

APPENDIX A

**IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON**

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,

Respondents,

v.

JEFF SCHULZ, ELLEN SCHULZ, 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,

Appellants.

THE PRESBYTERY OF SEATTLE, a Washington nonprofit corporation; and
THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, a Washington nonprofit corporation,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ, as individuals and as the marital community thereof,

No. 78399-8-1

DIVISION ONE

PUBLISHED OPINION

Filed: October 7, 2019

LEACH, J., — This consolidated appeal involves a church property dispute and a severance agreement dispute. In *Presbytery I*, Jeff and Ellen Schulz, former copastors of the First Presbyterian Church of Seattle (FPCS), and six former trustees of FPCS's board of trustees (Board) (together appellants) appeal the trial court's declaratory judgment in favor of FPCS, the Presbytery of Seattle (Presbytery), which is authorized to act on behalf of the Presbyterian Church U.S.A. (PCUSA), and two members of the Presbytery's administrative commission (AC) (together respondents). Appellants contend that the trial court erred in deferring to the AC's determination assuming original jurisdiction over FPCS, rejecting FPCS's disaffiliation from PCUSA, and finding that any interest FPCS had in church property was held in trust for the benefit of PCUSA. In *Presbytery II*, the Schulzes appeal the trial court's declaratory judgment in favor of Presbytery and FPCS, claiming that the trial court erred in deferring to the AC's determination that their severance agreements with FPCS were invalid and unenforceable.

In *Presbytery of Seattle, Inc. v. Rohrbaugh*,¹ the Washington Supreme Court established that a civil

¹ 79 Wn.2d 367, 48 P.2d 615 (1971).

court must defer to the decision of the highest tribunal of a hierarchical church in a matter involving a church property dispute. To ensure the First Amendment guarantee to the free exercise of religion, Washington courts have extended *Rohrbaugh* to any civil dispute in a hierarchical church with an internal dispute resolution process. Because no genuine issue of material fact exists about whether the Presbyterian Church is hierarchical or whether it has a binding dispute resolution process, the trial court properly deferred to the AC's determinations about the property and severance agreement disputes. We affirm.

FACTS

From 1983 until November 15, 2015, FPCS's congregation was ecclesiastically affiliated with PCUSA. FPCS filed its first articles of incorporation in 1874 and its restated articles of incorporation in 1985. These articles recognized FPCS's governing bodies as its "Session" and Board. Its Session, comprised of ministers, elders, and deacons, governed the congregation's ecclesiastical matters. Its Board, comprised of church members, governed the FPCS's business operations, real and personal property, and "all other temporal affairs."

FPCS purchased its first parcel of real estate in 1905 and added additional parcels over the years until it had accumulated all of its current real estate located on 7th Avenue in downtown Seattle. It purchased the property with funds from its members. Title to its property has remained in its name as a nonprofit corporation. Neither Presbytery nor PCUSA has financially contributed to its property.

In November 2015, FPCS told Presbytery that its Session was going to vote on whether to disaffiliate

from PCUSA and seek affiliation with another Presbyterian denomination. And its Board was going to vote on whether to amend the articles to remove all references to PCUSA. On November 15, the Session approved FPCS's disaffiliation from PCUSA, and the Board approved an amendment to the articles removing any reference to PCUSA.

On November 17, Presbytery formed the AC to investigate FPCS's disaffiliation. On February 16, 2016, the AC issued a report assuming "original jurisdiction" over FPCS based on its finding that "the governing board of FPCS (the FPCS session) is unable or unwilling to manage wisely its affairs." This report found that the 2015 amendments to FPCS's articles and bylaws were improper and ineffective, leaving the prior articles and bylaws in force. And it rejected FPCS's disaffiliation, stating that FPCS remained a part of PCUSA because PCUSA had not dismissed FPCS, which the church constitution authorized only PCUSA to do. It also ousted certain FPCS members from FPCS's Session and Board. And it elected church officers, appointed an individual to handle administrative matters, and called for an audit of FPCS's finances. It stated, "All property held by or for FPCS—including real property, personal property, and intangible property—is subject to the direction and control of the [AC] exercising original jurisdiction as the session of the church."

A day after the AC issued its report, respondents filed a lawsuit against appellants (*Presbytery D*). Among other things, respondents sought a declaratory judgment stating that the AC's report was "conclusive and binding" and that any "interest FPCS has in church property is held in trust for the benefit of [PCUSA]." On March 10, 2016, respondents asked the

trial court to grant partial summary judgment on its declaratory judgment claim. Appellants opposed the request and asked for a CR 56(f) continuance. They claimed respondents had not yet responded to their discovery request about whether PCUSA was hierarchical for purposes of civil disputes. Appellants also asked for a preliminary injunction to stop Presbytery from asserting control over FPCS's corporate affairs and property.

In May 2016, the trial court ruled in respondents' favor on all three requests. It concluded that (1) PCUSA is a hierarchical church and the AC's determinations are conclusive and binding on the Session, trustees, and congregation of FPCS, (2) the AC's February 16, 2016, findings and rulings are conclusive and binding, (3) the 2015 purported amendments to the by-laws and articles of incorporation "are void and without effect," (4) FPCS holds all church property in trust for the benefit of the PCUSA, and (5) the AC is the current governing body of FPCS. Appellants asked the court to reconsider its orders granting partial summary judgment, denying a CR 56(f) continuance, and denying a preliminary injunction. In a June 20, 2016, order, the trial court denied appellants' request to reconsider its denial of the CR 56(f) motion, asked for briefing "on whether it is factually at issue that [PCUSA] is a hierarchical church," and reserved ruling on reconsideration of its denial of the request for a preliminary injunction.

On June 30, after considering appellants' additional briefing, the trial court denied the remainder of their reconsideration requests. The trial court struck their third party complaint and dismissed their

Consumer Protection Act² claim. Appellants voluntarily dismissed claims for defamation, intentional interference with contractual relations, slander of title, trademark infringement, and ultra vires actions. The parties settled their remaining claims and agreed to a stipulated final order and judgment entered on August 16, 2017. Following these orders, respondents assumed control of FPCS and its property.

