

No. _____

**In The
Supreme Court of the United States**

THE PRESBYTERY OF OHIO VALLEY, INC.,
and THE SYNOD OF LINCOLN TRAILS, INC.
OF THE PRESBYTERIAN CHURCH (U.S.A.),

Petitioners,

v.

OPC, INC., f/k/a OLIVET PRESBYTERIAN CHURCH,
INC., d/b/a OLIVET PRESBYTERIAN CHURCH, d/b/a
OLIVET EVANGELICAL PRESBYTERIAN CHURCH,
d/b/a OLIVET PRESBYTERIAN CHURCH OF
EVANSVILLE, and OLIVET EVANGELICAL
PRESBYTERIAN CHURCH OF EVANSVILLE, INC.,

Respondents.

**On Petition For Writ Of Certiorari
To The Indiana Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First and Fourteenth Amendments to the United States Constitution require the Indiana Supreme Court to recognize and enforce trust language in a religious denomination's constitution where the language utilized follows the direction of *Jones v. Wolf*, 443 U.S. 595 (1979), and the local church agreed to be a part of the national church hierarchy and bound by that denominational constitution?

RULE 14.1(b) STATEMENT

The Petitioners are the Presbytery of Ohio Valley, Inc., which does business as the Presbytery of Ohio Valley or Ohio Valley Presbytery; and the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.), Inc., which does business as the Synod of Lincoln Trails, Inc. or the Synod of Lincoln Trails. Both entities are intermediary level judicatory or governing bodies within the Presbyterian Church (U.S.A.). No parent or publicly-held company owns any stock or interest of either Petitioner entity.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners The Presbytery of Ohio Valley, Inc. and The Synod of Lincoln Trails of the Presbyterian Church (U.S.A.) respectfully request that this Court grant their Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Indiana.



OPINIONS BELOW

The opinion of the Indiana Supreme Court is reported at 973 N.E.2d 1099 (Ind. 2012), and is included in the Petitioner's Appendix to this Petition ("App.") at 1-31 (hereafter "*Presbytery of Ohio Valley I*"). The October 23, 2012, Order of the Indiana Supreme Court denying Petitioners' motion to reconsider and clarify is not published and appears at App. 92. The December 14, 2010, decision and order of the Indiana Court of Appeals is reported at 940 N.E.2d 1188 (Ind. Ct. App. 2010), and is at App. 32-52 (hereafter "*Presbytery of Ohio Valley II*"). The March 9, 2010, Entry of Final Judgment with Findings of Fact and Conclusions of Law of the Vanderburgh Circuit Court granting summary judgment for Respondent is not reported and appears at App. 53-91.



JURISDICTION

The Indiana Supreme Court entered its judgment on July 31, 2012, and denied the Petitioners' timely

motion to reconsider and clarify on October 23, 2012. This Court has jurisdiction under 28 U.S.C. § 1257(a).

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**CONSTITUTIONAL PROVISIONS
AND STATUTE INVOLVED**

The First Amendment to the United States Constitution provides in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I. The Due Process Clause of the Fourteenth Amendment to the United States Constitution, through which the First Amendment’s requirements and restrictions are incumbent upon the States, provides: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .” U.S. Const. amend. XIV, § 1.

Indiana Code § 30-4-2-1(b) (2012) states:

Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but its terms must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee’s interest, the identity of the beneficiary, the nature of the beneficiary’s interest and the purpose of the trust may be ascertained with reasonable certainty.



STATEMENT OF THE CASE

This case presents an important and recurring issue concerning religious freedom and the standards for resolving church property disputes. The Indiana Supreme Court addressed for the first time the applicability of this Court's "neutral principles of law" approach as set forth in *Jones v. Wolf*, 443 U.S. 595, 602-06 (1979), for resolving church property disputes. This Court held in *Jones* that civil courts may resolve church property disputes without violating the First Amendment by applying "neutral principles of law." *Id.* at 603-05. "Neutral principles of law" include "objective, well-established concepts of trust and property law familiar to lawyers and judges" which may be applied to deeds, local church charters, state property laws, "and the provisions of the general church concerning the ownership and control of church property," and should be "completely secular in operation." *Id.* at 603; *see also Maryland & Vir. Elder of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 (Brennan, J., concurring) (1970); *Serbian E. Orthodox Diocese for the U.S.A. & Canada v. Milivojevich*, 426 U.S. 696, 723-25 (1976).

The First Amendment limits the role civil courts may play in resolving church property disputes, and the neutral principles approach mandates that civil courts show no preference for any particular religion and "accommodate all forms of religious organization and polity." *Jones*, 443 U.S. at 603. Here, the Indiana Supreme Court did not apply the state's trust laws in a neutral manner and failed to give due consideration

to the constitution of the general church and its specific constitutional provision for addressing ownership and control of church property when a local church congregation desires to be transferred to another denomination. Since 1983, the Presbyterian Church (U.S.A.) (“PC(USA)”) Constitution has stated: “All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)” (App. 21; 96.)¹ This provision of the PC(USA) Constitution is sometimes called the “Property Trust Clause.”

The Indiana Supreme Court did not take a neutral approach to the express, applicable Property Trust Clause of the Constitution of the PC(USA). The Indiana Supreme Court purported to avoid what it viewed as compulsory deference to a particular hierarchical form of church polity in favor of a congregational model (*Presbytery of Ohio Valley I*, 973 N.E.2d at 1105-06, n.7; App. 11-13), and ignored *Jones*’ direction that the neutral principles approach not

¹ In 2006, this provision was found at part G-8.0201 in the Book of Order of the PC(USA) Constitution. In 2011, it was renumbered, and is now found at part G-4.0203.

impose a particular form of church polity or otherwise burden free exercise of religion because “the constitution of the general church can be made to recite an express trust in favor of the denominational church” and “civil courts will be bound to give effect” to such expressions of intent. *Jones*, 443 U.S. at 606. Contending that “Indiana courts should apply neutral principles of Indiana trust and property law without regard to the organizational structure of the religious denomination” (*Presbytery of Ohio Valley I*, 973 N.E.2d at 1107-08; App. 13-15), the Indiana Supreme Court in effect rejected and trumped that organizational church structure by finding that the local church’s bylaws and minutes were insufficient expressions of intent to be bound by the denomination’s Property Trust Clause, although these stipulated documents plainly stated the Respondent’s intention and agreement to be governed by the PC(USA) Constitution. *Id.* at 1112; App. 24-25.

The decision of the Indiana Supreme Court is contrary to other recent decisions of the highest courts of Georgia, New York and Oregon, upholding the PC(USA) Property Trust Clause in circumstances similar to this case,² and the decisions of the highest

² *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 719 S.E.2d 446, 454 (2011), cert. denied by *Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc.*, ___ U.S. ___, 132 S. Ct. 2772 (2012) (Property Trust Clause enforceable against local church which held title to real estate in its own name); *Presbytery of Hudson River v. Trustees of First Presbyterian Church*, 72 A.3d 78, 95-96, (Continued on following page)

courts of Alaska, California, Connecticut and Georgia, addressing similar church property disputes in other denominations where the general church constitution, charter or canons contain the language contemplated by *Jones*.³ Intermediary appellate and trial federal and other state courts have reached various and differing results, even with respect to the same Presbyterian constitutional provision.⁴ This case thus

895 N.Y.S.2d 417 (N.Y. 2010) (PC(USA) is a hierarchical church and property of local church was held in trust and reverted to Presbytery upon local church's secession from the denomination); *Hope Presbyterian Church v. Presbyterian Church (U.S.A.)*, 352 Or. 668, ___ P.3d ___ (Or. 2012) (property belonged to denomination under both hierarchical and neutral principles approaches where local church amended its bylaws to state expressly that it was governed by the PC(USA) Constitution).

³ See cases upholding the Dennis Canon to find a trust in favor of the national Episcopal church over local church property, such as, *In re Episcopal Church Cases*, 45 Cal.4th 467, 87 Cal.Rptr.3d 275, 198 P.3d 66 (Cal. 2009); *Episcopal Church in the Diocese of Conn. v. Gauss*, 302 Conn. 408, 28 A.3d 302, 325 (2011), cert. denied, ___ U.S. ___, 132 S. Ct. 2773 (2012); *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga., Inc.*, 290 Ga. 95, 718 S.E.2d 237 (2011); *In re Church of St. James the Less*, 585 Pa. 428 (Pa. 2005). See also *St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conf. of United Methodist Church, Inc.*, 145 P.3d 541 (Alaska 2006) (trust found in favor of Methodist denomination).

⁴ See, e.g., *Episcopal Diocese of Mass. v. Devine*, 59 Mass. App. 722, 731, 797 N.E.2d 916, 924 (2003) (trust for denomination found based on neutral principles and trust provision in Episcopal canon); but see the contrary results reached in cases such as *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of So. Car.*, 685 S.E.2d 163, 172 (S.C. 2009), cert. dismissed by *Green v. Campbell*, 130 S. Ct. 2088

(Continued on following page)

squarely presents a deep and widening split among lower courts concerning the meaning of *Jones* and the application of neutral principles in hierarchical church settings.

The petition should be granted because the Indiana decision directly implicates a conflict in decisions among state courts on a fundamental issue of federal law. The PC(USA) Property Trust Clause is subject to conflicting interpretations in different states, and this national church organization is denied the uniformity that is essential to its polity. Furthermore, the outcome of this dispute affects many religious denominations and thousands of churches, and could require the reformation of thousands of deeds, corporate charters and other documents, thereby imposing a substantial burden and considerable cost on numerous not-for-profit religious organizations. This Court recently addressed both Religion Clauses in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment*

(2010) (denominational trust clause not upheld without recorded interest in local church property in case where church was in schism); *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 40 S.W.3d 301, 307 (Ark. 2001), *cert. denied*, 534 U.S. 945 (2001) (national trust clause not enforced); *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 525 (8th Cir. 1995) (trust not enforced under *Jones*). *See also* Cameron Ellis, *Church Factionalism and Judicial Resolution: A Reconsideration of the Neutral-Principles Approach*, 60 ALA. L. REV. 1001, 1007-08 (2009) (discussing inconsistent application of the neutral principles approach to PC(USA) Property Trust Clause and the Episcopal Dennis Canon).

Opportunity Comm'n, et al., 565 U.S. ___, 132 S. Ct. 694, 702 (2012), in which this Court reaffirmed First Amendment protection for religious organizations to determine polity, religious employment and other ecclesiastical matters. In *Hosanna-Tabor*, the Court affirmed a long line of cases protecting religious freedom, including *Watson*,⁵ *Jones* and *Serbian. Id.* at 702-06. The freedom to control church property, including places of worship, is no less important to religious freedom than the right to determine who will minister to the faithful. The Court should take this opportunity to resolve the growing disagreement and uncertainty over the intent and effects of *Watson* and *Jones* for hierarchical or connectional church property disputes and the role of civil courts in resolving church property disputes.



PROCEEDINGS BELOW

In 2007, Petitioners filed this lawsuit seeking declaratory judgment and other relief from the Respondent related to rights to the local church property and the process for resolving this church property dispute. *Presbytery of Ohio Valley II*, 940 N.E.2d 1188, 1191-92; App. 39-40. The parties agreed that the case presented only legal issues, and they filed cross-motions for summary judgment based on a stipulated record and stipulated facts. *Id.* at 1192; App. 40.

⁵ *Watson v. Jones*, (13 Wall.) 80 U.S. 679 (1871).

Respondent argued the trial court should employ the neutral principles of law approach as established by this Court in *Jones*, to find that it had complete and unfettered rights to the property based on the language of the deed to the real estate. Petitioners argued that the trial court should employ the hierarchical deference rule as set forth by this Court in *Watson*, and affirmed in *Jones*, 443 U.S. at 602, to determine the rights to this church property without violating the First Amendment. Petitioners argued in the alternative that they should also prevail under the neutral principles of law approach. In their summary judgment briefs, both parties addressed the limitations imposed by the First Amendment on civil courts faced with church property disputes. The trial court discussed those limitations and its fear of religious entanglement as the basis for its refusal to consider the effect of the Property Trust Clause on this dispute. (App. 71, 77-79, 88.) Yet the trial court delved into other doctrinal provisions of the PC(USA) Constitution unrelated to property and dismissal of congregations. (App. 64-65, 69-71, 73, 78, 85-87.) The trial court purported to apply the neutral principles of law approach when it found that Respondent was entitled to sole ownership of the property and no express or implied trust had been created in Petitioners' favor, but violated the First Amendment when it stated the PC(USA) should have revised the Olivet deed, and not relied on a national church constitutional trust provision. (App. 73, 90.)

On appeal, in an unanimous decision, the Indiana Court of Appeals reversed the trial court's summary judgment ruling. (App. 31-52.) The Indiana Court of Appeals agreed with the trial court that the neutral principles of law approach was the best approach to employ, but held that Petitioners prevail under that approach. *Presbytery of Ohio Valley II*, 940 N.E.2d at 1194; App. 45. The Indiana Court of Appeals explained the errors of the trial court stemming from its almost exclusive reliance on the language of the real property deed to the exclusion of the Olivet bylaws, minutes and other documents, and the complete exclusion of any consideration of the PC(USA) Constitution and polity. *Id.* at 1195; App. 47-48. Respondent argued to the trial court and the Indiana Court of Appeals that its bylaws stating it was governed by the PC(USA) Constitution were revocable, and when it reincorporated in 2006 to become part of the Evangelical Presbyterian Church, it had simply and properly removed itself from the governance of the PC(USA) and was no longer bound by the Property Trust Clause. The Court of Appeals disagreed. *Id.* at 1195-96; App. 49-51.

Applying neutral principles of corporate, contract and property law, the Indiana Court of Appeals examined other secular instances where a local member organization reincorporated and restated its corporate governance documents in order to rid itself of the rights and control by a parent organization. *Id.* (citing *National Bd. of Exam'rs for Osteopathic Physicians & Surgeons v. American Osteopathic Ass'n*, 645

N.E.2d 608, 617-18 (Ind. Ct. App. 1994) (hereafter “*NBOME*”) (parent organization had the right to enforce the terms of the national charter against member organization where articles and bylaws of the member organization incorporated the parent organization’s charter)).⁶ The Indiana Court of Appeals explained that “articles of incorporation and bylaws of a nonprofit corporation constitute a contract between the state and the corporation, the corporation and its members, and the members among themselves,” and that changes to such documents must be approved according to the requirements set forth in those documents and applicable statutes. *NBOME*, 645 N.E.2d at 617, 620. Following these established neutral principles of Indiana law, the Court of Appeals rejected the Respondent’s argument that different rules should apply to the interpretation of corporate documents for religious not-for-profit entities. *Presbytery of Ohio Valley II*, 940 N.E.2d at 1196; App. 50-51. The Court of Appeals found that Olivet expressly agreed it was bound by the PC(USA) Constitution and further stated that its own bylaws would not be amended to conflict with that Constitution.

⁶ Several cases have followed the holdings in *NBOME*. See, e.g., *Truck Finance Specialists, Inc. v. W & S Leasing, Inc.*, 911 N.E.2d 612, 616 (Ind. Ct. App. 2009); *Heritage Lake Property Owners Ass’n v. York*, 859 N.E.2d 763, 765 (Ind. Ct. App. 2007); *Holloway v. Bob Evans Farms, Inc.*, 695 N.E.2d 991, 996 (Ind. Ct. App. 1998); *Executive Bd. of Mo. Baptist Convention v. Windermere Baptist Conf. Ctr.*, 280 S.W.3d 678, 695 (Mo. App. 2009).

Id. The Court of Appeals further reasoned that no ecclesiastical inquiry was needed in this case with respect to either the Respondent's corporate bylaws and minutes or the denomination's Property Trust Clause, all of which should be considered under *Jones*. *Id.* The Court of Appeals concluded, "having applied neutral principles of law and treated these parties and their property dispute as any other corporate entities who appear before us, we can only conclude that the trial court erred by entering summary judgment in Olivet's favor," and it reversed the decision of the trial court. *Id.* at 1197; App. 51-52.

In a three-to-two decision, the Indiana Supreme Court agreed that the neutral principles of law approach should be used to determine church property disputes in Indiana, but reached the opposite result, finding in favor of the Respondent on the issue of whether there is an express trust on the property.⁷ *Presbytery of Ohio Valley I*, 973 N.E.2d at 1109; App. 17-18. The Indiana Supreme Court held that express use of trust language in a denominational constitution does not require the imposition of a trust in the denomination's favor. *Id.* at 1106, n.7; App. 11-13. The Indiana Supreme Court went on to state that, "under Indiana law, a claim of trust by the purported

⁷ Although the Indiana Supreme Court remanded the case to the trial court on the issue of whether there is an implied trust on the property, it entered judgment for the Respondent on all issues with respect to the creation of an express trust. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1112-13; App. 26.

beneficiary (*e.g.*, insertion of a trust clause into a denominational church organization's constitution), without indicia of intent on the part of the owner (settlor), is insufficient to impose a trust." *Id.*; App. 13. As a result, the Indiana Supreme Court held that there was no express trust over the property based on the PC(USA) Constitution or the Respondent's own corporate governance documents. Petitioners moved the Indiana Supreme Court to reconsider and to clarify its Opinion, but the Indiana Supreme Court denied Petitioners' motion without comment. App. 92.



FACTUAL BACKGROUND

This case proceeded before the trial court on a stipulated factual record. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1103; App. 4. The General Assembly of the Presbyterian Church in the United States of America ("PC(USA)") was formed in 1788. When divisions around slavery and religious doctrines could not be reconciled, the PC(USA) split in 1865. Churches south of the Mason-Dixon Line became known as the Presbyterian Church in the United States ("PCUS"). Congregations in northern states adopted the name "The United Presbyterian Church in the United States of America" ("UPCUSA"). This split continued until June 10, 1983, when the two factions reunited and the denomination became known as the Presbyterian Church (U.S.A.) ("PC(USA)"). *Presbytery of Ohio Valley II*, 940 N.E.2d at 1189; App. 34-35.

The PC(USA) and each of its predecessor denominations have always been governed by a church constitution, including a Book of Confessions and a Book of Order. The applicable PC(USA) Constitution, Book of Order, part G-4.0300, states basic principles of Presbyterian polity and explains that each lower governing body within the denomination is answerable to successive higher governing bodies.⁸ *Presbytery of Ohio Valley I*, 973 N.E.2d at 1111; App. 20-21. There are four levels of governance in the PC(USA): the General Assembly (highest); the Synod (multi-state regional); the Presbytery (primary regional); and the Session (local church). The presbytery is the primary governing body within the PC(USA), has plenary power, and is responsible for the mission and governance of the PC(USA) within its geographical region. *Id.* at 1103 n.2; App. 3.

The Respondent Olivet congregation has been affiliated with Presbyterianism since it was founded. Between 1906 and 1983, Respondent was a member congregation of the UPCUSA. As a member church of the UPCUSA at the time of the reunion, Respondent became a member church of the PC(USA) in 1983.

⁸ Relevant sections of the Book of Order were included in the Stipulated Documentary Record to the Indiana Courts, and are included at App. 94-106. The Annotated Book of Order of the PC(USA) may be found at: [http://index.pcusa.org/NXT/gateway.dll/Constitution/CONST0930/Level000000.htm?f=templates\\$fn=default.htm\\$3.0](http://index.pcusa.org/NXT/gateway.dll/Constitution/CONST0930/Level000000.htm?f=templates$fn=default.htm$3.0). This website includes a searchable version of the Annotated Book of Order that shows all amendments and the date changes were adopted.

Id.; App. 36-37. In 1983, local congregations like the Respondent could choose to leave the reunited denomination, but Respondent did not do so. *Id.* See *First Presbyterian Church of Schenectady v. United Presbyterian Church in the U.S. of Am.*, 62 N.Y.S.2d 86, 464 N.E.2d 454 (N.Y. 1984) (local congregation withdrew from denomination in dispute over 1983 reunification). The reunification of the denomination was noted in the Olivet Session Minutes for August 25, 1983, and the Olivet Session directed its clerk “to edit the By-Laws of the Olivet Presbyterian Church to bring them in line with the Book of Order changes as a result of the Reunion.” *Presbytery of Ohio Valley I*, 973 N.E.2d at 1111-12; App. 21-22.

