

**FIRST PRESBYTERIAN CHURCH OF
MARION, NORTH CAROLINA, INC.,**
Plaintiff

vs.

**PRESBYTERY OF WESTERN
NORTH CAROLINA,**
Defendant

COMPLAINT

AOC-CV-751 Data

Type: COMP

Claim: RLPR, POPP, INJU

COMES NOW Plaintiff, through this verified complaint, and respectfully presents to the Court the following information and seeks legal and equitable relief from the Court, as follows:

A. Parties, Jurisdiction and Venue

1. Plaintiff is a religious nonprofit corporation organized and operating under the laws of the State of North Carolina with its office in McDowell County, North Carolina. Plaintiff was incorporated through the office of the Secretary of State of North Carolina by the filing of a Certificate of Incorporation on 3 May 1950. Plaintiff religious nonprofit corporation is the successor to the unincorporated church association that was organized in 1845 and known as First Presbyterian Church of Marion. A copy of Plaintiff=s Certificate of Incorporation is attached hereto as **EXHIBIT 1** and incorporated herein by reference. Plaintiff is a 162-year-old active and thriving church in Marion and McDowell County, North Carolina, with approximately 140 members.

2. Defendant is a regional administrative unit of the Presbyterian Church (USA) (APCUSA@ or Adenomination@). The primary office of the Defendant is located at 114 Silver Creek Road, Morganton, NC 28655 in Burke County, North Carolina. McDowell County, North Carolina is included in the region that is administratively covered by Defendant in connection with ecclesiastical matters of the PCUSA.

3. The Superior Court of McDowell County, North Carolina has jurisdiction to hear and decide this **church property matter** under *Jones v. Wolf*, 443 U.S. 995 (1979) and *Atkins v. Walker*, 284 N.C. 306 (1973) pursuant to the **neutral principles of law doctrine**, which requires courts to decide church property disputes on general principles of property law and trust law without regard to ecclesiastical or denominational influences.

4. Venue for this matter is proper in McDowell County, North Carolina, as the Plaintiff is located in McDowell County, North Carolina and all of the real property that is the subject of this civil action is located in McDowell County, North Carolina.

B. Plaintiff=s History of being Independent and Congregational for its Properties and its Structure as a North Carolina Nonprofit Corporation

5. Plaintiff has demonstrated throughout its history that it is **congregational as to its property matters**. The combination of Plaintiff=s deeds, its congregational resolutions, and its nonprofit incorporation documents clearly demonstrate Plaintiff=s intent to be congregational as to its property matters.

6. At the time of its incorporation as a religious nonprofit corporation, the congregation of Plaintiff adopted a resolution on 7 May 1950 that specifically and clearly affirms Plaintiff=s sole and exclusive ownership of its real property. The wording of said resolution clearly and emphatically displays the intent of Plaintiff to disavow the existence of any possible trust relationship, formal or informal, express or implied, between Plaintiff and Defendant=s predecessor presbytery or between Plaintiff and any denomination whatsoever. The resolution instructed the local church=s trustees to sign a new deed placing all real property owned by the local church (i.e., the unincorporated association that was the predecessor to Plaintiff) in the incorporated name of Plaintiff. The text of the resolution adopted by Plaintiff=s congregation on 7 May 1950 reads as follows:

ABe it resolved: that the Trustees of the First Presbyterian Church of Marion, NC be and hereby are authorized and directed to execute and deliver to the First Presbyterian Church of Marion, NC, Incorporated, a **deed conveying in fee simple to said corporation all the real property** located in McDowell County, NC held by said trustees of the First Presbyterian Church, Marion, North Carolina, said deed to be drawn in such manner as to **insure the absolute ownership of said property by said corporation as against any claim that any presbytery, Synod or General Assembly or any other ecclesiastical body whatsoever, may make.**@

[emphasis added]

7. In May 1950, Plaintiff had a **connectional relationship for its worship and ecclesiastical doctrine** with the Presbyterian Church in the United States (APCUS@ or the ASouthern Church@). Plaintiff is informed and believes that in 1950, the governing documents and constitution of the PCUS did not have, and had never had, any type of Atrust clause@ that asserted the existence of any trust in favor of the denomination or any

other right of control or authority over the properties owned by local Presbyterian churches. Since the PCUS was not asserting any such claim in 1950, the only way Plaintiff would have had any connectional relationship with the PCUS **regarding its properties** would have been by Plaintiff granting connectional rights to the PCUS through documents, deeds or resolutions of the local church. The documents, deeds and resolutions of Plaintiff clearly show the exact opposite, i.e., a **strong intent not to grant any connectional rights or other rights regarding its properties** to the PCUS.

8. Plaintiff=s intent to have exclusive ownership of its properties in an independent, congregational manner, with no incidents of ownership, trust or control of any kind being granted to or held by Defendant or its predecessor, is also clearly established and reinforced by the following provisions found in **Plaintiff=s Certificate of Incorporation** filed **3 May 1950** with the North Carolina Secretary of State:

a. While the corporate name of Plaintiff reflects that it is Presbyterian in its ecclesiastical and worship orientation, the corporate name of Plaintiff does not include any appendage to reflect any affiliation with any national denomination or regional presbytery.

b. (1) Paragraph (b) of Article III states that one of the objects for which this corporation is formed is: **To possess, acquire, sell, alien and mortgage property, real and personal for the absolute, sole and exclusive benefit of the members of The First Presbyterian Church of Marion, North Carolina, Incorporated, without any right, title, interest or estate, legal or equitable, existing in favor of any other ecclesiastical body whatever; and with the exclusive right of the civil courts to determine who are the members of said corporation.**@ *[emphasis added]*

(2) Paragraph (b) of Article III, therefore, clearly and emphatically extinguishes any suggestion that Plaintiff ever intended for Defendant=s predecessor or the denomination to have any control or trust relationship of any kind over any of Plaintiff=s property, thereby reinforcing the independent, congregational ownership and control of all of its properties.

c. (1) Paragraph (c) of Article III lists one of Plaintiff=s objects as follows: **To organize, conduct and carry on various plans, efforts and undertakings for the general, spiritual, moral and social well being and improvement of its members and of the community in which they live.**@ *[emphasis added]*

(2) Paragraph (c) of Article III expressly limits the activities and functions of Plaintiff to the members and local community, reinforcing the independent congregational nature of Plaintiff. This paragraph specifically makes no reference to the rules or organization of Defendant=s predecessor or to any religious denomination and reinforces the local emphasis of the focus and mission of Plaintiff, consistent with Plaintiff=s deeds.

d. (1) Paragraph (d) of Article III states that one of the objects of Plaintiff is: **ATo own and maintain a place or places of worship and meeting for its members to be held as provided in subsection (b) above.**@ [emphasis added]

(2) The subsection (b) referred to is the one that states that Plaintiff shall own its own property without any right or interest in favor of any other ecclesiastical body whatever. This section strongly reinforces the absolute decision by Plaintiff, made in 1950, that it owns and controls its property in an independent, congregational manner and that no regional presbytery or denomination would ever have any control, trust relationship or interest in any of the local properties owned by Plaintiff.

e. (1) The un-lettered paragraph that follows section (e) of Article III states as follows: **and in order properly to prosecute the objects and purposes above set forth, the corporation shall have full power and authority to lease, rent, and otherwise acquire by purchase, devise or bequest, to hold, mortgage, convey or otherwise dispose of all kinds of property, both real and personal, for its own use or for the purpose of obtaining income from any accumulated funds ... and generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the corporation is created**@ [emphasis added]

(2) This paragraph in Article III of Plaintiff=s Certificate of Incorporation further reinforces the choice of Plaintiff to retain for itself full power and authority for owning and managing its own properties and activities, in an independent congregational manner, with no involvement, trust relationship or control by Defendant=s predecessor or any denomination.

