



Presbyterian Church (U.S.A.)

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CHURCH PROPERTY DISPUTES: A RESOURCE FOR THOSE REPRESENTING PRESBYTERIAN CHURCH (U.S.A.) PRESBYTERIES AND TRUE CHURCHES IN THE CIVIL COURTS

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I. Introduction

This resource is written by the Office of Legal Services for those representing the interests of presbyteries and true churches as identified by the presbyteries. It is written for both attorneys and non-attorneys. Involve the presbytery attorney early on if a dispute related to church property is developing. The attorney will be able to advise the presbytery in light of the applicable law and the particular facts presented.

A companion piece to this memorandum is the resource prepared by the Constitutional Services Department of the Office of the General Assembly. That resource discusses the factors and strategies presbyteries should consider as church property matters arise within the governing bodies of the church. By contrast, this resource focuses upon church property disputes within the civil courts.

Finally this memo uses "Presbyterian Church," "Presbyterian Church (U.S.A.)," and "PCUSA" interchangeably and in reference to various time periods. Only where the specific point being made relates to a particular predecessor denomination is that denomination named.

This memo also uses the terms "schism" and "schismatics." The PCUSA *Constitution* refers to schisms.

II. State-by-State Church Property Review, the Basics, and Some Strategies

State-by-State Church Property Review

The Office of Legal Services has prepared a state-by-state (plus Puerto Rico and Washington, D.C.) summary of church property law. In response to the U.S. Supreme Court's 1979 *Jones v. Wolf* decision, each state forged its own particular mechanisms for deciding church property disputes. Begin with the church property review and the pertinent cases for your state. It is important to understand the rules your state has adopted. Of course, the actual cases and any statutes should be read to determine how they apply to the facts presented. Be certain to involve the presbytery attorney. Only an attorney licensed in your state and representing the presbytery's interests can give the full services needed. If your state's property review is not attached at the end of this memorandum, call Eric Graninger, General Counsel, at 1-888-728-7228, ext. 5369 to secure a copy.

The Basics

Pursuant to the *Jones v. Wolf* decision, most states will apply one of three mechanisms for deciding church property disputes. The first two are the most common:

1. **Hierarchical deference rule:** Where the local church is part of a larger hierarchical church, the court will defer to the decision of the highest church governing body that has considered the matter. The court will award the property control pursuant to that decision.
2. **Neutral principles doctrine:** The court reviews the language of property deeds, the local church charters, state statutes concerning church property, and the provisions of the denominational constitution concerning the ownership and control of church property.
3. **Presumptive majority representation, defeasible upon a showing that the identity of the local church is to be determined by other means:** The majority vote of the congregation is presumed to control, except in a hierarchical church the majority rule may be overcome where the church charter or denominational constitution has established a property trust or other means to decide the dispute.

Some Strategies

- After you have determined the pertinent rules for deciding church property disputes in your state, strategies for the case can be implemented. For example, if your state follows a basic hierarchical deference rule, then it will be most important to demonstrate the PCUSA as a hierarchical church and show the court the central authority

of the presbytery in making church property and related decisions. If your state applies the neutral principles doctrine, then it will be important to note all hierarchical references in the deeds, the local church charter, and especially to emphasize the church property trust and the central authority of the presbytery under Chapter VIII of the *Book of Order*, the property chapter. If your state applies the third option, it is an uphill battle. The *Book of Order* property chapter and other provisions showing the authority of presbytery will be especially important. Sections III, IV, and V of this memorandum set forth provisions that should be useful to you in proving the presbytery's case to the court.

- **Secure the property (both real and personal) of the local church.** File an affidavit of property trust on the real estate. The affidavit is filed on the public records for the purpose of warning all persons the title to the real property is in dispute. The affidavit is for the purpose of preserving the rights of the presbytery and true church pending the dispute. **Moreover, send a letter to all banks and other institutions that hold accounts for the particular church. Inform the institution:**
 - The presbytery has jurisdiction over the local church and its assets
 - About the property clause and other pertinent property chapter provisions
 - That issues are pending
 - That no assets be released or their title changed pending further notice from the presbytery; make this a directive to the institution
- **Put the presbytery's and the local church's insurance companies on notice.** Where the presbytery and true church are in the position of defendants, insurance may respond with coverage or a defense. This is a very important benefit because it covers attorneys fees. Be sure to notify the insurance company promptly as the dispute arises. Most insurance policies require prompt notice or coverage may be denied or limited. **Note, however, you do not want to use the insurance company's standard attorneys in cases such as this. Press hard on the insurance company to accept an attorney of the presbytery's choosing. This should be an attorney familiar with such cases and/or PCUSA polity. Let the insurance company and the attorney work out the fee arrangement.**
- **The Office of the Stated Clerk of the General Assembly has some funds available to assist presbyteries when a church is in schism or its property is being used contrary to the *Constitution*.** If you are interested in the availability of these funds, the presbytery's stated clerk should make contact with the Office of the General Assembly, Department of Constitutional Services.
- **If you initiate the lawsuit, name the defendants as schismatics in the complaint and the caption. This will regularly remind the court of what the central issue is before it (the presbytery's authority to determine the true church) and the fact the court must defer to the ecclesiastical decisions of the church governing body. Example: "Presbytery of Middle Wyoming v. The Schismatic and Purported Covenant Presbyterian Church of Landsburgh."**

- If the case law is favorable to the presbytery in your state, file a motion for summary judgment as soon as practicable. It is not helpful to allow the schismatics to develop a record when the presbytery has already taken its actions and, under the polity, the result is known. Where the law of your state is firm for the presbytery, move forward with a motion for summary judgment. Knowing they cannot interfere in ecclesiastical disputes, many judges will look favorably upon a motion for summary judgment to dispose of such cases.
- Where members and/or ministers have renounced the jurisdiction of the church, point out to the court this means they have left the membership of the church and, so, do not have standing to represent the local Presbyterian church in a civil court.
- Where the schismatic faction has failed to appeal the rulings of the presbytery, point this out to the court. This is important for at least two interrelated reasons: First, it reminds the court the PCUSA is a church of successive governing bodies that have the responsibility and power to review the decisions of a lower governing body. When local church members disagree with the actions of the presbytery, they have a fundamental right to appeal those rulings to the synod and, ultimately, to the General Assembly. Second, civil courts are familiar with the doctrine of exhaustion of administrative remedies. In the civil form of this doctrine, a party must exhaust *all* available agency administrative remedies and appeals before it turns to the civil courts for relief. Because this is a common concept in the civil law, judges should understand this is a reason to dismiss the case as against the schismatics because they failed to exhaust their remedies within the church court system. Properly applied, this concept conserves judicial resources and keeps civil courts out of controversies not proper for their determination.
- Determine the religious background of your judge. The judge's religious background will likely influence the way the presbytery's case is viewed, at least initially. For example, a judge from a hierarchical church (Presbyterian, Episcopalian, Methodist, Roman Catholic) will understand there is an authority above the local church. For a judge from an episcopal system, it is very helpful to say, "The presbytery is the bishop." That type of straightforward statement fundamentally informs a judge who is knowledgeable of an episcopal system. In contrast, if the judge is from an independent or congregational background (Baptist), then it may be more challenging to educate the judge on the wide range of authority a presbytery has over a particular church, especially in regards to property matters.
- Use affidavits and church-recognized experts to demonstrate the polity of the PCUSA. Case law severely restricts civil courts from making ecclesiastical decisions. Civil courts are required to defer to the religious body in ecclesiastical, doctrinal, and polity decisions. Because of these factors, it is important to present the *Book of Order* and other ecclesiastical materials via an affidavit. See sections III, IV, and V for the various matters that could be presented to the civil court. An affidavit should be issued by a middle governing body officer or a General Assembly officer. Using a General

