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No. 628488

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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THOMAS RENTZ, JR., ET AL.,

Appellants,

v.

JANN WERNER, an individual; and THE AQUARIAN FOUNDATION,  
a Washington non-profit corporation,

Respondents.

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REPLY BRIEF OF APPELLANTS

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## INTRODUCTION

This case is determined by the plain language of the Church Bylaws and Articles. Those governing documents define the Church Member rights at issue – the rights to be a Member, to vote in elections, to select Board members, to select the President, etc. - as “mandatory” unqualified rights with repeated use of the word “shall” (“Admission to membership in this Church shall be open to ...all ...”; “All of the officers shall be elected by the members at its biannual meeting”; “the term of office of the officers shall be for two years...”; “The Church Board of Directors ... shall be elected by the members”).

Rhinehart easily could have provided in the Bylaws for some type of religious or ecclesiastical decision by the Church as a prerequisite for membership, or voting, or any of the rights at issue in this case. He also could have provided that some tribunal within the Church should decide disputes like this dispute rather than the courts. He chose not to do so. Instead, he defined those rights in unqualified and unambiguous language in the Bylaws and Articles. That language is decisive of this case and those rights should be enforced by this Court.

Werner’s arguments cannot overcome the plain language of the Bylaws and Articles. Werner’s 37 page brief is striking in that, with one exception, Werner never even mentions the controlling provisions of the Articles and Bylaws. Werner does not contest the interpretation of the Articles and Bylaws asserted by the Church Members, and at one point tacitly admits that the Church Members’ interpretations are correct.

Werner's arguments are devoted to claiming that the language of the Bylaws simply does not matter. Her arguments are internally inconsistent, for she repeatedly asks the Court to interpret the Bylaws at the same time she claims that the Court cannot do so.

Werner's "hierarchical argument" based on *Watson v. Jones*, 80 U.S. 679 (1871), misapplies the hierarchical/congregational distinction in a tortured, multistep chain of flawed reasoning. Werner misapplies the "hierarchical" label to seek to have the Court rely only on the Bylaws that Werner likes, and ignore the Bylaws that make clear that Werner does not have the powers she claims. And *Watson* does not support Werner's contention that the Court lacks jurisdiction to decide this matter. *Watson* stands for the proposition that courts enforce church rules that empower church tribunals to decide disputes, but there are no such rules, and no such tribunals, for this Church. Rhinehart left issues like this dispute to the Courts.

Werner's argument regarding the so called "Ministerial Exception" takes two broad quotes from *Elvig v. Ackles*, 123 Wn. App. 491, 98 P.3d 524 (2004) and *Gates v. Seattle Archdiocese*, 103 Wn. App. 160, 10 P.3d 435 (2006), and extrapolates those quotes into a so called "rule" that is not supported by *Elvig* and *Gates* and contradicted by numerous other cases.

Werner's argument that this case is a "doctrinal dispute" under *S.H.C. v. Lu*, 113 Wn. App. 511, 4 P.3d 174 (2002), is also incorrect. This case merely seeks to enforce the written Bylaws of a nonprofit entity under RCW 23.04. *Lu* also enforced internal church rules. Werner's

unstated reasoning on that issue is wholly circular – the only basis for her claim that the issue is “doctrinal” is her own assertion that it is doctrinal.

Finally, Werner’s “Statement of the Case” asserts a wide variety of factual assertions that are generally not tied into the three legal arguments in the “Argument” section of her brief. These factual assertions in many instances contain implied arguments. The last section of this brief briefly addresses a number of these facts/implied arguments.

In the end this case is determined by the plain language of the Church Bylaws and Articles. Those Bylaws and Articles should be enforced and this Court should issue the rulings limiting Werner’s powers set forth on page 3 of the Church Members’ opening brief.

### **ARGUMENT**

**1. Werner does not even dispute the Church Members’ interpretation of the Bylaws and Articles.** The Church Members extensively briefed the proper interpretation of the relevant portions of the Articles and Bylaws at pages 15-22 and 32-47 of their brief. Those provisions make clear that the fundamental membership rights in dispute are mandatory “shall” rights, not qualified in any way. These provisions include statements such as:

- “Only members of this Church shall elect the Board of Directors ...”
- “The Church Board of Directors...shall be elected by the members...”

- “All of the officers shall be elected by the members at its biannual meeting.”
- “The term of office of the officers shall be for two years ...”

