

Chairman Lance Kinzer
Kansas Statehouse, RM 165-W
300 SW 10th St.
Topeka, KS 66612

Rev. James A. West
Senior Pastor—Colonial Presbyterian Church
9500 Wornall Rd.
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Dear Chairman Kinzer, Ranking Member Pauls, and Judiciary Committee Members:

Long before I began serving as her Senior Pastor in 2008, Colonial desired to move out of the PC (USA) due to theological and cultural incompatibility. Colonial celebrates 60 years this May, and I've been told that Colonial had felt inclined to move out of the PC (USA) for over 20 years. When I arrived at Colonial, it became clear that a vast majority of the congregation desired to be out of the PC (USA), but their concern about potentially losing their property held them at bay. Colonial is a multi-site church of 1600 members with locations in Kansas City, MO and Overland Park, KS.

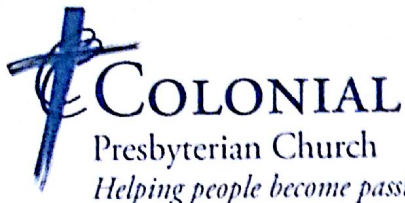
Finally, in January 2010, after many years and many attempts to bring about reform within the PC (USA), Colonial's leadership discerned that it was time for the congregation to consider a move. We invited Heartland Presbytery into a discernment process that lasted for six months. Midway through the discernment process, Heartland Presbytery sent a letter to every member family announcing that they would take Colonial's property if we attempted to leave the denomination. Consequently, when 97% of the congregation voted to leave the PC (USA) and join the Evangelical Presbyterian Church (August 22, 2010), we simultaneously filed for a "Quiet Title" with the Jackson County Courts in order to 'call the question' regarding the ownership of our property.

As you might imagine, I became an avid student of church property disputes and the law that surrounds the establishment of a trust. I was quickly tutored on the meaning of "neutral principles" as opposed to the "rule of deference." I was told that Missouri's use of neutral principles regarding trust cases was well established, whereas Kansas' use of neutral principles was not as well established.

By clearly utilizing neutral principles, the Missouri courts were not entangled in theological issues or any potential conflict of church and state. Instead, the issue came down to deeds, documents and the question of intent as to the establishment of a trust. Though the PC (USA) constantly pointed to their unilateral trust clause inserted into their *Book of Order*, the courts demanded evidence proving that Colonial agreed to enter into a trust. Such evidence would need to include terms and conditions familiar with lawyers and judges. As such, a unilateral trust clause was insufficient documentation to establish a trust relationship, and Colonial was granted full title of her property. Such was also the finding in another case with our sister congregation, Gashland Presbyterian Church in Clay County, MO. In that case, the Missouri Appellate Court affirmed that there was not even a cause of action because Heartland Presbytery could not produce any evidence that a trust was ever established. Even with a clean victory based on neutral principles, Colonial was obliged to spend over \$400,000 in legal fees simply to maintain status quo. The uncertainty of potentially losing our property was both difficult and harmful to our mission and any potential for growth in church membership while the litigation lingered. That being said, we are grateful to have this chapter closed and behind us, and we are VERY grateful to be in our new denomination.

A defining reality in the outcome of our case (and Gashland's) rested upon the fact that the deeds and articles of incorporation said nothing about entering into a trust with the PC (USA). In both instances, the churches' origins

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preceded the trust clause, so there was no documentation pointing to a trust relationship. That is not the case with all PC (USA) churches. Some congregations, particularly newer ones, have the trust language written into their deeds and articles. In such cases, the neutral principles approach works in favor of the denomination. The point being that the neutral principles approach is fair and unbiased towards both sides of any property dispute. Even so, we constantly heard Heartland's attorney beg the court to make an exception for the denomination because their case as a religious organization was "different than other organizations or other property disputes." The Missouri courts, however, maintained that the establishment of a trust is not a "religious or theological" consideration...It is a legal transaction that requires mutual consent and proper documentation.

I would strongly suggest that Kansas law reflect a clear and unapologetic adaptation of neutral principles when considering church property disputes. Such an approach would make it clear for both parties what the outcome of a court case would be based upon the deeds and articles of incorporation. If there is no clear established trust language, the denomination would likely forego expensive litigation (one would hope). If there is clear trust language, the congregation can know in advance that they will likely lose their property or be forced to purchase their property from the denomination if they choose to leave. Clarity on this issue of a trust is the burden of state lawmakers, and clarity is essential when so many people are potentially affected by the outcome.

On a personal note, I think the intent of Heartland Presbytery [and the PC (USA)] in these disputes borders on criminal. Heartland had no noble use or intent for Colonial's property. They were willing to displace 2000 attendees simply to sell off the property in pieces and pocket the income. In addition, they never once acted like an owner of the property. They never paid a dime on the property; they did not co-sign on our loan for \$9.2 million; and they never showed up to improve or maintain its structures. As Judge Del Muro stated, "It is the opinion of the court that Heartland would be unjustly enriched should it obtain title to the property." It is a sad and tragic reality that a church would need to defy their conscience and remain in a denomination that no longer holds to historic, biblical values, simply because they would forfeit their property should they act upon their faith and convictions. It is even more tragic that a denomination would stoop to such hostility in order to reap financial rewards for their own self-preservation.

To be sure, those churches that agreed to the trust language did so believing their trust relationship was based upon shared values and biblical doctrines of faith and practice. In reality, when the parent organization betrays the trust by abandoning those shared and essential doctrines, it can hardly be said that the departing church is the one leaving. They, in fact, are the ones who have been left. Nevertheless, documents are documents, and the deeds and articles are sufficient in establishing a trust in the eyes of the law. That is as it should be, tragic as it may be for a local church that is simply seeking to define and maintain the same biblical standards it had when the trust was established.

There is more I could say regarding our discernment process, our multiple attempts to settle with Heartland; and our brief case in KS that was dismissed via *res judicata* and *collateral estoppel*. Please feel free to ask whatever questions you may have, and thank you for the opportunity to be heard.

Sincerely,

Rev. Jim West

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