

**GENERAL ASSEMBLY
PERMANENT JUDICIAL COMMISSION**

**Mary Naegeli, Mark Stryker, and
Margaret Geline**

Complainant-Appellants

v.

Presbytery of San Francisco

Respondent-Appellee

Rem. Case 219-11

**RESPONDENT-APPELLEE'S
REPLY BRIEF**

I. INTRODUCTION

This case challenges the authority of a Presbytery to certify ready for examination, and then meaningfully to examine, a candidate under its care – nothing more. Presbytery has received the candidate’s declared departure from church standards, but has not yet determined whether it agrees that the candidate properly interpreted the standard at issue and, if so, whether a departure will be permitted.

Complainants argue that certification of readiness for examination was improper, and that no examination should be held in this case, because the candidate’s declared departure from the second sentence of G-6.0106b disqualifies her without regard to consideration of her statement of faith, manner of life, interaction with Presbytery over the course of care, answers to questions during examination, fit for the office of call, and the like. However, such claims reflect a deeply flawed understanding of Presbyterian polity.

The Presbyterian Church has faced various crises in its history, when parts of the church tried to impose particular requirements for ordination, without any possibility of exception, on others. In each case, the Presbyterian Church resolved these crises by recourse to its historic law and practice, that standards must be applied in examination of the whole person, and bar someone from service only if the examining body discerns that a declared disagreement should be treated as an “essential” in that case. The church adopted that rule in 1729, and affirmed it in controversies over its requirements for ordination in 1741-58, 1837-69, 1910-27, and now 1978-2008. In each case, the church struggled for a period with the perception of some that the matter at issue was of such unique importance that the church’s historic law and practice of forbearance must be overthrown. In each case, however, this sense of crisis was resolved through a reaffirmation of that legal process, which in fact is what makes us Reformed and Presbyterian. Most recently, faced with serious division from efforts to impose a single view about homosexuality, the General Assembly wisely reaffirmed this law and process in 2006 and 2008.

In 1976, when the Presbyterian Church began to grapple seriously with questions about homosexuality, the General Assembly of the PCUS studied the question and identified three basic strands of thought: that homosexuality is a sickness, a sin, or a legitimate variety of human sexuality. After reviewing the empirical, scriptural, and theological considerations for and against each position, the PCUS made the profoundly Reformed observation that:

Variations of each of the three basic positions we have outlined are chosen by faithful Christians. . . . All serious Christians will be compelled to reject one or another of these positions. But in view of the complexity of the issue, the disagreement among Christians and the variety in the character and experience of homosexual persons themselves, it seems unwise at this time to propose any one position as the position of our Church.¹

The forbearance shown by the PCUS at that time was consistent with our history and theology as Reformed Christians, and time has proved its wisdom. Regrettably, the General Assembly of the UPCUSA declared the next year that “unrepentant homosexual practice does not accord with the requirements for ordination.”² The PCUS then adopted that “definitive guidance” in efforts to align the two denominations’ positions prior to reunion.

These ill-advised statements – which were declared binding on the church by a decision of General Assembly’s PJC in 1985³ – have led not to an agreed orthodoxy, but to deep division and boundless rancor. Even as it attempted to quell continuing dispute, the church repeatedly acknowledged that its position on homosexuality was

¹ PCUS Minutes, Part 1, pp. 174, 319 (1977) (“The Church and Homosexuality: A Preliminary Study”).

² UPCUSA Minutes, Part 1, pp. 48, 264-265 (1978). The declaration purported to be an authoritative interpretation of the church’s “manner of life” standard for ordained service.

³ *Union Presbyterian Church of Blasdell v. Presbytery of Western New York*, PCUSA Minutes, Part 1, p. 118 (1985).

not the final word and required continuing discernment in the church.⁴ However, many in the church felt oppressed by the imposition of a single view and wronged by what they perceived as a violation of traditional Presbyterian forbearance. Far from settling the issue, these declarations – which became known after 1986-87 as “authoritative interpretations” – created a climate of estrangement and hostility, and contributed to steep membership losses, that have characterized the Presbyterian Church for the past 30 years.

In 2006 and 2008, the Presbyterian Church finally discerned that its declarations regarding homosexuality had not clarified matters or unified the church but, instead, had oppressed many in its membership and wrought enormous damage on the denomination and its mission. Accordingly, in 2006, the General Assembly returned to the Presbyterian Church’s historic law and practice, and reaffirmed that our requirements for ordination are to be applied with respect for individuals’ rights of conscience. In 2008, the General Assembly clarified three points: that the duty to show mutual forbearance under G-6.0108 applies equally to all standards; that examining bodies may accept scruples relating to personal behavior as well as matters of belief; and that examining bodies cannot accept a candidate’s refusal to perform the unique constitutional functions of office.⁵ General Assembly further clarified its return to historic Presbyterian law and practice with an Authoritative Interpretation that its

⁴ See, e.g. PCUSA Minutes, Part 1, pp. 76-77 (1993). Notably, when the church added G-6.0106b to the Constitution, it did not codify the language used in these very contentious declarations. In fact, it eschewed any mention of homosexuality or sexual practice, instead calling the church’s attention back to Scripture and its confessional heritage, and speaking more flexibly about chastity and repentance.

⁵ The 2008 AI states that “the requirements of G-6.0108 . . . 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.” PCUSA Minutes, Part 1, pp. 42-43, 380 (2008).

prior declarations about homosexuality do not bind the conscience of church members (i.e. are of “no further force or effect”).⁶

This case was brought against the Presbytery, when it tried to apply the letter and spirit of General Assembly’s directives, by three individuals who are unhappy with this return to historic Presbyterian law and process. Instead of protecting rights of conscience, Complainants seek to perpetuate the rigors of conflict. Their position is neither constitutional nor constructive. Moreover, what Complainants seek here would require serious and far-reaching amendments of the Constitution (discussed below) that would change the fundamental nature of Presbyterianism itself. Knowing that the great majority of the church would reject any effort to accomplish such ends through formal amendment of the Constitution, Complainants have sought instead to achieve their aims through litigation, inviting the judicial commissions of the church to defy the General Assembly. This commission must not lend its support to those efforts.

