



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4411

DATE FILMED 4-25-97 CAMERA NO. 1

CAMERAMAN JMW

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 24 2 16 PM '96

June 20, 1996

General Counsel
Federal Election Commission
999 East Street NW
Washington, DC 20463

Dear Gentlemen:

The FEC is conducting a probe focusing on Christian Coalition activities in 35 states.

Please investigate activities in Anna, Illinois of the Anna Presbyterian Foundation and the First Evangelical Presbyterian Church of Anna, Illinois, as regards their political activity and tax exempt status with the Internal Revenue Service.

If these organizations are claiming a tax exempt status I as a citizen demand to know how and where they are spending their tax exempt money, and in what manner they are getting it.

I have documents and case reference numbers of files in the Union County Court. I have names and addresses of knowledgeable citizens in the Southern Illinois community, should they consent to be interviewed.

I was born in Anna, Illinois. I am a descendant of the founder of the town.

Sincerely,

Edward Wesley Walton

Edward Wesley Walton
101 Swanson Road, Unit 116
Boxborough, MA 01719-1331
508 264-9189

cc: Internal Revenue Service

97043793824

My Comm. Exp: 2-23-2001

Commonwealth of Mass.
Middlesex, ss. June 20, 1996

Then appeared Edward Wesley Walton and acknowledged the foregoing to be his free act + deed, Before me,

Karen A. Bona
Notary Public



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 1996

Edward Wesley Walton
101 Swanson Road, Unit 116
Boxborough, MA 01719-1331

Dear Mr. Walton:

This is to acknowledge receipt on June 24, 1996, of your letter dated June 20, 1996. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

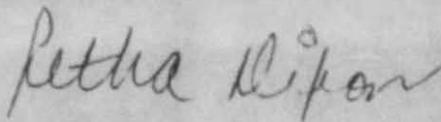
Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

97043793825

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,



Retha Dixon
Docket Chief

Enclosure

cc: Christian Coalition
Anna Presbyterian Foundation
First Evangelical Presbyterian Church

97043793826

JUL 11 9 47 AM '96

MUR 4411

July 9, 1996

Office of General Counsel
Federal Election Commission
999 East Street NW
Washington, DC 20463

Dear Counsel:

The First Evangelical Presbyterian Church (EPC) and the Anna Presbyterian Foundation (APF) of Anna, Illinois are 501 (c) (3) organizations.

[1] A violation under the Federal Election Commission's jurisdiction may have occurred in the distribution in the church of "training materials" [EXHIBIT A]. Complainant believes there is cause to investigate the source of the materials to see if they are of a partisan political nature.

[2] Article 5 of the APF Articles of Incorporation [EXHIBIT B] describes the APF as organized "to take and hold legal and equitable title to real and personal property for an autonomous congregation ..." If the group is autonomous, how may they receive or distribute training materials? Probable cause exists for the FEC to investigate the alleged autonomy.

[3] If the APF [EXHIBIT B] is "separate and independent from and of any denomination" as stressed in Article 5, the APF legal format and activities should not be replicated in other areas of the United States. But an analogous case can be cited in the State of Washington, which suggests that an algorithm or general organizing plan has been followed [EXHIBIT C].

The other evangelical Presbyterian church in approximately the same timeframe was converted in similar fashion with the aid of a foundation. Is this connection coincidental, or does it indicate a broader political alignment? Complainant affirms cause exists to investigate APF/EPC alleged independence.

[4] Barbara Diefenbach, an incorporator of the APF, proposed inviting Pat Boone's daughter and her husband to the Presbyterian church [EXHIBIT D]. A 1995 Council for National Policy directory lists Mr. Boone with televangelist Pat Robertson, founder of the Christian Coalition. The Council (CNP) is an ultra right-leaning political organization [IFAS Freedom Writer, Jan./Feb. 1996, p. 5]. Would members of Mr. Boone's family be expected to travel from California to Anna, Illinois for a purely religious purpose, or is this partisan electioneering? Reason exists to believe the APF/EPC (either or both) have violated (1993-94) or are about to violate (1996) Federal election law.

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RESPONDENTS

1. Barbara J. Throgmorton
RR 2, Box 375
Anna, Illinois 62906

Barbara Throgmorton is formerly Barbara Diefenbach, before that Barbara Walton. Barbara is my sister.

2. R. Finch and J. Karraker
402 East Vienna
P.O. Box 645
Anna, Illinois 62906

3. R. Corydon Finch
209 East Jefferson
Anna, Illinois 62906

4. James Larry Karraker
402 East Vienna
Anna, Illinois 62906

5. Anna Presbyterian Foundation
107 East Jefferson
Anna, Illinois 62906

6. Evangelical Presbyterian Church
107 East Jefferson
P.O. Box 653
Anna, Illinois 62906-1520

The above six respondents comprise just three persons, who are Barbara Throgmorton, R. Corydon Finch, and Barbara's lawyer James Larry Karraker. Finch and Karraker are closely associated. Neither can respond to this complaint without some conflict of interest. They, with Barbara Throgmorton, are the creators and promoters of the APF and EPC. Finch and Karraker operated in the employment of the organizations they incorporated, as far as I know. I do not know if they were employed by anyone else in that capacity. For further documents, please see EXHIBIT E.

Please investigate the First Evangelical Presbyterian Church at 107 East Jefferson and the Anna Presbyterian Foundation, at the same address (Anna, Illinois 62901), to determine if the two legal entities have been operating in compliance with their tax exempt status as defined under Section 501 (c) (3) of the United States Internal Revenue Code.

Organizers of the Anna group (APF/EPC) have displayed much activity centered around farms, funds and land [EXHIBIT E]. This group involved my mother in their activities, Mrs. Rosemary G. Walton of Anna, Illinois, owner of the Walton family farm.

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Mr. R. Corydon Finch in 1975, an incorporator, caused the First United Presbyterian Church, Anna, Illinois to be organized as a State of Illinois religious corporation. Article 5 of the Articles of Incorporation [EXHIBIT E] states that its purpose is to "constitute and organize the members of the corporation as a church ... in a church relation according to the provisions of the Constitution of the United Presbyterian Church in the United States of America ..." This was amended, such that the church was in fact detached from its national affiliation, but the money and funds and properties designated for that church, in its united capacity, were directed into the Anna Presbyterian Foundation, for the evangelical church (EPC).

Law partners Finch and Karraker in the 1980s were involved in litigation resulting from the transformation of the original First Presbyterian Church into an evangelical one. It caused a great disruption in the community. The EPC severed itself from the United Presbyterian Church (USA). [Union County 85-MR-27]

Although the evangelical church claims to be a spontaneous, grass roots organization, properly described as congregational, and on that basis of autonomy received an inheritance designated by the testator Vesta Alden (my father's cousin) for the trustees of the Presbyterian Church USA, I question whether the EPC is in fact acting independently as claimed.

My knowledge of the circumstances derives from my research in the Union County courthouse of Jonesboro, Illinois, and from personally interviewing about thirty people.

It is of the utmost importance to audit the flow of funds coming into and going out of the Anna Presbyterian Foundation and the Evangelical Presbyterian Church, to determine if any of these funds have been diverted to political purposes.

Please conduct an investigation.

Sincerely,

Edward Wesley Walton

Dr. Edward Wesley Walton
Leverett 116
101 Swanson Road
Boxborough, MA 01719

AFFIDAVIT

The contents of this complaint are true to the best of my knowledge.

Edward Wesley Walton

Subscribed and sworn to before me on this 9th day of July, 1996.

A. Lee Riani

A. Lee Riani, Notary Public - My Commission Expires: May 30, 1997

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EXHIBITS

EXHIBIT A

Minutes of Borad of Directors of First Presbyterian Church of Anna, Illinois, January 19, 1992 and February 17, 1992.

EXHIBIT B

APF Articles of Incorporation, October 27, 1980.

EXHIBIT C

1. Certificate of Incorporation
Reformed Presbyterian Fellowship of Renton, Washington
May 30, 1986 - 6 pages (5 + cover)
2. Certificate of Amendment
Reformed Presbyterian Fellowship of Renton, Washington
July 9, 1987 - 3 pages (2 + cover)
3. Certificate of Amendment
First Evangelical Presbyterian Church, Renton, Washington
4. Corporation Look-ups (two)
First Evangelical Presbyterian Church, Renton, Washington
Presbyterian Church (USA) Foundation, Renton, Washington
May 31, 1996 - 2 pages

EXHIBIT D

Minutes of Board of Directors of First Presbyterian Church of Anna, Illinois, February 17, 1982 (continued)

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EXHIBIT E

1. Articles of Incorporation
First United Presbyterian Church of Anna, Illinois
January 23, 1975 - 3 pages (cover + 2)
2. Articles of Amendment to the Articles of Incorporation
First United Presbyterian Church of Anna, Illinois
October 27, 1980 - 3 pages (cover + 2)
3. Memorandum of Conveyance Agreement (APF)
March 15, 1984 - 2 pages
4. Articles of Amendment to the Articles of Incorporation
First United Presbyterian Church of Anna, Illinois
June 23, 1984 - 3 pages (cover + 2)
5. Construction Real Estate Mortgage
Anna Presbyterian Foundation
December 10, 1990 - 4 pages
6. Annual Report

Evangelical Presbyterian Church
107 East Jefferson Street, P.O. Box 653
Anna, Illinois 62906-1520
7. MEMORANDUM OF JUDGMENT
Addresses, Karraker and Finch, 1983
March 17, 1983 - 2 pages

970437933831

STATE OF ILLINOIS
OFFICE OF
THE SECRETARY OF STATE



To all to whom these presents shall come, Greeting:

Whereas, ARTICLES OF INCORPORATION, duly signed and verified of ANNA PRESBYTERIAN FOUNDATION incorporated under the laws of the State of ILLINOIS have been filed in the Office of the Secretary of State as provided by The "General Not For Profit Corporation Act" of Illinois, in force January 1, A.D. 1944.

Now Therefore, I, ALAN J. DIXON, Secretary of State of the State of Illinois by virtue of the powers vested in me by law, do hereby issue this certificate and attach thereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois Done at the City of Springfield this 27th day of October AD 19 80 and of the Independence of the United States the two hundred and 5th



Alan J. Dixon

SECRETARY OF STATE

97043793833

File in Duplicate

ARTICLES OF INCORPORATION UNDER THE GENERAL NOT FOR PROFIT CORPORATION ACT

(Please type or print using black ink)

(Do Not Write In This Space)

Date Paid 10-27-80 Filing Fee \$50.00

Clerk [Signature]

Secretary of State, Springfield, Illinois.

We, the Incorporators (Not less than three)

Table with 5 columns: Incorporator's Names, Number, Street, Address City, State. Rows include Donald E. Burnett, Barbara J. Diefenbach, Russell L. Friese, and Clair S. Albright.

being natural persons of the age of twenty-one years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not For Profit Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

- 1. The name of the corporation is: Anna Presbyterian Foundation
2. The duration of the corporation is [X] perpetual OR _____ years.
3. The name and address of the initial registered agent and registered office are:

Registered Agent Clair S. Albright
Registered Office 303 West High Street
City, Zip Code, County Anna, Illinois 62906, Union (Do Not Use P. O. Box)

- 4. The first Board of Directors shall be 9 (Not less than three) in number, their names and addresses being as follows:

Table with 5 columns: Directors' Names, Number, Street, Address City, State. Rows include Clair S. Albright, Luster E. Davis, Marian Ladwig, John G. Wells, Jane H. Rader, Donell Trucee, Russell L. Friese, Barbara J. Diefenbach, and Donald E. Burnett.

5. The purposes for which the corporation is organized are: To support, sponsor and provide facilities and leadership for Christian fellowship, worship, prayer, praise, education, and benevolent enterprises common among Protestant churches recognizing the divinity of Christ, and for such other innovative, benevolent and Christian projects and activities as the corporation may, from time to time, pursue, and to take and hold legal and equitable title to real and personal property for an autonomous congregation separate and independent from and of any denomination

6. No part of the net earnings of the corporation shall inure to the benefit of, or be attributable to, its members, directors, officers, or other private persons, except that corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth Article 5 hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, or contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code (or the corresponding provision of any future United States Internal Revenue Law)

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Upon the dissolution of the corporation, the Board of Directors shall, after paying making provision for the payment of all of the liabilities of the corporation, dispose all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of the County in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

The power to alter, amend or repeal the By-Laws or to adopt new By-Laws shall be vested in the members of the corporation which power may be exercised by the corporation by a two-thirds vote of the members present at any annual meeting or at any special meeting called for that specific purpose, provided that a full reading of any proposed alteration, amendment or repeal of existing By-Laws or proposed By-Laws shall be openly made at such meeting, or the same shall have been produced in writing and distributed to each member of the corporation simultaneously with the call of any such meeting.

(NOTE: Any special provision authorized or permitted by statute to be contained in the Articles of Incorporation, may be inserted above.)

(INCORPORATORS MUST SIGN BELOW)

(Both copies must contain original signatures)

Barthelme Diefenbach
Augustus Treese
Van Thibault

Incorporators

As the incorporators, we declare that this document has been examined and is, to the best of our knowledge and belief, true, correct and complete.

- The registered agent cannot be the corporation itself.
- The registered agent may be an individual, resident in this State, or a domestic or foreign corporation, authorized to act as a registered agent.
- The registered office may be, but need not be, the same as its principal office.

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Form NP-29
ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT
CORPORATION ACT
of
STATE OF ILLINOIS
UNION COUNTY
This instrument was filed for record
OCT 28 1980
at 1:02 o'clock P.M. and
recorded in Vol. 11 page 273-275
Fred W. Blythe
County Clerk & ex-officio Recorder of Deeds
FILED
OCT 27 1980
SECRETARY OF STATE
CORPORATION DEPARTMENT
SPRINGFIELD, ILLINOIS 62756
TELEPHONE (217) 782-7880
(These Articles Must Be Executed and Filed in Duplicate)
Filing Fee \$50.00
C-187.1

EXHIBIT C



STATE of WASHINGTON SECRETARY of STATE

I, **Ralph Munro**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF INCORPORATION

to

REFORMED PRESBYTERIAN FELLOWSHIP OF RENTON

a Washington Non Profit corporation. Articles of Incorporation were filed for record in this office on the date indicated below.

Corporation Number: 2-374326-3

Date: May 30, 1986

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

1834
489-485

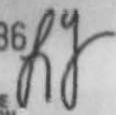
Ralph Munro, Secretary of State

97043793836

FILED

MAY 30 1986

SECRETARY OF STATE
STATE OF WASHINGTON



ARTICLES OF INCORPORATION
OF
REFORMED PRESBYTERIAN FELLOWSHIP OF RENTON

The undersigned, acting as the incorporators of a nonprofit corporation under the provisions of the Washington Nonprofit Corporation Act (RCW 24.03) adopts the following Articles of Incorporation in duplicate original for such corporation:

ARTICLE I

NAME

The name of this corporation is Reformed Presbyterian Fellowship of Renton.

ARTICLE II

DURATION

The period of its duration is perpetual.

ARTICLE III

PURPOSE

The corporation is organized exclusively for educational, charitable and religious purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (the "Code").

ARTICLE IV

POWERS

The corporation shall have all powers granted by law necessary and proper to carry out its above stated purposes, consistent with its qualification under Section 501(c)(3) of the Code.

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ARTICLE V

REGULATION OF INTERNAL AFFAIRS

Provisions for the regulation of the internal affairs of the corporation shall be set forth in the bylaws of the corporation.

ARTICLE VI

TAX EXEMPT STATUS

In establishing this corporation, the incorporators intend to obtain the full benefit of tax exemptions to which the corporation may be entitled under the Code, including, but not limited to a tax exemption under Section 501(a) of the Code as a corporation described in Section 501(c)(3) of the Code and to which contributions are deductible for federal income, estate, gift and generation-skipping tax purposes pursuant to Sections 170(c)(2), 2055(a)(2), 2522(a)(2) and 2602(b)(2), respectively, of the Code, or successor provisions of similar import. Accordingly, the corporation shall be managed in a manner consistent with the incorporators' intent that the corporation be so entitled, and the corporation shall refrain from such activities that will disqualify it from such entitlements.

ARTICLE VII

DISSOLUTION

In the event of dissolution, the net assets of the corporation shall be distributed only to a recipient or recipients, to be selected by the Board of Directors, that would qualify for exemption as an organization described in Section 501(c)(3) of the Code.

970437933838

ARTICLE VIII

REGISTERED OFFICE AND AGENT

The address of the initial registered office of the corporation is 7036 Lake Washington Blvd. S.E., Renton, Washington 98056, and the name of its initial registered agent at such address is Don Sytsma.

ARTICLE IX

DIRECTORS

The number of directors constituting the initial Board of Directors of the corporation is seven (7) and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
Davis Nichols	14411 S.E. 183rd Street Renton, Washington 98058
Glenn Boeshaar	18111 - 114th Avenue S.E. Renton, Washington 98055
Paul Johnson	11217 S.E. 181st Street Renton, Washington 98055
Robert Smith	7735 Mission Drive S. Seattle, Washington 98178
Don Sytsma	7036 Lake Washington Blvd. S.E. Renton, Washington 98056
Bonnie Landen	22820 - 148th Avenue S.E. Kent, Washington 98031
Marilyn Doehle	16040 - 132nd Place S.E. Renton, Washington 98058

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ARTICLE X

INCORPORATORS

The names and addresses of the incorporators are:

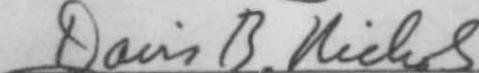
<u>Name</u>	<u>Address</u>
Don Sytsma	7036 Lake Washington Blvd. S.E. Renton, Washington 98056
Davis Nichols	14411 S.E. 183rd Street Renton, Washington 98058
Paul Johnson	11217 S.E. 181st Street Renton, Washington 98055
Glenn Boeshaar	18111 - 114th Avenue S.E. Renton, Washington 98055

DATED this 28th day of MAY, 1986.

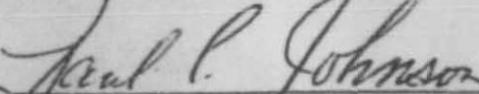
Incorporators



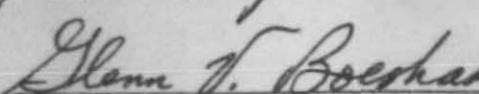
Don Sytsma



Davis Nichols



Paul Johnson



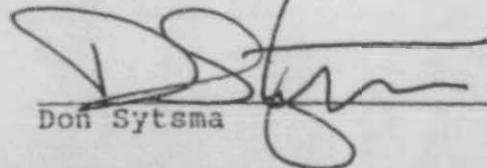
Glenn Boeshaar

9704379384C

CONSENT TO SERVE AS REGISTERED AGENT

I, Don Sytsma, hereby consent to serve as registered agent, in the State of Washington, for Reformed Presbyterian Fellowship of Renton. I understand that as agent for the corporation, it will be my responsibility to receive service of process in the name of the corporation; to forward all mail to the corporation; and to immediately notify the office of the Secretary of State in the event of my resignation or of any changes in the registered office address of the corporation for which I am agent.

DATED this 28th day of MAY, 1986.



Don Sytsma

Address:

7036 Lake Washington Blvd. S.E.
Renton, Washington 98056

97043793841



STATE of WASHINGTON SECRETARY of STATE

I, **Ralph Munro**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF AMENDMENT

to

REFORMED PRESBYTERIAN FELLOWSHIP OF RENTON

a Washington Non Profit corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Changing name to **FIRST EVANGELICAL PRESBYTERIAN CHURCH**

Corporation Number: 2-374326-3

Date: July 9, 1987

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro, Secretary of State

97043793842

00209 JUL 10 87

FILED
JUL 9 - 1987

SECRETARY OF STATE
STATE OF WASHINGTON

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION
OF

REFORMED PRESBYTERIAN FELLOWSHIP OF RENTON

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned President and Secretary of the REFORMED PRESBYTERIAN FELLOWSHIP OF RENTON, a Washington non-profit corporation, hereby certify that a special meeting of the members of said corporation, duly called on the 28th day of April, 1987, after notice of the purpose thereof and vote by all eligible voting members, the following was adopted by two-thirds majority of members:

I.

Resolved that the Articles of Incorporation of this corporation are hereby amended to read as follows:

"I. NAME

The name of this corporation shall be FIRST EVANGELICAL PRESBYTERIAN CHURCH."

WITNESS our hands and seals and the seal of the corporation affixed this 4TH day of June, 1987.

Matthew C. Hopkins
President

Dale R. Houchins
Secretary

970437933843

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

WHEREAS, the Articles of Incorporation of REFORMED PRESBY-
TERIAN FELLOWSHIP OF RENTON were duly amended as herein set forth,
we the undersigned President and Secretary of said corporation
thereof, do hereby certify to the facts herein stated and that the
said amendment was duly and regularly adopted and passed by two-
thirds majority affirmative vote of the membership of said corp-
oration as above certified.

Keith C. Hopkins
President

Attest:

Dale R. Houchins
Secretary

SUBSCRIBED AND SWORN to before me this 4TH day of
June, 1987.

Ronald E. Gessner
Notary Public in and for the State
of Washington, residing at Renton.
My Commission expires 11-22-89

97043793844



STATE of WASHINGTON SECRETARY of STATE

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby
issue this

CERTIFICATE OF AMENDMENT

to

FIRST EVANGELICAL PRESBYTERIAN CHURCH

a Washington Non Profit corporation. Articles of Amendment were
filed for record in this office on the date indicated below.

U.B.I. Number: 2-374326-3

Date: April 19, 1994

*Given under my hand and the seal of the State
of Washington, at Olympia, the State Capital*

RALPH MUNRO

Ralph Munro, Secretary of State

97043793845

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION
OF
FIRST EVANGELICAL PRESBYTERIAN CHURCH

00150 MAY 994

FILED
STATE OF WASHINGTON

APR 19 1994 BX

RALPH MUNRO
SECRETARY OF STATE

KNOW ALL MEN BY THESE PRESENTS

That the undersigned President and Secretary of FIRST EVANGELICAL PRESBYTERIAN CHURCH, a Washington non-profit corporation, hereby certify that at a meeting of the congregation said corporation, was duly called and held on the 8th day of November, 1993. A quorum was present. The following action was adopted by a two-thirds (2/3) majority of the votes cast:

I.

That Article XI be added to the Articles of Incorporation of this corporation to read as follows:

"XI

LIMITATION OF LIABILITY OF DIRECTORS

A Director of the Corporation, as defined in Article XII, shall not be personally liable to the corporation for monetary damages for conduct as a Director, except for liability of the Director as follows:

- a. For acts or omissions that involve intentional misconduct by the Director or a knowing violation of law by the Director; or
- b. For any transaction from which the Director will personally receive a benefit in money, property, or services to which the Director is not legally entitled."

97043793846

II.

That Article XII be added to the Articles of Incorporation of this corporation to read as follows:

"XII

INDEMNIFICATION

Section 1. Definitions. As used in this Article:

- a. "Act" means the Washington Business Corporation Act now in effect or hereafter in force as made applicable to the non-profit corporation by RCW 23B.17.030.
- b. For the purpose of limited liability and indemnification, the term "Director" means an individual who is or was an officer, elder, deacon or trustee of the corporation. Director shall include, unless the context requires otherwise, the estate or personal representative of a Director.
- c. All other definitions as defined by the Act are herein adopted.

Section 2. Indemnification Of Directors. The corporation adopts RCW 23B.08.500 through 23B.08.600 of the Act as now in effect or hereafter in force, and shall indemnify its Directors or its employees, pursuant to the provisions thereof, against liability arising out of a proceeding to which such individual was made a party because the individual is or was an officer, elder, deacon, trustee or employee of the corporation. The corporation may advance expenses incurred by such individual who is a party to a proceeding in advance of final disposition of the proceeding as provided by the Act.

97043793847

duly and regularly adopted and passed by unanimous affirmative vote of the congregation of said corporation as above certified.

Wayne B Lee
President

Attest:

Donald A. Lyden
Secretary

SUBSCRIBED AND SWORN TO before me this 6th day of

January, 1994.

Richard E. Gussner
Notary Public in and for the State
of Washington, residing at Richland
My Comm. expires: 11-22-91

97043793849

Corp: 2374 3263 UBI: 601 049 347
FIRST EVANGELICAL PRESBYTERIAN CHURCH

Agent: KATHRYN FERNANDEZ
19800 108TH AVE SE
\
RENTON WA 98055

Corp Type : N
Category : REG
Record Stat: A
Corp Tenure: PER
Incorporated WA 05/30/1986

LOF Filed: 05/31/96
Reg Exp:
File Date:
Roll Loc1: 95039 0829
Last Ref1: 950630 NAR 6196

9704379385C

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
FRWD UBI CORP# SNAM LACCT FNAM EXIT

Corp: 0093 1766 UBI: 601 552 164
PRESBYTERIAN CHURCH (U.S.A.) FOUNDATION

Agent: DR FRANCIS J BROOKE
233 6TH AVE N STE 100
SEATTLE WA 98109

Corp Type : N	LOF Filed: 05/31/96
Category : REG	Reg Exp:
Record Stat: A	File Date:
Corp Tenure: PER	Roll Loc1: 95036 1108
Qualified : PA 05/25/1994	Last Ref1: 950623 NAR 1275

97043793851

Enter-PF1---	PF2---	PF3---	PF4---	PF5---	PF6---	PF7---	PF8---	PF9---	PF10--	PF11--	PF12---
FRWD	UBI	CORP#	SNAM	LACCT		FNAM					EXIT

EXHIBIT D

199

February 17, 1982 (continued)

A motion by Hickam to approve minutes of January 6 and 19, 1982 was seconded and approved.

Proposed revisions of the Policy Manual, to be acted upon at the March meeting, were handed out for study.

There was a motion by Hickam, seconded and carried, to appoint J. D. Meller, John Wells and Larry Karraker to the Farm Management Committee [a sub-committee of the Finance Committee].

Rader moved to hold a corporate congregational meeting to approve the minutes of the Annual Meeting of January 17, 1982 on March 14, 1982. Motion seconded and carried.

Walton moved to direct the Finance Committee to appoint a committee to audit the treasurer's books.

Ladwig moved to place ads in the special TV and Radio section of the Gazette Democrat. Motion seconded and carried.

The Pastor's report was approved.

Barbara Diefenbach reported for the Worship Committee and recommended we invite Pat Boone's daughter and husband to present their witness on March 1 at the First Presbyterian Church. Report of the Worship Committee was received.

Walton reported for the Christian Education Committee and recommended purchase of three record players. Ladwig moved that the Board authorize the purchases. Seconded and carried.

The clerk reported the stated meeting of the Presbytery of the Mid-West on March 19th at Mt. Clemens, Michigan. Rader moved that Rev. Albright attend this meeting, the EPC and the Commissioners and alternates be elected at the March meeting. Motion seconded and carried.

The Treasurer's report was received.

Rader moved that the names of Mike and Kathy Stegle be removed from our church rolls; that the board review the church rolls at the next meeting.

The meeting was adjourned and dismissed with prayer by Rev. Albright.

Respectfully submitted John C. Owens Clerk

Clair Albright Moderator

I, Helen Owens, secretary for the Trustees of First Presbyterian Church certify that this is a true and correct copy of the Board's minutes at their meeting February 17, 1982.

Signed Helen Owens

Date Feb. 19, 1982

97043793852

Certificate Number 25010



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of Incorporation duly signed and verified of

THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS

have been filed in the Office of the Secretary of State on the 23rd
day of January A. D. 19 75 as provided by the "GENERAL NOT
FOR PROFIT CORPORATION ACT" of Illinois, approved July 17, 1942, in force
January 1, A. D. 1944.

Now Therefore, I, MICHAEL J. HOWLETT, Secretary of State of the State of Illinois,
by virtue of the powers vested in me by law, do hereby issue this Certificate of
Incorporation, and attach thereto, a copy of the Articles of Incorporation
of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to
be affixed the Great Seal of the State of Illinois
Done at the City of Springfield this 23rd
day of January A. D. 19 75 and
of the Independence of the United States
the one hundred, and 99th



Michael J. Howlett
SECRETARY OF STATE

97043793853

ARTICLES OF INCORPORATION UNDER THE GENERAL NOT FOR PROFIT CORPORATION ACT

(These Articles Must Be Filed in Duplicate)

(Do Not Write in This Space)

Date Filed 1-23-75 Filing Fee \$ 25.00 Clerk

To Michael J. Howlett, Secretary of State, Springfield, Illinois

Table with 5 columns: Name, Number, Street, Address City, State. Rows include David Starr Lodge, R. Corydon Finch, and John O. Wells.

being natural persons of the age of twenty-one years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not For Profit Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

- 1. The name of the corporation is: The First United Presbyterian Church of Anna, Illin
2. The period of duration of the corporation is: Perpetual
3. The address of its initial Registered Office in the State of Illinois is: 107 East Jefferson
4. The first Board of Directors shall be 14 in number, their names and addresses being as follows:

Table with 5 columns: Name, Number, Street, Address City, State. Lists 14 directors including Kathryn Loomis, Nancy Finch, Donald Burnett, etc.

5. The purpose or purposes for which the corporation is organized are: To constitute and organize the member of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the Constitution of The United Presbyterian Church in the United States of America, and to exercise the government of said church under some certain and definite form.

6. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 5 hereof.

97043793854

7. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of the County in which the principal office of the corporation is then located, exclusively for such purpose or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

8. The power to alter, amend or repeal the By-Laws or to adopt new By-laws shall be vested in the members of the corporation which power may be exercised by the corporation by a two-thirds vote of the members present at any annual meeting or at any special meeting called for that specific purpose, provided that a full reading of any proposed alteration, amendment or repeal of existing By-Laws or proposed By-Laws shall be openly made at such meeting, or the same shall have been produced in writing and distributed to each member of the corporation simultaneously with the call of any such meeting.

(Note: Any special provision authorized or permitted by statute to be contained in the Articles of Incorporation may be inserted above.)

(INCORPORATORS MUST SIGN BELOW)

David Starr Lodge
J. O. Wells

Incorporators

ACKNOWLEDGMENT

STATE OF ILLINOIS,
UNION } ss.
County of _____

I, _____
Mary E. Grimm

a Notary Public do hereby certify that on the
David Starr Lodge,

16th day of January 1925

(Names of Incorporators)

R. Corydon Finch and John O. Wells

personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.



Mary E. Grimm
Notary Public

FORM NO. 29

ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT
CORPORATION ACT

7153
STATE OF ILLINOIS
UNION COUNTY } ss.
This instrument was filed for record

JAN 27 1975

at 12:40 P.M. and
Recorded in Vol. 4, page 148-150-11

Fred W. Blylock
County Clerk & ex-officio Recorder of Deeds

FILED

JAN 23 1975

Milwaukee

(These Articles Must Be Executed and Filed in
Duplicate)

Filing Fee \$15.00

Rev. 2, 11-40

(4813-214-2-73) 10

R. Corydon Finch & J. O. Wells

97043793855

EXHIBIT E

(2)



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of Amendment to the Articles of Incorporation duly signed and verified of
 THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS
 have been filed in the Office of the Secretary of State on the 27th day of October A. D. 1920, as provided by the "GENERAL NOT FOR PROFIT CORPORATION ACT" of Illinois, approved July 17, 1913, in force January 1, A. D. 1914;

Now Therefore, I, ALAN J. DIXON, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this Certificate of Amendment and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois Done at the City of Springfield this 27th day of October A. D. 1920 and of the Independence of the United States the two hundred and 5th



Alan J. Dixon
 SECRETARY OF STATE

To: cord Finch

97043793856

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its _____ President, and its _____ Secretary, this _____ day of _____, 1980



THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS (Exact Corporate Title)

By Clair Albright Its _____ President
Joyce Verab Its _____ Secretary

As authorized officers, we declare that this document has been examined by us and is, to the best of our knowledge and belief, true, correct and complete.

STATE OF ILLINOIS } ss.
COUNTY OF UNION

I, Thompson & Johnson, a Notary Public, do hereby certify that on the 26th day of October, 1980, Clair Albright personally appeared before me and, being first duly sworn by me, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.



Thompson & Johnson
Notary Public.

97043793858

FORM NP-38

File # 5058 932-3

ARTICLES OF AMENDMENT

to the

ARTICLES OF INCORPORATION

SECRETARY OF STATE
CORPORATION DEPARTMENT
SPRINGFIELD, ILLINOIS 62756
TELEPHONE (217) 782-7880

FILED

OCT 27 1980

SECRETARY OF STATE

FILE IN DUPLICATE
FILING FEE \$25.00

C-1363

MEMORANDUM

NOTICE is hereby given that Robert H. Haley and Edna Haley, husband and wife, and Larry L. Haley and Cathy J. Haley, husband and wife, of the City of Anna, County of Union and State of Illinois have entered into an Agreement for Warranty Deed dated this 29th day of February, 1984, to sell to Anna Presbyterian Foundation, A Not For Profit Corporation, organized pursuant to the laws of the State of Illinois, the real estate described as follows:

Beginning at the Northeast corner of the Southwest Quarter of the Northeast Quarter of Section 21, Township 12 South, Range 1 West of the Third Principal Meridian; thence West along the North line of said Quarter-Quarter a distance of 494.80 feet to the point of beginning for this description; thence South a distance of 317.24 feet to a point on the Northerly line of right-of-way of S. B. I. Route 146; thence Northwesterly along the said line of right-of-way to a point, a distance of 160 feet; thence Northeasterly to a point on the North line of the said Quarter-Quarter which is 130 feet West of the point of beginning of this parcel; thence East along the North line of said Quarter-Quarter a distance of 130 feet to the point of beginning of this description, all situated in Union County, Illinois.

Notice is further given that said Contract contains provisions as to the Purchase Price and Payment, Taxes, Insurance, Default and Remedies and other matters and further contains the following provisions:

PURCHASER shall not, and public notice to all persons is hereby given that PURCHASER is hereby expressly prohibited to

9201
STATE OF ILLINOIS }
UNION COUNTY }
This instrument was filed for record

MAR 15 1984
at 9:55 o'clock A. M. and
recorded in Vol. 12 Page 679

[Signature]
Notary Public
Union County, Illinois

Fred W. Ralynlock
County Clerk & ex-officio Recorder of Deeds

97043793859

assign, convey, mortgage or in any other manner encumber or permit to be encumbered during or throughout the terms of this Agreement, any right, title, interest or estate which PURCHASER may have or may acquire either in and to or by virtue of this Agreement in the premises or any part or parts thereof, without first obtaining the written, signed consent of VENDOR so to do.

Dated: February 29, 1984

SELLORS:

Robert H. Haley
ROBERT H. HALEY

Edna Haley
EDNA HALEY

(SELLERS)

Larry L. Haley
LARRY L. HALEY

Cathy J. Haley
CATHY J. HALEY

(BUYERS)

PURCHASORS:

Barbara Diehlbach
MODERATOR - ANNA PRESBYTERIAN FOUNDATION

Walter Owens
SECRETARY

97043793860



To all to whom these presents shall come, Greeting:

Whereas, ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE FIRST PRESBYTERIAN CHURCH OF ANITA, ILLINOIS INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS HAVE BEEN FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE GENERAL NOT FOR PROFIT CORPORATION ACT OF ILLINOIS, IN FORCE JANUARY 1, A.D. 1944.

Now Therefore, I, Jim Edgar, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois, at the City of Springfield, this 23TH day of JUNE AD. 19 44, and of the Independence of the United States the two hundred, and 21.



Jim Edgar
SECRETARY OF STATE

97043793861

FORM NP-35

(DO NOT WRITE IN THIS SPACE)

To Be Filed
in Duplicate
Filing Fee \$25.00

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT CORPORATION ACT

Date 6/29/84
Filing Fee \$ 25
Clerk [Signature]

To Jim Edgar
Secretary of State
Springfield, Illinois

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 35 of the "General Not For Profit Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

1. The name of the corporation is: The First-- Presbyterian Church of Anna, Illinois
2. There are some members, having voting rights with respect to amendments:
(Insert "no" or "some")
(Strike paragraphs (a), (b), or (c) not applicable)
3. (a) At a meeting of members, at which a quorum was present, held on April 29, 1984, same receiving at least two-thirds (2/3) of the votes entitled to be cast by the members of the corporation present or represented by proxy at such meeting.

(b) --By a consent-in-writing signed by all members-of-the-corporation entitled-to-vote-with-respect-there-to,

(c) --At-a-meeting-of-directors-(members-having-no-voting-rights-with-respect-to-amendments) held on _____, 19____, same receiving the votes of a majority of the directors then in office, the following amendments were adopted in the manner prescribed by the "General Not For Profit Corporation Act" of the State of Illinois:

ARTICLE I

The name of the corporation is: Evangelical Presbyterian Church of Anna, Illinois

97043793862

STATE OF ILLINOIS }
UNION COUNTY } ss
This instrument was filed for record
105
JUL 11 1984
at 2:35 o'clock P M, and
recorded in Vol. 12 page 317-19
Jed W. Blaylock
County Clerk & ex-officio Recorder of Deeds

(over)

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its _____ President, and its _____ Secretary, this 20th day of June, 19 84.



THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS

(Exact Corporate Title)

By George Scottman Its _____ President

William Andrews Its _____ Secretary

As authorized officers, we declare that this document has been examined by us and is to the best of our knowledge and belief, true, correct and complete.

97043793863

FORM HP-35

File No. _____

ARTICLES OF AMENDMENT

to the

ARTICLES OF INCORPORATION

SECRETARY OF STATE
CORPORATION DEPARTMENT
SPRINGFIELD, ILLINOIS 62756
TELEPHONE (217) 782-1832

PAID

JUL 2 1984

FILED

JIM EDGAR
Secretary of State

File in Duplicate
Filing Fee \$25.00

C-130.3

THE MORTGAGOR, hereinafter named, MORTGAGES AND WARRANTS to MORTGAGEE, hereinafter named, to secure the payment of all INDEBTEDNESS, the nature and amount of which, showing when due and the rate of interest, and whether secured by note or otherwise, is hereinafter recited, the real property hereinafter described, according and pursuant to the terms, warranties, covenants, and agreements hereinafter set forth.

MORTGAGOR:
ANNA PRESBYTERIAN FOUNDATION, an Illinois General Not-For-Profit Corporation
107 East Jefferson Street, Anna, IL 62906

MORTGAGEE:
THE ANNA NATIONAL BANK, a banking corporation
Anna, IL 62906

DESCRIPTION OF INDEBTEDNESS: One Promissory Note of even date herewith in the principal sum of FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$550,000.00), or that portion thereof as may from time to time be advanced at the request of the Borrower pursuant to the commitment and Loan Agreement of even date herewith, with interest thereon at the rate of 10% per annum, principal and interest due and payable in full on or before one (1) year after the date hereof, according to the terms and provisions of the commitment and Loan Agreement of even date herewith.

This mortgage secures the payment of the Indebtedness, the terms and provisions of which by this reference thereto, are hereby incorporated herein as a part of this mortgage as fully as if completely set forth herein, and also secures the payment of the Additional Indebtedness hereinafter defined, which is included within the term "Indebtedness" as used above.

This mortgage is made pursuant to a commitment whereby Mortgagee has bound itself to make a future advance or future advances according to the terms and provisions of a Loan Agreement of even date herewith, the terms and provisions of which Loan Agreement by this reference thereto are hereby incorporated herein as a part of this mortgage as fully as if completely set forth herein.

COMMON ADDRESS OF REAL PROPERTY MORTGAGED: 303 W. HIGH Street, Anna, Illinois
315-317 South Street, Anna, Illinois, 107 E. Jefferson, Anna, Illinois, Route #146, Anna, Ill.

LEGAL DESCRIPTION OF REAL PROPERTY MORTGAGED:

TRACT I: LOT NUMBER TWENTY-TWO (22) AND FORTY-FOUR (44) FEET OFF OF THE NORTH SIDE OF LOT NUMBER TWENTY-THREE (23) IN S. A. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT II: LOTS NUMBERED NINE (9), TEN (10) AND ELEVEN (11) IN WINSTEAD DAVIE'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

97043793864

TRACY III: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 1 WEST OF THE THIRD PRINCIPAL MERIDIAN; THENCE WEST ALONG THE NORTH LINE OF SAID QUARTER-QUARTER A DISTANCE OF 494.80 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH A DISTANCE OF 317.24 FEET TO A POINT ON THE NORTHERLY LINE OF RIGHT-OF-WAY OF S.B.I. ROUTE 146; THENCE NORTHWESTERLY ALONG THE SAID LINE OF RIGHT-OF-WAY TO A POINT, A DISTANCE OF 160 FEET; THENCE NORTHEASTERLY TO A POINT ON THE NORTH LINE OF THE SAID QUARTER-QUARTER WHICH IS 130 FEET WEST OF THE POINT OF BEGINNING OF THIS PARCEL; THENCE EAST ALONG THE NORTH LINE OF SAID QUARTER-QUARTER A DISTANCE OF 130 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, ALL SITUATED IN UNION COUNTY, ILLINOIS.

ALSO

PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 1 WEST OF THE THIRD PRINCIPAL MERIDIAN, UNION COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SAID QUARTER-QUARTER; THENCE NORTH 90°-00' WEST ALONG THE SOUTH LINE OF THE SAID QUARTER-QUARTER A DISTANCE OF 494.80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 90°-00' WEST ALONG THE SAID NORTH LINE A DISTANCE OF 130.00 FEET; THENCE NORTH 2°-05'-53" EAST A DISTANCE OF 7.00 FEET; THENCE SOUTH 86°-54'-50" EAST A DISTANCE OF 129.93 FEET TO THE POINT OF BEGINNING; THE TRACT CONTAINING 0.010 ACRES MORE OR LESS, PURSUANT TO PLAT OF SURVEY PREPARED BY CHARLES L. GARNER, ILLINOIS LAND SURVEYOR, DATED JUNE 18, 1987.

97043793865

with all buildings, improvements, fixtures and appurtenances now or hereafter erected thereon including all rights, interest, privileges, easements, and appurtenances thereunto appertaining, and the rents, issues, proceeds and profits thereof, all of which are declared to be a part of the real property whether physically attached thereto or not; and as to any of the above property which is not considered by law as real property and is therefore not covered by this mortgage, this mortgage is hereby also deemed to be a Security Agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which is hereby granted to Mortgagee as secured party, securing the indebtedness, to have and to hold said property for the uses herein set forth, free from all rights and benefits under the Homestead Exemption Laws of the State of Illinois, which rights and benefits Mortgagor does hereby release and waive.

Mortgagor [individually if one person or entity, and jointly and severally if more than one person or entity] warrants, covenants and expressly agrees: (1) fee simple title to the real property is vested in Mortgagor free of any encumbrance; (2) to defend and bear the expense of defending the title to the real property against any and all claimants whatsoever; (3) to pay when due all taxes and assessments levied on the real property, all liens, mortgage obligations, judgments, or encumbrances on, against, or which may affect the title to, the real property; (4) to pay for and maintain in effect an insurance policy or policies affording at least the minimum coverage described in the insurance industry as Broad Form Coverage, or the equivalent thereof, with company or companies and in amounts acceptable to Mortgagee under policies immediately upon issuance to be deposited with, and with loss payable to, Mortgagee; (5) to maintain all improvements and structures on the real property in good repair and to make such repairs as reasonably may be necessary for the proper preservation thereof, and to refrain from the commission of any waste; (6) to use or permit use of the real property, or commit or omit any act with respect thereto, which violates any law pertaining to environment protection, or which could in any way expose Mortgagor or Mortgagee to any present or future liability under any law designed for environmental protection; (7) to cause to be made and pay for any environmental assessment or clean-up at any time required or requested by Mortgagee or any governmental agency; (8) if Mortgagor fails to pay, when due, any taxes, assessments, liens, other mortgage obligations, judgments, or encumbrances against the real property, the expense of any environmental assessment or clean-up or for any liability incurred under any environmental protection law, or for the insurance coverage in the amount and in the manner hereinabove required, or in the event that Mortgagor fails to maintain all improvements in good repair or fails to make repairs to the real property as reasonably may be necessary for the proper preservation thereof, then Mortgagee may pay any such amount or advance or expend funds or monies therefor, and any and all amounts so paid or incurred by Mortgagee shall become Additional Indebtedness secured by this mortgage, shall bear interest from the date of any such amounts or monies are advanced or expended at the rate provided in this mortgage, and are made a lien upon the real property; (9) Mortgagor shall not, without Mortgagee's prior written consent, lease, rent, sell, convey, mortgage, or otherwise voluntarily transfer or attempt to dispose of the real property of any interest therein; (10) if Mortgagor defaults in the payment of the Indebtedness, or violates or breaches any warranty, covenant, or agreement herein contained, or fails to pay any amount due under any other promissory note secured by any other mortgage on the real property, or if Mortgagor breaches any term or provision of any loan agreement made in connection with the loan transaction for which this instrument is security, or if any time Mortgagee subjectively shall deem itself insecure or inadequately protected in any bankruptcy proceeding, or if the real property becomes the subject matter of any bankruptcy proceeding in which an Order For Relief is entered, then Mortgagee may accelerate and declare the entire indebtedness secured hereby due and payable, and shall thereupon have all the rights and remedies provided for hereunder and under law, including the Illinois Mortgage Foreclosure Law; (11) upon default, Mortgagee may foreclose.

97043793866

Upon closure:

- (a) Mortgagor expressly authorizes Mortgagee, at any time during foreclosure, both prior to the entry of a judgment of foreclosure and thereafter throughout the proceeding, to be entitled to and to be placed in possession thereof to the same extent to which Mortgagor, absent the foreclosure, would have been entitled to physical possession, all in the manner and in accordance with the Code of Civil Procedure of the State of Illinois;
- (b) In any foreclosure suit there shall be recoverable, and Mortgagee shall recover, Attorney's Fees and Costs to the extent provided in the Illinois Mortgage Foreclosure Law, and such fees and costs advanced, paid, expended, incurred, or disbursed, shall become the Additional Indebtedness secured by the mortgage, will bear interest from the date or dates any such monies are advanced, incurred, or expended at the rate provided herein, and as such Additional Indebtedness and interest are made a lien secured by this mortgage upon the mortgaged real property, and all such costs Mortgagee is entitled to recover and there shall be recoverable in any foreclosure action, and the application of the proceeds of any sale shall be applied to the payment thereof and reimbursement of Mortgagee therefor;
- (c) Mortgagee is authorized to seek a manner of sale other than by public auction; Mortgagee is authorized to seek, and a Court is authorized to order, a sale by open or sealed bid, a sale conducted by other than a judicial officer, or a sale by a non-exclusive broker listing or by a designated duly licensed real estate broker nominated by Mortgagee.

Dated Dec 6, 1990.

MORTGAGOR:

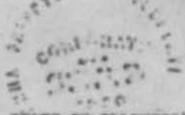
ANNA PRESBYTERIAN FOUNDATION

BY: [Signature]
PRESIDENT

ATTEST:

[Signature]
SECRETARY

(CORPORATE SEAL)



ACKNOWLEDGMENT

STATE OF ILLINOIS } SS
UNION COUNTY
This instrument was filed for record

2632

DEC 10 1990

[Signature]
Notary Public, State of Illinois
My Commission Expires Mar. 16, 1992

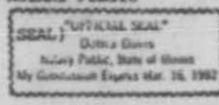
STATE OF ILLINOIS)
COUNTY OF UNION) SS.

This instrument was acknowledged before me on December 6, 1990, by

Stephen Wilkinson and Helen W. Owens, as President and Secretary, respectively, of Anna Presbyterian Foundation.

[Signature]
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY
FINCH & KANRAKER, P.C., AT THE
REQUEST OF AND FOR THE USE OF
MORTGAGEE.



97043793867

ANNUAL REPORT

FOR 1992

GENERAL NOT FOR PROFIT CORPORATION ACT

FILE NO. N 5058-932-3

FILE PRIOR TO 01-01-92
ADD \$3.00 PENALTY
FOR LATE FILING

SECRETARY OF STATE OF ILLINOIS

FILING FEES

Annual Report \$ 5.00

REGISTRATION FEE \$ 10.00

86 PAGE 173

DO NOT WRITE IN THIS SPACE

FILED

JAN 03 1992

GEORGE H. RYAN
SECRETARY OF STATE
91

1.) EVANGELICAL PRESBYTERIAN CHURCH OF ANNA, ILLINOIS
% JOHN O WELLS 123087
.07 E JEFFERSON ST PO BOX 653
ANNA, IL. 62906-1520

2.) CHANGES ONLY: Registered Agent Stephen F. Wilkinson X
Registered Office 315 South Street X
City, County, IL Zip Code

UNION

The above change was duly authorized by resolution of the board of directors. The address of the registered office and the address of the office of the registered agent, as changed, will be identical. THE ADDRESS OF THE REGISTERED OFFICE MUST INCLUDE A STREET NUMBER. A P.O. BOX MAY ONLY BE USED IN ADDITION THERETO.

3.) The above corporation organized under the laws of the state of ILLINOIS, pursuant to the provisions of "The General Not for Profit Corporation Act" of the State of Illinois, hereby makes the following report:

4.) The names and respective addresses of its officers and directors are:

NAME	OFFICE	NUMBER & STREET	CITY	STATE	ZIP
Stephen F. Wilkinson	President	303 W. High	Anna	Illinois	62906
Helen W. Owens	Secretary	Route 2, Box 80	Anna	Illinois	62906
Betty Leidigh	Treasurer	313 Brady Mill Road	Anna	Illinois	62906
Loel Verble	Director	205 W. Spring	Anna	Illinois	62906
Larry Goldsmith	Director	Route 2, Box 569	Anna	Illinois	62906
Joe Meller	Director	212 Apple3 Lane	Anna	Illinois	62906
Russell Friese		#4 Fairview Heights	Anna	Illinois	62906
Abram Norton		526 N. Main	Anna	Illinois	62906
Don Burnett		307 W. High	Anna	Illinois	62906
Glenn Mattheis		111 Orange St.	Anna	Illinois	62906

Is this corporation a condominium corporation as established under the Condominium Property Act?
Yes No (Check One)

Is this corporation a partnership as defined in the Internal Revenue Code of 1954?
Yes No (Check One)

Is this a Homeowner's Association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure?
Yes No (Check One)

7.) If a foreign corporation, the address of its principal office in the state of its incorporation is:

(Number and Street)

(Please read reverse side of this report before signing below)

(State or Country)

8.) BY Betty Leidigh Treasurer 12/31/91
(Authorized Officer's Signature) (Title) (Date)

Under the penalty of perjury and as an authorized officer, I declare that the within report and if applicable, the statement of change of registered agent and office, pursuant to provisions of the General Not For Profit Corporation Act, has been authorized by me and is, to the best of my knowledge and belief, true, correct, and complete.

