

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

THE FIRST PRESBYTERIAN CHURCH  
OF THIBODAUX

NO:

SECTION:

VERSUS

THE PRESBYTERY OF SOUTH LOUISIANA  
OF THE PRESBYTERIAN CHURCH (USA)

**MEMORANDUM IN SUPPORT OF  
PETITION FOR DECLARATORY  
JUDGMENT**

**MAY IT PLEASE THE COURT:**

This Memorandum is submitted in support of the Petition of The First Presbyterian Church of Thibodaux for a declaratory judgment.

**I. INTRODUCTION**

The resolution of competing claims to ownership or use of local church property, though largely a matter of state statutory and case law, is guided by decisions of the United States Supreme Court interpreting the religion clauses of the First Amendment to the U.S. Constitution. Those decisions set the guidelines within which state courts are required to operate. Although Part III will discuss the law at greater length, a brief introductory discussion of the “neutral principles of law” method approved by the U.S. Supreme Court and subsequently adopted by the Louisiana Supreme Court will aid the court in assessing the significance of the facts of this case set out in Part II.

In Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1871) the U.S. Supreme Court held that the Constitution does not prohibit civil courts from deferring to the decisions on church property disputes made by the highest ecclesiastical tribunals to which the matter may have been appealed in a hierarchical denomination<sup>1</sup> (usually the diocese in an Episcopal church, the conference in a

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<sup>1</sup> There are numerous forms of church governance. At one end of the spectrum there are wholly autonomous local congregations under a “congregational” form of government (e.g., Baptists). At the other end of the spectrum is a strictly hierarchical, vertical line of authority — from priest to bishop to cardinal to pontiff (e.g., the Roman Catholic Church). In between, there are numerous gradations or intermediate forms. The U.S. Supreme Court, however, has adopted a two-fold classification: congregational or hierarchical. The PCUSA and its predecessor denominations are “Presbyterian” in government, a form which is neither wholly congregational nor strictly hierarchical. With respect to internal, ecclesiastical matters, Presbyterians divide authority between ascending ecclesiastical bodies or “courts” of session, presbytery, synod, and general assembly. The governing body of a local Presbyterian church is its board of elders, called a “session” by Presbyterians. A local Presbyterian church that has incorporated also has a board of directors or trustees of the local church corporation. For corporate and

Methodist church, or the presbytery in a Presbyterian church). This constitutionally-approved method was deemed permissible, but was not mandatory. States were left free to adopt other methods for resolving church property disputes, such as statutory schemes — so long as the method chosen did not require civil courts to impermissibly base their decisions on religious concepts or on interpretations by civil courts of religious doctrine.

The hierarchical method remains operative in a minority of states today, but it tends in usual practice to favor national denominations to the disfavor of local congregations — a not surprising result given that the ecclesiastical tribunals which decide such matters are created and controlled by the very denominations claiming ownership or use of local church property. Some courts have noted that such one-sided favoritism resulting from civil court deference to denominational authorities was effectively a state establishment of the hierarchical denomination's religion, prohibited under state and federal constitutions.

Recognition of this problem inherent in the hierarchical method eventually led to the approval by the United State Supreme Court of still another method, the “neutral principles of law” method, which now governs resolution of church property disputes here in Louisiana. In Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) the U.S. Supreme Court first said that the neutral principles of law method was also a constitutionally permissible, alternative approach to resolving church property disputes.

Ten years later, in Jones v. Wolf, 443 U.S. 595 (1979), the U.S. Supreme Court elaborated on the meaning of neutral principles of law and advocated its adoption by the states. Under the neutral principles of law method, courts do not merely defer to ecclesiastical decisions. Instead, courts consider the language in religious documents like denominational constitutions but are not to use religious concepts in interpreting them or give undue deference to those religious documents. Further, courts are to undertake examination of all of the property-related documents which may bear on the question of consent and mutual intent — specifically,

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property matters Presbyterians function in a more congregational than hierarchical manner, consistent with Presbyterian denominational constitutions, Presbyterian history and custom, local articles of incorporation, and state law. In those states that follow the hierarchical deference rule for hierarchical denominations, proper characterization of the denomination involved is of threshold importance. However, in states which follow the neutral principles of law method, like Louisiana, characterization of the denominational governance structure does not dictate outcome.

language in the local property deeds at issue, the local church’s corporate charter or articles of incorporation, local resolutions, minutes, or correspondence, and any other evidence relevant to asserting mutual intent and the relationship between the parties.

Because of the importance of Wolf to the present controversy, its key, explanatory passages are excerpted:

**[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. ... As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. ... Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, “a State may adopt any one of various approaches for settling church property disputes as long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.**

At least in general outline, we think the “neutral principles of law” approach is consistent with the foregoing constitutional principles. ...

**The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties ...**

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This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method ... requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.

Jones v. Wolf at 602-604 (citations omitted).<sup>2</sup>

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<sup>2</sup> The Wolf court’s emphasis on mutual intent is seen in its instruction that civil courts should give effect to the result “indicated by the *parties*”. Id at 606 (emphasis added). The emphasis on mutual intent also can be seen by Wolf’s suggested alternative to amending denominational constitutions: “They (local churches) can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church.” Id (parenthesis added). As for the U.S. Supreme Court’s other suggested means of potentially obtaining clarification of church property status, amendment to denominational constitutions, Wolf apparently presumed that an amendment to a denominational constitution would necessarily involve local ratification by the other party. As explained in Part II, though, in the PCUSA the process of amending the denominational constitution, the Book of Order, does not involve vote by the other party, the title holder to local property.

The neutral principles of law method was subsequently adopted by the Louisiana Supreme Court in Fluker v. Hitchens, 419 So.2d 445 (La. 1982). In adopting this method, Louisiana went further than the United States Supreme Court by holding that adoption of the neutral principles approach was constitutionally *required* by Article I, Section 8 of the Louisiana Constitution (1974) (and, in the view of the Louisiana Supreme Court, by the First Amendment to the United States Constitution). The Court in Fluker said:

**Indeed, we think the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment in Article I, Section 8 of our state constitution *necessitate* our adoption of the “neutral principles” approach. Whatever authority or hierarchical organization may have over associated local churches is derived solely from the local church’s consent. Refusal to adjudicate its feud over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants or religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy’s religion.**

Fluker v. Hitchens at 445 (emphasis supplied), citing A. Adams and W. Hanlon, Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment, 128 U. Pen. L. Rev. 1291 (1980). C.f. Hargrave, Louisiana Constitutional Law, 42 La. L. Rev. 596 (1982).<sup>3</sup>

## **II. FACTS**

With neutral principles of law in mind to determine mutual intent, we turn to the facts of the present case.

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State court decisions throughout the United States, discussed in Part III, which have applied neutral principles make it clear that amendment to denominational constitutions to add express trust language is not by itself determinative. Courts following neutral principles of law consider many factors in determining the mutual intent of the parties, which intent must be reflected in some form acknowledged in the law as binding.

<sup>3</sup> Although the neutral principles of law method, and not the hierarchical method, is applicable in Louisiana and, as elsewhere noted, Louisiana law only recognizes express, statutory trusts, Watson v. Jones is noteworthy for its rejection of any argument that an implied trust arises from the text of Presbyterian denominational constitutions. Watson, in addition to making adoption of the hierarchical method permissible (a choice Louisiana has rejected in favor of neutral principles), also made clear that in Presbyterianism an implied property trust over local property does not inherently attach either in favor of a simple majority of the congregation or in favor of whatever party adheres to the general body, i.e., in favor of the national denomination. Watson noted that both contentions had long ago been rejected, in the seminal case of Craigdallie v. Aikman, 2 Bligh, 529; 1 Dow., 1 (Scotland, 1813), which decision had been subsequently "accepted in all cases of this nature in England, Scotland and America." Watson at 703-705. See also, Jones v. Wolff at 600, quoting Hull on remand, Presbyterian Church v. Eastern Heights Church, 225 Ga. 259, 167 S.E.2d 658 (1969) (Presbyterian Church II) (following review of the PCUS Book of Church Order the Georgia Supreme Court found "nothing that would give rise to a trust in any of these documents ...").

