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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

The PRESBYTERY OF SEATTLE, FIRST PRESBYTERIAN CHURCH
OF SEATTLE, ROBERT WALLACE, and WILLIAM LONGBRAKE,

Respondents,

v.

JEFF SCHULZ, ELLEN SCHULZ, LIZ CEDERGREEN, DAVID
MARTIN, LINDSEY McDOWELL, GEORGE NORRIS, NATHAN
ORONA, and KATHRYN OSTROM,

Petitioners.

The PRESBYTERY OF SEATTLE, FIRST PRESBYTERIAN CHURCH
OF SEATTLE, ROBERT WALLACE, and WILLIAM LONGBRAKE,

Respondents,

v.

JEFF SCHULZ and ELLEN SCHULZ,

Petitioners.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS AND INTRODUCTION

The Presbytery of Seattle; First Presbyterian Church of Seattle (“FPCS”); Robert Wallace, president of FPCS; and William Longbrake, secretary and longtime ruling elder of FPCS, ask this Court to deny the petition for review filed by former co-pastors Jeff and Ellen Schulz and six former members of the FPCS session (collectively, the “former leaders”).

Seeking to avoid church discipline for misconduct and to use church property for their own purposes, the former leaders plotted to have FPCS secede from the Presbyterian Church (U.S.A.) (the “Church”). But the constitution of the Church, which both the articles and the bylaws of FPCS incorporate, does not allow secession: Only the presbytery may dismiss a congregation. The former leaders also entered into agreements promising the Schulzes two years of severance if the Church fired them as pastors. But Church doctrine holds that such a change in the terms of call for a pastor requires the approval of both congregation and presbytery, neither of which they obtained. The Schulzes then renounced the jurisdiction of the Church. Under Church doctrine, this voluntary action terminated their pastoral ministries long before the Church could fire them.

Deferring to the Church’s interpretation of ecclesiastical doctrine, the trial court held that the Church constitution governs disputes over governance of congregations and employment of pastors. The trial court

therefore confirmed the Church's actions with respect to the former leaders and rejected the Schulzes' severance claim. The Court of Appeals affirmed. Its opinion, reported at 449 P.3d 1077 (2019), follows this Court's precedent and is fully supported by U.S. Supreme Court authority as well as published decisions of the Court of Appeals. Discretionary review is unwarranted.

II. ISSUES PRESENTED BY THE PETITION

A. Do the ecclesiastical questions that underlie this case require deferring to the Church's ecclesiastical authorities?

B. Even if ecclesiastical issues could be ignored, should this Court reject the former leaders' request to upend Washington law?

III. STATEMENT OF THE CASE

A. The parties' dispute

In 2012 the FPCS session, together with Seattle Presbytery, began working actively towards redevelopment of the real property in downtown Seattle on which First Presbyterian Church now sits. CP 593; *see* CP 616–17. Seattle Presbytery was involved because, as Jeff Schulz wrote in a September 2012 report, 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 and companion option agreement neared completion, the former leaders secretly hired a Louisiana lawyer, Lloyd Lunceford, who specializes in advising

local congregations trying to leave their denominations with the property they occupy. CP 436, 442–44, 415, 1306–08. Seattle Presbytery found out and demanded an explanation. Jeff Schulz responded that Lunceford had been hired to update FPCS’s corporate documents. CP 415, 421. In reality, Lunceford was hired “to represent and advise [FPCS] in connection with church property matters.” CP 436, 442; *see* CP 448–49 (Lunceford’s bill for \$138,925.74). Within a week of Jeff Schulz’s false assurance, Lunceford sent the former leaders draft severance agreements that were intended to become operative once FPCS seceded from the Church. CP 415, 423–30.

In July 2015 Seattle Presbytery began formally investigating allegations and concerns related to the former leaders. CP 178. On October 27, 2015, as this investigation was accelerating, the former leaders voted to rewrite the bylaws of FPCS, to make themselves a board of trustees for the church corporation,¹ to transfer \$420,000 in church funds to Lane Powell PC, to approve the Schulz severance agreements, and to call a meeting of the congregation and corporation on November 15 to vote on resolutions to

¹ The bylaws of FPCS, which had been adopted at a congregational meeting on May 8, 2005, eliminated the board of trustees and transferred trustee functions to the session. 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 trustees to be “chosen by the members of the church and of the congregation at an annual meeting called for that purpose Elections for trustees shall be at the said annual meeting.” CP 723.

“disaffiliate” from the Church,² amend the articles of incorporation, and ratify the session’s purported bylaw amendments. *See* CP 178–79, 187–89, 196, 200. Two elders resigned from the session rather than support these actions. CP 607; *see* CP 2357–61, 2389–95. Counsel for the former leaders threatened to sue one for disclosing their plan. CP 2307; *see* CP 2363–65.

On November 2, 2015, the Council of Seattle Presbytery voted to call a special meeting of the presbytery on November 17 for the purpose of appointing an administrative commission to act on the presbytery’s behalf with respect to FPCS. CP 2307; *see* CP 2330–61. Seattle Presbytery advised the former leaders that their actions were improper, CP 189, but they pressed forward. On November 5, the six remaining members of the session mailed the congregation voting materials. CP 132–33; *see* CP 141–71. They urged congregants to vote for “disaffiliation” in light of “fundamental differences concerning: Biblical and theological foundations, government, and property.” CP 568. They described the Church’s system of government as a “hierarchical structure” that frustrated FPCS’s entrepreneurial efforts. *Id.* Telling congregants that the Church “claims a trust interest in all church

² “Disaffiliation,” a euphemism for attempted secession, presumes that congregations are independent and choose the denominations with which they affiliate. But Presbyterian congregations belong to a unitary Church and may be dismissed only by presbytery action. CP 631–33, 650 (F-3.0201), 686 (G-3.0303b), 696 (G-4.0207).

property,” the session said it was looking for “a denomination that has no trust interest in church property.” CP 569, 563.

