56204-1

Supreme Court No. 56204-1
Court of Appeals No. 23393-9-I

NO. 23393-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DONALD L. BARNETT,

Appellant,

v.

JACK A. HICKS, JACK H. DuBOIS, and E. SCOTT HARTLEY, individually and as the Board of Directors of COMMUNITY CHAPEL AND BIBLE TRAINING CENTER and COMMUNITY CHAPEL AND BIBLE TRAINING CENTER

Respondents.

REPLY BRIEF

Charles K. Wiggins
Catherine Wright Smith
EDWARDS & BARBIERI
Attorneys for Appellant

6501 Columbia Center
Seattle, WA 98104
(206) 624-0974

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I. REPLY TO COUNTER-STATEMENT OF FACTS

A. Pastor Barnett Presented Evidence That The Concurrence Requirement Is Based On Religious Doctrine, And The Elders Did Not Dispute That Fact.

It is sad but telling that the defendants' central premise on appeal - that Pastor Barnett's right of concurrence is not based on any religious doctrine - is a falsehood. (Resp. Br. 6, 10, 19-23) Sad, because these elders must know that this is false; telling, because they would not need to resort to falsehood if their legal position were tenable.

Pastor Barnett clearly alleged in his pleadings that the elders' efforts to remove him were based on a difference in religious doctrine, and that the free exercise and establishment clauses of federal and state constitutions prevented the court from invalidating the concurrence requirement. (CP 182-83) Three hundred church members stated in declarations that Pastor Barnett's leadership was a matter of religious doctrine:

> It is my heart, mind, faith and conviction that Donald Barnett is to lead the congregation and be in charge of the church. As a member of the congregation, it is my belief and opinion that the senior elders should not remove Donald Barnett as the pastor and that they have no authority to do so. Pastor Barnett is to lead the congregation from Pentecost to the Feast of Tabernacles.

(CP 702) Pastor Barnett's brief opposing summary judgment argued that the disputed provisions of the articles and bylaws "were the expressions of the religious beliefs of Donald Barnett, defendants, and the members of the church." (CP 771-72)

The elders never argued that the concurrence requirement is not based on religious doctrine until their brief in the appellate court. To the contrary, the elders acknowledged in the trial court that Pastor Barnett claimed that the concurrence requirement was based on religious doctrine. (CP 635, 848) Defendant Hartley admitted that Community Chapel was "designed around the principles that Don Barnett espoused." (CP 555)

In view of Pastor Barnett's pleadings, the declarations of church members, defendant Hartley's admissions, and the elders' failure to dispute any of these facts, it is inexcusable for the elders to now claim on appeal that "the record simply will not support a claim that the special privileges and power personally accorded him [Pastor Barnett] are based on any religious doctrine." (Resp. Br. 21)

Had this untenable argument been made before, Pastor Barnett could have explained more fully the doctrinal basis for the concurrence requirement:

Pastor Barnett, the members of the church, and, at one time, the elders, believed that Pastor Barnett was specially directed by God to establish the church, to interpret scripture, and to receive revelation through the Holy Spirit. See generally Bylaws, Division 2, § I (CP 273-74) The doctrines of Community Chapel include faith in the "out-translation" of members of the church at the end of this present age (CP 282), and a belief that this end time is imminent. Thus, it was expected that Don Barnett would be the first and only pastor of Community Chapel, and would serve the church until the close of this age, i.e., "from Pentecost to the Feast of Tabernacles." (CP 702) In the unlikely event that Pastor Barnett resigned, the senior pastor who replaced him would probably not have the same spiritual insight, revelation and vision as Pastor Barnett, and the concurrence requirement would no longer be necessary.

Perhaps the elders no longer espouse these religious doctrines, as defendant Hartley stated in his deposition. But their own change of heart gives them no license to deny that the organizational structure of the church, and particularly the concurrence requirement, is based on religious doctrine.

B. The Elders Did Not Vote To Amend The Articles Of Incorporation During The Meeting At Pastor Barnett's House On The Morning Of March 4.

