

ownership rights. Despite more than a half-century of uninterrupted local property ownership and control, the national denomination with which MDPC is currently associated, the “PCUSA,” has recently claimed a right of absolute control over everything ever built or bought by MDPC. To the PCUSA, it does not matter that MDPC paid for its properties, and it is not enough that MDPC has contributed more than \$24.8 million to the denomination. Ignoring the most basic requirements of Texas trust, property, and corporate law, the PCUSA instead relies exclusively upon a self-written spiritual rulebook to deprive local churches of any temporal or material thing they might own in this world.

3. The PCUSA’s unwavering belief that it is immune from the basic property law principles applicable to everyone else is also why immediate injunctive relief is necessary. According to the PCUSA’s official resource for guidance on denominational rules, local presbyteries are directed to enforce the denomination’s property rules against local churches by seizing their property, unilaterally replacing their elected leadership with outsiders, and “chang[ing] the locks and secur[ing] the grounds if necessary.” *See* Exhibit 1 at 12. By daring to protect the rights of its members in this Court, MDPC has now also implicated the provisions of another PCUSA rulebook “for those representing Presbyterian Church (U.S.A.) presbyteries and true churches in the civil courts.” Exhibit 2 at 1. In utter disregard for civil court jurisdiction over a property dispute, that memo instructs PCUSA presbyteries faced with a lawsuit to “[s]ecure the property (both real and personal) of the church.” Exhibit 2 at 3. Civil court involvement aside, the memo explains, “[t]he presbytery has jurisdiction over the local church and its assets.” Exhibit 2 at 3.

4. The State of Texas, however, has not delegated the determination of local church property rights to PCUSA presbyteries. Instead, “*courts* decide non-ecclesiastical issues such as

property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities.” *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013) (emphasis added). “[A]nd absent a lawful directive otherwise [Texas courts] cannot delegate or cede their judicial prerogative to another entity.” *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 601 (Tex. 2013). Because immediate judicial intervention is necessary to maintain the status quo until this Court can resolve the question presented, this Court should also grant a temporary restraining order and temporary injunction.

II. **PARTIES**

5. Plaintiff MDPC is a Texas non-profit corporation whose registered office and principal business address is 11612 Memorial Drive, Houston, Texas 77024. MDPC may be served with pleadings and other legal process through its undersigned counsel of record.

6. Defendant herein is Presbytery of New Covenant, Inc. (“Presbytery”), a Texas non-profit corporation whose registered office and principal business address is 1110 Lovett Blvd., Houston, Texas 77006. Presbytery may be served with pleadings through its Registered Agent for service of process, Lynn R. Hargrove, at the same address.

7. Also made Defendant herein is Presbyterian Church (USA) (PCUSA), a Pennsylvania non-profit corporation, whose principal business address is 100 Witherspoon Street, Louisville, Kentucky 40202-6300. PCUSA may be served with pleadings through the Texas Secretary of State.

III. **JURISDICTION AND VENUE**

8. MDPC’s claims for declaratory relief are brought pursuant to the laws of the State of Texas and are properly founded upon the subject matter jurisdiction of this Court. This Court

may exercise personal jurisdiction over the Defendants, which maintain offices in Texas and conduct business in Texas. Plaintiff seeks only non-monetary relief.

9. Venue is proper in the Harris County civil district court because this suit contains, in part, an action to quiet title to real property situated in Harris County, and the Defendant's principal office is located in Harris County. TEX. CIV. PRAC. & REM. CODE §§ 15.002 & 15.011.

IV. **DISCOVERY AND DISCLOSURES**

10. MDPC moves this Court to order that discovery in this matter be conducted in accordance with a Level 3 discovery control plan tailored by the Court to the circumstances of the suit. *See* TEX. R. CIV. P. 190.4.

11. MDPC formally requests that Defendants disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2(a) – (l). Copies of any documents produced in response to these requests should be produced at the office of the undersigned counsel or at a place otherwise agreed upon by counsel.

V. **FACTS**

A. Background

12. MDPC is a Presbyterian church congregation founded in 1954 in what was then the outskirts of Houston, Texas. Shortly after MDPC's inception, in 1955, MDPC incorporated as "Memorial Drive Presbyterian Church U.S.," declaring its corporate purpose simply as "the support of public worship." Exhibit 3. Also in 1955, MDPC became formally associated with the Presbyterian Church, U.S., a large Presbyterian denomination more commonly known as the "PCUS." MDPC remained associated with the PCUS until June 1983, when the PCUS merged with another then-existing denomination to form the Presbyterian Church (U.S.A.) (the

“PCUSA”). By simple virtue of MDPC’s membership in the PCUS at the time of the denominational merger, MDPC automatically became a member of the PCUSA. MDPC has remained associated with the PCUSA since that date.

13. Within the PCUSA, MDPC is more specifically associated with Presbytery, a district administrative division of the PCUSA that oversees approximately 106 PCUSA churches in southeast Texas. Presbytery is one of 172 geographically-organized PCUSA presbyteries, each of which is charged with general spiritual oversight of PCUSA churches in a given area. Under Part II of the PCUSA Constitution,¹ the “Book of Order,” authority to waive or seek enforcement of the PCUSA’s claimed right to control the use of local church property is delegated exclusively to presbyteries. *See* Exhibit 11 at § G-4.0204.

14. Notwithstanding its claim to local church property, the PCUSA is not a denomination that distributes money, assets, or financial support to local churches. In fact, the only contribution of money or property known to have ever been received by MDPC from Presbytery² or the denomination is a \$15,000 down payment made on what would become MDPC’s first property in 1954, an amount for which MDPC reimbursed Presbytery between 1954 and 1958. *See* Exhibit 24. In contrast, MDPC has voluntarily made substantial contributions to denominational causes since 1955, donating anywhere from \$52,740 in 1960 to \$1.7 million in more recent years. Exhibit 25. To date, MDPC has made more than \$24.8 million in voluntary cash contributions to the PCUS or PCUSA. *See* Exhibit 25.

B. MDPC’s Property

¹ The PCUSA Constitution has two parts, the Book of Confessions (Part I) and the Book of Order (Part II). The PCUS Constitution likewise had two parts, similarly but not identically named the Book of Confessions (Part I) and the Book of Church Order (Part II).

² Before 1983, the relevant presbytery of which MDPC was a member was the PCUS “Presbytery of Brazos,” which is assumed to be the predecessor of Presbytery.

15. MDPC's original corporate charter reports that when MDPC was first incorporated it owned nothing: "no goods, chattels, lands, rights [or] credits." Exhibit 3. MDPC's first recorded acquisition of land took place in 1958, when it acquired the centerpiece of its current church campus in the name of "Memorial Drive Presbyterian Church, a Religious Corporation." Exhibit 4, Deed 1. MDPC has since acquired eight other parcels of real property, each time obtaining the property by a conveyance deed in the name of "Memorial Drive Presbyterian Church" or "Memorial Drive Presbyterian Church, U.S." Exhibit 4, Deeds 2-9.³ With respect to each of the nine real properties held by MDPC, the corresponding deeds purport to vest MDPC with complete, absolute, fee simple title to the underlying real property. *See* Exhibit 4.