## A. DENOMINATIONAL PROVISIONS

Defendant Presbytery of South Louisiana (“PSL”), first formed in 1973, is a regional administrative unit for the Presbyterian Church (USA) (“PCUSA” or “denomination”, an entity first formed in 1983). PSL is domiciled in East Baton Rouge Parish. The PCUSA currently has approximately 11,000 member churches located throughout the United States, including the State of Louisiana and East Baton Rouge Parish.

The PCUSA was formed in 1983 upon the merger of the Presbyterian Church in the United States (hereinafter the “PCUS” or the “southern church”) and the United Presbyterian Church in the United States of America (hereinafter the “UPCUSA” or the “northern Church”). Prior to the formation of the PCUSA, First Presbyterian Church was affiliated, according to its 1910 Articles of Incorporation, with the PCUS and its-then Presbytery of Louisiana. Upon formation of the PCUSA, the PCUS and the UPCUSA ceased to exist as separate denominations, and the Presbytery of Louisiana (subsequently re-formed as the Presbytery of South Louisiana) ceased being an administrative unit of the PCUS and became an administrative unit of the PCUSA.<sup>4</sup>

The Constitution of the PCUSA consists of two parts, the Book of Confessions and the Book of Order. The Book of Confessions contains doctrinal statements. The Book of Order pertains to church governance or polity and divides itself into three main sections: the Form of Government, the Directory of Worship and the Rules of Discipline. The provisions in the

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<sup>4</sup> The Presbytery of South Louisiana was first formed in 1973. When First Presbyterian Church was first organized in 1827 it was part of the Presbytery of Mississippi, Synod of Kentucky (which included all of the territory from which the states of Alabama, Arkansas, Louisiana, Mississippi and Texas were later formed). Subsequently, First Presbyterian Church became part of the Amite Presbytery, Synod of Mississippi. In 1836 the name “Amite Presbytery” was changed to “Louisiana Presbytery”. In 1901 the Synod of Mississippi was divided and a new Synod of Louisiana was organized with three presbyteries: Louisiana, Orleans and Red River. In 1973 the Louisiana and Orleans presbyteries were merged to form the Presbytery of South Louisiana.

These various presbyteries and synods were regional administrative units of broader Presbyterian bodies or denominations. The first formal organization in the United States of the few scattered Presbyterian churches occurred in 1706 in Philadelphia, at which time the Presbytery of Philadelphia was formed. In 1717 the Synod of Philadelphia was organized with four presbyteries. In 1837 a division occurred over doctrinal questions and American Presbyterianism was divided into two main branches known as the “Old School” and the “New School”. Continued controversy led to the withdrawal of the churches in the South in 1861, at which time the Presbyterian Church in the Confederate States of America was organized. In 1865 the General Assembly of that denomination changed its name to the Presbyterian Church in the United States (PCUS), with which First Presbyterian Church was affiliated until 1983.

PCUSA Constitution relating to property are found in the Form of Government of the Book of Order, Chapter VIII, G-8.000 – G-8.700 (Exhibit 6).

The PCUSA Book of Order includes a clause, G-8.0201, which asserts that, “All property held by or for a particular church ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA).” As noted, the purported effect of this provision, if legally enforceable under the laws of the State of Louisiana and the facts presented, is to require permission from the PSL in order for petitioner to disaffiliate from the PCUSA and remain in control over the use of property, and the improvements thereon, titled in petitioner’s name.

It was only in the year immediately prior to the 1983 formation of the PCUSA that the PCUS Book of Church Order was amended (reportedly) to add express trust clauses, in Section 6-1, Section 6-2 and 6-3, which first appeared in the 1982/1983 edition of the PCUS Book of Church Order.<sup>5</sup> (Exhibits 7 and 10)

The PCUSA Book of Order also contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that only a presbytery has authority to sever the relationship between a particular church and the PCUSA, that in the event of a split (“schism”) within a particular church which the presbytery is unable to reconcile, the presbytery shall determine which faction is the “true church” within the PCUSA and thus purportedly entitled to the local property. G-8.0600 further asserts that in making this determination, the presbytery is not bound by whichever faction receives the majority vote within the particular church at the time of a split. The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (6-5).

G-8.0301 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be “held, used, applied, transferred, or sold as provided by the presbytery.” The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (G-4).

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<sup>5</sup> These three trust clauses are ambiguous and are of uncertain meaning. Sections 6-1 and 6-2 of the 1982/1983 edition of the PCUS Book of Church Order assert that a particular church holds title to property in trust for *both* the benefit of the particular church (“the corporation” in 6-2) *and* the denomination, which are mutually exclusive propositions. Section 6-3 asserts a trust only in favor of the denomination. The trust asserted in 6-3 includes property held *by* a particular church, but 6-1 and 6-2 already assert a trust for such property — but one which runs in favor of the local church as much as in favor of the denomination. Therefore, the only thing which 6-3 appears to add is an asserted trust in favor of the denomination only for property held *for* (but not by) a particular church. Whatever their meaning, the existence of these PCUS trust clauses, added suddenly just before the PCUS ceased to exist, was and is largely unknown to rank and file Presbyterians in local church pews.

Although G-8.0501 of the PCUSA Book of Order states that the written permission of the presbytery is required before a particular church can sell, mortgage or otherwise encumber any of its real property, the provisions of the constitution with which First Presbyterian Church of Thibodaux was previously subject immediately prior to the formation of the PCUSA, the 1982/83 edition of the PCUS Book of Church Order, did not contain a similar provision but, to the contrary, provided at 6-8 that, “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.”

G-8.0700 of the PCUSA Book of Order sets forth an exemption from the provisions of Chapter VIII of the PCUSA Book of Order by providing that no particular church of the PCUSA shall be bound by any of the foregoing provisions (in Chapter VIII) if it was not previously subject to a similar provision in the denomination of which it was a part before the creation of the PCUSA — as long as that congregation, within a period of eight years following the establishment of PCUSA, votes to exempt itself from such provision. In the event of such timely vote a particular church “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 USA”.

Section G-7.0401 of the PCUSA Book of Order states that, “Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained.” The PCUS Book of Church Order also contains clauses authorizing and encouraging incorporation (6-1, 6-2 of the 1982/1983 edition). The PCUSA Book of Order not only mandates incorporation where permitted by civil law but also provides, at G-7.0402, that the corporation so formed shall be the title holder of record of the local church property. (Exhibit 11)

The PCUSA Book of Order and former PCUS Book of Church Order do not require that a local church corporation be identified with the denomination in the text of its articles of incorporation, nor require inclusion of the name of the denomination (PCUS or PCUSA) in its corporate name.

The PCUS Book of Church Order did not require, nor does the PCUSA Book of Order require, that the text of any property deeds include trust clauses in favor of a national denomination, nor do they otherwise require referral, mention, or inclusion of a national denomination such as the PCUS or PCUSA in the name or identity of the title holder to property.<sup>6</sup>

The PCUSA Book of Order sets forth “Historic Principles of Church Order” which state at G-1.0301(1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the power of civil courts. G-1.0301(1) states:

- (a) That “God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.”
- (b) Therefore we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for production and security, and at the same time, be equal and common to all others.

Part I of the constitution of the PCUSA, the Book of Confessions, sets forth the principle that the collective organization or gathering (communion) of Christians under a Presbyterian form of government should not burden or infringe individual property rights. The Westminster Confession of 1647, included in the Book of Confessions, states at 6.148, “Nor doth their communion one with another as saints, take away or infringe the title or property which each man hath in his goods and possessions.”

According to the constitution of the PCUSA, ecclesiastical authority, instruction and rules are derived from Scripture, as guided first by the Book of Confessions, and derived only secondarily by the Book of Order.

Additionally, as noted above, G-1.0301 of the PCUSA Book of Order expressly states that the provisions of the denominational constitution are not to be enforced by the civil power

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<sup>6</sup> In mandating local church incorporation when permitted by civil law, the PCUSA and its regional body, the PSL, has acknowledged that property matters are **not** governed exclusively by the trust or ownership provisions asserted in the PCUSA Constitution but instead are determined in accordance with the laws of the state in which the property is located. The PCUSA has expressly acknowledged this in its Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches 2000-2003 (“Almost all property matters are governed by state law ...”). G-9.0102 of the PCUSA Book of Order further distinguishes the spiritual realm from civil authority by providing, “Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction”.

of the state. The PCUSA's Book of Order provisions asserting a trust over local church property and a right to determine ownership of local church property are thus merely hortatory, simply a proclamation of the ecclesiastical preferences of those who voted to insert such provisions into the Book of Order. They cannot by themselves suffice to create property rights absent the use of ordinary civil means under state law for creating and documenting trusts or other property rights.

