Arrival Statement

This is a remedial case filed with the General Assembly Permanent Judicial Commission (GAPJC or this Commission) as a case of original jurisdiction by Cherokee Presbytery; The Session, First Presbyterian Church, Port Huron, Michigan; The Session, First Presbyterian Church, Ellsworth, Wisconsin; The Session, Calvary Presbyterian Church, Ann Arbor, Michigan; and The Session, St. Timothy Presbyterian Church, Livonia, Michigan, Complainants v. The Advisory Committee on the Constitution of the General Assembly of the Presbyterian Church (U.S.A.), Respondent.

Jurisdictional Statement

Under the provisions of D-6.0306, this Commission finds that Complainants' Challenge to the Preliminary Order for Dismissal was properly and timely filed and that this Commission has jurisdiction to hear this Challenge.

Appearances

Complainants were represented by Mark Schneider and Complainants’ Coordinator, Edward Koster, both of whom appeared by telephone conference call such that they could hear and be heard by all present. Respondent was represented by James A. Wilson and Paul K. Hooker.
Prior to the meeting of the 221st General Assembly of the Presbyterian Church (U.S.A.) (2014) (the GA), the Presbytery of Heartland transmitted to the GA an overture seeking an Authoritative Interpretation (AI) of the Book of Order, W-4.9000. This overture was subsequently identified by the GA as Item 10-03. The GA referred Item 10-03 to the Assembly Committee for Civil Union and Marriage Issues (the Committee). Pursuant to G-6.02, the Advisory Committee on the Constitution (the ACC) provided timely written advice to the Stated Clerk of the GA on Item 10-03 as follows:

The Advisory Committee on the Constitution advises that the 221st General Assembly (2014) disapprove Item 10-03.

This overture proposes an authoritative interpretation which would allow the exercise of pastoral discretion and freedom of conscience in conducting a marriage service for any couple as permitted by the “laws of the place where the couple seeks to be married.” It suggests an interpretation contrary to the clear statement of W-4.9000.

Section W-4.9001 and related citations (W-4.9002a, W-4.9004, W-4.9006) limit marriage to couples who are “a woman and a man.” Because these statements are clear and unambiguous, they cannot be interpreted in a manner that is inconsistent with their plain and ordinary meaning.

The Book of Order is not based upon state and civil law, but the church’s understanding of Scripture and Reformed theology. As noted in Southard v Presbytery of Boston (GAPJC 2012, 220-02), “While the PCUSA is free to amend its definition of marriage, a change in state law does not amend the Book of Order.”

Freedom of conscience is a foundational principle of the PC(USA) (G-2.0105) but must be exercised within certain bounds. The exercise of freedom of conscience in and of itself is not necessarily a violation of polity or an obstruction of constitutional governance. Such freedom of conscience, however, is not freedom of action. All persons in ordered ministry have a duty to fulfill constitutionally mandated responsibilities.

If it is the will of the assembly to change the definition of marriage, such a change is better accomplished by amendment of W-4.9000 rather than by authoritative interpretation.

Following discussion on the plenary floor, Item 10-03, as amended, was moved for approval. A commissioner asked that the motion be considered out of order in view of G-3.0105, and lengthy debate followed. Several questions were referred to the ACC. According to the Complainants, the ACC's responses were at best confusing and at worst directly contradicted its written advice. The ACC's advice, in general, was that Item 10-03 was in order and when asked,
said, "It is our opinion that it is within the rights of this Council to consider taking this action."
The plenary went on to approve the following AI of W-4.9000:

Worship is a central element of the pastoral care of the people of God (W-6.3001, W-6.3010) in which a teaching elder’s discernment of the leading of the Holy Spirit is indispensable. The necessity of ensuring the exercise of freedom of conscience in the interpretation of Scripture (G-2.0105) in the planning and leadership of worship has deep roots in our Reformed tradition and theology. Because a service of marriage is one form of such worship, when a couple requests the involvement of the church in solemnizing their marriage as permitted by the laws of the civil jurisdiction in which the marriage is to take place, teaching elders* have the pastoral responsibility to access the capabilities, intentions, and readiness of the couple to be married (W-4.9002), and the freedom of conscience in the interpretation of Scripture (G-2.0105) to participate in any such marriage they believe the Holy Spirit calls them to perform.

Exercising such discretion and freedom of conscience under the prayerful guidance of Scripture, teaching elders may conduct a marriage service for any such couple in the place where the community gathers for worship, so long as it is approved by the session; or in such other place as may be suitable for a service of Christian worship. In no case shall any teaching elder’s conscience be bound to conduct any marriage service for any couple except by his or her understanding of the Word, and the leading of the Holy Spirit. The authoritative interpretation of this section by the 203rd General Assembly (1991) (Minutes, 1991, Part I, p. 395, paragraphs 21.124-128), and the subsequent authoritative interpretations of the General Assembly Permanent Judicial Commission relying upon it, are withdrawn and replaced with this authoritative interpretation.

*As in other places in the Directory for Worship, the use of "teaching elders" in this paragraph should be understood to include ruling elders commissioned to pastoral service (Minutes, 2014, p. 30).

On September 8, 2014, the Complainants filed a remedial Complaint objecting to the ACC’s actions, advice and comments to the plenary of the GA during the discussion of Item 10-03. The Complaint seeks to have the GAPJC set aside or otherwise declare irregular an act or acts of the ACC. The Complainants allege that certain statements or advice of the ACC to the GA plenary were conflicting or erroneous.

