

IN THE SUPREME COURT  
STATE OF GEORGIA

PRESBYTERY OF GREATER )  
ATLANTA, INC., )  
 )  
Appellant, )  
 )  
v. ) SUPREME COURT DOCKET  
 ) NO. S11G0587  
TIMBERRIDGE PRESBYTERIAN )  
CHURCH, INC., )  
 )  
Appellee. )

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**BRIEF OF AMICUS CURIAE**  
**THE TRUSTEES REID MEMORIAL CHURCH**

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**A. Montague Miller, Esq.**  
**Thomas W. Tucker, Esq.**  
**John B. Long, Esq.**  
Tucker, Everitt, Long, Brewton  
& Lanier  
453 Greene Street  
Augusta, GA 30901  
706-722-0771  
706-722-7028 (fax)  
[mmiller@thefirm453.com](mailto:mmiller@thefirm453.com)

**Hugh Brown McNatt, Esq.**  
McNatt Greene & Peterson  
602 Church Street  
Vidalia, Ga 30475  
912-537-9343  
912-537-2658 (fax)  
[hmcnatt@mcnattandgreene.com](mailto:hmcnatt@mcnattandgreene.com)

**David E. Hudson, Esq.**  
**Patrick J. Rice, Esq.**  
Hull Barrett, PC  
801 Broad Street  
Augusta, GA 30901  
706-722-4481  
706-722-9779 (fax)  
[dhudson@hullbarrett.com](mailto:dhudson@hullbarrett.com)

**John C. Bell, Jr., Esq.**  
Bell & Brigham  
457 Greene Street  
Augusta, GA 30901  
706-722-2014  
706-722-7552 (fax)  
[john@bellbrigham.com](mailto:john@bellbrigham.com)

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## **I. Introduction**

The Trustees Reid Memorial Church (hereinafter “Reid Trustees”) is a Georgia non-profit corporation. Reid Trustees has a six member Board of Trustees, each of whom has served in such capacity for at least a decade. Reid Trustees is an entity which is entirely separate from, but which acts in concert with, the Reid Memorial Presbyterian Church of Augusta, Georgia (hereinafter “Reid Memorial”). Reid Trustees has been incorporated under the laws of the State of Georgia since 1878. The amended corporate name, Trustees Reid Memorial Church, has been used since the corporate charter was renewed on June 29, 1910.

As described by the Amicus The Presbytery Lay Committee in its brief of June 27, 2011, Reid Memorial is one of “hundreds of old-line southern churches” which could lose real property it has held for over a century even though it opted out of the Presbyterian Church (U.S.A.)’s purported trust clause within the time prescribed for doing so. Amicus Reid Trustees fully adopts and incorporates herein the arguments and case law set forth by Amicus The Presbytery Lay Committee and by Appellee herein, Timberridge Presbyterian Church, Inc. Reid Trustees will not attempt to better those arguments. Rather, Reid Trustees’s purpose is to demonstrate that, at the basest level of this hybrid hierarchal church system, Timberridge does not stand alone.

## **II. Interest of Amicus**

Reid Trustees was originally created as a trust under a number of codicils to the will of its benefactor, Robert A. Reid, who died testate in Richmond County, Georgia. Reid's will was dated July 31, 1869. The will left money and real property to certain trustees for the purpose of establishing, near his former home, a church in Summerville. Reid's will specified that the church be one according to the Presbyterian persuasion (in the southern states). Reid Trustees, then, is the owner of all real properties associated with the operation of the Reid Memorial Presbyterian Church ("Reid Memorial") since its founding in the Nineteenth Century.

For one hundred thirty three years, Reid Memorial continued its missions and operations using the land and buildings owned by Reid Trustees at the corner of Johns Road and Walton Way in Augusta with additions, accretions, construction, and improvements. As merger talks between the Presbyterian Church in the U.S. and the United Presbyterian Church in the U.S.A. began circa 1983, Reid Memorial took a middle-of-the-road approach, awaiting the finalization of all documents associated with the proposed merger. Finally, upon recommendation of the Session, Reid Memorial's congregation voted to join the merged entity, Presbyterian Church (U.S.A.) ("PCUSA"). Soon thereafter, through Session and congregational action,

Reid Memorial voted to exempt itself from the property provisions of Chapter 8<sup>1</sup> of the PCUSA Constitution, duly notifying the Denomination through the Northeast Georgia Presbytery. This congregational action was taken on July 22, 1984, well within the eight-year provision contained in Section G-8.0701 of the PCUSA Constitution, to wit:

