

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

THE FIRST PRESBYTERIAN CHURCH
OF THE CITY OF BATON ROUGE

NO:

SECTION:

VERSUS

THE PRESBYTERY OF SOUTH LOUISIANA

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

NOW INTO COURT, through undersigned counsel, comes petitioner, The First Presbyterian Church of the City of Baton Rouge, a Louisiana nonprofit corporation, domiciled in the Parish of East Baton Rouge, and respectfully represents:

THE PARTIES

1.

The First Presbyterian Church of the City of Baton Rouge (“FPCBR” or “First Presbyterian Church”) is a Louisiana nonprofit corporation domiciled in East Baton Rouge Parish, founded in 1827 and first incorporated in 1828.

2.

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

JURISDICTION AND VENUE

3.

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

4.

Venue is proper in East Baton Rouge Parish, as the defendant is domiciled in East Baton Rouge Parish and the property in question is located in East Baton Rouge Parish.

OWNERSHIP OF LOCAL CHURCH PROPERTY

5.

First Presbyterian Church of the City of Baton Rouge was founded in 1827 as the first Protestant Christian congregation in East Baton Rouge Parish. It was first incorporated as a Louisiana nonprofit corporation in 1828, and reincorporated in 1873. Its articles were amended in 1910, and restated again in 2005. (Exhibits 1, 2, 3 and 4)¹

6.

All real property held by First Presbyterian Church of the City of Baton Rouge that comprises its main campus consists of or is situated on tracts acquired in eleven different deeds dating from 1923 to 1994. Only one tract was acquired after PCUSA and the PSL began their existence and after the PCUSA's purported adoption in 1983 of an express trust clause discussed herein.

7.

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

8.

All deeds of real property held by First Presbyterian Church of the City of Baton Rouge which comprise its main campus were originally titled in, and at all times have remained titled in, the corporation "First Presbyterian Church of the City of Baton Rouge" only, and do not mention or refer to a national denomination such as the PCUSA nor contain any language creating or accepting any trust over said property in favor of a national denomination or any of its regional administrative units such as the PSL. Said property has continuously been so titled

¹ The Exhibits referenced in this petition are submitted with Petitioner's Memorandum in Support.

in the public mortgage and conveyance records of the Parish of East Baton Rouge, State of Louisiana. (en globo Exhibit 5)

9.

The PCUSA was formed by the merger in 1983 of the Presbyterian Church in the United States (hereinafter the “PCUS” or the “southern church”) and the United Presbyterian Church in the United States of America (hereinafter the “UPCUSA” or the “northern church”). Prior to the formation of the PCUSA, First Presbyterian Church of the City of Baton Rouge was affiliated, according to its 1910 Articles of Incorporation, with the PCUS and its then-Presbytery of Louisiana. Upon formation of the PCUSA, the PCUS and the UPCUSA both ceased to exist as separate denominations, and the Presbytery of Louisiana (subsequently re-formed as the Presbytery of South Louisiana) ceased being a regional administrative unit of the PCUS and became a regional administrative unit of the PCUSA.

10.

The Constitution of the PCUSA consists of two parts, the Book of Confessions (Part I) and the Book of Order (Part II). The Book of Confessions contains doctrinal statements and statements of church governance (polity). The Book of Order focuses on church governance and divides itself into three main sections: the Form of Government, the Directory of Worship and the Rules of Discipline. The provisions in the PCUSA Constitution relating to property are found primarily but not exclusively in the Form of Government of the Book of Order, Chapter VIII, G-8.000 – G-8.700. (Exhibit 6)

11.

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

12.

The PCUSA Book of Order contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that a PCUSA presbytery (such as PSL) may dictate ownership of

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

13.

G-8.0301 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be "held, used, applied, transferred, or sold as provided by the presbytery." The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (6-4). On information and belief, the PCUS Book of Church Order did not previously contain a similar clause. It is the petitioner's position that G-8.0301 and any predecessor clause in the PCUS Book of Church Order are not applicable to petitioner's property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

14.

Although G-8.0501 of the PCUSA Book of Order states that the written permission of the presbytery is required before a particular church can sell, mortgage or otherwise encumber any of its real property, Chapter 6 of the 1982/1983 edition of the PCUS Book of Church Order did not contain such a requirement but, to the contrary, stated at 6-8, that "Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS."

15.

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

16.

The PCUSA Book of Order sets forth “Historic Principles of Church Order” which state at G-1.0301(1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the power of civil courts. G-1.0301(1) states:

(a) That “God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.”

(b) Therefore we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for production and security, and at the same time, be equal and common to all others.

17.

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

18.

According to the constitution of the PCUSA, ecclesiastical authority, instruction and rules are derived from Scripture, as guided first by the Book of Confessions, and derived only secondarily by the Book of Order.

19.

G-8.0700 of the PCUSA Book of Order sets forth an exemption from the provisions of Chapter VIII of the PCUSA Book of Order by providing that no particular church (local congregation) of the PCUSA shall be bound by any of the provisions in Chapter VIII if it was not previously subject to a similar provision in the denomination of which it was a part before the creation of the PCUSA — as long as that congregation, within a period of eight years following the establishment of PCUSA, votes to exempt itself from such provision. In the event of such timely vote, a particular church “shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church USA.”

20.

First Presbyterian Church of the City of Baton Rouge timely exercised the exemption clause of G-8.0700 of the PCUSA Book of Order at a regularly called meeting on October 18, 1987, unanimously adopting a resolution to be exempt from all provisions of Chapter VIII of the PCUSA Book of Order. That resolution (Exhibit 8) states:

BE IT RESOLVED that The First Presbyterian Church of Baton Rouge, in accordance with Paragraph 7 of Chapter VIII, The Church and Its Property, of The Book of Order of the Presbyterian Church (U.S.A.) does choose to be exempt from all of the provisions of Chapter VIII of said The Book of Order of the Presbyterian Church (U.S.A.), in order that it may continue to hold title to all of its property and exercise its privileges of incorporation and property ownership, as provided in The Book of Church Order of the Presbyterian Church in the United States as set forth therein in Chapter VI prior to the establishment of the Presbyterian Church (U.S.A.).

21.

The minutes of the October 18, 1987 congregational meeting (Exhibit 9) state:

A.R. Stevenson, Moderator, called on C.G. Spaht to present a recommendation from the Session. C.G. Spaht explained that at the time of Reunion of our churches all churches were given the option for a period of eight (8) years to have the congregation vote if they wished for our church property to remain in control of the local church or have the property in control of the high courts of our church as it is outlined in the new Book of Order. He stated that the Session was recommending that the congregation vote to retain our property under control of the local church. He then moved that the Congregation approve the adoption of the Resolution which is attached to these official minutes. Seconded by L.W. Graving.

There were questions and discussions and then the question was called for. The Congregation then voted unanimously to approve the resolution.

22.

Following the unanimous congregational adoption of the October 18, 1987 resolution, the minutes of that congregational meeting were signed by the senior minister and clerk of session and timely submitted to the PSL which, pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, were accepted without objection by the PSL in affirmation that said proceedings were “regular and in accordance with the Constitution” and were “prudent and equitable.” (Exhibit 10)

23.

For 155 years, from the time First Presbyterian Church of the City of Baton Rouge was founded in 1827, and continuously throughout its existence until 1982, no denomination with

which it was affiliated contained an express trust clause in the denominational constitution. Prior to the addition of express trust language in the 1982/1983 edition of the PCUS Book of Church Order, the PCUS Book of Church Order did not contain an implied trust over local church property. (Exhibit 11)

24.

Leading up to and in connection with the merger of the “southern church” and the “northern church,” in the year immediately prior to the 1983 formation of the PCUSA, the PCUS Book of Church Order was amended (reportedly) to add express trust clauses, in Section 6-1, Section 6-2 and 6-3, which first appeared in the 1982/1983 edition of the PCUS Book of Church Order. These three trust clauses are ambiguous, inconsistent and are of uncertain meaning. Sections 6-1 and 6-2 of the 1982/1983 edition of the PCUS Book of Church Order assert that a particular church holds title to property in trust for *both* the benefit of the particular church (“the corporation” in 6-2) and the denomination. Section 6-3 asserts a trust in favor of the denomination.

25.

The process whereby property clauses (6-1, 6-2 and 6-3 of the 1982/1983 edition of the PCUS Book of Church Order and G-8.0201 of the 1983 PCUSA Book of Order) were adopted did not include or result from any vote, approval or action by the petitioner, which is the owner and titleholder of record of the property in question. Instead, the process involved: a) participation by commissioners (voting delegates) to the General Assembly, which commissioners are chosen by regional bodies (the presbyteries) who would be beneficiaries of the asserted trusts, and b) participation by presbyters (voting delegates) to the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, those presbyters are not required under Presbyterian governance to act in a representative capacity on behalf of the congregations.

26.

Following initial approval by the commissioners to General Assembly, the new clauses that asserted trusts were added to the denominational Constitutions upon ratification by a

requisite number of presbyteries — irrespective of whether or not the PSL, acting through its then-presbyters, voted in favor of ratification.

27.

Regardless of how one interprets the ambiguous and inconsistent trust clauses in Chapter 6 of the PCUS Book of Church Order, the resolution adopted by First Presbyterian Church of the City of Baton Rouge at its October 18, 1987, congregational meeting, which resolution and minutes have been received and approved by the PSL, manifest an intent by First Presbyterian Church of the City of Baton Rouge to reject any ownership claims by a denomination, or claims by the denomination of a right to determine ownership, and to reject the concept of holding or conveying any of its property in trust, or creating or establishing a trust, for the use and benefit of a national denomination, whether the PCUSA or the PCUS, all of which was done in compliance with the procedures established by G-8.0700 of the PCUSA Book of Order.

28.

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.

29.

At no time has the congregation of the First Presbyterian Church of the City of Baton Rouge, its governing body (the session) or the governing body of its local church corporation (the board of trustees) ever concurred in, accepted or otherwise indicated acquiescence to the denomination's assertion of a trust over local church property nor any denominational claim to determine ownership of property titled in the name of the local church corporation or of any improvements thereon. At all times the congregation, the session, and the board of trustees have affirmed and reaffirmed their understanding and intent that all property held by the corporation known as "The First Presbyterian Church of the City of Baton Rouge," and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held by it in full and complete ownership in accordance with its articles of incorporation, and that none

of said property is held in trust for the use and benefit of a national denomination or any of its regional administrative units such as the PSL.

30.

The 1828 Articles of Incorporation state that the First Presbyterian Church of the “town” of Baton Rouge was originally built by raising subscriptions to capital stock totaling \$3,000, (sixty shares of \$50.00 each) which local stockholders then chose Directors. The original name of the corporation was “the first Presbyterian Church and Congregation in the town of Baton Rouge and the parish of East Baton Rouge.” Said corporation had, in Section 1 of the 1828 Articles, full right and exclusive power in all property matters. Section 2 of the 1828 Articles provide that the corporation may establish such bylaws, regulations and ordinances as may be in conformity with the “General Assembly of the Presbyterian Church of the United States of America” (a predecessor to the PCUS), as shall seem convenient and not contrary to the constitution of the United States and the laws of Louisiana.

31.

The 1873 Articles of Incorporation of the First Presbyterian Church of the City of Baton Rouge provide that the board of trustees shall exercise all powers of the corporation. The 1910 Articles of Incorporation of the First Presbyterian Church of the City of Baton Rouge grant without limitation in Article III through VI full authority on all property matters variously to the local board of trustees and the congregation.

32.

Neither the 1873 Articles nor the 1910 Articles of First Presbyterian Church of the City of Baton Rouge contain any provision creating or establishing any trust, express or implied, upon the property title in the name of the local church corporation in favor of a national denomination. Said Articles were never amended to add such trust provisions. Neither the congregation, the session or the board of trustees of First Presbyterian Church of the City of Baton Rouge have ever adopted a corporate or congregational resolution creating or establishing a trust pertaining to property held by and titled in the name of the local church corporation.

33.

In anticipation of the expiration of its 1910 Articles, the Articles of Incorporation of First Presbyterian Church of the City of Baton Rouge were amended and restated in 2005 to remove outdated, anachronistic language (delete reference to the no-longer-existing PCUS) and to conform to recent developments in corporate law concerning perpetual existence, indemnification and other matters. No mention of denominational affiliation (whether PCUS or PCUSA) is included. Said amendments and restatement were adopted at a duly called and noticed meeting of the members of the corporation held on November 13, 2005. The amended and restated 2005 Articles were subsequently filed and recorded with the Louisiana Secretary of State on November 16, 2005, and in the mortgage and conveyance records of East Baton Rouge Parish. The 2005 Articles have also been available at all times to the PSL pursuant to G-9.047 – 9.0409 of the PCUSA Book of Order, but the PSL has asked that they not be submitted for its review until September 24, 2006. (Exhibit 10)

34.

The 2005 Amended and Restated Articles of Incorporation contain no provision accepting a trust, express or implied, over local church property in favor of a national denomination.

35.

