Case No. 2023-04

TE RYAN BIESE et al.
v.
TENNESSEE VALLEY PRESBYTERY

DECISION ON COMPLAINT
October 20, 2023

I. SUMMARY OF THE FACTS

10/14/22 The Tennessee Valley Presbytery (TVP) Committee for the Review of Session Records (RSR) met and reviewed minute submissions from various churches, one set of which was from Redeemer Church in Knoxville, TN. The minutes, dated January 26, 2022, contained this statement: "The youth group will have an outdoor Super Bowl Party on Feb. 7."

10/18/22 TVP held its Stated Meeting and the RSR committee recommended that the Redeemer Church Session minutes be cited for an exception of substance based on WLC 117, WLC 118, WCF 21:8, and *BCO* 40-2. After floor debate, the RSR Committee motion failed. A subsequent motion to approve the Redeemer Church minutes without exception carried.

12/07/22 Teaching Elder Biese, Ruling Elder Nathan Bowers, and Ruling Elder Wil Davis complained against the 10/18/22 action of TVP approving the minutes of Redeemer Church without exception.

02/11/23 At its Presbytery meeting, the TVP Stated Clerk reported that the Presbytery Leadership Committee recommended sustaining the Complaint of TE Biese et al., but a substitute motion to deny the Complaint prevailed.

03/08/23 The Complaint was carried to the General Assembly.

03/15/23 The Complaint was received by the Stated Clerk of the PCA.

06/22/23 The SJC Panel held the Hearing via videoconference. Panel members included RE Dowling (chair), TE Sartorius, and RE Wilson with alternates TE Lee and RE Donahoe.

II. STATEMENT OF THE ISSUE

1. Did Tennessee Valley Presbytery err in approving without exception the minutes of Redeemer Church at its meeting on 10/08/22 and by denying the Complaint of TE Ryan Biese et al. at its meeting on 2/11/23?

III. JUDGMENT

1. No.

IV. REASONING AND OPINION

Complainants allege that Presbytery erred when it approved without exception on October 8, 2022 the minutes of the Session of Redeemer Church (Knoxville) from January 26, 2021, and thereby declined to cite the Session with an exception of substance for these minutes. Complainants further allege that Presbytery subsequently erred when it denied a Complaint brought against Presbytery for its approval of these minutes. The language from these Session minutes in question reads as follows, "The youth group will have an outdoor Super Bowl party on Feb. 7." On October 8, 2022, Presbytery's Committee for Review of Sessional Records recommended that Presbytery cite Session with an exception of substance. Presbytery thereupon acted to "remove [this] item from the motion" and "approve[d] without exception the January 26, 2021 minutes of Redeemer Church (Knoxville)."

Complainants argue that the youth group event of February 7 "appears to violate the Scripture and represents a clear and serious irregularity from the prescriptions of the Constitution." They contend that, in its actions of October 8, 2022, Presbytery erred when it approved these minutes and thus did not find "an exception of substance in the aforesaid minutes." Presbytery should have cited Session with an exception of substance, Complainants continue, "since the action of the Session is not in accordance with the Constitution of the PCA."

The Record indicates, and Complainants acknowledge, that Presbytery adopted no grounds for its actions on October 8, 2022. That is to say, when it acted to remove the RSR Committee's recommendation from the motion, and when it approved without exception the Session minutes, Presbytery afforded no explanation for either action. One could speculate as to why Presbytery acted as it did. Perhaps it was discovered that the planned Super Bowl party never took place. Perhaps Presbytery was uncertain from the Session minutes whether the language in question reflected an action of the Session. In either case, one could see why Presbytery might not have taken an exception of substance. But such speculations as these fall entirely outside the Record. The Record affords insufficient information to permit the higher court to find Presbytery to have erred in its interpretation of the Constitution with respect to these two actions. It is for this reason that the Complaint is denied.

As a final note – when those members of a lower court are contemplating a complaint over any action, it is wise to make substantial effort to better preserve the record of the action taken. Similarly, presbyteries, as a whole, should strive to keep more detailed records over matters of controversy.

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The Panel's proposed decision was written by RE Dowling and revised and approved by a Panel vote of 3-0 on 7/31/23, with concurrence by the two alternate panel members. The SJC approved the Decision, as amended, on the following **18-1** vote, with four absent and one recused.

