

## MINUTES OF THE GENERAL ASSEMBLY

In conclusion, I believe it would be a mistake to believe SJC was “allowing” or affirming the hendiadys exegesis of 1 Tim 2:12. That specific question was not under review. While there is reasonable debate about what “type” of teaching is being prohibited and how it should be applied in local PCA churches (the issue in this case), there is little scholarly debate on the question: “Is only one thing being prohibited?” The answer to that question, from scholars in every camp of the gender debate, is a resounding “No.”

### **STANDING JUDICIAL COMMISSION CASE 2009-11 TE LARRY EDISON, ET AL VS. SOUTHWEST FLORIDA PRESBYTERY**

#### **I. SUMMARY OF FACTS**

1. At the stated meeting of SWFP on February 14, 2009 TE Bryan Gregory was examined for admission to SWFP (*BCO* 13-6), which examination was approved, he was received as a member of SWFP, his call as Senior Pastor of Cypress Ridge Presbyterian Church was approved, and a commission was appointed to install TE Gregory as pastor of Cypress Ridge on May 3, 2009.
2. On February 26 a complaint signed by 22 members of Presbytery was filed against SWFP “in connection with the sustaining of the theological examination of minister Bryan Gregory. . . . We . . . believe that the presbytery erred in sustaining the theological examination and in approving the ministerial call of a man whose theological views . . . are ‘out of accord’ with the fundamentals of our church’s doctrinal standards, are ‘hostile to’ the system of doctrine contained in said standards and ‘strike at the vitals of religion’ . . . .”
3. This complaint was heard at a special meeting of SWFP held on March 14. After hearing the complaint Presbytery went into closed session and adopted a motion “to sustain the Complaint filed against the actions of Presbytery in sustaining the theological exam of Mr. Gregory. . . . (32 in favor and 22 opposed)” In addition Presbytery adopted a motion “that because the SWFP erred in sustaining the theological examination of T.E. Bryan Gregory, that T.E. Gregory be sent back to Presbytery as a whole in order to undergo a theological reexamination.” In further motions Presbytery appointed a special meeting on March 24 for the reexamination, requested TE Gregory to appear, at Presbytery’s expense, and indefinitely delayed TE Gregory’s installation.

4. TE Gregory was reexamined at a special meeting of SWFP on March 24. After examination, it was moved “that the theological exam of Bryan Gregory be sustained by the Presbytery. Vote: 22 to sustain, 42 against sustaining.” It then was moved “On the grounds that the Presbytery of Southwest Florida has determined that it was in error when . . . it sustained the theological examination of minister Bryan Gregory, and approved the call . . . and since minister Bryan Gregory was not sustained when re-examined in the area of theology . . . it follows that the Presbytery of Southwest Florida must correct its record of the reception of Bryan Gregory into it’s (*sic*) membership, and recognize that Presbytery does not have constitutional grounds to approve his call to a church which is a member of our Presbytery. . . . Therefore the mentioned actions which have been determined to have been made in error are now reversed.” Finally, SWFP dismissed the commission to install TE Gregory as pastor of Cypress Ridge.
5. On April 10, 2009 TE Larry Edison, et al. filed a complaint against the actions of SWFP at its special meetings of March 14 and 24, 2009 in undertaking a “subsequent theological re-examination of minister Bryan Gregory and the rescinding of his transfer and call, after having previously approved the theological examination and call . . . and that this same meeting, accepting Bryan Gregory as a member in good standing. . . . [According to our agreed upon procedures] Presbytery had no right to rescind the examination and call, and re-examine the man as if he were a candidate and not already a member in good standing. . . .”
6. At the stated meeting of SWFP on May 12, 2009 Presbytery denied the complaint of TE Edison et al.
7. On May 26, 2009, TE Edison, et al. filed a complaint against SWFP with the General Assembly.

## II. STATEMENT OF THE ISSUES

1. Did SWFP err when it acted “to sustain the Complaint filed against the actions of Presbytery in sustaining the theological exam of Mr. Gregory on February 14, 2009”?
2. Did SWFP err: (a) when it acted as if sustaining the Complaint against its actions with respect to the theological exam of Mr. Gregory on February 14, 2009, of itself, had the effect of rescinding its previous action in sustaining the theological examination and approving the call of TE Gregory, and (b) when it therefore determined “that T.E. Gregory be sent back to the Presbytery as a whole in order to undergo a theological reexamination”?

