Bankson	*Concur*	Eggert [R]	*Concur*	Neikirk [R]	*Concur*
Bise [R]	*Concur*	Ellis	*Concur*	Pickering [R]	*Concur*
Carrell [R]	*Concur*	Garner	*Concur*	Ross	*Concur*
Coffin	*Concur*	Greco	*Concur*	Sartorius	*Concur*
Donahoe [R]	*Concur*	Kooistra	*Concur*	Terrell [R]	*Concur*
Dowling [R]	*Concur*	Lee	*Concur*	Waters	*Concur*
M. Duncan [R]	*Concur*	Lucas	*Absent*	White [R]	*Concur*
S. Duncan [R]	*Concur*	McGowan	*Concur*	Wilson [R]	*Concur*

CASE No. 2022-06

TE RYAN BIESE et al

v.

TENNESSEE VALLEY PRESBYTERY

October 20, 2022

The Complainants withdrew this Complaint on July 18, 2022 and the SJC noted such on October 20, 2022.

CASE NO. 2022-07

MR. PAUL HARRELL et al.

v.

COVENANT PRESBYTERY

DECISION ON APPEAL

March 2, 2023

SUMMARY OF CASE

The Accused are Paul Harrell, Wesley Hurston, Stephen Leininger, Zach Lott, Jason Satterfield, Lance Shackelford, and Tyrus Teague, seven members of Christ Redeemer PCA in Jonesboro Arkansas, a 38-member mission church, who for various reasons did not want TE Jeff Wreyford, the organizing minister who had served the mission for about four years, to continue as its permanent pastor. They confronted TE Wreyford and the temporary Session with their opinion at the cusp of particularization. The Session, persuaded of TE Wreyford's suitability to the work, made it known to the Accused that it fully supported his election at particularization. After meetings and other communications with the seven Accused, the Session, believing that their opposition was an affront to the Session's authority over the mission church, an encroachment on the authority of the Presbytery, and an implicit slander on the character of TE Wreyford, conducted a trial of the Accused, and censured them with indefinite suspension from the Lord's Supper.

We sustain the appeal and reverse the judgments of the lower courts.

I. SUMMARY OF THE FACTS

2015 In 2015 Covenant Presbytery established Christ Redeemer, a mission church in Jonesboro, Arkansas and appointed a temporary Session to govern it ("the Session"). TE Jeff Wreyford, the organizing minister approved by Presbytery led the congregation from its inception, and by mid-2020 the mission church, with its 38 members, was readying to become a particular congregation, anticipating the Session to call for an election of its officers as prescribed in our *Book of Church Order*.

08/03/20 TE Wreyford and a church member met with Stephen Leininger and Wesley Hurston, two representatives of the Accused, who, "speaking for the group," communicated a set of concerns shared by the group. The meeting was recorded, and a transcript is a part of the Record of the case.

08/30/20 The Accused met with the entire Session. During the meeting, Stephen Leininger, as a representative of the Accused, read a statement recounting that the seven were "unanimous in their opinion that [TE Wreyford] is not the one to be pastor of [the

mission church]" and recommended that he "remove his name from consideration." Like the August 3 meeting, this meeting was also recorded, and a transcript was made a part of the Record of the case.

09/09/20 The Session decided on a course of action, approving a form of letter to the Accused, which apparently was sent the next day (the "September 10 Letter") The Session characterized its letter as a "Letter of Review & Admonition." The Session explained it had asked TE Wreyford to respond to the concerns raised, and having considered his response, the Session had "voted … in the affirmative for their ongoing support" of TE Wreyford. The letter alleged that the Accused had violated the ninth commandment and directed the Accused to "prayerfully reflect and consider how you have sinned against Christ, TE Wreyford, or others inside or outside His church by what you have done or left undone," calling them to repent, and insisting that they appear before the Session to personally reaffirm their commitment to the fourth and fifth vows of church membership. If they failed to do so, they would face the institution of formal process against them. If the Accused provided no written response by a prescribed date, the letter continued, "we will understand this to mean that you are no longer willing to submit to your membership vows."

09/14/20 The Accused responded in writing, denying that they had sinned in expressing to the Session their concerns regarding TE Wreyford.

09/16/20 The Session replied in writing, saying that the Accused's correspondence "fail[ed] to address adequately the citation we gave you as [members] of Christ Redeemer ..." The Session required the Accused to "respond in writing" or the Session "would have no other option but to begin formal church disciplinary action" against them.

09/18/20 The Accused filed a five-page complaint against the September 9 and September 16 actions of the Session.

09/22/20 Four days later, the Session summarily denied the complaint. The Accused took their complaint to Presbytery, which assigned it to a commission.

09/30/20 The Session wrote to the Accused that it would "defer any further actions on our part at this time," stopping further judicial process or other action while the complaint was pending.

03/30/21 Presbytery's commission to review the complaint notified the parties of its proposed judgment to sustain the complaint in part.

04/13/21 Having received the proposed judgment, the Accused emailed a "proposed way forward" to the Session. The Accused wanted the Session to "encourage Jeff [Wreyford] to remove his name as a candidate for pastor" and "resign his position" before particularization so that he might "seek a call in another church or ministry."

04/21/21 The Session voted to open a *BCO* 31-2 investigation of the Accused.

05/04/21 The Session initiated formal process against the Accused. The Session approved a form of Indictment and citation against each of the seven Accused.

05/05/21 The Indictments were issued. They were identical (but separate) and were as follows:

> In the name of the Presbyterian Church in America the Session of Christ Redeemer PCA charges Mr. [LAST NAME] with violating the peace and purity of the church contrary to your membership vow: "Do you submit yourself to the government and discipline of the church and promise to study its purity and peace?" (BCO 57-5).
>
> That in days leading up to and following August 3, 2020, Mr. [LAST NAME] along with the other named defendants are charged with specifically:

First, failing to keep the fifth commandment to honor those placed in authority over you at Christ Redeemer by showing contempt of, rebellion against their persons in their lawful councils, commands, corrections, and attempting to bring shame and dishonor to them, their government, and the joyful performance of their duties. These offenses violate scriptures such as Exodus 20:12; Hebrews 13:17; 1 Peter 5:5; 1 Timothy 5:17-19, and also violate the Constitution in places such as Westminster Larger Catechism 124, 125, 128.

Second, failing to keep the ninth commandment in bearing false witness against a neighbor, by failing to preserve and promote truth between man and man, the good name of a neighbor, the ready reception of a good report, and the unwillingness to admit an evil report concerning them. These offenses violate scriptures such as Exodus 20:16; Ephesians 4:29; Titus 3:2; 1 Thessalonians 5:12-13; Proverbs 16:28; Philippians 4:8; 2 Timothy 2:16; James 3:13-18, and also violate the Constitution in places such as Westminster Larger Catechism 144& 145; These offenses being against the peace, unity and purity of the Church, and the honor and majesty of the Lord Jesus Christ, as the King and Head thereof.

