

**GAPJC**

**REMEDIAL CASE 219-11**

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**APPEAL FROM DECISION AND ORDER  
OF THE SYNOD OF THE PACIFIC**

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**Mary Holder Naegeli  
Mark J. Stryker  
Margaret H. Geline**

**Appellants (Complainants)**

**v.**

**The Presbytery of San Francisco**

**Appellee (Respondent)**

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## **I. INTRODUCTION**

The issue before the Synod of the Pacific permanent judicial commission was plain enough: Is a presbytery prohibited from waiving a mandatory church-wide ordination standard—specifically G-6.0106b, the “fidelity and chastity” provision—for a candidate who refuses to abide by that constitutional requirement? The church needs a current, clear answer to this burning question. The Synod of the Pacific failed to provide it.

Since the late 1970’s, the church has grappled with the issues of sexuality and ordination. A definition of the sexual ethic required of church officers was incorporated into the *Book of Order* in 1997. G-6.0106b has withstood all challenges to remove it, becoming the most tested constitutional policy in the church’s history. Though the pertinent provisions of the Constitution have remained unchanged, recent authoritative interpretations (AI) by the General Assembly have muddied the waters and, some believe, opened the door to possible exceptions.

The first of these AIs came out of the recommendations of the Theological Task Force on Peace, Unity, and Purity (PUP) at the 2006 General Assembly. Without mandating any certain procedure or timing, PUP Recommendation 5 requires ordaining bodies to determine whether any conscientious objection declared by an ordination candidate disqualifies the candidate for service because it departs from “the essentials of Reformed faith and polity.” This authoritative interpretation caused some to believe ordaining bodies could waive ordination standards, including mandatory standards such as G-6.0106b, based on a candidate’s freedom of conscience objection.

With this backdrop, in January 2008 the San Francisco Presbytery—believing PUP gave it license to ignore the plain, unchanged language of the Constitution—waived the mandatory standard in G-6.0106b for ministerial candidate Lisa Larges, a self-identified unrepentant lesbian who refuses to comply with this requirement. While the action was immediately challenged by this remedial case, San Francisco’s story neither begins nor ends in January 2008.

For more than ten years prior, the candidate was under care of San Francisco’s Committee on Preparation for Ministry (CPM). She transferred to San Francisco from Twin Cities Area Presbytery declaring the same objection to “fidelity and chastity” that she declared in January 2008. Never once did the CPM suggest that she should repent and forsake her disqualifying lifestyle. At one point, the CPM decided to keep her on the roll of candidates “until the rules changed.”

CPM, acting on behalf of Presbytery, failed its most fundamental duties to the whole church, to the presbytery, and to the candidate herself. The CPM failed to honor its covenant relationship with the wider church by not enforcing the standards the church had declared for all to follow. It failed the presbytery by offering incomplete and misleading information and testimony to the presbyters who considered the candidate’s departure. And it failed its obligation to the candidate by not advising that her life choices disqualified her for ordained service and by not counseling her to repent.

Before the trial was held for this remedial case, both this commission and the General Assembly spoke regarding ordination standards. First, this commission held in *Bush, et al v. Presbytery of Pittsburgh* (2008) 218-1 that “...the fidelity and chastity provision of G-6.0106b is a mandatory standard that cannot be waived.” Then, in response to *Bush*, the General Assembly in 2008 adopted the Knox Overture as an authoritative interpretation (Knox AI). The

Knox AI proclaims that “freedom of conscience applies to all standards equally.” Based on Knox, many have renewed their belief that ordaining bodies now have the option to waive G-6.0106b. Unfortunately, the SPJC sidestepped the constitutional issue and decided this case on technical procedural grounds not raised by either party or the facts, and refused for want of jurisdiction to admonish the Presbytery for some of its CPM’s failures.

Thus, the church needs a clear post-Knox statement from this Commission that will resolve, once and for all, the debate of the meaning of “mandatory,” “church-wide,” and “standards,” the requirements imposed by G-6.0106b, and the reality that G-6.0106b remains the mandatory standard for the whole church unless it is removed by constitutional process.

So, back to the burning question to which the church needs a clear answer: Is a presbytery prohibited from waiving a mandatory church-wide ordination requirements, and specifically, G-6.0106b? Clearly: Yes.

This case raises two additional questions: Does a SPJC have jurisdiction to admonish a presbytery for the misdeeds of its CPM? and, Is it an abuse of discretion to maintain an unqualified candidate on the roll of candidates for more than ten years waiting not for compliance, but for the rules to change? The *clear* answer to these questions is also “yes.”

## **II. SPECIFICATIONS OF ERROR**

1. The Synod of the Pacific Permanent Judicial Commission (SPJC) erred in constitutional interpretation when it failed to specify that G-6.0106b is a church-wide mandatory ordination standard that cannot be waived by any ordaining body (D-8.0105g).

2. The SPJC erred in constitutional interpretation when it held that “the examination for ordination is the proper time for Presbytery to determine whether or not a candidate’s departure constitutes a failure to adhere to the essentials of reformed faith and polity” (D-8.0105g).

3. The SPJC erred in constitutional interpretation when it declined to rule on the constitutionality of the outcome of the presbytery’s vote that declared the candidate ready for examination despite her departure from G-6.0106b (D-8.0105g).

4. The SPJC erred in constitutional interpretation when it determined it had no jurisdiction to review the actions of a presbytery taken by its Committee on Preparation for Ministry (D-8.0105g).

5. The SPJC erred in constitutional interpretation when it failed to recognize the CPM’s abuse of discretion in the care and counsel of the candidate, and erred when it failed to instruct the Presbytery to remove the candidate from the roll of candidates (D-8.0105g).

6. The SPJC failed to act justly when it declined to admonish the Presbytery’s CPM to “take care to provide only accurate, truthful material that focuses properly on the issues to be presented to the presbyters” (D-8.0105f).

7. The SPJC erred in its handling of evidence and testimony when it refused to admit into the record the contents of Envelope B and other documents requested by Appellants and when it refused to permit testimony regarding the relevance of the disputed documents or the alleged misconduct by the CPM (D-8.0105b, c, & d; D-14.0401).

8. The SPJC erred when it declined to receive proper evidence, refusing to admit into the record specific CPM minutes reflecting the committee's rationale and understanding of the departure motion presented to the Presbytery (D-8.0105c).

### **III. STATEMENT OF FACTS**

**A. The candidate has long held that she would not abide by the church-wide requirement for all ordained officers found in *Book of Order* section G-6.0106b, calling it “a mar on the church.”**

The Presbytery of San Francisco's final assessment by its Committee on Preparation for Ministry (CPM) of clergy candidate Lisa Larges was conducted in December 2007 (Record on Appeal [ROA] at 212-215). The candidate had informed the CPM that she would not abide by *Book of Order* section G-6.0106b, calling it a “mar on the church” (ROA 107). When presented with the nine constitutional questions for ordination, she answered “yes” to all except question e: “Will you be governed by our church's polity, and will you abide by its discipline?” to which she answered, “I will abide by the Church's discipline and polity except for G-6.0106b as stated in the departure I have declared” (ROA 214).

A year and a half earlier, the 217<sup>th</sup> General Assembly had adopted recommendations of the Theological Task Force on the Peace, Unity and Purity of the Church (PUP), interpreting the meaning of the freedom of conscience provision of the *Book of Order*, section G-6.0108. (*General Assembly Minutes* 2006, 28-29, 523, Item 06-01, especially Item 5.)

In response to the PUP-AI, the Presbytery commissioned a Discernment Team to develop local procedures that took PUP into account (ROA 100-101;

Recorder’s Transcript [RT] 236:7-238:21). The team met for nearly a year and, consistent with the *Book of Order* as interpreted by the PUP AI, and with general presbytery approval, established a procedure for dealing with an ordination candidate declaring a departure from standards: if the CPM believed the candidate was otherwise ready to be ordained, the question of whether the departure disqualified the candidate would be put to a vote of the presbytery (ROA 131-132). Like the constitutional provisions for handling “Extraordinary Circumstances” (e.g. exceptions to educational, ordination exams, and time requirements) (G-14.0470), the Presbytery’s policy called for the whole Presbytery to judge whether the exception CPM recommended was to be granted. Lisa Larges was the first candidate to declare a departure under this new review procedure (ROA 106; RT 166:21, 203:3-9).

