

23393-9

NO. 23393-9-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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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.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE NORMAN QUINN

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BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its Order Granting Defendants' Motion for Partial Summary Judgment on November 30, 1988, and in entering findings of fact, which are inappropriate and superfluous on summary judgment, in this order. (CP 651-701) (Copy attached as Appendix A)

2. The trial court erred in entering its Order and Judgment Granting Defendants' Second Motion for Partial Summary Judgment on December 16, 1988. (CP 861-63) (Copy attached as Appendix B)

3. The trial court erred in entering its Order Dissolving Restraining Orders and Granting Permanent Injunction on December 16, 1988. (CP 858-60) (Copy attached as Appendix C)

## II. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR

1. Whether the Nonprofit Corporation Act invalidated the requirement that Pastor Barnett concur in any amendment to Community Chapel's articles of incorporation when (a) the board of directors did not delegate any power to Pastor Barnett in violation of RCW 24.03.115, (b) the legislature clearly intended to allow corporation articles to vary the statutory voting requirements of RCW 24.03.165, and (c) Pastor



Barnett's right to concur in amendments to the corporate articles was preserved by the savings clause of the Nonprofit Corporation Act?

2. Whether the trial court violated the state and federal constitutions by striking down an organizational tenet of Community Chapel on the basis of an allegedly inconsistent statute?

3. Whether factual disputes concerning the notice provided for the meetings of the defendant elders should have prevented entry of judgment as a matter of law based on the validity of acts taken by the elders at those meetings?

### III. STATEMENT OF FACTS

This appeal arises from a dispute over the pastoral control of Community Chapel and Bible Training Center. Appellant Donald Barnett, the pastor of Community Chapel, seeks review from two orders of summary judgment affirming the actions of the respondent senior elders in eliminating the requirement in the church's bylaws and articles of incorporation that Pastor Barnett concur in any amendments to the bylaws and articles, and in then removing Pastor Barnett from his positions in the church. (See CP 651-56)

This case was decided on summary judgment motions brought by respondents. The facts in this brief are taken from the pleadings submitted by both parties in connection with the motions for summary judgment. On this appeal from summary judgment, the court is required to give Pastor Barnett the benefit of any reasonable inferences arising from the evidence.

A. Pastor Barnett Founded Community Chapel 21 Years Ago. Community Chapel Accepted Him As Its Spiritual Overseer.

Pastor Barnett began his service as a minister of the gospel of Jesus Christ a number of years prior to the formation of Community Chapel. (CP 368, 376) In November, 1967, he formed Community Chapel and Bible Training Center, Inc., a non-profit corporation registered with the State of Washington. (CP 368, 495-99)

Community Chapel is an independent church based in Burien, Washington. Pastor Barnett is the head of the church. (CP 368) The bylaws of Community Chapel incorporate the religious belief that the scriptures have never ordained a democratic government for the church, but have set the pastor over the

senior elders and the senior elders over the congregation:

We believe that God is a God of order who has established a specific structure of authority within both the church and the family. He has established offices in the church (pastors, elders, and deacons) through which the affairs of the local assembly are to be governed. Members of the assembly are enjoined to obey those who have the rule over them in spiritual matters. . . .

Fundamental Tenets of Community Chapel and Bible Training Center, Bylaws § VI, Art. 1. (CP 282) (See also CP 375-77, 433) The congregation has accepted Pastor Barnett's teaching that the pastor ultimately controls the church. (See CP 702, 756)

The articles and bylaws of Community Chapel incorporate this hierarchal religious doctrine. (CP 431-33) The articles of incorporation provided that Pastor Barnett alone would appoint three Elders to the initial Board of Elders of the church, and would be an ex-officio member of the Board of Elders. (CP 497) Pastor Barnett also appointed the Chairman and Vice-chairman of the Board of Elders. (CP 498) The original articles of incorporation also embodied this doctrinal conviction that the pastor is the spiritual leader of the church by requiring Pastor Barnett's concurrence in any changes to the articles:

Amendments to these Articles of Incorporation may be made by a three-fourths (3/4) affirmative vote of the Board of Elders and the original pastor's concurrence if still presiding.

(CP 498)

These provisions were reenacted in 1981, together with a provision that the original pastor's concurrence would be required to amend the bylaws of Community Chapel:

Section 3: The Bylaws of the corporation may be amended by a three-fourths (3/4) affirmative vote of the Board of Senior Elders and the original Pastor's concurrence, if he is still presiding.

(CP 13)

The bylaws of Community Chapel similarly gave considerable power over changes in church government to Pastor Barnett. The bylaws made Pastor Barnett lifetime chairman of the board of directors, president of the corporation, and pastor of the church, as well as other positions. (CP 260-61, 263) The bylaws prohibited board meetings without the presence or permission of Pastor Barnett. (CP 263) The bylaws also directed that if the board met in an emergency situation in which Pastor Barnett could not be present, the board "shall not make any decisions contrary to what it believes the Chairman's decision

would be, if the case is such as to require his concurrence." (CP 263)

The bylaws governing the headquarters church more explicitly set out Community Chapel's articles of faith on the proper form of church government:

#### Government of Church

The Church shall be governed by the Pastor, the Board of Senior Elders, and the Deacon Board, according to the following:

(CP 273)

The bylaws then go on to set out the doctrinal basis for Pastor Barnett's spiritual authority over the church:

#### ARTICLE ONE: The Pastor

##### A. The Original Pastor.

1. The original Pastor is Donald Lee Barnett.
2. The Pastor shall be recognized as the Spiritual Overseer of the Church, ordained and appointed of God for the ministry and to shepherd the flock of Community Chapel and Bible Training Center. In this capacity he shall be the chief Elder and Chairman of the Board of Senior Elders.

. . .

4. The Pastor shall have the prerogative to minister and lead the services as he feels the Holy Spirit shall lead him.

5. The Pastor shall have authority to question and advise any and all members of the Church, including its governing bodies, as he feels led.

(CP 273) The bylaws establish a method for changing pastors, but note that "[t]he original Pastor, having established the original Church by the direction of God and with support of the congregation, shall have oversight of same until the Pastor agrees to change."

(CP 274)

The bylaws expressly limited the elders' authority over the pastor and his spiritual leadership:

The Board of Senior Elders shall have no authority to infringe upon the pastoral rights and authority listed in these By-laws.

(CP 19)

Any amendments to the bylaws or articles of the church thus required Pastor Barnett's concurrence. As a result of these provisions, Pastor Barnett could prevent the elders or other officers from amending the bylaws or articles without his approval. He could not, however, unilaterally change the original articles or bylaws.

For 21 years, Community Chapel has followed this fundamental concurrence doctrine, employing a church government consistent with Pastor Barnett's inter-

pretation of the scripture. (See CP 375-77) The pastor's role is to seek God's revelation to decide the church's direction in the future. The senior elders worked under the pastor to carry out the pastor's vision. (See CP 273) With Pastor Barnett as its shepherd, Community Chapel developed into a substantial church. Community Chapel carried on the worship and educational functions of a church and also operated a Bible college, a Christian school, and a substantial publication division, on almost 45 acres of property in Burien. (CP 853-55)

B. Defendant Senior Elders Voted To Oust Pastor Barnett Contrary To The Concurrence Doctrine Embodied In The Church's Articles And Bylaws And Without Notice To Him.

