

III. REPORT OF THE CASES

CASE 2014-01

TE DON AVEN AND TE DAVID DIVELY VS. OHIO VALLEY PRESBYTERY

DECISION ON COMPLAINT JUNE 9, 2015

SUMMARY OF THE CASE

A minister notified his Presbytery his view had changed on Larger Catechism 177, now disagreeing with the final clause regarding the admission requirement for the Lord's Supper ("... only to such as are of years and ability to examine themselves.") Presbytery adopted a recommendation from its Credentials Committee and judged the minister's difference as being "more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine." Two ministers filed a complaint against that judgment, Presbytery declined to sustain it, and the two then filed a complaint with the SJC. The full SJC heard the Complaint, declined to either sustain or deny, and is now sending the matter back to the Presbytery, due to an insufficient Record.

I. SUMMARY OF THE FACTS

12/04/13 TE Charles Hickey, Pastor of Trinity Presbyterian Church of Ludlow, KY, officially notified Ohio Valley Presbytery (OVP) of a change in his view regarding the final clause in the answer to Larger Catechism question 177. He included the following as an attachment to that email notification:

Exception of TE Hickey to Westminster Larger Catechism Answer to Question 177:

I find in the Bible that participation in the sacramental meals on the part of the members of the covenant community, in good spiritual standing, was never limited by any factor other than the ability to ingest solid food (Exodus 12:4)

and do find the assumption everywhere that covenant children were included in the sacred meals of the covenant community (Lev 10:14; 22:10-11; Deut. 12:6-7, 12, 18; 14:26, 16:11, 14). I am unconvinced that the warnings found in 1 Corinthians 11 regarding unworthy participation, similar as they are to what are found in the ancient prophets, are in any way directed at little children. Therefore, I take exception to the phrase contained in Westminster Larger Catechism answer 177; "...and that only to such as are of years and ability to examine themselves" as being an extra-biblical requirement for covenant participation at the sacramental meal.

Rationale

In taking this exception I wish to make clear that I am not denying the necessity of faith for salvation, or, for that matter, for participation in the Lord's Supper. I believe that, as the Westminster divines assert in their Directory of Worship, baptized covenant children are "Christians." Not only can I not find in the Bible our traditional teaching that some Christians must not participate in the sacramental life of the church, but I find the Bible regularly numbering covenant children among the believers. Covenant children are in Holy Scripture artlessly identified as those who trust in the Lord (Psalm 22:9-10; Psalm 71:4-6; Luke 1:44), who offer a sacrifice of praise (Psalm 8:1-2), as saints (Eph. 1:1; 6:1-2), as heirs of the promise (Acts 2:39), as the saved (Acts 16:31), as those inhabited by the Holy Spirit (Acts 2:38-39), and as citizens of the kingdom of God (Luke 18:16). They are with a similar artlessness included among the repentant (Joel 2:12-17). Certainly if a covenant child can rejoice in the presence of the Son of God, or trust in the Lord while at his mother's breast, or know the Scripture's [*sic*] from his infancy, it cannot be said that the Bible regards covenant children as incapable of spiritual acts.

The only other qualification necessary for participation in the Supper that I can find in the Bible is the ability to eat solid food and drink from a cup (Exod. 12:4). Furthermore, if the children of believers are recipients of the promise of the remission of their sins and the gift of the Holy Spirit (Acts 2:29), then surely the signs and seals of those promises, both sacraments, should attend the recipients of the promise.

Though John Calvin did not embrace the communing of small children at the Lord's Table, I believe that Calvin's concept of covenant children possessing "faith in the seed" is a helpful way to describe the burden of this large body of biblical material (Institutes, IV, xvi, 16-20). In my view, given that both the Bible and the Westminster divines identify covenant children as Christians, it follows by rigorous necessity that their Christian life, their faith, if you will, should be nurtured by the ordinary means of grace (Acts 2:42). But if nurtured by hearing and learning the Word of God (certainly an activity that presumes some capacity for spiritual development (cf. 2 Tim. 3:14-15; Deut. 6:4-7), why not by the sacrament as well, which, it is to be remembered, has often been identified in our tradition as "a visible word"? Our authorities have often described the Lord's Supper as the "sacrament of nutrition," but if so, why would the infant faith of covenant children not be nourished by this means? Calvin's insistence that covenant children are to grow into a fuller understanding of their baptism as they get older serves as well to describe their developing relationship to the Lord's Supper [xvi, 21].

