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No. 94419-9
(Consolidated with No. 94967-1)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, et al.,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ,

Appellants.

THE PRESBYTERY OF SEATTLE, et al.,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ, LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL, GEORGE NORRIS,
NATHAN ORONA, and KATHRYN OSTROM,

Appellants.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Jeff and Ellen Schulz, the former co-pastors of First Presbyterian Church of Seattle (“FPCS”), together with six former members of the Session (governing council) of FPCS, (collectively, “Appellants”) ask this Court to overturn its unanimous holding in *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367 (1971), and to approve actions that violated ecclesiastical law, Appellants’ ordination vows, and the articles and bylaws of FPCS. In their personal appeal, the Schulzes seek reversal of a declaratory judgment that their purported severance agreements with FPCS are invalid, inapplicable, and unenforceable. Both requests should be rejected and the trial court’s judgments affirmed.

II. STATEMENT OF THE ISSUES

1. When Washington courts address a dispute arising in a denomination of hierarchical polity such as the Presbyterian Church (U.S.A.) (the “Church”), and that dispute turns on a question of doctrine, ecclesiastical law, or church government, must they defer to the decision of the highest tribunal in the denomination to which that question has been carried?

2. If questions of church doctrine are central to an employment contract dispute between a church and its former co-pastors, does the U.S. Constitution require civil courts to accept the answers to

those ecclesiastical questions provided by the church's ecclesiastical authorities?

3. Did the trial court in this case rule correctly when it followed governing law and entered declaratory judgments in favor of respondents?

4. If a decision by the Washington Supreme Court has not been shown to be either incorrect or harmful, but rather sets forth a salutary rule for resolving intra-church disputes, should that decision be reaffirmed rather than overturned?

5. Where undisputed evidence shows that Appellants failed to follow the requirements of Washington corporate law in electing themselves as a separate board of trustees, adopting bylaw amendments, and giving notice of a meeting of the members, is there an alternate basis for affirming the trial court's decision?

6. Where undisputed evidence shows acknowledgement of a denominational trust interest by a local church congregation, should the court enforce that interest?

III. STATEMENT OF THE CASE

A. The Parties' Dispute

In 2012 the FPCS Session, together with Seattle Presbytery, began working actively towards redevelopment of the real property in downtown

Seattle on which First Presbyterian Church now sits. CP 593; *see* CP 616–17. Seattle Presbytery was involved because, as Jeff Schulz wrote in his September 2012 report to Presbytery, FPCS “owns its property in trust of the Presbytery, which must approve a purchase/sale agreement.” CP 616.

In April 2014, as work on a purchase and sale agreement and companion option agreement neared completion, *see* CP 1325–1409, Jeff Schulz wrote a letter in which he confirmed that, “because PC(USA) properties owned by local congregations are held in ‘trust’ of the denomination, Presbytery has the authority to deny dismissal with the property, or to approve dismissal with property with a negotiated financial settlement.” CP 593. That same month, Appellants secretly hired a Louisiana lawyer, Lloyd Lunceford, who specializes in helping local congregations leave their denominations with the property they occupy. CP 436, 442–44; CP 415, 1306.

When Seattle Presbytery found out about the Lunceford hiring, it demanded an explanation. Jeff Schulz responded that Mr. Lunceford had been hired to update FPCS’s corporate documents. CP 415, 421. To the contrary, as his engagement letter confirms, Mr. Lunceford was hired “to represent and advise [FPCS] in connection with church property matters.” CP 436, 442; *see* CP 448–49 (Lunceford’s bill for \$138,925.74). Within a week of Jeff Schulz’s false assurance to Seattle Presbytery, Mr. Lunceford

sent Appellants draft severance agreements that were intended to become operative once FPCS seceded from the Church. CP 415, 423–25, 427–30.

In July 2015 Seattle Presbytery began formally investigating allegations and concerns related to Appellants. CP 178. On October 27, 2015, as this investigation was accelerating, the Session voted to rewrite the bylaws of FPCS, to make themselves a board of trustees for the church corporation,¹ to transfer \$420,000 in church funds to Lane Powell PC, to approve severance agreements with the Schulzes,² and to call a meeting of the congregation and corporation on November 15 to vote on resolutions to “disaffiliate” from the Church,³ amend the articles of incorporation, and ratify the Session’s purported bylaw amendments. *See* CP 178–79, 187–89, 196, 200. Two elders resigned from the Session rather than support these actions. CP 607; *see* CP 2357–61, 2389–95. Appellants’ lawyers threatened to sue one for disclosing their plan. CP 2307; *see* CP 2363–65.

¹ The bylaws of FPCS, which had been adopted at a congregational meeting on May 8, 2005, eliminated the board of trustees and transferred trustee functions to the Session. CP 549, 553; *see* CP 554–58. The bylaws could be amended only by a 2/3 congregational vote and then only in conformance with the Articles of Incorporation and the Church constitution. CP 558. The Articles required trustees to be “chosen by the members of the church and of the congregation at an annual meeting called for that purpose Elections for trustees shall be at the said annual meeting.” CP 723.

² The severance agreements purported to guarantee the Schulzes two years of continued compensation if, but only if, their pastoral relationships were terminated by the Church after taking control of FPCS. CP 201–06.

³ “Disaffiliation” is a misnomer for attempted secession. “Disaffiliation” presumes that congregations are independent and choose the denominations with which they affiliate. Presbyterian congregations belong to a unitary Church and can be dismissed only by presbytery action. *See* discussion in Part III.B below.

On November 2, 2015, the Council of Seattle Presbytery voted to call a special meeting of the presbytery on November 17 for the purpose of appointing an administrative commission to act on the presbytery's behalf with respect to FPCS. CP 2307; *see* CP 2330–61. Seattle Presbytery advised Appellants that their actions were improper and that only the presbytery could dismiss a congregation. CP 189. But Appellants pressed forward.

On November 5, 2015, the Session mailed voting materials to members of the congregation. CP 132–33; *see* CP 141–71. The Session urged members to vote for “disaffiliation” in light of “fundamental differences concerning: Biblical and theological foundations, government, and property.” CP 568. The Session described the Church’s system of government as “hierarchical.” *Id.* According to the Session, the Church’s hierarchical control had frustrated FPCS’s efforts at autonomy; “other less hierarchical denominations are more flexible and entrepreneurial.” *Id.* Telling congregants that the Church “claims a trust interest in all church property,” Session said it was looking for “a denomination that has no trust interest in church property.” CP 569, 563.

The FPCS bylaws require that public notice of congregational meetings “be given in printed and verbal form on at least two successive Sundays prior to the meeting.” CP 555. The bylaws also require that a

printed notice of any meeting of the corporation “be included in the church bulletin, signed by the Clerk of the Session,” specifying the time, place, and purpose of the meeting, “which notice shall be audibly read at public worship to the assembled congregation on at least two successive Sundays prior to the date of such meeting.” *Id.* On November 8, 2015, FPCS held a joint worship service with two other Presbyterian churches and Emerald City Bible Fellowship. CP 622. The church bulletin contained no notice about the meetings called for November 15, and no announcement was made to the assembled congregation. *Id.*; *see* CP 625-26 (bulletin).

On November 10, 2015, the Schulzes and the president of the church corporation signed the Schulz severance agreements. CP 201–06. These agreements were not disclosed to either the congregation or Seattle Presbytery. CP 102–03, 133, 433. Seattle Presbytery first saw the signed severance agreements after they were produced in discovery in the summer of 2016. CP 102, 133.

On November 15, 2015, Appellants convened meetings of the congregation and the corporation at which their proposed resolutions were presented. CP 549, 635. Appellants counted proxy votes, even though both the FPCS bylaws and the Church constitution forbid proxy voting. *Id.*; *see* CP 555 (bylaws), 657 (G-1.0501). A majority of the 54 persons present plus those represented by proxy voted in favor. CP 609.

Two days later, on November 17, Seattle Presbytery formed the Administrative Commission for First Presbyterian Church of Seattle (the “AC”). CP 172–73. The eight members of the AC included a longtime member and ruling elder of FPCS, Bill Longbrake. CP 548–50. The AC was charged with conducting a thorough investigation of alleged misconduct by FPCS leaders and taking corrective action. CP 178–80. In the course of its investigation, the AC heard from 50 witnesses in addition to considering substantial documentary evidence. CP 173; *see* CP 176–94.

In December 2015 the Schulzes sent a letter to Seattle Presbytery renouncing the jurisdiction of the Church. CP 102.⁴ Under Church law, that action terminated their pastorates and left the pulpit of FPCS vacant. CP 102, 104, 433–34. The Schulzes’ names were stricken from the roll of Presbyterian teaching elders in January 2016. CP 102.

On February 16, 2016, the AC issued its report. CP 176–94 & 596–614; Appendix A-1–A-19. The AC found that the Schulzes had engaged in serious misconduct involving intimidation, manipulation, and duplicity. CP 185. The AC found substantial evidence of financial

⁴ “[W]e, Jeff Schulz and Ellen Schulz, renounce jurisdiction of the Presbyterian Church (USA), per G-2.0509 and G-2.0407 of the Book of Order.” CP 109. The provisions of the *Book of Order* cited in the Schulzes’ letter can be found at CP 667–68 and CP 663. The AC addressed G-2.0509 at CP 184 and CP 197–98. *See also* CP 433–34.

irregularities and altered records. CP 184–85. The AC also found that Appellants had violated their ordination vows. CP 190.⁵

The AC determined that there was a schism in FPCS and that the members who opposed the actions of Appellants were the true church. CP 191; *see* CP 550. The AC determined that the Session was not capable of exercising its authority. CP 191. As the *Book of Order* provides in such circumstances, the AC assumed original jurisdiction and displaced the Session as the governing authority of FPCS. *Id.* The AC also filled the pulpit with a temporary pastor, Heidi Husted Armstrong. CP 192, 619–20.

Appellants did not appeal the AC’s decision. Rather, they refused to recognize the AC’s actions or comply with its directions. CP 628. This litigation followed. *See* CP 479–520. On May 27, 2016, the superior court entered a declaratory judgment upholding the decisions of the AC. CP 2801–07; *see* RP 5-45 (5/27/16). The court also denied a motion by the Schulzes and former Session members for a preliminary injunction, entering detailed findings that supported that denial. CP 2789–2800; *see* RP 46-52 (5/27/16).⁶

⁵ For example: “Will you be governed by our church’s polity, and will you abide by its discipline?” CP 190.

⁶ In a footnote, and in violation RAP 10.3(g), Appellants assign error to the trial court’s unappealed order and 12 of its 26 findings. Op. Br. (PI) at 3 n.1. Appellants do not try to explain how any of the court’s findings are erroneous. *See In re Disciplinary Proceeding Against Behrman*, 165 Wn.2d 414, 422 (2008).

Appellants sought direct discretionary review of the trial court's orders, but Commissioner Pierce denied their motion on October 7, 2016. Appellants also sought an emergency stay of the superior court's decision. CP 439. Deputy Commissioner Burton denied their motion on July 26, 2016. Only then did Appellants relinquish the church premises to the AC acting as the Session of FPCS, at which point the true FPCS congregation was restored to possession. *See* CP 72, 106.

In August 2016 the AC gained access to FPCS's records, including the Lunceford engagement letter, and took over church payroll. *See* CP 106, 436–40. After confirming that the Schulzes intended to assert rights under their purported severance agreements, CP 72–73 & 173, the AC issued a supplemental report, CP 196–206 (Appendix A-20–A-30). The AC found that the purported severance agreements seek to alter the terms of call for the Schulzes and that, under Church law, a change in the terms of call is not valid unless it is approved by both the congregation and the presbytery. Neither approval was obtained. CP 196–97; *see* CP 103–04, 111–21, 133, 432–33. The AC also found that the purported severance agreements do not apply if the Schulzes decide “to end the pastoral relationship” and that, under Church law, the Schulzes voluntarily ended their pastoral relationships when they renounced the jurisdiction of the Church. CP 197–98; *see* CP 104, 125, 433–34.

The purported severance agreements require the Schulzes to continue to serve FPCS “in good faith and good standing.” The AC found that, under Church law, the Schulzes ceased to be in good standing no later than their renunciation of jurisdiction in December 2015. CP 198; *see* CP 434. The purported severance agreements establish a “good cause” standard for termination that, the AC found, is inconsistent with Church law but nevertheless was satisfied by the Schulzes’ misconduct. CP 198; *see* CP 104–07, 127, 129–30, 437–38.⁷

Seattle Presbytery and FPCS sought a declaratory judgment confirming these findings. CP 1–12. In March 2017 the superior court granted declaratory relief, holding the purported severance agreements to be invalid, inapplicable, and unenforceable. CP 457–62. The court also dismissed the Schulzes’ counterclaims. *Id.*; CP 475. The Schulzes filed a notice of appeal to the Washington Supreme Court. CP 463–64.

In August 2017 the parties resolved all claims remaining in the trial court, and that court entered final judgment. CP 3392–98. Appellants filed a notice of appeal to the Washington Supreme Court. CP 3399. Their

⁷ A forensic accountant determined that the Schulzes took part of their compensation “under the table”—i.e., outside the church payroll system—in order to qualify for financial aid for a college-aged son. In failing to declare income in the year when it was earned, the Schulzes violated the Internal Revenue Code. CP 207–301, 450–56. *See also* CP 437–38 (non-payroll checks were Schulz “salary”; no indication of loan or advance).

appeal was consolidated with the Schulzes' already-pending appeal, and the cases were placed on a common briefing schedule.

B. The Polity of the Church

The Church is a historic Protestant denomination. CP 630–31. A foundational principle is that all Church congregations, “wherever they are . . . constitute one church.” CP 631, 650. Congregations are governed by a hierarchy of councils that include, in ascending order, the session (pastors and elders of the local congregation), the presbytery (composed of all pastors and at least one elder from each congregation within a district), the synod (composed of representative pastors and elders from the presbyteries within a region), and the general assembly (composed of delegations of pastors and elders from the presbyteries). CP 631, 2404–05.

The Church, its congregations, and its councils are governed by the Church constitution, Part II of which is called *The Book of Order*. CP 630; see CP 640–705. *The Book of Order* has detailed provisions that describe the councils and relationships among them, the roles and responsibilities of elders and deacons, property interests, and the resolution of disputes within the Church. CP 630–33, 1168–75, 2402–07. Under the *Book of Order*, the relationship between a congregation and the Church cannot be severed by the congregation. CP 632. On the contrary, that relationship “can be severed only by constitutional action on the part of the

presbytery.” CP 633, 696.⁸

The *Book of Order* requires each council of the Church to form and maintain a nonprofit corporation where that is permitted by civil law. CP 1168–69, 2404. Such corporations have the power to receive, hold, encumber, manage, and transfer property for and at the direction of the council. CP 1169; *see* CP 695.⁹ At the congregational level, corporations must act “for the congregation.” *Id.* Their actions are “all subject to the authority of the session and under the provisions of the Constitution of the [Church]. The powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.” *Id.*

C. History of First Presbyterian Church of Seattle and the Trust Clause

First Presbyterian Church of Seattle was organized on December 12, 1869, at the home of Rev. George Whitworth. CP 1039. The governing presbytery at that time was the Presbytery of Oregon. *Id.* The 1871 General Assembly statistics show FPCS as having seven members. *Id.* In 1873 the first elders of FPCS were elected and ordained, CP 1040, and in

⁸ The presbytery is empowered to determine which of two factions within a congregation is the true church and therefore entitled to the property. CP 696–97. “This determination does not depend upon which faction received the majority vote with the congregation at the time of the schism.” CP 697.

⁹ Appellants have sought to sow confusion by conflating the Church—an unincorporated association of Reformed Christians—with a nonprofit corporation by the same name (“A Corp.”) that was created by the General Assembly to carry out secular activities of the Presbyterian Mission Agency and Office of the General Assembly. *E.g.*, Op. Br. (PI) at 16. The Court should not be deceived. *See* CP 1168–70, 2404–07, 2614–17, 3209–11.

1874 articles of incorporation were filed with the territorial government, CP 720. Those articles state that the objects and purposes of FPCS are “to promote the worship of Almighty God and the belief in and extension of the Christian Religion, under the form of government and discipline of the ‘Presbyterian Church in the United States of America.’” CP 634, 717.¹⁰

FPCS is the oldest congregation in Seattle Presbytery, and it has a long and distinguished history. CP 633. Over the decades it helped to establish many other congregations in the Seattle area. *Id.* The historic records of FPCS reflect faithful adherence to Presbyterian principles and the church’s bylaws. *See* CP 2533–35, 2540–69.

In 1981, after the U.S. Supreme Court’s decision in *Jones v. Wolf*, 443 U.S. 595 (1979), the United Presbyterian Church in the United States of America adopted an express trust provision as part of the *Book of Order*. *See* CP 1171–73, 1178–84. That provision was carried over when, in 1984, the United Presbyterian Church in the United States of America joined with the Presbyterian Church in the United States (the southern branch) to form the Presbyterian Church (U.S.A.). CP 632, 1173.

Despite having voiced opposition to the express trust provision when it was first proposed, FPCS restated its articles of incorporation in

¹⁰ The Presbyterian Church in the United States of America, the historical predecessor of the Church, was formed in 1788. CP 631.

1985 to provide that the “objects and purposes” of FPCS are “to promote the worship of Almighty God and the belief in the extension of the Christian religion under the Form of Government and discipline of ‘The Presbyterian Church (U.S.A.).’” CP 634, 723–24.¹¹ The audited financial statements of FPCS thereafter contained a note to the following effect:

By Constitution, all church land and buildings are owned by or held in trust for the Presbyterian Church USA. Since [FPCS] retains stewardship responsibility, it has recorded such assets in its financial statements. The property is not subject to mortgage except by consent of the Presbytery of Seattle, a jurisdiction of the Presbyterian Church USA.

CP 2612–13, 2618–51.¹²

IV. ARGUMENT

A. As Washington courts recognize, churches that form corporations are still religious institutions.

Appellants’ case centers upon the fundamental misconception that church corporations have a completely separate identity from the religious bodies that they represent. As congregations individually incorporate, Appellants argue that their corporate form creates a purely temporal entity that is unaccountable to anyone else. Appellants also assert that religious

¹¹ In September 1984 the Session discussed the advantages and disadvantages of being related to the Church. One of the “disadvantages” was “[h]ierarchical control.” CP 1174.

¹² This language was omitted from the financial statements for 2014 that Appellants produced in late 2015. CP 2612–13. In May 2016 Appellants submitted a declaration in which their witness stated: “None of First Presbyterian’s current or historical financial statements indicate any obligation to the PCUSA or otherwise identify any trust interest in favor of the PCUSA.” CP 2158. That statement was false. CP 2611–12.

disputes are secular and that the right of members to leave a church entails a right to take church property. Washington courts reject such sophistry.