In September 2016, Presbytery and FPCS sued the Schulzes and asked the trial court to declare the severance agreements between the Schulzes and FPCS unenforceable (*Presbytery II*). The Schulzes became the copastors of FPCS in January 2006. On November 10, 2015, the Schulzes and the Board executed the Schulzes' severance agreements. These agreements had the stated purpose of encouraging the Schulzes to remain as pastors 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." They stated that if FPCS, while under the control of PCUSA and Seattle Presbytery, terminated the Schulzes' employment other than for "Good Cause," as defined by the agreements, FPCS would (1) pay the Schulzes their "Regular Compensation" for two years or until they obtained comparable employment and (2) forebear for three years from the remedies FPCS had available under its 2006 home equity sharing agreement with the Schulzes. The severance agreements limited "good cause" to the Schulzes' commission of certain identified misconduct like

² Ch. 19.86 RCW.

dishonesty, the use of illegal drugs, and moral turpitude that harmed FPCS's reputation.

On August 25, 2016, the AC issued a supplemental report stating, (1) the FPCS Board that entered into the severance agreements was not "validly constituted," (2) the severance agreements constituted a "change in the terms of call" that required the congregation's and the presbytery's approval, neither of which the Schulzes sought, so the severance agreements were invalid, (3) the Schulzes "ended their pastoral relationship with FPCS when they voluntarily renounced the jurisdiction of the [PCUSA]" effective December 16, 2015, at which time they ceased to serve FPCS in good faith and good standing, (4) the severance agreements' good cause standard "cannot replace the requirements placed upon teaching elders by the *Book of Order*," (5) even if the good cause standard applied, FPCS had good cause to terminate the Schulzes' employment due to alleged dishonesty and misconduct, and (6) the Schulzes did not sign a release of possible claims against FPCS, so payment under the agreements was not due.

In November 2016, after PCUSA and FPCS sued the Schulzes, FPCS stopped paying the Schulzes their regular pastoral compensation. On November 18, the Schulzes filed counterclaims against FPCS for breach of contract and willful withholding of wages. PCUSA and FPCS asked the trial court to grant them summary judgment, claiming that the AC "determined that [FPCS] has no obligations under the Severance Agreements. A civil court must defer to the [AC's] judgment." The trial court granted this request. It decided that the AC's determinations were "conclusive and binding." It concluded the severance agreements were "invalid, inapplicable, and unenforceable"

because (1) they constituted “a change in the terms of call” for the Schulzes, which required FPCS’s and Presbytery’s congregations’ approval, (2) the Schulzes terminated their pastoral relationships when they renounced the jurisdiction of PCUSA, (3) the Schulzes ceased to serve in good faith and standing as pastors of FPCS because they renounced jurisdiction, and (4) the severance agreements’ attempt to replace the standards of pastoral conduct in the “Book of Order” with a “good cause” standard was improper.

The trial court entered final judgment in *Presbytery II* on April 3, 2017. The Schulzes appealed to the Washington Supreme Court on April 21, 2017. The trial court entered final judgment in *Presbytery I* in August 2017. Appellants again appealed to our Supreme Court. The Supreme Court consolidated *Presbytery I* and *Presbytery II*. It then transferred the consolidated case to this court.

STANDARD OF REVIEW

This court reviews an order granting summary judgment de novo and performs the same inquiry as the trial court.³ It considers all facts and reasonable inferences in the light most favorable to the nonmoving party.⁴ And it affirms summary judgment only when the evidence presented demonstrates no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁵

³ *Mohr v. Grant*, 153 Wn.2d 812, 821, 108 P.3d 768 (2005).

⁴ *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

⁵ *Steinbach*, 98 Wn.2d at 437.

ANALYSIS

**Stare Decisis Requires That This Court Follow
*Presbytery of Seattle, Inc. v. Rohrbaugh***

Both appellants and the Schulzes maintain that stare decisis does not bar this court from reexamining the compulsory deference approach our Supreme Court adopted in *Rohrbaugh* because the United States Supreme Court's decision in *Jones v. Wolf*⁶ changed *Rohrbaugh's* legal underpinnings. We disagree.

In *Rohrbaugh*, the pastor and a third of the members of Laurelhurst United Presbyterian Church of Seattle voted to withdraw as a body from the United Presbyterian Church.⁷ These members asked the Presbytery of Seattle to strike Laurelhurst from its rolls and authorize them to use the church property for their own purposes.⁸ Presbytery refused and advised that the church constitution did not authorize members of an affiliated church to withdraw as a body.⁹ The members maintained the fact that they were the record titleholders of the property entitled them to use and control it.¹⁰ In examining this issue, the Washington Supreme Court adopted the rule that the United States Supreme Court articulated in *Watson v. Jones*:¹¹

⁶ 433 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).

⁷ *Rohrbaugh*, 79 Wn.2d at 367-68.

⁸ *Rohrbaugh*, 79 Wn.2d at 368.

⁹ *Rohrbaugh*, 79 Wn.2d at 368.

¹⁰ *Rohrbaugh*, 79 Wn.2d at 369.

¹¹ 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1871).

[T]he decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property. [And] in the absence of fraud, 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.^[12]

Our Supreme Court concluded that the record titleholder of the property was The First United Presbyterian Church of Seattle, the former name of Laurelhurst, and “a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a Session which must act in accord with that discipline.”¹³ The court further stated that according to the decision of “the highest tribunal,” the members “had no right to withdraw from the church as a body and take with them the name of the church and its property,” and they “forfeited their right to govern the affairs of the church when they did so.”¹⁴ The court held that because the United Presbyterian Church is hierarchical, its highest tribunal’s decision about ownership and control was conclusive.¹⁵

¹² *Rohrbaugh*, 79 Wn.2d at 373.

