



**THE PERMANENT JUDICIAL COMMISSION**  
*of*  
**THE EVANGELICAL PRESBYTERIAN CHURCH**

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**THE SESSION OF NEW ALBANY PRESBYTERIAN CHURCH v.  
PRESBYTERY OF THE ALLEGHENIES**

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**ORDER OF THE COMMISSION**

January 15, 2026

This matter comes before the Permanent Judicial Commission on the Complaint of the Session of New Albany Presbyterian Church (“Complainant”) against the Presbytery of the Alleghenies (“Respondent”).

This Complaint was timely filed on November 25, 2025.

The Commission conducted its D.14-8 analysis on December 9, 2025, found that the Complaint stated grounds upon which relief could be granted, and directed Respondent to answer and produce the Record by January 8, 2026. Respondent timely filed its Answer and produced the Record.

The Complaint alleges irregularities by Respondent in handling an overture submitted by Complainant for consideration at Respondent’s November 15, 2025 meeting. The essence of the Complaint is that the overture was deemed in order in advance by the EPC’s Chief Parliamentarian, whom Respondent’s Leadership Team (“LT”) consulted on this matter, yet Respondent used procedural steps to keep the overture from receiving a first reading on the docket. Rather than placing the overture on the docket for a first reading, Respondent scheduled a vote on whether to include the overture on the docket, citing General Assembly Resolution 44-43 (“GA 44-43”), which expresses an “opinion and wish” that presbyteries refrain from taking action on certain matters pending the work of the Ad Interim Committee on Same Sex Attraction and Ordination. Respondent’s meeting packet included a letter from GA Moderator David Strunk to the EPC family, placed immediately before the Complainant’s overture, which letter references the GA 44-43 opinion and wish.

In seeking the opinion of the Chief Parliamentarian, Respondent’s LT was advised that the overture was technically in order but not in accord with the wishes of GA 44-43. At that meeting, the Stated Clerk “spoke to the overture being in order but not in accord with the

wishes of the GA 44-43.” (Provisional Minutes of the 56th Stated Meeting of Respondent, held on November 15, 2025). The question was posed: “Shall the overture be included in the docket as a first reading?” Following discussion, Respondent voted to keep the overture from receiving a first reading at the November meeting of Respondent.<sup>1</sup>

Specifically, the Complaint raises five counts, which are summarized here<sup>2</sup>:

(1) The Stated Clerk wrongly and improperly relied upon an excerpt from a letter from GA Moderator Strunk and National Leadership Team (“NLT”) Chair Jones regarding the “opinion and wish” of the 44th GA concerning Resolution 44-43. The letter was included in the packet and placed before the overture, thus prejudicing the subsequent limited discussion and resulting in a vote not to place the overture on the docket.

(2) The Stated Clerk stated to the Presbytery that a number of Respondent’s members had voted in favor of GA 44-43. Complainant asserts that Respondent’s actions in deferring to GA 44-43 are in conflict with G.18-3N regarding a Session’s responsibility to overture its Presbytery on matters it believes vital or helpful to the whole Church.

(3) Complainant challenges Respondent’s practice of first and second readings as restrictive of the ability of a local church Session to move a proposed constitutional amendment through its Presbytery and have it filed with the General Assembly’s Stated Clerk in a timely manner.

(4) Respondent’s actions to procedurally exclude the overture from consideration were taken after being advised by the EPC’s Chief Parliamentarian that the overture was in order. Once Respondent was advised the overture was in order, it should have been placed on the docket.

(5) The “Gentlemen’s Agreement” reflected in GA 44-43 has no binding effect and is unconstitutional. No General Assembly can bind future General Assemblies, nor can it restrict a Presbytery or local church in a manner which is contrary to the Constitution.

Respondent provided a thorough Answer to the Complaint.

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<sup>1</sup> Respondent utilizes a practice of first and second readings of overtures. The first reading is simply a presentation of the overture in writing, without discussion or debate. The second reading occurs at the next meeting of the Presbytery, where discussion on the merits is held. The Respondent’s practice is that the overture is not read aloud at the first meeting, but is included in the packet for reference.

<sup>2</sup> D.14-3B requires that a complaint set forth with particularity all facts and reasons why the action or decision is being challenged. This often results in lengthy pleadings so as not to waive potential grounds. For readability, the Complaint is not restated in full here, but has been considered in its entirety and is summarized below.