The Church Members quoted the relevant language in their brief and explained how, by dictionary definition and rules of construction, their interpretation was correct, and this is an organization where the church members elect the board, and the Board controls the minister. It is not a dictatorship where the minister has absolute control over everyone and everything. Church Members’ opening Brief, pp. 15 – 22, 32 – 47.

The Church Members also explained how Rhinehart could have easily given the Minister the dictatorial powers that Werner claims in the Bylaws by stating, e.g., that “The Minister has discretion to reject any membership application”; or “The Minister has the power to expel any member”; or “The Minister shall choose the Board of Directors”; or “The President shall serve for life”. But Rhinehart did not. Rhinehart clearly delineated the powers of Minister in Article IV, Section 1 of the Bylaws, and those powers do not include any of powers claimed by Werner.

Werner’s 37 page brief is striking in that, with one exception, Werner never even mentions these provisions of the Articles and Bylaws. Werner does not offer any different interpretations of the language quoted and analyzed by the Church Members. She does not criticize or question the interpretative reasoning set forth by the Church Members. She does not try to explain how the word “shall” means something other than the dictionary definition of “shall” throughout the Articles and Bylaws.

Werner not only fails to dispute the Church Members' interpretation of the Bylaws, she tacitly admits that the Church Members are right, and that her actions are contrary to the Bylaws. On page 9 of her brief, Werner complains that the Church Members would "bulldoze the religious nature of these documents and enforce them in the same way it would any secular corporate bylaws or articles of incorporation". Apart from the verb "bulldoze", Werner is right. Church bylaws and articles should be interpreted in accordance with plain English, under the same rules of construction as any other contract, bylaw or article.<sup>1</sup> Werner cites no authority whatsoever, and none exists, for interpreting these documents other than in accordance with plain English language. Werner just ignores the Articles and Bylaws.

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<sup>1</sup>It is noteworthy that Rhinehart set up the Church as a membership nonprofit entity under RCW 23.04. Washington nonprofit corporations can be set up to either have or not have members. RCW 24.03.065(1). Rhinehart chose to have members. The Washington nonprofit statute, as well as all legal commentators, make clear that members have court enforceable, statutory rights under these corporate laws. *See, e.g.*, RCW 24.03.080 (setting forth members' rights to notice of member meetings); RCW 24.03.085 (setting forth members' voting rights, including gap-filling provisions if the governing documents are silent); 1 William W. Bassett, *RELIGIOUS ORGANIZATIONS & THE LAW* §4:5, at 4-17 (2004) ("Corporations are entirely the creature of state law. . . . Therefore, valid creation of the religious or affiliated corporation requires that both the procedures and the form of documents provided in the individual states be carefully followed."); 1A *FLETCHER CYC. CORP.* §80, at 62 (2002) ("Religious corporations are governed by the same general rules of law and equity as other corporations. In other words, they are subject to the same principles of law and the same control by civil courts as any other civil corporation."); *see also State Bank of Wilbur v. Wilbur Mission Church*, 44 Wn.2d 80, 92, 265 P.2d 821 (1954) (seeing "no reason" why the corporate rule limiting an officer's authority to call a stockholder or member meeting, subject to its bylaws or a board resolution, "is not equally applicable to religious corporations").

The only language of the Bylaws at issue that Werner mentions is the phrase “upon recommendation of the ecclesiastical head”. Werner cites this phrase in support of her position but she never tries to (and cannot) reconcile her interpretation of that phrase with the “shall rights” set forth in the rest of the Bylaws. The Church Members specifically addressed this phrase at pages 40-41 of their opening brief, showing that Werner’s interpretation: a) is contrary to the dictionary; b) would nullify three other provisions of the Bylaws; c) is not reconcilable because it is a twisted, indirect way of saying something that could be easily and clearly stated if it was the intended meaning. Werner never addresses or even mentions these arguments.

The “bottom line” in this case is that the plain English language of the Articles and Bylaws shows why the Church Members should prevail. They unambiguously state that Werner does not have the powers she claims. Werner does not even dispute this. That is outcome determinative of this case.