¹³ *Rohrbaugh*, 79 Wn.2d at 373.

¹⁴ *Rohrbaugh*, 79 Wn.2d at 371-72, 373.

¹⁵ *Rohrbaugh*, 79 Wn.2d at 367-73.

Eight years after *Rohrbaugh*, the United States Supreme Court decided *Jones*. This case involved a dispute over the ownership of church property after the rupture of a local church affiliated with the Presbyterian Church.¹⁶ The Court characterized the Presbyterian Church as a hierarchical organization.¹⁷ It framed the issue as “whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of ‘neutral principles of law,’ or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.”¹⁸ The Court defined “neutral principles of law” as relying on “well-established concepts of trust and property law familiar to lawyers and judges” and involving, for example, “the language of the deeds, the terms of the local church charters, and state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.”¹⁹

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely

¹⁶ *Jones*, 443 U.S. at 597.

¹⁷ *Jones*, 443 U.S. at 597-98.

¹⁸ *Jones*, 443 U.S. at 597.

¹⁹ *Jones*, 443 U.S. at 603.

from entanglement in questions of religious doctrine, polity, and practice.^[20]

The Court noted that the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, “a State may 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.”²¹ The Court held that “a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.”²² But if “the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.”²³

Appellants contend that this court should reconsider *Rohrbaugh* because *Jones* changed its legal underpinnings. First, *Jones* states only that unless ecclesiastical doctrine is involved, a State may constitutionally adopt neutral principles of law as a means of adjudicating a church property dispute; *Jones* does not require that states adopt this approach. Second, stare decisis requires this court to follow *Rohrbaugh*. “Stare decisis,” a Latin phrase meaning “to stand by things decided,” has two manifestations: horizontal stare

²⁰ *Jones*, 443 U.S. at 603.

²¹ *Jones*, 443 U.S. at 602 (Brennan, J., concurring) (quoting *Maryland & Va. Churches v. Sharpsburgh*, 396 U.S. 367, 368, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1970)).

²² *Jones*, 443 U.S. at 604.

²³ *Jones*, 443 U.S. at 604.

decisis and vertical stare decisis.²⁴ Under horizontal stare decisis, a court is not required to follow its own prior decisions.²⁵ The Washington Supreme Court has stated that generally, under stare decisis, it will not overturn its precedent unless there has been “a clear showing that an established rule is incorrect and harmful”²⁶ or “when the legal underpinnings of [its] precedent have changed or disappeared altogether.”²⁷ But “vertical stare decisis” requires that courts “follow decisions handed down by higher courts in the same jurisdiction. For example, trial and appellate courts in Washington must follow decisions handed down by our Supreme Court and the United States Supreme Court. Adherence is mandatory, regardless of the merits of the higher court’s decision.”²⁸

Because our Supreme Court decided *Rohrbaugh*, it is binding on this court and the doctrine of vertical stare decisis does not allow this court to reconsider it.

Church Property Dispute in *Presbytery I*

Appellants alternatively contend that even if this court applies *Rohrbaugh*’s compulsory deference

²⁴ *In re Pers. Restraints of Arnold*, 198 Wn. App. 842, 846, 396 P.3d 375 (2017), *rev’d on other grounds*, 190 Wn.2d 136, 410 P.3d 1133 (2018) (quoting BLACK’S LAW DICTIONARY 1626 (10th ed. 2014)).

²⁵ *Arnold*, 198 Wn. App. at 846.

²⁶ *W.G. Clark Constr. Co. v. Pac. Nw. Reg’l Council of Carpenters*, 180 Wn.2d 54, 65, 322 P.3d 1207 (2014) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)).

²⁷ *W.G. Clark Constr. Co.*, 180 Wn.2d at 65.

²⁸ *Arnold*, 198 Wn. App. at 846.

approach, the trial court erred in granting respondents summary judgment because (1) a genuine issue of material fact exists about whether the Presbyterian Church is hierarchical, (2) FPCS disaffiliated from PCUSA before the AC issued its report, and (3) the trial court erred in denying appellants' motion for a continuance. We disagree.

A. The Presbyterian Church Is Hierarchical

First, FPCS claims that the trial court erred in deferring to the AC's report because a genuine issue of material fact exists about whether the Presbyterian Church is hierarchical. We disagree.

The parties agree that under *Rohrbaugh's* deference approach, courts defer to an ecclesiastical tribunal only if the denomination is hierarchical.²⁹ Appellants rely on *Southside Tabernacle v. Pentecostal Church of God, Pac. Nw. Dist., Inc.*³⁰ to show that whether a church is hierarchical involves question of fact to be decided by the trial court. But *Southside Tabernacle* also states, "Although the hierarchical or congregational structure is a question of fact, summary judgment is available . . . if the trial court can say as a matter of law that [a church] is hierarchical."³¹ A church is hierarchical when it is "a subordinate member of some general church organization in which

²⁹ *Rohrbaugh*, 79 Wn.2d at 371-72.

³⁰ 32 Wn. App. 814, 821-22, 650 P.2d 231 (1982).

³¹ *Southside Tabernacle*, 32 Wn. App. at 822.

there are superior ecclesiastical tribunals.”³² A church is congregational when it is “governed independent of any other ecclesiastical body.”³³

The constitution of PCUSA governs the church; Part II of this constitution, called the Book of Order, provides the ecclesiastical law of PCUSA. Ordained Presbyterian minister and teaching elder Scott Lumsden and the Book of Order state that congregations within the Presbyterian Church are governed by a hierarchy of councils that include, in ascending order, (1) Sessions comprised of pastors and elders of the local congregation, (2) presbyteries comprised of all pastors and at least one elder from each of the congregations within a district, (3) synods comprised of representative pastors and elders from the presbyteries within a region, and (4) the general assembly comprised of delegations of pastors and elders from the presbyteries. The Book of Order also states, “The particular congregations of the Presbyterian Church (U.S.A.) wherever they are, taken collectively, constitute one church, called the church. . . . The relationship to the Presbyterian Church (U.S.A.) of a congregation can be severed only by constitutional action on the part of the presbytery.”

