

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HUDSON PRESBYTERIAN CHURCH)	CASE NO. 2006 09 6162
)	
Plaintiff)	JUDGE SPICER
)	MAGISTRATE SHOEMAKER
vs.)	
)	
EASTMINSTER PRESBYTERY)	<u>HUDSON PRESBYTERIAN CHURCH'S</u>
)	<u>MOTION FOR SUMMARY JUDGMENT</u>
Defendant)	
)	

Hudson Presbyterian Church hereby moves this Honorable Court for an order granting it summary judgment, issuing the declaratory relief requested pursuant to Civil Rules 56 and 57, and O.R.C. §2721.01 *et seq.* As set forth more fully in the attached brief, Hudson Presbyterian Church requests that this court declare that

- ° Hudson Presbyterian Church owns its real and personal property in fee simple, subject only to mortgages and liens, if any;
- ° Hudson Presbyterian Church holds title to its property free and clear of any trust interest asserted by Eastminster Presbytery, the PC(USA), or any other entity;
- ° The duly elected Session of Hudson Presbyterian Church is its legal and proper corporate Trustees, or directors; and
- ° Hudson Presbyterian Church had the legal right and authority to disaffiliate from the PC(USA), and cannot be compelled to remain therein.

WHEREFORE, Hudson Presbyterian Church respectfully prays for the judgment sought herein.

Respectfully submitted,

s/ Forrest A. Norman

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BRIEF

I. INTRODUCTION

At first glance, Hudson Presbyterian appears to be the large white church at the corner of Route 303 and Boston Mills Road in Hudson, Ohio. The building itself is in the New England meeting house architectural style, simple in form and structure, reflecting the early American congregationalist ethos. Sitting prominently on a triangular lot nicknamed “The Point,” this building has been the home of the congregation of the Hudson Presbyterian Church since the first wing of the building was built in 1986.

While there is a natural tendency to associate a church with its building, most will recognize that in the eyes of the law and in the eyes of the congregation itself, the church is a body of believers who have voluntarily chosen to associate together in order to manifest their collective faith. To be sure, definitions of “the church” will vary depending upon the context in which it is used, referring to a building, congregation, denomination, or “church universal.” Yet all certainly recognize the underlying principle that “the church” is the body of people. From a legal perspective, which, of course, is what we are dealing with here, the body of people collectively gathered finds its expression in the corporate entity known as Hudson Presbyterian Church. Hudson Presbyterian Church was originally incorporated on July 1, 1982.¹ As will be discussed in detail later in this Brief, the Articles of Incorporation expressly note the voluntary nature of the association between the Hudson Presbyterian Church and the denomination, the PC(USA).²

¹Exhibit 4. By agreement of the parties, and with consent of the Court, all exhibits are being filed separately in a Joint Appendix. This includes all agreed-upon exhibits, affidavits and case law.

²The original Articles of Incorporation note that the voluntary association between the Church and the denomination known as the “United Presbyterian Church in the United States of America” which is a predecessor denomination to the PC(USA), which resulted from the merger of two Presbyterian denominations. For ease of reference herein, the denomination is referred to as the PC(USA). The Amended Articles articulate the same voluntary association.

For reasons which are not before this Court, and which are mentioned here for reference only, theological and doctrinal differences have developed between churches within the PC(USA) and the denomination itself, and within other denominations as well which have brought about a movement of churches realigning from one denomination to another more in keeping with their theological viewpoints.³ The nature of the differences is immaterial to this lawsuit.

In November of 2006 the congregation of Hudson Presbyterian Church voted overwhelmingly to sever its association with the PC(USA) and seek an association more in keeping with its corporate expression of belief.

This litigation arises as a result of the decision of the congregation of Hudson Presbyterian Church to disaffiliate from the PC(USA). The question presented involves a simple issue of control over the large white church building mentioned above, along with the congregation's bank accounts and investment accounts.

The deed to the property is in the name of the Hudson Presbyterian Church.⁴ All of HPC's bank accounts are held solely in its own name.⁵ The Articles of Incorporation and By-Laws of Hudson Presbyterian Church expressly state the authority of the Session (the Board of Trustees) to acquire and hold title to both real and personal property. The Constitution of the PC(USA) expressly provides for the Session of a local church to own its lands. The laws of the State of Ohio under which HPC was incorporated grant the power of a non-profit corporation to acquire land, hold title

³PC(USA) churches across the country have been reconsidering their denominational affiliations, including such notables as Montreat Presbyterian, the home church of Billy Graham's wife Ruth, which voted in January 2007 to leave the PC(USA). The Episcopal Church (USA) has received the majority of press coverage, yet the realignment is prevalent among virtually all mainline Protestant denominations.

⁴Exhibits 1 and 2.

⁵Identified *infra*; see also "Disclosure of Property" filed under seal.

and defend that title. Ownership should not be in dispute: Hudson Presbyterian Church owns its property.

The issue before the Court may be simply stated as follows: The PC(USA)⁶ does not like the fact that Hudson Presbyterian Church voted to disassociate. It seeks to gain control of the property at issue by asking the Court to impose a trust interest in the property, in favor of the PC(USA). No written express trust exists, and therefore Eastminster seeks to have this Court create and impose such a trust upon the congregation of the Hudson Presbyterian Church, after it has voted to disassociate. Alternatively, Eastminster contends that the act of the congregation in voting to disaffiliate automatically entitled Eastminster to replace the Board of Directors of HPC with a board of its own choosing, and declare that its newly appointed “true board” is the “true” title holder to the property.

Hudson Presbyterian Church seeks a declaration of law in that no such trust exists, or otherwise may be imposed, and a declaration that Hudson Presbyterian Church, through its duly elected officers and directors (its “Session”), hold clear title to the property at issue.

This litigation arose when Hudson Presbyterian called its congregational meeting and Eastminster Presbytery took steps to interfere with the process, calling its own meeting to try and replace HPC’s Session with a group of its own choosing, along with other steps to prevent the vote and decision making process.⁷ To protect its corporate rights HPC initiated this declaratory judgment action, and pursuant to O.R.C. §1702.12(F)(8) obtained a TRO to prevent a change in corporate control, and to permit the vote to proceed. The TRO was subsequently converted to a

⁶Eastminster is a regional representative of the PC(USA).

⁷ Exhibit 31.

Preliminary Injunction. Following the vote, the parties agreed that the issues before the court were more properly stated as issues of property ownership and control, in light of the vote to disaffiliate.

The parties prepared a “Joint Statement of Agreed Upon Issues”(filed December 12, 2006), as a statement of the matters to be presented to this Court for determination in the declaratory judgment action. The issues presented are:

1. Does The Hudson Presbyterian Church own the real and personal property at issue?
2. Does Eastminster Presbytery have an enforceable trust interest in The Hudson Presbyterian Church’s property?
3. If Eastminster Presbytery has a trust interest in The Hudson Presbyterian Church’s property, is it revocable?
4. Does The Hudson Presbyterian Church have the legal right and/or authority to disaffiliate from the PC(USA)?

These issues set the basic framework for the current dispute.

The first question, “does The Hudson Presbyterian Church own the real and personal property at issue” must be answered unequivocally “yes,” as the recorded deeds and other documentary evidence establish ownership beyond question. (*See*, Statement of Facts, *infra*) The second question, “Do Eastminster Presbytery and PC(USA) have an enforceable trust interest in The Hudson Presbyterian Church’s property,” should be answered “no” because no express trust interest was ever established and no legal basis exists to impose one now that HPC has disaffiliated. The denomination’s “assertion” of a trust interest based upon a single clause in its Book of Order is inconsistent with the parties subsequent course of dealings, and cannot be said to amount to the creation of a legally cognizable trust. Therefore, the trust assertion should fail.

Even if this Court were to find some trust interest, the third question asks “is it revocable?” This should be answered “yes” because HPC has expressly reserved the right to revoke trusts in its corporate documents, and Ohio trust law by statute further provides that a trust is deemed revocable

where not expressly stated otherwise. (O.R.C. §5806.02). Finally, the question of whether “Hudson Presbyterian [has] the legal right and/or authority to disaffiliate from the PC(USA)” should be answered “yes” because of clear statutory rights of non-profit corporations in Ohio, the corporate charter and by-laws of HPC, the denomination’s constitution - which permits it - and the course of dealing between the parties - which contemplated it.

As this matter does not involve a controversy over church doctrine or ecclesiology, and as Ohio follows the neutral principles of law espoused by the Supreme Court of the United States, these questions should be answered by this Court.

II. STATEMENT OF FACTS

On September 17, 2006, HPC’s Session, its Board of Directors, voted unanimously to recommend that HPC disaffiliate from the PC(USA). (Exhibit 111). In accordance with its By-Laws, Session called a congregational meeting for this matter to be voted upon by the entire church membership. (Exhibit 36) This meeting went forward on November 5, 2006.

On November 5, 2006, at the duly called congregational meeting, Hudson Presbyterian Church, by a super majority voted to disaffiliate from the PC(USA). The vote tally was 162-61, or 73%. (Exhibit 112). The conduct of the vote, the tally, and the outcome has not been challenged by Eastminster Presbytery or any of those voting in the minority. The result of the vote is not in dispute.

1. THE DEEDS

The deeds to the parcels at issue are found at Exhibits 1 and 2. Exhibit 1 is a warranty deed recorded at volume 6674, pages 16-18. Exhibit 2 is for the warranty deed recorded at volume 6674, pages 19-21 of the deed records of Summit County, Ohio.⁸ The warranty deeds identify the sole grantee as the Hudson United Presbyterian Church. (*Id.*) The deeds convey no interest to

⁸The deeds pertain to permanent parcel numbers 380-HU-0012-02-011 32-00214, and 380-HU-0012-02-010 32-01939, respectively.

Eastminster Presbytery or the PC(USA), or its predecessor denomination The United Presbyterian Church in the United States of America. (*Id.*) There are no restrictions, reservations, reversions, and/or trusts identified. (*Id.*)

Sole ownership is confirmed by a Title Insurance policy issued to HPC,⁹ which asserts that “title to the estate in said land is . . . vested in: The Hudson United Presbyterian Church,” in “fee simple.” (Exhibit 10).

2. MORTGAGES

On November 1, 1986 Hudson Presbyterian Church received a commercial loan from the United Presbyterian Church in the United States of America, and issued a first mortgage deed as security for the loan. (Exhibit 21). In conjunction with the loan, a note was issued, in the amount of \$150,000. (Exhibit 22). The note has been satisfied and the mortgage has been paid in full and released. (Exhibit 23). The terms of the transaction are instructive for this case.

The first mortgage deed, which was acceptable to the PC(USA), notes that Hudson Presbyterian Church “is well seized of the above-described premises in fee simple, and has good right to bargain and sell the same in manner and form above written, and that the same are free from all encumbrances. . . .” (Exhibit 21 at p. 3).¹⁰ The PC(USA) acknowledged the full ownership interest held by HPC. Yet there is more: the mortgage contained an acceleration clause. The acceleration clause states:

This mortgage and the obligation which it secures shall become immediately due and payable upon termination of use of the property, described or identified in this instrument, by the Hudson Presbyterian

⁹The Title Insurance lists the name Hudson United Presbyterian Church, the original name of The Hudson Presbyterian Church, which was changed by the congregation in the early 1980s. The name change is not at issue.

¹⁰ Recorded at vol. 7382, page 643 of the Summit County Recorder’s office.

Church as a particular church in the Presbyterian Church (USA) and subject to the constitution of the Presbyterian Church (USA).

The acceleration clause reveals two important facts. First, that the parties contemplated the right of Hudson Presbyterian Church to cease being associated with the PC(USA). Second, the “penalty” of such disaffiliation is not forfeiture of the property by HPC, but, rather, acceleration of the loan payment schedule.

The “Promissory Note Secured by Real Estate” (Exhibit 22) contained a similar clause. In pertinent part, the promissory note’s acceleration clause states:

This note and the obligation which it secures shall become due and payable immediately upon the promissor congregation’s ceasing to be connected with the Presbyterian Church (USA), Inc. or the premises occupied by the promissor congregation be alienated, or sold, or abandoned, or cease to be used for Presbyterian mission purposes by the promissor congregation. . . .