Bankson	*Concur*	S. Duncan	Absent	Maynard	*Concur*
Bise	*Concur*	Eggert	*Dissent*	Neikirk	*Concur*
Carrell	*Concur*	Evans	*Concur*	Pickering	*Concur*
Coffin	*Concur*	Garner	Absent	Sartorius	*Concur*
Dodson	*Concur*	Greco	*Concur*	Ross	*Concur*
Donahoe	Recused	Kooistra	Absent	Waters	*Concur*
Dowling	*Concur*	Lee	*Concur*	White	Absent
M. Duncan	*Concur*	Lucas	*Concur*	Wilson	*Concur*

RE Donahoe recused himself and reported doing so in accord with SJC Vow 5 (*RAO* 17.1), the reasons for which had become clearer to him as the Case proceeded: "If in a given case I find my view on a particular issue to be in conflict with the Constitution of the PCA, I will recuse myself from such case, if I cannot conscientiously apply the Constitution."

CONCURRING OPINION

Case 2023-04: *TE Ryan Biese, et al. vs. Tennessee Valley*
TE Arthur G. Sartorius
November 9, 2023

I concur with the Decision of the Standing Judicial Commission in Case 2023-04. I write, however, to highlight the importance of the underlying substantive issue of the Case, and to emphasize that the SJC Decision should not be read as if it in any way addresses the underlying substantive issue.

In this particular Case, the core of the Complainants' position was that a church-sponsored youth group Super Bowl Party is in conflict with the propositions of the Westminster Standards which relate to a proper observance of the Christian Sabbath.

The Westminster Confession of Faith, Chapter 21 paragraph 8, sets forth the overall tone of the Standards in regard to the observance of the Christian Sabbath. There it is explained that:

> "This Sabbath is then kept holy unto the Lord, when men, after a due preparing of their hearts, and ordering of their common affairs beforehand, do not only observe an holy rest, *all the day*, from their own works, words, and thoughts about their worldly employments and recreations, but also are taken up, *the whole time, in the public and private exercises of his worship, and in the duties of necessity and mercy*. (emphasis added)
>
> Westminster Larger Catechism Question and Answer 117 is similar in content:
> Q. How is the Sabbath or the Lord's Day to be sanctified?
> A. *The Sabbath or Lord's Day is to be sanctified by an holy resting all the day*, not only from such works as are at all times sinful, but *even from such worldly employments and recreations as are on other days lawful; and making it our delight to spend the whole time (except so much of it as is to be taken up in works of necessity and mercy) in the public and private exercises of God's worship*: and, to that end, we are to prepare our hearts, and with such foresight,

> diligence, and moderation, to dispose and seasonably dispatch our worldly business, that we may be the more free and fit for the duties of that day. (emphasis added)

Questions 118 through 121 also deal with the manner in which one is to keep the Christian Sabbath, all of which set forth the proposition that the Sabbath Day is a holy day of rest for the purpose of worship, so as the whole time of the day is to be our delight in the Lord. Of these further parts of the Larger Catechism, Question and Answer 118 is particularly worth noting in that it speaks of "the charge of keeping the Sabbath" being "more specially directed to... superiors, because they are bound not only to keep it themselves, but to see that it be observed by all those that are under their charge; and because they are prone ofttimes to hinder them by employments of their own."

Based upon such particular language in our Standards, it would seem difficult to conceive of how a church session allowing a youth group to put on a Super Bowl Party on a Sunday would be an activity that could be considered within the bounds of what the Westminster Standards deem to be an appropriate Sabbath observance.

Furthermore, in the past, at the yearly meeting of the General Assembly, efforts were advanced with a design to possibly lead to amending the Standards to broaden allowable recreation on the Sabbath Day. Such efforts were defeated. (See Overture 7 answered in the negative at the 41st GA which sought to "Establish Study Committee on Sabbath Issue in Westminster Standards" and similarly, Overture 2 brought before the 43rd GA)

While it could be true that a number of officers of the PCA hold stated differences to the Standards in regard to "recreation" on the Christian Sabbath, and that such differences have ***not*** been found to strike at the vitals of religion or found to be hostile to our system of doctrine, that should not authorize churches or presbyteries to ignore what our Constitution sets forth. When a decision of a lower court is reviewed by a higher court it is the duty of the higher court to "insure that this Constitution is not amended, violated or disregarded in judicial process…." *BCO* 39.3.

Therefore, in conclusion, it is urged by this concurrence that the decision of the SJC in this Case only be read as a denial of the Complaint based upon the clear inadequacy of the Record, and not as one addressing the

underlying substantive issue.

/s/ TE Arthur G. Sartorius

DISSENTING OPINION

Case No. 2023-04: *TE Biese, et al, v. Tennessee Valley*
RE Jim Eggert
November 8, 2023

Background and Summary

At its meeting on October 18, 2022, the Presbytery, exercising its "Review and Control" jurisdiction over one of its member Session's records, took and recorded the following act in its own minutes: "MSP to approve without exception the January 26, 2021, minutes of Redeemer (Knoxville)." The propriety of Presbytery's action is the subject of the instant complaint.

