

CAUSE NO. 2015-CI-07858

FIRST PRESBYTERIAN CHURCH OF SAN ANTONIO	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	BEXAR COUNTY, TEXAS
	§	
MISSION PRESBYTERY,	§	
	§	
<i>Defendant.</i>	§	73 RD JUDICIAL DISTRICT

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF
PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff First Presbyterian Church of San Antonio ("FPC") files this Motion for Reconsideration of Plaintiff's Application for Temporary Injunction, based on additional evidence of imminent harm, and would show the Court as follows.

**I.
INTRODUCTION**

1. When proving "imminent harm," there is middle ground between an unsubstantiated fear that harm will occur and forcing a party to suffer an injury before an injunction can be granted. No Texas case requires that a party stare down the barrel of a gun to be entitled to relief. Instead, the party requesting the injunction must only show that the other party took a significant step toward the activity sought to be enjoined. *See State v. Morales*, 869 S.W.2d 941, 946 (Tex. 1994). This past weekend, Mission Presbytery took that step, by pointing the gun squarely at FPC. Mission Presbytery created its Administrative Commission with the power to take original jurisdiction over FPC and, in doing so, put FPC in imminent danger of

losing everything. Because Presbytery's actions infringe on the property rights of FPC and dramatically shift the status quo, FPC asks this Court to reconsider its ruling on FPC's Motion for a Temporary Injunction.

II. BACKGROUND FACTS

2. On August 26 and 27, 2015, the Court conducted a hearing on FPC's application for an injunction, as well as Intervenors' request for an injunction. During the hearing, and in briefing filed prior to the hearing, FPC demonstrated that by seeking to determine its ownership rights in court, FPC was at risk for retributory action by Mission Presbytery in the form of an Administrative Commission. FPC introduced evidence of "the Louisville Papers," a strategy memo sent from PCUSA's "Office of Constitutional Services" to all PCUSA presbyteries recommending that Presbyteries take certain action when local churches seek to determine their property rights. The actions recommended in the Louisville Papers include the following:

- 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 and physically seize property;
- * * *
- 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;
- * * *
- 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."

- g) through the use of administrative commissions, try and keep the local church in a defensive secular legal posture, counseling “Let the schismatics seek Caesar’s help.”

Plaintiff’s Exhibit No. 12 (Part I, pp 5-7, 12; Part II, pp. 3-4).

3. During the hearing, counsel representing both Mission Presbytery and Intervenors argued that FPC’s fears that Mission Presbytery would use an Administrative Commission to begin asserting rights over FPC’s property were unfounded. Mission Presbytery argued that all of FPC’s testimony regarding the acts of the Synod of the Sun and other PSCUSA presbyteries lacked relevance because “the question is whether Mission Presbytery is an imminent threat and has done anything in furtherance of any of these boogie men that [FPC is] trying to put in front of you.” *Objection by Counsel for Mission Presbytery and Intervenors*, Reporters Record of August 27, 2015 p. 27, attached hereto as Exhibit “A” and incorporated herein by reference. Mission Presbytery further argued that there was no evidence that Mission Presbytery would do any of the threatened actions in this case.¹

4. Further, Ruben Armendariz, Associate Presbyter and head of staff for Mission Presbytery, testified that it is the session—the governing body of the local congregation—that has authority over the finances of the church. The session prepares and adopts a budget for the church and is not required to submit the budget to presbytery for review. *See* Exhibit “A” at p.14. He also testified about the power of a presbytery to assume “original jurisdiction” over a church through an administrative commission. A presbytery can assume authority over a church that previously had been given to the session and actually replace the session. *Id.* at pp. 22-23.

¹ In fact, as highlighted in subsequent paragraphs, there was even direct testimony from the associate presbyter and the stated clerk that Mission Presbytery would not take the actions listed in the Louisville Papers. *See* Exhibit “A”.

When asked if Mission Presbytery would follow the instructions of the synod, the higher governing body, to form an administrative commission to replace the session of First Presbyterian Church, he said the presbytery “would not ignore it.”² *Id.* at pp. 37.

5. On October 12, 2015, the Court signed orders denying both applications for temporary injunction, noting in the Judge’s Notes that the Court was denying the applications based on a “finding of no imminent danger.” The Judge’s Notes also stated that “any changes in that status, however, may be reconsidered by this Court.”

6. Subsequently, an Emergency Motion to Reconsider was filed by Intervenors seeking to stop a vote scheduled for November 1, 2014 on whether to continue its voluntary affiliation with the PCUSA. On October 22, 2015, the Court properly denied the Intervenors’ Emergency Motion and refused to stop the scheduled vote. Within twenty-four hours of the Court’s decision, Mission Presbytery voted to do what the Court would not allow, and appointed an Administrative Commission with, among other things, the following authorities:

Item 1: To take all necessary steps, if it becomes evident that the church is in “schism,” to discern the “true church” within the Presbyterian Church (U.S.A.) in this matter [G-4.0207];

Item 2 To have access to all church records [G-3.0107], including but not limited to: membership rolls, minutes of Session and all boards and committees, minutes of congregational meetings, financial records, the church website, membership directories, newsletters, and materials distributed for sessional or congregational information;

² Likewise, the Rev. Bill Poe, the Interim Stated Clerk for Mission Presbytery, testified he had heard Mr. Armendariz’ testimony that “anything that affects someone holding an office of control, affects their ability to control the property.” *Id.* at 54. He testified he was not aware of any intent by Mission Presbytery to restrict FPC from performing any of its ministries in the future. *Id.* at 56. He acknowledged hearing Mr. Armendariz’ testimony describing the responsibilities of the session over preparing and adopting the budget and determining the distribution of the congregation’s benevolences and conceded the session had that authority. *Id.* at 56-57.

