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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.