FPCS relies on the declaration of Reverend Parker Williamson, an ordained Presbyterian minister. He stated that the Book of Order acknowledges that PCUSA is hierarchical for ecclesiastical matters only, not civil matters. To support his assertion, Williamson

³² *Org. for Preserving the Constitution of Zion Lutheran Church v. Mason*, 49 Wn. App. 441, 447, 743 P.2d 848 (1987).

³³ *Mason*, 49 Wn. App. at 447.

refers to provisions from the Book of Order stating that religious constitutions should not be aided by civil power and governing bodies of the church do not have civil jurisdiction. He also notes that PCUSA's General Assembly Permanent Judicial Commission has stated that although one provision in the Book of Order refers to a higher governing body's "right of review and control over a lower one," these concepts must be understood within the context of the "shared responsibility and power at the heart of Presbyterian order," not in hierarchical terms. But whether the Book of Order, internal tribunals, seminary treatises, or Presbyterian history characterize the Presbyterian Church as being hierarchical only for ecclesiastical matters is not relevant when our Supreme Court has adopted the *Rohrbaugh* analysis to ensure religious entities receive their First Amendment protections.

To counter Williamson, PCUSA provided the declaration of Laurie Griffith, an elected "Assistant Stated Clerk of the General Assembly of the [PCUSA] [who is] empowered, along with other Associate and Assistant Stated Clerks, to give guidance on Authoritative Interpretations of the Constitution of the [PCUSA]." She disagreed with Williamson's conclusion that the church is not hierarchical for civil matters. She explained in her declaration that the Book of Order establishes the poli[t]y and form of the church. She detailed the levels of the hierarchy of councils governing the church discussed above, explaining that it is because of the structure of the church that "secular courts have historically identified the polity of the [PCUSA] as being hierarchical in nature." Griffith stated further, "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.” It states that “all property held by a congregation, a presbytery, a synod, the General Assembly, or the [PCUSA] “is held in trust . . . for the use and benefit of the [PCUSA].”

Additionally, the Washington Supreme Court in *Rohrbaugh* described the Presbyterian Church as having a hierarchical structure, and the United States Supreme Court in *Jones* stated that the Presbyterian Church “has a generally hierarchical or connectional form of government, as contrasted with a congregational form.”³⁴ This, in addition to Griffith’s interpretation of the Book of Order and the text itself, makes clear that the Presbyterian Church contains local churches that are subordinate to PCUSA. No genuine issue of material fact exists about whether the church is hierarchical. The trial court did not err in finding that it was hierarchical.

B. FPCS’s Purported Disaffiliation from PCUSA before the AC Issued Its Report Does Not Preclude Application of the Deference Approach

Next, appellants claim that because they lawfully disaffiliated from PCUSA before the AC issued its report, *Rohrbaugh* does not require that this court defer to the AC’s determination. Appellants contend that here, unlike in *Rohrbaugh*, the congregation of the entire local church voted to disaffiliate from the national church and amend its articles to remove PCUSA’s authority. They assert that when FPCS voted to

³⁴ *Rohrbaugh*, 79 Wn.2d at 373; *Jones*, 443 U.S. at 597-98.

disaffiliate on November 15, 2015, PCUSA's ecclesiastical authority over it ended.

Rohrbaugh, however, requires that a court give effect to the decision of the highest tribunal of a hierarchical church in a controversy over the right to use church property. This rule applies here. Appellants do not cite any authority to support that the factual distinction they identify has legal significance. Because FPCS purportedly disaffiliated from PCUSA before the AC issued its report does not mean that the trial court erred in deferring to the AC's decision.

C. The Court Did Not Err in Denying Appellants' CR 56(f) Motion for a Continuance

Last, appellants assert that the trial court erred in denying their CR 56(f) request to continue the summary judgment hearing because respondents had not yet produced all their requested discovery about whether the Presbyterian Church is hierarchical. We disagree.

CR 56(f) gives courts discretion to continue a motion for summary judgment to allow further discovery if the nonmoving party, for good reason, cannot present facts essential to oppose the motion.³⁵ A trial court may deny a CR 56(f) motion when, "(1) the requesting party fails to offer a good reason for the delay, (2) the requesting party does not state what evidence is desired, or (3) the desired evidence will not raise a genuine issue of material fact."³⁶ This court reviews a denial of a motion for a CR 56(f) continuance for abuse

³⁵ *Kozol v. Dep't of Corr.*, 192 Wn. App. 1, 6, 366 P.3d 933 (2015).

³⁶ *Kozol*, 192 Wn. App. at 6.

of discretion.³⁷ A court abuses its discretion when it bases its decision on untenable grounds or reasons.³⁸

Appellants asked respondents to produce all documents related to whether the Presbyterian Church is a hierarchical denomination, which appellants contend is a material issue that they were unable to develop. Appellants' trial counsel asked for a three-month continuance to look "for evidence relating to the intent and I think the legally cognizable evidence of a trust. The legally cognizable evidence of the importation of Book of Order provisions into the governance documents of the Church and of its corporation."

When the trial court stated that it would need more information about what appellants were looking for because it had not heard a reason to give them a continuance, appellants' counsel stated they wanted to discover evidence regarding whether PCUSA is hierarchical for civil purposes. We have requests of PCUSA that are outstanding and unresponded to. . . . 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 to these issues.

Respondents' counsel explained that appellants had the Book of Order, Griffith's declaration and its exhibits, and all the minutes for Seattle Presbytery from 1979 among other documents. Respondents' counsel stated further:

We've also given them citations to numerous court decisions on this topic. Last, but not least,

³⁷ *Kozol*, 192 Wn. App. at 6.

³⁸ *Kozol*, 192 Wn. App. at 6.

we have produced [appellants'] 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.

