

No. 20-261

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In the  
**Supreme Court of the United States**

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JEFF SCHULZ, et al.,

*Petitioners,*

v.

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; AND WILLIAM LONGBRAKE, ON BEHALF OF HIMSELF AND SIMILARLY SITUATED MEMBERS OF THE FIRST PRESBYTERIAN CHURCH OF SEATTLE,

*Respondents.*

—◆—  
*ON PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON*

—◆—  
**BRIEF IN OPPOSITION**  
—◆—

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**QUESTION PRESENTED**

While under investigation for ecclesial misconduct, petitioners called a congregational meeting to approve seceding from the Presbyterian Church (U.S.A.), but they failed to give proper notice of the meeting. The presbytery determined that the congregation was in schism, ruled that the congregants who opposed petitioners were the true church, and removed petitioners from the governing board. The courts below ruled that petitioners had no basis to claim that they still led the congregation.

The question presented is this:

Does the First Amendment forbid courts to consider a church's constitution or to defer to the judgment of higher church authorities in resolving ecclesiastical questions related to governance of a congregation?

## **CORPORATE DISCLOSURE STATEMENT**

The Presbytery of Seattle and The First Presbyterian Church of Seattle, respondents before this Court, are Washington nonprofit corporations. They do not issue stock and have no parent corporations.

## **RELATED PROCEEDINGS**

(in addition to those cited in the petition)

King County Superior Court:

*Riddell Williams P.C. v. The First Presbyterian Church of Seattle*, No. 16-2-08630-6 SEA (Sept. 8, 2016)

Washington Supreme Court:

*The Presbytery of Seattle, et al. v. Jeff Schulz & Ellen Schulz, et al.*, No. 93374-0 (Oct. 7, 2016)

*The Presbytery of Seattle, et al. v. Jeff Schulz & Ellen Schulz, et al.*, No. 94419-9 (consolidated with No. 94967-1) (May 2, 2018)

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
CORPORATE DISCLOSURE STATEMENT .....	ii
RELATED PROCEEDINGS .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	v
STATEMENT.....	1
A. The Parties’ Dispute .....	1
B. The Polity of the Church .....	6
C. History of The First Presbyterian Church of Seattle .....	7
D. Proceedings in 2017–2020 .....	9
REASONS WHY CERTIORARI SHOULD BE DENIED .....	10
A. Petitioners fail to raise an issue that mer- its this Court’s consideration .....	10
1. <i>Watson</i> and its progeny uphold the free exercise of religion and avoid any establishment of religion.....	10
2. Presbyterian polity is hierarchical ra- ther than congregational.....	17
3. This case turns on questions of reli- gious doctrine and practice .....	19
4. Petitioners raise no credible challenge to the polity approach.....	21

## TABLE OF CONTENTS—Continued

	Page
B. This case is a poor vehicle to examine the constitutional issues petitioners seek to raise .....	26
1. Petitioners’ congregational meeting was a nullity .....	27
2. The true church is not determined by a majority vote.....	28
3. Petitioners represent no one but themselves .....	30
4. FPCS has recognized the Church’s interest in FPCS-titled property .....	31
5. This case is not the right one to tackle the chaos wrought by “neutral principles” .....	34
CONCLUSION.....	37
 APPENDIX	
Supreme Court of Washington, Order, May 5, 2018 .....	1a
Supreme Court of Washington, Ruling Denying Discretionary Review, October 7, 2016.....	2a
Report of the Administrative Commission for First Presbyterian Church of Seattle, February 16, 2016.....	15a

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Bangor Spiritualist Church, Inc. v. Littlefield</i> , 330 A.2d 793 (Me. 1975).....	27
<i>Barnett v. Hicks</i> , 792 P.2d 150 (Wash. 1990) .....	30
<i>Calvary Presbyterian Church v.</i> <i>Presbytery of Lake Huron</i> , 384 N.W.2d 92 (Mich. App. 1986) .....	17
<i>Couie v. Local Union No. 1849 United Brother-</i> <i>hood of Carpenters &amp; Joiners of America</i> , 316 P.2d 473 (Wash. 1957) .....	12
<i>East Lake Water Ass'n v. Rogers</i> , 761 P.2d 627 (Wash. Ct. App. 1988) .....	27
<i>Gibson v. Armstrong</i> , 1847 WL 1375 (Ky. 1847) .....	14
<i>Golden Lodge No. 13 v. Grand Lodge of</i> <i>Independent Order of Odd Fellows of Colo.</i> , 80 P.3d 857 (Colo. App. 2003).....	26
<i>Gonzalez v. Roman Catholic Archbishop of</i> <i>Manila</i> , 280 U.S. 1 (1929) .....	13
<i>Grand Aerie, Fraternal Order of Eagles v.</i> <i>National Bank of Washington, Kent Branch</i> , 124 P.2d 203 (Wash. 1942) .....	13
<i>Grand Court of Washington, Foresters of</i> <i>America v. Hodel</i> , 133 P. 438 (Wash. 1913) .....	12, 29

## TABLE OF AUTHORITIES—Continued

	Page
<i>Hartstene Pointe Maintenance Ass’n v. Diehl</i> , 979 P.2d 854 (Wash. Ct. App. 1999) .....	27
<i>Heartland Presbytery v. Gashland Presbyterian Church</i> , 364 S.W.3d 575 (Mo. Ct. App. 2012) .....	33, 34, 36
<i>Helm v. Zarecor</i> , 222 U.S. 32 (1911) .....	17
<i>Hoffman v. Tieton View Community Methodist Episcopal Church</i> , 207 P.2d 699 (Wash. 1949) .....	12
<i>Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)</i> , 291 P.3d 711 (Or. 2012) .....	32
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; School v. EEOC</i> , 565 U.S. 171 (2012) .....	16
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979) .....	<i>passim</i>
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America</i> , 344 U.S. 94 (1952) .....	14, 16, 22, 23
<i>Kreshik v. Saint Nicholas Cathedral</i> , 363 U.S. 190 (1960) .....	14
<i>Lowe v. First Presbyterian Church of Forest Park</i> , 308 N.E.2d 801 (Ill. 1974) .....	18
<i>McGinnis v. Watson</i> , 1862 WL 5032 (Pa. 1862) .....	13

## TABLE OF AUTHORITIES—Continued

	Page
<i>Mount Zion Baptist Church v. Second Baptist Church of Reno, 432 P.2d 328 (Nev. 1967) .....</i>	27
<i>Musicians' Protective Union Local No. 274 A.F. of M. v. American Federation of Musicians of United States and Canada, 329 F. Supp. 1226 (E.D. Pa. 1971).....</i>	26
<i>New v. Kroeger, 84 Cal. Rptr. 3d 464 (Cal. Ct. App. 2008).....</i>	21
<i>Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049 (2020) .....</i>	16, 20
<i>Peters Creek United Presbyterian Church v. Washington Presbytery of Pennsylvania, 90 A.3d 95 (Pa. Commw. Ct. 2014).....</i>	31, 32
<i>Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) .....</i>	17
<i>Presbytery of Greater Atlanta v. Timberridge Presbyterian Church, 719 S.E.2d 446 (Ga. 2011).....</i>	32
<i>Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church &amp; Congregation of Ridgeberry, 895 N.Y.S.2d 417 (N.Y. App. Div. 2010).....</i>	32
<i>Presbytery of Seattle v. Rohrbaugh, 485 P.2d 615 (Wash. 1971) .....</i>	12, 20, 29, 34

## TABLE OF AUTHORITIES—Continued

	Page
<i>Rentz v. Werner</i> , 232 P.3d 1169 (Wash. Ct. App. 2010) .....	24
<i>Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich</i> , 426 U.S. 696 (1976) .....	<i>passim</i>
<i>Sharpe v. Bonham</i> , 224 U.S. 241 (1912) .....	17
<i>Shepard v. Barkley</i> , 247 U.S. 1 (1918) .....	17
<i>State Bank of Wilbur v. Wilbur Mission Church</i> , 265 P.2d 821 (Wash. 1954) .....	27, 30
<i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1871) .....	<i>passim</i>
<i>Winebrenner v. Colden</i> , 1862 WL 5153 (Pa. 1862) .....	14

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I .....	21, 22, 23, 29
----------------------------	----------------