The elders assert that, "Either before they left Barnett's home or afterwards, the three directors voted unanimously to amend Article VI. . ." (Resp. Br. 8-9) The parties have given conflicting declarations. Pastor Barnett denies that any vote was taken at his home or in his presence, or that the subject of amending the articles was ever discussed. (App. Br. 10-11, CP 372) Elder Hartley claims that the articles were amended in Pastor Barnett's presence. (CP 29) On summary judgment, the court must accept Pastor Barnett's account.

The articles of amendment purport to have been signed at 11:00 a.m. (CP 657), which was during the time the elders were at Pastor Barnett's home. (CP 598) Thus, the elders must have secretly met before meeting with Pastor Barnett (contrary to Community Chapel's Bylaws, Div. One. § IV, Art. 7, CP 126), decided to amend the articles, prepared Articles of Amendment (which did not include a line for Pastor Barnett's signature, CP 657), and signed the articles at some unspecified time.

Pastor Barnett's counsel had previously assumed that the elders probably signed the articles of

amendment at some time after leaving Pastor Barnett's home. (CP 575; App. Br. 11) In fact, however, none of the elders have ever said they signed the articles after leaving Pastor Barnett's home, and the record permits the inference that they signed the articles of amendment before ever going to Pastor Barnett's home.

The elders claim that "Barnett grew angry with the other directors and asked them to leave immediately." (Resp. Br. 8) Nothing in the record suggests that Pastor Barnett became angry. Pastor Barnett denies that he became angry. He asked the elders to leave only when they refused to say whether they had met secretly without him. (CP 55-56)

II. REPLY TO RESPONDENT'S ARGUMENTS

A. The Legislature Limited The Application Of The Nonprofit Corporation Act Through The Savings Clause. (Appellant's Argument B.4; Reply To Respondent's B)

The elders argue that the Nonprofit Corporation Act applies to Community Chapel because "the statute says so." (Resp. Br. 11) In making this argument, the elders ask the court to ignore a very important part of the statute: the savings clause which preserved "any right accrued or any liability or penalty incurred" under prior law. RCW 24.03.905. (Resp. Br. 18-19)

The elders argue that Pastor Barnett's right to concur in any amendments to the articles or bylaws is not a "right" within the meaning of the savings clause. (Resp. Br. 18) This argument ignores reality. Twenty years ago Pastor Barnett left lucrative employment and a steady salary in order to establish Community Chapel. (CP 374) The concurrence requirement in the articles and bylaws guaranteed faithful adherence to Pastor Barnett's teachings and some measure of job security. The concurrence requirement was a "right" on which Pastor Barnett was entitled to rely.

The elders argue that the legislature could alter, amend or repeal the nonprofit corporation laws. (Resp. Br. 11, 19) This is a red herring. Interpretation of the savings clause is a matter of legislative intent, not a question of constitutional power.[1] Seattle Trust v. McCarthy, 94 Wn.2d 605, 617 P.2d 1023 (1980), on which the elders rely, is inapplicable because it interpreted a statutory change which lacked any savings clause.

The elders argue that the Nonprofit Corporation Act expressly applies to Community Chapel.

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[1]Pastor Barnett relied in the trial court on the vested rights doctrine (CP 530-36), but does not pursue that argument in this appeal.

(CP 613-14, Resp. Br. 11-13) If the Act applies, all of it applies. The elders cannot ask this court to ignore statutory language which shows a legislative intent that the Act should not apply to invalidate the concurrence requirement. See Obert v. Environmental Research, 112 Wn.2d 323, 331-33, 771 P.2d 340 (1989) (decision based on the savings clause of the Revised Uniform Limited Partnership Act, despite the fact that neither party had called the savings clause to the attention of the trial court or the Court of Appeals).

B. The Elders Fail To Show A Conflict Between The Nonprofit Corporation Act And The Concurrence Requirement. (Appellant's Argument B; Reply To Respondent's C)

1. The Board Of Directors Did Not Delegate Any Power To Pastor Barnett In Violation Of RCW 24.03.115.

The elders argue that the board improperly delegated its powers to Pastor Barnett, but do not discuss the language of RCW 24.03.115 prohibiting committees from exercising "the authority of the Board of Directors" to alter or amend corporate articles or bylaws. Thus, the elders never address the central question whether Pastor Barnett had "the authority of the Board of Directors" to alter or amend the articles or bylaws. The answer is clearly no. Pastor Barnett could not alter or amend the

bylaws. His sole power was to prevent an alteration or amendment from becoming effective if he declined to concur.

