

## **Comments of the Way Forward Commission with the concurrence of the All Agency Review Committee**

### **1. Comment to item 04-06 (Deliverance Dividing the Presbyterian Church (U.S.A.), A Corporation, Into Two Corporations)**

The Way Forward Commission (“WFC”), with the concurrence of the All Agency Review Committee (“AARC”), advises the 223<sup>rd</sup> General Assembly to answer Item 04-06 with its action on Recommendation 1 of Item 04-03.

#### **Preface**

*“But speaking the truth in love, we must grow up in every way into him who is the head, into Christ, from whom the whole body, joined and knit together by every ligament with which it is equipped, as each part is working properly, promotes the body’s growth in building itself up in love.” Ephesians 4:15-16*

Created by the 222<sup>nd</sup> General Assembly, the WFC was charged to examine and find a new structure paradigm that would address the challenges identified by previous review committees. The Commission was aware of the significant struggles our friends and colleagues on the Presbyterian Mission Agency Board (“PMAB”) have endured, and their deep desire to find a better way forward. And although we appreciate the significant amount of work they have dedicated, we believe their recommendations do not promote the entire body of Christ or build up the whole of our denomination.

As discussed below, the specific recommendation of the PMAB would reinforce existing issues of control and accountability with respect to the PMAB, are contrary to G-4.0101, and are unwise. More broadly, a new deliverance of corporate authority by the General Assembly is not the answer to the lack of focus on implementing the General Assembly’s mission directives that has plagued the PMAB for a number of years. Instead, these concerns should be addressed by the proposals contained in Recommendation 1 of the Way Forward Commission report, Item 04-03.

#### **A. What “A Corp.” Is**

“A Corp.” is shorthand for the corporate entity whose office name is “Presbyterian Church (U.S.A.), A Corporation. A Corp. exists by virtue of the requirement of G-4.0101, which requires “the General Assembly shall cause a corporation to be formed and maintained and shall determine a method to constitute the board of trustees by its own rule. The corporation so formed, or individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for and at the direction of the [General Assembly].” The A Corp allows the General Assembly (including the OGA and PMA) to conduct its business. The current form of A Corp. was created by a “deliverance” of the 1986 General Assembly, which delivered these powers to A Corp. (A “deliverance” is an action of the General Assembly that delivers powers from the General Assembly to a corporation. While the

General Assembly can withdraw powers given by a deliverance, to do so it has to specifically act to withdraw the powers “delivered” before it can reassert its own authority over those matters.)

After the reunion of the northern and southern churches, after an initial period when governance was assigned to Central Treasury Corporation, membership on the board of A Corp. was assigned to the General Assembly Council, which was originally conceived to act as an assembly between General Assemblies. The General Assembly Council, after several name changes, has become the PMAB. It no longer acts as an assembly between General Assemblies, but has been reformed in the hope that it would focus on implementing the mission directives set by the General Assembly. However, the members of the PMAB have remained the only members of the A Corp. board of directors – there is no representation on the A Corp board from the ecclesial arm of the corporation, the Office of General Assembly.

*B. The Context of Item 04-06*

The WFC, together with the AARC, at the direction of the 222<sup>nd</sup> General Assembly has been engaged in the process of studying and identifying a vision for the structure and function of the General Assembly agencies of the PC(USA). This mandate arose in the context of the 2016 review of the PMAB, which found: “Though the PMA has produced good work, it is evident that there are significant weaknesses in a number of areas, including: strategic decision-making and priority-setting; organizational culture and work environment; and collaborative efforts with other General Assembly agencies.” After nearly two years of detailed examination, thousands of hours of intensive engagement with staff at all levels, elected leadership, mid councils, and conversation throughout the denomination, both groups tasked by the 2016 General Assembly have found that these significant weaknesses remain. Both the WFC and AARC have observed that one of the sources of these significant weaknesses is a board that is not effective at handling corporate governance functions and that focuses far more of its energy on corporate matters than on implementing the mission direction of the church and assisting the General Assembly in determining what mission directions are now needed in our changing world. Just one example of this concern is addressed in our comments to Item 10-04, the PMAB “Work Plan,” which in our view fails to give the General Assembly meaningful insight into how the PMAB intends to accomplish its work over the next two years.

