

Brothers and Fathers in Christ,

As many of you have probably already heard, the Erskine Board of Trustees met last week and approved a response to the 2011 Synod's requests. This response will be included in the formal packet for Synod as part of Erskine's overall report to Synod. Given the length of time between the meetings of the Erskine trustees and Synod, however, and the amount of public attention focused on this particular topic, it is likely that some would see copies of the approved response prior to its official release while others may not. This inconsistency is not our board's intention.

Therefore, we thought it prudent to provide this response more quickly and directly. Synod requested that Erskine look into this matter, so it is only fitting we should reply to you, the elders and ministers of the ARP. Additionally, since we do not yet know which individuals will serve as delegates to Synod, we thought it best to provide this response to all elders and ministers who may serve as delegates. Please feel free to forward this report along to anyone who needs to see it.

While the timing does not allow for a fuller context, I am providing a link to [this recently posted article at Erskine's web site](#), which seeks to provide some context of the work Erskine trustees did to research, craft and deliberate on this response. In conjunction with this article, we plan to post the full response; however, we will wait 24 hours after this message is sent to provide broader access to the formal response.

It is our sincere hope that this response will be received in the same spirit of cooperation and mutual commitment to the kingdom of Christ in which the original request was made and received.

Yours in Christ and for the Erskine Board of Trustees,

Joe Patrick

Response of the Erskine College and Theological Seminary Board of Trustees
to the 2011 General Synod's Requests
February 17, 2012

The Board of Trustees of Erskine College and Theological Seminary (“Board”) prayerfully and respectfully submits this Response to certain requests made of the Board at the 2011 General Synod meeting. This Response deals primarily with the requests regarding removal of Board members, although other requests are also addressed herein. By way of preface and introduction, the Board acknowledges and invokes the *Westminster Confession of Faith* (Sec. I, Ch. 5, “Of Providence”):

God, the great Creator of all things, doth uphold, direct, dispose, and govern all creatures, actions and things, from the greatest even to the least, by His most wise and holy providence, according to His infallible foreknowledge, and the free and immutable counsel of His own will, to the praise of the glory of His wisdom, power, justice, goodness, and mercy.

I. Response Summary

Erskine College and Theological Seminary is the educational institution of the Associate Reformed Presbyterian Church.¹ As such, the Board has received the General Synod’s requests as a genuine expression of great care and concern for the Institution and her mission. For this we are thankful. However, for the reasons discussed in significant detail herein, the Board believes that the requests from the General Synod regarding Charter and Bylaw revisions would neither be in the Institution’s best interests nor in the best interests of the General Synod. These reasons include the potential impact on accreditation, the legal liability potentially imposed on the

¹ “Erskine” and “Institution” as used herein refer to both Erskine College and Erskine Theological Seminary except where the context or language indicates otherwise; similarly, “ARPC” and “General Synod” as used herein refer to the Associate Reformed Presbyterian Church, a denomination whose legal expression is the General Synod of the Associate Reformed Presbyterian Church, Inc. The relationship between the Institution and the General Synod is discussed in greater detail below.

General Synod, the potential impact on academic freedom, and the potential impact on trustees' independence to serve the mission of the Institution.

II. The Institution's Relationship with the Church
Historic, Unique, Mutually Beneficial, and Purposeful; Not Ownership or Control

According to its Institutional Mission Statement, Erskine is an academic community that exists to glorify God by equipping students to flourish as whole persons for lives of service. The specific mission of Erskine College is to equip students to flourish by providing an excellent liberal arts education in a Christ-centered environment where learning and biblical truth are integrated to develop the whole person. The specific mission of Erskine Theological Seminary is to educate persons for service in the Christian Church. By and through these mission statements, Erskine expresses its high commitment to the quintessential truth for all Christian scholars, that all truth is God's truth wherever it is found. Thus, it is only in a proper relationship to the divine Creator and Lord that all knowledge, whether regarding nature, society, arts, or sciences, comes into clearest focus. To image God in the fullness of our humanity is, especially in the Reformed tradition, one of our highest callings.²

Discovery of God's truth involves an openness to all of God's self-revelation, which necessitates careful examination of what we believe, what we know, and what we are unsure of. Our Christian commitment both inspires and requires such purposeful learning. Higher education in the West came about as a means of the church to deepen one's faith, knowledge of God, and knowledge of God's creation, holding that since all things came from God, all things could be legitimately studied and understood as a gift from God.³ Harvard, Yale, Princeton, and Columbia began this way, and the list of institutions established by the Christian Church prior to

² Arthur F. Holmes, *The Idea of a Christian College*, rev. ed. (Grand Rapids, MI: Wm. B. Eerdmans, 1987), 28.

