

**IN THE SUPREME COURT  
STATE OF GEORGIA**

**TIMBERRIDGE PRESBYTERIAN )  
CHURCH, INC./ TIMBERRIDGE )  
PRESBYTERIAN CHURCH, )**

**Appellant, )**

**v. )**

**PRESBYTERY OF GREATER )  
ATLANTA, INC., )**

**Appellee. )**

**SUPREME COURT DOCKET  
NOS. S09A1494, S09A1495**

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**BRIEF OF APPELLANT  
TIMBERRIDGE PRESBYTERIAN CHURCH, INC./  
TIMBERRIDGE PRESBYTERIAN CHURCH**

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## JURISDICTIONAL STATEMENT

Timberridge Presbyterian Church, Inc./Timberridge Presbyterian Church brings this direct appeal to the Supreme Court of Georgia for the review of adverse decisions entered against it on March 9, 2009, by the Superior Court of Henry County. The orders were entered in two separate but related lawsuits, the first being styled Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc., civil action file number 2007-CV-4142 (“Declaratory Judgment Suit”) (R-1241); and the second being styled Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, designated as civil action file number 2008-CV-379 (“Ejectment Suit”) (R-908).

The records of the Declaratory Judgment Suit and Ejectment Suit were sent to this Court separately, but the cases were consolidated here on appeal. For ease of reference, all record citations used in this brief, unless otherwise indicated, shall refer to the record generated in the Declaratory Judgment Suit.

The Georgia Supreme Court, rather than the Court of Appeals, has jurisdiction over these cases on appeal in accordance with the Constitution of the State of Georgia, Art. VI, § 6, ¶ 3 (1)-(2), which grants to the Supreme Court of Georgia appellate jurisdiction over cases involving title to land and all equity cases. As a result, this Court has jurisdiction to hear the instant appeal.

Timberridge requested, and this Court granted, an extension of time in which to file its Appellant's Brief, through and including June 25, 2009, and an extension of the page limitation to 40 pages. This Court's order granting Timberridge's requests are attached hereto as Exhibit A.

### **STATEMENT OF FACTS**

Timberridge Presbyterian Church, Inc. is a non-profit Georgia corporation that operates as a church called Timberridge Presbyterian Church, which was formerly affiliated with the national denomination Presbyterian Church (USA) (hereinafter "PCUSA"). Timberridge is located in McDonough, Henry County, Georgia, and the land on which it sits and the improvements thereon is the property which formed the central subject of the Declaratory Judgment Suit and the Ejectment Suit below ("Property"). Appellee Presbytery of Greater Atlanta, Inc. ("PGA") is a non-profit Georgia corporation serving as the regional administrative unit for the PCUSA.

A dispute exists regarding the Property where Timberridge is located. Timberridge filed the Declaratory Judgment Suit to seek a declaration from the Superior Court of Henry County that it owns the Property, which was conveyed to Timberridge by members of its church, free and clear of any encumbrances in favor of the PGA, the PCUSA or any other person or entity claiming under them.

(R-004.) Within the Declaratory Judgment Suit, Timberridge filed a separate, statutory claim to quiet title to the Property. (R-274.) Timberridge contends that under neutral principles of law, it owns the subject property outright, and that neither the PGA nor the PCUSA have any right or title to said Property.

The PGA contends that the Property is subject to a trust, and that Timberridge is holding the Property in trust for the benefit, use and enjoyment of the PCUSA. Subsequent to the filing of the Declaratory Judgment Suit, the PGA filed the Ejectment Suit, asserting ownership over the Property and seeking to eject Timberridge from its Property. (R-004, Ejectment Suit.)

On November 25, 2007, Timberridge Presbyterian Church voted to disaffiliate from the PCUSA. (R-1157-1158.) The vote was properly approved by the Timberridge Session,<sup>1</sup> and overwhelmingly approved by the congregation as a whole. (Id.) As a result of the vote to disaffiliate, the PGA, in the litigation below, made multiple references to the “former Session,” “former pastor,” and the “new, independent Timberridge”. (See, generally, R-004, *et seq.*, Ejectment Suit.) These descriptions are irrelevant, incorrect and interposed to confuse the circumstances surrounding this dispute.

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<sup>1</sup> The Session is the governing body of a local presbyterian church. As the church’s governing body, the Session is charged with, among other tasks, conducting the administration and operation of the church subject to, where appropriate, the consent of the congregation.

Timberridge Presbyterian Church currently exists as a religious institution, although not affiliated with the PCUSA denomination. (R-1160.) Timberridge Presbyterian Church, Inc., currently exists as the corporate entity overseeing the operations of Timberridge Presbyterian Church. (R-1158, 1160.) The Session of Timberridge Presbyterian Church still operates as the church's governing body, as well as the corporate Board of Trustees of Timberridge Presbyterian Church, Inc. (R-1158.) The only consequence of Timberridge's disaffiliation was to sever its formal, ecclesiastical relationship with the PCUSA. (R-1158, 1160.) The parties named herein, the nature of the dispute, the relevant documents, and the legal analysis to be employed by the Court remain the same.