9. Plaintiff approved **Articles of Amendment** to its Certificate of Incorporation and the same were filed with the N.C. Secretary of State on **17 May 2007**. In said amendment, a statement was added at the end of Paragraph (b) of Article III of the Certificate of Incorporation that recites the historical position of Plaintiff:

AIN accordance with established law, this non-profit religious corporation shall be subject to the legal concept of neutral principles of law, and no ecclesiastical body shall have any authority over the issues, properties or other matters regarding this non-profit religious corporation.@ [emphasis added]

Plaintiff further added standard technical provisions found in essentially every modern non-profit corporation. To further reinforce its historical position, however, Plaintiff also approved and added a new Article XVI to its Certificate of Incorporation that reads as follows:

Any affiliation or association that this non-profit religious corporation makes or enters into with any ecclesiastical body shall be fully voluntary by this corporation and such affiliation or association shall be severable by this corporation at any time for any reason deemed appropriate by the corporation upon the approval of both the Directors and members.®

Far from accepting the existence of any express or implied trust over local church property in favor of a national denomination, the Articles of Amendment reinforces Plaintiff=s congregational treatment of its properties. A copy of the Articles of Amendment is attached hereto as **EXHIBIT 2** and incorporated herein by reference.

C. Plaintiff=s Properties and Assets

10. Plaintiff is the owner of certain real property located in McDowell County, North Carolina. Most of the real property owned by Plaintiff has been purchased through the funds contributed by Plaintiff=s members and other parcels of Plaintiff=s real property have been received as gifts by deed or by testamentary bequest. None of the properties were conveyed by Defendant, Defendant=s predecessor, the PCUS or the PCUSA). The real properties owned at this time by Plaintiff are as follows:

A. Deed dated 15 May 1950 recorded in McDowell Deed **Book 115 at page 349**. The Plaintiff=s name is listed in the grantee section of this deed as follows: The First Presbyterian Church of Marion, North Carolina, Inc. The **main sanctuary** of the local church is located on the tract described in this deed. A copy of said deed is attached hereto as **EXHIBIT 3-A** and incorporated herein by reference.

B. Deed dated 2 May 1957 recorded in McDowell Deed **Book 143 at page 303**. The Plaintiff=s name is listed in the grantee section of this deed as follows: The First Presbyterian Church of Marion, North Carolina, Inc. The adjoining **educational building** is located on the tract described in this deed. A copy of said deed is attached hereto as **EXHIBIT 3-B** and incorporated herein by reference.

C. Deed dated 15 February 1962 recorded in McDowell Deed **Book 207 at page 451**. The Plaintiff=s name is listed in the grantee section of this deed as follows: The First Presbyterian Church of Marion, North Carolina, Inc. A copy of said deed is attached hereto as **EXHIBIT 3-C** and incorporated herein by reference. This deed places the title of the **land devised by Charles F. Barnes** in Plaintiff=s corporate name. The subject property was devised through the Last Will and Testament of Charles F. Barnes dated 1 March 1960 and filed for probate on 20 October 1961, being registered in McDowell County Book of Wills **8** beginning at page 19, and in particular at pages 25 and 26 thereof. The will of Charles F. Barnes was a holographic will, not prepared by an attorney. The Plaintiff=s name as the beneficiary of the subject real property was handwritten by Charles F. Barnes in his

will as ^AThe First Presbyterian Church of Marion, NC. @ Mr. Barnes did not add any appendage or reference to any presbytery or denomination in his handwritten bequest. A copy of the relevant pages of the Last Will and Testament of Charles F. Barnes is attached hereto as **EXHIBIT 3-D** and incorporated herein by reference.

D. Deed dated 29 December 1972 recorded in McDowell Deed **Book 230 at page 650**. The Plaintiff=s name is listed in the grantee section of this deed as follows: The First Presbyterian Church of Marion, North Carolina, Inc. The kitchen and **fellowship hall** is located on this adjoining tract described in this deed. A copy of said deed is attached hereto as **EXHIBIT 3-E** and incorporated herein by reference.

E. A one-half undivided interest in a house and lot on Lincoln Avenue in Marion, NC devised to Plaintiff through the Last Will and Testament of Helen Lancaster. A copy of the relevant portion of the Lancaster will is attached hereto as **EXHIBIT 3-F** and incorporated herein by reference.

11. No financial contribution toward the acquisition of any of the real property owned by Plaintiff was made by Defendant, by Defendant=s predecessor, by the PCUSA or by the PCUS. None of the documents of conveyance listed above mention or refer to Defendant or any predecessor presbytery, nor is there any language in any of these documents of conveyance creating or establishing any trust relationship over said property in favor of Defendant or of PCUSA or their predecessors, or any other national denomination or any of its regional administrative units or subdivisions. Neither Defendant nor its predecessor has ever had anything whatsoever to do with the acquisition, payment or maintenance of any of Plaintiff=s properties. Plaintiff does not now consult with Defendant in regard to its properties for any reason whatsoever, and **Plaintiff has not ever consulted with Defendant or its predecessor in regard to Plaintiff=s properties for any reason whatsoever.**

12. Plaintiff has demonstrated throughout its history that it did not need the consent or participation of any presbytery in order to engage in real property transactions and personal property transactions. Plaintiff, before its incorporation and after its incorporation, entered into the following **twenty-seven real estate transactions from 1845 through 1982** without the participation of the presbytery:

(1.) The first deed to the trustees of the unincorporated church dated **25 June 1845** and recorded in McDowell County **Deed Book 2 at Page 60**. This deed makes no reference to a presbytery and does not grant any authority to the denomination. A copy is attached hereto as **EXHIBIT 4-1** and incorporated herein by reference.

(2.) The deed to the trustees of the unincorporated church dated **10 July 1899** and recorded in McDowell County **Deed Book 27 at Page 494**. This deed corrects a technicality in the first deed but still it makes no reference to a presbytery and does

not grant any authority to the denomination. A copy is attached hereto as **EXHIBIT 4-2** and incorporated herein by reference.

(3.) The mortgage signed only by local church trustees dated **12 August 1899** and recorded in McDowell County **Deed of Trust Book 7 at Page 296**. A copy is attached hereto as **EXHIBIT 4-3** and incorporated herein by reference.

(4.) The mortgage signed only by local church trustees dated **12 August 1899** and recorded in McDowell County **Deed of Trust Book 7 at Page 299**. A copy is attached hereto as **EXHIBIT 4-4** and incorporated herein by reference.

(5.) The deed from the trustees of the unincorporated church, signed only by local church trustees, dated **16 April 1902** and recorded in McDowell County **Deed Book 31 at Page 109**. A copy is attached hereto as **EXHIBIT 4-5** and incorporated herein by reference.

