

Eden Prairie Presbyterian Church Administrative Commission 2
Report to the Presbytery of the Twin Cities Area
May 9, 2017

Madam Moderator, we're here tonight to bring the presbytery up to date on developments relating to the litigation with EPPC. With me in the chancel are the other members of the EPPC AC: ruling elders Sandra Hawley, Rochelle LeTourneau, Barbara Lutter and Dave Pekarna, teaching elder Tim Johnson, and our attorney, ruling elder Eric Caugh.

Introduction and Background

Since we were first elected, we've consistently viewed our work as defending and upholding the provisions of the *Book of Order*, as each one of us affirmed we would do when we were ordained. We've consistently seen this situation as much more than a "who owns the property" or an "us vs. them" issue. We believe it involves the very essence of our life together as Presbyterians—how we're connected; how we support each other; how we hold one another accountable; how we organize and govern ourselves, and how we decide our internal disagreements.

Tonight, we want to talk with you about the status of our work, considering the decision last week from the Minnesota Court of Appeals which affirmed the District Court's decision in our case. According to the Court of Appeals, the *Book of Order's* "Trust Clause [G-4.0203]" does not create a legally enforceable trust, and therefore EPPC is the "owner" of the real and personal property held by the congregation. For several reasons, this decision is deeply disappointing, and we're concerned about the impact it may have on our Minnesota congregations, our presbytery as a whole, our neighboring presbyteries in Minnesota, and the wider church.

This matter began in late 2012 when EPPC became one of six congregations that asked to enter the gracious separation process. The other five congregations honored their covenantal relationship with the denomination and followed that process through to the end, and each has been dismissed by the Presbytery. However, the situation with EPPC is a

story of the gracious separation policy gone awry, and we believe the decision of the Minnesota Court of Appeals potentially jeopardizes our presbytery's authority to make decisions in the future regarding congregations who seek to leave. Additionally, we believe the decision may also place in jeopardy our foundational understanding that the *Book of Order*, in its entirety, applies to all members of the PC(USA).

In the simplest terms, we're concerned that this decision, in effect, turns us into a congregational church, where each congregation has the freedom to pick and choose what it will and will not accept regarding church organization, government, and doctrine.

On December 18, 2015, Hennepin County District Court Judge Diane Bratvold heard oral arguments on cross motions for summary judgment. Both sides argued that there were no disputes of material facts and that the Court could resolve the dispute as a matter of law based on the briefs and the documents. Three months later, on March 17, 2016, Judge Bratvold's decision was filed, holding that the Trust Clause in the PC(USA) Constitution does not create a valid, enforceable trust, and determining that the presbytery and PC(USA) have no interest in the property held by EPPC.

Because we believed then (and still do) that the judge was wrong in her application of neutral principles of trust law instead of respecting and enforcing the presbytery's authority to resolve this matter internally, our AC authorized the legal team to file an appeal of the District Court decision, and the appeal was filed last summer.

We asked the Court of Appeals to reverse Judge Bratvold's decision. We argued that this is an intra-denominational dispute, and that the provisions of the *Book of Order* should govern its resolution. We argued that the US Constitution's establishment clause and the free exercise clause of the First Amendment give churches the right to organize and govern themselves, and that the church autonomy doctrine prevents the court from interfering in the presbytery's authority over EPPC. We argued that

the *Book of Order's* Trust Clause applies to EPPC, as it does to every PC(USA) congregation.

EPPC argued that this is “merely” a dispute over ownership of property, and that since the congregation amended its corporate documents to remove references to the Trust Clause, the Trust Clause does not apply.

The Court of Appeals decision affirming Judge Bratvold’s decision was filed on April 24, 2017, which brings us to where we are today.

Analysis and Next Steps

The Court of Appeals’ decision focused on the narrowest possible interpretation of the issues in this case, and concludes that the case is based solely in property law. This reveals that the Court does not accept our belief that property is an instrument for accomplishing the mission of Jesus Christ in the world, or that the way we own and hold property is a doctrinal matter.