The FPCS bylaws require public notice of congregational meetings to “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 about the meetings called for November 15, and no announcement was made to the assembled congregation. *See* CP 622, 625–26.

On November 10, the Schulzes signed their purported severance agreements. CP 201–06. The agreements were not disclosed to either the congregation or Seattle Presbytery. CP 102–03, 133, 433. On November 15, the former leaders convened meetings of the congregation and the corporation at which their proposed resolutions were presented. CP 549, 635. The former leaders counted proxy votes, even though both the FPCS bylaws and the Church constitution forbid proxy voting. CP 549, 635; *see* CP 555 (bylaws), 657 (G-1.0501). A majority of the 54 persons present plus those represented by proxy voted in favor. CP 609.

Two days later, on November 17, Seattle Presbytery formed the Administrative Commission for First Presbyterian Church of Seattle (the “AC”). CP 172–73. Messrs. Wallace and Longbrake are two of the eight members of the AC. The AC was charged with conducting a thorough investigation of alleged misconduct by FPCS leaders and taking corrective action. CP 178–80. In the course of its investigation, the AC heard from 50 witnesses and reviewed many documents. CP 173; *see* CP 176–94.

In December 2015 the Schulzes sent a letter to Seattle Presbytery renouncing the jurisdiction of the Church. CP 102.³ Under Church law, that action terminated their pastorates and left the pulpit of FPCS vacant. CP 102, 104, 433–34. As required by the Church constitution, the Schulzes’ names were stricken from the roll of Presbyterian teaching elders. CP 102.

On February 16, 2016, the AC issued its report. CP 176–94 & 596–614; Appendix A-1–A-19. The AC found that the Schulzes had engaged in serious misconduct; it found substantial evidence of financial irregularities and altered records; and it found that the former leaders had violated their ordination vows. CP 184–85, 190. The AC determined that there was a schism in FPCS and that members who opposed the actions of the former leaders were the true church. CP 191; *see* CP 550. The AC determined that

³ “[W]e, Jeff Schulz and Ellen Schulz, renounce jurisdiction of the Presbyterian Church (USA), per G-2.0509 and G-2.0407 of the Book of Order.” CP 109.

the session was not capable of exercising its authority. CP 191. As the Church constitution provides in such circumstances, the AC assumed original jurisdiction and displaced the session as the governing authority of FPCS. *Id.* The AC also filled the pulpit with a temporary pastor, Heidi Husted Armstrong. CP 192, 619–20.

The former leaders did not appeal the AC's decision. Rather, they refused to recognize the AC's actions or comply with its directions. CP 628. This litigation followed. *See* CP 479–520. On May 27, 2016, the superior court entered a declaratory judgment upholding the decisions of the AC. CP 2801–07; *see* RP 5–45 (5/27/16). The court also denied a motion by the former leaders for a preliminary injunction, entering detailed findings that supported that denial. CP 2789–2800; *see* RP 46–52 (5/27/16).

The former leaders sought direct discretionary review of the trial court's orders, but Commissioner Pierce denied their motion on October 7, 2016. They also sought an emergency stay, but Deputy Commissioner Burton denied that motion on July 26, 2016. Only then did the former leaders relinquish the church premises, at which point the true church was restored to possession. *See* CP 72, 106.

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 (Appendix A-20–A-30). The AC found that these

agreements seek to alter the terms of call for the Schulzes, which under Church law is 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 the jurisdiction of the Church. CP 197–98; *see* CP 104, 125, 433–34.

In March 2017 the superior court upheld these determinations and dismissed the Schulzes’ counterclaims. CP 457–62, 475. The Schulzes filed a notice of appeal to the Washington Supreme Court. CP 463–64. In August 2017 the parties resolved all claims remaining in the trial court, and that court entered final judgment. CP 3392–98. The former leaders filed a notice of appeal to the Washington Supreme Court, CP 3399–401, and their appeal was consolidated with the Schulzes’ already-pending appeal. After briefing was completed, this Court denied direct review and transferred the case to the Court of Appeals for decision.

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 “can be severed only by constitutional action on the part of the presbytery.” CP 633, 696. The presbytery is empowered to determine which of two factions within a congregation 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 with 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.” CP 695.

C. History of 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 1871 General Assembly statistics show FPCS as having seven members. *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. They state that the purpose of FPCS is “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, 717.⁴

FPCS is the oldest congregation in Seattle Presbytery, and it has a long and distinguished history. CP 633. The historic records of FPCS reflect faithful adherence to Presbyterian principles and the church’s bylaws. *See* CP 2533–35, 2540–69. In 1981, after the U.S. Supreme Court’s decision in

⁴ The Presbyterian Church in the United States of America, the historical predecessor of the Church, was formed in 1788. CP 631.

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 was 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. Audited financial statements of FPCS thereafter contained a note to the following effect:

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, 2618–51.⁵

⁵ This language was omitted from the financial statements for 2014 that the former leaders produced in late 2015. In May 2016 the former leaders submitted a declaration in which their expert witness stated: “None of First Presbyterian’s current or historical financial statements indicate any obligation to the PCUSA or otherwise identify any trust interest in favor of the PCUSA.” CP 2158. That statement was false. CP 2611–12.

