

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT KANSAS CITY

COLONIAL PRESBYTERIAN CHURCH)

Plaintiff,)

v.)

HEARTLAND PRESBYTERY)

Defendant.)

10 16 CV 249 09

Case Number:

FILED-CIRCUIT COURT
JACKSON CO. MO. KC
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**VERIFIED PETITION FOR DECLATORY AND INJUNCTIVE
RELIEF AND TO QUIET TITLE**

Plaintiff, The Colonial Presbyterian Church, by and through its counsel, J. Brett Milbourn of Walters Bender Strohbahn & Vaughan, PC and Ryan Terril of Terril Law Firm, LLC, and pursuant to RSMo. § 527.150, and Rules 87.02 and 92.02, hereby states, for its *Verified Petition*, as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff The Colonial Presbyterian Church (“Colonial”) is a Missouri nonprofit corporation with its principal place of business at 9500 Wornall Road., Kansas City, Missouri, 64414. Colonial is also registered as a foreign not for profit corporation in Kansas.

2. The congregation of members who meet for worship and other purposes (the “Colonial Church”) on property owned by Colonial is, for religious purposes, governed by a board of not more than 25 elders elected by the qualified members of the congregation, along with the Senior Pastor and Associate Pastors. This group of elders is commonly referred to in the Presbyterian tradition as the “Session.”

3. Pursuant to Colonial's by-laws, the elected elders of Colonial Church also serve as Colonial's corporate Board of Trustees. Fifteen Trustees currently serve on that Board, which is entrusted with corporate authority to act on behalf of Colonial.

4. The Defendant, Heartland Presbytery ("Heartland"), is a nonprofit Missouri corporation with its principal place of business at 3210 Michigan Avenue, Suite 200, Kansas City, Missouri 64109-2055. According to the Missouri Secretary of State's records, Heartland may be served through its registered agent, BLT Agent Services, Inc., at 1220 Washington, Suite 300, Kansas City, MO 64105.

5. Defendant Heartland is the representative governing body of the Presbyterian Church in the United States of America ("PCUSA"), in the Kansas City metropolitan geographical district in which the Colonial Church is located.

6. Missouri is the proper jurisdiction for this suit, as Colonial and Heartland each transact business in Missouri, the cause of action asserted herein arises in Missouri and that cause of action relates to the right, title and interest to real and personal property located within Missouri.

7. Venue is proper in the Circuit Court of Jackson County, Missouri, in that Colonial's real and personal property, which is at issue in this suit, is located in Jackson County, Missouri.

8. This Court has subject matter jurisdiction to hear this church property matter under *Jones v. Wolf*, 443 U.S. 995 (1979).

COLONIAL AND ITS PROPERTY

9. Colonial Church traces its history to January 11, 1942, when the first worship service of a new 37-member church, known as the "Boone Sunday School" was held in Jackson

County, Missouri. That church was later renamed the “Boone Presbyterian Church,” and it purchased its first parcel of land, at 95th and Wornall Road, from Roy and Etta Gallagher on February 20, 1952.

10. That parcel of land consisted of Lot 66 and the East half of Lot 65 of the Thomas Homesteads plat, in Jackson County Missouri, hereinafter referred to as “Parcel 1”.

11. The abstract of title for Parcel 1 is:

Date: 2-20-52
Grantee: Boone Presbyterian Church
Grantor: Roy and Etta Gallagher
Consideration: Unknown
Recording Information: B4535 Page 24

A copy of the Missouri Warranty Deed by which Boone Presbyterian Church acquired this property is attached as *Ex. 1*.

12. On May 3, 1953 the Session of the Boone Presbyterian Church adopted a resolution changing the name of the organization to “Colonial Presbyterian Church, an unincorporated a religious organization.” In the same year, the congregation built a chapel for worship services on Parcel 1.

13. On March 3, 1959, Colonial Presbyterian Church incorporated pursuant to Missouri’s General Not For Profit Corporation Act becoming “The Colonial Presbyterian Church”. See original Articles of Incorporation and Certificate of Incorporation, attached as *Ex. 2*.

14. Thereafter, in September 1959 the Trustees of Boone Presbyterian Church conveyed Parcel 1 to The Colonial Presbyterian Church, a Missouri Corporation. However, the foregoing conveyance was not legally sufficient due to Boone’s name change in 1953; thus, a further Quit Claim Deed was filed on April 18, 1960 conveying the property from Colonial

Presbyterian Church, an unincorporated religious organization, to “The Colonial Presbyterian Church, a Missouri Corporation”. See Warranty Deed dated September 1, 1959 and Quit Claim Deed dated April 18, 1960 conveying Lots 66 in the East half of lot 65 to Colonial Presbyterian Church, all attached as *Ex. 3*.

15. Also in 1960, as the congregation continued to grow, a larger (600-person capacity) sanctuary at 9500 Wornall Road. in Kansas City was dedicated.

16. On December 30, 1965, Colonial purchased a parcel of land immediately adjacent to its existing property, consisting of the West half of Lot 65 of the Thomas Homesteads plat, hereinafter referred to “Parcel 2.”

17. The abstract of title for Parcel 2 is:

Date: 12-30-65
Grantee: The Colonial Presbyterian Church
Grantor: Rhea and Bernice Scritchfield
Consideration: \$51,965.81
Recording Information: B5861 Page 275

See Missouri Warranty Deed dated December 30, 1965, attached as *Ex. 4*.

18. On June 2, 1971, Colonial again purchased a parcel of land immediately adjacent to its existing property, this time consisting of the East half of Lot 64 of the Thomas Homesteads plat, hereinafter referred to as “Parcel 3.”

