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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

THE PRESBYTERY OF SEATTLE, a  
Washington nonprofit corporation; THE  
FIRST PRESBYTERIAN CHURCH OF  
SEATTLE, a Washington nonprofit  
corporation; ROBERT WALLACE,  
President of The First Presbyterian Church  
of Seattle, a Washington nonprofit  
corporation; and WILLIAM  
LONGBRAKE, on behalf of himself and  
similarly situated members of First  
Presbyterian Church of Seattle,

Plaintiffs,

v.

JEFF SCHULZ and ELLEN SCHULZ, as  
individuals and as the marital community  
comprised thereof; LIZ CEDERGREEN;  
DAVID MARTIN; LINDSEY  
McDOWELL; GEORGE NORRIS;  
NATHAN ORONA; and KATHRYN  
OSTROM, as former trustees of The First  
Presbyterian Church of Seattle, a  
Washington nonprofit corporation,

Defendants.

No. 16-2-03515-9 SEA

PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT

1 **I. INTRODUCTION**

2 Rogue leaders of a local Presbyterian church—a church once great, but now  
3 reduced to perhaps 50 regular Sunday worshippers—seek to escape accountability for  
4 their misdeeds and to make off with the church’s property. Flouting the ecclesiastical  
5 authority that governs them, they unilaterally declare themselves free of denominational  
6 ties, even while claiming (falsely) that they remain “Presbyterian.” A higher council in  
7 the church investigates their actions and issues a detailed ecclesiastical report, which  
8 concludes that the rogue leaders’ efforts are illegitimate. But the rogue leaders refuse to  
9 recognize or comply with the decisions and directions reflected in this report.

10 While denying the authority of the higher council and ignoring its findings, the  
11 rogue leaders seek to rely upon bylaw amendments that they adopted improperly and that  
12 violate both the articles of incorporation and the constitution of the church. The rogue  
13 leaders also rely upon the results of a congregational vote that was taken without proper  
14 notice and that used improper procedures, including proxy voting. And they now deny  
15 that all property of local Presbyterian churches is held in trust for the broader church  
16 despite having previously proclaimed the opposite position.

17 Plaintiffs ask this Court to apply well-established First Amendment principles and  
18 Washington precedent to resolve the key question in this case: Who has the authority to  
19 direct the mission and manage the property of First Presbyterian Church of Seattle?

20 Although the plaintiffs have pleaded six causes of action, this motion asks the  
21 Court to decide only the first: their request for a declaratory judgment. A declaratory  
22 judgment that establishes the parties’ respective rights and obligations with respect to  
23 church mission and property will greatly simplify the remainder of the case. All the facts  
24 that are material to this request are undisputed, and the issues presented are purely legal.  
25 The Court can and should, therefore, enter a declaratory judgment in plaintiffs’ favor.

1 **II. UNDISPUTED FACTS**

2 **A. Facts relating to the Administrative Commission and its report**

- 3 1. At least up until November 15, 2015, First Presbyterian Church of Seattle  
4 (“FPCS”) was part of the Presbytery of Seattle (“Seattle Presbytery”) and the  
5 Presbyterian Church (U.S.A.) (the “Church”). Declaration of Scott Lumsden,  
6 ¶¶ 14-15, 21 & Ex. D; Declaration of William A. Longbrake, Ex. A § 5.
- 7 2. The Church is a historic Protestant denomination. One of its foundational  
8 principles is that all Church congregations, “wherever they are, taken  
9 collectively, constitute one church.” Lumsden Decl., ¶ 7 & Ex. A at F-3.0201.  
10 The congregations within the Church are governed by a hierarchy of  
11 “councils” including, in ascending order, the session (pastors and elders of the  
12 local congregation), the presbytery (composed of all pastors and at least one  
13 elder from each of the congregations within a district), the synod (composed of  
14 representative pastors and elders from the presbyteries within a geographical  
15 region), and the general assembly (composed of delegations of pastors and  
16 elders from the presbyteries). Lumsden Decl., ¶ 7 & Ex. A at F-3.0203, G-  
17 3.0101, G-3.0201, G-3.0301, G-3.0401, G-3.0501.
- 18 3. The Church, its congregations, and its councils are all governed by the  
19 Constitution of the Presbyterian Church (U.S.A.) (the “Church Constitution”).  
20 Lumsden Decl., ¶ 8 & Ex. A at G-1.02, G-3.0101. Part II of the Church  
21 Constitution is entitled the *Book of Order*. Lumsden Decl., ¶ 4. The *Book of*  
22 *Order* sets forth, inter alia, provisions governing the councils and the  
23 relationship between the councils, provisions related to a council’s property  
24 interest and ownership, and provisions governing resolution of disputes within  
25 the Church. *See id.*, ¶¶ 8, 10-11 & Ex. A.