From at least 1912 and until 1994, the Respondent congregation was unincorporated and known as “Olivet Presbyterian Church of Evansville, Indiana.” *Id.* at 1111; App. 22-23. In 1968 when the Respondent acquired the Oak Hill real estate,⁹ it was not incorporated. In 1969, the Olivet church recognized its connection to the denomination and adopted a Constitution and bylaws subjecting itself to the jurisdiction

⁹ The property referred to as the “Oak Hill real estate” where the church building is located was acquired on about June 14, 1968, by warranty deed to “Olivet Presbyterian Church of Evansville, Indiana,” an unincorporated entity. Acquisition of the Oak Hill real estate was made possible with donations and borrowed money, as well as proceeds from the sale of other church property acquired before 1968. *Presbytery of Ohio Valley II*, 940 N.E.2d at 1190; App. 36.

of the PC(USA). *Presbytery of Ohio Valley II*, 940 N.E.2d at 1189-91, 1195; App. 37-39, 49. The bylaws were amended in 1971 and 1978, and on both occasions expressly stated Olivet was subject to and governed by the church constitution. *Id.*

Consistent with provisions of the PC(USA) Book of Order at part G-7.0401, the Respondent congregation incorporated as an Indiana not-for-profit corporation on November 29, 1994, as “Olivet Presbyterian Church, Inc.” *Id.* at 1191; App. 37. The PC(USA) Constitution expressly provides that any particular church that forms a civil corporation may hold real or personal property in its own name, but may do so only in accordance with and subject to the Constitution of PC(USA). (App. 94.) After acquisition of the Oak Hill real estate and incorporation, Respondent restated its bylaws in 1998, and again in 2000. *Id.* “In both instances, the amended bylaws provided that Olivet ‘recognizes the constitution of said church as the authority for the governance of the church and its congregation.’ Stip. Ex. 42. The bylaws further provided that they ‘shall not be amended so as to conflict with the Constitution of [PC(USA)].’” *Id.*; *see also id.* at 1195; App. 49.

After it acquired the Oak Hill real estate, while the Property Trust Clause was a part of the PC(USA) Constitution, the Respondent stated and agreed three times – when it incorporated in 1994 and when it revised its bylaws in 1998 and 2000 – that it was subject to the PC(USA) Constitution – not designated portions of it, but in its entirety. On each occasion it

further stated that its own bylaws could not be changed to be inconsistent with this church Constitution. Respondent knew and agreed that, if it held title to real or personal property in its own name, the property was subject to the Property Trust Clause.

Before its secession, Respondent fully participated as a member congregation of the PC(USA), attending and participating in assemblies and meetings at every judicatory level; following the ordination standards and vows for elders, deacons and ministers of Word and Sacrament; receiving mission support and dollars; and using the PC(USA) tax exempt number and status. *See id.* at 1196; App. 51-52. Over the years, Respondent largely complied with PC(USA) requirements for holding, mortgaging, and transferring property by seeking Presbytery approval for transactions involving the property. *Id.* Consistent with the PC(USA) Book of Order, Respondent again acknowledged the need for, and sought, Presbytery approval when it petitioned the Presbytery in 2006 to leave the denomination “with property and finances.” *Id.* The Petitioners followed the PC(USA) constitutional requirements of the Book of Order at parts G-8.0301 and G-8.0501, which authorize the Presbytery to dismiss a member church to another Reformed denomination, with or without some or all of the real and personal property used by the local church. (App. 98-100.)¹⁰ Respondent continued as a particular

¹⁰ Part G-8.0301 is now identified as part G-4.0204 and part G-8.0501 is now G-4.0205.

member congregation in the PC(USA) until December 6, 2006, when the congregation was conditionally dismissed without property by the Presbytery to the Evangelical Presbyterian Church. (“EPC”). *Presbytery of Ohio Valley II*, 940 N.E.2d at 1196-97; App. 51-52.¹¹

The Presbytery’s actions at its August 26 and December 6, 2006, meetings were final actions of the Presbytery, the judicatory body with authority to act in such matters under the PC(USA) Constitution. The Presbytery sent a letter to the EPC stating the terms of the release of the Olivet congregation that included the terms of conditional dismissal. The EPC received the Olivet congregation on or about December 8, 2006, without taking exception to the terms of the dismissal. *Id.* at 1191; App. 38.

After its conditional dismissal without property, in February 2007, the Olivet Session formed a new corporation, “OPC, Inc.,” and merged the existing congregational corporation (Olivet Presbyterian Church of Evansville, Indiana, Inc.) into this new corporation. *Id.*; App. 38-39. On April 23, 2007, Olivet sent an email to the Presbytery stating it is “our conviction that God has given Olivet Evangelical Presbyterian Church the stewardship of this property.” *Id.*; App. 39.

¹¹ EPC is a separate denomination, with its own denominational constitution, separate tax identity, finances, ordination standards and theology. The EPC is not a part of the PC(USA). *Id.*; App. 35.

Thus, by fiat, the Respondent declared the property belonged to it and refused to engage in further discussion with the Presbytery to reach a property settlement. Later the congregation formed another corporation, “Olivet Evangelical Presbyterian Church of Evansville, Inc.,” but did not transfer the real estate deed to OPC, Inc. or this new corporation. *Id.*



REASONS FOR GRANTING THE PETITION

I. The Indiana Supreme Court’s Decision Violates the First and Fourteenth Amendments, Creates Confusion and Disagreement over *Jones v. Wolf* and Other Decisions of This Court, and Should Not Stand.

The Indiana Supreme Court’s ruling that there is no express trust over the Olivet property conflicts with, and raises uncertainty and confusion over, this Court’s holdings in *Jones v. Wolf* and other decisions. In this, its first church property ruling since *Jones*, the Indiana Supreme Court violated the First Amendment through its improper and truncated use of a neutral principles approach. The Indiana Supreme Court’s decision, like that of the trial court below, reflects a misapprehension that any resort to a general church constitution will unduly and impermissibly entangle the court in religious or ecclesiastical matters, or is a form of hierarchical deference,

running afoul of the First Amendment.¹² The Indiana court's refusal to give effect to the PC(USA) Constitution is a violation of the First Amendment.

The Indiana Supreme Court decided in a manner contrary to *Jones* that the Respondent congregation's written statement of intent to be bound by the PC(USA) Constitution was not sufficient for that purpose – despite the parties' stipulation to the authenticity of Olivet's bylaws and corporate documents explaining Olivet's intent to be so bound. Respondent's bylaws, articles of incorporation, corporate minutes, and correspondence reflect and expressly state Olivet's acknowledgement that it was a part of the PC(USA) and its agreement to be bound by the PC(USA) Constitution. Respondent further stated that its bylaws could not be amended to conflict with that Church Constitution.¹³ Olivet incorporated in

¹² Since *Watson*, this Court has not found hierarchical deference to be a First Amendment violation, but has permitted alternative approaches. See *Hosanna-Tabor*, 132 S. Ct. at 704-05.

¹³ The Indiana Supreme Court acknowledged that Respondent “recognizes the Constitution of [the PC(USA)] as authority for governance of the church and its congregations,” but then inexplicably concluded that the bylaws were “silent” as to whether Olivet adopted particular portions of the Constitution. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1111; App. 22. The Indiana Supreme Court's conclusion, however, cannot be reconciled with well-established Indiana law holding that adoption or incorporation of another document includes all of that document's provisions. *Southern Sch. Bldgs., Inc. v. Loew Elec., Inc.*, 407 N.E.2d 240, 246 (Ind. Ct. App. 1980). Any suggestion that Respondent was required to itemize each specific provision of

(Continued on following page)

1994, ten years after the specific provision at issue was made a part of the PC(USA) Constitution in 1983, and it adopted bylaws in 1998 and 2000 stating its express agreement to be bound by that particular PC(USA) Constitution, including its governance and property provisions and provisions that pertain to the handling of church property when a congregation seeks to leave the denomination. Notably, when Olivet petitioned to leave the denomination, it again acknowledged its connection to the PC(USA) and its agreement to be bound by those same provisions in the PC(USA) Constitution.

Like the trial court, the Indiana Supreme Court gave scant consideration to the Property Trust Clause and the interplay and cross-references between the PC(USA) Constitution and Respondent's bylaws, and instead focused in isolation on the deed and session minutes. The Indiana Supreme Court went so far as to conclude that the 1983 session minutes requesting the clerk of the Olivet session to edit the bylaws and

the PC(USA) Constitution to give effect to the Property Trust Clause conflicts with Indiana law on the drafting and interpretation of other written documents and in both purpose and effect treats religious organizations differently and hierarchical denominations adversely. The Indiana Supreme Court's result violates the Free Exercise Clause of the First Amendment and runs afoul of the Establishment Clause by preferring one form of religious polity over others. *Jones*, 443 U.S. at 606; *Serbian*, 426 U.S. at 723; see also *Thomas v. Review Bd. of Ind. Employ. Serv. Div.*, 450 U.S. 707, 717-18 (1981) (courts should not profess any preference for practicing or expressing religious beliefs in a particular manner).

bring them into conformity with the PC(USA) Book of Order after reunification and inclusion of the Property Trust Clause in the PC(USA) Constitution should not be read in conjunction with the Olivet 1998 and 2000 bylaws. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1112; App. 23-25.

The Indiana Supreme Court held that there is no express trust over the Olivet property because acts and writings in 1983, 1994, 1998 and 2000 were not sufficiently connected to form a single transaction, and thus did not meet the requirements of Indiana Code § 30-4-2-1(b) for creation of an express trust. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1112; App. 24-25. Under Indiana law, terms of an express trust need not be stated in a single writing, but “may be set forth in multiple writings so long as they are sufficiently ‘referred to and connected with’ the signed writing such that they may be read as a single transaction.” *Ransdel v. Moore*, 153 Ind. 393, 400, 53 N.E. 767, 769 (1899). The Indiana Supreme Court insisted the 1968 acquisition of the Oak Hill real estate, the 1983 reunification of the denomination, Olivet’s acknowledgement of reunification, and Olivet’s 1994 incorporation and 1998 and 2000 restatements of its bylaws were not a single transaction or sufficiently connected, and therefore there could be no express trust. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1112 (citing *Ransdel*, 153 Ind. at 400, 53 N.E. at 769); App. 25. The Indiana Supreme Court’s erroneous result does not represent a neutral reading of Olivet’s repeated and successive expressions of intent to be

included in the PC(USA) and bound by its constitution. Under Indiana trust law the only two writings that need be examined are the most recent 2000 Olivet bylaws and the PC(USA) Constitution. There is sufficient nexus and cross-reference between them to satisfy *Ransdel*. To avoid the conclusion that this was sufficient to create an express trust under *Jones*, the Indiana Supreme Court inexplicably required more when it stated: “The 1998 and 2000 bylaws state that Olivet recognizes the constitution of the [PC(USA)] as the authority for governance of the church and its congregations but are silent as to whether Olivet adopts or recognizes the PC(USA) Constitution as the authority controlling property ownership.” *Presbytery of Ohio Valley I*, 973 N.E.2d at 1111 (internal citation omitted); App. 22. This erroneous and strained analysis reflects a biased, not neutral, approach to this church property dispute and ignores the plain language of *Jones*.

Indiana Code § 30-4-2-1(b) requires that in order for a trust to be formed “its terms must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee’s interest, the identity of the beneficiary, the nature of the beneficiary’s interest and the purpose of the trust may be ascertained with reasonable certainty.” I.C. § 30-4-2-1(b). The PC(USA) Constitution provides in relevant part: “All property held by or for a particular church . . . is held in trust nevertheless for the use and benefit of the [PC(USA)].” Petitioners have never contended that the Property Trust Clause is a statement

of Olivet's intent as a trust settlor. In 1998 and again in 2000, Olivet expressed its intent and consent to an express trust over its property when it clearly and unequivocally acknowledged and adopted the Presbyterian's *entire* Constitution as binding on it and its officers. *Jones* and Indiana law require nothing more, and the Indiana Supreme Court erred in refusing to give effect to Respondent's express words and conduct.

Jones "requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." 443 U.S. at 602 (citations omitted). If relevant provisions of church constitutions cannot be enforced "without engaging in searching, and therefore impermissible inquiry into church polity," the civil courts simply may not intervene. *Serbian*, 426 U.S. at 722-23 (applying neutral principles based on *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969)). *Serbian* states:

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 . . . the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-25.

The PC(USA) permits member churches to hold title to real and personal property in their own names, but requires that all such property be held in trust for the use and benefit of the denomination. This trust provision reflects the unity of the church and the connections among the various levels of the Presbyterian church, across geographic regions and across generations of faithful church members – past, present and future. These are fundamental principles of Presbyterian polity and governance, and as such, no civil court may reject them in favor of a majority-rule, congregational or other form of governance. *Jones*, 443 U.S. at 606; *Serbian*, 426 U.S. at 723. The Indiana Supreme Court violated the First Amendment when it did so.

When church documents governing property matters are intertwined with ecclesiastical or doctrinal matters, civil courts cannot proceed as if such documents do not exist or have no effect. If such provisions cannot be applied without engaging in “a searching and therefore impermissible inquiry into church polity,” the courts must uphold the decision of the church judicatory. *Jones*, 443 U.S. at 606; *Serbian*, 426 U.S. at 723. The plain language of the Property Trust Clause cannot be ignored because other provisions in the PC(USA) Constitution contain ecclesiastical or doctrinal language. The First and Fourteenth Amendments require that state civil courts fairly and fully apply the Property Trust Clause using neutral principles of law, or defer to the polity and governance of the PC(USA), leaving

ecclesiastical and polity decisions to the church tribunals. *Id.* The Indiana Supreme Court's decision violates these important requirements and will erode and eviscerate Free Exercise rights if allowed to stand.

Furthermore, the Indiana Supreme Court's decision will have dire practical consequences for not-for-profit religious organizations. In *Jones*, this Court stated that churches may, but are not required to, "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." 443 U.S. at 606. Recognizing that the burden of modifying thousands of individual deeds or other documents can be avoided by stating an intent to create a trust in favor of the denomination in the denomination's constitution or another document (*id.*), this Court also specified that courts applying the neutral principles approach in church property disputes must consider the relevant provisions of church constitutions and similar documents, the denominational structure, and relationship between the local church and the greater denomination. *Id.* at 603-04. The PC(USA) followed the directive in *Jones* when it adopted the Property Trust Clause. The Indiana Supreme Court erred in its purported application of the neutral principles approach by refusing to give effect to the Property Trust Clause and the reversionary right of the Presbytery to determine the use of property that is no longer

being used by a congregation of the PC(USA). Allowing the Indiana Supreme Court decision to stand violates the First and Fourteenth Amendments, and this Court should grant this Petition to clarify the law and preclude other similar unconstitutional incursions in the future.

II. The Indiana Supreme Court's Decision Conflicts with Decisions of Other State Supreme Courts Applying *Jones* and Addressing the PC(USA) Property Trust Clause or Similar Provisions of Other Church Denominations.

In its opinion, the Indiana Supreme Court noted: “Some state courts have apparently read *Jones* as an affirmative rule *requiring* the imposition of a trust whenever the denominational church organization enshrines such language in its constitution.” *Presbytery of Ohio Valley I*, 973 N.E.2d at 1107, n.7; App. 11-13. As noted above, this Court instructed in *Jones* how denominations like the PC(USA) could use that approach:

The neutral-principles approach cannot be said to ‘inhibit’ the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. 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.**

Jones, 443 U.S. at 605-06 (emphasis added). When this Court held that a denominational trust over local church property need not be stated in the deed or corporate charter, it intended that lower courts would treat the denominational documents like other corporate charters and documents, and not create different rules for religious entities. *Id.* Several other state supreme courts have correctly reached such a conclusion. See, e.g., *Presbytery of Greater Atlanta*, 719 S.E.3d at 453 (“[T]he fact that a trust was not created under our state’s generic express (or implied) trust statutes does not preclude the implication of a trust on church property under the neutral principles of law doctrine.”); *Episcopal Church v. Gauss*, 28 A.3d at 324-25 (“*Jones* thus not only gave general churches explicit permission to create an express trust in favor of the local church but stated that civil courts would be bound by such a provision as long as the provision

was enacted before the dispute occurred.”); *Episcopal Church Cases*, 198 P.3d at 80 (“Requiring a particular method to change a church’s constitution – such as requiring every parish in the country to ratify the change – *would* infringe on the free exercise rights of religious associations to govern themselves as they see fit. It would impose a major, not a ‘minimal,’ burden on the church governance.”). *See also supra*, notes 2-3.

The Indiana Supreme Court contends that this is not what this Court intended when it voiced its approval of Justice Brennan’s assertion in *Sharpsburg*, 396 U.S. 367, that states may resolve church property disputes under any method as long as the approach does not violate the First Amendment. *Id.* at 368; *Jones*, 443 U.S. at 606. The Indiana Supreme Court found that requiring member congregations to adhere to a denominational constitution was the kind of compulsory compliance with a religious rule that would not allow civil courts the flexibility to consider contrary evidence or state law. The Indiana Supreme Court even surmised that requiring adherence to the PC(USA) Constitution in this instance would be a *de facto* form of hierarchical deference and run afoul of the First Amendment. *Presbytery of Ohio Valley I*, 973 N.E.2d at 1107, n.7; App. 11-13. This result flaunts neutral principles in a hollow, results-oriented, approach that ignores the church structure and constitution.

Having decided to employ the neutral principles of law approach as outlined by this Court in *Jones*, a state court cannot then use state property and trust laws to disembowel the First Amendment's protections. Having relied on and followed *Jones* to include language regarding the disposition of property in its denominational constitution, civil courts must give due consideration to that expression by the PC(USA), particularly in a case such as this where the member congregation repeatedly and expressly stated its adherence to that particular constitution. Allowing lower courts to ignore such expressions in purported reliance on state property or trust laws thwarts the fundamental protections for Free Exercise of religion in the First Amendment, and made applicable to the states by the Fourteenth Amendment.

At the same time, permitting states like Indiana to require churches to adopt a single approach to church property or require amendment of each church deed, runs afoul of the Establishment Clause. The Indiana Supreme Court erred on both the Free Exercise and Establishment sides of the First Amendment in holding that the PC(USA) Property Trust Clause in conjunction with Olivet's acceptance of the PC(USA) Constitution as binding authority on it were insufficient to establish an express trust in this case. This Court should grant this Petition to safeguard Petitioner's fundamental Free Exercise rights and preclude a violation of the Establishment Clause as mandated in *Jones* and its progeny. Further, this Court should grant this Petition to avoid

the consequences of conflicting state and federal court decisions, leaving national denominations and their member congregations with differing obligations, standards and rights among the states and stripping the PC(USA) Constitution of any uniform and unifying effect.

III. This Case Is Important and Reflects Recurring Inconsistency, Unpredictability and Burdens Imposed by Unconstitutional Applications of the Neutral Principles of Law Approach for Resolving Church Property Disputes.

In 2012, this Court declined to grant the petitions for writs of certiorari in two cases presenting issues very similar to this case: *Presbytery of Greater Atlanta*, 719 S.E.3d 446, *cert. denied*, 132 S. Ct. 2772; *Episcopal Church v. Gauss*, 28 A.3d 302, *cert. denied*, 132 S. Ct. 2773. Each of those cases presents a situation where the state's highest court correctly applied neutral principles and the holdings of *Jones*. This case is different. Allowing the decision of the Indiana Supreme Court to stand sends the wrong message to the states and lower courts and will create further confusion and inconsistency. The recurring and inconsistent application of *Jones* to the PC(USA) Property Trust Clause and other similar denominational provisions (*see discussion supra* and cases cited in notes 2-4), like that in this case demonstrate the

growing difficulty the lower courts have experienced with the neutral principles of law approach.¹⁴

Respondent criticized the Petitioners for not taking adequate steps under *Jones* to express a trust in a “legally cognizable form.” 443 U.S. at 606.¹⁵ *Jones* promised the burdens of doing so would be “minimal.” *Id.* The PC(USA) Constitution was modified to follow the direction in *Jones*:

In 1981 the United Presbyterian Church in the United States of America (UPCUSA) began a trend toward more definitive statements of their intent to preserve local church property in the name of the national organization in the event of a dispute. The Presbyterian Church in the United States (PCUS) followed suit in 1982 by similarly amending its Book of Church Order. In 1983, UPCUSA and PCUS joined to form the Presbyterian Church in the United States of America (PCUSA) and further strengthened their express trust provisions.

