

**PERMANENT JUDICIAL COMMISSION
SYNOD OF THE PACIFIC**

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Complainants

v.

Presbytery of San Francisco

Respondent

Case No. 09-04

**RESPONDENT'S
TRIAL BRIEF**

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INTRODUCTION

Since the 1970s, the Presbyterian Church has faced significant disagreement over two issues: whether a presbytery may ordain or install persons who, as matters of conscience, believe they are called into same-sex relationships; and whether a presbytery may ordain or install persons who, as a matter of conscience, refuse to ordain women. One cannot fully comprehend the nature of various statements and positions taken by the church since then without recalling that they were motivated by these two controversies. These questions have now been largely resolved. Two principles, consistent with centuries of Presbyterian polity, have re-emerged as guiding lights for the denomination:

- First, the Presbyterian Church has reaffirmed its historic, theological commitment to mutual forbearance in matters of conscientious disagreement that are not “essentials” of Reformed faith and polity. “Essentials” are not defined in the abstract, but are to be identified case-by-case, as individuals are examined for office.
- Second, the Presbyterian Church has affirmed that persons who aspire to serve as officers must be willing to perform the constitutional functions unique to their office. The church has insisted on this because certain functions in the church may be performed only by ordained leaders, and a leader’s refusal to perform them would render parts of the church incapable of doing things they need to do.

Authoritative Interpretations (“AIs”) played a significant role in generating and resolving each of the conflicts noted above. In particular:

- The GAPJC ruled in 1975, in the “Kenyon” case, that a ministerial candidate who refused to participate in the ordination of women could not be ordained.¹

¹ *Maxwell v. Pittsburgh Presbytery*, UPCUSA Minutes, Pt. 1, p. 254 (1977). This was affirmed in a number of later decisions, most recently *Simmons v. Presbytery of Suwannee*, PCUSA Minutes, Pt. 1, p. 114 (1985).

- General Assembly adopted “definitive guidance” in 1978 that “unrepentant homosexual practice does not accord with the requirements for ordination” (a purported interpretation of the requirement that a person’s “manner of life be a demonstration of the Christian gospel”).² The GAPJC then ruled that that statement was binding on the whole church.³

Deep division about the validity of these pronouncements eventually led the church in 1986-87 to adopt G-13.0103r, which clearly established, for the first time, that the General Assembly and its PJC may bind the church through such “AIs.”

Controversy over women’s ordination largely faded over time, but controversy has continued over the exclusion of gay/lesbian persons from office. In 1997, the church attempted to end that debate by adding G-6.0106b to the Book of Order. Many claimed that this simply codified prior authoritative interpretations barring “self-affirming, practicing homosexuals” from office. Others argued that the church, unwilling to put such an exclusionary rule in the Constitution, added a provision (“fidelity and chastity”) that held up the importance of sexual ethics while introducing more flexibility in the application of church standards. Debate over the standards continued.

A defining point in the debate was reached in 2006, when a task force representing views from across the church concluded five years of study and issued its final report.⁴ The task force reminded the church that it has faced various crises in its history, when parts of the church tried to impose particular ordination requirements, without any possibility of exception, on others. In each case, the Presbyterian Church eventually resolved these crises by reaffirming its historic law and practice: that standards must be interpreted in the context of individual examinations, where we must show each other mutual forbearance in matters of

² UPCUSA Minutes, Pt. 1, pp. 48, 264-265 (1978).

³ *Union Presby. Church of Blasdell v. Presbytery of Western New York*, PCUSA Minutes, Pt. 1, p. 118 (1985).

⁴ *A Season of Discernment*, Final Report of the Theological Task Force on Peace, Unity, and Purity of the Church (2006) (online at <http://oga.pcusa.org/peaceunitypurity/finalreport/final-report-revised-english.pdf>).

conscientious disagreement that the examining body finds to be “non-essential.” In response to this report, General Assembly in 2006 adopted an AI reminding the church that G-6.0108 requires respect for the individual’s biblically formed conscience (and, therefore, consideration of the possibility of mutual forbearance) in all ordination examinations.

In 2008, General Assembly adopted an additional AI of G-6.0108 that clarified three points: that the duty to show mutual forbearance applies equally to all standards; that examining bodies may accept scruples relating to personal behavior as well as matters of belief; and that examining bodies cannot accept a candidate’s refusal to perform the unique constitutional functions of office.⁵ At the same time, General Assembly reinforced its affirmation of respect for biblically formed conscience in an AI which stated that the 1978 “definitive guidance” on homosexuality, and subsequent affirmations of it, “have no further force or effect” in the church.⁶ General Assembly thus made clear that while G-6.0106b is a valid standard and must be applied, it is open to interpretation and its application is always subject to the possibility of mutual forbearance in matters of conscience. The Presbyterian Church does not attempt to bind the conscience by prohibiting all same-sex relationships. The 219th General Assembly (2010) affirmed these AIs once again, through a rejection of several overtures that sought to reverse them.⁷

In short, the 217th, 218th and 219th General Assemblies have resoundingly affirmed the same solution that the Presbyterian Church used in 1729, 1758, 1869, and 1927 to resolve previous ruptures over its ordination standards. In each case, the church struggled for a

⁵ The 2008 AI states that “the requirements of G-6.0108 . . . apply equally to all ordination standards of the Presbyterian Church (U.S.A.). Section G-6.0108 requires examining bodies to give prayerful and careful consideration, on an individual, case-by-case basis, to any departure from an ordination standard in matters of belief or practice that a candidate may declare during examination. However, the examining body is not required to accept a departure from standards, and cannot excuse a candidate’s inability to perform the constitutional functions unique to his or her office.” PCUSA Minutes, Pt. 1, pp. 42-43, 380 (2008).

⁶ PCUSA Minutes, Pt. 1, pp. 42-43, 371-373 (2008).

⁷ Action of the 219th General Assembly (2010) on Items 06-04 (<http://www.pc-biz.org/IOBView.aspx?m=ro&id=2237>) (rejecting efforts to restore the 1978 definitive guidance and subsequent affirmations of it) and 06-18 (<http://www.pc-biz.org/IOBView.aspx?m=ro&id=3111>) (rejecting effort to prohibit declared departures relating to a candidate’s practice or stated intent).

period with the perception that a point of disagreement in the church was so important that the church's historic law and practice of forbearance must be overthrown. In each case, however, this sense of crisis was resolved through a reaffirmation of mutual forbearance in cases of conscience.

STATEMENT OF FACTS

Lisa Larges was born in 1963, in La Crosse, Wisconsin, and moved with her family to Minneapolis at age four in order to obtain specialized schooling for blind students. She undertook study for the professional ministry in 1986, at San Francisco Theological Seminary, and graduated in 1989 with the Preaching Prize and a scholarship for academic excellence awarded by the faculty. During the period 1986-1997, Ms. Larges was under care of the Presbytery of the Twin Cities Area, which certified her in 1991 as ready to receive a call. Ms. Larges' certification was challenged because she had declared that she is lesbian. In 1993 the GAPJC ordered that her certification be set aside under the 1978 "definitive guidance" that the 218th General Assembly (2008) recently declared has no further force or effect.⁸

In April 1997, Ms. Larges moved San Francisco and came under care of the Presbytery of San Francisco. Here she has continued to develop her gifts for ministry, and to assist the PC(USA) in discerning what its position on same-sex relationships should be. Since 2007, she has served as Minister Coordinator of That All May Freely Serve (TAMFS), an organization that is committed to work for a more inclusive church.

At a regularly called meeting on January 15, 2008, the Presbytery of San Francisco received and considered the recommendation of its CPM that Ms. Larges be certified as "ready for examination, effective January 15, 2008, with a departure." The departure declared by Ms. Larges reflected serious disagreement with exclusionary interpretations of the sexual ethic in G-6.0106b. However, debate at that meeting ultimately focused, not on

⁸ See *LeTourneau v. Presbytery of Twin Cities Area*, PCUSA Minutes, Pt. 1, p. 163 (1993).

CPM's recommendation, but on a substitute motion that Ms. Larges' declared departure required her immediate removal from the roll of candidates (without any examination). After the Presbytery voted to examine Ms. Larges, complainants filed a remedial case seeking rescission of certification and her removal from the roll. Faced with conflicting testimony about whether the Presbytery had accepted Ms. Larges' departure or not, this Commission rescinded the certification and ruled that "examination for ordination is the proper time for Presbytery to determine whether or not a Candidate's departure constitutes a failure to adhere to the essentials of Reformed faith and polity." The Presbytery agreed with this Commission's description of the proper constitutional process, and therefore did not appeal.

Complainants appealed to the GAPJC in a further effort to prevent the Presbytery from examining Ms. Larges. The GAPJC refused to stay the Presbytery's examination, and affirmed this Commission's order in pertinent part. In so doing, it held that:

The Presbytery must go through the process required in G-6.0108b to determine whether the Candidate has expressed an interpretation of Scripture that represents a serious departure from essentials of Reformed faith and polity, and if it determines that she has, must then decide whether the departure infringes on the rights and views of others or obstructs the constitutional governance of the church. . . . This Commission declines to instruct the Presbytery as requested by Naegeli because all examinations of candidates for ordained office must be conducted on an individual basis.⁹

On November 10, 2009, at a regularly called meeting, the Presbytery examined Ms. Larges. As a foundation for examination, the COM recommended, and Presbytery voted, that Ms. Larges' call as Minister Coordinator for TAMFS be validated. Ms. Larges then was given an opportunity to present her Statement of Faith and accompanying statement of departure. In it, she declared that:

I affirm with joy the standards as expressed at G-6.0106a and believe them to be a sufficient expression of both the gifts and the requirements for officers of the church. I can and I will affirm with joy all the questions for ordination found at W-4.4003. I believe that as a candidate called to serve in this Church

⁹ Rem. Case 219-11, *Naegeli v. Presbytery of San Francisco* (GAPJC Nov. 2, 2009), pp. 6-7.

as Minister of Word and Sacrament, nothing in my faith or in my manner of life departs from the essentials of Reformed faith and polity.

Ms. Larges then addressed G-6.0106b, declaring her belief that this section denies the primacy of Jesus Christ as Head of the Church;¹⁰ misstates the proper use and function of the confessions;¹¹ causes grievous harm in singling out “one particular derived standard” from the confessions;¹² and represents an incomplete and misleading understanding of sin and repentance.¹³

After Ms. Larges presented her statements, presbyters were given full opportunity to question her about her faith, views on theology, the Bible, the Sacraments, and the government of the church, as well as her declaration of departure. The presbyters then discerned together about the proper way forward.

