No. _____

In The
Supreme Court of the United States

TIMBERRIDGE PRESBYTERIAN CHURCH, INC.
and TIMBERRIDGE PRESBYTERIAN CHURCH,

Petitioners,

v.

PRESBYTERY OF GREATER ATLANTA, INC.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR WRIT OF CERTIORARI

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March 6, 2012

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QUESTION PRESENTED

Whether the "neutral principles" doctrine embodied in the Religion Clauses of the First Amendment permits imposition of a trust on church property when the creation of that trust violates the state's property and trust laws.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Timberridge Presbyterian Church and Timberridge Presbyterian Church, Inc. Respondent is Presbytery of Greater Atlanta, Inc.

Timberridge Presbyterian Church is located on property owned by Timberridge Presbyterian Church, Inc., a Georgia non-profit corporation formed to hold and control the property of Timberridge.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Timberridge Presbyterian Church, Inc. and Timberridge Presbyterian Church (together, "Timberridge") respectfully request that this Court grant their petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia is published at 719 S.E.2d 446 (Ga. 2011) and appears in the Appendix of this Petition ("Pet. App.") at 1-54. The Georgia Supreme Court's denial of Timberridge's motion for reconsideration is unpublished and appears at Pet. App. 112. The Georgia Court of Appeals' decision ruling in favor of Timberridge is published at 705 S.E.2d 262 (Ga. Ct. App. 2010) and appears at Pet. App. 55-74. The trial court's orders are unpublished and appear at Pet. App. 75-93 and Pet. App. 94-111.

JURISDICTION

The Supreme Court of Georgia entered judgment on November 21, 2011, and denied Timberridge's timely motion for reconsideration on December 8, 2011. This Court has jurisdiction under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. The Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." *Id.* XIV, § 1.

Georgia's statutes governing the creation of express and implied trusts are reproduced in the appendix to this petition. Pet. App. 113-115.

STATEMENT OF THE CASE

This case presents an important and recurring issue concerning the First Amendment standards applicable to resolving disputes over the ownership of church property. In the decision below, the Georgia Supreme Court deepened an established conflict over whether, under the "neutral principles of law doctrine" set forth in *Jones* v. *Wolf*, 443 U.S. 595, 602-06 (1979), a court may impose a trust on church property that would be forbidden by a state's generic property and trust laws. See Pet. App. 1, 19.

This Court has held that "the First Amendment severely circumscribes the role civil courts may play in resolving church property disputes." *Presbyterian Church in the United States* v. *Mary Elizabeth Blue*

Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969) ("*Hull Church*"). The First Amendment "commands civil courts to decide church property disputes without resolving controversies over religious doctrine" or "ecclesiastical questions." *Id.* Applying that principle in *Jones*, the Court held that courts can resolve property disputes within a hierarchical church without violating the First Amendment through the application of "neutral principles of law." 443 U.S. at 603-05.

This Court explained that "'[n]eutral principles of law'" are those "objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* at 603. Using these "neutral principles" to resolve church property disputes is permissible under the First Amendment because their application avoids express or implicit entanglement between church and state by requiring courts to apply property law that "is completely secular in operation." *Id.*

Here, in resolving a property dispute within a hierarchical church, the Georgia Supreme Court held that the property of Timberridge, a local church, was held in trust for respondent, a national church, even though such a trust concededly would not have been "created under [the] state's generic express (or implied) trust statutes." Pet. App. 11, 19. That result cannot be squared with this Court's decision in *Jones*. Allowing a beneficiary to impose a trust based on special rules applicable only to disputes over church property is irreconcilable with this Court's conclusion that adherence to truly secular "neutral principles"

will avoid entanglement between churches and the state under the First Amendment.

What is more, the Georgia Supreme Court's decision implicates a deep conflict among state courts of last resort as to whether "neutral principles" for resolving church property disputes under the First Amendment must adhere to generally applicable trust law.

The Georgia Supreme Court joins the high courts of California, Connecticut, and New York in holding that *Jones* lessens the "burden" of creating a trust under state law and requires that courts impose a trust when a dispute involves religious property even though the local deeds and corporate charters would not otherwise create a trust under governing state law. See *infra* at 17-19. In contrast, the Eighth Circuit, and the high courts of Arkansas and South Carolina, have all held that a church denomination cannot impose a trust that would be otherwise contrary to state trust law. See *infra* at 19-21. Given the Georgia Supreme Court's conclusion that generic trust law could not support the imposition of a trust, this case presents an ideal vehicle to resolve the conflict in the lower courts over the meaning of "neutral principles" under the First Amendment.

A. Legal Background

1. The First Amendment limits the manner in which states may resolve property disputes involving churches and other religious organizations. For many

years, this Court held that the First Amendment mandated "hierarchical deference" – *i.e.,* the decision of the church hierarchy is binding – when deciding property disputes within hierarchical churches. See *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 119-21 (1952); *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam). "Hierarchical deference" was designed to avoid government entanglement with religion, which is prohibited by the First Amendment. See *Jones*, 443 U.S. at 602 (First Amendment prohibits "civil courts from resolving church property disputes on the basis of religious doctrine and practice") (citing *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 710, 724-25 (1976); *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (per curiam); *Hull Church*, 393 U.S. at 449).

In *Hull Church*, this Court recognized, however, that "not every civil court decision as to property . . . jeopardizes values protected by the First Amendment." 393 U.S. at 449. Rather, "neutral principles of law, developed for use in all property disputes, . . . can be applied without 'establishing' churches." *Id.* In *Jones*, this Court, following *Hull Church*, confirmed that the neutral principles approach is consistent with the constitution, noting the "promise of nonentanglement and neutrality inherent in the . . . approach." 443 U.S. at 604.

The Court explained that the concept of "neutral principles" depends on application of "completely secular" criteria for resolving church property disputes.

Id. at 603. As a result, a court must use the same tools "developed for use in all property disputes." *Hull Church*, 393 U.S. at 449; see also, *e.g.*, *Md. & Va. Eldership Churches*, 369 U.S. at 370 (neutral principles include deeds, reverter clauses, general state corporation laws, or state statutes). The method "relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges [and] promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones*, 443 U.S. at 603. Specifically, when examining church documents under "neutral principles," "a civil court must take special care to scrutinize the document in purely secular terms." *Id.* at 604. Applying these "secular criteria," "civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* at 606.

2. Under Georgia law, the creation of a trust requires that there be an intent on the part of the settlor (or grantor) to establish a trust in favor of the beneficiary. An express trust must be created in writing and shall have, "ascertainable with reasonable certainty . . . [a]n intention by a settlor to create such trust" as well as property, a beneficiary, a trustee, and trustee duties. Ga. Code Ann. § 53-12-20(b). Georgia's statute mirrors the requirements in the Restatement of Trusts, Second, and the leading treatise on the subject. See Restatement (Second) of Trusts § 2 (1959) ("Definition of a Trust[:] A trust . . . arises as a result of a manifestation of an intention to create it.");

George T. Bogert, *Trusts: Practitioner's Edition* § 8 (6th ed. 1987) ("An express trust is one which comes into being because a person having the power to create it expresses an intent to have the trust arise and goes through the requisite formalities."). Likewise, an "implied trust" requires an intent on the part of the settlor to establish a trust in favor of the beneficiary. Ga. Code Ann. § 53-12-130.[1]

B. Factual Background

Timberridge was established in 1829 and incorporated as a Georgia non-profit corporation in 1984. Pet. App. 55, 5. The church is located on land that, for most of the church's existence, was owned by individual parishioners. *Id.* at 6. In 1880, Timberridge affiliated with the Presbyterian Church in the United States ("PCUS"). At that time, individual owners retained their rights in Timberridge's property, and the PCUS had no property trust provision in its constitution. *Id.* at 2a. In 1970, Timberridge began acquiring the land on which the church is located because the individual owners conveyed their land to Timberridge and its "'successor and assigns'" and "'heirs and assigns.'" *Id.* at 80a. Three of the four relevant parcels were conveyed between 1970 and 1980. *Id.* When the first three parcels were conveyed,

[1] The only other basis for creating an implied trust under Georgia law is a showing that a principle of equity has been violated. Ga. Code Ann. § 53-12-132. That basis for creating a trust is not at issue in this case.

the PCUS had no documents that in any way purported to create a trust concerning the Timberridge property. *Id.* at 2.

In 1982, the PCUS unilaterally added "a provision in its Book of Church Order stating that local churches hold their property in trust for the PCUS." Pet. App. 2. The following year, the PCUS merged with the United Presbyterian Church in the United States of America ("UPCUSA") to form the Presbyterian Church in the United States of America ("PCUSA"). *Id.* at 2-3.

When the PCUSA was formed, two property opt-out provisions were adopted by the unified national church. First, a local church that had been a part of the PCUS could leave the denomination entirely and take its property within eight years of the merger. Pet. App. 4-5. Second, a local church could stay in the denomination, but opt-out of certain PCUSA property provisions if it were "'not subject'" to those provisions before the merger. *Id.* at 66a. Any congregation that took this second opt-out, would "'hold title to its property and exercise its privileges of incorporation and property ownership under the [previous constitution].'" *Id.* at 66-67. The language of the second opt-out provision states that it "may not be amended." *Id.* at 67.

In 1987, just days after the last parcel of property that comprises Timberridge was conveyed to the local church, Timberridge exercised the second opt-out provision and informed the respondent, the Presbytery of

Greater Atlanta ("PGA"), of its election. Pet. App. 6, 81. The PGA never responded to Timberridge or made any effort to explain the effect of the property opt-out. *Id.* at 81a. Timberridge never amended its deeds or Articles of Incorporation to state a trust in favor of the PCUSA, despite the PCUSA's request that it do so. *Id.* at 80; Williamson Aff. ¶ 21(g) (Index at 797, No. 2008-CV-378-M; Index at 1103, No. 2007-CV-4142-M (Super. Ct. Henry Cnty. Ga.)).

C. Proceedings Below

In 2007, before commencing a capital campaign, Timberridge's corporate entity sought a declaratory judgment that it owned its property and an injunction to prevent the PGA from imposing a trust against it, which Timberridge asserted would violate its rights under the First Amendment. Pet. App. 81-82; Compl. ¶ 52.[2] The PGA responded, counter-claimed, and filed a separate ejectment action against Timberridge "church," the ecclesiastical entity. Pet. App. 81-82. Timberridge and the PGA agreed that this dispute should be resolved under "neutral principles" of law.

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[2] The congregation of Timberridge voted to disaffiliate from the PCUSA after the PGA filed its counter-claim. Pet. App. 56. Of the 214 members who came to vote, 205 (94%) voted to disaffiliate. Later, the PGA attempted to organize a new Timberridge congregation but was unable to assemble a quorum. Patterson Aff. ¶¶ 18-26 (Index at 760-62, No. 2008-CV-378-M; Index at 1157-59, No. 2007-CV-4142-M (Super. Ct. Henry Cnty. Ga.)).

See Compl. ¶¶ 58-59; Pls. Br. in Supp. of Pet. for Interlocutory Inj. at 14 (citing *Jones*, explaining that state property law is limited by the First Amendment when deciding church property disputes, and noting Georgia's use of neutral principles); Def.'s Br. in Supp. of Mot. to Dismiss at 8-9.

Relying on "neutral principles," the trial court ruled that although the deeds favored Timberridge, the PCUSA constitution "created a trust in favor of the denomination as to any property held by the local church." Pet. App. 84. The court rejected Timberridge's showing that it had expressly opted out of the trust provision because the opt-out only applied to provisions Timberridge was not "subject to" before the merger. *Id.* at 86. The court stated that because the PCUS had adopted a trust provision in favor of the PCUS in 1982, Timberridge was subject to that trust provision and could not opt out of it. *Id.* The court also dismissed Timberridge's showing that the PCUSA had not met the intent requirement of Georgia's express trust statute. *Id.* at 89.

The court of appeals unanimously reversed. Pet. App. 60-71. Applying *Jones*, 443 U.S. at 605, the court of appeals analyzed Georgia's trust law, the relevant deeds and corporate documents, and the PCUSA constitution. Noting that neutral principles under *Jones* preclude "'compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved,'" Pet. App. 60 (citing *Jones*, 443 U.S. at 605), the court of appeals reasoned that neutral principles do not

permit a court to ignore "relevant statutes, documents of the local body, or the actual language of the relevant deeds, in favor of the rules of the national body." *Id.* at 60. Like the trial court, the court of appeals read the deeds and corporate documents to favor Timberridge. *Id.* at 64, 66.

As for the PCUSA constitution, the court of appeals rejected the trial court's holding that Timberridge's opt-out had been ineffective. The court analyzed the governing "neutral principals of law" and applied them to the documents relevant to the question of intent to create a trust. Pet. App. 69 (citing *Jones*, 443 U.S. at 606). The court of appeals held that "[i]n the absence of some showing of intention and assent on the part of Timberridge, neutral principles of law cannot support the unilateral imposition of a trust provision drafted by the purported beneficiary of the trust and the resulting deprivation of the opposing party's property rights." *Id.* at 71.

The Georgia Supreme Court granted certiorari "to consider whether the Court of Appeals correctly applied the 'neutral principles of law' doctrine set forth in *Jones*." Pet. App. 1; see also Br. of Appellee Timberridge at *4-5 (arguing that neutral principles must be heeded to avoid "state establishment of the hierarchical denomination's religion"). In a 4-3 decision, the Georgia Supreme Court reversed. Pet. App. 31.

The Georgia Supreme Court agreed that the deeds do not "show an intent by the grantors to create

a trust." Pet. App. 11. Recognizing that intent is critical to the formation of a trust under Georgia's generic trust law, Ga. Code Ann. § 53-12-20(b)(1), the court ruled that "a trust was not created under our state's generic express (or implied) trust statutes." *Id.* at 19. The court nevertheless concluded that the lack of a legally recognizable trust under generic trust law "does not preclude the implication of a trust on church property under the neutral principles of law doctrine." *Id.*

The Georgia Supreme Court ruled that "[r]equiring compliance" with the generic trust statute "would be inconsistent with the teaching of *Jones v. Wolf* that the burden on a national church and its member churches to provide which one will control local church property in the event of a dispute will be 'minimal.'" Pet. App. 16. The court held that if

> hierarchical denominations *must fully comply with OCGA § 53-12-20* [the generic express trust statute] for the parent church to retain control of local church property where there is a schism and a majority of the local church congregation disaffiliates, then an enormous number of deeds and corporate charters would need to be examined and reconveyed or amended.

Id. at 17 (emphasis added). The Georgia Supreme Court rejected application of this generally applicable state law because the "burden on the parent churches, the local churches that formed the hierarchical denominations and submitted to their authority, and

the free exercise of religion by their members would not be minimal but immense." *Id.* at 17-18. Specifically, the aspect of the generic trust statute that the Court found to be unduly burdensome was the requirement of a showing "'with reasonable certainty' an intention on the part of Timberridge to create a trust." *Id.* at 16 (internal quotation marks omitted).[3]

The court acknowledged – in the course of responding to one of the dissenting opinions – that "neutral principles" must be applied "with an even hand" because "to do anything else would raise serious First Amendment concerns." Pet. App. 30. ("[W]e simply enforce the intent of the parties as reflected in their own governing documents"). Nevertheless, the court concluded that "neutral principles" relieved respondent of the burden to prove "'an intention on the part of Timberridge to create a trust,'" *id.* at 16, and imposed a trust in favor of respondent even though the court agreed that "a trust was not created under our state's generic express (or implied) trust statutes." *Id.* at 19.

The dissenting opinions explained that the majority did not give effect to "neutral principles of law."

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[3] The Georgia Supreme Court reiterated its reading of First Amendment requirements in a companion case decided the same day as *Timberridge*: "As we explained in *Timberridge*, . . . requiring strict compliance with O.C.G.A. § 53-12-20 . . . would be inconsistent with the teaching of *Jones* v. *Wolf*." *Rector* v. *Bishop of the Episcopal Diocese of Ga., Inc.*, 718 S.E.2d 237, 244 (Ga. 2011).

See Pet. App. 35 (Carley, P.J., dissenting, joined by Hunstein, C.J.). Presiding Justice Carley explained that, under generally applicable Georgia law, the intent of the settlor has to be expressed or "'implied from the circumstances.'" *Id.* He recognized that "[t]he burden involved in taking the steps suggested by the Supreme Court are minimal, as the majority states, but only if appropriate steps are taken before a dispute erupts and *only if both parties have the requisite intent to create a trust.*" *Id.* at 36 (emphasis added). As a result, Presiding Justice Carley concluded that the majority had "disregard[ed] a basic principle of trust law which is subsumed in the 'neutral principles' approach to church property disputes," *i.e.*, that Timberridge "never intended to place any of its property in trust for the general church or in any way to consent to trust provisions in national church documents." *Id.* at 42.

Finally, Superior Court Judge Benefield, who sat by special designation, wrote a separate dissent, stating that "[p]erhaps it is time to acknowledge that the 'neutral principles of law' approach as it has evolved creates a bias for the national church and it is time to correct its application so that we can truly look for, as well as determine, the real intent of the parties." Pet. App. 52.

REASONS FOR GRANTING THE PETITION

The petition should be granted because the decision below directly implicates a well-developed conflict among the lower courts on an important issue of federal law that will affect dozens of religious denominations and thousands of churches.

First, the petition should be granted because state courts of last resort are firmly divided over the limits that the First Amendment imposes on the resolution of church property disputes under the "neutral principles" doctrine. The decision below, which mirrors decisions of three other state high courts, holds that a trust may be imposed on church property by a court purporting to apply "neutral principles" even though generally applicable property and trust law would not support the creation of an express or implied trust. In contrast, the Eighth Circuit and two state high courts have held the "neutral principles" doctrine under the First Amendment prohibits the adoption of special rules for resolution of disputes over church property. These courts hold that neutral principles do not permit a trust in favor of a beneficiary where the grantor lacks the intent necessary to satisfy secular property law.

Second, this Court should grant the petition because the issue is recurring and the application of the "neutral principles of law" continues to vex courts nationwide. Application of special rules to resolve disputes over church property interferes with the First Amendment principles underlying the "neutral

principles" doctrine by undermining the appearance of "neutrality" and entangling the state in church affairs on grounds that are not generally applicable to all property disputes. The special effect afforded to respondents' church documents undoes the "primary advantage[ ]" of the neutral principles approach – *i.e.*, that courts undertake "completely secular" analysis. *Jones*, 443 U.S. at 603. By relieving respondent of otherwise applicable requirements for creating or imposing a trust, the court below did not act "with an even hand," Pet. App. at 30, but instead put its thumb on the scale in favor of the national church in a way that violates the First Amendment.

Third, this Court should grant the petition because the Georgia Supreme Court's opinion simply cannot be reconciled with *Jones*. The Court's "neutral principles of law doctrine" does not encourage or *require* states that have adopted "neutral principles" to adopt special rules for resolving disputes over church property; rather, it manifestly *prohibits* special treatment of property disputes involving religious parties. To alter the requirements of state property law in cases involving disputes over church property to reduce the "burden" of establishing "intent" is the antithesis of the "neutral principles doctrine" under *Jones*.

I. THE JUDGMENT IMPLICATES A DEEP AND MATURE CONFLICT OVER WHETHER A TRUST MAY BE IMPOSED ON CHURCH PROPERTY THAT SECULAR LAW WOULD NOT ALLOW.

In *Jones*, this Court held that state courts could avoid entanglement when deciding church property disputes by applying secular "neutral principles." 443 U.S. at 604. At issue in this case is: Whether the "neutral principles" doctrine permits the imposition of a trust when a state's secular property and trust law would not. This question has vexed the lower courts, and the time has come for this Court to resolve it.