Ellis, 60 ALA. L. REV. at 1008 (footnotes omitted); see also *Fonken v. Community Church of Kamrar*,

¹⁴ Electronic and internet searches identify thousands of lower court cases addressing church property disputes since *Jones*. The results reached by many lower federal and state courts are inconsistent and conflicting.

¹⁵ The trial court went so far as to say any trust should have been stated in the deed. (App. 90.) The Indiana Supreme Court agreed when it vacated the decision of the Indiana Court of Appeals. (App. 4.)

339 N.W.2d 810, 819 (Iowa 1983) (discussing history of Property Trust Clause). Having followed *Jones*, the PC(USA) and its presbyteries and synods have nevertheless faced conflicting and inconsistent results in the civil courts. In some instances, like this Indiana decision, lower courts have gone so far as to negate or ignore the specific directions of *Jones*. Such incongruity, inconsistency and unpredictability precludes religious organizations from adequately planning their affairs, and creates similar ambiguity and uncertainty with respect to gifts from church donors. Doctrinal disputes such as those cited by Olivet (*see Presbytery of Ohio Valley I*, 973 N.E.2d at 1103-04; App. 5) often result in church schisms, splits and secessions, frequently leading to unresolved church property disputes.

This Court should grant this Petition to ensure that the intentions of religious organizations who changed their constitutions like the PC(USA) and of congregations like Olivet who pledged to abide by such constitutions are given effect. Moreover, this Court should ensure that the burdens of following a neutral principles approach are no greater for hierarchical, national denominations than they are for more localized, congregational churches. No particular form of church governance or polity should be preferred by the state. *Hosanna-Tabor*, 132 S. Ct. at 705; *Serbian*, 426 U.S. at 724-25. No governmental policy should “make[] it more costly to adhere to one creed than to another.” Michael W. McConnell & Richard A. Posner, *An Economic Approach to Issues of Religious Freedom*, 56 U. CHI. L. REV. 1, 5 (1989).

This Court should grant this Petition to address questions left open to confusion by *Jones*, resolve the existing conflict among state and other lower courts, and ensure that *Jones*' promise of minimal burdens on national hierarchical or connectional churches are indeed minimal.



CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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App. 1

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**In the
Indiana Supreme Court**

No. 82S02-1105-MF-314

(Filed Jul. 31, 2012)

THE PRESBYTERY OF OHIO VALLEY, INC., D/B/A THE
PRESBYTERY OF OHIO VALLEY, D/B/A OHIO VALLEY
PRESBYTERY, AND

App. 2

THE SYNOD OF LINCOLN TRAILS OF THE PRESBYTERIAN
CHURCH (U.S.A.), INC., D/B/A THE SYNOD OF
LINCOLN TRAILS, INC.,

Appellants (Plaintiffs below),

v.

OPC, INC., F/K/A OLIVET PRESBYTERIAN CHURCH, INC.,
D/B/A OLIVET PRESBYTERIAN CHURCH, D/B/A OLIVET
EVANGELICAL PRESBYTERIAN CHURCH, D/B/A OLIVET
PRESBYTERIAN CHURCH OF EVANSVILLE, AND
OLIVET EVANGELICAL PRESBYTERIAN CHURCH OF EVANS-
VILLE, INC., AND
THE EVANGELICAL PRESBYTERIAN CHURCH, D/B/A EVAN-
GELICAL PRESBYTERIAN CHURCH OF AMERICA,

Appellees (Defendants below).

Appeal from the Vanderburgh Circuit Court,
No. 82C01-0707-MF-343
The Honorable Carl D. Heldt, Judge

On Transfer from the Indiana Court of Appeals,
No. 82A02-1003-MF-339

July 31, 2012

Dickson, Chief Justice.

This case involves a property dispute between an individual church congregation, the Olivet Presbyterian

Church (“Olivet”),¹ and the denominational organization with which it was previously affiliated, the Presbyterian Church (U.S.A.) (“PC(USA)”), and the latter’s subsidiary organizations, the plaintiffs in this action – the Presbytery of Ohio Valley and the Synod of Lincoln Trails of the Presbyterian Church (U.S.A.), Inc. (collectively, “Presbytery”).² The trial

¹ The first and second named defendants, for purposes of this case, both constitute the congregation of Olivet. During the course of Olivet’s separation from the PC(USA), Olivet amended its articles of incorporation and became known as “OPC, Inc.” Stipulated Statement of Facts ¶ 11. Olivet then formed a second corporation, “Olivet Evangelical Presbyterian Church of Evansville, Inc.” *Id.* ¶ 12. The two entities then merged. *Id.* ¶ 13. The third named defendant, the Evangelical Presbyterian Church, is the denominational organization with which Olivet is now affiliated. *Id.* ¶ 14. The Evangelical Presbyterian Church remains a named party to this suit but “claims it has no beneficial or legal interest in the Property at issue in this dispute.” *Id.* ¶ 16.

² In the PC(USA) there are four governing bodies or “judicatories,” and each is answerable to the next highest body. *Book of Order: 2005-2007* §§ G-4.0301, G-9.0101, G-9.0103 (2005). These bodies, in ascending order, are the session, the presbytery, the synod, and the General Assembly. *Id.* § G-9.0101. A local church (or “particular church”) is governed by its session, which consists of the church’s ministers and elders elected by the congregation. *Id.* §§ G-7.0103, G-10.0101. A presbytery then consists of “all the churches and ministers . . . within a certain district,” as well as at least one elder from each session within the district. *Id.* § G-11.0101 (endnote omitted). A synod oversees three or more presbyteries in a specified geographic region and consists of “commissioners elected by the presbyteries.” *Id.* § G-12.0101. The General Assembly is the highest judicatory “and is representative of the unity of the synods, presbyteries, sessions, and congregations of the [PC(USA)].” *Id.* § G-13.0101. It meets

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court granted summary judgment rejecting the Presbytery's claims of express and implied trust and holding that the disputed property is solely owned by Olivet. The Presbytery appealed both the denial of its motion for summary judgment and the granting of Olivet's motion. The Court of Appeals reversed the trial court and granted summary judgment in favor of the Presbytery. *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 940 N.E.2d 1188, 1197 (Ind. Ct. App. 2010). We granted transfer, thereby vacating the opinion of the Court of Appeals. Ind. App. R. 58(A)(2). We hold that genuine issues of material fact arise from the inferences flowing from the stipulated designated evidence and that neither Olivet nor the Presbytery is entitled to the full relief sought in their respective motions for summary judgment.

Olivet, formerly the Olivet Presbyterian Church of Evansville and the Olive Street Presbyterian Church, was affiliated in 1900 with an ancestor of the current PC(USA), which was not formed until the early 1980s when the United Presbyterian Church in the U.S.A. combined with the Presbyterian Church of the United States to become the PC(USA).³ In 1968,

annually and is composed of a number of elders and ministers elected by each presbytery proportional to each presbytery's membership. *Id.* § G-13.0102.

³ The general history of Presbyterianism in the United States is replete with numerous splits and reunifications. *See* Stipulated Statement of Facts n.7 (referring the Court to the website of the Presbyterian Historical Society); *Family Tree of Presbyterian Denominations*, Presbyterian Historical Society,

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Olivet acquired the real estate and built its church building using its own resources. Beginning at least as far back as 1994, the Olivet congregation began to have doctrinal disputes with the PC(USA), “including disputes about church policies and positions on abortion, ordination, Christology and theology.” Stipulated Statement of Facts ¶ 50 [hereinafter Stip. Facts]. Olivet in 2006 (with a 98% approval vote of its congregation) decided to disassociate from the PC(USA) when the General Assembly of the PC(USA) was considering substantial alterations to its denominational policy and religious doctrine, among them: “1) the deity of Christ, 2) the essentials of salvation, and 3) the Bible as the infallible word of God.” Stipulated Documentary R. 48 [hereinafter Stip. Ex.]. In response, the PC(USA), through its Presbytery, offered to “release” Olivet from membership in the PC(USA) on condition that, while negotiations continue regarding “the issue of the disposition of the church and its real property,” Olivet must agree to treat the building as leased from the Presbytery for eight months and pay \$1.00 as lease consideration and, if a settlement is not agreed, then for up to one more year “at the current market value for such space in Evansville, Indiana.” Stip. Ex. 61. Olivet did not accept this proposal.

The National Archives of the PC(USA), <http://www.history.pcusa.org/history/denominations.cfm> (last visited July 19, 2012) (appended as Attachment A).

When Olivet declined to relinquish ownership of its church property, the Presbytery filed this action claiming a trust on Olivet's property in favor of the PC(USA) and seeking a declaratory judgment divesting Olivet from all right, title, and interest in its property. As explained by the trial court, the "PC(USA) seeks through this litigation to take control of the building and real property at 5600 Oak Hill Road as well as the congregation bank accounts and any other property." Entry of Final Judgment with Findings of Fact and Conclusions of Law, Appellants' App'x at 13-14.⁴ The trial court, faced with competing motions for summary judgment, determined that the property belonged exclusively to Olivet; that the Presbytery, its associated plaintiff, and the PC(USA) had no rights in the property; that the property was not held in trust – expressly, impliedly, or constructively – in favor of the PC(USA) or its associated entities, the plaintiffs; and that Olivet had not been unjustly enriched nor had it converted property belonging to the PC(USA) or the plaintiffs. The

⁴ The trial court's decision, titled "Entry of Final Judgment with Findings of Fact and Conclusions of Law," does not refer to summary judgment. After the trial court noted that the summary judgment motions were being taken under advisement, the parties each filed proposed entries of final judgment with findings of fact and conclusions of law. The trial court's "Final Judgment" resulted. It is clear, however, that the relief sought by the parties was entry of summary judgment and that is the relief requested by the Presbytery on appeal, we thus address only the question of whether summary judgment is appropriate and apply the summary judgment standard of review.

Presbytery instituted this appeal requesting both the entry of summary judgment in its favor and reversal of the trial court's judgment for Olivet. Additional facts will be provided as needed.

1. Neutral Principles of Law

As a general matter, it is clear that Indiana courts have subject-matter jurisdiction over Indiana church-property disputes. *Ramsey v. Hicks*, 174 Ind. 428, 431, 91 N.E. 344, 346 (1910); *see also Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 3024-25, 61 L. Ed. 2d 775, 783-84 (1979) (“There can be little doubt about the general authority of civil courts to resolve [church property] question[s]. The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.”). However, “the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes’” and “prohibit[s] civil courts from resolving church property disputes on the basis of religious doctrine and practice.” *Jones*, 443 U.S. at 602, 99 S. Ct. at 3025, 61 L. Ed. 2d at 784 (quoting *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 606, 21 L. Ed. 2d 658, 665 (1969) [hereinafter *Hull*]). The U.S. Supreme Court has declined to adopt a “particular method” for states to follow in resolving church property disputes. *Id.* Rather, “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.* (quoting *Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368, 90 S.Ct. 499, 500, 24 L. Ed. 2d 582, 584 (1970) [hereinafter *Sharpsburg II*] (Brennan, J., concurring)) (internal quotation marks omitted).

The parties dispute which method Indiana courts should apply in such cases. The Presbytery contends that the “preferred” approach is the polity approach (also termed the “hierarchical deference rule”) enunciated by the Supreme Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1871). Appellants’ Br. at 13-15. Olivet contends that the better method is the neutral-principles-of-law approach which was approved by the Supreme Court in *Jones v. Wolf*, 443 U.S. at 602-04, 99 S. Ct. at 3025-26, 61 L. Ed. 2d at 784-85. We agree with Olivet.

The polity approach was developed by the Supreme Court to settle a property dispute resulting from a schism in a local church. *See Watson*, 80 U.S. (13 Wall.) at 726-27, 20 L. Ed. at 676. Rejecting the “English” rule, which required inquiry into the “true standard of faith in the church organization” and then into which schismatic faction was most loyal to that standard, the Court determined that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest . . . church judicatories . . . , the legal tribunals must

accept such decisions as final, and as binding on them, in their application to the case before them.” *Id.* at 727, 20 L. Ed. at 676. The polity approach first inquires into the organizational structure of the denomination and, if found to be “hierarchical,”⁵ requires the civil courts to defer to the determination of the denominational church organization. *Id.* This amounts to a “rule of compulsory deference to religious authority in resolving church property disputes.” *Jones*, 443 U.S. at 605, 99 S. Ct. at 3026, 61 L. Ed. 2d at 786 (responding to the dissenters contention that states should be required to apply *Watson* in all cases). As the Court noted in *Jones*, in some instances “this task would not prove to be difficult,” but in others such a determination “would appear to require ‘a searching and therefore impermissible inquiry into church polity.’” *Id.* (quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723, 96 S. Ct. 2372, 2387, 49 L. Ed. 2d 151, 170). This may be especially true where, as here, the parties dispute the structural form of the denominational church organization. Moreover, the polity approach cannot be applied to all church-property cases, for instance, where the organizational structure of the

⁵ That is, the local church “is but 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 over the whole membership of that general organization.” *Watson*, 80 U.S. (13 Wall.) at 722-23, 20 L. Ed. at 674.

denomination is “connectional” or “congregational”⁶ resort must be made to “the ordinary principles which govern voluntary associations.” *Watson*, 80 U.S. (13 Wall.) at 725, 20 L. Ed. at 675. This would result in two rules, one for “hierarchical” churches (polity approach) and another for all other churches (“ordinary principles,” i.e., neutral principles of law). *See id.* at 725-27, 20 L. Ed. at 675-76.

The neutral-principles approach 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.” *Jones*, 443 U.S. at 603, 99 S. Ct. at 3025, 61 L. Ed. 2d at 784-85. The neutral-principles approach was first developed by Maryland and Georgia. *See id.* at 602-04, 99 S. Ct. at 3025-26, 61 L. Ed. 2d at 784-85. In reviewing the application of the approach in those states, the Court noted that when determining whether a trust had been created, the state courts considered the “language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership

⁶ That is, “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.” *Watson*, 80 U.S. (13 Wall.) at 722, 20 L. Ed. at 674.

and control of church property.” *Id.* But, the Court cautioned that, where civil courts undertake an examination of “certain religious documents, such as a church constitution,” they “must take special care to scrutinize the document in purely secular terms.” *Id.* at 604, 99 S. Ct. at 3026, 61 L. Ed. 2d at 785. In this respect, the civil courts will give effect to the intention of the parties, “provided it is embodied in some legally cognizable form.” *Id.* at 606, 99 S. Ct. at 3027, 61 L. Ed. 2d at 786. This allows “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, 99 S. Ct. at 3026, 61 L. Ed. 2d at 785 (quoting *Hull*, 393 U.S. at 449, 89 S. Ct. at 606, 21 L. Ed. 2d at 665) (alteration in original) (internal quotation marks omitted).

The lesson of *Jones* is that, subject to the limitations of the First Amendment, states are free to apply their own “well-established concepts of trust and property law” to church property disputes.⁷ *Id.*

⁷ Some state courts have apparently read *Jones* as an affirmative rule *requiring* the imposition of a trust whenever the denominational church organization enshrines such language in its constitution. See, e.g., *Episcopal Church in the Diocese of Conn. v. Gauss*, 302 Conn. 408, 28 A.3d 302, 325 (2011) (“*Jones* thus not only gave general churches explicit permission to create an express trust in favor of the local church but stated that civil courts would be *bound* by such a provision, as long as the provision was enacted *before* the dispute occurred.”), *cert. denied*, ___ U.S. ___ (2012); *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 719 S.E.2d

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446, 454 (2011) (“[T]he fact that a trust was not created under our state’s generic express (or implied) trust statutes does not preclude the implication of a trust on church property under the neutral principles of law doctrine.”), *cert. denied*, ___ U.S. ___ (2012). We do not understand *Jones* as creating such a rule. First, such a rule would result in *de facto* compulsory deference by enforcing the claim of the denominational church organization merely because the trust claim is added to the denominational church organization’s constitution and *regardless of any contrary evidence or state law*. Not only did the Court reject imposing a “compulsory deference” rule in all cases, *Jones*, 443 U.S. at 605, 99 S. Ct. at 3026, 61 L. Ed. 2d at 786, the Court specifically approved Justice Brennan’s assertion in *Sharpsburg II* that states may resolve church property disputes under *any* method so long as that approach does not abridge the First Amendment. *Id.* at 602, 99 S. Ct. at 3025, 61 L. Ed. 2d at 784 (quoting *Sharpsburg II*, 396 U.S. at 368, 90 S. Ct. at 500, 24 L. Ed. 2d at 584 (Brennan, J., concurring)) (“[T]he 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.’”). Second, the Court approved the neutral-principles approach as an acceptable means of applying *state property and trust law*. *See id.* at 604, 99 S. Ct. at 3026, 61 L. Ed. 2d at 785 (“The neutral-principles method, *at least as it has evolved in Georgia*. . . .” (emphasis added)). Thus, the Court’s expression that “the constitution of the general church can be made to recite an express trust in favor of the denominational church” organization, was *one example* of a means by which parties may be able to express their intent, “provided it is embodied in some legally cognizable form” under state law. *See id.* at 606, 99 S. Ct. at 3027, 61 L. Ed. 2d at 786. As explained below, under Indiana trust law, whether under an express or implied trust theory, the intent of the owner (settlor) to create a trust must be demonstrated. *See Flying Squadron Found. v. Crippen*, 201 Ind. 482, 524, 169 N.E. 843, 857 (1930); *Richards v. Wilson*, 185 Ind. 335, 368-69, 112 N.E. 780, 790 (1916); *see also Holsapple v.*

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at 602-03, 99 S. Ct. at 3025, 61 L. Ed. 2d at 784-85 (“Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes.”). Because the neutral-principles-of-law approach permits greater fairness, consistency, and equality of application to all church property disputes regardless of the structure of the denominational church organization, we adopt the neutral-principles-of-law approach for settling property disputes between religious organizations in Indiana.⁸

In the application of this approach, Indiana courts may consider Indiana statutes, the language of the deeds and conveyances, the local church charters or articles of incorporation, the constitution of the denominational church organization, and any other relevant and admissible evidence provided they

Schrontz, 65 Ind. App. 390, 397, 117 N.E. 547, 549 (1917), *trans. not sought*. Thus, under Indiana law, a claim of trust by the purported beneficiary (e.g., insertion of a trust clause into a denominational church organization’s constitution), without indicia of intent on the part of the owner (settlor), is insufficient to impose a trust.

⁸ The Supreme Court ultimately remanded *Jones* for determination of whether Georgia “was adopting a presumptive rule of majority representation” when the identity of the local church is disputed (i.e. when separate factions of a local church schism each claim the corporate designation associated with the identity of the local church). *Jones*, 443 U.S. at 606-10, 99 S. Ct. at 3027-29, 61 L. Ed. 2d at 787-89. Because the corporate membership of Olivet is not disputed by the parties, we decline to address this issue today.

