PRESBYTERIAN CHURCH IN AMERICA
STANDING JUDICIAL COMMISSION

CASE No. 2023-13

BCO 40-5 MATTER
re:
METRO NEW YORK PRESBYTERY

RULING ON REPORT
January 12, 2024

The SJC cited Metro New York Presbytery to appear at the Commission's Fall Stated Meeting as directed by the 50th General Assembly in the following resolution:

That the 50th General Assembly:

a. Find that the minutes of Metropolitan New York Presbytery (September 20, 2022; pp. 69–71) constitutes a "credible report" of "an important delinquency or grossly unconstitutional proceedings" (*BCO* 40-5) in Presbytery's delinquency to redress a Session who admitted to unconstitutional proceedings of: (1) permitting a woman to expound the Scriptures during a worship service on the Lord's Day; (2) holding many worship services without preaching; and (3) serving the Lord's Supper at many services without a preceding sermon. Furthermore, Presbytery was delinquent in failing to redress the views of a Teaching Elder who stated his approval of said proceedings.

b. Cite Metropolitan New York Presbytery to appear, per *BCO* 40-5, before the PCA's Standing Judicial Commission which the 50th GA constitutes its commission to adjudicate this matter, by representative or in writing, at the SJC's fall stated meeting, to "show what the lower court has done or failed to do in the case in question," following the *Operating Manual for the SJC*, particularly chapter 15.

The party representatives provided documents bearing on the matter pursuant to *OMSJC* 15.2. The representatives of the General Assembly filed a brief outlining their position. The representative of Metro New York Presbytery

chose not to file a brief, stating that Presbytery's position was outlined in the minutes of Presbytery's called meeting of August 8, 2023, which minutes were provided to the Commission. On October 19, 2023, representatives of the General Assembly and the Presbytery appeared for hearing before the Standing Judicial Commission.

Having considered the record, briefs, and arguments presented by the party representatives, the Standing Judicial Commission enters the following decision to "redress the proceedings of the court below" (*BCO* 40-5 and *OMSJC* 15.6):

The SJC remits this matter to Metro New York Presbytery with the injunction that they take up and dispose of the matter in a constitutional manner. (OMSJC 15-6.c) Metro New York Presbytery has addressed this matter as indicated in Minutes of August 8, 2023 and September 19, 2023. The Presbytery shall complete its work of dealing with TE Higgins and the Session of Trinity Presbyterian Church, Rye, NY, and report the results of that work to the Committee on Review of Presbytery Records for the 51st GA.

The minutes of the August 8. 2023, meeting of Presbytery make clear that Presbytery has taken some action on this matter. Those minutes record that Presbytery found that it erred when it "failed to redress unconstitutional proceedings at a church within its bounds when it allowed a woman to teach in its public worship service in place of the preaching that Sunday and for that teaching to be the sermon that preceded the celebration of the Lord's Supper even though the Senior Pastor briefly expounded the Word prior to celebrating the Lord's Supper on that day." Presbytery further found that it erred in failing to redress the views of the teaching elder who stated his approval of those proceedings.

In support of these conclusions Presbytery adopted the following statements:

It is the position of Metropolitan New York Presbytery that an "exposition of the Word" by a woman shall not take the place of the ordinary sermon in public worship services in the churches within its bounds.

It is the position of Metropolitan New York Presbytery that only qualified men should preach to God's people during public worship services. We do not believe that the principle that "a woman can do whatever an unordained man

can do" is to be applied to the preaching in public worship services (*BCO* 4-4, 8-5; WCF 21.5; WLC 156, 158).

Furthermore, it is the position of Metropolitan New York Presbytery that it is permissible for unordained and unlicensed men to occasionally preach (*BCO* 19-1), but not a woman.

Though allowing this woman to teach in place of a sermon only happened once, Metropolitan New York Presbytery has informed the church's Senior Pastor and the Session that this practice is unconstitutional, and they are not to repeat it in the future. The Senior Pastor and Session agreed to submit to the will of the presbytery on this matter.

Presbytery further concluded that it did not err in its decision to take no further action with regard to the allegations that "many worship services were held without preaching" and that a church within its bounds celebrated the Lord's Supper without a preceding sermon. In both cases the Presbytery accepted the report of the Senior Pastor of the Church that the Session sought to differentiate between an exposition of God's Word delivered by one who is ordained or licensed, which would be referred to as "a sermon," and an exposition of God's Word delivered by one who is not ordained or licensed, which would be referred to as "a message." Thus, Presbytery concluded that there was always an exposition of God's Word in the worship services of this congregation, but that exposition was sometimes called "a sermon" and sometimes "a message" depending on who was delivering the exposition.

In the course of the hearing before the SJC, the representative of Presbytery also provided the unapproved minutes of the Presbytery meeting of September 19, 2023. Those minutes record that Presbytery had asked the teaching elder and session in question to "examine their views regarding women preaching the Word of God in public worship services in light of the PCA Constitution (specifically, WCF 21.5, WLC 156 and 158) and the Metropolitan New York Presbytery's position; and they notify the presbytery of their views at its next stated meeting (*BCO* 21-5, vows 2-3)." Those minutes also record that Presbytery received the following response from the Session: "The pastors and elders of Trinity Presbyterian Church—in keeping with our respective ordination and installation vows—take no exceptions to WCF 21.5 or to WLC #s 156 and 158. We continue to profess our cheerful agreement to all of the vows listed in *BCO* 21-5." While the unapproved minutes are not clear, they

appear to indicate that Presbytery approved this response. That was also the view of the Presbytery's representative at the hearing.

This response, received by Presbytery at a meeting that occurred after Presbytery was cited to appear before the Standing Judicial Commission, is clearly inadequate and requires further response. The Session's response neither acknowledges any error nor delineates any specific stated differences that the teaching or ruling elders take to the *Westminster Standards* or the *Book of Church Order* in order to have viewed the alleged practice to be permissible.

In view of the inadequate nature of the response of the session, and the lack of clarity in the unapproved minutes as to exactly what action Presbytery took on that response, the Commission concluded that the best way forward was to follow *OMSJC* 15.6.c by remitting this matter to Presbytery so as to allow Presbytery to complete any remaining work in the matter, including such things as: seeking an admission of error from the teaching elder and session involved in the matter; requiring a statement of specific stated differences that the teaching or ruling elders take to the Constitutional documents that led them to conclude the they did not err (if that is their position); seeking evidence of repentance from those who committed the errors that Presbytery has identified; and determining how the congregation will be informed of Presbytery's conclusion that the Session had erred in its actions. Presbytery's actions will then be reported to the 51st General Assembly, which Assembly can then review, through the Committee on Review of Presbytery Records, the adequacy and constitutionality of those actions. Should the actions be found to be satisfactory the matter will be concluded. Should the Assembly, on recommendation from RPR, conclude that Presbytery's response is inadequate then *RAO* 16-10.c may be followed. The Standing Judicial Commission believes this approach is consistent with *BCO* 40 as understood and applied in light of *RAO* 16.10. It also appropriately protects the prerogatives and responsibilities of Presbytery while moving the matter toward a conclusion that is consistent with our Constitution.

