

THE PERMANENT JUDICIAL COMMISSION
of
The Synod of the Trinity
of
THE PRESBYTERIAN CHURCH (U.S.A.)

DECISION

The Rev. Randall Bush
The Rev. Mary Louise McCullough
The Rev. Wayne Peck
The Session of East Liberty Presbyterian Church
The Session of Sixth Presbyterian Church
Complainants

v.

CASE NO. 06.09

The Presbytery of Pittsburgh
Respondent

ARRIVAL STATEMENT

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above named complainant(s) against the Presbytery of Pittsburgh.

JURISDICTION STATEMENT

The Permanent Judicial Commission finds that it has jurisdiction, that the complainants have standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted.

HISTORY

At a meeting of the Presbytery of Pittsburgh on October 12, 2006, the presbytery adopted the following resolution:

"In its discernment of the essentials of Reformed polity and for the sake of the peace, unity, and purity of the church, Pittsburgh Presbytery:

"Adopts the principle that compliance with the standards for ordination approved by the Presbyterian Church (USA) in the *Book of Order* is an essential of Reformed polity. Therefore, any departure from the standards of ordination expressed in the *Book of Order* will bar a candidate from ordination and/or installation by this governing body. Provisions of the *Book of Order* are signified as being standards by use of the term "shall," "is/are to be," "requirement" or equivalent expression; and

"Resolves that no exceptions to the requirement that all Ministers of Word and Sacrament must "live either in fidelity within the covenant of marriage between a man and a woman or in chastity in singleness" (*Book of Order, G-6.0106b*) will be allowed within the jurisdiction of this Presbytery; and

"Resolves that Ministers of Word and Sacrament shall be prohibited from conducting same-sex marriages within the jurisdiction of this Presbytery."

Following this action, the complainants, believing that the adoption of the foregoing resolution constituted an irregularity under the Constitution, filed a complaint with the Stated Clerk of the Synod of the Trinity concerning the following particular allegations:

1. "It subverts the process of discernment by its creation of a "super standard" that supplants the denominational standards Pittsburgh Presbytery is bound to apply."

Irregularity 1 is sustained by a vote of 8-3 for the reasons stated in the rationale below:

2. "It adopts the *Book of Order* constitutional standards as essentials of Reformed polity, wrongfully setting aside the recent General Assembly's Authoritative Interpretation of G-6.0108."

Irregularity 2 is sustained by a vote of 8-3 for the reasons stated in the rationale below:

3. "It expressly prohibits any exception from the requirements of *Book of Order G-6.0106b*, despite the General Assembly's

Authoritative Interpretation and the historic Presbyterian principle that presbyteries have the responsibility to determine *individually*, as to each candidate coming before it, whether the candidate has departed from scriptural and constitutional standards of fitness for office, and whether any departure constitutes a failure to adhere to essentials of Reformed faith and polity."

Irregularity 3 is sustained by a vote of 8-3 for the reasons stated in the rationale below:

Our rationale for the first three (3) decisions are interrelated as the irregularities raised by complainants focus on the ordination process and thus, are combined herein. Although the Presbytery of Pittsburgh correctly followed the procedure outlined in its manual for adopting a controversial resolution, we find an irregularity in elevating certain language in the *Book of Order* as "an essential of reformed polity." The presbytery has the authority and duty to examine all candidates individually but does not have the authority to create a "super standard" in so doing.

The resolution's use of the phrase "is an essential of reformed polity" incorrectly equates mandatory ordination standards with the concept of essentials. "Essentials of the faith" and like phrases have extensive historical meanings and understandings (Final Report of the Special Commission of 1925; 1927 Swearingen Report, p 13-16). It is over simplification and overly broad to make a blanket determination that all mandatory standards are essentials of Reformed polity.¹ As evidenced by this case and the record of its two day trial, this statement has created confusion when its stated purpose was to remove confusion. As such it is impermissibly vague.

While we commend the Presbytery of Pittsburgh for its desire to clarify perceived confusion in the report of the Task Force on the Peace, Unity, and Purity of the Church (PUP) and to be pastoral, the resolution does not meet the Respondents stated goal. Had the presbytery simply reaffirmed its commitment to enforcing the mandatory standards of the *Book of Order*, we would have found no irregularity.

We find an irregularity as this resolution incorrectly removes presbytery's right and duty to determine a candidate's fitness from the actual ordination process. We have no need to remind presbyteries that the determination that there is a departure from mandatory ordination standards or essential tenets is a gravely serious matter with a profound impact on an individual called to ministry. Essentials of the faith must be determined after the candidate has been carefully examined by the ordaining body as to doctrine and behavior and

cannot be predetermined. (Swearingen, p 14 and PUP, lines 1050-1076). We therefore set aside and declare void paragraph two (2) of the resolution and hold that departures from ordination standards, and departures from essential tenets, must be determined on a case by case basis within the ordination process.

