NO. 93374-0

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; 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 composed 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.

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

Robert B. Mitchell, WSBA #10874
Peter A. Talevich, WSBA #42644

K&L GATES LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158
Telephone: 206-623-7580
Email: robert.mitchell@klgates.com
Email: peter.talevich@klgates.com

David D. Swartling, WSBA #6972

MILLS MEYERS SWARTLING
1002 2nd Avenue, Suite 3000
Seattle, Washington 98104
Telephone: 206-382-1000
E-mail:
dswartling@millsmeyers.com

Attorneys for Respondents Presbytery of Seattle, First Presbyterian Church of Seattle, Robert Wallace, and William Longbrake

Table of Contents

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

A. INTRODUCTION

Seeking to avoid accountability for their misdeeds and to make off with church assets, rogue leaders of a historic Presbyterian church tried to secede from the denomination unilaterally. The trial court entered a declaratory judgment holding that their efforts failed under both binding Washington precedent and the alternative test they espouse. Although the case continues, the former leaders ask this Court to accept discretionary review and reverse the trial court's orders. Their motion, which wholly fails the tests for such extraordinary relief, should be denied.

B. IDENTITY OF RESPONDENTS

Respondents are Seattle Presbytery, First Presbyterian Church of Seattle ("FPCS"), Robert Wallace as President of FPCS, and William Longbrake (collectively, "plaintiffs").

C. DECISION

On May 27, 2016, King County Superior Court Judge Mary E. Roberts granted plaintiffs' motion for partial summary judgment and entered a declaratory judgment. App. 2-8. She denied defendants' motion for a preliminary injunction and their motion for a continuance. App. 15-26, 10-13. After defendants moved for reconsideration of all three orders, Judge Roberts entered an order on June 20, 2016, denying reconsideration of her order denying a continuance but requesting a response on whether it

is factually at issue that the Presbyterian Church (U.S.A.) (the "Church")[1] is hierarchical. App. 33-36. Plaintiffs submitted a response. Plaintiffs' Appendix ("PA") 602-615. On June 30, 2016, Judge Roberts entered her order denying reconsideration. App. 28-31.

Defendants seek discretionary review of these five orders. They also seek direct Supreme Court review.

D. ISSUES PRESENTED

1. Did Judge Roberts err when she followed the holding in *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971), *cert. denied*, 405 U.S. 996, *reh. denied*, 406 U.S. 939 (1972)?

2. Did Judge Roberts err when she held that defendants would also lose under the "neutral principles" test that they espouse?

3. Did Judge Roberts abuse her discretion in denying defendants' motion for a continuance?

E. STATEMENT OF THE CASE

In 2015 Seattle Presbytery received a series of troubling reports from members of the FPCS session about the conduct of the co-pastors and allied church leaders. PA 375. These reports followed difficult

[1] Defendants persistently conflate the Church, an unincorporated association of Reformed Christians who agree to abide by the Church Constitution (i.e., the denomination), with a similarly named Pennsylvania nonprofit corporation ("A Corp.") that is maintained by the highest council of the Church, the General Assembly. This Court should not be deceived. See PA 209-211, 290, 292-293, 323-325, 370. On July 6, 2016, the trial court struck defendants' third-party complaint against A Corp.

interactions between the Presbytery's own Committee on Ministry (the primary body for interaction among a congregation, its pastors, and the presbytery) and those same leaders. PA 33. The Presbytery created a Committee for Special Administrative Review (CSAR) to look into these reports. *Id.* But fresh allegations of serious misconduct continued to surface, which the CSAR believed to lie beyond the scope of its charge. *Id.*

On November 2, 2015, the Presbytery called a special meeting for the purpose of appointing an administrative commission with full power to investigate the conduct of the co-pastors and session and to take appropriate steps, including assumption of original jurisdiction. PA 521-523. At its meeting on November 17, the Presbytery appointed an eight-member Administrative Commission for First Presbyterian Church of Seattle (the "AC"). PA 34-35. After hearing from 50 witnesses, the AC issued its report on February 16, 2016. PA 27; *see* PA 31-49 (report).