³ Harry Lee Poe, *Christianity in the Academy* (Grand Rapids, MI: Baker Academic, 2004), 54.

the Civil War “includes forty-nine founded by Presbyterians, thirty-four by Methodists, twenty-five by Baptists, and twenty-one by Congregationalists.”⁴

Under guise of the oft-misunderstood, misrepresented, and misapplied rubric of academic freedom, many of the schools that originally had a religious purpose for their existence now allow God no significant place. This historic reality, difficult to ignore, is perhaps most personified in the United States by Harvard University’s public acknowledgement in the 1950s that it had become a secular university with nothing more than a “tradition of worship.”⁵ The on-campus Memorial Church thereafter became primarily an assembly hall.

By contrast, Erskine (along with many other admirable institutions) has reaffirmed and reiterated its commitment to the twin pillars of academic excellence and Biblical truth. As a Christian liberal arts college and a theological seminary, Erskine today perceives its religious and academic programs as parts of a whole that cannot be separated; approaching education from a Christian worldview and examining subject matter from a Christian perspective.

Erskine’s historic and continued existence as a Christian institution has been, in large part, because of and through the work of the Associate Reformed Presbyterian Church denomination and its predecessors and constituents. Although Erskine’s relationship with the ARPC has at times perhaps been misunderstood and mischaracterized, the commitment of the Institution to its mission and its success thereon owes much to the denomination. It is therefore an understatement to say there is far more that joins Erskine and the Associate Reformed Presbyterian Church than separates.

The ARPC’s view of the role of the Church in Christian higher education was expressed by the General Synod in 1977 and 1978:

⁴ *The Idea of the Christian College*, 9f.

⁵ E. J. Kahn, Jr., *Harvard: Through change and through storm* (New York: W. W. Norton & Co: 1968), 272.

We believe in the importance of education, and we believe that education represents a vital part of the mission of the Church. Furthermore, we believe that our denomination has a definite role to play in Christian higher education.

We believe this is so because this area of service offers the Church a unique opportunity to present Christ and the Christian viewpoint and to demonstrate in a tangible way the value of life which is lived in right relation to God and man. We believe that only such a life can realize its fullest potential in terms of usefulness to society and inner satisfaction to the individual.

We believe that the Church has a responsibility not only to initiate the organizational structure for such participation, but also a responsibility to continue to nurture that organization and to provide theological and philosophical guidance to it.

[O]ur institutions of Christian higher education have a responsibility to stress Christian doctrine as well as Christian ethics, Christian commitment as well as academic excellence. Our calling in Christian higher education is to create an environment that exposes the college community to the truth of God's redemptive love and equip its members for lives of useful service, whether in the full-time ministries of the Church, or in some other worthy calling.⁶

By and through the published *Philosophy of Christian Higher Education* (in addition to other indices including the provision of financial support, prayers, and intangibles too numerous to list), the ARPC acknowledges and expresses its relationship with Erskine. By and through the adoption and maintenance of mission statements and policies that are consistent with the *Philosophy of Christian Higher Education* (in addition to other indices including the acceptance

⁶ *Statement of the Philosophy of Christian Higher Education of the Associate Reformed Presbyterian Church as Adopted by the General Synod, June 8, 1977 and June 7, 1978* (henceforth *Philosophy of Christian Higher Education*). One of the requests made in the motion passed at the 2011 ARPC General Synod was that the Institution recognize the right of General Synod to “delineate the Synod’s aspirations for the institution.” The primary way the General Synod has done this is the *Philosophy of Christian Higher Education*, which the Board gratefully receives as the expression of the General Synod’s aspirations for Erskine.

of financial support, dependence on prayers, and intangibles too numerous to list), the Board acknowledges and expresses Erskine's relationship with the ARPC. While humbly expressing its contrition for past shortcomings and failures with respect to aspects of the Institution's mission, the Board today reaffirms the Institution's relationship with the ARPC as clearly historic, unique, purposeful, and mutually-beneficial.