## OTHER AUTHORITIES

Clifford M. Drury, <i>George Frederick Whitworth, Father of Presbyterianism in Washington</i> , 26 J. PRESBYTERIAN HIST. SOC'Y (1943–1961) 1 (1948), <a href="http://www.jstor.org/stable/23324338">www.jstor.org/stable/23324338</a> (accessed Sept. 24, 2020) .....	24
--	----

## TABLE OF AUTHORITIES—Continued

	Page
Frank S. Ravitch, <i>A Funny Thing Happened on the Way to Neutrality: Broad Principles, Formalism, and the Establishment Clause</i> , 38 GA. L. REV. 489 (2004) .....	34
John H. Garvey, <i>Churches and the Free Exercise of Religion</i> , 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 567 (1990) .....	24
Louis J. Sirico, Jr., <i>Church Property Disputes: Churches as Secular and Alien Institutions</i> , 55 FORDHAM L. REV. 335 (1986) .....	25

## STATEMENT

### A. The Parties' Dispute

In 2012, Seattle Presbytery and the session (governing board) of The First Presbyterian Church of Seattle ("FPCS") began working to redevelop the real property in downtown Seattle on which First Presbyterian Church now sits. CP 593. Seattle Presbytery was involved because, as then co-pastor Jeff Schulz wrote, 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 neared completion, petitioners secretly hired an out-of-state lawyer who advises congregations trying to leave their denominations with the real property they occupy. CP 436, 442–44, 415, 1306–08. When Seattle Presbytery learned of this and asked for an explanation, Jeff Schulz said that the lawyer had been hired to update FPCS's corporate documents. CP 415, 421. In reality, he was hired "to represent and advise [on] church property matters." CP 436, 442. Within a week of Jeff Schulz's false assurance, the lawyer sent petitioners draft severance agreements that would become operative once FPCS seceded from the Presbyterian Church (U.S.A.) (the "Church"). CP 415, 423–30.

In July 2015, Seattle Presbytery began formally investigating petitioners. BIO 19a. On October 27, 2015, as this investigation was intensifying, petitioners voted to make themselves a board of trustees for

the church corporation,<sup>1</sup> to transfer \$420,000 in church funds to their law firm, to approve the Schulz severance agreements, and to call a meeting of the congregation and corporation on November 15, 2015, to vote on resolutions to “disaffiliate” from the Church.<sup>2</sup> See BIO 21a, CP 196, 200. Two elders resigned from the session rather than support these actions. BIO 40a–41a; see CP 2357–61, 2389–95.

On November 2, 2015, the Council of Seattle Presbytery called a special meeting of the presbytery to consider appointment of an administrative commission to act on the presbytery’s behalf with respect to FPCS. CP 2307. On November 5, petitioners mailed voting materials to the congregation. CP 132–33; see CP 141–71. They urged congregants to vote for “disaffiliation” in light of fundamental differences on “Biblical and theological foundations, government, and property.” CP 149. They described the Church’s system of government as a “hierarchical structure” that frustrated FPCS’s entrepreneurial efforts. *Id.* Telling

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<sup>1</sup> The bylaws of FPCS, adopted at a congregational meeting on May 8, 2005, eliminated the board of trustees. CP 549, 553; see CP 554–58. The bylaws could be amended only by a 2/3 vote of the members of the congregation present for the vote and then only in conformance with the Articles of Incorporation and the Church constitution. CP 558. The Articles required that trustees be “chosen by the members of the church and of the congregation at an annual meeting called for that purpose. . . .” CP 723.

<sup>2</sup> “Disaffiliation” implies that congregations are independent and choose the denominations with which they affiliate. Presbyterian congregations, however, belong to a unitary Church and may be dismissed only by presbytery action. CP 631–33, 650, 686, 696.

congregants that the Church “claims a trust interest in all church property,” petitioners said they were looking for “a denomination that has no trust interest in church property.” CP 150, 144.<sup>3</sup>

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.* But the bulletin for the November 8 service contained no notice of the meetings called for November 15, and no announcement was made to the assembled congregation. *See* CP 622, 625–26.

On November 10, 2015, the Schulzes signed their severance agreements. CP 201–06. On November 15, petitioners convened meetings of the congregation and the corporation and requested approval of their proposed resolutions. CP 549, 635. Petitioners solicited and counted proxy votes, even though both the FPCS bylaws and the Church constitution forbid proxy

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<sup>3</sup> No other denomination, however, proved willing to accept petitioners. *See* BIO 33a–34a.

voting. CP 549, 635.<sup>4</sup> A majority of the 54 persons present plus those represented by proxy voted in favor. CP 609.

Two days later, Seattle Presbytery formed the Administrative Commission for First Presbyterian Church of Seattle (the “AC”). BIO 22a. Respondents Robert Wallace and William Longbrake (a longtime member and ruling elder of FPCS) are members of the AC. BIO 25a. Seattle Presbytery instructed the AC to conduct a thorough investigation of petitioners and to take corrective action. BIO 22a–24a.

On February 16, 2016, the AC issued its report. The AC found that co-pastors Jeff and Ellen Schulz had engaged in serious misconduct; it found substantial evidence of financial irregularities and altered records;<sup>5</sup> and it found that petitioners had violated their ordination vows.<sup>6</sup> BIO 33a–50a. The AC determined that there was a schism in FPCS and that FPCS

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<sup>4</sup> Both the record and the trial court’s finding that voting “occurred in person and by proxy” (Pet. at 45a) belie petitioners’ assertion to the contrary (Pet. at 11 n.3).

<sup>5</sup> After reviewing church records, a forensic accountant determined that the Schulzes were paid “under the table”—i.e., outside the church payroll system—in order to qualify their college-age son for financial aid. The Schulzes thereby violated the Internal Revenue Code. CP 207–301, 450–56.

<sup>6</sup> Among other things, petitioners conspired “to isolate [elder and corporate officer Neal Lampi] from the early decision-making process and from [their] intentions.” CP 2355–56. Petitioners also did not tell the congregation about the Schulz severance agreements, CP 103, and refused to include an elder’s resignation letter in the session minutes. BIO 40a.

members who opposed petitioners' actions were the true church. BIO 50a. The AC also determined that the session was not capable of exercising authority. As the Church constitution provides in such circumstances, the AC assumed original jurisdiction and displaced the session as the governing board of FPCS. BIO 51a. The AC appointed a temporary pastor for the congregation. BIO 52a.

Petitioners did not appeal the AC's decision to a higher church council, as was their right. They simply refused to recognize the AC's actions or comply with its directions. CP 628. Civil litigation followed. On May 27, 2016, the trial court entered a declaratory judgment upholding the decisions of the AC. Pet. at 27a–35a. The court also denied petitioners' motion for a preliminary injunction, entering detailed findings of fact. Pet. at 36a–50a.

Petitioners sought interlocutory review of the trial court's orders. In her ruling denying review, Washington Supreme Court Commissioner Narda Pierce noted that, because the trial court had concluded petitioners would also lose under neutral principles, a reviewing court might not need to choose among methods for resolving church property disputes. BIO 11a. After the Court denied their motion for an emergency stay, petitioners relinquished FPCS's premises to the true church. *See* CP 72, 106. Petitioners have had no involvement with FPCS for more than four years. The Schulzes now live in Texas. *See* Decl. of H. Armstrong, Case No. 78399-8-I at 4 (Wash. Ct. App. Nov. 30, 2018).

## **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: in ascending order, the session (pastors and elders of the local congregation), the presbytery (all pastors and at least one elder from each congregation in a district), the synod (representative pastors and elders from the presbyteries in a region), and the general assembly (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 responsibilities of elders and deacons, Church property interests, and resolution of Church disputes. 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, but “only by constitutional action on the part of the presbytery.” CP 633, 696. If there is a split or schism within a congregation, the presbytery is empowered to determine which faction is the true church and therefore entitled to congregational property. CP 696–97. “This determination does not depend upon which faction received the majority vote within the congregation at the time of the schism.” CP 697.

