

JOURNAL

procedure was not followed and for the additional reasons stated above, we conclude no censure was invoked and therefore Philadelphia Presbytery did not have to take any action on this communication.

The Reasoning and Opinion was written by the Standing Judicial Commission.

Panel members were: TE Bob Stuart, RE John White and TE Steven Meyerhoff.

The vote on Case 2004-2 was:

TE Dominic A. Aquila	Concur	RE J. Grant McCabe	Recused
TE Howell A. Burkhalter	Concur	TE Charles E. McGowan	Concur
TE Stephen M. Clark	Concur	TE D. Steven Meyerhoff	Concur
RE M. C. Culbertson	Concur	RE Frederick Neikirk	Concur
RE Perry Denniston	Concur	RE Steven T. O'Ban	Absent
RE J. Howard Donahoe	Concur	TE Michael M. Rico	Concur
RE Samuel J. Duncan	Concur	TE G. Dewey Roberts	Concur
TE Robert M. Ferguson Jr.	Concur	TE Michael F. Ross	Concur
TE William W. Harrell	Concur	TE Robert D. Stuart	Concur
RE Terry L. Jones	Concur	RE John Tolson	Concur
TE Paul D. Kooistra	Absent	RE John B. White Jr.	Concur
RE Thomas F. Leopard	Concur	RE W. Jack Williamson	Concur
Adopted:	21 concurring,	0 dissenting,	0 disqualified, 0 abstained and 2 absent.
			1 recused,

JUDICIAL CASE 2004-3 COMPLAINT OF MR. TIM J. HARRIS VS. HERITAGE PRESBYTERY

I. SUMMARY OF THE FACTS

1. On June 4, 2003, the congregation of Christ Presbyterian Church (CPC) held its annual meeting. At the meeting, the treasurer presented his report to the congregation. The report included categorical amounts spent on church expenses (ROC, p. 12).
2. On July 3, 2003, Mr. Harris filed his Complaint to the CPC Session requesting detailed public disclosure to the congregation of expenditures, including salaries (ROC, p. 11).
3. On July 31, 2003, the CPC Session notified Mr. Harris that the Session met on July 24, 2003 in response to his Complaint and determined that it would publicize a detailed budget, but that the salaries would be presented in aggregate (ROC, p. 13).

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4. On August 23, 2003, Mr. Harris filed with Heritage Presbytery (Heritage) his Complaint against the CPC Session's action of July 24, 2003 (ROC, p. 9).
5. At its meeting of September 13, 2003, Heritage appointed a commission (CPC Commission) to adjudicate the Complaint. (ROC, p.16). The CPC Commission conducted its work and ruled that there is nothing either implicit or explicit in the *BCO* requiring a congregation to approve changes to the terms of a pastor's call. The CPC Commission also ruled that Heritage did not have the authority to instruct the CPC Session as to budgetary details or financial reports (ROC, p. 17).
6. Heritage Presbytery adopted the CPC Commission report at Heritage's meeting of January 31, 2004 (ROC, p. 8).
7. On March 1, 2004, Mr. Harris filed with the SJC his Complaint against Heritage Presbytery's action of January 31, 2004 (ROC, p. 1).

II. STATEMENT OF THE ISSUES

1. Did Heritage Presbytery err when it ruled that "There is nothing either implicit or explicit in the *BCO* stating that changes in a pastor's call be approved by vote of the congregation"? (ROC, p. 17).
2. Does the Book of Church Order require that changes in the terms of a pastor's call be publicized to the congregation?

III. JUDGMENT

1. No.
2. No.

IV. REASONING AND OPINION

The constitutional question before us in this case is whether the Book of Church Order (*BCO*) requires that changes in the terms of a pastor's call be approved by the congregation. Complainant argued that while there is no explicit statement in the *BCO* requiring this action by the congregation, there are implicit reasons for the congregation to approve changes in the terms of a call. Respondents argued the position taken by Heritage Presbytery: "There is nothing either implicit or explicit in the *BCO* stating that changes in a pastor's call be approved by vote of the congregation."

It is our judgment that the Presbytery is correct in its interpretation that there is nothing explicit or implicit in the *BCO* that requires that changes in the terms of pastoral calls be approved by the congregation. *BCO* 20-6 requires that a call include not only the approbation of the calling body (the Session for an assistant pastor and the congregation for a pastor or associate pastor), but also the terms of the call. Since there is no explicit provision in the *BCO* that requires any subsequent congregation action for changes to terms of calls,

it appears that once the original call (which includes the terms) has been approved, any future adjustments or changes become the responsibility of the Session since it approves and adopts the budget (*BCO* 12-5b).