Article III of the 2005 Articles of Incorporation of First Presbyterian Church of the City of Baton Rouge vest full power and authority in the board of trustees of the local church corporation “to receive, hold, encumber, manage, transfer property, real or personal, for the Church (defined as the First Presbyterian Church in Baton Rouge), and to accept and execute deeds of title to such property, to have and exercise all other incidents of ownership without limitation on behalf of the Church ...” Consistent with the provisions of Louisiana Nonprofit Corporations Law, Article X of the 2005 Articles of Incorporation further provides that, “In addition, the identity of the Corporation, the ownership of the Corporation’s assets, and the right to use of the name First Presbyterian Church of the City of Baton Rouge and/or the name First Presbyterian Church of Baton Rouge, shall be determined at a duly noticed annual or special meeting of the members by a two-thirds vote of the members present and voting”

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

36.

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.

37.

The actions of First Presbyterian Church of the City of Baton Rouge, 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 First Presbyterian Church of the City of Baton Rouge, 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).

38.

Petitioner's board of trustees unanimously adopted a resolution on September 20, 2005 reciting the particulars of its property history as set forth above, and reaffirmed its historic understanding and longstanding intent that all property held by the First Presbyterian Church of the City of Baton Rouge is held by it in full and complete ownership, that the denomination has no right, title or interest in said property, or right to determine the ownership thereof, and that none of said properties as being held in trust for the use and benefit of a national denomination or any of its administrative units such as the PSL. (Exhibit 12).

39.

The September 20, 2005, resolution of the board of trustees was unanimously ratified by the session of First Presbyterian Church at its October 10, 2005 meeting. These minutes, with the resolution attached, have at all times been available to the PSL pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, but the PSL has asked that they not be submitted for its review until September 24, 2006. (Exhibit 13)

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

40.

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. (Exhibit 14)

41.

In mandating local church incorporation when permitted by civil law, the PCUSA and its regional administrative unit, the PSL, have acknowledged that property matters are not governed exclusively by the trust or ownership provisions asserted in the PCUSA Constitution, or the constitutions of its predecessor denominations, but instead are subject to the laws of the state in which the property is located. The PCUSA has expressly acknowledged this in its Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches 2000-

2003 (“Almost all property matters are governed by state law ...”). G-9.0102 of the PCUSA Book of Order further distinguishes the spiritual realm from civil authority by providing, “Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction.” (en globo Exhibit 15)

42.

As a corollary to G-9.01012 of PCUSA Book of Order which states that the PCUSA and its administrative units such as the PSL have only ecclesiastical jurisdiction and do not have authority over civil matters (in recognition that property matters are to be governed by state law), G-1.0301(b) of the PCUSA Book of Order states that the provisions of the denominational constitution are not, as a matter of the free exercise of religion, to be enforced by the civil power of the state through its courts. Thus, while this court has subject matter jurisdiction to resolve the property dispute before it, it cannot do so by applying the PCUSA Book of Order property provisions, as such would constitute an unlawful church establishment prohibited by both the First Amendment to the United States Constitution and by the PCUSA’s own constitution. Rather, any trust or other property interest in favor of the PSL or PCUSA, if such exists at all, must be founded only upon mutual intent evidenced by the use of ordinary civil means pursuant to state law. (Exhibit 15)

43.

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

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

44.

The session of First Presbyterian Church of the City of Baton Rouge intends to call a congregational meeting to discuss and vote on various matters including, but not limited to, the initiation of a local capital improvement fund drive. The scope of the planned capital improvements will require bank financing to be paid through pledges to the fund drive. The

financing may require that First Presbyterian Church of the City of Baton Rouge grant mortgages and security interests in the local church property to secure the repayment thereof. First Presbyterian Church of the City of Baton Rouge will not be able to provide acceptable title insurance on its property until such time as the questions presented herein are resolved. Moreover, the underwriting of any extension of credit is significantly impacted by the status of ownership of local church property.

45.

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

46.

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

47.

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

of an administrative commission, though purportedly for ecclesiastical governance, is the mechanism or device used by the PCUSA in its efforts to seize ownership and control over local church property. (Exhibits 16, 18)

48.

PCUSA presbyteries, in response to dissent (whether perceived or actual) by local congregations, ministers, church officers, and trustees to certain denominational actions, have variously: a) taken acts intended to assert ownership or place clouds on otherwise merchantable local property titles by recording, without prior notice, affidavits or other documents in local mortgage and conveyance records which improperly assert trusts on local church property in favor of the denomination, regardless of the facts of a local church's property history or the laws of the state in which local church property is situated; b) without notice, sought to change locks on local church property and otherwise seize local church assets; and c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice and opportunity for hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own. There is a likelihood that the filing of this petition will be perceived to be dissent, causing the PSL to act in such a manner.

49.

Further heightening the threat to local congregations, the PCUSA, through its Office of General Assembly (Department of Constitutional Services), on or about August 10, 2006 issued "Advisory Opinion Note 19", which states in part III thereof that if a presbytery, such as the PSL, fails to appoint an administrative commission to take over control of a local church voicing dissent over denominational policies then the next higher ecclesiastical authority, the synod, may appoint an administrative commission to take over control of the presbytery. (Exhibit 17).

50.

In further illustration of the aggressive tactics being used by PCUSA presbyteries and their use of "administrative commissions" as the mechanism or device to try and seize denominational ownership and control over local church property, the PCUSA has prepared legal strategy memoranda, waived any privilege of confidentiality and disclosed them to the press and

public. These memoranda have been publicly available on the internet since at least August 9, 2006 and are available through a Google search of “Presbyterian Church (USA) and property law”, and two mouse clicks. No attempt has been made by the PCUSA to dispute the authenticity of these memoranda, to retrieve them, or to prohibit their further circulation. These PCUSA memoranda:

- a) advocate use of “administrative commissions” specifically for church property disputes, and in conjunction therewith advises how to remove the local pastor and/or governing board of the local church;
- b) advise how to freeze local church assets and physically seize property;
- c) recommend placing a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;
- d) recommend mailing letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters “order” that no assets be released to the local church;
- e) instruct presbyteries to investigate the religious background of any judge assigned to the case in order to exploit potential partiality or religious bias;
- f) recommend that presbyteries in their pleadings “use spiritual language” in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as “schismatic”; and
- g) recommend to presbyteries, through the use of administrative commissions, to try and keep the local church in a defensive secular legal posture, counseling “Let the schismatics seek Caesar’s help.”

In globo Exhibit 18.

51.

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

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

(Exhibit 19)

52.

On August 22, 2006 the highest PCUSA officials, the Stated Clerk and the Moderator, issued a reply, refusing to urge or otherwise call for such a moratorium. (Exhibit 20).

53.

The actions by PCUSA presbyteries described above violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of the Louisiana Constitution, the religion clauses of the First Amendment to the United States Constitution and Article I, Section 8 of the Louisiana Constitution, the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Louisiana Constitution, and substantive property rights guaranteed under Article I, Section 4 of the Louisiana Constitution. The effect of such actions, if taken in whole or in part or threatened by the PSL, would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters, impede the ability of the congregation of First Presbyterian Church of the City of Baton Rouge to hold a congregational or corporate meeting free of improper interference, and cloud the title of property held by First Presbyterian Church of the City of Baton Rouge.

54.

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

55.

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

56.

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

will be irreparably injured. First Presbyterian Church has an approximate membership of 1,700 and is the largest Presbyterian church in the state of Louisiana, with an annual budget of \$3.2 million. It employs approximately 60 people. It supports numerous ministries and missionaries, as more fully described in the Memorandum submitted in support of this Petition. No amount of subsequent monetary award would be an adequate remedy to the irreparable damage that would be done to the mission and ministries of First Presbyterian Church of the City of Baton Rouge which would occur as a result of confiscatory or disciplinary action initiated by the PSL in retaliation for the exercise of petitioner's rights.

57.

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

58.

Inasmuch as petitioner seeks only a temporary restraining order and preliminary injunction during the pendency of this suit, the interests of the petitioner and the members of the First Presbyterian Church of the City of Baton Rouge and its local church corporation outweigh any possible injury to the PSL which might result from the granting of a temporary restraining order and a preliminary injunction, said relief and injunction being in the public interest.

DECLARATORY RELIEF

59.

Petitioner seeks a declaratory judgment: (a) that all property held by or for First Presbyterian Church of the City of Baton Rouge, and any improvements thereon, whether real or personal, corporeal or incorporeal, movable or immovable, is held without any trust in favor a national denomination or any of its regional administrative units, such as the PSL; (b) that all property held by or titled in the name of the local church corporation is held by it in full and exclusive ownership; and (c) that neither the PCUSA nor the PSL has any right, title or interest in said property, nor right to determine the ownership thereof.

60.

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

WHEREFORE, Petitioner, First Presbyterian Church of the City of Baton Rouge, prays that a temporary restraining order and preliminary injunction be issued herein and a declaratory judgment be issued herein as follows:

- 1) Temporary Restraining Order - restraining and enjoining defendant The Presbytery of South Louisiana and any of its agents, employees or other persons or entities acting on its behalf or in its stead, from (a) filing any documents in the mortgage and conveyance records of East Baton Rouge Parish the effect of which would be to place a cloud on the title of any property titled in the name of petitioner, or otherwise taking any action to claim ownership of local church property whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership of local church property, in the possession of, control of, or owned by First Presbyterian Church of the City of Baton Rouge; and (b) further restraining defendant The Presbytery of South Louisiana and any agents, employees or other persons or entities acting on its behalf or in its stead, from asserting any rights to the property of First Presbyterian Church of the City of Baton Rouge, including but not limited to seeking to change the locks of FPCBR, initiating any disciplinary action against the ministers or members of FPCBR, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of FPCBR, the governing body of FPCBR (the session), its congregation, or the governing body of its local church corporation the First Presbyterian Church of the City of Baton Rouge (the board of trustees);
- 2) Preliminary Injunction - enjoining defendant during the pendency of this suit, from any of the acts described in paragraph 1) of this prayer;
- 3) Declaratory Judgment - declaring that all property held by or titled in the name of the petitioner, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held without trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the Presbytery of South Louisiana, and that the

petitioner holds all property titled in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Louisiana and as set forth in petitioner's articles of incorporation, and that neither the PCUSA nor any of its regional administrative units such as the Presbytery of South Louisiana has any right, title or interest in said property nor right to determine the ownership thereof;

- 4) that defendant be served with a copy of the above and foregoing petition and order;
- 5) that defendant be cited to answer said petition and to appear before this Honorable Court at a date and time fixed by this Court to show cause why a preliminary injunction should not issue as prayed for and, after all due proceedings had, a declaratory judgment issue as prayed for in favor of petitioner;
- 6) for all general and equitable relief, and;
- 7) for all costs of these proceedings.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
Lloyd J. Lunceford (#8439)
Brett P. Furr (#17572)
Eugene R. Groves (#6358)
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P.O. Box 2471
Baton Rouge, LA 70821
Telephone: (225) 387-3221
Facsimile: (225) 346-8049
ATTORNEYS FOR FIRST PRESBYTERIAN
CHURCH OF THE CITY OF BATON ROUGE

PLEASE SERVE:

THE PRESBYTERY OF SOUTH LOUISIANA

Through its agent for service of process:

William H. Bottomly, III

4800 Zenith St., Apt. 234

Metairie, LA 70001

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

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

EUGENE H. OWEN

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

EUGENE H. OWEN

SWORN TO AND SUBSCRIBED, before me, on this _____ day of _____, 2006 in Baton Rouge, Louisiana.

NOTARY PUBLIC

_____, Bar Roll Number: 8439
Commission expires: _____

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

FIRST PRESBYTERIAN CHURCH
OF THE CITY OF BATON ROUGE, INC.

NO:

DIVISION:

VERSUS

THE PRESBYTERY OF SOUTH LOUISIANA

ORDER

CONSIDERING THE FOREGOING Petition For Temporary Restraining Order, Preliminary Injunction, and Declaratory Judgment filed herein by The First Presbyterian Church of the City of Baton Rouge:

IT IS ORDERED that a Temporary Restraining Order be and hereby is issued as of this _____ day of _____, 2006, at _____ o'clock ____m., which Temporary Restraining Order shall continue for ten (10) days hereafter from the date and time above indicated unless, prior to the time of expiration, it is extended by the Court for good cause shown.

This Temporary Restraining Order shall be effective against the Presbytery of South Louisiana, its officers, agents, employees, and counsel, and any persons in active concert or participation with it, on its behalf or in its stead, restraining the Presbytery of South Louisiana from filing any documents in the mortgage and conveyance records of East Baton Rouge Parish to assert rights of ownership, or rights to determine ownership, to any property titled in the name of the First Presbyterian Church of the City of Baton Rouge or to assert a trust on behalf of the Presbytery of South Louisiana or other third party over property titled in the name of the First Presbyterian Church of the City of Baton Rouge, the effect of which would be to place a cloud on the title of said property, or otherwise take any action to claim ownership of local church property, or a right to determine ownership of local church property, in the possession of, control of, or owned by First Presbyterian Church of the City of Baton Rouge; and

IT IS FURTHER ORDERED that the Presbytery of South Louisiana, and any persons in active concert or participation with it, on its behalf or in its stead, is temporarily restrained from

taking any action that could affect the property and rights of the First Presbyterian Church of the City of Baton Rouge, including but not limited to: 1) seeking to change the locks of First Presbyterian Church; 2) initiating any disciplinary action against the ministers or members of FPCBR; 3) appointing an administrative commission to assert original jurisdiction over the First Presbyterian Church of the City of Baton Rouge; or 4) otherwise interfering with the normal duties and responsibilities of the ministers and other employees of the First Presbyterian Church of the City of Baton Rouge, the governing body of said local church (the “session”), or the board of trustees, the governing body of the local church corporation.