The *Book of Order* requires each council of the Church to form and maintain a nonprofit corporation where 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. At the congregational level, corporations must act “for the congregation.” CP 695. 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 The First Presbyterian Church of Seattle**

FPCS 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 first elders of FPCS were elected and ordained in 1873, CP 1040, and in 1874 articles of incorporation were filed with the territorial government, CP 720. The articles stated that the purpose of FPCS was “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.

As the oldest congregation in the Presbytery of Seattle, FPCS has a distinguished history of ministry in downtown Seattle. CP 633. FPCS’s historic records

reflect faithful adherence to Presbyterian principles and the church's bylaws. *See* CP 2533–35.

In 1981, after this 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 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 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. FPCS's audited financial statements thereafter noted:

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.

#### **D. Proceedings in 2017–2020**

After learning that the Schulzes intended to invoke their purported severance agreements, CP 72–73, 173, the AC issued a supplemental report. *See* CP 196–206. The AC found that the severance agreements would alter the terms of call for the Schulzes and that, under Church law, such a change was not valid unless both the congregation and the presbytery approve. Neither approval was obtained. CP 196–97; *see* CP 103–04, 111–21, 133, 432–33. The AC also found that the agreements do not apply if the Schulzes decide “to end the pastoral relationship” and that, under Church law, the Schulzes ended their pastoral relationships when they “renounced [Church] jurisdiction” in December 2015. CP 197–98; *see* CP 104, 125, 433–34.

Respondents sued the Schulzes seeking declaratory relief with respect to the severance agreements. In March 2017, the trial court upheld the AC’s determinations and dismissed the Schulzes’ counterclaims. CP 457–62, 475. The Schulzes promptly filed a notice of appeal to the Washington Supreme Court. CP 463–64. In August 2017, petitioners and respondents resolved all remaining trial court claims. After entry of final judgment, CP 3392–98, petitioners filed a notice of appeal to the Washington Supreme Court, CP 3399–401. That court consolidated petitioners’ appeal with the Schulzes’ already-pending appeal.

In May 2018, after briefing was completed, the Washington Supreme Court denied direct review and transferred the cases to the Court of Appeals. BIO 1a.

The Court of Appeals affirmed the trial court on both governance and severance. Pet. at 1a–26a. The Washington Supreme Court again denied review. Pet. at 53a–54a.

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**REASONS WHY CERTIORARI  
SHOULD BE DENIED**

**A. Petitioners fail to raise an issue that merits this Court’s consideration.**

The decision of the Washington Court of Appeals rejecting petitioners’ claims is fully consistent with—indeed, compelled by—governing state law. Petitioners contend that the law of Washington and at least 13 other states is unconstitutional and that 150 years of this Court’s precedents should be overturned. Petitioners focus their attack on *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), which they claim reflects “not only bad theology, but also bad constitutional law.” Pet. at 2. They are wrong on both counts.

**1. *Watson* and its progeny uphold the free exercise of religion and avoid any establishment of religion.**

*Watson v. Jones* involved competing claims by pro-slavery and anti-slavery factions to the Third or Walnut Street Presbyterian Church of Louisville, Kentucky. To resolve this dispute, the Court eschewed the approach taken by English judges, who seek to determine “the true standard of faith in the church

organization, and which of the contending parties before the court holds to this standard.” 80 U.S. at 727. As this Court explained, American courts must avoid such inquiries:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.

*Id.* at 728.

If civil courts may not resolve issues of religious faith and doctrine, they must defer to someone else’s resolution of those issues. *Watson v. Jones* sets forth three rules for deference. First, if property is subject to an express trust in which the settlor specifies doctrinal requirements, courts have the duty “to see that the property so dedicated is not diverted from the trust which is thus attached to its use.” *Id.* at 723. Second, if property is held by a religious congregation that “is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority,” *id.* at 722, courts should apply the ordinary principles that govern unaffiliated voluntary associations, such as majority rule, *id.* at 725. And third, if “the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general

church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control,” *id.* at 722, courts should follow this rule:

[W]henever 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 such decisions as final, and as binding on them, in their application to the case before them.

*Id.* at 727.

Washington courts have long followed *Watson v. Jones* to resolve disputes arising within churches of hierarchical polity. *See, e.g., Presbytery of Seattle v. Rohrbaugh*, 485 P.2d 615, 619 (Wash. 1971); *Hoffman v. Tieton View Cmty. Methodist Episcopal Church*, 207 P.2d 699, 706 (Wash. 1949). Washington courts have applied the same rule to resolve disputes arising within non-religious voluntary organizations. For example, in *Grand Court of Washington, Foresters of America v. Hodel*, 133 P. 438, 439 (Wash. 1913), the appellants argued that a subordinate lodge within a fraternal organization “may secede from the parent organization, if the majority of such lodge will it, and may take with them the money and property of the subordinate lodge.” The court rejected that contention, holding that “the majority cannot, against the will of the minority, lawfully divert such funds for uses other than those permitted by the constitution and laws of the order.” *Id.*; accord *Couie v. Local Union No. 1849*

*United Bhd. of Carpenters & Joiners of Am.*, 316 P.2d 473, 478 (Wash. 1957); *Grand Aerie, Fraternal Order of Eagles v. Nat'l Bank of Wash., Kent Branch*, 124 P.2d 203, 206 (Wash. 1942).

Washington law embodies *Watson's* premise: churches come before the courts “in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.” 80 U.S. at 714.<sup>7</sup> Petitioners, however, seek to disqualify churches from the protections, and free themselves from the restraints, that apply to other voluntary organizations in Washington.

This Court applied common-law rules when it decided *Watson v. Jones*,<sup>8</sup> but those rules enshrine First

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<sup>7</sup> As Justice Brandeis observed in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16–17 (1929), “the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.” (footnotes omitted).

<sup>8</sup> Amicus ACNA claims (at 8) that *Watson* “jettisoned” common law. To the contrary, earlier cases recognized the polity of religious bodies as a key issue in resolving intra-church disputes. See, e.g., *McGinnis v. Watson*, 1862 WL 5032 (Pa. 1862) (religious societies “may organize as independent churches, and then their law is found in their own separate institutions . . . . Or they may organize as associated churches . . . . When persons join a church belonging to such a general organism, they assent to its laws, and

Amendment principles. “The [*Watson*] opinion radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). A church’s power to decide deserves no less respect where its decision affects who can claim rights in property:

Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion.

*Id.* at 120–21 (footnote omitted); accord *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960) (per curiam).

Reinforcing constitutional support for the rules in *Watson*, this Court held in *Serbian Eastern Orthodox Diocese for the United States of America and Canada v.*

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are entitled to the implication that the affairs of the church are to be managed according to them.”); *Winebrenner v. Colder*, 1862 WL 5153 (Pa. 1862) (congregational majority may not claim independence from denomination; “it is those who adhere or submit to the regular order of the church, local and general (even though they be a minority), that constitute the true congregation, and also the true corporation if it be incorporated.”); *Gibson v. Armstrong*, 1847 WL 1375 (Ky. 1847) (in the case of schism, members’ rights to use property “must be decided by rules of the Church”; faction may not defy the Church’s highest tribunals).

*Milivojevic*, 426 U.S. 696, 709 (1976), that where resolution of a dispute

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, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

This is true regardless of whether deference affects the control of church property. *See id.*<sup>9</sup> The holding in *Milivojevic* reiterates the governing constitutional principle:

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government. . . . When . . . ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

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<sup>9</sup> Petitioners and *amici* treat church property disputes as wholly distinct from disputes over church governance. That is a false dichotomy. The persons who are the proper governors of a congregation have authority to control its property; those who are not, do not.

*Id.* at 724–25; accord *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185–87 (2012); see also *id.* at 201 (Alito, J., concurring).<sup>10</sup>

Just last term, this Court cited *Watson, Kedroff* and *Milivojevich* as having established the “constitutional foundation” for the ministerial exception. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020); see also *id.* at 2063 n.10. In words that could have been written for this case, the Court stated:

[T]he Religion Clauses protect the right of churches . . . to decide matters of faith and doctrine without government intrusion. State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion.

*Id.* at 2060 (internal citations and quotations omitted). Independence in matters of faith and doctrine requires independence in matters of church government, and this protects church autonomy “with respect to internal management decisions that are essential to the institution’s central mission.” *Id.*

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<sup>10</sup> Academic *amici* claim (at 4) that “courts are neither empowered nor qualified” to determine whether a religious organization has a hierarchical polity and may not even seek to do so. This Court’s decisions are directly to the contrary.