“scrutinize the[se] document[s] in purely secular terms” consistent with Indiana law.⁹ *See id.* at 604, 99 S. Ct. at 3026, 61 L. Ed. 2d at 785. In this respect, Indiana courts should apply neutral principles of Indiana trust and property law without regard to the organizational structure of the religious denomination, *id.* at 443 U.S. at 605, 99 S. Ct. at 3026, 61 L. Ed. 2d at 786 (“The neutral-principles approach . . . obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.”), whether interpreting the

⁹ The Supreme Court also stated that there may be cases where these documents incorporate “religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the *doctrinal issue* by the authoritative ecclesiastical body.” *Jones*, 443 U.S. at 604, 99 S. Ct. at 3026, 61 L. Ed. 2d at 785 (emphasis added). But the Court also noted that this scenario “should be gradually eliminated as recognition is given to the obligations of ‘States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.’” *Id.* (quoting *Hull*, 393 U.S. at 449, 89 S. Ct. at 606, 21 L. Ed. 2d at 665) (alteration in original). We likewise think such circumstances should be few. And, regardless, Indiana courts should first seek to interpret these provisions in secular terms applying neutral principles of Indiana law. Only when certain terms or provisions may not be understood without interpretation of ecclesiastical doctrine and those terms or provisions are needed to apply Indiana law, should resort be made to the authoritative ecclesiastical body. Moreover, such resort should be limited to those specific terms or provisions necessary to give the documents effect under neutral principles of Indiana law.

language of a deed or conveyance or determining whether there exists an express or implied (constructive or resulting) trust.¹⁰

¹⁰ We acknowledge that prior Indiana cases have used a variety of approaches to resolve church property disputes. See, e.g., *Smart v. Ind. Yearly Conference of Wesleyan Methodist Church of Am.*, 257 Ind. 17, 271 N.E.2d 713 (1971); *Ind. Annual Conference Corp. v. Lemon*, 235 Ind. 163, 131 N.E.2d 780 (1956); *Emberrly Cmty. Church v. Bloomington Dist. Missionary and Church Extension Soc’y, Inc.*, 482 N.E.2d 288 (Ind. Ct. App. 1985), *trans. not sought*; *Hinkle Creek Friends Church v. W. Yearly Meeting of Friends Church*, 469 N.E.2d 40 (Ind. Ct. App. 1984), *trans. denied*; *Grutka v. Clifford*, 445 N.E.2d 1015 (Ind. Ct. App. 1983), *trans. denied*; *Marich v. Kragulac*, 415 N.E.2d 91 (Ind. Ct. App. 1981), *trans. denied*; *Draskovich v. Pasalich*, 151 Ind. App. 397, 280 N.E.2d 69 (1972), *trans. denied*; *United Methodist Church v. St. Louis Crossing Indep. Methodist Church*, 150 Ind. App. 574, 276 N.E.2d 916 (1971), *trans. not sought*; *Price v. Merryman*, 147 Ind. App. 295, 259 N.E.2d 883 (1970), *trans. denied*; *Presbytery of Indianapolis v. First United Presbyterian Church*, 143 Ind. App. 72, 238 N.E.2d 479 (1968), *amended on denial of reh’g*, 143 Ind. App. 271, 240 N.E.2d 77 (1968), *trans. denied*.

Several of these cases (e.g., *Smart*, *Lemon*, *Draskovich*, *St. Louis Crossing*, *Merryman*, and *Presbytery of Indianapolis*) were decided without the benefit of the Supreme Court’s elucidation of the neutral-principles approach in *Jones v. Wolf* and were attempting to anticipate the Supreme Court’s ultimate resolution of the issue. A few other cases were decided after *Jones v. Wolf* but either failed to apply it (*Emberrly*) or applied it inconsistently (*Hinkle Creek Friends*, *Grutka*, and *Marich*): In *Emberrly*, 482 N.E.2d at 292-93, the Court of Appeals makes no mention of *Jones*, relying instead on the pre-*Jones* decisions of *Lemon* and *St. Louis Crossing*. In *Hinkle Creek Friends*, 469 N.E.2d at 41-44, the Court of Appeals applied both the hierarchical-deference approach and the neutral-principles approach to uphold the trial court’s order vesting ownership of all

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2. Indiana Trust Law

An express trust must be evidenced by a writing signed by the owner of the property (i.e., the settlor). Ind. Code § 30-4-2-1(a). The burden of proof rests on the party seeking to impose the trust. *See Matthews v. Adoniram Grand Lodge*, 129 Ind. App. 395, 403, 154 N.E.2d 806, 809 (1958) (“It is the law in Indiana that when an attempt is made to impress a trust upon real property when legal title is held by another, that the burden of establishing said trust is upon the one asserting, or claiming the benefit of the trust. . . .”), *trans. denied*; *see also Webster v. Webster*, 135 Ind. App. 53, 55, 184 N.E.2d 897, 899 (1962) (stating that plaintiff-appellant bore the burden of proving existence of oral trust), *trans. denied*. Certain terms are essential to the creation of a trust and must be “sufficiently definite” and “ascertained with reasonable certainty” from the writing(s), otherwise

property in the denominational church organization where the property deed contained an express reservation in favor of the denominational church organization. In *Grutka*, 445 N.E.2d at 1018-22, 1025, the Court of Appeals applied the neutral-principles approach in reversing the trial court’s grant of summary judgment regarding the existence of a trust on cemetery property and remanded for a factual determination of the title-holder’s intent to create a trust but applied a hierarchical-deference approach to determine the distribution of property if the trial court determined that the trust was not formed. In *Marich*, 415 N.E.2d at 101, the Court of Appeals remanded for a factual determination of the “hierarchical structure” of the denominational church organization based upon “neutral principles of law.” To the extent that these cases may be understood as divergent from our holding today, they are disapproved.

the trust must fail: (1) the trust property; (2) the settlor; (3) the identity of the trustee; (4) the identity of the beneficiary; and (5) the purpose of the trust. Ind. Code § 30-4-2-1(b); *see also id.* cmt. (b) (“This subsection retains the existing law.”); *Baker v. Gordon*, 130 Ind. App. 585, 596, 164 N.E.2d 118, 124 (1960), *trans. denied*; *Holsapple v. Shrontz*, 65 Ind. App. 390, 397, 117 N.E. 547, 549 (1917), *trans. not sought*. These terms may be set forth in multiple writings so long as they are sufficiently “referred to and connected with” the signed writing such that they may be read as single transaction, *Ransdel v. Moore*, 153 Ind. 393, 400, 53 N.E. 767, 769 (1899); *cf. Ross v. Thompson*, 128 Ind. App. 89, 100, 146 N.E.2d 259, 265 (1957) (“[Such] [w]ritings . . . are to be read in their setting, and the court may be aided by oral evidence as to the position, situation, circumstances, and surroundings of the party at the time of the execution of the deed and the writings.”), *trans. not sought*, provided that there is a “clear and unequivocal” demonstration of the settlor’s intent to create a trust, *Richards v. Wilson*, 185 Ind. 335, 368, 112 N.E. 780, 790 (1916); *see also Holsapple*, 65 Ind. App. at 397, 117 N.E. at 549 (stating that the intent to create a trust must be “clear”). Such heightened proof is necessary to protect the sanctity of property ownership against trust claims not intended by the settlor (i.e., the owner).

Implied trusts are “creatures of equity, imposed to do justice,” and, in Indiana, they arise in two forms: constructive trusts and resulting trusts.

Melloh v. Gladis, 261 Ind. 647, 655-56, 309 N.E.2d 433, 438-39 (1974). Constructive trusts are generally imposed when legal title is gained through wrongful means (e.g., fraud, duress, undue influence, theft, etc.). *Id.* We need not consider the existence of a constructive trust here because no claim is made that Olivet acquired its property through wrongful means. As such, we need only consider the possibility of a resulting trust, which is generally imposed in three circumstances: “(1) where an express trust fails in whole or in part; (2) where an express trust is fully performed without exhausting the trust estate; (3) where property is purchased and the purchase price is paid by one person and at his direction the vendor conveys the property to another person.” *Id.* at 655, 309 N.E.2d at 438 (quoting 5 Scott on Trusts § 404.1). It is only the first of these circumstances, the failure of an express trust, that is implicated by the facts of this case. Such a resulting trust is created by operation of law to give effect to the parties’ intentions when they have otherwise failed to satisfy the statutory requirements for creating an express trust. *See id.* And, as in the case of express trusts, the party seeking to impose the trust bears the burden of proof. *See Workman v. Douglas*, 419 N.E.2d 1340, 1345 (Ind. Ct. App. 1981), *trans. not sought*. As with express trusts, the settlor’s intent is crucial to the resulting trust analysis. *Flying Squadron Found. v. Crippen*, 201 Ind. 482, 524, 169 N.E. 843, 857 (1930).

3. Competing Motions for Summary Judgment

The parties' separate motions for summary judgment each designate the same stipulated statement of facts and stipulated exhibits.¹¹

In reviewing an appeal of a motion for summary judgment ruling, we apply the same standard applicable to the trial court. *Wilson v. Isaacs*, 929 N.E.2d 200, 202 (Ind. 2010). Summary judgment is appropriate where the designated evidence “shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ind. Trial Rule 56(C). Review is limited to those facts designated to the trial court, T.R. 56(H), and “[a]ll facts and reasonable inferences drawn from those facts are construed in favor of the non-moving party.” *Mangold ex rel. Mangold v. Ind. Dept. of Natural Res.*, 756 N.E.2d 970, 973 (Ind. 2001). The fact that each party sought summary judgment does not alter our analysis. *See Sees v. Bank One, Ind., N.A.*, 839 N.E.2d 154, 160 (Ind. 2005). Rather, we “consider each motion separately construing the facts most favorably to the non-moving party in each instance.” *Id.*

¹¹ Olivet also designated affidavits from various individuals in support of its motion for summary judgment. The Presbytery challenged the admissibility of these affidavits before the trial court and challenges them again on appeal. However, we need not separately address their admissibility because our conclusions are not altered even if we consider the facts asserted in these affidavits.

The parties' stipulations reveal the following relevant facts. The Olivet congregation first joined the Cumberland Presbyterian Church in 1900. In 1906, Olivet became a member of the United Presbyterian Church in the U.S.A. ("UPCUSA") when it merged with the Cumberland Presbyterian Church. In 1968, Olivet purchased the property and built the church building that is the subject of dispute in this case.¹² The property was conveyed by warranty deed to "Olivet Presbyterian Church of Evansville, Indiana," Stip. Facts ¶ 21, and has at all relevant times been titled and recorded as the property of Olivet. The real estate and church building were acquired entirely with monies donated to or borrowed by Olivet. The Presbytery, and its associated plaintiff, contributed no monies to the purchase of the real estate.

In the early 1980s, the UPCUSA and the Presbyterian Church of the United States merged to become the PC(USA) – the parent organization of the Presbytery and its associated plaintiff. In 1981, shortly before this merger was finalized, the UPCUSA, the predecessor of the PC(USA), amended its constitution, which consists of two documents, the *Book of Confessions* (principally expressing tenets of faith, totaling nearly 300 pages) and the *Book of Order* (covering the government, worship, and discipline within the PC(USA), consisting of 39 chapters and 6

¹² The Presbytery also claims a trust over certain personal property held by Olivet, including various bank accounts.

appendices, totaling nearly 400 pages). *See generally Book of Confessions* (2004); *Book of Order: 2005-2007* (2005). The 1981 amendment inserted into the nearly 700 pages of governing documents two paragraphs that serve as the basis of the Presbytery's claim of a trust on Olivet's property:

All Property Held in Trust

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

....

Property Used Contrary to Constitution

Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

Book of Order: 2005-2007 §§ G-8.0201, G-8.0301. When the merger was finalized in 1983, these provisions became a part of the PC(USA) Constitution, and

Olivet became a member of the newly-formed PC(USA) by default as result of its membership with the predecessor UPCUSA.

Olivet amended its bylaws several times during its affiliation with the PC(USA) and its predecessors. The most recent of these occurred in 1978, 1998, and 2000. The 1978 bylaws, which went into force *before* the inclusion of the trust provisions in the denominational organization's constitution, included a provision stating that the PC(USA) Constitution "is in all its provisions obligatory upon it and its members." Stip. Ex. 37-E (this document contains the signatures of Olivet's then-pastor and of the then-Clerk of Session). The only other signed document is the minutes of the August 25, 1983, Olivet Session meeting. These minutes include one relevant entry, which states: "The clerk was requested to edit the By-Laws of Olivet Presbyterian Church to bring them in line with the Book of Order changes as a result of the Reunion of the United Presbyterian Church in the U.S.A. and the Presbyterian Church in the United States." Stip. Ex. 37-F. The 1998 and 2000 bylaws state that Olivet "recognizes the constitution of [the PC(USA)] as the authority for the governance of the church and its congregations" but are silent as to whether Olivet adopts or recognizes the PC(USA) Constitution as the authority controlling property ownership. Stip. Exs. 42, 45.

In 1994, Olivet filed articles of incorporation with the Indiana Secretary of State. These corporate articles included language that would apply in the

event of a future corporate dissolution, specifically that “[a]ll assets become the property of Ohio Valley Presbytery upon dissolution of this church.” Stip. Ex. 38. The record also reveals that in 1998 the Presbytery made two separate loans totaling \$65,000 to Olivet. Each loan was secured by separate mortgages on Olivet’s real estate.

After over a decade of deliberation, Olivet, in 2006, (with a 98% approval vote of its congregation) decided to disassociate from the PC(USA). Olivet requested to be released from the PC(USA) “with property and finances, to the Evangelical Presbyterian Church.” Stip. Facts ¶ 60. In response, the PC(USA), through its Presbytery, offered to “release” Olivet from membership in the PC(USA) on condition that, while negotiations continue regarding “the issue of the disposition of the church and its real property,” Olivet must agree to treat the building as leased from the Presbytery for eight months and pay \$1.00 as lease consideration and, if a settlement is not agreed, then for up to one more year “at the current market value for such space in Evansville, Indiana.” Stip. Ex. 61. Olivet did not accept this proposal, and the Presbytery instituted this litigation. Following the summary judgment motions filed by Olivet and the Presbytery, the trial court entered judgment in favor of Olivet and the Presbytery appealed, requesting both (a) the reversal of the judgment for Olivet and (b) the grant of the Presbytery’s motion for summary judgment.

A. Olivet's Motion for Summary Judgment

The Presbytery contends on appeal that the trial court erred in granting Olivet's motion for summary judgment. In this motion, Olivet contends that there are no genuine issues of material fact and that, as a matter of law, the designated evidence demonstrates that no trust on its property, express or implied, exists in favor of the PC(USA).

As noted above, an express trust must be evidenced by a writing which is signed by the owner (settlor). Here, the only signed document, contemporaneous to the insertion of the trust provision in the PC(USA) Constitution, is the signed minutes of the August 25, 1983, Olivet session meeting, which note that the "clerk was *requested* to edit the By-Laws of Olivet Presbyterian Church to bring them in line with the Book of Order changes as a result of the Reunion of the United Presbyterian Church in the U.S.A. and the Presbyterian Church in the United States." Stip. Ex. 37-F (emphasis added). The minutes do not establish, however, that such "request" was anything more than a request of a single member of the session; nor that the request was formulated as a motion or was voted upon and approved by the session, Olivet's governing body; nor that such request was ever implemented as a formal bylaw revision being proposed and approved by the session. *See* Stip. Ex. 37 ("No copy of changes found.").

The Presbytery separately argues that these 1983 session minutes, when read in conjunction with

Olivet's bylaws from 1998 and 2000 and combined with the property trust provisions added to the *Book of Order* almost twenty years earlier, "effectuate an express trust under Indiana law." Appellants' Br. at 32. While the terms of a trust may be set forth in multiple writings so long as they are "referred to and connected with" the signed writing such that they are "a part of the [same] transaction," *Ransdel*, 153 Ind. at 400, 53 N.E. at 769, the three writings are not "sufficiently definite" to establish an express trust "with reasonable certainty." Ind. Code § 30-4-2-1(b). The bylaws of Olivet from 1998 and 2000 state that Olivet "recognizes the constitution of [the PC(USA)] as the authority for the governance of the church and its congregations" and that the bylaws "shall not be amended so as to conflict with the Constitution of the [PC(USA)]." Stip. Exs. 42, 45 (emphasis omitted). The PC(USA) Constitution includes the *Book of Order* and its 1981 trust provisions. However, the 1983 session minutes and the 1998 and 2000 bylaws do not refer and connect with each other such that they can be read as part of the same transaction. *See Ransdel*, 153 Ind. at 400, 53 N.E. at 769. Furthermore, even assuming that Olivet's 1983 session minutes and its 1998 and 2000 bylaws could constitute a signed writing, the relevant language in these documents is not a "clear and unequivocal" statement of Olivet's intent to create a trust on its property. *Richards*, 185 Ind. at 368, 112 N.E. at 790.

We find from the designated evidence and its resulting inferences, construing them favorable to the

Presbytery as non-movant, that there is no genuine issue of fact and that neither Olivet's 1983 session minutes nor its bylaws from 1998 or 2000, whether considered separately or together, are sufficient acts by Olivet to declare its intention to create an express trust on its property in favor of the PC(USA). For this reason, as to the Presbytery's claim of express trust, Olivet was entitled to partial summary judgment.

In addition to the Presbytery's claim of express trust, however, it alternatively seeks the imposition of an implied trust on Olivet's property. The Presbytery contends that a "lengthy history and a deep relationship between Olivet and the [PC(USA)] . . . should result in imposition of a trust on the Property" as a matter of equity. Appellants' Br. at 33. As discussed above, upon the failure of an express trust, a resulting trust may be implied by operation of law to give effect to the intent of the parties when they have otherwise failed to satisfy the statutory requirements for creating an express trust. *See Melloh*, 261 Ind. at 655, 309 N.E.2d at 438. As with express trusts, the settlor's intent is crucial to the resulting trust analysis. *Crippen*, 201 Ind. at 524, 169 N.E. at 857.

As noted in Part 2, a resulting trust may be imposed by operation of law to give effect to the parties' intentions when there has been a failure to satisfy the statutory requirements for creating an express trust. Olivet must demonstrate that the designated evidence and its reasonable inferences undisputedly establish the absence of a mutual intent on the part of Olivet and the Presbytery to create the

claimed trust. With respect to the PC(USA), its intention to create the trust is supported by the 1981 trust provisions of the *Book of Order*. See *Book of Order: 2005-2007* §§ G-8.0201, G-8.0301. With respect to Olivet, however, the issue is less clear. We must consider Olivet's recognition of the PC(USA) Constitution "as the authority for the governance of the church and its congregations," Stip. Exs. 42, 45 (bylaws of 1998 and 2000), and Olivet's continuance as a member of the PC(USA) from 1983 until 2006. Viewing the designated evidence in favor of the non-moving party, as required on summary judgment, while Olivet's 1998 and 2000 bylaws do not discuss property ownership, a finder of fact could find conflicting inferences from the fact that Olivet remained a member of the PC(USA) for nearly twenty-five years after insertion of the trust provisions. It is possible that inferences from the designated evidence may be drawn to support either of two opposite conclusions: that Olivet did or did not intend to create a trust on its property. The result is a disputed issue of material fact, and thus there remains a genuine issue of fact for trial, rendering summary judgment improper. This disputed issue of fact precludes summary judgment for Olivet as to the Presbytery's claim of an implied resulting trust in favor of the PC(USA).

B. The Presbytery's Motion of Summary Judgment

The Presbytery argues on appeal that the trial court erred in failing to grant its motion for summary judgment seeking to impose a trust on Olivet's

property in favor of the PC(USA) as a matter of law. To succeed, the Presbytery must show from the designated evidence that the undisputed facts conclusively establish either an express or an implied resulting trust. As to the claim of express trust, we have already concluded to the contrary in Part 3, A. We have found from the designated facts and their resulting inferences that Olivet's 1983 session minutes are not sufficiently connected with its bylaws from 1998 or 2000 to constitute a signed writing and that, even if they were, the relevant language in these documents is not a "clear and unequivocal" statement of Olivet's intent to create a trust on its property. *Richards*, 185 Ind. at 368, 112 N.E. at 790. Therefore, the Presbytery was not entitled to summary judgment on its claim of express trust.

With respect to the Presbytery's claim of implied resulting trust, summary judgment is likewise not appropriate on the evidence. Even when reviewing the designated evidence and inferences most favorable to the Presbytery on Olivet's motion for summary judgment, we determined that reasonable inferences lead to a disputed issue of material fact thus precluding summary judgment on the claim of implied resulting trust. Because this issue is one on which there remains a genuine issue of fact for trial, summary judgment is improper.

4. Conclusion

We hold that neither the Presbytery nor Olivet are entitled to summary judgment completely resolving this case in their favor. Genuine issues of disputed fact, resulting from varying inferences possible from the designated evidence, must be resolved at trial rather than on summary judgment. With respect to the Presbytery's claim of express trust, the designated evidence and its reasonable inferences show that there is no genuine issue of fact and that, as a matter of law, Olivet did not create an express trust upon its property in favor of the Presbytery or the PC(USA). As to the Presbytery's claim of implied resulting trust, reasonable inferences are possible and thus produce a genuine issue of material fact regarding the requisite unequivocal intent of Olivet to create a trust. This cause is remanded to the trial court for further proceedings consistent with this opinion.

