

**THE PERMANENT JUDICIAL COMMISSION  
OF THE GENERAL ASSEMBLY  
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

Chesterbrook Taiwanese Presbyterian Church, )	
Complainant/Appellant, )	
v. )	<b><u>DECISION AND ORDER</u></b>
National Capital Presbytery, )	Remedial Case 217-12
Respondent/Appellee. )	

**Headnotes**

1. **Property of a dissolving congregation:** A dissolving congregation has the right to dispose of church property only as the presbytery directs. G-8.0401 grants the presbytery exclusive rights and responsibilities for dealing with the property of a dissolved church.
2. **Effective date of dissolution:** The act of dissolution of a church is complete at the effective date stated in a presbytery resolution.
3. **Property held in trust:** The principle that all property held by or for a particular church is held in trust for the Presbyterian Church (U.S.A.) applies to congregations and presbyteries, no matter which entity holds title to church property. (G-8.0201)
4. **Congregational meetings on property matters:** Congregational meetings on property matters are not required for every matter having to do with property issues, but are limited to those matters enumerated in Chapters VII and VIII. (G-7.0304, G-8.0500)
5. **Lack of authority of a dissent or minority report:** In a judicial decision, neither a dissent nor a minority report has binding authority.
6. **Presbytery business with non-members:** Presbyteries and congregations are free to transact business with non-members and may take actions and pass resolutions that address their dealings with non-members. (G-15.0105)
7. **Standard of review:** Factual determinations made by a trier of fact have a presumption of correctness and are not to be disturbed on appeal unless they are plainly wrong, without supporting evidence or manifestly unjust (Hardwick v. Permanent Judicial Commission of the Synod of North Carolina, *Minutes*, 1983, p.45).

**Arrival Statement**

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal by the Chesterbrook Taiwanese Presbyterian Church (CTPC) from a deci-

sion of the Permanent Judicial Commission of the Synod of the Mid-Atlantic (SPJC) dated April 19, 2005. This Commission finds that it has jurisdiction, that the Appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more grounds for appeal under D-8.0105.

### **Appearances**

The following persons appeared on behalf of Appellant, Chesterbrook Taiwanese Presbyterian Church: Max Ko, Ying H. Shih, and Y.T. Hung . The Reverend David Shih, Moderator, and Chung Yao Kuo, Clerk of Session, of Chesterbrook Taiwanese Presbyterian Church were also present. Appellee, Presbytery of National Capital Presbytery, was represented by the following persons: Lynn Stanton-Hoyle, Gerald Hopkins, and James G.E. Williams. Richard McFail, Stated Clerk of the Presbytery, was also present.

### **History**

Chesterbrook Presbyterian Church (CPC) was a congregation of National Capital Presbytery (Presbytery), located in Falls Church, Fairfax County, Virginia on about 9 acres. The site is divided into three parcels: Parcel A of 3.4 acres, which contained the church building with parking and access to the street; Parcel B of .6 acres, which was a narrow strip of land on the northern boundary of the property, designed to provide access to the land at the rear; and Parcel C of 5 acres, a land-locked area at the rear of Parcel A. As early as 1974, Fairfax County records showed Parcel B as providing potential access to Parcel C.

As a diminishing and aging congregation, CPC began moving toward dissolution as a congregation. An “Exploratory Task Force” met on March 13, 2000, with the pastor and two elders of the Taiwanese Presbyterian Church of Northern Virginia (TPCNVA) to discuss the possibility of the latter using the building and land of the former, as TPCNVA had been meeting in a school building and had no facility of its own.

By September, 2000, Presbytery, through its Church Development Committee, began to discuss closure with CPC, and on September 17, the congregation of CPC voted to close with a tentative date of January 31, 2001. Throughout the remainder of 2000, committees of Presbytery worked with CPC, focusing on pastoral care and transition issues which would follow dissolution.

On October 8, 2000, TPCNVA’s Session met. In a letter dated October 9, 2000, from Elder Y. T. Hung, Clerk of Session of TPCNVA, to William Carter, the representative of CPC, Mr. Hung stated, “The Congregation and the Session express their deepest appreciation for the love and generosity of the Chesterbrook Presbyterian Church...[A]s a gift receiver, we think any additional request would be beyond the God’s grace to TPC. Therefore, TPC will go along with whatever the decision made by the CPC and with whatever CPC sees feasible.” Mr. Hung also suggested the need for language and exhibits to be precise concerning potential building of an assisted living facility on Parcel C and the impact of this proposed building on future plans for church expansion.

