

**SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**PRESBYTERY OF ST. ANDREW
PRESBYTERIAN CHURCH U.S.A., INC.**

APPELLANT

VS.

CAUSE NO. 2016-CA-01275

**FIRST PRESBYTERIAN CHURCH PCUSA
OF STARKVILLE, MISSISSIPPI**

APPELLEE

**APPEAL FROM THE CHANCERY COURT OF OKTIBBEHA COUNTY
CAUSE NO. 53CH1:15-cv-0151-D**

**BRIEF OF PRESBYTERY OF ST. ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.
APPELLANT**

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification and/or recusal:

A. PARTIES:

Plaintiff	First Presbyterian Church PCUSA of Starkville, Mississippi
Defendant	Presbytery of St. Andrew, Presbyterian Church U.S.A., Inc.

B. ATTORNEYS:

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C. CHANCELLOR:	Honorable H. J. Davidson, Jr. 14th Chancery Court District
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/s/ P. Scott Phillips
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Andrew, Presbyterian Church
U.S.A., Inc., Appellant

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STATEMENT OF THE ISSUES

1. Whether entry of the preliminary injunction violated Appellant's rights under the First Amendment to the United States Constitution by barring Appellant from exercising jurisdiction over a member congregation of its denomination and, further, from disciplining its members and ministers for violating church doctrine.

2. Whether the Chancery Court erred as a matter of law in determining that Appellant did not have a trust interest in the real and personal property of Appellee.

STATEMENT OF THE CASE

A. Nature of the Case.

Reduced to its simplest form, this matter involves church property. Attendant to that issue and of paramount concern is the right to religious autonomy secured by the First Amendment to the United States Constitution.

Presbytery of St. Andrew, Presbyterian Church U.S.A., Inc., Appellant herein, seeks review of entry of summary judgment in favor of First Presbyterian Church PCUSA of Starkville, Mississippi, Inc., Appellee herein. Specifically, Appellant seeks a determination as to whether the terms of the Presbyterian Church U.S.A., Inc.'s ("**PC(USA)**") Constitution created a trust interest over Appellee's real and personal property (the "**church property issue**") in favor of Appellant. Additionally, Appellant seeks review of the preliminary and permanent injunctions entered against it by the Chancery Court of Oktibbeha County, Mississippi for a determination of whether either injunction infringes upon its Constitutional rights to exercise ecclesiastical authority over a member congregation of its denomination (the "**First Amendment Issue**"). Finally, Appellant seeks review of certain factual findings and legal determinations made by the Chancery Court in order to determine whether they were clearly erroneous, constituted an abuse of discretion, or manifestly wrong.

B. Course of the Proceedings and Disposition in the Court Below.

Appellee filed suit against Appellant in the Chancery Court of Oktibbeha County, Mississippi, seeking a declaratory judgment on the church property issue, as well as a temporary restraining order and a preliminary injunction precluding Presbytery from taking any action affecting the church property, from initiating disciplinary or other retaliatory proceedings against "employees,

officers, ministers or members of [Appellee]” and asserting ecclesiastical jurisdiction over Appellee because of the church property issue. C.P. at 8-35. The lower court entered a temporary restraining order, later converted into a preliminary injunction, precluding Appellant from taking the above-described acts and, further, restraining its exercise of ecclesiastical authority over Appellee’s members, officers, or ministers unless “non-pretextual” and unrelated to the litigation. C.P. at 347-350.

At the close of discovery, both parties moved for summary judgment on the church property issue. C.P. at 535-538, 1076-1078. In its summary judgment motion, Appellee sought to permanently enjoin Appellant’s ecclesiastical authority over it, while Appellant requested relief from the injunction’s restriction on its exercise of ecclesiastical authority over its member congregation. C.P. at 535-538, 1025-1075, 1076-1078, & 1321-1352.

The lower court entered judgment in favor of Appellee on the church property issue and converted the preliminary injunction into a permanent injunction, though it lifted the injunction with respect to “ecclesiastical aspects of the functions of PC(USA) and [Appellee]” so as not to preclude the denomination’s “carrying out its ecclesiastical mission in ministering to its congregants and conducting such other usual and customary duties as required by church law.” C.P. at 1432-1460; R.E. at 0001-0029.

C. Statement of Facts Relevant to the Issues Presented for Review

i. The PC(USA) is a hierarchical denomination with a democratic form of government.

The PC(USA) is a hierarchical Christian denomination which governs itself through principles of representative democracy, as provided for in its Constitution. C.P. at 550 (Book of Order at §§ F-3.0205, G-3.0106); R.E. at 0041. With respect to its governmental structure, the Book

of Order¹ provides that "[t]he larger part of the church, or a representation thereof, shall govern the smaller." C.P. at 550 (Book of Order at §§ F-3.0106, F-3.0203); R.E. at 0041. To that end, the PC(USA) Constitution organizes the denomination into the following four decision-making councils: sessions, presbyteries, synods, and the General Assembly. C.P. at 550 (Book of Order at §F-3.0203); R.E. at 0041. As more fully discussed below, and excepting teaching elder(s)², individual members are elected to these councils by majority vote of fellow Presbyterians, though the electoral body casting the vote changes depending upon the council in which the election is held. C.P. at 550 (Book of Order at §§ G-3.0106, G-3.3.0204); R.E. at 0041.

The first level of council within the PC(USA) is a congregation's session, which consists of a teaching elder(s) and ruling elders³ who are responsible for management of the congregation's financial and spiritual affairs. C.P. at 554, 559 (Book of Order at §§G-2.0401, G-3.0201); R.E. at 45, 49. Ruling elders are elected by the congregation's membership. C.P. at 554 (Book of Order at § G-2.0401); R.E. at 0045.

Next are presbyteries, deemed the local embodiment of the PC(USA), which are responsible "for the government of the church throughout its [assigned] district." C.P. at 559 (Book of Order at § 3.0301); R.E. at 50. A presbytery's membership consists of teaching elders from each

¹The PC(USA) Constitution is memorialized in the Book of Confessions and the Book of Order and embodies the truism that "every Christian Church, or union or association of particular churches, is entitled to declare the terms of admission into its communion." C.P. at 550. (Book of Order at §§F-3.0102; F-3.04) Provisions pertaining to the hierarchical structure and representative nature of the PC(USA) government, as well as those addressing discipline within the denomination, are contained within the Book of Order.

²A teaching elder is a congregation's pastor. C.P. at 554 (Book of Order at §G-2.0501).

³A ruling elder is an individual congregation member possessing wisdom and maturity of faith who has demonstrated leadership and is compassionate in spirit. C.P. at 553 (Book of Order at §G-2.0301).

congregation in the district, as well as session members from those congregations who are elected to represent⁴ the congregation's interests at presbytery meetings. C.P. at 559 (Book of Order at § 3.0301); R.E. at 50.

The next level of council are synods, which are responsible for governance of presbyteries in its assigned region. C.P. at 560 (Book of Order at §3.0401); R.E. at 51. Members of a synod are referred to as commissioners, are elected to their positions by fellow presbytery members and, much like session members at presbytery meetings, are charged with representing the interests of its particular presbytery at synod meetings. C.P. at 560 (Book of Order at §3.0401); R.E. at 51.

The highest ranking council in the PC(USA) is the Generally Assembly, being composed of ruling elders and teaching elders elected by presbyteries in proportion to the number of congregation members in that presbytery's district. C.P. at 561 (Book of Order at §3.0501); R.E. at 52.

Thus, the nature and composition of these four PC(USA) councils demonstrate it is governed under representative democratic principles . The representative nature of the PC(USA) is premised upon principles of unity, as each individual is deemed representative of his or her congregation and each congregation is likewise representative of the PC(USA), the seemingly separate individuals and entities being inextricably linked in their faith. C.P. at 550 (Book of Order at §F-3.0201); R.E. at 41.

ii. Congregations within the PC(USA).

At a fundamental level, the PC(USA) is its congregations. Becoming a PC(USA) congregation is not as simple as declaring association or affiliation with the denomination. C.P. at

⁴ The PC(USA)'s governmental structure ensures each congregation is provided "full participation and access to representation in decision-making and employment practices" within the denomination. C.P. at 557 (Book of Order at §G-3.0103).

552 (Book of Order at §G-1.02); R.E. at 43. Rather, a member congregation is created by the PC(USA) through its presbyteries. *Id.* Specifically, the PC(USA) Constitution charges presbyteries with “organizing, receiving, merging, dismissing and dissolving congregations in consultation with its members.” C.P. at 559 (Book of Order at §G-3.0301); R.E. at 50. Once created, a congregation is bound by the provisions of the PC(USA) Constitution, allowed to participate in the governance of the denomination, and is subject to the leadership and decisions of the higher councils. C.P. at 551 (Book of Order at G–1.0103); R.E. at 42.

As provided for in the Book of Order, PC(USA) congregations in Mississippi must incorporate and those corporations are expressly subject its Session’s authority and the PC(USA) Constitution. C.P. at 562 (Book of Order at §G-4.0101); R.E. at 53.

Once created, a congregation elects ruling elders from its active members to its session. C.P. at 552-53 (Book of Order at §§G-1.0201; G-2.0301; G-2.0401); R.E. at 43-44. The Book of Order defines active members as those persons who have professed faith in Christ, been baptized, received into the membership of a PC(USA) church, submitted to PC(USA) governance, and participate in the PC(USA)’s “work and worship.” C.P. at 552 (Book of Order at § G-1.0403); R.E. at 43. Upon election, ruling elders are prepared, examined, ordained and installed, after which the ruling elder vows to abide by the PC(USA) Constitution and promote the goals of peace, unity and purity within the PC(USA). C.P. at 552-53, 577 (Book of Order at §§G-1.0201; G-2.0301; G-2.0401; W-4.4003); R.E. at 43-44, 68. As such, ruling elders are fiduciaries entrusted with “the life of a congregation as well as the whole church” and are accountable to their congregation and the denomination. C.P. at 553 (Book of Order at §G-2.0301); R.E. at 44.

