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STATE OF NEW YORK  
**Court of Appeals**

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KENNETH GORDON, JOHN MANLEY, MICHAEL EATON,  
MATTHEW BLACKWELL, SHAUN BABCOCK, RICHARD STOTZ,  
THOMAS CARLSEN, ROBERT HAMMOND, WILLIAM STORTZ,  
LEE STROCK, DAVID GEORGE, JOHN CONKLIN, DAVID YOUNG,  
AS TRUSTEES OF THE TRUSTEES OF PRESBYTERIAN SOCIETY OF  
CAYUGA CREEK d/b/a LANCASTER PRESBYTERIAN CHURCH and  
THE TRUSTEES OF THE PRESBYTERIAN  
SOCIETY OF CAYUGA CREEK,

*Plaintiffs-Appellants,*

vs.

THE PRESBYTERY OF WESTERN NEW YORK  
and PRESBYTERIAN CHURCH (U.S.A), a Corporation,  
*Defendants-Respondents.*

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Appellate Division Docket Number: CA 09-00787.  
Erie County Index No.: I 2008-006996.

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**OPPOSITION TO MOTION FOR LEAVE TO APPEAL  
TO THE COURT OF APPEALS  
ON BEHALF OF DEFENDANT-RESPONDENT  
THE PRESBYTERY OF WESTERN NEW YORK**

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**DISCLOSURE STATEMENT**  
**PURSUANT TO 22 N.Y.C.R.R. § 500.1 (F)**

The Presbytery of Western New York is the regional governing body of the Presbyterian Church, U.S.A., covering 64 congregations in Niagara, Erie, Cattaraugus, and Chautauqua counties. The Presbytery of Western New York has not issued any public shares, and has no parent company, subsidiaries or affiliates which have issued public shares nor does any publicly held company own 10% or more of its stock.

## PRELIMINARY STATEMENT

This Court should deny the motion for leave to appeal submitted by Plaintiffs/Appellants (collectively, the “Lancaster Church”). None of the issues presented on this appeal are novel, are of public importance, present a conflict with prior decision of the Court of Appeals, or involve a conflict among the departments of the Appellate Division. 22 N.Y.C.R.R. § 500.22(b)(4).

After the U.S. Supreme Court’s decision in *Jones v. Wolf*, 443 U.S. 595 (1979), denominational churches throughout the nation revised their church governing documents to incorporate express trust clauses providing that church property was held for the benefit of the denominational church. The Presbyterian Church (U.S.A.) (“PCUSA”) accomplished this task in the early 1980s when it adopted the Trust Clause in Part II of its Constitution, the Book of Order. And the Court of Appeals — consistent with *Jones v. Wolf* — adopted the “neutral principles” approach for deciding church property disputes. See *Schenectady v. United Presbyt. Church in U.S. of Am.*, 62 N.Y.2d 110 (1984) (“*Schenectady*”).

The Lancaster Church, by its actions and writings over the last three decades, has manifested its intent to be bound by the Book of Order. Things abruptly changed in June 2008 when the Lancaster Church voted to disaffiliate from PCUSA and commenced this lawsuit in Supreme Court, Erie County (J.

Curran) to retain title to the church property in its possession. While the case was pending, this Court issued its opinion in *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008) (“*Harnish*”) and the Fourth Department issued its opinion in *First Presbyterian Church of Oakfield v. Presbytery of the Genesee Valley of the Presbyterian Church (USA)*, 56 A.D.3d 1188 (4th Dep’t 2008) (“*Oakfield*”). Both cases upheld trust provisions in favor of the Episcopal and Presbyterian churches, respectively.

After giving the parties an opportunity to brief *Harnish* and *Oakfield*, the trial court rejected the arguments advanced by the Lancaster Church and granted the cross-motions of the Presbytery of Western New York (the “Presbytery”) and PCUSA to enforce the Book of Order’s Trust Clause. In doing so, the trial court correctly applied *Harnish* to the facts of the case and found that both an express *and* implied trust existed for the benefit of the PCUSA and the Presbytery. The Fourth Department unanimously affirmed on November 16, 2009.

The issues raised by the Lancaster Church’s motion for leave to appeal are well settled. All New York appellate courts applying the neutral principles analysis to religious property disputes have upheld the trust provisions contained in the constitutions of various denominational churches. The Lancaster Church’s legal theories are “novel” only in the sense that no litigant has

successfully advanced such spurious arguments in any New York appellate level decision.

## **BACKGROUND**

The facts and procedural history are stated in full in the Brief for that the Presbytery submitted to the Fourth Department and are only repeated here as necessary. *See* Presbytery's Brief dated June 5, 2009 at pages 3-6.