**2. The interpretation dispute is an “all or nothing” issue.**

One interpretative point that should have been made more clearly in the Church Members’ opening brief is that Werner’s claimed powers, if granted, would eviscerate all of the “shall” rights of the Church Members set forth in the Bylaws. It is hornbook law that courts interpret contracts, and bylaws are interpreted like contracts,<sup>2</sup> as a whole in a way to

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<sup>2</sup> Cf., *Save Columbia v. Columbia*, 134 Wn. App. 175, 181, 139 P.3d 386 (2006) (“In interpreting an organization’s By-laws, we apply contract law.”).

effectuate all provisions of the contracts. *See, e.g., Colorado Structures, Inc. v. Insurance Company of the West*, 161 Wn.2d 577, 167 P.3d 1125 (2007). Courts should not adopt an interpretation of one provision of bylaws that render other provisions meaningless. *See, e.g., McLean Townhomes, LLC v. American First Roofing*, 133 Wn. App. 828, 138 P.3d 155 (2006).

Werner's claims, if upheld, would negate all of the Bylaws. If Werner can, as she claims, summarily expel or exclude anyone from the Church for any reason, every single paragraph of the Bylaws is meaningless. Werner would have absolute authority to expel anyone who argues that the Bylaws should be followed; that is what she has done to date. Bylaws are intended to be the rules by which the Church is governed. Under Werner's interpretation there is only one simple rule - whatever Werner says. The Bylaws are meaningless.

Allowing Werner any of her other claimed powers will have the same effect, just indirectly. If Werner can summarily expel Board Members from the Board, the Members will ultimately have no rights in the Church. If Werner is President for life, the Church Members have no right to elect officers. Werner's different claimed powers all eviscerate the "shall rights" of the Church Members.

This is a baby that can't be split. Ultimate power lies either with Members or Werner, but not both. And we note that Werner's arguments also render Article V, Section 1 of the Bylaws, which defines the "Powers and Duties of Minister", meaningless. Under Werner's interpretation, that

paragraph merely needed to say “the Minister controls everything”, which it plainly does not say.

**3. Werner’s arguments are internally inconsistent, for she repeatedly asks the Court to interpret the Bylaws at the same time she claims that the Court cannot do so.** The main theme of Werner’s argument is that the Court should not interpret the Bylaws, but defer to Werner’s interpretation of the Bylaws. Her argument is inconsistent, however, because Werner repeatedly asks the Court to interpret the Bylaws in order to reach this conclusion.

As noted in our initial brief at page 25, Werner’s own declaration and multiple Declarations from Werner’s supporters within the Church relied on the Bylaws as the basis for asking the trial court to rule upon Werner’s alleged powers. Werner’s appellate brief continues along this line, acknowledging and that the Court must interpret the Bylaws to determine who has the powers at issue. For example, Werner’s brief to this Court includes the following:

- page 4, paragraph 2 (“the church’s governing documents granted the Ecclesiastical Head the power to choose the Board of Directors,...”);
- pages 8-9 (arguing the Court should interpret the Bylaws language citing the Golden Rule and references to “serving GOD, doing the work of GOD” as controlling the other Bylaws);
- page 10 (quoting “upon recommendation of the ecclesiastical head” language of Article III of Bylaws);
- P. 11, quoting Article V of Bylaws to support a claim that Werner can appoint ecclesiastical assistants in church).

Werner admits that the Court must interpret the Bylaws in order to decide this case, but at the same times contends that Court cannot do so. Werner is really asking the Court to consider only the language of the Bylaws that Werner likes, and ignore the rest. It doesn't work that way. The Bylaws must be interpreted as a whole. And Werner loses because the Bylaws, read as a whole, show that Werner does not have the powers she claims.

**4. Werner's "hierarchical argument" in Sections III A-C of her brief is incorrect.**

**a. *Watson* and the hierarchical/congregational cases merely stand for the proposition that courts enforce church rules that empower church tribunal to decide disputes.**

*Watson* and its progeny state that a church, in its governing documents, may (but does not have to) empower a tribunal of a person or persons to decide disputes, including disputes like the dispute in this case. If the church governing documents contains such a delegation of power, then the courts will enforce those provisions by allowing the church tribunal to make the decisions that they are empowered to make under the church governing documents. The courts will defer deciding such issues themselves because the governing documents specify that the issues should be decided by a church tribunal.

This situation is analogous to contracts with and without arbitration clauses. If a contract has an arbitration clause, courts exercise jurisdiction only to interpret and enforce the arbitration clause and defer to

an arbitrator. Similarly, if church rules contain a provision requiring certain disputes to be resolved by ecclesiastical tribunals with ecclesiastical rules, courts exercise jurisdiction to enforce those provisions, and defer to the tribunal.