Assembly officer will reemphasize the hierarchical nature of the PCUSA to the court. Also, G.2.e of the Standing Rules of the General Assembly charge the General Assembly Stated Clerk with the responsibility of giving advisory opinions concerning the meaning of the PCUSA Constitution. The Office of Legal Services can assist with the types of affidavits you need in your case. Again, the substance of the affidavit will likely contain the information set out in Sections III, IV, and V of this memorandum. The opening provisions of the affidavit should provide:

- The affiant's name. Use reverend if applicable.
- The title of the affiant and how long they have worked in that position.
- All degrees and the institutions from which received.
- Note if a minister, year of ordination, presbytery membership.
- Either set out all of the provisions that are of import in the body of the affidavit or state something like the following: "I have reviewed the Statement of Facts contained in the Brief in Support of the Presbytery of _____'s Motion for Summary Judgment in this action. Based upon my personal knowledge and expertise, that Statement of Facts is true and correct, and I incorporate it into this affidavit by reference."

- **Keep the original church name and corporation within the PCUSA.** At the end of the process, either the presbytery itself or the true congregation loyal to the presbytery should retain the original church's name and corporate entity. This is for two reasons: First, it reduces confusion because the long-existing PCUSA church remains PCUSA. Second, present endowments and future estates will be in the original name of the local church. Keeping the name and corporation with the true church (or the presbytery) loyal to PCUSA should ensure these funds remain secure.

III. Presenting the Presbyterian Church (U.S.A.) as a Hierarchical Church

Certainly, the Presbyterian Church (U.S.A.) (PCUSA) does not refer to itself as a hierarchical church. When speaking to a civil court, however, it is important to use the language the court uses. The courts distinguish between independent or congregational churches on the one hand and hierarchical churches on the other. **Firmly present the PCUSA to the court as a hierarchical church.** This section focuses upon the factors to demonstrate to the court the PCUSA is hierarchical:

- **The United States Supreme Court has consistently recognized the Presbyterian Church as hierarchical:** *Watson v. Jones*, *Mary Elizabeth Blue Hull*, and *Jones v. Wolf*; cite to these decisions. (See Section VI) The courts in many states have made similar rulings.
- **Secondary legal resources recognize the Presbyterian Church as hierarchical:**
 - *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 ALR3d 324, 334 (listing the Presbyterian Church as

hierarchical with control over local church property), and 417 ("Although the Presbyterian form of church government is without question hierarchical, there has been a considerable amount of litigation over the right of local Presbyterian churches to withdraw from the general church and retain the use and control of local church property. [T]his right is uniformly denied, on the ground that the local Presbyterian church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas." (Footnotes omitted)). Although this law report is dated (1974), its description of the Presbyterian Church as hierarchical is apt.

• *Hands Off! Civil Court Involvement in Conflicts Over Religious Property*, 98 Colum. L. Rev. 1843 (1998). This article recognizes the PCUSA as hierarchical. Id. at 1878. See Section VII.

• Of course, the *Book of Order* is replete with provisions that demonstrate the hierarchical nature of the PCUSA. This part of the memorandum sets out some of the best polity examples of the hierarchical nature of the PCUSA.

The four-level system of governing bodies shows the hierarchical structure of the PCUSA. PCUSA has four levels of governing bodies; each higher governing body has the power to review and change the actions of the lower governing body.

• The PCUSA is a body of Reformed Christians who have agreed to conduct their worship, discipline, governance, and other religious activities in conformity with the then current version of the *PCUSA Constitution*. The *Constitution* consists of the *Book of Confessions* (Part I) and the *Book of Order* (Part II). (G-1.0500) The *Book of Order* includes the Rules of Discipline, the Directory for Worship, and the Form of Government, a detailed formal structure of the church. The *Book of Order* sets forth the ecclesiastical polity of the church. (G-1.0300) The abbreviations used for these three sections are D, W, and G, respectively.

• There are four governing bodies of the PCUSA: session of the church, presbytery, synod, and General Assembly. (G-9.0101) All governing bodies are united by the nature of the church and share rights and duties under the Constitution. Though separate and independent, the governing bodies have such mutual relations that the act of one of them is the act of the whole church performed by it through the appropriate governing body. The jurisdiction of each governing body is limited by the express provisions of this *Constitution*, with powers not mentioned being reserved in the presbyteries, and with the acts of each governing body subject to review by the next higher governing body. (G-9.0103)

The property chapter shows the hierarchical nature of the PCUSA. All property is held in trust for the PCUSA. The presbytery has ultimate authority over local church property and, in the case of a schism, declares which faction is the true church. See Section IV for a full discussion of the property trust.

- All property, both real and personal, no matter how it is titled or held, is held in trust for the PCUSA. (G-8.0201)
- The presbytery is authorized to take control of a local church's property 1) when the church is dissolved by the presbytery or extinct, (G-8.0401); 2) when the church property is being used contrary to the *PCUSA Constitution*, (G-8.0301); 3) when the church is in schism. (G-8.0600)
- When a schism arises, it is the presbytery that declares which faction is the true church; that determination does not rely upon which faction received the majority vote of the congregation. (G-8.0601)
- When a church seeks to encumber or lease its property, it must secure the permission of the presbytery. (G-8.0501, 8.0502)

The presbytery's authority over ministers shows the hierarchical nature of the PCUSA. A local church cannot call a minister without the act of presbytery; a presbytery installs a minister in the local church; only the presbytery can dissolve the relationship between a minister and the particular church.

- The presbytery is an expression of the PCUSA within a certain district; it consists of all the ministers and churches within that district. (G-11.0101)
- The presbytery is responsible for the mission and government of the church throughout its geographical district. (G-11.0103)
- The presbytery has the responsibility and power to ordain, receive, dismiss, install, remove, and discipline ministers. (G-11.0103n)
- Ordination of a minister is an act of the presbytery. (G-14.0101)
- The relationship between a minister and a local church is established by the presbytery. (G-11.0103o) A call (employment of a minister) occurs only through the presbytery. (G-14.0507) The presbytery examines the minister and determines whether to proceed with installation. (G-14.0507b) If it does decide to proceed, the presbytery appoints a time and place for the installation service. (G-14.0509b) The presbytery conducts the installation service and installs the minister in the local church. (G-14.0510)
- A presbytery's committee on ministry visits regularly and consults with each minister in the presbytery. (G-11.0502a).
- While the minister or the church may request dissolution of the pastor-church relationship, only the presbytery is authorized to terminate the relationship between a local church and its minister. (G-14.0601, 14.0602, 14.0603) Only the presbytery can unilaterally terminate the minister's relationship with the church. (G-11.0103o) Neither the minister nor the congregation may unilaterally do so.

