

Overture – To reduce vexatious and improper litigation in the church

The Presbytery of the Twin Cities Area overtures the 219th General Assembly (2009) of the PC(USA) to send the following proposed amendment of the *Book of Order* to the presbyteries for their affirmative or negative votes:

Shall G-13.0103 be amended to read as follows [text to be deleted is shown with a strike-through]:

The General Assembly constitutes the bond of union, community, and mission among all its congregations and governing bodies. It therefore has the responsibility and power. . . .

r. to provide authoritative interpretation of the Book of Order which shall be binding on the governing bodies of the church when rendered in accord with G-13.0112 ~~or through a decision of the Permanent Judicial Commission in a remedial or disciplinary case.~~ The most recent interpretation of a provision of the Book of Order shall be binding; . . .

Rationale

G-13.0103r states that both the General Assembly and the GAPJC can issue “Authoritative Interpretations” of the Book of Order, and that the “most recent” of these shall be binding. In light of this provision, some have sought to change the law of the church through private judicial cases, rather than through proper recourse to the collective discernment of the whole church gathered in General Assembly. Indeed, some have sought to import notions of “judicial activism” from the secular world and argued that the GAPJC (a *commission* of the General Assembly) should have the power to overrule the General Assembly itself.

The proposed amendment would eliminate the incentives for such vexatious and improper litigation, by providing that authoritative interpretations of the Constitution that bind the whole church may be adopted only by the General Assembly, in plenary session. Such actions are properly taken with guidance on our law and polity from the Advisory Committee on the Constitution (the process described in G-13.0112).

The GAPJC bears the responsibility to decide cases that are brought by or against the PC(USA) or its governing bodies and agencies, because it is not practical for the General Assembly to hear individual cases in plenary session. Decisions of the GAPJC in such cases are final as to the parties. However, the responsibility to decide matters of more general import to the whole church properly rests with the General Assembly.

Judicial cases are extremely burdensome and costly to governing bodies of the church. When brought improvidently, they violate our biblical obligation to avoid vexatious or unnecessary litigation (D-1.0103) and are inconsistent with our fundamental theological conviction that we are most likely to discern the true movement of the Holy Spirit when we gather together in General Assembly (G-1.0400). Moreover, the GAPJC is woefully unprepared to do the work of the General Assembly, since it hears only from the parties to the case; does not have the wider

perspective afforded by all of the persons and resources that inform deliberations by the General Assembly; and must prepare its decisions within very tight time constraints (a number of cases usually must be decided, immediately after hearings, in only one or two days).

The proposed amendment would affirm our historic polity of collective discernment under the guidance of the Holy Spirit, and put an end to the "culture of litigation" that is growing in the church. It would do so by removing the incentive to pursue fundamental changes in church law through individual court cases. The judicial commissions of the church still could decide particular cases brought before them, as they do now. However, the authority to interpret the Constitution so as to bind the whole church would rest exclusively with the General Assembly.