

SUBJECT TO FINAL EDITING

## JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

### DECISION NO. 1378

IN RE: Petition for Declaratory Decision from the 2019 Special Session of General Conference regarding the constitutionality, meaning, application, and effect of the Traditional Plan as amended.<sup>1</sup>

#### DIGEST OF CASE

When reviewing an act of the General Conference for constitutionality, the Judicial Council applies a severability test, which requires that we (1) identify the unconstitutional provisions of the legislation in question, (2) declare them null and void, and (3) determine if they can be severed from the remainder. Unless it is evident that the General Conference would not have enacted those provisions that are within its legislative powers without those that are not, the invalid parts can be separated if what is left is not inextricably linked and can function independently.

In applying this test to the amended Traditional Plan, the Judicial Council holds that the amended Traditional Plan consists of a series of petitions that were separately numbered, dealing with completely different paragraphs of *The Book of Discipline of the United Methodist Church 2016*. One petition does not affect the other. These petitions are not so closely related that a change in one affects the others. The petitions held unconstitutional have no effect on the petitions declared constitutional. The constitutional petitions are not dependent on the unconstitutional petitions and can survive without the unconstitutional petitions.

Therefore, the Judicial Council affirms its rulings in JCDs 1366 and 1377 and holds that Petitions 90033, 90034, 90035, 90037, 90038, 90039, and 90040 found unconstitutional are null and void. Further, we hold that the following petitions found constitutional:

Petition 90032

Petition 90036

Petition 90042

Petition 90043

Petition 90044

Petition 90045, excluding the second sentence:

In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.

Petition 90046; and,

Petition 90047

can be upheld independently.

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<sup>1</sup> See Jurisdiction section.

## STATEMENT OF FACTS

On February 26, 2019, the Special Session of General Conference passed by a vote of 438 to 384 the amended Traditional Plan [hereinafter TP].<sup>2</sup> Subsequently, a clergy delegate made the motion to refer the TP as amended to the Judicial Council for a declaratory decision.<sup>3</sup> The motion was approved 405 to 395.<sup>4</sup>

Twenty-one interested parties, delegates to the General Conference, filed separate and joint briefs.

## JURISDICTION

The holdings herein determine only the constitutionality of the petitions before us pursuant to the reference under *The Book of Discipline 2016* [hereinafter *The Discipline*], ¶ 2609.1. Although the clergy delegate making the motion stated that the reference included “the meaning, application, and effect” as contained in ¶ 2610, the reference to the Judicial Council was limited to the question of the constitutionality of the petitions and not their meaning, application, and effect.

The Judicial Council has jurisdiction pursuant to ¶¶ 56.1, 2609.1 and 2610.1 of *The Discipline*. The General Conference has standing to request a declaratory decision pursuant to ¶¶ 2609.1 and 2610.2(a) of *The Discipline*.

## ANALYSIS AND RATIONALE

### I. Doctrine of Severability

When the General Conference enacts a legislation that contains unconstitutional provisions, it is our duty to so declare and to determine if the remaining parts can be upheld separately. Unless it is evident that the General Conference would not have enacted those provisions that are within its legislative powers without those that are not, the invalid parts can be severed if what is left is not inextricably linked and can function independently. “When reviewing legislation for constitutionality, we defer to the legislative authority of the General Conference. In reviewing acts of the General Conference for constitutionality, our first inclination is to save legislation, if at all possible, and not destroy.” JCD 1210. Absent clear evidence to the contrary, we are guided by the presumption of severability.

### II. Severability Test

The doctrine of severability requires that we (1) identify the unconstitutional parts of the legislation in question, (2) declare them null and void, and (3) determine if they can be separated from the remainder. “For constitutional purposes, separation is inappropriate when the remaining part is so inextricably connected to the part declared invalid that what remains cannot independently survive,” JCD 1366 at 22, or if it is evident that the General Conference would not have enacted what is left.

Primary evidence of General Conference’s intent is the text of the legislation—its language, meaning, structure, and purpose. Indicative of the intent to save the legislation can be a *severability clause*—a provision stating that, if a portion of the act is ruled unconstitutional, the remaining part will be effective. However, the absence of such a clause *per se* does not create the

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<sup>2</sup> See Daily Christian Advocate [hereinafter DCA], Vol. 2, No. 5 (February 27, 2019), p. 515.

<sup>3</sup> *Id.* at 519 (TIMOTHY BRUSTER: “I move to request a declaratory decision from the Judicial Council on the constitutionality, meaning, application, and effect of the Traditional Plan as amended, pursuant to paragraph 2609.1 of The Book of Discipline.”).

<sup>4</sup> *Id.* at 523.

presumption against severability. Secondary evidence is the legislative history contained in the official record of the proceedings of General Conference.