Under the above recited PC(USA) constitutional provisions, the Presbytery of St. Andrew

is a PC(USA) local embodiment that oversees the management of PC(USA) congregations throughout North Mississippi, including the Appellee’s Session and congregation.

iii. The First Presbyterian Church PCUSA of Starkville, Mississippi is a PC(USA) congregation.

Appellee has been a Presbyterian church for over 180 years, though it has been a member of other Presbyterian denominations in the past. C.P. at 46. Appellee was first received as a member congregation of the Presbyterian Church in the United States of America denomination, but separated from that denomination when differing theological and societal beliefs resulted in a division of the denomination. Appellee, like most congregations in the Southern United States, left the Presbyterian Church in the United States of America and ultimately re-aligned itself with the Presbyterian Church in the United States (hereinafter “PCUS”). Appellee remained a member congregation of the PCUS until 1983, when both factions of the former Presbyterian Church in the United States of America reunited (hereinafter referred to as “**Reunion**”) to form the PC(USA). Upon Reunion, Appellee became a PC(USA) congregation within the Presbytery of St. Andrew.

a. Before Reunion.

Four years prior to Reunion, and in response to the United States Supreme Court’s application of “neutral principles of law”⁵ in *Jones v. Wolf*, 443 U.S. 595 (1979), the PCUS amended its constitution to reflect the traditional Presbyterian tenet that land was owned and operated by a congregation’s trustees or officers for the benefit of the denomination. C.P. at 66, ¶5. The text of the amendment is hereinafter referred to as the “**PCUS trust clause**” and reads as follows:

§ 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 [PCUS].*

⁵The neutral principles of law analysis is discussed more fully in Section I(ii), infra.

C.P. at 628.

Amending the PCUS Constitution to include the trust clause was no easy task. In 1981, the 121st PCUS General Assembly adopted the trust clause as a proposed revision to its Constitution. C.P. at 66, Col 1, ¶5; C.P. at 69-70, 72. After adoption, the proposed revision was forwarded to the PCUS presbyteries to determine by majority vote whether it consented to the amendment. C.P. at 66. A majority of the presbyteries consented and, in 1982, the General Assembly adopted and enacted the proposed trust clause, thereby amending its Constitution. *Id.* at 66, Col 2, ¶ 2.

Despite Appellee's assertions to the contrary, it was fully aware that the PCUS claimed an interest in its property prior to amendment of the PCUS Book of Church Order. In 1981, the Stated Clerk of the PCUS General Assembly corresponded with the pastors and session members of each congregation in the denomination in advance of the 121st PCUS General Assembly to explain, *inter alia*, the purpose of the trust clause amendment. C.P. at 93-94. According to the Stated Clerk, the proposed amendment was drafted in response to the United States Supreme Court's decision that a hierarchical denomination could establish a binding trust over its member congregations' property through its governing constitution and/or bylaws in *Jones v. Wolf*. C.P. at 93-94; *Jones v. Wolf*, 443 U.S. 595, 606 (1979). The Stated Clerk also explained the proposed trust clause did not alter or expand upon the traditional presbyterian concepts of property ownership, as the PCUS always considered each of its member congregations to be united as one in the PCUS. C.P. at 98, ¶1. As such, its member congregations were deemed beneficial owners of their property, holding title in furtherance of the PC(US)'s mission and faith, subject only to the ultimate right of the denomination to possession in the event the congregation was dissolved or dismissed. C.P. at 70, §§ 6-3, 6-4, & 6-5; C.P. at 93-94; C.P. at 98, ¶ 3.

Appellee's session specifically reserved time to study the Stated Clerk's report on the

proposed trust clause amendment prior to the 121st General Assembly. C.P. at 657; C.P. at 986-987; C.P. at 1005. Appellee's Presbytery members also considered the amendment at Presbytery, where they voted to disapprove. C.P. at 669-680. One of Appellee's own members was elected as a commissioner to 121st General Assembly when the amendment was considered for adoption. C.P. at 675. Despite Appellee's vote to disapprove at Presbytery, a majority of the Presbyteries approved the amendment and it was submitted to the PCUS 122nd General Assembly for adoption and enactment. C.P. at 671, 675. Thus, the congregation and leadership of Appellee was involved in the amendment process at every level, belying any claim or finding otherwise.

Though Appellee asserts PCUS never claimed an interest in its property prior to addition of the trust clause, sixty years before that clause was adopted, the PCUS initiated the amendment process to provide that title to property of a PCUS congregation must be conveyed to the presbytery in the event of dissolution, which was ultimately adopted and enacted in 1925. C.P. at 78 & 1323-24, ¶8. The very nature of that amendment demonstrates the PCUS trust clause was not a sudden contrivance adopted without proper consideration and voting. Rather, the trust clause was actually a memorialization of the PCUS' traditional concepts of property ownership by its member congregations which amended its Constitution to provide for as instructed by the *Wolf* decision.

Once the trust clause was adopted by the PCUS 122nd General Assembly, it became binding on all member congregations, including Appellee's congregation.

b. After Reunion.

Upon Reunion, Appellee declared itself a member congregation of the PC(USA) and expressly acceded to governance under the denomination's Constitution. C.P. at 644-647. When the PC(USA) denomination was formed, the Book of Order contained a property chapter which incorporated a trust clause, reading as follows:

G-4.0203⁶ Property is Held in Trust

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

C.P. at 562; R.E. at 53 (Emphasis Added). There was, however, a critical distinction between the PC(USA) Constitution’s property chapter and that of the PCUS - unlike the PC(USA) Constitution, the PCUS Constitution allowed its congregations to buy, sell or mortgage property without prior approval by the denomination. C.P. at 628. That reservation reads as follows:

§ 6-8 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.

In contrast, the PC(USA) constitution required its congregations obtain prior authorization buy, sell, mortgage or otherwise encumber its property:

G-4.0206⁷ Selling, Encumbering, or Leasing Church Property

G-4.0206(a) Selling or Encumbering Church Property.

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

G-4.0206(b) Leasing Church Property

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

⁶Formerly G-8.0201.

⁷ Formerly G-8.0500.

C.P. at 562; R.E. at 53. Since PCUS congregations were not subject to this requirement under their former Constitution, they were allowed to operate under the PCUS property chapter by invocation of the “property exception” in the PC(USA) Constitution, which provides as follows:

G-4.0208⁸ Exceptions.

The provisions of this chapter shall apply to all congregations of the Presbyterian Church (U.S.A.) *except that any congregation 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 [PCUS] and the United Presbyterian Church in the United States of America [UPC] to form the Presbyterian Church (U.S.A.) [PC(USA)], shall be excused from that provision of this chapter if the congregation, 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.) [PC(USA)]. This paragraph may not be amended.

Id. (Emphasis Added) While Appellee misinterprets the PC(USA) property exception to permit exemption of itself from the entire property chapter of the PC(USA) Constitution, the plain text of Section G-4.0208 only permits exemption from a provisions which the congregation was not subject to prior to Reunion. *Id.* Since the amended PCUS constitution included a trust clause prior to Reunion, Appellee simply did not possess the right to entirely exempt itself from the PC(USA) trust clause.

Importantly, PCUS congregations who did not want to hold title to their property subject to the either trust clause were not without recourse. In working towards reunification of the PCUS and United Presbyterian Church in the United States of America, the denominations negotiated and entered into Articles of Agreement. C.P. at 605, Art. 13; R.E. at 96. Article 13 of that agreement

⁸Formerly G-8.0701.

expressly permitted PCUS congregations the right to seek dismissal from the denomination while retaining title to its property. *Id.* However, this right was subject to an explicit time constraint: dismissal could not be sought until one year after reunion and that right expired eight years after reunion, providing congregations a full seven-year window to determine whether to remain a member of the PC(USA) or leave with title to its property and free of any denominational trust interest. *Id.* Consequently, congregations aggrieved by either imposition of either trust clause had one option: Invoke Article 13 and seek dismissal. *Id.*

Despite availability of this righty, Appellee’s Session, as early as January of 1984, deliberated on “keeping Chapter VI relating to Church Property as it was before Union.” C.P. at 665. Eventually, on July 1, 1984, Appellee, at its annual congregational meeting, “resolve[d] to retain church property under the rules of the PCUS” and passed the following resolution:

WHEREAS, the First Presbyterian Church in Starkville, Mississippi, on or about June 10, 1983, became a particular church in the reunited denomination known as the Presbyterian Church (U.S.A.); and

WHEREAS, the First Presbyterian Church in Starkville, Mississippi, prior to that date was a particular church of the Presbyterian Church in the United States, one of the denominations which participated in the aforesaid reunion; and

WHEREAS, the Book of Order of the Presbyterian Church (U.S.A.) in Chapter VIII which is entitled [sic] “The Church and Its Property” contains provision which are somewhat different from those contained in the Book of Church Order of the Presbyterian Church in the United States in Chapter VI which is entitled [sic] “Church Property;” and

WHEREAS, Chapter VIII of the Book of Order of the Presbyterian Church (U.S.A.), Sub-section 7, entitled [sic] “Exceptions” and numbered G.8.0701⁹, provides that where there are provision in that Chapter which are different from those in Chapter VI of the Book of Church Order, “any church which was not subject to a similar provision of the Constitution of the Church of which it was part, prior to reunion . . . 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

⁹ Now § G-4.0208.