## **ARGUMENT**

### **POINT I. The U.S. Supreme Court and Court of Appeals Have Recognized That Trust Provisions Serve a Valid Purpose**

In 1979, in *Jones v. Wolf*, 443 U.S. 595, the United States Supreme Court instructed hierarchical churches on how to ensure that, under a neutral principles analysis, church property could be retained by a loyal faction in the event of a schism. According to *Wolf*, "the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* at 606.

Trust provisions in hierarchical denominations serve a valid purpose. Not only do they reflect the fact that in a hierarchical denomination all

congregations are part of a larger body, they provide for an orderly process for withdrawal from the denominations and the distribution of assets. Heeding the U.S. Supreme Court's instruction, in 1981 the PCUSA's predecessor amended its constitution to include a statement of express trust in favor of the general church.<sup>1</sup>

In *Schenectady*, this Court adopted the neutral principles approach endorsed by the U.S. Supreme Court in *Jones v. Wolf*. Under this standard, the focus in resolving a church property dispute is “on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.” 62 N.Y.2d at 122. However, as the Book of Order did not contain a Trust Clause at the time that *Schenectady* was commenced, the Court had no occasion to rule on the enforceability of the express trust in Section G-8.0200 of the PCUSA Book of Order.

Since *Schenectady* was decided in 1984, a number of New York appellate courts have applied the neutral principles analysis to church property disputes. On each occasion, the courts have enforced trust provisions contained in the constitution of the denominational church:

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<sup>1</sup> The history surrounding PCUSA's adoption of an express trust clause is explained in greater detail in the PCUSA's appellate brief at page 3.

- *Harnish*, 11 N.Y.3d 340 (2008) (enforcing trust provision in favor of Protestant Episcopal Church);
- *Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church and Congregation of Ridgeberry*, -- N.Y.S.2d--, 2010 WL 114396 (2d Dep't Jan. 12, 2010) ("*Ridgeberry*") (affirming enforcement of PCUSA's Book of Order Trust Clause);
- *Oakfield*, 56 A.D.3d 1188 (4th Dep't 2008) (affirming enforcement of PCUSA's Book of Order Trust Clause);
- *North Cent. N.Y. Annual Conference v. Felker*, 28 A.D.3d 1130 (4th Dep't 2006) ("*Felker*") (enforcing trust provision in the United Methodist Church's Book of Discipline);
- *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 250 A.D.2d 282 (3d Dep't 1999) ("*Trinity*") (enforcing trust provision in favor of Protestant Episcopal Church).

All of the above decisions have been unanimous. While each case has its own unique set of facts, the legal analysis is straightforward. There is no split among the appellate divisions. The Lancaster Church has offered no reason for this Court to revisit the Fourth Department's decision and make new law here.

**POINT II. The Lancaster Church Has Not Identified Any Novel  
Issues or Conflicting Decisions For The Court to  
Resolve**

**A. Religious Corporations Law Does Not Exempt the  
Lancaster Church From The Book of Order**

The Lancaster Church maintains that its pre-1828 date of incorporation is the most significant fact in this case. According to the Lancaster Church, Religious Corporations Law (“RCL”) § 69(3) creates a statutory trust in favor of PCUSA. But that statutory trust may not apply to a church incorporated prior to 1828 because of RCL § 24, which provides that any RCL provisions which “are inconsistent with or in derogation of” any of the rights the church had prior to January 1, 1828 do not apply unless that church reincorporates or passes a resolution to that effect. The Lancaster Church asserts that RCL § 69 does not apply here due to its pre-1828 date of incorporation. (Mot. at 12-13).

Based on a strained reading of this Court’s opinion in *Schenectady*, the Lancaster Church argues that compliance with RCL § 24 is the *only* way a pre-1828 church can be bound by a trust provision in favor of the denominational church. Indeed, the Lancaster Church went so far as to claim that RCL § 24 was “dispositive” in the trial court and characterized it as creating a “presumption”

before the Fourth Department.<sup>2</sup> Rather than use such extreme language this time around, the Lancaster Church asks whether “an express or implied trust be imposed upon the property of a church incorporated prior to 1828” where the church does not “comply with the statutory conditions precedent of [RCL § 24]?” (Mot. at 6). The answer since *Schenectady* in 1984 — and as confirmed by *Harnish* in 2008 — has always been yes.

