

THE PERMANENT JUDICIAL COMMISSION
of
THE PRESBYTERY OF SOUTHERN NEW ENGLAND
of
THE PRESBYTERIAN CHURCH (U.S.A.)

DECISION AND ORDER

Disciplinary Case No. PSNE 13-01

The Presbyterian Church (U.S.A.),
Through the Presbytery of Southern
New England

v.

The Reverend John P. Merz,
Teaching Elder

ARRIVAL STATEMENT

This is a disciplinary case that has come to the Permanent Judicial Commission of the Presbytery of Southern New England (“PJC”) as a result of charges submitted against The Reverend John P. Merz, a teaching elder and a member of the Presbytery of Southern New England (“PSNE”).

JURISDICTIONAL STATEMENT

The PJC has jurisdiction pursuant to D-3.0101(b)(1) because Rev. Merz is a teaching elder and a member of PSNE and because the charges were filed with the Stated Clerk of PSNE within the required time limits of D-10.0401.

HISTORY

On or about February 22, 2013, the Stated Clerk of PSNE received a written statement of alleged offenses by Rev. John P. Merz in accordance with D-10.0101 and 10.0401.

Pursuant to D-10.0103, the Stated Clerk reported the receipt of the statement to PSNE and referred the statement to an investigating committee.

An investigation was carried out in accordance with D-10.0200. Pursuant to D-10.0302, the investigating committee filed charges against Rev. Merz, and a prosecuting committee was appointed pursuant to D-10.0202j consisting of Rev. Dan Mena, Elder John Succo, and Elder Diane Gilliam (the "Prosecuting Committee").

On or about May 26, 2013, charges were filed with the Stated Clerk of PSNE.

Pursuant to D-10.0405, a pre-trial conference was held on July 21, 2013, at the PSNE offices in Old Saybrook, Connecticut. Minutes of the pre-trial conference are in the record of the proceedings in this case, to which reference is hereby made. It was not possible to hold the pre-trial conference within 30 days after receipt of the charges, but the parties agreed that the pre-trial conference had been properly called and waived any objections as to the scheduling thereof.

At the pre-trial conference, Rev. Merz's counsel filed a motion to dismiss together with a supporting brief, and dates were set for reply by the Prosecuting Committee and for response by Rev. Merz's counsel, both of which were subsequently timely filed.

Trial was set for November 23, 2013, at the Crowne Plaza Hotel in Cromwell, Connecticut. The trial was convened on that date and in that location at 10:00 A.M. with prayer by William Thomas, Stated Clerk of PSNE. The following occurred:

- The Moderator read D-1.0101 and D-1.0102.
- The prosecution, defense and the members of the PJC introduced themselves.
- No challenges to the members of the PJC were raised.
- There were no preliminary objections.
- The Clerk read the minutes of the Pre-Trial Conference.
- The prosecution made a motion to amend the charges, which amendment was allowed by the PJC because the amended charges did not prejudice the respondent or add further charges. The amended charges are shown in the discussion below.
- The Clerk then read the charges and asked Rev. Merz to plead to each. As to each charge, Rev. Merz pleaded "Not Guilty".
- The trial then proceeded as prescribed in the Book of Order.
- The evidentiary portion of the trial was concluded at 12:30 P.M., at which time the Moderator declared a recess while the PJC deliberated on the verdict.
- The trial was called to order again at 1:45 P.M., at which time the Clerk read the verdict on each charge.
- The trial was adjourned at 2:00 P.M. while the PJC retired to write the Decision.

- The trial was reconvened at 3:00 P.M. at which time the PJC reported that in the interest of everyone's time the written Decision would be finished as soon as possible and would be delivered to the parties by registered mail. The trial was adjourned with prayer by Stated Clerk William Thomas at 3:15 P.M.

CHARGES AND VERDICT

The charges, and applicable verdict on each, are set forth below.

The Presbyterian Church (U.S.A.) charges you, John Merz, with the following offenses.