Complainants repeatedly claim in their brief that, during the period of collective discernment, a member of the Presbytery declared “I don’t care what the Constitution says; we should ordain this woman!” (Complainants’ Brief at pp. 6, 24, 28). The Presbytery does not believe this accurately reflects the nature of the discussion or intent of its presbyters, who labored faithfully and carefully to assess Ms. Larges’ fitness for office within the bounds of our constitutional process. The Committee of Counsel for the Presbytery has been unable to identify anyone who made such a statement, and invites the Complainants to identify that

¹⁰ “Jesus Christ alone is the authority to which all other authorities are subordinate. This faith claim is essential to our faith and polity and the joy and substance of our witness. . . . To lead a life *‘in obedience to Scripture’* sets the authority of Scripture above the authority of Christ and returns us to life under the law. This misstatement of our theological understanding of Christ’s preeminence is my primary scruple regarding this provision.”

¹¹ “Scripture calls us to be imitators of Christ. To conform our lives to a lesser standard trespasses on both the authority of Christ and Scripture.”

¹² Ms. Larges listed thirteen types of harm caused by singling out one contested sexual ethic, and concluded that “In my own life, while I affirm the moral values of fidelity and chastity, I will not and can not claim chastity in singleness unless and until fidelity between two persons of the same gender within a covenantal relationship is recognized.”

¹³ “It is an essential of Reformed faith that sin is a condition of our being and not a bill of particulars” and G-6.0106b, contrary to the Reformed tradition, “leads back to a kind of *‘works righteousness.’*”

person, and to call that person to testify, so that the comment and its context may be properly assessed.¹⁴ The Presbytery respectfully submits that any unwillingness or inability by Complainants to call such a witness should be taken as an admission that their claim is insupportable and must be disregarded.

Following its period of discussion and collective discernment, the Presbytery voted “to sustain trials of ordination for Lisa Larges and proceed to ordination to minister of Word and Sacrament.” This case followed.¹⁵

ARGUMENT

The discussion that follows sets forth the reasons why the Presbytery’s approval of Ms. Larges was clearly constitutional and must be upheld under the law and polity of the Presbyterian Church. However, one preliminary point deserves particular note. The GAPJC addressed a case exactly like this case less than one year ago, in *Bierschwale II*.¹⁶ There the GAPJC upheld the presbytery’s determination that a gay man who declared his conscientious objection to, and refusal to abide by, G-6.0106b was nonetheless fit for ordained service. No meaningful distinction can be drawn between that case and this one. In that case, as in this one, the candidate expressed strong views, held over many years, that the exclusion of gay and lesbian persons reflected in various interpretations of G-6.0106b is wrong. In that case, as in this one, examination disclosed that the candidate was not presently in a same-sex relationship but held open the possibility of such a relationship in the future. In that case, as in this one, the examining presbytery concluded that, given all it knew about the candidate, including his faith,

¹⁴ If Complainants believe that the person who supposedly made this comment will not appear at their request, they may request issuance of a citation by this Commission to compel his or her testimony (D-7.0200).

¹⁵ Immediately following the Presbytery’s vote, 103 presbyters signed a request for stay, which had been prepared in advance. While this constituted less than 1/3 of the 320 voting commissioners who were recorded as present when the meeting began (and no later roll call was taken), the Presbytery did not object to Complainants’ claim that ordination has been stayed, because the Presbytery believes it will promote order and goodwill in the Presbytery to proceed with ordination after Complainants’ concerns have been addressed.

¹⁶ Rem. Case 219-08, *Bierschwale v. Presbytery of Twin Cities Area* (GAPJC Nov. 2, 2009).

views, manner of life, and call, mutual forbearance should be extended under G-6.0108. In that case, the SPJC and, ultimately, the GAPJC upheld the presbytery's decision. The Presbytery respectfully submits that this Commission must do likewise here.

I. OUR PRESEBYTERIAN HERITAGE

A. The standards of the church must be applied with mutual forbearance in non-“essential” matters of conscience.

Presbyterianism was organized in North America under the “Adopting Act” of 1729. This required all ministers to declare their general agreement with the Westminster Standards, but also provided room for the declaration of any disagreements. A presbytery could exclude someone who declared a scruple only if it believed that the point of disagreement was so fundamental (“essential”) that it rendered the church and the candidate “incapable of communion” with each other.¹⁷ This rule is now reflected in our constitutional requirement that persons who are being ordained or installed affirm that they “sincerely receive and adopt the essential tenets of the Reformed faith” (W-4.4003c) (emphasis added).

Confusion has sometimes arisen in the church about what this means. In essence, our system reflects the interaction of two vitally important principles: [i] that the church establishes standards for office that all ordaining bodies must apply; and [ii] that in the application of standards, an ordaining body must show mutual forbearance in any matter of conscience that it determines is not “essential” to fitness in the particular case at hand.

1. *Presbyteries must apply the standards of the whole church.*

Paul wrote that “there are varieties of gifts,” and that the body of faith consists of persons who perform many different tasks (1 Corinthians 12; Romans 12:3-8). Inherent in

¹⁷ *Minutes of the Presbyterian Church in America 1706-1788* (Guy S. Klett, ed.) (Philadelphia: Presbyterian Historical Society, 1976), pp. 103-04.

this statement is a recognition that not all persons are equally suited to serve as leaders in the church. The Pastoral Epistles caution us, “Do not ordain anyone hastily” (1 Timothy 5:22) and list numerous qualities desired for leadership (1 Timothy 3:2-13, Titus 1:5-9). Our confessions do likewise. The church does not ordain or install its leaders lightly.

Consistent with this, the PC(USA) has adopted constitutional standards for ordained service.¹⁸ As noted above, General Assembly recently issued an AI of G-6.0108, reminding the church that:

The *Book of Confessions* and the Form of Government of the *Book of Order* set forth the scriptural and constitutional standards for ordination and installation. These standards are determined by the whole church, after the careful study of Scripture and theology. . . . Ordaining and installing bodies . . . have the responsibility to determine their membership by applying these standards to those elected to office.¹⁹

Consistent with their obligation to apply “these standards,” presbyteries may not ignore any churchwide standards, or adopt additional standards of their own.

2. *Respect for conscience is a hallmark of Reformed faith and polity.*

Conscience has been called “the authority of the indwelling Word,” which “demands . . . not merely external obedience but an inner obedience, an obedience from the heart.”²⁰ When we think or act badly, conscience becomes “the inner tribunal of the soul,” providing “an accusing testimony which is well understood to be the verdict of an incorruptible judge.”

¹⁸ G-6.0106a states our fundamental standard: that ministers and elders must be “persons of strong faith, dedicated discipleship, and love of Jesus Christ as Savior and Lord,” and that “[t]heir manner of life should be a demonstration of the Christian gospel in the church and in the world.” That standard was supplemented in 1997 with “Amendment B” (G-6.0106b), which will be discussed further below. Further standards are established in W-4.4003, which requires certain affirmations upon ordination or installation.

¹⁹ PCUSA Minutes, Pt. 1, pp. 28-29, 514-19 (2006).

²⁰ Paul Grammont & Philibert Zobel, *The Authority of the Indwelling Word*, in John Todd, ed., *Problems of Authority* (Baltimore: Helicon Press, 1962), pp. 79-80.

Likewise, conscience “is the avowal, formulated within ourselves, that there is a certain good which we have no right to ignore.”²¹

The Scriptures attribute great importance to conscience. Jeremiah declared God’s covenant: “I will put my law within them, and I will write it on their hearts” (Jeremiah 31:33-34). Scripture tells us that although Abimelech unknowingly took Abraham’s wife, God spared him because he recognized “the integrity of your heart” (Genesis 20:3-8). Likewise, God honored Hezekiah’s appeal that God “pardon all who set their hearts to seek God . . . though not in accordance with the sanctuary’s rules” (2 Chronicles 30:17-20). The Psalmist prayed to God for vindication on the grounds that “I have walked in my integrity” (Psalms 26:1).

We find the same themes in the New Testament. Peter described baptism as “an appeal to God for a good conscience” (1 Peter 3:21). Paul wrote that even though the Gentiles lived outside Jewish custom, “what the law requires is written on their hearts, to which their own conscience also bears witness” (Romans 2:15). As he carried the Gospel around the world, Paul demonstrated the enduring importance of the “testimony of our conscience” (2 Corinthians 1:12).

While the church long has recognized the importance of conscience, it also has recognized that conscience can be defiled, so that one is incapable of discerning or doing right (Titus 1:15, Hebrews 10:22). A person also can have a “weak” conscience, believing that things of indifferent character are bad, or lacking the courage to act on personal conviction (1 Corinthians 8:7-8). The stirrings of conscience, however compelling, are not always correct.

Despite these problems, Paul emphasized time and again that Christians must follow their conscience. For example, where new converts doubted whether they could eat meat sold at market after its sacrifice in pagan observances, Paul admonished that, “nothing is

²¹ Philippe Delhaye, *The Christian Conscience* (Charles Quinn, trans.) (New York: Desclee, 1968), pp. 75, 89.

unclean in itself; but it is unclean for anyone who thinks it unclean. . . . The faith that you have, have as your own conviction before God” (Romans 14:14, 22-23).²² In short, Christians have been released from legalistic traditions by the saving grace of Jesus Christ, but *to act against one’s conscience is to sin*. As was stated by one of the foremost theologians of the Middle Ages, Thomas Aquinas (1225-1274), “acts are evaluated according to the will of those who perform them. . . . [T]he binding force of the conscience, even the erroneous conscience, is exactly the same thing as the binding force of the law of God.”²³

Christians in the Reformed tradition long have insisted that although conscience may be instructed by the church, it ultimately must be free from worldly coercion. The Westminster Confession (6.109) declares in ringing terms that “God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship” (G-1.0301(1)). We trust in the power of the Holy Spirit, who “acts upon the reason and conscience of men” (6.052, 6.184).²⁴

²² Paul made the same point in Romans 14:1-4:

“Some believe in eating anything, while the weak eat only vegetables. Those who eat must not despise those who abstain, and those who abstain must not pass judgment on those who eat, for God has welcomed them. Who are you to pass judgment on the servants of another? It is before their own lord that they stand or fall. And they will be upheld, for the Lord is able to make them stand.”

The Pastoral Epistles also condemned those who forbade marriage and demanded abstinence from foods as “the hypocrisy of liars whose consciences are seared with a hot iron” (1 Timothy 4:1-5). Likewise, they condemned those who demanded adherence to Jewish law as persons whose “very minds and consciences are corrupted” (Titus 1:10-16). New Testament warnings against the corrupt conscience often focused on persons who tried to enforce rules and traditions that had been abrogated through grace in Jesus Christ.