Contrary to the Lancaster Church’s theory, nothing in RCL § 24 suggests that it is the “only” means by which a church incorporated prior to 1828 can be bound by the Book of Order’s Trust Clause. RCL is just one of the several ways a trust can be created under New York’s application of the neutral principles analysis. Indeed, the manner in which the *Schenectady* Court conducted its analysis of the neutral principles squarely contradicts Lancaster’s flawed reading of the statute. The Court treated “the State statutes governing the holding of church property” as just one of the factors to be considered in the “neutral principles” analysis. 62 N.Y.2d at 122 (finding that local church’s decision not to bring itself within scope of RCL § 69 was one piece of “evidence” that ownership

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<sup>2</sup> For example, the Lancaster Church’s brief to the Fourth Department claimed “Pursuant to RCL § 24 and the abovementioned case law, the current RCL not only does not apply to LPC **but it is presumed by statute that** absent the statutorily mandated acts, **LPC does not hold property in trust and did not intend to be bound by the Trust Clause.**” (LPC Br. at 9) (emphasis added). *See also* LPC Br. at 17 (RCL § 24 allegedly provides “the only means of acceptance of a trust clause.”) (emphasis in original).

rested with local church). If RCL § 24 acted as an absolute “presumption,” as argued by the Lancaster Church, the Court would have ended its analysis there. But the Court went on to consider whether the Book of Order contained an express trust *and* whether there was an implied trust for the denominational church. Significantly, the Book of Order did not contain a Trust Clause at the time that *Schenectady* was commenced. In stark contrast, when the Lancaster Church commenced its lawsuit the Trust Clause had been in existence for over 25 years and there was ample evidence in the record to find that an express and implied trust had been created.

The Court repeated its analysis 24 years later when it issued its opinion in *Harnish*. The Court, applying neutral principles, found that nothing in the deeds or articles of incorporation created an express trust in favor of the Rochester Diocese or the Episcopal Church. *Id.* at 351. It further found that “[n]or does any provision of Religious Corporations Law conclusively establish a trust in favor of the Rochester or Episcopal Church.” *Id.* *Harnish* then proceeded to analyze the factor it deemed “dispositive” of the case: “the constitution of the general church concerning the ownership and control of the church property.” *Id.* The Trust Clause in the PCUSA’s Book of Order was similarly dispositive here.

**B. The Appellate Divisions Have Consistently Enforced Trust Provisions in Accordance with *Schenectady* and *Harnish***

The Second Department's recent opinion in *Ridgeberry* is particularly instructive as it too involved a Presbyterian Church which incorporated prior to 1828 and had allegedly not come into compliance with RCL § 24. The Second Department, following this Court's guidance in *Harnish*, ruled that the Book of Order was dispositive "even if no provision of the RCL conclusively established a trust in favor of the Presbytery of the Hudson River or PCUSA and despite the fact there is nothing in the deeds that establishes an express trust in favor of the Presbytery of the Hudson River or PCUSA." *Ridgeberry*, 2010 WL 114396 at \*11.

The Fourth Department's decision in *Oakfield*, which enforced the Trust Clause in the Book of Order, is also instructive. In that case, the Fourth Department affirmed Justice Noonan's decision in the court below for the reasons stated in *Harnish*. While *Oakfield* involved a church that was incorporated after 1828, Justice Noonan looked at all of the neutral principles factors as a whole to find that an implied trust existed in favor PCUSA: "despite the absence of express language in the original deeds, *the Oakfield congregation has over time fully accepted and performed a trust for the benefit of the denominational church* in accordance with the pertinent charter, statutes and constitution . . . , and such may

be implied thereby.” (emphasis added) (citation omitted). [The decision of Justice Noonan is found in the Record at page 81]. In other words, consistent with *Harnish*, RCL was just one of the factors considered in the neutral principles analysis. The Lancaster Church, just like the Oakfield congregation, has over time fully accepted and performed a trust for the benefit of the Presbytery and PCUSA.

Here, the trial court likewise found that RCL was not dispositive of the outcome in this matter. The Lancaster Church has nevertheless characterized Justice Curran’s oral decision as finding that RCL § 24 was completely “irrelevant” to the neutral principles analysis. (Mot. at 4). He did no such thing. A review of the transcript clearly indicates that Justice Curran used the words “neutral” and “nonfactor” to mean that RCL and the date of incorporation were not factors which decided the outcome of the case. And, as Justice Curran stated to the Lancaster Church’s counsel, “But the record should reflect . . . since you raised it, you agreed that the statutory analysis was a neutral factor in both *Harnish* and in this case.” (R. 18).<sup>3</sup> The Fourth Department affirmed for the reasons stated below.

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<sup>3</sup> This is not the only occasion where the Lancaster Church has misleadingly cited Justice Curran’s oral decision. In support of its position that the meaning and application of RCL § 24 was unsettled, it quotes Justice Curran as stating, “I know this is going to the Fourth Department. And, very honestly, I’m very interested to see what they will say about it.” (R.9). He was simply stating that the losing party would probably appeal. There is nothing to suggest that he was stating the law was unsettled because in the very

Finally, the Lancaster Church's suggestion that "the PCUSA and its regional presbyteries have taken inconsistent positions on the meaning and application of RCL § 24" is unavailing. (Mot. at 17 and letter from Lisa Sofferin dated January 20, 2010). While there may be factual distinctions unique among this case, *Oakfield*, and *Ridgeberry*, all Presbyteries have taken the position that RCL § 24 is simply one of the factors a court must consider in the neutral principles analysis. It is not the "only" means by which a trust can be imposed as asserted by the Lancaster Church.

