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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE PRESBYTERY OF SEATTLE, a
Washington nonprofit corporation; THE
FIRST PRESBYTERIAN CHURCH OF
SEATTLE, a Washington nonprofit
corporation; ROBERT WALLACE, President
of The First Presbyterian Church of Seattle, a
Washington nonprofit corporation; and
WILLIAM LONGBRAKE, on behalf of
himself and similarly situated members of
First Presbyterian Church of Seattle,

Plaintiffs,

v.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTROM, as trustees of The
First Presbyterian Church of Seattle, a
Washington nonprofit corporation,

Defendants.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTROM, as trustees of The

No. 16-2-03515-9 SEA

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER DENYING
MOTION FOR PRELIMINARY
INJUNCTION

[PROPOSED]



1 First Presbyterian Church of Seattle, a
Washington nonprofit corporation,

2 Third-Party Plaintiffs and
3 Counterclaimants,

4 v.

5 THE PRESBYTERY OF SEATTLE, a
6 Washington nonprofit corporation; SCOTT
7 LUMSDEN, Executive Presbyter of the
8 Presbytery of Seattle, an individual; and THE
9 FIRST PRESBYTERIAN CHURCH OF
10 SEATTLE, a Washington nonprofit
11 corporation, as recognized by the State of
12 Washington under Washington's Nonprofit
13 Corporations Act, by and through the
14 corporation's duly elected Board of Trustees,

15 Counterclaim Defendant and
16 Third-Party Defendants.

17
18 THE FIRST PRESBYTERIAN CHURCH
19 OF SEATTLE, a Washington nonprofit
20 corporation, as recognized by the State of
21 Washington under Washington's Nonprofit
22 Corporations Act, by and through the
23 corporation's duly elected Board of Trustees,

24 Cross-Claimant and Third-
25 Party Plaintiff,

26 v.

THE PRESBYTERY OF SEATTLE, a
Washington nonprofit corporation; ROBERT
WALLACE, an individual; WILLIAM
LONGBRAKE, an individual; and
PRESBYTERIAN CHURCH (U.S.A.), A
Corporation, a Pennsylvania nonprofit
corporation,

Cross-Claim Defendants and
Third-Party Defendants.

1 This matter came before the Court on “First Presbyterian Church of Seattle’s Motion
2 for Preliminary Injunction to Preserve the Status Quo,” Dkt. No. 50 (the “motion”).¹ The
3 Court has considered the motion and the following materials submitted with the motion:

4 Declaration of Richard Head in Support of Motion for Preliminary Injunction, with its
5 exhibit;

6 Declaration of Bruce Leaverton in Support of Motion for Preliminary Injunction, with
7 exhibits;

8 Declaration of Lloyd Lunceford in Support of Motion for Preliminary Injunction;

9 Declaration of David Martin in Support of Motion for Preliminary Injunction, with
10 exhibits;

11 Declaration of Parker Williamson in Support of Motion for Preliminary Injunction,
12 with its exhibit.

13 The Court has also considered Plaintiffs’ Opposition to Motion for Preliminary
14 Injunction and the following materials submitted with the opposition:

15 Declaration of Heidi Husted Armstrong in Opposition to Motion for Preliminary
16 Injunction;

17 Declaration of Laurie Griffith, with its exhibit;

18 Declaration of Neal Lampi in Opposition to Motion for Preliminary Injunction, with
19 exhibits;

20 Declaration of Scott Lumsden in Opposition to Motion for Preliminary Injunction,
21 with its exhibit;

22 Declaration of Robert B. Mitchell in Opposition to Motion for Preliminary Injunction,
23 with exhibits.
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¹ Because the leadership of First Presbyterian Church of Seattle is disputed, the Court refers to the movant as “defendants.”

1 The Court has considered as well Defendants' Reply in Support of Motion for
2 Preliminary Injunction to Preserve the Status Quo and the following materials submitted with
3 the reply:

4 Supplemental Declaration of Bruce Leaverton in Support of Motion for Preliminary
5 Injunction, with its exhibit.

6 The Court has considered the following additional materials:

7 Plaintiffs' Motion for Partial Summary Judgment;

8 Declaration of Heidi Husted Armstrong in Support of Plaintiffs' Motion for Partial
9 Summary Judgment;

10 Declaration of Shelley M. Dahl in Support of Plaintiffs' Motion for Partial Summary
11 Judgment, with exhibits;

12 Declaration of Doug Kelly in Support of Plaintiffs' Motion for Partial Summary
13 Judgment, with its exhibit;

14 Declaration of William A. Longbrake in Support of Plaintiffs' Motion for Partial
15 Summary Judgment, with exhibits;

16 Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial Summary
17 Judgment, with exhibits;