Again, the promissory note’s acceleration clause reveals that the business transaction contemplated the possibility of the promissor congregation (Hudson Presbyterian) ceasing to be “connected with” the Presbyterian Church (USA). The consequence of the disaffiliation is that the note and the obligation which it secures would become due and payable immediately. There is no provision in the note for the forfeiture of the property or the imposition of a trust. (Exhibit 22). Again, the note has been satisfied and the mortgage released. (Exhibit 23).

On or about January 15, 1995, Hudson Presbyterian Church entered into a loan transaction with the Synod of the Covenant of the Presbyterian Church (USA), Inc. (Exhibit 24). The loan document contains an acceleration clause which states that: “This note and the obligation which it secures shall become due and payable immediately upon the promissor congregation’s ceasing to be connected with the Presbyterian Church (USA), a corporation,” (Exhibit 24). This transaction with the Synod of the Covenant of the Presbyterian Church (USA) contemplated the possibility of the promissor congregation, Hudson Presbyterian Church, ceasing to be connected with the

PC(USA). And again, the consequences of disaffiliation would be acceleration of the loan payments, not forfeiture of the property or the imposition of a trust. (Exhibit 24). The note was paid in full on March 26, 2002. (Exhibits 24 and 26).

A third mortgage deed was issued by Hudson Presbyterian Church to the Synod of the Covenant of the Presbyterian Church (USA) on or about December 8, 1994. The third mortgage deed again contained similar “conditions of acceleration”:

This mortgage and the obligation which it secures shall become immediately due and payable upon the termination of use of the property, described or identified in this instrument, by the Hudson Presbyterian Church as a particular church in the Presbyterian Church (USA) and subject to the Constitution of the Presbyterian Church (USA).

(Exhibit 25).

Just like the first two, the third mortgage deed does not contain any provision calling for the forfeiture of the real property in the event of disaffiliation with the denomination. (*Id.*) The contemplated consequences of disaffiliation were acceleration of the loan payments, not forfeiture of the land or the imposition of a trust. (*Id.*) The note was paid in full on March 26, 2002, (*Id.*), and the mortgage released, (Exhibit 26, Release of Mortgage).

3. INSURANCE POLICIES

Hudson Presbyterian Church maintains an insurance policy covering its institution and property. (Exhibit 28). The named insured is “Hudson Presbyterian” whose mailing address is 201 West Streetsboro Street, Hudson, Ohio 44236. There are no additional named insureds or contingent beneficiaries. Eastminster also maintains an insurance policy, which does *not* list any interest in Hudson Presbyterian Church (Exhibit 113).

The local church insures itself, and Eastminster Presbytery does not carry a policy of insurance on the property of Hudson Presbyterian Church. (Schomer depo, pp. 45-46). Eastminster

Presbytery does not maintain corporate records such as insurance policies of local churches within its business records. (*Id.*)

4. ARTICLES OF INCORPORATION

Hudson Presbyterian Church is a not-for-profit corporation in the State of Ohio, originally incorporated on July 1, 1982. (Exhibit 4). Hudson Presbyterian Church amended its Articles of Incorporation on or about January 8, 2006. (Exhibit 3).

HPC's Articles of Incorporation at Article 3, ¶3 provide that, among other things, the general purpose and object for which the corporation has formed is to:

Voluntarily associate together for divine worship, for Godly living as is agreeable to the Holy Scriptures, for Christian fellowship, *and to voluntarily associate with a denomination such as the Presbyterian Church USA, as may be appropriate to carry out the dictates of conscience and the greater purposes of being His church.*

Exhibit 4, Art. 3, (emphasis added).¹¹

Article 5 expressly states that:

This corporation shall have the power to acquire and hold title to both real and personal property in fee simple, in trust, or otherwise. Any property held in trust, or deemed to be held in trust, shall be a revocable trust, unless expressly stated otherwise in writing, such powers being expressly reserved by this corporation.

(Exhibit 3).

HPC's Articles also expressly state that "This corporation shall have all the powers which a corporation of this class has under the laws of the State of Ohio." (Exhibit 3, at Article 6). HPC had

¹¹A similar provision is found in the original Articles of Incorporation, which state: "To voluntarily associate together for divine worship and Godly living, agreeably [sic] to the Holy Scriptures, submitting to the authority and form of government as setforth [sic] in the Constitution (as amended) of the United Presbyterian Church in the United States of America, and under the further authority of Eastminster Presbytery." These are discussed *infra* at III B.3(b), p. 33.

the right to amend its own Articles of Incorporation, clarifying and/or enlarging its purpose and powers.¹² (O.R.C. §1702.38).

5. BY-LAWS

The By-Laws of Hudson Presbyterian Church state, at Article 1.2, that

The Hudson Presbyterian Church is a particular congregation in the reformed tradition of the Presbyterian Church, and in accordance with the dictates of conscience is in voluntary association with the Presbyterian Church (USA) (hereafter “PC(USA)”), its successors or reformed structures, and as such, recognizes that the Constitution (the Book of Order), along with the Book of Confessions, are the guiding and governing documents for the denomination. So long as this relationship shall exist, and so long as the documents are in harmony with Scripture, these documents shall order the business of the Church.”

(Exhibit 5).

This clearly contemplates that Hudson Presbyterian Church is in voluntary association with the PC(USA). (*Id.*)

Article 3.3 of HPC’s By-Laws state that:

The Session shall be empowered to act on behalf of the Church with respect to business matters, including but not limited to contracting, conveying, encumbering or exchanging property, both real and personal. The Session shall be empowered to hold property in trust as allowed at law, reserving the right of revocation in all instances. All property held in trust must be held in an express trust. *These By-Laws in no way diminish the sole authority of the congregation, by vote, at a properly convened meeting on the matter, to be the final authority upon the following: matters relating to the election of elders, deacons, trustees; matters relating to the calling of ordained clergy; matters relating to the pastoral relationship (i.e., changes in*

¹²Eastminster Presbytery is an incorporated Ohio not-for-profit corporation, incorporated on or about August 28, 1973. (Exhibit 29). Eastminster Presbytery also amended its Articles of Incorporation, on or about January 13, 1987. (Exhibit 30). Eastminster Presbytery had the right to amend its own Articles of Incorporation. (Schomer depo, p. 52). In amending its own Articles of Incorporation, Eastminster Presbytery clarified and/or enlarged its powers, which powers were not necessarily excluded from the earlier powers granted. (Schomer depo, p. 52).

terms of call); and matters relating to the buying, mortgaging, or selling of real property.

(Exhibit 5, emphasis added).

In accordance with its By-Laws and Articles of Incorporation, the Session of Hudson Presbyterian Church is the governing body of the church for both ecclesiastical and secular matters.

(Exhibit 5, paragraph 3.1; Exhibit 3, Article 4, “the business of the church and the officers of the corporation shall be ordered and provided for as set forth in the By-Laws”).

6. FINANCIAL ISSUES

Hudson Presbyterian Church has three bank accounts, all with Morgan Bank. Each account is titled solely in the name of Hudson Presbyterian Church. (Affidavit of Vera Rastetter, attached hereto as Exhibit B; materials submitted under seal in support of Hudson Presbyterian Church’s property identification; Notarized Letter of Morgan Bank representative David Dalessandro, attached hereto as Exhibit C). The accounts are not joint, nor are there contingent beneficiaries, or any other interests identified in the accounts. The accounts are not held in trust for any person or entity, but are held solely by the corporation, the Hudson Presbyterian Church. (*Id.*)

Hudson Presbyterian Church also holds an endowment fund. This is maintained as McDonald Investments Endowment Fund Account No.17, and is titled in Hudson Presbyterian Church. The account is not jointly owned, nor is there any other ownership interest. (Affidavit of Vera Rastetter (Exhibit 114); Affidavit of Ronald Cappelletti, UBS/McDonald Financial Group representative (attached hereto as Exhibit 115). See also Hudson Presbyterian Church Property Identification, previously submitted under seal).

The endowment fund also contains two annuities for Hudson Presbyterian Church. The first is the “Gift and Endowment Fund,” Presbyterian Foundation Account No. 1021100772, designating “Hudson Presbyterian Church” as the sole, 100% beneficiary. The original donor was Hudson

Presbyterian Church. No secondary or contingent beneficiaries are listed, and no forfeiture clauses or conditions are attached. The second annuity is known as the John R. Howe Fund, Presbyterian Foundation Account No. 1021100769, which designates Hudson Presbyterian Church as its sole beneficiary, similar to the Gift and Endowment Fund. The original donor was the John R. Howe Memorial Fund/ Charitable Gift Annuity. For both annuities there are no restrictions or forfeitures clauses contained therein, and no qualifications restricting the fund to Hudson Presbyterian Church only so long as it is a member of any particular denomination. The sole beneficiary is “The Hudson Presbyterian Church.” (Terms of Endowment, Exhibit 116, Rastetter Affidavit, Exhibit 114, Exhibit 117, Correspondence re John R. Howe Fund).

Hudson Presbyterian Church also operates the Early Childhood Center, which maintains bank accounts in the name of the Early Childhood Center. The Early Childhood Center is a dba of Hudson Presbyterian Church. Three banking accounts are maintained for the Early Childhood Center, Morgan Bank Account No.505;720;740. Early Childhood Center is the sole account holder, with no joint ownership, or other interests expressed upon the accounts. (Exhibit 114; *see also*, Property Identification, filed under seal).

When it was first formed, Hudson Presbyterian Church, in addition to contributions from its individual members, received some financial support from Eastminster Presbytery, Synod of the Covenant, and the United Presbyterian Church in the United States of America. As the church rapidly became self sufficient, support amounts diminished. Hudson Presbyterian Church has not received any financial support from Eastminster Presbytery, Synod of the Covenant, or the PC(USA) since 1986.

Since 1983, Hudson Presbyterian Church has supported Eastminster Presbytery, Synod of the Covenant, and the Presbyterian Church in the United States of America. Over the past twenty-five years Hudson Presbyterian Church has given Eastminster, the Synod, and the PC(USA) more than

\$544,000. (Exhibit 60; see also Affidavit of Vera Rastetter, Exhibit 114). All of the monetary support of the Presbytery by Hudson is voluntary. (Schomer depo, p. 34).

Moreover, while Eastminster had given gifts and grants of approximately \$137,000 towards HPC's initial capital campaign to build the first wing of the church, HPC members funded more than \$650,000 towards that wing, and fully funded the expansion which more than doubled the size of the church in the 1990s. There were no "strings attached" to the Eastminster gifts.

In addition to the \$544,000 given by HPC to Eastminster and the PC(USA), HPC has been entirely responsible for its own finances since its inception in 1982, and has fully funded its own budget since 1986. Over the last five years alone, HPC's actual operating expenditures, fully paid for by HPC members, has exceeded \$2.17 Million (Exhibit 114, Rastetter affidavit).

7. BASIC ORGANIZATION OF THE PC(USA)

The PC(USA) is one of several Presbyterian denominations in the United States (in addition to dozens more throughout the world). (Schomer depo, p. 70). The PC(USA)'s own description of its structure may be used for a summary reference:

The Presbyterian Church (U.S.A.) is a body of Reformed Christians who have agreed to conduct their worship and other religious activities in conformity with the then current version of the Presbyterian Church (U.S.A.) Constitution. The Constitution consists of the *Book of Confessions* (Part I) and the *Book of Order* (Part II). G-1.0500. The *Book of Confessions* contains eleven theological statements developed over the church's history. The *Book of Order* includes the Rules of Discipline, the Directory for Worship, and the Form of Government, a detailed formal structure of the church.

The Form of Government sets forth the relationships among the various elements that comprise the church. Central to the organizational structure of the Presbyterian Church (U.S.A.) is the concept of governing bodies of which there are four types:

- ° sessions of particular churches (11,097)
- ° presbyteries (173)

- synods (16)
- General Assembly (1)

The Presbyterian Church (U.S.A.) is governed by these representative bodies composed of presbyters, both elders and ministers of the Word and Sacrament. G-9.0101. The session of a particular church consists of the pastor, associate pastors, and elders in active service. G-10.0101. The presbytery consists of all the churches (represented by elders) and ministers of the Word and Sacrament within a certain district. G-11.0101. A synod consists of at least three presbyteries within a specific geographic region and is composed of commissioners elected by the presbyteries. G-12.0101. The General Assembly consists of equal numbers of elder and minister commissioners from each presbytery. G-13.0102.