Rucker and David, JJ., concur.

Sullivan and Massa, JJ., dissent, believing the decision and analysis of the Court of Appeals in this case, 940 N.E.2d 1188 (Ind. Ct. App. 2010), to be correct.

FOR PUBLICATION

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**IN THE
COURT OF APPEALS OF INDIANA**

THE PRESBYTERY OF OHIO)
VALLEY, INC. d/b/a THE)
PRESBYTERY OF OHIO)
VALLEY d/b/a OHIO VALLEY)
PRESBYSTERY, and THE)
SYNOD OF LINCOLN TRAILS)
OF THE PRESBYTERIAN)
CHURCH (U.S.A.), INC.)
d/b/a THE SYNOD OF)
LINCOLN TRAILS, INC.,)

Appellants-Plaintiffs,)

vs.)

OPC, INC. f/k/a OLIVET)
PRESBYTERIAN CHURCH,)
INC. d/b/a OLIVET)
PRESBYTERIAN CHURCH)
d/b/a OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH)

No.)
82A02-1003-MF-339)
(Filed Dec. 14, 2010)

d/b/a OLIVET PRESBYTERIAN)
CHURCH OF EVANSVILLE,)
OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH)
OF EVANSVILLE, INC. d/b/a)
OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH,)
and THE EVANGELICAL)
PRESBYTERIAN CHURCH)
d/b/a EVANGELICAL)
PRESBYTERIAN CHURCH)
OF AMERICA,)
Appellees-Defendants.)

APPEAL FROM THE
VANDERBURGH CIRCUIT COURT
The Honorable Carl D. Heldt, Judge
Cause No. 82C01-0707-MF-343

December 14, 2010

OPINION – FOR PUBLICATION

BAKER, Chief Judge

In this appeal, a local congregation that was a part of the national Presbyterian Church petitioned to leave the national Church. When the governing Church body indicated that it might not permit the local congregation to retain the property on which it was situated, the local congregation truncated the process and refused to acknowledge the Church's right to the property. The dispute made its way into the judicial system, and we now conclude that because

(1) the local congregation was part of the national Church and accepted the benefits of being part of a national organization, (2) the local congregation acknowledged in its bylaws that it was bound by the national Church Constitution and could not amend its bylaws to conflict with that document, and (3) the Church Constitution contains a clause providing that all property titled to local congregations is held in trust for the use and benefit of the national Church, judgment must be entered in favor of the governing judicatory bodies of the national Church – the Appellants.

Appellants-plaintiffs Presbytery of Ohio Valley, Inc. d/b/a Presbytery of Ohio Valley d/b/a Ohio Valley Presbytery (“Presbytery”), and Synod of Lincoln Trails of the Presbyterian Church (U.S.A.), Inc. d/b/a Synod of Lincoln Trails, Inc. (“Synod”) (collectively, “the Appellants”) appeal the trial court’s order granting summary judgment in favor of appellees-defendants OPC, Inc. f/k/a Olivet Presbyterian Church, Inc. d/b/a Olivet Presbyterian Church d/b/a Olivet Evangelical Presbyterian Church d/b/a Olivet Presbyterian Church of Evansville, Olivet Evangelical Presbyterian Church of Evansville, Inc. d/b/a Olivet Evangelical Presbyterian Church (collectively, “Olivet”), and Evangelical Presbyterian Church d/b/a Evangelical Presbyterian Church of America (“EPC”) (collectively, the Appellees).

The Appellants argue that the trial court erred by applying the neutral principles of law approach rather than the polity approach to this property

dispute. But even if the neutral principle approach is found to apply herein, the Appellants contend that they should prevail. We conclude that when the neutral principles of law approach is applied correctly, the Appellants prevail. Consequently, we reverse and remand with instructions to enter summary judgment in the Appellants' favor, together with a declaratory judgment that Olivet has no right, title, or interest in the Oak Hill Property, and a constructive trust on that property in favor of the Presbytery.

FACTS¹

Structure and History of the Presbyterian Church

The General Assembly of the Presbyterian Church in the United States of America was formed in 1788, and when divisions around slavery and related religious doctrines could not be reconciled, the Church split in 1865. Churches south of the Mason-Dixon Line became known as the Presbyterian Church in the United States ("PCUS"), and congregations north of the Mason-Dixon line adopted the name "The United Presbyterian Church in the United States of America" ("UPCUSA"). The split continued until June 10, 1983, when these two branches of the Church reunited, and thereafter the denomination was known as the Presbyterian Church (U.S.A.) ("PC(USA)").

¹ We held oral argument in this case on November 30, 2010, and we thank the parties for their presentations.

Doctrinal disputes among American Presbyterians in the 18th and 19th centuries led to the formation of several splinter groups, including the EPC, which is an independent denomination. The PC(USA) and EPC have different standards for ordination and holding church property, as well as doctrinal differences.

The PC(USA) is governed by its Constitution, which is comprised of the Book of Confessions and the Book of Order. The Book of Order contains the Form of Government, Directory for Worship, and Rules of Discipline.

There are four levels of governance in the PC(USA): the General Assembly (highest), the synod (multistate regional), the presbytery (primary regional), and the session (local church). The Constitution provides that each lower governing body is answerable to the successive higher governing body. The presbytery is the primary governing body within the PC(USA), has plenary power, and is responsible for the mission and governance of the PC(USA) within its geographic area.

Among other things, the Constitution provides that all property held by individual congregations is held in trust for the PC(USA):

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the [PC(USA)], whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association,

and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the [PC(USA)].

Stip. Ex. 2. This clause (the “Property Trust Clause”) has been included in the Constitution since the formation of the PC(USA) in 1983.

The Parties to the Appeal

The Presbytery, which was incorporated in 1973, is responsible for the mission and governance of the PC(USA) in the southwestern third of Indiana, including all of Vanderburgh County. Consequently, Olivet is within the bounds of the Presbytery. The Synod, also incorporated in 1973, is the intermediate governing body responsible for all of the presbyteries in Indiana and Illinois.

Olivet was founded near the turn of the twentieth century and, beginning in at least 1906, was a member congregation of the UPCUSA. In 1968, the Olivet congregation decided to change locations, and purchased property, located on Oak Hill Road in Evansville (the Oak Hill Property). The funds for the purchase of the Oak Hill Property were derived from donations, borrowed money, and proceeds from the sale of other church property. The warranty deed stated that the property was conveyed to “Olivet Presbyterian Church of Evansville, Indiana.” Stip.

Ex. 36. Olivet has been located on the Oak Hill Property since that time.

When it acquired the Oak Hill Property in 1968, Olivet's governance documents recognized that it was part of the UPCUSA and subject to the UPCUSA Constitution. Olivet further expressly recognized that it was subject to and governed by the Constitution in its 1969, 1971, and 1978 bylaws. In 1983, when the northern and southern branches of the Church reunited, Olivet became a member church of the PC(USA).

On November 29, 1994, Olivet incorporated as an Indiana not-for-profit corporation as "Olivet Presbyterian Church, Inc." In 1998, and again in 2000, Olivet amended its bylaws. In both instances, the amended bylaws provided that Olivet "recognizes the constitution of [PC(USA)] as the authority for the governance of the church and its congregation." Stip. Ex. 42. The bylaws further provided that they "shall not be amended so as to conflict with the Constitution of [PC(USA)]." *Id.*

Olivet Petitions to Leave PC(USA)

On July 30, 2006, Olivet petitioned the Presbytery, pursuant to the procedure set forth in the PC(USA) Constitution, as follows: "The congregation of [Olivet] respectfully asks permission of the Presbytery . . . to be released from the [PC(USA)], with property and finances, to the [EPC]." Stip. Ex. 51. The Constitution provides that after receiving the

petition, the Presbytery would determine the future of Olivet's property, including the Oak Hill Property:

Whenever property of, or held for, a particular church of the [PC(USA)] ceases to be used by that church as a particular church of the [PC(USA)] in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

Stip. Ex. 2.

The Olivet petition was presented and discussed at the August 26, 2006, Presbytery meeting. No vote took place at this meeting because the EPC had not yet confirmed that it would accept Olivet if it were transferred. Because all necessary steps for transferring Olivet could not be completed by the December Presbytery meeting, the Presbytery Task Force proposed that the Olivet congregation and its pastor be dismissed to the EPC, but that property issues be resolved temporarily by entering into a lease for a consideration of \$1 through August 1, 2007. Thus, on December 7, 2006, the Presbytery agreed to release Olivet from membership in PC(USA) to EPC, effective immediately, without property, but anticipating further negotiations for a property transfer and subject to certain conditions. The EPC received Olivet on December 8, 2006.

In February 2007, Olivet formed a new corporation, named "Olivet Evangelical Presbyterian Church of Evansville, Inc.," which acquired the then-existing

corporation, OPC, Inc.² On April 23, 2007, Olivet's Clerk of Session sent an email to the Presbytery, informing it that Olivet had adopted the following session recommendation:

We are thankful for the partnership we have had in the past with the Presbytery . . . and we are looking forward to continuing our ministry for Christ in the Evansville area. Based on our conviction that God has given Olivet Evangelical Presbyterian Church the stewardship of [the Oak Hill Property], we respectfully decline to sign the lease proposed by the Presbytery. . . .

Stip. Ex. 68. On May 25, 2007, Olivet's Clerk of Session sent another email to the Presbytery, explaining that Olivet did not intend to continue any negotiations regarding disposition of the Oak Hill Property.

The Litigation

On July 2, 2007, the Appellants filed a complaint against the Appellees, seeking, among other things, a declaratory judgment that Olivet has no right, title, or interest in the Oak Hill Property and a constructive trust on that property in favor of the Presbytery. On October 19, 2009, the Appellants filed a motion for partial summary judgment, seeking a declaration that the Presbytery is entitled to the Oak Hill Property

² Olivet had reincorporated on November 6, 2006, anticipating its split with PC(USA), renaming itself OPC, Inc.

and seeking damages incurred as a result of Olivet's breach of the agreement that led to the dismissal of Olivet to the EPC and permitted Olivet to remain temporarily in possession of the property. The same day, the Appellees filed a cross-motion for summary judgment.

The relevant facts are undisputed, and the parties agreed to submit the case to the trial court on the basis of a stipulated record. In addition to the stipulated record, Olivet submitted several affidavits and documents to which the Appellants objected and moved to strike. The trial court took the objections and motion to strike under advisement but never expressly ruled on them.

Following a December 8, 2009, hearing on the cross-motions for summary judgment, the trial court entered final judgment in favor of the Appellees on March 9, 2010. In making its final ruling, the trial court considered and relied on the affidavits and documents that the Appellants had objected to and moved to strike. Among other things, the trial court found and held as follows:

7. . . . [T]his Court will find that Indiana law falls in line with a majority of the jurisdictions in the United States and will apply the Neutral Principles Approach as set forth by the United States. In applying the neutral principles, the Court looks to the deed, documents of ownership, corporate documents of the

parties and provisions of the Constitution of the PC(USA). . . .

* * *

14. Following the Neutral Principles Analysis, the title to real estate is demonstrated through the deed . . . [, which] clearly provided that the real property belongs to Olivet.

* * *

17. . . . [N]owhere in [Olivet's] Articles of Incorporation or in the By-laws was any statement made that the [Oak Hill Property] was being placed in trust for the benefit of any of the Plaintiffs and/or the PC(USA). Further, nowhere in the Articles of Incorporation or By-laws was it stated that membership was irrevocable. . . .

* * *

21. . . . Olivet agreed to abide by the governance of the church so long as they were a member, but church governance permits their departure and all agree they have departed and are following a new Presbyterian Church governance. As Olivet has indicated, they had a voluntary right to put it in and have the same voluntary right to take it out regarding when they follow or recognize church governance.

* * *

25. . . . No written and signed express trust has been presented by either party and thus the Court concludes one must not exist. . . .

* * *

Conclusions of Law

* * *

2. . . . While there is evidence that Indiana Courts have utilized both the “neutral principles approach” and the “polity approach” in determining ownership of church property, this Court is applying the neutral principles approach. . . . The majority view throughout the United States appears to follow the neutral principles approach. . . .

* * *

11. Indiana real estate law governs whether title to real estate has been transferred. If the real estate property owned by [Olivet] is to be placed in trust, it ought to be done through real estate transfer by the property owners. . . .

12. . . . [T]he Court can only conclude from the facts presented by the parties that Olivet prevails when applying the “neutral principles” approach. The evidence shows that the deed and documents of ownership specifically provide that the real and personal property at issue in this case are held solely by the Olivet

congregation rather than by the Plaintiffs or the PC(USA).

* * *

19. Both parties cite various portions of the PC(USA) Book of Order in support of their respective positions. . . . [T]he Court concludes that wading into various portions of the Book of Order which may or may not be conflicting requires this Court to determine ecclesiastical questions in the process of resolving property disputes [,] which is prohibited by the First Amendment to the United States Constitution. . . .

* * *

21. Insufficient evidence has been presented to establish in this case the existence of either an express trust or an implied trust of any sort. . . . Likewise, there has been insufficient evidence to establish a constructive trust since a constructive trust is not actually a trust but a common law remedy created by equity. . . .

Appellants' App. p. 12-40. The Appellants now appeal.

DISCUSSION AND DECISION

I. Standard of Review

Summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to

any material fact and that the moving party is entitled to judgment as a matter of law. *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 909 (Ind. 2001); *see also* Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. *Owens Corning*, 754 N.E.2d at 909. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. *Id.* If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. *Id.* An appellate court faces the same issues that were before the trial court and follows the same process. *Id.* at 908.

II. The Neutral Principles of Law Approach

The parties disagree as to which analytical framework should be used to resolve this dispute. The Appellants contend that the trial court erred by applying the neutral principles of law approach, arguing instead that the polity approach should have been applied. In either case, however, the Appellants argue that the trial court erred by ruling in the Appellees' favor.

As a general matter, a civil court may resolve a property dispute between a local church and the greater denominational church without violating the First Amendment to the United States Constitution or Article I of the Indiana Constitution. *Hinkle Creek Friends Church v. W. Yearly Meeting of Friends*

Church, 469 N.E.2d 40, 43 (Ind. Ct. App. 1984) (citing *Presbyterian Church of the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969)). The United States Supreme Court has recognized two acceptable approaches to resolving church property disputes: the polity approach (and its subpart applicable to hierarchical church bodies, the hierarchical deference rule) and the neutral principles of law approach. *Draskovich v. Pasalich*, 280 N.E.2d 69, 76-78 (1972) (analyzing *Hull*).

Although the Appellants prefer the application of the polity approach, they acknowledge that the neutral principles of law approach is also acceptable, if not preferred. We agree, and decline the Appellants' invitation to apply the polity approach. Instead, we will proceed, as did the trial court, with the neutral principles of law approach.

The neutral principles of law approach, in essence, requires courts to apply

neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Hull, 393 U.S. at 449. This court has also had occasion to explore the neutral principles of law approach, explaining first that the impact of *Hull* was

to render impotent the implied trust theory in so far as such theory is based upon principles of ecclesiastical law, church doctrine, or church discipline. It is clear that the civil courts cannot rely upon ecclesiastical law of the church to impose an implied trust upon real estate.

Merryman v. Price, 147 Ind. App. 295, 311, 259 N.E.2d 883, 893 (1970).

Following *Hull*, the United States Supreme Court further explored the neutral principles approach in *Jones v. Wolf*, 443 U.S. 595 (1979). The Supreme Court cited the approach with favor in general, but noted certain difficulties as well:

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. . . .

That 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. . . .

On balance, however, the promise of nontanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application. . . . We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.

Id. at 603-04 (emphasis added).

In this case, the trial court focused nearly exclusively on the language of the deed to the Oak Hill Property. Although the deed language is certainly a relevant consideration, that is not the end of our inquiry. This court has explained that the neutral principles of law approach “requires courts to examine certain documents for language of a trust in favor of the General Church. The documents to be examined include civil statutes, the express language of deeds, local church charters, and general church constitutions.” *Hinkle*, 469 N.E.2d at 43 (quoting *Grutka v. Clifford*, 445 N.E.2d 1015, 1019 (Ind. Ct. App. 1983)).

In *Merryman*, this court implied that a trial court may not examine church documents in applying the neutral principles approach, stating that the only relevant inquiry is the language to be found in the deed itself. 147 Ind. App. at 312-13, 259 N.E.2d at 893. This so-called formal title approach, however, has not been the law of Indiana since the United States Supreme Court issued *Jones* in 1979. The *Jones* Court held that, in fact, trial courts are *required* to examine

church constitutions and similar documents for trust language. 443 U.S. at 603-04. And this court later clarified, following *Merryman*, that so long as the analysis does not require ecclesiastical inquiries, examination of church charters and constitutions is appropriate under the neutral principles approach. *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 150 Ind. App. 574, 584-85, 276 N.E.2d 916, 922 (1971).

Inasmuch as courts are required to go beyond the language of the deed itself to resolve a church property dispute – assuming, of course, that ecclesiastical inquiries are not required – we turn to the language of the Property Trust Clause herein:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the [PC(USA)], whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the [PC(USA)].

Stip. Ex. 2. The language of this clause is plain and unambiguous – notwithstanding the language of the deed, all property held by entities of the PC(USA) is held in trust for the use and benefit of the PC(USA). It is undisputed that Olivet was a member congregation of the PC(USA). It is also undisputed that the

Property Trust Clause has been included in the PC(USA) Constitution since 1983.

Olivet emphasizes that when it purchased the property in 1968, neither the PC(USA), its Constitution, nor the Property Trust Clause existed. While that is certainly true, when the two branches of the Presbyterian Church came back together in 1983 to form the PC(USA), Olivet was included in the newly formed Church. And in 1998 and 2000, Olivet amended its bylaws, acknowledging that it was bound by the PC(USA) Constitution – which included the Property Trust Clause – and further acknowledging that it could not amend its bylaws to conflict with the Constitution. In other words, although Olivet did not retitle the Oak Hill Property such that it was explicitly held in trust for the PC(USA), it acknowledged, by virtue of its amended bylaws, that it was bound by the Property Trust Clause.

Notwithstanding this clear and unambiguous history, Olivet contends that its bylaws were not irrevocable and that when it reincorporated in 2006 to become part of the EPC, it properly removed itself from the governance of the PC(USA) Constitution and was no longer bound by the Property Trust Clause. We cannot agree.

In *National Board of Examiners of Osteopathic Physicians & Surgeons v. American Osteopathic Association*, this court considered a similar situation to the one we face herein. 645 N.E.2d 608 (Ind. Ct. App. 1994). NBOME's articles of incorporation and bylaws

expressly reserved to its parent organization, the AOA, the right to approve nominations to NBOME's board. *Id.* at 611. After decades of compliance, NBOME reincorporated and restated its articles of incorporation, omitting the AOA's right of approval.

In considering whether NBOME had the right to make those changes, we noted that "the articles of incorporation and bylaws of a nonprofit corporation constitute a contract between the state and the corporation, the corporation and its members, and the members among themselves." *Id.* at 617. We focused on the language of the relevant documents and the parties' historical course of conduct, finding that AOA was a third-party beneficiary of NBOME's articles and bylaws and, consequently, authorized to enforce those documents. Additionally, we found that NBOME was not permitted to delete AOA's right of approval unilaterally: "If substantive amendments are desired to be made [to the articles of incorporation and bylaws] . . . , then those amendments must be approved according to the applicable corporate governance rules existing by statute or in the articles themselves." *Id.* at 620.

Here, likewise, Olivet's bylaws expressly stated the church's acknowledgement that it was bound by the PC(USA) Constitution and further stated that the bylaws would not be amended to conflict with that Constitution. Olivet and PC(USA) have not been entirely consistent over the years with respect to abiding by all of the terms of the PC(USA) Constitution. But from 1983 until 2006, when Olivet left

PC(USA) altogether, it never attempted to amend its bylaws in a way that conflicted with the PC(USA) Constitution. Even more compelling, when Olivet decided to leave the PC(USA), it did so via the procedure mandated by the PC(USA) Constitution.