Erskine is a complex entity, with several constituencies that all feel a genuine ownership of and identification with the Institution. Its relationship to the ARPC is in some ways filial: a historic product of the church that was nurtured and sustained, particularly in its early years, almost entirely by the church. The nurture and sustenance has continued to the present day, although Erskine now depends on other constituents and has many of its practical priorities set by the standards of its profession (peer institutions, accrediting agencies, etc.). Erskine may be a "child" of the church, but just as a healthy child matures to adulthood, and a young Christian matures in faith, Erskine has also matured. In these respects, many of the Institution's charter changes over the years may be seen as transitional moments of Erskine's move from "adolescence" into "adulthood" – now a "grown child" who seeks the wise counsel of her elders, but must stand on her own, accountable as an "adult."

The mature relationship between Erskine and the ARPC is not "ownership," but an intimate bond that cannot be broken without damage to both parties. The same sort of relationship also exists between Erskine and its alumni and, as the label *alma mater* indicates, graduates commonly recognize a relationship with their school as that of a child fostered in a maternal relationship. The bonds between Erskine and its alumni are not merely those of annual donations and bequests; the intimacy of alumni commitment to the Institution is a factor which cannot be discounted.

Likewise, current students, faculty, and staff similarly identify themselves with and feel a similar bond for the Institution as they daily embody its mission. Evidencing the outpouring of such an affection for Erskine is the fact that many faculty and staff have devoted decades—in many cases their entire careers—to furthering the Institution and its goals.

All this notwithstanding, in the eyes of the Institution, the State of South Carolina, and of the accrediting agencies, Erskine is governed only by its Board of Trustees and, in this regard, all of the other constituencies—the ARPC church, the faculty, staff, students, and alumni—are “outside” or “external” to the Board, although certainly not to the Institution. The Board cannot and does not disregard its constituents, as they are essential components of the identity and mission of the school and their loss would fundamentally change Erskine. Input from these constituencies is vital, not only through the officially designated representatives to the Board but also in ad hoc communications. Yet, while all of these parties necessarily and desirably have “due influence” on the Board for all of the reasons discussed herein, the Board must ensure that none of these “external” (in a governance sense) influences compromise the Board’s independence. In such a complex undertaking as Erskine, Board actions taken in the best interests of the Institution as a whole may at times require difficult decisions; thus allowing any vested interests to compromise or prevent such actions would evidence “undue influence,” even when an “external” constituency acted with the best of intentions.

As recognized by the General Synod in 1978,

Autonomy is essential if the college corporation is to act legally and responsibly. It is in the best interests of the church that the Synod protect and defend this autonomy.

Precipitous action of the Synod, creating undue pressure by directing, or commanding, the Board of Trustees or Administration to take certain specific actions can

jeopardize the accreditation of the college . . . and seriously impair the church's mission in Christian higher education.

. . . The hope of successful achievement of the Christian goals and purposes of the college lies in mutual understanding, deference, respect, and a spirit of Christian charity between the Board of Trustees and the General Synod, with both bodies seeking prayerfully to function wisely and well within the blessing of God, whose we are and whom we serve.⁷

Although a more precise description of the relationship between Erskine and the ARPC sometimes defies reduction to language, the relational bond is one that the Board enthusiastically desires to maintain and strengthen.

III. The Associate Reformed Presbyterian Church's Relationship with the Board of Trustees *Relationship Expressed Through Appointments to an Autonomous Board*

“In 1834, at its annual meeting at Due West Corner, the Synod of the South resolved to ‘establish one or more schools or academies’ and asked individual congregations to present proposals to that end.... The Synod of 1835 moved to authorize ‘a school at Due West Corner’ which would provide two years of college training.”⁸ By a Special Act of the South Carolina General Assembly in 1850, a charter was established for a body politic and corporate, and “The Trustees of Erskine College” were empowered, “to make such by-laws and rules for the regulation and government of said college as they may deem necessary; provided said by-laws and rules be not repugnant to the Constitution and the laws of this State, or of the United States.” Throughout the several charter changes and amendments since 1850, nothing has changed the fact that Erskine is, as recognized by the 1978 General Synod,

⁷ “Report of the Special Committee on Christian Higher Education,” *Minutes of the General Synod*, June 5-8, 1978, 623f.

