

Joint Motion to Dismiss
2021 Synod Judicial Commission
(November 30, 2021)

“The purpose of Christian discipline is to bring about a redemptive change, and a continuing growth toward holiness in the life of a Christian” (Book of Discipline (“BoD”) Introduction, E-1.) But the purpose of the Charges brought against Pastor Jared Olivetti (“**Pastor Olivetti**”) and Mr. Zachary Blackwood, Mr. David Carr, Mr. Ben Larson, Mr. Keith Magill, and Mr. Nate Pfeiffer (the “**Immanuel Session**”) without fair and impartial process is to defame the entire leadership of a congregation. Hasty discipline that discredits leadership in this manner is neither just nor redemptive. The 2021 Synod Judicial Commission (the “**SJC**”) should say so.

I. Joint Motion to Dismiss

Pastor Olivetti and the Immanuel Session (collectively, the “**Accused**”) jointly request that the SJC immediately (1) dismiss all charges with prejudice (the “**Dismissal**”) against (a) Pastor Olivetti arising out of the Formal Accusation of Sin presented November 16, 2021 (the “**Olivetti Charges**”), and (b) the Immanuel Session arising out of the Formal Accusation of Sin presented November 16, 2021 (“**Immanuel Session Charges**”); (2) remove Mr. Kyle Borg, Mr. Stan Copeland, Mr. Joseph Friedly, and Mr. Pete Smith (the “**Accusers**”), from any further involvement in these proceedings or matters related to Pastor Olivetti and the Immanuel Session; and (3) void, vacate, and nullify the entirety of the investigation conducted by the Accusers.

Before proceeding to the substance of this motion, the undersigned counsel must note that the following arguments are the best the Accused can muster in the time allowed. Charges were not served until the week before Thanksgiving. Counsel for the Accused received the evidence and the Accuser’s investigation report the week of Thanksgiving. Counsel has not had time to read and

listen to all the evidence.¹ Three of the counsel for the accused are licensed attorneys, with almost 35 years of legal experience among them. In all their years of practice, none of them have had to prepare any brief involving a case of this complexity and this amount of evidence on this short notice – not to mention over a Thanksgiving holiday. None of them have ever seen the facts of any case so grossly mishandled. None of them have ever seen a court, in any jurisdiction, impose a process so unfair and unreasonable.

II. Background and Introduction

In 2020, Pastor Olivetti and the Immanuel Session faced a most difficult shepherding task as minor-on-minor abuse was discovered in the Church. Doing the best they could, they shepherded the congregation. Two families called for an investigation to see if there was a cover-up. The Great Lakes Gulf (“GLG”) Immanuel Judicial Commission found no cover up. Obviously, none of the elders themselves were perpetrators. Victims were believed by the elders. Pastor Olivetti and the Immanuel Session observed the laws of the State of Indiana in reporting the cases to the authorities and did not discourage others from reporting cases. The actions they took were used by God to stop the abuse that had been ongoing. They disciplined the perpetrator. And justice was meted out by the Tippecanoe County Court against the perpetrator nine months later.

While Pastor Olivetti and the Immanuel Session sinned along the way and made mistakes, they have publicly repented of these sins and mistakes. They have been reconciled to the vast majority of the congregation, which trusts its leadership and desires to press ahead, following Jesus Christ together.

¹ Due to the time constraints under which this Motion was written, the undersigned counsel cannot cite to all the documents referenced and relied upon in this motion. The undersigned counsel believe that it is fair to assume, however, that all such documents are either available to the SJC (*e.g.*, SJC emails to and from Moderator Mr. Keith Wing, Presbytery and Synod Communications, investigative reports, etc.) or are included in the evidence provided by the Accusers.

But now, Pastor Olivetti and the Immanuel Session face charges. They now raise four reasons why these charges should be dismissed.

Argument 1: The SJC should dismiss the Olivetti Charges and the Immanuel Session Charges because there have been gross irregularities in the August to November 2021 investigation that preceded them and the proceedings of the SJC that ratified them (BoD II.3.4.)

The investigation purporting to justify the Charges was a sham. It was hastily performed by the Accusers who assumed guilt from the start. Bias aside, the investigators lacked the training, professional experience, and wherewithal to discover the truth. They didn't talk to all the witnesses. They didn't ask for all the documents. They didn't distinguish hearsay from first-hand knowledge. They didn't weigh the credibility of the witnesses. They misread documents. They didn't account for evidence that supported innocence. Too often, they acted on speculation, not fact. And after the Accusers identified sins (or what they say are sins), they did not privately confront any of the Accused with any of these sins pursuant to Matthew 18. In a word, the investigation didn't investigate the facts – it justified presumptions.