Olivet argues that *NBOME* is not analogous to the instant appeal because it involved secular, rather than ecclesiastical, entities. But what we are asked to do herein is resolve a property dispute. We have applied the neutral principles of law approach – as advocated for by Olivet – and have, consequently, applied principles of contract, corporate, and property law in interpreting Olivet’s bylaws and the property provisions of the PC(USA) Constitution. Just because a party states that a document or a specific provision of a document is ecclesiastical does not automatically make it so, and here, no ecclesiastical inquiry is necessary to resolve the dispute.

Olivet agreed to be a part of the PC(USA) when it was formed in 1983. By so agreeing, Olivet reaped the myriad benefits of being affiliated with a national organization. Olivet amended its bylaws in 1998 and 2000, on both occasions acknowledging that it was bound by the PC(USA) Constitution and that it could not amend its bylaws to conflict with that document. Included in the PC(USA) Constitution is the non-ecclesiastical Property Trust Clause – the validity of which Olivet does not dispute – providing that all property titled in the name of individual congregations is nonetheless held in trust for the benefit of the PC(USA). When Olivet decided to leave the PC(USA),

it did so by following the procedures set forth in the PC(USA) Constitution – at least until the Presbytery indicated that it might not permit Olivet to retain the Oak Hill Property. At that point, Olivet truncated the process, indicated its refusal to abide by the Presbytery’s decision, and forced the Appellants to turn to the judicial system to resolve the dispute. Under these circumstances, having applied neutral principles of law and treated these parties and their property dispute as any other corporate entities who appear before us, we can only conclude that the trial court erred by entering summary judgment in Olivet’s favor.³

The judgment of the trial court is reversed and remanded with instructions to enter judgment in favor of the Appellants together with a declaratory judgment that Olivet has no right, title, or interest in the Oak Hill Property, and a constructive trust on that property in favor of the Presbytery.

NAJAM, J., and MATHIAS, J., concur.

³ Inasmuch as we have found in the Appellants’ favor without resolving their argument about the admission of the affidavits, we will not address that issue herein.

STATE OF INDIANA)
) SS: VANDERBURGH
)
COUNTY OF VANDERBURGH)
) CIRCUIT COURT

PRESBYTERY OF OHIO)
VALLEY, INC. d/b/a)
PRESBYTERY OF OHIO)
VALLEY, d/b/a OHIO VALLEY)
PRESBYTERY, and SYNOD OF)
LINCOLN TRAILS OF THE)
PRESBYTERIAN CHURCH)
(U.S.A.), INC., d/b/a SYNOD OF)
LINCOLN TRAILS, INC.,)

Plaintiffs)

v.)

OPC, INC. f/k/a OLIVET)
PRESBYTERIAN CHURCH,)
INC., d/b/a OLIVET)
PRESBYTERIAN CHURCH,)
d/b/a OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH, and)
d/b/a OLIVET PRESBYTERIAN)
CHURCH OF EVANSVILLE;)
OLIVET EVANGELICAL)
PRESBYTERIAN CHURCH OF)
EVANSVILLE, INC., d/b/a OLIVET)
EVANGELICAL PRESBYTERIAN)
CHURCH; EVANGELICAL)
PRESBYTERIAN CHURCH, d/b/a)
EVANGELICAL PRESBYTERIAN)
CHURCH OF AMERICA,)

Defendants)

) CAUSE NO.
) 82C01-0707-MF-343
) (Filed Mar. 9, 2010)

ENTRY OF FINAL JUDGMENT
WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The Court, having reviewed the pleadings, briefs, and the affidavits submitted by the parties, and having heard oral argument on the issues, now enters final judgment in favor of Defendants, Olivet Evangelical Presbyterian Church of Evansville, Inc., d/b/a Olivet Presbyterian Church, together with the merger of former corporations of the Olivet Presbyterian Church, Inc. and OPC, Inc. (hereinafter “Olivet”), and against the Plaintiffs, Presbytery of Ohio Valley, Inc., d/b/a Presbytery of Ohio Valley, d/b/a Ohio Valley Presbytery and Synod of Lincoln Trails of the Presbyterian Church (U.S.A.), Inc., d/b/a Synod of Lincoln Trails, Inc. (hereinafter collectively referred to as “Plaintiffs” and/or “PC(USA)”). Accordingly, the Court issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Olivet Presbyterian Church traces its beginnings to mission work in 1891 of the Jefferson Avenue Cumberland Presbyterian Church and Free Methodist Church with the start of a mission Sunday School. This evolved into the Olive Street Cumberland Presbyterian Church organizing on or about June 7, 1900 with 35 charter members.

2. In 1906, the name was changed to Olive Street Presbyterian Church and in 1912 with the

combination of another congregation, the name simply changed to the Olivet Presbyterian Church of Evansville.

3. During 1968 the congregation sought to move from its downtown location to its current location at property commonly known as 5600 Oak Hill Road, Evansville, Vanderburgh County, Indiana. The Olivet congregation has resided in the same location since constructing its church building near the corner of Oak Hill Road and St. George Road in the northern part of Vanderburgh County.

4. On Sunday, July 30, 2006, the congregation of Olivet Presbyterian Church voted overwhelmingly (98%) to ask the Presbytery to permit them to disaffiliate from the ecclesiastical governance of the Presbyterian Church (USA) and seek an association with another Presbyterian body more in keeping with their corporate expression of belief.

5. This litigation arises as a result of the decision of the congregation of Olivet Presbyterian Church to disaffiliate from the governance of the PC(USA) with its property that was bought and paid for by the Olivet congregation. Simply put, PC(USA) seeks through this litigation to take control of the building and real property at 5600 Oak Hill Road as well as the congregation bank accounts and any other property.

6. The further significance of the dispute before the Court is demonstrated in paragraph 89 of the Stipulation. The appraised value of the real estate on

January 15, 2008 was approximately \$1,000,000.00 and the appraisal does not include the value of any personalty, bank accounts or other property not consisting of the real estate. The parties further stipulated that a current appraisal has not been performed and the parties further agreed the old appraised value may not reflect the current price a willing buyer might pay for the real estate. There is no disagreement that Plaintiffs have not paid any meaningful monetary amount towards the real estate, personalty, bank accounts or other property associated with Olivet while the congregation of well over 100 individuals have made the financial contributions throughout the years. The Plaintiffs through this lawsuit seek to take full control of the real estate, personalty, fixtures, bank accounts and other property of Olivet for no financial consideration and to the exclusion of all of those individuals who have contributed their monetary assets to this property.

7. As will be further detailed in the Conclusions of Law, this Court will find that Indiana law falls in line with a majority of the jurisdictions in the United States and will apply the Neutral Principles Approach as set forth by the United States Supreme Court. In applying the neutral principles, the Court looks to the deed, documents of ownership, corporate documents of the parties and provisions of the Constitution of the PC(USA). As will be further detailed in the Conclusions of Law, the evidence shows that the deed and documents of ownership specifically provide that the real and personal property at issue in this

case are held solely by the Olivet congregation rather than in trust for the PC(USA).

8. The facts presented to the Court indicate that after a lengthy period (many years) of discernment by Olivet, the congregation sought an association with another Presbyterian body more in keeping with its corporate expression of belief. Even the PC(USA) Constitution and Book of Order permits and acknowledges the possibility of movement away from its denomination. The Olivet congregation presented evidence summarizing issues and concerns beginning at least in 1994 and continuing through the time of the congregation's vote in 2006 to move to the Evangelical Presbyterian Church denomination ("EPC").

9. Consistent with the Neutral Principles Analysis (outlined in the Conclusions of Law), the Court is encouraged to look at a number of neutral legal principles including what property is owned by the Olivet congregation and how title is held to that property.

10. Olivet owns certain personal property and fixtures, including but not limited to various bank accounts listed as follows:

- (a). Olivet Evangelical Presbyterian at Old National Bank, Account [Omitted In Printing];
- (b). Olivet Evangelical Presbyterian at Old National Bank, Account [Omitted In Printing]
- (c). Women of Olivet Presbyterian Church at Old National Bank, Account [Omitted In Printing].

(d). Olivet Preschool at Old National Bank, Account [Omitted In Printing]

As indicated by the Affidavit of Denise Atkins, an official of Old National Bank, and further supported by the Alex Merwin Affidavit, the accounts are not joint, nor are there contingent beneficiaries, any trust interest for any person or entity or any other interests identified in the accounts other than being solely held by the corporation, the Olivet Evangelical Presbyterian Church, Inc. and/or the one bank account maintained for the Olivet Preschool.

11. The Plaintiffs admit that ownership of the real property is in the name of Olivet Presbyterian Church of Evansville, Indiana. (Complaint ¶ 31). The deed to the parcel of property at issue is a warranty deed executed on June 14, 1968 and recorded June 17, 1968 at Volume 519, Page 264-265 as Document Number 68-09033 in the records of the Recorder of Vanderburgh County. The warranty deed identifies the sole grantee as the Olivet Presbyterian Church of Evansville, Indiana. The deed conveys no interest to the POV, the Synod or the PC(USA) or any predecessor denomination. There are no restrictions, reservations, reversions and/or trusts identified. (Stipulation of Documents #36). It is legally described as follows:

A part of the Southeast quarter of the Northeast quarter of Section Three (3) Township Six (6) South, Range Ten (10) West in Vanderburgh County, Indiana and more particularly described as follows:

Beginning at a point on the South line of the Southeast quarter of the Northeast quarter of said section a distance of Six hundred sixty three and seventy five hundredths (663.75) feet South Eighty-Nine (89) degrees fifty six (56) minutes Thirty (30) seconds West of the Southeast corner thereof; thence North Zero (0) degrees zero (0) minutes Twenty three (23) seconds East a distance of Thirteen hundred fifty six and eleven hundredths (1356.11) feet to a point on the North line thereof; thence North Eighty nine (89) degrees Forty eight (48) minutes East along said North line a distance of six hundred sixty two and twenty five hundredths (662.25) feet to the Northeast corner of said quarter quarter section; thence South Twenty-five (25.0) feet; thence South Eighty nine (89) degrees Forty nine (49) minutes West a distance of Four hundred (400.0) feet; thence South and parallel to the East line thereof a distance of Five Hundred (500.0) feet; thence North Eighty Nine (89) degrees Forty eight (48) minutes East a distance of Four Hundred (400.0) feet to a point on said East line; thence South along said East line a distance of Six hundred thirty two and seventy five hundredths (632.75) feet; thence South Eighty Nine (89) degrees Fifty six (56) minutes Thirty (30) seconds West a distance of Six hundred thirty eight and seventy-five hundredths (638.75) feet; thence South and parallel to the East line of said quarter quarter section a distance of Two hundred (200.0) feet; thence South Eighty nine (89) degrees

Fifth six (56) minutes Thirty (30) seconds West a distance of Twenty five (25.0) feet to the place of beginning and containing Thirteen and thirteen hundredths (13.13) acres more or less.

LESS AND EXCEPT any of that portion conveyed to the Board of Commissioners, Vanderburgh County, Indiana in Warranty Deed recorded September 17, 2004 as Document No. 2004R00032813.

(Hereinafter referred to as the "Olivet Real Estate").

12. There is no dispute that the Olivet Real Estate was purchased by the Olivet congregation with donations from the congregation long before the corporate existence of the PC(USA) or the Plaintiffs and that no monetary consideration was provided by PC(USA) and/or the Plaintiffs, or its predecessors, for the purchase of the Olivet Real Estate and/or improvements. It is further undisputed that the Olivet Real Estate and improvements have been continuously owned by Olivet since its purchase to the current time.

13. At all relevant times, the record title to the Oak Hill Road Real Estate has been and continues to be held in the name of the Olivet congregation. The Oak Hill Road Real Estate was purchased by the Olivet congregation with donations and money borrowed from financial institutions. The Plaintiffs did not contribute funds to the purchase of the Oak Hill Road Real Estate. From time to time, the Oak Hill Road Real Estate has been improved, and funding for

the improvements came from loans from financial institutions, contributions from the Olivet congregation, and loans from the Synod and Presbytery. *See*, Stipulation of Facts, ¶¶ 22-24.

14. Following the Neutral Principles Analysis, the title to real estate is demonstrated through the deed. The deed is set forth above and clearly provided that the real property belongs to Olivet.

15. The next analysis under the Neutral Principles Analysis is the examination of the mortgages. The original Olivet purchase mortgage, which has been satisfied for quite some time, did not involve the Plaintiffs and/or PC(USA) and is not at issue. In the Complaint, Count II, the Plaintiffs put at issue certain notes and mortgages which were held by both Plaintiffs and which were obviously acceptable to both Plaintiffs and the PC(USA) or they would not have been entered into at the time noted on the notes and mortgages. The Plaintiffs did not put these notes and mortgages to issue during the summary judgment hearing. Olivet points to the existence of these undisputed notes and mortgages indicating Olivet is “mortgagor.” Olivet asserts and the Court finds that this is another indicia applicable under the Neutral Principle Analysis that the Plaintiffs have acknowledged the full ownership interest in the real property held by Olivet. Standing alone, it would be insufficient; but it is an indicia of ownership since mortgagees do not have a real estate title interest in property unless or until there is a foreclosure. If the mortgagees (both Plaintiffs) owned the property in

trust, this would be inconsistent with the mortgage form utilized and recorded by both Plaintiffs.

Both the mortgage for the POV and the Synod indicate sole ownership in Olivet Presbyterian Church of Evansville, Indiana and do not recite any trust provisions in the POV or the Synod. The language contained in both mortgages states ownership in the Mortgagee (i.e. Olivet) and even states the Mortgagor may part with title. In paragraph 8 in each mortgage, it states in pertinent part:

The Mortgagee (either the POV or the Synod) at its option, may extend the time for the payment of the indebtedness or reduce the payments thereon, or accept a renewal note or notes therefore, without consent of any junior lien holder, and without the consent of the mortgagor (Olivet) if the mortgagor (Olivet) has then parted with title to the mortgaged premises . . .

(Stip Doc's, #43 and #44). This language in the mortgage again would not be consistent if either party felt that a trust provision existed in the ownership of the real estate held in trust for the benefit of these mortgagees.

16. The next indicia of a Neutral Principle Analysis would be the corporate status of Olivet. Olivet is a not-for-profit corporation in the State of Indiana and established the following civil incorporation history. While the real property continued to be titled Olivet Presbyterian Church of Evansville,

Indiana, as it had since June 1968, the Olivet congregation incorporated through filing its Articles of Incorporation with the Indiana Secretary of State forming Olivet Presbyterian Church, Inc. on or about November 28, 1994. (Stip Doc's, #38 and #39). The Articles of Incorporation indicate that the corporation was a "religious corporation, which is organized primarily or exclusively for religious purposes." (Stip Doc's, #38). The By-laws indicate that the congregation name shall be the Olivet Presbyterian Church of Evansville, Indiana and it incorporates under the laws of the State of Indiana through its corporate entity known as Olivet Presbyterian Church, Inc. (Article 1, Section 1 of the May 1998 By-laws – Stip Doc's, #42). Olivet, in its By-laws, indicated that it was a congregation of the Presbyterian Church (USA) and recognized church governance as the constitution.

17. The facts providing indicia of support for Olivet concerning the Articles of Incorporation and the By-laws are that nowhere in the Articles of Incorporation or in the By-laws was any statement made that the real or personal property was being placed in trust for the benefit of any of the Plaintiffs and/or the PC(USA). Further, nowhere in the Articles of Incorporation or By-laws was it stated that membership was irrevocable. In fact, Article 11 indicates that the By-laws shall be reviewed annually by the Session and that the By-laws may be amended at any stated or called meeting of the congregation by two-thirds vote of members present provided sufficient

notice. (Article 11, Section 2 – Stip Doc’s, #42). The record indicates that the By-laws were amended from time to time. (Stip Doc’s, #37B, C, D, #42, and #54).

18. Further indicia of a Neutral Principles Analysis in favor of Olivet is that there are no specific set of By-laws prescribed by the Book of Order or other authority of Plaintiffs. Also, I.C. § 23-17-1-1(3), *et seq.* indicates that a non-profit corporation has the statutory right to make and amend by-laws. Neither side has been able to provide any authority for requirement for any specific set of by-laws and this Court must conclude that none exists.

19. As pointed out in the briefs, the Plaintiffs’ governance, through the Book of Order, does contemplate individuals or groups leaving the denomination and it provides for that.

20. The Neutral Principle Analysis that Plaintiffs assert is that the By-laws indicate that they are a congregation of the Presbyterian Church (USA) and recognized church governance as the constitution while they voluntarily chose to be affiliated with such denomination. Also, Plaintiffs point out that the By-laws state that they will not be changed so as to be inconsistent with the church constitution while they voluntarily chose to be affiliated with such denomination. Olivet contradicts these assertions by Plaintiffs through indicating that there is no specific set of by-laws prescribed by the Book of Order, the Book of Order contemplates individuals and/or congregations leaving the denomination and finally, it is undisputed

that one of the checklist items prescribed by the Plaintiffs to effect Olivet's disassociation was that Olivet change their By-laws.

21. Finally, Olivet indicates that there is no indicia of transferring property interests in their Articles of Incorporation or By-laws and to assert any sort of knowing transfer through the By-laws is not demonstrated by any written record and/or testimony presented by either party. Olivet agreed to abide by the governance of the church so long as they were a member, but church governance permits their departure and all agree they have departed and are following a new Presbyterian Church governance. As Olivet has indicated, they had a voluntary right to put it in and have the same voluntary right to take it out regarding when they follow or recognize church governance.

22. The Articles of Incorporation were amended through filing Articles of Amendment with the Indiana Secretary of State on or about November 6, 2006, when the Session and the congregation realized they would be leaving Plaintiffs. (Stip Doc's, #59). In September 2006, the By-laws were amended to include Olivet Presbyterian Church of Evansville, Indiana becoming a congregation of the Evangelical Presbyterian Church. (Article 1, Section 2 – Stip Doc's, #54 and #59). This action was consistent with the previous congregation actions during the summer and the requirements imposed by PC(USA). The By-laws were accepted at a September 17, 2006 called congregation meeting pending acceptance into the Evangelical

Presbyterian Church. (Merwin Affidavit, ¶ 12). These Articles of Amendment are dated September 18, 2006 to coincide with correspondence from the Evangelical Presbyterian Church accepting both the congregation and the pastor at Olivet into the Evangelical Presbyterian Church. (Stip Facts, ¶ 69). The Articles of Amendment were certified by the Indiana Secretary of State on or about November 6, 2006 (Stip Doc's, #59) and the corporation became known as OPC, Inc. and continued its address at 5600 Oak Hill Road, Evansville, Indiana 47711. At the time of the Articles of Amendment, OPC, Inc. was simply listed as an Indiana non-profit corporation. The church revised its By-laws again in December 2006, indicating that the Olivet Presbyterian Church of Evansville, Indiana corporation was now a congregation of the Evangelical Presbyterian Church. (Stip Doc's, #60).

23. Olivet Evangelical Presbyterian Church of Evansville, Inc. was formed through Articles of Incorporation being filed with the Indiana Secretary of State on February 14, 2007. (Stip Doc's, #64; Merwin Affidavit, ¶ 12). The requisite capital, federal employer identification number and other authorizations along with the first meeting were preformed in order to move the Olivet congregation to a different Presbyterian denomination. (Merwin Affidavit, ¶ 12). Following the proper Indiana statutes, the Olivet congregation sought to merge OPC, Inc. into Olivet Evangelical Presbyterian Church of Evansville, Indiana and provided the board of directors of both corporations with the required notice and announcements. (Merwin

Affidavit, ¶ 12). Meetings of both board of directors occurred. At the meeting of each corporation, the merger was approved and the Articles of Merger were signed on March 4, 2007. (Merwin Affidavit, ¶ 12). The merging corporation being OPC, Inc., an Indiana non-profit corporation, incorporated on the 28th day of November, 1994 and the surviving corporation being the Olivet Evangelical Presbyterian Church of Evansville, Inc., an Indiana non-profit corporation incorporated on the 14th day of February, 2007.