Item 3 To have access to relevant records having to do with corporate officers, corporate articles, bylaws, and/or charters, including changes to any of these during the last 10 years [G-3.0108];

Item 5 If it becomes necessary, to assume original jurisdiction over the Session [G-3.0303e], with full authority and power to (a) provide for worship, sacraments, and continuing pastoral care of all members of the congregation, in the spirit of the Gospel of Christ; (b) to receive and act on requests from members to be transferred or deleted from the rolls; (c) to have authority to call necessary congregational meetings, and to obtain current and accurate membership lists from the church for this purpose.

Resolution of Mission Presbytery, October 23, 2015, attached hereto as Exhibit "B."

7. The newly vested Administrative Commission powers granted in the Resolution are clearly targeted to interfere with FPC's property rights. However, apparently mindful of the statement in the Judge's Notes regarding change of status, the Resolution goes on to state that "[t]he Administrative Commission shall not take any action to change the current right, title, or legal interest in any real or personal property that is presently held and/or used by the congregation. The Administrative Commission shall maintain the status quo with respect to such property." *See* Exhibit "B." But in truth, this so-called savings language is a blatant example of pretextualism, as it is **directly contradicted** by the specific powers granted by Mission Presbytery to its new Administrative Commission.

8. The specific powers as listed above already infringe on the property rights of FPC and change the existing status quo in the following ways:

Item 1 gives the Administrative Commission authority to declare the "true church" and specifically cites G-4.0207 of the PCUSA Book of Order. When one then reads G-4.0207 it states that the faction identified by the Mission Presbytery as the "true church" *is entitled to the property*;

Item 2 demands that the Mission Presbytery be given access to all church records and its website, and specifically cites G-3.0107, yet the text of G-3.0107 plainly

declares that, "minutes and all other official records of councils *are the property* in perpetuity of said councils or their legal successors." (In other words, records maintained by the session are the property of the session, records maintained by the presbytery are the property of the presbytery, records maintained by the synod are the property of the synod, etc.);

Item 3 demands Mission Presbytery access to various corporation records, specifically citing G-3.0108. Yet G-3.0108 says nothing at all about records of a civil corporation. It is restricted only to ecclesiastical records of a "council" (defined at G-3.0101 not as civil entities but as the ecclesiastical bodies of session, presbytery, synod, and the General Assembly. In any event, "*personal property*" encompasses "*records*", whether corporate or ecclesiastical;

Item 5 also disturbs the status quo of FPCSA's real property. It empowers the just-appointed administrative commission to assume original jurisdiction over the session, which is the governing body of FPCSA. According to G-3.0303e, which item 5 specifically cites, an administrative commission that assumes original jurisdiction over a session assumes "the full power of session." The responsibilities of the session are set forth at G-3.0201c, and include "*managing the physical property of the congregation...*". In other words, while a local church may be incorporated and title may be held in the name of the corporation, and while the board of directors of the civil corporation may have authority to hold and defend title, responsibility for the actual day-to-day management of the property is delegated to the session. Therefore, when an administrative commission assumes original jurisdiction to seize control of a church's local governing body it necessarily seizes the day-to-day management of that property as it is ordinarily used and controlled by the local church. Rather than seizing the assets directly, this power allows Mission Presbytery to remove the session and seize control of the assets. This is clearly a change in the status quo and contrary to the rulings of this Court.

9. Further, Mission Presbytery's appointment of the Administrative Commission was, by its own concession, for the purpose of combatting FPC's denomination affiliation vote set for November 1, 2015. Therefore, in context, the conditional phrase "if it becomes necessary" is evidently an allusion to whether or not FPC proceeds with the meeting and denomination affiliation vote as scheduled.

10. Because Mission Presbytery's actions and the powers given to the Administrative Commission present a material change in the status quo, and put FPC and its property in immediate danger, FPC requests that the Court reconsider its earlier ruling and grant FPC's Temporary Injunction.

III. ARGUMENT AND AUTHORITIES

11. A temporary injunction should be granted when the applicant shows that harm is imminent. *Operation Rescue-National v. Planned Parenthood*, 975 S.W.2d 546, 554 (Tex. 1998) (permanent injunction); *Bell v. Texas Workers Comp. Comm'n*, 102 S.W.3d 299, 302 (Tex. App.—Austin 2003, no pet.) (temporary injunction). Imminent harm is established by showing that the defendant will engage in the activity sought to be enjoined. *State v. Morales*, 869 S.W.2d 941, 946 (Tex. 1994).

12. After the action of Mission Presbytery on October 23, 2015, if it was not evident that Mission Presbytery intended to create an Administrative Commission with powers that encroach on FPC's existing property rights, it is clearly evident now. The right to membership information is a personal property right, as is control, access, and use of FPC's website, and obviously the Administrative Commission seeks to interfere with these rights. Further, Mission Presbytery does not have a right to all of FPC's financial records. The Administrative Commission intends to interfere with FPC's rights to its own financial information. Those records include bank account and other privileged information that would be dangerous in the hands of the Presbytery, particularly in light of the Louisville Papers. It is no secret why Mission Presbytery wants the information. Finally, the right to take "original jurisdiction" has

purportedly been given to the Administrative Commission and it—in conjunction with Mission Presbytery—is poised to take over the management and control of the church property.