The WFC and AARC, in the context of a broad set of recommendations designed to help our national church to make the space for discernment, to work together as one body in Christ, and to change the way we think and the way we act, recommend to this General Assembly a change in the A Corp board of directors. We do so in the belief that to change the focus of our national church, and particularly the PMAB, we must change its culture.

*C. Specific Concerns with a Deliverance to Divide A Corp. into two corporations*

Item 04-06 arose from the WFC and AARC recommendation (Item 04-03, Recommendation 1) that A Corp. retain its current delegation of powers from the General Assembly, but that the PMAB members be replaced as the board of A Corp. by a diverse board nominated by agencies impacted by the work of A Corp. together with nominees from advocacy committees and at large members. The PMAB’s counterproposal was described at the time by the co-moderator of the

PMAB's Governance Task Force as a "nuclear option" in opposition to the proposal to replace PMAB members as the board of A Corp. In effect, the PMAB proposal would divide the existing A Corp. into two corporations, and place most of the property now held by A Corp. into a corporation that continues to be controlled by the board of the PMAB. It is unclear whether the PMAB still recommends this multiplication of corporate entities to the General Assembly: while in public statements members of the PMAB have stated that the proposal is intended to put the PMAB in a position to negotiate issues of corporate control, the proposal as of the date of this comment remains business the PMAB is placing before the General Assembly. To the extent that the PMAB does not withdraw this proposal, the WFC, with the concurrence of the AARC, recommends its disapproval for the following reasons:

- Proposing a new corporation for the exclusive use of the PMA would take the church in the opposite direction from what the 2016 Review and our committees' work have concluded is needed. For many years the PMAB has retained exclusive control of A Corp., which has resulted in the issues identified by the 2016 Review, as well as the additional work our two groups have done over the last two years. The separate incorporation proposal does not free the PMAB to focus on mission, but rather would perpetuate those issues of control and accountability.
- The proposal would leave the Office of the General Assembly with a shell corporation to provide for the delivery of shared services and accountability to the General Assembly. This puts the Office of the General Assembly in an even more precarious position than it is now. Further, the Office of General Assembly itself has strongly rejected the proposal to be severed corporately from the missional arm of the PCUSA.
- Serious questions exist as to whether the proposal is constitutional. G-4.0101 directs the General Assembly for "a corporation" to "receive, hold, encumber, manage, and transfer property, real or personal..." not the formation of multiple corporations to carry out this task.
- The proposal is contrary to the PMAB's own policy regarding the creation of new corporate entities. In 2007, the predecessor to the PMAB adopted "Criteria and Standards" (attached as Appendix 1) for considering whether a new corporation should be created by the General Assembly. Among other criteria, the PMAB's own Criteria and Standards require consideration of: (a) whether a separate corporation is needed to accomplish a new mission of the church; (b) whether the existing A Corp. can accomplish the mission objective; and (c) the impact on existing church structures (such as OGA, Presbyterian Publishing Corp. and the Presbyterian Investment and Loan Program) that rely on A Corp. to provide services and financial transparency for their work. In advancing its proposal, PMAB has made no effort to address these criteria.
- A Corp. provides services to the General Assembly, and through it, to the entire denomination. It is a mistake to view it as a narrow "shared service" bureau only for PMA and OGA. The money and property it holds is not held solely for PMA and OGA – it is the property of the General Assembly held for the whole church. A Corp. is the denomination's corporation. It should be managed for the denomination. It should not be divided to create even deeper divisions between agencies that should have a common purpose of serving the whole church.

Apart from its constitutional and practical shortcomings, the proposal to divide A Corp. into two corporations, one of which the PMAB continues to control, is not simply just keeping options open for the PMAB, but rather demonstrates the PMAB has a fundamentally different view than the WFC and AARC of the broader themes that have emerged from our discernment throughout the church and are reflected in our recommendations and administrative actions.