Importantly, regardless of the irrelevance and confusing consequence of the PGA's reference to the "Independent Timberridge," the description has no factual merit. Timberridge has been received into the Evangelical Presbyterian Church, and is a member of that denomination. (R-1160.) As a result, the PGA's cumbersome and inaccurate references to an "Independent Timberridge" should be disregarded altogether.

## ENUMERATION OF ERRORS

1. Whether the Superior Court of Henry County erred in its application of the “neutral principles of law” analysis to the property dispute between Timberridge Presbyterian Church, Inc. and the Presbytery of Greater Atlanta, Inc.;
2. Whether the Superior Court of Henry County erred in its ruling that Timberridge’s disaffiliation resulted in loss of control over its civil corporation; and
3. Whether the Superior Court of Henry County erred in its denial of Timberridge’s motion to dismiss the PGA’s Ejectment Suit.

## ARGUMENT AND CITATION OF AUTHORITY

### **I. APPLICATION OF THE “NEUTRAL PRINCIPLES OF LAW” ANALYSIS DIRECTS A FINDING THAT NO TRUST ENCUMBERS TIMBERRIDGE’S PROPERTY.**

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.

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.

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, though not mandatory. In Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1872), the Court 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 denomination (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, not a 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 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 in most states, including Georgia. 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 a constitutionally permissible 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.

The import of Wolf was the Supreme Court's recognition that where both parties to a church property dispute (for example, the denomination and the local church), mutually intend that a trust be created over the local church property, the parties have a number of means at their disposal to reflect that intent clearly and unambiguously. In Wolf, the Supreme Court stated that:

At anytime before the [property] dispute erupts, the parties can ensure, if they so desire, that the faction loyal

to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil court will be bound to give effect to the result indicated by the parties, *provided it is embodied in some legally cognizable form.*

Wolf 443 U.S. at 606 (emphasis added).

The direction set forth by Wolf establishes two parameters that must guide the review of a church property dispute. First, that if a local church and a denomination mutually wish to subject the property to a trust, that intent can be explicitly reflected through a number of documents, at very little cost of effort to the parties. Second, courts shall give effect to and enforce the mutual intent of the parties; however, in order for the mutual intent of the parties to be enforced by the court, it must be embodied in a “legally cognizable form”.

Georgia courts have a well-established history of applying the “neutral principles of law” method for resolving church property disputes. Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1979); Carnes v. Smith, 236 Ga. 30, 222 S.E.2d 322 (1976); Pritchett v. Wesleyan Pentecostal Church at Holly Springs, 265 Ga. App. 565, 594 S.E.2d 750 (2004). In accordance with the standard neutral principles analysis, Georgia courts review documents such as property deeds,

Articles of Incorporation, church governing documents and state statutes to make a determination as to the ownership of the property in question.

Here, the dispute between Timberridge and the PGA concerns whether the property titled in the name of Timberridge Presbyterian Church, Inc. is subject to a trust in favor of the PCUSA. Applying the neutral principles of law, the analysis of the relevant documents must focus on: (1) whether they reflect a mutual intent by Timberridge and the PGA to create a trust over Timberridge's property; and (2) to the extent any mutual intent to create a trust is gleaned, whether any attempt to establish a trust satisfies the legal requirements under Georgia law for the creation of a trust. With these requirements in mind, each category of evidence in the neutral principles analysis will be addressed in turn.

**A. Deeds**

The first area of inquiry are the deeds relating to the Property at issue. Timberridge Presbyterian Church, as a non-corporate entity, was founded in 1829. (R-372.) Until 1970, all of the land on which Timberridge Presbyterian Church sat was owned by private property owners who were also members of Timberridge church. (Id.) From 1970 through 1987, through four separate deeds, the private property owners conveyed their respective interests in the disputed property to Timberridge Presbyterian Church. (Id.) None of the deeds reflect any limitation

on the use of the property; none of the deeds reflect a trust or other encumbrance; and none of the deeds mention PCUSA or any other denomination. (R-381-390.)

In 1984, Timberridge Presbyterian Church was incorporated with the Georgia Secretary of State as Timberridge Presbyterian Church, Inc., a Georgia non-profit corporation. (R-372-373.) In 1999, all real property owned by Timberridge Presbyterian Church was conveyed by warranty deeds to Timberridge Presbyterian Church, Inc. (R-373.) As before, these deeds reflect no limitation on the use of the property; these deeds reflect no trust or other encumbrance; and these deeds never mention PCUSA or any other denomination. (R-399-405.)

All deeds of real property held by Timberridge were originally titled in, and at all times have remained titled in, private property owners/Timberridge church members and the entities “Timberridge Presbyterian Church” and “Timberridge Presbyterian Church, Inc.” only, and do not mention or refer to a national denomination such as the PCUSA or any of its regional administrative units, or 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 PGA. (R-373-374; 381-390, 399-405.) The Property has continuously been so titled in the public mortgage and conveyance records of Henry County, Georgia. (Id.) Additionally, any and all encumbrances on the Property were secured and

satisfied by Timberridge Presbyterian Church, Inc. alone, without any financial support from the PGA or PCUSA. (R-374, 570-580.)

