PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)

Jana Childers; The Session of the Hermon Presbyterian Church, Bethesda, Maryland; The Session of the First Presbyterian Church, Mattoon, Illinois; The Session of the First Presbyterian Church, Vallejo, California; and The Session of the First Presbyterian Church, San Rafael, California, Each Individually and on Behalf of the San Francisco Theological Seminary, **Complainants,**	**Decision on Challenges to Preliminary Order and Motions to Dismiss**
v.	Remedial Case 225-01
The Committee on Theological Education, The Presbyterian Church (U.S.A.) Foundation, The Presbyterian Mission Agency, The Office of the General Assembly, and The Committee on the Office of the General Assembly, **Respondents.**	

Arrival Statement

This case arises from multiple challenges to a "Preliminary Order for Hearing" (Preliminary Order) by the Moderator and Clerk of the General Assembly Permanent Judicial Commission (GAPJC or this Commission), dated May 27, 2020, in a remedial case of original jurisdiction. Following the filing of a complaint by the Complainants (above) on May 18, 2020, and the filing of an amended complaint on May 21, 2020, the officers accepted the case for hearing. They also dismissed one complainant, Jana Childers, from the case for lack of standing; rejected the standing of Complainants' purported filing "on behalf of" parties that do not have standing, namely San Francisco Theological Seminary (SFTS); and dismissed the complaint against some Respondents (the Committee on the Office of the General Assembly [COGA], the Office of the General Assembly [OGA], and the Presbyterian Church (U.S.A.) Foundation [the Foundation]) because the complaint failed to state a claim upon which relief can be granted against those Respondents.

Multiple challenges to the Preliminary Order were received from both Complainants and Respondents, as well as motions by Respondents to dismiss the complaint. This decision follows a preliminary hearing before the full Commission to resolve those challenges and answer those motions.

Jurisdictional Statement

This Commission finds that it has jurisdiction to consider the challenges to the order of the GAPJC officers, that all parties listed have standing to challenge the Preliminary Order, that the challenges by the Complainants and by Respondents Committee on Theological Education (COTE) and the Presbyterian Mission Agency (PMA), were properly and timely filed, and the challenges are in order in accordance with D-6.0306a. The dismissal of the complaint against COGA and OGA in the Preliminary Order by the officers of this Commission having not been challenged, the Commission no longer regards those entities as parties to this case.

Appearances

Complainants were represented by Jonathan Nelson, counsel. Respondent COTE was represented by Saundra Tracy, chair of COTE, and by James Wilson and Jane Fahey, counsel. Respondent PMA was represented by Floretta Barbee-Watkins and Nicholas Yoda, committee of counsel, and April Davenport and Judy Woods, counsel. Respondent the Foundation was represented by Richard Clay, counsel.

History

In February 2019, the boards of trustees of SFTS and University of Redlands (Redlands) approved an agreement in principle to merge, about which COTE was formally notified in a written notice dated February 23, 2019. There is dispute over the amount and nature of conversations predating this official notification and how the information was received.

On May 20, 2019, the chair of COTE wrote a letter to the Stated Clerk of the General Assembly and the Co-Moderators of the 223rd General Assembly (2018), summarizing her understanding of the merger terms and noting several unresolved questions regarding the implications of the merger for the relationship of the seminary—soon to become the University of Redlands Graduate School of Theology (Redlands GST)—with the PC(USA).

The "Agreement and Plan of Merger by and between University of Redlands and San Francisco Theological Seminary," dated June 7, 2019, took effect July 1, 2019.

On July 10, 2019, the chair of COTE wrote a letter to Ralph Kuncl, president of Redlands; Childers, former dean of SFTS and then dean of Redlands GST; and Jim McDonald, former president of SFTS, then serving as an adviser to Redlands. The letter stated:

> San Francisco Theological Seminary's formal relationship (you have used the term "affiliation") with the PC(USA) was through its standing as one of the Institutional Members of COTE. This formal relationship to the PC(USA) came to an end with the dissolution of SFTS's Articles of Incorporation and the establishment of SFTS as a program of the U of R Graduate School of Theology (U of R GST). That being the case, SFTS is no longer an Institutional Member of COTE. Nor is the U of R, or its GST, in formal relationship with the PC(USA).