**B. The Presbytery’s CPM knew before accepting the transfer of the candidate that she had already been under care for ten years, that she held unorthodox views of marriage and sexuality, and that her ordination in Twin Cities Area Presbytery had been overturned by the GAPJC.**

Lisa Larges has been a candidate for ordination for more than 20 years. She first came under care of the Twin Cities Area Presbytery in 1986 and in 1991 not accord with the requirements for ordination . . .” applies to ordination candidates (*Minutes*, UPCUSA, 1978, Part I, p. 265; see also *LeTourneau, et. al. v. Presbytery of Twin Cities Area* (GAPJC 1993, 205-4)).<sup>1</sup> In addition, the GAPJC

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<sup>1</sup> While the Definitive Guidance was stripped of its authoritative effect by the 218th General Assembly, that does not render its observations untrue. The 218th General Assembly did not strip the Confessions or Scripture—both of which state the same conclusions as the Definitive Guidance regarding unrepentant homosexual conduct being inconsistent with ordination—of their authority.

admonished Twin Cities Area Presbytery for the apparent cavalier manner in which its CPM conducted its covenant relationship with the candidate:

This commission is concerned that, in the process of counseling and guidance of any candidate, the church does not lose sight of the special relationship that exists between candidate, [CPM], and presbytery. It is a relationship that is built on mutual trust and accountability among those parties and with the wider church. . . .

In this case, the process has lacked this sense of accountability and shredded the trusting relationship in our connectional Church. The person most likely to suffer unnecessarily is the candidate herself. (*Ibid.*)

All of this was known to San Francisco Presbytery when the candidate sought to transfer her candidacy in 1997 (ROA 174-181; RT 194:18-195:12).

The Presbytery also knew, because the candidate had told the Presbytery's CPM, that she held beliefs that contradict the *Book of Order*. Namely, that marriage is not a covenant between a man and a woman, as defined in the *Book of Order*, but a covenantal relationship before God between any two people of faith. She stated her belief that "holy relationships of homosexuality ... have parity with marriage" (ROA 177). She also informed the CPM of her belief that Presbyterian polity "does not bar Presbyterian ministers from marrying same sex couples" (ROA 180); (but see *Book of Order* W.9000 *supra*.) All of this was known *before* the Presbytery approved the candidate's transfer. These departures alone should have prevented the candidate's transfer and, effectively, caused her removal from the roll of candidates.

**C. Never once during the more than ten years under care with San Francisco Presbytery was the candidate advised to repent of her disqualifying lifestyle; indeed, the CPM wanted to keep her on the roll “until the rules changed.”**

After the transfer was approved in 1997, The Presbytery’s CPM would meet at least annually with the candidate to receive her written report on progress and “for the evaluation and nurture of the candidate” (*Book of Order* G-14.0421). At no time did the Presbytery’s CPM ever counsel the candidate that she should reform her practices and beliefs to conform to constitutional standards. It is evident her practices and beliefs did not change throughout her years under the care of San Francisco Presbytery (RT 99:2-20).

None of the covenants made between October 1999 and December 2007 advised the candidate to reconsider her homosexual commitment, nor was there any suggestion she should repent. She was never asked to change her life to comply with church-wide standards (ROA 182, 183, 203, 205, and 207).

In 2002, the candidate reported that she was working for an activist group devoted to subverting the church’s rules on the ordination of gays and lesbians called That All May Freely Serve (ROA 183).<sup>2</sup> Even then, the covenant did not demand the candidate reform her beliefs and practices to conform to constitutional

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<sup>2</sup> From the That All May Freely Serve website: “That All May Freely Serve commits to actively resist and transform structures and systems of injustice. To join in solidarity in making the connections with those disenfranchised by racism, classism, sexism, heterosexism, ageism, ablebodyism, gender identity oppression, eco-exploitation, militarism, and all other structures of exploitation and oppression through the lens of our social location and focus on the liberation of lesbian, gay, bisexual, and transgender people from religious prejudice and exclusionary church policies.” ([http://www.tamfs.org/index.php?option=com\\_content&task=view&id=94&Itemid=101](http://www.tamfs.org/index.php?option=com_content&task=view&id=94&Itemid=101))

standards. Instead, the covenant required the candidate to moderate her work schedule to spend more time with her lesbian partner (ROA 183).

In May 2003, the Presbytery's CPM conducted the candidate's second "final" assessment (ROA 184-187). She could not answer constitutional question "e" unequivocally (ROA 186).<sup>3</sup> She explained that "her understanding" of the requirement of G-6.0106b "is that she sees herself married in the eyes of God in every sense of the word" (ROA 186). Continuing in September 2003, the candidate fielded questions about her "marriage" and how she squared it with the mandate of the *Book of Order*. She again defined marriage as "a long term, committed life time commitment with another human being" (ROA 188). The committee was fully aware of her manner of life, as described in terms of the premarital counseling she and her partner had undergone and the "marriage" ceremony conducted by Rev. Jane Spahr (ROA 189).

In April 2004 the candidate met with the full CPM (ROA 198-201). She was asked directly by appellant Mary Naegeli, who was a member of the CPM, whether the candidate's "marriage" to her female partner included sexual intimacy (ROA 199). The candidate answered that living out her marriage vows included sexual intimacy (ROA 200).

Notwithstanding that the candidate's longstanding defiance to G-6.0106b and her unconstitutional views regarding marriage were themselves bars to ordination, the CPM was now confronted with a self-acknowledged, sexually active, homosexual candidate. The CPM referenced Office of Constitutional

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<sup>3</sup> "Will you be governed by our church's polity, and will you abide by its discipline? Will you be a friend among your colleagues in ministry, working with them, subject to the ordering of God's Word and Spirit?"

Services Advisory Opinion, Note 8, which states unequivocally, “Sexually active homosexual persons may not be ordained” (ROA 200). But this served only to slow down, but not stop, the process. Hope was expressed not that the candidate would change her belief and practice, but that the “rules would change” (ROA 201).

**D. Despite her bold refusal stated during her final assessment by the CPM on December 5, 2007, the CPM voted to present her statement of departure to the Presbytery with a recommendation that she be certified ready for examination for ordination.**

In March 2007, the committee learned the candidate was slated to become the director of TAMFS and, in order for her to be ordained to the position, she wanted another “final” assessment. The assessment was conducted before the entire CPM on December 5, 2007 (ROA 210-215) according to the procedure the CPM had worked out earlier that fall (RT 85:6-13, 183:7-10, 211:16-215:3). As part of this final assessment, she preached a sermon on the Prodigal Son and presented her statement of faith (ROA 212).

She also presented a four-page statement of departure defending her refusal to abide by G-6.0106b (ROA 107-110). She was asked specifically: “Given that G-6.0106b is our polity, if you moved forward, you would have to work under that policy.” The candidate reiterated what was stated in her written statement of departure: “Being a minister, I cannot and would not abide by G-6.0106b” (ROA 213).

Her refusal to abide by G-6.0106b was reinforced by her unwillingness to give an unequivocal “yes” to the fifth ordination question (“Will you be governed by our church’s polity, and will you abide by its discipline?”). She responded: “I

will abide by the Church's discipline and polity except for G-6.0106b as stated in the departure I have described" (ROA 214).

After deliberation, 12 members voted to "recommend to Presbytery that Lisa Larges be found certified ready for examination, effective January 15, 2008, with the following departure" (ROA 215). A vote for the motion meant the departure was not a failure to adhere to an essential tenet of the Reformed faith and polity. A vote against the motion meant the departure was from an essential tenet (ROA 172).

On January 15, 2008, when the issue of Ms. Larges' departure was presented, the presbyters understood the issue would be decided that night, and, like other waivers granted in extraordinary circumstances, would not be revisited (ROA 96-97). If the vote had not been challenged, the candidate would have proceeded to the Examination for Ordination, without any further consideration of her departure (*ibid.*; RT 176:3-177:3).

Although the candidate did not stand before the body in person (which was not required by G-14.0470 nor by the procedure recommended by the Discerning Team as implemented by the CPM), her personally-written statement explaining and defending her departure was presented to the presbyters (ROA 107-110). Also presented to the presbyters was the report by the majority of the CPM, along with other documents prepared by the CPM-majority containing incorrect summaries of constitutional ordination standards and the PUP-AI procedure, and misinformation regarding the rationale for G-6.0106b (ROA 98-106). The documents are notable for what was omitted: The presbyters were not informed that G-6.0106b is mandatory, nor much regarding Ms. Larges' long history as an ordination candidate, including an earlier ordination attempt rescinded by a GAPJC ruling (ROA 3; RT 98:18-102:5).

**E. After hearing misleading and false information presented on behalf of the candidate by the CPM Majority Report, the Presbytery acted irregularly on January 15, 2008, when it voted that the candidate’s departure from a mandatory standard (G-6.0106b) did not disqualify her from ordination.**

With more than 300 presbyters present, CPM presented its report and recommendation according to the procedure the Presbytery had worked out for itself to fulfill the requirement of the PUP-AI. Also presented was the candidate’s four-page statement of departure and the minority report.