1. Church corporations are created to serve churches, not the other way around.

Congregations are not subservient to their corporate expressions. The *Book of Order* requires trustees to obtain congregational approval before buying, selling, and mortgaging real property. CP 695. Corporate powers are “all subject to the authority of the session and under the provisions of the Constitution of the [Church].” *Id.* And again, the “powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.” *Id.*

The Washington Supreme Court has recognized this ordering:

There [in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871)], legal title was vested in the trustees of the local church; here it is vested in a corporation having trustees, but in both cases, under the church constitution, the right to control the use of the property is vested not in the trustees but in the Session, the Session in turn being subject to control by the Presbytery[.]

Rohrbaugh, 79 Wn.2d at 370. The Court also pointed out that, if title to property is held by the corporation and the members of the corporation are also the members of the congregation, “under the constitution of the church, only the loyal members of the church could be regarded as members of the congregation.” *Id.* at 372. *See* CP 550, 2616-17.

2. Disputes over church property and personnel arise from disputes over religious doctrine and practice.

Although Appellants assert that their claims in this case are “purely secular,” that assertion is belied by what they told the congregation of FPCS in urging a vote to secede. Appellants said that they “were seeking to join a . . . denomination that more closely aligns with our mission, vision, and values.” CP 562. They complained that “[d]ebates over ordination standards brought prolonged distraction” and that the Church was “losing its Biblical identity.” *Id.*; *see also* CP 2333, 2357. The AC determined that FPCS was in schism and the members of the congregation who opposed Appellants’ actions constitute the true church. CP 611.

Religious divisions underlying disputes such as this are the norm, not the exception. Disputes that affect church property arise “almost invariably out of disagreements regarding doctrine and practice.” *Jones v. Wolf*, 443 U.S. at 616 (Powell, J., dissenting). Disagreements affecting control of church property are usually over “which faction should have control of the local church,” *id.* at 614, an inherently ecclesiastical determination. *See Protestant Episcopal Church in Diocese of S.C. v. The Episcopal Church*, 806 S.E.2d 82, 91-92 (S.C. 2017) (lead opinion) (property dispute within religious denomination involved “questions of religious law or doctrine masquerading as a dispute over church property

and corporate control”); *Heartland Presbytery v. Presbyterian Church of Stanley, Inc.*, 390 P.3d 581, 592 (Kan. Ct. App. 2017) (“rarely—if ever—do disputes over the ownership or control of church property arise in a secular vacuum.”).

The Court in *Rohrbaugh* recognized that doctrinal disputes give rise to property disputes. In *Watson*, the doctrinal question involved slavery, 80 U.S. at 684; in *Rohrbaugh* itself, it involved changes made to the Church constitution in 1967. *See* 79 Wn.2d at 368. The Court held that

where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive.

Id. at 373.

3. Church members may leave, but they are not entitled to take church property.

Appellants assert that they have a First Amendment right to secede from the Church and take its property. They are wrong. Church members are always free to leave; they may also start another church, including a congregational church, if that is what they want. What they may not do is pretend that a congregational vote gives them the power to leave with the property and name of First Presbyterian Church of Seattle.

The Court in *Rohrbaugh* could not have been clearer about this:

The appellants have withdrawn from [the Church], but according to the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the Session who withdrew forfeited their right to govern the affairs of the church when they did so, . . . and consequently the appellants have no right to control the use of the property.

79 Wn.2d at 373.

B. The trial court followed governing law in entering declaratory judgments as well as other orders challenged by Appellants.

1. The trial court followed *Rohrbaugh*.

Under *Rohrbaugh*, a Presbyterian congregation may not vote to leave the denomination while retaining church property, unless the presbytery approves. When it granted partial summary judgment in May 2016, the trial court applied *Rohrbaugh*'s holding in circumstances that are virtually identical, right down to the identity of the plaintiff.

Appellants argue that *Rohrbaugh* does not apply to a denomination from which a local congregation has seceded. Op. Br. (PI) at 43. But Appellants' purported secession did not change the character of the Church or amend the *Book of Order*. An act of defiance does not succeed simply by being defiant. Appellants' argument assumes what it must prove—namely, that a local congregation has the power to unilaterally secede despite a Church constitution that says the opposite.

Appellants also contend that the outcome in *Rohrbaugh* would have been different, had the dissident group thumbed its nose at Seattle Presbytery and acted before an Administrative Commission could be appointed. Nothing in the Court’s decision supports this contention, and it makes no sense. The holding in *Rohrbaugh* applies with equal force here.

2. The hierarchical structure of the Church is indisputable.

The *Book of Order*, which governs all Presbyterian congregations and councils, CP 3177, describes the basic principles of Presbyterian government as follows:

F-3.0201 *One Church*

The particular congregations of the Presbyterian Church (U.S.A.) wherever they are, taken collectively, constitute one church

F-3.0202 *Governed by Presbyters*

This church shall be governed by presbyters, that is, ruling elders and teaching elders. . . .

F.3.0203 *Gathered in Councils*

These presbyters shall come together in councils in regular gradation. These councils are sessions, presbyteries, synods, and the General Assembly. . . . The larger part of the church, or a representation thereof, shall govern the smaller.

F-3.0204 *Seek and Represent the Will of Christ*

Presbyters are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ.

* * *

F-3.0206 *Review and Control*

A higher council shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal.

CP 650-51.

The General Assembly and its Permanent Judicial Commission provide Authoritative Interpretations of *The Book of Order*. CP 2404. The Church has empowered the Associate and Assistant Stated Clerks of the General Assembly to give guidance on Authoritative Interpretations, and the declaration submitted by Assistant Stated Clerk Laurie Griffith provides such guidance here. *See* CP 2402-26. Ms. Griffith explains that the “congregations within the Church are governed by a hierarchy of councils,” citing the provisions of the Church constitution quoted above. CP 2404–05.

Decisions of Washington courts and the U.S. Supreme Court agree that Presbyterian polity is hierarchical. In *Rohrbaugh*, the Court noted that the church at issue in *Watson* “was Presbyterian, having precisely the same hierarchical structure as that involved in this action.” 79 Wn.2d at 370. In *Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 667

(2012), the Court held that “the church at issue is part of a hierarchical religious organization and its highest ecclesiastical tribunal’s decisions on issues of discipline, faith, and ecclesiastical law must be given deference by a civil court.”¹³ Judge Roberts did not err when she reached the same conclusion.

Appellants rely upon a declaration by Parker Williamson to dispute the Church constitution, authoritative interpretations of that constitution (*see* CP 2402–05), and scores of reported appellate decisions. Op. Br. (PI) at 45. Appellants’ reliance is misplaced. Mr. Williamson’s declaration violates CR 56(e) because it is not made on personal knowledge and he is not a competent witness. *See* CP 2570–72, 3182–84. Conclusory statements of fact and legal conclusions are insufficient to raise a genuine issue of material fact. *Johnson v. Recreational Equip., Inc.*, 159 Wn. App. 939, 954 (2011). And individual teaching elders are not competent to

¹³ *Accord Hoffman v. Tieton View Cmty. M.E. Church*, 33 Wn.2d 716, 729 (1949) (organization of the Methodist Church “is Presbyterian in form and not Congregational. As a result, . . . local churches are only parts of the larger body, and no local Methodist Church may convert its property to a use not authorized by the superior church government.”); *Elvig v. Ackles*, 123 Wn. App. 491, 497 n.15 (2004) (“It is undisputed that the Presbyterian Church is a hierarchically-structured church.”); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 441-42 (1969) (“Petitioner . . . is an association of local Presbyterian churches governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body.”); *Jones v. Wolf*, 443 U.S. at 597-98 (“The [Presbyterian Church in the United States] has a generally hierarchical or connectional form of government, as contrasted with a congregational form.”).

interpret the Church constitution. CP 1174. *See* CP 2405 (Laurie Griffith states that Parker Williamson “is wrong” in contending that the Church is not hierarchical for civil matters, because “Chapter 4 of the *Book of Order* unequivocally establishes that civil matters impacting church property proceed through the polity as set forth within the other parts of the *Book of Order*.”).

More fundamentally, courts may not credit interpretations of church constitutions offered by dissidents and self-appointed experts. Rather, they must accept the interpretations given by governing church authorities. It is violation of the U.S. Constitution for a court to substitute its own interpretation of a denomination’s constitution “for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation,” *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721 (1976), yet that is what Appellants asked the trial court to do. *Cf. Lamont Cmty. Church v. Lamont Christian Reformed Church*, 777 N.W.2d 15, 24 (Mich. Ct. App. 2009) (criticizing trial court there for inquiring into matters of church polity and doctrine).

Appellants rely on *Southside Tabernacle v. Pentacostal Church of God*, 32 Wn. App. 814 (1982), for the proposition that whether a church is hierarchical or not is a question of fact. But as the court in that case noted, summary judgment is appropriate “if the trial court can say as a matter of

law” that a church is hierarchical. *Id.* at 822. In *Southside Tabernacle*, the court cited constitutional language that the Pentecostal Church of God has “a representative and congregational form of government,” as well as bylaws forbidding “interference with the sovereignty of any local church.” *Id.* at 823–24. No such language can be found in the constitution of the Presbyterian Church (U.S.A.). To the contrary, the *Book of Order* directs that, where a local church has ceased to use its property as a congregation in the Church, that property must be held and used as determined by the presbytery. CP 2405.

Even if there were a cognizable dispute about the extent to which the Church is hierarchical as an abstract matter, the only questions material to declaratory relief before Judge Roberts were (a) whether there exists in the Church a body above the congregational level that is empowered to speak to issues of church governance; (b) whether its judgments are binding absent an appeal to a yet higher council; and (c) whether that body has spoken. *See id.* at 818 (court must decide “whether or not the local church is subject to some higher governing authority.”); *Choi v. Sung*, 154 Wn. App. 303, 315-17 (2010) (local church bound by rules of hierarchical denomination even if it has acted congregationally).

The answer to these questions is plainly yes. The Church constitution empowers Seattle Presbytery, through its AC, to review the

performance of the Session; the AC's judgments are binding as a matter of Church law; and it has ruled. *See* CP 2407. The trial court correctly rejected Appellants' attempt to create a genuine issue of material fact.

3. The trial court appropriately exercised its discretion in denying a continuance.

In addition to opposing plaintiffs' motion for summary judgment on the merits, Appellants moved for a continuance under CR 56(f). Plaintiffs opposed Appellants' motion with a detailed memorandum and supporting declaration in which they pointed out, among other things:

- Appellants had been on notice for more than six months about the issues raised by plaintiffs' motion. CP 2586–87; *see* CP 2593–96, 2315–17 (11/3/15 and 11/5/15 letters to Appellants' counsel).
- Plaintiffs had responded fully to Appellants' 256 discovery requests, including those related to whether the Church is hierarchical. CP 2587–89, 2591.
- The further discovery that Appellants claimed to need was cumulative, immaterial, or nonexistent. CP 2574–85.

Appellants filed no reply. At the hearing on May 27, Judge Roberts said that she would like to start by hearing a reply, "because the response set out a number of arguments that were fairly persuasive that I'd like to hear a reply to." RP 3-4 (5/27/16). Appellants' counsel declined Judge Roberts's request, instead suggesting that the motion for summary judgment be argued first. RP 4-5 (5/27/16). When Appellants finally addressed their own motion for continuance, Judge Roberts asked how

long a continuance they wanted. “Three months” was the response. RP 36 (5/27/16). Judge Roberts asked why that much time was needed and what Appellants hoped to find. With respect to the hierarchy issue, she asked: “What do you think you don’t have that you have reason to think exists along that line?” RP 39-40 (5/27/16). Appellants’ counsel answered:

I would imagine that there are e-mails, that there are internal documents within the offices in Kentucky where the denomination headquarters are that relate those issues, that relate to the trust formation issues . . . that also relate to this model provision of the articles. . . . And, you know, I mean, there are other issues. But I think they’re in the record what our ask is in terms of 56(f).

RP 40 (5/27/16). Plaintiffs’ counsel responded:

Your Honor, on the 56(f) point, you were right to ask the question what it is that the defendants claim they need. On the issue of whether it’s hierarchical or not, they have the Book of Order. They have the declaration of Laurie Griffith and its exhibits. They have three declarations by Scott Lumsden and the exhibits to those declarations. They have all of the minutes for Seattle Presbytery from 1979. They either have or have access to all of the minutes of their own Church since 1874. We’ve looked at those minutes.

We’ve also given them citations to numerous court decisions on that topic. Last, but not least, we have produced Defendants’ own communications with the congregation last November, in which they say that the congregation should vote to disaffiliate because the PCUSA is hierarchical and has limited their freedom of action.

Further discovery on that subject can only be cumulative. It cannot create a genuine issue of material fact. The issue is determined under the Constitution of this country by examining the Constitution of the Church.

RP 43 (5/27/16).

In her order denying a continuance, Judge Roberts stated:

[D]efendants have had sufficient time and notice to prepare their opposition to plaintiffs' motion for partial summary judgment. Defendants have had ample opportunity to assemble declarations from experts, and they have done so. Upon inquiry from the court as to what specific evidence the defendants expected to discover, defense counsel made only vague references to internal correspondence he suspected existed. Even so, the anticipated evidence would not add anything to the defendants' already thorough response to the plaintiffs' motion for summary judgment. Evidence of the sort alluded to by defense counsel would be cumulative at best.

Defendants fail to show that additional discovery would support further their assertion that there exists a genuine issue of material fact as to whether the Presbyterian Church (U.S.A.) is hierarchical.

CP 2788.¹⁴ The trial court did not abuse its discretion in denying a continuance.

4. The trial court properly dismissed Appellants' CPA claim.

Appellants' counsel, purporting to represent FPCS, filed a cross-claim against Seattle Presbytery, Robert Wallace, and William Longbrake for violating Washington's Consumer Protection Act. *See* CP 750–64.

¹⁴ *Cf. Briggs v. Nova Servs.*, 135 Wn. App. 955, 961-62 (2006) (no abuse of discretion in denying continuance to plaintiffs who wanted to depose board of directors of nonprofit corporation, as the "record does not show what specific evidence the [plaintiffs] would be able to locate or how the evidence would raise a material issue of fact."), *aff'd*, 166 Wn.2d 794 (2009); *Lake Chelan Shores Homeowners' Ass'n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 183-84 (2013) (no abuse of discretion in denying continuance where party sought information not reasonably calculated to lead to admissible evidence).

Seattle Presbytery and Messrs. Wallace and Longbrake were alleged to have engaged in unfair or deceptive acts or practices by

trying to force First Presbyterian to remain affiliated with PCUSA, acting as First Presbyterian without authorization and taking action to harm First Presbyterian, making various false allegations against First Presbyterian and its leaders to the public and to church members, and falsely claiming an interest in the First Presbyterian Property.

CP 760.

On July 15, 2016, Seattle Presbytery, Robert Wallace, and William Longbrake moved for partial summary judgment dismissing Appellants' CPA claim. Among other reasons, they noted that Appellants could not establish the elements of a prima facie case, which include an unfair or deceptive act occurring in trade or commerce. CP 3221–30. Appellants in response admitted that they lacked standing to assert a CPA claim; they did not address the merits of that claim. CP 3238–39. The court granted summary judgment, ruling that Appellants lacked standing and that they “cannot establish the prima facie elements” of a CPA claim. CP 3284.

Although Appellants ask for reversal of the trial court's decision, they fail to support their argument with legal authority. This violates RAP 10.3(a)(6), and the Court should not consider their claim of error. *See, e.g., In re Disciplinary Proceeding Against Behrman*, 165 Wn.2d 414, 422 (2008); *Beal v. City of Seattle*, 134 Wn.2d 769, 777 n.2 (1998). In any

event, the trial court acted properly in dismissing Appellants' CPA claim when they failed to show an unfair or deceptive act occurring in trade or commerce. *See Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 33-34 (1997).

5. The trial court properly entered a declaratory judgment upholding the AC's supplemental report.

a. *The U.S. Constitution bars the Schulzes' attempt to have a civil court overrule ecclesiastical judgments.*

The U.S. Supreme Court has held that "where resolution of . . . disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity . . ." *Milivojevich*, 426 U.S. at 709. The Court made the same point in *Jones v. Wolf*, 443 U.S. at 602: "[C]ivil courts [must] defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." The Schulz severance agreements raise many such issues:

- Whether entering into a severance agreement with a Presbyterian pastor constitutes a change in the pastor's terms of call;
- Whether changes in the pastor's terms of call must be approved by the congregation and the presbytery;
- Whether the act of renouncing jurisdiction of the Church changes a pastor's standing as a teaching elder and voluntarily terminates his or her pastoral ministry;
- Whether a pastor who has renounced the jurisdiction of the Church can be said to be in good standing; and

- Whether a limited “good cause” standard for termination of a pastor is consistent with Church doctrine.

In this case, the AC examined each of these questions in light of the Church constitution and other definitive sources of guidance on matters of Church governance (e.g., decisions by the General Assembly Permanent Judicial Commission). CP 196–99; *see* CP 103–05, 111–25 (ecclesiastical authorities cited by the AC). It determined that, under Church law, the first three questions must be answered “yes” and the last two “no.” Judge Doyle deferred to those ecclesiastical determinations, just as the Constitution requires. She entered a declaratory judgment upholding the AC’s determinations, and she dismissed the Schulzes’ counterclaims.

The Schulzes would have a civil court second-guess the decisions of an ecclesiastical tribunal on matters of church doctrine. This the Constitution plainly forbids.

b. The constitutional requirement that courts defer on matters of church doctrine does not turn on whether a case involves property or contract law.

After asking for the Supreme Court to overturn *Rohrbaugh*, Op. Br. (PII) at 16-17, the Schulzes argue that *Rohrbaugh* should be confined to its facts: a church property dispute. They claim that, in a contract case—particularly one involving an employment contract—the Court should eschew deference in favor of “neutral principles.” They then argue

that “neutral principles” would permit a civil court to disregard the AC’s ecclesiastical findings. This argument does not withstand scrutiny.

The first problem in the Schulzes’ argument is that no hard line can be drawn between personnel and property issues in church disputes. What the Schulzes seek, no less than Appellants, is FPCS’s property. Lloyd Lunceford admitted this in his September 29, 2014, email to Jeff Schulz:

As per your request attached are draft severance packages for you and your wife They are in the form of amendments to your current terms of call and contain other provisions intended to increase the probability that they will constitute protected ***property rights*** that could not be taken away without due process of law.

CP 415, 424 (emphasis added). A contract claim may also be part of a larger dispute over church property.¹⁵ In this case, the Schulzes admit that their purported severance agreements were intended “to incentivize [them] to support FPCS’s disaffiliation from [the Church].” Op. Br. (PII) at 10.