13. FPC has shown that the activity FPC asked the Court to enjoin at the August hearing has actually now occurred and that the Administrative Commission claims powers—including the right to take “original jurisdiction” over FPC—that will infringe on FPC’s use and other ownership rights of FPC’s property. *See Morales*, 869 S.W.2d at 946. Therefore, the threat of irreparable harm is now undoubtedly imminent. Because the powers said to now be in the hands of the Administrative Commission can at any second damage FPC’s property, congregation, ministries, and charities, FPC asks the Court for the following:

- a. Reconsider its denial of Plaintiff’s Application for Temporary Injunction in light of Mission Presbytery’s creation of the Administrative Commission
- b. Grant Plaintiff’s Temporary Injunction (a copy of which is attached hereto as Exhibit “C”); and
- c. Take these actions by **1:00 p.m. on October 30, 2015**, after allowing Mission Presbytery time to respond to this Motion in writing, and so as to prevent imminent harm to FPC.

IV. PRAYER

WHEREFORE, Plaintiff First Presbyterian Church of San Antonio respectfully prays that the Court reconsider, and then grant FPC’s Motion for Temporary Injunction in light of the imminent harm caused by Presbytery’s creation of the Administrative Commission memorialized by Exhibit “B,” and for all further relief to which it is entitled.

Respectfully submitted,

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**ATTORNEYS FOR FIRST PRESBYTERIAN
CHURCH OF SAN ANTONIO**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Motion for Reconsideration of Plaintiff's Application for Temporary Injunction was served on counsel for Defendant and the Intervenors, Mr. José E. de la Fuente, LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, Telecopier No. 512/472-0532, via service through efile and EFP provider, and/or through some other permissible method, on the 28th day of October, 2015.

/s/ Kent C. Krause

Kent C. Krause

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REPORTER'S RECORD
TRIAL COURT CAUSE NO. 2015-CI-07858
VOLUME 1 OF 1

FIRST PRESBYTERIAN CHURCH * IN THE DISTRICT COURT
OF SAN ANTONIO *
*
V. * 131ST JUDICIAL DISTRICT
*
MISSION PRESBYTERY * BEXAR COUNTY, TEXAS

TESTIMONY OF RUBEN ARMENDARIZ & WILLIAM POE
AND
CLOSING ARGUMENTS

On the 27th day of August, 2015, the following proceedings came on to be heard before the Court, in the above-numbered and styled cause, and the following proceedings were had before THE HONORABLE JOHN D. GABRIEL, Judge Presiding, held in the 131st District Court, San Antonio, Bexar County, Texas.

Proceedings reported by computerized stenotype machine.

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131ST DISTRICT COURT
100 DOLOROSA, 4TH FLOOR
SAN ANTONIO, TX 78205
210/335-2521

LETITIA MONCIVAIS, CSR, RPR
131ST DISTRICT COURT 210/335-2521

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	DIRECT	CROSS
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* - * - *

1 RUBEN ARMENDARIZ,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. LUNCEFORD:

5 Q. Mr. Armendariz, my name is Lloyd Lunceford.

6 For the record, would you please state
7 your name?

8 A. Ruben Pacillas Armendariz.

9 Q. Would you spell your last name for the benefit
10 of the court reporter?

11 A. A-R-M-E-N-D-A-R-I-Z.

12 Q. And forgive me, is it Mr. Armendariz or
13 Reverend Armendariz?

14 A. I'm a ruling elder. Mr. Armendariz.

15 Q. By whom are you currently employed?

16 A. By Mission Presbytery.

17 Q. And what -- in what capacity?

18 A. I am the Associate Presbytery, head of staff.

19 Q. Is there any employee of Mission Presbytery who
20 is your superior, or are you the top guy right now?

21 A. I'm the top guy.

22 Q. Would you briefly describe the scope of your
23 job responsibilities?

24 A. It's fairly wide. I am responsible for the
25 operation of the Mission Presbytery and staff. I

1 A. G-3.0205. "In addition to those
2 responsibilities described in G-3.0113, the session
3 shall prepare and adopt a budget and determine the
4 distribution of the congregation's benevolences."

5 Q. Prior to the adoption of a church's budget by a
6 session, the session submits those budgets to the
7 presbytery for the presbytery's review and approval?

8 A. No.

9 Q. Okay. There's no qualification on the
10 authority of a session to adopt a budget and determine
11 distribution of the congregation's benevolences in this
12 provision, is there?

13 A. I'm sorry. Repeat that question.

14 Q. The session is given full authority in this
15 provision?

16 A. Yes.

17 Q. Okay. How would you define the term
18 benevolences?

19 A. It's a broad term of gifts that a congregation
20 may give.

21 Q. Would it include designated gifts to certain
22 missions?

23 A. Yes.

24 Q. To certain PC(USA) missions?

25 A. Yes.

1 Q. Well, in the Book of Order, the trust is said
2 to run in favor of the PC(USA). But isn't it a sign to
3 the presbytery, the responsibility, the front line
4 responsibility to implement that?

5 A. Yes, it is.

6 Q. Okay. Thank you.

7 Now, if you would read part E, which is
8 additional authority of the presbytery.

9 A. "Assume original jurisdiction in any situation
10 in which it determines that a session cannot exercise
11 its authority."

12 Q. I'll ask you to stop there for just a moment.
13 That uses a phrase "assume original jurisdiction."
14 That's sort of a presbyterian vernacular or a parlance
15 or vocabulary.

