

The amicus brief, The Wisconsin Conference Board of Trustees of the United Methodist Church, Inc., v. Ronald Culver, Loretta Konrad, Lucille Krentz, Arthur Lamonska, Gordon Trapp, John Does 1 through 10 and Jane Does 1 through 20, was joined by Clifton Kirkpatrick, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.). The brief was filed with the Supreme Court in the State of Wisconsin on December 1, 2000.

STATE OF WISCONSIN  
IN THE SUPREME COURT  
No. 99-1522

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THE WISCONSIN CONFERENCE BOARD  
OF TRUSTEES OF THE UNITED METHODIST  
CHURCH, INC.,

Plaintiff - Appellant-Respondent,

v.

RONALD CULVER, LORETTA KONRAD,  
LUCILLE KRENTZ, ARTHUR LAMONSKA,  
GORDON TRAPP, JOHN DOES 1 THROUGH 20  
AND JANE DOES 1 THROUGH 20

Defendants - Respondents - Petitioners.

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Review of the decision of the Court of Appeals,  
District II, Dated May 10, 2000,  
On Appeal from Judgment of the Circuit Court of  
Winnebago County  
Dated July 21, 1999, The Hon. William H. Carver, presiding  
Circuit Court Case No. 99-CV-165-BR5

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BRIEF OF AMICI CURIAE KATRINE L. ANDERSON, JUDY BELL, ERNEST CUTTING,  
ALYSON JANKE, MICHAEL B. LUKENS, AND CLIFTON KIRKPATRICK AS STATED  
CLERKS OF THE PRESBYTERY OF NORTHERN WATERS, THE MILWAUKEE  
PRESBYTERY, THE TWIN CITIES AREA PRESBYTERY AND THE SYNOD OF LAKES  
AND PRAIRIES, THE JOHN KNOX PRESBYTERY, THE WINNEBAGO PRESBYTERY  
OF THE PRESBYTERIAN CHURCH (U.S.A.), THE PRESBYTERIAN CHURCH (U.S.A.),  
AND THE UNITED HOUSE OF PRAYER FOR ALL PEOPLE OF THE CHURCH ON THE ROCK OF THE  
APOSTOLIC FAITH

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INTEREST OF AMICUS

The Presbyterian amici represent all five presbyteries of the Presbyterian Church (U.S.A.) (hereafter PC(USA)) having churches in Wisconsin, the Synod of Lakes and Prairies, and the General Assembly of PC(USA). These organizations are related to each other by a constitution and history of religious practice in a hierarchical connection similar to that of the United Methodist

Church (hereafter UMC).

Amicus The United House of Prayer for All People of the Church on the Rock of the Apostolic Faith (“United House of Prayer”), is a hierarchical religious society incorporated in the District of Columbia with 135 congregations in 25 states. The United House of Prayer was founded by the late Bishop C. M. Grace in the 1920's and now has a nationwide membership in the millions. The United House of Prayer was founded on principles of racial equality and religious freedom, and it has flourished in its over 80 years in existence.

If courts are not willing to enforce the UMC's ecclesiastical constitutional provisions regarding retention of local church property, the Presbyterian Church (U.S.A.), the House of Prayer, and other hierarchical churches risk losing to breakaway congregations real and personal property contributed by generations of members to promote the faith and mission of the whole church.

In the case on appeal the Circuit Court has apparently ignored clear and express provisions in the Discipline (the constitution) of the UMC that prohibit the alienation of church property without the consent of hierarchical authorities. A-App 98. The court also ignored the provisions of the Wisconsin Statute that direct attention to the requirements of the church law. Finally, the Court ignored the words of the deed, which states that the property is conveyed in trust for the Methodist Episcopal Church (predecessor to the UMC). The Circuit Court has, in effect, redefined the religious doctrine and organizational structure of a hierarchical church, and treated it as a congregational church. This case provides this Court with an opportunity to clarify the secular legal right of hierarchical churches to control the interests of their subordinate entities in property as in other matters and to determine their own membership.

#### STATEMENT REGARDING PUBLICATION OF DECISION

These amici believe that the decision in this case should be published because there is little Wisconsin case law addressing the issues presented by this case and because the constitutional issues involved are substantial and of continuing public interest.

#### ARGUMENT

A. Courts traditionally have respected a church's self-determined rules regarding ownership of property and resolution of internal disputes in order to protect the right of churches under the First Amendment to freely express their religious doctrines, policies, and practices through the ownership and control of property.

In 1871 the United States Supreme Court recognized that there was a difference between independent congregations and congregations united in a general body.

In that case the Court recognized that the Presbyterian Church in the United States of America was one of the "societies . . . united to form a more general body of churches, with ecclesiastical control in the general association over the members and societies over which it is composed." While the decision was surprising to some, it reinforced an essential element of Presbyterian polity. In Presbyterian polity and practice, as distinguished from the polities of the Roman Catholic, Episcopal, House of Prayer, and United Methodist Churches, there are no individual bishops. In the Presbyterian Church (U.S.A.) no single individual has the authority to appoint pastors or

apportion benevolences, as a United Methodist Bishop does. Yet the United States Supreme Court recognized the Presbyterian Church as "hierarchical" because of its structure of sessions, presbyteries, synods, and a General Assembly as governing bodies, each level with authority over the body below. The governing bodies the Presbyterian amici represent are the successors to and beneficiaries of both the plaintiffs and the defendants in *Watson v. Jones*.