Each governing body has particular responsibilities and powers. These are set out in the Form of Government: Sessions G-10.0102, Presbyteries G-11.0103, Synods G-12.0102, and the General Assembly G-13.0103. Our polity is presbyterial - as distinguished from hierarchal, episcopal, or congregational. As we explain our structure, we must not oversimplify the essential detail of our presbyterian polity.

A very important concept for this legal resource manual and within the life of the Presbyterian Church (U.S.A.) is found at G-9.0101. “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.” The corollary to this principle is that civil governments and courts must not assert ecclesiastical jurisdiction. This principle is embodied in the First Amendment to the United States Constitution and the religion clauses found in the various state constitutions.

Thus, neither the Presbyterian Church (U.S.A.) nor its governing bodies should be thought of as civil jural entities with legal capacities and attributes. Their fundamental ecclesiastical nature, relationships, duties, and responsibilities are established by the Presbyterian Church (U.S.A.) Constitution - not the civil law. The *Book of Order* does direct the particular churches (G-7.0401) and the higher governing bodies (G-8.0202) to cause a corporation to be formed whenever permitted by civil law. This provision is not understood to incorporate the ecclesiastical governing body but, instead, to create a corporation to perform the limited civil law functions necessary within the life of the church (e.g., holding title to real estate, entering into contracts). Of course, all of these corporations operate within the applicable civil law and the strictures of the Presbyterian Church (U.S.A.) Constitution. These corporations are civil jural entities.

(Exhibit 41, PC(USA) Legal Resource Manual).

Because the PC(USA), by its own admission, is not “hierarchical, a closer look at the actual relationship is in order.¹³

8. LOCAL CHURCH RELATION TO PRESBYTERY

The structure of the Presbytery is connectional. (Schomer depo, p. 57). The Presbytery is made up of representatives of sessions (lay congregants) and minister members. (Schomer depo, p. 57). This is what is meant by “connectional.” (*Id.*) Churches are not members of the Presbytery - the “connection” is made by common representative members from the local churches participating in the Presbytery entity. (Schomer depo, p. 58).

The local church representatives to Presbytery are “commissioners” empowered to exercise their own personal judgment in casting votes as opposed to “delegates,” directed on how to vote. (Schomer depo, p. 60). This characterizes the Presbyterian style of governance. (Schomer depo, p. 60).

It is the Session of a local church, and not its minister, which has the ultimate authority as to the governance of the church. (Schomer depo, p. 63). The local church calls its own pastor; the pastor is not assigned by the Presbytery. (Schomer depo, pp. 16-17; 37; Bogue depo, p. 35). HPC hires its own pastor, pays its own pastor, and may fire its own pastor. HPC conducts its own searches for pastors, forming its own, independent “pulpit committee.” (Schomer depo, pp. 16-17).

The General Presbyter, the “highest” official at the Presbytery, primarily provides administrative services for the Presbytery, serving as a communicator. (Schomer depo, p. 36). The office of “General Presbyter” is an administrative position, and the General Presbyter does not make executive decisions. (Schomer depo, p. 36). Neither does the General Presbyter direct policy, make

¹³HPC disagrees with the characterization or classification of the PC(USA) as a “hierarchical” denomination. *However*, this dispute need not be resolved in order to decide this case, as the neutral principles doctrine followed by Ohio provides a means of resolving church property disputes without deciding issues pertaining to polity. (See *Law and Argument, infra*).

theological pronouncements, or assign pastors to churches. (Schomer depo, p. 37). The General Presbyter does not interpret Scripture or direct pastors how to interpret the Scripture, nor does he tell pastors what to preach on, how to preach, or otherwise how to conduct local church business. (Schomer depo, pp. 37-38).

There is no hierarchy among Presbyters. There is no individual vested with hierarchical powers. (Schomer depo, p. 114). In Presbyterian polity, there are no bishops, or other authoritative figures of that nature. (Schomer depo, p. 115).

The trustees of Eastminster Presbytery do not have the power to mortgage the Hudson Presbyterian Church's property, to sell Hudson Presbyterian Church's property, or to sell the entity known as Hudson Presbyterian Church. (Schomer depo, p. 51). The trustees of Eastminster Presbytery cannot encumber in any way the property of Hudson Presbyterian Church. (*Id.*)

The Presbytery cannot enter into a contract which binds a local church. (Schomer depo, p. 53). Specifically, Eastminster Presbytery could not enter into a contract that would bind Hudson Presbyterian Church. The reverse, of course, is true - Hudson Presbyterian Church cannot enter into a contract which would bind the Presbytery. (Schomer depo, p. 55).

The Presbytery, even voting as a whole, cannot tell an individual church how to handle its budget, what programs it can offer, or how to run its Sunday School. (Schomer depo, pp. 38-39). A local church neither needs nor seeks approval of the Presbytery in approving or modifying its own budget. (Schomer depo, p. 39). The Presbytery has no authority to direct local church mission giving or outreach giving. (Schomer depo, pp. 40-41). Likewise, even the Presbytery voting as a whole, cannot command an individual church pastor what to preach on. (Schomer depo, p. 38).

A local church such as Hudson Presbyterian handles its own auditing requirements. (Schomer depo, p. 56).

The General Presbyter does not have a vote on any individual church session and does not have a say in the governance of Hudson Presbyterian. (Schomer depo, p. 41).

The General Presbyter does not sit on the Session of any particular church, either as a voting member or as an *ex officio* member. (Schomer depo, p. 41).

The General Presbyter does not make policy decisions for the local church. (Schomer depo, p. 42). Likewise, the General Presbyter does not control the operations of a particular church. (Schomer depo, p. 42).

The Presbytery, acting as a whole, does not have a vote on any individual church Session. (Schomer depo, p. 41).

The Presbytery does not have original jurisdiction to bring disciplinary charges against an individual member of a church. (Schomer depo, p. 43). The Presbytery does not have original jurisdiction over whom the local church ordains as a deacon or elder. (Schomer depo, p. 43). That ordination function is wholly under the auspices of the local church Session. (*Id.*)

The individual church chooses its own name, not the Presbytery. (Schomer depo, p. 43).

The Session of a particular church, such as Hudson Presbyterian, has the responsibility and power to provide for the management of the property of the church. (Schomer depo, p. 44). The Session of a particular church has the responsibility and power to determine the appropriate use of the church building and the church facilities. (*Id.*)

A local Presbyterian church does not need Presbytery approval of its articles of incorporation. (Schomer depo, pp. 179-180; Bogue depo, pp. 54; 57). A local Presbyterian church does not need Presbytery approval of its by-laws, either. (*Id.*) Each church is responsible for preparing and filing its own articles of incorporation. (*Id.*) A local church is responsible for amending its own by-laws. There is no prescribed or specified set of terms or language which is to

be included in any local Presbyterian church's articles of incorporation or by-laws. (Schomer depo, pp. 179-180).

In light of these practices and history, the General Presbyter of Eastminster Presbytery has agreed that "the control of a local church is a function of that local church's Session." (Schomer depo, p. 57). He further agreed that the Presbytery does not have "more or less complete" control over a local church. (*Id.*)

The Session is the ultimate authority for the local church. (Schomer depo, p. 45).

9. PC(USA) BOOK OF ORDER

The Constitution of the PC(USA) consists of the Book of Order (Exhibit 7) and the Book of Confessions (Exhibit 8). Both are ecclesiastical documents. (See Schomer depo, p. 67). The Book of Order yields to civil law. (Schomer depo, p. 79). The PC(USA) recognizes that the church extends beyond the boundaries of the PC(USA) and specifically recognizes other Presbyterian churches. (Schomer depo, discussion at pp. 67-73).

The PC(USA) is one of several Presbyterian denominations within the United States, itself being the result of a merger of three denominations. (Schomer depo, p. 70). At various times there have been mergers and divisions within the Presbyterian Church. (Exhibit 32; Schomer depo, pp. 71-72). The concept of Presbyterianism is not confined to a single denominational line. (Schomer depo, p. 73). There are independent Presbyterian churches functioning in the United States. (Schomer depo, p. 73). "Presbyterian" comes from a Greek word which is roughly translated to mean "ruled by elders." As far as individual church governance is concerned, decision making bodies are to be comprised of both elders and ministers, and that decisions are made by the authority vested in the corporate body. (Schomer depo, p. 74). Therefore, the decision making entity for the local church is its Session. (Schomer depo, p. 74). "The government of this church is representative, and the right of God's people to elect their officers is inalienable." (Exhibit 7, G-6.0107). That

means that no other body can tell a church who it should have running it. (Schomer depo, p. 84).

The only jurisdiction that a Book of Order has over its constituents is ecclesiastical. (Schomer depo, p. 84). The denominational governing body has no authority to impose civil penalties. (Schomer depo, p. 84).

In accordance with the PC(USA) Book of Order, a local church corporation “shall have the following powers: to receive, hold, encumber, manage and transfer property, real or personal, for the church.” (Exhibit 7 at G-7.0402; Schomer depo, p. 80). The phrase “for the church” refers to the “local church.” (Schomer depo, p. 80). These powers include, further, “to accept and execute deeds of title to such property.” (Exhibit 7, at G-7.0402; Schomer depo, p. 81). Likewise, further authority is granted to the trustees of the local church “to hold and defend title to such property.” (*Id.*) The only limitation on the local Session’s authority in this regard is that “in buying, selling and mortgaging real property, the trustees shall act only after the approval of the congregation granted in a duly constituted meeting.”

The powers vested with the local church Session or trustees (or directors) is a non-exhaustive list of powers. It is implied that there are powers invested in the church to carry out its functions, and implied powers are not limited by the express list. (Schomer depo, p. 83).

The Presbyterian Church has adopted many democratic principles. According to the Presbyterian Church (USA) Book of Order at provision G-4.0301(E), “[d]ecisions shall be reached in governing bodies by vote following the opportunity for discussion and the majority shall govern.” (Exhibit 7, at G-4.0301(E); see also Schomer depo, p. 74). This contemplates voting, which obviously contemplates that there may be contrary positions taken among voters. The government of the church is representative. (Schomer depo, p. 84).

The jurisdiction of the Book of Order to exercise discipline or control over an individual or entity is based upon voluntary assent. (Schomer depo, p. 76). Ecclesiastical jurisdiction may be

defeated merely by the subject of that discipline renouncing jurisdiction. (Schomer depo, p. 77).

["A]t its very essence the governance in the church depends on voluntary assent." (Schomer depo, p. 78).

Additional sections of the Book of Order, where relevant, are addressed in the Law and Argument section, *infra*.

10. THE RIGHT OF A LOCAL CHURCH TO LEAVE THE DENOMINATION

"The Presbyterian Church in the United States of America, through its practice and polity, recognizes that individual or particular churches may leave the denomination known as the PC(USA)." (Schomer depo, p. 85). The Book of Order contemplates that individual churches may decide to leave the denomination, and provides for it. (Schomer depo, pp. 85-86). In fact, churches do leave the PC(USA). (Schomer depo, p. 85).

The process of dismissal or transfer of a church from the PC(USA) to another denomination is initiated by a local congregation. (Schomer depo, pp. 89-90).

Nothing would prohibit a local church from telling Eastminster Presbytery that it now wanted to become affiliated with another denomination. (Schomer depo, p. 90).

Q: And that would obviously come from within the individual church through its own decision making process?

A: That's correct.

...

Q: You would agree that that would be a decision which would properly be made at that individual church level?

A: Yes.

(Schomer depo, pp. 90-91). The local church is the appropriate entity to manage its own affairs regarding denominational affiliation. (Schomer depo, p. 92).

Q: There is no provision in the Book of Order, or there is no procedure by which a local church is directed how to engage in that process, is there?

A: There is not.

Q: Okay. So that would be left up, of course, to the local church to determine that?

A: That is correct.

(Schomer depo, p. 92). The expression of the conscience of the local church is that which is reflected by the vote of either the congregation or the Session, depending upon the matter being voted upon. (Schomer depo, pp. 93-95).

Article XIII of the Book of Order sets forth “procedures for dismissal of a congregation with its property.” (Exhibit 7). The provisions of Article XIII expired by their own terms and were not replaced with alternative provisions, although Article XIII contemplates that subsequent provisions would be put in place. (*Id.*) Article XIII sets forth the principle of transfer of denominational affiliation based upon a 2/3 majority vote of a local congregation. (Exhibit 7, at Article XIII; Schomer depo, p. 101, 103).