The Supreme Court of Georgia has recently recognized that, “[i]n construing a deed, the court’s overriding goal is to ascertain and give effect to the intent of the parties.” Second Refuge Church of Our Lord Jesus Christ, Inc. v. Lollar, 282 Ga. 721, 724-725, 653 S.E.2d 462 (2007). “Generally speaking, the intent of the parties must be determined from the deed’s text alone, and extrinsic evidence will be admitted to interpret the deed only where the deed’s text is so ambiguous that its meaning cannot be determined through application of the ordinary rules of textual construction.” Id. at 725. “Absent such ambiguity, there is no question of fact to be resolved by the fact-finder.” Id.

As the Superior Court of Henry County recognized, the plain language of the deeds at issue here reveals a complete absence of any trust language or intent by Timberridge or the parties conveying the property to Timberridge to create a trust. (R-1247.) As a result, it must be concluded that the first principle in the neutral principles analysis directs a finding that Timberridge’s property is not encumbered by any trust.

**B. Corporate Documents**

The second area of analysis concerns Timberridge's corporate governing documents; however, the brief discussions of these documents set forth in the orders entered by the Superior Court of Henry County do not address what, under the neutral principles analysis, must be the subject of the court's review: whether the Articles of Incorporation reflect an intent by Timberridge to create a trust over its Property. Here, they do not. As a result, the neutral principles analysis of Timberridge's corporate documents directs a finding that Timberridge's property is not encumbered by any trust.

The review by the court below of the Timberridge Articles focused exclusively on evidence of Timberridge's affiliation with the PCUSA. The trial court concluded that Timberridge's corporate documents "evidence a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church... and that it subjected itself to the rules of governance of the PCUSA..." (R-1247.) On the face of the court's order, it is clear that the court below failed to review the Articles of Incorporation with the purpose prescribed by the neutral principles analysis: that is, to look for indicia of a specific intent to create a trust.

Timberridge's desire to be religiously affiliated with the PCUSA and to reflect that affiliation in its governing documents is irrelevant to the inquiry of the creation of a trust. It is undisputed that Timberridge was voluntarily affiliated with the PCUSA. This dispute revolves around whether, separate from its affiliation, Timberridge evidenced a specific intent to subject its property to a trust in favor of the PCUSA.

The very purpose of the neutral principles analysis is to assess church property disputes in a manner that avoids automatic deference to a denomination's governing rules. The rules of church governance are but one of the neutral principles to be considered. Each category of documents must be independently and secularly evaluated for evidence of intent to create a trust. The lower court, by concluding that the governing documents of the PCUSA control because Timberridge identified its affiliation with the denomination in its Articles of Incorporation, effectively eliminates the corporate documents as an independent "neutral principle" for assessing intent to create a trust. Moreover, it reduces the trust analysis to a deference to the denomination's governing rules, which is precisely the result that the neutral principles analysis is designed to avoid.

The proper analysis of Timberridge's Articles of Incorporation involves reviewing the documents for references to a trust in favor of the PCUSA or any

indicia of intent by Timberridge to create a trust, but none can be found in Timberridge's Articles. Undoubtedly, the Articles reference its affiliation with the PCUSA and association with the PGA. However, Timberridge's affiliation with the church is not indicia of an intent to create a trust, as the Superior Court of Henry County concluded. The Articles do not mention a trust, the creation of a trust, or any intent by Timberridge to create a trust, in favor of the PCUSA or any other entity. Rather, with regard to its Property, the Articles clearly reflect Timberridge's desire to vest with Timberridge Presbyterian Church, Inc. the exclusive authority to own, control and dispose of its Property. (R-393-395.) As a result, a review of the relevant corporate documents directs a finding that Timberridge did not create, and had no intention of creating, a trust over its Property in favor of the PCUSA.

### **C. Denominational Constitutions**

The third element of the neutral principles analysis is the review of the relevant provisions of the denominational governing documents, which in this case are the constitutions of the PCUSA and its predecessor, the PCUS.<sup>2</sup> The

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<sup>2</sup> Prior to the creation of the PCUSA, Timberridge was a member church of the denomination known as the Presbyterian Church in the United States, commonly referred to as the PCUS or the "southern church". In 1983, PCUS merged with its northern counterpart, the United Presbyterian Church in the United States of America to form the PCUSA, of which Timberridge became a member at that time. (R-375.)

constitution of the PCUSA is titled the Book of Order (“BOO”), and the constitution of the PCUS was referred to as the Book of Church Order (“BOCO”). It is on these documents that the Presbytery almost exclusively relies to argue that a trust over Timberridge’s Property was created.

Beginning with the BOO, the relevant provisions of the PCUSA constitution are as follows. First, the provision which purports to create the trust provides:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Book of Order, § G-8.0200. (R-582.)

Relatedly, the BOO provides:

A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

Book of Order, § G-8.0501. (R-1121).

Additionally, however, the BOO contains an exception to the purported creation of a trust by providing:

The provisions of this chapter shall apply to all particular churches of the Presbyterian Church (U.S.A.) except that any church which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the [southern church and northern church], shall be excused from that provision of this chapter if the congregation shall, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote. The particular church voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.). This paragraph may not be amended.

Book of Order, § G-8.0700. (R-376-377, 1121.)