Counsel asserted that additional discovery would be only cumulative.

The trial court denied appellants' request for a continuance:

The record shows that [appellants] have had sufficient time and notice to prepare their opposition to [respondents'] motion for partial summary judgment. [Appellants] 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 [appellants] expected to discover, [appellants'] counsel made only vague references to internal correspondence he suspected existed. Even so, the anticipated evidence would not add anything to the [appellants'] already thorough response to the [respondents'] motion for summary judgment. Evidence of the sort alluded to by [appellants'] counsel would be cumulative at best.

[Appellants] 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.

The record shows that appellants had already received extensive documentation related to whether the church is hierarchical, and appellants' counsel asked for a continuance to discover documents that he

merely expected existed. As discussed above, the trial court properly decided that the Presbyterian Church is hierarchical as a matter of law. The trial court acted within its discretion to deny appellants' continuance request.

The trial court did not err in following *Rohrbaugh* and deferring to the AC's determination that any interest FPCS had in church property was held in trust for the benefit of PCUSA.

Employment Contract Dispute in *Presbytery II*

The Schulzes claim that even if this court declines to reconsider *Rohrbaugh*, it should still decide that the trial court erred in applying compulsory deference rather than neutral principles to the AC's determinations about their severance agreements because courts in other jurisdictions and “[m]ost Washington court[] of appeals decisions” recognize that compulsory deference does not apply to a civil contract dispute involving religious institutions. We disagree.

In *Org. for Preserving the Constitution of Zion Lutheran Church v. Mason*,³⁹ the organization, comprised of members of the Zion Lutheran congregation, sought to enjoin the installation of Joseph Mason as pastor based on a voting provision in Zion Lutheran's constitution. The church asserted that because no property interest was involved, the civil courts could not interfere.⁴⁰ The trial court dismissed the organization's complaint, finding that it lacked authority to interpret the provision at issue in Zion Lutheran's

³⁹ 49 Wn. App. 441, 442-44, 743 P.2d 848 (1987).

⁴⁰ *Mason*, 49 Wn. App. at 445-46.

constitution.⁴¹ This court reversed and remanded for trial on two grounds: (1) there remained a question of fact about whether the church was hierarchical or congregational and (2) the church did not have a binding dispute resolution process.⁴² We rejected the argument that the dispute involved ecclesiastical questions that the trial court could not decide.⁴³ We explained that based on *Rohrbaugh*,

when a property dispute is involved, [the issue in this jurisdiction] is whether the church in question is hierarchically or congregationally organized. We see no logical reason why a different approach should be used to determine when the civil courts have jurisdiction over religious disputes not involving property.

Therefore, the jurisdictional threshold question remains whether Zion Lutheran Church is an independent congregation or a member of a hierarchically organized church.^[44]

And we stated that because the church did not have a binding dispute resolution process, “If the civil courts denied jurisdiction, the Organization would be without a remedy.”⁴⁵ *Mason* thus extended *Rohrbaugh*’s compulsory deference approach to civil disputes within a hierarchically organized church that has a binding dispute resolution process.

⁴¹ *Mason*, 49 Wn. App. at 442.

⁴² *Mason*, 49 Wn. App. at 447-50.

⁴³ *Mason*, 49 Wn. App. at 449.

⁴⁴ *Mason*, 49 Wn. App. at 447.

⁴⁵ *Mason*, 49 Wn. App. at 449.

Consistent with this holding is our Supreme Court's plurality opinion in *Erdman v. Chapel Hill Presbyterian Church*.⁴⁶ There, an employee of a local denomination of the Presbyterian Church brought a number of claims against the church and its ministers, including negligent retention and negligent supervision.⁴⁷ She submitted her claims to the church's decision-making ecclesiastical tribunal, which concluded her "allegations could not be reasonably proved."⁴⁸ In affirming the trial court's dismissal of Erdman's claims, the plurality opinion held that because Erdman submitted her claims to the church's highest decision-making tribunal and the church is "undisputedly a hierarchically structured church," a civil court must defer to the church's ecclesiastical decision.⁴⁹ The court noted that in *Rohrbaugh*, it "recognized the principle that deference is to be afforded such decisions of an ecclesiastical tribunal of a hierarchical church."⁵⁰ And it relied on the rule from the United States Supreme Court's decision in *Watson*, stating:

[T]he rule that should "govern the civil courts" is that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept

⁴⁶ 175 Wn.2d 659, 286 P.3d 357 (2012).

⁴⁷ *Erdman*, 175 Wn.2d at 660.

⁴⁸ *Erdman*, 175 Wn.2d at 664.

⁴⁹ *Erdman*, 175 Wn.2d at 681-82, 684.

⁵⁰ *Erdman*, 175 Wn.2d at 682.

such decisions as final, and as binding on them, in their application to the case before them.”⁵¹

Last, in *Elvig v. Ackles*,⁵² this court reiterated the rule articulated in *Mason*. The Schulzes mistakenly claim that *Elvig* shows a court should apply neutral principles to a civil contract dispute. There, Monica Elvig, an associate minister at Calvin Presbyterian Church, told the church that Reverend Will Ackles had sexually harassed her.⁵³ Church authorities did not discipline Ackles because the church’s investigating committee and judicial commission decided that insufficient evidence existed to file a charge.⁵⁴ They also precluded Elvig from seeking other work, claiming that the Book of Order prohibited a minister from transferring while charges were pending.⁵⁵ We affirmed the rule we articulated in *Mason*, stating, “[I]f the church accused of wrongdoing is a member of a hierarchically-organized church that has ecclesiastical judicial tribunals, civil courts must defer to the highest church tribunal’s resolution of the matter, despite the fact that the dispute could be resolved by a civil court.”⁵⁶ In affirming the trial court’s dismissal of Elvig’s claims against the church, the presbytery, and Ackles, this court reasoned,

⁵¹ *Erdman*, 175 Wn.2d at 679-80 (emphasis added) (quoting *Watson*, 80 U.S. at 727).