More to the point, Washington courts have consistently applied the principle of ecclesiastical deference in church employment cases. As the Schulzes concede, Op. Br. (PII) at 18-19, Division I has held that the

¹⁵ For example, *Milivojevich* began when the Holy Assembly of Bishops and Holy Synod of the Serbian Orthodox Church removed Dionisije Milivojevich as bishop of the American-Canadian Diocese of that church and defrocked him. 426 U.S. at 697-98. After he sued, the Illinois Supreme Court held that the Serbian church’s proceedings regarding him were arbitrary and invalid. The Supreme Court reversed, holding that the Illinois court’s inquiries “into matters of ecclesiastical cognizance and polity . . . contravened the First and Fourteenth Amendments.” *Id.* at 698. Notwithstanding that Milivojevich raised the propriety of his firing, the Court observed that the “basic dispute is over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), ***its property and assets.***” *Id.* (emphasis added).

Rohrbaugh Court’s express rejection of neutral principles applies not just to property questions but also to disputes not involving property—there, a dispute over the requirements for electing a pastor. *Org. for Preserving Constitution of Zion Lutheran Church of Auburn v. Mason*, 49 Wn. App. 441, 447 (1987). The Schulzes assert that “most Washington courts of appeals decisions” are to the contrary, Op. Br. (PII) at 18, but the cases they cite actually reinforce the same conclusion.

In *Rentz v. Werner*, 156 Wn. App. 423, 433-36 (2010), a case involving a minister’s expulsion of church members, the court traced the roots of the ecclesiastical abstention doctrine to *Watson*. After citing several cases, including *Milivojevich*, in which the Supreme Court held that civil courts cannot decide ecclesiastical questions, the court observed:

Washington courts have similarly applied the principles articulated in *Watson* in concluding that judicial deference or abstention is required in church-related disputes involving questions of religious doctrine. *See, e.g.*, [*Rohrbaugh*]; *Elvig* [*v. Ackles*], 123 Wn. App. at 499, . . . ; *Gates* [*v. Seattle Archdiocese*], 103 Wn. App. at 168-69.

156 Wn. App. at 436.

The *Rentz* court held that what is “ecclesiastical” must be given a wide scope and that the duty of non-interference by civil courts is so important that ecclesiastical judgments must be given deference even in non-hierarchical churches. *Id.* at 436-44. In language that could have been

written for this case, the court stated: “Whether a church has properly selected, retained, or terminated the services of a minister or other clergy and whether a minister is in compliance with church rules . . . go[] to the core of the church’s ecclesiastical affairs.” *Id.* at 441.

Once a court determines who exercises ecclesiastical authority in a church, the court must defer to that person’s judgment about doctrinal matters. *Id.* at 442. *Wentz* thus stands for the proposition that the Schulzes would lose even if the Church were not hierarchical for property matters, because a civil court would have to abstain from enforcing their severance claim rather than second-guess the AC’s ecclesiastical determinations.

Both *Elvig v. Ackles* and *Erdman v. Chapel Hills Presbyterian Church* involve personnel disputes in Presbyterian churches. In both cases, the courts deferred to the decisions of higher councils within the Church. 123 Wn. App. at 493¹⁶; 175 Wn.2d at 667-82. In an effort to distinguish these cases, the Schulzes claim that whether a presbytery commission is judicial or administrative is outcome-determinative, and the ministerial exception must be applied narrowly.¹⁷ These arguments fail. *See* CP 435–

¹⁶ “Because adjudicating Elvig’s case would require a civil court to impermissibly examine decisions made by a church tribunal, we must affirm [the trial court’s summary judgment dismissing her case].” *See also id.* at 498 (observing that only the presbytery may dissolve the relationship between a pastor and a church).

¹⁷ By renouncing jurisdiction, the Schulzes ceased to be pastors two months before the AC issued its report and assumed original jurisdiction over FPCS. For this reason, respondents believe that the ministerial exception does not apply. If, however, a court

36 (explaining the complementary roles of judicial and administrative commissions). *Elvig* and *Erdman*, like *Gates v. Seattle Archdiocese*, 103 Wn. App. 160 (2000), are based upon the First Amendment prohibition against secular courts becoming entangled “in matters of church doctrine and practice.” *Id.* at 166.

Neither *Elvig* nor *Gates* so much as mentions “neutral principles,” still less endorses that approach. The only cited Washington case to do so, *In re Marriage of Oboidi and Quyoun*, 154 Wn. App. 609 (2010), has nothing to do with matters of church governance (e.g., a pastor’s terms of call, renunciation of jurisdiction, or good standing). The court in that case was asked to determine the enforceability of a prenuptial agreement signed as part of an Islamic wedding ceremony, and it relied upon a New Jersey case in deciding that it could do so. The court cited no Washington case that discusses disputes within religious organizations.

c. Out-of-state cases and “neutral principles” do not aid the Schulzes’ cause.

The Schulzes assert that courts “throughout the country have rejected compulsory deference in cases involving contractual disputes with religious institutions.” Op. Br. (PII) at 19. The cases they cite for this

were to disregard Church doctrine and accept the Schulzes’ argument that they somehow remained Presbyterian pastors in good standing in February 2016, their severance claim would squarely lie within the ministerial exception. *See* RP 47-48 (3/17/17).

sweeping proposition do not support it. In *Second Episcopal District African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 816-17 (D.C. Ct. App. 2012), for example, the court stated:

The Free Exercise Clause requires civil courts to defer to the decisions of the highest tribunals of hierarchical religious organizations on matters of religious doctrine, discipline, faith, and ecclesiastical rule, custom, or law

Id. (quoting *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. Ct. App. 2005)). In *Prioleau*, unlike this case, no questions of church doctrine had been raised. The court cautioned that, if the dispute *did* turn on a matter of doctrinal interpretation or church governance, the trial court should grant summary judgment to avoid excessive entanglement. *Id.* at 818.

In *Jenkins v. Trinity Evangelical Lutheran Church*, 825 N.E.2d 1206 (Ill. Ct. App. 2005), the court enforced a provision in the denominational bylaws that required most church disputes to be resolved by binding ADR. With respect to the exceptions, the court noted that “the threshold question is whether plaintiff’s claim can be resolved without inquiring into the church’s religious doctrine.” *Id.* at 1212.

As the court in *Jenkins* noted, there was no dispute in that case that the plaintiff had resigned; the only dispute concerned the promises made to him in return for his resignation. In this case, by contrast, a key dispute

is whether a pastor's renunciation of jurisdiction constitutes a resignation. Under the Church constitution, it does. As Judge Doyle put it, the Schulzes could not be fired by the AC, potentially triggering a severance claim, because they "quit before they got fired." RP 19 (3/17/17). This was true "[r]egardless of what their intent was," because "that just happens by operation of law. In this case, church law." RP 20 (3/17/17).

In *Pearson v. Church of God*, 478 S.E.2d 849 (S.C. 1996), a denomination revoked a minister's license because of adultery and then stopped making pension payments. Citing *Milivojevich*, the South Carolina Supreme Court held that courts "must accept in litigation the religious determinations of the highest judicatories of a religious organization." *Id.* at 851. The court stated three general principles: (1) courts cannot resolve religious disputes; (2) courts must adjudicate rights growing out of civil law; and (3) in resolving such disputes, "courts must accept as final and binding the findings of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration." *Id.* at 853. In *Pearson's* case, the court held, the trial court should have directed a verdict in favor of the denomination: The plaintiff's arguments were "foreclosed by the fact that a court must accept the doctrinal and administrative determinations of the highest ecclesiastical

body of the Church.” *Id.* at 854.¹⁸ The same thing is true here.

All of these cases were decided in jurisdictions that embrace “neutral principles.” They demonstrate that the Schulzes would lose as surely under “neutral principles” as under Washington law. After all, the Supreme Court reiterated in *Jones v. Wolf* the obligation of civil courts to honor the ecclesiastical determinations of higher councils in religious organizations such as the Church. The Constitution forecloses claims like the Schulzes’ regardless of where they might be raised.

d. The trial court’s declaratory judgment invites no parade of horrors.

All the Schulzes’ arguments boil down to the assertion that no church should be the judge in its own cause. Respondents do not claim that churches are immune from suit, or that their judgments merit deference except in cases involving issues of church governance or church doctrine. There is nothing in this Court’s precedents, or in the trial court’s declaratory judgment, suggesting any need to worry about adjudication of a claim by (say) a supplier of shingles or candles to a church.

By contrast, any attempt by a civil court to second-guess the ecclesiastical judgments of the AC—that the Schulz severance agreements

¹⁸ *Accord Gipe v. Superior Court*, 124 Cal. App. 3d 617, 628 (1981) (First Amendment precludes civil courts “from adjudicating disputes over questions of church practice or religious discipline, faith or doctrines”); *Reardon v. Lemoyne*, 454 A.2d 428, 433 (N.H. 1982) (“[M]atters involving doctrine, faith, or internal organization . . . are insulated from judicial inquiry.”).

were never properly adopted, that they were made inapplicable by the Schulzes' renunciation of jurisdiction, and that they are unenforceable because of the Schulzes' failure to continue serving the Church in good faith and good standing—would be constitutionally impermissible. The trial court ruled in accordance with the U.S. Constitution and this Court's precedents, and its decision must be upheld.

C. The Washington Supreme Court should reaffirm rather than overrule *Rohrbaugh*.

1. Stare decisis compels upholding *Rohrbaugh*.

“A party asking this court to reject its precedent faces a challenging task. The party must show not merely that it would have been reasonable to reach a different conclusion in the first instance, but that the prior decision is so incorrect and harmful that it would be unreasonable to adhere to it.” *State v. Otton*, 185 Wn.2d 673, 690 (2016). Appellants fail at every step of this analysis.

First, *Rohrbaugh* is not incorrect. As the U.S. Supreme Court held in *Jones v. Wolf*, states are free to adopt the polity approach (rather than “neutral principles”) when resolving governance disputes in a hierarchical denomination. The First Amendment permits a state to “adopt any one of the various approaches for settling church property disputes,” including the polity approach. *Jones v. Wolf*, 443 U.S. at 602.

Although some courts have applied “neutral principles” to governance disputes within a hierarchical denomination, other courts continue to apply the polity test. *E.g.*, *Presbyterian Church of Stanley*, 390 P.3d at 594 (trial court “appropriately deferred to the decision of Heartland Presbytery regarding which faction of members within the [local church] should be entitled to the congregation’s property as a result of the unfortunate schism that developed”); *Newton Presbyterian Church v. Smith*, 2017 WL 7053909 (Mass. Suffolk Super. Ct. Nov. 17, 2017); *Chabad-Lubavitch of Mich. v. Shuchman*, 853 N.W.2d 390, 398 (Mich. Ct. App. 2014) (noting that “when a denomination is hierarchical, trial courts must enter a judgment that is consistent with any determinations already made by the denomination”), *rev’d in part on other grounds*, 862 N.W.2d 648 (Mem.) (Mich. 2015); *Protestant Episcopal Church in Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980) (holding that “[o]nly where no hierarchical control is involved, should the neutral principles of law principle be called into play,” and determination within Protestant Episcopal Church “resolves the question of control over local church property”), *cited in Trs. of Alpine Methodist Episcopal Church v. N.J. United Methodist Church*, No. A-4583-15T2, 2017 WL 6492523, at *10 (N.J. Super. Ct., App. Div. Dec. 19, 2017) (unpublished).¹⁹

¹⁹ Appellants claim that the First Amendment requires adoption of “neutral principles.”

The Court in *Rohrbaugh* weighed the neutral-principles approach, which had been recognized in several earlier court opinions,²⁰ and found it wanting. Specifically, *Rohrbaugh* considered and rejected the neutral-principles analysis set forth in *Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church*, 167 S.E.2d 658 (Ga. 1969), which was itself cited in *Jones* as an application of neutral principles. See 79 Wn.2d at 369-72; 443 U.S. at 659-60. The Court held that Washington’s polity approach was superior.

Second, *Rohrbaugh* is not harmful. Appellants have not pointed to

despite *Jones*’s holding to the contrary. Appellants’ cases do not establish their point. *Fluker Community Church v. Hitchens*, 419 So.2d 445, 447 (La. 1982), mentioned that the polity approach “may” deny a local church recourse to an “impartial body to resolve a just claim,” but it has not been cited for this principle outside of Louisiana. *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South Carolina*, 685 S.E.2d 163, 172 (S.C. 2009), described another case as holding that “where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so,” but that case contained no such holding. See *Pearson*, 478 S.E.2d at 851-54. In *First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S.*, 464 N.E.2d 454, 460 (N.Y. 1984), the court recognized that “[j]udicial deference to a hierarchical organization’s internal authority remains an acceptable alternative mode of decision,” while speculating that “the deference rule may indeed constitute a judicial establishment of religion.” In *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 197 n.10 (Mo. Ct. App. 2012), the court mused in a footnote addressing potential differences between Kansas and Missouri trust law that “it would arguably violate the First Amendment . . .” for a state to impose an “iron-clad” rule of deference. In *Dean v. Alford*, 994 S.W.2d 392, 395 (Tex. Ct. App. 1999), a case involving ouster of pastor of congregational Baptist church, the court declined to rule on the ecclesiastical issue of the church’s proper pastor. In none of these cases has a state “concluded that the First Amendment prohibits application of the deference approach to resolve secular church disputes,” as Appellants argue. Op. Br. (PI) at 29.

²⁰ As *Jones* pointed out, neutral principles had been “approved in” *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970), and had “received approving reference” in *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), and *Maryland & Virginia Churches*, 396 U.S. 367, 368-70 (1970) (Brennan, J., concurring). All these cases preceded *Rohrbaugh*.

any supposed ill effects of its application in this case that extend beyond their own interests. Appellants baldly assert that “*Jones* recognized . . . *Rohrbaugh*’s compulsory deference approach is ‘harmful’ in that it deprives local churches and their congregations equal access to a fair tribunal” Op. Br. (PI) at 24. But this assertion is unsupported, and *Jones* nowhere suggests that the polity approach it affirms is harmful. There is nothing “harmful” in requiring elders and pastors to abide by the polity and vows of the denomination of which they are a part.

It is the Church and other hierarchical denominations that would suffer harm if the rule were otherwise. A neutral-principles approach threatens the unity of the Church (which is, after all, a *unitary* church) and burdens the Church by disregarding doctrines that have been in place within the Church and its predecessors since before the Civil War. *See Watson*, 80 U.S. 679 (holding that trustees of Presbyterian church and their followers forfeited rights to property and use of it by attempting to separate from the Presbyterian Church).

Rather than try to satisfy the stringent standards in *Otton*, Appellants invoke a different test. They contend that Washington courts “are free to ‘reconsider precedent when the legal underpinnings of our precedent have changed or disappeared altogether’” Op. Br. (PI) at 23 (quoting *W.G. Clark Constr. Co. v. Pac. Nw. Reg’l Council of Carpenters*,

180 Wn.2d 54, 66-67 (2014)). In *W.G. Clark*, however, the Washington Supreme Court confronted a scenario in which its precedent interpreting a federal statute (ERISA) not only had proven objectively incorrect under the weight of authority from other jurisdictions, but also had made the outcome of cases “entirely dependent on whether the lawsuit is filed in federal or state court.” *Id.* at 58.

W.G. Clark did not address the scenario, applicable here, in which a valid rule under U.S. Supreme Court precedent could potentially yield to an alternative, equally acceptable rule. And while the Court in *W.G. Clark* did not require that its previous precedent be considered incorrect and harmful, the Court pointed to the type of harm from an incorrect application of federal law that merited overruling its own precedent—namely, “blatant and harmful forum shopping.” *Id.* at 1213. *W.G. Clark* is inapposite.²¹ Appellants must show that *Rohrbaugh* was incorrect and harmful, and the opposite is true.

2. Stare decisis aside, Rohrbaugh should be reaffirmed.

In addition to providing the law of Washington for over 45 years, *Rohrbaugh* continues to provide the superior rule for adjudicating disputes

²¹ Appellants also suggest that the “*Court of Appeals* [is] not required to follow [a] Washington Supreme Court opinion if its doctrinal underpinnings [were] eroded by later U.S. Supreme Court decisions.” Op. Br. (PI) at 23 (emphasis added). This suggestion asks the Washington Court of Appeals to commit reversible error. *E.g.*, *1000 Virginia Ltd. P’ship v. Vertecs Corp.*, 158 Wn.2d 566, 578 (2006) (noting that the “Court of Appeals lacked authority” to disregard Supreme Court precedent).

that arise within hierarchical denominations. If re-examined, the rule applied in *Rohrbaugh* should be endorsed anew.

a. Treating hierarchical denominations differently from congregational churches recognizes basic differences among religious organizations.

Appellants criticize the polity approach for providing different rules of decision for local churches within hierarchical religious denominations, on the one hand, and local churches that are independent or affiliated with non-hierarchical religious denominations, on the other. Op. Br. (PI) at 29. But Appellants fail to show why majority rule at the congregational level should govern both hierarchical and congregational churches. The Court should not ignore the fundamental differences between these very different types of religious organizations.

Appellants would have this Court declare that a local church within a hierarchical denomination must be treated just like a congregational church, controlled by the will of the majority in the congregation. The Church, however, is unitary, and its very name reflects representative leadership by presbyters in ascending councils, from the session to the presbytery to the synod to the general assembly. Unlike a congregational church, which has no higher authority to answer to, the Church's unity depends on oversight by higher councils, which (among other things) hold

local leaders accountable. Appellants would destroy that oversight and accountability.

Contrary to Appellants' argument that the polity rule favors hierarchical religious organizations, that rule simply allocates decision-making authority to the appropriate body within a religious organization. If a religious organization is congregational, then the congregation stands alone as the situs of authority. This is not true of hierarchical churches that, like the Church, have higher councils within the denomination making decisions on church governance and other matters. The polity approach is also consistent with how Washington courts have treated disputes within *non-religious* organizations that have a hierarchical structure. See *Anderson v. Enter. Lodge No. 2*, 80 Wn. App. 41, 47 (1995) (deferring to statewide organization's interpretation of its governing documents in suit by dissident members); *Couie v. Local Union No. 1849*, 51 Wn.2d 108, 115 (1957) (courts will not interfere with union's own interpretation of its constitution unless that interpretation is arbitrary and unreasonable).

Whereas the polity approach appropriately distinguishes among religious organizations based upon their own governing principles and has proven entirely workable in practice, "neutral principles" does the opposite. The neutral-principles approach promotes instability. It

encourages litigation and creates perverse incentives for manipulation and deceit. It is based on a false assumption, and it discriminates against religious denominations with a hierarchical polity.

b. The neutral-principles approach sows chaos.

Without question, “neutral principles” has brought uncertainty to what was previously a clear area of the law. Even the law review articles cited by Appellants as endorsing this approach recognize that its application has produced radically different outcomes around the country. Professor McConnell points to great uncertainty over the approach, for which “[t]he blame . . . falls squarely on the United States Supreme Court” because of its decision in *Jones*.²² Another article reports on “massive inconsistency in the application of the doctrine” and identifies six separate approaches that courts might take in applying neutral principles.²³ In practice, “neutral principles” has produced the opposite of the predictability that Appellants claim.²⁴

²² M. McConnell & L. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 310 (2016).