### Statement of Facts

On October 1, 2025, Complainant informed Respondent that the Session was considering bringing an overture to the Presbytery in November for discussion at the February meeting. This timing reflects an understanding that Respondent has had a practice of presenting overtures for first and second readings since 2022. The first and second readings practice is not in Respondent's bylaws, and it has never been adopted in a formal vote. It has, however, become a regular practice of Respondent.

On November 6, 2025, Complainant submitted an overture approved by its Session to Respondent's LT for inclusion on the November docket. Complainant requested that the overture be included in the packet and presented for a first reading without comment from Respondent's LT, and that it be given to the Presbytery for prayerful consideration in preparation for the second reading at the February 2026 meeting, at which time the merits would be discussed. The significance of the timing is that Respondent's February meeting is the last meeting of the Presbytery before the 60-day window for overtures to be submitted to the General Assembly. Therefore, if a first reading was to be held at the February meeting, there would not be sufficient time for the Presbytery to consider the matter at a second reading, presumably at the next meeting of the Presbytery.

The overture addresses issues concerning ordination standards and same sex attraction. Respondent's LT raised concerns as to whether this would be contrary to the 44th General Assembly's action set forth in GA 44-43, the so-called "Gentlemen's Agreement," or recommendation, which states in the final paragraph: "Be it further resolved that it is the opinion and wish of the 44th General Assembly that no presbytery shall take action on petitions or matters before them that might touch on these areas of inquiry and exploration until the final report [of the Ad Interim Committee on Same Sex Attraction and Ordination] is received and acted upon by the 46th General Assembly." The parties are in agreement that the "opinion and wish" language of GA 44-43 is not binding upon Presbyteries or future General Assemblies.

Respondent's LT consulted with the EPC's Chief Parliamentarian, who advised that the overture was in order, but out of accord with the resolution of GA 44-43.

The record shows that after being advised that the overture was in order, Respondent's LT decided to include the overture in the packet but to have the Presbytery vote as to whether to receive it for a first reading. If accepted, no discussion on the merits would take place. If rejected, the matter would not receive consideration on the merits at the February meeting in time for transmission to the General Assembly if passed, but would be tabled in some manner until after the Ad Interim Committee on Same Sex Attraction and Ordination completed its work. Included in the packet immediately in front of Complainant's overture was the letter from the Moderator of the 45th GA, David Strunk, and Victor Jones, Chair of the NLT and Moderator of the 44th GA, reiterating the "opinion and wish" language from GA 44-43.

### Opinion and Order

The Complaint sets forth five particular counts, each of which contains subparts and arguments. Pursuant to D.14-9A, this Commission is to vote “either to sustain, to sustain in part, or not to sustain” the complaint. This Commission is entitled to interpret pleadings, counts, and specific items set forth in the complaint in order to give effect to the intent of the constitution of the EPC, and is not bound to a rigid wooden reading of the counts as set forth in the pleadings. This is not a test on drafting pleadings, but in doing justice under the EPC constitution. Therefore, the voting on specifications may not line up perfectly with the pleadings, but may be set forth in order to give proper constitutional effect to the matter. Where there is an irregularity, the goal is to afford a remedy.

Some discussion is in order.

First, this Commission does not decide, and expresses no opinion regarding, the general propriety, constitutionality, or advisability of any presbytery practice concerning first and second readings or other docketing practices. The relief granted herein is limited to the specific irregularity shown in this record.

Second, this Commission has been advised that all parties are in agreement that the so-called “Gentlemen’s Agreement” and “opinion and wish” section of GA 44-43 are not binding upon future General Assemblies, and do not restrict a Session or Presbytery from considering a matter where appropriate. It is not a constitutional basis for exclusion of an otherwise valid overture.

Here, on the particular facts of this record, the overture was acknowledged to be in order, yet it was not taken up for consideration at the November 15, 2025 meeting based on reliance on GA 44-43. On these specific facts, this Commission concludes that the overture should have been taken up for consideration by Respondent as a court, and that reliance on GA 44-43 as the basis for not taking it up for consideration was improper.

Consequently, this Commission sustains in part the Complaint of New Albany Presbyterian Church, essentially as to Count 4, but with some overlapping areas in other counts. This Commission grants relief requested in Request for Relief No. 2 and directs Respondent to place the overture on the agenda for consideration, including opportunity for debate and vote, at Respondent’s February 14, 2026 meeting. Nothing in this Order compels adoption of the overture or any particular substantive outcome.

The relief granted is based solely on the particular facts of this record, namely, that the overture was acknowledged to be in order, yet was not taken up for consideration at that meeting based on reliance on GA 44-43. Although this Commission must correct this error in view of a Session’s right under G.18-3N, this Order is not intended to establish a general constitutional rule requiring presbyteries to docket or consider every overture submitted by a Session.