Witness and/or Documents:

- Session members: (TE Wreyford, TE Mike Malone, TE Norton, RE David Caldwell, RE Bo Mitchum, and RE Matt Olson), TE Overcast, TE Braasch, TE Clint Wilke, Josh Morrison, Shady Francis, and Jon Morgan.
- Official ROC 2020-1.PDF; Email from Paul Harrell to the CR Session, Dated April 13, 2021; Minutes pertaining to the Session's investigation and process.

The attachments were about 130 pages. The Accused were cited to appear before the Session on May 25, 2021.

05/18/21 The parties received notice that Presbytery had approved its "Commission's decision to partially sustain the complaint," that is "sustained to the extent that the two letters [September 10 and 16] administered restricted discipline without properly initiating and continuing judicial process as required by the BCO."

05/19/21 Each of the Accused provided the Session identical written responses to the Indictments objecting that they had been "improperly drawn" due to their lack of specificity, making it impossible for them to enter a plea. The response also objected to all the members of the Session sitting as judges in the case since the Indictments listed the entire Session as witnesses. The Accused proposed that the Session drop the charges against them and personally meet to see if they could mend their relationship and find a way forward.

05/20/21 The Session concluded that its Indictments had been properly drawn and sent emails to each of the Accused affirming the Accused's obligation to meet with the Session on May 25, 2021.

05/21/21 The Accused wrote a letter to the Session reiterating their objection to the lack of specificity in the Indictments.

05/25/21 This was the return date for the first citation. The Session represents that it was present, but apparently none of the Accused appeared.[20]

05/26/21 The Session wrote identical letters to all the Accused expressing how "grieved" it was that the Accused had failed to appear at the meeting the night before and cited them to appear a second time on June 3, 2021.

05/28/21 The Accused responded and reiterated their prior objection to the lack of specificity in the Indictments.

[20] The Record contains no minutes evidencing that a May 25, 2021 meeting occurred.

05/29/21 The Session replied that the specificity they asked for was already in the Indictments.

06/01/21 The Accused provided another memorandum to the Session again reiterating their prior objection to the lack of specificity in the Indictments.

06/03/21 The Accused entered written pleas of not guilty to the Indictments "under protest," raising again their objection that the Indictments were improper and lacked sufficient specificity. The Accused failed to physically appear at the second citation meeting, but the Session received their written pleas "under protest," and set the trial for July 12, 2021, in Memphis.

06/04/21 The Session notified the Accused of the date and location of the trial. They also denied the Accused's' requests to disqualify TE Wreyford and Session member TE Norton as judges in the trial. The notice restated the Session's position that the original Indictments were in conformity to the Constitution.

06/07/21 The Accused sent a memorandum to the Session challenging again the right of TE Wreyford and Session member TE Norton to sit as judges in the case. The Accused also requested that the trial be held in Arkansas rather than Tennessee since "the charges are alleged to have taken place" in Arkansas where the mission church was located. The Accused repeated their request for further specification in the Indictments so that they would be able to prepare their defense.

06/08/21 The Session denied the request to disqualify TE Wreyford and TE Norton; denied the Accused's request to move the trial from Tennessee to Arkansas; and reiterated the sufficiency of the Indictments and pointed them to the documents already mentioned in the Indictments "for further specifics."

06/11/21 The Accused sent another memorandum to the Session asking that the Session refer the trial to Presbytery per *BCO* 41, particularly in light of the fact that many of the Session members were listed as witnesses in the trial.

06/14/21 The Session denied the June 11 request.

06/25/21 The Accused sent another memorandum to the Session requesting that the date of the trial be changed.

06/29/21 The Session denied the June 25 request.

07/05/21 Wesley Hurston, one of the Accused who was hindered from attending the July 12 trial, wrote to the Session that he chose to be represented by Stephen Leininger (another one of the Accused) at the trial.

07/12/21 The trial was conducted in Memphis. All the Accused appeared; Wesley Hurston being represented through Mr. Leininger. The minutes show that after the Accused were dismissed, the Session entered executive session that led to unanimous adoption of a motion to "find the defendants guilty on both counts."

07/15/21 The Session met again and decided to impose the censure of indefinite suspension from the Lord's Table "until satisfactory evidence is given of repentance per *BCO* 36-5."

07/21/21 The Accused sent individual emails to the Session on July 21, 2021, consenting to a written judgment. The Accused received the judgment the same day.

07/29/21 The Accused filed a timely appeal of the judgment.

11/09/21 The Session sent an email to the Presbytery commission reviewing the appeal and explaining the provenance of a document called "Addendum to the Indictment date [sic] 5 May 2021." The Addendum added substantial detail describing the "times, places and circumstances" of the alleged offenses, detail that inexplicably was not contained in the Indictments served on the Accused. The Record does not explain why these specifications were not originally included in the Indictments, but only that the Session, without further elaboration, included this document in the Record because it understood the same to be the "response of the lower court" as required by *BCO* 42-5.

05/17/22 Covenant Presbytery "denied in whole" the Appeal by adopting its judicial commission's proposed judgment.

05/23/22 The Accused filed a timely appeal to the General Assembly.

10/31/22 The Appeal was heard by TE Paul Bankson (Chairman); RE Jim Eggert (Secretary); TE Carl Ellis; TE Guy Waters (alternate); and RE Dan Carrell (alternate). The Appellants presented their appeal represented by TE Dominic Aquila. Presbytery was represented by TE Robert Browning, TE Josh Sanford, and TE Tim Reed.

II. STATEMENT OF THE ISSUES

The Appellants identified eight specifications of error which are listed as issues below:

1. Did the Presbytery err in concluding that the Indictments adequately specified the offenses against the Accused in a manner consistent with the *Book of Church Order* and with due process as otherwise required by our Constitution?
2. Did the Presbytery err in finding that the Session, the court of original jurisdiction, properly declined to provide more particulars on the specifications of the Indictments before the trial, even though asked to do so?
3. Did the Presbytery err in sustaining the guilty verdicts against the Accused?
4. Did the Presbytery err in concluding that the members of Session were not disqualified from judging because they were all listed as witnesses?
5. Did the Presbytery err in finding that the TE Jeff Wreyford was not disqualified from sitting in trial of the case?
6. Did the Presbytery err in finding that TE Ed Norton (a member of the provisional Session) was not disqualified to sit in trial of the case?