18 Declaration of Robert B. Mitchell (filed with Plaintiffs' Motion for Partial Summary
19 Judgment);

20 Declaration of Peter A. Talevich in Support of Plaintiffs' Motion for Partial Summary
21 Judgment, with exhibits;

22 Second Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial
23 Summary Judgment, with exhibits;

24 Defendants' Opposition to Motion for Partial Summary Judgment;

25 Declaration of Richard B. Head (filed with Defendants' Opposition to Plaintiffs'
26 Motion for Partial Summary Judgment), with exhibits;

1 Declaration of Daniel Kittle in Support of Opposition to Plaintiffs' Motion for Partial
2 Summary Judgment, with exhibits;
3 Declaration of David Martin in Support of Opposition to Plaintiffs' Motion for Partial
4 Summary Judgment, with exhibits;
5 Declaration of Parker T. Williamson in Support of Opposition to Motion for Partial
6 Summary Judgment, with exhibits;
7 Plaintiffs' Reply in Support of Motion for Summary Judgment;
8 Second Declaration of William A. Longbrake in Support of Plaintiffs' Motion for
9 Partial Summary Judgment, with exhibits;
10 Third Declaration of Scott Lumsden in Support of Motion for Partial Summary
11 Judgment, with exhibits;
12 Second Declaration of Peter A. Talevich in Support of Motion for Partial Summary
13 Judgment;
14 Defendants' CR 56(f) Motion for Continuance;
15 Declaration of Daniel Kittle in Support of Defendants' CR 56(f) Motion for
16 Continuance, with exhibits;
17 Plaintiffs' Opposition to Defendants' Motion for Continuance;
18 Declaration of Robert B. Mitchell in Opposition to Defendants' Motion for
19 Continuance, with exhibits; and

20 _____
21 _____

22
23 The Court heard argument on the motion in open court on May 27, 2016.
24 Having considered the foregoing, the Court hereby finds, concludes, and orders as
25 follows:
26

1 **FINDINGS OF FACT**

2 1. The Presbyterian Church (U.S.A.) (the “Church”) is a hierarchical religious
3 denomination.

4 2. Under the Form of Government of the Church, congregations within the
5 Church are governed by a hierarchy of councils including, in ascending order, the session
6 (pastors and elders of the local congregation), the presbytery (composed of all pastors and at
7 least one elder from each of the congregations within a district), the synod (composed of
8 representative pastors and elders from the presbyteries within a geographical region), and the
9 general assembly (composed of delegations of pastors and elders from the presbyteries). The
10 presbytery with jurisdiction over First Presbyterian Church of Seattle (“FPCS”) is plaintiff
11 Presbytery of Seattle (“Seattle Presbytery”).

12 3. The Church, its congregations, and its councils are all governed by the
13 Constitution of the Presbyterian Church (U.S.A.) (the “Church Constitution”). Part II of the
14 Church Constitution, known as the *Book of Order*, sets forth the Form of Government of the
15 Church.

16 4. According to the Church Constitution, “[t]he provisions of this Constitution
17 prescribing the manner in which decisions are made, reviewed, and corrected within this
18 [C]hurch are applicable to all matters pertaining to property.”

19 5. Under the Church Constitution, “all property held by a congregation, whether
20 legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association . . .
21 is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).”
22 When property of a congregation of the Church “ceases to be used by that congregation as a
23 congregation of the Presbyterian Church (U.S.A.) in accordance with the Constitution, such
24 property shall be held, used, applied, transferred, or sold as provided by the Presbytery.”

25 6. If permitted by civil law, the Church Constitution requires congregations to
26 “cause a corporation to be formed and maintained.” The powers of the corporation and

1 trustees are “subject to the authority of the session and under the provisions of the [Church
2 Constitution],” and “[t]he powers and duties of the trustees shall not infringe upon the
3 powers and duties of the session . . .”

4 7. FPCS incorporated under civil law in 1874. The original articles of
5 incorporation state that FPCS was established “to promote the worship of Almighty God and
6 the belief in and extension of the Christian Religion, under the form of government and
7 discipline of the ‘Presbyterian Church in the United States of America.’”

