Bankson, *Concur*	Duncan, M., *Disqualified*	Neikirk, *Concur*
Bise, *Disqualified*	Duncan, S., *Disqualified*	Nusbaum, *Absent*
Cannata, *Concur*	Ellis, *Concur*	Pickering, *Concur*
Carrell, *Absent*	Greco, *Concur*	Ross, *Disqualified*
Chapell, *Concur*	Kooistra, *Concur*	Terrell, *Concur*
Coffin, *Concur*	Lee, *Concur*	Waters, *Disqualified*
Donahoe, *Concur*	Lucas, *Concur*	White, *Absent*
Dowling, *Concur*	McGowan, *Concur*	Wilson, *Concur*

RE Bise disqualified himself, per *OMSJC* 2.10.d.3.iii: "A member shall disqualify himself in any proceeding in which ... a person within the third degree of relationship to [the SJC member], ... (iii) ... is a member of a congregation in the bounds of a presbytery party to a case." RE M. Duncan disqualified himself, per *OMSJC* 2.10.d.3.iii: "A member shall disqualify himself in any proceeding in which ... a person within the third degree of relationship to [the SJC member], ... (iii) is a member of a court which is party to the case." RE S. Duncan disqualified himself because he was appointed as, and served as, the Representative of the Report. TE Ross disqualified himself because he is familiar with the original reporting party and members of the Session. TE Waters was disqualified because he is a member of the Presbytery that was party to the Case (*OMSJC* 2.10.d.(3).iii).

CASE 2019-07
MR. CHANDLER FOZARD
vs.
NORTH TEXAS PRESBYTERY

DECISION ON COMPLAINT
February 6, 2020

I. SUMMARY OF THE FACTS

03/16/09 The Session of Fort Worth Presbyterian Church (FWPC) adopted a policy titled "General Policy-Integration of Special Case Felons." The policy prescribed how persons that have been incarcerated for committing exceptionally violent crimes or sexual offenses were to be integrated into FWPC.

10/29/18 Mr. Chandler Fozard, a member of FWPC, sent an email to the leader of Reformed Prison Ministry (RPM) at FWPC. The email included a request to make changes to the policy. All of the members of the Session of FWPC were copied on the email.

01/08/19 The FWPC Session sent the RPM Chair, Session members TE Darwin Jordan, RE Steve Fults, RE John Weiser, and one other person, to meet with Mr. Fozard. One topic of discussion was to be Mr. Fozard's concern with the FWPC policy concerning special case felons.

01/11/19 The meeting took place. Mr. Fozard's four concerns and four recommended changes were discussed; however, no changes were made to the policy. One key point of discussion at the meeting was that the FWPC Session had concurred with the RPM Committee's recommendation to limit the number of Special Offenders (SOs) that could attend FWPC

01/18/19 Six members of FWPC, including Mr. Fozard, filed a Complaint with FWPC.

03/05/19 FWPC denied the Complaint. The Complainants received a letter with the FWPC Session's answer and reasoning for denying the Complaint.

The Complainants filed a Complaint with North Texas Presbytery (NTP). The exact date of the filing is unknown because the ROC does not contain a copy of the Complaint.

05/03/19 NTP designated the Complaint as NTP 2019-01 and declared the Complaint to be "timely filed and in administrative order." The NTP directed its Administrative Committee to make the necessary arrangements to hear the Case.

08/03/19 NTP met to conduct the hearing. Attendees received copies of briefs written by the parties and a copy of FWPC's policy for the Integration of Special Case Felons (SCFs). The hearing was recorded and transcribed. The NTP denied the Complaint.

08/23/19 Mr. Chandler Fozard brought his Complaint to the General Assembly.

12/13/19 SJC Panel conducted the hearing.

II. STATEMENT OF THE ISSUE

Did North Texas Presbytery error when they denied the complaint against the Session of Fort Worth Presbyterian Church?

III. JUDGMENT

No

IV. REASONING AND OPINION

In the Case before us, the Complainant raised a number of concerns about FWPC' s policy for the integration of persons known as Special Case Felons (SCFs) into the life of the congregation. SCFs are persons that have been released from prison and include those that have been convicted of crimes that are sexual in nature. Specifically, the Complainant argued that the restrictions placed on these persons by FWPC's policy were violations of Scripture.