This Commission voted to sustain the Complaint in part and to grant the relief set forth above. Any separate concurring opinions, if submitted, are appended.

## CONCURRING OPINION

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*THE SESSION OF NEW ALBANY PRESBYTERIAN CHURCH (Complainant) v.*

*THE PRESBYTERY OF THE ALLEGHENIES (Respondent)*

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January 15, 2026

I join the judgment of this Commission. I write separately because the complaint, sustained in part, presented additional constitutional matters that were properly before us and, in my view, warrant further constitutional consideration.

### **Scope**

This decision, and my concurrence, do not address the theological substance of the Complainant's overture, the work of the Ad-Interim Committee on Same-Sex Attraction, or the wisdom of advancing constitutional amendments during the pendency of Ad-Interim Committees of the General Assembly. It addresses only the limits of presbyterial authority under the Constitution.

### **Concurrence:** *The Rights of Sessions*

The Constitution expressly grants to Sessions the right to overture Presbytery on matters they believe vital or helpful to the whole Church (G.18-3.N). That grant is not qualified by the preferences of higher courts, forthcoming recommendations of denominational committees, or any anticipated reaction from commissioners.

The Respondent repeatedly asserts that the Complainant's overture was "not out of order, but out of accord with the EPC." The Constitution, however, recognizes no such category. "Accord" is neither a parliamentary ruling nor a constitutional standard. It has no defined content, no assigned authority, and no limiting principle. At most, it expresses a judgment of prudence. It does not express a rule of law. The Respondent's argument, therefore, is not that the overture was unlawful, but that it was inadvisable. For this reason, the Commission is correct to conclude that "the overture should have been taken up" and subsequently order its consideration.

It is not disputed that the overture was in order. By refusing to receive it, the Respondent nonetheless imposed the very consequence that follows from a ruling of "out of order," while disclaiming the constitutional grounds required to make such a ruling. The effect was to deny the Complainant the exercise of an explicit constitutional right on a basis the Constitution does not recognize.

A Presbytery's procedural authority over its own docket does not grant discretion to suspend, delay, or nullify the rights of the lower court. A Presbytery may debate an overture, amend, or decline to approve it on the merits. It may not deny a Session access to constitutional process by refusing to receive or consider an overture that is otherwise in order on grounds not found in the Constitution. A right that can be withheld for reasons of "accord" is not a right, but a permission.

For that reason, I agree with the Commission that the Presbytery's action, taken on the basis that the overture was "out of accord" with the wishes of a prior General Assembly, exceeded its constitutional authority, however well-intended. The Respondent's actions rest on accord, not authority, and in our polity, accord without authority is no authority at all.

**First Urge for Broader Resolution:** *First and Second Reading Practices*

The disposition of this case did not require the Commission to decide whether the practice of first and second readings for presbytery overtures is itself constitutionally permissible. The matter proposed by the Complainant did not erroneously fail because of that practice, but because the Presbytery declined to docket it at all.

The Complainant nevertheless questioned the constitutional status of such practices, and the Respondent relied upon them in its defense. Because the issue implicates the relationship between express constitutional rights and non-mandated procedural customs, and because such arguments are likely to recur, it deserves additional consideration.

The question presented is not whether a presbytery may adopt orderly procedures for the consideration of overtures. It may. The question is whether such procedures, when not mandated by the Constitution or bylaws, may be given priority over an express constitutional right.

A distinction must be maintained between expressed provisions and procedural custom. Expressed provisions are those powers and rights affirmatively granted by the *Book of Order*. They define what must be honored and what may not be withheld. Procedural custom, by contrast, consists of wise/"best" practices, non-mandatory procedures, parliamentary conveniences, and local habits developed over time. Such practices may promote order and efficiency, but they possess no independent legal force unless the Constitution or bylaws explicitly confer it.

The principle that demands emphasis is this: procedures exist to serve expressed rights; they do not exist to defeat them. By illustration, a presbytery may adopt a practice requiring ascending overtures to be submitted in a certain manner or by a certain advance date. That procedure channels the exercise of a session's right. But if the presbytery were to refuse to receive any overture submitted by a session merely on the ground that it prefers to avoid controversial subjects for a season, that would no longer serve the right, it would nullify it. The former regulates method; the latter extinguishes substance.

The Respondent contends that first and second readings are a longstanding and accepted practice; that the Constitution does not prohibit them; and that they may therefore govern how overtures are handled. The premise is accurate. The conclusion is not.