A. Statement of Facts

During the period 1986-1997, Lisa Larges was a candidate under care of the Presbytery of the Twin Cities Area, which in 1991 voted to certify her as ready to receive a call. This commission order that certification be set aside at that time, in the *LeTourneau* case, because the General Assembly had adopted an authoritative interpretation of G-6.0106[a] that “unrepentant homosexual practice does not accord with the requirements for ordination” and the presbytery, having knowledge that Ms. Larges is a lesbian, did not inquire about her sexual practice.⁷ In setting aside her certification, the GAPJC emphasized that “Ms. Larges remains a candidate under care of the Presbytery. . . . At such time as the presbytery is satisfied that she can properly be certified as ready to receive a call, it may proceed according to its own procedures.”

⁶ PCUSA Minutes, Part 1, pp. 42-43, 371-373 (2008).

⁷ *LeTourneau v. Presbytery of Twin Cities Area*, PCUSA Minutes, Pt. 1, p. 163 (1993).

In April 1997, Ms. Larges moved to the San Francisco Bay Area and came under care of the Presbytery of San Francisco. Here she has continued working to discern her life call, to develop her gifts for ministry, and to assist the PC(USA) in discerning what its position on same-sex relationships should be.

At a regularly called meeting on January 15, 2008, acting on the recommendation of its CPM, the Presbytery of San Francisco voted to certify Ms. Larges as “*ready for examination, effective January 15, 2008, with a departure.*” At the time it voted, the Presbytery had before it a statement in which Ms. Larges affirmed the essentials of Reformed faith and polity and declared a departure from G-6.0106b. In it, she declared that:

“I affirm with joy the standards as expressed at G-6.0106a and believe them to be a sufficient expression of both the gifts and the requirements for officers of the church. I can and I will affirm with joy all the questions for ordination found at W-4.4003. I believe that as a candidate called to serve in this Church as Minister of Word and Sacrament, nothing in my faith or in my manner of life departs from the essentials of Reformed faith and polity.”

Ms. Larges then addressed G-6.0106b, declaring her belief that this section denies the primacy of Jesus Christ as Head of the Church;⁸ misstates the proper use and function of the confessions as a guide;⁹ causes grievous harm in singling out “one

⁸ As expressed in her statement, “Jesus Christ alone is the authority to which all other authorities are subordinate. This faith claim is essential to our faith and polity and the joy and substance of our witness. . . . [W]hile Holy Scripture is necessary to faith and authoritative in our lives, ‘to lead a life in obedience to Scripture’ sets the authority of Scripture above the authority of Christ and returns us to life under the law. This misstatement of our theological understanding of Christ’s preeminence is my primary scruple regarding this provision.”

⁹ “Scripture calls us to be imitators of Christ; therefore to conform our lives to a lesser standard trespasses on both the authority of Christ and the authority of Scripture.” In this regard, Ms. Larges pointed out that our ordination vows require affirmation that one will be “guided by” (not “conform to”) the confessions.

particular derived standard” from the confessions;¹⁰ and represents an incomplete and misleading understanding of sin and repentance.¹¹

As noted above, while the Presbytery voted to certify Ms. Larges as ready for examination, it has not yet had an opportunity to examine her, on her declaration or on any other indicia of fitness for ordination. Complainants filed this action, with a stay of enforcement, on February 28, 2008. The Complaint sought an order rescinding Presbytery’s certification that Ms. Larges is “ready for examination,” overturning the CPM findings on which Presbytery acted, and instructing the Presbytery to remove Ms. Larges from its roll of candidates.

After addressing various procedural matters, the Vice Moderator and Clerk of the SPJC ruled on February 1, 2009 that Complainants were entitled to trial on whether certification of Ms. Larges as “ready for examination” was appropriate. At the same time, they ruled that the SPJC had no authority either to overturn the CPM’s findings and recommendation to presbytery, or to order that the Presbytery remove Ms. Larges from the roll of candidates. The SPJC also ruled that confidential materials from the work of the CPM (which had been submitted with the record, at Complainants’ request, in “Envelope B”) would not be admitted into evidence. After a pretrial hearing on March 19, 2009, the full SPJC voted to affirm the February 1, 2009 rulings of its Vice Moderator and Clerk.

This matter was tried on March 20, 2009. Testimony from two witnesses for the Complainants and three witnesses for the Presbytery made clear that there was significant disagreement about the nature of the action taken by the Presbytery at its January 15 meeting. Much of the debate focused on whether the Presbytery had voted

¹⁰ Ms. Larges listed fifteen types of harm caused by the singling out, in G-6.0106b, of a one contested sexual ethic, and concluded that “In my own life, while I affirm the moral values of fidelity and chastity, I will not and can not claim chastity in singleness unless and until fidelity between two persons of the same gender within a covenantal relationship is recognized.”

¹¹ “It is an essential of Reformed faith that sin is a condition of our being and not a bill of particulars. Further, our tradition asserts that God alone is our judge, and true repentance is known by God alone.”

merely to examine Ms. Larges or, instead, had voted to accept her departure in advance of examination. Disagreement seems to have arisen because the Presbytery had before it two motions. The first motion was presented by CPM, to certify Ms. Larges as ready for examination, with full and fair disclosure (as was required by the Presbytery's policy) that she had declared a departure.¹² The second motion was presented as a substitute for the main motion, by a minority from CPM, and sought to have Ms. Larges removed from the roll of candidates without the benefit of any examination.¹³

Rev. Robin Crawford, a member of Presbytery who participated in the debate, clarified during the trial the nature of the debate at the January 15 meeting:

Q: Can you tell us what you understood was the motion before the Presbytery respecting Lisa Larges?

A: Yes. There were two motions on the floor. I don't know that that has been discussed at great length this afternoon. The first, it was to remove her from candidacy. And the second was to find her ready for examination with a departure. (Tr. at p. 283¹⁴)

Q: Was it your understanding that the Presbytery was debating the merits of her departure or was it debating whether it wished to remove her?

A: What the Presbytery was debating was primarily the motion of the minority report to end her candidacy.

Q: OK. And that was offered as an alternative to examination?

A: Yes.

Q: Do you believe that members of the Presbytery understood their debate as one that would resolve the merits of her departure?

A: No. (Tr. at p. 284)

¹² Presbytery Minutes at pp. 14-15 and App. 5, pp. 1-13 (Jan. 15, 2008).

¹³ Presbytery Minutes at pp. 14-15 and App. 5, pp. 14-16 (Jan. 15, 2008).

¹⁴ Quotations of the trial transcript in this brief have been corrected for obvious typographical and transcription errors.