If this exception was timely exercised by a local church following the 1983 formation of the PCUSA, and the presbytery was notified, then the local church was exempted from any provisions in the new property chapter (Chapter VIII) of the PCUSA Book of Order that are dissimilar to the constitution of the denomination to which the local church was affiliated immediately prior to the formation of the PCUSA. With respect to Timberridge, by timely “opting out” of BOO § G-8.0200 (and setting aside all defenses to the enforceability of *any* purported trust over Timberridge’s Property), Timberridge would be subject to no more than those provisions contained in the BOCO regarding church property

trusts. (As discussed herein, however, and the issue which forms the substance of this instant appeal, is Timberridge's assertion that the governing documents, under the BOO and BOCO have not created a trust to which its Property is subject.)

In an abundance of caution, and in an effort to reiterate its intent to hold its Property free and clear of any encumbrance, Timberridge took every action of which it was aware to opt out of the trust provision. (R-377-378.) Following the formation of the PCUSA in 1983, Timberridge timely exercised the exception provision of G-8.0700 of the PCUSA Book of Order at an annual congregational meeting held on November 15, 1987. (Id.) Timberridge then forwarded the results of the congregation's opt out vote to the PGA. (Id.)

Consequently, although Timberridge asserts they are ultimately unenforceable, the denomination's constitutional provisions which are relevant here are set forth in the BOCO. The main provision in the BOCO purporting to create a trust provides:

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

Book of Church Order, § 6-3. (R-745.)<sup>3</sup>

In contradiction to BOO § G-8.0501, section 6-8 of the BOCO provides that a local church is not required to secure permission from the presbytery or any governing body of the denomination before selling or otherwise encumbering its property. Specifically, BOCO § 6-8 states:

Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent of 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.

(R-746.)

Setting all other issues aside, ultimately the “trust” that the PGA alleges and which the trial court - without explanation, description or review - found to exist, is, in fact, no trust at all. The parties agree that the relevant provisions regarding the purported creation of a trust under the PCUSA governing documents are those contained in the BOCO. The BOCO, however, is inherently contradictory, and obviates the existence of any trust. While § 6-3 purports to establish an ownership interest over the property in favor of the PCUSA, § 6-8 makes clear that local

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<sup>3</sup> It is worth noting that Timberridge was a member of the PCUS for more than 100 years during which no trust provision of any kind was contained in any denominational governing documents. The provision identified as § 6-3 in the BOCO was inserted in 1982, without Timberridge’s knowledge, on the eve of the merger of the northern and southern churches. (R-378.)

churches are free to “buy, sell or mortgage the property” without any notice to or permission from the PCUSA or any denominational governing entity. If local churches are expressly granted full autonomy over the maintenance, condition and disposition of their property, then clearly no trust interest in favor of the PCUSA exists. See, e.g., Presbytery of Beaver-Butler of the United Presbyterian Church in the USA v. Middlesex Presbyterian Church, 507 Pa. 255, 489 A.2d 1317 (1985).

The trial court having summarily concluded that a trust, created by the purported beneficiary, exists, it proceeded to resolve the apparent defect that the trust had not been created by the owner of the property, the purported settlor of the trust, as required under Georgia law. To circumvent the absence of indicia in the language of the governing documents of Timberridge’s consent to and participation in the creation of the trust, the trial court surmised that the PCUSA is governed by a representative democracy, and that Timberridge, by participating in the denominational government, must be deemed to have consented to the provisions.

The trial court’s reasoning is flawed for a number of reasons. First, the PCUSA is not governed by a representative democracy, and the PCUSA governing documents themselves make this point clear. Second, assuming a representative process was in place, there is no evidence reflecting the substance of Timberridge’s

participation in that process. Third, assuming the PCUSA was governed representatively, and even assuming that Timberridge participated in the process, Timberridge still should not be subjected to an illegal and improper attempt by the PCUSA to unilaterally encumber Timberridge's privately owned property solely for its own benefit.

Section 6-1 of the PCUS Book of Church Order provides that corporate trustees may convey or encumber property *only* under the instructions of the congregation adopted in a regularly constituted congregational meeting. A parallel provision is found at § G-8.0501 of the PCUSA Book of Order, which resolves that “[a] particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.” No evidence exists reflecting any authorization or instruction by the Timberridge congregation to convey or encumber its Property, because the Timberridge congregation never gave any of its members, elders or its Session such authority. Where elders have no authority to vote, make decisions, or act on behalf of their respective congregations without the written direction from their congregations, the denomination is not organized as a representative form of government. The trial court's conclusion in this respect was in error.

Consequently, the trial court erroneously concluded that Timberridge, through “representatives”, participated in adopting the trust provisions contained in the BOCO and BOO. Although the lower court placed much emphasis on the attendance by certain Timberridge members at presbytery meetings regarding the adoption of a trust clause and the merger of the northern and southern churches, this is insufficient evidence on which to draw any conclusions regarding the congregation’s consent to the creation of a trust over its Property.

In the first place, of the three individuals connected with Timberridge who were in attendance at the two meetings in question, one was the pastor of the congregation. (R-724.) Under Section G-8.0500 of the BOO, a local church’s minister has no authority to bind the congregation with respect to congregational property absent the instruction of his congregation through a proper vote, which did not occur here. The other two members who were present at presbytery meetings during the time of the inclusion of the trust provision were Timberridge elders; however, there is no evidence regarding how the Timberridge elders voted on the issue of the inclusion of a trust provision intended to encumber the congregational property. (R-699-710, 724.)