IV. ARGUMENT

A. Because ecclesiastical questions underlie the parties' dispute, the polity approach necessarily governs.

In *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 373, 485

P.2d 615 (1971), this Court held unanimously 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 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 former leaders claim that the legal underpinnings of *Rohrbaugh* “have collapsed in the wake of . . . *Jones v. Wolf*[.]” Pet. at 2. But *Jones v. Wolf* held that “civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.” 443 U.S. at 602; accord *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 709 (1976) (in such cases, “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 . . .”). Because this case turns on issues of religious doctrine and polity, *Jones* reinforces the correctness of the Court of Appeals’ decision to apply *Rohrbaugh* and, as that case requires, to hold for respondents.

The premise of the former leaders’ petition—that this dispute “raises

purely secular issues,” Pet. at 2—is false.⁶ Consider first their claim that a Presbyterian congregation may “disaffiliate” from the Church 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 the property.⁷ The issue of who is the “true church” within a hierarchical denomination is, by definition, one of hierarchical polity. Here, the AC determined that the true church consisted of the members of FPCS who opposed the former leaders’ actions.⁸

Consider next the former leaders’ claim that they are the legitimate leaders of FPCS because they were elected as trustees by the congregation. Even if their self-election is ignored, the Church constitution makes clear

⁶ When they urged the congregation to vote for “disaffiliation,” the former leaders used explicitly religious language. See CP 568. This is unsurprising. As the court observed in *Heartland Presbytery v. Presbyterian Church of Stanley, Inc.*, 390 P.3d 581, 592 (Kan. Ct. App. 2017), “rarely—if ever—do disputes over the ownership or control of church property arise in a secular vacuum.”

⁷ “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).

⁸ “Any right the presently disassociated members previously had to the beneficial use of the assets of [FPCS] was predicated upon their membership in the [Church]. They became strangers to it upon their disassociation.” See *Apostolic Faith Mission of Portland, Or. v. Christian Evangelical Church*, 55 Wn.2d 364, 368, 347 P.2d 1059 (1960).

that trustees act at the direction of the session and that the members of the session may be replaced by the presbytery if it finds the session to be unable or unwilling to manage wisely its affairs.⁹ As this Court noted in *Rohrbaugh*, “under 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” 79 Wn.2d at 370.

Fundamental issues of church government are inherently religious. “[Q]uestions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern[.]” *Milivojevich*, 426 U.S. at 717; *cf. New v. Kroeger*, 84 Cal. Rptr. 3d 464, 474–78 (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

⁹ 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).

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 principles of church doctrine are fatal to the Schulzes' claims under their purported severance agreements. Because the U.S. Constitution requires civil courts to accept the Church's interpretation of its own doctrine, the former leaders' petition for review must be rejected.

B. Even if the ecclesiastical questions underlying this case could be ignored, the polity approach is both sound and salutary.

The former leaders attack *Rohrbaugh* as antiquated and seek review to overturn it. Even if this Court could accept the former leaders' claim that this inherently religious dispute is "purely secular" and involves only the right to property, it should reject their arguments. "A party asking this court to reject its precedent faces a challenging task. The party must show not merely that it would have been reasonable to reach a different conclusion in the first instance, but that the prior decision is so incorrect and harmful that it would be unreasonable to adhere to it." *State v. Otton*, 185 Wn.2d 673, 690, 374 P.3d 1108 (2016). *Rohrbaugh* is neither incorrect nor harmful, and it is supported by both reason and the First Amendment.

Rohrbaugh employs the same rule of decision that courts apply to disputes involving all kinds of voluntary organizations: After looking at

governing documents to determine where decision-making authority resides, courts defer to that authority. *See, e.g., Golden Lodge No. 13 v. Grand Lodge of Indep. Order of Odd Fellows*, 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); *Grand Aerie, Fraternal Order of Eagles v. Nat'l Bank of Wash., Kent Branch*, 13 Wn.2d 131, 139, 124 P.2d 203 (1942) (same); *Anderson v. Enter. Lodge No. 2*, 80 Wn. App. 41, 49–50, 906 P.2d 962 (1995) (failure to pursue organization's internal appeal process barred judicial consideration of former members' claims); *Couie v. Local Union No. 1849 United Bhd. of Carpenters & Joiners of Am.*, 51 Wn.2d 108, 114, 316 P.2d 473 (1957) (same); *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) (the 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).

Contrary to the former leaders' claims, this rule does not raise any constitutional concerns. The U.S. Supreme Court has already spoken on this issue: It held that the First Amendment permits a state to "adopt any one of various approaches for settling church property disputes," including the polity approach that *Rohrbaugh* endorses. *Jones*, 443 U.S. at 602. Washington is hardly alone in preferring the polity approach. *See, e.g.,*

Heartland Presbytery v. Presbyterian Church of Stanley, Inc., 390 P.3d 581, 591 (Kan. Ct. App. 2017); *Newton Presbyterian Church v. Smith*, 2017 WL 7053909, at *5 (Mass. Suffolk Super. Ct. Nov. 17, 2017); *Chabad-Lubavitch of Mich. v. Schuchman*, 853 N.W.2d 390, 398 (Mich. Ct. App. 2014), *rev'd in part on other grounds*, 862 N.W.2d 648 (Mich. 2015) (Mem.); *Protestant Episcopal Church in Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980). The former leaders want Washington to become the first and only state to disregard *Jones v. Wolf* and hold that the polity approach is forbidden as a matter of constitutional principle.¹⁰

Experience in other jurisdictions reinforces this Court's skepticism about "neutral principles."¹¹ The doctrine has sown chaos;¹² it rewards

¹⁰ See Brief of Respondents at 38–39 (distinguishing cases purportedly holding that the First Amendment requires adoption of neutral principles). Although the former leaders fail to disclose this, the California Supreme Court has specifically rejected their argument that a rule requiring deference to a church denomination is unconstitutional. As that court held, such a rule (there, a state law) does not establish religion but rather "promotes the free exercise rights of persons to form and join a religious association that is constructed and governed as they choose." *Episcopal Church Cases*, 189 P.3d 66, 83 (Cal. 2009).