16 What does "assume original jurisdiction"
17 mean?

18 A. Assume original jurisdiction is a power that is
19 given to an administrative commission.

20 Q. So a presbytery can appoint an administrative
21 commission with authority to assume original
22 jurisdiction. And if that administrative commission
23 exercises that authority, it assumes authority that
24 previously had been a sessions?

25 A. It is, if it gives them that authority. But

1 there's a wide range of authorities of responsibility
2 that are given.

3 Q. Right. The scope --

4 A. It could be one of them, yes.

5 Q. Right. The scope of powers of administrative
6 commission is determined by the motion that creates it?

7 A. That's correct.

8 Q. Okay. And the motion that creates it could
9 give it the power to exercise original jurisdiction,
10 correct?

11 A. It could give it the power.

12 Q. Right. And if it's given that power and it
13 exercises it, it, in effect, becomes and replaces the
14 session, correct?

15 A. It depends if that's the power it's given.

16 Q. Right. This says, though, that it is within
17 the authority of a presbytery to do that, correct?

18 A. Yes, it is.

19 Q. Okay. And synods, in turn, review the work of
20 presbyteries, correct?

21 A. Yes.

22 Q. Okay. If you would look at G-3.0401.

23 Actually, that caption is clipped off the page. It's
24 actually on page 55. This pertains to functions of a
25 synod. Page 55.

1 in trust for the use and benefit of the Presbyterian
2 Church (U.S.A.).

3 Q. So if the synod concludes that a presbytery
4 isn't adequately implementing the trust clause, the
5 synod can take over the presbytery and do it for them?
6 That's what that's saying, isn't it?

7 A. That's the advisory that is made.

8 Q. And you had testified that Mission Presbytery
9 is the member presbytery of the Synod of the Sun,
10 correct?

11 A. Yes. That's correct.

12 Q. And are you aware that the Synod of the Sun has
13 previously taken over of presbytery within its
14 jurisdiction to do just that?

15 A. I am aware.

16 MR. LUNCEFORD: Your Honor, Exhibit 47 is
17 a published appellate decision in the reporter's system,
18 in which this same Synod of the Sun, of which Mission
19 Presbytery is a part, exercised original jurisdiction by
20 appointing an administrative commission to take over a
21 presbytery to -- in an attempt to exercise the
22 denominations claim over local church property when the
23 synod concluded that the presbytery wasn't being
24 sufficiently aggressive.

25 THE COURT: You said that's --

1 MR. DE LA FUENTE: Your Honor, I'm going
2 to object to the entire characterization of that. I
3 appreciate Mr. Lunceford's argument of the reasoning of
4 what happened with the synod, et cetera. So I object to
5 the characterization and the testimony on the record by
6 Mr. Lunceford.

7 I'm also going to object, again, to the
8 relevance of stuff that happened somewhere else. The
9 question is whether Mission Presbytery is an imminent
10 threat and has done anything in furtherance of any of
11 these boogie men that they're trying to put in front of
12 you. And I'm still waiting and I haven't heard
13 evidence, one, that Mission Presbytery intends to do
14 that in this case.

15 MR. LUNCEFORD: The Court, obviously, can
16 read the opinion for itself and determine what it says
17 and doesn't say.

18 THE COURT: Is that a Court opinion?

19 MR. LUNCEFORD: Yes. It's a Louisiana
20 First Circuit Court of Appeal decision, Exhibit 47.

21 MR. DE LA FUENTE: And I object to it
22 being entered into evidence.

23 MR. LUNCEFORD: I think it's already
24 been --

25 MR. WEST: No, it was not. That was one

1 A. Page 50.

2 Q. G-3.0205.

3 A. Yes.

4 Q. Okay. So with regard to, for example, the
5 assets, the intervenors are fighting about, the monies
6 they've contributed that have been made part at PC's
7 estate, the session has the ability to adopt a budget
8 and determine how those monies are going to be spent
9 right now, right?

10 A. That's what it says.

11 Q. As a session of a PC(USA) congregation?

12 A. Yes.

13 Q. And the presbytery can't step in and isn't just
14 stepping in and overseeing the budget and determining,
15 no, you should give a little more here and a little more
16 there, anything like that?

17 A. No.

18 Q. And the intervenors -- if the intervenors'
19 injunction is granted requiring FPC to continue
20 operating, using those assets as a body subject to the
21 PC(USA) Constitutions Rules and Regs, would this change
22 at all?

23 A. Not at all.

24 Q. With regard to the trust clause that
25 Mr. Lunceford asked you about, showed you Exhibit 19,

1 and obligations he's asserting that presbyteries have to
2 assert the trust clause. In this temporary injunction
3 proceeding today, hasn't Mission Presbytery consciously
4 chosen not to pursue an argument based on the trust
5 clause?

6 A. That's true.

7 Q. Exhibit 19, being the advisory opinion, is this
8 some legal requirement on Mission Presbytery, Inc.?

9 A. No.

10 Q. Is this an ecclesiastical opinion?

11 A. It is.

12 Q. Is it a -- is this one of the -- is this one of
13 the Constitution Rules or Regulations of the PC(USA)?

14 A. No, it's not.

15 Q. Are those found entirely within here?

16 A. Correct.

17 Q. The Book of Order?

18 A. Yes.

19 Q. I'm going to have you turn to -- I believe it's
20 G-3.102. I want you to read just the first line of
21 G-3.102, on page 42.

