

## **ADVISORY OPINION:**

The 2010 Action of the General Assembly of the Presbyterian Church (U.S.A.)  
Standing in Solidarity

### **What action did the 219th General Assembly of the Presbyterian Church (U.S.A.) take regarding holding national church-wide meetings<sup>i</sup>?**

The 219th General Assembly (2010) adopted a resolution entitled *A Call to Stand with Immigrant Presbyterians in Their Hour of Need*, which called for the national church to refrain from holding church-wide gatherings in states with legislation “like Arizona’s SB 1070.”<sup>ii</sup> The stated purpose of the resolution was to avoid asking Presbyterians to travel to states where a person’s outward appearance or characteristics might subject them to harassment due to legislation “similar to Arizona Law SB1070.”<sup>iii</sup>

The Social Justice Issues B Committee at the General Assembly was aware that other states, aside from Arizona, would likely be subject to the resolution. The rationale acknowledges that “[a]s of June 23, 2010, seventeen states” were in the process of considering copycat legislation. Further, the rationale states that the law would target an “entire class of people as potential violators of immigration law.” The Advisory Committee on Racial Ethnic Concerns submitted a comment for the resolution that recognized legislation like SB 1070 “fosters racism and gives foundation and rationale for racist acts in our society...[and] exposes people to threats and risks based on their physical appearance.”<sup>iv</sup>

The purpose and goal of *A Call to Stand with Immigrant Presbyterians in Their Hour of Need* is to ensure that when choosing a place where the whole church would gather, that the whole church would be able to do so without fear or potential for increased risk of harassment based on “appearance.”

### **What actions prompted the resolution, *A Call to Stand with Immigrant Presbyterians in Their Hour of Need*?**

In an effort to address the effects of a broken immigration system and to urge Congress to take action on immigration, among other reasons, states and localities considered legislation aimed at reducing unauthorized immigration in mid to late 2000s. In 2010, Arizona was the first state to enact such legislation, which became known as SB 1070. Soon thereafter, other states introduced, considered, or ultimately adopted a version of SB 1070.<sup>v</sup> However, after the federal government challenged SB 1070, many states took a “wait and see” approach and declined to move on such legislation.

### **Why is a resolution like this important?**

The General Assembly constitutes the bond of union, community, and mission among all its congregations and councils, to the end that the whole church becomes a community of faith, hope, love, and witness.<sup>vi</sup> This group of elected ruling elders and teaching elders reflects the diversity of the church and it is to lead and guide the

witness of the whole church. It has the responsibility and power to warn and bear witness against errors or immorality in the world.<sup>vii</sup>

Further, the *Book of Order* calls the church to remember that our unity is reflected in the diversity of our membership and, therefore, there is no place in the life of the church for discrimination, guaranteeing full participation and representation in our life together regardless of one's worldly condition.<sup>viii</sup>

The General Assembly recognized that if the above statements outlined in the Foundations of Presbyterian Polity, were meaningful that steps had to be taken to ensure that whenever the denomination invited the whole church to gather that all people, regardless of their worldly condition, would feel welcomed and safe. *A Call to Stand with Immigrant Presbyterians in Their Hour of Need* recognizes that by holding national meetings in states with such legislation we could no longer guarantee full participation and representation by sisters and brothers who would be afraid to travel to those states or where their presence would not be welcomed by virtue of the state's laws.

### **Is the Presbyterian Church boycotting states with legislation that is “like Arizona?”**

No. The action by the General Assembly is not a boycott and was adopted with the intention of recognizing that the denomination is led by and comprised of people from many nations and of all immigration statuses. The resolution was a sign that the General Assembly recognized that the whole church could not be present if it were to meet in states where some members of the body would be subject to harassment or increased scrutiny.

While the denomination will not hold church-wide meetings in states with legislation that targets people perceived of as being in the U.S. without authorization, staff of the national office continue to travel to and work with Presbyterians in all states.

### **What makes state legislation “like Arizona’s SB 1070,” thereby triggering the General Assembly’s resolution?**

While many states have laws that people of faith and good will have found to be “unfriendly” to immigrants, the resolution by the General Assembly is narrowly focused on the potential for racial profiling. Such laws include language which requires a police officer to inquire about a person’s immigration status when there is “reasonable suspicion” that that person is “unlawfully present” in the U.S.<sup>ix</sup>

### **The Supreme Court struck down many provisions of SB 1070 in 2012, is the General Assembly’s resolution still relevant?**

Yes. The Supreme Court did review SB 1070 as a result of the federal government’s challenge to SB 1070. The federal government used a very narrow legal theory known as preemption, which essentially claimed that Arizona was preempted from acting on immigration because immigration was under the purview of the federal government.<sup>x</sup> The Chief Justice of the Supreme Court explicitly asked the lawyer for

the federal government during oral arguments whether the case was about racial profiling. He asked, “No part of your argument has to do with racial or ethnic profiling, does it? I saw none of that in your brief.”<sup>xi</sup> The Solicitor General answered: “We’re not making any allegation about racial or ethnic profiling in this case.”<sup>xii</sup>