7. Did the Presbytery err in finding that Session did not refuse a reasonable indulgence by holding the trial of the case in Memphis, Tennessee?

8. Did the Presbytery err in finding that Session did not refuse a reasonable indulgence when it declined the Accused's request to refer the trial to Presbytery?

III. JUDGMENT

1. Yes.
2. Yes.
3. Yes.
4. No.
5. No.
6. No.
7. No.
8. No.

The guilty verdicts are reversed. This Decision addresses Specifications 1 and 2 in Part IV A; Specification 3 in Part IV B; and Specifications 4 through 8 in Part IV C.

IV. REASONING AND OPINION

A. The Indictments Failed to Sufficiently Specify the Charges (Specifications 1 & 2).

We agree that the Indictments were fundamentally and fatally flawed in that they lacked sufficient specificity.

Because an "offense" arises only out of "anything in the doctrines or practice of a Church member," an indictment must describe *in what manner* or *by what means* the member in question engaged in the sin charged. (*BCO 29-1*). Therefore, in order to state an "offense" in formal disciplinary proceedings an indictment must reduce to writing the particulars of an accused's offending

conduct with sufficient specificity: "In drawing the indictment, the times, places and circumstances should, if possible, be particularly stated, that the accused may have an opportunity to make his defense." (*BCO* 32-5).

Specificity in an indictment is the rule, not the exception, and is mandatory, not optional. *BCO* 32-5 states that the "times, places and circumstances *should*" (emphasis added) be set out in the indictment "*if possible*…" (emphasis added). The auxiliary verb "should" in *BCO* 32-5 imposes an *obligation* on the court and prosecutor to include the prescribed information in the indictment to the extent it is reasonably available to the court. The qualification "if possible" serves as an exception to the *general rule of specificity.* It is not much of an exception: "possible" means being within the limits of ability, capacity, or realization. Therefore, if the prosecutor has the ability or capacity under the circumstances to include more reasonable specificity, he is obliged to do so, at least to the extent that fairness would require. *BCO* 32-5 thus prescribes a very broad duty to include times, places, and circumstances. The prosecutor transgresses *BCO* 32-5 if such details of time, place or circumstances are known or can be reasonably ascertained by him, but are not included in the indictment, even if the specification of such matters is inconvenient or tedious. The failure to include sufficient specificity is unfair to an accused and violates basic principles of due process as required by our Standards.

The Indictments in this case are framed in three sections: (1) the Prologue to the Indictments, leading up to and including the phrase, "along with the other named defendants …." (2) the Allegations, beginning with the words, "are charged with specifically …." and (3) the Postscript, denominated as "Witnesses and/or Documents." The Indictments were issued and served separately, one to each of the seven Accused, although they were cited to appear jointly at the same meeting and were tried together in a single proceeding.

The three sections of the Indictments, whether considered individually or combined, fail to meet the standard of *BCO* 32-5. *BCO 32-5* requires that indictments should if possible specify "the times, places and circumstances" regarding the offenses. The sentence, "That in days leading up to and following August 3, 2020," taken in itself, is wholly inadequate to meet this standard. This phrasing of the Indictment failed to contain the specification of

a "time" required by *BCO* 32-5, and effectively afforded no specification of "time" at all.

Beyond the Prologue, the Allegations are flawed because they are overbroad, invoking, without further specification, violations of the fifth and ninth commandments, repeating wide phrases borrowed from the *Larger Catechism* without specification of any "times, places or circumstances."

Consequently, the validity of the Indictments hangs entirely on whether the insufficiencies described above were remedied by the Postscript. Was the relationship between the Prologue and the Allegations in light of the Postscript sufficient to have put the Accused on notice of the charges against them so as to satisfy basic due process as required by our Constitution? They did not.

In summary, the failure of the Indictments to include the specificity so obviously available is unjustifiable under *BCO* 32-5, and we find that the broad Indictments were abused to the prejudice of the Accused who were not adequately informed of the charges against them.

The Indictments fail in three further respects.

First, the Accused were put in the unfair position of being required to sift through the approximately 130 pages of material to ascertain exactly how the Session intended to show at trial that they had violated the fifth and ninth commandments. Merely attaching numerous pages of lengthy transcripts of conversations between the Accused and others fails to afford sufficient notice to the Accused. The transcripts did not set out that degree of detail necessary to inform the Accused to adequately prepare for their defense in advance of the trial. After carefully reading these transcripts together with the Allegations, this court is not able to discern exactly what words or actions of the Accused were put at issue by the Indictments, and certainly the Accused were in no better position than this court to resolve that question and thus understand for what actions they would stand on trial.

Second, the Indictments were *identical* for all seven Accused, identifying no unique misconduct of any one of the Accused as distinct from any other. *BCO* 32-5 requires that seven identical indictments prosecuted, as here, in a unified proceeding be interpreted to describe identical offenses as well as identical "times, places and circumstances." If any of the conduct charged against one

of the Accused is distinguishable or unique as against any of the others, such an Accused is entitled to know that ahead of time so as to prepare his defense as distinguishable from his co-defendants. This is important because the Record shows that not all the Accused said the same things at the two August 2020 meetings. In fact, five of the Accused were not even *present* at the August 3 meeting, and one of the Accused, although present, did not even speak during the August 30 meeting. It cannot be assumed that each of the seven Accused, for example, defamed the minister to others; to do that, incriminating statements of each of the Accused would have to be proven. Only the individual who made the statement could be held accountable under principles of fairness; a statement, if any, of one cannot be imputed to the others.

The Record, however, repeatedly demonstrates that the Session effectively imputed the conduct of one or more of the Accused to others. For example:

- In Clint Wilke's testimony, the witness said he could "not recall what every single person said or did" at the August 30 meeting, although he remembered "the man in the blue shirt" being asked to "sit down by your group." The witness never identifies who "the man in the blue shirt" was, so this testimony, even assuming that "asking a man to sit down" is sufficient to convict a man of an offense, is insufficient evidence of an offense against the remaining six.
- In Barr Overcast's testimony, the witness testified that the August 30 meeting was "contentious" in tone. There were matters raised that were "heartfelt" and "personal," he explained but which were "not always communicated in a … helpful way," and there were times when "tempers flared." The Prosecutor just leaves that testimony there without having the witness tell who failed to communicate in a helpful way, or whose temper flared. Was it one of the Accused? Two? All of them?
- Barr Overcast later added that Jason Satterfield's temper "flared." But how could the other six be held accountable for Jason's flared temper?
- Barr Overcast, when asked if the seven "spoke as a whole, "denied it, other than the initial statement at the beginning of the August 30 meeting that TE Wreyford should not continue as pastor. In fact, the witness opined that the Accused's not speaking as a whole "has been one of the issues in this whole process."