The defendants Jack Hicks, Jack DuBois and C. Scott Hartley were the senior elders of Community Chapel. (CP 3) These elders had each been appointed by Pastor Barnett. (CP 4, 497)

In January 1988, the elders began a series of meetings or hearings on allegations of sexual misconduct against the church and its leaders. (CP 49-54)<sup>1</sup>

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<sup>1</sup>These events are related only to provide the court with the factual background that precipitated this lawsuit. The claims of misconduct on the part of any of the parties to this action have not been decided and are not at issue in this case, and they are not relevant to the legal issues raised. Appellant hopes that respondents will also respect their

Pastor Barnett agreed that, for the purpose of these hearings only, he would not exercise any authority over the meetings, and that the elders would supervise the hearings as a group. (CP 35)

The elders conducted hearings, which they promised would be confidential, over several days in January and February 1988. (CP 26) On February 15, 1988, the elders wrote to Pastor Barnett, proposing restrictions on his pastoral role. (CP 36-37; 49-52)

Pastor Barnett did not accept these restrictions on his spiritual authority. (CP 52-53) On February 26, 1988, while Pastor Barnett was away, and contrary to the bylaws and to the Pastor's express orders, the senior elders took control of the Friday night services and denounced Pastor Barnett. (CP 53) On Sunday, February 28, Pastor Barnett once again conducted services. Ninety-five percent of the congregation expressed their support of Pastor Barnett as head of the church. (CP 23, 53) However, the elders

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own admonishment to "resist the temptation to present background information which is not material to the pure question of law presented." (CP 193)



continued to question Pastor Barnett's authority and expressed concern for his soul and the doctrinal direction the church was taking. (CP 55)

On March 4, 1988, Pastor Barnett arranged for each of the three senior elders to meet with him at the parsonage at separate times. (CP 54-55) He wished to discuss Community Chapel's problems and to see if there could be a resolution to the religious and philosophical differences that were driving him and the elders apart. (CP 55)

The senior elders came to the parsonage as a group on the morning of March 4. Pastor Barnett explained that he wished to discuss their differences of opinion over church policy and nothing else. (CP 55)

The parties dispute what happened next. The senior elders claim that they proposed an amendment to the articles of incorporation eliminating Pastor Barnett's right of concurrence, that they voted in favor of the amendment despite Pastor Barnett's non-concurrence, and that the Pastor Barnett demanded that they all leave his home. (See, e.g., CP 29) On appeal from summary judgment, however, this court

must accept Pastor Barnett's account that the amendment was never discussed:

There was no vote taken in favor of any amendment. In fact, the word "amendments" never even came up at the time that the elders came. The word "articles" never came up. The word "bylaws" never came up. There was no discussions of bylaws. No meeting had been called by the board for the amendment of the articles or bylaws. It was never indicated to me that anyone wanted amendments to the bylaws.

. . . At no time did they indicate in any manner that there would be further meetings of the board of senior elders or that any additional action was going to be taken. No notice was provided to me, nor do I think that any of the elders will say that they told me that they had planned for a meeting later that day.

(CP 372)

After leaving Pastor Barnett, the three defendants voted to amend the articles of incorporation, purportedly removing the requirement that Pastor Barnett concur in any changes to the articles and bylaws. This amendment was filed with the Washington Secretary of State without Pastor Barnett's signature later the same day. (CP 29-30, 57-58, 372)

After the articles were amended, the three senior elders again met without notice to Pastor Barnett. They amended the bylaws to remove Pastor Barnett as a member of the board of directors. They

also purported to "disfellowship" Pastor Barnett.  
(CP 29-30, 57-58, 229-30, 241)

These steps were taken by the elders at the same time that their counsel was representing to Pastor Barnett's attorney that he was unavailable for a hearing on a temporary restraining order in this case. (CP 57-59)

On March 10, 1988, the senior elders further amended the bylaws. These amendments removed Pastor Barnett from all of his offices with Community Chapel and terminated his salary. (CP 230, 242-45)

These meetings on March 4 and March 10 were contrary to the bylaws of Community Chapel. The bylaws prevented the Board of Senior Elders from meeting without the presence or permission of Pastor Barnett. (CP 263)

C. The Trial Court Granted Summary Judgment To The Elders On The Ground That State Nonprofit Corporation Law Prohibited The Concurrence Doctrine.

Pastor Barnett commenced this action on March 4, 1988, for a declaratory judgment that the senior elders had no authority to amend the articles of incorporation without his concurrence. Pastor Barnett also sought to enjoin the defendants from interfering with the performance of his duties.

(CP 1, 7) The senior elders answered and counter-claimed for a declaration that their actions on March 4 effectively amended the articles of incorporation. Alternatively, the senior elders' second counterclaim asked to remove Pastor Barnett for cause. (CP 76, 78)

Pastor Barnett raised affirmative defenses to the elders' counterclaims, including lack of notice to Pastor Barnett of the intended amendment to the articles and bylaws, the first amendment of the U.S. Constitution, and Article I, § 11 of the Washington Constitution. (CP 181-83)

On November 30, 1988, Judge Norman Quinn granted partial summary judgment in favor of the senior elders against Pastor Barnett "subject to those affirmative defenses not decided by the court." Judge Quinn struck down the concurrence requirement as illegal:

The requirement in Community Chapel's pre-March 4, 1988 articles for concurrence by the original pastor (Barnett) in any amendment to the articles violated on its face the prohibition against delegating the power to amend the articles. This required concurrence by the original pastor was an unlawful delegation to one person, and was not a "greater proportion" of directors as contemplated by RCW 24.03.165(2) and .455, because all directors did not have the same rights.

(CP 653) Judge Quinn also found that the senior elders' actions on the afternoon of March 4 were valid despite the lack of notice to Pastor Barnett. Judge Quinn reasoned that the afternoon meeting was simply a "continuation" of the morning meeting.  
(CP 655)

Judge Quinn's order failed to resolve Pastor Barnett's affirmative defenses. The defendants moved for summary judgment on these defenses. In response, approximately three hundred members of the congregation filed affidavits that they accept Pastor Barnett's authority and financially supported the church in reliance on their beliefs that he was the spiritual head of the church:

Pastor Barnett is to lead the congregation from pentecost to the feast of tabernacles. I have been an active member of Community Chapel and have given my tithes and offerings based on supporting the ministry of Donald Barnett. My religious conviction is that there is one Pastor of Community Chapel who is over the Senior Elders and they are not allowed to take any action which would remove him.

(CP 702, 756)

On December 16, 1988, Judge Quinn signed a second summary judgment order dismissing all of Pastor Barnett's affirmative defenses. (CP 861-62)

Judge Quinn found that there was no just reason for

delay and directed the clerk to enter judgment. (CP 862) Although it reserved defendants' second counterclaim to remove Pastor Barnett for cause, this order was a final judgment because the second counterclaim need not be resolved unless this court reverses summary judgment and remands for trial.

Judge Quinn dissolved the restraining orders and enjoined Pastor Barnett from attempting to interfere in any way with the operations of Community Chapel. (CP 859-60) Judge Quinn ordered Pastor Barnett to deliver all property to the corporation, including keys, monies, records, accounts, files, books, tapes, to the elders. (CP 859)

Pastor Barnett filed a timely Notice of Appeal on December 19, 1988. (CP 857).

#### IV. ARGUMENT

##### A. Summary of Argument.

This case is unique. Neither party has found 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. There is no authority for the defendants' position and the trial court's decision because they

are wrong. The legislature clearly intended to allow corporations to vary the statutory scheme and create individual provisions such as the concurrence requirement of the Community Chapel articles.

This case is also unique in that neither party has found any case striking down an article of church government based on a perceived inconsistency with state corporation laws. Even assuming for the sake of argument that the trial court correctly interpreted the Nonprofit Corporation Act, the trial court still erred in granting summary judgment because the court's interpretation violated the first amendment of the U.S. Constitution and Article I, § 11, of the Washington Constitution. A court cannot judicially veto portions of a church's governing articles. Both the trial court and the defendants failed to identify any state interest sufficiently compelling to justify this violation of Pastor Barnett's constitutional rights.