The sole purpose of the discussion was for the Presbytery to determine—as required by PUP Rec. 5c2—whether the candidate’s declared departure “constitute[d] a failure to adhere to the essentials of Reformed faith and polity under G-6.0108 of the *Book of Order*, thus barring the candidate from ordination ....” (See *General Assembly Minutes* 2006, 28-29, 523, Item 06-01, section 5c2) (ROA 215; RT 91:1-92:22, 95:10-25).

Even so, the material presented in the majority report focused not on the departure, but on the discernment process employed by the CPM in assessing the candidate and a glowing recommendation of the candidate’s personality and talent (ROA 98-99, 104-105).

The report included “a document that provides background information on departures and freedom of conscience” that was misleading and incomplete (ROA 102-103). It quotes as authority portions of the PUP Report (*A Season of Discernment*) that were not adopted by the General Assembly. It defines “departure” as a “declaration by an inquirer or candidate stating that they are objecting to or departing from an article which is not an ‘essential tenet’ of the Reformed faith and polity of the PC (USA)”; thus defining away the very issue

before the presbyters (*whether the departure was from an essential tenet*). It recklessly misquotes John Calvin, cobbling together cherry-picked out-of-sequence quotes that appear pages apart in the original text to turn Calvin's teaching on freedom of conscience on its head. And it summarizes *Book of Order* section G-6.0106b as referring to merely "committed relationships" rather than to constitutional marriage. (See *Book of Order* W-4.9001 "... For Christians marriage is a covenant through which a man and a woman are called to live out together before God their lives of discipleship..."). The actual text of G-6.0106b is relegated to an obscure footnote in the discussion on the CPM's assessment process (ROA 101; RT 98:11-101:3).

After debate, on a vote of 167 (yes) —151 (no), the presbytery certified that "candidate Lisa Larges is 'ready for examination' effective January 15, 2008, with a departure" (ROA 97). Thus, the presbytery improperly waived a mandatory church-wide ordination standard.

**F. After the vote by the San Francisco Presbytery, both the GAPJC and the General Assembly spoke on the issue of ordination standards.**

Not long after the vote, indeed, before the complaint could be heard by the SPJC, the GAPJC issued its opinion in *Bush v. Pittsburgh*, rendering two significant rulings: (1) that the fidelity/chastity requirement in G-6.0106b is a mandatory church-wide ordination standard that cannot be waived, and (2) that G-6.0106b could only be changed by constitutional amendment (which requires ratification by the presbyteries) and not by a General Assembly-issued authoritative interpretation.

Later that year, in June 2008, the General Assembly met in San Jose. It adopted the Knox Overture as an authoritative interpretation. Knox reaffirmed the

PUP AI and added that freedom of conscience (G-6.0108) applies equally to all standards for ordination. The proponents of the Knox Overture believe that it supersedes the holding of *Bush* and means that the “fidelity/chastity” requirement of G-6.0106b can be waived by ordaining bodies. We contend that the Knox AI had no such effect.

**G. Even though the first amended complaint alleges the Presbytery’s CPM failed to enforce church-wide ordination standards, failed to advise the candidate of her need to repent of her disqualifying lifestyle, and failed to accurately inform the presbyters regarding church-wide standards, the SPJC refused to admit material evidence regarding the CPM’s misconduct.**

The Appellants timely filed a Stay of Enforcement and a Complaint with the Synod of the Pacific Permanent Judicial Commission (SPJC) in February 2008 (ROA 1-54).

The First Amended Complaint<sup>4</sup> alleges misconduct by the CPM in its process for enforcing church-wide standards, for failing to properly counsel candidates regarding compliance with church-wide standards, and in misleading the presbyters at the challenged vote with false and incomplete information (ROA 377).

As proof of the alleged misconduct, including to show what information the CPM knew, but did not inform the presbyters, Appellants requested certain records of the CPM, primarily the so-called “Book of Life” related to the

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<sup>4</sup> The First Amended Complaint, which is the operative complaint, was filed and approved prior to trial (ROA 363-379).

candidate, be added to the relevant documents pursuant to *Book of Order* D-6.0307 (ROA 139-143).

In violation of her obligations under the *Book of Order* (see section D-6.0307 *et. seq.*), the Presbytery's stated clerk objected and refused to augment the list of documents with those identified by Appellants, based on her own determination they were not relevant (ROA 80-82). She provided copies of the disputed documents to the SPJC labeled as "Envelope B" (ROA 156-215), which remained under seal throughout the trial.

Prior to trial the SPJC clerk and vice moderator ruled without a hearing that the documents in Envelope B could not be used as evidence at trial (ROA: 298-300). Appellants filed a timely objection on the ground that the documents were necessary not only for the SPJC to review the misconduct of the CPM relative to its handling of candidates and church-wide standards, but also to show what material information the CPM knew, but failed to present to the presbytery, on the night of the challenged vote (ROA 346-358).

On the literal eve of trial, a hearing was held on Appellants' objections regarding the documents. To the surprise of all counsel, no reporter was present. When counsel expressed concern that the hearing should be reported, the Vice Moderator ruled that a reporter was not required.<sup>5</sup> During the unreported hearing, the SPJC improperly refused to permit Appellants to view the documents in Envelope B, to present CPM records which Appellants were rightfully in

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<sup>5</sup> The vice moderator's ruling is itself error which denied this body the opportunity for a full review (D-7.0601a ). ("The clerk of the permanent judicial commission shall...(a) Arrange in advance for the accurate verbatim recording of ***all testimony and oral proceedings.***")

possession of, or to present testimony regarding the relevance of the disputed documents (RT 8:13-21).

Specifically, Appellants offered the testimony of Rev. Marsha Roth and Elder Dennis Horgan, both of whom were eyewitnesses to the misconduct in the CPM process alleged in the First Amended Complaint. Even before the testimony was presented, however, the SPJC limited the questioning of the witnesses to brief descriptions of their involvement in the candidate's process and the authenticity of documents. The SPJC improperly, *and to the prejudice of appellants and the judicial process*, prohibited any questions regarding the conduct or knowledge of the CPM or the content of any CPM records (RT 78:18-79:15).

**H. The Synod ignored the constitutional issues and thus failed to provide clarity regarding the obligation of ordaining bodies to enforce standards.**

The trial took place in Oakland on March 20, 2009, concluding with a Decision and Order dated March 20, 2009 that rescinded the Presbytery's action on technical grounds, but failed to address the unconstitutionality of the outcome of the Presbytery's vote in defiance of G-6.0106b (ROA 476). The SPJC, incorrectly citing lack of jurisdiction, refused to review the evidence pertaining to the CPM's history with the candidate acting on the Presbytery's behalf, or its years-long failure to enforce church-wide ordination standards (ROA 475). Finally, again incorrectly citing lack of jurisdiction, the SPJC refused to order the presbytery to remove the candidate from the roll of candidates (ROA 477).

This appeal from the Decision and Order was filed in a timely manner, and the appellants—indeed, the whole church—await the *clarity* this Commission must provide to resolve, once and for all issues of great import to the church, namely:

- Whether G-6.0106b is a church-wide mandatory standard that can never be waived by an ordaining body.

- Whether a Presbytery should be admonished when its CPM fails its duties to the candidates under its care, to the presbytery it serves, and to the whole church whose standards it must enforce.

- Whether it is an abuse of discretion for a presbytery to keep an ordination candidate on the roll of candidates decades after it is clear by her repeated declarations and conduct that she will neither conform nor comply with church-wide ordination standards.

The answer to all three issues is *clearly*, Yes.

#### **IV. LOOKING AT THE LAW**

Appellants specify eight errors by the Synod Permanent Judicial Commission (SPJC) which implicate three areas of polity and procedure: the standard process and sequence of events leading up to the ordination of a Presbyterian candidate for ministry; the impact on this process from the PUP AI (2006), the holding of *Bush v. Pittsburgh Presbytery*, and the Knox AI (2008); and the jurisdictional reach of a higher governing body (Synod PJC) over a lower governing body (Presbytery) and its committees acting on their behalf (e.g. CPM). Since these aspects apply to more than one specification of error, what follows is an exploration of each in an overview and summary.

#### **A. ORDINATION IS AN ACT OF A PRESBYTERY ON BEHALF OF THE CHURCH; ITS PREPARATION IS CONDUCTED BY THE CPM**

**ACTING ON BEHALF OF THE PRESBYTERY, ACCORDING TO THE PROCEDURE SET FORTH IN THE *BOOK OF ORDER*.**

- 1. The CPM acts on behalf of the presbytery when it provides care and counsel in the preparation of ordination candidates; it therefore has a duty to enforce church-wide ordination requirements and its conduct acting as the presbytery is subject to review of a higher governing body.**

“Ordination to the office of minister of the Word and Sacrament is an action of the presbytery” (G-14.0120). The *Book of Order* mandates that every presbytery establish a Committee on Preparation for Ministry (CPM) for the purpose of preparing candidates for ordained ministry (G-9.0403, G-9.0902a, G-14.0401, and G-11.0103*l*). Thus, when the CPM prepares a candidate for ordained service it is doing so on behalf of the presbytery. The powers, procedures, and timelines by which a CPM prepares ordination candidates are set forth in *Book of Order* sections G-14.0410 through G-14.0490, and in particular sections G-14.0450, 14.0470, and 14.0480-.0482.

