

Concerning MDPC's Property and the Legal Actions taken by the Trustees

What is the disagreement regarding Property?

MDPC owns its property and other assets outright with complete control over their use. The MDPC campus is comprised of 9 separate parcels of land which were acquired gradually over time and all deeds to the property list MDPC as the owner. Since the merger of the PCUS and the United Presbyterian Church in the USA into the PC(USA) in 1983, a disagreement has arisen over who has the right to control the use of MDPC's physical property at 11612 Memorial Drive and other assets. The PC(USA) asserts that it is the ultimate owner of all church property without regard to how it was acquired, who paid for it, or what the deed says.

We have become increasingly aware that focusing on accomplishing our mission without the undisputed right to control the use of our property is more difficult than in the past. This issue of undisputed ownership of its church property needs to be resolved. It is the responsibility of the Trustees and Session to be good stewards of the gifts God has provided to our congregation. We believe the property – purchased, maintained and managed by the congregation of MDPC– is clearly one of God's gifts. It is the PC(USA)'s belief that MDPC's property is held in trust by MDPC for the ultimate benefit of the Presbytery.

Is the petition for declaratory judgment intended to accomplish a departure from the PC(USA)?

No. It is separate from our congregational discernment process. The only issue that the Court has been asked to decide is whether MDPC completely owns and controls all of the property held by or for it, without a legally enforceable "trust" (i.e., right to control the use) in favor of the PC(USA). The answer to this property question does not determine MDPC's denominational identity or affiliation. There is no necessary link between the two issues of property rights and denominational affiliation. There would still be a need for a civil court to decide who owns or controls MDPC property whether we choose to stay in PC(USA) or depart for another Presbyterian/Reformed denomination.

What is MDPC's history with the Presbyterian Church?

MDPC was established in 1955 as a member congregation of the Presbytery of the Brazos and Presbyterian Church, U.S., and celebrated its 60th Anniversary in 2015. In 1983, the PCUS and the United Presbyterian Church in America merged to create a new denomination: Presbyterian Church(USA), also referred to as the PC(USA).

How did the disagreement develop?

MDPC is currently in denominational affiliation with the Presbyterian Church (USA) and has been since 1983. Prior to this, MDPC was affiliated with the Presbyterian Church in the United States (PCUS) which provided that local congregations held their own property outright, free of any claim by the PCUS to control their property. However in 1982, the PCUS added an aspirational "trust clause" to its constitution with assurances that the trust clause did not change historical tradition that local congregations held their own property outright, free of any right by the denomination to control its use. The following year, the PCUS merged with another Presbyterian denomination to form the PC(USA), which also has a trust clause in its constitution. As originally intended, the trust clause was added to the denomination's constitution so that the denomination would have the right to claim ownership of the property of a church that dissolved or ceased to exist. Over the past few years, however, the PC(USA) has begun using this constitutional provision to seek to control the decisions of the local churches.

Simply stated, the Presbytery of New Covenant believes that PC(USA) has an enforceable “trust interest” in the property of MDPC because PC(USA) has a trust clause in its constitution which was adopted long after MDPC was formed. MDPC’s longstanding position is that PC(USA) has no beneficial interest in our property. MDPC paid for its property and the deeds are all in MDPC’s name. MDPC never agreed to place its property in trust for the denomination. PC(USA) has not contributed to the maintenance or enhancement of MDPC’s property. The Trustees believe that there is absolutely no basis for the PC(USA), which came into existence long after MDPC purchased its property, to assert that it is the beneficial owner of the MDPC campus.

Who are the Trustees and what are their responsibilities?

The MDPC Trustees are the seven ruling elders elected by the congregation whose responsibilities include having the power and authority to deal with real property matters. This includes the power to defend title to the church’s property. See details below from the MDPC Policies and Procedural Manual.

MDPC is incorporated under the laws of the State of Texas. The charter provides that the officers of the corporation shall be designated as “Trustees” and shall be seven in number, any four of whom are empowered to conduct business. Trustees have the power and authority to buy, sell, or mortgage property of the church, to accept and execute deeds as such Trustees, to hold and defend titles to the same, and to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church — provided such duties do not infringe upon the powers and duties of the Session or MDPC Foundation. In buying, selling, and mortgaging real property, the Trustees shall act solely under the authority of the corporation, granted in a duly-constituted meeting. Trustees shall be active Elders on the Session, and shall be elected by the congregation at the time of the election of Elders each year. The term of service as a Trustee shall coincide with the term of active service as an Elder. The Nominating Committee shall nominate the number of active Session members required to replace retiring Trustees or to fill unexpired terms. See section G-4.01. (from the MDPC Policies and Procedural Manual)

Why should MDPC resolve this now?