97043793868

ITEM 8 MUST BE SIGNED

STATE OF ILLINOIS } SS
UNION COUNTY

This instrument was filed for recd

5768

JAN 16 1992

11:05 o'clock 11 M. am.
Recorded in Vol. 86 page 178-179

Bobby Toler J
County Clerk & Public Recorder

97043793869

MEMORANDUM OF JUDGMENT

IN THE CIRCUIT COURT OF THE
JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

to
RECORDER OF DEEDS
UNION COUNTY, ILLINOIS

JUDGMENT RENDERED AGAINST CORYDON FINCH 343 S. Main Anna Illinois
(name and address)

on July 23, 1982 in the
(date judgment was entered)

amount of \$ ONE THOUSAND FOUR HUNDRED SEVENTY TWO DOLLARS
NINETY FIVE CENTS Plus costs and interest

in favor of Plaintiff, LAWYER'S CO-OP PUBLISHING
(judgment creditor)

in the above Court in Case No. 79 TM-1722

Signed: *Thomas M. Daly*
(Judge) (Magistrate)

STATE OF ILLINOIS }
UNION COUNTY }

This instrument was filed for record
6373

MAR 17 1983

At 8:00 o'clock A M., and
recorded in Vol. 46 page 592

Fred W. Blaylock
County Clerk & ex-officio Recorder of Deeds

After recording mail to:
Name Russell H. Classen
Address #7 North High St.
Belleville Illinois 62220

9704379387C

MEMORANDUM OF JUDGMENT

IN THE CIRCUIT COURT OF THE
JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

to

RECORDER OF DEEDS
UNION COUNTY, ILLINOIS

JUDGMENT RENDERED AGAINST LARRY KARRAKER 402 E. Vienna
(name and address)

Anna Illinois

on July 23, 1982 in the
(date judgment was entered)

amount of \$ ONE THOUSAND FOUR HUNDRED SEVENTY TWO DOLLARS
NINETY FIVE CENTS Plus costs and interest

in favor of Plaintiff, LAWYER'S CO-OP PUBLISHING
(judgment creditor)

in the above Court in Case No. 79 LM-1722

Signed: *[Signature]*
(Judge) (Magistrate)

STATE OF ILLINOIS } ss
UNION COUNTY
(This instrument was filed for record

6374
MAR 17 1983

at 800 o'clock A M. and
recorded in Vol. 46 page 593

Fred W. Blaylock

County Clerk & ex-officio Recorder of Deeds

After recording mail to:
Name Russell H. Classen
Address #7 North High St.
Belleville Illinois 62220

97043793871



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1996

Edward Wesley Walton
101 Swanson Road, Unit 116
Boxborough, MA 01719-1331

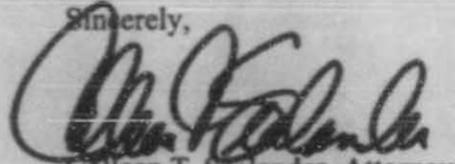
RE: MUR 4411

Dear Mr. Walton:

This letter acknowledges receipt on July 11, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

The respondents will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4411. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

97043793872



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 16, 1996

Stephen F. Wilkinson, Registered Agent
First Evangelical Presbyterian Church of Anna, Illinois
315 South Street
Anna, Illinois 62906

RE: MUR 4411

Dear Mr. Wilkinson:

The Federal Election Commission received a complaint which indicates that the First Evangelical Presbyterian Church of Anna, Illinois may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4411. Please refer to this number in all future correspondence.

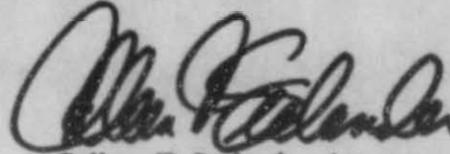
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the First Evangelical Presbyterian Church of Anna, Illinois in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043793873

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

97043793874



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1996

Stephen F. Wilkinson, Registered Agent
Anna Presbyterian Foundation
315 South Street
Anna, Illinois 62906

RE: MUR 4411

Dear Mr. Wilkinson:

The Federal Election Commission received a complaint which indicates that the Anna Presbyterian Foundation may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4411. Please refer to this number in all future correspondence.

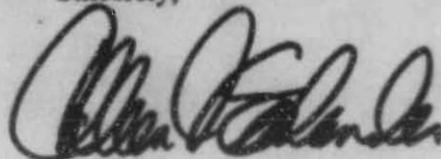
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Anna Presbyterian Foundation in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043793875

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

9 7 0 4 3 7 9 3 8 7 6



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1996

Barbara J. Throgmorton
RR2, Box 375
Anna, Illinois 62906

RE: MUR 4411

Dear Ms. Throgmorton:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4411. Please refer to this number in all future correspondence.

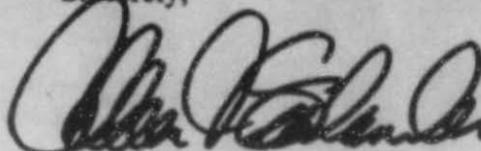
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043793877

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

9 7 0 4 3 7 9 3 3 8 7 8



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1996

R. Corydon Finch
209 East Jefferson
Anna, Illinois 62906

RE: MUR 4411

Dear Mr. Finch:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4411. Please refer to this number in all future correspondence.

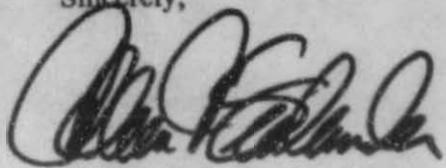
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043793879

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

- 1. Complaint
- 2. Procedures
- 3. Designation of Counsel Statement

9704379388C



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 16, 1996

James Larry Karraker
402 East Vienna
Anna, Illinois 62906

RE: MUR 4411

Dear Mr. Karraker:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4411. Please refer to this number in all future correspondence.

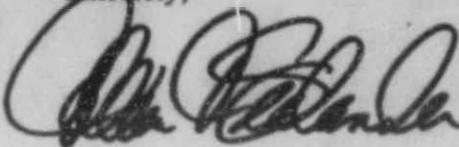
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043793881

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

970437933882

First Evangelical Presbyterian Church

315 South Street

Anna, Illinois 62906

618-833-5225



July 10, 1996

MUR 4411

Federal Election Commission
999 E. Street, NW
Washington, DC 20463

Attention: Retha Dixon, Docket Chief

JUL 15 2 34 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

We have received copies of material related to a request for an investigation of our congregation and the Anna Presbyterian Foundation [the non-profit entity providing for our congregation's ministry], originally received by the FEC June 24, 1996 [copies enclosed].

Though we have received no communication from the FEC other than copies of correspondence with Mr. Walton, I have called a meeting of both our Foundation Board and the First EPC board of Elders, or Session to discuss the implications of this request.

Our congregation has never had any connection with the Christian Coalition, nor have I, personally, been involved with this organization. Neither First EPC, the Anna Presbyterian Foundation, nor I, personally, have ever made contributions to this or similar organizations.

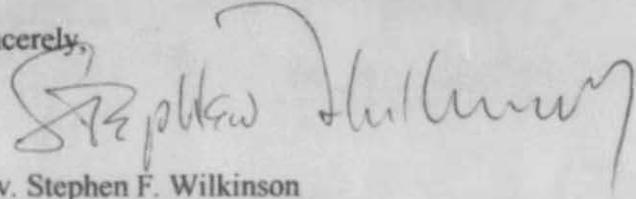
Additionally, we receive funds through voluntary contributions from our members and interested and involved friends of our church. As in most congregations, funds are used for local ministry needs and a variety missionary and outreach causes. Our congregation votes on a church budget annually, which is presented in a line-item format. The current and past budgets are readily accessible to anyone in our Annual Reports, and the Elders review financial activity at least monthly in regular meetings.

Our Elders meetings are routinely open to attendance by anyone, and each month we have a different member of our Board of Deacons [which in our congregation focuses on service and mercy ministries], sit in with the Elders to ensure good communication. We regularly communicate on ministry activity in our church newsletter, which includes weekly records of giving and expenditures. This publication is readily available anyone who is a participant in the life of our church. The financial synopsis is also published weekly in our Sunday bulletins. The Evangelical Presbyterian Church denomination to which we belong is a member of Evangelicals for Financial Accountability.

97043793883

I would appreciate an opportunity to discuss this matter with a representative of the FEC, or to invite an FEC representative to meet with our Boards. In the meantime, we will be seeking to understand and clarify our position with regard to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen F. Wilkinson". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Rev. Stephen F. Wilkinson

97043793884

R. CORYDON FINCH, P.C.

ATTORNEY AT LAW

402 EAST VIENNA STREET P.O. BOX 645 - ANNA, ILLINOIS 62906
618/833-4781 FAX 618/833-4777

July 30, 1996

Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

ATTN: COLLEEN T. SEALANDER, ATTORNEY
CENTRAL ENFORCEMENT DOCKET

RE: MUR4411

Dear Ms. Sealander:

I respond to your July 16, 1996, letter which, with exhibits, I received the evening of Thursday, July 25, 1996, upon returning from a week's vacation in the West.

I must begin by saying that it is absolutely disgusting to me to have to take my time to deal with the reckless and irrational claims made in Wesley Walton's letter to you. I do understand your obligation to immediately move the matter swiftly without reading the stuff.

It is unfortunate the law does not provide some criteria for screening out cranks, personal vendettas, and conspiracy theorists. From the face of Wesley's letter, it is obvious it does not make sense: it is riddled with conspiratorial and paranoid notions; it is nothing more than an expression of his borderline obsession with his vendetta against his sister, Barbara; and there is no credible, rational relationship between a meeting at which Pat Boone's daughter and some unspecified training materials were discussed, and the support of any specific candidate for any specific election.

Nonetheless, I want to put an end to this, if possible. Also, it took some time to review my old file and gather some of the information I will present, and it looks like Wesley may keep at this, so I may as well dictate some kind of response. Further, I would suppose that neither Barbara nor the present members of the church either may never have known or do not fully recall the course of the litigation, so it may be of advantage for them for me to set it forth in writing. Hence, this letter which I intend to dictate in a conversational style.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 2 9 54 AM '96

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I will begin by telling you my relationships to Wesley, to his sister, Barbara, to Larry Karraker, and to Anna Presbyterian Foundation ["APF"], and Evangelical Presbyterian Church ["EPC"].

I attended grades one through twelve with Wesley, and he was a frequent visitor at my home, and I at his. Barbara is five or six years younger than Wesley, and I can recall when she was a very small child. I attended Wesley's first marriage in Peoria, Illinois, sometime during my college years, and all I can remember about that is that he spent one night with his wife, the night of the wedding, went absolutely crazy, and according to many sources he never saw his wife after that, they were divorced, a child was born whom he never saw, and he spent several years after that in psychiatric care. Except for having seen Wesley ten or fifteen years ago at a high school class reunion, I have never seen him since. The only other communications of any kind between him and me, until I received your letter, were these: his mother left her estate to his sister, Barbara, and he attempted to file what I am told is a Will Contest proceeding in which he alleged, among other things, that I was somehow involved in inducing his mother to leave her estate to Barbara; also, during one of his visits to Anna, I am told he threatened to kill me. Larry Karraker represented Barbara in the litigation, the Will was not set aside, and Barbara inherited whatever her mother's assets were. As a not-so-incidental matter, Wesley's grievance has nothing to do with violation of the election laws, but simply grows out of his virtual paranoid obsession to avenge his having been excluded as an object of his mother's bounty.

My relationship to Larry Karraker: when I was State's Attorney of Union County from 1970 through 1972, Larry was a law student and during one of two summers he was employed by my office under an Illinois Supreme Court Rule permitting limited practice by law students. Thereafter, for two or three years in the early 1970's, he and I were associated as partners in a law practice, terminating 1977 or 1978. In 1986 we formed a professional corporation, Finch & Karraker, P.C., and practiced in that professional corporation until December 31, 1992. Thereafter, we have practiced as separate professional corporations, although still using the same building from which to conduct our separate law practices. Since January 1, 1993, I have practiced in a separation professional corporation named R. Corydon Finch, P.C. Throughout the entire period of time, however, very infrequently has he been aware of or known about the work I did for my clients, and vice versa.

For anyone even to suggest my connection to any radical religious cause is irritating; hence, the following: my relationship with organized religion, or any religion, for that matter, has always been a relationship based upon family history and relationships, convenience, and the practice of law. It has never had anything to do with politics in any way, nor the espousal of any political position, especially the political position of the

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Christian right. As a matter of fact, I am probably against everything the Christian right is for. Nonetheless, the history of my affiliation with organized religion is with the Episcopal Church. My granduncle, The Reverend Charles Dresser, was an Episcopal priest in Springfield, Illinois, in the 1860's. My father, who was born in 1868, did, along with his sister and six other persons, in the 1890's, establish St. Anne's Episcopal Church in Anna, Illinois, under the Diocese of Springfield, Illinois. One of the nephews of The Reverend Mr. Dresser was The Right Reverend John Chandler White, who was the fifth Episcopal Bishop of the Diocese of Springfield, Illinois, sometime in the 1950's. Anna is a small town of around 5,000 population and it was not possible for the Diocese to maintain a priest at St. Anne's throughout the years. When St. Anne's was not being serviced, my father preferred that I do, as a child, attend the First Presbyterian Church in Anna, which is less than a block from the home in which I was born and raised, and still live. In the late 1950's or early 1960's St. Anne's was again assigned a priest, and during the period of its service I was both a member of the vestry and a lay reader in the Episcopal Church. When the church was closed sometime before 1970, I did attend the First Presbyterian in Anna with my then-wife who was an active Presbyterian. In 1975 I was requested to and did incorporate the First Presbyterian Church (which therefore had functioned under the Illinois Statute pertaining to religious corporations) as an Illinois General Not-for-Profit Corporation ("FPC"), which is a corporation which later became Defendant in the litigation I will discuss. In 1976 or 1977, St. Anne's not being serviced by the Springfield Diocese, I began attending the Episcopal Parish Church in Cape Girardeau, Missouri. I attended that church until sometime in 1980, for the purpose of taking my teenage daughter who was then living with me, so that she would have an opportunity to be exposed to organized religion so she would have an opportunity to know whether she wanted to be a part of it. Since 1980, I have attended only four or five worship services, at Christ Church Cathedral in St. Louis, the Cathedral of St. John The Divine, and St. Paul's Cathedral, because occasionally I like to enjoy the beauty and pageantry of the high service. My only other appearances at any church or with any board or representative of any church have been in a professional capacity. I appeared three or four times before the congregation of the First Presbyterian Church in connection with the litigation I'll discuss below. I have also performed services for the First Baptist Church in Anna, the Anna Pentecostal Church, and since the end of the litigation, I have been consulted by several churches and church groups regarding severance of local church relationships from general denominations, which was the subject matter of the litigation I performed for the FPC.

Insofar as I am alleged to have any association with any form of religious beliefs, I tell you the following: I definitely do not ascribe to, espouse, or have any interest whatsoever, in the religious beliefs of the Presbyterian Church, in whatever form it takes. I was definitely opposed to the liberal social policies pursued by the general denomination of the United Presbyterian Church in the United States of America, the largest Presbyterian

denomination in the United States, in the 1960's and the 1970's. I even more strongly oppose the religious beliefs of the so-called Christian Right political organizations; I strongly support and believe in the United States Supreme Court's holding in Roe v. Wade. I do not believe that a small religious--basically fundamentalist and Roman Catholic--minority ought to be able to impose its moral views on an entire society and criminalize a woman's right to decide what happens with her body. I strongly believe that if a local church or a general denomination desires to ordain women or gays, that it certainly ought to have the right to do that. And, generally, the whole abortion debate ought not even be a part of national policy and should not be the subject matter of national elections. As far as Barbara's inviting Pat Boone's daughter to the church, I know nothing about that, and never heard of Pat Boone's daughter before. All I know about Pat Boone is that he was either a singer or movie star in the 1960's, and I deplore all of the television evangelists, Robertson included.

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Since Wesley seems to see some sinister conspiracy whereby Barbara, Larry Karraker, and I, incorporated an Anna Presbyterian Foundation, I will outline history of Anna Presbyterian Foundation in the context of the litigation I pursued on behalf of what was, in 1980, an Illinois General Not-for-Profit Corporation named "The First Presbyterian Church of Anna, Illinois" [hereinafter "FPC"]. Before 1975, the Presbyterian Church in Anna was associated with one of the three or four general Presbyterian denominations in the United States, named "The United Presbyterian Church in the United States of America" [hereinafter "UPCUSA"]. In 1975 the Book of Order of UPCUSA recommended incorporation of local churches under the general corporation laws of the state in which the local church was located. Therefore, my then-wife being active in the Anna Presbyterian Organization and I attending that church at the time, was asked to, and did, cause the formal incorporation as an Illinois General Not-for-Profit Corporation of FPC (see Wesley's Exhibit E). Neither Barbara nor Larry had anything at all to do with that incorporation. My recollection is that Barbara was not living in the area at the time, and Larry was not a member of the church at the time, nor do I recall that he and I were in practice together at that time. As I indicated above, a year or so after that I ceased attending that church.

In 1980, UPCUSA, the general denomination, was considering amending its Book of Order to give UPCUSA control over the property of local churches. At about that time, FPC had received as the beneficiary of the Last Will and Testament of Vesta Alden, a substantial amount of property. The reason for the amendment to the Book of Order was that, at that time, many local Presbyterian Churches across the country were dissatisfied with the conduct of the affairs of UPCUSA, and had begun attempting in various ways to disassociate themselves from the general denomination. Some of the issues, as I recall, dealt with UPCUSA's contribution to the defense of Angela Davis, the ordination of homosexual ministers, and right-wing issues like that. As UPCUSA moved toward

amending its Book of Order, FPC decided to sever its relationship with UPCUSA. Sometime in the summer or fall of 1980, I was employed by FPC to advise the pastor and the governing board as to the procedure for severance. As a basis for my advice to FPC, I relied upon cases cited in the Briefs I am sending, and also the proceeding then in process which later resulted in the decision of the California Court of Appeals in Protestant Episcopal Church v. Barker, 171 California Reporter, 541 (1981). My design was to immediately and simultaneously amend the Articles of Incorporation of FPC to omit any reference to UPCUSA (Wesley's Exhibit E), simultaneously to incorporate Anna Presbyterian Foundation [hereinafter "APF"], as a property holding corporation (Wesley's Exhibit B), and then to convey FPC's assets to APF, which I accomplished in the space of several days starting with the congregational meeting on October 26, 1980, and the incorporation and conveyance within the next several days. The foregoing history is set forth in considerably more detail in Parts I through III of the Statement of Facts in APPELLANTS' BRIEF in Case No. 5-83-0716, in the Appellate Court of Illinois for the Fifth District. After the severance in October of 1980, UPCUSA then conducted what it called an administrative proceeding, and sometime in 1981 filed Case No. 81-MR-5 in the Circuit Court of the First Judicial Circuit for Union County, Illinois, captioned Byron W. York, et al., v. The First Presbyterian Church of Anna, Illinois, et al. (being the same case captioned in the APPELLANTS' BRIEF I am sending you). I am unable to locate a copy of the original Complaint, although I do recall it was dismissed for failure adequately to state a cause of action. Thereafter, the Plaintiffs filed an Amended Complaint for Declaratory Judgment and Other Relief, a copy of which I am also sending to you. The case then proceeded to trial sometime in 1983, the trial judge ruled in favor of the based on an Illinois Supreme Court case, and thereupon dispossessed FPC and APF of their assets. We appealed, as set forth in the APPELLANTS' BRIEF in Case No. 5-83-0716 in the Appellate Court of Illinois for the Fifth District. Thereafter, the Appellate Court did on November 9, 1984, reverse the Trial Court, holding essentially that under neutral principles of law UPCUSA had no claim to APF's property. The Illinois Supreme Court rejected UPCUSA's appeal, and UPCUSA petitioned the United States Supreme Court for Writ of Certiorari. For that proceeding, see the orange-covered BRIEF in OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT, in United States Supreme Court Case No. 84-2035. On October 7, 1985, the Supreme Court of the United States denied UPCUSA's Petition for Certiorari, and a copy of a letter to me from the Clerk of the Supreme Court dated October 7, 1985, is attached for your information. Thereafter, UPCUSA and its Presbytery still refused to turn the property back to APF, so on December 23, 1985, I did on behalf of APF in Case No. 85-MR-27 in the Circuit Court of the First Judicial Circuit for Union County, Illinois, file a COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF, to get the property back. For some reason I don't not remember, that case went to the Appellate Court and was sent back, and, finally, on March 26, 1986, on my Motion for Judgment on

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Pleadings, there was entered in Case No. 85-MR-27, a DECLARATORY JUDGMENT and other relief, a copy of which is also attached, compelling return of the property to APF. That was the end of that case. During that period of time Larry Karraker and I were in separate offices, in separate places, and I have no idea whether or not he knew anything about the case. My recollection of Barbara's involvement during that period of time is that she was a member of the Board of one or the other corporations and both she and her mother, and Wesley's mother, Rosemary, opposed the litigation throughout on the basis of something in Corinthians which they read to indicate that Christians ought not to engage in litigation. My recollection, or at least as far as I knew, is that of the entire congregation by which I was employed at the time, the only three people opposed both the defense of the suit in the Trial Court, the initial Appeal to the Illinois Appellate Court, and the subsequent oppositions to Petitions to Writs of Certiorari to the Illinois and United States Supreme Courts, were Barbara and her mother, who were "strict constructionists" of the Bible.

The only other time I remember being professionally involved with FPC, is that at one time they were contracting to have a building constructed and they sought my advice to review the construction contract and advise them on the necessity for a payment performance bond.

I don't know if it matters, but I will describe for you in one word my political leanings and affiliation: none. I have voted in the primaries of both parties. Upon the resignation of a State's Attorney of Union County, in 1970, I was appointed to complete a two-year term, during which time I was tangentially involved in Democrat party politics. In a county where one of the main industries is nursing homes and shelter care homes, and their owners herd these people to the polls in droves, there is hardly any incentive to take the time to vote and have it canceled out by the mentally retarded. I specifically remember voting for McGovern, Reagan once, and Bush the first time. I know I did not vote in 1992 or 1994. I voted in the local Democrat primary in the spring of this year because two of my close acquaintances were running for office, and asked me to vote, and I did not want to disappoint them. I feel that until campaign finance laws are vastly improved to limit, for example, the influence of ADM on one side and UAW of the other, we're never going to get candidates (at least in the major parties) who will face and deal with the important issues facing this country. I can tell you for sure that I never have or never will do anything, at least if I know it, to assist people like Robertson, or his more recent reincarnation in people like Buchanan and Reed. These people, and their so-called Christian Coalitions, are nothing but havens for the lower social, educational, and economic classes who seek assurance, during periods of economic and political disequilibrium, in the certainty of Christian religious fundamentalism or the rigidity of Roman Catholicism.

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I will now comment in a seriatim manner on Wesley's exhibits.

EXHIBIT A: I know absolutely nothing about the January 19, 1982, or February 17, 1982, minutes of the meeting of the Boards of Directors. For your information, the attorney fees referred to in those minutes pertained to a dispute arising between the First National Bank of Jonesboro as Executor of the Estate of Vesta Alden, Deceased, the Bank's attorneys and the church organization, with respect to the reasonableness of the fees. I had not at that time been employed by the church with respect to the severance litigation discussed above.

EXHIBIT B: These are the Articles of Incorporation of APF, which I discussed above. I will comment, once more, that the formation of this corporation was my idea, not theirs, as a step preparatory to the litigation. The persons chosen as members of the Board of Directors were the same persons who were then members of what was called the church Session. It was only a coincidental matter that Barbara was involved.

EXHIBIT C: I have no idea where Wesley obtained copies of all of these corporation papers from the State of Washington—which is over 2,000 miles from Anna, Union County, Illinois. I have never seen all of this stuff before, and it certainly has nothing to do with APF, FPC, or the then-or-now-existing church organizations in Anna. Apparently, these documents indicate that local churches which affiliate with the Evangelical Presbyterian Church as a general denomination add "Evangelical" to their name.

EXHIBIT D: This must be the sinister portion of the February 17, 1982, minutes where Barbara recommends that Pat Boone's daughter appear. I don't know if she ever appeared or not, and if she did, I certainly was not invited, and would not have attended had I been.

EXHIBIT E (1): These are the Articles of Incorporation of FPC, which I prepared back in 1975, and explain above.

EXHIBIT E (2): These are the Articles of Amendment of FPC, which are referred to above, which was a part of my design to achieve severance, and as you can see from ARTICLE 5, there is reference to the "autonomous congregation separate and independent from and of any denomination". As you can see by looking back at ARTICLE 5 of Exhibit E, (1) the former reference was to UPCUSA. By "autonomous", I meant autonomous vis-a-vis UPCUSA; I did not, at the time at least, envision "any broad political alignment" or subversive activity to overthrow the United States Government, by pamphleteering or other means.

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EXHIBIT E (3): The next item is captioned MEMORANDUM, which is apparently a transaction between some people named Haley and APF. I had nothing to do with this and have no idea what kind of transaction this was. I do know and have represented the Haley family from time to time over a period of 35 years. This is the form of document we use in Illinois to provide notice of the existence of a land contract. My guess is that this is the building that APF purchased when the Trial Court rendered Judgment in Case No. 81-MR-5, dispossessing APF of the church building. It was a hand-ball court!

EXHIBIT E (4): ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS: This is apparently where FPC added "Evangelical" to its name. I had nothing to do with this, and have never seen it before. I do remember that what happened was, that, after the lawsuit, the congregation found it difficult to obtain ministers through any Presbyterian general denomination, and, in fact, it had one or two Methodist ministers there for a while. So, the congregation was required to affiliate with some kind of Presbyterian general denomination in order to obtain a source of supply of preachers. Sometime during this period of time I told somebody, and I don't remember who it was, that if and when they were to affiliate, to be sure to affiliate through FPC, and not the land-holding APF, so they would not get back in the same mess again.

EXHIBIT E (5): CONSTRUCTION REAL ESTATE MORTGAGE: The Mortgage by APF to The Anna National Bank: I represented The Anna National Bank from sometime around 1970 until 1995, during which time I did all of the Bank's title work and prepared its lending instruments. At the time this was prepared Larry Karraker and I were engage in practice as Finch & Karraker, P.C. As you can see from the third page of the Mortgage, it was prepared at the request of the Bank. I believe, but am not certain, that this loan was for the construction of an Educational Building. I can see this building from my home; so, before anyone infers evil political activity from "Educational"--I tell you that I know it to be used for Sunday School, etc., and not for political gatherings. It's also not very attractive.

EXHIBIT E (6): ANNUAL REPORT OF EVANGELICAL PRESBYTERIAN CHURCH: I don't know what Wesley thinks the significance of this may be, but it has none. Corporations are required to file annual reports with the Illinois Secretary of State. It looks like that's what they did. With the exception of Betty whomsoever, I know all the other persons named on that document. All are good, moral, ordinary people. All are harmless. None are engaged in political propagandizing.

EXHIBIT E (7): MEMORANDUMS OF JUDGMENT: Larry and I got into a dispute in the mid-70's with Lawyers Coop, and apparently we got sued in 1979, at a time when we were no longer affiliated. I honestly don't remember anything else about this dispute or the

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case.

Given the above background, I will treat the paragraphs of Wesley's letter as allegations and attempt to answer to the best of my knowledge:

- [1] If there were any "training materials" (and although I know absolutely nothing about this) apparently it was done in 1982. From reading the minutes and putting the other facts together, it looks like these were "EPC materials" dealing with the local churches becoming affiliated with the Evangelical general denomination. It seems to me it is hardly a basis for your even countenancing Wesley's complaint, without there having been some specification that the so-called "training materials" were somehow "right-wing". There are, after all, several "First Amendment" liberties associated with dissemination of training materials unless there is some evidence of an attempt to influence legislation or the election of particular candidates or support of specific parties;
- [2] In this paragraph Wesley attempts to relate APF and the "training materials". Did not anyone read Exhibit A and Exhibit D containing the February 17, 1982, minutes which refer to the "training materials"? That was a meeting of the Board of Directors of FPC, not APF. Also, I have explained above the reason for my setting up APF to hold title to property as an autonomous congregation—i.e., for the purpose of severance. Anyway, "autonomy" is no crime;
- [3] This is Wesley's attempt to relate APF to the church corporation in the State of Washington. I incorporated APF in 1982; all of the documents from Washington State are dated from 1986 through 1994. If there is a "general organizing plan" as Wesley alleges, no one told me about forming a corporation in Washington. I do remember that after the conclusion of the litigation in which I was involved, I was consulted by an attorney in one of the southern states and an attorney from Michigan, both at the suggestion of the Princeton University theologian whom I employed to testify in the 1983 trial. The matter about which I consulted was related to the procedure for severance from UPCUSA; it did not involve any questions about how to conspire with the Evangelical general denomination;
- [4] I think I have explained above Barbara's role as one of the incorporators of APF. I have said above all I know about Pat Boone's daughter—whoever she is. Further, Wesley alleges that "APF/EPC (either or both) have violated

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(1993-1994) or are about to violate (1996) Federal election law". Note that if Wesley or someone had even bothered to look at or read the allegedly inculpatory minutes (Exhibit A and Exhibit D), it is clear that whatever occurred, occurred in 1982, not 1993-1994.

- [5] My response to the allegation indicated in the last three paragraphs of page two and the first three paragraphs on page three appears in my discussion of the litigation captioned York v. First Presbyterian Church.

I request and hope that your office will review Wesley's complaint and my response and conclude that no further action is appropriate. I can tell you that nothing I, Larry Karraker, Barbara, or the local church congregation (through FPC, EPC, or APF) did warrants the resources of the Commission.

I hope that my response is not too lengthy and is helpful to you. I am sending along copies of documents which I refer to in the above text, and also a copy of several Briefs I wrote in the Illinois Appellate Court and the United States Supreme Court, which may amplify upon what I have said. The Illinois Appellate Court Brief is one of only two remaining in my possession, so I would like to have it returned to me when you're through with it. It looks like someone cut out the Appendix in the Appellate Court Brief, but I will tell you the Appendix was the Trial Judge's Order, which I appealed and got reversed. It would do nothing but confuse you, as it did me, when I read it, anyhow.

I am going to send copies of this letter (without any of the other materials) to Larry, whom I believe is representing Barbara. I talked with him this morning and he has not heard anything from the church organizations themselves, nor have I. Nonetheless, I am sending a copy of the letter to The Reverend Mr. Steve Wilkinson, the current pastor, for his information and assistance, in case EPC or APF employs counsel.

I will try in the following paragraphs to answer the other matters in your letter and the instruction sheet you sent.

First of all, I don't care whether this letter remains confidential, or not. My only concern with all of this is that when Wesley was here last summer he spent about two weeks carousing around in the courthouse and talking to people, and several of them told me he threatened physical harm to Barbara, Larry, and me. So, I suppose it would not help too much for him to see the content of this letter, but that's up to you; I can take care of myself, but I am concerned about Barbara.

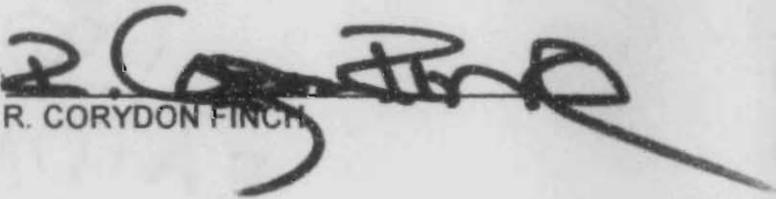
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Federal Election Commission
July 30, 1996
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Next, I do not intend to be represented by counsel; if you have any other notifications or need to know anything from me in my capacity as a Respondent representing myself, simply call me or write me.

Sincerely,

R. CORYDON FINCH, P.C.

BY 
R. CORYDON FINCH

RCF:dkm

cc: Mr. James L. Karraker
The Reverend Steve Wilkinson

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LIST OF EXHIBITS

- EXHIBIT 1: Amended Complaint in York v. First Presbyterian Church, #81-MR-5- -which is the case by UPCUSA against FPC and APF to take control of the property of the local congregation, with there being attached thereto the corporate resolution and by-laws which I prepared to effect severance of the "autonomous" congregation.
- EXHIBIT 2: My responsive pleading- -denying UPCUSA's theory of action, attacking the sufficiency of its administrative proceeding, and setting forth a neutral principles of law defense.
- EXHIBIT 3: My amendment to my responsive pleading adding an estoppel defense.
- EXHIBIT 4: UPCUSA's Reply to my pleadings.
- EXHIBIT 5: The Trial Court's Judgment in 81-MR-5- -in effect dispossessing FPC and APF of its property.
- EXHIBIT 6: The Judgment of the Appellate Court reversing the Trial Court on the basis of neutral principles of law.
- EXHIBIT 7: The Supreme Court's denial of Certiorari to the Fifth District Appellate Court- -in effect upholding application of neutral principles of law.
- EXHIBIT 8: My Complaint on behalf of APF in Case No. 85-MR-27 to compel UPCUSA to return to APF the property (incidentally, so you won't be confused, UPCUSA operated through an arm of its organization throughout these cases called the Southeastern Illinois Presbytery).
- EXHIBIT 9: UPCUSA's Answer to my Complaint (by way of explanation, the handwritten notes are mine and pertain to the sufficiency of the pleading under the Illinois Code of Civil Procedure).
- EXHIBIT 10: My Reply to UPCUSA's Answer.
- EXHIBIT 11: My Motion for Judgment on the Pleadings.
- EXHIBIT 12: The Final Judgment compelling UPCUSA to return assets to APF- -which was not appealed and therefore became the final Judgment, with which UPCUSA complied, thereby terminating all of the litigation.
- EXHIBIT 13: My Appellant's Brief in the Fifth District Appellate Court
- EXHIBIT 14: My Brief in the United States Supreme Court.

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IN THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ILLINOIS
UNION COUNTY

BYRON W. YORK, JOSEPH VAN ROEKEL,)
ALAN V. PAREIS, HELEN WESTBERG,)
JOE E. LOGSDON III, and PEYTON KUNCE,)
Individually and as Members of THE)
ANNA ADMINISTRATIVE COMMISSION II OF)
THE SOUTHEASTERN PRESBYTERIAN CHURCH OF)
THE UNITED STATES OF AMERICA, on behalf)
of said ANNA ADMINISTRATIVE COMMISSION II)
and on behalf of THE UNITED PRESBYTERIAN)
CHURCH OF THE UNITED STATES OF AMERICA)
and SOUTHEASTERN ILLINOIS PRESBYTERY)
OF THE UNITED PRESBYTERIAN CHURCH OF)
THE UNITED STATES OF AMERICA,)

Plaintiffs,)

vs.)

NO. 81-MR-5)

THE FIRST PRESBYTERIAN CHURCH OF ANNA,)
ILLINOIS,)
an Illinois Not-For-Profit corporation,)
ANNA PRESBYTERIAN FOUNDATION,)
an Illinois Not-For-Profit corporation,)
and CLAIR S. ALBRIGHT, HELEN OWENS,)
CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS,)
JANE RADER, JOEL MELLER, NORMAN HICHAM)
and JOYCE VERBLE, Individually and as)
Members of the Session of THE FIRST)
UNITED PRESBYTERIAN CHURCH OF ANNA,)
ILLINOIS,)

Defendants.)

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND OTHER RELIEF

Plaintiffs, BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN
WESTBERG, JOE E. LOGSDON III, and PEYTON KUNCE, individually and as
Members of THE ANNA ADMINISTRATIVE COMMISSION II OF THE SOUTHEASTERN
ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED
STATES OF AMERICA, on behalf of said ANNA ADMINISTRATIVE COMMISSION II and on

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behalf of THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, leave of Court having been first granted file this Amended Complaint against defendants, THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit corporation, ANNA PRESBYTERIAN FOUNDATION, an Illinois Not-For-Profit corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, Individually, and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, and say:

1. THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (hereafter UPCUSA) is an unincorporated religious association formed in the year 1706; its lay and clerical members are organized in a hierarchal form of government into particular churches, each being an integral part of UPCUSA of which THE SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS (hereafter the ANNA CHURCH) are a part.

2. THE SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA (hereafter PRESBYTERY), is a non-profit unincorporated association having its principal office in Ridgway, Illinois, and is an intermediate judicatory and assembly within the hierarchal religious denomination known as THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (UPCUSA) and has

jurisdiction over the individual religious congregations within its geographical area including the ANNA CHURCH.

3. Plaintiffs, BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS, HELEN WESTBERG, JOE E. LOGSDON III, and PEYTON KUNCE are all residents of the State of Illinois and are all of the members of the Anna Administrative Commission II appointed by PRESBYTERY on November 20, 1980.

4. Defendant, THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, is an Illinois Corporation under the General Not-For-Profit Corporation Act of Illinois, and prior to October 27, 1980, when its name was changed, was known as THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS.

5. Defendant, ANNA PRESBYTERIAN FOUNDATION, is an Illinois Corporation organized and existing since October 27, 1980, under the General Not-For-Profit Corporation Act of Illinois.

6. Defendants, CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM and JOYCE VERBLE, were, on and before October 26, 1980, certain of the Elders and members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS (The ANNA CHURCH), and subsequent to that date have acted and still purport to act as directors of THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS.

7. The ANNA CHURCH and its congregation at Anna, Illinois, was organized in 1866 as part of the Presbyterian Church of the United

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States which ultimately became a part of UPCUSA and at all times subsequent has been and is now a constituent part of the hierarchal organization of UPCUSA.

8. UPCUSA, PRESBYTERY and the ANNA CHURCH are all a part of a religious society organized and existing pursuant to the laws, rules and regulations adopted by and applicable to such church, which laws, rules, regulations and system of government are set forth in the Constitution, Form of Government of UPCUSA contained in "Book of Order" 1980-81 edition, published by the Office of the General Assembly of UPCUSA, a copy of which has been filed in this cause and which is by this reference incorporated herein and made a part hereof.

9. Said Book of Order contains the ecclesiastical law and form of government of UPCUSA which with its various components, including its presbyteries and congregations constitute one hierarchal united sovereign church with the integral parts being a part thereof in a hierarchal form of government and not independent or congregational.

10. Within the hierarchal form of government of UPCUSA as set forth in said Book of Order the particular churches which are members thereof, including the ANNA CHURCH, are each governed by a judicatory called a "Session" except in special instances specifically provided for in the constitution and laws of UPCUSA; each Session is comprised of representatives elected by the congregation of the particular church.

11. The individual congregations are organized within UPCUSA into distinct groups, each group being under the supervision and jurisdiction

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of a superior assembly or judicatory called a presbytery, of which plaintiff, THE SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, is one. Said presbyteries are composed of all the Ministers and the Elder Commissioners from all the churches within the geographical boundaries of each presbytery.

12. Within the form of government of UPCUSA the presbyteries are, in turn, organized into groups, each group and the particular churches therein being under the supervision and jurisdiction of an assembly or judicatory called a Synod and all of said particular churches and judicatories are in turn organized and subject to the jurisdiction of the Supreme Assembly or judicatory of UPCUSA known as the General Assembly of UPCUSA.

13. Under and by virtue of Chapter XII, Section 42.08, Chapter XI, Section 41.15 and Chapter XXVII, Section 57.033, of the Form of Government in said Book of Order, PRESBYTERY has the power, authority and jurisdiction to resolve questions of doctrine or discipline seriously or reasonably propounded, to visit churches for the purpose of inquiring into and correcting the evils that may have arisen in them, to take special oversight of churches without pastors, to organize and dissolve churches and in general, to order whatever is necessary pertaining to churches under its jurisdiction, to appoint administrative commissions in accordance with the ecclesiastical law as set forth in said Form of Government, which commissions shall investigate possible disorders in churches

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and formulate recommendations to PRESBYTERY after a full opportunity for hearing of the Session of the church under investigation, including recommendations as to whether the Session of a church should be dissolved and replaced by an Administrative Commission, and to take action on such investigations.

14. Prior to October 26, 1980, the Session of the ANNA CHURCH, with the guidance, recommendations, counsel and concurrence of the individually named defendants who were members of said Session, and over the objections of other members of said Session, adopted a Resolution setting forth proposed amendments to the Articles of Incorporation of what was then known as THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, a general Not-For-Profit Corporation and directing that such proposed amendments be submitted to a vote of a meeting of the congregation at a special meeting to be held on October 26, 1980; said proposed amendments deleted all references in said Articles of Incorporation to the word "united" in the name of the corporation and deleted from the purposes of the corporation all references to the organization, covenants and agreements that the ANNA CHURCH walk together in a church relation according to the provisions of the constitution of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (UPCUSA) and to exercise the government of said church under some certain and definite form. Said proposed amendment further provided that the ANNA CHURCH exist in an autonomous congregation separate and independent from and of any denomination; a copy of said Resolution is attached hereto, marked "Exhibit A", and by this reference incorporated herein and made a part hereof.

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15. Thereafter, with the guidance, recommendations, counsel and concurrence of the individually named defendants herein, 32 members of the congregation of the ANNA CHURCH executed a "Call and Notice of Special Meeting of Members of Corporation", calling a special meeting of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois general Not-For-Profit Corporation, on October 26, 1980, for the purpose of considering the foregoing amendments to the Articles of Incorporation and to amend the by-laws of the corporation, among other things to omit therein any references to the word "united" and to delete all references to or required guidance by the constitution of UPCUSA; a true and correct copy of said "Call and Notice of Special Meeting of Members of Corporation" to which is attached a copy of the proposed amendments of the By-Laws are attached hereto, marked "Exhibit B" and by this reference incorporated herein and made a part hereof.

16. A meeting of the congregation of the ANNA CHURCH was held on October 26, 1980, and, by a majority vote, the congregation, with the guidance, recommendations, counsel and concurrence of the individually named defendants herein, adopted the foregoing resolutions and amendments.

17. On October 27, 1980, Articles of Amendment to the Articles of Incorporation of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, a general Not-For-Profit Corporation, were filed and approved by the Secretary of State of Illinois incorporating the above-mentioned amendments; said amendments to the Article of

Incorporation were recorded in the Office of the County Clerk and ex-officio Recorder of Deeds of Union County, Illinois, on October 28, 1980, in Book 11, pages 270-272.

18. On October 27, 1980, defendants caused to be organized a new corporation entitled ANNA PRESBYTERIAN FOUNDATION, and Articles of Incorporation were filed in the Office of the Secretary of State of Illinois under the "General Not-For-Profit Corporation Act" of Illinois; said Articles of Incorporation were recorded in the Office of the County Clerk and ex-officio Recorder of Deeds of Union County, Illinois, in Book 11, pages 293-295.

19. On October 28, 1980, defendant, THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit Corporation, by and through its President, individually named defendant, CLAIR S. ALBRIGHT, and its Secretary, individually named defendant, JOYCE VERBLE, executed a Warranty Deed conveying the real estate owned by the ANNA CHURCH to the newly organized Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN FOUNDATION; said Warranty Deed was recorded in the Office of the County Clerk, ex-officio Recorder of Deeds of Union County, Illinois, in Book 136 at page 360.

20. At the stated meeting of PRESBYTERY held on November ¹³~~30~~, 1980, an Administrative Commission was appointed by PRESBYTERY to investigate the disunity and disharmony in the ANNA CHURCH and the reasons therefor, if there be any, and instructed said Commission to:

- (1) Communicate and interpret to the Anna Congregation and the Session, including the

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Minister, Chapter V of the Form of Government, with emphasis on the principles of Presbyterian church government and discipline, (35.01);

(2) Provide an objective explanation and interpretation of the 1980 General Assembly Overture (church property) to the Congregation and the Session, including the Minister;

(3) Visit and counsel with the Minister, the Session and the Congregation;

(4) Investigate a recent purported call of a special meeting of the Session, the call of which did not include the specific business to be considered;

(5) Investigate the purported actions of the Session, including the Minister, to call a special meeting of the corporation to organize an independent congregation;

(6) Investigate the purported actions of the Congregation on October 26, 1980, to organize as an independent church, which would be tantamount to an illegal withdrawal from the Presbytery, or dissolution of the church;

(7) Call Session and congregational meetings, if deemed warranted;

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- (8) Employ legal counsel, if necessary;
- (9) Recommend to the Presbytery whether or not the Session should be removed; and
- (10) Report its findings and recommendations to the Presbytery at its adjourned meeting on November 20, 1980.

21. Said Administrative Commission met with the Session of the ANNA CHURCH on November 15, 1980, and made an investigation of the actions of the individually named defendants herein and of the congregation of the ANNA CHURCH. Said Administrative Commission reported its findings and recommendations to PRESBYTERY at an adjourned meeting of PRESBYTERY held on November 20, 1980, a copy of which is attached hereto, marked "Exhibit C" and by this reference incorporated herein and made a part hereof.

22. Pursuant to the provisions of the Form of Government, Chapter XI, Section 41.15 of the Book of Order of UPCUSA, and after notice provided therein to the Session of the ANNA CHURCH, PRESBYTERY determined that said Session was unable or unwilling to manage wisely the affairs of its church, and appointed a commission, known as Anna Administrative Commission II, composed of ministers and ruling elders, who are individual plaintiffs herein, with full power of Session of ANNA CHURCH with the authority provided in the Form of Government, particularly as set forth in Chapter XI, Sections 41.07 and 41.08.

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23. The ANNA CHURCH is the owner of certain real estate situated in Anna, Illinois, more particularly described as follows:

TRACT 1: LOT NUMBER 10 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 2: LOT NUMBER 11 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 3: LOT NUMBERED FOURTEEN (14), EXCEPT 6 FEET OF EVEN WIDTH OFF OF THE NORTH SIDE THEREOF, IN S.W. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN UNION COUNTY, ILLINOIS.

TRACT 4: LOT NUMBERED TWENTY-TWO (22) AND 44 FEET OFF OF THE NORTH SIDE OF LOT NUMBER TWENTY-THREE (23) IN S.A. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, IN THE COUNTY OF UNION, AND STATE OF ILLINOIS.

TRACT 5: PART OF THE EAST PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 9, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 6.23 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 6: PART OF THE WEST PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 13.36 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 7: THE SOUTH PART OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 22.30 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 8: THE NORTHWEST QUARTER OF SECTION 16; THE NORTH 84.68 ACRES OF FRACTIONAL SECTION 17, ALSO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION 17; RUNNING THENCE SOUTH 48 RODS: THENCE WEST TO THE WEST LINE OF SAID FRACTIONAL SECTION 17; THENCE IN A NORTHWESTERLY DIRECTION ON THE SECTION LINE 48 RODS, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID FRACTIONAL SECTION 17; THENCE EAST ON THE NORTH LINE OF SAID FRACTIONAL SECTION 17, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS.

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said real and personal property for the use and benefit of those members of the ANNA CHURCH who desire to remain loyal to the United Presbyterian Church.

26. Plaintiffs contend and assert:

A. The actions undertaken by the individually named members of the Session of the ANNA CHURCH and its Congregation as hereinabove set forth were arbitrary and illegal, were undertaken unilaterally and without the approval and consent of PRESBYTERY and were in violation of the constitution of the UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA and under said constitution do not effect a disassociation of the ANNA CHURCH and UPCUSA, or PRESBYTERY, and have no legal effect with respect to the relationship between the ANNA CHURCH and said plaintiffs; further, said acts constitute serious disorders in said church and are evidence of a conspiracy to refuse to recognize the authority of UPCUSA, PRESBYTERY, and said Anna Administrative Commission II in violation of the constitution of UPCUSA and in violation of the rights of the loyal members of the congregation of the ANNA CHURCH.

B. Said Anna Administrative Commission II now has full powers of the Session of the ANNA CHURCH with all the duties, responsibilities and powers of said Session, including inter alia, the use of the real and personal property of the ANNA CHURCH, and defendants, and each of them, have improperly and illegally prevented and conspired to prevent plaintiffs from so acting in that they have refused to permit members of the Anna Administrative Commission II, the duly

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authorized representatives of plaintiffs, UPCUSA and PRESBYTERY, to enter the facilities of the ANNA CHURCH in order to speak with the congregation, have unlawfully denied the Anna Administrative Commission II access to rolls, records and minutes of the ANNA CHURCH, its boards and organizations or copies of same, have unlawfully refused to submit to the authority of the Anna Administrative Commission II and have unlawfully interfered with and obstructed said Commission's efforts to exercise the powers of Session of the ANNA CHURCH's property inconsistently with the provisions of the Form of Government, Chapter XI, Section 41.08, and have refused to account for same or to turn the same over to said Anna Administrative Commission II.

C. Said defendants have unlawfully conducted themselves as if they and the congregations of the ANNA CHURCH have withdrawn from UPCUSA and PRESBYTERY, when in fact, they are still members of the ANNA CHURCH who are subject to the rules and regulations of UPCUSA, and have unlawfully denied to the congregation of the ANNA CHURCH a place of worship in accordance with the beliefs of UPCUSA and have interfered with plaintiffs' rights to provide religious worship for the congregation of the ANNA CHURCH.

27. This complaint is brought to obtain a declaration of rights and legal relations under the provisions of Section 57.1 of the Illinois Civil Practice Act (Ill. Rev. Stat., 1979, ch. 110, Sec. 57.1) for the purpose of determining questions in actual controversy between the parties hereto under the facts and circumstances hereinabove set forth.

28. Under the guarantees of the First and Fourteenth Amendments of the Constitution of the United States and Article 1, Section 3 of the Constitution of the State of Illinois, 1970, UPCUSA is its own judge of its constitution, form of government and laws; under the law of UPCUSA all property and all parts of UPCUSA, including the ANNA CHURCH, are dedicated to religious uses under the authority and provisions of the Constitution, Form of Government of UPCUSA. The law of the Church in this regard was affirmed in 1968 by the action of the highest judicatory of UPCUSA, the General Assembly of UPCUSA, as the only interpreter of the constitution of UPCUSA, when said General Assembly stated as follows:

"Affirm its continued adherence to the principle that all property owned by a local church of the United Presbyterian Church in the United States of America whether used in programs of the local church or of a higher judicatory or held for investment, is held in trust for the United Presbyterian Church in the United States of America." Minutes of the 180th General Assembly, (1968, Part 1, page 635.)

The interest of UPCUSA in all property of the church and its constituent parts, including the ANNA CHURCH, results from the oneness of the church as a single ecclesiastical entity of which all parts are integral and inseparable, except as allowed by the acts of the judicatories of the church provided by the constitution, form of government of UPCUSA.

29. Any decision by this Court contrary to the contentions of plaintiffs set forth herein are and would be in violation of the First and Fourteenth Amendments to the Constitution of the United States of America and Article 1, Section 3 of the Constitution of the State of Illinois, 1970.

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30. By reason of the premises and in the event defendants are not enjoined by this Court from continuing to act contrary to the provisions of the Constitution, Form of Government of UPCUSA and to sequester the real and personal property of the ANNA CHURCH to themselves and to deny the use of same to the members of the congregation of the ANNA CHURCH who remain loyal and affiliated with UPCUSA and PRESBYTERY, plaintiffs and said loyal members of the congregation of the ANNA CHURCH will sustain great and irreparable loss, injury and damage for which they have no adequate remedy at law.

WHEREFORE plaintiffs pray that the Court will by its order, judgments and decree:

A. Find, declare and adjudge the rights and legal relations of all of the parties hereto with respect to the subject matter of this action;

B. Find, declare and adjudge that the unilateral action of the ANNA CHURCH, its Session and congregation, purporting to dissolve its relationship with UPCUSA and PRESBYTERY is null, void and of no force and effect;

C. Find, declare and adjudge that the ANNA CHURCH was on October 26, 1980, and still is a particular and constituent church within the single ecclesiastical entity of UPCUSA and governed by the Constitution, Form of Government of UPCUSA as set forth in the Book of Order;

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D. Find, declare and adjudge that the ANNA CHURCH was and is an integral and particular church of UPCUSA and as such is subject to the provisions of the Book of Order, Form of Government, which, in Chapter IV, Section 34.01, defines "a particular church" as submitting to the Form of Government;

E. Find, declare and adjudge that under the Form of Government, Chapter XXXII, Section 62.11, should the ANNA CHURCH, as a particular church, abandon its work as a particular church in UPCUSA, its property reverts to PRESBYTERY;

F. Find, declare and adjudge that under the First and Fourteenth Amendments to the Constitution of the United States of America and Article 1, Section 3 of the Constitution of the State of Illinois (1970) the highest judicatory of UPCUSA, the General Assembly, is the only interpreter of the Constitution of UPCUSA, and that said General Assembly has determined that all property owned by a local church of UPCUSA whether used in programs of the local church or of a higher judicatory, or held for investment is held in trust for UPCUSA;

G. Find, declare and adjudge that all property of the ANNA CHURCH, both real and personal, is subject to the use, control and direction of UPCUSA and PRESBYTERY, and order defendants to deliver to plaintiffs, through the Anna Administrative Commission II, possession of all such property;

H. Find, declare and adjudge that said Anna Administrative Commission II is entitled to conduct services and worship at the ANNA

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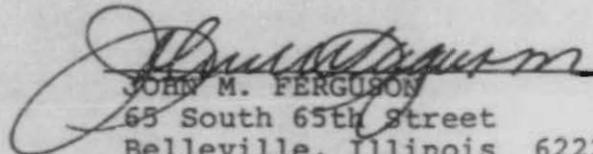
CHURCH and that UPCUSA and PRESBYTERY have the right to provide a pastor for said ANNA CHURCH;

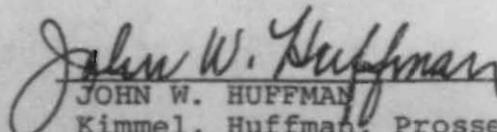
I. Find, declare and adjudge that defendants are not entitled to use of any of the property of the ANNA CHURCH except in accordance with the direction of the Anna Administrative Commission II;

J. Order and direct that Anna Presbyterian Foundation make, execute and deliver a deed to the real estate described above reconveying same to The First Presbyterian Church of Anna, Illinois for the use and benefit of the congregation of the ANNA CHURCH in accordance with the Constitution, Form of Government of UPCUSA;

K. Permanently enjoin defendants, and each of them, from interfering in any manner or degree with the orders and directives of the Anna Administrative Commission II in the performance by said Anna Administrative Commission II of its powers and duties under the Constitution, Form of Government of UPCUSA;

L. Grant plaintiffs such other, further and different relief as the facts in law require.


JOHN M. FERGUSON
65 South 65th Street
Belleville, Illinois 62223-2994
618/398-6500

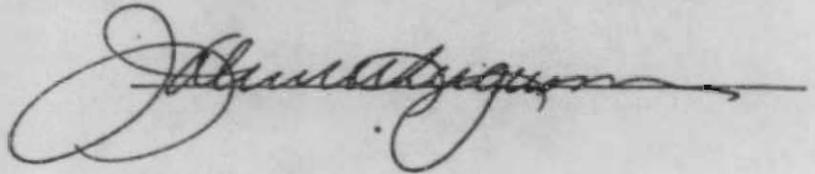

JOHN W. HUFFMAN
Kimmel, Huffman, Prosser & Kimmel, Ltd.
103 North Glenview, P.O. Box 30
Carbondale, Illinois 62901
618/457-3547

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Amended Complaint for Declaratory Judgment and Other Relief was served by depositing same in an envelope addressed to Mr. R. Corydon Finch, Attorney at Law, 343 South Main Street, Anna, Illinois 62906 with proper postage prepaid in the United States Mail, in Belleville, Illinois, on the 8th Day of April, 1982.