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3. Did SWFP err when it determined “that the Presbytery of Southwest Florida must correct its record of the reception of Bryan Gregory into its membership, and recognize that Presbytery does not have constitutional grounds to approve his call to a church which is a member of our Presbytery. . . . Therefore the mentioned actions which have been determined to have been made in error are now reversed.”?

### **III. JUDGMENTS**

1. No.
2. Yes.
3. Yes.

### **IV. REASONING AND OPINION**

#### **A. Issue 1.**

Complainant alleges that SWFP erred “when it considered the First Complaint and then unilaterally determined that it had erred in approving both the theological exam and call of T.E. Gregory in its State (*sic*) Meeting of March 14, 2009. . . .” According to *BCO* chapter 43, a complaint is a “written representation made against *some* act or decision of a court of the Church” [emphasis added]. The language of this provision is virtually unqualified, though it is limited by the further explanation that “no complaint is allowable in a judicial case in which an appeal is taken.” Clearly the approval of a theological exam and call of a minister qualifies as “some act or decision” which may be liable to complaint and thus it was properly within the power of the Presbytery to hear and sustain such a complaint. The question as to the theological judgment of the Presbytery, either in approving the original examination of TE Gregory, or in later disapproving the reexamination, was not raised by the Complainant, and thus is not before the SJC.

#### **B. Issue 2.**

Though SWFP had the duty to hear a complaint against its action in approving the theological examination of TE Gregory (and other actions related to that approval) and the right to sustain such a complaint, sustaining the complaint does not, of itself, correct or invalidate the action(s) complained against. In a given instance a presbytery might admit that it erred in a decision, but find that no harm had been done, and take no further notice of the matter; or, it

might, by further motion, correct itself by amending or rescinding<sup>6</sup> the previous action, if those motions are permissible under the governing authorities.

There is no evidence in the Record that Presbytery's action on February 14<sup>th</sup> to receive Mr. Gregory was taken pending receipt of a letter of transfer. Further, the Record is clear that Presbytery treated Mr. Gregory as a member. This is particularly clear in the fact that Mr. Gregory signed the ministerial obligation and was seated as a voting member at the March 24<sup>th</sup> meeting of Presbytery. Moreover, there is no record of SWFP, at the special meeting of March 14, taking any action that would undo their actions sustaining the examination, receiving into membership, or approving the call of TE Gregory taken at the stated meeting of February 14. Accordingly, there was no constitutional or parliamentary ground for determining that "T.E. Gregory be sent back to the Presbytery as a whole in order to undergo a theological reexamination."

#### C. Issue 3.

After the unconstitutional reexamination of TE Gregory, SWFP did act to rescind motions previously adopted with respect to the examination, membership and call of TE Gregory.<sup>7</sup> However, *Robert's Rules of Order Newly Revised*<sup>8</sup> set forth a class of motions that cannot be rescinded or amended. Among the circumstances specified are when something has been done that it is impossible to undo, or when a person has been elected to membership and been so notified. In this latter case, membership, having conferred certain rights, can only be removed by whatever disciplinary processes the organization may have adopted for its members. Thus, once having

<sup>6</sup> Note that "annul" is the parliamentary equivalent to "rescind."

<sup>7</sup> We note, however, that a motion to rescind requires a 2/3s vote to carry when there has not been previous notice of intent to make such a motion. The minutes of SWFP for the March 24 meeting fail to record that such a requirement was met. The immediately preceding vote, on a motion to sustain TE Gregory's exam, failed 22 to 42. If this is taken to be a measure of commissioner sentiments, the motion to rescind did not achieve the required 2/3s and thus failed to carry.

<sup>8</sup> (10<sup>th</sup> ed.), p. 297, l. 24-35; p. 298, l. 1-8.

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conferred membership upon TE Gregory, SWFP, having found that it erred in so-doing, could have no other recourse than to undertake proceedings according to *BCO* 31-2.