Summarizing its 54 findings, many of them reflecting multiple violations of the Church Constitution, the AC stated that its investigation had "confirmed the allegations made to the Presbytery." PA 32. The AC also found "additional irregularities in the records and the finances of the

church and a broad-based pattern of misconduct by the former co-pastors." *Id.*[2]

The AC determined that FPCS was in schism and that the members who opposed the actions of the former leaders constituted the true church. PA 46. Because the former co-pastors had renounced the jurisdiction of the Church, thereby forfeiting their status as pastors in the Church, the AC appointed a temporary pastor, Heidi Husted Armstrong, to minister to the true church. PA 24-25. Because it found the former session was unable or unwilling to manage wisely its affairs, the AC assumed original jurisdiction with full power of the FPCS session, displacing the former leaders. PA 46, 110-111. The Church Constitution authorized each of these steps. PA 152-155, 159-161, 170-171.

The former co-pastors and allied leaders refused to recognize the jurisdiction of the AC or to abide by its directions. PA 207. They asserted that they had "disaffiliated" from the Church by congregational vote on November 15, 2015. PA 44-45. But that vote, the AC determined, was ineffective because the meeting had not been properly noticed, the voting improperly included proxies, and—most importantly—the Church Constitution does not permit congregations to secede. *Id.* Only the

[2] The AC's report provides examples of intimidation, manipulation, deception, and potential fraud. PA 39-41.

Presbytery can dismiss a congregation, and it has not dismissed FPCS. PA 106-108.[3]

On March 10, 2016, plaintiffs moved for summary judgment. PA 1-22. Six weeks later defendants moved for a preliminary injunction. *See* PA 455-479 (opposition memo). Both motions, having been exhaustively briefed, were argued on May 27, 2016. PA 626-680 (hearing transcript). Judge Roberts granted plaintiffs' motion and denied defendants'; she later entered orders denying defendants' motion for a stay (App. 38-40) and their motion for reconsideration. The case is ongoing. For example, a pending motion seeks dismissal of defendants' claim alleging violations of the Washington Consumer Protection Act. PA 616-625.

F. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. Judge Roberts properly applied *Rohrbaugh*.

In the *Rohrbaugh* case, the Laurelhurst United Presbyterian Church, "feeling aggrieved by certain doctrinal changes which were adopted in 1967 by the United Presbyterian Church as a part of its constitution, voted to withdraw as a body." 79 Wn.2d at 368. Seattle Presbytery "advised that there was no authority in the constitution for the members of a church to withdraw as a body," and it appointed "an

[3] For a more complete description of background facts, *see* the Findings of Fact in Judge Roberts's Order Denying Preliminary Injunction, ¶¶ 1-21 (App. 20-23). Unchallenged findings are verities on appeal. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

administrative commission having the powers of Session to administer the affairs of the church for those members who had not withdrawn." *Id.* The King County Superior Court enjoined the dissidents from interfering with the Presbytery's "use and control of the property of the church or diverting" it; the court also required the dissidents to deliver "all property of the church, including its books and records and the deed to the church property." *Id.* at 368-69.

Affirming unanimously, the Supreme Court held that "where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government," and the matter has been decided by the highest tribunal, "the civil court will accept that decision as conclusive." *Id.* at 373. The members of the Laurelhurst Presbyterian church "had no right to withdraw from the church as a body and take with them the name of the church and its property." *Id.* On the contrary, by withdrawing they "forfeited their right to govern the affairs of the church" and "have no right to control the use of the property." *Id.*

Judge Roberts applied this holding to the undisputed facts before her and reached the same conclusion. Her decision was neither "obvious" nor "probable" error, RAP 2.3(b)(1), (2), but rather clearly correct.

Although defendants assert baldly that *Rohrbaugh* "is distinguishable" (Motion, p. 11), they make no attempt to distinguish it.[4] Instead, they argue that *Rohrbaugh* should be discarded in favor of a "neutral-principles" approach to resolving church-property disputes. This argument is further developed in defendants' statement of grounds for direct review, and plaintiffs respond to it in their answer to that document. Here plaintiffs will simply note that *Rohrbaugh* itself rejects defendants' argument. *See Choi v. Sung*, 154 Wn. App. 303, 315 n.16, 225 P.3d 425 (2010) ("The Washington Supreme Court has disavowed the approach taken in *Jones v. Wolf*, and exclusively adopted the deference approach."); *Org. for Preserving Constitution of Zion Lutheran Church of Auburn v. Mason*, 49 Wn. App. 441, 447, 743 P.2d 848 (1987) ("When the Washington Supreme Court had the opportunity to rule upon a church property dispute, the court expressly rejected the neutral principles method and, instead, reaffirmed the polity approach of *Watson v. Jones*.").