The SJC's process is fundamentally unfair. Multiple parties, not just the Accused, tried to expose the bias in the investigation in the summer of 2021, but the SJC rebuffed them. Multiple parties later asked the SJC to intervene and stop the Accuser's misuse and misconstruction of documents, but the SJC refused to consider these pleas. Instead, the Accusers went unchecked and unsupervised. The SJC received draft charges from the Accusers and decided, without any input from the Accused or any other person, that the Book of Discipline and Matthew 18 did not require a good faith attempt at private resolution. Instead, the SJC decided that it would suspend Pastor Olivetti and the Immanuel Session from office, starting December 31, 2021, until resolution of this matter, without any notice to the Accused or any opportunity for them (or the Immanuel RPC

congregation) to be heard. The SJC set a pre-trial and trial schedule without any input (or even verifying availability) from the Accused or their counsel. The Accused and their counsel did not receive the evidence, the investigative report of the prosecutors, or notice of the suspension of the Accused until the week of Thanksgiving. And now the SJC expects the Accused to prepare a full defense involving thousands of pages of documentary evidence and 58 witnesses over the Thanksgiving, Christmas, and New Years holidays and be ready for trial by the end of January 2022. This is absurd. It is grossly irregular.

Argument 2: The SJC should dismiss the Olivetti Charges and the Immanuel Session Charges because they do not identify actual sin with any reasonable degree of specificity (BoD II.2.1.) Generic categories of sin and character defects are alleged. But they do not identify any “specific offense, [or] the time, place and circumstances of its commission,” as the Book of Discipline requires. Fundamentally, Pastor Olivetti and the Immanuel Session do not know which of their specific actions are sin, and thus, they have been deprived of either the meaningful opportunity for repentance (if the Charges are true) or a meaningful defense (if the Charges are false).

Argument 3: The SJC should dismiss the Immanuel Session Charges as to Mr. Nate Pfeiffer because the SJC lacks jurisdiction to discipline him (BoD II.3.4.) Mr. Pfeiffer has withdrawn his ordination as an RPCNA elder. Quite simply, the SJC lacks jurisdiction to discipline elders for being bad elders after they are no longer elders.

Argument 4: The SJC should dismiss the Olivetti Charges and the Immanuel Session Charges because the charges fail to account for their repentance and reconciliation (BoD II.1.1.) Pastor Olivetti and the Immanuel Session have publicly confessed sin and repented. They have repented before their congregation, at Presbytery, in one-on-one meetings, and in writing. But the Accusers never met with them for the purpose of discussing the *results* of their investigation and their

specific charges. Thus, the Accusers and the SJC cannot show that every effort was made to avoid a trial for alleged sin and attempted reconciliation. This is fundamentally inconsistent with the redemptive purpose of church discipline.

Taken together, the Charges, the investigation that supposedly supports them, and the SJC's process are a farce. Any trial on these Charges under these circumstances will not be a fair trial but a show trial. And even if fairness could be salvaged, many in this denomination would view any verdict as an act of illegitimacy because of the irregularity and unfairness of these proceedings. If the SJC denies the Dismissal and proceeds with this trial, it will not advance redemption but instead will cause excessive sorrow for all. It will do nothing for any of the parties who have suffered in this matter. It will only defame Christ's name.

III. Argument 1: Gross Irregularity of The Proceedings

Fundamentally, the matters at issue are too complicated, too emotional, and too divisive to be handled by the RPCNA without the assistance of independent professionals trained to competently handle child abuse matters and the inevitable fallout. The incompetence of all the parties involved, not just questions about their morals, explains, in part, why the RPCNA courts have not been able to resolve this matter. That was true for Pastor Olivetti and the Immanuel Session, for the GLG Presbytery and, sadly, it remains true for the SJC and the Accusers now.

The RPCNA believes in common grace (Testimony 2.7; 7.3; 8.8). It believes that the church should cooperate with other human institutions because "His authority extends to associations of every description, domestic, civil and ecclesiastical." (William Symington, *Messiah the Prince*, at 97-98 (1881); *see also* Testimony 23:19). Our shame at this moment is that the Courts of the RPCNA, at every level, have not recognized the full extent of Christ's common grace and mediatorial authority and have, thus, failed to seek the assistance of trained professionals outside the church who might have saved us from the infirmities of our own inadequacies.

But the Accusers and the SJC have compounded incompetence with more of the same. The SJC was chartered by Synod to “address these matters,” specifically the matters of the sexual abuse occurring at the Church. Synod stepped in because the GLG Immanuel Judicial Commission was incapable of resolving these matters due to internal discord in the Presbytery and irregularities in the process. In other words, the SJC was tasked to re-do the work of the GLG Immanuel Judicial Commission so that “these matters” could be resolved finally and definitively in manner that was above reproach and in accordance with the Scriptures and the Book of Discipline.

Unfortunately, the SJC has not and cannot perform its chartered function. Gross irregularities have characterized every stage of the proceedings leading to these Charges, beginning shortly after the SJC was installed in 2021 and continuing until today at the November 30, 2021 pre-trial conference. Some of these irregularities resemble the factious spirit within the GLG Presbytery that precipitated Synod taking over “these matters” in the first place. Other irregularities are unique to this stage of the proceedings.

Succinctly, there are five categories of gross irregularity in these proceedings: (1) the individuals who performed the investigation were biased and presumed guilt; (2) the investigation was incomplete and inaccurate; (3) the Accusers and the SJC did not follow Christ’s Rule in Matthew 18; (4) the timeline for adjudicating the Charges has been unfairly rushed; and (5) the SJC decided to suspend Pastor Olivetti and the Immanuel Session prior to the pre-trial hearing or any hearing at all from the defense of the Immanuel congregation.

