



PRESBYTERIAN CHURCH (USA)

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August 16, 2006

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**California courts uphold PC(USA) Constitution on church property issues**

Three cases tried or settled, fourth expected soon

LOUISVILLE, Ky. – The Superior Court of California, County of Los Angeles, has recently issued a series of decisions that consistently hold that the Constitution of the Presbyterian Church (U.S.A.) prevents factions of local congregations from seizing church assets and harassing the faction of the congregation which remains loyal to PC(USA).

Recently, the Synod of Southern California and Hawaii, Hanmi Presbytery and the Presbyterian Church (U.S.A.) have been named as parties to lawsuits in the Los Angeles Superior Court involving particular churches that were in schism. Another was filed against the Presbytery of the Pacific, also within the synod. Those lawsuits involved Korean Hope Christian Church, Serone Church, Torrance First Presbyterian Church and Bethany United Presbyterian Church.

In each of those cases, congregations split into factions over selection and other issues concerning their pastor. After one side appealed to the presbytery or synod, the other faction unilaterally declared that the particular church had quit the denomination, and asserted control and ownership of all church property and funds, to the exclusion of both the other faction and the presbytery.

In all these cases, the courts have ruled that the dissident faction must follow the directions of the presbytery as to control or ownership of the church property.

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“The courts applied the rules from our Book of Order which is part of the PC(USA) Constitution. The Presbyterian Church (USA) has clear processes based on its theology, said Mark Tammen, director of Constitutional Services, Office of the General Assembly, PC(USA).

“As such, the *Constitution* entrusts presbyteries with determining their ‘strategy for mission’ in their bounds. This is the ‘yardstick’ for making such decisions. Obviously secular judges would have difficulty in making such a theologically based determination, and in fact, are prohibited from doing so by well established U.S. Supreme Court precedent,” Tammen added.

Five provisions of the Book of Order were central to these cases:

- “[T]he relationship to PC(USA) of a particular church can be severed only by constitutional action by the presbytery.” (G-8.0601).
- “[The presbytery has responsibility and power] to divide, dismiss, or dissolve churches in consultation with their members.” (G-11.0103i)
- “[A]ll property held by or for a particular church . . . is held in trust . . . for the use and benefit of the Presbyterian Church (U.S.A.).” (G-8.0201)
- “Whenever property of . . . a particular church of the PC(USA) ceases to be used by that church as a particular church of the PC(USA) in accordance with [the PC(USA)] Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.” (G-8.0301)
- “If there is a schism within the membership of a particular church and the presbytery is unable to effect a reconciliation . . . the presbytery shall determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.).” (G-8.0601).

“In resolving these cases, the courts applied the rules of the *Book of Order* from the PC(USA) so as to allow the presbyteries involved to carry out the responsibilities assigned to them by the Constitution that binds all Presbyterians together,” Tammen said.

Three of those cases have been tried or settled, the last will be tried shortly. In every case, judges from the Los Angeles Superior Court uniformly ruled in favor of the synod and the presbytery and against the faction seeking to seize control of the particular church and its property. In making those rulings, the courts have all determined that (a) the local congregations hold their property in trust for PC(USA) and (b) the civil court must defer to the decisions of the presbytery, whether by direct presbytery action or by an administrative commission acting for the presbytery.

“Because the synod had the responsibility for the administrative commission, it has assumed a tremendous financial and emotional burden. The far greater strain, however, has been the pain of congregations in schism, which divides congregations, but also families. This has been a difficult time for everyone and certainly a time to be in prayer,” said Margy Wentz, stated clerk of the Synod of Southern California and Hawaii.

The concerns of the broader church have been pastoral as well as legal. “In each of the Hanmi churches, those congregants who have chosen to remain in the denomination have suffered from hostility of the dissident factions, outright rejection by former pastoral leadership, difficult choices as families, and loss of beloved places of worship as the legal challenges are slowly settled,” Wentz explained.

“The financial and emotion burden has been offset, however, by the opportunity to show in fact, not just in words from the Book of Order, but in action, that the Presbyterian Church is a connectional church where the presbytery, synod, and General Assembly are connected to and support congregations that are suffering pain and loss,” Wentz concluded.