- Austin Braasch's testimony touched on only four of the Accused. If he was familiar with activities of only four, how is his testimony relevant to the remaining three, and how can his testimony inform the *identical Indictments*? It cannot.
- RE David Caldwell testified he was the acting moderator of the August 30 meeting, which, he says, began with an attempt to read the three "concerns" identified at the August 3 meeting, but was "quickly interrupted by Stephen" who said, "We don't wanna do that. We want to read the prepared statement." Even assuming for the sake of argument that Stephen's interruption was an offense, Stephen's conduct cannot be held against the remaining six.

This court has reviewed the Record to determine what can be fairly regarded as the Accused's manifestly joint action and has concluded that such action was limited to their: (1) communicating with one another about their noted three "concerns" and (2) subsequently communicating those "concerns" to TE Wreyford and then to the Session. But these actions were not "offenses" as we explain in Part B below.

Third, the evidence adduced at trial put at issue conduct of the Accused that occurred only *after* May 5, 2021, the date the Indictments were served on the Accused. This was clear error. For example, in his closing argument the Prosecutor alluded to:

- a May 19, 2021, email response to the Session's letter and indictment.
- letters of September 10, 2021, September 16, 2021, and September 22, 2021, from the Session to the Accused.
- the Accused's failure to appear at their first citation, including the failure to provide a courtesy notice to the Session that they would not attend the same.

A court may not consider matters outside an indictment at a trial on that indictment. Conduct and events that occurred after May 5, 2021, the date of the Indictments here, were outside of the scope of the proceedings fairly at issue. Any finding of guilt or censure related to or arising out of such alleged conduct or events is void for lack of the due process our Constitution requires.

B. The Session Erred in Finding the Accused Guilty (Specification 3).

Presbytery erred in this case by applying the wrong standard of review, and the Session erred in this case in finding the Accused guilty of the transgressions alleged against them. We will take each of these up in turn.

First, Presbytery erred in this case by applying the wrong standard of review. Presbytery assumed that the applicable standard of review in an appeal is based on *BCO* 40-5. Citing language from that provision, Presbytery reasoned: "In considering this Appeal, the burden of proof lies with the Appellants to show 'any important delinquency or grossly unconstitutional proceeding[s]' of the court alleged to be in error (in this case the Session)." This was incorrect; *BCO* chapter 40 governs cases of "General Review and Control," not appeals. The standard of review in appeals is governed by Chapter 43 and Chapter 39 of the *Book of Church Order,* not Chapter 40, and does not require a finding of an "important delinquency or grossly unconstitutional proceeding."

Presbytery's error, which assumed that reversal would require a showing that the Session's judgment was "grossly unconstitutional" or demonstrated an "important delinquency" inevitably and materially influenced Presbytery's decision, leading it to afford undue deference to the court of original jurisdiction regarding matters both of fact and of Constitutional interpretation, a deference inconsistent with the principles of review articulated in *BCO* 39-3.

Second, for the reasons set out below, the evidence in this case failed to show transgressions of the fifth or ninth commandments, and the assignment of guilt based on the facts presented was either clear error or a misapplication of the Constitution.

1. There Were No Transgressions of the Fifth Commandment.

As specified in the Indictments, the fifth commandment required that the Accused give "honor" to those "placed in authority" over them at Christ Redeemer, and prohibited "showing contempt of, rebellion against their persons in their lawful councils, commands, corrections, and attempting to bring shame and dishonor to them, their government, and the joyful performance of their duties." Two observations are in order.

First, the Session had neither the responsibility nor authority to determine or direct who, if anyone, would stand for election as the pastor of the mission church upon its organization as a particular church.

In the case of a mission church, the right of selecting a minister upon that church's organization as a particular church is, in principle, no different than the right prescribed for an established church, except that the appointment of a pulpit committee is entirely optional for the mission congregation (*BCO* 5-9*f*.). Consistent with the right of congregational selection of officers, the *BCO* fixes no principle or presumption that the congregation must extend a call to the organizing minister as pastor. Furthermore, the temporary government of the mission church is, contrary to the claims of the Session in this case, under no Constitutional "responsibility" to "offer" the organizing pastor, as claimed by the Prosecutor, nor is such the Session's "job" The calling of a pastor is solely an act and prerogative of the congregation, not an "offer" or act of a Session.

A church member is therefore guilty of no dishonor, contempt, or rebellion against a court to whose authority he is subject merely by virtue of that church member's disagreement with that court concerning a subject about which that court has no authority over the church member.

But the Prosecutor in this case repeatedly asserted (and the Session's verdict presumes) Sessional authority over the selection and suitability of the organizing minister as pastor. Examples of the Session's persuasion abound in the Record:

- The Addendum says, "We charge that [the Accused's] unwillingness to accept the ruling of the session regarding TE Wreyford's call as pastor … is a violation of the fifth commandment."
- In closing arguments, the Prosecutor said, "The session has continued to voice its support of [TE Wreyford] and believes without hesitation that he should be offered to the congregation as a candidate to serve as its pastor. That's our job. That's our responsibility as a provisional session."
- The Prosecutor at closing argument: "[T]he persistent insistence that [TE Wreyford's] name be removed as a candidate to be pastor of this church reflects a fundamental unwillingness to

> fulfill membership vow number five, and is disruptive of the peace of the church."

These repeated expressions of presumed Sessional responsibility and authority concerning the continuation, eligibility, suitability, and election of TE Wreyford upon the church's organization as a particular church were erroneous. The Session was not vested with any of the authority the above statements took for granted. Thus, when the Accused opposed the Session's opinions and overtures regarding these matters, they were not trespassing the fifth commandment.

Second, the Accused did not usurp or attempt to usurp any function of the Presbytery.

The evidence introduced at trial shows unequivocally that the Accused only expressed their "concerns" that TE Wreyford was called to serve their *particular congregation* as minister, not that he was disqualified from the ministry in general. Their concern, as stated, was that TE Wreyford "might not be called to the role of teaching elder within our church." That did *not* mean that TE Wreyford lacked a call to serve as a teaching elder anywhere. In fact, the Accused's' April 13, 2021, email, which the Session advanced as a ground for the guilt of the Accused, asked the Session to consider the possibility that the TE Wreyford "seek a call in another church or ministry," a statement contradicting the Session's findings that the Accused had usurped Presbytery's powers. It was clear error for the Session to conclude from the evidence presented that the Accused had assumed unto themselves any role belonging to Presbytery. There is no Record evidence that the Accused ever represented themselves to the Session or others as if they had legitimate authority to determine TE Wreyford's qualification to pastoral ministry in general or revoke his ministerial credentials.