A Further Note on Procedure in the Matter

This case came to the SJC as a *BCO* 40-5 reference from the 50th General Assembly on the basis of a proposal from the Committee on Review of Presbytery Records. RPR argued that the review of the records of Metro New York Presbytery led to a credible report of an "important delinquency or grossly unconstitutional proceedings." The Committee further argued that *BCO* 40-5 requires that such reports, even when arising from the review of the records of a presbytery, must be handled by citing the Presbytery to appear before the court next above, in this case, the General Assembly which has empowered the Standing Judicial Commission to act on its behalf. In voting to adopt the recommendation of RPR the 50th General Assembly apparently accepted RPR's argument with regard to how properly to understand and apply *BCO* 40-5 to a matter arising out of the required review of the records of a presbytery.

As the Commission was assigned this matter by the General Assembly, we took up the matter and dealt with it. At the same time, we question the constitutionality of the Assembly's referral in this case and wish to take this opportunity to explain why we are dubious about the Assembly's action.

We note, first, that *BCO* 15-4 states "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**.** (emphasis added) The fact that the annual review of presbytery records is treated as an exception to the SJC's jurisdiction over "all matters governed by the Rules of Discipline" should make us cautious about any argument that suggests that matters raised by RPR can come directly to the SJC as happened in this case.

Further, while the *Rules of Assembly Operations* and the *Operating Manual for the Standing Judicial Commission* are, and must be, under the authority of the *Book of Church Order*, it is also true that the *RAO* and *OMSJC* tell us, by way of application, how the PCA understands relevant provisions of the *BCO*. In regard to this matter, *RAO* 16-2 establishes that the General Assembly will carry out the required annual review of presbytery records through "its Committee on Review of Presbytery Records." This statement reminds us that RPR is a committee of the General Assembly. As such, its powers and procedures must come as grants from the Assembly. *RAO* 16-4.e; 16-6; 16-7;

16-8; 16-9; and 16-10.c spell out those powers and procedures. Of particular relevance to the present matter are *RAO* 16-6.c and 16-10.c

RAO 16-6.c states "The findings of the committee with respect to the minutes of each presbytery **shall** be noted under the following categories as appropriate:" 1) exceptions of substance; 2) exceptions of form; and 3) notations. (emphasis added) No other options are provided for RPR. Further, *RAO* 16-10.c states "If, in responding to an exception of substance, a presbytery reports that it disagrees with the conclusion of the Assembly and/or has not corrected or redressed the identified problem; and the committee… continues to believe that the presbytery has persisted in an error that is significant enough to require an Assembly response; **then** the committee shall notify the Assembly of the continuing exception, and shall make a recommendation as to whether the Assembly should again seek a more acceptable response from the presbytery, or should appoint a representative to present its case and refer the matter to the Standing Judicial Commission to cite the presbytery to appear for proceedings according to *BCO* 40-5." (emphasis added) In other words, RPR is empowered to bring a recommendation to cite a presbytery to appear for proceedings under *BCO* 40-5 **only** after 1) the Assembly has taken an exception of substance to the minutes of presbytery; 2) presbytery has had the opportunity to respond to the exception (whether by agreeing with it and redressing the matter or by disagreeing with it); and 3) RPR has concluded the response is unsatisfactory and requires further action by the Assembly.

This conclusion is buttressed by an analysis of Chapter 15 of *OMSJC* (the chapter of the *Manual* dealing with "Procedure for Hearing a Report Arising Out of General Review and Control (*BCO* 40; *RAO* 16-10.c)"). First, *OMSJC* is subordinate to the *BCO* and *RAO* (see *RAO* 17-5), and thus Chapter 15 must be interpreted in light of the material in the previous paragraph. Second, both the title of Chapter 15 and the language of 15.2 clearly acknowledge that the provisions of the Chapter are dependent on *RAO* 16-10.c, and, thus, that any report that arises out of the annual review of presbytery records that alleges "an important delinquency or grossly unconstitutional proceeding of a lower court (*BCO* 40-5)" can come to the SJC only after the provisions of *RAO* 16-10.c have been followed.

In the matter before us, the first two required steps in the process set forth in *RAO* 16-10.c were omitted. The 50th General Assembly did not first find an

exception of substance, nor was Metro New York Presbytery given the opportunity to respond to such an exception or to "redress the identified problem" before being cited to appear before the Standing Judicial Commission. As such, the 50th General Assembly exceeded its authority in immediately ordering the citation for Metro New York Presbytery to appear before the Standing Judicial Commission.[1]

This is not a small issue. *BCO* 11-3 holds:

All Church courts are one in nature, constituted of the same elements, possessed inherently of the same kinds of rights and powers, and differing only as the Constitution may provide. When, however, according to Scriptural example, and needful to the purity and harmony of the whole Church, disputed matters of doctrine and order arising in the lower courts are referred to the higher courts for decision, such referral shall not be so exercised as to impinge upon the authority of the lower court.

Thus, as much as we recognize the appropriate concern about the actions of the church in question and Metro New York Presbytery's response to those actions, which concern grows out of the responsibility of mutual submission and understanding that "every act of jurisdiction is the act of the whole Church performed by it through the appropriate organ" (*BCO* 11-4), we must also recognize the appropriate prerogatives of Metro New York Presbytery as a court of the Church. The procedures set forth in *BCO* 40, *RAO* 16-10.c, and *OMSJC* 15 appropriately balance these two concerns by providing a means whereby the actions of presbyteries are reviewed by General Assembly with regard to their conformity to our Constitution, a presbytery has the right to respond to any allegations of lack of conformity (whether by explanation or redress), and if there is ongoing disagreement, a mechanism is provided whereby such a dispute may be finally settled. The General Assembly should be scrupulous in the future in maintaining this careful balance that is required by our rules.

Finally, we underscore that none of the forgoing analysis in any way calls into question whether RPR acted appropriately in identifying the errors committed by Metro New York Presbytery. Both we and the Presbytery have concluded

[1] Of course, the other option would have been for the Assembly to suspend *RAO* 16-10.c, following the procedure set forth in *RAO* XX, but that path was not followed.

that Presbytery erred and that those errors need to be corrected. Further, nothing in this analysis in any way comments on how *BCO* 40-5 reports that arise in some manner other than the annual review of the records of a presbytery should be handled. That question is not before us.

This first section of this Ruling (pp. 1-3) was adopted unanimously by the SJC's drafting committee consisting of RE Frederick Neikirk (chairman), TEs Fred Greco and Sean Lucas, and REs Mel Duncan and John Pickering. The second section titled "A Further Note on Procedure in the Matter" (pp. 4-6) was authored only by RE Neikirk and TE Lucas.

The SJC approved the Ruling on the following **16-2** vote, with three absent, two not qualified, and one recused.

Bankson	*Concur*	S. Duncan	*Concur*	Maynard	Absent
Bise	*Concur*	Eggert	*Dissent*	Neikirk	*Concur*
Carrell	*Concur*	Evans	*Concur*	Pickering	*Concur*
Coffin	*Concur*	Garner	Not Qualified	Sartorius	*Concur*
Dodson	*Concur*	Greco	*Concur*	Ross	Absent
Donahoe	*Concur*	Kooistra	Not Qualified	Waters	*Concur*
Dowling	*Concur*	Lee	Recused	White	Absent
M. Duncan	*Dissent*	Lucas	*Concur*	Wilson	*Concur*

TE Lee recused himself because he was Chairman of the Committee on Review of Presbytery Records, from which this matter arose, and deemed it best to do so.

TEs Garner and Kooistra were not present at the SJC meeting in October 2023 when the Hearing was held in this matter, and thus not qualified.