(U.S.A.) vote to be exempt from such in a regularly called meeting and shall thereafter notify the Presbytery;”

NOW, THEREFORE, BE IT RESOLVED that the congregation of the First Presbyterian Church, in a meeting properly called and conducted, does hereby vote to be exempt from the provision of Chapter VIII of the Book of Order to which it was not subject prior to the reunion which established the Presbyterian Church (U.S.A.) *and will hold title to its property and exercise its privileges of incorporation under the provisions of the Book of Church Order, Presbyterian Church in the United States (1982-1983 edition)*, this action having been taken within the period of eight years following the establishment of the Presbyterian Church (U.S.A.).

C.P. at 681-683. (Emphasis Added) While Appellee now contends that Resolution exempted its property from the PC(USA) trust clause, it knew as early as 1988 or 1989 that PC(USA) would assert a trust interest in its property. PC(USA)’s position regarding Appellee’s property was conveyed to Elder James Long, who “brought it to the attention of the [Appellee’s] Session that he had talked with David Snellgrove at Presbytery regarding the property question and determined that in 1984 we passed a resolution at a Congregational Meeting to remain under the Old Book of Church Order.”

C.P. at 666-67. Dr. Long further reported that Mr. Snellgrove informed him of Appellee’s three options with respect to its property:

- “1. If there was a split in the congregation, the Presbytery would decide which half would get the property.
2. If our church is dissolved then Presbytery gets the property.
3. If we pull out of the Presbyterian Church, we get our property.”

Id. Thus, in 1988 or 1989, and within the window of Article 13, Appellee knew the PC(USA)’s position regarding ownership of the church property. C.P. at 721. That representation could only lead Appellee to one inescapable conclusion: if Appellee did not seek dismissal within the two year period before expiration of the right to invoke Article 13, the PC(USA) would claim a trust interest in its property.

By not seeking dismissal from the denomination after receiving this information, Appellee demonstrated its intent to be a PC(USA) connectional church and subjected itself to the

constitutional trust interest. That same intent was later ratified by Appellee's Session when it incorporated as "First Presbyterian Church PCUSA of Starkville, Mississippi" in compliance with the Book of Order. C.P. at 562, 743-46. Appellee even adopted bylaws¹⁰ wherein it agreed to be bound by the Book of Order and expressly "acceded ... to the Constitution" of the PC(USA). C.P. at 749-752.

Most telling of Appellee's intent to be bound by the denomination's Constitution is its history of over thirty (30) years of active participation in PC(USA) polity at virtually every organizational level and acceptance of benefits it would not have received but for its membership in the PC(USA), including but not limited to:

- **their Pastors' full participation in the life and governance of the church-attending meetings of the presbytery, taking advantage of pension and health benefits offered through PC(USA) and serving on committees and commissions; C.P. 837-838.**
- **submission of the church's reports with respect to membership and session's minutes for review in accordance with G-9.0407d(l) of the PC(USA) constitution; C.P. at 964.**
- **the election by the session of commissioners to stated and called meetings of the presbytery; C.P. at 837-838, 879-80.**
- **payment by Appellee to Appellant St. Andrew the per capita assessment and/or unified giving payment; C.P. at 965.**
- **exercising the "property exception" on July 1, 1984, and expressly electing to hold title to its property under the property chapter of the PCUS Book of Church Order; C.P. at 962, 982-84, 985-87, 1005-08, 722-24.**
- **subsequently incorporating and stating in its bylaws that "[t]he Church accedes to the Presbyterian Church of the United States (U.S.A.) and the Constitution of the Presbyterian Church of the United States (U.S.A.), Part 2, The Book of Order, as the same may be amended from time to time, and acknowledges the authority of the General Assembly of the Presbyterian Church of the United States (U.S.A.) over the Church"; See C.P. at 749-752.**

¹⁰ The Clerk of the Session signed the bylaws as "Adopted this the 31st day of July, 2005."

- **conveyances of real property into First Presbyterian Church PCUSA of Starkville, Mississippi; C.P. at 120-150.**
- **service of an elder (upon recommendation by the session and election by the presbytery) as an Elder Commissioner to the general assembly of the PC(USA); C.P. at 879-80.**
- **service of elders as members of an Administrative Commission appointed by Presbytery St. Andrew to assume original jurisdiction over a fellow church in the Presbytery; C.P. at 879-80, 1021-22.**
- **service of members on various committees of Presbytery St. Andrew; C.P. at 964, 837-38, 879-80.**
- **enjoyment by youth and members and staff in the presbytery’s camp and conference center at Camp Hopewell; C.P. at 965, 837-38.**

Despite Appellee’s well-demonstrated allegiance to the denomination, Appellee’s current Session members sought intervention by the Chancery Court of Oktibbeha County, Mississippi, to disavow the decisions and pledges made by their predecessors to the denomination.

D. The factual findings and legal determinations of the Chancery Court of Oktibbeha County, Mississippi.

a. The lower court’s findings regarding adoption of the PCUS trust clause and its effect on the validity of the PC(USA) trust clause.

The Chancellor ultimately determined Appellant did not have an express or implied trust interest in any of the church property at issue. In so concluding, the lower court held the PCUS trust clause was invalid and unenforceable because (1) it was adopted “shortly before the merger or “Reunion,” (2) there had been no trust provision in prior versions of the PCUS constitution, (3) PCUS represented to congregations that “beneficial ownership of church property would continue to be held by the congregation,” (4) the denomination did not seek “consent or approval” of the trust clause from congregations prior to amendment, and (5) only presbyteries, as opposed to

congregations, were allowed to vote¹¹ on approval. C.P. at 1450. Further, the court found it to be “clear that PCUS had always disclaimed any interest in church trust property until right before the merger,” and that PC(USA) “joined in the chorus of assurance” on that issue. *Id.*

The Chancellor’s decision also resulted from a misconstruction of the PC(USA) property exception provision contained in §G-4.0208 of the Book of Order. C.P. at 1439-41, 47-48, 1453-56. In construing that provision, the Chancellor referred to it as an “opt-out” or “grandfather” clause, at times seeming to interpret it to mean that Appellee could exempt itself from the PC(USA) trust clause regardless of the PCUS trust clause. *Id.* Somewhat similarly, the lower court found that, because the PCUS trust clause was adopted “in an obscure manner¹²” and because Appellee expressed its intent¹³ to not be bound by any trust provision in favor of the PC(USA), their exercise of the property exception exempt them from both PCUS and PC(USA) trust clauses. C.P. at 1451, 1453-55. Consequently, the lower court held that Appellee’s unambiguous resolution to take the property exception operated as a disclaimer of the PC(USA) trust clause. C.P. at 1458.

Inexplicably, the lower court relied upon its finding that “[Appellee] apparently held the belief that it had successfully exempted itself from the requirement of placing its property in trust, but could remain affiliated with the denominational church” as a premise for its judgment. C.P. at 1451. As support, the Chancellor referenced an alleged statement made by a Presbytery officer that

¹¹Similarly, the court found that “[w]hen the PC(USA) was formed, the trust provision was placed in the constitution without participation of local churches.” C.P. at 1453.

¹²To the same effect is the Chancellor’s finding that “[t]here is inadequate proof in the estimation of this Court that [the PCUS trust clause] was properly communicated or properly passed by votes of the member congregation.”

¹³Throughout its opinion, the court recites the fact that Appellee “reitere[d] its desire to retain title to its property” without regard to whether Appellee had any such right to maintain such a position.

Appellee would enjoy the same property rights it had under its former PCUS constitution. *Id.*

The court's invalidation of Appellant's trust interest was also the product of speculation, as it believed a "reasonable person" would not be "smug enough to opine that inclusion of the reference to the PCUS [constitution] was enough to grant property of the [Appellee] in trust." C.P. at 1453-55. Continuing along that line of reasoning, the Chancellor charged Appellant with a non-existent duty to correct Appellee's claimed "misunderstanding," despite total absence of credible evidence that Appellee misunderstood the effect of the property exception. C.P. at 1455. The court further faulted Appellant for Appellee's alleged misunderstanding and charged it with an additional non-existent duty to "straighten this out at the time of the opt out, not 30 years later." *Id.*

b. The Chancellor's findings regarding an express trust.

In its motion for summary judgment, Appellant argued that Appellee's July 1, 1984, congregational resolution satisfied the requirements to create an express trust in favor of PC(USA). C.P. at 1435. Despite presentation of that argument, the Chancellor found that it was "undisputed that there is no express trust agreement ... which can have the same effect by law...." C.P. at 1443. The Chancellor further found neither party "assert[ed] or represent[ed] that there [was] any writing signed by the proper FPC officials after authorization that satisfies" the requirements for creation of an express trust in land under Miss. Code Ann. § 91-8-407. *Id.* In support of that finding, the lower court fixated on the fact that the language of the deeds to the church property did not create or declare a trust in Appellant's favor. C.P. at 1443, 1447. In concluding that § 91-8-407 barred any claim of an express trust interest in real property which was not evidenced by a signed writing, the lower court misread subpart (b)(5) of the statute, holding that it would "bar a claim of even an implied trust since it is limited to an implied trust" covering a conveyance of land, as sub-part (b)(5) actually provides for the effectiveness of trusts arising "by implication of law out of a conveyance

of land.” C.P. at 1443-44.

Additionally, the Chancellor found neither the congregation’s July 1, 1984, Resolution nor its bylaws sufficient to create an express trust, even though Appellee drafted both documents and expressly referenced the PCUS Book of Church Order 1982-1983 Edition, and hence the trust clause contained therein, in each document. C.P. at 1456-57. Specifically, the Chancellor found Appellee’s reference to the PCUS Book of Church Order 1982-1983 Edition was “not clear as to the intent and is capable of different interpretations,” ignoring specific reference to the edition under which Appellee would be bound. C.P. at 1454. Similarly, the Chancellor found “[i]t would not make sense for FPC to state that it wished to continue to hold title to its property as it always had and then submit its property to a trust provision in the next clause.” C.P. at 1456-57.

