

**PERMANENT JUDICIAL COMMISSION OF THE
SYNOD OF SOUTHERN CALIFORNIA & HAWAII
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

Session of St. Andrew's Presbyterian Church of Santa Barbara, CA, <i>et al</i>)	Case Number 2012-3
)	
Complainants)	Rationale & Findings
)	
vs)	
)	
The Presbytery of Santa Barbara.)	
)	
Respondents)	
)	

PROCEDURAL HISTORY

On June 21, 2012, the Clerk of the Synod of Southern California & Hawaii received a complaint from the above referenced Complainants. Ruling Elder Curtis McKee, Moderator of the Permanent Judicial Commission of the Synod was out of the jurisdiction for a period of days; Teaching Elder Daryl Fisher-Ogden, Clerk of the Commission, is a member of the Respondent presbytery and will therefore not participate in the case under the provisions of D-5.0205. Commission officers, Teaching Elder Michael Haggin, Vice-Moderator, and Teaching Elder Judith Hirsch-Fikejs, Clerk *pro tempore*, examined the papers filed with the Commission pursuant to D-6.0103b(1) of the Book of Order. On June 25, 2012, the above named Synod PJC officers determined that the Preliminary Questions had been answered in the affirmative. The Synod PJC received the Respondent's answer to the Complaint on August 9, 2012, and the Moderator and Clerk *pro tempore* again ruled on the Preliminary Questions in the affirmative and that the case should proceed to trial. The trial was held on November 9, 2012, at St. James Presbyterian Church, Tarzana, CA.

At the trial, both the Complainant and Respondent were represented by counsel. The Complainants presented a notebook containing all the documents that had been generated by the parties and entered them into evidence. The Respondents did not present a pre-trial brief or any additional documentation. The Complainants presented witnesses whereas the Respondent did not. Both parties presented opening and closing arguments. The Synod PJC went into recess in order to confer and deliberate. Findings were announced Saturday, November 10, 2012, at 11:00 AM.

FINDINGS AND RATIONALE

1. **Count One:** Conferring on a “special interest” group a veto over the constitutional governance of the church.
Sustained. By attempting to form a union presbytery with ECO, Santa Barbara Presbytery did indeed attempt to align itself with a “special interest group” and thus confer upon that entity the status of an equal council, thus giving that group veto authority over the governance in the Constitution of the Presbyterian Church (U.S.A.).
2. **Count Two:** Promotion of division and schism in the church.

Sustained. While schism and division may not have been the specific intent of those approving the Plan for Union, the effect of that action did indeed bring about schism in the presbytery. Adoption of the Plan for Union did indeed loosen the collective ties between the presbytery and its churches and disrupted the sense of community whereby a fulsome discernment process could be implemented in order to resolve divergent views.

3. **Count Three:** Mischaracterization of ECOP as a “Reformed” body.

Sustained. In spite of evidence that the history of the Reformed Tradition did involve adherence to “essential tenets” and required signed affirmation of same for short periods of time, it is the current understanding that the Reformed Tradition rests on a clear understanding that Jesus Christ alone is Lord of the conscience, and this assertion not only appears in the Form of Government but is supported by the guidance of the Theological Declaration of Barmen. It is also a Reformed affirmation that membership in any worshipping body that claims the label “Reformed” has as its only membership requirement one's personal faith in Jesus Christ as Savior and Lord. The preponderance of the evidence demonstrates that the requirements of ECO are otherwise, and by requiring a signed agreement of like belief, exist beyond the boundaries of what it is understood to be Reformed.

4. **Count Four:** Mischaracterization of the “Presbytery of the West” as a “comparable” council or governing body.

Sustained. A preponderance of the evidence as of June 2, 2012, indicates that the Presbytery of the West does not meet the criteria as to membership churches with duly constituted and ordained Sessions or the requisite number of teaching elders. Thus it cannot be considered a comparable council with which another presbytery can form a union.

5. **Count Five:** Mis-use of our constitutional provisions for union presbyteries.

Sustained. The provisions in the Book of Order are intended to encourage ecumenical initiatives and the specifications are deliberately designed to give enormous latitude. However, they are given this latitude in order to promote reconciliation between councils, reduce unnecessary expense because of overlapping ministries, and to encourage and implement common mission and purpose. This Santa Barbara Presbytery Plan for Union does not do this but has been formed to serve as a “shield” to the denomination's action and judicial decision.

6. **Count Six:** Disregard of important constitutional requirements for union.

Sustained. Answered in findings for No. 5.

7. **Count Seven:** Violation of our constitutional guarantee of respect for biblically-formed conscience.

8. **Count Eight:** Conditioning congregational membership on more than a profession of faith.

9. **Count Nine:** Infringing congregations' right to elect, and sessions' responsibility to assess the fitness of, congregational leaders.

10. **Count Ten:** Violation of presbytery's obligations in assessing its congregations' choices of pastoral leadership.