2. There Were No Transgressions of the Ninth Commandment.

The Indictments specifically promised that the prosecutor would introduce evidence that the Accused bore false witness against their neighbor by (1) failing to preserve and promote truth between man and man, (2) failing to preserve and promote the good name of a neighbor, (3) failing to readily receive a good report, and (4) failing to be unwilling to admit an evil report concerning a neighbor. We will take up each of these in turn.

First, was there evidence that the Accused "failed to preserve and promote truth between man and man?" Certainly not if the question is whether the Accused misrepresented their opinions about whether TE Wreyford should serve as pastor.

If, on the other hand, we conceive of the question as being whether the Accused's "concerns" about TE Wreyford were composed of false ideas, it is impossible to judge such a question without first adjudicating the truth of those ideas. In such a case, the burden was on the prosecutor at trial to establish by evidence that the Accused's' "concerns" or ideas about TE Wreyford were in fact false. The representatives who met with TE Wreyford on August 3 defined their "concerns" as (1) that he had "a controlling and unyielding nature," (2) that they questioned his "philosophy of ministry," and (3) that they expressed their concern that he "might not be called to the role of teaching elder in our church."

TE Wreyford himself confessed that he "can be unyielding, dogmatic, and even 'walk over' people to complete a task or reach an objective," and this was something he had "struggled with." Therefore, the evidence does not support that the Accused failed to preserve and promote truth between man and man in this regard.

The Accused's' remaining "concerns," namely his philosophy of ministry and whether he was called to be their pastor, were not capable of adjudication by the Session or any other court since they describe matters of opinion that did nothing more than give voice to the reasons why the Accused found TE Wreyford to be unsuitable to become their pastor on particularization.

Furthermore, the minister, responding to the Accused's' "concern" about his philosophy of ministry, stated that after his first year of the planting work, he "began to see our great need to look outward" from the core group, and even though he "tried his best to bring our folks along," he often "met resistance," explaining that a "good" philosophy of ministry "challenges the existing flock" and, as a result, becomes "one of the primary reasons why faithful followers of Christ part company, but that doesn't mean it is wrong or sinful." Because TE Wreyford himself maintained that differences over philosophy of ministry justified parting ways and were not "wrong or sinful," the Record evidence did not support the conclusion that the Accused failed to preserve and promote truth between man and man in this regard. Mere disagreement about

philosophy of ministry was not a sin subjecting either party to censure, and where there is no sin, and both parties are entitled to their own opinion on the matter in question, there is no transgression of the ninth commandment merely for advancing one's own idea.

Secondly, the evidence did not support the Indictments' claim that the Accused "failed to preserve and promote the good name of a neighbor." The Prosecutor and the Session made much of the fact that there was no chargeable offense against TE Wreyford, one of the few points concerning which the Session and the Accused agreed, but which also serves to support the conclusion that the Accused did not slander him.

A man's unsuitability to serve as a minister to any particular work is not a mark against his good name. The ninth commandment does not prohibit members of a mission church from expressing their opinions about whether their organizing pastor should continue as pastor. As noted above, no member (or collection of members) of a mission church need accept the temporary government's opinion about the suitability or advisability of the organizational minister's continuing as pastor after particularization.

The only limitation on such expressions is the ninth commandment, but none of the Record evidence in this case showed any transgressing statements made by the Accused. It was simply assumed that because they had spoken to one another about TE Wreyford's suitability to continue that any statements or meetings were ninth commandment transgressions, but that is not necessarily the case, and it was the burden of the prosecutor to prove such by competent evidence, which did not occur.

Rather than reveal transgressions of the ninth commandment the Session only recycled its misconception of the fifth, insisting that the Accused had "arrogated" to themselves the role of Presbytery in determining the qualification of ministers, as if the Accused, proclaiming a supposed usurpation of ecclesiastical power, without bringing any charge of sin, misconduct, or other ground against TE Wreyford's ministerial qualifications, were engaged in a grand campaign of falsehood. But the Accused's' opposition to the minister being elected as their pastor was not, in itself, a form of "bearing false witness." The Accused were only exercising their rights as members of a congregation to select those who would rule over them. The Session's erroneous conflation of the fifth commandment with the ninth was clear error.

Third, the trial produced no evidence that the Accused "failed to readily receive a good report," if by "receiving a good report" is meant that the Accused had an obligation to accept the Session's recommendation and "support" of the pastor to serve the church plant at particularization. For the reasons stated above, the Accused, as church members, were entitled to choose the leader of their congregation according to the dictates of their own conscience and were not bound by the Session's report, which could form no basis for transgression of the ninth commandment.

Fourth, the trial produced no evidence that the Accused "failed to be unwilling to admit an evil report concerning a neighbor." For the reasons stated above the ninth commandment cannot be construed in such a way that a qualified member's opinion about the suitability of a minister to serve as his church's pastor is regarded as "an evil report" and is thus prohibited to be received from another member.[21] Members of churches are free to discuss their convictions regarding the suitability of an officer to serve their congregation without fear of censure from the Session. As noted above, the trial in this case revealed no falsehood or other transgression of the ninth commandment in such conversations, but only the Session's incorrect belief that the Accused violated their oaths of membership merely by sharing with one another their disagreement with the Session's judgment about TE Wreyford's suitability to be their pastor. Such is not the ground of a charge of receiving an evil report or a transgression of the ninth commandment.

C. Specifications of Error 4, 5, 6, 7, and 8 Are Not Sustained.

a. Specification 4, 5 and 6 (Disqualification/Prejudice -- Session Members Disqualified to Sit) are not sustained.

The Accused claims that all the members of the Session were disqualified from judging because they were all listed as witnesses. The mere listing of a Session member as a witness is not a sufficient ground for disqualification. *BCO* 35-11 provides that a member of the court "shall not be disqualified from sitting as a judge by having given testimony in the case" unless "the court subsequently determines that such member should be disqualified." This

[21] The Record indicates the Accused even explained they reached their conclusions independently: "None of us realized there were others who shared these concerns."

language does not disqualify a member from sitting as a judge merely by virtue of having been *listed* as a witness.

In this case, only two Session members were in fact called as witnesses: (1) RE David Caldwell and (2) RE Matt Olson. The Record does not present any facts supporting the conclusion that it was clear error for the Session to permit these two Session members to sit in judgment at the trial. *BCO* 39-3.2.