²³ Delhaye, *Christian Conscience*, at pp. 158-159.

²⁴ The Second Helvetic Confession (5.047) tells us that when a person accepts Christ, “the will itself is not only changed by the Spirit, but it is also equipped with faculties so that it wills and is able to do the good of its own accord. . . . Unless we grant this, we will deny Christian liberty and introduce a legal bondage.” Thus, “we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable” (G-1.0301(1)). Complainants’ citation to the Second Helvetic Confession (5.010) as support for their argument that private interpretation of Scripture “must yield to the determination of the wider body” (Complainants’ Brief at p. 17) takes out of context a snippet of text immediately after which that confession *rejects* the interpretations of the established church. Complainants’ citation of the Westminster Confession for the same point is likewise

Respect for freedom of conscience arises from a faithful recognition of the freedom that is ours in Jesus Christ. As Paul instructed the Galatians (5:1-6): “For freedom Christ has set us free. Stand firm, therefore, and do not submit again to the yoke of slavery.” Likewise, he emphasized in his letter to the Colossians (2:16-23) that Christians must “not let anyone condemn you in matters of food and drink or of observing festivals” because these are “only a shadow of what is to come, but the substance belongs to Christ.”

Freedom of conscience also enables us to be free *for* Christ. As noted by John Calvin, “The whole case rests on this: if God is the sole lawgiver, men are not permitted to usurp the honor.”²⁵ Calvin also warned that “Christ is obscured, or rather extinguished, unless our consciences stand firm in their freedom.”²⁶ The Pastoral Epistles (1 Timothy 1:19) caution that “by rejecting conscience, certain persons have suffered shipwreck in the faith.” Thus, the confessions (7.215) warn that “making men the lords of our faith and conscience” is idolatrous, and prohibited by the First Commandment (Exodus 20:3): “You shall have no other gods before me.”

Complainants attempt to “write off” freedom of conscience in the church with claims that the Westminster Standards expressed resistance to state (rather than ecclesiastical) authorities (Complainants’ Brief at pp. 15-16). However, this gravely distorts the history of the church.²⁷ The Reformed tradition, of which Presbyterianism is a part, emerged out of assertions of individual conscience against efforts by authorities in the church to require uniformity on points that some believed were in error. Thus, the Westminster Confession (6.175) declares that: “All synods or councils since the apostles’ times, whether general or particular, may err, and many have erred; therefore they are not to be made the rule of faith

misleading, because while that confession endorses the activity of synods and councils (6.174), it also says that these bodies may err and that their work cannot be made binding rules of faith or practice (6.175).

²⁵ John Calvin, *Institutes of the Christian Religion* (1559), Bk. IV, Ch. 10, § 8 (John T. McNeill, ed.) (Ford Lewis Battles, trans.) (Philadelphia: Westminster Press, 1960).

²⁶ *Id.*, Bk. III, Ch. 19, §§ 1 and 14.

²⁷ While the Confessions obviously are concerned with protecting rights of conscience from interference by the state, they are *also* concerned with protecting rights of conscience within the church.

or practice, but to be used as a help in both.” The Scots Confession (3.20) says the same thing:

As we do not rashly condemn what good men, assembled together in general councils lawfully gathered have set before us; so we do not receive uncritically whatever has been declared under the name of the general councils, for it is plain that, being human, some of them have manifestly erred, and that in matters of great weight and importance.

Calvin regarded the preservation of freedom of conscience, even inside the church, as an important duty for Christians. He taught that conscience should be curbed where its exercise might injure those who are weak in the faith, but that it should be asserted robustly to defeat the false claims of legalists in the church. Thus, Calvin declared that “we shall so temper the use of our freedom as to allow for the ignorance of our weak brothers, but for the rigor of the Pharisees, not at all!”²⁸ Paul likewise condemns legalists in the church, affirming that “We did not submit to them even for a moment, so that the truth of the gospel might always remain with you” (Gal. 2:3-5). The message, of both Paul and Calvin, is clear: Surrender to legalistic demands in the church, in violation of one’s conscience, denies the gospel and cripples the church’s ability to witness credibly to the saving power of Jesus Christ.

3. *Presbyterians owe each other mutual forbearance in non-essential matters of conscience.*

Consistent with Presbyterians’ respect for biblically formed conscience, our Historic Principles of Church Order state that “there are truths and forms with respect to which men of good characters and principles may differ” and that “in all of these we think it the duty both of private Christians and societies to exercise mutual forbearance toward each other” (G-1.0305). These bedrock principles of Reformed faith and polity find a more modern expression in G-6.0108:

²⁸ Calvin, *Institutes*, Bk. III, Ch. 19, §§ 11-12.

It is necessary to the integrity and health of the church that the persons who serve in it as officers shall adhere to the essentials of the Reformed faith and polity as expressed in *The Book of Confessions* and the Form of Government. So far as may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church, freedom of conscience with respect to the interpretation of scripture is to be maintained.

Contrary to the entire thrust of the Complainants' argument, "standards" and "conscience" are not alien principles hostile to each other. Rather, they work together. Our standards were developed in reliance on the fundamental understanding, going back centuries, that they would be applied with respect for the conscience of individual believers. Had we not guaranteed respect for conscience in our Constitution, the standards we adopted might be very different.

When an apparent conflict arises between church standards and a candidate's beliefs or behavior, we seek to determine whether the matter at issue is so fundamental it makes us "incapable of communion" with each other – that is, if it is "essential."

Many are surprised to learn that, over the centuries, Presbyterians have never defined a clear list of "essentials." When the Westminster Standards were first adopted (1643-49), some argued that all of the "essential" matter in Christianity could be found in the plain meaning of the Apostles' Creed. In 1608, Richard Bernard boiled the matter down even farther, declaring that "The only fundamental truth in religion is this: that Jesus Christ the son of God, who took our nature from the virgin Mary, is our only and all sufficient savior."²⁹ However, Presbyterians have always resisted defining "essentials" in the abstract, recognizing that such commitments could undermine freedom of conscience. Instead, it has been our rule over centuries that sessions and presbyteries are to define "essentials" only when that becomes both necessary and appropriate, in particular examinations of individual candidates.

²⁹ John Van Til, *Liberty of Conscience: History of a Puritan Idea* (Milwaukee: Marquette Univ., 1972), p. 40.

How one candidate expresses and lives out his or her beliefs, and how that person explains any departure from standards, may differ significantly from how another candidate approaches the same issue(s). A presbytery has the responsibility to consider each particular candidate in light of its experience with that candidate, including his or her demeanor, statement of faith, answers to questions posed during examination, demonstrated manner of life, interaction with presbytery over the course of care, fit for the office of call, and the like. Our Constitution guarantees each candidate the opportunity to express his or her conscience and to engage in meaningful discernment with the ordaining body about what points of difference might mean.

This is nothing new. The 1927 General Assembly, after reviewing centuries of Presbyterian practice, declared that:

[B]y the Act of 1729, the decision as to essential and necessary articles was to be in specific cases. It was no general authority that might be stated in exact language and applied rigidly to every case without distinction. . . . It was clearly the intention that this decision as to essential and necessary articles was to be made after the candidate had been presented and had declared his beliefs and stated his motives personally, and after the examining body . . . had had full opportunity to judge the man himself, as well as abstract questions of doctrine.³⁰

The 209th General Assembly (1997) affirmed this principle when it placed an introduction in the Book of Confessions stating that “the decision for ordination is always determined by the concrete encounter between the presbytery and the candidate.”³¹ The 217th and 218th General Assemblies affirmed this principle again, in their AIs of G-6.0108. These were based on recognition that an examining body has an “obligation . . . to gain the broadest vision of each officer-elect’s faith, manner of life and promise as it applies standards and makes determinations about essentials.” If someone declares a scruple, whether non-compliance is permitted may be determined only “after the ordaining/installing body has weighed the departure in the full context of the candidate’s

³⁰ Minutes, Pt. 1, pp. 58, 78-79, 80-81 (1927).

³¹ The Confessional Nature of the Church, *Book of Confessions*, at pp. xxvi-xxvii.

statement of faith and manner of life.”³² Most recently, the GAPJC affirmed this principle in the very case now before this Commission, in turning back efforts to address the consequences of Ms. Larges’ departure before she was examined.³³

B. Presbytery is entitled to deference on review.

Complainants make much of the fact that examination and ordination decisions are subject to review by higher governing bodies. The Presbytery does not dispute this. However, it is important to note that a presbytery is entitled to a high degree of deference in the review of assessments that it is uniquely positioned and qualified to make.

In 1927, General Assembly reviewed the history of Presbyterianism in America and unanimously affirmed the original and inherent powers of each presbytery to assess the qualifications of its members. The Assembly observed that presbytery is the only body that has sufficient familiarity with a ministerial candidate to perform this role: “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.”³⁴

This principle was affirmed in more modern times in a case called *Rankin* (1981). The GAPJC noted that the church placed even greater responsibility on the presbyteries replaced its requirement that ministers “receive and adopt” the Westminster Standards with a requirement that ministers “be instructed . . . and led” by a Book of Confessions. Accordingly, the GAPJC held that a presbytery’s finding of fitness “is a judgment for which

³² PCUSA Minutes, Pt. 1, pp. 515-18 (2006).

³³ Rem. Case 219-11, *Naegeli v. Presbytery of San Francisco* (GAPJC Nov. 2, 2009), p. 7.

³⁴ Minutes (1927), at p. 65.

higher judicatories should substitute their judgment only for the most extraordinary reasons.”³⁵

The GAPJC affirmed this again in *Simmons* (1985), which challenged a presbytery’s decision to install a pastor who rejected the Confession of 1967 and taught that women should not be ordained. Despite these departures, the GAPJC upheld his installation, noting that:

In challenging the constitutionality of Presbytery’s actions regarding the reception of ministers, appellants must overcome a substantial weight of authority that grants broad discretion to the presbytery in these matters. . . . As stated before, that factual determination by presbytery is the heart of its constitutional responsibility and is entitled to great weight.³⁶

Complainants concede that the Presbytery followed a correct process, and do not allege any deficiencies in that regard (Complainants’ Brief at p. 25). What they invite this Commission to do is to overturn the Presbytery’s collective discernment, in light of the dual mandates of G-6.0106b and G-6.0108, that Ms. Larges is fit for ordained service. As discussed above, this Commission may overturn such a decision only for “the most extraordinary reasons.” Such reasons do not exist here.³⁷

³⁵ *Rankin v. National Capital Union Presbytery*, UPCUSA Minutes, Pt. 1, pp. 113, 114 (1981).