CONCURRING OPINION

Case No. 2023-13
BCO 40-5 Matter re Metropolitan New York Presbytery
TE Fred Greco, joined by RE Dowling, RE S. Duncan, and TE Sartorius

I concur with the Decision of the Standing Judicial Commission in this case to remit the matter to the Presbytery to allow it to resolve the errors of the teaching elder and session involved in the matter. However, I desire to state my disagreement with the portion of the SJC's decision entitled "A Further Note on Procedure in the Matter."

First and foremost, I do not believe that the SJC was required to make such a statement in its decision. At best, the "Further Note" is *dicta* that is not binding on future Assemblies or litigants. At worst, I believe it is a statement that goes beyond the requirements of our Constitution and attempts explicitly to correct the 50th General Assembly. As a creature of the General Assembly, the ***Committee*** on Review of Presbytery Records (emphasis added) may recommend an action to the Assembly (*BCO* 15-1). It may not, however, bind the General Assembly to a specific course of action. The SJC has indicated in its decision that *Rules of Assembly Operation* (*RAO*) 16-6.c does indeed bind the General Assembly in its process because it delineates the normal and ordinary course of action arising out of the Committee on Review of Presbytery Records (CRPR). While this is the ordinary course of action, I do not believe it is Constitutionally mandated.

Because the *RAO* is not a part of the Constitution (*BCO* Preface III), the Constitutional provision that governs is *BCO* 40 (Review and Control, specifically *BCO* 40-5). That states in part:

> When any court having appellate jurisdiction shall receive a credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court, the first step shall be to cite the court alleged to have offended to appear before the court having appellate jurisdiction, or its commission, by representative or in writing, at a specified time and place, and to show what the lower court has done or failed to do in the case in question.

I believe that the matter raised in New York Metro Presbytery is an "important delinquency or grossly unconstitutional proceeding" of the Session of Trinity Presbyterian Church (Rye, NY). I further believe that the Presbytery failed to properly resolve such matter and do its duty under *BCO* 40-5. As a result, CRPR was within its purview to report such to the General Assembly and to ask the Assembly to act.

I do not think that every such report under *BCO* 40-5 would warrant immediate referral to the General Assembly to act through its Standing Judicial Commission. In fact, CRPR followed its normal course in what has become SJC 2023-14. However, I do not believe that CRPR is *forbidden* from bringing such recommendations to the Assembly. I note that the Assembly agreed with the recommendation of CRPR by an overwhelming margin (1447 to 168, or 89% to 11%). I further note that it is possible (even likely) that CRPR anticipated an inadequate response from the Presbytery to the exception of substance, a possibility that was borne out by the SJC decision characterizing it as "clearly inadequate and requires further response." The response did not even address the heart of the matter, as the SJC decision states: "The Session's response neither acknowledges any error nor delineates any specific stated differences that the teaching or ruling elders take to the *Westminster Standards* or the *Book of Church Order* in order to have viewed the alleged practice to be permissible."

For the reasons stated above, I concur and clarify that I do not believe the SJC should have issued its "Further Note on Procedure in the Matter."

TE Fred Greco

CONCURRING OPINION

Case No. 2023-13
BCO 40-5 Matter re Metropolitan New York Presbytery
TE David F. Coffin, Jr.
January 30, 2024

I concur with the decision of the Standing Judicial Commission (SJC) in this case, to remit

> this matter to Metro New York Presbytery with the injunction that they take up and dispose of the matter in a constitutional manner. (*OMSJC* 15-6.c) Metro New York Presbytery has addressed this matter as indicated in Minutes of August 8, 2023 and September 19, 2023. The Presbytery shall complete its work of dealing with TE Higgins and the Session of Trinity Presbyterian Church, Rye, NY, and report the results of that work to the Committee on Review of Presbytery Records for the 51st GA.

However, so there will be no misunderstanding with respect to my concurrence, some further observations are in order to highlight and support the "Further Note on Procedure" concluding the decision (pp. 4-6). That note sets forth a declaration of conscience, explaining that though the SJC complied with the assignment of a *BCO* 40-5 matter from the 50th General Assembly, it did so with grave concerns about the constitutionality of the Assembly's referral, while having little or no recourse.

The expression of these concerns must be understood in light of the fact that the SJC is governed exclusively by the provisions of *The Book of Church Order* and the "Rules of Assembly Operations" (*RAO*). Specific directions governing the implementation of these provisions are set forth in the "Operating Manual for Standing Judicial Commission," (*OMSJC*) as adopted by the General Assembly (*RAO* 17-5). Each member of the SJC vows, with respect to his labors, to judge according to the Constitution of the PCA (*RAO* 17-1).

Further, it must be noted that when a matter comes before the SJC, the Commission is required, throughout the *OMSJC*, to determine whether the matter is properly before the Commission according to the provisions of the Constitution. This is true from the reception of a case—in the provisions for finding a case Administratively in Order—and with respect to the hearing of a matter—in the provisions for a Panel finding a case Judicially in Order. Just as the referring Assembly could not determine the final judgment of a case prior to referring it to the SJC, so too the Assembly cannot determine *the SJC's judgment* as to whether a case is in order.

In addition, the chapter of the *OMSJC* that sets forth the procedure for taking up a referral from the Assembly via CRPR, i.e., "15. Procedure For Hearing a Report Arising Out of General Review and Control (*BCO* 40; *RAO* 16-10.c)," is clearly dependent upon *RAO* 16-10.c., anticipating that the provisions of *RAO* 16-10.c have governed the referral, and thus necessitates the SJC's judgment as to compliance with *RAO* mandated procedures.

All of these considerations urge that it is procedurally appropriate, and a matter of conscientious necessity, for the SJC to communicate its concern about the way this matter was referred to the SJC.

With respect to that concern, first, a general consideration. Our *BCO* is properly designed to set forth the fundamental scriptural principles of the government of the church, and a few practices and procedures that, prudentially, will provide a wholesome uniformity, consistency, and due process in the functioning of our government and discipline. Each Court of the church must adopt a set of regulations that set forth how those principles, practices and procedures will practically govern that court. These regulations are typically set forth in Rules or Bylaws adopted by that Court (e.g., "Rules of Assembly Operations" (*RAO*)). However, these Rules can neither add to, nor take away from, the provisions of the *BCO*. Thus, the Court's Rules determine, for that Court, subject to review, how the *BCO* will be administered in that jurisdiction.