C. Property Trusts in the PCUSA

16. Property disputes between PCUSA presbyteries and PCUSA congregations are not uncommon. In nearly all cases, the dispute centers around the existence—or lack thereof—of an enforceable "trust," which the PCUSA alleges to exist for its benefit over all property held by or for individual churches. *See, e.g., Windwood Presbyterian Church, Inc. v. Presbyterian Church (U.S.A.)*, 438 S.W.3d 597 (Tex. App. – Houston [1st Dist.] 2014); *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 77 So. 3d 975

³ To be precise, MDPC obtained deeds in the name of (1) "Memorial Drive Presbyterian Church, a Religious Corporation" (1958); (2) "Memorial Drive Presbyterian Church, U.S., a Texas religious corporation" (1967); (3) "Memorial Drive Presbyterian Church, U.S., a religious non-profit corporation" (1989); (4) "Memorial Drive Presbyterian Church, a non-profit organization incorporated in the State of Texas" (1973); (5) "Memorial Drive Presbyterian Church, U.S." (1968); (6) "Memorial Drive Presbyterian Church, U.S., a religious non-profit corporation" (1989); (7) "Memorial Drive Presbyterian Church, U.S., a religious non-profit corporation" (1989); (8) "Memorial Drive Presbyterian Church, U.S." (1989); and (9) "Memorial Drive Presbyterian Church, U.S." (1989). Exhibit 4, Deeds 1-9. On June 15, 2015, MDPC formally changed its corporate name to "Memorial Drive Presbyterian Church," and in conjunction therewith, has adopted and filed amended deeds to reflect the corporate name change. *See* Exhibit 14; Exhibit 15.

(La. Ct. App. 2011).⁴

17. The history underlying the PCUSA’s denominational trust claim is relatively short. Prior to 1981, no Presbyterian denomination’s constitution contained a reference to a trust. Indeed, the PCUS denomination—of which MDPC was a member until the PCUS merged into the PCUSA—unambiguously disclaimed any trust interest in local church property. Just one year before MDPC’s formation, in 1953, the PCUS formally adopted its position on the issue as a “Declaratory Statement” of the denomination:

The beneficial ownership^[5] of the property of a particular church of the [PCUS] is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the [PCUS] as established by the Constitution of such Church.

Disposition of the property of a particular church rests in the will of the congregation of that church.

Exhibit 5 at 235. The PCUS continuously affirmed this official Declaratory Statement until the PCUS merged into the PCUSA denomination in 1983. *See* Exhibit 5 at 235-36 (citing official reaffirmations of the Declaratory Statement in 1967 and 1971). Once created, the PCUSA likewise affirmed the PCUS’s statements pertaining to the beneficial ownership of local church

⁴ *See also Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 579 (Mo. Ct. App. 2012); *Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church & Congregation of Ridgeberry*, 72 A.D.3d 78, 86 (N.Y. Ct. App. 2010); *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099, 1103 (Ind. 2012).

⁵ The use of the legal term “beneficial ownership” is significant, because “there can be no trust in real property without a separation of the legal title from the beneficial interest, or equitable title. This rule is stated in numerous cases.” *Wheeler v. Haralson*, 99 S.W.2d 885, 886 (Tex. Comm’n App. 1937). “[W]hen a valid trust is created, the beneficiaries become the owners of the equitable or beneficial title to the trust property, and are considered the real owners.” *City of Mesquite v. Malouf*, 553 S.W.2d 639, 644 (Tex. App. - Texarkana 1977), writ refused NRE (Nov. 16, 1977). “This separation of the legal and equitable estates in the trust property is the basic hallmark of the trust entity.” *See also Perfect Union Lodge No. 10, A.F. & A.M., of San Antonio v. Interfirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988).

property. *See* Exhibit 6 (1990 PCUSA statement).

18. Amid affirmations of its longstanding position that the “beneficial ownership of the property of particular church . . . is in the congregation of such church,” in 1982, the PCUS amended its Constitution to add a “trust” provision that could only be aspirational in character. *See* Exhibit 7 at §§ 21.264-21.268. The so-called “trust clause” adopted by the PCUS in 1982 asserted:

All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the [PCUS].

Exhibit 5 at 229, § 6-3; Exhibit 8 at § 6-3.

19. To combat concerns that the new trust clause might divest local churches of their historic property rights, the PCUS repeatedly assured local congregations in 1981 and 1982 that the amendments including the trust clause did *not* change anything and did *not* create a legal trust. *See* Exhibit 9 at 2 (“These amendments do not give Presbytery . . . any jurisdiction over property.”); Exhibit 9 at 1 (“These amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property.”); Exhibit 5 at 237 (“The amended Chapter 6 . . . does not represent a change.”); Exhibit 10 at 3 (“The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate.”); Exhibit 5 at 237 (“[H]igher courts [of the PCUS] are not granted any original powers over the property of a congregation.”).⁶

⁶ Further evincing the non-binding, aspirational character of the new trust clause, the 1982-83 edition of the PCUS Book of Church Order included numerous provisions declaring that its scope and reach was limited to moral and spiritual matters only. *See* Part 1, Chapter 1 (The Nature and Extent of Church Power) § 1-2 (“The power which Christ has given his Church is wholly moral and spiritual); Chapter 14 (Jurisdiction of Church Courts) § 14-1 (“Church courts are altogether distinct from the government of the state and possess no civil jurisdiction or power to

20. Regardless of the trust clause’s admittedly non-legal effect, its addition to the denominational constitution in 1982 was accomplished without the consent of the individual congregations that actually owned the property. *Presbyteries* like Defendant Presbytery of New Covenant, Inc.,—not individual congregations or their governing bodies—voted to approve the new trust clause. Exhibit 7 at §§ 21.250 – 21.269; Exhibit 5 at 228, 229 § 6-7, 230 § 6-7, 237.

21. One year later, the PCUS dissolved into the PCUSA, whose inaugural 1983 constitution contained a trust clause almost identical to the one added to the PCUS Constitution in 1982. *See* Exhibit 11 at § G-4.0203.⁷ Notwithstanding the denominational transition, the new PCUSA maintained that the change was cosmetic only. The PCUSA, it asserted, was “in all ecclesiastical, judicial, legal, and other respects the continuing entity of the [PCUS].” Exhibit 12 at Preamble. Moreover, “[t]he history of the [PCUSA] is and shall embody, the history of the [PCUS].” Exhibit 12 at § 1.1. Not only that, but “[e]ach and every policy statement adopted by or issued at the direction of the [PCUS] . . . shall have the same force and effect in the [PCUSA].” Exhibit 12 at § 1.9.

D. MDPC is in Need of a Judicial Determination of its Property Rights

22. Over time, PCUSA presbyteries—and Presbytery in particular—have substantially altered their interpretation of the trust clause. Prompted perhaps by an attempt to

inflict civil penalties.”). Such disclaimers of any civil effect are made even more explicit in the PCUSA Constitution, discussed *infra* at ¶ 39.