In short, covenant children are reckoned in the Bible as believers in God and Christ, even if their faith is in the seed and not yet in the mature fruit, and as believers they have a right to participate in the Lord's Supper precisely so that their faith may be nourished unto maturity.

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- 01/11/14 OVP Stated Meeting. The change in view was discussed in Executive Session, and the minutes record the following: “When Presbytery rose from executive session, it was reported that action on the TE’s view would be postponed until the May Stated Meeting, and that all TEs who are members of Ohio Valley Presbytery and all REs serving Ohio Valley Presbytery churches, may take part in discussion outside the meeting concerning the change in the TE’s views.”
- 05/20/14 OVP Stated Meeting. The Minutes recorded the minister’s stated difference (minus rationale), followed by Presbytery’s two actions:
- A Presbytery Committee recommended his difference be judged as “more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine.” Presbytery concurred, and adopted the following:
- MSA that Presbytery receive Pastor Hickey’s difference as more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine.
- MSA that Presbytery not allow Pastor Hickey to practice or promote from the pulpit this difference in order to preserve the peace and unity of the church.
- 07/18/14 Revs. Aven and Dively filed a Complaint with OVP against Presbytery’s judgment on the difference (first motion above).
- 07/23/14 Rev. Dively, who was then the Presbytery Clerk, emailed presbyters the Complaint three months prior to OVP’s October Stated Meeting.
- 10/21/14 OVP Stated Meeting. Complaint was considered and denied.
- 11/07/14 Revs. Aven & Dively filed Complaint with SJC. The Case was assigned to a Panel of three SJC members who had been randomly selected (for the next case) before the Case was filed.

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- 12/8/14 OVP Clerk Dively filed initial Record of the Case (80 pages).
- 01/08/15 Additional documents were added to the Record at the request of the parties and the Panel, and the Record was finalized at 133 pages. The Panel then requested the SJC officers to consider conducting a full SJC Hearing on the case because of the significance of the Case and because the Panel could not likely hold a Hearing and render a proposed judgment in time for consideration at the March SJC meeting. The Parties did not oppose this request, and the officers assigned the case to the full SJC.
- 01/23/15 Complainants filed a Preliminary Brief.
- 02/17/15 Presbytery filed a Preliminary Brief.
- 03/05/15 Hearing was conducted before the full SJC at its stated meeting in Atlanta, GA. Rev. Hickey was present as a visitor. At the Complainants' request, Rev. Dominic Aquila assisted them and presented their case. Following a lengthy SJC discussion, a committee was appointed to draft and recommend a proposed Decision.
- 06/09/15 The SJC considered the Committee's recommendation, and after amendment, adopted this Decision.

III. STATEMENT OF THE ISSUE

Should the Complaint be sustained, which alleges Presbytery erred on May 20, 2014, when it granted an exception to TE Hickey's stated difference as to Larger Catechism 177, with respect to limiting participation in the Lord's Supper to those "such as are of years and ability to examine themselves," as being more than semantic but neither striking at the vitals of religion nor hostile to our system of doctrine?

IV. JUDGMENT

The Complaint is neither Sustained nor Denied. The Commission cannot render judgment because the Record is insufficient regarding this minister's *particular expression* of his view. Therefore, the Commission sends the matter back to OVP to hear further from TE Hickey regarding his stated difference in order to create a more comprehensive Record.

V. REASONING

Our polity related to our system of doctrine depends on the diligence and integrity of our ministers to identify fundamental changes in their views and to make them known to the presbytery (*BCO* 21-5.2). Once such a disclosure is made, our *BCO* does not provide express procedural guidance in dealing with the matter. However, by analogy the court should be guided by *BCO* 21.4.e and 21.4.f.