22 A. Yes. "Councils of the church have only
23 ecclesiastical jurisdiction for the purpose" --

24 Q. "Have only ecclesiastical jurisdiction"?

25 A. That's correct.

1 Q. Is that true?

2 A. That is true.

3 Q. Then I want to ask you about something
4 Mr. Lunceford asked you about, Section G-3.0303, the
5 Relations with Sessions, on page 52. And he actually
6 highlighted for you Section B. Can you read Section B
7 for us again, so we're familiar with what we're talking
8 about?

9 A. Yes. "Control the location of new
10 congregations and of congregations desiring to move as
11 well as to divide, dismiss, or dissolve congregations in
12 consultation with their members."

13 Q. All right. I want to ask about that last
14 phrase "in consultation with their members."

15 A. Yes.

16 Q. Right now, there's a temporary restraining order
17 in place on Mission Presbytery?

18 A. That is correct.

19 Q. Is Mission Presbytery fully able to act in
20 consultation with the members of FPC pursuant to that
21 temporary restraining order?

22 A. No, they're not.

23 Q. Mr. Armendariz, you've seen the temporary
24 restraining order and the list of things that they're
25 afraid of: Going and changing the locks and filing

1 liens and looking into Judge Gabriel's religious
2 background and who knows what else is in that list. All
3 those things you've seen listed. Has Mission Presbytery
4 done a single one of those things with regard to FPC?

5 A. None at all.

6 Q. Has Mission Presbytery developed or stated any
7 intent to do any one of those things regarding FPC?

8 A. No.

9 Q. Has Mission Presbytery been able to engage in
10 its ecclesiastical functions of relationship with the
11 members of FPC who are by virtue of that membership
12 members of Mission Presbytery?

13 A. No.

14 MR. DE LA FUENTE: Pass the witness, Your
15 Honor.

16 THE COURT: Mr. Luncéford?

17 REDIRECT EXAMINATION

18 QUESTIONS BY MR. LUNCEFORD:

19 Q. Mr. Armendariz, if the Synod of the Sun
20 instructed Mission Presbytery to form an administrative
21 commission to take original jurisdiction over the
22 session of First Presbyterian Church of San Antonio,
23 what would you do?

24 MR. DE LA FUENTE: I object. Calls for
25 speculation, Your Honor.

1 Q. (By Mr. Lunceford) What would your
2 responsibilities be on the Book of Order?

3 A. There would be no responsibility in the Book of
4 Order because it has not gone through due process.

5 Q. Well, if all process due had been granted and
6 at the end of the day, the synod, which has oversight
7 responsibility over the presbytery, told the presbytery
8 to replace the session of First Presbyterian Church of
9 San Antonio, wouldn't the presbytery be obliged to obey
10 the directive of the synod?

11 A. It would be only obliged to proceed with
12 process, but not to do so right immediately, no.

13 Q. Well, forget immediately. Suppose whatever the
14 process is, has occurred and there is no clear process
15 outlined, if the synod passed a resolution to instruct
16 the presbytery to form an administrative commission to
17 replace the session of First Presbyterian of
18 San Antonio, what would the presbytery's response to
19 that be?

20 MR. DE LA FUENTE: I object, Your Honor.
21 I'm going to object as calling for speculation. If he
22 wants to ask questions of what synod would do and what
23 synod would be able to require, he should ask those
24 questions of the synod, not of Mr. Armendariz.

25 MR. LUNCEFORD: He's the top dog in the

1 presbytery. He's qualified to say what the presbytery
2 would do.

3 THE COURT: I'll allow him to answer.
4 Overrule the objection.

5 MR. DE LA FUENTE: Your Honor, it's
6 entirely speculative.

7 A. I am the head of staff. We have a
8 constitutional officer who's a stated clerk. The stated
9 clerk is the polity person.

10 Q. (By Mr. Lunceford) Would you ignore the synod
11 or would you obey the synod?

12 MR. DE LA FUENTE: I object to the
13 question that it's argumentative and, again, calls for
14 speculation.

15 MR. LUNCEFORD: It's not argumentative at
16 all.

17 MR. DE LA FUENTE: They offered him two
18 options. It's argumentative, Your Honor.

19 THE COURT: I'll allow it. Overrule the
20 objection.

21 You may answer.

22 Q. (By Mr. Lunceford) Would you obey the synod or
23 would you ignore the synod?

24 A. I would obey the synod only as far as to
25 establish the process by which we would follow the

1 process, but it wouldn't be right away or we'll do it.

2 Q. If the process resulted in the synod telling
3 the presbytery to form an administrative commission to
4 replace the session of First Pres San Antonio, and at
5 the end of that process that was the result, would you
6 obey that -- would you ignore that result or would you
7 follow it?

8 MR. DE LA FUENTE: Your Honor, more
9 speculation.

10 THE COURT: Just so I understand your
11 question, you said -- and I know the witness answered
12 after a process, you're saying after due process?

13 Q. (By Mr. Lunceford) After whatever process
14 you're talking about has occurred, if the decision by
15 the synod remained and it directed the presbytery to
16 form an administrative commission to take control of the
17 session of First Pres San Antonio, would you ignore that
18 or would you follow it?

19 A. We would not ignore it, but we would try to
20 follow a process in order to see if we could fulfill
21 what the synod has instructed.

22 Q. And if you ignored it, does the synod have the
23 authority to form an administrative commission to take
24 over the presbytery and deal with what presbytery is
25 unwilling to do?