What is explicit in the *BCO* is that that Session approves and adopts the budget, not the congregation (*BCO* 12-5b). Since the *BCO* is silent, as acknowledged by past General Assemblies (see below), that which is explicit in the *BCO* should govern our practice. After the pastoral relationship has been established by the vote of the congregation and approved by Presbytery, changes in terms of call become a budgetary matter. The *BCO* clearly bestows to the Session the authority to approve and adopt the budget. Therefore, we hold that a congregation meeting to vote on changes in terms of a call is not required by the *BCO*.

Complainant cited advisory statements from past General Assemblies (ROC, p. 36) in support of his position that congregations should approve changes in the terms of a pastor's call. The specific citation was from the 14th General Assembly (1986), when it answered a constitutional inquiry regarding who can approve changes in terms of calls:

The *BCO* is not explicit on this matter of changes in terms of call. Since *BCO* 20-6 requires that terms of call be determined by the congregation (including financial stipulations) any changes in those terms must also be approved by the congregation.

GROUNDS: This response is supported by the prior action of the General Assembly in the parallel matter of presbytery approval of changes in the terms of call: "*BCO* 20-1 indicates that Presbytery must approve the call of a pastor. The call establishes the relationship of the pastor to the calling body. *The BCO* is silent concerning amending the call; however, inasmuch as the initial relationship must be approved by Presbytery, it would follow that if any changes are made in the original call, the Presbytery would necessarily have to approve the changes in the call for the protection of both the pastor and the calling body" (M11GA, 1983, 11-36, III.55, p. 101; M14GA, 1986, 14-52, 45.2, p. 128).

The 14th General Assembly's advice was that "any changes in those terms must also be approved by the congregation." Then it gave as its grounds the "prior action" taken by the 11th General Assembly. In other words, the 14th General Assembly, in concluding that congregations should approve changes in the terms of calls, based its support on the 11th General Assembly's advice, which answered an inquiry regarding the need of Presbyteries to approve changes in the terms of calls.

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In essence what the 14th General Assembly did was to co-join the requirement that changes in the terms of calls must be approved by the congregation (1986) and by the Presbytery (1983). It noted in the "grounds" that this was a "parallel matter" to a Presbytery giving approval of changes in the terms of call: "This response [from the 14th GA] is supported by the prior action of the General Assembly in the parallel matter of presbytery approval of changes in the terms of call."

Since the proposition was put forward that the reason congregations must approve changes in the terms of calls is because Presbyteries must also approve these changes, we needed to determine whether the *BCO* actually mandates this proposition. It is our judgment that the *BCO* makes no explicit provisions for either the congregation or the Presbytery to approve changes in terms of calls.

Note that even the responses to constitutional inquiries at the 11th (1983) and 14th (1986) General Assemblies on the question of who must approve the terms of a pastoral call acknowledged that the *BCO* is "not explicit" and "is silent" concerning amending a call:

The *BCO* is not *explicit* on this matter of changes in terms of call. Since *BCO* 20-6 requires that terms of call be determined by the congregation (including financial stipulations) any changes in those terms must also be approved by the congregation.

GROUND: This response is supported by the prior action of the General Assembly in the parallel matter of presbytery approval of changes in the terms of call: "*BCO* 20-1 indicates that Presbytery must approve the call of a pastor. The call establishes the relationship of the pastor to the calling body. *The BCO is silent concerning amending the call*; however, inasmuch as the initial relationship must be approved by Presbytery, it would follow that if any changes are made in the original call, the Presbytery would necessarily have to approve the changes in the call for the protection of both the pastor and the calling body" (*M11GA*, 1983, 11-36, III.55, p. 101; *M14GA*, 1986, 14-52, 45.2, p. 128. Emphases added).

In fact, the 21st General Assembly (1993) approved the following amendment to add a third paragraph to *BCO* 20-1 and sent it to the Presbyteries for their vote:

After the call and its terms have been approved by Presbytery, any amendments to the terms of the call must be reported to and approved by the Presbytery when amended.

This was clearly an effort to amend the *BCO* to add language that would make explicit and remove the "silence" of the *BCO*, that Presbyteries must approve any changes to the terms of calls. The amendment failed; it did not receive the required two-thirds of Presbyteries (*M22GA*, 1994, p. 55, 22-10, Item 3).