³⁶ *Simmons v. Presbytery of Suwannee*, PCUSA Minutes, Pt. 1, at pp. 115-16 (1985). General Assembly affirmed this yet again in 2006, in its AI of G-6.0108. That AI, which was intended to affirm centuries of Presbyterian polity, enables a higher governing body to review the propriety and thoroughness of a presbytery’s deliberations, but not to overturn the presbytery’s final decision unless (as noted above) it finds “the most extraordinary reasons” for doing so. The Advisory Committee on the Constitution advised General Assembly of this before it adopted the 2006 AI, and opined in plenary that the AI would not change our historic polity in this regard. See PCUSA Minutes, Pt. 1, pp. 519, 524 (2006).

³⁷ While deference would not be warranted had the Presbytery adopted a *policy* that it will not be bound by G-6.0106b (*Londonderry Presbyterian Church v. Presbytery of Northern New England*, PCUSA Minutes, Pt. 1, p. 577 (2001)), there are no allegations here that the Presbytery adopted any such policy. Rather, the record clearly shows that the Presbytery addressed Ms. Larges’ departure from G-6.0106b on its own, in light of the mandate in G-6.0108, without establishing any kind of policy about its application of that standard.

III. PRESBYTERY PROPERLY SHOWED MUTUAL FORBEARANCE, AND FOUND MS. LARGES FIT FOR ORDAINED SERVICE, UNDER G-6.0108

A. Ms. Larges’ statement does not reflect a “serious departure” from “essentials of the Reformed faith and polity”.

As is discussed more fully below, the presbyters who examined Ms. Larges were required to consider a series of questions in assessing her fitness for ordained service.

First, the presbyters had to decide how to interpret G-6.0106b. In her statement of departure and subsequent conversations with presbytery, Ms. Larges took the view that the second sentence of G-6.0106b excludes the possibility of covenanted, same-sex relationships. She therefore declared her belief that this part of our ordination standards is wrong, and that she could not in good conscience comply with it. In so doing, Ms. Larges clearly acted within the bounds of G-6.0108, which provides that “[t]he decision as to whether a person has departed from essentials of Reformed faith and polity is made initially by the individual concerned.” However, G-6.0108 also provides that determining whether someone has departed from the essentials “ultimately becomes the responsibility of the governing body in which he or she serves.” There is debate around the church about what G-6.0106b actually means to persons in Ms. Larges’ situation. Among the questions that have arisen in that regard (discussed below) are whether “chastity” requires “celibacy”; whether persons living in a committed, same-sex relationship should be deemed to be living in “singleness”; whether “obedience to Scripture” condemns all same-sex relations; and what constitute “practices which the confessions call sin”. Such interpretive issues may well have influenced some members of the Presbytery to conclude that G-6.0106b is not as exclusionary as Ms. Larges maintained.

If some in the Presbytery concluded that our standard requires celibacy outside heterosexual marriage, G-6.0106b then required them to discern whether Ms. Larges was “refusing to repent.” The confessions (5.094, 7.087) tell us that “repentance is a sheer gift of God and not a work of our strength,” and that it entails a person’s “true sense of his sin.”

Members of the Presbytery may well have concluded that Ms. Larges, although she disagrees with those who support G-6.0106b, is not “refusing to repent” but, rather, is acting on a good-faith conviction that her sexuality is a part of what God intends for her life. Indeed, while Ms. Larges declared her conscientious objection to any rule that would exclude all possibility of a same-sex relationship in the future, she also made clear that she is not presently in such a relationship.

Finally, if some in the Presbytery concluded that G-6.0106b requires celibacy outside heterosexual marriage and that Ms. Larges willfully refused to repent of a practice that Scripture and the confessions call sin, G-6.0108 required them to discern whether she had declared a “serious departure” from “essentials of the Reformed faith and polity.” As discussed below, the Presbytery properly weighed Ms. Larges’ declared departure in light of everything it knows about her, including her statement of faith, answers to questions posed during examination, demonstrated manner of life, interaction with presbytery over the course of care, fit for the office of call, and the like. In light of all of these considerations, the Presbytery concluded that she is fit for ordained service in the church. That process of collective discernment, by those who know Ms. Larges best, should not be disturbed now.

1. *Proper interpretation of church standards may permit some same-sex relationships.*

Complainants argue that there is clear and incontrovertible teaching in Scripture that the only permissible context for sexual expression is heterosexual marriage, and that “it is the Presbyterian’s duty to submit to the authority of the plain meaning of Scripture and the longstanding interpretation of the church through two thousand years of history” (Complainants’ Brief at pp. 8-11).

Complainants’ argument constitutes a telling admission that the basis for the debate about ordained service by persons in same-sex relationships is exactly what proponents of inclusive ordination standards have always said it is: the interpretation of Scripture. However, the statement quoted above betrays an extraordinarily limited view of how

Scripture and tradition are interpreted and applied in the Reformed (Presbyterian) tradition. For example, it has been (and remains) the consistent position of most of the global church, given what many regard as the “plain meaning” of Scripture, that women cannot be ordained.³⁸ However, that is not the position of the Presbyterian Church. Similarly, both the Roman Catholic and Eastern Orthodox churches have maintained over the centuries that clergy must be celibate.³⁹ However, that rule was roundly condemned in the Protestant Reformation, and no such rule is applied in the Presbyterian Church.⁴⁰ The “plain meaning” of Jesus’ own teachings, read without some appreciation of their historical and cultural context, would appear to prohibit both divorce and remarriage after divorce.⁴¹ However, the Presbyterian Church permits both. In light of such considerations, it cannot seriously be maintained that the church is bound by a simplistic reading of the so-called “plain meaning” of Scripture without any appreciation of its unique cultural and historical context, translation issues, and awareness of the broad biblical themes that inform lesser ones. Likewise, it

³⁸ For example, Paul declares unequivocally: “As in all the churches of the saints, women should be silent in the churches. For they are not permitted to speak, but should be subordinate, as the law also says” (1 Corinthians 14:33-35). The church has appealed not only to texts like this but also to the fact that Jesus called only men as the first disciples. The largest Christian communion in the world – the Roman Catholic Church – announced in July 2010 that the ordination of women constitutes one of the most serious crimes under canon law (equal in gravity to the sexual abuse of children). Even one of the most progressive denominations in the world – the Anglican Communion – is facing schism today over whether women may serve as bishops.

³⁹ The position finds Scriptural warrant in 1 Corinthians 7:32-33: “The unmarried man is anxious about the affairs of the Lord; but the married man is anxious about the affairs of the world, how to please his wife, and his interests are divided.” The church for centuries also appealed to the fact that neither Jesus nor Paul appear to have married, and to Old Testament texts about Jeremiah and Israel’s army which suggest that proper witnessing and service to God require sexual abstinence.

⁴⁰ In particular, John Calvin was deeply critical of Roman Catholic rules forbidding priests to marry. See Calvin, *Institutes*, Bk. III, Ch. 19 and Bk. IV, Ch. 10.

⁴¹ Thus, Jesus declared “what God has joined together, let no man separate” (Matthew 19:6, Mark 20:9) and taught that “[w]hoever divorces his wife and marries another commits adultery” (Matthew 5:32, 19:9; Mark 20:11; Luke 16:18). Paul likewise taught that “a married woman is bound by the law to her husband as long as he lives” (Romans 7:1-3, 1 Corinthians 7:39), that “the husband should not divorce his wife” (1 Corinthians 7:10-11), and that church leaders should be married only once (1 Timothy 3:2, 3:12). Such teachings were grounded in the idea that a couple, once married, become “one flesh” (Genesis 2:24, Ephesians 5:31) and cannot be separated. While the Hebrew Scripture does not condemn all divorce, various texts severely restrict its scope.

cannot seriously be maintained that Presbyterians are bound by church tradition simply because an idea has been held for a long time.

Consistent with their dubious claims about how Presbyterians should read the Bible, Complainants express an astounding degree of certitude about an interpretation of Scripture that places them wholly at odds with many biblical scholars. In 2001, over half of the Bible faculty in our Presbyterian seminaries signed a statement expressing their belief that Scripture does not condemn all same-sex relationships.⁴² Commentaries on the Scriptural passages cited by Complainants show that these passages are open to a range of interpretations.⁴³ The point, insofar as this case is concerned, is not whether a particular

⁴² “*The Whole Bible for the Whole Human Family: Members of the Biblical Faculty of the Presbyterian Seminaries Speak to the Issue of Ordination*” (online at <http://www.covnetpres.org/wp-content/uploads/2009/11/Bible-faculty-statement.pdf>).

⁴³ For example, see the following:

- *Leviticus*: Erhard S. Gerstenberger, *Leviticus* (Louisville: WJK, Old Testament Library Series, 1996), pp. 297-99 (proscription of homosexuality reflects cultural fears unique to their historical context “and in no way represents an unalterable law”); Jacob Milgrom, *Leviticus* (Minneapolis: Fortress Press, Continental Commentary Series, 2004), pp. 196-97 (proscription of homosexuality addresses neither lesbian relationships nor gay relationships among non-Jews); N.H. Snaith, *Leviticus and Numbers* (Greenwood: Attic Press, New Century Bible Series, 1967), p. 126 (proscription of homosexuality refers to the use of temple prostitutes, not to same-sex relationships generally).
- *Romans*: David L. Bartlett, *Romans* (Louisville: WJK, Westminster Bible Companion Series, 1995), pp. 30-31 (Paul is concerned not about sin but about the consequences of sin, it is not clear what kinds of behavior Paul is addressing, and Paul in any event does not address the question of behavior arising from a deep-seated psychological orientation); Christopher Bryan, *A Preface to Romans* (Oxford: Oxford Univ. Press 2000), pp. 84-89 (it is debatable whether Paul’s mention of women refers to lesbian practices or, instead, to unconventional heterosexual practices, and his inability to distinguish chosen behavior from psychological orientation makes application of this text “a matter for pastoral consideration”); Brendan Byrne, *Romans* (Collegeville: Liturgical Press, Sacra Pagina Series, 1996), pp. 68-71 (Paul refers to chosen behaviors, rather than to an abiding psychological orientation, and cites same-sex behavior as a rhetorical device to distance his Jewish readers from idolatrous Gentile practices); Stanley K. Stowers, *A Rereading of Romans* (New Haven: Yale Univ. Press 1994), pp. 50-52, 94-97 (Paul is not teaching about sexual ethics but is invoking ethnic otherness through a rhetorical stratagem that relates to social and cultural domination by male elites).
- *I Corinthians*: Anthony C. Thiselton, *The First Epistle to the Corinthians* (Grand Rapids: Wm. B. Eerdmans, New International Greek Testament Commentary Series, 2000), pp. 438-452 (describing extensive debate about whether Paul’s teaching refers to homosexual relations in general, or more narrowly to commercial prostitution, sacred male prostitution, pederastic practices, or culture-bound concepts of maleness and effeminacy from Platonic-Stoic philosophical traditions).

interpretation is correct; the point is that this is an area in which freedom of conscience in interpreting Scripture plays a critical role. The Presbytery was well within its rights to find Ms. Larges' biblical interpretation acceptable.