1 A. It has the authority.

2 Q. Okay. Thank you.

3 MR. LUNCEFORD: No further questions.

4 THE COURT: Mr. de la Fuente, anything
5 else?

6 RE-CROSS-EXAMINATION

7 QUESTIONS BY MR. DE LA FUENTE:

8 Q. Mr. Armendariz, Mission Presbytery has a
9 telephone, a mailbox, and a door, right?

10 A. That's correct.

11 Q. Has the synod come through any one of those
12 three things and told you to do anything with regard to
13 FPC?

14 A. Not at all.

15 MR. DE LA FUENTE: Pass the witness.

16 THE COURT: Mr. Lunceford, anything else?

17 MR. LUNCEFORD: Nothing further.

18 THE COURT: Mr. Armendariz, you may step
19 down.

20 * - * - * - *

21 WILLIAM CHRISTOPHER POE,

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. DE LA FUENTE:

25 Q. Mr. Poe, could you identify yourself for the

1 couldn't tell whether it violated it or not. When they
2 came forth with more specifics, we determined that it
3 wasn't pretextual, there was no violation of the TRO,
4 and we've not pursued it with this Court.

5 THE COURT: Okay, I guess
6 Mr. de la Fuente has a question on the wording of the
7 TRO.

8 I'm going to admit Exhibit 38 in evidence.
9 Just so there's a better understanding of what's
10 occurred.

11 (Defendant's Exhibit No. 38 admitted)

12 Q. (By Mr. De La Fuente) Mr. Poe, you just heard
13 Mr. Lunceford say, you know, the inquiry they were
14 asking about here was whether you followed the Book of
15 Order, right?

16 A. Yes.

17 Q. So whether you followed the Book of Order in an
18 ecclesiastical matter?

19 A. Yes, it is.

20 Q. They've asked for an injunction: Otherwise
21 interfering with the -- prohibiting Mission from
22 otherwise interfering with the normal duties and
23 responsibilities of the officers, ministers, and
24 employees of First Presbyterian Church of San Antonio,
25 or the FPC San Antonio foundation, or any designees

1 thereof in any way that pertains to the ownership,
2 control, use or disposition of the real and personal
3 property held by or in the name of First Presbyterian of
4 San Antonio.

5 Do you recall that?

6 A. Yes.

7 Q. You've heard testimony that anything that
8 affects someone holding an office of control, therefore
9 affects their ability to control the property, right?

10 A. Yes.

11 Q. So by this -- if one or more of an officer of
12 First Presbyterian Church violated the ordination vows,
13 could, under this injunction, Mission Presbytery do
14 anything about it?

15 A. I don't know, but I don't think so. I don't
16 think we would.

17 Q. And that would be for both a mundane violation
18 of ordination vows, right?

19 A. (Nods head).

20 Q. What about a profound violation? Same?

21 A. Same.

22 Q. What if there is an issue of -- and there is no
23 allegation of this by the way. But what if there is an
24 issue of, say, a significant malfeasance? Could you do
25 anything about it?

1 too many negatives in that. Are you -- I didn't
2 understand. Are you saying that there's something in
3 the injunction that would prohibit you from
4 communicating with the minority faction?

5 MR. DE LA FUENTE: I asked if it was in a
6 way that would interfere with -- that would pertain to
7 the ownership, control, use or disposition of the real
8 property.

9 Q. (By Mr. De La Fuente) And don't the members
10 have the authority to vote on such matters?

11 A. They do.

12 Q. Okay. FPC mentioned all kinds of ministries
13 that it participates in; the SAMM Shelter, and the
14 Community Assistance Ministry. Are those ministries
15 consistent with the Mission of PC(USA)?

16 A. Yes. So far as I know them.

17 Q. Are they allowed under the Constitution Rules
18 and Regulations of PC(USA)?

19 A. Yes.

20 Q. Are you aware of any intent by Mission
21 Presbytery to restrict FPC from performing any of those
22 ministries now or in the future?

23 A. No.

24 Q. In fact, Mr. Armendariz pointed to 3.0 -- was
25 asked about 3.0205, describing the responsibilities of

1 the session over preparing and adopting the budget and
2 determining the distribution of the congregation's
3 benevolences?

4 A. Yes.

5 Q. The session has that authority today?

6 A. Yes, it does.

7 Q. Okay. And if the session is required to
8 continue to treat the assets subject to the Constitution
9 Rules and Regulations of the PC(USA), meaning as a
10 member congregation of PC(USA) only -- we talked about
11 that earlier, right?

12 A. Uh-huh.

13 Q. Okay. Would that change anything they do under
14 3.0205?

15 A. No, it would not.

16 Q. Okay. Have you become aware of a desire of FPC
17 to leave the denomination?

18 A. Yes.

19 Q. How did you become aware of that desire?

20 A. We received a letter from Mr. West inviting us
21 to consider certain areas of negotiation.

22 Q. And did those areas of negotiation include
23 dismissing --

24 MR. LUNCEFORD: Your Honor, I'm going to
25 object to this line of questioning. He's asking about a

Exhibit "B"

At an Open Stated Meeting on October 23, 2015, at Presbyterian Pan American School in Kingsville, Texas, Mission Presbytery approved the following action by an overwhelming majority:

On October 12, 2015, the Session of First Presbyterian Church of San Antonio, Texas, called a congregational meeting to follow the morning service of worship on Sunday, November 1, 2015, for the following purposes:

1. "That First Presbyterian Church, San Antonio, terminate our voluntary affiliation with the Presbyterian Church (U.S.A.);
2. That First Presbyterian Church, San Antonio, petition a Covenant Order of Evangelical Presbyterians for voluntary affiliation, and so affiliate, if approved;
3. That First Presbyterian Church, San Antonio, reaffirm and ratify its previous Elders and Deacons, both active and those on rotation; the officer nominating committee; and the terms of call of all ordained staff wishing to remain employed by First Presbyterian Church, San Antonio."