***Step 1: Identify the unconstitutional parts***

In JCD 1366, we conducted a detailed and comprehensive review to identify the unconstitutional parts of the TP. *See* JCD 1366, *aff'd*, JCD 1377. Prior to its enactment, the TP consisted of a set of legislative *proposals* and was treated as such.<sup>5</sup> The situation changed fundamentally with the action of the Special Session on February 26, 2019. The TP before us is “an act of the General Conference”—*enacted* legislation, which, if upheld, will become effective Church law. The record shows that the 2019 General Conference passed the TP unamended,<sup>6</sup> with the exception of Petitions 90033, 90034, 90035, and 90037.<sup>7</sup>

Constitutionality of amended Petitions 90033, 90034, and 90035

We rendered declaratory judgment on February 26, 2019, holding the amended version of Petitions 90033, 90034, and 90035 to be in violation of ¶¶ 20 and 58 of the Constitution. JCD 1377 at 2. Their constitutional infirmity cannot be cured with the argument, raised in some briefs,<sup>8</sup> that ¶¶ 2718.3 and 2718.4 afford an accused bishop the right to appeal the findings of the Council of Bishops. We rejected a similar theory in Memorandum 1374:

Such a reading would grant a wholesale right to appeal to each level by any person or body seeking to appeal. That interpretation would eviscerate and render meaningless all of the carefully crafted rules for who may bring appeals and under what circumstances. Paragraph 2718.3 is precisely what it says it is: an ordering of the appeals levels. It contains no grants of jurisdiction, standing, or any other jurisprudential limitations on jurisdiction so carefully crafted throughout the Judicial Administration provisions of *The Discipline*.” [emphasis added]

It is the responsibility of the General Conference to address this issue legislatively. Therefore, we affirm our ruling in JCD 1377 with respect to the unconstitutionality of Petitions 90033, 90034, and 90035.

Constitutionality of amended Petition 90037

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<sup>5</sup> As a result of our ruling in JCD 1370, the Committee on Reference referred Petitions 90041 and 90048 (along with three other petitions) to the Standing Committee on Central Conference Matters [hereinafter SCCCM] on February 24, 2019. *See* DCA, Vol. 2, No. 4 (February 26, 2019), p. 395. The same day, the SCCCM declared both petitions as “Not Supported.” *See* 2019 General Conference Legislation Tracking posted online at <http://www.umc.org/who-we-are/2019-general-conference-legislation-tracking>. The vote of the SCCCM is reported on page 387 of the DCA, Vol. 2, No. 4 (February 26, 2019) under the category “Non-Calendar Items — Not Supported.”

<sup>6</sup> *See* DCA, Vol. 2, No. 5 (February 27, 2019), p. 515.

<sup>7</sup> The Legislative Committee amended Petitions 90033, 90034, and 90035 and referred them together with the other TP petitions to the Judicial Council under ¶ 2609.4. *See* DCA, Vol. 2, No. 4, (February 26, 2019), pp. 383, 421-422; DCA, Vol. 2, No. 5, (February 27, 2019), p. 467.

<sup>8</sup> *See* Opening Brief of Holly Grant, p. 4 (“There is therefore a very straightforward appeals process provided in ¶ 2718.3 for bishops from the administrative process of the Council of Bishops.”); Opening Brief of John Lomperis, p. 8 (“A related piece of legislation adopted at the 2016 General Conference created new sub-Paragraph 2718.3 of the *Discipline*...which was enacted...in part to provide for an appeal process for bishops facing discipline under the new provisions of ¶¶ 408, 410, and 422...”); Opening Brief of Robert Zilhaber, p. 10 (“...the appeals process adopted by the General Conference in 2016 and in ¶¶ 2718.3 & 2718.4 applies both to clergy members of annual conferences and conference relations committees and to clergy members of the Council of Bishops and the council relations committee.”).

Since we did not have the opportunity to separately examine the constitutionality of amended Petition 90037 prior to its enactment, we must now do so.<sup>9</sup> This legislation amends ¶ 635.1(a) by adding the underlined language:

Members shall be nominated by the presiding bishop after consultation with the chairperson of the board, the executive committee, or a committee elected by the board of the previous quadrennium, and with the cabinet. Prior to being nominated for membership on the Board of Ministry by the bishop, any individual must certify to the bishop that he or she will uphold, enforce, and maintain the Book of Discipline in its entirety, **including but not limited to** all qualifications for ordination (¶¶ 304, 330, 335, 336). Additionally, the bishop must certify to the annual conference secretary that he or she only has nominated individuals who will uphold, enforce, and maintain the Book of Discipline in its entirety, **including but not limited to** the qualifications for ordination (¶¶ 304, 330, 335, 336). To ensure adequate board membership ... [bold italics added]

Paragraph 635.1(a) as amended establishes a new *certification requirement*. More specifically, this provision instructs, as a pre-requisite for being nominated by the bishop to the board of ordained ministry, that the candidates certify their willingness to uphold, enforce, and maintain *The Discipline* in its entirety, “including, but not limited to” all qualifications for ordination. Likewise, bishops are required to certify that they have nominated individuals who will comply with *The Discipline* in its entirety, “including, but not limited to” all qualifications for ordination.