Lastly, the Chancellor determined that neither the congregation’s Resolution nor its bylaws satisfied the requirement that an express trust instrument be signed by the party granting the interest, refusing to find satisfaction through Appellant’s these instruments by majority vote. C.P. at 1454-55. Based on these findings, the lower court held no express trust was created in favor of Appellant.

c. The Chancellor’s findings regarding a constructive trust.

In determining no constructive trust existed in favor of PC(USA), the Chancellor’s analysis began with finding that “there were no documents titling any of the property in another’s name and a need for affirmative action in equity to protect a party who, in good conscience, should have and hold the property.” C.P. at 1448-49. The lower court further found that the denomination did not invest any funds into acquisition of Appellee’s property and, further, that there was no arrangement of trust evidenced by “oral conversations,” “minutes,” or other documentation that would satisfy the “classic legal definition of a constructive trust.” *Id.* The lower court made this finding despite the evidence cited above and argument that Appellee’s Session and congregation ratified the decision

to operate under the PCUS trust clause rather than invoke Article 13 and willingly accepted the multitude of benefits flowing from its connection with the denomination for over thirty-years, receipt of which facilitated Appellee's acquisition of property and constituted sufficient consideration to support imposition of an implied trust over the church property on those grounds. *Id.*

d. The Chancellor's findings regarding a resulting trust.

As to whether a resulting trust was created, the Chancellor found that Appellee was relieved from the PCUS trust clause because it was (1) adopted only one year prior to Reunion, (2) PCUS never claimed a trust interest in the property of its congregations before the amendment, (3) PCUS officials informed congregations that the amendment did not alter the right to buy, sell, or encumber church property, and (4) Appellee's reference to holding title to church property in the manner in which it had under the PCUS Book of Church Order (1982-1983 Edition) was ambiguous. C.P. at 1449-53. In so concluding, the Chancellor relied upon affidavit testimony from Dr. James E. Long wherein he impeached himself by contradicting his own report of those same events to Appellee's Session at a time when his memory was certainly much fresher, as memorialized in the Session's minutes. C.P. at 1440-41.

Similarly, the Chancellor seemingly disregarded Appellant's involvement in the process of amending the PCUS Constitution, finding instead that "[l]ocal churches apparently did not have a voice in the adoption" of the amendment. C.P. at 1453. The lower court concluded that inclusion of the provision for dismissal of a congregation in the PC(USA) constitution demonstrated the PC(USA)'s trust interest was not absolute. C.P. at 1456. Based on this finding, it was further determined that Appellee had no "fears of loss of its property in the event of affiliation with PCUS." C.P. at 1453. In so finding, the Chancellor never considered the fact that Appellee could have left the denomination if it did not want its property subjected to the PC(USA) trust.

e. The lower court's misconstruction of the affidavit of Presbyterian Church (U.S.A.), A Corporation.

While Appellant has always claimed a trust interest in Appellee's property, the lower court also considered an affidavit from the Presbyterian Church (U.S.A.), A Corporation. In that affidavit, a representative of A Corporation disclaimed a trust interest in Appellee's property. C.P. at 1452. However, that disclaimer was qualified, as the affiant further stated that creation of the PC(USA)'s trust interest under the Book of Order did not encompass A Corporation. C.P. at 1452. Rather, reference to the PC(USA) in the Book of Order trust clause was meant to include each and every session, presbytery, synod, and the General Assembly comprising the denomination as a whole. *Id.* Despite the explicit intent of the affiant, the lower court interpreted A Corporation's affidavit testimony as a disclaimer of the trust interest on behalf of the denomination. C.P. at 1452. In adherence to its misinterpretation, the lower court further reasoned that, since A Corporation did not claim an interest in the property of Appellee, it follows that Appellant likewise could not claim a trust interest therein. *Id.* The lower court reached this conclusion in spite of Appellant's demonstration that Presbytery, not A Corporation, is the actual body charged with administration and management of the congregations within its district and, in furtherance of those duties, it declared an interest in the properties of its congregations on behalf of the PC(USA) in its annual financial statements. *Id.*

f. The Chancellor's imposition of a permanent injunction.

Lastly, the lower court analyzed whether the temporary restraining order and permanent injunction violated Appellee's rights and acknowledged that their imposition was for the purpose of restraining interaction between the Appellant and Appellee which would "have a bearing on or perhaps create further turmoil on the relevant issue before the Court." C.P. at 1436. Moreover, the permanent injunction expressly barred PC(USA) from taking any action whatsoever against Appellee

for any use of its property which Appellee deems fit, thereby infringing upon the denomination's ability to address usages of church property by Appellee which conflict with the tenets of the PC(USA) faith. C.P. at 1459-60.

Thus, Appellant seeks review of the above-contended erroneous factual determinations, as well as the resulting legal conclusions, of the Chancery Court of Oktibbeha County, Mississippi.

SUMMARY OF THE ARGUMENT

the Chancellor's entry of summary judgment in favor of Appellee must be reversed due to several factual and legal errors it made in arriving at its decision. As discussed more fully below, the lower court committed a clear error of law by failing to consider or apply this Court's recent decision in *Shirley v. Christian Episcopal Methodist Church*, wherein a denominational trust interest in the property of its member congregation was upheld due to the congregation's well-documented and undeniable allegiance to it. Additionally, the lower court misapplied the neutral principles of law standard when determining that no express trust existed, as its opinion ignores the United States Supreme Court's pronouncement in *Jones v. Wolf* that a denomination need only satisfy a minimal burden to establish a trust over the property of its member congregations. The lower court's judgment also violates Appellant's First Amendment rights, as the Chancellor permanently enjoined Appellant's exercise of its ecclesiastical jurisdiction over its members if such exercise resulted from or was related to the church property issue before the Chancellor.

Reversal is also appropriate due to the numerous factual errors committed by the lower court. For instance, the Chancellor misconstrued the PC(USA) property exception as permitting Appellee's retention of title to its property while also remaining a member of the denomination, as there is no credible evidence that would support that determination. Another fact finding error arises from the Chancellor's determination that Appellee was not subject to the PCUS trust clause due to the alleged "obscure" manner in which it was adopted, as his finding is manifestly wrong in light of the Appellee's involvement in the various procedural stages required to amend the PCUS constitution. These, as well as myriad other, fact finding errors were manifestly wrong, clearly erroneous and/or resulted from the Chancellor's abuse of discretion, all of which mandate reversal of the lower court's entry of summary judgment.

ARGUMENT

I. Errors of Law Committed by the Lower Court.

i. Scope of Review of Questions of Law.

Appellant is challenging the application of various legal standards by the Chancery Court of Oktibbeha County, Mississippi and this Court reviews the Chancellor's application of legal standards and resolution of questions of law anew. *McNeil v. Hester*, 753 So. 2d 1057, 1063 (Miss. 2000).

ii. Courts in Mississippi resolve church property disputes under the neutral principles of law approach.

Due to First Amendment concerns implicated by church property disputes, courts in Mississippi utilize the "neutral principles of law" standard to determine whether a denomination has a trust interest in the property of its congregations. *Shirley, v. Christian Episcopal Methodist Church*, 748 So. 2d 672, 675 (Miss. 1999)(quoting *Church of God Pentecostal*, 716 So. 2d 200, 205 (Miss. 1998)). Application of neutral principles of law is an objective undertaking which requires examination of the relevant deeds to the Appellee's property, any applicable statutory provision(s), the constitutions and bylaws of the Appellant and Appellee, and any other authoritative church documentation demonstrating, or tending to demonstrate, Appellee's intent to hold its property in trust for the denomination. *Jones v. Wolf*, 443 U.S. at 601 & 603. However, a court's review of those documents, and any resulting judgment, must be "purely secular" and devoid of reliance on religious doctrine. *Church of God Pentecostal, Inc.*, 716 So. 2d 200, 205-06 (Miss. 1998). Consequently, if the Appellant's Constitution, Appellee's bylaws, or other documents "incorporate religious concepts" with regard to property ownership in the text, the court must defer to the ecclesiastical authority of the Appellant to promulgate those concepts and must abide by its decision with respect thereto. *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 824 (Miss. 2009); *see also Sustar v. Williams*, 263 So. 2d 537, 541 (Miss. 1972)(holding "a civil court could not decide

the ownership of church property where the issue was a church dispute based upon an interpretation of a church doctrine”).

Utilization of the neutral principles of law approach levels the playing field in church property disputes, as the Appellant is permitted to adopt “appropriate reversionary clauses and trust provisions [to] ensure that a dispute over the ownership of church property will be resolved” in a manner consistent with the provisions of the Book of Order. *Wolf*, 443 U.S. at 603-04. (“Each congregation of the [PC(USA)] shall be governed by this Constitution”) & G-1.0402 (“An active member ... has voluntarily submitted to the government of this church”). Thus, a determination of whether Appellant’s property is held in trust for PC(USA) requires “examin[ation] [of] certain religious documents *such as [the Book of Order]*, for *language of trust* in favor of the general church.” *Id.* at 604 (emphasis added).

Appellant’s burden in establishing a trust in its member churches’ property should be “minimal” and require no more than mere alteration of its Constitution “to recite an express trust in favor of the denominational church.” *Id.* at 606. This nominal burden further ensures protection of Appellant’s First Amendment right to free exercise of its religious beliefs. *Id.* at 608.

iii. The Chancellor committed a clear error of law in awarding summary judgment in favor of Appellee because it is a connectional PC(USA) church.

In its summary judgment motion, the lower court held the connection between Appellee, as a congregation, and Appellant, as a denomination, was insufficient to create a trust interest in Appellee’s property under the PC(USA) constitution. C.P. at 1452. However, the Mississippi Supreme Court, in *Shirley v. Christian Episcopal Methodist Church* 748 So. 2d 672 (Miss. 1999), decided a near exact issue to the one presented by the Parties herein, i.e. whether a congregation’s connection to a hierarchical denomination is sufficient to impose an implied trust over the church

property under a trust clause in the denomination's constitution. As the *Shirley* court found a connection between a congregation and denomination similar to that of Appellant and Appellee created a trust interest in the congregation's property in favor of the denomination under its constitution, the lower court committed a clear error of law.

