

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1415

IN RE: Review of a Bishop’s Ruling on a Matter of Law in the Greater New Jersey Annual Conference Regarding the Legality of the Annual Conference’s Expression of Support and Affirmation Concerning the Bishop, Board of Ordained Ministry, and the Witness of Local Churches and Clergy.

DIGEST OF CASE

An annual conference is without power to affirm a statement in an episcopal address and a policy of the Board of Ordained Ministry. The Decision of Law of Bishop John R. Schol is affirmed.

STATEMENT OF FACTS

At the March 2019 special session of the Greater New Jersey Annual Conference [hereinafter GNJAC], held to review the actions of the 2019 Special Session of the General Conference, a team was created called the GNJ Way Forward Team which was formed to help GNJAC move forward in light of the tension and confusion which permeated the United Methodist Church. The group gave a report at the May 2019 regular session and then a special called session of GNJAC was held on October 26, 2019 to hear about the team’s work to date. At the called session Bishop John R. Schol indicated in his episcopal address “that he would not forward complaints against LGBTQ people who serve the church or those who bless gays and lesbians in marriage.” Appendix II, Proceedings of the Special Session of GNJAC, October 26, 2019, p. 8. Similarly, the chair of the Board of Ordained Ministry “shared with the body that the BOOM would not inquire into the sexual orientation of any candidate.” *Id.* at 9.

Just prior to the conclusion of the conference session, several members submitted questions of law for rulings by the bishop who received them and indicated that he would rule within 30 days. One Question of Law was as follows:

That the Conference's motion to affirm Bishop Schol's declaration that he will not move forward with certain complaints and BOOM's disclosure of their resolution regarding candidates are in violation of multiple paragraphs of the Book of Discipline and Judicial Council decisions.

On November 22, 2019, the bishop issued his Decision of Law. The relevant parts read:

RULING OF LAW

The motion to affirm an address given by a Bishop at a Special Session of the Greater New Jersey Annual Conference (GNJAC) and to affirm a resolution passed by the Conference Board of Ordained Ministry in 2017 is null and void because members of an Annual Conference have no authority nor power to affirm or reject what a Bishop or the Conference Board of Ordained Ministry says or does except in the case of the Board of Ordained Ministry's report to the Clergy Executive Session which acts on behalf of the Annual Conference.

[...]

ANALYSIS

The motion to affirm an address given by a Bishop at a Special Session of Annual Conference and to affirm the principled decision of the BOOM to disregard sexual orientation or gender identity as a basis for recommending candidates for ministry is null and void because the members of an Annual Conference have no authority nor power to affirm nor reject what a Bishop or the Conference Board of Ordained Ministry says or does. The petitioner misstates the Bishop's statement. The Bishop did not say he would "not move forward with complaints." The exact wording of the Conference Board of Ordained Ministry policy was not before the Conference and is not reiterated in the request for a ruling. Whether the Bishop's actual words or the Board policy violate The Book of Discipline and Judicial Council rulings is not at issue here. What was asked in the request for a ruling was whether the motion to affirm these actions violated the Discipline. Since the motion was beyond the authority of the Annual Conference, it is null and void.

Jurisdiction

The Judicial Council has jurisdiction under ¶ 2609.6 of the *2016 Discipline*.

Analysis and Rationale

Annual conferences have specific powers delineated in the Constitution. *See* Const. ¶¶ 32-34. Likewise, the rights and duties of the episcopacy are described in ¶¶ 45-54. The Council of Bishops is entrusted with “the general oversight and promotion of the temporal and spiritual interests of the entire Church,” Const. ¶ 47, and bishops with “residential and presidential supervision” in their respective conferences. Const. ¶ 49. The episcopal address is an appropriate and frequently employed means to exercise that oversight and leadership role in the session of annual conference. The separation of powers requires “that each branch respect the defined roles of all other branches of the Church.” JCD 1401. By affirming a statement in the episcopal address, the GNJAC encroached on the bishop’s general superintending authority, thereby violating the separation of powers.

Further, the Constitution in ¶ 33 instructs “that the lay members may not vote on matters of ordination, character, and conference relations of clergy,” unless they serve on the Conference Board of Ordained Ministry or Committee on Investigation. The Judicial Council held that the separation of powers also applies to an annual conference and its Board of Ordained Ministry. “Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through the specific bodies set forth in the *Discipline*.” JCD 1202. Therefore, the GNJAC did not have the authority to affirm a policy of the Board of Ordained Ministry, except in the case of the Board’s report to the Clergy Executive Session acting on behalf of the annual conference.