19. The abstract of title for Parcel 3 is:

Date: 6-2-71
Grantee: The Colonial Presbyterian Church
Grantor: John and Mabel Edelman
Consideration: \$56,000.00
Recording Information: K267P1095

See Missouri Warranty Deed dated June 2, 1971, attached as *Ex. 5*.

20. On May 13, 1981, Colonial purchased another parcel of land immediately adjacent to its existing property, consisting of the West half of Lot 64 of the Thomas Homesteads plat, hereinafter referred to as "Parcel 4."

21. The abstract of title for Parcel 4 is:

Date: 5-13-81
Grantee: The Colonial Presbyterian Church
Grantor: Jewell and Helen Nash
Consideration: \$75,000.00
Recording Information: K1076P2373

See Missouri Warranty Deed dated May 13, 1987, attached as *Ex. 6*.

22. In 1982, a fire destroyed the Colonial's church sanctuary, and the congregation rebuilt the same, dedicating its new sanctuary on Easter Sunday, 1984.

23. On September 1, 1987, Colonial purchased a parcel of land immediately west of its existing property, consisting of Lot 63 of the Thomas Homesteads plat, hereinafter referred to as "Parcel 5."

24. The abstract if title for Parcel 5 is:

Date: 9-1-87
Grantee: The Colonial Presbyterian Church
Grantor: Meriam C. Kizer
Consideration: \$68,000.00
Recording Information: K1721P2244

See Missouri Warranty Deed dated September 1, 1987, attached as *Ex. 7*.

25. On June 15, 1988, Colonial purchased a parcel of land immediately south of its existing property, consisting of Lot 50 of the Thomas Homesteads plat, hereinafter referred to as "Parcel 6."

26. The abstract of title for Parcel 6 is:

Date: 6-15-88
Grantee: Colonial Presbyterian Church

Grantor: Alfred and Norma Buttermore
Consideration: \$45,000.00
Recording Information: K1811P2372

See Missouri Warranty Deed dated June 15, 1988 attached as *Ex. 8*.

27. While Colonial has, at various times, owned other parcels of land within the Thomas Homesteads plat, the above-described parcels comprise all of Colonial's current real estate in Missouri (collectively herein referred to as the "Wornall Road Campus"). See Legal Description and Property Account Summaries, attached as *Ex. 9*.

28. All together, the Wornall Road Campus currently consists of a 6-acre contiguous tract of land, upon which sits an 87,000 square-foot office and sanctuary building, two free-standing youth buildings, and paved parking for approximately 424 cars.

29. Recognizing the growing number of Colonial church members who lived in Kansas and the ever expanding growth in southern Johnson County, on September 26, 1996, Colonial purchased 127 acres near 135th St. and Quivira in Johnson County, Kansas, hereinafter referred to as "Parcel 7."

30. The abstract of title for Parcel 7 is:

Date: 9-26-96
Grantee: The Colonial Presbyterian Church
Grantor: Hackerott and McKee
Consideration: \$2,942,627.00
Recording Information: Book 4999 Page 742

See Kansas Warranty Deed dated September 26, 1996, General Warranty Deed dated August 31, 2000, and Legal Description, all attached as *Ex. 10*.

31. With a well developed plan to be "one church in two locations" and serve the needs of congregations and communities across state lines, on October 8, 2000, Colonial broke ground on the new Kansas site, and dedicated a new church facility two years later, on October 12, 2002.

32. The above-described Parcel 7 comprises all of Colonial's real property in Kansas (herein referred to as the "Quivira Road Campus").

33. All together, the Quivira Road Campus currently consists of approximately 127 acres upon which sits an approximately 50,000 square foot facility, that provides classrooms and a sanctuary capable seating approximately 525 people. The Quivira Road Campus also includes a separate youth house and provides paved and lighted parking for approximately 305 cars.

34. Colonial acquired all of the real property comprising the Wornall Road Campus and the Quiriva Road Campus (collectively the "Colonial Property"), with its own funds, which were donated or raised by the Colonial Church and its members, or through the use of loans/mortgages with local banks or in one instance, a national bond financing company. Moreover, at all times, the Colonial Property was and has been titled in its own name.

35. Colonial holds clear title to all the Colonial Property without any liens or encumbrances, except for one bond encumbrance that arises from the above referenced series of bonds issued in 2002, refinanced in 2004 and originally underwritten by B.C. Ziegler & Company and financed by Marshall & Ilsley Trust Company; and one mortgage encumbrance (line of credit) with The Mission Bank in Kansas. Such funding allowed for the expansion of both Colonial Campuses.

Bond Encumbrance

Date: April 1, 2002
Mortgagor: The Colonial Presbyterian Church
Mortgagee: Marshall & Ilsley Trust Company National Association
Instrument: Bond Trust Indenture
Amount: \$9,000,000.00
Recording Information: Kansas- Book 7795 Page 637;
Missouri- Doc # 2002K-0025792

Bond Encumbrance Refinance

Date: April 1, 2004
Mortgagor: The Colonial Presbyterian Church

Mortgagee: Marshall & Ilsley Trust Company National Association
Instrument: First Supplemental Trust Indenture and Amendment to Deed of Trust
Amount: \$9,250,000.00
Recording Information: Kansas-Book 200404 Page 003597;
Missouri- Doc # 2004K0021325
Current balance: \$ 8,045,000.00

Assignment of Bond Trust Indenture: Marshall & Ilsley Trust Company National
Association to Reliance Trust Company

Mortgage Encumbrance (line of credit)

Date: May 30, 2006
Mortgagor: The Colonial Presbyterian Church
Mortgagee: The Mission Bank
Amount: \$1,000,000.00
Recording Information: Kansas-Book 200608 Page 011019
Missouri- Doc # 2006E0079310
Current balance: \$0

See Ownership and Encumbrance Reports for Colonial's Missouri and Kansas property, attached as *Ex. 11*.

