

**IN THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY OF THE
PRESBYTERIAN CHURCH (U.S.A.)**

**JANA CHILDERS, THE SESSION OF THE HERMON PRESBYTERIAN CHURCH,
BETHESDA, MARYLAND, THE SESSION OF THE FIRST PRESBYTERIAN
CHURCH, MATTOON, ILLINOIS, AND THE SESSION OF THE FIRST
PRESBYTERIAN CHURCH, VALLEJO, CALIFORNIA, EACH INDIVIDUALLY AND
ON BEHALF OF THE SAN FRANCISCO THEOLOGICAL SEMINARY,**

Complainants,

- versus -

**THE COMMITTEE ON THEOLOGICAL EDUCATION, THE PRESBYTERIAN
CHURCH (U.S.A.) FOUNDATION, THE PRESBYTERIAN MISSION AGENCY, THE
OFFICE OF THE GENERAL ASSEMBLY AND THE COMMITTEE ON THE OFFICE
OF THE GENERAL ASSEMBLY,**

Respondents.

**STATEMENT OF COMPLAINT
REMEDIAL CASE**

We, Jana Childers, The Session of the Hermon Presbyterian Church, Bethesda, Maryland, The Session of the First Presbyterian Church, Mattoon, Illinois, and The Session of the First Presbyterian Church, Vallejo, California (“Complainants”) complain to the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) against The Committee on Theological Education (“COTE”), the Presbyterian Church (U.S.A.) Foundation (“Foundation”), the Presbyterian Mission Agency (“PMA”), the Office of the General Assembly (“OGA”), and the Committee on the Office of the General Assembly (“COGA”) in that the said Respondents committed irregularities and a delinquency as set forth in Paragraphs 110 through 241 *infra*, and as explained more thoroughly in the remainder of the instant Remedial Complaint.

Complainants believe that the decisions and actions were irregular or delinquent for the reasons set forth in Paragraphs 173 through 241 *infra*, and as explained more thoroughly in the remainder of the instant Remedial Complaint.

Complainants have the right to complain for the reasons set forth below in Paragraphs 23 through 38, *infra*.

Complainants request that the Permanent Judicial Commission of the General Assembly order the relief requested in Paragraphs 242 through 243, *infra*.

PRELIMINARY STATEMENT

1. San Francisco Theological Seminary (“SFTS”) has been an Institutional Member of COTE, and has been considered a PCUSA Theological Institution, since the PCUSA was formed in the mid-1980s. This is consistent with SFTS’s 150-year affiliation with the Presbyterian Church. Yet Respondent COTE has submitted a summary and recommendations to the 224th General Assembly that erroneously assert that SFTS is no longer a PCUSA theological institution and Institutional Member of COTE, as a result of its merger with the University of Redlands. Such a change of status would do, and is in fact already doing, great injury to SFTS. In asking the GA to approve its submissions, COTE is effectively seeking ratification of its actions and decisions without discussion or debate. COTE’s submissions hide COTE’s irregularities and misrepresent that SFTS has, at present, no relationship at all with our denomination. Only the GA has the power to decide whether or not SFTS is still considered to be “Presbyterian.” COTE has the formal power only to recommend, not to decide. COTE’s submissions to the General Assembly aim to achieve ratification, without full disclosure, review or discussion, of actions and decisions that COTE has already taken without authority.
2. Acting in concert with COTE, the Foundation has erroneously asserted that SFTS no longer even exists as the result of its 2019 merger with the University of Redlands (which is not a position that COTE is asserting in its GA 224 submissions). Accordingly, the Foundation is withholding payment to SFTS of funds that are due to it as a Presbyterian theological institution, much of which is the result of bequests, trust and gifts that specifically name SFTS as the intended beneficiary. The Foundation’s decisions and actions are causing serious harm to SFTS and the denomination.
3. SFTS is one of the last ten remaining Presbyterian seminaries, and the only one on the West Coast of the United States. Taken together, the actions and decisions of COTE and the Foundation have the potential to destroy SFTS. Excommunicating SFTS from the PCUSA will stop the flow of Presbyterian candidates for ministry to study at SFTS. It may void the calls issued to ordained SFTS faculty members by PCUSA presbyteries. It will bring litigation designed to claw portions of SFTS’s endowment away from the support of SFTS. It will irrevocably alter SFTS’s mission, which has always included the training of candidates for Presbyterian ministry and the promotion of the welfare of the Presbyterian Church. It would end all PCUSA graduate theological instruction west of the Rocky Mountains.
4. The PMA, OGA and COGA have control over the docket and agenda of the upcoming General Assembly. To some extent, the control of COTE’s agenda items has passed from the control of COTE to the control of these other entities of the General Assembly. The “virtual” electronic-only format of the 224th General Assembly increases the risk that blind approval of COTE’s deceptive submissions may render it impossible for the Complainants to remedy COTE’s irregularities. Accordingly, it may be necessary to obtain jurisdiction over PMA, OGA and COGA in order to provide complete and effective relief to the Complainants.

5. SFTS has attempted to discuss its excommunication with representatives of COTE, but COTE has expressed interest only in discussing how SFTS might relate to the PCUSA as a non-Presbyterian institution. SFTS is willing to go to great lengths to negotiate a solution to its dispute with COTE, and the University of Redlands is strongly supportive of SFTS's efforts to preserve its 150-year relationship with the Presbyterian Church. The timing of Respondents' decisions, so near in time to the opening of the next General Assembly, has left Complainants with no recourse but to seek judicial relief. While Complainants are confident that the right is on their side, they hope that the initiation of a remedial case may create an opening, and time, for discussion. Ideally, a task force or separate committee would be formed to recommend to the 225th General Assembly solutions to the larger questions that are raised by the parties in this case.
6. Complainants request, *inter alia*, that the erroneous decisions and actions be set aside, that COTE be required to include SFTS in its activities so long the General Assembly continues to recognize SFTS as a Presbyterian Church (U.S.A.) theological seminary, that COTE's submissions to the 224th General Assembly be withdrawn and/or amended and that Respondents be required to pay SFTS the funds to which it is entitled, including all arrears and current payments, while SFTS is, or has been, a Presbyterian Church (U.S.A.) theological seminary.

PARTIES AND OTHER INTERESTED ENTITIES

7. Jana Childers ("Dr. Childers") is an employee of SFTS – which is juridically speaking an entity of the General Assembly – a member and teaching elder of the Presbyterian Church (U.S.A.), and holds a position of employment at SFTS as its Dean and Chief Academic Officer, which also makes her its chief administrative officer.
8. The Session of the Hermon Presbyterian Church is a council of the Presbyterian Church (U.S.A.), having a place of worship in Bethesda, Maryland, within the National Capital Presbytery. The session of this party voted to join the instant complaint at a special meeting held on May 12, 2020. A certified copy of the resolution authorizing the session to join the instant complaint is attached hereto as Exhibit 1.
9. The Session of the First Presbyterian Church, Mattoon, Illinois, is a council of the Presbyterian Church (U.S.A.), having a place of worship in Mattoon, Illinois, within the Presbytery of Southeastern Illinois. The session of this party voted to join the instant complaint at a special meeting held on May 13, 2020. A certified copy of the resolution authorizing the session to join the instant complaint is attached hereto as Exhibit 2.
10. The Session of the First Presbyterian Church, Vallejo, California, is a council of the Presbyterian Church (U.S.A.), having a place of worship in Vallejo, California, within the Presbytery of Redwoods. The session of this party voted to join the instant complaint at a special meeting held on May 13, 2020. A certified copy of the resolution authorizing the session to join the instant complaint is attached hereto as Exhibit 3.

11. COTE, as a “permanent committee,” is an entity of the General Assembly of the PCUSA. COTE’s purposes are set forth in its 2013 Manual of Operations (“2013 Manual”) which is attached as Exhibit 4.
12. The term “entity of the General Assembly” is not defined in the Book of Order. However, when the term “entity” is used in the Book of Order, it is intended to have a broad application. *See, e.g.*, Book of Order Sections G-2.06, G-2-1101, G-3.0106, G-3.0108(a), G3-.0111, G-3.0205(c), G-3.0301(b), G-3.0307, G-4.0201, G-5.0101, G-5.0102, G-5.0105, and D-10.0106.
13. In its report to the General Assembly in 1989, the General Assembly Council acknowledged COTE’s status, early in its existence, as an entity of the General Assembly, as follows: “One joint project between COTE and CVU deserves special emphasis. These two General Assembly entities applied jointly for a major grant through a Lilly Endowment competitive grants program.” GAMinutes » 1989 » SECTION TWO - Reports » General Assembly Council Report Part Three Committee on Theological Education » I. Narrative » Accomplishments.
14. The most recent General Assembly designated COTE as an entity of the General Assembly, and its designation is dispositive and binding on the PJC. The Nominating Committee for the 223rd General Assembly listed COTE as an “entity” of the General Assembly on its web page describing COTE for potential candidates for membership, *see* <http://oga.pcusa.org/section/committees/nominations/entities-2/> (A copy is attached as Exhibit 5). Thus, each of the current members of COTE was on notice that COTE is an entity of the General Assembly.
15. According to a version of the Standing Rules from earlier in COTE’s existence, “the term “entity” is used to refer to any board, committee, council, or other body whose membership is elected by the General Assembly.” GAMinutes » 1989 » SUPPLEMENT » Standing Rules of the General Assembly » 47. Service on Assembly Entities. COTE’s current members, other than Institutional Representative Members, were elected by past General Assemblies.
16. The decision in 220-02, *FPC of Palmdale v. 221st GA and Civil Union and Marriage Committee*, is readily distinguishable. In that case, the committee respondent ceased to exist after the close of the General Assembly for which it was appointed. Here, COTE is a permanent committee of the General Assembly, with an existence and function that persist between assemblies. Also, in the *FPC of Palmdale* case, the court held that the committee in question had no power except to advise the General Assembly. In the instant case, while COTE has powers other than to advise the General Assembly, it is precisely COTE’s usurpation and exercise of power that properly belongs to the General Assembly that forms the gravamen of Complainants’ case.

17. The Foundation is an entity of the General Assembly of the PCUSA. The Foundation administers bequests and grants to various institutions that have some form of historical association to the PCUSA and to other non-Presbyterian institutions that are mentioned in the same wills and trust instruments.
18. The PMA is an entity of the General Assembly of the PCUSA. *See* Constitution of the PC(USA) » ... » 2014 ACC Agency Summary, Recommendations and Advice on Recommendations and Referrals in Reports » D. Advisory Committee on the Constitution Agency Summary (“The use of "the Presbyterian Mission Agency" is redundant to the phrase "entity of the General Assembly."”) It is a kind of super-agency that serves as an institutional parent to other entities, including COTE and the Foundation, providing supervision and institutional inclusion to them.
19. OGA is an entity of the General Assembly. It is responsible to organize the work of the General Assembly and to provide leadership to the PCUSA. It receives submissions for the General Assembly, publishes them and distributes them to the commissioners.
20. COGA is an entity of the General Assembly. It is authorized to carry out the assembly’s oversight of the Stated Clerk and the OGA, and to assure the accountability of the Stated Clerk of the General Assembly during the interim between sessions of the assembly.
21. San Francisco Theological Seminary (a non-party represented vicariously by the Complainants herein) is an entity of the General Assembly for juridical purposes, and has the right to be represented in COTE by an Institutional Representative Member. It is a Presbyterian seminary, established in 1871 as an ecclesiastical entity by action of a Presbyterian synod, first incorporated in 1872, with a 150-year history and heritage of formal affiliation with the Presbyterian Church, having 9 full-time faculty members, 26 part-time faculty members, 26 other employees, approximately 160 students currently enrolled, and approximately 4000 living alumni who are serving the Presbyterian Church (U.S.A.) and the Kingdom of God in various ways. SFTS is currently embedded within the University of Redlands, a California not-for-profit educational corporation, which has formally committed itself to supporting SFTS in retaining its Presbyterian nature and its affiliation with the PCUSA.

JURISDICTION OF THIS COMMISSION

22. This Commission has jurisdiction over the instant Complaint pursuant to Sections D-2.0102, D-2.0202, D-3.0101(c), and D-6.0100 of the Book of Order of the PCUSA. The complaint against the Foundation does not ask the Court to interpret civil law provisions or to interpret trust provisions, and therefore the GAPJC’s decision in *Rutgers Presbyterian Church v. Presbyterian Foundation*, Remedial Case 222-08, does not bar the PJC from assuming jurisdiction over this matter. The PJC has ecclesiastical jurisdiction over the main questions raised in the complaint: whether COTE and the Foundation have power to excommunicate the SFTS from the PCUSA; and whether in effectively doing so, they have usurped the

General Assembly's power and denied due process to SFTS. Questions relating to church membership and affiliation are quintessentially ecclesiastical in nature, and must be resolved in ecclesiastical courts, if anywhere. The PJC also has jurisdiction to determine whether COTE and the Foundation have usurped the General Assembly's power and, in doing so, deprived SFTS of due process.

STANDING OF THE COMPLAINANTS

23. The Complainants have standing to complain in this proceeding pursuant to Section D-6.0202 of the Book of Order, which provides in relevant part that:

A complaint of an irregularity or a complaint of a delinquency may be filed by one or more persons or councils subject to and submitting to the jurisdiction of a council.

b. In the instance of a complaint against ... an entity of the General Assembly, ... [t]hose eligible to file a complaint are

(2) a session, a presbytery, or a synod against the Presbyterian Mission Agency or an entity of the General Assembly, with the General Assembly;

(3) a person who is an employee of ... an entity of the General Assembly, claiming to have sustained injury or damage to person or property by the Presbyterian Mission Agency or an entity of the General Assembly, with the General Assembly

24. The Complainants have standing to present the claims outlined herein because they have suffered direct or indirect harm from the acts of the Respondents.
25. The Complainants also have standing to present vicariously the claims of SFTS, because complete justice requires it and the Permanent Judicial Commission has jurisdiction over the irregularities and delinquencies committed by entities of the General Assembly.
26. Dr. Childers is one of the ten Institutional Representative Members of COTE, representing SFTS. In that capacity, she has a personal right to participate in the governance of COTE with voice and vote in all of its decisions. As set forth in detail hereinafter, COTE has prevented, and is continuing to prevent Dr. Childers from participating and voting in its meetings. By ejecting SFTS as a PCUSA Seminary, and erasing SFTS from the list of PCUSA Seminaries, Respondents have ended Dr. Childers' service with the PCUSA as a Presbyterian educator; they have voided the terms of her call to employment with SFTS; and they have removed her authorization to administer holy communion to the students, faculty,

staff and community of SFTS. By withholding financing from SFTS, Respondents are imperiling its financial health and therefore, the security of Dr. Childers' employment.

27. Because the First Presbyterian Church in Vallejo, California, is geographically close to San Anselmo, SFTS professors, students and former students are frequent guest preachers at the church, and SFTS's Presbyterian students are a source of student interns for the church's programs. The church would be harmed by the loss of these connections. Even more, however, the church would be harmed by the loss of the only Presbyterian seminary on the West Coast. While the church shares a common faith nationwide, nevertheless West Coast Presbyterianism is very different from Presbyterianism in the rest of the country. The culture in California and the other western States diverges in many ways from the mores and way of life in other parts of the country. For the church in Vallejo, as elsewhere on the West Coast, it is very important to have a place where Presbyterians may acquire a theological education while remaining steeped in a Western cultural context – so preachers may acquire an ability to connect their congregations' needs more deeply with the great truths of the Christian faith. For many western Presbyterians, including those in Vallejo, SFTS's progressive leadership and leadership in spirituality studies have helped US Presbyterianism to catch up with the progressive and open spirit of Western American culture. To close down SFTS, or divorce it from its Presbyterian roots, would directly harm the Vallejo church not only by depriving it of guest preachers and interns, but even more, because it would extinguish the progressive theological voice that sustains Presbyterianism west of the Rockies.