Charge 1: Violation of vows of ordination from the Book of Order W-4003b: "Do you accept the Scriptures of the Old and New Testaments to be, by the Holy Spirit, the unique and authoritative witness to Jesus Christ in the Church universal, and God's Word to you?"

VERDICT ON CHARGE 1:

At the close of the trial, the PJC rendered the following verdict: **NOT GUILTY.**

The Prosecuting Committee failed to prove beyond a reasonable doubt that the actions complained of are in violation of the Book of Order paragraph W-4.4003, subparagraph b. The PJC finds that a violation of the indicated ordination vow requires proof beyond a reasonable doubt as to the meaning of Scripture, which is not possible in view of the reasonable disagreement within the PCUSA as to the meaning of Scripture on the subject of same-sex marriage.

Charge 2: Violation of vows of ordination from the Book of Order W-4.4003c: "Do you sincerely receive and adopt the essential tenets of the Reformed faith as expressed in the confessions of our church as authentic and reliable expositions of what Scripture leads us to believe and do, and will you be instructed and led by those confessions as you lead the people of God?"

VERDICT ON CHARGE 2:

At the close of trial, the PJC rendered the following verdict: **NOT GUILTY.**

The two cited confessions in this trial, in their historical contexts, were not about same-sex marriage. They are intended to address polygamy. As such, they do not provide guidance on the subject of this case and cannot sustain a finding of guilt beyond a reasonable doubt.

Charge 3: Violation of vows of ordination from the Book of Order W-4.4003d: “Will you fulfill your ministry in obedience to Jesus Christ, under authority of Scripture, and be continually guided by our confessions?”

VERDICT ON CHARGE 3:

At the close of trial, the PJC rendered the following verdict: **NOT GUILTY.**

For the reasons stated above under Charges 1 and 2, the Scripture and confessions are not sufficiently clear on the subject of same-sex marriage to sustain a verdict of guilt beyond a reasonable doubt on this charge.

Charge 4: Violation of Book of Order W-4.9001. "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 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."

VERDICT ON CHARGE 4:

At the close of trial the PJC rendered the following verdict: **NOT GUILTY.**

The PJC is bound by controlling precedent on this charge. Under similar facts, the Synod of the Northeast’s PJC (“SPJC”) and the General Assembly’s PJC (“GAPJC”) have held that a teaching elder being a party to a same-sex marriage solemnized outside the auspices of the PCUSA did not constitute a disciplinary offense under Book of Order paragraph W-4.9001. *Presbytery of Newark v. McNeil*, 221-02 (SPJC 2011)(GAPJC 2012).

Charge 5: Violation of the Book of Confessions paragraph 5.246. “Marriage: For marriage (which is the medicine of incontinency and continency itself) was instituted by the Lord God himself, who blessed it most bountifully, and willed man and woman to cleave one to the other inseparably, and to live together in complete love and concord (Matt. 19:4). Whereupon we know that the apostle said: ‘Let marriage be held in honor among all, and let the marriage bed be undefiled’ (Heb. 13:4). And again: ‘If a girl marries, she does not sin’ (1 Cor.7:28). The Sects: We therefore condemn polygamy and those who condemn second marriages.” Second Helvetic Confession.

VERDICT ON CHARGE 5:

At the close of trial, the PJC rendered the following verdict: **NOT GUILTY.**

In its historical context, this confession is concerned with polygamy, not with same-sex marriage. As a result, it does not provide sufficient guidance on the subject of this case to sustain a verdict of guilt beyond a reasonable doubt.

Charge 6: Violation of Book of Confessions paragraph 6.131. “Of Marriage and Divorce: Christian marriage ordained by God, blessed by our Lord Jesus Christ, established and sanctified for the happiness and welfare of mankind, into which spiritual and physical union one man and one woman enter, cherishing a mutual esteem and love, bearing with each other’s infirmities and weaknesses, comforting each other in trouble, providing in honest and industry for each other and for their household, praying for each other, and living together the length of their days as heirs of the grace of life.”
Westminster Confession of Faith

VERDICT ON CHARGE 6:

At the close of trial, the PJC rendered the following verdict: **NOT GUILTY.**

In its historical context, this confession is concerned with polygamy, not with same-sex marriage. As a result, it does not provide sufficient guidance on the subject of this case to sustain a verdict of guilt beyond a reasonable doubt.