A handwritten signature in cursive script, likely of the person who served the document, written in black ink.

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R E S O L U T I O N

BE IT RESOLVED by the Session, sitting as the Board of Directors, of The First United Presbyterian Church of Anna, Illinois, a General Not-For-Profit Corporation, that the proposed amendments to the Articles of Incorporation of the corporation, as hereinafter set forth, be submitted to a vote at a meeting of the corporation, being the members of the corporation, having voting rights, at a special meeting of the members to be held Sunday, October 26, 1980, at 11:45 o'clock a.m., which proposed amendments in the existing Articles of Incorporation are indicated by the horizontal crossing with a line of all words and matters which are to be omitted and by the lateral underlining of all words and matters which are to be added or substituted in lieu thereof, in words and figures as follows:

ARTICLE 1.

The name of the corporation is: The First United Presbyterian Church of Anna, Illinois.

ARTICLE 5.

The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the Constitution of The United Presbyterian Church in the United States of America, and to exercise the government of said Church under some certain and definite form in an autonomous congregation separate and independent from and of any denomination.

"Exhibit A"

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CALL AND NOTICE OF
SPECIAL MEETING OF MEMBERS OF CORPORATION

We, the undersigned, being members of the Illinois General Not-For-Profit Corporation, The First United Presbyterian Church of Anna, Illinois, having more than one-twentieth of the votes entitled to be cast at any Special Meeting, do hereby call a Special Meeting of the members of the said Corporation, being the congregation of said Corporation and do hereby direct the officers of said Corporation to cause to be given and delivered, either personally or by mail, this Call and Notice of a Special Meeting of the members, which is in the form, manner, words and figures as follows:

Each person to which this Call and Notice is given and delivered either personally or by mail is hereby notified that a Special Meeting of the members of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, a General Not-For-Profit Corporation, organized and existing under and by virtue of the Illinois General Not-For-Profit Corporation Act, is hereby called by the undersigned members of said Corporation.

Each such person is further hereby notified that the place, day and hour of the meeting, and the purpose or purposes for which the Special Meeting is called are as follows: the place of the meeting is The First Presbyterian Church at 107 East Jefferson Street, in the City of Anna, Union County, Illinois, the day is Sunday, October 26, 1980, and the hour is 11:45 o'clock a.m.

The purposes for which the meeting is called are to consider the proposed amendments to the Articles of Incorporation and the By-Laws of the Corporation hereinafter set forth, and any other amendments or action in implementation thereof which are deemed to be or appear to be necessary or appropriate to effectuate the purposes of said amendments.

The proposed amendments to ARTICLES 1 and 5 in the existing Articles of Incorporation are indicated by the horizontal crossing with a line of all words and matters which are to be omitted and by the lateral underscoring of all words and matters which are to be added or substituted in lieu thereof, as follows:

"ARTICLE 1. The name of the corporation is: The First United Presbyterian Church of Anna, Illinois.

"ARTICLE 5. The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the Constitution of The United Presbyterian Church in the United States of America, and to exercise the government of said Church under some certain and definite form in an autonomous congregation separate and independent from and of any denomination."

The proposed amendments to the existing By-Laws are indicated by the horizontal crossing with a line of all words and matters which are to be omitted and by the lateral underscoring of all words and matters which are to be added or substituted in lieu thereof, as set forth on Exhibit A attached hereto and incorporated herein.

"Exhibit D"

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BY-LAWS

OF

THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS

ARTICLE I--OFFICES-REGISTERED AGENT.

The principal office of "The First United Presbyterian Church of Anna, Illinois" (hereinafter "the corporation") in the State of Illinois shall be located on the church premises at 107 East Jefferson Street, in the City of Anna, County of Union, and State of Illinois. The corporation shall have and continuously maintain in the State of Illinois a registered office, and a registered agent whose office is identical with such registered office, as required by the Illinois General Not-For-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office in the State of Illinois, and the address of the registered office may be changed from time to time, by-the-Session

ARTICLE II--BOARD OF DIRECTORS-SESSION.

Section 1. The affairs of the corporation shall be managed by its Board of Directors, which shall be constituted of the members of, and shall be referred to as, "The Session" in these By-laws Board of Directors.

Section 2. The Session shall consist of the Pastor and twelve Ruling Elders in active service, except that in the year 1975 The Session shall consist of fourteen Ruling Elders and in the year 1976 The Session shall consist of fifteen Ruling Elders Board of Directors (hereinafter "The Board") shall consist of thirteen members of the corporation; one of the members of The Board shall be the Pastor; the remaining twelve members of The Board shall be Ruling Elders and shall be divided into three classes of four members each, the members of each of which three classes shall serve for a three year term, and one class of members shall be elected each year.

Section 3. The Ruling Elders on The Session shall be divided into three classes of equal number, one class to be elected each year for a three year term, except that in the year 1975, no new class shall be elected and there shall be two classes of seven Ruling Elders each, and in the year 1976, there shall be one class of seven Ruling Elders and two new classes of four Ruling Elders each.

ARTICLE III--OFFICERS.

Section 1. The officers of the corporation shall be a President, a Secretary, and a Treasurer. No two offices may be held by the same person.

Section 2. The office of President of the corporation shall be held by the same person who is Pastor of The Congregation; who shall be elected and chosen in accordance with the Constitution of the United Presbyterian Church in the United States of America; the Pastor of The Congregation shall be elected by The Congregation with the concurrence of The Board.

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Section 3. The Secretary of the corporation shall be the same person who is Clerk of The Session who shall be elected and chosen by The Session elected by The Board.

Section 4. The Clerk of The Session Secretary shall keep the minutes of the meetings of The Session The Board and The Congregation in books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or required by civil or ecclesiastical law; be custodian of the corporate records and of the seal of the corporation; and, in general, perform all duties incident to the office of Secretary of a corporation.

Section 5. The Treasurer of the corporation shall be a member of The Congregation elected and chosen by The Congregation.

Section 6. The Treasurer shall be fidelity bonded at the expense of the corporation; he shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipt for moneys payable to the corporation, and deposit all such moneys in the name of the corporation in such banks or other depositories as shall be selected in accordance with ARTICLE V of these By-Laws; in general he shall perform all duties incident to the office of Treasurer of a corporation.

ARTICLE IV--MEMBERS.

Section 1. The corporation shall have one class of members, namely, those persons who have entered into active membership in a church relation according to the provisions of The Constitution of the United Presbyterian Church in the United States of America as a particular church in the City of Anna, County of Union and State of Illinois; under and by authority of the Presbytery of Southeastern Illinois; or its successors in interest desire to be members of a congregation at the church in Anna, Union County, Illinois, historically known as and called "The First Presbyterian Church of Anna".

Section 2. The members of the corporation shall constitute "The Congregation" and herein collectively be referred to as "The Congregation."

Section 3. Each meeting of The Congregation shall be opened and closed with prayer.

Section 4. A regular annual meeting of The Congregation shall be held at the principal office of the corporation on the third Wednesday Sunday in January of each year for the transaction of any business properly coming before such meeting.

Section 5. A special meeting of The Congregation may be called at any time by The Session Board upon notice of the time, place and purpose of any such meeting having been given from the pulpit on each of the two consecutive Sundays immediately preceding the meeting, by open announcement of same during the time of public corporate worship.

Section 6. The Pastor shall preside at each meeting of The Congregation; provided that in the event that the pulpit is vacant; the Pastor is not present; or the Pastor and Session agree that the subject matter to be discussed make it more appropriate; then some other minister authorized by the Presbytery may be invited by The Session to preside at any such meeting provided, that in the event that the Pastor is unable, unwilling, or desires not to preside, then any person appointed by The Board or in accordance with Roberts Rules of Order may preside.

Section-7: The Clerk of the Session shall be Secretary of each meeting of The Congregation; provided that in the event of the absence of said Clerk The Session or The Congregation may designate a Temporary Recording Secretary.

ARTICLE V--CONTRACTS, CHECKS, DEPOSITS AND FUNDS.

Section 1. The Session Board may authorize any officer, or agent of the corporation, in addition to the officers so authorized by these By-Laws, to enter into any contract execute and deliver any instrument in the name of the corporation and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of The Session Board. In the absence of such determination by The Session Board, such instruments shall be signed by the Treasurer and countersigned by the President of the corporation.

Section 3. All funds of the corporation shall be deposited from time to time to the credit of the corporation in the Anna National Bank, Anna, Illinois.

Section 4. The Session Board may accept on behalf of the corporation, gifts, bequests or devise for the general purpose or for any special purpose of the corporation.

ARTICLE VI--BOOKS AND RECORDS.

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Session and committees having any of the authority of The Session Board and Congregation.

ARTICLE VII--FISCAL YEAR.

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

ARTICLE VIII--SEAL.

The corporation shall have a corporate seal which shall be in the form of concentric circles, bearing the corporate name, the date and State of incorporation, and the words "Corporate Seal."

ARTICLE IX--GENERAL PROVISIONS.

Section 1. The corporation, being a particular church of The United Presbyterian Church in the United States of America, is subject to each and every provision contained in The Constitution thereof both for civil and ecclesiastical purposes, except that in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General Not For Profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Section 163a, et seq, and these By-Laws shall be interpreted accordingly.

Section 2: To the extent not herein provided, all matters pertaining to the internal affairs of the corporation, including the rules, procedure, and any other matters pertaining to, for the nomination, election, and ordaining of officers and members of The Session Board and Congregation, and the calling, holding and conduct of meetings, shall be in accordance with The Constitution of the United Presbyterian Church in the United States of America, as amended from time to time, except to the extent that such Constitution does not apply to or extend to certain matters of order, in which case Roberts Rules of Order, shall govern.

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Section 3: Any term used in these By-Laws and not defined herein or in said "General Not-For-Profit Corporation Act", shall be defined or interpreted by, or by reference to, The Constitution of The United Presbyterian Church in the United States of America, which by this reference thereto is hereby incorporated herein as a part hereof.

ARTICLE X--BY-LAWS.

The power to alter, amend or repeal these By-Laws or to adopt new By-Laws shall be vested in The Congregation, which power may be exercised by The Congregation by a two-thirds vote of the members present at any annual meeting or at any special meeting called for that specific purpose, provided that a full reading of any proposed alteration, amendment or repeal of existing By-Laws or proposed new By-Laws shall be openly made at such meeting, or the same shall have been produced in writing and distributed to each member of The Congregation simultaneously with the call of any such meeting.

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THE REPORT OF THE ANNA ADMINISTRATIVE COMMISSION

The Rev. Byron W. York, Chairman, presented the written report and recommendations of the Anna Administrative Commission as follows:

Since being appointed by the Presbytery on November 13, 1980, the Anna Administrative Commission had met on three occasions.

The first meeting was held immediately following Presbytery, with all members present except Mrs. Helen Westberg. At that time, the Commission determined that it was a matter of urgent necessity to call a meeting of the Session of the First United Presbyterian Church of Anna as soon as possible. A date of November 15, 1980 was set, and the meeting was called for 2:00 p.m. Names of the Session Members were provided by Mr. Don McKinney an elder in the Anna Church, and the list was divided up for commission members to call.

The Commission next met at 1:30 p.m., Saturday, November 15th, at the Cobden Church. The Commission members reported that they had been able to contact all the Session members by Friday at noon. The Clerk of Session was also contacted and invited to meet with the Session. Only Mr. Clair Albright, the former pastor, had not been contacted. Mr. Albright was out of town Friday and part of Saturday. Elders contacted were:

Mrs. Helen Owens	Mrs. Berry Rife	Miss Esther Mary Ayers
Mr. Don McKinney	Mr. John Lutz	Dr. Joe Meller
Mr. Tom Ellison	Mrs. Helen Wells	Mr. Norman Hicham
Dr. Carroll Loomis	Mrs. Jane Rader	Mrs. Joyce Verble, Clerk

Mr. Merle Endean was out of the State, and will not return until spring.

Commission members reported various responses to their calls, all cordial but some firm in their refusal to attend a Session meeting. Several elders stated that on advice of legal counsel they would not attend the meeting. In this regard, Peyton Kunce reported that he had been called by Mr. R. Corydon Finch, an Anna attorney, asking Mr. Kunce not to contact members of the Anna Presbyterian Church. Mr. Finch was of the mistaken opinion that Mr. Kunce was contacting these elders as an attorney, but was quickly told that this was an act of the Presbytery Commission.

After deciding that our task for the day was to listen, and to ask questions, we met with five ruling elders from the Anna Session. Of this five, only Dr. Joe Meller was from the group voting to change the Corporate name of the Church. The five were: McKinney, Ellison, Loomis, Ayers, and Meller.

For the next four and one half hours, the Commission listened, first to Dr. Meller and then to the other four. What we heard was a chronology of events designed to break apart a congregation. A recitation of events, led by a small group of very strong vocal people, with the consent of the pastor, determined to protect themselves from imagined harm and physical threat, as it pertained to the property of the Church.

Dr. Meller expressed the feeling that what was needed was for the Presbytery to "leave them alone". He stated that they were aware that after a time they would have to join another denomination, but that for the present, any action on the part of the Presbytery would be viewed as a continuation of the heavy handed actions of the Presbytery. This was a response on the part of Dr. Meller to various contacts made by the Ministerial Relations Committee of the Presbytery, and by various individuals within the Presbytery. This comment also was a response to Dr. Meller's feelings about actions of the General Assembly concerning Overture A. (church property).

The other four ruling elders present gave their versions of what had happened in the Anna Church, some with great detail, listing dates, and conversations.

"Exhibit B"

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Although their presentation was more positive, it became obvious that the Congregation of the First United Presbyterian Church of Anna had been split into at least two groups, and that the Session of that Church was also divided. It also appeared that reconciliation under the present circumstances was and will be impossible. It also became apparent that there are serious theological divisions within the congregation, fed by rumors and innuendo from vested interest groups within the congregation. The issue of property played a large and important part in bringing this situation to a head.

The Anna Congregation had inherited an estate valued at approximately \$500,000, and some members feared that because of Overture A, these assets would be taken by the Presbytery. We realized that these were false understandings of the Overture, but were real to many of the Anna members.

After listening and asking questions for four and one-half hours, the Commission excused the Session and met in private to determine our next step. It was decided that the Commission would adjourn to meet on Tuesday, November 18th, at 7:00 p.m., at the Marion Church. Another attempt was to be made before that meeting to contact Mr. Clair Albright, the former pastor of the First United Presbyterian Church of Anna.

Mr. Albright was contacted, and he basically confirmed information already obtained, that the Congregation had withdrawn from the Presbytery and that they were joyous about the change. Mr. Albright stated that the property issue provided a catalyst for that action but was in "no way the central issue". He explained that there were many issues involving biblical, theological, and moral issues. Mr. Albright maintained that he was caught in the middle of that action and only desired to be a pastor to his people. He at no time explained why he chose to be a pastor to the group withdrawing. Nor did he offer any explanation of how or why the action to withdraw appeared in a widely circulated publication several weeks prior to the date of the withdrawal action. Mr. Albright professed to know very little about the legal aspects and referred to the employing of an attorney as something "they" did.

Mr. Albright also repeated the by now familiar plea to "leave them alone", and he stated that reconciliation was improbable, if not impossible. He stated that "a group in the church was going to pull out, no matter how the vote went, and had arranged to rent a building if the vote failed". Mr. Albright also stated that it was his opinion that none of the persons who had voted to change the by-laws "really cared what the Presbytery did".

On Tuesday, November 18th, the Commission met for its third and last time, to deal with its appointed task. The Commission had been instructed to (1) communicate and interpret to the Anna Congregation and Session Chapter V of the Form of Government. We did that, as best we were able, to the Session. We did not have time or the opportunity to communicate to the congregation.

We were instructed to (2) provide an objective explanation of Overture A. We did not do that because the congregation had spent ample time studying this overture, and had chosen to misinterpret the overture to their advantage.

We were instructed to (3) visit and counsel with the minister, Session, and Congregation. We have done this in respect to the former minister and the Session.

We were instructed to (4) investigate a recent purported call of a special meeting of the Session, the call of which did not include the specific business to be discussed. We discovered that such a meeting had been called. At least two elders had asked the clerk to state the purpose of the meeting, but the clerk refused to answer. No minutes of this meeting were available to us, but the apparent reason was to call a meeting of the corporation to amend the By-laws. Several Session members felt this was an illegal act and so stated.

We were instructed to (5) investigate the purported actions of the Session, including the minister, to call a special meeting of the corporation to organize an independent congregation. At the Session meeting mentioned above, a resolution was presented by two elders requesting a call of a Corporation meeting to amend the By-laws of the Corporation. Although several members of the Session felt that this was not legal according to our Book of Order and Form of Government, the majority prevailed, and the meeting was called.

However, it should be noted by the Presbytery that this meeting was called to "amend the By-Laws of the Corporation" and neither the Session resolution, nor subsequent mailings mentioned withdrawal from the Presbytery or the United Presbyterian Church in the United States of America. The resolution and the mailings shall be an addendum to this report.

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ARTICLE VIII--SEAL.

The corporation shall have a corporate seal which shall be in the form of concentric circles, bearing the corporate name, the date and State of incorporation, and the words "Corporate Seal."

ARTICLE IX--GENERAL PROVISIONS.

Section 1. The corporation, being a particular church of The United Presbyterian Church in the United States of America, is subject to each and every provision contained in The Constitution thereof both for civil and ecclesiastical purposes, except that, in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General Not For Profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Section 163a, et seq., and these By-Laws shall be interpreted accordingly.

Section-2. To the extent not herein provided, all matters pertaining to the internal affairs of the corporation, including the rules, procedure, and any other matters pertaining to, for the nomination, election, and ordaining of officers and members of The Session Board and Congregation, and the calling, holding and conduct of meetings, shall be in accordance with The Constitution of the United Presbyterian Church in the United States of America, as amended from time to time, except to the extent that such Constitution does not apply to or extend to certain matters of order, in which case Roberts Rules of Order, shall govern.

Section 3. Any term used in these by-laws and not defined herein or in said "General Not-For-Profit Corporation Act", shall be defined or interpreted by or by reference to, the Constitution of The United Presbyterian Church in the United States of America, which by this reference thereto is hereby incorporated herein as a part hereof.

ARTICLE X--BY-LAWS.

The power to alter, amend or repeal these By-Laws or to adopt new by-Laws shall be vested in The Congregation, which power may be exercised by The Congregation by a two-thirds vote of the members present at any annual meeting or at any special meeting called for that specific purpose, provided that a full reading of any proposed alteration, amendment or repeal of existing By-Laws or proposed new By-Laws shall be openly made at such meeting, or the same shall have been produced in writing and distributed to each member of The Congregation simultaneously with the call of any such meeting.

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS
NO. 81-MR-5

BYRON W. YORK, et al., :
PLAINTIFFS, :
-vs- :
THE FIRST PRESBYTERIAN CHURCH OF :
ANNA, ILLINOIS, an Illinois not- :
for-profit corporation, et al., :
DEFENDANTS. :

FILED

AUG 25 1982

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, Anna Presbyterian Foundation, an Illinois Not-For-Profit Corporation, and Clair S. Albright, Helen Owens, Charlotte, Rife, Jon Lutz, Lisa Wells, Jane Rader, Joel Meller, Norman Hickam, and Joyce Verble, Defendants, by R. Corydon Finch, their Attorney, for their Answer and Affirmative Defenses to the Amended Complaint for Declaratory Judgment and for other relief, of Plaintiffs, allege:

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1.

Defendants have no knowledge as to whether The United Presbyterian Church in the United States of America (hereafter UPCUSA) is an unincorporated religious association formed in the year 1706, sufficient to form a belief, and therefore demand strict proof thereof; Defendants deny all other matters alleged in Paragraph 1.

2.

Defendants have no knowledge as to whether The South-eastern Illinois Presbytery of the United Presbyterian Church of the United States of America (hereinafter PRESBYTERY), is a non-profit unincorporated association, sufficient to form a belief, and therefore demand strict proof thereof; Defendants deny all other matters alleged in Paragraph 2.

3.

Defendants have no knowledge as to the matters alleged in Paragraph 3, sufficient to form a belief, and therefore demand strict proof thereof; except that Defendants have knowledge that and admit that Peyton Kunce is a resident of the State of Illinois.

4.

Defendants admit Paragraph 4.

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5.

Defendants admit Paragraph 5.

6.

Defendants admit Paragraph 6, except that Defendants deny that any Defendant is known or referred to as "The Anna Church", and neither use nor admit to any such appellation throughout this pleading.

7.

Defendants deny Paragraph 7.

8.

Defendants deny Paragraph 8.

9.

Defendants deny Paragraph 9, except that Defendants admit that the "Book of Order" contains the ecclesiastical law and form of government of UPCUSA.

10.

Defendants deny Paragraph 10.

11.

Defendants deny Paragraph 11.

12.

Defendants deny Paragraph 12.

13.

Defendants deny Paragraph 13.

14.

Defendants deny Paragraph 14 as alleged, but admit the exhibit alleged therein.

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15.

Defendants deny Paragraph 15 as alleged, but admit the exhibit alleged therein.

16.

Defendants deny Paragraph 16 as alleged, but admit that at a meeting of the members of The First Presbyterian Church of Anna, Illinois, on October 26, 1980, the resolutions were adopted under and pursuant to the provisions of the Illinois General Not-For-Profit Corporation Act.

17.

Defendants admit Paragraph 17.

18.

Defendants admit Paragraph 18.

19.

Defendants deny Paragraph 19, as alleged, but admit that on October 28, 1980, The First Presbyterian Church of Anna, Illinois, a corporation, conveyed real property to Anna Presbyterian Foundation, a corporation, and that said Warranty Deed was recorded as alleged in Paragraph 19.

20.

Defendants have no knowledge of the matters alleged in Paragraph 20 sufficient to form a belief, and therefore demand strict proof thereof.

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21.

Defendants deny the matters alleged in Paragraph 21, except that Defendants have no knowledge as to whether any such Administrative Commission reported any findings or recommendations to Presbytery at any meeting of Presbytery, sufficient to form a belief, and therefore demand strict proof thereof.

22.

Defendants have no knowledge of the matters alleged in Paragraph 22, sufficient to form a belief, and therefore demand strict proof thereof.

23.

Defendants deny Paragraph 23 as alleged, but admit that Defendant Anna Presbyterian Foundation, an Illinois Not-For-Profit Corporation, is the owner of the real and personal property described in Paragraph 23.

24.

Defendants deny Paragraph 24 as alleged, but admit that some of said real and personal property was acquired and improved with funds, donations, devises, contributions, regular and irregular, of persons who from time to time have attended services at the church structure located on some of the real property described in the Complaint.

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25.

Defendants deny Paragraph 25.

26A.

Defendants deny Paragraph 26A.

26B.

Defendants deny Paragraph 26B.

26C.

Defendants deny Paragraph 26C.

27.

Defendants deny Paragraph 27, in that, Defendants deny that a Declaratory Judgment is the appropriate remedy and further deny that Plaintiffs have any standing to be in actual controversy with Defendants.

28.

Defendants deny Paragraph 28.

29.

Defendants deny Paragraph 29 and allege affirmatively that any decision by this Court in favor of the Plaintiffs would be in violation of the First and Fourteenth Amendments to the Constitution of the United States of America and the Constitution of the State of Illinois.

Defendants deny Paragraph 30.

FIRST AFFIRMATIVE DEFENSE

Defendants allege that the persons named as Plaintiffs, in their capacity as individuals, have no interest whatsoever and are in no actual controversy with either the subject matter of this litigation or with Defendants, or any one of them.

SECOND AFFIRMATIVE DEFENSE

Defendants allege that to the extent that the persons named as Plaintiffs purport to sue as members of Anna Administrative Commission II and on behalf of Presbytery and UPCUSA, said Plaintiffs' actions are, at most, by virtue of Paragraph 60.07 of The Book of Order, no more than actions which are regarded as and treated as actions of Presbytery, and as such, Plaintiffs have no more standing to sue these Defendants than does Presbytery, which is incapacitated to sue on the following grounds:

- (1) Presbytery has no separate legal existence independent of the members who compose it and, therefore, as an unincorporated association, is not a legal entity and has no capacity to sue;
- (2) Presbytery sues in neither any representative capacity nor on behalf of other members of the association;

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(3) Presbytery is not one of those designated unincorporated associations authorized by statute, namely, Illinois Revised Statutes, Chapter 30, Paragraph 183, et seq., to sue in its own name in any action concerning real estate, and Plaintiffs' pleading to which this is a response, in substantial part, seeks relief pertaining to the ownership of real property and therefore is an action concerning real estate;

(4) Neither Plaintiffs nor Presbytery have the capacity to take or own title to real estate and therefore cannot be a party interested in the controversy and therefore have no standing to sue for Declaratory Judgment.

THIRD AFFIRMATIVE DEFENSE

Defendants allege that neither the Anna Administrative Commission II nor Plaintiffs are authorized either by its charter as set forth in Paragraph 20 of Plaintiffs' pleading nor the Book of Order, Chapter XXX, Paragraph 60.04, to bring this suit.

FOURTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs as members of Anna Administrative Commission II did not exist as such when the actionable events occurring on October 26 through October 28, 1980,

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occurred, Anna Administrative Commission II allegedly having been appointed only on November 30, 1980, and therefore having no existence at the time of the actionable events alleged in Plaintiffs' pleading, have no injury to complain of or standing to sue these Defendants. :

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs' pleading not only does not set forth, but on its face affirmatively shows that the alleged actions of Anna Administrative Commission II are not actions to which these Defendants, or any of them, may be ordered compulsorily to defer, since there was nothing on October 26 through October 28, 1980, to which there is alleged that these Defendants ought to be ordered to compulsorily defer.

SIXTH AFFIRMATIVE DEFENSE

Defendants allege that to the extent that Plaintiffs are persons attempting to sue on behalf of Presbytery, the kind and nature of Presbytery on behalf of which Plaintiffs are attempting to sue under and by virtue of the Book of Order is an unincorporated religious association, and not the nature or kind of legal entity contemplated or referred to in the Book of Order, Chapter XXXII, Paragraph 62.03, wherein the kind and nature of Presbytery contemplated and referred to is a legal entity in the form of a corporation, as a consequence of which neither the unincorporated association Presbytery nor the persons

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who are Plaintiffs who allegedly derive whatever rights they may have therefrom have any standing within the Form of Government as set forth in the Book of Order upon which it is sufficient to base any cause of action.

SEVENTH AFFIRMATIVE DEFENSE

Defendants allege that the Book of Order, upon which Plaintiffs attempt to base their cause of action pertaining to the actions and internal affairs and doings of Defendant Illinois Corporations, and pertaining to matters of conveyance and legal title to real property, specifically is limited to ecclesiastical or spiritual matters, and neither has or confers any civil jurisdiction or civil affect, per Paragraphs 31.08, 35.03, 35.06, and 42.08.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that the "hierarchical" theory of action upon which Plaintiffs attempt to base their cause of action is insufficient as a matter of law under the neutral principles of law interpretive concept, and the First and Fourteenth Amendments to the Constitution of the United States of America, to set forth any cause of action for an express trust in favor of Plaintiffs or any of them.

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NINTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs' "hierarchical" theory of action is insufficient as a matter of law to invoke the jurisdiction of this Court since this Court is prohibited, by Article I, Paragraph 3, of the Illinois Constitution of 1970, to give preference to any denomination or mode of worship.

TENTH AFFIRMATIVE DEFENSE

Defendants allege that neither the internal conduct of affairs by either Defendant Corporation nor the conveyance by Warranty Deed by The First Presbyterian Church of Anna, Illinois, to Anna Presbyterian Foundation, was either contrary to or in violation of any existing decision or act of Plaintiffs or Presbytery, contrary to or in violation of any provision of the Book of Order, or contrary to or in violation of any provision of the Illinois General Not-For-Profit Corporation Act.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that Defendant The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, did, on October 26 and October 27, 1980, sever and terminate any relationship it may ever have had with Plaintiffs, Presbytery, and/or UPCUSA at which time neither Anna Administrative Commission II existed nor did there exist any ecclesiastical or other decision by either Anna Administrative Commission II, Presbytery, or UPCUSA, with regard to Defendants, with respect to which these

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Defendants, or any of them, or either alleged to be required to, or can be ordered or compelled to, defer.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that Defendant The First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, did, on October 26 and October 27, 1980, sever and terminate any relationship it may ever have had with Plaintiffs, Presbytery, and/or UPCUSA, and as a consequence of there being no provision in the Book of Order precluding such severance and termination, Plaintiffs, Anna Administrative Commission II, Presbytery, and UPCUSA, thereafter had no jurisdiction or control whatsoever over any of these Defendants, or the real or personal property of either corporate Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that the conveyance by Warranty Deed referred to in Plaintiffs' pleading is nowhere precluded or prohibited by the Book of Order.

FOURTEENTH AFFIRMATIVE DEFENSE

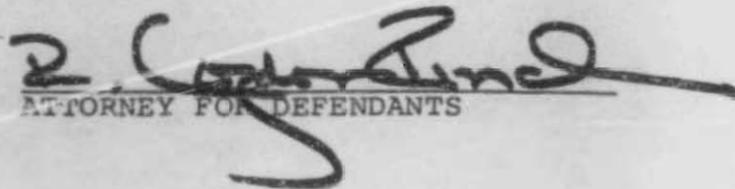
Defendants allege that Defendant First Presbyterian Church of Anna, Illinois, an Illinois Not-For-Profit Corporation, was not, after October 27, 1980, in any form or manner a member of the National Presbyterian Church, Presbytery, or UPCUSA, and therefore was not thereafter bound by any decision or decisions of any kind or nature whatsoever made by either Plaintiffs,

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Anna Administrative Commission II, Presbytery, or UPCUSA, nor under the jurisdiction, control, or so-called hierarchical structure of any one or more of the parties named as Plaintiff.

REQUEST FOR RELIEF

Defendants therefore request entry of Judgment in favor of Defendants, and each of them, and against Plaintiffs.

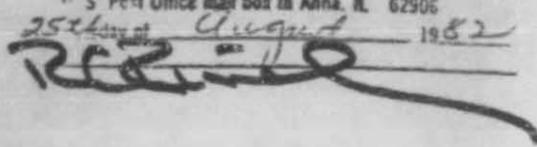

ATTORNEY FOR DEFENDANTS

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R. CORYDON FINCH
ATTORNEY FOR DEFENDANTS
343 SOUTH MAIN STREET
ANNA, ILLINOIS
TELEPHONE: 618+833-5138

PROOF OF SERVICE

I, the undersigned, certifies that a copy of the foregoing ...
... on the attorneys of record of all parties to ...
... closing the same in an envelope addressed to ...
... business address as disclosed by the ...
... on with postage fully prepaid and by depositing ...
... 5 Post Office mail box in Anna, IL 62906

25th day of August 1982


IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

NO. 81-MR-5

BYRON W. YORK, et al., :
PLAINTIFFS, :
-vs- :
THE FIRST PRESBYTERIAN CHURCH OF :
ANNA, ILLINOIS, an Illinois not- :
for-profit corporation, et al., :
DEFENDANTS. :

PROPOSED
AMENDMENT TO ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

The First Presbyterian Church of Anna, Illinois, an
Illinois Not-For-Profit Corporation, Defendants, by
R. Corydon Finch, their Attorney, by leave of Court
granted, for their AMENDMENT TO ANSWER AND AFFIRMATIVE
DEFENSES TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND OTHER RELIEF, filed herein August 25, 1982, allege:

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF AMERICA and SOUTHEASTERN
ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH OF
THE UNITED STATES OF AMERICA, did, prior to the commencement

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of this litigation, and prior to the occurrence of the actionable events alleged in Plaintiffs' AMENDED COMPLAINT, represent to Defendants that the general denomination of which Plaintiffs purport to be a part was not hierarchal in its form of government, that Defendants relied thereon in their performance of the actionable events alleged in Paragraphs 14 through and including 19 of Plaintiffs' AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF, and that Plaintiffs therefore are estopped now to assert in its pleadings in this litigation that the denomination of which Plaintiffs purport to be a part is hierarchal in any way.


ATTORNEY FOR DEFENDANTS

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IN THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ILLINOIS
UNION COUNTY

BYRON W. YORK, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 THE FIRST PRESBYTERIAN CHURCH)
 OF ANNA, ILLINOIS, an Illinois)
 not-for-profit corporation,)
 et al.,)
)
 Defendants.)

NO. 81-MR-

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

PLAINTIFFS' REPLY
TO
AFFIRMATIVE DEFENSES

NOW COME Plaintiffs and for their reply to the affirmative defenses set forth in Defendants' "Answer and Affirmative Defenses to Amended Complaint for Declaratory Judgment and Other Relief", say:

1. They deny the allegations contained in the first affirmative defense.
2. They deny the allegations contained in the second affirmative defense.
3. They deny the allegations contained in the third affirmative defense; further answering said paragraph they say that the matters and things set forth in Paragraph 20 of Plaintiffs' Amended Complaint pertain to the appointment and directions to Anna Administrative Commission I, which was an investigative commission appointed by Presbytery.

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4. For their answer to the allegations set forth in the Defendants' fourth affirmative defense they admit that Anna Administrative Commission II did not exist as an agency of Presbytery on or in October, 1980, but they deny all other allegations set forth in said fourth affirmative defense.

5. They deny the allegations and conclusions set forth in Defendants' fifth affirmative defense.

6. They deny the allegations and conclusions contained in Defendants' sixth affirmative defense.

7. They deny the allegations contained in Defendants' seventh affirmative defense.

8. They deny the allegations contained in Defendants' eighth affirmative defense and further answering said allegations say that the so-called "neutral principles of law" interpretive concept is not the law of Illinois relating to disputes involving property of churches in the State of Illinois as determined by the Supreme Court of Illinois.

9. They deny the allegations contained in Defendants' ninth affirmative defense.

10. They deny the allegations contained in Defendants' tenth affirmative defense.

11. They admit that Defendant The First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, acting for and on behalf of the First United Presbyterian Church of Anna, Illinois, a religious society, and a part of the United

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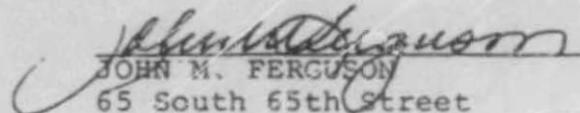
Presbyterian Church in the United States of America attempted to sever and terminate any relationship which the church, itself, had with Plaintiffs, Presbytery and UPCUSA; they further admit that Anna Administrative Commission II did not exist at that time; they deny all other allegations and conclusions set forth in said eleventh affirmative defense.

12. For their answer to the allegations set forth in Defendants' twelfth affirmative defense, they admit that Defendant, The First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, did in October, 1980, acting for and on behalf of the United Presbyterian Church of Anna, a religious society and a part of the United Presbyterian Church in the United States, attempt to sever and terminate any relationship said church, being a particular church of UPCUSA, ever had with Plaintiffs, Presbytery and UPCUSA, but they deny all other allegations of said twelfth affirmative defense and further deny that the actions of said Illinois not-for-profit corporation effected any such severance or withdrawal.

13. They deny the allegations contained in Defendants' thirteenth affirmative defense.

14. For their answer to the allegations contained in Defendants' fourteenth affirmative defense, they admit that the First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, was not, either before or after October 27, 1980, a member of UPCUSA or Presbytery, but they deny all other allegations contained in said fourteenth affirmative defense; further

answering said fourteenth affirmative defense, Plaintiffs say that said Illinois not-for-profit corporation was created by and for the First United Presbyterian Church of Anna, Illinois, a religious society and a particular church within UPCUSA, in accordance with the provisions contained in the Book of Order of UPCUSA which was and is bound by the decisions of UPCUSA and its judicatories and under the jurisdiction and control of UPCUSA and its judicatories.

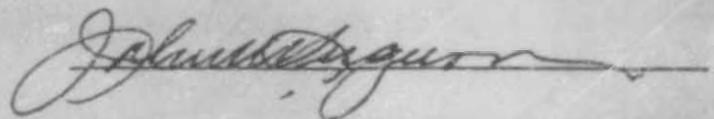

JOHN M. FERGUSON
65 South 65th Street
Belleville, Illinois 62223-2994
618/398-6500

KIMMEL, HUFFMAN, PROSSER & KIMMEL, LTD.
103 North Glenview, P.O. Box 30
Carbondale, Illinois 62901
618/457-3547

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Plaintiffs' Reply to Affirmative Defenses was served by depositing same in an envelope addressed to R. Corydon Finch, Box 516, 343 South Main Street, Anna, Illinois 62906, Attorney for Defendants, with proper postage prepaid in the United States Mail, in Belleville, Illinois, on the 5th day of December, 1982.



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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

UNION COUNTY, ILLINOIS

BYRON W. YORK, et al.,)

Plaintiffs,)

vs.)

NO. 81-MR-5

THE FIRST PRESBYTERIAN CHURCH)

OF ANNA, ILLINOIS, an Illinois)

not-for-profit corporation,)

et al.,)

Defendants.)

PLAINTIFF'S REPLY TO DEFENDANT'S
FIFTEENTH AFFIRMATIVE DEFENSE

Now come Plaintiffs and for their reply to Defendants' Fifteenth Affirmative Defense set forth in "Defendants' Amendment to Answer To Affirmative Defense to Amend Complaint for Declaratory Judgment and other Relief" says as follows:

1. Plaintiffs deny the allegations contained in the Fifteenth Affirmative Defense.

BYRON W. YORK, et al.

BY: *V. Mich. P.*
Their Attorney

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KIMMEL, HUFFMAN, PROSSER & KIMMEL, LTD.
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618/457-3547

John M. Ferguson
Attorney at Law
65 South 65th Street
Belleville, IL 62223
618/398-6500

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Plaintiff's Reply To Defendants Fifteenth Affirmative Defense was served by depositing same in an envelope addressed to R. CORYDON FINCH, 343 South Main Street, Anna, Illinois, Attorney for Defendants, and JOHN M. FERGUSON, 65 South 65th Street, Belleville, Illinois, with proper postage prepaid in the United States Mail in Carbondale, Illinois, on the 11 day of Feb, 1983.

Gandy Javors

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APPENDIX - A

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
OF ILLINOIS, UNION COUNTY
BYRON W. YORK, et al.,

Plaintiffs,

v.

THE FIRST PRESBYTERIAN CHURCH
OF ANNA, ILLINOIS, et al.,

Defendants.

No. 81-MR-5

[Filed October 18, 1983]

JUDGMENT ORDER

This cause coming on for bench trial, the Court, having considered the evidence and arguments and briefs of counsel, being fully advised in the premises, finds as follows: **Findings Of Fact:** When used hereafter, the following unqualified terms shall precisely be defined as follows: UPCUSA: United Presbyterian Church in the United States of America, an unincorporated religious association. SYNOD: The Synod of Lincoln Trails of UPCUSA. PRESBYTERY: The Southeastern Illinois Presbytery of the United Presbyterian Church in the United States of America, an unincorporated religious association. ANNA CHURCH: The First United Presbyterian Church of Anna, Illinois, an unincorporated religious association, and a particular church (as defined in Form of Government, Book of Order, Chapter IV, page [marginal reference] 34.01 et seq.) of UPCUSA as it existed prior to October 26, 1980. ANNA CHURCH CORPORATION: The First Presbyterian Church of Anna, Illinois, organized as an Illinois not-for-profit corporation, and prior to its change of name on October 27, 1980,

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known as The First United Presbyterian Church of Anna, Illinois, and Illinois not-for-profit corporation. ANNA PRESBYTERIAN FOUNDATION: An Illinois not-for-profit corporation organized and existing since October 27, 1980. BOOK OF ORDER: The 1980-81 Edition of the Book of Order consisting of Part II of the Constitution of UPCUSA, published by the Office of the General Assembly of UPCUSA. FORM OF GOVERNMENT: The Second portion (labeled II) of the Book of Order commencing on page (marginal reference) 31.00 and continuing through page (marginal reference) 75.051. ANNA ADMINISTRATIVE COMMISSION I: The investigative commission appointed on November 13, 1980 by Presbytery. ANNA ADMINISTRATIVE COMMISSION II: The Commission consisting of the individually named plaintiffs appointed by Presbytery on November 20, 1980, to replace the Session of the Anna Church under the provisions of Chapter XI, Section 15 (§ 41.15) of Form of Government in the Book of Order. JUDICATORY: The governing body of the united parts of UPCUSA consisting, in ascending order, of sessions, presbyteries, synods and a general assembly as set forth in Chapter V, "Of Church Government", page (marginal reference) 35.01 et seq. of Form of Government, Book of Order. SESSION: The ruling judicatory of a particular church of UPCUSA as defined, and with the powers and jurisdiction set forth, in Form of Government, Book of Order, Chapter XI, page (marginal reference) 41.01 to 41.25. HIERARCHAL OR HIERARCHICAL: Government church structure consisting of a series of ascending bodies called judicatories commencing at the lowest level with a Session, then Presbytery, then Synod, and, finally, at the highest level, the General Assembly, with each judicatory having control of those below it, as defined and applied by the courts, particularly the Illinois Supreme Court in *Lowe vs. First Presbyterian Church of Forest Park*, 1974, 56 Ill.2d 404, 308 N.E.2d 801, 805 and by the United States Supreme Court in *Presbyterian Church v. Mary E. B. Hull Memorial Presb. Church*, 1969, 393 U.S. 440, 442, 89 S.Ct. 601,

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602. 1. The United Presbyterian Church in the United States of American ("UPCUSA") is an unincorporated religious union of particular Presbyterian churches, founded in 1706, and is organized and governed in accordance with the constitution of the UPCUSA which sets forth the form of government and rules of discipline of the church.^{1*} (Tr. pp. 17-19, 23, 119-120)

2. The Book of Order (Pl. Exh. 1) sets forth in Part II, Form of Government, the "system of union" which UPCUSA has adopted;² it describes a local or particular church as those persons associated together for worship and submitting to the form of government;³ it specifies that all parts of the denomination comprise one Church;⁴ and it provides that "The General Assembly is the highest judicatory of this Church and shall represent in one body all of the particular churches thereof".⁵ (Tr. pp. 17-19)

3. By the provisions of the Constitution each particular church is immediately governed by a judicatory known as a "Session", and the particular churches are organized within the UPCUSA into district groups, each under the authority and jurisdiction of a superior judicatory known as a "Presbytery", composed of ministers and elders representing all the particular churches within the bounds of the Presbytery. The Constitution further provides for judicatories superior to the Presbyteries known as "Synods", and for a supreme judicatory known as the "General Assembly of the United Presbyterian Church in the United States of America".⁶ (Tr. pp. 17-19)

4. The Constitution defines the powers, duties and composition of the various judicatories, sets forth the methods of determining questions of faith, government, and discipline, arising within the church, and provides a procedure whereby any person or persons aggrieved or complaining of any matter in the church may have his or their charge or complaint heard before the constituted courts of the church, and may carry appeals from the lower to the higher judicatories.⁷

* All footnotes printed on pp. A-17 to A-20.

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5. Plaintiff, the Southeastern Illinois Presbytery of UPCUSA (Presbytery) is one such superior judicatory, having jurisdiction over the various particular churches as defined by The Book of Order, Part II (Form of Government), Chapter IV, ¶ 34.01, located within its geographical area including the Anna Church.

6. The individual Plaintiffs are members of "Anna Administrative Commission II" elected by Presbytery pursuant to The Book of Order, Form of Government, Chapter XI, ¶ 41.15, to replace and function as the Session of the Anna Church.⁹ (Pl. Exh. 38; Tr. p. 201)

7. The UPCUSA constitution provides that The First United Presbyterian Church of Anna, Illinois (the Anna Church) is an unincorporated religious association and ecclesiastical congregation which is separate and distinct from the corporation with the same name (Book of Order, Part II, Chapter XXXII, ¶ 62.04; Tr. pp. 24-26).

8. Defendant, The First Presbyterian Church of Anna, Illinois, an Illinois not-for-profit corporation, which was known as the First United Presbyterian Church of Anna, Illinois prior to October 27, 1980, when its name was changed, is a corporation whose original purpose was to hold title to both real and personal property for the unincorporated Anna Church, pursuant to the express provisions of The Book of Order, Form of Government.⁹

9. The individual Defendants are the Pastor and Session members (elders) of the Anna Church as of October 26, 1980 who concurred in, voted in favor of and condoned the action of a majority of the members of the congregation of the Anna Church in the actions it took in attempting to sever the Anna Church from UPCUSA.

10. The Anna Church and its congregation at Anna, Illinois, was organized in 1866 as part of the Presbyterian Church in the

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U.S.A. which ultimately became, through merger, a part of UPCUSA and at all times subsequent the Anna Church has been and is now a constituent part of UPCUSA (Pl. Exh. 4; Tr. pp. 30, 142).

11. The Alton Presbytery, in 1866, then a judicatory of the Presbyterian Church in the U.S.A., organized the Anna Church (Pl. exh. 4; Exh. 8 and 8 A; Tr. p. 142).

12. In the years 1866 to and including October 28, 1980, the Anna Church acquired and the Anna Church Corporation holds title to all of the real estate described in ¶ 23 of the Amended Complaint and Plaintiffs' Exhibit 27 (Tr. p. 6-7), as well as certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank account and other personal property, title to all of which is now vested in the Anna Presbyterian Foundation, an Illinois not-for-profit corporation organized and existing since October 27, 1980 (see Defendants' Answer to Para. 23 of the Amended Complaint).

13. From the time of its organization in 1866 until October 26, 1980, the Anna Church was and publicly acknowledged itself to be a constituent part of and a particular church in the UPCUSA, the Alton Presbytery and its successor, the Southeastern Illinois Presbytery of UPCUSA as evidence by, *inter alia*, the following: (a) The Articles of Incorporation of the Anna Church Corporation, then known as The First United Presbyterian Church of Ann, Illinois, as they existed on October 26, 1980, provided, in Article 5, as follows: "The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the constitution of The United Presbyterian Church in the United States of America and to exercise the government of said church under some certain and definite form." (Pl. Exh. 23 and 24) (b) The By-Laws of the Anna Church Corporation provid-

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ed, as of October 26, 1980, as follows: "Article III, Section 2. The office of president of the corporation shall be held by the same person who is Pastor Of The Congregation who shall be elected and chosen in accordance with the Constitution of the United Presbyterian Church in the United States of America." "Article V, Section 1. The corporation shall have one class of members, namely, those persons who have entered into active membership in a church relation according to the provisions of The Constitution of the United Presbyterian Church in the United States of America as a particular church in the City of Anna, County of Union and State of Illinois, under and by authority of the Presbytery of Southeastern Illinois, or its successors in interest." "Article IV, Section 6. The Pastor shall preside at each meeting of the congregation provided that in the event that the pulpit is vacant, the Pastor is not present, or the Pastor and Session agree that the subject matter could be discussed make it more appropriate, then some other minister authorized by the Presbytery may be invited by the Session to preside at any such meeting." "Article IX, Section 1. The corporation, being a particular church of the United Presbyterian Church in the United States of America, is subject to each and every provision contained in the Constitution thereof both for civil and ecclesiastical purposes, except that in the event of any conflict between civil and ecclesiastical law, with regard to civil matters, the corporation is subject to the "General not-for-profit Corporation Act" of the State of Illinois, Illinois Revised Statutes, Chapter 32, Sec. 163(a) et seq., and these by-laws shall be interpreted accordingly." "Article IX, Section 2. To the extent not herein provided, all matters pertaining to the internal affairs of the corporation, including the rules, procedure, and any other matters pertaining to, for the nomination, election, and ordaining of officers and members of the Session, and the calling, holding and conduct of meetings, shall be in accordance with the Constitution of the United Presbyterian Church in the United States of America, as amended from time to time, except

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to the extent that such constitution does not extend to certain matters of order, in which case Roberts Rules of Order shall govern." "Article IX, Section 3. Any term used in these by-laws and not defined herein or in said "General not-for-profit Corporation Act", shall be defined or interpreted by, or by reference to the Constitution of the United Presbyterian Church in the United States of America, which by this reference thereto is hereby incorporated herein as a part hereof." (Pl. Exh. 24) (c) The Anna Church obtained its pastors pursuant to the Constitution of UPCUSA and subject to the approval of Presbytery (Pl. Exh. 8; Tr. p. 145-147). (d) The Anna Church pursuant to the provisions of the UPCUSA Constitution¹⁰, requested and obtained permission from Presbytery in matters relating to the purchase, sale or mortgage of real estate (Pl. Exhs. 9, 10, 11, 12, 13, 14, 15, 16, 17; Tr. pp. 148-157). (e) Defendant, CLAIR S. ALBRIGHT, by his vows at his installation as Pastor of the Anna Church endorsed the government of the UPCUSA and vowed that he would honor its discipline; he promised to further the peace, unity and purity of the UPCUSA Church and that he would be a faithful minister, active in government and discipline in serving in the Courts of the Church and in his ministry (Book of Order, Form of Government, Chapter XX, ¶ 50.12 through 50.129; Tr. pp. 51-55 and 467-468).¹¹ (f) Each of the individually named Defendants who were ruling elders and members of the Session of the Anna Church as of October 26, 1980, as part of his vows endorsed the government of UPCUSA and vowed he would honor its discipline (Tr. pp. 54-56; Book of Order, Form of Government, Chapter XVII, ¶ 47.08 to 47.089).

14. On October 26, 1980, a meeting of the congregation of the Anna Church, which was also designated as a meeting of the members of the Anna Church Corporation, was held, the stated purpose of which was to consider proposed amendments to the Articles of Incorporation and the by-laws of the church corporation. Motions were made and declared passed at said

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meeting adopting the proposed amendments which deleted all references in the Articles of Incorporation to the word "united" in the name of the corporation and deleted from the purposes of the corporation all references to the organization, covenants and agreements that the Anna Church walk together in a church relation according to the provisions of the Constitution of UP-CUSA and to exercise the government of said church under certain and definite form. Said proposed amendments further provided that the Anna Church exist in an autonomous congregation separate and independent from and of any denomination. That meeting was presided over by the Pastor of the Anna Church, CLAIR S. ALBRIGHT. (Pl. Exh. 24; Def. Exh. G).

15. On October 27, 1980, Defendants organized the Anna Presbyterian Foundation to which was conveyed on October 28, 1980, all of the real estate of the Anna Church (Pl. Exh. 26, 27; Tr. pp. 6-7).

16. Thereafter, Defendant, CLAIR S. ALBRIGHT, the Pastor of the Anna Church, by letter requested that his name be removed from the rolls of Presbytery as an ordained minister (Tr. pp. 193 and 475).