STANDING TO REPRESENT SFTS VICARIOUSLY

28. The right of a complainant to plead the cause of a non-party (or “third party representation”) was raised, but not decided, by the GA PJC in *Rutgers Presbyterian Church v. Presbyterian Foundation*, Remedial Case 222-08. For the reasons set forth below, the PJC should permit it in the instant remedial proceeding.
29. The Book of Order does not appear to grant standing to SFTS to file a complaint in the judiciary of the PCUSA. The Book of Order clearly grants standing only to councils of the church and other defined parties, and the Book of Order does not characterize seminaries as councils of the church. G-3.0101. SFTS therefore has no remedy within the courts of the PCUSA for the harms that it has suffered, and is suffering, from the irregularities and delinquencies of the Respondents. Only sessions, presbyteries and synods have standing to bring complaints before the PJC as “councils” of the church. *See* Book of Order, D-6.0202.
30. SFTS's lack of standing to complain to the PCUSA judiciary is particularly unjust because SFTS is subject to its jurisdiction, as an “entity of the General Assembly,” under G-6.0202(b). In its decision in *Olson v. Trustees*, Remedial Case No. 200-1, the GAPJC found that it had “original jurisdiction” over a complaint in which SFTS was named as a respondent, and that the complainant had standing to bring the complaint against the trustees

of SFTS pursuant to Section D-6.500(g) of the Rules of Discipline that were then in force. On information and belief, that section read as follows:

D-6.0500 Who May File Complaint

A complaint may be filed by one or more persons or governing bodies subject to and submitting to the jurisdiction of a governing body as follows: []

(g) by a person claiming to have sustained injury or damage to person or property, or by a session, a presbytery, or a synod against the General Assembly Council or an agency of the General Assembly, with the General Assembly, after making a written request of the council or agency to reconsider and correct an irregularity or cure a delinquency.

31. SFTS may also face certain challenges in seeking a remedy in the civil judicial system for the specific harms that it has suffered, and continues to suffer, from the Respondents' actions. Consistent with the First and Fourteenth Amendments, "civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide religious disputes].... Such a determination... frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide... religious law [governing church polity]... would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring). This result may be required by the United States Constitution, which the courts have interpreted authoritatively to prohibit the government from becoming excessively entangled in religious affairs. *See, e.g., Everson v. Board of Education*, 330 U.S. 855, 67 S. Ct. 962, 91 L. Ed. 1297 (1947); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976). "The courts of the land [] cannot [] adjudicate whether a certain person is a Catholic in good standing" *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church*, 39 Cal.2d 121, 131 (1952).
32. SFTS has suffered harm precisely because COTE has determined that SFTS has ceased to qualify as a "Presbyterian Church (U.S.A.) theological institution" (also referred to herein as a "PCUSA Seminary"). As a result of this decision, COTE has denied SFTS its rights of participation in COTE's internal governance and due process. Further, in concert with COTE's determinations concerning SFTS's affiliation with the PCUSA, the Foundation has cut SFTS off from funds that the Foundation manages. While COTE and the Foundation denied SFTS due process in making these decisions, the courts may, under certain conditions, have no power to impose due process requirements upon internal church decisions. In general, challenges to internal church due process and claims of denominational affiliation can only be resolved within churches and their judicatories, not in civil courts. *Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666 (1872) (US Supreme Court required to defer to decisions of Presbyterian General Assembly in determining denominational affiliation); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) (courts unable to examine whether ecclesiastical decisions are "arbitrary").

33. Due process requires that judicatories allow third parties to represent non-parties vicariously, when the non-parties lack the capacity to represent themselves. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965) (doctor permitted to plead rights of patients since otherwise rights of patients would be compromised). In *Kowalski v. Tesmer*, 543 U.S. 125 (2004), the U.S. Supreme Court indicated that courts considering claims of a right of vicarious representation should consider “whether there is a “hindrance” to the [rights] possessor’s ability to protect his own interests.” *Id.* at 130.
34. Complainant Jana Childers has also suffered harm directly as a result of the violation of the rights of her employer, SFTS, making her an appropriate person to assert SFTS’s rights vicariously. *See Kowalski v. Tesmer, supra.*
35. Since civil courts typically close the door to claims that require them to determine the propriety of membership in a religious denomination, and since the Book of Order does not allow SFTS to present its claims directly in the judicatories of the church, due process requires that the General Assembly Permanent Judicial Commission permit Complainants, who have standing to bring complaints before the church’s judicatories, to plead vicariously for relief of the harms that the Respondents have inflicted, and are continuing to inflict, upon SFTS.
36. Section G-3.0101 of the Book of Order declares, in relevant part, that “[a]ll councils of the church are united by the nature of the church and share with one another responsibilities, rights, and powers as provided in this Constitution. The councils are distinct, but have such mutual relations that the act of one of them is the act of the whole church.” This unitary understanding of the nature of the church means that when the action of an entity of the General Assembly causes damage to the church in any way, every council has standing to challenge it in a remedial proceeding.
37. To put the matter another way: the Respondents are harming the PCUSA as a whole, and the body of Christ, by the high-handed way in which they have purported to eject SFTS from the PCUSA. But SFTS is given no “voice” in the Book of Order to represent itself in the judicatories of the Church. Unless this Council recognizes the right and authority of the Complainants to plead the claims of SFTS vicariously, the PCUSA will lose ten percent (1 out of 10) of its remaining seminaries, its century-and-a-half relationship with one of its leading seminaries will be ended, the denomination’s theological presence on the West Coast will be closed down and the Presbyterian spiritual life of SFTS will be snuffed out, without any right or power in the church itself to consider whether these things are right, or Godly.
38. For these reasons, the Commission must grant the Complainants vicarious standing to plead the claims of SFTS against the Respondents in this matter or, in the alternative, allow SFTS to be a complainant.

STATEMENT OF THE CASE

39. San Francisco Theological Seminary is one of ten official seminaries recognized by the PCUSA. Its official status confers benefits on the seminary and on the denomination. Although its programs are of undiminished high quality, the seminary's finances have long been in deficit. Fearing for its survival, the seminary reached out to possible partners for combination. The only proposal which provided for the seminary's continued intact existence came from the University of Redlands, with which SFTS merged last year.
40. The Redlands merger altered SFTS's corporate status, but left fully intact the 150-year old spiritual association that has always made SFTS a Presbyterian seminary. The merger provided that SFTS's community, faculty, student body, and use of its campus and endowment would continue. The merger documents included explicit commitments to preserve the seminary's relationship with the PCUSA. In fact, the seminary has continued to exist and to function in very much the same way that it did before the merger – but without having to cover its annual operating deficits, which are now funded by Redlands. The certificate of incorporation of the new corporate entity formed when SFTS and Redlands merged requires the board of trustees to provide fiduciary care for the interests of SFTS.
41. The Committee on Theological Education provides the official channel for PCUSA seminaries to communicate with the General Assembly. SFTS is one of the ten institutional members of COTE, with Dr. Jana Childers as its Institutional Representative Member on COTE. Prior to the time when the merger was fully negotiated, COTE provided SFTS with no reason to believe that the merger would create any problems for the seminary, despite being fully aware of the anticipated merger. Once the merger was consummated, however, COTE decided that SFTS no longer qualified as a PCUSA Seminary, and terminated its membership in COTE.
42. SFTS's membership in COTE, and its status as a PCUSA Seminary, are determined by the General Assembly, not by COTE. By terminating SFTS's membership, COTE usurped the General Assembly's powers. COTE's decision has caused the Presbyterian Foundation to withhold payments of bequests that were made to SFTS, but administered by the Foundation. The Foundation has threatened to sue SFTS for judicial permission to cut it off from millions of dollars of bequests.
43. Acting without SFTS's participation, COTE now has submitted a misleading summary and report to the 224th General Assembly. Instead of stating that the General Assembly will be deciding whether to cut SFTS off from funding and eject it from COTE membership, the COTE submissions make no mention of the funding cutoff, imply that the change in SFTS's status is a *fait accompli*, and fail to inform the General Assembly that its acceptance of the COTE summary and recommendations might cause the denomination to sever its 150-year ties with one of its leading seminaries.

44. Over its long history, SFTS has been primarily a seminary for Presbyterian students of theology. If SFTS is excommunicated from the PCUSA, many of its students would leave. The calls of the PCUSA teaching elders on its faculty may become invalid. Some Presbyterian pastors have already stopped considering SFTS as a place to send candidates for ministry as a result of COTE's actions. Combined with the withholding of SFTS's bequests, COTE's invalid usurpation of General Assembly powers and its misleading presentation to the 224th General Assembly might lead to SFTS's hasty demise – the opposite of its intention in its merger with Redlands.

San Francisco Theological Seminary's 150 Years of Association with the Presbyterian Church

45. In 1871, San Francisco Theological Seminary began when the Synod of the Pacific, a council within the Presbyterian Church, charged a newly appointed Board of Directors with “organizing a theological seminary such as the present wants and future interests of this coast demand.” SFTS began its existence as an unincorporated association, established as an ecclesiastical body by action of a Presbyterian council. Four professors and four students first met for instruction at the Presbyterian City College in what now is Union Square, in San Francisco, California, on Nov. 14, 1871. In 1872, SFTS became incorporated by filing in the municipal offices in San Francisco, California. With incorporation, SFTS remained the same Presbyterian theological institution that it had been previously, but its secular affairs were handled by the new corporate board. In 1890, with Synod approval, the Board voted to move to a 14-acre hilltop site in San Anselmo, California.
46. In 1895, the Committee of Theological Seminaries wrote to SFTS, asking it to transfer its supervision from the Synod to the General Assembly, which reiterated this request in 1896. Initially, SFTS received legal advice that recommended against the shift, because of the possibility that it might interfere with the seminary's receipt of funds from certain bequests.
47. In 1900 a new charter gave the Seminary power to grant degrees, in 1904 the Seminary elected its first president, and in 1913 jurisdiction over the Seminary was transferred from the Synod to the General Assembly of the Presbyterian Church, despite the bequests.
48. On September 16, 1914, SFTS registered with the California Secretary of State as a religious corporation under California law. A copy of SFTS's California certificate of incorporation, with amendments, is attached hereto as Exhibit 6.
49. The granting of a degree-granting charter, the transfer of jurisdiction from synod to General Assembly, and the transfer of authority over the secular affairs of the seminary from a San Francisco corporation to a California religious corporation did not alter the Presbyterian religious identity of SFTS, which has remained the same continuously from 1871 to the present day.
50. Enrollment increased over time and in 1922, with 106 students, SFTS ranked third in size among Presbyterian seminaries. From its early days, students came from around the Pacific

Rim and graduates went into missions abroad. One-third of students in 1922 were women, mostly as special or mission course students. In the post-World War II era, the Seminary enjoyed unprecedented expansion, with enrollment increasing to more than 300 and new buildings rising. In 1962, SFTS joined with neighboring theological schools in founding the Graduate Theological Union, a consortium based in Berkeley, California that provides an institutional framework for interfaith discussion and education.

51. Prior to 1983, SFTS was a “theological institution of The United Presbyterian Church in the United States of America” (“UPC”). When the UPC reunited with the Presbyterian Church in the United States (“PCUS”) to form the Presbyterian Church (U.S.A.), it did so pursuant to a set of commitments set forth in the Articles of Agreement, UPC and PCUS Reunion (“Reunion”). In Article 10 of the Reunion, the two merging denominations affirmed that “Theological institutions of the Presbyterian Church in the United States [listing seminaries] and of the United Presbyterian Church in the United States of America [listing seminaries, including SFTS] *shall continue into the reunited Church* with their present boards, charters and plans of government.” (Reunion, Section 10.2) (emphasis supplied) See Reunion (excerpts), Exhibit 7.
52. The Reunion also committed the new denomination as follows: “The Council of Theological Seminaries of The United Presbyterian Church in the United States of America and the Committee on Theological Education of the Presbyterian Church in the United States *shall continue with their present functions and membership....*” (Reunion, Section 10.6) (emphasis supplied) Prior to the reunion, SFTS had been a member of the Committee on Theological Education of the PCUS.
53. During its long existence, SFTS has been considered to be among the leading Presbyterian seminaries, educating clergy for Presbyterian churches and missionaries with a strong reputation among its peers for theological depth and academic rigor.
54. SFTS now has approximately four thousand living alumni/alumnae, many of whom are actively involved in pastoral ministry and other ordained callings in the PCUSA and other denominations. These alums include past moderators of the PCUSA: Ben Weir, Jack Rogers, Harriet Nelson, Howard Rice, and Bruce Reyes-Chow; and other alums who were/are leaders in the denomination and church: Diane Moffett, Louis Evans, Virstan Choy, Warren Lee, Mary Paik, Bob Conover, Joey Lee, and Kathy Runyeon.

San Francisco Theological Seminary is a Founding Member of COTE

55. In 1986, the 198th General Assembly of the PCUSA formed a new Committee on Theological Education to perform the following functions:
 - a. To receive and act upon requests and recommendations from the church;

- b. To receive and review reports from the theological schools appropriate to the work of the committee;
- c. To identify the issues, needs and opportunities of the institutions, individually and corporately, and, where appropriate, address these as requests and recommendation to the church;
- d. To prepare an appropriate formula for disbursements of funds to the theological schools of the Presbyterian Church (U.S.A.) and to advocate for their financial support;
- e. To maintain relations with educational and ecumenical associations which share common concerns with the committee;
- f. To serve as an agency of the denomination for relating to theological schools and agencies other than those of the Presbyterian Church (U.S.A.);
- g. To recommend to the General Assembly those theological schools which qualify as members of the Committee on Theological Education.

See Minutes of the 198th General Assembly (1986), Report of the Special Committee on Theological Institutions (“SCTI Report”) (attached as Exhibit 8 at 3 - 4, paras 24.046 - 24.053).

56. The SCTI Report quoted Robert W. Lynn, a Presbyterian leader, who issued a challenge for COTE and for the PCUSA (emphasis supplied):

There is a triangular relationship between teaching-learning, serving, and scholarship. If we concentrate on teaching-learning and service, but not on scholarship, we are left with a training school. If we value scholarship, as our ancestors did, then *we will see to it that these theological schools have maximum opportunity to develop points of contact with the university system* and to emphasize scholarship in their common life.

In dealing with scholars and scholarship, we have to think in longer time spans. *The history of scholarship is not measured in months or years, but in decades. Scholarly communities require a different kind of calculation. Faculties are long in gestation. Ethos, the formative spirit of a place, is a critical factor in the formation of scholarship. The grace-filled environment that liberates mind and spirit takes years to come into being.* But once it takes root, such an ethos can make a vital difference between a pedestrian institution and a lively, faithful servant of church and society.

That vital difference will be evident in due time in the life of the church. Make no mistake about it. What happens today in the theological schools will affect the church in the decades to come. As the seminary goes, so goes American Protestantism. Or, to put it another way, God's script for the 21st century is being partly written right now in such institutions as our Presbyterian theological schools.

That of course, is a large claim. But nothing else, I submit, will do justice to the experience of American Presbyterians in the past, or to the challenge that awaits us in the future (SCTI Report, at 1, paras. 24.007 - 24.010) (emphasis added).

57. The 198th General Assembly named SFTS as one of the then-eleven Presbyterian Church (U.S.A.) theological schools to be included in COTE as institutional members. SCTI Report at 1 - 2, Para. 24.012.
58. The 198th General Assembly also approved a "governance" relationship between the PCUSA Seminaries and the PCUSA (see SCTI Report at 2, paras. 24.017 - 24.026), in the following terms:

The theological institutions of the Presbyterian Church (U.S.A.) support the whole mission of the church and are accountable to the church through provisions in their charters. They are responsible for the education of ministers of the Word, church educators, and other church leaders, and they provide continuing learning opportunities for them. They are also centers of scholarly research, providing theological resources for the church.

All theological institutions will relate to the General Assembly, and relationships to other governing bodies presently in place may continue. The many diversities in these relationships – such as the methods in electing trustees and faculty and securing funds – are recognized and affirmed.

Agreements between the General Assembly and these institutions will include, among others, a commitment by the General Assembly to support them and a commitment by the institutions to be faithful to the theology and polity of the Presbyterian Church (U.S.A.) and to be responsive to actions of the General Assembly.

In order to bring into conformity the relationship between the General Assembly and the theological institutions, the following recommendations are made:

1. All theological institutions shall report to the General Assembly through the Committee on Theological Education [].

2. Presidents and trustees elected under the various charter provisions shall be presented to the General Assembly for approval.
3. Faculty members shall be elected by the governing boards of the respective institutions.
4. Changes in charters shall be reported to the General Assembly.
5. Relationships with other governing bodies which are presently in place or which may be formulated in the future may include provisions for funding from these governing bodies.

Each theological institution of the Presbyterian Church (U.S.A.) is urged to make such changes in its charter and governing documents as will bring it into conformity with the above recommendations.

59. In 1986, the 198th General Assembly of the PCUSA adopted the Theological Education Fund (“1% Plan”) to help finance its theological institutions, and established a formula pursuant to which funding from the 1% Plan would be paid to its then-11 (now 10) Presbyterian Church (U.S.A.) theological schools. SFTS was included in the 1% Plan, it has never been excluded from it, and is still entitled to receive a share of all distributions from the 1% Plan according to the General Assembly’s formula.
60. Following the denominational reunion that formed the PCUSA, the General Assembly formed the Special Committee to Study Theological Institutions (“SCSTI”) to recommend criteria for PCUSA theological institutions, among other things. In 1993 the SCSTI presented a report to the General Assembly, based on several years of study. A copy of the 1993 Report is attached as Exhibit 9. The Report recommended, and the 205th General Assembly approved, a set of criteria for identifying a PCUSA theological institution:

The church needs a basic definition of a Presbyterian school. As institutions develop, evolve, form partnerships, and change their mission emphases, COTE and the General Assembly need agreed-upon criteria and methods to define the relationships of the institutions to the church.