If there is no provision in church rules for an ecclesiastical decision-maker (like this case), just like where there is no arbitration clause in a contract, then the court will not defer jurisdiction but decide the matter itself.

*Watson v. Jones*, followed this rule exactly. *Watson* held that churches may, through their internal church rules, create tribunals to rule on matters of dispute:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and **to create tribunals for the decision of controverted questions of faith within the association and for the ecclesiastical government of all the individual members**, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. . . .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 to only such appeals as the organism itself provides for.

*Watson*, 80 U.S. at 728-729.

*Watson* did not say that courts will defer when the church rules do not empower a tribunal to decide the issue. And the fact that the church rules created a tribunal in *Watson* was the key factor in classifying the church as “hierarchical”.

The two cases other than *Watson* cited by Werner in Section III A of her brief, *Southside Tabernacle v. Church of God*, 32 Wn. App. 814, 822, 650 P.2d 231 (1982), and *Organization for Preserving the Constitution of Zion Lutheran Church v. Mason*, 49 Wn. App. 441, 743 P.2d 848 (1987) cite the same rule. Both are quoted for this rule on page 30 of the Church Members' first brief.

More importantly, as we pointed out on pages 31 – 32 of our first brief, and Werner does not dispute, the *Mason* case skipped over the hierarchical/congregational distinction because of the absence of tribunals. The *Mason* court found that arguments over whether the church was more hierarchical or more congregational did not matter – in the absence of a church rule appointing a tribunal to decide the issue, the court would decide the issue.

That is the case here. Rhinehart wrote Bylaws and Articles that do not establish an internal Church tribunal to control or limit Member rights. Rhinehart presumably made this choice to prevent the type of abuse that Werner is attempting here. Regardless of his motive in 1966, the Articles and Bylaws do not give Werner the power to resolve these disputes. Instead, the Articles and Bylaws give members mandatory, “shall” rights, and do not allow Werner or anyone to violate, amend, “interpret” or otherwise alter, those rights. Hence the Court decides the ultimate issue, the proper interpretation of the Bylaws, just as it would in a civil suit in the absence of an arbitration clause.

**b. Werner misapplies the hierarchical/congregational distinction to negate the Bylaws that forbid Werner's actions.**

Werner's argument in Section III A-C of her brief employs an erroneous, multistep chain of flawed reasoning to try to negate the Articles and Bylaws that forbid Werner from exercising the powers she claims, including the powers to decide this dispute. The fundamental fallacy in Werner's reasoning, if one ignores the multiple contrived steps in that reasoning, is that Werner is trying to use Article V of the Bylaws to ignore and negate Articles II, II and IV of the Bylaws and Articles IV and X of the Articles (among others).

Werner claims that Article V of the Bylaws, which gives Werner the power to hire and fire local spiritual leaders, means that the Church is "hierarchical".<sup>3</sup> She then contends that since the Church is "hierarchical", she is the sole decision maker in the Church, the Court cannot interfere, and all the "shall" Member rights in Articles II, II and IV of the Bylaws and Articles IV and X of the Articles are to be enforced or ignored at her whim. In other words, she asks the Court to read Article V of the Bylaws and ignore Articles II, III and IV of the Bylaws and Articles IV and X of the Articles. As a former U.S. President once said, "That dog don't hunt".

Werner's tortured reasoning, examined in detail, is based on three incorrect assumptions, that: a) there are two neat categories of churches, hierarchical and congregational, and every church falls 100% into one of these two categories; b) the Aquarian Foundation is 100% "hierarchical"

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<sup>3</sup>This is slightly simplified. As is discussed below, Werner also cites power to control finances as evidence that the Church is "hierarchical".

because the Seattle branch of the Church pays the rent of the local branch locations, hires and fires local spiritual leaders, and determines when local study groups can become Church Members; and c) this “bright line” characterization as “hierarchical” means that the Court cannot interpret and enforce the Bylaws, and Werner can “interpret” the Bylaws to give her all the powers she claims.