The principle of legality “demands that all decisions and actions by official bodies and their representatives be based on and limited by the Constitution and *The Discipline*. To guide their actions, individuals must be informed with specificity and clarity as to what is prescribed and proscribed by Church law.” JCD 1366 at 35-36 [emphases added].

The highlighted phrase “including, but not limited to” in ¶ 635.1(a) as amended removes *all* limitations and restrictions on the requirement, making it devoid of specificity and clarity with respect to the scope of the certification.<sup>10</sup> Basically, candidates could be asked to certify, in addition to the qualifications of ordination, that they, for example, attend weekly worship services, pay their pledges to the local church or abstain from smoking, drinking, and gambling. Bishops seeking to nominate candidates and individuals wishing to serve on the board of ordained ministry will have virtually no guidance for their actions in terms of what is prescribed and proscribed by Church law. In other words, ¶ 635.1(a) as amended contains an open-ended and unconstitutionally vague certification requirement. This is a dangerous slippery slope because it creates a nomination process neither based on nor limited by Church law that could lead to arbitrary and capricious decisions. “To pass constitutional muster, any proposed legislation affecting clergy rights must define with sufficient clarity and specificity the standards to guide future actions of all concerned persons and entities.” *Id.* at 42. Therefore, ¶ 635.1(a) as amended violates the principle of legality and, therefore, is unconstitutional.

Based on our present and previous analyses in JCD 1366 and 1377, we determine that the following portions of the TP are unconstitutional: Petitions 90033, 90034, 90035, 90037, 90038, 90039, 90040, and 90045 (second sentence).

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<sup>9</sup> The amendment to Petition 90037 was passed in the afternoon of the final day, February 26. *See* DCA, Vol. 2, No. 5 (February 27, 2019), pp. 504-507.

<sup>10</sup> Commonly used in contracts, “including, but not limited to” means that the things named are part of something larger, and the larger thing may also have *other parts*. It enables the contract writers to make claims later without having given all details of their description at the time the agreement was made.

***Step 2: Declare the unconstitutional provisions null and void***

Having identified the unconstitutional parts of the TP, we proceed to the second step of the severability test. Consistent with the foregoing analysis in Step 1 and our rulings in JCD 1366 and 1377, we declare the following unconstitutional TP Petitions null and void: Petitions 90033, 90034, 90035, 90037, 90038, 90039, 90040, and 90045 (second sentence).

***Step 3: Determine if the invalid parts can be separated from the remainder***

The question at this stage is whether “the remaining part is so inextricably connected to the part declared invalid that what remains cannot independently survive.” JCD 1366 at 22. If so, “the operative assumption is that the author of the legislation would not have proposed the remaining part by itself.” *Id.*

In JCD 1366, we answered this question in the *negative* for TP Petitions 90032, 90036, 90042, 90043, 90044, 90046, and 90047 and ruled that they are not inextricably linked and, therefore, could function independently. The briefs submitted in opposition to the TP challenged anew the constitutionality of the remaining petitions on various grounds.<sup>11</sup> We have ruled twice on those issues and dismiss them here as *res judicata*.<sup>12</sup> JCD 1366, *aff’d*, JCD 1377.

Some briefs have also argued that JCD 1210 is a precedent for declaring the TP unconstitutional.<sup>13</sup> We disagree. Decision 1210 dealt with the proposal referred to as “Plan UMC” adopted by the General Conference on May 2, 2012. In declaring Plan UMC unconstitutional the Judicial Council held that “The broad delegation of legislative authority and the commingling of the role of oversight so inextricably permeate the Plan as to render it

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<sup>11</sup> See, e.g., Opening Brief of Thomas Berlin et al., pp. 15-19 (claiming that Petition 90032 is impermissibly vague, Petitions 90036 and 90042 intrude on the annual conference’s reserved rights under ¶ 33 of the Constitution, Petition 90043 violates the doctrine of separation of powers); Opening Brief of Frederick Brewington et al., pp. 16-23 (asserting that Petition 90036 “violates the separation of powers mandated by the Constitution,” Petition 90042 violates the principle of legality, Petition 90046 is unconstitutional for vagueness); Opening Brief of Cedrick Bridgeforth, pp. 8-10 (arguing that Petition 90042 is unconstitutional for “making adherence to some parts of the *Discipline* more important than other parts of the *Discipline*,” and Petition 90036 is unconstitutional “because it singles out the same behaviors for which a bishop must not commission and ordain someone...”) [hereinafter Bridgeforth Brief]; Opening Brief of Timothy Bruster, pp. 4-7 (claiming that Petitions 90032, 90036, 90042-90046 are inseparable parts of the TP, which “should be treated as one plan and be ruled unconstitutional as a whole” and violates ¶ 4 of the Constitution because it “continues to single out on class of people as *less than* others.”) [hereinafter Bruster Brief]; Opening Brief of Bonnie Marden, pp. 2-6 (arguing that the entire TP violates Constitution, ¶¶ 4, 17, 20, 105 and the separation of powers); Opening Brief of Alex Shanks, pp. 6-11 (claiming that Petition 90036 “appears to discriminate against self-avowed homosexuals based upon their status in violation of ¶¶ 4 and 140 and denies them the equal protection that others enjoy under the principle of legality,” and Petitions 90042-90044 are in conflict with the separation of powers doctrine as interpreted in JCD 1368).