Far from being a wrongheaded relic of Reconstruction, *Watson v. Jones* is a pillar of contemporary First Amendment jurisprudence.

## **2. Presbyterian polity is hierarchical rather than congregational.**

Petitioners' charge of "bad theology" rests on their claim that the Presbyterian form of government is non-hierarchical. Without admitting it, petitioners attack the holdings in six decisions of this Court<sup>11</sup> as well as a host of state court decisions,<sup>12</sup> all of which state or

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<sup>11</sup> See *Jones v. Wolf*, 443 U.S. 595, 597–98 (1979) ("The [Presbyterian Church] has a generally hierarchical or connectional form of government, as contrasted with a congregational form."); *Presbyterian Church 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."); *Shepard v. Barkley*, 247 U.S. 1 (1918); *Sharpe v. Bonham*, 224 U.S. 241 (1912); *Helm v. Zarecor*, 222 U.S. 32 (1911); *Watson v. Jones*, 80 U.S. at 727 ("There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all.")

<sup>12</sup> See, e.g., *Calvary Presbyterian Church v. Presbytery of Lake Huron*, 384 N.W.2d 92, 95 (Mich. App. 1986) ("Despite the Church's arguments to the contrary, it is clear that this Presbyterian Denomination is hierarchical and that the church government had the agreed and declared power to act as it did in replacing the Session with the Administrative Commission and

presume that the Church features hierarchical governance.

In attacking the foundation for every published court decision in this country involving a Presbyterian church, petitioners cite to the declaration of their purported expert witness, Parker Williamson. *E.g.*, Pet. at 7, 8, 9. But Williamson “is wrong,” CP 2405, according to a declaration setting forth the Church’s authoritative assessment of its own polity. *See* CP 2402–26. “The congregations within the Church are governed by a hierarchy of councils,” CP 2404, and “presbyteries are required to protect the beneficial interests of the Church [in congregational property],” CP 2407.

The First and Fourteenth Amendments forbid courts from substituting their interpretation of church constitutions “for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation.” *Milivojevich*, 426 U.S. at 721. Therefore, no court may credit petitioners’ assertions about Presbyterian polity. Moreover, even if there were a judicially cognizable dispute over the extent to which the Church should be seen as hierarchical as an abstract matter, the only issue here is whether the Church constitution empowers a council above the congregational level to speak to issues of church governance and property. It plainly does. Under Presbyterian

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in determining that the seceding Church could not take the real estate with it.”); *Lowe v. First Presbyterian Church of Forest Park*, 308 N.E.2d 801, 805 (Ill. 1974) (“It is clear that the United Presbyterian Church is hierarchical in governmental form in that each judicatory has control of those below it.”).

polity, the AC's judgments are binding absent an appeal to a yet higher Church council, *see* CP 2406, and petitioners did not appeal them.

### **3. This case turns on questions of religious doctrine and practice.**

Although petitioners claim that this case raises but one issue—namely, ownership of the property titled in FPCS's name—they are wrong. Consider their assertion that a Presbyterian congregation may “disaffiliate” from the Church simply by taking a vote at a congregational meeting. The Church constitution specifically provides otherwise, based on a fundamental theological principle: the Church is unitary. CP 631, 650.

The Church constitution also provides that, if there is a schism in a congregation, the presbytery determines who is the true church and therefore entitled to carry on the congregation's ministry.<sup>13</sup> The issue of who is the “true church” within a hierarchical denomination is, by definition, one of hierarchical polity. Were the rule otherwise, a rogue pastor could respond to an investigation by rallying allies and pulling the congregation out of the denomination—while still claiming to

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<sup>13</sup> “If there is a schism within the membership of a congregation and the presbytery is unable to effect a reconciliation . . . , the presbytery shall determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the [Church]. This determination does not depend upon which faction received the majority vote within the congregation at the time of the schism.” CP 696–97 (G-4.0207).

lead “First Presbyterian Church of Seattle.” That is exactly what the Schulzes tried to do here. *Cf. Our Lady of Guadalupe*, 140 S. Ct. at 2060 (without the power of removal, “a wayward minister’s preaching, teaching, and counseling could contradict the church’s tenets and lead the congregation away from the faith.”).

When the lay petitioners were ordained as ruling elders, they vowed that they would be governed by the Church’s polity and abide by its discipline. BIO 49a. The AC removed them as ruling elders and leaders of the congregation after they violated that oath and refused to cooperate with the Church’s investigation.<sup>14</sup> Petitioners also claim to be trustees (even though the congregation never elected them as such), but the Church constitution makes clear that trustees act at the direction of the session. “[U]nder 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*, 485 P.2d at 618.

Fundamental issues of church government are inherently religious: “questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern[.]” *Milivojevich*, 426 U.S. at

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<sup>14</sup> The *Book of Order* provides: “After a thorough investigation, and after full opportunity to be heard has been accorded . . . , the presbytery may conclude that the session of a congregation is unable or unwilling to manage wisely its affairs. . . . [The administrative] commission shall assume original jurisdiction of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.” CP 687 (G-3.0303.e).

717; *cf. New v. Kroeger*, 84 Cal. Rptr. 3d 464, 474–79 (Cal. Ct. App. 2008) (even under “neutral principles,” courts must defer to church’s ecclesiastical determination of who were the true members of the parish and the bishop’s replacement of former vestry). Applying the polity approach to such issues is not just permissible; it is mandatory.

Ecclesiastical questions are equally fundamental to the Schulzes’ severance claim. Church doctrine holds that a severance agreement changes a pastor’s terms of call and therefore requires congregational and presbytery approval. Absent such approval, a severance agreement with a Presbyterian pastor is invalid. CP 23, 671 (G-2.0804), 664 (G-2.0502). Church doctrine also states that a pastor’s renunciation of Church jurisdiction terminates that person’s ministry. *See* CP 23–24, 667–68 (G-2.0509). These doctrinal principles require rejection of the Schulzes’ severance claim. Petitioners have abandoned any argument to the contrary.

#### **4. Petitioners raise no credible challenge to the polity approach.**

To overturn a cornerstone of First Amendment doctrine, petitioners would need an extraordinarily compelling argument. They do not have one.<sup>15</sup>

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<sup>15</sup> Petitioners simultaneously seek to rely on this Court’s decision in *Jones v. Wolf*, 443 U.S. 595, and to reject virtually everything that decision says—including that states may

First, petitioners posit that “church property cases” have nothing to do with church doctrine. Pet. at 13. But *Kedroff* and *Milivojevich* stand for the opposite proposition.<sup>16</sup> As in those cases, the question of who controls FPCS property is inextricably linked to issues of church governance and mission. And as this Court held in those cases, the First Amendment requires courts to defer to the Church’s ecclesiastical decisions regarding governance.

The Schulzes removed themselves from any role in leading FPCS when they renounced the jurisdiction of the Church. The other petitioners effectively renounced the jurisdiction of the Church when they followed the Schulzes’ lead, disrupting the peace and unity of the Church, and when they refused to engage with an investigation conducted under the Church’s discipline. This misconduct resulted in their removal by the AC. Petitioners have no standing to assert *any* position on behalf of FPCS, and no court may, consistent with the Free Exercise Clause, credit their claim that they still lead FPCS.

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continue to apply the polity approach to resolve church property disputes and must do so if the dispute turns on a question of doctrine. *See id.* at 602, 604. Academic *amici* try to argue that no one could reasonably rely on what this Court said in *Milivojevich* and *Jones v. Wolf*.

<sup>16</sup> *Amicus* Becket acknowledges (at 17 n.10) that the resolution of a church property dispute may turn on resolution of an ecclesiastical question such as who runs “the church itself,” in which case civil courts must defer to the ecclesiastical authorities. This is just such a case.

Petitioners assert that the Court of Appeals violated the Establishment Clause by deferring to the AC's determinations, but that assertion also does not withstand scrutiny. The First Amendment requires courts to defer to some person or entity in any matter involving religious doctrine and church governance, as *Watson*, *Kedroff*, and *Milivojevic* make clear. Petitioners apparently have no problem with judicial deference to a congregational majority. They do not explain why it is permissible for a court to defer to them but not to respondents. After all, respondents' position is supported by the constitution of the Church, whereas petitioners' ecclesiastical authority has been revoked.