IT IS FURTHER ORDERED that Petitioner/applicant is not required to furnish security as a condition to the issuance of this Temporary Restraining Order.

This Order is being granted without notice and hearing to temporarily preclude the Presbytery of South Louisiana from appointing an administrative commission to exercise original jurisdiction to replace the authority of the ordained clergy employed by the First Presbyterian Church or the authority of the session or board of trustees of First Presbyterian Church prior to a determination by this Court of the rights and responsibilities of the parties.

IT IS FURTHER ORDERED that this Temporary Restraining Order be filed in the Clerk’s Office and entered of record.

IT IS FURTHER ORDERED that the defendant The Presbytery of South Louisiana show cause on the _____ day of _____, 200____, at _____ o’clock, __.m. why a preliminary injunction should not be issued and granted as prayed for by petitioner.

IT IS FURTHER ORDERED that the defendant file its response to the petitioner’s request for a Declaratory Judgment within the delays allowed by law.

Baton Rouge, Louisiana, this _____ day of _____, 2006.

JUDGE, NINETEENTH JUDICIAL DISTRICT COURT

PLEASE SERVE:

THE PRESBYTERY OF SOUTH LOUISIANA
Through its agent for service of process:
William H. Bottomly, III
4800 Zenith St., Apt. 234
Metairie, LA 70001

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

THE FIRST PRESBYTERIAN CHURCH
OF THE CITY OF BATON ROUGE

NO:

SECTION:

VERSUS

**MEMORANDUM IN SUPPORT OF
PETITION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
DECLARATORY JUDGMENT**

THE PRESBYTERY OF SOUTH LOUISIANA

MAY IT PLEASE THE COURT:

This Memorandum is submitted in support of the Petition of The First Presbyterian Church of the City of Baton Rouge for a temporary restraining order, preliminary injunction during the pendency of this suit, and declaratory judgment.

I. INTRODUCTION

The resolution of competing claims to ownership or use of local church property, though largely a matter of state statutory and case law, is guided by decisions of the United States Supreme Court interpreting the religion clauses of the First Amendment to the U.S. Constitution. Those decisions set the guidelines within which state courts are required to operate. Although Part III will discuss the law at greater length, a brief introductory discussion of the “neutral principles of law” method approved by the U.S. Supreme Court and subsequently adopted by the Louisiana Supreme Court will aid the court in assessing the significance of the facts of this case set out in Part II.

The neutral principles of law method for resolving church property disputes can best be understood in contrast with earlier, now-discarded methods. In Colonial days the “English Rule” was followed, where disputes between a denomination and a congregation, or between factions within a congregation, concerning the ownership or use of local church property were resolved by awarding the property to the party deemed by the civil court to most closely adhere to the founding religious doctrines. In the absence of any express language in the denominational constitution or local charter or deeds establishing a trust, an implied trust was deemed to exist — for the benefit of the party deemed faithful to the true religion. The English Rule was thus also

known as the “departure-from-doctrine/implied trust” method. Not surprisingly, this approach was eventually held incompatible with the establishment clause of the First Amendment to the U.S. Constitution. Civil courts opining on what does or does not conform to correct doctrine is an unacceptable intrusion by civil authority into ecclesiastical affairs and would constitute an impermissible state establishment of religion.²

With discomfort over the departure-from-doctrine method growing, the U.S. Supreme Court held that a different approach, the “hierarchical method”, was constitutionally permissible (but not mandatory). Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1872) held that the U.S. Constitution does not prohibit civil courts from deferring to the decisions on church property disputes made by the highest ecclesiastical tribunals to which the matter may have been appealed in a hierarchical denomination³ (usually the diocese in an Episcopal church, the conference in a Methodist church, or the presbytery in a Presbyterian church). States were left free to adopt other methods for resolving church property disputes, such as statutory schemes, so long as the method chosen did not require civil courts to impermissibly base their decisions on religious concepts or on interpretations by civil courts of religious doctrine.

The hierarchical method remains operative in some states today, but it tends in usual practice to favor national denominations to the disfavor of local congregations — a not surprising result given that the ecclesiastical tribunals which decide such matters are created and controlled by the very denominations claiming ownership or use of local church property. Some

² Although problems with the departure-from-doctrine rule became increasingly evident during the 19th and 20th centuries, during which time its use waned, it was not expressly declared unconstitutional until Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church, 393 U.S. 440 (1969).

³ There are numerous forms of church governance. At one end of the spectrum there are wholly autonomous local congregations under a “congregational” form of government (e.g., Baptists). At the other end of the spectrum is a strictly hierarchical, vertical line of authority — from priest to bishop to cardinal to pontiff (e.g., the Roman Catholic Church). In between, there are numerous gradations or intermediate forms. The U.S. Supreme Court, however, has adopted a two-fold classification: congregational or hierarchical. The PCUSA and its predecessor denominations are “Presbyterian” in government, a form which is neither wholly congregational nor strictly hierarchical. With respect to internal, ecclesiastical matters, Presbyterians divide authority between ascending ecclesiastical bodies or “courts” of session, presbytery, synod, and general assembly. The governing body of a local Presbyterian church is its board of elders, called a “session” by Presbyterians. A local Presbyterian church that has incorporated also has a board of directors or trustees of the local church corporation. For corporate and property matters Presbyterians function in a more congregational than hierarchical manner, consistent with Presbyterian denominational constitutions, Presbyterian history and custom, local articles of incorporation, and state law.

courts have noted that such one-sided favoritism resulting from civil court deference to denominational authorities was effectively a state establishment of the hierarchical denomination's religion, prohibited under state and federal constitutions.

Recognition of this problem inherent in the hierarchical method eventually led to the approval by the United State Supreme Court of still another method, the “neutral principles of law” method, which now governs resolution of church property disputes here in Louisiana. In Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) the U.S. Supreme Court first said that the neutral principles of law method was also a constitutionally permissible, alternative approach to resolving church property disputes. Ten years later, in Jones v. Wolf, 443 U.S. 595 (1979), the U.S. Supreme Court elaborated on the meaning of neutral principles of law and advocated its adoption by the states. Under the neutral principles of law method, courts do not merely defer to ecclesiastical decisions. Instead, courts consider the language in religious documents like denominational constitutions but are not to use religious concepts in interpreting them or give undue deference to those religious documents. Further, courts are to undertake examination of all of the property-related documents which may bear on the question of consent and mutual intent — specifically, language in the local property deeds at issue, the local church's corporate charter or articles of incorporation, local resolutions, minutes, or correspondence, and any other evidence relevant to asserting mutual intent and the relationship between the parties.

Because of the importance of Wolf to the present controversy, its key, explanatory passages are excerpted:

[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. ... As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. ... Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, “a State may adopt any one of various approaches for settling church property disputes as long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

At least in general outline, we think the “neutral principles of law” approach is consistent with the foregoing constitutional principles. ...

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively

on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure the dispute over the ownership of church property will be resolved in accord with the desires of the members.

This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method ... requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions related to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Jones v. Wolf at 602-604 (citations omitted).⁴

The neutral principles of law method was subsequently adopted by the Louisiana Supreme Court in Fluker v. Hitchens, 419 So.2d 445 (La. 1982). In adopting this method, Louisiana went further than the United States Supreme Court by holding that adoption of the neutral principles approach was constitutionally *required* by Article I, Section 8 of the Louisiana Constitution (1974) (and, in the view of the Louisiana Supreme Court, by the First Amendment to the United States Constitution). The Court in Fluker said:

⁴ The Wolf court's emphasis on mutual intent is seen in its instruction that civil courts should give effect to the result "indicated by the *parties*". Id at 606 (emphasis added). The emphasis on mutual intent also can be seen by Wolf's suggested alternative to amending denominational constitutions: "They (local churches) can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church." Id (parenthesis added). As for the U.S. Supreme Court's other suggested means of potentially obtaining clarification of church property status, amendment to denominational constitutions, Wolf apparently presumed that an amendment to a denominational constitution would necessarily involve local ratification by the other party. As explained in Part II, though, in the PCUSA the process of amending the denominational constitution, the Book of Order, does not involve vote by the other party, the title holder to local property.

State court decisions throughout the United States, discussed in Part III, which have applied neutral principles make it clear that amendment to denominational constitutions to add express trust language is not by itself determinative. Courts following neutral principles of law consider many factors in determining the mutual intent of the parties, which intent must be reflected in some form acknowledged in the law as binding.

Indeed, we think the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment in Article I, Section 8 of our state constitution *necessitate* our adoption of the “neutral principles” approach. Whatever authority or hierarchical organization may have over associated local churches is derived solely from the local church’s consent. Refusal to adjudicate its feud over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants or religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy’s religion.

Fluker v. Hitchens at 445 (emphasis supplied), citing A. Adams and W. Hanlon, Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment, 128 U. Pen. L. Rev. 1291 (1980). C.f. Hargrave, Louisiana Constitutional Law, 42 La. L. Rev. 596 (1982).

II. FACTS

With neutral principles of law in mind to determine mutual intent, we turn to the facts of the present case.

A. DENOMINATIONAL PROVISIONS

Defendant Presbytery of South Louisiana (“PSL”), first formed in 1973, is a regional administrative unit for the Presbyterian Church (USA) (“PCUSA” or “denomination”, an entity first formed in 1983). PSL is domiciled in East Baton Rouge Parish. The PCUSA currently has approximately 11,000 member churches located throughout the United States, including the State of Louisiana and East Baton Rouge Parish.

The PCUSA was formed in 1983 upon the merger of the Presbyterian Church in the United States (hereinafter the “PCUS” or the “southern church”) and the United Presbyterian Church in the United States of America (hereinafter the “UPCUSA” or the “northern Church”). Prior to the formation of the PCUSA, First Presbyterian Church was affiliated, according to its 1910 Articles of Incorporation, with the PCUS and its-then Presbytery of Louisiana. Upon formation of the PCUSA, the PCUS and the UPCUSA ceased to exist as separate denominations, and the Presbytery of Louisiana (subsequently re-formed as the Presbytery of South Louisiana)

ceased being an administrative unit of the PCUS and became an administrative unit of the PCUSA.⁵

The Constitution of the PCUSA consists of two parts, the Book of Confessions and the Book of Order. The Book of Confessions contains doctrinal statements. The Book of Order pertains to church governance or polity 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 in the Form of Government of the Book of Order, Chapter VIII, G-8.000 – G-8.700 (Exhibit 6).

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).” As noted, the purported effect of this provision, if legally enforceable under the laws of the State of Louisiana and the facts presented, is to require permission from the PSL in order for petitioner to disaffiliate from the PCUSA and remain in control over the use of property, and the improvements thereon, titled in petitioner’s name.

It was only in the year immediately prior to the 1983 formation of the PCUSA that the PCUS Book of Church Order was amended (reportedly) to add express trust clauses, in Section 6-1, Section 6-2 and 6-3, which first appeared in the 1982/1983 edition of the PCUS Book of Church Order.⁶ (Exhibits 7, 11)

⁵ The Presbytery of South Louisiana was first formed in 1973. When First Presbyterian Church was first organized in 1827 it was part of the Presbytery of Mississippi, Synod of Kentucky (which included all of the territory from which the states of Alabama, Arkansas, Louisiana, Mississippi and Texas were later formed). Subsequently, First Presbyterian Church became part of the Amite Presbytery, Synod of Mississippi. In 1836 the name “Amite Presbytery” was changed to “Louisiana Presbytery”. In 1901 the Synod of Mississippi was divided and a new Synod of Louisiana was organized with three presbyteries: Louisiana, Orleans and Red River. In 1973 the Louisiana and Orleans presbyteries were merged to form the Presbytery of South Louisiana.

These various presbyteries and synods were regional administrative units of broader Presbyterian bodies or denominations. The first formal organization in the United States of the few scattered Presbyterian churches occurred in 1706 in Philadelphia, at which time the Presbytery of Philadelphia was formed. In 1717 the Synod of Philadelphia was organized with four presbyteries. In 1837 a division occurred over doctrinal questions and American Presbyterianism was divided into two main branches known as the “Old School” and the “New School”. Continued controversy led to the withdrawal of the churches in the South in 1861, at which time the Presbyterian Church in the Confederate States of America was organized. In 1865 the General Assembly of that denomination changed its name to the Presbyterian Church in the United States (PCUS), with which First Presbyterian Church was affiliated until 1983.

⁶ These three trust clauses are ambiguous 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

The PCUSA Book of Order also contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that only a presbytery has authority to sever the relationship between a particular church and the PCUSA, that in the event of a split (“schism”) within a particular church which the presbytery is unable to reconcile, the presbytery shall determine which faction is the “true church” within the PCUSA and thus purportedly entitled to the local property. G-8.0600 further asserts that in making this determination, the presbytery is not bound by whichever faction receives the majority vote within the particular church at the time of a split. The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (6-5).