The question in this instance is: May the Committee on Review of Presbytery Records (CRPR) recommend to the General Assembly that a matter arising out of the review of presbytery minutes be considered as a *BCO* 40-5 case? At first glance, one might suppose that would be permissible; *BCO* 40-5 is a provision of our government, and available to the *Courts* of the church for the good of the church. However, that initial impression cannot stand analysis. The question is, more properly, can CRPR, a *committee* of the Assembly, *a committee that is a creature of the Assembly*, and has responsibilities and powers *no more or less than those appointed* by the Assembly in the "Rules for Assembly Operation," properly recommend to the Assembly that a matter arising out of the review of presbytery minutes, be considered as a *BCO* 40-5 case without the CRPR itself first following the procedural requirements of the *RAO*? The answer is plainly, No. In its rules the Assembly has declared that a matter arising out of presbytery minutes *must be treated* by the CRPR in a particular way. The pertinent rules are as follows:

Rules of Assembly Operation 16-6. Guidelines for Examining Presbytery Records [emphasis added]:

c. The findings of the committee with respect to the minutes of each presbytery shall be noted under the following categories as appropriate:
    1) Exceptions of substance: Apparent violations of the Scripture or serious irregularities from the Constitution of the Presbyterian Church in America, actions out of accord with the deliverances of the General Assembly, and matters of impropriety and important delinquencies, and any non-compliance with *RAO* 16-3.e.5 should be reported under this category [record of officer candidate examinations].
    2) Exceptions of form: Violations of the Assembly's Guidelines for Keeping Presbytery Minutes (*RAO* 16-3), rules of order, etc. should normally be reported under this category. When a minor irregularity from a *BCO* provision or requirement is noted, it may be treated as an exception of form (*BCO* 40-3). If subsequent minutes continue to reflect the same particular exception of form, it may become an exception of substance.
    3) Notations: The committee may report to the clerk of presbytery any typographical errors, misspellings, improper punctuation and other minor variations in form and clarity. These are to be given as advice for the respective clerks.

These, *and these only*, are the Committee's options. Further, when it appeared through experience that these Rules were not adequate for serving the Assembly well, the Assembly itself added to those Rules,[1] in section 16, a way in which a matter arising out of the review of presbytery minutes *could* be referred to the SJC under *BCO* 40-5, after the regular requirements of the *RAO* had been pursued and found wanting,

[1] For insight into the historical circumstances of the amendment, the corresponding change to *BCO* 40-5, and the significance of those circumstances for understanding the provisions in question, see the Concurring Opinion of RE. J. Howard Donahoe in this case.

> *RAO* 16-10.c. If, in responding to an exception of substance, a presbytery reports that it disagrees with the conclusion of the Assembly and/or has not corrected or redressed the identified problem; and, the committee (after reviewing the presbytery's response and rationale, and, if a majority so desires, consulting with the Committee on Constitutional Business) continues to believe that the presbytery has persisted in an error that is significant enough to require an Assembly response; then, the committee shall notify the Assembly of the continuing exception, and shall make recommendation as to whether the Assembly should again seek a more acceptable response from the presbytery, or should appoint a representative to present its case and refer the matter to the Standing Judicial Commission to cite the presbytery to appear for proceedings according to *BCO* 40-5.

Note that this path is permissible for the Committee only *after* it has fulfilled its responsibilities under the regular Rules for dealing with matters arising out of presbytery minutes (as cited above).

In this case referred to the SJC by the GA, the CRPR had no right to recommend to the Assembly that a matter arising out of the review of presbytery records, *de novo*, be treated as a *BCO* 40-5 case without first following the order and requirements of the procedures of *RAO* 16, and the Assembly itself, had no right to accede to that recommendation. The Assembly had no right to do so because it had already bound itself according to the provisions set forth in the *RAO*. Apart from suspending those Rules, or amending them, the Assembly had no right to accede to the improper request from CRPR. The acts of the 50th GA in this matter provide a misleading standard, the error of which must be exhibited and rejected by a more considered deliberation. It is my hope that future Assemblies will not follow such an unconstitutional course and that future Moderators will rule such recommendations out of order.

Should the 50th Assembly's action in this matter be taken as precedent for other such referrals, the SJC would be burdened with increased responsibilities, responsibilities unspecified, and thus a distraction from the mounting caseload that is specified as its Constitutional obligation. *RAO* 16-10. c. was designed

to bring before the SJC alleged exceptions of substance ("Apparent violations of the Scripture or serious irregularities from the Constitution of the Presbyterian Church in America, actions out of accord with the deliverances of the General Assembly, and matters of impropriety and important delinquencies") only after the brotherly discussion of the concerns raised by CRPR, as approved by the Assembly, were brought to a presbytery for an appropriate response. Through this time-tested collegial procedure, most such disputes are resolved. The *RAO*, however, contains a valuable safeguard, should the exchange reach a stalemate: The Assembly itself, upon recommendation from CRPR, can send the matter to the SJC.

The erroneous view evident in the action of the 50th General Assembly, neglecting the wise procedure set forth in a proper reading of the *BCO* and the RAO, threatens to do damage to the unity of our various courts, and diminish the capacity of the SJC to adjudicate cases with efficiency and justice, doing significant harm to our church.

TE David F. Coffin, Jr.

CONCURRING OPINION

Case No. 2023-13
BCO 40-5 Matter re Metropolitan New York Presbytery
RE Howie Donahoe
January 30, 2024

I concurred in the SJC Ruling. I agree the matter raised in this Case appeared to be an "important delinquency or grossly unconstitutional proceeding" of a Session, and thereafter, by a Presbytery. I agree with a Dissenting Opinion that concludes, "any report deemed credible within our denomination of a woman preaching in the pulpit of a PCA Church, before a PCA Congregation, in a PCA Worship service shall be considered a "grossly unconstitutional proceeding." The SJC Ruling does not dispute these conclusions, but that is not the issue addressed in the second part of the Ruling. I believe further comment is warranted regarding the matter addressed in the second part of the SJC's Ruling (the final three pages).

First, I offer here some legislative history, hopefully shedding light on the interpretation of *BCO* 40-5. I readily grant legislative history is not the primary way to interpret the meaning of a text in the law. It is possible men could have different understandings of a text when they vote to approve it. So, I agree with the late Justice Scalia that the hunt for "original intent" might be a fool's errand, and much prefer his textualist philosophy wherein a text is to be understood to mean what the words meant at the time of their adoption. But legislative history can often clarify the meaning of the text, *especially* when rationale is provided at the time the new law is considered and when the rationale is drafted by the committee elected by the body.

In 2005 and 2006, the long-serving Strategic Planning Committee ("SPC") presented comprehensive reports to the 33rd and 34th GAs in Chattanooga and Atlanta. (*M33GA*, p. 342-445; *M34GA*, pp 568-628) The SPC Reports recommended multiple amendments to the *RAO* and the *BCO*, including the current wording of *BCO* 40-5 and what is now *RAO* 16-10.c. It appears there were 14 primary members on the SPC, with RE Brock as chairman.

TE Frank Barker	TE Will Barker	TE Dave Clelland	TE Lig Duncan III
TE Wayne Herring	TE Bill Lyle		
RE Joel Belz	RE Frank Brock	RE Sam Duncan	RE Bebo Elkin
RE Glenn Fogle	RE Harry Hargrave	RE Jack Williamson	RE Mike Wilson

There were also several advisory members including Agency and Committee Coordinators, Stated Clerk Taylor, and two advisory teaching elders - TEs David Coffin and Elliot Lee.

The amendment to *BCO* 40-5 (the current language of the *BCO)* was adopted by the 33rd GA and sent to the presbyteries. The SPC's rationale was included in its report to the 33rd GA and in the material sent to the presbyteries. The presbyteries voted 54-11 to approve the amendment (83% in favor).[2] The revision was then adopted and enacted by the 34th GA in Atlanta in 2006. (*M34GA*, p. 57) This is the text we have operated under for the last 18 years.

> BCO 40-5, first sentence: "When any court having appellate jurisdiction ~~shall be advised either by the records of~~ **receive a**

[2] Eleven presbyteries voted against the *BCO* 40-5 amendment: Ascension, Calvary, Grace, Heritage, Mississippi Valley, Northern Georgia, SE Alabama, SE Louisiana, Southwest, Southwest Florida, and Westminster.