36. From its inception, no other entity secured or guaranteed the debt or in any way pledged to be liable for the above referenced debt other than Colonial. In addition, all mortgage and bond payments to retire its debt have been made solely with Colonial's own funds, which were donated or raised by the Colonial Church and its members.

37. Moreover, with the exception of the above referenced debt, from its inception, Colonial has paid off all other mortgages and other encumbrances on the Colonial Property, including debts incurred in the process of improving the land, with its own funds, which were donated or raised by the Colonial Church and its members.

38. Colonial has at all times, and with its own funds, paid for the maintenance and upkeep of the buildings and grounds on the Colonial Property, including the costs of all utilities, insurance and taxes assessed against the Colonial Property.

39. Colonial has been self-sustaining and financially independent from any national Presbyterian denomination with which it has been affiliated throughout its history.

40. Colonial maintains cash and other assets, including personal property stored on the Colonial Property, in its possession or control or deposited with financial institutions used in its operations, global and local missions, and fundraising, all acquired solely through the efforts of the Colonial Church and its members and donors.

RELEVANT AMERICAN PRESBYTERIAN DENOMINATIONS

41. Presbyterianism is a form of Christianity that originated primarily in Scotland, and arrived in America in the early 18th Century. While many Presbyterian denominations have and do exist in America, four denominations are of particular significance to this suit.

42. The Presbyterian Church US (“PCUS”) denomination was originally organized in the mid 19th Century. The Boone Presbyterian Church at its founding in 1942, was a member of that denomination as was Colonial Church when it came into existence in the 1950’s and it remained so until 1983.

43. In 1958, the UPCUSA denomination was formed by the merger of two older Presbyterian denominations, and was merged with the PCUS in 1983 to form the newly-created Presbyterian Church USA (“PCUSA”) denomination.

44. Defendant Heartland is a Presbytery of the PCUSA with ecclesiastical or religious jurisdiction of the geographical region that contains the Colonial Church.

45. Prior to the creation of the PCUSA, the Evangelical Presbyterian Church (“EPC”) denomination was founded in 1981 by Presbyterians who were increasingly uncomfortable with the doctrinal direction their national denominations were charting.

46. The EPC is generally considered to be more conservative than the PCUSA on matters such as theology and personal behavior, and, especially during the last 10 years, there has been an ever-increasing exodus of members and congregations nationwide away from the PCUSA to the EPC.

47. As more fully set out below, The Colonial Church was, until recently, a voluntary member of the PCUSA insofar as the Colonial Church was, in 1983, a voluntary member of the PCUS.

THE PCUSA'S TRUST CLAUSE

48. At the 1981 meeting of the General Assembly of the UPCUSA, an alleged trust clause was adopted as part of that denomination's governing documents by which the denomination sought to unilaterally assert a beneficial interest in all property held by local churches of the denomination.

49. While Colonial was never a member of the UPCUSA, it is nonetheless noteworthy that no local church was ever allowed to vote on this amendment to the UPCUSA's governing documents.

50. When the UPCUSA and the PCUS merged in 1983, a new alleged trust clause, substantially identical to that enacted by the UPCUSA, was again unilaterally incorporated into the PCUSA's "Book of Order," at section G-8.0201 thereof.¹ That clause recites in pertinent part:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (USA), 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

¹ The current PCUSA Book of Order, which is too lengthy to attach to this petition, is available at: <http://oga.pcusa.org/publications/2009-2011-boo.pdf>

governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA).

51. Within the PCUSA, ecclesiastical authority, instruction and rules are derived from Scripture, as guided by the Book of Confessions and the Book of Order. Those two ecclesiastical documents comprise the Constitution of the PCUSA.

52. The Book of Confessions sets forth the general principle that the collective organization or communion of Christians under a Presbyterian form of government should not burden or infringe existing or vested property rights. Specifically, the Westminster Confession of 1647, which is incorporated in the Book of Confessions, recites, “[n]or 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.” Book of Confessions § 6.148.²

53. The Book of Order similarly sets forth the “Historic Principles of Church Order.” Pursuant to those principles, and as a fundamental matter of religious freedom, the Book of Order is not intended to be enforced through the power of civil courts:

(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 protection and security, and at the same time, be equal and common to all others.

Book of Order § G-9.0301.

54. The Book of Order also recites and recognizes that it has no authority over civil matters, but only seeks authority over ecclesiastical matters:

² The current PCUSA Book of Order, which is too lengthy to attach to this petition, is available at: <http://oga.pcusa.org/publications/boc.pdf>

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 for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline.

Book of Order § G-9.0102.

55. Neither Colonial (which is the legal titleholder to the property at issue in this suit) nor the Colonial Church (by whose efforts that property was acquired) was ever given any opportunity to vote on or approve the unilateral incorporation of the alleged trust clause into the PCUSA Book of Order in 1983 or any time since. Instead, the process of inserting that provision into the Book of Order involved participation by a) commissioners (voting delegates) to the national General Assembly chosen by the regional presbyteries (which presbyteries are the purported beneficiaries of the trust clause), and; b) presbyters (voting delegates) to the presbyteries, sent to the meetings of the regional presbyteries by local congregations. Even those presbyters, however, are not required to act in a representative capacity on behalf of local congregations. *See* Book of Order § G-4.0301.d (“Presbyters are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ”).

56. Colonial did not favor the inclusion of such a trust clause in the Book of Order, and has nowhere and in no way acknowledged any trust in favor of the PCUSA or any beneficial interest held by the PCUSA in any property acquired by the Colonial Church through the efforts of its members and donors or any property held by Colonial.

57. To the extent that Heartland claims that this clause unilaterally created some kind of trust by which the PCUSA holds a beneficial ownership interest in the Colonial Property, along with personal property thereon, and funds deposited in bank accounts titled in the name of

Colonial, Colonial asserts that the clause is inapplicable to any such property pursuant to Kansas and Missouri law.

