

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

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Eric Parnell, Bruce McIntosh, Cordelia )  
Shieh, Margaret Gelini, Greg Roth, Marsha )  
Roth, Randy Young, and the Session of )  
Walnut Creek Presbyterian Church, )  
Appellants (Complainants), )  
v. )  
Presbytery of San Francisco, )  
Appellee (Respondent). )  
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**DECISION AND ORDER**  
Remedial Case 220-03

**Arrival Statement**

This matter now before the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) is an appeal of a decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) rendered on September 25, 2010. The Notice of Appeal was received by the Stated Clerk of the General Assembly on November 9, 2010.

**Parties**

The Appellants (originally Complainants) in the case are Eric Parnell, Bruce McIntosh, Cordelia Shieh, Margaret Gelini, Greg Roth, Marsha Roth, Randy Young, and the Session of Walnut Creek Presbyterian Church. The Appellee (originally Respondent) in the case is the Presbytery of San Francisco.

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, that Appellants have standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more of the grounds for appeal in D-8.0105.

**Appearances**

Appellants were represented by Mary Holder Naegeli and Bruce McIntosh. Appellee was represented by Douglas Nave and Pamela Byers.

## History

In April, 1997, the Presbytery of San Francisco (Presbytery) enrolled Lisa Larges (the Candidate) under care as a candidate for the office of minister of the Word and Sacrament, upon transfer from the Presbytery of the Twin Cities Area. In December, 2007, the Committee on Preparation for Ministry of the Presbytery conducted its final assessment and on January 15, 2008, the Presbytery voted to certify the Candidate as ready for examination.

At its stated meeting of November 10, 2009, the Presbytery voted to validate the Candidate's call to serve as coordinator of the organization That All May Freely Serve, pending her ordination as a minister of the Word and Sacrament. The Presbytery then voted to approve the Candidate for ordination to the office of minister of the Word and Sacrament. In her examination, she presented to the Presbytery both a Statement of Faith and a Statement of Departure. In the latter document and within her examination, she affirmed that she is not currently in a same gender relationship.

On December 21, 2009, Appellants filed a remedial complaint against the Presbytery for its approval of the Candidate for ordination who stated a departure from G-6.0106b. On January 11, 2010, the SPJC, in its Decision and Order on Preliminary Questions, accepted the case for trial and at the same time entered a Stay of Enforcement as requested by more than one-third of the commissioners present at the November meeting of Presbytery. The trial before the SPJC was held on September 23, 2010. Substantial evidence was presented to the SPJC about scriptural and confessional interpretations concerning sexual behavior.

In its decision of September 25, 2010, (SPJC Decision) the SPJC affirmed the Presbytery's action to ordain the Candidate, with a departure. The record does not reflect that the SPJC ruled upon the scriptural and confessional issues noted above. The SPJC also ordered a continuation of the Stay of Enforcement in anticipation of an appeal to this Commission. On November 4, 2010, the Appellants filed a Notice of Appeal.

As of July 10, 2011, the *Book of Order* was amended to replace G-6.0106b with the language now codified in G-2.0104b. On July 15, 2011, the Presbytery filed a *Motion to Dismiss*, alleging that the Appellants' case was now moot because G-6.0106b had been replaced. However, the parties conceded that the issues raised in this case were broader than G-6.0106b.

## Specifications of Error

*Specification of Error No. 1:* The SPJC erred when it failed to sustain Specification of Error No. 1, which stated: The Presbytery erred when it voted to approve the ordination of candidate Lisa Larges, because her refusal to abide by the constitutional requirement of G-6.0106b was equivalent to answering "No" to the fifth constitutional question for ordination, "Will you be governed by our church's polity, and will you abide by its discipline?" (W-4.4003e), thus rendering her ineligible.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 2:* The SPJC erred when it failed to sustain Specification of Error No. 2, which stated: The Presbytery erred when it found that the Candidate's departure from G-6.0106b, a church-wide requirement for ordination, was not a serious departure from Reformed faith or polity.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 3.* The SPJC erred when it failed to sustain Specification of Error No. 3, which stated: The Presbytery erred when it granted to the candidate a departure from G-6.0106b, a mandatory church-wide ordination standard, because such an act obstructs the constitutional governance of the church.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 4.* The SPJC erred when it failed to sustain Specification of Error No. 4, which stated: The Presbytery erred when it granted to the candidate a departure from G-6.0106b, a mandatory church-wide standard, because departures can only be granted with regard to the interpretation of Scripture, not conduct.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 5.* The SPJC erred when it failed to sustain Specification of Error No. 5, which states: The Presbytery erred when it granted to the candidate a departure from G-6.0106b, a mandatory church-wide ordination standard, because it exceeds the bounds of freedom of conscience for one who seeks to hold office in the PC(USA).