In August 2013, in a church property legal case involving the Episcopal Church, the Texas Supreme Court reaffirmed what has been the law in Texas since 1909. This ruling eliminated confusion caused by some intermediate appellate courts misinterpreting the original 1909 decision and created a clear assurance that the proper standards for determining church property rights will be applied. The Texas Supreme Court in that case ruled that no trust exists merely on the basis of a trust clause in the denomination’s constitution and, if any trust were found to exist, it would have to be as a result of compliance with Texas trust, property and corporation law.

In other words in order for a trust to be created, a congregation would have to execute a trust agreement granting an ownership interest in its property to the denomination. This ruling is very favorable to local churches such as MDPC and presents a historic opportunity to end a longstanding disagreement over the right of MDPC to control its property.

Because MDPC never agreed to place all of its property in trust for the denomination, we believe that we should be successful in having a court confirm that MDPC is the sole owner of its property. Clearly establishing MDPC’s rights to use its property will honor the legacy of our past and provide stability for our future. Resolving this issue is imperative whether we remain or depart from PC(USA).

What is the status of church property law in the state of Texas?

- A. Following the August 2013 landmark church property decision of the Texas Supreme Court involving the Episcopal Church’s claim of a trust interest in the property of a church and diocese in Texas (Masterson vs. Diocese of Northwest Texas), which held that a denomination cannot unilaterally impose a trust on its member churches in the state of Texas, Houston area state courts awarded summary judgments in favor of First Presbyterian Church of Houston in 2014 and Windwood Presbyterian Church of Houston in 2015. The courts ruled that Presbytery of New Covenant does not have an enforceable trust interest in the property of these two churches because neither of these churches granted a trust interest to the PC(USA)

in accordance with the trust laws of the state of Texas. The trust clause of the Book of Order was held not to be sufficient to create a trust interest for the PC(USA) in the state of Texas.

- B. At its May 19, 2015 called meeting, Presbytery of New Covenant settled its appeal of the summary judgment in favor of Windwood Presbyterian Church by renouncing its claim to a trust interest in the church's property, executing a deed renouncing any interest in claimed in the church's property, and dismissing the church to the Evangelical Covenant Order of Presbyterians (ECO). Windwood made no payments to Presbytery to settle the case.
- C. In contrast with the settlement of its failed claim to a trust interest in the Windwood property, Presbytery of New Covenant continues its appeal of the summary judgment in favor of First Presbyterian Church of Houston, with the Presbytery incurring over \$1 million in legal fees and expenses to date.

Did MDPC attempt to resolve this disagreement before the filing of this legal action?

Yes. Dr. Halvorson, Rev. Steane and Elder Bob Giles, Moderator of the Denominational Issues Task Force, met with Presbytery officials in January and February. In addition, MDPC and the Presbytery have exchanged four different proposals during this time frame. After conscientious effort, we could not reach agreement on any process that would adequately protect MDPC's church property.

What actions are being taken to resolve this property disagreement?

On March 7, 2016, the Trustees of MDPC initiated a defensive petition seeking to clear the title of our property from claims by PC(USA) that it holds a trust interest in MDPC's property. The decision to file this court action came after many hours of prayer, discussion and legal consultation by your Trustees. The Trustees believe it is their obligation to take this action to protect MDPC's unencumbered right to ownership of its property. It is important to point out that MDPC is not suing the Presbytery or PC(USA) but is instead seeking to have a court to declare that MDPC is the sole and exclusive owner of its property.

With a firm commitment to continue the ministries, programs and mission of MDPC without distraction or dissension, the Session endorsed the Trustees' action and believes that the court system provides the best avenue for impartial third party review and decision, especially in this time of discernment.

What is MDPC doing to protect our Pastors and Session during this legal action?

An added element to this action is the request for a temporary restraining order or TRO. In addition to the claims that the Presbytery makes regarding ownership of MDPC's property, the Presbytery also claims that it has the power to remove pastors and sessions as a means of immediately seizing property control if a session even seeks a judicial decision on a property question such as ours. The Presbytery's dismissal procedure provides that if a congregation does so the Presbytery will appoint an Administrative Commission with power to remove the pastors and session.