This court should avoid these constitutional violations by interpreting the Nonprofit Corporation Act to allow Pastor Barnett's right of concurrence. Alternatively, the court should hold that the trial court's interpretation violates the first amendment,

or that the trial court's interpretation violates the guarantee of absolute freedom of religion under the Washington Constitution. In any case, the court should reverse the summary judgment and remand for reinstatement of Pastor Barnett as pastor of Community Chapel.

B. The Nonprofit Corporation Act Does Not Invalidate The Requirement That Pastor Barnett Concur In Any Amendment To Community Chapel's Articles Of Incorporation.

1. Introduction.

The trial court held that Pastor Barnett's right to disapprove any amendment to the corporate articles was inconsistent with RCW 24.03.115, which prohibits delegation of certain power to committees of the Board of Directors, and with RCW 24.03.165(2), which allows a majority of the directors to amend articles of incorporation. This was error, because neither section purports to invalidate a concurrence requirement such as that contained in Community Chapel's articles of incorporation. Nothing in the Nonprofit Corporation Act or in any other state legislation governing religious societies suggests any legislative intent to prohibit the form of control provided by the concurrence doctrine as embodied in Community Chapel's articles of incorporation and bylaws.



Finally, even if the trial court's interpretation of the Nonprofit Corporation Act was correct, Pastor Barnett's right of concurrence nevertheless remains valid under the savings clause enacted by the legislature as part of that Act.

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

The Nonprofit Corporation Act prohibits directors from delegating the authority to amend the bylaws or articles of a nonprofit corporation:

If the articles of incorporation or the bylaws so provide, the Board of Directors . . . may designate and appoint one or more committees each of which shall consist of two or more directors, which committees . . . shall have and exercise the authority of the Board of Directors in the management of the corporation: provided, that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the bylaws; [or] amending the articles of incorporation. . .

RCW 24.03.115. This prohibition against delegation to a committee of the board of directors has no application to the Community Chapel concurrence requirement because the board of directors never delegated any power to Pastor Barnett.

The articles of incorporation themselves give Pastor Barnett the right of concurrence - the direc-

tors have not appointed Pastor Barnett or delegated any authority to him. Further, the concurrence requirement does not give Pastor Barnett the right to alter or amend the bylaws or the articles. The elders still have this power. Pastor Barnett can only approve or disapprove the board's power. RCW 24.03.115 simply does not apply to this case.

3. The Concurrence Requirement Does Not Violate RCW 24.03.165 Because The Legislature Clearly Intended To Allow Corporation Articles To Vary These Statutory Voting Requirements. Nothing In The Nonprofit Corporation Act Or Any Other Statute Suggests Any Legislative Intent To Prohibit One-Person Control Of A Religious Society.

The trial court held that the concurrence requirement also violated RCW 24.03.165, which provides for amendments to the articles of a nonprofit non-member corporation on majority vote of the directors. The concurrence requirement does not violate this statute because the legislature has provided that the statutory provision may be modified by a corporation's own articles of incorporation to "require the vote or concurrence of a greater proportion of the . . . directors. . . ." RCW 24.03.455.

The Nonprofit Corporation Act thus clearly allows incorporators to vary statutory voting requirements in the articles of incorporation. Consistent with this legislative intent, the articles of Community Chapel appropriately provide for a "greater proportion" of directors than a simple majority by providing that any vote cast must include Pastor Barnett's.

The trial court concluded that "[t]his required concurrence by the original pastor . . . was not a 'greater proportion' of directors as contemplated by RCW 24.03.165(2) and .455, because all directors did not have the same rights." (CP 653) This interpretation ignores the well-established principle of statutory construction that language within a statute must be construed in a manner consistent with the general purposes of the statute, in order to effectuate the objective of the legislature. PUD No. 1 of Lewis County v. WPPSS, 104 Wn.2d 353, 369, 705 P.2d 1195 (1985); Amburn v. Daly, 81 Wn.2d 241, 245, 501 P.2d 178 (1972). The court should effectuate the legislative purpose of allowing a corporation to depart from the statutory voting scheme by interpreting RCW 24.03.455 to authorize the concur-

rence requirement in Community Chapel's articles and bylaws.

"Legislative intent is to be ascertained from the statute as a whole; and the sequence of all statutes relating to the same subject matter should be considered." Ravsten v. Dept. of Labor & Industries, 108 Wn.2d 143, 150, 736 P.2d 265 (1987). All statutes relating to religious societies should be considered together. See State v. Houck, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). A review of Washington legislation relating to religious societies does not reveal any legislative intention at any time to prevent one person from exercising the right of concurrence embodied in Community Chapel's articles and bylaws. To the contrary, the legislature has consistently allowed one person to control a religious organization.

The territorial legislature first regulated religious societies in an 1881 act which became RCW ch. 24.08. Code 1881, § 2451 et seq. This legislation was repealed as of July 1, 1969, by the Washington Nonprofit Corporation Act, RCW ch. 24.03. Laws 1967, ch. 235. Nothing in the earlier legislation required any specific number of directors or

established any voting pattern for directors. The concurrence requirement was clearly valid under RCW ch. 24.08, the law in effect at the time Community Chapel was incorporated.

The Nonprofit Corporation Act initially required three directors for any corporation. Laws 1967, ch. 235, § 21 (former RCW 24.03.100). In 1986, this requirement was changed to permit a one-member board of directors. Laws 1986, ch. 240, § 15. RCW 24.03.100. This change was designed to make the Nonprofit Corporation Act consistent with the Business Corporation Act. Senate Bill Report, SB 4491 (February 4, 1986). The amendment was based on the Model Business Corporation Act, which rejected the common law tradition that a board of directors must consist of a minimum of three directors in favor of the modern perception that it may be appropriate to vest full management power in one or two persons. Model Business Corporation Act Annotated, § 8.03 (official comment).

This change reflects a legislative determination that a nonprofit corporation may allow one person to exercise unique powers of control. This is the only effect of the concurrence requirement in the

Community Chapel articles, and it is clearly consistent with the general statutory scheme for nonprofit corporations.

One other statute reflects a legislative determination that religious organizations may allow a spiritual leader to exercise exclusive management control. RCW ch. 24.12 authorizes a "corporation sole," under which "the bishop, overseer or presiding elder of any church" may be deemed to be a corporation. RCW 24.12.010.<sup>3</sup>

Reading these statutory provisions together, this court should conclude that the Washington legislature has never disapproved concentration of the control of a religious organization in the hands of one person. The trial court's interpretation of the Nonprofit Corporation Act marks a radical departure from this tradition. "It is not to be assumed that the legislature would effect such a change by mere implication." Little v. Little, 96 Wn.2d 183, 191, 634 P.2d 498 (1981). The court should hold that

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<sup>3</sup>Recognition of the corporation sole was evidently a legislative accommodation of the Roman Catholic position that church property is ultimately controlled by the ecclesiastical authority, not by a board of lay trustees. A. Stokes and L. Ffeffer, Church and State in the United States, at 541-45 (1964).

the concurrence requirement of Community Chapel's articles and bylaws is valid.

4. Pastor Barnett's Right To Concur In Amendments To The Corporate Articles Was Preserved By The Savings Clause Of The Nonprofit Act.

The savings clause of the Nonprofit Corporation Act calls for full prospective application to all existing corporations, but also preserves all existing rights:

. . . The repeal of any prior act or part thereof by this chapter shall not affect any right accrued or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. . . .

RCW 24.03.905. The court should hold that this savings clause preserved Pastor Barnett's right of concurrence even if RCW 24.03.165 or RCW 24.03.115 would otherwise invalidate the concurrence provisions.

