

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

9 THE PRESBYTERY OF SEATTLE, a
10 Washington nonprofit corporation; and
11 THE FIRST PRESBYTERIAN CHURCH
12 OF SEATTLE, a Washington nonprofit
13 corporation,

14 Plaintiffs,

15 v.

16 JEFF SCHULZ and ELLEN SCHULZ, as
17 individuals and as the marital community
18 comprised thereof,

19 Defendants.

No. 16-03515-9 SEA
No. 16-2-23026-1 SEA
Consolidated

DECLARATION OF ROBERT B.
MITCHELL IN SUPPORT OF
PLAINTIFFS' AMENDED MOTION
FOR SUMMARY JUDGMENT IN
PRESBYTERY II

20 I, Robert B. Mitchell, pursuant to RCW 9A.72.085, declare as follows:

21 1. I am one of the attorneys for the plaintiffs in this action. I am also one of
22 the attorneys for the plaintiffs in *Presbytery of Seattle et al. v. Jeff and Ellen Schulz et al.*,
23 Case No. 16-2-03515-9 SEA ("*Presbytery I*"). I have personal knowledge of the matters
24 set forth in this declaration and am competent to testify about them.

25 2. Attached as **Exhibit A** is a true copy of the Order Granting Plaintiffs'
Motion for Partial Summary Judgment; Declaratory Judgment in *Presbytery I*. The Court
entered this order and issued its declaratory judgment on May 27, 2016.

1 3. Attached as **Exhibit B** is a true copy of the Findings of Fact, Conclusions
2 of Law, and Order Denying Motion for Preliminary Injunction in *Presbytery I*. The Court
3 entered this order on May 27, 2016.

4 4. Attached as **Exhibit C** is a true copy of a record from the Washington
5 Secretary of State's Office stating that the amendments of the Restated Articles of The
6 First Presbyterian Church of Seattle that had been filed on November 16, 2015, are "void
7 and without effect."

8 5. Attached as **Exhibit D** is a true copy of a record from the Washington
9 Secretary of State's website identifying the leadership of First Presbyterian Church of
10 Seattle ("FPCS").

11 6. On August 4, 2016, Daniel Kittle, counsel for the former leaders of FPCS,
12 wrote us an email confirming that they had "vacated the premises and will be worshipping
13 at another location unless and until a court overturns or stays Judge Roberts' orders and
14 Commissioner Burton's ruling [denying their emergency motion to the Washington
15 Supreme Court for a stay of those orders]."

16 7. On August 19, 2016, I sent an email to Mr. Kittle and the other attorneys at
17 Lane Powell PC who represent Jeff and Ellen Schulz in *Presbytery I*. I attached a copy of
18 the severance documents that they had produced in discovery. I said this:

19 Even if these documents had been duly authorized and were otherwise
20 enforceable, they appear not to be operative because the Schulzes
21 terminated or dissolved their pastoral relationships when they renounced
22 the jurisdiction of the Presbyterian Church (U.S.A.) effective December
23 16, 2015. Do you agree? If so, and you let us know by Wednesday, August
24 24th, we will prepare a stipulation to that effect for filing with the Court. If
25 not, I expect that we will ask the Court to declare that the signed MOUs
are both invalid and inoperative.

8. On August 24, 2016, I received two emails from Daniel Kittle of Lane
Powell. The first one advised me that the Schulzes had retained Michael Subit of Frank

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Freed Subit & Thomas LLP to represent them with respect to employment issues. The second one reported what Mr. Kittle believed to be the understanding of the former FPCS trustees regarding the Memoranda of Understanding that the Schulzes and FPCS signed in November 2015. His clients' understanding, he said, is as follows:

1. The Memoranda addressed termination of employment by FPCS, not renunciation of ecclesiastical authority of PCUSA.
2. Jeff and Ellen Schulz renounced the ecclesiastical authority of PCUSA in December 2015.
3. Jeff and Ellen Schulz have never resigned employment by FPCS.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of January, 2017 at Seattle, Washington.



Robert B. Mitchell

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTROM, as trustees of The
First Presbyterian Church of Seattle, a
Washington nonprofit corporation,

Defendants.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTROM, as trustees of The

No. 16-2-03515-9 SEA

ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT;
DECLARATORY JUDGMENT

~~[PROPOSED]~~

1 First Presbyterian Church of Seattle, a
Washington nonprofit corporation,

2 Third-Party Plaintiffs and
3 Counterclaimants,

4 v.