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4. In July 2015 Seattle Presbytery authorized the creation of a Committee for Special Administrative Review or CSAR “to review allegations and concerns raised regarding” FPCS and to make recommendations arising from that review. Lumsden Decl., ¶ 18.
5. In the course of the CSAR’s work, two elders on the session (governing board) of FPCS came forward with new allegations and concerns, which the CSAR regarded as beyond the scope of its charge. Lumsden Decl., ¶ 19.
6. On October 30, 2015, FPCS elder David Martin wrote a letter to Seattle Presbytery in which he stated, among other things, the following:
  - a. “On 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.”
  - b. “[A]ll assets of FPCS are owned by and under the control of the Corporation, and are therefore not subject to Presbytery authority.”
  - c. “The Corporation transferred approximately \$420,000 into the trust account of law firm Lane Powell PC in October 2015.”Lumsden Decl., ¶ 20 & Ex. E.
7. On November 15, 2015, a majority of the congregation of FPCS voted in person or by proxy 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. Lumsden Decl., ¶ 21.

- 1 8. On November 17, 2015, following the *Book of Order*, Seattle Presbytery  
2 appointed an Administrative Commission for First Presbyterian Church of  
3 Seattle (the “Administrative Commission”) to work on the presbytery’s behalf  
4 with purposes and authority as described in the presbytery’s resolution and as  
5 repeated on pages 2-3 of the Administrative Commission’s report. Lumsden  
6 Decl., ¶ 22.
- 7 9. Effective December 16, 2015, Jeff and Ellen Schulz, the co-pastors at FPCS,  
8 renounced the jurisdiction of the Presbyterian Church (U.S.A.). Lumsden  
9 Decl., ¶ 23 & Ex. F.
- 10 10. On February 16, 2016, the Administrative Commission adopted ten resolutions  
11 and issued its report, together with a 222-page appendix. Declaration of  
12 Shelley M. Dahl, ¶¶ 4-5 & Ex. A.
- 13 11. The Administrative Commission assumed original jurisdiction, thereby  
14 becoming the session of FPCS with responsibility for the governance,  
15 property, and spiritual well-being of the church. Lumsden Decl., ¶¶ 24-25.
- 16 12. As authorized by the *Book of Order*, the Administrative Commission  
17 determined that there is a schism in FPCS and that the members who opposed  
18 the actions of the former FPCS elders constitute the true church. Dahl Decl.,  
19 Ex. A at 14, ¶ 48. The Administrative Commission noted that Jeff and Ellen  
20 Schulz, having renounced the jurisdiction of the Presbyterian Church (U.S.A.),  
21 had ceased to function at that point as pastors of FPCS. *Id.* at 7, ¶ 5. The  
22 Administrative Commission appointed a temporary pastor for the FPCS  
23 congregation as well as a person having authority to oversee the property and  
24 financial affairs of FPCS. *Id.* at 15, ¶¶ 5-6; Declaration of Heidi Husted  
25 Armstrong, ¶¶ 3-6. The Administrative Commission also determined that its

1 members, as the current ruling elders on session, were now the trustees of the  
2 FPCS corporation. Dahl Decl., Ex. A at 15-16, ¶¶ 10-13.<sup>1</sup>

3 13. The Administrative Commission reported having received credible reports of  
4 financial irregularities at FPCS. Dahl Decl., Ex. A at 7-8, ¶¶ 8, 14. The  
5 Administrative Commission determined that all property of FPCS—including  
6 real property, personal property, and intangible property—is subject to the  
7 direction and control of the Administrative Commission’s original jurisdiction  
8 and must be held, used, applied, transferred, or sold as the Administrative  
9 Commission may provide or direct. *Id.* at 16, ¶ 15. The Administrative  
10 Commission directed that the funds transferred to the Lane Powell trust  
11 account be returned to the church immediately, and all funds held in the name  
12 of the FPCS corporation be turned over to the Administrative Commission.  
13 Finally, the Administrative Commission directed an accounting of all financial  
14 transactions involving FPCS, and the turning over of all books and records, by  
15 February 21, 2016. *Id.* at 16, ¶¶ 16-20.

16 14. On February 17, 2016, counsel for the defendants apprised plaintiffs’ counsel  
17 that “the decisions of the Administrative Commission have no authority over  
18 [FPCS] nor do the AC, the Presbytery or PCUSA hold any valid claims to, or  
19 interests in, [its] records or property.” Declaration of Robert B. Mitchell, ¶ 3.

20 **B. Facts relating to corporate articles and bylaws**

21 1. As is common among Presbyterian churches, and as contemplated under the  
22 Church Constitution, FPCS is organized for state-law purposes as a nonprofit  
23 corporation. Lusmden Decl., Ex. D; Lumsden Decl., Ex. A at G-4.0101.

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24 <sup>1</sup> The Administrative Commission determined that, if the defendants continue to claim the  
25 status of corporate trustees, they are subject to the Administrative Commission’s original  
jurisdiction and are answerable to the Administrative Commission in all respects under G-  
3.0201c, G-4.0101 and G-4.0202 of the *Book of Order*. Dahl Decl., Ex. A at 16, ¶ 14.