<sup>12</sup> *Res judicata*, “a thing or matter settled by judgment,” is a “rule...that a matter once judicially decided is finally decided.” Black’s Law Dictionary, pp. 1305-1306 (6<sup>th</sup> ed. 1990).

<sup>13</sup> See, e.g., Bridgeforth Brief, p. 7

(In JCD 1210, the Judicial Council did *not* address the entirety of Plan UMC petition by petition. Instead, it lifted up several areas of Plan UMC which it deemed as unconstitutional and then declared the *entire* plan to be unconstitutional. So, there is precedence for declaring an entire plan which spans numerous different paragraphs in the *Discipline* as unconstitutional even if some the parts of the plan may be constitutional.);

Bruster Brief, p. 6

(In JCD 1210 the Judicial Council ruled that ‘Plan UMC’ was unconstitutional. In that instance, the Judicial Council treated the entire plan in the same manner as the three plans submitted to the 2019 called session of the General Conference were treated—as one plan. In that decision, the Judicial Council ruled that the plan, in its entirety, was unconstitutional because the provisions of the plan were all part of the whole and could not be separated out.).

constitutionally unsalvageable.” Plan UMC was a plan of organization of the entire structure and operations of the Church. The constitutional defect in Plan UMC affected every part of the plan.

In contrast, the TP consists of a series of petitions that were separately numbered, dealing with completely different paragraphs of *The Discipline*. One petition does not affect the other. These petitions are not so closely related that a change in one affects the others. The petitions held unconstitutional have no effect on the petitions declared constitutional. The constitutional petitions are not dependent on the unconstitutional petitions and can survive without the unconstitutional petitions.

Once it has been established that the remainder can stand alone, the inquiry shifts to the *intent* of the General Conference. The question here is: Can it be reasonably concluded from the available evidence that the General Conference would have enacted the remainder without the invalid portions? Our answer is YES.

Although the TP does not have a severability clause, the lack of a provision stating General Conference’s intent to save the legislation is not dispositive. The record shows that the delegates were aware of the constitutional infirmities identified in JCD 1366 at the time the Legislative Committee debated and voted on the amended TP on February 25.<sup>14</sup> The next day, the Secretary of the General Conference read the digest of our ruling in JCD 1377 just moments before the TP was presented to the plenary session.<sup>15</sup> The attempts to introduce amendments by supporters of the TP were clearly motivated by the concern that it had constitutional problems that needed fixing.<sup>16</sup> Bringing the TP into alignment with the Constitution would have

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<sup>14</sup> See DCA, Vol. 2, No. 5 (February 25, 2019), p. 421, EMILY ALLEN:

I speak against this motion because I believe the amendment still does not make the legislative item constitutional. I reviewed Judicial Council Decision 1366 on p. 33 in reference to this item where it says: ‘We also note the conspicuous lack of any provision granting a bishop the right to appeal the findings of the Council of Bishops.’;

*id.* at 422, JILL WONDEL:

This plan was recommended that it was unconstitutional by the Judicial Council. The modified petitions that we received also look like they would be ruled unconstitutional and the amount of amendments that need to be made in order to make it constitutional, I think are too large for the amount of time that we have. I would prefer not to work on something that will eventually be ruled unconstitutional.;

*id.* at 423, JOHN LOMPERIS:

...this amendment respects and listens to the advisory ruling we received earlier in the fall from the Judicial Council that identified some concerns about parts of the Traditional Plan having constitutional issues. It address [*sic*] the concern of the Judicial Council...;

*id.*, BRADLEY LAURVICK:

This wasn’t concerns in an advisory capacity the Judicial Council offered us. They said it was broken. They said it does not work. So why are we going to go—now we’re going line-by-line, trying to fix these things that are unfixable. [...] I don’t want to keep jamming bricks on top of something that is going to implode upon our denomination when it gets sent to the Judicial Council again, and they say, ‘Yeah. Your third try didn’t fix it, either.’ We can do better than this amendment and better than this plan.;

*id.* at 439, THOMAS BERLIN:

The original Traditional Plan was sent to Judicial Council, and approximately forty percent of it was ruled unconstitutional. Then, portions of the Modified Tradition Plan were ruled unconstitutional. [...] Those who have put it together are very intelligent. They are very knowledgeable. But despite their best efforts, it keeps being shown to be unconstitutional and rejected by the committee or the Judicial Council.”.