²³ J. Hassler, Comment, *A Multitude of Sins?*, 35 Pepp. L. Rev. 399, 431, 436-44 (2008). A judge describes the legal background for religious disputes following *Jones* as “a welter of contradictory and confusing case law largely devoid of certainty, consistency, or sustained analysis.” *Id.* at 432 (quoting John E. Fennelly, *Property Disputes and Religious Schisms: Who Is The Church?*, 9 St. Thomas L. Rev. 319, 353 (1997)).

²⁴ In a recent example, the Supreme Court of South Carolina issued a badly fractured decision, with all justices writing opinions, regarding 36 parishes that tried to secede from the Episcopal Church. *Protestant Episcopal Church in Diocese of S.C.*, 806 S.E.2d 82. The lead opinion and a concurrence reasoned that, even under neutral principles, the

c. *“Neutral principles” encourages litigation and creates perverse incentives for manipulation and deceit.*

The very unpredictability in how “neutral principles” will be applied has led to a surge in church-related litigation. A cottage industry has developed in which attorneys such as Mr. Lunceford, supported by “experts” such as Mr. Williamson, develop theories to attack the ties that bind congregations to hierarchical denominations and offer their services to dissenters across the land. Funds that should be devoted to mission and ministry are diverted to lawyers and litigation instead.²⁵

Appellants here followed a cynical but common playbook: They tried to rewrite the 2005 Bylaws and 1985 Restated Articles by, among other things, inserting indemnity clauses to protect the Session from the consequences of violating Church law. *See* CP 587, 589. After purporting to elect themselves as an independent board of trustees, Appellants

denomination’s decision required deference because the “corporate” issues associated with church leadership could not be determined without reference to ecclesiastical issues. *Id.* at 84-93 (lead opinion); *id.* at 93-102 (Hearn, J., concurring). A concurrence/dissent concluded that only those churches that “expressly acced[ed]” to the denomination’s constitutional provision regarding property ownership held property in trust for the denomination (although there was no such requirement in the denomination’s constitution). *Id.* at 102-03 (Beatty, C.J., concurring/dissenting). Two dissenting justices wrote that all of the church property belonged to the local churches, although their analyses differed. *Id.* at 103-08 (Kittredge, J., dissenting); *id.* at 108-25 (Toal, J., dissenting). As this case shows, jettisoning *Rohrbaugh* would force this Court to wade into the debate over what “neutral principles” actually means, an issue that is divisive and confusing.

²⁵ In his declaration Mr. Lunceford states: “As an attorney, I have represented dozens of local church nonprofit corporations in litigation with PCUSA and its presbyteries nationwide similar to this litigation.” CP 1308.

diverted church funds and borrowed other funds to create a litigation “war chest.” *See* CP 635, 727–28. Then they asserted that the Session was subservient to the nonprofit corporation of which they were trustees. CP 635, 727-29.

Seattle Presbytery was not informed of the Session’s plans. Rather, it was misled. *See* CP 2553–54, 596, 605. At the same time, faithful elders were bypassed, bullied, and ultimately forced to resign from the Session. *See* CP 2355–56 (“Do you have any suggestions on how to isolate [elder and corporate officer Neal Lampi] from the early decision-making process and from our intentions . . . ?”), 2307 (threat), 2360–61 (resignation letter). The congregation was never told about the severance agreements with the co-pastors. CP 103. Because winning under “neutral principles” evidently demands such machinations, the doctrine encourages would-be defectors to deceive and manipulate their fellow church members.²⁶

In this case, mendacity carried over to Appellants’ declarations. A Presbyterian pastor and pundit sought to portray mandatory Church doctrines as “aspirational” or otherwise unimportant,²⁷ while an

²⁶ After the November 15, 2015, congregational vote, their lawyers forbade Appellants from cooperating or even meeting with the AC, lest they acknowledge in any way the authority of the Church. CP 600–01. This thwarted any opportunity for reconciliation.

²⁷ *Cf. Lamont Cmty. Church*, 777 N.W.2d at 24 & n.7 (criticizing testimony by Lloyd Lunceford and holding that the hearing including his testimony “devolved into an impermissible ‘searching’ inquiry into the polity” of the denomination).

accounting expert misrepresented the financial statements of both FPCS and A Corp. *See* CP 2402–26, 2611–62; Note 8. Appellants made convoluted arguments about how their actions were permissible—indeed, how they should be determinative—under “neutral principles” and how state corporate-law rules supersede the Church constitution. *Rohrbaugh* is a bulwark against such mischief.

d. “Neutral principles” encourages courts to become entangled in religious questions rather than avoid them.

Because church property disputes are not inherently secular but rather involve issues of church doctrine, the “neutral principles” approach encourages courts to intervene in doctrinal disputes. Appellants ask this Court to ignore the AC’s decision under a neutral-principles analysis, but they are really asking that a civil court substitute its judgment for that of a higher church council. Appellants not only want to avoid application of Presbyterian polity, to evade Church discipline, and to ignore the Church’s interest in congregational property. They also ask this Court to declare them to be the “true” church of FPCS, in direct contravention of the AC’s determination and Church law. The Court must refuse this request.

D. Appellants’ violations of Washington nonprofit corporation law invalidate their attempted secession.

The declaratory judgments that the trial court entered here were required by *Rohrbaugh* and other governing precedents, and they should

be affirmed on that basis. But there is an alternate basis for affirmance: In their haste to rewrite corporate documents and call a meeting of the congregation and the corporation, Appellants repeatedly failed to comply with the requirements of Washington corporate law. This makes their secession ineffective as a matter of civil law no less than it was under the constitution of the Church. *See Blue Diamond Grp., Inc. v. KB Seattle I, Inc.*, 163 Wn. App. 449, 453 (2011) (a court “may affirm summary judgment on any grounds supported by the record.”).

1. The members of the Session could not establish a Board of Trustees or make themselves its members.

RCW 24.03.100 provides that, after the initial board of directors is established, “directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws.” The 1985 Restated Articles require that trustees be elected by the members of the church at their annual meeting. CP 723. Indeed, the articles say this twice. The 1985 Restated Articles do not permit trustees to be appointed or elected in any other manner.

The bylaws of FPCS, adopted at a meeting of the congregation and the corporation on May 8, 2005, do not provide for election or appointment of trustees. On the contrary, the 2005 Bylaws eliminated the Board of Trustees and transferred trustee functions to the Session. CP 553.

For a separate Board of Trustees to be validly established, therefore, the Session would have to bring amendments to the bylaws before a duly called meeting of the congregation and the corporation, have those amendments approved by the members of FPCS, and then conduct an election of trustees at the FPCS annual meeting. None of those steps occurred. *Cf. State Bank of Wilbur v. Wilbur Mission Church*, 44 Wn.2d 80, 92-93 (1954) (attempted displacement of church trustees “a nullity” where no annual meeting of the membership had occurred); *id.* at 93 (under articles, trustees “could be elected only from the membership.”).

2. The members of the Session could not amend the bylaws.

RCW 24.03.070 provides that “[t]he power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws.” The 1985 Restated Articles are silent on bylaw amendments, but the 2005 Bylaws are not: They provide that they “may be amended subject to the Articles of Incorporation, the laws of the state of Washington and the Constitution of the Presbyterian Church (U.S.A.) by a two-thirds vote of the voters present, providing that the proposed changes in printed form shall have been distributed at the same time as the call of the meeting at which the changes are voted upon.” CP 558.

This bylaw language required bylaw amendments to be approved by the members of the congregation and corporation, voting at a duly noticed member meeting. This is consistent with the manner in which all previous bylaw amendments were handled. *See* CP 553, 2533–34. As Judge Roberts concluded, the purported bylaw amendments that the Session adopted on October 27, 2015, “were ineffective as a matter of corporate law.” CP 2799.

This conclusion undermines not just Appellants’ arguments in *Presbytery I* but also the Schulzes’ severance claim. For the 2005 Bylaws require, in Article VI, that the congregation and corporation hold an annual meeting during the first calendar quarter “at which changes in the terms of call for the pastor(s) shall be presented.” CP 554. This did not happen: The congregation was not told about the change in the terms of call for the co-pastors. Because the members of FPCS never approved the purported severance agreements, those agreements are invalid under the 2005 Bylaws as well as under Church law. *See* RP 6-8, 46-47 (3/17/17).

3. The bylaws purportedly adopted at the October 27 Session meeting conflicted with the 1985 Restated Articles.

Bylaws must be consistent with the law and with the articles of incorporation. RCW 24.03.070. Although Appellants purported to amend the 2005 Bylaws at the October 27 Session meeting, they did not purport

to amend the 1985 Restated Articles. Those articles continued to provide that the objects and purposes of FPCS were to “promote the worship of Almighty God and the belief in the extension of the Christian Religion, under the Form of Government and discipline of the Presbyterian Church (U.S.A.)” Regardless of what Appellants might try to do to the 2005 Bylaws, a superior governing document required those bylaws to comply with the Form of Government of the Church, i.e., the *Book of Order*.

The bylaw amendments that the Session tried to adopt on October 27, 2015, did not do this. In purporting to recognize a separate board of trustees unaccountable to the Session and Seattle Presbytery, the bylaw amendments directly contradicted G-4.0101 of the *Book of Order*, which states that the corporation’s powers are “subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.)” CP 695. By pretending to separate a “secular” corporation from the FPCS congregation, and by placing all power in the hands of that corporation, Appellants violated the Presbyterian principles of governance that continued to be incorporated in the Articles.

4. Appellants failed to give proper notice of the November 15 member meeting.

The 2005 Bylaws contain detailed requirements for notices of meetings. “Public notice of meetings of the congregation shall be given in

printed and verbal form on at least two successive Sundays prior to the meeting.” CP 555. Public notice of meetings of the corporation must be mailed 10–50 days before the meeting. A “printed notice shall also be included in the church bulletin, signed by the Clerk of the Session,” and that notice must be “audibly read at public worship to the assembled congregation on at least two successive Sundays prior to the date of such meeting.” *Id.*

Apart from the mailed notice, Appellants did not comply with any of these requirements. *See* CP 621–26. Therefore, no business could be validly conducted at the meetings called for November 15, 2015. *See E. Lake Water Ass’n v. Rogers*, 52 Wn. App. 425, 426 (1988) (“Where a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void.”). The November 15 congregational and corporate votes were, therefore, void as a matter of Washington corporate law.

5. Appellants were properly removed as members of the Session.

Appellants argue that, even if all of the “corporate” actions in their attempted secession were invalid, “no neutral principle allows [the AC] to install its own members as FPCS’s corporate trustees” Op. Br. (PI) at 34. Appellants are wrong. The *Book of Order* explicitly authorizes a presbytery to conclude that the session of a congregation is not wisely

managing its affairs and to assume original jurisdiction, giving “an administrative commission . . . the full power of the session.” CP 686–87 (G-3.0303e); *see* CP 599-600 (AC charter). This provision is part of the Form of Government of the Church, incorporated into the 1985 Restated Articles. The same provision is incorporated in the 2005 Bylaws: “Any matter of church governance not addressed by these bylaws shall be governed by the [Church constitution].” CP 554.

Nothing in the 1985 Restated Articles, the 2005 Bylaws, or Washington law prohibits such a provision. And the default method for removal of trustees under Washington law, removal by a two-thirds vote of the members, does not apply where the articles provide for another method. *See* RCW 24.03.103 (stating that the “bylaws or articles of incorporation may contain a procedure for removal of directors,” and providing default provisions “in the absence of any provision regarding removal of directors”).

E. The Church’s trust interest is indisputable.

Even if Appellants could be said to have successfully seceded from the Church, that very action caused them to forfeit to the Church all property of FPCS. Although courts applying “neutral principles” have been deeply divided as to whether to apply a hybrid or a strict approach in

examining a denomination's trust interest in property held by a local church, Appellants lose under both approaches.

1. *Jones v. Wolf* invited denominations to resolve property disputes before they arise by placing an express trust clause in their constitutions.

Jones v. Wolf permitted states to “adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.” 443 U.S. at 602 (quoting *Md. & Va. Eldership of Churches of God*, 396 U.S. at 368). The *Jones* majority thought that, in advance of any disputes, “the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property.” *Id.* at 606. The Court suggested that the parties could modify any deeds or corporate charters to address property or, “[a]lternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.” *Id.* The Court believed the “burden involved in taking such steps will be minimal” and concluded that “the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” *Id.*

Based upon the *Jones* Court's invitation to make “the constitution of the general church . . . recite an express trust in favor of the

denominational church,” the Church constitution contains such language. *See* CP 696 (G-4.0203, G-4.0204). Other hierarchical denominations also amended their constitutions to recognize the denomination’s property rights. *See, e.g., Protestant Episcopal Church*, 421 S.E.2d at 87-88 (discussing Dennis Canon in Episcopal Church).

Courts have since disagreed about whether such a trust clause governs disputes over church property. Some courts have applied a hybrid approach, in which they have looked to the denominational constitution without strictly applying state trust requisites. Other courts have applied a “strict approach” that demands that the trust created over local church property comply with the statutory or common-law requisites for creating a trust under state law.²⁸ Regardless of whether the Washington Supreme Court might theoretically pursue a hybrid or a strict approach, the Church’s trust interest dooms Appellants’ claim to FPCS property.

2. Under the hybrid approach to “neutral principles,” the trust clause in the *Book of Order* applies by its own terms.

Some courts have examined the trust clause in a denomination’s constitution and have held that, regardless of the peculiarities of state trust law, church property is held in trust for the denomination. *E.g., Presbytery of Greater Atlanta v. Timberridge Presbyterian Church*, 719 S.E.2d 446,

²⁸ The law review articles cited by Appellants recognize these competing approaches. *See* McConnell, 58 Ariz. L. Rev. at 320-25; Hassler, 35 Pepp. L. Rev. at 419-26.

458 (Ga. 2011); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 924-25 (N.Y. 2008) (holding that Dennis Canon and local church's continued membership in diocese were sufficient to show existence of trust, although property deeds did not recite trust); *Episcopal Church in Diocese of Conn. v. Gauss*, 28 A.3d 302, 319-20 (Conn. 2011) (holding that Dennis Canon and local church's membership in diocese sufficed to show existence of trust, even though property deeds did not recite trust).²⁹

In *Presbytery of Greater Atlanta*, the members of Timberridge Presbyterian Church voted to leave the Church and later affiliated with another Presbyterian denomination. 719 S.E.2d at 449-50. The court of appeals held that property belonged to the local church, because "the national church documents could not be dispositive" and the Presbytery had failed to show the existence of an express trust under Georgia law. *Id.* at 450. The Georgia Supreme Court reversed, reasoning that "the fact that a trust was not created under our state's generic express (or implied) trust statutes does not preclude the implication of a trust on church property under the neutral principles of law doctrine." *Id.* at 454. The court held that the trust provision in the *Book of Order* created such a trust, which

²⁹ *Cf. Rohrbaugh*, 79 Wn.2d at 372 (criticizing a state court's ruling in favor of local church trustees because it failed to recognize "the nature of their trust," which was "defined by the provisions of the church constitution").

was further confirmed by the local church “proclaim[ing] its allegiance to the [*Book of Order*]” *Id.* at 455.

This approach recognizes that “hierarchical denominations have added more explicit property provisions to their general and local church governing documents, as the Supreme Court said would be appropriate.” *Id.* at 458. In addition to taking the U.S. Supreme Court at its word that the constitution of the general church could address property matters in advance by adding an express trust provision, the hybrid approach also avoids making the local church the sole arbiter of what happens to church property. *Accord Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 171 (Tenn. 2017) (“[A] civil court must enforce a trust in favor of the hierarchical church, even if the trust language appears only in the constitution or governing documents of the hierarchical religious organization.”); *Presbyterian Church of Stanley*, 390 P.3d at 596-98 (trust language in *Book of Order* “should control regardless of whether the principle of hierarchical deference or the neutral-principles approach is applied”).

As *Presbytery of Atlanta* pointed out, trust provisions in national constitutions arise “pursuant to rules of representative government that the local and national churches previously agreed to follow.” 719 S.E.2d at 456. And giving effect to a denomination’s trust provision ensures that the

relationship between a national church and local congregations is not governed by a welter of state laws, but rather by a uniform set of expectations. If the Washington Supreme Court were to adopt neutral principles, it should follow this approach and hold that the Church's trust provision applies by its own terms.

3. Even under the strict approach, the trust clause and FPCS's corporate documents prove that FPCS created a trust.

Appellants implicitly argue for a strict approach to “neutral principles,” one that demands strict compliance with state law to form a trust.³⁰ But Appellants cannot prevail under that approach, either.

Under Washington law, a trust may be created by a “[d]eclaration by the owner of property that the owner holds identifiable property as trustee.” RCW 11.98.008(2); *see also* RCW 11.98.011. The 1985 Restated Articles and the 2005 Bylaws are such “declarations.” *See Peters Creek United Presbyterian Church v. Washington Presbytery of Phila.*, 90 A.3d 95, 110-11 (Pa. Commw. Ct. 2014). The Restated Articles, adopted just two years after the reunification of the northern and southern Presbyterian churches under a constitution containing an express trust clause, recognize that FPCS exists “to promote the worship of Almighty God . . . under the Form of Government and discipline of ‘The Presbyterian Church

³⁰ “[O]nly a few states have adopted [the strict neutral principles approach].” “Most states apply the hybrid approach.” *Church of God*, 531 S.W.3d at 168 (collecting cases).

(U.S.A.).” CP 723. Twenty years later, the FPCS congregation approved the 2005 Bylaws, which again state that FPCS is a member church within the Church and “[a]ny manner of church governance not addressed by these bylaws shall be governed by” the Church constitution. CP 554.³¹

Even under the legal theory espoused by Appellants, the governing documents of a local congregation are an “important neutral principle.” *Presbytery of Atlanta*, 719 S.E.2d at 452. And the governing documents of the local church can themselves create a trust interest by adopting the provisions of the Church Constitution. *Peters Creek United Presbyterian Church*, 90 A.3d at 110-11 (holding that in adopting bylaws that recognized that the congregation was subject to the Church Constitution, the congregation had created an express trust in which it held church property for the Church’s benefit); *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 291 P.3d 711, 724 (Or. 2012) (statements in articles of incorporation and bylaws recognizing Church constitution and trust interest created express trust).