5 THE PRESBYTERY OF SEATTLE, a
6 Washington nonprofit corporation; SCOTT
7 LUMSDEN, Executive Presbyter of the
8 Presbytery of Seattle, an individual; and THE
9 FIRST PRESBYTERIAN CHURCH OF
10 SEATTLE, a Washington nonprofit
corporation, as recognized by the State of
Washington under Washington's Nonprofit
Corporations Act, by and through the
corporation's duly elected Board of Trustees,

11 Counterclaim Defendant and
12 Third-Party Defendants.

13
14 THE FIRST PRESBYTERIAN CHURCH
OF SEATTLE, a Washington nonprofit
15 corporation, as recognized by the State of
Washington under Washington's Nonprofit
16 Corporations Act, by and through the
corporation's duly elected Board of Trustees,

17
18 Cross-Claimant and Third-
Party Plaintiff,

19 v.

20
21 THE PRESBYTERY OF SEATTLE, a
Washington nonprofit corporation; ROBERT
22 WALLACE, an individual; WILLIAM
23 LONGBRAKE, an individual; and
PRESBYTERIAN CHURCH (U.S.A.), A
24 Corporation, a Pennsylvania nonprofit
corporation,

25 Cross-Claim Defendants and
26 Third-Party Defendants.

1 This matter came before the Court on Plaintiffs' Motion for Partial Summary
2 Judgment (the "motion"). Plaintiffs requested summary judgment on the first cause of action
3 in the complaint that they filed on February 17, 2016, which seeks a declaratory judgment.

4 The Court has considered the motion and the following materials submitted with the
5 motion:

6 Declaration of Heidi Husted Armstrong in Support of Plaintiffs' Motion for Partial
7 Summary Judgment;

8 Declaration of Shelley M. Dahl in Support of Plaintiffs' Motion for Partial Summary
9 Judgment, with exhibits;

10 Declaration of Doug Kelly in Support of Plaintiffs' Motion for Partial Summary
11 Judgment, with its exhibit;

12 Declaration of William A. Longbrake in Support of Plaintiffs' Motion for Partial
13 Summary Judgment, with exhibits;

14 Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial Summary
15 Judgment, with exhibits;

16 Second Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial
17 Summary Judgment, with exhibits;

18 Declaration of Robert B. Mitchell (filed with Plaintiffs' Motion for Partial Summary
19 Judgment); and

20 Declaration of Peter A. Talevich in Support of Plaintiffs' Motion for Partial Summary
21 Judgment, with exhibits.

22 The Court has also considered defendants' opposition to the motion and the following
23 materials submitted with defendants' opposition:

24 Declaration of Richard B. Head (filed with Defendants' Opposition to Plaintiffs'
25 Motion for Partial Summary Judgment), with exhibits;
26

1 Declaration of Daniel Kittle in Support of Opposition to Plaintiffs' Motion for Partial
2 Summary Judgment, with exhibits;

3 Declaration of David Martin in Support of Opposition to Plaintiffs' Motion for Partial
4 Summary Judgment, with exhibits; and

5 Declaration of Parker T. Williamson in Support of Opposition to Plaintiffs' Motion
6 for Partial Summary Judgment, with exhibits.

7 The Court has considered as well plaintiffs' reply in support of the motion and the
8 following materials submitted with plaintiffs' reply:

9 Second Declaration of William A. Longbrake in Support of Plaintiffs' Motion for
10 Partial Summary Judgment, with exhibits;

