To: Christian Reformed Churches in the United States

Date: August 2015

RE: Churches and the U.S. Supreme Court *Obergefell* Decision

My impression of the discussion of same-sex marriage at Synod 2015 was that while strong opinions and assessments were offered on either side of the issue, clearly expressed was a desire for advice during a time when society’s norms are rapidly changing.

While we await the report of the Study Committee to Provide Pastoral Guidance regarding Same-sex Marriage to Synod 2016, soon after Synod 2015 concluded, the U.S. Supreme Court issued a ruling, and many have turned to the denominational offices for suggestions and advice.

The purpose of this memo is to provide such advice, to situate it in our positions on marriage and homosexuality, and to offer it to our churches in the United States. We have included the official forms for filing your Articles of Incorporation for CRC churches within Michigan. All other churches, please contact your state offices for similar forms. General questions should be directed to Mr. John Bolt, director of finance and operations, at jbolt@crcna.org.

In closing, consider the opening verses of Ephesians 4: *As a prisoner for the Lord, then, I urge you to live a life worthy of the calling you have received. Be completely humble and gentle; be patient, bearing with one another in love. Make every effort to keep the unity of the Spirit through the bond of peace. There is one body and one Spirit, just as you were called to one hope when you were called; one Lord, one faith, one baptism; one God and Father of all, who is over all and through all and in all.*

Yours faithfully,



Steven R. Timmermans

Executive Director

Overview of the Decision

On June 26, 2015, the Supreme Court of the United States issued its decision in *Obergefell v. Hodges*, in which it declared that marriage is a fundamental right under the Constitution and ruled that laws in several states which prohibited same-sex marriages were unconstitutional. The majority opinion provided four principles for this conclusion.

First, the right to personal choice regarding marriage is inherent in the concept of individual autonomy. Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, the decision concerning marriage is among the most intimate that an individual can make.

Second, the right to marry is fundamental since it supports a two-person union unlike any other in its importance to the committed individuals.

Third, the right to marry safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education while the existing marriage laws at issue harm and humiliate the children of same-sex couples.

Fourth, this case and the Nation’s traditions make clear that marriage is a keystone of our social order.

While it is not the purpose of this material to debate the finding of the Supreme Court, it is important that we consider the near-term potential impacts that this ruling may have on local congregations. Much of the guidance that is reported here is provided by Carl Esbeck, Professor at the University of Missouri School of Law and key legal advisor to the National Association of Evangelicals, along with the Christian Legal Society on whose board of directors he serves. In addition, the work of Kevin Snider, Chief Counsel of the Pacific Justice Institute, has also been used.

Status of the Law in the U.S. Generally Following the Decision

In analyzing the impact of the Court’s decision in *Obergefell*, it is important to note that the ruling is directed at governmental bodies. As a result, legislative and executive branches at all levels of government cannot enact laws or regulations which prohibit same-sex marriage. While the court’s ruling does not apply to nongovernmental persons and organizations, private parties are still subject to federal and state laws and regulations which prohibit discrimination based upon certain “protected classes” such as race, ethnicity, age, or disability. At the present time, sexual orientation and gender identity are not protected classes under federal law. However, many states and local jurisdictions have already passed laws making them such. Even prior to the Supreme Court case, states have engaged in litigation in the private sector for discrimination against these classes, as in the much publicized cases of the wedding photographer and the bakery who refused to provide services for same-sex weddings.

As a result of the First Amendment to the U.S. Constitution, these discrimination laws generally are applied differently to religious organizations when they are pursuing their religious doctrines and ecclesiology. Religious organizations can protect themselves from liability when they engage in activities or enact policies that are directly and fundamentally tied to their religious beliefs.

What Is the CRCNA Recommending to Its Churches?

Given this legal context, Esbeck feels that now is the time that churches, mission agencies, schools, and other religious institutions should review and adopt positions and policies to strengthen their ability to exercise their religious freedom going forward. Our denominational attorneys very much agree that member churches should be responding to the present circumstances through constructive and balanced decision making, which should include proactively formulating and implementing relevant statements and policies.

