

REMEDIAL CASE 205-3

**Alexander F. METHERELL, Robert D. ROACH, Cordell BAANHOFMAN
And John CUMMINGS**

v

THE 204TH GENERAL ASSEMBLY (1992)

**John FIFE, James E. ANDREWS, Howard L. RICE, Martha MARTIN
Jane ODELL, and Richard BALDWIN**

This matter was filed as a remedial case against the 204th General Assembly (1992) and certain named individuals involved in the General Assembly process, alleging "the unconstitutionality and procedural irregularities" of actions of the 204th General Assembly (1992) in adopting the majority report of the Special Committee on Problem Pregnancies and Abortion.

Procedural Issues

The Executive Committee of the General Assembly Permanent Judicial Commission, in accordance with D-6.1200a, determined that the complaint was timely filed, that the General Assembly Permanent Judicial Commission does not have jurisdiction, that the complainants have standing to file the case, and that the Complaint does not state a claim upon which relief can be granted.

This determination was communicated to all parties, and, in accordance with D-6.1200b, the General Assembly Permanent Judicial Commission met to decide the jurisdictional questions as to whether the case would be heard by the General Assembly Permanent Judicial Commission.

Findings

Upon consideration of written briefs and oral arguments presented by complainants and the Committee of Counsel of the General Assembly, the General Assembly Permanent Judicial Commission finds that the complainants have failed to state a claim upon which relief can be granted.

The adoption of the report by the General Assembly was, in fact, the establishment of a policy which is well within the jurisdiction of the General Assembly (G-13.0103b).

The Permanent Judicial Commission voted to affirm the recommendation of its executive committee and dismiss this case without further hearing.

Milton S. Carothers and Marcos Feliciano were not present and took no part in the proceedings.

In the Matter of
Request for Reconsideration of decision in 205-3

By: Alexander F. METHERELL
Robert D. ROACH
Cordell BAANHOFMAN
John COMMINGS

The General Assembly Permanent Judicial Commission finds that neither circumstances nor understanding have changed since reaching the decision in *Metherell, Roach, Baanhofman, and Cummings v. the 204th General Assembly (1992), et al.*, Case 205-3.

The General Assembly Permanent Judicial Commission does not have the authority to overturn the General Assembly in programmatic decisions. *Book of Order*, D-6.0500, describes the jurisdictional relationships of who may complain of whom. *Book of Order*, D-6.0500g, deals with complaints against General Assembly agencies, but does not include a complaint against the legislative body, the General Assembly.

The decision of the 204th General Assembly (1992) in acting on the report of the Special Committee on Problem Pregnancies and Abortion is not subject to the review of any body save future assemblies.

The petitioners have failed to recognize the proceeding, October 30, 1992 - November 2, 1992, as fulfillment of D-6.1200b. It was both a pretrial conference and a trial on the preliminary questions of jurisdiction and whether or not a claim has been stated upon which relief can be granted. These issues were clear and focused from the time of the PJC executive committee's initial determination in August of 1992. No amount of conferencing, negotiating, or rewriting of the complaint would make it possible for the General Assembly Permanent Judicial Commission to rule on the constitutionality of the 204th General Assembly's (1992) action in this matter as requested by the petitioners.

Order

It is therefore ordered that Case 205-3 not be reconsidered.

Dissenting Opinion of Joel Secrist

It is my opinion that the PJC erred when it did not provide a pretrial conference to resolve the preliminary questions.

The *Book of Order*, D-6.1200b, is clear that if any question arises on any point of the preliminary questions a pretrial conference shall be scheduled. The word "shall" is mandatory, not permissive.

The trial of the preliminary questions before the full PJC was not a substitute for the pretrial conference. The trial on October 31, 1992, was a formal trial of the preliminary questions.

There was no informal exploration of settlement possibilities, and no informal action that may have reasonably expedited the resolution.

As a general proposition, we expect parties to comply with the technical requirements of the *Book of Order*. Disregard of these requirements cannot be tolerated.

Upon direct application by the complainants for reconsideration in Remedial Case 205-3, I have no alternative other than supporting the complainants' position that the denial of due process has resulted in injury to the complainants. Therefore, it is my dissenting opinion that a pretrial conference should be scheduled in this matter in order to comply with D-6.1200b.