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 6.* The SPJC erred when it applied the Knox AI to expand the limits of freedom of conscience beyond those plainly stated in the constitution.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 7.* The SPJC erred when it applied the Knox AI to excuse the candidate from the expressly stated mandatory "requirement" found in G-6.0106b.

This specification of error is not sustained. See discussion under Specification of Error No. 8.

*Specification of Error No. 8.* The SPJC erred when it found that an authoritative interpretation could amend, modify, or excise express terms from the meaning of the Constitution, even if it did not actually change or remove words from the printed page.

This specification of error is not sustained.

Given that the constitutional provisions under which the Candidate was examined are no longer part of the Constitution, and that the Candidate was not in a same gender relationship at the time

of the examination, this Commission declines to interpret provisions that no longer exist. Therefore, Appellants' Specifications of Error Nos. 1-8 are not sustained.

*Specification of Error No. 9 (Appellants' Specification of Error No. 11).* The SPJC erred when it failed to recognize that the Presbytery's affirmation of the Candidate's erroneous belief and statement of non-compliance was itself a departure from the essentials tenants [sic] of Reformed faith and polity.

This specification of error is not sustained.

The record does not sustain the contention that the Presbytery's action constituted a departure.

*Specification of Error No. 10 (Appellants' Specification of Error No. 9).* The SPJC erred by not correcting the doctrinal error and abuse of discretion exercised by the Presbytery of San Francisco in this ordination decision.

This specification of error is sustained. See discussion in the Decision and Order below.

In sustaining this specification of error, this Commission is not ruling on whether doctrinal error or abuse of discretion occurred, but only that it is not evident from the language of the decision whether or not the SPJC ruled upon this matter.

*Specification of Error No. 11 (Appellants' Specification of Error No. 10).* The SPJC erred when it failed to rule on the constitutionality of the ordination decision itself, limiting its comments to presbytery process only.

This specification of error is sustained. See discussion in the Decision and Order below.

### **Decision and Order**

This Commission denies the Appellee's Motion to Dismiss, as the issues raised by the Appellants in the Specifications of Error are broader than the applicability of G-6.0106b.

The record does not reflect that the SPJC ruled on the Appellants' contention that Scripture and the Confessions prohibit certain sexual behavior. While the Appellants' complaint was based primarily on G-6.0106b, the Appellants clearly and consistently presented arguments at trial on the basis of scriptural and confessional standards without objection by the Presbytery. Since the doctrinal issue is central to the Appellants' case, it was error for the SPJC not to expressly rule upon the issue.

The SPJC Decision is reversed in part and affirmed in part and the case is remanded to the SPJC to rule on the matters which are the subject of Specifications of Error Nos. 10 and 11 above, and such other matters as may come before it. Since the Constitution has changed, the SPJC is encouraged to direct the Presbytery to reexamine the candidate under G-2.0104b.

The Stay of Enforcement remains in place pending further adjudication of these proceedings.

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Pacific is hereby reversed in part and affirmed in part.

IT IS FURTHER ORDERED that this case is remanded to the Permanent Judicial Commission of the Synod of the Pacific.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of San Francisco report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

#### **Absences and Non-Appearances**

Commissioner Jeana Lungwitz did not participate in this case.

#### **Concurrence of H. Clifford Looney**

I am concurring in the disposition of this case because the result obtained by the majority suggests returning this case to the Presbytery.

The Presbytery was entitled to and required to decide on the appropriateness of ordination.

This case presents an element of belief about which there have been great tensions but about which resolution, to the degree achieved, has been only possible by emphasis upon the requirement of mutual forbearance. The extent to which we “forbear” is continually tested by so called “constitutional” questions raised by those who would impose a particular idea of what an essential tenet of our faith might be upon those who hold a less or more restrictive view on the belief or conduct of church officers. See the concurring opinion of Lungwitz, et al., in Southard (*Minutes*, 2012, pg. \_\_\_\_).