Petitioners assert that by "establishing a top-down hierarchical governance structure for any and all faith groups that are not wholly 'independent,'" *Watson* "denies religious groups their constitutional freedom to determine their own form of governance." Pet. at 14.<sup>17</sup> *Watson* does no such thing. Rather, the polity approach accommodates whatever polity a religious

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<sup>17</sup> *Amicus* Becket (at 3) adds that the polity approach pushes religious organizations "toward a more rigidly hierarchical structure," but they cite no evidence for this assertion and their example of the Presbyterian Church in America (organized in 1973) belies it. Academic *amici* (at 13) claim without support that deference pressures "congregational denominations" and "operates as a one-way ratchet toward ever more hierarchical forms of religious government." Like petitioners, and contrary to *Milivojevic*, *amici* seek to dispute the Church's theological self-understanding. *Amici* would forbid courts to consider *any* church constitution, including the ones they cite, whereas the polity approach accords equal respect to the constitution of every religious organization.

organization may choose. *See, e.g., Rentz v. Werner*, 232 P.3d 1169, 1176 (Wash. Ct. App. 2010) (resolving ecclesiastical dispute within spiritualist church by determining the person to whom organizational documents gave ecclesiastical authority and deferring to her decision).<sup>18</sup>

It is petitioners who seek to replace the wide variety of church organizational forms with a single model. According to petitioners, every Protestant church—regardless of what its doctrine teaches—is a collection of autonomous congregations that are free to “affiliate” or “disaffiliate” as they see fit (or, more accurately, as a majority of the then-congregants might decide). Such congregations are assumed to spring up on their own rather than being the product of denominational church-planting activity,<sup>19</sup> to draw members and financial support for reasons that have nothing to do with doctrine or governance, and to regard property as a personal possession rather than as a means to pursue

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<sup>18</sup> “The rule of deference does not prefer certain groups because their status makes them more worthy. . . . The general church prevails because that is the choice the formerly united group made, *ex ante*, for its own self-government. And the free exercise of religion protects the right to make and carry out choices about ecclesiastical governance.” John H. Garvey, *Churches and the Free Exercise of Religion*, 4 NOTRE DAME J.L. ETHICS & PUB. POL’Y 567, 586–87 (1990).

<sup>19</sup> FPCS was organized in 1869 by a prominent Church missionary. *See Clifford M. Drury, George Frederick Whitworth, Father of Presbyterianism in Washington*, 26 J. PRESBYTERIAN HIST. SOC’Y (1943–1961) 1, 1–10 (1948), [www.jstor.org/stable/23324338](http://www.jstor.org/stable/23324338) (accessed Sept. 24, 2020); CP 1039.

church-wide ministry.<sup>20</sup> The only evidence that a court may consider to suggest otherwise is how the congregation's property happens to be titled.<sup>21</sup> Petitioners' assumptions are not just wrong; they also may not be indulged without establishing a special form of congregational religion.<sup>22</sup>

Petitioners' real beef is less with the polity approach than with any form of "neutral principles" that looks at organizational documents. Petitioners and *amici* have convinced themselves that the quality of judicial decision-making would improve if only courts were forbidden to examine or credit the constitutions under which churches govern themselves. This is counterintuitive, to say the least. Petitioners' position also reflects a peculiar notion of "neutrality," as it would deny the Presbyterian Church the respect that

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<sup>20</sup> Petitioners, who served as fiduciaries, have no personal ownership claim to FPCS's property. Hence, *amicus* ACNA's discussion (at 1) of individual property rights has no bearing on this case.

<sup>21</sup> See Louis J. Sirico, Jr., *Church Property Disputes: Churches as Secular and Alien Institutions*, 55 *FORDHAM L. REV.* 335, 356–57 (1986) (listing additional assumptions that underlie the "neutral principles" test and concluding that it "fails to comport with reality . . . because it assumes that selectively culled provisions accurately reflect the expectations of the parties. It thus permits dispute resolution only by positing an artificial formalism on the church's part.").

<sup>22</sup> Contrary to *amici*'s claim that their preferred approach avoids pressuring churches to structure their internal affairs in any particular way (Becket Br. at 19), *amici*'s approach would require churches to retitle tens of thousands of parcels of real property before courts would recognize that the church's polity is not congregational.

courts give to secular organizations ranging from musicians' unions to the Independent Order of Odd Fellows.<sup>23</sup> This Court has never endorsed such willful blindness or countenanced such hostility to churches with non-congregational polities, and it should not start now.

**B. This case is a poor vehicle to examine the constitutional issues petitioners seek to raise.**

Even if petitioners could establish a theoretical issue meriting Supreme Court review, this case would not be a good one to consider it. Petitioners ask this Court to defer to the majority vote taken at a congregational meeting, but the absence of proper notice means that no business could validly be conducted at that meeting. A majority vote, moreover, cannot determine the identity of the “true church” under Washington law, and petitioners are not part of the true church. Further, petitioners’ self-election did not make them trustees or give them standing to assert claims on behalf of the FPCS congregation. Finally, FPCS has long recognized the Church’s interest in the property that petitioners claim for themselves. For all these reasons,

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<sup>23</sup> See *Musicians’ Protective Union Local No. 274 A.F. of M. v. Am. Fed’n of Musicians of the U.S. and Can.*, 329 F. Supp. 1226, 1236 (E.D. Pa. 1971) (a governing board’s construction of constitution and bylaws “is binding on the membership and will be recognized by the courts”; revocation of local charter upheld); *Golden Lodge No. 13 v. Grand Lodge of Indep. Order of Odd Fellows of Colo.*, 80 P.3d 857, 859 (Colo. App. 2003) (affirming decision by governing body of fraternal organization to revoke local chapter’s charter and seize its assets).

petitioners cannot prevail under any version of “neutral principles.”

**1. Petitioners’ congregational meeting was a nullity.**

As the trial court found (Pet. at 45a), petitioners failed to provide notice of their purported congregational and corporation meeting as the bylaws required. In addition to the lack of notice at the church service on November 1, no notice was read at the service on November 8, 2015, and no notice was printed in the church bulletin. *See* CP 555, 622, 625–26. Therefore, no business could be validly conducted at the meeting that petitioners called for November 15, 2015. *E. Lake Water Ass’n v. Rogers*, 761 P.2d 627, 628 (Wash. Ct. App. 1988) (“Where a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void.”); *cf. Hartstene Pointe Maint. Ass’n v. Diehl*, 979 P.2d 854, 855–56 (Wash. Ct. App. 1999) (action taken by committee not constituted as bylaws require is invalid).

Washington is not alone in requiring strict compliance with the requirements for giving proper notice of a member meeting. *Compare State Bank of Wilbur v. Wilbur Mission Church*, 265 P.2d 821, 827 (Wash. 1954), *with Bangor Spiritualist Church, Inc. v. Littlefield*, 330 A.2d 793, 795 (Me. 1975), *and Mount Zion Baptist Church v. Second Baptist Church of Reno*, 432 P.2d 328, 329 (Nev. 1967). Petitioners might have tried to cure their notice problems by calling another

meeting in conformity with the bylaws, but they never did so. Having chosen to stand on the congregational and corporate votes taken November 15, 2015, they have no valid basis to claim that the congregation chose to leave the Church.

**2. The true church is not determined by a majority vote.**

Even if petitioners had managed to conduct a valid congregational meeting, the fact that their resolutions attracted a majority of those voting on November 15, 2015, would not mean that petitioners and their supporters became the true church and that their opponents were cast out. To the contrary:

[A]ny rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in the . . . constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it.

*Jones v. Wolf*, 443 U.S. at 607–08.

The *Book of Order* contains the very provisions that *Jones* contemplates:

- The presbytery is empowered to determine which of two factions within a congregation is the true church and therefore entitled to carry on the ministry of the church using its property. “This determination does not depend

upon which faction received the majority vote with the congregation at the time of the schism.” CP 697 (G-4.0207).

- “All property held by or for a congregation . . . is held in trust . . . for the use and benefit of the [Church].” CP 696 (G-4.0203).

