

NEW YORK SUPREME COURT

Appellate Division—Fourth Department

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,

– against –

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

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT PRESBYTERIAN CHURCH (U.S.A.)

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PRELIMINARY STATEMENT

This appeal is a rare instance where the United States Supreme Court caselaw provides a clear, controlling answer for resolution of a state court religious dispute.

In the case at bar, Lancaster Presbyterian Church, a local church of the Presbyterian Church (U.S.A.), left the denomination and seeks to retain title to church property in its possession. In doing so, it ignores and rejects a provision in the denomination's constitution that deems such property to be held in trust for the Presbyterian Church (U.S.A.).

In 1979, the Supreme Court in *Jones v. Wolf* delved into religious property disputes and proposed a solution—a constitutional trust clause—to resolve disputes such as this. The solution was adopted by the Presbyterian Church (U.S.A.) and ratified by the court below.

The lower court properly decided that property owned by the local church was held in trust for the Presbyterian Church (U.S.A.). That ruling should be affirmed.

QUESTION PRESENTED

1. Is the trust clause found in Section G-8.0200 of the Book of Order of the Presbyterian Church (U.S.A.) enforceable against property that was owned by the Lancaster Presbyterian Church at the time of its disaffiliation?

The lower court answered "Yes".

STATEMENT OF FACTS

In 1981, the United Presbyterian Church in the United States (“UPCUSA”) enacted an express trust clause whereby property owned by local churches was held in trust for UPCUSA. In 1982, the Presbyterian Church in the United States enacted a similar trust clause. In 1983, the two denominations merged, creating the Presbyterian Church (U.S.A.) (“PCUSA”). The constitution of the PCUSA—the Book of Order—contains an express trust clause in G-8.0200, stating that property owned by a particular church is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). Lancaster incorporated as a Presbyterian Church in 1821. Lancaster Presbyterian Church was a member of the UPCUSA in 1981 and then, upon merger, a member of the PCUSA and subject to the Book of Order until Lancaster’s disaffiliation in 2008. During that time, it was a member of the Presbytery of Western New York. Record at 132-33, 146, 178, 184-85; and Book of Order separately submitted).

In 1998, Lancaster submitted the “Lancaster Affirmation” to all churches within the Western New York Presbytery. (R. at 271) The Affirmation was signed by the Elders, Clerks, and Moderator of Lancaster Presbyterian Church (U.S.A.). (R. at 271) It states as follows:

We, the undersigned affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and the Book of Order. We receive and adopt its tenets and historic principles of church government. (R. at 280)

Further, in July 1998, in a letter to “Fellow Presbyterians”, the Session of Lancaster Presbyterian Church declared: “We choose to stand for and within our Constitution.” (R. at 279)

In 2004, David Breckenridge, an Elder of the Lancaster Presbyterian Church was elected by the Presbytery to serve as a Principal Commissioner on the 216th General Assembly of the Presbyterian Church (U.S.A.), the highest governing body of the PCUSA. (R. at 272)

In 2005, Lancaster submitted a Church Information Form as part of a process calling for a new pastor. In the Church Information Form, Lancaster identified concerns about “disrespect of constitutional authority” and reaffirmed its fidelity to the Book of Order with language virtually identical to the 1998 Affirmation. (R. at 286)

Plaintiff Lancaster Presbyterian Church commenced suit and moved for summary judgment for a declaration that it owned the subject personal and real property free and clear of any trust. (R. at 20-250) Defendant Presbyterian Church (U.S.A.) answered plaintiff’s Complaint, claiming a trust over the subject personal and real property, and made a cross-motion for summary judgment for a declaration that it had a trust over the subject personal and real property. (R. at 251-63)

The court below granted the cross-motions of defendant Presbyterian Church (U.S.A.) and the Presbytery of Western New York, declaring that the subject personal and real property are held in trust for the use and benefit of the Presbyterian Church (U.S.A.) with their disposition to be governed by the Constitution of the Presbyterian Church (U.S.A.). (R. at 4-5)

ARGUMENT

INTRODUCTION

The United States Supreme Court has held that hierarchical churches, such as the Presbyterian Church of the United States (“PCUSA”), can ensure that church property is retained by the denominational church in the event of a dispute by amendment of its constitution, rather than amendment of individual deeds and corporate charters. *Jones v. Wolf*, 443 U.S. 595 (1979). New York courts have, accordingly, upheld express trust provisions in church constitutions that were enacted in response to the Supreme Court’s ruling. *First Presbyt. Church of Schenectady v. United Presbyt. Church*, 62 N.Y.2d 110 (1984); *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008).

The PCUSA functions as a hierarchical or connectional form of church government in which authority is vested in the first instance in the local church (the session) with its actions subject to review and control by higher church bodies: in ascending order, the presbytery, the synod, and the General Assembly. *First Presbyt. Church of Schenectady v. United Presbyt. Church*, 62 N.Y.2d 110 (1984).

The Constitution of the PCUSA comprises The Book of Confessions (Part I) and the Book of Order (Part II). The Book of Order contains the Form of Government for the PCUSA.

Section G-7.0100 [“Organization, Mission, and Government”] of the Book of Order states:

A particular church in the Presbyterian Church (U.S.A.) can be organized only by the authority of a presbytery and shall function under the provisions of this Constitution.

Section G-4.0100 [“The Church—Universal and Particular”] states:

Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution.