The Community Chapel articles and bylaws conferred a specific right on Pastor Barnett which was preserved by the savings clause of the Nonprofit Act. This result is particularly appropriate in light of the legislature's consistent approval of one person control over the affairs of religious societies.

C. The Trial Court Violated The State And Federal Constitutions By Striking Down An Organizational Tenet Of A Church On The Basis Of An Inconsistent Statute.

1. Introduction: The Concurrence Requirement Is An Organizational Tenet Of Community Chapel.

In this case, a secular court struck down a principle of church government based on a statutory scheme which the trial court found to require a particular manner of church decision-making. Applying the Nonprofit Corporation Act in this manner violated the religious guarantees of the first amendment of the U.S. Constitution<sup>4</sup> and of Article I, § 11 of the Washington Constitution. The statute as interpreted improperly restricts the free exercise of the religious beliefs of Pastor Barnett and the members of Community Chapel.<sup>5</sup> It also improperly aids the establishment of types of religious organizations which do not give their spiritual leader certain

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<sup>4</sup>The first amendment applies to the states. Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L. Ed. 1213 (1940); Everson v. Bd. of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L. Ed. 711 (1947).

<sup>5</sup>Pastor Barnett has standing to assert his own constitutional rights and those of members of Community Chapel. See Larson v. Valente, 456 U.S. 228, 102 S.Ct. 1673, 72 L. Ed.2d 33 (1982); Tony and Susan Alamo Fdn. v. Secretary of Labor, 471 U.S. 290, 105 S.Ct. 1953, 1962 n. 26, 85 L. Ed. 2d 278 (1985).



powers of control within the church organization. No state interest, compelling or otherwise, justifies this intrusion into church government.

The concurrence requirement reflects church doctrine, and was not adopted accidentally or by happenstance. The members of Community Chapel supported the church through the years, accepted Pastor Barnett as the leader of the congregation, and gave their tithes and offerings based on the conviction that Pastor Barnett should exercise certain controls as their spiritual leader. Our state and federal constitutions protect the rights of Pastor Barnett and his parishioners to exercise this concurrence doctrine.

2. The Free Exercise Clause Protects Pastor Barnett's Rights To Exercise The Concurrence Requirement Established In The Articles and Bylaws Because of Church Doctrine.

The free exercise clause of the first amendment prohibits government regulation that substantially burdens the practice of any religion. In this case, the Nonprofit Corporation Act as interpreted by the trial court burdens the practice of the religion of Pastor Barnett and the members of his congregation by precluding application of the concurrence doctrine

found in the church's articles and bylaws. The court must weigh the governmental interest in the regulation against the free exercise rights of Pastor Barnett and his congregation. The regulation is invalid unless it burdens religious freedom no more than is necessary to promote an overriding secular interest. Neither the trial court nor the defendants have ever identified any state interest which outweighs Pastor Barnett's free exercise rights. Thus, the Nonprofit Corporation Act cannot prevent enforcement of the concurrence doctrine.

A secular court's failure to respect the organizational tenets of a religious body improperly impedes to the free exercise of that religion. The state cannot intrude into church government or change the decision of church leaders:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.

It is of the essence of these 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 an appeals as the organism itself provides for.

Watson v. Jones, 13 Wall. 679, 728-29, 80 U.S. 679, 20 L. Ed 666 (1872).

In Watson, the Supreme Court held that a secular court must comply with the previously established decision-making process of the religious organization in resolving disputes within an independent religious group. Watson early established that it is unconstitutional for a secular court to impose a civil method of dispute resolution on a religious organization in conflict with its form of church government:

The opinion radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

Kedroff v. Saint Nicholas Cathedral, 344 U.S. 54, 116, 73 S. Ct. 143, 97 L. Ed. 120, 136 (1952), discussing Watson v. Jones, supra. The trial court blatantly violated this freedom from interference by enforcing its interpretation of the Nonprofit Corporation Act.

The U.S. Supreme Court applied the reasoning of Watson to strike down another statute governing religious organizations in Kedroff, supra. In Kedroff, the American branch of the Russian Orthodox Church relied upon a state statute to justify its control of a church. The Supreme Court invalidated the New York legislation giving control of the church and its property to the American sect. The statute violated the free exercise clause of the first amendment by interfering with the control and decisions of the church:

Article 5-c undertook by its terms to transfer the control of the New York churches . . . . This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment. It prohibits in this country the free exercise of religion. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to the church statutes . . . prohibits free exercise of religion.

Kedroff v. St. Nicholas Cathedral, supra, 344 U.S. at 107-08. The legislature had no power to change church doctrine by statute in this way. See also Northside Bible Church v. Goodson, 387 F.2d 534, 538 (5th Cir. 1967) (striking down an Alabama statute that purported to authorize a 65% majority of a local

church to withdraw local church property from the use and control of a parent church organization).

Kedroff teaches that neither the courts nor the legislature can question a church on matters of religious doctrine or authority. The trial court's ruling had precisely that improper effect in this case. The trial court's refusal to honor Community Chapel's own organizational tenets violates the right to freely exercise religious beliefs guaranteed by the first amendment of the U.S. Constitution. As the U.S. Supreme Court held in Kedroff, a secular court cannot rely on a statute in this way to resolve a religious dispute.

The Washington Supreme Court has also consistently held that a secular court must defer to the organizational structure of a church:

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.

Church of Christ v. Carder, 105 Wn.2d 204, 209, 713 P.2d 101 (1986), quoting Watson v. Jones, supra, 13 Wall. at 725. The Carder Court held that the church board's decision to terminate a preacher against the wishes of the majority of the congregation must be

enforced because the church's organizational provisions gave the board this power:

The Association's constitution vested powers of control of business matters in the church board. It was pursuant to this authority that a majority of the church board decided to terminate Carder as preacher. In Bower v. Root, 169 Wash. 671, 14 P.2d 965 (1932), this court recognized the validity of the church officers' actions when authorized by church rules, even though such actions contravened the wishes of the majority.

Church of Christ v. Carder, supra, 105 Wn.2d at 209.

The Court thus affirmed the trial court's order enforcing the church board's decision, and declared invalid the subsequent attempts by the majority of the church members to transfer control of the church and its property.

The sole justification for the trial court's intrusion into the beliefs and government of Community Chapel was a perceived inconsistency between the Nonprofit Corporation Act and the church's articles and bylaws. Judge Quinn's ruling collided with the constitutional principle that even "any incidental burden on the free exercise of appellant's religion may be justified [only] by a 'compelling

state interest in the regulation of a subject within the state's constitutional power. . ." City of Sumner v. First Baptist Church, 97 Wn.2d 1, 7-8, 639 P.2d 1358 (1982), quoting Sherbert v. Verner, 374 U.S. 398, 403, 10 L.Ed.2d 965, 83 S.Ct. 1790 (1963) (emphasis in original).

In First Baptist Church, the state Supreme Court rejected the argument that the state may blindly insist on "uniform" safety regulations without regard to first amendment values. The First Baptist Church operated a school in the basement of the church building which did not meet the City of Sumner's building code and zoning ordinances for schools. The Supreme Court recognized a valid state interest in applying reasonable health, fire and safety standards to private religious schools, but reversed the trial court's injunction against use of the church building for school purposes. The Court pointed out that the free exercise guarantees of the first amendment are violated by burdensome state regulations even if those regulations have only an indirect impact on the free exercise of religious beliefs:

So in this case, although there is no fundamental tenet against compliance with building codes or zoning ordinances, the practical effect of their uncompromising enforcement would be to close down the

church-operated school. This would deny to church members the right to guide the education of their children by sending them to their church-operated school, a fundamental and constitutionally protected right.