17. Based upon a report of the Ministerial Relations Committee of Presbytery the General Council of Presbytery recommended to Presbytery at its stated meeting held on November 13, 1980, that Presbytery appoint an administrative commission to investigate the reasons for disunity in the Anna Church and to report its findings and recommendations to Presbytery at its adjourned meeting on November 20, 1980 (Pl. Exh. 32; Tr. p. 160). The minutes of the stated meeting of Presbytery held on November 13, 1980, show on their face that the recommendations of the General Council were adopted by Presbytery. That administrative commission for investigation purposes referred to as Anna Administrative Commission I was formed at that time consisting of the individually named Plaintiffs (Tr. p. 194).

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18. Anna Administrative Commission I met with the Session of the Anna Church on November 15, 1980, and made an investigation of the actions of the individually named Defendants herein and of the congregation of the Anna Church (Tr. pp. 195-100; see also the Report of the Anna Administrative Commission contained, in full, on pp. 3 to 9 of Pl. Exh. 38).

19. By letter dated November 14, 1980, addressed to JOYCE VERBLE, Clerk of Session of the Anna Church, and sent by Certified U.S. Mail, Return Receipt Requested, the Session of the Anna Church was advised of the appointment by Presbytery on November 13, 1980, of Anna Administrative Commission I with instructions to report its findings and recommendations to Presbytery at an adjourned meeting on November 20, 1980. Because of a possible recommendation of removal of the Session of the Anna Church at the November 20 adjourned meeting, the Session was by such notice invited and encouraged to be present and to participate in a hearing on such recommendations. The return receipt signed by JOYCE VERBLE indicates that this notice was received by her as Stated Clerk of Session of the Anna Church on November 15, 1980. (Pl. Exh. 33; Tr. pp. 166-169 and 199-200) Plaintiffs' Exhibit 33 also shows on its face that a copy was sent to Defendant, CLAIR S. ALBRIGHT.

20. The Anna Administrative Commission I submitted its written report which appears, in full, in the Minutes of the Adjourned Meeting of Presbytery held on November 20, 1980, and which is in evidence as Plaintiffs' Exhibit 38. Following a detailed recitation of the activities of Anna Administrative Commission I, the Commission reported its conclusion as follows: "After a thorough investigation, it is the opinion of the Commission that the Session of the First United Presbyterian Church of Anna had acted unwisely and that it had shown utter disregard of the Book of Order of the United Presbyterian

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Church in the U.S.A., and for the peace and unity of members of the congregation to which it was called to minister. This Session had participated in the spreading of rumors and inuendos about its members, the congregation, the Presbytery, and other judicatories of the Church. It is the opinion of the Commission, that presently the Session is divided, it is divisive, and it is unable to perform its duties as outlined in Chapter XI of the Form of Government. We also feel that the Session is unable to comply with Section 35.02 of Chapter V of the Form of Government, in that it is not able to proceed with any recognized form in carrying out its duties." (Pl. Exh. 38, p. 5)

21. Following debate, Presbytery adopted the recommendations of Anna Administrative Commission I as follows: "1. That the Session of the First United Presbyterian Church of Anna be notified of this report, and all actions taken by the Presbytery of Southeastern Illinois, meeting in adjourned session in Effingham, Illinois, on November 20, 1980; 2. That the Session of the First United Presbyterian Church of Anna be removed by reason stated in the Commission's report, in accordance with Chapter XI, Section 41.15, of the Form of Government, and that an administrative commission be appointed with full powers of the session; 3. That the Commission be authorized to retain legal counsel at the Presbytery's expense." Presbytery appointed the individually named Plaintiffs herein as members of Anna Administrative Commission II (Pl. Exh. 38, pp. 9-10).

22. Only one member of the session of the Anna Church was present at the Presbytery meeting of November 20, 1980 and he endorsed the recommendations of Anna Administrative Commission I (Pl. Exh. 38).

23. The appointment by Presbytery of Anna Administrative Commission II on November 20, 1980, included the granting to that Commission of all powers of Session. Those powers in-

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clude full control over the use of the property of the Anna Church.¹² (Tr. p. 59)

24. The Anna Church was notified of the decision and action of Presbytery in appointing the Anna Administrative Commission II to replace the Session of the Anna Church by letter from the Stated Clerk of Presbytery dated November 22, 1980 (Pl. Exh. 35; Tr. pp. 169-170).

25. No appeal or review of the decision of Presbytery to replace the Session of the Anna Church, pursuant to the Book of Order¹³ was undertaken or attempted by the Anna Church or any of the Defendants, and such decision became final (Tr. pp. 66, 90-100 and 228-229).

26. The Defendants in this cause and the dissident members of the congregation of the Anna Church have continued to use and control the property and assets as they existed on October 26, 1980, to the exclusion of Plaintiffs and the loyalist members of the congregation who adhered to the form of government of UPCUSA and contrary to the constitutional power of authority of the Plaintiffs acting through the Anna Administrative Commission II.¹⁴

27. Since November 20, 1980, Anna Administrative Commission II has carried out all of the functions of the Session of the First United Presbyterian Church of Anna, Illinois, a particular church of UPCUSA. It has organized a search committee, presented a candidate to Presbytery and called and the Presbytery has installed a Pastor. The Anna Administrative Commission II has continued to oversee the ongoing mission and ministry of the Church (Tr. p. 202). Because the loyal members of the Anna Church desire to worship with a pastor who is ordained by the UPCUSA in services that are in accordance with the principles and doctrine of the united church, Plaintiffs have provided temporary facilities on Washington

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Street in Anna, Illinois, for the purpose of conducting religious services in accordance with the beliefs and religious doctrine of the loyalist group (Tr. pp. 209-211). Following the events described above Plaintiffs instituted this action seeking a decree that all property and assets of the Anna Church be turned over to the Anna Administrative Commission II and that Defendants be enjoined from interfering in any way with the Commission's control and use of such property.

28. The ANNA CHURCH is the owner of certain real estate situated in Anna, Illinois, more particularly described as follows: *TRACT 1*: LOT NUMBER 10 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS. *TRACT 2*: LOT NUMBER 11 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS. *TRACT 3*: LOT NUMBERED FOURTEEN (14), EXCEPT 6 FEET OF EVEN WIDTH OFF OF THE NORTH SIDE THEREOF, IN S.W. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN UNION COUNTY, ILLINOIS. *TRACT 4*: LOT NUMBERED TWENTY-TWO (22) AND 44 FEET OFF OF THE NORTH SIDE OF LOT NUMBER TWENTY-THREE (23) IN S. A. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, IN THE COUNTY OF UNION, AND STATE OF ILLINOIS. *TRACT 5*: PART OF THE EAST PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 9, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 6.23 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS. *TRACT 6*: PART OF THE WEST PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL

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MERIDIAN, CONTAINING 13.36 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS. *TRACT 7*: THE SOUTH PART OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 22.30 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS. *TRACT 8*: THE NORTHWEST QUARTER OF SECTION 16; THE NORTH 84.68 ACRES OF FRACTIONAL SECTION 17, ALSO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION 17; RUNNING THENCE SOUTH 48 RODS: THENCE WEST TO THE WEST LINE OF SAID FRACTIONAL SECTION 17; THENCE IN A NORTHWESTERLY DIRECTION ON THE SECTION LINE 48 RODS, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID FRACTIONAL SECTION 17; THENCE EAST ON THE NORTH LINE OF SAID FRACTIONAL SECTION 17, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS. *TRACT 9*: ALL THAT PART OF THE NORTH HALF OF SECTION 15 LYING BETWEEN THE CENTER LINES OF RUNNING LAKE DITCH AND CLOVER LAKE, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15; RUNNING THENCE EAST 2338 FEET: THENCE SOUTH 11 DEGREES 30 MINUTES EAST, 1378 FEET: THENCE SOUTH 27 DEGREES 30 MINUTES EAST, 1509 FEET; TO THE SOUTH LINE OF THE NORTH HALF OF SAID SECTION 15; THENCE WEST 2612 FEET: THENCE NORTH 14 DEGREES 35 MINUTES WEST, 1500 FEET: THENCE NORTH 31 DEGREES 45 MINUTES WEST, 1350 FEET, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH,

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RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS. The ANNA CHURCH is also the owner of certain personal property, including books of worship, hymnals, books, records, furniture and furnishings, bank accounts and other personal property.

29. This action is brought to obtain a declaration of rights and legal relations under the provisions of Section 57.1 of the Illinois Civil Practice Act (Ill. Rev. Stat., 1979, ch. 110, Sec. 57.1) for the purpose of determining questions in actual controversy between the parties hereto under the facts and circumstances hereinabove set forth.

30. By reason of the premises and in the event defendants are not enjoined by this Court, plaintiffs will sustain great and irreparable loss, injury and damage for which they have no adequate remedy at law.

CONCLUSIONS OF LAW

1. UPCUSA is hierarchical in governmental form in that each judicatory has control of those below it. Each member Presbyterian Church is subject to the rules and directions of its Presbytery, Synod, and Assembly.
2. The Anna Church is a member of UPCUSA and therefore a part of that hierarchical structure. Since the original formation of the Anna Church in 1866, it has been an integral part of UPCUSA. Its membership implies consent to UPCUSA's form of government and its conduct during that period acknowledges UPCUSA's supremacy. Under that form of government, the Presbytery is authorized to remove the session of a local church and to appoint an administrative commission with full powers of the session, including full control over the use of the property of the local church.
3. "Whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest

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of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Watson v. Jones*, 80 U.S. (13 Wall) 679.

4. "Where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, that church is ordinarily bound by the decisions of the ecclesiastical judicatories. In these circumstances the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies." *Lowe v. First Presbyterian Church*, 56 Ill.2d 404 (1974).

5. There is no evidence in the case before this Court which justifies interference by a civil court with the decision of an ecclesiastical body. *Gonzales v. Roman Catholic Archbishop of Manila*. 280 U.S. 1.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

A. That all property of the ANNA CHURCH, both real and personal is subject to the use, control and direction of UPCUSA and Presbytery, and the defendants are ordered to deliver to the plaintiffs, through the Anna Administrative Commission II, possession of all such property within 30 days after entry of this Judgment Order.

B. That the defendants are not entitled to use of any of the property of the ANNA CHURCH except in accordance with the direction of the Anna Administrative Commission II.

C. That the Defendant Anna Presbyterian Foundation make, execute and deliver a deed to the real estate described above reconveying same to the First Presbyterian Church of Anna, Illinois, for the use and benefit of the congregation of the ANNA

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CHURCH in accordance with the Constitution, Form of Government of UPCUSA.

D. That the defendants, and each of them, are permanently enjoined from interfering in any manner or degree with the orders and directives of the Anna Administrative Commission II in the performance by said Anna Administrative Commission II of its powers and duties under the Constitution, Form of Government of UPCUSA.

E. That defendants deliver possession of and make an accounting for the personal property described above to the First Presbyterian Church of Anna, Illinois, within 30 days after entry of this Judgment Order.

F. That the unilateral action of the ANNA CHURCH, its Session and congregation, purporting to dissolve its relationship with UPCUSA and PRESBYTERY is null, void and of no force and effect.

G. That the ANNA CHURCH was on October 26, 1980, and still is a particular and constituent church within the single ecclesiastical entity of UPCUSA and governed by the Constitution, Form of Government of UPCUSA as set forth in the Book of Order.

H. That the ANNA CHURCH was and is an integral and particular church of UPCUSA and as such is subject to the provisions of the Book of Order, Form of Government, which, in Chapter IV, Section 34.01, defines "a particular church" as submitting to the Form of Government.

I. That under the Form of Government, Chapter XXXII, Section 62.11, should the ANNA CHURCH, as a particular church, abandon its work as a particular church in UPCUSA, its property reverts to PRESBYTERY.

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J. That under the First and Fourteenth Amendments to the Constitution of the United States of America and Article 1, Section 3 of the Constitution of the State of Illinois (1970) the highest judicatory of UPCUSA, the General Assembly, is the only interpreter of the Constitution of UPCUSA, and that said General Assembly has determined that all property owned by a local church of UPCUSA whether used in programs of the local church or of a higher judicatory, or held for investment is held in trust for UPCUSA.

K. That said Anna Administrative Commission II is entitled to conduct services and worship at the ANNA CHURCH and that UPCUSA and PRESBYTERY have the right to provide a pastor for said ANNA CHURCH.

L. That this Court retains jurisdiction of this cause for the purpose of enforcement of this Judgment Order.

DATED this 17 day of October, 1983.

Sgd: DONALD E. GARRISON
Circuit Judge

FOOTNOTES

[Omitted]

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NO. 5-83-0716

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

BYRON W. YORK, JOSEPH VAN ROEKEL,
ALAN V. PAREIS, HELEN WESTBERG,
JOE E. LOGDSON III, and PEYTON KUNCE,
Individually and as Members of THE
ANNA ADMINISTRATIVE COMMISSION II OF
THE SOUTHEASTERN PRESBYTERIAN CHURCH
OF AMERICA, on behalf of said ANNA
ADMINISTRATIVE COMMISSION II and on
behalf of THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA and SOUTHEASTERN ILLINOIS
PRESBYTERY OF THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA,

Plaintiffs-Appellees,

v.

THE FIRST PRESBYTERIAN CHURCH OF
ANNA, ILLINOIS, an Illinois Not-For-
Profit Corporation, ANNA PRESBYTERIAN
FOUNDATION, an Illinois Not-For-Profit
Corporation, and CLAIR S. ALBRIGHT,
HELEN OWENS, CHARLOTTE RIFE, JOHN
LUTZ, LISA WELLS, JANE RADER, JOEL
MELLER, NORMAN HICHAM and JOYCE
VERBLE, Individually and as Members
of the Session of THE FIRST UNITED
PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

Defendants-Appellants.

) Appeal from the Circuit Court
) of Union County

FILED

NOV 9 1984

William J. Garrison
FIFTH DISTRICT OF ILLINOIS
CLERK APPELLATE COURT

) Honorable Donald E. Garrison,
) Judge Presiding.

MR. JUSTICE KARNS delivered the opinion of the court:

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This appeal concerns a dispute between a small local church corporation, the First Presbyterian Church of Anna, Illinois, and its predecessor, the First United Presbyterian Church of Anna, Illinois (Anna Church) and its denominational organization, the United Presbyterian Church in the United States of America (UPCUSA). Anna Church appealed from an order of the circuit court of Union County granting injunctive and declaratory relief in favor of UPCUSA and its governing bodies. The central controversy involves the ownership and control of the property of Anna Church.

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Defendant-Appellant, Anna Church, was formerly a member of UPCUSA, an unincorporated religious association of Presbyterian churches, having a hierarchical structure of church government. UPCUSA's Constitution provides that the local church is governed by a judicatory known as the Session, comprised of members of the local church, having immediate authority to direct and manage the affairs of the local church. The actions of the Session are, in many instances, subject to review and control by higher UPCUSA judicatories, called, in ascending order, the Presbytery, the Synod, and the General Assembly. UPCUSA's form of government is outlined in that part of the church constitution called the Book of Order, which delineates the duties, obligations, and authority of each judicatory.

In July 1980, UPCUSA's General Assembly presented Overture A, which consisted of a proposed amendment to UPCUSA's constitution in order to create an express trust, to the benefit of the denominational church organization, of all property held by the local churches and the

judicatories of UPCUSA. Although a similar proposal failed in 1929, Overture A was approved and the amendment was added in May 1981. On October 27, 1980, Anna Church held a meeting of its members, called for the purpose of amending its Articles of Incorporation. By a vote of 98-28, the congregation amended the Articles with certain provisions which in essence amounted to an absolute withdrawal from UPCUSA. Immediately afterwards, the defendants organized the Anna Presbyterian Foundation. By a margin of 100 to 15, the members voted to convey the real property of the local church to this entity, and the transfer was effected by warranty deed on October 28, 1980. Although the reasons for these actions were never fully clarified, the record indicates that substantial concern existed in the local congregation over the ramifications of the proposed Overture A.

On November 13, 1980, at its stated meeting, plaintiff-appellee Presbytery appointed an administrative commission to investigate the actions of Anna Church. The investigation primarily consisted of a meeting attended by the commission and several members of the Anna Church's former Session. On the Commission's finding of disunity and "utter disregard" by the Session of UPCUSA's Book of Order, Presbytery appointed a second commission (plaintiff Anna Administrative Commission II) to replace the Anna Church Session, which was formally removed by the same order of Presbytery on November 20, 1980. Both the removal and the appointment were authorized by UPCUSA's constitutional directives, although Anna Church argued at trial and asserts on appeal that Presbytery's order was somehow effected without procedural due process.

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When Anna Church continued to exercise control over the local church property, UPCUSA, Presbytery, and Anna Administrative Commission II sought a declaratory judgment. After a non-jury trial, the court ordered the defendants to convey all the church property to the Administrative Commission, and enjoined the defendants from interfering with the Commission's authority and control. The court declared that Anna Church remained a constituent member of the denomination, subject to its orders and decisions, that the local church's withdrawal was invalid, and that UPCUSA's General Assembly had determined that all church property was held in trust for UPCUSA. Based on judicial deference to the General Assembly's determination, the trial court declared that defendants were no longer entitled to the use of any church property.

Constitutional restraints upon the adjudication of church controversies have not eliminated the recurrence of bitter property disputes such as the one brought in this appeal. (Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv.L.Rev. 1142 (1962); Annot., 52 A.L.R.3d 324 (1973).) Unfortunately, the authoritative case law offers no specific mandate for deciding the issues presented. Rather, the approaches sanctioned by the Supreme Court of the United States are advanced by the parties as contrasting principles for our analysis. A review of the constitutionally acceptable methods is therefore helpful to our disposition of the case at bar.

Traditionally, church litigation involving the application of ecclesiastical decisions have been decided in accordance with the principles articulated in Watson v. Jones (1872), 80 U.S. (13 Wall.) 679, 20 L.Ed. 666. In Watson, two rival factions of a local Presbyterian church became involved in litigation over control of the church premises.

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The General Assembly of the larger denominational church decided in favor of the majority faction, but the minority group took control of the property. Both the deed and the charter provided that the property and the trustees of the local church were subject to the fundamental laws of the general church. In Watson, the court held for the majority under an absolute principle of judicial deference to internal ecclesiastical decisions. The deference rule was to be applied in those cases where the religious entity holding the property is a subordinate member of a general church organization having a hierarchical structure. Specifically enunciated, compulsory deference was mandated "whenever the questions of discipline, or faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried * * *." 80 U.S. 679, 727, 20 L.Ed. 666, 676.

The language used by the high court in Watson has been quoted for decades in cases involving church disputes. Although a controversy within an hierarchical system of church government can be identified by the Watson definitional formula and therefore presented as a case requiring compulsory deference, the rule itself is not so precisely applied. The Watson language omits reference to decisions rendered by an internal church judicatory concerning matters entirely civil in nature. Thus, where the litigation involves only the issue of property control, the Watson standard fails as a constitutional imperative.

An alternative to the strict deference of Watson was identified in Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church (1969), 393 U.S.440, 21 L.Ed. 658, 89 S.Ct. 601. The Hull case

involved the withdrawal of two local churches from the general hierarchical organization, and subsequent discord over the control of the church property. The court stated that civil courts are proper fora for settling religious property disputes, and rejected any application of Watson which would preempt civil review of church decisions affecting property rights. The Hull principle left civil courts free to adjudicate property disputes if the decisional process averted underlying doctrinal conflicts. As the Hull case recognized the efficacy of a "neutral principles of law" analysis, this method was unequivocally endorsed in Jones v. Wolf (1979), 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020, allowing state courts to adopt a "neutral principles of law" analysis in resolving property disputes if they chose to do so, rather than apply the principle of judicial deference heretofore thought to be required by Watson.

Despite appellants' contrary assertion, UPCUSA maintains a hierarchical structure of government and, at least until the events of October 1980, the Anna Church's subordinate posture in the general church organization left it subject to the decisions of the controlling judicatories. This circumstance does not, however, preclude a civil court decision respecting the Anna Church property, even under a Watson stricture, provided that the decision is reached without intrusion into UPCUSA's ecclesiastical domain. In our view the threshold question for our consideration is whether we are constrained under our state decisional law. Appellee maintains that we are committed to compulsory deference and, in support of this contention, cites Lowe v. First Presbyterian Church (1974), 56 Ill.2d 404, 308 N.E.2d 801.

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In Lowe, the Presbytery of the general church formally dissolved the local church in accordance with its church constitutional authority, and ordered the local church to convey its property to the Church Extension Board of the Presbytery. The local congregation refused, claiming that the Board had previously quitclaimed the property to the local church and that Presbytery lacked authority to dissolve their local church or to order the reconveyance. The court held that a simple examination of the deed to the property was not sufficient to resolve the controversy and stated that a detailed inquiry into the polity of the general church was necessitated by the issues presented. Finding that the denominational church was hierarchical in form, and that the local church was its subordinate member, the court deferred to the internal church decision because "[i]n these circumstances, the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies." 56 Ill.2d 404, 415, 308 N.E.2d 801, 807.

We find that the Lowe decision does not prevent our disposition of this appeal by a neutral principles analysis. We note preliminarily that the significant Jones case was decided several years after Lowe. The unambiguous approval in Jones of a neutralized analysis of church property disputes, together with the high court's thoughtful articulation of the advantages and necessary cautions which inhere in the neutral principles method, support our belief that our own supreme court may be inclined to endorse the adoption of the neutral approach in reviewing property disputes such as the present one.

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The factual disparity between Lowe and the instant case serves as an additional basis for our rejection of Lowe as dispositive of the issues presented here. In Lowe, the authority of the parent church to dissolve the subordinate congregation and to direct a conveyance of its assets was explicitly authorized in the church constitution and implemented accordingly. In contrast, no dissolution of the Anna Church was attempted, for reasons unapparent in the record, although the identical constitutional option existed. Unlike Lowe, the internal decision to which the trial court yielded in the instant case is not supported by demonstrable concepts of ecclesiastical law which grant a clear right to denominational appropriation of local church assets. Therefore, even if the removal of the Anna Church Session is judicially endorsed, the property issue is left unresolved.

Moreover, we do not read Lowe as a blanket adoption of the compulsory deference rule, foreclosing review by neutral principles in all cases presenting internal religious controversies. The thrust of appellees' arguments appears to be an assertion that the mere categorization of the local-general church relationship as hierarchical is determinative of the question of property control. To extract such a meaning from Lowe and other pre-Jones cases is to discount the judicial role in resolution of civil property rights which has been emphatically recognized and painstakingly qualified in the principles which have evolved since Watson and which have culminated in the Jones endorsement of a neutral approach.

Our careful examination of Lowe produces a belief in its

conformance to both the deference of Watson and the neutrality of Jones. Where appropriate, a church decision requires judicial acquiescence. But when the property question is distinguishable from church doctrine, the issue can, and must, be decided without impermissible intrusion into ecclesiastical jurisdiction.

In the instant case, no question of religious doctrine or practice was ever addressed or decided by the Presbytery. The only matter considered and ruled upon by the higher judicatory was the removal and replacement of the Anna Church Session, an entity which had arguably ceased to exist. Presbytery's decision included no mention of severance by the former Session or of legal ownership of the church property. Endorsement of the removal action is mandated by First Amendment considerations, but it fails to resolve the real issue presented in this appeal. We believe that the neutral principles approach is the appropriate method for determining the central question of property control.

Our preference for a neutralized analysis is not limited to our belief in its adaptability to the facts presented in the case at bar. We are additionally persuaded by the more widespread benefits of its utilization. In First Presbyterian Church of Schenectady v. United Presbyterian Church (1984), 62 N.Y.2d 110, 464 N.E.2d 454, the court of appeals of New York adopted a neutral principles approach on facts virtually identical to those presented for our review, and remarked on the method's advantages:

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"It is completely secular in operation, it is flexible enough to accommodate all forms of religious organizations and it relies upon well-established principles of law familiar to Judges and lawyers. It also provides predictability so that religious organizations may order their affairs to account for its application. Moreover, we agree with those who have observed that the doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause." 62 N.Y.2d 110, ____, 464 N.E.2d 454, 460.

The policies advanced by the New York court apply especially to the instant facts. UPCUSA's Overture A was concededly proposed to conform to the Jones ruling, and Anna Church's reaction to the proposal leaves no doubt that the relationship between the parties lacked an explicit mutual understanding of property rights within the religious structure or otherwise. The judicial task, then, is to settle the property rights, most carefully, avoiding invasion into the ecclesiastical purview.

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In applying neutral principles, courts will generally examine the language of the deeds, the terms of the local corporate charter, the state statutes applicable to church property, and the relevant provisions of the church constitution and laws. (Jones v. Wolf, 443 U.S. 595, 603, 61 L.Ed.2d 775, _____, 99 S.Ct. 3020, 3025, citing Maryland and Va. Churches v. Sharpsburg Church, 396 U.S. 367, 368, 24 L.Ed.2d 582, _____, 90 S.Ct. 494, 500.) An examination of the evidence as to the first three items for consideration yields nothing that creates an express or implied trust or other interest vested in the general church. It is clear from the record that title to the local church property was conveyed to the Anna Presbyterian Foundation, an Illinois not-for-profit corporation, on October 28, 1980, prior to the removal decision and long before the adoption of Overture A in May 1981. This analysis is referred to as the "formal title" doctrine and was the method employed by the Georgia supreme court in ruling in favor of the local church upon remandment of Hull. (On remand, sub. nom. Presbyterian Church in United States v. Eastern Heights Presbyterian Church (1969), 225 Ga. 259, 167 S.E.2 658; cert. den. 396 U.S. 1041.) The last item of analysis requires cautious inquiry. The provisions in chapter XI of part II of UPCUSA's Constitution, utilized by the UPCUSA Presbytery to remove the Anna Church Session, is not helpful to Appellees' cause because the provisions do not confer title or right of control to the local property, nor can a purely secular interpretation support any contention that those provisions operate to create some type of property interest in the general church. The constitutional provisions which directly relate to the issue of property

are found in chapter XXXIII of the Book of Order, which authorizes a takeover of local church property upon dissolution or extinction, neither of which occurred in the Anna Church. Because nothing which can be legitimized by neutral legal principles is discoverable from the record to support appellees' right to the local church property, we reverse those portions of the trial court's order which affect the property interest of Anna Church.

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We also reverse the trial court's declaration of the nullity of Anna Church's actions of withdrawal and severance, holding that to make such a ruling impermissibly intrudes into church polity. Despite appellees' concession that the local church had the right to withdraw from the denomination, the trial court nullified the withdrawal apparently accepting the general church's assertion that the local congregation could not maintain control over church property upon severance from UPCUSA. Also reflected in the judgment is the trial court's acquiescence in the General Assembly's interpretation of UPCUSA's constitution, which established a superior interest in the local church property for the benefit of the denomination. These contentions by Appellees amounted to self-serving arguments rather than supportable allegations of fact and should not have been included in the trial court's judgment. The constitutional restraints which control religious property disputes, whether applied through Watson deference or a neutral analysis, require that the only action of the trial court which can be affirmed is the judicial conformance to Presbytery's decision of removal and replacement of the Anna Church Session. On the other hand, because "the State has a

legitimate interest in resolving property disputes," (Presbyterian Church
Mary Elizabeth Blue Hull Memorial Presbyterian Church (1969), 393 U.S. 440
445, 21 L.Ed.2d 658, _____, 89 S.Ct. 601, 604), our neutral disposition of
the property question is not only an appropriate resolution but a judicial
obligation. Our task has been made easier by the limited scope of the
decision of the church judicatory, confining the ultimate result of the
instant litigation to a judicial acknowledgement of the removal and
replacement of the Anna Church Session. We affirm that aspect of the
judgment order and reverse those portions which purport to do anything
more.

AFFIRMED IN PART; REVERSED IN PART.

Welch, P.J. and Harrison, J., concur.

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 7, 1985

Mr. R. Corydon Finch
343 South Main Street
Anna, IL 62906

Re: Byron W. York, et al.,
v. First Presbyterian Church of Anna, Illinois,
et al.
No. 84-2035

Dear Mr. Finch:

The Court today entered the following order in the above
entitled cases:

The motion of petitioners to consolidate this case with No.
85-10, Presbytery of Beaver-Butler v. Middlesex Presbyterian
Church is denied. The petition for a writ of certiorari is
denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk

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EXHIBIT 7

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS
NO. 85-MR-27

ANNA PRESBYTERIAN FOUNDATION,
an Illinois General Not-For-Profit
Corporation,

PLAINTIFF,

-vs-

FIRST UNITED PRESBYTERIAN CHURCH
OF ANNA, ILLINOIS, a voluntary
unincorporated association, THE
SOUTHEASTERN ILLINOIS PRESBYTERY
OF THE UNITED PRESBYTERIAN CHURCH
IN THE UNITED STATES OF AMERICA,
a voluntary unincorporated association,
and THE UNITED PRESBYTERIAN CHURCH IN
THE UNITED STATES OF AMERICA, a
voluntary unincorporated association,

DEFENDANTS.

FILED

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

COMPLAINT FOR DECLARATORY JUDGMENT
AND OTHER RELIEF

Anna Presbyterian Foundation, an Illinois General
Not-For-Profit Corporation, Plaintiff, by R. Corydon Finch,
its attorney, for its cause of action, pursuant to Section
2-701 of the Code of Civil Procedure of the State of Illinois,
for Declaratory Judgment and other relief against First
United Presbyterian Church of Anna, Illinois, a voluntary
unincorporated association, The Southeastern Illinois

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Presbytery of the United Presbyterian Church in the United States of America, a voluntary unincorporated association, and The United Presbyterian Church in the United States of America, a voluntary unincorporated association, Defendants, alleges:

1.

Plaintiff is an Illinois General Not-For-Profit Corporation with its principal place of business in Anna, Union County, Illinois.

2.

Defendant First United Presbyterian Church of Anna, Illinois, is a voluntary unincorporated association with its office in Anna, Union County, Illinois; and, it and its members are members of Defendant The Southeastern Illinois Presbytery of the United Presbyterian Church in the United States of America, a voluntary unincorporated association; and, the foregoing Defendants and their members are members of United Presbyterian Church in the United States of America, a voluntary unincorporated association; aforesaid Defendants and their members are one voluntary unincorporated association and with their agents, employees, and attorneys are in active concert and participation with regard to all matter alleged herein.

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3.

Since October 28, 1980, Plaintiff has been and still is, the owner of, and vested with the fee simple interest in and to real property (described on Appendix A attached hereto and incorporated herein by this reference) and personal property (described on Appendix B attached hereto and incorporated herein by this reference)[all collectively hereinafter referred to as "Plaintiff's Property"], and has been at all times since October 28, 1980, and still is, entitled to the possession, use and control thereof, and to all the rents, issues, proceeds, and profits therefrom.

4.

Since October 18, 1983, pursuant to a JUDGMENT ORDER in Case No. 81-MR-5 in this Court, Defendants have claimed and have exercised an interest in, and the possession, use, and control of, and the rents, issues, proceeds, and profits from, Plaintiff's Property.

5.

On October 23, 1985, there became final the Judgment of the Appellate Court of Illinois, Fifth District, in Case No. 5-83-0716, which reversed those portions of said Judgment Order which purported to grant to Defendants any interest in, and the possession, use, and control of, Plaintiff's Property.

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6.

Defendants have since the filing of the Appellate Court's Mandate in Case No. 81-MR-5, refused to relinquish and make restitution to Plaintiff of Plaintiff's Property.

7.

There is an actual justiciable controversy between the parties since Defendants claim that the Judgment of the Appellate Court sustains their claim to some interest in, the possession, use, and control of, and the rents, issues, proceeds, and profits from, Plaintiff's Property.

PRAYER FOR RELIEF

Plaintiff prays for the following relief:

1.

For a declaration of rights, declaring that Plaintiff is the legal owner of, is vested with fee simple title in and to, and is entitled to the possession, use, and control of, Plaintiff's Property, and the rents, issues, proceeds, and profits therefrom since October 18, 1983.

2.

For a declaration that the WARRANTY DEED whereby Plaintiff conveyed its property, pursuant to this Court's JUDGMENT ORDER in Case No. 81-MR-5, is null and void and of no force or effect, and quieting title to Plaintiff's real property in Plaintiff.

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3.

For a mandatory injunction directing Defendants immediately to vacate, transfer, convey, relinquish, and make restitution to Plaintiff of the possession, use, and control of Plaintiff's Property, and the rents, issues, proceeds, and profits received therefrom since October 18, 1983.

4.

For an Order enjoining and restraining Defendants, and each of them, and their members, and all agents, employees, attorneys, and any other person or persons in active concert or participation with them, from hereafter in any way interfering with or molesting Plaintiff in Plaintiff's possession, use, and control of the property.

5.

For an accounting of the rents, issues, proceeds, and profits from Plaintiff's Property since October 18, 1983.


ATTORNEY FOR PLAINTIFF

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure of the State of Illinois, the undersigned certifies that the COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF to which this VERIFICATION is attached, is true and correct, except as the matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Dated December 23 , 1985.



R. CORYDON FINCH

R. CORYDON FINCH
ATTORNEY FOR PLAINTIFF
343 SOUTH MAIN STREET
ANNA, IL 62906
TELEPHONE: 833-5138

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TRACT 1: LOT NUMBER 10 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 2: LOT NUMBER 11 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 3: LOT NUMBERED FOURTEEN (14), EXCEPT 6 FEET OF EVEN WIDTH OFF OF THE NORTH SIDE THEREOF, IN S. W. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN ANNA COUNTY, ILLINOIS.

TRACT 4: LOT NUMBERED TWENTY-TWO (22) AND 44 FEET OFF OF THE NORTH SIDE OF LOT NUMBER TWENTY-THREE (23) IN S. A. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, IN THE COUNTY OF UNION, AND STATE OF ILLINOIS.

TRACT 5: PART OF THE EAST PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 9, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 6.23 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 6: PART OF THE WEST PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 13.36 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 7: THE SOUTH PART OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 22.30 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 8: THE NORTHWEST QUARTER OF SECTION 16; THE NORTH 84.68 ACRES OF FRACTIONAL SECTION 17, ALSO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION 17; RUNNING THENCE SOUTH 48 RODS; THENCE WEST TO THE WEST LINE OF SAID FRACTIONAL SECTION 17; THENCE IN A NORTHWESTERLY DIRECTION ON THE SECTION LINE 48 RODS, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID FRACTIONAL SECTION 17; THENCE EAST ON THE NORTH LINE OF SAID FRACTIONAL SECTION 17, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS.

TRACT 9: ALL THAT PART OF THE NORTH HALF OF SECTION 15 LYING BETWEEN THE CENTER LINES OF RUNNING LAKE DITCH AND CLOVER LAKE, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15; RUNNING THENCE EAST 2338 FEET; THENCE SOUTH 11 DEGREES 30 MINUTES EAST, 1378 FEET; THENCE SOUTH 27 DEGREES 30 MINUTES EAST, 1509 FEET; TO THE SOUTH LINE OF THE NORTH HALF OF SAID SECTION 15; THENCE WEST 2612 FEET; THENCE NORTH 14 DEGREES 35 MINUTES WEST, 1500 FEET; THENCE NORTH 31 DEGREES 45 MINUTES WEST, 1350 FEET, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS.

PERSONAL PROPERTY

- (1) Original records of the Session prior to October 26, 1980, and copies of Session records from October 26, 1980, to November 17, 1983;
- (2) Farm contracts and typewriter contract;
- (3) Copies of books and ledgers;
- (4) All furniture, fixtures, appliances, books, hymnals, and contracts;
- (5) Corporate name of "First Presbyterian Church of Anna";
- (6) The following deposits:

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<u>NATURE OF ACCOUNT</u>	<u>INSTITUTION</u>	<u>AMOUNT</u>
1. Checking	Anna National Bank	\$2,157.31
2. Passbook Savings 5598	First Federal of Chicago	6,408.91
3. Passbook Savings 5630	First Federal of Chicago	6,408.91
4. Passbook Savings 5648	First Federal of Chicago	6,408.91
5. Passbook Savings 5655	First Federal of Chicago	6,408.91
6. Passbook No. 32-752601-8	First Federal of Chicago	9,267.58
7. Checking No. 335-599-4	Anna National Bank	1,270.06

IN THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ILLINOIS
UNION COUNTY

ANNA PRESBYTERIAN FOUNDATION,
an Illinois General Not-for-
Profit Corporation,

Plaintiff,

vs.

FIRST UNITED PRESBYTERIAN
CHURCH OF ANNA, ILLINOIS,
et al.,

Defendants.

NO. 85-MR-27

ANSWER

NOW COME FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, a voluntary unincorporated association, THE SOUTHEASTERN ILLINOIS PRESBYTERY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, a voluntary unincorporated association, and THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, a voluntary unincorporated association, Defendants, and for their answer to the Complaint for Declaratory Judgment and Other Relief, filed herein, say:

1. They admit the allegations contained in Paragraph 1 of said Complaint.
2. For their answer to Paragraph 2 of said Complaint, Defendants admit that Defendant, FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, is a voluntary unincorporated association with its

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office in Anna, Union County, Illinois, but they deny all other allegations contained in Paragraph 2 of said Complaint; further answering Paragraph 2, they aver that FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, is a particular church of The Presbyterian Church (USA), successor to THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, and of THE SOUTHEASTERN ILLINOIS PRESBYTERY OF THE PRESBYTERIAN CHURCH (USA), both of which are unincorporated associations, and all of said Defendant voluntary unincorporated associations are governed by the Constitution of The United Presbyterian Church (USA).

3. They deny the allegations contained in Paragraph 3 of said Complaint and each of the same.

4. They deny the allegations contained in Paragraph 4 of said Complaint and each of the same; further answering said Paragraph 4, they aver that they have claimed and have exercised an interest in, and the possession, use and control of all of the property and assets of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, its predecessors and successors since said Church was organized in 1866.

5. They admit that on October 23, 1985, there became final the Judgment of the Appellate Court of Illinois, Fifth District, in case No. 5-83-0716, but they deny all other allegations contained in Paragraph 5 of said Complaint and each of the same.

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6. For their answer to Paragraph 6 of said Complaint they admit that since the filing of the Appellate Court's mandate in case No. 81-MR-5, they have refused to turn over or deliver to Plaintiff the property and assets of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS; further answering said Paragraph they deny that said property and assets are "Plaintiff's property" and deny that Plaintiff is entitled to possession, use and control of same.

7. They deny the allegations contained in Paragraph 7 of said Complaint and each of the same.

8. They deny that Plaintiff is entitled to the relief prayed for in said Complaint or any relief.

FIRST AFFIRMATIVE DEFENSE

For their affirmative defense to the Complaint, Defendants say:

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1. The Complaint herein wholly fails to state a cause of action against these Defendants. *fails to point out specifically the defects complained of or cited by 2-615*
 2. The Complaint shows on its face that Defendants are sued as voluntary unincorporated associations, which, in Illinois, do not have the capacity to sue or be sued. *2-209.1*
 3. Said Defendants are not legal entities in Illinois which has adhered to the common law rule that an unincorporated association cannot sue or be sued in its own name, subject to precise exceptions in equity, which do not apply to this case. *2-209.1*

*It entitled 2-701 to
further relief further + incident
to DS + is req'd to seek
all relief necessary to terminate
the contract
reason
give rise to
the proceedings*

4. The Complaint sets forth a prayer for mandatory injunction relief, and there is no allegation that Plaintiff lacks an adequate remedy at law.

5. Said Complaint sets forth a prayer to quiet title to real estate, notwithstanding allegations in the Complaint that Plaintiff is not in possession of the real estate described.

*possession
not an elem. of cla for QT when QT
is not incidental to other relief.*

SECOND AFFIRMATIVE DEFENSE

For their second affirmative defense to the Complaint herein, Defendants say:

1. In its Opinion dated November 9, 1984, the Appellate Court of Illinois, Fifth District, in cause No. 5-83-0716, has stated the law of this case.

2. In that decision, the Appellate Court determined and announced that Defendants' actions in removing and replacing the Session of the local Anna Church were proper under the Constitution of the united church as it existed at that time.

3. Said Constitution contained a provision in Book of Order, Form of Government, Chapter XI, Paragraph 41.07, providing as follows:

"Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and

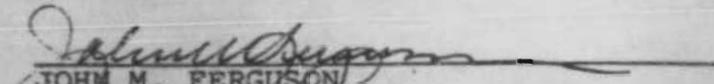
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all other religious services. *It shall also have exclusive authority over the uses to which the church building and properties may be put, but may temporarily delegate the determinations of such uses, subject always to the superior authority and direction of the session.*" (Emphasis added)

4. As a part of the law of this case, the Appellate Court of Illinois, Fifth District, has held that it has a judicial obligation to a judicial acknowledgement of the removal and replacement of the session of the local church "and nothing more"; further, that anything else is a judicial intrusion in violation of the First Amendment to the United States Constitution.

5. The granting of the relief prayed for by Plaintiff in the Complaint herein would fall within the "judicial intrusion" condemned by the Appellate Court of Illinois, Fifth District, in its cause No. 5-83-0716, which constitutes the law of the case.


JOHN M. FERGUSON
65 South 65th Street
P.O. Box 1227
Belleville, Illinois 62223
618/398-6500
ATTORNEY FOR DEFENDANTS

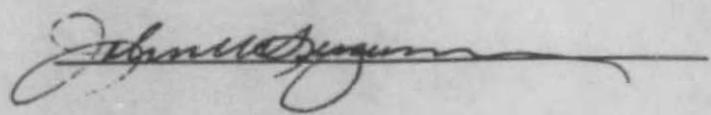
VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure of the State of Illinois, the undersigned certifies that the Answer and Affirmative Defenses above stated are true and correct, except as to the matters therein stated to be on

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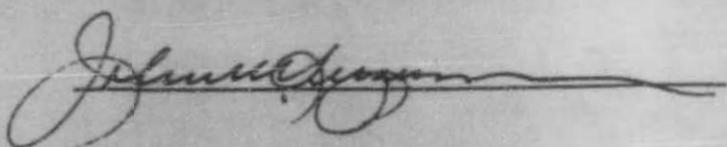
information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

DATED January 22, 1986.



CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Answer and Affirmative Defenses was served by depositing same in an envelope addressed to R. CORYDON FINCH, 343 South Main Street, Anna, Illinois 62906, Attorney for Plaintiff, with proper postage prepaid in the United States Mail in Belleville, Illinois, on the 22nd day of January, 1986.



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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS
NO. 85-MR-27

ANNA PRESBYTERIAN FOUNDATION, :
an Illinois General Not-For- :
Profit Corporation, :
PLAINTIFF, :
-vs- :
FIRST UNITED PRESBYTERIAN :
CHURCH OF ANNA, ILLINOIS, :
et al., :
DEFENDANTS. :

FILED

JAN 29 1986

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

PLAINTIFF'S REPLY TO DEFENDANTS'
AFFIRMATIVE DEFENSES

Plaintiff, by R. Corydon Finch, its attorney, Replies
to Defendants' Affirmative Defenses, as follows:

REPLY TO FIRST AFFIRMATIVE DEFENSE

1.

Denies Paragraph 1 because it fails to point out
specifically the defects complained of as required by Section
2-615 of the Code of Civil Procedure.

2.

Denies Paragraph 2 of Defendants' First Affirmative
Defense on the ground that under and by virtue of Section
2-209.1 of the Code of Civil Procedure, a voluntary un-
incorporated association may sue and be sued in its own name.

3.

Denies Paragraph 3 on the same ground above set forth in immediately preceding Paragraph 2.

4.

Denies Paragraph 4 on the ground that Plaintiff is entitled under Section 2-701 in an action for Declaratory Judgment to request whatever further relief is necessary and proper after the Declaratory Judgment, and, further, under said Section of the Code of Civil Procedure and under general rules of pleading and procedure, Plaintiff is required to seek all relief necessary to terminate the controversy giving rise to the proceedings.

5.

Denies Paragraph 5 on the ground that possession is not an element of a cause of action requesting quieting of title where that relief is incidental to other relief prayed for.

REPLY TO SECOND AFFIRMATIVE DEFENSE

1.

Admits Paragraph 1.

2.

Denies each and every allegation contained in Paragraph 2. Further Replying to Paragraph 2, Plaintiff represents that the Appellate Court found only that civil court intrusion into the removal action was constitutionally prohibited; the Appellate Court did not find that any "session" existed

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on November 20, 1980, or that the removal action was "proper";
more particularly:

- (a) The Appellate Court found that on November 13, 1980, there was no "session" [Opinion, page 3, second paragraph, York v. First Presbyterian Church, 474 N.E.2d 718, 85 Ill.Dec. 758; Opinion, page 9, second paragraph, 474 N.E.2d 720, 85 Ill.Dec. 760];
- (b) The Appellate Court found that at the time of the removal action the "session" had "arguably ceased to exist" [Opinion, page 9, second paragraph, 474 N.E.2d 720, 85 Ill.Dec. 760];
- (c) The Appellate Court found that the removal action was irrelevant to the property dispute since the removal action did not resolve the property dispute [Opinion, page 8, second paragraph, page 9, second paragraph; 474 N.E.2d 720, 85 Ill.Dec. 760];
- (d) The Appellate court found only that the civil court system was required by the First Amendment only to "endorse" [Opinion, page 9, second paragraph, 474 N.E.2d 720, 85 Ill.Dec. 760] and "judicially acknowledge" [Opinion, page 13, 474 N.E.2d 722, 85 Ill.Dec. 62] the fact of the removal action; it neither ordered

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enforcement nor determined the propriety thereof, but rather found that constitutional restraints prohibited intrusion into the ecclesiastical issue of removal, resulting only in "conformance" of the removal action [Opinion, page 12, paragraph 2, 474 N.E.2d 722, Ill.Dec. 762].

3.

Admits Paragraph 3, but denies the relevancy and legal sufficiency thereof as an Affirmative Defense to Plaintiff's Complaint seeking title to and possession of property, on the ground that the Appellate Court, in its Opinion stating the law of this case as Defendants admit in Paragraph 1 of their Second Affirmative Defense, explicitly holds that the provisions of Chapter XI of UPCUSA's Constitution relating to removal of a session "is not helpful to Appellees' [Defendants'] cause because the provisions do not confer title or right of control to the local property, nor can a purely secular interpretation support any contention that those provisions operate to create some type of property interest in the general church." [Opinion, page 11; 85 Ill.Dec. 756, at 761, 474 N.E.2d 716, at 721 (1984)].

Further Replying to Paragraph 3, Plaintiff represents that Defendants are estopped and barred by the doctrine of res adjudicata from relitigating the issue decided by the Appellate Court, whereby the Court decided that Chapter XI

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of Defendants' Constitution did not create any property interest whatsoever in Plaintiff's property, which issue was also litigated between the parties and decided adversely to Defendants by the Supreme Court of Illinois in Case No. 61328, and by the Supreme Court of the United States in Case No. 84-2035, in support of which there is filed herein simultaneously herewith and incorporated in this pleading as a part hereof the following Briefs demonstrating that Defendants' contention based on Chapter XI of its Constitution has repeatedly been advanced and litigated:

- (1) Plaintiff's APPELLANTS' BRIEF, in Case No. 5-83-0716, in the Appellate Court of Illinois, Fifth District;
- (2) Defendants' APPELLEE'S BRIEF, in Case No. 5-83-0716 in the Appellate Court of Illinois, Fifth District;
- (3) Defendants' PETITION FOR LEAVE TO APPEAL in Case No. 61328 in the Supreme Court of Illinois;
- (4) Plaintiff's ANSWER TO PETITION FOR LEAVE TO APPEAL in Case No. 61328 in the Supreme Court of Illinois;
- (5) Defendants' PETITION FOR WRIT OF CERTIORARI to the Appellate Court of Illinois, Fifth District, in Case No. 84-2035 in the Supreme Court of the United States;

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(6) Plaintiff's BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI to the Appellate
Court of Illinois, Fifth District, in Case
No. 84-2035 in the Supreme Court of the
United States;

and in each case decided adversely to Defendants, in support
of which there is attached hereto and incorporated herein
the Orders of the Supreme Court of Illinois and the Supreme
Court of the United States.

4.

Denies the convoluted misinterpretation of the Appellate
Court decision alleged in Paragraph 4.

Further Replying Plaintiff represents that the Appellate
Court held that the Trial Court was constitutionally permitted
to do "nothing more" than judicially acknowledge the removal
action, and that by the Trial Court's doing something more
in the nature of compelling conveyance and transfer of property
on the basis of Defendants' Constitution, the Trial Court
thereby violated the First Amendment, and hence the Trial
Court was reversed. More explicitly, the Appellate Court
held that the Trial Court had a judicial obligation to make
a neutral disposition of the property question, "confining
the ultimate result of the instant litigation to a judicial
acknowledgment of the removal and replacement of the Anna
Church Session, [affirming] that aspect of the Judgment Order

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and [reversing] those portions [of the Judgment Order] which purport to do anything more" [Opinion, page 13, 85 Ill.Dec. 756, at 762, 474 N.E.2d 716, at 722]; the judicial obligation, the obligation of the Trial Court in this case, "is to settle the property rights * * * avoiding invasion into the ecclesiastical purview [Opinion, page 10].

5.

Denies the convoluted mininterpretation alleged in Paragraph 5.

Further Replying Plaintiff represents that the Appellate Court found that the Trial Court, in Case No. 81-MR-5, committed the constitutionally impermissible "judicial intrusion" when it impermissibly intruded into the ecclesiastical jurisdiction of Chapter XI of UPCUSA's Constitution to resolve the property dispute, rather than applying neutral principles of law, thereby mandating neutral principles of law, and not Chapter XI of UPCUSA's Constitution, as the law of the case; moreover, this Court's now granting the relief prayed for by Plaintiff in this case pursuant to the Appellate Court Opinion requires application of the neutral principles of law analysis mandated by that Opinion, and consequent and resultant application of neutral principles of law to determine that by virtue of the severance and conveyance [p. 11] to Plaintiff, Plaintiff is the legal owner of the real and personal property which is the subject matter of this case and entitled to all right, claim, title or interest therein

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or thereto and the proceeds, rents, issues and profits thereof.

REPLY TO OTHER AFFIRMATIVE MATTER

As to the denials and other affirmative matter in Defendants' ANSWER which attempts to dispute or place at issue Plaintiff's ownership of the property described by reference in Paragraph 3 of Plaintiff's Complaint, Plaintiff represents that Defendants are estopped and barred by the doctrine of res adjudicata from re-litigating any of the factual issues framed by the pleadings, since all such issues have been litigated between Plaintiff and Defendants in Case No. 81-MR-5 in this Court, the Final Judgment in which is the Appellate Court Opinion hereinabove referred to, and in support hereof that case and its Final Judgment are hereby incorporated herein for the purpose of this Court's taking Judicial Notice thereof, pursuant to Sections 8-1106 and 8-1202 of the Code of Civil Procedure.

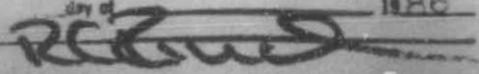
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R. CORYDON FINCH
ATTORNEY FOR PLAINTIFF

R. CORYDON FINCH
ATTORNEY FOR PLAINTIFF
343 SOUTH MAIN STREET
ANNA, ILLINOIS
TELEPHONE: 618+833-5138

PROOF OF SERVICE

I, _____, do hereby certify that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above captioned case by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of said case, with postage fully prepaid and by depositing said envelope in the U. S. Post Office mail box in Anna, Ill. 62906 on _____ day of _____, 1986.



61328

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2036

April 2, 1985

Mr. R. Corydon Finch
Attorney at Law
343 S. Main St.
Anna, IL 62906

No. 61328 - Byron W. York, et al., etc., petitioners, v. The
First Presbyterian Church of Anna, Illinois, etc.,
et al., respondents. Leave to appeal, Appellate
Court, Fifth District.

The Supreme Court today DENIED the petition for leave to
appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court
on April 23, 1985.

