The Honorable Theresa Doyle
Motion for Summary Judgment
Hearing: Friday, March 17, 2017 @ 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

THE PRESBYTERY OF SEATTLE, a Washington nonprofit corporation; and THE FIRST PRESBYTERIAN CHURCH OF SEATTLE, a Washington nonprofit corporation, Plaintiffs, v. JEFF SCHULZ and ELLEN SCHULZ, as individuals and as the marital community comprised thereof, Defendants.	No. 16-2-03515-9 SEA No. 16-2-23026-1 SEA Consolidated PLAINTIFFS' REPLY IN SUPPORT OF THEIR AMENDED MOTION FOR SUMMARY JUDGMENT IN *PRESBYTERY II*

The former leaders of First Presbyterian Church of Seattle ("FPCS") entered into the Severance Agreements "to encourage the Schulzes to support leaving [the Presbyterian Church (U.S.A.) (the "Church")] . . . ." Martin Decl., ¶ 13. This over-$300,000 inducement prompted the Schulzes to support an unlawful plan, which the former leaders had hatched more than a year earlier, to secede from the Church and claim property held

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for the Church.[1] The Schulzes contend that they and the other former leaders designed the Severance Agreements not only to bypass ecclesiastical rules that govern pastors but also to pass muster under a secular "neutral principles" approach. They accomplished neither.

The Court must defer to the determinations of a higher council within the Church; it may not substitute its judgment on religious tenets for that of the Church. Even if the Court could ignore that these are pastoral contracts that by their nature require reference to religious doctrine, FPCS indisputably had good cause to terminate the Schulzes based on their violations of federal law.

A. The Severance Agreements cannot be enforced without an impermissible inquiry into religious doctrine.

As Judge Roberts recognized in *Presbytery I*, the Church "is a hierarchical church in which determinations of Seattle Presbytery, through its Administrative Commission, are conclusive and binding on the session, trustees, and congregation of [FPCS] . . . ." Mitchell Decl., Ex. A; *Presbytery of Seattle v. Rohrbaugh*, 79 Wn.2d 367, 373 (1971) (where right of property depends upon a question of church government, and the question

[1] That attempt failed, as Judge Roberts recognized in *Presbytery I.* But it had a long gestation. Nineteen months before the November 2015 vote to secede, the former leaders of FPCS retained a Louisiana lawyer (Lloyd Lunceford), who specializes in advising churches to separate from the Church, to advise them "in connection with church property matters." Second Lumsden Decl., Ex. A. Jeff Schulz told Seattle Presbytery on Sept. 24, 2014, that he had hired Lunceford to "update our corporate documents." Second Dahl Decl. Ex. A. Five days later, Lunceford sent Jeff Schulz draft severance agreements to ensure that the Schulzes' salary would be a "protected property right" if the presbytery took control. *Id.* Ex. B. Schulz lied to Seattle Presbytery then, and he lies to the Court now by declaring that he "did not hire Mr. Lunceford to advise the Session regarding disaffiliation . . . ." J. Schulz Decl., ¶ 20.

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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").[2] The Administrative Commission's determinations that, under Church law, the Severance Agreements were not properly adopted and are inapplicable is just as "conclusive and binding in all determinations of church policy and governance" as the determinations that Judge Roberts upheld in *Presbytery I.* This is a pure question of law, one that renders all of the Schulzes' complaints about the Administrative Commission's findings immaterial.

Seeking to distinguish *Elvig v. Ackles*, the Schulzes argue that the Court must defer to a higher tribunal within the Church only if that tribunal is "judicial." But *Elvig* holds that a civil court may adjudicate a church employee's claim only where "an ecclesiastical tribunal of a hierarchically-structured church has not already resolved the matter . . ." 123 Wn. App. 491, 497 (2004). An ecclesiastical tribunal may be either judicial (as in *Elvig*) or administrative (as in *Rohrbaugh*). After the Schulzes renounced jurisdiction, a Church judicial tribunal would not have had jurisdiction to determine the ecclesiastical validity of the Severance Agreements. Second Lumsden Decl. ¶ 18. The Administrative Commission's decision is entitled to no less deference than the judicial tribunal in *Elvig*; each was a higher council with jurisdiction over the particular dispute.

The ecclesiastical abstention doctrine also precludes courts, while interpreting pastoral contracts, from "assuming the power to reorganize the essential principles of the

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[2] Whether the Severance Agreements were meant to create a property right (as Lloyd Lunceford asserted, *supra* note 1) or a contract right is immaterial. Either way, the Church's interpretation is entitled to deference under the First Amendment. *Rohrbaugh*, 79 Wn.2d at 373; *Gates v. Seattle Archdiocese*, 103 Wn. App. 160, 166-68 (2000).

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church . . . ." *Gates*, 103 Wn. App. at 166-68 (rejecting pastor's contention that he was "trying to enforce non-religious terms of his employment agreement"). As *Gates* teaches, the Court cannot resolve contract disputes dependent upon "religious scripture, doctrine, and principles." *Id.*

The Schulzes ask this Court to do what the Court of Appeals in *Gates* refused to do. First, the Schulzes argue that the Court should substitute its judgment for that of the Administrative Commission regarding whether the congregation and presbytery needed to approve the Severance Agreements. This ignores the Church's interpretation of its own polity—namely, that a severance agreement for a pastor is a change in the terms of call that requires approval by the presbytery and congregation. Lumsden Decl., Exs. B-C. Defendants concede that the congregation and the presbytery never approved the Severance Agreements. *See* Lumsden Decl. ¶ 11.