8 8. The restated articles of incorporation, adopted in 1985, provide that the
9 “objects and purposes” of FPCS are “to promote the worship of Almighty God and the belief
10 in the extension of the Christian Religion, under the Form of Government and discipline of
11 ‘The Presbyterian Church (U.S.A.)’”

12 9. On October 27, 2015, the session of FPCS purported to repeal the bylaws then
13 in effect (the “2005 Bylaws”) and establish separate corporate and congregational bylaws.
14 The session then installed its members as trustees of the corporation. According to FPCS
15 elder David Martin, “[t]he FPCS Board is governed by the Corporation’s Articles of
16 Incorporation and Corporate Bylaws, as well as the provisions of the Washington Nonprofit
17 Corporation Act, and is not subject to the authority of the Presbytery of Seattle (‘Presbytery’)
18 or the PCUSA Book of Order.”

19 10. Mr. Martin notified Seattle Presbytery that the assets of FPCS were “owned
20 by and under the control of the Corporation, and are therefore not subject to Presbytery
21 authority.” He also stated that the “Corporation” had transferred approximately \$420,000
22 into the trust account of Lane Powell P.C.

23 11. The FPCS session and the FPCS board, purporting to be different entities,
24 provided notice to the FPCS members of corporation and congregational meetings to occur
25 on November 15, 2016. Notice of each meeting was mailed to the members of FPCS, but no
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1 notice was read at the November 8, 2016 joint service and no notice was printed in the FPCS
2 church bulletin for that service.

3 12. On November 15, 2016, the members of the FPCS congregation voted to
4 disaffiliate from the Church, and the members of the FPCS corporation voted to ratify the
5 October 27 bylaw amendments and amend the restated articles of incorporation to remove
6 any references to the Church. Voting occurred in person and by proxy. The *Book of Order*
7 does not permit “disaffiliation” by congregational vote, nor does it permit voting by proxy.
8 Seattle Presbytery’s Communal Discernment and Gracious Separation Policy constitutes the
9 only policy under which a congregation within Seattle Presbytery may be dismissed or
10 otherwise separated from the Church.

11 13. On November 17, 2016, following the *Book of Order*, Seattle Presbytery
12 appointed an Administrative Commission for First Presbyterian Church of Seattle (the
13 “Administrative Commission”) to work on the presbytery’s behalf with purposes and
14 authority as described in the presbytery’s resolution and as repeated on pages 2-3 of the
15 Administrative Commission’s report.

16 14. Effective December 16, 2015, Jeff and Ellen Schulz, the co-pastors at FPCS,
17 renounced the jurisdiction of the Presbyterian Church (U.S.A.).

18 15. On February 16, 2016, the Administrative Commission adopted ten
19 resolutions and issued its report, together with a 222-page appendix.

20 16. The Administrative Commission assumed original jurisdiction, thereby
21 becoming the session of FPCS with responsibility for the governance, property, and spiritual
22 well-being of the church.

23 17. As authorized by the *Book of Order*, the Administrative Commission
24 determined that there is a schism in FPCS and that the members who opposed the actions of
25 the former FPCS elders constitute the true church. The Administrative Commission noted
26 that Jeff and Ellen Schulz, having renounced the jurisdiction of the Presbyterian Church

1 (U.S.A.), had ceased to function at that point as pastors of FPCS. The Administrative
2 Commission appointed a temporary pastor for the FPCS congregation as well as a person
3 having authority to oversee the property and financial affairs of FPCS. The Administrative
4 Commission also determined that its members, as the current ruling elders on session, were
5 now the trustees of the FPCS corporation.

6 18. The Administrative Commission determined that all property of FPCS—
7 including real property, personal property, and intangible property—is subject to the
8 direction and control of the Administrative Commission’s original jurisdiction and must be
9 held, used, applied, transferred, or sold as the Administrative Commission may provide or
10 direct.

11 19. The Administrative Commission directed that the funds transferred to the
12 Lane Powell trust account be returned to the church immediately, and all funds held in the
13 name of the FPCS corporation be turned over to the Administrative Commission. The
14 Administrative Commission also directed an accounting of all financial transactions
15 involving FPCS and the turning over of all books and records by February 21, 2016.

16 20. After being apprised of the Administrative Commission’s actions, defendants’
17 counsel stated that “the decisions of the Administrative Commission have no authority over
18 [FPCS] nor do the AC, the Presbytery or PCUSA hold any valid claims to, or interests in,
19 [its] records or property.” This litigation followed.

20 21. Since the purported secession of FPCS from the Church, the defendants have
21 continued to conduct worship service in the FPCS chapel. The FPCS congregants who
22 opposed defendants’ actions, on the other hand, have worshipped at various locations.