City of Sumner v. First Baptist Church, supra,  
97 Wn.2d at 7.

Enforcement of the City of Sumner's building code would not have prohibited the members of the Sumner church from operating a school at any other location. It only precluded using the church building as a school until it complied with fire and safety codes which were concededly important. Nevertheless, the state Supreme Court held that the City of Sumner must accommodate the church to the greatest possible extent in order to insure that the government regulation did not impermissibly infringe on religious liberty. Just as the City of Sumner was required to accommodate religious beliefs and adopt the least restrictive means of achieving its interests, so the court in this case must accommodate Community Chapel's religious beliefs.

Pastor Barnett and his congregation have been precluded from worshipping under Pastor Barnett's leadership, at their own church, built by their own contributions. The only possible interest of the



state is a rigidly uniform application of a questionable interpretation of the Nonprofit Corporation Act. Yet the defendants have consistently failed to identify any public policy justifying the defendants' interpretation of the Nonprofit Corporation Act, other than blind insistence on uniform enforcement of state statutes. See, e.g., Respondent's Brief Opposing Stay Pending Appeal at 10, 14-35. The statute thus cannot be enforced to prohibit exercise of the concurrence doctrine embodied in the church's articles and bylaws.<sup>6</sup>

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<sup>6</sup>The American Bar Association's Revised Model Nonprofit Corporation Act recognizes the necessity of such governmental accommodation of religious beliefs:

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this act on the same subject, the religious doctrine shall control to the extent required by the constitution of the United States or the constitution of this state or both.

Revised Model Nonprofit Corporation Act, § 1.80 (1987). The official comment to this section explains why any statute must be so limited:

The model act avoids interfering with the free exercise of religion by negating or allowing religious corporations to negate provisions of the model act that might result in excessive entanglement in religious activities by the state. By limiting state intrusion the model act uses the least restrictive means to provide an orderly structure in which religious

3. The Establishment Clause Prohibits The Courts From Establishing A Form of Religious Government for Community Chapel That Prevents A Single Spiritual Leader From Exercising Concurrence Power Over Church Decisions.

Besides violating the rights of Pastor Barnett and his congregation to freely exercise their religious beliefs, the trial court's interpretation of the Nonprofit Corporation Act violates the establishment clause of the first amendment by establishing a denominational preference for those religions that do not allow a single spiritual leader to exercise a unique power to control church decisions.

A law such as the Nonprofit Corporation Act directly regulates religious organizations. Such direct government interference in the internal organization of a religious group is invalid when it has a primary effect of inhibiting religious activity or when it creates an excessive entanglement between government and religion. If the Nonprofit Corporation Act precludes the type of control which Pastor Barnett exercises over Community Chapel, it

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corporations can be formed and operate.

Official Comment to § 1.80.

violates the establishment clause of the first amendment.<sup>7</sup>

The first amendment was enacted not only to secure the free exercise of religion but to insure that the secular authorities refrain from interfering with church government, including the selection and compensation of ministers. The struggle against an established church in Virginia provided the model for the first amendment. A. Stokes and L. Pfeffer, Church and State in the United States, at 65, 92 (1964). In colonial Virginia, the government controlled the appointment of ministers and was empowered to silence the teaching or preaching of all other persons. The established Episcopal Church was

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<sup>7</sup>A law generally violates the establishment clause unless it can pass a three-part test. First, the law must have a secular purpose. Second, the law must have a primarily secular effect. Third, it must not involve the government in an "excessive entanglement" with religion. The degree of entanglement is analyzed by evaluating the character and purpose of the religious institution to be benefited, the nature of the aid, and the resulting relationship between the government and religious authorities. However, when a law directly regulates religious organizations, as in this case, it will be held invalid if it has a primary effect of inhibiting religious activity or if it creates an excessive entanglement between government and religion. Laws discriminating among religions thus are subject to strict scrutiny. See Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862 97 L. Ed. 2d 273 (1987).

vigorously attacked by Baptists, whose ministers often met unauthorized in homes and preached without licenses. W. Miller, The First Liberty, at 5, 15 (1986). Both Baptists and Presbyterians successfully pressed the Virginia House of Delegates for an end of the established church, largely through the efforts of James Madison. Miller, supra, at 7, 17, 34-50; Stokes and Pfeffer, supra, at 71. And it was Madison who first introduced the Bill of Rights into Congress and shepherded the first amendment through the legislative process. Stokes and Pfeffer, supra, at 92-100.

The first amendment's establishment clause prohibits laws which discriminate among religious organizations, and which prefer a particular type of church structure. The U.S. Supreme Court struck down a Minnesota statute which impeded a religion's right to solicit contributions from non-members as violative of the establishment clause in Larson v. Valente, 456 U.S. 228, 102 S.Ct. 1673, 72 L. Ed. 2d 33 (1982). The Minnesota Charitable Solicitation Act imposed registration and reporting requirements only on those religious organizations which solicited more than 50% of their funds from non-members. The

Court held that the denominational preference inherent in this classification was unconstitutional unless it was justified by a compelling government interest to which it was "closely fitted":

The clearest command of the establishment clause is that one religious denomination cannot be officially preferred over another.

Larson v. Valente, supra, 456 U.S. at 244-45, 102 S.Ct. at 1683. See also Northside Baptist Church v. Goodson, supra, 387 F.2d at 537.

Judge Quinn's ruling similarly preferred one type of church over another. If the Nonprofit Corporation Act precludes the enactment by a church organization of articles and bylaws embodying a concurrence doctrine of the type required by the religious beliefs of Pastor Barnett and the members of the Community Chapel, it in effect legislates a type of religious organization that does not give unique power to the church's spiritual leader. Legislating a more "democratic" religious structure is precisely the type of activity precluded by the establishment clause of the first amendment. The establishment clause prohibits the courts from establishing a form of religious government for Community Chapel that

prevents a single spiritual leader from exercising concurrence power over church decisions.

4. The Trial Court's Interpretation Of The Washington Nonprofit Corporation Act Violates Pastor Barnett's Absolute Freedom Of Conscience In All Matters Of Religious Sentiment, Belief And Worship, Guaranteed By The Washington Constitution.

The freedom of conscience clause of the Washington Constitution, Article I, § 11, provides protection of Pastor Barnett's religious rights which is independent of and stricter than the first amendment. The court should hold that the trial court's decision violated Pastor Barnett's rights under the Washington Constitution.

The Supreme Court has ruled that "our state constitution requires a far stricter separation of church and state than the federal constitution." Witters v. Commission for the Blind, 102 Wn.2d 524, 626, 689 P.2d 53 (1984), rev'd on other grounds 474 U.S. 481, 106 S.Ct. 748, 88 L. Ed. 2d 846 (1985), citing Weiss v. Bruno, 82 Wn.2d 199, 509 P.2d 973 (1973) (both discussing aid to schools). The freedom of conscience clause likewise requires a heightened protection of Pastor Barnett's rights to exercise the concurrence doctrine under the state constitutional law analysis undertaken by our state courts.

Stricter scrutiny is required under the Washington Constitution than under the first amendment because of the textual language of the state constitution, significant differences in the texts of these parallel provisions of the federal and state constitutions, and state constitutional and common law history. Cf. State v. Gunwall, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986) (discussing criteria for examining differences between federal and state constitutions)<sup>8</sup>.

The textual language of the state constitution requires heightened scrutiny. Article I, § 11 of the Washington Constitution provides:

RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion, but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. . . .

---

<sup>8</sup>This analysis under Gunwall should lead the court to apply a higher standard under the facts of this case. The court's rejection of a different standard in Backlund v. Board of Commissioner, 106 Wn.2d 632, 639 n.3, 724 P.2d 981 (1986), did not purport to foreclose this issue in other cases.

