

1 **OVERTURE 11** from Calvary Presbytery (to CCB, OC)

2 “Amend *BCO* 15-5.a and 15-5.b and Direct CCB to Draft Proposed
3 Amendments to the *RAO* and *OMSJC*”

4 Note: This Overture is not identical to Overtures 3 & 8

5
6 **Whereas** “the Church is governed by various courts” (*BCO* 10-1) and “ecclesiastical
7 jurisdiction is not a several, but a joint power, to be exercised by presbyters in
8 courts” (*BCO* 1-5); and

9
10 **Whereas** “Every court has the right to resolve questions of doctrine and discipline seriously
11 and reasonably proposed, and in general to maintain truth and righteousness,
12 condemning erroneous opinions and practices which tend to the injury of the peace,
13 purity, or progress of the Church” (*BCO* 11-4); and

14
15 **Whereas** the General Assembly is “the highest court of this Church,” (*BCO* 14-1)
16 responsible for receiving “all appeals, references, and complaints regularly brought
17 before it from the lower courts” and deciding “in all controversies respecting
18 doctrine and discipline” and superintending “the affairs of the whole church” (*BCO*-
19 14-6.a,i); and

20
21 **Whereas** the General Assembly, as the highest court of the Presbyterian Church in America
22 may rightly desire to exercise its constitutional authority as a court to decide a
23 judicial case, notwithstanding the limiting Vows taken by SJC members (*RAO* 17-1),
24 just as a presbytery does; and

25
26 **Whereas** the General Assembly may rightly desire to exercise its constitutional authority as
27 a court to decide a judicial case by not ordinarily deferring to the factual findings of
28 the presbytery or its discretion and judgment (*BCO* 39-3.2); and

29
30 **Whereas** the practice of the SJC, as a creature of and subordinate body to the General
31 Assembly, having final authority on a judicial case that is unreviewable by the
32 highest court of the Presbyterian Church in America deprives the General Assembly
33 of its authority as a court and of its members of their authority as elders of the
34 Church and upsets the orderly, hierarchical system of church government established
35 by the *BCO* in particular and of polity in general; and

36
37 **Whereas** the *Book of Church Order (BCO)* recognizes a distinction between a commission
38 (*BCO* 15-1), which “concludes the business assigned to it” and a judicial commission
39 (*BCO* 15-3), which must submit its decision, without debate, for approval or
40 disapproval of presbytery; and

41
42 **Whereas** the *BCO* establishes the principle that judicial commissions act on behalf of a
43 presbytery, but do not have their decisions finalized until the entire court hears and
44 approves the judgment rendered (*BCO* 15-3); and

45

1 **Whereas** the Standing Judicial Commission of the General Assembly (SJC) has been
2 established (*BCO* 15-4 and *Rules of Assembly Operations (RAO)* 17) in a way that
3 has been interpreted to insulate its decisions from review of the General Assembly,
4 making its judgments final, without approval of the General Assembly as a whole
5 (*BCO* 15-5.a and b); and
6

7 **Whereas** this represents a contradiction in the way the various courts of the church
8 operate—with the judicial commissions of presbyteries operating in one fashion and
9 the General Assembly/SJC operating in another; and
10

11 **Whereas** this contradiction may violate the essential principle of *BCO* 11-3 that “all Church
12 courts are one in nature”; and
13

14 **Whereas** insulation of SJC Decisions from the oversight of the entire General Assembly
15 may violate the principle of the General Assembly having the power to “bear
16 testimony against error in doctrine” (*BCO* 14-6a); and
17

18 **Whereas** the means for ensuring that the SJC remains the General Assembly’s judicial
19 commission and subject to the oversight and control of the General Assembly as a
20 court is already present in the model found in presbytery judicial commissions in
21 *BCO* 15-3;
22

23 **Be it therefore resolved that:**
24

- 25 1. *BCO* 15-5.a and *BCO* 15-5.b be amended as follows (strike-through for
26 deletions; underlining for additions):
27

