

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

Session of Caledonia Presbyterian Church,)
Paula Bremer, James Gunn, Alan Crandall,)
Jerry Indermark, James F. Scaife, Presbytery)
of Central Florida, Presbytery of Prospect)
Hill, and Presbytery of Stockton,)
Appellants (Complainants),)
v.)
Presbytery of John Knox,)
Appellee (Respondent).)

DECISION AND ORDER
Remedial Case 220-04

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 Lakes and Prairies (SPJC) dated October 8, 2010. The Notice of Appeal was received by the Stated Clerk of the General Assembly on November 22, 2010.

Parties

The Appellants (originally Complainants) in the case are the Session of Caledonia Presbyterian Church, Paula Bremer, James Gunn, Alan Crandall, Jerry Indermark, James F. Scaife, The Presbytery of Central Florida, The Presbytery of Prospect Hill, and the Presbytery of Stockton. The Appellee (originally Respondent) in the case is the Presbytery of John Knox.

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 Whitman H. Brisky and Vashti Varnando. Appellee was represented by Douglas Nave, Marilyn Gamm, and Michael Hibbs.

History

At a stated meeting convened February 20, 2010, The Presbytery of John Knox (the Presbytery) approved Scott Anderson (the Candidate) for ordination as minister of the Word and Sacrament and approved his call as Executive Director of the Wisconsin Council of Churches.

As stipulated between the parties before the SPJC, at the time of such approval for ordination the Candidate was known to the Presbytery to be living in a committed partnership of many years' duration with another man and not within a covenant of marriage between a man and a woman. During his examination by the Presbytery, the Candidate stated that "in every respect" his relationship with his partner is exactly like a marriage except for procreation, and that he has never taken a vow of celibacy. The Candidate stated at his examination that he believes his manner of life is consistent with Scripture and the Confessions, as well as with the ordination standards in the *Book of Order*.

After examination and collective discernment, the Presbytery voted to approve the Candidate's ordination by a vote of 81 in favor, 25 against. The Complainants thereafter filed a remedial case with the SPJC objecting to such ordination approval by the Presbytery. The SPJC by a vote of 7 in favor, 2 opposed (1 opposed/1 abstain on one specification), did not sustain the specifications of error in the complaint to the SPJC. This Appeal to the GAPJC followed. A Stay of Enforcement had been entered, and remains in effect.

A number of weeks before the scheduled date for the hearing before the GAPJC, G-6.0106b of the *Book of Order* was replaced with new language (now G-2.0104b) by a majority vote of the presbyteries of the Presbyterian Church (U.S.A.), effective July 10, 2011. In light of this change, the Appellee submitted to the GAPJC a *Motion to Dismiss Appeal as Moot*. Appellant filed a Response to such motion. The parties orally argued the motion, and the GAPJC reserved its decision on the motion until after completion of the arguments in the scheduled hearing on the specifications of error in the Appeal.

Decision & Order

The *Motion to Dismiss Appeal as Moot* is granted, and the Stay of Enforcement is lifted. The only alleged irregularities set out in Appellants' Notice of Appeal cite G-6.0106b and Authoritative Interpretations of that section as the basis of their Appeal. The language of that section was removed from the *Book of Order* prior to the GAPJC hearing of the Appeal. In granting this motion, this Commission declines to rule upon the application of a provision of the *Book of Order* that no longer exists. Nothing in this Decision should be construed to interpret the ordination standards under the new Form of Government, as that issue is not before the Commission.

IT IS THEREFORE ORDERED that the *Motion to Dismiss Appeal as Moot* is granted, and the case is Dismissed.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of John Knox report this decision to the Presbytery of John Knox at its first meeting after receipt, that the Presbytery

of John Knox enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

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

Concurrence of Bradley C. Copeland, Yun Jin Kim Meta Cramer and Susan J. Cornman

We concur with the decision of the majority to grant the *Motion to Dismiss* on the basis of mootness.

While we find the "Knox AI" to be flawed, we believe that the Presbytery acted in good faith when it based its decisions on its interpretation of that Authoritative Interpretation of G-6.0108 adopted by the 218th General Assembly (2008). G-13.0103r of the *Form of Government* in force at the time of the contested ordination examination states, "The most recent interpretation of a provision of the *Book of Order* shall be binding." In this case this would be the Knox AI. The flaw of the Knox AI, however, is that it fails to recognize that any AI, regardless of who issues it, cannot modify a specific requirement of the *Book of Order*. An AI can interpret the *Constitution* but the only way to modify such an explicit requirement (G-6.0106b) is through the amendment process.