All three of Werner’s assumptions are incorrect. First, churches are not neatly categorized as either 100% hierarchical or 100% congregational. The same church can have some characteristics that are hierarchical, and other characteristics that are congregational. *See, e.g., Southside Tabernacle, supra* (“the General Church exhibits certain characteristics in common with both a hierarchical and congregational church”); 77 C.J.S. Religious Societies, § 8, p. 11 (2006) (“The terms congregational and hierarchical are poles on a continuum along which church organizations fall, and it is possible to combine elements of both congregational and hierarchical polities.”); *Grace Evangelical Lutheran Church v. Lutheran Church-Missouri Synod*, 454 N.E.2d 1038, 1045 (Ill. App. 1983), *cert. denied*, 469 U.S. 820 (1984) (“These are theoretical categories, however, and it has been recognized that it is possible for a church to constitute a combination of hierarchical and congregational aspect.”). A church may be congregational with respect to some issues (e.g., ownership of property), and hierarchical with respect to others (e.g., discipline.). *See, e.g., Grace Evangelical, supra*, 454 N.E.2d at 1045 (“the parties all agree that with respect to the ownership of property the Synod

is congregational. ... However this aspect of the polity of the Synod is not dispositive in this property dispute because we are concerned with the alleged violation of a requirement of doctrinal purity...”).

Second, relying on her incorrect assumption that a church must be either 100% congregational or 100% hierarchical, Werner claims that the Aquarian Foundation is 100% hierarchical based on several hierarchical characteristics that are unrelated to the issues in dispute. Werner summarizes her evidence in Section IIIB, at the bottom of page 31 and top of page 32 of her brief, claiming that the Church is hierarchical because Seattle branch is responsible for the rent of the local chapels, hires and fires local spiritual leaders, pays salaries and determines whether study groups can become a Church branch. This is irrelevant to the issues in this case. Perhaps the church can be characterized as “hierarchical” regarding these issues, but those are not the issues in dispute in the case. Werner also ignores other characteristics of this Church that do not fit the hierarchical mold.<sup>4</sup>

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<sup>4</sup> For example, *Watson* refers to a hierarchical church as being “a member of a much larger and more important religious organization.” 80 U.S. at 726-27. See also *Southside Tabernacle*, 32 Wn. App. at 818-19 (“Most large protestant denominations and the Roman Catholic Church have been found to be hierarchical. The Baptist Churches are treated by the Courts as being congregational.”). In all the “hierarchical” cases cited by Werner, the local churches were part of very large, established national or international organizations.

The Aquarian Foundation is and always has been *tiny*, especially in comparison to all of the churches discussed in the applicable case law. It is a church of a few hundred members, not millions of members. Werner’s unstated argument is that the Aquarian Foundation became “hierarchical” when it gained its first non Seattle branch, because at that point it could claim it had multiple

Third, and finally, Werner leaps to the conclusion that since the church is “hierarchical”, the Court can’t decide the issues in dispute and must instead assume (and tacitly *rule*) that Werner has absolute power to decide these issues. That conclusory leap is contrary to law. Werner would have the powers she claims if the Bylaws gave her those powers. But they do not, and that is decisive of the case. Again, Werner seeks to have this Court use a twisted interpretation of Article V of the Bylaws to nullify all the other Bylaws.

**5. Werner’s argument regarding the “ministerial exception” is incorrect. (Rebutting Section III D of Werner’s brief).**

Werner’s argument regarding the so called “Ministerial Exception” takes two broad quotes from the *Elvig* and *Gates* cases and extrapolates those quotes into a “rule” that “the relationship between her [Werner] and her church is immune from judicial scrutiny”. Werner brief, page 35. The *Elvig* and *Gates* cases do not stand for such a proposition, and numerous cases show there is no such “rule”.

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branches with “central control.” This is overly simplistic, as the discussion above shows.

The Church displays another important characteristic of a congregational structure: existence as a nonprofit membership corporation. *See* 1 William W. Bassett, RELIGIOUS ORGANIZATIONS & THE LAW §4:2, at 4-4 (2004) (congregational churches “generally use the membership or aggregate corporation model”); *id.* §4:4, at 4-10 (“Churches of congregational polity will usually choose membership corporational models for worshipping communities”; a hierarchical church “may wish to incorporate the diocese, stake or region and its assets as a nonmembership religious corporation, or, to spread decision-making and participation farther, a membership corporation limiting members to representatives of local worshipping congregations”).

*Elvig v. Ackles, supra*, was a lawsuit in which one Presbyterian minister sued the church and two other Presbyterian ministers for sexual harassment. The church governing documents provided for multiple layers of neutral ecclesiastical tribunals, with a written *Book of Order*, designed to address such disputes. The church dispute resolution procedure was followed, including several levels of appeal.