⁷ The PCUSA trust clause states:

All property held by or for a congregation, 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 the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Exhibit 11 at § G-4.0203.

survive in the face of hemorrhaging denominational membership,⁸ institutional amnesia has set in. Contrary to the denomination's earlier reassurances that "[t]he beneficial ownership of the property of a particular church . . . is in the congregation of such church," Presbytery has more recently argued that local church property is "for the use and benefit of PC(USA)." *Compare* Exhibit 5 at 235 *with* Exhibit 13 at 23. Similarly, whereas the PCUS once clearly stated that "higher courts [of the PCUS] are not granted any original powers over the property of a congregation," Presbytery now contends that it has "the power to assume control over the property of the congregation." *Compare* Exhibit 5 at 237 *with* Exhibit 13 at 30. And the trust clause that did not "in any way establish any kind of an encumbrance on church property" is now construed as "one of the approved methods for the creation of an express trust." *Compare* Exhibit 10 at 3 *with* Exhibit 13 at 35.

23. Presbytery's amnesiac view of church property rights is not the end of the story, however. Presbytery has further taken the stance that a church that remains in the PCUSA should be legally deemed to have accepted the Presbytery's self-serving interpretation of the trust clause. "[B]y remaining associated with the denominational church for the past 31 years," the Presbytery recently argued to a Harris County court, a church "demonstrate[s] that it intend[s] to be bound by the governing documents of the church, including the constitution containing the express trust clause." Exhibit 13 at 36.⁹

⁸ According to 2013 statistics published by PCUSA's Office of the General Assembly (Departments: Church Statistical Reporting, Stated Clerk), in 1967 the combined membership of the UPCUSA and PCUS denominations stood at 4,254,597. By 1983, when the UPCUSA and PCUS merged to form the PCUSA, total membership had dropped to 3,131,228. The merger did not stem the decline. By the end of 2013, total membership had dropped to 1,760,200. Likewise, in the four year period of 2011 through 2014, the Presbytery's membership has shrunk by over 20 percent, losing over 7,300 dues-paying members. *See* www.pcusa.org/news/2014/5/29/statedclerk.

⁹ This argument was rejected by the trial court, which successively granted a TRO, temporary injunction, and summary judgment in favor of First Presbyterian Church of Houston. *See First Presbyterian Church of Houston v.*

24. Presbytery's position is, in essence, both an ultimatum and a constructive intrusion upon the property of all the local churches in the Presbytery. Because Presbytery's position is fundamentally incompatible with MDPC's ownership rights, MDPC must now challenge Presbytery's public claim to MDPC's property or else risk later facing the accusation that by "remain[ing] with the PC(USA)" MDPC "thereby confirm[ed] its commitment to the trust clause in the Book of Order." Exhibit 13 at 36 n.48.

25. In furtherance of its position, MDPC has recently taken several legal steps to make even clearer its longstanding and unconditional repudiation of the Presbytery's attempted land-grab. On June 15, 2015, MDPC filed a Certificate of Amendment with the Texas Secretary of State, formally changing MDPC's name from "Memorial Drive Presbyterian Church, U.S." to "Memorial Drive Presbyterian Church." Exhibit 14. In conjunction with the corporate name change, MDPC duly recorded amendments to each property deed held in the corporation's prior name. Exhibit 15. Finally, MDPC's trustees passed a resolution that, while denying that any trust had ever arisen in favor of the PCUSA or Presbytery, expressly revoked any such trust to the extent it existed. Exhibit 16.

26. In due reliance upon the above facts and the law of Texas, MDPC now seeks a declaratory judgment adjudicating and recognizing its exclusive ownership of all property held by MDPC or in its name, free of any trust claimed by the PCUSA. To preserve the status quo so that this Court can render meaningful relief, MDPC further petitions this Court for a temporary restraining order and temporary injunction.

Presbytery of New Covenant, Inc., No. 2014-30354 (Harris County, Texas) (ex parte TRO granted May 29, 2014) (Temporary Injunction granted September 17, 2014) (summary judgment granted on February 20, 2015).

VI.
RELIEF REQUESTED

COUNT 1 – DECLARATORY JUDGMENT RECOGNIZING MDPC’S EXCLUSIVE OWNERSHIP RIGHTS

27. MDPC respectfully moves this Court for a declaration that it alone holds full and absolute legal and equitable title to its property. Under TEX. CIV. PRAC. & REM. CODE § 37.004,

A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Pursuant to this provision, MDPC requests that the Court declare the ownership rights of MDPC based upon the property deeds and any other documents of title, together with the trust and property law of Texas.

28. To the extent necessary, MDPC expressly pleads and incorporates an action for trespass to try title pursuant to TEX. PROP. CODE § 22.001. MDPC has record title to approximately nine parcels of property, identified in Appendix A, through a regular chain of conveyances from the sovereignty of the soil or a superior title out of a common source. MDPC is currently in possession of these properties, and it or its predecessor-in-interest has maintained consistent possession of these properties prior to any assertion of a proprietary or trust interest by Presbytery and/or the PCUSA. Moreover, the title to these properties is adversely affected by Presbytery and the PCUSA’s claim to a trust or beneficial interest, which claims are legally invalid and unenforceable.

29. To the extent necessary, MDPC expressly pleads and incorporates an action to quiet title to the approximately nine parcels of real property to which it holds the deeds. MDPC’s right of ownership is sufficient to warrant judicial interference, and Presbytery’s claimed interest

in trust is a cloud on title that is disturbing MDPC's lawful possession. Because MDPC holds title superior to that of any interest claimed by Presbytery, FPC seeks to quiet title to its properties.

COUNT 2 – APPLICATION FOR TEMPORARY RESTRAINING ORDER

30. MDPC respectfully moves this Court for a temporary restraining order (“TRO”) prohibiting Presbytery from interfering in any way with MDPC's ownership, control, or use of any of its property. “The purpose of a TRO is to preserve the status quo” pending the Court's more considered evaluation of the need for temporary injunctive relief. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). In this case, the draconian property expropriation powers claimed by Presbytery make a TRO the *only* thing that can meaningfully protect the status quo.

31. This Court should grant an ex parte TRO when “it clearly appears from specific facts shown by affidavit or verified complaint that [(1)] immediate and [(2)] irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had.” TEX. R. CIV. PROC. 680. A TRO is particularly appropriate when the applicant also shows (3) a “likelihood of success on the merits—the standard required for injunctive relief.” *See, e.g., In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

A. TRO Factor One – Likelihood of Success

32. Following the Texas Supreme Court's decision in *Masterson v. Diocese of Nw. Texas*, there is only one analysis or methodology by which courts may decide property disputes between religious organizations: the “neutral principles of law” method. 422 S.W.3d at 607 (Tex. 2013) (“Texas courts must use only the neutral principles construct” to “determine property interests when religious organizations are involved.”). “Under the neutral principles

methodology, courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities.” *Id.* at 596.