G-8.0301 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be “held, used, applied, transferred, or sold as provided by the presbytery.” The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (G-4).

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, the provisions of the constitution with which First Presbyterian Church of the City of Baton Rouge was previously subject immediately prior to the formation of the PCUSA, the 1982/83 edition of the PCUS Book of Church Order, did not contain a similar provision but, to the contrary, provided 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.”

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 of the PCUSA shall be bound by any of the foregoing 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

denomination, which are mutually exclusive propositions. Section 6-3 asserts a trust only in favor of the denomination. The trust asserted in 6-3 includes property held *by* a particular church, but 6-1 and 6-2 already assert a trust for such property — but one which runs in favor of the local church as much as in favor of the denomination. Therefore, the only thing which 6-3 appears to add is an asserted trust in favor of the denomination only for property held *for* (but not by) a particular church. Whatever their meaning, the existence of these PCUS trust clauses, added suddenly just before the PCUS ceased to exist, was and is largely unknown to rank and file Presbyterians in local church pews.

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”.

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 (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. (Exhibit 14)

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

The PCUS Book of Church Order did not require, nor does the PCUSA Book of Order require, that the text of 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.⁷

The PCUSA Book of Order sets forth “Historic Principles of Church Order” which state at G-1.0301(1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the power of civil courts. G-1.0301(1) states:

⁷ In mandating local church incorporation when permitted by civil law, the PCUSA and its regional body, the PSL, has **acknowledged** that property matters are **not** governed exclusively by the trust or ownership provisions asserted in the PCUSA Constitution **but instead** are determined in accordance with the laws of the state in which the property is located. The PCUSA has expressly acknowledged this in its Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches 2000-2003 (“Almost all property matters are governed by state law ...”). G-9.0102 of the PCUSA Book of Order further distinguishes the spiritual realm from civil authority by providing, “Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction”.

(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.

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

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.

Additionally, as noted above, G-1.0301 of the PCUSA Book of Order expressly states that the provisions of the denominational constitution are **not** to be enforced by the civil power of the state. The PCUSA’s Book of Order provisions asserting a trust over local church property and a right to determine ownership of local church property are thus merely hortatory, simply a proclamation of the ecclesiastical preferences of those who voted to insert such provisions into the Book of Order. They cannot by themselves suffice to create property rights absent the use of ordinary civil means under state law for creating and documenting trusts or other property rights.

The foregoing denominational provisions reflect a confusing and ambiguous denomination intent (or at least denominational desire, for the PCUSA has acknowledged in its own Legal Resource Manual and constitution that property matters are governed by state law which may not coincide with denominational ambitions). The PCUSA constitution itself acknowledges that the authority of the PCUSA is ecclesiastical only and does not extend to civil matters, and that the power of the state, acting through its courts, is **not** to be used to enforce the text of the denominational constitution, including its property provisions. Therefore, enforcement of any denominational claim to a trust or ownership interest must be founded, if it is

to be founded at all, on the observance of state law pertaining to the creation of a civil trust or ownership interest. (Exhibits 15, 18)

For the other side of the coin of required *mutual* intent, we must turn to the particular facts relating to First Presbyterian Church of Baton Rouge.

B. THE LOCAL CHURCH PROVISIONS

The First Presbyterian Church of the City of Baton Rouge (“FPCBR” or “First Presbyterian Church”) is a Louisiana corporation domiciled in East Baton Rouge Parish. It was founded in 1827 as the first Protestant Christian congregation in East Baton Rouge Parish. It was first incorporated as a Louisiana nonprofit corporation in 1828, and reincorporated in 1873. Its articles were amended in 1910, and restated again in 2005. (Exhibits 1, 2, 3 and 4)

The immovable property held by First Presbyterian Church of the City of Baton Rouge which comprises its “main campus” consists of or is situated on tracts acquired in eleven different deeds dating from 1923 to 1994. (en globo Exhibit 5) Only one tract was acquired after PCUSA adoption in 1983 of an express trust clause. The main campus of First Presbyterian Church of the City of Baton Rouge occupies the block bounded by North Blvd. and Convention on the south and north, and 8th Street and 7th Street on the east and west (plus a small parking lot on the northeast corner of Convention and 7th Street).

All acquisitions of immoveable property held by First Presbyterian Church of the City of Baton Rouge, and all improvements thereon, movable and immovable, real and personal, were acquired and/or built exclusively as a result of financial contributions made by the members of First Presbyterian Church. No financial contributions were made by the PSL, the PCUS, or the PCUSA.

All deeds of immovable property held First Presbyterian Church of the City of Baton Rouge were originally titled in, and at all times have remained titled in, the corporation “First Presbyterian Church of the City of Baton Rouge” only, and do not mention or refer to a national denomination such as the PCUS or PCUSA or any regional unit such as the PSL, nor contain any language creating or accepting any trust over said property in favor of a national denomination or regional unit such as the PSL.

For 155 years, from the time First Presbyterian Church of the City of Baton Rouge was founded in 1827, and continuously throughout its existence until 1982, no denomination of which it was affiliated contained a trust, express or implied,⁸ in the denominational constitution. A trust clause, if validly created and enforceable under Louisiana law, would mean that First Presbyterian Church of the City of Baton Rouge would need the permission of the PSL before it could disaffiliate from the PCUSA and maintain control over the use of the local church property.

The process whereby trust clauses (6-1, 6-2 and 6-3 of the 1982/1983 edition of the PCUS Book of Church Order and G-8.0201 of the 1983 PCUSA Book of Order) were adopted did not include a vote by First Presbyterian Church of the City of Baton Rouge, which is the owner and titleholder of record. Instead, the process involved: a) participation by commissioners (voting delegates) to the General Assembly, which commissioners are chosen by the regional bodies (the presbyteries) in whose favor the asserted trusts would operate, and b) participation by presbyters (voting delegates) meeting in the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, presbyters are not required under Presbyterian polity to act in a representative capacity on behalf of those congregations.

Following initial approval by commissioners to the General Assembly, the new clauses asserting trusts were adopted into the denominational Constitutions upon ratification by a requisite number of presbyteries — *irrespective* of whether or not the Presbytery of South Louisiana, acting through its then-presbyters, voted in favor of ratification.

⁸ See, G.A. Actions on Church Property from the PCUS, PCUSA, UPC and PC(USA), and 1983 Report of the Ad Interim Committee on the Study of the (PCUS) Book of Church Order. The absence of an implied trust in the PCUS constitution (with which FPCBR was affiliated prior to the 1983 formation of the PCUSA) was noted by the U.S. Supreme Court in Jones v. Wolf, supra. Wolf reviewed a prior case, Hull, supra, and its eventual disposition on remand to the Georgia Supreme Court. On remand, the Georgia Supreme Court applied the “neutral principles of law” method and examined the deeds to the disputed property, Georgia state statutes dealing with implied trusts, and the PCUS Book of Church Order. After this review the Georgia Supreme Court found “nothing that would give rise to a trust in any of these documents ...”. Jones v. Wolf, 443 U.S. 595, at 600. citing Presbyterian Church v. Eastern Heights Church, 225 GA 259, 1675 E.2d 698 (1969) (Presbyterian Church II). State Supreme Courts in two other states, Pennsylvania and New York, have likewise concluded that no implied trust was contained in the constitution of the UPCUSA (the other denomination which merged with the PCUS to form the PCUSA). See The Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317 (Pa. 1985), and First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States, 62 N.Y.2d 110, 464 N.E.2d 454 (1984).

First Presbyterian Church of the City of Baton Rouge timely exercised the exemption of G-8.0700 of the PCUSA Book of Order by a congregational vote at a regularly called meeting on October 18, 1987, unanimously adopting a resolution to be exempt from provisions of Chapter VIII of the PCUSA Book of Order. (Exhibit 8) That resolution states:

BE IT RESOLVED that The First Presbyterian Church of Baton Rouge, in accordance with Paragraph 7 of Chapter VIII, The Church and Its Property, of The Book of Order of the Presbyterian Church (U.S.A.) does choose to be exempt from all of the provisions of Chapter VIII of said The Book of Order of the Presbyterian Church (U.S.A.), in order that it may continue to hold title to all of its property and exercise its privileges of incorporation and property ownership, as provided in The Book of Church Order of the Presbyterian Church in the United States as set forth therein in Chapter VI prior to the establishment of the Presbyterian Church (U.S.A.).

The minutes of the October 18, 1987 congregational meeting (Exhibit 9) state that in adopting the resolution set forth in the preceding paragraph, the congregation understood its vote to mean that its church property would “remain in control of the local church” rather than in control of the “higher courts of our church”. Those minutes state:

A.R. Stevenson, Moderator, called on C.G. Spaht to present a recommendation from the Session. C.G. Spaht explained that at the time of Reunion of our churches all churches were given the option for a period of eight (8) years to have the congregation vote if they wished for our church property to remain in control of the local church or have the property in control of the high courts of our church as it is outlined in the new Book of Order. He stated that the Session was recommending that the congregation vote to retain our property under control of the local church. He then moved that the Congregation approve the adoption of the Resolution which is attached to these official minutes. Seconded by L.W. Graving.

There were questions and discussions and then the question was called for. The Congregation then voted unanimously to approve the resolution.

Following unanimous congregational approval of the October 18, 1987 resolution, the minutes of that congregational meeting were signed by the senior minister and clerk of session and timely submitted to the PSL which, pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, were accepted without objection by the PSL in affirmation that said proceedings were “regular and in accordance with the (denominational) Constitution” and were “prudent and equitable”. (Exhibit 10)

The 1828 Articles of Incorporation state that the First Presbyterian Church of the “town” of Baton Rouge was originally built by raising subscriptions to capital stock totaling \$3,000, (sixty shares of \$50.00 each), which local stockholders then chose Directors. The original name

of the corporation was “the first Presbyterian Church and Congregation in the town of Baton Rouge and the parish of East Baton Rouge.” Said corporation had, in Section 1 of the 1828 Articles, full right and exclusive power in all property matters. Section 2 of the 1828 Articles provide that the corporation may establish such bylaws, regulations and ordinances as may be in conformity with the “General Assembly of the Presbyterian Church of the United States of America” (a predecessor to the PCUS), as shall seem convenient and not contrary to the constitution of the United States and the laws of Louisiana.

The 1873 Articles of Incorporation of First Presbyterian Church of the City of Baton Rouge provide that the board of trustees shall exercise all powers of the corporation. The 1910 Articles of Incorporation of First Presbyterian Church of the City of Baton Rouge grant without limitation in Article III through VI full authority on all property matters variously to the local board of trustees and the congregation. Neither the 1873 Articles nor the 1910 Articles contain any provision imposing or accepting any trust, express or implied, upon the property titled in the name of the local church corporation in favor of a national denomination. Said Articles were never amended to add such trust provisions. Neither the congregation, the session or the board of trustees have ever adopted a corporate or congregational resolution creating or accepting a trust pertaining to property held by and titled in the name of the local church corporation.

In anticipation of the expiration of its 1910 Articles, the Articles of Incorporation of First Presbyterian Church of the City of Baton Rouge were amended and restated to remove anachronistic language (delete reference to the no-longer-existing PCUS) and to conform to developments in corporate law, such as providing for perpetual existence and the indemnification of officers. No mention of denominational affiliation (PCUS or PCUSA) is included. These amended and restated Articles were unanimously adopted at a duly called and noticed meeting of the members of the corporation held on November 13, 2005, which amended and restated Articles were subsequently filed and recorded with the Louisiana Secretary of State on November 16, 2005, and in the mortgage and conveyance records of East Baton Rouge Parish. The 2005 Articles have at all times been available to the PSL pursuant to G-9.047 – 9.0409 of the PCUSA Book of Order but the PSL has asked that they not be submitted for its review until September 24, 2006.

The 2005 Amended and Restated Articles of Incorporation contain no provision accepting a trust, express or implied, over local church property in favor of a national denomination. Article III of the 2005 Articles of Incorporation vest full power and authority in the board of trustees of the local church corporation “to receive, hold, encumber, manage, transfer property, real or personal, for the Church (defined as the First Presbyterian Church in Baton Rouge), and to accept and execute deeds of title to such property, to have and exercise all other incidents of ownership without limitation on behalf of the Church ...”

In accordance with the provisions of Louisiana Nonprofit Corporations Law, Article X of the 2005 Articles of Incorporation provides that, “In addition, the identity of the Corporation, the ownership of the Corporation’s assets, and the right to use of the name First Presbyterian Church of the City of Baton Rouge and/or the name First Presbyterian Church of Baton Rouge, shall be determined at a duly noticed annual or special meeting of the members by a two-thirds vote of the members present and voting ...”.