A. Gross Irregularities Defined

The Book of Discipline states that “[t]he accused may offer objections to proceeding with trial on the grounds that there have been gross irregularities” and if this objection “prove[s] to be well founded, the court must dismiss the case, or permit amendments to the charge without changing

its nature” (BoD II.3.4.) In other words, the Church may hear charges brought through *regular* order. Any charge that results from grossly irregular proceedings are biblically indecent and out of order (*see* 1 Corinthians 14:40).

The Scriptures describe the “regular” order for church discipline to include the following:

- “Keep far from a false charge.” (Exodus 23:7)
- “Do not receive an accusation against an elder except on the basis of two or three witnesses.” (1 Timothy 5:19; *see also* Deuteronomy 19:15; 2 Corinthians 13:1)
- “Brothers, if anyone is caught in any transgression, you who are spiritual should restore him in a spirit of gentleness.” (Galatians 6:1)

The Book of Discipline does not define “gross irregularities” expressly. But it does reference various regularities and irregularities in discipline matters, including the following:

- “God has established an orderly manner for dealing with sin in His church. This order, as set forth in Matthew 18:15-17, involves loving personal confrontation, using witnesses, and calling upon church leaders for counsel and judgment.” (BoD I.1.2)
- “Discipline should be exercised with prudence, discretion, humility, and in full dependence on the guidance of the Spirit of God, with love for both the Lawgiver and the law breaker.” (BoD I.1.5.)
- “No charge shall be received without investigation from any one who is not of good character, or is mentally deficient, nor shall any be accepted at any time from one who manifests malice.” (BoD II.1.2)
- Grounds for appeal include “manifest prejudice or unfairness to the party on trial.” (BoD II.4.10.)

Finally, the Ninth Commandment, as expounded in the Westminster Larger Catechism, identifies what characterizes judicial process when it is marked with gross irregularities, including but not limited to “prejudicing the truth . . . giving false evidence . . . out-facing and overbearing the truth . . . undue silence in a just cause . . . misconstruing intentions, words, and actions . . . unnecessary

discovering of infirmities . . . raising false rumors . . . and stopping our ears against just defence.”
(WLC A. 145, B-31.)

When comparing the facts of this case with the principles noted above, it is evident that a number of principles set forth in this section have been trampled by the Accusers and the SJC.

B. Evidence of Gross Irregularities

1. Gross Irregularity No. 1: The Accusers Assumed Guilt

Many of the irregularities in the Accusers’ investigation arose because the Accusers were not unbiased and objective investigators. A person is biased if they cannot act objectively in discharging their duties and are predisposed toward an outcome. An accusation of bias is not an accusation of sin, but merely a recognition of fact – a biased person cannot enter a matter with an open-mind, and their presence discredits the fairness of the process in which they participate.

The evidence shows that at least two of the Accusers in this case were predisposed toward prosecution of Pastor Olivetti and the Immanuel Session before the investigation began. Their bias and predisposition toward guilt was publicly known before the SJC was even constituted – they volunteered on the floor of Synod to be prosecutors! And one of these individuals, Pastor Kyle Borg, also consulted closely with the prosecutors who tried to bring charges against the Accused at the GLG Presbytery. Pastor Borg also has publicly posted on Gentle Reformation statements that reflect frustration with church leadership for mishandling abuse.
<https://gentlereformation.com/2021/03/05/what-if-they-had-known/>.

Throughout the investigation, this bias and predisposition manifested itself in several ways. For example, the Accusers prematurely discussed what an appropriate censure would be for Pastor Olivetti and the Immanuel Session at least two months before Charges were filed. On Sep. 9, 2021,

during an interview with Mr. Jeff Kessler (ruling elder at Lafayette RPC, and provisional elder at Immanuel RPC at the time), one of the Accusers made the following statements to Mr. Kessler:

Investigator:² you just said a moment ago, that the Immanuel session sinned but that they shouldn't be defrocked. Just in your opinion, knowing what you know, would you say there is a level of censure that would be fitting for what, for those sins, and that's a big question so if you don't feel comfortable answering that's totally understandable.

September 9, 2021 Recording of Mr. Jeff Kessler Interview at 59:08.

Investigator: one of the themes that we see is . . . and all of this is on written records, you know, whether it is the shepherding committee . . . whether it was the judicial commission, you know there is broad agreement that there was sin, and there is broad agreement that a degree of censure would probably be appropriate.

September 9, 2021 Recording of Mr. Jeff Kessler Interview at 1:01:40-1:02:30.

This line of inquiry has no place in an objective investigation of fact. It is doubly presumptuous because it assumes not only that Charges are inevitable but also that guilt is inevitable, too. From these presumptions, the SJC should logically infer – at the very least – bias and a predisposition of guilt on the part of at least some of Accusers.

As noted above, the undersigned counsel has not had time to review all the evidence, including all of the recorded interviews between the investigators and witnesses. Nor have we had time to speak with any of the witnesses (other than the Accused) regarding their interactions with the Accusers. It is possible that additional evidence would further corroborate what the Accusers and many others believe to be true: bias infected the investigation.

2. Gross Irregularity No. 2: The Investigation Is Incomplete and Inaccurate.

The Accusers admitted in their investigation report that they formed conclusions about the facts at issue before speaking with any of the witnesses in these matters, relying only upon the evidence previously obtained by the GLG Immanuel Judicial Commission and supplemental

² The speakers do not identify themselves in the recording, but the investigator is one of the Accusers.

documentation. By any professional standards, this manner of forming conclusions about facts is fundamentally flawed and reflects gross incompetence.