The stated purposes of this congregational meeting are contrary to the provisions of the Constitution of the Presbyterian Church (U.S.A.) [*Book of Order, G-1.0503*].

The Session of First Presbyterian Church, San Antonio, has indicated its unwillingness to utilize the Gracious Separation Process approved by Mission Presbytery, or any form or revision of that process.

On October 13, 2015, Judge John Gabriel of the 131st District Court of Bexar County, State of Texas, denied the petition of First Presbyterian Church, San Antonio, for a Permanent Injunction against the Presbytery, and set aside the Temporary Restraining Order that had been granted to First Presbyterian Church, San Antonio, on May 12, 2015, enjoining the Presbytery from taking any ecclesiastical action against the church that could be construed by the court to interfere with the church's holding title to its property.

Mission Presbytery has a deep pastoral concern for this congregation and its members and ministers, and for the relationships that bind us together in Christ.

Therefore, be it resolved that Mission Presbytery, acting in Stated Meeting on October 23, 2015, does hereby declare that as the congregation of First Presbyterian Church, San Antonio, is poised to conduct a vote in congregational meeting that is in violation of the provisions of the Constitution of the Presbyterian Church (U.S.A.), Mission Presbytery does hereby authorize the appointment, by vote of the Presbytery, of an Administrative Commission [G-3.0109b] to intervene on its behalf with First Presbyterian Church, San Antonio, and its Session, with the following purposes and authority:

1. To take all necessary steps, if it becomes evident that the church is in "schism," to discern the "true church" within the Presbyterian Church (U.S.A.) in this matter [G-4.0207];
2. To have access to all church records [G-3.0107], including but not limited to: membership rolls, minutes of Session and all boards and committees, minutes of congregational meetings, financial records, the church website, membership directories, newsletters, and materials distributed for sessional or congregational information;
3. To have access to relevant records having to do with corporate officers, corporate articles, bylaws, and/or charters, including changes to any of these during the last 10 years [G-3.0108];

4. To determine, on behalf of presbytery, whether proceedings have been faithful to the mission of the whole Church, and that lawful injunctions of higher councils have been obeyed [G-3.0108a]; and, if necessary, to direct that corrective action be taken if matters are determined to be out of compliance with the Constitution [G-3.0108c];
5. If it becomes necessary, to assume original jurisdiction over the Session [G-3.0303e], with full authority and power to (a) provide for worship, sacraments, and continuing pastoral care of all members of the congregation, in the spirit of the Gospel of Christ; (b) to receive and act on requests from members to be transferred or deleted from the rolls; (c) to have authority to call necessary congregational meetings, and to obtain current and accurate membership lists from the church for this purpose;
6. To have authority to dissolve pastoral relationships, both temporary and installed, fully observing the due process requirements of the Constitution (G-2.0901ff.);
7. To have authority to negotiate terms for the dismissal of the congregation if it becomes evident that a sufficient majority of the active membership desires to be dismissed to another Reformed denomination with which the Presbyterian Church (U.S.A.) is in communion.

The Administrative Commission's authority is restricted in the following specific way: The Administrative Commission shall not take any action to change the current right, title, or legal interest in any real or personal property that is presently held and/or used by the congregation. The Administrative Commission shall maintain the status quo with respect to such property.

Later in the same Stated Meeting, on October 24, 2015, the Presbytery elected the following persons to the Administrative Commission, with the provision of appointing an additional Ruling Elder to the Commission after obtaining that person's expression of willingness to serve:

Teaching Elder Faith Jonggeward (San Pedro, San Antonio)
Teaching Elder Al Krummenacher (Austin Presbyterian Theological Seminary)
Teaching Elder Fred Morgan (Honorably Retired)
Teaching Elder Rob Mueller (Divine Redeemer, San Antonio)
Ruling Elder Phil Barnes (Westlake Hills, Austin)
Ruling Elder Judy Ferguson (First, Kerrville)
Ruling Elder Susan Trull (St. Andrew, San Antonio)

CAUSE NO. 2015-CI-07858

FIRST PRESBYTERIAN CHURCH OF	§	IN THE DISTRICT COURT
SAN ANTONIO,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
MISSION PRESBYTERY,	§	BEXAR COUNTY, TEXAS
	§	
Defendant.	§	
	§	
v.	§	
	§	
ED BONDURANT, et al.,	§	
	§	
Intervenors	§	73 RD JUDICIAL DISTRICT

ORDER GRANTING TEMPORARY INJUNCTION

After considering First Presbyterian Church of San Antonio’s (“FPC”) Verified Original Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary and Permanent Injunction, memorandum in support of temporary injunction, any further replies or responsive pleadings, discovery on file, the evidence presented, the temporary injunction hearing record and the arguments of counsel, the Court finds that FPC has established the probability of its right to the requested relief under the neutral principle factors set forth by the Texas Supreme Court in *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594 (Tex. 2013); *Windwood Presbyterian Church, Inc. v. Presbyterian Church (USA.)*, 438 S.W.3d. 597 (Tex. App.—San Antonio [1st Dist.], 2014, no pet.). The Court further finds that: (i) FPC is a Texas not-for-profit corporation; (ii) Its primary purpose is not monetary but spiritual and philanthropic; and (iii) FPC supports numerous ministries, missionaries, and charitable endeavors of wide-ranging civic and community impact, including but not limited to: the SAMM shelter (started at FPC), Community Assistance Ministry (CAM), the Dental Clinic, and Mission Road. Based upon