The General Presbyter of Eastminster Presbytery, testified that the provisions of Article XIII were fair, balanced, and acceptable, as drafted. (Schomer depo, pp. 103-104).

Hudson Presbyterian Church, in conducting its vote to disaffiliate from the PC(USA), substantially followed the procedures set forth in Article XIII. The only substantive difference which the General Presbyter could identify was that HPC’s vote was “to disaffiliate” rather than “requesting dismissal.” However, the effect of either dismissal or disaffiliation is to sever the connectional tie between the local church and the Presbytery. The end result is the same. (Schomer depo, pp. 102-103).

11. NO EXPRESS TRUST EXISTS

There is no written express trust existing between Hudson Presbyterian Church and Eastminster Presbytery or the PC(USA). (Schomer Depo at pp 181-182).

Q: Would you agree that there is no written express trust document between Hudson Presbyterian Church and Eastminster Presbytery?

A: No, there is not.

Q: There is nothing in the Hudson Presbyterian Church's Articles of Incorporation which establish a trust relationship between Hudson Presbyterian and Eastminster Presbytery, correct?

A: As I've read the revised by-laws, that's correct.

Q: And not in the Articles of Incorporation, either?

A: Correct.

(Schomer Depo at pp.181-182).

The sole basis of Eastminster's assertion of a trust interest is based upon an interpretation of the Book of Order. (Schomer Depo at p. 182; Eastminster's Answers to Interrogatories, Nos. 9, 10, 11, and Eastminster's Responses to Requests for Production No. 11). No express trust document has been produced, as none exists.

III. LAW AND ARGUMENT

A. THIS COURT HAS JURISDICTION TO HEAR CHURCH PROPERTY DISPUTES/ “THE NEUTRAL PRINCIPLES” DOCTRINE APPLIES

Courts in Ohio may properly consider and rule upon property disputes between church bodies. *Serbian Orthodox Church of St. Demetrius of Akron, Ohio v. Kelemen* (1970), 21 Ohio St.2d 154, 157-158. “Where the dispute involves non-doctrinal contractual disputes, a civil court retains jurisdiction to hear the dispute.” *Tibbs v. Kendrick* (1994) 93 Ohio App.3d 35, 42.¹⁴ The nature of the dispute must be considered to determine if the issue is doctrinal, or non-doctrinal, such as property or contractual legal issues. Courts must carefully avoid addressing doctrinal matters, but certainly can hear non-doctrinal property and contractual disputes. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 449.

The First Amendment prohibits any inquiry by the court into religious doctrine or practice, as the courts have “no role in determining ecclesiastical questions in the process of resolving property disputes.” *Id.* at 447. Yet “not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And, there are neutral principles of law developed for use in all property disputes, which can be applied without “establishing” churches to which property is awarded.” *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 449. Thus, “the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, states, religious organizations,

¹⁴*Tibbs v. Kendrick, supra*, considered “who can preach from the pulpit,” which is a wholly different dispute from the issue at bar.

and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.” *Id.* *Blue Hull* established the “neutral principles” doctrine for church property disputes.

Ten years after *Blue Hull* the U.S. Supreme Court again visited church property ownership disputes and affirmed the neutral principles approach, clarifying the role of the court in looking to property deeds, titles, Articles of Incorporation, and other ordinary *indicia* of ownership to reach a decision. In *Jones v. Wolf*, 443 U.S. 595 (1979), the Vineville Presbyterian Church voted 164-94 to separate from the PCUS. The Augusta-Macon Presbytery appointed a commission which declared that the minority faction was the “true congregation” and claimed the minority had authority to exercise control over the corporation. *Id.* at 598. The minority then sought control of the church’s real and personal property in court. The trial court, affirmed by the Georgia Supreme Court, rejected the minority’s argument, and held that control remained with the majority. The U.S. Supreme Court upheld the Georgia Supreme Court’s application of the neutral principles of law. *Id.* at 599. Noting that “the neutral-principles analysis shares the peculiar genius of private law systems in general - flexibility in ordering private rights and obligations to reflect the intentions of the parties,” *Id.* at 603, the Court declared that “the neutral-principles approach . . . obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.” *Id.* at 605. Ultimately, it was the property deeds, articles of incorporation, and majority vote that prevailed, and the majority of the congregation retained control of the property.

The Supreme Court of Ohio has directly adopted and applied the “neutral principles of law” doctrine, most notably in *Serbian Orthodox Church v. Kelemen*, *supra*, which was remanded by the U.S. Supreme Court in light of its decision in *Blue Hull*¹⁵. In that case, the Ohio Supreme Court held

¹⁵A thorough examination of Ohio law reveals that Ohio has been utilizing the “neutral principles” approach since the 1830s, although it was not called by that name until *Blue Hull*.

that the constitutionally appropriate method of resolving a church property dispute is to “look to the ordinary indicia of property rights.” *Kelemen, supra* at 160. The ordinary indicia of property rights include the recorded property deeds, articles of incorporation for corporate entities, and general Ohio law regarding property and trusts. *Id. See also Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God* (1989), 61 Ohio App. 3d 526, 536-537.

Therefore, in this case, the factual matters to be considered are:

- ° Recorded Property Deeds
- ° Articles of Incorporation
- ° By-Laws
- ° General Ohio Law regarding Property and Trusts

Additional “neutral” documents may be reviewed, as long as they are ordinary indicia of property ownership. Towards those ends, the court may consider mortgages, bank accounts, and the denomination’s Book of Order to the extent it does not involve ecclesiology.

The *Kelemen* case (*Serbian Orthodox Church v. Kelemen* (1970), 21 Ohio St. 2d 154, 160) arose from a dispute between two competing factions for control of a local church. The local church separated from its denomination, which was an episcopal or hierarchical style denomination.¹⁶ The Court of Appeals ruled in favor of the denomination, holding that members of the local church had committed schismatic acts in seeking a withdrawal from the general church. In reversing the Court of Appeals, the Ohio Supreme Court made two important rulings: (1) it held that the Court of Appeals had erred in considering evidence of church organization, as that was immaterial to a neutral law inquiry; and (2) it reversed a finding of “schism” because of the *Blue Hull* case,

¹⁶The mere fact that a denomination might be characterized or classified as “hierarchical” does not preclude courts from ruling on property matters, as is evidenced by the numerous cases where the courts did just that.

prohibiting such ecclesiastical inquiries. *Id.* at 160. “Schism” is an ecclesiastical concept inappropriate for neutral law inquiries. Analysis of “schism” would require consideration of doctrine, which the court may not do. *See e.g., Blue Hull, supra* 393 U.S. at 449-450.

In *Kelemen*, the court assessed the Articles of Incorporation of the local church, noting that the corporation was formed “for the purpose of providing a place of worship . . . according to the rules, regulations and customs of the Servian [Serbian] Orthodox Church . . . for receiving, holding and disbursing [*sic*] gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining . . . buildings.” *Id.* at 216-217. The recorded deeds established that the corporation (the local church) held legal title to all church property. *Id.* at 217.

The denomination argued that an implied trust theory would entitle it to an ownership interest in the corporation’s property. The Ohio Supreme Court rejected this argument, holding that “Ohio law does not reveal a recognition of an implied trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine.” *Id.* at 217. The Ohio Supreme Court further observed that the constitution and by-laws of that particular church provided that “the congregation may independently function only in the matters relative to the material holdings (properties) of the congregation.” The Court therefore concluded that “in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation.” *Id.* at 217.

The principles of *Kelemen* have been consistently applied in Ohio, utilizing the neutral principles of law doctrine to determine church property disputes when local churches leave denominations. In *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God* (1989), 61 Ohio App. 3d 526, the Second Appellate District rendered a well-reasoned and thorough assessment of the development of church property law, starting with pre-colonial England,

and tracking the law as it developed in the United States, and into the present day State of Ohio. In *Executive Offices*, the court noted that the trial court had been reluctant to address the issue of church polity, i.e., whether the relationship was hierarchical or otherwise, in light of the admonitions of the court in the *Kelemen* case. *Id.* at 537. The *Kelemen* case, it was noted, “involved a general dispute as to church governance that was intertwined with doctrinal disputes. *Kelemen* involved accusations of schism, an issue concerning which the Court of Appeals had made inquiry. These questions compelled resolution, or at least consideration, of an underlying controversy of an ecclesiastical nature. The case before us does not. There is no general dispute about church governance, certainly not one arising from a dispute over a doctrine, dogma or religious practice. This whole issue concerns ownership of real property. In this case the courts cannot avoid the responsibility to resolve a dispute civil in character because the litigants are religious bodies.” *Id.* at 537-538.

In *Executive Offices* the Offices of the Denomination asked the court to declare that the local church held its property in trust for the denomination, the Church of God of Cleveland, Tennessee. (*Id.* at 530-531). For many years it had been the position of the General Assembly of the Church of God that real property held by a local church is held in trust for the use and benefit of the Church of God of Cleveland, Tennessee. (*Id.* at 532). The Articles of Incorporation of the Fairborn Church of God, a local church, stated that its purpose was:

To form and become the Fairborn Church of God under and in accordance with the General Assembly of the Church of God and to do all things not prohibited by law, and which are in accordance with the teachings of the General Assembly of the Church of God. (*Id.*)

The deeds to the property at issue in *Executive Offices* showed that the local church’s deeds did not follow the generally prescribed format called for by the denomination’s trust claims. (*Id.* at 532).

Analyzing Ohio’s application of the neutral principles of law approach, the court in *Executive*

Offices recognized that it “could and should look to the articles of incorporation of the local church, the deeds involved, and the general law of Ohio.” (*Id.* at 536). In rejecting the implied trust theory (discussed *infra*) and in analyzing the deeds, articles of incorporation, and general laws of Ohio, the court found that “the deeds contain no language setting an interest on the general church.” (*Id.* at 540). The court upheld the local church’s claims to the property, and rejected the denomination’s claims of both an express and implied trust. (*Id.*).

B. APPLICATION OF THE NEUTRAL PRINCIPLES DOCTRINE TO THE CASE AT BAR

As the Ohio neutral principles approach directs, we will consider here the recorded deeds, articles of incorporation, by-laws, general Ohio law regarding trusts, corporations, and property, and other neutral documents evidencing ownership and control.

1. THE DEEDS

Hudson Presbyterian Church is the sole owner of the two parcels of property which comprise the land upon which the church building sits. (Exhibits 1 and 2). Neither Eastminster Presbytery nor the PC(USA) are referenced in either Warranty Deed. (*Id.*) Neither Deed creates a trust nor a beneficial interest in any entity other than the Hudson Presbyterian Church. (*Id.*) There is no reverter clause or reserved interest in any third party. (*Id.*)

The Chicago Title Insurance Company acknowledged that the interest in the land is vested in the Hudson United Presbyterian Church *in fee simple*. (Exhibit 10).

Therefore the first and most significant aspect of the neutral principles inquiry establishes that Hudson Presbyterian Church is the proper and sole title holder to the property. The deeds show no signs of a trust, a reverter, or any other restrictions on ownership. The asserted trust argument fails on the first element of a neutral principles examination.

2. STATUTORY NON-PROFIT CORPORATE AUTHORITY

Hudson Presbyterian Church is an Ohio non-profit corporation, duly incorporated in accordance with the provisions of O.R.C. §1702 *et seq.*

These provisions permit a non-profit corporation to:

(1) Purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, transfer, and dispose of property of any description or any interest in property of any description;

...

(4) Be a partner, member, associate, or participant in other enterprises or ventures, whether profit or non-profit;

(5) Borrow money, and issue, sell, and pledge its notes, bonds and other evidences of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust, of all or any of its property, and guarantee or secure obligations of any person;

(6) Become a member of another corporation;

...

(8) Resist a change or potential change in control of the corporation, if the directors, by a majority vote of a quorum, determine that the change or potential change is opposed to or not in the best interests of the corporation, upon consideration of any of the matters set forth in division (E) of §1702.30 of the Revised Code;

(9) Do all things permitted by law and exercise all authority within the purposes stated in its articles are incidental to those purposes.

O.R.C. §1702.12(F).

The general non-profit corporate law of Ohio permits the precise type of ownership interest enjoyed by HPC, as well as association rights. Per statute, HPC may acquire property, be a member of or associate with another entity, manage its property, and resist potential changes in control. The “general laws” element of the neutral principles doctrine supports HPC’s position with respect to its property ownership and affiliation.