A. There Is A Conflict Among The Lower Courts About The Meaning Of "Neutral Principles" Under the First Amendment.

1. A number of state high courts have read this Court's decision in *Jones* to alter the substantive rules for church property disputes, thereby establishing standards that depart from generally applicable property and trust principles.

In *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920, 924 (N.Y. 2008), the New York Court of Appeals acknowledged that the deeds, corporate charter, and state laws did not create a trust over a local church parish, but nevertheless held that the "constitution" of the national church was "dispositive" under this Court's decision in *Jones*. *Id.* at 925.

Specifically, the Court of Appeals concluded that under *Jones* a national church can "recite an express trust" and "'civil courts will be bound to give effect to the result.'" *Id.* at 924 (emphasis omitted); see *id.* at 925 (*Jones* "*requires* that we look to 'the constitution of the general church concerning the ownership and control of church property") (emphasis added). Applying that standard, the Court of Appeals concluded that the local church "agreed to abide" by an "express trust" created through an amendment to the church's constitution in 1979 based on the local church's "incorporation in 1927 or upon recognition as a parish in spiritual union with the Rochester Diocese in 1947." *Id.* at 925.

In *In re Episcopal Church Cases*, 198 P.3d 66, 80 (Cal. 2009), the California Supreme Court ruled that free exercise concerns required it to impress a trust in the denomination's favor. Applying *Jones*, the court held that an amendment to the national church canons created an "express trust in favor of the denominational church," without an agreement "between the general church and [the local parish]." *Id.* The California Supreme Court held that *Jones* "intended" that express trusts "could be done by whatever method the church structure contemplated." *Id.* at 80. Put another way, the Court concluded that requiring assent "would infringe on the free exercise rights of religious associations to govern themselves as they see fit" because it would "impose a major, not a 'minimal' burden." *Id.* (emphasis omitted).

Likewise, in *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 28 A.3d 302 (Conn. 2011), the Connecticut Supreme Court followed the highest courts of New York and California and concluded that a change in a national church's canons was controlling even though "[t]he deeds to the property in question are in the name of [the local congregation]" and "there is no language of express trust in those deeds." *Id.* at 318. Purporting to apply "neutral principles," the Court held that the adoption of a canon in 1979 created an express trust in favor of the national church based on "the application submitted by the members of the local congregation in 1956 for admission to the general church as a parish." *Id.* at 319. The Connecticut Supreme Court concluded that "*Jones* . . . not only gave general churches explicit permission to create an express trust in [their] favor . . . but stated that civil courts would be *bound* by such provision, as long as the provision was enacted *before* the dispute occurred." *Id.* at 325.

2. In stark contrast, the Eighth Circuit, other state high courts, and several state intermediate courts have held that, under "neutral principles," a general church's trust provision is binding only if it conforms to general trust laws.

In *Church of God in Christ, Inc.* v. *Graham*, 54 F.3d 522, 525 (8th Cir. 1995), the Eighth Circuit considered "the proper constraints placed on [Missouri] law by the First Amendment" in resolving church property disputes. The court of appeals recognized that "'neutral principles'" must be "'objective,

well-established concepts of trust and property law'" which "do[ ] not run afoul of the First Amendment because" they entail "'"no inquiry into religious doctrine."'" *Id.* at 525-26 (quoting *Jones*, 443 U.S. at 602-03). Under these neutral principles, the court held that "states are not required to defer to an ecclesiastical determination of property ownership." *Id.* at 526. Applying that understanding, the Eighth Circuit concluded that amendments to a denomination's constitution are not necessarily dispositive because when there is lack of intent, which generic trust principles ordinarily would require, to create a trust, "the national Church cannot wrest ownership from the . . . congregation under neutral principles of Missouri law." *Id.*

In *All Saints Parish Waccamaw* v. *Protestant Episcopal Church in the Diocese of South Carolina*, 685 S.E.2d 163, 172 (S.C. 2009), *cert. dismissed*, 130 S. Ct. 2088 (2010), the South Carolina Supreme Court also rejected a denominational trust provision that it concluded did not satisfy generally applicable trust principles. Applying "the First Amendment and its protections of religious liberty," the court ruled that church property disputes are resolved "through the application of neutral principles of property, trust, and corporate law." *Id.* The court held that the denomination's express trust provision has "no legal effect on the title to the congregation's property" because "[i]t is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of

another." *Id.* at 174. Because the denomination did not have a recorded interest in the property, it could not impress a trust under neutral trust principles. *Id.*

Finally, in *Arkansas Presbytery of the Cumberland Presbyterian Church* v. *Hudson*, 40 S.W.3d 301, 307 (Ark. 2001), the Arkansas Supreme Court similarly rejected a denomination's trust provision under "neutral principles," which required the court to "construe deeds and other writings . . . from their four corners for the purpose of ascertaining . . . intent." *Id.* After concluding that the deeds favored the local church, the court rejected the denomination's trust provision because the land at issue was conveyed to the local church before the denominational church's trust provision existed, *id.* at 310, and the national church failed to "cite any cases that allow a [settlor] to impose a trust upon property previously conveyed without the retention of a trust." *Id.* at 309.

A number of intermediate state courts likewise have concluded that *Jones*'s "neutral principle" standard does not authorize abandonment of generally applicable property and trust law. In *Carrollton Presbyterian Church* v. *Presbytery of South Louisiana of the Presbyterian Church U.S.A.*, 77 So. 3d 975 (La. Ct. App. 2011), *cert. denied* (La. Feb. 18, 2012), the Louisiana Court of Appeal held that generic Louisiana trust law applies to church property disputes and requires that a trust must meet the form requirements of the law to be embodied "'in some legally cognizable form.'" *Id.* at 981. The court concluded that, under "neutral principles," the trust asserted by

the national church failed to comply with generally applicable Louisiana law. *Id.* (emphasis omitted).[4]

Likewise, in *Heartland Presbytery* v. *Gashland Presbyterian Church*, ___ S.W.3d ___, 2012 WL 42897 (Mo. Ct. App. Jan. 10, 2012), the Missouri court of appeals held that *Jones* does not create special property rules for churches: "The intent . . . was to explain that . . . a 'neutral principles approach' would not impose a particular property-rights regime on the parties." *Id.* at *10. Emphasizing that *Jones* did not establish "substantive property and trust law to be applied to church-property disputes," *id.*, the court applied neutral state trust law and concluded that the absence of intent by the local church to create a trust meant the general church could not rely on its constitution's express trust provision. *Id.* at *12.[5]

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[4] The Louisiana court ruled that the denomination's trust provision failed under neutral principles because the local church had the right to dispose of its property, and the " 'right to dispose of all of one's property is mutually exclusive of any right by a third party to dictate disposition of that same property.' " 77 So. 2d at 981. Presiding Justice Carley, in his dissent from the judgment at issue here, made precisely the same point. Pet. App. 33.

[5] Academic articles have underscored the disarray among the lower courts on the limitations that the First Amendment imposes on the resolution of church property disputes. See Calvin Massey, *Church Schisms, Church Property, and Civil Authority*, 84 St. John's L. Rev. 23, 32 (2010) ("[C]ourts are divided on their answers to [questions about how neutral principles are applied]."); Jeffrey B. Hassler, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property*

(Continued on following page)

B. This Case Provides An Ideal Vehicle To Resolve The Conflict.

This case squarely implicates this deep and persistent conflict over the meaning of "neutral principles" under *Jones*. The Georgia Supreme Court expressly held that "a trust was not created under [the] state's generic express (or implied) trust statutes" but nevertheless imposed a trust in favor of the national church because it concluded that "[r]equiring compliance" with generally applicable state trust statutes would be inconsistent with *Jones*. Pet. App. 16, 19.

Had the Georgia Supreme Court applied the approach to *Jones* embraced by the Eighth Circuit, the South Carolina Supreme Court, or the Arkansas Supreme Court, then it would have affirmed the Georgia Court of Appeals' judgment because "a trust was not created under [Georgia's] generic (or implied) trust statutes." Pet. App. 19.[6] In short, had

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Disputes in a Time of Escalating Intradenominational Strife, 35 Pepp. L. Rev. 399, 431 (2008) (noting "massive inconsistency" in the application of the neutral principles doctrine).

[6] Although, in this case, applying neutral trust principles would have resulted in a judgment for the local church, the application of "neutral principles" also may support the claims of a general church. See, *e.g.*, *In re Church of St. James the Less*, 888 A.2d 795, 807, 810 (Pa. 2005) (holding that under "well-established legal principles governing trusts, courts may only find that a trust exists where there is clear and unambiguous language or conduct indicating that the settlor intended to create a trust" and noting that the court was not "simply deferring to a religious canon 'to override the rights of parties under civil law' " when it awarded property to the national church because

(Continued on following page)

Timberridge and Respondent been secular entities, there is no question that Timberridge would have prevailed under generally applicable state trust law. Instead, applying the same analysis as the high courts in New York, California, and Connecticut, the Georgia Supreme Court held that "[r]equiring compliance" with Georgia's generic express trust statute "would be inconsistent with the teaching of *Jones v. Wolf*" because requiring a showing of "'an intention on the part of Timberridge to create a trust'" would impose a burden that would not be "'minimal.'" *Id.* at 16-18. That is, the Court held that rather than making the denomination satisfy the *same* burden that would apply to any secular entity under state law, the denomination could reap the benefit of a special rule. Had this special rule applied in the Eighth Circuit, South Carolina, Arkansas, Louisiana and Missouri cases discussed above, the outcomes there too would have been different, and the opposite of what state law otherwise would require.

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the local church "had already agreed to place its property in trust" for the general church); *Bishop & Diocese of Colo.* v. *Mote*, 716 P.2d 85, 100, 104, 108 (Colo. 1986) (holding "neutral principles" doctrine is inconsistent with "any . . . artificial presumption or rule[ ] that must be applied in every case in which determination of control over property of a local church becomes necessary" and that awarding the property to the national church because a number of neutral principles "demonstrate a unity of purpose . . . reflecting the intent that" the property was held for the benefit of the national church).

C. The Conflict Concerns An Important And Recurring Issue Of Federal Law.

The proper interpretation of *Jones* is an important and recurring issue under the First Amendment. As described above, courts across the country have grappled with how to interpret it.

Moreover, the decisions by these State high courts are merely the tip of the iceberg. Multiple intermediate and trial-level state courts have been required to grapple and are currently grappling with how to interpret *Jones* in light of these state high court decisions. See, *e.g.*, *Presbytery of Hudson Riv. of Presbyterian Church (U.S.A.)* v. *Trs. of the First Presbyterian Church & Congregation of Ridgeberry*, 72 A.D.3d 78, 95 (N.Y. App. Div.), *leave to appeal denied*, 929 N.E.2d 1005 (N.Y. 2010) (applying the *Harnish* ruling in the Presbyterian context). Additional cases are pending. See *Episcopal Diocese of Forth Worth, et al.* v. *Episcopal Church, et al.,* No. 11-0265 (Tex. granted Jan. 6, 2012). Given the irreconcilable views expressed in the two sets of conflicting cases, there is a compelling need for the Court to provide guidance on an issue that will continue to require the expenditure of scarce litigant and judicial resources with the outcomes being determined by geography rather than a sound constitutional rule. In sum, the situation is intolerable, and the Court should rectify it now.

II. REVIEW IS WARRANTED BECAUSE THE DECISION BELOW IS WRONG.

When this Court adopted the neutral principles approach in *Jones*, it explained that neutral principles are "objective, well-established concepts of trust and property law familiar to lawyers and judges." 443 U.S. at 603. The Georgia court's ruling that a beneficiary can impose a trust upon a settlor without satisfying the requirements of otherwise applicable trust and property law is antithetical to this Court's view that "neutral principles" would entail application of "well-established concepts of trust and property law."

The impetus for the Court's adoption of "neutral principles" was the promise that such an approach would avoid "entanglement," *id.* at 604, and "free civil courts completely from entanglement in questions of religious . . . polity," *id.* at 603. The decision below – like the New York, California, and Connecticut decisions that adopt the same approach to "neutral principles," *supra* at 17-19 – results in entanglement and sacrifices "neutrality" in the process. The Georgia Supreme Court acknowledged that the First Amendment required application of "neutral principles with an even hand," Pet. App. 30, but it declined to adhere to generally and dispositive express and implied trust statutes because it concluded that "requiring compliance" would impose too great a "burden." But that "burden" that the Georgia Supreme Court abandoned was the requirement of a showing "with reasonable certainty" of "an intention on the part of Timberridge to create a trust,'" *i.e.*, precisely what the secular

trust law requires. *Id.* at 16 (internal quotation marks omitted). Imposition of a trust absent a showing of intent is not applying "neutral principles with an even hand."

To the contrary, when this Court allowed state courts to rely on "neutral principles," to resolve church property disputes, it explained that churches could adopt express trust provisions that would bind civil courts "to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. The Georgia Supreme Court's ruling disregards Timberridge's intent and discounts the lack of a legally recognizable trust under Georgia law.

The approach intended by *Jones* – and required by the First Amendment – is a neutral system where property rules for resolution of secular property disputes likewise apply to disputes when the parties happen to be churches.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 6, 2012

In the Supreme Court of Georgia

Decided: November 21, 2011

S11G0587. PRESBYTERY OF GREATER ATLANTA, INC. v. TIMBERRIDGE PRESBYTERIAN CHURCH, INC.

NAHMIAS, Justice.

We granted certiorari in this case to consider whether the Court of Appeals correctly applied the "neutral principles of law" doctrine set forth in *Jones v. Wolf,* 443 U.S. 595, 602-606 (99 SC 3020, 61 LE2d [sic] 775) (1979), to this hierarchical church property dispute. *See Timberridge Presbyterian Church, Inc. v. Presbytery of Greater Atlanta, Inc.,* 307 Ga. App. 191 (705 SE2d 262) (2010). Timberridge Presbyterian Church ("Timberridge") is located on property owned by appellee Timberridge Presbyterian Church, Inc. ("TPC Inc."), a corporation formed to hold and control the property of Timberridge. The Court of Appeals held that TPC Inc. did not hold the property in trust for the benefit of the Presbyterian Church (U.S.A.) ("PCUSA"), which is represented in this case by appellant Presbytery of Greater Atlanta, Inc. ("Presbytery"), the PCUSA's governing body for the geographic district in which Timberridge is located. For the reasons that follow, we reverse.

1. Timberridge was formed in Henry County in 1830. In 1880, Timberridge became a member of the Presbyterian Church in the United States ("PCUS"), which was the southern branch of the post-Civil War

denomination. The PCUS Book of Church Order ("BOCO") set forth the rules governing the southern church. By early 1982, and apparently well before then, the northern and southern branches of the Presbyterian Church were meeting to discuss reunification, and the PCUS was meeting to consider whether to add a provision to its Book of Church Order stating that local churches hold their property in trust for the PCUS.

At a January 26, 1982, meeting of the Presbytery of Atlanta, the immediate predecessor of the Presbytery of Greater Atlanta, to consider and vote on constitutional amendments to the Book of Church Order, including the property trust provision, the participants included Timberridge's pastor and one of its elders. The record does not reveal how they voted, but it shows that the property trust provision was approved by a vote of 155 for and 96 against. In June 1982, the General Assembly of the PCUS adopted the property trust provision. The provision stated that "[a]ll property held by or for a particular [local] church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust . . . for the use and benefit of the [PCUS]." BOCO § 6.3. About two weeks later, the Presbytery of Atlanta met to vote on the reunification of the southern and northern branches of the Presbyterian Church. Timberridge's pastor and an elder again attended. The vote was 235 for reunification

and 54 against; an affidavit by Timberridge's pastor states that he voted in favor of reunification.

In 1983, the PCUS and the northern branch of the denomination formally reunited as the Presbyterian Church (U.S.A.), and Timberridge became a member of the PCUSA. The PCUSA Book of Order ("BOO"), which took effect immediately upon the formation of the reunited church, sets forth the rules governing the national church and its local member ("particular") churches. The Book of Order provides that "[t]he government of the church is representative," BOO § G-6.0107, and that the PCUSA "shall be governed by representative bodies," which in order from lowest to highest are called "session, presbytery, synod, General Assembly," § G-9.0101. Each of those bodies is composed of presbyters (the elders and ministers of the particular churches), *see id.* and § G-4.0301(b); is governed by majority vote, *see* § G-4.0301(e); and "shall participate through its representatives in the planning and administration of the next higher body," § G-9.0404(a). A higher governing body has "the right of review and control" over decisions of lower ones. § G-4.0301(f). As these provisions demonstrate, the PCUSA operates as a representative democracy, as has historically been the case with Presbyterian churches. *See* § G-1.0400 & n. 6.

Chapter 8 of the Book of Order contains the provisions of the church constitution governing property. Mirroring Section 6.3 of the PCUS Book of Church Order adopted the year before reunification,

Section G-8.0201 of the BOO is an explicit trust provision, specifying that "[a]ll property held by or for a particular church . . . , whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the [PCUSA]." Section G-8.0301 provides that if a local church stops using its property as a church of the PCUSA, the property "shall be held, used, applied, transferred, or sold as provided by the presbytery." Section G-8.0601 similarly provides that, in the event of a schism within the membership of a local church,

> 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.

Section G-8.0701 of the Book of Order permitted a local church, within eight years of the formation of the PCUSA, to opt out of a property provision of the BOO, but only if the local church was not "subject to a similar provision of the Constitution of the church of which it was a part" before the formation of the PCUSA. In addition, the PCUSA's Articles of Agreement, which set forth the contractual agreement for reunification between the northern and southern branches, provided that a local church of either

branch could petition for dismissal from the PCUSA for eight years after the reunion and if two-thirds of the congregation voted for dismissal, the local church would be dismissed and would retain all of its property. *See* Articles 13.3(e), (g), 13.4.

The 1983 Book of Order also provided that, "[w]henever permitted by civil law, each particular church shall cause a corporation to be formed" to "receive, hold, encumber, manage, and transfer property, real or personal, for the church." §§ G-7.0401, G-7.0402. As required by these provisions, in 1984 Timberridge Presbyterian Church Inc. was formed as a Georgia non-profit corporation to hold and control the property of Timberridge Presbyterian Church. TPC Inc.'s Articles of Incorporation state that the corporation's purpose is "to be a church institution which is a member of the Presbytery of Atlanta of the [PCUSA] or any successor Presbytery thereof" and that its bylaws cannot conflict with the PCUSA Book of Order "as the same now exists or may hereafter from time to time be amended." The Articles also provide that the corporation has the power to "receive, hold, encumber, manage, and transfer property, real and personal," for the church, and that the corporation's members will consist of "active members" of Timberridge as defined by the PCUSA Book of Order. Section G-5.0202 of the BOO provides that "an active member of a particular church is a person

. . . [who] has voluntarily submitted to the government of [the PCUSA]."

Until 1970, the land on which Timberridge is located was owned by individuals who were also members of the church. From 1970 through 1987, the individual owners conveyed their various interests in the land to Timberridge and "its successors," to Timberridge and its "heirs and assigns," or simply to Timberridge without any successors or assigns language. During the eight years after reunification, Timberridge did not seek to retain all of its property by petitioning for dismissal from the PCUSA as allowed by the Articles of Agreement. However, in November 1987, following a vote of its congregation, Timberridge sent the Presbytery a letter stating that Timberridge had "voted to take the 'property exemption' as provided in the Book of Order, Section G-8.0700." Timberridge did not receive a response to this letter from the Presbytery or the PCUSA. In 1999, Timberridge transferred all of its real property by warranty deeds to TPC Inc. and "its successors, heirs, executors, administrators, and assigns in fee simple."