the property deeds of FPC, the terms of its corporate charter, the provisions of the denominational constitution, and the generally applicable provisions of Texas law, FPC has demonstrated the likelihood of its complete and exclusive ownership of any property held in its name. The Court also finds that Mission Presbytery has the means at its disposal and has indeed threatened imminent harm and irreparable injury, loss or damage to FPC in connection with FPC filing this action and that, if the Court does not issue the Temporary Injunction, FPC will be irreparably injured, because Presbytery will proceed to form an Administrative Commission or listening team to seize control of FPC property or its corporate operations or both. Such conduct by Mission Presbytery would render FPC without an adequate remedy at law in that an award of damages would not adequately compensate FPC for the resulting harm to its ability to conduct its various ministries. The Court therefore finds that absent a temporary injunction, the rights of FPC and its ministry will be irreparably injured, as seizure of FPC's property or corporate operations by Mission Presbytery will adversely impact donations and volunteer support by Plaintiff's congregants and that no amount of subsequent monetary reimbursement would be an adequate remedy for the irreparable damage that would be done to the mission and ministries of FPC. The Court also finds that FPC seeks protection of the ownership, possession and enjoyment of immoveable and personal property and that existing policy and prior action of Mission Presbytery demonstrates that FPC will suffer irreparable injury if injunctive relief is not granted and, thus, a monetary award is an insufficient remedy at law. Thus, the Court finds that the equities favor the issuance of this Temporary Injunction and that this Temporary Injunction is necessary to preserve the status quo between the parties pending a judgment on the merits of the underlying claims.

IT IS THEREFORE ORDERED that this Temporary Injunction be and is hereby issued against the Mission Presbytery of the Presbyterian Church (USA), its officers, agents, employees,

and counsel, and any persons or entities in active concert or participation with the Mission Presbytery, or acting by or through the Presbytery or on its behalf or in its stead (hereinafter "Presbytery"). This Temporary Injunction pertains to all Property held by or for First Presbyterian Church of San Antonio and its civil corporation (FPC), 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 FPC (collectively "Property"), which real Property is more particularly described in the Appendix attached hereto. Presbytery is enjoined from filing any documents in the mortgage and conveyance records of Bexar County to assert ownership, use or control, or rights to determine ownership, use or control, to any real Property titled in the name of FPC or to assert a trust on behalf of the Presbytery or other affiliated third party over real Property titled in the name of FPC or otherwise held by or for FPC the effect of which would be to place a cloud on the title of said real Property, or otherwise interfere with or disturb FPC's ownership, use, control, or disposition of FPC's Property, or interfere with FPC's right to determine the ownership, use, control, or disposition of Property held by or for FPC or held in the possession of, control of, or owned by or titled in the name of FPC.

IT IS FURTHER ORDERED that the Mission Presbytery of the Presbyterian Church (USA), and any persons or entities in active concert or participation with it, on its behalf or in its stead, whether acting directly or indirectly, are temporarily enjoined from taking any action that could affect the property rights of FPC, including but not limited to:

- (1) Filing any documents in the mortgage and conveyance records in Bexar County, or any County where FPC's property is located, the effect of which would be to place a cloud on the title of any property titled in the name of plaintiff;
- (2) Otherwise taking any action to claim or assert ownership, use, or control of the Personal and Real Property, or a right to determine ownership, use or control of the Personal and Real Property, in the possession or control of, owned by, titled in the name of or held for the benefit of First Presbyterian Church of San Antonio;

- (3) Asserting any rights to the property of First Presbyterian Church of San Antonio, including but not limited to seeking to change the locks of the church, initiating any disciplinary action against the ministers or members of the church that pertains to the ownership, control, use or disposition of FPC's Real and Personal Property, appointing a listening team, a visiting team, or an administrative commission with purported authority to assume "original jurisdiction" over FPC's local governance or control of local property possessed by or titled in the name of First Presbyterian Church of San Antonio or in the name of any foundation for First Presbyterian Church of San Antonio's benefit, or otherwise interfering, by dissolution or otherwise, in any way with the property-related rights and responsibilities of the employees of FPC, the governing body of FPC (the session), its congregation, or the governing body of its local church corporation FPC (the board of trustees);
- (4) Contacting any financial institution to assert a claim of interest in any account, fund, stock or other asset held in the name or for the benefit of First Presbyterian Church of San Antonio or First Presbyterian Church of San Antonio Foundation; or
- (5) Otherwise interfering with the normal duties and responsibilities of the officers, ministers, and employees of First Presbyterian Church of San Antonio or the First Presbyterian Church of San Antonio Foundation or any designees thereof in any way that pertains to the ownership, control, use or disposition of the Real and Personal Property held by, for or in the name of First Presbyterian of San Antonio.

IT IS FURTHER ORDERED that nothing in this Temporary Injunction shall preclude Presbytery from taking ecclesiastical action for non-pretexual ecclesiastical cause that is unrelated to this litigation or any property issue raised in, prompted by, related to, or affecting the ownership, control, use, or disposition of the Personal or Real Property held by, for or in the name of First Presbyterian Church of San Antonio.

IT IS FURTHER ORDERED that the trial on the merits is set for a jury trial on March 7, 2016.

IT IS FURTHER ORDERED that the bond in the amount of Five Hundred Dollars (\$500.00) previously filed in support of the Temporary Restraining Order shall remain in effect and serve as bond for this Temporary Injunction.

SIGNED this _____ day of _____ 2015, at ____ : ____ . m.

JUDGE PRESIDING