(6.) The mortgage signed only by local church trustees dated **18 December 1905** and recorded in McDowell County **Deed of Trust Book 10 at Page 529**. A copy is attached hereto as **EXHIBIT 4-6** and incorporated herein by reference.

(7.) The mortgage signed only by local church trustees dated **21 November 1906** and recorded in McDowell County **Deed of Trust Book 11 at Page 375**. A copy is attached hereto as **EXHIBIT 4-7** and incorporated herein by reference.

(8.) The mortgage signed only by local church trustees dated **5 September 1908** and recorded in McDowell County **Deed of Trust Book 13 at Page 226**. A copy is attached hereto as **EXHIBIT 4-8** and incorporated herein by reference.

(9.) The mortgage signed only by local church trustees dated **1 February 1911** and recorded in McDowell County **Deed of Trust Book 14 at Page 154**. A copy is attached hereto as **EXHIBIT 4-9** and incorporated herein by reference.

(10.) The deed to the trustees of the unincorporated church dated **23 August 1921** and recorded in McDowell County **Deed Book 115 at Page 243**. A copy is attached hereto as **EXHIBIT 4-10** and incorporated herein by reference.

(11.) The mortgage signed only by local church trustees dated **12 January 1923** and recorded in McDowell County **Deed of Trust Book 21 at Page 485**. A copy is attached hereto as **EXHIBIT 4-11** and incorporated herein by reference.

(12.) The mortgage signed only by local church trustees dated **March 1923** and recorded in McDowell County **Deed of Trust Book 21 at Page 510**. A copy is attached hereto as **EXHIBIT 4-12** and incorporated herein by reference.

(13.) The mortgage signed only by local church trustees dated **1 October 1929** and recorded in McDowell County **Deed of Trust Book 34 at Page 312**. This mortgage states that the money being borrowed is for the purpose of erecting a new

church. It acknowledges that the Marion Presbyterian Church is in the Concord Presbytery, but it does not recite that the Concord Presbytery was involved with the decision about the loan. Even though the text recites that the purpose for borrowing the money was to build the new church, no one from the Concord Presbytery executed the document. A copy is attached hereto as **EXHIBIT 4-13** and incorporated herein by reference.

(14.) The mortgage signed only by local church trustees dated **27 March 1933** and recorded in McDowell County **Deed of Trust Book 34 at Page 497**. As with the mortgage in 1929, this mortgage states that the money being borrowed is for the purpose of erecting a new church. It acknowledges that the Marion Presbyterian Church is in the Concord Presbytery, but it does not recite that the Concord Presbytery was involved with the decision about the loan. Even though the text recites that the purpose for borrowing the money was to build the new church, no one from the Concord Presbytery executed the document. A copy is attached hereto as **EXHIBIT 4-14** and incorporated herein by reference.

(15.) The mortgage signed only by local church trustees dated **1 January 1936** and recorded in McDowell County **Deed of Trust Book 40 at Page 135**. As with the mortgage in 1929 and 1933, this mortgage states that the money being borrowed is for the purpose of erecting a new church. It acknowledges that the Marion Presbyterian Church is in the Concord Presbytery, but it does not recite that the Concord Presbytery was involved with the decision about the loan. Even though the text recites that the purpose for borrowing the money was to build the new church, no one from the Concord Presbytery executed the document. A copy is attached hereto as **EXHIBIT 4-15** and incorporated herein by reference.

(16.) The deed from the church trustees to the incorporated church dated **15 May 1950** and recorded in McDowell County **Deed Book 115 at Page 349**. A copy is attached hereto as **EXHIBIT 4-16** and incorporated herein by reference.

(17.) The deed to the incorporated church dated **2 May 1957** and recorded in McDowell County **Deed Book 143 at Page 303**. This is the deed by which Plaintiff acquired the property adjoining the sanctuary building, where the educational building is now located. A copy is attached hereto as **EXHIBIT 4-17** and incorporated herein by reference.

(18.) The deed to the incorporated church dated **29 December 1958** and recorded in McDowell County **Deed Book 150 at Page 203**. This was a conveyance from members (McIntosh) for a building lot in another part of Marion. A copy is attached hereto as **EXHIBIT 4-18** and incorporated herein by reference.

(19.) The lease from the incorporated church to the Marion Airport Commission, Inc. dated **1 October 1962** and recorded in McDowell County **Deed Book 171 at Page 85**. This was for part of the land devised to the church by Charles F. Barnes. This was not signed by the presbytery and the presbytery is not mentioned in the

document. A copy is attached hereto as **EXHIBIT 4-19** and incorporated herein by reference.

(20.) The conveyance and cross conveyance to and from the incorporated church dated **4 June 1962** and recorded in McDowell County **Deed Book 172 at Page 39**. A copy is attached hereto as **EXHIBIT 4-20** and incorporated herein by reference.

(21.) The lease from the incorporated church dated **1 October 1962** and recorded in McDowell County **Deed Book 172 at Page 129**. This is apparently a duplicate original of the same airport lease recorded in Deed Book 171 at Page 85. This was not signed by the presbytery and the presbytery is not mentioned in the document. A copy is attached hereto as **EXHIBIT 4-21** and incorporated herein by reference.

(22.) The mortgage signed only by local church trustees dated **11 February 1963** and recorded in McDowell County **Deed of Trust Book 145 at Page 23**. A copy is attached hereto as **EXHIBIT 4-22** and incorporated herein by reference.

(23.) The mortgage signed only by local church trustees dated **5 May 1969** and recorded in McDowell County **Deed of Trust Book 183 at Page 71**. A copy is attached hereto as **EXHIBIT 4-23** and incorporated herein by reference.

(24.) The deed to the incorporated church dated **15 February 1962** and recorded in McDowell **Deed Book 207 at page 451**. This was for the Charles F. Barnes devised land. A copy is attached hereto as **EXHIBIT 4-24** and incorporated herein by reference.

(25.) The right of way agreement from the incorporated church to the N.C. State Highway Commission dated **5 March 1970** and recorded in McDowell County **Deed Book 208 at Page 336**. A copy is attached hereto as **EXHIBIT 4-25** and incorporated herein by reference.

(26.) The mortgage signed only by the incorporated church dated **22 January 1973** and recorded in McDowell County **Deed of Trust Book 230 at Page 653**. A copy is attached hereto as **EXHIBIT 4-26** and incorporated herein by reference.

(27.) The utility easement signed only by the incorporated church dated **25 June 1971** and recorded in McDowell County **Deed Book 254 at Page 371**. A copy is attached hereto as **EXHIBIT 4-27** and incorporated herein by reference.

13. Plaintiff has additionally entered into a number of real estate transactions since 1983 when the PCUSA was formed and has always been consistent in making no reference to Defendant or its predecessor presbytery in these transactions. All of these **transactions since 1983** reflect the **independent, congregational ownership and control by Plaintiff** of its real property and include without limitation the following:

A. A lease was entered into between Plaintiff and the Marion Airport Commission, Inc., on **22 June 1988**, and recorded in McDowell **Deed Book 384 at Page 707**. It involved some of the land devised to the local church by Charles F. Barnes. Defendant had nothing to do with the discussion and agreement to enter into this lease. Defendant was not consulted about the matter and did not sign the lease. Defendant does not receive any of the rent from the lease. A copy of said lease is attached hereto as **EXHIBIT 5-A** and incorporated herein by reference.