> **credible report with respect to** the court next below ~~or by memorial, either with or without protest, or by any other satisfactory method~~, of any important delinquency or grossly unconstitutional proceedings of such court, the first step shall be to cite the court alleged to have offended to appear **before the court having appellate jurisdiction, or its commission,** by representative or in writing, at a specified time and place, and to show what ~~it~~ **the lower court** has done or failed to do in the case in question." (*M33GA*, 33-45, 33-48, III, 8b, pp. 184, 186)." [*M34GA*, pp. 57-60]
>
> [SPC rationale] "Comment: Proposed change simplifies the language of the antecedent in the conditional, and allows for the use of a commission, in anticipation of a proposed amendment to *RAO* 14-10.c [now *RAO* 16.10.c] establishing a judicial procedure to settle the question of the disputed exceptions alleged under General Assembly review of presbytery records. (*M33GA*, 33-48, III, 8, p. 186; see also Appendix C, Attach. 1, p. 342)." [cf. *M33GA* pp. 340-41.]

It is clear from the SPC's rationale for the *BCO* 40-5 revision that it was initiated in preparation of the *RAO* revision that would pertain to a situation in which a presbytery filed unsatisfactory *responses* to RPR/GA citations. This *RAO* revision was also published in the SPC's Report to the 33rd GA, in anticipation of proposing it to the 34th GA for a vote.

In 2006, at the 34th GA in Atlanta, the Assembly adopted fifteen revisions to the *RAO* in omnibus, by more than the required two-thirds majority, including the addition below to what was then *RAO* 14-10.c (which is now 16-10.c).

> [14-10.c - all new; now 16-10.c] If, in responding to an exception of substance identified by the Assembly, a presbytery reports that it disagrees with the conclusion of the Assembly and has not corrected or redressed the identified problem; and, the committee (after reviewing the presbytery's response and rationale) continues to believe that the presbytery has persisted in an error that is significant enough to require an Assembly response; then, the committee shall notify the Assembly of the continuing exception, and shall

> make recommendation as to whether the Assembly should again seek a more acceptable response from the presbytery, or should refer the matter to the Standing Judicial Commission to cite the presbytery to appear for proceedings according to *BCO* 40-5. [*M34GA*, p. 72-73]
>
> [SPC rationale] "See comment on *BCO* 40-5."

It is difficult, at least for me, to review that legislative history and conclude the commissioners and presbyters who approved the revision to *BCO* 40-5 envisioned the abridged process followed by last year's Assembly regarding this present matter. No Assembly in the last 18 years since the adoption of that revision to *BCO* 40-5 has ever used such an abridged process.

In short, while the provisions of *BCO* 40-5 and RAO 16-10.c were rightfully applied last year to Case 2023-14: *BCO 40-5 Matter re Northwest Georgia,* they were not rightfully applied to Case 2023-13: *BCO 40-5 Matter re Metro New York.* RAO 16-10.c was not followed - *nor suspended* - by the 50th GA. It is within the SJC's purview, and perhaps its responsibility, to simply apprise the Assembly of such. And this appraisal might be particularly warranted when such a large majority of an Assembly overlooks such a procedural mistake.

I offer two final thoughts. Some might contend *RAO* 16-10.b and 10.c are not mandatory because they are not part of the Constitution. However, those *RAO* sections set forth how the PCA has decided *BCO* 40-5 *will and should be* implemented at the Assembly level. They can only be ignored if two-thirds of an Assembly votes to suspend the Rules, or, after someone has successfully proposed a revision to the *RAO*.

I leave the reader to ponder a scenario. Let us say the minutes of a presbytery show that an ordination candidate expressed a relatively common difference with the Standards, say, allowing for some sort of recreation on the Sabbath. And presbytery judged it as not striking at any fundamental of our system of doctrine. And let us suppose a particularly zealous RPR regarded presbytery's judgment as an “important delinquency,” and sought to bypass our regular order, and, through a *BCO* 40-5 accusation, without any due process, without any pre-indictment investigation, sought immediately to bring the matter to a

trial before the SJC? Would we be persuaded wisdom and fairness had been served? I think not.

RE Howie Donahoe

DISSENTING OPINION

Case No. 2023-13
BCO 40-5 Matter re Metropolitan New York
RE Melton L. Duncan
January 29, 2024

Fathers and Brothers,

I am humbly dissenting from the decision in PCA v. Metropolitan New York Presbytery.

I affirm the rightness of the Review of Presbytery Records (RPR) recommendation approved by the Memphis General Assembly; that RPR properly utilized the *BCO* 40-5 statute to cite a lower court with a credible report of an "important delinquency" before the PCA. I also want to affirm the rightness of the SJC to determine the matter on the merits. My right honorable brethren on the Standing Judicial Commission (SJC) apparently disagreed and remanded the matter back down with reasoning; "A Further Note on Procedure in the Matter." In my view the SJC had the appropriate authority given by the 50th General Assembly to conclude the matter without further process.

In summary I am arguing that any report deemed credible within our denomination of a woman preaching in the pulpit of a PCA Church, before a PCA Congregation, in a PCA Worship service shall be considered a "grossly unconstitutional proceeding."

For the Church,

RE Melton L. Duncan

DISSENTING OPINION

Case No. 2023-13
BCO 40-5 Matter re: Metropolitan New York
RE Jim Eggert
January 2024

First, I want to affirm my agreement with the SJC's conclusion in this case. The response of the Presbytery was clearly inadequate since the record failed to reflect that the Session had acknowledged any error, nor that the teaching or ruling elders on the Session delineated any specific stated differences that they take to our Standards or the *Book of Church Order* that would have explained how it would be possible for them to have viewed the exposition of the Word by a woman in public worship services to be a permitted practice. I also agree that this matter should be remitted to the Presbytery to take up and dispose of in a constitutional manner and report its work of dealing with TE Higgins and the Session of Trinity Presbyterian Church, Rye, NY, and report the results of that work to the Committee on Review of Presbytery Records (RPR) for the 51st General Assembly.

My agreement above suggests that perhaps I might have *concurred* with the decision. But in the end, I chose to dissent because I disagree with the Decision's critique of the 50th General Assembly's action in referring this case to the SJC, a referral which I am convinced was appropriate under the circumstances.

My dissent springs mainly from that part of the opinion that commences "A Further Note on Procedure in the Matter" where the decision today "questions the constitutionality of the Assembly's referral in this case" to the SJC. I dissent because I do not question that referral. Further, the decision "takes [an] opportunity to explain why [The SJC] is dubious about the Assembly's action" of assigning the case to the SJC, but I do not regard the assignment as "dubious." Lastly, the decision asserts that the Assembly "exceeded its authority in immediately ordering the citation" for the presbytery to appear before the SJC, a proposition with which I also disagree.

When the 50th General Assembly decided that the minutes of the Metropolitan New York Presbytery constituted a "credible report" of an "important delinquency or grossly unconstitutional proceedings" (*BCO* 40-5) and cited

the Presbytery to appear before the SJC, the Assembly did *not* refer the SJC to evaluate either: (1) the constitutionality of the Assembly's referral or (2) the proprietary of the referral under its own *Rules of Assembly Operation.* Yet a large measure of the decision today is filled with discussion of that very subject matter.