33. Rather than defer to a “higher” church body as some courts have traditionally done—an approach *Masterson* explicitly rejected—courts should simply “appl[y] generally applicable law and legal principles. That application will usually include considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and by laws, if any), and relevant provisions of governing documents of the general church.” *Id.* at 603 (citing *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979)). In other words, an alleged trust that fails to comply with the ordinary requirements of Texas trust, property, and corporate law is not really a trust and will not be enforced.

34. As set forth below, Texas law does not recognize Presbytery’s alleged trust for at least four, independent reasons: (1) there is no evidence that MDPC ever intended to create a trust; (2) there is no written and signed trust instrument; (3) MDPC’s corporate board and membership never approved the creation of a trust; and (4) any trust in favor of Presbytery or PCUSA that might have existed has been revoked. For one or all of these reasons, MDPC is likely to succeed on the merits of its case. Each of these points is considered in greater detail below.

1. *MDPC Never Intended to Create a Trust in Favor of Presbytery or the PCUSA.*

35. The most fundamental problem with Presbytery’s alleged trust is that MDPC never intended to create a trust. In Texas, however, “[a] trust is created only if the settlor manifests an intention to create a trust.” TEX. PROP. CODE § 112.002. “Ordinarily, an express trust does not arise unless the owner of property has shown an *unequivocal intention* to create a trust.” *Chapman Children’s Trust v. Porter & Hedges, L.L.P.*, 32 S.W.3d 429, 438 n.5 (Tex.

App. – Houston [14th Dist.] 2000) (emphasis added). For a trust over property to arise, there must accordingly be some clear “manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.” *Pickelner v. Adler*, 229 S.W.3d 516, 526 (Tex. App. - Houston [1st Dist.] 2007); *see also Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 273 (Tex. App. - Houston 1966), writ refused NRE (“The cardinal principle to be observed in construing a trust instrument is to ascertain the settlor’s intent.”).

36. As observed in *Masterson*, the search for a trust “will usually include considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and by laws, if any), and relevant provisions of governing documents of the general church.” 422 S.W.3d at 603. In the instant case, none of these documents contain any hint of the requisite “unequivocal intention to create a trust.” *Chapman’s Children’s Trust*, 32 S.W.3d at 438 n.5.

37. Though MDPC has acquired various real properties over the course of its sixty-year existence, none of its property deeds contains any indication of an intent to establish a trust. Quite the opposite, MDPC acquired title to each of its real properties exclusively in its own corporate name. *See* Exhibit 4, Deeds 1-9. Moreover, when MDPC acquired each parcel of real property, its expressed intent was to acquire “all” rights associated with each property. *See* Exhibit 4, Deeds 1-9. At the same time, conspicuously absent from each deed is any conveyance of a “beneficial interest,” “equitable title,” or “trust” to any third party, presbytery, or denomination. *See* Exhibit 4, Deeds 1-9. Under Texas law, the absence of any such language in the property deeds means that MDPC acquired both legal and equitable title at the time of the purchases. TEX. PROP. CODE § 5.001 (“An estate in land that is conveyed or devised is a fee

simple unless the estate is limited by express words.”). This has been settled law in Texas for 175 years. *See, e.g., id.; Reeves v. Bass*, 39 Tex. 618, 628-29 (Tex. 1873) (“[E]very conveyance of land shall be deemed the conveyance of a fee simple title, unless the parties, in the face of the deed, limit the estate conveyed by express words.”).¹⁰

38. Significantly, MDPC obtained the deed to its main church property by purchasing it from a PCUS presbytery—Presbytery’s predecessor entity, in fact—in 1958. Exhibit 4, Deed 1. Like MDPC’s other deeds, that deed shows that MDPC acquired “*all* that certain tract of land” “together with *all* and singular the rights and appurtenances thereto in anywise belonging.” Exhibit 4, Deed 1 (emphasis added). The acquisition of “all” rights, of course, means that MDPC acquired every right to the underlying property. *See, e.g., Steger v. Muenster Drilling Co.*, 134 S.W.3d 359, 373 (Tex. App. - Fort Worth 2003) (“The word ‘all’ means ‘every.’”). Any present contention that MDPC intended to vest substantial rights in Presbytery is thus completely inconsistent with the only instrument representing a transaction between the two parties.¹¹

39. MDPC’s corporate documents similarly lack any indications of trust intent. While the PCUSA has *asked* local churches to recite the trust clause in their corporate charters, MDPC’s defining corporate document says nothing about a trust, nor has it ever. *See* Exhibit 18; Exhibit 3. MDPC has never approved, adopted, or voted upon the PCUSA trust clause, and there is no record of MDPC ever announcing or declaring any intent to hold property for the benefit of Presbytery or the PCUSA. Nor has any iteration of MDPC’s corporate bylaws ever contained

¹⁰ *See also Brown v. Clark*, 116 S.W. 360, 364-65 (Tex. 1909) (“It follows, we think, as a natural and proper conclusion, that the church to which the deed was made still owns the property, and that whatever body is identified as being the church to which the deed was made must still hold the title.”) (cited for this proposition by *Masterson*, 422 S.W.3d at 605-06).

¹¹ As Presbytery recently argued to a Harris County district court, “Texas courts have ‘long recognized Texas’ strong public policy in favor of preserving the freedom of contract’ by enforcing contractual provisions agreed to by the parties.” Exhibit 13 at 33 (quoting *El Paso Field Services, L.P. v. Mastec North America, Inc.*, 389 S.W. 3d 802, 811-12 (Tex. 2013)).

any such reference. *See* Exhibit 17. Although MDPC has admittedly been a member of the PCUSA or PCUS since its founding, MDPC does not exist to serve a particular denomination. Rather, MDPC’s sole corporate purpose is and always has been stated in terms that are not denomination-specific: “the support of public worship.” Exhibit 3. Since 1982, MDPC’s corporate charter has pledged the assets of the corporation not for the benefit of the PCUS or PCUSA, but “for use in performing the corporation’s religious functions.” Exhibit 3. Also since 1982, MDPC’s charter has provided that upon MDPC’s dissolution or discontinuance, its assets are to be transferred not to the PCUSA, but “to a charitable, educational or religious organization in the State of Texas.” Exhibit 3.

40. If MDPC’s sole purpose has been the amassment of assets for the PCUSA it has gone to great lengths throughout its history to hide that fact. In truth, the only document that references a trust is the PCUSA’s own trust clause—which the PCUSA wrote and adopted all by itself. However, the PCUSA’s reliance on its rulebook’s trust clause seems especially misplaced when the same rulebook also says things like:

“[A]ll church power, whether exercised by the body in general, or in the way of representation by delegated authority, is only ministerial and declarative; . . . that no church judicatory ought to pretend to make laws to bind the conscience in virtue of their own authority”;

“Since ecclesiastical discipline must be purely moral or spiritual in its object, *and not attended with any civil effects*, it can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance and blessing of [God]”;

“*Councils of this church have only ecclesiastical jurisdiction* for the purpose of serving Jesus Christ and declaring and obeying his will They may frame statements of faith, bear testimony against error in doctrine and immorality in life, resolve questions of doctrine and discipline, give counsel in matters of conscience, and decide issues properly brought before them under the provisions of this *Book of Order*”; and

“Nor doth their communion one with another as saints, take away or infringe the

title or property which each man hath in his goods and possessions.”