The foregoing denominational provisions reflect a confusing and ambiguous denomination intent (or at least denominational desire, for the PCUSA has acknowledged in its own Legal Resource Manual and constitution that property matters are governed by state law which may not coincide with denominational ambitions). The PCUSA constitution itself acknowledges that the authority of the PCUSA is ecclesiastical only and does not extend to civil matters, and that the power of the state, acting through its courts, is not to be used to enforce the text of the denominational constitution, including its property provisions. Therefore, enforcement of any denominational claim to a trust or ownership interest must be founded, if it is to be founded at all, on the observance of state law pertaining to the creation of a civil trust or ownership interest. (Exhibits 6, 11 and 12)

For the other side of the coin of required *mutual* intent, we must turn to the particular facts relating to First Presbyterian Church of Thibodaux.

## **B. THE LOCAL CHURCH PROVISIONS**

First Presbyterian Church of Thibodaux, Louisiana was founded on June 6, 1847. It was first incorporated as a Louisiana nonprofit corporation on December 17, 1904, for a term of 99 years (the 1904 corporation). In 2007 the members of the Church and 1904 corporation, reincorporated and adopted new Articles of Incorporation for the First Presbyterian Church of Thibodaux at a duly called congregational/corporate meeting on January 28, 2007, which Articles were then filed with the Louisiana Secretary of State on June 21, 2007 and recorded with the Clerk of Court, Parish of Lafourche, on July 3, 2007 (The "2007 Articles" or "2007 Articles of Incorporation")

All immovable property owned and held by the 1904 corporation were acquired in various acts of transfer (donations or acts of sale) variously dated: September 27, 1926; January 16, 1939 (2); August 21, 1952; June 12, 1954 (2); January 31, 1974; September 1, 1989; August

2, 2002; and by legacy from the succession of Charles B. Gilbert (Probate #8231), said property being more fully described in Exhibit 3 submitted herewith.

All acquisitions of immovable or real property and any moveable property, owned and held by First Presbyterian Church of Thibodaux, and all improvements thereon, whether corporeal or incorporeal, movable or immovable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by the members of the local (i.e., particular) Church, or by donations made to First Presbyterian Church of Thibodaux, Louisiana, with the clear understanding that the property and improvements were and would continue to be owned and held by the local Church, whether unincorporated or incorporated as First Presbyterian Church of Thibodaux, Louisiana or First Presbyterian Church of Thibodaux. No financial contributions or donations were made by the PSL, the PCUSA or any predecessor denomination. Said property includes:

A. All of that immovable property, together with all buildings, improvements, servitudes, mineral rights and other appurtenances related thereto, described on Exhibit A and Exhibit "B" hereto, including particularly all mineral rights, mineral servitudes, mineral leases and mineral royalties affecting and/or arising from any and all of the properties described on Exhibit "A" and Exhibit "B" (Exhibit 3).

B. Any and all movable property of Grantor, wherever located, including all of the furniture, fixtures and equipment, contract rights, general intangibles, monies, stocks, and bank accounts. Exhibit C (Exhibit 5)

All real properties owned and held by First Presbyterian Church of Thibodaux were originally titled in, and at all times have remained titled in, the name of the local church only, and do not mention or refer to a national denomination such as the PCUSA nor contain any language creating or accepting any trust over said property in favor of a national denomination or any of its regional administrative units such as the PSL. Said property has continuously been so titled in the public records of the Parish of Lafourche, State of Louisiana. (Exhibit 3)

As a result of the lapse of the chartered incorporation of First Presbyterian Church of Thibodaux, Louisiana, the members of the Church, who were also the members of the 1904 corporation, decided to form a new nonprofit corporation on January 28, 2007, which ultimately led to the formation of the plaintiff corporation the First Presbyterian Church of Thibodaux.

Further, the members of the Church, the members of the 1904 corporation, approved and authorized the transfer of all of the assets of the 1904 corporation to the plaintiff herein as set forth in a resolution of the members adopted on April 1, 2007 a copy of which is attached to the Act of Conveyance referred to below.

Pursuant to said consent/authorization of the members, the 1904 corporation and the Church transferred all of its (their) assets to the plaintiff, FPCT, by Act of Conveyance dated July 25, 2007, recorded in the conveyance records of Lafourche Parish on July 27, 2007, in Conveyance Book 1703, page 343, as File No. 1030996. A copy of said Act of Conveyance is submitted herewith, along with the member consent authorizations, as Exhibit 4.

For 135 years, from the time First Presbyterian Church of Thibodaux was founded in 1847, and continuously throughout its existence until 1982, no denomination of which it was affiliated contained a trust, express or implied,<sup>7</sup> in the denominational constitution. A trust clause, if validly created and enforceable under Louisiana law, would mean that First Presbyterian Church of Thibodaux would need the permission of the PSL before it could disaffiliate from the PCUSA and maintain control over the use of the local church property.

The process whereby trust clauses (6-1, 6-2 and 6-3 of the 1982/1983 edition of the PCUS Book of Church Order and G-8.0201 of the 1983 PCUSA Book of Order) were adopted did not include a vote by First Presbyterian Church of Thibodaux, which is the owner and titleholder of record. Instead, the process involved: a) participation by commissioners (voting delegates) to the General Assembly, which commissioners are chosen by the regional bodies (the presbyteries) in whose favor the asserted trusts would operate, and b) participation by presbyters

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<sup>7</sup> See, G.A. Actions on Church Property from the PCUS, PCUSA, UPC and PC(USA), and 1983 Report of the Ad Interim Committee on the Study of the (PCUS) Book of Church Order. The absence of an implied trust in the PCUS constitution (with which FPCBR was affiliated prior to the 1983 formation of the PCUSA) was noted by the U.S. Supreme Court in Jones v. Wolf, supra. Wolf reviewed a prior case, Hull, supra, and its eventual disposition on remand to the Georgia Supreme Court. On remand, the Georgia Supreme Court applied the “neutral principles of law” method and examined the deeds to the disputed property, Georgia state statutes dealing with implied trusts, and the PCUS Book of Church Order. After this review the Georgia Supreme Court found “nothing that would give rise to a trust in any of these documents ...”. Jones v. Wolf, 443 U.S. 595, at 600. citing Presbyterian Church v. Eastern Heights Church, 225 GA 259, 1675 E.2d 698 (1969) (Presbyterian Church II). State Supreme Courts in two other states, Pennsylvania and New York, have likewise concluded that no implied trust was contained in the constitution of the UPCUSA (the other denomination which merged with the PCUS to form the PCUSA). See The Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317 (Pa. 1985), and First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States, 62 N.Y.2d 110, 464 N.E.2d 454 (1984).

(voting delegates) meeting in the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, presbyters are not required under Presbyterian polity to act in a representative capacity on behalf of those congregations.

Following initial approval by commissioners to the General Assembly, the new clauses asserting trusts were adopted into the denominational Constitutions upon ratification by a requisite number of presbyteries — *irrespective* of whether or not the Presbytery of South Louisiana, acting through its then-presbyters, voted in favor of ratification.

First Presbyterian Church of Thibodaux timely exercised the exemption of G-8.0700 of the PCUSA Book of Order by a congregational vote at a regularly called meeting on September 9, 1990. Whatever the technical result of such vote might be under the PCUSA's Book of Order's labyrinth-like provisions, the actual understanding and express intent of the local congregation was that by timely exercising its exemption prerogatives it would remain in full ownership and control of all local property, as indicated in the resolution and church minutes surrounding the congregation's exemption vote. (Exhibit 8)

Following unanimous congregational approval of the September 9, 1990 motion, the minutes of that congregational meeting were signed by the senior minister and clerk of session and timely submitted to the PSL which, pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, were accepted without objection by the PSL in affirmation that said proceedings were “regular and in accordance with the (denominational) Constitution” and were “prudent and equitable”. (Exhibit 9)

The June 6, 1847 local church minutes state it was established at the initiative of and by individual residents of Thibodaux, Louisiana, who then voluntarily placed themselves under the pastoral care of the (former) Presbytery of Louisiana. No mention is made in this founding document of specific denominational affiliation, but in any event the local church in Thibodaux would have been associated at the time with a pre-cursor not only to the PCUS, formed in 1865, but with a precursor to the Presbyterian Church in the Confederate States of America. See footnote 3. As elsewhere noted, no denomination with which FPCT has ever been affiliated had trust language in its constitution prior to the unilateral addition in 1982.