This raises a question that is both interesting and important: Was the SJC right to undermine the legitimacy of the very *referral* of this matter under the circumstances of this case? For the reasons set out herein I am not yet persuaded that it was.

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

> a. … 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 take care that the lower courts observe the Constitution; to redress whatever they may have done contrary to order…

Certainly, *BCO* 40-5 is one of the constitutional mechanisms to provide a means for the Assembly to perform these vital functions. *BCO* 40-5 states:

> When any court having appellate jurisdiction shall receive a credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court, the first step shall be to cite the court alleged to have offended to appear before the court having appellate jurisdiction, or its commission, by representative or in writing, at a specified time and place, and to show what the lower court has done or failed to do in the case in question.

Of course, *BCO* 40-5 is a part of the *Rules of Discipline* and provides a means by which a lower court is cited to appear before a higher court. The triggering mechanism for this procedure is a "court having appellate jurisdiction" receiving a "credible report" of the sort described in the provision. *BCO* 40-5

does not specify exactly in what manner the "credible report" may arise and does not on its face exclude the possibility that it may arise out of the review of presbytery records. Indeed, unlike *BCO* 40-1 through 40-4, *BCO* 40-5 makes no express reference to "records" of a lower court at all. One might imagine any number of ways that a "credible report" might come to the Assembly, and *BCO* 40-5 appears to stand apart in Chapter 40 as a procedure and remedy only for the most *egregious* cases – those credibly involving "important delinquencies" or "grossly unconstitutional proceedings" – so that *BCO* 40-5 is not a species of regular "records review" so much as a mechanism to address only those exceptional cases falling into the orbit of the rule that command the urgent attention of the Assembly.

BCO 40-5 requires the exercise of judgment about whether the actions alleged trigger the criteria precedent to the issuance of a citation. Of course, a biblical or constitutional violation is always a "delinquency," but, if it results in no substantial harm, it may not be "important." An unconstitutional act or omission of a court is not good, but to be actionable under *BCO* 40-5 it must be "gross," which means glaringly noticeable, usually because of inexcusable behavior. A court's "grossly unconstitutional" act or omission is so flagrant and inexcusable as to undermine our constitutional order to a degree that it is deemed harmful in its own right.

In this matter, the Assembly exercised its judgment to trigger the issuance of a citation and committing the matter to the SJC for adjudication, deeming the report it received from RPR about Metro New York Presbytery to be a "credible report" of an "important delinquency or grossly unconstitutional proceeding" of that court. *BCO* 15-4's imperative that the Assembly "shall commit all matters governed by the Rules of Discipline" to the SJC (including proceedings under *BCO* 40-5) is a mandate to the General Assembly, and is not, on its face, self-executing. In other words, a particular matter is committed to the SJC when the Assembly in fact "commits" that matter to the SJC, as it obviously did in this case.

Under the circumstances presented in this case, my deference to the Assembly's preliminary determination to commit the instant *BCO* 40-5 proceedings to the SJC is such that I cannot in good conscience join in today's decision which asserts the Assembly "exceeded its authority" by doing so. Of course, the SJC is a commission of the Assembly and, as such is "authorized to deliberate upon and conclude the business referred to it" (*BCO* 15-1), which

it has done. But the decision as adopted essentially asserts that the business was improperly *referred*, arguing as it does, that the mechanism of the referral came to the Assembly through RPR in a manner that allegedly violated not only the *Rules of Assembly Operation (RAO)* and the *Operating Manual of the Standing Judicial Commission (OMSJC)*, but apparently our Constitution. In other words, the Decision effectively maintains that the very *citation* of the presbytery was outside the power of the Assembly.

For reasons set out below, I respectfully disagree. First, it appears that the decision's interpretation of the *RAO* transgresses *BCO* 40-5. Furthermore, I don't believe the referral of the case to the SJC necessarily violated the *RAO*. I disagree with the constitutional considerations advanced in the Decision and have concluded that the referral of the matter to the SJC was in order.

I. As Articulated in the Decision, the Interpretation of RAO 16 is Unconstitutional and Cannot be Enforced.

The Decision agrees that the Assembly "apparently accepted RPR's argument with regard to how to properly understand and apply *BCO* 40-5 to a matter arising out of the required review of the records of a presbytery." The Assembly simply applied *BCO* 40-5 on its face when it made the determination that it had received a "credible report" of an "important delinquency or grossly unconstitutional proceeding" and cited the presbytery to appear before the SJC. Not a single word of *BCO* 40-5 prohibits the Assembly from citing a presbytery to appear because the "report" arose from RPR in connection with its review of presbytery records, a limitation that must be derived -- if it can be derived at all -- from a source *other* than *BCO* 40-5.

BCO 40-5 took its present form in 2006 via an amendment adopted per the recommendation of the Strategic Planning Committee, whose rationale noted that the change "allows for the use of a commission, in anticipation of a proposed amendment to *RAO* 14-10.c establishing a judicial procedure to settle the question of the disputed exceptions alleged under General Assembly review of presbytery records." (M33GA, 33-48, III, 8, p. 186; see also Appendix C, Attachment 1, p. 342)." (See also pp. 340-41 in M33GA.) Of course, the rationale of an Assembly Committee is not determinative of the Assembly's intent, which must be derived by the words of the text that the Assembly adopted. Therefore, even if we assume that the Strategic Planning Committee's rationale for the revision was initiated in preparation of the *RAO*

provision now in consideration, such rationale cannot control the interpretation of *BCO* 40-5. We ought not interpret *BCO* 40-5 based on *actual* provisions of the *RAO*, much less "*anticipated*" ones, for that would make the interpretation of the Constitution reliant on extra constitutional documents and procedures that can be revised outside the constraints of the constitutional amendment process. Neither the *RAO* nor the *OMSJC* are part of the Constitution and are constitutionally *subordinate* to the *BCO*. Therefore, the prescriptions of the *BCO* must supersede any contrary prescriptions of the *RAO* or the *OMSJC*.

BCO 40-5 prescribes that when a qualifying report has been received by "any court having appellate jurisdiction," then "*the first step*" is to cite the court to appear. The Decision advances an interpretation of *RAO* 16-6.c and *RAO* 16-10.c that supposes the Assembly must entertain *other* precedent steps before citing a presbytery to appear, i.e. that the Assembly must first take an exception of substance to the presbytery minutes, afford the presbytery an opportunity to respond to RPR, and *only then* entertain a recommendation from RPR to cite the presbytery to appear per *BCO* 40-5. These novel and modified "first steps" prescribed by the *RAO* (and advanced by the Decision) are a not enforceable since the *BCO* is supreme over the *RAO*, and because the insertion of interceding steps ahead of "the first step" mandated by *BCO* 40-5 would unconstitutionally amend *BCO* 40-5, contrary to the prescriptions of *BCO* 26-1 and 26-2, making the citation of the Presbytery not the "first step," but the *last*.

II. The Assembly Did Not Violate BCO 15-4

The Decision alludes to *BCO* 15-4, a provision that states the Assembly "shall commit all matters governed by the Rules of Discipline" to the SJC. But by this rule, the committal of the instant *BCO* 40-5 proceeding to the SJC, being a matter governed by the *Rules of Discipline*, was not only appropriate; it was *mandatory*.