PCUSA Const. at §§ F-3.0107-08, G-30102, and Book of Confessions § 6.148 (emphasis added).

41. Presbytery’s reliance upon the denominational trust clause is also misplaced for a wholly distinct reason: the PCUSA is bound by its official historical statements specifically disclaiming the trust clause’s legal effect. *See, e.g.*, Exhibit 9 at 2 (“These amendments do not give Presbytery . . . any jurisdiction over property.”); Exhibit 9 at 1 (“These amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property.”); Exhibit 9 at 1 (“[T]he amendments . . . do not represent any significant change in the traditional view of church property.”); Exhibit 5 at 235 (“The beneficial ownership of the property of a particular church . . . is in the congregation of such church.”); Exhibit 10 at 3 (“The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate.”); Exhibit 5 at 237 (“[H]igher courts [of the PCUS] are not granted any original powers over the property of a congregation.”).

42. Without any statements or records reflecting MDPC’s trust intent, any argument that MDPC intended to create a trust rests on the mere fact of MDPC’s association with the PCUSA—a denomination that MDPC did not affirmatively elect to join;¹² a denomination that MDPC is supposedly not allowed to leave;¹³ a denomination that insisted that its trust clause did not establish any legal rights;¹⁴ and a denomination whose rules are not supposed to be legally

¹² *See* Exhibit 12 at § 1.2 (“Each and every member of the [PCUS] . . . shall be a member of the [PCUSA].”).

¹³ *See* Exhibit 13 at 21 (“Congregations of the PC(USA) . . . cannot unilaterally secede or be dissolved or dismissed at their own discretion, but rather only by the action of a presbytery.”).

¹⁴ *See* Exhibit 10 at 3 (“The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate.”); Exhibit 5 at 237 (“[H]igher courts [of the PCUS] are not granted any original powers over the property of a congregation.”).

enforced.¹⁵ Far from evidencing an intent to give the PCUSA a global trust, MDPC's continued association with the denomination was not something that was understood to alter MDPC's property rights at all. As time has revealed Presbytery's evolving view of church property, however, MDPC is now doing everything in its power to preserve its longstanding, independent property rights.

2. *The Trust Claimed by Presbytery is Not Embodied in a Written and Signed Trust Instrument.*

43. Even *if* it could be determined that MDPC unequivocally intended to create a trust, no trust would exist because there is no written and signed trust instrument. Pursuant to TEX. PROP. CODE § 112.004, “[a] trust in either real or personal property is enforceable only if there is written evidence of the trust’s terms bearing the signature of the settlor.” *See also Nolana Dev. Ass’n v. Corsi*, 682 S.W.2d 246, 249 (Tex. 1984) (“[A] trust consisting of real property is invalid unless created by a written instrument signed by the trustor.”).¹⁶

44. MDPC has most assuredly never signed a document granting Presbytery or the PCUSA beneficial title to all property owned by MDPC. Not to be inconvenienced by Texas trust law, however, Presbytery has blindly argued in other litigation that the trust clause is itself sufficient to create a trust under Texas law. Exhibit 13 at 34 (“[I]ncorporation of a trust provision in a church’s constitution [i]s one way to comply with state law on the creation of trusts.”).

45. Presbytery’s position, of course, seeks to circumvent the most basic requirement of Texas trust law, the requirement of a trust instrument. This precise argument was squarely

¹⁵ *See* PCUSA Const. at § F-3.0108 (“Since ecclesiastical discipline must be purely moral or spiritual in its object, **and not attended with any civil effects**, it can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance and blessing of [God]”).

¹⁶ Even the undisputed intent to create a trust is not enough to overcome a trust’s failure to be embodied in a written, signed trust instrument. *See, e.g., In re Davis*, 244 F.3d 133 (5th Cir. 2000) (applying Texas law, and finding “the trust legally fails, despite [settlor’s] intent to create a trust” because the trust involved real property and no signed trust instrument existed).

rejected by the Texas Supreme Court in *Masterson*, in which an Episcopalian denomination argued “that a superior hierarchical church organization’s amendment to its constitution to include a trust provision is sufficient to establish a trust in property held by its subordinate churches.” 422 S.W. 3d at 611. Following other courts that have rejected the same argument, the *Masterson* Court explained that a denominational trust clause is relevant only if it is “embodied in some legally cognizable form.” *Id.* at 612. Accordingly, unless a denominational trust clause is expressly adopted in a written and signed trust instrument, it is not “legally cognizable” in Texas. *See id.* at 611-12 (citing *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575 (Mo. Ct. App. 2012)); *Best Inv. Co. v. Hernandez*, 479 S.W.2d 759, 763 (Tex. Ct. App. - Dallas 1972), writ refused NRE (“Declarations of the purported beneficiary of the trust are not competent to establish the trust.”). *See also Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099, 1107 n.7 (Ind. 2012) (“[S]uch a rule would result in . . . enforcing the claim of the denominational church organization merely because the trust claim is added to the denominational church organization’s constitution and *regardless of any contrary evidence or state law.*”); *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina*, 685 S.E.2d 163, 174 (S. Car. 2009) (“It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another.”).

3. MDPC’s Corporate Membership Has Not Duly Approved or Created a Trust in Favor of Presbytery or the PCUSA.

46. Even *if* it could be shown that MDPC intended to create a trust, and even *if* a trust clause written by the would-be beneficiary could satisfy the requirement that a trust instrument be signed by the owner-settlor, Presbytery’s alleged trust would still fail because it was not properly adopted by MDPC’s corporate board and membership.

47. As a Texas non-profit corporation, MDPC can act and transact business only in accordance with the provisions of the Texas Business Organization Code. TEX. BUS. ORGS. CODE §§ 1.001 *et seq.* That statute vests MDPC with full authority to own property and MDPC's Board of Directors with exclusive authority to manage the corporation's affairs. *See* TEX. BUS. ORGS. CODE §§ 2.101, 22.201, 22.214. In the absence of special provisions in MDPC's corporate charter or bylaws, MDPC's elected Board must expressly approve *every* conveyance of an interest in MDPC's real property. *See* TEX. BUS. ORGS. CODE § 22.255. Moreover, a conveyance of "all or substantially all of the assets of a corporation" also requires the express approval of at least two-thirds of the votes of members at a special called meeting. *See* TEX. BUS. ORGS. CODE §§ 22.164, 22.252.

48. Never at any point in MDPC's history did its corporate board adopt a trust clause or otherwise approve the transfer of a real property interest to Presbytery or the PCUSA. No corporate meeting was ever held to approve the global transfer of beneficial interests to the denomination, and two-thirds of MDPC's membership has certainly never voted to do so. Absent compliance with the Texas corporate statute, a Texas corporation simply cannot be separated from its real property. This was the law when MDPC incorporated in 1955 and it is still the law today. *See, e.g., Shield v. Shield*, 286 S.W.2d 252, 257 (Tex. App. – El Paso 1955, writ ref'd n.r.e.) (finding no conveyance took place where "it is affirmatively shown by the evidence . . . that there was never any authority given by the Board of Directors.").