Additionally, the Appellants, while arguing on appeal a scriptural basis for overturning the Presbytery's action, failed to include such arguments in either their original complaint or the specification of errors. These omissions meant that this Commission was unable to address issues broader than the application of G-6.0106b in its Decision.

Finally, given that the language of G-6.0106 has now been replaced through the amendment process, we believe that it would have been in the best interest of the church had the parties withdrawn this case, as they were urged to do, and agreed to examine the candidate under the new standard of ordination, G-2.0104b.

Concurrence of William E. Scheu

I concur in the majority's decision to grant the Motion to Dismiss on the basis of mootness.

Had the passage of Amendment 10A not occurred prior to the hearing of this case, I would have voted to reverse the decision of the SPJC by which it affirmed the action of the Presbytery in granting to Scott D. Anderson a departure to a mandatory provision of the constitution (G-6.0106b). In my view, the Anderson departure, as approved by the Presbytery, was an obstruction of constitutional governance, and thereby not a permissible exercise of conscience under G-6.0108a. In reversing the SPJC I would have joined with a dissent in this case which held that that the *Knox AI* did not reverse *Bush* because the General Assembly by an

authoritative interpretation could not and in fact did not interpret away the explicit mandatory standard expressed in G-6.0106b.

However, Amendment 10A passed and the express mandatory standard of G-6.0106b is no longer in the constitution. Therefore there is now no obstruction of constitutional governance and neither the *Knox AI* nor *Bush* have any remaining vitality as they relate to G-6.0106b. The denomination by constitutional process has decided to proceed under different rules. In granting the Motion to Dismiss, we members of this Commission model the old standard of life together, expressed in the old PCUS Book of Church Order as “subjecting ourselves to our brethren in the Lord.”

My prayer is that the new constitutional provision will lead to ordination examinations that take the meaning of Scripture and the Confessions seriously and honestly, so that the peace, unity and purity of the church may be upheld and nourished.

Concurrence of H. Clifford Looney, Barbara A. Bundick, A. Bates Butler III

We concur in the result obtained by the majority opinion. The position of the appellant at virtually all stages of this proceeding relied on their objections to the approach taken by the Presbytery to the ordination decisions only in the context of G-6.0106b. Those provisions are no longer to be a bone of contention. The Presbytery relied in good faith on the principles of freedom of conscience and mutual forbearance. Its reliance was justified.

The practical aspects of this situation and the interests of our denomination suggest that we have no reason to disturb the decision of the Synod PJC.

We would prefer to affirm the Synod but concur in this result.

Dissent of Michael J. Lukens and Margaret MacLeod

We respectfully dissent from the majority opinion of this Commission.

We agree that it serves no useful purpose to review the validity of a complaint against an action that was taken under a law that no longer exists. However, at the very core of this issue are doctrinal matters that rest upon our interpretation of Scripture and understanding of the covenantal nature of our faith. The record in this case amply demonstrates that such issues were considered by the SPJC, yet these matters are not reflected in its judgment.

While the Appellants in this case focused their complaint primarily within the constitutional provisions of G-6.0106b (now altered in the current Form of Government), both parties reflected extensive investment in deeper doctrinal and scriptural foundations. It is a common assessment in this record as well as within the whole church that controverted doctrine and moral theology are the critical arenas of conflict in the question of ordaining practicing homosexual persons. The SPJC in its ruling ignores these critical dimensions. It is the

responsibility of the SPJC in the testing of the Appellants' Complaint against the Presbytery to review not only the validity of the process but also the core substance of the Complaint, i.e., whether the action of the Presbytery was consistent with the range of acceptable doctrinal formulation in the Reformed interpretation of Scripture and Confessions. This the SPJC did not do. A more comprehensive review does not require definitive doctrinal or scriptural judgment on a widely controverted issue in the church today. The review, however, does mean that the SPJC is to provide a judgment on the range of legitimate interpretive options before the church, options that can be validated within the parameters of our theological legacy. For we have a legacy in which we are bold to strive openly for the true teaching of our faith, in which we are confident that, by the rule of the Spirit, we may exhibit to the world the wonders of God's grace and the truth that is before us in the ministry and love of Jesus Christ. In this legacy, judicial review extends not just to procedural matters but also to the very foundations of our faith.