A congregational meeting of CPC was held on November 12, 2000 to approve the dissolution of the church, effective January 31, 2001, with the following resolution:

We accept the Session's plan to deed the real property to National Capital Presbytery, Incorporated, with the provision that the building and grounds be given, at no cost, to the Taiwanese Presbyterian Church of Northern Virginia Congregation and to give Lewinsville Presbyterian Church the opportunity to determine whether or not an assisted living facility for low and moderate income persons can be constructed on the back portion of the Church property and to also explore the possibility of developing a home for the Family Respite Center.

On November 26, 2000, at a congregational meeting, TPCNVA voted to accept CPC's plan, and to change the church name to "Chesterbrook Taiwanese Presbyterian Church."

At the stated meeting of Presbytery on January 23, 2001, the Presbytery approved the dissolution resolution for CPC (effective January 31, 2001) and the name change for TPCNVA. The January 23, 2001 resolution included the following:

8. On February 1, 2001, the CTPC is authorized to use "Parcel A" and "Parcel B" property as their new church home with all responsibilities thereof. The Taiwanese Church, chartered in 1992 and a rapidly growing congregation, will move from its current worship site at Oakton Elementary School to "Parcel A." This move will allow them to continue to grow their ministry by now having their own church building. The Taiwanese Church shall maintain and make improvements to the property as necessary. Also, the Taiwanese Church shall be National Capital Presbytery, Inc.'s local representative for oversight of "Parcel C," with such representation to end upon any development of Parcel "C" anticipated in paragraph 12.

\* \* \*

12. The Session of Lewinsville Presbyterian Church is requested to form a task force for exploring the use of undeveloped "Parcel C" as an Affordable Assisted Living Facility or a similar facility. Every effort shall be made to incorporate the Family Respite Center (currently located on "Parcel A") into the Affordable Assisted Living Facility. It is recognized that access to "Parcel C" will be by way of "Parcel B" or other access over a portion of "Parcel A." This task force shall report its build/no build decision to Presbytery's Business Advisory Committee no later than July 31, 2002, which is 18 months from dissolution of Chesterbrook Presbyterian Church. By mutual agreement, this time may be extended if needed.

The January 23, 2001 resolution also provided that the Presbytery address contractual issues with two not-for-profit tenant organizations using church facilities, and proceed with all legal arrangements for dealing with Parcel C, including a long-term lease of the property and access rights. CTPC moved to the property on February 1, 2001. Later in 2001, CPC transferred the title to all the church property (Parcels A, B, and C) to Presbytery.

The feasibility study for the assisted living facility on Parcel C began, and the deadline for completing the study was extended to March 1, 2004. During the period 2001-2004, many activities related to planning, zoning, and other government approvals for the assisted living facility were in progress. CTPC became concerned that the use of Parcel C and the location of the access road would impair its capacity to expand the building as the congregation grew. On February 17, 2004, Presbytery leadership sent a letter to all those of interest, acknowledging CTPC's concerns and stating a willingness to work together to solve the issues. Several discussions and communications to that end ensued.

On March 9, 2004, Presbytery Council met, considered motions concerning the disposition of the issues, but postponed action until a later date. Later that month, Presbytery voted to accept the project proposal for the assisted living facility, now named Chesterbrook Residences, Inc. (CRI). On April 20, 2004, a meeting was held with representatives of CTPC, Presbytery, CRI, and Lewinsville Church, which resulted in a first draft of a proposed resolution to address these concerns. This resolution was to be presented at Presbytery's stated meeting in May, 2004. At some point, CTPC ceased to participate in the discussions.

On May 10, 2004, a revised "Working Draft" of the resolution was sent by e-mail to CTPC representatives and the others participating in the drafting. The following day, Presbytery Council met to consider the draft. Though invited, representatives of CTPC did not attend.

Presbytery held its stated meeting on May 25, 2004 and the Council's recommended resolution was presented. Following a failed motion to postpone, Presbytery passed the resolution after considerable discussion. The May 25, 2004 resolution began as follows:

National Capital Presbytery recognizes that language in the Chesterbrook Presbyterian Church Dissolution Resolution which it approved on January 23, 2001, has led to confusion, distress and conflict. The presbytery, therefore, apologizes to its members and particularly to the members and leadership of CTPC, Lewinsville Presbyterian Church, Immanuel Presbyterian Church and Chesterbrook Residences, Inc (CRI). The Presbytery seeks grace and forgiveness as it moves forward.