We need to continue to mutually forbear as individuals, as presbyteries, as synods, and as a denomination. To do that we should place more emphasis on our reluctance to micromanage the decisions presbyteries reach on the ordination of those who express the need to depart from scriptural or confessional interpretations that challenge what others regard as essential.

The record in this matter presents substantial evidence that the Presbytery found:

- a. the requirements of G-6.0106b were not offended by the beliefs of the Candidate (there was no active offending conduct), or that she was entitled to exercise her right of scruple as expressed;
- b. given the right of scruple, and that there was no seriously offending conduct, that there was not a refusal to repent;
- c. the Candidate's expression of her interpretation of scripture was not a "serious" departure from essentials of Reformed faith and polity;
- d. the Candidate's expression of departure did not infringe on the rights of others or obstruct church governance.

I would have preferred to simply affirm the SPJC because I would limit the use of "constitutional" questions to look behind the decisions of ordaining councils on the ordination of persons in ordered ministries. Hopefully the change in our Constitution will have a similar impact.

Aside from the rule which accords great weight to the factual decisions of ordaining bodies, ordination decisions by those bodies are regarded as being uniquely within their authority because of the intense, if not intimate, contact of the nurturing relationship that is required by the candidacy process. That relationship provides an ordaining body with a foundation for decision that cannot be supplanted by the appellate process. For appellate bodies to be empowered to continually micromanage the ordination process would inappropriately encourage disagreement and waste judicial resources.

The protocol for review by an appellate body needs, therefore, to be very prudently limited to those cases in which either an ordaining body or a Permanent Judicial Commission has very clearly erred or the process is so defective as to have deprived one of the parties of due process, such that there are extraordinary reasons for reversal. The duty of a reviewing body is to be discharged with caution and great deference. We have so held in *Hope v. Presbytery of San Francisco* (*Minutes*, 2004, p. 363).

I do not believe that the record here supports a finding that such extraordinary reasons are present.

### **Dissent of A. Bates Butler III, Jay Lewis and Susan J. Cornman**

Specifications of Error Nos. 10 and 11 should not be sustained. Our polity recognizes that it is the ordaining body that is best suited to make decisions about the candidate's fitness for office, and factual determinations by examining bodies are entitled to deference by higher governing bodies in any review process. (see White and Crews, *Minutes*, 2012, pg. \_\_\_\_). This deference to the examining body exists because of the intense, if not intimate, contact of the nurturing relationship between the candidate and the examining body that is required by the candidacy process. It is that relationship that provides the examining body with a foundation for decisions that cannot and should not be supplanted by the appellate process unless for

extraordinary reasons. No such reasons exist herein. For an appellate body to be empowered to micromanage the ordination process without there being extraordinary reasons would be ill-advised.

In this matter the Presbytery conducted a reasonable, responsible, prayerful and deliberate examination of the Candidate. Based upon the evidence in the Record, the Presbytery considered both the scriptural and confessional standards of the church as well as the relevant provisions of the *Book of Order*. In reviewing the Presbytery's decision, the SPJC also had presented to it both the scriptural and confessional standards of the church in addition to the relevant ordination provisions of the *Book of Order* including G-6.0106b. While the SPJC decision might have been more clear in its language, and indeed may have been in-artful, to suggest that the SPJC itself did not rule upon the scriptural and confessional standards ignores the totality of the language in its decision and elevates form over substance.

Both parties urged this Commission not to remand this case for further hearings as they recognized that to do so would not only cause significant and unnecessary expense to the church, but would also result in no difference in outcome. This Commission is charged with securing the "economical determination of proceedings." We believe that sending the case back to the SPJC does not accomplish that charge.

We would affirm the decision of the SPJC.

### **Certificate**

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 220-03, Eric Parnell, Bruce McIntosh, Cordelia Shieh, Margaret Gelini, Greg Roth, Marsha Roth, Randy Young and the Session of Walnut Creek Presbyterian Church, Appellant (Complainants) vs. The Presbytery of San Francisco, Appellee (Complainant), made and announced at Louisville, KY on August 1, 2011.

Dated this August 1, 2011.