3. ARTICLES OF INCORPORATION

First, incorporated on July 1, 1982, HPC amended its Articles of Incorporation in 1983, and again in January of 2006. All three Articles of Incorporation acknowledge the voluntary nature of the association between Hudson Presbyterian Church and the PC(USA). They contain no restrictions on HPC's affiliations. And they contain no restrictions on HPC's property ownership. And perhaps most importantly for this lawsuit, they contain no express or implied trust interests.

Ohio Revised Code §1702.38 authorizes non-profit corporations to amend their articles of incorporation:

The articles may be amended from time to time in any respect if the articles as amended set forth all the provisions that are required in, and only those provisions that may properly be in, original articles filed at the time of adopting the amendment, other than with respect to the initial directors, except that a public benefit corporation shall not amend its articles in such a manner that it will cease to be a public benefit corporation.

- (B) Without limiting the generality of the authority described in division (A) of this section, the articles may be amended to:
- (1) Change the name of the corporation;
 - (2) Change the place in the state where its principle office is to be located;
 - (3) Change, enlarge, or diminish its purpose or purposes;
 - (4) Change any provision of the articles or add any provision that may properly be included in the articles.

HPC expects that Eastminster will argue that HPC's Amended Articles of Incorporation have no effect to the extent that they modify the relationship with Eastminster Presbytery and/or the PC(USA). However, Hudson Presbyterian Church had every legal basis to amend its Articles of Incorporation, pursuant to O.R.C. §1702.38(B)(3), which permits changing, enlarging, or diminishing a non-profit corporation's purpose or purposes. Likewise, O.R.C. §1702.38(B)(4)

permits a non-profit corporation to “change any provision of the articles or add any provision that may properly be included in the articles.” “Change” means “change.” Therefore Eastminster’s argument that HPC was not entitled to change its Articles of Incorporation is directly contrary to the statutory rights given to a non-profit corporation such as HPC.¹⁷ Nonetheless, HPC will address its rights as a corporate entity under both its current and original Articles of Incorporation, both of which support HPC’s rights to property ownership, voluntary affiliations/disaffiliations, and negate the trust claims.

(A) HPC’S CURRENT ARTICLES OF INCORPORATION

In January 2006, Hudson Presbyterian Church amended its Articles of Incorporation in accordance with the directives of its Session. The primary purpose of the amendment was to include language from the Confessing Church Movement, which HPC had recently joined.¹⁸ In updating and amending its articles of incorporation, HPC clarified and expounded upon its statement of powers.

In pertinent part, the purpose clause of the Articles of Incorporation states that

The general object and purposes for which this corporation, a religious organization, is formed are:

...

(3) To voluntarily associate together for divine worship, for Godly living as is agreeable to the Holy Scriptures, for Christian fellowship, *and to voluntarily associate with a denomination such as the*

¹⁷Eastminster actually does not question HPC’s authority to change its Articles, but rather questions the “effect” of the change. The problem with this argument is twofold. Logically, a “change” has an “effect” or otherwise it is not a “change.” Secondly, HPC maintains it enlarged and clarified its corporate powers and fundamentally did not change anything. As Reverend Schomer conceded, the nature of the connectionalism in the PC(USA) is voluntary, and churches can and do leave the denomination. Therefore it is a bit incongruous for Eastminster to argue that HPC could not clarify its voluntary relationship and right to leave the denomination in its Amended Articles of Incorporation.

¹⁸Eastminster Presbytery does not take issue with HPC’s association with the Confessing Church Movement and does not dispute the right of HPC to include those tenets in its Amended Articles of Incorporation. (See Schomer depo, pp. 132-133).

Presbyterian Church (USA), as may be appropriate to carry out the dictates of conscience and the greater purposes of being His church.

...

This corporation shall have the power to acquire and hold title to both real and personal property in fee simple, in trust, or otherwise. Any property held in trust, or deemed to be held in trust, shall be in a revocable trust, unless expressly stated otherwise in writing, such powers being expressly reserved by this corporation.

While mentioning the power to hold property in trust, nothing in the Amended Articles of Incorporation establish a trust. Moreover, to the extent that a trust may exist, HPC reserved the right to revoke any such trust. In accordance with that power, Session set forth the following resolution on September 23, 2006:

At a duly called meeting of the Session of Hudson Presbyterian Church this 23rd day of September, 2006, it is hereby RESOLVED and DECLARED:

1. Session affirms that no property trust in favor of the denomination has ever been created by any governing body of Hudson Presbyterian Church;
2. Session is aware of the provisions of The Book of Order set forth at G-8.0000 *et seq.*, and affirms that no such trust has ever been created with respect to the property of Hudson Presbyterian Church, and that Session has never assented to such a trust;
3. Notwithstanding this understanding, Session hereby revokes any such trusts which may be said to exist, having expressly reserved the right of revocation of trusts in all instances.

(Exhibit 51). The Resolution was unanimously adopted.

The original Articles of Incorporation were silent on property ownership, although the 23-year history of Hudson Presbyterian Church leading up to the amendment of the Articles of Incorporation is absolutely clear that Hudson Presbyterian Church was permitted to hold property in its own right, because it did hold property in its own right.

The Amended Articles of Incorporation merely specify with greater particularity some of the powers inherent in a corporation. The updated articles of incorporation provide clearer guidance and authority to the directing body, its Session.

In reviewing the authority vested in a non-profit corporation under Ohio Revised Code §1702.12(F), it is clear that HPC is and has been acting in accordance with Ohio law. First, §1702.12(F)(1) permits HPC to acquire and hold property. Similarly, §1702.12(F)(4) permits HPC to maintain membership in other organizations. This means that there can be nothing legally improper with a church, such as HPC, becoming a member of other organizations.¹⁹ Such associations are entirely consistent with the provisions of §1702.12(F)(6), as well, which permit a church to be a member of a separate incorporated denomination. Inherent in the right to join, affiliate, or become a member of another organization is the right to terminate such membership. Therefore, the Ohio Revised Code specifically permits Hudson Presbyterian Church to withdraw its membership from the PC(USA).

Further, the Ohio Revised Code specifically states that a non-profit corporation may “resist a change or potential change in control of the corporation, if the directors, by a majority vote . . . determine that the change or potential changes opposed are not in the best interests of the corporation. . . .” O.R.C. §1702.12(F)(8). At the outset of this litigation, Eastminster Presbytery sought to change the control of Hudson Presbyterian Church; it attempted to remove HPC’s Session and replace it with an administrative commission of its own choosing. The Revised Code specifically permits HPC to resist this type of change. Specifically, O.R.C. §1702.12(F)(8) permits resisting a change of control “upon consideration of any of the matters set forth in division (E) of Section 1702.30 of the Revised Code. These include:

¹⁹Other organizations include the New Wineskins Association of Churches, the Confessing Church Movement, or another denomination, such as the Evangelical Presbyterian Church.

The long-term and short-term best interests of the corporation, including, but not limited to *the possibility that those interests may be best served by the continued independence of the corporation.* The Board of Directors of the corporation, the Session of Hudson Presbyterian Church, engaged in consideration of the community and societal considerations affecting Hudson Presbyterian Church and its affiliation with the denomination, considered the effect of a potential change of control upon its employees, including its pastor, director of youth and family ministries, and other employees, and expressly adopted a resolution on September 23, 2006 evidencing its due consideration.

§1702.30(E)(4). A director must act on what he or she “reasonably believes” is in the best interest of the corporation. §1702.30(E). See also statement of unity of the HPC staff (Exhibit 59).

Here, the evidence is more than sufficient that the directors of HPC acted in accordance with a reasonable belief the change of control attempted by Eastminster Presbytery would harm HPC, and that the vote of the congregation regarding disaffiliation should be honored. The congregation concurred overwhelmingly that the church should withdraw from the PC(USA).

Therefore, HPC’s Articles of Incorporation, under the neutral principles doctrine, support the actions of HPC regarding its voluntary associations, and, most importantly for this case, do not create or imply a trust.

(B) HPC’S ORIGINAL ARTICLES OF INCORPORATION

The nature of the voluntary association of the church, as a corporation, with the denomination is clearly seen in the original Articles of Incorporation, as well.

Even the original Articles of Incorporation permit the church to terminate its association with the PC(USA).

The purpose or purposes for which said corporation is formed are:

...

2. To voluntarily associate together for divine worship and Godly living, agreeably [*sic*] to the Holy Scriptures, submitting to the authority and form of government as setforth [*sic*] in the Constitution

(as amended) of the United Presbyterian Church in the United States of America, and under the further authority of Eastminster Presbytery.

(Exhibit 4, Art. 3, ¶2).

Accordingly, the voluntary association is that *of the corporation*, as articles of incorporation do not confer rights upon individuals, but rather apply to the corporate entity. The only logical interpretation of the original Articles is that the voluntary association is the voluntary submission of HPC to the authority and form of government in the PC(USA)'s constitution. Voluntary submission is just that - *voluntary*. The adverbial phrase "to voluntarily associate" modifies the remainder of the paragraph, as the phrases are separated by commas, not semicolons, and are included in the same paragraph. Consequently, any argument that HPC could not voluntarily associate or disassociate with a denomination under its original Articles of Incorporation is both ungrammatical and illogical. Moreover, the denomination's constitution provides for congregations withdrawing from the denomination, as discussed *infra*.

Therefore, the most basic reading of the original or amended Articles of Incorporation establish that HPC has the right of association, and the right to hold its own property. It is preposterous for the Presbytery to argue that HPC lacks the fundamental rights when in its Articles of Incorporation and the denomination's own Constitution specifically contemplate them.

And, most significantly for this case, the original articles do not create a trust. Just as significantly, at the time the original articles were drafted, HPC did not own any land, and therefore cannot be said to have tacitly asserted to a trust by virtue of the Book of Order. The neutral principles approach simply does not support a trust claim under the original articles, either.

4. STATUTORY PRESUMPTION

There is a statutory presumption of ownership in favor of non-profit corporations. The Ohio Revised Code provisions for non-profit corporate property expressly state that "All property acquired

by a corporation by purchase, gift, devise, bequest, or otherwise shall be the *absolute* property of the corporation, unless at the time of acquiring such property it is otherwise in writing specified.”

O.R.C. §1702.35 (emphasis added). At the time Hudson Presbyterian Church acquired its land, and constructed its church building (and later expanded the church building), this provision of the Revised Code was in effect. As shown below, ownership is vested solely in HPC, and whether by purchase, gift, devise, bequest, or otherwise, is the absolute property of HPC.

The neutral principles of law doctrine requires this Court to inquire into “the ordinary indicia of property rights,” which include state statutes and laws. *Kelemen, supra* at 160.

As neutral principles apply, the most logical place to begin this inquiry is to look at the property deeds by which HPC obtained the property.

5. THE MORTGAGES

On multiple occasions in the 1980s and 1990s, when the congregation of Hudson Presbyterian Church entered into loan transactions with the United Presbyterian Church in the United States of America, the Synod of the Covenant, and Eastminster Presbytery, to borrow money for the construction of a church building, those lenders took mortgages. As part of the mortgage process, they obtained a title guaranty to verify that Hudson Presbyterian Church in fact owned the property and could pledge it as a mortgagor. The guaranty, issued January 16, 1987, specified that the property securing the loan is owned by “The Hudson Presbyterian Church” in fee simple. The only encumbrances noted on the guaranty are a mortgage deed in the amount of \$150,000 from Hudson Presbyterian Church to UPCUSA; a second mortgage in the amount of \$25,000 from HPC to the Synod of the Covenant; and, a third mortgage in the amount of \$100,000 from HPC to Eastminster. (Exhibit 119). No separate reverter interest is noted, no trust interest is declared, and no contingent property interest (implied, constructive, contractual, or otherwise) is referenced. (*Id.*)

Each mortgage unequivocally establishes that Hudson Presbyterian Church owns the land, that there is no trust interest claimed or existing by any other entity, and that HPC is entitled to withdraw from the denomination without forfeiting its property.

All three mortgages, acknowledged and accepted by the PC(USA), clearly and unambiguously contemplate the possibility that HPC might cease to be “connected with” the Presbyterian Church (USA), Inc. The consequence of such an occurrence would not be forfeiture of the land, but rather would be acceleration of the loan payment. Eastminster Presbytery likewise signed and acknowledged the obligations set forth in the promissory note, which obviously included the terms which contemplated the congregation no longer being connected with the PC(USA). (Exhibit 22).