B. A Boundary Line Agreement was signed on **25 May 1990** by Plaintiff and adjoining property owners (Jim B. Clevenger and wife Elizabeth Pace Clevenger) and recorded in McDowell **Deed Book 411 at Page 720**. This agreement dealt with the tract devised to Plaintiff by Charles F. Barnes. This document was prepared in accordance with the information shown on a survey that was arranged and paid for solely by Plaintiff. Defendant was not involved in the decision to have a survey made of said property and Defendant was not involved in the discussion or decision to sign the boundary line agreement. Defendant did not pay for the survey or the document. The boundary line agreement was not signed by Defendant and no mention is made of Defendant or the Presbyterian denomination in this document. A copy of said boundary line agreement is attached hereto as **EXHIBIT 5-B** and incorporated herein by reference.

C. A Lease Agreement was signed on **25 May 1990** by Plaintiff and adjoining property owners (Jim B. Clevenger and wife Elizabeth Pace Clevenger) that leased a portion of real property devised to Plaintiff by Charles F. Barnes, for providing a convenient easement to the adjoining owners. This lease was recorded in McDowell **Deed Book 411 at Page 724**. Defendant was not involved in the discussion or decision to enter into the lease agreement and Defendant did not pay for the document or receive any of the rent from the lease. The lease was not signed by Defendant and no mention is made of Defendant or the Presbyterian denomination in this document. A copy of said lease is attached hereto as **EXHIBIT 5-C** and incorporated herein by reference.

D. A Lease Agreement was signed on **12 October 1990** by Plaintiff and Agape House, Inc., a nonprofit corporation providing intensive residential services to young males from McDowell County. This document leased to Agape House, Inc. a portion of real property devised to Plaintiff by Charles F. Barnes. This lease was recorded in McDowell **Deed Book 416 at Page 929**. Defendant was not involved in the discussion or decision to enter into the lease agreement with Agape House, Inc. and Defendant did not pay for the document or receive any of the rent from the lease. The lease was not signed by Defendant and no mention is made of Defendant or the Presbyterian denomination in this document. A copy of said lease is attached hereto as **EXHIBIT 5-D** and incorporated herein by reference.

E. A cemetery lot in Oak Grove Cemetery in Marion, NC was given to Plaintiff by members of Plaintiff congregation in **December 1992** by means of a deed recorded in McDowell **Deed Book 449 at Page 177**. The grantee block on said deed

designates and includes only Plaintiff, acknowledging that Plaintiff is Aa North Carolina Non-Profit Corporation@ and not making any reference to Defendant or to the Presbyterian denomination. A copy of said deed is attached hereto as **EXHIBIT 5-E** and incorporated herein by reference.

F. The same cemetery lot in Oak Grove Cemetery that Plaintiff acquired by gift in 1992 was sold by Plaintiff to Carol Dymond in **August 1995** by means of a deed recorded in McDowell **Deed Book 497 at Page 54**. Defendant was not involved in the discussion or decision to sell the cemetery lot, and Defendant did not pay for the deed or receive any of the purchase price paid by the purchaser for the cemetery lot. The deed was not signed by Defendant and no mention is made of Defendant or the Presbyterian denomination in this document. A copy of said deed is attached hereto as **EXHIBIT 5-F** and incorporated herein by reference.

14. The unilateral claim by Defendant of the existence of a trust that has somehow attached itself to Plaintiff=s properties, even in spite of the many consistent historical actions of Plaintiff to disavow any denominational trust connection or control over its properties, constitutes a cloud on the title to Plaintiff=s real properties.

15. Additionally, Plaintiff received in 1988 a significant financial bequest from a trust established by Helen Johnson McMurray, the wife of Dr. Carl W. McMurray, a former pastor of Plaintiff. This fund is known as The Carl Walker McMurray Memorial Fund. The Helen Johnson McMurray trust contained several distributions, including one as follows:

Ato FIRST PRESBYTERIAN CHURCH of Marion North Carolina, located at 303 Hillcrest Drive in Marion, North Carolina 28752, with the request that the governing board of said Church name the gift ATHE CARL WALKER McMURRAY MEMORIAL FUND@ and use the net income therefrom for the following, and related, purposes:

- (1) Supplement medical needs, not otherwise provided for, for pastors and missionaries who retire from the active ministry after leaving the Marion First Presbyterian Church;
- (2) Contribute periodically, according to need, to the benevolent funds of the Church, such as shelter and food for the homeless and needy, help finance special and appropriate Church Gospel projects, programs, meetings, etc. which will promote the Gospel of Jesus Christ.

It is hereby specifically requested that no monies from this gift be contributed to the World or National Council of Churches or their affiliates.@"

The trust document quoted above does not grant any rights or ownership interest to Defendant or its predecessor presbytery or to the denomination; rather, all was granted solely to Plaintiff. Plaintiff also has other financial resources and from time to time receives testamentary bequests. All of Plaintiff=s bank accounts and financial holdings are titled

solely and exclusively in Plaintiff=s name alone, and neither Defendant nor the denomination have any rights, trust, control, authority or ownership interest in any of said accounts or holdings. Further, while Plaintiff is not an affiliate of either the World Council of Churches or the National Council of Churches, which the McMurray fund document specifically requested never receive any money, PCUSA is an affiliate of both.

D. Denominational Structure and Plaintiff=s Relationship to the Denomination

16. The **PCUSA was formed in 1983 by the merger** of the Presbyterian Church in the United States (APCUS@ or the ASouthern Church@) and the United Presbyterian Church in the United States of America (AUPCUSA@ or the ANorthern Church@). Before the PCUSA was formed, Plaintiff (and the unincorporated local church that preceded Plaintiff) had an association with PCUS, the Southern Church, for ecclesiastical doctrine and worship. There was no association or connection, however, between Plaintiff and PCUS regarding Plaintiff=s properties, as Plaintiff has always been congregational in regard to its properties.

17. When the PCUS merged with UPCUSA in 1983 to form the PCUSA, the newly-formed denomination created a very lengthy and complicated governing document, known as the Constitution of the PCUSA. The Constitution of the PCUSA consists of two parts and is published in two books:

A) Part one is referred to as the Book of Confessions, which contains doctrinal statements and statements regarding church governments and polity. This part is published by PCUSA in a separate bound volume.

B) Part two is referred to as the Book of Order, which focuses on church governance and is divided into three main sections, namely (1) the Form of Government, (2) the Directory for Worship, and (3) the Rules of Discipline. This part is also published by PCUSA in a separate bound volume.

18. The provisions in the PCUSA Constitution relating to property are found primarily, but not exclusively, in the Form of Government portion of the Book of Order, specifically in Chapter VIII, Sections G-8.000 through G-8.700.

19. Section G-8.0201 in the PCUSA Book of Order has asserted and claimed unilaterally since 1983 that Aall property held by or for a particular church ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA).@ This clause, referred to sometimes as the Atrust clause@ and sometimes as the Aproperty trust clause,@ claims the existence of a trust unilaterally imposed by the PCUSA that has attached itself on real and personal property owned by local churches. **Plaintiff has never adopted or approved any resolution or document agreeing to, accepting or acquiescing in any such unilaterally claimed property trust for the PCUSA.** The PCUSA=s trust

clause, therefore, is not applicable to any of Plaintiff=s properties as it is contrary to the many clear and emphatic statements in Plaintiff=s incorporation documents, in Plaintiff=s resolutions, and in Plaintiff=s deeds that disavow any trust or rights of any kind in any other ecclesiastical entity in regard to Plaintiff=s properties and assets. The Atrust clause@of the PCUSA Book of Order, therefore, is not legally enforceable against Plaintiff.