49. It was precisely this disregard for corporate law that the Texas Supreme Court eschewed in *Masterson*. Rejecting an Episcopal denomination's argument that churches cannot take actions inconsistent with the denomination's rules, the *Masterson* Court reaffirmed that it is the Texas corporate statute—not a denomination's rules—that govern what a church corporation

can and cannot do: “[U]nder neither the former nor the current [corporate] statute is an external entity empowered to” meddle in a corporation’s affairs “absent specific, lawful provisions in the corporate documents.” *Masterson*, 422 S.W. 3d at 610.

4. MDPC Has Revoked Any Trust that Might Have Existed in Favor of Presbytery or the PCUSA.

50. Even if MDPC intended to create a trust, a valid trust instrument existed, and it was duly approved by MDPC’s corporate board and membership, Presbytery’s trust claim would still fail because MDPC has revoked any trust that might have existed.

51. Under Texas law, “[a] settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.” TEX. PROP. CODE § 112.051(a). In this precise context, in fact, the *Masterson* Court resoundingly affirmed the right of an Episcopalian church to revoke any trust that might have arisen out of the denomination’s trust clause. *See Masterson*, 422 S.W.3d at 613 (“Even if the [Episcopalian constitution] could be read to imply the trust was irrevocable, that is not good enough under Texas law. The Texas statute requires express terms making it irrevocable.”).

52. In this case, the trust clause sought to be enforced by Presbytery is nearly identical to the Episcopalian trust clause considered, found revocable, and held to be revoked in *Masterson*.¹⁷ The PCUSA trust clause likewise does not purport to be irrevocable and MDPC therefore duly revoked any such trust by its January 19, 2016 corporate resolution renouncing

¹⁷ Also known as the “Dennis Canon,” the Episcopalian trust clause considered in *Masterson* states:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission, or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Masterson, 422 S.W.3d at 611.

any trust that MDPC might have ever created in favor of Presbytery or PCUSA. *See* Exhibit 16; Exhibit 11 at § G-4.0203.

B. TRO Factor Two – Immediate Injury

53. The second prerequisite to a TRO and Temporary Injunction is proof of an imminent or immediate injury. In this case, the infliction of an immediate injury is not only possible, but it is the standard operating procedure for PCUSA presbyteries faced with civil actions by local congregations. In fact, the PCUSA headquarters—to whom Presbytery is answerable—has issued two extreme strategy memoranda for use by lawyers representing presbyteries faced with litigation. *See* Exhibit 1; Exhibit 2. Of particular concern is the denomination’s repeated prodding of presbyteries to implement a device called an “administrative commission” to seize all local church assets and take control of local church property. *See* Exhibit 1 at 5-14.

54. An administrative commission is a small group of presbytery representatives to whom the presbytery can ostensibly grant unlimited scope of powers under the guise of spiritual emergency. *See* Exhibit 1. Although the use of administrative commissions is ordinarily intended to address spiritual matters, PCUSA presbyteries, at the instigation of denominational headquarters, have misused them as a device to unilaterally expropriate local church property. Indeed, the PCUSA has advised that “[i]f the presbytery has information that a declaration of schism is imminent” or that a church is “affected with disorder,” the local presbytery should immediately form an administrative commission with the authority to “assume original jurisdiction over”—fire and replace—the entire governing session of a church. Exhibit 1 at 9.

55. The threat of unlawful property expropriation is very real. In a heavy-handed attempt to discourage congregations from expressing disagreement or asserting their legal rights,

the PCUSA's strategy memos make the following recommendations to presbyteries faced with litigation:

- a) *use administrative commissions specifically for church property disputes*, and in conjunction therewith remove the local pastor and/or governing board of the local church;
- b) freeze local church assets, "*change the locks*," physically seize property, and "*secure grounds if necessary*";
- c) place a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;
- d) mail letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters "order" that no assets be released to the local church;
- e) investigate the religious background of any judge assigned to the case in order to exploit potential partiality or religious bias;
- f) "use spiritual language" in their pleadings in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as "schismatic"; and

See Exhibit 1 at 5-7, 12; Exhibit 2 at 3-4. Faced with these instructions, district presbyteries have willingly complied, usurping control of local churches to seize their property and placing clouds on the property titles of local churches.

56. Even the filing of a legal action does nothing to dissuade presbyteries from trying to confiscate local church property. Quite the opposite, the PCUSA has widely circulated a memorandum entitled "A resource for those representing [PCUSA] presbyteries and true churches in the civil courts." See Exhibit 2 at 1. Despite being narrowly focused upon cases in which civil court jurisdiction has already been invoked, the memo encourages churches to act fast, "secure the property (both real and personal) of the local church," and advise all financial institutions that "the presbytery"—not the court—"has jurisdiction over the local church and its assets." Exhibit 2 at 3.

57. Nor is the expropriation of church property some distant threat with which Presbytery is unfamiliar. Indeed, Presbytery has adopted and distributed its own written policy that advocates the use of “administrative commissions” for precisely such purposes. As Presbytery has expressly threatened: “If a congregation or its leadership preemptively files suit in a civil court against the Presbytery,” Presbytery may immediately form an administrative commission, “assume original jurisdiction,” “freeze the assets of the church,” and, of course, “secure the building, grounds and other property.” Exhibit 20 at 5 n.1, 11-13. Drastic as these actions may seem, Presbytery has continued to insist that these are its “rights” as a presbytery. *See* Exhibit 13 at 5, 13, 23, 30, 48.¹⁸

58. When Presbytery chooses to exercise its “rights,” MDPC faces the real threat that its assets will be frozen, its doors shut, its accounts cleaned out, and its property sold. *See* Exhibit 20 at 11-13. Because the Presbytery ostensibly can use, lease, or sell any property it seizes, the cash-strapped Presbytery is actually incentivized to form an administrative commission as promptly as possible when a suit is filed. *See* Exhibit 20 at 11-13; Exhibit 1 at 12-14.

59. Claiming this intrusive authority in December 2007, Presbytery responded to Houston-area Heritage Presbyterian Church’s dissatisfaction with the PCUSA by forming an

¹⁸ In pleadings filed in 2014, Presbytery specifically asserted, “[Presbytery] is granted rights under the Constitution to seize control of the operations of the congregation and assume control over its property,” Exhibit 13 at 5; “[T]he presbytery had longstanding rights to take control of the congregation’s property for the use and benefit of the denomination,” Exhibit 13 at 13; “The powers that can be granted to the Administrative Commission are broad, including the power to assume control over the property of the congregation for the use and benefit of PC(USA),” Exhibit 13 at 23; “[T]he permissive powers set forth in the [Presbytery’s] Alternative Procedure . . . include the power to assume control over the property of the congregation for the use and benefit of PC(USA),” Exhibit 13 at 30; “Presbytery has had the power to do all of the things for which [the local church] claims ‘imminent harm,’” Exhibit 13 at 48.