Kuncl, Childers, and McDonald disputed this finding in a letter dated August 23, 2019. Considerable correspondence followed, as well as discussions within COTE about what the relationship or status of Redlands GST with the PC(USA) could and should be.

On February 5, 2020, an attorney for the Foundation wrote a letter to Redlands stating that financial proceeds of investments previously held in the name of SFTS should not legally be dispersed to Redlands, a claim disputed in subsequent correspondence between attorneys for the two entities.

At the February 12-14, 2020, meeting of the PMA, COTE presented its reports and recommendations for the 224th General Assembly (2020), which contained proposed revisions to the General Assembly Organization for Mission, including changes pertaining to the criteria for being considered an "institutional member" of COTE. These recommendations also included a list of institutional members on which neither SFTS nor Redlands was included. COTE submitted these recommendations to the 224th General Assembly, and they were posted on the PC-Biz website as Item 02-030[1] with other Assembly business.

On March 24, 2020, the chair and staff liaison of COTE wrote a letter to Kuncl, Childers, and McDonald, informing them of a decision taken at COTE's February 28, 2020, meeting, stating that "the Committee on Theological Education does not believe that there is sufficient evidence to accept the University of Redlands as an institutional member of COTE," and that it would be open to receiving more information so that COTE "might consider a Covenant Relationship."

Complainants filed their complaint with a request for a stay of enforcement on May 18, 2020, and an amended complaint on May 21, 2020. As noted in the Arrival Statement above, the officers of this Commission determined that preliminary questions were satisfied with regard to the Complainant sessions in their complaint against COTE and the PMA, dismissing Childers as a complainant and dismissing all other respondents. On May 26, 2020, members of the GAPJC were informed of the request for a stay of enforcement, the Preliminary Order, and the requirements for a stay pursuant to D-6.0103. The Stated Clerk of the General Assembly did not receive within ten days the signatures required to issue a stay, and a stay of enforcement was not granted.

Because of the COVID-19 pandemic, the 224th General Assembly met June 19-27, 2020, using video conference technology. As part of the abbreviated assembly's focus on "crucial" business, the Assembly referred the relevant COTE recommendations to the 225th General Assembly (2022).

On June 26, 2020, Complainants filed a challenge to the dismissal of the complaint by Complainant Jana Childers, to the ruling that the sessions' complaint may not be considered to be "on behalf of" another party, and to the dismissal of the complaint against the Foundation. Complainants did not challenge the dismissal of the complaint against OGA and COGA.

[1] Originally labeled as REC-002.

On June 26, 2020, Respondent COTE filed a motion to dismiss the complaint as untimely and for failure to state a claim upon which relief can be granted.

On June 26, 2020, Respondent PMA, together with OGA and COGA (though the complaint against these latter two entities was dismissed in the Preliminary Order), filed a motion to dismiss the complaint on the grounds that this Commission lacks jurisdiction, that the complaint was untimely filed, and that the complainants fail to state a claim upon which relief can be granted.

On June 30, 2020, Respondent the Foundation, having received the June 26, 2020, filings of the other parties, and though the complaint against it was dismissed in the Preliminary Order, submitted a document called "Preservation of Defenses, Answer, and Motion to Dismiss Complainants' Amended Complaint."

This Commission received briefs on the determination of all four preliminary questions and heard oral arguments in a hearing by video conference on August 14, 2020.

Determinations of the Preliminary Questions

Given the multiple challenges on the various preliminary question issues, the Commission determined that it would be clearest to assess whether each individual preliminary question as listed in D-6.0305 should be answered in the affirmative or negative for each complainant and/or respondent.

D-6.0305a: Does the GAPJC have jurisdiction?

The officers of this Commission held in their Preliminary Order that the GAPJC does have jurisdiction in this matter. The PMA challenged this finding with regard to the complaint against the PMA.

This challenge to the Preliminary Order is not sustained. The preliminary question is answered in the affirmative.

The PMA acknowledged that the GAPJC has general jurisdiction in complaints against the PMA in accordance with D-6.0202b. The challenge focused on questions of whether the complaint against the PMA was timely and stated a claim on which relief can be granted. Those matters are addressed later in this decision.

D-6.0305b: Do the Complainants have standing to file the complaint?

The officers of this Commission held in their Preliminary Order that Jana Childers does not have standing to file the complaint. The officers further held that the listed sessions do have standing, but only on their own behalf, not "on behalf of SFTS." Complainants challenged these findings.

This challenge to the Preliminary Order is not sustained. The preliminary question is answered in the affirmative only with regard to the Complainant sessions, filing in their individual capacities and not "on behalf of SFTS."

D-6.0202b(3) affords individuals the right to file a complaint against an entity of the General Assembly only if they are "a person who is an employee of the Presbyterian Mission Agency or an entity of the General Assembly, claiming to have sustained injury or damage to person or property by the Presbyterian Mission Agency or an entity of the General Assembly." Childers is not an employee of an entity of the General Assembly and therefore does not have standing. Regardless of whether Childers is considered to have been an employee of a Presbyterian seminary on the date the complaint was filed, this Commission holds that seminaries are not "entities of the General Assembly" as D-6.0202b(3) uses that phrase. Further, D-6.0202b(3) gives standing for employees to file against the employing entity to address injury sustained in connection with that employment, not against a different entity by whom the individual was not employed.

Because the Complainant sessions are councils of the PC(USA), D-6.0202b(2) gives them standing to file their complaint. The Rules of Discipline do not require councils to demonstrate harm that they have suffered in connection with the alleged irregularities or delinquencies in order to have standing. (See, *The Session of the Concord Liberty Presbyterian Church (U.S.A.) v. The Office of the General Assembly of the Presbyterian Church (U.S.A.) et al., 2006,* 217-14, and, *Cherokee Presbytery, et al. v. Advisory Committee on the Constitution, 2015,* 222-03.)

There is no provision, however, for any council or other entity to file a complaint "on behalf of" another party that does not have standing to file a complaint. Inasmuch as SFTS did not have standing under D-6.0202b, it is not entitled to be listed vicariously as a complainant.

D-6.0305c: Was the complaint timely filed?

The officers of this Commission held in their Preliminary Order that the complaint was timely filed. Respondents challenged this finding.

(1) This challenge to the Preliminary Order is sustained with regard to the complaints against the PMA and the Foundation. The preliminary question with regard to PMA and the Foundation is answered in the negative.

In order to be considered timely, a complaint must be filed "within ninety days after the alleged irregularity has occurred" or "within ninety days after failure or refusal of respondent to

cure the alleged delinquency at its next meeting, provided that a written request to do so has been made prior to said meeting" (D-6.0202b). The complaint in this case was filed on May 17, 2020; ninety days before this would be February 17, 2020.

The latest specific action alleged to be an irregularity by PMA in the complaint occurred with the consideration of COTE's report to the 224th General Assembly at the February 12-14, 2020, meeting of PMA. While the complaint alleges that "on information and belief, COTE consulted with PMA between February 28 and March 23, 2020," the complaint does not allege specific actions PMA might have taken that amount to irregularities during this window.

Complainants acknowledged at hearing that the allegation of an irregularity by the Foundation on February 5, 2020, was *not* timely, but argued that the failure of the Foundation to cure that action at its February 19-21, 2020, meeting was a delinquency and that this latter allegation of delinquency *was* timely. An alleged irregularity that is untimely cannot simply be converted into a timely alleged delinquency in this way. Because the complete and discrete action of the Foundation was communicated on February 5, 2020, the subsequent inaction of the Foundation does not give rise to a separate, timely claim.

(2) This challenge to the Preliminary Order with regard to COTE is not sustained.

With regard to the complaint against COTE, the questions of when particular events occurred that amounted to alleged irregularities are factually in dispute and would best be determined at trial. This Commission therefore declines to dismiss the complaint on this ground.

D-6.0305d: Does the complaint state a claim upon which relief can be granted?

The officers of this Commission held in their Preliminary Order that the complaint stated claims upon which relief can be granted against COTE and PMA, and that it did not state a claim upon which relief can be granted against the Foundation, COGA, or OGA. Respondents COTE and PMA challenged the findings with regard to those entities. Complainants challenged the finding with regard to the Foundation.

(1) This challenge to the Preliminary Order with regard to the Foundation is not sustained. The preliminary question is answered in the negative.