The elders generally argue that the directors improperly "delegated" their powers. (Resp. Br. 13-15) "To delegate" means to grant power or responsibility to another to carry out one's own functions. The directors did not grant Pastor Barnett the power or responsibility to amend the articles or bylaws. The Board of Directors itself was required to amend the articles or bylaws. Pastor Barnett could not amend them by himself.

Fletcher's Cyclopedia of Corporations (Perm. ed. 1982) explains that any limitation on delegation is simply an application of the general law of agency that "the trust delegated by a principal to his agent cannot be delegated by the latter, particularly when the performance of the agency involves the exercise of judgment or discretion." Fletcher, supra, at § 494. Under these principles, the concurrence requirement is not an invalid "delegation." The elders are still required to exercise their own discretion and judgment in deciding whether to amend the bylaws and articles--Pastor Barnett cannot act for them. His power to veto is not the power to

enact, and the board of directors did not delegate any power to Pastor Barnett in violation of RCW 24.03.115.

2. Neither The Language Nor The Legislative History Supports The Elders' Interpretation of RCW 24.03.455.

The concurrence requirement is consistent with the provision of RCW 24.03.455 that the articles of incorporation may "require the vote or concurrence of a greater proportion of the . . . directors." (App. Br. 19-24) The elders argue that the concurrence requirement permits amendments to the articles of incorporation by a "lesser proportion" of the directors. (Resp. Br. 16-17) This simply restates the elders' fallacious argument that Pastor Barnett has the power to amend the articles of incorporation. The concurrence doctrine does not require a "lesser proportion" of the directors to agree to an amendment. To the contrary, it requires a "greater proportion," because any amendment must gain the vote of Pastor Barnett as well as a simple majority of the directors.

RCW 24.03.455 should be interpreted in light of the legislative history of the statutory scheme regulating religious societies. Nothing suggests

any intent by the legislature to prohibit concentration of the control of a religious organization in the hands of one person. The elders have failed to identify any legislative intent to disapprove of the concurrence requirement.

C. Pastor Barnett's Pleadings And The 300 Declarations By Community Chapel Members Establish That The Concurrence Requirement Is Based On Religious Principles. (Reply To Respondent's Argument D)

The elders now argue for the first time that Pastor Barnett failed to prove in the trial court that the concurrence requirement is based on religious doctrine. The elders argue that a party opposing summary judgment cannot rest upon the allegations of his pleadings, but must affirmatively present the factual evidence on which he relies. (Resp. Br. 23) But this rule applies only if the party moving for summary judgment has carried its burden of showing that there is no issue of material fact. Hash v. Childrens Orthopedic Hospital, 110 Wn.2d 912, 915, 757 P.2d 507 (1988). Pastor Barnett was entitled to rely on the allegations of his reply that the concurrence requirement was based on religious doctrine. (CP 182-83) The elders never presented any evidence disputing this allegation. Even if the elders had presented some evidence, the

declarations by 300 members created a factual issue whether the concurrence requirement was based on religious principle.

Pastor Barnett seriously doubts that any elder would testify that the concurrence requirement has nothing to do with religious doctrine. Any such claim could have been tested at trial. The elders should not be permitted to ambush Pastor Barnett and mislead this court by tardily making an insupportable factual argument for the first time on appeal.

The elders seem to argue that the concurrence requirement cannot be based on religious doctrine because Pastor Barnett is afforded a special status which is not extended to other pastors. (Resp. Br. 20-21) This is fatuous. It is a hallmark of religious organizations that one or more individuals is viewed as occupying a special status by virtue of having received unique revelations from God. E.g. United States v. Ballard, 322 U.S. 78, 88 L.Ed. 1148, 64 S.Ct. 882 (1944); Seventh Elect Church v. First Seattle Dexter Horton National Bank, 167 Wash. 473, 10 P.2d 207 (1932).