The Appellants challenged TE Wreyford's sitting in judgment of the case because "his name is listed in the narrative underlying the charges preferred against us; as such he is in a personally prejudiced position and would be incapable of rendering an unbiased judgment." The Appellants similarly challenged TE Norton's qualification to sit in judgment "since he was involved in a number of conversations with some of the defendants, including urging Tyrus Teague to remove himself from being a ruling elder trainee and candidate," including allegedly saying, "if Tyrus did not step down from elder training he would not be approved by the Session to stand for election before the congregation." While it was within the discretion of the Session to have disqualified TE Wreyford and TE Norton, we do not find that the Record demonstrates that it was clear error for the Session not to do so (*BCO* 39-3.2).

b. Specification 7 (Location of Trial) is not sustained.

The Accused argues that there was a refusal of reasonable indulgence in that the trial should have been held in Jonesboro, Arkansas where the church plant was located rather than in Memphis, Tennessee. The location of the trial is a matter to which a reviewing court should afford great deference to a lower court (*BCO* 39-3.2). This court sees no basis in this Record to conclude that the Session committed clear error in its selection of the location of the trial.

c. Specification 8 (Failure to Propose a Reference to Presbytery) is not sustained.

The Session declined the Accused's request to refer the trial to Presbytery, and the Accused maintain that Session erred in that decision. But *BCO* 41-5 places Session under no obligation to make such a reference, and the Record does not demonstrate clear error in Session's refusal to present such a reference to Presbytery.

The Panel's proposed decision was drafted by RE Jim Eggert, edited by RE Dan Carrell and TE Guy Waters, and adopted unanimously by the Panel. After amendments, the SJC approved this Decision by vote of 22-0 on the following roll call vote. Ruling Elders indicated by [R].

Bankson	*Concur*	Eggert [R]	*Concur*	Neikirk [R]	*Concur*
Bise [R]	*Concur*	Ellis	*Concur*	Pickering [R]	*Concur*
Carrell [R]	*Concur*	Garner	*Concur*	Ross	*Concur*
Coffin	*Concur*	Greco	*Concur*	Sartorius	*Concur*
Donahoe [R]	*Concur*	Kooistra	*Recused*	Terrell [R]	*Concur*
Dowling [R]	*Concur*	Lee	*Concur*	Waters	*Concur*
M. Duncan [R]	*Concur*	Lucas	*Absent*	White [R]	*Concur*
S. Duncan [R]	*Concur*	McGowan	*Concur*	Wilson [R]	*Concur*

TE Kooistra provided the following reason for his voluntary recusal: "I recused myself because Jeff Wreyford was a principal in the Case, and he is an assistant pastor in the church plant my wife and I are a part of. Lorie Wreyford, Jeff's wife, is the director of children's ministries at the church."

CONCURRING OPINION
CASE 2022-07: *HARRELL et al. v. COVENANT PRESBYTERY*

RE Jim Eggert

Introduction

I file this concurrence to provide further analysis that I hope might prove helpful to the Church in matters relating to indictments, the standard of review in appeals from Session verdicts, as well as the polity of mission churches regarding the selection of ministers.

Regarding Indictments

This case involved indictments that were insufficient in their form, an error that hopefully can be avoided in all cases of ecclesiastical process.

"An offense, the proper object of judicial process," *BCO* 29-1 says, "is anything in the doctrines or practice of a Church member professing faith in

Christ which is contrary to the Word of God." To "practice" means to "put into effect." Just as Paul encouraged the Philippians to "practice" his teachings (Phil. 4:9), an "offense" is practicing sin, or *putting sin into effect*, and in this limited sense every particular instance of sin by a believer is therefore a "practice" of sin as contemplated by *BCO* 29-1 so that for purposes of committing an "offense" one can only "practice" sin by particular instances of engaging in a particular sin particularly. And because, for purposes of formal disciplinary process, an "offense" is a "practice" our Standards require that an indictment must identify at least one particular instance of the accused "putting sin into effect." *WCF 15.5* states, "Men ought not to content themselves with a general repentance, but it is every man's duty to repent of his particular sins particularly." Since one of the purposes of church discipline is the "rebuke of offenses" and "the spiritual good of offenders themselves" (*BCO 27-3*), *BCO 29-1* prescribes that indictments should be drawn in such a way that states an offender's particular sins particularly so that the offender may be encouraged to repent with that degree of particularity that our Standards prescribe, or risk standing convicted at trial for a particular and identifiable act or course of malfeasance, not mere vague or generalized declarations of guilt.

Therefore, in order to state an "offense" in formal disciplinary proceedings an indictment must reduce to writing the particulars of an accused's offending conduct with sufficient specificity. The indictment must set out more than mere conclusory allegations (e.g. "the accused bore false witness"). Our *Rules of Discipline* prescribe, "In drawing the indictment, the times, places and circumstances should, if possible, be particularly stated, that the accused may have an opportunity to make his defense." (*BCO 32-5*). In other words, the indictment should be drawn in such a way that a particular doctrine expounded, or practice engaged in by the accused (i.e. an instance of sin) is sufficiently identified in advance that it could be fairly proved or *fail* to be proved at trial. Indictments cannot be framed so broadly that the prosecutor can "move the goalposts," so that the accused arrives at his trial having fairly prepared to answer or defend accusations pertaining to one thing, only to discover that he stands on trial for something else. Consequently, threadbare recitals in an indictment that an offense has been committed, supported by mere conclusory statements, do not suffice.

The requirement of sufficient specificity is "so that the accused may have an opportunity to make his defense" ensuring fundamental fairness and the due

process afforded by our Constitution, the very ground of *BCO 32-5*. For example, no higher court could rightly uphold a conviction on an indictment that alleged, without identifying place, incident, or time, that the accused had "violated God's law," or that the accused had "failed to love his neighbor" without reference to any neighbor in particular, or any specific act or omission (i.e. "practice").

Standard of Review in Appeals

In our polity, the standard of review applicable to a higher court reviewing a lower court's decision depends on the nature of the matter being reviewed. A reviewing court owes "great deference" to a lower court's "factual findings" and "regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties." (*BCO 39*-3.2 & 3). By contrast "when the issues being reviewed involve the interpretation of the Constitution of the Church," the reviewing court "has the duty and authority to interpret and apply the Constitution of the Church according to its best abilities and understanding, regardless of the opinion of the lower court." (*BCO* 39-3.4).

Unlike complaint proceedings, the SJC's review is plenary in an appeal from a Session's verdict in a case of process, and thus the SJC owes no deference to Presbytery's review in such cases. That is because both Presbytery's and the SJC's review are governed by the same standard. *BCO* 39-3.2 & 3 describe the deference due to lower courts regarding "factual matters" and "matters of discretion." But *BCO* 39-3.2 does not restrain the SJC's review of the Presbytery's decision in an appeal of a Session's verdict for the simple reason that a Presbytery, not being the court of original jurisdiction, has no "personal knowledge and observations of the parties and witnesses involved." Both the Presbytery and the SJC, as reviewing courts, are tasked to review the same record produced by the court of original jurisdiction by the same standard. The Session, in such a case, is the only court due any deference for "factual matters" under *BCO* 39-3.2.