Counts 7, 8, 9, 10 Sustained. Councils do not have the right to bind the conscience of either pastors or members to a pro-forma set of essentials. While teaching elders' consciences are free within the confines of the church's polity interpretation of Scripture as put forth in the Constitution, members have the right of conscience to a greater degree as well as freedom of conscience to determine the fitness of their own leaders, both at the congregational level as well as the level of the presbytery. The “litmus test” for ordination is given in the Book of Order and provides presbyteries with the freedom to examine candidates on a case by case basis and determine whether or not they meet those standards and are judged by a particular presbytery to be fit for pastoral leadership.

11. **Count Eleven:** Defiance of the church's discernment that categorical exclusion of gay and lesbian Presbyterians is improper.

Sustained. The GA PJC has ruled that presbyteries must examine their candidates for ordination on an individual basis and may not impose exclusionary rules beforehand in order to discourage candidates who espouse a particular theological persuasion or understanding of ministry fitness (*Parnell vs Presbytery of San Francisco, GA PJC, 2012; Larson vs Presbytery of Los Ranchos, GA PJC, 2012;*). Thus, the standards imposed by ECO and contained in the Plan for Union as a means of circumventing the stated ordination standards in the Constitution of the Presbyterian Church (U.S.A.) constitute a failure to consider each candidate individually and are a way of imposing categories of persons who may or may not be considered for ordination to pastoral ministry.

12. **Count Twelve:** Denial of our commitment to remain open to God’s continuing reformation of the church.

Sustained. The preponderance of the evidence shows that by imposing the necessity of adhering to specific “essential tenets” as put forth by ECO and incorporated in the Plan for Union, the processes of dialogue and discernment whereby divergent views may be examined with the goal of discovering common ground for agreement have been inhibited significantly so that a body of “like minded” persons becomes the norm rather than seeking fellowship and common ministry that can be supported by all members of the Presbytery and its member churches.

13. **Count Thirteen:** Violation of presbytery’s duty to exercise genuine, good-faith discernment in providing for dissident congregations.

Sustained. A preponderance of the evidence shows that the Plan for Union and Santa Barbara Presbytery's plan to “routinely dismiss dissident congregations” in the future abdicates their trusteeship, a privilege that enables them to serve the entire church. They also abdicated their responsibility to be faithful to their adherence to the Reformed Tradition in insuring that churches which are dismissed move into fellowships that conform to the church's understanding of church order, theology and practical ministry as viewed through the prism of the Reformed Tradition.

14. **Count Fourteen:** Undermining of the property trust provisions in the Presbyterian Church (U.S.A.)

Sustained. The Plan for Union clearly provides a far different standard for dismissing churches and undercuts the trusteeship of the presbytery in assuring the continuance of Reformed ministry presence when congregations feel it is necessary to part ways with the council and its member churches. As trustees for the whole church, adopting a divergent standard as laid out by the ECO puts the Santa Barbara Presbytery clearly at odds with the polity of the Presbyterian Church (U.S.A.).

15. **Count Fifteen:** Violation of obligations to congregations and members who remain exclusively loyal to the Presbyterian Church (U.S.A.)

Sustained. A preponderance of the evidence shows that no provision has been made in the Plan for Union for those congregations who decide not to become a part of the proposed union presbytery, thus insuring isolation from other congregations in that geographical area, putting the livelihood and employment of pastors at risk, and literally setting these congregations adrift from the guidance and fellowship of the presbytery.

16. **Count Sixteen:** Deprivation of full rights of membership in the presbytery.

Sustained. A preponderance of the evidence shows that the Plan for Union and the rules of the ECO would remove from full participation by vote in the union presbytery those who are not serving as church pastors, thus eliminating those who are serving in validated ministries for no other reason than the polity of the union presbytery is no longer that of the Book of Order, contrary to assertions otherwise.

17. **Count Seventeen:** Violation of presbytery’s duty to pursue ministry, and to establish

ecumenical relationships, within its geographic bounds.

Sustained. By seeking the formation of non-geographical presbyteries at the General Assembly and by aligning with a non-geographical presbytery, namely the Presbytery of the West, the Santa Barbara Presbytery has put theological affinity ahead of doing ministry in a geographical location and to work to develop and strengthen ecumenical relationships with believers of other denominations as a sign of the unity of Christ's church.

18. **Count Eighteen:** Failure to conduct business decently and in order.

Sustained. While those supporters placing the Plan for Union before the presbytery membership observed the letter of the law, the spirit of open dialogue, using every avenue available to share information, using gatherings to answer questions, responding appropriately to written requests for information, allowing open discussion without time constraints – all were clearly missing. Both written documentation and trial testimony confirm this. While the plan was clearly laid out and a timeline presented, members felt excluded and their concerns given little importance. While the process may have been orderly, a significant portion of members did not feel that they were treated decently.

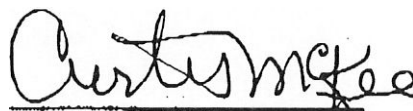
19. **Count Nineteen:** Establishment of union before receipt of requisite synod approval.