⁵² 123 Wn. App. 491, 98 P.3d 524 (2004).

⁵³ *Elvig*, 123 Wn. App. at 493.

⁵⁴ *Elvig*, 123 Wn. App. at 498-99.

⁵⁵ *Elvig*, 123 Wn. App. at 498-99.

⁵⁶ *Elvig*, 123 Wn. App. at 496.

Elvig's negligent supervision and aiding and abetting claims would require a secular court to examine decisions made by ecclesiastical judicial bodies, and her retaliation claims would require a court to question and interpret the transfer rule in the church's *Book of Order*. We can do neither without effectively undermining the church's inherent autonomy.

....

Our ruling is a narrow one based on the court's inability to question or interpret the Presbyterian Church's self-governance.⁵⁷

The Schulzes ask this court to distinguish *Erdman* and *Elvig* from this case because both Erdman and Elvig filed complaints with their respective churches. The Schulzes claim that by contrast, because they did not submit their severance claims to any ecclesiastical body for resolution but, rather, Presbytery unilaterally convened the AC to decide the validity of their severance agreements, a civil court need not defer to the AC's decision. We do not find this factual distinction persuasive. It has no bearing on the rule that a civil court must defer to the decision of the highest tribunal of a church that is hierarchically structured.

Consistent with *Mason*, *Erdman*, and *Elvig*, we conclude that because the Presbyterian Church is hierarchical and has an internal dispute resolution process, the trial court properly deferred to the AC's determination that the Schulzes' severance agreements were invalid.

⁵⁷ *Elvig*, 123 Wn. App. at 496.

CONCLUSION

We affirm. The trial court properly deferred to the AC's determinations resolving the property and severance agreement disputes.

APPENDIX B

**IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND OR 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

No. 16-2-03515-9 SEA

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 EL-
LEN SCHULZ, as indi-
viduals and as the mari-
tal community com-
prised 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,

Third-Party
Plaintiffs and
Counterclaim-
ants,

v.

THE PRESBYTERY OF
SEATTLE, a Washing-
ton nonprofit corpora-
tion; SCOTT

LUMSDEN, Executive
Presbyter of the Presby-
tery of Seattle, an indi-
vidual; and THE FIRST
PRESBYTERIAN
CHURCH OF SEAT-
TLE, a Washington non-
profit corporation, as
recognized by the State
of Washington under
Washington's Nonprofit
Corporations Act, by and
through the corpora-
tion's duly elected Board
of Trustees,

Counterclaim
Defendant and
Third-Party De-
fendants,

THE FIRST PRESBY-
TERIAN CHURCH OF
SEATTLE, a Washing-
ton nonprofit corpora-
tion, as recognized by
the State of Washington
under Washington's
Nonprofit Corporations
Act, by and through the
corporation's duly
elected Board of Trus-
tees,

Cross-Claimant
and Third-Party
Plaintiff,

v.

THE PRESBYTERY OF
SEATTLE, a Washing-
ton nonprofit corpora-
tion; ROBERT WAL-
LACE, an individual;
WILLIAM LONG-
BRAKE, an individual;
and PRESBYTERIAN
CHURCH (U.S.A.), A
Corporation, a Pennsyl-
vania nonprofit corpora-
tion,

Cross-Claim De-
fendants and
Third-Party De-
fendants.

[FILED May 27, 2016]

Before: The Honorable Mary E. Roberts

**ORDER GRANTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT;
DECLARATORY JUDGMENT**

This matter came before the Court on Plaintiffs' Motion for Partial Summary Judgment (the "motion"). Plaintiffs requested summary judgment on the first cause of action in the complaint that they filed on February 17, 2016, which seeks a declaratory judgment.

The Court has considered the motion and the following materials submitted with the motion:

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

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

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

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

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

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

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

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

The Court has also considered defendants' opposition to the motion and the following materials submitted with defendants' opposition:

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

Declaration of Daniel Kittle in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment, with exhibits;

Declaration of David Martin in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment, with exhibits; and

Declaration of Parker T. Williamson in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment, with exhibits.

The Court has considered as well plaintiffs' reply in support of the motion and the following materials submitted with plaintiffs' reply:

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

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

Second Declaration of Peter A. Talevich in Support of Plaintiffs' Motion for Partial Summary Judgment.

The Court has considered the following additional materials:

First Presbyterian Church of Seattle's Motion for Preliminary Injunction to Preserve the Status Quo;

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

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

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

Martin in Support of Motion for Preliminary Injunction, with exhibits;

Declaration of Parker Williamson in Support of Motion for Preliminary Injunction, with its exhibit;

Plaintiffs' Opposition to Motion for Preliminary Injunction;

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

Declaration of Laurie Griffith, with exhibits;

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

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

Declaration of Robert B. Mitchell in Opposition to Motion for Preliminary Injunction, with exhibits;

Defendants' Reply in Support of Motion for Preliminary Injunction to Preserve the Status Quo;

Supplemental Declaration of Bruce Leaverton in Support of Motion for Preliminary Injunction, with its exhibit;

Defendants' CR 56(f) Motion, for Continuance;

Declaration of Daniel Kittle in Support of Defendants' CR 56(f) Motion for Continuance, with exhibits;

Plaintiffs' Opposition to Defendants' Motion for Continuance;

Declaration of Robert B. Mitchell in Opposition to Defendants' Motion for Continuance, with exhibits;
and

The Court held oral argument in open court on May 27, 2016.

Based upon the foregoing, the Court GRANTS the motion. There exists no genuine issue of fact that is material to the first cause of action, which seeks a declaratory judgment, and plaintiffs are entitled to judgment as a matter of law. The Court therefore enters the following declaratory judgment:

1. The Presbyterian Church (U.S.A.) is a hierarchical church in which the determinations of Seattle Presbytery, through its Administrative Commission, are conclusive and binding on the session, trustees, and congregation of First Presbyterian Church of Seattle (FPCS).