Finally, regardless of the nature of the PCUSA’s government or Timberridge’s participation therein, the ultimate dispositive conclusion is that the

trust purportedly created through the BOCO and BOO is improper and illegal. As discussed in greater detail throughout this brief, the purported trust fails to comply with the requirements under Georgia law for the creation of a trust concerning real property. There is no writing evidencing Timberridge's creation of the trust or consent thereto. The trust provision serves as the PCUSA's unilateral and self-serving attempt to abscond with a local church's property, which has been privately held and maintained by the local church for nearly 200 years. Just as illegal laws are unenforceable, the PCUSA's improper attempt to assert an ownership interest over Timberridge's property, against Timberridge's will, should not be enforced.

Upon review of the constitutional provisions set forth in the BOO and BOCO, the court below concluded that the Timberridge Property was subject to an enforceable trust in favor of the PCUSA, drawing the definitive conclusion that simply because the denomination, through its governing documents, asserted that a trust was created, then a trust was, in fact, created. The analytical error committed by the Superior Court of Henry County in reaching that result was two-fold. First, its conclusion violates the neutral principles analysis by affording undue weight to the church's governing documents. See also From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church, 370 Md. 152, 803 2d 548 (2002)

(finding that the trial court placed undue weight on the language of the church governing documents, to the exclusion of deeds which were executed in the name of the local church only, with no reference to a trust, and thus failed to properly apply the neutral principles analysis). Second, it ignores entirely the requirements for the creation of a trust which, at a minimum (under the law and common sense), require the consent of the property owner. O.C.G.A. § 53-12-20. As a result, the trial court erred in its application of the neutral principles analysis to the church governing documents.

#### **D. Relevant Statutes**

Lastly, courts assessing church property disputes under the neutral principles analysis must also consider any state statutes that apply. This aspect of the analysis is guided by the direction set forth by the United States Supreme Court in Jones. v. Wolf, which established that in order for a trust to be enforceable, it must be created in a form that is legally cognizable. Wolf, supra, 443 U.S. at 606. Two provisions of the Georgia Code in particular are relevant. The first concerns the requirements for the creation of a legally valid trust under Georgia law. See O.C.G.A. § 53-12-20. The second concerns the enforceability of a trust over church property reflected in the property deed. See O.C.G.A. § 14-5-46.

With regard to the former, the Georgia Code sets forth those requirements a party must satisfy in order to create a legally cognizable trust. Under O.C.G.A. § 53-12-20 Georgia law requires the following in order to establish an express trust:

- (a) A declaration in writing; and
- (b) Each of the following elements, ascertainable with reasonable certainty:
  - (1) An intention by a settlor to create a trust;
  - (2) Trust property;
  - (3) A beneficiary;
  - (4) A trustee; and
  - (5) Active duties imposed on the trustee, which duties may be specified in the writing or implied by law.

In this case, the requisite elements for establishing an express trust do not exist. Most importantly, there is no declaration in writing by Timberridge that creates a trust in favor of the PGA or the PCUSA. No deed mentions the PGA, the PCUSA or the existence of a trust. (R-381-390, 399-405.) Furthermore, no corporate documents declare the existence of a trust. (R-391-398.) Finally, the corporate minutes of Timberridge expressly refute any attempt to create a trust in favor of the PCUSA, as the congregation voted against any such trust. (R-583-584, 729.) There is no evidence of record which establishes any intent on behalf of Timberridge to create a trust, which is an essential element under Georgia law. The evidence of record clearly reflects the opposite: that Timberridge (the purported settlor) never intended to create any trust but expressly rejected any

attempt by the PCUSA to do so. In the absence of any mutual intent to create a trust, not to mention a writing to that effect, it cannot be said that a trust has been created. For this reason alone, the trial court's orders should be reversed.

Nonetheless, the PGA urged, and the lower court considered, that O.C.G.A. § 14-5-46, which addresses the enforceability of trusts contained in deeds regarding church property, supports a finding that a trust exists in favor of the PCUSA. O.C.G.A. § 14-5-46 provides:

All deeds of conveyance... for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies.

The PGA focuses its attention on the closing language of the statute, arguing that because the section references "the mode of church government or rules of discipline exercised by such churches or religious societies," then the sole inquiry in resolving property disputes is to look at the applicable mode of church government and rules of discipline. This reading cannot be accepted.

The plain language of the statute reflects an intent to validate and protect the conveyance of property in trust for religious purposes. As the opening sentence indicates, the purpose of the Code section is the Georgia General Assembly's establishment that deeds conveyed to religious organizations are valid at law. More specifically, the Code section addresses land which is conveyed subject to certain limitations on the use of the property, and in which the deeds identify the intents, uses, and purposes to which the property should be employed. With regard to such conveyances, the statute ensures that Georgia courts will enforce the plain language of the deed.

Relatedly, the statute contemplates the common occurrence that property is transferred to an individual ("person" or "trustee" under the statute) or to a group ("persons," "trustees" or "society" under the statute) to be held by that individual or group in trust for use as church property. The statute also contemplates the common occurrence that the individuals or groups in whose name the property is conveyed may leave the church. Consequently, the statute protects the conveyance by ensuring that where a grantor of property intended that property to be used for church purposes, as outlined by the plain language of the deed, the property will continue to be used for the purposes identified in the deed even though the individuals or groups in whose name the property was transferred may leave the

church. By the protection afforded under O.C.G.A. § 14-5-46, the individuals in whose name the property is conveyed would not be permitted to reappropriate the property to any use other than the uses outlined in the deed.

