

ACC ADVICE ON ITEM

Advice on Item 06—From the Advisory Committee on the Constitution (ACC).

The Advisory Committee on the Constitution advises the 217th General Assembly (2006) with respect to Item _____ with the following comments:

Recommendation 5 of the Report of the Task Force on Peace, Unity and Purity (Item _____) asks the General Assembly to approve an authoritative interpretation of G-6.0108 as it pertains to the responsibilities of governing bodies with respect to the ordination or installation of ministers of Word and Sacrament, elders, and deacons. The recommended authoritative interpretation is clear and within the power of the General Assembly to approve if it chooses.

A. *Current Constitutional Standards Regarding Ordination*

The Advisory Committee on the Constitution (ACC) believes that clarity as to the current constitutional standards regarding ordination is important to understanding and assessing the proposed authoritative interpretation.

Presbyterians, in the midst of our most serious conflicts, have found themselves being reformed according to the Word of God (*Book of Order*, G-2.0200). One example is found in the Adopting Act of 1729, which anchored the ordination standards in the essentials of the Reformed faith and allowed candidates to declare differing opinions on matters not deemed “essential and necessary.” Another example is the deep division in the 1920s in the fundamentalist/modernist controversy that led to the report of the Special Commission of 1925. The report said in 1926, “The Church at large should illustrate as well as demonstrate, the power of the Gospel to bind up wounds and to soften animosities; and such, we are convinced, was the purpose of incorporating in the Presbyterian Constitution, the obligation for [Presbyterians] to maintain a patient, considerate and [caring] attitude toward each other” (*Minutes*, PCUSA, 1926, Part I, p. 78). If we desire to resolve our present conflict, we must use the many and varied gifts God has provided. For several years, the Advisory Committee on the Constitution (ACC) has sought to make the following salient points:

1. There are three sources of constitutional authority for the PC(USA):
 - a. The language of the *Constitution* itself (and amendments made to it),
 - b. General Assembly Permanent Judicial Commission decisions interpreting the *Constitution*,
 - c. Deliberate General Assembly interpretations together are referred to as “authoritative interpretations” made pursuant to G-13.0103r.
2. The most recent interpretation of a provision of the *Book of Order* shall be binding.
3. The process of constitutional amendment is carefully defined in the *Book of Order* (Chapter XVIII).
4. The constitutional structure of the church is not modeled on the United States federal system with the General Assembly Permanent Judicial Commission as a supreme court that has final authority in constitutional matters because the General Assembly itself also has power to provide authoritative interpretations of the *Constitution* in accordance with G-13.0103r.

The Advisory Committee on the Constitution has in the past advised that the standards of the church on ordination cannot be changed by a General Assembly authoritative interpretation alone.¹

¹ In 2001, the Advisory Committee on the Constitution advised: “The position of the church on ordination cannot be changed by a General Assembly authoritative interpretation alone” (*Minutes*, 2001, Part I, p. 656). With hindsight, and in the context of the task force recommendations, it is clear that this statement was not as precise as it should have been. The word “position” in the context of the 2001 advice referred to the constitutional standards for ordination. Debate over the task force proposal has shown that “position” can also have a broader, less precise meaning, and could be understood to refer to the manner in which the church interprets the *Book of Order*, and as opposed to the standards therein.

In 1978, the former UPCUSA adopted a policy statement that came to be called “definitive guidance.” The next year, 1979, the former PCUS adopted a similar statement. Both sought to prohibit the ordination of “self affirming practicing homosexual persons.” The General Assembly of the church determined in a Permanent Judicial Commission (PJC) decision (*Union Presbyterian Church of Blasdell v. The Presbytery of Western New York, Minutes, 1985, Part I, p. 118 et seq.*) that those earlier statements carried the authority of the present *Constitution*. Thus, the earlier “definitive guidance” became an “authoritative interpretation.”

In 1996, the General Assembly proposed, and in 1997 the presbyteries adopted, an amendment to the Form of Government found at G-6.0106b. The provisions of G-6.0106b have been interpreted by the General Assembly PJC on several occasions.

In *Wier v. Second Presbyterian Church (Minutes, 1999, Part I, p. 831) [Weir I]*, the General Assembly PJC held that G-6.0106b does not authorize the nullification of an ordination that has been completed, even if the ordination might have been contrary to G-6.0106b’s provisions.

In *Benton, et al v. Presbytery of Hudson River (Minutes, 2000, Part I, p. 586)*, the General Assembly PJC limited the application of G-6.0106b, finding: “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” (Ibid, 587).