23 22. Seattle Presbytery and its agents have not interfered or attempted to interfere
24 with any bank account held in the name of FPCS. Instead, to support its ministry to the
25 FPCS congregants who opposed defendants’ actions, Seattle Presbytery opened a new
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1 banking account at Banner Bank in the name of Seattle Presbytery AC for the First
2 Presbyterian Church of Seattle.

3 23. Seattle Presbytery established a new website, rather than interfere with the
4 website now controlled by defendants, to inform the FPCS congregants who opposed
5 defendants' actions of the congregation's activities and changing locations for worship.

6 24. Seattle Presbytery and its agents have not contacted Diamond Parking, Seattle
7 Classical Christian School, Town Hall, or any other entities that have contractual obligations
8 to FPCS. Instead, after defendants rejected a proposed joint communication, Seattle
9 Presbytery decided to await a prompt resolution of this case rather than draw these entities
10 into the parties' dispute. Seattle Presbytery has also not interfered with any of the
11 redevelopment projects associated with FPCS premises.

12 25. Lane Powell P.C. has voluntarily agreed not to access any of the funds in its
13 trust account that were placed there by defendants until the Court determines who is entitled
14 to those funds.

15 26. Seattle Presbytery offered to make the client files of FPCS in the hands of
16 Riddell Williams available to both the plaintiffs and defendants in this matter, while the right
17 to those files remains disputed, but the defendants rejected this compromise.

18 CONCLUSIONS OF LAW

19 1. To obtain a preliminary injunction, the movant must establish (1) a clear legal
20 or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that
21 the act complained of will result in actual and substantial injury. *E.g., Huff v. Wyman*, 184
22 Wn.2d 643, 651, 361 P.3d 727 (2015).

23 2. Defendants have not met their burden of showing a clear legal or equitable
24 right for the following reasons:

25 a. Under *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485
26 P.2d 615 (1971), *cert. denied*, 405 U.S. 996, *reh. denied*, 406 U.S. 939 (1972), the

1 determinations of the Administrative Commission of Seattle Presbytery are entitled to
2 conclusive deference. As a result, the Administrative Commission's assumption of
3 original jurisdiction over the affairs of FPCS cannot be disturbed.

4 b. Washington courts have rejected a "neutral principles of law"
5 approach to resolving ecclesiastical disputes related to church property, but even
6 under this analysis, defendants would not be entitled to relief. Defendants' purported
7 attempts to amend the FPCS 2005 Bylaws and the Restated Articles of Incorporation
8 were ineffective as a matter of corporate law.

9 c. Moreover, even if a neutral principles of law approach applied, the
10 *Book of Order* provides that all property held by or for congregations, including
11 FPCS, is held in trust for the Church. FPCS's Restated Articles of Incorporation and
12 2005 Bylaws incorporate this provision; FPCS's financial statements expressly
13 recognized it before 2015. Because defendants have ceased to use such property as
14 property of the Church, Seattle Presbytery is entitled to the use and possession of that
15 property.

16 d. With respect to defendants' claim of trademark infringement,
17 defendants have not shown ownership, distinctiveness, or likely confusion. Their
18 requested injunction would impermissibly limit the plaintiffs' Free Exercise rights.

19 3. Defendants have not met their burden of showing a well-grounded fear of
20 immediate invasion of any right. Instead, the evidence shows that plaintiffs have not
21 interfered with defendants' purported governance of FPCS but have, instead, attempted to
22 resolve the issue promptly in court before taking any actions related to church property.

23 4. Defendants have not met their burden of showing that the acts complained of
24 will result in actual and substantial injury.

1 **ORDER**

2 The Motion is DENIED.

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4 IT IS SO ORDERED this 27th day of May, 2016.

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7 
8 Mary E. Roberts
KING COUNTY SUPERIOR COURT JUDGE

9 Presented by:

10 K&L GATES LLP

11
12 By _____
13 Robert B. Mitchell, WSBA #10874
14 Peter A. Talevich, WSBA #42644
Attorneys for Plaintiffs

15 MILLS MEYERS SWARTLING

16
17 By _____
18 David D. Swartling, WSBA #6972
Attorneys for Plaintiffs

19
20 Approved to form; notice of presentation
waived:

21 LANE POWELL PC

22
23 By _____
24 Bruce W. Leaverton, WSBA #15329
25 John R. Neeleman, WSBA #19752
26 Randall P. Beighle, WSBA #13421
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