Respondents argue that in a complaint proceeding *BCO* 43-10 gives the higher court power to “annul in whole or any part of the action of the lower court,” and that what the higher court can require of the lower court surely must be within the power of the lower court. Therefore, respondents reason, the rules of Robert’s are superseded by the Constitution of the PCA. Respondent’s guiding principle is sound, but their reading of *BCO* 43-10 is mistaken. The parliamentary meaning of “annul” in *BCO* 43-10 is determined by *RONR*, in part because these provisions simply make plain what common sense and justice require. “Annul” in *BCO* 43-10 cannot be in order when something has been done that is impossible to undo. Just as surely the rights and privileges of membership cannot be removed by an action to annul when a member has a right to due process under the Rules of Discipline. The February 26 complainants could have prevented TE Gregory from becoming a member by evoking the suspension of SWFP’s action in approving TE Gregory’s examination under *BCO* 43-4, but they did not. Once TE Gregory was admitted a member of Presbytery, he thereafter had the right to due process under the Rules of Discipline.

Respondents cite a number of precedents alleged to favor SWFP’s actions. However, no case with respect to licensure is on point, since *BCO* 19-6 makes it plain that no privilege is conferred in licensure that cannot be removed by a simple majority vote. In the main the remainder of the cases cited lack the specificity needed to determine the principles by which the court decided. Only one case<sup>9</sup> clearly favors the position of the Respondents. However another very prominent case, litigated over a number of years, provides helpful confirmation of the principles here affirmed. In SJC 23, Complaint of RE Val H. Barleman, et al. vs. Presbytery of Ascension, 1983, the court sustained a “complaint . . . against the Presbytery . . . in sustaining the trials for ordination . . . and declares the said action annulled.” However, in a note explanatory the court held that “This judgment annuls the action of the presbytery in sustaining the trials for ordination but does not in itself annul Presbytery’s act of

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<sup>9</sup> SJC 50, Complaint of TE Kenneth L. Gentry, Jr., et al. vs. Calvary Presbytery, 1986.

ordination, and so does not remove Mr. Lutjens from the roll of Presbytery.” Further, an important direction was given as to what should be done concerning the minister in question: “the Pastoral Committee be instructed by this General Assembly to pursue orderly discipline against Mr. Lutjens, if his views continue to fail to conform with the Word of God, the Standards of this Church, and the *Book of Church Order*, after due pastoral counsel.”

However that may be, *BCO* 14-7 provides that “Actions of the General Assembly . . . are to be given due and serious consideration by the Church and its lower courts when deliberating matters related to such action. Judicial decisions . . . *may* be appealed to in subsequent similar cases as to any principle which may have been decided [emphasis added].” This court has given “due and serious consideration” to the alleged precedents. However, the permissive character of this provision makes plain that the court has the discretion to consider whether or not alleged precedents are persuasive with respect to the meaning of the law as it is written, and the application of that law to the facts of the case immediately before the court.<sup>10</sup>

The principle herein affirmed is essential to biblical discipline. Church discipline, we confess, can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance of the great Head of the Church. There can be no justice in removing a man, not only from office, but, as ministers have their membership in the church through the presbytery, from the church of Jesus Christ itself, apart from due process. The provisions of *RONR* comport well with the Rules of Discipline of the PCA in this matter. That being said, there is no question that each party in this case is seeking to apply the Scriptures and our Constitutional Standards with care and with an eye toward the honor and blessing of Jesus Christ.

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<sup>10</sup> We note further that established custom, once discovered as in conflict with parliamentary authority, falls to the ground, and the conflicting provision in the parliamentary authority must thereafter be enforced. Cf. *RONR* (10<sup>th</sup> ed.), p. 17, l. 4-18. Though it may be customary in some presbyteries to treat one who has been received as a member of presbytery, in the context of a complaint against that action, as if he were not, such a custom must give way to the requirement for due process enshrined in *Robert's Rules*.

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Accordingly, the actions of SWFP at the special meeting of March 24 are hereby annulled and the action of SWFP at the special meeting of March 14 with respect to the appointed reexamination of TE Gregory is annulled. Further, SWFP is directed to meet and undertake what appropriate remedies there may be in light of having on March 14 approved the complaint against Presbytery's action to sustain the theological examination of TE Gregory on February 14, 2009.

The Summary of the Facts was drafted by RE Marvin Culbertson and the Reasoning and Opinion was drafted by TE David Coffin. The Proposed Decision was edited and adopted as the unanimous decision of the panel: TE David Coffin, RE Marvin Culbertson and TE Tim Muse; RE Tom Leopard, alternate, and was amended by the full Standing Judicial Commission.

