

**Simmons, et al. v. Pby of Suwannee,
Remedial Case No. 197-4,
11.067**

**THE REVEREND LIB MCGREGOR SIMMONS,
THE REVEREND DAVID W. A. TAYLOR,
THE REVEREND ROLAND P. PERDUE III
Complainants-Appellants**

vs.

**THE PRESBYTERY OF SUWANNEE
Respondents-Appellee**

This is a remedial case initiated by a complaint filed by the Reverend Lib McGregor Simmons, et al. against the Presbytery of Suwannee challenging its action on December 16, 1983, in voting to sustain the examination of the Reverend Thomas T. Ellis under G-11.0403, to receive him into membership in the presbytery on transfer from Atlanta Presbytery, to place in his hands the call of the congregation of the Northshore Presbyterian Church of Jacksonville, Florida, to become its pastor, and to approve a commission to install him. Complainants allege that these acts of the presbytery were unconstitutional.

At the trial on May 3, 1984, the facts were established by stipulation before the Permanent Judicial Commission of the Synod of Florida, which voted five to four not to sustain the complaint, thereby upholding the reception of Mr. Ellis as a member of Suwannee Presbytery. The Complainant's appeal from the Synod's decision was timely filed and is in order. Appellants have standing to appeal, this Commission has jurisdiction, and the record is adequate for a decision in the case.

The three matters presented to this court center around Presbytery's reception of Mr. Ellis, despite appellant's claims that :(1) Mr. Ellis stated to the presbytery that the Confession of 1967, one of those listed in G-1.0501, is not a statement of the Reformed Faith by which he would be instructed, led or guided in the fulfillment of his office, (2) Mr. Ellis stated to the presbytery that, in his view, women should not be ordained as ministers, elders, or deacons (cf. G-14.0200), and (3) Mr. Ellis stated to the presbytery that he did not agree with the provision of S-3.0500d that unconfirmed baptized children who were being nurtured and instructed should be invited to partake of the Lord's Supper.

In challenging the constitutionality of Presbytery's actions regarding the reception of ministers, appellants must overcome a substantial weight of authority that grants broad discretion to the presbytery in these matters. The recent decision of *Rankin vs. National Capital Union Presbytery* (*Minutes*, UPCUSA, 1981, Part I, p. 113), traces the history of this discretion in the former United Presbyterian Church in the United States of America. In 1927 the General Assembly of the Presbyterian Church in the U.S.A. received a report from its Special Commission of 1925 which stated in part:

The Presbytery is the only body whose members see the candidate and hear him officially. It is the body qualified and constitutionally appointed to judge at first hand, concerning his spirit and bearing his general attitude toward the service of Christ. (Rankin, supra at p. 115.)

The Rankin court concluded on the facts of the case before it that presbytery's determination that differences apparent in the minister's personal wording of his answers were not denials of doctrines and stated:

This is a judgment the presbytery was best qualified to make. While some answers to some questions may appear to be weak, we affirm the principle that we are not to substitute our own judgment for that of the lower judicatory, which is best able to judge. [See Anderson, Minutes of the General Assembly, Part I, 1962, pages 316ff]. (Rankin, supra at p. 116.)

In the recent case of *Hambrick vs. Permanent Judicial Commission Synod of North Carolina* (No. 1-1983) the General Assembly Permanent Judicial Commission of the Presbyterian Church in the United States used nearly identical language in describing that court's basis for setting aside a presbytery's determination in connection with the reception of ministers.

In defining the limits of presbytery's discretion in this regard, several provisions of the *Book of Order* are also instructive.

The authority for presbytery's examination of ministers is lodged in part in G-11.0403: *A presbytery shall determine the ministers of the Word who shall be its continuing members. In making this determination the presbytery shall be guided by all the following criteria:*

a. The ministry of continuing members shall be in demonstrable conformity with the mission of God's people in the world as set forth in Holy Scripture, the Book of Confessions, and the Book of Order of this church.

b. ...

c. ...

d. ...

e. The ministry shall include responsible participation in the deliberations and work of the presbytery and in the worship and service of a congregation.

In carrying out its constitutional function, the presbytery is required to:

...examine each minister...who seeks membership in it on his or her Christian faith and views in theology, the Sacraments, and the government of this church...(G-11.0402.)