*D. Broader Concerns with Any New Deliverance*

In the light of critiques of the proposal to divide A Corp., some members of the PMAB have suggested that they may pursue an alternative proposal, presumably by suggesting a substitute for Item 04-06, that creates a new deliverance. Such a new deliverance would not create two corporations, but instead would deliver corporate powers to PMAB without a new incorporation. The WFC, with the concurrence of the AARC, urges the General Assembly that such an action would be both unprecedented and unwise.

In light of statements by PMAB members claiming a deliverance is necessary to accomplish the change in board membership proposed by the WFC and AARC, we received a legal opinion (attached as Appendix 2) from Pennsylvania counsel regarding the issue. To summarize, under Pennsylvania law:

1. There is no legal requirement for a deliverance.
2. There is no requirement in the Book of Order for a deliverance to change the membership of the A Corp. board.
3. There is no requirement in the case law for a deliverance.
4. The Criteria and Standards (attached as Appendix 1) as to creation of new corporations indicate that a deliverance is not actually appropriate here, because no corporation is being created.

The last point is particularly important. As discussed above, PMAB is not, and should not be, a separate corporation. Therefore, it can only create confusion, and potentially a deeper lack of accountability, to give PMAB corporate powers without corporate accountability.

The General Assembly has a different mechanism for delegating authority to the PMAB as an agency of the denomination – amendment of the Organization for Mission. Authority has never been given by the General Assembly to the PMAB through a deliverance. It has been given through the Organization for Mission. Claims that the Organization for Mission is somehow less authoritative than corporate documents ignores our polity and replaces our Presbyterian system of decision-making with the corporate mindset that has created dysfunction at the PMAB.

A Corp. already has, through the 1986 Deliverance, the powers appropriate to the General Assembly's corporate form, consistent with G-4.0101. No proposal that expands those powers, or that gives PMAB corporate powers without corporate responsibilities is appropriate. Item 04-3, Recommendation 1, allows PMAB to continue to set its budget, control its funds, and to supervise its staff, without the risk and confusion of a new deliverance. Accordingly, the WFC, with the concurrence of the AARC, recommends against adoption of any new deliverance as a

response to Item 04-06, and instead recommends that the General Assembly answer Item 04-06 with its action on Recommendation 1 to Item 04-03.

## **2. Comment to item 03-06 (GACOR recommendation to expand its membership)**

The Way Forward Commission (“WFC”), with the concurrence of the All Agency Review Committee (“AARC”), recommends that the 223<sup>rd</sup> General Assembly approve Item 03-06. In the work of both of our groups, we have seen the importance that the General Assembly Committee on Representation have adequate resources to carry out the important work of lifting up in measurable and useful ways our denominational commitment to diversity and inclusion in employment and contracting. Item 03-06 will further strengthen this important work, and will assist GACOR in continuing to be a central voice in the review of each agency’s work.

## **3. Comment to item 10-04 (PMAB Work Plan)**

The Way Forward Commission (“WFC”), with the concurrence of the All Agency Review Committee (“AARC”), advises the 223<sup>rd</sup> General Assembly to review with care Item 10-04, the Presbyterian Mission Agency Board’s Work Plan for 2019-20. This item of business contains three important “emphases” for 2019-20:

- Congregational Vitality, where churches prioritize faithfulness over self-sufficiency.
- Poverty, where the denomination fights unjust economic systems perpetuating destitution and need.
- Structural Racism/White Supremacy, where Presbyterians dismantle structures and ideologies oppressing people of color.

We concur that these emphases are important and appropriate. However, the document contains no plan for addressing these issues. Without specifics, it is unclear how the PMAB will develop a detailed budget to address these issues in a manner accountable to the General Assembly or how future General Assemblies will have useful measures for determining whether the PMAB has accomplished this plan. The WFC, with the concurrence of the AARC, recommends that the General Assembly direct the PMAB to develop a detailed work plan within 90 days of the close of the General Assembly and report that plan for review and approval to the Moving Forward Implementation Commission (*see* Item 04-02, Recommendation 5). In addition, the WFC, with the concurrence of the AARC, recommends that the General Assembly direct the PMAB to report a detailed work plan to the 224<sup>th</sup> General Assembly (2020), containing not just mission emphases, but specific and measurable steps as part of an action plan to be taken to accomplish those emphases.