Then, as now, decisions in the Presbyterian Church were made by groups of duly elected people called governing bodies or judicatories. At the local level, the congregation elects elders. Pastors are called by the congregation and installed by the next higher governing body, the presbytery. The session also elects from among itself representatives to join their pastor as commissioners in the presbytery, the next higher governing body. The presbytery has much of the authority that is possessed by individual bishops in Roman Catholic, Episcopal, and House of Prayer polities. However, this authority is assigned to groups of elders and ministers rather than one individual. Those same elders and ministers making up the presbytery elect from among their number elders and ministers to serve as commissioners to the synod and the General Assembly itself. These governing bodies act corporately on behalf of that portion of the church for which they are responsible.

The Court in *Watson* recognized that the Church Constitution gave the General Assembly the authority to make anti-slavery pronouncements if its search of the Scriptures led it to that position. Mr. Watson, a member of the Walnut Street Presbyterian Church, was deeply offended by the anti-slavery pronouncements issued by the General Assembly. The U. S. Supreme Court made it clear in *Watson* that the trust intended by the original donors could not be frustrated by the sensitivities of Mr. Watson. Under the First Amendment Mr. Watson was free to leave the Walnut Street Church, but he was not free to take the property given by Presbyterians before him out of the Presbyterian Church in the United States of America merely because he disagreed with the current leadership of that denomination.

B. The neutral principles analysis requires application of simple contract law analysis, and does not result in impermissible entanglement.

A little over a hundred years later, the United States Supreme Court was again faced with a property dispute involving a presbytery and a local session. In that case, the United States Supreme Court explicitly recognized what it had implicitly noted in *Watson* a century earlier. In *Jones v. Wolf* the Court held:

Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a . . . doctrinal controversy.

Immediately following this pronouncement by the United States Supreme Court, the Presbyterian denominations that are the predecessors to the governing bodies represented by these Presbyterian amici amended their respective Church Constitutions to make explicit their historic understanding of how church property should be treated. The current Constitution of the Presbyterian Church (U.S.A.) states:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether such property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)

Using the neutral principles of law analysis, the Supreme Court in *Jones v. Wolf* held that "civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." These amici (and the United Methodist church) have developed theologically based polities that provide legally cognizable forms and mechanisms for resolving the kinds of conflicts raised by the Petitioners in the present case. The governance of hierarchical denominations is not difficult to understand, whether that hierarchy be of Presbyterian, Roman Catholic, Episcopal, House of Prayer, or United Methodist order. Giving legal effect to the ecclesiastical hierarchy in the present case will not call upon those courts to engage in analysis foreign to their experience. Courts are often called upon to review complex contracts involving topics well beyond the particular jurist's own expertise. Even complex contracts are routinely enforced as written. The task in the present case is no different; there is no entanglement here.

The Supreme Court made it clear in *Jones v. Wolf* that courts should allow such clear and unambiguous language to determine the result if denominations have gone to the effort of developing such clear policies. The Petitioners are in error to rely on *Jones v. Wolf* for the idea that "polity is irrelevant in property cases." The holding is actually the opposite, namely that when the polity is clear it will be given force and effect. In the case at bar the United Methodists, like these amici, have gone to great lengths to make resolution of cases like this one clear and understandable to all who choose to affiliate with these hierarchical churches. Other denominations use different forms of hierarchical structure that may dictate very different results in disputes over property than the polities of the United Methodist or Presbyterian Churches do. Some churches, like the Baptist churches and the United Church of Christ, are organized upon a congregational model that permits decisions like the one at bar to be the sole and complete right of the congregation by vote. It is important to note that none of the organizational structures are designed solely for efficiency or even fairness, but rather represent each group's best understanding of how the Almighty would have them organize. John Wesley looked to the Christian Scriptures for his polity. For their respective polities, cases such as this one are not really about real estate at all, but rather they are about how a particular tool for ministry (in the case of *Elo*, real estate) will be used to advance the proclamation of their respective faiths. Under the United States Constitution, each religious society is entitled to the same protection and deference to its understanding of God's revelation.

C. The violation of donor intent, if allowed in this case,  
will have widespread damaging effect.

The Wisconsin Conference should surely be given as much protection today in the case before this Court as the U.S. Supreme Court provided the Presbytery of Louisville in 1871. For this Court to do otherwise will severely discriminate against persons joining and supporting

hierarchical Churches like the United Methodists and the Presbyterians. If this Court were to adopt the Petitioner's position, as pleaded in their latest brief, the decision could have dramatic, yet unintended, consequences and implications for the Presbyterian Church (U.S.A.) and its members. We urge this Court to provide the protection the First Amendment guarantees. If not, the expenditure of mission resources

#### CONCLUSION

There are 32,359 Presbyterians, in 157 congregations, governed by five presbyteries and one synod in Wisconsin. Those faithful Presbyterians join their beloved Church with the understanding that the Book of Order will determine the outcomes in cases like this one. They give generously, indeed sacrificially, of their resources to support the mission of the Presbyterian Church. They watch this case with great interest, for its outcome may well dramatically affect their religious practice for years to come. For these reasons we urge that the decision of the Court of Appeals be affirmed.

Respectfully submitted,  
Brusky & Sjostrom SC

By:  
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#### CERTIFICATION

I certify that this amicus curiae brief conforms to the rules contained in Rule 809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of this brief is 13 pages.

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Kevin J. Sjostrom