2. The findings and rulings of the Administrative Commission adopted on February 16, 2016, are conclusive and binding in all determinations of church policy and governance related to FPCS.

3. The amendments to the bylaws that the defendants purported to adopt in October 2015 and to have the FPCS congregation ratify in November 2015, as well as the amendments to the articles of incorporation that the FPCS congregation purported to adopt in November 2015, are void and without effect. FPCS is governed by the Restated Articles of Incorporation of the First Presbyterian Church of Seattle dated June 18, 1985, and the Bylaws of the First Presbyterian Church of Seattle dated May 8, 2005.

4. Any interest that FPCS has in church property is held in trust for the benefit of the Presbyterian Church (U.S.A.).

5. The current governing body of FPCS is the Administrative Commission for First Presbyterian Church of Seattle. This Administrative Commission, appointed by Seattle Presbytery in November 2015, assumed original jurisdiction on February 16, 2016,

and it now acts as the session of FPCS. The ruling elders and directors/trustees of FPCS are Steve Aeschbacher, Heidi Husted Armstrong, Shelley Dahl, J.P. Kang, William Longbrake, Jonathan Siehl, Kathy Smith, and Robert Wallace. The duly elected officers of FPCS are Robert Wallace (President), Shelley Dahl (Vice President), and William Longbrake (Secretary/Treasurer).

SO ORDERED this 27th day of May, 2016.

/s/ Mary E. Roberts

Mary E. Roberts

KING COUNTY SUPERIOR COURT JUDGE

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND OR 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

No. 16-2-03515-9 SEA

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 EL-
LEN SCHULZ, as indi-
viduals and as the mari-
tal community com-
prised 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,

Third-Party
Plaintiffs and
Counterclaim-
ants,

v.

THE PRESBYTERY OF
SEATTLE, a Washing-
ton nonprofit corpora-
tion; SCOTT

LUMSDEN, Executive
Presbyter of the Presby-
tery of Seattle, an indi-
vidual; and THE FIRST
PRESBYTERIAN
CHURCH OF SEAT-
TLE, a Washington non-
profit corporation, as
recognized by the State
of Washington under
Washington's Nonprofit
Corporations Act, by and
through the corpora-
tion's duly elected Board
of Trustees,

Counterclaim
Defendant and
Third-Party De-
fendants.

THE FIRST PRESBY-
TERIAN CHURCH OF
SEATTLE, a Washing-
ton nonprofit corpora-
tion, as recognized by the
State of Washington un-
der Washington's Non-
profit Corporations Act,
by and through the cor-
poration's duly elected
Board of Trustees,

Cross-Claimant
and Third-Party
Plaintiff,

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.

[FILED May 27, 2016]

Before: The Honorable Mary E. Roberts

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

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

¹ Because the leadership of First Presbyterian Church of Seattle is disputed, the Court refers to the movant as “defendants.”

and the following materials submitted with the motion:

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

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

Declaration of Lloyd Lunceford in Support of Motion for Preliminary Injunction; Declaration of David Martin in Support of Motion for Preliminary Injunction, with exhibits;

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

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

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

Declaration of Laurie Griffith, with its exhibit;

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

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

Declaration of Robert B. Mitchell in Opposition to Motion for Preliminary Injunction, with exhibits.

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

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

The Court has considered the following additional materials:

Plaintiffs' Motion for Partial Summary Judgment;

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

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

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

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

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

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

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

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

Defendants' Opposition to Motion for Partial Summary Judgment;

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

Declaration of Daniel Kittle in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment, with exhibits;

Declaration of David Martin in Support of Opposition to Plaintiffs' Motion for Partial Summary Judgment, with exhibits;

Declaration of Parker T. Williamson in Support of Opposition to Motion for Partial Summary Judgment, with exhibits;

Plaintiffs' Reply in Support of Motion for Summary Judgment;

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

Third Declaration of Scott Lumsden in Support of Motion for Partial Summary Judgment, with exhibits;

Second Declaration of Peter A. Talevich in Support of Motion for Partial Summary Judgment;

Defendants' CR 56(f) Motion for Continuance;

Declaration of Daniel Kittle in Support of Defendants' CR 56(f) Motion for Continuance, with exhibits;

Plaintiffs' Opposition to Defendants' Motion for Continuance;

Declaration of Robert B. Mitchell in Opposition to Defendants' Motion for Continuance, with exhibits;
and

The Court heard argument on the motion in open court on May 27, 2016.

Having considered the foregoing, the Court hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

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

2. Under the Form of Government of the Church, congregations within the Church are governed by a hierarchy of councils including, 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 of the congregations within a district), the synod (composed of representative pastors and elders from the presbyteries within a geographical region), and the general assembly (composed of delegations of pastors and elders from the presbyteries). The presbytery with jurisdiction over First Presbyterian Church of Seattle (“FPCS”) is plaintiff Presbytery of Seattle (“Seattle Presbytery”).

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

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

5. Under the Church Constitution, “all property held by a congregation, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A).” When property of a congregation of the Church “ceases to be used by that congregation as a

congregation of the Presbyterian Church (U.S.A.) in accordance with the Constitution, such property shall be held, used, applied, transferred, or sold as provided by the Presbytery.”

6. If permitted by civil law, the Church Constitution requires congregations to “cause a corporation to be formed and maintained.” The powers of the corporation and trustees are “subject to the authority of the session and under the provisions of the [Church Constitution],” and “[t]he powers and duties of the trustees shall not infringe upon the powers and duties of the session . . .”.

7. FPCS incorporated under civil law in 1874. The original articles of incorporation state that FPCS was established “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.’”

8. The restated articles of incorporation, adopted in 1985, 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.)’”

9. On October 27, 2015, the session of FPCS purported to repeal the bylaws then in effect (the “2005 Bylaws”) and establish separate corporate and congregational bylaws. The session then installed its members as trustees of the corporation. According to FPCS elder David Martin, “[t]he 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.”