In *Shirley*, the Mississippi Supreme Court was tasked with deciding whether Christian Methodist Episcopal Church ("CME"), a hierarchical denomination, held a trust interest in the church property of Crossroads CME ("Cross Roads"), one of its member congregations. *Id.* at 673. Because the denomination was hierarchical, the Court determined that CME could establish its trust interest in the church property by demonstrating that Cross Roads was a connectional church of the denomination. Analyzing the facts under neutral principles of law, the Court held that Cross Roads was a connectional church because it "participated in the governing structure of CME by sending delegates to the Annual Conference as well as accepting trustees . . . appointed by the General Conference," "paid its annual assessments to CME," "accepted and paid pastors assigned to it by CME," "accepted Sunday School literature from CME, as well as \$1,000 when building the current church," had belonged to the denomination for over fifty years, and agreed to be bound by the tenets of the denomination's Book of Discipline. *Id.* at 676-77. Also of importance was the fact that the Book of Discipline required CME congregations to deed their property to trustees who would hold title for the benefit of the denomination. *Id.* Since the Book of Discipline contained a clause declaring that all CME congregations held their property in trust for the denomination, Cross Roads held the church property in trust for CME. *Id.* at 676.

Much like the congregation in *Shirley*, Appellee's actions and declarations establish that it is a connectional church of the PC(USA). First and foremost, Appellee admits it joined the PC(USA) denomination at its formation in 1983 and subsequently declared itself to be a PC(USA)

congregation in its articles of incorporation as well as in its bylaws. Appellee also expressly acceded to governance under the PC(USA) Constitution in those documents. In addition to those declarations, Appellee has continuously held itself out to the public as a local PC(USA) congregation¹⁴; paid per capita assessments and/or unified giving fund contributions to Presbytery each year; and submitted its minutes and annual reports to Presbytery as required by the Book of Order.

Appellee's record of service in the PC(USA) further solidifies its connection to the denomination. Appellee has actively participated in the denomination's hierarchical government through duly elected representatives, routinely elected and sent elders from its Session to represent its interests at each Presbytery meeting, and has been represented at General Assembly by one of its congregation's ruling elders. At one time, no less than ten (10) members of Appellee served on various Presbytery committees and, ironically, Appellee has even had an elder from its congregation serve as the Co-Chair on an administrative commission which assumed original jurisdiction over a PC(USA) church within its Presbytery. Despite Appellee's statements to the contrary, these acts establish the degree of its dedication to the denomination, as it was actively advancing and enforcing the PC(USA) polity.

Undoubtedly, Appellee has also received benefits and assistance through its membership in the PC(USA) that it would not have otherwise obtained. For instance, Appellant has facilitated access to pension and health insurance benefits for Appellee's staff which defrayed its administrative costs, its congregation members have access to and have used Appellant's facilities, such as the

¹⁴ The inclusion of "PC(USA)" in the corporate name was unanimously approved by Appellee's congregation and that action demonstrates its desire to be a connectional church of the denomination.

Camp Hopewell Conference Center, for retreats, meetings and as a summer camp for Appellee's youth members, and has utilized Appellant's assistance to locate and hire replacement pastors. Acceptance of those benefits from the denomination resulted in Appellee's receipt of personal property in the form of additional capital and those funds could be expended on acquisition of additional real property and other personal property.

Most telling of Appellee's connection to the denomination is its decision to remain a PC(USA) congregation even after Appellant explained to Dr. Long Appellee's options with respect to church property, despite their exercise of the property exception. Armed with that knowledge, Appellee was left with the inescapable conclusion that its property would be subject to a trust interest in favor of Appellant if it did not invoke Article 13. When faced with the option of remaining within the PC(USA) or leaving with its property, Appellee decided to not invoke Article 13, instead choosing to remain a member congregation in the PC(USA). This very act starkly contrasts with the Chancellor's finding that Appellee had always expressed its intent to hold title to its property free of a trust interest in favor of the denomination, as Appellee's decision to stay is tantamount to express acceptance of the PC(USA)'s trust interest. Thus, by remaining a connectional church of the PC(USA) in spite of the PC(USA)'s trust interest, Appellee effectively abandoned any alleged intent that it remain the owner of its property free of a trust interest in favor of the denomination.

Lastly, Appellee's conveyances of church property to its corporate form when incorporating are similar to those analyzed by the Court in *Shirley*. As provided for in its articles of incorporation, Appellee's session controls the property at issue. Its session is comprised of ruling elders elected from within the congregation, as well as its pastors and associate pastors. Book of Order at G-3.0201. Crucially, ruling elders must be ordained and installed in accordance with the Book of Order. *Id.* at G-2.0403. Once ordained and installed, a ruling elder is responsible for the "life of the

congregation as well as for the whole church,” likening their role to that of a congregation’s trustee in other denominations. *Id.* at G-2.0301. Thus, much like the trustees in *Shirley* were local congregation members, Appellee’s ruling elders are congregation members ordained and installed pursuant to the PC(USA) Constitution and entrusted with the safe-keeping and management of their PC(USA) congregation. Just as the *Shirley* court found the trustees were agents of the denomination due to their appointment at CME’s annual conference, the control of Appellee’s church property is entrusted to its ruling elders. Consequently, conveyance of its real property to its corporate form by Appellee does not deprive Appellant of its trust interest therein. Rather, it preserves that interest.

Applying the analysis from *Shirley*, Appellant established a trust interest in the property of Appellee due to its status as a connectional church of the PC(USA). As evidenced by the above-cited facts, Appellee is and intended to be a connectional church in the PC(USA) since joining in 1983 and the Chancellor committed a clear error of law by granting summary judgment in favor of Appellee.

a. The lower court’s failure to consider binding precedent further demonstrates its abuse of discretion when ruling on summary judgment.

In its summary judgment motion, Appellant thoroughly discussed *Shirley v. Christian Episcopal Methodist Church* 748 So. 2d 672 (Miss. 1999), and distinguished it from the court’s earlier opinion in *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998). Like *Shirley*, *Church of God Pentecostal, Inc.* is a recent Mississippi decision wherein the Supreme Court applied neutral principles of law to determine whether a parent denomination held a trust interest in the property of an alleged member congregation. Despite Appellant’s discussion and application of those decisions, the lower court’s opinion only discusses the *Church of God* opinion in support of its determination that Appellant did not have a trust interest

in Appellee's property. Not once did the lower court attempt to distinguish, let alone mention, the *Shirley* decision, which in and of itself would constitute error in that *Shirley* involves resolution of an issue most similar to the one presented by the parties, i.e. whether a hierarchical denomination held a trust interest in the property of its congregation by virtue of a trust clause in its constitution.

Church of God involved a church property dispute between Church of God Pentecostal (“**Pentecostal**”), the parent denomination, and Freewill Pentecostal Church (“**Freewill**”), the local congregation. Faced with a matter of first impression, the Mississippi Supreme Court adopted and applied the neutral principles of law approach to the property issue. *Church of God*, 716 So.2d at 206-210. It thereafter performed a “purely secular” examination of the church property deeds, applicable Mississippi code provisions, as well as the constitutions and bylaws of the denomination and congregation to determine whether the denomination had any basis to support imposition of a trust interest. *Id.* at 205-06. The court noted that Pentecostal could establish “either an actual transfer of property from the congregation to the denomination, an express trust, or clear and convincing evidence that the local congregation intended to impose a ‘trust’ over its property in favor of the congregation” in order to establish its interest. *Id.* at 206.

When no transfers of property or documents creating an express trust in favor of the denomination were found, the court utilized neutral principles of law to determine whether the congregation's property was subject to a constructive or resulting trust. *Id.* The Court reviewed various instruments, including the congregation's bylaws, the granting language utilized in the congregation's deeds, and the denomination's constitution, finding the denomination's intent that property of its congregations be held in trust for the denomination to be unambiguous. *Id.* at 208. Thus, the court noted that the “relevant inquiry” was the relationship between Pentecostal and the

Freewill congregation to determine whether the local church was truly a “sister church” of the denomination. *Id.*

The court found the relationship between Pentecostal and Freewill “tenuous at best,” due mainly to lack of evidence that Freewill adopted Pentecostal’s bylaws, though it was also significant that Pentecostal did not consider Freewill, or any Mississippi congregation, a member congregation of the denomination, that Freewill never incorporated as required by Pentecostal’s constitution, that Freewill had no right to representation in Pentecostal meetings or conferences, Pentecostal never assigned a bishop to oversee Freewill or any other Mississippi congregations, and Freewill was never reprimanded for noncompliance with Pentecostal’s constitution. *Id.* at 208-209. Because there was no express declaration of the denomination’s intent that church property be held in trust and little connection between the denomination and congregation, the court held Pentecostal failed to clearly and convincingly demonstrate a trust interest in Freewill’s property. *Id.* at 211

The lower court analyzed the *Church of God* decision and interpreted it to mean that courts may look to the “relationship of the two churches to determine whether a constructive trust or a resulting trust was applicable and whether there had been a compliance with denominational church documents by the congregational church.” Acknowledging the lack of relationship between the congregation and denomination in *Church of God* was insufficient to support a trust interest in the congregation’s property, the lower court went on to hold that, even though the “relationship between [Appellant] and [Appellee] was much stronger over the last 30 plus years” than that between Pentecostal and Freewill, it was insufficient to support a constructive trust in favor of Appellant. The Chancellor’s determination appears supported by one finding: that Appellee purportedly did not intend for Appellant to have a trust interest of any sort in its property.