Other seminal provisions show the hierarchical nature of the PCUSA. The presbytery is the key governing body and has broad authority over the local church. Only a presbytery can organize, receive, unite, divide, dismiss, and dissolve a local church; the presbytery directs per capita apportionments to the particular churches; it reviews and corrects the church session's minutes.

- The particular church carries a vital responsibility in the mission of the church. Congregations serve as essential mission arms of the presbytery and of the larger church. (G-7.0102)
- When a particular church is organized by a presbytery, the organizing members sign a covenant to live and work together as disciples of Jesus Christ, and serve as a part of the body of Christ in this place according to the principles of faith, mission, and order of the PCUSA. (G-7.0201) The presbytery continues its work with the church as it elects presbyters, secures pastoral leadership, coordinates its work with other churches, secures bylaws in conformance with the *PCUSA Constitution*, and strengthens the mission of the congregation in the larger life of the denomination. (G-7.0202b)
- A particular church of the PCUSA can be organized only by the authority of a presbytery and shall function under provisions of the *Constitution*. (G-7.0101)
- The presbytery's committee on ministry visits each church session at least once every three years, discussing the mission and ministry of that church and encouraging its full participation in the life and work of the presbytery and the larger church. (G-11.0502c)
- Only the presbytery is authorized to divide, dismiss, or dissolve churches. (G-11.0103j)
- The presbytery organizes new churches and receives and unites churches. (G-11.0103h)
- The presbytery controls the location of new churches and those that desire to move. (G-11.0103j)
- To ensure a congregation is following the guiding principles of Reformed worship (W-1.4001), the presbytery shall have oversight and review of the ministry of congregations and discuss the quality and standards of worship and the fruit it is bearing in the Life of God's people as they proclaim the gospel, its joy, and justice. (W-1.4002)
- Both pastors and the session are accountable to the presbytery in its exercise of constitutional supervision of members. (W-1.4008)
- The presbytery may direct per capita apportionments to the churches within its bounds. (G-9.0404d)
- The church session shall meet when directed to do so by the presbytery. (G-10.0201)
- Presbyterian polity is interdependent: Each governing body shall participate through representatives with governing bodies above and below concerning mission priorities, budgeting, administration, etc. (G-9.0404a, b)
- Records are the property of the governing body that created them. When, however, congregations, presbyteries, or synods are dissolved, the records will be held by the next higher governing body. (G-9.0406)
- The local church's minutes shall be available to the presbytery upon request. (G-10.0301)
- At least annually, each governing body shall have its minutes reviewed by the next highest governing body. If a lower governing body fails to send up its records for review, the higher governing body shall order them produced by a specified time. (G-9.0407c)
- Review shall include that the proceedings have been in accordance with the *Constitution* and faithful to the whole church and that the lawful injunctions of a higher governing body have been obeyed. (G-9.0409a) A higher governing body can order the production of a lower governing body's records at any time it learns of an irregularity or delinquency. (G-9.0408) A higher governing body may direct a lower body to

reconsider, correct, and cure an irregularity or delinquency. (G-9.0410) This may also be done by judicial process. (G-9.0411)

When a particular church is dissolved, the presbytery shall take possession of its records, assert jurisdiction over the church members, and grant them certificates of transfer to other churches. (G-10.0302b.(2))

Each particular church of the PCUSA is governed by the *Constitution*. Its officers are ministers, elders, and deacons. Its government and guidance are the responsibility of the session. It shall fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church and for the glory of God. (G-4.0104)

Principles of Presbyterian Government are set out at G-4.0300: The PCUSA adheres to the basic principles of Presbyterian polity:

- The particular churches of the PCUSA wherever they are, taken collectively, constitute one church; (G-4.0301a)
- This church shall be governed by presbyters (ministers and elders); (G-4.0301b)
- These presbyters shall come together in governing bodies (traditionally called judicatories or courts) in regular gradation; (G-4.0301c)
- A higher governing body shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal; (G-4.0301f)

The church session is responsible for maintaining regular and continuing relationship to higher PCUSA governing bodies by electing commissioners to presbytery, nominating elders who may be considered for election to synod or General Assembly, and observing and carrying out the instructions of higher governing bodies consistent with the *Constitution*. (G-10.0102p)

Presbyterian Unity: The nature of Presbyterian order is such that it shares power and responsibility. The system of governing bodies, whether they have authority over one or many churches, sustains such mutual relationship with the structures as to express the unity of the church. (G-4.0302)

IV. Presenting the Property Trust Clause

Chapter VIII of the Book of Order is titled *The Church and Its Property*. This relatively brief chapter is central in church property cases. It sets out the core provisions that will operate when a church property dispute is presented. Read this chapter for the exact language. It will be invaluable as the issues are presented to the court. These provisions and the presbytery's actions in regards to them should be clearly and vigorously presented to the court. Note the provisions are straightforward and in clear language a civil court should be able to review and enforce without making any ecclesiastical determinations of its own. Moreover, via affidavits (see Section II, above), the stated clerk of the presbytery, synod, or the General Assembly can provide the court with statements as to what these provisions mean. The following is a summary:

- **G-8.0100: Decisions Regarding Property.** Decisions pertaining to church property, their review, and correction are made according to the *PCUSA Constitution*, citing particularly to G-1.0400, each governing body's decision is subject to review and appeal to the next higher governing body.
- **G-8.0201: Property is Held in Trust.** This all-encompassing property trust applies to both real and personal property, no matter where it is held within the PCUSA and by whatever governing bodies, trustees, associations, or corporations.
- **G-8.0301: Property Used Contrary to the Constitution.** Whenever the property of a particular church ceases to be used as a particular church of the PCUSA in accordance with the *Constitution*, then such property shall be held, transferred, or sold as provided by the presbytery.
- **G-8.0401: Property of Church Dissolved or Extinct.** Whenever a particular church is formally dissolved by presbytery, or has become extinct, such property shall be held, used, sold, or disposed of as the presbytery directs.
- **G-8.0501: Selling or Encumbering Church Property.** Only after the presbytery grants written permission may a particular church sell, mortgage, or otherwise encumber its property, or acquire property subject to an encumbrance or condition.
- **G-8.0502: Leasing Church Property.** Only after the presbytery grants written permission may a particular church lease its sanctuary or lease any of its property for more than five years.
- **G-8.0601: Property of Church in Schism.** The relationship of the PCUSA to a particular church can only be severed by a constitutional action on the part of the presbytery. If there is a schism in a particular church and the presbytery is unable to effect a reconciliation or a division into separate churches within the PCUSA, then the presbytery shall declare which faction is the true church within the PCUSA and thereby determine which one of the factions is entitled to the property. This determination does not depend upon which faction received the majority vote within the particular church.
- **G-8.0701: Exceptions.** At the time of reunion in 1983, both the United Presbyterian Church in the United States of America (UPCUSA) and the Presbyterian Church in the United States (PCUS) had express property trust clauses in their respective constitutions. The PCUS did not, however, have a provision similar to G-8.0500, restricting the encumbering or leasing of church property. G-8.0701 gave churches in the former PCUS the option to opt out of G-8.0500 if a majority of the congregation voted to do so and notified the presbytery prior to June 10, 1991. Check the presbytery records for such opt outs. Bear in mind, churches that exercised this option only opted out of G-8.0500; they could not and did not opt out of the property trust clause (G-8.0201) or the balance of Chapter VIII. Neither the UPCUSA nor the PCUS ever had provisions whereby a congregation could unilaterally leave with the church property.