For almost a quarter-century after Timberridge affiliated with the PCUSA in 1983, the local church functioned as a regular member of the national church. Its pastor from 1978 to 1984 stated that Timberridge "took part in the governance of the denomination by regularly attending meetings of the Atlanta Presbytery" and "experienced benefits of

being associated with the [PCUSA] such as participation in the representational governance . . . and the availability of the denomination's resources." Similarly, Timberridge's pastor from 1984 to 2003 stated that the church "actively participated in the governance of the denomination" and "experienced some of the benefits of being associated with the greater denomination, such as locating an Associate Pastor with the help of the [Presbytery] . . . [and] taking advantage of . . . [a] year round camp and conference center."

By 2007, however, a dispute arose between TPC Inc. and the Presbytery and PCUSA as to who controls Timberridge's property. In September 2007, TPC Inc. filed an action for declaratory judgment and injunctive relief against the Presbytery, seeking a declaration that TPC Inc. owned all Timberridge property and did not hold it in trust for the benefit of the PCUSA. TPC Inc. later amended its complaint to add a quiet title action. The Presbytery filed a counterclaim, contending that TPC Inc. held the church property in trust for the benefit of the PCUSA and should be enjoined from transferring the property. In November 2007, a majority of the Timberridge congregation voted to disaffiliate from the PCUSA. In January 2008, the Presbytery filed an ejectment action against the majority faction identifying itself as Timberridge. Five months later, the majority faction of Timberridge affiliated with the Evangelical Presbyterian Church, a separate denomination.

The parties filed cross-motions for summary judgment, and on March 9, 2009, the trial court entered two separate but almost identical orders in the 2007 and 2008 lawsuits. Applying the neutral principles of law doctrine, the court concluded, among other things, that Section G-8.0201 of the Book of Order created a trust in favor of the PCUSA as to any property held by TPC Inc. The court also concluded that the opt out provision of Section G-8.0701 was of no avail to TPC Inc. with respect to the trust issue, because Timberridge was already "subject to a similar provision of the Constitution of the [general] church of which it was a part" before the formation of the PCUSA – the explicit property trust provision of the PCUS Book of Order. The court therefore granted summary judgment to the Presbytery in both actions. TPC Inc. filed appeals of both orders in this Court, which we transferred to the Court of Appeals after finding that the appeals did not come within our equity or title to land jurisdiction. *See* S09A1494 & S09A1495 (Apr. 12, 2010); Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (1) and (2).

The Court of Appeals reversed the trial court's judgments. It weighed the neutral principles – the relevant deeds, state statutes, and local and national church documents – together, saying that the national church documents could not be dispositive. *See Timberridge,* 307 Ga. App. at 193. Instead, the court focused on whether the evidence established

an express trust under OCGA § 53-12-20. *See Timberridge,* 307 Ga. App. at 200-201. The court concluded that,

> [r]ead as a whole in light of the relevant law, the evidence is inadequate to show the existence of a trust in favor of the Presbytery. The evidence must reveal that "factors other than mere connectional relationship between a local and general church were present." In the absence of some showing of intention and assent on the part of Timberridge, neutral principles of law cannot support the unilateral imposition of a trust provision drafted by the purported beneficiary of the trust and the resulting deprivation of the opposing party's property rights.

Id. at 200 (citation omitted). This Court then granted certiorari.

2. To avoid First Amendment concerns in resolving property disputes in hierarchical religious denominations, secular courts apply "neutral principles of law" to determine whether the local church or the parent church has the right to control local property, avoiding any inquiry into religious doctrine. *See Jones,* 443 U.S. at 602-606.[1] These "neutral principles" include relevant deeds, state statutes, and

[1] The parties do not dispute that the Presbyterian Church (U.S.A.) is a hierarchical denomination. *See Timberridge,* 307 Ga. App. at 192.

the governing documents of the local and general churches. *See Jones,* 443 U.S. at 602-606 (discussing the "corporate charter" of the local church and the "constitution of the general church"); *Georgia Dist. Council of the Assemblies of God, Inc. v. Atlanta Faith Mem. Church, Inc.,* 267 Ga. 59, 60-61 (472 SE2d 66) (1996) (reviewing the bylaws of the denomination); *Crumbley v. Solomon,* 243 Ga. 343, 343-344 (254 SE2d 330) (1979) (reviewing the Disciplinary Rules of the parent church); *Carnes v. Smith,* 236 Ga. 30, 37 (222 SE2d 322) (1976) (reviewing the Book of Discipline of the parent church and noting that the corporate charter of the local church would have been relevant if the local church had one). We review all of these materials, keeping in mind that the outcome of these church property disputes usually turns on the specific facts presented in the record, that the neutral principle factors are interrelated, and that our ultimate goal is to determine "the intentions of the parties" at the local and national level regarding beneficial ownership of the property at issue as expressed "before the dispute erupt[ed]" in a "legally cognizable form." *Jones v. Wolf,* 443 U.S. at 603, 606.

(a) Deeds

The deeds that transferred the property at issue from the individual owners to Timberridge between 1970 and 1987 do not contain trust language. The 1999 deeds then transferred the property from Timberridge to TPC Inc. and "its successors, heirs,

executors, administrators, and assigns in fee simple." The Court of Appeals held that the "absence of any trust language in the deeds" weighed against the recognition of a trust in favor of the PCUSA. *Timberridge,* 307 Ga. App. at 196. We disagree.

It is true that neither the 1970-1987 deeds nor the 1999 deeds show an intent by the grantors to create a trust. But they also do not expressly preclude the creation of one. And it is undisputed that Timberridge affiliated with the PCUSA in 1983 and thus brought itself under the national church's constitution, which squarely states that local churches such as Timberridge hold their property in trust for the PCUSA even if "legal title is lodged in a corporation." Given that provision, Timberridge would have no reason to believe that its deeds needed to recite a trust in favor of the general church, particularly the 1999 deeds transferring the property at issue to TPC Inc. Thus, the absence of language in the deeds creating a trust in favor of the national church is of limited value in deciding the question before us, and we turn to consideration of other neutral principles.

(b) Statutes

(1) OCGA 14-5-46

OCGA § 14-5-46, which is entitled "Conveyances to churches or religious societies confirmed," provides:

> All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land

> within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies.[2]

This Court has repeatedly applied this statute and its predecessors, including Code Ann. § 22-5507, to church property disputes. *See*, *e.g.*, *Holiness Baptist Assoc. v. Barber,* 274 Ga. 357, 358-359 (552 SE2d 90) (2001); *Crumbley,* 243 Ga. at 344-345; *Carnes,* 236 Ga. at 37-38. However, the Court of Appeals held that § 14-5-46 could not be applied here to support the

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[2] When a conveyance that falls within OCGA § 14-5-46 is made to trustees, OCGA § 14-5-47 provides that:

> All trustees to whom conveyances are or shall be executed, for the purposes expressed in Code Section 14-5-46, shall be subject to the authority of the church or religious society for which they hold the same in trust and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.

creation of a trust because "the deeds . . . do not convey the property to trustees, nor to the Presbytery or PCUSA, but simply to 'Timberridge Presbyterian Church' or 'Timberridge Presbyterian Church, Inc.'" *Timberridge,* 307 Ga. App. at 194.

By its plain language, OCGA § 14-5-46 applies (1) if there is a deed "to any person or persons," "to any church or religious society," *or* "to trustees" for the use of any church and (2) if the deed is "for the purpose of erecting churches or meeting houses." Thus, the statute is not limited to deeds to trustees or that contain trust language, and indeed this Court applied § 14-5-46 to a deed that did not contain any trust language in *Barber. See* 274 Ga. at 358-359. There, the deed conveying the local church property was simply "to named individuals as 'Deacons of Vickers Holiness Baptist Church [the local church] and their successors in office.'" *Id.* at 359 n. 7. Citing OCGA § 14-5-46, we held that

> it is undisputed that the Association [the general church] remains a hierarchy, that the [local] Church has been a member of the Association for over 30 years, and that the Church is subject to the Association's discipline. Such discipline unquestionably provides that the Association "shall hold all church property," thereby implying a trust for the benefit of the Association.

Barber, 274 Ga. at 359.

Although the Court of Appeals' reason for not applying OCGA § 14-5-46 was erroneous, we note that this Court and the Court of Appeals have failed to analyze another component of the statutory text in our modern cases, namely, whether the property was conveyed "for the purpose of *erecting* churches or meeting houses." *See*, *e.g.*, *Barber,* 274 Ga. at 358-359; *Crumbley,* 243 Ga. at 344-345; *Carnes,* 236 Ga. at 37-38; *Rector &c. of Christ Church v. Bishop of the Episcopal Diocese of Ga.,* 305 Ga. App. 87, 90-92 (699 SE2d 45) (2010) (cert. granted). Compare *Harris v. Brown,* 124 Ga. 310, 314 (52 SE 610) (1905) (holding that § 14-5-46's predecessor applied only to deeds conveying property for the purpose of erecting a church building and therefore did not apply to the deed in question, which conveyed property for the purpose of erecting both church and school buildings).

Instead, we appear to have viewed OCGA § 14-5-46, § 14-5-47, and their predecessors, which date back more than two centuries, *see* Ga. Laws 1805, pp. 15-16, as expressing this State's policy of looking to "the mode of church government or rules of discipline" in resolving church property disputes, even when the statutory text does not squarely apply. This policy is consistent with *Jones v. Wolf*'s focus on local and parent church governing documents as an important neutral principle. *See* 443 U.S. at 602-606. *See*, *e.g.*, *Barber,* 274 Ga. at 359; *Carnes,* 236 Ga. at 38 (stating broadly that "Code Ann. § 22-5507 [now § 14-5-46] recognizes and validates deeds conveying land for church purposes according to the limitations set out

in the deed and for use 'according to the mode of church government or rules of discipline'"). In any event, although § 14-5-46 may weigh in favor of the trial court's judgments under our precedents, we need not rely on it to resolve this case.

(2) OCGA § 53-12-20

Instead of focusing on OCGA § 14-5-46, the Court of Appeals relied heavily, and incorrectly, on Georgia's generic express trust statute. OCGA § 53-12-20 provides, in relevant part, as follows:

> (a) [A]n express trust shall be created or declared in writing and signed by the settlor. . . .
>
> (b) An express trust shall have, ascertainable with reasonable certainty:
>
> (1) An intention by a settlor to create such trust;
>
> (2) Trust property;
>
> (3) Except for charitable trusts, a beneficiary who is reasonably ascertainable at the time of the creation of such trust or reasonably ascertainable within the period of the rule against perpetuities;
>
> (4) A trustee; and
>
> (5) Trustee duties specified in writing or provided by law.

The Court of Appeals effectively held that local and national church documents cannot suffice to

establish a trust in favor of the national church without compliance with this statute. The court concluded that the church documents in this case could not create a trust in favor of the PCUSA because they were not "sufficient to establish an express trust" since they did not "show 'with reasonable certainty' an intention on the part of Timberridge to create a trust, OCGA § 53-12-20(b)." *Timberridge,* 307 Ga. App. at 200.

Requiring compliance with OCGA § 53-12-20, however, would be inconsistent with the teaching of *Jones v. Wolf* that the burden on a national church and its member churches to provide which one will control local church property in the event of a dispute will be "minimal." 443 U.S. at 606. In this regard, the dissenters in *Jones* expressed concern that the neutral principles doctrine would unconstitutionally interfere with the free exercise rights "of those who have formed the association and submitted themselves to its authority." *Jones,* 443 U.S. at 618 (Powell, J., dissenting).

The Court rejected that concern in this important passage:

> Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion. . . . 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 606 (emphasis added).

As this passage explains, local churches can modify their deeds, amend their charters, or draft a separate legally recognized document to establish an express trust as set forth in OCGA § 53-12-20. But that is not the *only way* in which the parties can ensure that local church property will be held in trust for the benefit of the national church; it may also be done through the national church's constitution, for example, by making it "recite an express trust." *Jones,* 443 U.S. at 606. If, as the Court of Appeals held in this case, hierarchical denominations must fully comply with OCGA § 53-12-20 for the parent church to retain control of local church property when there is a schism and a majority of the local church congregation disaffiliates, then an enormous number of deeds and corporate charters would need to be examined and re-conveyed or amended; the burden on the parent churches, the local churches that formed the hierarchical denominations and submitted to

their authority, and the free exercise of religion by their members would not be minimal but immense.

Moreover, the Court of Appeals' approach is inconsistent with this Court's cases deciding that local churches held their property in trust for the general church with no mention of OCGA § 53-12-20 or evidence of compliance with its terms. *See*, *e.g.*, *Kemp v. Neal,* 288 Ga. 324, 326-329 (704 SE2d 175) (plurality); *id.* at 331-334 (Carley, P.J., dissenting in part); *Barber,* 274 Ga. at 358-359; *Crumbley,* 243 Ga. at 344-345; *Carnes,* 236 Ga. at 37-38. If compliance with § 53-12-20 were necessary to create a trust in favor of a national church, those cases could not have been decided as they were. We also note that our numerous church property cases either made no mention of the generic implied trust statutes, now OCGA § 53-12-90 to 53-12-93, *see*, *e.g.*, *Kemp,* 288 Ga. at 326-329 (plurality); *id.* at 331-334 (Carley, P.J., dissenting in part); *Barber,* 274 Ga. at 358-359; *Crumbley,* 243 Ga. at 344-345, or explained that the requirements of those statutes were *not* met, *see Carnes,* 236 Ga. at 37-38 – and yet the Court still concluded that the local church property was held in trust for the general church.

The Court of Appeals dismissed our precedent by saying that our cases did not "cite the express trust provision . . . because these cases involved *implied* trusts." 307 Ga. App. at 194-195 (emphasis added). But this case, like previous cases, involves a trust implied under neutral principles of law, even though one aspect of that analysis is consideration of trust

language expressly included in the national church's discipline. *See*, *e.g.*, *Barber,* 274 Ga. at 359 ("implying a trust" for the benefit of the general church where its discipline expressly provided that the general church "shall hold all church property").

In short, and contrary to the Court of Appeals' decision, the 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. *See Kemp,* 288 Ga. at 326-329 (plurality); *Barber,* 274 Ga. at 358-359; *Crumbley,* 243 Ga. at 344-345; *Carnes,* 236 Ga. at 37-38. Accord *Bishop and Diocese of Colorado v. Mote,* 716 P2d 85, 100 (Colo. 1986) (explaining that *Jones v. Wolf* "did *not* restrict the inquiry to a search for explicit language of express trust" (emphasis in original)).

(c) Church Governing Documents

(1) Local Church Documents

It is clear that Timberridge formed TPC Inc. in 1984 because Section G-7.0401 of the governing Book of Order adopted with the PCUSA's formation in 1983 required all member churches to form a corporation to hold and control church property if permitted by their state law. TPC Inc.'s Articles of Incorporation filed with the Georgia Secretary of State unequivocally submit Timberridge and its property to the PCUSA as its governing authority. The Articles provide that the corporation is "to be a church institution which is

a member of the Presbytery of Atlanta of the [PCUSA], or any successor Presbytery thereof." Indeed, the corporation's members must be "active members" of Timberridge "as defined in the Book of Order of the [PCUSA]," which defines an "active member of a particular church" to be a person who has "voluntarily submitted to the government of this [general] church." BOO § G-5.0202. Thus, the corporation's charter precludes any TPC Inc. member who refuses to submit to the government of the PCUSA from continuing to function as a member of TPC Inc.[3]

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[3] The dissents would reject any consideration of the "active member" requirement of the Articles of Incorporation. *See* Presiding Justice Carley's Dis. Op. at 4-5; Judge Benefield's Dis. Op. at 6-7. However, that requirement reveals the intent of the local church, which formed the TPC Inc. corporation in 1984 and then transferred legal title to its property to the corporation in 1999, that each of the corporation's members abide by the government of the national church, which has since its foundation in 1983 included an explicit trust on local church property. Unlike the dissents, we do not quote or rely on aspects of the Book of Order's definition of an "active member" that implicate religious doctrine, only the element that requires submission to the government of the PCUSA, because consideration of religious doctrine is forbidden under the First Amendment and the neutral principles doctrine. We similarly do not consider any part of the Articles of Incorporation, Book of Order, or Book of Church Order that relates to spiritual rather than organizational and property matters. National and local church documents will often include a mixture of religious precepts and provisions dealing with government, property, and other matters common to both religious and non-religious organizations. Courts may not inquire into the former, but *Jones v. Wolf* and this Court's subsequent cases allow and indeed direct us to consider the latter. *See also Bishop and Diocese of Colorado v. Mote,* 716 P2d at 101

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In addition, TPC Inc.'s Articles of Incorporation state that its bylaws cannot conflict with the PCUSA Book of Order. A corporation's "'[b]ylaws' means the code of rules other than the articles [of incorporation] adopted pursuant to this chapter for the regulation or management of the affairs of the corporation. . . ." OCGA § 14-3-140(3). *See also* OCGA § 14-5-40 (providing that Chapter 3 of Title 14 is applicable to nonprofit corporations formed for religious purposes). As discussed in Division 1 above, the Book of Order provides comprehensive rules regarding the government of a local church, its relationship to the Presbytery and the PCUSA, and its property – including an explicit provision stating that "[a]ll property held by or for a particular church . . . , whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the [PCUSA]."

The Court of Appeals erroneously concluded that TPC Inc.'s charter sheds no light on the trust issue, saying the Articles of Incorporation "do not express such clear intent to render the local church corporation subject in all matters both ecclesiastical and temporal to the authority of the Presbytery or PCUSA." *Timberridge,* 307 Ga. App. at 196-197. It may be that TPC Inc. did not render itself subject to

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("*Jones v. Wolf* does not require the civil courts to shy away from those documents, or provisions in documents, that intertwine religious concepts with matters otherwise relevant to the issue of who controls the property.").

the authority of the PCUSA and Presbytery in *all* temporal matters (and courts should pay no attention to ecclesiastical matters). But TPC Inc. holds legal title to the local church's property and its founding document plainly makes the local church subject to the PCUSA Book of Order, which contains a very explicit trust provision. And under the corporate charter and the Book of Order, any effort by TPC Inc. or its putative members to break away from the PCUSA results in the individuals no longer being members of the corporation and the property reverting to the control of the Presbytery. *See* BOO §§ G-8 .0301, G-8.0601. By adopting these Articles of Incorporation, TPC Inc ., with unmistakable clarity, agreed to bind itself to the Presbytery and the PCUSA and to abide by the Book of Order, which has included the explicit property trust and other governance provisions since the PCUSA was established in 1983 – well before Timberridge transferred the property at issue in this case to TPC Inc. in 1999.

Presiding Justice Carley's dissent notes that Article X allows amendment of the Articles of Incorporation and does not expressly prohibit an amendment from conflicting with the Book of Order. *See* Dis. Op. at 5. The dissent says that this "necessarily" means that TPC Inc. "is not subject to the Book of Order or its trust provision." *Id.* at 6. But it means no such thing. As a matter of law, articles of incorporation bind a corporation and its members until the document is properly amended. What is relevant about the Articles of Incorporation is that in its own

charter TPC Inc. proclaimed its allegiance to the PCUSA Book of Order, which included a provision explicitly stating that local church property is held in trust for the use and benefit of the PCUSA, and at no time during the more than two decades before this dispute erupted and the eight years after it was deeded the property at issue did TPC Inc. even *seek* to amend its Articles to demonstrate any different intent.