58. RSMo. § 456.4-401 specifies the methods by which a trust in real property can be created under Missouri law, including the requirement of a “declaration by the owner of the property that the owner holds identifiable property as trustee.” Colonial has never made any such declaration, nor anything remotely comparable thereto.

59. The ecclesiastical Book of Order also contains a provision (at section G-8.0300) by which the denomination unilaterally asserts that if a local congregation chooses to disaffiliate and no longer be a “particular church” of the PCUSA, then the presbytery (i.e. Defendant Heartland) can take over and “hold, use, apply, transfer, or sell” the property owned and paid for by the local church.

60. Despite its unilateral assertion of a trust in property owned by the local church, The Book of Order wholly fails to require that any property deeds include trust clauses in favor of the national denomination or refer to, mention, or include the national denomination among the titleholders to the property. And, Colonial has, for the last 50 plus years, held the Colonial Property and all personal property thereon and all funds and other assets deposited with any financial institution solely in its own corporate name and not in trust for any other party.

61. At no time has Colonial, its corporate officers or the Colonial Church ever concurred in, accepted, or otherwise agreed to the denomination’s unilateral assertion of a trust over the Colonial Property, personal property thereon, or funds and other assets deposited with any financial institution titled in the name of Colonial, all of which are maintained and used by Colonial in the furtherance of the mission and purpose of the Colonial Church.

“THE LOUISVILLE PAPERS”

62. Sometime prior to August of 2006 and perhaps as early as September of 2005, the PCUSA denominational leadership and their in-house lawyers drafted and issued what are now commonly referred to as "The Louisville Papers" (the denomination's headquarters being in Louisville, Kentucky). These "Louisville Papers" were then secretly distributed to some of the "governing bodies" of the church, including some or all of the presbyteries and synods, but not to the sessions of local church congregations. At least some copies were marked to reflect an assertion of confidentiality and of the attorney-client privilege.

63. The Louisville Papers recommended strong-arm tactics aimed at derailing the attempts of local congregations who sought to disassociate from the denomination with their property, including the appointment of "Administrative Commissions" designed to take over leadership of local churches, seize permanent control of all local church property and assets, and file legal actions to cloud title to local church property.

64. Other tactics recommended to the local presbytery by the PCUSA included:

- Secure the property (both real and personal) of the local church.
- Moreover, send a letter to all banks and other institutions that hold accounts for the particular church. Inform the institution:
 - The presbytery has jurisdiction over the local church and its assets.
 - That no assets be released or their title changed pending further notice from the presbytery; make this a directive to the institution.
- Put the presbytery's and the local church's insurance companies on notice. Note, however, you do not want to use the insurance company's standard attorneys in cases such as this. Press hard on the insurance company to accept an attorney of the presbytery's choosing.
- If you initiate the lawsuit, name the defendants as schismatics in the petition and the caption. This will regularly remind the court of what the central issue is before it (the presbytery's authority to determine the true church) and the fact the court must defer to the ecclesiastical decisions of the church governing body.

- Where the members and/or ministers have renounced the jurisdiction of the church, point out to the court this means they have left the membership of the church.
- Determine the religious background of your judge. The judge's religious background will likely influence the way the presbytery's case is viewed, at least initially.
- Keep the original church name and corporation within the PCUSA.

See Ex. 12.

65. In August 2006, a person or persons unknown, forwarded a copy of the Louisville Papers to various media outlets, warning local sessions and congregations for the first time of the national denomination's scheme.

66. As the Louisville Papers were reviewed, it became apparent that while that document was still secret, at least some governing presbytery bodies around the country had actually begun to implement some of the draconian measures set forth in the Louisville Papers, thus heightening the concerns of many local churches trying to protect the property they had purchased and labored to pay for with their own funds.

HEARTLAND'S IMPLEMENTATION OF THE LOUISVILLE PAPERS

67. On June 7, 2007, Heartland's Committee on Ministry recommended the formation of an Administrative Commission purporting to have authority over two Presbyterian churches in Kansas that had expressed a desire to leave the PCUSA.

68. An Administrative Commission is the body that the Louisville Papers recommend be formed to take control of local churches (by unilaterally replacing the elected elders of the congregation and replacing them with pastors and elders of other churches who would be responsive to the desires of the presbytery and the PCUSA rather than the local congregation)

and their property in order to derail local attempts to leave the denomination or to seize permanent control of all property and assets of those local congregations.

69. By way of example, the Louisville Papers advised the Administrative Commission in church separation issues:

- Freeze the assets.
- Organize the loyal minority if the presbytery can identify one. Declare them to be the “true church” and thus entitled to the property
- Make property decisions, including selling the property for the presbytery’s use.
- Dissolve the congregation and utilize the assets, real and personal, for another mission of the presbytery.
- Sell the building and release money.

See Ex. 13.