Complainants testified to the contrary. Faced with conflicting testimony and the possibility of some confusion at the meeting (see, e.g. Tr. at pp. 297-299), the SPJC ruled that the “Presbytery erred when it voted to certify the Candidate as ‘ready for examination . . . with a departure’ because 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” (slip op. p. 5 (emphasis added)). The SPJC held further that the debate in Presbytery on certification of Ms. Larges could not be deemed tantamount to an examination because it did not conform to the requirements in G-14.0482 that the candidate appear before the Presbytery and present her statement of faith personally.¹⁵

The Presbytery respectfully disagrees with the SPJC’s factual determination that it erred in its vote of January 15, 2008, because it believes that its members intended only to certify Ms. Larges’ readiness for examination, without any prejudgment of her declared departure.¹⁶ Nonetheless, the Presbytery did not appeal, because it agrees entirely with the SPJC’s order that a candidate’s departure must be assessed in the context of a full and proper examination.

Complainants filed a Notice of Appeal on May 1, 2009. They then sought a stay of enforcement of the SPJC decision and Ms. Larges’ process. Stays were denied by the members of both the SPJC and GAPJC. This case was docketed for hearing on

¹⁵ The SPJC also admonished the Presbytery to be mindful of its obligation “to faithfully execute its constitutional obligations to the entire church to enforce mandatory church wide ordination standards” (Decision para. 3). At the same time, it made clear that it would not prejudge the merits of Ms. Larges’ declared departure (Decision para. 2). The Presbytery believes that these two facets of the decision properly reflect the obligation of all examining bodies to faithfully apply all church standards in the light of G-6.0108.

¹⁶ This was the plain meaning of the motion itself, as was noted on cross-examination by the Rev. Carrie Buckner, who moderated the January 15 meeting:

Q: Can you point me to a document that says that this vote is simply not about a departure but simply just to move her on for an examination?

A: The only thing I could point to is the motion itself, sir. (Tr. at p. 263)

October 30, 2009. Appellants filed the brief to which this brief is responsive on September 11, 2009.

II. THE SPJC PROPERLY RULED THAT PRESBYTERY MUST ADDRESS MS. LARGES’ DEPARTURE IN EXAMINATION FOR ORDINATION, NOT IN CERTIFICATION FOR EXAMINATION

Presbyterian law and process do not permit presbyteries to assess whether a departure relates to an “essential” in the abstract. In 1927, General Assembly reviewed the origins of Presbyterianism in America, and declared unanimously that: “It was clearly the intention that this decision as to essential and necessary articles was to be made after the candidate had been presented and had declared his beliefs and stated his motives personally, and after the examining body . . . had had full opportunity to judge the man himself, as well as abstract questions of doctrine.”¹⁷ Likewise, a report placed at the very beginning of our Book of Confessions, at the instruction of General Assembly, states that the Constitution “excludes demand for adherence to any specifically worded interpretations of a few selected doctrines. In a presbytery the decision for ordination is always determined by the concrete encounter between the presbytery and the candidate.”¹⁸

The Presbytery of San Francisco has not delegated to its CPM final authority to certify candidates’ readiness to be examined. In all cases, the CPM must introduce a motion before Presbytery – either that the candidate simply be found certified ready for examination (if no departures from standards have been declared) or that the candidate be found certified ready for examination with whatever departures have been named. Thus, this case really involves a process of certification for examination, and not examination for ordination.¹⁹ Nonetheless, the debate over Ms. Larges’ certification of

¹⁷ UPCUSA Minutes (1927), pp. 58, 78, 80-81 (emphasis added).

¹⁸ The Confessional Nature of the Church, Book of Confessions at pp. xxvi-xxvii (emphasis added).

¹⁹ This is pursuant to the *Steps and Procedures for Ordination* (“STEPS”) policy that is followed by the Presbytery’s CPM. Thus, the general assumption in D-14.0450 that the CPM certifies candidates ready

readiness to be examined was informed by the fact that she currently labors within the bounds of the Presbytery, in a non-ordained capacity, and has stated her desire to seek ordination and validation of her present ministry in the Presbytery.

Pursuant to rulings of this commission, once a presbytery undertakes consideration of an applicant's declared departure from standards (even where that is not required by the Constitution), its action must accord with the constitutional process for consideration of standards under G-6.0108.²⁰ This does not permit the assessment of declared departures in a vacuum – rather, as the SPJC ruled, departures must be assessed in the context of the overall examination.

Complainants argue that declared departures from standards are to be treated under D-14.0482, during certification of readiness to be examined, as “waivers and exceptions of requirements granted” under G-14.0470. However, G-14.0470 provides for a few, very specific exceptions from requirements that relate to a candidate's process of preparation – namely, educational requirements (G-14.0471),²¹ examination requirements (D-14.0472),²² and the mandatory period of time under care (D-14.0473).²³ This section does not relate in any way to the candidate's Christian faith and views, manner of life, or other substantive questions where disagreements of conscience may arise. The Constitution clearly provides that a presbytery can always conduct “further examination of the candidate's Christian faith and views in theology,

for examination, and merely reports that action to presbytery, doesn't apply here. It might be noted that this case differs significantly from an earlier case in which this commission held that Ms. Larges was improperly certified as ready to receive a call (*LeTourneau v. Presbytery of Twin Cities Area* (1993)). That case addressed procedures for candidacy, examination and ordination (involving certification of a higher order than readiness for examination, and allowing the presbytery of care, rather than the presbytery of call, to examine and ordain the candidate) that were thoroughly revised in the early 1990s and are no longer in effect. *LeTourneau* therefore has no precedential value here.

²⁰ Rem. Case 219-08, *Bierschwale v. Presbytery of Twin Cities Area* (GAPJC slip op. Mar. 2, 2009).

²¹ The standard education requirements are established in D-14.0450b-d.

²² The standard examination requirements are established in D-14.0430.

²³ The standard time under care is established in D-14.0403.

the Bible, the Sacraments, and the government of the church as it deems necessary” (G-14.0482).²⁴

In arguing that the SPJC was wrong to require that departures be considered in the context of a full examination, Complainants make some rather startling claims that the 2006 AI “added a step” to the examination process and that its directive on the treatment of departures “is silent as to timing” (Complainants’ Brief at pp. 25, 36-37). However, the report from which the 2006 AI was drawn emphasized that an examining body has an “obligation . . . to gain the broadest vision of each officer-elect’s faith, manner of life and promise as it applies standards and makes determinations about essentials.” If someone declares a scruple, whether non-compliance is permitted may be determined only “after the ordaining/installing body has weighed the departure in the full context of the candidate’s statement of faith and manner of life.”²⁵

The Presbytery’s witnesses all testified to the understanding that the Presbytery, in voting that Ms. Larges be certified ready for examination, indicated its desire to consider her departure in the context of a full and proper examination. For example, Rev. Carrie Buckner, who moderated the meeting, testified as follows:

²⁴ The extraordinary leap that Complainants make in trying to apply the rules for reporting of process exceptions granted under G-14.04070 to declared departures from church standards is evidenced in their claim that a presbytery’s acceptance of a departure, once granted, is “even transferable to another presbytery” (Complainants’ Brief at p. 20). However, it is a fundamental principle of our polity (G-11.0401, G-11.0402) that presbyteries have the authority to examine the faith, manner of life, and other qualifications of persons who wish to transfer into membership. Here, as in so much of their brief, Complainants simply ignore or misstate basic principles of our polity in an effort to reach results that are otherwise unsustainable.