1. Statement of Faith in Articles of Incorporation and Bylaws

Courts consistently have started their analyses with the question of whether the defendants in these lawsuits are organizations which can demonstrate that the activities in question are consistent with sincerely held religious beliefs. Each church should have Articles of Incorporation and Bylaws which include a Statement of Faith to which the church can point when defending its exercise of religious liberty. Synod previously adopted **Model Articles of Incorporation** for member churches, which includes an Article titled “Fundamental Principles” highlighting the ecclesiastical relationship of each church to the denomination and the biblical and doctrinal principles that apply to CRCNA member churches. A similar **Statement of Faith** should carry forward into the Bylaws of each church. The Model Articles can be found at [www.crcna.org/SynodResources](http://www.crcna.org/SynodResources) under “Documents” (or paste the following link into your browser).

<http://crcna.org/sites/default/files/Model%20Articles%20of%20Incorporation%20-%20U.S.%20Congregations%202009.DOC>

A Statement of Faith expanded beyond the “Fundamental Principles” section could be modeled after two paragraphs excerpted from the Public Declaration of Agreement with the Beliefs of the CRCNA (adopted by Synod 2013). An example is given in Attachment A.

2. Adoption of Position Statements.

Along with a Statement of Faith in the organization’s governing documents, certain policies and positions also should be formally adopted that rely on the Statement of Faith for their foundation. Esbeck suggests that two of these be (a) a key position statement focused on the church’s definition of/position concerning Marriage and Human Sexuality/Same-sex Attraction and (b) a statement about the Final Authority in the interpretation of these statements. While the purpose of the statement on Marriage and Human Sexuality/Same-sex Attraction is obvious, the statement about the Final Authority is intended to provide a clear understanding of who or what is to provide the definitive interpretation of these position statements.

An example position statement on Marriage and Human Sexuality/Same-sex Attraction, drawn from denominational positions, is included as Attachment B. Each body would need to detail the position of Final Authority relevant to it within the instruction of synod and the Church Order.[[1]](#footnote-1)

3. Adoption of Policies.

Esbeck and others also strongly suggest that churches should adopt (a) a policy about marriage ceremonies conducted by the church and (b) a facilities use policy. Many congregations open their facilities for use by outside organizations. It is important that the church clearly define the circumstances acceptable for the use of its property and avoid being considered “public accommodations.” Generally, public accommodations are businesses or buildings that are open to or offer services to the general public. A facility determined to be a public accommodation becomes subject to many anti-discrimination laws. As such, it may be difficult to prevent it from being used for events outside of your congregation’s wishes. A well-defined facilities use policy in conjunction with a Statement of Faith could provide most local churches with the right to exercise their religious liberties and prevent unwanted issues.

A sample Wedding Policy and Facilities Use Policy can be found in Attachments C and D, respectively.

**Attachment A**

**Excerpt from the Public Declaration of Agreement with the Beliefs of
the Christian Reformed Church in North America**

We believe that the Old and New Testaments are the inspired Word of God, the only infallible rule for faith and life. We affirm three creeds—the Apostles’ Creed, the Nicene Creed, and the Athanasian Creed—as ecumenical expressions of the Christian faith. We also affirm three confessions—the Belgic Confession, the Heidelberg Catechism, and the Canons of Dort—as historic Reformed expressions of the Christian faith, whose doctrines fully agree with the Word of God.

Along with these historic creeds and confessions, we recognize the witness of *Our World Belongs to God: A Contemporary Testimony*, adopted by synod as a current Reformed expression of the Christian faith.

**ATTACHMENT B**

**MARRIAGE AND HUMAN SEXUALITY**

**Marriage:**

The position of the CRCNA and of this congregation is that “marriage is an institution created by God. It is a covenant relationship established by mutual vows between a man and a woman united by God. Permanent unity in marriage is possible in Christ and is demanded of Christ’s disciples who are married.”[[2]](#footnote-2)

A civil government’s sanction of a union will be recognized as a legitimate marriage by the church only to the extent that it is consistent with the definition of “marriage” found in these Articles.