20. Section G-8.0600 of the PCUSA Book of Order has asserted and claimed unilaterally since 1983 that a presbytery of PCUSA (such as Defendant) may unilaterally dictate ownership and control of local church property located within the geographic region for which the presbytery has administrative authorities. Plaintiff has never adopted or approved any resolution or document agreeing to, accepting or acquiescing in any such unilaterally claimed power and authority over Plaintiff=s properties. This section is not applicable to Plaintiff=s property as it is contrary to the many clear and emphatic statements in Plaintiff=s incorporation documents, in Plaintiff=s resolutions, and in Plaintiff=s deeds that disavow any rights, authority or control over its properties by any other ecclesiastical entity. This section of the PCUSA Book of Order, therefore, is not legally enforceable against Plaintiff.

21. Section G-7.0401 of the PCUSA Book of Order states: AWhenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained.@ In mandating local church incorporation when permitted by civil law of the state where the church is located, the PCUSA and its regional administrative units, including Defendant, have acknowledged that property matters are not governed by the Atrust clause@ or other unilateral ownership claims and provisions asserted in the PCUSA Book of Order. Plaintiff believes that Section G-7.0401 of the PCUSA Book of Order is an acknowledgment by PCUSA that incorporated churches (such as Plaintiff) are subject to the laws of the state in which the property is located. The laws of trusts in North Carolina do not permit the non-owner of a property unilaterally to impose a trust in favor of the non-owner on the owner=s property when the historically consistent words and deeds of the owner reflect a clear intent that there is not such a trust.

22. Plaintiff never filed any amendment to its Articles of Incorporation agreeing to accept the unilateral claims of the PCUSA Book of Order that purported to impose a trust on Plaintiff=s property. Plaintiff never issued any correction deeds to add any reference to Defendant having any authority, control, interest, trust or ownership over Plaintiff=s properties. Plaintiff never revised the name on its bank account or other financial holdings to add Defendant as having any type of interest therein whatsoever. Plaintiff never took any action of any kind whatsoever that could be interpreted as accepting or agreeing to any unilateral attempt by Defendant or by PCUSA or any administrative unit thereof to have any claim of any interest, ownership, trust or control in the real property or personal property owned by Plaintiff.

23. Section 1-0301(b) of the PCUSA Book of Order states that the provisions of the PCUSA constitution are not, as a matter of the free exercise of religion, to be enforced by the civil power of the state through its courts. Thus, while the McDowell County Superior Court has subject matter jurisdiction to resolve the existing property dispute before it, the

Court cannot do so by applying the property provisions of the PCUSA Book of Order, as such would constitute an unlawful church establishment prohibited by both the First Amendment of the United States Constitution and by the PCUSA=s own constitution. If any trust exists at all, it must be founded only upon mutual intent evidenced by the use of ordinary civil means pursuant to the laws of the State of North Carolina. Further, since 1973, North Carolina follows the **neutral principles of law** doctrine, which requires courts to decide church property disputes on general principles of property law and trust law of the state without regard to ecclesiastical influences.

24. Before the merger of the Southern Church and the Northern Church in 1983, Plaintiff was affiliated with the Southern Church (i.e., PCUS). Plaintiff is informed and believes that within approximately one year before the merger, the Southern Church amended its constitution (i.e., its Book of Church Order) and added a clause similar to section G-8.0600 of the PCUSA Book of Order (i.e., a Aproperty trust clause@). Prior to 1982, however, Plaintiff is informed and believes that the Southern Church never had a Aproperty trust clause@ or anything remotely similar to a property trust clause in its Constitution that asserted any trust relationship or right of ownership or control over the local church property of churches.

25. **Plaintiff was incorporated as a nonprofit corporation under the laws of the State of North Carolina on 3 May 1950, over thirty years before the Southern Church amended its constitution to add a type of Aproperty trust clause.@** Plaintiff made only one reference to PCUS in the entire incorporation document, and that was an ecclesiastical reference ... not a property reference. Article III, paragraph (a) in the Certificate of Incorporation contains the only reference in the entire document to the Presbyterian denomination, and it states that one of the objects for which the corporation was formed was:

A(a) to incorporate The First Presbyterian Church of Marion, North Carolina into a church to be conducted according to the doctrine and worship of The Presbyterian Church in the United States **as it exists at this date**, with the power in said corporation to establish and conduct schools and other means of propagating the Gospel and to teach the truths of God=s Word and the Christian Religion.@ *[emphasis added]*

This one sentence in Plaintiff=s nonprofit incorporation document refers only to the Adoctrine and worship@ of the PCUS (i.e., the Southern Church) that was **in effect as of May 1950**. It does not grant any control, a trust connection, authority or interest in any of Plaintiff=s properties to the denomination. Even if the phrase in Plaintiff=s articles is interpreted not to be limited to ecclesiastical matters, the PCUS did not have a Aproperty trust clause@ in any of its governing documents in May 1950. Plaintiff never adopted any resolution approving or accepting the unilaterally claimed Aproperty trust clause@ and has consistently disavowed the existence of any such trust over its properties through its actions.

26. Section 6-8 of the PCUS Book of Church Order that was in effect when the PCUSA was formed by merger states: Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.@ After the denominational merger that produced PCUSA in 1983, Section G-8.0501 of the PCUSA Book of Order required written permission from the presbytery before any church could sell, mortgage or otherwise encumber any of its real property. Plaintiff has never followed that provision, as it is congregational as to its properties.

E. Plaintiff=s Exemption from Denominational Rules and Control

27. Section G-8.0701 of the new 1983 PCUSA Book of Order provided for a procedure by which any individual church could **exempt** itself from certain of the provisions of the PCUSA Book of Order if it met the required criteria. Two portions of Chapter VIII of the new 1983 PCUSA Book of Order were of special concern to Plaintiff, as follows:

A) Section G-8.0501, which required the written permission of a presbytery before the local church could sell, mortgage or otherwise encumber its property.

B) Section G-8.0201, which stated that all property owned by a local church, regardless of how titled and regardless of how used, Ais held in trust nevertheless for the use and benefit of the Presbyterian church (U.S.A.).@

Provided the local church met the required criteria set forth in Section G-8.0701, it could exempt itself from the above provisions through a vote of the church congregation within a period of eight years from June 10, 1983.

28. The required criteria of Section G-8.0701 that a local church must meet before it could become exempt from the above provisions is as follows: The only church that is eligible to be exempt from these provisions is a local Achurch which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America to form the Presbyterian Church (U.S.A.).@ For the reasons set forth above in this Complaint, Plaintiff was not subject to a similar provision in the Southern Church at the time of the reunion (i.e, the 1983 merger). Accordingly, Plaintiff was eligible and did meet the required criteria for exempting itself from the offensive Aproperty trust@ portions of Chapter VIII of the new 1983 PCUSA Book of Order listed above.