The 1904 Articles of Incorporation grant, in Articles I and III, full right and exclusive power in all property matters, and expressly state that the board of Trustees of the local church corporation “shall have full power and control generally of all property belonging to the said corporation”. Said powers are not made subject in the 1904 Articles to the provisions of any denominational constitution.

In light of the expiration of its 1904 Articles, the 2007 Articles of Incorporation of First Presbyterian Church of Thibodaux were adopted to remove anachronistic language and to conform to developments in corporate law, such as providing for perpetual existence and the indemnification of officers. No mention of denominational affiliation (PCUS or PCUSA) is included. These 2007 Articles were unanimously adopted at a duly called and noticed meeting of the members of the corporation held on January 28, 2007, which amended and restated Articles were subsequently filed and recorded with the Louisiana Secretary of State on June 21, 2007, and in the records of the Clerk of Court, Lafourche Parish, on July 3, 2007. The 2007 Articles have at all times been available to the PSL pursuant to G-9.047 – 9.0409 of the PCUSA Book of Order.

The 2007 Articles contain no provision accepting a trust, express or implied, over local church property in favor of a national denomination. Article II of the 2007 Articles of Incorporation vest full power and authority in the board of trustees of the local church corporation to receive, hold, encumber, manage, transfer property, real or personal, for the Church (defined as the First Presbyterian Church of Thibodaux), and to accept and execute deeds of title to such property, to have and exercise all other incidents of ownership without limitation on behalf of the Church ... Said powers are not made subject in the 2007 Articles to the provisions of any denominational constitution.

In accordance with the provisions of Louisiana Nonprofit Corporations Law, Article IV of the 2007 Articles of Incorporation provides that, in addition, the identity of the Corporation, the ownership of the Corporation’s assets, and the right to use of the name First Presbyterian Church of Thibodaux and/or the name First Presbyterian Church of Thibodaux, shall be determined at a duly noticed annual or special meeting of the members by a two-thirds vote of the members present and voting.

At no time has the congregation of the Church, the members of the 1904 corporation, the 2007 corporation, nor the members of the First Presbyterian Church of Thibodaux, its governing body (the session) or the governing bodies of its local church corporations (the board of trustees) ever concurred in, accepted or otherwise indicated acquiescence to the denomination's assertion of a trust over local church property nor any denominational claim to determine ownership of property titled in the name of the local church corporation or of any improvements thereon. At all times the congregation, the session, and the board of trustees have affirmed and reaffirmed their understanding and intent that all property held by the corporation known as "The First Presbyterian Church of Thibodaux", and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held by it in full and complete ownership in accordance with its articles of incorporation, and that none of said property is held in trust for the use and benefit of a national denomination or any regional administrative unit such as the PSL.

The laws of the State of Louisiana, Chapters 1 and 2 of Louisiana Trust Code, R.S. 9:1721, et seq., set forth the exclusive requirements for the creation of a valid trust enforceable in Louisiana. The actions of the Church, the 1904 and 2007 corporations and First Presbyterian Church of Thibodaux, and its property-related documents recited herein, preclude a finding of any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana, as explained in Part III, below.

### **III. LAW AND ARGUMENT**

#### **A. LOUISIANA**

A survey of Louisiana caselaw involving church property discloses several reported decisions that are either not relevant (i.e., they do not address questions of ownership, trusts, revocability, or disaffiliation) or they predate Wolf and the 1982 Louisiana Supreme Court decision in Fluker which adopted the Wolf-authorized "neutral principles" method. Discussed below, then, are the benchmark decision in Fluker and, with the exception of one instructive Third Circuit decision, the pre and post-Fluker decisions of the Louisiana First Circuit Court of Appeal.

Fluker Community Church v. Hitchens, 419 So.2d 445 (La. 1982), is noteworthy for its express adoption of Wolf to apply neutral principles of contract and property law to resolve Louisiana church property disputes, and for its emphasis on the specific language in the property deed involved. At issue was an unincorporated association that functioned for many years as a freestanding religious congregation (society), eventually affiliated with the African Methodist Episcopal Church, and subsequently chose by majority vote to disaffiliate. In a brief opinion, the Louisiana Supreme Court concluded that under the circumstances presented the text of the A.M.E. Discipline (the denominational constitution) *and* the property deed overcame the Louisiana presumption of majority rule, such that the minority faction loyal to A.M.E. had the right to control the actions of the titleholder to the tract of land at issue and hence had the right to determine the use of the tract.

Actual ownership of the property involved was not at issue; both sides concurred in the validity of the deed which placed title in the local congregation represented by the majority. Because ownership of the property was not contested, there was no occasion for the court to address the comparative rights of the local congregation versus the parent denomination. The validity of any trust under the Louisiana Trust Code was thus not an issue.

The deed expressly titled the property in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana” (emphasis added by the Louisiana Supreme Court). The Louisiana Supreme Court thus ruled that the local Fluker church had acted exclusively in its capacity as an “A.M.E.” church when it acquired the land. The specific provisions of the A.M.E. Discipline concerning disaffiliation or abandonment therefore was said to reflect the intention of the parties and controlled, allowing the minority faction of the local congregation to control the actions of the majority faction title holder with respect to the use of the tract.<sup>8</sup>

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<sup>8</sup> LeBlanc v. Davis, 432 So.2d 239 (La. 1983) is the only other Louisiana Supreme Court case found which cites Fluker to apply neutral principles to resolve a church dispute. At issue, however, was the dismissal of a pastor rather than a dispute over contested property. The only First Circuit post-Fluker decision reported is Thomas v. Craig, 424 So.2d 1090 (La. App. 1<sup>st</sup> Cir. 1982). At issue was a dispute in governance between the pastor and the board of deacons. The reported decision does not address a specific controversy over property. The First Circuit acknowledged, though, the jurisdictional distinction between ecclesiastical matters and neutral principles of law, citing Katz v. Singerman, 241 La. 103, 127 So.2d 515 (1961); Wilkerson v. Battiste, 393 So.2d 195 (La. App. 1<sup>st</sup> Cir. 1980), and; Bourgeois v. Landrum 396 So.2d 1275 (La. 1981).

The only germane post-Wolf, post-Fluker Louisiana opinion found outside the First Circuit is Bethany Independent Church v. Stewart, 645 So.2d 715, 93-1252 (La. App. 3<sup>rd</sup> Cir. 10/5/94), writ denied, 649 So.2d 421, 94-2967 La. 2/9/95. At issue was a local congregation's disaffiliation from its denomination, The Cumberland Presbyterian Church. Following disaffiliation, the local church re-named itself Bethany Independent Church. The court ruled that the property of the local, unincorporated Presbyterian church belonged to the national denomination. Like Fluker, the court sought to ascertain the intent of the parties before the dispute arose.

Applying neutral principles it found that the presumption of rule-by-majority, normally applicable to nonprofit, unincorporated associations under La. R.S. 9:1051, had been overcome by the text of property regulations in the denomination's 1984 Confession of Faith (the denomination's constitution) because the statute had not been properly followed. The court concluded, "it was the intention of the parties, agreed upon before the dispute arose, to be bound by the provisions of the Confession of Faith, 1984, including those provisions relative to property". Bethany at 722. The validity under Louisiana's Trust Code of "held in trust" language was apparently not raised by the parties and not addressed by the court.<sup>9</sup>

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<sup>9</sup> There are a limited number of pre-Wolf, pre-Fluker Louisiana decisions. First Methodist Protestant Church of Baton Rouge v. First Congregational Methodist Church of Baton Rouge, 184 So.2d 265 (La. App. 1st Cir. 1966), rehearing denied 4/4/66; writ refused 6/7/66, pre-dates Wolf by 13 years and Fluker by 16 years. At issue was a dispute over legal title between two Methodist factions. The court used "neutral principles" (without referring to them as such) to examine the denominational Book of Discipline and local articles of incorporation. The facts are unique. Prior to the purported sale of church property by a dissonant local congregation, the Mississippi Conference had declared the petitioner/seller church to be extinct, with the property thus reverting for an interim period to the mother church pursuant to the Book of Discipline. Subsequently, however, the petitioner church was "reactivated" and full title was again vested in the First Methodist congregation. The dissonant faction, the First Circuit ruled, was thus without authority to sell. The legal dispute over property ownership was actually between two separate, local Methodist congregations, and the Conference was not a party to the suit. In affirming the trial court's dismissal of one faction's exception of nonjoinder of an indispensable party, the court ruled that at the time suit was filed the Mississippi Conference "had no claim or interest in the property in question". First Methodist at 268. The validity of any trust under the Louisiana Trust Code was thus not an issue.