In *Londonderry, et al v. Presbytery of Northern New England (Minutes, 2001, Part I, p. 577)*, the General Assembly PJC held that a higher governing body had an obligation to exercise pastoral oversight when an ordaining body (a session) adopted the position that “we vow to continue welcoming persons living singly or in committed relationships, regardless of sexual orientation, into the life, membership and leadership of this congregation on an equal basis, including eligibility for election and ordination as a ruling elder or deacon” (Ibid, pp. 577–78). In reaching this conclusion, the PJC noted: “G-6.0106b presents the qualifications established by the corporate judgment of the whole church for ordination to service as minister of the Word and Sacrament, elder, and deacon. The Historic Principles of Church Order are explicit as to the right of the church to make and to enforce these standards” (Ibid, p. 579).

In *Wier v. Second Presbyterian Church of Ft. Lauderdale (Minutes, 2002, Part I, p. 339) [Weir II]*, the General Assembly PJC held that an allegation that the accused was a “practicing homosexual” was an insufficient allegation of an irregularity against the respondent, and that the complaint must allege that the person purportedly disqualified from ordination or installation must have self-acknowledged the proscribed sin. The PJC further explained: “Self-acknowledgment may come in many forms. In whatever form it may take, self-acknowledgment must be plain, palpable, and obvious, and details of this must be alleged in the complaint” (Ibid, p. 341). Finally, the PJC went on to hold that “[s]ince the standard for self-acknowledgment is that it be plain, palpable, and obvious, the ordaining and installing governing body is in the best position to make any such determination based on its knowledge of the life and character of the candidate” (Ibid).

In *Presbytery of San Joaquin v. Presbytery of the Redwoods (Minutes, 2003, Part I, p. 277)*, the General Assembly PJC held that “sexual orientation alone would be no more sufficient or reasonable grounds for further questioning than would singleness, obesity or any other categorization. In other words, stereotypical profiling is not a reasonable or valid ground for singling out a candidate for additional questioning. Therefore, if a person does not self-acknowledge a practice that the confessions call sin, then a governing body has a positive obligation to make further inquiry only if it has direct and specific knowledge that said person is in violation of the ordination and installation standards of the Constitution” (Ibid, p. 280).

In *McKittrick v. Session, West End Presbyterian Church of Albany, New York (Minutes, 2003, Part I, p. 272)*, the General Assembly PJC held that where an “elder had admitted during his examination that he was a gay man in a fifteen-year relationship, and that this information had previously been shared with his pastors and the nominating committee of the church” (Ibid, p. 272), a remedial case could seek a declaration that the installation was irregular. Further, the PJC held that a remedial case could challenge the procedures followed by the installing body, as opposed to the conduct of the individual installed. Finally, the PJC noted that “when, as in this case, an installation occurs immediately following the examination process, there may be no practical opportunity for a protesting or dissenting party to seek a stay of enforcement of the decision to install. The Presbyterian custom of conducting business ‘decently and in order’ should not

be converted into a race in which the swift prevail. We undermine our system of mutual accountability when the proceedings such as ordination or installation are rushed with the consequence (whether intended or otherwise) that certain remedies become unavailable. Therefore, we encourage governing bodies to permit sufficient time between the examination and installation or ordination of a candidate so that there can be no intimation that any governing body intended to shield its action from scrutiny” (Ibid, 274).

In summary, cases before the General Assembly PJC have established at least the following authoritative interpretations of G-6.0106b:

1. Governing bodies are not free to declare that they will disobey the constitutional standards for ordination and installation established by the whole church, and when faced with such a declaration higher governing bodies must exercise oversight, whether pastoral or administrative over the disobedient governing body.

2. *Book of Order*, G-6.0106b, applies to ordination and installation, and does not otherwise set constitutional limitations for governing bodies.

3. *Book of Order*, G-6.0106b, requires that the conduct complained of be self-acknowledged for it to constitute a basis for challenging a governing body’s decision to ordain or install, as opposed to its process for making such a decision. Self-acknowledged means that by words or actions, the person seeking ordination or installation has made it plain, palpable, and obvious that he or she is engaged in conduct “the confessions call sin.” Alleged sexual sin (lack of chastity in singleness or fidelity in marriage) is subject to the same high standard of self-acknowledgment as any sinful behavior in precluding ordination or installation.

4. With respect to a challenge based on an alleged lack of chastity or fidelity, sexual orientation alone is not sufficient ground to require a governing body to make further inquiry into a person’s fitness for office.

5. A challenge made to the process by which a governing body makes a decision to ordain or install is subject to review, and presumably to correction of the process by which such decisions are made.