**Human Sexuality/Same-sex Attraction:**

The position of the CRCNA and of this congregation is that “homosexuality is a condition of disordered sexuality that reflects the brokenness of our sinful world. Persons of same-sex attraction should not be denied community acceptance solely because of their sexual orientation and should be wholeheartedly received by the church and given loving support and encouragement. Christian homosexuals, like all Christians, are called to discipleship, holy obedience, and the use of their gifts in the cause of the kingdom. Opportunities to serve within the offices and the life of the congregation should be afforded to them as to heterosexual Christians. Homosexualism (that is, explicit homosexual practice), however, is incompatible with obedience to the will of God as revealed in Scripture. The church affirms that it must exercise the same compassion for homosexuals in their sins as it exercises for all other sinners. The church should do everything in its power to help persons with homosexual orientation and give them support toward healing and wholeness.”[[3]](#footnote-3)

**Attachment C**

MARRIAGE POLICY FOR CHURCHES[[4]](#footnote-4)

The position of this congregation is that marriage is an institution created by God. It is a covenant relationship established by mutual vows between a man and a woman united by God. Permanent unity in marriage is possible in Christ and is demanded of Christ’s disciples who are married. On this basis, this church adopts the following policy.

MARRIAGE CEREMONIES:

# Only duly ordained clergy shall officiate at marriage ceremonies conducted on church property.

# Applicants wishing to have a ceremony performed by a member of the clergy employed by the church, or to use the church facilities for a ceremony, must fall within the general definition of marriage as a covenant relationship established by mutual vows between a man and a woman united by God. Besides the general definition of marriage, the church has other teachings on marriage that may affect the availability of use of church facilities for applicants (e.g., prior marriages, marrying outside of the faith, potential fraud). These issues will be explored during premarital counseling.

# Applicants shall receive \_\_\_\_\_\_\_ hours of premarital counseling by clergy or counselors employed by the church or other persons who, in the sole opinion of the pastoral staff of the church, have appropriate training, experience, and spiritual understanding to provide such counseling.

PREMISES:

# Any marriage performed on church premises shall be officiated by a member of the clergy.

# Clergy officiating marriage ceremonies on church premises, whether or not employed by the church, shall affirm their agreement with the following Articles of Faith and shall conduct themselves in a manner that is consistent with the following:

## We believe the Old and New Testaments to be the inspired Word of God, which proclaims the good news of God’s creation and redemption through Jesus Christ. Acknowledging the authority of God’s Word, we submit to it in all matters of life and faith.

## We affirm three confessions—the Belgic Confession, the Heidelberg Catechism, and the Canons of Dort—as historic Reformed expressions of the Christian faith, whose doctrines fully agree with the Word of God. We affirm three creeds—the Apostles’ Creed, the Athanasian Creed, and the Nicene Creed—as ecumenical expressions of the Christian faith.

## We recognize the witness of *Our World Belongs to God: A Contemporary Testimony*. We recognize the Belhar Confession as an Ecumenical Faith Declaration.

# The clergy assigned by the church to implement the procedures contained in the Marriage Policy may, in the clergy’s sole discretion, decline to make church facilities available for, or decline to officiate at, a ceremony when, in the clergy’s judgment, there are significant concerns that one or both of the applicants may not be qualified to enter into the sacred bond of marriage for doctrinal, moral, legal, or other reasons.

CERTIFICATE:

After the ceremony, the church will issue a marriage certificate.

**Attachment D**

CHURCH FACILITIES USE POLICY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Church (the “Church”) may allow, at its discretion, the use of its facilities for activities not directly related to the operation of the Church.

COMPATIBLE USE

*Mission of the Church*: Non-Church related activities may be allowed when the goals of users are compatible with the mission and identity of the Church and its status as a tax-exempt religious organization. No activity shall be conducted on Church property that is incompatible with the Christian faith. As the spiritual authority of the Church, the Consistory/Council shall have non-appealable authority over a decision relative to whether a use is consistent with Christian theology, doctrine, and witness. Further, Consistory/Council may determine in their sole discretion that an activity may negatively reflect on the Church’s testimony to the community. In that event, Consistory/Council, in their sole discretion, may deny an application or cancel a calendared activity. A representative of the Church given supervisorial authority over a use of the facilities for a given event has the inherent authority to stop said event in progress if, in his or her opinion, any activities at the event are incompatible with the Christian faith or may negatively reflect on the Church’s testimony to the community.

*Safety*: The Church may deny an application or cancel a calendared activity if determined that there is an unreasonable level of risk of injury to persons or property. A representative of the Church given supervisorial authority over a use of the facilities for a given event has the inherent authority to stop said event in progress if, in his or her opinion, such action is necessary in order to protect life, health, and property.

PRIORITY USE

Church activities take priority over all other uses. For non-Church activities, first priority for space is to Church members.