29. In compliance with the time period of Section G-8.0701, Plaintiff met at a regularly called meeting of its congregation on 24 June 1984 and adopted a AResolution on

Church Property Provisions@ (the A1984 Resolution@), a copy of which is attached hereto as ***EXHIBIT 6*** and incorporated herein by reference.

30. The first paragraph of action by the 1984 Resolution that was passed by the congregation of Plaintiff on 24 June 1984 reads as follows:

ANOW, THEREFORE, BE IT RESOLVED, by the First Presbyterian Church of Marion, North Carolina, in the Presbytery of Concord: ...

1. That **this congregation** in a regularly called meeting **voted to be exempt from the provisions requiring the written permission of presbytery before selling, encumbering, leasing church property or acquiring property** subject to an encumbrance or condition as stated in G-8.0500 of the Form of Government of the Presbyterian Church, (U.S.A.):@ [emphasis added]

The 1984 Resolution specifically stated that the local clerk of session would send official notice of this action to the presbytery=s office. The Concord Presbytery was the administrative unit that included McDowell County, North Carolina in 1984. Defendant is the successor administrative unit for the region that now includes McDowell County, North Carolina.

31. The second paragraph of action by the 1984 Resolution that was passed by the congregation of Plaintiff on 24 June 1984 reads as follows:

ANOW, THEREFORE, BE IT RESOLVED, by the First Presbyterian Church of Marion, North Carolina, in the Presbytery of Concord: ...

2. That, according to the provision of G-8.0701 of the Form of Government of the Presbyterian Church (U.S.A.), **this congregation voted to hold its property and exercise its privileges of incorporation and property ownership**

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to the Form of Government provisions of Chapter 6 of the Book of Church Order of the former Presbyterian Church in the United States as that chapter existed on June 10, 1983;@

[emphasis added]

32. The above-quoted 1984 Resolution was adopted approximately one year after the creation of PCUSA by the merger of the Northern Church and Southern Church, well within the eight-year period for local churches to exempt themselves from any control by the denomination over local church properties. As reflected by affidavits from twelve present or former members of Plaintiff, the affiants and the general membership of Plaintiff clearly understood without question that the congregational action taken by Plaintiff on 24 June 1984 in passing the Resolution on Church Property Provisions exempted and removed all of Plaintiff=s property from any and all control of every sort, kind and description by the Defendant and by the Presbyterian denomination=s claimed trust clause over Plaintiff and all of Plaintiff=s property. The affidavits are as follows, and a copy of each is attached hereto as exhibits as labeled below, and each affidavit is incorporated herein by reference:

- A. Affidavit of Robert Lee Ayers dated 6 May 2007, labeled as **EXHIBIT 7-A**.
- B. Affidavit of Donald Edward Beam dated 27 April 2007, labeled as **EXHIBIT 7-B**.
- C. Affidavit of Wade H. Boyd, Jr. dated 25 April 2007, labeled as **EXHIBIT 7-C**.
- D. Affidavit of Robert Earl Brendle dated 25 April 2007, labeled as **EXHIBIT 7-D**.
- E. Affidavit of Miriam A. Broome dated 25 April 2007, labeled as **EXHIBIT 7-E**.
- F. Affidavit of Robert A. Gourley dated 25 April 2007, labeled as **EXHIBIT 7-F**.
- G. Affidavit of William G. Greenlee dated 25 April 2007, labeled as **EXHIBIT 7-G**.
- H. Affidavit of James E. Neal, III dated 27 April 2007, labeled as **EXHIBIT 7-H**.
- I. Affidavit of Donald G. Pasour dated 25 April 2007, labeled as **EXHIBIT 7-I**.
- J. Affidavit of Mary Frances Queen dated 25 April 2007, labeled as **EXHIBIT 7-J**.
- K. Affidavit of Angus V. Stronach dated 24 April 2007, labeled as **EXHIBIT 7-K**.
- L. Affidavit of Patricia K. Turnbull dated 30 April 2007, labeled as **EXHIBIT 7-L**.

33. The 1984 Resolution (Exhibit 6) is consistent with the language in Plaintiff=s 1950 incorporation certificate (Exhibit 1) and the 7 May 1950 congregational resolution. The wording of all Plaintiff=s deeds and other real estate documents (Exhibits 3A through 3F, 4-1 through 4-27, and 5A through 5F) are also consistent with **Plaintiff=s history of demonstrating by word and deed that it has always been autonomous and**

congregational as to its property, and that it has never been connectional to any presbytery or denomination in regard to its property.

34. The minutes of a meeting of the Session (the governing body) of Plaintiff on 29 February 1990 include references to a discussion about the Plaintiff being exempt from any kind of property trust with Defendant or the denomination, and include the following provisions:

ACorrespondence was responded to from Caroline B. Gourley of Presbytery of Western North Carolina. Respectfully urges all churches to take notice that the time limit is 1991, whereby >Property Exemption= can still be obtained.

Those churches which have previously filed for this exemption, are requested to write to Presbytery. The date of filing for this church was June 24, 1984. By common consent the Session Clerk is to furnish this information to Presbytery, requesting a note of confirmation.@

A copy of the relevant portion of the minutes of Plaintiff=s Session from 29 February 1990 is attached hereto as **EXHIBIT 8** and incorporated herein by reference.

35. The minutes of a meeting of the Session (the governing body) of Plaintiff approved on 09-09-1990 include reference to a discussion by the Session regarding the exempt status of Plaintiff from the denomination=s Atrust clause.@ The minutes state the clear view of Plaintiff, as expressed by the Session, as follows:

AWe lean strongly on the AProperty Exception@ clause or paragraph in our church Book of Order G-8-0701 - page 40.

This church filed for this property AException@ status June 1984, at the urging of Presbytery. A district meeting of Presbytery was held in this church, mainly to explain this and several other topics.

The validity of the property AException@ clause was re-affirmed as recently, by Presbytery, February of this year.@

A copy of the relevant portion of the minutes of Plaintiff=s Session from 09-09-1990 is attached hereto as **EXHIBIT 9** and incorporated herein by reference.

36. Article V of the Certificate of Incorporation of Plaintiff (i.e, Exhibit 1) identifies the persons who are in charge of the activities, affairs and property of the corporation, and all of the persons designated in said article are local members of the local church. Nowhere in Article V is there any reference to any person from the presbytery or from the denomination having any influence, trust relationship, control or authority over any of the properties or activities of Plaintiff. Plaintiff has never taken any action to grant or surrender any rights of any kind over its properties to the denomination or to Defendant.

37. Plaintiff has never at any time, either before or after the formation of PCUSA, adopted any resolution or approved any statement of consent agreeing or acquiescing to any Atrust clause@ that would establish any previously-not-existing trust relationship over its properties with the denomination or presbytery. Further, Plaintiff has not at any time taken any action of any kind that could possibly be interpreted as giving express or implied consent to any Atrust clause@ arrangement with the denomination or presbytery.

F. Trusts under the Law of North Carolina

38. For a trust to be valid in North Carolina, there are four required elements that must be present:

- (A) there must be sufficient terms to establish the trust;
- (B) there must be a definite subject of the trust;
- (C) there must be an definite object or purpose of the trust; and
- (D) there must be a definite beneficiary of the trust.