24. The Neutral Principles Analysis provides some indicia of ownership of the property through the civil corporate status. The Articles of Merger and the Certificate of Merger issued by the Indiana Secretary of State indicating the successful merger of OPC, Inc. into the surviving entity, Olivet Evangelical Presbyterian Church of Evansville, Inc., were issued March 7, 2007. As provided by law and the merger articles:

Upon the effective date of the merger, the surviving corporation shall be vested with all the rights, privileges, immunities, powers and franchises and all property, real and person, and all accounts, contract rights and other choices and action of the Merging Corporation without the necessity of any further act or deed.

(Merwin Affidavit, ¶ 12).

25. The next indicia under a Neutral Principles Analysis is to look at other written documents. Based upon a review of the record, there is no written

express trust existing between Olivet and the Plaintiffs. (Merwin Affidavit, ¶ 3). No written and signed express trust has been presented by either party and thus the Court concludes one must not exist. This indicia favors Olivet's position. An express trust is one created by the direct and positive act of the settlor by some writing, deed, will or oral declaration. I.C. § 30-4-2-1(a). Plaintiffs indicate that the Indiana trust provisions relied upon by Defendants were not passed until after purchase of the property. However, nothing prohibited a trust clause being inserted in the Olivet deed, which does not exist. Further, nothing prohibited Defendants from making a written expression signed by the appropriate official of the church indicating that the property was put in trust after passage of the Indiana trust statutes in 1971 and certainly none of the Plaintiffs nor PC(USA) appear to have sought to have Olivet make such a written expression since 1971.

26. Looking at the Neutral Principles Analysis, the basis of Plaintiffs' assertion of a trust interest in all of the property of Olivet is based upon an interpretation of the Book of Order. The Plaintiffs' church constitution, as evidenced through the Book of Order, provides an indicia of ownership in the church under a Neutral Principles Analysis.

27. While examining the church constitution as part of the Neutral Principles Analysis, it was in 1983 that the United Presbyterian Church in the United States of America (PCUS) "Southern Branch" and the United Presbyterian Church in the USA (UPCUSA)

“Northern Branch” combined and became the Presbyterian Church (USA). Olivet church through these combinations became a member of the PC(USA). The affiliation of Olivet Presbyterian Church of Evansville, Indiana with the PC(USA) was viewed as a “reunion” of two national level denominations according to Session minutes of the Olivet congregation dated August 25, 1983 (Stip Doc’s, #37F), which was the same time of the adoption of the current version of the Book of Order. The Court finds no particular indicia of ownership arising out of the merger of these two national branches and/or the adoption of the Book of Order at the time. Actions by parties to attempt to impose a trust upon property owned by others are inconsistent with the civil law approach and/or a Neutral Principles Analysis of the manner in which property is put in trust for another and thus, no indicia is gleaned from the merger events and the adoption of the current version of the Book of Order.

28. Both parties outline significant steps taken in the discernment and in the eventual departure of Olivet from the Plaintiffs, which are more fully outlined in the briefs, the Stipulation of Facts (Stip Facts, ¶ 53 through ¶ 81) and/or in the affidavits, all of which were a part of the record submitted on summary judgment. In pertinent part, this may be summarized that on June 9, 2006, the Olivet Session (Board of Directors) presented its recommendation for dismissal to the congregation for prayer and discernment and with Plaintiff representatives being present. Four town meetings with POV representatives

took place in July. (Stip Facts, ¶ 57 and ¶ 58; Merwin Affidavit, ¶ 12). At the annual Olivet congregation meeting on July 30, 2006, a vote in favor of dismissal to the Evangelical Presbyterian Church with property and finances passed 116 for and 2 against. POV representatives were present and witnessed the voting and no dispute exists between the parties concerning these facts. (Merwin Affidavit, ¶ 12). Various meetings and correspondence occurred between the Plaintiffs' task force and representatives of the Olivet congregation regarding how matters should proceed. The Plaintiffs' task force outlined various steps to be completed in their meeting on August 17, 2006, including but not limited to revision of the Articles of Incorporation and church By-laws (Stip Facts, ¶ 67; Merwin Affidavit, ¶ 12). Delays occurred waiting for the new denomination's approval. Delays occurred due to changes in the language of resolutions presented at various assemblies. One of these changes included the original Olivet proposed resolution to be dismissed never being presented to any assembly and never acted upon.

29. The Court finds paragraph 77 of the Stipulation of Facts of significance, which states in part as follows:

The parties disagree regarding the adequacy, extent or appropriate procedure for the presentation of the Olivet petition and the Presbytery resolution, but on December 7, 2006, the Presbytery adopted a resolution by which it agreed to release Olivet congregation from

membership in the PC(U.S.A.) into membership in the EPC, effective immediately, subject to the following conditions:

* * *

The fact that the parties disagree on this fact is significant. Further demonstrating the parties' disagreement regarding the adequacy, extent or appropriate procedure during this Presbyterian assembly of representatives from various Plaintiff congregations, is the Affidavit of William Rasch. (Affidavit of William Rasch).

30. Under a Neutral Principles Analysis, it is difficult for the Court to glean any indicia of ownership where the parties disagree regarding the adequacy, extent or appropriate procedure for the presentation of the Olivet petition and the Presbytery action . . . " As will be further detailed in the Conclusions of Law, a vote by a body of members made up from various churches must inextricably involve matters of church belief which are inconsistent with a neutral principles approach.

31. The parties agree through their Stipulation at paragraph 88 that the Olivet congregation has consistently made clear its intention to continue its affiliation and worship under the Evangelical Presbyterian Church, and never expressed nor has it implemented any plans to abandon the real estate titled in its name since 1968.

32. All Findings of Fact may be deemed Conclusions of Law

CONCLUSIONS OF LAW

1. The Court finds there is ample United States Supreme Court precedent and Indiana Court precedent for concluding that this Court has jurisdiction to hear church property disputes. This Court further concludes that the more reasoned and proper approach under both Federal and Indiana jurisprudence is to apply the Neutral Principles Doctrine.

2. This Court has three significant United States Supreme Court precedents as guidance for evaluating the facts of this dispute along with considerable state court law. While there is evidence that Indiana Courts have utilized both the “neutral principles approach” and the “polity approach” in determining ownership of church property, this Court is applying the neutral principles approach as described and discussed in the United States Supreme Court precedent *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) and *Jones v. Wolf*, 443 U.S. 595 (1979). The majority view throughout the United States appears to follow the neutral principles approach.

Plaintiffs urge the Court to apply the “polity” approach” citing United States Supreme Court precedent in *Watson v. Jones*, 80 U.S. 679 (1871) While *Watson v. Jones* has not been overruled, it has been significantly further clarified and defined in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S.

440 (1969) and in *Jones v. Wolf*, 443 U.S. 595 (1979). It is significant that *Watson v. Jones* was decided well before the application of the Bill of Rights, including the First Amendment, to the various states through the Fourteenth Amendment. The *Blue Hull* U.S. Supreme Court precedent indicates that the First Amendment is to be applied through the states and generally holds that each of the individual states can apply a polity, neutral principles or other test, but the Court notes that the neutral principle test is a very good and logical one. If a religious organization wants to establish a trust interest in a property, they must do so through neutral principles and not through the courts being required to evaluate ecclesiastical views.

3. Plaintiffs seek to have this Court adopt the "polity approach", recognizing the hierarchy of governing bodies within a religious organization through reliance upon *Presbytery of Indianapolis v. First United Presbyterian Church of Indianapolis*, 238 N.E.2d 479 (Ind. Ct. App. 1968). The only United States Supreme Court precedent available to the Presbytery of Indianapolis court at the time of its decision was the 1874 decision in *Watson v. Jones*. Shortly after this decision, the 1969 United States Supreme Court decision emerged in *Blue Hull*, 393 U.S. 440 (1969). This Court today is further influenced by the second United States Supreme Court opinion offered ten years later in 1979, *Jones v. Wolf*.

Two (2) Indiana Court of Appeals decisions were issued after the United States Supreme Court precedent in *Blue Hull*, 393 U.S. 440 (1969), and of course

after the previous 1968 decision in the *Presbytery of Indianapolis*, 238 N.E.2d 479, (Ind. Ct. App. 1968).

Courts in Indiana may consider and rule upon property disputes between church bodies. *Smart v. Indiana Yearly Conference of the Wesleyan Methodist Church of America*, 271 N.E.2d 713 (Ind. 1971).

. . . adjudicating church property disputes by relying on formal title will ensure an almost even handed administration of justice since the necessary evidence will almost always be admissible. The formal title approach will seldom involve civil courts in deciding what the polity of a given church is, a determination which will almost inevitably involve ecclesiastical considerations. One final advantage inherent in this approach is that it invites and encourages religious organizations to title their property as clearly and unambiguously as possible. *Merryman v. Price*, 259 N.E.2d 883, 893 (Ind. Ct. App. 1970).

The nature of the dispute must be considered to determine if the issue is doctrinal, or non-doctrinal, such as property or contractual legal issues. Courts must carefully avoid addressing doctrinal matters, but can hear non-doctrinal property and contractual disputes. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). In that same year (1971), the Court of Appeals decided *Merryman v. Price*, 259 N.E.2d 883 (Ind. Ct. App. 1971). There, the Court of Appeals stated that

[t]he total impact of the Mary Elizabeth Blue Hull case is decided by the Supreme Court of the United States and by the Supreme Court of Georgia on remand as to render impotent the implied trust in so far as such theory is based upon principles of ecclesiastical law, church doctrine, or church discipline. It is clear that the civil courts cannot rely upon ecclesiastical law of the church to impose an implied trust upon real estate.

Id. at 893. The Court went on to describe the benefits of using a neutral principles approach.

This approach has the advantage of almost never involving a civil court with the vexing problem of whether preferred evidence is admissible under the First Amendment. Further adjudicating church property disputes by relying on formal title will insure an almost evenhanded administration of justice since the necessary evidence will almost always be admissible. The formal title approach will seldom involve a civil court in deciding what the polity of a given church is, a determination which will almost inevitably involve ecclesiastical considerations. One final advantage inherent in this approach is that it invites and encourages religious organizations to title their property as clearly and unambiguously as possible.

Id. at 893.

4. The crux of the U.S. Supreme Court case relied upon by the PC(USA), *Watson v. Jones*, was the

determination by the Court of what faction of Presbyterians was the true church to whom real estate was deeded. The Court, even in that precedent cited by Plaintiffs, started with the deed in determining ownership of real estate as was also the case in *Hinkle Creek Friends Church v. Western Yearly Meeting of Friends Church*, 469 N.E.2d 40 (Ind. Ct. App. 1984). The *Hinkle* court began with examination of the deed language which supported the Court's conclusion. 469 N.E.2d 2d at 43-44.

5. The Supreme Court of Indiana has utilized the "neutral principals" doctrine after *Blue Hull with Smart v. Indiana Yearly Conference of the Wesleyan Church of America*, 271 N.E.2d 713 (1971). In *Smart*, the organized general church took conveyance of the property in the organized general church's name with the consent of the local church congregation, while the local congregation paid the consideration. Since there was no agreement that the general church would hold the land in some capacity solely for the benefit of the local church congregation, the general church was declared the owner of the real estate.

Likewise, the Indiana Court of Appeals was utilizing and applying the "neutral principals" doctrine during a similar time period in *Merryman v. Price*, 259 N.E. 883 (Ind. Ct. App. 1970). Herein, a quiet title action was brought by trustees of a local church against officials of a general church. The Indiana Court of Appeals held that where the local church officials made their *prima facie* case with reference to the legal title to the church property and

where the positions of the officials of the general church could not be sustained without reference to ecclesiastical law, church discipline and/or church doctrine, title was properly quieted in the trustees of the local church. With roots in both *Smart* and *Merryman*, the Indiana courts have applied the “neutral principles of law” doctrine in numerous cases including: *Draskovich v. Pasalich*, 280 N.E.2d 69, 76-81 (Ind. Ct. App. 1972); *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 N.E.2d 916 (Ind. Ct. App. 1972); *Marich v. Kragulac*, 415 N.E.2d 91 (Ind. Ct. App. 1981); *Grutka v. Clifford*, 445 N.E.2d 1015 (Ind. Ct. App. 1983); *Hinkle Creek Friends Church v. Western Yearly Meeting of Friends Church*, 469 N.E.2d 40 (Ind. Ct. App. 1984); *Emberrry Community Church v. Bloomington District Missionary and Church Extension Society, Inc.*, 482 N.E.2d 288 (Ind. Ct. App. 1985); *Konkle v. Henson*, 672 N.E.2d 450 (Ind. Ct. App. 1996); *Stewart v. Kingsley Terrace Church*, 767 N.E.2d 542 (Ind. Ct. App. 2002); *Brazauskas v. Fort Wayne-South Bend Diocese*, 796 N.E.2d 286 (Ind. 2003); *West v. Wadlington*, 908 N.E.2d 1157 (Ind. Ct. App. 2009).

6. This Court holds that the better constitutionally appropriate method of resolving a church property dispute is to look to the ordinary indicia of property rights, and this means applying a neutral principal approach. While Indiana’s preferred and accepted method of deciding disputes concerning church property is “neutral principals”, other jurisdictions have also specifically adopted this approach:

See, See Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, 489 A. 2d 1317 (Pa. 1985); *Presbytery of Riverside v. Community Church of Palm Springs*, 152 Cal. Rptr. 854, cert denied 444 U.S. 974 (1979); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 716 (Ill. Ct. App. 1984); *Presbytery of Elijah Paris Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States of America*, 464 N.E.2d 454 (N.Y. 1984); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *Trinity Presbyterian Church v. Tankersley*, 374 So.2d 861 (Ala. 1979), cert denied, 445 U.S. 904 (1980).

The Court is further cautioned by the United States Supreme Court to avoid addressing doctrinal matters. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). The First Amendment prohibits any inquiry by the court into religious doctrine or practice as the courts have “no role in determining ecclesiastical questions in the process of resolving property disputes.” *Id* at 447. Indiana is bound to interpret state statutes and state laws and recognize the separation between church and state. U.S. Const. amend. I; Ind. Const. art. 1, §§ 2-7.

7. The Book of Order is cited by both parties and contains contradictory terms as it relates to this property dispute. Generally, the Presbyterian Church (USA) Book of Order is an ecclesiastical set of rules. Unless one is sitting as an ecclesiastical judge, little

reference is needed to the Book of Order and that book so states:

G-9.0102 [Chapter IX, Paragraph 1(a)]

Governing Bodies of the Church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying His will in relation to truth and service, order and discipline.

Blue Hull establishes the “neutral principles” doctrine for church property disputes especially where it states “[t]he First Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, state, religious organizations and individuals must construe relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions. *Id.* at 449.

8. Ten years after *Blue Hull*, the U.S. Supreme Court again visited church property ownership disputes and affirmed the neutral principles approach, clarifying the role of the court in looking to property deeds, titles, articles of incorporation and other ordinary indicia of ownership to reach a decision. In *Jones v. Wolf*, 443 U.S. 595 (1979), the Vineville Presbyterian Church (local congregation) voted 164 to 94 to separate from the PCUS. The Augusta-Macon

Presbytery (same entity as one of the entities herein) appointed a commission which declared that the minority faction was the “true congregation” and claimed the minority had authority to exercise control over the church corporation property. *Id.* at 598. The minority then sought control of the church’s real and personal property in court. The trial court, affirmed by the Georgia Supreme Court, rejected the minority’s argument and held that control remained with the majority (local congregation). The U.S. Supreme Court upheld the Georgia Supreme Court’s application of the neutral principles of law. *Id.* at 599. Noting that “the neutral-principles analysis shares the peculiar genius of private law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties,” *Id.* at 603, The Court declared that “the neutral-principles approach . . . obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.” *Id.* at 605. Ultimately, it was the property deeds, articles of incorporation, and majority vote that prevailed, and the majority of the congregation retained control of the property.

9. Likewise, the Indiana Supreme Court in *Smart v. Indiana Yearly Conference of the Wesleyan Methodist Church of America*, 271 N.E.2d 713 (Ind. 1971) held that where the organized general church (Wesleyan Methodist Church of America) who actually took the named title conveyance of the property with the consent of the local church which paid the

consideration, Wesleyan Methodist Church of America (the general church) remained owner of the real estate where there was no agreement that the general church would hold the land in some capacity solely for the benefit of the local church. This Indiana Supreme Court holding is consistent with recognizing the title owner as superior under a “neutral principles” analysis. In the case at bar, the local congregation is the title owner and thus prevails.

10. Olivet is the sole owner of the parcel of property which comprises the land upon which the church building sits. (Complaint, ¶7; Stip Facts, ¶21). Neither the Plaintiffs nor the PC(USA) are referenced in the warranty deed. (*Id.*). The Deed does not create a trust nor a beneficial interest in any entity other than Olivet. (*Id.*). There is no reverter clause or reserved interest in any third party. (*Id.*). Therefore, the first and most significant aspect of the neutral principles inquiry establishes that Olivet is the proper and sole title owner to the property.

11. Indiana real estate law governs whether title to real estate has been transferred. If the real estate property owned by Olivet Presbyterian Church of Evansville, Indiana is to be placed in trust, it ought to be done through real estate transfer by the property owners. Plaintiffs’ initial admission concedes that Olivet never did so. (Complaint, ¶ 31). While Plaintiffs suggest the Trust Code requiring a writing was passed in Indiana after Olivet’s original purchase of the property in 1968, nothing prohibited either party from inserting a trust clause in its deed or signing a

written trust agreement placing the property in trust as required for real property being transferred into a trust through a written instrument bearing the signature of the authorized owner of the real estate, I.C. § 30-4-2-1, *et seq.* Also, the Indiana Statute of Frauds has prohibited parole evidence to demonstrate transfer of title to real property to contradict a writing, I.C. § 32-21-1-13 and requires the conveyance to be made by a deed in writing and properly signed.

12. Given the significant repetition of both United States Supreme Court and Indiana case law suggesting that the deed carries a superior position in disputes of this nature and given the Indiana statute's preference for a document in writing signed by a party being bound, the Court can only conclude from the facts presented by the parties that Olivet prevails when applying the "neutral principles" approach. The evidence shows that the deed and documents of ownership specifically provide that the real and personal property at issue in this case are held solely by the Olivet congregation rather than by the Plaintiffs or the PC(USA).

13. The "general laws" element of the neutral principles doctrine supports Olivet's position with respect to its property ownership and affiliation as it is a general non-profit corporation duly incorporated in accordance with the provisions of I.C. § 23-17-1-1, *et seq.* with the authority to own real or personal property.

14. The Articles of Incorporation for the Presbyterian Church (USA), the parent organization for the Plaintiffs, filed December 22, 1966 in the Commonwealth of Pennsylvania (Stip Doc's, #71) indicate that in Article 4 of the PC(USA) Articles of Incorporation that:

The corporation does not contemplate pecuniary gain or profit, incidental or otherwise . . .

(Stip Doc's, #71). Neither Plaintiffs nor PC(USA) have provided any evidence of pecuniary contribution to the purchase of real estate, the improvements and/or the financial accounts of Olivet. Given the PC(USA)'s statement in its own Articles of Incorporation, neither the Plaintiffs nor the PC(USA) should profit from obtaining Olivet's property without value through imposition of some sort of implied trust without written document or signature or otherwise.

15. The Articles of Incorporation for Olivet have been cited earlier through the Statement of Facts. Neither in the original Articles of Incorporation filed in 1984 nor in any of the amendments can one find a statement placing either the real or personal property of Olivet in trust and bearing the signature of an authorized agent for Olivet as provided for the formal creation of a trust pursuant to I.C. § 30-4-2-1. Likewise, in the amendment of the Articles of Incorporation to OPC, Inc. and/or in the merger of OPC, Inc. into Olivet Evangelical Presbyterian Church there is no statement placing in trust either the real or

personal property of Olivet bearing the signature of an authorized agent on behalf of Olivet. *Id.*

16. Further applying the “neutral principles” approach, Olivet, as a corporate citizen of Indiana, is entitled to neutral application of Indiana law and in particular I.C. § 23-17-4-2, *et seq.* These statutes have never been interpreted to allow one entity to, by the adoption of a rule, impose a trust upon the property of another.