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

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

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

13. On November 17, 2016, following the *Book of Order*, Seattle Presbytery appointed an Administrative Commission for First Presbyterian Church of Seattle (the “Administrative Commission”) to work on the presbytery’s behalf with purposes and authority as

described in the presbytery's resolution and as repeated on pages 2-3 of the Administrative Commission's report.

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

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

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

17. As authorized by the *Book of Order*, the Administrative Commission determined that there is a schism in FPCS and that the members who opposed the actions of the former FPCS elders constitute the true church. The Administrative Commission noted that Jeff and Ellen Schulz, having renounced the jurisdiction of the Presbyterian Church (U.S.A.), had ceased to function at that point as pastors of FPCS. The Administrative Commission appointed a temporary pastor for the FPCS congregation as well as a person having authority to oversee the property and financial affairs of FPCS. The Administrative Commission also determined that its members, as the current ruling elders on session, were now the trustees of the FPCS corporation.

18. The Administrative Commission determined that all property of FPCS—including real property, personal property, and intangible property—is subject to the direction and control of the Administrative Commission's original jurisdiction and must be held, used,

applied, transferred, or sold as the Administrative Commission may provide or direct.

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

3. Defendants have not met their burden of showing a well-grounded fear of immediate invasion of any right. Instead, the evidence shows that plaintiffs have not interfered with defendants' purported governance

50a

of FPCS but have, instead, attempted to resolve the issue promptly in court before taking any actions related to church property.

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

The Motion is DENIED.

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

/s/ Mary E. Roberts

Mary E. Roberts

KING COUNTY SUPERIOR COURT JUDGE

APPENDIX D

**IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON**

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,

Respondents,

v.

JEFF SCHULZ, ELLEN SCHULZ, 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,

Appellants.

THE PRESBYTERY OF SEATTLE, a Washington nonprofit corporation; and
THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, a Washington nonprofit corporation,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ, as individuals and as the marital community thereof,

52a

Appellants.

No. 78399-8-1

Decided and Filed: November 27, 2019

Before: Leach, J.
Justice.

**ORDER DENYING MOTION FOR
RECONSIDERATION**

The appellants, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby:

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

/s/ J. Leach
Judge

APPENDIX E

THE SUPREME COURT OF WASHINGTON

THE PRESBYTERY OF SEATTLE, et al., Respondents, v. JEFF and ELLEN SCHULZ, et al., Petitioners.	No. 97996-1 Court of Appeals No. 78399-8-1
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[FILED April 1, 2020]

Before: STEPHENS, MADSEN, JOHNSON, GORDON
McCLOUD, and MONTOYA-LEWIS
Justices.

ORDER

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, Wiggins, Gordon McCloud, and Montoya-Lewis (Justice Wiggins did not participate, Justice Johnson sat for Justice Wiggins), considered at its March 31, 2020, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

54a

IT IS SO ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 1st day of
April, 2020.

For the Court

/s/ Debra L. Stephens
CHIEF JUSTICE

APPENDIX F

Table of state court decisions concerning
church property

States adopting neutral principles

Alabama - *Haney's Chapel United Methodist Church v. United Methodist Church*, 716 So.2d 1156 (Ala. 1998)

Alaska - *St. Paul Church, Inc. v. Board of Trustees of the Alaska Missionary Conference of the United Methodist Church, Inc.*, 145 P.3d 541 (Ak. 2006)

Arizona - *Ad Hoc Comm. of Parishioners of Our Lady of Sun Catholic Church, Inc. v. Reiss*, 224 P.3d 1002 (Ariz. App. 2010)

Arkansas - *Ark. Presbytery of Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301 (Ark. 2001)

Colorado - *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 102 (Colo. 1986)

Delaware - *Trustees of the Peninsula-Delaware Annual Conference of the United Methodist Church, Inc. v. East Lake Methodist Episcopal Church, Inc.*, 731 A.2d 798 (Del. 1999)

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- Louisiana** - *Fluker Community Church v. Hitchens*, 419 So.2d 445 (La. 1982)
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- Minnesota** - *Piletich v. Deretich*, 328 N.W.2d 696 (Minn. 1982)
- Mississippi** - *Church of God Pentecostal v. Freewill Pentecostal Church of God*, 716 So.2d 200 (Miss. 1998)
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- Nebraska** - *Aldrich on behalf of Bethel Lutheran Church v. Nelson on behalf of Bethel Lutheran Church*, 859 N.W.2d 537 (Neb. 2015)
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- Ohio** - *Southern Ohio State Exec. Offices of Church of God v. Fairborn Church of God*, 573 N.E.2d 172 (Ohio. App. 1989)
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States adopting hybrid neutral principles

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Georgia - *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446 (Ga. 2011); *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Ga., Inc.*, 718 S.E.2d 237 (Ga. 2011)

Kentucky - *Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church v. Branstetter*, 824 S.W.2d 417 (Ky. 1992)

New York - *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920 (N.Y. 2008)

Tennessee - *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146 (Tenn. 2017)

Virginia - *Falls Church v. Protestant Episcopal Church in U.S.*, 740 S.E.2d 530 (Va. 2013)

States adopting hierarchical deference

Florida - *Mills v. Baldwin*, 377 So.2d 971 (Fla. 1980).

Kansas - *Heartland Presbytery v. Presbyterian Church of Stanley, Inc.*, 390 P.3d 581 (Kan. App. 2017)

Michigan - *Bennison v. Sharp*, 329 N.W.2d 466 (Mich. App. 1982)

Nevada - *Tea v. Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182 (Nev. 1980)

New Jersey - *Protestant Episcopal Church in Diocese of New Jersey v. Graves*, 417 A.2d 19 (N.J. 1980)

West Virginia - *Church of God of Madison v. Noel*, 318 S.E.2d 920 (W.Va. 1984)