- 1           2. The original articles of incorporation, filed February 27, 1874, state that FPCS  
2           was established “to promote the worship of Almighty God and the belief in and  
3           extension of the Christian Religion, under the form of government and  
4           discipline of the ‘Presbyterian Church in the United States of America.’”  
5           Lumsden Decl., ¶ 15 & Ex. C. The restated articles of incorporation, adopted  
6           in 1985, provide that the “objects and purposes” of FPCS are “to promote the  
7           worship of Almighty God and the belief in the extension of the Christian  
8           Religion, under the Form of Government and discipline of ‘The Presbyterian  
9           Church (U.S.A.).” *Id.*, ¶ 15 & Ex. D.
- 10          3. The bylaws that governed FPCS at least up until October 27, 2015, were  
11          approved by the congregation on May 8, 2005. Longbrake Decl., ¶ 5 & Ex. A.
- 12          4. The 2005 bylaws eliminated a separate board of trustees and transferred the  
13          functions of the trustees to the session. Longbrake Decl., Ex. A, § XI(1)-(2)  
14          (elders, constituting the session, act as officers and directors of the  
15          corporation).
- 16          5. The defendants voted for themselves as the new board of trustees of FPCS, a  
17          Washington nonprofit corporation, after they voted to establish a board of  
18          trustees separate from the session on October 27, 2015. Lumsden Decl., ¶ 20  
19          & Ex. E.
- 20          6. The bylaw amendments purportedly adopted by defendants on October 27,  
21          2015, Longbrake Decl., Ex. B, were not presented to the congregation for  
22          decision or ratification until November 15, 2015. *Id.*, Ex. B and C.
- 23          7. The congregational meeting on November 15, 2015 was not announced  
24          publicly in printed and verbal form on at least two successive Sundays prior to  
25          the meeting. Declaration of Doug Kelly, ¶¶ 3-4. In addition, the proposals

1 were not noticed in the church bulletin or audibly read at public worship of the  
2 assembled congregation at least two successive Sundays prior to the meeting,  
3 *Id.*, Ex. A, as the 2005 bylaws required. See Longbrake Decl., Ex. A, § VII.  
4 No proposals were even mentioned—verbally during the service or in  
5 writing—during the November 8, 2015 service. Kelly Decl., ¶ 4 & Ex. A.  
6 8. The votes that were taken at the congregational meeting on November 15,  
7 2015, included proxies, Longbrake Decl., Ex. B and C, even though proxy  
8 voting was prohibited under the 2005 bylaws, *Id.*, Ex C and is not allowed  
9 under the Church Constitution. Lumsden Decl., Ex. A at G-1.0501.

10 **C. Facts relating to the Church’s trust interest**

- 11 1. Section G-4.0203 of the Church Constitution provides that all property held by  
12 a congregation, “whether legal title is lodged in a corporation, a trustee or  
13 trustees, or an unincorporated association . . . is held in trust nevertheless for  
14 the use and benefit of the Presbyterian Church (U.S.A).” Lumsden Decl., ¶ 10  
15 & Ex. A at G-4.0203. This express trust provision has been in place since at  
16 least 1983. Lumsden Decl., ¶ 10.  
17 2. On November 20, 2012, Seattle Presbytery approved the formation of the  
18 “Seattle First Redevelopment Administrative Commission.” According to the  
19 rationale for the motion, authored by defendant Jeff Schulz and dated Sept 18,  
20 2012, this commission was established because “FPCS owns its property in  
21 trust of the presbytery, which must approve a purchase/sale agreement.” Dahl  
22 Decl., ¶ 6 & Ex. B.  
23 3. In a letter dated April 16, 2014, defendant Jeff Schulz wrote that “because  
24 PC(USA) properties owned by local congregations are held in ‘trust’ of the  
25 denomination, Presbytery has the authority to deny dismissal with the property,



1 or to approve dismissal with property with a negotiated financial settlement.”  
2 Dahl Decl., ¶ 7.

- 3 4. Section G-4.0204 of the Church Constitution provides that, when property of a  
4 congregation of the Church “ceases to be used by that congregation as a  
5 congregation of the Presbyterian Church (U.S.A.) in accordance with the  
6 Constitution, such property shall be held, used, applied, transferred, or sold as  
7 provided by the Presbytery.” Lumsden Decl., ¶ 10 & Ex. A at G-4.0204. The  
8 Administrative Commission found that the “FPCS session has ceased to use  
9 FPCS’s property as a congregation of the Presbyterian Church (U.S.A.) in  
10 accordance with the Constitution of the Presbyterian Church (U.S.A.)” Dahl  
11 Decl., Ex. A at 14, ¶ 53.

### 12 III. STATEMENT OF ISSUES

13 Whether the Court should grant partial summary judgment and declare:

14 1. The Administrative Commission’s findings and actions are entitled to  
15 conclusive deference under *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485  
16 P.2d 615 (1971);

17 2. As a matter of nonprofit corporate law, the Administrative Commission  
18 acting as session governs the FPCS corporation and is entitled to lead and to manage the  
19 corporation and its property; and

20 3. Any interest that defendants had in the FPCS corporation’s property is  
21 merely a trustee’s interest, not a possessory interest, and it reverted to the Church when  
22 defendants ceased to use that property as a congregation of the Church in accordance with  
23 the Church Constitution.

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**IV. EVIDENCE RELIED UPON**

Plaintiffs rely upon the pleadings and papers on file as well as the Declarations of Heidi Husted Armstrong, Shelley M. Dahl, Doug Kelly, William A. Longbrake, Scott Lumsden, and Robert B. Mitchell.