When reviewing whether a man's stated difference is "out of accord with any fundamental of our system of doctrine" (i.e., because it is "hostile to the system [or] strikes at the vitals of religion"), the court will ordinarily need to consider more than the man's mere citation of the confessional section, and in many cases, even more than a summary statement of the difference. The court will often need also to consider the Biblical and Confessional exegesis, and the theological reasoning that is used to support the difference. It is that underlying exegesis and reasoning that will evidence how the man and the court is understanding the Constitution of the Church and thus should be an important part of the higher court's review of the lower court's decision. This could be warranted even with commonly expressed confessional differences, at least in part because there could be instances where two men disagree with the same confessional statement, but for different reasons. And while one man's reasons might be acceptable to the Presbytery, the other man's might not be. Consider two examples.

First, consider two men who take exception to the language of Larger Catechism 191 that states that the church is to be "countenanced and maintained by the civil magistrate" arguing that this statement goes beyond the God-given authority of the civil magistrate. One man, however, might defend his difference by reasoning that Scripture (e.g., Mt. 22:21) and the Confession (e.g., 23:3) point to a greater separation of civil and ecclesiastical authority than is apparently recognized by his reading of LC 191. The other might support his difference by arguing that because all authority on heaven and earth has now been given to Christ (Mt. 28:18) and because Christ has delegated his earthly authority to the church (Mt. 16:17-19), therefore the civil magistrate has no authority over the church (or individual Christians, for that matter), and indeed, by virtue of Mt. 16, the church should have authority over the civil magistrate. Whatever is right or wrong with either of these views, surely the second raises more serious questions about the nature of the

difference, not because of the mere statement of the difference, but because of the issues raised in the supporting argumentation.

Similarly, consider two men who take exception to the phrase “without body, parts, or passions” in WCF 2:1. One man states he objects to the phrase because he believes saying God does not have “passions” means God cannot love. A second man states he objects to the phrase because he believes God has “passions” that are contingent upon the actions of men. Again, whatever one thinks of these reasons, the second raises more serious questions than the first because of the underlying reasoning.

In the same manner, in this case the question before OVP and this Commission is not simply whether or not paedocommunion is an allowable exception, but whether this particular formulation of that confessional difference, as developed in TE Hickey’s reasoning, is allowable, or whether it “strikes at the vitals of religion” or is “hostile to the system of doctrine.” Given that, it is not sufficient to conclude that because “paedocommunion” has been deemed an allowable exception in other settings, TE Hickey’s expression of it must be so deemed here. The question that must be addressed is whether this particular formulation of that difference justifies the granting of an exception.

Apart from his statement of difference, certain statements in TE Hickey’s rationale require further explanation for the Record. It is not clear from the Record how Presbytery understood these statements, or whether Presbytery required or received such further explanation. Further, before the SJC renders a judgment, TE Hickey should have an opportunity to provide a fuller statement of his view than what is contained in the Record, should he desire to do so.

The Record was insufficient in the following respects:

1. The Record does not indicate: a) whether the following statements in the minister’s “rationale” mean he believes all covenant children have some degree of faith, or b) what he believes is the nature of “infant faith” with respect to the child’s capacity for spiritual discernment.

[Opening to Rationale] In taking this exception I wish to make clear that I am not denying the necessity of faith for salvation, or, for that matter, for participation in the

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Lord's Supper. I believe that, as the Westminster divines assert in their Directory of Worship, baptized covenant children are "Christians."

. . . Though John Calvin did not embrace the communing of small children at the Lord's Table, I believe that Calvin's concept of covenant children possessing "faith in the seed" is a helpful way to describe the burden of this large body of biblical material (Institutes, IV, xvi, 16-20).

[*Conclusion to Rationale*] In short, covenant children are reckoned in the Bible as believers in God and Christ, even if their faith is in the seed and not yet in the mature fruit, and as believers they have a right to participate in the Lord's Supper precisely so that their faith may be nourished unto maturity.

2. The Record does not indicate whether Presbytery judged this minister's confessional difference to only pertain to LC 177, or whether it logically results in a difference with other sections. For example, in this instance should the stated difference also require expressing differences to six other questions of the Larger Catechism, with respect to:
 - those who "worthily communicate" (LC 170, as well as *WCF* 29:7),
 - the requirements of preparation (171),
 - the appropriate resolution of doubts or lack of preparation (172),
 - concerning the "ignorant" professors (173),
 - concerning the duties of participants at the time of administration (174),
 - and the duties of participants after they have received the sacrament (175)?

