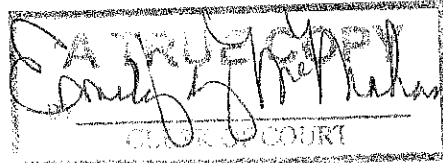


STATE OF SOUTH CAROLINA  COUNTY OF ABBEVILLE
Dr. Richard Taylor, Dr. Parker Young, J. David Chesnut, and the Erskine Alumni Association,  Plaintiffs,  vs.  General Synod of the Associate Reformed Presbyterian Church, Inc.  Defendant.

IN THE COURT OF COMMON PLEAS  
  
EIGHTH JUDICIAL CIRCUIT  
  
C.A. No.: 2010-CP-01-080

**VERIFIED  
COMPLAINT**



EMILY Y. MCMAHAN  
CLERK OF COURT

EMILY Y. MCMAHAN  
CLERK OF COURT

2010 MAR 15 PM 2:12

FILED  
STATE OF SOUTH CAROLINA  
CLERK OF ABBEVILLE

Plaintiffs Dr. Richard Taylor, Dr. Parker Young, J. David Chesnut, and the Erskine Alumni Association (hereinafter "Plaintiffs"), by and through their undersigned counsel, complain of Defendant General Synod of the Associate Reformed Presbyterian Church, Inc., (hereinafter "the General Synod"), and would respectfully show the Court and allege as follows:

**PARTIES AND JURISDICTION**

1. Dr. Richard Taylor is currently serving as an elected Trustee of Erskine. By the actions alleged in this Complaint, the General Synod has purported to oust Dr. Taylor from Erskine's Board. Dr. Taylor is an alumnus of Erskine. Dr. Taylor resides in Greenville, South Carolina.
2. Dr. Parker Young is currently serving as an elected Trustee of Erskine. By the actions alleged in this Complaint, the General Synod has purported to oust Dr. Young from Erskine's Board. Dr. Young is an alumnus of Erskine.

3. J. David Chesnut is currently serving as a voting Trustee of Erskine by virtue of his role as President of Plaintiff Erskine Alumni Association. Mr. Chesnut is an alumnus of Erskine. Dr. Taylor resides in Decatur, Georgia.

4. Plaintiff Erskine Alumni Association is an unincorporated association devoted to the promotion of the interests of Erskine College and its Alumni. Pursuant to Erskine's Bylaws, Erskine Alumni Association is entitled to representation on the Board of Erskine.

5. The General Synod is a South Carolina non-profit corporation and a religious organization that operates throughout South Carolina with its principal place of business and headquarters located in Greenville, South Carolina.

6. This Court has jurisdiction over the parties, and venue is appropriate pursuant to South Carolina law because the location of Erskine's property, which is at issue in the lawsuit, is in Due West, South Carolina, in the County of Abbeville, and all or a substantial portion of the acts giving rise to the Complaint occurred or will occur or arise in Abbeville County.

### **FACTS**

7. Erskine College ("Erskine") is a non-profit charitable organization incorporated in the State of South Carolina on December 20, 1850, and operating under the provisions of Sections 501(c)(3) of the Internal Revenue Code of 1986, as amended. Erskine's purpose is to own, maintain, and operate a college with authority to confer distinctions, honors, licenses, and degrees usually conferred by colleges and universities in South Carolina. Erskine has its main campus and principal offices in Due West, South Carolina.

8. On or about March 3, 2010, the General Synod issued a resolution to restructure Erskine's Board of Trustees (Exhibit A). Specifically, the General Synod resolved to

terminate or remove fourteen of the thirty Trustees and to create an “Interim Board” chaired by the Moderator of the General Synod, Rev. Dr. John R. de Witt.

9. Each of Plaintiffs Taylor and Young were among the fourteen Trustees that the General Synod purported to remove.

10. At the same time, the General Synod has resolved and formed the intention to take over control of the operation of Erskine College by attempting to revise Erskine’s Bylaws to reduce the Board’s number to sixteen Trustees, to change how Trustees are appointed, and to alter the criteria for the appointment of Trustees.