The Session minute from Redeemer (Knoxville) under review was this: "The youth group will have an outdoor Super Bowl Party on Feb. 7 [2021]" (hereafter referred to as "the Super Bowl Minute").

The SJC's Decision poses and answers the following question in the negative:

> Did Tennessee Valley Presbytery err in approving without exception the minutes of Redeemer Church at its meeting on 10-08-2022 and by denying the Complaint of TE Ryan Biese (Et al) at its meeting on 02-11-2023?

I dissent from the Decision on procedural grounds because I believe this case has been presented in a mode of review that the SJC is not Constitutionally authorized to adjudicate. Because the SJC cannot reach the question posed, I cannot join in the Decision's declaration that the Presbytery did not err.

The Presbytery's review of the Super Bowl Minute is non-justiciable because the Constitution does not commit Presbytery's review of Session records to the Assembly (and therefore the SJC). Furthermore, other than cases presenting credible reports of an "important delinquency or grossly unconstitutional

proceedings" of a "court next below' under *BCO* 40-5, the Assembly has not committed to the SJC any part of what "Review and Control" authority it *does* have.

I. The Case is Judicially Out of Order Because the SJC Has No Jurisdiction to Review the Super Bowl Minute.

BCO 39-1 states, "The acts and decisions of a lower court are brought under the supervision of a higher court in one or another" of the four modes of review: (1) Review and Control, (2) Reference, (3) Appeal, and (4) Complaint.

When we look at this case, we find that, while different "modes of review" were in operation, they all pertained to the propriety of the way Presbytery carried out its Session minutes review function under *BCO* Chapter 40. The ultimate question, however framed, is "Did Presbytery make the right decision about the Super Bowl Minute when it approved it without exception"?

Presbytery was unquestionably engaged in *BCO* Chapter 40 "Review and Control" activities when it approved the Super Bowl Minute. When the Complainants later invoked that "mode of review" called "complaint" (governed by *BCO* Chapter 43) -- a "written representation made against some act or decision of a court of the Church" -- it was directed against Presbytery's act or decision to approve the Super Bowl Minute per its *BCO* Chapter 40 "Review and Control" powers.

What shall we do when a complaint proceeding, representing one mode of review, asks for a review of a court's acts or decisions taken while it was exercising another mode of review? To answer that question, we must consult the Constitution to determine what powers and parameters are afforded to the court in the mode of review complained against. Therefore, to consider the question posed by the complaint in this case, the SJC must consider those constitutional powers assigned to Presbyteries whenever they review minutes of their member Sessions.

When we read *BCO* Chapter 40, we discover its six constituent paragraphs bear such a relation to one another as to set out that "mode of review" we collectively call "Review and Control" jurisdiction. These paragraphs establish an amalgam of proceedings depending on which of the six sequenced sections of that chapter is invoked:

- *BCO* 40-1 prescribes both "the right and duty of every court above the Session to review, at least once a year, the records of the court next below." B*CO* 40-2 and 40-3 set the constitutional standards for what we customarily call the review of minutes or, more precisely, "records" of a "court next below," the type of proceedings at issue in this case.
- *BCO* 40-4 governs the situation, not raised in this case, when a court does not "distinctly record" its action in its minutes and therefore its records do not "exhibit to the higher court a full view of their proceedings."
- *BCO* 40-5 and *BCO* 40-6, also not at issue in this case, govern those instances where a court "having appellate jurisdiction" receives a "credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court." In such matters, the higher court can initiate formal proceedings against the lower.

BCO 40-1's phrase "court next below" pertaining to records review is important to the instant matter. Our polity does not authorize records review of *non-adjacent* courts. Because Sessions are not "courts next below" from the General Assembly, the Assembly has no authority to review the records of Sessions. This elementary observation has an important implication for this case: because the General Assembly has no jurisdiction to review Session records under *BCO* 40-1 through *BCO* 40-3, the SJC (which is no more than a commission of the Assembly) lacks authority to undertake the review of Session records, just as it lacks authority to undertake the review of the review of Session records.

