

1 **OVERTURE 7** from Nashville Presbytery (to CCB and OC)  
2 “Amend *BCO* 42-6 Regarding Suspending Judgment during Appeal”  
3

4 **Whereas**, it was proposed in Overture 21 to the 48<sup>th</sup> General Assembly (and referred to the  
5 49<sup>th</sup> General Assembly) that *BCO* 42-6 be amended by requiring a two-thirds (2/3)  
6 vote by the court of original jurisdiction to prevent an appellant from approaching the  
7 Lord’s Table and, if an officer, to prevent him from exercising some or all of his  
8 official functions until the case is decided by the higher court; and  
9

10 **Whereas**, the vote count for passing a motion by a supermajority of two-thirds (2/3) is, for  
11 example, 4 votes in the affirmative on a Session with 5 members voting and 20  
12 presbyters voting in the affirmative in a court with 30 members voting; and  
13

14 **Whereas**, requiring a supermajority two-thirds (2/3) vote would increase the power of the  
15 higher court in the appeals process and downgrade the authority of the lower court  
16 which is not in keeping with grass roots Presbyterianism; and  
17

18 **Whereas**, the constitutional documents within the historical stream of our denominational  
19 polity starting with the 1822 PCUSA *Book of Discipline* required that the judicial  
20 sentence of suspension, excommunication, or deposition from office “shall be  
21 considered as in force until the appeal shall be issued” or decided; and similarly, the  
22 1879 PCUS *Rules of Discipline* required that the judicial sentence of suspension,  
23 excommunication, or deposition “shall nevertheless be considered as in force until the  
24 appeal shall be issued” or decided; and  
25

26 **Whereas**, the 19<sup>th</sup> century minister and *BCO* scholar, F. P. Ramsay wrote in his *Exposition of*  
27 *the Book of Church Order* (1898, pp. 251-252) about appeals in the case of suspension,  
28 excommunication, or deposition and how the judgment was considered in force during  
29 appeal:

30 “That is, one on whom such sentence has been passed, and who has  
31 arrested the pronouncing of it by his appeal, is bound to abstain from  
32 the sacraments or from the exercise of his office until the superior  
33 court passes upon his appeal; and not to submit himself by thus  
34 abstaining would itself be an offence worthy of the highest censure,  
35 if wittingly committed. *If one could arrest the force of a judgment,*  
36 *as well as the pronouncing of sentence, by appeal, the grossest*  
37 *offender could not be reached until after most hurtful delay”*  
38 [emphasis added]; and  
39

40 **Whereas**, it was not until the 1925 PCUS *BCO* that constitutional language was introduced  
41 giving the court the option to suspend the force of the judicial sentence of suspension,  
42 excommunication, or deposition from office until the case was finally decided; and  
43

1 **Whereas**, the 24<sup>th</sup> General Assembly changed *BCO* 42-6 significantly by removing the  
2 language identifying the censures of suspension, excommunication, and deposition as  
3 the more serious censures under which the judicial sentence may be kept in force  
4 during appeal while adding the explanation that keeping the judgment in force “shall  
5 never be done by way of censure;” and  
6

7 **Whereas**, F. P. Ramsay wrote, “the Rules of Discipline assume that, while a court may err, it  
8 will more probably be right than the party that objects to its action” (*Exposition of the*  
9 *Book of Church Order*, 1898, p. 247); and  
10

11 **Whereas**, the church Session—in the case of a Pastor inflicted with the censure of suspension,  
12 excommunication, or deposition who appealed the censure, if not prevented by their  
13 Presbytery—would not be able to restrict the Pastor from preaching and teaching  
14 (*BCO* 20-1) or moderating the church Session (*BCO* 10-3; 12-2) except by pastoral  
15 dissolution (*BCO* 23-1). See Committee of Commissioners on Judicial Business,  
16 *M17GA* (1989), 17-82.III, item 34, p. 167; and Report of the Committee on  
17 Constitutional Business, *M18GA* (1990), Appendix A, Attachment 1, III.B.4, p. 204;  
18 and  
19

20 **Whereas**, requiring a two-thirds (2/3) supermajority vote for an intermediary step in the  
21 judicial process while requiring only a majority vote for the judgement is incongruous  
22 with the relative significance of these decisions; and  
23

24 **Whereas**, ensuring proper adherence to Presbyterian polity is best achieved by godly  
25 presbyters carefully applying church law in its courts; and  
26

27 **Whereas**, when a court considers preventing an appellant from approaching the Lord’s Table  
28 and/or from exercising his official functions it may be most appropriate when the  
29 censure inflicted was suspension from the sacraments and/or office, excommunication,  
30 or deposition from office; and  
31

32 **Whereas**, adding instructive information in our *BCO* to the end that church courts should  
33 show “prudence and wisdom” when making decisions under *BCO* 42-6 is a better  
34 method of applying historic Presbyterian judicatory principles than constructing  
35 requirements of a supermajority vote for situations in which the requirement of a  
36 majority vote has stood the test of time in our church courts for 200 years. The terms  
37 “prudence” and “wisdom” used in the proposed revisions come from the use of the  
38 words concerning decisions of church courts, presbyters, pastors, and elders in the  
39 *Preliminary Principles*, *BCO* 11-2, *BCO* 56-4, and *BCO* 57-2.  
40

41 **Therefore, be it resolved** that *Book of Church Order* 42-6 be amended as follows  
42 (underlining for additions, ~~strike through~~ for deletions):  
43

44 42-6. Notice of appeal shall have the effect of suspending the judgment of the lower  
45 court until the case has been finally decided in the higher court. However, the court of

1 original jurisdiction may, for sufficient reasons duly recorded, prevent the appellant  
2 from approaching the Lord's Table, and if an officer, prevent him from exercising  
3 some or all his official functions, until the case is finally decided (cf. *BCO* 31-10;  
4 33-4). Preventing the appellant from approaching the Lord's Table and/or from  
5 exercising his official functions may be most appropriate when the censure is  
6 suspension from the sacraments and/or office, excommunication, or deposition from  
7 office. The court of original jurisdiction should show prudence and wisdom in taking  
8 this action, and ~~T~~this shall never be done in the way of censure.  
9

10 So that *BCO* 42-6 as amended would read:

11  
12 42-6. Notice of appeal shall have the effect of suspending the judgment of the lower  
13 court until the case has been finally decided in the higher court. However, the court of  
14 original jurisdiction may, for sufficient reasons duly recorded, prevent the appellant  
15 from approaching the Lord's Table, and if an officer, prevent him from exercising  
16 some or all his official functions, until the case is finally decided (cf. *BCO* 31-10;  
17 33-4). Preventing the appellant from approaching the Lord's Table and/or from  
18 exercising his official functions may be most appropriate when the censure is  
19 suspension from the sacraments and/or office, excommunication, or deposition from  
20 office. The court of original jurisdiction should show prudence and wisdom in taking  
21 this action, and this shall never be done in the way of censure.  
22

23 *Adopted by the Nashville Presbytery at its 109th meeting on February 8, 2022*

24 *Attested by R. Neil Spence, stated clerk*