Notably, neither *Church of God* nor *Shirley* analyzed whether the congregational churches intended for their property to be held in trust. Rather, the relevant inquiry in both instances was whether the congregation's intent to be a connectional, or member, church of the denomination was sufficiently expressed such that it would be bound by the trust clause in the denomination's constitution. In *Church of God*, that intent was lacking, whereas in *Shirley*, Cross Roads' intent was amply demonstrated. In Appellee's case, it is beyond any reasonable dispute that the congregation intended to be a member, or connectional, church of the PC(USA). Because of that intent, the lower court should have found Appellee's property was subject to the PCUS trust clause and created a trust interest in favor of PC(USA).

Instead of so holding, the lower court endeavored to recount every act purportedly undertaken by Appellee to escape any trust interest claimed by the denomination. However, it failed to mention, or even consider, the most important fact: If Appellee truly intended to remain the sole owner of the church property, it could have invoked Article 13 within eight years of Reunion and left the denomination with its property. Yet Appellee never took that action - even after Dr. Long reported to the Session that David Snellgrove at Presbytery explained their options while there was still time to invoke Article 13. At that point, more than two years remained to invoke Article 13, but, since Appellee did not, its intent to remain a member of the PC(USA) was crystalized and its property was subject to a trust interest in favor of the denomination after the Article 13 window closed. Any other result is inapposite to relevant considerations and analysis set forth in *Shirley* and *Church of God*. Accordingly, the Chancellor's grant of summary judgment is appropriately reversed.

The Georgia Supreme Court decision in Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., involves resolution of nearly identical issues to those presented herein under neutral principles of law.

While there is no Mississippi precedent applying neutral principles of law in the context of a Presbyterian church, in the matter of *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, the Georgia Supreme Court resolved near identical issues to those presented herein, i.e. whether a local congregation held its property in trust for the PC(USA) under the Book of Church Order trust clause. *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272 (Ga. 2011); cert denied *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.* 132 S.Ct. 2722, 183 L.Ed. 2d 638 (2012). Beginning its inquiry by examination of the Book of Order, the court first determined that PC(USA) denomination was hierarchical, focusing on the PC(USA)'s representative form of government, its division into representative bodies, the composition of those bodies by elected representatives from each congregation, the ascension of authority up the chain of tribunals, the express right of a congregation to seek dismissal with its property within eight years of reunion and other relevant property sections. *Id.* at 272-274.

The court also considered the history of the congregation, finding it was a former PCUS member that reunited under the PC(USA) Constitution, that it exercised its right to substitute the PCUS trust clause in place of the PC(USA) trust clause, (2) incorporated to hold title to church property as required by the Book of Order, (3) declared itself a member of the PC(USA) in its articles of incorporation, (4) prohibited promulgation of bylaws that conflicted with any provision of the Book of Order, and (5) required corporate officers maintain active membership in the PC(USA). *Id.* at 274. . *Id.* at 274. Review of the church property deeds established title was held in Timberridge's corporate name, at times including the phrases "its successors" or its "heirs and assigns," *though the deeds were of little value as evidence of intent.* *Id.* at 274.

Importantly, Timberridge’s exercise of the property exception evidenced its knowledge and appreciation of the trust provision. *Id.* That awareness resulted in the court’s determination that it affirmatively chose to remain PC(USA) member congregation after Reunion because it opted to not seek dismissal with its property under Article 13, that action being found as direct evidence of its intent to be bound by the PC(USA) Constitution. *Id.* Additional evidence of that intent was inferred from the duration of Timberridge’s membership in the PC(USA) under a trust clause for nearly a quarter century, its continued operation as a PC(USA) congregation, its participation in the governance of the denomination through attendance and voting at presbytery meetings, participation in decisions of the higher tribunals, and receipt of denominational benefits, such as assistance from presbytery to replace a pastor and use of a camp and conference center. *Id.* at 274-75.

The court, citing *Jones v. Wolf*, held the intention to create a trust in favor of PC(USA) required examination of the actions before the dispute “took a legally cognizable form.” *Id.* at 277; citing *Jones*, 443 U.S. at 603. To that end, the court refused to require the PC(USA) prove an express trust existed in its favor under the Georgia Code¹⁵. *Id.* at 278-79. In rejecting strict compliance with the statutory provisions, the court reasoned that requiring a national denomination to strictly comply with the nuances of trust codes in all 50 states would contravene the teachings of *Jones v. Wolf*, as such requirement would impose a burden that far exceeds the minimal burden of

¹⁵In its Memorandum in Opposition to Presbytery’s Motion for Summary Judgment, Appellee encouraged the lower court to disregard the *Timberridge* decision, arguing its inapplicability due to the Georgia Supreme Court’s reliance upon a “unique Georgia Statute” that permitted creation of a trust interest by deed when the denomination’s constitution provided for such interest. *Timberridge*, 290 Ga. at 277-78; C.P. at _____. However, the *Timberridge* Court was clear that its decision did not rest upon the actual statute in question. *Id.* at 287-88. Rather, the decision was premised on Georgia’s “policy reflected in [that statute]” as well as the denomination’s constitution and other documents. *Id.* At 287-88. Accordingly, the *Timberridge* is applicable to the facts of this matter despite Appellee’s misrepresentation of the grounds supporting that decision.

proof required to establish a trust in its favor, especially since the *Jones* court specifically provided for creation of a denominational trust through constitutional amendment. *Id.* at 278-80. Thus, though the national church's trust clause did not satisfy the Georgia Code's express trust requirements, that alone did not preclude the trust's existence. *Id.* at 281.

The *Timberridge* court placed substantial weight on the congregation's adherence to the national churches governing documents, finding that *Timberridge* (1) incorporated due to the Book of Order section requiring that action, (2) declared membership in the PC(USA) church in its articles of incorporation, thereby subjecting it to PC(USA)'s authority, (3) required its corporate officers to be active members and acknowledged its bylaws could not contradict the Book of Order, (4) its incorporation did not divest the PC(USA) of its trust interest, (5) its allegiance to the Book of Order was an acceptance of the plain language of the trust provision, and (6) more than two decades passed without any attempts at amending its bylaws to evidence a contrary intent. *Id.* at 282. Accordingly, the Georgia Supreme Court held *Timberridge*'s actions evidenced an intent that it hold the church property in trust for the PC(USA) under the denomination's Constitution, a conclusion reached by "[a]pplying the neutral principles with an even hand, ... [to] simply enforce the intent of the parties as reflected in their own governing documents," as any other action would infringe upon First Amendment protections. *Id.* at 287.

Being fully candid with the Court, these question of ownership of church property are generally dependent upon the facts of each case which has resulted in decisions in favor of imposition of a trust and against imposition. It is respectfully submitted that *Timberridge* is a mirror-image to the instant case, as the facts surrounding Appellee's membership in the denomination would satisfy the factors considered by the Georgia Supreme court in resolving the church property issue. Further, the neutral principles analysis by the *Timberridge* court is most consistent with

adopted by the Mississippi Supreme Court in *Church of God Pentecostal*, supra, and *Shirley*, supra. Thus, because the relevant facts of the instant matter fit squarely into the relevant considerations made by the *Timberridge* court, the Chancellor's failure to consider and apply the reasoning therein constituted a clear error of law.

iv. The Court mis-applied the neutral principles of law standard in determining that Appellant did not possess an express interest in Appellee's property.

Creation of an express trust in Mississippi only requires that the trustor have the capacity and intent to create the trust, designate a definite or identifiable trust beneficiary, assign duties to a trustee under the trust, and ensure a sole trustee is not also the sole beneficiary. MISS. CODE ANN. § 91-8-402 (2016). A valid trust of real property must also be reduced in writing and signed by the party creating the trust. MISS. CODE ANN. § 91-8-407 (2016). A denomination's burden in establishing a trust with its member churches should be "minimal" and require no more than mere alteration of "the constitution of the general church ... to recite an express trust in favor of the denominational church." *Wolf*, 443 at 606. This nominal burden ensures protection of the right to free exercise of religious beliefs secured by the First Amendment. *Id.* at 608.

As set forth above, the lower court declined to find that Appellee's property was subject to an express trust in favor of Appellant because, in its estimation, there was no evidence that Appellee intended to create such a trust. In arriving at that conclusion, the lower court analyzed the Appellant and Appellee's relationship under the *Wolf* and *Church of God* decisions, thereafter determining that no express trust document existed and that the deeds to Appellee's property did not contain a trust provision or a reverter clause. Further, it held that Appellee's July 1, 1984, Resolution to be governed by the property chapter contained in the PCUS Book of Church Order 1982-1983 Edition and the congregation's adoption of bylaws in July 2003 which referenced governance under the

PCUS Book of Church Order was insufficient to satisfy the writing requirement for an express trust in favor of PC(USA).

The chancellor's refusal to find an express trust in favor of the PC(USA) is the product of a misinterpretation and mis-application of the U.S. Supreme Court's decision in *Wolf*. The lower court correctly interpreted the *Wolf* decision to encourage state courts to review deeds and other instruments of title to church property, review the constitutions and bylaws of the religious denomination and congregation for trust clause language, and apply principles of property and trust law familiar to judges and lawyers when deciding whether a trust interest was created in favor of a denomination. However, the lower court failed to appreciate the fact that the *Wolf* court was also concerned with the burden strict application of trust laws in each state would have on a national or multi-national denomination's perfection of a trust interest in its congregation's properties. As aptly announced by the *Wolf* court, state courts should not endeavor to make the creation of a trust an onerous burden on the denomination, as doing so would require unnecessary and costly expenditures to comply with the varying trust and property laws of the states. *Wolf*, 443 at 606. Rather, the *Wolf* court declared that state courts should impose a "minimal burden" on denominations to create a trust and even went so far as suggesting that a denomination would only need to amend its constitution to provide for such an interest. *Id.*

Though the lower court felt it was correctly applying the principles announced in *Wolf*, its determination that the trust clause contained within the PC(USA) constitution did not create a trust interest in the denomination's favor would, in essence, require the denomination to undertake a substantial burden to obtain a trust interest in the properties of its Mississippi congregations. If every court in every state misinterpreted *Wolf* in the same or similar fashion, the PC(USA) would ultimately draft thousands of congregational trust agreements while also ensuring those agreements

comport with the trust and property laws of the various states and would require amendment every time a member church bought or sold property, a scenario which the *Wolf* court expressly sought to avoid. Since the Chancellor's decision unnecessarily expands upon the minimal burden contemplated by the *Wolf* court, its decision constitutes a clear error of law and entry of summary judgment in favor of Appellee is appropriately reversed.

v. Appellant's First Amendment rights are violated by the permanent injunction.