The critical aspect of the statute is that it applies only where property has been conveyed subject to limitations on its use. Twice the statute references the “the intents, uses, and purposes contained in the deeds of conveyance,” and the importance of those intents, uses and purposes being protected. Where no such limitations on the use of the property have been included, however, then the deed simply reflects a fee simple conveyance of property, from one party to another.

In Lollar, supra, the Georgia Supreme Court recognized the appropriate analysis of a church property dispute, bearing in mind O.C.G.A. § 14-5-46, when the relevant deed was unambiguous. Lollar, 282 Ga. at 724-725, 653 S.E.2d 462.

The Georgia Supreme Court held:

The 1965 warranty deeds are plain on their face. They conveyed the church property to Rev. Days “as Trustee of Second Refuge Church of Our Lord Jesus Christ.” Georgia law expressly authorizes the creation of religious land trusts, and the language employed in the 1965 warranty deeds is the typical formulation employed to do so. The trial court’s finding that Rev. Days used the phrase “as Trustee of Second Refuge Church of Our Lord Jesus Christ” as a mere moniker does not alter the legal analysis. Where the language of a written instrument is clear and unambiguous, the courts must enforce it as written rather than giving effect to the subjective and

unexpressed intentions and understandings of one party. Thus, the trial court and special master erred in holding that fee simple absolute title to the church property vested in Rev. Days as a result of the 1965 warranty deeds.

Id. at 725. See also Apostolic Overcoming Holy Church of God, Inc. v. Davis, 228 Ga. 36, 183 S.E.2d 745 (1971); Presbyterian Church in U. S. v. Eastern Heights Presbyterian Church, 225 Ga. 259, 167 S.E.2d 658 (1969).

Such is the case here. None of the deeds at issue contain any limiting language. There are no intents, uses, or purposes contained in the deeds. The deeds serve simply as the legal mechanism by which private property owners conveyed property. As a result, no further inquiry is necessary.

Nonetheless, the PGA argued, and the trial court agreed, that under this statute, whenever property is deeded to a church, the property is to be held in accordance with “the mode of church government or rules of discipline exercised by such churches or religious societies.” Such a reading contradicts all of Georgia jurisprudence regarding church property disputes and, additionally, would render the statute inherently contradictory.

First, under this strained reading, whenever property is conveyed to a church, automatically, the rules governing the church’s denomination supercede the language of the deed and control the use and disposition of the property. If

such a reading is accurate, the entire neutral principles analysis would be invalidated. In resolving church property disputes, if a deed existed, Georgia courts would not look at any documents other than the denominational constitution, for it would control. Georgia, then would, de facto, employ the “deferential” standard of review to resolve church property disputes. Of course, Georgia law does not employ this approach.

Second, the reading proposed by the PGA would render the statute inherently contradictory. In both sentences, the statute clearly instructs that the “the intents, uses, and purposes contained in the deeds” are to be honored. However, if the PGA’s argument was correct, if the intents, uses, and purposes for the property, as described in the deeds, was to conflict with the mode of church government or rules of discipline, then the denominational constitution would be held to control regardless of the terms of the deed. The statute cannot be read to allow that, despite its clear focus on preserving the intents of a grantor, those purposes and intents may be trumped by the rules promulgated by a denomination. If the PGA’s interpretation were accurate, the statute would become a vehicle for denominations to abscond with its members churches’ property simply by amending the governing documents and resting on O.C.G.A. § 14-5-46 so that its amendment would be civilly enforced, to the exclusion of the language contained

in the deed. Such a reading is especially troublesome where, as here, the property at issue had been in the possession and use of the Timberridge congregation for more than 100 years before the PCUSA was even formed.

Finally, it is clear that the PGA's interpretation of the statute is flawed because no court has ever employed that reading to resolve property disputes. If it were true that, where a deed to a church exists, the denomination's governing documents control the disposition of the property, then every case reviewing property disputes would have relied on the statute and held that the denomination controlled the property.

In this regard, the Georgia Supreme Court decision in First Evangelical Methodist Church of Lafayette v. Clinton is particularly noteworthy. 257 Ga. 459, 360 S.E.2d 584 (1987). The local congregation of the "First Evangelical Methodist Church of Lafayette" voted to withdraw from the denomination, the "Evangelical Methodist Church", and a dispute subsequently arose concerning two separate pieces of property, the main church building and the church parsonage. The properties were located on separate parcels of land and had separate deeds. In deciding the case the court looked to the differing deed language for each, holding that the church building property belonged to the general church but that the parsonage property belonged to the local church.

The language in the deed to the church building property expressly stated that it was conveyed to the “Trustees of the First Evangelical Methodist Church, Lafayette Georgia, affiliated with the Evangelical Methodist Church of Abilene, Texas...” and “that said connection is to be maintained in the use of the property herein conveyed.” The Clinton court concluded that when the local congregation left the denomination, the property was no longer being used for the purposes *specified in the language of the deed*. As a result, title to the property was declared to be vested in the denomination in accordance with the deed language.