17. Applying another “neutral principle” approach, both mortgages for the Presbytery Plaintiff and the Synod Plaintiff indicate sole ownership in Olivet Presbyterian Church of Evansville, Indiana and do not recite any trust interest in either Plaintiffs. The language contained in both mortgages state ownership in the mortgagor (i.e. Olivet) and even state the mortgagor may part with title. This language in the mortgages is inappropriate at best and more likely indicative of Olivet’s ownership since no reference is made to a trust provision in the ownership of the ownership. In the mortgage documents, which are neutral civil legal documents, the Plaintiffs, the Presbytery of Ohio Valley and the Synod of Lincoln Trails, have repeatedly acknowledged their non-ownership in the property without any reference to claimed ownership through any sort of trust.

18. While the Plaintiffs seek to impose a trust in all real property and all accounts of Olivet, the only evidence submitted concerning title to bank accounts is that of the Denise Atkins affidavit and/or

the Merwin affidavit (§ 8). These establish that title to all of the accounts is entirely in the name of Olivet and reflects no trust interest. The bank accounts are all evidenced by documents which may be characterized as documents properly reviewable by a court under the neutral principles of law doctrine and the Court finds nothing in the documents which can be construed as giving an interest in any entity other than Olivet Evangelical Presbyterian Church, Inc.

19. Both parties cite various portions of the PC(USA) Book of Order in support of their respective positions.

Plaintiffs' case significantly relies upon G-8.0201, added to the Book of Order in 1981, which states:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Plaintiffs rely heavily upon this and other provisions of Chapter 8 in the Book of Order in asserting its trust interests.

The Olivet Defendants reply asserting that the Book of Order is an ecclesiastical document which by

its very terms is not supposed to have civil law jurisdiction citing G-9.0102 stating:

Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying this will in relation to truth and service, order and discipline.

Both parties assert many other provisions of the Book of Order all of which are a part of the record. Olivet also cites the Affidavits Alex Merwin and William Rasch. Irrespective of the affidavits, the Court concludes that wading into various portions of the Book of Order which may or may not be conflicting requires this Court to determine ecclesiastical questions in the process of resolving property disputes which is prohibited by the First Amendment to the United States Constitution. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 447 (1969). Plaintiffs ask this Court to hold that pursuant to G-8.0201, the Olivet property is held in trust for the use and benefit of the Presbyterian Church (USA) and yet Defendants assert that G-8.0201 is not a settlor's declaration but an assertion by an entity that does not hold title to any of the property at issue in the instant case and which never held property at issue in the present case. Plaintiffs assert the actions of its Presbytery consisting of voting members of various churches

must be upheld while Defendants cite Chapter G-9.0102, stating governing bodies of the church (i.e., a Presbytery) have only ecclesiastical jurisdiction. As further example, G-1.0307 of the Book of Order states: "That all church power, whether exercised by the body in general or in the way of representation by delegated authority is only ministerial and declarative" At G-1.0308 it states "An ecclesiastical discipline must be purely moral or spiritual in its object and not intended with any civil effects" This conflict and the other potentially conflicting provisions in the Book of Order appear to this Court to force an evaluation or determination of ecclesiastical questions or interpretations in the process of resolving this property dispute. This Court declines to do so, based upon the First Amendment to the United States Constitution, the Indiana State Constitution, U.S. Supreme Court precedent and state court precedent. "Civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Jones v. Wolf*, 443 U.S. 595, 606 (1979).

20. Plaintiffs cite I.C. § 23-10-2-14 in support of their position that the Olivet property should revert to the larger denomination because of a "dissolution." The dissolution Plaintiffs assert is the action allowing Olivet to disaffiliate from the PC(USA) and affiliate with the EPC. Paragraph 88 of the Stipulation of Facts states the parties' agreement that:

The Olivet congregation has consistently made clear its intention to continue its affiliation

and worship under the EPC, but not the PC(U.S.A.), and never expressed, nor has it implemented, any plans to abandon the Oak Hill Road Real Estate.

As part of this argument, Plaintiffs assert further provisions of the Book of Order for this Court to interpret and evaluate, G-8.0601, G-11.0103-I and G-8.0401, to which the Court declines based upon the ecclesiastical considerations stated above. Further inconsistent with any suggestion of dissolution or abandonment is the parties' stipulated fact that the Plaintiffs sought to lease property to Olivet as described in the Stipulation at paragraphs 82 through 86. Indiana Code § 23-10-2-14 applies to church property which has been truly abandoned, which is not the case with the Olivet property. There is no evidence that Olivet dissolved and in fact, the evidence is that it merged with a new corporate entity affiliated with another denomination affiliated with the Presbyterian Church. Olivet merely disaffiliated from the PC(USA). The real property has never been abandoned nor has the congregation disbanded or dissolved. In fact, this litigation itself is evidence that the property ownership is being contested rather than abandoned.

21. Insufficient evidence has been presented to establish in this case the existence of either an express trust or an implied trust of any sort. An express trust is one created by the direct and positive act of the settlor by some writing, deed, or declaration provided in some legally cognizable form signed or

expressed by an individual authorized to do so. *Holsapple v. Shrontz*, 117 N.E.2d 547, 549 (Ind. Ct. App. 1970); *Betsner v. Betsner*, 151 N.E. 343, 345 (Ind. Ct. App. 1926). Likewise, there has been insufficient proof of an implied trust or a constructive trust since the proof necessary to establish an implied trust must likewise be clear and unequivocal. *Philbin v. Carr*, 75 Ind. App. 560, 584; 129 N.E. 19, 27 (Ind. Ct. App. 192); *Flying Squadron Foundation v. Crippen*, 169 N.E. 843 (Ind. 1930); *Auten v. Sevier*, 202 N.E.2d 274 (Ind. Ct. App. 1964); *Workman v. Douglas*, 419 N.E. 2d 1340 (Ind. Ct. App. 1981). Likewise, there has been insufficient evidence to establish a constructive trust since a constructive trust is not actually a trust but a common law remedy created by equity. A constructive trust must arise when persons have obtained money or property which does not equitably belong to them and which they cannot in good conscience retain or withhold from another who is beneficially entitled to it. Constructive trusts are generally designed to prevent unjust enrichments and fraud and to satisfy the ends of justice, and such a basis has not been proven here. Plaintiffs have not met their burden of proof to show that a trust, either express or implied, has been created or was intended to be created by Olivet or its predecessors. The greater weight of the evidence as shown through the deed and documents of ownership is that the Olivet Real Estate and the personal property is held solely by Olivet unencumbered by any interest of the Plaintiffs and/or the PC(USA).

22. If it were intended that the Olivet Real Estate and personal property were to be held in trust for PC(USA), the same could have been done by revising the deed and documents of ownership. Such was the charge of the United States Supreme Court in *Blue Hull*, that the parties organize their relationship to establish the trust clearly so Courts would not be forced to weigh conflicting evidence. The fact that this was not done allows an inference that the parties, or at a minimum Olivet, did not intend for an implied or express trust to be established. Insufficient evidence has been provided by PC(USA) to show that the property at issue in this case is held in trust. The best evidence of ownership is presented by Olivet in the language of the deed and the documents of ownership.

23. The law as applied to the facts are with Olivet and against Plaintiffs and/or PC(USA).

24. All Conclusions of Law may be deemed Findings of Fact.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there is no just reason to delay the entry of a final and appealable judgment as follows:

1. The Olivet Real Estate and personal property shall, and is hereby, determined to be owned solely by Olivet;

2. No express or implied trust has been created in favor of Plaintiffs and/or PC(USA) concerning the Olivet Real Estate and personal property;

3. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count 1 of Plaintiffs' Complaint declaring and quieting title for all real and personal property in Olivet and finding no trust, express, implied or constructive, in favor of Plaintiffs. Issues related to the mortgage liens, if any, are not resolved by this decision (See paragraph 75 of Plaintiffs' Complaint);

4. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count II of Plaintiffs' Complaint as Olivet assumed control over its own property that is not held in trust for Plaintiffs and/or PC(USA) and Olivet has not been unjustly enriched nor have they converted Plaintiffs' property;

5. Judgment shall be and is hereby rendered in favor of Olivet and against Plaintiffs and/or PC(USA) on Count III of Plaintiffs Complaint as this Court has found for Olivet on Counts I and II of Plaintiffs' Complaint, rendering the issue moot. Because the real and personal property at issue has been determined to belong to Olivet, Plaintiffs had no rights with regard to the property which could be the subject of a contract.

DATED: March 9, 2010 /s/ Carl Heldt
CARL HELDT, JUDGE
VANDERBURGH
CIRCUIT COURT

From: Mailbox-Dispositions/incourts@courts.state.in.us on behalf of dispositions@courts.state.in.us
Sent: Tuesday, October 23, 2012 12:11 PM
Subject: 82S02-1105-MF-00314 – Notice of Issuance of Order or Opinion

NOTICE: DO NOT RESPOND TO THIS E-MAIL – MESSAGES SENT TO THIS ADDRESS WILL NOT RECEIVE A REPLY. QUESTIONS CONCERNING THE ATTACHED SHOULD BE DIRECTED TO THE CLERK'S OFFICE AT (317) 232-1930 OR clerk@courts.state.in.us.

CAUSE NO.: 82S02-1105-MF-00314

LOWER COURT CAUSE NO.: 82C010707MF343

PRESBYTERY OF OHIO VALLEY, INC. ET. AL. V. OPC, INC. ET. AL.

YOU ARE HEREBY NOTIFIED THAT THE SUPREME COURT HAS ON THIS DAY, 10/23/2012, ORDERED AS FOLLOWS:

APPELLANT'S PETITION FOR REHEARING IS HEREBY DENIED.

BRENT E. DICKSON, CHIEF JUSTICE ALL JUSTICES CONCUR.

(ORDER REC'D. 10/23/12 AT 11:40 AM) ENTERED 10/23/12 KM

TRANSMITTED PURSUANT TO MY AUTHORITY
UNDER APPELLATE RULE 26.

SIGNED,
KEVIN S. SMITH
CLERK OF THE SUPREME COURT,
COURT OF APPEALS, AND TAX COURT
216 STATE HOUSE
200 W. WASHINGTON ST.
INDIANAPOLIS, IN 46204

**EXCERPTS FROM THE
PC(USA) CONSTITUTION
(1983-PRESENT)
(Showing Amendments)**

**G-7.0000 CHAPTER VII. THE PARTICULAR
CHURCH**

G-7.0401 Incorporation and Trustees

Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained. Only members on the active roll of the particular church shall be members of the corporation and eligible for election as trustees. The elders in active service in a church who are eligible under the civil law shall, by reason of their office, be the trustees of such corporation, unless the corporation shall determine another method for electing its trustees. Any such alternate method shall provide for a nominating committee elected by the corporation, and for terms for trustees the same as are provided for elders. Any particular church which is not incorporated may select trustees from the members on the active roll of the church. The power and duties of such trustees shall not infringe upon the powers and duties of the session or of the board of deacons. (G-10.0102, G-6.0402)

Amend (1987, 142, 15.156, Ovt. 68-87):
Inserted "who are eligible under the civil law"
and struck, from the end of the sentence,

“Only members . . . as trustees,” a parentheses “(subject to civil law regarding age requirements).”

G-7.0402 Powers

The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the church; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the church, all subject to the authority of the session and under the provisions of the *Constitution of the Presbyterian Church (U.S.A.)*, provided further that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation granted in a duly constituted meeting. (G-8.0500)

Amend (**1988, 138, 12.197, Req. 1-88**):
Added “provided further . . . a duly constituted meeting.”

Earlier Ref.: (**PCUSA, 1927, 196**): See at G-7.0400.

G-8.0000 CHAPTER VIII. THE CHURCH AND ITS PROPERTY

G-8.0101 Decisions Regarding Property

The provisions of G-1.0400 and other provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property.

G-8.0201 Property Is Held in Trust

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Amend Rejected (**2006, 38-39, 358, Item 05-07**): Rejected deleting concept that property of a congregation is held in trust for the whole church.

GA (**1990, 248, 21.242, Req. 90-24**): Answered questions regarding dismissal of churches under Article 13 of Articles of Agreement. Approval of GA not required.

GA (1989, 226, 21.191, Req. 89-10; 1988, 140, 12.229, Req. 9-88): When dealing with a request by a church for dismissal with its property, the presbytery is responsible for exercising the expressed trust provisions.

PJC (2006, 217-12, 493, Chesterbrook Taiwanese PC v National Capital Pby): The principle that all property held by or for a particular church is held in trust for the Presbyterian Church (U.S.A.) applies to congregations and presbyteries, no matter which entity holds title to church property.

Earlier Ref.: (UPC, 1980, 99; 1968, 633): Committee on Conservation of Church Property, fund for legal expenses of pbys, New Chapter XLII on church property.

Earlier Ref.: (UPC, May 23, 1981, 24): New Chapter XLII on church property.

Earlier Ref.: (PCUS, 1981, 90ff., 224ff.; 1967, 127, par. F; 1953, 43, 143; 1950, 23, 60, 61): New Chapter 6 on church property.

G-8.0202 Incorporation and Trustees

Whenever permitted by civil law, each presbytery, synod, and the General Assembly shall cause a corporation to be formed and maintained. The council of the governing body shall constitute the Board of Trustees of the corporation unless the governing body

shall determine an alternative method to constitute the Board of Trustees.

Amend (1984, 601, 55.065, Ovt. 57-84):
Added section G-8.0202.

G-8.0301 Property Used Contrary to Constitution

Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

Amend Rejected (2006, 38-39, 358, Item 05-07): Rejected deletion of this paragraph.

GA (1990, 244, 21.180, Req. 90-14): It is not permissible under the *Constitution* for a particular church to sell all its property without the approval of presbytery.

PJC (2006, 217-12, 493, Chesterbrook Taiwanese PC v National Capital Pby): A presbytery has exclusive power to determine the use and disposition of church property

when the property ceases to be used for a particular church,

G-8.0401 Property of Church Dissolved or Extinct

Whenever a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the *Constitution of the Presbyterian Church (U.S.A.)*.

Amend Rejected (**2006, 38-39, 358, Item 05-07**): Rejected adding “and no longer exists as a church body” after “cause”.

Amend Rejected (**2006, 38-39, 358, Item 05-23**): Rejected concept that any presbytery or synod that chooses to withdraw from the denomination shall forfeit all real property to next higher governing body.

PJC (**2010, 219-03**, Sundquist v. Heartland Pby) Functions of administrative commission are limited by appointing body and may include any function that body wishes to

delegate, including assuming original jurisdiction of a session and dissolving or dismissing a congregation.

PJC (2006, 217-12, 493, Chesterbrook Taiwanese PC v National Capital Pby): (1) Presbytery has exclusive rights and responsibilities for dealing with the property of a dissolved church.

PJC (2) A dissolving church has the right to dispose of church property only as the presbytery directs.

Earlier Ref.: (PCUSA, 1941, 154; 1937, 32, 66, Ovt. 20); (PCUS, 1917, 68, par. 5).

Earlier Ref.: (PCUSA, 1927, 196): See at G-7.0400.

G-8.0501 Selling or Encumbering Church Property

A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

Amend Rejected (2006, 38-39, 358, Item 05-07): Rejected adding PC(USA) membership as condition of this provision.

Amend Rejected (**2001, 45, 417, Ovt. 01-15**): Rejected proposed language to limit need for presbytery permission to property used for “religious purposes” or “adjacent and contiguous to such property.”

GA (**1995, 278, 21.090, Req. 95-7**): Congregation must approve purchase of real property, even when unencumbered.

GA (**1990, 248-252, 21.242, Req. 90-24**): See at G-8.0701.

Note: See also the 1988 amendment at G-7.0402.

Earlier Ref.: (**1957, 188, Wefer v. Synod Pennsylvania**): Presbytery may not select a purchaser of its choice; (**1969, 608, Ice v. Synod Chesapeake**): Particular church is not required to place at presbytery’s disposal a portion of the assets derived from the sale of property. (However, see GA (**1990, 244, 21.180, Req. 90-14**) under G-8.0701. See also G-7.0304a(4) and G-7.0402.)

Earlier Ref.: (**PCUS, 1949, 28, 57**): Rejected amendment to limit power of congregation to sell, mortgage, alienate property.

Earlier Ref.: (**PCUSA, 1935, 106**) for mortgage, (**1941, 155, 177-178**) for sale, including Memorandum on the Function of Presbyteries with Respect to Mortgages on Particular Churches, (**1946, 255**): Report 1946 relates history and purpose.

G-8.0502 Leasing Church Property

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

Amend Rejected (**2006, 38-39, 358, Item 05-07**): Rejected adding PC(USA) membership as condition of this provision.

Amend Rejected (**2001, 45, 417, Ovt. 01-15**): see at G-8.0501.

PJC (**1991, 179, 11.049**, Matsuda, et al. v. Pby of San Francisco): Presbytery exceeded its own authority and usurped the authority of the session to determine to whom the building might be leased.

G-8.0601 Property of Church in Schism

The relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action on the part of the presbytery (G-11.0103) If there is a schism within the membership of a particular church and the presbytery is unable to effect a reconciliation or a division into separate churches within the Presbyterian Church (U.S.A.), the presbytery shall determine if one of the

factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.). This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.

Amend Rejected (**2006, 38-39, 358, Item 05-07**): Rejected deleting “true church” wording and allowed 60% vote of the active membership of a particular church to determine fate of that church’s property.

GA (**2008, 49, 51, 284, Item 04-28**): Asked that presbyteries and synods develop and make available to lower governing bodies and local congregations a process that exercises the G-11.0103i responsibility and power with consistency, pastoral responsibility, accountability, gracious witness, openness, and transparency.

GA (**1990, 244, 21.180, Req. 90-14**): It is not permissible under the Constitution for a particular church to sell all its property without the approval of presbytery.

PJC (**2010, 219-03, Sundquist v. Heartland Pby**) Functions of administrative commission are limited by appointing body and may include any function that body wishes to delegate, including assuming original jurisdiction of a session and dissolving or dismissing a congregation.

PJC (**PCUS 1976, 92**, Strong v. Synod of Mid-South): Presbytery may not abdicate its power to exercise independent judgment in dismissing churches and ministers.

Earlier Re.: (**PCUS 1974, pp. 119-121**, Anderson v. Synod of Florida): Constitution forbids dismissing a church to independence. Presbytery should decline to entertain the request. Dissolution is only course.

Earlier Ref.: (**UPCUSA, 1958, 60**) Deals with congregations wanting to withdraw at time of union of PCUSA and UPCNA.

G-8.0701 Exceptions

The provisions of this chapter shall apply to all particular churches of the Presbyterian Church (U.S.A.) except that any church which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America to form the Presbyterian Church (U.S.A.), shall be excused from that provision of this chapter if the congregation shall, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote. The particular church voting to

be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.). This paragraph may not be amended.

GA (1998, 58, 164, 16.0178, Req. 98-1): Exemption adheres to the particular church, not to a piece of property.

GA (1992, 320, 21.209, Req. 91-16): Where a new church was formed by dissolution of a former PCUS and a former UPCUSA, new church was never a member of either former church and is therefore not entitled to the exemption.

GA (1991, 392, 21.076, Req. 91-8): The exception still applies to a church formed from a merger of two former PCUS churches.

GA (1990, 248, 21.242, Req. 90-24): The section is to be interpreted to mean the Constitution of the PCUS as it existed in 1983. (See also PCUS, 1982 G. A. *Minutes*, pp. 193-194)

GA (1990, 244, 21.180, Req. 90-14): It is not permissible under the Constitution for a particular church to sell all its property without the approval of presbytery.

GA (1990, 247, 21.230, Req. 90-22): A church formerly a member of the PCUS and a member of a union presbytery at the time

of reunion may vote to take the exemption provided in G-8.0700.

GA (1987, 146, 15.203, Com. 6-87): An exemption granted to a particular church under G-8.0701 affects *only* provisions concerning property set forth in Chapter VIII which did not apply to the particular church prior to reunion.

Earlier Ref.: (PCUS, 1981, 9ff., 224ff, BCO 1982-83, 6-1): Text of Chapter VI, 1982-83 *Book of Church Order*, applicable to churches which took the exemption at reunion.