3. If the stated difference does result in differences with other sections, what are the implications of that for the nature of the exception? Given that *Confession of Faith* 28:6 makes specific provision for the efficacy of baptism to be delayed in time from its administration, and that there is no like provision for the efficacy of the Lord's Supper, does not the stated difference also require an expression of corresponding differences to questions 171-175 of the Larger Catechism?

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4. The Record does not make clear whether the minister reached his position solely on his view that “covenant children were included in the sacred meals of the covenant community” simply on the basis of their being covenant children and his exegesis of 1 Corinthians 11:27-29, or whether there are additional theological reasons for his particular difference (e.g., the child’s personal discerning faith, as distinguished from the representational faith of the child’s parents).
5. If the minister’s reasons are based upon the exegesis of 1 Corinthians 11:27-29, then the Record does not indicate how the minister exegetes that passage or related Standards (possible examples being LC 170, 171, 172, 173, 174, and 177 (where it is the only text cited)). Further, how, for example, would the minister’s exegesis fit with “remembrance passages” like Luke 22:19 and 1 Corinthians 11:24-25?
6. The Record does not indicate how the stated difference affects the minister’s approval of the PCA’s form of government and discipline as being in conformity with the general rules of biblical polity (*BCO* 21-5.3), given the *BCO*’s frequently expressed distinction between communicant and non-communicant members. Further, with the stated difference, the Record does not indicate how the minister will comply with and enforce the above-mentioned distinctions of the *BCO*.

We conclude that the Record before us is insufficient to allow us to reach a determination on this case. Accordingly, we remand this case to the Presbytery to hear further from TE Hickey regarding his change in view. Such a remand has been an option (*BCO* 43-10) for higher courts for over a century. For example, in his comments on the same provision in the 1898 Book of Church Order, F. P. Ramsay observed that the higher court “may wait for fuller records before deciding the issue.”¹

Finally, if this matter comes back to the SJC, the Record shall include the 133-page Record from Case 2014-01, and any additional material considered by Presbytery when it hears the matter, including any supplemental or clarifying material submitted by TE Hickey.

¹ *Exposition of the Book of Church Order*, 1898, pp. 255-256, on Chapter XIII, Sec. 4, para. 4. Ramsay, an expert in ecclesiastical law, was President of Fredericksburg College, Virginia in 1898. <http://pcahistory.org/bco/rod/43/10.html> & <https://archive.org/details/expositionofform00rams>

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A committee of five SJC members initially drafted this Decision. After amendment, it was adopted by the SJC on June 9, 2015 by a vote of 15-0-1. Vote on Decision in Case 2014-01. (^R denotes Ruling Elder.)

Barker, <i>Absent</i>	Duncan ^R , <i>Concur</i>	Neikirk ^R , <i>Concur</i>
Bise ^R , <i>Concur</i>	Greco, <i>Concur</i>	Nusbaum ^R , <i>Concur</i>
Burnett ^R , <i>Absent</i>	Gunn, <i>Concur</i>	Pickering ^R , <i>Concur</i>
Cannata, <i>Absent</i>	Haigler ^R , <i>Absent</i>	Robertson, <i>NotQual*</i>
Carrell ^R , <i>Concur</i>	Kooistra, <i>Absent</i>	Terrell ^R , <i>Absent</i>
Chapell, <i>Concur</i>	Lyle, <i>Absent</i>	White ^R , <i>Concur</i>
Coffin, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson ^R , <i>Concur</i>
Donahoe ^R , <i>Concur</i>	Meyerhoff, <i>Concur</i>	

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JULY 22, 2015

Concurring Opinion of RE Howard Donahoe

As I understand it, the Complainants alleged two Presbytery errors. First, they alleged Presbytery erred by allowing *anyone* to disagree with the final clause of Larger Catechism 177. Here's the assertion from their Brief:

The specific phrase that is the object of the difference: “. . . and that only to such as are of years and ability to examine themselves” is such a significant part of the fundamentals of the system of doctrine that to grant an exception to it tears at the very fabric of the system so as to disfigure and distort the whole system.²

Second, they alleged Presbytery erred by granting the exception in this particular instance given the minister's “specific statements” and his “expanded reasoning.”³

² Complainant's Preliminary Brief, page 5 lines 37-40

³ Complainant's Preliminary Brief, page 2 line 17 and page 5 line 14.