Moreover, even under strict neutral principles, “it is permissible to look at the conduct of the parties after the conveyance in ascertaining that intent.” *Hope Presbyterian Church*, 291 P.3d at 724; *see also Presbytery*

³¹ Appellants contend that “successive FPCS boards refused to adopt [the Church’s] model articles of incorporation,” but their citations fail to show any consideration of these purported model articles.

of Hudson River of Presbyterian Church (U.S.A.) v. Trs. of First Presbyterian Church & Congregation of Ridgebury, 895 N.Y.S.2d 417 (N.Y. App. Div. 2010). In *Presbytery of Hudson River*, for example, the court noted that a trust in favor of the presbytery was evidenced by the fact that the congregation’s leaders had repeatedly recognized a trust. 895 N.Y.S.2d at 430 (congregation had sought consent from presbytery prior to disposing of property).

Appellants try to ignore their many statements regarding the Church’s trust interest in FPCS property, but those statements establish intent. For example, Jeff Schulz, in seeking approval of an administrative commission to assist in FPCS’s redevelopment, recognized that FPCS “owns its property in trust of the Presbytery.” CP 616. FPCS’s financial statements repeatedly disclosed that, by Constitution, “all church land and buildings are owned by or held in trust for the Presbyterian Church USA.” CP 2612–13, 2618–51. These same statements described FPCS’s interest as a “stewardship responsibility.” *Id.*³² Even as Appellants urged

³² Appellants evidently believed that FPCS’s financial statements were relevant to the existence of a trust: Their expert declared that a trust interest “should be recorded, classified, and described appropriately in the financial statements of [FPCS], the purported trustee as asserted by the Presbytery.” CP 2152. The expert then stated, falsely, that “[n]one of [FPCS’s] current or historic financial statements . . . identify any trust interest in favor of [the Church.]” CP 2158. *See* CP 2612, 2672, 2639, 2650.

secession, they recommended that the church join “a denomination that has no trust interest in church property.” CP 569, 563.³³

Appellants argue that FPCS’s adoption of the 1985 Restated Articles is irrelevant, because those articles “only reflect FPCS’s intent to follow PCUSA’s constitution insofar as it relates to ecclesiastical affairs, not adherence to PCUSA’s constitution generally, or on property matters specifically.” Op. Br. (PI) at 39. But the 1985 Restated Articles contain no such limitation. The 1985 Restated Articles refer specifically to the “Form of Government” of the Presbyterian Church (U.S.A.), which is another name for the very *Book of Order* that governs church governance and property disputes.³⁴ Far from limiting their scope to adherence to the Church’s “ecclesiastical affairs,” the 1985 Restated Articles adopted the

³³ Appellants contend that they freed themselves from obligations under the trust clause by consulting an attorney about whether the trust was enforceable and by expressing “unalterable opposition” as a congregation to the clause. Op. Br. (PI) at 37. That an attorney in the past might have agreed with Appellants’ attorneys here makes Appellants’ position no less wrong. And declaring congregational opposition to a duly enacted provision of the Church constitution is a useless gesture. The denomination enacted the provision by representative action, which binds all congregations. *See* CP 1171–73.

³⁴ This fact alone distinguishes the out-of-state authorities that Appellants cite in an attempt to discount FPCS’s corporate documents. *See* Op. Br. (PI) at 40. In *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 584 (Mo. Ct. App. 2012), the articles of incorporation stated that the local church was “connected with and ecclesiastically subject to” the presbytery and the general church. Moreover, the articles rejected in *Gashland Presbyterian Church* were adopted in 1948, *before* the trust clause was adopted in the UPC-USA and Presbyterian Church (U.S.A.) constitutions. The same was true in a decision issued by the Missouri appellate court shortly after *Gashland Presbyterian Church*. *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 193-94 (Mo. Ct. App. 2012) (noting that articles of incorporation of church were adopted in 1953, while national church had added trust clause in 1983). *Church of the Brethren v. Roann Church of the Brethren, Inc.*, 20 N.E.3d 906, 912-13 (Ind. App. 2014), did not involve a denominational trust clause and is inapposite.

Church's policies on property, including its trust clause, along with all other aspects of polity addressed in the *Book of Order*.³⁵

Appellants also argue that, notwithstanding the 1985 Restated Articles and 2005 Bylaws, the Church's trust interest fails under Washington law because the trust "must be in writing and otherwise satisfy the statute of frauds." Op. Br. (PI) at 36. The trust here does both. The 1985 Restated Articles and the 2005 Bylaws incorporate the Church Constitution and the *Book of Order*, which in turn refers to "[a]ll property held by . . . a congregation." CP 696 (emphasis added). *See generally Porter v. Laue*, 44 Wn.2d 451, 452 (1954) (reference in letter promising to sell timber was sufficient to create trust, as declaration was made after conveyance and "sufficiently identifi[ed] the land in question").³⁶

³⁵ In *Presbytery of Ohio Valley v OPC, Inc.*, 973 N.E.2d 1099, 1111-12 (Ind. 2012), the court reasoned that no trust existed although the local church's bylaws recognized the Church constitution as "the authority for the governance of the church and its congregations." The court's conclusion that the bylaws were silent on whether the local church adopted the Church's provisions on property ownership is incorrect. By adopting the Church constitution, which addresses property ownership in G-4.0203 and G-0204, a local church necessarily adopts it as "the authority controlling property ownership." *See* CP 2402-07.

³⁶ Appellants' cases all involve trusts that were purportedly created orally, *Stocker v. Stocker*, 74 Wn. App. 1, 5 (1994) (deed alone without any written evidence of trust did not show writing for trust); *In re Swartwood's Estate*, 198 Wash. 557, 563 (1939) ("express trust concerning realty must be evidenced in writing," and there was none); *In re Marriage of Lutz*, 74 Wn. App. 356, 366 (1994) (noting presence of, at most, "oral express trust"), or transactions that did not involve a trust and therefore had no other writing to reference, *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn. App. 231, 237 (2008) (purchase and sale agreement without incorporated legal description); *Bigelow v. Mood*, 56 Wn.2d 340, 341 (1960) (insufficient legal description in written contract for purchase of real property). Neither is applicable here where the trust itself was created by a writing (the 1985 Restated Articles and 2005 Bylaws) and addressed identifiable

Appellants finally argue that they successfully revoked the Church's trust by voting to secede from the Church. This argument assumes what it must prove—namely, that Appellants successfully seceded from the Church. Moreover, the *Book of Order* provides that “when property of, or held for, a congregation of the [Church] ceases to be used by that congregation as a congregation of the [Church] . . . such property shall be held, used, applied, transferred, or sold as provided by the presbytery.” CP 676 (G-4.0204).

By acceding to the trust provisions in the *Book of Order*, Appellants recognized that ceasing to use FPCS's property within the Church would transfer control over that property to the presbytery. This plainly does not contemplate a trust revocation, and the *Book of Order* contains no method of revocation. See *Manary v. Anderson*, 176 Wn.2d 342, 360 (2013) (under common law, “a trust can be revoked only using the method of revocation specified in the trust instrument”).³⁷ By their actions in trying to remove FPCS property from Church ministry, Appellants forfeited any right to such property.

property owned by the settlor.

³⁷ Appellants cite a case involving a trust where the trustor expressly “reserve[d] power to revoke the trust” without specifying the method of revocation. Op. Br. (PI) at 41-42 (citing *Poltz v. Tyree*, 41 Wn. App. 695, 695-96, 699 (1985) (settlor could orally revoke trust that by its terms allowed revocation)). *Poltz* has no application where, by the terms of the document that constitutes the trust, there is no method of revocation allowed.

Because FPCS created and acknowledged a trust in property that would revert to the Church upon any attempt to secede, Appellants have no claim to any FPCS property even under strict “neutral principles.”

V. CONCLUSION

This case is extraordinary in many ways, from the effrontery of these elders in defying both the Presbytery of Seattle and the Washington Supreme Court³⁸ to their misrepresenting FPCS financial statements and Presbyterian polity. Yet this case is only a foretaste of what awaits other trial courts if the Washington Supreme Court fails to uphold *Rohrbaugh*. Reaffirming its salutary holding will encourage local church leaders to put their faith in God rather than clever lawyers and to communicate honestly with fellow believers rather than scheme against them.

The Court should take this opportunity to say, once again, that “neutral principles” is inferior to examining the polity of churches involved in property and other intra-church disputes. As *Jones* held, polity is crucially important if a dispute turns on issues of church doctrine or ecclesiastical judgment. The Schulz severance claim is just such a dispute. There is no reason to use a different test to resolve the parties’ conflicting claims over who properly governs FPCS.

³⁸ Appellants understood from the outset that their secession plan could not succeed unless they convinced the Washington Supreme Court to overturn *Rohrbaugh*. CP 1226.

Even if this Court were inclined to ignore stare decisis and to overturn *Rohrbaugh*, this case is poor vehicle to take up that cause. Appellants violated Washington law repeatedly in their attempts to amend the 2005 Bylaws, elect themselves as an independent board of trustees, and give the notice required for a valid meeting of the congregation and the corporation. Their attempt to secede failed under civil law just as surely as it did under the constitution of the Church. In addition, that attempt triggered exercise of the Church's trust interest in FPCS property.

The trial court should be affirmed.

DATED this 2nd day of February 2018.

Respectfully submitted,

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APPENDIX

Report of the Administrative Commission for First Presbyterian Church of Seattle

February 16, 2016

Executive Summary

After thoroughly investigating allegations of mismanagement by the leadership of First Presbyterian Church of Seattle (FPCS), the Administrative Commission for FPCS has determined that the governing board of FPCS (the FPCS session) is unable or unwilling to manage wisely its affairs. The Administrative Commission has, therefore, assumed original jurisdiction with the full power of the session, in accordance with the Constitution of the Presbyterian Church (U.S.A.). This decision was not arrived at lightly, but after much prayer and deliberation.

Seattle Presbytery appointed the Administrative Commission (AC) on November 17, 2015, and assigned it a number of responsibilities. First, the AC was asked to reiterate the Presbytery's invitation to the FPCS session to enter into the Presbytery's Communal Discernment and Gracious Separation process. Second, the AC was directed to investigate "... allegations, admissions, and events [which] suggest that the session is affected with disorder and call into question its ability and willingness to exercise its authority and manage wisely its affairs." And third, the AC was instructed to take actions it deemed appropriate based upon its findings. The accompanying Report of the Administrative Commission for First Presbyterian Church of Seattle describes how the AC discharged the responsibilities entrusted to it. It sets forth detailed findings and identifies the actions taken by the AC.

The Report's findings focus on the conduct of the session and former co-pastors of FPCS. The AC determined that the FPCS leadership:

- Failed to follow the Constitution of the Presbyterian Church (U.S.A) and its own procedures;
- Failed to be truthful and forthcoming with its own congregation, ministry partners, and the Seattle Presbytery; and
- Failed to wisely manage the affairs of the church

FPCS leadership attempted to declare unilaterally that FPCS is no longer a part of the Presbyterian Church (U.S.A.) and not subject to the jurisdiction of the Presbytery. The FPCS session did this rather than engage in the process set forth in the Presbytery's Communal Discernment and Gracious Separation Policy.

The AC extended repeated invitations to FPCS leadership to enter into the Gracious Separation process, which were ignored or rebuffed.

The AC also repeatedly invited the FPCS session to engage in a non-conditional meeting "... to listen to your concerns, to build trust, and to find a way forward." The FPCS session refused these invitations and responded that they would meet only if the AC agreed to legal conditions that would treat any such meeting not as part of the AC's ecclesiastical process but rather as a confidential "settlement" negotiation.

The AC determined that the FPCS session's attempt to amend the existing bylaws of the church on October 27, 2015, was improper and ineffective, as was the congregation's subsequent vote to "disaffiliate" from the Presbyterian Church (U.S.A.). Therefore, the existing bylaws, adopted on May 8, 2005, remain in effect. The church remains a part of the Presbyterian Church (U.S.A.) because it has not been dismissed--a step that only the Presbytery is constitutionally authorized to take.

The Constitution of the Presbyterian Church (U.S.A.) also requires that a congregation may be released only to another Reformed body. No Reformed body has advised the Presbytery that it is prepared to accept the FPCS congregation. In addition, some members of the congregation want to remain within the Presbyterian Church (U.S.A.). The AC has concluded that the actions of the FPCS session have caused a schism within the congregation and those who disagree with the actions of the FPCS session constitute the "true church," in accordance with the denomination's Constitution.

The AC reviewed pertinent available documents, but the FPCS session refused to provide any documents requested by the AC. The AC also met with and received information from more than 45 individuals. The AC's investigation confirmed the allegations made to the Presbytery about the FPCS session. It also revealed additional irregularities in the records and the finances of the church and a broad-based pattern of misconduct by the former co-pastors.

Because the former co-pastors of FPCS renounced the jurisdiction of the Presbyterian Church (U.S.A.) effective December 16, 2015, leaving the church without a pastor, the AC has appointed an interim pastor.

In summary, the AC conducted a thorough investigation and afforded the FPCS session a full opportunity to be heard. But the FPCS session refused to produce any records, and it refused to meet with the AC except under unacceptable conditions. Despite this non-cooperation, the AC's investigation, as reflected in the Report, confirmed allegations and identified additional irregularities, which together show a broad-based pattern of misconduct by the FPCS leadership.

The AC has advised the persons who previously constituted the FPCS session that they no longer may act in that capacity. The AC has elected church officers and has appointed an individual to handle administrative matters. It also has called for an audit of the church's finances. The AC expects to supplement this report after it has had an opportunity to review church records.

Report of the Administrative Commission for First Presbyterian Church of Seattle

February 16, 2016

Background

On July 21, 2015, Seattle Presbytery (the “presbytery”) authorized its moderator to name a Committee for Special Administrative Review or CSAR “to review allegations and concerns raised regarding Seattle First Presbyterian Church, including the work of COM [the presbytery’s Committee on Ministry] in relationship to Seattle First Presbyterian Church,” and to report to the presbytery any recommendations from that review. The CSAR made its recommendations in a report to the presbytery dated December 5, 2015.

In the course of the CSAR’s work, two elders on the session of First Presbyterian Church of Seattle (“FPCS”) raised many new allegations and concerns, which the CSAR regarded as beyond the scope of its charge. These allegations included that the FPCS session:

1. was unwilling to utilize the Communal Discernment and Gracious Separation policy approved by the presbytery;
2. was following a detailed strategy involving the establishment of a separate corporation and was planning to engage the presbytery in a long legal battle;
3. was contemplating the possible transfer of the congregation’s funds (restricted and otherwise) to this separate corporation or its lawyers;
4. was considering naming the current elders to a separate board of this corporation;
5. had held unauthorized meetings of the session with irregularities in proceedings, including failure to vote on duly moved and seconded motions;
6. had kept inaccurate record of actions taken and had restricted access to minutes [G-3.0107; see G-3.0108b]¹;
7. had given no opportunity or provision for dissent [G-3.0105a and 3.0105b] and had isolated and intimidated elders who expressed their conscience [G-2.0105]; and
8. had not apprised the congregation about the matters stated above.

The presbytery directed the FPCS session to produce documents. In response, the FPCS session² wrote the presbytery on October 30, 2015, as follows:

¹ All citations in this report refer to provisions of the *Constitution of the Presbyterian Church (U.S.A.), Part II, Book of Order, 2015-2017*. The *Book of Order* describes the polity and form of government of the Presbyterian Church (U.S.A.). “Each congregation of the Presbyterian Church (U.S.A.) shall be governed by this constitution.” [G-1.0103]

² By the time that this response was written, resignations had reduced the FPCS session to the following individuals: Liz Cedergreen, David Martin, Lindsey McDowell, George Norris, Nathan Orona, and Kathryn Ostrom, along with then co-pastors Jeff and Ellen Schulz as moderators of session. Church records indicate that Lindsey McDowell, George Norris, and Nathan Orona have now been on the FPCS session more than six consecutive years, which is contrary to G-2.0404.

1. “On Tuesday, October 27, 2015, the Session voted to reestablish the FPCS Board as a body separate from the Session. The FPCS Board is governed by the Corporation’s Articles of Incorporation and Corporate Bylaws, as well as the provisions of the Washington Nonprofit Corporation Act, and is not subject to the authority of the Presbytery of Seattle (‘Presbytery’) or the PCUSA Book of Order. Nevertheless, as an accommodation to the FPCS Session, the FPCS Board has authorized the Session to provide the following information to Presbytery: The Board held a meeting following the FPCS Session meeting on October 27, 2015.”
2. “[A]ll assets of FPCS are owned by and under the control of the Corporation, and are therefore not subject to Presbytery authority. Nevertheless, as an accommodation to the FPCS Session, the FPCS Board has authorized the Session to provide a copy of the Corporation’s most recent financial statements.”
3. “The Corporation transferred approximately \$420,000 into the trust account of law firm Lane Powell PC in October 2015.”

On November 15, 2015, the congregation of FPCS voted to “disaffiliate” from the Presbyterian Church (U.S.A.), to ratify changes to the bylaws of the congregation and the corporation that the FPCS session had adopted on October 27, 2015, and to amend the articles of incorporation of the church. The presbytery had advised the FPCS session before November 15, 2015, that these actions were out of order, that only the presbytery can dismiss a congregation, and that the Book of Order does not allow proxy voting. The FPCS session ignored this advice.

A special meeting of the presbytery took place on November 17, 2015, for the purpose of considering the circumstances summarized above. By a vote of 136 to 8, with three abstentions, the presbytery approved a resolution appointing an administrative commission to work on the presbytery’s behalf with the following purposes and authority:

1. “to reiterate the presbytery’s invitation to the session of First Presbyterian Church of Seattle (FPCS) to enter into the presbytery’s Communal Discernment and Gracious Separation policy and, if that invitation is accepted, to appoint the members of the Discernment Team;
2. “to require or request, have access to, receive, and review all documents of FPCS, including but not limited to business and financial records of the congregation and the corporation [G-3.0107, G-3.0108, G-3.0204];
3. “to ensure that the provisions of the Constitution are followed in the governance of FPCS, including but not limited to G-4.0101, G-4.0102, G-4.0202, and G-4.0204;
4. “to direct that corrective action be taken if matters are determined to be out of compliance with the Constitution [G-3.0108c];
5. “to make provision for and to name a moderator [G-1.0504 and G-3.0201];
6. “to call meetings of the congregation [G-1.0502] and the session [G-3.0203], if necessary, to transact business in accordance with the Book of Order;
7. “if it becomes evident that the church is in ‘schism,’ to determine the ‘true church’ within the Presbyterian Church (U.S.A.) in this matter [G-4.0207];
8. “to thoroughly investigate and provide a full opportunity for the session to be heard, and if it concludes that the session is unable or unwilling to manage wisely its affairs, to assume original jurisdiction with the full power of the session [G-3.0303e];
9. “to consult with ruling elders and teaching elders, to provide written notice of disapproval, and, if the ruling or teaching elder persists in the work, to conclude that he

or she has renounced the jurisdiction of the Presbyterian Church (U.S.A.) [G-2.0407; G-2.0509];

10. “if necessary, to dissolve pastoral relationships, both temporary and installed, fully observing the due process requirements of the Constitution [G-2.0901 ff.];
11. “to consider the viability of the congregation and make recommendations to the presbytery in that regard;
12. “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 body, utilizing the presbytery’s Communal Discernment and Gracious Separation Policy;
13. “to safeguard all property of FPCS, which continues to be held in trust for the use and benefit of the Presbyterian Church (U.S.A.), and to determine the ownership of any FPCS property that has been transferred to third parties; and
14. “to seek relief in civil court, if necessary, and/or to respond to court actions instituted by others, to remedy any omission, error, or misdeed on the part of the session, the congregation, or the trustees (or any other entity that purports to act or have acted on behalf of FPCS).”