**POINT III. The Lancaster Church's Belated Attempt to Raise Constitutional Claims Should Be Rejected**

The Lancaster Church, in trying to paint its legal arguments as being of public importance, has cited the First Amendment to the U.S. Constitution in its motions for leave to appeal. (Mot. at 20-22). The Lancaster Church, however, did not raise this argument below and it is not adequately preserved for review. *See Cibro Petroleum Prods., Inc. v. Roderick G.W. Chu & Co.*, 67 N.Y.2d 806 (1986) (constitutional theories which were not argued to the courts below, will not have been adequately preserved for review by the Court of Appeals).

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next sentence Justice Curran stated "But I know one thing and that is I must be bound primarily by Harnish." *Id.*

In any event, the Lancaster Church's argument that a local church must sign a document in order for a trust to be created in favor of a denominational church squarely contradicts the numerous New York appellate decisions cited above. New York law does not require a local church to sign a document agreeing to be bound by the constitution of the denominational church.<sup>4</sup>

Here, there was ample evidence of the Lancaster Church's manifestation of intent to be bound by the Trust Clause. Section 7.0101 of the Book of Order provides that "a particular church can be organized only by authority of a presbytery and shall function under the provisions of this Constitution." Indeed, the Lancaster Church conducted its affairs in accordance with the Book of Order since the Trust Clause was adopted three decades ago. In the words of the Lancaster Church (Br. at 5):

At all times, and more particularly during the period of 1981 to June 15, 2008, the LPC was a participating member of the PCUSA. It is undisputed that LPC participated in proceedings of the PCUSA, sought out the consent of the Presbytery for mortgage commitments on the real property as mandated by Religious Corporations Law § 12(5a), filed annual church reports, accepted money from the Presbytery, installed officers in

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<sup>4</sup> The Lancaster Church's argument about New York's Statute of Frauds ignores the plain language which carves out an exception for implied trusts. *See* N.Y. Gen. Obligations Law § 5-703 ("But this subdivision does not . . . prevent any trust from arising . . . by implication or operation of law.").

accordance with the PCUSA Constitution and utilized the PCUSA's polices and procedures to call a new pastor to lead its congregation.

In addition to the conduct of the Lancaster Church, the congregation authored two documents where it declared as follows:

We, the undersigned, do declare and affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and Book of Order. We receive and adopt its tenets and historical principles of church government.

(R. 280 and R. 286). The trial court's analysis of these documents is described more fully at pages 11-14 of the Presbytery's Appeal Brief. Significantly, the Lancaster Church never objected to the Trust Clause or removed itself from the reach of the trust provisions in the Book of Order. (R. 15). Given this overwhelming evidence, the Lancaster Church was left with very little choice but to argue that RCL rendered its writings and decades of conduct meaningless.<sup>5</sup> But it is an argument that is contrary to well settled New York law.

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<sup>5</sup> The Lancaster Church further believes the fact that certain real property carries a mortgage cuts in its favor, but it actually supports the Presbytery's position that the Lancaster Church was aware that it had to obtain the Presbytery's consent when doing so. When the Lancaster Church sought to secure a \$800,000 mortgage with Alden State Bank in 2002, the mortgage commitment was approved by the Presbytery at a meeting held on May 28, 2002 as required by Religious Corporations Law, Section 12, subdivision 5-a. (R. 274, 305). In order to complete the transaction, the Lancaster Church submitted a Petition in New York State Supreme Court, Erie County. (R. 274, 290-310).

## CONCLUSION

It is regrettable that the Lancaster Church now uses this motion for leave to appeal to attack the entire State judiciary for “building a body of church property law favoring church property trusts” to support its allegedly “pro-denominational bias” and apparently forgetting the standards applicable to summary judgment motions. (Mot. at 28-29). The Lancaster Church apparently believes New York courts are so eager “to follow the tide of cases favoring pro-denominational resolutions” they will essentially stop at nothing to find in favor of the denomination. (Jan. 20, 2010 letter from Lisa Sofferin at 3).

It is true that all of the appellate level decisions that have applied the neutral principles analysis to church property disputes since *Schenectady* — *Harnish* (Episcopalian), *Ridgeberry* (Presbyterian), *Oakfield* (Presbyterian), *Felker* (Methodist), and *Trinity* (Episcopalian) — have found implied or express trusts for the benefit of hierarchical churches. The Presbytery believes this trend follows a fundamental legal doctrine known as *stare decisis*. Given this well settled law, leave to appeal is not warranted here. The Appellate Division’s decision involved a straightforward application of existing law. None of the grounds for leave to appeal are met here. The Court should therefore deny the Lancaster Church’s motion, with costs.

Dated: January 22, 2010

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