The First Amendment to the United States Constitution "severely circumscribes the role that civil courts may play" when resolving disputes regarding church doctrine and governance, and requires deference to a denomination's authority over its member congregations. *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 204 (Miss. 1998). However, the degree of deference exercised by a court is necessarily tied to the internal structure of the church body in question. When the issue before a court concerns a hierarchical denomination, decisions of "church authorities and such tribunals as they may set up for themselves are supreme" on ecclesiastical matters. *Sawyer v. Brandon*, 825 So. 2d 26, 30 (Miss. 2002). These limitations on a court's jurisdiction over religious organizations require restraint to prevent undue interference with a denomination's right to minister to its congregations, to alter or dissolve a congregation or church, and to discipline a minister ordained by the denomination. *Id.* At 822. These rights "lie at the core of ecclesiastical affairs" and are secured to every denomination in the United States. *Id.* (holding "alteration of a parish is, in fact, a matter of internal church government"); see also *Conic v. Cobbins*, 44 So. 2d 52 (Miss. 1950)(declining to exercise jurisdiction over question of whether discipline of bishop was warranted or determination of whether presiding bishop was property appointed).

While some questions clearly implicate church polity, courts are often faced with more difficult questions, particularly where an ideological rift divides a congregation in two. When a hierarchical church congregation is divided, “judicial relief, if appropriate, would ordinarily await final determination by the highest tribunal having jurisdiction over ecclesiastical matters.” *Pilgrim Rest Missionary Baptist Church v. Wallace*, 835 So. 2d 67, 72 (Miss. 2003)(citing *Bowen v. Green*, 275 S.C. 431 (1980)). However, if such tribunal was not afforded an opportunity to reach a determination, courts have one option: to “restore the status quo to enable the church to act.” *Id.*; see also *Greater Fairview Missionary Baptist Church v. Hollins*, 160 So.3d 223, 232-233 (Miss. 2015)(explaining that the rule announced in *Pilgrim Rest* was a limited exception to ecclesiastical abstention doctrine which allows court intervention when a church body has not ruled on a doctrinal matter). The same is true when the question before a court in anyway concerns a determination of which faction has remained faithful to the denomination, i.e. a “True Church” determination. See *infra*, *Carothers v. Moseley*, 55 So. 881, 881-82 (Miss. 1911)(pre-neutral principles opinion declining to answer ecclesiastical question of which faction of Presbyterian denomination constituted true church).

In *Carothers v. Moseley*, the Mississippi Supreme Court, when faced with a congregational schism after the union of Cumberland Presbyterian Church and Presbyterian Church, U.S.A., held the question of which congregational faction was the “True Church” required the court to resolve an ecclesiastical question and, as such, was beyond its jurisdiction. *Carothers*, 55 So. at 881. In particular, the court recognized that “question[s], involving the doctrine, discipline, ecclesiastical law, rule, and custom of [Presbyterian Church] are simply off-limits.” *Id.* As the *Carothers* court recognized, the judiciary cannot question the “ecclesiastical government of all the individual members, congregations, and officers” of a denomination. *Id.*

In the matter under review, the lower court's injunction is simply too broad and must be lifted to the extent it has prohibited Presbytery and its higher governing councils within the PC(USA) from interacting with Appellee's members or otherwise disciplining their transgression of the PC(USA) constitution.

Appellant is entitled to be free of any judicial restraint on its exercise of ecclesiastical jurisdiction over the congregations in its district. By way of example, in the case of a division within a congregation, the Book of Order provides Appellant the right to investigate the matter and take appropriate action, such as officially declare a division within the congregational body, discipline its active members for any violation of the provisions of the PC(USA) Constitution, or dissolve a congregation. As provided for by the Book of Order, Appellant was entitled to exercise its right as the Appellee's parent denomination to declare who among the congregation constituted the True Church so that they may continue the PC(USA) mission. Because the permanent injunction actually prohibits the PC(USA)'s disciplining of its members for violations of the PC(USA) Constitution committed in connection with the church property issue presently before the Court, Appellant's First Amendment rights are infringed upon by the permanent injunction. See *Carothers*, 55 So. at 881 (holding denomination has a right to ecclesiastical governance over individual members, congregations, and officers within its membership on controverted issues of faith, doctrine and other similar matters).

Moreover, the permanent injunction chills Appellant's right to discipline Appellee's minister. The lower court prohibited such conduct even though Appellee's minister was ordained in the PC(USA) denomination and subject to Appellant's exclusive ecclesiastical jurisdiction on such matters as his management and leadership of Appellee's congregation under the Book of Order. There is no question that Appellant's disciplining of Appellee's minister for violation of the

PC(USA) constitution was a purely ecclesiastical matter and “subject at all times to the control of the church.” See *Conic v. Cobbins*, 44 So. 2d 52, 56 (Miss. 1950) and *Greater Fairview Missionary Baptist Church v. Hollins*, 160 So. 3d 223, 229 (Miss. 2015)(holding that United States Supreme Court precedent clearly precludes ministerial church-employment related decisions from a court’s jurisdiction). Consequently, this also infringes on Appellant’s constitutional rights.

Given the breadth of the conduct restrained, the permanent injunction effectively forbids Appellant from enforcing each member’s pledge to further the goals of the denomination that he or she made upon admittance into the PC(USA)’s membership. As argued in the lower court, such restraint on a denomination’s ecclesiastical authority to discipline its members raises additional concerns of irreparable harm to the denomination’s public image, as Appellant has the sole right “to define and govern [its] theology, [its] membership, and [its] own tribunal’s ecclesiastical determinations.” *Roman Catholic Diocese of Jackson v. Morrison*, 905 So. 2d 1213, 1237 (Miss. 2005)(distilling the holdings from *Employment Division Department of Human Resources of Oregon v. Smith*, 492 U.S. 872 (1990), *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), and *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94 (1952) into the above-quoted legal proposition). For instance, in the future, Appellee may utilize the church property in a way that expressly violates or contradicts the tenets of the PC(USA) denomination or a provision within its Constitution without fear of discipline by its parent denomination because such action implicates Appellee’s ownership and use of its property. By so restricting Appellant’s right to discipline its members, the lower court has effectively revised the text of the Book of Order to include an exception to the denomination’s right to discipline Appellee or its members for violation of the PC(USA) polity. This type of direct interference by a court has always been prohibited by the First Amendment.

Decades of Mississippi precedent requiring judicial abstention from proscription of the ecclesiastical authority of Appellant prohibited the lower court from entertaining jurisdiction over, or in any way proscribing, Appellant's right discipline its members See *Linton v. Flowers*, 230 Miss. 838, 844 (Miss. 1957)(holding congregation's rights to promulgate faith and practice are not within court's jurisdiction, as opposed to property rights of a congregation's members, which are within the scope of protections that a court may afford litigants). The lower court's jurisdiction in this matter extended only as far as was necessary to allow it to decide the issue of ownership of the church property as between Appellant and Appellee, and this issue was resolved by the Chancellor's awarding of summary judgment to Appellee. Accordingly, not only is the permanent injunction superfluous, it prospectively forbids Appellant from engaging in protected activity secured by the First Amendment. Consequently, the injunction must be lifted, as Appellant is entitled to relief from the lower court's failure to defer to the PC(USA)'s jurisdiction over such matters.

II. The lower court's factual determinations were clearly erroneous, manifestly wrong and/or constituted an abuse of discretion.

i. Standard of Review of Questions of Fact.

In ruling on the summary judgment motions submitted by Appellant and Appellee, the Chancery Court's findings must be supported by substantial evidence and, if they are not, such findings are subject to reversal on appeal. *Redd Pest Control Co. v. Foster*, 761 So. 2d 967, 971 (Miss. Ct. App. 2000). For evidence to be considered substantial, it must, at the very least, be credible. *Samples v. Davis*, 904 So. 2d 1061, 1064 (Miss. 2004). Evidence sufficient to sustain a chancellor's findings is that which "supports or tends to support the findings of fact made below, together with all reasonable inferences which may be drawn therefrom." *Arnold v. Dubose*, 740 So. 2d 979, 984 (Miss. Ct. App. 1999).

Even if the lower court's factual determinations were based upon substantial evidence, an appellate court must review the findings and evidence submitted in support thereof to ensure the court did not abuse its discretion or make a finding that is manifestly wrong, clearly erroneous, or which misapplies the correct legal standard. *Redd Pest Control Co. v. Foster*, 761 So. 2d at 971. Under the abuse of discretion standard, an appellate court must determine that sufficient evidence existed to support the lower court's factual findings. *Id.*

ii. Factual determinations of the lower court which were manifestly wrong, clearly erroneous, and/or unsupported by substantial evidence.