In judging the compatibility of an examinee's "faith and views" with the Constitution of this church, the presbytery is guided by G-6.0108 which reads:

It is necessary to the integrity and health of the church that [its ministers]...shall adhere to the essentials of the Reformed faith and polity as expressed in the Book of Confessions and the Form of Government. So far as may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church, freedom of conscience with respect to the interpretation of Scripture is to be maintained.

...The decision as to whether a person has departed from essentials of Reformed faith and polity...ultimately becomes the responsibility of the governing body in which he or she serves. (G-1.0301; G-1.0302.)

Both the former United Presbyterian Church in the United States of America and the former Presbyterian Church in the United States have acknowledged the relationship between "freedom of conscience" on the one hand, and on the other, actions which "infringe on the rights of others." In the recent decision titled *Huie vs. Synod of the Southeast* (No. 21-1977), Minutes, General Assembly Presbyterian Church U.S., p. 112, the court said:

...dissenting views...may be tolerated if the presbytery...finds that those views may be held by a minister without destroying his effectiveness in carrying out church policy in conformity with the fundamental provisions of the Book of Church Order...

Stated another way, the Preliminary Principles to the *Book of Order* acknowledge the "inseparable connection between faith and practice, truth and duty." (G-1.0304.) This connection has been recently expanded by a document adopted by the 195th General Assembly (1983) Presbyterian Church (U.S.A.) titled "Historic Principles, Conscience, and Church Government," where the concluding section of the report to the General Assembly states:

(4) The fact that the church permits diversity of theological beliefs but in many areas requires uniformity of practice does not exalt polity over theology. It is simply recognition that in at least some areas practice must be uniform in order to define the church's identity...Church officers must conform their actions, though not necessarily their personal beliefs or opinions, to the practice of the church in areas which the church has determined to be necessary or essential. (Minutes, 1983, Part I, pp. 141-158.)

In the recent *Hambrick* decision, the Permanent Judicial Commission focused on what it felt governed the presbytery's duty in regard to questioning of a minister and stated:

Unless a minister is willing to perform all the [constitutional] functions of the office...he or she should not be received by the Presbytery....(Hambrick, Minutes of General Assembly, Presbyterian Church in the United States, 1983.)

A review of the *Book of Order* and recent decisions of the highest courts in both of the former churches focuses our attention on statements that a minister must be willing to perform certain functions of office, both before being received by presbytery, as well as throughout his or her ministry. Both traditions have language comparable to that found in *Pittsburgh Presbytery vs. Maxwell* (Minutes, UPCUSA, 1975, Part I, p. 254), which states, in connection with the ordination of women:

There is no question that refusal to ordain women on the basis of their sex is contrary to the Constitution.

...

Presbytery does not have the power to permit the ordination of [a minister] who rejects this part of the polity of Church. (Maxwell, Minutes, General Assembly, United Presbyterian Church, Part I, 1975, p. 258. See also Huie, Minutes, General Assembly, Presbyterian Church in the United States, p. 112 (1977).

It is equally clear that on matters of belief and practice, the presbytery must determine that the ministry of the person being examined is in "demonstrable conformity with the mission of God's people in the world as set forth in Holy Scriptures, the Book of Confessions, and the Book of Order of their church." (G-11.0403a).

Recognizing the theological diversity of our reunited church, the Presbyterian Church (U.S.A.) adopted as part of its Plan for reunion the following statement:

3.2 The General Assembly of the reunited Presbyterian Church shall at an early meeting appoint a committee representing diversities of points of view and groups within the reunited Church to prepare a Brief Statement of the Reformed Faith for possible inclusion in the Book of Confessions as provided in G-18.0201.

3.3 Until the Brief Statement of the Reformed Faith has been incorporated into the Book of Confessions, the Presbyterian Church (U.S.A.) accepts a A Brief Statement of Belief adopted by the 102nd General Assembly of the presbyterian Church in the United States in 1962, attached to this Plan for Reunion as Appendix I, page 280, as a summary of the Reformed understanding of historic Christian doctrine set forth in Scripture and contained in the confessions of the Presbyterian Church (U.S.A.). During that interval, A Brief Statement of Belief shall be utilized with the Confessions of the Church in the instruction of Church members and officers, in the orientation and examination of ordinands prior to ordination, and of ministers seeking membership in Presbyteries by transfer from other Presbyteries or other Churches. (Articles of Agreement to form Presbyterian Church (U.S.A.), 3.2, 3.3.)