The AC determined that FPCS was in schism and that those members who opposed petitioners were the true church. BIO 50a. Under Washington law, such determinations merit deference regardless of whether they accord with a majority vote. *See Rohrbaugh*, 485 P.2d at 619 (if the holder of record title is the church corporation, and the members of the corporation are the members of the Presbyterian congregation, “under the constitution of the church, only the loyal members of the church could be regarded as members of the congregation”); *Hodel*, 133 P. at 439.

Washington law requires the identity of any local church named in a deed to be determined according to the constitution of the denomination. That being so, “the First Amendment requires that . . . courts give deference to the presbyterial commission’s determination of that church’s identity.” *Jones*, 443 U.S. at 609. Here the presbyterial commission—the AC—has determined the true church’s identity, and civil courts may not override that determination. The First Amendment bars petitioners’ plea that this Court treat them as the true church.

### **3. Petitioners represent no one but themselves.**

As the caption of this case reflects, the presbytery and FPCS are united against petitioners. Petitioners do not represent FPCS, the congregation, or any of its members. To the contrary, petitioners and everyone who supported them have withdrawn from membership, while FPCS continues to minister at its historic site.

The Schulzes resigned as Presbyterian pastors in December 2015. The AC removed the other petitioners from the session in February 2016, and they may not challenge that removal. Although petitioners assert that they are trustees, the congregation never elected them to that position. *See* CP 723 (restated articles require that trustees be elected at the annual meeting); Pet. at 44a (trial court found that the session “installed its members as trustees of the corporation” on October 27, 2015). Under Washington law, the fact that petitioners were never properly elected means that they have no basis to claim the status of a trustee. *Cf. Wilbur Mission Church*, 265 P.2d at 827–28 (attempted displacement of church trustees “a nullity” where no annual meeting of the membership had occurred); *Barnett v. Hicks*, 792 P.2d 150, 153 (Wash. 1990) (corporate directors lack authority to disregard requirements in articles and bylaws).

When they vacated FPCS’s premises in 2016, petitioners formed a new corporation, Seattle First Mosaic Church, and named themselves as its trustees. CP 106.

Petitioners later changed the name of their corporation to “Disaffiliated Members of First Presbyterian Church of Seattle,” but this entity has nothing to do with FPCS. Petitioners’ role in a corporation oxymorically called “Disaffiliated Members” does not permit them to claim leadership of or to act on FPCS’s behalf.

**4. FPCS has recognized the Church’s interest in FPCS-titled property.**

Petitioners argue that courts must reject a denomination’s trust interest in congregational property unless there has been strict compliance with state law to form a trust. Here there was.

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. Wash. Presbytery of Pa.*, 90 A.3d 95, 110–12 (Pa. Commw. Ct. 2014). The Restated Articles, adopted after the northern and southern Presbyterian churches reunified under a constitution with 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 (U.S.A.).’” CP 723. The FPCS congregation then approved the 2005 Bylaws, which 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.

The governing documents of a local congregation are an “important neutral principle.” *Presbytery of Greater Atlanta v. Timberridge Presbyterian Church*, 719 S.E.2d 446, 452 (Ga. 2011). Those documents themselves can create a trust interest by adopting the provisions of the Church Constitution. *Peters Creek United Presbyterian Church*, 90 A.3d at 110–11 (in adopting bylaws recognizing that the congregation was subject to the Church Constitution, the congregation 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 [the grantor’s] intent.” *Hope Presbyterian Church*, 291 P.3d at 724. In *Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church & Congregation of Ridgeberry*, 895 N.Y.S.2d 417, 430 (N.Y. App. Div. 2010), 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 such a trust, including when they sought the presbytery’s consent before disposing of property.

Petitioners' statements regarding the Church's trust interest in FPCS property confirm what the articles and bylaws say. For example, Jeff Schulz recognized that FPCS "owns its property in trust of the Presbytery." CP 616. FPCS's financial statements disclosed that, under the Church constitution, "all church land and buildings are owned by or held in trust for the [Church]," and they described FPCS's interest as a "stewardship responsibility." CP 2612–13, 2618–51.<sup>24</sup> Even as petitioners lobbied for secession, they recommended that FPCS join "a denomination that has no trust interest in church property." CP 569, 563.

Petitioners have argued that FPCS's adoption of the 1985 Restated Articles shows no more than an intention to follow the Church constitution in ecclesiastical matters. The Restated Articles contain no such limitation. They refer specifically to the "Form of Government" of the Presbyterian Church (U.S.A.)—i.e., the *Book of Order*, which sets forth rules for church governance and resolution of property disputes. This fact distinguishes *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 584 (Mo. Ct. App. 2012). The articles of incorporation in *Heartland Presbytery* stated that the local church was "connected with

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<sup>24</sup> Petitioners previously argued that FPCS's financial statements were relevant to determining 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]." CP 2152. The expert then stated: "None of [FPCS's] current or historic financial statements . . . identify any trust interest in favor of [the Church]." CP 2158. That statement was false. See CP 2612, 2627, 2639, 2650.

and ecclesiastically subject to” the presbytery and the general church. *Id.* at 585.

When petitioners tried to remove FPCS property from Church ministry, they forfeited any right to such property. *See Rohrbaugh*, 485 P.2d at 619–20 (“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 [they] have no right to control the use of the property.”). Because FPCS created a trust in property that would revert to the Church upon any attempt to secede, petitioners can make no claim to any FPCS property even under strict “neutral principles.”

### **5. This case is not the right one to tackle the chaos wrought by “neutral principles.”**

As petitioners note, this Court receives many requests to resolve questions left open by *Jones v. Wolf*. Nearly all such petitions reflect the challenges of attempting to translate a simple-sounding slogan—“neutral principles”—into a coherent legal doctrine.<sup>25</sup> These

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<sup>25</sup> As one scholar observed in a related context, “neutrality is nothing more than a buzzword and a dangerous one at that, because it implies that the supposedly neutral approach should be taken more seriously because it is actually neutral.” Frank S. Ravitch, *A Funny Thing Happened on the Way to Neutrality: Broad Principles, Formalism, and the Establishment Clause*, 38 GA. L. REV. 489, 517 (2004). Academic *amici* and Becket use “ordinary principles” in place of “neutral principles,” but that phrase is no less disingenuous. Lifted from *Watson v. Jones*, it applies to “a church of a strictly congregational or independent

challenges do not arise under *Watson v. Jones* or its polity approach, and this case does not raise them. This Court need not consider the many problems inherent in applying “neutral principles” until it reviews a case that squarely raises those issues.

Although petitioners assert that this case presents a single issue related to “local congregations and their former denominations,” Pet. at 34, nothing could be further from the truth. There is no “former” denomination here, and petitioners have no legal basis for asserting that they represent the local congregation. Rather, FPCS and its leaders—the true church as determined by the AC in conformity with *Jones* and state law—are allied with the presbytery and the denomination, and they are the respondents in this case.

Petitioners claim that reversal would likely alter the outcome. They are wrong. Although petitioners disparage the evidence showing FPCS’s acknowledgment of the Church’s trust interest, that evidence is overwhelming. Petitioners also assert that the language in the articles and bylaws recognizing the Church’s form of government “antedates FPCS’s membership in any Presbytery.” Pet. at 36. Petitioners are wrong about this, too: FPCS was a member of a governing presbytery from its formation in 1869, long before it filed articles of incorporation with the territorial

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organization, governed solely within itself . . . and to property held by such a church[.]” 80 U.S. at 724. What these terms cannot hide is that accepting petitioners’ and *amici*’s argument would result in less favorable treatment for churches than Washington courts accord non-religious associations organized the same way.

government. CP 1039. In 1985, *after* the trust clause was added to the *Book of Order*, FPCS restated its articles to make clear its membership in the Church and allegiance to its form of government. CP 723–24. By contrast, the articles considered in *Heartland Presbytery*, 364 S.W.3d at 584, were adopted in 1948, long *before* an express trust clause was added to the Church constitution.