To discern the impact of the PUP-AI, we must first challenge generally held assumptions about the candidacy process set out in the *Book of Order*. These provisions reveal the following sequence of events and processes as a candidate moves from Inquiry through Candidacy to “Ready for Ordination”:

G-14.0410        The presbytery, acting through its CPM, oversees a candidate’s preparation for ministry (G-14.0411), giving special attention to the candidate’s spiritual growth, academic progress, and practical training. With specific reference to the exercise of freedom of conscience within certain bounds (G-6.0108), the *Book of Order*

requires that “[t]he presbytery shall also seek to give guidance and instruction to the inquirer or candidate in the faith and polity of the church.” (G-14.0412)

G-14.0420 The CPM receives an annual written report from the candidate and conducts an annual consultation for the evaluation and nurture of the candidate (G-14.0421).

The annual consultations address the candidate’s academic progress, developing sense of call, successful completion of written ordination examinations (G-14.0431), ministry experiences, and timely completion of all requirements (listed in G-14.0450a-d). During these annual consultations, issues can arise relating to a candidate’s qualifications, suitability, call, or readiness for pastoral ministry. The CPM works with the candidate and exercises discretion with “sympathetic interest,” while interpreting to the candidate the requirements for ordination. Indeed, a “special relationship ... exists between candidate, CPM, and presbytery built on mutual trust and accountability among those parties and with the wider church” (*LeTourneau v Twin Cities Area*, [Remedial Case 205-4]).

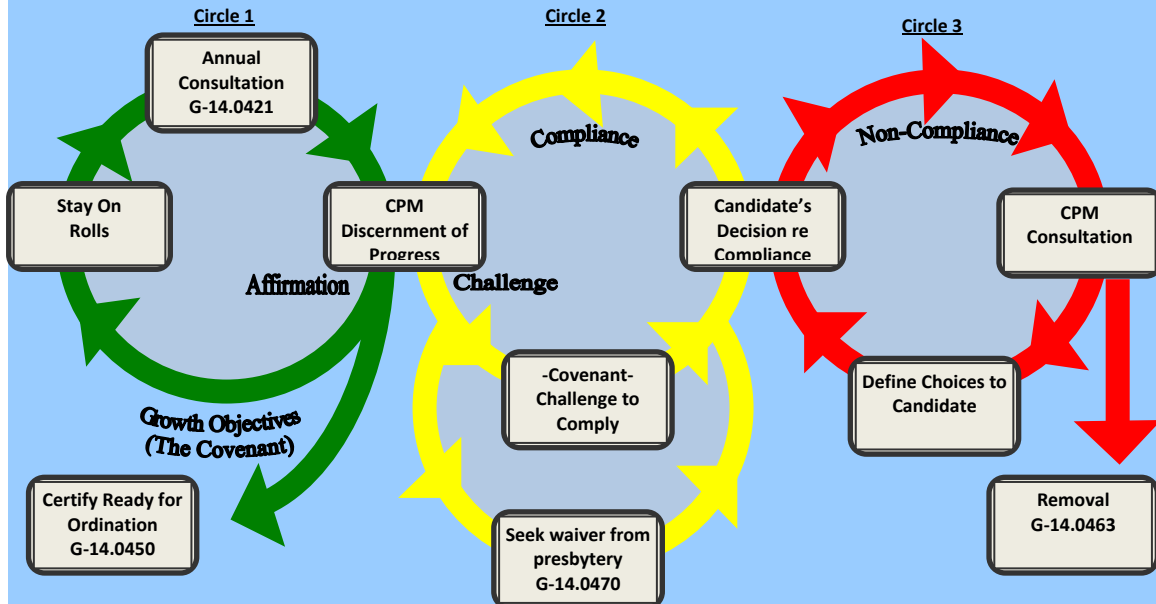
In San Francisco Presbytery the annual consultation results in a written “covenant” which commits the candidate to goals in five areas: education, personal growth, interpersonal relationship, professional development, and spiritual development (RT 232:9-17). These covenants provide the CPM the vehicle to advise a candidate regarding disqualifying belief or conduct.

G-14.0460 Occasionally, a candidate fails to fulfill requirements or demonstrates a manner of life inconsistent with ordained ministry. These situations are discovered and assessed in the course of interactions between the candidate, the CPM liaison, sometimes the seminary, and the CPM. The care process for an individual can stop if the candidate withdraws from the process or if the CPM removes the candidate from the roll of candidates. (See Figure 1, below, Circles 1 and 2.) The process ends when the CPM reports its decision to remove a person from the roll (thus barring the individual from ordination) and seeks the presbytery's concurrence (G-14.0463). (Fig. 1, Circle 3)

G-14.0470 If the CPM determines that extraordinary circumstances justify exempting a candidate from a particular requirement (i.e., educational, written examination, and time requirements), the candidate's process, *but not the candidate*, comes before the presbytery on recommendation of the CPM that an exception be granted, which can only be done by vote of the presbytery (G-14.0742). Once granted, such exceptions for the candidate are binding and even transferable to another presbytery (G-14.0474).

Certainly, a departure from a church-wide mandatory standard like G-6.0106b requires the same kind of scrutiny and special approval from the presbytery as the requirements for education, written examinations, and the overall time frame of a candidate's process.

Figure 1: CPM Care & Counsel Candidate “Discernment Process”



G-14.0450 Once all the requirements for ordination have been met, or waivers obtained by a vote of presbytery, the candidate proceeds to a final assessment by the CPM. In San Francisco Presbytery, this assessment includes hearing the candidate’s sermon with accompanying biblical exegesis paper, discussing her statement of faith, and verifying that all ordination requirements are accounted for (ROA 161-163). When the CPM is satisfied that all requirements are either fulfilled or properly waived (G-14.0470), a report to the presbytery is drafted documenting any waivers and certifying the candidate ready for ordination.

G-14.0482 Only after all known or foreseeable impediments to ordination have been overcome, *and* the CPM certifies the candidate “ready

for ordination,” the presbytery conducts the “Examination for Ordination.” The Examination for Ordination is the presentation of the candidate to the presbytery and penultimate act to ordination. An Examination for Ordination includes the following:

1. What is often (inaccurately) called “final trials of ordination,” conducted during a presbytery meeting at which “the candidate appears and makes a brief statement of personal faith and of commitment to the ministry of Word and Sacrament.”

2. The presbytery receives the CPM’s report that the candidate has completed all requirements, except for those specified items for which a waiver has been granted pursuant to section G-14.0470 *et seq.*, and has been certified ready for ordination. It is very rare for a presbytery to overrule its CPM’s recommendation. And this stands to reason: the CPM is the part of the presbytery that gets to know the candidates, knows their heart, their struggles, their deficiencies, their talents. In San Francisco Presbytery, there are more than 300 presbyters and 80 candidates. It would be impossible for the presbyters to obtain sufficient familiarity with each other during the Examination for Ordination to render an individual judgment on any candidate’s readiness absent the recommendation of the CPM. Simply, a presbytery must be able to rely on the CPM to do its work faithfully and honestly.

3. Though not required, the presbyters may ask further questions of the candidate regarding personal faith and views on

theology, the Bible, Sacraments, and the government of the church.

4. If the presbytery is fully satisfied that the candidate is qualified, it approves the call and votes to proceed to the ordination and installation.

We've jumped around a bit in chapter 14, but you can see that all of this falls under the general topic of "examination," a term which carries different meanings in the *Book of Order* in different contexts. In G-14.0430, "examinations" refer to the "ords," that is the five written examinations: Bible Content, Bible Exegesis, Theological Competence, Worship and Sacraments, and Church Polity. In G-14.0482, "Examination for Ordination" refers to the penultimate step in the process conducted before the full presbytery. This must be distinguished from the "final assessment," which is the last evaluation conducted by the CPM, the results of which are reported to the Presbytery at the time of the Examination for Ordination (G-14.0450).

For our purposes throughout this brief, the phrase "Examination for Ordination" refers to the penultimate step prior to ordination (G-14.0482), and "examinations" (plural) refers to the written "ords." While "examination" may have different uses, it is understood that throughout this process the candidate is scrutinized, nurtured, and guided by the CPM acting on behalf of the presbytery (G-14.0401).

This outline describes the typical process for a candidate preparing for ministry in the PCUSA. The salient features of this process are a presbytery acting through its CPM and, typically, receiving the CPM's recommendations and adopting them.