In order to resolve differences which have arisen, underscore its commitment to the vitality and success of Chesterbrook Taiwanese Presbyterian Church and the proposed Chesterbrook Affordable Assisted Living Facility, and more clearly define its intentions, National Capital Presbytery hereby resolves, agrees, and acknowledges that:

1. The Presbytery retains title to Parcels A, B, and C . . . and all the rights and responsibilities of a presbytery under the Constitution of the Presbyterian Church (USA);
2. With regard to Parcels A and B, National Capital Presbytery grants to Chesterbrook Taiwanese Presbyterian Church all of the rights and responsibilities of a particular church under the Constitution of the Presbyterian Church (USA) [ex. G-8.0201, ff; G-10.0102, ff]

- a. with the understanding that an access road on Parcel B to Parcel C will occupy a portion of Parcel A in perpetuity and subject to an easement granted across Parcel A;
- b. with the understanding that CTPC cedes its interest in Parcel B and agrees that the Presbytery shall retain all rights and responsibilities to Parcel B...

On July 6, 2004, CTPC filed a complaint with the SPJC concerning the actions of Presbytery on May 25, 2004. A stay of enforcement was requested by CTPC, but was not granted. Following a trial, SPJC issued a decision on April 29, 2005, which upheld the May 25, 2004 resolution, and ordered that congregational meetings should be held “in all future matters of this sort having to do with property issues . . .” An appeal was filed by CTPC with the GAPJC on June 2, 2005. A hearing on appeal was held February 10, 2006 by the GAPJC.

### **Specifications of Error**

CTPC’s specifications of error have been reworded or combined for purposes of clarity.

#### **Part I Property of Dissolving Congregation**

One specification of error suggests the question: “May a dissolving congregation direct disposition of church property?”

*Specification of Error Number 3: SPJC erred in denying a particular church’s right of the disposition of its own property before it was formally dissolved by the Presbytery.*

This specification of error is not sustained.

Specification of error number 3 refers to the “right” of a church to dispose of church property before being dissolved by Presbytery. CTPC contends that, because of the wishes expressed by CPC prior to its dissolution, CTPC had a greater interest in the church property from February 1, 2001 forward than Presbytery was willing to acknowledge.

The Book of Order is clear that a dissolving church, such as CPC, has the right to dispose of church property only as the presbytery directs. G-8.0401 grants Presbytery exclusive rights and responsibilities for dealing with the property of a dissolved church. SPJC correctly held that a dissolving congregation cannot dispose of church property by gift, contract or other means. Thus, CTPC could not acquire from CPC that which CPC had no right to transfer.

CTPC argued that the dissolution of CPC was not complete until the January 23, 2001 resolution was passed by Presbytery and a formal celebration occurred. However, G-8.0401 does not apply only after “formal dissolution” as CTPC defines it, *i.e.*, after a final worship service. The process leading to the dissolution of a congregation, even in cases where the congregation seeks to be dissolved, takes substantial time, particularly when dealing with real property.

The act of dissolution is complete at the effective date stated in a presbytery resolution, which in this case was January 31, 2001.

Moreover, even if CPC had not been formally dissolved before January 23, 2001, it could not have sold, leased, or otherwise encumbered church property without the written approval of Presbytery (G-8.0501). A presbytery has exclusive power to determine the use and disposition of church property in a case where the property ceases to be used for a particular church, as was the case with CPC (G-8.0301).

These three provisions of the Book of Order (G-8.0301, G-8.0401, G-8.0501) are consistent with the premise in G-8.0201 that “[a]ll property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.) . . . is held in trust . . . for the use and benefit of the Presbyterian Church (U.S.A.)” This principle applies to congregations and presbyteries, no matter which entity holds title to church property, and applies whether the property is being used for a particular church program, for investment or otherwise.

## **Part II**

### **Effect of CPC Resolution and January 23, 2001 Presbytery Resolution**

Two specifications of error suggest the question: “What ‘rights’ did CTPC receive under the November 12, 2000 CPC resolution or the January 23, 2001 presbytery resolution?”

*Specification of Error Number 4: SPJC erred in disregarding CTPC’s contractual right and the promise of Presbytery.*

This specification of error is not sustained.

*Specification of Error Number 5: SPJC erred in neglecting the common understanding of the Chesterbrook Dissolution Resolution of January 23, 2001, which resulted in denying CTPC’s right to the property.*

This specification of error is not sustained.