We see no confusion in the *Book of Order*, the 2006 Report of the Special Task Force on the Peace, Unity, and Purity of the Church and its Authoritative Interpretation or the decisions of the General Assembly Permanent Judicial Commission. We understand that no presbytery may grant an exception to any mandatory church wide behavioral ordination standard. Under our polity, violations of behavioral standards are to be addressed through repentance and reconciliation, not by exception or exemption. The freedom of conscience granted in G-6.0108 allows candidates to express disagreement with the wording or meaning of provisions of the constitution, but does not permit disobedience to those behavioral standards.

G-6.0106b provides in part “among these standards is the requirement to live either in fidelity within the covenant of marriage between a man and a woman (W-4.9001), or chastity in singleness.” This is a behaviorally measured standard which applies to all ordained officers of the church. It is clear. It is mandatory.

4. “It prohibits Ministers of Word and Sacrament from conducting same-sex marriages within the jurisdiction of Pittsburgh presbytery despite the absence of any such express prohibition in the Constitution of the Presbyterian Church (USA) or under any authoritative interpretation thereof.”

Irregularity 4 is not sustained by a vote of 11-0.

The fourth paragraph of the resolution is not concerned with the examination of candidates for ordination and installation or evaluation of their fitness for office. Rather, its focus is the conduct of those already ministering within the presbytery and is therefore not subject to our rationale above.

Marriage is defined in both the Book of Order and the civil law of Pennsylvania applicable throughout the Presbytery of Pittsburgh as being between a man and a woman (W-4.9001; 23Pa.C.S.A. 1704). The resolution may be read as a mere summary of civil law applicable to clergy within the Commonwealth of Pennsylvania, intended to advise new clergy about the legal context of their ministry, or it may be read as a summary of the Book of Order provisions on marriage. In

either case, such a policy is constitutional in scope and does not violate either the *Book of Order* or the case law under it.

However, the resolution can not be read to prohibit ministers in the Presbytery of Pittsburgh from performing services to bless same-sex unions which *Benton v. The Presbytery of Hudson River*, 212-11, held are permitted, by the *Directory for Worship*:

"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."

Complainants argue that the Constitution does not specifically prohibit ministers from conducting same-sex marriage ceremonies and thus, the presbytery cannot impose such a prohibition. However, the *Book of Order* (*G-9.0103*) states that when the Constitution is silent "powers not mentioned (are) reserved to the presbyteries." Therefore, the Presbytery of Pittsburgh has the authority to establish policy disallowing Ministers of Word and Sacrament to conduct same-sex marriages.

1. For example it is understood that the ordination questions of G-14.0405 must be answered in the affirmative. This is a mandatory ordination standard and a departure is an absolute bar to ordination. We do not believe a failure to affirmatively answer ordination questions automatically constitutes a departure from the essentials of the faith as expressed in those questions. To make that determination a candidate's reason for refusing to answer affirmatively would have to be ascertained.

ORDER

IT IS THEREFORE ORDERED that: the Stated Clerk of the Presbytery of Pittsburgh read this Decision including the PJC accompanying statement, to the Presbytery at its first meeting.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Pittsburgh report this Decision to the Presbytery at its first meeting, 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 Synod. (D-7.0701)

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Trinity report this Decision to the Synod at its first meeting, that the Synod enter the full Decision upon its minutes.

ABSENCES AND NON-PARTICIPANTS

Jay Lewis, John Matta, William Chancellor and Todd Green, members of the Permanent Judicial Commission, were not present and took no part in the proceedings.

DATE

Dated this sixteenth day of May, 2007

Debbie O'Dell Senecca
Moderator, Permanent Judicial Commission

Karin Carroll
Clerk, Permanent Judicial Commission

Concurring and Dissenting Opinion in Case 06.09
Concerning the Complaint of Bush et al v. The Presbytery of Pittsburgh
Heard before the Synod of the Trinity Permanent Judicial Commission
Presbyterian Church (U.S.A.)
On May 14 and 15, 2007

We respect the decision of our brothers and sisters of the SPJC but we respectfully dissent from that portion of the Decision which set aside the second paragraph of the Resolution. We concur with the majority decision to not set aside paragraphs three and four of the Resolution and their clear affirmation of mandatory ordination standards.

Complainant claims that the Overture created a "super standard." We submit the intent of the Presbytery of Pittsburgh was not to create a "super" layer of ecclesiastical law but rather to reaffirm what already had been clearly stated in the Book of Order, so as to preclude continued confusion in the standards.

Further, Complainant claims that the Presbytery of Pittsburgh was erroneous in eclipsing the conscience of any particular candidate for ordination/installation (G-6.0108) by a required subscription to the Book of Order constitutional standards. We feel that while there may be a perception of subscription, the intent of the Resolution is to clarify candidating requirements so that the ordaining/installing process is not compromised.

We perceive no intent in the Resolution to threaten the balance between faith and order nor to negate a case-by-case examination of a candidate. Rather, we perceive the Resolution ensures that the conscience of a candidate remains within the confines of the Book of Order standards. We believe the focus of Respondent was to preclude a compromise in fidelity/chastity provisions.

The Resolution is not unconstitutional on its face. If the Presbytery were to apply the Resolution in an improper manner, remedies are available.

The Rev. Dr. H. C. Ted Kelley

Jestyn G. Payne

Gwilym A. Price, III