The bishop ruled correctly in both regards.

In passing, we note the blatant discrepancy between the bishop’s assertion that he “did not say he would ‘not move forward with complaints,’” Decision of Law, *supra*, and the unambiguous statement in the minutes of the special annual conference session “that [the bishop]

would not forward complaints against LGBTQ people who serve the church or those who bless gays and lesbians in marriage.” Proceedings, *supra*. While the movant may not have used the exact words of the bishop in his Question of Law, he correctly understood their meaning and import, which occasioned his request.

Decision

An annual conference is without power to affirm a statement in an episcopal address and a policy of the Board of Ordained Ministry. The Decision of Law of Bishop John R. Schol is affirmed.

Dennis Blackwell recused himself and did not participate in any of the proceedings related to this decision.

May 5, 2021

Concur in Part and Dissent in Part

An annual conference may certainly express agreement or disagreement with other bodies of The United Methodist Church. Of concern is that one could read the decision’s holding herein, which states,

an annual conference is without power to affirm a statement in an episcopal address and a policy of the Board of Ordained Ministry

and be left with the impression that the Judicial Council has undermined and usurped the exclusive authority of General Conference and created new church polity that runs contrary to this denomination’s historic witness, polity, Social Principles, and decades of foundational beliefs as reflected in General Conference’s Resolutions. Indeed, our denomination is predicated upon an understanding of itself as a democratic institution that jealously guards those principles

without which a truly democratic institution cannot exist. The right to express agreement and disagreement is integral to the healthy functioning of a democratic institution, which the United Methodist Church considers itself. (*See, e.g.*, the preface and history set forth in the *Discipline* as well as the many well-researched articles contained in reputable and scholarly journals such as *Methodist History*.)

I hope and choose to believe that the majority would not intentionally act with such disregard. I suspect that the above holding was the result of a process of reviewing the presiding bishop's ruling of law, the majority's reliance upon the rationale and the analysis set forth by the bishop (albeit uninformed by Judicial Council precedents), and then the misapplication of Decision 1202. Note that JCD 1202 is one of many cases in a long line of precedents. However, the well-established precedent that the Council applies in JCD 1202 is *not* the proposition attributed to 1202 in the majority's analysis. Of great concern is the noticeable lack of Judicial Council Decisions from previous quadrenniums. There are propositions being made which appear to be uninformed by the 1320 cases that existed prior to the 2016 convening of the current Council. Yet, relative to Decisions written in past quadrenniums, reference is rarely made to the content of Decisions that apply the well-established precedents. Here again a majority opinion is promulgated which is uninformed and in the one instance when a former Decision is referenced, the content of the case is misrepresented and misapplied. Decision 1202 is unrelated to the issues in the question of law herein and it does not support the outcome of the above analysis. Indeed, none of the Judicial Council Decisions support the conclusion reached by the majority in the above decision, including JCD 1202.

The majority's analysis sets forth the following:

“Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through the specific bodies set forth in

the Discipline.” JCD 1202. Therefore, the GNJAC did not have the authority to affirm a policy of the Board of Ordained Ministry, except in the case of the Board’s report to the Clergy Executive Session acting on behalf of the annual conference.

The first sentence is an accurate statement of that which the Council often quotes when reviewing bishops’ rulings of law that result from an annual conference member asking a question that is related to fair processes, judicial processes, and/or administrative processes. However, its application is very specific. Essentially, members of annual conference ought not ask presiding bishops to answer questions or comment upon fair processes, judicial processes, and administrative processes. There are a variety of reasons that are mentioned in the long line of Judicial Council Decisions on this issue, which include the inappropriate circumstances created by a bishop issuing an opinion concerning a judicial or administrative matter which is or may become litigated by the member of the annual conference who is the subject of the inquiry. This concern involves the polity which has developed in The United Methodist Church regarding the “Separation of Powers.”