The Constitution of the Church is very clear in outlining the jurisdiction and authority afforded to courts of the church and the relationship between the higher and lower courts.
BCO 11-2 states in part, "they [Church courts] have power to establish rules for the government, discipline, worship, and extension of the Church, which must be agreeable to the doctrines relating thereto contained in the Scriptures, the circumstantial details only of these matters being left to the Christian prudence and wisdom of Church officers and courts."

BCO 39-3.3 states in part "A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties. ... Therefore, a higher court should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court."

In the Record of the Case and in oral arguments, it was clear that the parties differed on the interpretation and application of Scripture. While both parties agreed that there was an obligation to minister to SCFs and to make reasonable provision for the protection of the children and the vulnerable at FWPC, the parties did not agree on what those reasonable provisions should be. However, in the judgment of this court, the Complainant did not

demonstrate that the Session at FWPC had violated Scripture or the *Constitution of the Church* in their formulation and application of the SCF policy. The Record of the Case contains some arguments by the Respondents of the lower courts that do not properly interpret or apply the *BCO*'s 1st and 2nd Preliminary Principles in the Respondents' defense of what is otherwise acknowledged as a legitimate right of a session to set policy within the parameters of our *Constitution*. This Decision should not be read or interpreted as an endorsement or affirmation of those arguments.

Without a violation of Scripture or the *Constitution*, the higher court is obligated to defer to the lower court and deny the Complaint.

We do commend both parties for their desire to minister to, and restore, those that have been convicted of crimes, with the good news contained in the Gospel. This Case serves to remind us all that care and discipline of all members of the Church is to be administered with the compassion of the Lord Jesus Christ. We would encourage both parties to continue to talk, study, and work on solutions on how to best minister to SCFs.

The proposed opinion was drafted and approved by Panel members RE E. J. Nusbaum, TE H. Paul Lee and TE Paul Kooistra, and Panel alternate TE Charles McGowan. After adopting amendments, the SJC approved the above Decision by a vote of 20-1, with three absent.

Bankson, *Concur*	Duncan, M., *Concur*	Neikirk, *Dissent*
Bise, *Concur*	Duncan, S., *Concur*	Nusbaum, *Absent*
Cannata, *Concur*	Ellis, *Concur*	Pickering, *Concur*
Carrell, *Absent*	Greco, *Concur*	Ross, *Concur*
Chapell, *Concur*	Kooistra, *Concur*	Terrell, *Concur*
Coffin, *Concur*	Lee, *Concur*	Waters, *Concur*
Donahoe, *Concur*	Lucas, *Concur*	White, *Absent*
Dowling, *Concur*	McGowan, *Concur*	Wilson, *Concur*

Concurring Opinion

Case 2019-07: Mr. Chandler Fozard v. North Texas Presbytery

TE David F. Coffin, Jr., joined by TE Paul Bankson, RE Steve Dowling

I concurred with the proposed decision of the Standing Judicial Commission (SJC) in this case, to deny the Complaint, but I want to highlight the fact that my concurrence was grounded narrowly on the specific wording of the decision: "in the judgment of this court, the Complainant *did not demonstrate*

that the Session at FWPC had violated Scripture or the Constitution of the Church in their formulation and application of the SCF policy." (Emphasis added). My concurrence should not be understood to imply my approval of the Session's policy, about which policy I have grave concerns; concerns, however, that were not raised by the Complaint, or were not raised in a way that demonstrated that Session erred.

Further, I want to draw attention to the disclaimer included in the SJC's decision:

> The Record of the Case contains some arguments by the Respondents of the lower courts that do not properly interpret or apply the *BCO*'s 1st and 2nd Preliminary Principles in the Respondents' defense of what otherwise is acknowledged is a legitimate right of a session to set policy within the parameters of our Constitution. This Decision should not be read or interpreted as an endorsement or affirmation of those arguments.

In my judgment, in this concurring opinion, it may be profitable to offer some elaboration with respect my view of the improper interpretations and applications before the Court.