The court dismissed the case, stating “because adjudicating Elvig’s case would require a civil court to impermissibly examine decisions made by a church tribunal, we must affirm [dismissal]”. *Elvig, supra*, 123 Wn. App. at 492. The court also stated “our ruling is a narrow one” based upon deference to the extensive, well-documented proceedings of the church tribunals. The court also noted that it expressly was not ruling on courts’ ability to determine such disputes if the plaintiffs were laypersons rather than clergy. *Elvig, supra*, 123 Wn. App. at 499.

*Elvig* does not help Werner. The church governing documents in *Elvig* empowered a church tribunal to decide the dispute and issue. The Aquarian Foundation governing documents do not. Rhinehart left such issues to the Courts. Thus, the Court must decide.

*Gates v. Seattle Archdiocese*, 103 Wn. App. 160, 10 P.3d 435 (2006), is also distinguishable. The plaintiff in *Gates* claimed that the plaintiff should have “been able to plan and direct the liturgy, according to his own priorities, without submitting to Father Boley’s authority.” *Gates, supra*, 103 Wn. App. at 169. This was contrary to church rules - the court noted that “cannon law gives Father Boley, as pastor, sole authority to

direct the liturgy in his parish”. *Id.*, at 169. The court thus enforced canon law. In this case, Werner has violated the Aquarian Foundation canon law as set forth in the Church Bylaws and Articles. The Court needs to, and should, enforce those Church Bylaws and Articles.

Numerous other cases show there is no such “rule” as alleged by Werner that courts cannot decide disputes regarding the actions of ministers. In *Church of Christ v. Carder*, 105 Wn.2d 204, 713 P.2d 101 (1986), the Supreme Court held that Washington courts had jurisdiction to decide a dispute between the minister of the church (Carder) and the faction supporting that minister and other church members over control of the property of the church. In *Hendryx v. Peoples United Church of Spokane*, 42 Wash. 336 (1906), the Supreme Court held that our courts had jurisdiction to decide a dispute where church members were suing the church and its minister claiming that the minister was expelling his opponents in a scheme to enrich himself with church assets. In *Organization for Preserving the Constitution of Zion Lutheran Church v. Mason*, 49 Wn. App. 441, 743 P.2d 848 (1987), this Court decided a dispute over whether Mr. Mason was entitled to act as the church pastor.<sup>5</sup> Werner’s claimed “ministerial exception” is simply not the law.

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<sup>5</sup> See, also, e.g., *Baugh v. Thomas*, 56 N.J. 203, 265 A.2d 675, 677 (1970) (rejecting the proposition that “civil courts lack jurisdiction to determine whether established procedures of a religious organization, as proved, have been followed where a member is expelled from that organization”; “except in cases involving religious doctrine, we can see no reason for treating religious organizations differently from other non-profit voluntary associations”); *David v. Carter*, 222 S.W.2d 900, 905-06 (Tex. Civ. App. 1949) (court asserts jurisdiction “when the facts show a radical departure from the accepted customs and rules of the

**6. The dispute in this case is not doctrinal. (Rebutting Werner brief, Section III E).** The one case cited by Werner for her argument in this section of her brief is distinguishable. *S.H.C. v. Lu*, 113 Wn. App. 511, 4 P.3d 174 (2002), involved a claim by a consenting adult that she'd been hoodwinked into having sex with her Buddhist Grand Master. She sued the Grand Master for fraud and also sued the Buddhist Temple for failing to supervise and stop the Grand Master's actions.

The court allowed the plaintiff to proceed against the Grand Master. That claim was not dismissed. The court dismissed the plaintiff's claims against the Temple because it was undisputed that the written ecclesiastical rules of the Temple stated that members of the Temple (i.e., the persons being sued for negligent supervision) should not criticize or question the Grand Master if they saw fault, but instead should leave and join another guru. The Court could not rule that these Temple personnel were obligated to control the Grand Master's actions without overruling the undisputed, written ecclesiastical doctrine that these Temple personnel should not question the Grand Master. In other words, the court enforced the written rules of the Temple.

*Lu* does not help Werner. *Lu* stands for the proposition that courts will enforce church rules. That is exactly what the Church Members are

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organization"); *Konkel v. Metropolitan Baptist Church, Inc.*, 117 Ariz. 271, 572 P.2d 99, 100 (App. 1977) (the court "has jurisdiction to determine whether appellants were expelled from membership in accordance with the constitution and bylaws of the church").

seeking. This is not a “religious debate” – it is a question of reading the Bylaws and Articles.