Section G-8.0200 ["All Property Held in Trust"], adopted by the PCUSA in 1983, reads as follows:

All property held by or for a particular church..., whether legal title is lodged in a corporation, a trustee or trustees...is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Upon its enactment, the trust clause contained in Section G-8.0200 was binding on Lancaster Presbyterian Church. Lancaster, however, has now quit the PCUSA and seeks to disavow and reject the trust imposed on property that it acquired during its existence as a member of the PCUSA or its predecessors.

Such an effort by Lancaster Presbyterian Church is untenable, erroneous, and violative of the constitution by which it was bound as a member church.

POINT I

JONES v. WOLF IS PRINCIPAL AUTHORITY FOR THE IMPOSITION OF A TRUST

In 1979, the United States Supreme Court decided *Jones v. Wolf*, 443 U.S. 595, the seminal case concerning church property disputes. *Jones* involved a schism in a local church affiliated with the Presbyterian Church of the United States. At issue was title to disputed property originally held in the name of the local church.

The Supreme Court in *Jones* held that a state court may constitutionally adopt "neutral principles of law" as a means of adjudicating church property disputes. *Jones*, 443 U.S. at 597. Such adjudication requires consideration of language of deeds, terms of local church charters, state statutes governing the holding of church property, and provisions of the constitution of the general church concerning the ownership and control of church property. *Id.* at 603. (emphasis added).

The Supreme Court discussed proper application of neutral principles in two prior cases — one of which resulted in church property being awarded to the local congregation (*Presbyt. Church v. 19 Eastern Heights Church* (“*Presbyterian Church II*”), 225 Ga. 259 (1969)) and one in which resulted in church property being awarded to the denominational church (*Carnes v. Smith*, 236 Ga. 30 (1976), *cert. denied* 429 U.S. 868 (1976)). *Jones*, 443 U.S. at 600. The dispositive issue in each case was the existence of express trust language in the governing documents of the denominational church:

As in *Presbyterian Church II*, the court [in *Carnes*] found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The [*Carnes*] court observed, however, that the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church. *Jones* at 600–01.

In discussing the facts before it, the court noted that relevant documents, i.e., deeds, local church charters, state statutes governing church property, and the provisions of the constitution of the general church concerning ownership and control of church property, did not contain the trust language central to the *Carnes* decision:

And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church. *Id.* at 601.

Based upon lack of trust language in relevant documents, the Supreme Court in *Jones* noted that Georgia courts “accordingly held that legal title to the property of the [local] church was vested in the local congregation.” *Id.*

The *Jones* Court recognized that amendment of individual deeds and corporate charters of local churches to create trusts would impose a heavy burden on denominational churches. To

allay the burden, the Supreme Court allowed that constitutions instead could be amended to recite an express trust in favor of the denominational church:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form. *Id.* at 606. (emphasis added)

In recognizing this alternative – modification of the general church constitution – the Supreme Court endorsed an approach that is binding upon and that cannot be unilaterally revoked by a schismatic faction. As the Supreme Court implicitly recognized, denominational constitutions are not amended by actions of local congregations acting on their own, but by the general church at large according to its own polity. As a necessary result, modification or revocation of a constitutional trust can only be accomplished by the general church in compliance with its ecclesiastical polity.

In response to *Jones*, the PCUSA and its predecessors expressly created a trust in its favor. Specifically, in 1981, the General Assembly of the UPCUSA, with participation from local churches, presbyteries, and synods, amended the *Book of Order* by adding Chapter XLII, “Of Property”, which provided that all property held by or for a particular church, a presbytery, a synod, the General Assembly, or UPCUSA, whether legal title is lodged in a corporation, a trustee or trustees, was “held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.” In 1983, this language eventually became Chapter VIII of the Book of Order of the PCUSA (“The Church and Its Property”), section G-8.0201

("All Property Held in Trust"), stating that property owned by a local church is held in trust for the PCUSA.

POINT II

NEW YORK COURT OF APPEALS CASELAW RECOGNIZES THE SUPREMACY OF *JONES v. WOLF* AND COMPELS THE FINDING OF A TRUST IN FAVOR OF PCUSA

New York courts have adopted the neutral principles analysis of *Jones* and adhered to the *Jones* document-based analysis. *First Presbyt. Church of Schenectady v. United Presbyt. Church* ("Schenectady"), 62 N.Y.2d 110 (1984). Furthermore, New York courts have upheld express trust provisions in church constitutions enacted in response to *Jones*. *Episcopal Diocese of Rochester v. Harnish* ("Harnish"), 11 N.Y.3d 340 (2008); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* ("Trinity"), 250 A.D.2d 282 (3d Dept. 1999).

In *Schenectady*, decided before UPCUSA's enactment of an express trust clause in 1981, the Court of Appeals adopted neutral principles and reaffirmed an analysis focusing on "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 (citing *Jones*, 443 U.S. at 503).

The analysis in *Schenectady* is telling. The court looked for a trust clause in the previous version of the Book of Order, the clear inference being that the existence of such a clause would be determinative of a trust:

The last item to be considered is the constitution of the denominational church, known as the Book of Order....The Book contains no provision which creates an express trust in favor of the UPCUSA.
Id. at 123.

In 2008, the Court of Appeals decided *Harnish*, a case where the Dennis Canons of the Episcopal Church, adopted in 1979, contain an express trust clause similar to the Book of Order.