39. Under the law of North Carolina, a trust is a legal relationship between persons (the word Apersons@ includes all entities, including the parties to this civil action). A trust exists when one person declares that certain property he owns must be handled in a particular way for someone's benefit. This declaration can be expressed in spoken words or written words, or partly by each. It does not matter how the legal relationship involving a trust is created as long as the parties have acknowledged the existence of the legal relationship either by words or by behavior. Regardless of the other terms, however, **there cannot be a valid trust unless the parties intend**, through their words or through their actions, for there to be a trust.

40. Plaintiff has consistently and repeatedly disavowed any kind of trust in favor of Defendant or the denomination for which Defendant is a regional administrative unit. Plaintiff has demonstrated historically and consistently its refusal to enter into any trust relationship with Defendant and the denomination which Defendant represents, by both action and written word. **The clear intent for Plaintiff not to be in a trust relationship with Defendant** includes without limitation the following:

- (A) Plaintiff has acquired land and has sold land without involving Defendant.
- (B) Plaintiff has entered into a boundary line agreement and has entered into leases without involving Defendant.
- (C) Plaintiff has passed congregational and session resolutions and has entered official minutes disavowing the existence of any trust or property connection with Defendant.

(D) Plaintiff has executed incorporation documents that clearly and emphatically disavow any intent ever to create any kind of trust or connectional relationship with Defendant or the denomination for which it is a regional administrative unit in regard to Plaintiff=s property.

In fact, **Plaintiff has never signed anything, said anything or done anything that could possibly cause Defendant to believe that Plaintiff has ever had the intent for there to be any kind of trust** with Defendant. The law of North Carolina places the burden on the party wishing to establish a trust to show its existence by clear, strong and convincing evidence.

G. Denominational/Presbytery Claims that Threaten Plaintiff

41. The process whereby the PCUS in 1982/1983 adopted a trust clause@ (by which the predecessor denomination unilaterally asserted that all local churches own their properties in trust for the denomination) did not include or result from any vote, approval or action by Plaintiff. Plaintiff never took any action after the PCUS amended its constitution to insert a trust clause@ and before the PCUS merged to form PC(USA) to acquiesce or accept any such claimed trust connection by the PCUS denomination over Plaintiff=s properties and assets. In the total absence of approval or acceptance by Plaintiff of the PCUS=s new concept of a property trust clause@ after decades of not having one, Plaintiff demonstrated its continuing, consistent lack of intent to enter into any kind of trust arrangement with the PCUS.

42. After the PCUSA was formed in 1983, Plaintiff never approved, accepted or acquiesced in the current denomination=s or presbytery=s assertion of a trust over local church property or any denominational claim to determine ownership or control of property titled in Plaintiff=s name. The passage by Plaintiff of the 1984 Resolution reflects Plaintiff=s clear intent not to enter into any such relationship.

43. Plaintiff is informed and believes that **PCUSA has issued instructions** to its various presbyteries, including Defendant, to take unilateral action to claim ownership interests and exercise control over the real and personal properties of local churches who challenge PCUSA=s governing documents and authority, such as PCUSA=s trust clause and other provisions that purport to give PCUSA certain control over the properties of local churches. Plaintiff is informed and believes that presbyteries have removed the pastor, excommunicated the membership and padlocked the sanctuary of one or more local churches who challenged the presbytery=s or the denomination=s authority and control.

44. The PCUSA has issued two documents (one dated December 2005 and the other dated September 2005) that instruct presbyteries (including Defendant) to take **severe and punitive action** against local congregations such as Plaintiff **Aif a dispute related to church property is developing** @.

A. The document dated December 2005 instructs presbyteries to take actions against local churches that include the following:

(1) **Regardless of how the deeds recite the local church property is owned, the presbytery is instructed to file on the public record an affidavit asserting control of the presbytery over the real property owned by local churches.** This would obviously and deliberately place a cloud on the title to the property.

(2) **Regardless of how bank accounts are titled or used, the presbytery is instructed to send a letter to all banks used by the local church for the bank to Ahold@ (freeze) their accounts and not allow any assets to be released.** These severe actions would be extraordinarily prejudicial to Plaintiff and would irreparably harm the ability of this long-standing local church to conduct its day to day affairs and continue its heritage and mission in McDowell County, North Carolina that it has maintained for 162 years. [emphasis added]

The relevant pages of the December 2005 document are attached hereto as **EXHIBIT 10** and incorporated herein by reference.

B. The document dated September 2005 is even more strident as it instructs presbyteries to take actions against local churches that include the following:

(1) **A Freeze the assets.@**

(2) **A File Lis Pendens - cite the trust clause (G-8.0201) as the basis.@**

(3) **A Building and property - change the locks and secure the grounds if necessary.@**

(4) **A Organize the loyal minority if the presbytery can identify one. Declare them to be the >true church= and thus entitled to the property.@**

(5) **A The presbytery may retain the property for/with a loyal minority. If there is no loyal minority, the presbytery may dissolve the congregation and utilize the assets, real and personal, for another mission of the presbytery.@**

(6) **A The presbytery may sell ... the building.@**

(7) **A The presbytery has the power to decide disposition of real property.@**
[emphasis added]

The relevant pages of the September 2005 document are attached hereto as **EXHIBIT 11** and incorporated herein by reference.

H. Existence of Genuine Controversy

45. Plaintiff=s membership and its representative elected officials have rejected the unilateral claims of Defendant and the denomination of the existence of any trust relationship or connection over any of Plaintiff=s properties. This position is reflected in Plaintiff=s Articles of Amendment (i.e., Exhibit 2) publicly filed on 17 May 2007 with the N.C. Secretary of State. A paid employee of Defendant contacted Plaintiff=s pastor in June 2007 and informed him that Defendant=s executive group is aware of Plaintiff=s strong position that Plaintiff=s properties are exempt from the Aproperty trust clause.@ Plaintiff=s pastor has informed Plaintiff=s governing body, known as the Session, of the communication from Defendant regarding the **existing dispute related to church property**.

46. A genuine controversy exists between Plaintiff as the local church and Defendant as the regional arm of the Presbyterian denomination that threatens the ownership and control by Plaintiff over its own property. Plaintiff is in need of a declaratory judgment, pursuant to Article 26 of Chapter 1 (Section 1-253 *et seq*) of the North Carolina General Statutes reciting that Plaintiff is exempt from all clauses and provisions of the governing documents of Defendant and the Presbyterian denomination that unilaterally claim Plaintiff, as a local church, owns its properties subject to a trust in favor of the presbytery and denomination. The unilateral claim and assertion by Defendant of the existence of a trust in Defendant=s favor over the properties owned by Plaintiff constitutes a **cloud on the title to the real properties** owned by Plaintiff.