DECISION ON MOTION TO DISMISS:

In view of the verdicts above, the Respondent’s motion to dismiss is denied as being moot.

DISCUSSION

The facts of this case are not in dispute. On January 8, 2009, Rev. Merz, a teaching elder of the PCUSA, and Mr. William Starkowski, both males, were married in a civil ceremony, conducted in accordance with Connecticut law, at their home in Simsbury, Connecticut. A copy of the marriage certificate that is on file with the Simsbury Town Clerk was introduced into evidence at the trial. In the March 2009 edition of *Presbyterian Promise News*, Rev. Merz wrote an article celebrating his marriage to Mr. Starkowski, noting in the final two paragraphs that it was not a marriage recognized by the PCUSA. A copy of the article was also introduced into evidence at the trial.

Except for Charge 4, on which there is controlling precedent, this appears to be a case of first impression. On similar facts, the SPJC and the GAPJC found that the same-sex marriage of a teaching elder and member of the Presbytery of Newark in an Episcopal ceremony conducted in Massachusetts was not a violation of Book of Order W-4.9001. *McNeil*. However, the *McNeil* case did not involve charges based on violation of ordination vows (Charges 1, 2 and 3 in this case) or on violation of confessions (Charges 5 and 6 in this case), and on those issues it is distinguishable from this case and is not a controlling precedent.

Similarly, the authority of scripture and the confessions was not invoked in *McNeil*, whereas the Prosecuting Committee relied heavily on its reading of scripture, especially, and also the confessions.

Rev. Merz is entitled to a presumption of innocence, and can be found guilty only if such guilt is proven beyond a reasonable doubt. D-11.0401.

Each charge is discussed in detail below.

DISCUSSION OF CHARGES 1, 2, AND 3:

Charges 1, 2, and 3 assert that by being a party to a same-sex marriage, Rev. Merz violated certain of his ordination vows. It is clear that violation of ordination vows can constitute a disciplinary offense. *Davis v. Presbyterian Church (U.S.A.) through the Presbytery of San Francisco*, 219-09. The ordination vows for teaching elders, ruling elders and deacons are propounded to the candidates for ordination as questions, and they are set forth in Section W-4.4003. The questions seek affirmation by the ordination candidate of the authorities each candidate is required to accept personally and in accordance with which they are required to conduct their ministries. The questions appear in order of priority; i.e.: first, Jesus Christ; second, Scripture; and third, the confessions. Each of these questions is discussed below in the order in which they are listed in Charges 1, 2 and 3.

It is also noted that Rev. Merz has not been charged with a violation of the first, most important ordination vow, which is that he will "... trust in Jesus Christ as your Savior, acknowledge him Lord of all and Head of the Church, and through him believe in one God, Father, Son and Holy Spirit." W-4.4003a.

Charge 1: Violation of vows of ordination from the Book of Order W-4003b: "Do you accept the Scriptures of the Old and New Testaments to be, by the Holy Spirit, the unique and authoritative witness to Jesus Christ in the Church universal, and God's Word to you?"

It is a basic tenet of Reformed churches that no one person can know the mind of God. For this reason, the PCUSA has occasionally formed special committees to study various subjects and report their considered findings to the General Assembly. One such committee was the Special Committee to Study Issues of Civil Union and Christian Marriage (the "Special Committee"), which was appointed in response to action of the 218th General Assembly (2008) calling for such appointment. The Special Committee reported its findings and recommendations to the 219th General Assembly (2010) (the "Final Report"), which, together with a minority report (the "Minority Report"), was accepted by the General Assembly and transmitted to the church at large.