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 7, 1985

Mr. R. Corydon Finch
343 South Main Street
Anna, IL 62906

Re: Byron W. York, et al.,
v. First Presbyterian Church of Anna, Illinois,
et al.
No. 84-2035

Dear Mr. Finch:

The Court today entered the following order in the above
entitled case:

The motion of petitioners to consolidate this case with No.
85-1C, Presbytery of Beaver-Butler v. Middlesex Presbyterian
Church is denied. The petition for a writ of certiorari is
denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

UNION COUNTY, ILLINOIS

NO. 85-MR-27

ANNA PRESBYTERIAN FOUNDATION, :
an Illinois General Not-For- :
Profit corporation, :

PLAINTIFF, :

-vs- :

FIRST UNITED PRESBYTERIAN :
CHURCH OF ANNA, ILLINOIS, :
et al., :

DEFENDANTS. :

FILED

JAN 29 1986

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

MOTION FOR JUDGMENT ON PLEADINGS

Plaintiff, by R. Corydon Finch, its attorney, moves, pursuant to Section 2-615(e) of the Code of Civil Procedure, for Judgment on the pleadings, there being no material facts in dispute and Plaintiff being entitled to Judgment as a matter of law.

R. Corydon Finch
R. CORYDON FINCH

R. CORYDON FINCH
ATTORNEY FOR PLAINTIFF
343 SOUTH MAIN STREET
ANNA, ILLINOIS
TELEPHONE: 618+833-5138

PROOF OF SERVICE

This undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above captioned case by enclosing the same in an envelope addressed to each of their business addresses as disclosed by the pleadings of record with postage fully prepaid and by depositing said envelope in U. S. Post Office mail box in Anna, IL. 62906
on the _____ day of _____ 19 86

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

UNION COUNTY, ILLINOIS

NO. 85-MR-27

ANNA PRESBYTERIAN FOUNDATION, :
an Illinois General Not-For-Profit :
Corporation, :

PLAINTIFF, :

-vs- :

FIRST UNITED PRESBYTERIAN CHURCH :
OF ANNA, ILLINOIS, a voluntary :
unincorporated association, THE :
SOUTHEASTERN ILLINOIS PRESBYTERY :
OF THE UNITED PRESBYTERIAN CHURCH :
IN THE UNITED STATES OF AMERICA :
a voluntary unincorporated association, :
and THE UNITED PRESBYTERIAN CHURCH IN :
THE UNITED STATES OF AMERICA, a :
voluntary unincorporated association, :

DEFENDANTS. :

FILED

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CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

DECLARATORY JUDGMENT AND OTHER RELIEF

This case coming on for hearing on March 14, 1986, upon the MOTION FOR JUDGMENT ON PLEADINGS, filed herein January 29, 1986, by Anna Presbyterian Foundation, an Illinois General Not-For-Profit Corporation [hereinafter "Plaintiff"], pursuant to Section 2-615(e) of the Code of Civil Procedure, requesting relief on the pleadings consisting of Plaintiff's COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF, filed herein December 23, 1985, the ANSWER of FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, a voluntary unincorporated association [hereinafter "Defendants"], including Defendants' FIRST AFFIRMATIVE

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DEFENSE and SECOND AFFIRMATIVE DEFENSE, and PLAINTIFF'S REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSES, filed herein January 29, 1986;

And, Plaintiff appearing in Court by R. Corydon Finch, its attorney, and Defendants appearing in Court by John M. Ferguson, their attorney, and each announcing ready for hearing;

Whereupon, the Court, having examined the matters on file herein, having acknowledged taking judicial notice of the entire file and record of proceedings in Case No. 81-MR-5 in this Court, having heard the arguments of counsel, and now being fully advised in the premises, finds:

1.

This Court has jurisdiction of the subject matter and of each party hereto.

2.

There is no material fact in dispute and Plaintiff is entitled to a Judgment as a matter of law for the relief requested in its COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF.

IT IS THEREFORE ORDERED, ADJUDGED, DECLARED AND DECREED:

1.

Plaintiff is the legal owner of, is vested with fee simple title in and to, and is entitled to the possession, use, and control of, the real property described in Appendix A attached hereto and incorporated herein as a part hereof and the personal property described in Appendix B attached hereto and incorporated

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herein as a part hereof [all collectively hereinafter referred to as "Plaintiff's property"], and is entitled to the rents, issues, proceeds, and profits therefrom since October 18, 1983.

2.

The WARRANTY DEED, whereby Plaintiff conveyed its real property, pursuant to this Court's JUDGMENT ORDER in Case 81-MR-5, dated December 13, 1983, and recorded December 19, 1983, in Deed Record Book Volume 142, at Page 498, et seq., in the Office of the Recorder of Deeds for Union County, Illinois, is null and void and of no force and effect, and the title thereto is hereby quieted in Plaintiff.

3.

Defendants and each of them be and the same hereby are mandatorily enjoined and ordered to vacate, transfer, convey, relinquish, and make restitution to Plaintiff of the possession, use, and control of Plaintiff's Property, and the rents, issues, proceeds, and profits received therefrom since October 18, 1983, to be effectuated on or before 30 days after entry and filing of this Judgment.

4.

Defendants, and each of them, and their members, and all agents, employees, attorneys, and any other person or persons in active concert or participation with them, be and the same hereby are enjoined and restrained in any way from interfering with or molesting Plaintiff in Plaintiff's possession, use,

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and control of Plaintiff's property, from on or after 30 days after entry and filing of this Judgment.

5.

Defendants are directed to account to Plaintiff for the rents, issues, proceeds and profits from Plaintiff's property since October 18, 1983, on or before 30 days after the date of entry and filing of this Judgment; Defendants may deduct from the personal property described on Appendix B any reasonable amounts expended for repairs, maintenance, and improvements on or to the real property described on Appendix A.

6.

Defendants' Motion for Stay of Enforcement of this Order is denied.

7.

There is no just reason for delay of enforcement or appeal of this Judgment.

Dated *March 24*, 1986.

ENTER:

Donald E. Isamson

CIRCUIT JUDGE

R. CORYDON FINCH
ATTORNEY FOR PLAINTIFF
343 SOUTH MAIN STREET
ANNA, IL 62906
TELEPHONE: 833-5138

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TRACT 1: LOT NUMBER 10 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 2: LOT NUMBER 11 IN WINSTEAD DAVIE'S SECOND ADDITION TO THE TOWN (NOW CITY) OF ANNA, UNION COUNTY, ILLINOIS.

TRACT 3: LOT NUMBERED FOURTEEN (14), EXCEPT 6 FEET OF EVEN WIDTH OFF OF THE NORTH SIDE THEREOF, IN S. W. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, SITUATED IN ANNA COUNTY, ILLINOIS.

TRACT 4: LOT NUMBERED TWENTY-TWO (22) AND 44 FEET OFF OF THE NORTH SIDE OF LOT NUMBER TWENTY-THREE (23) IN S. A. WALTON'S SECOND ADDITION TO THE CITY OF ANNA, IN THE COUNTY OF UNION, AND STATE OF ILLINOIS.

TRACT 5: PART OF THE EAST PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 9, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 6.23 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 6: PART OF THE WEST PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 13.36 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 7: THE SOUTH PART OF THE SOUTHWEST QUARTER IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 22.30 ACRES, MORE OR LESS, SITUATED IN THE COUNTY OF UNION AND STATE OF ILLINOIS.

TRACT 8: THE NORTHWEST QUARTER OF SECTION 16; THE NORTH 84.68 ACRES OF FRACTIONAL SECTION 17, ALSO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID FRACTIONAL SECTION 17; RUNNING THENCE SOUTH 48 RODS; THENCE WEST TO THE WEST LINE OF SAID FRACTIONAL SECTION 17; THENCE IN A NORTHWESTERLY DIRECTION ON THE SECTION LINE 48 RODS, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID FRACTIONAL SECTION 17; THENCE EAST ON THE NORTH LINE OF SAID FRACTIONAL SECTION 17, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE THREE WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS.

TRACT 9: ALL THAT PART OF THE NORTH HALF OF SECTION 15 LYING BETWEEN THE CENTER LINES OF RUNNING LAKE DITCH AND CLOVER LAKE, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15; RUNNING THENCE EAST 2338 FEET; THENCE SOUTH 11 DEGREES 30 MINUTES EAST, 1378 FEET; THENCE SOUTH 27 DEGREES 30 MINUTES EAST, 1509 FEET; TO THE SOUTH LINE OF THE NORTH HALF OF SAID SECTION 15; THENCE WEST 2612 FEET; THENCE NORTH 14 DEGREES 35 MINUTES WEST, 1500 FEET; THENCE NORTH 31 DEGREES 45 MINUTES WEST, 1350 FEET, TO THE PLACE OF BEGINNING, IN TOWNSHIP 12 SOUTH, RANGE 3 WEST OF THE THIRD PRINCIPAL MERIDIAN, IN UNION COUNTY, ILLINOIS.

APPENDIX A

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PERSONAL PROPERTY

- (1) Original records of the Session prior to October 26, 1980, and copies of Session records from October 26, 1980, to November 17, 1983;
- (2) Farm contracts and typewriter contract;
- (3) Copies of books and ledgers;
- (4) All furniture, fixtures, appliances, books, hymnals, and contracts;
- (5) Corporate name of "First Presbyterian Church of Anna";
- (6) The following deposits:

<u>NATURE OF ACCOUNT</u>	<u>INSTITUTION</u>	<u>AMOUNT</u>
1. Checking	Anna National Bank	\$2,157.31
2. Passbook Savings 5598	First Federal of Chicago	6,408.91
3. Passbook Savings 5630	First Federal of Chicago	6,408.91
4. Passbook Savings 5648	First Federal of Chicago	6,408.91
5. Passbook Savings 5655	First Federal of Chicago	6,408.91
6. Passbook No. 32-752601-8	First Federal of Chicago	9,267.58
7. Checking No. 335-599-4	Anna National Bank	1,270.06

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IN THE
In the Appellate Court of Illinois
FIFTH DISTRICT

BYRON W. YORK, JOSEPH VAN ROEKEL,
ALAN V. PAREIS, HELEN WESTBERG,
JOE E. LOGSDON III, and PEYTON KUNCE,
Individually and as Members of THE
ANNA ADMINISTRATIVE COMMISSION II OF
THE SOUTHEASTERN PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA, on behalf of said ANNA
ADMINISTRATIVE COMMISSION II and on
behalf of THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA and SOUTHEASTERN ILLINOIS
PRESBYTERY OF THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA,

Plaintiffs-Appellees,

vs.

THE FIRST PRESBYTERIAN CHURCH OF
ANNA, ILLINOIS, an Illinois Not-For-Profit
Corporation, ANNA PRESBYTERIAN
FOUNDATION, an Illinois Not-For-Profit
Corporation, and CLAIR S. ALBRIGHT,
HELEN OWENS, CHARLOTTE RIFE, JOHN
LUTZ, LISA WELLS, JANE RADER, JOEL
MELLER, NORMAN HICHAM and JOYCE
VERBLE, Individually and as Members
of the Session of THE FIRST UNITED
PRESBYTERIAN CHURCH OF ANNA,
ILLINOIS,

Defendants-Appellants.

Appeal from the
Circuit Court of the
First Judicial
Circuit, For Union
County, Illinois

The Honorable
Donald E.
Garrison,
Circuit Judge.

APPELLANTS' BRIEF

R. CORYDON FINCH,
343 South Main Street
P. O. Box 516
Anna, Illinois 62906
Telephone: (618)833-5138
Attorney for Appellants

ORAL ARGUMENT REQUESTED

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No. 5-83-0716

IN THE
In the Appellate Court of Illinois

FIFTH DISTRICT

BYRON W. YORK, JOSEPH VAN ROEKEL,
ALAN V. PAREIS, HELEN WESTBERG,
JOE E. LOGSDON III, and PEYTON KUNCE,
Individually and as Members of THE
ANNA ADMINISTRATIVE COMMISSION II OF
THE SOUTHEASTERN PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA, on behalf of said ANNA
ADMINISTRATIVE COMMISSION II and on
behalf of THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA and SOUTHEASTERN ILLINOIS
PRESBYTERY OF THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES OF
AMERICA,

Plaintiffs-Appellees,

vs.

THE FIRST PRESBYTERIAN CHURCH OF
ANNA, ILLINOIS, an Illinois Not-For-Profit
Corporation, ANNA PRESBYTERIAN
FOUNDATION, an Illinois Not-For-Profit
Corporation, and CLAIR S. ALBRIGHT,
HELEN OWENS, CHARLOTTE RIFE, JOHN
LUTZ, LISA WELLS, JANE RADER, JOEL
MELLER, NORMAN HICHAM and JOYCE
VERBLE, Individually and as Members
of the Session of THE FIRST UNITED
PRESBYTERIAN CHURCH OF ANNA,
ILLINOIS,

Defendants-Appellants.

Appeal from the
Circuit Court of the
First Judicial
Circuit, For Union
County, Illinois

The Honorable
Donald E.
Garrison,
Circuit Judge.

APPELLANTS' BRIEF

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POINTS AND AUTHORITIES

I. Both Civil and Denominational Law Permit A Congregation To Sever Its Relationship And Withdraw From A General Denomination, Maintaining Ownership And Control Of Its Property. (p. 19)

Ferraria v. Vasconcellos, 31 Ill. 25 (1863) (p. 20);

Watson v. Jones, 80 U.S. 666 (1872) (p. 21);

Illinois Classis v. Holden, 296 Ill. 473, 122 N.E. 46 (1919) (p. 23);

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) (p. 25);

Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1979) (p. 25);

Jones v. Wolf, 443 U.S. 595 (1979) (p. 32);

Lowe v. First Presbyterian Church, 56 Ill.2d 404, 308 N.E.2d 801 (1974) (p. 21).

II. Defendant Corporation Was Deprived Of Its Property Without Due Process Of Law, Thereby Precluding Deference. (p. 35)

Gonzales v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929) (p. 37);

Lowe v. First Presbyterian Church, 59 Ill.2d 404, 308 N.E.2d 801 (1974) (p. 37);

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) (p. 37);

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) (p. 41);

Drell v. American National Bank & Trust Company, 57 Ill.App.2d 129, 239 N.E.2d 101 (1905) (p. 37).

III. There Was No Decision, Resolving The Actual Property Dispute, For A Civil Court To Enforce, Thereby Necessitating Application Of Neutral Principles. (p. 43)

Watson v. Jones, 80 U.S. 666 (1872) (p. 46);

Lowe v. First Presbyterian Church, 56 Ill.2d 404, 308 N.E.2d 801 (1974) (p. 46);

Presbytery v. Jaeggi, Missouri Court of Appeals, No. 46180, ___ S.W.2d ___ (1984) (p. 47).

THE NATURE OF THE ACTION AND THE JUDGMENT APPEALED FROM

This action was brought for declaratory judgment and equitable relief.

There was a three-day bench trial.

The Judgment appealed from renders declaratory and equitable relief, including a mandatory injunction directing Defendants to convey real property to Plaintiffs.

The Judgment is not based on the verdict of a jury.

No question is raised on the pleadings.

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ISSUES PRESENTED FOR REVIEW

- I. WHETHER BOTH CIVIL AND ECCLESIASTICAL LAW DO NOT PERMIT A CONGREGATION TO SEVER ITS RELATIONSHIP AND WITHDRAW FROM A GENERAL DENOMINATION, MAINTAINING OWNERSHIP AND CONTROL OF ITS PROPERTY.
- II. WHETHER DEFENDANT CORPORATION WAS DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.
- III. WHETHER THERE WAS ANY DECISION, RESOLVING THE ACTUAL PROPERTY DISPUTE, FOR A CIVIL COURT TO ENFORCE.

STATEMENT OF FACTS

In 1866 a Presbyterian congregation was organized in Anna, affiliated with a Presbytery which was a part of the institutional predecessor of The United Presbyterian Church in the United States of America [hereinafter "UPCUSA"]. [PX. 4; T. 501-504; 120].

I. The Structure and Government of the Parties

UPCUSA was in 1866 and is now a voluntary religious association. UPCUSA has a structure and system of government defined in that part of its "Constitution" called "*The Book of Order*" [PX. 1].

That Constitution organizes UPCUSA in a governmental structure of ascending representational bodies of *ecclesiastical* authority called judicatories. These judicatories are called Session, Presbytery, Synod, and General Assembly [hereinafter "GA"].

The governing body of a congregation is called a "Session", and consists of pastor and persons elected by the congregation. The Constitution mandates that each congregation incorporate [PX. 1; ¶ 62.04]. In 1975, the Anna congregation was incorporated as "The First United Presbyterian Church of Anna, Illinois", under the Illinois "General Not-For-Profit Corporation Act" [PX. 24-B] (hereinafter "Defendant Corporation").

Thereupon, the Board of Directors, referred to as the "Session" [T. 640], had plenary authority "over all the affairs" of the church, *except those specifically granted to the pastor, the congregation, or a higher judicatory.*" [PX. 1, ¶ 41.08, 62.04; DX. 2, p. 47-48]

A "Presbytery" is a geographical organization, consisting of all ministers in the geographical area and one lay person from each congregation, who meet together several times each year. [PX. 1; Ch. XII] (The Presbytery of Southeastern Illinois is hereinafter included in references to "UPCUSA" unless the context requires otherwise, in which case the reference will be to "Presbytery".)

The Constitution grants not general, but enumerated powers to Presbytery [PX. 1, ¶42.08], including certain specified powers over a local congregation: (1) a kind of Administrative Review [PX. 1, ¶ 83.01 et seq.; DX. X, p. 78-79] being a limited review of books and records [DX. W; T. 775-776]; (2) the approval of certain sales, mortgages and leases [PX. 1, ¶ 52.08, 62.12; DX. X, p. 64, 83-84], (3) the authority to dissolve churches [PX. 1, ¶ 42.08] under specified conditions [PX. L, ¶ 62.11], according to a prescribed procedure [DX. X., p. 74-75], and (4) the power of removal of members of a Session [PX. 1, ¶ 41.15] according to a prescribed procedure [DX. X., p. 56]. Ad hoc "Administrative Commissions" are appointed by Presbytery to aid in performance of functions (3) and (4).

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A "Synod" is the next judicatory including a geographic region covering a number of presbyteries, which was not involved in this case.

GA is a judicatory meeting annually and consisting of representatives appointed by presbyteries. It has specified authority on questions of doctrine, interpretation and record review brought from lower judicatories in the form of complaints or appeals [PX. 1, ¶ 44.09, 44.10]. It does not have power to make law or amend the Constitution; amendments are effected only by a prescribed procedure [PX. 1, ¶ 64.06; DX. X, p. 159-160] whereby GA proposes an amendment to all presbyteries, and approval by presbyteries and by the next annual GA is necessary before the amendment becomes a part of its Constitution.

The principal officer of both a presbytery and GA is called the "Stated Clerk" [PX. 1, Ch. XXVI]. The Stated Clerk of Presbytery has extensive powers and functions [T. 695, 702-711], including that of being a quasi-legal counsel to Sessions [T. 703-704]. The GA Stated Clerk likewise has administrative, advisory and ceremonial functions [T. 11], he edits and publishes [T. 16, 107-108] *Presbyterian Law for the Local Church* [DX. 2] and *Presbyterian Law for Presbytery and Synod* [DX. X], and is mandated to testify in civil litigation [T. 75].

II. History and Nature of UPCUSA Power Over Sessions and Property

In 1866, the *relationship* between a local church and the UPCUSA was based upon the Constitution. That was established by a committee on the constitutional power of the GA in 1856 [T. 366]. A report of the 1856 GA stated that the

“constitution is the sole bond of our union. We are united externally and formally only as that unites us.” [T. 367]

In 1869, the GA, faced with the voluntary withdrawal of synods, presbyteries, and local churches, took no action other than simply to resolve that the clerk “be directed to drop their names from the list of our synods and presbyteries and they are no longer to be regarded as part of the Presbyterian Church under the care of the assembly.” [T. 350]

In 1874, the GA further reiterated that the GA “cannot deny the right of the congregation or the minister to withdraw from the jurisdiction of either a classis or presbytery * * * the question of property being left to the civil tribunal.” [T. 351-354]

These actions of the GA pertaining to withdrawal all had “to do with the severance of congregations from the general church” [T. 404, 412], and where within the constitutional structure of UPCUSA [T. 405, 409, 418].

Nothing in the Constitution did, at that time, preclude withdrawal, disconnection or severance. (Hereinafter, unless a specific context otherwise requires, the term “severance” will be used to describe the unilateral acts of local congregations variously described as withdrawal, disassociation or renouncing of jurisdiction from or of, UPCUSA.)

In 1927, the GA unanimously [T. 425] adopted a report of the Special Commission of 1925, called the Swearingen Report. The Swearingen Commission [DX. W; T. 767] specifically dealt with “the constitutional authority of the General Assembly”, establishing that the GA “has limited, defined and delegated powers [T. 328], and that it would be “intolerable if the General Assembly whose powers are limited by the constitution, could even when sitting as a judicial court, amend by indirection the organic law of the church, which contains within itself provi-

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sions for effecting orderly change." [T. 329] UPCUSA admitted the Swearingen Report was authoritative [T. 86]. A 1981 Report of the Stated Clerk, containing an opinion of the Permanent Judicial Commission of the GA [T. 425], cited the Swearingen Report as "a determinative point" in the history of the church [T. 425], drawing "together nearly 200 years of Presbyterian constitutional development" and "is now considered the authoritative statements of these constitutional principles." [T. 326] The thrust of that Report was that the General Assembly "has limited, defined and delegated powers" [T. 328].

The Swearingen Report also refutes the often-asserted claim that higher judicatories have *general* authority over lower judicatories under a concept referred to as "Review and Control." The Report clarifies that the "Review and Control" notion is employed to describe only one specific power which is narrowly confined to presentation, review, and inquiry into facts reflected by the records. [DX. W; T. 775-776]

In 1929, an attempt to insert a trust provision in the Constitution failed. [T. 119; DX. AA, at T. 782-785] The proposed amendment would have added the following language to the predecessor of Section 62.04 of *The Book of Order*:

"The charter or articles of incorporation shall declare that its property is held in trust under the Constitution of and for the Presbyterian Church in the United States of America."

This proposed amendment was rejected [DX. BB, at 786-787], and therefore never became a part of the Constitution.

In 1930, the GA approved a practice whereby, upon a local congregation's giving evidence of withdrawal, "their name

ought also to be struck from the list of congregations belonging to the presbytery". [T. 347]

In 1956, UPCUSA published "*The Pastor's Guide*" [DX. F, at T. 712], wherein the UPCUSA admits that it is not "hierarchical" [T. 722-723], but rather, is a representative democracy [T. 723].

In 1975, the Constitution mandated civil incorporation of local congregations:

THE BOOK OF ORDER, Chapter XXXII, Paragraph 62.04 Each particular church shall be incorporated, cause a corporation to be formed and maintained * * * to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution."

In January, 1975, the Anna congregation was incorporated as "The First United Presbyterian Church of Anna, Illinois". [PX. 24-B]

In 1979, the United States Supreme Court decided *Jones v. Wolf*.

In July, 1980 [PX. 6, T. 505-510], UPCUSA proposed to amend its constitution to insert a trust provision [T. 509]. In its proposal, it admitted that the amendment (1) would "make explicit UPCUSA's *understanding*" of property holding, (2) was responsive to the decision in *Jones v. Wolf*, and, (3) addressed instances where a congregation withdrew from UPCUSA [T. 506]. It also admitted that the amendment merely was "consistent with our constitution" [T. 507] (admitting by implication that no trust arrangement had been a part of the Constitution.)

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Further evidence of UPCUSA's lack of any property control is UPCUSA's 1980 BLUEBOOK [PX. 3], which, as explanatory matter, included an Appendix entitled "Implications of Presbyterian Theology and Polity for the Holding of Presbyterian Ecclesiastical Property," wherein a Princeton Theological Seminary Professor "searches the official theological standards in vain for theological assertion of the organic character of the UPCUSA denomination, or of the implications of such unity for maintaining control by the denomination of property of its local congregations." [PX. 3, p. 31] There was no evidence by UPCUSA opposing that observation, which was a part of the information UPCUSA itself circulated internally.

On July 2, 1980, in connection with the controversy over the proposed amendment, Presbytery's Stated Clerk Hale met with Defendants. He had been Stated Clerk for more than 25 years [T. 126], as a paid employee thereof [T. 177-178]. The Stated Clerk was the usual channel for any question as to the proper approach to presbytery [T. 703], was required to be "acquainted with the constitution and how to use it" [T. 703], with the duty to "research questions re presbyterian law for clerks of session and members of presbytery" [T. 704]. In summary, the Stated Clerk was charged by presbyterian law to be the most knowledgeable and central to the operation of presbytery/local church relations [T. 703-710]. According to UPCUSA's own authorities, no more knowledgeable person was available to represent the UPCUSA to the local church. Stated Clerk Hale did two things at the July 2, 1980 meeting: he circulated a tract [PX. 21, T. 635-636] denying that UPCUSA had a hierarchical order of government [T. 636]; and, upon inquiry as to whether UPCUSA was a hierarchical or constitutional church, replied that the UPCUSA was "a constitutional church". [T. 445]

III. Severance and Conveyance.

Defendant Corporation placed reliance upon the Stated Clerk's presentations, and effected severance and conveyance. [T. 447-459].

In 1980, the Constitution granted the "session authority over all of the affairs and activities of the particular church, except such matters as may by this form of government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory." [PX. 1, ¶ 41.08]

On October 16, 1980, the Board of Directors of Defendant Corporation proposed amendments to its Articles of Incorporation to effect severance from UPCUSA. [PX. 22-23, T. 637-638], and gave notice to members of the corporation of the amendments to delete references to UPCUSA and effect severance. [PX. 24, T. 639-644]

On October 26, 1980, the corporation amended the Articles and By-Laws by a vote of 98 in favor and 28 opposed, effecting severance. [DX. A, T. 734-754] At the same time a separate resolution authorized transfer of title of the congregation's assets by a vote of 100 to 15. [T. 743] On October 27, 1980, Anna Presbyterian Foundation, an Illinois general not-for-profit corporation, was issued a Certificate of Incorporation. [PX. 26] On October 28, 1980, Defendant corporation conveyed by Warranty Deed to Defendant The Anna Presbyterian Foundation all its real property. [PX. 27]

IV. Expert Witnesses On Severance

UPCUSA's only attempt at expert testimony on the effect of severance was by its Stated Clerk, William Thompson. Thompson was employed by UPCUSA at a substantial income [T.

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74-75], and one of his "mandated duties" was to represent UPCUSA in civil litigation. [T. 75] Before becoming Stated Clerk he was a lawyer engaged principally in litigation [T. 76] He had testified previously in excess of 15 times in cases like this. He claimed "a greater than usual knowledge" of UPCUSA's polity [T. 76], but did not claim to be an expert in the history of UPCUSA [T. 77]. As a matter of interest and bias, he admitted UPCUSA was partially financing this litigation [T. 78]. He was not a disinterested witness.

Thompson admitted that the *Book of Order* expressly provides that it has no civil effect, and that ecclesiastical discipline is not attended with any civil effects [T. 102-103]. He also admitted that the *Book of Order* expressly neither prescribes a procedure for, nor proscribes, severance, but that it was "silent on this point". His sole basis for concluding that withdrawal was prohibited was a provision [PX. 1, ¶ 82.12] authorizing withdrawal of an individual member, he reasoning that "[M]y including in the Constitution this explicit reference to the withdrawal of the individual member and omitting any reference to the withdrawal of a group of persons purporting to be a congregation, the constitution prohibits the latter." [T. 123] Thus, by convoluted negative inference from an omission did Thompson hope to infer a severance prohibition. Thompson's negative inference was something he had not theretofore included as part of the law of UPCUSA. As Stated Clerk, he prepared and edited *Presbyterian Law For The Local Church* [DX. 2] which was in effect in 1980 [T. 107]. He admitted that in that book he attempted to "set forth for the people in local churches the Presbyterian law as it pertains to them as pastors, elders, as sessions * * * * by which it is at least suggested by the general denomination that the people in local churches operate their affairs, * * *". [T. 107-108]. The publication does not state that it does not purport to be exhaustive of Presbyterian

Law. Thus *Presbyterian Law For The Local Church*, like the *Book of Order*, neither prohibits severance, nor indicates any civil effect on the Defendant Corporation's property upon severance. And, it "publishes the law of the United Presbyterian Church as [Stated Clerk Thompson] understand[s] it" [T. 92].

Defendant's expert witness, Dr. Clyde Henry had Bachelor's and Master's degrees in theology from UPCUSA's Princeton Theological Seminary [T. 243-244], had been an ordained minister in UPCUSA from 1940 until retirement in 1979 [T. 44] and had held a number of offices in various presbyteries and participated in various capabilities in several GA's [T. 246-249]. He had made an extensive study of the history of the Presbyterian Church [T. 253], had written articles for presbyterian publications, and was an editorial advisor to the *Presbyterian Lay Committee* [T. 255-256]. He had qualified as an expert witness in similar civil litigation, and tendered his qualifications in the field of presbyterian polity, history, and theology, including "the constitution of the church and the meaning of the constitution as it applies to all of the structures of the church" [T. 259-260]. He was a member of UPCUSA, and a member in good standing of the Presbytery of New Brunswick. [T. 258-259]. No attempt was made by Plaintiff to rebut his testimony. He was truly a disinterested witness.

Dr. Henry states his expert opinion to be that no concept forbade a congregation unilaterally from severing its relationship with UPCUSA [T. 343-345]. He demonstrated the historical basis for his opinion by the literature of the church, and the GA acquiescences to severance cited above in the HISTORY. These instances of severance were, in his opinion, within the constitutional structure of UPCUSA [T. 405, 409, 418]. As a further historical basis for the absence of any prohibition against a congregation withdrawing with its property, Dr. Henry cited the Loetscher article in UPCUSA's BLUEBOOK, cited above.

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V. Upcusa's Remedies Required Due Process

UPCUSA's Constitution provides Presbytery only two remedies for effecting control of a congregation still within its jurisdiction—dissolution and session-removal. [T. 58] UPCUSA's Amended Complaint alleged both dissolution [C. 59, ¶ 13; C. 63, ¶ (6)] and session-removal [C. 60, ¶ 13; C. 64, ¶ (9); C. 67; ¶ B]. However, Stated Clerk Thompson, after reviewing Presbytery's action [DX. Y, T. 674-683], admitted that Presbytery did not pursue dissolution [T. 125-126].

Either way, Presbytery was, and UPCUSA alleged that it was, required to follow certain prescribed procedures, according to Defendant Corporation "a full opportunity for hearing" [C. 60, ¶ 13] including some kind of notice [C. 64, ¶ 22].

UPCUSA's mandated procedure for session removal is set forth in *Presbyterian Law for Presbytery and Synod*:

Form of Government, Chapter XI, Section 15, requires that a *full opportunity to be heard* be accorded to a session in question *before a commission is named with the full power of a session*. "Until a full opportunity to be heard has been accorded the session, the *presbytery cannot lawfully remove it . . . the failure to grant the session an opportunity to be heard on the reasons for its removal invalidates the action of presbytery in removing the session.*" (M. 1963, pp. 311-312). The *presbytery itself should give this opportunity to be heard to a session when a commission is recommending the suspension or removal of the session, * * * it is apparent that the opportunity to be heard is not sufficient if it is confined to the administrative commission.* [DX. X, p. 56, emphasis supplied.]

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Stated Clerk Thompson also admitted that the foregoing “when it deals with removal of a session provides that the opportunity to be heard be an opportunity to be heard *on the reasons for the removal* of the session, * * *” [T. 96]. He also admitted, explicitly, that “*in the application of the compulsory deference principle to ecclesiastical type of decision making body, * * * it is necessary and Presbyterian law prescribes that there be fundamental due process in terms of information being given as to the nature or reasons for something and an opportunity to be heard on those, * * **” [T. 90-91; Emphasis Supplied].

In further elucidation of the “full opportunity” concept in terms of “fundamental due process”, Thompson admits that the dissolution-remedy procedures explicitly provide for “due process type of procedure upon a Presbytery attempting to dissolve a particular church” [T. 94-95], and that the two remedies require equivalent procedures: “[I]n the event that the Presbytery elects the remedy not of dissolution, but of removing the session, *equivalent* fundamental due process proceedings are contemplated by the *Presbyterian Law for the Presbyterian and Synod*” [T. 95-96].

The dissolution proceeding requirements are even more detailed and divided *sequentially*, emphasizing *first* a hearing on the initial Administrative Commission report [DX. X, p. 74, ¶ (3)] only then to be followed by a notice of the “opportunity to be heard” at a time and place “reasonably convenient”, which shall command appearance to “show cause” (DX. X., p. 74, ¶ (3)); at that hearing Presbytery is to “consider all the evidence, testimony, and arguments * * * [DX. X, p. 75].

Further confirmation that “full opportunity to be heard on the reasons for removal” contemplates notice to the session *after* a commission investigates *and reports to the Presbytery*,

appears in Thompson's OPINION OF THE STATED CLERK [T. 499] where the *sequence* is quite clear that only *after* the Presbytery decides to consider, in that case dissolution, is notice of hearing, and subsequent conduct of a hearing, appropriate and contemplated.

VI. Presbytery Proceedings

On November 13, 1980, Presbytery created the first Administrative Commission to investigate Defendant Corporation and make recommendations [PX. 32, T. 650, at 669].

A. Notice

A letter was sent by the Stated Clerk on November 14, 1980, addressed to the "Clerk of the Session", stating that an Administrative Commission had been appointed to "recommend to the presbytery whether or not the Anna Session should be removed", of a "possible hearing" on a "possible recommendation", and a date upon which the Administrative Commission would "report its findings and recommendations". [PX. 33, T. 671]. The letter was not sent to any person who was a member of the Board of Directors of Defendant Corporation. The name of no person to be removed was stated. The letter stated no reason for removing any person. So notice was not actually given "to the session" as UPCUSA alleges [C. 64, ¶ 22]; Hale sent the letter requiring a return receipt. It was received November 15 [T. 672], 5 days before what turned out to be the critical "hearing". Hale, "by his recollection", notified the pastor [T. 167], but produced no receipt; the pastor's un rebutted testimony was that he did not receive any such notice [T. 462-463]. No provision in Presbyterian law provides that notice to a clerk constituted substituted service on any other person. *The Book of Order* [PX. 1, ¶ 56.01] states the duties of a Clerk

to be only clerical and pertain to record keeping. Presbytery produced no evidence whatsoever of either any attempt actually to notify any member of the Board of anything about potential removal, much less any reason therefor. No reason existed at that time. As appears *infra*, reasons given for removal were only developed and stated by Administrative Commission Chairman York within only a brief time before the 3:00 o'clock Saturday afternoon meeting on November 20.

On November 15, 1980, there was an informal meeting in Cobden with a minority of Defendant Corporation's Board of Directors [T. 218; DX. Y, at T. 676, ¶ 7]. All members were not notified [T. 218-219; 676, at ¶ 4]. The members who did attend the November 15 meeting were not told, much less notified, that removal was being considered, nor any reasons therefor given, the Administrative Commission regarding its task simply has "to listen, and to ask questions" [DX. Y; T. 676, at ¶ 8].

Pastor Albright had been told that Presbytery was meeting on November 20 to receive a Commission report. Albright was not told removal was "a possibility", nor were any reasons given for removing anyone from any office. [T. 47-49; T. 473-475].

B. Full Opportunity for Hearing on Reasons for Removal

All semblance of charges and hearing occurred on and between November 15th and 20th. Administrative Commission Chairman York admitted that between the creation of the Administrative Commission and the Presbytery meeting on November 20, there was a "constraint of time" [T. 199]. So, at the end of the Cobden meeting, the Administrative Commission "made an outline and decided what they were going to say and how they were going to say it" [T. 244]. After that, York prepared a report [T. 224-225]. The only persons seeing the report before the November 20 meeting were Commission

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members [T. 225]. The report was presented at 3:00 o'clock p.m., on November 20. Of his presentation, he said "I believe I read these three pages" [T. 226]. "The next thing that happened was a very brief discussion" [T. 226]. York did not "present any evidence of any witnesses showing anything that was said in the report was true" [T. 226]. Although a member of the minority from Anna [DX. CC; T. 788] was present, he did not testify or reiterate "what was in the report" [T. 227].

Nonetheless, Presbytery, upon receipt of the report and recommendation, voted immediately then to approve and adopt it [DX. Y, T. 682-683].

Presbytery did not, after receiving the report, then give notice of a hearing on its contents to Defendant Corporation or its Board, as the *sequence* prescribes.

Moreover, Presbytery's decision did not even mention severance or any claim to Defendant Corporation's property, which is what the civil suit requests, and was granted, relief for. [See ARGUMENT, III, *infra*.]

Yet, the Presbytery "decision" to which UPCUSA maintains [T. 100-102] this Civil Court is compelled to defer, and to which the Trial Court did defer, states only:

"2. that the Session of the First United Presbyterian Church of Anna be removed for reasons stated in the Commission's report, in accordance with Chapter XI, Section 41.15, of the Form of Government, and that an Administrative Commission be appointed with full powers of the Session;" [T. 682]

VII. Sequel

Effective May 23, 1981, UPCUSA finally amended *The Book of Order*, providing:

All property held by or for a particular church, *** is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

ARGUMENT

I. **Both Civil And Ecclesiastical Law Permit A Congregation To Sever Its Relationship And Withdraw From A General Denomination, Maintaining Ownership And Control Of Its Property**

Defendant Corporation on October 26, 1980, severed its relationship with UPCUSA, before Presbytery appointed an Administrative Commission in November, 1981, and before the GA adopted its Property Amendment in 1981. At the time of severance, neither civil law nor UPCUSA's Constitution precluded Defendant Corporation from withdrawing, with its property, from its voluntary association with UPCUSA.

An historical review of the development of state and federal case law, concurrent with the history of Presbyterian law and usage, unequivocally demonstrate that Defendant Corporation's severance, prior to any litigation either within UPCUSA or civil court, has continually been regarded as effective to remove a corporation *and its property* from any control or jurisdiction of UPCUSA, and from application of compulsory deference. More particularly, there is no applicable precedent for holding that a severed corporation, or its property, remains subject to the control of a general denomination, whether by utilization of the compulsory deference notion or assertion of the "hierarchal" power of UPCUSA. In order fully to demonstrate, both the cases relating to severance, and those not relating to severance but constituting instances of compulsory deference or hierarchal assertion, will be discussed in historical sequence.

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Ferraria v. Vasconcellos, 31 Ill. 25 (1863): This is an early severance case involving UPCUSA's predecessor. There, a congregation acquired property; then became associated with the Presbytery of Sangamon, and two years later a majority of the congregation voted to sever. [Id., at 28-29.] After severance, as in the case at bar, Presbytery appointed a committee to investigate and report back. The minority faction, as adherents to Presbytery, then sued in equity for restoration of the property. The issue before the Supreme Court, after several remands, was for the purpose of determining "the law and usage of the Presbyterian Church on this question of withdrawal, and the effect and consequences of a withdrawal." [Id., at 34]

The Supreme Court reviewed a voluminous record of evidence of stunningly similar import and effect as the evidence in the case at bar, including the status of the law of UPCUSA at the time of defendant congregation's severance. That evidence was (and still is): (1) the Constitution and the usages of the Presbyterian Church neither provide for nor preclude severance [Id., at 34-35]; (2) the effect of severance is simply the striking of the church's name from Presbytery's role [Id., at 36], and (3) the right to church property upon severance is determined, not by ecclesiastical, but by civil courts [Id., at 37-38]. However, since after reviewing the evidence as to the withdrawal procedure, the court is not sure of the propriety of the voting [Id., at 46], it therefore is unable equitably to award the property exclusively to the majority or the minority.

Significantly the Court does conclusively determine [Id., at 53] that the congregation was not prohibited from severance, and that the entire congregation, which owned the property before the severance, still owned the property after severance [Id., at 53]. Only because of uncertainty about propriety of the voting, does the court determine that the only equitable remedy

is partition and sale with proportionate division of proceeds between the factions of the congregation. The principle, however, of the Supreme Court's giving effect to severance is not mitigated by the facts peculiar to that case. In the case at bar, the property was owned by an Illinois corporation, and the propriety of the intra-corporate proceedings effecting severance were not questioned by UPCUSA.

Watson v. Jones, 80 U.S. 666 (1872) is urged by UPCUSA as the initial and controlling United States Supreme Court authority compelling civil courts' deference to so-called "hierarchal" churches' tribunals in all cases of intra-denominational disputes. *Watson* is also cited by the Illinois Supreme Court in *Lowe v. First Presbyterian Church*, 56 Ill.2d. 404, 308 N.E.2d 801 (1974), as one of the bases for that decision, which will also be urged by UPCUSA as controlling.

Both UPCUSA and the Trial Judge believed that *Watson* indiscriminantly controlled all issues in the case at bar, broadly interpreting *Watson* to mandate application of "compulsory deference" to all decisions and desires of "hierarchal" churches under all circumstances. However, the *Watson* facts and issues dealt neither with severance, nor a property dispute.

Watson's inapplicability to severed congregations, and to property disputes, is therefore of critical importance. Briefly, *Watson* involved congregations claiming adherence to UPCUSA, not severance. *Watson* involved the ecclesiastical questions as to who the "true" office holders were, not who owned property.

Watson's historical setting: GA, in 1865, passed an anti-slavery resolution. Louisville Presbytery then adopted a declaration that the resolution was heretical [80 U.S., at 673]. Then, GA, in 1866, made an ecclesiastical decision dissolving

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every Presbytery disobeying its anti-slavery resolution. As a result Louisville Presbytery, and the Walnut Street Church in Louisville, divided on the issue. Anti-slavery forces in the Walnut Street Church claimed to adhere to UPCUSA; also, the pro-slavery forces in the church claimed they, too, adhered, and that they, too, were the "true" local church. GA, in 1867, decided the anti-slavery adherents were the "true" group. After that decision, both opposing groups still claimed to be the "true" groups, and adherents to UPCUSA. [80 U.S., at 674.]

So, under the *Watson* facts, the competing groups were *both* claiming association with UPCUSA, not to the contrary. Defendant Corporation after severance on October 26, 1980, was not associated with UPCUSA, and did not claim to be. Severance and denial of further voluntary association by Defendant Corporation is significant in that the underlying rationale of *Watson* was based upon the nature of a denomination as a voluntary association. The Court observes [80 U.S. 676, 13 Wal. 728] and recognizes the "right to organize voluntary religious associations ****" and that "all who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." The Court did not face the issue of what happens when a congregation decides no longer voluntarily to associate, and proceeds to sever. Because, the GA decision—that the anti-slavery groups were doctrinally the "true" congregation—actually dealt with the opposite of severance.

Equally as importantly, *Watson* was not a property dispute. In *Watson*, property control turned upon who held local church offices, and that was the focus of the dispute. There, unlike the case at bar, "[I]t was admitted that both [the deed and the charter] contemplated the connection of the local church with the general Presbyterian One, and subjected both property and the trustees alike to the operation of its fundamental laws" [13

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Wall., at 683]. Not only was there that salient distinguishing fact, rendering the property issue moot; but also, the Court itself, in the opening sentence of its opinion, characterized the controversy as "essentially ecclesiastical" [80 U.S., at 679]. Even further, the Supreme Court's initial statement of the compulsory deference rule applies only to ecclesiastical, and not property, matters: "[W]henever the questions of discipline or of faith, or of ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, * * *" [80 U.S., at 676].

Moreover, throughout the *Watson* Opinion, and even in the Brief of counsel for the general denomination [80 U.S., at 669], it is urged *not* that civil courts defer in matters of property disputes, but only that "civil courts must accept as final the action or decision of an ecclesiastical court *upon an ecclesiastical question*, * * *" [80 U.S., at 669, Emphasis supplied.] Even beyond that, the *Watson* court's own precedential bases distinguished property disputes from cases of deference to already-made ecclesiastical decisions.

Watson's compulsory deference notion is therefore applicable, if at all, where (1) the underlying rationale of *Watson* is satisfied by all parties' consenting to submission to UPCUSA's government—which is not the fact where Defendant Corporation has severed its relationship; and (2) the issues involved are ecclesiastical matters rather than disputes over the title to property.

Illinois Classis v. Holden, 296 Ill. 473, 122 N.E. 46 (1919), next confronted the Illinois Supreme Court with a general denomination's claim that a congregation's withdrawal was contrary to the constitution of the general denomination. There, two congregations, members of a general denomination

called the Reformed Church, voted to sever and convey. Both congregations then applied to the Classis—Reformed Church's version of Presbytery—requesting dismissal, but the Classis determined it had no authority to dismiss. Thereafter, the severed congregations conveyed to congregations which were members of the institutional predecessor of UPCUSA. The Classis then sued the Presbyterian congregations to set aside the conveyance. The Reformed Church apparently contended that according to its constitution and laws, the withdrawal was illegal, constituted a dissolution of a local church, thereby vesting property in the general denomination. It does not clearly appear whether Reformed Church's constitution expressly forbade severance, or whether, like UPCUSA's Constitution, severance is neither precluded nor provided for. The latter appears more likely, given the fact that the Classis' refusal to dismiss was based on its determination of its lack of authority, and the further fact that, in Court, Reformed Church apparently argued, as does UPCUSA in the case at bar, by way of the contorted reasoning that absent any provision relating to severance, severance constitutes dissolution, and therefore the constitutional dissolution remedies apply. But it makes no difference. The fact is that, whether severance provisions were explicit or not, the Supreme Court refused to honor Reformed Church's claim that would have compelled what was initially a voluntary association to become an involuntary association. In other words, the Court was unwilling to hold that once a congregation associates with a general denomination, that congregation, and any property it acquires along the way, are forever bound to the general denomination. To that issue, the Supreme Court simply notes that it "may be that these congregations were subject to the discipline of the Reformed Church, but their property was not subject to the control of the church." [Id., at 477.] And then, applying what are now more elegantly characterized as

“neutral principles of law”, the Court applies a formal-title doctrine to deny relief to the general denomination, noting that the deeds did not, as they could have, contain a declaration in favor of the general denomination.

it should be noted that UPCUSA's predecessor apparently did not urge that compulsory deference be applied, even though the Classis—which claimed to be the judicatory with supervisory powers over the local church as Presbytery does in the case at bar—had made an ecclesiastical decision that severance was not permissible. Apparently, in these circumstances, UPCUSA conceded that the concept of hierarchal supervision and compulsory deference did *not* apply to severed congregations.

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969), was a severance case decided by the United States Supreme Court. The general denomination was the Presbyterian Church in the United States (“PCUS”), which did, as does UPCUSA, characterize itself as “hierarchal”. UPCUSA participated as *amicus curiae*. The Court characterized the case as a “church property dispute which arose when two local churches withdrew from a hierarchical general church organization.” [393 U.S. 441]

There, as here, local churches had severed, an Administrative Commission had been appointed, it acknowledged severance, and proceeded to take over the local church. The local church then sued to enjoin trespassing on its property. PCUS moved to dismiss on the basis of compulsory deference. [*Id.*, 443; 444, footnote 3]. Georgia Courts determined that PCUS had departed from doctrine, that implied trust had terminated, and enjoined PCUS from interfering.

The United States Supreme Court reversed and remanded. Since PCUS had argued compulsory deference, the case is

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sometimes incorrectly interpreted [See *Lowe, infra*] to suggest that the Court reversed on compulsory deference grounds. It did not. *Hull* was remanded with directions not to defer, but to decide on neutral grounds.

Supreme Court commences its analysis observing that "*It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution.*" [Id., at 445] Mr. Justice Brennan then instructively analyzes those cases where there was no issue of severance, but rather, ecclesiastical issues where all parties were members of the general denomination, e.g., *Watson v. Jones*, *Gonzales v. Archbishop*, 280 U.S. 1 (1929) [where the question was who was entitled to a chaplancy in the Roman Church], and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) [involving whether the American or Russian orthodox Church could appoint a Bishop to a Cathedral in New York] as illustrative of proper application of compulsory deference.

Returning to property disputes, the Court emphasizes that compulsory deference, as applied in *Watson*, *Gonzales*, and *Kedroff*, is not operative in property disputes following severance of ecclesiastical relationships:

"This, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. *Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. There are neutral principles of law, developed for use in all property disputes, which can be applied without*

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'establishing' churches to which property is awarded. But First amendment values are plainly jeopardized when church property litigation is made to turn on a resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, Abington School District v. Schenpp, 374 U.S. 203 (1963): The Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, states, religious organizations, and individuals, must structure relationships involving church property so as not to require civil courts to resolve ecclesiastical questions." [Id. at 449, emphasis supplied]

Accordingly, since Georgia had resolved the controversy on the basis of trust theory and the departure-from-doctrine criteria, the case was remanded for resolution on non-religious grounds.

Hull therefore suggests an equation: where a case involves ecclesiastical issues, the First Amendment commands State Courts to defer; contrarily, where severance has occurred and it is axiomatic that the only matter in dispute is property, the First Amendment commands civil courts to decide the property dispute.

Presbytery Of Riverside v. Community Church Of Palm Springs, 89 Cal.App.3d 910, 152 Cal. Rptr. 854 (1979), is a recent instance where UPCUSA recognized the effectiveness of a local church corporation's severance; demonstrating that UPCUSA was, in 1969, still following its historical usage of permitting withdrawal and pursuing civil court determination of property ownership. In that case, the corporation had petitioned through the judicatories for a property settlement. As a final step, the GA's Permanent Judicial Commission did, in 1968, authorize Palm Springs corporation to present its request to withdraw its property to the 1969 GA. Pending presentation to the GA, two events, both analogous to the case at bar, occurred: Riverside Presbytery attempted to take possession of the property whereupon the Palm Springs corporation amended its Articles of Incorporation to delete references to UPCUSA; and, Presbytery then appointed an Administrative Commission to replace the session. Nonetheless, GA then recognized the effectiveness of severance, because, upon presentation of the petition to withdraw to the 1969 GA, GA expressly approved the finding that the petition was filed "by an independent body which has renounced the jurisdiction of UPCUSA, therefore it is not filed by a proper petitioner and cannot be considered by this body." [C. 113-G and 113-H at ¶¶ 15, 16, and 17; Defendants' Admissions Request Exhibit K] Thereupon, following Presbyterian usage and custom of not deciding property disputes within its judicatories, but deferring to civil court resolution thereof, UPCUSA sued for the Palm Springs corporation's property. UPCUSA, of course, argued compulsory deference based on its "hierarchalness", asserting that the California court was compelled to defer to UPCUSA's Administrative Commission's decision. Although the Court questioned whether there had been a final ecclesiastical decision, the fundamental basis for the decision was the *Hull* mandate that the First Amendment com-

mands civil courts to decide church property disputes [152 Cal. Repr., at 859-860], correctly distinguishing the application of compulsory deference to cases involving ecclesiastical, rather than property, disputes.

In *Palm Springs*, as in the case at bar, UPCUSA's approach, despite undisputed severance, was based on the fiction that there remained a local session to be replaced by one of its Administrative Commissions. But, the Court noted that this reasoning disregarded essential facts, namely, that when the Presbytery acted, purporting to suspend the powers of the local session, the church corporation already had severed its association with UPCUSA, for, as the court observed, it was "undisputed that a local church within UPCUSA may withdraw and terminate its affiliation. The only dispute here concerns the ownership and right to possession of property in the name and possession of the local church when that right is exercised. There is no question in this case as to which body is the true Presbyterian church in Palm Springs. Community church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian church * * * * there is no existing religious or ecclesiastical controversy" [152 Cal. Rptr., at 862].

Certiorari was denied by both the state and federal Supreme Courts. [444 U.S. 974 (1979)] UPCUSA has thus learned that it must, in civil litigation, if not within its judicatories [See ARGUMENT, III, *infra.*], dispute severance, as it is doing in this case, albeit without any constitutional basis.

Lowe v. First Presbyterian Church, 56 Ill.2d 404, 308 N.E.2d 801 (1974), was continually asserted by UPCUSA in the Trial Court, and accepted by the Trial Judge, as controlling. *Lowe* was litigation by UPCUSA through one of its Presbyteries

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against a local congregation, which had *not* severed association with UPCUSA. Nonetheless, discussion of *Lowe* becomes necessary in the context of the severance-type cases because of the Trial Judge's misplaced reliance.