We see how this principle touches this case when we read the Decision's framing of the issue presented by the complaint:

> Did Tennessee Valley Presbytery err *in approving without exception the minutes of Redeemer Church at its meeting on 10-08-2022 and by denying the Complaint* of TE Ryan Biese (Et al) at its meeting on 02-11-2023? (Emphasis added)

Presbytery's act of "approving without exception" certain minutes of a Session was a *review of a Session record.* And once we apprehend that our polity *prohibits* the review of records by non-adjacent courts, we see that the first

question framed by the Decision -- did Presbytery err in approving the minutes of the Session -- makes it hard to understand how the SJC, without effectively engaging in record review of a non-adjacent court, could evaluate whether the Presbytery erred or not when it approved the record in question. The problem is not remedied by the Decision's framing of the seeming second question -- whether Presbytery erred "by denying the Complaint…" -- because the second question is identical to the first. The SJC could not possibly dispose of the complaint without effectively engaging in a review of the Super Bowl Minute.

The Decision, reasoning that the record in this matter "affords insufficient information to permit the higher court to find Presbytery to have erred in its interpretation of the Constitution," declines to disturb Presbytery's judgment about the Super Bowl Minute, implying that if the SJC would have had additional information available it might have reached a different result. The Decision even encourages those who file complaints concerning record review "to make substantial effort to better preserve the record of the action taken" and for Presbyteries to "strive to keep more detailed records over matters of controversy" pertaining to minute review. The Decision assumes that the Presbytery had a process that may have produced information or material *outside* of the Super Bowl Minute when it was considering whether it would approve or disapprove the same, and that the Presbytery's evaluation of the minute together with such unidentified possible extra information or material should be afforded deference by the SJC. For instance, the decision "speculates" that perhaps Presbytery concluded that the Super Bowl party "never took place" or that it was not "not an act of the Session."

It's tempting to suppose that the SJC is in no different position whatsoever than the Presbytery to read the thirteen words of the Super Bowl Minute and make its own "interpretation of the Constitution" regarding the same. In that case, how was the Presbytery in any different or better position to evaluate the Constitution as it pertained to the Super Bowl Minute than is the SJC? What additional "information" is relevant in reviewing Session minutes beyond Session minutes themselves?

It is instructive to compare the detailed regulations and procedures afforded for the review of Presbytery minutes via the *Rules of Assembly Operation* (*RAO*) Chapter 16 as against the absence such guidelines and procedures afforded for the review of Session minutes per *BCO* 40-1 through *BCO* 40-3. *RAO* Chapter 16 helpfully sets out detailed guidelines for the review of

Presbytery minutes, for keeping Presbytery minutes, for submitting Presbytery records, for examining Presbytery records, for reporting on Presbytery records, and for Presbyteries responding to the General Assembly. These regulations map a procedure for the Assembly and the Presbyteries to both evaluate Presbytery minutes and communicate with one another regarding the Assembly's review of Presbytery records so that errors, mistakes, and sometimes misunderstandings can be identified and resolved through a mutual process of orderly exchange between the Assembly and its Presbyteries. In other words, *RAO* Chapter 16 affords a mechanism for review and the development of information that the General Assembly can use to evaluate and resolve issues arising out of Presbytery minutes, which is seemingly the kind of "information" found wanting in the Decision.

In contrast to *RAO* Chapter 16, our Constitution prescribes no such guidelines for Presbytery review of Session minutes. The *RAO* is not part of the Constitution because it has never been adopted through a constitutional process and is therefore not enforceable as a rule governing Session minute reviews. The only guide that we have in a case like this, and the only rules the SJC could ever constitutionally enforce, if any, pertaining to a Presbytery's review of Session minutes are those that can be discerned from the first three short paragraphs of *BCO* Chapter 40.

We might mistakenly assume in a case involving Session record review by a Presbytery that *RAO* Chapter 16 applies to the review of Session minutes, but it does not. In fact, the Decision shows signs of this assumption, using the phrase "exception of substance" no less than five times, and concluding that "one could see why Presbytery might not have taken an *exception of substance*" (emphasis added) to the Super Bowl Minute. But the phrase "exception of substance," introduced and defined only in *RAO* Chapter 16, is not found anywhere in our Constitution, the only authority that the SJC may apply in cases arising before it.

In the absence of the Assembly's adopting constitutional rules governing Presbytery review of Session records, Presbyteries are presumptively free to adopt and implement their own procedures for such Session record review if such procedures do not transgress the Constitution. Many such schemes might be (and presumably have been) fashioned that suit the size, characteristics, and preferences of our various Presbyteries.

I believe that the absence of constitutional uniformity in the procedures regulating Session record review illustrates the problematic nature of SJC jurisdiction in a case like today's. Presbytery may adopt its own written rules (or even implement *unwritten* customs or practices) governing its Session record review. But it is neither the place nor prerogative of the SJC, charged as it is with interpreting and enforcing our *Constitution*, to either interpret or enforce Presbytery's *local rules or customs*, whether written or otherwise, and it certainly is in no position to interpret and apply the *RAO* rules governing the review of *Presbytery* minutes as if such rules applied to the review of Session minutes in any way.