I concurred with the SJC that the Record was insufficient as it pertained to the second part regarding the minister's *particular expression* of his view.⁴ My concern was not Presbytery's judgment granting the exception for the difference per se, but whether Presbytery exercised appropriate or sufficient judgment on some things in the minister's rationale, or at least on how he expressed them (i.e., his *particular expression*). And a fuller Record could address that.

There's a distinction between a man's confessional "difference" (i.e., the specific part of the Standards with which he disagrees or has reservations - *BCO* 21.4.f.)⁵ and the rationale he might provide to support or explain his view ("in their own words" - *RAO* 16.3.e.5). As the SJC shows with its illustrations on LC 191 and *WCF* 2:1, a Presbytery might judge a difference to be permissible in and of itself, but might have different concerns arising from a man's rationale for holding the difference.

On the other hand, there are certain parts of the Standards on which disagreements have already been judged, or probably would be judged, as unacceptable *regardless* of a man's rationale. Below are some examples.

- cessation of certain kinds of revelation (*WCF* 1:1, 6)⁶
- divine inspiration of Scripture (*WCF* 1:8)
- particular redemption (*WCF* 3:4-7)⁷
- infant baptism (*WCF* 28:4)⁸
- existence of hell (*WCF* 32:1)
- marriage only between a man and a woman (*WCF* 24:1)

The examining court, and the appellate Church courts, would likely judge any disagreement with one of those fundamental doctrines as disqualifying, regardless of a man's particular expression of his view.

Unlike the six examples above, a disagreement with the final clause of LC 177 should not automatically be judged as disqualifying - and no GA or SJC

⁴ Italics are original in the SJC Judgment.

⁵ For use of the noun "difference" in the Record of the Case, see p. 2 fifth paragraph; p. 59 item 13h; p. 62 second paragraph, and p. 68 item 2.

⁶ *Landrum v. MS Valley*, Case 95-11, *M26GA* pp. 222-227, http://pcahistory.org/ga/26th_pcaga_1998.pdf
Bogue v. Ascension, *M8GA* pp. 50, 63, 92, http://pcahistory.org/ga/8th_pcaga_1980.pdf

Gentry v. Calvary, Case 86-01, *M14GA* p. 229, http://pcahistory.org/ga/14th_pcaga_1986.pdf

Serio v. Palmetto, Case 88-10, *M16GA* pp. 191-198, http://pcahistory.org/ga/16th_pcaga_1988.pdf

⁷ *Bowen v. E. Carolina*, Case 1990-8, *M19GA*, pp. 537-564, http://pcahistory.org/ga/19th_pcaga_1991.pdf

⁸ *Ibid.*

has ever judged it to be so.⁹ I concurred with the SJC's Judgment in this Case largely because the SJC did *not* judge it to be so. If the SJC had agreed with the Complainant's key assertion in the excerpt from their Brief above, it could have sustained the Complaint rather than remanding for a more comprehensive Record.

/s/ RE Howard Donahoe

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Concurring Opinion of TE Grover Gunn, joined by RE John Bise

The change in views at the center of this case involves paedocommunion, a term that can cover a broad range of possible opinions on the admitting of baptized covenant children to the Lord's Supper. The term could possibly refer merely to a rejection of adult only communion and an openness to the possibility that a baptized covenant child may, at an age younger than usual or traditional, have a profession of faith that provides credible evidence that he has the maturity of faith needed for partaking of the Lord's Supper meaningfully and responsibly. I do not regard this degree of paedocommunion as an exception to our Standards, provided that one is not significantly and artificially lowering our Standards' measures of readiness to partake. At the opposite extreme of possible meanings is the view that every covenant infant should partake of the Lord's Supper as soon as possible after his baptism through someone's inserting into his mouth at a communion service a small crumb of communion bread that has absorbed a small drop of communion wine. This view totally eliminates the distinction between