Brief history of the property trusts

Prior to 1981 in the UPCUSA and 1982 in the PCUS, the two major Presbyterian Church denominations did not have express property trusts in their constitutions. They did not need them. The 1871 U.S. Supreme Court ruling in *Watson v. Jones* referred to property held by trustees of a particular Presbyterian church as in trust for the persons who by the *Presbyterian Church Constitution*, usages, and laws are entitled to that use. The *Watson* Court then went on to hold that, as a hierarchical church, once the highest governing body of the Presbyterian Church had ruled on the matter, the civil courts would enforce that ruling as to the property control. *Watson's* hierarchical deference rule did not require or even suggest an explicit property trust provision; it upheld the traditional polity of review by successive governing bodies of the Presbyterian Church.

In *Mary Elizabeth Blue Hull* in 1969, the U.S. Supreme Court announced the neutral principles doctrine but did not define it. In 1979, in *Jones v. Wolf*, the Supreme Court defined the neutral principles doctrine and instructed denominations and others on how to meet this new standard: "Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." 443 U.S. at 606. Both the UPCUSA, effective 1981, and the PCUS, effective 1982, followed the Supreme Court's instructions to the letter, adopting express property trusts in favor of the denomination and in language that could be clearly and simply applied by civil courts. Where opponents point out that the property deeds contain no express trust language and/or the local church was formed prior to the trust language being expressly set out in the *Book of Order*, point out the chronology of U.S. Supreme Court decisions and the clear instructions presented by the Court in *Jones v. Wolf*. The property trust clauses did not create new rules. They simply codified the Presbyterian Church practice into the *Constitution*. An affidavit may be helpful in this regard.

V. Presenting Factors that Show the Connection between the PCUSA and the Church at Issue

Because of the polity, local Presbyterian churches have a wide variety of strong connections to the presbytery and the denomination. This section sets out many of those connections that should be examined, documented, and, perhaps, presented to the civil court. Once again, review the church property cases in your particular state. If they consider factors such as those set out below, then these should be presented to the court as additional evidence of the hierarchical and connectional relationships. If they do not consider such factors and the case law is otherwise strong for the presbytery's position, then it is probably wise not to bring these factors into the case because they may invite the court to examine matters not relevant to that state's church property analysis. Also, some of these factors could cut against the presbytery; so, if these matters are not usually considered under the case law of your state, it may be best to leave them aside. If these factors are presented, a middle governing body or General Assembly officer can present them to the court via an affidavit (see Sec. II).

Most of the documentation for these factors will be in the records of the presbytery. Some will be in session minutes and some with the General Assembly. Have the presbytery stated clerk or other presbytery official gather these records. They will know best where to search and this will save on attorney expenses. Factors to consider:

- **Copy of the deed.** Does it contain a property trust? The name Presbyterian? Adherence to the *PCUSA Constitution*? Belonging to the Presbytery of ____? Synod of ____? For Presbyterian worship and governance?
- **Copy of corporate articles and bylaws.** Same questions as above. Does it state the *PCUSA Constitution* is the charter, serves as the bylaws?
- **Did the corporate articles, bylaws, or other documents forbid the church from subordinating itself to higher church governing bodies?** If not, note to the court the local church was free to subordinate itself and did so pursuant to the *Presbyterian Church Constitution*.
- **Formation of the church.** Did the presbytery create the church? Did the denomination create the church? Did those who formed the church petition to join the presbytery? Who were the original formers? Were they Presbyterians? Were the first or subsequent ministers Presbyterian? Is there a covenant document? What do the presbytery minutes state?
- **Property dealings.** Did the church at any time act under the property chapter whereby the presbytery approved loans, mortgages, leases, etc.?
- **Decades or centuries of Presbyterian membership.** Demonstrate to the court it is the presbytery that keeps the faith with Presbyterians who, in the past, gave their monies, work, and hope to create a Presbyterian church in this place to perpetuate the faith of the Presbyterian Church. Document the long periods of time this church has been a member of the presbytery and prior denominations. It is improper and unfair to let present members "break the chain" between founding Presbyterians of the past and those of the future.
- **Worship activities.** Are the worship activities of the local church consistent with those of the general church? This factor is challenging with the PCUSA because of the diversity in worship styles.
- **Calling pastors.** The presbytery plays the key role in ministers taking calls and leaving churches. Via the minutes and files, demonstrate these in regards to this particular church. Show the succession of Presbyterian ministers approved by the presbytery. Did the presbytery install any of the ministers in the church building? Laying on of hands? Document work with committees on ministry and pastor nominating committees. Show if the church wanted a minister but the presbytery refused and, so, the minister was not called. Did most ministers attend Presbyterian-related seminaries? Were most ministers members of presbytery? At the time of schism, was the minister one installed by the presbytery?
- **Use of church governing bodies and officers to assist the local church.** Show how this church, its ministers, or members have initiated the use of presbytery officers, committees, or appeals in the past, or have been compelled to do so.