The January 23, 2001 resolution granted “authorized use” to CTPC and required it to assume “all the responsibilities thereof.” This authorized use was limited by the “development of ‘Parcel C’ anticipated in paragraph 12.” That paragraph expressly “recognized that access to ‘Parcel C’ will be by way of ‘Parcel B’ or other access over a portion of ‘Parcel A’.” The difference in understanding between CTPC and Presbytery about the extent of CTPC’s rights in Parcels A and B under this language (including its right to object to the location of an easement) did not emerge until 2004 when Fairfax County officials determined that access to the assisted living facility would cross both Parcels A and B. In light of the language of paragraph 12 of the 2001 resolution, the SPJC correctly held that CTPC’s right to use Parcels A and B was subject to the placement of an easement over either Parcel A or B for purposes of access to Parcel C.

## **Part III**

## Effect of 2004 Presbytery Resolution

Specification of error number 2 suggests the question: “Was the CTPC divested or deprived of property rights by the May 25, 2004 resolution of Presbytery?”

*Specification of Error Number 2: SPJC erred in allowing a presbytery to use a resolution to dispose of a particular church’s property right that has been well settled without consent of the particular church.*

This specification of error is not sustained.

After February 1, 2001, CTPC was authorized to use the church property. No right previously given to CTPC was taken away from it by the May 25, 2004 resolution. Rather, the May 25, 2004 resolution gave CTPC full rights and responsibilities for the church property under Chapter VIII of the Book of Order.

## Part IV Necessity for Congregational Meeting

Specifications of error numbers 1, 7, and 8 suggest the question: “Was a meeting of the CTPC congregation required to give consent to the placing of easements in May 2004?”

*Specification of Error Number 1: SPJC erred in making a decision which contradicted its own finding.*

This specification of error is not sustained.

*Specification of Error Number 7: SPJC agreed with CTPC’s position that the May 25, 2004 resolution required approval of the CTPC congregation. As Presbytery filed no appeal, the SPJC’s finding is final and CTPC’s plea should be granted.*

This specification of error is not sustained.

*Specification of Error Number 8: SPJC erred in failing to correct and prevent the irregularities and delinquencies of Presbytery, as required by D-2.0101.*

This specification of error is not sustained.

In specification of error number 1, CTPC contends that SPJC correctly recognized that there should have been a meeting of CTPC congregation “to approve and accept” the May 25, 2004 resolution. CTPC further argues that SPJC then erred when it did not grant relief to it based on the fact that no such meeting occurred, even while suggesting that such meetings “should” occur “in all future matters of this sort having to do with property issues and congregations.”

Before May 25, 2004, CTPC had only been “authorized to use” Parcels A and B, modified by the possible future easements provided for in paragraph 12 of the resolution of January 23, 2001. That authority was not diminished by the relocation of the proposed access road easement at the direction of the Fairfax County officials. Yet SPJC’s recognition of the wisdom of holding a congregational meeting to discuss the effect of the new easement was reasonable in light of the pattern of miscommunication and misunderstanding shown in this case.

However, a requirement for such a meeting in “all future matters of this sort having to do with property issues and congregations of the Presbytery” goes too far. Congregational meetings are not required for every matter having to do with property issues. The Book of Order requires congregational meetings in the limited situations enumerated in Chapters VII and VIII. G-7.0304 states, “Business to be transacted at meetings of the congregation shall include . . . [m]atters related to buying, mortgaging, or selling real property (G-8.0500) . . .”

No business other than those items listed in G-7.0304a may be transacted at a congregational meeting. (G-7.0304b.) G-8.0501 notes that many property related transactions also require the written permission of presbytery:

A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.<sup>1</sup>

SPJC’s more expansive recommendation for congregational meetings is one that congregations and presbyteries may follow, but are not required to follow. Increasing the opportunities for communication and consensus, whether by congregational meetings, informational meetings, or correspondence, is desirable, even if not constitutionally mandated.

## **Part V Procedural Errors**

Specifications of error numbers 6, 9 and 10 allege procedural errors by the SPJC.

*Specification of Error Number 6: SPJC erred in using materials that were part of the process of reconciliation against the party who participated in the process.*

This specification of error is not sustained.

This specification of error largely relies on a “Minority Report” in the SPJC decision, which concluded that the content of the May 25, 2004 resolution was “implicitly accepted by CTPC’s participation and approval in drafts of the resolution as early as April 2004.” CTPC, using a civil court standard, argues that SPJC made improper use of “materials” that were part of

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<sup>1</sup> Written presbytery approval is also required if a congregation proposes to “lease its real property used for purposes of worship, or lease for more than five years any of its other real property . . .” (G-8.0502)



an offer of compromise. This civil court standard is not applicable in the Presbyterian Church (U.S.A.)’s judicial process.

It should be noted that the designation “Minority Report” in the SPJC decision is not in common use in the ecclesiastical process of the Presbyterian Church (U.S.A.), and should normally have been written as a dissent. Neither a dissent nor a minority report has binding authority.