First, in answer to the Complainant's charge that the Session's policy violated the rights of conscience set forth in the First Preliminary Principle, Respondents argued that for the higher courts to overturn the Session's policy would be to violate the Session's rights of conscience. In view is the language of the First Preliminary Principle:

> 1. God alone is Lord of the conscience and has left it free from any doctrines or commandments of men (a) which are in any respect contrary to the Word of God, or (b) which, in regard to matters of faith and worship, are not governed by the Word of God. Therefore, the rights of private judgment in all matters that respect religion are universal and inalienable. . . .

However, Respondents' claim, though well-intended, is without merit. Church courts, as such, have no right of conscience, because church courts have no conscience, and that because they have no soul created in the image of God. Further, contrary to Respondents' claim, the right of conscience in the First Principle is not applied to the Church, as such, in the Second Principle. On the contrary, it is applied to the people who are forming a

denomination. In setting up their own government, according to their best lights, they violate the rights of no other person, because no one is forced to be a member. It is a voluntary association (cf. Morton Smith's *Commentary* on the *BCO*, as cited by Respondents, "*if a number of individuals agree* in their private judgment as to religious matters, they certainly have the right and privilege to associate themselves and to draw the terms for membership in that body." Emphasis added).

The Respondents' serious misunderstanding of the above has led them into a labyrinth that will confound their participation in sound Presbyterian government. According to our polity, church courts, having no conscience, cannot sin, they can only err; and when they err, they can be corrected by the higher courts without any violation of the rights of the court corrected. Note further, that erring courts cannot have the censures of the Rules of Discipline brought against them, nor can they be required to repent upon a finding of error (cf. *BCO* 11-3, 11-4; 42-9; 43-10; 30-1).

Second, Respondents argued that the Second Preliminary Principle assures that every individual PCA church has the inalienable right to form its terms of admission and its system of internal government. In view is the language of the Second Preliminary Principle:

> 2. In perfect consistency with the above principle, every Christian Church, or union or association of particular churches, is entitled to declare the terms of admission into its communion and the qualifications of its ministers and members, as well as the whole system of its internal government which Christ has appointed. In the exercise of this right it may, notwithstanding, err in making the terms of communion either too lax or too narrow; yet even in this case, it does not infringe upon the liberty or the rights of others, but only makes an improper use of its own.

But this language cannot be understood to apply to anything other than a denomination or independent church body being formed. The member churches and the courts of the denomination are voluntarily a part of a body that has already exercised the rights of the Second Principle on their behalf in the adoption of a form of government, rules for discipline and a directory for worship. The Respondents' construction of this principle would undermine the very existence of a Presbyterian denomination and lead to chaos.

Respondents' illustrations of the variety in the practical administration of different congregations and courts belonging to the same denomination are nothing to the point (e.g., whether to have a new members class; what should be taught in that class; length and depth of officer training; whether to have a separate women's or men's ministry; the particulars of its ministry to youth and children; what staff positions it will have, etc.). Our Confession of Faith teaches us that such matters are typically not questions of conscience before God, but rather are to be understood under the rubric of "there are some circumstances concerning the worship of God, and government of the church, common to human actions and societies, which are to be ordered by the light of nature, and Christian prudence, according to the general rules of the Word, which are always to be observed." (CF 1.6) Yet all of this wholesome variety, rooted in practical wisdom applied to differing circumstances, must be within the parameters of the Constitution of the Church, previously established. No appeal to the Second Preliminary Principle can relieve that constitutional obligation. This point is summed up nicely in J.A. Hodge's commentary on the Second Principle:

> This principle is essential to all organizations. Men are at liberty to refuse to be connected with a society, but if they voluntarily enter, they must submit to its terms of admission and to its laws. So if any man's conscience will not permit him to concur with, or passively submit to, the standards of the Church, he "shall, after sufficient liberty modestly to reason and remonstrate, peaceably withdraw from our communion, without attempting to make any schism." Provided that which he cannot accept shall be judged by the Church to be indispensable to Presbyterian doctrine or polity. (*What Is Presbyterian Law?* Philadelphia, 1882, pp. 23-24).