²⁵ PCUSA Minutes, Pt. 1, pp. 513, 515-518 (2006). Some have questioned whether the Theological Task Force Report can be used as a guide to the meaning of General Assembly’s action, since the Assembly did not adopt the entire report as an AI. In fact, it would have been inconsistent with normal practice for General Assembly to adopt the entire report (AIs are always limited to very succinct statements of principle) but the Assembly adopted all seven of the report’s recommendations, which distilled its essence, with negligible amendment. This is compelling evidence that the General Assembly concurred with it, and that it provides a reliable guide to what the Assembly meant to accomplish.

Q: What was your understanding of the meaning of that motion that Lisa Larges was certified ready for examination with a departure? What was your understanding of that motion?

A: My understanding of that was that the Presbytery wants to examine her, wants to talk with her.

Q: Was it your sense that the Presbytery voted that the departure should be accepted?

A: Absolutely not.

Q: Why not?

A: Well, I think the Presbytery understands that the departure needs to be considered as part of the examination. (Tr. at pp. 253-254)

Q: When you were considering the departure personally, did you feel you had all of the information you needed to decide if it was acceptable?

A: No. No.

Q: If – that wasn't the issue at hand, I understand – but if it had been the issue at hand, what other information did you think you needed?

A: Well, like I said, I would want to talk with her about her manner of life, her relationships, how she understands chastity, what – what it means to her to be called. And there's a lot of questions I would have. (Tr. at p. 254)

Q: Did you have questions about the grounds of the departure itself?

A: Yeah, sure.

Q: . . . What kind of questions did you have in that regard?

A: About the nature of her departure?

Q: Her departure, yeah.

A: I think questions about some of the theological positions she takes, about her understanding of what repentance means, her interpretation of Scripture, and her understanding of the sum of the confessions that she cites. That's all very relevant and important. (Tr. at pp. 254-255)

Another member of the Presbytery, Rev. Robin Crawford, testified very clearly about the nature of the Presbytery's process:

Q: What was the next step in Lisa Larges' process?

A: It would be to examine her for ordination, which would be characterized by an identified call that was an ordainable position, a statement of faith, and an opportunity to discuss those with the candidate on the floor of the Presbytery.

Q: Would it include consideration of her departure?

A: It absolutely would. (Tr. at p. 286)

Q: Do you believe you could reach a decision as to whether her departure was allowable without the other things you mentioned, her Statement of Faith and so forth?

A: No, I couldn't. What would be lacking would be the context of her life in ministry, her understanding and reflection, if there were any others beyond the paper. But mostly the opportunity for the Presbytery itself to talk in – in the context of this particular candidate about the gifts and requirements of ordination. (Tr. at pp. 286-87)

The Presbytery here has not yet begun its examination of Ms. Larges. She did not appear before Presbytery at its meeting on January 15. That the Presbytery was apprised of her declared departure in no way pre-determines the outcome of the examination itself – some in the Presbytery may have voted to certify Ms. Larges “ready for examination” out of a principled belief that every candidate is entitled to declare his or her conscience and then to explore with the examining body what points of difference might mean. In any event, the meaning and significance of Ms. Larges' declaration properly can be determined only after the Presbytery has had an opportunity to review and question her about her entire statement of faith, her manner of life, the reasons and intentions underlying her declaration of a departure, her fit for the ministry to which she is called, and the like.

III. THE SPJC PROPERLY DECLINED TO RULE THAT DEPARTURES FROM G-6.0106b ARE NOT ALLOWED

Complainants argue that the SPJC made an error of constitutional interpretation, because G-6.0106b is an unambiguous standard from which no

departures are permitted. However, principled consideration of what G-6.0106b actually requires demonstrates that Complainants claim far too much.

While many conjure up a single sexual ethic when talking about G-6.0106b, that section actually states that candidates “are to lead a life in obedience to Scripture and in conformity to the historic confessional standards of the church.” Strictly speaking, the words “are to lead” must be read as establishing a mandate, since the Preface of the Book of Order states that the words “ARE TO BE signify practice that is mandated.” However, it defies both common sense and Reformed theology to read this literally – the confessions themselves (7.259) say that it is impossible to meet this standard. Were this Commission to adopt Complainants’ position, that G-6.0106b should be strictly enforced, no one could ever qualify to serve the church at all. G-6.0106b establishes an important aspiration, but not an enforceable mandate.

Proponents of an exclusionary interpretation of G-6.0106b typically claim that its second sentence has a unique status among our standards. However, this is insupportable. G-6.0106b calls for obedience to all of the standards set forth in Scripture and the confessions and then cites a particular sexual ethic as one standard “among these” – not as a special standard “above” them. One cannot rely on use of the word “requirement” in the sexual ethic, to hold that in special regard, because the heading of G-6.0106 refers to “Requirements” in the plural; under a strict reading of this provision, other parts of the standard must be regarded as requirements too.

Likewise, the specificity of the sexual ethic in G-6.0106b cannot be taken as an indication that it is essential. If this were so, G-6.0106b would wildly distort the message and mission of the church. It would give unique status to a contested sexual ethic, raising it above Christ’s “greatest and first commandment” that we love the Lord our God with all our heart, soul and strength, and the second commandment that we love our neighbors as ourselves (Matthew 22:34-40). Likewise, it would give this contested sexual ethic greater importance than Christ’s great commission that we “Go therefore and make disciples of all nations . . . teaching them to obey everything that I

have commanded you” (Matthew 28:19-20). The patent distortion in such a hierarchy of standards demonstrates that such a reading cannot be correct.