⁸ Lowry Ware, “A History of Erskine College, 1839-1982” in the *Bicentennial Supplement* (Greenville, SC: General Synod of the Associate Reformed Presbyterian Church, 1982), 420f.

. . . under the laws of the State of South Carolina, a separate corporation, legally distinct from the church and governed by a Board of Trustees. The Board of Trustees is empowered to exercise its independent judgment with reference to the operation of Erskine College and final decisions related thereto lie within the exclusive province of the Board. It is clear to the committee that, from a legal standpoint, the Board of Trustees is an autonomous body.⁹

By Charter amendment in 1980, the Board of Trustees granted the right to the General Synod to appoint all members of the Erskine Board of Trustees, with the number of members and their terms in office to be set forth in the Bylaws.¹⁰ The 1980 Charter amendment also states that any change in this section of the Charter must have prior approval of both the General Synod and the Board of Trustees. Thus, it is through its board appointments that the General Synod's relationship with Erskine is expressed and its influence thereon is most directly exercised.¹¹

The autonomy of the Board of Trustees is important, has been confirmed by the General Synod over the years, and serves many purposes, including, (1) the establishment of guardians to hold to immovable fundamentals while adapting to changing environments; (2) the protection of academic freedom in the context of loyalty to God's truth and liberty to think for oneself; and (3) the necessity and desirability of making the college legally and solely responsible for its own acts.¹² The Trustees, in return, acknowledge and pledge to: (1) recognize the distinctly Christian

⁹ "Report of the Special Committee on Christian Higher Education," *Minutes of the General Synod*, June 5-8, 1978, 621f.

¹⁰ The Charter restatement by the Board of Trustees in 1977 stated only that Board membership was pursuant to the then-current Bylaws.

¹¹ The 1980 Charter amendment does not grant to the General Synod the right to remove trustees nor does any other governing document.

¹² Although the Erskine Board is not a "Board of the General Synod" *per se*, even the denomination's *Manual of Authorities and Duties* recognizes the importance of the autonomy of the church's boards, which "shall perform the work entrusted to them without particular instructions, but shall follow the general instructions of the Court." *Manual of Authorities and Duties for Officers and Agencies and Rules of Order* (Greenville, SC: General Synod of the Associate Reformed Presbyterian Church, 2011), 11.

commitment of Erskine, including interpretation and explanation of the needs, interests, and concerns of the Associate Reformed Presbyterian Church in the course of setting institutional purposes, priorities and policies; (2) interpret and explain to church policy makers how the unique nature of an academic enterprise makes it distinct from other church agencies, including its essential commitment to academic freedom; and (3) protect the institution's integrity from unreasonable and unwarranted outside (in a governance sense) interference (from wherever the source) in service of the institution as a whole rather than any special interest.

IV. Removal of Board Members

Vesting Exclusively with Board is in Institution's Best Interests

Under the applicable provisions of the Charter and Bylaws, the right to remove members from the Board of Trustees is vested exclusively with the Board pursuant to a clear and precise due process whereby members may be removed by the Board for cause. Through its passed motion, the 2011 General Synod requested that the Institution recognize the right of the General Synod to remove board members.¹³ Removal of board members by the General Synod or by any other body would not be in the Institution's best interests for several reasons, including undesirable practical results such as: (A) the potential impact on accreditation,¹⁴ and (B) the potential for legal liability imposed on the General Synod; in addition to important core mission issues such as: (C) the potential impact on academic freedom, and (D) the potential impact on

¹³ The Board of Trustees is responding herein, in the entirety of this Response, to both the General Synod's request that the Board amend its Bylaws to reflect the Board Member Removal Policy as adopted by the 2011 General Synod and the passed motion that the Board consider amending the Charter.

¹⁴ For example, a 1973 charter amendment, which was approved to make it clear that the General Synod did not have the right to confirm or annul the appointments of the Board's officers or the school's officers, professors, tutors or instructors, was entered, "as a result of a college self-study and of recommendations by various consultants and accrediting agencies." "Addendum to Report of the Board of Trustees of Erskine College to the General Synod," *Minutes of the General Synod*, June 5-9, 1972, 174.

trustees' independence to serve the mission of the Institution.¹⁵ Instead, appropriate formal and informal avenues for communication of issues and concerns between the General Synod and the Board of Trustees are in place, which have been and should continue to be respectfully, competently, and successfully utilized.