Note, however, that upon peaceable withdrawal, a body of like-minded folk would have the right to set up for themselves a new government, and in that circumstance the Second Principle would be fully applicable to their endeavors.

Over all, Respondents' arguments from the Preliminary Principles fail to grasp that these Principles, articulated in 1788, set forth the foundation for how Presbyterians would form and guide their branch of the church, in relation to other denominations, now in the novel circumstances created by the disestablishment of the church in post-Revolutionary America. These principles have an abiding significance, both to remind us of our foundations, and to be applied anew when in God's providence believers are convicted that they must depart from a denomination that has abandoned the Gospel, in

order to continue afresh what has been abandoned, as we have seen in the commentary of J.A. Hodge above. However, these Principles were never articulated as belonging to the various church structures that made up such denominations. The use of these Principles in such a manner, as fully applicable to Sessions and Presbyteries within a denomination, is a modern novelty, an expedient that grew out of the sad controversies that wreaked havoc in the Northern and Southern Presbyterian Churches in the late 20th century. In sum, to modify an ancient maxim to our purpose: Hard circumstances made for bad interpretation of law.

/s/ TE David F. Coffin, Jr.

Dissenting Opinion
Case 2019-07: Mr. Chandler Fozard v. North Texas Presbytery
RE Frederick R. Neikirk

As the lone dissenting vote in SJC 2019-07, Fozard vs. North Texas Presbytery, it seems particularly incumbent on me to explain that vote.

At the outset I want to stress that I recognize, and take seriously, the difficult legal and shepherding issues that confront the Session of Fort Worth Presbyterian Church (FWPC) as they seek to be faithful in their responsibility to reach out to ones who have been incarcerated for committing exceptionally violent crimes or sexual offenses. I applaud the efforts of the Session and Congregation, and of Complainant, to minister to ones who have been convicted of these crimes, whether those individuals remain incarcerated or have been released. I further affirm that many of the actions taken by Session are fully within their rights.

Having said that, I do believe that Session and Presbytery erred at key points, and thus that the Standing Judicial Commission erred in failing to uphold the Complaint. It is my view that Session and Presbytery erred in their application of Preliminary Principles 1 and 2, that they erred in allowing, indeed mandating, what amounts to a second type of church membership, and that they erred in limiting, by a blanket policy, the number who can come to hear the Gospel during corporate worship services. These issues clearly involve the interpretation of Scripture and the Constitution of the PCA, and thus, contrary to the argument of the SJC, are ripe for consideration under the standard of *BCO* 39-3(4).

As a point of general concern, and in agreement with at least some other members of the Standing Judicial Commission, I believe Session and Presbytery erred in the breadth they concluded that Preliminary Principles 1 and 2 give to lower courts to determine "terms of admission." This argument was at the core of Session's "Biblical" response to the reasoning Complainants offered from Scripture. If all Session's Representative meant in his argument before Presbytery is the "narrow point" that individual sessions have the right to determine whether or not they will have new members classes, or what specific procedures they will use for interviewing prospective members, or what questions they will ask on *BCO* mandated examinations for prospective officers then I agree fully. But I don't believe that right comes from Preliminary Principles 1 and 2. I believe it comes from the powers given to sessions and presbyteries in *BCO* chapters 12, 13, and 57. If, however, Session's Representative meant that Preliminary Principles 1 and 2 give sessions and presbyteries the "broader" right to set their own standards for membership then I believe they have misread the historic meaning of those principles. I grant that Session's Representative seemed at times to be taking the "narrower" view and at times the "broader" view, and I believe we need to be careful to read his remarks in context. But, especially given my concerns below, I am less sanguine than were, apparently, other members of the Commission that lack of clarity on Preliminary Principles 1 and 2 did not constitute a fatal flaw in Respondent's argument.

This concern about how Preliminary Principles 1 and 2 were applied is particularly troublesome because, in my judgment, Complainant did demonstrate before Session and Presbytery at least two valid Biblical and Constitutional concerns with regard to the policy in question (FWPC's "General Policy - Integration of Special Case Felons).