11 Third Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial
12 Summary Judgment, with exhibits; and

13 Second Declaration of Peter A. Talevich in Support of Plaintiffs' Motion for Partial
14 Summary Judgment.

15 The Court has considered the following additional materials:

16 First Presbyterian Church of Seattle's Motion for Preliminary Injunction to Preserve
17 the Status Quo;

18 Declaration of Richard Head in Support of Motion for Preliminary Injunction, with its
19 exhibit;

20 Declaration of Bruce Leaverton in Support of Motion for Preliminary Injunction, with
21 exhibits;

22 Declaration of Lloyd Lunceford in Support of Motion for Preliminary Injunction;

23 Declaration of David Martin in Support of Motion for Preliminary Injunction, with
24 exhibits;

1 Declaration of Parker Williamson in Support of Motion for Preliminary Injunction,
2 with its exhibit;

3 Plaintiffs' Opposition to Motion for Preliminary Injunction;

4 Declaration of Heidi Husted Armstrong in Opposition to Motion for Preliminary
5 Injunction;

6 Declaration of Laurie Griffith, with exhibits;

7 Declaration of Neal Lampi in Opposition to Motion for Preliminary Injunction, with
8 exhibits;

9 Declaration of Scott Lumsden in Opposition to Motion for Preliminary Injunction,
10 with its exhibit;

11 Declaration of Robert B. Mitchell in Opposition to Motion for Preliminary Injunction,
12 with exhibits;

13 Defendants' Reply in Support of Motion for Preliminary Injunction to Preserve the
14 Status Quo;

15 Supplemental Declaration of Bruce Leaverton in Support of Motion for Preliminary
16 Injunction, with its exhibit;

17 Defendants' CR 56(f) Motion for Continuance;

18 Declaration of Daniel Kittle in Support of Defendants' CR 56(f) Motion for
19 Continuance, with exhibits;

20 Plaintiffs' Opposition to Defendants' Motion for Continuance;

21 Declaration of Robert B. Mitchell in Opposition to Defendants' Motion for
22 Continuance, with exhibits; and

23 _____
24 _____

25
26 The Court held oral argument in open court on May 27, 2016.

1 Based upon the foregoing, the Court GRANTS the motion. There exists no genuine
2 issue of fact that is material to the first cause of action, which seeks a declaratory judgment,
3 and plaintiffs are entitled to judgment as a matter of law. The Court therefore enters the
4 following declaratory judgment:

5 1. The Presbyterian Church (U.S.A.) is a hierarchical church in which the
6 determinations of Seattle Presbytery, through its Administrative Commission, are conclusive
7 and binding on the session, trustees, and congregation of First Presbyterian Church of Seattle
8 (FPCS).

9 2. The findings and rulings of the Administrative Commission adopted on
10 February 16, 2016, are conclusive and binding in all determinations of church policy and
11 governance related to FPCS.

12 3. The amendments to the bylaws that the defendants purported to adopt in
13 October 2015 and to have the FPCS congregation ratify in November 2015, as well as the
14 amendments to the articles of incorporation that the FPCS congregation purported to adopt in
15 November 2015, are void and without effect. FPCS is governed by the Restated Articles of
16 Incorporation of the First Presbyterian Church of Seattle dated June 18, 1985, and the Bylaws
17 of the First Presbyterian Church of Seattle dated May 8, 2005.

18 4. Any interest that FPCS has in church property is held in trust for the benefit of
19 the Presbyterian Church (U.S.A.).

20 5. The current governing body of FPCS is the Administrative Commission for
21 First Presbyterian Church of Seattle. This Administrative Commission, appointed by Seattle
22 Presbytery in November 2015, assumed original jurisdiction on February 16, 2016, and it
23 now acts as the session of FPCS. The ruling elders and directors/trustees of FPCS are Steve
24 Aeschbacher, Heidi Husted Armstrong, Shelley Dahl, J.P. Kang, William Longbrake,
25 Jonathan Siehl, Kathy Smith, and Robert Wallace. The duly elected officers of FPCS are
26

1 Robert Wallace (President), Shelley Dahl (Vice President), and William Longbrake
2 (Secretary/Treasurer).

3
4 SO ORDERED this 27th day of May, 2016.

5
6 
7 Mary E. Roberts
KING COUNTY SUPERIOR COURT JUDGE

8 Presented by:

9 K&L GATES LLP

10
11 By
12 Robert B. Mitchell, WSBA #10874
Peter A. Talevich, WSBA #42644
13 Attorneys for Plaintiffs

14 MILLS MEYERS SWARTLING

15
16 By
17 David D. Swartling, WSBA #6972
Attorneys for Plaintiffs

18 Approved for form; notice of presentation
19 waived:

20 LANE POWELL PC

21
22 By
23 Bruce W. Leaverton, WSBA #15329
John R. Neeleman, WSBA #19752
24 Randall P. Beighle, WSBA #13421
Daniel A. Kittle, WSBA #43340
25 James B. Zack, WSBA #48122
Attorneys for Defendants

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTRÖM, as trustees of The
First Presbyterian Church of Seattle, a
Washington nonprofit corporation,

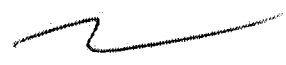
Defendants.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof; and LIZ CEDERGREEN,
DAVID MARTIN, LINDSEY McDOWELL,
GEORGE NORRIS, NATHAN ORONA, and
KATHRYN OSTRÖM, as trustees of The

No. 16-2-03515-9 SEA

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER DENYING
MOTION FOR PRELIMINARY
INJUNCTION

~~[PROPOSED]~~



1 First Presbyterian Church of Seattle, a
2 Washington nonprofit corporation,

3 Third-Party Plaintiffs and
4 Counterclaimants,

5 v.