¹¹ *Rohrbaugh* considered and rejected the analysis set forth in *Presbyterian Church in the U.S. v. E. Heights Presbyterian Church*, 167 S.E.2d 658 (Ga. 1969), which was cited in *Jones v. Wolf* as an application of "neutral principles." See 79 Wn.2d at 369–72; 443 U.S. at 600–01. As the Court of Appeals has noted, *Rohrbaugh* held that the polity approach is superior to "neutral principles." See *Choi v. Sung*, 154 Wn. App. 303, 315 n.16, 225 P.3d 425 (2010) (*Rohrbaugh* disavowed "neutral principles"); *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*.").

¹² A judge describes the legal background for religious disputes following *Jones* as "a welter of contradictory and confusing case law largely devoid of certainty, consistency, or sustained analysis." Jeffrey B. Hassler, Comment, *A Multitude of Sins?*, 35 Pepp. L. Rev. 399, 432 (2008) (quoting John E. Fennelly, *Property Disputes and Religious Schisms: Who*

manipulation and deceit;¹³ and it encourages courts to become embroiled in religious disputes. In asking this Court to ignore the AC's decision, the former leaders are not just seeking to have a civil court substitute its judgment for that of a higher church council so that they can avoid application of Presbyterian polity, evade Church discipline, and override the Church's trust interest. They are, in effect, asking this Court to declare them to be the "true church" of FPCS, in direct contravention of the AC's determination and Church law.

C. The rule that the former leaders urge upon this Court would violate respondents' rights.

The former leaders ask this Court declare that a local church within a hierarchical denomination must be treated just like a congregational church, controlled by the will of the majority in the congregation. The Church, however, is unitary, and its very name reflects representative leadership by presbyters in ascending councils, from the session to the presbytery to the synod to the general assembly. Unlike a congregational church, which has no higher authority to answer to, the Church's unity

Is The Church?, 9 St. Thomas L. Rev. 319, 353 (1997)). Hassler identifies six separate approaches that courts might take in applying "neutral principles." *See id.* at 436-44.

¹³ For just a few of the many examples in this record, *see* CP 2355-56 ("Do you have any suggestions on how to isolate [elder and corporate officer Neal Lampi] from the early decision-making process and from our intentions . . . ?"), 2307 (threat against resigning elder), 2360-61 (resignation letter). *See also* note 5 *supra* (former leaders' expert witness misrepresented church records in his declaration to the court).

depends on oversight by higher councils, which (among other things) hold local leaders accountable. The former leaders seek to destroy that oversight and accountability.

Contrary to the former leaders' argument that the polity rule favors hierarchical religious organizations, that rule simply allocates decision-making authority to the appropriate body within a religious organization. If a religious organization is congregational, then the congregation stands alone as the situs of authority. This is not true of hierarchical churches that, like the Church, have higher councils within the denomination making decisions on church governance and other matters. As already noted, the polity approach is also consistent with how Washington courts have treated disputes within *non-religious* organizations having a hierarchical structure.

D. The former leaders cannot prevail under the rule they espouse.

The former leaders assert that they “will prevail under a neutral-principles analysis,” Pet. at 3 n.1, but that is simply not true. First, the Schulzes cannot prevail on their severance claim because courts *must* defer to the AC’s resolution of the ecclesiastical questions underlying that claim. Every case that the Schulzes cite, including those from “neutral principles” jurisdictions, supports the trial court’s declaratory judgment denying their severance claim and the Court of Appeals’ decision affirming that judgment. *See* Brief of Respondents at 28–36.

Second, the former leaders' repeated failures to comply with the articles and bylaws of FPCS made their secession ineffective as a matter of corporate law even if the impermissibility of secession under the Church constitution is ignored. For example, the former leaders could not elect themselves trustees of FPCS or amend the bylaws, because the articles and bylaws reserved both powers to the congregation. The bylaw amendments the former leaders tried to adopt also violated the articles of incorporation. The former leaders failed to give proper notice of a member meeting, so no business could validly be conducted at the meetings on November 15, 2015. And even if there had been a valid vote to secede, the former leaders would thereby have forfeited all property of FPCS to the Church. *See* Brief of Respondents at 47–64.

V. CONCLUSION

The former leaders fail to show any basis for review under RAP 13.4(b). Their petition for review should be denied.

DATED this 10th day of January 2020.

Respectfully submitted,

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APPENDIX

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.

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]¹;
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 session² wrote the presbytery on October 30, 2015, as follows:

¹ 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]

² 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 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.

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 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 |
| 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 |
| Jack Merner | Teaching Elder, Cascades Presbytery; Exeter House resident and FPCS attender |
| 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 attender |
| 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 attender |
| 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,³ 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 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

³ 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.

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:

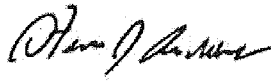
1. Effective 10:00 a.m. on February, 16, 2016, the Administrative Commission has assumed original jurisdiction with the full power of the session of First Presbyterian Church of Seattle under G-3.0303e. The individuals who constituted the FPCS session prior to this action by the Administrative Commission 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

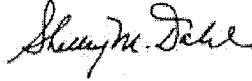
election of corporate trustees at the annual meeting of the congregation, but the former corporate trustees were not so elected.

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.

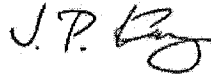
22. The Administrative Commission acting as the session directs all persons doing business with FPCS to do so through Scott Lumsden.
23. The Administrative Commission has authorized and directed the presbytery's staff and its legal counsel to take all steps deemed necessary or appropriate to carry out these actions.
24. The Administrative Commission reserves the right to make additional findings and to take further actions as necessary or appropriate.