The salient flaws in *Lowe* which make it distinguishable as precedent are: (1) it was not a severance case, but rather, a case where the defendant congregation did not deny its association with UPCUSA; (2) the Court misapprehended *Watson* and *Hull*, and therefore unnecessarily felt compelled to depart from Illinois' prior adherence to neutral principles; and (3) the Court was not urged to see the *Watson* and *Hull* distinction between ecclesiastical and property disputes.

(1) As to the significantly distinguishable procedural issues and facts, defendant did not question the "hierarchical" nature of, or its continued association with, UPCUSA. The case was resolved on the pleadings. Fact sequence was also different: the precipitating event was Presbytery's decision to dissolve the congregation and *then* direct liquidation of assets. That ecclesiastical decision was made by Presbytery while the congregation *was a member* of Presbytery. For, defendants admitted the allegation that "Defendants constitute a member church of the Presbytery subject to its control and supervision" and that "Defendant church and all of its operations has always recognized and honored the authority of Presbytery until directed by Presbytery to transfer its property" [308 N.E.2d, at 802].

(2) The Court relied in large part on an interpretation of *Watson* and *Hull* as infusing a kind of general and complete control of the "hierarchical" denomination over its congregations. Integral to this reasoning was the fact that both parties maintained adherence to UPCUSA:

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“The Supreme Court [in *Watson*] noted that the local congregation was a member of the national presbyterian church and subject to its control and system of ecclesiastical government, Therefore since the General Assembly had decided the question, the court was bound by that decision.” [308 N.E.2d, at 804; Emphasis supplied.]

Following that rationale based upon consensuality, the Court determines that the congregation was undeniably a member of UPCUSA, and therefore subject to its rules [308 N.E.2d, at 805]. Defendant’s continued membership constituted consent to UPCUSA’s form of government—contrary to the situation in the case at bar. Under that fact situation, the Supreme Court felt that the Forest Park congregation was bound by the decision of the church tribunal, and because of the Court’s understanding of *Watson* and *Hull*, the Court felt that it could not review that decision.

(3) The Court’s misapprehension of *Watson* and *Hull* was based on a failure to recognize the distinction between ecclesiastical disputes and property disputes.

The *Watson* controversy was “essentially ecclesiastical” [80 U.S., at 679], and deference was urged [80 U.S., 669] and granted [80 U.S., at 676] upon “questions ecclesiastical”. The *Watson* opinion by no statement suggests deference in property disputes. Further, the *Watson* rationale, founded upon its allusion to First Amendment considerations [80 U.S., at 676] and civil courts’ incompetence in “ecclesiastical law and religious faith” [80 U.S., at 677], cannot be extrapolated to encompass property disputes.

Reliance on *Hull* was similarly misplaced. *Hull*, only by cursory reading—i.e., focusing upon the PCUS motion to dismiss on the basis of compulsory deference, and the fact that the Court did in fact reverse—, can appear to adopt compulsory deference. However, as the discussion above shows, *Hull* not only rejected PCUS's deference argument, but also clearly mandated both that compulsory deference was constitutionally impermissible in the property dispute in that case, and that neutral principles of law were to be applied.

In summary of *Lowe*, the Court's reliance on *Watson* and *Hull* constituted a deviation from Illinois' prior use of neutral principles of law, as embodied in the corporate-title and formal-title doctrines, which was amply demonstrated by the dissent. Had *Watson*, and even more so, *Hull*, been properly and completely presented, Illinois' apparent deviation from a history of application of neutral principles would not have occurred, although the result may have been the same.

Jones v. Wolf, 443 U.S. 595 (1979) involved the United States Supreme Court in a property dispute following a congregation's severing from PCUS, the denomination involved in *Hull*. The issue was "whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law', or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." [Id., at 597] UPCUSA again appeared as *amicus curiae*. [Id., at 596-597, *note.] PCUS and UPCUSA are of similar structure, and both claim "hierarchal" powers. [DX. A]

PCUS again urged compulsory deference, based on its "hierarchal" nature; the Court, following *Hull*, affirmed "neutral principles". As in the case at bar: severance was the

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initiating event, Presbytery "appointed a commission to investigate", and the commission issued a decision declaring the minority faction "the true congregation," which then sued in Georgia Courts for the property. Georgia Courts applied "neutral principles", as did the Supreme Court, to deny PCUS' claim. The *Jones* holding is that the First Amendment does not compel a court to defer to a "hierarchical" tribunal in deciding a property dispute with a severed congregation. At the same time, the Court subscribed to *Watson's* rationale proscribing a court from deciding ecclesiastical disputes, involving "doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith."

Because of a statement in *Jones* regarding the nature of the First Amendment limitation, the case is cited by "hierarchical" churches as also broadly approving deference in all kinds of church disputes. The Court stated:

"Subject to these First Amendment limitations, however, the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes. Indeed, 'a state may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" [Id., at 602, quoting from *Md. & Va. Churches v. Sharp-berg Church*, 396 U.S. 367 (1970)]

In *Md. & Va. Churches*, a brief Per Curiam and concurrence dismissing an appeal for lack of federal question, the Supreme Court briefly considered, and alternately approved both neutral principles and compulsory deference, although the approval of the *Watson* approach was clearly premised upon consentuality, since the Concurrence indicates that deference may apply *both*

to hierarchal and congregational denominations, clearly showing that deference is limited to instances of there being *one* entity of government, rather than separate, severed, entities.

Jones therefore is not a blanket mandate for deference in every case, irrespective of events leading to the property dispute. Because, as appears later in the opinion, the events leading to dispute, including "the language of the deeds, the terms of the local church charters, 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" may be considered in determining each State's approach. The point of *Jones* is simply that the First Amendment, itself, does not dictate a particular approach.

Moreover, that neither the First Amendment, nor even *Watson*, always compel deference, appears from the Court's observation [*Id.*, at 603, note 3] that *Watson* "stated that, regardless of the form of church government, it would be the 'obvious duty' of a civil tribunal to enforce the 'express terms' of a deed, will, or other instrument of church property ownership. [13 Wall., at 722-723".] So *Watson* is *not* an inviolable rule of compulsory deference in *every* case involving a "hierarchal" church, oblivious to neutral principles.

UPCUSA had not, before the dispute about Defendant Corporation's October, 1980, severance erupted, indicated any interest in Defendant Corporation's property, in its Constitution, in deeds, or other instruments, as PCUS also had not [DX. A], but as apparently had been done in the Walnut Street charter and deed in *Watson* [13 Wall., at 683]. Equally applicable, then, to the circumstances in *Watson v. Jones*, *Jones v. Wolf*, and the case at bar, is the *Jones v. Wolf* observation:

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"At any time before the dispute erupts, the parties can insure, 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." [Id. at 606; Emphasis supplied.]

But UPCUSA did, after the dispute in this case erupted, amend its constitution and recite an express trust. By that amendment, and especially by its admission that it was in response to *Jones v. Wolf* [T. 506], did UPCUSA place a practical construction on its pre-amendment lack of control over Defendant Corporation's property.

In conclusion, no Illinois or United States Supreme Court precedent compels this Court to defer to any decision of Presbytery, where a congregation has, prior to the dispute, severed with property titled in its corporate name, even had Presbytery afforded due notice and hearing (which it did not (Part II, *infra*) and even had Presbytery actually decided the severance/property-dispute issues (which it also did not (Part III, *infra*)).

II. Defendant Corporation Was Deprived Of Its Property Without Due Process Of Law, Thereby Precluding Deference

Presbytery's decision, and the Trial Court's deference thereto, denied Defendant Corporation due process of law. Presbytery's decision was (1) without notice to any person who was to be removed from any office, (2) without notice of any reason for removal, i.e., without charges, and (3) without op-

portunity for full hearing, or preparation therefor. That procedure was therefore totally violative of UPCUSA's own due process requirements, and totally arbitrary in violation of well-defined civil due process requirements of notice and hearing. Accordingly, Presbytery's violation of those due process guarantees prohibit a civil court from deferring to Presbytery's decision.

UPCUSA had specific procedural rules for its dissolution and session removal remedies [STATEMENTS OF FACTS, V.], which were designed for the purpose of permitting a civil court constitutionally to apply compulsory deference [T. 90-91]. But, Presbytery's actual notice-and-hearing procedure was devoid of any semblance of conformity with its procedural rules [STATEMENTS OF FACTS, VI.]. The procedure actually followed was indeed swift, and egregiously arbitrary: The entire process, from appointment of the initial Administrative Commission to Presbytery's decision, was executed in seven days; the purported notice was not delivered until only five days were remaining to prepare for a "possible" hearing on un-stated issues; there was no notice of any reason for removal; there was no notice to any person sought to be removed from any office; there was no hearing. There was only the "decision" to which this Court is told it is constitutionally compelled, principally by *Watson and Lowe*, to defer. To defer would be deference only to the wishes of UPCUSA. To defer unmistakably would be to take Defendants' property without due process of law—both by clearly-understood civil standards of 'fundamental due process', or by the UPCUSA's own procedural rules.

Civil courts are not compelled to defer to an arbitrary decision of a church tribunal in a property dispute.

That the case at bar is not an "ecclesiastical dispute", but a "property dispute", is a material fact admitted by UPCUSA's

counsel [C. 193, 203], and binding on UPCUSA. *Drell v. American National Bank & Trust Company*, 57 Ill.App.2d 129, 239 N.E.2d 101 (1905).

Recognition that civil courts are not required by the First Amendment to defer to an arbitrary decision of a church tribunal began with Mr. Justice Brandeis' definition of the civil court role in *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929):

In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunal on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest have made them so by contract or otherwise. (Id., at 447; Emphasis Supplied.)

A fortiori, arbitrary decisions of church tribunals are not conclusive in property disputes.

Subsequently, the United States Supreme Court, in *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969) recognized the State's interest in protecting property rights, in observing that a State "has a legitimate interest in resolving *property disputes*, and that a civil court is a proper forum for that resolution" [393 U.S., at 445], that there might be circumstances where marginal civil review of *ecclesiastical* determinations might be appropriate", citing *Gonzales* [Id., at 447], and remanded that property-dispute case for decision on "neutral principles".

Then came *Lowe v. First Presbyterian Church*, 59 Ill.2d 404, 308 N.E.2d 801 (1974). *Lowe* erroneously interpreted *Watson* and *Hull* to compel deference in property disputes. But, having done that, *Lowe* did adopt the due process protections of *Gon-*

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zales. This is obvious from the *Lowe* opinion's focus upon UP-CUSA's form of government and upon the procedures UP-CUSA prescribes for what was in that case a dissolution, rather than a session-removal, proceeding. That focus and emphasis clearly appears from the following excerpts from the opinion:

- [1] Plaintiffs allege that * * * the *Presbytery adopted a resolution dissolving the congregation * * ** and directed that the assets of the church be liquidated by the Plaintiff committee.
- [2] * * * Plaintiffs assert that the Defendant church is subordinate to the Presbytery and that *under the provisions of Chapter XXXII of the Form of Government * * ** Defendants are required to convey the property in accordance with the directions of the Presbytery. Chapter XXXII provides: [Paragraph 62.11 and 62.08—the dissolution and sale, mortgage, lease restriction paragraphs; *Id.*, at 802]
- [3] * * * therefore, assert Defendants, Plaintiffs have no right to *order transfer* of the property, since, they urge, the property is subject only to the control of the local church. [*id.*, at 803]
- [4] The more recent view of the law relating to *church property disputes* attaches substantial significance to the *internal structure or polity* of the congregation and the parent church. * * * a major factor in resolving questions of ownership and control of church property resulting from disputes between local and national church organizations is the structure of the parent church body and *its relationship to the local church.*

[5] * * * * it is clear that the United Presbyterian Church is hierarchical in governmental form *in that* each judicatory has control of those below it. *The significance here* of this structure is that each member Presbyterian Church is *subject to the rules and direction of its Presbytery, Synod and Assembly.* [Id., at 805]

[6] * * * * their [Defendants'] membership implies consent to its *form of government* and their conduct during that period acknowledges its supremacy. *Under that form of government,* as earlier indicated, the Presbytery is authorized to direct the disposition of a local church's property upon dissolution of that church. There are no allegations in the pleadings before us which justify interference by a civil court. See *Gonzales v. Roman Catholic Archbishop of Manila,* * * * [Id., at 806].

Applying the *Lowe* reasoning: the case at bar is a property dispute, so internal structure is of substantial significance (§ [4] *supra*); the significance of internal structure is that the Presbyterian system is *subject to rules* of its Presbytery (§ [5] *supra*); under that system of government, i.e., *by those rules,* Presbytery may remove a session and dispose of property, unless there are allegations in the pleadings justifying interference by a civil court (§ [6] *supra*) involving *Gonzales'* exceptions to compulsory deference.

However, there are in the instant case at bar (as there were not in *Lowe*) allegations in the pleadings which placed in issue UPCUSA's compliance with its own rules and constitutional due process: UPCUSA alleges it was required to accord a session "a full opportunity for hearing" [C. 59-60] and that Presbytery made its decision "after notice" [C. 64]. Defendants

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denied both allegations [C. 96, 98]. Accordingly, UPCUSA, itself alleged its due process compliance, and *thereupon UPCUSA itself raised the due process issue*. UPCUSA cannot now be heard to claim that this Court is precluded from inquiring into, and determining UPCUSA's non-compliance with, its own rules and due process. And, upon that determination of non-compliance, as *Lowe* prescribed, civil court interference is justified, as recognized initially by Brandeis in *Gonzales*.

What the *Lowe* case did *not* do and state was urged by UPCUSA, and apparently accepted by the Trial Court. And, therefore, what *Lowe* did not do or state becomes important. *Lowe* did not [ARGUMENT I] pertain to a *severed* corporation. But also, and pertinent to compulsory deference, *Lowe* did not blindly and blandly compel deference to all wishes of UPCUSA's judicatories, simply on the basis of UPCUSA's alleged "hierarchal" nature. However, it is this so-called "hierarchal" nature, which UPCUSA customarily asserts in litigation in order to stay within the *Watson* pale, despite the historical facts of the Swearingen Report [DX. W], the Permanent Judicial Commission Report of 1981 [T. 425], *The Pastor's Guide* [DX. F; T. 712], *The Book of Order's* own definition that Church Government is decentralized and "connectional", and not hierarchal, in nature [PX. 1, especially 35.101-35.104], *The Book of Order's* omission of any reference to or use of the term "hierarchal", and, finally, UPCUSA's Constitution's specific limitations of denominational power to *ecclesiastical and spiritual* matters, further specifically disclaiming any civil jurisdiction or effect [PX. 1, ¶ 31.08, 35.03 and 35.06], as raised by Defendants' SEVENTH AFFIRMATIVE DEFENSE [C. 103], which was neither stricken or denied. And, of course, the evidence that Presbytery's Stated Clerk admitted orally and in written document, that the denomination was not "hierarchal", but rather, "constitutional" [PX. 21, T. 445, 635-636].

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All the foregoing UPCUSA documents and statements, made outside the context of pending litigation, support the *Lowe* focus on the constitutional, — i.e., governed by *The Book of Order* — nature of UPCUSA. In other words, *Lowe* did not import to UPCUSA or Presbytery some kind of brooding omnipresence with some kind of unspecified, unwritten general civil power — omnipotently controlling a congregation's every act. But, it is the kind of general control, based upon UPCUSA's alleged "hierarchicalness", which Plaintiffs must, and do, assert in order to avoid focus upon the failure of the Presbytery in this case to comply with its own due process laws pertaining to session-removal. The central emphasis of this argument is that *Lowe* nowhere states that generally there is any such kind of "control". The clear emphasis and focus of the Supreme Court in *Lowe* is on the form of government and the procedure it describes. It is therefore inescapable that this Court is precluded, by Plaintiffs' own pleadings, admissions, documents, rules of procedure, and authorities, from deferring to the "decision" of Presbytery.

As a final development, *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), re-affirmed Brandeis' dictum in *Gonzales*. *Serbian* "essentially involve[d] not a church dispute, but a religious dispute * * * *'" [Id., at 709] over whether a Dioisije was the "true Diocesan Bishop" [id., at 706-707].

However, Illinois Courts had inquired into whether the Mother Church had followed its own laws and procedures in arriving at the decision to unfrock Dionisije [Id., at 712-713], had rejected the Mother Church's own witnesses' interpretation of its internal procedures [Id., at 718-719], applied the *Gonzales* "arbitrariness" exception to the deference rules, and therefore refused to defer to the decision to oust Dionisije. The United States Supreme Court, maintaining the clear historical distinc-

tion between "ecclesiastical" disputes and "property" disputes, rejects the "arbitrariness exception", making obvious that the rejection applies only to religious controversies, employing the *Watson* definition of "ecclesiastical dispute":

"For civil courts to analyze whether the *ecclesiastical* actions of a church judicatory are in what sense "arbitrary" must inherently entail inquire into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the *ecclesiastical* question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that *religious* controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. *Watson* itself requires our conclusion in its rejection of the analogous argument that *ecclesiastical* decisions of the highest church judicatories need only be accepted if the subject matter of the dispute is within their "jurisdiction."

"But it is a very different thing where a subject matter of dispute, strictly and purely *ecclesiastical* in its character, — a matter over which the civil courts exercise no jurisdiction, — *a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,* — becomes the subject of its action." [Id., at 713-714; Emphasis Supplied]

In summary, the inescapable logic is: civil constitutional law does not permit deference where a church tribunal in a property dispute proceeds arbitrarily, violating due process; UPCUSA

properly believed fundamental due process necessary in order to request deference, and *ergo* its rules of procedure; UPCUSA alleged and placed in issue its compliance with its own rules, thereby requiring proof by a preponderance; compliance was not only proved, but the controversy appeared; therefore, this Court is not compelled to defer to any decision made by Presbytery.

III. There Was No Decision, Resolving The Actual Property Dispute, For A Civil Court To Enforce, Thereby Necessitating Application Of Neutral Principles

The Presbytery "decision" of November 20, 1980, did not resolve any dispute between UPCUSA and Defendant Corporation, much less the actual dispute over property.

The actual dispute was over Defendant Corporation's property, arising from severance and conveyance. Presbytery neither made, nor attempted to make, any decision about severance and conveyance.

Upon severance on October 26, 1980, references to "Session" were deleted [PX. 24, at T. 640-642]. Thereafter, Defendant Corporation's Board of Directors did not purport to be, or be members of, an UPCUSA judicatory called a "Session". Consequently, after October 26, 1980, there was no "Session" to remove, and there were no competing factions claiming to be members of any "Session"; nor were there any competing factions claiming to be members of Defendant's Board of Directors—neither in the pleadings nor at trial did UPCUSA ever claim that the corporate actions were not in full compliance with the corporate Articles and By-Laws *and* the Illinois General Not-for-Profit Corporation Act.

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Nonetheless, Presbytery pursued a course, and rendered a "decision", to remove a session — that did not, in fact, exist.

So, with some ingenuity, UPCUSA, by its pleadings, created a ruse — a fictional non-entity called the "Anna Church", and proceeded to remove its "session". As an historical note, relevant at this point: there had not been, and UPCUSA neither alleged nor proved that there were, prior to October 26, 1980, two entities in Anna, i.e., Defendant Corporation and a separate "Anna Church". In fact, the only evidence (Defendants') clearly showed one entity functioning both before and after October 26, 1980 [T. 437-439, 461-462].

The necessity for the "Anna Church" ruse is obvious:

(1) Presbytery had no remedy for severance or general property control, but rather, Presbytery had only two remedies for church "difficulties"—dissolution and session-removal [T. 58] and dissolution was inappropriate [T. 125-126]. Accordingly, characterization of the dispute as session-removal was imperative if Presbytery were to have any semblance of a basis for action.

(2) UPCUSA had no other basis under its own or civil law for gaining control of Defendant Corporation—because of Defendant's full compliance with its charter, civil common law concepts, and the Corporation Act; and

(3) Characterization of the dispute in terms of who constituted the "true" Session, rather than in terms of a property dispute, was necessary to enable UPCUSA to argue that the issue concerned an "ecclesiastical" matter, and therefore was in the pale of compulsory deference as applied in, for example, *Watson and Serbian*.

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That the fiction of the "Anna Church", and the Presbytery "decision" to "remove its Session", had no further intrinsic value became apparent in the civil litigation. For example, to the suggestion made by Defendants' Motions Attacking Complaint that the original Complaint abounded in "ecclesiastical" matters, Counsel then admitted that the issues were not "ecclesiastical", but "assets" [C. 193, 203]. Further, and most clearly demonstrative of the emptiness and futility of the Presbytery "Session-removal decision", is the fact that the prayer for relief [C. 70-72] did not request that any person or group of persons be removed from any "Session" of any "Anna Church" or from any other office. And even further, the relief granted by the Trial Court did not remove any person from any office [C. 140-142]. What Plaintiffs' requested, and the Court granted, was relief on issues *not before, or decided by*, Presbytery, i.e., relief voiding severance and directing conveyance of real property—the actual issues. The reason for Presbytery's not pursuing enforcement of its own decision in civil court is obvious: removal and replacement of a non-existent "Session" of a fictionalized "Anna Church" would have been a gesture not availing Presbytery of what it really wanted—the property.

The civil relief, then, was other than, and substantially beyond, the "decision" of Presbytery, to which the Trial Court supposedly was deferring. Presbytery "decided" one issue; the Trial Court enforced something drastically different!

Compulsory deference has never before been applied by a civil court to grant civil relief on disputes not resolved by the church tribunal.

Even with UPCUSA's *Watson* and *Lowe* precedents, civil courts have enforced only what the church tribunal has decided.

For example, in *Watson v. Jones*, 80 U.S. 666 (1872), GA had decided that the persons later plaintiffs in the civil litigation were the "true" session members [80 U.S., at 670, 674], so those plaintiffs sued requesting that they be established as the "true" session and that as an incidental matter defendants who were also claiming to be the session and threatening to take possession of the property be enjoined [80 U.S., at 670-671, 674]. The actual dispute, over session membership, was the dispute decided by GA, and it was GA's resolution of the actual dispute which was deferred to and enforced by the Federal Circuit Court. As a further example, *Lowe v. First Presbyterian Church*, 56 Ill.2d 404, 308 N.E.2d 801 (1974), shows that the actual dispute—regarding conveyance of property which was resolved by that Presbytery's decision—was the *same* dispute and decision deferred to and enforced by the Court. More specifically, as the Court notes, the "essence of this controversy is found in the allegations that * * * * under the [dissolution remedy of *The Book of Order*. (PX. 1, ¶ 62.11) defendants are required to convey [308 N.E.2d, at 802]. Defendants there admitted that Presbytery had made a decision resolving the issue of dissolution [308 N.E.2d, at 803], and directing transfer of assets [308 N.E.2d, at 802]. Upon defendants' refusal, that Presbytery sued to compel conveyance. Obviously, in that case, circumstances were undisputably appropriate for the dissolution remedy; that was the Presbytery decision, and that was the decision enforced by the Court.

Further demonstrative of the historical application of compulsory deference only to decisions which resolve the actual dispute is the view of the compulsory-deference adherents expressed in the dissent in *Jones v. Wolf*, 443 U.S. 593 (1979). The dissenting Justices explicated the sequence of issues in compulsory-deference application as follows:

“Until today, and under the foregoing authorities, the first question presented in a case involving an intrachurch dispute over church property was where within the religious association the rules of polity, accepted by its members before the schism, had placed ultimate authority over the use of the church property. * * * After answering this question, of course, the civil court must determine whether the dispute has been resolved within that structure of government and if so, what decision has been made.” [443 U.S., at 618-619, and note 6.]

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A final example of common understanding that the church tribunal ought at least to try to decide the actual issue for which it intends to seek civil-court deference is *Presbytery v. Jaeggi* [St. Louis Cir.Ct. Opinion in Appendix to separate volume in Record entitled “PLAINTIFF’S POST TRIAL BRIEF ON MERITS”; Missouri Court of Appeals Opinion, Case No. 46180, filed January 31, 1984]. There, upon analagous events of pre-1981 severance by a local church corporation, followed by a commission investigation, the Missouri Presbytery’s decision did, at least, declare the severance null and void, and the Missouri Circuit Court deferred to *that* decision.

In summary, Presbytery, in this case selected its own, albeit fictionalized, battleground. It created a fictional “session”, but named no person whom it sought to remove, gave notice to no person whom it sought to remove, requested from the Court removal from any “session” of no person. Had Presbytery desired, intended, or had any basis in its law, to deal with the actual issues, i.e., severance and conveyance, it could have noticed and held its “hearing” on those issues, and rendered its “decision” *on those issues actually in dispute*. It would then have at least had a “decision” to which it could have requested a civil court to defer, i.e., to accord what amounts to a *res-judicata*-type effect [T. 88-89]. UPCUSA’s Stated Clerk admitted as

much when he agreed that "[i]f an ecclesiastical decision making body had *decided a case*, that the civil courts are bound by *that decision*, and that process * * * is referred to as compulsory deference" [T. 88, Emphasis supplied]. Thompson also admitted that if there is no internal—within the ecclesiastical structure—decision to which deference can be made, compulsory deference would not apply [T. 88-90].

The consequence of all the foregoing is that a civil court may not decide, *on the basis of compulsory deference*, any dispute which the church tribunal did not decide. There is no pro-compulsory-deference authority for a civil court to decide a dispute which the church tribunal itself declined to confront or decide.

The further consequence, however, is that this civil court may decide the severance and property issues between the parties to this case on the only remaining, and constitutionally-sanctioned, basis, i.e., neutral principles of law. And neutral principles [ARGUMENT I, *supra*] clearly leave the severed Defendant Corporation, and Defendant Anna Presbyterian Foundation, with its property, free of any claim of UPCUSA.

CONCLUSION

The precise relief sought is reversal of the Judgment Order.

Respectfully submitted,

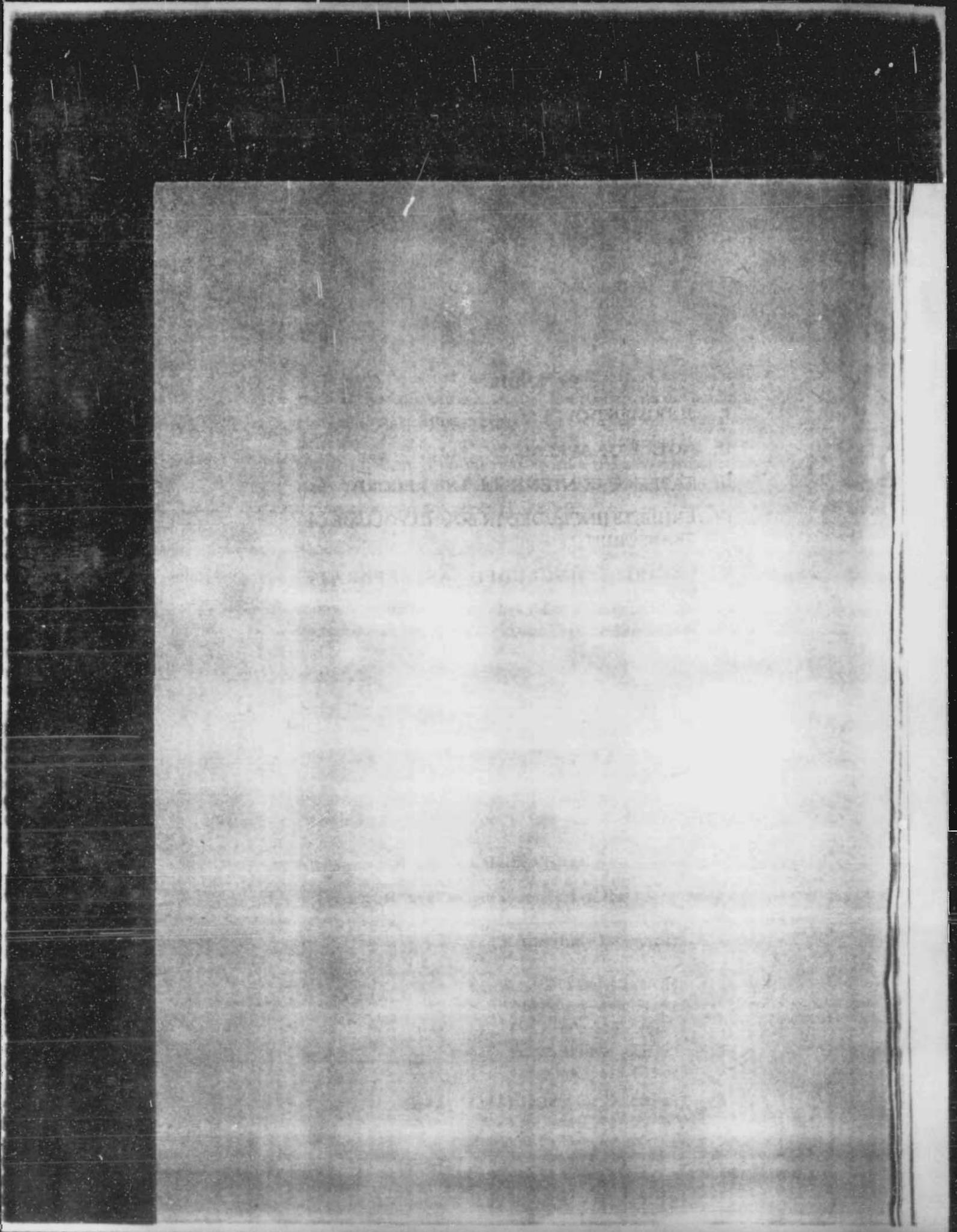
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343 South Main Street
P. O. Box 516
Anna, Illinois 62906
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Attorney for Defendants-
Appellants

APPENDIX

- I. JUDGMENT ORDER
- II. NOTICE OF APPEAL
- III. TABLE OF CONTENTS OF THE RECORD
- IV. EXHIBITS [INCLUDED IN BOUND VOLUME OF TRANSCRIPT]
- V. EXHIBITS [INCLUDED AS SEPARATE VOLUMES]
- VI. WITNESSES

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the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct." (Emphasis added)

9. Chapter XXXII, ¶ 62.04

10. Book of Order, Form of Government, Chapter XXXII, ¶ 62.11 and 62.12

11. The installation vows or obligations of a pastor are contained in the Book of Order, Part II (Form of Government), Chapter XX, ¶¶ 50.12-50.129; they are identical to the vows and undertakings of a Minister upon ordination, found in Chapter XIX, ¶¶ 49.041 to 49.049 (Tr. pp. 51-54).

12. Book of Order, Form of Government, Chapter XI, Para. 41.07 provides: "Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put*, but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session." (Emphasis added.)

13. Book of Order, Form of Government, Chapter XIII, ¶ 43.05 provides that the Synod has appeal jurisdiction over all appeals, complaints and references brought before it from Presbytery, and to decide finally in such cases all questions that do not affect the doctrine or the interpretation of the constitution of the Church. Part III of the Book of Order (the Book of Church Discipline), Chapter VI, ¶ 86.01 et seq. sets forth the requirements and procedure for complaints in remedial cases and Chapter XIII, ¶¶ 93.01 et seq. sets forth the procedure for appeals. Chapter V of the Form of Government (Part II of the

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Book of Order), ¶ 35.01, dealing with church government, provides that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church (see also Tr. p. 66).

14. Part III, (Form of Government) of the Book of Order, Chapter XI, ¶ 41.07 (quoted in Footnote 12) provides that the session shall have exclusive authority over the uses to which the church buildings and properties may be put. Chapter XI, ¶ 41.15 (quoted in Footnote 8) of the Form of Government provides that whenever the presbytery shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission with the full power of a session and that this commission shall take the place of the existing session which shall cease to act until such time as the presbytery shall otherwise direct.

APPENDIX - II

APPEAL TO THE APPELLATE COURT OF ILLINOIS,
FIFTH DISTRICT FROM THE CIRCUIT COURT OF
ILLINOIS, FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

Byron W. York, et al.,
Plaintiffs-Appellees,

vs.

The First Presbyterian Church of
Anna, Illinois, et al.,
Defendants-Appellants.

No. 81-MR-5

[Filed October 25, 1983]

NOTICE OF APPEAL

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, an Illinois Not-For-Profit corporation, ANNA PRESBYTERIAN FOUNDATION, and Illinois Not-For-Profit Corporation, and CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ, LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM, and JOYCE VERBLE, Individually and as Members of the Session of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, Defendants-Appellants, by R. Corydon Finch, their attorney, appeal to the Appellate Court of Illinois, Fifth District, from the JUDGMENT ORDER, dated October 17, 1983, and filed October 18, 1983.

The relief sought from the reviewing court is reversal of the entire judgment and entry of judgment in favor of Defendants-Appellants.

Sgd: R. CORYDON FINCH
R. CORYDON FINCH
Attorney for Defendants-Appellants

APPENDIX III

TABLE OF CONTENTS OF THE RECORD

Nature of Document	Date of Filing	Record Page
Complaint	Mar. 16, 1981	
Motions Attacking Complaint	June 4, 1981	C. 36
Order	Apr. 1, 1982	C. 53

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Amended Complaint	Apr. 12, 1982	C. 55
Motions Attacking Amended Complaint	May 3, 1982	C. 83
Order	Aug. 6, 1982	C. 93
Answer and Affirmative Defenses	Aug. 25, 1982	C. 94
Motion For Change Of Venue	Aug. 25, 1982	C. 107
Opposition To Motion	Sept. 7, 1982	C. 110
Defendant's First Request For Admissions	Jan. 27, 1983	C. 113
Reply To Fifteenth Affirmative Defense	Feb. 14, 1983	C. 114
Fifteenth Affirmative Defense		C. 116
Judgment Order	Oct. 18, 1983	C. 118
Proof of Service of Notice of Appeal	Oct. 25, 1983	C. 143
Notice of Filing	Oct. 25, 1983	C. 145
Notice of Appeal	Oct. 25, 1983	C. 147
Motion For Stay Of Judgment	Oct. 25, 1983	C. 149
Order	Nov. 7, 1983	C. 153
Report of Proceedings On Motion Attacking Complaint	Dec. 23, 1983	C. 155

Report Of Proceedings On
Motion Attacking Amended
Complaint Dec. 23, 1983 C. 213

APPENDIX - IV

**EXHIBITS [INCLUDED IN BOUND VOLUME
OF TRANSCRIPT]**

Plaintiffs' Exhibit [PX] Or Defendants' Exhibit [DX]	Description	Page In Transcript
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PX 4	Alton Presbytery Minutes— 1866	501
PX 6	UPCUSA's Stated Clerk's 7/80 Correspondence Re Property Amendment	505
PX 7	GA Minutes, Extract, 1968	511
PX 8A	"Foot-Prints Of The Presbyterians", 1866-1966	513
PX 9	Session Resolution Of 6/20/72 Re Mortgaging Property	541
PX 10	Presbytery Resolution Of 6/22/72 Re Mortgaging Property	545
PX 11	Presbytery Minutes Of 6/22/72	548
PX 12	Letter Of 6/23/72 From Teaford To Elliot	562

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PX 13	Letter Of 7/5/72 From Elliot To Rendleman	563
PX 14	Letter Of 6/14/76 From Lodge To Elliot	564
PX 15	Presbytery Minutes Of 6/17/76	565
PX 16	Letter Of 7/7/76 From Lodge To Elliot	566
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PX 18	Presbytery Minutes Of 4/20/78	568
PX 19	Presbytery Minutes Of 2/1/79	599
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PX 22	First United Presbyterian Church Of Anna, Illinois, Minutes Of 10/16/80	637
PX 23	Session Resolution Of 10/16/80	638
PX 24	Notice Of Meeting Of Corporation	639
PX 28	Letter Of 10/21/80 From Whitings To Congregation	645
PX 31	Letter Of 11/4/80 From Finch To McDonna	647

PX 32	Presbytery Minutes Of 11/13/80	650
PX 33	Letter Of 11/14/80 From Hale To Verble	671
PX 35	Letter Of 11/22/80 From Hale To Verble	673
PX 38/DX 1	Presbytery Minutes Of 11/20/80	674
DX B	Presbytery Standing Rules	684
DX C	Presbytery Stated Clerk Duties	702
DX D	Presbytery Stated Clerk Job Description	708
DX F	"The Pastor's Guide"	712
DX G	Defendant Corporation Minutes Of 10/26/80	734
DX P	"Digest: Form Of Govern- ment, Of The GA"	755
DX V	GA Minutes, Extract, 1968	760
DX W	Swearingen "Special Com- mission Of 1925" Minutes	767
DX CC	United Presbyterian Church Anna, Illinois, Roll Of Members	788

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APPENDIX - V

EXHIBITS [INCLUDED AS SEPARATE VOLUMES]

Plaintiffs' Exhibits [PX] Or Defendants' Exhibits [DX]	Description
PX 1	"The Book Of Order"—1980-1981
PX 3	"Blue Book, Part I", 1980
PX 8	"Foot-Prints Of The Presbyterians, 1866-1966"
PX 24-A	Articles Of Incorporation Of First United Presbyterian Church Of Anna, Illinois, Of March 26, 1969
PX 24-B	Articles Of Incorporation Of The First United Presbyterian Church Of Anna, Illinois, Of January 23, 1975
PX 25	Articles Of Amendment To Articles Of Incorporation Of The First United Presbyterian Church Of Anna, Illinois, Of October 27, 1980
PX 26	Articles Of Incorporation Of Anna Presbyterian Foundation Of October 27, 1980
PX 27	Warranty Deed From The First Presbyterian Church Of Anna, Illinois, To Anna Presbyterian Foundation Of October 28, 1980
DX U	Articles Of Consolidation Of Presbyteries Of January 20, 1972

- DX X "Presbyterian Law For Presbytery And Synod", 1980-81
- DX Z "Presbyterian Law For The Local Church", 1980-81
- DX HH "The Book Of Confessions", 1970
- DX A "The Book Of Church Order Of The Presbyterian Church In The United States," 1977-1978

APPENDIX - VI

WITNESSES

Witnessess	Direct	Cross	Redirect	Recross
William P. Thompson	10	74	119	124
George Edwin Parks	127			
Jackson Hale	135	173		
Byron York	188	212	228	
Olive Whiting	229			
Clyde Henry	242 & 289	261 & 374	422	433
Clair S. Albright	434	463		
Byron York	486			

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QUESTIONS PRESENTED

I.

WHETHER ANY SUBSTANTIAL FEDERAL QUESTION IS INVOLVED, BECAUSE THE ILLINOIS APPELLATE COURT RESOLVED THE PROPERTY DISPUTE ON THE BASIS OF NEUTRAL PRINCIPLES OF STATE LAW THAT DID NOT INVOLVE INQUIRY INTO RELIGIOUS DOCTRINE, PRACTICE OR PRECEPTS.

II.

WHETHER THE ILLINOIS APPELLATE COURT WOULD HAVE DECIDED A FEDERAL QUESTION, AND IN A WAY IN CONFLICT WITH THE DECISIONS OF THIS COURT, ONLY HAD IT FOLLOWED PETITIONERS' URGING TO INVOLVE ITSELF IN INTERPRETING THE UPCUSA CONSTITUTION IN RELIANCE ON THE RELIGIOUS DOCTRINE, PRACTICE AND PRECEPTS OF UPCUSA.

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First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America, 62 N.Y.2d 110, 464 N.E.2d 454 (1984), <i>cert. denied</i> , 83 L.Ed.2d 404, 105 S.Ct. 514 (1985) 11, 16, 18	
Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979)	11, 12, 18
Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 494 (1969)	10, 12, 13
Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969)	10, 11, 13

Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W. 2d 465 (1984), <i>cert. denied</i> , 105 S.Ct. 2361 (1985) . .	16
Presbytery of Riverside v. Community Church of Palm Springs, 89 Cal.App.3d 910, 152 Cal.Rptr. 854, <i>cert. denied</i> , 444 U.S. 974 (1979)	15
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)	17
Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872)	14, 15

No. 84-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BYRON W. YORK, JOSEPH VAN ROEKEL, ALAN V. PAREIS,
HELEN WESTBERT, JOE E. LOGSDON III, and PEYTON KUNCE,
Individually as as Members of THE ANNA ADMINISTRATIVE
COMMISSION II OF THE SOUTHEASTERN PRESBYTERIAN CHURCH
OF THE UNITED STATES OF AMERICA, on behalf of said
ANNA ADMINISTRATIVE COMMISSION II and on behalf of
THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES
OF AMERICA and SOUTHEASTERN ILLINOIS PRESBYTERY OF THE
UNITED PRESBYTERIAN CHURCH OF THE
UNITED STATES OF AMERICA,

Petitioners,

vs.

THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,
an Illinois Not-For-Profit Corporation, ANNA PRESBYTERIAN
FOUNDATION, an Illinois Not-For-Profit Corporation, and
CLAIR S. ALBRIGHT, HELEN OWENS, CHARLOTTE RIFE, JOHN LUTZ,
LISA WELLS, JANE RADER, JOEL MELLER, NORMAN HICHAM
and JOYCE VERBLE, Individually and as Members of the Session
of THE FIRST UNITED PRESBYTERIAN CHURCH OF ANNA, ILLINOIS,

Respondents.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIFTH DISTRICT**

The First Presbyterian Church of Anna, Illinois, a corpora-
tion, and other Respondents named in the caption, respectfully
submit this Brief in Opposition to the Petition for Writ of Cer-
tiorari [hereinafter "Petition"] to the Appellate Court of Il-
linois, Fifth District.

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JURISDICTIONAL STATEMENT

The ground on which the jurisdiction of this Court is attempted to be invoked is not present. The Appellate Court of Illinois did not, as the Petition alleges, "consider and determine the issue of the applicability" of the First Amendment. The Appellate Court fully acknowledged the applicability of the First Amendment, and applied neutral principles of the law of the State of Illinois totally within the circumscription prescribed by the First Amendment. See REASONS FOR DENYING THE WRIT, part I, *infra*.

STATEMENT OF THE CASE

Petitioners' Statement of the Case contains both inaccuracies and significant omissions. Further, Petitioners represent (Petition p. 3) to this Court that Respondents never challenged, and the Illinois Appellate Court did not find any fault with, the Trial Court's findings of fact. That constitutes an egregious misrepresentation. Correction is necessary.

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Respondents have throughout the Illinois appellate review process challenged the Trial Court's findings on the ground that the Trial Court Judgment was substantially a re-iteration of Petitioners' Amended Complaint—consisting largely of conclusions of ultimate fact, intermixed with Petitioners' theories of action, all shrouded in ecclesiastical characterizations. Further, the Illinois Appellate Court does, contrary to Petitioners' misrepresentation, find fault with the Trial Court's finding that there existed an "Anna Church Session" for Petitioners' Administrative Commission to replace (Petitioners' Appendix A-28), and with those portions of the Trial Court Judgment affecting property interests and acquiescing in UPCUSA's General Assembly's interpretation of its own constitution—describing these findings as "self-serving arguments rather than supportable allegations of fact * * * *". (Petitioners' Appendix A-31).

The following clarified, corrected, or additional facts are material to consideration of the questions presented.

This case arises from a dispute over ownership and control of church property. The principal adversary among Petitioners is The United Presbyterian Church in the United States of America [hereinafter "UPCUSA"]; among Respondents the principal adversary is The First Presbyterian Church of Anna, Illinois, an Illinois General not-for-profit Corporation [hereinafter "Anna Church Corporation"]. (Petitioners' Appendix A-2, A-23).

UPCUSA is the same general denomination which has heretofore been denied *Certiorari* in cases cited in the TABLE OF AUTHORITIES. UPCUSA's organization is variously characterized as "hierarchical" or "connectional", depending upon whatever a writer believes the characterization will suggest as to the nature and extent of the power, if any, of one UPCUSA judicatory over another. However, the agreed basis for UPCUSA's relationship with local congregations is its Book of Order, generally [and hereinafter] referred to as its "Constitution". (Petitioners' Appendix A-6, A-23). The entire Constitution—not only those paragraphs cited in the Petition—was in the Trial Court Record and was before the Illinois Appellate Court.

A presbyterian congregation in Anna, Illinois, had a relationship with UPCUSA and its predecessors commencing in 1866.

In 1929, UPCUSA attempted to insert a trust provision into its Constitution, to require that local church corporations declare in their charter that their "property is held in trust under the Constitution of and for [UPCUSA]". But the proposal was rejected. It never became a part of the Constitution. (Petitioners' Appendix A-23).

In 1975, the congregation in Anna incorporated itself under state law—the Illinois General Not-for-Profit Corporation Act. The congregation did not, as the Petition claims, simply "form a separate and distinct corporation to handle property". (Petition p. 8, 25). Rather, the members of the congregation *were* the corporation, and by Article IX, Section I of its By-Laws, subject to the ultimate civil autonomy of state law. (Petition p. 11, 25).¹

¹ Petitioners' argument that Anna Church Corporation was solely "to handle property" is based on its misleadingly half-quoting (Petition p. 25) only the last phrase of Chapter XXXII, Paragraph 62.04, of its Constitution. That Paragraph, which was consistent with Anna Church Corporation's formation, belies UPCUSA's claim. Paragraph

Subsequently, in 1979 occurred the initial event contributing to issues precipitating this litigation: this Court decided *Jones v. Wolf*.

In response to this Court's decision, UPCUSA, in July 1980, again proposed to insert a trust provision into its Constitution. UPCUSA admitted that the amendment (1) would "make explicit" UPCUSA's "understanding" of property holding, (2) was responsive to the decision in *Jones v. Wolf*, and (3) addressed instances where a congregation withdrew from UPCUSA. (T. 506-507; Respondents' Appendix B).

On October 26, 1980, Anna Church Corporation, relying, *inter alia*, on UPCUSA's having admitted the absence of any Constitutional barrier, severed its relationship with UPCUSA by Amendment of its Articles of Incorporation and By-Laws. (Petitioners' Appendix A-11, A-23 and A-24).

Anna Church Corporation's corporate actions—including the manner of voting, and the efficacy of the 98-28 and 100-15 votes in favor of severance and conveyance—were all in full compliance with its corporate Articles and By-Laws and with the controlling provisions of the General Not-for-Profit Corporation Act. Petitioners have never asserted, and the Trial Court did not find, any defect whatsoever in the corporate proceedings under Illinois law. As a matter of compliance with civil

62.04 states that "Each particular church shall be incorporated, cause a corporation to be formed and maintained* * *." (Respondents' Appendix A) At the same time is also belied Petitioners' elliptical allusion to Paragraph 62.04 to support their ruse of two separate entities in Anna (Petition p. 4). The purpose of the ruse is dual: to suggest the dispute is an "ecclesiastical issue", in order to enter the pale of *Watson*, and in order to have a semblance for their claim that their Administrative Commission had a "Session" to replace after October 26, 1980.

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law, Anna Church Corporation's actions on October 26, 1980, and thereafter were unassailed and remain unassailable.²

On October 26, 1980, no paragraph, part or provision of UP-CUSA's Constitution forbade or prohibited severance of relations with UPCUSA; by UPCUSA's own admission, withdrawal of a congregation was not even "addressed" in its Constitution at that time. (Respondents' Appendix B).

On October 26, 1980, no paragraph, part or provision of UP-CUSA's Constitution contained any forfeiture or reversion of local church property in the event of severance.

On October 26, 1980, no paragraph, part or provision of UP-CUSA's Constitution contained any trust in favor of UPCUSA, or any contractual or proprietary interest of UPCUSA in local church property.

On October 26, 1980, formal title to Anna Church Corporation's real and personal property stood indefeasibly in its name alone under state property law. On October 28, 1980, Anna

² Further, although legally irrelevant, is the fact that UPCUSA's Constitution [¶35.01] is based on the principle of majority rule (Petition p. 6, footnote 4), which fully would have effectuated Anna Church Corporation's votes of 98-28 and 100-15.

The significance of the unassailed and unassailable actions of the Anna congregation's actions is dual. First, it relieves the necessity for the two-stage analysis alluded to by the *Jones* dissent [443 U.S., at 611]. Because, in *Jones*, the "only question" presented was which of the competing factions in the local congregation was, under state neutral principles, entitled to control of the congregation; here, Anna Church Corporation's full and unquestioned compliance with state corporation law resolved that issue. Secondly, by elimination of the second-stage issue, it leaves only a dispute between the equivalent of "central councils of a church organization and [the legal equivalent of] a unanimous local congregation"—a situation where the *Jones* dissent agreed that a neutral-principles analysis would suffice [443 U.S., at 614].

Church Corporation gave its property by conveyance to Respondent Anna Presbyterian Foundation, an Illinois General Not-for-Profit Corporation. (Petitioners' Appendix A-11, Paragraph 15, and A-30).

On October 26, 1980, UPCUSA's Constitution did, however, contain provisions disclaiming any civil effect or civil jurisdiction whatsoever. In particular, as a PRELIMINARY PRINCIPLE of its FORM OF GOVERNMENT, the Constitution, Paragraph 31.08, states that "ecclesiastical disciplines must be purely moral or spiritual in its object, and *not attended with any civil effects*"; of its CHURCH GOVERNMENT by judicatory (defined in Petition, p. 7, ¶¶ 3 and 4), the Constitution, Paragraph 35.03, ordains that "*judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, * * *.*" (See entire text of Paragraphs 31.08 and 35.03 in Respondents' Appendix C; Emphasis supplied hereinabove).

On November 20, 1980, UPCUSA's Constitution still contained the civil-effect disclaimers. But on that day, UPCUSA's Presbytery decided to create an "Administrative Commission" to replace a non-existent "Session" in Anna. And it is that "decision", and that Administrative Commission, for which UPCUSA now claims civil effect and civil jurisdiction.¹

¹ Petitioners suggest UPCUSA's Constitution [Chapter XXXII, ¶62.11] offers a "dissolution" means for asserting control, but that its Presbytery "has not yet adopted this remedy, in connection with the Anna church, but it could do so at any time". (Petition p. 27). This is another misrepresentation of fact. UPCUSA alleged "dissolution" in its Amended Complaint 'C. 59, ¶13; C.63, ¶(6); UPCUSA's own witness, Stated Clerk William P. Thompson, admitted pursuit of "dissolution" was not appropriate. [T. 125-126]. Even the Trial Judge found that the congregation was not extinct (Petitioners' Appendix A-15, at ¶26), and the Appellate Court found that neither dissolution nor extinction had occurred. (Petitioners' Appendix A-31).

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Presbytery's November 20, 1980, "decision" purports at most to remove "the Session of the First United Presbyterian Church of Anna". (Petition p. 15). In addition to lacking any basis in either ecclesiastical *or* civil law for any civil effect or jurisdiction, the "decision" is fraught with both conceptual and factual anomalies. First, after the October 26, 1980, severance, Anna Church Corporation's Board of Directors did not purport to be any UPCUSA judicatory called a "session". Consequently, after October 26, 1980, there was no "session" to remove, and there was no person claiming to hold any office as a member of any "session". Also, there was not then or ever thereafter any competing faction claiming to be Anna Church Corporation's Board of Directors. Further, the "decision" did not purport to remove any *person* from membership in any session. The "decision" did not claim retroactively to remove any person who was a member of any "session" on or prior to October 26, 1980. The "decision" did not claim to remove any member from Anna Church Corporation's Board of Directors. There was simply no dispute about who were members of Anna Church Corporation's Board of Directors.

Moreover, the actual dispute was over Anna Church Corporation's severance, its property, and its conveyance. Presbytery neither made, nor attempted to make, any "decision" about severance or property. Presbytery therefore failed to either address or resolve any dispute whatsoever between UPCUSA and Anna Church Corporation. The Illinois Appellate Court properly noted the limited scope of the Presbytery proceeding. (Petitioner's Appendix A-28, A-29, A-31 and A-32).

UPCUSA argues that the Presbytery decision empowered its Administrative Commission to take over the property, because a session had power to direct a congregation what to do with its property. But, even assuming *arguendo* that the Commission had the civil power to direct a non-existent session to direct a civil corporation, the facts are that the Commission did not attempt to direct any session to direct Anna Church Corporation to do, or not to do, anything with its property.

Instead, in March, 1981, UPCUSA commenced this action, asking the Illinois Trial Court to do what neither it nor Presbytery had done or attempted to do, i.e., to void severance and set aside the conveyance. Moreover, the Commission, which was created November 20, 1980, requested that the Court effectuate the Commission's non-exercise of its claimed power retroactively, i.e., to October 26, 1980.