The recommendations of the task force offer answers to two other significant questions raised by G-6.0106b that the General Assembly PJC has not addressed:

- how an ordaining or installing body should determine which practices the confessions call sin; and
- what is the standard of review by higher governing bodies over such determinations.

B. *G-6.0108 and Freedom of Conscience within Certain Bounds*

Section G-6.0108 reflects an important principle of Presbyterian polity—the balance between the individual right of conscience recognized in the Westminster Confession and the necessity of uniformity within our denomination in those things our community has found to be essential. While the principle originated at the time of the Adopting Act in 1729 based on certain ministers’ objections to portions of the Westminster Confession relating to the relationship between the church and civil government, over the history of the denomination the view of what is essential and nonessential broadened to other issues. The discussions of the history of this issue in the 1926 Report of the Special Commission of 1925 (*Minutes*, PCUSA, 1926, Part I, pp. 62–87), the 1972 Report on Doctrinal Loyalty (*Minutes*, PCUS, 1972, Part I, pp. 195–200), and in the 1983 Report of the Special Committee on Historic Principles, Conscience, and Church Government (*Minutes*, UPCUSA, 1983, Part I, pp. 141ff) are valuable background in the consideration of the current recommendation.

The Report of the Special Committee on Historic Principles, Conscience, and Church Government (*Minutes*, UPCUSA, 1983, pp. 141ff), sets forth well the basis for this principle:

Reasonable people may differ about many matters. The church should encourage diverse points of view. Diversity may be a sign of health of the church. Uniformity may be the result of the tyranny of those in control, the failure to acknowledge differences, or the fear of ostracism.

Those beliefs and practices about which the church tolerates or encourages diversity are nonessential. The distinction between essential and nonessential articles entered our church with the Adopting Act of 1729. Nonessential issues are not unimportant but

are those subjects about which diversity is understood to be desirable or acceptable. A nonessential issue is judged by a governing body of the church to be one about which agreement or compliance is not required. The General Assembly makes, for example, a particular pronouncement about an issue in the world. The issue is important and the debate of the General Assembly is intense and weighty because the consequences are important. But agreement with the position of the General Assembly is not required. People may even be encouraged by the Assembly to continue to voice contrary viewpoints.

Essential matters are those regarding which the church does require uniformity of either belief or practice. There are some issues which are so clearly understood to be essential that the church does not vote on them until a challenge is made. For example, the doctrine of the two natures of Christ was assumed to be essential until the question was raised about its essential character. Then the church is required to make a decision through its carefully defined procedures. Essential or necessary matters of faith and practice are determined by the appropriate governing body only in response to a challenge in a particular instance.

The consequent decision by an individual to withdraw is a last resort after the dissenter has exercised all the options mentioned earlier in the discussion of Principle Two. The person needs to be willing to participate in honest debate and be open to the possibility of being persuaded by the view of the majority. When the governing body has acted and has determined that the issue is essential and that compliance is therefore required, then the conscience of a dissenter may be abused if that person remains within the denomination. The freedom to withdraw from a voluntary association preserves the right of private judgment.

The individual does not make the decision about the essential character of a particular decision of a governing body. The governing body, itself, arrives at such a determination after being careful to allow sufficient time for thoughtful debate and the full consideration of differing points of view. The action of the governing body may be to determine that the issue in question is not essential. In that case, the individual is still free to speak and act from a conflicting point of view. If, however, the governing body determines that the particular question is essential and that compliance is necessary, then the individual holding a minority opinion must exercise judgment about the possible violation of conscience.

Mutual forbearance is to be exercised by individuals within the church toward one another. Forbearance is willingness to accept other people in the church who do not share our own ideas. To exercise forbearance is to accept diversity with gratitude for those who differ and willingness to remain in conversation with people whose perspective may disturb us.

Ultimately, the tolerance of the exercise of individual conscience within the bounds determined by the appropriate governing body is intended to build up the church:

It follows, therefore, that whenever a question arises as to where these limits are, the issue must be decided by the organization and not by the individual member of it. As applied within the Presbyterian Church, this means that such issues will be determined either *generally*, by amendment of the Constitution, or *particularly*, by Presbyterianial authority, subject to the constitutional right of appeal.