A. Accreditation

Erskine College and Theological Seminary is accredited by the Southern Association of Colleges and Schools – Commission on Colleges (SACS). All accredited institutions are required to comply with all SACS Core Requirements before accreditation reaffirmation, one of which is:

C.R. 2.2 The institution has a governing board of at least five members that is the legal body with specific authority over the institution. The board is an active policy-making body for the institution and is ultimately responsible for ensuring that the financial resources of the institution are adequate to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from it. Both the presiding officer of the board and a majority of other voting members of the board are free of any contractual, employment, or personal or familial financial interest in the institution.

SACS also promulgates detailed Comprehensive Standards and reaffirmation may be denied if an institution is out of compliance with one or more of them, including:

C.S. 3.2.2 The legal authority and operating control of the institution are clearly defined for the following areas within the institution's governance structure: (Governing board control)

- 3.2.2.1 institution's mission;
- 3.2.2.2 fiscal stability of the institution;
- 3.2.2.3 institutional policy, including policies concerning related and affiliated corporate entities and all auxiliary services; and

¹⁵ Even if the General Synod had the right to remove trustees, the Board questions, for all of the reasons stated in this Response, whether the exercise of that right would ever be in the best interests of the Institution.

3.2.2.4 related foundations (athletic, research, etc.) and other corporate entities whose primary purpose is to support the institution and/or its programs.

C.S. 3.2.3 The board has a policy addressing conflict of interest for its members.

C.S. 3.2.4 The governing board is free from undue influence from political, religious, or other external bodies and protects the institution from such influence.

C.S. 3.2.5 The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

Erskine College is currently undergoing SACS accreditation reaffirmation, and the Board is happy to report that Erskine has been found to be in compliance with all of the above requirements and standards under the current Charter and the recently revised Bylaws, whereby the Board members are appointed by the General Synod but removed only by the Board for cause. However, after recent actions taken by the General Synod to attempt to remove trustees, SACS placed Erskine College on warning in July 2010 for twelve months for "failure to comply" with Comprehensive Standard 3.2.4. In response, Erskine's Board of Trustees took steps to address SACS concerns by revising its Bylaws to make explicit a conflict-of-interest policy, including a section on "undue influence" with procedures to address perceived or actual cases. In May 2011, the Board of Trustees voted to approve the revised Bylaws; the General Synod was thereafter informed of these changes in June 2011; and at the end of that month SACS voted to remove the warning.

Likewise, Erskine Theological Seminary is also accredited by the Association of Theological Schools (ATS), which has its own Standards of Accreditation, including:

8.3.1 Governing board

8.3.1.1 The governing board is responsible for the establishment and maintenance of the institution's integrity and its freedom from inappropriate external and internal pressures and from destructive interference or restraints. It shall attend to the well-being of the institution by exercising proper fiduciary responsibility, adequate financial oversight, proper delegation of authority to the institution's administrative officers and faculty, engaging outside legal counsel, ensuring professional and independent audits, using professional investment advisors as appropriate, and maintaining procedural fairness and freedom of inquiry.

8.3.1.2 The governing board shall be accountable for the institution's adherence to requirements duly established by public authorities and to accreditation standards established by the Commission and by any other accrediting or certifying agencies to which the institution is formally related.

Erskine Theological Seminary is currently undergoing ATS accreditation reaffirmation, and the Board is unaware of any issues involving these standards; however, the Board has also been informed by ATS that with respect to denominationally-related schools where trustees are appointed/elected by the church, the church may not withdraw appointment of, dismiss, or remove trustees once they are appointed, and that the ATS Board of Commissioners would not consider the allowance of such removal or withdrawal of appointment of trustees by an ecclesial body to be good governance -- because it means that the church is the *de facto* board if it has the authority to remove board members for a variety of causes.

B. Legal Distinctions

Vesting the General Synod with the ability to remove Board members would also raise issues regarding the possibility that the corporate legal distinction between the General Synod of the Associate Reformed Synod, Inc. and Erskine would be ignored by a court of law, thereby exposing the General Synod to Erskine's debts, obligations and liabilities. The degree of control

that one entity exerts over another is one of the factors considered by courts in an “alter ego” or “ascending liability” analysis as to whether corporate distinctions should be honored.

The Institution’s Charter, amended, restated, and approved by the General Synod in 1977, makes clear that the Institution is its own corporation, established to own, maintain, and operate without profit, as a charitable or eleemosynary corporation, a college which might from time to time include professional and graduate schools. Regarding the issue of legal liability, the General Synod exercised commendable and cautious foresight when, in 1978, the following comment was adopted regarding the 1977 charter:

The committee believes that the intent of the present charter is to make the college legally and solely responsible for its own acts.¹⁶

C. A Healthy Academic Environment

Academic freedom has been given many definitions and is a concept frequently misunderstood and misused. The Board maintains that in the context of a Christian liberal arts education, academic freedom is the recognition that faith and intellect cannot be forced and must not be forced if each is to play its part in relation to the other. Arthur Holmes, professor emeritus at Wheaton College, astutely observed,

While Scripture is our final rule of faith and practice, not all truth about everything is fully revealed therein. If that were so we would need no natural or social sciences, no humanities and no theology – just biblical exegesis. Rather, the eternal Logos has left his imprint on nature and human beings and history, and the truth discovered therein is God’s truth too. We approach it with reverence and humility, modest and tentative in our pronouncements. If all truth is God’s truth, we must be free to explore it. If it ultimately fits into a coherent whole, then our task is to interpret it as such by developing Christian perspectives in the natural and social sciences and the humanities, so as to structure a Christian worldview that exhibits plainly the principle that truth is one and all truth is God’s. This requires open eyes

¹⁶ “Report of the Special Committee on Christian Higher Education,” *Minutes of the General Synod*, June 5-8, 1978, 622.

and open doors on the world, not blinkers and cloisters and defensiveness about the problem.

The fact is that faith liberates rather than enslaves the mind. It helps me understand myself and my world, it creates a positive attitude toward learning. Christian liberty is neither irresponsible license nor repressive bondage, and academic freedom in the Christian college must rest on this realization.¹⁷

It should also be noted that academic freedom has a special relevance in the Reformed tradition:

The early leaders of the Reformation – Wycliffe, Huss and Luther – were university men and their opposition to Rome developed because they refused to think in ruts worn by tradition, superstition, and ignorance.

Religious liberty and academic freedom went hand in hand, insisting on the right to examine the cherished and to improve on the past. Not only reformers were repressed. Aristotle and Aquinas had been banned at Paris; later, elsewhere, Descartes, Newton, and Locke shared the same fate. And remember Galileo. But truth will win out. It cannot be suppressed; for in the final analysis, all truth is God's.¹⁸

The unique but necessary challenge to the Christian college is that academic freedom avoid the extremes of both legalism and license. Because “liberty without loyalty is not Christian [and] loyalty without the liberty to think for oneself is not education,” academic freedom is absolutely essential to the academic task on the Christian college campus.¹⁹ Although the Christian campus may not have been their context in deciding the line of cases involving academic freedom, the United States Supreme Court has held, and the Board agrees,

¹⁷ *The Idea of a Christian College*, 63.

¹⁸ *Ibid*, 65.

¹⁹ *Ibid*, 61.

that academic freedom involves *institutional* determination of who may teach, what may be taught, how it shall be taught, and who may be admitted to study.²⁰

As discussed above, the Erskine Board of Trustees alone governs the Institution and, as such, is the body ultimately responsible for protecting academic freedom. In order to fulfill this responsibility, the Board must also have the final authority to defend and protect Erskine from influences motivated from the competing viewpoints: (1) that education from a religious perspective lacks objectivity and therefore respectability; or (2) that academic freedom is a license to compromise faith and morals and must therefore be restricted or removed. It must be the Board's ultimate and final responsibility and authority to guide Erskine if Erskine is to be the place where both minds and hearts are opened to God's truth. This responsibility and authority must be undertaken by the Board without reference to, or fear of review by, any other body lest both the authority and responsibility be weakened.