The course of dealing between Hudson Presbyterian Church, and the denomination itself, the PC(USA), the Synod of the Covenant of the PC(USA), and Eastminster Presbytery, spanning two decades, expressly contemplated the possibility of HPC departing from the denomination. This recognition was documented in the financial transactions between the parties and clearly demonstrates a mutual understanding of the consequences of disaffiliating from the PC(USA) denomination. There are no documents that suggest that the relationship between the parties changed after the mortgages were satisfied.

Eastminster Presbytery is expected to argue that a trust interest exists, or should be implied or constructed by this Court, resulting in the congregation’s forfeiture of its property. This argument is manifestly absurd, given the evidence of the parties’ mutual understanding of the consequences of disaffiliation. If, while money was owed, the congregation departed from the denomination, the lender could demand an acceleration of the loan payments. The documents do not contemplate that the local church would forfeit its land. The documents contemplate that ownership would remain vested with HPC. Now that Hudson Presbyterian Church has paid its financial obligations to its

lenders, it would be extremely inequitable to place HPC in a weaker position of ownership than when it still owed money.

Under neutral principles of law, the property deeds, mortgages and promissory notes all clearly support the sole ownership of Hudson Presbyterian Church, free and clear of any trust whether express, implied, or constructive. Therefore, this Court should declare that Hudson Presbyterian Church owns its property free and clear of any encumbrances or trust asserted by Eastminster Presbytery or any other entity.

6. TITLE TO BANK ACCOUNTS AND OTHER PERSONAL PROPERTY

Eastminster has asked the Court to impose a trust interest in “all real property and all accounts, including but not limited to endowments and bequests” of the Hudson Presbyterian Church. (Responses to Plaintiff’s First Set of Interrogatories to Defendant, Interrogatory 10). Title to all of the accounts is entirely in the name of HPC, and reflects no trust interest.

The bank accounts, investment funds, and annuities are all evidenced by documents which may be characterized as documents properly reviewable by a court under the neutral principles of the law of doctrine for determining church ownership. None of the documents express any trust interest in Eastminster Presbytery or the PC(USA), and reflect sole ownership by the Hudson Presbyterian Church. Nothing in the documents can be construed as giving interest in any entity other than Hudson Presbyterian Church.

7. THE PC(USA) BOOK OF ORDER²⁰

(A) GENERAL PROVISIONS

Under neutral principles of law, the Book of Order of the PC(USA) may be considered to the extent that it does not require this Court’s consideration of ecclesiastical questions. The Ohio

²⁰The Book of Order is Exhibit 7.

Supreme Court in *Kelemen, supra*, cautioned courts to avoid consideration of issues of church governance intertwined with doctrinal disputes; any review should be confined to doctrinally neutral documents. However, the denomination's constitution may be afforded some weight, along with the other neutral documents to the extent it can be assessed without ruling on doctrine. Here, the PC(USA)'s Book of Order supports HPC's position regarding property ownership, voluntary association, voluntary jurisdiction, self-governance, and a democratic process of withdrawal from the denomination.

By its own terms, the PC(USA) Book of Order has no civil jurisdiction or power to impose civil penalties.

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. (G-90102(A)).

For each particular church in the PC(USA), "its government and guidance are the responsibility of the Session." (G-40104).

In providing structural guidance for a local church, the Book of Order suggests that where permitted by civil law, the local church shall form a corporation. Addressing the contemplated powers of the corporation, the Book of Order states:

The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the church; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the church, all subject to the authority of the Session and under the provisions of the Constitution of the Presbyterian Church (USA), provided further that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation granted in a duly constituted meeting. (G-7.0402).

Here, the Book of Order acknowledges that HPC has rights to hold, encumber, manage, and transfer its property, or defend its title to the property. “The church” as used here refers to the local church. (Schomer depo, p. 80). The fact that “the approval of the congregation” is required for matters of buying, selling, and/or mortgaging the real property indicates a strong preference for local ownership, not a trust subject to the Presbytery’s oversight.

Pursuant to the terms of the Book of Order, the Session of the local church has the responsibility for the mission and governance of the local church. (G-10.0102). The Book of Order specifically states that the Session is:

to provide for the management of the property of the church, including determination of the appropriate use of church buildings and facilities, and to obtain property and liability insurance coverage to protect the facilities, programs, and officers, including members of the Session, Staff, Board of Trustees, and Deacons.

(Book of Order G-10.0102(O). The Session is further tasked with the responsibility “to establish and maintain those ecumenical relationships necessary for the life and mission of the church in its locality.” (Book of Order G-10.0102(Q)).

The Session also has the responsibility “to lead the congregation continually to discover what God is doing in the world *and to plan for change, renewal, and reformation* under the Word of God.” (G-10.0102(J), emphasis added).

Generally, the Book of Order directs that “all structures shall be open to the possibility of change and new forms of ecumenical cooperation.” (G-9.0402(c)). Presbyterianism governance is different from hierarchical or Episcopal forms of governance, and contemplates a combination of congregational democratic principles and representative eldership guidance. Emphasizing the underlying democratic principles, the Book of Order specifically states that “decisions shall be reached in governing bodies by vote, following opportunity for discussion, and a majority shall govern.” (G-40301(E)). This emphasis is further found in the Book of Order Section called “The

Church and Its Officers”, which expressly states that “the government of this church is representative, and the right of God’s people to elect their officers is inalienable.” (Book of Order G-6.0107).

The parties have agreed that the Book of Order provides for particular churches departing from the denomination. Upon the merger of the PC(US) and UPCUSA Article 13 was established, outlining “procedures for dismissal of a congregation with its property.” (Exhibit 7, at Article 13, p. B-13). By its own terms, “the provisions of this Article are intended to apply only to the reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America to form the Presbyterian Church (USA) *and shall not alter, abridge or nullify in any way the principles as to the ownership or property in either antecedent church or in the reunited church as established by ecclesiastical and civil law.*” (Book of Order, Article 13.1). The procedure by which congregations could then disaffiliate from the PC(USA) include the calling of a congregational meeting, the holding of informational meetings, and ultimately a congregational meeting for purposes of voting on the dismissal/disaffiliation issue. “If two-thirds of those present in the voting vote to request dismissal, *this particular church will be dismissed under the special provisions of Article 13 of the Articles of Agreement, and will retain all of its property, subject to any existing liens and encumbrances, but will surrender its membership as a congregation in the Presbyterian Church (USA).*” (*Id.*) No discretionary powers were vested with the Presbytery in this regard, but rather it was directed that *if* a congregation votes by two-thirds in favor of dismissal, *then* the “particular church *will be dismissed*” and “*will retain all of its property.*” (*Id.*) The principle set forth is straightforward: the congregation votes, and the outcome of the vote determines the issue of continued affiliation.

The same provision also provided for future dismissal procedures, stating “any petition for dismissal with property filed later than eight years from the consummation of union shall be handled

under the appropriate provisions for such a request in the Form of Government.” (Exhibit 7, Article 13.4, p. B-15). (The “Form of Government” refers to that portion of the B.O.O. beginning with the “G-” preface). However, no other provisions were ever enacted. Therefore, the provisions of Article 13 are the most pertinent provisions available. Therefore, in conducting its vote on the dismissal/disaffiliation issue, Hudson Presbyterian Church opted to substantially follow the provisions of Article 13.

While the Presbytery will likely argue that it has sole authority to determine dismissals, such an argument finds no support in the Book of Order, the Articles of Reunion, or the Presbytery’s Manual of Operations, all of which are entirely silent on the issue. The Presbytery does bear the responsibility to provide for such dismissals, pursuant to the Book of Order at G-11.0103(I).²¹ Therefore, it appears that the Presbytery must dismiss local churches after an appropriate vote.

All in all, the Book of Order clearly establishes that the local church owns and manages its property in accordance with civil law, and that the local church may vote to determine its affiliation with the denomination. This is perfectly consistent with Hudson Presbyterian Church’s Articles of Incorporation, By-Laws, the denomination’s Book of Order, the deeds to Hudson Presbyterian Church’s property, and the titling of HPC’s bank accounts and endowment fund. Any assertion by Eastminster Presbytery that the Book of Order creates an express trust conflicts with a straightforward reading of the relevant documents, the denomination’s Book of Order, and all other pertinent authorities.

²¹“The Presbytery . . . has the responsibility and power . . . to divide, dismiss, or dissolve churches in consultation with their members.” G-11.0103(I).

8. “CHAPTER 8” PROPERTY PROVISIONS - “CHAPTER 8” DOES NOT ESTABLISH A TRUST

Eastminster relies heavily upon the provisions of Chapter 8 of the Book of Order in asserting its trust interests. There are several fundamental problems with this approach which must lead to its rejection as a basis for the establishment or imposition of any trust interest.

First, the Book of Order is an ecclesiastical document which by its very terms is not supposed to have civil law jurisdiction. (G-9.0102; Schomer depo, p. 84). Legal disputes over property rights are a matter of civil jurisdiction. Therefore, the effect of the governing bodies of the church, and the effect of the Book of Order *as an ecclesiastical document*, has no affect on the outcome of the civil law determinations.

Second, Chapter 8 does not establish a legally cognizable trust. In *Jones v. Wolf*, 443 U.S. 594 (1979), the court noted, *in dicta*, that ecclesiastical entities could account for appropriate resolution of property disputes by relying upon the neutral principles doctrine and setting up the neutral documents to reflect the intended outcome. The court stated that

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. . . . Civil courts will be bound to give affect to the result indicated by the parties, *provided it is embodied in some legally cognizable form.*” (443 U.S. 595, 606, emphasis added).

HPC’s corporate charter, property deeds, by-laws, and mortgages are all in legally cognizable forms, none of which recite an express trust or provide for a right of reversion. This is solid indicia of ownership and intent. Reviewing each provision of Chapter 8 in turn, it is clear that the assertions of Chapter 8 of the Book of Order do not amount to a trust-creating document in any “legally cognizable form.”

(A) G-8.0201

G-8.0201, added to the Book of Order in 1981, states:

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.)

The declaration of Chapter G-80200 is not a settlor's declaration, but an assertion by an entity which does not hold title to any of the property at issue in the instant case. It never held any of the property at issue in the present case. Under Ohio law, the settlor of the trust must own the property before dedicating it to a trust. (O.R.C. §5804.01, *see infra*, "Trust Law Does Not Support a Trust.") Likewise, Ohio law requires conveyance of the trust *res*. No transfer or conveyance is found in Chapter 8 in any legally cognizable or enforceable form. No transfer of any *res* has ever occurred to establish the claimed trust.

The terms are vague and indefinite as to intent, assent, fiduciary obligations or directives, and purport to create, in one fell swoop, a trust over all property even tangentially related to the PC(USA). It purports to create a trust over previously acquired and after-acquired property. While this provision falls short of any recognized form of trust creation, even if it were to be given some consideration, one would expect after-acquired property to reflect a trust relationship if the parties actually intended to create a legal trust. As the HPC after-acquired property deeds and mortgages reflect the opposite intent, G-8.0201 cannot be said to create a trust over that property.

At most, G-8.0201 may be said to create some sort of "ecclesiastical trust," which would necessarily be voluntary in nature (hence revocable), and unenforceable in a court of law. As noted in *Executive Offices*, "at most, these provisions, and others concerning the use of deeds, create a

form of “equitable charge” on the ownership interest of the local church. The local church is not a fiduciary of the general church. The local church holds most, if not all, of the ownership interest. *These factors distinguish the relationship from a trust.” Executive Offices, supra*, at 181, (emphasis added).

Therefore, under a neutral principles analysis, G-8.0201 cannot be said to have created a trust.

(B) G-8.0301

The provisions of G-8.0300, “Property Used Contrary to Constitution,” appears to attempt to assert a civil penalty of property forfeiture. G-8.0301 states:

whenever property of, or held for, a particular church of the Presbyterian Church (USA) ceases to be used by the church as a particular church of the Presbyterian Church (USA) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold by the Presbytery.

This passage directly conflicts with G-9.0102 which states that “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. . . .” Yet G-8.0301 appears to direct the Presbytery to impose a civil penalty if it determines that a particular church’s property is not being used “in accordance with this Constitution.” It then claims the right to use, apply, transfer, or sell property which it neither owns nor controls. This does not amount to a legally cognizable form which should be given any effect in the civil court. It also contradicts the terms of the mortgages in our case, which provide for precisely the opposite result. The specific terms for property usage upon disaffiliation found in the mortgages should control over the general, non-property-specific and rather vague assertion of G-8.0301. This provision cannot be said to create a trust in any legally cognizable form.