- **Denominational listing.** The General Assembly publishes a list of all member churches. Secure the page showing this listed church for all of the years it has been with the denomination.
- **Tax exempt status.** A federal group tax exemption ruling is held by the PCUSA for all churches, middle governing bodies, and the General Assembly. This ruling includes all those listed in the General Assembly publication. Secure a statement from the Legal Office that this particular church is part of the denomination and, so, in PCUSA's group tax exempt ruling.
- **Insurance.** Many churches are insured under presbytery master insurance policies. If applicable, show this.
- **Use of the names and symbols of the denomination or predecessor denominations.** Is this church known in the community as part of the denomination? Did it use the denominational symbols on its sign, stationery, etc.? Does the cornerstone include the name Presbyterian?
- **Constitutional questions.** Did officers (G-14.0207) and ministers (G-14.0405b) of the church answer the constitutional questions set forth in the *Book of Order*, including the agreement to be bound by our church's polity and discipline?
- **Participation in higher governing bodies.** Did elders and ministers participate in presbytery, synod, or General Assembly meetings? Other meetings of the higher governing bodies?
- **Presbytery and higher governing bodies at the church.** Did the church ever host meetings of higher governing bodies? Did presbytery or any of its committees ever hold meetings in this particular church? Did presbytery officers ever visit the church? Preach at the church?
- **Hymnals and other publications.** Did the church use hymnals or other publications produced by the Presbyterian Church?
- **Did the church ever receive any grants or loans from the presbytery or a higher governing body? Is there a loan in effect at the present time?**
- **Mission programs.** Did members participate in mission programs sponsored by higher governing bodies? Attend camps or conference centers owned or sponsored by the presbytery or the synod?
- **Finances.** Did the church send any collections or per capita funds to the presbytery or higher governing bodies? Did the church participate in any of the special offerings (One Great Hour of Sharing? Pentecost Offering?)
- **Review of minutes.** Did the church submit its minutes for review and approval by the presbytery (G-9.0407c)? Did the presbytery ever correct the minutes?
- **When it threatened to leave, did the local church notify the presbytery or higher governing bodies, thereby demonstrating its knowledge that it is related to higher bodies?**

VI. Overview of U.S. Supreme Court Cases

There are seven important U.S. Supreme Court cases which relate to church property disputes. They date from 1871 to 1979. This section provides a summary of those cases: their underlying facts and the important rulings the Court issued. The Court's 1979 *Jones v. Wolf* decision was the last opinion of the Supreme Court on this topic. All seven cases are

summarized here because of how one builds upon the other. It is important to have a working knowledge of all of these cases because the various states have, at the invitation of the *Jones v. Wolf* Court, applied a variety of ways to decide church property disputes. Some harken back to the 1871 *Watson v. Jones* case. Others decline to go beyond 1979. In some states, the law is not favorable to presbyteries because the state courts have misapplied a U.S. Supreme Court case. In these instances, it is especially important to be familiar with these cases because you may ask the court to correct state law.

In all of these cases, the Supreme Court issued cautionary language about the civil courts interfering with the ecclesiastical law and polity of churches. These opinions also set forth some of the leading First Amendment language about the autonomy of churches and the circumscribed authority of civil courts in how they handle various church disputes. Because of the extensive quotation of the various opinions, this section constitutes about half of the entire memorandum. Use this language to remind the state court of the U.S. Supreme Court's various rulings in favor of hierarchical churches.

Watson v. Jones (1871) 80 U.S. 679, 20 L.Ed. 666

Key Points: Court draws a bright line between congregational and hierarchical churches. Civil courts will determine church property control as follows: In a congregational church, the determination will be by majority vote of the congregation or an authorized local church board. In a hierarchical church, the determination will be by the highest church governing body that has ruled on the matter. Civil courts must accept the rulings of such church bodies, not engage in ecclesiastical decisions themselves. This is known as the hierarchical deference rule.

Facts: During the Civil War, the Walnut Street Presbyterian Church in Louisville, Kentucky split over the issue of slavery. A majority of the congregation was anti-slavery with a slim pro-slavery majority in control of the session and the trustees. In August of 1865, the pro-slavery session proposed to re-engage a pro-slavery minister who was rejected by the congregation; the session called him anyway. Some members asked the synod to intervene (likely the presbytery was dealing with its own split). In January of 1866, a synod committee visited the church "with power to call a congregational meeting for the purpose of electing additional ruling elders, calling a pastor, or choosing a stated supply, and doing any other business competent to a congregational meeting that may appear to them, the said congregation, necessary for their best interests." The pro-slavery session and trustees refused to open the church; the congregation organized itself on the sidewalk and elected additional elders, all anti-slavery. The pro-slavery contingent retained control and refused any participation by the newly elected elders. The presbytery, synod, and General Assembly (dealing with their own splits) all issued rulings in regards to this church. Ultimately, the anti-slavery General Assembly recognized the authority of the anti-slavery middle governing bodies, newly elected elders, and session. Still excluded from church operations, the anti-slavery elders recognized by the higher church judicatories filed suit in the Louisville civil court for control of the property. The local court ruled in favor of the anti-slavery elders as recognized by the higher governing bodies. The Kentucky Court of Appeals ruled the General Assembly and middle governing bodies acted beyond church law and

held in favor of the pro-slavery contingent. Ultimately, a related case came before the U.S. Supreme Court.

Rulings: The Court notes the various parts of the *Presbyterian Church Constitution* (Confessions of Faith, Form of Government, Book of Discipline, and Directory for Worship). It notes and explains the membership and powers of the ascending series of four church judicatories, now known as governing bodies: church sessions, presbyteries, synods, and the General Assembly.

In determining the rightful owner in church property disputes, the Court sets forth three alternatives for decision making. The second and third are the most important:

1. When the property by deed, will, or other instrument has express terms devoted to the teaching, support, or spread of a specific form of religious belief, that will be enforced. 80 U.S. at 722.
2. When the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority, then the determination will be by majority vote of the congregation or an authorized board of the local church. *Id.*
3. When the property is held by a religious congregation or body that is a subordinate member of some general church organization in which there are superior ecclesiastical tribunals, with a general and ultimate power of control more or less complete in some supreme judicatory, then the determination will be by the highest church judicatory that has ruled on the matter. *Id.*

Thus, *Watson v. Jones* established what is known as the hierarchical deference rule: In hierarchical churches (ex. Presbyterian, Episcopal, Methodist), the civil courts will defer to the ruling of the highest church judicatory that considers the matter. The court will make its property control ruling on the basis of the church judicatory ruling. By contrast, in congregational or independent churches (ex. Baptist), the civil court will defer to the majority vote of the local congregation or authorized board and award the property accordingly.

The *Watson v. Jones* Court authored pivotal language still widely used in a variety of cases concerning churches:

- As to the rule of hierarchical deference: “[W]henever the questions of discipline, or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.” 80 U.S. at 727.
- As to the right of denominations to organize themselves and the authority of their ecclesiastical rulings: “In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does

not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary associations to assist in the expression and dissemination of any religious doctrine and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." *Id.* at 728-29.

- As to the inability of civil courts to make ecclesiastical determinations: "Nor do we see that justice would be likely to be promoted by submitting those [ecclesiastical] decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest of minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all those bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so." *Id.* at 729.

Case Comments: It is important to note the Presbyterian Church did not have a property trust clause in its *Constitution* at this time. It did not need one. Presbyterian polity clearly established (as it does now) the authority of presbyteries in relation to the particular churches and the successive authority of every higher governing body. Even without a trust clause in the deed or the church constitution, the *Watson v. Jones* Court recognized the property was held in trust "for the use of the persons who by the constitution, usages, and laws of the Presbyterian body are entitled to that use." 80 U.S. at 720. Noting that the trustees do not personally own the property but act as fiduciaries, the Court referred to the "true body of the church" and the "mode which is authorized by the canons of the general church" *Id.* at 721.