Petitioner’s board of trustees unanimously adopted a resolution on September 20, 2005 reciting the particulars of its property history as set forth above, reaffirming its understanding and intent that all property held by the First Presbyterian Church of the City of Baton Rouge is held by it in full and complete ownership, and that none of said properties are being held in trust for the use and benefit of a national denomination. (Exhibit 12) The September 20, 2005 resolution of the board of trustees was unanimously ratified by the session of First Presbyterian Church of the City of Baton Rouge at its October 10, 2005 meeting. (Exhibit 13) The related minutes with resolution attached have at all times been available to the PSL pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order but the PSL has asked that they not be submitted for its review until September 24, 2006. (Exhibit 10)

At no time has the congregation of the First Presbyterian Church of the City of Baton Rouge, its governing body (the session) or the governing body of its local church corporation (the board of trustees) ever concurred in, accepted or otherwise indicated acquiescence to the denomination’s assertion of a trust over local church property nor any denominational claim to determine ownership of property titled in the name of the local church corporation or of any improvements thereon. At all times the congregation, the session, and the board of trustees have

affirmed and reaffirmed their understanding and intent that all property held by the corporation known as “The First Presbyterian Church of the City of Baton Rouge”, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held by it in full and complete ownership in accordance with its articles of incorporation, and that none of said property is held in trust for the use and benefit of a national denomination or any regional administrative unit such as the PSL.

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 requirements for the creation of a valid trust enforceable in Louisiana. The actions of First Presbyterian Church of the City of Baton Rouge, and its property-related documents recited herein, preclude a finding of any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana, as explained in Part III, below.

III. LAW AND ARGUMENT

A. LOUISIANA

A survey of Louisiana caselaw involving church property discloses several reported decisions that are either not relevant (i.e., they do not address questions of ownership, trusts, revocability, or disaffiliation) or they predate Wolf and the 1982 Louisiana Supreme Court decision in Fluker which adopted the Wolf-authorized “neutral principles” method. Discussed below, then, are the benchmark decision in Fluker and, with the exception of one instructive Third Circuit decision, the pre and post-Fluker decisions of the Louisiana First Circuit Court of Appeal.

Fluker Community Church v. Hitchens, 419 So.2d 445 (La. 1982), is noteworthy for its express adoption of Wolf to apply neutral principles of contract and property law to resolve Louisiana church property disputes, and for its emphasis on the specific language in the property deed involved. At issue was an unincorporated association that functioned for many years as a freestanding religious congregation (society), eventually affiliated with the African Methodist Episcopal Church, and subsequently chose by majority vote to disaffiliate. In a brief opinion, the Louisiana Supreme Court concluded that under the circumstances presented the text of the A.M.E. Discipline (the denominational constitution) *and* the property deed overcame the

Louisiana presumption of majority rule, such that the minority faction loyal to A.M.E. had the right to control the actions of the titleholder to the tract of land at issue and hence had the right to determine the use of the tract.

Actual ownership of the property involved was not at issue; both sides concurred in the validity of the deed which placed title in the local congregation represented by the majority. Because ownership of the property was not contested, there was no occasion for the court to address the comparative rights of the local congregation versus the parent denomination. The validity of any trust under the Louisiana Trust Code was thus not an issue.

The deed expressly titled the property in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana” (emphasis added by the Louisiana Supreme Court). The Louisiana Supreme Court thus ruled that the local Fluker church had acted exclusively in its capacity as an “A.M.E.” church when it acquired the land. The specific provisions of the A.M.E. Discipline concerning disaffiliation or abandonment therefore was said to reflect the intention of the parties and controlled, allowing the minority faction of the local congregation to control the actions of the majority faction title holder with respect to the use of the tract.⁹

The only germane post-Wolf, post-Fluker Louisiana opinion found outside the First Circuit is Bethany Independent Church v. Stewart, 645 So.2d 715, 93-1252 (La. App. 3rd Cir. 10/5/94), writ denied, 649 So.2d 421, 94-2967 La. 2/9/95. At issue was a local congregation’s disaffiliation from its denomination, The Cumberland Presbyterian Church. Following disaffiliation, the local church re-named itself Bethany Independent Church. The court ruled that the property of the local, unincorporated Presbyterian church belonged to the national denomination. Like Fluker, the court sought to ascertain the intent of the parties before the dispute arose. Applying neutral principles it found that the presumption of rule-by-majority,

⁹ LeBlanc v. Davis, 432 So.2d 239 (La. 1983) is the only other Louisiana Supreme Court case found which cites Fluker to apply neutral principles to resolve a church dispute. At issue, however, was the dismissal of a pastor rather than a dispute over contested property. The only First Circuit post-Fluker decision reported is Thomas v. Craig, 424 So.2d 1090 (La. App. 1st Cir. 1982). At issue was a dispute in governance between the pastor and the board of deacons. The reported decision does not address a specific controversy over property. The First Circuit acknowledged, though, the jurisdictional distinction between ecclesiastical matters and neutral principles of law, citing Katz v. Singerman, 241 La. 103, 127 So.2d 515 (1961); Wilkerson v. Battiste, 393 So.2d 195 (La. App. 1st Cir. 1980), and; Bourgeois v. Landrum 396 So.2d 1275 (La. 1981).

normally applicable to nonprofit, unincorporated associations under La. R.S. 9:1051, had been overcome by the text of property regulations in the denomination's 1984 Confession of Faith (the denomination's constitution) because the statute had not been properly followed. The court concluded, "it was the intention of the parties, agreed upon before the dispute arose, to be bound by the provisions of the Confession of Faith, 1984, including those provisions relative to property". Bethany at 722. The validity under Louisiana's Trust Code of "held in trust" language was apparently not raised by the parties and not addressed by the court.¹⁰

In addition to Louisiana jurisprudence, Louisiana statutory law is relevant. 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 requirements for the creation of a valid trust enforceable in Louisiana. The actions of First Presbyterian Church, and its property-related documents, preclude finding any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana. **None** of the following nonexclusive list of particulars has been satisfied with respect to any property held by and titled to the First Presbyterian Church of the City of Baton Rouge:

¹⁰ There are a limited number of pre-Wolf, pre-Fluker Louisiana decisions. First Methodist Protestant Church of Baton Rouge v. First Congregational Methodist Church of Baton Rouge, 184 So.2d 265 (La. App. 1st Cir. 1966), rehearing denied 4/4/66; writ refused 6/7/66, pre-dates Wolf by 13 years and Fluker by 16 years. At issue was a dispute over legal title between two Methodist factions. The court used "neutral principles" (without referring to them as such) to examine the denominational Book of Discipline and local articles of incorporation. The facts are unique. Prior to the purported sale of church property by a dissonant local congregation, the Mississippi Conference had declared the petitioner/seller church to be extinct, with the property thus reverting for an interim period to the mother church pursuant to the Book of Discipline. Subsequently, however, the petitioner church was "reactivated" and full title was again vested in the First Methodist congregation. The dissonant faction, the First Circuit ruled, was thus without authority to sell. The legal dispute over property ownership was actually between two separate, local Methodist congregations, and the Conference was not a party to the suit. In affirming the trial court's dismissal of one faction's exception of nonjoinder of an indispensable party, the court ruled that at the time suit was filed the Mississippi Conference "had no claim or interest in the property in question". First Methodist at 268. The validity of any trust under the Louisiana Trust Code was thus not an issue.

Louisiana District, Church of the Nazarene v. Church of the Nazarene, 132 So.2d 667, (La. App. 1st Cir. 1961) was an action by a parent church corporation, Louisiana District Church of the Nazarene, to be declared owner of real property standing in the name of its local or subordinate corporate member, the Bible Holiness Church of Ponchatoula (formerly Church of the Nazarene, Ponchatoula, Louisiana). The parent corporation's claim to ownership rested on the alleged subordinate corporation's withdrawal from the parent church without the parent's consent, in alleged violation of the parent church's governing constitution, the Manual of the Church of the Nazarene. The First Circuit relied heavily on the provisions of the Manual and decided in favor of the parent church, following the "hierarchical theory" set forth in Watson v. Jones, 13 Wall. 679, 80 U.S. 674, 20 L.Ed. 666 (1871). Church of the Nazarene is of dubious validity after Fluker.

- 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 defined as only 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).¹¹

B. OTHER JURISDICTIONS

Although the matter before the court is governed by Louisiana law as bound by federal constitutional principles, recent jurisprudence from other states addressing the same issues offer instructive guidance. Relevant cases from New York, California, Maryland, Pennsylvania, and Texas are briefly reviewed.

1. New York

To Petitioner's knowledge, the most recent judicial opinion in the United States on the issues before this Court was decided on August 16, 2006, in The Presbytery of Hudson Valley of the Presbyterian Church (USA), et al v. The Trustees of The First Presbyterian Church and Congregation of Ridgebury, et al (S. Ct. – State of New York, IAS Part – Orange County, Index No. 6144/2005) (The Hon. John K. McGuirk). A copy

¹¹ The Louisiana requirements for the valid creation of a trust are particularly stringent, a legacy of Louisiana's civilian heritage. The report by the Law Institute which accompanied the revisions to the Louisiana Trust Code proposed in 1964 explained that, unlike the English common law which recognized implied trusts, the law of Louisiana did not recognize any private trusts prior to 1920. Only in 1920 did the Louisiana legislature first authorize the creation of any kind of trust in Louisiana. Louisiana's earlier prohibitions of any kind of trust, and its present stringent requirements, harken back to Art. 1520 of the Civil Code of 1825 and 1808 which prohibited such "substitutions and fideicommissa", a prohibition which had antecedent authority in Art. 896 of the Code Napoleon. See, Report by the Louisiana Law Institute, Prec. R.S. 9:1721. The Louisiana Trust Code precludes any kind of non-statutory, implied trust (except those where all or a substantial part of the corpus had been contributed by the local beneficiaries who locally, immediately, directly enjoy the benefits of the trust). See R.S. 9:2281. The Louisiana Trust Code also prohibit(s) express trusts that do not conform to the Louisiana statutory requirements.

of this recent opinion is attached to this Memorandum and is commended to this Court for review.

Following a vote by the congregation of First Presbyterian Church of Ridgebury to disaffiliate from the PCUSA, the regional PCUSA presbytery, The Hudson (River) Presbytery, filed suit against the local church, claiming that the congregation's property belonged to the denomination. Applying "neutral principles of law", the court rejected the PCUSA's argument that it was the rightful owner of the property and was entitled to control its use under the denomination's ownership and trust provisions in Chapter 8 of the PCUSA Book of Order.

The facts of the case are closely analogous to those before this Court. The local Ridgebury congregation was incorporated in 1805. It owned five parcels of property, acquired between 1833 and 1964. In each case the property was deeded in the name of "The Trustees of First Presbyterian Church and Congregation of Ridgebury" without any restriction on the title or particular reference to a national denomination. "More specifically, none of the deeds contain language vesting a present or future interest in the favor of the Hudson River Presbytery or PCUSA." Deciding the case under "neutral principles of law", the New York court turned aside the PCUSA's argument that it was the rightful owner of the property under the denomination's ownership and trust provisions in the PCUSA Book of Order, noting, "It is hornbook property law that only the owner of real property can convey an interest in the property; B cannot create a future interest in A's property without A's consent."

Attorneys for the Hudson River Presbytery and the PCUSA argued that Ridgebury had acquiesced to the denomination's assertion of a right to determine ownership or trust by virtue of its membership in the PCUSA since 1983. The trial court rejected that argument, though, stating, "Mere silence in continuing its membership in the denominational church, absent more, is an insufficient expression of an intent to express a trust." The court further stated that under New York law, "[t]he manifestation of intention requires an external expression of intention as distinguished from undisclosed intention." The court concluded by observing, "The only affirmative action on

defendant's part on this subject since 1981 were their explicit manifestation not to hold their property for the benefit of plaintiffs.”

2. California

On December 1, 2004, the California Supreme Court declined to review a decision of the California 5th District Court of Appeal, letting stand that lower court's ruling allowing a local Methodist church to revoke the trust language contained in the United Methodist Book of Discipline. This permitted the local congregation to leave the denomination with its property. California-Nevada Annual Conference of United Methodist Church, et al v. St. Luke's United Methodist Church, et al, 121 Cal. App. 4th 754, 17 CAL. RPTR. 3rd 442 (decided August 13, 2004; review denied December 1, 2004).

St. Luke's was first incorporated as a member of the Methodist Church in 1948.¹² Subsequent to incorporation St. Luke's acquired title to nine parcels of property, six prior to formation of the United Methodist Church and three after formation. Some of the deeds contained trust language and some did not. While the litigation was pending, St. Luke's amended its articles of incorporation and formally disassociated itself from the United Methodist Church and explicitly declared that all property was held in trust only for the sole benefit of the local church corporation.

The trial court interpreted the California Corporations Code to mean that the settlor (the person who creates a trust) was the United Methodist Church, and that it created a trust in favor of itself and had taken no action to amend its own Book of Discipline to revoke the trust. The appellate court reversed, however, holding that such apparent "self-dealing" was at odds with basic principles of trust law, which did not

¹² St. Luke's articles of incorporation stated as among its authorized purposes, "to acquire, manage and hold in trust for the benefit of said St. Luke's Methodist Church, property of every kind and nature, both real and personal ...". In 1968 the Methodist Church united with the Evangelical United Brethren Church to form the United Methodist Church, governed by the denomination's Book of Discipline. Paragraph 2501 of the United Methodist Church Book of Discipline provides in part that "titles to all properties held ... by a local church ... shall be held in trust for the United Methodist Church and subject to the provisions of its Discipline." The denomination is governed by a general conference, but the fundamental administrative unit is termed "annual conferences" which have supervisory responsibility over the local churches within their respective geographic bounds (i.e., akin to a Presbyterian presbytery).

include the creation of a trust by the declaration of a non-owner that the owner holds property merely as trustee for the non-owner.