70. Consistent with the draconian action plan outlined in the Louisville Papers, Heartland did form an Administrative Commission on June 16, 2007, purportedly delegating broad powers to the Administrative Commission, including:

- a. Access to all church records, including but not limited to: membership rolls, minutes of Session and all boards and committees, financial records, membership directories, newsletters, and materials distributed for congregational information.
- b. Authority to call a congregational meeting (G 7.0303.a.(2)) and to obtain current and accurate membership lists from the church for this purpose.
- c. Authority to engage appropriate legal counsel.
- d. Authority to take all necessary steps to discern the “true church” (G-8.0601), that is, those wishing to remain loyal to the Presbyterian Church (U.S.A.).
- e. In the event that a Session calls a congregational meeting for the purpose of considering actions leading to separation from the PCUSA, the Commission shall have authority to dissolve the Session and assume the

full powers and jurisdiction of the Session. In the event that this has occurred prior to this action of presbytery, the power shall be effective immediately. With the full authority of the Session, the Commission shall be empowered to:

- i. Provide for worship and for the continuing pastoral care of all members of the congregation, in the manner of Christ.
 - ii. Receive and act on requests from members to be transferred or deleted from the rolls.
 - iii. Determine and negotiate appropriate distribution of all property and assets of the congregation, with any final resolution to be recommended to the Presbyterian Council for approval.
- f. Authority to dissolve the pastoral relationship upon evidence that the pastor has advocated separation from the denomination or upon renunciation of jurisdiction, fully observing the due process requirements of the Constitution, G-9.0505b.(2).
- g. Authority, in consultation with the Committee of Ministry, to transfer the minister to an established judicatory of another Reformed denomination with which the Presbyterian Church (U.S.A.) is in correspondence.
- h. Authority to declare a minister to have renounced jurisdiction in accordance with G-11.0416 upon evidence that they have obtained membership of any character in another denomination.

See Ex. 14.

71. The Administrative Commission was initially given purported authority over two specific churches, but Heartland also authorized itself or its Committee on Ministry to expand “the list of churches for which the Administrative Commission has authority.” *See Ex. 14.* Since that time, the Administrative Commission has exercised its self appointed authority over Gashland Presbyterian Church in Clay County Missouri and has filed a lawsuit against Gashland not only seeking to take its property but collect and award damages.

72. These actions and threatened actions of Heartland and its Administrative Commission were consistent with and in furtherance of the strategies outlined in the Louisville Papers. *See Ex. 12.* They mirrored actions taken by presbyteries elsewhere in the country, such as Tulsa, Oklahoma, Huntsville, Alabama, and Quincy, Illinois, where other presbyteries of the PCUSA denomination ultimately purported to outright “dissolve the church and retain possession of the property.”

73. In Defendant Heartland’s case with Hillsdale Church, former member of the Heartland Presbytery, the Administrative Commission, after determining that Hillsdale desired to separate from the PCUSA:

- Demanded the production of a wide variety of Church records, including documents relating to property holdings, financing accounts, and membership.
- Sent letters directly to members of the church without consultation or notice to the Hillsdale Pastors or its Session. In such letters the Administrative Commission asserted that the local church property was not Hillsdale’s property but was held in trust for and was in fact the property of the PCUSA.
- Advised Hillsdale that it had the right to take over the church and conduct meetings on the church property whenever it wanted.
- Launched an investigation into the conduct of Hillsdale’s Pastor accusing her of being a “ring leader” behind Hillsdale’s request for dismissal.
- In further effort to put pressure on Hillsdale and in fact punish them for seeking to disaffiliate with the PCUSA, Defendant Heartland, through its Administrative Commission, sought to cloud the title of Hillsdale’s real property by promoting to the property lender that a default had occurred by Hillsdale pursuant to the promissory note and mortgage thereby accelerating the amount due and forcing Hillsdale to obtain new financing.

ACTIONS TAKEN AND THREATENED WITH RESPECT TO COLONIAL

74. In late January 2010, Colonial’s Session, after lengthy prayer concerning the Church’s denominational status, decided to enter into a period of discernment on the question of Colonial’s continued affiliation with the PCUSA denomination.

75. In or about early February 2010, the Colonial Church leadership met with representatives of Defendant Heartland to discuss the discernment process and invited the local presbytery to participate in the same.

76. Upon information and belief, shortly after meeting with Colonial, Defendant Heartland formed an Administrative Review Commission (“ARC”), which in the presbytery’s “process” is a preliminary step to potentially placing a local church under the Administrative Commission’s self appointed power and authority.

77. In early March 2010, Colonial’s Session and various church leaders met to discuss the proposed discernment process and to obtain feedback on structure and content.

78. Shortly thereafter, Colonial’s Session mailed a letter and summary document informing the church members of the upcoming discernment process and inviting them to attend town hall meetings to further discuss the issue of whether or not Colonial should remain as a member of the PCUSA denomination. Colonial’s Session then held four town hall meetings between the end of March and the first of May to discuss denominational issues and the future of Colonial’s continued membership in the PCUSA. The ARC was invited too and did attend each meeting.

79. In the middle of the discernment process Defendant Heartland mailed a letter to Colonial members on or about April 1, 2010. The letter sought to inform Colonial congregants of their “value and importance” to Defendant Heartland. The letter professed a deep care for Colonial as the parties walked through the discernment process. The letter closed by advising Colonial members that they were being held “in prayer, asking God to dwell closely with you and to enliven your ministry....” *See Ex. 15.*

80. In anticipation of taking a survey following the discernment process, the Session repeatedly asked to meet with the ARC to discuss what it believed the next steps might be to amicably resolve any potential differences should the survey indicate a desire to separate. After a period of receiving no response, on or about May 2, 2010, the ARC finally agreed to meet with Colonial's Session. The ARC had little to offer about "next steps", but requested that certain additional language be added to the explanatory letter accompanying the survey. Session, as a courtesy, added language informing Colonial members that they were certainly free to return the survey ballot blank if the member needed more time to consider the survey questions.

81. Thereafter, completely unknown to Colonial, on May 6, 2010, Defendant Heartland, in full disregard of the spirit and tone of their above April 1, 2010 correspondence, unilaterally placed Colonial under the self described and appointed "authority" of the previously formed Administrative Commission. Defendant Heartland took such action prior to the conclusion of Colonial's discernment process and before any survey results were even known.

82. Colonial mailed its survey letters and ballots to its members on or about May 8, 2010.

83. Again, in contravention of its April 1 letter, on or about May 19, 2010, the ARC and Administrative Commission held a clandestine meeting seeking Colonial members who might be interested in staying with the PCUSA. Only six out of more than 1,200 members attended. Colonial's Session was not notified of the meeting nor invited to come, and further, the meeting was called before the survey was completed or the results announced.