6 THE PRESBYTERY OF SEATTLE, a
7 Washington nonprofit corporation; SCOTT
8 LUMSDEN, Executive Presbyter of the
9 Presbytery of Seattle, an individual; and THE
10 FIRST PRESBYTERIAN CHURCH OF
11 SEATTLE, a Washington nonprofit
12 corporation, as recognized by the State of
13 Washington under Washington's Nonprofit
14 Corporations Act, by and through the
15 corporation's duly elected Board of Trustees,

16 Counterclaim Defendant and
17 Third-Party Defendants.

18 THE FIRST PRESBYTERIAN CHURCH
19 OF SEATTLE, a Washington nonprofit
20 corporation, as recognized by the State of
21 Washington under Washington's Nonprofit
22 Corporations Act, by and through the
23 corporation's duly elected Board of Trustees,

24 Cross-Claimant and Third-
25 Party Plaintiff,

26 v.

27 THE PRESBYTERY OF SEATTLE, a
28 Washington nonprofit corporation; ROBERT
29 WALLACE, an individual; WILLIAM
30 LONGBRAKE, an individual; and
31 PRESBYTERIAN CHURCH (U.S.A.), A
32 Corporation, a Pennsylvania nonprofit
33 corporation,

34 Cross-Claim Defendants and
35 Third-Party Defendants.

1 This matter came before the Court on “First Presbyterian Church of Seattle’s Motion
2 for Preliminary Injunction to Preserve the Status Quo,” Dkt. No. 50 (the “motion”).¹ The
3 Court has considered the motion and the following materials submitted with the motion:

4 Declaration of Richard Head in Support of Motion for Preliminary Injunction, with its
5 exhibit;

6 Declaration of Bruce Leaverton in Support of Motion for Preliminary Injunction, with
7 exhibits;

8 Declaration of Lloyd Lunceford in Support of Motion for Preliminary Injunction;

9 Declaration of David Martin in Support of Motion for Preliminary Injunction, with
10 exhibits;

11 Declaration of Parker Williamson in Support of Motion for Preliminary Injunction,
12 with its exhibit.

13 The Court has also considered Plaintiffs’ Opposition to Motion for Preliminary
14 Injunction and the following materials submitted with the opposition:

15 Declaration of Heidi Husted Armstrong in Opposition to Motion for Preliminary
16 Injunction;

17 Declaration of Laurie Griffith, with its exhibit;

18 Declaration of Neal Lampi in Opposition to Motion for Preliminary Injunction, with
19 exhibits;

20 Declaration of Scott Lumsden in Opposition to Motion for Preliminary Injunction,
21 with its exhibit;

22 Declaration of Robert B. Mitchell in Opposition to Motion for Preliminary Injunction,
23 with exhibits.
24
25
26

¹ Because the leadership of First Presbyterian Church of Seattle is disputed, the Court refers to the movant as “defendants.”

1 The Court has considered as well Defendants' Reply in Support of Motion for
2 Preliminary Injunction to Preserve the Status Quo and the following materials submitted with
3 the reply:

4 Supplemental Declaration of Bruce Leaverton in Support of Motion for Preliminary
5 Injunction, with its exhibit.

6 The Court has considered the following additional materials:

7 Plaintiffs' Motion for Partial Summary Judgment;

8 Declaration of Heidi Husted Armstrong in Support of Plaintiffs' Motion for Partial
9 Summary Judgment;

10 Declaration of Shelley M. Dahl in Support of Plaintiffs' Motion for Partial Summary
11 Judgment, with exhibits;

12 Declaration of Doug Kelly in Support of Plaintiffs' Motion for Partial Summary
13 Judgment, with its exhibit;

14 Declaration of William A. Longbrake in Support of Plaintiffs' Motion for Partial
15 Summary Judgment, with exhibits;

16 Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial Summary
17 Judgment, with exhibits;