The failure lies in treating silence as authorization. The Constitution's silence concerning first and second readings does not elevate practice to constitutional status; it preserves the rights that are expressly granted. To reason otherwise would be to suggest that whatever the Constitution does not forbid, a court may impose. That is not how a polity governed by a written Constitution works. The absence of a prohibition does not create authority.

*The Book of Government* 18-3.N grants Sessions the right to overture Presbytery. The Constitution contains no requirement of multiple readings as a condition of receipt. From this it follows that a practice not found in the Constitution may regulate the manner in which a right is exercised, but it may not determine whether the right is exercised at all.

When a non-mandated practice is employed to delay, deny, or condition the receipt of an overture, it ceases to be merely procedural and becomes substantive. At that point it operates, not as a channel of constitutional process, but as a barrier to it.

Stated concisely: the Constitution grants Sessions the right to overture Presbytery. The practice of first and second readings, while not prohibited, is not itself a provision of the Constitution or of the Respondent's bylaws. Such a practice may regulate the manner of consideration, but it may not be employed to suspend, condition, nullify, or delay the consideration of a constitutional right. Where a conflict arises, express provisions control over procedural custom. Procedural practices may channel the exercise of rights; they may not condition their existence.

### **Second Urge for Broader Resolution: *The “Gentleman’s Agreement”***<sup>1</sup>

The Complainant asked this Commission to determine whether the concluding stipulation reflected in Assembly Item 44-43, now recorded as *Act of Assembly* 24-05 (§Office of the Minister, p. 216, 2025-2026), is unconstitutional. The Commission has declined to rule on that question. I respectfully believe this case presented an appropriate occasion to consider its constitutional effect.

The controlling issue is not the wisdom of restraint, the desirability of unity, or the prudence of awaiting the report of a denominational study committee. The sole question is one of authority.

This case presented an appropriate opportunity to clarify a matter of enduring constitutional importance: whether one General Assembly may, by expression of “opinion and wish,” effectively bind future Assemblies or subordinate courts in the exercise of rights granted by the Constitution. That question transcends the present controversy in our beloved corner of Zion, the Evangelical Presbyterian Church. The subject matter will change. The constitutional principle will not.

The General Assembly’s desire to provide an Ad-Interim Committee a season of unpressured deliberation is understandable and commendable. Nothing here questions that impulse. The issue is not whether the Assembly may encourage restraint, but whether it may enforce restraint by suspending the constitutional rights of Sessions and Presbyteries to overture.

The Constitution grants lower courts the right to overture the next higher court, in regular gradation (G.1-11; 3-1; 18-3.N). No provision authorizes the Assembly to place those rights in abeyance, even temporarily, by resolution. Assembly Item 44-43 (*AoA* 24-05) did not amend the Constitution and did not claim to. It expressed a sentiment which, fairly interpreted, acknowledged those constitutional limits.<sup>2</sup> Encouragement and authority are not the same. Opinions and wishes do not carry the authority of order.

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<sup>1</sup> I use the phrase “Gentleman’s Agreement” only because it appears in the record. The label is colloquial, imprecise, and confers no judicial weight. Whatever its name, the issue before the Court is the constitutional effect, if any, of the understanding described.

<sup>2</sup> The text of *Acts of Assembly* 24-05 excludes the stipulation of this so-called “Gentleman’s Agreement,” perhaps by acknowledgement, that even among statutory provisions of the constitution, it possesses no binding authority.



If an Assembly's "opinion and wish" may operate to suspend enumerated rights, then those rights exist only at the pleasure of a majority. That is not polity conducted according to a written constitution. Rights secured by text may be altered only by amendment, not by expectation.

For that reason, I believe the Commission should have found that Assembly Item 44-43 (*AoA* 24-05), properly understood, could not bind Sessions or Presbyteries in the exercise of their rights to overture the higher court.

### **Conclusion**

These additional matters, in which the Commission has exercised restraint in declining to address, were properly before us, and I would have welcomed their resolution. While appreciating the impulse toward restraint, in this instance clarity on such matters is a better servant of the peace of the Church.

Taken together, these issues reveal a single constitutional principle: in our polity, authority flows from text, not from tradition, preference, or prudence. Expressed provisions govern. Practices serve rights; they do not defeat them. Advisory guidance may exhort; it may not command. Jurisdiction is to be exercised within, and not beyond, the limits of constitutional authority.

For these reasons, I respectfully concur in the judgment and write separately to express why the additional grounds for relief, in my view, should have been addressed.

TE Zachary Hopkins

This concurring opinion is joined by

RE Gordon Miller  
RE Donald Flater