

# THE POLITY DEBATE REGARDING SAME-GENDER BLESSINGS AND MARRIAGES IN THE PRESBYTERIAN CHURCH (U.S.A.)

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**ABSTRACT**

This paper will examine how the decision made by the Presbyterian Church in 1927 – to use polity rather than theology to solve its theological issues – has guided the same-gender blessing and marriage debate since the 1980s. The paper summarises the formation process of the Presbyterian Church (U.S.A.)'s polity regarding same-gender blessing and marriage ceremonies in light of General Assemblies' decisions and General Assembly Permanent Judicial Commissions' ecclesiastical rulings.

**INTRODUCTION**

The United Presbyterian Church in the U.S.A. (UPCUSA) and the Presbyterian Church in the U.S. (PCUS) both studied the topic of same-gender relationships and issued 'definitive guidance' statements on ordination (and installation), but did not issue polity statements regarding same-gender blessing and marriage (see Vermaak 2009 for a full discussion). The Presbyterian Church (U.S.A.) (PC(USA)) has dealt with the topic since its beginning in 1983 through polity means, following the pattern established by the 1927 General Assembly of the Presbyterian Church in the United States of America (PCUSA), when it accepted the report of the *Special Commission of 1925* to give preference to polity when dealing with theological issues (PCUSA Minutes 1927:58–86, cf. Vermaak 2010).

This paper briefly highlights some of the decisions, which can be made by the General Assembly when it issues an Authoritative Interpretation on the Constitution of the PC(USA) – the *Book of Order* and *The Book of Confessions* – by the presbyteries when they approve an amendment sent to them by the General Assembly to change the Constitution, or an Authoritative Interpretation issued by the denomination's highest court – the General Assembly Permanent Judicial Commission (GAPJC) – when it issues a ruling. Authoritative Interpretations are binding on the denomination, but are not printed in the *Book of Order*. One has to search through either the General Assembly Minutes or the denomination's website to find these Authoritative Interpretations, especially regarding same-gender relationships.

**SAME-GENDER BLESSINGS AND MARRIAGES**

In 1983, the UPCUSA and PCUS reunited to form the PC(USA), and the General Assembly added a new statement regarding marriage to the Directory for Worship in the *Book of Order*:

*Marriage is a gift God has given to all humankind for the well-being of the entire human family. Marriage is a civil contract between a woman and a man. For Christians marriage is 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 (W-4.9001).*

Although W-4.9001 did not address same-gender marriages or unions, it was a clear statement that the Constitution did not support them; only marriages between heterosexual persons were recognised and permitted in the PC(USA). Interestingly, but not surprising, the second sentence that 'marriage is a civil contract between a woman and a man' [emphasis added] once again showed the double standards the church has used. The Westminster Confession of Faith up to the 1950s defined marriage as 'a union between one man and one woman designed of God to last so long as they both shall live' (PCUS Minutes 1959:69–70; 6.133 *The Book of Confessions*). The classic language of marriage between 'one man and one woman' pertained to the idea of lifelong marriage, which could only be ended through the death of a spouse or divorce on the grounds of adultery (these were the only two reasons Jesus gave for a marriage to end and for remarriage to occur). Thus, if one spouse remarried for reasons other than death or adultery, one would be married to more than one spouse and thus commit adultery.

The Presbyterian Church in the United States of America (PCUSA) in 1952 (PCUSA Minutes 1952:188–189), which united with the United Presbyterian Church in North America in 1958 to become the UPCUSA, and the PCUS in 1959 (PCUS Minutes 1959:69–70), respectively, amended the Westminster Confession of Faith 6.131–132 and 6.133–139 to allow for divorce and remarriage on grounds other than infidelity – namely, when 'a marriage dies in the heart and the union becomes intolerable' (6.137 *The Book of Confessions*).

Thus, the predecessor churches of the PC(USA) changed their Confessions in the 1950s to allow for the remarriage of divorced persons, specifically for ministers to continue to serve in congregations after divorce and remarriage, despite acknowledging that Jesus strictly forbade divorce except on the grounds of adultery, and remarriage only after divorce resulting from adultery or after the death of a spouse. Yet, Jesus recognised that sin corrupts marriage and '... he acknowledged divorce as a reality, but without approving it' (PCUS 1980:361). Thus, 'Christians who are sinners, do divorce ...' (PCUS 1980:361), but partnered gay and lesbian Christians, who are defined as 'sinners' by the 1978 and 1979 'definitive guidance' when they are actively involved in relationships, are not allowed to marry. An

exception applies to the majority of heterosexuals in the church, while the minority of partnered gay and lesbian Christians is excluded under this exception.