D. Institutional Mission

Board of Trustee independence is also necessary and desirable for the ultimate accomplishment of the Institution's mission. An independent board should be the most fully enabled and capable of doing what is best for the Institution, because it is to the Institution and its mission alone that board members are held in fiduciary obligation. It is in this respect that the Institution's and the General Synod's best interests are most aligned -- an independent Erskine board is the best means by which the General Synod's desire will be fulfilled that the Institution achieve its mission and commitments. Both the authority of the Erskine Board, which is "empowered to exercise its independent judgment with reference to the operation of Erskine"²¹

²⁰ See *Widmar v. Vincent*, 454 U.S. 263 (1981); *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

²¹ "Report of the Special Committee on Christian Higher Education," *Minutes of the General Synod*, June 5-8, 1978, 622.

and the concomitant ability of the Erskine board to fulfill its recognized duties, would be less than complete and certainly less than confident if an external body had removal authority.

V. Effective and Working Processes Are in Place

For Board Member Removal for Cause; For General Synod to Communicate Concerns

Pursuant to Article VII of the newly revised Bylaws, Board members and corporate officers, acknowledging their fiduciary obligations to the Institution, must exercise the utmost good faith in all transactions and matters concerning the Institution, refrain from conflicts between the interests of the Institution and their own, and refuse submission to undue influence from any external source so that the integrity of the Institution can be protected at all times.²² A new and detailed Bylaw process is in place as described in Article VII regarding how the Board shall deal with any Board member's failure in these regards and in Article II regarding the power of removal and the protection of due process rights of any Board member against whom removal charges are brought. These Bylaw provisions are appropriate and sufficient for dealing with all real and perceived fiduciary failures on the part of any Board member. Further, these requirements and processes should give the General Synod great assurance that the Board's self-governance works and that any such situations properly brought to the Board's attention will be thoroughly and appropriately investigated and resolved.²³

²² Integrity is also a SACS accreditation Comprehensive Standard, found at C.S. 1.1, which states, "The Institution shall operate with integrity at all times."

²³ Without stating any view or opinion regarding the Board Member Removal Policy adopted by the 2011 General Synod as it applies to Agencies and Standing Committees of the ARPC, which Erskine is neither (see Institution's 1850 charter; revisions and restatements since; also, the "Report of the Special Committee on Christian Higher Education," adopted at the 1978 General Synod meeting), the Board notes that as applied to Erskine, the policy would leave open significant questions regarding the bases for removal "for cause" and would grant an appeal only to the Ecclesiastical Commission on Judiciary Affairs, a nine-member group which is not the appointing body and has no singular fiduciary obligation to Erskine. To be clear, however, it is on the basis of the much broader concerns expressed in this Response, and not these particular issues about the Board Member Removal Policy, that the Board responds herein.

The inability of the General Synod to remove Erskine’s Board members does not mean that the General Synod cannot bring matters of concern to the Erskine Board for response. Effective and efficient communication processes have been in place for many years and the Board reaffirms its commitment thereto, even while acknowledging that these processes may not have been utilized to their best and highest capacity in the past. The 2011 Report on Erskine presented at the 2011 General Synod contains several examples of the communications processes at work in its responses to several motions and a memorial from the 2010 General Synod. In one particular, the 2010 General Synod approved a memorial requesting that the Erskine Board of Trustees look into and report on the MEDCOM program at Erskine Seminary. A Board committee was appointed, conducted an investigation, and made recommendations to the full Board, after which a full report in response to the original memorial was made at the 2011 General Synod. Indeed, this very Response is another example of the communication processes between the General Synod and the Board at work.

The communication processes in place are appropriate to and sufficient for the “due influence” afforded by the historic, unique, mutually beneficial and purposeful relationship between the ARPC and Erskine; and the Board welcomes other appropriate means of communication with the General Synod.

VI. Concluding Summary

The Board of Trustees of Erskine College and Theological Seminary humbly submits this Response and asks and prays that this Response in no way be read or misunderstood to reflect anything other than our expression of the greatest appreciation and respect to the General Synod. The Board believes that legitimate concerns from the ARPC about the Institution, its mission, or

its Board members, should continue to be presented to the Board through appropriate channels to be dealt with by the Board through the processes established by the Bylaws and Charter.²⁴

²⁴ Aspects of the Charter amendment requested in the 2011 General Synod passed motion regarding affirmations to be made by Board members, faculty, and administrators are more appropriately addressed in the Bylaws, Board policies, and/or employee handbooks; likewise, aspects of the requested Charter amendment regarding the General Synod's aspirations should continue to be addressed in General Synod documents rather than the Institution's Charter.