

A CONCURRING OPINION TO ARNOLD M. GOODMAN'S "PLACING HOMOSEXUAL RABBIS IN CONGREGATIONS"

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This paper was submitted as a concurrence to "Placing Homosexual Rabbis in Congregations," by Rabbi Arnold M. Goodman. Concurring and dissenting opinions are not official positions of the Committee on Jewish Law and Standards.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

The issue of homosexuality confronts us with a real and painful dilemma, in which important Jewish norms and values conflict. I believe that given the current state of our scientific knowledge, of the development of halakhic arguments, and of our insight into God's will, the traditional prohibition of homosexual activity must be maintained. At the same time, individuals violating this norm cannot be penalized to a greater extent than those comparably violating other halakhic prohibitions. In Rabbi Joel Roth's words ("Homosexuality," above, p. 669), "I find it unacceptable for the community to be more severe and intolerant in its reactions to the [halakhically] illegal act of homosexual behavior (which is not chosen in any conventional sense) than it is to the illegal acts of *הלול שבת* or intermarriage (which are freely chosen)." (I understand that Rabbi Roth and I differ regarding some of the implications of this statement.)

I believe that this approach must guide enforcement related to the prohibition on homosexual behavior. In rabbinic placement, infractions of this halakhic norm should be dealt with in a manner similar to other infractions of halakhah. I was impressed by Rabbi Joel Meyers' description of the way in which the Rabbinical Assembly deals with violations of halakhah or other normative standards. Individual cases are considered by the Vaad Hakavod and other bodies such as the Joint Placement Commission, with sensitive judgments made on a case by case basis. In particular cases, a rabbi might be denied use of placement services, or be subject to other penalties or restrictions.

While I understand the attraction of a simple policy regarding placement of avowed homosexuals, the complexities of the issue and variation among particular cases demand prudent judgments on a case by case basis. A rabbi who seeks to publicize his practice of homosexual behavior, and proclaims homosexuality as an equally legitimate Jewish

lifestyle, would represent one type of “avowed homosexual.” A rabbi who is “outed” against his will, and when pressed reluctantly acknowledges his behavior, would represent another. Other factors would need to be considered as well.

I would have preferred that the CJLS had not been asked to endorse a blanket policy with regard to the placement of an avowed homosexual. I believe that Rabbi Kassel Abelson’s paper represents an overly blunt prohibition. I would have greater sympathy for a general policy that the Joint Placement Commission should not recommend for placement those who avowedly violate halakhah, although my sense is that this position is currently approximated in practice to an appropriate degree. Such a general formulation would provide a vital context for both the application and the perception of the policy. To articulate a policy banning placement for the entire class of avowed homosexuals, and not for other avowed violators of Jewish law, would be to be more severe with regard to the halakhically illegal act of homosexual behavior than with regard to other halakhic infractions such as *חלול שבת*. It certainly would appear as more severe to some in the movement, deepening their sense of hurt and alienation, and might be cited by others to justify practices that discriminate against open homosexuals relative to open violators of Shabbat, for example.

My vote for Rabbi Arnold M. Goodman’s paper is reluctant, for I believe that it expresses an overly broad acceptance of the placement of avowed homosexuals. At a theoretical level, I am uncomfortable with his paper as well as Rabbi Abelson’s. In practice, though, I believe that Rabbi Goodman’s position would somewhat more readily allow for the approach that I judge most proper: treating violations of the halakhic prohibition of homosexuality similarly to other halakhic violations. Those whom blunt policy excludes from placement are out of the system. Those who can be placed remain subject to the standards and procedures of the Rabbinical Assembly, including the Vaad Hakavod, and the prudential wisdom of the Joint Placement Commission.

It is conceivable that a situation might arise in which an argument could be made for singling out the class of avowed homosexuals, or avowed violators of another specific Jewish norm, as forfeiting access to the placement system. Such an argument would need to be very powerful to overcome the costs involved in being more severe with this halakhic prohibition than other comparable prohibitions. Both the compelling reasons for the blanket denial of placement, and the failure of any alternative to achieve the desired result, would need to be set forth with great care. In my judgment, the case for a specific policy against placement for avowed violators of the halakhic prohibition of homosexual behavior in particular has not been adequately made.