On October 27, 2014, the Respondent filed a Motion to Dismiss and Answer to Complaint, requesting that all claims and requests for relief against it or any other person or entity be dismissed.

By Preliminary Order for Dismissal dated October 29, 2014, the Moderator and the Clerk of the GAPJC found that the GAPJC had jurisdiction, the Complainants had standing, and the Complaint was timely filed. However, the Moderator and Clerk went on to find that the
Complaint did not state a claim upon which relief could be granted, and the matter was dismissed.

The Complainants filed a Challenge to the Preliminary Order on November 21, 2014. By Order dated December 2, 2014, the Challenge was accepted and is now before this Commission.

Decision

This Commission finds that the Complaint does not state a claim upon which relief can be granted pursuant to D-6.0305d.

Under the Book of Order, the GAPJC does not act as the final arbiter of the Constitution in Presbyterian polity. This Commission's role is restricted and it has no jurisdiction to directly declare an action of the GA unconstitutional. Direct challenges to actions of the GA do not fall within the GAPJC’s jurisdiction in response to a complaint filed pursuant to D-6.0202b(2).

Pursuant to G-6.02, authoritative interpretations of the Book of Order may be provided by the GA or through a decision of the GAPJC in a remedial or disciplinary case. This is not a remedial or disciplinary case challenging an action performed under the authority of an AI. Given the posture of this case, a constitutional issue is not before this Commission.

By filing against the ACC, the Complainants seek to do indirectly what cannot be done directly in an action against the GA. During oral argument before this Commission, counsel for the Complainants conceded that bringing an action against the ACC was the only way Complainants could find to challenge the AI.

Prior to the GA, the ACC advised in writing that Item 10-03 was “contrary to the clear statement of W-4.9000.” The Complaint alleges that the oral advice from the ACC members during plenary conflicted with and/or was outside the scope of the ACC’s written advice. In addition, the Complainants allege the oral advice was also contrary to the Constitution and thus out of order under Robert’s Rules of Order Newly Revised. Implicit in the Complainants’ argument is the assumption that different advice from the ACC would have led to a different result in the GA's vote on Item 10-03. This Commission does not know and must not speculate on how the GA would have responded had the ACC advised the GA differently. After the GA considered the advice of the ACC, that advice was superseded by the GA’s action.

Assuming the facts in the Complaint to be true, given the case before this Commission, there is no relief that can be granted. Even if the ACC’s advice during plenary was flawed or confusing, once the GA voted on Item 10-03, the Constitution does not allow the ACC’s advice or the GA’s action to be reviewed by the GAPJC.

This Commission upholds the decision in the Preliminary Order for Dismissal that the Complaint does not state a claim upon which relief can be granted.
Order

IT IS THEREFORE ORDERED that this case is dismissed.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Cherokee report this Decision to the Presbytery of Cherokee at the first meeting after receipt, that the Presbytery of Cherokee enter the full Decision upon its minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Clerks of Session of the First Presbyterian Church of Port Huron, Michigan; First Presbyterian Church of Ellsworth, Wisconsin; Calvary Presbyterian Church of Ann Arbor, Michigan; and St. Timothy Presbyterian Church of Livonia, Michigan, report this Decision to their respective Sessions at the first meeting after receipt, that the Sessions enter the full Decision upon their minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

Absences and Non-Appearances

Commissioners Mary McClure and Flor Velez-Diaz did not participate in the hearing or deliberations.

Certificate

We certify that the foregoing is a true and correct copy of the Decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 222-03, Cherokee Presbytery; The Session, First Presbyterian Church, Port Huron, Michigan; The Session, First Presbyterian Church, Ellsworth, Wisconsin; The Session, Calvary Presbyterian Church, Ann Arbor, Michigan; and The Session, St. Timothy Presbyterian Church, Livonia, Michigan (Complainants) v. The Advisory Committee on the Constitution of the General Assembly of the Presbyterian Church (U.S.A.) (Respondent), made and announced at Nashville, TN, this 14th day of February, 2015.

Dated this 14th day of February, 2015.

______________________________________________
Jeana Lungwitz, Moderator
Permanent Judicial Commission of the General Assembly

______________________________________________
Jay Lewis, Clerk
Permanent Judicial Commission of the General Assembly
I certify that I did transmit the foregoing to C. Laurie Griffith, requesting she transmit it by Federal Express Next Day Air, to:

Mark Schneider and Ed Koster, Committee of Counsel for Complainants
James A. Wilson and Paul K. Hooker, Committee of Counsel for Respondent
By regular mail to:
Clerks of Session, First Presbyterian Church of Port Huron, Michigan; First Presbyterian Church of Ellsworth, Wisconsin; Calvary Presbyterian Church of Ann Arbor, Michigan; and St. Timothy Presbyterian Church of Livonia, Michigan
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on February 14, 2015.

____________________________________________
Jay Lewis, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Nashville, TN on February 14, 2015, in Remedial Case 222-03, Cherokee Presbytery; The Session, First Presbyterian Church, Port Huron, Michigan; The Session, First Presbyterian Church, Ellsworth, Wisconsin; The Session, Calvary Presbyterian Church, Ann Arbor, Michigan; and The Session, St. Timothy Presbyterian Church, Livonia, Michigan, Complainants v. The Advisory Committee on the Constitution of the General Assembly of the Presbyterian Church (U.S.A.) Respondent, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Nashville, TN on February 14, 2015.

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C. Laurie Griffith
Manager of Judicial Process and Social Witness