

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1366

IN RE: Petition for Declaratory Decision from the Council of Bishops regarding the constitutionality of three sets of legislative petitions known as the One Church Plan, Connectional Conference Plan, and Traditional Plan.

DIGEST OF CASE

The Judicial Council has jurisdiction to determine the constitutionality of any proposed legislation when such declaratory decision is requested by the General Conference or by the Council of Bishops but lacks the authority to scrutinize proposed constitutional amendments under ¶ 2609.2. To trigger jurisdiction and be properly before the Judicial Council, a petition for declaratory decision must contain proposed legislation that *prima facie* requires no constitutional amendment(s) for implementation and can be tested directly against the constitutional provisions in effect at the time of filing. The Connectional Conference Plan contains proposed constitutional changes and does not pass this jurisdictional test. The One Church Plan and the Traditional Plan meet those criteria to be properly before the Judicial Council. The task of the Judicial Council is to pass upon the constitutionality of the legislative petitions without expressing an opinion as to their merits or expediency. It is up to the General Conference to determine the wisdom of each plan.

With respect to the **One Church Plan**, the Judicial Council makes the following ruling: As a primary principle in any organizational structure of The United Methodist Church, connectionalism denotes a vital web of interactive relationships—multi-leveled, global in scope, and local in thrust—that permits contextualization and differentiation on account of geographical, social, and cultural variations and makes room for diversity of beliefs and theological perspectives but does not require uniformity of moral-ethical standards regarding ordination, marriage, and human sexuality. Full legislative power of the General Conference includes the authority to adopt a uniform, standardized, or a non-uniform, differentiated theological statement. Our Constitution commands not that all church policies enacted by the General Conference be uniform but that all uniform church policies be enacted by the General Conference. It assigns the legislative function to set standards related to certification, commissioning, ordination, and marriage to the General Conference and the administrative responsibility for applying them to the annual conferences, local churches, and pastors within their missional contexts. The legislative branch of the Church is constitutionally free to set

the standards for entrance into the ministry wherever and whenever it sees fit. Regardless of where that threshold may be at any given time, the annual conference may enact additional requirements that are not in conflict with the letter or intent of the minimum standards set by the General Conference.

Petition 1 is constitutional.

Petition 2 is constitutional.

Petition 3 is constitutional.

Petition 4 is constitutional, *except* for the second sentence:

The bishop may choose to seek the non-binding advice of an annual conference session on standards relating to human sexuality for ordination to inform the Board of Ordained Ministry in its work.

This part violates the separation of powers, is contrary to ¶ 33 and, therefore, unconstitutional.

Petition 5 is constitutional.

Petition 6 is constitutional.

Petition 7 is constitutional.

Petition 8 is constitutional, *except* for the sentence:

Similarly, clergy who cannot in good conscience continue to serve a particular church based on unresolved disagreements over same-sex marriage as communicated by the pastor and Staff-Parish Relations Committee to the district superintendent, shall be reassigned.

This part is in conflict with ¶ 54 and is unconstitutional.

Petition 9 is constitutional.

Petition 10 is constitutional.

Petition 11 is constitutional.

Petition 12 is constitutional

Petition 13 is constitutional, *except* for the second sentence:

Provided, however, that any clergy session of an annual conference that votes on such matters shall not, without the consent of the presiding bishop, take up any subsequent motion on that issue during any called or special session of annual conference held within 30 full calendar months from the date of such vote regardless of the outcome.

This part infringes upon an annual conference's reserved rights under ¶ 33 and is unconstitutional.

Petition 14 is constitutional.

Petition 15 is constitutional.

Petition 16 is constitutional.

Petition 17 is constitutional.

With respect to the **Traditional Plan**, the Judicial Council makes the following decision: Impartiality and independence of decision-making bodies are the hallmarks of due process and bedrock principles of procedural justice in our constitutional polity. No process can be fair and equitable if the body bringing the complaint is also empowered to determine its merits. The fundamental right to fair and due process of an accused bishop is denied when the complainants are also among those tasked with reviewing and making the final decision. The Council of Bishops was not designed to function as an inquisitorial court responsible for enforcing doctrinal purity among its members.

As a tenet of United Methodist constitutionalism, the principle of legality means that all individuals and entities are equally bound by Church law, which shall be applied fairly and without regard to race, color, national origin, status, or economic condition. It forbids selective or partial enforcement of Church law at all levels of the connection and demands that *The Discipline* in its entirety be followed without distinction. All decisions and actions by official bodies and their representatives must be based on and limited by the Constitution and *The Discipline*. Individuals must be informed with specificity and clarity as to what is prescribed and proscribed by Church law. No person or body can be required to act contrary to Church law or prohibited from engaging in lawful conduct. No person can be punished for actions and conduct that are permitted or required by Church law. Clergy persons whose credentials and conference membership are at stake have the right to know what to expect when they choose a course of action or take a particular stance on ordination, marriage, and human sexuality. 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.

Under the principle of legality, the General Conference can prescribe or proscribe a particular conduct but cannot contradict itself by prescribing prohibited conduct or prohibiting prescribed conduct. It can require bishops, annual conferences, nominees, and members of boards of ordained ministry to certify or declare that they will uphold *The Discipline* in its entirety and impose sanctions in case of non-compliance. But it may not choose standards related to ordination, marriage, and human sexuality over other provisions of *The Discipline* for enhanced application and certification. The General Conference has the authority to require that the board of ordained ministry conduct a careful and thorough examination to ascertain if an individual meets all disciplinary requirements and certify that such an examination has occurred. But it cannot reduce the scope of the board examination to one aspect only and unfairly single out one particular group of candidates (self-avowed practicing homosexuals) for disqualification. Marriage and sexuality are but two among numerous standards candidates must meet to be commissioned or ordained; other criteria include, for example, being committed to social justice, racial and gender equality, and personal and financial integrity, that all should be part of a careful and thorough examination.

Petition 1 is constitutional.

Petitions 2, 3, and 4 deny a bishop's right to fair and due process guaranteed in ¶¶ 20, 58 and are unconstitutional.

Petition 5 is constitutional.

Petitions 6, 7, 8, and 9 violate the principle of legality and are unconstitutional.

Petition 10:

- ¶¶ 2801.1-7 violate the principle of legality and are unconstitutional;
- ¶ 2801.8, the first sentence:

Clergy who find themselves for reasons of conscience unable to live within the boundaries of ¶¶ 304.3, 341.6, 613.19, and 2702.1a-b are encouraged to transfer to a self-governing church formed under this paragraph.

is unconstitutionally vague and violates the principle of legality;

- ¶ 2801.9 is constitutional;
- ¶¶ 2801.10-12 and the "local churches" reference in ¶ 2801.13 are in conflict with ¶ 41 and unconstitutional;
- ¶¶ 2801.14-23 are constitutional.

Petition 11 is constitutional.

Petition 12 is constitutional.

Petition 13 is constitutional.

Petition 14, 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.

violates ¶¶ 20, 58 and is unconstitutional.

Petition 15 is constitutional.

Petition 16 is constitutional.

Petition 17 is constitutional insofar as it refers to self-governing Methodist churches formed by annual conferences under the provisions of proposed ¶ 2801.9.