In light of these assertions, a Harris County district court quite properly granted First Presbyterian Church of Houston an ex parte TRO, a Temporary Injunction, and a Permanent Injunction. *See First Presbyterian Church of Houston v. Presbytery of New Covenant, Inc.*, No. 2014-30354 (Harris County, Texas) (ex parte TRO granted May 29, 2014) (Temporary Injunction granted September 17, 2014) (permanent injunction granted on February 20, 2015).

administrative commission and ousting 83% of the congregation from the property. The neighboring Dallas-area PCUSA presbytery, Grace Presbytery, likewise demonstrated its disapproval of the First Presbyterian Church of Longview by simply taking the church's property. In both cases, an administrative commission cast aside the corporate and property rights of the local church's members, fired the church's elected leaders, and seized absolute control of all property held by or for the local church. Lacking the resources to defend themselves, a majority of the congregations left their respective properties to worship at makeshift locations.

60. In other cases, a judicial injunction has only inspired PCUSA presbyteries to contrive new ways to separate churches from their property, in contemptuous disregard for the rule of law. *See* Exhibit 21, *Carrollton Presbyterian Church v. Presbytery of South Louisiana*, Suit No. 565482, 19th Judicial District Court, East Baton Rouge Parish, Louisiana, Written Findings and Reasons for Judgment Imposing Sanctions, July 18, 2013 (pp. 5, 6, 23-25, 42-45). In *Carrollton*, the same regional PCUSA synod that has oversight over Presbytery, the Dallas-based Synod of the Sun, conspired with the Louisiana presbytery that is Presbytery's contiguous neighbor to knowingly violate a court-issued Temporary Restraining Order in an unlawful attempt to take control of local church property. *See id.* In fact, the *Carrollton* court found the presbytery's and synod's efforts to circumvent the court's injunction to be so egregious that the court imposed \$390,000.00 in sanctions against the presbytery, which sanctions were recently affirmed on appeal. *See* Exhibit 21 at 5-6, 23-25, 42-45; *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (U.S.A.)*, 2014-1214, -- So. 3d. -- (La. Ct. App. 3/9/15).

61. *Carrollton* is especially significant because Presbytery is subject to the oversight

and control of the very synod that conspired to violate the TRO in that case. If Presbytery were to fail to seize MDPC's property, the same synod that has proven itself so willing to seize church property in the past could simply intervene and *force* Presbytery to take MDPC's property. Indeed, PCUSA synods are actually under standing instructions to "enforce" the trust clause in this manner. As an official PCUSA opinion explains, "Presbyteries are responsible for enforcing the trust clause If a presbytery fails to carry out these constitutional responsibilities, the synod may be required to intervene." Exhibit 19 at 3-4. Acknowledging this multi-faceted threat, Presbytery's chief officer recently admitted to a Harris County court that notwithstanding Presbytery's supposed good intentions, Presbytery would "not have any choice" but to follow any such orders it received from the synod. Exhibit 22 at 289-90.¹⁹

62. Forced to defend its property rights in this Court, MDPC has set events in motion that cannot be reversed. By requesting this Court to exercise its constitutional jurisdiction, MDPC has taken the precise step that Presbytery has warned would trigger an administrative commission and the consequent confiscation of church property. *See* Exhibit 20 at 5 n.1, 11-13; Exhibit 2. In the face of such an immediate injury, immediate injunctive relief is required.

C. TRO Factor Three – Irreparable Injury

¹⁹ During the testimony of Presbytery's chief officer, Mike Cole, the following colloquy took place:

THE COURT: [I]f the synod told you to go out there and change the locks, you would, right? If the synod said, pursuant to some of the documents that we've [looked] at in this case: You're not doing your job, and that we want this congregation to be dissolved and have the locks changed. That's consistent with what they state that their rights are, which is that they would own the property upon dissolution. And you would follow that order, wouldn't you?

MIKE COLE: Your Honor, only if they had original jurisdiction over the Presbytery.

THE COURT: Right.

MIKE COLE: If -- if they -- if they claimed original jurisdiction over the Presbytery by action of the whole synod, I think we would probably not have any choice.

Exhibit 22 at 289-90.

63. The third and final prerequisite to preliminary injunctive relief is proof of an irreparable injury and inadequate remedy at law. Ordinarily, “[a]n injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

64. Because MDPC must use and maintain its property daily, the potential harm that might result from losing its property is incalculable. That the PCUSA has both incentivized and ordered presbyteries to seize property is certain; when this happens, MDPC will suffer untold losses if it must wait for a final judgment to re-obtain the property it has occupied continuously for sixty years.

65. With nowhere else to go, MDPC’s congregation and the heart of its ministry will be scattered for months or years. In the interim, Presbytery may sell, alter, pilfer, or neglect the property, as PCUSA operating procedures empower it to. *See* Exhibit 1 at 14. By the time the congregation is returned to possession, it may find its property to be in disrepair or even foreclosure. Not only might MDPC’s banks require new personal guarantees or other unfavorable lending terms, but MDPC’s membership may have dwindled so much that it no longer has the resources to maintain or pay for its facilities. It is precisely these concerns that have prompted Texas courts to award similar or identical preliminary injunctive relief in favor of property-owners. *See, e.g., First Presbyterian Church San Antonio v. Mission Presbytery*, No. 2015-CI-07858 (Bexar County, Texas) (ex parte TRO granted May 12, 2015); *First Presbyterian Church of Houston v. Presbytery of New Covenant, Inc.*, No. 2014-30354 (Harris County, Texas) (ex parte TRO granted May 29, 2014).

66. The irreparable injury to MDPC is not limited to its property. In this case, the

Presbytery's actions, if not enjoined, would also irreversibly interrupt the daily ministry of MDPC. Before the Presbytery can purport to exercise any authority over MDPC's property, it would have to take the extraordinary step of ousting MDPC's pastoral staff, governing session, and congregational leadership. The forcible removal of every vestige of MDPC leadership would not only have an incalculable effect upon those leaders cast out, but would have an immediate and severe impact on the congregation, its community outreach programs, and the ministries dependent upon MDPC funding.

67. Like any non-profit organization devoted to spiritually and physical serving others, MDPC is highly dependent upon voluntary contributions and continuity of membership, leadership, and fellowship. Where the interruption of a business might result in lost profits, the interruption of MDPC's ministry could immediately deprive a needy family of the flow of resources on which it has come to depend, both tangible and intangible. Moreover, because the ministries of MDPC often serve those with the greatest need, the disruption of MDPC's operations will be magnified and disproportionately felt by those with the least means.

68. Among the beneficiaries of MDPC's continuous dedication of resources are various local, regional, and global causes. For instance, MDPC has most recently offered substantial assistance to Houston residents impacted by the May 2015 flooding, with special assistance being given to Gracewood, a local group home for mothers and their children who are fleeing abuse. This summer alone, MDPC is dedicating special service efforts to MDPC Food Pantry, which provides free food and meals to low-income families in the Houston area; SEARCH Homeless Services, which seeks to guide Houston's homeless population into permanent homes; The Beacon, a Houston care center that provides meals, showers, laundry services, medical care, and legal assistance to Houston's underprivileged; and Casa el Buen

Samaritano, a Houston clinic dedicated to providing free medical assistance to those in need. Internationally, MDPC supports benevolent agencies and causes in China, Mexico, Egypt, Guatemala, Ethiopia, Uganda, Honduras, Hungary, and the Balkans, among others.