18 Declaration of Robert B. Mitchell (filed with Plaintiffs' Motion for Partial Summary
19 Judgment);

20 Declaration of Peter A. Talevich in Support of Plaintiffs' Motion for Partial Summary
21 Judgment, with exhibits;

22 Second Declaration of Scott Lumsden in Support of Plaintiffs' Motion for Partial
23 Summary Judgment, with exhibits;

24 Defendants' Opposition to Motion for Partial Summary Judgment;

25 Declaration of Richard B. Head (filed with Defendants' Opposition to Plaintiffs'
26 Motion for Partial Summary Judgment), with exhibits;

1 Declaration of Daniel Kittle in Support of Opposition to Plaintiffs' Motion for Partial
2 Summary Judgment, with exhibits;

3 Declaration of David Martin in Support of Opposition to Plaintiffs' Motion for Partial
4 Summary Judgment, with exhibits;

5 Declaration of Parker T. Williamson in Support of Opposition to Motion for Partial
6 Summary Judgment, with exhibits;

7 Plaintiffs' Reply in Support of Motion for Summary Judgment;

8 Second Declaration of William A. Longbrake in Support of Plaintiffs' Motion for
9 Partial Summary Judgment, with exhibits;

10 Third Declaration of Scott Lumsden in Support of Motion for Partial Summary
11 Judgment, with exhibits;

12 Second Declaration of Peter A. Talevich in Support of Motion for Partial Summary
13 Judgment;

14 Defendants' CR 56(f) Motion for Continuance;

15 Declaration of Daniel Kittle in Support of Defendants' CR 56(f) Motion for
16 Continuance, with exhibits;

17 Plaintiffs' Opposition to Defendants' Motion for Continuance;

18 Declaration of Robert B. Mitchell in Opposition to Defendants' Motion for
19 Continuance, with exhibits; and

20 _____
21 _____

22
23 The Court heard argument on the motion in open court on May 27, 2016.

24 Having considered the foregoing, the Court hereby finds, concludes, and orders as
25 follows:
26

FINDINGS OF FACT

1
2 1. The Presbyterian Church (U.S.A.) (the "Church") is a hierarchical religious
3 denomination.

4 2. Under the Form of Government of the Church, congregations within the
5 Church are governed by a hierarchy of councils including, in ascending order, the session
6 (pastors and elders of the local congregation), the presbytery (composed of all pastors and at
7 least one elder from each of the congregations within a district), the synod (composed of
8 representative pastors and elders from the presbyteries within a geographical region), and the
9 general assembly (composed of delegations of pastors and elders from the presbyteries). The
10 presbytery with jurisdiction over First Presbyterian Church of Seattle ("FPCS") is plaintiff
11 Presbytery of Seattle ("Seattle Presbytery").

12 3. The Church, its congregations, and its councils are all governed by the
13 Constitution of the Presbyterian Church (U.S.A.) (the "Church Constitution"). Part II of the
14 Church Constitution, known as the *Book of Order*, sets forth the Form of Government of the
15 Church.

16 4. According to the Church Constitution, "[t]he provisions of this Constitution
17 prescribing the manner in which decisions are made, reviewed, and corrected within this
18 [C]hurch are applicable to all matters pertaining to property."

19 5. Under the Church Constitution, "all property held by a congregation, whether
20 legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association . . .
21 is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)."
22 When property of a congregation of the Church "ceases to be used by that congregation as a
23 congregation of the Presbyterian Church (U.S.A.) in accordance with the Constitution, such
24 property shall be held, used, applied, transferred, or sold as provided by the Presbytery."

25 6. If permitted by civil law, the Church Constitution requires congregations to
26 "cause a corporation to be formed and maintained." The powers of the corporation and

1 trustees are “subject to the authority of the session and under the provisions of the [Church
2 Constitution],” and “[t]he powers and duties of the trustees shall not infringe upon the
3 powers and duties of the session . . .”

4 7. FPCS incorporated under civil law in 1874. The original articles of
5 incorporation state that FPCS was established “to promote the worship of Almighty God and
6 the belief in and extension of the Christian Religion, under the form of government and
7 discipline of the ‘Presbyterian Church in the United States of America.’”

8 8. The restated articles of incorporation, adopted in 1985, provide that the
9 “objects and purposes” of FPCS are “to promote the worship of Almighty God and the belief
10 in the extension of the Christian Religion, under the Form of Government and discipline of
11 ‘The Presbyterian Church (U.S.A.).’”