Similarly, the SJC owes no deference to the Presbytery regarding "matters of discretion and judgment" per *BCO* 39-1.3. In evaluating such matters, the Presbytery was limited to the record in the same way the SJC is, facing the same task of determining, solely based on the record, whether the court of original jurisdiction committed any "clear error" in matters of discretion and

judgment. Presbytery, being governed by the same standard as the SJC, is due no deference on such issues because it has no superior position to the SJC "regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties."

Lastly, *BCO* 39-3.4 indicates that "a higher court should not consider itself obliged to exhibit the same deference to a lower court when the issues being reviewed involve the interpretation of the Constitution of the Church." Therefore, the SJC owes no duty of deference to either the Session or Presbytery regarding matters of Constitutional interpretation in connection with an appeal.

Thus, in effect, an appeal taken up to the SJC from a Session's verdict in a case of process effectively creates two fresh reviews of the same nature, first by Presbytery then by the SJC.

Minister Selection in Mission Churches

Vocation to office in the Church is the "calling of God by the Spirit" not only through "the inward testimony of a good conscience," but also through "the manifest approbation of God's people" along with the "concurring judgment of a lawful court of the Church." (*BCO 16-1*). "[T]he right of God's people to recognize by election to office those so gifted is inalienable" so that "no man can be placed over a church in any office without the election, or at least the consent of that church." (*BCO 16-2*). Preliminary Principle Number 6 in the *Book of Church Order* underlies this "inalienable right" of church members: "Though the character, qualifications and authority of church officers are laid down in the Holy Scriptures, as well as the proper method of officer investiture, the power to elect persons to the exercise of authority in any particular society resides in that society." The inalienable right of church members to either elect or consent to those placed over them applies alike to mission churches as it does to settled congregations.

Our polity rightly prescribes the "great deference" owed by higher courts to lower courts when reviewing their acts and decisions. (*BCO 39-3*). But *BCO 16-1* and *16-2* also prescribe a manner of deference to *congregations* in their selection of officers. No man, however gifted or qualified, may be thrust upon a congregation by a court of the Church without the congregation's consent. Congregations choose their Teaching Elders, subject only to review

by Presbytery. If Presbyteries may not select ministers for their member churches, then Sessions certainly may not do so, and the fact that the appointees of a provisional Session are not even members of the mission churches they govern serves only to accentuate the encroachment on a congregation's rights if such a provisional Session seeks to exert its preference in selection on members of a congregation. The Session in this case overestimated its role in the ministerial selection process, misapprehending the Accused's' opposition to its ministerial preference as imagined fifth commandment violations.

Since the government of a mission church is temporary and provisional, our polity accommodates to it the axiom of the congregation's exclusive right to officer selection. When members of mission churches take the vows of membership and are received on the rolls of the mission work, they are understood to assent to the call of the organizing minister assigned to that work and to have affirmed to the organizing minister the congregational promises made to a pastor, just as established churches do. (*BCO 5-5.a*). This is because, as noted above, "no man can be placed over a church in any office without the election, or at least the consent of that church." (*BCO 16-2*). In other words, while the mission congregation has not elected the organizing minister, the minister is deemed to have "at least the consent" of the mission congregation to his government at the time of their addition to the rolls and during the continuance of the provisional government of the mission. Similarly, our polity deems the members of a mission church to have "consented" to the government of its provisional Session. Based on these accommodations to its provisional status, the polity governance between the members of the mission church and its temporary government is the same as between any congregation and its officers, but only during the time from the mission church's inauguration to the time of its particularization.

And since the goal of a mission church "is to mature and be organized as a particular church as soon as this can be done decently and in good order" (*BCO 5-1*), the mission congregation has the right to select its government upon particularization just as any Presbyterian congregation does.

When an established church selects a minister, his election is governed by procedures set out in *BCO* chapter 20. The congregation has the right to elect a pulpit committee (*BCO 20-2*), and when the pulpit committee is prepared to recommend a candidate to the congregation, the Session is required to order a

congregational meeting for the purpose of voting on the candidate. *(BCO 20-2*).

In the case of a mission church, the right of selecting a minister at particularization is, in principle, no different than the right prescribed for an established church, except that the appointment of a pulpit committee is entirely optional for the mission congregation. The provisional government "shall call a congregational meeting," and at that meeting, "the congregation may, by majority vote, call the organizing pastor to be their pastor without the steps of *BCO* 20." (*BCO 5-9.f*). Thus, whether the congregation of a mission church prefers to call its organizing minister as its pastor or to use a pulpit committee is left entirely to the discretion of the congregation. Consistent with the right of congregational selection of officers, the *Book of Church Order* fixes no principle nor presumption that the congregation must extend a call to the organizing minister as pastor. To the contrary, situations may vary at particularization; the organizing minister, for example, might decide, for whatever reasons, not to stand for election. (*BCO 5-9.f.1*). And in the event the congregation chooses not to call the organizing minister as pastor or the minister withdraws, the Session is obliged to "oversee the election of a pastor according to the provisions of *BCO 20* so far as they are applicable." (*BCO 5-9.f.1*). Indeed, our *Form of Government* even permits particularization with no pastor at all: "If there is no pastor, the session of the new work may elect as moderator one of their own number or any teaching elder of the Presbytery with Presbytery's approval," and "action shall be taken to secure, as soon as practicable, the regular administration of Word and Sacraments." (*BCO 5-10*).

Because *BCO 5-9.f* prescribes that the congregation "may" call the organizing pastor as its pastor, it follows that the congregation is under no Constitutional *obligation* to do so. It therefore also follows that the temporary government of the mission church is under no Constitutional "*responsibility*" to "offer" the organizing pastor nor is such the Session's "*job*." The calling of a pastor is solely an act and prerogative of the *congregation*, not an "offer" or authority of a *Session*.

In short, no view of the facts in this case supported a transgression of the fifth commandment because the Session had no authority to prescribe who should stand for election at particularization; it is only prescribed to "call a congregational meeting." (*BCO 5-9.f*). It is ultimately the *congregation's*

prerogative to prescribe the business undertaken at that meeting, not the *Session's*. The Accused's resistance and opposition to the Session's "support" for the organizing minister and their "insistence" that the organizing minister's name be removed as a candidate to be pastor did not "show contempt of" or "rebellion against" the Session's "lawful councils, commands, or corrections" because all attempts by the Session to direct (or redirect) the Accused to support the organizing minister were not authoritative.