The first point on which I agree with Complainant focuses on what Complainant referred to as the lack of an "exit strategy" from the conditions of the policy. Complainant noted that some of the men covered by the policy had been received by Session as communicant members and yet they were told they would continue to be monitored, could not move about various parts of the building(s) without a chaperone, could not approach children under 18, etc., and, at least so far, there is no stated mechanism by which those members can escape that special status and fully participate in the life of the church. With Complainant, I believe this situation creates what is de facto a second class of communicant members. In agreeing with Complainant on this particular point I am not questioning whether Session was within their rights to receive these men as communicant members, whether they were

within their rights to receive them with these conditions imposed originally, or whether Session may impose such conditions in consideration of individual person's criminal sentences or conditions of probation. My concern is with a blanket policy that mandates these restrictions for everyone who has ever been convicted of one of these felonies (and perhaps other felonies, given how the Record indicates the policy is now being applied), and with the lack of any stated mechanism that will allow the member to demonstrate their repentance over some period of time so that they can, at some point, fully participate in the life of the church. Such a requirement, with no formally stated "exit strategy" seems to establish a requirement for communicant membership that goes beyond the Biblical requirements summarized in *BCO* 57-5, and, as argued by Complainant, it calls into question Scripture's teachings on grace and repentance (e.g., I Cor 6:9-11; II Cor 2:5-11; 5:17; Eph 2:1-10, etc.).

I also agree that Complainant demonstrated a second key problem with the policy - that being Session's decision to limit the number of "special case felons" who can be present in worship at any one time, even if those individuals have fulfilled their sentences and are no longer on probation. Complainant argued, successfully in my view, that this policy violates the evangelistic imperative of the church. Again, I understand, and sympathize with, the need to provide appropriate safeguards for those who are vulnerable, and I certainly believe Session has the right to put in place many safeguards. I am not convinced, however, that a church has the right under Scripture to limit, especially by category, who can come to worship. I do affirm the right of a Session to limit who can be present in worship on the basis of formal discipline or as a response to a proper requirement of the civil magistrate with regard to an individual (e.g., a condition of a sentence or probation that mandates that one have no contact with minors; a no trespass order, etc.). With Complainant, however, I believe that a blanket restriction on the number of offenders who can be present in worship is inconsistent with the evangelistic imperatives of passages such as Mt 28:19-20 and Lk 14:23. Further, with due respect to the argument of my brothers on the Session of FWPC what is in view here is a very different matter than limiting the number of infants who can be in the nursery. What is at stake in attendance at worship is the means of grace, the care of men's souls, and even their salvation (see WLC 154-155).

I join the Standing Judicial Commission in commending "both parties for their desire to minister to and restore those that have been convicted of crimes with the good news of the Gospel." Further, I again affirm the right and

responsibility of the Session of FWPC to put in place many of their policies in an effort to protect the vulnerable. Nonetheless, I agree with Complainant that the pieces of the policy noted above are inconsistent with Scripture and the Constitution of the PCA. As such, I respectfully dissent from the decision of the SJC to deny all portions of the Complaint and thus to uphold the actions of the lower courts.

/s/ RE Frederick R. Neikirk

CASE 2019-08
TE NEAL GANZEL
vs.
CENTRAL FLORIDA PRESBYTERY

DECISION IN APPEAL
February 6, 2020

I. SUMMARY OF THE FACTS

Jan. 2009 — A group of 21 members of Coquina Presbyterian Church (CPC), Ormond Beach, FL, sent a letter to the Session raising concerns about pastoral and sessional leadership, and suggesting a number of structural changes. Two members of Session were among the signers of the letter. The group's concerns were also shared orally at the January meeting of the CPC Session.

02/23/09 — The Session of CPC responded to the above letter. Session expressed its disagreement both with the concerns raised by the members and their suggested changes. Session encouraged the concerned members to live out their membership vows. The two elders who had signed the letter of concern did not participate in Session's deliberations, nor did they sign Session's letter. One of those elders soon moved out of state.

Summer '09 — Session raised questions about the Christian character of the second elder who had signed the letter of concern. This man, a founding member of CPC, resigned from the Session and renounced his membership in CPC.