The elders gratuitously compare Pastor Barnett's unique status at Community Chapel to the metaphorical farm in George Orwell's Animal Farm. (Resp. Br. 22)

In Animal Farm, the pigs lead a rebellion against the legal manager of the farm, seize control, ruthlessly drive out or destroy all who oppose their ideas and methods, and finally subject the other animals to a heavier yoke than ever was imposed by the rightful farm manager. Animal Farm tells us more about the elders than about Pastor Barnett.

The elders rhetorically overstate Pastor Barnett's "unique" powers. (Resp. Br. 19-22) Pastor Barnett's concurrence is required only to amend the articles or by-laws, or to appoint additional senior elders. (CP 119-20) Pastor Barnett's concurrence was not required for many actions by the senior elders, including removal of any senior elder, appointment or removal of deacons, appointment to or removal from office of elders, and approval of expenditures. (CP 119-20) The senior elders clearly have broad powers despite the concurrence requirement.

The elders seem to argue that the concurrence doctrine could not be considered to be based on religious principles unless Pastor Barnett could offer some "scriptural basis" or present evidence that it is "biblical." (Resp. Br. 21-22) This reflects a fundamental misunderstanding of religious

freedom. The first amendment and the Washington Constitution both prohibit the state from requiring that a religious belief be anchored in the words of a particular holy text, or from examining the basis for such a belief. Cf. Thomas v. Review Board, 450 U.S. 707, 716, 67 L.Ed.2d 624, 101 S.Ct. 1425 (1981) (court could not constitutionally compare the interpretation of scripture by petitioner Jehovah's Witness with that of other Jehovah's Witnesses: "Courts are not arbiters of scriptural interpretation.").

D. The Trial Court Violated The State And Federal Constitutions By Striking Down The Concurrence Requirement.

1. The Perceived Collision Between The Concurrence Requirement And the Nonprofit Corporation Act Must Be Evaluated Under The Compelling Interest Test. (Reply To Respondent's Argument E)

This case should be decided under the compelling interest test used by the Court in City of Sumner v. First Baptist Church, 97 Wn.2d 1, 7-8, 639 P.2d 1358 (1982). The elders' brief is somewhat unclear, but implies that the state's interest need not be "compelling." (Resp. Br. 25-26) The elders' diluted standard ignores the consistent decisions of this state's Supreme Court and the U. S. Supreme Court which clearly require the state to show a compelling

interest in order to infringe on the free exercise of religion. E.g., Wisconsin v. Yoder, 406 U.S. 205, 215, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972) (Resp. Br. 26); Sherbert v. Verner, 374 U.S. 398, 406-07, 10 L.Ed.2d 965, 83 S.Ct. 1790 (1963); Backlund v. Board of Commissioners, 106 Wn.2d 632, 641, 724 P.2d 981 (1986) (Resp. Br. 33); City of Sumner v. First Baptist Church, supra. (Resp. Br. 35-37)

The few cases cited by the elders which have employed a more deferential standard are limited to narrow circumstances not presented by this case. O'Lone v. Estate of Shabazz, 482 U.S. 342, 96 L.Ed.2d 282, 107 S.Ct. 2400, (1987) (prison regulations "are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights"); Goldman v. Weinberger, 475 U.S. 503, 507, 89 L.Ed.2d 478, 106 S.Ct. 1310 (1986) ("Our review of military regulations challenged on first amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society."); Heffron v. International Society for Krishna Consciousness, 452 U.S. 640, 647, 69 L.Ed.2d 298, 101 S.Ct. 2559 (1981) (proselytization in a

public place "subject to reasonable time, place, and manner restrictions.").

2. The Elders Have Failed To Identify A Compelling Interest In Striking Down The Concurrence Requirement. (Reply to Respondent's Argument E.2)

The elders argue that the following state interests are sufficiently compelling to justify infringing on the free exercise of religion: "Controlling excessive delegations of authority by the officers of nonprofit corporations"; "regulating corporations that grant such a pastor[2] dictatorial powers and prevent his control or removal"; "insuring that nonprofit corporations are used for their intended purposes and do not become vehicles for abuse or manipulation for private advantage." (Resp. Br. 30, 32, 33-34)

The legislature has not found any of these interests to be compelling. The legislature has not chosen to preclude control of a nonprofit corporation by one individual. Prior to 1967 and since 1986, nothing in any statute even arguably prohibited one

[2]"Such a pastor" apparently refers to the imaginary pastor described in the elders' brief: "Imagine a pastor using his considerable influence to exploit vulnerable members of his congregation." (Resp. Br. 31)

person control of a nonprofit corporation. Prohibition of one person control may be convenient for the elders, but it is not compelling for the legislature.