PUBLIC ACCOMMODATION

Church facilities are not a place of public accommodation. All activities must be compatible with the mission and identity of the Church.

PROPERTY TAXES

The facilities are currently exempt from property taxes. Any use that jeopardizes the property-tax exempt status of the Church is prohibited.

TAX EXEMPT RELIGIOUS NONPROFIT

The Church is a nonprofit religious corporation which is exempt from state and federal taxation. The Church will not permit non-Church users to engage in activities which could cause the Church to lose its nonprofit status.

INSURANCE

Users shall provide proof of insurance for the use of the facilities in an amount determined by the Church.

CANCELLATION OF AN EVENT

If the Consistory/Council, or their designee, determines that a calendared event must be canceled or stopped, the Church shall refund the use fee to the user.

*Exception*: The Consistory/Council, or their designee, may decline to refund the use fee in the case of a false statement made on the application or concealment of a material fact.

WEDDINGS

The Church deems marriage a religious institution. A wedding is a solemnization and celebration of a marriage. All weddings are subject to the Church’s Marriage Policy, which is memorialized in a separate document.

USE FEES

The Church may charge a use fee to cover the performance of services or provision of such things as set up and tear down, staff, security, utilities, supplies, cleaning, wear and tear, damage deposits, etc. Such fees will be kept at below-market value for the rental of like property. The charge of a use fee does not convert the use of Church facilities into a for-profit commercial transaction.

APPLICATION FOR USE OF CHURCH FACILITIES

Name of Applicant:

Name of Primary Contact Person:

Are you a member of the Church?

 Yes

 No

If not a member of the Church, are you a member of another church?

 Yes

 No

E-mail:

Telephone: ( )

 Area code

Address:

Organization’s website:

Organization’s purpose:

Is the applicant a tax-exempt corporation?

 Yes

 No

If yes, is an officer or director of the corporation a member of the Church?

 Yes

 No

If no, is an officer or director of the corporation a member of another church?

 Yes

 No

Purpose of meeting:

If not provided above, describe the activities at the meeting:

Estimated number of persons attending: \_\_\_\_\_\_\_\_\_\_

Date of event:

By signing below, the applicant attests that he or she has read the Church Facilities Use Policy and acknowledges the items below as follows:

* The proposed use of the facilities will comply with the Church Facilities Use Policy.
* This application does not create a contract.
* The Church campus is private property and is not a place of public accommodation.
* The Church may deny the application, at its sole discretion, due to incompatibility, including but not limited to the following:

o scheduling

o potential risks of injury to persons and property

o activities inconsistent with the Church’s mission or messaging

o the mission of the applicant organization being inconsistent with the Church’s mission or messaging

o incompatibility with the physical facilities

o subjecting the Church to potential tax liability

Is this a wedding? (If yes, the application requires signatures from both bride and groom.)

 Yes

 No

Signature

Printed name

Dated: , 20 **AGREEMENT FOR USE OF FACILITIES**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Church (the “Church”) agrees to allow ( *insert name* ) (“User”) to use its facility located at (*insert Church’s physical address)* (“Facility”) under the conditions described below.

AREA OF FACILITY TO BE USED: *(Insert description of areas for use—e.g., kitchen, rooms, outside areas, parking.)*

TIME: From \_\_\_\_\_\_\_\_\_\_\_ [a.m./p.m.] to \_\_\_\_\_\_\_\_\_\_\_\_\_ [a.m./p.m.]

PURPOSE: *(Church to insert purpose—e.g., wedding, seminar, etc.)* (the “Activities”)

USER FEES: User agrees to submit funds in the amount of $\_\_\_\_\_\_\_\_\_\_\_ by (insert date) as a User Fee to cover the performance of services or provision of such things as set up and tear down, cleaning, supplies, utilities, wear and tear, church staff or other persons contracted by the Church for the Activities.

CHURCH STAFF: The primary contact and onsite Church representative for the use of the Facility is (insert name and contact info). The Church will provide staff or contracted persons as follows: (*Insert, e.g., sound technician, custodian, chef, security, IT, etc.*)

CHURCH EQUIPMENT & SUPPLIES: (*e.g., projector, audio, coffee and bagels, etc.*)

USER WILL PROVIDE: (*e.g., catered food, sound equipment, parking/traffic attendants, etc.*)

MEDICAL ATTENTION:

The Church is not responsible for providing any medical attention to any participant at the Activities. However, User authorizes employees, volunteers, or persons contracted by the Church to administer first aid as they deem necessary to any participant in the Activities. User also authorizes medical and surgical care and transportation to a medical facility or hospital for treatment necessary for the participant’s well-being, at User’s expense.