Nor are Complainants on any surer footing in their discussion of the confessions. While confessional definitions of marriage describe one type of relationship, they do not necessarily preclude other types of relationships. In fact, there are only two passages in the Book of Confessions that might speak directly to same-sex relationships and, again, there is significant debate about how they should be interpreted. The Westminster Confession, which condemns “sodomy” and “unnatural lust” (7.249), might well be concerned with violence/rape (as existed in the story of Sodom) and obsessive sexual interest. Scholars have shown that the only other potentially relevant passage, which refers to “homosexual perversion” (4.087), is a mis-translation that General Assembly has now initiated a process to correct.⁴⁴ In any case, a careful interpreter might conclude that even this passage, as it is mis-translated

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- *1 Timothy*: Thomas C. Oden, *First and Second Timothy and Titus* (Louisville: John Knox Press, Interpretation Commentary Series, 1989), p. 39 (context makes clear that Paul condemns child abusers and others who transgress relations of covenantal fidelity, not all same-sex relations).

Complainants' claim that Genesis 1-2 establishes the necessity of “complementary, creative sexual unions” between a man and a woman, as the only permissible form of relationship, is likewise ill-founded. The Creation accounts may well address heterosexuality as the condition to which most people would relate, but they do not necessarily exclude other possibilities. In fact, the only word spoken by God in these accounts relates equally to heterosexual and homosexual persons: “It is not good that the man should be alone” (Gen. 2:18). “Celibacy” – what proponents of exclusionary standards seek to impose on gay and lesbian persons – comes from the Latin word *caelebs*, meaning “alone”.

For more general treatments showing the wide diversity of scholarly views on these texts, see, e.g. Robert L. Brawley, ed., *Biblical Ethics and Homosexuality: Listening to Scripture* (Louisville: WJK 1996); Daniel Helminiak, *What the Bible Really Says about Homosexuality* (New Mexico: Alamo Square Press 2000); Robin Scroggs, *The New Testament and Homosexuality* (Philadelphia: Fortress Press 1983); Choon-Leong Seow, ed., *Homosexuality and Christian Community* (Louisville: WJK 1996); Jeffrey S. Siker, ed., *Homosexuality in the Church: Both Sides of the Debate* (Louisville: WJK 1994); Walter Wink, ed., *Homosexuality and Christian Faith: Questions of Conscience for the Churches* (Minneapolis: Fortress Press 1999).

⁴⁴ PCUSA Minutes, Pt. 1, pp. 18-19, 1260-1262 (2008). This work has been continued by the 219th General Assembly (2010) as a cooperative project with other Reformed denominations who have undertaken similar efforts to correct their translations (<http://www.pc-biz.org/IOBView.aspx?m=ro&id=3225&promoid=140>). Recent scholarship has shown that homosexuality did not appear in any version of the Heidelberg Confession until it was added by a translator, working from non-confessional texts, in 1962. See Jack Rogers, *Jesus, the Bible, and Homosexuality: Explode the Myths, Heal the Church* (Louisville: WJK 2006), pp. 114-119.

now, no more condemns all same-sex relations than a warning against “heterosexual perversion” condemns all heterosexual relations.

Faced with the undeniable existence of strong disagreement around the church about how Scripture and the confessions should be interpreted, Complainants claim that the Book of Order prohibits all same-sex relationships.

As a preliminary matter, principled consideration of what G-6.0106b actually requires demonstrates that Complainants claim far too much. While many conjure up a single sexual ethic when talking about G-6.0106b, that section actually states that candidates “are to lead a life in obedience to Scripture and in conformity to the historic confessional standards of the church.” Strictly speaking, the words “are to lead” must be read as establishing a mandate, since the Preface of the Book of Order states that the words “ARE TO BE signify practice that is mandated.” However, it defies both common sense and Reformed theology to read this literally – the confessions themselves (7.259) say that it is impossible to meet this standard. Were this Commission to adopt Complainants’ position, that G-6.0106b should be strictly enforced, no one could ever qualify to serve the church at all. G-6.0106b establishes an important aspiration, but not an enforceable mandate.

In fact, Complainants are not really interested in applying G-6.0106b, as that section exists in our Constitution. What Complainants really care about is the sexual ethic in its second sentence. However, that sentence states that the requirement of fidelity and chastity is “among these” standards – an example of what the first sentence of G-6.0106b requires, not a special rule in its own right. One cannot rely on use of the word “requirement” in the sexual ethic, to hold that in special regard, because the heading of G-6.0106 refers to “Requirements” in the plural; under a strict reading of this provision, other parts of the standard must be regarded as requirements too. In short, if one is to take a legalistic approach to G-6.0106b, one must enforce the rigors of its first sentence. To do otherwise, and focus solely on the second sentence, is simply arbitrary (at best).

Likewise, the specificity of the sexual ethic in G-6.0106b cannot be taken as an indication that it is essential. If this were so, G-6.0106b would wildly distort the message and mission of the church. It would give unique status to a contested sexual ethic, raising it above Christ's "greatest and first commandment" that we love the Lord our God with all our heart, soul and strength, and the second commandment that we love our neighbors as ourselves (Matthew 22:34-40). Likewise, it would give this contested sexual ethic greater importance than Christ's great commission that we "Go therefore and make disciples of all nations . . . teaching them to obey everything that I have commanded you" (Matthew 28:19-20). The patent distortion in such a hierarchy of standards demonstrates that such a reading cannot be correct.

Similarly, a "specificity" test would elevate this single, contested sexual ethic above confessional teachings that Christians are to avoid idolatry, self-seeking, pride, discontent, undue correction of others, provoking others to wrath, unjust taking of life, anger, hatred, greed, excessive passions, distracting cares, immoderate use of life's bounty, provoking words, oppression, quarrelling, wounding, unclean thoughts, unjust or unfaithful contracts, vexatious lawsuits, withholding what belongs to others, inordinate prizing of worldly goods, distrustful and distracting cares, envy at the prosperity of others, idleness, prodigality, prejudicing of the truth, passing unjust sentence, undue silence in a just cause, speaking the truth unseasonably, rash, harsh, or partial censoring, denying the gifts and graces of God, unnecessarily discovering infirmities, and the like (7.209-7.258). None of these sins listed in the Larger Westminster Catechism are stated as specifically as the second sentence of G-6.0106b, yet few would dispute that they are of equal or greater gravity. Likewise, few would dispute that no one perfectly conforms to these standards, or that these standards must be applied with consideration of the particular circumstances in which a person acts. So it is with the particular sexual ethic identified in G-6.0106b (a part of our Form of Government that is, in fact, subordinate to the confessions). To claim that its second sentence is superior to all other Scriptural and confessional standards by virtue of its specificity is nonsensical.

Even if specificity were a proper test of “requirements,” the second sentence of G-6.0106b in fact is not sufficiently clear to establish a clear mandate. To treat the second sentence of G-6.0106b as having a single meaning, clear enough to treat as an essential, is to ignore the words used in it.⁴⁵

- “*Chastity*”: A core term in the second sentence of G-6.0106b is “chastity.” Many claim that that must require celibacy of persons who have a same-sex orientation – and that is clearly what the Complainants wish were the case. However, that goes well beyond what the church has codified in the Constitution. Had such a rule been intended, the church could easily and simply have codified in G-6.0106b what was then the relevant church policy, that “unrepentant homosexual practice does not accord with the requirements of ordination.” The church chose not to do that. Likewise, when General Assembly crafted G-6.0106b, it rejected 19 overtures that were virtually identical to the present wording of G-6.0106b but used “celibacy” instead of “chastity”. Such clear choices by the church must be respected. Whatever some hoped to accomplish with the adoption of G-6.0106b, one cannot properly read into it restrictive terms that the church itself refused to adopt.

The use of “chastity” in G-6.0106b has never been authoritatively interpreted.⁴⁶ In the Reformation period, when many of our confessions were written, the church taught that “chastity” was not celibacy, but a moderation or renunciation of excessive sexual pleasure; thus the Heidelberg Catechism (4.018) says that we are to “live

⁴⁵ Complainants claim to find evidence that G-6.0106b is “plain enough to be operative” in the sustained efforts some have made to remove it from the Book of Order (Complainants’ Brief at p. 22). Doubtless the animus against gay and lesbian people that many see in G-6.0106b provides some reason for wanting to eliminate this section, which has deeply wounded many in the Presbyterian family, in the interests of healing. However, it is claims like those made by Complainants here – that is, efforts to give G-6.0106b a much more exclusionary impact than its terms warrant – that motivate many efforts to remove it.

⁴⁶ While several GAPJC decisions mention a prohibition of homosexual practice, none of them purport to interpret G-6.0106b; rather, each speaks of practice “proscribed by the General Assembly” (*i.e.* a prohibition established through AI, rather than amendment of the Constitution with ratification by the presbyteries). *Benton v. Presbytery of Hudson River*, PCUSA Minutes, Pt. 1, pp. 586, 588 (2000); *Wier v. Second Presbyterian Church*, PCUSA Minutes, Pt. 1, pp. 340, 342 (2002). As noted above, General Assembly in 2008 ruled, and in 2010 affirmed, that those statements have no further force or effect.

chaste and disciplined lives, whether in holy wedlock or in single life.” The 215th General Assembly (2003) refused a request that it issue an authoritative interpretation of “chastity,” reminding candidates and examining bodies instead that they should read and interpret the confessions. The Assembly’s full statement makes clear that this term requires “particularized fact-finding” in “specific” cases, guided by the “vast number of relevant reflections on these terms from our tradition.”⁴⁷ In fact, many believe that “chastity” refers to such traditional virtues as self-control, modesty, temperance, respect for oneself and others, and commitment to the discipline of monogamy – requirements, often found in discussions of Christian sexual ethics, that apply equally to heterosexual and homosexual persons. In any event, the point here is that the term requires interpretation, and cannot be construed as facilely as Complainants suggest.