The 1991 General Assembly approved the majority report of the Assembly Committee on the Constitution (ACC) (PC(USA) Minutes 1991:55, 57) that there was no mention in the *Book of Order* of same-gender unions or ceremonies and '[i]f 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*' (PC(USA) Minutes 1991:395).

W-4.9001 specifically defined Christian marriage as between 'a man and a woman'. The ACC was clear that under the *Book of Order*, partnered gay and lesbian Christians could not be married. Also, the session was responsible and accountable for the appropriate use of the church buildings and facilities (*Book of order* G-10.0102n) and '... [s]hould 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' (PC(USA) Minutes 1991:395). Regarding a minister performing a same-gender union ceremony, the ACC stated:

*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.*

(PC(USA) Minutes 1991:395)

Within the Constitution of the PC(USA), same-gender marriages were not permissible. Yet, this statement is ambiguous. It is unclear what 'the same as' means. If rings and vows are exchanged, but no marriage license is issued and the minister calls the service a blessing, can someone else determine that the service is a marriage and file a complaint? Likewise, what does it mean that the session or the minister determines that the union is the same as a marriage ceremony? Does the session or minister have to use specific words or actions to make this distinction? If the minister determines it is not a marriage, can that action be challenged? Is 'would not be proper' a clear prohibition or is it a suggestion? No definition of 'would not be proper' exists in the *Book of Order*; neither were the strong prohibitions of 'shall' or 'shall not' used. Ambiguity over this 1991 decision has reigned for years: Conservatives have claimed that if the ceremony has any hint of wedding elements (exchange of rings, promises, flower girls, etc.), then it must be a wedding, even if it is not announced as such.

The 2000 GAPJC, in *Benton, et al. v. Presbytery of Hudson River*, was a landmark decision regarding same-gender unions. It complemented the 1991 General Assembly's Authoritative Interpretation that same-gender unions were permissible, as long as they were not considered the same as marriage ceremonies. However, liturgical same-gender marriages, according to the 1991 Authoritative Interpretation and the 2000 Benton ruling, were not forbidden, but '... [i]t would not be proper for a minister ... to perform a same sex union ceremony that the minister determines to be the same as a marriage ceremony' (PC(USA) Minutes 1991:395).

The GAPJC found the argument unpersuasive that G-6.0106b was a foundational standard derived from the Confessions and it should be applied to standards for worship as well, since G-6.0106b applied to ordination and did not change the worship practices set out by the 1991 Authoritative Interpretation (PC(USA) Minutes 2000:587, see Vermaak 2009:275–282). It argued that a vital distinction existed – namely, '[a] determinative distinction between a permissible same-gender ceremony and a marriage ceremony is that the latter confers a new status whereas the former blesses an existing relationship.' The GAPJC admonished that W-4.9004 and similar pronouncements declaring a new status were to be

reserved for services of marriage (PC(USA) Minutes 2000:588). The GAPJC advised that, based on this theological distinction, there should be a liturgical distinction in services blessing a same-gender relationship. The 1991 Authoritative Interpretation left it to the judgment of individual ministers and sessions whether to conduct same-gender ceremonies on church property. They should take special care to avoid any confusion of such services with services of Christian marriage. Ministers should not use liturgical forms from services of Christian marriage or services recognising civil marriage in the conduct of such ceremonies. Ministers should also instruct same-gender couples that the service to be conducted does not constitute a marriage ceremony and should not be perceived as such (PC(USA) Minutes 2000:587).

Thus, the GAPJC made it clear that a minister could not perform a same-gender marriage; it would be a violation of the Constitution. However, countless ministers have merely moved the services offsite and have performed same-gender blessing and/or marriage services without requiring permission from the session or having to report these services to the session and/or the presbytery (ministers are required to report all civil marriages which they perform to the session and/or the presbytery). The GAPJC, however, did not specify what these liturgies for same-gender blessing should look like, or instruct any committee to write such liturgies. The GAPJC left the liturgical distinction wholly up to the ministers who perform these blessings and the sessions who allow them to occur on church property. Currently, no Presbyterian-sanctioned same-gender blessing liturgies or guidelines exist.

The 2000 GAPJC, in the Benton ruling, used 'should' language three times, which did not compel compliance from ministers performing same-gender unions; it did not use a single 'shall' or 'must' which did. 'Should' and 'should not' are considered more a recommendation than a requirement and leave little opportunity for remedial or disciplinary action in same-gender union services. The GAPJC's use of 'should' is part of the long history of not over-legislating what is permissible and what is impermissible, but allowing governing bodies and ministers to exercise freedom of conscience. The question remains whether 'should' and 'should not' are flat-out requirements or prohibitions or if 'SHOULD' signifies practice that is strongly recommended' (Preface to the *Book of Order*).