The Committee on Theological Education is the continuing body best equipped to consider changes in the relationship of theological institutions to the whole church. *As changes to institutions and relationships may occur from time to time, the special committee recommends that a procedural step be instituted; namely, that the General Assembly shall consider proposed changes to their relationship to theological institutions only on the prior recommendation of COTE. Changes in the nature of the agreements between the theological institutions and the General Assembly*

shall likewise be considered by the General Assembly after prior recommendation of COTE.

The special committee recommends two types of institutional relationship to the church. One type describes those institutions that meet the descriptive criteria of a degree-granting Presbyterian theological school. The criteria for this type follow below:

1.1 The institution must have a *historic relationship* to the Presbyterian church.

1.2 The institution must have a *continuing relationship* to the Presbyterian church.

1.3 The institution must accede to the *reporting and approval policies* governing Presbyterian theological institutions. These include the following provisions adopted by the General Assembly in 1986:

1. All theological institutions shall report to the General Assembly through the Committee on Theological Education. . . .

2. Presidents and trustees elected under the various charter provisions shall be presented to the General Assembly for approval.

4. Changes in charters shall be reported to the General Assembly [*sic*].¹

1.4 The degree programs offered by the institution *shall be accredited through the accredited membership procedures of the Association of Theological Schools* in the United States and Canada.

(Emphasis added)

61. The 1993 Report expressed concern about the lack of PCUSA theological schools in some parts of the country, a fact that is particularly relevant to SFTS, as the only PCUSA that is located west of the Rocky Mountains:

¹ The 1993 Report omitted item “3” from the 1986 SCTI Report, which read as follows: “24.023 – 3. Faculty members shall be elected by the governing boards of the respective institutions.”

The special committee heard repeatedly, in the open forums it sponsored and the communications it received, the question that heads its mandate from the General Assembly:

. . . Does the church have the number and kind of theological institutions it needs, located where they are needed?

The special committee found that there is a near-consensus on one response to this question: *the geographical distribution of theological schools is far from ideal. The majority of schools are clustered in the Middle Atlantic region and the mid-South, and whole regions of the country do not have a Presbyterian theological school in or near them. . .*

62. The 1993 Report also recommended strongly that at least one of the PCUSA Seminaries should move to a “much closer integration” with a university, to improve the quality of PCUSA research and instruction:

The theological institutions have lost many of their old partners, and they have not yet reconstituted their relationship to a long-term partner from which many have been estranged: the university. [] ... [A] closer relationship between theological institutions and universities would be mutually enriching, exposing theological faculty to scholars with other disciplines and a broader universe of intellectual thought, and exposing the university to communities of scholars who combine intellectual integrity with faith commitments. *What is required* is a new educational ecology, encompassing the theological school with its faith commitments and the university with its vast intellectual resources. *This report and its proposals urge that strong, durable and mutually enriching alliances with universities be forged.*

1993 Report 9 (emphasis added).

If the scholarship of Presbyterian schools’ faculties has indeed lost some of its focus and seriousness, one cause may be the institutions’ isolation from major research universities. *No Presbyterian institution is an integral part of a research university. . .*

The research team on educational mission insists [] that *sturdy bridges between the theological institutions and universities must be established*: “The future of these schools as responsible intellectual communities partly depends upon their willingness to tackle this issue [of relationships to universities] once again.” University-based scholarship profoundly affects the way people confront the issues of modern life and its purpose and meaning. The university’s realms of knowledge thus have direct bearing on the mission of the church. Reciprocally, theological ideas and methods can make pivotal

contributions to university scholarship. Closer contact between theological and university faculties is thus *not only desirable but essential*.

1993 Report 18 (emphasis added).

We hold that the church's need for stronger and more serviceable ties to the wider intellectual and social world would best be fulfilled through *deeper connections between the theological schools and neighboring universities*.

To meet the need fully, the Presbyterian church requires at least one theological school to enter a long-term relationship with a university in order to provide joint doctoral education in the various branches of theological and religious studies.

The best way for the Presbyterian Church (U.S.A.) to participate in this needed form of doctoral education is for at least one of its theological seminaries to form an integral relationship with a university in order to offer a fully joint doctor of philosophy degree that offers specialization in a number of fields and areas.

1993 Report 33 - 35 (emphasis added).

63. The 1993 Committee recommended, and the 205th General Assembly approved, that the PCUSA's theological institutions consider restructuring their "corporate existence" in order to meet the PCUSA's needs for improved theological education in the 21st century:

The intent of the framework that follows is to provoke serious self-examination in each institution and serious conversation among the schools through COTE and other mechanisms (such as the regular meeting of presidents that we endorse in Section III). In the course of such discussions, the prospects of reorientation of program, mergers, and moves will arise. [] [T]he erosion of program quality by financial pressures should provoke the question of *whether the school should refocus its program and restructure its physical and corporate existence*.

We are convinced, however, that *the only effective initiatives for the consideration of merger or program transformations are those that come from within the school and its constituency or from an actual potential new partner. Trustees, administrators, alumni and alumnae, and faculty know the school best and have the best opportunity to begin a careful and confidential consideration of the issues*. The rest of the church, through

COTE and other agencies and judicatories, may assist the school in various ways once a planning process has begun.

1993 Report 27 (emphasis added).

64. Between 1986 and the present, two of the original 11 PCUSA Seminaries merged with each other, bringing the number down to its present number: 10.
65. According to the COTE Manual (“2013 Manual”), as revised on February 11, 2013, “[t]wenty-three voting members constitute the voting membership of COTE, ten (10) Institutional Representatives and thirteen (13) Church-at-Large/Elected Members.” A copy of the 2013 Manual is attached hereto as Exhibit 4.
66. According to the 2013 Manual, “There shall be ten Institutional Representative members. These are the presidents or chief administrative officers of each of the ten Presbyterian Church (U.S.A.) theological seminaries.” (hereafter, “PCUSA Seminaries”) The 2013 Manual lists the ten PCUSA Seminaries as follows:
 - a. Austin Presbyterian Theological Seminary
 - b. Columbia Theological Seminary
 - c. The University of Dubuque Theological Seminary
 - d. Louisville Presbyterian Theological Seminary
 - e. McCormick Theological Seminary
 - f. Pittsburgh Theological Seminary
 - g. Princeton Theological Seminary
 - h. San Francisco Theological Seminary
 - i. Johnson C. Smith Theological Seminary
 - j. Union Theological Seminary & Presbyterian School of Theological Education
67. From the beginning, SFTS has been an active member of COTE, participating fully in its deliberations and decisions. The 198th General Assembly explicitly designated SFTS as a PCUSA Seminary and a full member of COTE. Only a subsequent General Assembly has the power or authority to change that designation.
68. In recent years, particularly after the transfer of its coordinator for Theological Education and Seminary Relations in 2015, COTE lost focus. As the academic environment for religious instruction changed, and as enrollment in seminary training diminished for the PCUSA, COTE failed to offer effective leadership for the denomination’s theological institutions.
69. In 2018, the 223rd General Assembly approved a COTE request permitting COTE to experiment in its organizational structure, but committing COTE to conduct itself in conformity with its Manual of Operations. While the 223rd General Assembly permitted COTE to delegate much of its work to a small committee of representatives, it did not authorize COTE to jettison any of its Institutional Members or their representatives, nor to

pick and choose between PCUSA Seminaries, which ones to fund and which ones to starve of funds, nor to refuse to bring to future General Assemblies the reports of any PCUSA Seminaries as required by its own 1986 organizational documents. *See* COTE Agency Summary (2018), attached as Exhibit 10.

SFTS Considered Merging with Redlands to Preserve Itself as a Presbyterian Theological Institution

70. In the meanwhile, SFTS perceived a need to plan for change in its own future and to provide for its institutional survival. Changes in expenses, income and enrollments showed a trend that seemed to lead to the institution's demise unless SFTS could find a partner to share its costs and continue its program of educating Presbyterian pastors and missionaries.
71. For the prior several years, SFTS had been struggling with financial deficits in excess of \$2 million each year. In fiscal year 2018, SFTS experienced a decrease in unrestricted net assets in excess of \$3 million. The seminary's balance sheet as of June 30, 2019 included approximately fifteen million dollars in debt.
72. In addition, enrollment in the seminary had dropped precipitously during the past decade. In fall 2010, for example, SFTS enrolled more than 300 students. By fall 2019, enrollment had dropped to approximately 100 students. While the seminary continued to maintain a full teaching faculty, libraries, and a beautiful physical campus in Marin County, its operating costs had become a burden that it could not sustain for the long term.
73. In March, 2018, SFTS hosted a team of evaluators from the Association of Theological Schools (ATS), who conducted the seminary's regular comprehensive evaluation visit as an element of the school's ATS accreditation. The ATS approved SFTS's continued accreditation, but did so for only seven years, rather than for the ten year period which it would have provided under normal circumstances. The ATS evaluators noted the seminary's significant financial challenges as the reason for the shorter accreditation. They also scheduled a follow-up visit two years later, for the purpose of evaluating SFTS's progress in seeking solutions to its financial problems. *See* ATS Report dated November 19, 2019, attached as Exhibit G to Kuncl/Childers Letter attached hereto as Exhibit 11.

SFTS Discusses its Planned Merger with Representatives of COTE, the Foundation, the OGA and the Seminary Respondents.

74. SFTS began to discuss its need to find a merger partner, or other institutional solution, with other members of COTE and with leaders of the PCUSA starting in 2017. SFTS solicited advice from many of the leaders who were represented in COTE, and in September, 2017 and again in September, 2018, President McDonald of SFTS discussed the possibility of merger with the President of Princeton Seminary, Dr. Craig Barnes.
75. In February, 2018, SFTS President James McDonald submitted a report to the seminary's board of trustees discussing SFTS's unsatisfactory financial performance and five potential

scenarios for achieving financial stability for SFTS. These scenarios included selling property near the campus to raise capital; increasing annual revenue; pursuing partnerships, either with other seminaries or with a university; and selling the main campus and moving to another location.

76. After an extensive program of exploration, SFTS found a merger partner that was willing to commit to preserving SFTS's faculty, student body, physical campus and, above all, its affiliation with the PCUSA. The University of Redlands ("Redlands"), which was founded as a Baptist institution, but which has since become a secular not for profit educational corporation, has a president who is a member of the PCUSA and a board that is friendly to the expression of religious faith on campus.
77. On May 17-18, 2018, SFTS President James McDonald submitted a lengthy explanation to the seminary's trustees on SFTS's discussions with Redlands, and the reasons that were motivating SFTS to find a merger partner. A copy of this letter is attached as Exhibit 12.
78. Dr. McDonald's May 2018 report explained that the only scenario for future financial survival that seemed likely to preserve SFTS as a living institution, retaining its faculty and curriculum and campus, was a combination with Redlands. He laid out a timeline for the negotiations with Redlands, forecasting an agreement in principle sometime in or around October, 2018, and a statement of agreement from the two institutions' boards in February, 2019, followed by the drafting of merger documentation.
79. On or about September 14, 2018, the presidents of Redlands and SFTS entered into an informal agreement in which they set forth a non-binding intention to pursue merger negotiations, with customary obligations of confidentiality covering the details of the negotiations and the documentation exchanged. From that date until mid-February, 2019, both institutions were severely limited in the information that they were able to give to others concerning their discussions.
80. In December, 2018, Dr. McDonald had an extensive telephone discussion with J. Herbert Nelson, Stated Clerk of the General Assembly, and his special assistant Vernon Broyles. They said that they were unaware of any precedent that would provide guidance to the denomination about what SFTS was contemplating. They saw no impediment to SFTS remaining affiliated with the PCUSA but they were not offering definitive guidance. Both Mr. Nelson and Mr. Broyles consented to SFTS's non-disclosure agreement which permitted Dr. McDonald to share details of the planned merger with them.
81. In January, 2019, Dr. McDonald discussed details of the merger negotiations with Rev. Dr. Lee Hinson-Hasty, senior director for Theological Education Funds Development for COTE and the Foundation. Dr. Hinson-Hasty spoke no word during that conversation of warning that the planned merger might damage SFTS's relationship with the church, COTE or the Foundation. He offered some helpful advice and a commitment to set up meetings with several people at the top of the Presbyterian Foundation.

82. That same month, Dr. Childers met with Dr. Hinson-Hasty and several alumni of SFTS to discuss the prospective merger. Again, Dr. Hinson-Hasty did not suggest that the merger terms might cause any change in SFTS's relations with the denomination or its entities.
83. In January, 2019, Dr. McDonald also had a long telephone conversation with Dr. Sandra Tracy, Chair of COTE, describing the terms that were being negotiated for the merger. Dr. Tracy did not express any concern about the merger. Dr. Tracy explained where COTE was in its process of re-envisioning itself, a process approved by the last GA and on which the next GA will expect a report. As COTE reviewed its mission and scope of responsibilities, it was also wrestling with the larger question of what it means to be a Presbyterian seminary. At the time of their conversation, there was little or no guidance on this question. Dr. Tracy mentioned that the last time a General Assembly took up this question was in the Special Report on Theological Institutions in 1993, a very different time in the life of the church and in society more generally. COTE's next meeting was scheduled to be held the end of February, 2019, when they were scheduled to discuss these questions.
84. Between January 24 and 26, 2019, Dr. McDonald met with the other president of PCUSA Seminaries at COTE's annual meeting, held in Florida, and spent a considerable amount of time answering all of the questions which they had about the merger.
85. In his conversations with Dr. Hinson-Hasty, Dr. Tracy, and the other seminary presidents, Dr. McDonald emphasized SFTS's desire to maintain its relationship with the PCUSA.
86. In February 2019, the boards of trustees of SFTS and Redlands approved an Agreement in Principle to merge, dated January 21, 2019. SFTS's board approved the Agreement in Principle at its meeting on February 11-12, 2019. The Redlands board approved it on or about February 23, 2019. A copy of the Agreement in Principle is attached as Exhibit 13.
87. On or about February 23, 2019, Dr. McDonald sent a written notice to the other presidents of PCUSA Seminaries in COTE, through Dr. Tracy, informing COTE formally about the Agreement in Principle, and invited COTE to engage in further discussions concerning the merger. At the time, COTE had no institutional requirements for the evaluation of combinations of Presbyterian seminaries with other institutions, and SFTS wanted to learn whether their institutional partners in COTE had any expectations that they might incorporate in their final merger agreement with Redlands. However, COTE's representatives failed to provide any guidance to SFTS concerning any expectations they had for the merger.

COTE Takes Unilateral Actions, and Objections Follow

88. On information and belief, the other members of COTE met from February 28 to March 1, 2019, and discussed SFTS's plan to merge with Redlands. SFTS was not invited to take part in this meeting.

89. On or about March 18, 2019, COTE's chair, Sandra Tracy, asked the Stated Clerk of the General Assembly to conduct a review of the financial and legal implications of SFTS's proposed merger with Redlands. However, neither Ms. Tracy, nor the Stated Clerk, ever informed SFTS of the nature of its concerns, or how they might prefer to see such concerns addressed on behalf of the Presbyterian Church (U.S.A.). In a letter addressed to the "PCUSA Presidents," Ms. Tracy asked for prayer "as we negotiate these new relationships," but she never actually attempted to negotiate any aspect of SFTS's relationship with COTE or the Presbyterian Church (U.S.A.), or to inform SFTS of any concerns over the potential terms of its negotiation of a merger with Redlands.
90. On March 19 and 21, 2019, Dr. Jeffrey Bullock, President of the University of Dubuque, wrote letters, first to Dr. McDonald, and then to the other members of COTE, in which he used inflammatory language to attack SFTS's merger with Redlands. Dr. Bullock opined that the concept of Presbyterian seminaries had lost its requirement of attachment to specific theological principles over the years, and that the denomination had substituted formal governance ties to the PCUSA in their place. Bullock described the situation as follows:
- At least since the early 20th century, PCUSA seminaries first cohered around confessional and theological identities. As this consensus became more fragmented, coherence moved to matters of governance and legal constitution. For example, our Boards must be approved by the PCUSA General Assembly. Our Presidents and/or Deans must be approved by the PCUSA General Assembly. Relatedly, as it relates to governance and legal constitution, our Articles of Incorporation and By-Laws are also regularly updated and on file with the PCUSA General Assembly, presumably, in response to their oversight responsibility. We have a formal—and legal—tie.
91. Dr. Bullock attacked the terms of the merger that provided that SFTS's corporate entity would disappear, which would mean that its separate articles of incorporation would no longer exist. From this he clearly implied that SFTS would no longer have any Presbyterian identity, and that the use of SFTS assets by Redlands constituted a flagrant betrayal of the intentions of generations of Presbyterian donors. Dr. Bullock saw SFTS, not as a precious institution of Presbyterian instruction and scholarship that should be preserved, but as a mere pot of Presbyterian money that rightly belonged to the other seminaries. Dr. Bullock clearly implied that he preferred that SFTS be shut down, its assets sold, and the money be used to fund the remaining PCUSA Seminaries, including the ones at the University of Dubuque or controlled by the other Institutional Representative Members of COTE. A copy of Dr. Bullock's letter dated March 21, 2019 is attached as Exhibit 14.
92. At the time of Dr. Bullock's letter, SFTS owned or controlled real property and other endowment funds valued at more than seventy million dollars, subject to about fifteen million dollars in debt. In addition, the Foundation managed (and continues to manage) an unknown amount, believed to be well in excess of three million dollars, in endowment capital that it is holding in trust for SFTS as a named beneficiary of inter vivos trusts, wills,

and other instruments. Until the Foundation stopped making payments to SFTS in or about 2019, SFTS received income from these investments each year from the Foundation. In 2018, the Foundation paid approximately one hundred and twenty thousand dollars (\$120,000.00) annually in trust income to SFTS. SFTS also received approximately forty thousand dollars per year in 1% Plan funds.