The presbytery appointed the following eight individuals to serve as members of the Administrative Commission:

- Steve Aeschbacher (Ruling Elder, Bellevue Presbyterian Church)
- Heidi Husted Armstrong (Teaching Elder, Member-at-large)
- Shelley Dahl (Ruling Elder, University Presbyterian Church)
- J.P. Kang (Teaching Elder, Japanese Presbyterian Church)
- Bill Longbrake (Ruling Elder, First Presbyterian Church of Seattle)
- Jonathan Siehl (Teaching Elder, Honorably Retired)
- Kathy Smith (Commissioned Ruling Elder, North Point Church)
- Bob Wallace (Ruling Elder, Bellevue Presbyterian Church)

Proceedings of the Administrative Commission

At its initial meeting on November 18, 2015, the Administrative Commission elected Shelley Dahl and Steve Aeschbacher as co-moderators. After reviewing and discussing background documents, the Administrative Commission determined that letters should be sent to the FPCS session identifying concerns, requesting additional documents, and inviting the FPCS session to appear before the Administrative Commission on December 4, 2015, at 3:00 p.m. to address the issues described in the Administrative Commission’s charter. The letters were sent to the FPCS session on November 20, 2015.

The FPCS session did not respond. Instead, its lawyers wrote a letter dated December 1, 2015, to the presbytery’s legal counsel. This letter asserted: “Because the AC [Administrative Commission] has no ongoing ecclesiastical or legal authority over the Church or the Corporation, its production requests, stated areas of inquiry, and the Presbytery’s discernment and dismissal process are moot and require (and will therefore receive) no further response.” The Administrative Commission did not receive any other response to its request for documents from the FPCS session, and no member of the FPCS session attended the meeting of the Administrative Commission on December 4, 2015.

The Administrative Commission continued to encourage the FPCS session to appear before it. To that end, the Administrative Commission twice rescheduled the meeting time that it had initially offered, to December 16 and then to December 17, 2015. The Administrative Commission also advised the FPCS session that its appearance would be without prejudice to any argument that it was no longer under the authority of the presbytery. The lawyers for the FPCS session assured the Administrative Commission that the FPCS session was available at the appointed hour, but they refused to permit any meeting to occur except under conditions that would treat the session's meeting with the Administrative Commission in this ecclesiastical proceeding as if it were a litigation settlement conference and that would preclude the Administrative Commission from disclosing the fact or the substance of the meeting. The Administrative Commission could not accept those conditions. Once again, despite repeated invitations, no member of the FPCS session attended the meeting of the Administrative Commission on December 17, 2015.

On December 18, 2015, the Administrative Commission again wrote to the FPCS session, urging it to engage with the Commission and to "step out from behind your lawyer and communicate with us so we can hear more of your perspectives" On December 30, 2015, the FPCS session responded. It stated that "FPCS is no longer affiliated with the Presbytery. Engaging in an investigation or having an 'opportunity to be heard' is not appropriate" The Administrative Commission replied on December 31, 2015, reiterating its invitation to the FPCS session to appear and participate in the Administrative Commission's meeting on January 7, 2016, to which members of the presbytery, members of FPCS, and other interested persons had been invited. But again the FPCS session did not appear.

At the Commission's meeting on January 7, several members of the presbytery lamented the breakdown in communication between the FPCS session and the presbytery. They also voiced concern that the lawyers had become an impediment to open communication. With that encouragement, the Administrative Commission wrote to the FPCS session on January 11, 2016, inviting the session members to a non-conditional listening meeting on January 20, 2016, from which all lawyers, staff, and spokespersons would be excluded and at which no notes would be kept. The FPCS session said that it would attend only if the Administrative Commission agreed that the fact of the meeting, its participants, and any communications or actions relating to the meeting would never be used as evidence in any legal proceeding. This would preclude the Administrative Commission from reporting to the presbytery the fact of the meeting or, if it did, from using its report in any subsequent proceeding, including one initiated by the FPCS session.

Even though such conditions were inconsistent with a non-conditional meeting and betrayed the influence of persons who were not supposed to be part of such a meeting, the Administrative Commission offered a revised agreement that would bar participants from publicly attributing any statement to any speaker (either by name or position) without that person's permission. The Administrative Commission also agreed not to use the FPCS session's appearance at the meeting as evidence that it acknowledged the continuing jurisdiction of the presbytery. But the FPCS session rejected that proposal, insisting that the January 20 meeting occur on its terms or not at all. The meeting did not occur.

Besides reaching out repeatedly to the FPCS session, the Administrative Commission invited all interested persons to provide input about the matters before it. The Administrative

Commission also followed up with everyone who contacted it. In addition to holding meetings and gathering information from members of the Administrative Commission and presbytery staff, the Administrative Commission interviewed and/or received information from 14 ruling elders, 18 teaching elders, and 27 current or former members, attenders, and employees of FPCS (some categories overlap):

Judy Andrews	Ruling Elder at Woodland Park Presbyterian Church
John Baker	FPCS member
Becki Barrett	Teaching Elder, Overlake Park Presbyterian Church; Committee for Special Administrative Review
Steven B. Bass	CPA who conducted audits and financial reviews of FPCS for many years up to and including 2010 and who interacted with members of the FPCS session in 2013-14
Michael Bennett	Ruling Elder and former FPCS member who served on session
Tiesa Blankenship	Former FPCS employee
Lynne Faris Blessing	Teaching Elder, Bethany Presbyterian Church
Gordy Boyd	Ruling Elder and Union Church member
Carla Brown	FPCS bookkeeper, 2007-early 2010
Claudie Cassady	Former FPCS member and former FPCS Operations Committee and Nominating Committee member
Mark Cassady	Ruling Elder and former FPCS member who served on session
Colleen Chinen	Ruling Elder, Steel Lake Presbyterian Church; co-moderator, Committee on Ministry
Fred Choy	Teaching Elder, Seattle Community Church
Peter Chung	Ruling Elder, Seattle Community Church
Sheri Edwards Dalton	Teaching Elder and Seattle Presbytery member-at-large
Barbara Danhoff	FPCS bookkeeper, 2010-2013
Susan Denton	FPCS member
Tyler Easley	Teaching Elder and Seattle Presbytery member-at-large; Committee for Special Administrative Review
Nancy Emerson	Ruling Elder (Wabash Valley Presbytery, Indiana); Exeter House resident and FPCS visitor
Dave Erland	Ruling Elder, Sammamish Presbyterian Church; Committee for Special Administrative Review
Brian Fuson	Former FPCS attender
Mona Gacutan	Ruling Elder and FPCS member who served on session until October 25, 2015

Melinda Glass	Ruling Elder, Lake Burien Presbyterian Church; Committee for Special Administrative Review
Larry Grounds	Teaching Elder, Redmond Presbyterian Church; former co-moderator, Committee on Ministry
Julie Gustavson	Ruling Elder and former FPCS member who served on session
Jerry Hardcastle	Exeter House resident; FPCS visitor (member, Trinity Episcopal Church)
Gail Irving	Teaching Elder and FPCS Shelter Team employee
Mansour Khajehpour	Teaching Elder and Operations Manager at FPCS from January 2013 until July 2014
Neal Lampi	Ruling Elder and FPCS member who served on session until October 27, 2015
David Lapse	Former assistant organist and sexton at FPCS (1987-2007); current musician at Exeter House
Della Lium	Ruling Elder, Brighton Presbyterian Church; Exeter House resident and FPCS attender
Jim Lium	Ruling Elder, Brighton Presbyterian Church; Exeter House resident and FPCS attender
Scott Mann	Teaching Elder, Bellevue Presbyterian Church, and Moderator of Seattle Presbytery
Will Mason	Teaching Elder, Steel Lake Presbyterian Church; former co-moderator, Committee on Ministry
Jack Merner	Teaching Elder, Cascades Presbytery; Exeter House resident and FPCS attender
James B. Notkin	Teaching Elder, Union Church
Binh Nguyen	Director of Southeast Asia Ministries, Seattle Presbytery
Lyle Oliver	Deacon and Ruling Elder; Exeter House resident and current FPCS attender
Cindy O'Sullivan	FPCS Shelter Team member
Rajat (RJ) Parsad	FPCS member
Jane Pauw	Teaching Elder, Rainier Beach Presbyterian Church
Charles Peet	Teaching Elder; Exeter House resident and FPCS visitor
Michelle Perrigo	Former FPCS member; former worship team member and small group leader
Steve Quant	FPCS Shelter Team member
Dale Sewall	Teaching Elder, Honorably Retired
Dick Steele	Teaching Elder; Exeter House resident and FPCS attender
Elizabeth Steele	Exeter House resident
Laurinda Steele	FPCS member
Vonna Thomas	Teaching Elder and Seattle Presbytery member-at-large
Kelly Wadsworth	Teaching Elder/Validated Ministry (Exeter House chaplain)

Findings of the Administrative Commission

Having carefully and prayerfully considered the information before it in light of the authority, roles, and responsibilities that the presbytery has entrusted to it, the Administrative Commission makes the following findings:

1. The Administrative Commission reiterated to the FPCS session multiple times the presbytery's invitation to enter into the Communal Discernment and Gracious Separation process. See, e.g., letters to FPCS session dated November 20, 2015, and December 18, 2015. The FPCS session ignored or explicitly rejected every invitation to follow the presbytery's Communal Discernment and Gracious Separation policy.
2. The presbytery's Communal Discernment and Gracious Separation Policy constitutes the only policy under which a congregation in the presbytery may be dismissed or otherwise separated from the Presbyterian Church (U.S.A.).
3. The presbytery has received no request from another Reformed denomination to dismiss the FPCS congregation. Nor has the presbytery received any information suggesting that another Reformed denomination is willing to receive the FPCS congregation.
4. By written statement submitted to the stated clerk of the presbytery, Jeff and Ellen Schulz, until then the co-pastors of FPCS,³ renounced the jurisdiction of the Presbyterian Church (U.S.A.). In accordance with G-2.0509, renunciation is effective upon receipt, and the Schulzs' letter was received by the presbytery on December 16, 2015.
5. Under G-2.0509, renunciation of jurisdiction removes a pastor from membership in the presbytery and terminates the exercise of the pastor's ministry. The roles occupied by Jeff and Ellen Schulz as co-pastors at FPCS therefore ended on December 16, 2015, leaving FPCS without any pastor. On January 19, 2016, the stated clerk reported the Schulzs' renunciation at a meeting of the presbytery, and their names were deleted from the roll.
6. The Administrative Commission requested documents from the FPCS session, including business and financial records of the congregation and the corporation. The Administrative Commission was entitled to such documents under G-3.0108b. The FPCS session refused to comply with the Administrative Commission's requests. This refusal violates G-3.0108 and G-3.0202.
7. On October 30, 2015, the FPCS session sent to the presbytery audited financial statements for 2014. The Administrative Commission has questions about these statements, which were the first CPA-reviewed statements for FPCS since 2010.
8. Multiple witnesses supplied the Administrative Commission with credible reports of financial irregularities involving the FPCS session. These irregularities include but are not limited to the following: tampering with the books; failing to reconcile bank

³ In this report, "pastor" refers to a teaching elder and minister of the Word and Sacrament who has been called by a congregation and installed in a pastoral relationship. See G-2.0501, G-2.0504a.

statements and to balance the general ledger; failing to provide complete information to accountants; having unauthorized signers sign checks; and failing to submit accurate financial information to the presbytery. In addition, the Administrative Commission received information suggesting that the FPCS session may have impermissibly used restricted funds and improperly recharacterized certain assets. The actions by the FPCS session described in this paragraph violate G-3.0113 and G-3.0205.

9. There are numerous irregularities in the records maintained by the FPCS session. For example, the minutes that the FPCS session provided to the presbytery on October 30, 2015, reflect alterations and deletions of relevant material that had been included in the earlier versions of the minutes obtained by the Committee on Ministry in 2014. The minutes maintained by the FPCS session also fail to reflect discussions and actions leading up to the decision to unilaterally “disaffiliate” from the Presbyterian Church (U.S.A.). These irregularities violate G-1.0505, G-3.0107, and G-3.0204.
10. Members of the FPCS session isolated and drove out ruling elders who expressed their conscience, and they sought to supplant the elders’ ordination vows with vows of secrecy and deception. These actions violate G-3.0103, G-3.0105, G-3.0201, and G-3.0202.
11. The Administrative Commission received many credible reports that reflect a pattern of intimidation and manipulation by the former co-pastors and other members of the FPCS session. These reports came from elders, congregants, staff, volunteers, and others.
12. Jeff Schulz gave ruling elders scripts and directed them to read the scripts verbatim before the congregation. Elders were also instructed as to what they could and could not say when visitors attended session meetings.
13. The record of the dealings between the former co-pastors and the presbytery reflects a pattern of duplicity rather than candor, including specifically with respect to the proposed merger with A Seattle Church and the attempt to “disaffiliate” from the presbytery unilaterally. The FPCS session has also not been candid with the congregation about these subjects. The FPCS session has demonstrated a disregard for transparency, accountability, and polity. Its actions violate G-3.0201 and G-3.0202.
14. From 2010 through 2015, the Administrative Commission has been told, the full terms of call for the then co-pastors were not brought before the congregation for its approval, contrary to G-1.0503 and G-2.0804. The Administrative Commission has seen no documents suggesting otherwise. In addition, the FPCS session entered into agreements with the then co-pastors purporting to guarantee future severance compensation if the presbytery formed an administrative commission. These agreements were neither disclosed to nor approved by the congregation, contrary to G-1.0503c.
15. Multiple witnesses supplied the Administrative Commission with credible reports of improper conduct involving the former co-pastors. Among other things, it was reported that the former co-pastors were paid amounts not authorized by the congregation; that funds in accounts maintained for the upkeep of the church were used on the former co-pastors’ personal residence, without corresponding increases in the church’s equity interest or the pastors’ reported compensation; and that in late 2013 the former co-pastors

took some of their compensation in cash in order to make a better case for financial aid for a college-age child. These actions violate G-2.0104a.

16. The Administrative Commission heard from many of those whom it interviewed that the former co-pastors frequently did not act in the manner called for by G-2.0501, G-2.0503, and G-2.0504. They failed to support many people in the disciplines of the faith amid the struggles of daily life and did not enable the ministry of others.
17. The Administrative Commission found irregularities in the manner in which the FPCS session added congregants to or removed them from membership rolls and in the vetting of prospective elders. There has been arbitrary and inconsistent treatment of potential and current members; David Martin was made an elder before he was baptized into church membership; and elders were not rotated off the session after six years. These actions violate G-2.0104, G-2.0402, G-2.0404, G-3.0201c, and G-3.0204.
18. Until very recently (the second half of 2015), the FPCS session (including the co-pastors) and congregational leadership through their conduct and statements proclaimed the authority of the Presbyterian Church (U.S.A.) with respect to both temporal and spiritual matters at FPCS. For example, in a report to presbytery dated September 18, 2012, in which Jeff Schulz asked that the Seattle First Redevelopment Committee be reconstituted as the Seattle First Redevelopment Commission, he wrote that FPCS “owns its property in trust of the Presbytery, which must approve a purchase/sale agreement.” In a letter dated April 16, 2014, he wrote that “because PC(USA) properties owned by local congregations are held in ‘trust’ of the denomination, Presbytery has the authority to deny dismissal with the property, or to approve dismissal with property with a negotiated financial settlement.”
19. In 2014, at the request of FPCS, the FPCS session and the presbytery through another administrative commission collaborated on and approved agreements to sell and redevelop church properties, using agreed legal counsel. As this was happening, the FPCS session secretly hired a lawyer with a reputation for advising churches that seek to leave the denomination about property disputes. When this was discovered, Jeff Schulz first denied that the lawyer had been hired and then claimed that his hiring had nothing to do with church property. He also denied that he had any plans to take the congregation out of the Presbyterian Church (U.S.A.).
20. On July 31, 2015, ten days after the appointment of the CSAR, elders David Martin and George Norris met with then-elder Mona Gacutan in Kirkland, Washington. They outlined to her a plan to unilaterally pull out of the Presbyterian Church (U.S.A.), while keeping such discussions out of the session’s minutes. They also discussed “how to isolate” another elder, Neal Lampi, whom they saw as unsympathetic to their plan. They supported their arguments with false information about the finances of other churches in the presbytery.
21. At a session meeting on August 6, 2015, the FPCS session discussed this “disaffiliation” plan, although the discussion there and at other meetings was not disclosed in the minutes. The moderator, Jeff Schulz, asked the members of the FPCS session to take a vow of secrecy. Ms. Gacutan left the room rather than do so.

22. At a session meeting on October 25, 2015, Ms. Gacutan made a motion, which was duly seconded, to pursue the presbytery's Communal Discernment and Gracious Separation policy. The FPCS session failed to take a vote on Ms. Gacutan's motion, in violation of section 4 of Robert's Rules of Order and G-3.0105. At the end of the meeting, Ms. Gacutan resigned from the FPCS session. She asked that her resignation letter be placed in the minutes, but that request was refused.
23. At a session meeting on October 27, 2015, ruling elder Neal Lampi resigned from the FPCS session. His seven-page letter of resignation described this as "the culmination of [the session's] long often duplicitous struggle with the Presbytery." He described the session's practice of "concealing [its] deliberations" as having "now emerged to be the norm." He called upon his fellow session members to consider their own motivations rather than just attack the presbytery's. And he lamented that the conflict with the presbytery would now take place in civil court; "other options available to our congregation have been set aside in favor of the satisfaction of self-righteous indignation."
24. At its meeting on October 27, 2015, the remaining members of the FPCS session took several actions that violated the Constitution of the Presbyterian Church (U.S.A.). They began by voting to rescind the existing bylaws of the church and to adopt separate congregational and corporate bylaws.
25. The existing "Bylaws of the First Presbyterian Church of Seattle" were adopted by a vote of the congregation on May 8, 2005. Those bylaws are not subject to amendment by the FPCS session, and they remain in full force and effect.
26. Article II of the bylaws is entitled "Relation to the Presbyterian Church (U.S.A.)," and it provides as follows: "The First Presbyterian Church of Seattle is a member church of the Presbyterian Church (U.S.A.)."
27. Article V of the bylaws is entitled "Governance of the Church." It provides as follows:

This church shall be governed in accordance with the current edition of the *Constitution of the Presbyterian Church (U.S.A.)*. Consistent with that *Constitution*, these bylaws shall provide specific guidance for this church. *Robert's Rules of Order (Newly Revised)* shall be used for parliamentary guidance. Any matter of church governance not addressed in these bylaws shall be governed by the *Constitution of the Presbyterian Church (U.S.A.)*.
28. Article VI of the bylaws, entitled "Meetings," requires an annual meeting of the congregation and the corporation during the first quarter, at which changes in the terms of call for the pastor(s) must be presented. It also provides that special meetings may be called by the Session, if the call for the meeting states clearly the purpose of the meeting and business is restricted to that which is specified. Under Article VI, an annual special meeting is required during the second quarter for receipt of the nominating committee report and election of church officers. Consistent with the Constitution of the Presbyterian Church (U.S.A.), Article VI states that only active members may vote and that "[p]roxy voting is not permitted in meetings of the congregation and the corporation."