After reaching these premature conclusions, the Accusers' investigative report also shows the Accusers did not verify and substantiate the investigation performed by the GLG Immanuel Judicial Commission when they did talk to witnesses and review new evidence. Nor did they gather the additional evidence critical to these matters that many who complained against the Immanuel Judicial Commission had requested at Synod. Specifically, based on a review of the categories of evidence provided by the Accuser, it appears that the Accusers did not interview any IRPC members who did not happen to be the parents of abuse victims. The Accusers expressly state they "identified 'interested parties' that may want to meet with us Those interested parties included the IRPC Session, Lafayette Reformed Presbyterian Church Session, committee/commission members, parents of sexual abuse victims from the church, and Pastor Keith Evans." Unless the Accusers failed to document who else they interviewed, this statement confirms that the investigation lacks a critical perspective in this matter of those who have first-hand knowledge of Pastor Olivetti's and the Immanuel Session's alleged sins, and their ongoing repentance and efforts toward reconciliation. On this basis alone, the investigation is incomplete.

The Accusers also say that they framed their interviews as open-ended opportunities for the witnesses to say whatever they wanted, which confirms that the Accusers squandered opportunities to methodically confirm or disprove their presumptions. It is also impossible to discern from their investigative report what effort the Accusers made to distinguish hearsay from first-hand account; rumor from fact; and a witness's speculation from his actual knowledge. Nor does the investigative report meaningfully wrestle with the competing testimony and evidence from an objective perspective.

The Accusers obtained public records from Tippecanoe County court proceedings. But the Accusers misconstrued those documents and confirmed their fundamental inexperience and, sadly, incompetence to understand the significance of those records, or how to reconcile those records with other evidence that was clearer and more compelling. This inability to understand the full context and significance of these documents led to significant distortions of fact that infect the Charges and the assumptions that went into them, including the timeframe of alleged sexual abuse.

Most disturbingly, the Accusers acted upon their misconstruction of these public documents to state – as a fact matter of fact, and not mere conjecture – that Minor³ committed abuse as late as January 2021, which was well-beyond the scope of abuse understood by all parties (including the local government). The Accusers made this false statement of fact to several individuals, including [REDACTED] (who are also a victim family), and the rest of the Immanuel Session, in September 2021. These false allegations were quickly discredited and disproved by the Accused. But in their investigation report, the Accused persist to this day in stating conjecture as fact, telling the SJC “[n]othing in the public record definitely proves that [abuse occurring after April 2020] did not happen” – as if lack of evidence disproving a fact is somehow evidence of the fact itself! This statement reflects the Accusers’ fundamental misunderstanding of the purpose of an independent investigation and how judicial proceedings should function in any court – ecclesiastical or otherwise. This statement also suggests a disturbing naiveté on the part of the Accusers – namely, that they know the scope of the sexual abuse better than the Indiana Department of Child Services and the Tippecanoe County Prosecutor’s office.

Bottom line, the Accusers’ investigation fails to bring any new facts to light. Instead, it obfuscates reality. It was a sham.

³ To avoid any need to redact any portion of this document, the name of the person who committed the sexual abuse in this matter has been omitted. The name of this person is known to the SJC and the parties.

3. Gross Irregularity No. 3: Matthew 18 Was Not Followed Before Charges Were Ratified

Every Accused is prepared to testify that no Accuser privately met with any of them about the results of their investigation or the specific Charges. Under any understanding of the meaning of Matthew 18, this was insufficient and irregular.

The Accusers say (and the SJC apparently agrees) that Matthew 18 can be dispensed with because this matter has now become a “public report” or a *fama clamosa* to which Matthew 18 does not apply (BoD II.1.4.) But what is the *fama clamosa*? It is beyond dispute that this term refers only to a public report of scandalous or grossly immoral conduct (murder, rape, adultery, etc.) committed by the accused. By contrast, the Charges alleged that the Accused failed to shepherd the flock and failed to maintain their qualifications as elders. No scandalous sin is alleged. And failing to shepherd the flock or maintain the qualifications for eldership are not *inherently* scandalous. Any elder may fail to shepherd the flock or act contrary to his qualifications for any number of reasons that do not involve any scandalous sin. Thus, in order for the Accusers and the SJC to find *fama clamosa*, a specific scandalous sin committed by the Accused must be charged. But none is charged here.

The Accusers also appear to suggest that even if the charged sin is not inherently scandalous, it’s still public, and that’s enough to skirt meaningful attempts at private resolution before charges are filed and certified. But any publicity surrounding these matters involving Pastor Olivetti and the Immanuel Session is a result of two things: 1) the gossip and rumor that has gone unchecked throughout the denomination for nearly two years, and 2) the fact that this was a matter that was hotly disputed at Presbytery and Synod. In other words, the Accused didn’t cause the publicity! If Matthew 18 does not apply to this matter, then it doesn’t apply to any matter that

happens to generate sufficient gossip, rumor, and public debate within the ecclesiastical courts. That's both absurd and patently unbiblical.