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

(Book of Order, *The Constitution of the Presbyterian Church (U.S.A.)*, Part G - Form of Government, Section 8.0701 [now 4.0208] (hereinafter sometimes referred to as the “exceptions provision”) (emphasis added)). Importantly, the name “Reid Memorial” has been carried in the minutes of the Northeast Georgia Presbytery as one

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<sup>1</sup> This exceptions provision was later recodified without changes in Chapter Four of the Book of Order, Section 4.0208.

of the numerous churches within such presbytery which exercised the option to withdraw from the property provisions of the PCUSA Constitution. An excerpt from the minutes of Northeast Georgia Presbytery is appended hereto as Exhibit “A”.

Appellee Timberridge was organized in the late Nineteenth Century. The similarity of the history of Appellee Timberridge and that of Reid Trustees is remarkable.<sup>2</sup> The interest of amicus curiae Reid Trustees is readily seen. Both Appellee and Reid Trustees have held their properties independently for well over a century. Both were former members of the “Old Line” Presbyterian Union, the Presbyterian Church in the United States. Both of the entities “opted out” or used the exceptions provision of the merged church, PCUSA, in order to safeguard and underscore their independent ownership of their properties. Neither of the two entities have, in any way, assented to the trust provisions of the new merged PCUSA Constitution. Both Reid Trustees and Appellee Timberridge are entitled to the final judgment of this Court, declaring for all purposes, that their independent real property ownership is a matter of right flowing from their similar history and from their

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<sup>2</sup> It should be noted however that, unlike Timberridge, Reid Memorial has not voted to disassociate its church or congregation from the PCUSA or the Northeast Georgia Presbytery. While it is true that varying levels of disagreement with the Denomination may exist among its members, Reid Memorial remains affiliated with PCUSA and the Presbytery.

utilization of the exceptions provision of the merged Constitution.<sup>3</sup>

### III. Argument

#### A. The Equities Favor the Appellee Timberridge on All Points

While such is not the focal point of this litigation, there is no question that PCUSA, the mainstream Presbyterian denomination in America, is losing enrolled members at an alarming rate. For example, after the merger in 1983, the reported membership of PCUSA was 3,131,228.<sup>4</sup> Nearly three decades later, in 2010, the

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<sup>3</sup> In addition to the exceptions provision of Section G-8.0701, the PCUSA Constitution also contains several provisions that limit the effect of PCUSA's Constitution to spiritual or moral matters. The Book of Order states, for example, that its provisions are not by themselves to be accompanied by civil affects. Consider for example the strong statement of Section G-1.0301(1)(b), which provides: **“We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time, be equal and common to all others.”** (Book of Order, Section G-1.0301(1)(b); see also Book of Order Sections G-1.0307, G-1.0308, G-1.0301(1)(a), and G-9.0102.) Notably, these several provisions were retained even after adoption of Section G-8.0201 that purportedly asserts a trust. Therefore, to the extent the Appellant Presbytery argues that the Court should find an enforceable trust merely because the denominational constitution asserts a trust, this argument contradicts that same constitution. The trust clause, read in conjunction with the rest of the Book of Order, expresses **only the beneficiary's desire**. Under Jones v Wolf, 443 U.S. 595 (1979), that desire, to be enforceable by civil authority, must be met by the consent of the owner and by compliance with state property and trust law.

<sup>4</sup> Jerry L. Van Marter, *Comparative Statistics 2008*, PRESBYTERIAN CHURCH (U.S.A.) (Aug. 21, 2009), <http://www.pcusa.org/news/2009/8/21/statistically-speaking>; *General Assembly Council Task Force on Church Membership Growth*, A

approximate membership on the rolls of congregations within PCUSA had shrunk to 2,016,091.<sup>5</sup> As members and congregations depart, Presbyteries controlled and populated largely by ordained ministers of the word and sacrament have worked to assume control over valuable real properties of dissenting congregations. In some cases, they have demanded and received “exit” penalties extending into the millions of dollars.

This brief will not attempt to delve into the reasons for dissatisfaction among departing members and congregations. It suffices to say that the differences between national and international policies of the General Assembly, embraced by the Presbyteries, have often been at odds with the expectations and aspirations of local congregations or “grass-roots” Presbyterians.