11. On March 6, 2010, Rev. Dr. John R. de Witt, the Moderator of the General Synod, sent notice to the newly appointed Trustees, calling for a meeting of the purported Interim Board of Trustees on Wednesday, March 17, 2010, at 11:00 a.m. in order to elect a new Board chairman and other officers, take control of the ongoing College presidential search, and to alter or amend Erskine’s Bylaws (Exhibit B).

12. On information and belief, this planned takeover of Erskine will include the exercise of direct or indirect control by the General Synod over Erskine’s property and assets, including but not limited to its real property and endowment.

13. Erskine College’s Charter, which was amended and restated on February 3, 1977, states that “membership of the Board of Trustees and voting rights shall be set forth in the Bylaws of this corporation” (Exhibit C). The Charter was further amended and restated on August 5, 1980, to state that while the General Synod can appoint Trustees, the “terms of office shall be as set forth in the Bylaws of this Corporation” and that “any change in this section of this charter must have prior approval of *both* the General Synod of the Associate Reformed Presbyterian General Synod *and* the Board of Trustees of this Corporation.”

(Exhibit D; emphasis added.)

14. The Bylaws of Erskine College clearly grant the sole authority to remove Trustees to the Board of Trustees and permit removal of Trustees only by a two-thirds vote of the Trustees themselves, and then only when the Trustee to be removed is afforded due process which includes among other protections, a hearing before the Executive Committee of the Board of Trustees and an appeal before the Board of Trustees as a whole. (Exhibit E).

15. Erskine's Bylaws further provide that the General Synod has the authority to appoint only five Trustees a year, and that all such appointments are for a six-year term. Further, the Bylaws limit the amount of Trustees at one time to thirty-four members. (*Id.*)

16. According to S.C. Code Ann. § 33-31-808(j), "the articles or bylaws of a religious corporation may: (1) limit the application of this section; and (2) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board." S.C. Code Ann. § 33-31-809 similarly subjects the power of removal of any person who appoints a director to the restrictions contained in the organizations charter and bylaws. Further, Under S.C. Code Ann. § 33-31-801(b), "all corporate powers must be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board."

17. The due process required for the removal of an Erskine Trustee was not provided to any of the fourteen Trustees the General Synod has purported to remove.

18. The General Synod lacks the authority to appoint fourteen new Trustees.

19. The attempt by the General Synod to terminate fourteen Trustees, including Plaintiffs Taylor and Young, appoint fourteen new Trustees, and call a meeting of this purported Interim Board to conduct further business, violates Erskine's Charter and Bylaws

and the South Carolina Code.

20. The General Synod's plan to seek to exercise control of Erskine's assets and property is similarly without legal basis.

21. The General Synod's illegal attempt to reconstitute the Erskine Board has caused and will cause numerous harms, including but not limited to the following, many of which are immediately threatened and irreparable:

- a. Plaintiffs Taylor and Young are illegally deprived of their Board positions.
- b. Plaintiffs Chesnut and Erskine Alumni Association are deprived of their right to associate with the duly constituted Board of Erskine.
- c. Plaintiffs and the Erskine community generally are subject to uncertainty as to the identity of the members of Erskine's Board.
- d. The creation of an alternative, illegally constituted "Board" creates a substantial risk that *ultra vires* actions will be taken on behalf of Erskine, and that third parties will refuse to deal with Erskine altogether.
- e. Plaintiff Trustees have an obligation to oversee the property and assets of Erskine, and are deprived of the ability to carry out their duties.
- f. At least one of Erskine's accrediting bodies, The Association of Theological Schools ("ATS"), has already begun a review of "the unique governing action taken by the General Synod of the ARP General Synod" and has threatened to revoke Erskine College's accreditation (Exhibit F). This would cause great harm to all Plaintiffs and to the broader Erskine community.
- g. The confusion over the Board's makeup and the threat to Erskine's accreditation will interfere with the ongoing College presidential search. The General Synod's

disruption of the governance damages Erskine's reputation and standing and inhibits it from attracting and recruiting the caliber of presidential candidate it otherwise would be able to without the interference by the General Synod.