The Accusers also suggest that questions over an elder's qualifications are, by definition, not subject to private resolution. First, the Book of Discipline does not say this. Second, the Accusers cite no precedent for this. Third, and more fundamentally, questions surrounding an elder's qualifications are never resolved in the abstract – they always involve resolution of specific sins which can be confronted, addressed, and repented of privately. The one exception that proves this rule is *fama clamosa* – and that doesn't apply here for the reasons stated above.

4. Gross Irregularity No. 4: The Timeline for Adjudicating The Charges Have Been Unfairly Rushed.

The Charges were served on Pastor Olivetti and the Immanuel Session 12 days ago. All of Pastor Olivetti and the Immanuel Session's counsel in this case were not formally retained until November 23, 2021. Digital copies of the Accusers' evidence (thousands of pages and dozens of hours of recorded interviews) were received a few days after the Charges were filed.

A full report of the Accusers' investigation was not given to Pastor Olivetti and the Immanuel Session or their counsel until 10:51 p.m. the Tuesday before Thanksgiving. The defense did not even know the time, location, or agenda of the pre-trial hearing until 4:30 p.m. on Thanksgiving Eve. The agenda provided by the SJC proposed a 14-hour hearing at which ecclesiastical counsel was expected to raise objections to the Charges and discuss up to 58 witnesses and hundreds of pages of evidence and hours of recorded interviews after only days to review these materials – with only the weekend of Thanksgiving and the following Monday to prepare.

On Thanksgiving Day, counsel for Pastor Olivetti and the Immanuel Session requested combining the hearings of Pastor Olivetti and the Immanuel Session and requested modifying the agenda so that only the objections in this Dismissal could be presented or presented at the

beginning of the pre-trial hearing. Counsel also requested documentation relevant to the defense from both the Accusers and the SJC. The SJC denied these requests the day after Thanksgiving. All requests were denied.

One counsel for Pastor Olivetti and the Immanuel Session notified the SJC that this hearing is scheduled to take place the same day as the funeral for the late daughter of RPTS Professor Denny Prutow – a funeral in which several of the accused individuals and their counsel had planned to attend – to no effect. Needless to say, this compressed timeline has impeded the ability of Pastor Olivetti, the Immanuel Session, and their Counsel to prepare their defense.

Further, Pastor Olivetti and the Immanuel Session have not received any assurance from the Accusers or the SJC that the accused have received all the evidence in the Accusers' and the SJC's possession.

Worse yet, the SJC notified the defense on November 26, 2021, that it would not permit even the Immanuel Session (or any other elder, RPCNA member, or person) to observe the pre-trial hearing of Pastor Olivetti, and vice versa. The defense was not permitted to provide any objections prior to the SJC deciding unilaterally to proceed with the pre-trial hearing cloaked in secrecy. In sum, the process provided to Pastor Olivetti and the Immanuel Session have been grossly irregular and has deprived them of meaningful notice and opportunity to be heard.

5. Gross Irregularity No. 5: The SJC Suspend Pastor Olivetti and The Immanuel Session Prior To Any Input from The Defense or The Immanuel Congregation.

On the day after Thanksgiving, the SJC informed counsel for Pastor Olivetti and the Immanuel Session that it had decided to suspend Pastor Olivetti and the Immanuel Session effective December 31, 2021. The SJC suspended the accused without any hearing of any kind from the

defense. Further, the defense did not know (until the decision was announced by the SJC) that the suspension was even being contemplated by the SJC.

The defense does not know how the SJC made these decisions, what the vote of the SJC was, whether the Accusers were present, or whether the Accusers were able to provide any written argument to the SJC in connection with this decision. In essence, Pastor Olivetti and the Immanuel Session have been deprived of notice and opportunity to be heard at a secret pre-pre-trial meeting of the SJC before being suspended from their positions at the Church. And the members of the Immanuel congregation have been deprived of their elders without the opportunity for comment.

* * *

All told, these proceedings are grossly irregular. The Accusers' and the SJC's actions prejudice Pastor Olivetti and the Immanuel Session. Any trial on these Charges, under these circumstances, will not be a fair trial. If there is a trial, many in this denomination are unlikely to accept the legitimacy of its verdict because many believe (and the evidence shows) these proceedings are infected with bias, incompetence, unfairness, and (ultimately) injustice. These gross irregularities show that, effectively, the Accusers and the SJC collectively communicate the Old Western justice sentiment to Pastor Olivetti and the Immanuel Session, "we're gonna have to give you a fair and impartial trial before your hanging."

IV. Argument 2: The Charges Lack The Required Specificity

The Charges themselves are deeply problematic for at least two reasons: 1) the accusations lack the required specificity; and 2) the accusations allege character defects instead of transgressions.⁴

⁴ The Charges also allege that all the Accused have violated the Covenant of Communicant Membership. Time does not permit the undersigned to fully develop the implications of this charge against the Accused, which implies that if found guilty, the Accused would not only suffer censure as office holders, but as communicant members of the RPCNA.

A. The Charges Lack The Required Specificity.

The Book of Discipline states that where formal charges are brought against individuals, “a charge . . . shall name the specific offense, the time, place, and circumstance of its commission” (BoD II.2.1.)