Against this backdrop of hemorrhagic attrition, we see in this case the Appellant, Presbytery of Greater Atlanta, Inc., arguing that an important provision of the Constitution of the PCUSA is, in effect, null and void of any effect. The logical extension of the argument employed by the Appellant Presbytery would

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Report Approved by the 203<sup>rd</sup> General Assembly (Sept. 1991), <http://oga.pcusa.org/publications/church-membership-growth.pdf>.

<sup>5</sup> Sharon Youngs, *2010 Statistics*, Office of the General Assembly of the Presbyterian Church (U.S.A.) (July 1, 2011), <http://www.pcusa.org/news/2011/7/1/stated-clerk-releases-pcusa-2010-statistics/>.

require this Court to ignore the background, purpose, and clear meaning of the **exceptions** provision of the Constitution. This provision has been codified from time to time in Chapter 8 and in Chapter 4 of the PCUSA Constitution. However, its language has not changed since the merger and **it is the only constitutional provision which, by its own language, cannot be amended.** (See also Book of Order, Section G-6.05.) The inclusion of the last sentence of the property provisions of the PCUSA Constitution was no accident. Nor was the merger undertaken because sessions and congregations were clamorous to surrender their valuable real estate interests to the control of other courts or governing bodies.

The exceptions provision of the Constitution greatly facilitated the merger. There is no doubt that the inclusion of this provision in the Constitution brought in many churches by offering a “safe harbor” with respect to their concerns about the ownership of valuable real properties. Whether this exceptions provision of the Constitution was a “**safe harbor**” or simple “**bait**” to attract congregations and sessions into the fold of PCUSA is, in fact, the crux of this case.

**If** the provision is indeed a “safe harbor,” protecting the realty interests of churches joining the merger in good faith with the foreknowledge that their real property would be preserved, protected, and otherwise secured unto them, then the provision has meaning, purpose, and a reason for its existence.

On the other hand, if this exceptions provision is interpreted in the manner suggested by the Appellant Presbytery, then it was nothing more than “bait,” used to lure congregations and members of the old-line southern churches into the fold and framework of PCUSA, where their valuable realty interests can now be stripped from them and forever relieved.

Amicus Reid Trustees respectfully submits that this Court should have no part of the latter interpretation or result.

Moreover, it is important for the Court to know that, beyond the ecclesiastical aspects of church governance involved here, the import and result of this case may ultimately determine the rights of many Georgia Presbyterian congregations and hundreds of millions of dollars of value in church real properties. The Court should draw no conclusion that the very limited hierarchy of the PCUSA has (except in the rarest of cases) contributed any form of funding or contribution to the acquisition, improvement, or maintenance of individual church real properties. On the contrary, the money flows the other way. By a per capita contribution method and other assessments, it is the congregations of the individual churches who support the operations of the Presbyteries, Synods , and the General Assembly.

Thus, in a very practical way, the de facto juxtaposition of the parties in this case is (a) the congregation of Appellee Timberridge and potentially other

Presbyterian congregations throughout the state of Georgia comprised of thousands of individuals who are living, breathing, church going, voting, tax paying, genuine good citizens; arrayed against, (b) entities controlled by the national Denomination (headquartered in Kentucky) whose elements are Presbyteries composed of ordained ministers of the Denomination along with a smattering of elders from various congregations who are typically selected for limited terms on a random basis.

### **B. The True Nature of the Presbyterian Church**

Amicus Reid Trustees believes it important for the Court to fully comprehend the actual structure of the Presbyterian Church (PCUSA). The ecclesiastical governance of the church is largely articulated in its Constitution, the document originating with the merger of the Presbyterian churches in the early 1980's. The Presbyterian Church governance rests in a system of courts, rather than the typical hierarchical chain. The courts are: a) the General Assembly, b) the Synods, c) the Presbytery, and d) the Session. (Book of Order, Section G-9.0101.) These courts have overlapping ecclesiastical, non-civil jurisdiction. (Id.)

Since neither this Court nor any interest of the state of Georgia is concerned with the ecclesiastical jurisdiction of the various courts of the Presbyterian Church, Amicus Reid Trustees will not review that matter further. However, by understanding the structure of the Presbyterian Church as a system of courts for resolving

ecclesiastical/doctrinal matters, it becomes readily apparent that the Presbyterian Church (PCUSA) is unique in its system of governance within the universe of Christian denominations.