Toleration does not involve any lowering of the Standards. It does not weaken the testimony of the Church as to its assured convictions. It does not imply that support is offered to what may be regarded as a brother's error. But it does mean that in the spirit of Christ, patience is exercised by the body of the Church toward those deemed to be at fault in some of their beliefs, remembering our own proneness to err, in order that by the manifestation of such graces, and by prayer, together with fidelity in our own witnessing, all finally, may be brought to see eye to eye in a fuller apprehension of the truth, and led into a convincing compliance with the Master's new commandment that His disciples should love one another. 1926 Report of the Special Commission of 1925 (*Minutes*, PCUSA, 1926, Part I, pp. 79–80); see also 1972 Report on Doctrinal Loyalty (*Minutes*, PCUS, 1972, Part I, pp. 195–200).

C. *The Proposed Authoritative Interpretation*

The Advisory Committee on the Constitution offers the following observations concerning the authoritative interpretation of G-6.0108 proposed, and in particular on the intersection between that authoritative interpretation and the application of G-6.0106b:

1. *Recommendation 5.a.*: This paragraph restates a well-established principle of our polity. It provides the context for the remaining paragraphs of the proposed authoritative interpretation, but standing alone is indisputable.

2. *Recommendation 5.b.*: The paragraph first amplifies the first paragraph by restating the principle that ordination and installation standards are determined by the whole church solely by the constitutional process of approval by the General Assembly with the concurrence of the presbyteries.² In this respect, the recommendation echoes the words of the Special Commission of 1925 in its 1926 report: "It would be intolerable if the General Assembly, whose powers are limited by the Constitution, could, even when sitting as a judicial court, amend by indirection, the organic law of the

² The Advisory Committee on the Constitution understands the phrase "after the careful study of Scripture and theology" as descriptive of the process that should surround any amendment of our constitutional documents, rather than as suggesting that an amendment enacted by the presbyteries could be invalidated because it was not somehow adopted "after the careful study of Scripture and theology."

Church, which contains within itself provisions for effecting orderly change.” (*Minutes*, PC(USA), 1926, Part I, p. 83). This is a sound and important principle of our polity.

The second sentence of paragraph 5b reiterates a principle frequently identified by the Advisory Committee on the Constitution—that interpretation of the provisions of the *Constitution* can occur through either a decision of the General Assembly Permanent Judicial Commission on the facts of a particular case before it or by a General Assembly through the process for adoption of an authoritative interpretation found in G-13.0103r. Taken with the first sentence, this paragraph reaffirms that neither a permanent judicial commission nor a General Assembly adopting an authoritative interpretation can change the standards for ordination or installation. All either can do is interpret the standards that are part of the *Constitution*. While this principle borders on the axiomatic, its restatement may lend weight to arguments that the authoritative interpretation of the *Constitution* in place prior to the adoption of G-6.0106b should be eliminated because that authoritative interpretation added to rather than interpreted the then existing constitutional standards. Whether such a position is adopted depends on whether the argument prevails that the definitive guidance that became authoritative interpretation in 1993 actually legislated new constitutional standards rather than interpreted existing ones. That determination is not called for by this proposed authoritative interpretation, and thus would have to be determined separately by this or a future assembly, or by the General Assembly PJC in a judicial case.

3. *Recommendation 5.c.*: The first sentence of this paragraph restates another longstanding principle of Presbyterian polity, namely that while the whole church determines the constitutional standards for ordination and installation, application of those standards in the first instance lies with the body that knows and examines the candidate (e.g., the presbytery or session).

Subpart 1 of Recommendation 5.c. is descriptive of the determination sessions and presbyteries must first make after examining a candidate for office as required by Chapter 14 of the Form of Government. If a candidate has not departed from scriptural and constitutional standards for fitness for office, the ordaining or installing body need go no further in its inquiry. In this regard, at least insofar as application of G-6.0106b to this examination process is concerned, the duty to examine extends only to self-acknowledged (e.g., plain, palpable, and obvious) conduct “the confessions call sin.” The proposed authoritative interpretation does not change this limitation on the examination process.

Subpart 2 of Recommendation 5.c. addresses the unresolved issue of how ordaining and installing bodies address the fitness of a particular candidate who self-acknowledges particular conduct that the confession call sin but refuses to repent of that conduct. This subsection treats such a situation as raising an issue of faith and polity by applying the “essentials” standard of G-6.0108 to the determination of whether such self-acknowledgement disqualifies the candidate from ordination or installation. Neither the General Assembly PJC nor previous assemblies have addressed the particular question of whether or not G-6.0106b’s broad prohibition on ordination or installation of a person engaged in a self-acknowledged conduct the confessions call sin is limited by G-6.0108’s authorization of ordaining or installing bodies to determine whether a candidate’s departure constitutes a failure to adhere to the essentials of Reformed faith and polity.