Finally, petitioners claim that FPCS “disaffiliated” from the Church “under ordinary corporate law.” Pet. at 37. They cite Washington statutes that apply only if articles and bylaws do not address such issues as meeting notice and the amendment process. Those default provisions are irrelevant here. The trial court determined that petitioners lacked authority to amend the bylaws and that only the congregation could do so; hence, their purported amendments were “void and without effect.” Pet. at 34a. The trial court also found that petitioners failed to give notice as the bylaws required. Pet. at 44a–45a. Petitioners’ assertions to the contrary are simply false. Petitioners also ignore the AC’s determination that they are outside the true church, a determination that no civil court may second-guess. *Jones v. Wolf*, 443 U.S. at 609.



**CONCLUSION**

The Washington Supreme Court, having examined the facts in this case, declined to entertain petitioners' arguments three times: in 2016, 2018, and 2020. This Court should follow suit and deny the petition for certiorari.

Respectfully submitted,

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**THE SUPREME COURT OF WASHINGTON**

THE PRESBYTERY OF	)	No. 94419-9
SEATTLE, et al.,	)	(consolidated with
Respondents,	)	No. 94967-1)
	)	
v.	)	<b>ORDER</b>
	)	(Filed May 2, 2018)
JEFF SCHULZ and	)	
ELLEN SCHULZ,	)	King County
Appellants.	)	Superior Court
	)	No. 16-2-23026-1 SEA
	)	(consolidated with
	)	No. 16-2-03515-9 SEA)

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Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins, and Gordon McCloud, considered this matter at its May 1, 2018, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That this case is transferred to Division I of the Court of Appeals.

DATED at Olympia, Washington, this 2nd day of May, 2018.

For the Court

/s/ Fairhurst, C.J.

\_\_\_\_\_  
CHIEF JUSTICE

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**IN THE SUPREME COURT 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 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,

Petitioners.

NO. 93374-0

RULING DENYING  
DISCRETIONARY  
REVIEW

(Filed Oct. 7, 2016)

Petitioners in this case seek direct discretionary review of a partial summary judgment order declaring the following: that respondent Presbytery of Seattle, through its Administrative Commission, governs the First Presbyterian Church of Seattle (FPCS); that the Commission's findings and rulings are conclusive and binding; and that FPCS property is held in trust for the benefit of the national organization, Presbyterian Church (U.S.A.).<sup>1</sup> This partial summary judgment order does not adjudicate all the claims in this matter, and therefore is subject only to discretionary review until the entry of a final judgment. RAP 2.2(d). As applicable here, RAP 2.3(b) provides that discretionary review of an interlocutory superior court decision is available only if (1) the court committed obvious error that renders further proceedings useless, (2) the court committed probable error that substantially alters the status quo or limits the freedom of a party to act, or (3) the court so far departed from the usual course of judicial proceedings as to call for appellate review. Although discretionary review may be requested under these circumstances, such piecemeal review is disfavored. *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990); *Hartley v. State*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985).

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<sup>1</sup> The deputy commissioner previously denied the petitioners' motion to stay all superior court proceedings and enjoin all actions seeking to enforce or implement the declaratory judgment pending review. The facts as related in that ruling are summarized again here.

This case arises from a vote by some members of the congregation of FPCS to disaffiliate from the national religious organization Presbyterian Church (U.S.A.) and the Presbytery of Seattle, and to adopt new articles of incorporation and bylaws providing that FPCS is not subject to the authority of the Presbyterian Church (U.S.A.) or its form of government. The Presbytery of Seattle, acting pursuant to the constitution of Presbyterian Church (U.S.A.), appointed an Administrative Commission to conduct an investigation and issue a report and take action in light of the results of the investigation. Subsequently, the Administrative Commission adopted resolutions stating that it assumed original jurisdiction with the full power of the session of FPCS, and that the individuals “who previously constituted the session and the officers, directors, or board of trustees” no longer had authority with respect to FPCS’s ministry, business dealings, or property.<sup>2</sup> Those specified individuals maintained that they still constituted the duly elected board of trustees of FPCS, that through their actions FPCS had severed all ties with the Presbyterian Church (U.S.A.), and that the commission had no authority over them. Disputes arose concerning who was entitled to FPCS property, funds, and accounts receivable. Copastors Jeff Schulz and Ellen Schulz and those who maintain they are the duly elected board of trustees of FPCS declined the

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<sup>2</sup> The “session” is the governing body of the local church on ecclesiastical matters, composed of the pastor or pastors and the elders of the local church, while the board of trustees governs business and property interests. FPCS’s session also acts as its board of trustees.

Administrative Commission's directions to vacate the church property, turn over books and records, and return funds that had been placed in a law firm trust account.

The Presbytery of Seattle and individuals who the Administrative Commission elected as FPCS officers (respondents herein) filed suit against the Schulzes and the individuals who maintain they are the proper board of trustees of FPCS (petitioners herein). Respondents moved for partial summary judgment on their claim for declaratory relief. Petitioners sought a motion for a continuance under CR 56(f) and also filed a motion for a preliminary injunction prohibiting respondents from carrying out the Administrative Commission's resolutions. The superior court denied petitioners' request for a continuance, concluding that petitioners had already thoroughly responded to the motion for partial summary judgment and failed to show that the additional discovery they requested would provide additional support for their assertion that a genuine issue of fact exists as to whether Presbyterian Church (U.S.A.) is hierarchical. The superior court then granted respondents partial summary judgment and entered a declaratory judgment finding that Presbyterian Church (U.S.A.) is a hierarchical church in which the determinations of the Presbytery of Seattle, through its Administrative Commission, are conclusive and binding on the session, trustees, and congregation of FPCS, and that any interest that FPCS has in church property is held in trust for the benefit of the Presbyterian Church (U.S.A.). Further, the court

determined that the current governing body of FPCS is the body elected by the Administrative Commission. The court additionally found that FPCS is governed by the Restated Articles of Incorporation adopted in June 1985 and the bylaws adopted in May 2005, and it held void the recent amendments to the articles of incorporation and bylaws that the congregation had voted to approve providing that FPCS was not subject to the authority of the Presbyterian Church (U.S.A.) or its governance documents.

The superior court also denied petitioners' motion for a preliminary injunction against implementation of the Administrative Commission's resolutions, finding they had not shown (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of would result in actual and substantial injury. *See Huff v. Wyman*, 184 Wn.2d 643, 651, 361 P.3d 727 (2015). As to the first criterion, the court found that the rights at issue were conclusively determined by the Administrative Commission, citing the same authority on which it had based the declaratory judgment. *See Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 373, 485 P.2d 615 (1971) (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). The court also concluded that, even if neutral principles of law were

applied as a means of adjudicating the church property dispute, an approach described in *Jones v. Wolf* 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), and advanced by petitioners, the Presbytery of Seattle would still be entitled to the use and possession of the property by virtue of the 2005 Restated Article of Incorporation and bylaws that incorporated a *Book of Order* provision that the property held by and for the congregation is held in trust for the Presbyterian Church (U.S.A.). As to the second and third criteria, the court observed that petitioners had continued to worship in the FPCS chapel while congregants who opposed their actions worshiped elsewhere, and that respondents had not interfered with any bank accounts in the name of FPCS and had decided to await a prompt resolution of the action before contacting entities (such as Diamond Parking and Seattle Classical Christian School) that have contractual obligations to FPCS. The court found petitioners had not met their burden of showing that any fear of immediate invasion of a right was well grounded or that the acts complained of would result in actual and substantial injury.

Petitioners moved for reconsideration of the orders denying a continuance, granting declaratory judgment, and denying a preliminary injunction. The superior court denied reconsideration of all of these matters, and petitioners now seek this court's direct discretionary review of each of these orders.