This procedure is well known among presbyters, who appreciate the work of their CPMs and take its assessment and recommendations of candidates seriously. What is less known and appreciated, perhaps, is that in the interest of encouraging rigor in the assessment process this procedure was refined by the recommendations of the Theological Task Force on Peace, Unity, and Purity adopted as an authoritative interpretation by the General Assembly in 2006 (the PUP AI).<sup>6</sup>

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<sup>6</sup> In 2006, the General Assembly approved an Authoritative Interpretation of G-6.0108 as follows:

a. The *Book of Confessions* and the Form of Government of the *Book of Order* set forth the scriptural and constitutional standards for ordination and installation.

b. These standards are determined by the whole church, after the careful study of Scripture and theology, solely by the constitutional process of approval by the General Assembly with the approval of the presbyteries. These standards may be interpreted by the General Assembly and its Permanent Judicial Commission.

c. Ordaining and installing bodies, acting as corporate expressions of the church, have the responsibility to determine their membership by applying these standards to those elected to office. These determinations include:

(1)

Whether a candidate being examined for ordination and/or installation as elder, deacon, or minister of Word and Sacrament has departed from scriptural and constitutional standards for fitness for office,

(2)

Whether any departure constitutes a failure to adhere to the essentials of Reformed faith and polity under G-6.0108 of the *Book of Order*, thus barring the candidate from ordination and/or installation.

d. Whether the examination and ordination and installation decision comply with the Constitution of the PC(USA), and whether the ordaining/installing body has conducted its examination reasonably, responsibly, prayerfully, and deliberately in deciding to ordain a candidate for church office is subject to review by higher governing bodies.

*Continued on next page.*

**2. The PUP AI adds a step: a determination must be made whether a candidate’s departure disqualifies the candidate from ordained service.**

The PUP AI added a step to this process: not only is a determination made whether a person has departed from scriptural and constitutional standards for fitness for office, but according to the PUP AI, a determination must also be made whether that departure constitutes a “failure to adhere to the essentials of Reformed faith and polity” with attention to freedom of conscience exercised within certain bounds (G-6.0108). If the stated departure is determined to be a “failure to adhere,” then the candidate is barred from ordination. As with any action of a presbytery, the determination decision itself is subject to review by a higher body (see PUP AI at ‘d’).

**3. The determination of a candidate’s departure must be made before the candidate is certified ready by the CPM for the Examination for Ordination.**

While the PUP AI directs ordaining bodies to assess departures separately, it does not state the point in the process when this must occur.<sup>7</sup> However, implicit

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*Continued from previous page.*

e. All parties should endeavor to outdo one another in honoring one another’s decisions, according the presumption of wisdom to ordaining/installing bodies in examining candidates and to the General Assembly, with presbyteries’ approval, in setting standards.

<sup>7</sup> Nor could it, since an authoritative interpretation cannot amend or alter the constitution (*Bush v. Pittsburgh* (2008), p. 5). For the General Assembly to mandate a procedure would require a constitutional amendment, ratified by a majority of the presbyteries (G-18.0301d). Moreover, whatever application we draw from the PUP, or any other authoritative interpretation, must be consistent with the *Book of Order*.

in the PUP AI's description is that it must be considered *before* the CPM certifies the candidate is ready for ordination.

The *Book of Order* is clear that the Examination for Ordination described in section G-14.0482 is to occur *only after* all impediments to ordination have been removed. Section G-14.0450 states that the CPM “shall report to the presbytery when it has certified a candidate ready for examination for ordination...” And section G-14.0482 provides that “the presbytery shall receive the report...that the candidate has completed all requirements, and has been certified ready for ordination...” This does not preclude the presbytery from identifying disqualifying beliefs or polity issues at the time of Examination for Ordination (G-14.0482), but the CPM is responsible under G-14.0470 to present to the presbytery any potential “waivers and exceptions” *before* this point is reached.

Weaving the PUP AI into the fabric that is the process of ordination, it is apparent that departures from Reformed faith and polity must be evaluated by the CPM first, in the context of a full final assessment, and not, as the SPJC determined, at the Examination for Ordination. After all, the final assessment is the moment of truth for a candidate who must have the endorsement of those who know her best in order to be commended to the presbytery. And certainly, if the CPM deems the departure not to constitute a failure to adhere to essentials of Reformed faith and polity, but the departure has been stated, then the CPM is obligated to let the Presbytery know it exists and to ask for its concurrence in the same manner as described in G-14.0470 in dealing with other waivers and exceptions—all *before* the Examination for Ordination.

## **B. THE KNOX AUTHORITATIVE INTERPRETATION HAD NO EFFECT ON THE MANDATORY NATURE OF G-6.0106b.**

- 1. In *Bush v Pittsburgh*, the GAPJC makes it clear that G-6.0106b is not subject to a freedom of conscience waiver, nor is this changed by a subsequent authoritative interpretation.**

The *Bush* decision gave clear guidance to presbyteries and CPMs that compliance with G-6.0106b is required of all who seek office in the PCUSA.

Section G-6.0106b contains a provision where conformity is required by church officers ‘to live either in fidelity within the covenant of marriage between a man and a woman (W-4.9001), or in chastity in singleness.’ The church has decided to single out this particular manner of life standard and require church-wide conformity to it for all ordained church officers. (*Bush v. Pittsburgh* (2008) at p. 4-5)

*Bush* also makes it clear that G-6.0106b is not subject to a freedom of conscience objection.

The candidate and examining body must follow G-6.0108 in reaching a determination as to whether the candidate for office has departed from essentials of Reformed faith and polity, but that determination does not ... permit departure from the ‘fidelity and chastity’ requirement found in G-6.0106b. (*Bush v. Pittsburgh* at p. 5)

- 2. The Knox Overture, adopted as an authoritative interpretation in 2008, does not alter the effect of the holding of *Bush*.**

The 2008 Knox Overture begins by affirming the PUP AI, including that departure determinations by ordaining bodies are reviewable by higher governing

bodies. It also provides, in part, that the freedom of conscience provision of G-6.0108 must apply “equally” to all ordination standards.<sup>8</sup> The proponents of Knox believed *Bush* had set up “fidelity/chastity” as the sole church-wide essential, creating a “super standard.” The intention of the Knox Overture was to undo this aspect of *Bush*. But Knox fails in this goal for at least three reasons

a. “Fidelity/Chastity” is not the “only” essential. The GAPJC in its *Bush* decision never referred to the “fidelity and chastity” clause as the only standard with which all governing bodies would have to comply. On the contrary, it stated: “It would be an obstruction of constitutional governance to permit examining bodies to ignore or waive a specific standard that has been adopted by the whole church, such as the ‘fidelity and chastity’ portion of G-6.0106b, or any other similarly specific provision” (*Bush* at p. 7).

b. Both G-6.0108 and Knox contain internal exceptions to any absolute “apply equally” rule. G-8.0108 expressly limits its application to the interpretation of scripture, and even then only where departures from standards do

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<sup>8</sup> The Knox Overture provides as follows:

The 218th General Assembly (2008) affirms the authoritative interpretation of G-6.0108 approved by the 217th General Assembly (2006). Further, the 218th General Assembly (2008), pursuant to G-13.0112, interprets the requirements of G-6.0108 to apply equally to all ordination standards of the Presbyterian Church (U.S.A.). Section G-6.0108 requires examining bodies to give prayerful and careful consideration, on an individual, case-by-case basis, to any departure from an ordination standard in matters of belief or practice that a candidate may declare during examination. However, the examining body is not required to accept a departure from standards, and cannot excuse a candidate’s inability to perform the constitutional functions unique to his or her office (such as administration of the sacraments).”

not involve “the constitutional governance of the church.” Knox has a similar restraint. Knox states that an examining body “cannot excuse” an inability to carry out “the constitutional functions of the church.” Thus, not even G-6.0108 or Knox can be “applied equally” to all ordination standards; such application is blocked by their own internal exceptions. Saying, as Knox does, that “the requirements of G-6.0108 ... apply equally to all ordination standards” is, as even Knox implicitly acknowledges, not the same as saying that “all ordination standards have the same force or effect.”

c. The Knox Overture is an authoritative interpretation. As such, it cannot alter or amend the constitution, but must be consistent with it (*Londonderry Presbyterian Church v. Presbytery of Northern New England* (2000) 213-2; *Bush v. Presbytery of Pittsburgh* (2008) 218-10). Section G-6.0106b, of course, contains mandatory language: “... among these standards is the requirement...” For Knox to have its intended effect it would have to excise the word “requirements” from the *Book of Order*—something that can only be done by constitutional process.<sup>9</sup>

Thus, there is nothing in the wording of the Knox authoritative interpretation on G-6.0108 that compels the GAPJC to rule any differently than it did in 2008 in *Bush v. Pittsburgh* when it prohibited presbyteries from waiving G-6.0106b.