This reveals a real gap between our Constitution and the unregulated local procedural frameworks governing Session minute review. Through this fissure one can begin to see the shape of the argument advanced in this dissent. It is my contention that this disjunction between the constitutional prescription requiring the review of minutes of "courts next below" and the absence of procedural mechanisms to realize such review is evidence that the Presbytery review of Session records is an insular feature of our polity. The regulation of the exchange between Presbyteries and their member Sessions that is essential to effective Session record review is left entirely to the government of Presbyteries, and neither the Assembly nor the SJC (as it commission) has jurisdiction to review a Presbytery's review of Session minutes, other than pertaining to those prescriptions that can be discerned in *BCO* Chapter 40.

If one thinks about it, the same principle operates with respect to the General Assembly's review of Presbytery records: the Constitution does not prescribe a particular procedure for the General Assembly to implement Presbytery minute review pursuant to *BCO* 40-1 through *BCO* 40-3, so the General Assembly has adopted its own procedures for implementing those provisions in *RAO* chapter 16. Presbyteries do the same by adopting their own standing rules or local customs and practices governing Session record review. Thus, both the Assembly and Presbyteries "legislate" "between the lines" of those standards that our Constitution prescribes for the review of minutes of adjacent courts.

One might conclude that the procedural vacuum pertaining to Presbytery review of Session minutes just means that the Assembly should afford deference to Presbytery's activity, which is perhaps a reasonable interpretation of the Decision's approach. But, for the reasons set out below, I believe that

the Assembly's power of review is more limited than that and have concluded that the Assembly lacks jurisdiction over a Presbytery's review of Session minutes at all. Therefore, for practical purposes, the Assembly's power of "Review and Control" is restricted to those cases that arise as credible reports of important delinquencies or grossly unconstitutional proceedings under *BCO* 40-5.

These constitutional restraints on Assembly review can be demonstrated by trying to apply the first three paragraphs of *BCO* chapter 40 to this case. *BCO* 40-2 lays out four considerations that the higher court (in this case Presbytery) is to apply when it is examining the records of a court next below. The instant Complaint might implicate two of them: "Whether they [the proceedings of the Session] have been regular and in accordance with the Constitution" and "Whether they [the proceedings of the Session] have been wise, equitable and suited to promote the welfare of the Church" (*BCO* 40-2.2 and *BCO* 40-2.3)

But after listing these considerations, *BCO* Chapter 40 continues, "It is ordinarily sufficient for the higher court [in this case Presbytery] merely to record in its own minutes and in the records reviewed whether it approves, disapproves or corrects the records in any particular" (*BCO* 40-3). This means that, as a constitutional "standard of review," the SJC must presume that it was "*sufficient*" for Presbytery to approve the Super Bowl Minute. (Exactly the same result would obtain, by the way, if Presbytery had *disapproved* the minute because that also would "ordinarily" be "sufficient.") "Ordinarily" means of a kind to be expected in the normal order of events; routine; or usual. In other words, normally it is *sufficient* for a next higher court (in this case Presbytery), upon reviewing the records of a lower court (in this case a Session), to simply set out the higher court's approval, disapproval, or correction of the lower court's minutes. That is all that is required. Since either the approval or disapproval of records of courts next below is *sufficient*, Presbytery's acts or decisions about Session records are subject to no meaningful "standard of review" implementable by the SJC.

Moreover, the word "ordinarily" suggests that some records reviewed by a next higher court (in this case, Presbytery with respect to the Super Bowl Minute) might present *extraordinary* circumstances. This implication is made explicit in the second clause of *BCO* 40-3 which continues, "but should any serious irregularity be discovered the higher court may require its review and correction by the lower."

"*May* require its review and correction?" That is surprising since one might have expected that the emergence of a "serious irregularity" in the minutes of a Session would *mandate* the reviewing Presbytery act to redress it. Yet that is not what our Constitution prescribes. Even in such an *extraordinary* case, *BCO* 40-3 merely provides that the higher court "may" (not "shall") in such cases require the "serious irregularity" to be reviewed and corrected by the lower court, making such review and correction solely a matter of *discretion* with Presbytery without any apparently meaningful standard of review to evaluate the exercise of that discretion. Whereas the Decision implicitly interprets this provision to permit the SJC to review the activity with bounded deference to Presbytery, I take it that the deference due to Presbytery by this language to be so complete as to make a complaint against the action *non justiciable*.