Second, the Schulzes argue that they did not terminate their pastoral relationships with FPCS by renouncing the jurisdiction of the Church. But under Church law, "[i]f a pastor of a particular church renounces the jurisdiction of the [C]hurch . . ., the pastoral relationship is thereby dissolved, and the pulpit is vacant." Dahl Decl., Ex. B ¶ 13; Lumsden Decl., Ex. E. Resignation of a pastor under a church's form of government is an ecclesiastical issue, not a secular issue. *See Pearson v. Church of God*, 478 S.E.2d 849, 853-54 (S.C. 1996) (deferring to highest ecclesiastical tribunal regarding whether ministry had been terminated under church's rules).

Furthermore, the Schulzes did not continue to serve FPCS in good faith and good standing. "Good standing" turns on what is required of a pastor under the *Book of Order*;

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it is not a determination that the former leaders were entitled to make after leaving the Church. A court cannot force the Church to recognize that a pastor is in good standing when the Church has determined otherwise. Finally, the Administrative Commission made findings related to the conduct of the former pastors, based upon a good-cause standard, that are intertwined with religious doctrine. Each basis alone is sufficient to grant summary judgment. All apply.

B. The Schulzes' arguments fare no better under "neutral principles."

The Schulzes urge that neutral principles should apply to the Severance Agreements. Even if neutral principles could apply—and they cannot—summary judgment would be equally warranted. The Schulzes violated federal law by failing to report income, and they endangered the reputation of FPCS by their actions. The facts constituting these actions are not disputed.

The Schulzes violated the law when they purported to "defer their salaries for December 2013 to a future period," while actually taking the money but failing to report it. Lumsden Decl., Ex. F. To receive income in one year without reporting it, for the purpose of receiving a more favorable award of federal financial aid, violates the law. *See* 26 U.S.C. § 61(a)(1); 18 U.S.C. § 1001; 20 U.S.C. § 1097. The Schulzes admit the facts giving rise to these violations of law. E. Schulz Decl., ¶ 8.

The Schulzes now assert, however, that their December 2013 compensation was a "loan or advance from FPCS that would either be forgiven or repaid." *Id.* ¶ 9. They cannot defeat summary judgment with this newfound, sham claim. *See Marshall v. AC & S, Inc.*, 56 Wn. App. 181, 184-85 (1989) (nonmoving party could not create issue of fact

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with declaration contradicting unambiguous prior written documentation). David Martin's contemporaneous memo refers solely to salary that would be "recognized" over time, and the checks refer to "***salary*** in lieu of" paychecks through payroll. There is no hint in any document or record that the Schulzes might repay the Church under any circumstance. Second Lumsden Decl., ¶¶ 23-29. Even in 2016, Ellen Schulz asked FPCS to allow her to "realize" her "***deferred income***." Lumsden Decl. Ex. G. The "loan" assertion is simply false, as explained in the Second Declaration of Neil Beaton.

Even if the December 2013 payments had been characterized at the time as a "loan" rather than a deferral of salary, the income that the Schulzes received would still be reportable, and their actions were unlawful. An employer-employee advance is "a bona fide loan" only if there is "an unconditional promise to repay at the time the funds are advanced." *Vancouver Clinic, Inc. v. United States*, 2013 WL 1431656, *2 (W.D. Wash. April 9, 2013). "A transaction is not a loan if the parties do not intend repayment at the time it is entered into," but is reportable income. *Id.* The Schulzes present no evidence that they had any obligation to repay their December 2013 salary, because they had none.

The Schulzes finally try to argue that their illegal actions are irrelevant because they occurred before the Severance Agreements were executed. But Paragraph 4 contains seven subparagraphs, ***each of which alone*** constitutes good cause. *See Affordable Cabs, Inc. v. Dep't of Emp't*, 124 Wn. App. 361, 369 (2004) (term "or" indicates "alternatives"). Paragraph 4(d) defines good cause as including a "violation of law," and Paragraph 4(e) references "conduct likely to cause financial or reputational detriment . . . to FPCS." ***Only*** paragraph 4(a), concerning dishonesty and misrepresentation, refers to conduct occurring

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"after the date of" the Severance Agreement. If the Schulzes wished Paragraphs 4(d) and 4(e) to be similarly limited, they could have so provided. *See Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1234 (9th Cir. 2013). While the Schulzes argue that "the parties intended paragraphs 4(a) and 4(e) to be mutually exclusive," this is irrelevant in the face of what is written. *Condon v. Condon*, 177 Wn.2d 150, 162 (2013) ("It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.").

The Schulzes have failed to set forth evidence to create a genuine issue of material fact. This Court should (as in *Presbytery I*) enforce the Administrative Commission's ecclesiastical determinations regarding a Presbyterian church's relationship to its pastors. Alternately, the good-cause standard is met even if the religious nature of the Severance Agreements is ignored. A declaratory judgment should be entered and the counterclaims dismissed.[3]

DATED this 13th day of March 2017.

I certify that the foregoing memorandum contains 1,734 words, in compliance with the Local Civil Rules.

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[3] Because the Schulzes have no claim to payment, their counterclaims necessarily fail.

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