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<sup>9</sup> *Bush v. Pittsburgh*, “The fidelity and chastity provision may only be changed by a constitutional amendment. Until that occurs, individual candidates, officers, examining and governing bodies must adhere to it.”; see also G-18.0201 and 0301.

**C. ALL ACTIONS OF A LOWER BODY ARE SUBJECT TO REVIEW BY A HIGHER GOVERNING BODY; THESE INCLUDE THE ACTIONS OF A CPM ACTING ON BEHALF OF A PRESBYTERY.**

This case highlights the delicate balance between exercising discretion without interference and the proper accountability to which every decision-making body is subject (G-7.0103, G-9.0103). When there is evidence that trust has been violated in a discretionary process, then accountability—review and correction—must be activated for the covenants between candidate, CPM, presbytery and the wider church to have any meaning.

**1. All actions of a governing body within the PCUSA are subject to review by a higher governing body.**

First some basic rules: “The governing bodies (i.e., session, presbytery, synod) are separate and independent but have such mutual relations that the act of one of them is the act of the whole church” (G-9.0103). The acts of each governing body are “subject to the review by the next higher governing body” (G-9.0103, 9.0407d). This includes of course that the actions of a presbytery are subject to review by its synod (G-12.0102n). Indeed, a higher governing body is required to review the records of presbyteries at least annually (G-11.0305), and the synod has the right to review a presbytery’s records “or any other information as may come to its attention” anytime there is a suggestion of impropriety (G-9.0408, 9.0409a).

These rules beg two questions relevant to this case: (1) What constitutes an “act” of a governing body that is subject to review? and (2) What constitutes the records of a presbytery that are subject to review? Or, stated in terms of the present case, are the records of a CPM among the records of a presbytery the Synod may review? To answer these questions, it is important to understand the

relationship between a CPM and its presbytery, in order to ascertain whether a synod has access to the records and jurisdiction over the actions of a CPM. The terms “presbytery” and “presbytery working through its CPM” are interchangeable in G-14.0400, reflecting the close association (and consequently the legal conjoining) of two groups, one of which is a subset of the other. Here is a sampling of the CPM/Presbytery interplay:

a. Candidates are prepared for their task “under the direction of the committee on preparation for ministry,” . . . “Presbyteries shall enter into covenant relationship with [candidates for ministry]” (G-14.0401).

b. “The presbytery, through a CPM, shall seek to instruct . . .” (G-14.0410)

c. “...the individual [candidate] is under the oversight of the presbytery through the CPM” (G-14.0411).

d. “The presbytery shall exercise responsibility for the spiritual growth of inquirers and candidates, to support them with an understanding and sympathetic interest, and to give guidance . . .etc.” (G-14.0412). It is apparent that “presbytery” here means “presbytery working through its CPM” since this is exactly the relationship nurtured between the CPM and its candidates under care.

The bottom line? A candidate related to and examined by the CPM is a candidate in relationship with the presbytery. As far as the candidate is concerned, when the CPM guides and directs, the presbytery is guiding and directing. Every time the covenant between candidate and CPM is renewed or updated, the presbytery has acted. This is an effective way for the presbytery to delegate its many responsibilities, but there are times when the whole presbytery gets involved: for instance, when an individual is coming under care, transitioning

from Inquirer to Candidacy, granting exceptions and waivers, and moving from Candidacy to “Examination for Ordination.” Those public acts of the presbytery accomplished by votes are built upon the patient, discreet (but not secret!) acts of the CPM in covenant with the candidate and the presbytery, but are by no means the only acts of the presbytery that can be reviewed by a higher governing body. When CPM acts, presbytery acts. And those acts are subject to the scrutiny of a higher governing body.

Precedent exists in at least five cases where a PJC reviewed the actions of a CPM—four of them relate to the roll of candidates: *Bedford-Central PC v. Pby of NYC* (1987) 199-1: GAPJC reviewed and sustained the CPM’s removal of a candidate from the roll based on the candidate’s theological views; *Bevenssee v. Pby of New Brunswick* (1998) 210-2: GAPJC affirmed authority and discretion of presbytery to remove candidate from rolls of inquirers or candidates. Inquirer may be removed from roll for not working toward goals set by CPM; *Sheldon, et al. v. Pby of West Jersey* (2000) 212-12: presbytery should remove candidate’s name from roll if candidate is found to be ineligible for candidacy; and *Hope, et. al. v. Pby of San Francisco* (2006) 217-1: GAPJC reviewed and affirmed the presbytery’s removal of a candidate from the roll.

Moreover, in *LeTourneau v. Pby of Twin Cities Area* (which coincidentally involves the same candidate as in the present case), the PJC went out of its way to admonish the CPM for the manner in which it handled the candidates under its care (*LeTourneau, et al. v. Pby of Twin Cities Area* [1993] 205-4).

**2. A Synod has jurisdiction to review the records or actions of a presbytery's CPM, when there is cause.**

While a governing body may delegate particular aspects of its task to commissions and committees, it is always on the basis of accountability to the governing body (G-9.0403). This implies there is some internal mechanism within a presbytery for review of a CPM by the presbytery itself. In the present case, that “review” took place when the Presbytery received the report of the CPM on January 15, 2008, and debated the relative merits of the Committee’s recommendation and the Minority Report’s caution. When the Presbytery adopted the CPM’s recommendation to declare the candidate ready for ordination despite her departure from G-6.0106b, it failed in its duty to the whole church by granting an exception to a church-wide mandatory standard. The Presbytery’s failure to act properly to correct CPM’s error of judgment was cause for review by the Synod. We are not suggesting that synods must micromanage every little discretionary act of lower governing bodies; but in the present case, the accumulation of many CPM indiscretions over the years became the basis for seriously flawed report and an obviously unconstitutional Presbytery action.

This is an important point to establish: To say that the actions of a CPM are not reviewable is to say that certain actions of the presbytery are not reviewable, when indeed all actions of a presbytery are reviewable (G-9.1013). If the conduct and record of a CPM is shielded from review, then there is no covenantal accountability and no viable means for a presbytery (or synod) to evaluate the committees to which it has entrusted important work.

The synod is given the specific responsibility “to take care that [its presbyteries] observe the Constitution of the church” (G-12.0102n). Implicit in

this direction is the authority to hold commissions and committees accountable, as well. By refusing to take up the specific constitutional violations alleged in Appellants complaint, relating to acts of the CPM, the Synod PJC abdicated a fundamental obligation to the wider church.

### **3. Specific conditions trigger the Synod’s jurisdiction over CPM.**

The Synod has authority to review the actions of lower governing body’s committee where (1) abuse of discretion is alleged (e.g. *Hope et al v. San Francisco Presbytery*, Remedial Case 216-6, 2003) or (2) when there are extraordinary reasons for correcting the action of a lower governing body (*Rankin v. National Capital Presbytery, UPC Minutes*, 1981, p. 113).

When a standing committee such as the CPM brings its discreet work out into the open (a presbytery meeting), and its presbytery does not correct a clear abuse of discretion, then the Synod has jurisdiction to review the acts of a presbytery, and it matters not that those acts were done by the CPM. The same is true if allegations of impropriety are properly lodged in the form of a remedial action. Otherwise, the discretion afforded a CPM is unbridled and self-defining, concepts that do not accord with Presbyterian values of decency, orderliness, and accountability (G-9.0403).

a. **Abuse of Discretion:** CPM is afforded considerable discretion in dealing with its candidates, and ordinarily there is no cause for the Synod to interfere. However, if it can be demonstrated that a CPM abused its discretion—by applying an incorrect interpretation of the *Book of Order* or applicable church law or by arriving at an unconstitutional conclusion —and its presbytery did not correct it (“failure to act”), then the synod must step in and hold the CPM, as well as the presbytery, accountable for its abuse of discretion, and to correct the error.

In the present case, the Appellants allege that CPM abused its discretion by maintaining improper criteria for keeping the candidate under care, “until the rule [G-6.0106b] changes,” and by misapplying PUP to mean that an exception to a mandatory church-wide standard (G-6.0106b) could be granted if a candidate articulated a departure from the standard, and by misinforming the presbyters voting on the departure. The SPJC should have addressed these allegations.

“Discretion” afforded a body such as CPM does not give it uncontrolled power or the veil of secrecy, but rather gives it the opportunity to exercise its wisdom in specific individual cases, all subject to the limitations in the *Book of Order*. When the CPM acted outside those limitations, as alleged in the complaint, this became a matter for Synod’s review. It was error for the SPJ to refuse to review the CPM’s documents and conduct.

b. **Extraordinary Reasons:** The PUP AI identifies the extraordinary reasons for judicial review in the case of declared departures: an unconstitutional outcome of a lower body’s action, or a faulty process (see PUP 5d).