(C) G-8.0601

Eastminster may further look to subsection G-8.0601 “Property of Church in Schism.” In pertinent part this section states:

If there is a schism within the membership of a particular church and the Presbytery is unable to affect a reconciliation or a division into separate churches within the Presbyterian Church (USA), the Presbytery shall determine if one of the factions is entitled to the property *because it is identified by the Presbytery as the true church within the Presbyterian Church (USA)*.

(B.O.O. G-80601). This section impermissibly weaves purported property disposition methodologies with “true church” determinations. Civil courts are not allowed to give affect or consideration to “true church” determinations involving a matter of doctrine as that would be tantamount to establishing a church. Therefore, in the neutral principles analysis, G-8.0601 should be given no affect.²² This case may be decided on neutral documents without trying to walk through the legal land mines of G-8.0601. The term “schism” is undefined in the Book of Order, and is not differentiated from a majority/minority position. A “schism” cannot be said to exist any time there is a minority position where the minority continues to object. This flies in the face of the democratic principles imbued throughout the Constitution of the denomination, and directly contradicts Eastminster’s proposed interpretation and application of G-8. There needs to be some distinction between “schism” and “sour grapes.” In *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U.S. 440, 89 S.Ct. 601, the U.S. Supreme Court expressly stated that “religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.” *Id.* at 449,

²²Furthermore, even if G-80601 were to be given some degree of consideration, the problem Eastminster faces is that there is no evidence of a schism at Hudson Presbyterian. Hudson Presbyterian Church conducted a vote in accordance with the terms of the Constitution, and there was a majority and minority position. Eastminster cannot be permitted to merely dislike the outcome, cry schism, and disenfranchise the majority.

89 S.Ct. at 606. The argument being advanced by Eastminster directly contradicts this command. Eastminster would have this Court disregard the clear neutral principles approach in order to give affect to a determination made by the Presbytery as to a “true church” faction whose members and persons are unidentified, give affect to a “true church” determination in an unidentified and undefined “schism” and divest the titled owners of property in order to establish the Presbytery’s preference of churches.²³ This argument should fail.

Chapter 8 fails to set forth a trust interest in a legally cognizable form, is contradictory to the principles enumerated elsewhere in the Book of Order, flies in the face of neutral principles of document, and seeks to impose civil penalties of forfeiture of property based upon civilly unreviewable ecclesiastical determinations.

The schema of property forfeiture pursuant to Chapter 8 of the Book of Order advanced by the Presbytery must fail as inviting an impermissible entanglement of religious doctrine into civil law determinations.

Ohio courts have rejected the “Chapter 8 Provisions” (see discussion of *Upper Ohio Valley Presbyterian, infra*, and case law in other neutral principles states shows consistent rejection of the Chapter 8 trust claim.

In Pennsylvania, a local Presbyterian church disaffiliated from the national denomination, which filed suit to try and impose a trust on the property. *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church* (Pa. 1985), 489 A.2d 1317, 1321. (Exhibit 124). In adopting the neutral principles approach, Pennsylvania’s Supreme Court rejected the Presbytery’s arguments for

²³The admonition of *Kelemen* should preclude consideration of G-80601 as it involves an interpretation of allegedly schismatic conduct, goes beyond the permissible bounds of neutral law inquiries as enumerated in *Executive Offices*, and runs afoul of the U.S. Supreme Court directive that religious organizations must structure their relationships involving church property so as not to require civil courts to resolve ecclesiastical questions. *Blue Hull* at 449, 89 S.Ct. at 606.

denominational deference and the argument that the local church should be bound by the church's highest tribunal's decision regarding property. Expressly rejecting provisions from Chapter 8 of the Book of Order, the Pennsylvania Supreme Court explained that "according to the well-established legal principles governing trusts, courts may only find that a trust exists where there is clear and unambiguous language or conduct indicating that the settlor intended to create a trust. *Beaver-Butler* at 1324.²⁴

The *Beaver-Butler* court "then examined the National Presbyterian Church's Book of Order and found that it neither prohibited the local church from disaffiliating from the National Presbyterian Church nor contained any express trust language." *Id.* at 1324-25.

The Supreme Court of the State of New York has rejected the enforceability of Chapter 8 of the Book of Order in a case on all fours with the instant matter. In the *Presbytery of Hudson Valley of the PC(USA) v. The First Presbyterian Church of Ridgebury* (2006) Orange County Case No. 6144/2005, decided August 16, 2006 (hereinafter "*Ridgebury*") (Exhibit 121), the local church voted on January 10, 2005 to disassociate from the PC(USA). Applying earlier New York case law permitting Presbyterian Churches to disaffiliate from the denomination while retaining their property, the *Ridgebury* case expressly directed its attention to Chapter 8 of the Book of Order, as the first case to consider its application since the provision's adoption in the 1980s. "The issue in this case, in a nutshell, is whether this action by the General Assembly is enforceable." (*Id.* at p. 5). Recognizing that "inasmuch as Chapter 8 of the Book of Order purports to affect title in real

²⁴See also, for comparison where express trust language was found to exist in the neutral documents, the Episcopal case of *In Re: Church of St. James The Less* (Pa. 2005) [CITE]. In *St. James the Less* the Articles of Incorporation stated that "The said Corporation shall not, . . . without the assent of the [Diocese], previously had and obtained, grant, sell . . . or otherwise dispose of any lands. . . ." *Id.* at 2. Later amendments to the articles did not remove this limitation or the pledge of allegiance and subordination to the diocese. *Id.* at 4. There were also other documents acknowledging a trust. *Id.* at 5. Ultimately, the Court held that the local church was permitted to disaffiliate, but that due to the existence of a trust, the local church held such property in trust for the denomination it departed. No forfeiture of land was allowed. *Id.* at 24.

property, the court will interpret it in accordance with secular property law in this state.” (*Id.*) The court noted that “it is Hornbook property law that only the owner of real property can convey an interest in the property; B cannot create a future interest in A’s property without A’s consent.” (*Id.* at 6, citing to *Bogert, Trusts and Trustees* [2nd Ed Rev] in §§141 *et seq.*) In other words, a third party, such as the denomination, cannot declare a trust interest in its own favor absent the owner’s consent. Finding no such language in the deeds or charters of the *Ridgebury* Church, the court found no evidence of such consent, and held in favor of the local church. Further noting that

In the absence of any language *in the deed* . . . indicating that title is held subject to the laws or discipline of the national church . . . the laws of the national church [do] not affect title to the realty held by the local church.

Id. at p. 6, *emph. added.*

The *Ridgebury* court also assessed the argument that by remaining in the national denomination for 25 years after the adoption of Chapter 8 of the Book of Order, the local church had acceded to the alleged trust language placed in the Book of Order. Rejecting this argument, the court found “that mere silence and continuing its membership in the denominational church, absent more, is an insufficient expression of an intent to create a trust.” (*Id.* at p. 9). The *Ridgebury* court ruled that Chapter 8 was insufficient to create a trust. As was held in *Ridgebury*, so it should be held here: Chapter 8 does not create a trust interest in HPC’s property.

9. TRUST LAW DOES NOT SUPPORT A TRUST

In Ohio, trusts are classified, based upon the event bringing them into existence, as either (1) express trusts, or (2) implied trusts. Implied trusts can be divided into resulting and constructive trusts. 91 O.Jur.3d *Trusts* §5.

An express trust is one created by the direct and positive act of the settlor by some writing, deed, will, or oral declaration. *Peterson v. Teodosio* (1973), 34 Ohio St. 2d 161. An express trust is

a fiduciary relationship with respect to property, arising as a result of the manifestation of an intention to create it and subjecting the person in whom title is vested to equitable duties to handle it for the benefit of others. *Gabel v. Richley* (1995), 101 Ohio App.3d 356; see also, 91 O.Jur.3d Trusts §36. The validity of an express trust depends upon its having certain formal elements and cannot be created merely by reason of a moral, ethical, or honorary obligation. 91 O.Jur.3d Trusts §36; §4 (“In Ohio the trust is not valid unless it is enforceable by a court. The law knows no trust which simply binds the conscience.”)

The general essential elements of a trust include (1) an intent to create a trust; (2) a trustee; (3) a trust *res*; and (4) a definite beneficiary. *In Re Blaszak*, 397 F.3d 386, 2005 Fed. App. 0051P (6th Cir.).

(A) HERE, THERE IS NO EXPRESS TRUST

An express trust requires:

- (1) An explicit declaration of trust, accompanied by an intention to create it, or circumstances which show beyond reasonable doubt that a trust was intended to be created;
- (2) An actual conveyance or transfer, of a lawful, definite property, estate, or interest, for a definite term, made by a person capable of making a transfer of it; and
- (3) Vesting of the legal title presently in a person capable of holding it, to hold it as a trustee for the benefit of a *cestui que* trust or purpose to which the trust fund is to be applied, or a retention of title by the owner under circumstances which clearly and unequivocally disclose an intention to hold for the use of another.

(*Ulmer v. Fulton* (1935), 129 Ohio St. 323; see also 91 O.Jur.3d Trusts §86).

The burden of proof for establishing the existence of an express trust is by clear and convincing evidence. O.R.C. §5801 *et seq.*

In the instant case, there is ambiguity, not certainty, on all the necessary trust elements. For instance, who is the settlor? Was it the PC(USA), or the individuals who formed the HPC corporation, or a combination of the two, or perhaps an ongoing scenario whereby each of the congregation members who donate to the local church may be said to be settlors? If it was the intent of HPC's founders to create the corporation as a trustee, that intent was not reflected in any of the formative documents, nor was it reflected by the ongoing business transactions between the entities.

Next, an express trust requires a definite beneficiary. The entirely autonomous management of the local church's financial and property dealings for its own benefit is overwhelming evidence that the local church itself is the intended beneficiary of any property held in its name.

Ohio has adopted the Uniform Trust Code, set forth at O.R.C. §5801 *et seq.* As there is no document establishing the trust which Eastminster claims, it will likely argue the existence of an oral express trust. Evidence of an oral trust "may be established only by clear and convincing evidence." O.R.C. §5804.07. However, there is no evidence whatsoever that an oral trust was created. And, even if Eastminster were able to produce evidence of some oral expression of intent, there can be no "clear and convincing evidence" of the essential terms of such a trust.

Both the intention to create a trust and the manifestation of that intention are essential. The intention to create a trust must be manifested with reasonable certainty. An intention without manifestation is not sufficient, nor is a mere declaration of a purpose which is not carried into effect. Even an intention plus a voluntary agreement to establish a trust in the future is insufficient to create an express trust in the present. (91 O.Jur.3d, Trusts §100, and related case citations). Loose, vague, and indefinite expressions of purpose are never sufficient to create a trust. *Id.* at §101.

California has rejected the concept that a national church can create a trust interest in itself, merely by issuing a rule declaring that such a trust exists. *California Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church*. (Exhibit 122). The court

proceeded to note that even in the event a trust interest was created by a local church, it was capable of being revoked by the church unless the local church had expressly declared the trust to be irrevocable. (*Id.* at p. 2).

In *California-Nevada* the court found that an express trust did exist because it was evidenced in the local church's deeds to the property (*Id.* at p. 11) and in its articles of incorporation (*Id.* at p. 12). Therefore the neutral documents amounted to "clear and convincing" evidence and "substantial" proof of an intent to create a trust. "If the properties were held in trust for the benefit of the United Methodist Church, it is because St. Luke's manifested in a number of different ways its intentions to so hold the properties." (*Id.* at p. 15). Yet upon analysis the California court *rejected* the denomination's claim that inclusion of the trust language in its Book of Discipline altered state requirements for the formation of a trust.

As described by the court, the denomination's argument "appears to be that . . . a general church [can] create a trust, in favor of itself, with the trust property being the local church's property. In plaintiff's view, the general church (or "superior religious body") can do this by so providing in the general church's "governing instruments. . . . [This] would appear to be sharply at odds with other general principles of trust law. . . . We know of no principle of trust law stating that a trust can be created by the declaration of a non-owner that the owner holds the property as trustee for the non-owner. . . . Nothing . . . supports the view that a general church can create a trust in favor of itself simply by enacting a rule stating that a local church holds property in trust in favor of the general church." *Id.* at 17.