Similarly, a “specificity” test would elevate this single, contested sexual ethic above confessional teachings that Christians are to avoid idolatry, self-seeking, pride, discontent, undue correction of others, provoking others to wrath, unjust taking of life, anger, hatred, greed, excessive passions, distracting cares, immoderate use of life’s bounty, provoking words, oppression, quarrelling, wounding, unclean thoughts, unjust or unfaithful contracts, vexatious lawsuits, withholding what belongs to others, inordinate prizing of worldly goods, distrustful and distracting cares, envy at the prosperity of others, idleness, prodigality, prejudicing of the truth, passing unjust sentence, undue silence in a just cause, speaking the truth unseasonably, rash, harsh, or partial censuring, denying the gifts and graces of God, unnecessarily discovering infirmities, and the like (7.209-7.258). None of the sins listed in the Larger Westminster Catechism are stated as specifically as the second sentence of G-6.0106b, yet few would dispute that they are of equal or greater gravity. Likewise, few would dispute that no one perfectly conforms to these standards, or that these standards can be applied without consideration of the particular circumstances in which a person acts. So it is with the particular sexual ethic identified in G-6.0106b (a part of our Form of Government that is, in fact, subordinate to the confessions). To claim that its second sentence is superior to all other Scriptural and confessional standards by virtue of its specificity is nonsensical.

It also must be noted that, even if specificity were a proper test of “requirements,” the second sentence of G-6.0106b is not so specific as to establish a clear mandate. G-6.0106b contains numerous terms that require interpretation.

- *“Chastity”*: It is notable that when the church adopted G-6.0106b, it did not attempt to codify a rule that “unrepentant homosexual practice does not accord with the requirements of ordination” (the authoritative interpretation then in force). It chose something different. Likewise, the 1996 General Assembly chose from among numerous overtures that were largely identical, rejecting

proposals to require “celibacy” while adopting “chastity” instead. Whatever some hoped to accomplish with the adoption of G-6.0106b, one cannot properly read into it restrictive terms that the church itself refused to adopt. The lead complainant in this case, Mary Naegeli, was asked about this at trial, and was unable to give a satisfactory response:

Q: How do you interpret the fact that General Assembly, when it wrote G-6.0106, had 33 proposals for this language, half of which used “celibacy” and half of which used “chastity”, and General Assembly chose “chastity” instead of “celibacy”?

A: I don’t know the answer to that question. (Tr. at p. 145)

Rev. Naegeli also admitted that the word “chastity” is open to interpretation:

Q: When you say that Lisa Larges’ refusal to take a vow of celibacy is disqualifying, how do you square that with the confessions?

A: There’s a big leap that you just created there with the question, that this requires Lisa to take a vow of celibacy. She is not required to take a vow of celibacy. She is required to place her sexual activity in the sanctioned allowed environment, which is marriage between a man and a woman. She is free to marry.

Q: That’s your interpretation, isn’t it? You said that’s your interpretation, isn’t it?

A: I’m only speaking my interpretation here. (Tr. at p. 158)

Rev. Crawford, another member of the Presbytery, likewise testified to the ambiguities that require exploration when the requirement of chastity is being applied:

A: I’ve heard primarily this afternoon these two words “fidelity” and “chastity” to be held synonymous with “celibacy”. And I’m not sure that that is at all the case. I would have wanted an opportunity for the body to talk about, you know, what that meant. (Tr. at pp. 290-291)

The use of “chastity” in G-6.0106b has never been authoritatively interpreted. Indeed, General Assembly in 2003 decided that it would be improper to interpret “chastity” authoritatively, and referred the church instead to study of

the Confessions in individual cases.²⁶ Such instructions put the lie to any claims that G-6.0106b establishes a clear mandate from which no exceptions are allowed.

- *“In singleness”*: Equally important, the church chose to require chastity “in singleness” (rather than “outside marriage”). A growing number of states recognize some form of same-sex partnerships (including marriage), and there obviously are hundreds of thousands of same-sex couples in other states. It might be questioned whether it is consistent with Scripture and the Confessions to require that such persons, having made covenants of fidelity with a lifetime partner, must break those covenants or forever be barred from ordained service.
- *“Practice the confessions call sin”*: The confessional status of same-sex practice is far from settled. This is amply demonstrated by General Assembly’s initiation of a review to determine whether the church is using a faulty translation of the Heidelberg Confession – one of the very few confessional texts that might refer to same-sex practice (4.087).²⁷ Likewise, there is substantial debate whether condemnation of “unnatural lust” and “sodomy” in the only other confessional passage that might refer to same-sex practice (7.249) refers to loving same-sex relationships or, rather, to things like obsessive sexual interest and homosexual rape.
- *“Refusing to repent”*: Finally, quite apart from what G-6.0106b actually requires (i.e. obedience to Scripture and conformity to the confessions), a point often overlooked is that G-6.0106b disqualifies a person from service only if that person is “refusing to repent” of the practice at issue. The confessions teach us that repentance “is a sheer gift of God and not a work of our strength” (5.094). Likewise, the confessions teach us that repentance involves an inward

²⁶ PCUSA Minutes, Pt. 1, pp. 61, 64 (2003).

²⁷ PCUSA Minutes, Pt. 1, pp. 18-19, 1260-1262 (2008).

conviction of the wrongfulness of one's acts – when the candidate has “a true sense of his sin” (7.087) and is so aware of his sins that he “grieves for them from his heart” (5.093, 4.081, 6.082, 7.186).

In premising disqualification for church leadership on a person's refusal to repent – that is, wilful disregard of one's God-given, inward convictions – G-6.0106b brings us back to the fundamental importance of conscience.

Assuredly a person who believes that his or her conduct is sinful, and is unwilling to change that, should not serve as a leader in the church. However, a different case arises where the candidate sincerely believes that he or she is acting as God wills. Where biblically formed consciences differ, G-6.0106b affirms – and requires sessions and presbyteries to affirm – the importance of mutual forbearance. Many faithful Presbyterians of same-sex orientation believe that their orientation is a good and natural part of God's creation that can be responsibly acted on. In such cases, the individual, although disagreeing with the majority, is not “refusing to repent” but is, rather, acting responsibly in conscientious discernment of what God intends for his or her life. G-6.0106b itself takes examining bodies back to our fundamental concern for the biblically formed conscience – the sacred forum in which we believe God speaks to the individual and holds that person accountable.

In sum, there is much in G-6.0106b that must be interpreted as that section is applied. Even aside from the arbitrariness of their refusal to acknowledge the real requirement in its first sentence, Complainants' claim that the second sentence constitutes an unambiguous mandate is insupportable.