The Accusers recognize this requirement of the Book of Discipline. They aver that they have “sought to be comprehensive and clear in the framing of the accusation and counts, and in providing statements about the circumstance of commission.” They also testify that they have “been careful to document time (day/month/year) but believe that in this case there are patterns and habits of sin making a single time/place of commission difficult to ascertain.”

Despite the Accusers’ description of the Charges, this “careful . . . document[ation]” does not actually appear in the Charges for any offense. No dates and times of any specific instances of misconduct are included in the Olivetti Charges. The general accusation asserts that Pastor Olivetti has not safeguarded his qualifications for the eldership “since at least 2019 to the present,” but the Counts most closely dealing with his eldership and interaction with the congregation (Counts 1 and 3) only allege sin “[a]fter approximately April of 2020.” Conversely, Count 2 against Pastor Olivetti, which alleges his failure to manage his own house well, places his mismanagement “[s]ince at least 2019,” but does not include any end point, indicating that even after his son has been removed from the house, Pastor Olivetti continues to manage his house sinfully.

Similarly, the necessary information does not appear in the Immanuel Session Charges. However, the Accusers maintain that the Immanuel Session continues to endanger the members of the Church to this day. They state, “[s]ince April of 2020, the Ruling Elders . . . unnecessarily endangered members of the flock entrusted to their care.”

It is out of order to publicly accuse the entire leadership of a church with breaking nearly every one of the Ten Commandments and not identify one specific action, statement, or decision of the accused. There are no lack of charges, but there is a substantial lack of specificity with respect to these Charges. Pastor Olivetti and the Immanuel Session are left to guess what crimes they have committed until their trial begins. Even where arguable particularized allegations are raised – for example, “Pastor Olivetti indicated Presbytery was serving as a source of oversight and accountability to the IRPC Session’s decisions and directions in the case,” there is no indication where, when, or to whom such indication was made, nor is there any indication to what extent this indication was “partial[ly false] or [a] misleading communication.”

Similarly, it is alleged that “Pastor Olivetti indicated that he was fully cooperative with DCS.” Again, it is unclear when this indication was made, whether it was allegedly untrue at that time or subsequently became untrue, to whom the indication was made, or even that the indication was untrue at all. Due to this incredible uncertainty, Pastor Olivetti and the Immanuel Session do not have the information to either repent (if the Charges are true) or prepare for an adequate defense (if the Charges are false).

Although the Accusers provide no particularity to any misconduct, the Accusers intend to call up to 58 witnesses during a trial with the SJC. No information is provided in the Olivetti Charges or the Immanuel Session Charges identifying the content of any witness’s testimony, the relevance of such testimony, or the intended length of time each witness will testify.

The Accusers also provided over 1,000 pages of information they have collected. However, there is no assurance that this information reflects all the information the Accusers have, or if there is any exculpatory evidence they have not provided to the Accused. Despite the voluminous paperwork provided to Pastor Olivetti and the Immanuel Session, neither the Olivetti Charges nor

the Immanuel Session Charges cite to any document that provides any detail or evidence of misconduct.

The only specific instance of misconduct identified in the Olivetti Charges and the Immanuel Session Charges was not committed by Pastor Olivetti or any other elder of the Church. The misconduct was committed by the Minor. But these facts are evidence of censurable conduct by the Minor involved, not evidence of censurable conduct by Pastor Olivetti or the Immanuel Session. The Immanuel Session disciplined the Minor *nine months before* he was found delinquent by the Tippecanoe County criminal justice system, and he was placed in a juvenile facility.

B. Because The Accusations Allege Character Defects Instead of Transgressions, The Accusers Cannot Establish Them And The Defense Cannot Refute Them.

Finally, a significant portion of what is charged consists not of actions, but rather character attacks, which cannot readily be established or refuted, and as such, should be dismissed. Failing to dismiss the Charges effectively flips the burden of proof from the Accusers to Pastor Olivetti and the Immanuel Session. They have to prove, in effect, that they are qualified to be elders even though they are not confronted with specific charges of their lack of qualification.

V. Argument 3: The SJC Lacks Jurisdiction to Discipline Elders Who Are Not Elders

The Immanuel Session Charges include charges against one elder, Nate Pfeiffer, who has withdrawn his ordination. The RPCNA Constitution clearly states that “a ruling elder may be *removed* from office,” (Constitution D-12) (emphasis added), which necessarily implies the elder removed must hold the office at the time of his removal. That is not and will not be the case for Mr. Pfeiffer. Any proceeding against him, whether as an individual or past member of the Immanuel Session, is out of order.⁵

⁵ While the letter of the law may permit Charges against Mr. Zachary Blackwood, the spirit of the law certainly cuts against it. He resigned as a member of the Immanuel Session earlier this year, and did so upon the understanding that

VI. Argument 4: Repentance of Pastor Olivetti and The Immanuel Session

The primary purpose of church discipline is to reclaim a sinning member (BoD I.1.3). That purpose is behind Christ's Rule in Matthew 18. A church trial is a last resort. Formal discipline is not instituted unless evidence is presented that the means of reconciliation have been attempted (BoD I.2). The Book of Discipline calls for the church to avoid a trial if possible and permits a trial only after evidence is presented that the means of reconciliation have been tried (BoD II.1.1). In the context of personal responsibility, where a member sins against another, the sinner is to be confronted (BoD I.2.1). The Book of Discipline anticipates a final, biblical resolution: "If the sinner repents, there must be forgiveness and reconciliation, and the matter shall be closed. You have won your brother" (BoD I.2.2). Similarly, the Book of Discipline requires a session or higher court to follow the same approach, confronting the sinner (BoD I.3.1; *see also* BoD II.2.2). And the desired and expected result is nearly identical: "If the sinner confesses and repents, there must be forgiveness and reconciliation, and the matter shall be closed. You have won your brother" (BoD I.3.3).