**V. LEGAL STANDARD**

A party seeking to obtain summary judgment may “move with or without supporting affidavits for a summary judgment in the party’s favor upon all or any part thereof.” CR 56(a). Summary judgment is required if there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A fact is not “material” unless it “is one upon which the outcome of the litigation depends in whole or in part.” *Marshall v. Thurston County*, 165 Wn. App. 346, 350, 267 P.3d 491 (2011). Because no issues of material fact are in dispute, and because plaintiffs are entitled to a declaratory judgment as a matter of law, plaintiffs request that the Court enter judgment in their favor. *See, e.g., State, Dep’t of Ecology v. Wahkiakum County*, 184 Wn. App. 372, 376, 337 P.3d 364 (2014) (determining constitutionality of statute, and determining that there were no disputed facts).

**VI. ARGUMENT AND AUTHORITY**

Plaintiffs are entitled, as a matter of law, to a declaratory judgment confirming that Seattle Presbytery’s Administrative Commission has exercised its ecclesiastical authority to assume original jurisdiction and to act as the session—the governing body—of FPCS, displacing the defendants. It is the Administrative Commission, acting as the session, that is entitled to make decisions related to FPCS and its property, not the defendants.

Given the undisputed facts, plaintiffs prevail under any theory that could apply in a dispute over local church governance. First, under controlling Washington law, Seattle Presbytery has made ecclesiastical determinations that are grounded on the Church

1 Constitution. The Administrative Commission has determined that defendants and the  
2 congregants who attempted to unilaterally disaffiliate from the Church are no longer the  
3 true FPCS church. The Administrative Commission has assumed original jurisdiction  
4 over the church and is acting as its session. These actions are entirely consistent with the  
5 Church Constitution and Presbyterian polity, and they are entitled to conclusive deference  
6 under Washington law.<sup>2</sup>

7 Second, even if one could set aside the deference to higher church councils that  
8 Washington law requires, defendants' actions were improper as a matter of nonprofit  
9 corporate law. Defendants' hasty attempts to amend the FPCS bylaws and articles were  
10 ineffective, and the purported amendments are void. FPCS continues to operate under  
11 governing documents that are expressly subject to the Church Constitution. Under those  
12 documents, Seattle Presbytery was authorized to assume original jurisdiction and act as  
13 the session of FPCS, and defendants have forfeited any claim to be the leaders of FPCS.

14 Third, under principles of trust law, defendants have no claim to the Church's  
15 property after having ceased to use it as a congregation of the Church in accordance with  
16 the Church Constitution. Instead, such property has reverted to the Church.

17 ***A. Because Seattle Presbytery is a higher council within a hierarchical Church, its***  
18 ***determinations receive conclusive deference.***

19 This is not the first time that the leaders of a local church have sought to leave with  
20 its property. The threshold issue in such a case is church polity—specifically, whether the  
21 church in question is congregational or is instead a subordinate unit of a hierarchical

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22 <sup>2</sup> As the United States Supreme Court has recognized, states may resolve church disputes  
23 by (1) a polity approach, where the court accepts the conclusion of the highest body in a  
24 hierarchical church, or (2) a neutral-principles approach, where the court relies on well-  
25 established concepts of trust and property law. *Jones v. Wolf*, 443 U.S. 595, 602-04, 99 S.  
Ct. 601, 61 L. Ed. 2d 775 (1979); see *Southside Tabernacle v. Pentecostal Church of God*,  
32 Wn. App. 814, 818-21, 650 P.2d 231 (1982). Washington applies the polity approach.  
*Southside Tabernacle*, 32 Wn. App. at 820 n.2. But plaintiffs would also prevail under a  
neutral-principles analysis. See, e.g., *Ohio Dist. Council, Inc. of the Assemblies of God v.*  
*Speelman*, 2016-Ohio-751 (Feb. 29, 2016).

1 organization. *E.g., Org. for Preserving Constitution of Zion Lutheran Church of Auburn*  
2 *v. Mason*, 49 Wn. App. 441, 446-47, 743 P.2d 848 (1987). “[W]hen the local church is  
3 congregational, that is, governed independent of any other ecclesiastical body, the  
4 property dispute is resolved ‘by the ordinary principles which govern voluntary  
5 associations.’” *Id.* at 447, quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 725, 20 L. Ed.  
6 666 (1872). But “when the local church is a subordinate member of some general church  
7 organization in which there are superior ecclesiastical tribunals, the court must defer to  
8 and enforce a decision of the highest church tribunal that has ruled on the question.” *Id.*,  
9 citing *Watson*, 80 U.S. at 727.<sup>3</sup>

10 The local church in this case, FPCS, is indisputably part of a hierarchical church  
11 denomination, the Presbyterian Church (U.S.A.). Lumsden Decl., ¶ 6; *Rohrbaugh*, 79  
12 Wn.2d at 370 (Seattle Presbytery is part of a hierarchical church structure); *Erdman v.*  
13 *Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 681, 286 P.3d 357 (2012) (a  
14 Presbyterian church is “undisputedly a hierarchically structured church.”). *Cf. Hoffman v.*  
15 *Tieton View Cmty. Methodist Episcopal Church*, 33 Wn.2d 716, 729, 207 P.2d 699 (1949)  
16 (the organization of the Methodist Church “is Presbyterian in form and not  
17 Congregational. As a result, . . . local churches are only parts of the larger body, and no  
18 local Methodist Church may convert its property to a use not authorized by the superior  
19 church government.”).