This portion of the recommendation is consistent, however, with the usual breadth of discretion given ordaining or installing bodies in General Assembly Permanent Judicial Commission (GAPJC) decisions addressing the role of such bodies outside the constraints of G-6.0106b in *Simmons, et al. v. Presbytery of Suwannee* (Remedial Case No. 197-4), and *Rankin v. National Capital Union Presbytery* (Remedial Case 193-10, UPCUSA). As the *Rankin* decision pointed out:

Whereas, formerly, the candidates’ examination sought to determine if the candidate could subscribe to the system of doctrine and the propositional statements that were a part of the Westminster Confession and Catechisms; now the focus of the examination is on the candidate’s ability to use a number of confessional formulations to learn from, be guided by, and lead the people of God. Formerly the Constitution prescribed empirical standards, as set out in the vows, the Westminster Confession, and the Larger and Shorter Catechisms, by which the candidate’s theology was judged. Now the Constitution places the primary focus of the candidate’s examination not on his or her conformity with theological prescriptions but rather on the candidate’s willingness and commitment to be instructed by the Confessions of our Church and continually guided by them in leading the people of God. The necessary implication of this current focus is that the presbytery has been assigned greater responsibility in determining the sufficiency of the candidate’s commitment to be instructed by the Confessions of our Church and his or her willingness to use them in leading and guiding the people of God. The presbytery, therefore, must be vested with sufficient authority to carry out these many constitutional obligations. This determination is a judgment for which higher judicatories should substitute their judgment only for the most extraordinary reasons. As noted in the report of the Special Commission of 1925: “The Presbytery is the only body whose members see the candidate and hear him officially. It is the body qualified and constitutionally appointed to judge, at first hand, concerning his spirit and bearing, and his general attitude toward the service of Christ.” (*Minutes* of the General Assembly, 1927, p. 65)

The Advisory Committee on the Constitution believes that the assembly has the authority to interpret the interplay of these sections. Specifically, the assembly has the authority to interpret whether G-6.0106b is likewise limited by an ordaining or installing body's authority to decide whether a particular deviation from confessional standards is a deviation from that which is essential to our faith and polity.

In this regard, the Advisory Committee on the Constitution reminds the assembly that while the focus of the interpretation and application of G-6.0106b has largely been on the ordination or installation of those who are or are believed to be in gay or lesbian sexual relationships, the language of G-6.0106b, which governing bodies must apply in their examinations, is much broader, proscribing the ordination or installation of any person who self-acknowledges engaging in any "practice which the confessions call sin" and refuses to repent of that practice. This portion of the proposed authoritative interpretation offers a means, consistent with historic polity, for principled distinctions to be made by governing bodies in determining which practice the confessions call sin, in particular circumstances, disqualify a person from ordination or installation.

4. *Recommendation 5.d.*: This paragraph reaffirms the historic and constitutional principle of the review of lower governing bodies by higher governing bodies. It focuses the review on the questions of whether the lower governing body conducted its examination and determined that any departure does or does not constitute a failure to adhere to the essentials of Reformed faith and polity on the standard of whether the lower governing body acted "reasonably, responsibly, prayerfully, and deliberately." These are not specific phrases from either the constitutional description of the review of lower governing bodies by higher governing bodies or from GAPJC decisions. However, the manner in which such review would occur under this paragraph is consistent with the standards set forth by the GAPJC in *Simmons, et al. v. Presbytery of Suwannee (Remedial Case No. 197-4)*, and *Rankin v. National Capital Union Presbytery (Remedial Case 193-10, UPCUSA)*.

5. *Recommendation 5e*: This paragraph, consistent with its predecessors, reaffirms the primary role of the General Assembly (with the concurrence of the presbyteries) in setting the constitutional standards for ordination and installation, and then in interpreting those standards. Likewise, it acknowledges the historically recognized, unique role of sessions and presbyteries in making decisions to (or not to) ordain or install the candidates they have examined. In this context, to "outdo one another in honoring one another's decisions" for ordaining or installing bodies means to treat the standards of the *Constitution* with the deepest respect, and to engage in a probing and rigorous process in determining whether particular views as to what the confessions call sin are consistent with what is essential to our faith and polity. Likewise, in the exercise of oversight over ordination or installation decisions, higher governing bodies or judicial commissions would "outdo one another in honoring one another's decisions" by focusing review on whether the ordaining or installing body engaged in a probing and rigorous process, and not on whether it agreed with the lower governing bodies determination as to what is essential to our faith and polity. This statement is consistent with historic principles regarding the interrelationship of higher and lower governing bodies, and provides useful clarity in describing how those bodies interact for our polity to work.