

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-01-086

**MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

EMILY Y. MCMAHAN  
CLERK OF COURT

2010 MAR 15 PM 3 05

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

Plaintiffs submit this memorandum in support of their motion for a temporary restraining order preserving the status quo by halting the actions of Defendant General Synod in purporting to remove fourteen Trustees of Erskine College (“Erskine”), form a new “Interim Board,” and thus effectively take control of Erskine. The General Synod’s actions are wholly without legal basis, and create a tremendous risk of irreparable harm.

**FACTS**

Erskine is a charitable or eleemosynary corporation, incorporated in 1850, as an educational institution. (See Exhibit C to the Verified Complaint). The Board of Trustees is the governing body of Erskine, pursuant to the college’s Charter. In 1980, an amendment to the Charter allowed for the appointment of all members of Erskine’s Board of Trustees by the Defendant General Synod of the Associate Reformed Presbyterian General Synod, Inc. (“the General Synod”). (Exhibit D to the Verified Complaint). The Charter provides that in all other respects, issues related to the Board of Trustees – including the Board’s power, duties, and

composition, and specifically including removal of Trustees – are governed by Erskine’s Bylaws. (See Exhibit E to the Verified Complaint).

On March 3, 2010, in a special meeting called by the General Synod, the General Synod voted to remove fourteen members of Erskine’s Board of Trustees, without cause. (Exhibit A to the Verified Complaint). This action was unlawful, in that the Bylaws plainly do not give the General Synod the unilateral right to remove Trustees, with or without cause. In addition to purporting to remove Trustees, the General Synod purported to appoint an Interim Board. The General Synod has scheduled a meeting of this putative “board” on Wednesday, March 17, 2010. (Exhibit B to the Verified Complaint). At this meeting, the Interim Board is charged with electing new officers, as well as amending and revising Erskine’s Bylaws to restructure the Board of Trustees, by reducing the size and make-up of the Board and adopting special criteria for appointing Trustees – in effect, cementing the takeover of Erskine by the General Synod.

Based on these events and the arguments outlined below, Plaintiffs respectfully move this court for a temporary restraining order to immediately enjoin the activities of the General Synod in its attempt to remove certain Trustees, including Plaintiffs Parker and Young, reconstitute the Board of Erskine, and assume control of Erskine College, its assets, properties, governance, and endowment.

#### **LEGAL STANDARD**

The decision whether to grant or deny a temporary restraining order is left to the discretion of the trial court. *Metts v. Wenberg*, 158 S.C. 411, 417, 155 S.E. 734, 736 (1930). The purpose of a temporary injunction is “to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *County Council of*

*Charleston v. Felkel*, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964) (citations omitted). “A plaintiff’s entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation.” *FOC Lawshe, Ltd. v. Int’l Paper Co.*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002) (citations omitted). The standard for obtaining a temporary restraining order is the same as that for obtaining a temporary injunction: “a party must demonstrate [1] irreparable harm, [2] a likelihood of success on the merits, and [3] an inadequate remedy at law.” *Id.* (citations omitted).

### ARGUMENT

Plaintiffs seek a temporary restraining order to enjoin the actions of the Defendant General Synod and to maintain the status quo until a hearing on the issues set forth in Plaintiffs’ Motion for Temporary Injunction can be held. Plaintiffs seek a temporary restraining order on the following grounds:

#### **I. Imminent Irreparable Harm**

According to Rule 65(b) of the South Carolina Rules of Civil Procedure, a temporary restraining order may be granted upon a clear showing that “immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.” If the actions of the General Synod are not enjoined, Plaintiffs (and the entire Erskine community) will be faced with serious, irreparable harm.

The General Synod has purported to remove fourteen Board of Trustees members and replace these trustees with an “Interim Board.” (Exhibit A to the Verified Complaint). The Interim Board is scheduled to meet on March 17, 2010 to make permanent changes to Erskine’s Bylaws, to include the election of officers and the restructuring of the composition of the Board.

(Exhibit B to the Verified Complaint). Because this Interim Board is unlawful, its purported

actions will be unlawful, giving rise to total confusion and the likelihood that Erskine will take *ultra vires* or otherwise unauthorized actions.

Plaintiffs Parker and Young are among the fourteen Trustees the General Synod has purported to remove. The harm to them from being deprived of Board membership and the right to participate in a planned massive restructuring of Erskine is obvious, and irreparable. The Bylaws are clear that removal can be accomplished only by a vote of two-thirds majority of Board members present (not by the General Synod unilaterally), and then *only* after due process hearings have been held or elected to be waived. (Exhibit E to the Verified Complaint). There is absolutely no argument that the General Synod has even purported to comply with this clear requirement of the Bylaws.