It may be that a part of the confusion or lack of clarity with this issue is that the practice in the former PCUS was for Presbyteries to approve changes in the terms of a pastor's call. A good portion of the basic format of the former PCUS Book of Church Order was the template for the PCA Book of Church Order. The PCUS *BCO* had this explicit provision:

The terms of a call under which the relation of Pastor or Associate Pastor is established can be changed only with the consent of the Presbytery (PCUS *BCO* 25-2, May 1961).

Neither this nor comparable language was included in the PCA *BCO* when it was written and then ultimately adopted by the PCA General Assembly.

It is our sense that the some of the practices of the former PCUS were continued in the PCA even if the formal language or provisions were not explicitly carried over into the PCA *BCO*. In other words, the operating practices of the former church continued into the present church in a type of "oral tradition." The failed amendment to *BCO* 20-1 was an attempt to enshrine language in our Constitution that would continue the practice from the former church, which was being practiced as if it had become a formal part of the PCA Constitution.

We find no constitutional provision for the congregation to vote on the changes of terms in a pastor's call. Once the original call has been approved by the congregation and acted on by the Presbytery, any future adjustments or changes is a budgetary matter and become the responsibility of the Session since it approves and adopts the budget (*BCO* 12-5b).

If there is a desire to enshrine these practices in the Constitution, then the proper way to accomplish this is by amendment. There would have to be two amendments to make explicit that both the congregation and the Presbytery would have to approve changes in the terms of pastoral calls.

With reference to Issue 2: We find no provision in our Constitution that requires a Session to publicize the details of the budget that it has approved and adopted. However, it would be our counsel that it would be prudent for a Session to present the budget to the congregation for its information. Since the members of the church are the ones who are being asked to support the ministry of the church, it would be wise to distribute the budget that was

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approved and adopted by the Session. It would also be appropriate to allow members to review more specific details of the budget, like staff salaries, upon inquiry.

The Summary of the Facts was written by RE Terry Jones, the Statement of the Issue, Judgment and the Reasoning and Opinion of the Court by TE Dominic Aquila. All concur.

TE Dominic Aquila, RE Terry Jones, RE Grant McCabe

The vote on the Case 2004-3 was:

TE Dominic A. Aquila	Concur	RE J. Grant McCabe	Concur
TE Howell A. Burkhalter	Dissent	TE Charles E. McGowan	Dissent
TE Stephen M. Clark	Dissent	TE D. Steven Meyerhoff	Concur
RE M. C. Culbertson	Disqualified	RE Frederick Neikirk	Dissent
RE Perry Denniston	Concur	RE Steven T. O'Ban	Concur
RE J. Howard Donahoe	Absent	TE Michael M. Rico	Concur
RE Samuel J. Duncan	Dissent	TE G. Dewey Roberts	Concur
TE Robert M. Ferguson Jr.	Concur	TE Michael F. Ross	Concur
TE William W. Harrell Jr.	Dissent	TE Robert D. Stuart	Concur
RE Terry L. Jones	Concur	RE John Tolson	Concur
TE Paul D. Kooistra	Absent	RE John B. White Jr.	Concur
RE Thomas F. Leopard	Dissent	RE W. Jack Williamson	Concur

Adopted: 14 concurring, 7 dissenting, 1 disqualified, 0 recused, 0 abstained, 2 absent.

DISSENTING OPINION IN CASE 2004-3

The undersigned respectfully dissent from the decision in case 2004-3, *Harris v. Heritage Presbytery*. The majority concludes that “There is nothing either implicit or explicit in the *BCO* stating that changes in a pastor’s call be approved by vote of the congregation.” It is the opinion of the undersigned that there is at least an implicit requirement that the congregation approve changes in terms of call for a pastor, and that this requirement constitutes an important safeguard for both the congregation and the pastor.

We note at the outset that the fact that the requirements are implicit does not lessen their force. *WCF I-VI* states “the whole counsel of God...is either expressly set down in Scripture, or by good and necessary consequence may be deduced from Scripture.” We argue the same interpretative principle applies with regard to understanding the principles contained in the *Book of Church Order*. That which is derived as “good and necessary consequence” from explicit statements in the *BCO* must also be binding upon us. Such good

and necessary consequence is clear from the nature of the pastoral call, the congregational vows, and the provisions for dissolution of the pastoral relationship.