Complainants repeatedly betray a perspective that is at odds with Presbyterian law and process – and is, in fact, a denial of our Reformed heritage. For example, Rev. Naegeli testified that “Anything in the Book of Order that is stated as a mandatory requirement or a ‘shall not’ statement is intended by the Book of Order itself to be

mandatory. And I call that an essential of polity.” (Tr. at p. 61) This perspective was explored during questioning:

Q: So if the church mandates a requirement –

A: Uh-huh.

Q: – such as G-6.0106b, for instance, does that mandate, that requirement, does that infringe the freedom of conscience of the individual?

A: No. It’s plainly stated that the church can do that and has done that properly. And a person gets to decide whether or not they can abide by it.

Q: And if they can’t, what happens?

A: If they can’t abide by it, they’re selecting themselves out of membership with us. (Tr. at p. 52)

Complainants likewise betray a fundamental misperception of Presbyterian law and process in characterizing the practice of mutual forbearance as a “waiver” of standards. Presbyters necessarily consider any departures declared by applicants for membership in light of their own affirmations to be governed by the church’s polity, knowledge of Scripture and the confessions, love for the PCUSA, and a deep desire to be guided in collective discernment by the working of the Holy Spirit.

Our Historic Principles of Church Order state that “God alone is Lord of the conscience” (G-1.0301), that “there are truths and forms with respect to which men of good characters and principles may differ,” and that “in all of these we think it the duty both of private Christians and societies to exercise mutual forbearance toward each other” (G-1.0305). These bedrock principles of Reformed faith and polity find a more modern expression in G-6.0108. These provisions are integral parts of the Presbyterian Constitution, core elements in our theology, law, and practice. To make them “gap fillers,” to be applied only where there is little controversy and one cannot

claim a more specific rule in the Constitution, turns Presbyterianism and the Reformed tradition on its head.

Complainants argue that the 2008 AI “cannot alter or amend the Constitution,” and then claim that “[f]or Knox to have its intended effect it would have to excise the word ‘requirements’ from the Book of Order” (Complainants’ Brief at p. 29). However, that the 2008 General Assembly interpreted the Constitution differently than Complainants might like does not mean that the Assembly amended it. In fact, what both the 2006 and 2008 Assemblies did was remind the church of a part of our polity that had been neglected in debates about homosexuality – that all of our ordination standards are to be applied with our traditional respect for freedom of biblically-formed conscience. The provisions that these Assemblies lifted up for the church are every bit as much of the Constitution as G-6.0106b is – and they speak in mandatory terms.

While Complainants appear to contemplate that this commission may overrule the General Assembly, that is not possible in our constitutional system. The Advisory Committee on the Constitution clearly summarized the respective roles of the General Assembly and its PJC, in advice approved by the General Assembly, in 1986:

It should be understood that the General Assembly retains ultimate authority, by following G-13.0112, to approve or disapprove a constitutional interpretation in a Judicial Commission judgment. If the General Assembly chooses to resolve a question before it by means of interpretation without amending the Constitution, that interpretation is also binding upon the conscience of the whole church.²⁸

The 1986 General Assembly also disapproved a suggestion that authoritative interpretation be eliminated and any changes in church law require formal constitutional amendment. As noted by the ACC, such a change –

²⁸ PCUSA Minutes, Part 1, pp. 197-198 (1986) (emphasis added). This has been repeatedly approved by the General Assembly. See PCUSA Minutes, Part 1, pp. 34ff (1986); PCUSA Minutes, Part 1, pp. 68, 75, 137-38 (1987); PCUSA Minutes, Part 1, pp. 48, 50, 129 (1988).

– would strike a fundamental blow at the connectional polity of this church. The connectional principle’s vitality depends wholly upon the absolute authority of higher bodies to review and correct the actions of lower bodies in application of church law. This is indeed the most fundamental principle of our structural arrangement. (See G-1.0400.) Such an arrangement will undoubtedly at times produce higher governing body “error” in the eyes of some; but if the “error” is one sufficiently widely perceived as such, it is correctible without destruction of the basic arrangement – by a specific substantive amendment to the Constitution.²⁹

In short, once the General Assembly has issued an Authoritative Interpretation of existing constitutional language, proponents of a different interpretation cannot overturn that by recourse to the judicial commissions of the church – that would simply start a “back and forth” process where General Assembly and its PJC issued a series of competing “authoritative interpretations,” discrediting the authority of our governing bodies and the theology of collective discernment that undergirds Presbyterian polity. If Complainants are correct in their belief that the 217th and 218th General Assemblies erred, they should seek to correct that interpretative error by proposing a formal constitutional amendment.

Such an amendment could put in place different, and potentially clearer, language than is currently found in G-6.0106b and G-6.0108. Given Complainants’ position, this assumedly would require a plain statement that “unrepentant homosexual practice does not accord with the requirements of ordination,”³⁰ and amendment of G-1.0301, G-1.0305, and G-6.0108 (at a minimum) to make clear that our constitutional guarantees of freedom of conscience do not apply to this question. If that is what the whole church discerns, the church will adopt it as part of the Constitution. If the church is unwilling to adopt such an amendment, Complainants’ entire position fails: the church in fact welcomes the mutual forbearance for which our Constitution provides, and which the 217th and 218th General Assemblies have twice affirmed.

²⁹ PCUSA Minutes, Pt. 1, pp. 198-199 (emphasis in original).

³⁰ That is, the operative words of the 1978 “definitive guidance” that subsequently was affirmed as an “authoritative interpretation.”

IV. THE SPJC CORRECTLY DISMISSED CLAIMS RELATING TO ACTIONS OF THE CPM

Throughout this case, Complainants have laid out a litany of complaints about the manner in which the Presbytery's CPM worked with Ms. Larges over the past ten years (or more). The Presbytery believes that those complaints are meritless; Ms. Larges and the CPM clearly had an honest and continuing dialogue about the hurdles to her advancement in the church (so that she could not be misled in this regard); and the CPM at no time acted in defiance of church rules, but worked conscientiously and faithfully within them. Such points could be discussed at length. However, there are several more basic, procedural reasons why these claims cannot go forward.

First, most of Complainants' litany of grievances is time-barred. The Constitution provides that a complaint about an alleged irregularity must be filed no more than 90 days after its occurrence, and that a complaint about an alleged delinquency must be filed no more than 90 days after the governing body is requested and refuses to cure it (D-6.0202a). While Complainants express dismay at the actions of the CPM over a course of ten years or more, they were members of CPM for much of that period, clearly familiar with the work of the committee, and made no effort to challenge what they now allege were serious errors. Had Complainants wished to invoke judicial review of the CPM's work at any time, they could have tried to initiate a direct challenge for committee irregularities, as they are doing now, or could have brought their concerns to the Presbytery and challenged an unsatisfactory response. Complainants did neither.