Similarly, the Session had no lawful authority to "continue to voice its support" of the minster or assert its "belief without hesitation that he should be offered to the congregation as a candidate to serve as its pastor," at least not in the sense that to oppose the same would be deemed inherently divisive and censurable as against the authority of the Session. Similarly, the Session had no lawful authority to insist that the Accused stop resisting the Session's attempts to "recommend" the minister to the congregation. While members of a Session in an established congregation at least have a right as *individuals* to express their positions about a proposed minister, the members of a provisional Session for a mission church, not being members of the mission congregation, do not even have the right to vote on the question of the call of the minister. A Session, provisional or otherwise, asserting a collective recommendation in its capacity as a court of the Church in favor of a particular candidate and against the recommendation of church members who disagree is acting outside of its function and risks encroachment on congregational prerogative. In this case the Accused's open opposition to the recommendation led to their indictment and censure.

The Accused's opposition to the Session brought no "shame and dishonor" to the Session in "the joyful performance of [the Session's] duties," because the Session was not engaged in any of its lawful duties whenever its exercise of discipline practically functioned to silence what the Session described as the Accused's "dissident voices." Far from performing its duties, the Session encroached on the exclusive right of these members of the congregation to select their minister, specifically by encroaching on the rights of the Accused to seek to satisfy their own conscience in both selecting and seeking the selection of whomever they deemed suitable, for reasons sufficient to them, to be their pastor. The facts as presented do not describe a violation of the fifth commandment.

Furthermore, if members of a congregation do not believe that a particular minister is suitable to serve as their congregation's pastor, this fact does not in itself obligate them (or the minister) to a Matthew 18 process of reconciliation (or subject either party to charges) because no Scripture clearly obligates a church member to support any particular minister as his pastor, and therefore there is no issue to be reconciled, and one opinion or another on the subject cannot be adjudicated as an "offense." The pastoral relation, like that of all other church officers, is a voluntary relation between the officer and the congregation that elects him.

A disagreement about the perceived unsuitability of a minister to serve a particular work (what we refer to as a minister's "call" to a particular work) is not an *offense* to be resolved. An "internal call" refers to a minister's sense that he is called to a particular work. An "external call" is a congregation's collective sense whether a particular minister is called to serve their particular congregation, followed by the concurrence of the Presbytery of which the particular church is a member. Presbytery putting a call into a minister's hands requires a congruence of both minister and congregation on the question of his call. For example, no minister is required to find himself suited to minister to any particular congregation, and if the congregation disagrees with such a minister about his suitability to them or theirs to him, such is not a matter that must be "reconciled" between them as though one party had sinned against the other. It is only a question of "calling" to which no definitive answer can be given, and members of the congregation persuaded that the man ought to minister among them cannot bind the minister's conscience, nor can he bind theirs. By the same principle, a minister who desires to stand for election despite opposition from some in the congregation does not inherently commit an *offense* against them that must be "reconciled," just as a particular member's desire to vote against the minister commits no offense against him (or the congregation) requiring "reconciliation."

A member's reasons for voting against a man to serve as his pastor (or for desiring the dissolution of the pastoral relationship) will not always seem to the minister, or those who favor him, fair, accurate, or complementary. But despite the disagreement inherent in such situations, the right of a congregation to choose its pastor can only be preserved by a congregational vote, not the conclusion of a Matthew 18 process which would necessarily assume that all the respective parties must agree. It is not the Session's place to effectively make its own support of the organizing minister a ground for process,

discipline, and censure against any members of the congregation who hold a different opinion.

Similarly, no man has a right to serve a particular congregation, and no Session has the right to impose his service. In the case of a mission church, it is not the personal franchise of the organizing minister to continue to labor amongst his planted congregation if at the time of particularization, the congregation elects not to call him, nor is it the franchise of the temporary Session of a mission church to see him installed, no matter how enthusiastically it may "support" him. The only party with a “franchise” (i.e. a vote) to determine the question is the *congregation*.

Because disagreements about the organizing minister’s continuance as pastor were not matters to be “reconciled” per Matthew 18, the Session could neither charge nor censure the Accused for declining to participate in a “meeting to help the two parties move towards reconciliation.” It was a constitutional error in this particular case for the Session to treat the disagreement between these members and the organizing minister as if it were a matter of “reconciliation” that authorized the Session to summon the Accused, demand the renewal of their membership vows, and effectively require the Accused’s’ agreement with the Session that the organizing minister was the suitable choice for pastor upon pains of suspension from the Lord’s Supper and presumably, should the Accused dare to persist, excommunication from the Church.

One might object that the Accused were not “the congregation,” but only particular members of it, and not even a majority. Thus, it might be supposed that the Session’s interaction with these particular members was not an interference with any *congregational* right as such. Naturally, no one can know the mind of a congregation without a lawfully called congregational meeting and vote.

But this objection does not withstand scrutiny. Congregations are inherently composed of their particular members, each representing an opinion and a vote. Therefore, the rights of any given congregation cannot be considered abstractly from the rights of the individual members that compose it. The right of congregations to select the officers of the church implies a correlative freedom of its individual members to exercise their conscience about those who will rule over them without interference or censure from the courts of the Church. Therefore, it is irrelevant that the Accused represented only a

minority of the mission church's congregation. Their lack of majority would not make their "concerns" or their judgment about the suitability of the minister to rule over them censurable offenses. Nor can it be known that the seven in truth were a minority, since it is possible that other members of the congregation not present would, if asked to vote, agree with the seven Accused.

Lastly, I would note that had the Session put to the congregation at a congregational meeting the question of whether the organizing minister should stand for election as the permanent minister or whether the congregation preferred to appoint a pulpit committee to measure him against other candidates would have been the path most consistent with our *Form of Government*. In that scenario, the congregation would have had an opportunity to voice its preference. As it happened, the matter turned into a sort of showdown between the Session and the Accused. Because no such congregational meeting occurred, the record in the instant case only tells us what the Accused wanted and what the Session wanted, not what the *congregation* wanted, the very matter that ought to be determined in the selection of a pastor.

CASE No. 2022-08

RE DAVID SNOKE
v.
PITTSBURGH PRESBYTERY

DECISION ON COMPLAINT
October 20, 2022

The SJC finds that the above-named Complaint is Administratively Out of Order and cannot be put in order.

RE Snoke did not have standing to file a Complaint against a Presbytery action taken at its meeting on January 29, 2022 because he was not a commissioner from his church to that meeting.[22] He filed his Complaint with Presbytery in

[22] This was confirmed by RE Snoke in an email response to the Panel on September 8, 2022 and confirmed by Pittsburgh Clerk TE Capper in an email to the Panel on September 9, 2022.