93. On March 25, 2019, Dr. McDonald wrote to the other presidents of Presbyterian Church (U.S.A.) theological seminaries, to respond to Dr. Bullock's letter. (A copy of Dr. McDonald's letter is attached as Exhibit 15.) He informed them, *inter alia*, of the following facts:
- a. that "[a]fter the merger SFTS as an institution will continue to exist"
 - b. that "[o]ur Agreement in Principle with University of Redlands specifically provides for SFTS to remain a PCUSA seminary, in connection with the PCUSA and training persons for ministry who are qualified to be ordained in the PCUSA. This was a fundamental issue for our Board of Trustees - that we remain a PCUSA seminary in connection with the denomination - and will be clearly stated in our legal agreements to effect the merger. The intention is for SFTS to continue as the PCUSA seminary on the west coast for the foreseeable future."
 - c. that "[a]ll of the assets of SFTS will continue to be used to pursue the mission of SFTS. Those assets, physical plant and human capital, will also be used by the broader University of Redlands for a variety of programs that SFTS through the GST and the broader university will launch together and separately. SFTS will also have access to an extraordinary set of additional resources that can enhance our offerings and the educational preparedness of our students (many of whom will become ordained PCUSA teaching elders)."
94. Dr. Bullock's letter of March 21, 2019, inviting the members of COTE to carve up SFTS for their own benefit, marked the point in time when the attitudes of COTE and the Foundation toward SFTS's merger began to change. Prior to then, no one at COTE had expressed a negative opinion about the merger. Afterward, the merger of the SFTS corporate entity into Redlands gradually became evidence, for COTE and the Foundation, that SFTS was no longer a PCUSA Seminary. This despite the very obvious survival of SFTS as an educational and ecclesiastical entity.
95. Dr. Bullock's views failed to appreciate the San Francisco Theological Seminary's true value and importance to the Presbyterian Church. As a community of scholarship, education, mentoring and personal and spiritual growth, SFTS is a precious jewel among the finest treasures of the PCUSA. Our denomination once had more seminaries. Over time, many have closed, progressively depriving our denomination of rich resources of spiritual discernment and progress. Only ten remain in existence today - and only one on the West Coast of the United States. As Robert Lynn told the 198th General Assembly in 1986, the "ethos" of a

seminary, once developed, produces a quality of scholarly mentorship and intellectual production that can only be developed over a span of decades. To the Presbyterian Church, the loss of a 150-year seminary would be a much greater loss than could be recouped from the sale of the seminary's assets – which continue to be devoted to the seminary's purposes, post-merger, as before.

96. The merger with Redlands was, in the opinion of the SFTS trustees, the only combination that would allow SFTS to survive – and survive as a Presbyterian seminary. Conversations with other prospective partners always boiled down to a transfer of assets and students, accompanied by the breakup of the faculty and the liquidation of the campus. Redlands, in contrast, is funding the seminary's annual operating deficits, while it transfers additional programs and students to the SFTS campus in San Anselmo. By adding to the value of the programs already being conducted on the campus in Marin County, Redlands is showing its commitment to the seminary's survival as a valuable member of the Presbyterian theological community, not its absorption into a faceless, secular academic miasma.
97. Dr. Bullock's concerns about honoring the intention of donors were addressed by the Office of the Attorney General of the State of California, which specifically inquired about the disposition of restricted assets in the merger, and approved it in June, 2019.
98. On April 12, 2019, President McDonald of SFTS met with representatives of COTE to provide them with complete information concerning SFTS's merger negotiations with Redlands. Again, COTE's representatives provided Dr. McDonald with no insight as to any expectations that they had on behalf of the Presbyterian Church (U.S.A.) concerning the merger. Insofar as SFTS's representatives could tell, COTE had no concerns about the merger that were not entirely satisfied through their meeting with President McDonald.
99. On information and belief, COTE met on April 30, 2019 to discuss SFTS's plan to merge with Redlands. SFTS was not invited to participate in this meeting.
100. On May 20, 2019, Sandra Tracy addressed a letter on behalf of COTE to the GA Stated Clerk and the Co-Moderators of the General Assembly, summarizing her understanding of the merger terms that SFTS and Redlands had negotiated. Among other things, she stated that "a formal relationship with the PCUSA is determined by the General Assembly." This letter, written after the terms of the merger had been fully negotiated and approved by the boards of both institutions, marked the first time that COTE provided SFTS with any criteria relevant to COTE's consideration of what status a post-merger SFTS might have with the denomination. A copy of the letter is attached hereto as Exhibit 16.
101. The May 20, 2019 Tracy letter noted that several issues remained to be addressed concerning the merger. She listed the following issues:

1. **The language of the merger document, particularly as it relates to the PCUSA.** We do not know if the relationship with the PCUSA specifically

will be addressed in the final agreement, and if so, what specific indications of ways to maintain a relationship are articulated in the formal agreement.

2. Accreditations status of the SFTS programs. It appears that both institutions have been proactive in addressing the accreditation issue. However, formal action by each of their accreditation bodies will not occur until after a merger.

3. Determination of the relationship of Redlands and the new University of Redlands Graduate School of Theology to the PCUSA. As noted earlier, this will be determined by General Assembly upon a recommendation from COTE. COTE will work closely with Redlands to identify a strategy for relating to the new U of R Graduate School of Theology consistent with the ways PCUSA relates to other institutions. COTE views the planned STFS merger as an important case study of how the PCUSA relates to a wide variety of models of theological education, some models which are yet to emerge. COTE also will incorporate what we learn from this case into the revised policies on membership to be brought to the General Assembly in 2020.

4. The impact of the STFS merger on the other PCUSA seminaries. COTE is remaining in close contact with the other seminaries that are in formal relationship with the PCUSA regarding issues the planned merger may pose for them. Will this merger generate concerns about the future of the other seminaries or will it encourage seminaries to consider similar ventures that might expand opportunities for the seminaries and the church? What impact will it have on donor trust and commitment – both among the individual seminaries and for the PCUSA’s Theological Education Fund? Will the merger adversely impact giving, or might it encourage donors to support more sustainable missions? In what ways can COTE and the seminaries strengthen COTE’s ability to serve as a point of contact and communication between the seminaries and the General Assembly?

San Francisco Theological Seminary Merges with Redlands, Relying on General Assembly Reports

102. On July 1, 2019, the corporate shell of the San Francisco Theological Seminary merged with the University of Redlands as part of a new Graduate School of Theology, pursuant to an agreement dated June 7, 2019. In the merger, SFTS’s trustees ensured that the seminary would continue to be financially viable for the foreseeable future. The merger agreement provided that SFTS assets would continue to be devoted to SFTS’s mission. In addition, the merger documentation provided that SFTS would continue to exist as a separate community within Redlands, and that it would continue to exist as a PCUSA Seminary.

103. As with its modulations in 1872 from an unincorporated to an incorporated entity, in 1900 from an unchartered to a chartered entity, in 1913 from a synod to a General Assembly entity, and in 1914 from a San Francisco-incorporated to a state-incorporated entity, SFTS's Presbyterian spiritual identity remained unchanged in the merger of its corporate shell with Redlands. A copy of the Agreement of Merger between SFTS and Redlands is attached hereto as Exhibit 17.
104. Inter alia, the Agreement of Merger contained the following explicit protections for SFTS and its continued mission:
- a. Para. 5.6 (a) Following the Closing Date, the Combined Corporation shall provide each individual who was a full-time faculty member of SFTS ("SFTS Faculty Member") immediately prior to the Effective Time with continued employment with the Combined Corporation, with the same ranking and tenure held by such SFTS Faculty Member immediately prior to the Effective Time.
 - b. Para. 5.8(f) SFTS will be a core program of study within the GST. As part of the GST, SFTS will (i) have a distinct community life and student leadership experience (ii) seek to maintain its historical connection as a Presbyterian seminary, (iii) consider the guidance of the PCUSA in determining program/degree design and course offerings for professional ministry programs so that individuals seeking ordination in the PCUSA will have adequate preparation and training in the Reformed tradition, with a high emphasis on scholarship and inquiry, and (iv) continue to prepare individuals for careers in other faith traditions and denominations.
 - c. Para. 5.8(g) SFTS will continue to be a worshipping community with regular services on the Marin Campus or wherever GST programs become principally located. As long as the UR owns the Marin Campus, the Montgomery Chapel and the Stewart Chapel will remain available as worship spaces.
 - d. Para. 5.8 (I) The name "San Francisco Theological Seminary" will be utilized by the GST as the part of the GST that offers a professional degree or degrees (Master of Divinity or other similar master's degrees) that prepare individuals for ordination as professional clergy within a denomination or a particular religious tradition, as well as a professional degree or degrees (Doctor of Ministry or other similar terminal degree) that offer faith-based practitioners an incubator for the theological research and development of alternative understandings, new tools and novel resources for ministry in a rapidly-changing world. The SFTS "brand" shall continue through a number of means, including the continued use of the sfts.edu web site.
 - e. Para. 5.8 (q) In addition to the UR name, SFTS' name will be included on diplomas and academic credentials earned through SFTS as part of the GST....

- f. Para. 5.8(r) GST leadership will help to assist SFTS in maintaining the strong relationship now enjoyed by SFTS with the PCUSA, and the Presbyterian Church in the Republic of Korea and Presbyterian Church of Korea denominations in Korea.
 - g. Para. 5.14 SFTS Endowments. Following the consummation of the Merger, UR shall (a) comply with the terms, conditions and restrictions set forth in the donor agreements and the SFTS endowments that are transferred to UR pursuant to this Agreement, and (b) cause any gifts, endowments, grants, pledges, and beneficial interests in trusts, trust properties or income therefrom, specifically naming SFTS as the recipient or beneficiary, whether received prior to or following the Effective Time, to be used solely for the purposes and/or benefit of the GST [Graduate School of Theology, which is another name for an extension of SFTS], or otherwise in compliance with the terms, conditions and restrictions applicable to such gifts, endowments, grants, pledges, and beneficial interests in trusts, trust properties or income therefrom, in each of cases (a) and (b), as if the GST replaced SFTS in such terms, conditions and restrictions.
105. The Agreement of Merger also contained provisions that recognized the authority of the PCUSA and its General Assembly:
- a. Para. 3.28 PCUSA Study Grants. Whether SFTS Students having been awarded study grants from PCUSA will be eligible to continue to receive such grant amounts following the consummation of the Merger is subject to the discretion of PCUSA's General Assembly, with a decision not expected to be made prior to its next meeting in 2020.
 - b. Para 6.1 Closing Conditions. [] (I) SFTS shall have provided written notice to SFTS Students receiving study grants from the PCUSA informing them of the status of their continued eligibility to receive such grant awards following the consummation of the Merger, including when such decision is expected to be made by the PCUSA General Assembly.
106. In the view of the negotiators who drafted the merger agreement, its terms satisfied the recommendations for PCUSA theological seminaries laid down by the Special Committee on Theological Institutions in 1986:
- i. 1. All theological institutions shall report to the General Assembly through the Committee on Theological Education [].
 - ii. 2. Presidents and trustees elected under the various charter provisions shall be presented to the General Assembly for approval.
 - iii. 3. Faculty members shall be elected by the governing boards of the respective institutions.

- iv. 4. Changes in charters shall be reported to the General Assembly.
 - v. 5. Relationships with other governing bodies which are presently in place or which may be formulated in the future may include provisions for funding from these governing bodies.
107. SFTS and Redlands also understood that the merger terms complied with the definition of a Presbyterian seminary set forth in the 1993 SCSTI Report:
- 1.1 The institution must have a historic relationship to the Presbyterian church.
 - 1.2 The institution must have a continuing relationship to the Presbyterian church.
 - 1.3 The institution must accede to the reporting and approval policies governing Presbyterian theological institutions. These include the following provisions adopted by the General Assembly in 1986:
 - 1. All theological institutions shall report to the General Assembly through the Committee on Theological Education. . . .
 - 2. Presidents and trustees elected under the various charter provisions shall be presented to the General Assembly for approval.
 - 4. [*sic*] Changes in charters shall be reported to the General Assembly.
 - 1.4 The degree programs offered by the institution shall be accredited through the accredited membership procedures of the Association of Theological Schools in the United States and Canada.
108. On July 1, 2019, upon the consummation of the merger and the retirement of James McDonald as President of SFTS, Dr. Childers became SFTS's Institutional Representative Member in COTE. From that date forward, she was personally entitled to participate in every decision of COTE, with voice and vote.
109. Although its corporate shell was reconfigured in the merger, SFTS continues to exist as an unincorporated Presbyterian spiritual association, essentially unchanged from its existence prior to the merger, with the Redlands board providing fiduciary responsibility for the seminary. SFTS faculty and administrators continue to govern SFTS, to teach SFTS students, to control SFTS curriculum, and award degrees of Master of Divinity, Doctor of Ministry, and Master of Arts in Theological Studies to SFTS students based on their understanding of the requirements of Presbyterian theology and polity. SFTS continues to adhere to the standards and requirements of the Presbyterian Church (U.S.A.) in its governance, spiritual

and educational practices, and to consider itself to be a Presbyterian Church (U.S.A.) theological seminary.

COTE Blocked SFTS from Further Participation, and the Foundation Cut off All Funding

110. Once the merger was completed, Dr. Bullock's views appear to have prevailed with his colleagues at COTE and with the Foundation. After July 1, 2019, COTE's other members and staff began to exclude SFTS completely from involvement in COTE's meetings and other deliberations. Even without action from the General Assembly to terminate SFTS's status, the staff and other members of COTE treated SFTS as a non-member.
111. By letter dated July 10, 2019 (attached as Exhibit "18") from Dr. Tracy, as COTE's chair, and Barry Ensign-George, COTE's staff liaison, the committee sent a a strong, but mistaken, message to SFTS:

San Francisco Theological Seminary's formal relationship (you have used the term "affiliation") with the PC(USA) was through its standing as one of the Institutional Members of COTE. This formal relationship to the PC(USA) came to an end with the dissolution of SFTS's Articles of Incorporation and the establishment of SFTS as a program of the U of R Graduate School of Theology (U of R GST). That being the case, SFTS is no longer an Institutional Member of COTE. Nor is the U of R, or its GST, in formal relationship with the PC(USA).

112. In the July 10, 2019 letter, and subsequently, COTE dangled the possibility that SFTS might be able to negotiate some form of second class "Covenant Relationship" with the PCUSA, which would not entitle SFTS to be classified as a "Presbyterian theological institution." However, covenant relationship with the PCUSA would come at a high cost: *inter alia*, the 1993 Report recommended, and the 205th General Assembly approved, a strict rule for seminaries in covenant relationships:

Each institution will take pains not to compete with Presbyterian theological institutions for funds or students

113. "Not to compete" for Presbyterian students would be the death knell for SFTS as a Presbyterian seminary, and would result in the diminishment of the seminary's influence in the development of PCUSA theological and spiritual discussions. Such a result is the opposite of what SFTS and Redlands intended to achieve through their merger, and it is directly contrary to the intent of the 1993 Report, which *encouraged* seminaries to form tighter bonds with neighboring research universities *for the sake of the denomination's future*.
114. Dr. Kuncl, the Redlands president, responded to Dr. Tracy's letter by letter dated August 2, 2019 (a copy is attached as Exhibit "19"), welcoming conversation with COTE, and

expressing his personal strong commitment to maintaining SFTS's historic relationship with the Presbyterian church, but politely pointing out that SFTS considered "a continuation of the Institutional Membership in COTE" to be an option.

115. On August 23, 2019, Dr. McDonald and Dr. Childers wrote a letter to COTE in which they disputed Dr. Tracy's claim that the relationship between SFTS and the PCUSA had ceased to exist after the merger, explained the seminary's continuity in existence as recognized by the ATS's continuance of its accreditation (instead of requiring a new accreditation), and described how SFTS's embedding within Redlands was a fulfillment of the PCUSA's 1993 report that recommended "integration" of a PCUSA seminary with a research university. The letter reminded Dr. Tracy that only the General Assembly had authority to change the status of a seminary's relationship with the PCUSA, and requested politely that COTE not advertise to the world their belief that the relationship had already ended, as a representation of that kind could cause great damage to SFTS. A copy of that letter is attached as Exhibit "20."
116. By letter dated September 3, 2019, Dr. Tracy acknowledged receipt of the Letter from Drs. Kunch and Childers, and shared their concern that COTE communications might harm SFTS's reputation, requesting that SFTS also refrain from hurting the reputation of COTE. A copy of the letter is attached as Exhibit "21."
117. On information and belief, COTE met from September 9 to 11, 2019, and discussed SFTS's plan to merge with Redlands. SFTS was not invited to take part in this meeting.
118. Dr. Tracy wrote to SFTS on October 2, 2019 to inform them that COTE was proposing revised criteria for the various forms of seminary relationships with the PCUSA, and enclosed a list of the proposed criteria approved by COTE at its September meeting. A copy of the letter is attached as Exhibit "22."
119. On or about November 13, 2019, Dr. Childers sent a letter to COTE to prepare for a virtual meeting with them scheduled for the following week. A copy of the letter is attached as Exhibit "23." In the letter, Dr. Childers reminded COTE that the 1993 had recommended that PCUSA theological schools form "deeper connections with universities," that would require "change."
120. On November 20, 2019, four COTE representatives held a virtual meeting with representatives of SFTS and Redlands in which the SFTS and Redlands participants provided COTE with all the information that they requested concerning the merger. COTE's representatives expressed no dissatisfaction at that time with the information they received. They did, however, pose several specific questions that they expressed as standards for affiliation with the PCUSA. In particular, the COTE representatives asked whether the seminary could show references to a continuing relationship with the PCUSA in its charter or bylaws. In discussion, COTE's representatives also used the phrase "or other equivalent documents" to refer to this criterion.

121. On December 10, 2019, Dr. Childers and the University of Redlands President, Ralph Kuncl wrote to follow up on the November 20 meeting, to explain how SFTS continues to meet COTE’s criteria for institutional membership, and to provide documentary evidence in support of its explanation. A copy of Dr. Childers’ and Dr. Kuncl’s letter (the “Kuncl/Childers letter”) is attached as Exhibit 24. COTE never engaged in any substantive exchange after receipt of that letter.
122. In the Kuncl/Childers Letter, SFTS addressed, point by point, the “institutional criteria” that COTE’s representatives had identified as being required for consideration as a Presbyterian seminary. Criterion #1, historic affiliation, required no demonstration after 150 years. Criterion #3, involving reporting through COTE, General Assembly recognition of president and trustees, and notification of changes to charter documents, were agreeable to SFTS, although the letter pointed out that it would be more appropriate for the General Assembly to approve the dean of the seminary rather than the president of the university. Criterion #4 was also easily met, since SFTS has been continuously accredited by ATS since 1938.
123. With respect to Criterion #2, “a continuing relationship with the Presbyterian church, ... articulated in its governing documents (charter and bylaws),” the Kuncl/Childers Letter gave a thorough response:

Criteria #2: *The institution must have a continuing relationship to the Presbyterian church, which is articulated in its governing documents (charter and bylaws).*

It is now clear to us that Criteria #2 is at the heart of the assessment (we might suggest “misunderstanding”) pertaining to SFTS’s institutional membership. The criteria states that the institution must have a “continuing relationship” to the PC(USA) and must articulate its continuing relationship “in its governing documents.” The criteria then states parenthetical examples of what might constitute “governing documents” – charter and bylaws. As will be demonstrated below, SFTS and its new home institution have demonstrated their commitment to the continuing relationship with the PC(USA) in its governing documents (specifically, in the Merger Agreement (defined below) and in the minutes of the University of Redlands Board of Trustees).

With respect to SFTS’s merger with the University of Redlands, we thought it might be helpful to trace the significance that the two institutions (SFTS and the U of R) placed on preserving SFTS’s relationship to the PC(USA) in the merged institution on the way to formalizing that commitment in a formal, governing document.

Although there was substantial conversation and exploration in the prior months, key meetings that helped to shape the eventual merger took place on the University of Redlands campus from November 28 through November

30, 2018. At those meetings, members of both institutions' Board of Trustees, together with broad leadership teams from both institutions, gathered to explore, test, debate, inquire, assess, challenge, etc. It was a remarkable, collaborative series of discussions during which SFTS's leaders made clear (among other things) that they had no interest in pursuing a merger that stripped SFTS of its unique identity and mission, including its connection to the Presbyterian church. University of Redlands leaders made clear (also, among other things) that they had no interest in damaging SFTS's uniqueness, mission, and relationships and, instead, would hope to preserve, strengthen and amplify them. From those conversations, the two sides agreed to establish an Agreement in Principle that would capture the nature of the parties' interests as they continued to explore and move toward a formal merger. From December 4, 2018 through January 21, 2019, the Agreement in Principle went through 11 drafts. The Agreement in Principle that was finalized – and which is attached to this letter as Exhibit A – contained a number of references to SFTS and its relationship with PC(USA). In particular, please note the “specific commitments” the parties made to:

- Maintain SFTS as a part of a new University of Redlands Graduate School of Theology (AIP § III(A))
- Preserve this fact: “SFTS, as part of the GST, will continue its historical connection as a Presbyterian seminary.” (AIP § III©)
- Obligate SFTS to “consider the guidance of PCUSA” in determining program/degree design and course offerings so that the PC(USA) is satisfied that ministers seeking ordination in the church would be adequately prepared. (AIP § III©)
- Add SFTS trustees to the University of Redlands Board of Trustees. (AIP § III(E))
- Establish a GST Advisory Board and inviting all SFTS trustees who are not invited to serve on the University Board of Trustees to serve on the Advisory Board. (AIP § III(F))
- Hire SFTS's president, Jim McDonald, to help the University foster a positive relationship with the PC(USA). (AIP § III(J))

The Agreement in Principle ultimately was superseded by the Amendment and Plan of Merger between SFTS and the University of Redlands, dated June 7, 2019 (the “Merger Agreement”). The Merger Agreement was, and

is, a binding agreement that outlines the duties and requirements of the “Combined Corporation” (consisting of what, prior to closing, was the independent SFTS and the independent U of R). In other words, *the Merger Agreement is a governing document of the post-merger University of Redlands*. And, in the Merger Agreement, each of the bullet points identified above was captured and included as part of the Merger Agreement. So, for example, the Merger Agreement states that, upon closing, the University of Redlands Board of Trustees would now include the three trustees recommended by SFTS leadership and approved by U of R leadership. Merger Agreement § 2.6(a); Merger Agreement Section 2.6 is attached as Exhibit B: The biographies of the three individuals formerly serving as trustees of SFTS and now serving as trustees of the University of Redlands are included in Exhibit C. The Merger Agreement also required the creation of the GST Advisory Board, with an invitation to every SFTS trustee (other than the three joining the University Board of Trustees) to serve on it. Merger Agreement § 2.6(b).

Specifically speaking about SFTS’s ongoing relationship to the PC(USA), the Merger Agreement stated:

SFTS will be a core program of study within the GST. As part of the GST, SFTS will (I) have a distinct community life and student leadership experience (ii) **seek to maintain its historical connection as a Presbyterian seminary**, (iii) **consider the guidance of the PCUSA** in determining program/degree design and course offerings for professional ministry programs so that individuals seeking ordination in the PCUSA will have adequate preparation and training in the Reformed tradition, with a high emphasis on scholarship and inquiry, and (iv) continue to prepare individuals for careers in other faith traditions and denominations. [bold added][Merger Agreement §5.8(f); Merger Agreement Section 5.8 is attached as Exhibit D]

Also in Section 5.8 of the Merger Agreement – which deals with the operation of the GST/SFTS after the closing – is this language:

GST leadership will help to assist SFTS in maintaining the strong relationship now enjoyed by SFTS with the PCUSA [and the Presbyterian churches in Korea]. [bold added][Merger Agreement §5.8(r)]

Criteria #2 requires that an institution articulates its continuing relationship to the Presbyterian church in its governing documents. Here, SFTS – now a part of the University of Redlands – meets that criteria. In one of our governing documents, we specifically say that SFTS seeks “to maintain its historical connection as a Presbyterian seminary” and that SFTS will work to maintain “the strong relationship now enjoyed by SFTS with the PCUSA.”

If the Merger Agreement is considered to be a “governing document” of the University of Redlands and SFTS, now housed within the University’s GST, it is clear that Criteria #2 for Institutional Membership is satisfied.

Careful readers of COTE’s membership criteria will note that “governing documents” has a parenthetical reference to “charter and bylaws.” The parenthetical inclusion of “charter and bylaws” provides examples, but these examples are not a complete definition of the term “governing documents.” That is, there are other documents that are “governing documents” other than a charter or bylaws. The most obvious, and most common, type of governing document in addition to a corporation’s articles of incorporation and bylaws are the minutes of the meetings of its board of directors. So, for example, minutes that contain voted actions of the University of Redlands Board of Trustees are considered “governing documents” of the University. Those minutes, containing those actions, govern the way that the University can operate. In this specific case, the University of Redlands Board of Trustees voted to approve both the Agreement in Principle and the Merger Agreement. The minutes of the Board of Trustees May 11, 2019 meeting are attached as Exhibit E. As a result of the Board’s adoption of the Merger Agreement, the University must be governed in ways consistent with those documents. If the membership criteria could *only* be established through a charter or bylaws, it would not have been drafted to say “governing documents.” It is a standard form of interpretation to give words their commonly-understood meaning and to presume that the inclusion of those words is intentional. The criteria was not written as follows: “The institution must have a continuing relationship to the Presbyterian church, which is articulated in its charter and bylaws.” Instead, it referred to “governing documents” because it recognized that there could be other ways to establish the relationship other than through the charter or bylaws (though those might be the most common ways). The point is clear: institutional members cannot just pay “lip service” to a relationship with the PC(USA); instead, there must be a formal document that guides institutional behavior.

Because the Merger Agreement governs the institutional behavior of the post-merger University of Redlands, and because the University of Redlands Board of Trustees affirmed and adopted the Merger Agreement, the continuing relationship between SFTS and the PC(USA) is preserved in institutional governing documents that formally impose obligations on the University. As a result, Criteria #2 for Institutional Membership is satisfied.

124. In her letter dated May 20, 2019 – more than one month before the merger was completed – Dr. Tracy had also clearly considered the merger agreement to be a “governing document” that might be capable of expressing a continuing relationship with the PCUSA. In that letter, she had expressly asked about **“The language of the merger document, particularly as it**

relates to the PCUSA. We do not know if the relationship with the PCUSA specifically will be addressed in the final agreement, and if so, *what specific indications of ways to maintain a relationship are articulated in the formal agreement.*”

125. On or about January 6, 2020, COTE convened a meeting of the Institutional Representatives of Presbyterian Church (U.S.A.) theological seminaries to discuss several agenda items, including SFTS’s merger with Redlands. Because SFTS still was, and is, a Presbyterian Church (U.S.A.) theological seminary, its President or chief administrative officer should have been invited to attend, *see* 2013 Manual, Sections II.A., III.A., with voice and vote at least in any matters that did not directly concern SFTS. Instead, SFTS was expressly told not to send any representative to the meeting. Subsequently, SFTS was informed that the press of other business prevented COTE’s Institutional Representatives from considering its merger at the January meeting.
126. On information and belief, COTE submitted its proposed summary and recommendations for the 224th General Assembly to the Presbyterian Mission Agency on or after January 15, 2020, and perhaps as late as March 1, 2020, substantially in the form of the documents attached hereto as Exhibits “25” and “26.” COTE did not send a copy of these submissions to SFTS, nor did it inform SFTS’s representatives that it was recommending to the General Assembly, essentially, that SFTS be removed from institutional membership in COTE, and disqualified as a PCUSA Seminary, by stating that these changes had already occurred and asking the assembly to approve the report.
127. On January 21, 2020, Dr. Tracy wrote to SFTS, thanking them for the “informative packet of material ... with a great deal of new information” that was sent with the December 10, 2019 letter. A copy of Dr. Tracy’s letter is attached as Exhibit “27.” Dr. Tracy implied that COTE had not yet decided what to say or recommend to the General Assembly about SFTS, although on information and belief COTE had a January 15, 2020 deadline to present draft materials to PMA for approval. Instead, she told SFTS’s representatives that they would be engaging SFTS in further discussions:

In discussing the packet COTE determined that it will need time in order fully and thoughtfully to process this information. COTE plans, among other things, to consult with key individuals within the PC(USA). It will seek additional information and/or clarification from you if and as questions arise. We will move as expeditiously as possible to prepare COTE’s response to the information you have provided prior to scheduling another meeting of our two teams sometime later this winter or early spring.

128. However, rather than engaging in further discussions with SFTS about continuing its institutional membership, COTE and other “key” actors in the PCUSA decided to take decisive action against SFTS.

The Lawyers Get Involved

129. On February 5, 2020, a lawyer for the Foundation wrote to the General Counsel for Redlands to give notice that the Foundation no longer considered itself obligated to send to SFTS the financial proceeds from millions of dollars of investments that it held in the name of SFTS, “given that San Francisco Theological Seminary’s (“SFTS”) is no longer a Presbyterian Church (USA) (“PCUSA”) Seminary following its recent merger with the University of Redlands and the Redlands’ subsequent lack of institutional membership in the PC (USA)’s Committee on Theological Education.” A copy of the Foundation’s letter is attached as Exhibit 28.
130. The letter went on to assert:
- As you know, as of the merger’s effective date, the SFTS no longer exists under California law. Cal. Corp. Code § 6020. Accordingly, ***and given that the institution is no longer legally related to the PC(USA)***, the Foundation is confident that a court would agree SFTS no longer exists under the terms of the gift instruments such that the designated successors now have a vested interest in these funds (emphasis added).
131. The Foundation’s letter bore the caption “INADMISSIBLE SETTLEMENT COMMUNICATION PURSUANT TO INDIANA EVIDENCE RULE 408,” and yet its text threatened to initiate a lawsuit against SFTS unless SFTS agreed to settle any claims to the money for a tiny fraction of the amount that the Foundation was holding for SFTS. By making claims under California law with respect to SFTS’s continued *corporate* existence, the Foundation appeared to be trying to insulate itself from PJC jurisdiction, *see Rutgers Presbyterian Church v. Presbyterian Foundation*, Remedial Case 222-08. Yet by tying its assertion to SFTS’s alleged excommunication from the PCUSA, the Foundation also appeared to be trying to insulate its decision from the review of civil courts, as well. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976). The letter suggests that the Foundation’s position was “we can sue you, or just withhold your money, and you can’t do anything about it.”
132. The Foundation’s letter attached copies of two wills, each of which specifically named SFTS as a beneficiary, and directed the Foundation to pay income from the estate annually to SFTS, unless SFTS “ceased to exist.” On information and belief, many more instruments exist that expressly direct the Foundation to invest money for the express benefit of SFTS.
133. In a letter dated February 17, 2020, Brent Geraty, General Counsel for Redlands, pointed out the many inaccuracies contained in the Foundation’s letter (including the express intention of the merger parties that SFTS would *continue* to exist as a *Presbyterian* seminary), cited the provisions of California corporation law that provided that a surviving corporation in a merger is vested with all of the rights of the disappearing corporation, noted that the Foundation has a continuing obligation to make payments to SFTS for the investments that it manages for SFTS, and made demand upon the Foundation to resume its payments to SFTS. The Geraty Letter was sent by both U.S. and electronic mail, so it was received by the

Foundation's lawyer on or about February 17, 2020. A copy of the letter is attached as Exhibit 29.

134. The board of trustees of the Foundation met at University Presbyterian Church in El Paso, Texas from February 19- 21, 2020. At that meeting, they failed to remedy the delinquency that the Geraty Letter had demanded that they correct. Mr. Geraty has made calls to the Foundation's lawyer to follow up on his letter, but the Foundation and its lawyers have failed to return them.
135. On or about February 21, 2020, on information and belief, the PMA had a deadline to approve COTE's proposed summary and recommendations to the General Assembly, and to forward them to the Stated Clerk for the General Assembly. On an unknown date on or about or after February 21, 2020, PMA decided to approve COTE's summary and recommendations, and took action to forward them to the Stated Clerk of the General Assembly.
136. On February 28, 2020, the members of COTE conducted a Special Called Meeting to discuss SFTS's merger with Redlands. A few days before the meeting, Dr. Kunch called Dr. Tracy to inquire about the agenda for the meeting. Dr. Tracy promised to phone him after the meeting to provide him with an "update on where things stand."
137. The meeting did not strictly take place in any one location, because it was conducted over the internet via Zoom. On information and belief, it was hosted at the PCUSA headquarters in Louisville, Kentucky. SFTS was not invited to participate in the meeting. COTE made some decisions at the meeting concerning SFTS, but then delayed for almost one month before informing SFTS about them.
138. On information and belief, COTE decided on or after February 29, 2020 to apply new criteria to end negotiations with SFTS about its request to retain institutional membership in COTE and status as a Presbyterian theological institution. On information and belief, COTE may have decided at the same time on the final set of criteria to apply to evaluate institutional membership and Presbyterian theological institution status, including a requirement that "[t]he institution must have a continuing relationship to the PC(USA), which is articulated in its governing documents (as used herein, governing documents shall mean charter, articles of incorporation, or constitution required by its state of incorporation)."
139. On March 3, 2020, Dr. Tracy wrote a letter (attached as Exhibit "30") to Drs. Kunch and Childers, with the following vague assurances:

When Dr. Kunch called me before the meeting, I indicated that I would be in touch shortly after that meeting to provide an update on where things stand. At this point I can only affirm that COTE is moving forward and fully intends to have a formal response to you within the next 2-3 weeks

140. On March 24, 2020, COTE's Chair, Sandra Tracy, wrote to SFTS, informing it that in COTE's opinion, SFTS no longer qualifies as a PCUSA Seminary, nor as a member of COTE itself. (A copy of Dr. Tracy's letter is attached as Exhibit 31.) Dr. Tracy wrote as follows:

At COTE's meeting on February 28, 2020, the Committee made the following decisions:

1. Given that San Francisco Theological Seminary is the disappearing corporation in the merger between SFTS and University of Redlands, the Committee on Theological Education does not believe that there is sufficient evidence to accept the University of Redlands as an institutional member of COTE.

2. We would be open to receive more information from the University of Redlands regarding its ecclesiastical identity and commitment so that the Committee on Theological Education might consider a Covenant Relationship.

141. COTE noted that SFTS had merged with Redlands, and implied that the disappearance of its corporation prevented SFTS from being considered as a Presbyterian Church (U.S.A.) theological seminary. However, COTE did not at that time, or at any other, ever identify any standard that it was applying, except for the disappearance of SFTS's corporate shell, and the secular nature of Redlands' certificate of incorporation, to determine whether or not SFTS itself still qualified.
142. The timing of the March 24 letter made it difficult for SFTS to request a stay of the action or decision which COTE had taken at its meeting on February 28, since stays must be requested within 30 days of the date on which an irregularity is committed, not from the date on which they were discovered, according to an Assistant Stated Clerk of the PCUSA.
143. Separately, COTE informed SFTS that COTE had approved new internal rules, without providing notice of the contents of the new rules to SFTS.
144. The representatives of SFTS had no knowledge of, and took no part in, the process in which COTE wrote and adopted new rules. On information and belief, COTE may have applied the provisions of its new rules to justify any practices and standards it employed in terminating SFTS's membership in COTE.
145. Dr. Childers, as Dean of SFTS, responded to Dr. Tracy's letter on March 27, 2020, expressing SFTS's frustration that COTE had terminated SFTS's membership on the basis of a legal technicality that COTE had never raised with SFTS in the course of discussion, and that overlooked the reality that SFTS had succeeded in negotiating its complete survival as

an entity in its merger negotiations with Redlands. A copy of this letter is attached as Exhibit 32.

146. On March 31, 2020, Dr. Childers expressed the frustration of SFTS officials in a letter to the GA's Stated Clerk. A copy of this letter is attached as Exhibit 33.
147. At some point prior to April 7, 2020, and without prior notice to SFTS, the PCUSA removed SFTS from the list of Presbyterian Church (U.S.A.) Seminaries that is listed by the PMA on its website. A copy of this page is attached as Exhibit 34.

COTE Has Submitted Misleading Statements to G.A. 224, Seeking to Excommunicate SFTS

148. Now, COTE is moving ahead to ask the current 224th General Assembly to accept a deceptive report which silently removes SFTS as an Institutional Member of COTE and essentially excommunicates SFTS from the PCUSA.
149. The rules of the 224th General Assembly required COTE to submit its reports to the Stated Clerk of the General Assembly at least 120 days prior to the start of the assembly. Standing Rules of the General Assembly 6, Standing Rule A2. On information and belief, COTE did not submit its materials to the Stated Clerk on time.
150. On information and belief, on or about April 21, 2020, the Stated Clerk of the General Assembly published a document titled "Proposed Revisions to the General Assembly Organization for Mission—From the Committee on Theological Education" (REC-002) ("COTE Recommendation") in which it implicitly, but not explicitly, asks the GA to approve the removal of SFTS from the list of PCUSA Seminaries - it asks for approval of a list of PCUSA Seminaries which omits SFTS, without explaining why. SFTS had no voice or vote in the preparation of COTE's recommendation. On information and belief, COTE timed its submission so as effectively to prevent SFTS from presenting any petitions against its actions at the 224th General Assembly. A copy of the COTE Recommendation is attached as Exhibit 26.
151. The COTE Recommendation contains the following proposals:
 - a. To amend the "Organization for Mission of the Presbyterian Church (U.S.A.)" to impose new requirements for Institutional Members of COTE, including the following:

"‘Institutional’ relationships require that the theological institution meet the following criteria: (1) The institution must have a historic relationship to the PC(USA), seen in its having been founded with the purpose of training pastoral leaders for the PC(USA) and its predecessor denominations, and in a history of significant financial support from Presbyterian denominations that have merged into the PC(USA); (2) *The institution must have a*

continuing relationship to the PC(USA), which is articulated in its governing documents (as used herein, governing documents shall mean charter, articles of incorporation, or constitution required by its state of incorporation); (3) The institution must agree to abide by the reporting and confirmation policies prescribed by COTE for those in institutional relationship with the PC(USA).

152. The COTE Recommendation admits that it is proposing a change in the terms of Institutional Membership in COTE – and, by extension, in what it means to be a PCUSA Seminary:

The proposed revisions to the Manual of Operations will clarify and revise categories of membership and the criteria for those categories.

153. The COTE Recommendation includes nine seminaries in its list of Institutional Members, and asks the General Assembly to approve the list. Although SFTS has always been a Presbyterian seminary, and has been a member of COTE since its founding, it was left off the list this year. The COTE Recommendation does not inform the commissioners of the GA that it drafted its new list to exclude SFTS, nor does it attempt to persuade them explicitly that SFTS should be excommunicated from the list of PCUSA seminaries. Instead, in another display of *fait accompli*, it provides the following non-explanation:

COTE is in conversation with the Omaha Presbyterian Seminary Foundation and San Francisco Theological Seminary, the University of Redlands, and its Graduate School of Theology, regarding the relationship between these institutions and the categories of membership in COTE.

154. Up until the present date, the "Organization for Mission of the Presbyterian Church (U.S.A.)" contains *no criteria whatsoever* for Institutional Membership in COTE, which is the test for consideration as a PCUSA Seminary. The proposed criterion (2) differs from the proposed criteria that COTE delivered to SFTS prior to the November, 2019 meeting, which was quoted verbatim in the Kunc/Childers Letter of December 10, 2019:

Criteria #2: *The institution must have a continuing relationship to the Presbyterian church, which is articulated in its governing documents (charter and bylaws).*

155. COTE's 2019 proposal would have recognized references in an organization's "bylaws" as sufficient evidence of continued relationship with the PCUSA. COTE's formulation dropped reference to "bylaws" – which had been its own proposal – and included limiting language "shall mean" which would limit "governing documents" to a very narrow class of instruments.

156. The Kunc/Childers Letter demonstrated persuasively that SFTS's Merger Agreement qualified as a "governing document" under COTE's 2019 version of Criteria #2. In proposing

a different requirement, designed to disqualify bylaws and merger agreements as “governing documents,” COTE apparently felt it had to apply an even stricter new standard, never before seen in any of COTE’s own governing documents, in order justify its expulsion of SFTS.

157. The COTE Recommendation makes it clear that COTE does not intend to be bound by any of the General Assembly’s prior actions defining COTE’s existence or nature. It asks the General Assembly to:

2. Approve the following clarification:

- The prior action supersedes all previous actions regarding the Committee on Theological Education, including the actions of 198th (1986) and 205th (1993) General Assemblies.

158. What COTE has done, and asks the General Assembly to approve, is backwards. COTE was *supposed* to make *recommendations* for *action of the General Assembly* concerning which theological institutions qualified for institutional membership. Between assemblies, COTE was supposed to obey the rules which prior assemblies had put in place, and recognize as Institutional Members and PCUSA Seminaries those institutions that prior assemblies had recognized. Instead, COTE has made up its own new criteria for membership, and applied them to expel SFTS, and *then changed them again afterward to justify the expulsion.*
159. The criterion imposed by the 198th General Assembly of “a continuing relationship” with the PCUSA is easy for SFTS to demonstrate. SFTS also showed COTE that it met COTE’s new proposal to require references to the PCUSA relationship in its “governing documents” – which was *COTE’s* criterion until it received the Kunc/Childers Letter. It is COTE’s burden to explain to the 224th General Assembly why it should abandon all of its prior pronouncements to require a PCUSA Seminary to articulate its relationship in a “charter, articles of incorporation, or constitution required by its state of incorporation.”
160. The COTE Recommendation makes no effort to explain why it is necessary for the present General Assembly to abandon all of its prior instructions to COTE and to adopt an entirely new standard that is designed to ratify the expulsion of one of COTE’s founding members. Nor does it explain why it is beneficial for the PCUSA to lose its affiliation with one of its ten remaining Presbyterian theological institutions.
161. Instead, the COTE Recommendation asks the PCUSA to ratify its rewriting of its own rules, its deviation from the rules that have always applied to it in its dealings with SFTS, and its usurpation of the General Assembly’s own powers, without actually admitting or explaining anything to the commissioners who are charged with exercising their duty of ruling the Presbyterian Church (U.S.A.). In so doing, the COTE Recommendation misleads the General Assembly and deals dishonestly with the responsibilities that COTE has been tasked to discharge.

162. On information and belief, on or about April 21, 2020, the Stated Clerk of the General Assembly also published a “Committee on Theological Education (COTE) Agency Summary” (“COTE Summary”) to the 224th General Assembly. While the COTE Summary provides information about what COTE members have been doing in recent years, it provides no explanation or justification for the new standards it seeks to impose on PCUSA Seminaries, or why the new standards are superior to the ones established in 1986, or why it excommunicated SFTS from the PCUSA.
163. The COTE Summary deceptively states that COTE is “*in conversation* with leaders of this *new entity* [SFTS] with the goal of bringing a proposal to General Assembly when such a proposal is completed.” The timing of the *conversations* of COTE and the Foundation – excommunicating SFTS just prior to all deadlines for filing overtures with the General Assembly – guarantees that for at least the next two years, if the COTE Recommendation is approved, SFTS will, after 150 faithful years of conducting Presbyterian education, have no official relationship or status with the Presbyterian Church (U.S.A.), will receive none of the funds to which it is entitled from the Foundation or under the 1% Plan, and will have no official recognition as a seminary for the education of PCUSA ministerial candidates. A copy of the COTE Summary is attached as Exhibit 25.
164. As if that is not enough, the General Assembly’s approval of the COTE Recommendation is likely to provoke the Foundation to bring litigation against SFTS to rewrite all of the wills, trusts and other instruments within its management that name SFTS as a beneficiary. The next shoe to drop may be a lawsuit brought on behalf of the denomination, claiming the assets that SFTS brought into its merger, on the spurious ground that if SFTS is no longer “Presbyterian,” a court must transfer all of the donations which SFTS has received over the past 150 years to the PCUSA in order to honor the wishes of the seminary’s donors. This appears to be the real meaning behind the statement in the COTE Summary that it has “learned”

the need for clarity about how the denomination can steward the investment made by individuals, councils, the denomination (and its predecessors) in the seminaries that have played such an important role in the denomination’s life.

The intent of this statement is better expressed in the letter President Bullock sent to COTE when he learned of SFTS’s intent to merge with Redlands:

Unless they have been modified by the SFTS Trustees and are on file with the State of California and with the PCUSA, the SFTS Articles, specifically Section V above, prescribe an end of organizational life disbursement of assets. In this regard, Articles of Incorporation function as the voice of those donors who are now received in the Church Triumphant. Even in death, their investments are part of the continuing legacy of the mission of SFTS “...organized and operated exclusively for religious purposes.” [] Redlands, by its own description, is not a religious organization. By their president’s

own declaration, it is a secular organization. Though historically related to various streams of American Baptists, they are no longer organized and, thus, constituted "...exclusively for religious purposes." [] What does matter, in principle, is that there are plenty of PCUSA organizations, colleges and Universities that continue to be constituted, as evidenced by their own Articles of Incorporation, for "...exclusively...religious purposes." The University of Dubuque, for one, meets that test, as do many others. I am aware of other legally valid religious organizations from a variety of stripes and theological positions that are willing to talk about possibilities for continuing to use these assets for their intended purpose, as described by the SFTS Articles; that is, for the work of the Kingdom of God.

165. Prior to April 21, 2020, Complainants had no knowledge of COTE's Recommendation or Summary. On information and belief, they were written primarily in Louisville, Kentucky and published to the internet from the same location. Despite its reference to "*discussions*," COTE has never directly communicated to SFTS the new standards which it is now asking the General Assembly to promulgate.
166. COTE's Recommendation and Summary propose major changes in COTE's purposes and structure. None of these proposed changes were approved by SFTS. None of them were in place on July 1, 2019 when COTE ejected SFTS from participation in COTE. SFTS had neither voice nor vote in the formulation of the new proposals and standards, some of which seem to have been created to justify the expulsion of SFTS and the redistribution of its capital assets and 1% Plan contributions. Without disclosing the fact, COTE is asking the General Assembly to approve standards that it created after the fact of SFTS's merger, and applied *ex post facto* to the merger.
167. The excommunication of SFTS from the PCUSA has definite spiritual implications for the seminary, its faculty and its student body. Dr. Childers and other Presbyterian ministers on the faculty will lose their General Assembly authorization to conduct communion. They may no longer be able to rely on the approval of calls from PCUSA presbyteries, which authorized them to teach at a PCUSA Seminary. As a result they may be forced to choose between continuing to teach at SFTS or leaving SFTS to follow new calls consistent with their status as ordained Presbyterian teaching elders. Students will have to explain to their church sponsors why they wish to remain at SFTS, and pastors will hesitate before recommending that students attend SFTS as a "non-Presbyterian" seminary. The seminary will lose students and the denomination will lose candidates for ministry.
168. In the current academic environment – with COVID-19 wreaking havoc with enrollments and uncertainty over the future of the entire educational establishment, worldwide – a two-year interruption of SFTS's historic relationship with the Presbyterian Church could prove fatal to SFTS. COTE's improper and inept handling of SFTS's membership could result in the loss to the Presbyterian Church of one of its ten precious seminaries – which COTE

seems to believe that it has already accomplished – and the destruction of the denomination’s only graduate theological seminary on the West Coast.