Werner’s argument on this issue presented at the trial court, and which might reappear at oral argument, is entirely circular. Werner argues that different religious beliefs cause different people to interpret the Bylaws differently. In essence, Werner argues that, due to her religious beliefs, she interprets the word “shall” in the Bylaws (e.g., “The Church Board of Directors ... shall be elected by the members...” ) to mean something different from the definition of “shall” in the dictionary and dozens of Washington cases. She contends that any attempt to interpret the word “shall” by this Court is therefore a ruling on the validity of her religious beliefs and off-limits to the Court.

If accepted, this circular reasoning would deprive courts of all jurisdictions whenever a defendant merely claimed they were acting, or interpreting documents, based on their religious beliefs. Werner cites no authority for such an argument and none exists.<sup>6</sup>

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<sup>6</sup>In fact, this type of argument was rejected in *Mason*, discussed in detail on pp. 31-32 of the Church Members’ opening brief. The church in *Mason* had sought, and obtained, dismissal in the trial court of a lawsuit by members objecting to the election of a pastor, contending that “the dispute involved ecclesiastical matters over which the civil court lacked jurisdiction.” 49 Wn. App. at 444. This Court reversed and rejected the Church’s argument, as well as the argument of the dissenting judge, who concluded that granting jurisdiction “requires the trial court to pass judgment on Zion Lutheran Church’s call of a pastor -- essentially a spiritual endeavor.” *Id.* at 450 (Williams, J., dissenting). The *Mason* majority held that the court should assert jurisdiction and decide the election issue because the church had no mechanism in place to resolve the dispute.

**7. Werner’s miscellaneous implied arguments in her “Statement of the Case” are generally irrelevant and incorrect.** Werner’s “Statement of the Case” asserts a wide variety of facts that are generally not tied into the three legal arguments in the “Argument” section of her brief. These factual assertions in many instances are implied arguments. This portion of the brief briefly addresses a number of these facts/implied arguments.

**a. Disputed or unsupported “facts”.**

Werner’s brief contains many “statements of fact” that are either disputed or wholly unsupported in the record. For example, on the last paragraph of page 6 that carries over into the first two paragraphs on page 7 of her brief, Werner makes many statements based upon citations to Werner’s own Declaration. It is true that Werner made those statements, but Werner fails to acknowledge that her Declaration was disputed.

On page 5, Werner states “Although appellants argue these powers belonged to the first ecclesiastical head [Rhinehart], they ask the Court to strip them from its second [Werner].” There is no cite to the record for this statement and it is not true. Rhinehart was not empowered to act as a dictator.

In the second paragraph of page 13, Werner states, without any citation to the record, “Appellants concede that admission to the Church depends on ‘loyalty’ to, and “a certain level of understanding’ of religious teachings”. Again, this simply is not true.

**b. Inferential leaps of logic.**

Werner's brief is full of inferential leaps of logic where the inferences Werner draws either don't follow from the stated facts, or are only one of many equally likely possible inferences. For example:

i. Under subheading IIB, Werner recites testimony from several Church Members who expressed great devotion and confidence in Rhinehart. In the last sentence of this subsection, Werner then draws the inference from these facts that "the Aquarian Foundation is structured to concentrate so much power in the Ecclesiastical Head". Yet nothing in that testimony relates to the allocation of power under the Bylaws. Although the appellants revered Rhinehart, they do not believe he ever had (or wanted) the dictatorial powers claimed by Werner. On the contrary, Rhinehart wrote Bylaws that forbid any Minister from acting as Werner has acted.

ii. In Section IIC, on pages 8 and 9 of her brief, Werner argues that the reference to the Golden Rule in the Bylaws means that the Court cannot interpret the plain language of the Bylaws because the Bylaws are tainted (we mean this in a non pejorative way) in all respects by religious interpretation. That is not an accurate reading of the Bylaws. The Declaration of Independence refers to the "Laws of Nature", "Nature's God", and rights of citizens that are "endowed by their Creator" in its first two paragraphs. Our coins say "In God We Trust". Kids refer to "God" in the pledge of allegiance. Yet none of these references mean

that our courts are not qualified to interpret our nation's governing documents.