Second, while our judicial commissions sometimes review committee procedures (which can have dispositive effect), the Presbytery is aware of no cases in which this commission has overturned a substantive recommendation of a committee that remained subject to approval or disapproval by the appointing presbytery. The reason appears to be common sense: a recommendation has little or no effect until it has been approved, and approval of an ill-founded recommendation provides grounds for a complaint directly against the presbytery. The apparent absence of cases in this

area demonstrates that judicial review of a committee recommendation is essentially a meaningless act, rarely sought and improvidently granted (if ever).

In *Concord Liberty* (2006), the GAPJC dismissed a complaint filed against the Office of the General Assembly and the Theological Task Force on Peace, Unity and Purity, challenging the recommendations set forth in the Task Force’s report:

“The Report of the Theological Task Force on Peace, Unity and Purity is only a recommendation to the 217th General Assembly (2006), and has no force or effect without further consideration and action by the General Assembly. Therefore, the recommendations proposed in that report, which the Complaint challenges as ‘irregularities,’ do not constitute ‘actions’ that are subject to remedial attack at this time.”³¹

This commission’s holding is directly apposite to Complainants’ grievances with CPM here, and confirms that those grievances may not be tried.³² While Complainants attempt to depict the actions of the CPM as the actions of the Presbytery itself, this

³¹ *Concord Liberty Presbyterian Church v. Office of General Assembly*, PCUSA Minutes, Part 1, pp. 501-502 (2006) (emphasis added).

³² While Complainants cite five cases that they claim support a judicial review of the actions of a CPM, these are all inapposite. In three of those cases – *Bedford-Central Presbyterian Church v. Presbytery of New York City*, PCUSA Minutes, Part 1, p. 119 (1987); *Bevenssee v. Presbytery of New Brunswick*, PCUSA Minutes, Part 1, p. 133 (1998); and *Sheldon v. Presbytery of West Jersey*, PCUSA Minutes, Part 1, p. 589 (2000) – this commission in fact dealt only with claims against the presbytery, not against the CPM. In *Hope v. Presbytery of San Francisco*, PCUSA Minutes, Part 1, p. 455 (2006), this commission addressed issues of procedural fairness that resulted in the candidate’s removal from the rolls. This was consistent with the fact that judicial commissions may hear challenges to committee procedures that have a deleterious and dispositive effect on the inquirer/candidate – but that is not the kind of case at issue here, where the challenge relates to a CPM’s substantive recommendation, that the Presbytery proceed with the candidate toward ordination, which cannot have any effect without final action by the Presbytery itself. The only other case cited by Complainants is *LeTourneau*, where this commission spoke generally about CPM’s responsibilities – but did so, again, in a case addressing claims only against the *presbytery*. In short, none of these cases supports Complainants’ efforts to try their grievances against the CPM here.

commission has made clear that whether the acts of a governing body are subject to judicial review depends on the capacity in which that body takes them.³³

Even if judicial review were appropriate here, Complainants' grievances in essence boil down to dissatisfaction that their views did not prevail with the majority on the CPM, and that the CPM did not write what Complainants would have written. Countless decisions of this commission hold that an irregularity or delinquency arises when a governing body acts, or fails to act, contrary to the Constitution. Mere unhappiness with a particular outcome does not rise to the level of a constitutional case. "A governing body or council does not commit a delinquency . . . when it does not exercise its power to implement its responsibilities as requested by one or more Presbyterians out of their understanding of Christ's lordship."³⁴

Notwithstanding these points, the Presbytery does feel constrained to address two arguments made repeatedly by Complainants as it cannot let go by, without some comment, attacks on the integrity of its members.

First, Complainants argue that CPM "misinformed" presbyters about the fundamental process of examination. In fact, as discussed above, it is Complainants themselves who completely misread the 2006 and 2008 AIs, as well as centuries of Presbyterian law and history. Moreover, the assumption that responsible presbyters are not familiar with the fundamentals of our polity (or know so little about G-6.0106b,

³³ *Metherell v. 204th General Assembly*, PCUSA Minutes, Part 1, p. 163 (1993), *reconsideration denied*, PCUSA Minutes, Part 1, pp. 177-178 (1993) (distinguished between acts of General Assembly through its agencies and in its legislative capacity).

³⁴ *Montreat Presbyterian Church v. General Assembly Council*, PCUSA Minutes, Part 1, p. 346 (2002) (dismissing complaint about allegedly unorthodox programming at a Peacemaking Conference). *See also, e.g., Presbytery of Shenango v. General Assembly Council*, PCUSA Minutes, Part 1, p. 581 (2006) (dismissing complaint about a church award to a lesbian activist); *Presbytery of National Capital v. Office of General Assembly*, PCUSA Minutes, Part 1, p. 136 (1998) (dismissing complaint about the allegedly erroneous contents of constitutional advice).

and have so little ability to consider it themselves, that they can be misled by the views of CPM) displays a remarkable lack of faith in the members of this Presbytery.³⁵

Second, Complainants claim that the CPM “recklessly misquoted” the work of John Calvin. While one might challenge a series of quotations where no indication was given that that is what they are, the CPM in fact provided page citations and ellipses clearly reflecting its use of the material. Further, contrary to Complainants’ assertions, even a cursory reading of Calvin’s work on conscience demonstrates that he regarded the preservation of freedom of conscience as an important duty for Christians. In the same chapters cited by CPM, Calvin wrote at length that conscience should be curbed where its exercise might injure those weak in the faith, but that it should be asserted robustly where that is necessary to defeat the false claims of legalists in the church. Thus, Calvin declared that “we shall so temper the use of our freedom as to allow for the ignorance of our weak brothers, but for the rigor of the Pharisees, not at all!”³⁶ Calvin then cited two stories from the life of the early church, where Paul had Timothy circumcised in order to win a Jewish audience, but refused to have Titus circumcised in response to demands from “false brethren” who sought to impose legalisms over the gospel of grace.³⁷ Paul claims that “We did not submit to them even for a moment, so that the truth of the gospel might always remain with you” (Gal. 2:3-5).