(2) National Church Documents

Timberridge joined the PCUSA when the reunited national church was established in 1983. There is no dispute that *at that time* (1) the PCUSA's governing constitution plainly stated that local churches hold their property in trust for the use and benefit of the general church, *see* BOO § G-8.0201, and (2) the governing constitution of the general church that Timberridge had previously belonged to, the PCUS, contained an identical trust provision, *see* BOCO § 6.3. Moreover, *when Timberridge affiliated with the PCUSA,* it agreed that it "was a local expression of the universal church," BOO § G-4.0102, that it would be "governed by this Constitution," § G-4.0104, that its active members have "voluntarily submitted to the government of this church," § G-5.0202, and that it would "function under the provisions of this Constitution." § G-7.0101. Timberridge then had the right to leave the PCUSA for eight years, taking its property with it, *see* Article 13 of PCUSA Articles of Agreement, but instead it

stayed. And while Timberridge purported to opt out of the property provisions of the Book of Order pursuant to its November 1987 letter to the Presbytery, it plainly could not opt out of the property *trust* provision in Section G-8-0201, which mirrored the one in Section 6.3 of the PCUS Book of Church Order. *See* BOO § G-8.0701 (stating that a local church could opt out of a property provision of the BOO within eight years of the formation of the PCUSA only if the local church was not "subject to a similar provision of the Constitution of the church of which it was a part" before the PCUSA was formed).[4]

[4] We note that this did not leave Timberridge's 1987 letter without import. Section G-8.0501 of the Book of Order precludes a local church from buying, selling, mortgaging, or otherwise encumbering real property, or from acquiring real property subject to an encumberance or condition, without the written permission of the Presbytery. Because the PCUS Book of Church Order did not contain a similar provision, Timberridge could opt out of that provision, allowing the local church to buy, sell, and encumber real property without prior approval (but still in trust for the national church). We also note that, even if Timberridge's "opt out" under § G-8.0701 were somehow deemed effective, it would not help TPC Inc.'s case. Section G-8.0701 goes on to say that "[t]he 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 [PCUSA]." Thus, Timberridge's property would remain subject to the identical trust provision of the BOCO – "the Constitution to which it was subject immediately prior to the establishment" of the PCUSA.

Thus, contrary to the Court of Appeals' view that the PCUSA "unilateral[ly] impos[ed]" the trust provision without any assent by the local church, *see* 307 Ga. App. at 200, Timberridge's act of affiliating with the PCUSA in 1983 with the trust provision *already* in its governing constitution demonstrated that Timberridge assented to that relinquishment of its property rights – rights it then chose not to reassert by leaving the new national church during the next eight years. The creation of TPC Inc. in 1984 and the transfer of Timberridge's property to that corporate entity in 1999 further demonstrated Timberridge's acceptance of the trust provision, as discussed in the last subdivision. And Timberridge's continued membership in the PCUSA, for nearly a quarter of a century in all, with the trust provision always in full effect, further bolsters this conclusion. *See Barber,* 274 Ga. at 359; *Crumbley,* 243 Ga. at 345.

For these reasons, in considering the national church's constitution in this case, we need not address the more difficult question of whether a general church may *amend* its governing documents, pursuant to procedures agreed upon by it and its member churches, to *add* an explicit property trust provision and make that trust apply to the property of its existing members, particularly where the evidence does not indicate that the national church historically had authority over local church property. *See Kemp,* 288 Ga. at 331-332 (Carley, P.J., dissenting in part).[5]

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[5] Compare *State Presbytery of the Cumberland Presbyterian Church v. Hudson,* 40 SW3d 301, 308-310 (Ark. 2001) (4-3

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However that question is resolved, it may be incorrect to characterize such an amendment as the "unilateral imposition of a trust provision," as the Court of Appeals did here, *see* 307 Ga. App. at 200, if the national church enacted the trust provision pursuant to rules of representative government that the local and national churches previously agreed to follow, *see* BOO §§ G-4.0104, G-7.0101, and in which the local church's representatives could and did participate. We also need not address TPC Inc.'s contention that the procedures used by the PCUS and the PCUSA to adopt the property trust provisions of the Book of Church Order and the Book of Order were flawed. *See Rector &c. of Christ Church,* 305 Ga. App. at 97 (holding that the First Amendment precludes a court from "questioning the validity of the process by which the church legislates"); *Episcopal Church Cases,* 198 P3d 66, 80 (Cal.) (same), cert. denied, ___ U.S. ___ (130 SC 179, 175 LE2d [sic] 41) (2009).

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decision holding that the explicit trust provision of the general Cumberland Presbyterian Church could not be applied to a local church that became a member of the general church and acquired its property before the adoption of the provision), with *Presbytery of Hudson Riv. of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church & Congregation of Ridgeberry,* 72 AD3d 78, 95-97 (N.Y. App. Div. 2010) (applying the explicit trust provision of the PCUSA BOO to a local church that both became a member of the national church and acquired its property before the adoption of the provision, also noting that the BOO's trust provision may simply have codified a longstanding implied trust).

Our conclusion regarding the effect of the local and national church documents in this case is consistent with the precedent of the United States Supreme Court, this Court, and many state courts. The decisions from other states on which Presiding Justice Carley's dissent principally relies are readily distinguishable[6] or wrongly decided,[7] and Judge

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[6] *See From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church,* 803 A2d 548, 553-554, 568-569 (Md. 2002) (holding that local church property was not held in trust for the AME Zion denomination where the local church amended its articles of incorporation to delete all references to AME Zion and to expand its corporate powers over church property well before the dispute arose); *Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church,* 489 A2d 1317, 1323-1325 (Pa. 1985) (holding that local church property was not held in trust for the national church, which did not have trust language in its Book of Order when the local church affiliated with it or when the local church amended its charter in 1981 to disaffiliate); *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States,* 464 NE2d 454, 461-463 (N.Y. 1984) (holding that local church property was not held in trust for the national church, where the local church charter was not amended to invoke a New York statute creating a trust relationship with the national church and the national church did not have trust language in its Book of Order before the dispute arose and indeed had rejected a proposed trust provision in the past).

[7] Presiding Justice Carley relies heavily on *Carrollton Presbyterian Church v. Presbytery of South Louisiana of the Presbyterian Church (U.S.A.),* ___ S3d ___ (2011 WL 4433571, La. Ct. App. 1 Cir. Case No. 2011 CA 0205, decided Sept. 14, 2011), but we find the reasoning of the Louisiana intermediate appellate court unpersuasive. *Carrollton* misinterprets the general church constitutions in holding that the express trust provision of the PCUSA Book of Order is ineffectual because it is "inconsistent"

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Benefield's dissent cites no precedent that supports her position.[8]

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with the provision of the PCUS Book of Church Order that Timberridge opted back into, *see* footnote 4 above, which allows Timberridge to sell or encumber local church property without prior approval from the general church. *See Carrollton,* ___ S3d at ___ (2011 WL 4433571, *5). However, *Carrollton* cited no legal authority for its reasoning, which is simply wrong. In addition to contradicting the rule against construing legal documents to render a provision (the express trust clause) surplusage, it contradicts the reality that a trustee normally has broad authority to dispose of the trust corpus without prior approval of the beneficiary – although the trustee must act as a fiduciary in doing so. *See*, *e.g.*, OCGA § 53-12-261 (listing the extensive powers of a trustee of an express trust, as a fiduciary, to deal with trust property, including selling, transferring, investing, leasing, and mortgaging it, without prior approval of the beneficiary). Where a legal titleholder does need to obtain the consent of a third party to encumber or dispose of property, that may indicate that a trust exists in favor of the third party, but the converse is not true and indeed is not typical of trusts. Timberridge does not have "absolute or uncontrolled discretion to dispose of the property," nor is Timberridge both the "single trustee" and "sole beneficiary" of the property. Presiding Justice Carley's Dis. Op. at 3. To the contrary, the Book of Order to which Timberridge submitted explicitly states that the local church holds property "in trust nevertheless for the use and benefit of the [PCUSA]." Finally, the *Carrollton* court's reliance on Louisiana trust statutes, *see* ___ S3d at ___ (2011 WL 4433571, *6), is inconsistent with this Court's precedents applying Georgia statutes in church property cases. *See* Division 2(b) above.

[8] Judge Benefield questions whether this case should be decided on summary judgment, *see* Dis. Op. at 1, 8-14, but she stands alone in that view. The parties have agreed that the material facts are undisputed, and both parties moved for summary judgment. *See Timberridge,* 307 Ga. App. at 191 ("The

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Finally, we reject Judge Benefield's assertion that the neutral principles doctrine, and particularly its consideration of church governing documents, "creates a bias for the national church." Dis. Op. at 11. Before *Jones v. Wolf,* courts normally resolved property disputes in hierarchical denominations simply by deferring to the decision of the general church's ecclesiastical authorities. *See Watson v. Jones,* 80 U.S. 679, 726-729 (20 LE2d [sic] 666) (1871). *That* approach was "biased" toward the national church – and it should be noted that the four Justices who dissented in *Jones v. Wolf* did not suggest that the neutral principles doctrine was insufficiently fair to local churches but instead wanted to continue simply

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relevant facts are not generally disputed by the parties."). The trial court granted the Presbytery's motion and denied TPC Inc.'s motion, and the Court of Appeals reversed that judgment, but neither court suggested that summary judgment one way or the other was inappropriate. Moreover, as Judge Benefield acknowledges, neither party has ever enumerated error in this regard, although both parties have been on the losing side at times during the extensive appellate review of this case. The material facts – the facts regarding the documents examined under the neutral principles of law doctrine – are undisputed; whether a trust on the local church property in favor of the general church is determined to exist when that doctrine is applied is a legal determination based on those facts. Indeed, this will often be the situation, as it typically has been in this Court's (and most other courts') church property cases since *Jones v. Wolf* – which, we note, was itself a summary judgment case from Georgia. *See Jones v. Wolf,* 244 Ga. 388 (260 SE2d 84) (1979) ("*Jones II*") (affirming, on remand from the U.S. Supreme Court, the trial court's judgment for the local church based on the neutral principles doctrine).

to defer to the general church to avoid First Amendment concerns. *See* 443 U.S. at 620-621 (Powell, J., dissenting).

The neutral principles doctrine, as approved by the majority in *Jones v. Wolf* and as applied by this Court, allows hierarchical denominations to structure the property relationships between the general and local churches before disputes arise. The result is not pre-ordained; it depends on the deeds, statutes, and national and church governing documents. What has happened over the years since *Jones v. Wolf* is that many hierarchical denominations have added more explicit property provisions to their general and local church governing documents, as the Supreme Court said would be appropriate. *See* 443 U.S. at 606. Thus, instead of our finding no mention of property issues in those documents, *see Jones II,* 244 Ga. at 389-390 (finding no trust for the general church where review of the "corporate charters, relevant deeds, and the organizational constitutions of the denomination" found only "silence"), we find provisions showing either that the general church does not control local church property, *see Georgia Dist. Council of Assemblies of God,* 267 Ga. at 61 & n.2, or, as in this case and others, provisions showing that local church property is held in trust for the general church. Applying the neutral principles with an even hand, we simply enforce the intent of the parties as reflected in their own governing documents; to do anything else would raise serious First Amendment concerns.

3. Conclusion

In sum, the resolution of this church property dispute in the national church's favor does not rest on the "mere connectional relationship between a local and national church." *Carnes,* 236 Ga. at 35. Instead, our decision derives from the specific language of the governing documents adopted by the local and national churches, supported by the policy reflected in OCGA § 14-5-46 and not contradicted by the deeds at issue. It is based, therefore, on the sort of legal materials "familiar to lawyers and judges," embodied in "legally cognizable form," and having nothing to do with the church's religious doctrine. *Jones v. Wolf,* 443 U.S. at 603, 606. Like the trial court, we conclude that neutral principles of law demonstrate that an implied trust in favor of the PCUSA exists on the local church's property to which TPC Inc. holds legal title. *See Barber,* 274 Ga. at 359; *Crumbley,* 243 Ga. at 345. The Court of Appeals erred in concluding to the contrary.

Judgment reversed. Benham, Thompson, and Melton, J.J., concur. Hunstein, C.J., Carley, P.J., and Chief Judge Deborah C. Benefield dissent. Hines, J. not participating.

CARLEY, Presiding Justice, dissenting.

The majority is mistaken in disregarding, as wrongly decided, *Carrollton Presbyterian Church v. Presbytery of South Louisiana of the Presbyterian Church (USA),* ___ S3d ___ (La. App. 1 Cir. Case Number 2011 CA 0205, decided September 14, 2011), which is apparently the only precedent in the entire nation which is directly on point. Moreover, the majority has contrived an opinion which purports to make a thorough examination of the documents relevant to the "neutral principles of law" doctrine and to find the existence of a trust pursuant thereto even though it virtually ignores a necessary element of trusts.

As the majority acknowledges, Timberridge gave the Presbytery timely notice of the congregation's "vote[ ] to take the 'property exemption' as provided in the Book of Order (G-8.0700)." The majority opines that Timberridge "plainly could not opt out of the property trust provision in Section G-8.0201, which mirrored the one in Section 6.3 of the PCUS Book of Church Order. [Cit.]" (Emphasis omitted.) Majority Opinion, p. 25. As the majority recognizes, § G-8.0701 provides that a local church could opt out of a property provision of the Book of Order (BOO) within eight years after the 1983 formation of the Presbyterian Church in the United States of America (PCUSA) if the local church was not "subject to a similar provision of the Constitution of the church of which it was a part" prior to that formation. Although the property trust provision in § 6.3 of the

prior 1982 PCUS Book of Church Order (BOCO) is indeed substantially similar to BOO § G-8.0201, the majority misses the full import of the similarity requirement.

> G-8.0701 allows a church to be excused from a provision in that chapter of the Book of Order that is *not* substantially similar to a provision of its prior governing constitution. As the two purported express trust provisions in the Book of Order and [Timberridge's] prior governing constitution (The Book of Church Order) *are* substantially similar, this could only mean that G-8.0701 provided [Timberridge] a means of opting out of G-8.0501, which requires the presbytery's authorization to sell, mortgage, or encumber property, since that provision is in sharp contrast to § 6-8 of The Book of Church Order, which allowed a church to buy, sell, or mortgage "property of that particular church [in the conduct of *its* affairs as a church of the PCUS]." . . . "[T]he unfettered right to dispose of all of one's property is mutually exclusive of any right by a third party to dictate the disposition of that same property." (Emphasis supplied in part.)

Carrollton Presbyterian Church v. Presbytery of South Louisiana of the Presbyterian Church (USA), supra at ___. Although the Louisiana court did not cite authority in support of this neutral principle of law, it is consistent with the recognition of numerous courts and treatises that a trust fails if the trustee has absolute or uncontrolled discretion to dispose of

the property, especially where, as here, the trustee is granted the power to use the property for its own benefit. George Gleason Bogert, George Taylor Bogert & Amy Morris Hess, *The Law of Trusts and Trustees* § 162; 55A Fla. Jur. 2d *Trusts* § 31. *See also* Restatement (Second) of Trusts § 125 (1959) ("If property is transferred to a person to be disposed of by him in any manner . . . , no trust is created and the transferee takes the property for his own benefit."); 10 Ga. Jur. *Decedents' Estates and Trusts* § 17:10 (prior to Revised Georgia Trust Code of 2010, merger of legal and equitable interests resulted where single trustee was also the sole beneficiary).

"In other words, in allowing [Timberridge] to fall back on § 6-8, G-8.0701 negated any express trust as provided by G-8.0201." *Carrollton Presbyterian Church v. Presbytery of South Louisiana of the Presbyterian Church (USA), supra* at ___. Thus, the majority completely misapplies BOO §§ G-8.0201 and G-8.0701, on which it so heavily relies. Furthermore, the majority's observation that the *Carrollton* court relied on Louisiana trust statutes is immaterial, as it did so only as part of an alternative holding "even if [it was] not persuaded that [the local church] is exempt from the Book of Order's express trust provision." *Carrollton Presbyterian Church v. Presbytery of South Louisiana of the Presbyterian Church (USA), supra* at ___. Because of the ultimate negation of § G-8.0201 with respect to Timberridge, the majority is left with wholly insufficient evidence that

Timberridge's property is held in trust for the general church.

Moreover, even if the property trust provision has not been negated in accordance with the analysis of the Louisiana court, a crucial element for the existence of a trust is still not present in this case. That element is the intent of the settlor, which must be ascertained with reasonable certainty for an express trust to exist. OCGA § 53-12-20(b)(1). Alternatively, it must be "implied from the circumstances" for an implied trust to exist. Former OCGA § 53-12-2(3) (as it read prior to passage of the Revised Georgia Trust Code of 2010). Furthermore, even assuming that the majority has appropriately declined to apply Georgia's generic express or implied trust statutes, the same requirement of the settlor's intent nevertheless is found in the neutral principles approach, as articulated in *Jones v. Wolf,* 443 U.S. 595, 603-606 (III) (99 SC 3020, 61 LE2d [sic] 775) (1979):

> [T]he 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*. . . . [A] religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the *desires of the members*. . . . The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general

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

The burden involved in taking the steps suggested by the Supreme Court are minimal, as the majority states, but only if appropriate steps are taken before a dispute erupts and only if both parties have the requisite intent to create a trust. *Jones v. Wolf, supra* at 606(3). Although the majority acknowledges this intent requirement in passing, it seriously errs by failing to apply that requirement in its examination of the relevant documents.

The intention of Timberridge Presbyterian Church (Timberridge), as the local church, cannot be discerned by consideration of either the 1982 amendment to the Book of Church Order or the 1983 Book of Order. To limit judicial consideration in this manner would effectively constitute an inappropriate

deference to church doctrine and reliance on religious precepts, or even an attempted return to the unconstitutional "departure from doctrine" approach. *From the Heart Church Ministries v. AME Zion Church,* 803 A2d 548, 569-570 (III) (Md. 2002). Although the majority does consider relevant documents other than the Book of Church Order or the Book of Order, it does not articulate what it should be looking for. Where, as here, there is neither a dispositive statute nor any deed with clear trust language, a court must look in other documentation or circumstances for the local church's intention to create a trust or to consent to trust provisions in national church documents. *From the Heart Church Ministries v. AME Zion Church, supra* at 570-571 (III).

The Articles of Incorporation for Timberridge Presbyterian Church, Inc. (TPC Inc.) are a remarkably slender reed on which to hang the weight of the majority opinion. The majority relies upon the Articles' reference to the definition of "active member" in the Book of Order but fails to quote the whole definition, which reads as follows:

> An active member of a particular church is a person who has made a profession of faith in Christ, has been baptized, has been received into membership of the church, has voluntarily submitted to the government of this church, and participates in the church's work and worship.

BOO § G-5.0202. This provision is "located outside the property section of the Book of Order." *First*

Presbyterian Church of Schenectady v. United Presbyterian Church in the United States, 464 NE2d 454, 462 (III) (N.Y. 1984). Like the overall intent of the Book of Order, the purpose of that definition clearly is spiritual. The portion on which the majority relies is that an active member has "voluntary [sic] submitted to the government of" the general church. This provision strongly implies in the context that the member has submitted to the authority of the general church only in spiritual matters. *See Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church,* 489 A2d 1317, 1325 (II) (Pa. 1985). *See also* BOO § G-9.0102 (ascribing to the governing bodies of the general church "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"). Moreover, the definition of "active member" relates only to individual members, and not to local churches or their relationship with the general church. Thus, judicial inquiry into and application of that definition is both irrelevant and constitutionally foreclosed. *See First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States, supra*.