Moreover, in answer to this specification, the record in this case does not demonstrate that CTPC approved or accepted the resolution before it was presented to Presbytery for debate and vote on May 25, 2004.

*Specification of Error Number 9: SPJC erred in ruling that Presbytery’s violation of its own Manual “does not rise to the level of constitutional error.”*

This specification of error is not sustained.

SPJC correctly determined that Presbytery’s failure to include a copy of the May 25, 2004 resolution in the mailing that preceded the stated May 2004 Presbytery meeting did not rise to the level of constitutional error. (Hope, *et al*, v. Presbytery of San Francisco, *Minutes, 2006*, p. \_\_)

Moreover, Presbytery’s manual states: “Docket and Packet: The packet containing materials to be voted on will be mailed prior to each regular meeting.” The manual does not state that *all* materials to be voted on will be mailed in advance.

*Specification of Error Number 10: SPJC erred in allowing a non-member of Presbytery who is not subject to the Constitution of the Presbyterian Church (U.S.A.) to be a party to the Presbytery Resolution.*

This specification of error is not sustained.

Presbyteries and congregations are free to transact business with non-members and may take actions and pass resolutions that address their dealings with non-members. G-15.0105 states:

The Presbyterian Church (U.S.A.) will initiate and respond to approaches for conversation and common action with movements, organizations, and agencies of the business, educational, cultural, and civic communities that give promise of assistance toward accomplishing the mission of the Church in the world.

## **Part VI Factual Errors**

*Specification of Error Number 11: SPJC erred in disregarding the evidence admitted, and the undisputed facts and circumstances, which resulted in a denial of justice.*

This specification of error is not sustained.

CTPC alleges that certain evidence was disregarded by SPJC, resulting in a denial of justice. That certain facts were not mentioned in SPJC's decision does not mean they were not considered by SPJC. Moreover, factual determinations made by SPJC, as a trier of fact, have a presumption of correctness and are not to be disturbed on appeal unless they are plainly wrong, without supporting evidence or manifestly unjust (*Hardwick v. Permanent Judicial Commission of the Synod of North Carolina, Minutes, 1983, p.45*). CTPC has not met the burden articulated in *Hardwick*.

According to CTPC, the evidence shows that Presbytery acted contrary to the expressed intent of the parties with respect to the January 23, 2001 resolution and that Presbytery representatives were less than forthcoming with CTPC. The SPJC, as the trier of fact, did not find improper motives or dishonesty, but a profound breakdown in communication between CTPC and the Presbytery. CTPC's quest for accountability and integrity reflects its commitment to our polity and deep respect for Presbytery. In seeking forgiveness, reconciliation and closure, Presbytery demonstrated its sensitivity to the means and manner by which it exercised its authority and power.

Church discipline is a power to be used for "building up the body of Christ, not for destroying it, for redeeming, not for punishing. It should be exercised as a dispensation of mercy and not of wrath so that the great ends of the Church may be achieved, that all children of God may be presented faultless in the day of Christ." (D-1.0102) Although the ruling of SPJC is now affirmed, it is this Commission's hope that this process has helped remove discord and division between CTPC and Presbytery.

### **Order**

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic be affirmed, with the clarification that the Constitution requires a congregational meeting on property matters only as specified in G-7.0304, G-8.0501, and G-8.0502.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the National Capital Presbytery report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Clerk of Session of Chesterbrook Taiwanese Presbyterian Church report this Decision and Order to the Session at its next meeting, that the Session enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

### **Absences and Non-participants**

William Carlough, P. David Snellgrove, and Judy Woods were not present and took no part in this case. Christopher Yim was recused from participation in this case.

Dated this 12<sup>th</sup> day of February, 2006.

### **Certificate**

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 217-12, Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery, made and announced at Austin, Texas, on February 12, 2006.

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Jane E. Fahey, Moderator  
Permanent Judicial Commission of the General Assembly

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Ernest E. Cutting, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Austin, Texas, on February 13, 2006.

Y.T. Hung, Counsel for Appellant  
Chung Yao Kuo, Clerk of Session, Chesterbrook Taiwanese Presbyterian Church  
James G.E. Williams, Counsel for Appellee  
Richard McFail, Stated Clerk, National Capital Presbytery  
Roger Harp, Stated Clerk, Synod of the Mid-Atlantic  
General Assembly Permanent Judicial Commission (regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on February 13, 2006.

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Ernest E. Cutting, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the Decision and Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly at Austin, Texas, on February 13, 2006, in Remedial Case 217-12, Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Austin, Texas, on February 13, 2006.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness