

05-12 Mid Council Report to the 220th General Assembly—From the General Assembly Commission on Mid Councils.**Source:** Agencies **Sponsor:** Commission on Mid Councils**Committee:** [05-12] Mid Councils **Type:** General Assembly Full
Review Consideration**Topic:** Unassigned<http://pc-biz.org/Explorer.aspx?id=3913&promoID=223>**ADVICE FROM THE ACC**

The report of the General Assembly Mid Council Commission contains eight numbered recommendations for assembly action, each containing one or more specific action items. The Advisory Committee on the Constitution will address each enumerated recommendation separately, noting connections between particular recommendations.

1. *General Notes on Recommendations 1–4:*

These first four recommendations relate to the future of synods. The Advisory Committee on the Constitution advises that they address complementary aspects of the same question, so that to approve any of them without approving the other three would create the potential for significant constitutional confusion. The Advisory Committee on the Constitution (ACC) therefore advises that if the assembly wishes to accomplish the intent of Recommendation 1 to eliminate synods as councils of the church, that it consider the first four recommendations as a single motion with multiple parts.

The Advisory Committee on the Constitution (ACC) notes that the recommendations presume a number of constitutional amendments that are not yet before this assembly (cf. Recommendations 3 and 4). There is considerable risk in committing to a course of action on the assumption that the proposed action can be accomplished constitutionally without having the opportunity to evaluate the merits of the proposed mechanisms for implementation.

In addition, the ACC advises the assembly to review carefully the time frame for implementation of the recommendations so as to avoid the possibility of a lapse in constitutional authority to fulfill essential functions currently provided by synods prior to the full implementation of the recommendations.

The Advisory Committee on the Committee therefore advises the assembly that it would pose fewer constitutional risks to delay approval of Recommendation 1 until the assembly has also had full opportunity to review the amendments envisioned in Recommendations 3 and 4 for its implementation. If the assembly nevertheless wishes to fulfill the intent of Recommendation 1 it could answer the recommendation by instructing the Moderator to appoint a task force to bring to the 221st General Assembly (2014) the necessary constitutional amendments and a timeframe to accomplish Recommendations 1, 3, and 4 together. The Advisory Committee on the Committee also advises the assembly to consider carefully the merits of alternative strategies to accomplish similar ends, such as that proposed by Item 05-02 from the Presbytery of St. Andrew.

2. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 1:

Recommendation 1 contains two action items: The first action item would strike section G-3.04 in its entirety. This section of the Form of Government addresses matters relating to the synod, and would have the effect of eliminating synods as a council of the church. The second action item would amend language in G-3.03 (dealing with presbyteries) to reframe the function of presbyteries and to eliminate references to synods.

The history of the synod as a council pre-dates that of the assembly itself, the first synod having been established in 1717. The modern synod dates to 1972, when large regional synods supplanted the previous statewide synod model. Synods perform important functions in the life of the Presbyterian Church (U.S.A.): they facilitate the work of the church on a regional level; they have been the primary denominational contact with particular ministries in higher education; they have played an important role in advocacy and oversight of the denomination's commitment to racial ethnic diversity and inclusiveness. While the particular mission functions of synods vary, many perform significant mission support both financially and in direct mission endeavors. In regards to governance, synods perform an important role as an intermediate level of administrative review and judicial process between the 173 presbyteries and the General Assembly. Synods are also uniquely empowered to form non-geographic presbyteries to support the mission of racial ethnic and immigrant communities (*Book of Order*, G-3.0403c).

However, there is nothing in the history or foundational principles of Reformed polity that requires the existence of synods. From a polity perspective, the benefits of a four-tiered system of governance versus a three-tiered system are pragmatic and logistical rather than theological.