Furthermore, the prohibition in the Articles of Incorporation on bylaws which conflict with the Book of Order is likewise irrelevant to Timberridge's intent with respect to the property trust provision in the Book of Order. Article IX of the Articles of Incorporation actually prohibits bylaws or amendments thereto

which conflict with either the Articles or the Book of Order. Furthermore, Article X permits amendment of the Articles of Incorporation by majority vote of the members and does not prohibit any conflict thereof with the Book of Order. The majority cannot logically insist that Article IX is relevant but that Article X is not. Either both are irrelevant, or both are relevant in opposite ways. If the proscription on conflicting bylaws in Article IX indicates that Timberridge is subject to the Book of Order and its property trust provision, then the omission in Article X of any such proscription on conflicting amendments to the Articles necessarily provides the contrary indication that Timberridge is not subject to the Book of Order or its trust provision. Moreover, because Article IX indisputably does not make the Articles themselves subject to the Book of Order, the absence of any actual amendment to the Articles cannot show that TPC Inc. subjected itself to the Book of Order or its trust provision, especially in light of Article VI. That Article broadly grants TPC Inc. all of the powers conferred by the Georgia Nonprofit Corporation Code, including, but not limited to, the power "to receive, hold, encumber, manage, and transfer property, real or personal; to accept and execute deeds of title to such property; [and] to hold and defend title to such property. . . ." Nothing in the Articles of Incorporation states or implies any intent or consent that Timberridge's property be held in trust for the general church.

In the face of the exceedingly weak or non-existent documentary evidence of Timberridge's intent to hold all of its property in trust for the general church, other relevant documentation and circumstances overwhelmingly prove the absence of any such intent. Timberridge operated for more than 150 years, including over 100 years as a member of the Presbyterian Church in the United States (PCUS), without any property trust provision. As explained by the Court of Appeals, and apparently accepted by the majority, there is no evidence that any representative of Timberridge was aware of or assented to either the adoption of the 1982 property trust amendment to the Book of Church Order or the adoption of the property trust provision or opt-out clause in the 1983 Book of Order. *Timberridge Presbyterian Church v. Presbytery of Greater Atlanta,* 307 Ga. App. 191, 199 (1)(d) (705 SE2d 262) (2010). It cannot be said that Timberridge voluntarily affiliated with the general church in 1983. The Articles of Agreement providing for the 1983 reunion of the PCUS with the United Presbyterian Church in the United States of America (UPCUSA) mandates that "[e]ach and every congregation of the [PCUS] and of The [UPCUSA] shall be a congregation of the Presbyterian Church (U.S.A.)." Article 1.4. Thus, instead of being required to "opt in," each local church was automatically part of the new general church and was given eight years to petition for dismissal or to seek an exemption from the provisions of the property chapter of the Book of Order.

Timberridge did not wait eight years, but rather acted in four years. In fact, Timberridge acted just two weeks after the last individual owner conveyed her interest in the land to Timberridge, and the Presbytery was promptly notified as required. More important, Timberridge broadly took "the 'property exemption' as provided in the Book of Order (G-8.0700)" and did not limit that notice to a single provision of the property chapter. Most important of all, Timberridge's notice, regardless of the precise application of that chapter's language thereto, constituted Timberridge's only expression of intent with respect to the recently enacted property trust provisions in national church documents. In that prompt notice, Timberridge unmistakably rejected any consent to hold its property in trust for the general church. It is irrelevant that 20 years elapsed thereafter during which Timberridge continued its relationship with the general church until a dispute arose and Timberridge brought suit asserting control of its property. Those circumstances are wholly consistent with the fact that Timberridge, which never expressed any intent to create a trust, was relying on its prompt notice of exemption from property trust provisions as its expression of intent not to create a trust. Compare *Kemp v. Neal,* 288 Ga. 324, 329 (2) (704 SE2d 175) (2010); *Holiness Baptist Assn. v. Barber,* 274 Ga. 357, 359 (552 SE2d 90) (2001); *Crumbley v. Solomon,* 243 Ga. 343, 345 (254 SE2d 330) (1979); *Rector, Wardens and Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga.,* 305 Ga. App. 87 (699 SE2d 45) (2010)

(where local church recorded charter making it subject to national church's canons, reaffirmed such accession after enactment of property trust canon, took no steps to disavow that canon for 30 years, and sought permission to sell or incur indebtedness on property), aff'd, ___ Ga. ___ (Case Number S10G1909, decided November 21, 2011).

In sum, the majority erroneously rejects the most relevant precedent, which demonstrates the negation of the property trust provision in § G-8.0201 by § G-8.0701. Moreover, the majority disregards a basic principle of trust law which is subsumed in the "neutral principles" approach to church property disputes, and Timberridge proved that it never intended to place any of its property in trust for the general church or in any way to consent to trust provisions in national church documents. Accordingly, I can only conclude that the Court of Appeals correctly reversed the trial court's grant of summary judgment in favor of the Presbytery, and I therefore respectfully dissent.

I am authorized to state that Chief Justice Hunstein joins in this dissent.

BENEFIELD, DEBORAH C., Judge, dissenting.

The courts have virtually ignored the summary judgment standard in church property disputes thereby giving little credence to the opportunity for the parties to have a jury, as opposed to a judge,

decide the issues. *Carnes v. Smith,* 236 Ga. 30 (222 SE2d 322) (1976); *Rector of Christ Church v. Bishop of the Episcopal Diocese of Ga., Inc.,* 305 Ga. App. 87 (699 SE 2d 45) (2010); cert. granted *Rector v. Bishop in the Episcopal Diocese of Ga.,* 2011 Ga. LEXIS 53 (Jan. 13, 2011), as well as this case. "[T]he civil courts use 'neutral principles of law,' i.e., statutes, charters, relevant deeds of conveyance, and the organizational constitutions and bylaws of the denomination, to resolve hierarchical church property disputes." *Kemp v. Neal,* 288 Ga. 324, 326 (704 SE2d 175) (2010) (plurality). Therefore, the *only* forms of evidence to be considered in these cases are deeds, statutes, and local and national church documents leaving little to no room for parol evidence as to the uniquely factual issue of intent.[1]

There are church property cases decided solely on the national church's documents demonstrating the grantor's intent by looking at the beneficiary's impression of a trust, apparently due to the alleged grantor's "affiliation" with the national church and

[1] Apparently, the courts recognize an unacknowledged fifth form of evidence and that is the local church's alleged acceptance of benefits from the greater church. "Because [the local congregation] remained a member of the [greater church] and accepted the benefits flowing from that relationship, it cannot now deny the existence of a trust for the benefit of the general church." *Crumbley v. Solomon,* 243 Ga. 343, 345 (254 SE2d 330) (1979). *Also see* the majority's opinion, pgs. 7-8. Local churches sometimes deny the value of the purported benefits received. *Carnes, supra.* (the local church separated from the general church because they were not granted a full-time pastor.)

the purported "benefits" enjoyed by the grantor thereby. *Kemp, supra*, at 328-329; *Crumbley v. Solomon,* 243 Ga. 343, 344-345 (254 SE2d 330) (1979); *Carnes, supra*. Affiliation with the national church, and purported benefits of it, have not been articulated as a neutral principle of law. Inasmuch as this "affiliation" is not a deed, statute or church document and it is being relied on to demonstrate intent, perhaps it creates a genuine issue of material fact assuming opposing affidavits to the contrary as in this case. (*See* affidavits of Dan Patterson, a trustee of TPC, Inc., and Michael L. West, the CEO of TPC, Inc.) Conversely, it is perhaps a judicial acknowledgment that it is insufficient to decide these critical cases on deeds, statutes and church documents alone.

Often the deeds (or land grant) do not establish a trust holding the property for the greater church. *See Carnes; Christ Church; Kemp* and *Crumbley*, *supra*. In determining intent, this is viewed as irrelevant, "neutral" or in some roundabout way proof of the grantor's intent. As the majority opinion notes, "[i]t is true that [the deeds do not] show an intent by the grantors to create a trust." Maj. Op. at 12. When in truth, it was either created or it was not and a review of the deed would quickly demonstrate which was true. The majority continues "[b]ut [the deeds] also do not expressly preclude the creation of one. Given [the provision in the national church's constitution] Timberridge would have no reason to believe that its deeds needed to recite a trust in favor of the general church . . . " *Id.*, *see also Christ Church, supra*, at

89-90. It would seem just as easily [sic] to follow that Timberridge had no intention of creating a trust since they did not provide one in the deeds as they easily could have. What would be the purpose of including language "this instrument does not create a trust" in a deed?

The statutes are also generally found to be inapplicable, *Kemp, supra*, or as the majority states, unnecessary or inappropriate in the resolution of this case. In reversing the Court of Appeals, the majority concludes that "the fact that a trust was not created under our state's generic express . . . trust statute[ ] does not preclude the implication of a trust on church property under the neutral principles of law doctrine." Maj. Op. at 20. Presumably, it would also not compel the implication of a trust. The majority minimizes reliance on OCGA § 53-12-20, Georgia's express trust statute, even as persuasive authority, and strongly criticizes the Court of Appeals for incorrectly relying on it.

Even the majority takes issue with the applicability of OCGA § 14-5-46. As the majority concedes, "[a]lthough the Court of Appeals' reason for not applying [the code section] was erroneous, we note that this Court and the Court of Appeals have failed to analyze another component of the statutory text in our modern cases, namely, whether the property was conveyed 'for the purpose of *erecting* churches or meeting houses.'" (Emphasis in original.) Maj. Op. at 14-15.

Nonetheless, the majority looks to OCGA § 14-5-46 as an expression of "this State's policy of looking to 'the mode of church government or rules of discipline' in resolving church property disputes, even when the statutory text does not squarely apply." *Id.* at 15. This argument begs the question why OCGA § 53-12-20 cannot likewise be used, at a minimum, as an expression of the State's policy.

Despite its apparent inapplicability, the majority asserts that OCGA § 14-5-46 "weigh[s] in favor of the trial court's judgments under our precedents . . . ", *id.* at 16, yet does not concede that OCGA § 53-12-20 weighs against those judgments demonstrating the bias of "neutral principles of law" as it has evolved in favor of the national church.

The majority relies on Timberridge's Articles of Incorporation to demonstrate its intent to establish a trust in favor of PCUSA. Without deeds and statutes to resolve the dispute all that is left to the majority are the respective church's documents. Since the majority interprets Timberridge's Articles of Incorporation to "unequivocally submit Timberridge *and its property* to the PCUSA as its governing authority," (emphasis supplied), *id.* at 21, it is necessary to review them.

In Division 1 the majority quotes a portion of Article 4 of the Articles of Incorporation of Timberridge Presbyterian Church, Inc., which states the corporation is "to be a church institution which is a member of the Presbytery of Atlanta of the [PCUSA], or any

successor Presbytery thereof." Further examination of the Article shows that use of the quoted sentence violates the neutral principles of law doctrine and should not have been relied upon by the majority in finding the intent of Timberridge as it began by stating the "purposes for which the Corporation is organized are the proclamation of the Gospel for the salvation of humankind . . . " which deviates from the role of civil courts to decide these disputes without reference to ecclesiastical matters.[2]

The majority then quotes the requirement found in the Articles of Incorporation, that "the corporation's members must be 'active members' of Timberridge 'as defined in the Book of Order of the [PCUSA],' which defines an 'active member of a particular church' to be a person who has 'voluntarily submitted to the government of this [general] church.'" Citing § G-5.0202. Maj. Op. at 21. The quote relied on by the majority has a footnote defining the term "government" by

[2] The majority reproaches the dissenters for quoting ecclesiastical portions of the church documents, however, the quotes are an effort to demonstrate it is the majority that is delving into, and relying on, ecclesiastical matters in their decision and not the dissenters. As noted by the dissent in *Jones v. Wolf, supra* at 612, church documents "tend to be drawn in terms of religious precepts. Attempting to read them 'in purely secular terms' is more likely to promote confusion than understanding." By parsing out the secular terms from the scriptural references in the national church's Book of Order, the majority has purportedly found the local church's intent thereby creating bias for the national church, rather than a true understanding of the intent of both parties.

citing two biblical passages.[3] Therefore, it is artful for the majority to say they are not quoting the biblical portions of the PCUSA's Constitution. Furthermore, as Presiding Justice Carley points out in his dissent, this definition of "active member" is outside of the property section of the Book of Order and again sounds in spiritual terms.

The majority's contention that Timberridge's articles "unequivocally submit Timberridge and its property to PCUSA as its governing authority," Maj. Op. at 21, is tempered by the majority's admission that Timberridge may not have rendered itself subject to the authority of PCUSA "in *all* temporal matters." (Emphasis in original.) *Id.* at 23. A review of the Book of Order demonstrates there is not an area of church governance, including temporal matters, that is not addressed. Nonetheless it is "clear" to the majority that "[b]y adopting these Articles of Incorporation, TPC Inc., with unmistakable clarity, agreed to bind itself to," *id.*, the Book of Order's explicit property trust provision. This conclusion is particularly troublesome since they rely heavily on the national church's constitution, as opposed to

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[3] "They serve at a sanctuary that is a copy and shadow of what is in heaven. This is why Moses was warned when he was about to build the tabernacle: 'See to it that you make everything according to the pattern shown you on the mountain.'" Heb. 8:5. (NIV)

"Peace and mercy to all who follow this rule, even to the Israel of God" Gal. 6:16. (NIV)

simply relying on the articles, to reach this conclusion.

The majority maintains that "[o]ur decision derives from the specific language of the governing documents adopted by the local and national churches, supported by the policy reflected in OCGA § 14-5-46 and not contradicted by the deeds at issue." *Id.* at 31. Could the majority not as easily declare that "[o]ur decision derives from the specific language of the governing documents . . . supported by the policy of OCGA § 53-12-20 and not contradicted by the deeds at issue?"

In finding intent neither the trial court, the Court of Appeals nor the majority have cited the summary judgment standard.[4] It is also true that neither of the parties have argued that summary judgment was inappropriate in this case. This may be because the "neutral principles of law" construct, as it has evolved in this state, virtually eliminates any genuine and material issues of fact by foreclosing parol evidence as to intent despite the "affiliation"

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[4] Where this dissenter stands alone, as characterized by the majority, is not whether summary judgment should be granted under the current application of the neutral principles of law doctrine, rather it is whether the law should be changed to permit additional types of evidence to show the intent of both parties. As noted by the dissent in *Jones v. Wolf,* " 'the neutral principles of law' approach operates as a restrictive rule of evidence," at least in its current incarnation. *See Jones,* 443 U.S. at 611.

argument.[5] As a result, we have institutionalized "trial by judges" in the area of church property cases.

The majority argues that the application of the neutral principles of law doctrine does not create a bias for the national church and it allows this Court to be "even handed" in resolving church property disputes. This argument is a paternalistic assurance to the parties that the courts have developed a system to resolve church property disputes without the bothersome need of a jury. After all, juries may tread on the church's first amendment rights. Trust us. We know best.

As quoted in Justice Carley's dissent in *Kemp, supra*, 288 Ga. at 332, "[t]he majority's determination that a hierarchical church can unilaterally impress a trust in its favor of local congregational property depends on dicta in *Jones v. Wolf,* . . . but effectively ignores

> the important qualification in the *Jones v. Wolf* dicta that the obligation of civil courts is to honor "the result indicated by the parties." [Cit.] In simpler language, civil courts must give effect to bilateral agreements, and a unilateral declaration of trust by the putative beneficiary is not a bilateral agreement

[5] In the majority's response to this dissent, no mention was made as to how evidence of the local church's "affiliation" with the national church fits into the tight construct of the neutral principles of law doctrine and how they can rely on it as a matter of law when it is a fact that is in dispute in this case.

> . . . [The majority's] decision to grant hierarchical churches a unique authority to impress a trust upon property they do not own merely by declaring that the church is the trust beneficiary of that property is [a] . . . startling cession of governmental power to a religious organization.

Quoting Calvin Massey, Church Schisms, Church Property, and Civil Authority, 84 St. John's L. Rev. 23, 46-49 (III) (2010).

Despite this, the majority in the case *sub judice* states their decision is "based . . . on the sort of legal materials 'familiar to lawyers and judges,' embodied in a 'legally cognizable form,' and having nothing to do with the church's religious doctrine," quoting *Jones v. Wolf*. Maj. Op. at 31. In what non-church property case is the grantor's intent found solely in a self serving document created by the grantee determined to be a "legally cognizable form"?

Calvin Massey's quote in the *Kemp* dissent goes on to provide:

> This is . . . the . . . extraordinary power to seize property by divesting others of their beneficial interests in the property . . . Donors of property to local churches are not necessarily members of the hierarchical church. Such donors have no assurance that their intent to transfer property in trust for the exclusive benefit of the local church, and not the hierarchical church, will be honored. All the general church would need to do is

> alter its own internal governing instruments to nullify the explicit intentions of donors.

Granted, the Court in *Kemp* decided the case solely on one page of the national church's constitution and though it may be argued that there is more evidence of intent in this case, the point is that the church's property is being taken as a matter of law and not by the consideration of intent by a jury.

Perhaps it is time to acknowledge that the "neutral principles of law" approach as it has evolved creates a bias for the national church and it is time to correct its application so that we can truly look for, as well as fairly determine, the real intent of the parties. There is no clearer example of the need for this correction than the per curiam decision in the *Kemp* case. In *Kemp,* the real property of a local church was awarded to the national church based upon one page of its Book of Discipline and the "affiliation" of the local church with the greater one. Presiding Justice Carley's dissent pointed out that "the local church obtained title long before adoption of the trust provision on which the majority relies." *Kemp, supra*, at 332. There were no deeds of conveyance, the statutes were inapplicable and there were no local church documents. Affidavits of two long-time church members averring that there was no question concerning the local church's right of ownership of the property, given to a bank to obtain a loan upon which the bank relied in accepting a deed to secure the promissory note, *Kemp, supra*, footnote 2, were presumably not

considered because they were not relevant to the application of the neutral principles of law doctrine. "When a local church has a relationship with a national church and accepts the benefits afforded to it as a result of that relationship, the local church cannot deny the existence of a trust for the national church as recited in the constitution of the national church."[6] (Citations omitted.) *Kemp, supra*, at 329. Based on *one page* of the Book of Discipline[7] and the local church's "affiliation" with the national church, the local church lost its property to the national church. Is this the even-handedness of which the majority speaks?

This Court, as the highest court in Georgia, is, and has been, appropriately concerned with protecting the church's first amendment rights to freedom of religion and the establishment of churches. However, it appears by applying the neutral principles of law construct as it is currently employed, the parties are being denied the right to a jury trial. Churches

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[6] The local church denied receiving such benefits and, ironically, when the local church argued that as a result the "trust was breached," the *Kemp* Court stated: "We know of no neutral principle of law that embodies appellants' position, and civil courts may not rely on doctrinal concerns or ecclesiastical principles when deciding disputes between churches." *Kemp, supra*, at 329-330.

[7] It was the only portion of the Book of Discipline placed in the record by the parties.

should not be required to give up one right to protect another.[8]

By implementing the neutral principles of law in this way, we have not earnestly looked for the intent of *both* parties. And if we have not, then we have failed not only the pew sitters in the particular churches, but also the overriding directive of *Jones v. Wolf* to resolve church property disputes by ascertaining "'the intention of the parties' . . . regarding beneficial ownership of the property at issue as expressed . . . in a 'legally cognizable form.'"

The majority opines that "Judge Benefield's dissent cites no precedent that supports her position," Maj. Op. at 28-29, and by doing so ignores the point of this dissent. This Court can change, or evolve, the neutral principles of law construct and I am suggesting that it should and, for that, *Jones v. Wolf* provides the precedent: "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." (Emphasis added.) *Jones v. Wolf, supra* at 602. For the reasons stated in this dissent, it is time to reform the standard employed.

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[8] *See Culpepper v. State,* 132 Ga. App. 733 (209 SE2d 18(3) (1974) (a defendant's testimony at a motion to suppress could not be used against him in the State's case at trial because that would force him to forfeit a valid Fourth Amendment claim or waive his Fifth Amendment privilege against self-incrimination.)