Even if the state had a sufficiently strong interest in "controlling excessive delegations of authority" (Resp. Br. 30), the trial court's interpretation of the Nonprofit Corporation Act would not further that interest. The effect of the trial court's interpretation is to force churches like Community Chapel to organize with only one director. This decision will not control excessive delegation; it will cause excessive delegation.

A case cited by the elders, Wisconsin v. Yoder, supra, (Resp. Br. 26) illustrates how a state statute may fail to further the state's interest. Adherents to the Amish religion challenged Wisconsin's compulsory school attendance law. The court acknowledged the validity of the state's compelling interest in compulsory education, but struck down the law because none of the state's interests were effectively served by forcing the Amish to send their children to public or private school. Similarly, Washington's Nonprofit Corporation Act fails to further any arguable interest in "controlling excessive delegations of

authority" because it allows single director corporations.

The alternative state interests suggested by the elders, curbing abuse of power and manipulation for private advantage (Resp. Br. 31-32, 34), are simply not present in this case. The elders deliberately limited their motion for partial summary judgment to a pure question of law. They disclaimed reliance on any allegations of misconduct. (CP 193) The court never ruled on the elders' second counterclaim, which was for removal of Pastor Barnett for alleged breaches of fiduciary duty. (CP 78, 861-62) There has been no allegation, let alone proof, that Pastor Barnett engaged in any of the abuses "imagined" in the elders' brief. (Resp. Br. 31-32) The only arguable "misconduct" was that Pastor Barnett engaged in consensual sexual relations with women other than his wife. Pastor Barnett had previously repented and been forgiven of these activities. (CP 31-34)

The elders argue that invalidating the concurrence requirement "has minimum impact on the free exercise of religion when it only affects the leadership or permanence of <u>one</u> pastor. . ." (Resp. Br. 28-29) A violation of the free exercise of

religion is a serious matter whether it affects one individual or one million individuals. The Washington Constitution guarantees absolute freedom of conscience "to every individual," not to groups, churches or majoritarian religious views. Wash. Const. Art. I, § 11. Further, the elders ignore the impact of their usurpation of power on the hundreds of church members who believe in the leadership of Pastor Barnett.

3. The Elders Have Failed To Show That No Alternative Form Of Regulation Would Satisfy The Government's Interest. (Reply to Respondent's Arguments E.2 and E.3)

The elders concede that the state cannot infringe on the free exercise of religion unless they can show that "no action imposing a lesser burden on religion would satisfy the government's interest." (Resp. Br. 26, 34) The state and federal constitutions require the government to accommodate the free exercise of religion to the greatest extent possible. City of Sumner v. First Baptist Church, 97 Wn.2d 1, 8-10, 639 P.2d 1358 (1982).[3]

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[3]The elders challenge the authority of First Baptist Church, arguing that recent cases have not required the state to accommodate the free exercise of religion. (Resp. Br. 36) The silence of recent cases regarding the accommodation requirement does not undermine First Baptist Church, but rather suggests that since First Baptist Church no one has attempted to defend an infringement on the free exercise of religion by claiming the compelling

The elders argue that invalidating the concurrence requirement is the least restrictive means of achieving the state's goal of regulating the powers of corporate directors, claiming that Pastor Barnett has failed to suggest any less restrictive alternative. (Resp. Br. 35) The elders are wrong. At a minimum, the elders could not amend the articles and remove Pastor Barnett without the majority vote of the congregation which the bylaws required for removal of any pastor who served as successor to Pastor Barnett. (CP 765-66) The trial court does not seem even to have considered this alternative, which would have accomplished the arguable state interest in preventing one man control of Community Chapel while preserving to the congregation the right to retain Pastor Barnett consistent with their religious beliefs.