In the present case, the SPJC improperly focused on Presbytery’s process for evaluating the candidate’s departure when it should have addressed the outcome of San Francisco Presbytery’s decision. The decision, of course, clearly violated the constitution, and provided the extraordinary reason that should have triggered Synod’s review and intervention.

It was equally improper for the SPJC to refuse to consider whether keeping the candidate on the roll after more than 20 years of defiance to church-wide standards was an abuse of the presbytery’s discretion. (It most certainly was.)

## **V. ARGUMENT**

### **ERROR SPECIFICATION No. 1**

**The Synod of the Pacific Permanent Judicial Commission (SPJC) erred in constitutional interpretation when it failed to specify that G-6.0106b is a church-wide mandatory ordination standard that cannot be waived by any ordaining body.**

In its Decision, the SPJC falls short: it admonished the Presbytery of San Francisco to “enforce mandatory church wide ordination standards” (Decision, #3), but did not specify that G-6.0106b is among them. PJC decisions should bring clarity and guidance, not ambiguity. The unclear language of the Decision leaves the door open to various interpretations of “mandatory,” “church-wide,” and “standards.” The question was put squarely before the SPJC: Is G-6.30106b a mandatory church-wide standard that cannot be waived? It was error for the SPJC to fail to state clearly that it is.

### **ERROR SPECIFICATION No. 2**

**The SPJC erred in constitutional interpretation when it held that “the examination for ordination is the proper time for Presbytery to determine whether or not a candidate’s departure constitutes a failure to adhere to the essentials of reformed faith and polity.”**

- a. The Examination for Ordination is not the proper time to consider a candidate’s departure from standards; it is the wrong time.**

The Decision mandates that consideration of a candidate’s departure must be done during the Examination for Ordination, citing PUP Recommendation 5 as

authority. But recommendation 5 is silent as to timing. As we saw in our discussion of the candidacy process (page 17-24 above), a prerequisite to an Examination for Ordination (G-14.0482), is the CPM's certification the candidate "ready for ordination" (G-14.0450). And before a candidate can be certified ready for ordination, all impediments to such certification must be removed, including any declared departures (G-14.0482). Thus, far from being the "proper" time to consider a departure, the Examination for Ordination is the *wrong* time.

In the case at hand, the CPM determined the candidate was ready for ordination, except for her departure from G-6.0106b. This departure was considered by the Presbytery on January 15, 2008. Since the decision of the Presbytery was to allow the exception, all that remained was the final step, the Examination for Ordination, to be conducted at a subsequent Presbytery meeting without revisiting the now resolved issue of her departure from G-6.0106b.

**b. There is neither requirement nor reason for the candidate to present her departure in person.**

The SPJC seems to be concerned that it was improper to consider the candidate's departure without her personal appearance. This concern is misplaced. While PUP specified that departures must be considered on a case-by-case basis, there is no requirement, nor any apparent need, for the candidate to present her departure in person.

What is to be evaluated is the departure from established standards for ordination by a particular individual. The determination is whether the candidate has seriously departed from a provision that is "essential" to PCUSA polity or belief, not whether the constitutional provision itself is legitimate and applicable, and certainly not whether that departure is overshadowed by the apparent virtue of

an otherwise qualified candidate. The emphasis is upon the departure and its “seriousness,” not on the Constitution or the candidate.

In the present case, the statement describing the departure from G-6.0106b was written by the candidate herself and expressed her own views and reasoning, and no other. Its consideration was taken up at the time appropriate for her specific process, and not as part of an overarching discussion of Presbytery policy. The focus was solely on her departure and whether it constituted a failure to adhere. There is no logical need for her to appear in person for the presbytery to make its determination. This satisfies the “case-by-case” rule.

**c. The SPJC has no authority to dictate a procedure where the Constitution is silent, and certainly not one that is at odds with the Constitution.**

“The jurisdiction of each governing body is limited to the express provisions of the Constitution, with powers not mentioned being reserved to presbyteries” (G-9.0103) .

While the constitution implies certain timing of events, with certain determinations required before others, it is silent with regard to procedure. In the face of this silence, the synod is powerless to dictate to the presbytery any particular process. However, as we saw above, one process can be ruled out: contrary to the Synod’s ruling, a candidate’s departure must be resolved *before*—not during—an Examination for Ordination can be held (G-14.0450-14.0482).

Moreover, while a synod is not empowered to determine presbytery process in cases where the Constitution is silent, where the Constitution is clear, the synod has the moral obligation to “take care that the Presbyteries observe the Constitution of the church” (G-12.0102n). Here, the SPJC failed on both counts,

by insisting that the Examination for Ordination was the only time a consideration of a “departure” could occur, and by failing to identify the operative church-wide mandatory standard of G-6.0106b in its Decision.

Indeed, there was nothing wrong—and certainly nothing constitutionally deficient—with San Francisco Presbytery’s process for handling departures. It was:

1. ***Constitutional.*** The procedure is consistent with the manner prescribed in the *Book of Order* for dealing with exceptions and waivers (G-14.0470 *et. seq.*).

2. ***Not disputed by either party*** in the present case; nor was any evidence or argument presented regarding the propriety of the process.

3. ***Developed in good faith*** and ratified by a majority of the presbyters in May 2007, well in advance of the particular candidate’s statement of departure, as a guideline intended to build trust and collaboration among presbyters.

4. ***Used faithfully*** to evaluate the candidate. The CPM applied it as a guide for its own process of discernment in the months leading up to Ms. Larges’ final assessment in December 2007.

5. ***Orderly***, even if prolonged by the great effort exerted to make sure no step was missed or done carelessly.

6. ***Pragmatic***, in that it was anticipated the discussion of Ms. Larges’ departure would be time-consuming, and that the presbyters could not tolerate a late-night meeting to cover all the steps of her examination for ordination in one meeting.

7. *Fair*, as evidenced by the outcome. The candidate was in no way disadvantaged by the process implemented by the Presbytery—indeed, the Presbytery voted in her favor. No one was protesting when in sequence the debate and vote occurred. The Appellants protest the decision itself.

### **ERROR SPECIFICATION No. 3**

**The SPJC erred in constitutional interpretation when it declined to rule on the constitutionality of the outcome of the presbytery’s vote that declared the candidate ready for ordination despite her departure from G-6.0106b.**

There can be no doubt that when the San Francisco Presbytery voted in January 2008, G-6.0106b could not be waived. The provision’s mandatory language is unambiguous; it applies to all ordained officers; and no exceptions are specified. Neither the PUP nor Knox interpretations of G-6.0108 can modify what the *Book of Order* clearly mandates. Therefore, the SPJC should have upheld the church-wide standard.

### **ERROR SPECIFICATION No. 4**

**The SPJC erred in constitutional interpretation when it determined it had no jurisdiction to review the actions of a presbytery taken by its CPM.**

As we have seen, all actions of a governing body are subject to review by a higher governing body. It matters not what character of the body does the acting; it is still the body, and it is still subject to review.

Here, there is evidence in the Presbytery’s own records that its CPM subversively failed to enforce church-wide standards with regard to this candidate, *for years*. If such conduct can be shielded from view because it done by the CPM,

then effectively all conduct of a presbytery can be shielded from view. This is not our polity. The SPJC erred when it determined it had no jurisdiction to review or admonish the conduct of the CPM.

But the triggers for SPJC review and intervention were obvious: the CPM acted outside constitutional limits, and the presbytery failed to correct the CPM's excess. Review and admonishment by the SPJC was proper.

### **ERROR SPECIFICATION No. 5**

**The SPJC erred in constitutional interpretation when it failed to recognize the CPM's abuse of discretion in the care and counsel of the candidate, and erred when it failed to instruct the Presbytery to remove the candidate from the roll of candidates.**

Generally, the discretionary acts of a governing body are not subject to review, unless they reveal an abuse of discretion (*Leslie v. Session, First Presbytery Church Manhattan, Kansas* [2001] 214-2, 4). However, where an abuse by a governing body is discovered, a higher governing body is obligated to correct the error. The GAPJC has held it is an abuse of discretion to maintain a candidate on the roll once it is determined the candidate is ineligible for ordination (*Sheldon v. Presbytery of West Jersey* [2000] 212-12).

Here, the candidate has rendered herself ineligible by her 20-year refusal to abide by the sexual standards required for church officers. Since 1996, she has consistently declared she would neither enforce nor abide by G-6.0106b, thereby failing to meeting this ordination requirement. Since she refuses to abide by mandatory standards, it is an abuse of discretion to keep her in the process any longer (*Maxwell v. Presbytery of Pittsburgh, UPC, 1975, p. 254*). This

commission has not only the jurisdiction, but the duty, to instruct the presbytery to remove the candidate's name from the roll of candidates.