Steve Aeschbacher



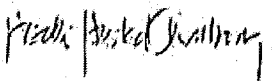
Shelley Dahl



J.P. Kang



Bill Longbrake



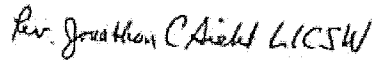
Heidi Husted Armstrong



Kathy Smith



Bob Wallace



Jonathan Sieht

First Supplemental Report of the Administrative Commission for First Presbyterian Church of Seattle

August 25, 2016

Background

On November 17, 2015, Seattle Presbytery appointed the Administrative Commission for First Presbyterian Church of Seattle and authorized it to work on the presbytery's behalf with purposes and authority as described on pp. 2-3 of the Administrative Commission's Report dated February 16, 2016. The final paragraph of that Report states that the Administrative Commission "reserves the right to make additional findings and to take further actions as necessary or appropriate."

On June 2, 2016, the plaintiffs in *Presbytery of Seattle v. Schulz, et al.*, King County Superior Court Cause No. 16-2-03515-9 SEA, served their first requests for production to defendants Jeff Schulz, Ellen Schulz, Liz Cedergreen, David Martin, George Norris, and Kathryn Ostrom. In response, those defendants produced (among other things) a "Resolution of the Board of Trustees of the First Presbyterian Church of Seattle" dated October 27, 2015. Attached to this document were a "Memorandum of Understanding Regarding Severance Compensation Obligations" signed on November 10, 2015, by Kathryn G. Ostrom, President of First Presbyterian Church of Seattle (FPCS), and Jeffrey Eric Schulz, and a substantially identical "Memorandum of Understanding Regarding Severance Compensation Obligations" signed on November 10, 2015, by Kathryn G. Ostrom, President of FPCS, and Ellen Schulz. These three documents are attached. Together, the memorandum of understanding with Jeff Schulz and the memorandum of understanding with Ellen Schulz are referred to as the "Severance Agreements."

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 supplemental findings:

1. The Severance Agreements were approved at the same meeting where the former session members took other actions that the Administrative Commission has found violated the Constitution of the Presbyterian Church (U.S.A.). See Report, Findings 24-34.
2. The resolution approving the Severance Agreements was passed by a "Board of Trustees" that the Administrative Commission has found was not validly constituted. See Report, Finding 34. The Severance Agreements state that they are based "upon the authority of certain resolutions duly adopted by the Session of FPCS," but the Administrative Commission has not seen any such resolutions.
3. The Severance Agreements seek to alter the terms of call for Jeff Schulz and Ellen Schulz.

4. If a proposed agreement with a pastor contemplates the continuation of salary and benefits after the dissolution of the pastoral relationship, that agreement constitutes a change in the terms of call that requires the approval of the congregation. *Saurbaugh v. Pby. of Great Rivers*, Remedial Case 206-13; *see also Baumann and Griffiths v. Session of Bellefield Church*, Remedial Case 202-1.
5. Under G-1.0503, congregations are authorized to change existing pastoral relationships by approving changes to the terms of call of the pastor or pastors. Under G-2.0804, the session is required to propose for congregational action such changes in the terms of call as the session deems appropriate. Neither the session nor a board of trustees may alter the terms of call for a pastor without both fully informing the congregation and securing its approval. Jeff and Ellen Schulz knew or should have known this.
6. The Severance Agreements were neither presented to nor approved by the congregation of FPCS.
7. Under G-2.0502, no pastoral relationship may be established, changed, or dissolved without the approval of the presbytery. A proposed severance package is a change in the terms of call that requires the approval of the presbytery. See Advisory Opinion: Clergy Compensation and Terms of Call (updated October 2012) (“The session, congregation and presbytery must approve the severance package as it is considered a change in the terms of call.”). Jeff and Ellen Schulz knew or should have known this.
8. The Severance Agreements were neither presented to nor approved by the presbytery.
9. The Severance Agreements are invalid because they were not properly authorized by the session, the congregation, or the presbytery. Alternatively, even if the Severance Agreements could be considered to be valid and enforceable against Ms. Ostrom and the other former session members, they may not be enforced against FPCS because the session, the congregation, and the presbytery did not authorize them and Jeff and Ellen Schulz knew this.
10. The Severance Agreements provide in paragraph 1 that Jeff [Ellen] Schulz will continue his [her] pastorate for FPCS “until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship”
11. By written statement submitted to the stated clerk of the presbytery and received on December 16, 2015, Jeff and Ellen Schulz renounced the jurisdiction of the Presbyterian Church (U.S.A.). Under G-2.0509, their renunciation of jurisdiction was effective on December 16, 2015. See Report, Finding 4.
12. Renunciation of jurisdiction removes a pastor from membership in the presbytery and terminates the exercise of the pastor’s ministry. See G-2.0509. The roles occupied by Jeff and Ellen Schulz as co-pastors at FPCS therefore ended on December 16, 2015. At the next presbytery meeting on January 19, 2016, the stated clerk of the presbytery reported

the Schulzes' renunciation, and their names were deleted from the roll. See Report, Finding 5.