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22 <sup>3</sup> As the Court held in *Watson*, and the Washington Supreme Court quoted in *Rohrbaugh*,  
23 “All who unite themselves to such a body (the general church) do so with an implied  
24 consent to (its) government, and are bound to submit to it. . . . It is of the essence of these  
25 religious unions, and of their right to establish tribunals for the decision of questions  
arising among themselves, that those decisions should be binding in all cases of  
ecclesiastical cognizance, subject only to such appeals as the organism itself provides  
for.” 79 Wn.2d at 618-19. This language has a “clear constitutional ring.” *Presbyterian*  
*Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S.  
440, 446, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).

1 The next issue for the Court to consider is whether a superior ecclesiastical  
2 tribunal in the Presbyterian Church (U.S.A.) has made a decision about the governance  
3 and property of the local church. In this case it has: Seattle Presbytery, which is superior  
4 to the FPCS session, appointed the Administrative Commission and gave it the power to  
5 investigate the affairs of FPCS, including the attempted unilateral disaffiliation from the  
6 Church by a majority of the congregation under the instigation of defendants. Lumsden  
7 Decl., ¶ 22. The Administrative Commission conducted a thorough investigation despite  
8 the non-cooperation of defendants. *See* Dahl Decl., Ex. A at 3-6. The Administrative  
9 Commission reviewed documents and interviewed or received information from 50  
10 witnesses. *Id.* at 5-6. It made 54 detailed findings. *Id.* at 7-14.<sup>4</sup> Based upon those  
11 findings and pertinent provisions in the Church Constitution, the Administrative  
12 Commission assumed original jurisdiction over FPCS, which means that it supplanted the  
13 individuals who had previously been the FPCS session and officers of the FPCS  
14 corporation. *Id.* at 14, ¶ 1; Lumsden Decl., ¶¶ 24-25.<sup>5</sup>

15 The Administrative Commission also made decisions on ownership and control of  
16 FPCS property:

17 All property held by or for FPCS—including real property, personal  
18 property, and intangible property—is subject to the direction and control  
19 of the Administrative Commission exercising original jurisdiction as the  
20 session of the church. Under G-4.0204, such property must be held, used,  
21 applied, transferred, or sold as the presbytery may provide.

22 Dahl Decl., Ex. A at 16, ¶ 15.

23 <sup>4</sup> As the Executive Summary of the Administrative Commission report concludes, the  
24 Commission’s investigation “confirmed allegations and identified additional irregularities,  
25 which together show a broad-based pattern of misconduct by the FPCS leadership.” Dahl  
Decl., Ex. A at ii.

<sup>5</sup> The situation in *Rohrbaugh* was nearly identical: Seattle Presbytery “appointed an  
administrative commission having the powers of Session to administer the affairs of the  
church for those members who had not withdrawn.” 79 Wn.2d at 368.

1 This Court must accept, and enforce, the Administrative Commission’s decisions.  
2 As the Washington Supreme Court held unanimously in *Rohrbaugh*, a case on all fours  
3 with this one,

4 where a right of property in an action before a civil court depends upon a  
5 question of doctrine, ecclesiastical law, rule or custom, or church  
6 government, and the question has been decided by the highest tribunal  
7 within the organization to which it has been carried, the civil court will  
8 accept that decision as conclusive.  
9 79 Wn.2d at 373. See also *Erdman*, 175 Wn.2d at 682 (*Rohrbaugh* “recognized the  
10 principle that deference is to be afforded such decisions of an ecclesiastical tribunal of a  
11 hierarchical church.”); *Choi v. Sung*, 154 Wn. App. 303, 315, 225 P.3d 425 (2010) (“In a  
12 hierarchical setting, civil courts defer to the decision rendered by the highest church  
13 judicatory to which the question/dispute was presented.”).

14 The right to property in this case plainly depends upon questions of doctrine,  
15 ecclesiastical law, and church government, and those questions have been decided by the  
16 highest tribunal within the Church to which they have been carried. As to doctrine, the  
17 Administrative Commission determined that a schism has taken place and that the true  
18 church is made up of the members of FPCS who, like plaintiff Longbrake, oppose the  
19 actions taken by the former FPCS elders in October-November 2015. Dahl Decl., Ex. A  
20 at 14, ¶ 48; see Longbrake Decl., ¶¶ 1, 6, 8-12; cf. *Choi*, 154 Wn. App. at 316 (court must  
21 accept the ruling of a superior body as to who is in the congregation). The Administrative  
22 Commission also determined that the Schulz defendants forfeited their roles as teaching  
23 elders and pastors when they renounced the jurisdiction of the Church, and it has  
24 appointed a temporary pastor for the congregation. Dahl Decl., Ex. A at 7, ¶ 4;  
25 Declaration of Heidi Husted Armstrong, ¶¶ 4-5; cf. *Erdman*, 175 Wn.2d at 363 (court  
cannot question personnel decisions concerning a church’s minister.)