The language in the deed to the parsonage property, however, was different, and dictated a different outcome. In actuality, there were two deeds pertaining to the parsonage property which the court examined. The first conveyance provided that the parsonage property be held “in trust, that said premises shall be held, kept and maintained as a place of residence for the use and occupancy of the ministers of the First Evangelical Methodist Church, Lafayette, Georgia ... subject to the Discipline of the said Church.” Subsequently, the parsonage property was reconveyed and deeded again in an instrument which did not contain any of the limiting language in the first parsonage deed or in the church building deed. The court explained:

It will be seen that the application of neutral property principles must yield a contrary result as to this parcel.

Here, there is no mention in the deed of the connectional church, but rather there is conveyance to the local church. Accordingly, the parsonage tract remains the property of the local congregation.

Clinton at 459, citing Jones v. Wolf supra.

At the time Clinton was decided, O.C.G.A. § 14-5-46 was in effect. The Georgia Supreme Court regarded it as no impediment to declaring that the parsonage tract remained the property of the local congregation without any trust attaching to that property in favor of the denomination. In the present case, the deeds to the Timberridge property make no mention of the PCUSA or its predecessor, or contain any other language that gives rise to a trust.

To the degree that Georgia's general statute on express trusts, O.C.G.A. § 53-12-20, is also germane, it requires that there be a written trust instrument which must contain "[a]n intention by a settlor to create a trust" which is "ascertainable with reasonable certainty...". Here, it cannot be ascertained with reasonable certainty that the settlor, Timberridge, intended to create a trust.

## **II. THE TRIAL COURT ERRED IN RULING THAT TIMBERRIDGE'S DISAFFILIATION RESULTED IN LOSS OF CONTROL OVER ITS CIVIL CORPORATION.**

Timberridge is a corporate entity organized and existing under the Georgia Nonprofit Corporation Code. O.C.G.A. § 14-3-101, *et seq.* O.C.G.A. § 14-3-304

provides:

Except as provided in subsection (b) of this Code section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

O.C.G.A. § 14-3-304(a). Specific exceptions are provided only as follows:

- (b) A corporation's power to act may be challenged:
  - (1) In a proceeding by a member against the corporation to enjoin the act;
  - (2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
  - (3) In a proceeding by the Attorney General under Code Section 14-3-1430.

O.C.G.A. § 14-3-304(b).

Under the plain language of the Code section, the only parties who may challenge the actions of a non-profit corporation are members of the corporation, in an action against the corporation; a receiver, trustee, or other legal representative, in an action against a director, officer, employee, or agent of the corporation; or the Georgia Attorney General. Inexplicably, the trial court permitted the PGA's challenge of Timberridge's control over the corporation, though the PGA had no standing to question any acts that the Timberridge corporation has taken with regard

to disaffiliation. The PGA is not a “member” of Timberridge Presbyterian Church, Inc., nor does it satisfy any other category of entity authorized to challenge the corporate decisions of Timberridge. See O.C.G.A. § 14-3-140(20).

Nonetheless, and ignoring chronology, the PGA asserts, and trial court held, that because Timberridge disaffiliated from the PCUSA, it no longer has the authority to act on behalf of its own church. There is no basis for this contention. The ecclesiastical decision made by the members of Timberridge regarding their religious affiliation has no effect on the property dispute pending here. Indeed, the trial court’s ruling on the effect of the disaffiliation was a constitutional violation in and of itself. The principle of separation of church and state prevents courts from deciding questions involving a church’s internal affairs in matters of theology, discipline or governance. Thannawaro v. Cambodian Buddhist Soc’y, Inc., 274 Ga. App. 857, 619 S.E.2d 365 (2005). As a result, the trial court’s finding that a religious, ecclesiastical act of disaffiliation resulted in loss of control over a civilly created corporation is erroneous and must be reversed.

On this issue, the case of St. Mary’s of Egypt Orthodox Church, Inc. v. Townsend. 243 Ga. App. 188, 532 S.E.2d 731 (2000) is distinguishable. The relevant facts in St. Mary’s are markedly different than those in the instant case, and thus direct an entirely different result. For example, through numerous

passages, St. Mary's governing documents emphasize its subordination to the authority and control of the OCA. The regulations governing St. Mary's provided that St. Mary's is subject to the jurisdiction of the OCA. Further, they provided that "[t]he decisions made at parish meetings will be binding on all Parishioners *after approval by the proper Diocesan authority.*" 243 Ga. App. at 191, 532 S.E.2d at 734 (emphasis added by court).

In contrast, the articles of incorporation governing Timberridge provide no such evidence or indication of subordination. In fact, to the contrary, Timberridge's Articles make clear that Timberridge Presbyterian Church, Inc. is a distinct, independent corporation, whose purpose was aligned with, but was never subordinate to, the PGA and the PCUSA. For example, Article VI describes the broad degree of autonomy the corporation is authorized to exercise:

The Corporation formed hereby shall have all of the powers conferred unto it by the Georgia Nonprofit Corporation Code which are necessary, incidental, or convenient to the purposes and objects of the Corporation as herein stated, including, but not limited to, the powers to administer the affairs of the Corporation; to receive, hold, encumber, manage, and transfer property, real or personal; to accept and execute deeds of title to such property; to hold and defend title to such property; and to manage funds for the furtherance of the purposes of the Church.