iii. On pages 11-13, Werner makes an extraordinarily strained argument that the Membership Application and Membership Card give her the absolute power she asserts because they require "loyalty" to her. First, the Membership Application and Card don't overrule the Bylaws. Second, they don't state what Werner says they state. The Application states, "I shall support the existing policies or traditions of the Church as established and evolved by its founder, Keith Milton Rhinehart". We agree with that. Keith Milton Rhinehart wrote the By-laws. The Bylaws control.

iv. Werner states on page 12, at the end of the first full paragraph, that "The membership application and membership card together *suggest* that if a member is/are determined not to be faithful to the church's teaching, the membership card may not be renewed". The Court need not look to incredibly strained interpretations of what a vague statement in a membership application "suggests"; these issues are decided by the plain, clear language in the Bylaws. Werner cannot use vague statements in the Membership Application to avoid the Bylaws.

v. In the last paragraph of page 12, Werner cites an unauthenticated, undated letter from an anonymous person as evidence of one of her claimed powers. It is hard to imagine anything less persuasive or even relevant.

vi. In the first paragraph of page 13, Werner cites testimony by Sera Baxter that there were restrictions on attendance at certain advanced teachings of the Church. Werner then infers that this testimony shows Werner has power to expel Church Members. Yet the testimony was unrelated to Church membership or expulsions. Werner's inference does not follow from the evidence.

vii. In Paragraph IIE, Werner cites Church Members' non-technical, non-legal use of the words "hierarchy" or "hierarchical" to argue that the Church is "hierarchical" from the technical, legal perspective articulated by *Watson* and its progeny. The lay use of these words is not probative of the legal issue.

viii. In Paragraph IIE(1), Werner cites evidence that the appellants "deferred" to her. The evidence shows that the appellants showed respect for her position as Ecclesiastical Head of the Church. But the cited evidence has nothing to do with the specific issues in the case – Werner's power to under the Bylaws.

ix. Paragraph IIE(2), the reference to controlling finances, is likewise irrelevant. Interestingly, the paragraph states that "Seattle" controls the purse strings. There is no reference to Werner's personal power. More importantly, control of the purse strings doesn't mean the By-laws give the powers claimed by Werner.

x. Paragraph IIB(3), stating the mother church decides whether, where and how to establish a local branch, Paragraph IIB(4), on pages 17-18, that "Seattle monitors and disciplines local

spiritual leaders”, and Paragraph IIB(5), claiming that local spiritual leaders get “guidance” from Werner, are all irrelevant to the issues in dispute. These are examples of Werner’s specious reasoning where she asks the court to use her power under Article V of the Bylaws over spiritual leaders to ignore the plain language of the “shall” Member rights in Articles II, II and IV of the Bylaws and Articles IV and X of the Articles

xi. Paragraph IIIJ, regarding misappropriation of assets, misses the point. Neither Werner nor the Church ever produced any of their financial documents. They refused. They flatly disobeyed the Trial Court’s order quoted on page 23 of the Church Members’ brief and on the record at CP 68-70. It is somewhat astounding that on page 28, Werner cites the testimony of one of her supporters, Treasurer Nancy Campbell, to say that there has been no misconduct. Yet Werner ignores the fact that she and the Church refused to produce any financial records of the Church. The Church and Werner admit they disobeyed the Court’s September 12 Order, and never produced the documents ordered to be produced. CP 2590-2630. The Church’s long brief is irrelevant. All the defenses the Church asserts in its brief against producing the documents were never ruled upon by the Trial Court.

**8. Werner’s argument would mean that there is no authority to resolve multimillion dollar disputes.** Finally, Werner’s arguments also beg the question posed by *Organization v. Mason*: who decides who controls the millions of dollars at issue here if not the courts?

Werner claims she is entitled to an \$85,000 a year job for life, and control for life of millions of dollars of assets. If Church Member Martin McDermott physically moved into the Church, seized physical control of the assets, and decreed that he had a life tenured job and control of the \$4 million, that that he had a unique connection with the spiritual world, would it be a “might is right” issue? Would the parishioners decide by means of fisticuffs in the Church parking lot?

### CONCLUSION

Interpretation of the Articles and Bylaws determines who controls millions of dollars of Church assets. The Court, and only the Court, is empowered to make this decision. And those Articles and Bylaws clearly state that Werner does not have the powers she claims. Consequently, the Court should issue the rulings limiting Werner’s powers set forth on page 3 of the Church Members’ opening brief.

RESPECTFULLY SUBMITTED this 30th day of September,  
2009.

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