I. Immediate Threat of Irreparable Harm

47. In light of the existing dispute related to church property and the PCUSA=s instructions to its presbyteries for severe pre-emptive action, Plaintiff=s representatives and members fear **immediate and irreparable harm** through unilateral and forceful retaliatory action by Defendant to padlock Plaintiff=s sanctuary and other buildings, seize and freeze Plaintiff=s bank accounts, and completely disrupt and take over the local church. Such unilateral, hostile, aggressive action would violate Plaintiff=s historic, well-documented independent, congregational treatment of its property and would **completely and irreparably destroy the 162-year-old life, reputation and mission of Plaintiff** as a thriving church in Marion and McDowell County, North Carolina. In particular, Plaintiff believes imminent severe unilateral take-over by Defendant of Plaintiff=s assets would cause the following **immediate and irreparable harm**:

A. Cause Plaintiff to be unable to engage in its religious education program for children and adults, its music program for children and adults, and its weekly worship in its historic and beautiful sanctuary building and educational building that is well-known and easy to find as a landmark in the Marion and McDowell County community; and

B. Cause Plaintiff to be unable to provide its beautiful, historic sanctuary to its members for funerals, weddings, and worship services of all kinds; and

C. Forcefully interrupt Plaintiff=s historical ministry and compassionate social and ecclesiastical outreach to the Marion and McDowell County community, thereby irreparably harming Plaintiff=s reputation and standing as a responsible witness in the this area; and

D. Irreparably alienate potential new members from joining a church whose denominational leadership would take such severe, shocking, punitive behavior to the obvious harm of a thriving and historical local church; and

E. Thoroughly disgust and alienate the leadership and membership of this historical local church through controlling power plays by Defendant which would have the obvious destructive impact of causing members to withdraw their membership from Plaintiff church; and

F. Destroy the spirit and fellowship of this historic, thriving church because of a dispute over church property that for 162 years has been exclusively owned and controlled in word and deed by Plaintiff, exclusively for its local membership and community and consistent with its mission and ministry; and

G. Cause Plaintiff to be unable to pay its lawful debts and obligations, including without limitation salaries to its pastor, secretary, youth director and organist/music director, thereby irreparably harming Plaintiff=s reputation and standing as a responsible witness in the Marion and McDowell County area; and

H. Cause Plaintiff to be unable to pay electricity bills, water bills, telephone bills, postage bills, repair and maintenance bills, further irreparably harming Plaintiff=s reputation and standing as a responsible witness in the Marion and McDowell County area.

48. The long-standing and well-documented history and actions of Plaintiff have consistently established Plaintiff=s independent, congregational approach toward its properties. Repeatedly and consistently, throughout its history, Plaintiff has reinforced its independent, congregational approach to its property and its connectional approach only to its worship. The actions and behaviors clearly reflect no intent for the existence of any connectional or trust relationship by Plaintiff to the denomination in connection with its properties. Accordingly, Plaintiff expects to prevail in this litigation regarding the existing dispute over church property.

49. Plaintiff is in need of an **immediate temporary restraining order** and, thereafter a **preliminary injunction**, to **maintain the *status quo*** that has been in existence for 162 years for the pendency of this civil action and prevent the irreparable harm from Defendant referred to above. If Plaintiff succeeds and prevails ultimately in this civil action, its integrity as an active, thriving church will be protected by the issuance of an immediate temporary restraining order that would do the following until after a hearing can be held with proper notice to Defendant:

A. Prohibit Defendant from entering onto the properties of Plaintiff for any purpose whatsoever; and

B. Prohibit Defendant from taking any action of any kind to deprive or attempt to deprive Plaintiff from maintaining the same level of access to and activity in and on all of its properties that Plaintiff and its membership has enjoyed throughout its long-standing and recent history; and

C. Prohibit Defendant from filing any document regarding any of Plaintiff=s properties in the office of the Register of Deeds of McDowell County, North Carolina or with the Secretary of State of North Carolina; and

D. Prohibit Defendant from communicating orally or in writing with any financial institution or facility where any of Plaintiff=s financial assets are held or invested in regard to any of Plaintiff=s financial assets and accounts; and

E. Prohibit Defendant from interfering with any of the internal activities and operations of Plaintiff that Plaintiff and it=s membership have enjoyed throughout its long-standing and recent history; and

50. Remedies at law would be inadequate to repair the horrible destruction to the effectiveness of Plaintiff=s religious mission and activities that Defendant could (and, according to the documents from the Presbyterian denomination quoted in paragraph 44 above, would) impose on Plaintiff as a local church without the protection of immediate equitable relief to maintain the *status quo* as requested by Plaintiff.

51. A delay in the issuance of an immediate temporary restraining order would enable Defendant to take the punitive and severe actions listed above that would immediately devastate and irreparably destroy the Plaintiff=s ministries, functions and effectiveness.

52. There would be no prejudice to Defendant for the status quo to be maintained through an immediate temporary restraining order and through a preliminary injunction, by which Plaintiff alone exclusively retains control and sole ownership of its own real and personal properties, just as it has maintained throughout its 162-year history.

WHEREFORE, Plaintiff prays the Court for relief that includes the following:

1. A **Judgment declaring the rights** of the parties regarding Plaintiff=s properties, *to wit*,
 - (A) that **Plaintiff is exempt from the Aproperty trust clause@** by which Defendant unilaterally claims, on behalf of the Presbyterian denomination, to have a trust over Plaintiff=s properties; and

(B) that **Defendant has no trust or claim of any kind over any of Plaintiff=s real or personal properties**; and

(C) that Plaintiff is **congregational in regard to its properties** and is thereby **exempt from any control** of any kind by **Defendant** in regard to Plaintiff=s properties; and

2. A **Judgment removing the cloud on the title** to Plaintiff=s properties that is asserted by Defendant through its unilateral claim that Plaintiff=s properties are subject to the denominational **Aproperty trust clause@** and through any other claims of Defendant, as the administrative arm of the PCUSA, regarding any control over Plaintiff=s properties; and

3. An **immediate temporary restraining order** to maintain the *status quo* of Plaintiff=s long-standing exclusive control over its real and personal properties between the filing of this Complaint and a hearing after notice to Defendant as to whether to convert such order into a preliminary injunction pending a final hearing of this matter; and

4. A **preliminary injunction** to maintain the *status quo* of Plaintiff=s long-standing exclusive control over its real and personal properties pending a final hearing of this matter regarding the Plaintiff=s property rights and ownership and all issues raised by the pleadings; and

5. Such other and further relief that seems just and proper to the Court under the circumstances.

6. Plaintiff exercises its right to request a **TRIAL BY JURY** as to all issues so triable.

7. Plaintiff requests that this verified Complaint be treated as an affidavit in support of the relief requested herein.

Respectfully submitted through verified Complaint on this 2nd day of July, 2007.

STEPHEN R. LITTLE, P.A.

Stephen R. Little, Attorney for Plaintiff
NC State Bar # 7859
20 North Main Street
Marion, NC 28752
Phone: (828) 652-8003
Fax: (828) 652-4631

Verification by Plaintiff

NORTH CAROLINA
McDOWELL COUNTY

J. Smith Gibbs, first being duly sworn, deposes and says that he is the Plaintiff=s Clerk of the Session and in such capacity is the authorized official and representative of the Plaintiff herein; he has read the foregoing COMPLAINT and knows the contents thereof; the same is true of his own knowledge except as to those matters and things stated on information and belief, and as to those matters and things, he believes them to be true; and he has been authorized by the Plaintiff=s Session to execute this verification.

This _____ day of July, 2007.

J. SMITH GIBBS
Clerk of the Session

Sworn to and subscribed before me,

COMPLAINT

this _____ day of July, 2007.

NOTARY PUBLIC

My Commission Expires: _____

INC\FPC\Complaint
06 RE 676