Thus, even if we assume that the Super Bowl Minute presents a "serious irregularity," and that the Assembly is constitutionally permitted to review the question, the Assembly (through the SJC) faces an impossible situation. Strictly applying the standard of *BCO* 40-3, nothing in those constitutional provisions authorizes the SJC to require the Presbytery to, in turn, require the Session's review and correction of the Super Bowl Minute, seeing that such an act rests entirely within Presbytery's sole discretion.

The above analysis is just another way of explaining how the Constitution neither authorizes nor assigns the General Assembly (through the SJC) constitutional jurisdiction or standards to review the records of a non-adjacent court. Put another way, records review is a discrete "Review and Control" activity under *BCO* Chapter 40 that begins and ends with the court adjacent to the court that makes a record. Records review, as such, creates and encourages an insular forum of exchange between those two adjacent courts. Filing a complaint against a records review decision of Presbytery confuses two distinct modes of review because the SJC has no authority to engage in what is effectively a review of a Session record under *BCO* 40-2 and *BCO* 40-3.

A point of clarification is in order. This dissent is not to be understood to render all matters recorded in Presbytery minutes to be nonjusticiable simply because they involve records that could, in theory, be reviewed pursuant to "Review and Control" under *BCO* 40-2 and *BCO* 40-3, nor should it be understood to generally restrict the ability of the higher courts to review acts or decisions recorded in Presbytery minutes. Obviously, the acts and decisions of Sessions

and Presbyteries are usually recorded in their minutes. This case is unique in that the *particular activity* of Presbytery complained against is itself the review of the records of a Session bounded by *BCO* 40-1 through *BCO* 40-3. The non justiciability of simple records review comprises the intended scope of this dissent. This dissent is not intended to find a restriction on the constitutional review of other acts or decisions of Presbyteries in any way.

I will be quick to add that the General Assembly *is* granted other "Review and Control" powers under *BCO* Chapter 40. The General Assembly may, upon receipt of a "credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court" cite the court alleged to have offended to appear before the SJC and give an account. (*BCO* 40-5). But this is not at all a review of a "records review" process where the General Assembly "looks over the shoulder" of that exchange between lower courts essential to the records review process, critiquing and correcting the adequacy of Presbytery's review of Session records, but instead mirrors a formal "case of process" where the "accused" is a court. And I would add that this mode of review ensures that the SJC will have before it the kind of "information" the Decision found wanting in the instant case.

II. The SJC Lacks Authority to Adjudicate "Review and Control" Decisions of Presbyteries Except in *BCO* 40-5 Proceedings

The obstacle to the SJC review of the instant complaint is even more profound than already stated.

Even if we were to assume, contrary to all that is set forth in the above section, that the General Assembly has jurisdiction to review the Presbytery's review of the Super Bowl Minute, the General Assembly has never in fact delegated to the SJC authority to implement *BCO* 40-2 and *BCO* 40-3, making it unconstitutional for the SJC to apply these standards to a case like this.

The General Assembly's powers are enumerated in *BCO* 14-6 and include the following:

> a. To receive and issue all appeals, references, and complaints regularly brought before it from the lower courts; to bear

> testimony against error in doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline; …
> c. To review the records of the Presbyteries, to take care that the lower courts observe the Constitution; to redress whatever they may have done contrary to order;

While unequivocally granting these powers to the General Assembly, *BCO* 15-4 nevertheless also directs the Assembly to delegate certain of those powers to the SJC:

> The General Assembly shall elect a Standing Judicial Commission to which it shall commit all matters governed by the Rules of Discipline, except for the annual review of Presbytery records, which may come before the Assembly.

This direction to commit matters to the SJC corresponds to the powers afforded to the Assembly in *BCO* 14-6(a): "To receive and issue all appeals, references, and complaints regularly brought before it from the lower courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline…"

But the "Rules of Discipline" encompass Chapters 27 through 46 of the *Book of Church Order*, which include the four modes of review of the acts or decisions of lower courts set out in *BCO* 39-1. "All matters governed by the Rules of Discipline" is a wide designation and therefore seems, at first impression, to indicate that the Assembly is obliged to commit anything at all relating to the implementation of the Rules of Discipline to the SJC rather than the Assembly. "All matters" on its face would presumptively include "Review and Control" proceedings as encompassed under the six paragraphs composing *BCO* Chapter 40.

But that "first impression" would be incorrect.

It must be presumed that, until the Assembly in fact commits any particular of its powers to the SJC, such powers are retained by the Assembly. Upon closer review, we discover that the Assembly has not delegated to the SJC jurisdiction of proceedings under *BCO* 40-1 through *BCO* 40-4.