In the absence of this substantial doctrinal judgment, the SPJC decision is flawed. The SPJC decision should be reversed and the matter remanded for this further consideration and judgment regarding attendant doctrinal and scriptural matters in this case.

**Dissent of Gregory A. Goodwiller, Margaret MacLeod, Tony Cook and
Flor Vélez-Díaz**

We respectfully dissent from the majority's conclusion that the elimination of G-6.0106b to the *Book of Order* make this case moot. The result is that Presbytery is free to ordain this candidate, based on the Synod review, without any determination by this Commission that either G-6.0106b or the new language authorizes such an ordination. However, any candidate in similar circumstances that the Presbytery might consider in the future may be subjected to challenge and full judicial process. By this decision the majority is essentially creating a decision-free zone of time in which an ordination can occur without substantive review beyond the Synod level. We believe that a better result is one in which the issues are clearly decided.

In its decision, the SPJC relied heavily on its interpretation of an Authoritative Interpretation of G-6.0108 adopted by the 218th General Assembly (2008) (the so called "John Knox AI") that is purported to overturn the historic understanding of our polity that those who are ordained to office or ordered ministry in our church must be willing to abide by all constitutional standards. This understanding has been clearly articulated many times in our denomination's life, and was well stated in the document, *Historic Principles, Conscience, and Church Government*, presented to the 195th General Assembly (1983) which concludes: "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*, UPC, 1983, pg. 141 ff).

While G-6.0108 of the *Book of Order* (now G-2.0105) clearly establishes the importance of maintaining freedom of conscience (another historic principle of our tradition), it also sets limits on that freedom. Freedom of Conscience for those in ordered ministries (church officers) is to be maintained only "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” (G-6.0108a. now G-2.0105).

The Candidate in question is undeniably unwilling to “conform” his “actions” to a “practice of the church” in an area “which the church has determined to be necessary” (by placing G-6.0106b into the *Book of Order*), which clearly should have led the Commission to sustain Specification of Error #2. We contend that the Presbytery of John Knox has obstructed the constitutional governance of our church by voting to proceed to ordain him despite the Candidate's unwillingness. We further contend that while the John Knox AI does not need to be read as an abrogation of these principles, to the extent that it does so, the John Knox AI is unconstitutional.

We also recognize that since the church has now voted to remove the “fidelity and chastity” language from the former G-6.0106b (now G-2.0104), the circumstances that gave rise to the John Knox AI have changed. We pray that the church will now return to its historic polity and practice with respect to freedom of conscience articulated in the Authoritative Interpretation adopted by the 195th General Assembly (1983) as recommended in *Historic Principles, Conscience, and Church Government*:

The Historic Principles of Presbyterianism have sought to establish balance between the private judgment of the individual and the freedom of the church to order its affairs. While the majority cannot force its will on an unwilling minority, neither can the minority thwart the intention of the majority on the grounds that the conscience of the minority is violated. Freedom of conscience does not require that the conscientious opinion of every member of the church will prevail. Where there are differences of opinion, our church recognizes that the ways of resolving conflict between the freedom of individual conscience and the requirements of our polity are compromise, acquiescence by one group or another, or withdrawal without causing schism. Therefore freedom of conscience is not abridged by the requirements of our Constitution.

We realize that this process has gone on for many years and been exceedingly costly to all involved. Nevertheless, for the sake of maintaining the peace, unity, and purity of our beloved church, and in ultimate fairness to both the Appellants in this case and the Candidate himself, we would urge him to voluntarily submit to another examination and ordination decision by his presbytery under the new provision (G-2.0104) of our *Book of Order*.

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 220-04, Session of Caledonia Presbyterian Church, Paula Bremer, James Gunn, Alan Crandall, Jerry Indermark, James F. Scaife, Presbytery of Central Florida, Presbytery of Prospect Hill, and Presbytery of Stockton Appellant (Complainants), v. Presbytery of John Knox, Appellee (Respondent), made and announced at Louisville, KY on August 1, 2011.

Dated this August 1, 2011.