Some claim that G-6.0106b was targeted at persons in same-sex relationships and that discussions about the meaning of “chastity” are disingenuous. However, the church, having resorted to legislation to resolve its disputes, must live with the terms legislated. Had what became G-6.0106b required “celibacy in singleness” or singled out “self-affirming practicing homosexuals,” it might never have been adopted by General Assembly or ratified by the presbyteries. The choice of terms that won its adoption must be respected in its application.

- *“In singleness”*: Equally important, the church chose to require chastity “in singleness” (rather than “outside marriage”). A growing number of states recognize some form of same-sex partnerships (including marriage), and there obviously are hundreds of thousands of same-sex couples in other states. It might be questioned whether it is consistent with Scripture and the Confessions to require that such persons, having made covenants of fidelity with a lifetime partner, must break those covenants or forever be barred from ordained service.

⁴⁷ PCUSA Minutes, Pt. 1, pp. 61, 64 (2003).

- *“Practice the confessions call sin”*: As noted above, the confessional status of same-sex practice is far from settled. The single reference to “sodomy” in all of the confessions (7.249) might mean violence/rape or the kind of idolatry, hypocrisy, greed, oppression, and inhospitality that Scripture elsewhere identifies as the sin of Sodom. Likewise, scholars have shown that the sole reference to “homosexual perversion” (4.087) is a mis-translation that is now being corrected.⁴⁸ In any case, this passage should no more condemn all same-sex relations than a warning against “heterosexual perversion” condemns all heterosexual relations.

This case is not the forum in which the meaning of these terms should be determined – G-6.0108 clearly places the primary responsibility for interpretation of standards first with the individual who declares a departure, and then with the governing body that assesses it. As noted above, General Assembly declined to adopt an AI of “chastity,” referring the church instead to study of the confessions. What is important here is to recognize that Complainants’ facile claims, that there is a clear and enforceable requirement in G-6.0106b, are groundless. In finding Ms. Larges fit for ordained service, some presbyters may have concluded that she erroneously interpreted G-6.0106b, and that it was not necessary for her to declare a departure at all.

2. *Our constitutional mandate that conscience be respected protects Ms. Larges’ efforts to live in accordance with her beliefs.*

Complainants argue that Ms. Larges’ declaration cannot be accepted because “biblical interpretation is the only realm in which freedom of conscience is to be maintained. However, a departure from clearly articulated standards of behaviour, such as this Candidate has declared in response to G-6.0106b, cannot be granted within this framework” (Complainants’ Brief at p. 23). This attempt to divorce belief from practice simply isn’t church law – indeed, it is flatly contrary to our theology, polity, and history:

⁴⁸ See note 44, *supra*.

- As a matter of theology, Jesus taught that the connection between faith and practice is so close that one directs us immediately to the other: “By their fruits you will know them” (Matt. 7:15-20, Luke 6:43-45). Likewise, our Historic Principles of Church Order (G-1.0304) declare that “there is an inseparable connection between faith and practice, truth and duty.” Calvin admonished the church that we have “a doctrine not of the tongue but of life” – we are supposed to live out what we believe.⁴⁹ Such passages reflect a sound grasp of the realities of human knowledge and action. As noted by Hans-Georg Gadamer, whose teachings on hermeneutics ground every seminarian’s education, establishing the meaning of a text and applying it “are not two separate actions, but one process.”⁵⁰
- We have faithfully implemented this principle in our history as a church. For example, over 250 years ago, Presbyterians resolved a dispute over ordination standards by affirming that “everything that appears plain duty and truth unto the body may appear at the same time not to be essential. . . . What is plain sin and plain duty in one’s account, is not so in another’s. . . . [W]e must not make terms of communion which Christ has not made, and we are convinced that he has not made every truth and every duty a term.”⁵¹ Practice (as well as belief) has always been subject to mutual forbearance.
- The inseparable connection between belief and practice is recognized in our Constitution. Thus, the Westminster Confession (6.175) declares that “synods and councils . . . are not to be made the rule of faith or practice, but to be used as a help in both” (emphasis added). Thus, General Assembly unequivocally affirmed, in the 2008 AI, that G-6.0108 requires governing bodies to consider case-by-case “any departure from an ordination standard in matters of belief or practice.”

⁴⁹ Calvin, *Institutes*, Bk. III, Ch. 4, § 4.

⁵⁰ Hans-Georg Gadamer, *Truth and Method* (New York: Seabury Press (2d ed. 1975)), pp. 275-76.

⁵¹ *Minutes of the Presbyterian Church in America 1706-1788* at pp. 278, 287 (emphases added).

In short, “freedom of conscience in the interpretation of Scripture” is not some abstract notion that allows a person to hold convictions about the meaning of Scripture so long as he or she does not try to live them out. If a person is not allowed to apply Scripture, that person is not allowed to interpret Scripture, because a refusal to follow the meaning of Scripture constitutes a denial of its validity and claim to a faithful response. Our beliefs permeate who we are and how we act, or they are scarcely worth calling “beliefs” at all. Because both belief and behavior arise out of conscience, our constitutional guarantee of freedom for the biblically formed conscience necessarily applies to both.

Quite apart from these general principles, the only kinds of behavior to which Complainants object here have all been addressed by the GAPJC in past cases, and found not to be disqualifying. Thus, Complainants’ object that Ms. Larges teaches and organizes activities meant to bring about a change in our ordination standards. However, such efforts are the very means by which the church may come to appreciate the need for reform, and openness to such efforts is a large part of what makes us a “Reformed” community of faith. The GAPJC has held that teaching a view which is contrary to official church teaching does not disqualify someone from ordained service if the presbytery finds that person qualified for membership.⁵² Likewise, Complainants object that Ms. Larges “stated that she does not intend to comply with the ‘fidelity and chastity’ requirement” and that she must be disqualified if she “cannot affirm the standard (by aspiring to conform to it)” (Complainants’ Brief at pp. 18, 22). However, as noted above, the GAPJC addressed exactly the same objection in *Bierschwale II* and held that an express refusal to comply with the sexual ethic in G-6.0106b, when the candidate is not presently out of compliance, does not bar the candidate from service.⁵³

⁵² *Simmons v. Presbytery of Suwannee*, PCUSA Minutes, Pt. 1, p. 115 (1985) (pastor who intended to teach that women should not be ordained was not thereby disqualified from office).

⁵³ Rem. Case 219-08, *Bierschwale v. Presbytery of Twin Cities Area* (Nov. 2, 2009) (a candidate’s “statements about his possible *future* conduct do not provide a foundation for finding a *present* violation of G-6.0106b”).

Our theology, history, and law make clear that it is impossible to separate belief from practice. The vital respect that Presbyterians accord an individual's biblically formed conscience, protected and nurtured under G-6.0108, applies to both. The kind of conduct in which Ms. Larges is presently engaged has been found by the GAPJC not to disqualify a candidate under our ordination standards. Accordingly, Complainants' objections cannot provide any grounds for overturning the Presbytery's collective discernment here.

3. *Ms. Larges was not disqualified under G-6.0106b by a refusal to repent.*

Quite apart from the behavioral requirements of G-6.0106b, a point often overlooked is that G-6.0106b disqualifies a candidate only if that person is "refusing to repent" of the practice at issue. The confessions teach us that repentance "is a sheer gift of God and not a work of our strength" (5.094). Likewise, the confessions teach us that repentance involves an inward conviction of the wrongfulness of one's acts – when the candidate has "a true sense of his sin" (7.087) and is so aware of his sins that he "grieves for them from his heart" (5.093, 4.081, 6.082, 7.186).

In premising disqualification for church leadership on a person's refusal to repent – that is, wilful disregard of one's God-given, inward convictions – G-6.0106b brings us back to the fundamental importance of conscience. This is not to say that repentance is entirely a "passive" process; assuredly a person who believes that his or her conduct is sinful, and is unwilling to change that, should not serve as a leader in the church. However, a different case arises where the candidate sincerely believes that he or she is acting as God wills. Where biblically formed consciences differ, G-6.0106b affirms – and requires sessions and presbyteries to affirm – the importance of mutual forbearance. Many faithful Presbyterians of same-sex orientation believe that their orientation is a good and natural part of God's creation that can be responsibly acted on. In such cases, the individual, although disagreeing with the majority, is not "refusing to repent" but is, rather, acting responsibly in conscientious discernment of what God intends for his or her life.

In short, if we take the confessions seriously (as G-6.0106b requires), it cannot be said that Ms. Larges is refusing to repent. Again, in finding Ms. Larges fit for ordained service, some presbyters may have concluded that her declaration did not entail a true departure from G-6.0106b because that section, properly understood, did not disqualify her to begin with.

4. *Presbytery properly assessed Ms. Larges' departure in light of everything it knew about her faith, views, and manner of life.*

No one has questioned the obvious depth and sincerity of Ms. Larges' Christian faith. Moreover, Ms. Larges offered a declaration of departure that was thoroughly grounded in her interpretation of Scripture and understanding of our Reformed heritage. Fundamental to her scruple was an insistence that Christians are saved by faith alone, and that requiring vows of celibacy from gay/lesbian persons involves a form of "works righteousness" that is profoundly at odds with our theology.

It should be noted that while Ms. Larges declared a departure from a particular interpretation of G-6.0106b, she could not have accepted that standard, given her personal convictions, without departing from other confessional standards. Thus, for example, the confessions warn that "making men the lords of our faith and conscience" is idolatrous.⁵⁴ Likewise, for Ms. Larges – who told the Presbytery she is not presently in a same-sex relationship – to fore swear the possibility of a future relationship would constitute a sin under provisions in the confessions that prohibit vows of celibacy.⁵⁵ Given the circumstances in her case, some choice was required. Ms. Larges chose to affirm the great Reformed principle *sola fide* (salvation by faith alone), and to reject the idolatry of placing human commands

⁵⁴ The Westminster Standards condemn obedience to human authority in violation of one's conscientious understanding of Scripture (6.109), noting that such obedience violates the First Commandment (7.215).

⁵⁵ The confessions condemn "entangling vows of single life" (7.249), and warn that "vows of perpetual single life, professed poverty, and regular obedience, are so far from being degrees of higher perfection, that they are superstitious and sinful snares, in which no Christian may entangle himself" (6.126).

above the instruction of her conscience – the sacred forum in which we believe God speaks to the believer.

