

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

DECISION

Marc G. Benton, <i>et al.</i>,)	
Complainants/Appellants)	
)	
v.)	REMEDIAL CASE 212-11
)	
Presbytery of Hudson River,)	
Respondent/Appellee)	

This remedial case comes before the Commission on appeal by Marc G. Benton and others (Appellants) from a decision by the Permanent Judicial Commission of the Synod of the Northeast (SPJC) dismissing Appellants’ allegations that the Presbytery of Hudson River (Presbytery) committed an irregularity in adopting the following motion:

. . . that the Presbytery affirm the freedom of any session to allow its ministers to perform ceremonies of holy union (within or outside the confines of the church sanctuary) between persons of the same gender, reflecting our understanding at this time that these ceremonies do not constitute marriage as defined in the Book of Order.

The Permanent Judicial Commission finds that it has jurisdiction, that Appellants have standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more grounds for appeal under D-8.0105.

HISTORY

Following the August 1998 publication of an article concerning a same-sex holy union service at South Presbyterian Church in Dobbs Ferry, New York (South Church), the Session of the Bethlehem Presbyterian Church (Bethlehem Church), where Appellant Marc G. Benton serves as pastor, wrote the Stated Clerk of the Presbytery requesting that the Presbytery

investigate, counsel, and as necessary discipline the pastors and Session of South Church and take steps to preclude any further such ceremonies there. At its October 1998 meeting, the Presbytery Council appointed a Special Administrative Review Committee to gather information concerning the matters raised in the Bethlehem Church's letter. Following meetings with both South Church and Bethlehem Church, the committee presented its report to the Council on January 5, 1999. The Council received the report, and recommended that dialogue between the two churches continue. "In addition, in order to provide clarity and leadership at this critical point in the ongoing dialogue," the Council also passed the above-quoted motion which is at issue in this case.

At the stated meeting of the Presbytery on January 30, 1999, the Moderator of the Council presented the report of the Special Administrative Review Committee, including the motion at issue. The Presbytery approved the motion, and a written protest was received.

Appellants initiated this remedial case against the Presbytery by complaint dated April 13, 1999.

On August 23, 1999, Appellants' counsel submitted a formal request, with supporting statements, for pretrial citations to three witnesses (the clerk of session and two pastors of South Church), along with a request for their production of certain minutes, papers, and other effects from South Church. The Executive Committee of the SPJC denied this request by letter dated September 12, 1999, and the SPJC affirmed this ruling at its meeting on October 7, 1999, with a written decision dated October 11, 1999.

A trial was held November 4, 1999. Appellants renewed their request for trial citations, which the SPJC denied.

The SPJC concluded that Presbytery's motion of January 30, 1999, did not constitute an irregularity, citing the testimony of those present at the Presbytery meeting that the motion was not intended to authorize same-sex marriages.

The SPJC further rejected Appellants' argument that existing provisions of the *Constitution* prohibit same-sex ceremonies. The SPJC concluded that the *Constitution* "does not address" these ceremonies, and declined what it viewed as the invitation of the Appellants to legislate by judicial fiat.

The SPJC also rejected Appellants' argument to extend existing provisions of the *Constitution* to prohibit same-sex ceremonies, again based upon its view that "the plain language of the motion . . . states that it is not authorizing marriage ceremonies between persons of the same sex."

The SPJC further concluded that the Presbytery motion did not violate the constitutional injunction in W-4.9001 (*sic* – W-4.9004) that the Christian understanding of marriage is not to be diminished. According to the SPJC, W-4.9004 "addresses additions to the marriage ceremony and does not apply to ceremonies of same-sex union." In addition, the SPJC rejected Appellants' argument that the Presbytery's motion improperly authorizes sessions to approve acts of worship that impermissibly simulate Christian marriage or that are otherwise contrary to the *Constitution*. According to the SPJC, Appellants did not carry their burden of proving "that the Presbytery would not or could not express its disapproval of such hypothetical session actions."

Finally, the SPJC rejected Appellants' argument that Presbytery had improperly approved use of church property contrary to the *Constitution*, based on its prior conclusion that the *Constitution* "does not prohibit same-sex unions that are not the same as marriage."

SPECIFICATIONS OF ERROR

The Appellants cited five specifications of error

- I. The SPJC erred in failing to rule that existing provisions of the Constitution of the Presbyterian Church (U.S.A.) and the effect thereof do not allow a presbytery to permit ministers to solemnize (on or off) church property same-sex unions.

This specification is not sustained.

None of the provisions of the Directory for Worship upon which Appellants rely prohibit the conduct of same-sex ceremonies that are not the same as marriage ceremonies. Appellants cite W-1.4001, which provides that “[t]hose responsible for worship are to be guided by the Holy Spirit speaking in Scripture, the historic experience of the Church universal, the Reformed tradition, *The Book of Confessions*, the needs and particular circumstances of the worshipping community, as well as the provisions of the Form of Government and this directory.” “Guided” is a key word in this provision; it emphasizes the balance that this very provision commends to the church between order and liberty, including pastoral attention and sensitivity to the needs and circumstances of the faith community being served. Moreover, a positive warrant for the application of worship in pastoral care is given in W-6.0000 and W-7.0000.