29. Article VII of the bylaws, entitled “Notice of Meetings,” requires that public notice of meetings of the congregation “be given and printed and verbal form on at least two successive Sundays prior to the meeting.” It also requires that printed notice of meetings of the corporation “be included in the church bulletin, signed by the Clerk of the Session, . . . which notice shall be audibly read at public worship to the assembled congregation on at least two successive Sundays prior to the date of such meeting.”
30. Article XI of the bylaws, entitled “Elders,” states that “[t]he Session shall have such duties and powers as are set forth in the *Constitution of the Presbyterian Church (U.S.A.)*.” It provides further that the session “shall act as officers and directors of the corporation, and shall form such committees as are necessary to carry out its work and maintain the corporation’s good standing with the State of Washington.”
31. Article XV of the bylaws, entitled “Amendments,” states that those bylaws “may be amended [a] subject to the Articles of Incorporation, [b] the laws of the state of Washington and [c] the *Constitution of the Presbyterian Church (U.S.A.)* [d] by a two-thirds vote of the voters present, [e] providing that the proposed changes in printed form shall have been distributed at the same time as the call of the meeting at which the changes are voted upon.” The bylaw amendments that the FPCS session purported to adopt on October 27, 2015, satisfied none of these five requirements.
32. The bylaw amendments purportedly adopted by the FPCS session on October 27, 2015, violate both the Articles of Incorporation and the Constitution of the Presbyterian Church (U.S.A.). The restated Articles of Incorporation, adopted in 1985, provide that the corporation exists and acts “under the Form of Government and discipline of the ‘Presbyterian Church (U.S.A.)’.” The Presbyterian Form of Government requires, among other things, that the powers exercised by any corporation formed by a congregation are “subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.). The powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.” G-4.0101. The corporate bylaws approved by the FPCS session on October 27, 2015, however, purport to place the property of the church outside the control of session, contrary to the Constitution of the Presbyterian Church (U.S.A.). The purported amendments are, therefore, void.
33. The bylaws provide that they can be amended only by the congregation, not by the session. The changes to the bylaws that the FPCS session purported to adopt on October 27, 2015, were made without the knowledge, much less a two-thirds majority vote, of the congregation. Nor were they distributed in printed form to the congregation until after the FPCS session adopted them. For these reasons as well, the amendments adopted by the FPCS session on October 27, 2015, were improper and ineffective.
34. Acting under the improperly amended bylaws, the FPCS session on October 27, 2015, appointed themselves trustees of a supposedly independent corporation. Under the restated Articles of Incorporation, the board of trustees must be elected by the congregation at its annual meeting, but that did not happen in this case. The FPCS session/trustees also transferred approximately \$420,000 in church funds to the trust account of Lane Powell PC. This transfer was contrary to G-4.0201. The presbytery has

demanded an accounting of the funds and either their return or their deposit in the court registry. The lawyers for the FPCS session have refused to do any of those things.

35. On October 30, 2015, the FPCS session asserted to the presbytery that the FPCS Board of Trustees “is not subject to the authority of the Presbytery of Seattle . . . or the Book of Order.” This assertion is fundamentally contrary to the Constitution of the Presbyterian Church (U.S.A.): a board of trustees is subject to the session, just as the session is accountable to the presbytery, and the actions of the board of trustees are subject to the Book of Order. See G-3.0101, G-3.0201c, G-4.0202, and G-4.0203.
36. The FPCS session called a meeting of the congregation for November 15, 2015, to vote on a resolution calling for the church to “disaffiliate” from the Presbyterian Church (U.S.A.). The notice of this meeting violated the requirements of the bylaws and G-1.0502. Among other things, it was not given in printed and verbal form on at least two successive Sundays prior to the meeting. It was not mentioned at all in the service on November 8, 2015, which was a joint service with two other churches. The meeting notice also did not meet the bylaw requirements for a public notice of a meeting of the corporation: it did not appear in the church bulletin, and it was not audibly read at public worship to the assembled congregation on at least two successive Sundays.
37. “Disaffiliation” is not among the matters that are proper to a congregational meeting under G-1.0503. The FPCS session also called for proxy voting at this meeting in violation of G-1.0501 and Article VI of the bylaws, both of which permit only active members of the congregation who are present at a meeting to vote. The presbytery informed the FPCS session of these constitutional flaws, but the FPCS session proceeded anyway. It counted proxy votes and required that all ballots be signed, thereby intimidating members. It disregarded protests from the floor. The FPCS session acted contrary to G-3.0202c and section 45 of Robert’s Rules of Order.
38. The meeting of the congregation on November 15, 2015, had 54 individuals in attendance in addition to the then co-pastors, two lawyers, and two security guards. One member of the congregation, RJ Parsad, was dragged out of the meeting and was readmitted only after police intervention. As of November 15, 2015, according to the Administrative Commission’s review of session minutes, the roster of active or occasional members at FPCS should have had 101 names, including Mr. Parsad’s, plus four youth members.
39. Liz Cedergreen, clerk of session, wrote a letter to the Stated Clerk and the Executive Presbyter that was received by them on November 17, 2015. Ms. Cedergreen reported that at the congregational meeting on November 15, 2015, “81 out of 104 members were present,” and 73 of them “approved disaffiliation from Presbyterian Church (U.S.A).”
40. Under G-3.0303b and G-4.0207, a congregation’s relationship with Presbyterian Church (U.S.A.) can be severed only by constitutional action on the part of the presbytery. The “disaffiliation” resolution presented by the FPCS session to the congregation on November 15, 2015, was unconstitutional and has no effect.
41. The amendments to the articles of incorporation that the congregation approved on November 15, 2015, are also invalid and of no effect, because (among other things) those amendments purport to effect a unilateral “disaffiliation” from the Presbyterian Church

(U.S.A.). The FPCS session’s attempt to validate its bylaw changes retroactively by congregational ratification on November 15, 2015, was ineffective as well, because (among other things) those bylaw changes violated the Constitution of the Presbyterian Church (U.S.A.). The meeting of the congregation and corporation at which these actions were taken was also not validly called and was not properly noticed as the bylaws require.

42. Ms. Cedergreen’s letter of November 17, 2015, signed “For the Session,” states that FPCS “is no longer affiliated with either PCUSA or the Presbytery of Seattle.” Ms. Cedergreen’s letter appears to be a written statement by the ruling elders of FPCS renouncing the jurisdiction of this church.

43. On January 27, 2016, Neal Lampi found that the door to the room where he regularly met for Bible study with FPCS shelter guests had been boarded up. On January 28, 2016, Gail Irving resigned from her position as shelter employee. She lamented the closing of “the one evangelical piece of the shelter where the gospel of Christ was literally shared” and described other aspects of the “shameful treatment” that shelter guests had received as a result of the steps taken by FPCS leaders in recent months.

44. The actions of the FPCS session described in these findings violate G-4.0202, which states:

The provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property.

45. The actions of the FPCS session described in these findings violate G-4.0203, which states:

All property held by or for a congregation . . . 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.).

46. The actions of the FPCS session described in these findings violate their ordination vows, including specifically W-4.4003e and i:

e. Will you be governed by our church’s polity, and will you abide by its discipline? Will you be a friend among your colleagues in ministry, working with them, subject to the ordering of God’s Word and Spirit?

i. (1) (For ruling elder) Will you be a faithful ruling elder, watching over the people, providing for their worship, nurture, and service? Will you share in government and discipline, serving in councils of the church, and in your ministry will you try to show the love and justice of Jesus Christ?

(2) (For teaching elder) Will you be a faithful teaching elder, proclaiming the good news in Word and Sacrament, teaching faith and caring for people? Will you be active in government and discipline,

serving in the councils of the church; and in your ministry will you try to show the love and justice of Jesus Christ?

47. The FPCS session has failed to act in accordance with basic principles of accountability and responsibility, consistent with the mutual commitments of Presbyterian polity, including those governing the shared responsibilities of councils (e.g., sessions and presbyteries) and the governance of congregations, as required by F-3.01 and G-1.01.
48. The conduct of the FPCS session has caused a schism within the congregation. The members of the congregation who oppose the actions taken by the FPCS session on and after October 27, 2015, are “the true church within the Presbyterian Church (U.S.A.)” G-4.0207.
49. The Administrative Commission has conducted a thorough investigation of the matters entrusted to it by the presbytery.
50. The Administrative Commission has accorded the FPCS session a full opportunity to be heard.
51. The FPCS session is unable or unwilling to manage wisely its affairs.
52. For all these reasons, the FPCS session “cannot exercise its authority.” G-3.0303e.
53. The FPCS session has ceased to use FPCS’s property as a congregation of the Presbyterian Church (U.S.A.) in accordance with the Constitution of the Presbyterian Church (U.S.A.). See G-4.0204.
54. The FPCS congregation is not viable under its current leadership. Under other circumstances, there are ministry opportunities that appear to be viable.

Actions by the Administrative Commission

After prayerful deliberation and with a heavy heart, but as required by the findings set forth above and consistent with its delegated authority and responsibilities, the Administrative Commission has decided, declared, and taken action as follows:

1. Effective 10:00 a.m. on February, 16, 2016, the Administrative Commission has assumed original jurisdiction with the full power of the session of First Presbyterian Church of Seattle under G-3.0303e. The individuals who constituted the FPCS session prior to this action by the Administrative Commission no longer have any role in the governance of FPCS and have no authority with respect to its ministry or its property. The Administrative Commission will now perform the duties of the session.
2. The Administrative Commission, acting as the session, will (a) provide that the Word of God may be truly preached and heard, (b) provide that the Sacraments may be rightly administered and received, and (c) nurture the covenant community of disciples of Christ, consistent with the responsibility and power conferred by G-3.0201.

3. The Administrative Commission has appointed Shelley Dahl and Steve Aeschbacher as co-moderators of the session in accordance with G-3.0104 and G-3.0201. If there are any meetings of the congregation, the Administrative Commission has appointed Shelley Dahl and Steve Aeschbacher to act as co-moderators under G-1.0504.
4. Acting as the session, the Administrative Commission has elected Kathy Smith as the clerk of session.
5. Acting as the session, the Administrative Commission has appointed Heidi Husted Armstrong as temporary pastor to serve the FPCS congregation.
6. Acting as the session, the Administrative Commission has appointed Scott Lumsden as the person having authority to oversee the property and financial affairs of FPCS.
7. The amendments to the bylaws of FPCS that were purportedly adopted on October 27, 2015, and purportedly ratified on November 15, 2015, are null and void.
8. The amendments to the 1985 restated articles of incorporation of FPCS that were purportedly adopted by the congregation on November 15, 2015, are null and void.
9. The Administrative Commission believes that ruling elders Liz Cedergreen, David Martin, Lindsey McDowell, George Norris, Nathan Orona, and Kathryn Ostrom have renounced the jurisdiction of this church. If they have not, the Administrative Commission acting as the session will give them as well as Blair Bush notice of its disapproval of their work. If any of these individuals wishes to consult with the session, he or she should contact Kathy Smith within five calendar days. If, having been provided opportunity for consultation and having been given this written notice, Liz Cedergreen, David Martin, Lindsey McDowell, George Norris, Nathan Orona, Kathryn Ostrom, and Blair Bush, or any of them, persist in acting as if they are leaders of the FPCS congregation or the FPCS corporation, the Administrative Commission acting as the session will conclude that they have renounced the jurisdiction of this church under G-2.0407.
10. As provided in the bylaws of the church, the members of the Administrative Commission, as the current ruling elders on session, are the officers and directors of the corporation. They have elected Bob Wallace as president, Shelley Dahl as vice president, and Bill Longbrake as secretary/treasurer of the FPCS corporation to serve terms of one year or until their successors are elected, if sooner, and have empowered them to take appropriate steps and to pursue appropriate remedies to implement this report.
11. The individuals who previously constituted the FPCS session are no longer officers, directors, or trustees of the FPCS corporation. Their successors have been named in accordance with the bylaws of the church and the corporation.
12. Even if the bylaws were not clear on this point, the members of the Administrative Commission, as the current ruling elders on session, are the trustees of the FPCS corporation under G.-4.0102, unless the corporation has determined another method for electing its trustees. The 1985 restated articles of incorporation of FPCS call for the

election of corporate trustees at the annual meeting of the congregation, but the former corporate trustees were not so elected.

13. Because only persons eligible for membership in the congregation or council are eligible to be members of the corporation and to be elected as trustees under G-4.0102, loss of membership and ordered ministry disqualifies the individuals who previously constituted the FPCS session from continuing to serve as trustees of the FPCS corporation.
14. If the former FPCS session members nevertheless continue to claim the status of corporate trustees, they are subject to the Administrative Commission acting as the session and are answerable to the Administrative Commission acting as the session in all respects under G-3.0201c, G-4.0101, and G-4.0202.
15. All property held by or for FPCS--including real property, personal property, and intangible property--is subject to the direction and control of the Administrative Commission exercising original jurisdiction as the session of the church. Under G-4.0204, such property must be held, used, applied, transferred, or sold as the presbytery may provide.
16. All funds that were transferred to the Lane Powell trust account must be returned to the church immediately. Acting as the session, the Administrative Commission further directs that all funds held in the name or under the control of the FPCS corporation be turned over immediately to the Administrative Commission in its capacity as the session of the church.
17. Until the Administrative Commission directs otherwise, no church or corporate funds of FPCS may be used or expended without the prior approval of the Administrative Commission acting as the session.
18. To the extent that any books and records related to FPCS, including membership and communicant rolls or financial records, are currently in the possession of the corporation, the former trustees, or any individual who, before today's Administrative Commission action, was a member of the FPCS session, those books and records must be turned over to the Administrative Commission acting as the session within five calendar days.
19. The financial records of FPCS will be audited as soon as possible by a certified public accountant appointed by the Administrative Commission acting as the session.
20. The Administrative Commission acting as the session directs all persons who were responsible for any financial transactions involving FPCS since December 31, 2014, to provide a full accounting of such transactions to the Administrative Commission within five calendar days.
21. Acting as the session, the Administrative Commission directs the individuals who previously constituted the FPCS session and any persons acting under their direction and control, including the former co-pastors, to vacate the church premises and turn over the keys, electronic door openers, and all other means of egress/ingress to Scott Lumsden by 10:00 a.m. on February 18, 2016. The Administrative Commission, acting as the session, will provide for the continuation of the ministries of the church.

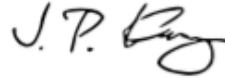
22. The Administrative Commission acting as the session directs all persons doing business with FPCS to do so through Scott Lumsden.
23. The Administrative Commission has authorized and directed the presbytery's staff and its legal counsel to take all steps deemed necessary or appropriate to carry out these actions.
24. The Administrative Commission reserves the right to make additional findings and to take further actions as necessary or appropriate.



Steve Aeschbacher



Shelley Dahl



J.P. Kang



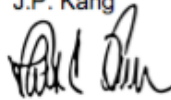
Bill Longbrake



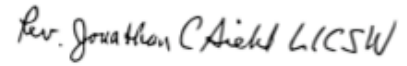
Heidi Husted Armstrong



Kathy Smith



Bob Wallace



Jonathan Siehl

**First Supplemental Report of the
Administrative Commission for First Presbyterian Church of Seattle
August 25, 2016**

Background

On November 17, 2015, Seattle Presbytery appointed the Administrative Commission for First Presbyterian Church of Seattle and authorized it to work on the presbytery's behalf with purposes and authority as described on pp. 2-3 of the Administrative Commission's Report dated February 16, 2016. The final paragraph of that Report states that the Administrative Commission "reserves the right to make additional findings and to take further actions as necessary or appropriate."

On June 2, 2016, the plaintiffs in *Presbytery of Seattle v. Schulz, et al.*, King County Superior Court Cause No. 16-2-03515-9 SEA, served their first requests for production to defendants Jeff Schulz, Ellen Schulz, Liz Cedergreen, David Martin, George Norris, and Kathryn Ostrom. In response, those defendants produced (among other things) a "Resolution of the Board of Trustees of the First Presbyterian Church of Seattle" dated October 27, 2015. Attached to this document were a "Memorandum of Understanding Regarding Severance Compensation Obligations" signed on November 10, 2015, by Kathryn G. Ostrom, President of First Presbyterian Church of Seattle (FPCS), and Jeffrey Eric Schulz, and a substantially identical "Memorandum of Understanding Regarding Severance Compensation Obligations" signed on November 10, 2015, by Kathryn G. Ostrom, President of FPCS, and Ellen Schulz. These three documents are attached. Together, the memorandum of understanding with Jeff Schulz and the memorandum of understanding with Ellen Schulz are referred to as the "Severance Agreements."

Findings of the Administrative Commission

Having carefully and prayerfully considered the information before it in light of the authority, roles, and responsibilities that the presbytery has entrusted to it, the Administrative Commission makes the following supplemental findings:

1. The Severance Agreements were approved at the same meeting where the former session members took other actions that the Administrative Commission has found violated the Constitution of the Presbyterian Church (U.S.A.). See Report, Findings 24-34.
2. The resolution approving the Severance Agreements was passed by a "Board of Trustees" that the Administrative Commission has found was not validly constituted. See Report, Finding 34. The Severance Agreements state that they are based "upon the authority of certain resolutions duly adopted by the Session of FPCS," but the Administrative Commission has not seen any such resolutions.
3. The Severance Agreements seek to alter the terms of call for Jeff Schulz and Ellen Schulz.