⁹ Most recently, by a 69-31% margin, the June 2015 Chattanooga GA adopted a recommendation from a minority of the Committee on Review of Presbytery Records and *declined* to cite Susquehanna Valley Presbytery for its judgment allowing such a difference with LC 177. The RPR Committee had, by a vote of 29-22, recommended the GA cite Presbytery simply for granting the exception, without RPR noting any specific concern about the man's rationale or particular expression of his view. But instead, the RPR Minority's recommendation *against* any citing was adopted. See also the June 2013 action of the Greenville GA judging Pacific NW Presbytery's response "Satisfactory." *M41GA*, pp. 464-465 for GA's action and pp. 500-514 for PNW's Response. http://pcahistory.org/ga/41st_pcaga_2013.pdf

communing and non-communing baptized members in the visible church. I regard this degree of paedocommunion as an exception to our Standards that is out of accord with the fundamentals of our system of doctrine. Because the term “paedocommunion” has such a wide range of possible meanings, I agree with the opinion in the SJC decision that a presbytery should examine in thorough detail on a case by case basis the new views of any TE who reports a change in views that involves paedocommunion. I also agree that the presbytery should also record in its minutes a detailed explanation of its evaluation of such changed views.

I commend the TE at the center of this case for his honesty in reporting to his Presbytery with transparent candor the changes in his views since he took his ordination vows. He has specified where his new view fits within the broad spectrum described above. He believes that all covenant children are believers who should be admitted to the Lord's Table as soon after baptism as they can ingest solid food. This view limits baptized, non-communing members in the visible church to baptized covenant children who are not yet able to ingest solid food. I believe that he has expressed his new view in the current record of the case with sufficient clarity and detail to allow the SJC to render an informed judgment on the compatibility of his new view with our Standards. In my opinion, his new view as expressed in the current record is out of accord with the fundamentals of our system of doctrine. Nevertheless I am willing to concur with the decision of the majority of the SJC to remand the case back to the Presbytery without denying or sustaining the complaint. The degree of paedocommunion in this case is far enough along the spectrum to have serious theological implications that contradict fundamentals of our system of doctrine beyond the explicit contradiction which I profess to see as noted above. This possibility is largely not addressed in the current record of this case. As suggested in the decision, there are questions that still need to be asked and areas that still need to be investigated. My hope is that remanding this case back to the Presbytery will give the Presbytery an opportunity to supplement the current record so that it becomes more complete and provides greater clarity. I would, of course, re-evaluate my judgment in response to any substantial clarifications and modifications in a new record.

/s/ TE Grover Gunn, joined by RE John Bise

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JULY 15, 2015

Concurring Opinion RE Jack Wilson, joined by RE Howie Donahoe and RE John White

I concur in the Judgment and Reasoning of the Commission. I write separately to note that not every difference with our Standards warrants the formation of a record with the level of analysis outlined in this decision. In my view, not every difference demands an evaluation of the implications of that difference with respect to other parts of our Standards. It is, in the first place, the duty of an officer or candidate to make his differences known in his own words with specificity and clarity. It is then the duty and purview of the Presbytery to evaluate those differences by the benchmarks outlined in *BCO* 21-4(f). Our decision should not be misconstrued as a framework for evaluating all differences with our Standards; or as a methodology to be employed in every instance of a change in views; or as an infringement upon the discretion of our presbyteries to determine generally the manner of inquiry or the means employed to evaluate the views of candidates and officers subject to their jurisdiction.

/s/ RE Jack Wilson, joined by RE Howie Donahoe and RE John White

CASE 2015-01

**D. G. SANFACON
VS.
PHILADELPHIA PRESBYTERY**

**DECISION ON COMPLAINT
April 29, 2015**

The Standing Judicial Commission (SJC) finds that the above-named Complaint is Administratively Out of Order and cannot be put in order (*OMSJC* 9.1.a.). This ruling is based on the fact that the original Complaint was not timely filed, and therefore this ruling voids every action taken on the Complaint(s) by the lower courts.