69. Even the ministries identified above are just a fraction of the groups that benefit from MDPC's substantial donations of time, food, effort, care, and money. Without a base of operations, continuous community presence, or place to gather together for ministry, there is simply no way that MDPC can continue to support the causes that have come to depend on the church. If MDPC's property is suddenly taken and its congregation scattered, each of the above causes would immediately suffer—as would Agape Development Ministries, the Aldine Community Transformation Center, Alpha Houston, Amazing Place, Back 2 Basics, Be an Angel, Bering Omega, Bo's Place, Boys and Girls Country, Breath of Life, Bridges to Life, and the dozens of other organizations that benefit from the \$14 million that MDPC annually devotes to ministry and philanthropy. While the interruption of support to any one of these groups would cause harm, the interruption of support to all of them would be nothing short of tragic.

70. No amount of monetary reimbursement would be an adequate remedy for the irreparable damage that would be done to the mission and ministries of MDPC if a TRO and Temporary Injunction are not granted. Presbytery's limited interest in taking MDPC's property—retaliation against MDPC for daring to seek protection in a civil court—does not even come close to justifying the injury facing the church. These concerns easily exceed the type of irreparable injury needed to justify injunctive relief. *See, e.g., See, e.g., Sonwalkar v. St. Luke's Sugar Land P'ship, L.L.P.*, 394 S.W.3d 186, 201 (Tex. App. – Houston [1st Dist.] 2012) (finding loss of interim management rights irreparable); *First Presbyterian Church of Houston*, No. 2014-30354 (Harris County, Texas), Temporary Injunction (“[A]bsent a temporary injunction, the

rights of Plaintiff and its ministries will be irreparably injured.”).

71. It is further necessary that the requested restraining order be granted ex parte and without notice to Presbytery, because the mere filing of this Petition will trigger the immediate property seizure sought to be enjoined. The cited exhibits and facts demonstrate that Presbytery is ready, authorized, and willing to “secure” MDPC’s property for no other reason than this request for relief. These same concerns have prompted district courts in Harris County, Texas; Dallas County, Texas; Bexar County, Texas; Leflore County, Mississippi; Oktibbeha County, Mississippi; Tallapoosa County, Alabama; East Baton Rouge Parish, Louisiana; and Johnson County, Kansas, to grant identical or nearly-identical TRO’s against PCUSA presbyteries in five states. *See* Exhibit 23 (including eight ex parte TRO’s, five preliminary injunctions, two permanent injunctions, and an appellate affirmance of a permanent injunction—all of which mirror the TRO now sought).

COUNT 3 – APPLICATION FOR TEMPORARY INJUNCTION

72. For the same reasons and to the same extent that MDPC has requested a temporary restraining order, it also requests a temporary injunction to preserve its property rights and the status quo until the Court can render a final judgment.

VII. **PRAYER**

Based upon the foregoing allegations and causes of action, MDPC requests the entry of judgment as follows:

1. Declaratory Judgment:

A declaration recognizing that Memorial Drive Presbyterian Church (“MDPC”) alone is the absolute, full, exclusive, fee simple owner of all real or personal property that is owned by MDPC, held for MDPC, or titled in its name; further, that the Presbyterian Church (U.S.A.) (“PCUSA”) and the Presbytery of New Covenant, Inc. (“Presbytery of

New Covenant”), have no right to or interest in any of the real or personal property so owned or held for MDPC; and further, that neither the PCUSA nor the Presbytery of New Covenant has any trust, equitable, or beneficial interest, including any express trust, constructive trust, or resulting trust, in any of the real or personal property so owned by MDPC. MDPC requests that the judgment be accompanied by permanent injunctive relief protecting and enforcing the declaratory judgment of the Court.

2. Temporary Restraining Order:

Entry of a Temporary Restraining Order as follows:

“A temporary restraining order against the Presbytery of New Covenant, its officers, agents, employees, and counsel, and any persons or entities in active concert or participation with the Presbytery of New Covenant, or acting by or through the Presbytery of New Covenant, on its behalf, or in its stead.

This temporary restraining order shall pertain to all Property held by or for MDPC, both immovable (real) together with all buildings and improvements thereon, and movable (personal), whether corporeal or incorporeal, wherever located, whether held by, for or in the name of MDPC (collectively “Property”), which real Property is more particularly described in the Appendix attached hereto.

The Presbytery of New Covenant shall be restrained from filing any documents in the mortgage and conveyance records of Harris County to assert ownership, use, or control, or rights to determine ownership, use, or control, of any real Property titled in the name of MDPC.

The Presbytery of New Covenant shall be restrained from asserting a trust on behalf of the Presbytery of New Covenant or other affiliated third party over real Property titled in the name of MDPC or otherwise held by or for MDPC, the effect of which would be to place a cloud on the title of said real Property.

Nor shall the Presbytery of New Covenant otherwise: interfere with or disturb MDPC’s ownership, use, control, or disposition of its Property; or interfere with MDPC’s right to determine the ownership, use, control, or disposition of Property held by MDPC, held for MDPC, in the possession or under the control of MDPC, or owned by or titled in the name of MDPC.

Accordingly, the Presbytery of New Covenant, and any persons or entities in active concert or participation with it, on its behalf, or in its stead, whether acting directly or indirectly, shall be temporarily restrained from

taking any action that could affect the property rights of MDPC, including but not limited to:

- (a) seeking to change the locks of MDPC or any of its buildings;
- (b) initiating any disciplinary or other retaliatory action against the employees, officers, ministers or members of MDPC which directly or indirectly arises from or is connected to any property issue raised in, prompted by, or related to the subject matter of this litigation;
- (c) dissolving MDPC or ordering or instructing an administrative commission to assert original jurisdiction, directly or indirectly, over MDPC, the effect of which would be to assume control over the ownership, use, or disposition of the Property; or
- (d) otherwise interfering with the normal duties and responsibilities of the officers, ministers, and employees of MDPC, the governing body of MDPC (the session), or any related designees or agents, in any way that pertains to the ownership, control, use, or disposition of the Personal or Real Property held by, for, or in the name of MDPC.

Provided, however, that nothing in this Temporary Restraining Order shall preclude the Presbytery of New Covenant from taking ecclesiastical action for non-pretexual ecclesiastical cause that is unrelated to this litigation or any property issue raised therein or prompted thereby; or from taking such ecclesiastical action which is not related to or does not affect the ownership, control, use, or disposition of the Personal or Real Property held by, for, or in the name of MDPC.”

3. Temporary Injunction:

Following the requisite notice and any necessary hearing on the matter, entry of a temporary injunction to the same extent and upon the same terms as the requested temporary restraining order. MDPC requests that the temporary injunction be entered and binding until a final judgment on the merits of the instant Petition.

4. All other general and equitable relief to which MDPC may be entitled.

Respectfully submitted,

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