Section 11 is as comprehensive a guarantee of religious liberty as may be found anywhere, guaranteeing "absolute freedom of conscience in all matters of religious sentiment, belief and worship. . ." The state may intrude on freedom of conscience only in two situations: to prohibit "acts of licentiousness"; and to preserve "the peace and safety of the state." Other than this, absolute freedom is guaranteed and no one may be "molested or disturbed in person or property on account of religion. . ."

The establishment clause of § 11 is equally broad, prohibiting the use of public money or property for "any religious worship exercised or instruction, or the support of any religious establishment." As noted above, our courts have already determined that this establishment clause requires stricter scrutiny of state acts affecting religious organizations. See Weiss v. Bruno, supra.

Significant differences in the texts of federal and state constitutions also compel the conclusion that the Washington constitution provides heightened protection for religious freedom. The first amendment is not nearly so absolute as § 11: "Congress shall make no law respecting an establishment of



religion, or prohibiting the free exercise thereof. . ." U.S. Constitution, Amend. 1. The language of the first amendment does not "guarantee" absolute freedom of conscience in all matters of religious sentiment, belief and worship. Nor does the first amendment restrict any exceptions to the two narrow exceptions of the Washington Constitution.

State constitutional history is a third factor which requires independent interpretation of Washington's guarantee of religious freedom. Two major issues dominated the politics of religion at the time of adoption of the Washington Constitution: widespread disapproval of the Mormon practice of polygamy; and, distrust of the parochial school system established by the Roman Catholic Church leading to an effort to insure that public taxes not be diverted to the support of religious or sectarian schools. Conklin & Vache, The Establishment Clause and the Free Exercise Clause of the Washington Constitution--a Proposal to the Supreme Court, 8 U.P.S. L. Rev. 411, 430 (1985). The Congressional Enabling Act for statehood required the Washington Constitution to include a provision securing "perfect

toleration of religious sentiment" and prohibiting sectarian control of public schools. Act of February 22, 1889, Ch. 180, § 4, 25 Stat. 676 (1889). The provision required by the Enabling Act was included verbatim in Art. XXVI of the Washington Constitution.

However, the convention delegates were not content simply to secure "perfect toleration of religious sentiment." Art. I, § 11 goes far beyond mere toleration, prohibiting public support of any religious establishment and guaranteeing absolute freedom of conscience. The Washington delegates rose above the anti-Catholic sentiment of the 19th century to insure that all persons were guaranteed "absolute freedom of conscience, in all matters of religious sentiment, belief and worsh. p."

The court thus should hold that the trial court's decision must be struck down under the stricter standards of the state constitution, even if the trial court's ruling does not violate the federal constitution. The absolute freedom of Pastor Barnett and his congregation in all matters of religious sentiment, belief and worship includes the belief that scripture dictates that a church must be under the authority of a pastor, not under the demo-

cratic model of a collegial board of directors who must function by majority vote.

No one has ever suggested that the trial court's interpretation is required to restrain "acts of licentiousness" or to preserve "the peace and safety of the state." The trial court, further, violated the establishment clause of § 11 by lending its support to the doctrinal view espoused by the senior elders and rejected by Pastor Barnett. The trial court's interpretation of the Washington Nonprofit Corporation Act violates Pastor Barnett's absolute freedom of conscience in all matters of religious sentiment, belief and worship, guaranteed by the Washington Constitution.

D. Factual Disputes Concerning The Notice Provided For The Meetings Of The Defendant Elders Should Have Prevented Entry Of Judgment As A Matter Of Law Based On The Validity Of Acts Taken By The Elders At Those Meetings.

Even if the concurrence requirement was invalid under the Nonprofit Corporation Act and Pastor Barnett's exercise of his concurrence rights was not protected by the guarantees of the state and federal constitutions, a factual dispute concerning the notification of the meetings at which the defendants

purported to strip Pastor Barnett of his role in the church should have precluded summary judgment affirming those acts. Pastor Barnett asserts that the defendants failed to give adequate notice of their intention to "continue" the meeting of March 4. See CP 372. The acts taken by the defendants were invalid unless on proper notice. RCW 24.03.120, CP 20-21. In light of the factual dispute between the parties concerning the events on the morning of March 4, the court should not have entered judgment without a hearing and factual findings on whether there was a meeting, and whether that meeting was properly continued.

Corporate government would dissolve into anarchy if officers and directors could secretly convene to accomplish their own purpose without notice to all those responsible for corporate direction. On the disputed facts in this record, the trial court erred in granting judgment as a matter of law validating corporate acts that were taken at meetings called without proper notice.

V. CONCLUSION

For the reasons set out above, this 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 April 27, 1989.

EDWARDS & BARBIERI

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Charles K. Wiggins

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1988

*Handwritten signature*

HONORABLE NORMAN QUINN  
CIVIL TRACK I

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

DONALD L. BARNETT, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JACK A. HICKS, JACK A. DuBOIS, )  
and E. SCOTT HARTLEY, indivi- )  
dually and as the Board of )  
Directors of COMMUNITY CHAPEL )  
BIBLE TRAINING CENTER and )  
COMMUNITY CHAPEL AND BIBLE )  
TRAINING CENTER, )  
 )  
Defendants. )

NO. 88-2-04148-2

ORDER GRANTING DEFENDANTS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

THIS MATTER came on for hearing before the honorable  
Norman Quinn, upon the Defendants' first Motion for Partial  
Summary Judgment, and the Court having considered the certifi-  
cations of Jack DuBois (CP \_\_\_ ) and Scott Hartley (CP \_\_\_ )  
in favor of the motion and their Affidavits (CP \_\_\_ ), and their Reply  
Brief (CP \_\_\_ ) and the Declarations of Barnett (CP \_\_\_ ) and  
Pierce (CP \_\_\_ ), plaintiff's Memorandum (CP \_\_\_ ) and Supple-  
mental Memorandum (CP \_\_\_ ), excerpts from depositions of  
DuBois (CP \_\_\_ ) and Hartley (CP \_\_\_ ), and the Court having  
heard arguments by Robert J. Rohan, of Schweppe, Krug &  
Tausend, P.S., representing defendants, and Roger Johnson and

ORDER GRANTING DEFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 1

SCHWEPPE, KRUG & TAUSEND, P.S.  
800 WATERFRONT PLAZA  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 223-1600

APPENDIX A

051

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COPIES

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1 Further, Community Chapel voluntarily took advantage of the  
2 Nonprofit Act, RCW 24.03, when it amended its articles after  
3 that Act was passed, and is bound by all of the provisions of  
4 the Nonprofit Act. Furthermore, the Nonprofit Act, RCW  
5 24.03.010, specifically applies to not-for-profit corporations  
6 formed under prior acts, such as the former RCW 24.08 under  
7 which Community Chapel was originally formed. RCW 24.03.920  
8 (18) repealed the former RCW 24.08.

9 The requirement in Community Chapel's pre-March 4, 1988  
10 articles for concurrence by the original pastor (Barnett) in  
11 any amendment to the articles violated on its face the prohi-  
12 bition against delegating the power to amend the articles.  
13 This required concurrence by the original pastor was an unlaw-  
14 ful delegation to one person, and was not a "greater propor-  
15 tion" of directors as contemplated by RCW 24.03.020 and  
16 .455, because all directors did not have the same rights.

17 Both directors and officers can be removed by the board  
18 of directors here. RCW 24.03.103 and .130.

19 The articles and bylaws which on their face do not  
20 conform to the Nonprofit Act are, and were prior to March 4,  
21 1988, void as a matter of law.

22 3. The Articles Prevail Over Conflicting Bylaws.