One of the conclusions of the Final Report and the Minority Report is that there is

reasonable disagreement as to the proper interpretation of Scripture with respect to same-sex marriage. This disagreement is summarized in the Minority Report as follows:

Second, there truly exist variant interpretations of Scripture that in turn dictate different pastoral models and advocacy models. The variant interpretations of Scripture are the foundational reason that the 1978 theological/pastoral/advocacy strands have unraveled. The ongoing controversy around this issue and others will not be resolved until consensus is reached on the interpretation of Scripture. Unity cannot be reached through polity inventions. Unity will only be reached through common affirmation of truth.

There are at least two larger approaches to biblical interpretation at play in these debates. One tends to call itself "liberal" or "progressive." The other is variously labeled as "evangelical," "conservative," "orthodox," or "traditional." Admitting that the terms and descriptions are oversimplified and miss many nuances, it is still useful to compare the two perspectives.

Both approaches appeal to Scripture, although they read it differently. Both refer to history and biological and social sciences. Both see their approach as compassionate toward lesbians and gays, although they understand the requirements of compassion quite differently.

Traditionalists tend to focus on specific biblical commandments that appear to prohibit same-sex relations categorically. Progressives tend to focus on broader principles of love and justice that they regard as more important than the specific commandments.

Traditionalists tend to emphasize a core meaning of marriage established by God in creation. They see the near universality of marriage in almost all known cultures as confirmation of God's design in creation. They think it unwise for either church or society to alter the core meaning of marriage. Progressives tend to emphasize the variability of marriage across human history and around the world. They are reluctant to fix a core meaning. They view further evolution of the institution as natural and necessary.

Traditionalists tend to see the biblical writers, and the church through its history, as elaborating a fairly consistent strand of teaching on marriage, under divine inspiration. They believe that the church can apply that teaching directly today, despite the differences and even injustices of the societies in which it was formed. Progressives tend to stress contradictions between various biblical passages and church attitudes toward marriage over the years. They view the biblical authors as captives of limited cultural perspectives prevalent in societies deformed by patriarchy and other injustices. They are reluctant to apply sexuality standards originating in the ancient Near East to a modern society that has more scientific knowledge about sexuality.

Traditionalists tend to view the two sexes, male and female, as an important part of God's providence in creation. They therefore regard marriage, the institution joining the two sexes, as of unique social importance. Although they recognize how sin has distorted relationships between the sexes, and how the grace of Jesus Christ may open new possibilities for just relationships between men and women, they do not believe that God's grace in Christ nullifies God's earlier grace in making two complementary sexes to be joined together. Progressives tend to be wary of any purported distinctions between the sexes, in which they suspect the taint of past patriarchal attitudes. They take Paul's declaration that in Christ "there is no longer male and female" (Gal. 3:28) as a mandate for reconfiguring institutions, such as traditional marriage, that take account of sex differences. For them the biological or social gender identity of a spouse should be an irrelevant factor.

Traditionalists tend to see God's commands as offering clear choices between limited options. For them, marriage is the single norm for human sexual expression. The ways to God's blessing are two: either fidelity in marriage or chastity in singleness. Progressives tend to be open to other kinds of covenanted sexual relationships.

Traditionalists draw out biblical themes of purity, emphasizing the calling of Christians to keep their bodies as "the temple of the Holy Spirit." They speak against specific sexual acts—homosexual acts, or any sex outside of marriage—that they understand to violate that purity. Progressives tend to regard this emphasis on purity as outdated and unhelpful. They are more concerned about the emotional content of a relationship—the love, trust, and commitment between individuals—than about the form of the relationship or the bodily acts by which it is expressed.

Traditionalists acknowledge that sexual desires may be deep-seated; however, they emphasize the choices that individuals have in how to act on their desires. They affirm that, by God's grace, the behaviors—and even sometimes the desires—can be transformed. Progressives tend to view sexual orientation as a fundamental, indelible part of an individual's personality. They stress the likelihood that persons will act on their desires and the unlikelihood that the desires can be redirected.