84. On May 23, 2010, Colonial announced their survey results. 1,044 or 90.6% of all respondents favored leaving the PCUSA. In terms of active members, 92.4% favored leaving the denomination. The numbers were some of the largest in the country for churches discerning

whether to leave the PCUSA denomination. Heartland Presbytery was informed of the results on or about May 24, 2010.

85. On May 27, 2010, the Heartland Presbytery mailed a letter to all Colonial members revealing for the first time, the engagement of Defendant's Administrative Commission and therein stated its intention to, among other things, "endeavor to ensure that all property of Colonial Presbytery church continues to be held in trust for the use and benefit of the Presbyterian Church USA".

86. By the foregoing communication, Defendant Heartland expressly advised Colonial Church of Defendant's position that all Colonial property was in fact Defendant's property. Such claim occurred before any vote had been taken to actually disassociate, and before any meeting was even set to determine next steps, if any.

87. Seeking to better understand the unilateral "process" the Administrative Commission repeatedly referenced for handling potential church separation, as well as the self appointed authority Defendant Heartland seeks to impose if a local church takes any action to separate, Colonial's Session, in good faith, repeatedly asked for a meeting with the Administrative Commission, but no response was forthcoming.

88. On or about June 15, 2010, Colonial's Pastors received letters from the Administrative Commission dated June 11, 2010 requesting a response to the Administrative Commission's stated inquiries no later than June 17, 2010. In its correspondence, the Administrative Commission threatened that if the Pastors did not respond by June 17th, the Administrative Commission would assume that such Pastors had "renounced the jurisdiction of the PCUSA". The threat was significant because by obtaining a "renouncement" by Colonial's

Pastors, the Administrative Commission's self appointed authority to immediately interfere with Colonial Church's operations and property, all as more fully described above, was activated.

89. Colonial's Pastors responded that it has premature to answer the questions posed in the above letter and that the timeline for doing so was self serving and inconvenient.

90. Soon thereafter, a sub-committee of the Administrative Commission sought meetings with Colonial's Pastors. The Clerk of Colonial's Session attempted to coordinate a joint meeting but his requests were fully ignored. In what then can only be described as a string of harassing emails, the Administrative Commission and the sub-committee unilaterally continued to seek a meeting with Colonial's Pastors on a date certain despite their unavailability. Again, in response, Colonial's Clerk of Session attempted to coordinate a joint meeting at a mutually convenient date but his requests were again ignored.

91. On July 2, 2010, the Administrative Commission sent Colonial's Session a letter asking them to attend a meeting with the Administrative Commission on July 12, 2010 and included a stated Agenda.

92. On July 12, 2010 Colonial Session members, in good faith, met with the Administrative Commission. However, at the start of the meeting, the Administrative Commission unilaterally disregarded its own agenda and instead, sought an immediate statement from Colonial's Session whether reconciliation to remain in the PCUSA denomination was possible. Determining the reconciliation issue was again significant because the Administrative Commission could again justify invoking certain self appointed powers over Colonial and its property should Colonial not answer the reconciliation question in a manner unilaterally determined to be acceptable by the Administrative Commission's liking.

93. During the meeting, the Administrative Commission also asserted its self appointed authority to act in matters of potential church separation and further cited to its alleged list of powers in the event Colonial's Session would call a congregational meeting to consider any action to separate from the PCUSA denomination. *See Ex. 14.*

94. At the conclusion of the meeting, Colonial inquired whether the Administrative Commission would agree to seek resolution outside of the Administrative Commission's described process and outside of litigation should Colonial decide to separate. The Administrative Commission would not answer the question responding that it was premature to discuss the issue as it had to follow its own self described process.

95. Colonial then inquired whether Defendant Heartland would agree not to interfere in Colonial's church and ministry operations during the pending of any property dispute (stand down) should Colonial decide to separate. The Administrative Commission, again, would not respond to the inquiry and would make no such agreement.

96. On August 5, 2010, Colonial's elders, following a lengthy period of discernment by its congregation and leaders and multiple discussions with Defendant Heartland, acting both in their capacity as the duly elected Board of Trustees and the Colonial church Session, voted unanimously to recommend that Colonial terminate its voluntary affiliation/association with the PCUSA and to voluntary affiliate/associate with the EPC. They further unanimously voted to convene a meeting of the congregation and corporation members to vote upon its recommendation to formally end the voluntary association of the Colonial Church with the PCUSA and to thereafter affiliate with the EPC.

97. Accordingly, a meeting was called and set for August 22, 2010, after proper notice pursuant to Colonial's bylaws, for the purpose of the congregation and corporation

members, voting to disassociate with the PCUSA and Heartland Presbytery and immediately affiliate with the EPC.

98. Pursuant to prior written requests by the Administrative Commission to meet with Colonial's lead Pastor, Jim West, on August 10, 2010 a meeting took place between select members of the Administrative Commission, Pastor West, and Colonial's Clerk of Session.

99. At this meeting, the Administrative Commission inquired, among other ecclesiastical matters, whether Pastor West would "leverage his influence to dissuade Colonial's Session and congregation from its current course". Pastor West said he would not as he supported the Colonial's elected leadership and the will of the congregation and memberships.

100. The Administrative Commission responded that the Session's and Trustee's August 5, 2010 decision to "call a vote" to leave the Heartland Presbytery further empowered the Administrative Commission to "use its powers" over Colonial—powers previously spelled out in paragraph 70 above. The Administrative Commission closed the meeting by noting that if Colonial does not change course, it will not be "a very pretty picture" going forward.