As amply argued above, in denying Appellant's Motion for Summary Judgment, the Chancellor found that Appellee's property was not subject to an "express or implied, resulting or constructive" trust in favor of the PC(USA). However, in arriving at that conclusion, the lower court committed numerous fact-finding errors resulting from its misinterpretation and/or mis-reading of provisions of the Book of Order, as well as its mis-reliance on Appellee's unsubstantiated assertions. These errors resulted in the Chancellor characterizing numerous facts in stark contrast to plain readings of the testimony presented by both parties as well as the text of documentary evidence relied upon by each. However, the lower court cited and relied upon these errors and/or mis-characterizations in its grant of summary judgment in Appellee's favor, necessitating reversal.

a. Erroneous factual findings regarding the PCUS and PC(USA) trust clauses.

The lower court's refusal to enforce the PCUS trust clause was solely premised upon its finding that it was not adopted until shortly before Reunion and contradicted alleged disclaimers of such an interest made by the PCUS prior to its inclusion in the Book of Church Order. For instance, the Chancellor's invalidation of PCUS trust clause is predicated upon an alleged assurance given by the denomination to its congregations that "beneficial ownership of church property would continue

to be held by the congregation.” Notably, the lower court’s finding failed to give any consideration to the PCUS’s usage of the term “beneficial ownership” in the alleged assurances, as that term is meant to differentiate between legal title and the right to use and enjoyment of property held in trust. Thus, due to the lack of substantial evidence demonstrating that PCUS had always disclaimed an interest in Appellee’s property, the lower court’s reliance upon this factual oversight was error and is not credible evidence sufficient to support its entry of summary judgment.

To the same effect is the Chancellor’s determination that the PCUS trust clause was invalid because the denomination did not seek consent or approval of the trust clause from its congregations prior to amendment. This factual finding is irreconcilable with the inherent governmental structure of the PCUS, as Appellant’s minutes plainly demonstrate that Appellee’s Session members represented the interests of their congregation by voting to disapprove concurrence with the amendment to the General Assembly. Moreover, the Chancellor’s misconception regarding the representative nature of the PCUS polity resulted in a complete disregard of the fact that the amendment was ultimately adopted because it received enough votes from other presbyteries to be adopted and enacted by the General Assembly, despite Appellee’s members’ vote at Presbytery. Similarly, the Chancellor’s lack of appreciation that Dero Ramsey, an individual member of Appellee, was present and voted during the General Assembly when the amendment was adopted. Thus, despite the Chancellor’s conclusions, the PCUS trust clause was approved by the denomination as a whole, including Appellee, because a majority of member-delegates approved its passage at the General Assembly. Consequently, the Chancellor’s findings in this respect are clearly erroneous and constitute an abuse of discretion.

The lower court erred in determining Appellee’s expressed intent to retain ownership of its property, coupled with adoption of the trust clause in an “obscure manner,” was sufficient to exempt

Appellee from the PCUS and PC(USA) trust clauses. According to the Chancellor, such a resort is warranted, especially in light of Appellee's memorialization of its intent to be governed by the provisions of the PCUS Book of Church Order (1982-1983 Edition) in its bylaws. That finding is not only subject to reversal for the above-cited reasons, but is also clearly erroneous in that the Chancellor willingly ignored contradictory evidence of Appellee's intent when arriving at its factual determination on this issue.

Further error is found in the lower court's ascription of the "reasonable [denomination]" standard to Appellant's relationship with Appellee. In holding Appellant to this unprecedented standard, the Chancellor found that, in its estimation, a reasonable denomination "would not be smug enough" to interpret Appellee's reference to the PCUS constitution as sufficient to grant a trust interest in Appellant's favor. Nowhere in its opinion does the lower court define the parameters of such duty. Moreover, the Chancellor's factual finding begs the question of whether a reasonable congregation would be smug enough to think it could take action in contradiction of a plain reading of the denomination's constitution and believe it could remain a member therein. Similarly, the lower courts pronouncement calls into question the reasonableness of new members of a Session and/or congregation who are smug enough to disregard the pledges and commitments made to the PC(USA) by their predecessors decades earlier. Regardless of the flaws in the lower court's reasoning, these determinations were not authorized under a neutral principles of law analysis and, as a product of the Chancellor's own speculation, lacked legal and factual support. Accordingly, the chancellor erred in weighing these considerations when granting summary judgment in Appellee's favor.

b. Erroneous factual findings regarding the lack of an express trust.

The chancellor's determination that neither party disputed there was no valid express trust agreement was clearly erroneous. As is apparent from Appellant's summary judgment brief, the Chancellor's determination ignores Appellant's argument that the bylaws, being a signed writing, was sufficient to constitute a written trust agreement, as it incorporated the trust clause by reference. Moreover, the chancellor's determination that Appellee's intent to be bound by the PCUS trust clause was unclear and capable of alternate meanings is confounding, at best, as there simply can be no question as to which PCUS constitution property chapter Appellee chose to operate under. Without question, the Appellee's own verbage indicates it intended to operate under the property chapter of the PCUS Book of Church Order, 1982-1983 Edition which, also unquestionably, contained a trust clause that was validly adopted by the denomination prior to Reunion. These factual mis-findings, alone, warrant reversal of the lower court.

For the same reasons, the lower court's refusal to treat the congregational Resolution as demonstrative of its intent to hold title to its property in trust for the denomination is clearly erroneous, as it disregards the congregation's majority decision to operate under the PCUS trust clause.

c. Erroneous factual findings regarding the lack of a constructive trust.

The lower court's determination that constructive trust did not exist in favor of PC(USA) is premised upon its initial finding that "there were no documents titling any of the property in another's name and a need for affirmative action in equity to protect a party who, in good conscience, should have and hold the property." However, in so finding, the lower court unnecessarily circumscribed its own equity jurisdiction. Appellant, in its motion for summary judgment, argued that imposition of a constructive trust was appropriate due to Appellee's willing

acceptance of benefits stemming from its membership in the PC(USA). Moreover, its failure to appreciate and consider these membership benefits further resulted in the lower court's determination that the denomination did not invest any funds into acquisition of Appellee's property. Such a finding was not supported by any evidence presented by Appellee.

As for the determination that there was no arrangement of trust between Appellant and Appellee evidenced by "oral conversations," "minutes," or other documentation that would satisfy the "classic legal definition of a constructive trust," that finding contradicts Appellee's understanding of the import of the PCUS trust clause which is memorialized in Appellee's Session's minutes. As the Chancellor's factual finding in these respects failed to accurately portray Appellee's and Appellant's relationship and understanding regarding property ownership under the property exception to the Book of Order, the lower court committed a clear error of law in granting summary judgment in favor of Appellee.

d. Erroneous factual findings regarding the lack of a resulting trust.

In refusing to impose a resulting trust over Appellee's property, the lower court's determination relied upon invalidation of the PCUS trust clause due to its recent adoption prior to Reunion, its own misinterpretation of the PCUS's statement that congregations would continue to have beneficial ownership of their property, and the ambiguity it perceived in Appellee's reference to holding title to church property in the manner in which it had under the PCUS Book of Church Order (1982-1983 Edition). As argued above, these determinations were erroneous and because the Chancellor's entry of summary judgment rests upon these conclusions, it is appropriately reversed.

Moreover, the Chancellor abused his discretion in giving any weight to the testimony of Dr. James E. Long. As Appellee's own minutes demonstrate, Dr. Long was responsible for reporting the three options relayed to him by David Snellgrove at Presbytery prior to expiration of the sunset

provision in Article 13. Despite record evidence memorializing Dr. Long's report to the Session, the lower court gave greater weight to his alleged misunderstanding of the effect of the property clause contained in his affidavit authored in support of summary judgment even though it completely contradicts with his earlier account, as reflected in the Session's minutes. While the Chancellor's factual determinations are ordinarily entitled to great deference, in this instance, his conclusions are not the product of providing Dr. Long the benefit of the doubt. Rather, those determinations are manifestly wrong as they are not only unsupported by any credible evidence, they contradict credible evidence. As such, the lower court's grant of summary judgment was unwarranted.

e. The lower court's misconstruction of the affidavit of Presbyterian Church (U.S.A.), A Corporation.

Lastly, the lower court's misinterpretation and misapplication of the facts asserted in the Presbyterian Church (U.S.A.), A Corporation affidavit further warrant reversal. In refusing to give effect to A Corporation's qualified disclaimer that, while A Corporation itself did not possess a trust interest, that interest was in fact held and accounted for by an instrumentality of the denomination, its presbyteries. Demonstrating the lower court's misconception and, hence, its factual error, the Chancellor failed to read A Corporation's statement consistent with the above-cited Book of Order provisions. As provided therein, the PC(USA) denomination consists of, and may be identified, by each and every session, presbytery, synod, and the General Assembly, whether taken individually or in the aggregate. While the affiant attempted to make this concept clear in her affidavit, even citing to Book of Order provisions announcing those same concepts, the lower court's interpretation of A Corporation's affidavit testimony as a disclaimer of a trust interest on behalf of the denomination as indicative of the invalidity of the PC(USA)'s trust interest. However, as this determination was arrived at despite provisions in the PC(USA)'s Book of Order to the contrary, the

lower court's holding that the PC(USA) could not have a trust interest in Appellee's property is clearly erroneous and resulted from a failure to consider the weight of the credible evidence before it.

CONCLUSION

As set forth above, Appellant is entitled to relief from the Chancery Court of Oktibbeha County, Mississippi's grant of summary judgment in favor of Appellee, as the due to the erroneous factual findings and legal conclusions committed by the lower court, as those

RESPECTFULLY SUBMITTED, this, the 11th day of May, 2017.

**PRESBYTERY OF ST. ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.,
Appellant**

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CERTIFICATE OF SERVICE

I, **P. Scott Phillips**, do hereby certify that I have this day mailed a true and correct copy of the foregoing motion to the person(s) indicated below and electronically filed said motion with the Clerk of Court using the MEC system:

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THIS the 11th day of May, 2017.

P. Scott Phillips