Traditionalists acknowledge that the church has changed its mind previously on issues such as slavery, divorce, and women's ordination. But they believe those revisions of doctrine came about because of fresh insight into the Scriptures—not merely out of a desire to conform to social trends. They do not see the issue of homosexuality as analogous, because the biblical texts on that topic are much less ambiguous. Progressives believe that sometimes God moves first in society to bring about greater justice and then pulls the church along behind. They believe that changes in teaching on slavery, divorce, and women's ordination do set a valid precedent for a possible change in teaching on sexuality.

The pastoral model for traditionalists is: Compassion toward practicing homosexual persons means calling them, with all heterosexuals who have departed from God's intentions, to repentance and restoration. The advocacy model is to call society away from its destructive "anarchy in sexual relationships" (The Book of Confessions, The Confession of 1967, 9.47). For progressives the pastoral model is: Compassion means affirmation of everyone's sexual orientation and encouragement to use it responsibly in covenanted relationships. The advocacy model is to seek the dissolution of distinctions between marriage and same-gender relationships.

The only Scripture cited by the Prosecuting Committee in its brief is Matthew 19:4,5 and Hebrews 13:4. In the Matthew passage, Jesus is discussing divorce, and he refers to the portion of the creation story in which God makes a woman to offer as a potential helpmate to Adam, and Jesus says, "Haven't you read that in the beginning the Creator made them male and female, and said 'For this reason a man will leave his father and mother and be united with his wife, and the two shall become one flesh?' So they are no longer two, but one. Therefore, what God has joined together, let man not separate." We find this passage gives rise to "variant interpretations" and we do not find any one particular interpretation governs our decision in this case.

In Hebrews 13:4, the writer states: "Marriage should be honored by all and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral." This passage has no relevance to this case. Rev. Merz has not been charged with sexual immorality, it has not been proven, and it is not to be presumed. *Wier v. Second Presbyterian Church, Minutes, 2002.*

It is also noted that nowhere does Scripture condemn a committed, monogamous, loving relationship.

"In order to discipline an ordained person for the violation of a Presbyterian standard, a standard must be violated." *PJC of Newark Presbytery v. McNeill*, February 26, 2011, p. 6., citing decisions of the GAPJC in *Spahr vs. Presbyterian Church (U.S.A.)* (2008; Disc. Case 218-12) and *Presbyterian Church (U.S.A.) vs. White* (2009; Disc. Case 219-07). Also, it is fundamental that in order to make a finding of guilt in a disciplinary proceeding, the finding of guilt must be beyond a reasonable doubt. D-11.0401. Where there is not a consensus as to the meaning of Scripture on the subject of same-sex marriage, a violation of W-4003b based on a violation of Scripture cannot be sustained beyond a reasonable doubt.

Charge 2: Violation of vows of ordination from the Book of Order W-4.4003c: "Do you sincerely receive and adopt the essential tenets of the Reformed

faith as expressed in the confessions of our church as authentic and reliable expositions of what Scripture leads us to believe and do, and will you be instructed and led by those confessions as you lead the people of God?”

Marriage does not receive substantial treatment in the Confessions. Charges 5 and 6 cite two paragraphs from the Confessions that are alleged to have been violated, Section 5.246 from the Second Helvetic Confession, and Section 6.131 from the Westminster Confession of Faith. Section 5.246 states:

MARRIAGE: For marriage (which is the medicine of incontinency and continency itself) was instituted by the Lord God himself, who blessed it most bountifully, and willed man and woman to cleave one to the other inseparably, and to live in complete love and concord (Matt. 19:4 ff). Whereupon we know that the apostle said: “Let marriage be held in honor among all, and let the marriage bed be undefiled” (Heb. 13:4). And again: “If a girl marries, she does not sin (1 Cor. 7:28). THE SECTS. We therefore condemn polygamy, and those who condemn second marriages.