1 As to ecclesiastical law and church government, the Administrative Commission's  
2 findings and actions are grounded upon the Church Constitution, specific provisions of  
3 which are cited more than 80 times in its report. Dahl Decl., Ex. A. Presbyterian polity  
4 requires that church property remain subject to the control of the church's governing  
5 body, the session. Lumsden Decl., ¶ 10. Because in this case the Administrative  
6 Commission has assumed original jurisdiction, it is the session, and it has full power to  
7 manage, direct, and control church property. Lumsden Decl., Ex. A at G-3.0303e. It has  
8 exercised that power, but the defendants have refused to comply with its directions. In  
9 such circumstances the Court must enforce the Administrative Commission's  
10 ecclesiastical judgments.

11 ***B. Defendants violated the Washington Nonprofit Corporation Act.***

12 Entirely apart from the requirement that courts must defer to the decisions made  
13 and the directions issued by the Administrative Commission, defendants repeatedly  
14 violated the Washington Nonprofit Corporation Act, ch. 24.03 RCW. Defendants  
15 purported to amend the FPCS bylaws in October 2015, but they had no such power: only  
16 the FPCS congregation could so act. Defendants then attempted in November 2015 to  
17 obtain "ratification" of these bylaw amendments, as well as approval of amendments to  
18 the articles of incorporation, by the FPCS congregation. But defendants failed to properly  
19 notice the congregational meeting or to properly conduct a congregational vote.

20 Defendants' attempts to circumvent ecclesiastical processes by manipulating  
21 corporate documents were ineffective. As a matter of nonprofit law, the Administrative  
22 Commission has properly exercised authority over the affairs of FPCS.

23 **1. Defendants' attempted October 2015 bylaw amendments are invalid.**

24 On October 27, 2015, defendants voted to rescind the existing bylaws of the  
25 church and to adopt separate congregational and corporate bylaws, with the latter bylaws

1 making no reference to the Presbyterian Church (U.S.A.). Lumsden Decl., ¶ 20 & Ex. E.  
2 The existing bylaws of the church and the corporation had been adopted by the  
3 congregation on May 8, 2005. Longbrake Decl., ¶ 4 & Ex. A. They placed responsibility  
4 on the session for all temporal and financial affairs of the church. Longbrake Decl., Ex.  
5 A, § XI. They also provided that they “may be amended subject to the Articles of  
6 Incorporation, the laws of the state of Washington and the *Constitution of the*  
7 *Presbyterian Church (U.S.A.)* by a two-thirds vote of the voters present, providing that the  
8 proposed changes in printed form shall have been distributed at the same time as the call  
9 of the meeting at which the changes are voted upon.” *Id.* § XV. The bylaw amendments  
10 that defendants adopted on October 27, 2015, satisfied none of these requirements.

11 First, the restated articles of incorporation provide that the FPCS corporation exists  
12 to promote worship and the Christian Religion “under the Form of Government and  
13 discipline of the ‘Presbyterian Church (U.S.A.)’” Lumsden Decl., Ex. D. The  
14 Presbyterian form of government requires, among other things, that the powers exercised  
15 by any corporation formed by a congregation are “subject to the authority of the session  
16 and under the provisions of the Constitution of the Presbyterian Church (U.S.A.). The  
17 powers and duties of the trustees shall not infringe upon the powers and duties of the  
18 session or the board of deacons.” Lumsden Decl., Ex. A at G-4.0101.

19 The restated articles also require that the trustees of the corporation “shall be  
20 chosen by the members of the church and of the congregation at an annual meeting called  
21 for that purpose,” and they repeat, “[e]lections for trustees shall be at the annual meeting.”  
22 Lumsden Decl., Ex. D. In violation of these requirements, the FPCS session purported to  
23 make themselves unaccountable trustees, not by a vote at the annual meeting of the  
24 congregation, but rather by their own vote on October 27, 2015. Lumsden Decl., ¶ 20.  
25 Because the attempted bylaw changes on October 27, 2015, are not consistent with the



1 form of government of the Presbyterian Church (U.S.A.) or with other requirements of the  
2 restated articles of incorporation, they are invalid. *See Peters Creek United Presbyterian*  
3 *Church v. Wash. Presbytery of Pa.*, 90 A.3d 95, 117-18 (Pa. Commw. Ct.), *appeal denied*,  
4 102 A.3d 987 (Pa. 2014) (bylaw amendments purporting to disaffiliate with Presbyterian  
5 Church (U.S.A.) were void where they conflicted with articles of incorporation).

6 Second, state law provides that the power to amend bylaws is vested in the board  
7 of directors “unless otherwise provided in the articles of incorporation or the bylaws.”  
8 RCW 24.03.070. The bylaws here provided that they could be amended only by the  
9 congregation, not by the session. Longbrake Decl., Ex. A, § XV. Moreover, the proposed  
10 bylaw changes had to be distributed in printed form at the same time as the call of the  
11 meeting at which they were to be voted upon. *Id.* Defendants acted on October 27, 2015,  
12 without the knowledge of the congregation, much less the congregation’s informed  
13 approval. *See* Lumsden Decl., ¶ 20.