101. True to its continued assertion and threats to seek control and power over Colonial, on August 16, 2010, the Administrative Commission's Clerk sent an email to Colonial's Clerk of Session informing Colonial of a unilaterally set meeting scheduled for August 19, 2010, wherein the Administrative Commission would be finally unilaterally deciding whether Colonial's Session (and corporate trustees) were unable or unwilling to manage the affairs of Colonial and the Colonial Church and whether the Administrative Commission should unilaterally dissolve and remove Colonial's Session/corporate trustees and replace them with persons of the Administrative Commission's own choosing and/or the Administrative Commission itself. *See Ex. 16.*

102. On the basis of the above and forgoing, Colonial asserts that an immediate and severe threat exists that Defendant Heartland will take action pursuant to the list of self appointed and unilateral powers delegated to their Administrative Commission and as further described in the Louisville Papers, which include dissolving and seeking to remove Colonial's elected Session and corporate trustees on August 19, 2010, and further seeking to disrupt and interfere with Colonial's duly called corporate and congregational members meeting set for August 22, 2010. As explained in the Louisville Papers, all such action are part of a broader plan seeking to interfere with Colonial's ownership of the Colonial Property, and/or with Colonial's right to the use and enjoyment of the Colonial Property, along with personal property thereon, and funds and other assets deposited with financial institutions titled in the name of Colonial.

103. These same actions would interfere with Colonial's providing for and leading the Colonial Church membership in worship, carrying on its mission and ministry work across the city, states and world, for which purpose the Colonial Church was originally formed and which has continued to carry on over the last 50 plus years.

104. These same actions would also interfere and disrupt Colonial's expansive children's pre-school and daycare operations certified in Kansas and Missouri, which employ 66 teachers and serve over 450 children from around the entire Kansas City metropolitan area.

105. Given the significant survey numbers, any such aggressive action taken by Defendant Heartland through its Administrative Committee is likely to trigger mass confusion and disruption that will negatively impact the employment of the teachers cited above, the welfare of hundreds of children, the 40 full-time employees of Colonial and their families, the shut-ins, the widows, the special needs programs, and the elderly, all of whom Colonial cares for

and ministers to on a daily basis. In addition, missionaries who depend on Colonial's staff and the Church's funding will also be negatively impacted.

106. The intervention of this Court has unfortunately become necessary to protect Colonial's operation and administration, its property, and its use, the dissolution of the Colonial's leadership and a possible mass exodus of members from the Colonial Church, all of which would result in irreparable harm for which no adequate legal remedy in the form of money damages could be had.

107. The Colonial Property was acquired, improved, and maintained exclusively by the efforts of Colonial and the Colonial Church and its members and donors with the understanding that the property and improvements were and would continue to be part of the Colonial Church, regardless of its denominational affiliation.

108. At no time during the history of the Colonial Church has Colonial received any moneys or financial contributions from the PCUSA denomination or the Heartland Presbytery for the purchase of any real or personal property.

109. No deed or title to the Colonial Property, real or personal, contains or has ever contained any language creating or acknowledging any trust over such property in favor of the PCUSA or Heartland.

110. Colonial has been self-sustaining financially from any national denomination with which it has been affiliated throughout its history. To the extent that it has given money to any national organization, such money has been in the form of per capita gifts.

111. Colonial maintains cash and other assets in its possession or control or deposited with financial institutions which are used in its operations, missions and fundraising, all of which were funded solely through the efforts of Colonial, its members, and donors.

112. Since its formation in 1959, Colonial has been in continuous autonomous existence as a Missouri non-profit corporation. Colonial has expressed its independence doctrinally from any national organization. It designs its own worship services and ministries. It has not, in the main, participated in denomination-sponsored offerings and fundraising. Its missions program is primarily non-denominational. It does not use denomination-published Christian education materials.

113. A number of non-denominational and community based organizations operate out of the facilities on the Colonial Property. Organizations holding meetings in the Colonial facilities have included the Boy Scouts, the Salvation Army, City Wide Pastors Prayer Meetings, Neighborhood Homes Associations, and Bible Study Fellowship.

114. Over the years, Colonial has repeatedly disagreed with practices and actions of the PCUSA and has communicated its disagreement to the PCUSA when appropriate.

115. By this Verified Petition, Colonial seeks to quiet its title to the Colonial Property along with personal property thereon and funds and other assets deposited with any financial institution titled in the name of Colonial, as well as a declaration regarding its rights thereto and an injunction against interference with its rights.

116. By way of a separate application filed contemporaneously with this Petition pursuant Rule 92.02, Colonial also seeks a restraining order and temporary injunction maintaining the status quo pending the resolution of this church property dispute between Colonial and Defendant Heartland.

COUNT I — DECLARATORY JUDGMENT

1. Colonial, by this reference, incorporates all preceding paragraphs of this Petition as though fully recited here.

2. Defendant Heartland Presbytery has expressed the intention to assert denominational ownership over all of Colonial's property based upon language contained within one of the ecclesiastical governing documents of the PCUSA, the Book of Order.

3. Colonial asserts that it is the true owner of the Colonial Property, real and personal, and that Defendant Heartland Presbytery has no interest in that property creating an actual controversy between the parties.

4. The Colonial Church has sought the assurance of Defendant Heartland Presbytery that it will not advance any claim against Colonial's property owned by Colonial or that it release any and all claims it may allege against Colonial's Property, however, Defendant Heartland Presbytery has refused to give such assurance.

5. To the contrary, Defendant Heartland Presbytery continues to suggest it has the right to control the real and personal property of Colonial.

6. Having duly paid all expenses of securing the land, building their church and related buildings, maintaining the structures and grounds, and being the sole obligor and guarantor on all related debt, the members of the Colonial Church should not be deprived of the use and benefit of their property, and any claim Defendant Heartland Presbytery may assert against such property should be extinguished.