With this ruling, the United States Supreme Court provided a bright line rule as to how church property disputes would be determined by the civil courts. With its polity and the hierarchical deference rule established, the Presbyterian Church was secure in making its own determinations and where those had civil ramifications (ex. property ownership) knowing they would be enforced. The hierarchical deference rule was firmly in place for almost a century.

Gonzalez v. Roman Catholic Archbishop (1929) 280 U.S. 1, 74 L.Ed. 131, 50 S.Ct. 5

Key Points: Not a church property case but establishes an exception that later comes into play in such cases: Generally, the decisions of church tribunals, even those affecting civil rights, are binding on the civil courts. But there will be an exception where the civil court finds fraud, collusion, or arbitrariness.

Facts: In this case, Gonzalez sued the Archbishop of Manila to compel him to appoint Gonzalez a chaplain. Gonzalez would be the beneficiary of a trust if he were named chaplain. The archbishop refused.

Rulings: The U.S. Supreme Court upheld the archbishop's sole discretion in making the appointment decision but it added, in dicta (language not necessary for the ruling), that a civil court could review decisions of church judicatories for fraud, collusion, or arbitrariness. "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." 280 U.S. at 16:

Case Comments: This exception for fraud, collusion, or arbitrariness is sometimes claimed in church property cases against the presbytery or other church governing bodies. Arbitrariness is the most typical claim. These arguments are rarely successful because of the natural inclination of courts to stay clear of ecclesiastical decisions and the internal operations of church tribunals (see *Serbian Eastern Orthodox Diocese v. Milivojevich*, below, limiting the arbitrariness exception).

Kedroff v. St. Nicholas Cathedral (1952) 344 U.S. 94, 97 L.Ed. 120, 73 S.Ct. 143

Key Points: Court holds New York's law removing Russian Orthodox churches from the authority of the patriarch in Moscow unconstitutional. The rulings in *Watson v. Jones* and *Gonzalez v. Roman Catholic Archbishop*, although not decided under the First Amendment, are recognized for their free exercise bases.

Facts: During the Cold War, New York passed a law placing all Russian Orthodox churches in that state under the jurisdiction of the Russian Orthodox Church in America rather than the Orthodox Church in Russia with its patriarch in Moscow.

Rulings: The U.S. Supreme Court determined this was unconstitutional and that the First Amendment's free exercise clause required the churches to remain under the jurisdiction of Moscow. The *Kedroff* Court focused upon *Watson v. Jones* and cited *Gonzalez*, noting the freedom for religious organizations these opinions radiate. 344 U.S. at 116.

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church (1969) 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601

Key Points: Court holds Georgia's departure-from-doctrine rule unconstitutional under the First Amendment because it compels civil courts to determine what are the substantial original tenets of the church and whether or not they have been abandoned. Civil courts must not decide church property cases by resolving controversies over religious practice and doctrine. The Court announces but does not define the neutral principles of law doctrine, those principles developed for use in all property disputes.

Facts: Two Presbyterian churches in Savannah, Georgia voted to withdraw from the Presbyterian Church in the United States and reconstitute themselves as an autonomous Presbyterian organization. Their complaints included, variously, the ordination of women; pronouncements on social matters; support of the removal of Bible reading in the schools; teachings alien to the Confessions; membership in the National Council of Churches of Christ; etc. The two ministers renounced the jurisdiction of the church and so did many elders. The presbytery established an administrative commission but conciliation failed. The commission acknowledged the departure of the local leadership and proceeded to take control of the property until new leadership could be appointed. The dissident church members did not appeal within church judicatories. Instead, they filed suit in civil court to enjoin the presbytery and higher governing bodies from trespassing.

At this time, Georgia statutory law employed the departure-from-doctrine rule. This rule provided that when a Georgia church was a member of a hierarchical denomination, a trust in favor of the denomination would be enforced "conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and ... an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent." 393 U.S. at 444 (Footnote 3, quoting the Georgia statute and the Georgia Supreme Court). At trial, the jury determined the denomination had engaged in a "fundamental or substantial abandonment of the original tenets and doctrines of the [Presbyterian Church] so that the new tenets and doctrines are utterly variant from the purposes for which the [Presbyterian Church] was founded." 393 U.S. at 443-44. The local churches were awarded the property under the departure-from-doctrine rule. This judgment was affirmed by the Georgia Supreme Court.

Rulings: The U.S. Supreme Court declared the departure-from-doctrine rule unconstitutional under the first amendment:

- "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." 393 U.S. at 449.
- "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free

development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." Id.

"[T]he departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to religion. Plainly, the First Amendment forbids civil courts from playing such a role." Id. at 450.

In rejecting the departure-from-doctrine rule, the Supreme Court established the neutral principles doctrine but did not clearly define it: "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." Id. at 449. Interestingly, the *Mary Elizabeth Blue Hull* Court called upon churches to structure their relationships according to these neutral principles but did not set out what they were: "States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." Id.

Case Comments: This lack of definition invited more church property cases. Ultimately, the Supreme Court was compelled to define what it meant by neutral principles.

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, (1970) 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499

Key Points: Court dismisses an appeal (and thereby leaves the lower court's ruling in place) where the Maryland Court of Appeals applies neutral principles and decides a church property dispute by examining— statutory law regarding church corporations holding property, deeds, church corporate articles, and the constitution of the general church. In a concurring opinion, three ways of satisfying neutral principles are set out: 1) The hierarchical deference rule as long as the civil courts do not make any polity or doctrine determinations; 2) The formal title doctrine where deeds, corporate articles, state law, and the denomination's constitution are examined; 3) States can adopt special statutes concerning church property as long as they do not interfere in church doctrine or polity.

Facts: Two local churches in Maryland sought to secede from the general church. In an earlier opinion, 393 U.S. 528 (1969), the U.S. Supreme Court directed the Maryland Court of Appeals to reconsider the case in light of the Court's *Mary Elizabeth Blue Hull* opinion (establishing the neutral principles doctrine but not defining it). When the case returns, the Maryland court has examined state statutory law governing the holding of property by religious corporations, deed language, charters of the church corporations, and provisions in the denominational church constitution to determine ownership of the property. The denominational church constitution did not have a trust clause. The Maryland Court of Appeals awarded the property to the seceders. On appeal back to the U.S. Supreme Court, the Court dismissed the

case in one paragraph stating the Maryland court had resolved the matter without inquiring into religious doctrine and, so, no substantial federal question was presented. This case is a harbinger of how neutral principles will operate.