Now, it might be supposed without much argument that the most rigidly hierarchical churches of the Christian faith would be the Roman Catholic or perhaps the Eastern (Greek) Orthodox structures. Of the mainstream denominations in America, the next most rigid hierarchical structure would likely be the Episcopal Church, which has its roots in the Church of England. At the base of the hierarchical ladder stand the congregational churches (such as Baptists) which have complete and total control over their own activities and little or no ecclesiastical governance.

**If** it may be said that there is a church which is hierarchical in fact, but situated on the first rung of the hierarchical ladder, it is the Presbyterian hybrid. Put another way and in shorter form, the Presbyterian Church is, as the Court of Appeals has correctly found, hierarchical. Nevertheless, it is hierarchical only because it is not congregational. If it must be within one group or the other, it falls within the hierarchical category, albeit barely within the circumference of the tangent of that circle of organizations. It does not simply follow, however, that because PCUSA is within the hierarchical ambit of religious denominations, and because its Constitution purports to impose a trust over all real estate of its congregations, that this purported

trust provision prevails. Indeed, real property transactions within hierarchical church organizations should, perhaps, be measured or gauged with even greater scrutiny as the organization in its structure approaches the “congregational” end of the spectrum.

In any event, a key question has been, both before the Court of Appeals and before this Court, whether the trust provisions contained in the property section of the PCUSA Constitution received any local assent, either formal or inferential. Neither Timberridge nor Reid Memorial has engaged in any conduct or course of action which could fairly be interpreted as assent to an express or implied Trust in favor of PCUSA.

Furthermore, any suggestion that the question of assent may somehow be determined by any act or omission of a Session of an individual church at a point in time prior to the merger of the Denominations is grossly mistaken. No comment, statement, argument, or other discussion of the effect of the merger upon a church’s real estate could be made before the merger under any provision of the Constitution. The Constitution authorizes and allows for only **one method, post-merger**, for an individual church to make a the property election. The PCUSA, through its Presbytery, should not be heard to argue otherwise. Nor should the Presbytery be heard to say that the exceptions provision of the PCUSA Constitution is unavailing to a given church because it failed to take some ultra-vires act prior to the merger and

the ratification of the Constitution. The clear language of the exceptions provision contemplates that every “opt-out” be made **after** the merger.

Moreover, this Court should not assume that the exceptions provision of the Constitution, with its generous eight-year period for a congregation to opt-out (and the added proviso that the paragraph may not be amended), appeared by accident or natural evolution. That provision of the Constitution was obviously hard-fought, adamantly insisted upon, and cast in the strident language insisted upon by churches which would not have otherwise joined the merger. Importantly, however, to the extent that the inclusion of this strict language in the Constitution reflects any action of certain local churches who would not have otherwise joined the merger, it clearly supports the unassailable conclusion that those local churches at all times intended to preserve their property and their property rights for themselves and to not cede those rights, which they had enjoyed for many decades, to the national denomination. **The exceptions provision says what it says and can be accorded no other meaning.**

#### **IV. Conclusion**

**In conclusion, a church’s assent to a virtual forfeiture of real property interests through a purportedly all inclusive trust clause in a denominational constitution cannot be implied when the constitution itself provides to the**

**contrary in a non-amendable paragraph. This is especially so when it is further shown that the individual church did everything within its power for over a century and a half to establish its independent ownership and control of the real properties it acquired, constructed, and maintained through its own contributions and funding.**

Accordingly, Amicus Reid Trustees respectfully and urgently submits that the decision of the Georgia Court of Appeals should be affirmed in all of its particulars and that the affirming decision should clearly delineate the neutral principles by which similar disputes should be judged.

Respectfully submitted this 31<sup>st</sup> day of October, 2011.

/s/ A. Montague Miller  
**A. Montague Miller, Esq.**  
Georgia Bar No. 506100  
/s/ Thomas W. Tucker  
**Thomas W. Tucker, Esq.**  
Georgia Bar No. 717975  
/s/ John B. Long  
**John B. Long, Esq.**  
Georgia Bar No. 457200  
Tucker, Everitt, Long, Brewton & Lanier  
453 Greene Street  
Augusta, GA 30901  
706-722-0771  
706-722-7028 (fax)  
[mmiller@thefirm453.com](mailto:mmiller@thefirm453.com)

/s/ David E. Hudson  
**David E. Hudson, Esq.**  
Georgia Bar No. 374450  
/s/ Patrick J. Rice  
**Patrick J. Rice, Esq.**  
Georgia Bar No. 603000  
Hull Barrett, PC  
801 Broad Street  
Augusta, GA 30901  
706-722-4481  
706-722-9779 (fax)  
[dhudson@hullbarrett.com](mailto:dhudson@hullbarrett.com)