28 **15-5. a.** In the cases committed to it, the Standing Judicial Commission
29 shall have the judicial powers and be governed by the judicial
30 procedures delegated to it by ~~of~~ the General Assembly. ~~The decision of~~
31 ~~the Standing Judicial Commission shall be the final decision of the~~
32 ~~General Assembly except as set forth below, to which there may be no~~
33 ~~complaint or appeal.~~ Members of the Standing Judicial Commission
34 may file concurring or dissenting opinions, or a minority report as set
35 forth in (c) below. The General Assembly may direct the Standing
36 Judicial Commission to retry a case if upon the review of its minutes
37 exceptions are taken with respect to that case.
38

39 **b.** In each case the Standing Judicial Commission shall issue a
40 summary of the facts, a statement of the issues, its proposed judgment
41 and its reasoning, together with any concurring or dissenting opinions.
42 ~~all of which shall be entered on the minutes of the General Assembly~~
43 ~~and shall be reported by the Stated Clerk to the next General~~
44 ~~Assembly. The judgment shall be effective from the time of its~~
45 ~~announcement to the parties. The General Assembly shall, without~~

1 debate, approve or disapprove of the proposed judgment, or may refer
2 (a debatable motion) any strictly constitutional issue(s) to the
3 Committee on Constitutional Business. In the case of referral, the
4 Standing Judicial Commission shall either dismiss some or all of the
5 specific charges raised in the case or decide the case only after the
6 report of the Committee on Constitutional Business has been heard and
7 discussed. If the General Assembly approves, the judgment of the
8 Standing Judicial Commission shall be final and shall be entered on
9 the minutes of the General Assembly as the action of the General
10 Assembly. If the General Assembly disapproves, it may assume
11 original jurisdiction at the point of the original complaint or
12 indictment, and/or assign the case back to the Standing Judicial
13 Commission, with or without the assumption of original jurisdiction
14 and with or without instructions to the Standing Judicial Commission
15 for further handling of the case, and/or appoint, through the moderator,
16 a special commission to hear the case again, with or without the
17 assumption of original jurisdiction. In the event that a minority report
18 of the Standing Judicial Commission is properly filed and presented to
19 the General Assembly, the General Assembly's review of the case
20 shall be governed by 15-5.c and not 15-5.b.

21
22 If approved, these two sections would read as follows:
23

24 **15-5. a.** In the cases committed to it, the Standing Judicial Commission
25 shall have the judicial powers and be governed by the judicial
26 procedures delegated to it by the General Assembly. Members of the
27 Standing Judicial Commission may file concurring or dissenting
28 opinions, or a minority report as set forth in (c) below. The General
29 Assembly may direct the Standing Judicial Commission to retry a case
30 if upon the review of its minutes exceptions are taken with respect to
31 that case.
32

33 **b.** In each case the Standing Judicial Commission shall issue a summary
34 of the facts, a statement of the issues, its proposed judgment and its
35 reasoning, together with any concurring or dissenting opinions. The
36 General Assembly shall, without debate, approve or disapprove of the
37 proposed judgment, or may refer (a debatable motion) any strictly
38 constitutional issue(s) to the Committee on Constitutional Business. In
39 the case of referral, the Standing Judicial Commission shall either
40 dismiss some or all of the specific charges raised in the case or decide
41 the case only after the report of the Committee on Constitutional
42 Business has been heard and discussed. If the General Assembly
43 approves, the judgment of the Standing Judicial Commission shall be
44 final and shall be entered on the minutes of the General Assembly as
45 the action of the General Assembly. If the General Assembly

1 disapproves, it may assume original jurisdiction at the point of the
2 original complaint or indictment, and/or assign the case back to the
3 Standing Judicial Commission, with or without the assumption of
4 original jurisdiction and with or without instructions to the Standing
5 Judicial Commission for further handling of the case, and/or appoint,
6 through the moderator, a special commission to hear the case again,
7 with or without the assumption of original jurisdiction. In the event
8 that a minority report of the Standing Judicial Commission is properly
9 filed and presented to the General Assembly, the General Assembly's
10 review of the case shall be governed by 15-5.c and not 15-5.b.

- 11
12 2. The Committee on Constitutional Business be directed to draft proposed
13 amendments to the *Rules of Assembly Operations* and the *Operating Manual of*
14 *the Standing Judicial Commission* as may be necessary to conform any
15 provisions thereof to the provisions of *BCO 15-5* as amended by this resolution.
16

17 *Adopted by Calvary Presbytery at its stated meeting, January 25, 2014*

18 *Attested by /s/ TE Charles E. Champion, stated clerk*