Effective May 23, 1981, UPCUSA finally amended Chapter XXXII of its Constitution, adding:

All property held by or for a particular church * * * is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

In the Trial Court, UPCUSA urged, and was granted relief on, the theory of judicial deference to the Presbytery "decision", based upon broad interpretations of this Court's *Watson v. Jones* and the Illinois Supreme Court's *Lowe v. First Presbyterian Church*. (Petitioners' Appendix A-19, ¶¶ 3, 4 and 5).

The Illinois Appellate Court readily and easily distinguished *Watson* (Petitioners' Appendix A-25, 26) and *Lowe* (Petitioners' Appendix A-27), noted that the Presbytery "decision" was insufficient for judicial deference, anyway, (Petitioners' Appendix A-31), and adopted for Illinois the neutral principles approach (Petitioners' Appendix A-27, A-29). The Illinois Supreme Court denied leave to appeal. (Petitioners' Appendix A-34).

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REASONS FOR DENYING THE WRIT

I.

No Substantial Federal Question Is Involved, Because The Illinois Appellate Court Resolved The Property Dispute On The Basis Of Neutral Principles Of State Law That Did Not Involve Inquiry Into Religious Doctrine, Practice Or Precepts.

The Appellate Court of Illinois explicitly utilized the neutral principles of law of the State of Illinois in resolving the property dispute. (Petitioners' Appendix A-27 and 29).

The Appellate Court also explicitly examined "the language of the deeds, the terms of the local corporate charter, the state statutes applicable to church property, and the relevant provisions of the church constitution and laws" searching for "an express or implied trust or other interest vested in the general church * * * * [provisions conferring] title or right or control to the local property * * * [or] some type of property interest in the general church". (Petitioners' Appendix A-30).

The Appellate Court was further explicit in its "most carefully, avoiding invasion into the ecclesiastical purview" and utilizing a "purely secular interpretation" of UPCUSA's Constitution. (Petitioners' Appendix A-30). The Appellate Court refused "impermissibly [to] intrude into church polity". (Petitioners' Appendix A-31).

The Appellate Court,—in its application of the neutral principles of the secular law of Illinois to the prescribed documents, and its concomitant avoidance of matter requiring inquiry into religious doctrine, practice and polity—, explicitly and strictly decided the case within the permissible proscribed pale of state law in the manner prescribed by the decisions of this Court for state court resolution of property disputes: *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) [hereinafter "*Hull*"]; *Maryland and Virginia elder-*

ship of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 494 (1969) [hereinafter "Md. & Va. Churches"]; Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979) [hereinafter "Jones"]. The Appellate Court also was persuaded by *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 62 N.Y.2d 110, 464 N.E.2d 454 (1984) [hereinafter "Schenectady"], for which this Court has since denied *certiorari*, 83 L.Ed.2d 404, 105 S.Ct. 514 (1985).

The Appellate Court followed this Court's proscriptions as to permissible boundaries of its inquiry, and its prescriptions as to documents subject to inquiry, as set forth in the cited precedents. However, it did not *decide* any of the federal questions already decided in any of those precedents.

Hull is a case of severance from, followed by a property dispute with, Presbyterian Church in the United States ["PCUS"]—a denomination also self-characterized as "hierarchical" based on a substantially similar Constitution as, and now having merged with, UPCUSA. There, as here, local churches had severed, an Administrative Commission had been created, it acknowledged severance, and proceeded to take over the local church. The local church then sued to enjoin trespassing on its property. PCUS moved to dismiss on the basis of compulsory deference. [Id., 443; 444, footnote 3]. Georgia Courts had determined that PCUS had departed from doctrine, that implied trust had terminated, and enjoined PCUS from interfering. The case therefore raised new questions as to deference, inquiry into departure from doctrine, implied trust, and the like. This Court *decided* that civil court resolution of "controversies over religious doctrine and practice" was prohibited by the First Amendment, and that the First Amendment commanded civil court resolution of church property disputes without violation of the prohibition. [393 U.S., at 449]. This Court further *decided* that civil court resolutions be according to "neutral principles of law, developed for use in all property

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disputes, * * *." [393 U.S., at 449]. The Appellate Court did not involve itself in re-deciding the federal constitutional questions decided in *Hull*; it merely followed *Hull's* command to apply state secular law as it would in any other property dispute.

Md. & Va. Churches' Per Curiam by this Court then decided that a Maryland State Court, in resolving a church property dispute in reliance upon "state statutory law * * * language in the deeds * * * charter of the corporations * * * the constitution of the [general denomination] pertinent to the ownership and control of church property", without inquiring into religious doctrine, did not involve a substantial federal question. [396 U.S., at 367-368]. The concurrence amplified the decision to include First Amendment proscription against precisely the intrusion UPCUSA desired of the Appellate Court in the case at bar:

To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. [396 U.S., at 369].

Again, the Appellate Court did not *decide Md. & Va. Churches'* prescriptions as to permissible documents or its proscription as to probing into allocation of power; the Appellate Court explicitly *followed* both the prescription and the proscription. And in the same manner of applying state law as did the Maryland Court, the Illinois Court avoided involvement in any federal question.

Jones is the most recent decision by this Court. It, like *Hull* and the case at bar, involves the same scenario of severance, the claim for civil control by a Presbytery Administrative Commission purporting to replace a non-existent Session, followed by the property litigation. Again, as in *Hull*, PCUS was the general denomination and UPCUSA its *Amicus Curiae*.

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The federal question decided by this Court in *Jones* is a reaffirmation of *Hull* and *Md. & Va. Churches*: a state civil court may, consistent with the First and Fourteenth Amendments, decide a church property dispute on the basis of "neutral principles of law" [443 U.S., at 597, 604, 605-06], and that compulsory deference is not required in church property disputes [443 U.S., at 605]. Secondly, *Jones* again indicated that the "neutral principles" were those of state, not federal constitutional, law, emphasizing that the neutral principles of law to be utilized by the Georgia Court—to resolve that case's factual issue as to whether the majority faction of the congregation represented the religious corporation—was not a principle of federal law, but a principle of Georgia state law; for examples: "if in fact Georgia has adopted a presumptive rule of majority representation" [443 U.S., at 607]; "the State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy" [Id., at 608]; and, "Because these critical issues of state law remain undetermined, * * *". [Id., at 608, footnote 5; Emphasis Supplied].

Jones further decided, by describing more fully, the instruments to be examined, relied upon, and interpreted, viz., by copious references to the deeds, state statutes applicable to church property, local church charters, and "the provisions in the constitution of the general church concerning the ownership and control of church property". [Id., at 603; Emphasis Supplied].

Finally, *Jones* did decide more specifically the concepts to be included and excluded in application of "neutral principles". Included are the "well-established concepts of trust and property law familiar to lawyers and judges" [Id., at 603]; excluded are "religious precepts in determining whether the document indicated that the parties have intended to create a trust". [Id., at 604].

Once again, and upon the same scenario of events, the Illinois Appellate Court *followed* all decisions made in the *Jones* opinion. It did not *decide* any of the federal constitutional questions or guidelines promulgated in *Jones*. The Appellate Court accepted its constitutionally-proscribed sphere of application of secular state law, and proceeded to interpret the prescribed documents by secular state law. What this Court prescribed is what the Appellate Court examined, and found devoid of purely secular provisions creating ownership and control in UPCUSA. Clearly having functioned within its proscribed boundary, the Appellate Court decision did not involve any federal question, much less a substantial federal question.

II.

The Illinois Appellate Court Would Have Decided A Federal Question, And In A Way In Conflict With The Decisions Of This Court, Only Had It Followed Petitioners' Urging To Involve Itself In Interpreting The UPCUSA Constitution In Reliance On The Religious Doctrine, Practice And Precepts Of UPCUSA.

The Appellate Court of Illinois consciously, explicitly, and demonstrably refrained from involving itself in the interpretation of UPCUSA's Constitution in other than a "purely secular" way. (Petitioners' Appendix A-30 and A-31).

Petitioners Reasons For Granting The Writ suggests the Appellate Court should have gone further. Petitioners intermingle the following arguments: [1] The Appellate Court ignored state precedent (Petition p. 19); [2] it failed to declare "the rights and legal relations" between the parties, presumably a violation of Illinois' declaratory judgment statute (Petition p. 19); [3] it should have applied *Watson v. Jones*' (80 U.S. 666) [hereinafter "*Watson*"] "broad doctrine of judicial deference" to the Presbytery "decision" (Petition p. 20-24); and [4] it "misapplied" neutral principles of law, by "ignoring" certain self-serving and self-selected paragraphs of UPCUSA's Constitution (Petition pp. 19-20, 24-30).

Arguments [1] and [2] are matters of state law subject to review, if at all, by the Illinois Supreme Court, and that Court denied leave to appeal. (Petitioners' Appendix A-34).

Argument [3], attempting to resurrect *Watson's* compulsory deference rule, runs afoul of three obstacles. First, *Watson* was between competing groups *both* claiming an association with UPCUSA, and therefore presenting a controversy characterized by the *Watson* Court as "essentially ecclesiastical" [80 U.S., at 670], and deference was urged [Id., at 669], and granted [Id., at 676], upon "questions ecclesiastical". *Watson* was not a case of severance—with one side, like Anna Church Corporation, eschewing UPCUSA affiliation—followed by a property dispute. There, property control only incidentally was involved, as it turned on who held the disputed offices. "[I]t was admitted that both 'the deed and the charter' contemplated the connection of the local church with the General Presbyterian one, and subjected both property and trustees alike to the operation of its fundamental laws" [13 Wall., at 683]. The Illinois Appellate Court properly held that on "the issue of property control, the *Watson* standard fails as a constitutional imperative". (Petitioners' Appendix A-26).

Secondly, this Court, in *Jones*, expressly rejected compulsory deference as a constitutional imperative [443 U.S., at 602, 605] for church property disputes.

Third, there was no decision to which a court could defer to resolve the dispute. Presbytery decided only that a "Session * * * be removed." (Petition p. 15) That was not any part of any dispute, but an *a posteriori* false issue [See *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal.App. 3d 910; 152 Cal. Rptr. 854, at 862; *cert. denied*, 444 U.S. 974 (1979)] framed *after* Anna Church Corporation's severance, and after the property dispute erupted. As the Appellate Court found, the "Presbytery decision included no mention of severance * * * or of legal ownership of the church property". (Petitioners' Appendix A-28 to 29). This finding by the Ap-

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pellate Court accords with the procedure for compulsory-deference application prescribed by its adherents in *Jones* [443 U.S., at 618-619, footnote 6], whereby application requires determination of “*whether* the dispute has been resolved within the structure of government and, if so, *what decision* has been made.” [Emphasis supplied]. Here, no dispute was resolved by Presbytery. So, for the Appellate Court to have resolved the actual dispute, on the compulsory deference theory, where it had not been resolved “within [UPCUSA’s] structure of government” [Id., at 619] would have involved the Court in an “invasion into the ecclesiastical purview”, which it avoided. (Petitioners’ Appendix A-30).

By its argument [4] UPCUSA advances certain selected, self-serving, paragraphs of its Constitution, and avoids mention of the civil-effect disclaimers. (Petition p. 26-27). UPCUSA does not contend that its selected paragraphs clearly or expressly confer ownership or control. Rather, it contends that they are “aspects” of control (Petition p. 26), or are “means” to assert and maintain control, and calls the Administrative Commission a “procedure” for control (Petition p. 26-27). Further, UPCUSA admits that the provision describing the Administrative Commission [Chapter XI, § 41.15] must be “read in connection with” (Petition p. 28) the provision describing a Session [Chapter XI, § 41.07] in order “to give effect” to enforcing “presbytery’s authority over” (Petition p. 29)—not ownership and control of—the property.

These are the same, selected, paragraphs of its Constitution UPCUSA argued, unavailingly, to the South Dakota Supreme Court in *Foss v. Dykstra*, 342 N.W.2d 220, at 223-224 (1983); to the New York Court of Appeals in *Schenectady*, 62 N.Y.2d 110, 464 N.E.2d 454, at 461-462 (1984), *cert. denied*, 83 L.Ed.2d 404, 105 S.Ct. 514 (1985); and, to the Missouri Supreme Court in *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465, at 471-472 (1984), *cert. denied*, 105 S.Ct. 2361 (1985). The facts of those cases were, in *all* salient respects, precisely analogous to the facts before the Appellate Court of Illinois.

The Appellate Court of Illinois therefore reversed the Trial Court's reliance on these selected paragraphs, holding that those paragraphs did not "grant a *clear right* to denominational appropriation of local church assets". (Petitioners' Appendix A-28).

But, by its Petition UPCUSA again urges that a state Court become impermissibly entangled in "religious doctrine, practice, and administration" [443 U.S., at 605], to "impermissibly inquire into church polity". [*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, at 723]. Because, each of the foregoing proscriptions would be violated were the Illinois Court required to resolve the ambiguities, religious meanings, and internal inconsistencies posed, for example, by an Administrative Commission acting with no explicit or implicit property ownership or control accoutrements under Chapter XI, Paragraph 41.15 (Petition p. 27), but "taking the place of the existing [if one there were] session", the claimed authority of which, under Chapter XI, Paragraph 41.07 (Petition p. 27), is subject to the prefatory, and unquestionably religious precept of, "Directory for Worship".

Further, if a civil court were properly to treat UPCUSA's Constitution as it would any other civil contract, it would read and interpret it in its entirety. Then, the civil-effect disclaimer of the PRELIMINARY PRINCIPLES of UPCUSA's FORM OF GOVERNMENT, and the civil-jurisdiction disclaimer of UPCUSA's judicatories of CHURCH GOVERNMENT (Respondents' Appendix C), would have to be juxtaposed and reconciled with the Presbytery/Administrative Commission/Session paragraphs selectively marshaled by UPCUSA.

Resolution should be in purely secular terms, as the New York Court of Appeals did, finding that the power UPCUSA claims for its Sessions is belied by the civil-effect disclaimers, requiring that the claimed control by the Administrative Commission through Session "powers" be discounted. [*Schenectady*, 464 N.E.2d, at 462].

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To avoid that result, UPCUSA now urges that the Illinois Court be required to resolve the ambiguities, as they were called in *Schenectady*, within UPCUSA's terms of interpretation, being the terms of its religious doctrine, practice and precepts.

UPCUSA's argument to a civil court would necessarily be that, within its ecclesiastical system of religious doctrine, practice and precepts, the paragraphs it selectively advances mean more than they say, and the civil-effect disclaimers mean less than they say. But that argument, and the interpretive difference between those conflicting Constitutional provisions, is then unquestionably resolvable *only* by a civil court's immersion into and acceptance of *purely* religious precepts.

UPCUSA offers *Jones* as compelling intrusion into its morass of conflicting constitutional provisions. But *Jones* compels, instead, "special care to scrutinize the document *in purely secular terms*, and *not to rely on religious precepts*". [443 U.S., at 604; Emphasis Supplied]. UPCUSA would have the Illinois Court so beyond "purely secular terms" and utilize "religious precepts" of interpretation and resolution of ambiguities and contradictions. UPCUSA's way would have been the First Amendment violation. The Appellate court scrupulously avoided such a First Amendment violation, thereby upholding this Court's barrier between Church and State.

CONCLUSION

The Appellate Court of Illinois neither has decided a federal question, nor, *a fortiori*, has it decided a federal question in a way in conflict with any applicable decision of this Court.

Respondents therefore respectfully request that the Petition be denied for lack of jurisdiction, or, in the alternative, be denied.

Respectfully submitted,

R. CORYDON FINCH

343 South Main Street

Anna, Illinois

Attorney for Respondents

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APPENDIX

APPENDIX A

THE FORM OF GOVERNMENT

CHAPTER XXXII—OF INCORPORATION AND OF TRUSTEES

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62.04 Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

APPENDIX B

THE UNITED PRESBYTERIAN CHURCH

In the United States of America

1201 Interchurch Center

475 Riverside Drive

New York, N.Y. 10027

Telephone 212-870-2005

July 1980

Sisters and Brothers in Christ:

The Commissioners to the 192nd General Assembly of The United Presbyterian Church in the United States of America, meeting in Detroit, Michigan, May 27 - June 4, 1980, in an almost unanimous decision, after opening hearings in which all could participate and all points of view be expressed, voted to approve and send to the presbyteries the overture "On Property." During the coming year, our church will be engaged in a process of study and response to the chapter proposed for the Book of Order.

It will be the responsibility of each of our presbyteries to understand the intent and effect of this decision. It is, therefore, essential that you carefully study the full text of the General Assembly's action and note what it actually proposes.

This overture, if approved:

- Will make explicit what has been our denomination's understanding of how the holding of property relates to the nature and unity of our church;
- Will be an appropriate response to a decision in July 1979 by the U.S. Supreme Court (*Jones v. Wolf*) that, in effect, told us that the courts will take seriously our historic understanding of how property relates to the organic nature of the church only if we express that understanding explicitly in our Constitution.

- Will address those few instances when a majority of the members of a congregation votes to withdraw from The United Presbyterian Church in the United States of America.

This overture, if approved, will not result in any of the following:

- It will not lead to any usurping of the proper and clearly delegated rights of a session and congregation over its own life and the use of its material resources;
- It will not increase control by any judicatory of our church over the property (real or personal) of a congregation;
- It will not abridge the right of an individual or of several individuals in a congregation to withdraw from The United Presbyterian Church in the United States of America.

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This new chapter on property is consistent with our Constitution and our long history as a church. In 1793, the "radical" or basic principles of our presbyterian polity were set down for the establishment of an American Presbyterian Church. The first of the principles is this: "That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically, the Church; that a larger part of the Church, or a representation of its, should govern a smaller, or determine matters of controversy which arise therein;..." (Form of Government, Chapter V, Section 1 (35.01).)

Following this principle, the judicatories of our church have consistently exercised proper authority, the higher or more inclusive over the lower and less inclusive, in matters of dispute. One of the values of this process is the avoidance of civil litigation. When matters of dispute arise in a congregation, for example, they are properly handled by the presbytery. We make no distinction between the spiritual nurture and oversight of

congregations by the presbytery and the use of physical resources that are the necessary equipment for ministry.

This General Assembly has acted out of its spiritual concern to be faithful to the unity of the church. The church is not a private possession but a sacred trust and its property cannot be separated from its life, ministry, and mission.

We submit this overture to you for thoughtful consideration in the spirit of the Apostle Paul, who wrote, "I therefore, a prisoner for the Lord, beg you to lead a life worthy of the calling to which you have been called, with all lowliness and meekness, with patience, forbearing one another in love, eager to maintain the unity of the Spirit in the bond of peace." (Ephesians 4:1-3.)

We ask you and your session to engage in study and prayer that presbyteries may act according to the will of God in this and in every matter. May God grant us the gift of understanding and love as we seek to be faithful.

The One Hundred Ninety-second General Assembly

/s/ Chas. A. Hammond
By: Charles A. Hammond
Moderator

APPENDIX C

THE FORM OF GOVERNMENT

CHAPTER I—PRELIMINARY PRINCIPLES

••••

31.08 Lastly, that, if the preceding scriptural and rational principles be steadfastly adhered to, the vigor and strictness of its discipline will contribute to the glory and happiness of any church. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of any impartial public, and the countenance and blessing of the great Head of the Church Universal.

CHAPTER V—CHURCH GOVERNMENT

••••

35.03 These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however, to this necessary and Scriptural authority, they possess the powers requisite for obtaining evidence and inflicting censure. They can call before them any offender against the order and government of the Church; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.

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FEDERAL ELECTION COMMISSION
#2, 123456789
July 31, 1996
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62906

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attention: Colleen T. Sealander, Attorney
Central Enforcement Docket

Dear Ms. Sealander:

In response to your letter Dated July 16, 1996, (re: MUR 4411) concerning notice of a possible FEC investigation, my first thought was what a waste of time and tax dollars.

My response is simple and straightforward. At no time in my life have I contributed any money to the Christian Coalition. Although now I might, considering the totally ridiculous nature of this charge. To my knowledge, neither has my church, First Evangelical Presbyterian Church of Anna, Illinois, ever contributed a penny to the Christian Coalition or to any political candidate. The church is not politically active.

I engage in no hidden conspiracies or agendas. We pay our taxes and live open-book lives. The Federal Election Commission is welcome to investigate both my husband and me on any level; we are ordinary law-abiding citizens with nothing to hide. I have also chosen not to retain an attorney for this matter because I have done absolutely nothing to warrant FEC concerns.

As for the "Pat Boone connection", it stretches the imagination to connect a 1982 committee report with no action taken to a "possible" violation in the 1990's of a federal election law. I really don't have any recollection of that report except what was entered in the church minutes. At any rate, rest assured no political motivation existed behind either the invitation or acceptance, had either occurred.

Both my late mother, Rosemary Walton, and I have participated actively over a long period of time in the First EPC of Anna, and our names along with many others will naturally be scattered throughout the church records in various capacities.

Again, if the FEC wishes to look further into the allegations against me, so be it. I think it is an absolute waste of everyone's time and a sad commentary on the intrusion of the government of this wonderful country into private lives. No FEC violations will be found because there are none.

Sincerely,

Barbara J. Throgmorton

Barbara J. Throgmorton
618/833-2398

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

AUG 20 2 58 PM '96

August 20, 1996

Fax Transmission to

Ms. Colleen T. Sealander, ESQ
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Fax No. (202) 219-3923

RE: MUR 4411

Dear Attorney Sealander:

Thank you for your letter of July 16, 1996.

From before that time, and until about September 3 of this year I will be occupied with a related case. I do have additional information in the matter (MUR 4411) but I would require some time to organize it.

Sincerely,

Edward Wesley Walton

Edward Wesley Walton
Boxborough, Massachusetts

Telephone No. (508) 264-9189

Fax No. (508) 264-0116

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First Evangelical Presbyterian Church

315 South Street • Anna, Illinois 62906 • 618-833-5225



August 29, 1996

Federal Election Commission
999 E. Street, NW
Washington DC 20463

Attn: Colleen T. Sealander, Attorney
Central Enforcement Docket

Re: MUR4411

Dear Ms. Sealander:

Please inform us of the status of the above referenced matter. Are we to understand that the complaint is being dismissed, or should we expect more communication from FEC?

If, indeed, this matter is a dead issue, we would appreciate some verification for our records.

Sincerely,

Rev. Stephen F. Wilkinson
as Registered Agent,
Anna Presbyterian Foundation

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FEDERAL ELECTION
COMMISSION
MAIL ROOM
SEP 3 9 09 AM '96

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In the Matter of

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ENFORCEMENT PRIORITY

SENSITIVE

GENERAL COUNSEL'S REPORT

MAR 11 1997

EXECUTIVE SESSION

I. INTRODUCTION

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 25 cases which do

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not warrant further action relative to other pending matters.¹ Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more remote and consequently more difficult to develop. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community.

¹ These cases are: MUR 4332 (*Bill Thomas Campaign Committee*); MUR 4347 (*Anonymous Respondent*); MUR 4354 (*Brian Steel for Congress*); MUR 4367 (*Philipstown Republicans*); MUR 4371 (*Employment Group*); MUR 4373 (*Cannon for Congress*); MUR 4374 (*Mark Stodola for Congress Primary Committee*); MUR 4375 (*Westchester County Conservative Party*); MUR 4377 (*Braxton for Congress*); MUR 4379 (*Teamsters Local Union No. 135*); MUR 4383 (*Pauken for Congress*); MUR 4384 (*Willie Colon for U.S. Congress*); MUR 4388 (*Bill Witt for Senate and Congress*); MUR 4390 (*Kolbe 96*); MUR 4391 (*Pat Roberts for Congress Committee*); MUR 4393 (*Cecil J. Banks*); MUR 4397 (*AFL-CIO*); MUR 4405 (*Katz for Congress Committee*); MUR 4411 (*First Evangelical Presbyterian Church*); MUR 4414 (*Turietta-Koury for Congress Committee*); MUR 4418 (*Bell Atlantic*); MUR 4421 (*Butler for Mayor*); MUR 4448 (*Friends for Jim Rapp*); Pre-MUR 334 (*Kinnamon for Congress*); and Pre-MUR 335 (*Davis for Congress*).

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We have identified cases which have remained on the Central Enforcement Docket for a sufficient period of time to render them stale 12 are not worthy of further action, and merit closure.⁴

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective April 1, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

⁴ These cases are: MUR 4139 (*Enid 94*); MUR 4150 (*Frank Fasi*); MUR 4257 (*DSCC*); MUR 4258 (*NRSC*); MUR 4260 (*Packwood & Auto Dealers*); MUR 4261 (*NRA Institute for Legis.*); MUR 4262 (*Oregon Republican Party*); MUR 4265 (*NRSC; Sen. Phil Gramm*); MUR 4272 (*Bishop for Congress*); MUR 4279 (*Russ Berrie Co.*); MUR 4284 (*United We Stand America*); and Pre-MUR 322 (*Royal Hawaiian Country Club*).

97043794101

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

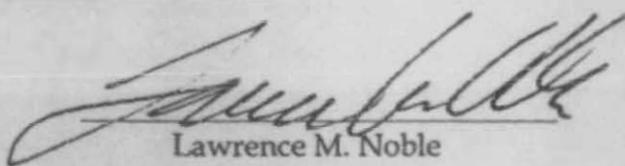
- 1. Pre-MUR 322
- 2. Pre-MUR 334
- 3. Pre-MUR 335.

B. Take no action, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

- | | | |
|--------------|--------------|--------------|
| 1. MUR 4139 | 13. MUR 4347 | 25. MUR 4390 |
| 2. MUR 4150 | 14. MUR 4354 | 26. MUR 4391 |
| 3. MUR 4257 | 15. MUR 4367 | 27. MUR 4393 |
| 4. MUR 4258 | 16. MUR 4371 | 28. MUR 4397 |
| 5. MUR 4260 | 17. MUR 4373 | 29. MUR 4405 |
| 6. MUR 4261 | 18. MUR 4374 | 30. MUR 4411 |
| 7. MUR 4262 | 19. MUR 4375 | 31. MUR 4414 |
| 8. MUR 4265 | 20. MUR 4377 | 32. MUR 4418 |
| 9. MUR 4272 | 21. MUR 4379 | 33. MUR 4421 |
| 10. MUR 4279 | 22. MUR 4383 | 34. MUR 4448 |
| 11. MUR 4284 | 23. MUR 4384 | |
| 12. MUR 4332 | 24. MUR 4388 | |

97043794102

3/5/97
Date


Lawrence M. Noble

General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Enforcement Priority) Agenda Document #X97-16

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matter:

A. Decline to open a MUR, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 322;
2. Pre-Mur 334;
3. Pre-MUR 335.

B. Take no action, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

- | | |
|--------------|---------------|
| 1. MUR 4139; | 10. MUR 4279; |
| 2. MUR 4150; | 11. MUR 4284; |
| 3. MUR 4257; | 12. MUR 4332; |
| 4. MUR 4258; | 13. MUR 4347; |
| 5. MUR 4260; | 14. MUR 4354; |
| 6. MUR 4261; | 15. MUR 4367; |
| 7. MUR 4262; | 16. MUR 4371; |
| 8. MUR 4265; | 17. MUR 4373; |
| 9. MUR 4272; | 18. MUR 4374; |

(continued)

97043794103

Federal Election Commission
Certification: Enforcement Priority
March 11, 1997

Page 2

19. MUR 4375;	27. MUR 4393;
20. MUR 4377;	28. MUR 4397;
21. MUR 4379;	29. MUR 4405;
22. MUR 4383;	30. MUR 4411;
23. MUR 4384;	31. MUR 4414;
24. MUR 4388;	32. MUR 4418;
25. MUR 4390;	33. MUR 4421;
26. MUR 4391;	34. MUR 4448.

Commissioners Aikens, Elliott, McDonald, McGarry,
and Thomas voted affirmatively for the decision.

Attest:

3-12-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

97043794104



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward Wesley Walton
101 Swanson Road, Unit 116
Boxborough, MA 01719-1331

RE: MUR 4411

Dear Mr. Walton:

On July 11, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043794105

MUR 4411
FIRST EVANGELICAL PRESBYTERIAN CHURCH

Edward Wesley Walton alleges that the First Evangelical Presbyterian Church ("the Church") and the Anna Presbyterian Foundation, both located in Anna, IL, are 501(C)(3) organizations. He alleges that distribution in the Church of certain "training materials" that may be of a partisan political nature may have violated federal law. He also suggests that a visit from Pat Boone's daughter and her spouse constitutes political electioneering, and not a religious visit, because Mr. Boone is listed in the 1995 National Policy directory with Pat Robertson, founder of the Christian Coalition. He would like the First Evangelical and the Anna Presbyterian Foundation to be investigated to determine if they have been operating in compliance with their tax exempt status.

Respondent Rev. Stephen F. Wilkinson of the Church disavows any connection between the Christian Coalition and his congregation, and has had no personal involvement with it.

Respondent R. Corydon Finch responds that this matter seems to have arisen from a personal vendetta by the complainant against himself and the other respondents, all of whom apparently grew up together in Anna, IL. Mr. Finch disclaimed any knowledge of invitations by the Church or Barbara Walton (complainant's sister) to the daughter of Pat Boone to the Church. He also states that he has no knowledge as to whether she actually did visit. He believes that the "training materials" dealt with the Church's process of affiliation with the Evangelical general denomination in 1982, and are not even remotely related to any type of alleged political action.

This matter is less significant relative to other matters pending before the Commission.

97043794106



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

Stephen F. Wilkinson, Registered Agent
First Evangelical Presbyterian Church of Anna, Illinois
315 South Street
Anna, IL 62906

RE: MUR 4411

Dear Mr. Wilkinson:

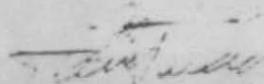
On July 16, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the First Evangelical Presbyterian Church of Anna, Illinois. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely


F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043794107

MUR 4411

FIRST EVANGELICAL PRESBYTERIAN CHURCH

Edward Wesley Walton alleges that the First Evangelical Presbyterian Church ("the Church") and the Anna Presbyterian Foundation, both located in Anna, IL, are 501(C)(3) organizations. He alleges that distribution in the Church of certain "training materials" that may be of a partisan political nature may have violated federal law. He also suggests that a visit from Pat Boone's daughter and her spouse constitutes political electioneering, and not a religious visit, because Mr. Boone is listed in the 1995 National Policy directory with Pat Robertson, founder of the Christian Coalition. He would like the First Evangelical and the Anna Presbyterian Foundation to be investigated to determine if they have been operating in compliance with their tax exempt status.

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This matter is less significant relative to other matters pending before the Commission.

97043794108



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

R. Corydon Finch, Esq.
402 East Vienna Street
P.O. Box 645
Anna, IL 62906

RE: MUR 4411

Dear Mr. Finch:

On July 16, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

Thank you for sending us your original briefs filed in the Fifth District Appellate Court of Illinois and the United States Supreme Court. We have retained copies as part of our case file and are pleased to return the originals to you.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

3 Attachments

1. Narrative
2. Appellants' Brief
3. Brief in Opposition to Petition for Writ of Certiorari to the Fifth District Appellate Court of Illinois

97043794109

MUR 4411
FIRST EVANGELICAL PRESBYTERIAN CHURCH

Edward Wesley Walton alleges that the First Evangelical Presbyterian Church ("the Church") and the Anna Presbyterian Foundation, both located in Anna, IL, are 501(C)(3) organizations. He alleges that distribution in the Church of certain "training materials" that may be of a partisan political nature may have violated federal law. He also suggests that a visit from Pat Boone's daughter and her spouse constitutes political electioneering, and not a religious visit, because Mr. Boone is listed in the 1995 National Policy directory with Pat Robertson, founder of the Christian Coalition. He would like the First Evangelical and the Anna Presbyterian Foundation to be investigated to determine if they have been operating in compliance with their tax exempt status.

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Respondent R. Corydon Finch responds that this matter seems to have arisen from a personal vendetta by the complainant against himself and the other respondents, all of whom apparently grew up together in Anna, IL. Mr. Finch disclaimed any knowledge of invitations by the Church or Barbara Walton (complainant's sister) to the daughter of Pat Boone to the Church. He also states that he has no knowledge as to whether she actually did visit. He believes that the "training materials" dealt with the Church's process of affiliation with the Evangelical general denomination in 1982, and are not even remotely related to any type of alleged political action.

This matter is less significant relative to other matters pending before the Commission.

9704379411C



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

Stephen F. Wilkinson, Registered Agent
Anna Presbyterian Foundation
315 South Street
Anna, IL 62906

RE: MUR 4411

Dear Mr. Wilkinson:

On July 16, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Anna Presbyterian Foundation. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely

* original was signed
F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

9704379411



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

James Larry Karraker
402 East Vienna
Anna, IL 62906

RE: MUR 4411

Dear Mr. Karraker:

On July 16, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely

** original was signed*
F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043794112



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

Barbara J. Throgmorton
RR2, Box 375
Anna, IL 62906

RE: MUR 4411

Dear Ms. Throgmorton:

On July 16, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on April 1, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer Henry at (202) 219-3400.

Sincerely

* original was signed

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043794113



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4411

DATE FILMED 4-25-97 CAMERA NO. 1

CAMERAMAN JMJ

97043794114



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 4/28/97

Microfilm

Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4411

97043800996

APR 2 9 55 AM '97

March 28, 1997

Office of General Counsel
Federal Election Commission
999 East Street NW
Washington, DC 20463

CLOSED

Re: MUR-4411

Dear Counsel:

Please find enclosed a transcript of State of Illinois court proceedings over a motion filed in connection with the following case: THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA, et al., vs. THE FIRST PRESBYTERIAN CHURCH OF ANNA, ILLINOIS, et al.

Mr. Finch's "Motion Attacking Complaint" is a motion to dismiss it. The styling "First Presbyterian Church of Anna, Illinois, et al." does not show [1] that the Church is incorporated; [2] that on Oct. 25, 1981, its articles of incorporation had been amended to make it "a member congregation of the Evangelical Presbyterian Church."

Mr. Karraker has his name and postal address on the amendment document, County records, Book 11, Page 452 (1981). Mr. Finch is one of the Church's three incorporators (1975). In the text he treats the church as a corporate entity, which it is, but does not call it evangelical. The amended Article V places the Church squarely within the evangelical hierarchy. The estate it received was willed by the testator Vesta Alden to the United Presbyterian Church of the United States, Plaintiff in the lawsuit.

Case No. 81-MR-5 is filed with Lorraine Moreland, Circuit Clerk, Union County Courthouse, 311 W. Market St., Jonesboro, IL 62952.

Sincerely,

Edward Wesley Walton
Edward Wesley Walton

Dr. Edward Wesley Walton, Ph.D.
Leverett 116
101 Swanson Road
Boxborough, MA 01719
(508) 264-9189

97043600997

ARTICLES OF INCORPORATION UNDER THE GENERAL NOT FOR PROFIT CORPORATION ACT

(These Articles Must Be Filed in Duplicate)

(Do Not Write in This Space)

Date Paid 1-23-75 Filing Fee \$ 25.00 Clerk

To Michael J. Hewitt, Secretary of State, Springfield, Illinois

Table with 5 columns: Name, Number, Street, Address City, State. Rows include David Starr Lodge, R. Corydon Finch, and John O. Wells.

being natural persons of the age of twenty-one years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not For Profit Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

- 1. The name of the corporation is: The First United Presbyterian Church of Anna, Illin
2. The period of duration of the corporation is: Perpetual
3. The address of its initial Registered Office in the State of Illinois is: 107 East Jefferson
4. The first Board of Directors shall be 10 in number, their names and addresses being as follows:

Table with 5 columns: Name, Number, Street, Address City, State. Lists names and addresses of the first board of directors.

5. The purpose or purposes for which the corporation is organized are: To constitute and organize the members of the corporation as a church, to covenant and agree to walk together as disciples of Jesus Christ in a church relation according to the provisions of the Constitution of The United Presbyterian Church in the United States of America, and to exercise the government of said church under some certain and definite form.

6. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 5 hereof.

97043800998

PK 11 PAGE 452

(DO NOT WRITE IN THIS SPACE)

To Be Filled
in Duplicate
Filing Fee \$25.00

FORM NP-33

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
under the
GENERAL NOT FOR PROFIT CORPORATION ACT

Date 11-23-81
Filing Fee: \$25.00
Clerk AJT

To Jim Edgar
Secretary of State
Springfield, Illinois

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 35 of the "General Not For Profit Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

1. The name of the corporation is: The First Presbyterian Church of Anna, Illinois.
2. There are some members, having voting rights with respect to amendments:
(Insert "no" or "some")
(Strike paragraphs (a), (b), or (c) not applicable)
3. (a) At a meeting of members, at which a quorum was present, held on October 25, 19 81, same receiving at least two-thirds (2/3) of the votes entitled to be cast by the members of the corporation present or represented by proxy at such meeting.
(b) - By a consent in writing signed by all members of the corporation entitled to vote with respect thereto,
(c) - At a meeting of directors (members having no voting rights with respect to amendments) held on _____, 19 _____, same receiving the votes of a majority of the directors then in office, the following amendments were adopted in the manner prescribed by the "General Not For Profit Corporation Act" of the State of Illinois:

ARTICLE V

The purpose or purposes for which the corporation is organized are: To constitute the members of the Congregation a Church as disciples of Jesus Christ and as a member congregation of the Evangelical Presbyterian Church.

97043800999

James P. Karsch
P. H. 602
Anna, Ill

STATE OF ILLINOIS }
UNION COUNTY }
This instrument was filed for record
#3252
NOV 30 1981
at 11:25 o'clock A. M. and
recorded in Vol. 4 page 452-3
Fred W. Blaylock
County Clerk & ex officio Recorder of Deeds

(over)

STATE OF ILLINOIS

The United Presby-

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL

FILED

UNION COUNTY

DEC 23 1983

Matilene Page

CLERK OF THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
UNION COUNTY, ILLINOIS

THE UNITED PRESBYTERIAN CHURCH OF :
THE UNITED STATES OF AMERICA, et al., :

Vs. :

No. 81-MR-5

THE FIRST PRESBYTERIAN CHURCH OF :
ANNA, ILLINOIS, et al. :

REPORT OF PROCEEDINGS

MOTION ATTACKING COMPLAINT

BE IT REMEMBERED that on the 2nd day of October,
A. D., 1981, the following proceedings were had before the
Honorable Donald E. Garrison, Circuit Judge:

APPEARANCES:

JOHN M. FERGUSON, Attorney at Law, Belleville, Illinois,
in behalf of The Plaintiss.

JOHN W. HUFFMAN, Attorney at Law, Carbondale, Illinois,
in behalf of The Plaintiffs.

R. CORYDON FINCH, Attorney at Law, Anna, Illinois,
in behalf of The Defendants.

97-04380-1000

1 THE COURT: This is case number 81-MR-5, The United Presby-
2 terian Church of The United States of American, et al.,

3 Vs. The First Presbyterian Church of Anna, Illinois, et al.

4 Let the record show that the Plaintiff, by counsel, is here
5 and that the Defendant, by counsel, is here.

6 I am Don Garrison. I am one of the Judges of The Second
7 Judicial Circuit. I am assigned by the Supreme Court of
8 Illinois to hear this case to its conclusion. I live in
9 Fairfield. I have never been to Anna-Jonesboro or to
10 Union County before in my life. I do not know anything
11 about this case. I have never met any of the parties to
12 this case until today, and, if you are interested, I am not
13 a Presbyterian. I am a Methodist, for whatever that may be
14 worth.

15 This matter comes on for hearing today on a motion filed by
16 the Defendants, attacking the complaint. I previously indi-
17 cated to you in my letter to counsel that I would hear oral
18 arguments today and that I would allow each side an opportuni-
19 ty to file written briefs if each of you so desire. In any
20 event, I will take the matter under advisement following
21 the oral arguments today. I will not decide the motion
22 here and now. Are each of you ready to proceed with the
23 oral arguments today?

24 MR. FINCH: I am ready, Your Honor.

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97-04380-002

PENGAD CO., BAYONNE, N.J. 07002 FORM II 74A

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MR. FERGUSON: Ready, Your Honor.

THE COURT: Very well. Mr. Finch, you may argue your motion.

MR. FINCH: Thank you. May it please The Court and Counsel, this case is basically, Your Honor, about a claim by someone to church property. I presume from what your letter said, you have read the complaint and I have tried, likewise, to understand the complaint. I want to approach my argument in three ways, in three parts, for this reason: The language of the complaint for a declaratory judgment as the Plaintiffs have set it forth is a mixed bag of ecclesiastical language and legal terms mixed together. I rather presume that we are going to be involved for a long time in this litigation. There are numerous cases going on across the United States involving this issue, that is, lawsuits by The United Presbyterian Church and its Presbytery against local churches, so I don't know how far we will go. Nonetheless, the baffling and confusing nature of the language in the complaint is the first thing I want to approach. The second thing I want to approach is to go through the, what I think are the primary cases that deal with the issues that either are or will be raised in connection with this litigation and particularly this complaint. The third thing I want to do is to look at the complaint, paragraph by paragraph, and fourth, I want to

C-157

PENGAD CO., BAYONNE, N.J. 07003 FORM IL 24A

1 get around to my motion.

2 ~~In order for the Court and Counsel to have a viewpoint,~~
3 I want to talk first about what is not the law at all,
4 and then I am going to talk about the law. I want to talk
5 about epistemology, which I am going to define as the science
6 or skill that deals with systems of beliefs, and terms and
7 concepts that are employed. I think that in doing that, I
8 want to make certain things clear. I think what I am going
9 to say is not going to be understood very well in part,
10 because I don't want to spend the time in great detail to
11 go through all of it. Secondly, I am not sure counsel
12 would appreciate it. I will support that. Third, what I
13 am going to go through, inasmuch as I do not know you, nor
14 do I know about your background, please do not feel I am
15 being presumptuous in assuming that you do or do not under-
16 stand, and should you, through the course of the first part
17 of what I am going to say, wish to inquire, please feel free
18 to do so.

19 The reason I want to take up the matter of language and co
20 cepts first, more specifically can be demonstrated by some
21 thing like what is found on page twelve, it starts on page
22 eleven and goes on to page twelve, in the last paragraph
23 of the last paragraph of paragraph numbered twenty-eight
24 on page twelve, it says, for example, the interest of the

C-158

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PERGID CO., BAYONNE, N.J. 07003 FORM II 2-1-A

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United Presbyterian Church of The United States of America
in all property of the church and its constituent parts,
including the Anna Church, results from the oneness of the
church as a single ecclesiastical entity of which all parts
are integral and inseparable. Throughout this, and I will
get to the complaint later, throughout this, we are barraged
with concepts that are rather nebulous in their form, that
are alien to law, like hierarchal, which I will get to
later, oneness, these kinds of concepts. The attempt, I
think, is made in the complaint is to somehow confuse the
law with these alien concepts, and of course, if they do
that, and if they are permitted to do that, then they have
won, there is no doubt about that. I will get to that later.
The way I want to approach this is, I want to talk about
belief systems. Now, there are belief systems that deal
with part of the world around us and there are belief
systems that are all-inclusive. To demonstrate what I mean,
Lewis Carroll, in Alice in Wonderland, offers a partial
belief system, a way of looking at things and characterizing.
There, if something was said to be a road, it is a road,
by fiat. Doctor Goebbels made much of this way, character-
izing concepts in terms and through one medium or another,
putting them off into other areas of human behavior. Now,
there are other belief systems that are also partial. The

1 psycho-analytic view of mass is a belief system that is
2 separate and apart from any of the Greek belief systems, from
3 the Christian belief systems, the nuclear physics, let's
4 say, but it also, once you accept its theoretical under-
5 pinnings is that the unconscious effect of all behavior,
6 once you accept it and buy into it, then there is no way
7 out to accept human behavior. You cannot argue with the
8 Freudian, except, and when, if you enter his system.
9 Another belief system ^{that} is partially explained through moti-
10 vation is economic motivation. I put those forth for this
11 reason. I put them forth because they are not relevant and
12 I want to move on to belief systems that attempt to be
13 complete and are all-inclusive. Now, there are several
14 of those. The one that I want to take up first is the
15 belief system that explains absolutely everything that ever
16 went on that is referred to in this complaint and explains
17 everything we are doing today. That belief system, like-
18 wise, is all inclusive. The belief system I am talking
19 about is the one that deals with nuclear physics. That
20 explains the way your hand is moving, my voice, the com-
21 position of this table, it explains motivation in that there
22 is an electric chemical, it explains by nuclear physics
23 the process that explains thought and voice. Now, the
24 theoretic underpinnings of this, that's important to what

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PENCAD CO., BAYONNE, N.J. 07001 FORM IL 114

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1 I am going to do. The system of sub-atomic physics
2 has several theoretical underpinnings, and if you buy
3 these, does anyone want to ask a question? Did either
4 of you have a question? Are you going to talk while I
5 am arguing?

6 THE COURT: All right, you may make your argument to the
7 Court.

8 MR. FINCH: I did say in the beginning that what I had to
9 say would not be understood nor appreciated and I have
10 tried to cover some of the things that do have something
11 to do with it. The theoretical underpinnings of nuclear
12 physics cover certain laws and ^{a postulation} ~~apostulation~~ of four basic
13 forces. These laws have to do, for example, a few of
14 them have to do mostly with conservation of energy and
15 ~~mass~~ ^{mass} has to do with conservation. Momentum has to do with
16 conservation. Electrical charge. There are the four forces.
17 Now, no one who operates in that belief system, no physicist
18 who uses those concepts and terms believes that they are
19 dealing with reality. They know, however, that if they are
20 going to talk about what goes on, if they are going to
21 manipulate what goes on, they have to have some way of
22 looking at it, they have to have some concept within which
23 particles, for example, fit, and they also have to have
24 terms that describe those concepts. It would be possible

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PENCAD CO., BAYONNE, N.J. 07002 FORM H 12A

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to set forth everything that is in this complaint, the behavior of people, for example, a corporation, it is alleged in here, voted a certain way on a certain proposition. It would be possible to explain that in terms of nuclear physics. There is another belief system and that is the belief system of western christianity which has also certain theoretical underpinnings and like the system of physics, has its own closure rule. So that, once you start using these terms and accepting them, there is no way out. Now, let me demonstrate that. Certain of the theoretical underpinnings of the Christian system are based on the platonic concept. Getting around to our legal system's not accepting it, maybe I should make that point now. The notion of oneness, the notion of the tri-union of the trinity, the notion of their being a unit of integral part which constitutes one, are purely platonic. They could not have been otherwise because that was the only system or concept available at the time of the formation of the church in the first twelve or thirteen hundred years since the birth of Christ. Into that, and the platonic concept is important because that is what they are using here, a oneness, a hierarchy, a concept that is all-inclusive, and you can't get out. That was what Plato was doing. Then, St. Thomas along came/Aquinas and into that, he infused an Aristotilia

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PERCIVAL CO., BAYBROOK, N.J. 07002 FORM N. 244

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type of logic by saying that either being or not being
at the same time. Something cannot both be and not be
at the same time. A. is A. and it can't be anything else.
That is within the system. Those are the theoretical under-
pinnings of the Christian system. Now, the cloture rule
is simply this: God works in mysterious ways. We cannot
comprehend the working of God. No reason. All right.
Once they have got that, and once they pull you into it,
you see, and that is their doctrine and dogma. Once they
do that, there is no way out for anybody to argue with them
within their own system because it is neatly built and
constructed, the system of nuclear physics is built and
constructed so that once you start using their terms, you
cannot argue with it, you have lost. The legal system
which we deal with, which is another belief system, has
other basic presuppositions, namely that we deal with
things that are specific, things we can see, things which
are written down, and all this is mandated, this division
between what we do here as lawyers, counsel is a lawyer,
Peyton Kunce is a lawyer, myself. What we do here as law-
yers, we are separated from these concepts by the first
amendment of The United States and the third amendment or
whatever it is of The Illinois Constitution, which I will
get around to later. Nonetheless, my point here is, through

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PENGAP CO., BAYONNE, N.J. 07002 FORM R 34A

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this complaint, we are dealing with terms and concepts that are alien to the law and that, if they are permitted simply to allege a broad concept like hierarchal, or a notion of oneness, there is no way out, absolutely no way out. Now, this is what they have done. I want to go through the complaint now and demonstrate some of this, if I may. The second page of the complaint, paragraphs one through six set forth basically the nature of the parties, and since I have made an attack on that, I want to point out now that the United Presbyterian Church of The United States of America is alleged to be an unincorporated religious association. The Plaintiffs, the Presbytery, in paragraph two is said to be a non-profit unincorporated association. I don't know how that is different from the other. It tells who the individual plaintiffs are. Paragraphs four, five and six describe in one way or another, the Defendants. Then the second large part of the complaint deals with the hierarchy concept, the ecclesiastical concept, and what it says, to summarize it without reading it through, is that from the United Presbyterian Church of The United States of America, whatever that is, on down to the local church, they are all part of one hierarchy, and they say it is under eccleastical law, and, ⁱⁿ paragraph eleven, they get into some matters which I think I will later attack

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PENGAD CO. STONHAM, N.J. 07868 FORM IL 71A

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as irrelevant, paragraph eleven talks about Presbyteries in general, that is, what they are, what they are composed of, individual congregations, somewhere else, I don't know, that will later be attacked as inappropriate. Paragraph twelve introduces what they call a judicatory, called a synod, which they say fits into this hierachy somewhere. In paragraph thirteen, it gets into other matters that flow from the general belief system of Christianity, namely they say the presbytery has the power in said book of order, citing it generally, to resolve questions of doctrine or discipline, to visit churches to correct evils, to dissolve churches when administrative commissions investigate, likewise, later on when I get to my motion, paragraph by paragraph, I will point out that these are, of course, way beyond the scope of our civil courts to the extent that as the prayer does, to the extent that these people are asking the courts to assist the presbytery in correcting evils. I think that here is another interesting way where I could point up the relevancy of this. The legal system deals with its own kind of evils. They have the criminal law and that creates our evils, as lawyers. This legal system, this court, the civil court, cannot deal with whatever evils they are talking about here, so later on, I will ask that this be stricken as being irrelevant. When we get

1 to paragraphs fourteen through nineteen. Paragraphs fourteen
2 through nineteen recite and allege a sequence of events
3 and acts purportedly committed by my clients and their
4 corporate activities by modifying their corporate charter,
5 their by-laws, conveying land and et cetera. What fourteen
6 through nineteen lead down to in paragraph nineteen, finally,
7 and this demonstrates, I think, my point that the com-
8 plaint is basically a complaint dealing with land, and
9 asking for relief pertaining to land. Paragraph nineteen
10 finally gets down to what is the gist of all of this, well,
11 one defendant corporation conveyed by warranty deed to another.

12 That is what they are trying to get at. So, in fourteen
13 through nineteen, they set forth those kinds of facts.
14 Paragraph twenty deals with what is called an administrative
15 commission. I will later attack that as not having any
16 standing, as I view the United Presbyterian Church and the
17 Presbytery, itself. Here, they say an administrative commissio
18 whatever that is, is one of the Plaintiffs, was appointed,
19 and they set forth a number of irrlevancies there. They
20 say the presbytery's job is to communicate and interpret,
21 so again, this is totally beyond the pale of what this
22 court can do, that is, enter an order directing that my
23 clients be subjected to communication and interpretation
24 by anyone. That is what the first amendment is all about.

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PERGAD CO. BAYONNE, N.J. 07002 FORM IL 24A

1 The administrative commission is authorized to do what next?
2 Provide an objective explanation. Visit and counsel. And
3 it goes on. The only significant one of these is, of course,
4 they were authorized to employ legal counsel, but I have
5 never seen employment authorization set forth in a complaint
6 before. Nonetheless, that is what that paragraph says.
7 Paragraphs twenty-one and twenty-two likewise deal with
8 what this administrative commission did. They were appointed
9 to do these things, it says, they held a meeting, it says
10 they reported back, and then what did they do? They deter-
11 mined that my clients were unwilling to manage wisely their
12 affairs. All right. When I get around to it, I will attack
13 that again as being, having nothing to do with the lawsuit,
14 either the one involving land or having anything to do with
15 the lawsuit that is cognizable by the civil courts. Now,
16 paragraph twenty-three. Now, we can see what the lawsuit
17 is about. The allegations about the lack of wisdom of
18 my clients and their evil and sinfulness all pale in light
19 of these legal descriptions of land which amount to a
20 number of church lots and over two hundred acres, this,
21 essentially, is what the lawsuit is about and this is what
22 they want. The balance of page nine, there, deals further
23 personal property and it says that they acquired it by
24 gifts, et cetera, basically, it deals with property.