This recognition of a need for a transitional statement of belief indicates to this court that a presbytery needs to be afforded adequate discretion to test the conformity of its ministers' theology with the essential tenets of the Reformed faith as defined by our church. See *Rankin* supra at p. 116. Similarly, the presbytery's authority in connection with reception of ministers should be exercised in a manner which does not render meaningless the provisions of G-14.0202b concerning a congregation's election to exclude itself from the provision of G-14.0201.

Fundamentally the question of challenge to a presbytery's decision to receive a minister is

one to be decided by a higher governing body based upon the higher court's review of the record before it, and upon that review, a determination by the court as to whether or not the presbytery acted reasonably, responsibly, and deliberately within the Constitution of the church. *Rankin*, supra at p. 116.

Where, as here, that determination centers upon presbytery's examination of a minister of the Word, the constitutional question turns on whether or not the party challenging the presbytery's action has adequately carried forward its burden to prove that the presbytery acted unreasonably in finding that the minister's examination disclosed no information that would disqualify the examinee from service in this church. As stated before, that factual determination by presbytery is the heart of its constitutional responsibility and is entitled to great weight.

Mindful of the foregoing historical and constitutional authority, we now turn to consideration of each specification of error in the order presented to us.

The first specification of error deals with Mr. Ellis's alleged refusal to be led or guided by the Confession of 1967 in the fulfillment of his ministry. In that regard, even the complainant's agree Mr. Ellis stands within the Reformed tradition and that he accepts not only the Westminster Confession of Faith, but also the Reformed faith as required in G-14.0405c. It is believed that in the light of what he does believe, his apparent rejection of the Confession of 1967 is insufficient grounds to override the decision of Presbytery to receive him. This specification of error is not sustained.

The second specification of error alleges that Mr. Ellis does not believe that women should be ordained. In *Hambrick*, supra, the Commission held that a minister of the Presbyterian Church in Ireland who did not believe in the ordination of women could be received by presbytery provided that he was prepared to perform all the functions of office mandated in the Constitution.

When Mr. Ellis was received by Atlanta Presbytery in 1975, a complaint similar to this complaint was raised. (*Huie*, supra.)

The record in *Huie* indicated that if instructed by Presbytery to participate in the ordination of a woman, Mr. Ellis represented that he would be obedient to his brethren. On this ground the *Huie* Court ruled that Atlanta Presbytery could receive him. In our opinion the complainants have not established that Mr. Ellis has repudiated this position. Since Complainants have not proven that Mr. Ellis would refuse to honor his ordination vows, we find, based upon the authorities cited herein, that Presbytery did not act unconstitutionally in voting to receive Mr. Ellis. This specification of error is not sustained.

The third specification of error deals with Mr. Ellis's rejection of the principle that unconfirmed baptized children should be invited to partake of the Lord's Supper. The record does not prove that Mr. Ellis's proposed practice in regard to admitting baptized but unconfirmed children to the Lord's table is so inconsistent with S-3.0300h and S-3.0500d as to sustain this complaint against the action of Presbytery. This specification of error is not sustained.

The Reverends Harvard A. Anderson and Robert L. Craghead and Elder Jose L. Capella were absent and did not participate in the decision. The Rev. Mary Bettis Love did not participate due to D-8.0400 and Elder Mary B. Steddom did not participate because of D-4.0400.

**Dissenting Opinion of James W. Angell,
Sarah W. Clark, C. Donald Close, Frances L. Hollis,
Justin M. Johnson, and Evelyn Reddin**

We respectfully dissent from the majority decision with respect to its determination that Suwannee Presbytery was acting within proper constitutional limits when it voted to approve the admission into its membership of the Rev. Thomas Ellis.

The General Assembly has frequently considered the issue of the powers of the higher courts over the lower courts. In *Maxwell vs. Pittsburgh Presbytery*, it was determined that "Neither a Synod or the General Assembly has any power to allow a presbytery to grant an exception to an explicit constitutional provision." (*Minutes*, UPCUSA, 1975, Part I, p. 259.) In our judgment the presbytery did not properly exercise its responsibility and the synod did not correctly exercise its authority.