12 9. On October 27, 2015, the session of FPCS purported to repeal the bylaws then
13 in effect (the “2005 Bylaws”) and establish separate corporate and congregational bylaws.
14 The session then installed its members as trustees of the corporation. According to FPCS
15 elder David Martin, “[t]he FPCS Board is governed by the Corporation’s Articles of
16 Incorporation and Corporate Bylaws, as well as the provisions of the Washington Nonprofit
17 Corporation Act, and is not subject to the authority of the Presbytery of Seattle (‘Presbytery’)
18 or the PCUSA Book of Order.”

19 10. Mr. Martin notified Seattle Presbytery that the assets of FPCS were “owned
20 by and under the control of the Corporation, and are therefore not subject to Presbytery
21 authority.” He also stated that the “Corporation” had transferred approximately \$420,000
22 into the trust account of Lane Powell P.C.

23 11. The FPCS session and the FPCS board, purporting to be different entities,
24 provided notice to the FPCS members of corporation and congregational meetings to occur
25 on November 15, 2016. Notice of each meeting was mailed to the members of FPCS, but no
26

1 notice was read at the November 8, 2016 joint service and no notice was printed in the FPCS
2 church bulletin for that service.

3 12. On November 15, 2016, the members of the FPCS congregation voted to
4 disaffiliate from the Church, and the members of the FPCS corporation voted to ratify the
5 October 27 bylaw amendments and amend the restated articles of incorporation to remove
6 any references to the Church. Voting occurred in person and by proxy. The *Book of Order*
7 does not permit "disaffiliation" by congregational vote, nor does it permit voting by proxy.
8 Seattle Presbytery's Communal Discernment and Gracious Separation Policy constitutes the
9 only policy under which a congregation within Seattle Presbytery may be dismissed or
10 otherwise separated from the Church.

11 13. On November 17, 2016, following the *Book of Order*, Seattle Presbytery
12 appointed an Administrative Commission for First Presbyterian Church of Seattle (the
13 "Administrative Commission") to work on the presbytery's behalf with purposes and
14 authority as described in the presbytery's resolution and as repeated on pages 2-3 of the
15 Administrative Commission's report.

16 14. Effective December 16, 2015, Jeff and Ellen Schulz, the co-pastors at FPCS,
17 renounced the jurisdiction of the Presbyterian Church (U.S.A.).

18 15. On February 16, 2016, the Administrative Commission adopted ten
19 resolutions and issued its report, together with a 222-page appendix.

20 16. The Administrative Commission assumed original jurisdiction, thereby
21 becoming the session of FPCS with responsibility for the governance, property, and spiritual
22 well-being of the church.

23 17. As authorized by the *Book of Order*, the Administrative Commission
24 determined that there is a schism in FPCS and that the members who opposed the actions of
25 the former FPCS elders constitute the true church. The Administrative Commission noted
26 that Jeff and Ellen Schulz, having renounced the jurisdiction of the Presbyterian Church

1 (U.S.A.), had ceased to function at that point as pastors of FPCS. The Administrative
2 Commission appointed a temporary pastor for the FPCS congregation as well as a person
3 having authority to oversee the property and financial affairs of FPCS. The Administrative
4 Commission also determined that its members, as the current ruling elders on session, were
5 now the trustees of the FPCS corporation.

6 18. The Administrative Commission determined that all property of FPCS—
7 including real property, personal property, and intangible property—is subject to the
8 direction and control of the Administrative Commission’s original jurisdiction and must be
9 held, used, applied, transferred, or sold as the Administrative Commission may provide or
10 direct.

11 19. The Administrative Commission directed that the funds transferred to the
12 Lane Powell trust account be returned to the church immediately, and all funds held in the
13 name of the FPCS corporation be turned over to the Administrative Commission. The
14 Administrative Commission also directed an accounting of all financial transactions
15 involving FPCS and the turning over of all books and records by February 21, 2016.

16 20. After being apprised of the Administrative Commission’s actions, defendants’
17 counsel stated 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 interests in,
19 [its] records or property.” This litigation followed.

20 21. Since the purported secession of FPCS from the Church, the defendants have
21 continued to conduct worship service in the FPCS chapel. The FPCS congregants who
22 opposed defendants’ actions, on the other hand, have worshipped at various locations.

23 22. Seattle Presbytery and its agents have not interfered or attempted to interfere
24 with any bank account held in the name of FPCS. Instead, to support its ministry to the
25 FPCS congregants who opposed defendants’ actions, Seattle Presbytery opened a new
26

1 banking account at Banner Bank in the name of Seattle Presbytery AC for the First
2 Presbyterian Church of Seattle.