As is customary, the Presbytery merged its discernment regarding the points discussed above in a single vote on Ms. Larges’ fitness for ordained service. Its discernment that her departure could not be deemed to be “essential” may have turned on an appreciation of the importance the Reformed church places on respect for the individual’s biblically formed conscience, and recognition that current debates about sexual ethics in the Presbyterian Church bear close parallels to the rejection by the Reformers, in the 1500s, of the Roman Catholic requirement that all clergy be celibate. Ms. Larges’ demonstration of her deep love of the Presbyterian Church, and her extraordinary commitment to it, doubtless placed her refusal to comply with G-6.0106b in a different light, as discerned by some members of the Presbytery, than departures by others whose sexual ethics do not conform to church standards. Likewise, the Presbytery’s discernment was doubtless influenced by evidence of the rich gifts of ministry that Ms. Larges brings to the Presbytery, as well as the close fit between those gifts and the position at TAMFS to which she has been called. All of these considerations (and others) properly informed the Presbytery’s discernment, under longstanding Presbyterian law and practice, about whether Ms. Larges’ declared departure should be deemed “essential” to her fitness for ministry. The Presbytery discerned that it should not, and its collective discernment is entitled to deference from this Commission.

B. Ms. Larges’ departure does not “infringe on the rights and views of others”.

G-6.0108a states that a session or presbytery cannot accept a scruple if it finds that the candidate’s departure would “infring[e] on the rights and views of others.” Some claim that this clause requires strict adherence to all standards of the church, since any divergence would mean that the majority’s view was not given full credence. Complainants take this line of argument even further (since the majority in the Presbytery accepted Ms. Larges’

departure), and argue that acceptance of her departure infringed the rights and views of members of the Presbytery who dissented from it.

Complainants' argument cannot be accepted. Fewer than one-third of the presbyters attending the meeting signed the protest or dissent. To say that one must always agree with a standard, so long as anyone in the governing body wants to enforce strict compliance with it, is to eviscerate freedom of conscience. The exception swallows the rule. If freedom of conscience means anything, it means that a candidate may disagree with a standard and, if the majority in the governing body finds that disagreement to be non-essential, conscience is to be respected. Complainants' argument would read both G-6.0108 (freedom of conscience is to be maintained) and G-1.0400 (a governing body must act according to the discernment of the majority) out of the Constitution. It is clearly wrong.

Rejection of Complainants' argument leaves the question, what does the clause about "infringing on the rights and views of others" actually mean? The Presbytery believes that this clause means that our commitment to mutual forbearance must be respected. It disqualifies the candidate who says, for example, "I believe that persons who support war are misguided and should not serve in church leadership, and I believe this point is so clear I will never consider anyone's scruple about it." In taking such a position, the candidate is "infringing on the rights and views of others" – by refusing even to consider the possibility that someone else's declaration of conscience might be valid. A candidate is not required to affirm that he or she will accept someone else's scruple; but he or she is at least obliged to give it good faith consideration, in collective discernment with the other members of the governing body. Unwillingness to do so reflects a serious departure from our Reformed tradition and renders the candidate unfit for office in the Presbyterian Church.

Ms. Larges' departure did not involve any refusal to consider, in collective discernment with other members of the Presbytery, the scruples that other applicants for membership might assert. No such concerns are alleged in the Complaint. Accordingly, it is clear that the Presbytery's acceptance of Ms. Larges' declaration did not involve a rejection of our commitment to conscience so as to infringe on the rights and views of others.

C. Ms. Larges' departure does not "obstruct the constitutional governance of the church".

As noted above, Presbyterian law clearly requires that persons who aspire to serve as ordained leaders must be willing to perform the functions that only ordained leaders can perform. Where candidates declare scruples about those functions, common sense requires their disqualification, because one can't hold a job if one isn't willing to do the job. General Assembly affirmed this most recently in the 2008 AI, declaring that an examining body "cannot excuse a candidate's inability to perform the constitutional functions unique to his or her office (such as administration of the sacraments)."⁵⁶

It is helpful to recall recent controversies in understanding how this clause in G-6.0108 is to be interpreted – it was written after the church had grappled for some time with the question whether men who refused to ordain women could themselves be ordained. Such a refusal could readily be viewed as "obstructing the governance of the church" because those who refused to officiate were essentially attempting to set themselves above the Presbyterian system of governance, where congregations have an inalienable right to elect their leaders (G-6.0107, G-14.0221, G-14.0532) and governing bodies – not individual clergy – have the responsibility to assess such individuals' fitness for office (G-14.0240, G-11.0402, G-14.082). A minister's refusal to participate in the ordination of someone who has been duly elected by the congregation, and found fit by the session or presbytery, amounts to a fundamental rejection of Presbyterian polity itself.

Some have suggested that forbearance from a same-sex relationship might be required as a function of office. However, this is not the case. The Constitution clearly establishes that ordination does not confer a higher order of humanity on church leaders; rather, "ordained officers differ from other members in function only" (G-6.0101). Likewise, the 218th General Assembly's AI of G-6.0108 makes departures automatically disqualifying,

⁵⁶ PCUSA Minutes, Pt. 1, pp. 42-43, 380 (2008).

without further consideration by the governing body, only if they relate to functions that are “unique” to the office of call.⁵⁷

Ms. Larges’ declared departure did not suggest any unwillingness to perform constitutional functions unique to office, and the Complaint alleged no such unwillingness. Accordingly, the Presbytery, in accepting her scruple, did not approve any departure “obstructing the constitutional governance of the church.”

IV. GAPJC DECISIONS REQUIRE THAT PRESBYTERY’S ACTION BE UPHELD

A. *Bierschwale II* requires that the Presbytery’s action be upheld.

The Presbytery has briefed the issues in this case in an effort to advance conversation and understanding in the church. However, as discussed above (at pp. 10-11), the questions raised in this case have already been asked and answered – by the GAPJC. In a case exactly like this one, decided less than one year ago, the GAPJC upheld the presbytery’s determination that a gay man who declared his conscientious objection to, and refusal to abide by, G-6.0106b was nonetheless fit for ordained service. No meaningful distinction can be drawn between that case and this one. *Bierschwale II* makes absolutely clear that the Presbytery acted appropriately and within the scope of its authority under the Constitution when it found that Ms. Larges is fit for ordained service in the church. That decision therefore requires that the Presbytery’s action be upheld here.

B. *Bush* does not require a different result.

In early 2008, the GAPJC issued a decision (in the *Bush* case) which suggested that the second sentence of G-6.0106b (“fidelity and chastity”) is so specific that its application

⁵⁷ See note 5, *supra*.

cannot be qualified by respect for the individual's conscience under G-6.0108.⁵⁸ General Assembly responded immediately, when it met several months later, by adopting an AI of G-6.0108 which clarified that the duty to show mutual forbearance applies equally to all standards, and that examining bodies may accept scruples relating to personal behavior as well as matters of belief.⁵⁹ The Assembly therefore immediately and unequivocally overruled *Bush*.

Complainants claim that *Bush* is still in force, under G-13.0103r (which provides that the most recent of conflicting AIs is binding) because citation of that case in the GAPJC's decision in *Naegeli* "pulled it forward and applied it again after the [2008] AI was adopted" (Complainants' Brief at p. 26). However, Complainants' claim cannot stand, for several reasons:

- First, *Naegeli* is not the most recent action on *Bush* from the General Assembly or the GAPJC. The most recent action came on July 8, 2010, when the Assembly, meeting in plenary session, rejected an overture that sought to restore *Bush* and other exclusionary statements.⁶⁰
- Second, the GAPJC's citation of *Bush* for one principle does not constitute endorsement of other principles in that decision. In fact, on the same day that it decided *Naegeli*, the GAPJC issued another decision (*Bierschwale II*) in which it expressly refused to resurrect the *Bush* decision insofar as it related to the sexual ethic in G-6.0106b.⁶¹ Complainants' therefore claim that the GAPJC did something it clearly intended not to do.

⁵⁸ Rem. Case 218-10, *Bush v. Presbytery of Pittsburgh* (GAPJC Feb. 11, 2008).

⁵⁹ PCUSA Minutes, Part 1, pp. 42-43, 380 (2008). The text of this AI is quoted in note 5 above.

⁶⁰ General Assembly action on Item 06-04 (<http://www.pc-biz.org/IOBView.aspx?m= ro&id=2237>).

⁶¹ Rem. Case 219-08, *Bierschwale v. Presbytery of Twin Cities Area* (GAPJC Nov. 2, 2009), p. 5.

- Finally, Complainants have fundamentally misconstrued the GAPJC’s statement in *Naegeli* that examining bodies may not “ignore or waive” an ordination standard. Applying a standard in light of G-6.0108 is neither “ignoring” it (as refusing to acknowledge it would do) nor “waiving” it (as casually dismissing it would do) – it is applying the standard as it was meant to be applied, with respect for freedom of conscience. Proper treatment of a declared departure requires an honest acknowledgment of how a candidate falls short of church standards, assessment whether that shortcoming may be deemed “essential” in light of everything the examining body knows about the candidate, and (where an “essential” is involved) consideration of how accepting that departure may affect church governance and the rights and views of others.⁶² Presbyters necessarily consider any departures declared by a candidate in light of their own affirmations to be governed by the church’s polity, knowledge of Scripture and the confessions, love for the PC(USA), and a deep desire to be guided in collective discernment by the working of the Holy Spirit. Were the rule otherwise, and the statement in *Naegeli* as preclusive as Complainants claim, the GAPJC would never have instructed the Presbytery to examine Ms. Larges – her statement of departure would have ended the matter.

Complainants also essentially argue that the 217th, 218th, and 219th General Assemblies all acted in violation of the Constitution, by discerning in G-6.0108 “something that can only be done by constitutional process and not by an authoritative interpretation” (Complainants’ Brief at p. 26). This argument also is insupportable, for several reasons:

- First, contrary to Complainants’ argument, the issuance of AIs is a “constitutional process” – one that is expressly established in G-13.0103r. AIs issued over the course of our ordination debates have displeased virtually all parts of the church at one time or another – indeed, it is instructive to recall that G-13.0103r was added to the Book of Order, over the objections of more “liberal” parts of the church, in order to legitimate General Assembly declarations that the church’s general “manner of life”

⁶² Rem. Case 219-11, *Naegeli v. Presbytery of San Francisco* (GAPJC Nov. 2, 2009), p. 6.

standard (G-6.0106) must be interpreted as a bar to “unrepentant homosexual practice.” However, such displeasure provides no grounds for questioning the constitutionality of a process that the Book of Order itself specifically establishes.