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Roll call vote on 2009-11:

TE Dominic A. Aquila, Dissent	TE William R. Lyle, Concur
TE Howell A. Burkhalter, Concur	RE J. Grant McCabe, Concur
RE E.C. Burnett, Concur	TE Charles E. McGowan, Concur
TE David F. Coffin Jr., Concur	TE D. Steven Meyerhoff, Concur
RE Marvin C. Culbertson, Concur	TE Timothy G. Muse, Concur
RE J. Howard Donahoe, Absent	RE Frederick J. Neikirk, Concur
RE Samuel J. Duncan, Concur	RE Jeffrey Owen, Absent
TE Fred Greco, Abstain	RE Calvin Poole, Absent
TE Grover E. Gunn III, Dissent	TE G. Dewey Roberts, Dissent
RE Terry L. Jones, Concur	TE Danny Shuffield, Concur
RE Thomas F. Leopard, Concur	RE John B. White Jr., Concur

15 Concur, 3 Dissent, 1 Abstain, 3 Absent

### **DISSENT IN SJC 2009-11 TE LARRY EDISON, ET. AL. VS SOUTHWEST FLORIDA PRESBYTERY**

This dissent asserts that the Statement of the Issues and Judgments should have been as follows:

#### **I. STATEMENT OF THE ISSUES**

1. Did SWFP err when it acted "to sustain the Complaint filed against the actions of Presbytery in sustaining the theological exam of Mr. Gregory on February 14, 2009"?

2. Did SWFP err when it sustained the Complaint against its actions with respect to the theological exam of Mr. Gregory on February 14, 2009, and determined "that TE Gregory be sent back to the Presbytery as a whole in order to undergo a theological examination"?
3. Did SWFP err when it determined ". . . that the Presbytery of Southwest Florida must correct its record of the reception of Bryan Gregory into its membership, and recognize that Presbytery does not have constitutional grounds to approve his call to a church which is a member of our Presbytery. . . . Therefore the mentioned actions which have been determined to have been made in error are now reversed"?

## **II. JUDGMENTS**

1. No.
2. No.
3. No.

## **III. REASONING AND OPINION FOR THIS DISSENT**

One of the main issues in this case is the membership status of Bryan Gregory as of February 14, 2009. The ROC is clear that Mr. Gregory's theological exam was approved and that there was a motion to receive him as a member of SWFP, approve his call as Senior Pastor of Cypress Ridge Presbyterian Church, and appoint a commission to install him. While SWFP took all of these actions on February 14, 2009, Mr. Gregory was not yet a member of SWFP in that he had not yet been dismissed by his Presbytery; his reception into SWFP was in reality incomplete in that his formal membership dismissal from the Presbytery had not yet taken place.

*BCO* 13-1 defines the membership of Presbytery: "The Presbytery consists of all the teaching elders and churches within its bounds that have been accepted by the Presbytery." No teaching elder or church can be a member apart from being formally admitted or accepted by the Presbytery. Mr. Gregory was approved for membership in SWFP but he was not yet by this approval a member of SWFP on February 14, 2009, because he had not yet been dismissed by his Presbytery.

*BCO* 46-3 states that members of a church dismissed to another church continue under the authority of the dismissing church until they form a regular connection to the receiving church.

Members of one church dismissed to join another shall be held to be under the jurisdiction of the Session dismissing them until they form a regular connection with that to which they have been dismissed.

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In SJC 2002-10 the SJC answered the question as to when a PCA member is considered to have been transferred to another church, that is, when the member has been officially received and considered transferred. In SJC 2002-10 a member of one PCA church began attending another PCA church and went through the class for new members. On request, the Session of the dismissing church voted to send her letter to the new church. However, the member decided not to go forward with the transfer and did not meet with the Session of the receiving church to be received; she returned to her former church. The Session of the dismissing church informed her that it had already voted to dismiss her and she was no longer a member of that church by this action. She filed a Complaint, which was denied by the Session and then by Pacific Northwest Presbytery. She carried the Complaint to the SJC which stated the issue and judgment as follows:

**Statement of the Issue:**

"Did Pacific Northwest Presbytery err in declaring that C. G. was no longer a communicant member of Faith Presbyterian Church in Tacoma, Washington?"

**Judgment:**

"Yes, C. G. was and continues to be a communicant member of Faith Presbyterian Church of Tacoma, WA."