Although the complaint against the Foundation contained multiple allegations, it is, at the end of the day, a challenge to the Foundation's exercise of its fiduciary responsibilities under secular law. This Commission and the General Assembly have repeatedly found that the Foundation's exercise of its fiduciary responsibilities is beyond the jurisdiction of ecclesiastical process. Therefore, the complaint against the Foundation fails to state a claim on which this Commission may grant relief. (See, *Session of Rutgers Presbyterian Church, New York, N.Y., v. Presbyterian Foundation, et al. 2016,* 222-08*: "Trust agreements, including an alleged breach of fiduciary duty under such agree*ments, are typically interpreted under state law. Whether

Respondents breached their fiduciary duties in this case rests on an interpretation of the Trust under New York law.")

(2) This challenge to the Preliminary Order with regard to PMA is sustained. The preliminary question is answered in the negative.

The complaint alleges that PMA committed irregularities in failing to prevent or correct COTE's actions and decisions. Because COTE is accountable directly to the General Assembly, and not to PMA, this Commission would not remedy irregularities alleged to have been committed by COTE by sustaining complaints against another entity. The complaint against PMA fails to state a claim on which relief can be granted.

(3) This challenge to the Preliminary Order with regard to COTE is not sustained. The preliminary question is answered in the affirmative.

The determination of preliminary questions requires this Commission to assume the truth of the facts as alleged. (See *Hope, et al. v. Presbytery of San Francisco, 2003,* 216-6*; Wolfe* v. *Presbytery of Winnebago, 2008,* 219-04; *Lewellen v. Presbytery of Los Ranchos, 2016,* 223-03.) At the heart of the complaint is an allegation that COTE acted beyond the authority and responsibilities assigned to it by the General Assembly when it determined that SFTS, in its merger with Redlands, ceased to be a seminary of the PC(USA) and an institutional member of COTE.

If COTE were to have exceeded its authority, then that would be an actionable claim, subject to a range of possible relief.

Decision

With regard to the Session of the Hermon Presbyterian Church, Bethesda, Maryland; the Session of the First Presbyterian Church, Mattoon, Illinois; the Session of the First Presbyterian Church, Vallejo, California; and the Session of the First Presbyterian Church, San Rafael, California, as complainants, and the Committee on Theological Education as respondent, the provisions of D-6.0305 regarding preliminary questions have been met. The case will proceed to trial with the sessions as complainants and COTE as the sole respondent.

The case will be restyled accordingly as "The Session of the Hermon Presbyterian Church, Bethesda, Maryland; The Session of the First Presbyterian Church, Mattoon, Illinois; The Session of the First Presbyterian Church, Vallejo, California; and The Session of the First Presbyterian Church, San Rafael, California, Complainants, v. The Committee on Theological Education, Respondent" and scheduled for trial before this Commission at a later date.

The motion by COTE to dismiss is denied, while the motion by PMA to dismiss is granted. The motion by Complainants to reinstate the complaint against the Foundation is denied.

This Commission takes notice that the Co-Moderators of the 224th General Assembly publicly expressed their hope that conversation and, if need be, mediation might resolve these matters. This Commission shares that hope, affirming D-1.0103 of the Preamble to the Rules of Discipline:

> The traditional biblical obligation to conciliate, mediate, and adjust differences without strife is not diminished by these Rules of Discipline. Although the Rules of Discipline describe the way in which judicial process within the church, when necessary, shall be conducted, it is not their intent or purpose to encourage judicial process of any kind or to make it more expensive or difficult. The biblical duty of church people to "come to terms quickly with your accuser while you are on the way to court..." (Matthew 5:25) is not abated or diminished. It remains the duty of every church member to try (prayerfully and seriously) to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted, and to avoid formal proceedings under the Rules of Discipline unless, after prayerful deliberation, they are determined to be necessary to preserve the purity and purposes of the church.

Order

IT IS THEREFORE ORDERED that the Preliminary Order by the Moderator and Clerk of this Commission is modified as described in the above decision.

IT IS FURTHER ORDERED that the Clerks of the Session of the Hermon Presbyterian Church, Bethesda, Maryland; the Session of the First Presbyterian Church, Mattoon, Illinois; the Session of the First Presbyterian Church, Vallejo, California; and the Session of the First Presbyterian Church, San Rafael, California, enter the full Decision upon their minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

Absences and Non-Appearances

Commissioners Scott Clark and Wendy S. Tajima were recused and did not participate in the hearing and deliberations. The commissioner position from the Synod of Alaska-Northwest was vacant.

Dissenting Opinion

We dissent from the opinion of the majority in its determination that the complaint against the Committee on Theological Education (COTE) was timely filed.