- h. Erskine risks losing currently incoming and future students who will choose to attend other institutions out of concern over the foregoing harms and the actions of the General Synod.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment – Composition of Board)**

22. Plaintiffs incorporate by reference the foregoing allegations of this Complaint as if fully set forth herein.

23. Plaintiffs seek a Declaratory Judgment pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, declaring that the General Synod has no authority to remove members of Erskine's Board of Trustees (including Plaintiffs Taylor and Young), that the attempted removal is unlawful and void, that any Board Members appointed at the March 3, 2010 meeting of the General Synod were improperly appointed, that the Interim Board appointed by the General Synod is not the Board of Trustees of Erskine, and that the Board as it existed prior to that March 3, 2010 meeting is the rightful Board of Directors of Erskine.

**FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment – Ownership of Erskine Property)**

24. Plaintiffs incorporate by reference the foregoing allegations of this Complaint as if fully set forth herein.

25. Plaintiffs seek a Declaratory Judgment pursuant to S.C. Code Ann. §§ 15-53-10, *et seq.*, declaring that Erskine, through its Board, is the rightful owner of all its assets, including but not limited to all buildings and grounds, real property, accounts, endowments, and personal property, and that the General Synod has no ownership in or other rights to control

the assets or property of Erskine.

**FOR A THIRD CAUSE OF ACTION**  
**(Injunction)**

26. Plaintiffs incorporate by reference the foregoing allegations of this Complaint as if fully set forth herein.

27. The General Synod's actions caused Plaintiffs irreparable and immediate harm.

28. Plaintiffs seek a temporary and permanent injunction that enjoins the General Synod from engaging in any transaction or activity in which the General Synod purports to control or act for or on behalf of Erskine, or involving the property, funds, or other assets which rightfully belong to Erskine, enjoins the General Synod from removing any Trustees, and enjoins the General Synod from calling any meeting of the Board of Trustees or the purported "Interim Board."

**FOR A FIFTH CAUSE OF ACTION**  
**(Wrongful Termination)**

29. Plaintiffs incorporate by reference the foregoing allegations of this Complaint as if fully set forth herein.

30. The General Synod wrongfully purported to terminate and remove Plaintiffs Taylor and Young and twelve other Trustees.

31. The General Synod had no authority under statute, Erskine's Charter, Bylaws, and the General Synod's own Form of Government, to remove Trustees as only the Board of Trustees has the authority to remove Trustees, and then only by a two-thirds vote of Trustees.

32. By terminating and removing Trustees, the General Synod violated the due process rights of the Trustees by failing, Erskine's Bylaws, and the South Carolina Code.

33. Plaintiffs seek reinstatement of the rightful Trustees of Erskine.

WHEREFORE, Plaintiffs pray that the Honorable Court enter a judgment against the General Synod and requests an Order for the following relief:

- A. Declare that the General Synod has no authority to remove members of Erskine's Board of Trustees (including Plaintiffs Taylor and Young), that the attempted removal is unlawful and void, that any Board Members appointed at the March 3, 2010 meeting of the General Synod were improperly appointed, that the Interim Board appointed by the General Synod is not the Board of Trustees of Erskine, and that the Board as it existed prior to the March 3, 2010 meeting is the rightful Board of Directors of Erskine.
- B. Declare that Erskine, through its Board, is the rightful owner of all its assets, including but not limited to all buildings and grounds, real property, accounts, endowments, and personal property, and that the General Synod has no ownership in or other rights to control the assets or property of Erskine.
- C. Restrain and permanently enjoin the General Synod from engaging in any transaction or activity in which the General Synod purports to control or act for or on behalf of Erskine, or involving the property, funds, or other assets which rightfully belong to Erskine;
- D. Restrain and permanently enjoin the General Synod from removing any Trustees of Erskine;
- E. Restrain and permanently enjoin the General Synod from calling a meeting of the Board of Trustees on March 17, 2010, or at any point in the future;
- F. Restrain and permanently enjoin the General Synod from assembling its