- The 2006 and 2008 AIs stand squarely within the interpretive process. As the GAPJC noted in *Londonderry*:

It is not unusual for a document such as our Constitution, written at different periods of time and under different circumstances, to exhibit tensions and ambiguities in its provisions. Nevertheless, it is the task of governing bodies and judicial commissions to resolve them in such a way as to give effect to all provisions.⁶³

That is precisely what the 217th and 218th General Assemblies did in adopting the 2006 and 2008 AIs (and what the 219th General Assembly did in refusing to overturn them). Given the clear tension between some exclusionary interpretations of G-6.0106b (“fidelity and chastity”) and G-6.0108 (which requires respect for the conscience of individual believers), General Assembly was called upon to interpret how those provisions might be read together. In 2006, the 217th General Assembly adopted an AI reminding the church that G-6.0108 qualifies the application of our ordination standards. The GAPJC then ruled in *Bush* that one standard – the second sentence of G-6.0106b – is so specific that G-6.0108 does not apply to it. The 218th General Assembly corrected this in another AI making clear that G-6.0108 qualifies the application of the second sentence of G-6.0106b just as it does all of our other ordination standards (i.e. that G-6.0108 applies “equally to all ordination standards”).⁶⁴

⁶³ *Londonderry Presbyterian Church v. Presbytery of Northern New England*, PCUSA Minutes, Pt. 1, pp. 577, 578 (2001) (para. 12.1044). *Londonderry* also dealt with ordination standards, but addressed a case where an examining body (session) adopted a policy that it would *never* apply G-6.0106b (rather than acknowledging G-6.0106b as a valid standard and addressing issues under it with due regard to the mandate of G-6.0108).

⁶⁴ For some, this series of AIs has raised the question “Who gets the last word” – General Assembly, sitting in plenary session, or its PJC? General Assembly in 2010 adopted an AI of G-13.0103r in which it declined to place one body higher than the other, so that whichever speaks most recently binds the church until the next body speaks (<http://www.pc-biz.org/IOBView.aspx?m=ro&id=3405&promoid=193>). However, that AI makes

Complainants argue that the 2008 AI “literally excise[d] the word ‘requirement’ from the *Book of Order*” (Complainants’ Brief at p. 26). As discussed above (at pp. 26-27), Complainants misapply the word “Requirements” in G-6.0106b. In any event, however, that the 2008 General Assembly interpreted the Constitution differently than Complainants might like does not mean that the Assembly amended it. In fact, General Assembly in 2008 engaged in exactly the same interpretive process the GAPJC did in *Bush* (assessing how two constitutional provisions should be read together); accordingly, in arguing that *Bush* remains good law, Complainants essentially admit that that interpretive process is valid. The mandate of G-6.0108 that the last three General Assemblies lifted up for the church is every bit as much a part of the Constitution as G-6.0106b is, and the 2008 AI is binding on the church.

C. **Maxwell does not require a different result.**

As a final argument, Complainants claim that the so-called “Kenyon” case⁶⁵ requires Ms. Larges’ disqualification (Complainants’ Brief at pp. 26-28). However, the argument is simply contrary to Presbyterian law.

The “Kenyon” case addressed the fitness of a candidate who declared that he would not participate in the ordination of women – that is, he would not perform a constitutional function that the Constitution vests uniquely and solely in Ministers of Word and Sacrament. As noted above, church law clearly requires that persons who aspire to serve as ordained leaders be willing to perform the functions that only ordained leaders can perform. Thus, the 218th General Assembly declared that an examining body “cannot excuse a candidate’s inability to perform the constitutional functions unique to his or her office (such as

clear that “General Assembly and the GAPJC must each accord to the previous interpretive deliverances of the other the highest respect and deference.” During plenary consideration of the proposed AI, Fred Denson addressed General Assembly as Moderator of the GAPJC, and stated unequivocally that “The fact of the matter is that we go out of our way to give deference and the highest respect to anything the GA has done, so that any AI that we issue, we try to ensure that it’s in full harmony with prior AIs” (audio-visual recording of plenary debate available through OGA). Accordingly, to the extent the *Bush* decision might have conflicted with the AI adopted by the 217th General Assembly (2006), such conflict is very unlikely to recur.

⁶⁵ *Maxwell v. Pittsburgh Presbytery*, UPCUSA Minutes, Pt. 1, p. 254 (1977).

administration of the sacraments).”⁶⁶ Walter Kenyon’s departure was disqualifying because his refusal to ordain women – tantamount to the arrogation of a bishop’s power to supersede the decisions of his congregation and session – amounted to a fundamental rejection of Presbyterian polity itself.

There are no allegations in this case (nor do the facts provide any basis for allegations) that Ms. Larges has stated any refusal to perform the constitutional functions unique to the office of Minister of Word and Sacrament.⁶⁷ Accordingly, Complainants’ citation of *Kenyon* is simply irrelevant.

WITNESSES

The Presbytery intends to call four witnesses at trial, all of whom it believes are willing to testify voluntarily in this matter. It therefore is not necessary for this Commission to issue citations requiring their appearance under D-7.0200. The witnesses that the Presbytery intends to call are:

Rev. Dr. Jack Rogers
Professor of Theology Emeritus, San Francisco Theological Seminary
Moderator of the 213th General Assembly (2001)

Rev. Dr. Mark Achtemeier
Associate Professor of Systematic Theology, Dubuque Theological Seminary
Member, Theological Task Force on Peace, Unity and Purity (2001-2006)

Mr. Chuck Fry
Elder at First Presbyterian Church of Berkeley
Director of Operations, Lafayette-Orinda Presbyterian Church
Moderator, San Francisco Presbytery (2009)

⁶⁶ PCUSA Minutes, Part 1, pp. 42-43, 380 (2008).

⁶⁷ While Complainants object that Ms. Larges “intends” to ordain officers who do not meet church standards, such concerns are groundless. Deciding who will be ordained is not something that Ms. Larges will be empowered to do. In the Presbyterian system, congregations and their governing bodies – sessions and presbyteries – determine the fitness of candidates for ordained leadership.

Rev. Keenan Kelsey
Pastor, Noe Valley Ministry, San Francisco
Moderator, San Francisco Presbytery Committee on Ministry (2009)

The Presbytery reserves the right to call additional or different witnesses as it might deem necessary.

CONCLUSION

Application of standards with mutual forbearance in non-essential matters of conscience does not constitute the grant of a “waiver;” rather, it constitutes an effort to apply our standards as they were meant to be applied, with due regard to the mandate of G-6.0108. In its examination of Ms. Larges, the Presbytery faithfully honored both church standards and our theological conviction that biblically formed conscience is a sacred forum in which God holds each person accountable, and that where matters of conscience are concerned, each of us has “the duty . . . to exercise mutual forbearance toward each other” (G-1.0305(5)).

Webster’s Dictionary defines an “essential” as something that is “absolutely necessary” or “indispensable.” Certainly there are core tenets of the Christian faith – the sovereignty of God, salvation through faith in Jesus Christ, and the like – that virtually anyone would acknowledge are “essentials.” Where biblical directives are concerned, one might as readily identify Christ’s “greatest and first commandment” that we love the Lord our God with all our heart, soul and strength, and the second commandment that we love our neighbors as ourselves (Matthew 22:34-40); or the Great Commission that we “Go therefore and make disciples of all nations” (Matthew 28:19-20). To try to elevate a contested sexual ethic into an “essential tenet” of Reformed faith and polity – one that is rejected by roughly half of the membership of the Presbyterian Church – is a theological distortion of the gravest kind.

In 1976, when the Presbyterian Church began to grapple seriously with questions about homosexuality, the General Assembly of the PCUS studied the question and identified

three basic strands of thought: that homosexuality is a sickness, a sin, or a legitimate variety of human sexuality. After reviewing the empirical, scriptural, and theological considerations for and against each position, the PCUS made the profoundly Reformed observation that:

Variations of each of the three basic positions we have outlined are chosen by faithful Christians. . . . All serious Christians will be compelled to reject one or another of these positions. But in view of the complexity of the issue, the disagreement among Christians and the variety in the character and experience of homosexual persons themselves, it seems unwise at this time to propose any one position as the position of our Church.⁶⁸

The forbearance shown by the PCUS at that time was consistent with our history and theology as Reformed Christians, and time has proved its wisdom.

Complainants cannot credibly maintain that freedom of conscience is immaterial to application of G-6.0106b. That provision was adopted in 1996-97 by a bare majority – only 51% – of the ministers and elders voting in presbytery. Voting in 2008-09 on a proposed amendment shows exactly the same thing: the current version of G-6.0106b was retained with the support of only 51% of voting presbyters.⁶⁹ General Assembly just voted again to send yet another proposed revision of G-6.0106b to the presbyteries.⁷⁰ It is incontrovertible that G-6.0106b poses a core issue of conscience for many in the church. This provision therefore provides a compelling test of the extent to which Presbyterians remain willing to respect individuals' freedom of conscience as our theology and law require.

In 1926, when rupture threatened the church, the General Assembly declared that:

⁶⁸ PCUS Minutes, Pt. 1, pp. 174, 319 (1977).

⁶⁹ Because we amend the Constitution by a vote of presbyteries, rather than individual presbyters, it is often reported that the proposed amendment failed by a vote of 95 to 78. However, consideration of the numbers of voting presbyters provides a more accurate picture of the extent to which there is actual disagreement in the church. Indeed, the presbyteries that voted in favor of the amendment account for larger numbers of congregations (5614) and ministers (10,829) than those that voted against it (which represent 5521 congregations and 9187 ministers).

⁷⁰ Action of 219th General Assembly on Item 06-09 (<http://www.pc-biz.org/IOBView.aspx?m= ro&id=2309>).

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.⁷¹

Those who choose to become Presbyterians choose to join a community whose theology and polity require respect for the individual's biblically formed conscience. Certainly there are other Christian fellowships that follow different forms – from the Roman Catholic Church, where conscience is heavily constrained by the pronouncements of bishops, to denominations like the Southern Baptists, where each congregation essentially makes its own rules. Presbyterians have discerned in Scripture a different way to order their life as a community of faith, and those choosing to be part of it must “embrace both the blessings and responsibilities, the grace and obligation, of living in covenant community.”⁷² That includes, critically, mutual forbearance in non-essential matters of conscience – precisely as the Presbytery showed Ms. Larges in this case.

Date _____

⁷¹ Minutes, pp. 62, 79-80 (1926).

⁷² *Londonderry Presbyterian Church v. Presbytery of Northern New England*, PCUSA Minutes, Pt. 1, pp. 577, 580 (2001) (para. 12.1066).

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CERTIFICATION OF SERVICE

I hereby certify that the enclosed Respondent's Trial Brief is submitted in answer to the Complainants' Trial Brief in *Eric Parnell et al. v. Presbytery of San Francisco*, Rem. Case # 09-04, and that a copy has been furnished to the Stated Clerk of the Synod by Express Mail, and to Complainants' Counsel by certified mail, return receipt requested, on this 30th day of July, 2010, at the following addresses:

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For Committee of Counsel of Respondent