Section 6.131 states:

Christian marriage is an institution ordained of God, blessed by our Lord Jesus Christ, established and sanctified for the happiness and welfare of mankind, into which spiritual and physical union one man and one woman enter, cherishing a mutual esteem and love, bearing with each other’s infirmities and weaknesses, comforting each other in trouble, providing in honesty and industry for each other and for their household, praying for each other, and living together the length of their days as heirs of the grace of life.

The original version of Section 6.131 read:

Marriage is to be between one man and one woman, neither is it lawful for any man to have more than one wife, nor for any woman to have more than one husband at the same time.

It is clear that the primary purpose of these sections of the confessions was to condemn polygamy. See Final Report at footnotes 11 and 13. Polygamy is specifically referred to in Section 5.246 and is described in the original version of Section 6.131. That is why those Sections use the number “one” (“**one** man and **one** woman” and “cleave **one** to **the other**”), rather than the article “a”.

In reading and understanding the confessions, we are not to read them as statutes but rather are to place them in their historical contexts in order to discern their essential meaning. Paragraphs 5.246 and 6.131 were intended to address polygamy, which was the

issue of the day, not same-sex marriage, which did not exist at that time. Accordingly, they do not provide a clear standard that can support a violation beyond a reasonable doubt.

Charge 3: Violation of vows of ordination from the Book of Order W-4.4003d: “Will you fulfill your ministry in obedience to Jesus Christ, under authority of Scripture, and be continually guided by our confessions?”

This question relates the prior questions regarding personal acceptance of the authority of Jesus Christ, Scripture, and the confessions to the promise to reflect those principles in the practice of ministry. If being a party to a same-sex marriage solemnized in a civil ceremony outside the auspices of the PCUSA, in accordance with civil law, cannot be proven beyond a reasonable doubt to be a violation of Scripture or the confessions, then perforce it cannot be proven beyond a reasonable doubt to be a violation of prescribed action in the practice of ministry.

Accordingly, the PJC finds Rev. Merz **NOT GUILTY** on each of Charges 1, 2, and 3.

DISCUSSION OF CHARGE 4:

Charge 4: Violation of Book of Order W-4.9001. "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 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."

In *McNeil*, the GAPJC held that the Directory for Worship sets standards and norms for conduct of worship in the life of congregations and governing bodies of the PCUSA and does not apply to services of worship conducted outside the auspices of the PCUSA. *McNeill* at page 3. In this case, the marriage ceremony was a civil ceremony conducted outside the auspices of the PCUSA, and as such it was not governed by W-4.9001. Moreover, there was no evidence introduced that Rev. Merz represented his civil ceremony to be a Christian Marriage under W-4.9001. To the contrary, the article written by Rev. Merz and admitted into evidence at trial expressly states that his relationship was not a marriage recognized by the PCUSA. There also was no evidence presented that the references by Rev. Merz to the fact that he was married were anything more than his simply use of the term in the popular lexicon to refer to the legal effect of his civil ceremony.

The Prosecuting Committee also argued that the prior disposition of Disciplinary Case *PCUSA v. Rev. Graham Robinson*, by this commission is controlling precedent in this case. It is not. *Robinson* resulted in the censure of the teaching elder who solemnized the marriage at issue in this case. It does not constitute authority for a violation of the Constitution by a party to that marriage. Moreover, *Robinson* was not a trial to a verdict, but rather, was a plea agreement. Rev. Robinson and his Investigating Committee had negotiated a voluntary settlement of the charges against him, including the terms of the rebuke he accepted, before the case was even brought to the Permanent Judicial Commission. A plea agreement can never be precedent in another case.

Accordingly, the PJC finds Rev. Merz **NOT GUILTY** on Charge 4.