13. Jeff and Ellen Schulz ended their pastoral relationship with FPCS when they voluntarily renounced the jurisdiction of the Presbyterian Church (U.S.A.). See Request 90-4 (Minutes, 1990, Part 1, p. 255) ("If a pastor of a particular church renounces the jurisdiction of the church under [G-2.0509], the pastoral relationship is thereby dissolved, and the pulpit is vacant.").
14. The Session did not terminate or dissolve the Schulzes' pastoral relationship; rather, the Schulzes terminated or dissolved their pastoral relationship by their renunciation of jurisdiction. In addition, the Administrative Commission did not assume original jurisdiction and become the Session of FPCS until February 16, 2016, two months after the effective date of the Schulzes' renunciation of jurisdiction and four weeks after their names had been deleted from the roll.
15. The Severance Agreements in paragraph 2 assume that, in order to be entitled to any benefits, "Pastor Schulz continues to serve FPCS . . . in good faith and in good standing." Jeff and Ellen Schulz ceased to serve FPCS in good faith and in good standing by no later than the effective date of their renunciation of the jurisdiction of the church, which was December 16, 2015.
16. The Severance Agreements purport to set forth a "Good Cause" standard for pastoral conduct that alone would justify termination or dissolution of the pastoral relationship if the "Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship." This "Good Cause" standard does not and cannot replace the requirements placed upon teaching elders by the *Book of Order* (see, e.g., G-2.0504), which continue to govern.
17. Even if the "Good Cause" standards set forth in the Severance Agreements applied here, they would be satisfied. The Report describes conduct manifesting "[d]ishonesty . . . or intentional and knowing misrepresentation by Pastor Schulz" as well as "[m]isconduct in the performance of Pastor Schulz's duties and responsibilities" (Severance Agreements, paragraph 4(a) and (e)). See, e.g., Report, Findings 10-16, 19, and 21.
18. The Severance Agreements are conditioned upon "a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation." Neither Jeff nor Ellen Schulz has provided such a release.

Actions by the Administrative Commission

After prayerful deliberation, 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:

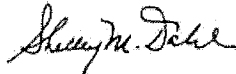
1. Because the Severance Agreements are invalid (having not been properly authorized by the session, the congregation, or the presbytery) and inoperative (the Schulzes having severed their pastoral relationships with FPCS when they renounced the jurisdiction of

the church), and because the Severance Agreements presume conditions that have not and cannot be fulfilled (e.g., continued “good standing”), the Administrative Commission has directed Scott Lumsden, as the person having authority to oversee the property and financial affairs of FPCS, not to pay Jeff or Ellen Schulz anything under the Severance Agreements.

2. Because the Severance Agreements are invalid (having not been properly authorized by the session, the congregation, or the presbytery) and inoperative (the Schulzes having severed their pastoral relationships with FPCS when they renounced the jurisdiction of the church), and because the Severance Agreements presume conditions that have not and cannot be fulfilled (e.g., continued “good standing”), the Administrative Commission acting as Session is entitled to exercise its rights and remedies under the Home Equity Sharing Agreement executed by Jeff and Ellen Schulz and dated August 16, 2006, as well as the corresponding Deed of Trust dated August 16, 2006, without regard to any forbearance or restriction purportedly required or imposed by the Severance Agreements.
3. With respect to the Home Equity Sharing Agreement executed by Jeff and Ellen Schulz and dated August 16, 2006, as well as the corresponding Deed of Trust dated August 16, 2006, the Administrative Commission confirms that the employment of Jeff and Ellen Schulz by FPCS ceased effective December 16, 2015.
4. The Administrative Commission reserves the right to make additional findings and to take further actions as necessary or appropriate.




Steve Aeschbacher



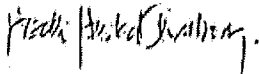
Shelley Dahl



J.P. Kang



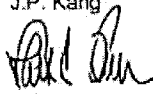
Bill Longbrake



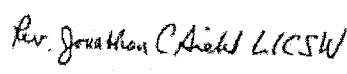
Heidi Husted Armstrong



Kathy Smith



Bob Wallace



Jonathan Siehl

**RESOLUTION
OF
THE BOARD OF TRUSTEES
OF
THE FIRST PRESBYTERIAN CHURCH OF SEATTLE**

October 27, 2015

WHEREAS, Reverend Jeffrey Eric Schulz and Reverend Ellen Adair Schulz (the "FPCS Pastors") have faithfully served the First Presbyterian Church of Seattle ("FPCS") as Co-Pastors under certain terms of call for a period of at least nine (9) years;

WHEREAS, the Board of Trustees (the "Board") of FPCS believes that it is in the best interests of the corporation and its members to encourage and induce the FPCS Pastors to remain as Co-Pastors of FPCS and to continue serving FPCS, its Session, and its Congregation under their current terms of call, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, "PCUSA"), on the other hand; and

WHEREAS, in consideration of the commitment and agreement of the FPCS Pastors to continue serving FPCS, the Board believes it is in the best interest of FPCS to commit to provide severance compensation and forbear from exercising certain rights relating to real property owned by the FPCS Pastors in the event that PCUSA seeks to remove the FPCS Pastors from their current terms of call.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board hereby approves and adopts the Memorandum of Understanding Regarding Severance Compensation Obligations between FPCS and Reverend Jeffrey Eric Schulz, attached hereto as Exhibit A; and it is hereby

FURTHER RESOLVED THAT the Board hereby approves and adopts the Memorandum of Understanding Regarding Severance Compensation Obligations between FPCS and Reverend Ellen Adair Schulz, attached hereto as Exhibit B; and it is hereby

FURTHER RESOLVED THAT any officer of FPCS is hereby authorized and directed, in the name of and on behalf of FPCS, to execute and deliver any and all documents and take any and all other steps and do any and all other things which they deem necessary or advisable, in order to effectuate the purpose of each and all of the foregoing resolutions, and the performance of any such acts and the execution and delivery by any of them of any such agreements and other documents shall conclusively establish the authority of such officer therefor.