Defendants offer two arguments in an effort to reduce the force of *Rohrbaugh*. First, they suggest that its holding should not apply in "disputes that do not implicate a church's ecclesiastical affairs." Motion, p. 13. Whatever merit that point might have in another case, it has none

[4] Plaintiffs' trial-court briefs address every purported distinction suggested by the defendants. *See* PA 315, 459-463, 613-614.

here. The AC's report reflects the results of an ecclesiastical investigation into the defendants' misconduct and violations of the Church Constitution. It concludes that the defendants forfeited their right to govern the mission and ministry of FPCS, not just to manage its property—although proper stewardship of property is vital to fulfilling the mission of the Church. And no issue is more central to the constitutionally protected autonomy of churches than the selection and discipline of church leaders.[5]

Second, defendants claim to have created a reasonable inference that the Church is non-hierarchical via an "expert" declaration by Parker Williamson. Williamson's declaration is neither competent nor admissible evidence, as Civil Rule 56(e) demands. *See* PA 318, 415-416, 608-610. Individual teaching elders are not empowered to issue authoritative determinations of constitutional requirements. PA 215. And hearsay and legal arguments do not constitute admissible evidence. *See, e.g., Tortes v. King Cty.*, 119 Wn. App. 1, 12-13, 84 P.3d 252 (2003).

To entertain Williamson's declaration, moreover, would embroil the courts in resolving issues of doctrine that they are constitutionally prohibited from considering.

---

[5] "The [U.S.] Constitution mandates that religious organizations must retain the 'power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.' . . . [A] religious organization must be able to choose and retain its spiritual leaders." *Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 667, 286 P.3d 357 (2012) (internal citations omitted).

> The United States Supreme Court has held that it is a violation of the First and Fourteenth amendments for courts to substitute their own interpretation of a denomination's constitution "for that of the highest ecclesiastical tribunals in which the church law vests authority to make that interpretation." *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Lamont Cmty. Church v. Lamont Christian Reformed Church, 285 Mich. App. 602, 617, 777 N.W.2d 15 (2009). In determining whether a particular church is hierarchical with respect to property, a court must look at the language of the church constitution. If that language is unclear, the court must "accept any interpretation made by the highest governing body permitted to make that decision." *Id.*[6]

In this case, the language of the Church Constitution is clear, and it disposes of the defendants' arguments. That language is reinforced by the authoritative interpretation provided by Laurie Griffith (PA 288-312).[7] Judge Roberts's conclusion that the Church is hierarchical for purposes of

---

[6] Defendants concede this point: "In short, to avoid entanglement, courts find a national church to be 'hierarchical' simply because the national church says it is hierarchical." Statement of Grounds for Dir. Rev., pp. 13-14. In *Convention of Protestant Episcopal Church in Diocese of Tennessee v. Rector, Wardens & Vestrymen of St. Andrew's Parish*, 2012 WL 1454846, at *17 (Tenn. Ct. App. 2012), the court rejected an argument that three declarations (by a former bishop, a diocese board member, and 15 bishops or former bishops) claiming that the Episcopal Church is non-hierarchical could create a disputed issue of material fact, observing that "the affiants were simply offering their opinions and interpretations of the constitutions and canons, not facts." Those constitutions and canons "speak for themselves and are determinative of the issue," the court concluded, holding that the Episcopal Church is hierarchical. The same conclusion follows from the Church Constitution in this case.

[7] Ms. Griffith states flatly that Williamson "is wrong." PA 291.

determining rights in property is also consistent with every reported decision on that question, not one of which suggests that there could be a genuine issue of material fact as to whether Presbyterian polity is hierarchical.[8] Judge Roberts's conclusion reflects defendants' own admission when, in November 2015, they encouraged the congregation to vote for "disaffiliation" from the Church:

> PCUSA's polity, or system of government, though representative, **is also hierarchical**, which has, in our experience, allowed for misuse of authority and power with little to no recourse on the part of local congregations. This