Despite multiple GAPJC decisions, uncertainty still exists over the distinction between same-gender blessings and marriages and which criteria are to be used to distinguish the difference. Unfortunately, the uncertainty regarding the force and intent of the language in the 1991 Authoritative Interpretation, coupled with the 2000 Benton ruling, created a climate which was rife for judicial complaints. This, in turn, led to General Assemblies and GAPJCs trying to clarify the polity, while wholly ignoring the theological dimensions of same-gender blessings and marriages.

The 2004 General Assembly voted to issue a resolution which stated, in part:

*Affirms the Presbyterian Church's historic definition of the meaning of marriage as a "civil contract between a woman and a man"...*

*Declares that all persons are entitled to equal treatment under the law (Constitution of the United States of America); therefore*

*Urges state legislations to change state laws to include the right of same-gender persons to civil union and, thereby, to extend to them all the benefits, privileges, and responsibilities of civil union, and urges all persons to support such changes in state laws.*

*Urges the Congress of the United States of America to recognize those state laws that allow same-gender union and to change federal laws to recognize all civil unions licensed and solemnized under state law to apply in all federal laws that provide benefits, privileges, and/or responsibilities to married persons.*

(PC(USA) Minutes 2004:59)

The General Assembly would support gays and lesbians, but would not advocate for their civil marriage rights, only their civil union rights, since marriage could only be between 'a man and a woman'.

The 2008 GAPJC, in *Spahr v. Presbyterian Church (U.S.A.) through the Presbytery of Redwoods*, ruled that the charges against Rev. Dr J.A. Spahr for performing a same-gender (liturgical, not civil) marriage were based on W-4.9001 and accordingly, she could not be guilty:

*By the definition in W-4.9001, a same sex ceremony can never be a marriage. The SPJC found Spahr guilty of doing that which by definition cannot be done. One cannot characterize same sex ceremonies as marriages for the purpose of disciplining a minister of the Word and Sacrament and at the same time declare that such ceremonies are not marriages for legal or ecclesiastical purposes. The PPJC was correct in finding that by performing the two ceremonies at issue, Spahr did not commit an offense as charged. Therefore, the SPJC erred in determining that Spahr was guilty of violating W-4.9001 or the 1991 AI.*

(PC(USA) Minutes 2008:332)

*Under W-4.9001, a same-sex ceremony is not and cannot be a marriage.*

(PC(USA) Minutes2008:333)

W-4.9001 only allows ministers to perform a marriage between a man and a woman, not a same-gender marriage. This frustrating ruling stated that, since the denomination does not recognise same-gender marriages, whether liturgical or civil, they do not exist according to the Constitution of the PC(USA). Thus, Spahr could not be guilty of something she cannot perform in the first place. The Office of the Stated Clerk immediately issued an updated Advisory Opinion Note 7 regarding same-gender relationships. It quoted the *Spahr* case that '... officers of the PCUSA [sic – PC(USA)] authorized to perform marriages shall not state, imply, or represent that a same sex ceremony is a marriage' (PC(USA) Constitutional Services 2008:1). Clearly, despite the ambiguity in the *Spahr* ruling, Note 7 stated that the *Benton* and *Spahr* rulings both prohibited same-gender (liturgical) marriages.

The 2008 PJC of Pittsburgh Presbytery (PPJC), in *The Presbyterian Church (U.S.A.) through Pittsburgh Presbytery v. Edwards*, ruled on a complaint that Rev. Dr J.M. Edwards had performed a (liturgical) same-gender marriage. The PPJC followed the logical conclusion of the 2008 GAPJC in the *Spahr* ruling: even if Edwards called the ceremony a marriage, she was not guilty of performing a same-gender marriage. Thus, a minister could not be guilty of violating the Constitution, since same-gender marriages were not recognised by the *Book of Order*. The PPJC concluded that whatever the ceremony was, it could not be a marriage, since it was not recognised by the *Book of Order* and 'purporting to do so does not violate the Constitution either' (PJC of the Presbytery of Pittsburgh 2008:5).

The PJC of the Presbytery of Boston (PPJC), in *Presbytery of Boston v. Southard*, dealt with charges against Rev. J. Southard for performing a (civil) same-gender marriage 'in violation of the Book of [sic - Directory for] Worship of the PCUSA [sic - PC(USA)] W04.9000 [sic - W-4.9000]' (Brondyke, et al 2007 [sic - 2008]) in the state of Massachusetts, where it is permissible. The PPJC dismissed charges 2, 3, and 4 and directed the Prosecuting Committee to amend charges 1 and 5 (PJC of the Presbytery of Boston 2009a:1-2). The PPJC did not sustain the revised charge 1; it argued that the prosecution did not prove that W-4.9000 contained mandatory language. Also:

*Since the Preface to the Directory of Worship (clause b) states that the Directory uses language that is "simply descriptive", this Commission takes this to mean that the definition of Christian marriage in W-4.9001 is merely descriptive; there is no mandatory language in this article. Where mandatory language is used in subsequent articles (e.g., W-4.9004), it is taken to refer to mandatory action, not limiting the gender of the couple to*

*be married. In addition, there is no mandatory language in the Constitution, nor in any Authoritative Interpretation, prohibiting Ministers of [sic – the] Word and Sacrament from performing same-gender marriages in states where this is allowed by law. The Authoritative Interpretation of 1991 ... written by the Advisory Committee on the Constitution, again contains no mandatory language.*

(PJC of the Presbytery of Boston 2009b:4)

Additionally, the PPJC found that neither the 2000 *Benton* ruling (since it was a remedial case and it did not address same-gender marriage) nor the 2008 *Spahr* ruling applied (since it contained no clear prohibition). The PPJC, as a result, did not sustain revised charge 2 either that Southard did not fulfill her ordination vows to be governed by the church's polity (W-4.4003e) since no offense had been committed (PJC of the Presbytery of Boston 2009b:5). Thus, Southard became the first Presbyterian minister to be charged and found not guilty for conducting a civil same-gender marriage. Interestingly, the Prosecuting Committee, not the original Appellants, filed an appeal with the PJC of the Synod of the Northeast (SPJC) specifying thirteen errors by the PJC of the Presbytery of Boston (PJC of the Synod of the Northeast 2009:1-3).

The 2009 Investigative Committee of the Presbytery of the Redwoods filed charges with its PJC against Rev. Dr J.A. Spahr for performing a same-gender marriage and persisting in a pattern of disobedience by performing fifteen additional same-gender marriages from May to November 2008, the period during which civil same-gender marriages were legal in California (Blackstone 2010:1-3). Spahr reported all the weddings she had performed in her annual report to the presbytery, thus bringing it to the attention of the complainants. Both the *Southard* and *Spahr* cases are set to be appealed by either side all the way up to the GAPJC level.

The 2008 General Assembly appointed a Special Committee of Civil Union and Christian Marriage to study the following and report to the 2010 General Assembly, including any polity recommendations, regarding<sup>1</sup>: a. the history of the laws governing marriage and civil union, including current policy debates; b. how the theology and practice of marriage have developed in the Reformed and broader Christian tradition; c. the relationship between civil union and Christian marriage; d. the effects of current laws on same-gender partners and their children; e. the place of covenanted same-gender partnerships in the Christian community. A Part 4 was added: the overture advocated for equal rights and did not seek to redefine the nature of Christian marriage (PC(USA) Minutes 2008:258-259). The Special Committee completed its report and did not recommend any changes in the definition of marriage in the *Book of Order*, since they believed they had no mandate from the 2008 General Assembly (Scanlon 2010:1). It recommended that the General Assembly encourage presbyteries and sessions to develop resources regarding how church facilities can be used for (same-gender) blessing ceremonies and how clergy can participate in same-gender union ceremonies. It also recommended that the Office of Theology and Worship and the Department of Constitutional Services provide updated guidelines and resources addressing the difference between a ceremony of Christian marriage and a same-gender union ceremony (PC(USA) 2010:30). General Assemblies and the Office of Theology and Worship have been avoiding this issue since 1991; by not providing any liturgical and practical guidelines for same-gender unions and blessings, they are seen as not endorsing it.

## CONCLUSIONS AND RECOMMENDATIONS

The federal government of the United States of America does not recognise the marriages of same-gender couples and is

1. This list is provided in the same format as used in the Minutes of the 2008 General Assembly.

prohibited from doing so by the Defense of Marriage Act. However, civil same-gender marriages are legal in the states of Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and the district of Washington, D.C., and their validity is recognised by the state of New York. Additionally, the 18 000 same-gender marriages performed in the state of California from June to November 2008 have been upheld. The PJC of the Boston Presbytery set the precedent on whether civil same-gender marriages are impermissible under W-4.9001, ruling '... that the definition of Christian marriage in W-4.9001 is merely descriptive; there is no mandatory language in this article' (PJC of the Presbytery of Boston 2009b:4). Both the *Southard* and *Spahr* rulings are set for years of appeal, all the way to the GAPJC level. Future overtures from presbyteries to the General Assembly, commissioners' resolutions by two commissioners to a General Assembly meeting, and communications requesting clarity, will request Authoritative Interpretations regarding both liturgical and civil same-gender marriages. The polity battle over civil and liturgical same-gender blessings and marriages, and the accompanying charges and trials will continue in the absence of theological study, debate and guidance regarding same-gender relationships.

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