<sup>15</sup> See DCA, Vol. 2, No. 5 (February 26, 2019), p. 487.

<sup>16</sup> See, *e.g.*, *id.* at 465 (CHAPPELL TEMPLE:

necessitated “dividing the question,” that is, dividing the TP into separate petitions for debate and voting. When a delegate moved to divide the question and the presiding bishop ruled against the motion,<sup>17</sup> the movant appealed the ruling on the ground that the TP “must be divided for a vote one-by-one.”<sup>18</sup> However, the body voted to sustain the chair 522 to 301.<sup>19</sup> In doing so, the General Conference deliberately bundled together the constitutional and unconstitutional parts and passed them as *one* package on the final day of the Special Session.<sup>20</sup> More likely than not, most delegates expected that the legislation would be sent to the Judicial Council for a third round of constitutional review.<sup>21</sup>

The legislative history contained in the record supports our finding that the delegates voted to adopt the TP *fully cognizant and in spite of* its constitutional flaws. We find no evidence to the contrary and conclude that the General Conference would have enacted the remainder without the invalidated portions. Consequently, Petitions 90032, 90036, 90042, 90043, 90044, 90046, and 90047 can be upheld independently.

### RULING

When reviewing an act of the General Conference for constitutionality, the Judicial Council applies a severability test, which requires that we (1) identify the unconstitutional provisions of the legislation in question, (2) declare them null and void, and (3) determine if they can be severed from the remainder. Unless it is evident that the General Conference would not have enacted those provisions that are within its legislative powers without those that are not, the

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...there were several things that were already shared by the Judicial Council that needed fixing. We didn't get the chance to complete fixing them, because we moved to vote on everything before us before all the amendments had been made. So, I'm concerned that if we refer it now, we're going to get the same answer, and we already know that we need to fix some of those things. So, why don't we fix them first tomorrow in plenary and refer it afterwards?;

*id.* at 504 (HOLLY GRANT:

Bishop, this change to the paragraph makes it so that we are not just singling out sexuality concerns. It fixes the Judicial Council's concern they had with this amendment. [...] This is just one of only eight amendments that would be needed to bring the Traditional Plan into compliance with the Judicial Council and I would hope that the bishop allows us to do this in a fair way. Thank you.).

<sup>17</sup> Delegate Kelly Robier made a point of order to divide the question. *See id.* at 512 (KELLY ROBIER: I rise to a point of order. Rule 17, p. 48 of the ADCA. Bishop, before any vote is taken, a delegate shall have the right to call for a division of any question. I have been in the queue for point no. 8 for this entire day to divide the question. It is my right to divide that question, and we are currently in violation of it.).

<sup>18</sup> *Id.* at 512. (BISHOP CYNTHIA HARVEY: “I've conferred with our parliamentarian. All along, we have been voting on these as a bundle. So, these are conferring, conforming, and there is no way to divide the question.” KELLY ROBIER: I respectfully appeal the decision of the Chair.).

<sup>19</sup> *See id.* at 513.

<sup>20</sup> *See id.* at 515.

<sup>21</sup> *See, e.g.,* Reply Brief of Holly Grant, p. 5

(Most delegates determined that it was better to pass the whole plan and let the Judicial Council determine in a more deliberative way which parts were unconstitutional than to try to adopt only those parts of the plan that delegates thought might be constitutional. The adoption of the Traditional Plan as a whole does not indicate that delegates believed that all parts were essential in order to enact any parts of the plan.).

invalid parts can be separated if what is left is not inextricably linked and can function independently.

In applying this test to the amended Traditional Plan, the Judicial Council holds that the amended Traditional Plan consists of a series of petitions that were separately numbered, dealing with completely different paragraphs of *The Book of Discipline of the United Methodist Church 2016*. One petition does not affect the other. These petitions are not so closely related that a change in one affects the others. The petitions held unconstitutional have no effect on the petitions declared constitutional. The constitutional petitions are not dependent on the unconstitutional petitions and can survive without the unconstitutional petitions.

Therefore, the Judicial Council affirms its rulings in JCDs 1366 and 1377 and holds that Petitions 90033, 90034, 90035, 90037, 90038, 90039, and 90040 found unconstitutional are null and void. Further, we hold that the following petitions found constitutional:

Petition 90032

Petition 90036

Petition 90042

Petition 90043

Petition 90044

Petition 90045, excluding the second sentence:

In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.

Petition 90046; and,

Petition 90047

can be upheld independently.

April 25, 2019

## **Concurring Opinion**

I write separately because the process herein has resulted in an awkward inability to flush out and further refine the previous findings under JCD 1366 and 1377. The majority opinion has done well in setting forth the competing factors in making the determination as to whether the legislation bundled and adopted as “The Traditional Plan” ought to continue to be treated as one piece of legislation, or whether we are obligated to sever the petitions.