---

[8] *E.g., Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 441-42, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969) ("Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body."); *Jones v. Wolf*, 443 U.S. 595, 597-98, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979) ("The [Presbyterian Church in the United States] has a generally hierarchical or connectional form of government, as contrasted with a congregational form."); *Calvary Presbyterian Church v. Presbytery of Lake Huron*, 148 Mich. App. 105, 112, 384 N.W.2d 92 (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 in determining that the seceding Church could not take the real estate with it."); *In re Presbytery of Albany*, 35 A.D.2d 252, 252-53, 315 N.Y.S.2d 428 (N.Y. App. Div. 1970) ("The decision of the Presbytery that all assets be forfeited by appellant church, being a property decision of a hierarchial [*sic*] polity based upon ecclesiastical law[,] may be constitutionally enforced."); *Lowe v. First Presbyterian Church of Forest Park*, 56 Ill.2d 404, 412, 308 N.E.2d 801, *cert. denied*, 419 U.S. 896 (1974) ("It is clear that the United Presbyterian Church is hierarchical in governmental form in that each judicatory has control of those below it. The significance here of this structure is that each member Presbyterian church is subject to the rules and directions of its Presbytery, Synod, and Assembly."). *Cf. Hoffman v. Tieton View Cmty. Methodist Episcopal Church*, 33 Wn.2d 716, 729, 207 P.2d 699 (1949) (because the organization of the Methodist Church "is Presbyterian in form and not Congregational," local churches "are only parts of the larger body," and no local church "may convert its property to a use not authorized by the superior church government").

> **hierarchical** structure has impeded our ability to carry out our mission.

PA 80 (emphasis added).

2. Judge Roberts properly rejected defendants' attempts to rewrite FPCS corporate documents and make themselves unaccountable trustees.

On October 27, 2015, the defendants purported to amend the bylaws of FPCS, which the congregation had adopted in May 2005. PA 65. The defendants adopted separate bylaws for the church and the corporation, placed all church property in the corporation, and elected themselves trustees of the corporation. PA 109, 525. The bylaws and articles of incorporation did not permit any of these actions.

Article XV of the 2005 bylaws (PA 70) provides as follows:

> These bylaws may be amended subject to the Articles of Incorporation, the laws of the state of Washington and the *Constitution of the Presbyterian Church (U.S.A.)* by a two-thirds vote of the voters present, providing that the proposed changes in printed form shall have been distributed at the same time as the call of the meeting at which the changes are voted upon.

As Judge Roberts determined, defendants violated every one of these requirements. Their purported bylaw amendments were contrary to the Restated Articles of Incorporation of FPCS, which state that the objects and purposes of FPCS are "to promote the worship of Almighty God and the belief in [and] the extension of the Christian Religion, under the Form of Government and discipline of 'The Presbyterian Church (U.S.A.).'"

PA 197. The Presbyterian Form of Government (Constitution) requires that any corporation created by a congregation be subject to the session. The Church Constitution also provides that all property is held in trust for the Church. The articles also required that trustees be elected at an annual meeting of the congregation. Bylaws may not conflict with the articles of incorporation. And these bylaws could be amended only at a meeting of the congregation and corporation. *See* PA 373-375, 395, 397, 464-468.

Recognizing this last point, defendants called a meeting of the congregation and the corporation on November 15 for the purpose of ratifying their bylaw changes, voting to "disaffiliate," and amending the articles of incorporation. The 2005 bylaws set forth the following notice requirements for such meetings:

> (1) Public notice of meetings of the congregation shall be given in printed and verbal form on at least two successive Sundays prior to the meeting. . . .
>
> (2) Public notice of meetings of the corporation shall be given by letter mailed to all members not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. A printed notice shall also be included in the church bulletin, signed by the Clerk of the Session, indicating the date and hour when, and place where, such meeting will be held, and the 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.

PA 67.

Defendants did not meet any of these requirements, other than mailing notice of the corporation meeting. They did not announce the meeting at the service on Sunday, November 8, nor did they include printed notice in the church bulletin. PA 54, 57-58. Defendants also called for proxy votes, something forbidden by both the 2005 bylaws and the Church Constitution. PA 44, 67. Judge Roberts concluded that the November 15 meeting was not properly noticed or conducted and that the amendments to articles and bylaws purportedly adopted and ratified there were void and ineffective. App. 7, 25.

