

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ABBEVILLE )  
 )  
 Dr. Richard Taylor, Dr. Parker Young, J. )  
 David Chesnut, and the Erskine Alumni )  
 Association, )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-01-080

MOTION AND ORDER INFORMATION

Plaintiff, )  
 vs. )  
 )  
 General Synod of the Associate Reformed )  
 Presbyterian Church, Inc. )  
 Defendant. )

FORM AND COVERSHEET

Plaintiff's Attorney: J. Theodore Gentry, Bar No. 64038 Address: Post Office Box 728 Phone: 864-242-8200 Fax 864-235-8900 E-mail: tgentry@wyche.com Other:	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
John R. Devlin, Jr. E. Brown Parkinson, Jr. Devlin & Parkinson, P.A. Post Office Box 10387 Greenville, SC 29603 864-242-4050 john.devlin@devlinparkinson.com	

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion for Preliminary Injunction  
 Estimated Time Needed: 1 Hour Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

J. Theodore Gentry March 15, 2010  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ 25<sup>00</sup>  
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
<input type="checkbox"/> Other: _____	Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____	
<input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

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 General Synod, Inc.  Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-01-080

**MOTION FOR PRELIMINARY INJUNCTION**

EMILY Y. MONAHAN  
CLERK OF COURT

2010 MAR 15 PM 3 08

FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

Plaintiffs, who are Trustees of Erskine College and other persons affiliated with Erskine, hereby move pursuant to Rule 65(b) of South Carolina Rules of Civil Procedure for a temporary restraining order to restrain and enjoin Defendant General Synod of the Associate Reformed Presbyterian General Synod, Inc., (hereinafter “the General Synod”), and its agents, appointees, assigns, and any person or entity acting in concert with or on behalf of Defendant from engaging in any transaction or activity in which the restrained party purports to control or act for or on behalf of Erskine, or involving the property, funds, or other assets which rightfully belong to Erskine; exercising and assuming control of Erskine; assembling the Board of Trustees or its “Interim Board;” and attempting to remove the existing Board of Trustees of Erskine in violation of the Bylaws of Erskine (Exhibit E to Complaint) and the S.C. Non-Profit Corporation Act, §§ 33-31-101, *et seq.*

Plaintiffs will suffer irreparable harm if the contemplated actions of the General Synod are not prohibited; the actions of the General Synod are and would be in violation of clear corporate

policy and South Carolina law, resulting in a likelihood that Plaintiffs will succeed on the merits of their claim. No other adequate remedy exists under the law to protect Plaintiffs' rights.

Specifically, the grounds for this Motion are as follows:

- (1) Erskine College ("Erskine") is a legally established not-for-profit corporation, governed by its own Board of Trustees. Erskine is neither owned nor controlled by the General Synod. Despite this, the General Synod, in an attempt to assume unauthorized control of Erskine and its Board of Trustees, has removed fourteen Trustees from office, and has purported to establish a new "Interim Board." The General Synod lacks the authority to do this; its purported actions are completely arbitrary and lawless. (See Exhibit A to the Complaint).
- (2) The General Synod has noticed a meeting to elect new officers and amend Erskine's Bylaws by changing the composition of and qualifications for the Board of Trustees. (Exhibit B to the Complaint). All of these actions have been taken without any authority from Erskine's Charter or Bylaws (Exhibits C-E to the Complaint) or the South Carolina Code.
- (3) The General Synod's purported actions directly affect Plaintiffs. Plaintiffs Richard Taylor and Parker Young are among the fourteen Trustees the General Synod has purported to remove. Plaintiff David Chesnut is a Trustee who faces uncertainty regard composition of the Board, and the substantial risk of participating in unauthorized conduct by persons purporting to act as the Board of Erskine, but without authority.
- (4) 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. Plaintiff Alumni Association has the right to have its President on the Board of

Trustees.

- (5) The Plaintiff Trustees are charged with the assets of Erskine, including not just its 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.
- (6) The General Synod's actions threaten to affect the ongoing search for Erskine's new president by interfering with the existing presidential search committee's right to control and make decisions regarding the search. Just as the General Synod has usurped its authority in an attempt to take over Erskine's Board of Trustees, the General Synod will likely attempt in similar fashion to assume control of the presidential search, again creating the risk of *ultra vires* action.
- (7) The General Synod's actions have also threatened Erskine's status as an accredited institution with The Association of Theological Schools ("ATS"). In a letter dated March 5, the ATS questioned the General Synod's "unique governing action" over Erskine and whether this action has accrediting implications for the Erskine Theological Seminary. (See Exhibit F to the Complaint). The General Synod's actions also may negatively affect Erskine's accreditation with the Southern Association of Colleges and Schools ("SACS").
- (8) In its attempt to remove fourteen members of the Board of Trustees without notice and without a hearing, the General Synod has substantially violated the due process rights of these members, the Bylaws of Erskine, and South Carolina law. These actions must be stopped before further harm occurs.
- (9) There is substantial risk of harm and confusion if the legal composition of the Board of

Trustees is uncertain.


(10) All actions taken by the General Synod have been taken absent any authority from Erskine's Charter or Bylaws, from the General Synod's own Form of Government policy, or from the S.C. Non-Profit Corporation Act.

(11) "The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury party pending litigation." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009). The only available remedy under the law to preserve the status quo and prevent the General Synod from taking any further actions in violation of corporate policy is the grant of an injunction.

For these reasons, the Plaintiffs moves for an order of this Court granting a preliminary injunction to prevent any further harm from taking place during the pendency of discovery and this litigation.

This Motion is further based upon the applicable rules, statutes, and case law and any memorandum of law to be submitted at or before the hearing on the matter, as well as any additional affidavits or supplemental memoranda which may be filed with this Court at or prior to the hearing on this Motion.

Respectfully submitted,

  
\_\_\_\_\_  
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Date: March 15, 2010  
Greenville, South Carolina

**Attorneys for Plaintiffs Dr. Richard Taylor, Dr.  
Parker Young, J. David Chesnut, and the Erskine  
Alumni Association**