Concurring opinion: Three justices join a concurring opinion (authored by Justice Brennan, the author of the *Mary Elizabeth Blue Hull* opinion) suggesting the neutral, principles doctrine can be met in three different ways:

1. **The *Watson v. Jones* hierarchical deference rule:** Churches with a congregational polity decide property ownership by majority vote. Churches in a hierarchical polity decide property ownership by the highest church authority that has ruled on the dispute at issue. But the opinion cautions the *Watson* approach can only be used if the appropriate church governing body can be determined without resolution of doctrinal questions or extensive religious policy inquiry. 396 U.S. at 370.
2. **The formal title doctrine:** Courts can determine property ownership by looking at deeds, reverter clauses, general state corporation laws, and general church constitutions. But the opinion cautions that civil courts cannot apply such documents if they are conditioned upon departure from doctrine (the rule struck down in *Mary Elizabeth Blue Hull*). *Id.*
3. **States can pass special statutes regarding church property arrangements as long as they do not interfere in doctrine; both doctrine and ecclesiastical policy must be left to church governing bodies.** *Id.*

Serbian Eastern Orthodox Diocese v. Milivojevich, (1976) 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372

Key Points: The Illinois Supreme Court reinstated a defrocked Orthodox bishop, reunited three dioceses into one, and returned control of the diocese's property to the defrocked bishop, all by applying the ecclesiastical law and polity of the church. The Supreme Court held this was an unconstitutional rejection of the decisions of the highest church tribunal. Such church tribunal decisions are binding on civil courts. Moreover, the Illinois court's reliance on the arbitrariness exception was misplaced. The arbitrariness exception cannot be used by a civil court to reexamine the decisions of the highest church tribunal on matters of church laws and regulations. The arbitrariness exception is thereby limited.

Facts: Various disputes led to the Serbian Orthodox bishop of the American-Canadian diocese (Milivojevich) being defrocked by the mother church's Holy Synod and Holy Assembly. The diocese was also divided into three new dioceses with new bishops named. The defrocked bishop sued in Illinois court to be reinstated as bishop, have the reorganization of the dioceses declared invalid, and have all properties secured in him. The Illinois Supreme Court performed a detailed review of church law and determined the actions of the mother church, in applying its own church law and polity, were procedurally and substantively defective. Therefore, the actions were arbitrary, invalid, and reversed.

Rulings: The U.S. Supreme Court reversed the Illinois Supreme Court:

- The Supreme Court notes this case is essentially not a church property dispute, but a religious dispute which under Supreme Court precedent is for ecclesiastical, not civil, tribunals. 426 U.S. at 709.
- The Illinois Supreme Court rested its decision "upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute and impermissibly substitutes its own inquiry into church polity and resolutions based upon those disputes." Id. at 708.
- "[W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. Id. at 709.
- As to the arbitrariness exception set forth but not defined in *Gonzalez and Mary Elizabeth Blue Hull*, it does not allow for the review performed by the Illinois Supreme Court: "[N]o 'arbitrariness' exception—in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations—is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." Id. at 713.
- "Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria." Id. at 714-15.
- The Court criticized the Illinois court on a variety of matters, including its rejection of the expert testimony presented by the mother church's expert witnesses. Id. at 718 (See also footnote 10).
- "In short the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the constitution requires that civil courts accept their decisions as binding upon them." Id. at 724-25.

Case Comments: In addition to the very strong language restricting a civil court's power to interpret church law, this is the case to use if your opponents make a claim of arbitrariness against the actions of the presbytery.

Jones v. Wolf (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020

Key Points: No longer is the hierarchical deference rule of *Watson v. Jones* the only way to determine church property disputes. Indeed, states may adopt any one of various approaches to settle church property disputes. The Court identifies three: 1) Neutral principles where the court examines statutory law on churches holding property, church corporate articles, deeds, and the provisions of the denomination's constitution. The Court explicitly calls upon denominations to modify their constitutions to provide for express trusts and states the civil courts will be bound to enforce them; 2) Hierarchical deference remains an option to determine church property disputes even though it is not the only option; 3) A presumptive rule of majority representation may be used as long as it is defeasible upon some showing that the identity of the local church is to be determined by some other means (ex. local church charter or denomination's constitution can provide that church is to be identified by higher governing body). Since *Jones v. Wolf*, no other church property cases have been taken by the U.S. Supreme Court. This ruling allows state courts to use multiple mechanisms to decide such cases and they do.

Facts: Various disputes brought the Vineville Presbyterian Church in Macon, Georgia to a congregational meeting. By a margin of 164 to 94, the congregation voted to leave the Presbyterian Church in the United States and join the Presbyterian Church in America. The Augusta-Macon Presbytery of the PCUS appointed a commission that eventually ruled the minority faction constituted the "true congregation." The presbytery commission withdrew all authority from the majority faction. The majority faction took no part in the commission's work and did not appeal its decisions. The minority faction brought suit in civil court to gain control of the property. The Georgia courts applied "neutral principles of law" and ruled for the majority.

Rulings: The United States Supreme Court sets out what it means by the neutral principles of law doctrine.

- The Court recognizes the PCUS has a generally hierarchical or connectional form of government as contrasted with the congregational form. As in other Presbyterian cases, the Court notes the ascending levels of four governing bodies, with each subject to the review and control of the next higher governing body. 443 U.S. at 597-98.
- In applying its version of neutral principles, the Georgia courts reviewed property deeds, state statutes concerning implied trusts, church corporate charters, and the *Presbyterian Church Constitution*. In none of these documents did the court discern a trust in favor of the denomination. On this basis, the Georgia courts ruled in favor of congregational majorities. Id. at 600-01.

- By contrast, in a schism involving a United Methodist church, the Georgia court found the *United Methodist Constitution* contained an express trust in favor of the denomination. On that basis, the court awarded the property to the denominational church. Id. at 600-01.
- The Supreme Court noted the state has a legitimate interest in the peaceful resolution of church property disputes and the civil courts are open to make determinations of church property ownership. Id. at 602.
- The Supreme Court explicitly stated "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 so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" Id. at 602 (quoting the concurring opinion in *Maryland & Virginia Churches*, emphasis in original). This multiplicity approach became very important as states around the country began to apply church property rules in a variety of ways.
- Having stated that any of various approaches could be used, the Court went on to identify three possible approaches:
 1. The neutral principles approach is used where a court reviews the language of deeds, the terms of local church charters, state statutes concerning church property, and the provisions of the general church constitution concerning the ownership and control of church property. Id. at 603.

Case Comments: Obviously, this neutral principles approach disadvantaged hierarchical churches, in part, as compared to their prior status under *Watson v. Jones*. No longer were civil courts mandated to follow the hierarchical deference rule in church property cases. Significantly, the *Jones v. Wolf* Court set out the mechanism by which denominations could reinstate their former position: "Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine ownership in the event of schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of its members." Id. at 603-04.

Even more explicitly, "At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." Id. at 606. Having noted how these matters could be resolved, the Court called upon "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." Id. at 604 (quoting *Mary Elizabeth Blue Hull*).