The Judicial Council has repeatedly noted that such questions are *improper questions* to be asking of a bishop as a matter of law and such questions should thus not be asked. Similarly, the Judicial Council has continually noted that when an *improper question* is asked of the bishop presiding over an annual conference, the bishop remains obligated to respond and report the improper request, however, the response in this particular instance should be limited to a statement that the question submitted was an improper question to ask a presiding bishop as a matter of law.

I raise *all* of this so as to emphasize that Decision 1202 is just one of many decisions in a long line concerning a specific type of question of law and the bishop’s response to those

inquiries. Decision 1202 does not stand for nor support the proposition set forth in the majority's analysis and holding.

There are, however, lines of decisions and precedents that we do apply concerning the legality of an annual conference statement or resolution. It is this line of precedents that would normally be applied in reviewing a bishop's ruling on whether the statement made by the annual conference was permissible or impermissible. In this line of decisions the methods and criteria for determining the legality and permissibility of an annual conference's statement are set forth. A reading of that line of decisions shows that there are no unequivocal statements barring annual conferences from affirming a policy of its Board of Ordained Ministry.

Indeed, the Judicial Council has a number of Decisions that involve annual conference statements in support of its Board of Ordained Ministry. The Council analyzes them on a case by case basis pursuant to Judicial Council precedents. As to annual conference statements in support of its Board of Ordained Ministry, the primary controlling precedent is that **an annual conference may adopt a resolution that is aspirational in nature; however, the language in the resolution may not negate, ignore or violate the Discipline, even when the disagreements are based upon conscientious objections to those Disciplinary provisions. See** 232, 544, 886, 913, 1021, 1044, 1045, 1052, 1111, 1115, 1120, 1125, 1163, 1201, 1218, 1220, 1250, 1255, 1262, 1283, 1292 1340, 1357, 1389, 1392, 1396, 1398.

Thus, it is of concern that the Council has issued a statement with language that appears to contradict hundreds of Judicial Council Decisions and Memoranda which inherently support the opposite policy and understanding of that which is stated in the *Decision* section hereinabove.

The right to dissent and the role that it has in a healthy democratic institution has been a long-valued principle in the United Methodist Church and its predecessor denominations.

The Judicial Council has ensured this critical component of our democratic institution throughout its history. Indeed, the Judicial Council's holding in Decision 1044 **underscores the principle that an annual conference may express disagreement with other bodies of The United Methodist Church**, while still being subject to the Constitution, the Discipline and the decisions of the Judicial Council. Particularly noteworthy is the determination of the Judicial Council concerning a resolution made by an annual conference in Decision 1044, which was as follows:

Be it resolved that the Baltimore-Washington Annual Conference of The United Methodist Church believes that **Judicial Council Decision 1032 is inconsistent with Christian teachings, and contrary to the United Methodist Church Constitution**; and

Be it FURTHER resolved, that from this day forward, the Baltimore-Washington Annual Conference will model inclusive behavior by **expecting and encouraging** its congregations and clergy to abide by the principle: Membership in any local church in the Baltimore-Washington Annual Conference shall not be denied on the basis of race, color, national origin, economic condition, gender, marital status, sexual orientation, ability or disability, or any other status.

The Judicial Council determined that the presiding bishop correctly ruled that the resolution adopted by the Annual Conference is aspirational in nature and does not violate Division Two, Section II, Article IV of the Constitution (§ 16.1, *2004 Discipline*). Only the General Conference can define and fix the conditions, privileges, and duties of Church membership. The resolution does not seek to define and fix the conditions, privileges, and duties of Church membership. The resolution does not carry or propose any penalties or actions if a congregation or clergyperson chooses not to agree or comply. Annual conferences may express disagreement with other bodies of The United Methodist Church, but they are still subject to the Constitution, the *Book of*

Discipline, and the decisions of the Judicial Council. The decision of law is affirmed. There are many such cases wherein the right to affirm or dissent is recognized as a critical hallmark to a healthy democratic institution as long as the Discipline is not violated as set forth in said Decisions.

Wherefore, to the extent that the majority inadvertently suggests that an annual conference **has no authority nor power to affirm or reject what a Bishop or the Conference Board of Ordained Ministry says or does**, I must strenuously dissent because such a statement, particularly an unqualified and broad statement, is contrary to our United Methodist polity, heritage, Discipline, and especially the many precedents set forth in our Judicial Council Decisions. (As to the recognition of the right to dissent Decision 301 is interesting.)

Beth Capen

May 5, 2021