Louisiana District, Church of the Nazarene v. Church of the Nazarene, 132 So.2d 667, (La. App. 1st Cir. 1961) was an action by a parent church corporation, Louisiana District Church of the Nazarene, to be declared owner of real property standing in the name of its local or subordinate corporate member, the Bible Holiness Church of Ponchatoula (formerly Church of the Nazarene, Ponchatoula, Louisiana). The parent corporation's claim to ownership rested on the alleged subordinate corporation's withdrawal from the parent church without the parent's consent, in alleged violation of the parent church's governing constitution, the Manual of the Church of the Nazarene. The First Circuit relied heavily on the provisions of the Manual and decided in favor of the parent church, following the "hierarchical theory" set forth in Watson v. Jones, 13 Wall. 679, 80 U.S. 674, 20 L.Ed. 666 (1871). Church of the Nazarene is of dubious validity after Fluker.

The facts in First Presbyterian Church of the City of Baton Rouge v. The Presbytery of South Louisiana, Suit No. 547025; Section 22 (Judge Timothy Kelley) (filed on September 6, 2006) are strongly analogous. First Presbyterian Church of Thibodaux (FPCT) was founded in 1847. First Presbyterian Church of Baton Rouge (FPCBR) was founded in 1828. Both churches were thus founded long before the denominations with which they are presently affiliated came into existence. Prior to 1982, when the PCUS unilaterally added express trust language to its denominational constitution, at no time was either church ever affiliated with any denomination that contained a trust, express or implied, in its denominational constitution. Subsequent to the adoption of express trust language in the PCUS and PCUSA constitutions, neither FPCBR or FPCT amended their articles of incorporation or deeds to acknowledge or accept any trust claim over local property. At all times the property of both churches has been titled exclusively in the name of the local church only, without reference to or mention of any specific national denomination. For both churches, all property had been donated to the local congregation only or acquired by the local congregation through the contributions of its individual members only, without denominational financial support.

Additionally, both FPCBR and FPCT timely exercised the exemption provision in Chapter VIII of the PCUSA Book of Order under circumstances clearly indicating a congregational intent to maintain full local ownership and control of local property in the local church corporation only, which property at all times had been titled exclusively in the name of the local church without any mention of denominational affiliation.

In response to the suit filed by First Presbyterian Church of the City of Baton Rouge, and under salient facts identical to those now presented by FPCT, the PSL stipulated to a final judgment declaring that all property held by or for FPCBR was held exclusively by it without any third party interest, in trust or otherwise, attaching thereto in favor of the PCUSA or any of its regional administrative units such as the PSL. A copy of the final judgment to which the PSL stipulated is submitted herewith. (Exhibit 13) From this stipulated judgment neither a civil appeal by a putative intervenor nor an ecclesiastical appeal was taken.

In addition to Louisiana jurisprudence, Louisiana statutory law is relevant. The laws of the State of Louisiana, Chapters 1 and 2 of Louisiana Trust Code, R.S. 9:1721, et seq., set forth

the exclusive requirements for the creation of a valid trust enforceable in Louisiana. The actions of First Presbyterian Church, and its property-related documents, preclude finding any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana. **None** of the following nonexclusive list of particulars has been satisfied with respect to any property held by and titled to the First Presbyterian Church of Thibodaux:

- a) An inter vivos (nontestamentary) trust must be by authentic act or by act under private signature in the presence of two witnesses, duly acknowledged by the settlor or by affidavit of one of the attesting witnesses (§ 1752);
- b) It must clearly appear that the creation of a trust is intended (§ 1753);
- c) A trustee must be either a natural person with capacity to contract or a bank or trust company organized under Louisiana federal law and domiciled in Louisiana (§ 1783);
- d) If an inter vivos trust includes immovables or other property that title to which must be recorded in order to effect third parties, a trustee shall file the trust instrument for record in each parish in which the property is located (§ 2092);
- e) Trusts for charitable, benevolent or eleemosynary purposes, whether express or implied, are defined as only those where all or a substantial part of the corpus thereof shall have been contributed by the local beneficiaries, who are those who shall have contributed (or whose predecessor beneficiaries shall have contributed) all or a substantial part of the corpus of the trust and who shall locally, immediately and directly enjoy the benefits of the trust (§ 2281).<sup>10</sup>

## **B. OTHER JURISDICTIONS**

Although the matter before the court is governed by Louisiana law as bound by federal constitutional principles, recent jurisprudence from other states addressing the same issues offer helpful and illuminating guidance. Relevant cases from New York, California, Maryland,

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<sup>10</sup> The Louisiana requirements for the valid creation of a trust are particularly stringent, a legacy of Louisiana's civilian heritage. The report by the Law Institute which accompanied the revisions to the Louisiana Trust Code proposed in 1964 explained that, unlike the English common law which recognized implied trusts, the law of Louisiana did not recognize any private trusts prior to 1920. Only in 1920 did the Louisiana legislature first authorize the creation of any kind of trust in Louisiana. Louisiana's earlier prohibitions of any kind of trust, and its present stringent requirements, harken back to Art. 1520 of the Civil Code of 1825 and 1808 which prohibited such "substitutions and fideicommissa", a prohibition which had antecedent authority in Art. 896 of the Code Napoleon. See, Report by the Louisiana Law Institute, Prec. R.S. 9:1721. The Louisiana Trust Code precludes any kind of non-statutory, implied trust (except those where all or a substantial part of the corpus had been contributed by the local beneficiaries who locally, immediately, directly enjoy the benefits of the trust). See R.S. 9:2281. The Louisiana Trust Code also prohibit(s) express trusts that do not conform to the Louisiana statutory requirements.

Pennsylvania, and Texas are briefly reviewed. Copies of the cases cited are collected in the Exhibits submitted herewith. (Exhibit 14)

### **1. New York**

In The Presbytery of Hudson Valley of the Presbyterian Church (USA), et al v. The Trustees of The First Presbyterian Church and Congregation of Ridgebury, et al (S. Ct. – State of New York, IAS Part – Orange County, Index No. 6144/2005) (The Hon. John K. McGuirk).

Following a vote by the congregation of First Presbyterian Church of Ridgebury to disaffiliate from the PCUSA, the regional PCUSA presbytery, The Hudson (River) Presbytery, filed suit against the local church, claiming that the congregation’s property belonged to the denomination. Applying “neutral principles of law”, the court rejected the PCUSA’s argument that it was the rightful owner of the property and was entitled to control its use under the denomination’s ownership and trust provisions in Chapter 8 of the PCUSA Book of Order.

The facts of the case are closely analogous to those before this Court. The local Ridgebury congregation was incorporated in 1805. It owned five parcels of property, acquired between 1833 and 1964. In each case the property was deeded in the name of “The Trustees of First Presbyterian Church and Congregation of Ridgebury” without any restriction on the title or particular reference to a national denomination. “More specifically, none of the deeds contain language vesting a present or future interest in the favor of the Hudson River Presbytery or PCUSA.” Deciding the case under “neutral principles of law”, the New York court turned aside the PCUSA’s argument that it was the rightful owner of the property under the denomination’s ownership and trust provisions in the PCUSA Book of Order, noting, “It is hornbook property law that only the owner of real property can convey an interest in the property; B cannot create a future interest in A’s property without A’s consent.”<sup>11</sup>

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<sup>11</sup> Attorneys for the Hudson River Presbytery and the PCUSA argued that Ridgebury had acquiesced to the denomination’s assertion of a right to determine ownership or trust by virtue of its membership in the PCUSA since 1983. The trial court rejected that argument, though, stating, “Mere silence in continuing its membership in the denominational church, absent more, is an insufficient

## 2. California

On December 1, 2004, the California Supreme Court declined to review a decision of the California 5th District Court of Appeal, letting stand that lower court's ruling allowing a local Methodist church to revoke the trust language contained in the United Methodist Book of Discipline. This permitted the local congregation to leave the denomination with its property. California-Nevada Annual Conference of United Methodist Church, et al v. St. Luke's United Methodist Church, et al, 121 Cal. App. 4<sup>th</sup> 754, 17 CAL. RPTR. 3<sup>rd</sup> 442 (decided August 13, 2004; review denied December 1, 2004).