169. Complainants understand that COTE and the other PCUSA Seminaries have already begun to rely upon COTE’s website to persuade candidates for Presbyterian ministry not to attend SFTS – because it is supposedly no longer a PCUSA Seminary. Instead, the other nine Institutional Members of COTE are urging candidates to accept competing offers to attend their own schools. In doing so they are relying upon their own manipulation of COTE’s processes to draw students, and tuition revenue, away from SFTS and into their own competing seminaries.
170. COTE and the Foundation have essentially conducted a coup against the General Assembly’s authority to determine whether or not SFTS is a PCUSA Seminary and to set standards for institutional membership in COTE. Without waiting for General Assembly approval, or including SFTS (as a member) in its deliberations, COTE has created new criteria for institutional membership and has applied them to justify expelling SFTS from the Presbyterian Church.
171. On information and belief, both OGA and COGA have received requests that COTE’s submission be removed from the consent agenda at the 224th General Assembly, because they are controversial and because they reflect the result of wrongdoing on the part of COTE. However, to date, COTE’s submissions remain on the consent agenda. This harms SFTS, the Complainants and the PCUSA generally because it will prevent SFTS and the Complainants from opposing the approval of the submissions.
172. The irregular actions of COTE, the PMA and the Foundation need to be reversed, and the decision over the future status of SFTS needs to be decided by the General Assembly, after receiving full and honest information, in a year where discussions are not truncated by videoconference attendance. Removing COTE’s misleading submissions from the agenda of the 224th General Assembly, and restoring SFTS’s status in the meanwhile, will create opportunities for a fresh and frank examination of the situations at SFTS and in COTE, and possibly, for COTE to revise its General Assembly submissions and/or for SFTS and Redlands to make adjustments to meet reasonable criteria, by agreement with the full COTE committee or by a new Special Committee to Study Theological Institutions.

SPECIFICATIONS OF IRREGULARITY

Specification of Irregularity #1: COTE’s Decision to Expel SFTS was Ultra vires

173. COTE has exceeded its authority as a committee, and usurped the power of the General Assembly, by purporting to terminate SFTS’s status as a PCUSA Seminary and a member of COTE.

174. Section G-3.0109 of the Book of Order provides, in relevant part, that “A committee shall study and recommend action or carry out decisions already made by a council. It shall make a full report to the council that created it, and its recommendations shall require action by that body.”
175. COTE is a permanent committee of the General Assembly.
176. COTE is also an entity of the General Assembly.
177. Committees are not empowered to exercise duties of the council that created them, absent express delegation. The GAPJC found that a complainant states a claim on which relief may be granted under the Book of Order when a subordinate committee of a council makes a determination with respect to a power which the council has not delegated to it, and attempts to enforce its determination, without first making a recommendation to the council and waiting for the council to approve or reject its recommendation. *Wolfe v. Presbytery of Winnebago*, Remedial Case No. 219-04.
178. The power to determine membership in COTE has always existed exclusively in the General Assembly. The General Assembly never empowered the staff or members of COTE to expel any seminary from membership in COTE.
179. In 1985, the 198th General Assembly constituted SFTS as a Presbyterian Church (U.S.A.) theological seminary and as an institutional member of COTE.
180. SFTS’s status as a Presbyterian Church (U.S.A.) theological seminary has been reaffirmed by each subsequent General Assembly up to and including the 223rd General Assembly held in 2018.
181. The 205th General Assembly approved the 1993 report of the Special Committee to Study Theological Institutions, including the following statement:
- The Committee on Theological Education is the continuing body best equipped to consider changes in the relationship of theological institutions to the whole church. As changes to institutions and relationships may occur from time to time, the special committee recommends that a procedural step be instituted; namely, that *the General Assembly shall consider* proposed changes to their relationship to theological institutions only on the prior recommendation of COTE.
182. According to COTE’s Manual, the fullest extent to which COTE’s duties extend to the question of its own membership is “[t]o *recommend to the General Assembly* those theological seminaries which shall qualify as members of the Committee on Theological Education.” 2013 Manual 3, Section I (15). The Manual did not authorize COTE to add or subtract from its own membership in the absence of General Assembly determination, or to

suspend membership pending General Assembly approval of a recommendation, under any interpretation.

183. In authorizing COTE to “experiment” for the following two years, the 223rd General Assembly did not expressly grant to COTE any power to expel institutional members from COTE, to remove any theological institution from the list of Presbyterian theological institutions, or to sever the ties of any COTE institutional member to the PCUSA, all of which powers remained within the authority of the General Assembly alone.
184. Therefore COTE erred when they decided on February 29 or March 1, 2020 that the status of SFTS as a Presbyterian Church (U.S.A.) theological seminary and member institution of COTE had terminated, because they exercised a power that the General Assembly had not delegated to them.
185. Under the precedent of *Wolfe v. Presbytery of Winnebago*, Remedial Case No. 219-04, the unauthorized action of COTE is attributable to the PMA or OGA or COGA and was therefore an irregularity of PMA or OGA or COGA as well as of COTE.
186. The PMA has oversight responsibility over COTE, including the duty of remaining fully informed about COTE’s actions and decisions. On information and belief, COTE consulted with PMA on or about February 29 - March 1, 2020, concerning its continuing action of exercising powers that are assigned exclusively to the General Assembly. The PMA committed an irregularity in failing to prevent or correct COTE from committing its own irregularity.

Specification of Irregularity #2 – Application of Criteria Diverging from General Assembly Rules

187. In 1993, the 205th General Assembly adopted the report of the Special Committee to Study Theological Institutions, which recommended a set of rules that COTE and the General Assembly should apply to determine which theological institutions qualified to be classified as Presbyterian Church (U.S.A.) theological institutions and institutional members of COTE.
188. The 205th General Assembly adopted the following criteria for classification as a Presbyterian Church (U.S.A.) theological institution and institutional member of COTE, as recommended by the Special Committee to Study Theological Institutions:

The special committee recommends two types of institutional relationship to the church. One type describes those institutions that meet the descriptive criteria of a degree-granting Presbyterian theological school. The criteria for this type follow below:

- 1.1 The institution must have a historic relationship to the Presbyterian church.

1.2 The institution must have a continuing relationship to the Presbyterian church.

1.3 The institution must accede to the reporting and approval policies governing Presbyterian theological institutions. These include the following provisions adopted by the General Assembly in 1986:

1. All theological institutions shall report to the General Assembly through the Committee on Theological Education. . . .

2. Presidents and trustees elected under the various charter provisions shall be presented to the General Assembly for approval.

4. Changes in charters shall be reported to the General Assembly [*sic*].²

1.4 The degree programs offered by the institution shall be accredited through the accredited membership procedures of the Association of Theological Schools in the United States and Canada.

The following institutions fit this definition at the present time: Austin Presbyterian Theological Seminary in Austin, Texas; Columbia Theological Seminary in Decatur, Ga.; Johnson C. Smith Theological Seminary, a constituent seminary of the Interdenominational Theological Center, Atlanta, Ga.; Louisville Presbyterian Theological Seminary in Louisville, Ky.; McCormick Theological Seminary in Chicago, Ill.; Pittsburgh Theological Seminary in Pittsburgh, Pa.; the Presbyterian School of Christian Education in Richmond, Va.; Princeton Theological Seminary in Princeton, N.J.; San Francisco Theological Seminary in San Anselmo, Calif.; Union Theological Seminary in Virginia in Richmond, Va.; and the University of Dubuque Theological Seminary in Dubuque, Iowa.

189. The General Assembly has not modified its criteria for institutional membership in COTE and classification as a Presbyterian Church (U.S.A.) theological institution. Therefore, COTE is required to apply the criteria established by the 205th General Assembly in considering whether to recommend that changes to theological institutions affect an institution's classification as a Presbyterian theological institution and COTE institutional member.

190. COTE invented constantly changing new criteria, and applied them its consideration of SFTS's status after its merger with Redlands. In her May 20, 2019 correspondence on behalf

² The 1993 omitted item "3" from the 1986 SCTI Report, which read as follows: "24.023 – 3. Faculty members shall be elected by the governing boards of the respective institutions."

of COTE, Sandra Tracy demanded to know “1. The language of the merger document, particularly as it relates to the PCUSA. We do not know if the relationship with the PCUSA specifically will be addressed in the final agreement, and if so, what specific indications of ways to maintain a relationship are articulated in the formal agreement.” The 205th General Assembly’s requirements for Presbyterian theological seminaries included no requirement that a continuing relationship with the PCUSA be expressed explicitly in any formal corporate documentation.

191. In October or November, 2019, COTE altered its new requirements, demanding that “The institution must have a continuing relationship to the Presbyterian church, which is articulated in its governing documents (charter and bylaws).” This criterion diverged even farther from the criteria established in 1993.
192. Finally, on information and belief, on February 29 or March 1, 2020, at its meeting in El Paso, Texas, COTE decided that SFTS no longer qualified as an Institutional Member of COTE or as a Presbyterian theological institution, applying an even newer criterion that “(2) The institution must have a continuing relationship to the PC(USA), which is articulated in its governing documents (as used herein, governing documents shall mean charter, articles of incorporation, or constitution required by its state of incorporation).”
193. COTE has excluded, and continues to exclude, SFTS from membership and from classification as a PCUSA Seminary on the basis that the articles of incorporation of the University of Redlands do not specifically mention any commitment to the PCUSA. This is an entirely new standard for institutional member/ PCUSA Seminary status, and it is *ultra vires* for COTE to apply it to exclude SFTS from membership in COTE or to remove SFTS from the list of PCUSA Theological Seminaries.
194. In authorizing COTE to “experiment” for the following two years, the 223rd General Assembly did not expressly grant to COTE any power to apply new rules to alter the *current* membership of COTE, or to deny to current institutional members the right to participate in COTE decision-making on an equal basis with every other institutional member institution.
195. Although SFTS was, and is, an institutional member, COTE excluded SFTS from the formal sessions of COTE, and from the informal meetings of its sub-committees and of the presidents of its institutional members, starting in or before July, 2019 and continuing to date, including the meeting that COTE held on February 29 to March 1, 2020, in El Paso, Texas.
196. The PMA has oversight responsibility over COTE, including the duty of remaining fully informed about COTE’s actions and decisions. On information and belief, COTE consulted with PMA on or about February 29, 2020 concerning its decision to exclude SFTS from its virtual meeting conducted on that date and the following date, and its decision to diverge from General Assembly criteria in refusing to recognize SFTS’s *current* institutional

membership. The PMA committed an irregularity in failing to prevent or correct COTE from committing its own irregularity.

Specification of Irregularity #3 – “Fundamentally Unfair” Proceeding Denying SFTS Due Process

197. As an institutional member of COTE, SFTS has a right to participate in COTE’s governance and discussions on an equal basis with the other institutional members. SFTS denied this right to SFTS completely after July 2019. Instead, the other institutional members sat in judgment on SFTS.
198. COTE pretended to negotiate in good faith with SFTS over SFTS’s request to retain institutional membership in COTE, following the expulsion of SFTS expressed in COTE’s July 10, 2019 letter. COTE set forth a shifting set of criteria. Each time that SFTS demonstrated that it satisfied COTE’s new criteria, COTE changed the criteria, making them more difficult to meet.
199. In her letter dated May 20, 2019, the chair of COTE, Dr. Tracy, conceded that continued connection to the PCUSA might be evidenced by language in a merger agreement. She asked to see “[t]he language of the merger agreement, particularly as it relates to the PCUSA.” SFTS and Redlands addressed this requirement by including specific language in their merger agreement formally recording their commitment to retain the seminary’s relationship to the PCUSA. In their letter dated December 10, 2019, Dr. Ralph Kuncel and Dr. Childers pointed out that they had considered their incorporation of language in the merger agreement the parties signed on July 1, 2019 to demonstrate SFTS’s continued relationship to the PCUSA. Perhaps if COTE had clearly expressed a need for a PCUSA reference in a certificate of incorporation or bylaws, the parties might have complied.
200. After the merger was consummated, COTE exacted a promise from SFTS that it would not do or say anything to embarrass COTE or to portray it in a bad light during their negotiation. Having done so, it effectively shut SFTS from filing a remedial case protesting its exclusion from COTE proceedings during the pendency of its negotiations with COTE.
201. in November, 2019, COTE sent SFTS a list of new criteria, insisting that “The institution must have a continuing relationship to the Presbyterian church, which is articulated in its governing documents (charter and bylaws).” SFTS sent an extensive packet of governance documentation to COTE on December 10, 2019 to meet this demand.
202. Finally, after giving SFTS an evasive response to its packet of documents, COTE decided on February 29 or March 1, 2020, to apply an entirely new criterion to disqualify SFTS from institutional membership, requiring that "(2) The institution must have a continuing relationship to the PC(USA), which is articulated in its governing documents (as used herein, governing documents shall mean charter, articles of incorporation, or constitution required by its state of incorporation)."

203. COTE never communicated its final standard to SFTS prior to the date on which it made its decision, despite alluding to future negotiations, and it gave SFTS no opportunity to try to meet its new criterion. This is fundamentally unfair.
204. Although SFTS was transparent in its communications with COTE, and cooperated fully and promptly with COTE's requests for information about its desire to find an appropriate merger partner, its negotiations with Redlands, and its ultimate merger agreement, COTE provided no information in return about the standards it ultimately applied in evaluating its relationship with SFTS, or about what procedures it intended to follow, within COTE's committee structure, to conduct that evaluation.
205. In *Lewis v Presbytery of New York City*, Remedial Case No. 207-13, the GAPJC opined that a council committee "is obligated to treat all parties fairly and provide them with an opportunity to present their positions. The test is fundamental fairness - the opportunity to be heard and a consideration of their respective positions without prejudice."
206. COTE diverged fatally from the due process that the presbytery provided to the complainant in the *Lewis* case, *supra*. In *Lewis*, "[t]he Complainant was afforded a full opportunity to be present at every meeting over a period of six months where the problems of North Church were considered and to present his position on the question of the dissolution of the pastoral relationship, including the meeting of Presbytery where the vote to dissolve was taken."
207. In contrast, SFTS – a full institutional member of COTE – has been shut out of all COTE meetings since at least July 1, 2019, while COTE changed its own rule book, adopted its own internal (and secret) standards, and engaged in debate over SFTS's still-pending, and still-negotiable, relationship with Redlands. If there was a set of institutional relationships that would have been acceptable to their fellow members in COTE, or some kind of governance solution that might have changed COTE's decision, SFTS never knew about it. Instead, having negotiated an entire merger agreement without input or feedback from COTE, SFTS finds itself suddenly out of COTE, cut off from funds that it needed to sustain its academic programs and student scholarships, and cut off from the flow of student referrals that come via PCUSA clergy.
208. COTE's actions of shifting the goalposts during its post-merger negotiations with SFTS, its evasive non-responses to SFTS inquiries during the period of December 2019 through March 2020, its failure to give SFTS an opportunity to confront the criterion it finally devised, culminated in a decision that COTE made at its February 29-March 1, 2020 virtual meeting and its three-week delay in communicating its final decision to SFTS. These are all proof of COTE's bad faith in the conduct of its duty to negotiate with its own member over the terms of its membership.
209. The PMA has oversight responsibility over COTE, including the duty of remaining fully informed about COTE's actions and decisions. On information and belief, COTE consulted with PMA between March 1 and March 23, 2020, concerning its decision to apply a new

criterion to disqualify SFTS from institutional member status. The PMA committed an irregularity in failing to prevent or correct COTE from committing this irregularity and from denying due process to SFTS.

Specification of Irregularity #4:

210. COTE erred in deciding not to submit the name of the President of the University of Redlands or the Dean of SFTS to the 224th General Assembly for approval, or to report the names of the Redlands trustees, or to solicit and transmit a report from SFTS to the General Assembly.
211. The SCTI Report recommended that each PCUSA Seminary submit the names of its new President and trustees through COTE to the General Assembly, and required COTE to transmit reports of all Presbyterian seminaries through COTE to each General Assembly. These requirements have been in place since 1986, and were approved again in 1993. Because the merger of SFTS has taken place since the last General Assembly, and resulted in a change of the President and trustees having authority over SFTS, COTE was required to submit their names to the 224th General Assembly. In its submission to the General Assembly, COTE decided that it was not required to solicit or include any such information about SFTS. This was an error.

Specification of Irregularity #5 - Decision that SFTS no longer exists as a Presbyterian seminary:

212. The Foundation and COTE erred, by deciding that SFTS no longer exists as Presbyterian entity due to the merger of its corporate shell with a non-sectarian university corporation.
213. In the merger of SFTS's California corporate shell with Redlands, the religious *corporation* disappeared. The Foundation and COTE have relied on the disappearance of the religious corporation to conclude that SFTS no longer exists as a Presbyterian entity, and therefore deny that the Foundation has any continuing obligation to obey directions given in instruments of gift, or trust or of bequest naming SFTS as the beneficiary of the Foundation's fiduciary obligations, or that COTE has any further duties toward SFTS.
214. The position taken by COTE and the Foundation mistakes the nature of religious corporations, which are merely the secular shells for pre-existing religious associations. *See, e.g., Walker Memorial Baptist Church v. Saunders*, 285 N.Y. 462, 35 N.E.2d 42 (1941) ("under the customs, practices and usages of the Baptist faith, there is a clear-cut distinction between the spiritual body and the incorporated church. The spiritual body is of ancient origin, recognizing and following the laws and precepts of the New Testament. [] The deacons are elected by the spiritual body, and assist the pastor in the discharge of his duties. Formerly the deacons also had charge of the temporalities, but when it was found desirable to form a corporation to hold the temporalities, trustees were elected to handle the finances and to control and manage the temporalities of the church.") *Accord, Trinity Presbyt. Church v. Tankersley*, 374 So 2d 861, 866 (Ala 1979); *Folwell v. Bernard*, 477 So 2d 1060, 1063

(Fla Dist Ct App 1985); *Gordon v. Bd. of Educ.*, 78 Cal App 2d 464, 473-474, 178 P2d 488, 494 (1947).