Defendants do not take issue with Judge Roberts's findings and conclusions, which are plainly correct. Instead, they pretend that those findings and conclusions do not exist. Defendants blithely assert that the 2005 bylaws could be amended "by a two-thirds vote of the Board" (Motion, p. 8), even though Article XV refers to "voters" and requires that the proposed changes be distributed "in printed form . . . at the same time as the call of the meeting at which the changes are voted upon," language that echoes the requirements for giving notice of meetings of the congregation and corporation. PA 67, 70. The language in the bylaws is reinforced by decades of consistent practice (*see* PA 373-374), reflecting that only the congregation could amend the bylaws. In addition, the

amendments were invalid as a substantive matter. Hence, as Judge Roberts concluded, the 2005 bylaws continue to govern.[9]

In light of these conclusions, defendants have no basis to argue that they were validly elected as trustees, that the congregation properly voted to "disaffiliate," or that they have standing to object to plaintiffs' exercise of control over the mission and ministry of FPCS. In short, defendants lose under "neutral principles" just as surely as they do under *Rohrbaugh*.

3. Judge Roberts properly determined that defendants hold property in trust for the denomination.

That defendants' cause is doomed under "neutral principles" is reinforced by Judge Roberts's declaration that "[a]ny interest that FPCS has in church property is held in trust for the benefit of the Presbyterian Church (U.S.A.)." App. 7. Defendants' attacks on this declaratory judgment are baseless.

For more than a century, courts recognized the Church's implied trust interest in local church property. This was the basis for the U.S. Supreme Court's holding in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20

---

[9] Articles of incorporation and bylaws are "correlated documents" and are construed together. *Roats v. Blakely Island Maint. Comm'n, Inc.*, 169 Wn. App. 263, 274, 279 P.3d 943 (2012). The 2005 bylaws (PA 66-70) contain the following provisions:

- FPCS "is a member church of the Presbyterian Church (U.S.A.)."
- FPCS "shall be governed in accordance with the current edition of the *Constitution of the Presbyterian Church (U.S.A.)*."
- "Any matter of church governance not addressed by these bylaws shall be governed by the *Constitution of the Presbyterian Church (U.S.A.)*."
- "The Session shall have such duties and powers as are set forth in the *Constitution of the Presbyterian Church (U.S.A.)*."

L. Ed. 666 (1872), decided two years before FPCS incorporated, as well as *Rohrbaugh*. After the U.S. Supreme Court signaled in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), that it might no longer recognize such an implied trust, the Church accepted the Court's invitation that "the constitution of the general church can be made to recite an express trust in favor of the denominational church." *Id.* at 606; *see* PA 212-215, 219-225. Since 1981, the Church Constitution has expressly provided that all property held by a congregation, regardless of legal title, "is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)." PA 170. Whenever property of a congregation "ceases to be used by the congregation as a congregation of the [Church], such property shall be held, used, applied, transferred, or sold as provided by the presbytery." *Id.*

Defendants say that the FPCS session objected to the express trust language when it was first proposed. No matter: It was approved by Seattle Presbytery and by an overwhelming majority of presbyteries. PA 214. This language was in the Church Constitution before FPCS, in 1985, restated its articles of incorporation to embrace the Form of Government of the Presbyterian Church (U.S.A.). *See* PA 196-199. In addition to being incorporated in the 2005 bylaws ("Any matter of church governance not addressed by these bylaws shall be governed by the [Church

Constitution]," PA 66), the Church's trust interest was consistently recognized in the financial statements of FPCS prior to 2015:

> By Constitution, all church land and buildings are owned by or held in trust for the Presbyterian Church USA. Since the Church 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.

PA 321. Defendants themselves repeatedly acknowledged the same trust interest, including when they asked the congregation to "disaffiliate."[10]

Defendants ask the Court to dismiss the Church Constitution's trust provisions under the neutral-principles analysis they advocate. In addition to ignoring their own prior recognition of those provisions' legal import, defendants' argument would disregard several authorities that have considered a denominational charter as part of a neutral-principles analysis. *See, e.g.*, *Peters Creek United Presbyterian Church v. Wash. Presbytery of Pa.*, 90 A.3d 95, 122 (Pa. Commw. Ct.), *appeal denied*, 102 A.3d 987 (Pa. 2014); *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 352 Or. 688, 684-96, 291 P.3d 711 (2012); *Convention of Protestant Episcopal Church in Diocese of Tenn.*, 2012 WL

[10] "Session seeks a denomination that has no trust interest in church property." PA 75. *See also* PA 28 (written statement by defendant Jeff Schultz in 2012 that FPCS "owns its property in trust for the Presbytery"). Parker Williamson's contrary interpretation of the Church Constitution is no more cognizable than his iconoclastic view of "hierarchy." *See* PA 291-293 (Declaration of Laurie Griffith).