While it is true that *BCO* 15-4 removes the "annual review of Presbytery records" from the jurisdiction of the SJC, that is not the case here. The Decision warns that the SJC's lack of jurisdiction over the annual review of presbytery records "should make us cautious about any argument that suggests that matters raised by RPR can come directly to the SJC as happened in this case." But the Assembly most certainly did *not* ask the SJC to engage in the "annual review of presbytery records;" it empowered the SJC to *adjudicate* a

case as prescribed by *BCO* 40-5 by "reversing or redressing the proceedings of the court below in other than judicial cases," "censuring the delinquent court," "remitting the whole matter to the delinquent court with an injunction to take it up and dispose of it in a constitutional manner," or "staying all further proceedings in the case" just "as circumstances may require." None of those remedies could be accomplished merely by the "annual review of presbytery records." The full SJC received the record in this case, reviewed briefs, heard the arguments of the parties, and then rendered a final decision. None of these procedures, and certainly not the result reached in this case, bear any substantive resemblance to the "annual review of presbytery records." They were acts unique to the adjudication of a *BCO* 40-5 case.

III. The Assembly Did Not Violate BCO 11-3

Calling it "no small issue," the Decision also advances the argument that *BCO* 11-3 implies that the Assembly (through RPR) should have followed the procedures in *RAO* 16, first identifying that the presbytery's minutes showed an "exception of substance" and that the presbytery then be "given an opportunity to respond to such an exception or to 'redress the identified problem' before being cited to appear." *BCO* 11-3 reads as follows:

> All Church courts are one in nature, constituted of the same elements, possessed inherently of the same kinds of rights and powers, and differing only as the Constitution may provide. When, however, according to Scriptural example, and needful to the purity and harmony of the whole Church, disputed matters of doctrine and order arising in the lower courts are referred to the higher courts for decision, such referral shall not be so exercised as to impinge upon the authority of the lower court.

Against the chain of reasoning advanced in the Decision, not a syllable of this provision prescribes the Decision's proposed procedure. Indeed, *BCO* 40-5, does not require that a presbytery be given an opportunity to respond *before* being cited to appear, stating instead that the "*first step* [emphasis added] shall be to cite the court alleged to have offended to appear," *after* which a presbytery is to be heard. Consequently, nothing in *BCO* 11-3 supports the conclusion that the Constitution was violated merely because the Assembly acted on a recommendation from RPR to commit *BCO* 40-5 proceedings to the

SJC in this matter, proceedings in which the presbytery was in fact heard by the SJC. By the reasoning of the Decision, it would seem that *BCO* 40-5 would *itself* transgress *BCO* 11-3.

IV. The Committal did not Clearly Violate the RAO.

The Decision today carefully advances an interpretation of *RAO* 16, particularly *RAO* 16-6.c and 16-10.c, but the Decision's interpretation is not the only reasonable interpretation of the *RAO* or the *BCO*, and it is evidently *not* the interpretation adopted by the 50th General Assembly.

The *RAO* is certainly one way that the Assembly expresses its interpretation and implementation of the *BCO*. But I am not persuaded that the *RAO*, as presently written, exhausts all the mechanisms by which the Assembly may commit a *BCO* 40-5 proceeding to the SJC per *BCO* 15-4.

I do not understand the argument of today's Decision to be that the Assembly lacks essential power to assign a *BCO* 40-5 proceeding to the SJC, but that the *origin* of the presentation of the *BCO* 40-5 proceeding in this particular matter wrongly originated via an unauthorized source (RPR) and an unauthorized procedure (without precedent exchanges between RPR and the presbytery) that violated the letter of the *RAO*. Today's Decision effectively maintains that the *RAO* prescribes but a single path by which the Assembly may assign a *BCO* proceeding to the SJC that arises out of RPR. I respectfully disagree.

In support of its interpretation, the Decision cites *RAO* 16-10.c, under the heading "Guidelines for Responding to the Assembly:"

> If, in responding to an exception of substance, a presbytery reports that it disagrees with the conclusion of the Assembly and/or has not corrected or redressed the identified problem; and, the committee (after reviewing the presbytery's response and rationale, and, if a majority so desires, consulting with the Committee on Constitutional Business) continues to believe that the presbytery has persisted in an error that is significant enough to require an Assembly response; ***then***, the committee shall notify the Assembly of the continuing exception, and shall make recommendation as to whether the Assembly should again seek a more acceptable response from the

> presbytery or should appoint a representative to present its case and refer the matter to the Standing Judicial Commission to cite the presbytery to appear for proceedings according to *BCO* 40-5. (emphasis added).

Putting aside that "guidelines" are not necessarily as stringent a regulation as "rules," the Decision interprets the adverb "then" to effectively mean "then, and then only," advancing the position that RPR, being a creature of the Assembly, may only do what the Assembly expressly authorizes, whether they be guidelines or otherwise, its "powers and procedures coming as grants from the Assembly."

But this argument demands closer scrutiny. *RAO* 16-10.c governs only "exceptions of substance." Curiously, however, "exceptions of substance" are defined as

> Apparent violations of the Scripture or serious irregularities from the Constitution of the Presbyterian Church in America, actions out of accord with the deliverances of the General Assembly, and matters of impropriety and important delinquencies, and any noncompliance with *RAO* 16-3.e.5 should be reported under this category.

The definition of "exception of substance" does *not* cite *BCO* 40-5, nor does it allude to *BCO* 40-5 "grossly unconstitutional proceedings."

Regarding an "exception of substance," one might suppose that a "serious irregularity from the Constitution" or even a "matter of impropriety" should be interpreted to include both "important delinquencies" and "grossly unconstitutional proceedings." On the other hand, if one adopts a stricter interpretive approach – along the lines of today's decision – we perhaps might infer that, since RPR's "powers and proceedings" come only as "grants from the Assembly," and since no mention is made in *RAO* 16-10.c of *BCO* 40-5's "grossly unconstitutional proceedings," that RPR has been granted no authority to engage in an exchange with a presbytery concerning the same, so that the review and control of credible reports of "grossly unconstitutional proceedings" (from whatever source) remain the exclusive prerogative of the *Assembly* regardless of the machinations of RPR.

But more fundamentally, the Decision overlooks that *RAO* 16-7, the article that prescribes the "Guidelines for Reporting on Presbytery Records" and lists those matters that RPR may report to the Assembly, seems to ascribe broad authority to RPR. After authorizing RPR to include in its report

- the minutes it has received (*RAO* 16-7.a),
- a list of the presbyteries that have not submitted minutes (*RAO* 16-7.b),
- RPR's recommendation concerning the minutes of each presbytery including the details about any exceptions of substance (*RAO* 16-7.c),

the very next paragraph then authorizes and directs RPR to include in its report ***"[a]ny other recommendation to the Assembly"*** (emphasis added) (*RAO* 16-7. d).

"Any other recommendation" is a wide grant of power to RPR, and a particularly potent endowment when one considers that it is added *after* the very provision that the Decision maintains circumscribes RPR's whole authority to recommend a *BCO* 40-5 citation regarding an "exception of substance." Beyond those powers described in the Decision, RPR may make any other recommendation at all to the Assembly, presumably including recommendations regarding "grossly unconstitutional proceedings" concerning *BCO* 40-5. Put simply, the Decision's proposed interpretation of the *RAO*, while presenting one plausible understanding of those rules, is not the only one. I maintain that the Assembly was free to interpret the *RAO* another way, and obviously did so. Indeed, if the above is correct, then a motion to suspend the rules would not have even been necessary (or expected), as is supposed by the Decision.