MEMORANDUM OF UNDERSTANDING REGARDING SEVERANCE COMPENSATION
OBLIGATIONS

WHEREAS, the Reverend Jeffrey Eric Schulz ("Pastor Schulz") has been serving as co-pastor of the First Presbyterian Church of Seattle, a Washington nonprofit corporation ("FPCS"), under certain current terms of call for a period of at least nine (9) years; and

WHEREAS, FPCS wishes to encourage Pastor Schulz to remain as Pastor of FPCS, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, "PCUSA"), on the other hand; and

WHEREAS, as an inducement and encouragement to Pastor Schulz to continue serving FPCS, its Session and its Congregation under his current terms of call, and in consideration of Pastor Schulz's commitment and agreement to do so, regardless of and including in the event of conflict between FPCS, its Session, and its Congregation, on the one hand, and PCUSA, on the other hand; and

WHEREAS, upon the authority of certain resolutions duly adopted by the Session of FPCS, and in consideration of the recitals above and the mutual promises below, FPCS and Pastor Schulz do hereby agree as follows:

1. Except as set forth below, Pastor Schulz shall continue his pastorate for FPCS in accord with his current terms of call until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship, in which case the provisions of Sections 2 through 6 of this Agreement shall govern the rights, duties, and obligations of the parties hereto.

2. Assuming Pastor Schulz continues to serve FPCS to the satisfaction of the Session, in good faith and in good standing, under his current terms of call, then if, *and only if*, the pastoral relationship and terms of call between Pastor Schulz and FPCS are terminated and/or dissolved by PCUSA, other than for "Good Cause" (as defined below), then, in exchange for a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation, FPCS shall:

a. Continue to pay to Pastor Schulz all of his "Regular Compensation" (as defined below) for a certain period of time that shall end upon the earlier of: (i) Pastor Schulz securing a pastoral relationship with another congregation or securing other comparable employment; and (ii) two (2) years from the date of such termination and/or dissolution by PCUSA.

b. Forbear from exercising its rights and remedies under that certain Home Equity Sharing Agreement executed by Pastor Schulz and dated August 16, 2006 (the

“Home Equity Sharing Agreement”), as well as that certain corresponding Deed of Trust of same date executed by Pastor Schulz and granted to secure performance by Pastor Schulz under the Home Equity Sharing Agreement (the “Deed of Trust”), until three (3) years from the date of such termination and/or dissolution by PCUSA. Notwithstanding the foregoing, all provisions relating to the consequences of sale or refinance of the property set forth in the Home Equity Sharing Agreement and Deed of Trust shall not be affected by this Memorandum of Understanding. Except as specifically modified herein, the rights, duties, and obligations of the parties under the Home Equity Sharing Agreement and Deed of Trust shall not be modified or affected in any way by this Memorandum of Understanding.

3. For purposes of this Memorandum of Understanding, “Regular Compensation” shall mean the total compensation, inclusive of housing allowance and any other compensation-related benefits, paid to or for the benefit of Pastor Schulz during the twelve (12) month period immediately preceding any termination or dissolution of Pastor Schulz’s terms of call by PCUSA. In the event that FPCS discontinues contributing to the Presbyterian Board of Pensions on Pastor Schulz’s behalf, then FPCS shall instead contribute an equivalent amount into some other appropriate tax-deferred program for Pastor Schulz’s benefit.

4. For purposes of this Memorandum of Understanding, “Good Cause” shall mean:

a. Dishonesty, fraud, theft, embezzlement or intentional and knowing misrepresentation by Pastor Schulz, occurring after the date of this Memorandum of Understanding, in the performance of his duties;

b. Use of alcohol or legal drugs or prescription medications by Pastor Schulz in a manner or to the extent that it impairs performance of his duties;

c. Use of illegal drugs at any time;

d. Any conduct involving moral turpitude by Pastor Schulz that causes harm to either his or FPCS’s reputation or community standing, or any arrest or violation of law other than for minor traffic infractions;

e. Misconduct in the performance of Pastor Schulz’s duties and responsibilities or conduct that would be likely to cause financial or reputational detriment to Pastor Schulz or FPCS;

f. Harassing or otherwise subjecting FPCS employees, volunteers, parishioners, students, or members of the public to inappropriate behavior or language, after given notice and reasonable opportunity to correct any inappropriate behavior or language; or

g. Failure to materially comply with the reasonable written rules and/or written policies of FPCS, after given notice and reasonable opportunity to correct any noncompliance.

5. Pastor Schulz acknowledges and agrees that he is solely responsible for any and all income or other tax consequences, including interest and penalties, arising from his receipt of his Regular Compensation and Mortgage Forbearance as set forth in Section 2 of this Memorandum of Understanding, and that he will defend, indemnify, and hold harmless FPCS from any and all liability related to such tax consequences.

6. The rights, duties, and obligations of the parties under this Memorandum of Understanding shall be binding upon and inure to the benefit of the parties, and their heirs, successors, and assigns.

