Winnebago Presbytery
Office of the Stated Clerk

Memorandum to Pastors and Session Clerks:

The U.S. Supreme Court Decision in *Obergefell v. Hodges* (June 2015) significantly changed the legal context for marriages throughout the United States, generating a number of questions within the ministries and churches of Presbytery. The following question and response narrative attempts to clarify common questions and respond to some of the most pressing uncertainties.

1. *How did the Supreme Court decision change the legal view of marriage?*

   The validity and option of same-gender marriage must now be recognized in all states, including the legality of such marriages performed in another state. Further, a state may not restrict or limit legal benefits attached to marriage based on the gender of married individuals.

2. *How does this Decision affect pastors who officiate in marriages?*

   The law of The Presbyterian Church (U.S.A.) [PCUSA] regarding marriage, as determined by the 221st General Assembly (2014) and approved by the presbyteries, was substantially revised in 2015.[1] At the same time, an Authoritative Interpretation of the General Assembly was adopted that specifically upholds the right of conscience for a pastor (teaching elder or commissioned ruling elder) to decide whether to officiate at a same-gender marriage ceremony. The revised Directory for Worship now specifically upholds the right to refuse by personal conviction and conscience to officiate at a same-gender marriage.[2] Hence, neither matter is a contested issue within the framework of our polity and judicial precepts.

3. *Can a pastor (teaching elder or commissioned ruling elder) be sued in civil court for refusing to officiate at a same-gender marriage ceremony, even when the parties are members of the church-community?*

   The precedents in American legal case-law strongly suggest that such a lawsuit would not prevail, although such a lawsuit might be filed and the definitive outcome is at present undetermined. However, there is long court tradition (over 200 years!) for sustaining the rights of conscience on the part of both clergy and congregations as a part of a deep legacy for protecting the freedom of religious beliefs, particularly when such beliefs are rooted in long-standing ecclesial law and tradition. There have been no successful complaints in this vein in the last century.

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[1] *Book of Order*: W-4.9000. See Advisory Opinion from the Office of the General Assembly for full texts of the revised text in the Directory for Worship and the Authoritative Interpretation.

[2] W-4.9006.

4. *Can the Session deny the use of church property and facilities for a same-gender marriage ceremony?*

   Yes. The Session is specifically authorized to determine how the property and facilities may be used [G-3.0102; G-3.0201 c.; G-4.0201 & .0202]. The PCUSA Constitution is clear that a Session cannot be compelled to use the property of the local church that it governs in a way that conflicts with its understanding of Christian discipline under the guidance of Scripture and the Holy Spirit.

   However, such permission or denial should be supported by a local church policy declaration about the sacred mission or religious educational nature in the use of its facilities and not determined simply on an individual or occasional basis.

5. *If a Session sets a policy that denies in advance any approval of same-gender marriage ceremonies in or by the church, does this conflict with state or local anti-discrimination laws that deal with "public accommodation"?*

   If a local church has a policy of renting its property or facility to persons outside its membership and church-community, it may be subject to state or local laws that prohibit discrimination against certain classes of persons. A church that has such a rental practice and wishes to prohibit same-gender marriage ceremonies on its property may be vulnerable to complaint. Although this issue has not been legally tested to date in a definitive way, a church that has a practice of property rental for weddings and wishes to set an exclusionary policy should consult an attorney or, perhaps better, cease the rental practice.

6. *Can a Session prohibit a pastor in relation to officiating at a same-gender wedding ceremony?*

   Yes. The pastor is bound by a decision of the Session that prohibits the use of the church for a same-gender marriage ceremony, even if the pastor is open to and believes such a service is legitimate.

   However, the State of Wisconsin allows a pastor to serve as an agent of the state to officiate at a marriage authorized by state license, whether or not this is also a marriage ceremony authorized by the church. The PCUSA also implicitly authorizes a pastor so to act apart from the church. Thus, a pastor may officiate at such a ceremony away from the local church property or facility as an agent of the state when such agency is authorized by the state (the ceremony would not be an act of the local church nor recorded so). There is nothing in PCUSA regulations at present that restricts such a pastoral act beyond the bounds of the local church.

7. *Can a Session compel a pastor to officiate at a same-gender marriage ceremony?*

   No. If a Session has a policy that approves same-gender marriages in the church, this does not mean that the pastor is expected or compelled to officiate at such a ceremony against the pastor's belief and conscience. This freedom, long a foundational principle in the Reformed tradition, is confirmed in the revised declaration on marriage in the Directory for Worship (G-4.9000).

8. *Does a church policy that refuses same-gender marriage ceremonies on church property affect the church's tax exempt status (both federal and state codes)?*

   The tax consequence of this Decision is unclear at present, in the absence of civil court decisions. However, the claim that the Supreme Court's prohibition against sexual discrimination extends into the tax status of an otherwise exempt religious institution is an extreme stretch, when it is clear that the exclusionary practice is rooted in doctrinal and ecclesial tradition. Again, it is commonly argued that this would be a deep departure from the extraordinarily strong history of judicial deference in protecting freedom of belief and religious practice rooted in belief as well as judicial hesitation to enter the arena of arbitrating doctrinal teaching and religious life. It would then seem that there is little chance of success of litigation from church discrimination on religious grounds, especially when the discrimination does not extend into the civil community but applies only within the church's membership. There are ample precedents for this view at present.