23 On their face, the article and bylaw provisions regarding  
24 removal of Barnett as a director are in conflict. As a matter  
25 of law, articles prevail over conflicting bylaws and thus  
26



1 Barnett could be removed as a director by a three-fourths vote  
2 of the directors as provided in the articles here. RCW  
3 24.03.025. On its face, the articles require the same result.

4 4. The March 4 and 10, 1988 Meetings of the Directors  
5 Were Valid.

6 The Nonprofit Act provides for regular directors' meet-  
7 ings with or without notice and for special directors meetings  
8 upon such notice as set forth in the bylaws. RCW 24.03.120.

9 It is undisputed here that (a) the bylaws do not provide any  
10 notice for regular or special directors meetings; (b) all four  
11 directors were present at Barnett's house on the morning of

12 March 4, 1988; (c) ~~there was a discussion among the four of~~  
13 ~~whether Barnett would permit a directors meeting;~~  
14 ~~whether Barnett would permit a directors meeting;~~

15 (d) Barnett at one point ~~asked~~ <sup>ASKED</sup> the other three directors to  
16 leave his house, which they did; (e) ~~the pattern estab-~~

17 ~~lished by the original articles and bylaws and all provisions~~  
18 ~~thereof was to not require notice of directors meetings;~~ (f)

19 there was a bylaw that stated that directors' meetings must  
20 either be permitted by Barnett or held in his presence; and

21 (g) all directors were in Barnett's presence on the morning of  
22 March 4, 1988. The Court determines that there was a valid

23 directors' meeting on the morning of March 4, 1988. This  
24 meeting was not terminated by Barnett's <sup>REQUEST</sup> ~~demand~~ that the other

25 directors leave his house. This <sup>REQUEST</sup> ~~demand~~ reflected Barnett's  
26 clear choice not to participate in that meeting, either at

that time or at any continuation of that meeting later that

1 day. Based on the undisputed facts, and Barnett's own declar-  
2 ation, it is unbelievable to suggest that Barnett intended to  
3 or evidenced an intent to participate further in the meeting  
4 on the morning of March 4, 1988, or any continuation of that  
5 meeting later that day.

6 It is undisputed that directors Hartley, Hicks and  
7 DuBois, ~~either in Barnett's presence or later on~~ March 4, 1988  
8 ~~after Barnett demanded that they leave his house,~~ voted to  
9 amend the articles, and that later that same day after leaving  
10 Barnett's house, they voted to amend the bylaws, remove  
11 Barnett as a director, and disfellowship Barnett. It is also  
12 undisputed that on March 10, 1988, that directors Hartley,  
13 Hicks, and DuBois met and voted to further amend the bylaws.

14 Based on the foregoing determinations and its conclusion  
15 that defendants are entitled to partial summary judgment as a  
16 matter of law, now, therefore, it is hereby ORDERED and  
17 DECLARED that:

18 A. The March 4 and March 10, 1988 amendments by  
19 Hartley, Hicks and DuBois to the Articles of Incorporation and  
20 Bylaws of Community Chapel and Bible Training Center Corpora-  
21 tion were and are valid actions of its board of directors, and  
22 are set forth on Exhibits A, B and C which are hereby incor-  
23 porated by this reference; and that the other actions by  
24 Hartley, Hicks and DuBois on March 4, 1988 were valid actions  
25 of the corporation's Board of Directors, namely removing  
26

ORDER GRANTING DEFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 5

SCHWEPPE, KRUG & TAUSEND, P.S.

900 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
1206 / 223-6000

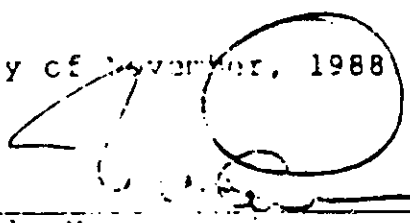
055

APPENDIX A

1 plaintiff Barnett as a member of the Board of Directors (Board  
2 of Senior Elders), as set forth on Exhibit D and incorporated  
3 by this reference, and removing Barnett from all of his  
4 officer positions with Community Chapel and Bible Training  
5 Center Corporation and disfellowshipping Barnett; and

6 B. Those provisions of Community Chapel's articles and  
7 bylaws in derogation of the Washington Nonprofit Corporation  
8 Act, RCW 24.03, are and were void prior to March 4, 1988, and  
9 the articles and bylaws are hereby conformed to the Act, and  
10 those portions of the articles and bylaws which are and were  
11 void are those circled on Exhibit E hereto which is hereby  
12 incorporated by this reference.

13 DONE IN OPEN COURT this 30<sup>th</sup> day of November, 1988



Honorable Norman Quinn

16 Presented by:

17 SCHWEPPE, KRUG & TAUSEND, P.S.

18  
19 By Robert J. Rohan  
20 Robert J. Rohan  
21 Attorneys for Defendants

22 C. This order is  
23 subject to those  
24 affirmative defenses  
25 not decided by the  
26 Court.

22 Copy Received: Notice of  
23 Presentation Waived:

24 By Roger Johnson Rodney G Pierce  
25 Roger Johnson Rodney G Pierce  
26 Attorney for Plaintiff  
06831

ORDER GRANTING DEFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT - 6

APPENDIX A

SCHWEPPE, KRUG & TAUSEND, P.S.  
800 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON, PERC  
206 223 1600

DEC 20 1988

HONORABLE NORMAN QUINN  
CIVIL TRACK I

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

DONALD L. BARNETT )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JACK A. HICKS, JACK H. )  
 DuBOIS, and E. SCOTT HARTLEY, )  
 individually and as the Board )  
 of Directors of COMMUNITY )  
 CHAPEL BIBLE TRAINING CENTER )  
 and COMMUNITY CHAPEL AND )  
 BIBLE TRAINING CENTER, )  
 )  
 Defendants. )

NO. 88-2-04148-2

ORDER AND JUDGMENT GRANTING  
DEFENDANTS' SECOND MOTION FOR  
PARTIAL SUMMARY JUDGMENT

THIS MATTER having come on for hearing before the Honorable  
 Norman Quinn, upon the Second Motion of Defendants for Partial  
 Summary Judgment, and the Court having reviewed defendants Motion  
 (CP \_\_\_\_\_), and Reply Brief (CP \_\_\_\_\_) and pleadings submitted  
 by plaintiff Donald L. Barnett, including the declarations of

*those documents referenced at page 3 of Plaintiff's brief,*  
 (CP \_\_\_\_\_) and \_\_\_\_\_ (CP \_\_\_\_\_) and  
 Plaintiff's Memorandum (CP \_\_\_\_\_), and the Court having heard  
*together with articles and by-laws previously submitted with declarations*  
 arguments by Robert J. Rohan, of Schweppe, Krug & Tausend,  
*of members of congregation*  
 representing defendants, and attorneys representing plaintiff,

and the Court finding that there are no genuine issues of  
 disputed fact, and that defendants are entitled to partial  
 summary judgment as a matter of law, now, therefore, it is hereby

441.7

ORDER AND JUDGMENT GRANTING  
DEFS' SECOND MOTION FOR  
PARTIAL SUMMARY JUDGMENT -1-

SCHWEPPE KRUG & TAUSEND PS

561

APPENDIX B

1 ORDERED, ADJUDGED AND DECREED that:

2 1. The following affirmative defenses of plaintiff are  
3 dismissed: 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 2.14, 2.15,  
4 2.16, 2.18, 2.19, 2.20.

5 2. This Court confirms that it has previously dismissed  
6 plaintiff's affirmative defenses 2.7 and 2.8.

7 3. Defendants' counterclaim may be amended to include an  
8 allegation that all licenses and fees have been paid.