4. The Free Exercise Of Religion Clauses Preclude A Court From Striking Down An Article Of Church Government. (Reply to Respondents' Argument F)

Pastor Barnett's opening brief discussed at length the case of Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 119, 97 L.Ed. 120, 138, 73 S.Ct. 143

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importance of wooden and rigid adherence to uniform regulations without regard to their impact on the free exercise of religion.

(1952), in which the U.S. Supreme Court held that the first amendment invalidated a New York statute which purported to override a church's articles of incorporation. (App. Br. 28-30). Strangely, although the elders find room in their brief to cite 70 other cases, they never mention Kedroff. Instead, the elders attempt to distinguish other cases cited by Pastor Barnett without discussing their facts:

> Those cases are inapplicable. . . [T]his is not an ecclesiastical dispute. The issue here involves a conflict between a corporate structure and a state statute.

(Resp. Br. 37)

The elders could not have made this broad assertion if they had cited Kedroff. Like this case, Kedroff involved a state statute which purported to govern a religious corporation. The clear holding of Kedroff is that civil disputes between rival factions of a religious organization must be determined "according to the laws of that association." 344 U.S. at 122 (Frankfurter, J., concurring). Civil law cannot be used to strike down church law which determines how the church is controlled.

The elders seem to argue that their action in removing Pastor Barnett, if illegal, was somehow ratified by their own later action in disfellowshiping Pastor Barnett. (Resp. Br. 38, n.5) This

argument was first raised, and only obliquely, in the elders' reply brief supporting their second motion for summary judgment. (CP 842) There is no indication that the trial court relied on this argument in any way. Moreover, the elders never claimed that they had followed the procedures established by the bylaws for disfellowshiping a church member. Compare CP 30 with CP 465. Finally, any attempt to disfellowship Pastor Barnett was prohibited by Judge Bates' Temporary Restraining Order (CP 73-75) and was therefore invalid.

The elders appear to argue that the court should ignore the articles and bylaws of Community Chapel and resolve this case by "the ordinary principles which govern voluntary associations." (Resp. Br. 38-40) But none of the cases cited by the elders support this position. Control of a church is governed by interpretation of the articles and bylaws of that church, not by some vague and undefined "ordinary principles." Church of Christ v. Carder, 105 Wn.2d 204, 209, 713 P.2d 101 (1986) ("If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the

property."); Organization of Lutherans v. Mason, 49 Wn. App. 441, 446, 743 P.2d 848 (1987) ("Here, the court was simply asked to construe an ambiguous provision in what amounts to a contract between the members of the congregation, dealing with a purely procedural question."); Samoan Congregational Christian Church in the U.S. v. Samoan Congregational Christian Church of Oceanside, 66 Cal. App.3d 69, 135 Cal. Rptr. 793, 798 (1977) ("[W]e now examine the corporate articles, bylaws and pertinent state law to resolve this property dispute."); Gospel Tabernacle Body of Christ Church v. Peace Publishers & Co., 506 P.2d 1135, 1139 (Kan. 1973) ("We find no evidence in the record of any relinquishment by plaintiffs of local congregational control over financial and property matters.").

The courts resort to "ordinary principles" of law only if the articles and bylaws of the church do not address the issue. The courts never resort to "ordinary principles" in order to invalidate a church's organizational tenets. Under the cases cited by the elders, the court should not invalidate the articles of incorporation by striking down the concurrence requirement.

5. The Trial Court's Ruling Violates The Establishment Clause. (Appellant's Argument C.2; Reply to Respondent's G)

The elders incorrectly claim that Pastor Barnett did not rely on the establishment clause in the trial court. (Resp. Br. 40-41) Pastor Barnett expressly relied on the full text of the first amendment to the U.S. Constitution. (CP 183, 770) Pastor Barnett's affirmative reliance on the first amendment implicitly included the establishment clause.

The appropriate test in this case is that used to evaluate laws which discriminate among religious organizations and prefer a particular type of church structure. Such statutes are subject to strict scrutiny. Larson v. Valente, 456 U.S. 228, 72 L.Ed.2d 33, 102 S.Ct. 1673 (1982). In both Larson and this case, the offensive statute was facially neutral, and employed apparently secular criteria, but discriminated against certain types of religious organizations. Larson, supra, 456 U.S. at 246-47, n.23. The elders' reliance on the three part test employed by the U.S. Supreme Court for evaluating state financial assistance to religious organizations is misplaced. See Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 2105 (1971). The three part Lemon test is not used to examine a statute like the

Nonprofit Corporation Act which expresses a statutory preference for one denomination over another.