To prevent the Presbytery from attempting to do that here, we requested the TRO. The Court granted the TRO. The TRO preserves the current status quo for a short period of time until there is a hearing on MDPC's application for a temporary injunction to keep the Presbytery from attempting to seize control of our church property while the property issue is being resolved by the court. The TRO does not restrict routine access to the MDPC campus by representatives of the Presbytery or normal interaction between members of MDPC and the Presbytery. Also the TRO does not prevent us from having a fair and open discernment process. In fact it preserves that process.

A complete copy of the TRO is on the MDPC website.

How can MDPC justify litigation against fellow Christians under 1 Corinthians 6?

This is a great question, which reveals our commitment to Biblical fidelity and desire to apply the spiritual authority of God's Word to all of life's issues.

We believe that God “holds the title” to all property (Psalm 24:1) and we are stewards of it (Genesis 1:26). Thus we are accountable to God for our care of material things (Matthew 25:14-30). Therefore, with prayer, we need to go to the Bible to seek God’s will for how we should handle property and any disputes surrounding it.

In short, Paul’s exhortation to the Christians in Corinth (1 Corinthians. 6:6) warns Christians not to denigrate the Gospel by allowing personal greed to prompt trivial lawsuits against fellow believers. In fact, the Apostle Paul exercised his right as a Roman citizen to appeal his case to be tried by the Emperor Augustus in Rome instead of by the Jewish religious courts in Jerusalem when he was accused by them of blasphemy (Acts 25: 21) so that he could continue preaching and teaching the gospel.

Your Trustees are motivated to be good stewards acting with kindness and love in order to protect MDPC’s physical plant that has been dedicated to the glory of God and the mission of this congregation. Your Trustees did not file this petition for declaratory judgment in order to extract anything from the PC(USA) except the freedom to continue to serve Christ in the way the church leadership has discerned we should go. This is no “trivial case” as Paul is addressing.

Has PC(USA) contributed financially to the payments for debt service, property purchase, maintenance or improvements of property at 11612 Memorial Drive over the years?

No. PC(USA) has not contributed monetarily in any way toward the costs of maintaining and improving the MDPC physical property. MDPC membership has provided the financial support in securing, maintaining and improving the property. MDPC staff and Session have provided the manpower to manage, maintain and oversee the property.

MDPC has contributed approximately \$25,000,000 to the PC(USA) and its related entities since its founding in 1955.

How does this action affect MDPC? Will our programs, ministries and mission be affected by this action?

Understandably, there are questions regarding the day-to-day effect this declaratory judgment action will have on our church. We do not want our God-given mission to be side-lined by this disagreement between MDPC and Presbytery. Generally, the Session believes that the lawsuit will resolve a longstanding disagreement with minimal disruption to our day-to-day activities as a church. In fact, removing the disruptive elements of this disagreement was one of the major objectives in the prayerful decision to pursue court involvement.

Our worship, programs, ministries and mission will not be affected by this action. We believe that resolving this issue will remove a long-standing element of distraction between the Presbytery and MDPC. Our programs and ministries will continue, grow and flourish as we focus on the mission God has given us.

What will change as a result of this action?

This petition for declaratory judgment does not affect the daily operation of our church and worship services. We will continue to seek to see to it that no one fails to obtain the grace of God (Hebrews 12:15).

Besides the updated information you will receive regarding milestones and progress achieved in confirming that MDPC is the sole and exclusive owner of its property, the congregational worship and ministry experience should not be interrupted or distracted. The only change that is anticipated is that a court will confirm that MDPC truly does hold unchallenged interest and ownership rights to our own property and that the congregation has complete control over our own buildings, facilities and other assets.

Since the Presbytery’s Gracious Reconciliation and Dismissal Procedure provides that churches that bring legal challenges to the denomination’s claim of a trust interest in their property cannot use the procedure, MDPC will follow its own discernment process which will be approved by the session and invite Presbytery’s participation in that process.

How is this legal action being funded?

Your Trustees hope there will be a quick settlement of the property question with Presbytery so that legal expenses will be minimal and paid from our operating budget.

Why wasn't the congregation informed before legal action was filed?

Initially, it was necessary to avoid public discussion of this matter because it involved legal action. If it were made public prematurely, then the Presbytery has the authority to form an administrative commission to remove our Pastors and Session, replacing them with other pastors and elders from within our Presbytery. Dr. Halvorson informed the congregation by email that discussions with Presbytery regarding the dismissal process were taking place. Once we were at a point where it became possible to discuss this matter publicly, the congregation was the first to know. Going forward, the congregation will be receiving regular updates on the status of the Trustees' legal action.