215. California law recognizes the distinction, and separate natures, of religious corporations and the spiritual associations that they serve. *See, e.g., Providence Baptist Church v. Superior Court*, 40 Cal. 2d 55, 251 P.2d 10 (1952) (distinguishing between individual membership in a church and membership in its corporation); *Wheelock v First Presb. Church*, 119 Cal 477, 483, 51 P 841, 843-844 (1897) (recognizing the survival and preeminence of a distinct religious entity following the creation of a California religious corporation to serve a Presbyterian church).
216. However, although the nature of a religious corporation may be primarily a matter of civil law, not to be adjudicated in the judicial commissions of the PCUSA, the existence of a spiritual association that may be affiliated with a corporation is a matter of religious law, which merely is recognized by the civil courts. Thus, the continued existence of SFTS as a spiritual association is within the jurisdiction primarily of the GAPJC, and not of the civil courts.
217. The Presbyterian Church (U.S.A.) recognizes a distinction between the function of a church corporation, *see* Book of Government, Art. 4, and the spiritual entity governed by the councils of the church. Under the Book of Government, a religious corporation is a utilitarian instrument of the church, used for holding property, and the corporate trustees (who are in charge of the corporation and its property as a matter of civil law) are subject to the authority of the corresponding church council.
218. Under the Book of Order, a church's corporate shell, and its trustees, have no standing to bring an action before the permanent judicial commissions of the church. They have no juridical status at all under the church's Rules of Discipline. Rather, the rulers of the spiritual entities of the church, presbytery or synod have standing. A corporation is subject to dissolution by State government for myriad reasons, including a simple failure to file annual reports. To hold that the dissolution or disappearance in merger of a corporation *ipso facto* ends the existence of the spiritual entity to which it corresponds, and deprives its spiritual officers or council of the right to represent a church, presbytery, synod or seminary in church judicial proceedings, would be absurd. The State has no power over the spiritual entities of the Presbyterian Church.
219. A spiritual association may survive even the *dissolution* by the State government of the corporation it has formed in order to incorporate. *See, e.g., Kupperman v. Congregation Nusach Sfard*, 39 Misc. 2d 107, 240 N.Y.S.2d 315 (Sup. Ct. Bronx Co. 1963) (religious association incorporated in 1919, survived the dissolution of its corporation in 1923, and reincorporated in 1932). Nevertheless, while SFTS's prior articles of incorporation are no longer in effect, its merger combined its prior corporate shell with that of Redlands. The "combined corporation" (as it is called in the merger agreement) is *both* the former SFTS corporate entity *and* the former Redlands corporate entity.

220. SFTS's agreement of merger clearly contemplates the survival of SFTS as a functioning Presbyterian entity that continues to exist after the merger of its religious corporation with Redlands, and committed Redlands to its survival. The merger agreement protected SFTS's properties, faculty, student body and bequests for the continued use, post-merger, of SFTS.
221. Post-merger, the Association of Theological Schools conducted a review of SFTS's accreditation. If SFTS had ceased to exist, the ATS would have required its new corporate shell to apply for a new accreditation. Instead, SFTS's existing accreditation was carried forward. When two Evangelical Lutheran Church in America seminaries were contemplating dissolving and reuniting as a new seminary corporation, ATS told them that the new entity would not be accredited. Instead, they chose to merge to save their accreditation. The reason: a merger preserves the former corporate existence of both elements of the combined corporation.
222. Nothing in the COTE Manual required Presbyterian Church (U.S.A.) theological seminaries to have separate articles of incorporation. Nothing in the bequests, trusts, funds, and gifts that the Foundation administers requires beneficiaries to be separately incorporated in order to be considered to be sufficiently "Presbyterian" to receive funds.
223. The PJC, the Foundation and COTE all have a duty, as agencies of a spiritual association, to recognize the spiritual reality of SFTS's continued existence as a seminary. COTE and the Foundation committed an irregularity in considering only the secular side of SFTS's existence, and to disregard its more important ecclesiastical survival.

Specification of Irregularity #6 - Foundation Decision was ultra vires:

224. The Foundation exceeded the scope of its own authority, and usurped the authority of the General Assembly, by deciding that SFTS is no longer a Presbyterian seminary and, therefore, no longer qualifies to receive gift, trusts, funds and bequests that were entrusted to the Foundation for the benefit of SFTS.
225. SFTS continues to perform its duties as a PCUSA Seminary in exactly the same way it did before the merger. It has the same spiritual essence, faculty, student body, campus, courses, and commitment to Presbyterian instruction. Nothing essential to the seminary, as a place of Presbyterian Christian instruction and scholarship, has changed.
226. As set forth above, the authority to change SFTS's status as a Presbyterian Church (U.S.A.) theological seminary rests with the General Assembly, not with any of its subordinate entities. The Foundation lacks the authority to determine, on its own, whether SFTS's status has changed. Likewise, it may not rely upon the decision of COTE, for two reasons: first, such a decision is *ultra vires* for COTE also; and second, the Foundation acted *before COTE had decided that, in its view, SFTS was no longer a Presbyterian seminary.*

227. The Foundation has already withheld funds from SFTS even though the General Assembly has never revoked SFTS's status as a PCUSA Seminary.
228. The Foundation's determination that SFTS is not "Presbyterian" is also contradicted by the invitation extended by COTE's remaining members to SFTS to apply for "covenant relationship" status with the Presbyterian Church. On information and belief, the Foundation manages extensive assets that produce distributions for seminaries that are in covenant relationship with the church. COTE's invitation clearly indicates that COTE knows that SFTS is still sufficiently Presbyterian in character to receive funds managed by the Foundation.
229. The Foundation committed an irregularity by making a determination concerning SFTS's Presbyterian status without waiting for an authoritative decision from the General Assembly. Any funds that would have been paid to SFTS, absent the decision that SFTS no longer qualified for the funds, should have been paid to SFTS.

Specification of Irregularity #7- OGA and COGA failed to remove COTE from consent agenda:

230. On information and belief, both OGA and COGA have received requests within the past 30 days that COTE's submission be removed from the consent agenda at the 224th General Assembly, because they are controversial and because they reflect the result of wrongdoing on the part of COTE. However, to date, COTE's submissions remain on the consent agenda. The decision to deny the requests made by OGA and COGA was made in Louisville, Kentucky. This decision is an irregularity because it harms SFTS, the Complainants and the PCUSA generally. It undermines due process in the denomination and it will prevent SFTS and the Complainants from opposing the approval of the submissions.
231. Throughout, the Respondents have used the tactics of delay, of secrecy, of vagueness and of lax oversight to deny due process to one of the denomination's leading seminaries. They have ignored the plain reality that the San Francisco Theological Seminary survives today, the same as before the merger but with its finances strengthened through alliance with a university. As a result, COTE's other members seek to deny SFTS a fair playing field in the fierce competition to recruit Presbyterian theology students. They have shamefully overlooked the call of the 205th General Assembly to build university relationships and look to the future of theological education.
232. The last stage of infamy is scheduled to play out at the 224th General Assembly, where COTE expects its usurpation of power and its unfair actions toward SFTS to be ratified by consent in an assembly that will be truncated, and rendered more difficult and autocratic, by pandemic. Even if a motion succeeds in removing COTE's recommendations and summary from the consent agenda, the odds are stacked against Complainants and SFTS. COTE and PMA have had a year to plan their moves and recruit commissioners and ratify their irregularities and delinquencies. The removal of the COTE submissions from the consent

agenda may, at least, create some opportunity for SFTS and the Complainants to be heard and to persuade the majority of commissioners who have no prejudice in this matter.

SPECIFICATIONS OF DELINQUENCY

Specification of Delinquency #1:

233. The Foundation has withheld, and is continuing to withhold, payment of moneys that are due to SFTS pursuant to gifts, trusts, funds and bequests that the Foundation administers, on the basis of its erroneous and unauthorized determination that SFTS no longer exists as a “Presbyterian” seminary.
234. On information and belief, the Foundation made quarterly payments to SFTS prior to July 1, 2019, from bequests and other moneys held in trust by the Foundation for SFTS, in the amount of approximately \$120,000 per year.
235. In addition, the Foundation annually made payments to SFTS pursuant to its obligations under the Theological Education Fund (the 1% Plan) in the amount of approximately \$40,000 per year.
236. Although SFTS reasonably expected the Foundation to make payments to it in similar amounts after July 1, 2019, the Foundation ceased to do so, for the reasons previously stated.
237. In his letter dated February 5, 2020, an attorney representing the Foundation disclaimed any obligation to make future payments to SFTS.
238. On information and belief, the Foundation and COTE may have made payments to the Seminary Respondents that included amounts that should have been paid to SFTS, but for the Foundation’s erroneous decision that SFTS no longer exists and no longer qualifies for funding from the Foundation.
239. On February 17, 2020, SFTS informed the Foundation that it was delinquent in its obligations to pay funds to SFTS.
240. The board of the Foundation met on February 19-21, 2020, in El Paso, Texas.
241. The Foundation has failed to cure its delinquency.

REQUEST FOR RELIEF

242. Complainants request that this Council through its Commission DECLARE:

- a. That SFTS's status as a Presbyterian Church (U.S.A.) theological seminary has not been validly terminated by action of COTE or the Foundation or otherwise, and that any such determination may only be made by the General Assembly.
- b. That the Institutional Representative of SFTS to COTE is its chief administrative officer, Dr. Jana Childers, as designated by SFTS and the Board of Trustees of the University of Redlands, and that Dr. Childers is entitled to participate fully in COTE as SFTS's institutional representative member.
- c. That COTE erred and committed an irregularity by refusing to permit the Institutional Representative of SFTS to participate in its meetings and the meetings of its subcommittees held on and after July 1, 2019.
- d. That COTE erred and committed an irregularity by adopting new standards for COTE membership and classification of PCUSA Seminaries without the participation or knowledge of the Institutional Representative Member for SFTS.
- e. That COTE's new standards for membership are invalid because of the improper and fundamentally unfair way in which COTE drafted and adopted them.
- f. That COTE erred and committed an irregularity by failing to submit the name of the University of Redlands President for approval by the 224th General Assembly, to report the names of the Redlands trustees, and to solicit and submit a report from SFTS.
- g. That COTE erred and committed an irregularity by drafting and submitting its submissions to G.A 224 without the participation of the Institutional Representative of SFTS.
- h. That COTE erred and committed an irregularity by submitting a report and recommendation to the General Assembly that stated that SFTS was no longer a member of COTE or a PCUSA Seminary, and asking the GA to approve the report and recommendation, rather than by preserving SFTS's status as a member of COTE and as a PCUSA Seminary, and presenting a case asking the GA to determine for itself whether SFTS had ceased to be a PCUSA Seminary with the right of SFTS to present a dissenting point of view.
- i. That COTE's submissions to G.A. 224 are improper and invalid because COTE drafted and submitted them without the participation of the Institutional Representative of SFTS, and because they represent that SFTS is not currently an Institutional Member of SFTS.

- j. That COTE and the Foundation erred and committed an irregularity by applying standards to determine whether SFTS was a PCUSA Seminary that have not been approved by the General Assembly.
 - k. That the Foundation erred and committed an irregularity by assuming that SFTS's status as a Presbyterian Church (U.S.A.) theological seminary has been terminated.
 - l. That the Foundation erred and committed an irregularity by withholding funds from SFTS that the Foundation holds and manages from gifts, trusts, funds and bequests for the benefit of SFTS.
 - m. That COTE and the Foundation erred and committed an irregularity by failing to distribute to SFTS its share of the 1% Plan.
 - n. That the Foundation erred and committed an irregularity by threatening to file suit against the University of Redlands and SFTS in civil court to establish that SFTS is no longer entitled to distributions from the Foundation.
243. Complainants further request that this Council through its Commission ORDER:
- a. That a trial shall be held on the allegations raised by the instant Complaint.
 - b. That unless and until SFTS's status as a Presbyterian Church (U.S.A.) theological seminary has been terminated by action of the General Assembly, COTE shall continue to include SFTS and its Institutional Representative with full voice and vote in all of its activities.
 - c. That COTE shall withdraw its summary and recommendation to GA224, and that the GA Entities shall withdraw them from the websites of the PCUSA, shall cease to circulate them, and shall remove them from the agenda of the 224th General Assembly.
 - d. That COTE and the Foundation shall forthwith pay to SFTS the arrears in the 1% Plan to which it is entitled, and that they shall continue to pay SFTS its full share of such funds on schedule so long as SFTS's status as a Presbyterian Church (U.S.A.) theological seminary continues.
 - e. That the Foundation shall forthwith pay to SFTS the arrears in all gifts, trusts, funds and bequests that it formerly paid to SFTS, but withheld due to its improper assumption that SFTS is no longer a Presbyterian Church (U.S.A.) theological seminary, and that it shall continue to pay SFTS on schedule its full share of such funds, and of all new gifts, trusts, funds and bequests that it shall receive, so long as SFTS's status as a Presbyterian Church (U.S.A.) theological seminary continues.

- f. That all Respondents will cease to publish any statements to the effect that SFTS is not a PCUSA Seminary, so long as SFTS's status as a Presbyterian Church (U.S.A.) theological seminary continues.

Respectfully submitted,

/s/ Jonathan Robert Nelson

Ruling Elder Jonathan Robert Nelson
Counsel for Complainants

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INDEX OF APPENDED EXHIBITS

EXHIBIT #	DESCRIPTION
1	Resolution of session of Hermon Presbyterian Church
2	Resolution of session of First Presbyterian Church, Mattoon, Illinois
3	Resolution of session of First Presbyterian Church, Vallejo, California
4	2013 Manual, Committee on Theological Education
5	Entities nominating information page, 223 rd General Assembly
6	SFTS's certificate of incorporation, with amendments,
7	Articles of Agreement, UPC and PCUS Reunion
8	Minutes of the 198th General Assembly (1986), Report of the Special Committee on Theological Institutions
9	1993 Report of the Special Committee to Study Theological Institutions
10	COTE Agency Summary submitted to 2018 General Assembly
11	Kuncl/Childers Letter dated December 10, 2019
12	May 17-18 summary provided by Dr. James McDonald to SFTS trustees
10	Agreement in Principle
11	Letter dated March 21, 2019 from Dr. Jeffrey Bullock
12	Letter dated March 25, 2019 from Dr. James McDonald
13	Agreement in Principle
14	Letter dated March 21, 2019 from Jeffrey Bullock
15	Letter dated March 25, 2019 from James McDonald
16	Letter dated May 20, 2019 from Sandra Tracy
17	Agreement of Merger between SFTS and Redlands
18	Letter dated July 10, 2019 from Sandra Tracy
19	Letter dated August 2, 2019 from Ralph Kuncl
20	Letter dated August 23, 2019 From McDonald/Childers
21	Letter dated September 23, 2019 from Sandra Tracy

22	Letter dated October 2, 2019 from Sandra Tracy
23	Letter dated November 13, 2019 From Jana Childers
24	Letter dated December 10, 2019 from Jana Childers/ Ralph Kuncel
25	COTE Summary for GA 224
26	COTE Recommendations for GA 224
27	Letter dated January 21, 2020 from Sandra Tracy
28	Letter dated February 5, 2020 from lawyer for Presbyterian Foundation
29	Letter dated February 17, 2020 from Brent Geraty, General Counsel of University of Redlands
30	Letter dated March 3, 2020 from Dr. Sandra Tracy
31	Letter dated March 24, 2020 from Dr. Sandra Tracy
32	Letter dated March 27, 2020 from Jana Childers
33	Letter dated March 31, 2020 from Jana Childers
34	PMA web list of Presbyterian theological schools

CERTIFICATION OF SERVICE
OF COMPLAINT, D-6.0301f

I, Jonathan Robert Nelson, do hereby certify that, on May 16, 2020, I served a copy of the above-referenced complaint, by email, upon the following:

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Dated: New York, New York
May 16, 2020

/s/ Jonathan Robert Nelson
Ruling Elder Jonathan Robert Nelson
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CERTIFICATION OF SERVICE
OF COMPLAINT, D-6.0301f

I, Jonathan Robert Nelson, do hereby certify that, on May __, 2020, I served a copy of the above-referenced complaint by first class mail upon the following:

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May __, 2020

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