The court of appeal held that the UMC Book of Discipline did not create the trust but that the trust had been created by St. Luke's articles of incorporation, language in several of St. Luke's property deeds, and by St. Luke's demonstrated intent to hold its property in trust for the benefit of the United Methodist Church *and* for its own benefit. Having validly created the trust under California statutory law, St. Luke's had specific authority under the California Corporations Code to revoke the trust, and did so by amending its articles of incorporation to expressly state that it no longer would be affiliated with or subject to the United Methodist Church and that St. Luke's would thereafter hold its property in trust for the sole benefit of the local church corporation.

3. Maryland

Another instructive case is From the Heart Church Ministries, Inc., et al v. African Methodist Episcopal Zion Church, et al, 370 Md. 152, 803 A.2nd 548 (2002). The supreme court for the state of Maryland (called the Maryland Court of Appeals) was asked to address the issue of whether, when a local church withdraws from a religious denomination, the property belongs to the local church or to the denomination. The Maryland court followed "neutral principles" to consider the competing texts of local church property documents and denominational documents.

The trial court ruled in favor of the denomination, its regional conference, and the newly incorporated Full Gospel AME Zion Church, and against From the Heart Church Ministries. However, the Maryland high court accepted the case for review and reversed the lower court.

In reversing and holding for the local congregation, the Maryland Court of Appeals referred to its prior decision in Mt. Olive A.M.E. Church v. Board of Incorporators, 348 Maryland 299, 703 A. 2nd 194 (1997) as providing the appropriate framework:

... [R]esolution of church property disputes demand an analysis that involves the review of all relevant documents and circumstances. Unless the deed to the property clearly provides for the holding of the

property in trust for the parent church, it is not enough to consider simply the form of the church government, the constitution or other authoritative sources pertinent to the parent church's claim to the property, consideration must also be given to the Religious Corporations Law, the relations between the parties, and the local church charter. The latter at the very least provides insight into the relations between the parties and may evidence the local church's consent to the form of government and to be bound by provisions in the parent church's constitution or other authoritative sources pertaining to the ownership and control of its property.

From the Heart at 187, 569, citing Mt. Olive at 320, 204 and quoting Jones v. Wolf (emphasis supplied). The Maryland Court of Appeals said that the trial court had incorrectly based its decision only on factors enumerated in the Book of Discipline which had indicated congregational acceptance of the denomination's polity. But in relying exclusively on provisions in the denomination's constitution, the trial court failed to comply with the directive in Mt. Olive (and Watson v. Jones, supra p. 2) to consider all relevant documents and circumstances. In particular, the trial court failed to consider From the Heart's intentional deeding of the church property in its name only, not in trust, and the national denomination's apparent acknowledgement of and acquiescence for a time in this deeding irregularity.

The trial court also failed to consider the amendments to From the Heart's charter and bylaws to remove references to the AME Zion denomination. In considering only denominational polity, then, the trial court "inappropriately has deferred to the church doctrine; it has relied on religious precepts to enforce From the Heart's Connectional responsibilities". From the Heart at 187, 569. The Maryland Supreme Court further said:

In undertaking an examination of religious documents, such as a church constitution, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.

Id. at 604.

The Maryland court, in examining the trust language in the AME Book of Discipline, also said that language extended to apply to the situation when a local church is affiliated with a denomination, but it gave no indication that the trust created is

irrevocable nor addressed the situation where a local church terminates its affiliation.

The court thus concluded:

Consent to holding property in trust during the course of affiliation does not automatically constitute consent to relinquishing that property once the affiliation terminates. This is particularly the case where the trust is revocable and is, therefore, another reason that there must be a more expanded review of documents and circumstances, as required by Mt. Olive, rather than merely the review of the Church Discipline.

From the Heart at 189, 190, 571

4. Pennsylvania

The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, et al v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317, is a 1985 decision by the Supreme Court of Pennsylvania which reversed the appellate court and reinstated the trial court's decision allowing a local congregation to leave the denomination with its property. The case is noteworthy in part because of an antecedent connection to the PC (U.S.A.). In Beaver-Butler, the Pennsylvania Supreme Court adopted the neutral principles approach to hold that the Pennsylvania appellate court erroneously gave undue deference to the UPCUSA denomination.

Middlesex Presbyterian Church is a very old church. It had been affiliated with the UPCUSA and its predecessors since the Presbyterian Church's inception in America in 1799. It was incorporated in 1907 and had been a participating church at that time in the Presbyterian Church in the United States of America (PCUSA), and later with the UPCUSA.¹³ On April 6, 1981, Middlesex amended its local charter to disaffiliate from the UPCUSA, effective April 18, 1981. The amendment to modify the UPCUSA Book of Order, however, which inserted language expressly asserting a trust in favor of the UPCUSA, did not become part of the UPCUSA Constitution until May 23, 1981.

¹³ In 1958 the PCUSA merged with the United Presbyterian Church in North America (UPCNA) to form the United Presbyterian Church in the United States of American (UPCUSA). The UPCUSA was the "northern church" which then merged in 1983 with the "southern church", the Presbyterian Church in the United States (PCUS), to form the present Presbyterian Church (U.S.A.) with which First Presbyterian Church of Baton Rouge is currently affiliated.

The Supreme Court of Pennsylvania found that prior to the creation of express trust language in the UPCUSA constitution, the constitution of the UPCUSA did not contain any trust, explicit or implicit, in the property of member congregations in favor of the UPCUSA. In determining that a trust did not exist the court applied Pennsylvania law which provided that, although no particular form of words or conduct was required to manifest the intention to create a trust, the appearance of all elements of a completed trust must be present:

A trust must be created by clear and unambiguous language or conduct, it cannot arise from elusive statements admitting possible inferences consistent with other relationships.

Id. at 269, quoting Bair v. Snyder County State Bank, 314 Pa. 85, 89, 171 A. 274, 275 (1934).

As in other cases, the focus of the Pennsylvania court's inquiry was the intent of the parties at the time of the alleged creation of the trust by the settlor, Middlesex. In support of its conclusion that Middlesex was the settlor and that it had not intended to create a trust, the Pennsylvania court found the following facts determinative:

The putative settlor in this case was clearly Middlesex. In support of this conclusion we note that the Middlesex church was not a creation or offshoot of the central denomination. Rather, the record establishes that the Middlesex church was created and incorporated on the local level by members of the parish; and that all property was retained in the corporate name of the local church. Subsequently, when the local body voluntarily affiliated with UPCUSA's predecessor, there was no express trust language in the denomination's constitution. Also, it was undisputed that there was never any express trust language in the constitution during the entire period Middlesex remained affiliated with the denomination. In fact, a prior attempt by the predecessor denomination, circa 1929, to include express trust language in the constitution was defeated by the member churches.

The denomination here has cited no evidence that Middlesex ever intended to convey their property interests to them. To the contrary, throughout their entire affiliation Middlesex retained all property in their own corporate name. The commonwealth court's reliance on selected passages from the Book of Order was misplaced in that the court ignored the overall intent of that book as a means of overseeing the *spiritual* development of member churches. In addition, these selected provisions, which at most evidence the putative trustee's desired interpretation, are far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.

Beaver-Butler at 269, 270 (emphasis supplied).¹⁴

5. Texas

Subsequent to the 1979 decision by the U.S. Supreme Court in Wolf, not all states have had occasion to decide whether to adopt the neutral principles of law method. Some states which had previously adopted the hierarchical method (sometimes called the “deference rule”) have not had occasion to revisit the issue since. The Texas Supreme Court has generally been regarded by lower Texas courts to have adopted the hierarchical method in 1909. Brown v. Clark, 102 Tex. 323, 116 S.W. 360 (1909). The Texas Supreme Court has not granted writs since 1909 to revisit or clarify the matter.

The Schismatic and Purported Casa Linda Presbyterian Church in America, et al v. The Grace Union Presbytery, Inc., et al, 710 S.W.2nd 700 (Court of Appeals of Texas, Dallas) (decided April 18, 1986) is the most recent Texas appellate decision citing Brown. Grace Union concluded that no trust, express or implied, existed over the local church property there at issue. On the separate question of ownership (the body to be correctly identified as the one to whom the property had originally been deeded.), Grace Union interpreted Brown to deem ownership an ecclesiastical issue to be decided by deference to the hierarchical church. Although Texas, unlike Louisiana, is a “hierarchical” state, its caselaw illustrates the relevance which the specific name in which property is titled bears on the question of denominational claim to ownership.

¹⁴ In Church of St. James the Less [J-18-2005] (decided December 29, 2005), the Supreme Court of Pennsylvania (Eastern District) again had occasion to address the validity of an asserted denominational property trust over local church property. Citing its earlier decision in Beaver-Butler, supra, and applying neutral principles of law, the court ruled against the local church based on the specific facts presented.

The intent of the denomination (the Episcopal Church USA) was made plain by its constitution, the enactment of a new canon in 1979, referred to as the “Dennis Canon”, which added a clause which read, “All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this [National Episcopal Church] and the Diocese thereof in which such Parish, Mission or Congregation is located.” In assessing the intent of the local church, St. James the Less, the court reviewed, among other things, the congregation’s original 1846 charter (articles of incorporation) and amendments in 1919 and 1967 to the charter.

St. James the Less’s own articles expressly prohibited it from ever disaffiliating from the Diocese and the ECUSA, and required that St. James always accede to the authority of the Diocese and the ECUSA. St. James also declared in its articles that if it ever dissolved, its property would be placed in trust for the Diocese.

Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W.2d 865 (Tex.Civ.App.-Texarkana 1977, no writ) involved a split between two factions of a PCUS congregation in Paris, Texas. Significantly, the Paris congregation's articles of incorporation specifically referred to the local church corporation by denominational affiliation, "The First Presbyterian Church U.S. of Paris, Inc." (i.e., the PCUS). And all of the property deeds also specifically referred to denominational affiliation, naming the property owner either as the "First Presbyterian Church of Paris U.S." or the corporation "First Presbyterian Church U.S. of Paris, Inc.". The court exercised subject matter jurisdiction to decide the question of ownership, applied the hierarchical method and deferred to the presbytery's decision to award ownership to the loyalist minority faction.

The court noted that even if it was conceded that the local church owned its property and was free to dispose of it as it wished, the loyalist faction rather than the 100% that voted to disaffiliate constituted the local church when: a) the title holder of record in the property deeds was the "First Presbyterian Church of Paris U.S." or the "First Presbyterian Church U.S. of Paris, Inc." and, b) the PCUS hierarchy recognized and identified the loyalist faction as being that PCUS church. Presbytery of the Covenant at 871, 872.

C. ARGUMENT

The facts of this case and the law of Louisiana present a compelling case in favor of First Presbyterian Church of the City of Baton Rouge. The PSL has no valid claim or right to ownership, nor to determine ownership, of the local church property at issue. Neither the PSL nor any higher ecclesiastical body of the PCUSA or its predecessor denominations contributed any funds for to the purchase of the land, the construction of any improvements thereon, or the furnishing and maintenance of the land and improvements. Not a penny. The property is all titled exclusively in the name of the local church corporation, and the name of that local church corporation makes no reference whatsoever to the "PCUS", the "PCUSA", or any other denominational organization. Similarly, all of the property is exclusively deeded in the name of the local church corporation only, without reference to specific denominational organization.

At no time has First Presbyterian Church of the City of Baton Rouge ever manifested an intent to accept a denomination's asserted claim, through PSL, to determine ownership of the local church property, or to accept a denomination's asserted claim that local church property is held in trust for the benefit of PSL or a national denomination. Nor has First Presbyterian Church of the City of Baton Rouge ever manifested an intent to convey its property to the PSL or any national denomination in trust. To the contrary, First Presbyterian Church of the City of Baton Rouge, at every opportunity, by the adopting, recording and furnishing of its articles of incorporation, property deeds, and church minutes and resolutions, specifically denied the denomination's assertion of a right to ownership or to determine ownership. All of these actions have been open and public and all of the related documents have been furnished to the PSL, which has accepted them without objection.

The PCUSA confuses two distinctly separate issues. It is one thing for the PCUSA to interpret clause G-8.0600 of its Book of Order to allow it to determine, in the event of an internal split within a local church, which faction will be recognized "within the PCUSA." It is quite another for the PCUSA to assert that the PCUSA, the PSL, the faction of the local church recognized by PCUSA or anyone else is entitled to property owned by First Presbyterian Church of the City of Baton Rouge under Louisiana law. If the PCUSA asserts that G-8.0600 allows national church confiscation of local church property, then that clause violates Louisiana law. The PCUSA cannot simply assume that local church property is actually titled in the name of the PCUSA or the PSL and proceed as if its assumption were correct. The title to this local church's property belongs to First Presbyterian Church of the City of Baton Rouge.