BCO 15-4's imperative "shall commit all matters governed by the Rules of Discipline" to the SJC is a direction to the General Assembly, and is not, on its face, self-executing. While *BCO* 15-4 directs the Assembly to act, the question remains whether the Assembly has done so as a matter of historical fact, as well as in what manner it has done so. The SJC may not presume to possess independent powers to set the boundaries of its own jurisdiction; it must defer to the Assembly's interpretation and implementation of its mandated duty to "commit" certain matters to the SJC under *BCO* 15-4. Otherwise, the SJC would become a law unto itself, effectively defining its own powers beyond the accountability of the Court that created it.

The *RAO* evinces the Assembly's interpretation and implementation of its mandated duty to "commit" matters to the SJC pursuant to *BCO* 15-4. That interpretation and implementation appears in two paragraphs of the *RAO*:

> RAO 17-1: "The Standing Judicial Commission shall have oversight of appeals, complaints and judicial references from lower courts."
>
> RAO 17-2: "With respect to the Rules of Discipline, any reference (*BCO* 41), appeal (*BCO* 42), complaint (*BCO* 43), *BCO* 40-5 proceeding, or request to assume original jurisdiction (*BCO* 34-1) made to the General Assembly shall be assigned to the Standing Judicial Commission for adjudication."

Assuming that *RAO* 17 conveys the Assembly's understanding and implementation of the *BCO* 15-4 mandate, we see that *RAO* 17 commits to the SJC precious little of the Assembly's presumptively retained *BCO* Chapter 40 and *BCO* 14-6(c) "Review and Control" jurisdiction.

In *RAO* 17-1 the Assembly merely declares the SJC's "oversight of appeals, complaints and judicial references from lower courts," omitting altogether any oversight over *BCO* Chapter 40 "Review and Control" jurisdiction. In other words, this provision affords the SJC no "oversight" over the implementation of any of the paragraphs of *BCO* Chapter 40.

At least *RAO* 17-2 “assigns” the limited class of "*BCO* 40-5 proceedings” to the SJC, but it assigns nothing else, implicitly *excluding* any assignment of *BCO*-40-1, 2, 3 and 4 proceedings from the SJC’s power of “adjudication.”

In other words, the entire “mode of review” we call “Review and Control,” other than “proceedings under *BCO* 40-5,” has not in fact been committed to the SJC for either “oversight” or “adjudication.” Consequently, the SJC has no authority to implement or apply *BCO* 40-2 through *BCO* 40-4 in this or in any other case, and the Complaint is judicially out of order.

The *RAO* delegates only *BCO* 40-5 proceedings to the SJC, not any other part of *BCO* Chapter 40 “Review and Control.” As a result, Presbytery’s “Review and Control” decisions about Session minutes are outside the scope of the SJC's review powers unless, having met the threshold requirement of a “credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court,” they are presented to the SJC in *BCO* 40-5 proceedings. But no such proceedings are before the SJC in this matter, and therefore this matter is outside the purview of the SJC.

III. The Instant Complaint is Governed Exclusively by “Review and Control,” and is Not a “Proceeding in a Judicial Case”

Notwithstanding the above analysis, if this case were not a proceeding in “Review and Control,” but were instead a “proceeding in a judicial case,” then the SJC would have jurisdiction to adjudicate it. To this end, we must consider the possible application of *BCO* 40-3, providing as it does an exception to the “Review and Control” jurisdiction of the Assembly in the following phrasing:

> Proceedings in judicial cases, however, shall not be dealt with under review and control when notice of appeal or complaint has been given the lower court; and no judgment of a lower court in a judicial case shall be reversed except by appeal or complaint.

Therefore, if the instant proceedings are deemed to be “proceedings in a judicial case” then the instant complaint, including the issues it raises, falls outside of the orbit of “Review and Control” jurisdiction altogether.

When Presbytery approved the Super Bowl Sunday Minute it was not engaged in a "proceeding in a judicial case," but in a "Review and Control" proceeding. Presbytery's mere receipt and consideration of a complaint did not transform its "Review and Control" proceeding into a "proceeding in a judicial case." As noted above, to adjudicate the Complaint before us, the SJC must take up in hand the very standards that apply to "Review and Control" proceedings as prescribed in *BCO* 40-2 and *BCO* 40-3. Therefore, the SJC is today invited to apply the standards applicable to "Review and Control" proceedings, not "proceedings in a judicial case."

That a complaint is not a "proceeding in a judicial case" is also supported by the observations of the esteemed commentator on the *Book of Church Order*, F.P. Ramsay:

> And that a complaint is not judicial process is evident from these two considerations: that no one can be censured by the issue of a complaint; and that questions that were not connected with a judicial cause may be the subjects of complaint (F.P. Ramsay, *Exposition of the Book of Church Order* (1898, pp. 252-254), on XIII-4-1).