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1 Paragraph twenty-five makes some assertions again, all of
2 the property was and is subject to the control and ultimate
3 ownership, et cetera, et cetera, and again, we have got to
4 be careful here when we deal with this and which I ask the
5 court to do, as to whether or not this is ownership,
6 control, et cetera, within an ecclesiastical sense or
7 ownership within a legal sense because again, we have got
8 some cases where a lawyer is dealing with deeds, contracts,
9 evidences of ownership, somehow. Nonetheless, they assert
10 here in their way, that the property is theirs to control
11 under the ultimate ownership of the presbytery.

12 Chapter twenty-six is divided into a number of parts and
13 it has to do with assertions again, that have to do mostly
14 with eccleastical matters. It says, in paragraph A. that
15 the act of my clients in disassociating themselves was a
16 serious disorder, and by their own admission here, under
17 the constitution, that is an eccleastical notion not a
18 civil law notion. Without going through each one, A., B.,
19 C., and D., they deal with, basically, my clients' viola-
20 tion of ecclesiastical rules which, incidentally, don't
21 pertain to property. If they do, they pertain that way
22 only in the sense that the last of paragraph C, it says
23 that all this has deprived plaintiffs of their right to
24 provide religious worship for the congregation which, of

PENNSA CO., BAYONNE, N.J. 97043801013

1 course, is another kind of equitable relief this court
2 can't give. This court cannot enjoin anybody mandatorily
3 or prohibitively to subject themselves to or to listen to
4 any form of worship. Nonetheless, that is what they are
5 contending.

6 Paragraph twenty-seven says declaratory judgment, and they
7 have got to say that and they have.

8 Paragraph twenty-eight says that this court is prohibited
9 from, it says that this court has to act affirmatively in
10 order to give the presbytery and its UPCUSA its rights,
11 under the guarantees, it says, of these two amendments.

12 It goes ahead and talks about what I have referred to before,
13 the oneness of the church and all that, and taking the other
14 two paragraphs with it and summing them up, it says that
15 this court has to act to avoid denying to the plaintiffs
16 their constitutional rights.

17 Now, what I want to urge upon the court in considering that
18 part of it is this: Paragraph twenty-eight and twenty-
19 nine and thirty were used in two other cases that I know of
20 that the United Presbyterian Church and the Presbytery has
21 brought in the same language, and those were cases where
22 there had not been as there has been here, a conveyance
23 out by a church body, so what I am wondering here, and in
24 effect, what the plaintiffs are asking you to do is to enter

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1 an order having someone convey something back, a mandatory
2 injunction with specific performance, whatever you want
3 to call it, but the plaintiffs are asking a civil court
4 to intervene affirmatively into the affairs of a religious
5 organization, namely, my clients. I think that they in-
6 cluded that in there by error, because I don't think any-
7 one has ever suggested that the civil court can intervene
8 in that way. Nonetheless, I want to point out to the court
9 that I think the amendments to the Federal and State Con-
10 stitutions prohibit the courts from intervening into the
11 affairs of a religious body. Rather than constituting a
12 mandatory direction for a court to intervene, and I have
13 there, specific reference to the Illinois Constitution,
14 where it says, and I will paraphrase it now, but I will
15 read it later, that the states shall not prefer any
16 denomination or mode of worship over the other. So, I
17 think that what they are asking for there is simply turned
18 around and I don't think they meant that to be in there.
19 Now, I would like to look at the relief they have asked
20 for because I think that is important.
21 Paragraph A. says declare the legal rights which is a standard
22 allegation.
23 Paragraphs B., C., and D. really say the same thing in differ-
24 ent words. Declare what the Anna Church did as being wrong,

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1 declare that it is still a part of the hierachy of the church,
2 and they say that in several ways, declare that it was still
3 a particular and constituent church, a single ecclesiastical
4 entity, that was one way of saying it. Paragraph D. says
5 the same thing, find and declare again that the Anna church
6 was and is an integral part and is subject to government
7 under the form of government and so forth.

8 So those all amount to the same thing. Declarations as to
9 and to build up and to reafirm this hierarchal concept. It
10 has nothing to do with law. It says this court, this civil
11 court should make an order saying that my clients are bound
12 within this Platonic-aristotilian Western Christian concept.
13 That's what they are asking here. It is not a legal concept,
14 and when we move on to sub-paragraph E., they say, they
15 ask for further relief which is impossible to attain, declare
16 and judge that under the form of government, should the
17 Anna church, whenever that may be, and as a particular church,
18 abandon its work, there is no allegation that it is about
19 to or that they have any reasonable apprehension of all that,
20 they are asking for some kind of relief, it is speculative,
21 then it has got to return its property to the church. Well,
22 it doesn't have its property now. It has already been con-
23 veyed out, so that relief is unavailable.

24 Paragraph F. the convoluted language again, about ecclestical

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PERGOLD CO., BAYONNE, N.J. 07002 FORM IL 25A

1 matters and down at the bottom, they say find that the Anna
 2 church holds the property in trust for the Plaintiff. I will
 3 get to that later, but the trust concept, and I won't
 4 mention that when I get to it, and I am going to argue it
 5 now, the trust concept is kind of interesting if they really
 6 want to follow this through. The trust concept, the plaintiffs
 7 are asserting, would work this way: Here is the greater
 8 church, the greater denomination, and they are saying well,
 9 all of the local churches hold their property in trust for
 10 the greater denomination. The law is, when that kind of law
 11 was being enforced, that the holding in trust was for the
 12 true believers rather than the greater denomination, so,
 13 if the court gets hung up on the in trust theory, here is
 14 what we would have. We have a case of the plaintiffs arguing
 15 on the one hand that they are the true believers and the
 16 defendants arguing on the other hand that they are the
 17 true believers, and what that gets the court into as the
 18 United States Supreme California Court found out was that
 19 what that gets the court into is deciding the pure matters
 20 of doctrine. The irony is there that if we get into the
 21 in trust theory then we are into doctrinal disputes which
 22 is probably a part of why all this thing started anyhow,
 23 and we are supposed to look back at the formation of the
 24 church in the first place, John Calvin, I presume, although

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PENGAS CO., BAYONNE, N.J. 07001 FOUR IN ALL

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I don't really remember that much about it. Somebody along the way back there, set forth the original tenets of Presbyterianism, so then the question becomes who Your Honor decides who the true believers are. Anyhow, that is what they ask for there.

Then, finally, they get around to getting a little bit closer to what they want. In paragraph G., they say they want possession of the property delivered to them. Here is the unique legal concept now. Look at it this way. Without any insertion of a legal basis for it in the complaint, they are saying, you have got to divide this property into separate interests. The Defendants can keep the legal interests, but somehow, we have a claim to the possessory interests, something like a lease, I suppose. Anyhow, that's what they ask for there, and finally in J., they ask that one of the Defendants convey the other. Okay, now, that is the kind of relief. My point in mentioning all of this relief is that the first four, five, or six paragraphs that they ask for there, declare that my clients are in the hierarchy, determine who the true believers are. This court is not in that business. The constitution says it isn't. Finally they get around to saying, we want a conveyance made. All of the highly conceptual Christian notions and notions that are involved in this church aside,

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PENCAD CO., BAYONNE, N.J. DTGCS Form H 34A

1 all the sinfulness, the lack of wisdom, here, V. ...
2 aside, this has to do with a piece of land, a number of
3 pieces of land, as a matter of fact, so that's what the
4 case is about. Now, to give you a framework within which
5 to look at this, and in the brief that I will prepare, I
6 will mention more cases than I am going to today, but I
7 wanted to suggest what I thought were the cases providing
8 the better media to get into, both there and in my argu-
9 ment. The law in this area took a new direction in 1979,
10 when the United States Supreme Court decided a case called
11 Jones against Wolf, and there are cases following up on
12 that, but before I get to that, the only case that I can
13 find in Illinois and the one I presume upon which the
14 Plaintiffs will rely to some extent is a case called Lowe
15 Vs. The First Presbyterian Church of Forest Park, which was
16 decided by our Supreme Court in 1974. I bring this up to
17 distinguish it on a number of grounds that have nothing to
18 do with this case, but what it was, the Presbytery in that
19 case, being a Presbyterian Church in Chicago, brought
20 a suit for mandatory injunction to compel the conveyance
21 of the Forest Park Presbyterian Church's property to the
22 Presbytery, what was then called the Church extension board.
23 Maybe I had better mention something, I don't know if these
24 people know it or not, I assume one of them does, even thoug

C-174

1 these are suits by an incorporated association, the Presbytery
2 has a corporation that holds property and the general church
3 has a corporation that holds property, so there are, through-
4 out the hierarchy of the church, in their sense, they are
5 a corporation. They simply have elected not to use that
6 in bringing the lawsuit. In this case, the request for
7 relief back in 1974, was indeed, that the local church
8 convey to what was then called the church extension board.
9 And that, I think, was their property-holding device at
10 that time. What happened here, that is in the Lowe case,
11 unlike what you are dealing with, there, the Presbytery
12 took the initial action, sorting out the chain of events
13 in that case, and the initial ^{action} was that the Presbytery,
14 itself, and in this sense, and this is something else that
15 is going to be confusing, these people don't use their terms
16 consistently, and don't know if they think consistently or
17 not, but there is a thing called Presbytery that meets,
18 you go to Presbytery, and I may not have all of my facts
19 straight, but every local church elects a commissioner who
20 goes once or twice a year to a meeting of all other commiss-
21 ioners and that's a presbytery, and that's a kind of legis-
22 lative body and that's a kind of judicial body, and they
23 exist, that particular one, exists for a term which I think
24 is a year. Now, in this case, The Illinois Supreme Court

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PENGLO CO., BAYONNE, N.J. 07002 FORM R 34A

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PERCIVAL CO., DAYTON, N.C. 27603 FORM 11 11A

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talks about the Presbytery adopting a resolution, as they are
talking about this legislative body, the one that is a
committee, adopting a resolution. This, when a complaint
here talks about the Presbytery of Southeastern Illinois,
The United Presbyterian Church, they are talking about, as
they say in their own pleadings, they are talking about
all the people, property, the churches, and everything
else in the geographical area, so there is a difference
there in talking about the Presbytery, which is a geographi-
cal entity in Southern Illinois, here we are, the Presbytery
of Southeastern Illinois is one thing, a geographical area,
the second thing, it is a legislative judicial body that lasts
for a period. It is also a corporation that exists some-
where and it is also, apparently, a not-for-profit corpora-
tion. Nonetheless, what they are talking about here in this
Lowe case, the Presbytery adopted a resolution dissolving
a congregation of this Defendant church and that resolution
directed that the assets of the church be liquidated by the
Plaintiff which is the Presbytery. Now, they didn't do it,
so the presbytery brought this suit for a mandatory in-
junction setting up, just as they have set up here, you
know, we have got this hierarchy, and you people, you just
answer a part of it, and therefore, we want a mandatory in-
junction saying convey to us. All right, now, in that case

1 based on what was then the law, so when they
2 get around to deciding that this case is their authority,
3 all I am really asking now is to be aware of the fact that
4 the law as set forth in '74, at that time, has been super-
5 ceded by what is now called, or what I call in my pleadings,
6 the mutual principles of law interpretative concept, which
7 is set forth in Jones against Wolf, and I want to mention
8 certain parts of this case because I want to get around to
9 another case which follows it. The case here is about a
10 Presbyterian Church in Georgia. Now, the parties involved
11 there, well, let me back up for a minute. This United
12 Presbyterian Church of The United States of America is not
13 the only Presbyterian Church in the world, nor the United
14 States. There is a Cumberland Presbyterian Church, and
15 there is also one in the southern States which I think is
16 The United Presbyterian Church of The United States. That
17 is another outfit. But, their ecclesiastical structure
18 is the same, so the same issue arose here. The people voted
19 to withdraw from that general church. Some members disagreed.
20 They began a class action in state court against the larger
21 group which contended that they controlled the, that they
22 still had control of the local church. What this court does,
23 The United States Supreme Court, is to review their de-
24 cisions up to that time. They reviewed the trust theory,

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PENNSA CO., SAVONNE, N.J. 07001 FORM H, Q.A.

1 and they state here what it is, the trust theory,
2 that a general church, let me find it, the Georgia Supreme
3 Court resolved this controversy by applying the theory of
4 implied trust whereby the property of a local church,
5 affiliated with a hierarchal church organization, is deemed
6 to be held in trust for the general church, provided that
7 the general church had not substantially abandoned the
8 tenets of the faith and the practices as they existed at
9 the time of the affiliation. That is my point that I was
10 trying to explain before. Then, to make this short, the
11 Georgia Supreme Court remanded this and remanded an earlier
12 case, adopted a neutral principles of law method, whereby
13 the court examined the deeds to the property, the court
14 examined the state's statutes dealing with implied trust,
15 and the/court examined the church order to determine whether
16 there was any basis for a trust in favor of the general
17 church and it shows the development, mentioning a Methodist
18 church here, which, by the way, has an expressed trust pro-
19 vision, they say, and they reviewed the Georgia case law
20 development, and they say, the only question presented by
21 this case is, which faction of the formerly united congre-
22 gation is entitled to this property. Then they get around
23 to it. The first amendment severely circumscribes the roles
24 that the civil courts may play in resolving these church

1 ~~the Protestant Episcopal Church in the~~ property disputes. The first amendment prohibits
2 courts from resolving church properties on the basis of
3 religious doctrine. It goes on here, and the upshot of
4 this case is that, and this is what the churches have done,
5 if I can find it here, the upshot of this case is that
6 courts may settle property disputes based on the deeds
7 that may exist, the state laws, if any, that exist per-
8 taining to ownership of church property and church govern-
9 ment rules if there are any. The lexicon, the rubric
10 that is coming out of this case was resolved by the Cali-
11 fornia Courts and I am going to get to that case in a
12 minute are that it is the job of the civil court to apply
13 mutual principles of law and to look, as they would in a
14 case, say it might be a Kentucky Fried Chicken franchise,
15 trying to get away from Kentucky Fried's general corpora-
16 tion. Where would you look? Would you look in deeds, into
17 franchise contracts? Yeah, you would, and that's the way
18 the courts said that civil courts are to deal with these
19 disputes. Not to get into the highly conceptual areas of
20 dogma and doctrine. Now, the latest thing and at least
21 the most articulately written, I think, is the case that
22 has been decided by the court of appeals of California
23 and is now on petition for certiorari to the California
24 Supreme Court. In this case, in this opinion, it is the

PENGAD CO. BAYONNE. N.J. 4-3801025

1 Protestant Episcopal Church, Inc. vs.
2 A Corporation, et al., Vs. The Reverend John D. Barker, et
3 al., and the citation is Protestant Episcopal Church, vs.
4 Barker, 171 California Reporter, I can't read that number,
5 541. It was decided January 30, 1981. The California
6 has to decide whether to grant certiorari on October 8, 1981.
7 Now, this involves four Episcopal churches. The theory ad-
8 vanced by the Protestant Episcopal Church of The United
9 States of America was precisely the same as the theories
10 that are being advanced here, namely that the Episcopal
11 Church is heirarchal and that the local churches held their
12 land in an implied trust. There is no expressed trust in
13 accordance with Wolf against Jones. As a matter of fact,
14 these cases were tried in the trial courts in California
15 before Wolf against Jones came down, and the local church
16 lost all of them. Wolf Against Jones was decided and then
17 it came for hearing in the California Court of Appeals.
18 There are four churches here and the California Appellate
19 Court reversed the California trial court as to three of
20 the churches and not as to the fourth. Now, I am going to
21 deal with the three churches because they are analogous to
22 what they did here. The fourth church which lost its property
23 to the Protestant Episcopal Church did not take the steps
24 I am going to discuss. What happened out there is, and

1 I think I am not mis-stating any facts, because
2 that paragraphs fourteen through nineteen of the complaint
3 sets forth the doings of my clients in a sufficient way
4 so that I am not misrepresenting anything. If I am, I
5 am sure they will tell me. But, there, as here, there
6 was a local church with a general not-for-profit corpora-
7 tion, incorporated under state law. That is point one of
8 the similiarity. The corporation. The second point of
9 similiarity is that in the by-laws of these Episcopal churches,
10 just as in the by-laws that we have, it said something
11 to the effect that, I am not sure what ours says but we
12 will walk in relationship / ^{with} some metaphor like that, it
13 wasn't very descriptive, but we will walk in relation
14 with the greater church, so we will call that an affiliation
15 through by-laws and that was there in the Episcopal churches
16 in California and that was there in our case. The next
17 thing that happened was that the corporation by their
18 board of directors or however they did it, just like we did,
19 we amended the by-laws, took out all of that, took out
20 all references to the greater denomination, and then after
21 that, two things happened. After that Wolf against Jones
22 was decided and after that, all of these churches started
23 after the local churches, to try to get their property back.
24 Nonetheless, this opinion, and I am not going to bore you

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with it and you are probably getting tired
anyhow, but this Judge neatly takes each of these theories,
he takes the hierarchal theory and explains what it is,
very clearly, he takes the implied trust theory, and he
says, here is what it asserts, just like the Supreme Court
said, and then he takes the expressed trust theory, the
theory of Wolf Vs. Jones, and then he takes each one of
these under the line of Supreme Court cases dealing with
Wolf Vs. Jones and he says, here is why the heirachal
theory doesn't work, and he has done a really good job
of going through these, the Georgia law and the Supreme
Court law, and prior to that, and also he takes up some-
thing else which I will cite in my brief, I am not going
to belabor you with it now, but as I said, this is not the
only litigation. There is a case, an another case out in
California in which the Supreme Court had decided, before
this case was decided, called the Riverside case, which
was another case where this outfit went in and tried to
get a local church and they lost, and so he cites that case
there, and that's Presbytery, Riverside, and so the upshot
of all of this is that the California Court says that, in
effect, these churches can hire lawyers, and if they want
to have an interest in property, they can do it like every-
body else does, and they can put it into some deeds and

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1 documents so we can find them without the
2 questions of doctrine and dogma. Now, if I may, because
3 time, I would like to take part of my motion and go through
4 a little bit of it. May I do that?

5 THE COURT: Yes. What is the citation for Jones Vs. Wolf?

6 MR. FINCH: Which system do you have available?

7 THE COURT: The Supreme Court, West.

8 MR. FINCH: Okay, that is 99 Supreme Court Reporter, 3020.

9 THE COURT: Thank you.

10 MR. FINCH: I will, in my brief, because I know that some
11 of these cases are not easy to come by, I will provide
12 you with Jones against Wolf, and also provide you with the
13 California cases, and the Riverside case.

14 Now, specifically to my motion, paragraphs one, two, do
15 you want me to go ahead?

16 THE COURT: Yes.

17 MR. FINCH: Paragraphs one and two are substantially the
18 same. Paragraph one is directed at the United Presbyterian
19 Church, paragraph two is directed at the Presbytery and
20 Paragraph three is directed at the Administrative Commission.
21 They have alleged that these outfits are unincorporated
22 associations and what they have asked for is equitable
23 relief with respect to a piece of land. Now, the law is
24 quite clear that a suit at law, which I realize this is,

1 a suit at law requires as plaintiff a legal entity,
2 this, of course, isn't. A suit in equity may be brought
3 by an unincorporated association if they join some members
4 as somebody representative of the group. Then, we get
5 into the matter of who can own land under Illinois law.
6 You have got to be a legal entity to do that. The only
7 basis other than a legal entity, owning a piece of land
8 is the specific statutory section which authorizes unincor-
9 porated organizations to hold and convey real estate and
10 that is limited to fraternal and social organizations, which
11 Plaintiff may be, I don't know, but at least they don't
12 allege that they are. They allege that they are a religious
13 organization, and of course, not within the legal concept
14 of a fraternal or social organization. So, my first point
15 is just the bare name of United Presbyterian Church of The
16 United States of America, The Presbytery of Southeastern
17 Illinois, or even administrative commissions, they don't
18 have any legal status, they cannot, they are not capable
19 of taking and holding title; therefore, what would happen
20 if you enter an order saying, convey to this person, or that
21 this unincorporated association has an ownership interest,
22 which they talk about, whatever that is, and if you should
23 win, what do you do with that? The next thing is, what if
24 we want to sue somebody here? I might want to counter-claim.

PENGAD CO., BAYONNE, N.J. 07001
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1 Who do I counter-claim against, and what do I do
2 in counter-claim. What do I do with it? Do I enforce
3 against the administrative commission and all of these
4 preachers, or do I enforce it against, what do I do with
5 it? So I ask that question. Then, under section 57.1 of
6 the Civil Practice Act under declaratory judgments, it says
7 that in order for one to sue for declaratory judgment,
8 they have to be interested in the controversy, and I don't
9 know that these nebulous ecclesiastical claims that are
10 made and I question whether they are or not, constitute
11 an interest in the controversy. However, I don't want to
12 urge that point too strongly because I would like to get
13 this lawsuit over with so that we can have some peace about
14 it, but I think now, so that the Defendants can be pro-
15 tected in some way, the unincorporated association either
16 offers to what their real corporations may have, and whether
17 they know it or not, they do, or, with somebody in a repre-
18 sentative capacity, so that we will have some one to depose
19 and discover, so that we will have some one to counter-
20 claim against if we want to, there is not even an allegation
21 here, there is at the Presbytery, it says they are in
22 Ridway, that is where the clerk's office is, but what about
23 security for costs, what if we wanted costs? What is the
24 United presbyterian Church of The United States of America?

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FERGUSON CO., MAYORNE, N.J. 87082 FORM N. 144

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Are they a resident of The State of Illinois or what, none
of that is made clear at this point, given the manner in
which they set up their corporate status, or lack of it.
Now, the next two paragraphs attack the business about
the hierarchy and what I have said, in other words, I am
attacking here and moving that there be stricken from the
complaint or made more definite and certain, however it
is best to do it, that there be stricken from the complaint
the nebulous conclusions that, well, you know, here is the
hierarchy, this fits here, this fits here, this fits here,
they refer to a thing called a book of order, which I
don't know if they have, but it is a book about that thick,
and therein, in that book of order, is the secret to their
success or lack of it, is that one of them there, John?
MR. FERGUSON: Yes.
MR. FINCH: Now, they say they are incorporated in here, but
that is sort of like bringing a law suit for negligence and
instead of referring to a specific statute, incorporating
the motor vehicle code or charging a crime and incorporating
the criminal code, so all I am asking in that paragraph is
okay, if they have got a hierarchy, that is well and good,
but what I want to see is, I would like to know before we
just go on and on and on with this litigation, the platonic
concepts; I would like to see in that book of order where it:

1 ~~is that is says that the~~
 2 nature and this nature. That's what those paragraphs
 3 do. I further there, of course, although I think it is
 4 too early, really, for the court to decide that, until
 5 it is set forth, but I further, so as not to lose my grounds
 6 to say it, even when they set it forth or when they attempt
 7 to set it forth, it can only be in deeds, books of order
 8 and something like that if we try to get into dogma or
 9 then we are violating the neutral principles of interpreta-
 10 tive concepts.

11 The other paragraph I have got here says substantially that
 12 this is a lawsuit about some pieces of property and all of
 13 this business about entering an order so that the ministers
 14 can come down here and communicate and interpret and visit
 15 and counsel, and preach, or whatever they are going to do,
 16 that is totally outside the bounds of the civil courts.
 17 The way they need to handle that is simply this, and maybe
 18 I will get this in an admission later on, I don't know,
 19 but the highest clerical officer in this Presbyterian Church
 20 ~~business~~ is a man named William Thompson. He may still
 21 be, I don't know, but he said, whoever controls church property
 22 controls dogma. Fine. That really is the way it is. So
 23 if they want somebody down here preaching, if they want some-
 24 one to come down here and counsel, if they want to reconcile

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1 strife, or whatever it is that they want to do
2 well and good, if they want to do it, let them do it through
3 the medium of an ownership in the property, my point being
4 is, short of this court saying, you have got a right to
5 that piece of property, I don't think this court can
6 order that preacher A. goes down there and these guys have
7 got to listen to him, and that, in effect, is what they are
8 asking for in much of that relief. Well, I will ask to
9 stike particular parts of it, and I am not going to labor
10 you with that today, but the business about correcting
11 evils and all of that, I think that all that should be
12 stricken out of the complaint.

13 There is one more matter here that I want to bring up.

14 THE COURT: Where are you now in your motion?

15 MR. FINCH: Judge, I am lost right now. Okay, in paragraphs
16 nine, ten, eleven, twelve, that is what I am talking about
17 now, and I am directing those parts of the motion to para-
18 graphs fourteen, fifteen, sixteen, twenty-four, twenty-
19 five and twenty-six of the complaint, but I will explain
20 what those paragraphs in the complaint deal with. There
21 was a meeting of The First Presbyterian Church, there was
22 a meeting of a corporation called the First United Presby-
23 terian Church of Anna, a general non-for-profit corporation,
24 they have alleged that. At that meeting, pursuant to call,

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PENCAL CO., BAYONNE, N.J. 07002 FORM IL 20A

1 et cetera, at that meeting, that corporate body, by its
 2 members, voted, as I indicated earlier to modify the by-laws
 3 and do some other things. There were disgruntled, there
 4 were people voting in the minority, members of The First
 5 United Presbyterian Church, a small minority, but yet a
 6 minority. Now, the complaint sets forth that the manner
 7 in which this corporation conducted its meeting, the call,
 8 the conduct of the meeting, et cetera, and I am not sure
 9 exactly how they put it here, that the meeting was arbitrary
 10 and illegal, whatever that means, had no legal effect, con-
 11 stitutes a serious disorder, conspiracy, et cetera, all
 12 the other things. What I am saying in my motion is, the
 13 only part that it has the right to attack under state law,
 14 it has the right to attack the internal affairs of that cor-
 15 poration or the disgruntled shareholders. In Wolf against
 16 Jones, there, the people that moved out when they became
 17 unhappy, they brought their class action, but at least, the
 18 interested parties brought that lawsuit. Now, The Presbytery
 19 is sitting over here saying we are going to attack the internal
 20 affairs of the corporation. I don't think they can do it
 21 and that's what those paragraphs in my motion deal with. I
 22 ask the court to strike those attacks by the Plaintiffs here.
 23 Paragraph thirteen, and basically the rest of the paragraphs
 24 ask the court, I am more specific there than I am going to be

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PENGAD CO., BAYONNE, N.J. STAMP FROM N.J. 11-11-68

1 in my argument, ask the court to strike the
2 references to ecclesiastical misbehavior that my clients
3 are guilty of on the grounds that one, it is beyond the
4 scope of your constitutional powers and therefore, you
5 can't do it, and it is irrelevant to the case.

6 I thank you for your patience in listening to this.

7 THE COURT: You may argue in response to the motion.

8 MR. FERGUSON: May it please the Court. It is difficult
9 to respond to all of Mr. Finch's arguments. All I can
10 state, preliminarily to the Court is what I don't intend
11 to do. I don't intend to get into
12 philosophy. I don't intend to get into dogma dealing with
13 religious concepts or religious doctrine. Neither one of
14 them have anything whatever to do with the issues in this
15 case, nor with the issues raised by this motion to dismiss.
16 Now, preliminarily, also, I would like to state to the Court
17 that Mr. Finch's, or Defendant's motion to dismiss, in the
18 first three paragraphs, are procedural. They deal with the
19 legal standing of the named Plaintiffs to bring this liti-
20 gation, or to ask for the relief that has been asked in
21 this complaint. We want to process this case in as orderly
22 a means as possible. Now, in looking over Mr. Finch's
23 motion, I have determined that in order to eliminate any
24 kind of questions regarding the legal entities, to ask leave

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PASCAD CO., WATERBURY, N.J. 07081 FORM R 11A

1 of this court to amend the complaint to sue in
2 of The individual Commission members who are presently
3 plaintiffs in the lawsuit. They are individuals and certainly
4 are legal entities with standing to use the courts of
5 Illinois. On behalf of both the Presbytery and the UPCUSA,
6 The National Denominational church, I have that amended
7 complaint ready and will ask the court to enter an order
8 granting me leave to file it. There are no changes with
9 respect to the substantive matters in the complaint, other
10 than that, and as I say, that is purely procedural and we
11 want to avoid any question about that and not waste the
12 Court's time or our time playing around with that sort of
13 thing. Now, second, I think it might be helpful to the
14 Court if I present or state just what the law in this
15 case is. Now, I notice by the clock which is staring me
16 in the face, that Mr. Finch took an hour's time talking
17 about philosophy, Aristotle, Plato, and all that, and
18 ecclesiastical dogma. It had nothing to do with the motion
19 which he filed in this court until 2:30. He spent ten
20 minutes talking about the real issues which are before this
21 Court at this time on this record, and that is the allegations
22 in this complaint. One interesting thing in that respect,
23 nowhere in his motion to dismiss does he allege or contend
24 that the complaint fails to state a cause of action under the

1 Civil Practice Act. He has asked that the
2 the parties in Illinois are not entitled to sue, they are
3 not legal entities and he has asked to strike certain
4 portions of the complaint when we put them all together,
5 that is the old complaint. It is a very unique type of
6 motion in that respect because I think that most of the
7 motions that the court hears deal with the basic motion to
8 dismiss for failure to state a cause of action, but nowhere
9 has he done that. We have brought this action under the
10 declaratory judgment section of the Civil Practice Act.
11 I think it is section fifty-seven, I am not sure. It could
12 be fifty-three. It clearly states that it is not grounds,
13 well, it does not state that now, but originally when the
14 Civil Practice Act was amended to incorporate that section,
15 it provided specifically that it shall not be grounds for
16 a motion to dismiss that the Declaratory Judgment Action
17 asks for an advisory opinion if an actual controversy exists.
18 Now, that has evolved down to the present section of the
19 Civil Practice Act which authorizes declaratory judgment
20 actions in cases or matters involving actual controversy
21 between the parties. Now, what this complaint that we are
22 dealing with here deals with is an attempt to state as clearly
23 as possible what the actual controversies between these
24 parties are, and obviously, it deals with the assets of this

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PLANO CO., DAYTON, N.J.

1 church and who is to control them, whether it be the dissident
2 group or whather it is to be the loyal portion of the con-
3 gregation, the ones that adhere to the constitution, the
4 by-laws and the book of order of the United Presbyterian
5 Church of which they were a member and of which this
6 church in Anna, Illinois, was a member until they took the
7 action which they did last year. Now, as background for
8 the court and we can set this out in memoranda and I don't
9 think that it is necessary that the court keep the citations
10 because we will supply them. The law in this case goes
11 back for over a century. Even prior to that. The Courts,
12 under the common law as adopted from England by the United
13 States generally refused to decide or get involved into
14 religious doctrinal matters. There was one basic exception
15 to that which grew with the law in the United States, and
16 that was where it was necessary to do so in order to determine
17 ownership of property where you had a division of a local
18 church or a division of any church in any denomination
19 along the line, and where it was necessary in order to
20 determine the ownership of that property, they would, to
21 that degree. Post civil war, in 1872, as a result of the
22 slavery issue, during the civil war, during and before the
23 civil war, a case came up from the State of Kentucky, where
24 a local church in the State of Kentucky had a division within

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1 ts membership over the slavery issue, I mean, one group
2 advocated no slavery and one group advocated or was for
3 slavery. That case reached the Supreme Court in 1872.
4 The name of it was Watson Vs. Jones. Mr. Finch mentioned
5 it here. It is reported in 13 Wall, it is an old case but
6 we have the United States citation and we will supply that,
7 in fact, I have it here. It is 80 U. S. (13 Wall) 679.
8 It is also reported in the Lawyer's Edition at 20-666.
9 Now that case was an effort by the United States Supreme
10 Court to lay down as a matter of stare decisis and guidance
11 of all of the states throughout the United States of what
12 the law in dealing with church questions was, actually.
13 They categorized the types of questions into three cata-
14 gories. The first category dealt with when you are dealing
15 with property rights, whether or not the documents creating
16 the ownership were explicit, whether the property was do-
17 nated or conveyed for the use of, or in trust for, or for a
18 particular purpose. That was one category. The second
19 category dealt with congregational churches. Now congrega-
20 tional churches were defined by the Supreme Court as those
21 churches which were autonomous, in and of their own right
22 A congregation in Anna, a congregation in Jonesboro,
23 Timbuktu, Belleville, St. Louis, wherever, if they were a
24 congregational church, determined questions of rights of

1 property by themselves, unihibited by any higher authority
2 or any other structure. Now, in those cases and Mr. Finch
3 erroneously summarized the implied theory as being con-
4 trolled by who adheres to the correct doctrine, in the
5 congregational churches that is the controlling element.
6 Who was the true believer of that particular congregation,
7 there were the ones generally who ended up with the property.
8 The third catagory the Supreme Court defined in 1872, were
9 the hierarchal churches. Now, at that time there were many
10 many more than there are now, but we have the familiar one,
11 of course, of the Presbyterian, the Methodist, the Lutheran,
12 the Catholic, the orthodox churches, all follow that type
13 of organization. Now, they have their own church law and
14 the court in the Watson case said that in the hierarchal
15 churches the highest judicatory body, if they had decided
16 the issue, then their decision was controlling. Otherwise,
17 it was an interference by the court in religion, contrary
18 to the first amendment of The United States Constitution.
19 In other words, if it is a hierarchal church and they have
20 a process of lower and higher judicatories, then if the highest
21 judicatory of that church decides an issue, then that is
22 controlling upon the courts. The Court can't interfere
23 with it because it is interference with religion and inter-
24 ference with the church or establishment of churches or

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1 whatever, the broad field encompassed by the first amend-
2 ment. Later on, of course, the Supreme Court made the
3 first amendment applicable to all of the states through
4 the fourteenth amendment, that the court is aware. Now,
5 that remains the law of this country for over a hundred
6 years. The next development was in 1969, when a church
7 in Georgia, the State of Georgia, another southern church
8 and I might say, it is only incidental, it is not too
9 important, that is not the same denomination that we are
10 dealing with here and we are not dealing with the same
11 constitution that the court was dealing with there. They
12 are similiar but they are not the same. The hierarchal
13 structure is the same, but that court was dealing, The
14 Supreme Court was dealing in that case and that is the
15 Hull case, it is known as, Mary Elizabeth Hull Memorial
16 Presbyterian Church, as they referred to it in the litera-
17 ture and there is a wealth of literature on this, Your Honor,
18 law review articles, Supreme Court opinions, and I think
19 I am trying to capsulize the most important ones but there
20 are others that follow from it and lead us to it and all.
21 The proper name for that case is The Presbyterian Church
22 of The United States Vs. Mary Elizabeth Hull Memorial Pres-
23 byterian Church. It is reported in 393 U. S. 440. But there,
24 the issues in that local congregation, in that local church,

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which is known as a particular church under the constitution and by-laws that control, that particular church was divided over the civil rights issues that were prevalent in those days, the late sixties, the civil rights marches in Birmingham took place, I think, in 1967, and one faction of the church and the united denomination supported the civil rights movement, they adopted a resolution advocating a settlement of the Viet Nam issue and the cessation of hostilities over there but in event, whatever those issues were and there were numerous ones, created a schism, a division, and as a consequence of that division, the case came up before The Supreme Court as to who controlled the property and assets of that local church. The Hull case, the Supreme Court decided that they were going to apply the implied trust theory that had first been laid down by the Watson theory over a hundred years ago, but by dicta, and it was pure dicta, the Supreme Court said in its opinion, in the majority opinion, that it would not object if a particular state in the United States, among all forty or fifty of them wanted to adopt a different type of principle or doctrine that controlled these matters, it would look at it. For instance, it even pointed out, and for the first time brought into the legal literature this euphonic name, neutral principles of law, which I don't know

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PERMAN CO., BAYONNE, N.J. 07001 FORM H, 1944

1 what it is, I thought all principles of law were neutral,
2 but they first used that phrase and they described it as
3 meaning and applying to a situation where the documents
4 creating the ownership in the local church specifically
5 provided one way or the other, they were lapsing back
6 over into the congregational category as outlined in the
7 Watson case. They said, we won't object if a state, the
8 highest court of the state or the legislature adopts that
9 principle, we will not find that as repugnant to first
10 amendment principles, however, we do not want any of the
11 courts delving into doctrinal matters to make that decision,
12 only the book of order and controlling constitutional
13 questions. They said either adopt that or if a church or
14 denomination has it expressly provided in their constitu-
15 tion that all property belongs to the one church, the one
16 denomination, the implied trust theory. Now, all they did
17 was approve that if the particular states wanted to utilize
18 it and wanted to decide it. So, the case goes back. They
19 reversed and remanded it to the Supreme Court of Georgia.
20 The Supreme Court of Georgia looked at it and they said,
21 well, if we can't get into the doctrine of this matter,
22 we are going to abolish that altogether and we will adopt
23 in Georgia the neutral principle theory, and they did that.
24 They said, the law of Georgia from this point on is going to

1 be that if the documents themselves don't create the trust,
2 or it is not specifically and expressly provided in the
3 constitution of the denomination, then the property, both
4 equitable and legal title, is vested according to the deed.
5 So they adopted that neutral principle as the law in Georgia.
6 Now, Georgia was the first state that did it. It is one
7 of the few that has done it to this day. That was 1969.
8 In 1974, The Illinois Supreme Court had a case before it.
9 Mr. Finch mentioned the case. It is known as the Lowe case,
10 and it arose out of the city of Chicago, one of the suburbs,
11 I think it is River Forest, or someplace, yes, Forest Park,
12 the Presbyterian Church of Forest Park. The citation on
13 that Judge, is easy to remember. 56 Illinois 2nd. But, it
14 is the last pronouncement by The Supreme Court in Illinois
15 of what the law in Illinois is, and the law in Illinois,
16 pursuant to that opinion, written by Justice Underwood is
17 that the implied trust doctrine set forth initially over
18 a hundred years ago is the law of Illinois. We refused to
19 adopt this neutral principles of law doctrine, whatever
20 it is. Justice Goldnherst wrote a dissent. He would have
21 gone the other way. It as a six to one vote and the law
22 in Illinois, pronounced by our Supreme Court is the implied
23 trust theory in hierarchal churches. Now, in 1979, follow:
24 the Supreme Court decision in '74, and there were other

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1 intervening cases. There was a Serbian church case which
2 dealt with Serbian religious denominations and also a
3 Russian orthodox church case but the Supreme Court re-confirmed
4 the implied trust theory unless this other doctrine had
5 been adopted by the states. In most cases they hadn't,
6 so they applied the implied trust, demonstrating that the
7 Supreme Court in no way, as Mr. Finch said, superceded
8 Watson Vs. Jones. They did no such thing, they didn't over-
9 rule it, they qualified it. They said, it is still the
10 law, but if a state, through its highest judicial body,
11 decides that that state has adopted another doctrine, we
12 will listen to that and we will not be critial of that
13 as violating the first amendment, first and fourteenth
14 amendments. Illinois has not done that to this day. The
15 Lowe case that I just mentioned is the latest word on it.
16 Now, Jones Vs. Wolf was another Georgia case. Lo and behold,
17 we had in 1969, a case that went to the Supreme Court in
18 the Hull case where the Supreme Court tossed this little
19 tidbit out, well, if you want to adopt neutral principles,
20 we will consider that, and they they refused certiorari
21 on the second go-round, so that which in effect, approved
22 it, as they done on remand, and ten years later, another
23 Georgia church had a fight so that went up to the Supreme
24 Court, based on the neutral principles theory and the Supreme

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1 Court approved it, and they said that the State of Georgia
2 had adopted that as its policy, so that is not repugnant
3 to the first amendment, the first and fourteenth amendments,
4 and therefore, we approve. Now, since Jones Vs. Wolf, which
5 is 99 Supreme Court, Judge, Supreme Court 2030, I think,
6 Mr. Finch may have given you that citation, since that, Mr.
7 Finch is right, because there has been a lot of literature
8 written on this subject and his comment at the beginning
9 of his argument that he found this complaint baffling and
10 confusing can only mean that he hasn't read some of these
11 Supreme Court decisions because they lay it out. There is
12 no problem on it. It is clearly defined. Everything I
13 have said here is talked about by the courts, by The Supreme
14 Court of The United States. It is laid out in the Supreme
15 Court decision in Illinois, in the Lowe case, there are
16 law review articles written by experts on it, who deal with
17 these matters on a day to day basis. I can only cite those
18 in the memorandum which I will file. I will probably in
19 one instance, there is a Pennsylvania bar review article
20 that is excellent, that was written in 1977, immediately
21 following the Hull case. By that I mean, it followed the
22 Hull case and was before the Jones vs. Watson case, by
23 George McKieg, who is the general solicitor for the
24 general assembly of The United Presbyterian Church of The

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United States of America, and it deals with the internal law. Now, Mr. Finch argued and I sat patiently here and listened to it, that these allegations in the complaint deal with all kinds of ecclesiastical allegations. That is not true. They deal with internal law of the Presbyterian Church as set forth in its constitution and in its book of order and it is the law of procedure and substance in dealing with all of these matters we have here before us today. It is not doctrinal, it is not ecclesiastical, it is not philosophical, it has nothing to do with Plato and Aristotle. It is a question of whether or not this local church which was a member of The United Presbyterian Church of The United States of America, and as such, were bound by that constitution. If they want to depart, they have to do it in accordance with the procedure set forth in its constitution. That's the law of the land and that's is what this case is all about. It has nothing to do with the Aristotle or Plato beliefs. Now, Judge, with the amendment that I have asked leave to file, it eliminates a goodly portion of Mr. Finch's motion here. The only one, in my opinion, I submit to the court that has any substance, whatever, to it, and I am not sure he is right there, I don't think he is, because these other cases have gone up to The United States Supreme Court as

1 religious associations, bringing suits and being sued,
2 so, we know know that we have corporations for the purpose
3 of holding property. Mr. Finch doesn't have to tell us
4 that, but I want to point out one principle that is basic
5 throughout this whole thing. A corporation is not the
6 church and the church is not a corporation. It cannot be
7 because of the first amendment. You can't have a church
8 controlled by the state. It cannot be created by the state,
9 it cannot be governed by the state law, by civil law. It
10 would be repugnant to the first and fourteenth amendment.
11 principles and the comparable provisions in the Illinois
12 Constitution. So, we are dealing, we are trying to present
13 this in the true perspective as a true first amendment
14 issue, if and when it reaches the Illinois Supreme Court
15 and The United States Supreme Court so that we can argue
16 constitutional separations of powers here and the separation
17 of church and state. Now, that is the reason for the con-
18 stitutional allegations in this complaint, Your Honor, and
19 we have tried to, as concisely and accurately as possible,
20 to allege and set forth the facts which we expect to prove
21 in this courtroom. I mean, we wouldn't have alleged them
22 if we couldn't prove them. We are not here, dealing with
23 whether they are true or not. Mr. Finch, for purposes of
24 his motion, has admitted all these things, in his motion

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to dismiss, so, I submit to you that all of these allegations,
or all of these contentions in his motion starting with
paragraph four, roman four, all deal with the matter
which is in actual controversy and deals with the merits
of this case, which this court shouldn't consider on a motion
to dismiss basis until he has the record laid before him.
He complains because we didn't attach this book to the
complaint on the basis that we are suing on an instrument,
therefore we have to attach it. We are not suing on a
written instrument like a note, a mortgage, or a contract.
This is referred to in the complaint, in the allegations
of the complaint as being, or as provided for in the book
of order and the evidence, when we submit it and get to
the trial stage, will show that. I have one copy of it,
Judge, I don't think it is even necessary because every
time that we mention it, we say in the allegations in the
complaint what it provides, so that's a ridiculous con-
tention in his motion. I could go through book and page,
I have marginal notes on his motion here, he alleges that
our complaint is faulty because it doesn't comply with the
neutral principles of law theory. I have explained to the
Court that we are not dealing in Illinois, with the neutral
principles of law doctrine. This is not a suit on a written
instrument. I mean, every one of these, I think he want

Handwritten signature or initials

1 through and pulled everything he could, he must have been
2 reading the practice act as he dictated this. It all re-
3 lates to the matter in controversy. We have attempted to
4 define hierarchal. Those are proper allegations in the
5 complaint. Now, I would like, in closing, before closing, to
6 make a couple of comments here about Mr. Finch's statements.
7 He said he was not sure that we meant for one of these pro-
8 visions to be in this complaint. I assure Mr. Finch and
9 the Court that every allegation in this complaint were
10 intended to be there, just as it has stated it, precisely,
11 and no other way. We didn't put anything in there that
12 we didn't mean to put in there. It all is relevant to
13 the issue and the matter in controversy in this suit. Now,
14 he made the statement, too, that according to the Supreme
15 Court in the Jones Vs. Wolf case, that prior to that, these
16 issues were all resolved by, the true believers always got
17 the property. That is not so. It was only so where you
18 had the congregational form of government. Not hierarchal,
19 what we are dealing with here. He made the statement that
20 the law was superceded since 1974, by Jones Vs. Wolf. No
21 such thing, Your Honor. A careful reading of the Supreme
22 Court's opinion will demonstrate that better than anything
23 that I can say. I have numerous, there is a multitude of
24 post-Jones Vs. Wolf cases that have been decided on the

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1 implied trust theory where that doctrine controlled within
2 the state in which the suits arose, and that's the real
3 issue here. Thank you, Your Honor.

4 THE COURT: Anything further, Mr. Finch?

5 MR. FINCH: May I very briefly respond, simply in this way,
6 I do not want it to become a matter of personal antagonism
7 between myself and Mr. Ferguson. I have endeavored to do
8 my best. It is not always that good. I know that. Secondly,
9 I think he understands, I would hope that he understands
10 this. I would like to get this thing in order so that we
11 can deal with it. What I have asked for, rather than
12 waiving around that book, I think if there is any basis
13 in there so that we can see now whether in the form of
14 government or book of order of that church that they have
15 any claim to this property, either by implied trust or
16 whatever, I think they ought to be made to set that forth
17 as an allegation, rather than again, proceeding in these
18 very general concepts, and talking about a church is a
19 church but it is not a corporation. That's the kind of
20 thing I was talking about in the beginning, because, you
21 see, if we get led aside, then we get confused, and we
22 have to talk about something that is so nebulous, no relations
23 ships, whatever it is, if we have got corporations, I
24 want to deal with it. If he has got a book, I would like

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1 to deal with that, and I would like to know, and that's
2 what my motion asks. Where in that book does he say a
3 church can't withdraw. It is not in there, at least I
4 can't find it. Where in that book does it say that they
5 have an implied expressed trust? I don't think it is in
6 there. But why should we have to go farther with this
7 lawsuit and go through discovery and go through evidence,
8 when, if it is there, as he says it is, then he can set
9 it forth. So, again, what I have asked is, if there is
10 a case, if he has got something specific, I would like
11 to see it and I have asked, that is what my motion is
12 designed to do. Thank you.

13 MR. FERGUSON: Your Honor, if I could, I would submit an
14 order granting me leave to file an amended complaint
15 with the clerk later on. It deals with the realignment
16 of the parties, is all.

17 THE COURT: All right, it disturbs me,---

18 MR. FINCH: I want to object to that motion, Your Honor.

19 THE COURT: In the midst of a decision on a motion to attack
20 the complaint, and now, you are moving to amend the com-
21 plaint,---

22 MR. FERGUSON: Confess part of it, only a portion, Your Honor

23 THE COURT: His motion with respect to the remainder of it.
24 Doesn't he still have the opportunity to attack what you

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1 have amended?

2 MR. FERGUSON: Well, he could attack what I have amended,
3 Judge, but the only thing I have amended is the alignment
4 of the parties. The rest of it is the same.

5 THE COURT: Do you mean to,---

6 MR. FERGUSON: I am confessing the first three paragraphs
7 of his motion.

8 THE COURT: All right, I think what I would rather do is
9 decide the remainder of this motion and then allow you to
10 file an amended complaint.

11 MR. FERGUSON: I merely wanted to save the court's time in
12 dealing with that point.

13 THE COURT: I appreciate that and I will take it that you
14 are confessing paragraphs one, two and three of the motion.
15 You understand my reasoning, don't you?

16 MR. FERGUSON: I understand, Judge, and I have no quarrel
17 with it.

18 THE COURT: I mean, I don't know how I am going to decide
19 it. It may be necessary for you to amend some additional
20 parts of your complaint and it may not. I don't know yet.

21 MR. FERGUSON: I had that problem on procedure as to when
22 I would present this, and I decided that in order to get
23 the entire motion heard today that I would merely confess
24 it after the hearing.

1 THE COURT: Certainly, Mr. Finch will have the opportunity
2 to attack the amended complaint, whenever it turns up,
3 so we will simply not decide that oral motion right now.

4 MR. FERGUSON: With your order, or whatever it is, Judge,
5 if you can sign an appropriate leave to grant it. I
6 needed leave to file that, that's why that,--

7 THE COURT: I will do so as soon as I reach my decision on
8 his motion to dismiss.

9 MR. HUFFMAN: Your Honor, how quickly would you like the
10 briefs in from the parties?

11 THE COURT: How much time do you need, Mr. Finch; you will
12 be the first, I suppose, to file a brief.

13 MR. FINCH: I would like until November 15, Your Honor.
14 The reason being that I will not be in my office to do
15 anything at all until after October 16. I would like some
16 time from then to do that, if I may.

17 THE COURT: Do you feel as though you need more than thirty
18 days from now?

19 MR. FINCH: I need thirty days of working time.

20 MR. FERGUSON: That seems rather long to me, Your Honor.
21 I would like to get this thing progressing, if possible,
22 Cord.

23 MR. FINCH: You want to get it progressing, but you filed
24 a complaint and I am asking the Court, I will not be in my

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1 the 16th, and I would like thirty days from that if I may.

2 THE COURT: All right, you may have until November the
3 15th, and then you may file a responsive brief, do you
4 feel that you need more than thirty days?

5 MR. FERGUSON: I won't need that much. Ten or fifteen days
6 will be plenty for me.

7 THE COURT: All right, then you will have until December
8 the first, and then I will give you an additional fifteen
9 days to file your reply.

10 MR. FINCH: Very good. Thank you.

11 THE COURT: That will be until December 15. I am anxious
12 also, that we reach a fair and expeditious conclusion of
13 the matter. I might say for the benefit of the spectators
14 here today, you have heard legal arguments here today,
15 you have not heard evidence, we have not held a trial.
16 There may be a time for that later, but we are simply here
17 for legal arguments today and the Court will take the matter
18 under advisement and render a decision following the submission
19 of the briefs. Any other questions?

20 MR. FINCH: No, Your Honor.

21 MR. FERGUSON: No, Your Honor.

22 THE COURT: All right.

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END OF PROCEEDINGS

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THE UNITED PRESBYTERIAN CHURCH OF :
THE UNITED STATES OF AMERICAN, et al., :

Vs. :

No. 81-MR-5

THE FIRST PRESBYTERIAN CHURCH :
OF ANNA, ILLINOIS, et al. :

CERTIFICATE OF COURT REPORTER

I, Golda H. Brown, one of the official court reporters
of The First Judicial Circuit of The State of Illinois,
do hereby certify that the foregoing is a true and correct
transcript of the proceedings had in the above entitled cause
on the 2nd day of October, A. D., 1981, before The Honorable
Donald E. Garrison, Circuit Judge.

Dated this 13th day of November, A. D., 1981.

Golda H. Brown
Golda H. Brown,
Court reporter.

0-7-0-4-3-0-0-1-0-5-7

PERCIVAL CO., STAMPAER, No. 01002 FORM 11 12A

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April 3, 1997

Mr. F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

CLOSED

RE: MUR4411

Dear Mr. Turley:

Today I received your certified letter of April 1, 1997.

Mr. Finch responds that "this matter seems to have arisen from a personal vendetta against himself and the other respondents, all of whom apparently grew up together in Anna, Illinois."

I graduated from high school with Mr. Finch and of course know my sister, but the complaint I made did not arise from personal animosity. I believed that the church was politicalized. In 1993 in Anna, Illinois, I interviewed a number of people who had experienced a conversion of our Presbyterian church to an evangelical version.

Sincerely,

E. W. Walton

Edward Wesley Walton

Edward Wesley Walton, Ph.D.
Leverett Unit 116
101 Swanson Road
Boxborough, MA 01719

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