The message, of both Paul and Calvin, is clear: Surrender to legalistic demands, in violation of one’s conscience, denies the gospel and cripples the church’s ability to witness credibly to the saving power of Jesus Christ. When Complainants

³⁵ Likewise, Complainants’ critique of the CPM’s definition of a “departure” (Complainants’ Brief at pp. 12-13) cannot stand. That definition, fairly read, clearly refers to the candidate’s statement that her departure relates to something that she believes is non-essential (not that the candidate has declared a departure that in fact must be regarded as non-essential). If the PJs accept Complainants’ invitation to begin editing such fine points in committee reports across the church, they will be very busy panels indeed.

³⁶ Calvin, *Institutes*, Bk. III, Ch. 19, § 11.

³⁷ *Id.* at § 12.

claim that, as they have in this case, that “we have been unable to locate anywhere where Calvin wrote anything” suggesting that preserving one’s freedom of conscience is a duty, the only conclusion this commission can draw is that Complainants have not read very much Calvin.³⁸

In *Broad Avenue Presbyterian Church* (1995), this commission dismissed, for failure to state a claim, a complaint that the General Assembly Council failed to ensure that its agencies and employees took positions within what complainants deemed to be acceptable bounds of orthodoxy. This commission observed that “Presbyterians understand the imperatives of Christ’s lordship in diverse ways among themselves,” and that a judicial commission cannot function as a “general board of review.” Noting that General Assembly in fact had addressed the causes of dissatisfaction with GAC, this commission issued a wise admonition which applies equally to this case: “Our best remedy is always action by a governing body inspired by the Holy Spirit.”³⁹ Presbyterian theology and polity teach us that that will occur when the Presbytery gathers together to conduct its examination of Lisa Larges.

Finally, Complainants’ request that the Presbytery be directed to remove Lisa Larges from its roll of candidates is wholly unconstitutional. This commission repeatedly has emphasized that “[t]he responsibility of making a judgment about the wisdom of a person remaining on the roll of candidates belongs to the candidate’s presbytery.”⁴⁰ Even in the *LeTourneau* case, where the candidate’s declaration regarding her sexual orientation disqualified her from immediate certification of readiness to receive a call, this commission emphasized that she “remains a candidate under care of the Presbytery. . . . At such time as the presbytery is satisfied that she

³⁸ Or, for that matter, the Westminster Standards, which condemn “making men the lords of our faith and conscience” as a sin in violation of the First Commandment (7.215).

³⁹ *Broad Avenue Presbyterian Church v. General Assembly Council*, PCUSA Minutes, Part 1, pp. 124-125 (1995).

⁴⁰ *Hope v. Presbytery of San Francisco*, PCUSA Minutes, Part 1, p. 455 (2006); *Bevenssee v. Presbytery of New Brunswick*, PCUSA Minutes, Part 1, p. 133 (1998); *Bedford Central Presbyterian Church v. Presbytery of New York*, PCUSA Minutes, Part 1, p. 119 (1987).

can properly be certified as ready to receive a call, it may proceed according to its own procedures.”⁴¹ Complainants’ request for an order requiring that the Presbytery remove Lisa Larges from its roll of candidates is therefore manifestly contrary to church law.

V. THE SPJC PROPERLY EXCLUDED IRRELEVANT AND PREJUDICIAL MATERIAL FROM THE RECORD

Finally, the Presbytery believes that the SPJC acted appropriately in excluding from the record confidential materials from the CPM, some of it more dating back to 1997 (i.e. a dozen years ago), for several reasons.

First, exclusion of the challenged material was appropriate in light of the SPJC’s ruling that the work and recommendations of the CPM in this matter were not properly before it. For reasons discussed above, the Presbytery believes that this ruling was correct and, accordingly, there was no purpose to be served in admission of the materials.⁴²

⁴¹ *LeTourneau v. Presbytery of Twin Cities Area*, PCUSA Minutes, Part 1, pp. 163, 165 (1995). While this commission in Rem. Case 218-4, *Stewart v. Mission Presbytery* (2007) indicated that issues under G-6.0106b may warrant a candidate’s removal from the rolls in some circumstances, it reaffirmed the traditional discretion of presbyteries in stating only that a presbytery “should” act, rather than requiring that it must.

⁴² Complainants’ allegations that the Presbytery’s Stated Clerk acted wrongly here, in placing contested materials in a discrete envelope, are completely groundless. The Rules of Discipline state that, upon notification that a case has been accepted, the Stated Clerk shall transmit to the PJC “the minutes and papers pertaining to the case, along with the list of the record and any requests for additional papers which, if available, shall be included” (D-6.0307c). Accordingly, the Stated Clerk divided these materials into two files and explained in her transmittal letter to the SPJC why she believed some of them should not be treated as parts of the record. D-6.0307 requires the Stated Clerk to transmit “materials and papers pertaining to the case” (emphasis added), thereby requiring the Stated Clerk to make a preliminary assessment of relevance. The Stated Clerk did so. As required by the rules, she then properly identified all “additional” documents that Complainants sought to include in the record, and transmitted copies of such additional documents as were available to her (D-6.0307(c)). The Stated Clerk therefore fulfilled her constitutional role, providing the SPJC with information and material that would alert it to the record controversy and enable it to make a final determination as to the proper scope of the record.

Second, and more importantly, Complainants' cavalier handling of confidential records from CPM, in violation of the rules under which Complainants obtained access to those materials as members of the committee, defied both the needs of this case and the rules of the church.

The Presbytery is deeply troubled that the Complainants have served copies of these confidential materials on this commission, because their ability to do so demonstrates that they have acted in plain contempt of a direct order of the SPJC. At the conclusion of trial, after all parties had had ample opportunity to be heard and the SPJC had formally voted on the matter, the Complainants were instructed to surrender all copies of those materials to the Stated Clerk of the Presbytery, with one copy to be retained by the Stated Clerk of the Synod in order to maintain a complete record of the proceedings (Tr. at pp. 343-355). This order was made in light of the fact that the materials were not supposed to have been disclosed outside the CPM to begin with; after it became clear that numerous copies of the material, relating to a number of candidates who have nothing to do with this case, had been circulated in a hotel dining room where the trial was held (before a large audience); and that one of the binders, in fact, was missing. The SPJC ordered all of the confidential material to be returned to the Presbytery, over Complainants' objection, and Complainants simply defied that order.

Complainants' action in this matter unfortunately reflects their approach to this entire case: that they are a law unto themselves, with the authority to act as they see fit, regardless of the rules, proper process, or the impact Complainants' acts might have on the rights and interests of others. That is not how the church of Jesus Christ can, or should, operate. It is perhaps the most telling evidence, of all the testimony and other material introduced in this case, that Complainants' position is wrong.

Dated: October 12, 2009
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