1454846, at *12-13; *Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trs. of First Presbyterian Church & Congregation of Ridgebury*, 72 A.D.3d 78, 895 N.Y.S.2d 417 (N.Y. App. Div., 2d Dep't), *leave to appeal denied*, 929 N.E.2d 1005 (N.Y. 2010).

Defendants also ask the Court to focus solely on the named party in property deeds, Motion at 14, but they misstate Washington trust law. Washington law requires that a trust interest be supported by a declaration or be in writing. RCW 11.98.008(2). The restated articles, bylaws, and annual financial statements of FPCS are all "declarations" and "writings" that recognize the Church's trust interest. *See, e.g.*, *Hope Presbyterian Church of Rogue River*, 352 Or. at 687-92 (holding that congregation created trust by declaration when it recognized the Church's form of government in its articles of incorporation and bylaws).

Despite their efforts to persuade this Court both to grant discretionary review of non-final orders and to apply neutral principles, defendants cannot prevail even under a neutral-principles analysis—as Judge Roberts expressly held. App. 25. Their bungled attempt to amend corporate documents gives them no right to govern FPCS. They also cannot erase their multiple admissions and declarations of the Church's trust interest in FPCS property.

4. Judge Roberts did not abuse her discretion in denying a continuance.

Defendants filed a motion for a continuance, claiming that they needed more time to conduct discovery on whether or not the Church is hierarchical. Plaintiffs responded that the evidence defendants sought was cumulative, nonexistent, or immaterial. PA 418-429. Plaintiffs also pointed out that defendants had had six months to prepare for the summary judgment motion, as all of the grounds asserted in the motion had been spelled out in correspondence from plaintiffs' counsel dated November 3 and 5, 2015. PA 430-431, 437-440, 506-508.

Defendants filed no reply in support of their motion. At the outset of the hearing on May 27, after confirming this fact, Judge Roberts asked defendants' counsel to give an oral reply. He declined to do so. PA 629-631. Later she asked him to identify what discovery defendants thought they needed and what they thought it would show. Counsel could identify nothing specific. PA 663-667.

Judge Roberts noted these facts in her Order Denying Defendants' CR 56(f) Motion for Continuance. App. 12-13. She ruled that defendants had failed to show that additional discovery would support their assertion that there exists a genuine issue of material fact as to whether the Church is hierarchical; that any evidence related to corporate authority was known

to defendants or available to them; and that they had not explained how additional discovery would support their arguments on the trust issue. *Id.*

This order is reviewed for abuse of discretion. *Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 743, 218 P.3d 196 (2009). Far from reflecting an abuse of discretion, Judge Roberts's order was compelled by the record before her and supported by precedent. A trial court may deny a motion for continuance when the requesting party does not have a good reason for the delay in obtaining evidence or does not indicate what evidence would be established by further discovery, or when the new evidence would not raise a genuine issue of material fact. *Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 369, 166 P.3d 667 (2007). Defendants' showing failed all three tests.

5. This case does not meet the tests for discretionary review.

As RAP 2.3(b) makes clear, Washington law disfavors piecemeal review. *See Doerflinger v. New York Life Ins. Co.*, 88 Wn.2d 878, 882, 567 P.2d 230 (1977). A party may obtain discretionary review only in very limited circumstances. Defendants cite two:

> (1) The superior court has committed an obvious error which would render further proceedings useless; [or]
>
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act[.]

Neither test is satisfied here. Applying binding Supreme Court precedent is not error of any kind, much less obvious error. Applying the terms of corporate articles and bylaws as they are written is what trial courts do every day. Reading the constitution of a church and applying it consistent with an authoritative determination of its meaning is equally proper. Judge Roberts did not err in any of her orders.

Nor can defendants satisfy the other half of the tests in RAP 2.3(b). Nothing in the orders that they seek to have reviewed has rendered further proceedings "useless" or has limited the freedom of the parties to act. On the contrary, these orders have cleared the way for prompt resolution of the remaining claims and counterclaims upon motion or stipulation, at which point a final judgment can be entered.

G. CONCLUSION

Defendants' motion for discretionary review should be summarily denied.

Respectfully submitted this 20th day of July, 2016.

K&L GATES LLP

By _____
Robert B. Mitchell, WSBA #10874
Peter A. Talevich, WSBA # 42644

MILLS MEYERS SWARTLING

By _____
David D. Swartling, WSBA #6972

Attorneys for Respondents Presbytery of Seattle, First Presbyterian Church of Seattle, Robert Wallace, and William Longbrake