In response to this instruction by the U.S. Supreme Court, both the United Presbyterian Church in the United States of America, effective in 1981, and the Presbyterian Church in the United States, effective in 1982, adopted new chapters of the *Constitution* setting out express trusts on church property, their operations, the fact that presbytery determines the true church, and the like. In light of the Court's new neutral principles ruling, these constitutional amendments returned the Presbyterian Church to the same status it had held since the *Watson v. Jones* decision in 1871.

2. The hierarchical deference rule of *Watson v. Jones* remains one of the approaches approved by the Supreme Court to decide church property disputes. The U.S. Supreme Court notes that "Georgia law requires that 'church property be held according to the terms of the church government,' and provides that a local church affiliated with a hierarchical religious association 'is part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations.'" *Id.* at 608-09. Noting that this brings in the Presbyterian Church *Book of Order*, the Supreme Court cautions that civil courts must not "usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners [the minority faction] represent the 'true congregation' of the Vineville church. Therefore, if Georgia law provides that the identity of the Vineville church is to be determined according to the 'laws and regulations' of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity." *Id.* at 609.

Case Comments: The Supreme Court stated the hierarchical deference is not required by the First Amendment. *Id.* at 605. Some mistakenly read this to suggest that hierarchical deference was being abandoned but it is clear from this case, *Maryland and Virginia Churches*, and other cases that the rulings in *Watson v. Jones* are alive and well. Nowhere has the Court ever overruled *Watson v. Jones*; to the contrary, it has been repeatedly cited in the Supreme Court's case law.

3. The presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, is identified as an option. This rule, of course, puts the Presbyterian Church (and other hierarchical churches) at an immediate disadvantage because it ignores the fundamental and historic church polity that a presbytery identifies the true church, not a majority vote of the congregation. In effect, this rule, improperly applied, violates the free exercise of religion clause by turning the Presbyterian Church into an association of congregational or independent churches. Significantly, the Supreme Court noted that a presumptive rule of majority representation was proper where it was "defeasible upon a showing that the identity of the local church is to be determined by some other means." *Id.* at 607. The Court notes the various ways the presumptive majority rule can be trumped: "Most importantly, any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be

established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it." *Id.* at 607-08.

Case Comments: As noted above, the Presbyterian Church took the Court's advice and adopted both an express property trust and clear statements about the authority of the presbytery in property matters (see Sec. IV.)

VII. Other Resources

Law review articles are written by law professors, students, and practitioners. Typically, they have an academic focus and analyze principles in a particular area of law. In a state where church property case law is basically settled, law review articles will probably have little effect. If, however, the state has little or no case law or conflicting decisions, a law review article may be of more interest to the court. This section summarizes a few relatively recent articles. There are many others. The first resource listed below, however, is an annotated law report which discusses this area of law generally with a particular focus on cases nationwide.

- *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 ALR3d 324, 334 (listing the Presbyterian Church as hierarchical with control over local church property), and 417 ("Although the Presbyterian form of church government is without question hierarchical, there has been a considerable amount of litigation over the right of local Presbyterian churches to withdraw from the general church and retain the use and control of local church property. [T]his right is uniformly denied, on the ground that the local Presbyterian church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas." (Footnotes omitted)). Although this law report is dated (1974), its description of the Presbyterian Church as hierarchical is apt. It also discusses Presbyterian Church cases at section 25 of the annotation.
- *Hands Off! Civil Court Involvement in Conflicts Over Religious Property*, 98 Colum. L. Rev. 1843 (1998). Although the author criticizes the hierarchical deference approach, he notes it continues to be valid within U.S. Supreme Court jurisprudence and applied in many states, and he recognizes the Presbyterian Church as hierarchical. *Id.* at 1878. A review of some Presbyterian cases is provided, *id.* at 1898-1901, but some date from before *Jones v. Wolf*. Citing an Iowa Supreme Court case, he notes the 1981 property trust amendment to the *Book of Order* was not a new principle but rather clarified the uncertainty created by *Jones v. Wolf*. *Id.* at 1901.
- *Property Disputes and Religious Schisms: Who is the Church?*, 9 St. Thomas L. Rev. 319 (1997). This author endorses hierarchical deference and criticizes neutral principles. One of his main points is that one is bound by the rules of the church joined. "The Episcopal and Presbyterian churches trace their existence to the English Reformation. Thus, their polity, doctrine, and structure were established long before affiliation by the contemporary members. New membership in any existing organization implies

acceptance of the organization's existing rules." *Id.* at 354. Most of the article is devoted to reviews of U.S. Supreme Court cases and several state cases.

- *Religious Property Disputes and Inherently Religious Evidence: Towards a Narrow Application of the Neutral Principles Approach*, 35 *Vill. L. Rev.* 949 (1990). This author criticizes the hierarchical deference approach, analyzes the Episcopal Church, and a particular Kentucky Supreme Court case. He proposes a very narrow neutral principles approach whereby only secular documents are considered (deeds, corporate articles) and not general church constitutions. This proposal is contrary to the Supreme Court's guidance in *Jones v. Wolf*.

- *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 *Am. U. L. Rev.* 513 (1990). This is the most useful law review article reviewed. Although the author criticizes hierarchical deference and favors neutral principles, his case analyses are very helpful. He divides cases into three categories and identifies those cases in each: Hierarchical deference approach; Hybrid neutral principles and deference approach; and Strict neutral principles approach. These summaries are quite useful to the litigator who wants to know how other states handle certain church property issues.

- *The Need for an Exclusive and Uniform Application of "Neutral Principles" in the Adjudication of Church Property Disputes*, 32 *St. Louis U. L. J.* 263 (1987). This is another useful article. Although it criticizes the hierarchical deference approach, it provides a good review of cases, especially those ruling on Presbyterian Church and Episcopal Church property disputes. In addition, it provides a good review of core Presbyterian Church polity, especially the property trust. Most importantly, this article explicitly notes the Presbyterian Church, in response to the *Jones v. Wolf* Court, adopted clear and binding provisions in regards to church property:

- "National churches themselves may eliminate most of the uncertainty in the application of neutral principles by adopting constitutional provisions which will unequivocally demonstrate that the property of local churches is held in trust for the national church." *Id.* at 313.

- "PCUS and UPCUSA have adopted such provisions in the wake of *Jones v. Wolf*. [I]t seems clear that under either the polity or neutral principles approach a court must hold that the national church controls local property. Indeed, the adoption of such provisions will likely decrease the volume of church property litigation. Local churches will recognize that an express trust in favor of the national church will compel summary judgment in favor of the national church." *Id.* at 314.

- "[A] denomination that wishes to optimize its chances of prevailing in property litigation would be well-advised to adopt an unequivocal declaration of express trust as found in the constitutions of the [Episcopal and Presbyterian churches]." *Id.* at 314-15.

* *Church Property Disputes: Churches as Secular and Alien Institutions*, 55 Fordham L. Rev. 335 (1986). The author criticizes all existing church property doctrines and proposes his own: Courts should review secular legal documents (deeds, corporate articles) solely. Footnote 4 in this article lists many other law review articles on the topic.

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