November 30, 2010

In the Court of Appeals of Georgia

FOURTH DIVISION
SMITH, P. J.,
MIKELL and ADAMS, JJ.

A10A1611, A10A1612. TIMBERRIDGE PRESBYTERIAN SM-074, CHURCH, INC. v. PRESBYTERY OF GREATER 075 ATLANTA, INC. (Two Cases)

SMITH, Presiding Judge.

In these appeals transferred from the Supreme Court of Georgia, we must once again venture into the thorny and contentious arena of church property disputes. The issue presented here is whether a church corporation and its property are controlled by Timberridge Presbyterian Church, Inc. ("Timberridge"), a local church which has voted to disaffiliate from the Presbyterian Church (USA) ("PCUSA"), or controlled by the Presbytery of Greater Atlanta, Inc. ("the Presbytery"), the regional body representing PCUSA. Because the application of "neutral principles of law" to all the relevant documents does not demonstrate that the regional body has the right to control the local church corporation or its property, the trial court erred in granting summary judgment in favor of the Presbytery. We therefore reverse the judgment of the trial court.

The relevant facts are not generally disputed by the parties. Timberridge Presbyterian Church was founded as an unincorporated association in 1829.

In 1880, Timberridge became affiliated with the Presbyterian Church in the United States ("PCUS"), sometimes called the "southern church." In the early 1980s, a union was proposed between PCUS and the United Presbyterian Church in the U.S.A. ("UPCUSA"). The union officially occurred in 1983, forming the PCUSA. Timberridge was incorporated as Timberridge Presbyterian Church, Inc. in 1984. The PCUSA allowed member churches a period of eight years after its formation to opt out of certain provisions in its Book of Order pertaining to local church property, and in 1987 Timberridge attempted to exercise this option, although PCUSA contends that attempt was ineffectual.

In 2007, Timberridge filed a complaint for declaratory judgment and petition for injunction seeking a declaration with regard to the existence of any trust in its property in favor of the Presbytery or the PCUSA. Approximately two weeks later, PCUSA filed an answer and counterclaim seeking injunctive relief and bad faith attorney fees. About two months after that, Timberridge voted to disaffiliate from the PCUSA. The Presbytery then filed a separate action in ejectment seeking a writ of possession, damages, and injunctive relief forbidding Timberridge from using the name "Timberridge Presbyterian Church" or controlling the church corporation.

The parties filed cross-motions for summary judgment, and the trial court entered substantially identical orders in both actions, declaring that an express trust was created by the property trust

provision of the PCUSA Book of Order and that Timberridge and its members and pastor no longer had the authority to control the church corporation. Both cases were appealed to the Georgia Supreme Court, and then transferred together to the Court of Appeals. Because we agree with the trial court that the same principles of law apply to both cases, we have consolidated them for purposes of appeal.

1. In Timberridge's first enumeration of error, it complains that the trial court erred in its application of the "neutral principles of law" analysis of the property dispute.

> It is well settled that civil courts cannot intervene in doctrinal disputes within a church. However, where a church property dispute can be resolved without regard to the doctrinal disputes, a court is authorized to render a decision that enforces the legal rights of the parties. Georgia law recognizes two basic types of church government: congregational and hierarchical. A congregational church is strictly independent of other ecclesiastic associations and owes no fealty or obligation to any higher church government authority. If the church government is congregational, then a majority of its members control its decision and local church property. A hierarchical church, on the other hand, is "organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." If a church is hierarchical, then we must use "neutral principles of law" to determine

> whether the local church or parent church has the right to control local property. Neutral principles of law include state statutes, corporate charters, relevant deeds, and the organizational constitutions and bylaws of the denomination.

(Citations and footnotes omitted.) *Rector of Christ Church v. Bishop of the Episcopal Diocese of Georgia,* 305 Ga. App. 87, 88 (699 SE2d 45) (2010). In applying this "neutral-principles approach," we look to the intention of the parties as provided in the deeds, corporate charter, or constitution, and "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(III) (99 SC 3020, 61 LE2d [sic] 775) (1979).

Here, the parties do not dispute that the Presbyterian Church (USA) is hierarchical, as distinguished from congregational, in government.[1] We therefore apply neutral principles of law in examining the relevant statutes, applicable deeds, and the corporate and organizational documents of the local church as well as those of the national denomination to determine the intention of the parties. *St. Mary of Egypt Orthodox Church v. Townsend,* 243 Ga. App. 188, 190 (532 SE2d 731) (2000).

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[1] Some decisions refer to the "hierarchical" form of church government as "connectional," but the same test applies. *Carnes v. Smith,* 236 Ga. 30, 32(1) (222 SE2d 322) (1976).

A. Relevant Statutes. The parties agree that OCGA § 14-5-46 is relevant here, but disagree as to its precise application and whether it controls the issue before us. That Code section provides:

> All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies.

The Presbytery asserts that the final sentence of this Code section mandates that the national rules of the PCUSA exclusively control the disposition of local church property. But we cannot read that sentence in isolation from the remainder of the section, which is limited on its face to "deeds of conveyance." And nothing in the language of the Code section limits its application to the rules of the *national* church.

We may not consider such rules as the exclusive or dispositive factor in determining the control of the

property at issue. In applying neutral principles of law as required by the United States Supreme Court and the Supreme Court of Georgia, we cannot ignore relevant statutes, documents of the local body, or the actual language of the relevant deeds, in favor of the rules of the national body. The narrow approach urged by the Presbytery would result in a de facto "rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved," as disapproved by the United States Supreme Court in *Jones v. Wolf, supra*, 443 U. S. at 605(III).

We conclude that OCGA § 14-5-46 is to be read in harmony with the principles established for the resolution of church property disputes: We apply neutral principles of law to "the intents, uses, and purposes contained in the deeds of conveyance," as well as "the mode of church government or rules of discipline exercised by such churches or religious societies," on the local, regional, and national level as those pertain to the property at issue.

We must also consider the application of the Georgia Trust Act, OCGA § 53-12-1 et seq., as that chapter governs the creation and interpretation of trusts. The Presbytery asserts, and the trial court held, that the provisions of Georgia trust law relied on by Timberridge are inapplicable and that OCGA § 14-5-46 exclusively controls church property disputes. But

> [a]ll statutes are presumed to be enacted by the General Assembly with full knowledge of

> the existing condition of the law and with reference to it, and are therefore to be construed in connection and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the Constitution, but also with reference to other statutes and decisions of the courts.

(Citations and punctuation omitted.) *Georgia Public Defender Standards Council v. State of Georgia,* 284 Ga. App. 660, 663(2) (644 SE2d 510) (2007).

Nothing in OCGA § 14-5-46 abrogates any other provision of Georgia law; rather, by its terms it refers to the validity of deeds of conveyance "for the uses and purposes expressed in the deed," not to the imposition of a trust in favor of any use or purpose as expressed in other documents. The only reference to a trust in the statute is to a deed "to trustees for the use of any church or religious society," but the deeds at issue here do not convey the property to trustees, nor to the Presbytery or PCUSA, but simply to "Timberridge Presbyterian Church" or "Timberridge Presbyterian Church, Inc." OCGA § 14-5-46 therefore cannot be applied here without reference to other statutory and case law, particularly where the imposition of a trust is alleged in the absence of any reference in the deeds.

In addition, while the trial court concluded that *Crumbley v. Solomon,* 243 Ga. 343 (254 SE2d 330) (1979), and *Carnes v. Smith,* 236 Ga. 30, 32(1) (222

SE2d 322) (1976), supported an exclusive consideration of OCGA § 14-5-46 because neither case cites OCGA § 53-12-20, that conclusion is erroneous. Those decisions do not cite the express trust provisions now codified in OCGA § 53-12-20[2] because those cases involved *implied* trusts. *See Crumbley,* 243 Ga. at 345 (trust implied for benefit of general church); *Carnes,* 236 Ga. at 39(1) (implied trust intended by founders of local church in favor of national denomination). And in *Carnes,* upon which *Crumbley* relied, 243 Ga. at 345, the Georgia Supreme Court explicitly declared that it considered the Georgia statutes governing *implied* trusts, former Ga. Code Ann. §§ 108-106 and 108-107.[3] *Carnes, supra*, 236 Ga. at 37(1). For these reasons, we do not limit our consideration of statutory law to the provisions of OCGA § 14-5-46.

The applicable version of OCGA § 53-12-20 provided in pertinent part:[4]

> (a) An express trust shall be created or declared in writing.

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[2] The statutes pertaining to trusts were extensively revised and renumbered in 1991 as the Georgia Trust Act. The provisions of OCGA § 53-12-20 were found in relevant part in former Ga. Code Ann. §§ 108-104 and 108-105.

[3] The language of former Ga. Code Ann. § 108-106 has been adopted in part in OCGA §§ 53-12-90 through 53-12-93, and that of former Ga. Code Ann. § 108-107 in part in OCGA § 52-12-93 [sic].

[4] OCGA § 53-12-20 was amended in 2010 to add a requirement that the writing be signed by the party to be charged.

> (b) An express trust shall have each of the following elements, ascertainable with reasonable certainty:
>
> (1) An intention by a settlor to create a trust. . . .

These requirements are entirely consistent with determining the intention of the parties by applying neutral principles of law to all the relevant deeds, statutes, constitutions, and charters of the local and national churches.

B. Deeds. Having determined the applicable statutes, we now turn to the relevant deeds of conveyance. As noted in Division 1(a), above, the deeds at issue here do not convey the property to trustees, nor to the Presbytery or PCUSA, but simply to "Timberridge Presbyterian Church" or "Timberridge Presbyterian Church, Inc." The language contained in deeds can be significant, and even controlling in certain circumstances. In *First Evangelical Methodist Church v. Clinton,* 257 Ga. 459-460(1, 2) (360 SE2d 584) (1987), the Georgia Supreme Court considered the language of two deeds as dispositive in determining the ownership of church property, reaching different results as to each deed. The first deed conveyed property to trustees "in connection with the affiliations aforesaid" with a connectional church. The court held that the deed vested title in the connectional church, and when the local church severed its relationship with that church it "forfeited its right of use and possession." *Id.* at 460(1). But as to a second deed which contained no trust language and no

restriction regarding its use, "the application of neutral property principles must yield a contrary result," and the court held the conveyance was to the local church and the parcel remained its property. *Id.* at 460(2).

Timberridge asserts as controlling here the general rule that "the intent of the parties must be determined from the deed's text alone." *Second Refuge Church &c. v. Lollar,* 282 Ga. 721, 725(2) (653 SE2d 462) (2007). As we observed above with respect to the Presbytery's contentions that the "mode of church government or rules of discipline" language of OCGA § 14-5-46 is dispositive, such an approach is too narrow and does not comport with the neutral application of legal principles to the facts of this case. We must consider all relevant documents. But the absence of any trust language in the deeds, whether to local trustees or in favor of the Presbytery or the national church, weighs against the creation of a trust.

C. Local Church Documents. We next consider the effect of the corporate documents of Timberridge. The trial court held that the references in the Timberridge Articles of Incorporation to the PCUSA and to its Book of Order "evidence a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church . . . and that it subjected itself to the rules of governance of the PCUSA by referencing the PCUSA Book of Order." Based on this analysis, it also held that the corporation was a PCUSA entity and

that the members, pastor and elders of Timberridge were no longer authorized to control the corporation. In so doing, the trial court relied upon our decision in *St. Mary, supra*, 243 Ga. App. 188. We disagree with both of these findings.

In *St. Mary,* the local parish adopted uniform parish bylaws that were issued by the diocese and were "standard and obligatory for all parishes" in the diocese. *Id.* at 192. Those bylaws provided that no parish decision "with regard to the property shall be contrary to or in conflict with" the national church statutes, and that "all decisions and resolutions made by the parish in annual or special meetings shall be sent to the bishop for confirmation and that they do not become effective until receipt of such confirmation." *Id.* And, "[m]ost significantly, the articles of incorporation for St. Mary's explicitly affirm the submission of the parish corporation to the hierarchical authority of the OCA, stating: 'The corporation shall be subordinate and subject to The Diocese of the South of the Orthodox Church in America.'" *Id.*

Here, in contrast, the corporate documents do not express such clear intent to render the local church corporation subject in all matters both ecclesiastical and temporal to the authority of the Presbytery or PCUSA. The trial court correctly observed that Timberridge's articles of incorporation "*reference* the PCUSA, the presbytery[,] and the PCUSA Book of Order and provide that the bylaws of the corporation shall not be inconsistent with the PCUSA Book of Order." (Emphasis supplied.) But the only references

in the articles of incorporation are (1) that Timberridge is "a church institution which is a member of the Presbytery of Atlanta of the Presbyterian Church (USA) or any successor Presbytery thereof," (2) that "active members" will be defined as in the Book of Order of PCUSA, (3) that any bylaws enacted in the future shall not conflict with the Book of Order, and (4) that upon dissolution of the corporation its assets may be disposed of as directed by "the Presbytery of which the Church is then a member."[5] These provisions do not express any intent to create a subsidiary corporation under the complete control and authority of the parent church as in *St. Mary.*

D. National Documents. Finally, we consider the effect of the organizational constitutions and bylaws of the denomination. Section G-8.0701 of the Book of Order of the PCUSA provides:

> 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

[5] This last provision, as well as applying only when the corporation is dissolved, would seem to contemplate a possibility that the corporation might in the future change its membership, as it does not use the "successor" language of the first article.

> (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.

In 1987, four years after the formation of PCUSA, Timberridge voted at its annual meeting to "take the exemption as provided in the Book of Order." The CEO of Timberridge testified that the minutes were approved by the Moderator of the Session[6] and recorded and the Presbytery "was duly notified of Timberridge's vote to opt out of the trust provision contained in Chapter 8." This was done by letter dated November 18, 1987, stating: "the Congregation of Timberridge Presbyterian Church voted to take the 'property exemption' as provided in the Book of Order (G.-8.0700)."

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[6] The session is the governing body of a local Presbyterian church. Book of Order G-7.0103.

The former PCUS did not have a trust provision in its Book of Church Order until immediately before the merger that formed PCUSA in 1983. A provision was added to the former PCUS Book of Church Order of 1982/1983 that is identical to § G-8.0201 in the PCUSA Book of Order, but for the omission of language referring to the PCUSA, its subdivisions and its governing body:

> § 6-3. All property held by or for a particular church, 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 the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

The Presbytery urges that this amendment prevented Timberridge from opting out of the property trust provision, since Timberridge was "subject to a similar provision of the Constitution of the church of which it was a part prior to the reunion" of PCUS and UPC to form PCUSA, and that Timberridge is therefore bound by the property trust provision. While acknowledging that it received Timberridge's letter, the Presbytery through its administrative head states that it does not "interpret the November 18, 1987 letter as an exemption from the property trust clause." Instead, it contends that Timberridge opted out of a different provision of the PCUSA Book of

Order which was not included in the PCUS Book of Church Order:

> Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.

The PCUSA Book of Order, in contrast, requires the permission of the Presbytery to "sell, mortgage, or otherwise encumber any of its real property" or acquire property subject to an encumbrance.

Once again, however, this approach of focusing narrowly on a single document does not comport with the application of neutral principles of law to *all* the relevant documents. The Presbytery asserts that its interpretation of the property trust provision must control, and that Timberridge failed in its effort to opt-out and instead opted out of a different provision. But we are not considering the import of the opt out provision in isolation. Rather, we look at all the relevant documents to determine whether the parties evidenced an *intent* to create a trust and gave it "some legally cognizable form." *Jones v. Wolf, supra*, 443 U.S. at 606(III).

The Presbytery attempts to supply evidence of Timberridge's assent to an express trust in the form of an affidavit from its Associate Stated Clerk, identifying the minutes of the meeting of the Presbytery of

Atlanta at which the amendments to the PCUS Book of Church Order were voted on, and stating that the minutes reflect that Timberridge delegates were present at the meeting, that a vote was called on amendments to the Book of Church Order, "including amendments to the 'Church Property' provisions of the Book of Church Order," and that the amendments passed. But the minutes merely reflect that several amendments headed "Chapter 6, Form of Government on 'Church Property'" were voted on, without identifying the contents of any provision or the section of Chapter 6 to be amended. This affidavit does not establish that any representative of Timberridge voted for any particular amendment, was aware of the details of the property trust provision, intended to assent to it, or actually gave assent on behalf of the church. Similarly, while an affidavit from a former pastor of Timberridge states that Chapter 6 of the PCUS Book of Church Order was amended during his tenure to add the property trust clause, he does not state when he became aware of this amendment or that his knowledge was communicated to the members or elders of Timberridge.

Most importantly, none of this material provides evidence that Timberridge was aware of or assented to the adoption of the PCUSA opt-out clause or the exception it contained with respect to a local church's previous Constitution. But even if it could be inferred from this evidence that Timberridge was aware of changes in the PCUS Book of Church Order and the resulting effect on the opt-out clause of the PCUSA

Book of Order, an arguable inference is not sufficient to establish an express trust. The documents must show with "reasonable certainty" an intention on the part of Timberridge to create an express trust, OCGA § 53-12-20(b), and they do not. Rather, all the evidence "declared in writing" points towards an intention on the part of Timberridge to opt out of the property provisions of the PCUSA Book of Order, even if that attempt was only partially successful.

Read as a whole in light of the relevant law, the evidence is inadequate to show the existence of a trust in favor of the Presbytery. The evidence must reveal that "factors other than mere connectional relationship between a local and general church were present." *Carnes, supra*, 236 Ga. at 35(1). In the absence of some showing of intention and assent on the part of Timberridge, neutral principles of law cannot support the unilateral imposition of a trust provision drafted by the purported beneficiary of the trust and the resulting deprivation of the opposing party's property rights.

In addition, the absence of a property trust clause in the PCUS Book of Church Order until immediately before the reunion of PCUS and UPCUSA and the fact that Timberridge had operated without a property trust provision for nearly 200 years, distinguish this case from our earlier decisions and those of the Georgia Supreme Court in which local churches explicitly adopted express trust provisions and took no action to challenge them for extended periods of time. For example, in *Christ Church, supra*, 305 Ga.

App. 87, an express trust was established by the national church in 1979, and the local church re-recorded its charter in 1981, reaffirming its "accession to the doctrine, discipline, worship, constitution and canons" of the national church after adoption of the express trust provision. *Id.* at 96(3)(b). Moreover, the local church "failed to take any steps to disavow the canon or attempt[ ] to remove itself from the reach of . . . " the express trust provision during a 30-year period after its adoption. The local church "repeatedly sought the canonically-required consent of the Diocese of Georgia before alienating real property or incurring indebtedness, including two times after adoption of the Dennis Canon in 1979." *Id.* This was in addition to our holding that the local church had been subject to an implied trust from 1823. *Id.* at 93(3)(a). *See also Crumbley, supra*, 243 Ga. at 345 ("We note that Franklin Tabernacle participated in making this disciplinary rule and did not contest its validity for 30 years.")

Here, in contrast to *Crumbley* and *Christ Church,* Timberridge promptly attempted to opt out of the newly created property trust provisions. While the national church adopted rules "codifying the trust relationship," *Christ Church, supra*, 305 Ga. App. at 94(3)(a), the local church has not undisputedly "adopted or adhered to those rules" with respect to the property at issue, *id.*, but rather has "taken steps to disavow" the provision and attempted "to remove itself from the reach of" the trust provision, *id.* at 96(3)(b), regardless of whether that attempt was

successful under the precise wording of the interlocking church documents. No intent has been demonstrated on the part of the purported grantor of the trust to place its property in trust. In fact, the evidence shows that Timberridge took every possible step to express its intention *not* to create a trust.