This Commission concludes that ceremonies of “union” between persons of the same sex are governed by the General Assembly’s Authoritative Interpretation of 1991. The Appellants argue that since G-6.0106b is a foundational standard derived from the Confessions, it should be applied to standards for worship as well. This is unpersuasive. The plain language of G-6.0106b speaks only to ordination. The adoption of G-6.0106b did nothing to change the constitutional

interpretation concerning worship practices set out in the 1991 Authoritative Interpretation which reads:

There is no mention in the *Book of Order* of same sex unions (ceremonies). If a same sex ceremony were considered to be the equivalent of a marriage ceremony between two persons of the same sex, it would not be sanctioned under the *Book of Order*. In section W-4.9001, Christian marriage is specifically defined as:

[A] covenant through which *a man and a woman* are called to live out together before God their lives of discipleship. In a service of Christian marriage[,] a lifelong commitment is made by *a woman and a man* to each other, publicly witnessed and acknowledged by the community of faith. (emphasis added)

Inasmuch as the session is responsible and accountable for determination of the appropriate use of the church building and facilities (G-10.0102n), it should not allow the use of the church facilities for a same sex union ceremony that the session determines to be the same as a marriage ceremony.

Likewise, since a Christian marriage performed in accordance with the Directory for Worship can only involve a covenant between a woman and a man, it would not be proper for a minister of the Word and Sacrament to perform a same sex union ceremony that the minister determines to be the same as a marriage ceremony. (*Minutes*, 1991, pp. 55, 57, 395)

- II. The SPJC erred in its conclusion that because same-sex union ceremonies are not specifically named in the *Constitution* as disallowed, the SPJC could not rule that they are constitutionally impermissible.

This specification is not sustained.

As phrased, this specification of error misconstrues the decision of the SPJC. The SPJC did not reject the general principle that it has jurisdiction to address the constitutionality of actions that are not specifically named in the *Constitution*. In the instant case, the SPJC simply chose not to extend the provisions of the *Constitution*, and specifically G-6.0106b, beyond the stated scope of

applicability. For the reasons discussed under Specification I above, that decision was not an irregularity.

III. The SPJC erred in its conclusion that the Christian understanding of marriage is not impaired by ceremonies of same-sex union.

This specification is sustained in part and not sustained in part.

Both parties erred in applying the Authoritative Interpretation categorically and without distinction. Said Authoritative Interpretation clearly assumes that some same-sex ceremonies could be the equivalent of a marriage ceremony, and therefore, would contravene the *Book of Order*, and some might not. A determinative distinction between a permissible same-sex ceremony and a marriage ceremony is that the latter confers a new status whereas the former blesses an existing relationship. The *Book of Order* makes this theological distinction concerning marriage in W-4.9004: “In the name of the triune God the minister shall declare publicly that the woman and the man are now joined in marriage.” This and similar pronouncements declaring a new status are to be reserved for services of marriage.

Because of this theological distinction, there should also be a liturgical distinction in services blessing a same-sex relationship. The 1991 General Assembly Authoritative Interpretation leaves to the judgment of individual ministers and sessions (if church property is to be utilized) whether to conduct same-sex ceremonies. In exercising this judgment, however, ministers and sessions should take special care to avoid any confusion of such services with services of Christian marriage. Ministers should not appropriate specific liturgical forms from services of Christian marriage or services recognizing civil marriage in the conduct of such ceremonies. They should also instruct same-sex couples that the service to be conducted does not constitute a marriage ceremony and should not be held out as such.

Notwithstanding the above admonitions, the Directory for Worship affirms the value of worship services in the practice of pastoral care and gives great latitude to ministers and sessions in addressing the pastoral care of members. A same-sex ceremony celebrates a loving, caring, and committed relationship. Therefore, it would be appropriate for this worship occasion to be in the form and spirit of W-6.3010 and W-6.3011. Such a same-sex ceremony does not bless any specific act, and this decision should not be construed as an endorsement of homosexual conjugal practice proscribed by the General Assembly.

Therefore it is our determination that the motion adopted by the Presbytery is in error because it failed to distinguish between permissible and impermissible same-sex ceremonies.

- IV. The SPJC erred in refusing to permit Complainants/Appellants to obtain and present evidence and testimony going to an issue at the heart of the case, namely whether the format, framework and venue of a marriage or wedding in a worship service for a man and a woman may properly be put to the purpose of solemnizing a same sex union.

This specification is not sustained.

The focus of the Appellants' complaint was the action of the Presbytery. It was not a remedial case against the Session of South Church or a disciplinary case against its pastors. The SPJC therefore properly concluded that the requested evidence was not relevant.

- V. The SPJC erred in failing to rule that the performance on church property of same sex union ceremonies contravenes the constitutional proscription against the use of property of the Presbyterian Church (U.S.A.) contrary to the Constitution.

This specification is not sustained for the reasons discussed under Specification 1.

ORDER

IT IS THEREFORE ORDERED that, insofar as the Presbytery's motion failed to make the necessary distinction outlined in this decision, the decision of the SPJC is reversed.

IT IS FURTHER ORDERED that the Presbytery send a copy of this decision to all minister members and all sessions within the Presbytery.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this decision to the Synod at its first meeting after receipt, that the Synod enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Hudson River report this decision to the Presbytery at its first meeting after receipt, that the Presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

Dated this 22nd day of May 2000.