Not sustained. There is no evidence to support this allegation. The minutes of June 2, 2012, state that it is the intent of the Santa Barbara Presbytery to request approval of the Synod for its Plan for Union at a stated meeting of that council.

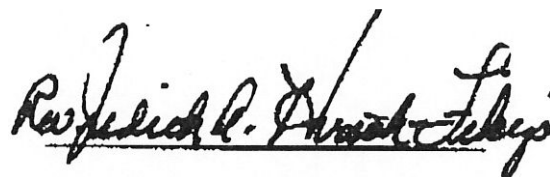
REQUEST FOR RELIEF

1. The Permanent Judicial Commission of the Synod of Southern California & Hawaii hereby declares null and void the actions taken by Santa Barbara Presbytery at their called meeting of June 2, 2012 wherein the Plan for Union was approved.
2. It is further ordered that the Stated Clerk of the Santa Barbara Presbytery report this Commission's decision and order to the presbytery at its first meeting following this order, to enter the full decision and order in its minutes and to send an excerpt of those minutes showing entry of the decision and order to the Stated Clerk of the Synod.

Dated this tenth day of November, 2012



R. Curtis McKee, Moderator
Permanent Judicial Commission
Synod of Southern California and Hawaii



Judith Hirsch-Fikejs, Clerk
Permanent Judicial Commission
Synod of Southern California and Hawaii

**Dissenting Opinion of Rev. Michael D. Haggin
and (in part) Rev. Paul B. Chun and Elder R. Curtis McKee**

I completely concur in the unanimous decision of the Commission that the action of the Presbytery of Santa Barbara to create a union presbytery together with the Presbytery of the West of the ECO is irregular and unconstitutional. This could have been a single point of complaint and would, by itself, justify the remedial action ordered in this case. Complainants, however, allege a large number of additional points of complaints which appear to impute unnecessarily negative motives to the Respondent. Accordingly I cannot concur with my colleagues in their decision on several of the counts of the Complaint:

Count Two: Promotion of division and schism in the church

The evidence shows that the moving actors in Respondent presbytery sought to form a union presbytery in the belief, hope, or expectation that it would hold the Presbytery of Santa Barbara together and prevent a number of the member congregations from seeking dismissal. By prompting this Complaint, their action gave rise to divisions in the Presbytery community, but it would be a sheer speculation to say that the divisions and schisms resulting from one course of action were greater or less than those resulting from another course of action. The Commission has found that the action of the Presbytery was unconstitutional. I do not endorse Complainant's desire to mark it as malevolent as well.

Count Three: Mischaracterization of ECOP as a "Reformed" body

The Form of Government (G-5.04) authorizes a presbytery to unite "with one or more comparable councils or governing bodies, each of which is a member of another Reformed body." Accordingly, on June 2, 2012, Respondent presbytery voted "to recognize ECO: a Covenant Order of Evangelical Presbyterians as a Reformed body." This Commission has effectively found that ECOP is not "another" body and that Presbytery of the West is not a "comparable council." In this count, Complainant asks us to deny that ECOP is "Reformed." Witness testimony was presented to indicate that ECOP fails a particular theological 'litmus' test. I believe that it is at least equally legitimate to classify as "Reformed" bodies whose theological witness descends historically from the central preachers and teachers of the sixteenth-century Protestant Reformation, including Huldrych Zwingli, John Calvin, Heinrich Bullinger, Zacharius Ursinus, Thomas Cranmer, John Knox, and others of that 'school.' When any individual seeking ordination is examined, the ordaining council has the responsibility of determining whether or not the candidate has departed from essentials of Reformed faith and polity (G-2.0105). In this case, Respondent presbytery exercised its analogous responsibility responsibly and defensibly.

Count Twelve: Denial of our commitment to remain open to God's continuing reformation of the church

Complainants believe themselves to be distinguished from the majority in the Presbytery of Santa Barbara in part because of their greater 'openness to God's continuing reformation of the church' on a theological point in recent (and continuing) contention. It does not follow from this that the Presbytery's members voting in the majority on June 2, 2012, must be closed to God's continuing reformation of the church on other points of Gospel teaching or even at other times. Since this count appears to charge Respondent with doing something improper in the future, I cannot concur with the Commission decision here. The Rev. Paul B. Chun joins me in this dissent.

Count Eighteen: Failure to conduct business decently and in order

The evidence presented in support of this count spoke largely to the limitations placed on length of

speeches and total time of discussion on June 2, 2012. Complainant also objected to “confused, inchoate, and unconstitutional premises that misled presbyters.” The length of time on June 2, 2012, for individual speeches and for the entire discussion was set by the presbytery itself in adopting a rule for this business. It followed upon several months of consideration in which there were other public discussions and there was ample opportunity for the members of the presbytery to influence their fellow presbyters. The presbytery was ready to proceed to a decision on June 2, 2012, even if the Complainants felt themselves to be ‘behind the pace’ in the competition of ideas. Respondent presbytery’s actions were (as we have found) mistaken and irregular, but they were not indecent or disorderly. The Rev. Paul B. Chun and ruling elder R. Curtis McKee join me in this dissent.