St. Luke's was first incorporated as a member of the Methodist Church in 1948.<sup>12</sup> Subsequent to incorporation St. Luke's acquired title to nine parcels of property, six prior to formation of the United Methodist Church and three after formation. Some of the deeds contained trust language and some did not. While the litigation was pending, St. Luke's amended its articles of incorporation and formally disassociated itself from the United Methodist Church and explicitly declared that all property was held in trust only for the sole benefit of the local church corporation.

The trial court interpreted the California Corporations Code to mean that the settlor (the person who creates a trust) was the United Methodist Church, and that it created a trust in favor of itself and had taken no action to amend its own Book of Discipline to revoke the trust. The appellate court reversed, however, holding that such apparent "self-dealing" was at odds with basic principles of trust law, which did not

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expression of an intent to express a trust." The court further stated that under New York law, "[t]he manifestation of intention requires an external expression of intention as distinguished from undisclosed intention." The court concluded by observing, "The only affirmative action on defendant's part on this subject since 1981 were their explicit manifestation not to hold their property for the benefit of plaintiffs."

<sup>12</sup> St. Luke's articles of incorporation stated as among its authorized purposes, "to acquire, manage and hold in trust for the benefit of said St. Luke's Methodist Church, property of every kind and nature, both real and personal ...". In 1968 the Methodist Church united with the Evangelical United Brethren Church to form the United Methodist Church, governed by the denomination's Book of Discipline. Paragraph 2501 of the United Methodist Church Book of Discipline provides in part that "titles to all properties held ... by a local church ... shall be held in trust for the United Methodist Church and subject to the provisions of its Discipline." The denomination is governed by a general conference, but the fundamental administrative unit is termed "annual conferences" which have supervisory responsibility over the local churches within their respective geographic bounds (i.e., akin to a Presbyterian presbytery).

include the creation of a trust by the declaration of a non-owner that the owner holds property merely as trustee for the non-owner.<sup>13</sup>

### **3. Maryland**

Another instructive case is From the Heart Church Ministries, Inc., et al v. African Methodist Episcopal Zion Church, et al, 370 Md. 152, 803 A.2<sup>nd</sup> 548 (2002). The supreme court for the state of Maryland (called the Maryland Court of Appeals) was asked to address the issue of whether, when a local church withdraws from a religious denomination, the property belongs to the local church or to the denomination. The Maryland court followed “neutral principles” to consider the competing texts of local church property documents and denominational documents.

The trial court ruled in favor of the denomination, its regional conference, and the newly incorporated Full Gospel AME Zion Church, and against From the Heart Church Ministries. However, the Maryland high court accepted the case for review and reversed the lower court.

In reversing and holding for the local congregation, the Maryland Court of Appeals referred to its prior decision in Mt. Olive A.M.E. Church v. Board of Incorporators, 348 Maryland 299, 703 A. 2<sup>nd</sup> 194 (1997) as providing the appropriate framework:

**... [R]esolution of church property disputes demand an analysis that involves the review of all relevant documents and circumstances. Unless the deed to the property clearly provides for the holding of the property in trust for the parent church, it is not enough to consider simply the form of the church government, the constitution or other authoritative sources pertinent to the parent church’s claim to the property, consideration must also be given to the Religious Corporations Law, the relations between the parties, and the local church charter. The latter at the very least provides insight into the**

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<sup>13</sup> The court of appeal held that the UMC Book of Discipline did not create the trust but that the trust had been created by St. Luke’s articles of incorporation, language in several of St. Luke’s property deeds, and by St. Luke’s demonstrated intent to hold its property in trust for the benefit of the United Methodist Church *and* for its own benefit. Having validly created the trust under California statutory law, St. Luke’s had specific authority under the California Corporations Code to revoke the trust, and did so by amending its articles of incorporation to expressly state that it no longer would be affiliated with or subject to the United Methodist Church and that St. Luke’s would thereafter hold its property in trust for the sole benefit of the local church corporation.

California appellate circuits are not in accord, however, on whether neutral principles or the hierarchical deference rule should govern in that state. The 4<sup>th</sup> District Court of Appeal recently held that the hierarchical deference rule should apply. See, *In re: Episcopal Diocese of Los Angeles*, 2007 WL 1815858 (decided June 25, 2007).

**relations between the parties and may evidence the local church's consent to the form of government and to be bound by provisions in the parent church's constitution or other authoritative sources pertaining to the ownership and control of its property.**

From the Heart at 187, 569, citing Mt. Olive at 320, 204 and quoting Jones v. Wolf (emphasis supplied). The Maryland Court of Appeals said that the trial court had incorrectly based its decision only on factors enumerated in the Book of Discipline which had indicated congregational acceptance of the denomination's polity. But in relying exclusively on provisions in the denomination's constitution, the trial court failed to comply with the directive in Mt. Olive (and Watson v. Jones, supra p. 1) to consider all relevant documents and circumstances. In particular, the trial court failed to consider From the Heart's intentional deeding of the church property in its name only, not in trust, and the national denomination's apparent acknowledgement of and acquiescence for a time in this deeding irregularity.

The trial court also failed to consider the amendments to From the Heart's charter and bylaws to remove references to the AME Zion denomination. In considering only denominational polity, then, the trial court "inappropriately has deferred to the church doctrine; it has relied on religious precepts to enforce From the Heart's Connectional responsibilities". From the Heart at 187, 569. The Maryland Supreme Court further said:

**In undertaking an examination of religious documents, such as a church constitution, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.**

Id. at 604.<sup>14</sup>

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<sup>14</sup> The Maryland court, in examining the trust language in the AME Book of Discipline, also said that language extended to apply to the situation when a local church is affiliated with a denomination, but it gave no indication that the trust created is irrevocable nor addressed the situation where a local church terminates its affiliation. The court thus concluded:

**Consent to holding property in trust during the course of affiliation does not automatically constitute consent to relinquishing that property once the affiliation terminates. This is particularly the case where the trust is revocable and is, therefore, another reason that there must be a more expanded review of documents and circumstances, as required by Mt. Olive, rather than merely the review of the Church Discipline.**

From the Heart at 189, 190, 571.

#### **4. Pennsylvania**

The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, et al v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317, is a 1985 decision by the Supreme Court of Pennsylvania which reversed the appellate court and reinstated the trial court's decision allowing a local congregation to leave the denomination with its property. The case is noteworthy in part because of an antecedent connection to the PC (U.S.A.). In Beaver-Butler, the Pennsylvania Supreme Court adopted the neutral principles approach to hold that the Pennsylvania appellate court erroneously gave undue deference to the UPCUSA denomination.

Middlesex Presbyterian Church is a very old church. It had been affiliated with the UPCUSA and its predecessors since the Presbyterian Church's inception in America in 1799. It was incorporated in 1907 and had been a participating church at that time in the Presbyterian Church in the United States of America (PCUSA), and later with the UPCUSA.<sup>15</sup> On April 6, 1981, Middlesex amended its local charter to disaffiliate from the UPCUSA, effective April 18, 1981. The amendment to modify the UPCUSA Book of Order, however, which inserted language expressly asserting a trust in favor of the UPCUSA, did not become part of the UPCUSA Constitution until May 23, 1981.

The Supreme Court of Pennsylvania found that prior to the creation of express trust language in the UPCUSA constitution, the constitution of the UPCUSA did not contain any trust, explicit or implicit, in the property of member congregations in favor of the UPCUSA. In determining that a trust did not exist the court applied Pennsylvania law which provided that, although no particular form of words or conduct was required to manifest the intention to create a trust, the appearance of all elements of a completed trust must be present:

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<sup>15</sup> In 1958 the PCUSA merged with the United Presbyterian Church in North America (UPCNA) to form the United Presbyterian Church in the United States of American (UPCUSA). The UPCUSA was the "northern church" which then merged in 1983 with the "southern church", the Presbyterian Church in the United States (PCUS), to form the present Presbyterian Church (U.S.A.) with which First Presbyterian Church of Baton Rouge is currently affiliated.