Simply stated, the Book of Discipline anticipates that before going to trial, the Accusers and the Court must ensure that they have fully understood and acknowledged the extent of genuine repentance so that unnecessary judicial proceedings can be avoided. The Accusers and the SJC have not done that here.

A. Pastor Olivetti's Statements of Repentance

Pastor Olivetti has publicly repented on multiple occasions, and there are three instances in the record of his repentance publicly. Consequently, the Olivetti Charges should not have been brought, may not stand, and must be dismissed.

resignation would satisfy any and all accusers. Going forward with charges against him now is unreasonable, at best, and vindictive (and thus unbiblical), at worst.

First, Pastor Olivetti wrote a public confession that he delivered at the Church in March 2021 where he acknowledged that at times he “exercised undue and improper influence, involving a series of conflicts of interest, which put some of the victims’ families at a disadvantage.” He also admitted to not fully recusing himself and undermining the Church’s trust in him and his spiritual authority. Pastor Olivetti concluded his remarks by saying, “I am zealous to be forgiven and learn whatever lessons God has for me.” He also offered to meet with anyone who wanted to discuss these matters to facilitate reconciliation within the Church.

In June 2021, Pastor Olivetti addressed the Church and again asked for their forgiveness. He acknowledged, “I did not do everything possible to avoid the appearance of evil, to remain above reproach.” He also acknowledged that he promised more supervision of children than the Immanuel Session was able to provide and, as a result, broke his promise. Pastor Olivetti repented of exercising undue and improper influence and not using wisdom. As he did in March 2021, Pastor Olivetti again offered publicly to meet with anyone who wanted to discuss his repentance.

In a statement to the Presbytery, Pastor Olivetti stated that he was sorry “for having made a tragic situation worse, to the offense and hurt of others.” He expressed a desire to learn more about how to handle situations relating to abuse, influence and authority in the church. “I am eager to clear myself and be forgiven, I am indignant at my failures and sins. I am trying to hear and follow the Spirit, even through [sic] processes and people who have been difficult.”

These examples describe in substance Pastor Olivetti’s repentance, but they are not exhaustive of his repentance. They do not capture the number of calls, emails, and meetings Pastor Olivetti has taken to bring reconciliation to the Church.

B. Immanuel Session's Statements of Repentance

The Immanuel Session has also repented both publicly and privately, and both generally and specifically. Ben Larson specifically repented to several of the families of the victims. Speaking for the Immanuel Session to one family in December 2020, he stated, "We feel a deep need to express our repentance to you promptly. We are working to keep a short account of sins, repenting now even if we may have additional repentance ahead." To another family, Mr. Larson emailed them in December 2020 and said, "I failed as your friend, elder, and accountability partner to ensure that you were rightly informed."

At Presbytery, Mr. Larson repented publicly saying, "I am clinging to the Savior who heals and restores the wounds of the soul – those of the victims, their families, the congregation, my heart and the heart of the session, and even those who have committed these acts."

In December 2020, the Immanuel Session sent a letter to one of the Church families on letterhead of the Church. The Immanuel Session acknowledged that they sinned against the family "grievously" and pled for forgiveness. As mentioned above, the Immanuel Session publicly repented at a church service on January 2, 2021, where they repented of failing to respond promptly, failing to actively encourage reporting of abuse, and failing to take immediate responsibility for a safety plan. At this meeting, the Immanuel Session led the congregation through their example of repentance and reconciliation.

In a letter to Presbytery dated August 24, 2021, the Immanuel Session wrote about their repentance and stated that they were continuing to confess and repent of sins against victims, the victim's families, and the congregation.

Like Pastor Olivetti's examples of repentance, these examples are illustrative. These examples do not capture all the conversations that the Immanuel Session has had to repent and bring

reconciliation to the Church, but they are illustrative of the Session's efforts to repent, seek forgiveness, and reconcile, and they do reflect genuine repentance.

C. Shepherding Committee Report

Even if, *arguendo*, the sincerity of the repentance of Pastor Olivetti and the Immanuel Session were in doubt, it is established by the testimony of other elders of the Reformed Presbyterian Church. The Shepherding Committee of the GLG Presbytery was assigned to help the Immanuel Session follow through with steps of repentance. The Shepherding Committee was comprised of John Hanson (a ruling elder at Southside RPC), Wade Mann (a teaching elder at Elkhart RPC), and Bill Roberts (a teaching elder at Southside RPC).