Then, the *California-Nevada* court went on to note that the trust which it had found existed by virtue of the local church's actions, was *revocable*. In California, as in Ohio, where not otherwise specified, a trust is presumed to be revocable. (See generally, *Id.*).

The purported trust likely championed by Eastminster has no firm terms. Eastminster will likely contend that it somehow created a trust in property which it did not own, for its own use and benefit, with a right of transfer of title to its name, if it determines that it does not like the manner in which the property owner is utilizing those assets. This alleged trust finds no support in the deeds to the property, HPC's Articles of Incorporation, HPC's By-Laws, or the course of dealing between the parties. Quite simply, Eastminster's likely theory of an express trust is novel, but not reflected in any legally cognizable form and not supported by clear and convincing evidence. Therefore, Eastminster's express trust theory must fail, whether oral or written.

(B) HERE, THERE IS NO IMPLIED TRUST

Ohio courts have consistently rejected the implied trust theory in church property disputes. *Kelemen, supra*, and progeny. Proof necessary to establish an implied trust is the same as that for an express trust - clear and convincing.

A resulting trust, one of the categories of implied trusts, is declared by a court of equity where the legal estate and property is transferred by one under circumstances where the beneficial interest is not intended to be enjoyed by the holder of the legal title. *University Hospitals of Cleveland, Inc. v. Lynch* (2002), 96 Ohio St. 3d 118. Yet here, there can be no doubt but that Hudson Presbyterian Church was expected to enjoy the beneficial interests of the disputed property. The local congregation is the primary beneficiary of the property, serving the local community in carrying out its mission. Therefore, any argument in favor of a resulting trust must fail.

Nor can Eastminster assert a constructive trust. A constructive trust is not actually a trust, but a common law remedy created by equity; a constructive trust may arise where someone has obtained money or property which does not equitably belong to him, and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it. *Cosby v. Cosby* (2002), 96 Ohio St. 3d 228; *University Hospitals, supra*. Constructive trusts are generally designed to

prevent unjust enrichment and fraud, and to satisfy the ends of justice. 91 O.Jur.3d Trusts §240. However, the doctrine of constructive trust does not allow a court to disregard existing legal rights merely to fashion a result that it deems fairer than that created by the parties. *See e.g., University Hospitals, supra*. In the instant case, there is no evidence of fraud, unjust enrichment, or acts *maleficio*. Instead, the equities unequivocally establish that while Eastminster Presbytery supported Hudson Presbyterian Church during its startup phase, those gifts pale in comparison to the gifts from HPC's own members, and HPC's fully self-sufficient budget since 1987.

Thus, the equities do not favor the imposition of a constructive trust.

Eastminster argues that “an express trust was created on May 23, 1981 by PC(USA)’s predecessor, UPCUSA, in its Book of Order, pursuant to the 1979 United States Supreme Court decision in *Jones v. Wolf*. (Exhibit 118, Eastminster’s Answers to Interrogatories No. 11). Of course, the first and most obvious problem with this argument is that it contemplates that a trust was created before Hudson Presbyterian Church was formed. Because no written trust exists, Eastminster apparently intends to argue that the provisions of the Book of Order created a trust when HPC joined the denomination.

Eastminster may claim that “the settlor is PC(USA).” (Exhibit 118). Of course, PC(USA) never owned any of the property at issue, and therefore could not have been the settlor of an express trust with that property. Nevertheless, Eastminster asserts that “HPC, as a particular church formed within the UPCUSA . . . became bound by this express trust.”

However, the Ohio Supreme Court has held that joining a church structure does not constitute assent to the creation of a trust. “Ohio law does not reveal a recognition of an implied trust theory of real property *when a local church joins a church hierarchy.*” *Serbian Orthodox Church v. Kelemen* (1970), 21 Ohio St. 2d 154, 160. Therefore, the act of HPC’s joining the PC(USA) could not imply assent to a trust, and this theory must fail. The Ohio Supreme Court has

rejected the implied trust theory advanced by Eastminster. Where “there [were] no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the mother church . . . [and] the church was able to independently function regarding matters of property holdings,” (*Id.* at 160), the Court held that “in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title of the property is vested in the [local church] corporation.” (*Id.*) Consistent with *Kelemen*, this Court should reject Eastminster’s argument that joining a denomination somehow constitutes assent to (or creation of) a trust.

Eastminster goes on to suggest in its interrogatory answers that “an implied or constructive trust was also created at approximately the same time.” (Interrogatory Answer No. 11). One of the many problems with this argument is that it is legally wrong, as implied or constructive trusts can not be created by private parties, but are imposed by a court in equity. Therefore, an “implied” or “constructive” trust could not have been created 25 years ago. Therefore, Eastminster is left to argue that an implied or constructive trust should be judicially created today.

Ohio has rejected the implied trust doctrine in church property disputes for more than 170 years. In *Keyser v. Stansifer* (1834), 6 Ohio 364, the Ohio Supreme Court expressly rejected the implied trust approach. There, a decision of the majority of the congregation governed the disposition of church property, where the deed to the church property did not contain an unequivocal dedication to the contrary. (*Id.*)

In *Keyser* there were no limitations in the deeds, and the incorporated church owned the land in fee simple. *Id.* at 365. Given that the land was owned in fee, it “became the absolute property of this association [the local church], subject to no use except its general purposes. *It was therefore “the very nature of a corporation to hold such property at the will of the majority.”* (*Id.*, emphasis added). As was held by the Ohio Supreme Court in *Keyser*, so it should be held here - HPC, as a corporation, holds its property at the will of the majority. Not a minority. In *Keyser*, the contention

was that the majority had “deserted the principles under which the association was organized” and had ceased, therefore, to be part of the denomination, and should therefore lose property rights. Without examining the doctrinal differences, the Supreme Court simply ruled that “it does not follow that they lose their property by ceasing to entertain certain opinions.” *Id.* at 365. Thus, in Ohio, property ownership is not incident to holding a particular church doctrine. As was held in *Keyser*, so it should be held here. The majority of the corporation is the rightful owner, as it is the embodiment of the corporation. And, moreover, property ownership is not dependent upon doctrine.

And in *Kelleman, supra*, the Ohio Supreme Court reaffirmed its rejection of the implied trust theory. *Kelemen, supra*, at 160. Conducting a similar review, the Court reached a similar conclusion in *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God* (1989), 61 Ohio App. 3d 526.

In *Executive Offices* the denomination claimed a trust interest based upon the denomination’s constitution’s language that

A local Board of Trustees shall hold title to manage and control pursuant to the direction of the local congregation all real estate owned by the local congregation . . . provided that all such property shall be used, managed and controlled for the sole and exclusive use and benefit of the Church of God. Cleveland, Tennessee, U.S.A. [The Denomination].

Executive Offices, supra, at 538. The court rejected the contention that this created an express trust. *Id.* at 540. The provision rejected in *Executive Offices* is very similar to the Book of Order provisions in the current case. The PC(USA) B.O.O. recognizes the right of a congregation to own its property, but asserts that “all property held by or for a particular church, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).” (G-8.0201). The operative language in both cases is similar, and as it was insufficient to create a trust in *Executive Offices* it should likewise be insufficient to create a trust here.

Ohio courts have had the opportunity to look at the precise trust clause of the PC(USA) and have rejected its application in similar situations. In *The Upper Ohio Valley Presbytery, Inc. v. The Covenant Presbyterian Church of Steubenville* (Aug. 15, 1988), 1988 Ohio App. LEXIS 3452 a local church voted to withdraw from the United Presbyterian Church (USA), which the court expressly noted was “a voluntary religious association.” (*Id.* at *1).²⁵ “On May 23, 1981, Appellant [UPCUSA] amended its Book of Order to include the “property overture” whereby all property of local churches would be held in trust for appellant.” (*Id.* at *3-*4). The Presbytery then proceeded to call a meeting and attempt to remove the local church’s Session and replace it with a new session of its own choosing. (*Id.*) The trial court reviewed all documents, deeds, mortgages, Book of Order, articles of incorporation, etc., and found the real estate to be owned exclusively by the local church (*Id.* at *6-*7) and expressly rejected the Presbytery’s contention that the Book of Order created a trust. (*Id.* at *12-*13). A similar result should be reached here.

The court in *Upper Ohio Valley Presbytery* further rejected the implied trust doctrine on the factual basis that the existence of a mortgage interest held by the Presbytery precluded a trust. The court pointed out that any mortgage securing a loan from the Presbytery would be a superfluous act, if in fact the local church was holding the property in trust for the Presbytery. (*Id.* at *9). Likewise, here the mortgages in the record would have been superfluous if HPC had been holding the property in trust for the PC(USA).

²⁵A few court decisions have erroneously categorized the Presbyterian Church as “hierarchical.” Not even the PC(USA) calls itself hierarchical. (*See, e.g.* Exhibits 41, 15, 16, 48, and 49). Hudson Presbyterian Church expressly challenges that categorization. However, determinations of hierarchical status of a denomination are not dispositive of property dispute issues, as the ruling in *The Upper Ohio Valley Presbytery, Inc. v. The Covenant Presbyterian Church of Steubenville*, and *Executive Offices, supra*, demonstrates. Therefore, HPC has elected not to devote such time to this query, although it reserves the right to address it fully in the Reply Brief, if necessary.

The Presbytery in *The Upper Ohio Valley Presbytery* argued that the “purposes” clause of the local church’s articles of incorporation support the imposition of an express or implied trust. The trial court and the court of appeals both rejected this argument. The clause at issue stated:

. . . formed for the purpose of worshiping Almighty God, and to be in ecclesiastical connection with the General Assembly of the United Presbyterian Church of North America; to receive, hold and disburse gifts, bequests and other funds for said purposes; to own and maintain suitable real estate in buildings for its purposes, and to do all things necessary and incident thereto.

The trial court expressly found that this clause did not create a trust in favor of UPCUSA. The similar “connectional” language in the purposes clause of *Upper Ohio Valley Presbytery* to the case at bar is instructive. The voluntary and ecclesiastical connective language is present in both. As it was found not to be a trust in the *Upper Ohio Valley Presbytery* case, so it should be held here, that there is no trust.

In *The Upper Ohio Valley Presbytery* the denomination also argued for “subordination” similar to the likely “submitting” argument of Eastminster here. The Constitution and By-Laws of the local church in *Upper Ohio Valley Presbytery* stated:

Being organized as a congregation of the United Presbyterian Church in the United States of America, we hereby declare our acceptance of the government and discipline and director(y) for worship of that church, and our subordination to her several courts, and particularly to the Presbytery of Steubenville.

Further reference was made to a provision of the then effective Book of Order which held that

Whenever a particular church is formally dissolved by the Presbytery . . . such property it may have shall be held, used, and applied for such uses, purposes, and trusts as the Presbytery may direct, limit and appoint, or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America.

(Citation to (1980-81), the Book of Order, Chapter XXXII, paragraph 11 (62.11); (1982-83), the Book of Order, Chapter XLII, paragraph 4 (72.04)).

Both the trial court and appellate court rejected an argument that this constituted an implied trust. (*Id.* at *11-*13). As this is almost identical to the PC(USA)'s current Chapter 8, it should not be the basis for an implied trust in the case at bar. As it was held there, so it should be held here. Eastminster's argument that an implied trust exists in its favor must fail as a matter of law.

IV. CONCLUSION

The foregoing facts and law clearly establish that Hudson Presbyterian Church is the lawful owner of the property at issue free and clear of any outside trust interests. The recorded deeds, corporate charter, by-laws, and other ordinary indicia of property ownership unequivocally demonstrate that Hudson Presbyterian Church owns its property without a trust interest in any outside interest, and there is no basis to impose one now. The duly elected session members are the proper and legal corporate board of trustees holding title to the property for the corporation. And, finally, in accordance with HPC's Articles of Incorporation, By-laws, the PC(USA)'s Book of Order, and the general laws of the State of Ohio, HPC had the legal right and authority to disaffiliate from the PC(USA), and cannot be compelled to remain therein.

WHEREFORE, it is hereby moved and respectfully requested that this Court issue an order declaring these rights, and granting judgment to Hudson Presbyterian Church.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent by ordinary U.S. Mail, postage prepaid, this 16th day of April, 2007 to:

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