RELEASE

User **AGREES TO RELEASE** Church and its pastors, elders, officers, staff, employees, volunteer workers, attorneys, agents, representatives, affiliates, successors-in-interest, and assigns (collectively the “Church and its Related Parties”) from any claim, loss, liability, or expense of any kind in connection with any injury, death, property loss, or damage relating to User’s use of the Church, including without limitation the negligent conduct of the Church and its Related Parties or any other person or cause. This release applies to all Activities that are in any way related to the Church and the Facilities, whether or not such Activities or uses involve inherent risks.

MEDIATION AND ARBITRATION

User agrees to submit any claim or dispute that arises out of, or results from, any Activities or event described or related to this Agreement to mediation and, if mediation is not successful, to legally binding arbitration. The mediation and legally binding arbitration shall be conducted in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation. Judgment upon an arbitration award may be entered in any court otherwise having jurisdiction. The choice of law shall be that of the State in which the Church Facility is located.

INSURANCE

User shall provide proof of insurance covering the event in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

INDEMNIFICATION

User shall hold harmless and indemnify the Church and its Related Parties from and against any claim, loss, liability, or expense of any kind, including without limitation those arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the use of the Facility.

CANCELLATION OR STOPPAGE OF EVENT

User understands that the Church may cancel calendared Activities if the Church determines in its sole discretion that the use is incompatible with the Church’s mission, may cause harm to the Church’s reputation, or involves an unreasonable level of risk of injury to persons or property. Further, User understands and agrees that a representative of the Church, given supervisorial authority over a use of the facilities described in the Agreement, has the inherent authority to stop an event in progress if, in his or her opinion, (a) such action is necessary in order to protect life, health, and property or (b) any activities at the event are incompatible with the Christian faith or may negatively reflect on the Church’s testimony to the community. If the Church determines that a calendared event must be canceled or stopped, the Church shall refund the use fee to User. *Exception*: The Church may decline to refund the use fee in the case of a false statement made on the application or concealment of a material fact.

OTHER

In the event that any provision of this Agreement is found to be invalid or unenforceable in any manner, that provision shall be deemed amended in as minimal a manner as possible so as to make the provision valid and enforceable. No waiver of a breach of this Agreement shall be deemed a waiver of any other breach of the same or any other provision of this Agreement. This Agreement contains all the terms of the agreement between the parties with respect to use of the Facility and may be amended only by a writing signed by all of the parties to this Agreement. The parties may execute this Agreement in any number of counterparts with the same effect as if all parties had signed the same physical document. Each party may transmit the executed copies in an imaged format to the other parties by facsimile or electronic mail, and the imaged copies shall have the same effect as if all parties had signed the same physical document. All executed counterparts, whether originals or copies sent by facsimile, electronic mail, or a combination, shall be construed together and shall constitute one and the same Agreement.

[Signatures follow on the next page]

User:

(*Insert Name of User)*

By (Print Name):

Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Position of Person Signing)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Church:

(*Insert Name of the Church)*

By (Print Name):

Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Position of Person Signing)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Article 27 of the Church Order states that “each assembly exercises, in keeping with its own character and domain, the ecclesiastical authority entrusted to the church by Christ; the authority of councils being original, that of major assemblies being delegated.” The commentary on Article 27 in the *Manual of Christian Reformed Church Government* includes this statement: “The council, as the trustees or directors of a charity or legal entity, also have temporal authority over the assets and liabilities of the church” (2008 edition, p. 119). [↑](#footnote-ref-1)
2. The position statement and all actions of synod upon which it is based are referenced at www.crcna.org/welcome/beliefs/position-statements/marriage. [↑](#footnote-ref-2)
3. The position statement and all actions of synod upon which it is based are referenced at www.crcna.org/welcome/beliefs/position-statements/homosexuality. [↑](#footnote-ref-3)
4. Components of this policy, offered as an example, were developed by Kevin T. Snider, Chief Counsel, Pacific Justice Institute. [↑](#footnote-ref-4)