**A trust must be created by clear and unambiguous language or conduct, it cannot arise from elusive statements admitting possible inferences consistent with other relationships.**

Id. at 269, quoting Bair v. Snyder County State Bank, 314 Pa. 85, 89, 171 A. 274, 275 (1934).

As in other cases, the focus of the Pennsylvania court's inquiry was the intent of the parties at the time of the alleged creation of the trust by the settlor, Middlesex. In support of its conclusion that Middlesex was the settlor and that it had not intended to create a trust, the Pennsylvania court found the following facts determinative:

**The putative settlor in this case was clearly Middlesex. In support of this conclusion we note that the Middlesex church was not a creation or offshoot of the central denomination. Rather, the record establishes that the Middlesex church was created and incorporated on the local level by members of the parish; and that all property was retained in the corporate name of the local church. Subsequently, when the local body voluntarily affiliated with UPCUSA's predecessor, there was no express trust language in the denomination's constitution.**

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**The denomination here has cited no evidence that Middlesex ever intended to convey their property interests to them. To the contrary, throughout their entire affiliation Middlesex retained all property in their own corporate name. The commonwealth court's reliance on selected passages from the Book of Order was misplaced in that the court ignored the overall intent of that book as a means of overseeing the *spiritual* development of member churches. In addition, these selected provisions, which at most evidence the putative trustee's desired interpretation, are far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.**

Beaver-Butler at 269, 270 (emphasis supplied).<sup>16</sup>

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<sup>16</sup> In Church of St. James the Less [J-18-2005] (decided December 29, 2005), the Supreme Court of Pennsylvania (Eastern District) again had occasion to address the validity of an asserted denominational property trust over local church property. Citing its earlier decision in Beaver-Butler, supra, and applying neutral principles of law, the court ruled against the local church based on the specific facts presented.

The intent of the denomination (the Episcopal Church USA) was made plain by its constitution, the enactment of a new canon in 1979, referred to as the "Dennis Canon", which added a clause which read, "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this [National Episcopal Church] and the Diocese thereof in which such Parish, Mission or Congregation is located." In assessing the intent of the local church, St. James the Less, the court reviewed, among other things, the congregation's original 1846 charter (articles of incorporation) and amendments in 1919 and 1967 to the charter.

St. James the Less's own articles expressly prohibited it from ever disaffiliating from the Diocese and the ECUSA, and required that St. James always accede to the authority of the Diocese and the ECUSA. St. James also declared in its articles that if it ever dissolved, its property would be placed in trust for the Diocese.

## 5. Texas

Subsequent to the 1979 decision by the U.S. Supreme Court in Wolf, not all states have had occasion to decide whether to adopt the neutral principles of law method. Some states which had previously adopted the hierarchical method (sometimes called the “deference rule”) have not had occasion to revisit the issue since. The Texas Supreme Court has generally been regarded by lower Texas courts to have adopted the hierarchical method in 1909. Brown v. Clark, 102 Tex. 323, 116 S.W. 360 (1909). The Texas Supreme Court has not granted writs since 1909 to revisit or clarify the matter. Although Texas, unlike Louisiana, is a “hierarchical” state, its caselaw illustrates the relevance which the specific name in which property is titled bears on the question of denominational claim to ownership.

Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W.2d 865 (Tex.Civ.App.-Texarkana 1977, no writ) involved a split between two factions of a PCUS congregation in Paris, Texas. Significantly, the Paris congregation’s articles of incorporation specifically referred to the local church corporation by denominational affiliation, “The First Presbyterian Church U.S. of Paris, Inc.” (i.e., the PCUS). And all of the property deeds also specifically referred to denominational affiliation, naming the property owner either as the “First Presbyterian Church of Paris U.S.” or the corporation “First Presbyterian Church U.S. of Paris, Inc.”. The court exercised subject matter jurisdiction to decide the question of ownership, applied the hierarchical method and deferred to the presbytery’s decision to award ownership to the loyalist minority faction.

The court noted that even if it was conceded that the local church owned its property and was free to dispose of it as it wished, the loyalist faction rather than the 100% that voted to disaffiliate constituted the local church when: a) the title holder of record in the property deeds was the “First Presbyterian Church of Paris U.S.” or the “First Presbyterian Church U.S. of Paris, Inc.” and, b) the PCUS hierarchy recognized

and identified the loyalist faction as being that PCUS church. Presbytery of the Covenant at 871, 872.<sup>17</sup>

### **C. ARGUMENT**

The facts of this case and the law of Louisiana present a compelling case in favor of First Presbyterian Church of Thibodaux. The PSL has no valid claim or right to ownership, nor to determine ownership, of the local church property at issue. Neither the PSL nor any higher ecclesiastical body of the PCUSA or its predecessor denominations contributed any funds for the purchase of the land, the construction of any improvements thereon, or the furnishing and maintenance of the land and improvements. Not a penny. The property is all titled exclusively in the name of the local church corporation, and the name of that local church corporation makes no reference whatsoever to the “PCUS”, the “PCUSA”, or any other denominational organization. Similarly, all of the property is exclusively deeded in the name of the local church corporation only, without reference to specific denominational organization.

At no time has First Presbyterian Church of Thibodaux ever manifested an intent to accept a denomination’s asserted claim, through PSL, to determine ownership of the local church property, or to accept a denomination’s asserted claim that local church property is held in trust for the benefit of PSL or a national denomination. Nor has First Presbyterian Church of Thibodaux, the Church, nor the 1904 corporation ever manifested an intent to (i) convey its property to the PSL or any national denomination in trust, or (ii) subject its property to any trust. To the contrary, First Presbyterian Church of Thibodaux, at every opportunity, by the adopting, recording and furnishing of its articles of incorporation, property deeds, and church minutes and resolutions, specifically denied the denomination’s assertion of a right to ownership or to determine ownership. All of these actions have been open and public and all of the related documents have been furnished to the PSL, which has accepted them without objection.

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<sup>17</sup> The Schismatic and Purported Casa Linda Presbyterian Church in America, et al v. The Grace Union Presbytery, Inc., et al, 710 S.W.2<sup>nd</sup> 700 (Court of Appeals of Texas, Dallas) (decided April 18, 1986) is the most recent Texas appellate decision citing Brown. Grace Union concluded that no trust, express or implied, existed over the local church property there at issue. On the separate question of ownership (the body to be correctly identified as the one to whom the property had originally been deeded,), Grace Union interpreted Brown to deem ownership under Texas’ hierarchical method to be an ecclesiastical issue, to be decided by deference to the hierarchical church.

The PCUSA confuses two distinctly separate issues. It is one thing for the PCUSA to interpret clause G-8.0600 of its Book of Order to allow it to determine, in the event of an internal split within a local church, which faction will be recognized “within the PCUSA.” It is quite another for the PCUSA to assert that the PCUSA, the PSL, the faction of the local church recognized by PCUSA or anyone else is entitled to property owned by First Presbyterian Church of Thibodaux under Louisiana law. If the PCUSA asserts that G-8.0600 allows national church confiscation of local church property, then that clause violates Louisiana law. The PCUSA cannot simply assume that local church property is actually titled in the name of the PCUSA or the PSL and proceed as if its assumption were correct. The title to this local church’s property belongs to First Presbyterian Church of Thibodaux.

Likewise, the defendant’s claim of a trust over local church property, which asserts that the local church cannot leave the PCUSA and retain ownership and control of its local property without the Presbytery’s permission, is without merit. From 1847 to 1982, no denomination with which the First Presbyterian Church of Thibodaux was affiliated had a trust provision, express or implied, in its denominational constitution. The provisions that were added to the 1982/1983 edition of the PCUS Book of Church Order were not approved by (indeed were generally unknown to) the congregation of First Presbyterian Church of Thibodaux.