Likewise, the defendant's claim of a trust over local church property, which asserts that the local church cannot leave the PCUSA and retain ownership and control of its local property without the Presbytery's permission, is without merit. From 1827 to 1982, no denomination with which the First Presbyterian Church of the City of Baton Rouge was affiliated had a trust provision, express or implied, in its denominational constitution. The provisions that were added to the 1982/1983 edition of the PCUS Book of Church Order were not approved by (indeed were generally unknown to) the congregation of First Presbyterian Church of the City of Baton Rouge.

The trust clause that was added in 1983 to the new PCUSA constitution also did not involve approval or concurrence by First Presbyterian Church of the City of Baton Rouge. To the contrary, First Presbyterian Church of the City of Baton Rouge has continuously and expressly rejected any assertions of a trust or denominational claims to determine ownership, whether under the PCUS constitution or the PCUSA constitution. Such express rejection includes but is not limited to the timely congregational resolution on October 18, 1987, discussed in Part II.B, above. That resolution and related minutes which document the rejection was timely furnished to the PSL and accepted by it without objection. The Presbytery cannot sit silent for almost 20 years and now be heard to assert a trust over the property at issue and a right to determine its ownership.

Neither the local church articles of incorporation or property deeds create, acknowledge or accept any trust on church property. The PSL has acknowledged that these church property matters are governed by state law, and the law of the State of Louisiana sets forth the requirements for the creation of a valid trust enforceable in this state at R.S. 9:1721, et seq. Those requirements have in part been listed above, in Part III.A., and **none** of those requirements have been satisfied with respect to any property held by and titled to the First Presbyterian Church of the City of Baton Rouge. Those requirements are the *exclusive* means by which a trust may be validly created in Louisiana; Louisiana law does not recognize the concept of implied or constructive trusts.

In Fluker, supra, the Louisiana Supreme Court examined both the denominational constitution *and* the local property deeds to determine *mutual* intent and found that the local property was expressly titled in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana.” [Emphasis added by the Louisiana Supreme Court.] The Louisiana Supreme Court thus concluded that, “Fluker acted solely within its capacity as an A.M.E. local church” when it acquired the property. *Id.* In marked contrast, the title in the deeds for the property held by First Presbyterian Church of Baton Rouge make no reference to the PCUSA or any of its predecessor denominations such as the PCUS. The deeds to the property are titled only in the name of the local church corporation, which name does not refer to, include, or identify itself with the PCUSA or the PCUS.

The present facts thus also stand in marked contrast to Presbytery of the Covenant, supra, where the court based its decision to award property to the minority faction loyal to the denomination on the fact that the property deeds specifically referred to “First Presbyterian Church of Paris US”. Id. at 871, 872 (emphasis in original).

The present facts are more comparable to those in St Luke’s, supra, where the local congregation was incorporated prior to the creation of the current denomination, where most of the property was acquired prior to the formation of the current denomination and where most (in the present case, all) of the property deeds did not contain any trust language. Like the California Corporations Code, Louisiana Trust Law does not allow a non-owner to create a trust unilaterally over someone else’s property and then name itself as the beneficiary. The California court was quick to reject that as “self-dealing”.

What the PSL is attempting to do by asserting a trust or a right to determine ownership under the facts presented is analogous to a non-owner agent for the subdivision in which Your Honor owns a home changing the civic association’s rules to say that if Your Honor ever decides to move out of the subdivision the non-owner agent shall be entitled to determine who owns Your Honor’s house. And as long as Your Honor lives in that house you possess it for the benefit of that non-owner agent, so that if Your Honor ever decided to move and keep ownership or control of the home’s equity, Your Honor would need the permission of the non-owner agent. And all this even though the non-owner agent’s name is not on the mortgage, has never contributed a penny to paying the mortgage off, and doesn’t even help cut the grass.

The facts presented are also analogous to From the Heart, supra (except that First Presbyterian Church of the City of Baton Rouge did not need to amend its articles to delete reference to the PCUSA because its articles never referred to the PCUSA to begin with). Indeed, the present facts are even stronger than From the Heart. In From the Heart, the property deeds had at one time listed the owner as “Full Gospel A.M.E. Zion Church, Inc.”, whereas none of the property deeds for First Presbyterian Church of the City of Baton Rouge have ever made mention of the PCUS or the PCUSA.

In ruling in favor of the local church, the Supreme Court of Maryland (the Maryland Court of Appeals) noted that the national denomination had apparently acknowledged and

acquiesced in the local church's intentional deeding of its local church property in the name of the local church only and without reference to any trust. In the present case, FPCBR's possession of the property at issue, as exclusive owner and without a trust in favor of the denomination, has always been open and public. All property deeds, articles of incorporation, pertinent resolutions (including the October 18, 1987 congregational resolution), and minutes have variously been filed of record in the Secretary of State's Office, the mortgage and conveyance records for East Baton Rouge Parish, and furnished to the PSL in the ordinary course of business. The PSL has had actual and constructive knowledge of these documents, has never challenged them previously, and should not be heard now to contest them belatedly.

The facts of the present case are readily distinguished from St. James the Less, supra, but are akin to Beaver Butler, supra. Unlike St. James the Less, the articles of incorporation for First Presbyterian Church of Baton Rouge do not expressly prohibit it from disaffiliating with the denomination, nor state that in the event of dissolution its property would be placed in trust for the presbytery. Like the church in Beaver Butler (Middlesex Presbyterian Church), First Presbyterian Church of the City of Baton Rouge was founded long before the creation of the denomination with which it later affiliated. When it did affiliate, there was no express trust language in the denominational constitution. And after the denominational constitution was amended to add provisions which purport to give the denomination a right to determine ownership and which assert that all local property is held in trust for the denomination, First Presbyterian Church of the City of Baton Rouge never acquiesced to this but specifically and continuously rejected this, and retained all property in its own corporate name.

Just as the court in Beaver Butler found mutual intent lacking, and noted that a trust cannot arise from "elusive statements admitting possible inferences consistent with other relationships", Id at 269, so the selected provisions of the Book of Order, on which the PSL relies, "at most evidence the putative trustee's desired interpretation" Id, and do not even begin to satisfy the stringent and exclusive requirements for the establishment of a valid trust under the Louisiana Trust Code.

Finally, the facts before this Court are closely analogous to those in the August 22, 2006 New York case of Presbytery of Hudson Valley, et al v. First Presbyterian Church of Ridgebury.

Both congregations were established prior to the formation of the presbyteries under whose “care” they later came, and before the establishment of the denomination with which they later became affiliated, and prior to the adoption by those denominations of an express trust clause in the denominational constitution. In both cases all property is deeded in the name of the local church corporation only, without reference to the denomination. In both cases there has been no manifestation of an intention to create or accept a trust over a local church property on behalf of the denomination. In both cases the only affirmative action on the part of the local congregation on this subject was an explicit manifestation of just the opposite — not to hold local property for the benefit of the denomination. This most recent court decision in the United States is attached to this Memorandum and its review is commended to this Court.

IV. THE NECESSITY OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Louisiana Code of Civil Procedure article 3601 provides that “an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases provided by law.” In order to obtain a preliminary injunction, the moving party must: (1) make a *prima facie* showing that it will prevail on the merits of the suit; (2) show that it is threatened with irreparable harm and is without an adequate remedy at law; (3) show that the threatened harm to the plaintiff outweighs potential for harm or inconvenience to the defendant; and (4) show that issuance of a preliminary injunction will not disserve the public interest. Chandler v. State of Louisiana, 02-1410 (La. App. 1 Cir. 3/28/03), 844 So.2d 905. See also, Freeman v. Treen, 442 So.2d 757 and 761, 763 (La. App. 1 Cir. 1983); Vision Center v. Options, Inc., 596 F.2d 1111 (5th Cir. 1979). “Irreparable injury” is defined as “a loss sustained by an injured party which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard.” Shaw v. Hingle, 94-1579 (La. 1/17/95) 648 So.2d 903 (citing Terrebonne Parish Police Jury v. Matherne, 405 So.2d 314, 319 (La.1981)).

A showing of irreparable harm is not required when the deprivation of a constitutional right is involved, as is the case before the court. Chandler, 844 So.2d at 909, citing Brennan v. Bd. of Supervisors of Trustees for Univ .of Louisiana Sys., 95-2396 (La. App. 1 Cir. 3/27/97),

691 So.2d 324. Nor is a showing of irreparable harm required when the moving party demonstrates that the action sought to be enjoined is in violation of prohibitory law or the deprivation of a constitutional right is involved. Chandler, 844 So.2d at 909, citing Paradigm Ins. Co. v. Louisiana Patient’s Compensation Fund Oversight Bd., 95-1727 (La. App. 1 Cir. 9/27/96), 680 So.2d 783, 785).

As noted above, LA C.C.P. art. 3601 provides that “an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, *or in other cases provided by law.*” (*emphasis added.*) The case at hand alternatively or additionally falls under the category of “other cases provided by law”. Louisiana Code of Civil Procedure article 3663 “specifically provides injunctive relief in two separate cases: (1) as an ancillary remedy in a possessory action, and (2) as the relief to be granted in an injunction suit brought to enjoin trespassers and other disturbers, and which is neither a possessory nor a petitory action.” Barrilleaux v. NPC, Inc., 1997-2040 (La. App. 1 Cir. 12/29/97), 704 So.2d 449, 451 (citing Official Revision Comments to art. 3663; Ryan v. Pekinto, 387 So.2d 1325, 1329 (La. App. 1 Cir. 1980)).

Injunctive relief is available to protect ownership, possession and enjoyment of immovable property. LA C.C.P. art. 3663 provides, in pertinent part, that injunctive relief, “to protect or restore possession of immovable property or of a real right therein, is available to ... a person who is disturbed in the possession which he and his ancestors in title have had for more than a year of immovable property or of a real right therein of which he claims the ownership, the possession, or the enjoyment.” A preliminary injunction which is brought to protect rights in real property does not require any showing of irreparable harm. Barrilleaux, 704 So.2d at 451; Monroe Real Estate & Devt. Co. v. Sunshine Equipment Co., Inc., 35,555 (La. App. 2 Cir. 1/23/02), 805 So.2d 1200. “An owner of immovable property is provided injunctive relief against a trespasser to protect ownership and possession without a showing of irreparable injury.” Barrilleaux, 704 So.2d at 451 (citing Adcock v. Marshall Exploration, Inc., 434 So.2d 471, 473 (La. App. 2 Cir. 1983)).¹⁵

¹⁵ The essential element in an action seeking injunctive relief to prevent trespass is that movant has actually or constructively possessed the property for more than one year prior to the disturbance.

The facts, law and argument set forth above demonstrate a substantial likelihood, indeed present a compelling case, that petitioners will prevail on the merits. A monetary judgment is not an adequate remedy; a temporary restraining order and a preliminary injunction are required to prevent the deprivation of constitutional rights, to prevent a violation of prohibitory law, to protect ownership and possession of immovable property, and/or to prevent irreparable harm to the work and well being, the mission and ministry, of petitioner.

This Court is not being asked to referee a theological dispute nor render a decision based on religious doctrine. However, some basic understanding of the ecclesiastical environment in which the present suit arises, the current threat posed by the PCUSA against First Presbyterian Church of the City of Baton Rouge, will explain why a temporary restraining order and a preliminary injunction are necessary.

Throughout the United States local Presbyterian congregations that are traditional in viewpoint have become increasingly opposed to the direction that the General Assembly of the PCUSA, its administration, and many of its regional governing structures, its presbyteries, have taken. An uneasy merger first created the PCUSA in 1983, and concern that was present from the start in some quarters grew more widespread with the release in 1991 of a PCUSA-sponsored Sexuality Report which promoted a concept called “sexual justice-love”. This nebulous concept condoned any sexual arrangement said to be consistent with “the Jesus story” of “genuine love” and “caring justice”. Although the Sexuality Report was not officially accepted by the General Assembly at that time, its philosophy was increasingly reflected in the life of the PCUSA.

Concern about the direction of the PCUSA escalated in 1993, when a PCUSA-funded “Reimagining God” conference was held. Widely published reports of that conference revealed promotion of a “new trinity” consisting of the goddesses Kali (a goddess of vengeance, worshiped by the ritual smashing of coconuts representing the heads of one’s enemies), Kamin (a goddess who sits astride a dragon), and Iman.

Bagents v. Crowell Long Leaf Lumber Co., 20 So.2d 641 (La. App. 1 Cir. 1945). To constitute a trespass, there must be an unlawful physical invasion of the property or possession of another. Barrilleaux, 704 So.2d at 451 (citing Dickie’s Sportsman’s Centers v. Department of Transp. And Devt., 477 So.2d 744, 750 (La. App. 1 Cir. 1985)).

In a conservative counter movement, a “fidelity in marriage/chastity in singleness” requirement was approved in 1997, which amended the Book of Order to reiterate and emphasize that the standards for ordination for a minister or officer within the PCUSA included the requirement that sex be limited to heterosexual marriage (PCUSA Book of Order G.-8.0106b.). Two subsequent efforts to repeal and eliminate this standard were defeated by increasing majorities of the presbyteries (to amend the Book of Order requires approval at a General Assembly and subsequent ratification by a majority of presbyteries).