When the congregation calls a pastor it must both issue a call and “promise and oblige” itself to “free [him] from worldly cares and avocations” by providing salary, benefits, vacation, etc (*BCO* 20-6). Moreover, in affirming the fourth vow at the time of ordination or installation (*BCO* 21-6.4) the congregation obliges itself to provide the pastor “that competent worldly maintenance which you have promised and to furnish him with whatever you may see useful for the honor or religion and for his comfort among you.” In both of these actions it is the congregation that is making the promise and thus it is the congregation that must keep the promise¹. But, how can the congregation keep this promise if the Session, and the Session alone, approves changes in those terms of call? Under the majority’s theory a session could, at any time after the original call is approved, act to reduce the financial terms of the call, thus making it impossible for the congregation to keep its vow. We believe this is why previous General Assemblies, while agreeing the *BCO* is “not explicit” on the question of who must approve changes in terms of call, concluded “Since *BCO* 20-6 requires that terms of call be determined by the congregation (including financial stipulations) any changes in those terms of call must also be approved by the congregation.”²

This understanding of the congregation’s responsibility is consistent with Scripture. It is our understanding that the passages most commonly used to underscore the responsibility to provide worldly support to pastors are directed to the people as a whole, rather than to the Session.³

In addition, we note that leaving the right to approve changes in terms of call solely in the hands of the session has the potential for undermining *BCO* 23-1. Consider the situation in which a dispute arises between a pastor and other members of session. Rather than following the procedures of *BCO* 23-1, the session could simply rid themselves of the pastor by drastically reducing his terms of call, thereby “starving him out.” Under the majority’s theory there is no clear recourse for the pastor, nor is there clear recourse for the congregation if they do not want their pastor to leave.

Our conclusion in no way lessens the force of the Session’s responsibility to “approve and adopt the budget of the church”(*BCO* 12-5). For example, a church may have a mortgage that requires a fixed amount of debt service each year. The fact that Session must include this as part of the budget does not undermine Session’s right to “approve and adopt the budget.” Similarly, our position does not lead to “congregationalism.” If it is congregationalism for

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the congregation to approve changes in the terms of call for a pastor, why is it not equally congregationalism when the congregation approves the original terms of the call? Congregational approval of changes in terms of call in nowise lessens the legitimate rights and responsibilities of sessions.

In short, it is our contention that there is “good and necessary consequence” in the *BCO* for requiring that the congregation, rather than the session alone, approve changes in the terms of call to a pastor. We believe this conclusion safeguards the congregation by insuring it has the ability to fulfill its vows to the pastor, and that it in nowise undercuts the legitimate authority of sessions. We further believe this conclusion is necessary for the protection of pastors so they always have recourse should there be efforts to settle “intrasessional disputes” by the rest of a session seeking to bring financial pressure to bear on the pastor. It is out of these concerns for the integrity of our Constitution, the peace of our churches, and the right and responsibility of congregations to uphold their vows before God that we respectfully dissent in this case.

TE Stephen M. Clark, RE Samuel J. Duncan, TE William W. Harrell Jr.,
RE Thomas F. Leopard, TE Charles E. McGowan, RE Frederick R. Neikirk

JUDICIAL CASE 2004-4 APPEAL OF TE JOHN P JERGUSON VS. WESTERN CAROLINA PRESBYTERY

The full SJC concurred with the panel that this case is judicially out of order on the basis of *BCO* 42-2. The case is not ready for higher court review because it is being reheard by the Presbytery.

The Vote on Case 2004-4 was:

TE Dominic A. Aquila	Concur	RE J. Grant McCabe	Concur
TE Howell A. Burkhalter	Concur	TE Charles E. McGowan	Concur
TE Stephen M. Clark	Concur	TE D. Steven Meyerhoff	Concur
RE M. C. Culbertson	Concur	RE Frederick Neikirk	Concur
RE Perry Denniston	Concur	RE Steven T. O'Ban	Concur
RE J. Howard Donahoe	Absent	TE Michael M. Rico	Concur
RE Samuel J. Duncan	Concur	TE G. Dewey Roberts	Concur
TE Robert M. Ferguson Jr.	Absent	TE Michael F. Ross	Concur
TE William W. Harrell Jr.	Absent	TE Robert D. Stuart	Concur
RE Terry L. Jones	Concur	RE John Tolson	Concur
TE Paul D. Kooistra	Absent	RE John B. White Jr.	Concur
RE Thomas F. Leopard	Concur	RE W. Jack Williamson	Concur
Adopted: 20 concurring, 0 dissenting, 0 disqualified, 0 recused, 0 abstained, 4 absent.			