14 Third, the Church Constitution directly forbids what defendants’ purported bylaw  
15 amendments sought to accomplish. The Church Constitution precludes efforts to place  
16 church property beyond the control of the session and, by extension, the presbytery. Not  
17 only are “[t]he provisions of this Constitution prescribing the manner in which decisions  
18 are made, reviewed, and corrected within this church . . . applicable to all matters  
19 pertaining to property,” Lumsden Decl., Ex. A at G-4.0202, but also “[w]henver property  
20 of, or held for, a congregation of the Presbyterian Church (U.S.A.) ceases to be used by  
21 that congregation as a congregation of the Presbyterian Church (U.S.A.) in accordance  
22 with this Constitution, such property shall be held, used, applied, transferred, or sold as  
23 provided by the presbytery.” *Id.* at G-4.0204. Defendants sought to sequester church  
24 property before the presbytery could assume original jurisdiction over it. Defendants’  
25

1 attempt to circumvent ecclesiastical law not only is unavailing under the Constitution of  
2 the Church; it also violated civil law.

3 **2. Defendants' efforts in November 2015 to ratify the purported new**  
4 **bylaws and to amend the articles of incorporation failed.**

5 Defendants tried to fix their improper bylaw amendments by submitting them to  
6 the congregation for "ratification" on November 15, 2015, at the same time proposing  
7 amendments to the FPCS articles of incorporation. Longbrake Decl., Ex. B and C. This  
8 transparent attempt to evade the authority of the Church and the presbytery was no more  
9 valid or effective than the actions taken on October 27, 2015. *See E. Lake Water Ass'n v.*  
10 *Rogers*, 52 Wn. App. 425, 426, 761 P.2d 627 (1988) ("Where a meeting of a nonprofit  
11 corporation is not in accordance with its bylaws, its proceedings are void.").

12 First, for the reasons set forth above, any effort to deny a higher council's  
13 authority over the church session or board of trustees violated the Church Constitution.<sup>6</sup>  
14 A congregation's board of trustees is subject to the session, just as the session is  
15 accountable to the presbytery, and the actions of the board of trustees are subject to the  
16 Book of Order. Lumsden Decl., ¶¶ 7-10 & Ex. A at G-3.0101, G-3.0201c, G-4.0202, and  
17 G-4.0203. And under the rules of parliamentary procedure, an assembly cannot ratify an  
18 action taken in violation of the organization's procedural rules or the organization's  
19 bylaws. *See Robert's Rules of Order Newly Revised* (11th ed.), pp. 124-25; *see also*  
20 Lumsden Decl., Ex. A at G-3.0105 (meetings of councils shall be conducted in accordance  
21 with Robert's Rules of Order).

22  
23 <sup>6</sup> Defendants conducted the November vote under their purported bylaw amendments,  
24 which were not validly adopted. Even if they had been properly adopted, the restated  
25 articles of incorporation continued to recognize the authority of the Church. The subject  
matter and voting procedure of the November congregational vote violated the restated  
articles. *See Peters Creek United Presbyterian Church*, 90 A.3d at 119 (noting that  
corporation's bylaws cannot conflict with its charter).

1 Second, the meetings were not properly noticed and are therefore invalid.  
2 Defendants were required to provide public notice by letter to all members not less than  
3 ten nor more than 50 days prior to any special meeting of the corporation. *See* Longbrake  
4 Decl., Ex. A, § VII(2). Moreover, defendants were required to include in the church  
5 bulletin “[a] printed notice . . . , signed by the Clerk of the Session, indicating the date and  
6 hour when, and place where, such meeting will be held, and the purpose of the meeting,  
7 which notice shall be audibly read at public worship to the assembled congregation on at  
8 least two successive Sundays prior to the date of such meeting.” *Id.* No mention was  
9 made of any corporation meeting at the church service on November 8 (the Sunday  
10 before), and no notice was provided in the church’s bulletin. Kelly Decl., ¶¶ 3-5 & Ex. A  
11 (copy of bulletin for November 8 service).

12 Third, defendants permitted voting by proxy, which is not permitted under the  
13 2005 bylaws or the Constitution. Longbrake Decl., Ex. A § VI.3 (“Proxy voting is not  
14 permitted in meetings of the congregation and the corporation”); Lumsden Decl., Ex. A at  
15 G-1.0501 (“All active members present at either annual or special meetings are entitled to  
16 vote”). The November actions were therefore invalid.

17 **3. Because the restated articles of incorporation and the 2005 bylaws**  
18 **remain in effect, defendants have no basis to resist original**  
19 **jurisdiction.**

20 Defendants’ efforts to remove any reference to the Church from FPCS’s governing  
21 documents failed as a matter of nonprofit corporation law. Therefore, they have no basis  
22 under those documents to contest the assumption of original jurisdiction by Seattle  
23 Presbytery’s Administrative Commission. The restated articles recognize that FPCS is  
24 organized “under the Form of Government and discipline of the ‘Presbyterian Church  
25 (U.S.A.).’” Lumsden Decl., Ex. D. Similarly, the 2005 bylaws recognize that FPCS is a  
member church within the Church and “[a]ny manner of church governance not addressed

1 by these bylaws shall be governed by” the Church Constitution. Longbrake Decl., Ex. A,  
2 § V. Because the restated articles and 2005 bylaws are expressly subject to the form and  
3 manner of the governance of the Church, it follows that FPCS remains subject to the  
4 Church Constitution. And because the Church Constitution authorizes the Administrative  
5 Commission to assume original jurisdiction with respect to FPCS and it has done so, the  
6 Administrative Commission is properly acting as the session of FPCS. Lumsden Decl.,  
7 Ex. A at G-3.0303(e). The Court should enter summary judgment and declare that FPCS  
8 is governed by the Administrative Commission acting as session.