In its Reasoning the SJC stated:

*BCO* 46-3 states that "members of one church dismissed to join another shall be held to be under the jurisdiction of the Session dismissing them until they form a regular connection with that to which they have been dismissed." The Record of the Case indicates that while C. G. requested that her membership be transferred from Faith Presbyterian Church to Covenant Presbyterian Church and that a certificate of transfer was sent to the Session of Covenant PCA in Issaquah, WA, she never united with the church. Thus, her membership was still with Faith Presbyterian Church (Tacoma).

This decision affirmed that a member of a local church, while formally dismissed by her Session, continued as a member of the dismissing church since she had not formed a regular connection with the other church.

In the same sense that members of local churches are received and dismissed by Sessions, so it is with ministers transferring from one

Presbytery to another. It is not enough just to be dismissed or received; both actions must be effectuated before a regular connection is made. In this regard, *BCO* 46-6 states the same principle with regard to the transfer of teaching elders and Presbyteries as *BCO* 46-3 does with members and churches:

When a Presbytery shall dismiss a minister, licentiate or candidate, the name of the Presbytery to which he is dismissed shall be given in the certificate, and he shall remain under the jurisdiction of the Presbytery dismissing him until received by the other.

To press and illustrate this principle, we can ask: If allegations had been raised against Mr. Gregory on February 14, 2009, which preceded his Presbytery acting to formally dismiss him, before which court would the matter be taken up? Obviously, it would be appropriately taken up by the court that still had judicial authority over him, which, in this case, was his home Presbytery and not SWFP. He was not yet a member of SWFP on February 14, 2009, which means that it could not have instituted an investigation or process against him under *BCO* 31-2 as stated in the majority decision; SWFP did not have judicial authority over Mr. Gregory at that time. Mr. Gregory's membership had not yet been finalized in SWFP and as a consequence he did not have the rights pertaining thereunto in SWFP. In essence, the majority decision allows for ministers (and conceivably members) to hold dual memberships which will have the effect of creating confusion regarding who their legitimate overseeing authority may be.

It is the opinion of this dissent that the February 26, 2009, Complaint alleging error on the part of SWFP was in order and that it was appropriate for SWFP to sustain the Complaint and require a re-examination of Mr. Gregory since he was not yet a member of SWFP. He had yet not formed a regular connection with that Presbytery and was not under its judicial authority.

Further, that Complaint alleged not only that SWFP erred in approving Mr. Gregory's theological exam, but it was also a prior announcement or notice to rescind its action to receive him as a member. To rescind an action taken at a prior meeting requires a majority vote if notice of intent to rescind is given before the meeting; without prior notice a 2/3 vote is required to rescind. Also, since Mr. Gregory was not a member of SWFP, references to a class of motions that cannot be rescinded or amended did not pertain in this instance.

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While this dissent cannot predict what will happen in the future, it is not outside the bounds of possibility that the majority opinion touching on the nature of membership jurisdiction will have unintended consequences on the definition of oversight and membership and when and how courts can exercise legitimate authority.

/s/ TE Dominic Aquila

/s/ TE Grover Gunn

### **IV. AMENDMENTS TO SJC MANUAL**

The following amendments to the SJC Manual were previously adopted by the Assembly (see 38-10, p. 64).

**Add a new section 2 as follows and renumber thereafter.**

#### **2. CONDUCT OF COMMISSION MEMBERS.**

- 2.1 A member shall, at all times, keep in mind his high calling as an officer of the church of the Lord Jesus Christ and shall in all endeavors conduct himself in accordance with that calling. Further, since “ecclesiastical discipline . . . can derive no force whatever but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church” (*BCO*, Preface, II. Preliminary Principles, 8), the members of the Standing Judicial Commission must maintain the highest standards of integrity, independence, impartiality, and competence.
- 2.2 All members of the commission, including officers, shall be entitled to participate in the discussion and to vote on any matter pending before the commission for which they are qualified.
- 2.3 A “qualified” member under these Rules is any member of the commission who:
  - a. in a hearing (*SJCM* 10.8.a (2)) has read the Record of the Case and all briefs timely filed by the parties;
  - b. in a review or rehearing *SJCM* 17.8.b has read the Judicial Panel’s proposed decision, all briefs timely filed by the parties, and that portion of the Record of the Case the member feels necessary to understand the issues of the case;