6. The Elders Fail To Argue Against An Independent Interpretation Of The Washington State Constitution In Light Of the Gunwall Factors. (Appellant's Argument C.4; Reply to Respondent's H)

A stricter interpretation of the freedom of conscience clause is required by the Washington Constitution. (App. Br. 39-44) The elders cannot deny that the freedom of conscience clause in the Washington Constitution is on its face far broader than the first amendment, and that the Washington Constitution goes far beyond mere toleration of religious sentiment. They therefore ignore State v. Gunwall, 106 Wn.2d 54, 61-63, 720 P.2d 808 (1986), and limit their discussion to seven cases decided from 1912 to 1966, none of which even considers whether Washington's constitution should be more strictly interpreted than the federal constitution. (Resp. Br. 44-45) This court should follow current law and adopt an independent interpretation of the Washington State Constitution under Gunwall.

E. Corporate Directors Cannot Reconvene An Adjourned Meeting Without Giving Notice To All Directors Of Their Intent To Do So. (Appellant's Argument D; Reply to Respondents' I)

The actions of the elders at any "continuation" of the March 4 meeting were invalid because the elders never gave notice to Pastor Barnett that they intended to continue the meeting.[4] (App. Br. 44-45) The elders concede that no notice was given, pointing out that Judge Quinn so held. (Resp. Br. 46)

The elders argue that no new notice was required because they were entitled to reconvene the meeting at any time and at any place without further notice to Pastor Barnett, citing Fletcher, Cyclopedia of Corporations, § 2015 at 110-11 (Resp. Br. 47). Fletcher actually shows that any alleged "adjournment" was invalid: "[G]enerally a regularly convened meeting can be adjourned only by the act of the meeting itself. . ." Fletcher, supra, § 2015 at p. 110. The "meeting" at Pastor Barnett's home, such

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[4]The elders claim that "no one disputes" that a valid meeting was underway. (Resp. Br. 46) Pastor Barnett argued in the trial court (CP 577-78) and argues in this court that no valid meeting was held on March 4, 1988--there was no notice, no agenda, no call to order, no vote and no adjournment. Indeed, as pointed out above in Section I.B., there is no evidence that the elders "continued" any meeting. Nothing in the record supports the claim that the elders signed the articles of amendment after leaving Pastor Barnett's house.

110. The "meeting" at Pastor Barnett's home, such as it was, was never adjourned by "act of the meeting itself," and any later meeting of the elders cannot be considered a "continuation."

The cases cited by the elders also show that the meeting was never properly adjourned. In each case all participants at the original meeting knew that the meeting was adjourned, and also knew the agenda to be discussed at the continued meeting. Morris Alpert & Sons v. Kahler, 502 P.2d 98, 99 (Col. 1972) ("Pursuant to motion, the meeting was adjourned to October 30, 1970 for further consideration of the offers."); State ex rel. Ryan v. Cronan, 40 Pac. 41, 44 (Nev. 1892):

> The president again announced that the meeting was adjourned, and requested those present to go somewhere else to hold a meeting, and told them to get out of the room, and that he wanted them to understand that they would have to hold a meeting at some other place. . . The meeting was then adjourned by the stockholders, to meet immediately in room 11 of the same building.

Here, by contrast, Pastor Barnett did not even know the agenda of the original meeting, had no idea the elders intended to continue the meeting, and certainly did not know that they intended to vote on amending the bylaws at a continued meeting.

Pastor Barnett was deprived of the most elementary rudiments of due process, the right to be informed of the issue for decision, and the right to be heard. Compare Robinson v. Davis, 126 A.D.2d 715, 511 N.Y.S.2d 311, 312 (1987) ("The congregation prepared a list of charges of alleged acts of misconduct against the plaintiff, served him with these charges and gave him notice of the meeting and an opportunity to defend against the charges.") (cited at Resp. Br. 48).