The record in this case is clear that, on July 10, 2019 and after a meeting of the Executive Committee of COTE, the chair of COTE wrote to the Dean of the former San Francisco Theological Seminary (SFTS) that COTE no longer considered SFTS to be an institutional member of COTE since its July 1, 2019 merger into the University of Redlands (Redlands) as the University of Redlands Graduate School of Theology (Redlands GST). COTE validated this decision at its meeting on February 28, 2020, but this validation does not constitute a new or restated decision, and thus cannot be regarded as the occasion on which the alleged irregularity occurred, as Complainants propose. COTE gave further notice of its decision in its report to the 224th General Assembly, received by the Presbyterian Mission Agency Board at its meeting of February 12-14, 2020, listing the institutional member seminaries related to the Presbyterian Church (U.S.A.). The fact that SFTS/ Redlands GST was not included in this list indicates that the decision regarding its status had already been made prior to February 28, 2020. Since Complainants did not file their remedial complaint until May 17, 2020, well past the statutory 90-day deadline, the Commission should have determined that the complaint was not timely filed and thereupon should have dismissed this case.

Paul K. Hooker

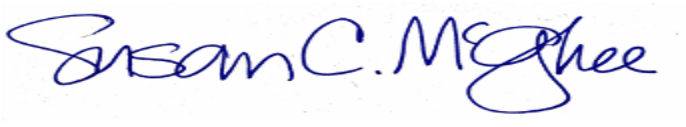
James C. Pak

Certificates

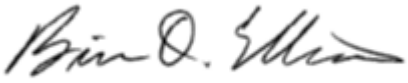
We certify that the foregoing is a true and correct copy of the Decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 225-01, Jana Childers; The Session of the Hermon Presbyterian Church, Bethesda, Maryland; The Session of the First Presbyterian Church, Mattoon, Illinois; The Session of the First Presbyterian Church, Vallejo, California; and The Session of the First Presbyterian Church, San Rafael, California, Each Individually and on Behalf of the San Francisco Theological

Seminary, Complainants, v. The Committee on Theological Education, The Presbyterian Church (U.S.A.) Foundation, The Presbyterian Mission Agency, The Office of the General Assembly and The Committee on the Office of the General Assembly, Respondents, deliberating by videoconference under the provisions of 6.02.90e of its Manual of Operations, made and announced in Louisville, Kentucky, this 16th day of August, 2020.

Dated this 16th day of August, 2020.



Susan C. McGhee, Moderator
Permanent Judicial Commission of the General Assembly

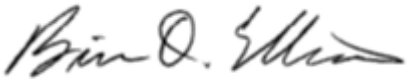


Brian D. Ellison, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing, directing Flor Vélez-Díaz to deposit it in the mail in Louisville, Kentucky, for the following:

Jana Childers, Complainant
Clerk of Session, Hermon Presbyterian Church, Bethesda, Maryland, Complainant
Clerk of Session, First Presbyterian Church, Mattoon, Illinois, Complainant
Clerk of Session, First Presbyterian Church, Vallejo, California, Complainant
Clerk of Session, First Presbyterian Church, San Rafael, California, Complainant
Counsel, Committee on Theological Education, Respondent
Counsel and Committee of Counsel, Presbyterian Mission Agency, Respondent
Counsel, Presbyterian Church (U.S.A.) Foundation, Respondent
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by electronic mail to Flor Vélez-Díaz, on August 16, 2020.



Brian D. Ellison, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, by video conference on August 16, 2020, in Remedial Case 225-01, Jana Childers; The Session of the Hermon Presbyterian Church, Bethesda, Maryland; The Session of the First Presbyterian Church, Mattoon, Illinois; The Session of the First Presbyterian Church, Vallejo, California; and The Session of the First Presbyterian Church, San Rafael, California, Each Individually and on Behalf of the San Francisco Theological Seminary, Complainants, v. The Committee on Theological Education, The Presbyterian Church (U.S.A.) Foundation, The Presbyterian Mission Agency, The Office of the General Assembly and The Committee on the Office of the General Assembly, Respondents, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on August 16, 2020.

Flor Vélez-Díaz
Assistant Stated Clerk of the General Assembly,
Presbyterian Church (U.S.A.)
and Manager of Judicial Process and Social Witness