E. Conclusion. It is undisputed that the deeds are silent regarding any trust in favor of the Presbytery or the national church, that the local church's documents are silent regarding any creation of a trust or naming of a trustee, and that the local church attempted to opt out of the property trust provisions of the PCUSA Book of Order within the time frame provided for that process. Applying neutral principles of law, and bearing in mind OCGA § 53-12-20 and its requirement of both a writing and intention on the part of the settlor to create a trust, we must conclude that the Presbytery has not presented evidence demonstrating with reasonable certainty an intention on the part of Timberridge to create a trust in its favor. The trial court therefore erred in granting summary judgment to the Presbytery.

2. The trial court also erred in holding that the Presbytery controls the local corporate entity itself. As discussed in Division I, neutral application of legal principles to the local church documents, the PCUSA Book of Order, and the relevant statutes does not demonstrate such control by the Presbytery over the church corporation.

3. In light of our rulings in Divisions 1 and 2, above, the Presbytery's action in ejectment in Case No. A10A1612 is also without merit. Timberridge's final enumeration of error therefore is moot.

Judgments reversed. Mikell and Adams, JJ., concur.

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

PRESBYTERY OF GREATER ATLANTA, INC.,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION**
TIMBERRIDGE PRESBYTERIAN CHURCH, (an independent Presbyterian church),	)	**File No. 08-CV-0379-M**
Defendant.	)	

ORDER

(Filed Mar. 9, 2009)

The above-styled case came for a hearing before this court on January 20, 2009, with both parties represented by council.

This case involves a dispute over the ownership, use, and control of local church property. On one side of the dispute is the local Timberridge congregation and corporate titleholder to the property, Timberridge Presybterian [sic] Church, Inc., formerly affiliated with, the Presbyterian Church (U.S.A.) (a.k.a. PCUSA), and on the other side is the Presbytery of Greater Atlanta, Inc. (PGA), a regional governing body of the PCUSA. Despite multiple motions in two suits, the parties agree and the court concurs that all motions are governed by a single issue, whether, under the facts presented, the express trust provision in Section

G-8.021 of the Book of Church Order of the PCUSA is legally valid and enforceable against property held by or for Timberridge Presbyterian Church, Inc.

After hearing oral argument and review of the law and the record, including all briefs and proposed orders, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The undisputed facts show that Timberridge Presbyterian Church (TPC) is a Presbyterian church which, until recently, was a member of the Presbyterian Church (U.S.A.) (a.k.a. PCUSA) which in turn made TPC a member of the Presbytery of Greater Atlanta (PGA).

The PCUSA is a hierarchal [sic] organization which is governed by a Constitution comprised of the Book of Confessions and the Book of Order. The PCUSA has a representative form of government.

TPC became a part of the PCUS (the Southern division of the Presbyterian Church) in 1880. From that time until June 10, 1983, TPC operated under the Book of Confessions and Book of Order of the PCUS.

In June of 1982, the PCUS amended the property provisions of its Constitution by adding Section 6-3 to the Book of Order, which stated:

> All property held by or for a particular church, 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 the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

It is unclear to the Court whether a representative of TPC other than its minister attended the meeting of the PCUS at which the property trust provision was adopted.

On June 10, 1983, the PCUS and the United Presbyterian Church in the United States of America (UPCUSA) (the northern division of the Presbyterian Church) entered into a reunion to form the Presbyterian Church (U.S.A.) (a.k.a. PCUSA).

It is clear that there were several meetings involved in the process of reunion which were attended by representatives of TPC. At one meeting there were two representatives and the church's minister. At the other meeting there was one representative and the church's minister. The representatives had the power to vote on matters that were considered during these meetings.

While the minutes of these meetings do not reflect how the representatives of TPC voted, the minutes do reflect that a large majority of the representatives voted in favor of reunion.

As a part of this reunion process, the PCUSA adopted a Book of Order. As a member of the PCUSA,

TPC was bound by the reunited PCUSA Book of Order.

Several sections of the reunited PCUSA Book of Order are relevant to the determination of this case.

The first relevant section is a property trust clause contained in Section G-8.0201 which provides:

> 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.).

Section G-8.0201 of the reunited PCUSA Book of Order is almost identical to Section 6-3 of the old Book of Order used. by PCUS and TPC before reunion.

In connection with Section G-8.0201, quoted above, Section G-8.031 of the reunited PCUSA Book of Order states:

> 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.

The next relevant section is Section G-8.0701 which contains a provision that authorized churches, for a period of eight years from the date of reunion (1983), to opt out of a property provision *if the church was not subject to a similar provision under its former Constitution*. (Emphasis added).

The final relevant section is Article XIII of the Articles of Agreement governing the reunion of the UPCUSA and the PCUS, located in Appendix B of the reunited PCUSA Book of Order, which provides that a particular church could, within a period of eight years from the date of reunion, petition to leave the denomination with its property.

On June 1, 1984, TPC formed Timberridge Presbyterian Church, Inc. (TPC, Inc.), pursuant to Section 0-7.041 of the PCUSA Book of Order. This Georgia non-profit corporation was formed, among other reasons, to be "a church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Atlanta.

The original Articles of Incorporation of TPC, Inc. contain several references to the PCUSA. Article IV provided in pertinent part that the purpose of the corporation is to be a church institution which is a member of the Presbytery of Atlanta of the PCUSA or any successor Presbytery thereof. Article VIII provided that the members of the corporation would be

the active members of the Church as defined by the PCUSA Book of Order. Article VII provided that the Elders in active service to TPC were to serve as the Board of Trustees (i.e. Directors) of the corporation. Art. IX provided that any bylaws adopted by the Trustees shall not conflict with the Articles of Incorporation or with the Book of Order of the PCUSA. Finally, Article X provided that the Articles of Incorporation could only be amended by a vote of a majority of the members of the corporation

As to the real property which is the subject of this case, TPC acquired the real property upon which the church and its cemetery are, and had for many years, been situated through the following four deeds: August 15, 1970 Deed from J. J. Green and H. B. Green to TPC its "successors and assigns"; May 23, 1980 Deed from Fay Smith Brannan and Ellen Smith to TPC its "heirs and assigns"; May 23, 1980 Deed from Brenda Brannan Taylor and Eugenia Brannan Bogart to TPC its "heirs and assigns"; October 30, 1987 Deed from Nan T. McGarity to TPC its "heirs and assigns."

In 1999, through the execution and delivery of two warranty deeds, the church and cemetery property that had been conveyed through the four original deeds was, in its entirety, conveyed from TPC to TPC, Inc. and "its successors, heirs and assigns."

TPC has, throughout its history as both a PCUS church and as a PCUSA church, participated in the governance of the denomination and attended

meetings, voted at PGA meetings, called only pastors who were ordained by the PCUS and PCUSA; and used the registered mark of the PCUSA.

On November 15, 1987 at an annual meeting of the congregation, TPC voted to take the property exemption as provided in the Book of Order.

On November 18, 1987, a letter was written to the Atlanta Presbytery (now PGA) to officially inform them that TPC had "voted to take the property exemption as provided in the Book of Order (G-8.0700)." The letter asked the Atlanta Presbytery to "Please make record of this vote in any appropriate way."

TPC never received a response to this letter.

In September 2007, TPC wanted to initiate a capital campaign to raise funds to make renovations to existing buildings. Recognizing that the denomination claims that all property is held in trust for the PCUSA, the trustees of TPC felt it necessary to seek declaratory relief from the court to determine whether TPC or PCUSA through PGA had the ultimate right to determine ownership, use, and control of the property upon which TPC church buildings and other facilities were located.

As a result, TPC, Inc. filed a complaint for declaratory judgment and petition for injunction against PGA, Inc. in the Superior Court of Henry Court [sic], civil action file number 07-CV-4141-M.

PGA, Inc. timely filed an answer and counterclaim in that action and Judge Arch McGarity of the

Superior Court of Henry County granted a Temporary Injunction enjoining PGA, Inc. from interfering with the use of said church property by TPC, Inc.

Subsequently, PGA, Inc, filed the instant action against TPC (an independent Presbyterian Church) seeking ejectment and injunctive relief.

CONCLUSIONS OF LAW

The PCUSA is a hierarchal [sic] church as defined in *Watson v. Jones,* 80 U.S. 679, 722 (1871) and not a congregational church as defined in *Kedroft v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 110 (1952). *Accord Crumbley v. Solomon,* 243 Ga. 343, 344 (1979).

In Georgia, church property disputes between a hierarchical general church (i.e., the denomination) and a local; church must be resolved by application of "neutral principles of law." *Crumbley v. Solomon,* 243 Ga. 343, 343 (1979). Under the neutral principles of law doctrine, the court must consider the following: 1) deeds to the property, 2) corporate documents, 3) the denomination's constitution or other rules of governance, and 4) state statutes.

A. NEUTRAL PRINCIPLES DISCUSSED

(1) DEEDS

None of the deeds to TPC or TPC, Inc. contain an express trust clause in favor of PGA or the denomination. However, all of said deeds contain language

vesting title in TPC or TPC, Inc. and "its successors and assigns," "its heirs and assigns," or "its successors, heirs and assigns."

Citing *Crumbley v. Solomon,* 243 Ga. 343 (1979), PGA contends that language such as "its successors and assigns" in a deed vesting title in a local church includes the denomination if the denomination's constitution contains a trust in favor of the denomination.

The court does not agree with this contention. While the ruling in the *Crumbley* case was in favor of the denomination, such ruling did not turn on the language "its successors and assigns" in the deed.

However, the deeds are only one of the neutral principles to be considered.

(2) CORPORATE DOCUMENTS

TPC, Inc. was formed on June 1, 1984 in compliance with the PCUSA Book of Order and was formed, among other reasons, to be a "church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Greater Atlanta.

As shown by the findings of fact, the Articles of Incorporation of TPC, Inc. make several connectional references to PCUSA and its Book of Order.

The Articles of Incorporation not only contained references to the PCUSA Book of Order, but incorporated provisions of the PCUSA Book of Order when defining certain terms such as "member" of the corporation. Accordingly, the Court finds that the TPC, Inc. corporate documents evidence a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church (i.e., TPC) and that it subjected itself to the rules of governance of the PCUSA by referencing the PCUSA Book of Order in its Articles of Incorporation.

(3) DENOMINATIONAL CONSTITUTION

It is clear that Sections G-8.0201 and G-8.0301 of the PCUSA Book of Order (as quoted in the findings of fact) created a trust in favor of the denomination as to any property held by the local church.

TPC contends that such sections do not apply to it because TPC elected to opt out of these property trust provisions pursuant to Section G-8.0701 of PCUSA Book of Order.

Section G-8.0701 states:

> 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 of 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 it 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.

TPC did have a congregation meeting on November 15, 1987 with a quorum present. The relevant portion of the minutes reads as follows:

> 3. Discussion of the Property Exemption Clause
>
> Arnold Grogan made a motion to table discussion until further information could be procured. The motion was seconded by Rick LeCates; motion failed. Dick LeCates moved for Timberridge to take the exemption as provided in the Book of Order. Motion seconded by Beverly Burham; motion carried.

> (Note: these minutes were provided to the court at the hearing upon the court's request).

TPC wrote a letter to PGA on November 18, 1987 saying TPC "voted to take the property exception as provided in the Book of Order (G-8.0700)."

PGA contends that the "opt out" provision only opted the local church out of any property provision of the Book of Order if the church was not subject to a similar provision in the PCUS constitution to which it was subject immediately before reunion.

Section 6-3 of the PCUS Book of Church Order, to which TPC was subject immediately before reunion, did contain a property trust clause in favor of the denomination. Moreover, a comparison of the property provision contained in the PCUS constitution and the PCUSA constitution reveals only one significant difference, which is that under the PCUSA Book of Order a local church must seek the written permission of the presbytery before it may sell, mortgage, otherwise encumber or lease its real property. PCUSA Book of Order § G-8.0501. There was no similar provision in the PCUS Book of Church Order. Accordingly, the Court concludes that the "opt out" provided in Book of Order § 8.0701, which was exercised by TPC, Inc. on November 18, 1987, was not effective to opt it out of the property trust provisions of the PCUSA Book of Order. It was effective only to opt the church out of the requirement that it seek permission of the

presbytery before selling, mortgaging, encumbering or leasing its real property.

The TPC argues that because it did not expressly consent to the inclusion of the property trust clauses in either the PCUS constitution or the PCUSA constitution, those provisions are not applicable to Plaintiff's property. There is no evidence in the record regarding how the TPC representatives voted when the questions of the adoption of the PCUS trust clause and reunion were put to the presbytery for a vote. The record reflects, however, that the pastor and two Timberridge representatives attended the January 26, 1982 Presbytery meeting at which the presbytery voted in favor of the property chapter in the PCUS Book of Church Order. The record also reflects that TPC's pastor and one representative were present at the February 8, 1983 presbytery meeting at which the presbytery voted on whether or not reunion between the northern and southern church should occur. The vote was in favor of reunion. The Court concludes that the PCUSA operates under a representational form of governance and that express assent from a particular church was not required in order to subject that church to the constitution of the denomination.

The church was not without a means of leaving the denomination with its property if it wished. At the time of reunion between the northern and southern churches, the churches signed the Articles of Agreement, which was an agreement governing the reunion of the northern and southern churches into

the PCUSA. Article XIII of the Articles of Agreement provided that any southern church that wished to leave the PCUSA denomination with its property could petition the presbytery to leave and the petition would be granted as a matter of course. As a former PCUS church, TPC could have submitted a petition under Article XIII but did not do so.

4) STATE STATUTES

The TPC contends that in order for the Court to find that an express trust exists on the church property, the requirements of O.C.G.A. § 53-12-20, regarding express trusts, must be met. PGA, on the other hand, contends that O.C.G.A. § 53-12-20 is inapplicable and that O.C.G.A. § 14-5-46 applies in this case. O.C.G.A. § 14-5-46 (§ 22-5507 of the former Code) provides:

> All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the

> mode of church government or rules of discipline exercised by such churches or religious societies.

In both *Carnes v. Smith,* 236 Ga. 30 (1976) and *Crumbley,* the Georgia Supreme Court cited prior Code Section 22-5507 (which is the current O.C.G.A. §14-5-46). *Carnes*, 236 Ga. at 38; *Crumbley*, 243 Ga. at 345. No Georgia case cites O.C.G.A. § 53-12-20 as being controlling, or even applicable to, a church property trust dispute. Based on the foregoing, the Court concludes that O.C.G.A. § 53-12-20 is not controlling and that O.C.G.A. § 14-5-46 specifically contemplates that conveyances of real property to churches shall be given effect in accordance with the mode of church governance or rules of discipline of such church. In the case at bar, the denomination's constitution provides that the property of an individual church shall be held in trust for the greater church.

5) NEUTRAL PRINCIPLES CONCLUSION

Even though the deeds to TPC do not contain an express trust clause to the PCUSA or PGA, it is clear that the law of this state requires that the property conveyed by such deeds be subject to the constitution of the PCUSA.

Furthermore, TPC through its actions, as well as the Articles of Incorporation of TPC, Inc., obviously intended to be bound by said constitution.

Therefore, after considering the neutral principles in this case, along with the ruling in *Crumbley v.*

Solomon, 243 Ga. 343, 346 (1979) and the rationale used therein, the Court finds that the local church held its property in trust for the greater church.

B. CONTROL OF THE CORPORATION

A related issue in this case is whether the pastor, elders or members of the TPC are authorized to continue to control TPC, Inc. The record reflects that after the TPC Pastor and Session renounced the jurisdiction of the PCUSA, they continued to control TPC, Inc., the church corporation. PGA contends that they had no authority to do so.

TPC, Inc. was formed on June 1, 1984 and, as discussed above, its Articles of Incorporation exhibit an intention that the corporation was to be the civil arm of a PCUSA church and that it was to conduct its business in compliance with the PCUSA Book of Order. The Articles in [sic] Incorporation of TPC, Inc. were amended on April 24, 2008, months after the Pastor and Session had renounced the jurisdiction of the PCUSA and had declared that the entire church had unilaterally "disaffiliated" from the denomination. The Amended Articles of Incorporation deleted any and all references to the PCUSA.

St. Mary of Egypt Orthodox Church, Inc. v. Townsend, 243 Ga. App. 188 (2000) is instructive on this issue. In *St. Mary,* a suspended rector and members of the parish who chose to follow the suspended rector attempted to continue to exercise control over the parish corporation. The Georgia Court of Appeals

held that the parish statutes and the corporate by-laws and articles of incorporation, when read in conjunction, created a corporation that was a subsidiary parish under the authority of the parent church. *St. Mary,* 243 Ga. App. at 194.

As discussed above, the PCUSA Book of Order requires individual churches to incorporate if civil law allows. TPC, Inc. was formed in accordance with that provision of the Book of Order. Furthermore, TPC, Inc.'s Articles of Incorporation reference the PCUSA, the presbytery and the PCUSA Book of Order and provide that the bylaws of the corporation shall not be inconsistent with the PCUSA Book of Order. The Court concludes that TPC, Inc. was formed as a PCUSA related entity and that the members of the TPC, its pastor and Elders were no longer authorized to control the corporation, or to amend the Articles of Incorporation of TPC, Inc., once they "disaffiliated" from the PCUSA.

DISPOSITION OF PENDING MOTIONS

The central issue of this case was whether or not the local church held property in trust for the general church. Having found in favor of the general church on that issue, the pending motions are disposed of as follows:

The Court finds that neither the related case nor the TRO entered in the related case barred the filing of the instant case against the TPC; therefore, Defendant's Motion to Dismiss is hereby **DENIED**;

For the reasons set forth in this order, Plaintiff's Motion for Summary Judgment is hereby **GRANTED**.

Accordingly, Plaintiff is entitled to the issuance of a Writ of Ejectment and is entitled to the injunctive relief sought. It is **HEREBY ORDERED** that a Writ of Ejectment issue to the Sheriff commanding that Defendant forthwith be removed from the property at issue in this case surrendering all property belonging to TPC, Inc. or TPC. It is **FURTHER ORDERED** that the Defendant and all persons acting on its behalf, are hereby permanently **ENJOINED** from using, occupying, possessing, depleting, squandering, encumbering, mortgaging, or wasting the property at issue in this case, provided, however, that it shall not be construed as a violation of this injunction if the parties, at any time in the future, wish to enter into a mutually agreeable contract or lease relating to the property at issue. Nor shall it be construed to be a violation of this injunction if any person who is a member of the TPC wishes to attend services that may in the future be held by TPC (the PCUSA church) on the property at issue or return to membership in the TPC (the PCUSA church). It is further ordered the Defendant and all persons acting on its behalf are permanently ENJOINED from exercising control over Timberridge Presbyterian Church, Inc., its assets and property, and from using the name Timberridge Presbyterian Church.

The enforcement of this Order and the Writ of Ejectment are hereby **STAYED** until either: 1) the expiration of the 30 day period to file a Notice of

Appeal, if no appeal is filed; or 2) the case is remanded to this Court by the appellate court.

SO ORDERED, this 6th day of March, 2009.

/s/ A. Quillian Baldwin, Jr.
Honorable
A. Quillian Baldwin, Jr.
Sitting By Designation for
Henry County Superior Court

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN CHURCH, INC.,	)	
Plaintiff,	)	**Civil Action File No. 07-CV-4142-M**
v.	)	
PRESBYTERY OF GREATER ATLANTA, INC.,	)	
Defendant.	)	

ORDER

(Filed Mar. 9, 2009)

The above-styled case came for a hearing before this court on January 20, 2009, with both parties represented by council.