Under this narrow theory several provisions of SB 1070 were struck down, but the Supreme Court upheld section 2(B), the section of the law at the heart of the General Assembly’s action. Section 2(B) was upheld by the Court because at the time the Court reviewed the law it had not gone into effect therefore the Court stated it would be “inappropriate to assume the it would be construed in a way to conflict with federal law.”<sup>xiii</sup> The Court added that its opinion did not “foreclose other preemption and constitutional challenges to the law as interpreted and applied after” it went into effect.<sup>xiv</sup>

### **Some organizations initially called for a boycott of Arizona and have since rescinded that position.<sup>xv</sup> Why has the General Assembly not rescinded their action?**

The General Assembly of the Presbyterian Church (U.S.A.) has not instituted a boycott. The purpose of the action is to “stand with immigrant Presbyterians,” not to punish a state for their laws. While there was a call to rescind action of the 219th General Assembly after the Supreme Court released its opinion, the 220th General Assembly voted down that overture and reaffirmed its 2010 action in two separate resolutions.<sup>xvi</sup> One affirmed the 2010 action explicitly<sup>xvii</sup>, while another included the statement that when selecting venues for church events that a factor would be the “safety and freedom from harassment of all who might attend.”<sup>xviii</sup>

### **Which states have passed laws like SB 1070?**

The spirit of the 219<sup>th</sup> GA action was to refrain from inviting Presbyterians to a state where some of the participants would be subject to increased scrutiny based on their perceived immigration status. While several states have adopted laws considered to be unwelcoming of immigrants, not all of those states have adopted laws that rise to the level of SB 1070, where individuals may be targeted if there is a “reasonable suspicion” that they may in the U.S. without authorization. The states that currently have adopted laws “like Arizona SB 1070” are Alabama, Arizona, and South Carolina.<sup>xix</sup> The office of Immigration Issues maintains this list at their website [www.pcusa.org/immigration](http://www.pcusa.org/immigration).

### **What will happen if there is immigration reform?**

The resolution, *A Call to Stand with Immigrant Presbyterians in Their Hour of Need*, will remain in affect until the laws that trigger the resolution are rescinded by the states that enacted them, a court renders them unlawful, federal laws are adopted that pre-empt the state law or otherwise render the laws null and void, or the General Assembly votes to rescind the action. As of April 2013 many policy watchers anticipate that legislation to reform our nation’s immigration laws is imminent. Whether that legislation will address racial profiling is yet to be seen. The office of

Immigration Issues will continue to monitor legislation and policy and keep the denomination informed via its website and communications with mid-councils.

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<sup>i</sup> The rationale of the resolution states that “national and synodical agencies of the PC(USA)” are to be subject to the resolution, while the resolution states that the “PC (USA) to refrain from holding...” Minutes, 2010, Part I, p 879-881.

<sup>ii</sup> *Minutes*, 2010, Part I, p 879.

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.*

<sup>v</sup> National Conference of State Legislatures: <http://www.ncsl.org/issues-research/immig/2012-immigration-related-laws-jan-december-2012.aspx>.

<sup>vi</sup> Book of Order G-3.0501.

<sup>vii</sup> Book of Order G-3.0501(c).

<sup>viii</sup> Book of Order F-1.0403.

<sup>ix</sup> Ariz. Rev. Stat. § 11-1051. <http://www.azleg.gov/ars/11/01051.htm> (retrieved April 16, 2013).

<sup>x</sup> *Arizona v. United States*, 567 U.S. \_\_\_ (2012).

<http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf> (retrieved April 16, 2013).

<sup>xi</sup> <http://www.scotusblog.com/2012/04/argument-recap-a-choice-between-radical-and-reasonable/>

<sup>xii</sup> *Id.*

<sup>xiii</sup> *Arizona v. United States*, 567 U.S. \_\_\_ (2012). Accessed at:

<http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

<sup>xiv</sup> *Id.*

<sup>xv</sup> Beard, Betty and Neighbor, Megan. “National Council of La Raza Announces End of Boycott” *The Arizona Republic* [Phoenix] September 9, 2011.

<http://www.azcentral.com/arizonarepublic/local/articles/20110909arizona-boycott-called-off-la-raza.html> (accessed April 16, 2013).

<sup>xvi</sup> Minutes, 2013, Part I, p 1135.

<sup>xvii</sup> Minutes, 2012, Part I, p 1159.

<sup>xviii</sup> Minutes, 2012, Part I, p 1144.

<sup>xix</sup> Information is available at the Office of Immigration Issues website:

<http://oga.pcusa.org/section/departments/immigration/immigration-legislation/>.