Following the completion of the Shepherding Committee's service, they produced a final report. They reported: "The Shepherding Committee sees God's grace active in the Immanuel situation. Perhaps the most important way for our purposes is the repentance, confession, and reconciliation that has taken place in the congregation. Some members have left but for nearly all the rest there is a spirit of unity, love, and great support for the elders. God has blessed the congregation with 16 new members since the March meeting of Presbytery, including three adults making a profession of faith and being baptized." The Shepherding Committee positively identified Pastor Olivetti and each member of the Immanuel Session and the ways they had repented. They concluded, "[a]ll of the elders confessed sin on January 2, 2021 . . . , sought reconciliation, showed fruits of repentance, and humility. They are very sensitive to the mistakes/sins they committed and are endeavoring not to repeat the errors made." Thus, three RPCNA elders who were tasked with helping bring reconciliation at the Church affirmed that each of the Accused in this case repented.

D. There Is No Evidence That The Accusers Have Attempted Reconciliation; Thus, The Charges Are Not Chargeable

In this case, Pastor Olivetti and the Immanuel Session have repented and have been reconciled to most of those who were in the congregation at the time these matters occurred and nearly everyone who remains, including those who have been added since that time. The Accusers' course of action, by bringing Charges and insisting on a trial, is not redemptive.

Further, the Olivetti Charges and the Immanuel Charges are not chargeable under Scripture or the RPCNA Constitution. The Book of Discipline requires that before a trial can be initiated, the means of reconciliation must have been tried (BoD II.1.1; *see also* BoD II.2.2). In this case, meaningful attempts at reconciliation have not occurred with respect to the Charges.

Ironically, in their investigation report, the Accusers have cited to some of the very repentance documents in the Olivetti Charges and the Immanuel Session Charges. The Accusers also reviewed the Shepherding Committee report and interviewed members of the Shepherding Committee. In the evidence provided by the Accusers, one Accuser makes a revealing statement in his interview with the Shepherding Committee elders:

We also were asked by the Commission in some ways to measure repentance . . . its one of those things, I don't know really how to do that. . . . I'm kinda where you are Bill [Roberts] because, obviously because things have been kinda subsequently we don't need to pursue that, I mean obviously if a guy's repented and acknowledged things, I don't wanna keep beating him to get him to admit something he's already admitted.

Sept. 29, 2021 Recording of Interview with Shepherding Committee at 1:11:13 to 1:12:05 (emphasis added). Thus, one of the Accusers, in a moment of clarity, raises the question with the Shepherding Committee why they would "keep beating" Pastor Olivetti and the Immanuel Session if they have repented.

Nevertheless, the Accusers still think it is necessary "keep beating" Pastor Olivetti and the Immanuel Session months after the repentance and reconciliation began. They say in their

investigative report that “[w]hile some sin has been admitted to – personally and corporately – we believe it would be most productive to the peace, purity, and progress of the church to have an authoritative body determine the adequacy of such repentance.” What the Accusers fail to explain, however, is how they can make this statement without personally meeting with the Accused and discussing the results of the investigation, the specific Charges, and how those Charges line up with the personal and public repentance of the Accused.

Fundamentally, the Accusers have failed to present “evidence . . . that the means of reconciliation . . . have been tried.” (BoD II.1.1; .) And by certifying the Charges, the SJC has failed “to seek a solution of the case without formal trial.” (BoD II.1.1; *see also* BoD II.2.2.)

Paul warns the church against inflicting excessive sorrow on a repentant sinner: “[Y]ou should rather turn to forgive and comfort him, or he may be overwhelmed by excessive sorrow. So I beg you to reaffirm your love for him.” 2 Corinthians 2:7-8. If this case proceeds without Dismissal, the SJC and the Accusers risk imposing excessive sorrow on Pastor Olivetti, the Immanuel Session, their families, the Church, the Presbytery, and the entire denomination.

VII. Conclusion

This Motion identifies many separate and independent reasons why the SJC should 1) grant the Joint Dismissal and vacate all Charges against all the Accused, 2) remove all Accusers from any further involvement in these proceedings, and 3) void, vacate, and nullify the entirety of the investigation conducted by the Accusers.

There may be additional bases on which Pastor Olivetti and the Immanuel Session are entitled to this relief, but counsel has only had slightly over one week to review the Charges and the evidence provided to the defense and prepare for the pre-trial hearing.

In lieu of further judicial proceedings, Pastor Olivetti and the Immanuel Session request additional assistance from the GLG Presbytery and SJC to provide ongoing oversight of the reconciliation and rebuilding that is ongoing. The Accused request the opportunity to engage in collaborative discussion with these courts about the particulars of this oversight and assistance, which may include the ongoing use of provisional elders, additional counseling with other elders, and mediated reconciliation between offended parties.

The SJC sits at a crossroad of great opportunity. Will we as a denomination come alongside elders who have worked and are working in good faith and build them up at times of weakness? Will we expend our energy to seek better practices for the next time a church faces some similar crisis? Will we be known as those who grow upward as a church to greater purity by building one another up in love? Or will we be known as a church that seeks purity primarily by first lopping off perceived impurities? Will we be known as a church that rushes to judgment – that files Charges first and asks the important questions later?

Jesus commands that we pursue redemption over retribution.

If the SJC denies the Dismissal, Pastor Olivetti and the Immanuel Session request that the SJC commit its decision and reasoning to writing and provide it to the defense with all deliberate speed.

Respectfully Submitted in Christ,

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Pastor James Faris, *2nd Reformed RPC*
Mr. Justin Olson, *2nd Reformed RPC*
Mr. John Westercamp, *Southside RPC*

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