/s/ Hugh Brown McNatt  
**Hugh Brown McNatt, Esq.**  
Georgia Bar No. 498300  
McNatt Greene & Peterson  
602 Church Street  
Vidalia, Ga 30475  
912-537-9343  
912-537-2658 (fax)  
[hmcnatt@mcnattandgreene.com](mailto:hmcnatt@mcnattandgreene.com)

/s/ John C. Bell  
**John C. Bell, Jr., Esq.**  
Georgia Bar No. 048600  
Bell & Brigham  
457 Greene Street  
Augusta, GA 30901  
706-722-2014  
706-722-7552 (fax)  
[john@bellbrigham.com](mailto:john@bellbrigham.com)

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TIMBERRIDGE PRESBYTERIAN	)	
CHURCH, INC.,	)	
	)	
Appellee.	)	

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**CERTIFICATE OF SERVICE**

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I hereby certify that the foregoing Amicus Brief of the Trustees Reid Memorial Church was served upon all counsel of record by U.S. Mail with adequate postage affixed thereto and addressed as follows:

Robert E. Wilson, Esq.  
Debra A. Golymbieski, Esq.  
**Wilson, Morton & Downs, LLC**  
Two Decatur TownCenter 125  
125 Clairmont Avenue, Suite 420  
Decatur, GA 30030  
*Counsel for Appellant*

Michael C. Kendall, Esq.  
Maureen E. Murphy, Esq.  
**Talley, French & Kendall, P.C.**  
3152 Golf Ridge Blvd., Suite 201  
Douglasville, GA 30135  
*Counsel for Appellee*

David H. Gambrell, Esq.  
Linda A. Klein, Esq.  
John Hinton IV, Esq.  
**Baker, Donelson, Bearman  
Caldwell & Berkowitz, PC**  
3414 Peachtree Road  
Monarch Plaza, Suite 1600  
Atlanta, GA 30326

*Counsel for Amicus Presbyterian Lay Committee*

Chris Cox, Esq.  
Alexandra Fellowes, Esq.  
**Weil, Goshal & Manges, LLP**  
Silicon Valley Office  
201 Redwood Shores Parkway  
Redwood Shores, CA 94605-1175

*Counsel for Amicus Reverend Gradye Parsons*

Forrest A. Norman, Esq.  
**Gallagher Sharp**  
Sixth Floor, Bulkley Building  
1501 Euclid Avenue  
Cleveland, OH 44115

This 31<sup>st</sup> day of October, 2011.

/s/ A. Montague Miller  
A. Montague Miller  
Georgia Bar No. 506100

# FAX COVER SHEET

NORTHEAST GEORGIA PRESBYTERY

To \_\_\_\_\_

Fax No. \_\_\_\_\_

From John ...

Date/Time 9-21

Subject \_\_\_\_\_

Pages 2, including this one

Comments Please let me know if I can

be of further help -

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Action Requested

- \_\_\_\_\_ Call when you receive this
- \_\_\_\_\_ Fax your reply
- \_\_\_\_\_ Please reply
- \_\_\_\_\_ Approve, sign, and fax back
- \_\_\_\_\_ Call if you have questions
- \_\_\_\_\_ For information - no response required
- \_\_\_\_\_ Other \_\_\_\_\_

Exhibit "A"

**CHURCHES HOLDING PROPERTY UNDER  
FORMER PCUS BOOK OF ORDER CHAPTER SIX**

**(By Congregational Vote on Book of Order G-8.0700)**

<b>Church</b>	<b>Date of Vote</b>
Lavonia	September 11, 1983
Monticello	October 30, 1983
Eatonton	November 20, 1983
Madison	May 20, 1984
Lincolnton	May 27, 1984
Ficklen	June 3, 1984
Washington	June 17, 1984
Reid Memorial	July 22, 1984
South Liberty (to PCA 2/3/91)	March 4, 1984
Cliffwood (to PCA 3/2/89)	June 23, 1985
Pleasant Hill	October, 1985
Helen	July 17, 1988
Toccoa First	March 12, 1989
Greene Street	June 11, 1989
Elberton First	September 17, 1989
Gainesville First	October 11, 1989
Greensboro First	October 29, 1989
Commerce	March 18, 1989

**NOTE**

The former Presbyterian Church in the United States Book of Order Chapter Six which governs the above churches is included on the following two pages of the Minute Book.