The uncertainty over the identity of the makeup of the Erskine Board constitutes irreparable harm to all Plaintiffs, all of whom must deal with and answer to the Board of Trustees.

By virtue of his position with the Erskine Alumni Association, Plaintiff Chesnut is a voting member of the Board of Trustees. Plaintiff Chesnut and Plaintiff Alumni Association have the right to deal and associate with the true Board of Erskine, and would be harmed by the General Synod's efforts to undermine that right.

Without a temporary restraining order in place, the General Synod may purport to continue to exercise unlawful, unauthorized control and to make changes to the composition of Erskine's current governing body. Such changes present not only a substantial threat of harm to the current Erskine students, faculty, alumni, and supporters, but also threaten to the institution for years to come.

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The Plaintiff Trustees are charged with the assets of Erskine, including not just its

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physical plant but also a multi-million-dollar endowment. The General Synod's imposition of a purported new Board, and the General Synod's apparent intent to exercise direct or indirect control of these assets, constitutes further threatened irreparable harm.

Additionally, Erskine is in the process of a presidential search, as its current president, Dr. Randall Ruble, has announced his retirement, effective June 2010. If the General Synod is allowed to continue to conduct meetings of this unauthorized and invalid "Interim Board," there is a likelihood of interference in and harm to the presidential search process.

In addition to the above, Erskine's accreditation is at stake. All of the Plaintiffs have a substantial interest in ensuring that Erskine does not lose accreditation. In a letter dated March 5, 2010, The Association of Theological Schools ("ATS") called into question the General Synod's "unique governing action" over Erskine and whether this action had accrediting implications for the Erskine Theological Seminary. (Exhibit F to the Verified Complaint). By removing fourteen trustees without notice and a hearing, the General Synod violated not only Erskine's Bylaws but also the requirements for accreditation as set forth by the ATS. Further, the General Synod's actions may also have negative implications on Erskine's accreditation with the Southern Association of Colleges and Schools ("SACS").

For these reasons, Plaintiffs will clearly suffer irreparable harm if the actions of the General Synod are not restrained.

## **II. Strong Likelihood of Success on the Merits**

According to S.C. Code Ann. §§ 33-31-808 and 809, the articles or bylaws of a religious corporation may limit the ability of an appointing body to remove Trustees, and may set forth the vote and procedures by which the board or any person may remove with or without cause a director. In this case, the Bylaws of Erskine clearly set forth the procedures by which the Board may remove an appointed member. The Bylaws specifically state that only the Board itself may

vote to remove a Trustee. Such removal requires a two-thirds majority of the Board members present, but *only* after the Trustee has received at least ten days written notice and has the opportunity for a hearing. (Exhibit E to the Verified Complaint). The Bylaws provide for removal by a vote of the Board of Trustees only, not by any other governing body. The General Synod's purported removal of Trustees is thus blatantly unlawful.

Further, Erskine's Bylaws clearly establish that the institution shall be governed by the Board of Trustees. (Exhibit E to the Verified Complaint). The Bylaws do not give any powers or control to the General Synod. 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." Since the Charter and Bylaws of Erskine do not provide otherwise, the Board of Directors, not the General Synod, is the appropriate governing body of the institution.

Therefore, any actions taken by the General Synod are unlawful, unauthorized, and null and void *ab initio*. Plaintiffs have therefore shown a high likelihood of success on the merits, and the factors weigh in favor of granting a temporary restraining order.

### **III. Inadequate Remedy at Law**

Without the issuance of a temporary restraining order, Plaintiffs will have no adequate remedy at law to preserve their rights as set forth in the Charter and Bylaws. If unchecked, the General Synod's willful and unauthorized attempts to usurp control of the Board of Trustees and the property of Erskine College will result in actions that cannot be undone later. A temporary restraining order is therefore necessary to prevent such harms.

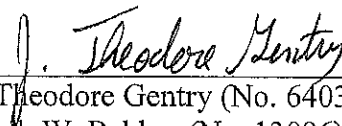
### **CONCLUSION**

For the reasons outlined above and the facts as alleged in the Verified Complaint, Plaintiffs respectfully request that this Court grant their Motion for Temporary Restraining Order

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and enjoin the Defendant General Synod and its agents from (i) engaging in any transaction or activity in which the restrained party purports to control or act for or on behalf of Erskine, or purports to control or dispose of the property, funds, or other assets which rightfully belong to Erskine; (ii) exercising and assuming control of Erskine; (iii) assembling the Board of Trustees or its "Interim Board;" and (iv) attempting to remove the existing Board of Trustees of Erskine.

Respectfully submitted,



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