This is a key point, because the Court knows it must abstain from involving itself in a church’s internal affairs, including disputes involving ecclesiastical matters. The Court rejected our position that this dispute is an ecclesiastical matter involving the application and interpretation of church polity and doctrine. Instead, it defined the dispute as one “merely” involving secular property rights.

Because of this narrow view, the Court applied “neutral principles of law” to decide the case, and concluded that EPPC’s property is not held in trust for the PC(USA). The Court ignored the decision of the presbytery regarding EPPC property because that decision, in the Court’s view, does not involve polity or church doctrine. Therefore, the Court concluded it is not interfering with an internal ecclesiastical matter.

While the decision is distressing because the Court sided with EPPC, it’s also deeply disturbing for us as we contemplate its impact on our future and life together.

So, after lengthy and prayerful deliberation, we decided unanimously to direct our attorney to prepare and file a Petition for Review of this decision by the Minnesota Supreme Court.

Considerations and Action

As we discussed the options and ultimately chose to appeal, we weighed the financial and human costs of appealing with the costs of doing nothing. From a resource standpoint, our work continues to demand much more of us as individual presbyters and staff than we ever dreamed it would, and has diverted us as a presbytery from our ministry and mission.

We also considered the financial costs. Our legal team has agreed to represent us in the appeal at a significant discount, along with a cap on the total cost. This is the same arrangement we had for the appeal to the Minnesota Court of Appeals and will provide substantial savings. Even so, the costs could still be significant if the Minnesota Supreme Court grants the Petition for Review.

As we considered these costs, we tried to balance them against what's at stake if we do nothing, which in our minds is the defense of our denomination's polity, theology and very essence, including honoring our ordination vows, showing respect for the saints who went before us, keeping faith with our Presbyterian heritage of connectional governance and mission, and upholding policies which we established—such as the Gracious Separation Policy—to honor our covenantal relationships.

If the Court of Appeals' ruling is not challenged and reversed by the Minnesota Supreme Court, any Minnesota congregation in our presbytery, as well as Minnesota congregations in neighboring presbyteries, may believe they have tacit permission to follow EPPC's lead, modify their corporate documents, and unilaterally depart the denomination without obtaining dismissal from the presbytery under the *Book of Order*.

Further, we're concerned that other provisions of the *Book of Order* may be ignored or violated, and that the courts will not respect or enforce a

subsequent decision by the presbytery to impose order or assume original jurisdiction of a congregation.

This AC is fully committed to fulfilling the charge you gave us, which was to “take all necessary steps to assert and protect the legal and ecclesiastical interests of the presbytery and the PC(USA)” in this case. We are united in our conclusion that pursuing this appeal is the next necessary step in fulfilling that charge to hold EPPC accountable for their breach of the polity to which they bound themselves for 160 years, and their failure to abide by their covenant to hold their property in trust for the use and benefit of the PC(USA).

So, we believe the costs of an appeal are outweighed by the costs which may be incurred in the future if we do not appeal, including harm to our presbytery, loss of membership, and the forfeiture of ministry opportunities and mission presence.

When we met with the PLT last week to inform them of our decision, someone asked the question, “If the Minnesota Supreme Court were to reverse the Appeals Court decision and Eden Prairie wanted to go back to the negotiating table, would we?” Our answer is unequivocal: absolutely! It’s what we’ve said and prayed and hoped for all along. Let us be clear: this litigation isn’t about the big presbytery picking a fight with a small congregation that didn’t do what we wanted; it’s not about payback; it’s not about property; and it’s not about money, as some have asserted.

It’s about who we are as Presbyterians: followers of Jesus Christ who covenant to live together and bear witness together and proclaim the love of Christ together within structures of mutual support, mutual love, and mutual accountability. It’s about standing up for the values we cherish, the faith we profess, and the promises we make—to God and to one another.

Madam Moderator, this concludes our report.

The Rev. David Liddle, chair
EPPC Administrative Commission