



ATTORNEYS AT LAW

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February 21, 2021

Executive Committee Trustees

Re: February 19th Letter from Guenther and Jordan

Dear Executive Committee Trustees:

I represent The Southwestern Baptist Theological Seminary (“Southwestern Seminary”). Last Friday, you received a letter from attorneys James P. Guenther and James D. Jordan. The letter purports to provide a brief overview of recent interactions between my client and the Officers of the Southern Baptist Convention Executive Committee and their legal counsel. Regrettably, the February 19th letter is incomplete. It omitted key facts of this matter and misrepresented the actions of Southwestern Seminary and the Executive Committee’s Officers. As Executive Committee trustees, you deserve to know a fuller, more complete picture about this matter and the surrounding issues.

Last fall, Southwestern Seminary was forced to initiate legal action against the Harold E. Riley Foundation because certain individuals had engaged in an improper effort to remove Southwestern Seminary and Baylor University as the charitable members of the Foundation. Southwestern and Baylor filed suit in order to ensure that Mr. Riley’s donative intent was fulfilled through the Foundation he had established. The individuals involved on the opposing side of that litigation included then-Southwestern Seminary trustees Charles Hott and Thomas Pulley, along with Mike Hughes and D. August “Augie” Boto, former Executive Committee general counsel, vice president, and interim president. Allegations against the individuals included breach of fiduciary duty, self-dealing, and misuse of charitable funds. The allegations were serious enough to motivate the Attorney General of the State of Texas to directly intervene in the case on the side of Southwestern Seminary and Baylor University, an exceptionally rare event. In an effort to maintain the integrity of the Seminary’s board in light of the legal action taken, the officers of Southwestern Seminary’s board took action to suspend the rights and privileges of Charles Hott and Thomas Pulley pending a full investigation.

That suspension is the focal point of the February 19th letter. But the suspension cannot be divorced from the underlying acts of those associated with the Harold E. Riley Foundation—acts the Seminary believed and alleged were designed to injure it (and Baylor). Accordingly, there is no question that the officers of Southwestern Seminary’s board had the right—if not the duty—to

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suspend Charles Hott and Thomas Pulley pending investigation. Indeed, the Seminary's Amended and Restated Bylaws unambiguously and broadly provide that, “[a]ll matters of alleged trustee misconduct shall be considered in an appropriate manner, as prescribed by a majority of the elected trustee officers, within the trustee body. If not resolved therein, the matter shall be referred to the Convention for disposition in accordance with Article VIII of the Seminary’s Articles of Incorporation.” [Article II, Section 12 (emphasis added)]. Moreover, the Seminary’s Amended and Restated Bylaws provide that Robert’s Rules of Order Newly Revised shall apply as long as they are not inconsistent with the Articles of Incorporation or Bylaws. [Article I, Section 6]. Robert’s Rules of Order 63 provides, in general, that if the majority of the elected trustee officers vote to form a committee and further determine that a trial by the committee is warranted, then at that point the trustee accused of misconduct is deprived of all rights of membership until the matter is disposed of. That is precisely what occurred here. Thus, the Seminary’s actions were entirely legitimate and based on the governing documents applicable to the Seminary.

During the course of the underlying lawsuit, it is critical to note that Southwestern Seminary discovered that Mr. Boto was communicating with Mr. Guenther and Mr. Jordan to advocate the very position that Mr. Guenther and Mr. Jordan then communicated to the Seminary and is now communicating to the Executive Committee Trustees. On that point, Mr. Hott sat for his deposition on November 17th. Under oath, Mr. Hott admitted that he knew of conversations Mr. Boto had with Convention lawyers about his status as a trustee. Despite Mr. Boto’s many years of previous employment by the Executive Committee, he is not a neutral actor in this case. Rather, Mr. Boto served as a trustee of the Harold E. Riley Foundation at the time of the legal matter; he actively participated in attempts to withhold funds from Southwestern Seminary and was a party to the underlying litigation. It is deeply troubling, if not an outright conflict of interest, that Convention lawyers appear to have been consulting with Mr. Boto, who was involved as an opposing party against a Convention entity in a serious matter under active litigation.

Southwestern Seminary and Baylor University, along with the Texas Attorney General, presented their case against the Foundation and these individuals as part of a temporary injunction hearing held the week of January 25, 2021. The following represents a small sampling of the evidence that was presented in the week-long temporary injunction hearing:

- Mr. Boto, Mr. Hott, and the other trustees amended the Foundation’s Bylaws in order to compensate themselves for their service as nonprofit trustees.
- Since August 2020, nearly \$4 million in funds, intended to benefit Baylor and Southwestern, were spent on legal fees in an effort to seat themselves on the board of directors of Citizens, Inc., the publicly traded insurance company founded by the late Mr. Riley.
- Mr. Hott, as the Chief Investment Officer for the Foundation, actively loaned out shares of the common stock in the company for which the Foundation had a controlling interest. The purpose of loaning out these shares was for short sellers to borrow these shares, thus driving down the value of the share price.

- Mr. Boto worked directly with Dr. Paige Patterson in 2017 to carry out a plan with the Committee on Nominations to get Charles Hott on the Southwestern Seminary board of trustees. Within a month of his election to the Seminary's board, Dorothy Patterson recommended Mr. Hott to serve as a trustee for the Harold E. Riley Foundation.

Not surprising, these and other facts led to an overwhelming victory for Southwestern Seminary and Baylor University. On February 8, 2021, the Seminary announced that it, along with Baylor University, had entered into a settlement agreement with the Harold E. Riley Foundation and its current trustees and officers, including Mr. Boto and Mr. Hott. The settlement agreement returned full control of the Foundation to Southwestern and Baylor. Mr. Boto and Mr. Hott agreed to resign all positions they had with the Harold E. Riley Foundation. Furthermore, given the staggering evidence presented during the injunction hearing, Mr. Boto and Mr. Hott agreed “not to seek or accept any position or employment from or appointment in any fiduciary capacity, whether as an officer, director, or trustee at any Texas public and/or private nonprofit charitable organization,” as well as all Southern Baptist Convention entities. This was a decisive victory for both Southwestern Seminary and Baylor University. It also represents what is believed to be the first time in Southern Baptist history where individuals have been legally prohibited from serving as entity employees or trustees.

In specific response to the February 19th letter you received this weekend, I have provided the following key points about the Seminary's actions and its response to the Executive Committee:

1. Southwestern Seminary did not remove any trustees; instead, it acted in accordance with its governing documents and parliamentary procedure to address trustee misconduct.

A basic principle of board governance is that a board must have the ability to address issues of misconduct in order to maintain the integrity of the board and protect the organization. While Convention lawyers have repeatedly referred to the Seminary's actions as “removal” of trustees, this claim simply has no basis in fact. “Removal from office” and “suspension of rights” are two totally separate and distinguishable acts. No prohibition exists in any governing documents of either the Convention or the Seminary that prohibits the Board Officers of the Seminary from investigating allegations of Seminary trustee misconduct. To the contrary, the Bylaws of the Seminary specifically vest the duly elected Officers of the Board of Trustees with broad authority to investigate a Seminary trustee. Neither the Executive Committee, nor the SBC as Sole Member, has any authority over the Bylaws of the Seminary. The power to adopt bylaws is vested by the Southern Baptist Convention in the Seminary's Board of Trustees (Article VI, Section 7). To attempt to prohibit the Seminary from following its own bylaws would turn SBC governance on its head and in effect turn the SBC Executive Committee and its Officers into an unauthorized “super board”—one that will not withstand any level of scrutiny before the Convention. The seriousness of the claims of breach of fiduciary duty here were such that inaction by the Board Officers of the Seminary to protect the integrity of the Seminary's governing board and its work would have been a dereliction of duty, not simply as elected SBC entity trustees, but as legal fiduciaries of a Texas nonprofit corporation.

2. The Executive Committee does not have the right to act on behalf of the Convention as Sole Member. When the entities amended their governing documents roughly twenty years ago to include the Convention as the sole member of the entities, it was done so on a clear and repeated understanding that the Convention—and the Convention alone—can exercise the rights of sole membership. The Articles of Incorporation of the Seminary make it clear that it is the Convention, a Georgia nonprofit corporation, which is the sole member of the seminary corporation. It is not the SBC Executive Committee, a Tennessee corporation. The Seminary does not dispute the role of the Executive Committee “to act for the Convention ad interim in all matters not otherwise provided for” (SBC Bylaw 18.E(1)). Our point of disagreement is the role of the SBC Executive Committee in attempting to exercise this right on behalf of the Convention, particularly given that governance of the Seminary is “otherwise provided for” when the Convention approved the Seminary’s Articles of Incorporation vesting governance in the Board of Trustees elected by the Convention in all matters except for those powers which are enumerated and reserved for the Convention itself. Any demand for action, while invoking the sole member rights of the Convention, is an attempt to exercise those rights; it is not merely an attempt to guard those rights. Put succinctly, sole membership has nothing to do with the Executive Committee, which itself has the Southern Baptist Convention as its sole member. The only two parties in the Seminary’s sole membership relationship to the Convention are the messengers, acting for the Convention, and the Seminary’s Board of Trustees. The action of the Officers of the Executive Committee in attempting to exercise the sole member rights of the Convention contradicts precedent and previous public arguments made by these very same Convention and Executive Committee lawyers. Furthermore, this type of overreach undermines the autonomy and authority of local churches by depriving messengers, and ultimately Southern Baptist churches, of their exclusive rights as the sole member.

3. The right of the Seminary’s board to govern itself is not just a matter of control, it is a foundational principle in accreditation standards. The Seminary embraces the role of the Convention as the sole member, and the Seminary understands its responsibility to the churches of the Convention. Matters related to board governance and the integrity of its operations are the exclusive province of the Seminary’s Board of Trustees, however. This prerogative is mandated by the accrediting organizations that accredit the six Southern Baptist seminaries. In the case of the Southern Association of Colleges and Schools Commission of Colleges, regional accreditor for Southwestern Seminary and three sister SBC seminaries, the standards for accreditation declare that the governing board “defines and addresses potential conflict of interest for its members,” “has appropriate and fair processes for the dismissal of a board member,” and “protects the institution from undue influence by external persons or bodies.” The governance structure in which Southwestern Seminary operates with the Convention as the sole member is perfectly acceptable under these standards. If, however, an entity other than the Convention can attempt to invoke the rights of the sole member, we will face a serious threat to our ability to maintain compliance and demonstrate conformity with accreditation standards.

To summarize, the officers of the Southwestern Seminary board took action that it deemed necessary in light of the acts of Charles Hott, Thomas Pulley, and others. The suspensions of

Messrs. Hott and Pulley were fully authorized by the Seminary's Bylaws in connection with allegations of trustee misconduct. The suspensions were in no way contrary to any bylaws of the Southern Baptist Convention. Even in hindsight, the board officers' actions were shown to be correct and appropriate. The evidence in support of the Seminary and Baylor's lawsuit proved to be overwhelming. It was so overwhelming that the Attorney General intervened in support of the Seminary and Baylor. And it was so overwhelming that the Defendants in that case, including Messrs. Hott and Boto, completely capitulated during the temporary injunction proceedings. Frankly, the board officers should be applauded for taking decisive action to protect a member institution and its board, even in the face of calls by counsel for the SBC Executive Committee to reinstate individuals who clearly breached fiduciary duties owed to the Seminary.

While it is impossible to provide the full details of this matter in a short summary, you deserve to know the arguments that have been presented by the Seminary in response to the Executive Committee Officers' demands for action over the past several months. The Seminary's unwillingness to comply with the demands made by the Officers of the Executive Committee is not out of a desire to subvert the SBC's system of governance, but out of a principled commitment to adhere to that system. For your benefit, I have attached to this email all correspondence on this matter from October 16, 2020, until the present. If you have any questions, please do not hesitate to contact me.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Michael D. Anderson

Michael D. Anderson

Subject: Matters re: SWBTS Board

Date: Friday, October 16, 2020 at 10:48:15 AM Central Daylight Time

From: William Townes

To: Colby Adams

Dr. Greenway,

Dr. Floyd asked me to forward this communication to you that he received from our SBC Attorneys regarding a SWBTS trustee matter that they were made aware of for your awareness and consideration.

Bill

William (Bill) E. Townes, Jr. CPA/MBA
Chief Financial Officer
Southern Baptist Convention Executive Committee
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Dr. Floyd:

In our capacity as general counsel for the Convention, we received an email from Charles Hott, a trustee of SWBTS. Mr. Hott enclosed an email dated October 13, 2020, which appears to be from Phillip Lavant, chair of the Seminary's board. In the email Mr. Lavant declined Mr. Hott's request for materials pertaining to a meeting of the board scheduled for this coming Monday, October 19. Mr. Lavant advised Mr. Hott that Mr. Hott is the subject of an investigation authorized by the board's officers into allegations of trustee misconduct, and the investigation has led the officers to conclude a trial of Mr. Hott is warranted. Mr. Lavant stated that Mr. Hott has been "presently deprived " of his "rights and privileges of a trustee until the allegations of trustee misconduct are resolved." Mr. Lavant added: "This procedure is in keeping with the Seminary's Bylaws and Robert's Rules of Order. . . ."

If these communications are factual, we believe the Seminary board's position defeats the rights of the SBC to determine the composition of the Seminary's board. It would also violate Mr. Hott's rights as a trustee under Texas law.

Robert's Rules of Order does not contemplate the investigation of a director of a corporation and sets out no procedure for such an investigation. We see one provision in the Seminary's bylaws relevant to this subject. It

provides:

12. Trustee Interaction: All matters of alleged trustee misconduct shall be considered in an appropriate manner, as prescribed by a majority of the elected trustee officers, within the trustee body. If not resolved therein, the matter shall be referred to the Convention for disposition in accordance with Article VIII of the Seminary's Articles of Incorporation.

This bylaw does not, and in our opinion could not, authorize the Seminary's board to suspend a trustee's rights of office.

We have no knowledge regarding the misconduct allegations against Mr. Hott beyond what may be contained in the Seminary's petition against the Riley Foundation. We suspect they are related to the matters involved in the Seminary's suit. Mr. Hott believes the charge against him is that he violated his fiduciary duty to the Seminary, a charge which he flatly denies.

Mr. Hott reports that two other Seminary trustees (who are former trustees of the Riley Foundation) have also been denied their trustee rights. He claims Tom Pulley has been denied access to Monday's meeting unless and until Mr. Pulley signs an agreement to recuse himself from the board's discussions of the Riley Foundation matter. Mr. Hott says Dr. Randy Martin agreed to recuse himself from any such discussions during the Monday meeting, and presumably will be allowed access to the remainder of the board meeting.

We have no knowledge of the truth of these claims. We know that under Texas law a trustee has the right to participate in meetings of the board as long as he holds office.

We understand the Seminary's board will be in a difficult position if it needs to discuss matters, including pending litigation, that may touch on Mr. Hott's alleged misconduct. And we can imagine the Seminary's board may find it difficult to discuss confidential matters generally if it believes Mr. Hott, Mr. Pulley or Dr. Martin cannot be trusted.

However, it is our opinion that such difficulties cannot be solved by the officers of the board simply depriving a trustee of rights which the Convention vested in him by appointing him as a trustee. To do so would be tantamount to remove him from office, and neither the board nor its officers have authority to do that.

We have no knowledge about or opinion concerning whether Mr. Hott should be removed from office as a trustee of SWBTS. We know the Convention has appointed him to serve on that board through 2022. We are of the opinion that only the Southern Baptist Convention can remove him from that office prior to the expiration of that term. If the board of any entity can exclude a Convention-elected trustee from participating in the board's meetings, then the right of the Convention to determine the composition of the board is compromised.

It is our opinion that the SBC has the right to insist upon any trustee being allowed to serve in the office to which the Convention appointed him. Since the Convention is not in session and only the Executive

Committee can act for the Convention ad interim, only the Executive Committee has standing to enforce the Convention's right for Mr. Hott to participate in the upcoming meeting of the Seminary's board.

We recommend that the EC communicate to the Seminary's board chairman or President Greenway on this issue to help the board and its officers recognize it would be inappropriate for them to ignore the Convention's appointment of these trustees by denying them their rights of office. We believe the Seminary's board is obliged to work through what its officers apparently, and perhaps quite correctly, perceive to be a difficult issue for the board in a less draconian manner. While there may be other options, one would be for the board to form a committee on which Mr. Hott and the other two trustees would not serve and letting that committee deal with litigation and any other matters which might need to be handled in confidence.

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October 19, 2020

Via Electronic Mail

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James D. Jordan (JDJordan@GJPLaw.com)
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101 5th Avenue West, Suite 102
Springfield, TN 37172

Re: Southwestern Baptist Theological Seminary

Counselors:

I represent Southwestern Baptist Theological Seminary (“the Seminary”). I am in receipt of an email the two of you authored that was subsequently forwarded to the Office of the President for the Seminary. Your email concerns the Seminary’s current handling of allegations of trustee misconduct. The purpose of my letter is to explain the basis for the Seminary’s actions.

As you know, there is presently an allegation of trustee misconduct lodged against a Seminary trustee. In response thereto, the Seminary’s elected trustee officers voted to establish a committee to investigate the allegation of misconduct, to determine whether the allegations warrant a trial, and to report to the entire Board of Trustees the results of the investigation and, if warranted, a trial. The acts of the Seminary’s elected trustee officers are entirely consistent with the governing documents of the Southern Baptist Convention and the Seminary, as detailed herein.

At the outset, the Seminary recognizes that the Charter of the Southern Baptist Convention provides the framework for the selection of trustees to the Seminary. The Charter, however, does not mention or otherwise provide a procedure for investigating or removing a trustee of the Seminary in connection with allegations of misconduct. Instead, all discussion of the handling of allegations of trustee misconduct are set forth in the Amended and Restated Bylaws of the Seminary.

In that regard, the Amended and Restated Bylaws broadly provide that, “[a]ll matters of **alleged trustee misconduct shall be considered in an appropriate manner, as prescribed by a majority of the elected trustee officers, within the trustee body.** If not resolved therein, the

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matter shall be referred to the Convention for disposition in accordance with Article VIII of the Seminary's Articles of Incorporation." [Article II, Section 12 (emphasis added)]. Accordingly, the elected trustee officers have broad power to vote on and establish a framework for investigating allegations of trustee misconduct and determining whether to recommend removal.

Moreover, the Amended and Restated Bylaws of the Seminary provide that *Robert's Rules of Order Newly Revised* shall apply as long as they are not inconsistent with the Articles of Incorporation or Bylaws. [Article I, Section 6]. *Robert's Rules of Order* 75 provides, in general, that if the majority of the elected trustee officers vote to form a committee and further determine that a trial by the committee is warranted, then at that point the Trustee accused of misconduct is deprived of all rights of membership until the matter is disposed of. This is precisely what has occurred here.

Based on the foregoing broad grant of authority, the procedure adopted by the elected trustee officers pertaining to the present allegation of trustee misconduct is consistent with the Amended and Restated Bylaws of the Seminary and is not inconsistent with any procedure set forth in the Charter of the Southern Baptist Convention.

Feel free to contact me should you have any questions.

Sincerely,

/s/ Michael D. Anderson

Michael D. Anderson

GUENTHER, JORDAN & PRICE

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November 16, 2020

JDJordan@GJPLaw.com

Via Email to:

Mr. Michael D. Anderson (michael.anderson@kellyhart.com)
Kelly Hart
201 Main Street
Suite 2500
Fort Worth, TX 76102

Re: Southwestern Baptist Theological Seminary
of the Southern Baptist Convention

Dear Mr. Anderson:

We are writing on behalf of the Officers of the Board ("Officers committee"), a committee of the Executive Committee of the Southern Baptist Convention which functions much like an executive committee. The Officers committee is authorized to exercise the power of the board of trustees in the interim between meetings of the Executive Committee.

The Officers committee has adopted an action calling on Southwestern Seminary either to rescind its action "suspending" two directors of the Seminary or to acknowledge that the action was null and void. Southwestern's action violates the fundamental right of the Convention to determine the makeup of the entities' boards. The significance of Southwestern's unprecedented action is difficult to overstate.

Southwestern's suspension of two members of its board is equivalent to removing the trustees from office. The Seminary has deprived them of the right to attend, participate in, and vote in meetings of the Board. They are excluded from communications to Board members. Although Southwestern has euphemistically referred to this as a suspension, there is no such status under Texas law. The law has no provision which permits a corporate director to be deprived of rights and duties of office except removal.

The right of the Convention to determine the membership of the boards of its various entities and of the Executive Committee is well-established both in the law and in SBC polity. The Convention has enjoyed this right since the very beginning of the Convention's history. Without the power to control the membership of the entities' boards, the SBC would have no means to ensure that every entity stays connected to the Convention, true to its ministries, and responsive to the desires of the messengers.

This issue was so significant that in the late 1990's the Convention requested each entity of the Convention to amend its governing documents to make the SBC corporation the sole member of the entity corporation. In becoming the member of each entity, the Convention cemented its relationships with the entities. Relationships which may have been grounded more in tradition and religious polity became relationships based on state law.

As the sole member of Southwestern, the Convention is not just an interested observer in Southwestern's governance. The Convention has a role to play in Southwestern's governance, a role that is described in the Convention's governing documents but codified by Texas law. The Convention was very clear about its reasons for embracing the concept of membership, stating that its reasons included (1) ensuring that the corporate directors would always be appointed by the SBC and the SBC alone; and (2) clarifying that only the SBC would have the right to remove a corporate director which the SBC had placed on the board of an entity.

As part of this process, in its 1999 annual meeting the SBC took the following action:

45. Neal H. Walls (GA) moved the adoption of Executive Committee Recommendation 14, and it was adopted.

Recommendation 14: Restatement of the Articles of Incorporation of The Southwestern Baptist Theological Seminary. The Executive Committee of the Southern Baptist Convention recommends that the Southern Baptist Convention approve the Restated Articles of Incorporation of The Southwestern Baptist Theological Seminary, which contain new language making the Southern Baptist Convention the sole member of The Southwestern Baptist Theological Seminary *and clarifying the Convention's right to trustee removal*. . . .

As a result of these amendments, Southwestern's Articles of Incorporation today include the following key provisions:

The qualifications and term of office of a trustee, the number of trustees constituting the Board of Trustees, and any increase or decrease from time to time of the number of trustees, shall be determined by the Southern Baptist Convention according to the provisions of the Constitution of the Convention. *The election of trustees shall occur by the act of the Southern Baptist Convention.* (Art. VII, emphasis added)

The Southern Baptist Convention may remove a trustee prior to the expiration of the trustee's term for any reason deemed sufficient to the Convention, the election and removal of trustees by the Convention being religious acts within the scope of the free exercise of the Convention's religion under the Constitution of the United States. (Art. VIII, emphasis added)

The Convention's sole right to remove a trustee of Southwestern has always been a matter of SBC polity. Since 1999, that right is also assured by its status as the sole member under Southwestern's governing documents and Texas law.

Not only did Southwestern undertake to violate this right reserved to the Convention, but Southwestern stated publicly that the action was "not inconsistent with the Southern Baptist Convention's governing documents" despite being advised to the contrary prior to the action. On October 16, Dr. Ronnie Floyd called Dr. Adam Greenway to express his concern and call his attention to a memorandum from us

making it clear that the Seminary would violate the SBC's rights if the trustees were removed.

You have defended the Seminary's action by saying the board acted properly pursuant to its bylaws and *Robert's Rules of Order*. We find that argument without merit.

First, as stated above, there is no such legal status as "suspended" as applied to the director of a corporation. A person is a director, with all the rights and privileges associated with that office, until the director's term expires or the director dies, resigns or is properly removed from the board.

Second, when Texas law is read together with the Seminary's articles of incorporation, the law and the articles vest the right to remove a trustee in the SBC. Tex. Bus. Orgs. Code Ann. § 22.211 reads:

Removal (a) A director of a corporation may be removed from office under any procedure provided by the certificate of formation or bylaws of the corporation.
(b) In the absence of a provision for removal in the certificate of formation or bylaws, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director [that is to say, the SBC].

Southwestern's articles of incorporation state that its directors may be removed from office only "by the act of the Southern Baptist Convention." (Article VIII) Because removal is an act of the Convention, the choice of what process the Convention will employ in taking that act is a Convention decision, not a decision for Southwestern. (As a side note, several members of the Officers committee speculated about the legal validity of actions taken by Southwestern's Board when some directors do not have notice of the meeting and are excluded from participation.)

Third, the Seminary's bylaws agree. If Southwestern's officers cannot, through a process (which must obviously be a legal process) resolve allegations of trustee misconduct, then the matter "shall be referred to the Convention for disposition in accordance with Article VIII of the Seminary's Articles of Incorporation."

Finally, the reliance on *Robert's Rules of Order* is wholly misplaced. It is the Seminary's least authoritative governing document, trumped by the law, the articles of incorporation, and the bylaws of the corporation, in that order. Both the Seminary's bylaws and *Robert's* itself recognize the subordinate status of parliamentary rules. The bylaws state:

Parliamentary Authority: The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Seminary in all cases to which they are applicable and in which they are not inconsistent with the Seminary's Articles of Incorporation and these bylaws.

Robert's says:

In an incorporated association the corporate charter [that is, Articles of Incorporation or Certificate of Formation] supersedes all its other rules, none of which can legally contain anything in conflict with the charter. Nothing in the charter can be suspended by the

Mr. Michael D. Anderson
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organization itself unless the charter or applicable law so provides. *Robert's*, 2.7

(T)he actions of any deliberative body are also subject to applicable procedural rules prescribe by local, state or national law and would be null and void if it is in violation of such laws. *Robert's* 1.5

In any event, Section 63 of *Robert's*, the section which you cited as your justification for the board's action, does not authorize the Seminary's board to remove (or even to "suspend") a director. Section 63 is purely procedural. It outlines the process for an investigation and trial *while accepting as given that the assembly has the right to determine who will and will not be members or officers*. But, the right to determine who will and will not be Southwestern's directors belongs to the Convention, not the board.

. . . .

The right to place directors on the board of an entity with the assurance that those directors will be able to exercise their rights as directors is so fundamental that the Officers committee is of the opinion that the Convention cannot permit the Seminary's board to violate that crucial right. While we understand the issues for Southwestern are significant in this individual context, the Executive Committee is required to look beyond the "micro" perspective of a single dispute to the broader "macro" issues and precedents at stake for SBC governance and structure. The Officers committee expects the Seminary to reverse its removal of the two directors no later than December 15, 2020, in whatever manner the Seminary may choose, and to announce that action through Baptist Press. The committee's goal is to resolve this crisis without a public confrontation.

If the Seminary's board believes these two trustees should be removed from office, the Seminary should make that request to the messengers in the 2021 annual meeting of the Convention. In the meantime, the Seminary's board should respect the Convention's decision to elect those trustees and assure those trustees all the rights and privileges of their offices.

Sincerely,



James P. Guenther



James D. Jordan

cc: Dr. Ronnie Floyd
Members of the Officers committee, Southern
Baptist Convention Executive Committee

Subject: RE: Southwestern Seminary

Date: Tuesday, November 17, 2020 at 2:20:23 PM Central Standard Time

From: Michael Anderson

To: Jaime Jordan

CC: Jim Guenther

Jaime:

I am available this afternoon.

Michael

From: Jaime Jordan [mailto:JDJordan@gjplaw.com]

Sent: Tuesday, November 17, 2020 10:32 AM

To: Michael Anderson

Cc: Jim Guenther

Subject: Southwestern Seminary

Mr. Anderson,

Our client would like for us to have a “just the lawyers” conversation with you about the situation at Southwestern involving the two trustees. There is a strong desire to see if we can find a way for the Executive Committee and Southwestern to work together on this issue.

Would you be available for a call with Jim and me after 2 pm CST today or any time tomorrow afternoon? If so, just let us know when. I think it would likely take 30 - 45 minutes.

Thanks,
Jaime

James D. Jordan
GUENTHER, JORDAN & PRICE, PC
P.O. Box # 696
Springfield, TN 37172-0696
(615) 329-2100 Ext. 2
(615) 329-2187 (Fax)

Subject: Southwestern Seminary
Date: Tuesday, November 17, 2020 at 3:57:10 PM Central Standard Time
From: Jaime Jordan
To: Michael Anderson
CC: Jim Guenther
Attachments: 2007-12-10 Ltr to Gaubatz - FINAL.doc, OPINION - Guenther - Action of the IMB to suspend a trustee - 12-4-07.DOC

Per our discussion, here are links to the two Baptist Press articles relating to the International Mission Board's suspension of Wade Burleson in 2007. The first article reports his suspension, and the second article reports the Board Chair's remarks agreeing that the IMB had exceeded its authority and would not enforce the suspension.

<https://www.baptistpress.com/resource-library/news/imb-trustees-censure-suspend-burleson/>

<https://www.baptistpress.com/resource-library/news/burleson-resigns-as-imb-trustee/>

I'm also attaching two documents for your review:

1. Opinion dated 12/4/2007 from Jim Guenther to August Boto (who was then inside general counsel to the Executive Committee) addressing the IMB's action suspending Mr. Burleson.
2. Letter from Mr. Boto to Derek Gaubatz who was then general counsel to the IMB, addressing the suspension directly with the IMB.

The purpose of these documents is to indicate that any reliance on the 2007 IMB action as a precedent for suspending a trustee is not well placed. The documents also show the Executive Committee's commitment to the principal that an entity cannot remove or suspend a trustee appointed by the Convention.

We will be glad to discuss this issue further if you would find that helpful. While the Executive Committee officers might be willing to have a little flexibility on the request to resolve this situation by December 15 if we report to them that Southwester is working cooperatively with us on a resolution, I cannot see the officers or the EC itself being willing to wait until April or June for that resolution.

- Jaime

James D. Jordan
GUENTHER, JORDAN & PRICE, PC
P.O. Box # 696
Springfield, TN 37172-0696
(615) 329-2100 Ext. 2
(615) 329-2187 (Fax)

Subject: RE: SBC Executive Committee Officers

Date: Wednesday, November 18, 2020 at 3:50:46 PM Central Standard Time

From: Michael Anderson

To: Jaime Jordan

CC: Jim Guenther

I was referring to the EC of the EC that you mentioned on the call...I assume, maybe incorrectly, that is what you referred to as the Officers committee in your November 16th letter. Is that who these individuals (Slade, Tucker and Knott) are?

Also, in your November 16th letter to me, you reference an authorization from the Officers committee. Can you let me know what that authorization is and where it is found. You also state that the Officers committee has adopted an action calling on SWBTS to take certain action. Can you provide me with the action that the Officers committee adopted.

Thanks.

Michael

From: Jaime Jordan [mailto:JDJordan@gjplaw.com]

Sent: Wednesday, November 18, 2020 3:45 PM

To: Michael Anderson

Cc: Jim Guenther

Subject: SBC Executive Committee Officers

Michael, per your request yesterday, these are the current trustee officers of the Executive Committee (the information is from Baptist Press news reports):

Rolland Slade, pastor of Meridian Baptist Church in El Cajon, Calif., was unopposed as EC chair and was unanimously elected by ballot vote.

Tom Tucker, a vocational evangelist from Rock Hill, S.C., was elected as EC vice chair.

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Rod Martin, CEO of The Martin Organization in Destin, Fla., was elected to chair the Committee on Convention Events and Strategic Planning.

If you are interested in the current EC staff, those names can be found here, using the menu on the

right-hand side of the page:

<http://www.sbcec.org/>

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GUENTHER, JORDAN & PRICE, PC
P.O. Box # 696
Springfield, TN 37172-0696
(615) 329-2100 Ext. 2
(615) 329-2187 (Fax)

Subject: RE: SBC Executive Committee Officers
Date: Wednesday, November 18, 2020 at 4:26:28 PM Central Standard Time
From: Jaime Jordan
To: Michael Anderson
CC: Jim Guenther
Attachments: Bylaws -06-16-20.pdf

Yes, the officers whose names I sent you are the officers who make up the Officers of the Board committee. Although that is their formal name, they are generally just referred to as "the Executive Committee officers" or "the officers." As I said, this committee often functions like an executive committee of the board for the SBC Executive Committee.

I'm attaching the EC's bylaws. The officers are identified in section 4.1 and the Officers of the Board committee is described in section 6.2.

I don't have minutes or resolutions that I can send you. The Officers were acting somewhat informally. I can tell you that I sat in on their meeting. They reviewed the November 16 letter and by unanimous consent requested that we send the letter to you as Southwestern's counsel. I don't think they saw this action as an act of the Executive Committee under 6.2.3.h, but more of an attempt to resolve this issue without formal EC action.

- Jaime

James D. Jordan
GUENTHER, JORDAN & PRICE, PC
(615) 329-2100 Ext. 2

From: Michael Anderson <michael.anderson@kellyhart.com>
Sent: Wednesday, November 18, 2020 3:51 PM
To: Jaime Jordan <JDJordan@gjplaw.com>
Cc: Jim Guenther <JPGuenther@gjplaw.com>
Subject: RE: SBC Executive Committee Officers

I was referring to the EC of the EC that you mentioned on the call...I assume, maybe incorrectly, that is what you referred to as the Officers committee in your November 16th letter. Is that who these individuals (Slade, Tucker and Knott) are?

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Thanks.

Michael

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Sent: Wednesday, November 18, 2020 3:45 PM
To: Michael Anderson

Cc: Jim Guenther

Subject: SBC Executive Committee Officers

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P.O. Box # 696
Springfield, TN 37172-0696
(615) 329-2100 Ext. 2
(615) 329-2187 (Fax)

Subject: RE: SBC Executive Committee Officers

Date: Thursday, November 19, 2020 at 11:06:09 AM Central Standard Time

From: Michael Anderson

To: Jaime Jordan

CC: Jim Guenther

Jaime:

Based on your emails and our conversation, I write to seek further clarification on a couple of issues so that I can advise my client. Your November 16th letter states that the Officers have “adopted an action calling on Southwestern Seminary” to take action. Before stating this action, you make clear that the Officers are “authorized to exercise the power of the board of trustees in the interim between meetings of the Executive Committee.”

In the email below, however, you state that the Officers are acting somewhat informally. You then say they didn’t see this as an action under 6.2.3.h. If this is the case, then I would suggest a follow up letter to your November 16 letter making it clear that this is not a formal action and that the Officers are not invoking 6.2.3.h.

If this is, as your November 16 letter characterizes it, a formal action of the Officers, then I would request the following information from you:

- By acting under Bylaw 6.2.3.h, what specific authority assigned to the Executive Committee are the Officers invoking?
- If this action has been taken under Bylaw 6.2.3.h, has the president mailed the minutes of this Officers meeting to every trustee pursuant to Bylaw 6.2.5?

Whether or not this action is formal or informal, it seems clear that the Officers are attempting to direct Southwestern Baptist Theological Seminary to take an action either revoking their suspension of trustees or acknowledging that the action is null and void. According to SBC Bylaw 18.5.9, however, “The Executive Committee shall not have authority to control or direct the several boards, entities, and institutions of the Convention. This is the responsibility of trustees elected by the Convention and accountable directly to the Convention.” How is this action of the Officers calling on the Southwestern Baptist Theological Seminary trustees to take a specific action consistent with SBC Bylaw 18?

Furthermore, in our conversation earlier this week, you referred to longstanding Baptist polity as a basis for this action. Since your November 16 letter repeatedly makes reference to the sole member rights of the Convention, should I assume that this is the polity to which you refer? It is my understanding that the SBC’s sole member rights are non-transferable to the Executive Committee. Is this understanding accurate? Also, I know that you are well-versed in matters of ascending liability. How does the involvement of the Executive Committee in a matter not specifically assigned to the Executive Committee, in this case, relate to the concept of ascending liability, particularly for other matters? It seems that by acting as a “super board” that the SBC could be opening itself up to liability down the road.

Just to be clear, this does not serve as the official response from the Seminary. I am merely seeking to understand the issues at hand so I can properly advise my client.

Thank you for your continued engagement on these issues. I look forward to your response.

Michael

Michael D. Anderson
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
(817) 878-3506 (direct dial)
(817) 878-9280 (fax)

email: michael.anderson@kellyhart.com
website: www.kellyhart.com

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From: Jaime Jordan [mailto:JDJordan@gjplaw.com]
Sent: Wednesday, November 18, 2020 4:26 PM
To: Michael Anderson
Cc: Jim Guenther
Subject: RE: SBC Executive Committee Officers

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- Jaime

James D. Jordan
GUENTHER, JORDAN & PRICE, PC
(615) 329-2100 Ext. 2

From: Michael Anderson <michael.anderson@kellyhart.com>
Sent: Wednesday, November 18, 2020 3:51 PM
To: Jaime Jordan <JDJordan@gjplaw.com>

Cc: Jim Guenther <JPGuenther@gjplaw.com>
Subject: RE: SBC Executive Committee Officers

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ATTORNEYS-AT-LAW

James P. Guenther
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P.O. Box 696
101 Fifth Avenue West, Suite 102
Springfield, Tennessee 37172-0696

Telephone
615-329-2100

Fax
615-329-2187

JDJordan@GJPLaw.com

* ALSO ADMITTED IN KENTUCKY AND TEXAS

December 9, 2020

Via Email to:

Mr. Michael D. Anderson (michael.anderson@kellyhart.com)
Kelly Hart
201 Main Street
Suite 2500
Fort Worth, TX 76102

Re: Southwestern Baptist Theological Seminary

Dear Mr. Anderson:

We are writing on behalf of the SBC Executive Committee Officers committee with a desire to work together in a spirit of cooperation to determine the best path forward to an appropriate resolution regarding the trustee suspension. Based upon the nature of the communications from SWBTS, the Officers committee sees no evidence of an intention to restore the rights of the trustees SWBTS has effectively removed from office. The principal at stake, the exclusive right of the Convention as the Seminary's sole member to determine the composition of every entity's board of trustees, is fundamentally critical in the structure by which the Convention relates to its entities.

As has been explained, the Officers committee understands the sensitive nature of this situation and again it is their desire to work in cooperation with the Seminary. By this letter, the Officers committee is inviting the Seminary's board officers or their representatives to meet virtually as soon as is practical. The officers are eager to hear any explanation the Seminary wishes to provide regarding the details of this matter and the Seminary's support for its actions to these duly appointed trustees. The officers would also like to discuss the importance of the principle at stake.

The officers hope the Seminary's board will accept this offer promptly and work to schedule a meeting together. Of course, you or other counsel for SWBTS will be welcome in light of the ongoing litigation. We will attend in order to answer any questions regarding the legal principles involved. Everyone desires to work through this issue together in the spirit of cooperation.

Sincerely,



James D. Jordan

cc: Officers of the SBC Executive Committee

KELLY HART

ATTORNEYS AT LAW

MICHAEL D. ANDERSON, PARTNER
michael.anderson@kellyhart.com

TELEPHONE: (817) 878-3506
FAX: (817) 878-9280

December 29, 2020

Via Electronic Mail

James D. Jordan
Guenther, Jordan & Price, PC
101 5th Avenue West, Suite 102
Springfield, TN 37172

Re: Southwestern Baptist Theological Seminary

Jaime:

I hope you and your family had a Merry Christmas. I have now had an opportunity to confer in depth with my client with respect to your December 9th letter to me. Upon an extensive and careful review of the issues raised in your letter, the Officers of the Seminary's Board of Trustees have decided, *at this time*, to respectfully decline your client's request for a meeting. Given the issues you have raised and our response below, the Seminary's Board Officers believe that it makes more sense and is, indeed, prudent to meet once the issues of trustee misconduct at the Seminary have been fully addressed and resolved internally.

Please understand that the reason for this decision is not out of an unwillingness of the Board Officers to explain or otherwise justify their suspension of the two trustees (Mr. Hott and Mr. Pulley). Rather, it is based on the fundamental belief that the Board Officers of the Seminary do not believe the Executive Committee of the Southern Baptist Convention, nor the officers of the Convention's Executive Committee, have the authority to intervene in matters outside the scope of the responsibilities assigned to the Executive Committee in the governing documents of the Southern Baptist Convention. If this meeting were merely an attempt to discuss the Seminary's action in suspending two trustees pending an internal investigation and had not been preceded by a demand that the Seminary rescind the suspensions, we would be in a different place with different considerations. That is not the case, however.

In your December 9th letter on behalf of the SBC Executive Committee officers, you write, "The principal [sic] at stake, the exclusive right of the Convention as the Seminary's sole member to determine the composition of every entity's board of trustees..." While my client does not share your client's assessment that this right of the Convention has been compromised, we do agree with you regarding the principle at stake. Our point of disagreement is the role of the SBC Executive Committee attempting to exercise this right *on behalf of the Convention*. Any

demand for action, while invoking the sole member rights of the Convention, is an attempt to exercise those rights; it is not merely an attempt to guard those rights. Put simply, the action of the officers of the SBC Executive Committee in attempting to exercise the sole member rights of the Convention contradicts both precedent and previous public arguments made by Convention and Executive Committee lawyers.

For example, in a 2003 response to inquiries from New Orleans Baptist Theological Seminary regarding sole membership, Mr. Guenther and Mr. Augie Boto, representing the Convention and the Executive Committee, respectively, provided several assurances regarding the non-transferability of the sole member rights to the Executive Committee. Specifically, in response to an inquiry on whether or not the Executive Committee could act for the Convention under the Executive Committee's "ad interim" authority, Messrs. Guenther and Boto responded:

No. Ecclesiastically, the Executive Committee's ad interim authority to act for the Convention is limited to those matters "not otherwise provided for." Governance of NOBTS is "otherwise provided for" when the Convention approves the Seminary's articles of incorporation which vests governance in the board elected by the Convention in all matters except for those powers which are enumerated and reserved for the Convention itself.

Moreover, the legal theory of ascending liability is a foundational legal doctrine that shields the Convention and other entities of the Convention from undue liability. In a 1985 memo addressing ascending liability, Mr. Guenther wrote:

Generally, the Executive Committee has insisted on its right to study the agencies and their work (a specific duty assigned it by the Convention's bylaws) and to report on those studies to the Convention. The agencies have been vigorous in their insistence that the Convention has vested in their trustees the responsibility for directing the work of the agencies. Both are right. Clearly the Executive Committee is not in Southern Baptist life a "super board." The Executive Committee exercises no control over the agencies. This is legally significant to "ascending liability."

Consistent with the foregoing, Mr. Boto—who was serving as Executive Vice President and General Counsel to the SBC Executive Committee at the time—wrote the following in 2008 in response to a 2007 SBC annual meeting motion made by Rick Garner, "No, the Convention cannot issue such a directive. Doing so would directly connect the seminary to the Convention in a way that would destroy the corporate shield to liability." In his 2008 response, it is worth emphasizing that Mr. Boto was referring to acts of the Convention rather than the Executive Committee. This is particularly noteworthy because the Convention, by 2008, held rights as the sole member. Even with these rights, Mr. Boto recognized and cautioned against overreach on the part of the Convention. For the Executive Committee, who does not and cannot exercise

these rights on behalf of the Convention, this warning from Mr. Boto should be taken even more seriously.

With this context in mind, the Seminary does not believe that the officers of the Executive Committee of the Convention have the authority to intervene in this internal matter while it runs its course. Furthermore, I must again take issue with your repeated assertion that the Board Officers of the Seminary have somehow *removed* two trustees. That is simply not the case. The two trustees have been *suspended* in accordance with the Seminary's Bylaws pending a complete investigation and a trial—the results of which will be reported to the Convention in due course. It is worth highlighting that prior to their suspension, the Board Officers made multiple attempts to address the issues with the now-suspended trustees in an effort to avoid suspension altogether. The now-suspended trustees, however, refused to take corrective action, leading to their suspension. Importantly, the full Board of Trustees affirmed, without opposition, the suspension at the October 2020 Board of Trustees meeting.

Regardless, removal and suspension are two totally separate and distinguishable acts. There is absolutely no prohibition in any governing documents of either the Convention or the Seminary that prohibits the Board Officers of the Seminary from investigating allegations of Seminary trustee misconduct. To the contrary, the Bylaws of the Seminary specifically vest the duly elected Officers of the Board of Trustees with broad authority to investigate a Seminary trustee. To prohibit the Seminary from conducting such a procedure consistent with its own Bylaws would turn the Officers of the SBC Executive Committee into an unauthorized super board—one that will not withstand any level of scrutiny before the Convention.

In the matter before us, the Seminary's Amended and Restated Bylaws unambiguously and broadly provide that, “[a]ll matters of alleged trustee misconduct shall be considered in an appropriate manner, as prescribed by a majority of the elected trustee officers, within the trustee body. If not resolved therein, the matter shall be referred to the Convention for disposition in accordance with Article VIII of the Seminary's Articles of Incorporation.” [Article II, Section 12 (emphasis added)]. Moreover, the Seminary's Amended and Restated Bylaws provide that *Robert's Rules of Order Newly Revised* shall apply as long as they are not inconsistent with the Articles of Incorporation or Bylaws. [Article I, Section 6]. *Robert's Rules of Order* 63 provides, in general, that if the majority of the elected trustee officers vote to form a committee and further determine that a trial by the committee is warranted, then at that point the trustee accused of misconduct is deprived of all rights of membership until the matter is disposed of.

The Board Officers of the Seminary have followed the Seminary's Bylaws with respect to the allegations of trustee misconduct. This process, as you understand, is ongoing and will conclude in due order. It is not appropriate at this time, however, to go into detail regarding the charges against the two trustees under suspension—Mr. Hott and Mr. Pulley. Facts related to their suspension are currently being litigated in Tarrant County District Court. If you do not

already have them, I am happy to provide the public filings in the case being litigated. You should also be advised that the Attorney General for the State of Texas deemed the allegations and evidence developed thus far in the case serious enough to warrant intervening in the lawsuit on behalf of the Seminary and the other plaintiff in the lawsuit, Baylor University. Suffice it to say, the charges of trustee misconduct were found to be credible by the Board Officers of the Seminary's Board, who voted to proceed to an investigation and trial.

I trust that this letter appropriately and fully addresses any concerns of the Officers of the Executive Committee of the SBC. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Michael D. Anderson

Michael D. Anderson

cc: Officers of the Southwestern Seminary Board of Trustees