3 23. Seattle Presbytery established a new website, rather than interfere with the
4 website now controlled by defendants, to inform the FPCS congregants who opposed
5 defendants' actions of the congregation's activities and changing locations for worship.

6 24. Seattle Presbytery and its agents have not contacted Diamond Parking, Seattle
7 Classical Christian School, Town Hall, or any other entities that have contractual obligations
8 to FPCS. Instead, after defendants rejected a proposed joint communication, Seattle
9 Presbytery decided to await a prompt resolution of this case rather than draw these entities
10 into the parties' dispute. Seattle Presbytery has also not interfered with any of the
11 redevelopment projects associated with FPCS premises.

12 25. Lane Powell P.C. has voluntarily agreed not to access any of the funds in its
13 trust account that were placed there by defendants until the Court determines who is entitled
14 to those funds.

15 26. Seattle Presbytery offered to make the client files of FPCS in the hands of
16 Riddell Williams available to both the plaintiffs and defendants in this matter, while the right
17 to those files remains disputed, but the defendants rejected this compromise.

18 CONCLUSIONS OF LAW

19 1. To obtain a preliminary injunction, the movant must establish (1) a clear legal
20 or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that
21 the act complained of will result in actual and substantial injury. *E.g., Huff v. Wyman*, 184
22 Wn.2d 643, 651, 361 P.3d 727 (2015).

23 2. Defendants have not met their burden of showing a clear legal or equitable
24 right for the following reasons:

25 a. Under *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485
26 P.2d 615 (1971), *cert. denied*, 405 U.S. 996, *reh. denied*, 406 U.S. 939 (1972), the

1 determinations of the Administrative Commission of Seattle Presbytery are entitled to
2 conclusive deference. As a result, the Administrative Commission's assumption of
3 original jurisdiction over the affairs of FPCS cannot be disturbed.

4 b. Washington courts have rejected a "neutral principles of law"
5 approach to resolving ecclesiastical disputes related to church property, but even
6 under this analysis, defendants would not be entitled to relief. Defendants' purported
7 attempts to amend the FPCS 2005 Bylaws and the Restated Articles of Incorporation
8 were ineffective as a matter of corporate law.

9 c. Moreover, even if a neutral principles of law approach applied, the
10 *Book of Order* provides that all property held by or for congregations, including
11 FPCS, is held in trust for the Church. FPCS's Restated Articles of Incorporation and
12 2005 Bylaws incorporate this provision; FPCS's financial statements expressly
13 recognized it before 2015. Because defendants have ceased to use such property as
14 property of the Church, Seattle Presbytery is entitled to the use and possession of that
15 property.

16 d. With respect to defendants' claim of trademark infringement,
17 defendants have not shown ownership, distinctiveness, or likely confusion. Their
18 requested injunction would impermissibly limit the plaintiffs' Free Exercise rights.

19 3. Defendants have not met their burden of showing a well-grounded fear of
20 immediate invasion of any right. Instead, the evidence shows that plaintiffs have not
21 interfered with defendants' purported governance of FPCS but have, instead, attempted to
22 resolve the issue promptly in court before taking any actions related to church property.

23 4. Defendants have not met their burden of showing that the acts complained of
24 will result in actual and substantial injury.

ORDER

The Motion is DENIED.

IT IS SO ORDERED this 27th day of May, 2016.


Mary E. Roberts
KING COUNTY SUPERIOR COURT JUDGE

Presented by:

K&L GATES LLP

By

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

MILLS MEYERS SWARTLING

By

David D. Swartling, WSBA #6972
Attorneys for Plaintiffs

Approved for form; notice of presentation
waived:

LANE POWELL PC

By

Bruce W. Leaverton, WSBA #15329
John R. Neeleman, WSBA #19752
Randall P. Beighle, WSBA #13421
Daniel A. Kittle, WSBA #43340
James B. Zack, WSBA #48122
Attorneys for Defendants

EXHIBIT C

Per Declaraion filed May 27, 2016, this amendment is void and without effect. This entity is governed by the Restated Articles of Incorporation dated June 18, 1985.