Once that determination was made, there was then the issue of whether our review falls under 2609.1 (scope of review limited to constitutionality) or 2610 (scope of review encompasses the adopted legislation’s constitutionality, meaning, application, or effect). The maker of the motion for a Declaratory Decision recited the language of 2610 but then specified the controlling paragraph as being 2609.1, pursuant to which the presiding Bishop announced that the requisite number of votes would be one-fifth of the delegates present and voting. Thus, at that point one could reasonably argue that clarification had been made and that the chair’s announcement solidified the classification of the Request for a Declaratory Decision.

As such, when this set of petitions came before the Judicial Council for a third time, there was a pragmatic determination that the next inquiry ought to be whether General Conference had actually made any amendments to the petitions since the Council’s issuance of JCD 1366 and 1377 and, if so, whether those amendments effected their constitutionality.



In any event, the procedural path that was taken has provided a result that is far less satisfactory than one might expect, albeit not altogether surprising. There has been, perhaps, a desire to remain consistent within the context of these Decisions relating to the Special Session. However, in doing so, the net result is that we have failed to flush out through a deeper level of judicial scrutiny, the problems that are inherent in that which remains.

Some of the petitions that were adopted conflict with the Discipline, some lack constitutional authority, and some contain a provision which violates the constitutional authority vested in the annual conference versus the role of the episcopacy.

Presumably these matters will end up before the Council again in one form or another. Hopefully General Conference will be proactive in reconciling these problems. In any event, the petitions that were ultimately passed are set forth hereinbelow so that, at the very least, the Church can have a better sense of those Disciplinary provisions which were actually amended pursuant to the legislation adopted under the label of Traditional Plan as modified by the majority opinion herein [per Legislative Tracking Page].

### ¶ 304.3 Qualifications for Ministry (footnote 1)

Petition 90032, adopted in the main motion by a vote of 438 to 384, amends the first footnote in ¶ 304.3 by adding the following underlined text:

“Self-avowed practicing homosexual” is understood to mean that a person openly acknowledges to a bishop, district superintendent, district committee of ordained ministry, Board of Ordained Ministry, or clergy session that the person is a practicing homosexual; **or is living in a same-sex marriage, domestic partnership or civil union, or is a person who publicly states she or he is a practicing homosexual.** See Judicial Council Decisions 702, 708, 722, 725, 764, 844, 984, 1020, 1341. [CoWF, Submitted by Thomas A. Lambrecht]

### ¶ 304.5 Qualifications for Ordination

Petition 90043, adopted in the main motion by a vote of 438 to 384, amends ¶ 304.5 as follows:

5. In all votes regarding license, ordination, or conference membership, the requirements set forth herein are minimum requirements. Each person voting is expected to vote prayerfully based on personal judgment of the applicant’s gifts, evidence of God’s grace, and promise of future usefulness for the mission of the Church. **The District Committee on Ordained Ministry and the Board of Ordained Ministry shall not approve or recommend any person for candidacy, licensing, commissioning, or ordination who does not meet the qualifications of ¶ 304.1-3, based on the full examination and thorough inquiry into the person’s fitness by the committee and board (see Judicial Council Decisions 1343 and 1344). The bishop presiding in the clergy session shall rule any such unqualified candidate out of order and not eligible to be acted upon.** [CoWF, Submitted by Thomas A. Lambrecht]

### ¶ 415.6 Specific Responsibilities of Bishops – Presidential Duties

Petition 90036, adopted in the main motion by a vote of 438 to 384, amends ¶ 415.6 by adding the following underlined text:

6. To consecrate bishops; to ordain elders and deacons; to commission deaconesses, home missionaries, and missionaries; and to see that the names of the persons commissioned and consecrated are entered on the journals of the conference and that proper credentials are furnished to these persons. **Bishops are prohibited from consecrating bishops who are self-avowed homosexuals, even if they have been duly elected by the jurisdictional or central conference. Bishops are prohibited from commissioning those on the deacon or elder track if the Board of Ministry has determined the individual is a self-avowed homosexual or has failed to certify it carried out the disciplinarily mandated examination, even if the individual has been**

**recommended by the Board of Ordained Ministry and approved by the clergy session of the annual conference. Bishops are prohibited from ordaining deacons or elders if the Board of Ministry has determined the individual is a self-avowed homosexual or has failed to certify it carried out the disciplinarily mandated examination, even if the individual has been recommended by the Board of Ordained Ministry and approved by the clergy session of the annual conference.** [CoWF, Submitted by Thomas A. Lambrecht]

¶ **362.1e Complaint Procedures**

¶ **413.3d Complaint Against Bishops**

Petition 90044, adopted in the main motion by a vote of 438 to 384, amends ¶ 362.1e and ¶ 413.3d as follows:

¶ **362.1 e) Referral or Dismissal of a Complaint**—Upon receiving a written and signed complaint, the bishop shall, within 90 days, carry out the supervisory response process outlined above. If within 90 days after the receipt of the complaint resolution is not achieved, the bishop shall either:

(1) Dismiss the complaint **as having no basis in law or fact,** with the consent of the cabinet giving the reasons therefore in writing, **copies** of which shall be placed in the clergyperson's file **and shared with the complainant;** or

(2) Refer the matter to the counsel for the church as a complaint. [CoWF, Submitted by Thomas A. Lambrecht]

¶ **413.3 d) (i)** If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process (¶ 413.3) shall monitor the fulfillment of the terms of the resolution. If the supervisory response does not result in resolution of the matter, the president or secretary of the College of Bishops may either dismiss the complaint **as having no basis in law or fact,** with the consent of the College of Bishops and the committee on episcopacy, giving the reasons therefore in writing, **copies** of which shall be placed in the bishop's file **and shared with the complainant,** refer the matter to the committee on episcopacy as an administrative complaint pursuant to ¶ 413.3e, or refer the matter to counsel for the Church pursuant to ¶ 2704.1 to prepare a complaint to forward to the committee on investigation. [CoWF, Submitted by Thomas A. Lambrecht]

¶ **2701.5 Just Resolution** [CoWF, Submitted by Thomas A. Lambrecht]

Petition 90045, adopted in the main motion by a vote of 438 to 384, amends Just Resolution in

¶ **362.1 Complaint Procedures**

¶ **413.3c Complaints Against Bishops — The supervisory response**

¶ **2701.5 A Just Resolution in Judicial Proceedings**

¶ **2706.5.c.3 Findings other than reasonable grounds by committee or other actions**

¶ as follows:

¶ **362. Complaint Procedures**—1. Ordination and membership in an annual conference in The United Methodist Church is . . .

This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work . . .

A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. **Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint. In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.** In appropriate situations, processes seeking a just resolution as defined in ¶ 362.1c may be pursued. Special attention should be given to ensuring that cultural, racial, ethnic, and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration.

A complaint is a written and signed statement claiming misconduct as defined in ¶ 2702.1. When . . .

¶ 413. *Complaints Against Bishops*—

3. c) **The supervisory response** may include a process seeking a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. (See ¶ 362.1b, c.) The appropriate persons, including the president of the College of Bishops, or the secretary if the complaint concerns the president, should enter into a written agreement outlining such process, including an agreement as to confidentiality. If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties. Such written statement of resolution shall be given to the person in charge of that stage of the process for further action consistent with the agreement. **Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint. In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.**

¶ 2701. 5. *A Just Resolution in Judicial Proceedings*—A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. **Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint. In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.** Special attention should be given to ensuring that cultural, racial, ethnic, age, and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration. During the just resolution process, the parties . . .

¶ 2706.5 c) Findings other than reasonable grounds by committee or other actions

(3) Upon recommendation of the counsel for the Church and the counsel for the respondent, the committee may refer the matter to the resident bishop as deemed appropriate for a process seeking a just resolution. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.2d. The appropriate persons, including the counsel for the Church and counsel for the respondent, should enter into a written agreement outlining the process, including any agreements on confidentiality. If resolution is achieved, a written statement, affirming such resolution, including any terms and conditions, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on any matters to be disclosed to third parties. **Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint. In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the *Discipline*, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.** If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures . . .

¶ 2701.5 Just Resolution [CoWF, Submitted by Thomas A. Lambrecht]

Petition 90046, adopted in the main motion by a vote of 438 to 384, amends

¶ 362.1(c)

¶ 413.3(c)

¶ 2701.5

2706.5(c)3

by adding the same sentence to all four as follows: **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.**

Also add **the complainant**, in ¶¶ 2701.5 and 2706.5(c)3.

¶ 362. Complaint Procedures—1. Ordination and membership in an annual conference in The United Methodist Church is a sacred trust. . .

. . .  
c) **Just Resolution**—The supervisory response may include a process that seeks a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s), in reaching an agreement satisfactory to all parties.<sup>69</sup> If the bishop chooses to initiate a mediated attempt to produce a just resolution, then the bishop, the person filing the complaint, the respondent, and other appropriate persons shall enter into a written agreement outlining the process, including any agreements on confidentiality. A process seeking a just resolution may begin at any time in the supervisory, complaint, or trial process. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties. A just resolution agreed to by all parties shall be a final disposition of the related complaint.

¶ 413. Complaints Against Bishops

. . .  
3. After receiving a complaint as provided in ¶ 413.2, . . .

. . .  
c) The supervisory response may include a process seeking a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. (See ¶ 363.1b, c.) The appropriate persons, including the president of the College of Bishops, or the secretary if the complaint concerns the president, should enter into a written agreement outlining such process, including an agreement as to confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties. Such written statement of resolution shall be given to the person in charge of that stage of the process for further action consistent with the agreement.