In this case, the "questions that were not connected with a judicial cause" are questions pertaining to how Presbytery acquitted itself in exercising its "Review and Control" powers under *BCO* Chapter 40. So, although questions about acts or decisions taken in "Review and Control" proceedings might have otherwise been the proper subject of a complaint, they fall *outside* the delegated purview of the SJC because they are not "proceedings in a judicial case" pursuant to *BCO* 40-3.

IV. Conclusion

Upholding our standards is an important matter, and the questions raised by the Complainants in this case are good and important ones.

The enforcement of the Sabbath by the ecclesiastical courts might arise in various forms other than "Review and Control." These other modes of review may also be considered by those who believe that the Church needs reform or correction in this area.

Such a concern may be brought by a member of the Session or a member of the church as a complaint against an act of a Session approving a Super Bowl party, or for refusing to exercise discipline and oversight concerning it. In such a case that "act or decision" of the court, if any, would be directly under consideration.

Those who believe that a Super Bowl Party violates our standards, after following the prescriptions of Matthew 18, might consider bringing charges and formal process against those they believe have violated the Sabbath.

Per *BCO* 33-1, "if the Session refuses to act in doctrinal cases or instances of public scandal and two other Sessions of churches in the same Presbytery request the Presbytery of which the church is a member to initiate proper or appropriate action in a case of process and thus assume jurisdiction and authority, the Presbytery shall do so." Therefore, if two Sessions of a Presbytery agreed to ask for this relief then a matter such as presented in this case could be handled as a case of process with the full development of the facts that attend a trial. The decision would be subject to SJC review by complaint or appeal, and the SJC would have the benefit of a fully developed record in such a case.

Such complainants could also request their Presbytery to invoke *BCO* 40-5 jurisdiction over the Session on the ground that the Session's "approval" of a Super Bowl party -- if such approval were in fact established --- was an "important delinquency or grossly unconstitutional proceeding." If Presbytery agreed, Presbytery would cite the Session to appear and show cause. If the Presbytery refused to invoke such jurisdiction, or if the complainants were unhappy with the outcome of a show cause proceeding, the complainants might file a complaint to the Presbytery and take the matter to the SJC through *BCO* Chapter 43 arguing that Presbytery erred by either refusing to invoke its *BCO* 40-5 powers or by failing to censure the Session. In such a case, the SJC would have a much more fully developed record by virtue of the evidence adduced in the proceedings, which would be in the nature of a trial.

Lastly, if concerned persons were of the conviction that a Presbytery's actions or inaction regarding church Super Bowl parties in its member churches under its care present an "important delinquency or grossly unconstitutional proceeding," then *BCO* 40-5 charges may be sought with respect to the Presbytery.

Some might assert that all decisions of a Presbytery, including decisions about the exercise of its "Review and Control" jurisdiction should be subject to review by the higher court, and this dissent unreasonably undermines that principle. While I respect the point, I cannot reconcile it with the current structuring of our Constitution. I would point out that the modes of review are neither comprehensive nor equal. Our Constitution affords different modes of review. The various "modes of review' help ensure that important matters touching the peace and purity of the Church might be addressed "in one or another" of the "modes of review" (*BCO* 39-1), just like one city may have multiple roads leading to it. But it does not follow that every mode of review is as suitable as every other to achieve a desired objective, just as we find that some roads prove to be unsuitable avenues to one's intended destination.

I believe that our Constitution permits the Assembly to exercise "Review and Control" authority only in the most extreme cases (involving "important delinquencies" or "grossly unconstitutional proceedings"), and only in those cases involving the acts or delinquencies of Presbyteries. The Constitution does not grant to the Assembly "Review and Control" authority over the acts or delinquencies of Sessions, and therefore the Assembly cannot assign such authority to the SJC. The only part of "Review and Control" jurisdiction the *RAO* assigns to the SJC is *BCO* 40-5, ensuring that the SJC may only proceed in accordance with the protections and advantages afforded to deliberation and decision in judicial proceedings (not general review proceedings), with citation and a trial "according to the rules provided for process against individuals." This method affords the full development of the facts as well as the protections that realize the comity and regard due to coordinate courts of the Church.

Because I cannot agree that the Presbytery did not err in approving the disputed minutes, I cannot concur and respectfully dissent. I maintain that the SJC cannot say whether the Presbytery erred or not. The case is simply judicially out of order.

/s/ RE Jim Eggert