Recently, however, dissatisfaction with the PCUSA’s direction has reached a crescendo in many segments of the denomination. Notwithstanding the repeated affirmation by a majority of presbyteries of the “fidelity/chastity” standard, the 217th General Assembly of the PCUSA, meeting in Birmingham, Alabama in June, 2006, effectively amended the denominational constitution unilaterally, using a procedural device that does not require ratification by the presbyteries. The result of this amendment has put in place a “local option” policy within the PCUSA. Under this new “local option” policy, each session and presbytery now may determine for itself whether or not the fidelity/chastity ordination standard, or any other ordination standard, though technically remaining in the text of the Book of Confessions or Book of Order, is actually “essential” and binding. In other words, ordination standards are now “discretionary standards” — an oxymoron. The effect of this “local option” is both (a) the jettisoning of uniform teaching on sexual morality or other commonly held, historic matters of belief or practice that have marked the Christian Church for two millennia and (b) the removal of any uniform ordination standards that have also functioned as a basis for a common denominational life.

Further exacerbating tension with the PCUSA was a decision by the 217th General Assembly to officially receive a study paper on the Trinity which, as distinguished from the traditional formulation of “Father, Son and Holy Spirit”, has offered a new formulation of “Mother, Child and Womb” for additional use in the PCUSA.

For many, the actions of the 217th General Assembly have been the straw that broke the camel’s back. Numerous “renewal groups” from the traditional or conservative wing within the PCUSA, representing hundreds of thousands of Presbyterians, are meeting in national conclaves

scheduled between July, 2006 and March, 2007 to exercise their rights of free speech and assembly and consider a variety of responses, and have already called for a suspension of donations to the General Assembly of the PCUSA and the exploration of possible exit strategies from the denomination. At least one prominent renewal group (to whose board of directors the senior minister of First Presbyterian Church of the City of Baton Rouge was recently appointed) has recently adopted a resolution calling on the chief officer of the PCUSA and on presbytery officials throughout the United States to declare by August 15, 2006, a moratorium on any retaliatory or disciplinary action by the denomination against dissenting traditionalists. The PSL has not responded to that request for a moratorium and on August 22, 2006 the top officials of the PCUSA, the Stated Clerk and Moderator, issued a letter rejecting the request to use their good offices and influence to call for a moratorium. (Exhibits 19, 20)

The reaction by denominational officials to the growing dissent has been one of alarm. The PCUSA has already lost over 25% of its members since it was created 23 years ago, and is losing additional members at an average rate of 50,000 people per year. The PCUSA has estimated that this rate will likely climb to 75,000 to 80,000 per year in the foreseeable future. The threat of denominational confiscation of local church property is generally believed to be one of the few remaining things that is keeping numerous congregations from severing their ties with the denomination. Acting through the arm of its presbyteries, the PCUSA has thus tried to squelch the growing dissent and the escalating threat of denominational breakup by taking aggressive action against local congregations that are voicing dissent from PCUSA decisions.

In further illustration of the aggressive tactics being used by PCUSA presbyteries and their use of “administrative commissions” as the mechanism or device to try and seize denominational ownership and control over local church property, the PCUSA has prepared legal strategy memoranda, waived any privilege of confidentiality, and disclosed them to the press and public. These memoranda have been publicly available on the internet since at least August 9, 2006 and are available through a Google search of “Presbyterian Church (USA) and property law”, and two mouse clicks. No attempt has been made by the PCUSA to dispute the authenticity of these memoranda, to retrieve them, or to prohibit their further circulation. These PCUSA memoranda:

- a) advocate use of “administrative commissions” specifically for church property disputes, and in conjunction therewith advises how to remove the local pastor and/or governing board of the local church;
- b) advise how to freeze local church assets and physically seize property;
- c) recommend placing a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;
- d) recommend mailing letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters “order” that no assets be released to the local church;
- e) instruct presbyteries to investigate the religious background of any judge assigned to the case in order to exploit potential partiality or religious bias;
- f) recommend that presbyteries in their pleadings “use spiritual language” in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as “schismatic”; and
- g) recommend to presbyteries, through the use of administrative commissions, to try and keep the local church in a defensive secular legal posture, counseling “Let the schismatics seek Caesar’s help.”

In globo Exhibit 18. See also, Exhibit 16.

It is in this unfortunate climate that First Presbyterian Church of the City of Baton Rouge has sought a judicial declaration of its property rights. It has no choice but to seek such a declaration. The session of First Presbyterian Church intends to call a congregational meeting to discuss and vote on various matters, including but not limited to the initiation of a local capital improvement fund drive. Efforts to promote an effective, local capital fund drive for local church improvements, and the ability to obtain any necessary bank financing for capital improvements, including the granting of mortgages and security interests which may be required, will be stymied in the absence of the injunctive and declaratory relief petitioner seeks.

At the congregational meeting which the session of First Presbyterian Church of the City of Baton Rouge intends to call, discussion and vote may also be held on the continuation or discontinuation of some or all of the voluntary per capita payments made by First Presbyterian Church of the City of Baton Rouge to governing bodies of the PCUSA. Such congregational meetings are a public forum for congregational members and some members will wish to discuss the pros and cons of continued affiliation with the PCUSA — even though neither the session, the board of trustees, nor the ordained staff of First Presbyterian Church of the City of Baton

Rouge have voted or otherwise recommended disaffiliation from the PCUSA. Nevertheless this suit, given the current regional and national climate, will be viewed by the PCUSA as a shot across its bow and a possible first step towards disaffiliation. The threat of imminent retaliatory action by the denomination is present.

Already, PCUSA presbyteries, in response to dissent, whether perceived or actual, by local congregations, ministers, church officers, and trustees to certain denominational actions, have variously: a) taken acts intended to assert ownership or place clouds on otherwise merchantable local property titles by recording, without prior notice, affidavits or other documents in local mortgage and conveyance records which improperly assert trusts on local church property in favor of the denomination, regardless of the facts of a local church's property history or the laws of the state in which local church property is situated, b) without notice sought to change church locks and otherwise seize local church property, and c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice or hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own.

And if a presbytery is reluctant to take control over a local church that dissents from the aberrant positions taken by the PCUSA, the PCUSA has threatened the unprecedented takeover of presbyteries. The PCUSA, through its Office of General Assembly (Department of Constitutional Services) on or about August 10, 2006 issued "Advisory Opinion Note 19" which states, in part III thereof, that if a presbytery, such as the PSL, fails to appoint an administrative commission to take over control of a local church voicing dissent over denominational policies, then the next higher ecclesiastical authority, the synod, may appoint an administrative commission to take control of the presbytery. (Exhibit 17)

The imminent threat of such action being taken by the PSL against First Presbyterian Church of the City of Baton Rouge is especially strong given the leadership that the ministers and members of FPCBR have provided to national renewal groups that are protesting the denomination's actions. Several members of First Presbyterian Church of the City of Baton Rouge have served on the boards and task forces of national renewal groups that are protesting

PCUSA policies. The senior minister of First Presbyterian Church of the City of Baton Rouge has recently been appointed, as previously noted, to the board of directors of a prominent renewal group which has been the particular subject of denominational efforts to target dissent. There is a palpable sense that First Presbyterian Church of the City of Baton Rouge has a target on its back.

To repeat, the petitioner is not asking the Court to wade into the thicket of theological controversy nor render a decision based on the Court's assessment of what does or does not constitute proper religious doctrine. The present case is about property, and its resolution is to be found in the application of neutral principles of law. This brief discussion, though, on the underlying controversy within the PCUSA explains why property issues have come to the fore, and why protection is needed, in the form of a TRO and a preliminary injunction, from retaliatory action by the PSL.

The chilling effect of confiscatory denominational actions, taken or threatened, is immediate and unmistakable. First Presbyterian Church of the City of Baton Rouge is a not-for-profit corporation whose primary purpose is not monetary but spiritual and philanthropic. Given the nature of the mission and ministry of First Presbyterian Church of the City of Baton Rouge, an award of monetary damages would not be an adequate remedy at law.

First Presbyterian Church of the City of Baton Rouge has an approximate membership of 1,700. It is the largest Presbyterian church in Louisiana. It employs approximately 60 people and has an annual budget of \$3.2 million. It offers three worship services per Sunday and sponsors numerous Sunday School classes, Bible studies, women's "circles", and evangelistic and discipleship programs. It supports numerous local, national, and international missionaries with almost \$350,000 in donations per year. Its ministries are numerous and varied. A small sampling of those ministries include: the Baton Rouge Christian Counseling Center (which has served over 5,700 clients and is one of the largest Christian counseling centers in the southeastern United States), Buchanan Elementary School (providing numerous supplies and resources through the adopt-a-school program), and Threads of Love (a national sewing ministry begun at First Presbyterian Church which provides suitable burial clothing for aborted and stillborn children). Additional ministries include financial support to the Catholic Presbyterian

Apartments (160 elderly residents), a \$50,000 commitment to build a local Habitat for Humanity house, and a financially supportive partnership with Abounding Love Ministries, an African-American church in Melrose East.

First Presbyterian Church of the City of Baton Rouge is also singularly prepared and provisioned to provide emergency hurricane relief. In the aftermath of Hurricane Katrina, FPCBR housed in its church gymnasium 160 Entergy workers for a two month period. It also converted its youth building into a full service, long-term dormitory for 65 U.S. Marshals who came to Baton Rouge from throughout the United States. For this action First Presbyterian Church of the City of Baton Rouge received the 2006 Special Recognition Award from the United States Department of Justice, given by the Justice Department to only one outside organization per year.

Should the PSL seek to change the locks on the church doors, cloud title or confiscate property, appoint an administrative commission, or otherwise try to usurp the authority of the governing body and local ministers of First Presbyterian Church of the City of Baton Rouge, there would be a massive disruption in the life of the local congregation, as members disengage or depart. Donations would drastically diminish, and all of the FPCBR-supported ministries would be irreparably damaged. No amount of a subsequent monetary award would be an adequate remedy.

The actions taken and the actions threatened by PCUSA presbyteries, including the PSL, described in the petition violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of the Louisiana Constitution, the religion clauses of the First Amendment to the United States Constitution and Article I, Section 8 of the Louisiana Constitution, the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Louisiana Constitution, and substantive property rights guaranteed under Article I, Section 4 of the Louisiana Constitution. The effect of such actions, if taken in whole or in part or threatened by the PSL, would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters and impede the ability of the congregation of First Presbyterian Church to hold a congregational meeting free of improper interference.

Inasmuch as petitioner seeks only a *temporary* restraining order and *preliminary* injunction during the pendency of this suit, the interests of the petitioner and the members of the First Presbyterian Church of the City of Baton Rouge and its local church corporation outweigh any possible injury to the PSL which might result from the granting of temporary relief and a preliminary injunction, said relief and injunction being in the public interest. Such *temporary* restraining order and *preliminary* injunction do not constitute civil court trespass into the prohibited ecclesiastical realm of permanent appointment or removal of ministers but instead merely preserves the status quo during the pendency of this suit. Thompson v. Bank One of Louisiana, 925 So.2d 555, 2005-1101 (La. App. 4 Cir. 1/11/06).

Petitioner believes that there is a substantial likelihood it will prevail on the merits of its suit for declaratory judgment, that no trust attaches to any local property held by or titled in the name of the local church corporation, and any improvements thereon, in favor of a national denomination, and that the local church corporation holds all property titled in its name in full ownership without regard to arbitrary ecclesiastical edicts that would declare the “true church” within the PCUSA as property owner.

V. CONCLUSION

For the reasons set forth, the First Presbyterian Church of the City of Baton Rouge urges the court to grant a temporary restraining order, preliminary injunction and a declaratory judgment as follows:

- 1) Temporary Restraining Order - restraining and enjoining defendant The Presbytery of South Louisiana and any of its agents, employees or other persons or entities acting on its behalf or in its stead, from filing any documents in the mortgage and conveyance records of East Baton Rouge Parish the effect of which would be to place a cloud on the title of property titled in the name of petitioner, or otherwise taking any action to claim ownership of local church property whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership of local church property, in the possession of, control of, or owned by First Presbyterian Church of the City of Baton Rouge; and further restraining defendant PSL and any agents, employees or other persons or entities acting on its behalf or in its stead, from asserting any rights to the property of First Presbyterian Church of the City of Baton Rouge, including but not limited to seeking to change the locks of First Presbyterian Church of the City of Baton Rouge, initiating any disciplinary action against the ministers or members of First Presbyterian Church of the City of Baton Rouge, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of First Presbyterian Church of the City of Baton Rouge, the governing body of First Presbyterian Church of the City of Baton Rouge (the session), its congregation, or the

governing body of its local church corporation the First Presbyterian Church of the City of Baton Rouge (the board of trustees);

- 2) Preliminary Injunction - enjoining defendant during the pendency of this suit, from any of the acts described in paragraph 1) of this prayer; and
- 3) Declaratory Judgment - declaring that all property held by or titled in the name of the petitioner, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held free of any trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the PSL, and that the petitioner holds all property titled in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Louisiana and as set forth in petitioner's articles of incorporation, and that neither the PCUSA nor any of its regional administrative units such as the PSL has any right, title or interest in said property nor right to determine the ownership thereof.

Respectfully submitted,

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Through its agent for service of process:

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