¶ 2701.5. A Just Resolution in Judicial Proceedings—A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. Special attention should be given to ensuring that cultural, racial, ethnic, age, and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration. During the just resolution process, the parties may be assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. Processes that seek a just resolution are encouraged at any time, including through the judicial proceedings. After the referral of a matter as a judicial complaint from counsel for the Church to the committee on investigation, if a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church, **the complainant**, and the counsel for the respondent, should enter into a written agreement outlining such process, including

any agreement on confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on any matters to be disclosed to third parties. If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for possible readmission.

**¶ 2706.5. Bill of Charges and Specifications, Deliberations, Vote, and Referral**

c) Findings other than reasonable grounds by committee or other actions

(1) If the committee on investigation determines . . .

(2) If the committee on investigation determines . . .

(3) Upon recommendation of the counsel for the Church and the counsel for the respondent, the committee may refer the matter to the resident bishop as deemed appropriate for a process seeking a just resolution. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. The appropriate persons, including the counsel for the Church, **the complainant**, and counsel for the respondent, should enter into a written agreement outlining the process, including any agreements on confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** If resolution is achieved, a written statement, affirming such resolution, including any terms and conditions, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on any matters to be disclosed to third parties. If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for readmission. The written statement affirming such resolution shall be given to the bishop for further action(s) to implement the agreement, if any. If the process does not result in resolution, the matter shall be returned to the committee.

**¶ 2711.3 Power Of The Trial Court – Penalties**

Petition 90042, adopted in the main motion by a vote of 438 to 384, amends ¶ 2711.3 as follows:

¶ 2711. Power of the Trial Court

3. *Penalties - If the Trial Results in Conviction.* Further testimony may be heard and arguments by counsel presented regarding what the penalty should be. The trial court shall determine the penalty, which shall require a vote of at least seven members. The trial court shall have the power to remove the respondent from professing membership, terminate the conference membership and/or revoke the credentials of conference membership and/or ordination or consecration of the respondent, suspend the respondent from the exercise of the functions of office, or to fix a lesser penalty. **Except, where the conviction is for conducting ceremonies which celebrate homosexual unions, or performing same-sex wedding ceremonies under ¶ 2702.1(b) or (d), the trial court does not have the power to and may not fix a penalty less than the following:**

**a) First (1st) offense – One (1) year’s suspension without pay.**

**b) Second (2nd) offense - Not less than termination of conference membership and revocation of credentials of licensing, ordination, or consecration.**

**The penalty fixed by the trial court shall take effect immediately unless otherwise indicated by the trial court. [CoWF, Submitted by Thomas A. Lambrecht]**

It is unclear whether the last sentence of ¶ 2711.3 has been eliminated by the amendment or whether it is uneffected and remains as the last sentence of ¶ 2711.3. Petition 90042 did not strike out the sentence so as to indicate that it is deleted. On the other hand, the language in Petition 90042 instructed only, “Amend ¶ 2711.3 *Penalties* as follows:...” whereupon the last sentence is simply not present. The missing sentence of uncertain status provides as follows:

Should any penalty fixed by a trial court be altered or reduced as a result of the appellate process, the respondent shall be restored and/ or compensated as appropriate, provided that in no instance and under no circumstances shall the respondent be entitled to receive an award of compensation for or reimbursement of any expenses or fees associated with the respondent’s use of an attorney.<sup>23</sup>

See Judicial Council Decision 1201

¶ 2715.10 *Appeal Procedures –*  
*[Right To Appeal no longer reserved to exclusively to the Individual]*

Petition 90047, adopted in the main motion by a vote of 438 to 384, amends ¶ 2715.10 as follows:

¶ 2715. Appeal Procedures—General

...

10. The Church shall have no right of appeal from findings **of fact** of the trial court. **The Church shall have a right of appeal to the committee on appeals and then to the Judicial Council from findings of the trial court based on egregious errors of Church law or administration that could reasonably have affected the findings of the trial court. When the committee on appeals or the Judicial Council shall find egregious errors of Church law or administration under this part, it may remand the case for a new trial, along with a statement of the grounds of its action. This is not to be double jeopardy.** In regard to cases where there is an investigation under ¶ 2702, but no trial is held, egregious errors of Church law or administration may be appealed to the jurisdictional **or central conference** committee on appeals **and then to the Judicial Council** by counsel for the Church. The committee on investigation’s decision not to certify a bill of charges does not alone constitute an egregious error of Church law or administration. When the committee on appeals **or the Judicial Council** shall find egregious errors of Church law or administration under this part, it may remand the case for a new hearing, in which event it shall return to the chair of the committee on investigation a statement of the grounds of its action. This is not to be double jeopardy. [CoWF, Submitted by Thomas A. Lambrecht]

Respectfully Submitted,

Beth Capen

April 26, 2019