The Appellants, all of whom serve on CPM and have known this candidate through her process, understand the reticence of the CPM to remove her from the roll of candidates. It is a final step to a lengthy process, and a painful disappointment for one who feels called to ministry. All agree that this candidate—who never hid her views, her commitments, her lesbian partnership, or her sense of call from the committee—conducted herself articulately, respectfully, and thoughtfully. The CPM itself gave her the time and consideration required to explore the questions her candidacy raised. Nevertheless, despite difficult questioning at times through the years, the CPM was so nice as to avoid confrontation of the very thing that disqualified this candidate from ordination. This reality is at the heart of the abuse of discretion.

A biblical and compassionate response to this candidate must be consistent with its denominational covenant-keeping. That is, love for this candidate must be balanced by truth and honest embrace of the rules set forth in our *Book of Order*. For years, the CPM held out false (and inappropriate) hope that “the rules would change,” and did not articulate any hope that the candidate herself would reform her beliefs and behavior to conform to that standard. Sadly, the right thing to do after a ten-year impasse is to remove her name from the roll of candidates, “speaking the truth in love” (Eph. 4:15). Since the Presbytery working through the CPM was unable to fulfill this obligation, it fell to the SPJC to put its weight behind the constitutional requirements and instruct the Presbytery to do the right thing. The SPJC having also failed in this task, the duty now falls to this Commission.

### **ERROR SPECIFICATION No. 6**

**The SPJC failed to act justly when it declined to admonish the Presbytery’s CPM to “take care to provide only accurate, truthful material that focuses properly on the issues to be presented to the presbyters.”**

The deficiencies of the Majority Report have been discussed previously (pp. 13-15 above). Trust was violated when the CPM submitted a report that was incomplete, misrepresentative, and misleading. When trust is violated, our system of governance falls apart. A CPM that fails its most basic duties, as San Francisco’s has, must be admonished and held accountable for our covenants with each other to have any meaning in the future.

Since the presbytery failed to admonish its CPM, it fell to the SPJC to do so; and since the SPJC also failed to admonish the CPM, this Commission must do so.

### **ERROR SPECIFICATION No. 7**

**The SPJC erred in its handling of evidence and testimony when it refused to admit into the record the contents of Envelope B and other documents requested by Appellants and when it refused to permit testimony regarding the relevance of the disputed documents or the alleged misconduct by the CPM.**

“If a higher governing body learns at any time of any irregularity or delinquency by a lower governing body, it may require the governing body to produce *any* records and take appropriate action” (G-9.0408, emphasis added). In a judicial case, “stated clerks have no ground to refuse to produce documents requested by any party, or to determine appropriate content of the record of a

case...” (*Letter to Stated Clerks and to Moderators of PJC’s about implementation of judicial process* [1990] Minutes, 11.087).

In this case, the First Amended Complaint challenges both the CPM’s *process* for dealing with candidates who refuse to comply with ordination requirements, as well as the irregular result of the presbytery’s vote. As such, CPM’s records (that is, the contents of Envelope B) were relevant and should have been produced. In any case, it was not appropriate for the San Francisco Presbytery stated clerk to arrogate the judicial commission’s role by refusing to provide the documents.

The contents of Envelope B were needed to support the Appellants’ claim that the CPM never required the candidate to reform her life in compliance with G-6.0106b, a failure of its basic duty to counsel and guide the candidate toward fulfilling ordination requirements. This is demonstrated simply by assembling all the covenants between the CPM and the Candidate, from 1997 to the present, and recognizing what was missing or never occurred.

Further, these documents were necessary to support the claim alleged in the First Amended Complaint that the CPM omitted key information regarding the candidate in its report to the Presbytery on January 15, 2008.

Based on its mistaken belief that it had no jurisdiction to review the conduct of a CPM, the SPJC erroneously decided not to admit any evidence or testimony related to the San Francisco Presbytery’s CPM. By forbidding any argument to demonstrate otherwise, the SPJC thwarted the justice of these proceedings. This decision was made on the basis of preconceived notions only, raising the specter the SPJC prejudged the case, which is improper. (See *Hope, et. al. v. Pby of San Francisco* (2006) 217-1.)

We ask, therefore, that the GAPJC not make the same mistake during this appeal, and consider the CPM evidence *de novo*, with the contents of Envelope B in hand.

We appeal to the GAPJC to consider all the pertinent written evidence now available to it; and to instruct the SPJC in the proper handling of disputed evidence in the future.

### **ERROR SPECIFICATION No. 8**

**The SPJC erred when it declined to receive proper evidence, refusing to admit into the record specific CPM minutes reflecting the committee's rationale and understanding of the departure motion presented to the Presbytery.**

Rev. Naegeli and Rev. Palmbush, both members of the CPM present at the candidate's final assessment on December 5, 2007, testified at the trial. Questions were directed to these witnesses regarding their understanding of the motion CPM was making before the Presbytery (RT 85, 213:13-215:14-232). The testimony established that the motion was about the candidate's departure. The record of that motion, and the understanding of it by CPM members, was contained on pages 6 and 7 of the CPM Minutes for December 5, 2007 (ROA 172).

Consistent with the testimony of Naegeli and Palmbush, the CPM minutes state:

It was noted that a vote for the motion would indicate a person did not believe that the departure Lisa is declaring is an essential tenet of the Reformed faith and polity. A vote against would mean a person did not believe the departure was an essential tenet. (ROA 172)

Even though two witnesses testified to the contents of this document, which is a part of the records of the presbytery, and notwithstanding that it was relevant to an issue in the case, still the SPJC ruled it inadmissible, believing erroneously it could not review CPM records. This decision was irregular.

Appellants' counsel requested that the redacted one-half page of minutes containing this particular CPM discussion be included in the trial record (RT, 318:2-325:21). The request was denied on the basis that "this commission has limited itself to allegations of error at the Presbytery level, [and rules] that it's not relevant" (RT, 325:3-8). The ruling of the SPJC reflects a misconception by that body of its proper authority and is in error.

## **VI. CONCLUSION**

Appellants are asking the GAPJC to address directly the three main issues raised by the SPJC handling of this case:

1. Is G-6.0106b a mandatory church-wide standard that can never be waived?
2. Must a CPM lovingly counsel a candidate to abide by church-wide standards, faithfully enforce those standards, and truthfully inform its presbyters of material information they need to make a decision on a candidate's departure?
3. Is it an abuse of discretion to retain a candidate who for more than 20 years has consistently refused to abide by the church's requirements for ordination?

The *clear* answer to all three questions is yes.

Please take this opportunity to do the right thing and address the presenting issues clearly by ordering as follows:

1. G-6.0106b remains a mandatory church-wide standard for ordination that cannot be waived by any governing body. Thus, the presbytery's vote of January 15, 2008, is rescinded, since it reached an unconstitutional result.

2. The Presbytery is instructed, therefore, to remove the candidate Lisa Larges from its roll of candidates, as she does not meet the requirements for ordination in the PCUSA.

3. CPM is admonished to exercise its discretion in loving concern for each candidate within constitutional limits, by counseling candidates toward and requiring compliance with the mandatory church-wide standards for ordination, including G-6.0106b. Further, the CPM is admonished, when presenting a candidate's departure for the presbytery's consideration, to honor its covenant to the candidate and the wider church by providing all material and true information required for presbyters to evaluate the departure.

4. In its annual consultations with inquirers and candidates, the CPM is admonished to identify clearly the growth, change, or repentance desired in *the candidate*, who may remain under care as long as progress is discerned. The CPM is obligated to uphold church-wide mandatory ordination standards, including G-6.0106b, and therefore shall not retain a candidate indefinitely solely in hope that the church's policy or standards will change.

5. The Presbytery shall develop a procedure for holding its CPM accountable to the constitutional limits that shape its work and, according to that procedure, annually evaluate the CPM's policies and their implementation. Provision shall also be made for reviews when requested by presbyters alleging

abuse of discretion. The outcome of these reviews shall be recorded in the minutes of the Presbytery.

Lack of clarity in these matters is causing anguish in the church. Gay, lesbian, bi-sexual and transgendered candidates seeking ordination in the PCUSA are anguished over the confusing signals given by the church. The PCUSA's indecisiveness—enacted wherever “niceness” counterfeits grace and truth— has engendered false hope that the church will change its policies in practice if not in writing. The wider church is experiencing the anguish caused by repeated challenges to biblical, confessional standards for its officers and wonders if the PCUSA really wants to be a constitutional (as well as confessional and connectional) body.

This Commission has the unique opportunity—and obligation—to help all parties know and understand our defining principles and their faithful implementation in everyday Presbyterian life. To this end, we ask this Commission to do the right thing and provide clear answers to the burning constitutional questions before it.

Respectfully Submitted,

Date: September 11, 2009

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Counsel for Appellants

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