The trust clause that was added in 1983 to the new PCUSA constitution also did not involve approval or concurrence by the Church or First Presbyterian Church of Thibodaux, Louisiana (the 1904 corporation). To the contrary, the Church and First Presbyterian Church of Thibodaux and its ancestor in title (the 1904 corporation) has continuously and expressly rejected any assertions of a trust or denominational claims to determine ownership or disposition, whether under the PCUS constitution or the PCUSA constitution. Such express rejection includes but is not limited to the timely congregational motion on September 9, 1990, discussed in Part II.B, above, and the decision not to amend any deeds or Articles to add third party ownership or trust provisions. The 1990 motion and related minutes which document the rejection was timely furnished to the PSL and accepted by it without objection. The Presbytery cannot sit silent for seventeen (17) years and now be heard to assert a trust over the property at issue and a right to determine its ownership, control or use.

Neither the local church articles of incorporation or property deeds create, acknowledge or accept any trust on church property. The PSL has acknowledged that these church property matters are governed by state law, and the law of the State of Louisiana sets forth the requirements for the creation of a valid trust enforceable in this state at R.S. 9:1721, et seq. Those requirements have in part been listed above, in Part III.A., and **none** of those requirements have been satisfied with respect to any property held by and titled to the First Presbyterian Church of Thibodaux. Those requirements are the *exclusive* means by which a trust may be validly created in Louisiana; Louisiana law does not recognize the concept of implied or constructive trusts.

In Fluker, supra, the Louisiana Supreme Court examined both the denominational constitution *and* the local property deeds to determine *mutual* intent and found that the local property was expressly titled in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana.” [Emphasis added by the Louisiana Supreme Court.] The Louisiana Supreme Court thus concluded that, “Fluker acted solely within its capacity as an A.M.E. local church” when it acquired the property. *Id.* In marked contrast, the title in the deeds for the property held by First Presbyterian Church of Thibodaux make no reference to the PCUSA or any of its predecessor denominations such as the PCUS. Nor do the founding minutes of 1847, or any articles of incorporation ever effected, whether the 1904 Articles of Incorporation or the 2007 Articles of Incorporation. The deeds to the property are titled only in the name of the local church corporation, which name does not refer to, include, or identify itself with the PCUSA or the PCUS.

The salient facts in the case at bar are strongly analogous to those of First Presbyterian Church of Baton Rouge, discussed supra in Part III. A. In the FPCBR case, the PSL stipulated to a final judgment declaring full and exclusive property rights in the local church only, without any third party interest, in trust or otherwise, attaching thereto in favor of the PCUSA or any of its regional administrative units such as the PSL. In the case at bar the same judgment, whether stipulated or not, should equitably and lawfully result.

Turning to the instructive case law from other jurisdictions, the present facts stand in marked contrast to Presbytery of the Covenant, supra, where the court based its decision to award property to the minority faction loyal to the denomination on the fact that the property

deeds specifically referred to “First Presbyterian Church of Paris US”. Id. at 871, 872 (emphasis in original).

The present facts are more comparable to those in St Luke’s, supra, where the local congregation was incorporated prior to the creation of the current denomination, where most of the property was acquired prior to the formation of the current denomination and where most (in the present case, all) of the property deeds did not contain any trust language. Like the California Corporations Code, Louisiana Trust Law does not allow a non-owner to create a trust unilaterally over someone else’s property and then name itself as the beneficiary. The California court was quick to reject that as “self-dealing”.

What the PSL is attempting to do by asserting a trust or a right to determine ownership under the facts presented is analogous to a non-owner agent for the subdivision in which Your Honor owns a home changing the civic association’s rules to say that if Your Honor ever decides to move out of the subdivision the non-owner agent shall be entitled to determine who owns Your Honor’s house. And as long as Your Honor lives in that house you possess it for the benefit of that non-owner agent, so that if Your Honor ever decided to move and keep ownership or control of the home’s equity, Your Honor would need the permission of the non-owner agent. And all this even though the non-owner agent’s name is not on the mortgage, has never contributed a penny to paying the mortgage off, and doesn’t even help cut the grass.

The facts presented are also analogous to From the Heart, supra (except that First Presbyterian Church of Thibodaux did not need to amend its articles to delete reference to the PCUSA because its articles never referred to the PCUSA to begin with). Indeed, the present facts are even stronger than From the Heart. In From the Heart, the property deeds had at one time listed the owner as “Full Gospel A.M.E. Zion Church, Inc.”, whereas none of the property deeds for First Presbyterian Church of Thibodaux have ever made mention of the PCUS or the PCUSA.

In ruling in favor of the local church, the Supreme Court of Maryland (the Maryland Court of Appeals) noted that the national denomination had apparently acknowledged and acquiesced in the local church’s intentional deeding of its local church property in the name of the local church only and without reference to any trust. In the present case, FPCT’s possession

of the property at issue, as exclusive owner and without a trust in favor of the denomination, has always been open and public. All property deeds, articles of incorporation, pertinent resolutions and minutes have variously been filed of record in the Secretary of State's Office, the mortgage and conveyance records for Lafourche Parish, and furnished to the PSL in the ordinary course of business. The PSL has had actual and constructive knowledge of these documents, has never challenged them previously, and should not be heard now to contest them belatedly.

The facts of the present case are readily distinguished from St. James the Less, supra, but are akin to Beaver Butler, supra. Unlike St. James the Less, the articles of incorporation for First Presbyterian Church of Thibodaux do not expressly prohibit it from disaffiliating with the denomination, nor state that in the event of dissolution its property would be placed in trust for the presbytery. Like the church in Beaver Butler (Middlesex Presbyterian Church), First Presbyterian Church of Thibodaux was founded long before the creation of the denomination with which it later affiliated. When it did affiliate, there was no express trust language in the denominational constitution. And after the denominational constitution was unilaterally amended to add provisions which purport to give the denomination a right to determine ownership and which assert that all local property is held in trust for the denomination, First Presbyterian Church of Thibodaux never acquiesced to this but specifically and continuously rejected this, and retained all property in its own corporate name.

Just as the court in Beaver Butler found mutual intent lacking, and noted that a trust cannot arise from "elusive statements admitting possible inferences consistent with other relationships", Id at 269, so the selected provisions of the Book of Order, on which the PSL relies, "at most evidence the putative trustee's desired interpretation" Id, and do not even begin to satisfy the stringent and exclusive requirements for the establishment of a valid trust under the Louisiana Trust Code.

The facts before this Court are closely analogous to those in the August 22, 2006 New York case of Presbytery of Hudson Valley, et al v. First Presbyterian Church of Ridgebury. Both congregations were established prior to the formation of the presbyteries under whose "care" they later came, and before the establishment of the denomination with which they later became affiliated, and prior to the adoption by those denominations of an express trust clause in the

denominational constitution. In both cases all property is deeded in the name of the local church corporation only, without reference to the denomination. In both cases there has been no manifestation of an intention to create or accept a trust over a local church property on behalf of the denomination. In both cases the only affirmative action on the part of the local congregation on this subject was an explicit manifestation of just the opposite — not to hold local property for the benefit of the denomination.

## **V. CONCLUSION**

For the reasons set forth, the First Presbyterian Church of Thibodaux urges the court to grant a declaratory judgment as follows:

- 1) Declaratory Judgment - that all property held by or titled in the name of the petitioner, and all property formerly titled in the name of the First Presbyterian Church of Thibodaux, Louisiana (the 1904 corporation), whether corporeal or incorporeal, movable or immovable (real or personal), is or was held without trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the Presbytery of South Louisiana, and that the petitioner holds all property held in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Louisiana and as set forth in petitioner's articles of incorporation, and that neither the PCUSA nor any of its regional administrative units such as the Presbytery of South Louisiana has any right, title or interest, in trust or otherwise, in said property nor any right to determine the ownership or disposition thereof;
- 2) that defendant be served with a copy of the above and foregoing petition and order;
- 3) that defendant be cited to answer said petition and to appear before this Honorable Court at a date and time fixed by this Court to show cause why a declaratory judgment should not be granted as prayed for in favor of petitioner;
- 4) for all general and equitable relief, and;
- 5) for all costs of these proceedings.

Respectfully submitted,

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**PLEASE SERVE:**

**THE PRESBYTERY OF SOUTH LOUISIANA**

*Through its agent for service of process:*

**William H. Bottomly, III**

**4800 Zenith St., Apt. 234**

**Metairie, LA 70001**