This case involves a dispute over the ownership, use, and control of local church property. On one side of the dispute is the local Timberridge congregation and corporate titleholder to the property, Timberridge Presybterian [sic] Church, Inc., formerly affiliated with, the Presbyterian Church (U.S.A.) (a.k.a. PCUSA), and on the other side is the Presbytery of Greater Atlanta, Inc. (PGA), a regional governing body of the PCUSA. Despite multiple motions in two suits, the parties agree and the court concurs that all motions are governed by a single issue, whether, under the facts presented, the express trust provision in Section G-8.021 of the Book of Church Order of the PCUSA is

legally valid and enforceable against property held by or for Timberridge Presbyterian Church, Inc.

After hearing oral argument and review of the law and the record, including all briefs and proposed orders, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The undisputed facts show that Timberridge Presbyterian Church (TPC) is a Presbyterian church which, until recently, was a member of the Presbyterian Church (U.S.A.) (a.k.a. PCUSA) which in turn made TPC a member of the Presbytery of Greater Atlanta (PGA).

The PCUSA is a hierarchal [sic] organization which is governed by a Constitution comprised of the Book of Confessions and the Book of Order. The PCUSA has a representative form of government.

TPC became a part of the PCUS (the Southern division of the Presbyterian Church) in 1880. From that time until June 10, 1983, TPC operated under the Book of Confessions and Book of Order of the PCUS.

In June of 1982, the PCUS amended the property provisions of its Constitution by adding Section 6-3 to the Book of Order, which stated:

> All property held by or for a particular church, 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 the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

It is unclear to the Court whether a representative of TPC other than its minister attended the meeting of the PCUS at which the property trust provision was adopted.

On June 10, 1983, the PCUS and the United Presbyterian Church in the United States of America (UPCUSA) (the northern division of the Presbyterian Church) entered into a reunion to form the Presbyterian Church (U.S.A.) (a.k.a. PCUSA).

It is clear that there were several meetings involved in the process of reunion which were attended by representatives of TPC. At one meeting there were two representatives and the church's minister. At the other meeting there was one representative and the church's minister. The representatives had the power to vote on matters that were considered during these meetings.

While the minutes of these meetings do not reflect how the representatives of TPC voted, the minutes do reflect that a large majority of the representatives voted in favor of reunion.

As a part of this reunion process, the PCUSA adopted a Book of Order. As a member of the PCUSA,

TPC was bound by the reunited PCUSA Book of Order.

Several sections of the reunited PCUSA Book of Order are relevant to the determination of this case.

The first relevant section is a property trust clause contained in Section G-8.0201 which provides:

> 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.).

Section G-8.0201 of the reunited PCUSA Book of Order is almost identical to Section 6-3 of the old Book of Order used. by PCUS and TPC before reunion.

In connection with Section G-8.0201, quoted above, Section G-8.031 of the reunited PCUSA Book of Order states:

> 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.

The next relevant section is Section G-8.0701 which contains a provision that authorized churches, for a period of eight years from the date of reunion (1983), to opt out of a property provision *if the church was not subject to a similar provision under its former Constitution*. (Emphasis added).

The final relevant section is Article XIII of the Articles of Agreement governing the reunion of the UPCUSA and the PLUS, located in Appendix B of the reunited PCUSA Book of Order, which provides that a particular church could, within a period of eight years from the date of reunion, petition to leave the denomination with its property.

On June 1, 1984, TPC formed Timberridge Presbyterian Church, Inc. (TPC, Inc.), pursuant to Section G-7.041 of the PCUSA Book of Order. This Georgia non-profit corporation was formed, among other reasons, to be "a church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Atlanta.

The original Articles of Incorporation of TPC, Inc. contain several references to the PCUSA. Article IV provided in pertinent part that the purpose of the corporation is to be a church institution which is a member of the Presbytery of Atlanta of the PCUSA or any successor Presbytery thereof. Article VIII provided that the members of the corporation would be

the active members of the Church as defined by the PCUSA Book of Order. Article VII provided that the Elders in active service to TPC were to serve as the Board of Trustees (i.e. Directors) of the corporation. Art. IX provided that any bylaws adopted by the Trustees shall not conflict with the Articles of Incorporation or with the Book of Order of the PCUSA. Finally, Article X provided that the Articles of Incorporation could only be amended by a vote of a majority of the members of the corporation

As to the real property which is the subject of this case, TPC acquired the real property upon which the church and its cemetery are, and had for many years, been situated through the following four deeds: August 15, 1970 Deed from J. J. Green and H. B. Green to TPC its "successors and assigns"; May 23, 1980 Deed from Fay Smith Brannan and Ellen Smith to TPC its "heirs and assigns"; May 23, 1980 Deed from Brenda Brannan Taylor and Eugenia Brannan Bogart to TPC its "heirs and assigns"; October 30, 1987 Deed from Nan T. McGarity to TPC its "heirs and assigns."

In 1999, through the execution and delivery of two warranty deeds, the church and cemetery property that bad been conveyed through the four original deeds was, in its entirety, conveyed from TPC to TPC, Inc. and "its successors, heirs and assigns."

TPC has, throughout its history as both a PCUS church and as a PCUSA church, participated in the governance of the denomination and attended

meetings, voted at PGA meetings, called only pastors who were ordained by the PCUS and PCUSA; and used the registered mark of the PCUSA.

On November 15, 1987 at an annual meeting of the congregation, TPC voted to take the property exemption as provided in the Book of Order.

On November 18, 1987, a letter was written to the Atlanta Presbytery (now PGA) to officially inform them that TPC had "voted to take the property exemption as provided in the Book of Order (G-8.0700)." The letter asked the Atlanta Presbytery to "Please make record of this vote in any appropriate way."

TPC never received a response to this letter.

In September 2007, TPC wanted to initiate a capital campaign to raise funds to make renovations to existing buildings. Recognizing that the denomination claims that all property is held in trust for the PCUSA, the trustees of TPC felt it necessary to seek declaratory relief from the court to determine whether TPC or PCUSA through PGA had the ultimate right to determine ownership, use, and control of the property upon which TPC church buildings and other facilities were located.

As a result, TPC, Inc. filed the present action seeking a declaratory judgment and injunction against PGA, Inc. PGA, Inc. timely filed an answer and counterclaim and Judge Arch McGarity of the Superior Court of Henry County granted a Temporary Injunction enjoining PGA, Inc. from interfering with the use of said church property by TPC, Inc.

Subsequently, PGA, Inc. filed a separate action against TPC (an independent Presbyterian Church) in the Superior Court of Henry County, civil action file number 08-CV-0379-M, seeking ejectment and injunctive relief.

CONCLUSIONS OF LAW

The PCUSA is a hierarchal [sic] church as defined in *Watson v. Jones,* 80 U.S. 679, 722 (1871) and not a congregational church as defined in *Kedroft v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 110 (1952). *Accord Crumbley v. Solomon,* 243 Ga. 343, 343 (1979).

In Georgia, church. property disputes between a hierarchical general church (i.e., the denomination) and a local church must be resolved by application of "neutral principles of law." *Crumbley v. Solomon,* 243 Ga. 343, 343 (1979). Under the neutral principles of law doctrine, the court must consider the following: 1) deeds to the property, 2) corporate documents, 3) the denomination's constitution or other rules of governance, and 4) state statutes.

A. NEUTRAL PRINCIPLES DISCUSSED

(1) DEEDS

None of the deeds to TPC or TPC, Inc. contain an express trust clause in favor of PGA or the denomination. However, all of said deeds contain language vesting title in TPC or TPC, Inc. and "its successors

and assigns," "its heirs and assigns," or "its successors, heirs and assigns."

Citing *Crumbley v. Solomon,* 243 Ga. 343 (1979), PGA contends that language such as "its successors and assigns" in a deed vesting title in a local church includes the denomination if the denomination's constitution contains a trust in favor of the denomination.

The court does not agree with this contention. While the ruling in the *Crumbley* case was in favor of the denomination, such ruling did not turn on the language "its successors and assigns" in the deed.

However, the deeds are only one of the neutral principles to be considered.

(2) CORPORATE DOCUMENTS

TPC, Inc. was formed on June 1, 1984 in compliance with the PCUSA Book of Order and was formed, among other reasons, to be a "church entity affiliated with the PCUSA and the Presbytery of Atlanta and any successor thereto." PGA is the direct successor of the Presbytery of Greater Atlanta.

As shown by the findings of fact, the Articles of Incorporation of TPC, Inc. make several connectional references to PCUSA and its Book of Order.

The Articles of Incorporation not only contained references to the PCUSA Book of Order, but incorporated provisions of the PCUSA Book of Order when

defining certain terms such as "member" of the corporation. Accordingly, the Court finds that the TPC, Inc. corporate documents evidence a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church (i.e., TPC) and that it subjected itself to the rules of governance of the PCUSA by referencing the PCUSA Book of Order in its Articles of Incorporation.

(3) DENOMINATIONAL CONSTITUTION

It is clear that Sections G-8.0201 and G-8.0301 of the PCUSA Book of Order (as quoted in the findings of fact) created a trust in favor of the denomination as to any property held by the local church.

TPC contends that such sections do not apply to it because TPC elected to opt out of these property trust provisions pursuant to Section G-8.0701 of PCUSA Book of Order.

Section G-8.0701 states:

> 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 of 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 it 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.

TPC did have a congregation meeting on November 15, 1987 with a quorum present. The relevant portion of the minutes reads as follows:

> 3. Discussion of the Property Exemption Clause
>
> Arnold Grogan made a motion to table discussion until further information could be procured. The motion was seconded by Rick LeCates; motion failed. Dick LeCates moved for Timberridge to take the exemption as provided in the Book of Order. Motion seconded by Beverly Burham; motion carried.
>
> (Note: these minutes were provided to the court at the hearing upon the court's request).

TPC wrote a letter to PGA on November 18, 1987 saying TPC "voted to take the property exception as provided in the Book of Order (G-8.0700)."

PGA contends that the "opt out" provision only opted the local church out of any property provision of the Book of Order if the church was not subject to a similar provision in the PCUS constitution to which it was subject immediately before reunion.

Section 6-3 of the PCUS Book of Church Order, to which TPC was subject immediately before reunion, did contain a property trust clause in favor of the denomination. Moreover, a comparison of the property provision contained in the PCUS constitution and the PCUSA constitution reveals only one significant difference, which is that under the PCUSA Book of Order a local church must seek the written permission of the presbytery before it may sell, mortgage, otherwise encumber or lease its real property. PCUSA Book of Order § G-8.0501. There was no similar provision in the PCUS Book of Church Order. Accordingly, the Court concludes that the "opt out" provided in Book of Order § 8.0701, which was exercised by TPC, Inc. on November 18, 1987, was not effective to opt it out of the property trust provisions of the PCUSA Book of Order. It was effective only to opt the church out of the requirement that it seek permission of the presbytery before selling, mortgaging, encumbering or leasing its real property.

The TPC argues that because it did not expressly consent to the inclusion of the property trust clauses

in either the PCUS constitution or the PCUSA constitution, those provisions are not applicable to Plaintiff's property. There is no evidence in the record regarding how the TPC representatives voted when the questions of the adoption of the PCUS trust clause and reunion were put to the presbytery for a vote. The record reflects, however, that the pastor and two Timberridge representatives attended the January 26, 1982 Presbytery meeting at which the presbytery voted in favor of the property chapter in the PCUS Book of Church Order. The record also reflects that TPC's pastor and one representative were present at the February 8, 1983 presbytery meeting at which the presbytery voted on whether or not reunion between the northern and southern church should occur. The vote was in favor of reunion. The Court concludes that the PCUSA operates under a representational form of governance and that express assent from a particular church was not required in order to subject that church to the constitution of the denomination.

The church was not without a means of leaving the denomination with its property if it wished. At the time of reunion between the northern and southern churches, the churches signed the Articles of Agreement, which was an agreement governing the reunion of the northern and southern churches into the PCUSA. Article XIII of the Articles of Agreement provided that any southern church that wished to leave the PCUSA denomination with its property could petition the presbytery to leave and the petition

would be granted as a matter of course. As a former PCUS church, TPC could have submitted a petition under Article XIII but did not do so.

4) STATE STATUTES

The TPC contends that in order for the Court to find that an express trust exists on the church property, the requirements of O.C.G.A. § 53-12-20, regarding express trusts, must be met. PGA, on the other hand, contends that O.C.G.A. § 53-12-20 is inapplicable and that O.C.G.A. § 14-5-46 applies in this case. O.C.G.A. § 14-5-46 (§ 22-5507 of the former Code) provides:

> All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies.

In both *Carnes v. Smith,* 236 Ga. 30 (1976) and *Crumbley,* the Georgia Supreme Court cited prior Code Section 22-5507 (which is the current O.C.G.A. §14-5-46). *Carnes*, 236 Ga. at 38; *Crumbley*, 243 Ga. at 345. No Georgia case cites O.C.G.A. § 53-12-20 as being controlling, or even applicable to, a church property trust dispute. Based on the foregoing, the Court concludes that O.C.G.A. § 53-12-20 is not controlling and that O.C.G.A. § 14-5-46 specifically contemplates that conveyances of real property to churches shall be given effect in accordance with the mode of church governance or rules of discipline of such church. In the case at bar, the denomination's constitution provides that the property of an individual church shall be held in trust for the greater church.

5) NEUTRAL PRINCIPLES CONCLUSION

Even though the deeds to TPC do not contain an express trust clause to the PCUSA or PGA, it is clear that the law of this state requires that the property conveyed by such deeds be subject to the constitution of the PCUSA.

Furthermore, TPC through its actions, as well as the Articles of Incorporation of TPC, Inc., obviously intended to be bound by said constitution.

Therefore, after considering the neutral principles in this case, along with the ruling in *Crumbley v. Solomon,* 243 Ga. 343, 346 (1979) and the rationale used therein, the Court finds that the local church held its property in trust for the greater church.

B. CONTROL OF THE CORPORATION

A related issue in this case is whether the pastor, elders or members of the TPC are authorized to continue to control TPC, Inc. The record reflects that after the TPC Pastor and Session renounced the jurisdiction of the PCUSA, they continued to control TPC, Inc., the church corporation. PGA contends that they had no authority to do so.

TPC, Inc. was formed on June 1, 1984 and, as discussed above, its Articles of Incorporation exhibit an intention that the corporation was to be the civil arm of a PCUSA church and that it was to conduct its business in compliance with the PCUSA Book of Order. The Articles in incorporation of TPC, Inc. were amended on April 24, 2008, months after the Pastor and Session had renounced the jurisdiction of the PCUSA and had declared that the entire church had unilaterally "disaffiliated" from the denomination. The Amended Articles of Incorporation deleted any and all references to the PCUSA.

St. Mary of Egypt Orthodox Church, Inc. v. Townsend, 243 Ga. App. 188 (2000) is instructive on this issue. In *St. Mary,* a suspended rector and members of the parish who chose to follow the suspended rector attempted to continue to exercise control over the parish corporation. The Georgia Court of Appeals held that the parish statutes and the corporate bylaws and articles of incorporation, when read in conjunction, created a corporation that was a subsidiary

parish under the authority of the parent church. *St. Mary,* 243 Ga. App. at 194.

As discussed above, the PCUSA Book of Order requires individual churches to incorporate if civil law allows. TPC, Inc. was formed in accordance with that provision of the Book of Order. Furthermore, TPC, Inc.'s Articles of incorporation reference the PCUSA, the presbytery and the PCUSA Book of Order and provide that the bylaws of the corporation shall not be inconsistent with the PCUSA Book of Order. The Court concludes that TPC, Inc. was formed as a PCUSA related entity and that the members of the TPC, its pastor and Elders were no longer authorized to control the corporation, or to amend the Articles of Incorporation of TPC, Inc., once they "disaffiliated" from the PCUSA.

DISPOSITION OF PENDING MOTIONS

The central issue of this case was whether or not the local church held property in trust for the general church. Having found in favor of the general church on that issue, the pending motions are disposed of as follows:

Defendant's Motion to Dismiss is hereby **denied**[1];

[1] Counsels' oral argument went directly to the merits of this case, and, having disposed of the issues on the merits on summary judgment, the Court denies PGA's Motion to Dismiss.

For the reasons set forth in this order, Plaintiff's Motion for Summary Judgment is hereby **denied**;

For the reasons set forth in this order, Defendant's Cross Motion for Summary Judgment is hereby **granted**;

and Plaintiff's Motion for Order of Contempt is hereby **denied**[2].

SO ORDERED, this 6th day of March, 2009.

/s/ A. Quillian Baldwin, Jr.
Honorable
A. Quillian Baldwin, Jr.
Sitting By Designation for
Henry County Superior Court

[2] The TPC filed a motion for contempt contending that PGA's filing of a separate but related Petition seeking to eject the TPC and seeking related injunctive relief was a violation of the TRO entered in this case. Pretermitting the issue of the validity of the TRO, the Court interprets the TRO to prohibit PGA from physically interfering with the church's possession and use of the property, not from seeking legal remedy through the courts. Accordingly, the Court finds there was no violation of the TRO.

[SEAL] **SUPREME COURT OF GEORGIA**
Case No. S11G0587

Atlanta December 8, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

PRESBYTERY OF GREATER ATLANTA, INC. v.
TIMBERRIDGE PRESBYTERIAN CHURCH, INC.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied and that the attached opinion be substituted for the one issued on November 21, 2011.

Benham, Thompson and Melton, JJ., concur. Hunstein, C.J., Carley, P.J., and Chief Judge Deborah C. Benefield dissent. Hines, J., not participating.

Having considered Timberridge Presbyterian Church, Inc.'s motion to stay the remittitur, we hereby grant the motion and stay the remittitur until the time passes for the filing of a petition for a writ of certiorari in the Supreme Court of the United States without one being filed or until, if such a petition is timely filed, the Supreme Court of the United States rules on the petition.

Hunstein, C.J., Carley, P.J., Benham, Thompson and Melton, JJ., and Chief Judge Deborah C. Benefield concur. Hines, J., not participating.

O.C.G.A. § 53-12-20. Express trusts

(a) Except as provided in subsection (d) of this Code section, an express trust shall be created or declared in writing and signed by the settlor or an agent for the settlor acting under a power of attorney containing express authorization.

(b) An express trust shall have, ascertainable with reasonable certainty:

(1) An intention by a settlor to create such trust;

(2) Trust property;

(3) Except for charitable trusts or a trust for care of an animal, a beneficiary who is reasonably ascertainable at the time of the creation of such trust or reasonably ascertainable within the period of the rule against perpetuities;

(4) A trustee; and

(5) Trustee duties specified in writing or provided by law.

(c) The requirement that a trust have a reasonably ascertainable beneficiary shall be satisfied if under the trust instrument the trustee or some other person has the power to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

(d) In the case of a trust created pursuant to 42 U.S.C. Section 1396p(d)(4)(B) by an agent acting for

the settlor, the power of attorney need not contain an express authorization to create or declare a trust.

O.C.G.A. § 53-12-130. Resulting trusts

A resulting trust is a trust implied for the benefit of the settlor or the settlor's successors in interest when it is determined that the settlor did not intend that the holder of the legal title to the trust property also should have the beneficial interest in the property under any of the following circumstances:

(1) A trust is created but fails, in whole or in part, for any reason;

(2) A trust is fully performed without exhausting all the trust property; or

(3) A purchase money resulting trust as defined in subsection (a) of Code Section 53-12-131 is established.

O.C.G.A. § 53-12-132. Constructive trusts

(a) A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity.

(b) The person claiming the beneficial interest in the property may be found to have waived the right

to a constructive trust by subsequent ratification or long acquiescence.