In seeking review, the petitioners first assert that the superior court committed obvious or probable error

in failing to apply a “neutral principles of law” analysis to the facts presented by this matter. As noted, in *Jones* the Supreme Court recognized a “neutral principles of law” analysis as one of several acceptable approaches civil courts may follow in resolving church property disputes. Historically, the Supreme Court’s first approach to the role of civil courts in adjudicating church property disputes was outlined in *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 20 L. Ed. 666 (1871). There the Supreme Court concluded that where individuals had organized themselves into a voluntary religious association, and had agreed to be bound by the decisions of the governing hierarchy of the association, the civil courts were compelled to give deference to the final decisions of the organization’s hierarchical authorities. In *Rohrbaugh* this court adopted the approach in *Watson*, which it summarized as setting forth the rule that “the 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.” *Rohrbaugh*, 79 Wn.2d at 372. The court observed that historically it had applied a similar rule under which “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.” *Id.* at 373. The court saw no reason to abandon the rule. *Id.*

Fifteen years later, in *Church of Christ at Centerville v. Carder*, 105 Wn.2d 204, 208, 713 P.2d 101 (1986), this court observed that First Amendment case law subsequent to its decision in *Rohrbaugh* had recognized three ways in which a property dispute in a hierarchical church setting may be addressed: (1) pursuant to *Watson*, which requires deference to the highest hierarchical body; (2) according to neutral principles of law which may not necessarily coincide with the highest hierarchical body's decision, as set forth in *Jones*; and (3) according to any state legislation that governs church property arrangements in a manner that precludes state interference in doctrines. But no hierarchical church was involved in *Carder* and thus “[t]here is no higher church body to which the aggrieved parties can appeal or to which this court can defer.” *Id.* at 208. Here, petitioners acknowledge that this court “has not squarely addressed the issue since *Jones*,” but argue that discussion in recent decisions presages future application of neutral principles to resolve disputes such as those presented in this matter. In support of this proposition, petitioners cite the descriptions of *Jones* in the lead opinion in *Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 675-76, 286 P.3d 357, 367 (2012) (Madsen, C.J., with three justices concurring; two justices concurring in the result) (observing that use of the neutral principles of law approach was applied to a church property dispute in *Jones*, but stating that the neutral principles of law approach was not the proper approach to address claims of negligent retention and supervision of the church minister). Three justices “strongly disagree[d]

with the lead opinion that we should reject the ‘neutral principles of law’ approach approved by the United States Supreme Court in *Jones*.” *Id.* at 692 (Chambers, J., dissenting in part and concurring in part). Petitioners also cite decisions from other jurisdictions that have applied the *Jones* approach in circumstances where the court could resolve a property dispute without reference to church doctrine.

These opinions may illustrate that the legal question is at least arguable, and that this court may be asked to consider whether changes in the legal context after *Rohrbaugh* warrant revisiting the question. But the various opinions in *Erdman* do not show that the preferred approach to resolution of church property disputes has indeed changed. Petitioners’ showing that there is a debatable issue falls far short of demonstrating the superior court committed obvious or probable error as required by the review criteria of RAP 2.3(b)(1) and (2).<sup>3</sup>

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<sup>3</sup> Petitioners also claim there is conflict among the decisions of the Court of Appeals. See *Choi v. Sung*, 154 Wn. App. 303, 225 P.3d 425, *review denied*, 169 Wn.2d 1009 (2010) (Washington Supreme Court has disavowed the *Jones* “neutral principles of law” approach and exclusively adopted the *Watson* “compulsory deference” approach to address property disputes in a hierarchical church setting) and *In re Marriage of Obaidi & Qayoum*, 154 Wn. App. 609, 226 P.3d 787, *review denied*, 169 Wn.2d 1024 (2010) (applying neutral principles of contract law to a prenuptial agreement that was based on Islamic law). But a conflict among the published decisions of the Court of Appeals is a criterion for review of a Court of Appeals decision terminating review. See RAP 13.4(b).

Further, it is unclear whether a court reviewing the superior court decision in this matter will find it necessary to choose among the different acceptable methods for resolving church property disputes. In its order denying the petitioners' motion for a preliminary injunction, the superior court concluded that even if the neutral principles of law approach applied, the petitioners would not be entitled to relief. The superior court reasoned that since the FPCS's restated articles of incorporation and 2005 bylaws incorporated a provision of the *Book of Order* that property held by the congregation was held in trust for the Presbyterian Church (U.S.A.), as further reflected in FPCS's financial statements until 2015, the petitioners' rights to the property ended when they ceased to use it for the benefit of the Presbyterian Church (U.S.A.). Petitioners dispute that FPCS ever consented to hold the property in trust for another entity. But regardless of the relative weight of the parties' positions, the potential that the legal issue petitioners present would not be reached is further indication that interlocutory review is not appropriate.

Next, the petitioners argue that the superior court committed obvious or probable error in entering summary judgment on the basis that Presbyterian Church (U.S.A.) is a hierarchical church. Petitioners submitted the declaration of an expert witness who is an ordained minister and former church leader and who has authored papers on the constitution and governance of the Presbyterian Church (U.S.A.). Petitioners contend this declaration created a genuine issue of fact as to

whether Presbyterian Church (U.S.A.) is a hierarchical church. However, petitioners point to no clear decisional law in Washington on the extent to which a court may consider the testimony of an expert witness as to the meaning of a denomination's constitution, and whether the court may weigh that interpretation against a contrary interpretation of the tribunals that the denomination has vested with interpretative authority. This is an issue that has been considered by the courts in some other states. *See, e.g., Lamont Cmty. Church v. Lamont Christian Reformed Church*, 285 Mich. App. 602, 618, 777 N.W.2d 15 (2009) (stating that if a denomination's constitutional provisions are not so express that the civil courts can enforce them without engaging in an searching inquiry into church polity, the courts must accept the interpretation of the church constitution provided by the denomination's authorities). Petitioners protest that this analysis is circular when the very question at issue is whether a religious organization's structure is hierarchical, and the underpinning for deference to the denomination's tribunal is the premise that the religious organization is hierarchical. But for purposes of this motion for discretionary review, I need only determine whether the petitioners have demonstrated that the superior court committed probable or obvious error. They have failed to do so. Even in states that apply a neutral principles approach to church property disputes, courts have disagreed over whether express provisions in a denomination's constitution are dispositive on the creation of a trust, and whether or what additional evidence is appropriate to examine. *See Hope Presbyterian Church of*

*Rogue River v. Presbyterian Church (U.S.A.)*, 352 Or. 668, 685-86, 291 P.3d 711 (2012) (discussing cases). Petitioners' arguments highlight the difficult task civil courts face in adjudicating such matters without becoming entangled in questions of religious doctrine and practice. But they have not shown that the superior court's determination here, that there was no genuine issue of material fact that precluded summary judgment, is contrary to any controlling authority on this issue.

Finally, petitioners argue the superior court committed obvious or probable error in failing to grant their CR 56(f) motion for a continuance to allow them to obtain answers to discovery requests that they had propounded on the issue of whether Presbyterian Church (U.S.A.) is a hierarchical church. But the superior court denied the continuance on the basis that petitioners did not show a likelihood that these requests would result in additional noncumulative information pertinent to resolution of the partial summary judgment motion. In this context, the question of whether a continuance should have been granted and whether petitioners can show they suffered any resulting prejudice is closely related to the appropriate scope of the civil court's inquiry as to whether a religious organization is hierarchical. As discussed above, I cannot say that the superior court committed probable or obvious error in its determination of what evidence is properly considered in a civil court's resolution of this question. It follows that I cannot say that the court's denial of a

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continuance until discovery requests on this point were answered was obvious or probable error.

The motion for discretionary review is denied. My conclusion that discretionary review is not warranted under RAP 2.3(b) makes it unnecessary to decide whether direct review would be appropriate. RAP 4.2.

/s/ Narda Pierce  
COMMISSIONER

October 7, 2016

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**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.

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**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]<sup>1</sup>;
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 session<sup>2</sup> wrote the presbytery on October 30, 2015, as follows:

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<sup>1</sup> 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]

<sup>2</sup> 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

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

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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.

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-2.0901ff.];

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

## 31a

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

## 32a

Jack Merner	Teaching Elder, Cascades Presbytery; Exeter House resident and FPCS attendee
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 attendee
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 attendee
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,<sup>3</sup> 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

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<sup>3</sup> 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.

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 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.

/s/ Steve J. Aeschbacher  
Steve Aeschbacher

/s/ Shelley M. Dahl  
Shelley Dahl

/s/ J.P. Kang  
J.P. Kang

/s/ William A. Longbrake  
Bill Longbrake

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/s/ Heidi Husted Armstrong /s/ Kathy Smith  
Heidi Husted Armstrong Kathy Smith

/s/ Robert C. Wallace /s/ Rev. Jonathan C.  
Bob Wallace Siehl LICSW  
Jonathan Siehl

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