While Recommendation 1 would strike section G-3.04 describing the purpose, mission, functions, responsibilities, and composition of synods, and amend G-3.03, regarding the presbytery, it does not identify substitute language to identify which purposes, functions, and responsibilities of the synod should be preserved, or how they would be preserved. The process for identification of these purposes, functions, and responsibilities is addressed in Recommendation 3. The Advisory Committee on the Constitution is unable to provide definitive advice regarding the elimination of a whole section of the *Book of Order* in the absence of language to replace current structures.

These two items, if approved, are intended to take effect at the end of the 222nd General Assembly (2016). Section G-6.04e specifies the date on which an amendment becomes effective and mandates that an amendment receiving the necessary affirmative votes "shall become effective one year following the adjournment of the assembly transmitting the proposed amendment." This provision supersedes and controls the proposals of the Mid Council Commission, and would accelerate the date on which synods would cease to be councils of the church ahead of a complete plan for how the ecclesiastical responsibilities of synods would be handled.

The intention to postpone the effective date of the proposed amendments is in conflict with the clear procedures for amending the *Book of Order* in G-6.04, which begins "Amendments to the *Book of Order* shall be made only if all the following steps are completed :..." In other words, the amendment is to become effective either on the date specified in G-6.04e or not at all. If the assembly wishes to make the amendment to G-3.04 effective on a different date, it would be necessary to approve as an amendment to the Form of Government itself a provision establishing the date on which the provisions establishing the synods as a council of the church would cease to have effect (i.e., a "sunset clause").

3. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 2:

Recommendation 2 would require existing synods to bring to the 221st General Assembly (2014) plans for the transfer of assets, funds, projects, and programs of the synod. The language of the recommendation suggests that these plans would be presented to the assembly, but would not necessarily require approval by the assembly. The Advisory Committee on the Constitution advises the assembly that the Form of Government would require assembly approval of such plans. Section G-3.0502 states,

The General Assembly has responsibility to maintain relationships with presbyteries and synods by:

- a. consulting with and providing resources for presbyteries and synods as they execute their constitutional responsibilities;
- b. overseeing the work of synods;

- c. reviewing the records of synods, taking care to ensure that they conform to this Constitution;
- d. organizing new synods, or dividing, uniting, or otherwise combining previously existing synods or portions of synods; ...

The Advisory Committee on the Constitution advises that the constitutional responsibility of the General Assembly for “dividing, uniting, or otherwise combining previously existing synods,” extends to the approval of plans for the distribution of assets and continuation of programs of dissolved synods. A particular assembly may advise a future assembly of its design for how that future assembly should regard such plans, that is, with greater or lesser latitude for synod autonomy, but it may not bind the future assembly from exercising its responsibility of oversight and approval.

In addition to the above constitutional issues, there may be constitutional implications raised by the plans of particular synods when they are brought to the assembly for approval. It should be noted that the process of reallocating church property (both real and personal) is governed by G-4.02. There are tensions within this section between the missional and fiduciary functions of councils as they relate to property. Whatever processes may be proposed under Recommendation 3 for the review and approval of such plans should seek to resolve such tensions equitably and consistently.

The Advisory Committee on the Constitution advises the assembly that the time frame proposed in Recommendation 2 relies upon the delegation of assembly authority to approve synod plans to the commission envisioned in Recommendation 5, and/or to the regional administrative commissions envisioned in Recommendation 3, should a synod present an insufficient, unsatisfactory, or disputed plan to the 221st General Assembly (2014). Even so, it is possible that such a synod might be delayed in the approval or implementation of its plan beyond the 2016 deadline, requiring the synod to continue to function after the provision establishing synods has been removed from the Constitution.

4. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 3:

Recommendation 3 seeks to address the absence of specific constitutional language in Recommendation 1 by instructing the Moderator to appoint a committee to work with the Stated Clerk to present necessary amendments to the Constitution and *The Manual of the General Assembly*, to create five regional administrative commissions of the General Assembly for specified purposes of mission facilitation, boundary alignment, and preservation of historic racial ethnic ministries. The Advisory Committee on the Constitution advises the assembly that the charge for these commissions may be too limited in prospect. Essential functions currently exercised by synods, such as administrative review, and the power to enforce the church’s commitment to racial ethnic diversity and inclusion, are not identified in the charge for these commissions. While all constitutional functions pertaining to oversight of councils would devolve to the General Assembly following the elimination of synods, it would seem prudent to allow for the assembly to delegate to regional commissions additional powers that may be necessary for the timely and effective review and remediation of issues at the presbytery level. Failure to do so may have the effect of increasing the need to resort to judicial process as a means of remediation of issues.

In addition, the Advisory Committee on the Constitution advises the assembly that it seems unwise to adopt an action in Recommendation 1 that would mandate the elimination of an entire level of governance without having had the opportunity to evaluate proposed amendments and structures to ensure the continuation of essential functions of governance.

5. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 4:

Recommendation 4 seeks to address how judicial process would function in the absence of synod permanent judicial commissions. It proposes empowering the Moderator to appoint a committee (evidently distinct from that in Recommendation 3) to propose amendments to the Constitution and *The*

Manual of the General Assembly to create “the necessary number” of judicial commissions “rooted in the various regions” to perform the functions currently performed by synod PJC’s. As with Recommendation 3, this recommendation is sparse in detail, and leaves several important questions unanswered, among them:

a. *The relationship of regional GAPJC’s to the national GAPJC.* How will the regional judicial commissions function as commissions of the General Assembly distinctly from the General Assembly’s own PJC? Section F-3.0202 provides as a foundation of our polity that “... presbyters shall come together in councils in regular gradation.” By assigning two levels of judicial review to a single council (the General Assembly, through regional and national judicial commissions), the principle of regular gradation is challenged. Will there be provision that regional commissions be comprised of persons drawn from the region under jurisdiction of each commission? It is implicit in the principle of regular gradation that those exercising ecclesiastical jurisdiction over a particular part of the church be drawn from that part of the church, except where conflict of interest or rotation of service may exclude a lower council from representation.

b. *The power of authoritative interpretation.* Section G-6.02 provides for authoritative interpretation of the Constitution “through a decision of the General Assembly Permanent Judicial Commission in a remedial or disciplinary case.” If regional commissions are permanent judicial commissions of the General Assembly, will they be empowered to establish authoritative interpretations of the Constitution? Would provision be made for decisions in one region to be binding on that region and not on others, pending a decision by the national GAPJC, as with U.S. Circuit Courts of Appeal?

c. *The adjudication of cases in process.* At some point, synod PJC’s would cease to function and their responsibility for cases in process transferred to regional judicial commissions. How would issues arising out of this transition be addressed concerning obtaining stays of enforcement, determinations on preliminary questions, and agreements or settlements at pretrial conference?

As with Recommendation 3, the Advisory Committee on the Constitution notes that this recommendation requires the assembly to act on the elimination of structures without a clear understanding of what will replace them.

6. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 5:

Recommendation 5 would instruct the Moderator to appoint a commission to work in consultation with the Stated Clerk to act as the General Assembly for purposes of organizing, dividing, uniting, or combining synods, and approving the organization, division, union or combination of presbyteries (per G-3.0502) between the meetings of the General Assembly, until regional administrative commissions have been constituted. This would effectively continue some of the existing powers of the Mid Council Commission under a newly formed commission. The Advisory Committee on the Constitution advises the assembly that these powers constitutionally belong to the assembly, and that the assembly may delegate them to one or more commissions if it chooses. The Advisory Committee on the Constitution also advises the assembly that the approval of various non-geographic presbyteries as envisioned in Recommendation 5 would give considerable latitude to this commission to authorize significant departures from the historic practice of the church. These will be discussed more fully in the advice regarding Recommendation 6. Since a commission is empowered to act as the assembly, a liaison from the Advisory Committee on the Constitution should be appointed to advise the commission, consistent with Standing Rule E.3.f in *The Manual of the General Assembly*.

7. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 6:

Recommendation 6 consists of two action items that propose amendments to the Constitution to provide for two experiments in Presbyterian polity on a time-limited basis. The first action item would

allow for synods to form non-geographic presbyteries within their bounds for "particular missional purposes" in addition to the existing power to create them to support racial ethnic and immigrant congregations, with certain specific presbytery powers shared jointly with a congregation's presbytery of origin. The second would allow the transfer of individual congregations to presbyteries (either geographic or non-geographic) in the same or adjoining synods, while retaining an "affiliate" relationship with the presbytery of origin, which would also share with the receiving presbytery certain rights regarding church property and congregational division or dismissal. Section G-3.0106 states clearly that "mission determines the forms and structures needed for the church to do its work." The proposals are consistent with this constitutional affirmation. In addition, the proposals include enabling constitutional amendments that are adequately specific so as to preserve the unity of constitutional authority. The advice on each of these proposals will be addressed separately.

a. The first proposal, regarding non-geographic presbyteries, concerns a topic on which the Advisory Committee on the Constitution has advised the assembly on several occasions. Our advice on related proposals is attached to Items 05-01, 05-05, 05-08, and 05-10). The Advisory Committee on the Constitution has consistently expressed its concern over the creation of non-geographic presbyteries. They challenge the foundational principle of the unity of the church expressed in F-1.0302a, may intentionally or unintentionally compromise the church's commitment to racial and ethnic inclusivity, and risk the division of the church into communities of the like-minded, with the effect of excluding the voice of God as God may speak through those with whom we are in disagreement. This particular proposal, in distinction from others, mitigates some of these concerns through the time-limited nature of the amendment, the requirement of the consent of the affected presbyteries, the sharing of certain powers with the presbyteries of origin during the period of experimentation, and the requirement of a valid mission rationale.

Nevertheless, the Advisory Committee on the Constitution notes that there are no constitutional restrictions on the ability of congregations with similar mission purposes to unite in common mission without the requirement of establishing a common structure of governance. It also advises the assembly that establishing temporary and fluid structures of governance creates issues related to their dissolution, such as the disposition of common assets and the membership of newly ordained members which are not addressed in the recommendation.

If the assembly chooses to approve this recommendation, the Advisory Committee on the Constitution raises the concern that churches seeking permission to sell property or be dismissed to another Reformed body would require the permission of their presbyteries of origin, but those churches would not be guaranteed voice or vote in that decision. Fundamental fairness would dictate that some accommodation be made to grant voice, if not vote, in these decisions.

b. The second proposal concerns transfer of individual congregations to other presbyteries (either geographic or non-geographic) in the same or an adjoining synod. The Advisory Committee on the Constitution raises the same concerns regarding the unity of the church and the value of diversity as with the first proposal. In addition, the Advisory Committee on the Constitution finds this proposal erodes the essential unity of the church as expressed in F-3.0201 and F-3.0202 by regarding congregational mission as somehow disconnected from that of other churches in its geographic vicinity, or of the shared mission of the geographical presbytery. This proposal has the added protection, however, that either presbytery could rescind the new relationship and restore the church to its original presbytery after consultation with the congregation. It should be noted that such "affiliate congregations" would have voice (and, in some cases, vote) in the presbytery of origin, whereas those dismissed (potentially) to the same (non-geographic) presbytery under the first proposal would lack that voice.

8. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 7:

Recommendation 7 would establish a task force to review the nature and function of the General Assembly Mission Council and the Office of the General Assembly with respect to their relationship and

support of mid councils. The Advisory Committee on the Constitution advises the assembly that such a task force is within the power of the assembly to create.

9. The Advisory Committee on the Constitution submits the following advice to the assembly regarding Recommendation 8:

Recommendation 8 recommends that the Moderator be empowered to appoint a national Racial Ethnic Ministries Task Force to address various concerns expressed to the commission during its research. The Advisory Committee on the Constitution advises the assembly that it is within the power of the assembly to create such a task force.