9 Based on the foregoing order, JUDGMENT is hereby entered as  
10 follows:

11 1. Plaintiff's complaint is dismissed with prejudice.

12 2. Defendants are granted judgment on their first  
13 counterclaim. The declaratory relief set forth in this Court's  
14 Order Granting Defendants' Motion for Partial Summary Judgment,  
15 entered November 30, 1988, is now a final declaration of the  
16 rights of the parties with respect to defendants' first  
17 counterclaim.

18 3. Defendants are entitled to their statutory costs and  
19 fees herein.

20 4. There is no just reason for delay. The Clerk is  
21 expressly directed to enter this judgment.

22 DONE IN OPEN COURT this 16<sup>th</sup> day of December, 1988.

23  
24 \_\_\_\_\_  
JUDGE

*Quinn*  
QUINN

25  
26  
ORDER AND JUDGMENT GRANTING  
DEFS' SECOND MOTION FOR  
PARTIAL SUMMARY JUDGMENT -2-

**APPENDIX B**

SCHWEPPE, KRUG & TAUSEND P.S.

800 WATERBURY PLACE  
OF WASHINGTON  
SEATTLE, WASHINGTON 98101  
206 465 6000

562

1 Presented by:


2 SCHWEPPE, KRUG & TAUSEND, P.S.

3 

4 ROBERT J. ROWAN  
Attorneys for Defendants

5 ~~Copy Received; Notice of~~  
6 ~~Presentation Waived:~~

7 LAW OFFICES OF RODNEY G. PIERCE

8   
9 RODNEY G. PIERCE  
Attorney for Plaintiff

10 0147-001\0121588.RJR

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ORDER AND JUDGMENT GRANTING  
DEFS' SECOND MOTION FOR  
PARTIAL SUMMARY JUDGMENT -3-

**APPENDIX B**

SCHWEPPE, KRUG & TAUSEND, P.S.

503

800 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 223-1600

FILED

1988 DEC 23 11 8 02

HONORABLE NORMAN QUINN  
CIVIL TRACK I

SUPERIOR COURT CLERK  
SEATTLE, WASH.

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

DONALD L. BARNETT )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JACK A. HICKS, JACK H. )  
 DuBOIS, and E. SCOTT HARTLEY, )  
 individually and as the Board )  
 of Directors of COMMUNITY )  
 CHAPEL BIBLE TRAINING CENTER )  
 and COMMUNITY CHAPEL AND )  
 BIBLE TRAINING CENTER, )  
 )  
 Defendants. )

NO. 88-2-04148-2

ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION

THIS MATTER came on regularly for hearing upon the Motion of Defendants for an Order Dissolving Restraining Orders. The Court having granted defendants' second motion for partial summary judgment, which effectively disposes of all claims in this case, and the Court having reviewed the declarations filed in connection with this motion and Defendants' Motion for Contempt, and having heard arguments by counsel, and the Court finding that the plaintiff has lost on the merits and that the restraining order previously obtained by plaintiff on March 15, 1988 should not have been issued, and that the March 17, 1988 restraining order should be dissolved, now, therefore, it is hereby

441.6

ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION -1-

APPENDIX C

558

SCHWEPPE, KRUG & TAUSEND, P.S.  
800 WATERFRONT PLACE  
1001 WESTERN AVENUE  
SEATTLE, WASHINGTON 98104  
206 223 6000

1 ORDERED that

2 1. All restraining orders issued in this case are  
3 dissolved.

4 2. The Court shall retain the bond posted by plaintiff  
5 until further order of this Court.

6 3. The clerk shall return the bond posted on or about  
7 March 18, 1988 by defendants, to defendants immediately without  
8 further order of this Court.

9 4. Plaintiff Donald L. Barnett is immediately and  
10 permanently enjoined from attempting to or actually interfering  
11 in any way with the operations, functions, programs, services,  
12 management, or governing or any other activities of the  
13 corporation.

14 5. ~~Within \_\_\_\_\_ days from the entry of this order,~~  
15 ~~plaintiff shall deliver to the corporation all personal property~~  
16 ~~of the corporation, except automobiles, presently in his~~  
17 ~~possession or control. Without limiting the foregoing, this~~  
18 ~~shall include all monies, records, accounts, files, books, tapes,~~

19 *no* and keys. Keys to be delivered by 5:00 p.m. Dec 17, 1988. A-1  
20 *all* ~~other personal property~~ by 5:00 p.m. Dec 19, 1988.

21 ~~6. Within \_\_\_\_\_ days from the entry of this order,~~  
22 ~~plaintiff shall return to the corporation all corporate~~  
23 ~~automobiles and shall vacate the corporation's parsonage.~~

24 6.7. As used herein, the "corporation" refers to Community

25  
26  
ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION

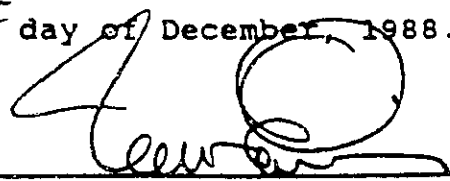
APPENDIX C

S. J. SCHWEPPE, KRUG & TAUSEND, P.S.  
800 WATERFRONT PLACE  
1011 WESTERN AVENUE  
SEATTLE WASHINGTON 98104  
(206) 223-1600



1 Chapel and Bible Training Center, Inc., and all of its divisions.

2 DONE IN OPEN COURT this 16<sup>th</sup> day of December, 1988.



JUDGE NORMAN QUINN

5 Presented by:

6 SCHWEPPE, KRUG & TAUSEND, P.S.

7   
8 ROBERT J. ROHAN  
9 Attorneys for Defendants

10 ~~Copy Received; Notice of~~  
11 ~~Presentation Waived:~~

12 LAW OFFICES OF RODNEY G. PIERCE

13   
14 RODNEY G. PIERCE  
15 Attorney for Plaintiff

16 0147-001\0121688.RJR

17  
18 7. BARNETT shall be entitled to use the  
19 Chapel for worship services on the evenings  
20 of Friday December 16 and 23, 1988, and on the  
21 mornings and evenings of Sunday, December  
22 18 and 25, 1988.

23 8. Barnett shall be entitled to remain in the personage  
24 on a rent free basis until his interest in the  
25 personage is determined. During such period  
26 he shall maintain the property in its current  
condition and pay all applicable utilities.

ORDER DISSOLVING RESTRAINING  
ORDERS AND GRANTING PERMANENT  
INJUNCTION -3-

APPENDIX C

SCHWEPPE, KRUG & TAUSEND, P.S.

5(11)

800 WATERFRONT PLACE  
100 WESTERN AVENUE  
SEATTLE WASH 98104  
206 423 6000

## APPENDIX D

### U.S. Constitution

Amendment I. Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### Washington State Constitution

Article 1, § 11. Religious Freedom

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

RCW 24.03.115. Committees

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: Provided, That no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law.

RCW 24.03.165. Procedure to amend articles of incorporation

Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, with regard to the question, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having

voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, with regard to the question, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

#### RCW 24.03.455 Greater voting requirements

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

#### RCW 24.03.905 Savings

Any corporation existing on the date when this chapter takes effect shall continue to exist as a corporation despite any provision of this chapter changing the requirements for forming a corporation or repealing or amending the law under which it was formed. The provisions of this chapter shall, however, apply prospectively to the fullest extent permitted by the Constitutions of the United States and the state of Washington to all existing corporations organized under any general act of the territory or the state of Washington providing for the organization of corporations for a purpose or

purposes for which a corporation might be organized under this chapter. The repeal of any prior act or part thereof by this chapter shall not affect any right accrued or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. The repeal of a prior act or acts by this chapter shall not affect any existing corporation organized for a purpose or purposes other than those for which a corporation might be organized under this chapter.