7. Colonial asserts that its documents of ownership and title, actions of the Colonial Church, and the historical principals of church governance confirm ownership by Colonial and the local church, The Colonial Church.

8. Defendant Heartland Presbytery has no right, title or interest in the Colonial Property, any personal property thereon, or any funds and other assets deposited with any financial institution titled in the name of Colonial.

9. Colonial asserts that as a matter of Missouri law, application of neutral principals of law confirms ownership by Colonial and the local church, The Colonial Church.

WHEREFORE, Colonial respectfully requests that the Court enter an order, pursuant to Rule 87.02 as follows:

- a. declaring that Colonial has sole right, title, and interest in the Colonial Property, the personal property thereon, and all funds and other assets deposited with any financial institution titled in the name of Colonial, and are held by Colonial without any trust in favor of Heartland or the PCUSA denomination;
- b. declaring that Colonial has the sole right, title, and interest to the Colonial Property, the personal property thereon and all funds and other assets deposited with any financial institution titled in the name of Colonial;
- c. declaring that Heartland has no right, title or interest to the Colonial Property, the personal property thereon or any funds and other assets deposited with any financial institution titled in the name of Colonial; and
- d. awarding Colonial its reasonable costs, including attorney's fees, and such further relief as the Court deems just and proper.

COUNT II — QUIET TITLE

10. Colonial, by this reference, incorporates all preceding paragraphs of this *Verified Petition* as though fully recited here.

11. Colonial is the owner of the Colonial Property, as well as any personal property thereon, along with the funds and other assets deposited with any financial institution titled in the name of Colonial, and all such property, real and personal, is held by Colonial without any trust in favor of Defendant Heartland or the PCUSA denomination.

12. Colonial wishes to eliminate any cloud upon, or doubt as to the true holder of title to the Colonial Property, as well as any personal property thereon, along with the funds and other assets deposited with any financial institution titled in the name of Colonial.

WHEREFORE, Colonial respectfully requests that the Court enter an order, pursuant to RSMo. § 527.150, in favor of Colonial as follows:

- a. quieting title to the Colonial Property, as well as any personal property thereon, along with the funds and other assets deposited with any financial institution titled in the name of Colonial solely in Colonial;
- b. declaring that Colonial is entitled to the quiet, exclusive, uninterrupted and peaceful possession of the Colonial Property, as well as any personal property thereon, along with the funds and other assets deposited with any financial institution titled in the name of Colonial;
- c. declaring that Heartland has no right, title, or interest to the Colonial Property, the personal property thereon or any funds and other assets deposited with any financial institution titled in the name of Colonial; and
- d. awarding Colonial its reasonable costs, including attorney's fees, and such further relief as the Court deems just and proper.

COUNT III — INJUNCTIVE RELIEF

13. Colonial, by this reference, incorporates all preceding paragraphs of this *Verified Petition* as though fully recited here.

14. By purporting to create the Administrative Commission and purporting to bestow upon it the aforementioned powers and by allowing the Administrative Commission to take the unilateral actions it has taken, Defendant Heartland has created an imminent threat of irreparable harm to Colonial for which there is no adequate remedy at law.

15. The threatened injury to Plaintiff outweighs any potential damage the requested injunction against Defendant Heartland will do to it or its Administrative Commission by granting this injunctive relief.

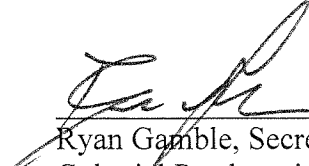
16. The requested injunction, if issued, would not be adverse to, but would instead protect, the interests of Jackson County's citizens and the public at large.

WHEREFORE, Colonial respectfully requests that the Court, pursuant to Rule 92.02, issue a restraining order and temporary injunction against Heartland prohibiting it, as well as each of its members, officers, agents, servants, employees, attorneys, and persons acting in concert with it, including but not limited to Heartland's "Administrative Commission," from exercising any purported power to dissolve or assume jurisdiction over Colonial or take possession of the Colonial Property or any other assets of Colonial, as well as a prohibition against the following actions:

- A. taking any action that would interfere with or place a cloud over the title on the Colonial Property, or with Colonial's rights to the personal property thereon and all funds and other assets deposited with any financial institution titled in the name of Colonial.
- B. disturbing The Colonial Church and Colonial's right, title, and interest in and right to the use and enjoyment of the Colonial Property as described in the *Verified Petition*;
- C. taking any other action which would interfere with the Colonial Property or the Corporate Trustees.

VERIFICATION

I, Ryan Gamble, on or about August, 18th, 2010, upon my oath depose and state that I have read the above and foregoing Verified Petition, have personal knowledge of the matters set forth therein, and the same are true and correct to the best of my knowledge.

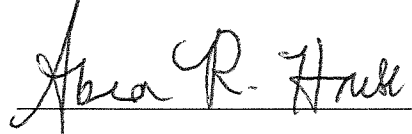


Ryan Gamble, Secretary
Colonial Presbyterian Church

STATE OF MISSOURI)
) ss.
JACKSON COUNTY)

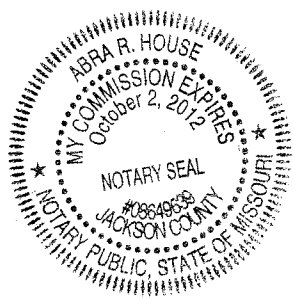
BE IT REMEMBERED, that on this 18th day of August, 2010, before me, a Notary Public within and for the County and State aforesaid, came Ryan Gamble, who executed the foregoing Verified Petition.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Jackson, Missouri, on this 18th day of August, 2010.



Notary Public

My appointment Expires:
10-2-2012



Respectfully Submitted,

WALTERS BENDER STROHBEHN
& VAUGHAN, P.C.

By 

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