(R-393-394.)

The PGA boldly asserts that Timberridge's act of disaffiliation from the PCUSA in and of itself directs a finding that Timberridge must vacate its own Property, and ownership and control of the Property is relinquished to the PGA. The PGA relies on a provision in the Book of Order, Section G-8.0301, which essentially functions as a punishment against any church that would dare exercise its right to freedom of association and disaffiliate from the PCUSA. It declares that in the event a church disaffiliates from the PCUSA, the church relinquishes control of its property to the governing Presbytery.

The PGA's desire to punish a church for its decision to affiliate itself with a presbytery of its own choosing is shockingly offensive. This country was founded in part on the principle that individuals are free to exercise their own beliefs, religions and associations. U.S. CONST. Amend. I; NAACP v. Alabama, 357 U.S. 449, 460-461 (1958). The PGA's attempt to financially benefit from imposing a severe punishment on a church for its decision to associate with another presbytery should be wholly rejected. By its conduct, the PGA forced the disaffiliation and should not now be heard to complain.

### **III. THE TRIAL COURT ERRED IN DENYING TIMBERRIDGE'S MOTION TO DISMISS THE PGA'S EJECTMENT SUIT.**

Since October 3, 2007, the PGA had been subject to a temporary restraining

order entered in the Declaratory Judgment Suit. Pursuant to the order, the PGA is specifically enjoined from:

- (a) filing any documents in the mortgage and conveyance records of Henry County, in the state of Georgia, the effect of which would be to place a cloud on the title of any property titled in the name of Plaintiff, or otherwise taking any action to claim ownership or control of local church property whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership or control of local church property, in the possession of, control of, or owned by Timberridge;
- (b) asserting any rights to the property of Timberridge Presbyterian Church or Timberridge Presbyterian Church, Inc. for so long as this Temporary Restraining Order valid, including, but not limited to, any attempt to change the locks of Timberridge; and
- (c) proceeding in any way in violation of Georgia law and Plaintiff's property rights.

(R-281-282.)

On January 23, 2008, the PGA filed its Ejectment Suit in the lower court. The PGA sought an order ejecting Timberridge Presbyterian Church from its property, and enjoining the church from "using, occupying, possessing, depleting, squandering, encumbering, mortgaging or wasting the Subject Property," as well as "the issuance of a writ of possession in favor of PGA." (R-012-014, Ejectment

Suit.) The PGA's Ejectment Suit violated the Temporary Restraining Order, and the trial court erred in refusing to dismiss this improper suit.

Relatedly, the Georgia Code makes clear that a plaintiff is not permitted to simultaneously pursue separate actions to seek the same relief against the same defendant. Under O.C.G.A. § 9-2-5, the Code provides that:

No plaintiff may prosecute two actions in the courts at the same time for the same cause of action and against the same party. If two such actions are commenced simultaneously, the defendant may require the plaintiff to elect which he will prosecute. If two such actions are commenced at different times, the pendency of the former shall be a good defense to the latter.

O.C.G.A. § 9-2-5(a); see also, O.C.G.A. § 9-2-44(a).

It is well-established under Georgia law that a defendant in one action who files a counterclaim becomes, by virtue of the counterclaim, a "plaintiff" for purposes of evaluating the permissibility of a subsequent suit brought by that defendant against the prior suit's plaintiff. Jenkins v. Crea, 2008 WL 131455 \* 2 (Ga. App. Jan. 11, 2008); Scott v. Rakestraw, 252 Ga. App. 408, 556 S.E.2d 492 (2001); McLain Building Materials, Inc. v. Hicks, 205 Ga. App. 767, 423 S.E.2d 681 (1992).

Here, the PGA's status with respect to the counterclaim pending in the Declaratory Judgment Suit is identical to its status as plaintiff in the Ejectment

Suit. Moreover, the claims that the PGA asserted in both cases are nearly identical. Both cases involve the same interested parties, the same set of operative facts and seek the same result: a determination of the property interests relating to the real and personal property owned by Timberridge Presbyterian Church, Inc. The Presbytery's subsequent Ejectment Suit, therefore, violates Georgia law and the purpose of the prior pending action doctrine: to ensure judicial economy, to avoid inconsistent judgments and to prevent harassment to the parties through multiple proceedings. Jenkins, supra. As a result, the trial court erred in denying Timberridge's motion to dismiss the Ejectment Suit.

This 25th day of June, 2009.

Respectfully submitted,

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IN THE SUPREME COURT  
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN )  
CHURCH, INC./ TIMBERRIDGE )  
PRESBYTERIAN CHURCH, )

Appellant, )

v. )

PRESBYTERY OF GREATER )  
ATLANTA, INC., )

Appellee. )

SUPREME COURT DOCKET  
NOS. S09A1494, S09A1495

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the within and foregoing **Appellant's Brief** was served upon all parties in the above-styled case by depositing copies of the same in the U.S. Mail in a properly addressed envelope with adequate postage thereon and addressed to counsel of record as follows:

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This 25th day of June, 2009.

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Maureen E. Murphy