DISCUSSION OF CHARGES 5 AND 6:

Charge 5: Violation of the Book of Confessions paragraph 5.246. “Marriage: For marriage (which is the medicine of incontinency and continency itself) was instituted by the Lord God himself, who blessed it most bountifully, and willed man and woman to cleave one to the other inseparably, and to live together in complete love and concord (Matt. 19:4). Whereupon we know that the apostle said: ‘Let marriage be held in honor among all, and let the marriage bed be undefiled’ (Heb. 13:4). And again: ‘If a girl marries, she does not sin’ (1 Cor.7:28). The Sects: We therefore condemn polygamy and those who condemn second marriages.” Second Helvetic Confession.

Charge 6: Violation of Book of Confessions paragraph 6.131. “Of Marriage and Divorce: Christian marriage ordained by God, blessed by our Lord Jesus Christ, established and sanctified for the happiness and welfare of mankind, into which spiritual and physical union one man and one woman enter, cherishing a mutual esteem and love, bearing with each other’s infirmities and weaknesses, comforting each other in trouble, providing in honest and industry for each other and for their household, praying for each other, and living together the length of their days as heirs of the grace of life.” Westminster Confession of Faith

Regarding the confessions, the Prosecuting Committee over-states their authoritative control. They are “subordinate standards of the church, subject to the authority of Jesus Christ, the Word of God, as the Scriptures bear witness to him.” Book of Order F2.02 “Confessions address the issues, problems, dangers, and opportunities of a given historical situation... The theology and ethics of confessions of every age are shaped by what seem to be the normative or preferable sexual, familial, social, economic, cultural, and political patterns of a particular period of history.” “Confessional Nature of the Church Report” Book of Confession, p. xv.

For the reasons stated above under Charge 2, the PJC finds that paragraphs 5.246 and 6.131 of the confessions relate to polygamy, do not relate to same-sex marriage, and do not provide a standard on which to base a verdict of guilt beyond a reasonable doubt.

Accordingly, the PJC finds Rev. Merz **Not Guilty** on Charges 5 and 6.

CONCLUDING REMARKS:

It is not the PJC's place to make policy, which can come only from the General Assembly. It is the responsibility of the PJC to determine the facts of each case, apply the Constitution to those facts, and determine whether guilt has been proven beyond a reasonable doubt. In this case, the Prosecuting Committee did not carry its burden of proof.

ORDER

IT IS THEREFORE ORDERED that the Stated Clerk of the Presbytery of Southern New England report this decision to the Presbytery at its first meeting after he receives it and that the Presbytery enter the full decision upon its minutes.

IT IS FURTHER ORDERED that the case is hereby dismissed.

ABSENCES AND NON-PARTICIPANTS

All members of the PJC were present for the presentation of evidence and took part in the decision. The verdicts and the foregoing decision in this case were unanimously approved by the members of the PJC. The members of the PJC are:

Samuel C. Hamilton, Moderator

James Whitney, Clerk

Mark Carta, Member

Lawrence A. Cox, Member

Rev. Eileen L. Epperson, Member

Rev. Barbara G. Hager, Member

Rev. Joan Priest, Member

Dated this 5th day of December, 2013.

Samuel C. Hamilton, Moderator

James Whitney, Clerk

CERTIFICATION AND TRANSMITTAL FORM

CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Presbytery of Southern New England, Presbyterian Church (U.S.A.), in Disciplinary Case, Presbyterian Church (U.S.A.) v. Rev. John P. Merz, as agreed by all members of the PJC by electronic transmission of such agreement.

Samuel C. Hamilton, Moderator,
Permanent Judicial Commission of the
Presbytery of Southern New England

James Whitney, Clerk,
Permanent Judicial Commission
Presbytery of Southern New England

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, by depositing it in the United States mail at New Haven, Connecticut on December 5, 2013.

Mark Robertson, Counsel for Respondent

Rev. Parker Williamson, Counsel for Complainant

Rev. Dan Mena, Moderator of the Prosecuting Committee

Rev. John Merz, Respondent

William Thomas, Stated Clerk of the Presbytery of Southern New England

James Whitney, Clerk,
Permanent Judicial Commission,
Presbytery of Southern New England