Acknowledged and agreed to:

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| <p>THE FIRST PRESBYTERIAN CHURCH OF SEATTLE</p> <p>By <u>Kathryn G. Ostrom</u> Kathryn G. Ostrom, President</p> <p>Dated: <u>11/10/15</u></p> | <p><u>Jeffrey Eric Schulz</u> Reverend Jeffrey Eric Schulz</p> <p>Dated: <u>11/10/15</u></p> |
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MEMORANDUM OF UNDERSTANDING REGARDING SEVERANCE COMPENSATION
OBLIGATIONS

WHEREAS, the Reverend Ellen Schulz ("Pastor Schulz") has been serving as co-pastor of the First Presbyterian Church of Seattle, a Washington nonprofit corporation ("FPCS"), under certain current terms of call for a period of at least nine (9) years; and

WHEREAS, FPCS wishes to encourage Pastor Schulz to remain as Pastor of FPCS, including in the event of any conflict between FPCS, its Session, and its Congregation, on the one hand, and Presbyterian Church (U.S.A.), or any Presbytery, Synod, Administrative Commission, or affiliate (other than FPCS) of Presbyterian Church (U.S.A.) (collectively, "PCUSA"), on the other hand; and

WHEREAS, as an inducement and encouragement to Pastor Schulz to continue serving FPCS, its Session, and its Congregation under her current terms of call, and in consideration of Pastor Schulz's commitment and agreement to do so, regardless of and including in the event of conflict between FPCS, its Session and its Congregation, on the one hand, and PCUSA, on the other hand; and

WHEREAS, upon the authority of certain resolutions duly adopted by the Session of FPCS, and in consideration of the recitals above and the mutual promises below, FPCS and Pastor Schulz do hereby agree as follows:

1. Except as set forth below, Pastor Schulz shall continue her pastorate for FPCS in accord with her current terms of call until such time as either Pastor Schulz or the Session of FPCS determines to end the pastoral relationship, which may occur at any time without any liability from either party to the other, unless such Session is acting under the control of PCUSA in terminating or dissolving the pastoral relationship, in which case the provisions of Sections 2 through 6 of this Agreement shall govern the rights, duties, and obligations of the parties hereto.

2. Assuming Pastor Schulz continues to serve FPCS to the satisfaction of the Session, in good faith and in good standing, under her current terms of call, then if, *and only if*, the pastoral relationship and terms of call between Pastor Schulz and FPCS are terminated and/or dissolved by PCUSA, other than for "Good Cause" (as defined below), then, in exchange for a full and comprehensive release of all possible claims that Pastor Schulz might have or assert against FPCS, its Session, and its Congregation, FPCS shall:

a. Continue to pay to Pastor Schulz all of her "Regular Compensation" (as defined below) for a certain period of time that shall end upon the earlier of: (i) Pastor Schulz securing a pastoral relationship with another congregation or securing other comparable employment; and (ii) two (2) years from the date of such termination and/or dissolution by PCUSA.

b. Forbear from exercising its rights and remedies under that certain Home Equity Sharing Agreement executed by Pastor Schulz and dated August 16, 2006 (the "Home Equity Sharing Agreement"), as well as that certain corresponding Deed of Trust

of same date executed by Pastor Schulz and granted to secure performance by Pastor Schulz under the Home Equity Sharing Agreement (the "Deed of Trust"), until three (3) years from the date of such termination and/or dissolution by PCUSA. Notwithstanding the foregoing, all provisions relating to the consequences of sale or refinance of the property set forth in the Home Equity Sharing Agreement and Deed of Trust shall not be affected by this Memorandum of Understanding. Except as specifically modified herein, the rights, duties, and obligations of the parties under the Home Equity Sharing Agreement and Deed of Trust shall not be modified or affected in any way by this Memorandum of Understanding.

3. For purposes of this Memorandum of Understanding, "Regular Compensation" shall mean the total compensation, inclusive of housing allowance and any other compensation-related benefits, paid to or for the benefit of Pastor Schulz during the twelve (12) month period immediately preceding any termination or dissolution of Pastor Schulz's terms of call by PCUSA. In the event that FPCS discontinues contributing to the Presbyterian Board of Pensions on Pastor Schulz's behalf, then FPCS shall instead contribute an equivalent amount into some other appropriate tax-deferred program for Pastor Schulz's benefit.

4. For purposes of this Memorandum of Understanding, "Good Cause" shall mean:

a. Dishonesty, fraud, theft, embezzlement or intentional and knowing misrepresentation by Pastor Schulz, occurring after the date of this Memorandum of Understanding, in the performance of her duties;

b. Use of alcohol or legal drugs or prescription medications by Pastor Schulz in a manner or to the extent that it impairs performance of her duties;

c. Use of illegal drugs at any time;

d. Any conduct involving moral turpitude by Pastor Schulz that causes harm to either her or FPCS's reputation or community standing, or any arrest or violation of law other than for minor traffic infractions;

e. Misconduct in the performance of Pastor Schulz's duties and responsibilities or conduct that would be likely to cause financial or reputational detriment to Pastor Schulz or FPCS;

f. Harassing or otherwise subjecting FPCS employees, volunteers, parishioners, students, or members of the public to inappropriate behavior or language, after given notice and reasonable opportunity to correct any inappropriate behavior or language; or

g. Failure to materially comply with the reasonable written rules and/or written policies of FPCS, after given notice and reasonable opportunity to correct any noncompliance.

5. Pastor Schulz acknowledges and agrees that she is solely responsible for any and all income or other tax consequences, including interest and penalties, arising from her receipt of her Regular Compensation and Mortgage Forbearance as set forth in Section 2 of this Memorandum of Understanding, and that she will defend, indemnify, and hold harmless FPCS from any and all liability related to such tax consequences.

6. The rights, duties, and obligations of the parties under this Memorandum of Understanding shall be binding upon and inure to the benefit of the parties, and their heirs, successors, and assigns.

Acknowledged and agreed to:

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| <p>THE FIRST PRESBYTERIAN CHURCH OF SEATTLE</p> <p>By <u>Kathryn G. Ostrom</u> Kathryn G. Ostrom, President</p> <p>Dated: <u>11/10/15</u></p> | <p><u>Ellen Schulz</u> Reverend Ellen Schulz</p> <p>Dated: <u>11/10/15</u></p> |
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K&L GATES LLP

January 10, 2020 - 3:11 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97996-1
Appellate Court Case Title: The Presbytery of Seattle, et al. v. Jeff and Ellen Schulz, et al.

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