Page 1 of 1



SOS

Office of the Secretary of State
Corporations & Charities Division

Washington Nonprofit Corporation

See attached detailed instructions

Standard Filing Fee \$20.00

Filing Fee with Expedited Service \$70.00

This Box For Office Use Only

FILED

NOV 16 2015

Void and without effect

WA SECRETARY OF STATE

11/16/15 3041279
002
\$70.00R
Ref: 3118120

UBI Number: 601144420

ARTICLES OF AMENDMENT

Chapter 24.03 RCW

SECTION 1

NAME OF CORPORATION: (as currently recorded with the Office of the Secretary of State)

THE FIRST PRESBYTERIAN CHURCH OF SEATTLE

SECTION 2

ARTICLES OF AMENDMENT WERE ADOPTED BY: (please check and complete one of the following)

- The amendment was adopted by a meeting of members held: (Date) November 15, 2015
A quorum was present at the meeting and the amendment received at least two-thirds of the votes which members present or represented by proxy were entitled to cast.
- The amendment was adopted by a consent in writing and signed by all members entitled to vote.
- There are no members that have voting rights. The amendment received a majority vote of the directors at a board meeting held: (Date) _____

SECTION 3

AMENDMENTS TO ARTICLES ON FILE: (if necessary, attach additional information)

See Attached Amendments

SECTION 4

EFFECTIVE DATE OF ARTICLES OF AMENDMENT: (please check one of the following)

- Upon filing by the Secretary of State
- Specific Date: _____ (Specified effective date must be within 30 days AFTER the Articles of Amendment have been filed by the Office of the Secretary of State)

SECTION 5

SIGNATURE: (see instructions page)

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

X <u>Kathryn E. Ostrom</u>	Kathryn Ostrom, President	11/15/2015	206.223.7948
Signature	Printed Name and Title	Date	Phone

**AMENDMENTS TO RESTATED ARTICLES OF INCORPORATION
OF
THE FIRST PRESBYTERIAN CHURCH OF SEATTLE**

1. *The third paragraph is deleted in its entirety and replaced with:*

The objects and purposes of the said association shall be to promote the worship of Almighty God and the belief in the extension of the Christian Religion.

2. *The second sentence of the fourth paragraph is deleted in its entirety and replaced with:*

All persons who shall heretofore have been or who hereafter may be, by the Session of the Congregation received and admitted upon confession of their faith, reaffirmation of faith, or transfer of letter from other churches shall be "members" of the church.

3. *The first sentence of sixth paragraph is deleted in its entirety and replaced with:*

The Minister or Ministers, Elders and Deacons shall be called and chosen by the members of this church under the regulations prescribed in the bylaws.

4. *Immediately following the sixth paragraph, the following text is inserted as a new seventh paragraph:*

A trustee shall have no liability to the corporation or its members for monetary damages for conduct as a trustee, except for acts or omissions that involve intentional misconduct by the trustee, or a knowing violation of law by the trustee, or for conduct violating RCW 23B.08.310, or for any transaction from which the trustee will personally receive a benefit in money, property or services to which the trustee is not legally entitled. If the Washington Nonprofit Corporation Act or the Washington Business Corporation Act (the "Act") is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors of a nonprofit corporation, then the liability of a trustee shall be eliminated or limited to the full extent permitted as so amended. Any repeal or modification of this paragraph shall not adversely affect any right or protection of a trustee existing at the time of such repeal or modification for or with respect to an act or omission of such director occurring prior to such repeal or modification.

EXHIBIT D

THE FIRST PRESBYTERIAN CHURCH OF SEATTLE

UBI Number	601144420
Category	REG
Profit/Nonprofit	Nonprofit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	02/27/1874
Expiration Date	02/28/2017
Inactive Date	
Duration	
Registered Agent Information	
Agent Name	PTSGE CORP
Address	925 4TH AVE
City	SEATTLE
State	WA
ZIP	981040000
Special Address Information	
Address	
City	
State	
Zip	

Governing Persons

Title	Name	Address
Director,Trustee	AESCHBACHER, STEVE	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee	HUSTED ARMSTRONG, HEIDI	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee,Vice President	DAHL, SHELLEY	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee	KANG, J P	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee	Longbrake, William	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee	SIEHL, JONATHAN	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee	SMITH, KATHY	1544 S SNOQUALMIE ST SEATTLE, WA 98108
Director,Trustee,President	Wallace, Robert	1544 S Snoqualmie St SEATTLE, WA 98108
Secretary,Treasurer	Longbrake, William	1544 S SNOQUALMIE ST SEATTLE, WA 98108