Granted, we cannot know for sure what interpretation of the *RAO* the Assembly had in view when it assigned the instant *BCO* 40-5 proceeding to the SJC; that is the enigma inherent in the collective action of any Assembly. But when the *RAO* is reasonably susceptible to two interpretations, one of which vindicates the Assembly's referral of a *BCO* 40-5 proceeding to the SJC, it's my view that the SJC should prefer the interpretation that vindicates the Assembly's action. As explained above, there are at least two such plausible interpretations in this case: (1) that *RAO* 16.10.c unconstitutionally amends the "first step" of *BCO* 40-5 and (2) *RAO* 16-7. d grants RPR wide authority to make other recommendations, including concerning proposed *BCO* 40-5

proceedings. Therefore, I have concluded to defer to the Assembly's apparent judgment.

V. The Referral was not Out of Order.

In the end, the propriety of the Decision's critique of the Assembly is bound up with one's understanding of the relationship between the Assembly and the SJC in *BCO* 40-5 proceedings. *OMSJC* 15 governs the SJC when it hears reports arising out of review and control under *BCO* 40 and *RAO* 16-10. c. In such cases, *OMSJC* 15.1 and 15.2 direct the SJC to first determine whether the case is administratively and judicially in order. Generally, in any matter presented to the SJC, if a case is not in order, the Commission cannot proceed in the case. So perhaps the critique of the Assembly's referral of the instant case should be understood as the common exercise of the SJC's obligation to engage in such a preliminary analysis, and perhaps one might even propose that the Assembly may not antecedently adjudicate the SJC's judgment as to whether a case is in order under the *RAO* or otherwise.
Whatever the merit of such an argument, I do not believe that this analysis justifies the Decision as written.

First and foremost, the SJC did *not* find the instant case to be administratively or judicially out of order. It received the record, received briefs, heard the argument of the parties, deliberated, and then decided the case, all as prescribed by *BCO* 40-5. Indeed, if the case was out of order, then the SJC should have refused to hear the case at all. Such did *not* occur, and if the argument of the Decision be true, then not only was the referral of the *BCO* 40-5 proceeding to the SJC in this case null and void, violating as it allegedly did both the Constitution and the *RAO*, but it also follows that today's Decision itself would be null and void as a lawless act of both the Assembly and its SJC. Applying the Decision's logic, the SJC, without the prescribed precedent work of RPR, could not have been in any better position to take up this *BCO* 40-5 proceeding than was the Assembly itself, which is to say that neither the Assembly nor the SJC could take it up at all.

Contrary to the reasoning of the Decision, I am inclined to defer to the Assembly's apparent interpretation and implementation of its mandated duty to "commit" *BCO* 40-5 proceedings to the SJC under *BCO* 15-4 and assume a more deferential attitude toward the Assembly's referral in this case than the Decision's explanation will permit.

Evaluating the role of the SJC in a *BCO* 40-5 referral from the Assembly is complicated by the fact that such a referral has two elements:

> (1) the preliminary and jurisdictional question of whether the matter is appropriate for a *citation* to issue to a presbytery in the first place; and
>
> (2) whether the "credible report" has been proven to be true.

That the SJC (rather than the Assembly) has exclusive jurisdiction to settle the matters identified in (2) is not, I believe, a controversy. But it is not so clear that the Assembly lacks authority to adjudicate the question posed by (1) in circumstances like this case. If we assume, as *BCO* 40-5 seems to do, that the Assembly has the power of *referral* to the SJC, we must also assume that the Assembly must possess power to evaluate:

- What constitutes a "report;"
- Whether a report is a "credible report;"
- Whether a report, if true, would demonstrate an "important delinquency; "and
- Whether a report, if true, would demonstrate a "grossly unconstitutional proceeding."

Interestingly, even *RAO* 16-10.c, highlighted by the Decision, seems to assume that the Assembly *does* have power to assess those matters addressed in (1), for *RAO* 16-10.c provides that the Assembly can receive a recommendation from RPR to refer a *BCO* 40-5 matter arising out of the review of presbytery records to the SJC.

But if the Assembly possesses a primary role in evaluating the matters laid out in (1) above, to what degree does the SJC possess the power to review those preliminary determinations in such cases as the Assembly elects to exercise such power? *BCO* 15-4's direction that the Assembly "commit all matters governed by the Rules of Discipline" seems to assume that the Assembly both possesses power and may play an active role – to "commit" implies action – to make at least the preliminary determination about what is in fact a matter "governed by the Rules of Discipline."

For example, a report about alleged grossly unconstitutional proceedings of a presbytery received by the Assembly that is not "credible" is *not* "governed by the Rules of Discipline," and therefore the Assembly cannot, constitutionally speaking, "commit" the matter to the SJC, nor can the SJC take it up. The same goes for reports that do not in the Assembly's judgment present "important delinquencies" or "grossly unconstitutional proceedings." If the Assembly, after deliberation, affirmatively declined to commit a report to the SJC because it concluded it did not present an "important delinquency" or "grossly unconstitutional proceeding," would its own SJC have the power to review that determination, reverse it, and take up the matter? I would not think so since the Assembly, not the SJC, is the only body with power to "commit" the matter to the SJC. But by the same logic, the SJC should not have jurisdiction to review and reverse the Assembly's action in cases where it has reached the opposite conclusion – that a matter did *not* present "important delinquencies" or "grossly unconstitutional proceedings." Today's Decision implies that the SJC retains a power of review over an Assembly's determination about whether a matter is appropriate to be "committed" under *BCO* 40-5. I disagree.

I grant that there are reasons to be concerned about direct referrals of *BCO* 40-5 reports to the SJC in that the Assembly could become overly aggressive in assigning *BCO* 40-5 cases, overwhelming the SJC, when perhaps redressing a concerning report might be better resolved through the robust process of review of presbytery records. And even though I disagree, I also appreciate the plausible interpretation of the *BCO, RAO* and *OMSJC* articulated in the decision about the prerequisites that must be satisfied before RPR may propose that the Assembly commit a *BCO* 40-5 proceeding to the SJC arising out of the review of presbytery minutes.

But I am unpersuaded that the decision's interpretation is the *only* plausible interpretation, and I am inclined in this case to defer to the Assembly's apparent interpretation and implementation of its mandated duty to "commit" *BCO* 40-5 proceedings to the SJC under *BCO* 15-4 in this case. The Assembly obviously found the report in this case so egregious that it justified invoking the exceptional provisions of *BCO* 40-5.

Lastly, I want to state my conviction that the final disposition of the instant matter, including whether it should for any reason be subject to another *BCO* 40-5 referral, is and should be the prerogative of the 51st General Assembly according to its best judgment in interpreting our Constitution. It is not within

the SJC's purview or power, in this Decision or otherwise, to direct or constrain the 51st General Assembly's interpretation of the *RAO* or the Constitution with respect to the referral of *BCO* 40-5 proceedings, nor is it the SJC's role to "explain" to the 51st General Assembly what should happen after the Presbytery in this case reports its work of dealing with TE Higgins and the Session of Trinity Presbyterian Church, Rye, NY, nor do I find it appropriate in this case for the SJC to counsel the Assembly to be "scrupulous in the future in maintaining" the alleged "careful balance that is required" by the Assembly's own "rules" of operation.

I respectfully dissent.