The elders quote the trial court's conclusion that further notice would have been fruitless because, "It would be indulging in unreality to suggest that he still was intending and evinced any intent to participate in the meeting that day." (Resp. Br. 46-47) This is circular reasoning. There had been no notice to Pastor Barnett of any meeting, no agenda, no discussion of the proposal to amend the articles, and no vote. The trial court found there was a meeting only because Pastor Barnett and the three elders were in the same place at the same time. (CP 654) Pastor Barnett could not refuse to participate in a meeting of which he had no notice and the business of which he was never told.

No one knows how Pastor Barnett would have reacted if he had known of the elders' intentions, or whether he and the elders could have reached a compromise solution. In any event, the Supreme Court has rejected the argument that a majority of the directors may act without notice to a dissenting director:

> A meeting of the board of directors of the corporation is not legally constituted without notice to all of the directors. 13 Am. Jur. 915, § 956; 64 A.L.R. 715; 2 Fletcher, Cyclopedia Corporations (Perm. Ed.) 190, § 406.
>
> The excuse urged by respondents, for failure to give notice to Mrs. Trethewey of the meeting, that the giving of the notice would have been fruitless and would have prevented carrying out of the business that Mr. Lycette and Mr. Campbell intended, is without merit. The fact that a director might dissent from the action of the board cannot be successfully urged in excuse of deprivation of his legal right to know what action is being taken so that he may proceed in a manner which he deems proper respecting it. He is entitled to be present and make himself heard.

Lycette v Green River Gorge, Inc., 21 Wn.2d 859, 863, 153 P.2d 873 (1944).

The trial court erred in granting judgment as a matter of law validating corporate acts that were taken at meetings called without proper notice.

III. CONCLUSION

Pastor Barnett observed in his opening brief that the elders had failed to cite any case holding that any corporation law in the country, profit or nonprofit, prohibits a provision in the articles of incorporation requiring the concurrence of a specific individual to amend the articles. (App. Br. 15) Nor does any case strike down an article of church government based on a perceived inconsistency with state corporation laws. (App. Br. 16)

The elders still fail to supply any authority to justify their actions or the trial court's decision. The court should reverse the trial court and remand for reinstatement of Pastor Barnett to his proper place in the corporate structure of Community Chapel.

RESPECTFULLY SUBMITTED this 21 day of July, 1989.

EDWARDS & BARBIERI

By _____
Charles K. Wiggins

By _____
Catherine Wright Smith
Attorneys for Appellant

Statement of Additional Authorities

NO. 56204-1

SUPREME COURT OF THE STATE OF WASHINGTON

DONALD L. BARNETT,

Appellant,

v.

JACK A. HICKS, JACK H. DuBOIS, and E. SCOTT HARTLEY, individually and as the Board of Directors of COMMUNITY CHAPEL AND BIBLE TRAINING CENTER and COMMUNITY CHAPEL AND BIBLE TRAINING CENTER,

Respondents.

RESPONDENTS' STATEMENT OF ADDITIONAL AUTHORITIES

Robert H. Rohan
David G. Knibb
SCHWEPPE, KRUG & TAUSEND, P.S.
Attorneys for Respondents

800 Waterfront Place
1011 Western Avenue
Seattle, Washington 98104
(206) 223-1600

Pursuant to RAP 10.8, respondents direct the Court's attention to the following additional authorities:

Farley v. Henderson, 875 F.2d 231 (9th Cir. 1989). First Amendment protection of legitimate claims of free exercise of religion does not extend to conduct (psychic healing) that a state has validly proscribed.

Olsen v. Drug Enforcement Administration, 878 F.2d 1458 (D.C. Cir. 1989). Members of a church that advocates sacramental use of marijuana are not entitled by the First Amendment to an exemption from laws criminalizing marijuana use. No exemption even for limited use during a worship service.

Austin v. Berryman, 878 F.2d 786 (4th Cir. 1989) (en banc). A woman who quit her job because her religion required her to follow her spouse to a new location is not entitled to state unemployment benefits under the First Amendment's Free Exercise Clause.

Respectfully submitted this 10 day of October, 1989.

SCHWEPPE, KRUG & TAUSEND, P.S.

By 

David G. Knibb
Robert J. Rohan
Attorneys for Respondents

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