Tammen explains that the Presbyterian Constitution holds that the particular churches of the PC(USA) constitute one church. He pointed to a recent Advisory Opinion from Clifton Kirkpatrick, stated clerk of the General Assembly, PC(USA), which deals with the unity of the church and outlines the theological basis for these Presbyterian principles.

The church is not a voluntary association of those who share the same opinions and experiences, but is an organic body called into existence by *God* that celebrates and transmits through the ages the name and knowledge of Jesus Christ. The constitutional provisions under which congregations hold property for the benefit of the Presbyterian Church (U.S.A.) arise out of and reflect our theological conviction that this denomination constitutes one indivisible body, which itself is part of the body of Christ, and which encompasses not only the visible church today but our forebears and heirs in the one holy, catholic, and apostolic church.

Together we affirm that our God is in control of the world we occupy. We order our affairs out of an abiding conviction that persons do not join the Presbyterian Church (U.S.A.) of their own volition, but are called to membership in this denomination by the sovereignty of God, and participate in its government through the work of the Holy Spirit. “A presbyterian polity recognizes the responsibility of all members for ministry and maintains the organic relation of all congregations in the church.” (Confession of 1967, § 9.40.)

A look at each case:

### **Korean Hope Christian Church**

Cerritos, CA

The Korean Hope Christian Church case began as a dispute over choosing the senior pastoral staff for the church after two congregations merged. That dispute led the appointment of an administrative commission to resolve the issues. One faction unilaterally declared that the particular church had left the denomination, and excluded the congregants who sought to remain within PC(USA). The dissident faction entered into a series of claimed transfers of the congregation’s real estate to other related parties.

The synod and the presbytery initiated a lawsuit to enforce the directives of the administrative commission and to protect the congregants who sought to remain within PC(USA). At the trial, the synod and Hanmi Presbytery prevailed. The court found that the property of Korean Hope Christian Church must be held in trust for PC(USA):

The court finds that, under all of the circumstances, the property of the local church [Korean Hope Christian Church] was held in trust for the use and benefit of PCUSA. The constitution of PCUSA and California Corporations Code §9142, clearly support the existence of the trust.

The court also found that the administrative commission had legal authority over Korean Hope Christian Church. Therefore, the court permanently enjoined the dissident faction from interfering with the administrative commission:

This court finds that it must apply the rule of judicial deference as to the propriety of the “imposition of regional supervision” by the Hope Administrative Commission and to its findings and rulings. The court therefore grants [the Presbytery’s] request for an order permanently enjoining Defendants from interfering with the actions of Hope Administrative Commission, acting as the session of Hope Church or attempting to use or encumber the property of Hope Church.

### **Serone Church**

Artesia, CA

In the Serone Church case, the recently called pastor was facing disciplinary charges within the ecclesiastical judicial system of PC(USA). Before the Permanent Judicial Commission could hear the case, the pastor’s faction of Serone Church, claiming to act as its session, voted to sever its ties with PC(USA), the synod, and the presbytery. The pastor renounced the jurisdiction of the PC(USA) and thereby his ordination as a minister of Word and Sacrament in the denomination. The congregation split into factions, and there were reports of physical assaults. The presbytery created an administrative commission to oversee Serone Church and to attempt to reconcile the factions.

The dissident faction filed a lawsuit purportedly on behalf of Serone Church against the presbytery, claiming that the presbytery had no authority over the church. In a decision issued on July 20th, the court found that Serone Church had no authority to unilaterally sever its ties with PC(USA), the synod, or the presbytery:

The Court finds that the resolutions seeking to disassociate Plaintiff [Serone Church] with PCUSA that were passed in the January 11 session meeting were ineffective in severing those ties between Plaintiff and PCUSA . . . The Book of Order states that “the relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action the part of the presbytery.” . . . A unilateral amendment of a church’s corporate by-laws seeking to sever relationship

to the PCUSA is ineffective since, “under the Book of Order, the relationship of a particular church to PCUSA can be severed only by action on the part of Presbytery.” The Court is bound to recognize and defer to PCUSA’s governance of its internal affairs, and is also bound to recognize the Court of Appeal’s ruling . . . When a local church is in schism, and the relevant presbytery appoints an administrative commission which makes such a determination, a civil court must defer to the decision of the presbytery to appoint that commission and to the ecclesiastical determinations which that commission makes. Moreover, when the presbytery’s commission makes a determination as to the division of the church’s property concurrently with its determination as to which is the “true church,” it is proper that the civil court defer to that decision as well. The court finds that the Serone Administrative Commission was appointed by the relevant presbytery (Hanmi) pursuant to a schism within the Serone Church, and that it must defer to the decision to appoint the commission, and to the decisions of that commission.

A few hours after the court issued that decision, the parties reached a global confidential settlement.

### **Torrance First Presbyterian Church**

Torrance, CA

In the Torrance First Presbyterian Church case, the congregation called a pastor from Olympia Presbytery, in Washington. That pastor, however, was facing accusations within Olympia Presbytery, and the PC(USA) Constitution prohibited the presbytery from issuing a certificate for his transfer until the charges were resolved.

A dispute arose within the Torrance Church congregation as to how best to respond to the pastor’s failure to obtain a proper transfer from Olympia Presbytery. Ten members of the session for Torrance Church wrote, requesting and thereafter obtaining the appointment of an administrative commission over Torrance Church. The administrative commission, which was granted broad authority, unsuccessfully attempted to reconcile the factions of the church. The pastor quit the denomination. Thereafter, one faction filed a lawsuit purportedly on behalf of the particular church against the synod and the presbytery, seeking a declaration that the congregation had severed its ties with PC(USA), the synod, and the presbytery.

On June 6, 2005, the Los Angeles County Superior Court issued an injunction against the dissident faction. As it ruled:

The court agrees with the national church [PCUSA] that the local congregation holds its church property, real and personal, in trust for the national church, and that it cannot revoke such trust without the consent of the national church, pursuant to section 9142 (c) and (d) of the

Corporations Code.

On this basis, the court restrained the dissident faction from:

- using money in any bank account for any purpose other than to pay standard operational expenses;
- encumbering or selling any of the property of Torrance First Presbyterian Church;
- denying access to worship services by members of the administrative commission, Hanmi Presbytery, and members of the true church as defined by the presbytery (cf. *Book of Order* G-8.0601);
- preventing access to the property of Torrance First Presbyterian Church by members of the administrative commission; and
- preventing access to pulpit supply by a person authorized by the Synod, Hanmi Presbytery, or PC(USA).

In a follow up ruling, the court stated that the dissident faction had failed to show “reasonable probability” that it would prevail on the merits of the case. The case should be set for trial within the next few weeks.

**Bethany United Presbyterian Church**  
Los Angeles, CA

The Bethany Church case was procedurally similar to the other cases: a faction of a PC(USA) congregation within the Presbytery of the Pacific, another presbytery within the synod, unilaterally sought to change the name of the particular church, deeded its real property to a new entity, and declared the church was independent of PC(USA). The presbytery authorized the formation of an administrative commission. In response, the dissident faction filed suit. The court entered summary judgment in favor of the presbytery, and against the dissident faction, writing:

. . . [T]he First and Fourteenth Amendments to the United States Constitution and established precedent acknowledging their applications to this ecclesiastical issue requires this Court to give effect to the Presbytery of the Pacific’s determination as the authorized judicatory body within the hierarchical Church organization. Indeed, California courts have examined this same issue in the context of the hierarchical structure of the Presbyterian Church (USA) and the authority of the Presbytery of the Pacific over its constituent churches. In so doing, our Court of Appeal has expressly identified the Presbytery of the Pacific as the authoritative ecclesiastical body charged with identifying the “true church” in property disputes involving one of its local churches...the Presbytery of the Pacific - - as both the ecclesiastical and judicially recognized authority for the determination of “true church” status within its geographic region - - has determined that Plaintiffs are not the “true church.” Plaintiffs are therefore not entitled to possess, convey or in any manner use or dispose of the Bethany United Property and that decision is binding upon them.