We dissent from the majority opinion with respect to Mr. Ellis's position on the Confession of 1967 (C'67). We agree that Mr. Ellis holds to the essential tenets of the Reformed faith as traditionally expressed. No questions are raised about details of that formulation of beliefs. But we take note that the questions required for ordination and for installation as pastor, elder, or deacon include the following:

Do you sincerely receive and adopt the essential tenets of the Reformed faith as expressed in the confessions of our church as authentic and reliable expositions of what Scripture leads us to believe and do, and will you be instructed and led by those confessions as you lead the people of God? (G-14.0405c.)

Mr. Ellis specifically refused to be "guided and led" by C'67. It is not enough to have studied C'67 (which he did). That is not the question. One might well be "instructed" by that with which he or she disagrees. But the question also requires being "led."

Confessions of faith differ. They do not all address the same issues or theological questions. Rather, they reflect the issues and areas of Christian concern that are pertinent to the time in which they are written. It is this living characteristic that makes confessions useful.

The Christian faith is alive because it follows a Living Lord. It therefore repeatedly finds new expressions in its Confessions. A relevant ministry thus requires the minister to be "led" by even that with which he or she may not agree.

We respectfully dissent from the majority decision with respect to Mr. Ellis's position on the ordination of women.

The Constitution specifies that among the duties of a pastor is "leadership of the congregation in implementing the principles of participation and inclusiveness in the decision-making of the church." (G-6.0202.) Reluctant performance of a function which is contrary to one's belief would not constitute leadership in the accepted role of pastor as teacher. The record shows, in fact, that Mr. Ellis has stated his intention to teach his conviction that the ordination of women to church office is contrary to God's will as he interprets Scripture! "It would be necessary for me to teach what my convictions are--that the Scriptures do not teach that women should be ordained to church office, but rather that they are to be excluded from that particular aspect of the church's ministry and life." (T. 5-6, tape 2.)

We do not question Mr. Ellis's right to hold that view, but we contend that his teaching of it precludes any possibility of his providing leadership in implementing an opposing view as required by the Constitution. He further stated in the transcript of his examination before Presbytery in response to questions of his expressed disagreement on the issue of ordination of women that, although it would not be his desire, it might be a "responsible action" to lead the Northshore Church out of the Presbyterian Church (U.S.A.). In defining a minister of the Word who is an active member engaged in ministry, the Book or Order specifies that such persons must comply with all the criteria in G-11.0403 without exception. The first of these criteria states "The ministry of continuing members shall be demonstrable conformity...." We would

further point out that with regard to the ordination of women, the exemption provided for congregations in G-14.0202 does not imply either implicitly or explicitly a concomitant exemption for ministers.

We believe the Presbytery, in an admirable but misguided attempt to maintain an "open and fair" policy of including a broad spectrum of views among its membership, has thereby lessened or possibly eliminated the potential of Mr. Ellis to be effective in leading his congregation in a review of the *Book of Order* or engaging them in a serious and productive study of the concerns expressed in the complaint.

In addition to our dissent from the majority decision concerning the specifications of error, we dissent from the philosophy expressed therein on judicial review.

The decision to be made as to whether or not a minister is exercising his or her freedom of conscience on the one hand, or taking action, by word or otherwise, which defeats our church law on the other hand, is not a "factual determination" that is thereby beyond review and correction by this Permanent Judicial Commission.

The function of a judicial commission is to consider and decide a case of process for the governing body according to D-9.0503. We agree wholeheartedly that this Commission is bound by the facts found by a lower governing body as to exactly what a minister may have said, or done, concerning that minister's Christian faith and views in theology, the Sacraments, and the government of this church. (G-11.0402.)

The issue of whether those acts, either present or future would defeat church law, is not a "factual determination" in our view, but rather the ultimate issue. The General Assembly has wisely left the resolution of this fundamental question to the judicial commissions of this church. While we must give some deference to the consideration and conclusions reached by a lower governing body on fundamental questions of this nature, this Commission may not escape its responsibility to independently consider, and decide, such ultimate questions. This in no way undermines the discretion of the lower governing body to consider and determine the facts from which such conclusions must be drawn.