4. If a proposed agreement with a pastor contemplates the continuation of salary and benefits after the dissolution of the pastoral relationship, that agreement constitutes a change in the terms of call that requires the approval of the congregation. *Saurbaugh v. Pby. of Great Rivers*, Remedial Case 206-13; *see also Baumann and Griffiths v. Session of Bellefield Church*, Remedial Case 202-1.
5. Under G-1.0503, congregations are authorized to change existing pastoral relationships by approving changes to the terms of call of the pastor or pastors. Under G-2.0804, the session is required to propose for congregational action such changes in the terms of call as the session deems appropriate. Neither the session nor a board of trustees may alter the terms of call for a pastor without both fully informing the congregation and securing its approval. Jeff and Ellen Schulz knew or should have known this.
6. The Severance Agreements were neither presented to nor approved by the congregation of FPCS.
7. Under G-2.0502, no pastoral relationship may be established, changed, or dissolved without the approval of the presbytery. A proposed severance package is a change in the terms of call that requires the approval of the presbytery. See Advisory Opinion: Clergy Compensation and Terms of Call (updated October 2012) (“The session, congregation and presbytery must approve the severance package as it is considered a change in the terms of call.”). Jeff and Ellen Schulz knew or should have known this.
8. The Severance Agreements were neither presented to nor approved by the presbytery.
9. The Severance Agreements are invalid because they were not properly authorized by the session, the congregation, or the presbytery. Alternatively, even if the Severance Agreements could be considered to be valid and enforceable against Ms. Ostrom and the other former session members, they may not be enforced against FPCS because the session, the congregation, and the presbytery did not authorize them and Jeff and Ellen Schulz knew this.
10. The Severance Agreements provide in paragraph 1 that Jeff [Ellen] Schulz will continue his [her] pastorate for FPCS “until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship”
11. By written statement submitted to the stated clerk of the presbytery and received on December 16, 2015, Jeff and Ellen Schulz renounced the jurisdiction of the Presbyterian Church (U.S.A.). Under G-2.0509, their renunciation of jurisdiction was effective on December 16, 2015. See Report, Finding 4.
12. Renunciation of jurisdiction removes a pastor from membership in the presbytery and terminates the exercise of the pastor’s ministry. See G-2.0509. The roles occupied by Jeff and Ellen Schulz as co-pastors at FPCS therefore ended on December 16, 2015. At the next presbytery meeting on January 19, 2016, the stated clerk of the presbytery reported

the Schulzes' renunciation, and their names were deleted from the roll. See Report, Finding 5.

13. Jeff and Ellen Schulz ended their pastoral relationship with FPCS when they voluntarily renounced the jurisdiction of the Presbyterian Church (U.S.A.). See Request 90-4 (Minutes, 1990, Part 1, p. 255) ("If a pastor of a particular church renounces the jurisdiction of the church under [G-2.0509], the pastoral relationship is thereby dissolved, and the pulpit is vacant.").
14. The Session did not terminate or dissolve the Schulzes' pastoral relationship; rather, the Schulzes terminated or dissolved their pastoral relationship by their renunciation of jurisdiction. In addition, the Administrative Commission did not assume original jurisdiction and become the Session of FPCS until February 16, 2016, two months after the effective date of the Schulzes' renunciation of jurisdiction and four weeks after their names had been deleted from the roll.
15. The Severance Agreements in paragraph 2 assume that, in order to be entitled to any benefits, "Pastor Schulz continues to serve FPCS . . . in good faith and in good standing." Jeff and Ellen Schulz ceased to serve FPCS in good faith and in good standing by no later than the effective date of their renunciation of the jurisdiction of the church, which was December 16, 2015.
16. The Severance Agreements purport to set forth a "Good Cause" standard for pastoral conduct that alone would justify termination or dissolution of the pastoral relationship if the "Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship." This "Good Cause" standard does not and cannot replace the requirements placed upon teaching elders by the *Book of Order* (see, e.g., G-2.0504), which continue to govern.
17. Even if the "Good Cause" standards set forth in the Severance Agreements applied here, they would be satisfied. The Report describes conduct manifesting "[d]ishonesty . . . or intentional and knowing misrepresentation by Pastor Schulz" as well as "[m]isconduct in the performance of Pastor Schulz's duties and responsibilities" (Severance Agreements, paragraph 4(a) and (e)). See, e.g., Report, Findings 10-16, 19, and 21.
18. The Severance Agreements are conditioned upon "a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation." Neither Jeff nor Ellen Schulz has provided such a release.

Actions by the Administrative Commission

After prayerful deliberation, as required by the findings set forth above and consistent with its delegated authority and responsibilities, the Administrative Commission has decided, declared, and taken action as follows:

1. Because the Severance Agreements are invalid (having not been properly authorized by the session, the congregation, or the presbytery) and inoperative (the Schulzes having severed their pastoral relationships with FPCS when they renounced the jurisdiction of

the church), and because the Severance Agreements presume conditions that have not and cannot be fulfilled (e.g., continued “good standing”), the Administrative Commission has directed Scott Lumsden, as the person having authority to oversee the property and financial affairs of FPCS, not to pay Jeff or Ellen Schulz anything under the Severance Agreements.

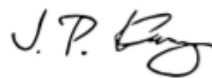
2. Because the Severance Agreements are invalid (having not been properly authorized by the session, the congregation, or the presbytery) and inoperative (the Schulzes having severed their pastoral relationships with FPCS when they renounced the jurisdiction of the church), and because the Severance Agreements presume conditions that have not and cannot be fulfilled (e.g., continued “good standing”), the Administrative Commission acting as Session is entitled to exercise its rights and remedies under the Home Equity Sharing Agreement executed by Jeff and Ellen Schulz and dated August 16, 2006, as well as the corresponding Deed of Trust dated August 16, 2006, without regard to any forbearance or restriction purportedly required or imposed by the Severance Agreements.
3. With respect to the Home Equity Sharing Agreement executed by Jeff and Ellen Schulz and dated August 16, 2006, as well as the corresponding Deed of Trust dated August 16, 2006, the Administrative Commission confirms that the employment of Jeff and Ellen Schulz by FPCS ceased effective December 16, 2015.
4. The Administrative Commission reserves the right to make additional findings and to take further actions as necessary or appropriate.



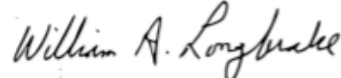
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Shelley Dahl



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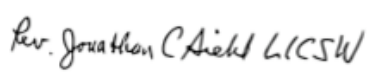
Heidi Husted Armstrong



Kathy Smith



Bob Wallace



Jonathan Siehl

**RESOLUTION
OF
THE BOARD OF TRUSTEES
OF
THE FIRST PRESBYTERIAN CHURCH OF SEATTLE**

October 27, 2015

WHEREAS, Reverend Jeffrey Eric Schulz and Reverend Ellen Adair Schulz (the “FPCS Pastors”) have faithfully served the First Presbyterian Church of Seattle (“FPCS”) as Co-Pastors under certain terms of call for a period of at least nine (9) years;

WHEREAS, the Board of Trustees (the “Board”) of FPCS believes that it is in the best interests of the corporation and its members to encourage and induce the FPCS Pastors to remain as Co-Pastors of FPCS and to continue serving FPCS, its Session, and its Congregation under their current terms of call, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, “PCUSA”), on the other hand; and

WHEREAS, in consideration of the commitment and agreement of the FPCS Pastors to continue serving FPCS, the Board believes it is in the best interest of FPCS to commit to provide severance compensation and forbear from exercising certain rights relating to real property owned by the FPCS Pastors in the event that PCUSA seeks to remove the FPCS Pastors from their current terms of call.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board hereby approves and adopts the Memorandum of Understanding Regarding Severance Compensation Obligations between FPCS and Reverend Jeffrey Eric Schulz, attached hereto as Exhibit A; and it is hereby

FURTHER RESOLVED THAT the Board hereby approves and adopts the Memorandum of Understanding Regarding Severance Compensation Obligations between FPCS and Reverend Ellen Adair Schulz, attached hereto as Exhibit B; and it is hereby

FURTHER RESOLVED THAT any officer of FPCS is hereby authorized and directed, in the name of and on behalf of FPCS, to execute and deliver any and all documents and take any and all other steps and do any and all other things which they deem necessary or advisable, in order to effectuate the purpose of each and all of the foregoing resolutions, and the performance of any such acts and the execution and delivery by any of them of any such agreements and other documents shall conclusively establish the authority of such officer therefor.

MEMORANDUM OF UNDERSTANDING REGARDING SEVERANCE COMPENSATION
OBLIGATIONS

WHEREAS, the Reverend Jeffrey Eric Schulz (“Pastor Schulz”) has been serving as co-pastor of the First Presbyterian Church of Seattle, a Washington nonprofit corporation (“FPCS”), under certain current terms of call for a period of at least nine (9) years; and

WHEREAS, FPCS wishes to encourage Pastor Schulz to remain as Pastor of FPCS, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, “PCUSA”), on the other hand; and

WHEREAS, as an inducement and encouragement to Pastor Schulz to continue serving FPCS, its Session and its Congregation under his current terms of call, and in consideration of Pastor Schulz’s commitment and agreement to do so, regardless of and including in the event of conflict between FPCS, its Session, and its Congregation, on the one hand, and PCUSA, on the other hand; and

WHEREAS, upon the authority of certain resolutions duly adopted by the Session of FPCS, and in consideration of the recitals above and the mutual promises below, FPCS and Pastor Schulz do hereby agree as follows:

1. Except as set forth below, Pastor Schulz shall continue his pastorate for FPCS in accord with his current terms of call until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship, in which case the provisions of Sections 2 through 6 of this Agreement shall govern the rights, duties, and obligations of the parties hereto.

2. Assuming Pastor Schulz continues to serve FPCS to the satisfaction of the Session, in good faith and in good standing, under his current terms of call, then if, *and only if*, the pastoral relationship and terms of call between Pastor Schulz and FPCS are terminated and/or dissolved by PCUSA, other than for “Good Cause” (as defined below), then, in exchange for a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation, FPCS shall:

a. Continue to pay to Pastor Schulz all of his “Regular Compensation” (as defined below) for a certain period of time that shall end upon the earlier of: (i) Pastor Schulz securing a pastoral relationship with another congregation or securing other comparable employment; and (ii) two (2) years from the date of such termination and/or dissolution by PCUSA.

b. Forbear from exercising its rights and remedies under that certain Home Equity Sharing Agreement executed by Pastor Schulz and dated August 16, 2006 (the

“Home Equity Sharing Agreement”), as well as that certain corresponding Deed of Trust of same date executed by Pastor Schulz and granted to secure performance by Pastor Schulz under the Home Equity Sharing Agreement (the “Deed of Trust”), until three (3) years from the date of such termination and/or dissolution by PCUSA. Notwithstanding the foregoing, all provisions relating to the consequences of sale or refinance of the property set forth in the Home Equity Sharing Agreement and Deed of Trust shall not be affected by this Memorandum of Understanding. Except as specifically modified herein, the rights, duties, and obligations of the parties under the Home Equity Sharing Agreement and Deed of Trust shall not be modified or affected in any way by this Memorandum of Understanding.

3. For purposes of this Memorandum of Understanding, “Regular Compensation” shall mean the total compensation, inclusive of housing allowance and any other compensation-related benefits, paid to or for the benefit of Pastor Schulz during the twelve (12) month period immediately preceding any termination or dissolution of Pastor Schulz’s terms of call by PCUSA. In the event that FPCS discontinues contributing to the Presbyterian Board of Pensions on Pastor Schulz’s behalf, then FPCS shall instead contribute an equivalent amount into some other appropriate tax-deferred program for Pastor Schulz’s benefit.

4. For purposes of this Memorandum of Understanding, “Good Cause” shall mean:

a. Dishonesty, fraud, theft, embezzlement or intentional and knowing misrepresentation by Pastor Schulz, occurring after the date of this Memorandum of Understanding, in the performance of his duties;

b. Use of alcohol or legal drugs or prescription medications by Pastor Schulz in a manner or to the extent that it impairs performance of his duties;

c. Use of illegal drugs at any time;

d. Any conduct involving moral turpitude by Pastor Schulz that causes harm to either his or FPCS’s reputation or community standing, or any arrest or violation of law other than for minor traffic infractions;

e. Misconduct in the performance of Pastor Schulz’s duties and responsibilities or conduct that would be likely to cause financial or reputational detriment to Pastor Schulz or FPCS;

f. Harassing or otherwise subjecting FPCS employees, volunteers, parishioners, students, or members of the public to inappropriate behavior or language, after given notice and reasonable opportunity to correct any inappropriate behavior or language; or

g. Failure to materially comply with the reasonable written rules and/or written policies of FPCS, after given notice and reasonable opportunity to correct any noncompliance.

5. Pastor Schulz acknowledges and agrees that he is solely responsible for any and all income or other tax consequences, including interest and penalties, arising from his receipt of his Regular Compensation and Mortgage Forbearance as set forth in Section 2 of this Memorandum of Understanding, and that he will defend, indemnify, and hold harmless FPCS from any and all liability related to such tax consequences.

6. The rights, duties, and obligations of the parties under this Memorandum of Understanding shall be binding upon and inure to the benefit of the parties, and their heirs, successors, and assigns.

Acknowledged and agreed to:

<p>THE FIRST PRESBYTERIAN CHURCH OF SEATTLE</p> <p>By <u>Kathryn G. Ostrom</u> Kathryn G. Ostrom, President</p> <p>Dated: <u>11/10/15</u></p>	<p><u>Jeffrey Eric Schulz</u> Reverend Jeffrey Eric Schulz</p> <p>Dated: <u>11/10/15</u></p>
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MEMORANDUM OF UNDERSTANDING REGARDING SEVERANCE COMPENSATION
OBLIGATIONS

WHEREAS, the Reverend Ellen Schulz (“Pastor Schulz”) has been serving as co-pastor of the First Presbyterian Church of Seattle, a Washington nonprofit corporation (“FPCS”), under certain current terms of call for a period of at least nine (9) years; and

WHEREAS, FPCS wishes to encourage Pastor Schulz to remain as Pastor of FPCS, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, “PCUSA”), on the other hand; and

WHEREAS, as an inducement and encouragement to Pastor Schulz to continue serving FPCS, its Session, and its Congregation under her current terms of call, and in consideration of Pastor Schulz’s commitment and agreement to do so, regardless of and including in the event of conflict between FPCS, its Session and its Congregation, on the one hand, and PCUSA, on the other hand; and

WHEREAS, upon the authority of certain resolutions duly adopted by the Session of FPCS, and in consideration of the recitals above and the mutual promises below, FPCS and Pastor Schulz do hereby agree as follows:

1. Except as set forth below, Pastor Schulz shall continue her pastorate for FPCS in accord with her current terms of call until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship, in which case the provisions of Sections 2 through 6 of this Agreement shall govern the rights, duties, and obligations of the parties hereto.

2. Assuming Pastor Schulz continues to serve FPCS to the satisfaction of the Session, in good faith and in good standing, under her current terms of call, then if, *and only if*, the pastoral relationship and terms of call between Pastor Schulz and FPCS are terminated and/or dissolved by PCUSA, other than for “Good Cause” (as defined below), then, in exchange for a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation, FPCS shall:

a. Continue to pay to Pastor Schulz all of her “Regular Compensation” (as defined below) for a certain period of time that shall end upon the earlier of: (i) Pastor Schulz securing a pastoral relationship with another congregation or securing other comparable employment; and (ii) two (2) years from the date of such termination and/or dissolution by PCUSA.

b. Forbear from exercising its rights and remedies under that certain Home Equity Sharing Agreement executed by Pastor Schulz and dated August 16, 2006 (the “Home Equity Sharing Agreement”), as well as that certain corresponding Deed of Trust

of same date executed by Pastor Schulz and granted to secure performance by Pastor Schulz under the Home Equity Sharing Agreement (the "Deed of Trust"), until three (3) years from the date of such termination and/or dissolution by PCUSA. Notwithstanding the foregoing, all provisions relating to the consequences of sale or refinance of the property set forth in the Home Equity Sharing Agreement and Deed of Trust shall not be affected by this Memorandum of Understanding. Except as specifically modified herein, the rights, duties, and obligations of the parties under the Home Equity Sharing Agreement and Deed of Trust shall not be modified or affected in any way by this Memorandum of Understanding.

3. For purposes of this Memorandum of Understanding, "Regular Compensation" shall mean the total compensation, inclusive of housing allowance and any other compensation-related benefits, paid to or for the benefit of Pastor Schulz during the twelve (12) month period immediately preceding any termination or dissolution of Pastor Schulz's terms of call by PCUSA. In the event that FPCS discontinues contributing to the Presbyterian Board of Pensions on Pastor Schulz's behalf, then FPCS shall instead contribute an equivalent amount into some other appropriate tax-deferred program for Pastor Schulz's benefit.

4. For purposes of this Memorandum of Understanding, "Good Cause" shall mean:

a. Dishonesty, fraud, theft, embezzlement or intentional and knowing misrepresentation by Pastor Schulz, occurring after the date of this Memorandum of Understanding, in the performance of her duties;

b. Use of alcohol or legal drugs or prescription medications by Pastor Schulz in a manner or to the extent that it impairs performance of her duties;

c. Use of illegal drugs at any time;

d. Any conduct involving moral turpitude by Pastor Schulz that causes harm to either her or FPCS's reputation or community standing, or any arrest or violation of law other than for minor traffic infractions;

e. Misconduct in the performance of Pastor Schulz's duties and responsibilities or conduct that would be likely to cause financial or reputational detriment to Pastor Schulz or FPCS;

f. Harassing or otherwise subjecting FPCS employees, volunteers, parishioners, students, or members of the public to inappropriate behavior or language, after given notice and reasonable opportunity to correct any inappropriate behavior or language; or

g. Failure to materially comply with the reasonable written rules and/or written policies of FPCS, after given notice and reasonable opportunity to correct any noncompliance.

5. Pastor Schulz acknowledges and agrees that she is solely responsible for any and all income or other tax consequences, including interest and penalties, arising from her receipt of her Regular Compensation and Mortgage Forbearance as set forth in Section 2 of this Memorandum of Understanding, and that she will defend, indemnify, and hold harmless FPCS from any and all liability related to such tax consequences.

6. The rights, duties, and obligations of the parties under this Memorandum of Understanding shall be binding upon and inure to the benefit of the parties, and their heirs, successors, and assigns.

Acknowledged and agreed to:

<p>THE FIRST PRESBYTERIAN CHURCH OF SEATTLE</p> <p>By <u>Kathryn G. Ostrom</u> Kathryn G. Ostrom, President</p> <p>Dated: <u>11/10/15</u></p>	<p><u>Ellen Schulz</u> Reverend Ellen Schulz</p> <p>Dated: <u>11/10/15</u></p>
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K&L GATES LLP

February 02, 2018 - 5:42 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94419-9
Appellate Court Case Title: The Presbytery of Seattle, et al v. Jeff Schulz and Ellen Schulz
Superior Court Case Number: 16-2-23026-1

The following documents have been uploaded:

- 944199_Briefs_20180202174101SC950271_0866.pdf
This File Contains:
Briefs - Respondents
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A copy of the uploaded files will be sent to:

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- peter.talevich@klgates.com
- prothwell@davisrothwell.com
- rweber@millsmeyers.com
- spierce@davisrothwell.com
- suzanne.petersen@klgates.com

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Phone: 206-623-7580 - Extension 7640

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