9 ***C. Defendants have no proprietary interest in church property.***

10 Even if defendants had any right to act as the leaders of FPCS—and they do not—  
11 their right to control any property reverted to the Church upon their attempted secession.  
12 In *Jones v. Wolf*, discussing an alternative approach that a state could adopt to resolve  
13 church disputes, the Court stated:

14 At any time before the dispute erupts, the parties can ensure, if they so  
15 desire, that the faction loyal to the hierarchical church will retain the  
16 church property. They can modify the deeds or the corporate charter to  
17 include a right of reversion or trust in favor of the general church.  
18 Alternatively, the constitution of the general church can be made to recite  
19 an express trust in favor of the denominational church. The burden  
involved in taking such steps will be minimal. And the civil courts will be  
bound to give effect to the result indicated by the parties, provided it is  
embodied in some legally cognizable form.

20 443 U.S. at 606.

21 The Church Constitution contains exactly these types of provisions. First, under G-  
22 4.0203, all property held by a congregation, regardless of legal title, “is held in trust  
23 nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)” Lumsden Decl.,  
24 ¶ 10 & Ex. A. Second, under G-4.0204, whenever property of a congregation “ceases to be  
25 used by the congregation as a congregation of the [Church], such property shall be held,

1 used, applied, transferred, or sold as provided by the presbytery.” *Id.* FPCS’s own 2005  
2 bylaws and restated articles recognize that FPCS is subject to the governance of the Church  
3 and, hence, these provisions. And defendants have repeatedly acknowledged the Church’s  
4 trust interest in FPCS property. Dahl Decl., ¶¶ 6-7 & Ex. B.

5 Numerous courts have recognized that this provision provides the Church and the  
6 relevant presbytery with property rights superior to those of a seceding congregation. *See,*  
7 *e.g., Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trs. of First*  
8 *Presbyterian Church and Congregation of Ridgebury*, 72 A.D.3d 78, 895 N.Y.S.2d 417  
9 (N.Y. App. Div., 2d Dep’t 2010); *Peters Creek United Presbyterian Church*, 90 A.3d at  
10 111. In *Peters Creek United Presbyterian Church*, for example, the court held that by  
11 adopting bylaws in 2001 that recognized that the congregation was subject to the Church  
12 Constitution, the congregation had created an express trust in which it held church  
13 property for the Church’s benefit. 90 A.3d at 110-11. And in *Presbytery of Hudson River*,  
14 the court noted that a trust in favor of the presbytery was evidenced by the fact that the  
15 congregation’s leaders had repeatedly recognized a trust. 72 A.D.3d at 97 (congregation  
16 had sought consent from presbytery prior to disposing of property). These cases  
17 addressed the identical provision in the Church Constitution that is at issue here.

18 The reasoning adopted in these cases applies equally to Seattle Presbytery’s  
19 interest in the property held by FPCS. The Church Constitution has contained express  
20 trust provisions since at least 1983. Lumsden Decl., ¶ 10. In 1985 FPCS adopted restated  
21 articles recognizing that FPCS existed “to promote the worship of Almighty God . . .  
22 ***under the Form of Government and discipline of ‘The Presbyterian Church (U.S.A.)’***”  
23 (emphasis added). Lumsden Decl., Ex. D. Similarly, the 2005 bylaws state that FPCS is a  
24 member church within the Church and “[a]ny manner of church governance not addressed  
25 by these bylaws shall be governed by” the Church Constitution. Longbrake Decl., Ex. A,

1 § V. Having agreed to be subject to the Church and its form of governance, FPCS agreed  
2 to the Book of Order, including its trust provision. *See Peters Creek United Presbyterian*  
3 *Church*, 90 A.3d at 110-11. Moreover, the repeated references to Seattle Presbytery’s  
4 trust interest by defendant Jeff Schulz are “further evidence of [FPCS’s] intent to create a  
5 trust.” *Id.*; *see also Presbytery of Hudson River*, 72 A.D.3d at 97.<sup>7</sup> Because FPCS created  
6 and acknowledged a trust in property that would revert to the Church and Seattle  
7 Presbytery upon any attempted disaffiliation, defendants have no claim to any property  
8 held by FPCS.

9 **VII. CONCLUSION**

10 For the reasons set forth above, the Court should grant partial summary judgment  
11 and grant plaintiffs’ request for declaratory relief.

12 DATED this 10th day of March 2016.

13 Respectfully submitted,

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23 \_\_\_\_\_  
24 <sup>7</sup> FPCS’s creation of the trust through its articles of incorporation and bylaws is consistent  
25 with Washington statutory requisites for creating a trust, which permit a trust to be created  
by a “[d]eclaration by the owner of property that the owner holds identifiable property as  
trustee.” RCW 11.98.008(2). The restated articles and the 2005 bylaws are such  
“declarations.” *See Peters Creek United Presbyterian Church*, 90 A.3d at 110-11.