JUDICIAL COUNCIL
OF THE UNITED METHODIST CHURCH
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No. 0417-01

MOTION TO RECONSIDER DECISION NO. 1341

On behalf of the Western Jurisdiction College of Bishops
Motion submitted by:
Richard A. Marsh, Chancellor, Rocky Mountain Conference
Llewelyn G. Pritchard, Chancellor, Pacific-Northwest Conference
Date: June 12, 2017

INTRODUCTION

The Western Jurisdiction College of Bishops hereby moves for reconsideration of Decision No. 1341 pursuant to Rule IX.C of the Rules of Practice and Procedure of The Judicial Council of The United Methodist Church.

THE DECISION UNLAWFULLY CHANGES THE DEFINITION OF "SELF-AVOWAL"

The General Conference is the only body authorized by the Constitution to exercise full legislative power over all matters distinctively connectional in the United Methodist Church. *Discipline,* ¶16. This power is not shared with and may not be usurped by any other Church institution or official. This power includes the authority to define and establish standards, conditions and qualifications for admission to ministry. *See, e.g.,* JCDs 702 (1993), 513 (1982), 325 (1970), 318 (1969) and 313 (1969). The Judicial Council recognized in Decision No. 702 that only the General Conference can define the words, "self-avowed practicing homosexual". JCD 702 (1993). The Judicial Council is not constitutionally empowered to do so. *See also*, Concurring Opinion in JCD 544 (1984).

In fact, following Decision 702, the General Conference defined "self-avowed practicing homosexual" in Footnote 1 to ¶304.3 of the *Discipline*.

> "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."

Discipline,¶304.3, n.1.

The General Conference specifically limits the persons or bodies to whom an open acknowledgement of sexual practice must be made. An open acknowledgement made to persons or bodies other than those identified in the General Conference's definition does not disqualify a clergy person from appointment under ¶304.3.

The General Conference definition requires the clergy person to make an open acknowledgment of sexual practice to one of the designated audiences. The General Conference's definition of "open acknowledgement" does not permit disqualification under ¶304.3 based on an ***inference*** of sexual practice arising from "common understanding and practice" or from a public record, no matter how reasonable the Judicial Council or anyone else in the world thinks it might be to draw such an inference.

The Decision violates the General Conference definition, and thereby the *Discipline*, by allowing disqualification to be based on statements made to third parties other than those identified in Footnote 1 to ¶304.3. The Decision violates the General Conference definition, and thereby the *Discipline*, by allowing a clergy person to be deprived of an appointment by failing to disavow an inference of sexual practice arising from "common understanding and practice" or third-party sources including but not limited to public records.

No entity or individual member of The United Methodist Church has the right to negate or ignore the *Discipline*. JCD 886 (2000). And yet, this is exactly what the Decision does with its creation of a new definition of self-avowal. The Decision unlawfully legislates when it changes the disciplinary definition of "self-avowed practicing homosexual" to include self-avowal of sexual practice by inference or public record.

THE DECISION UNLAWFULLY VIOLATES THE PRESUMPTION OF INNOCENCE

The Decision creates a "rebuttable presumption" of self-avowed sexual practice based solely on the existence of a same gender marriage. This presumption (1) unlawfully presumes guilt in an *a priori* fashion; (2) unlawfully requires a respondent to prove a negative; and (3) unlawfully removes the Church's burden to prove a chargeable offense.

The *Discipline* does not place the burden to prove the absence of a chargeable offense on a clergy person. To the contrary, the Church bears the burden to prove all elements of a chargeable offense, and then by clear and convincing evidence. *Discipline*, ¶2711.2. In the context of this Decision, a clergy person does not bear the burden to prove the absence of sexual practice. Instead, the Church bears the burden of proving sexual practice.

The Judicial Council cannot judicially legislate a factual presumption of sexual practice. JCD 702 (1993). The Decision unlawfully creates a factual presumption of sexual practice based on the existence of a same gender marriage, and this factual presumption unlawfully violates the legal presumption of innocence guaranteed by the law of the Church. JCD 920 (2001).

THE DECISION UNLAWFULLY CREATES A NEW CHARGEABLE OFFENSE

The Decision creates a presumption of self-avowed sexual practice through proof of the existence of a same gender marriage. The Decision treats the fact of a same gender marriage as

proof that a clergy person is a "self-avowed practicing homosexual". The Decision thereby equates the fact of a same gender marriage with a chargeable offense. The Judicial Council is without authority to expand the list of chargeable offenses. JCD 702 (1993) (Judicial Council cannot legislate). Only the General Conference can declare that same gender marriage is a chargeable offense, and it has not done so despite opportunity.

THE DECISION UNLAWFULLY TREATS THE SOCIAL PRINCIPLES AS CHURCH LAW

The Decision correctly recognizes that the Social Principles do not have the status of Church law. However, the Decision irreconcilably goes on to state that the Social Principles "have the effect of Church law". Both cannot be true statements.

The fact that the Social Principles are incorporated as "ideals" in ¶310.2d does not determine their status as "law". The logic of this argument is fallacious. These "ideals" have been so incorporated in the candidacy provisions of the *Discipline* since at least 1992. And yet, prior to this Decision, no one has ever remotely suggested this connection between incorporation and "law" under ¶310.2d or its earlier counterparts.

The General Conference never intended by this incorporation to treat the Social Principles as "Church law". Instead, as the plain language of ¶310.2d informs, the General Conference only intended to incorporate "ideals". These "ideals" are aspirations, not legal requirements, similar to the difference between "aspirational" and "unlawful" discussed in the Judicial Council's decisions dealing with annual conference legislation. *Compare,* JCDs 913 (2001) and 1021 (2005) *with* JCD 1120 (2009).

The best evidence of General Conference intent regarding the legal effect of the Social Principles comes from the 2004 General Conference session. During the 2004 session, the

General Conference declared that the Social Principles are "not to be considered church law." *See*, Petition 41560 at: http://gc2004.org/Calms/petition.asp?mid=2886&Petition=1560. (*See,* APPENDIX A below.) This declaration is now embodied in the Preface to the Social Principles. *Discipline*, Part V, ¶¶ 160-166. The Judicial Council has since recognized the legal effect of this legislation. JCD 1254 (2013).

The Decision does not conform with either the express language of the *Discipline* or the Judicial Council's own precedent when it incorporates the "ideals" in the Social Principles as "Church law" in ¶310.2d. The Decision unlawfully treats the Social Principles as Church law. The Decision opens the floodgate to countless future challenges to actions that allegedly do or do not comport with an "ideal" stated in the Social Principles.

CONCLUSION

The matters for which reconsideration are sought are not central to the Decision's basic holding that the consecration of Bishop Karen Oliveto by the Western Jurisdiction College of Bishops was lawful, and indeed mandated by the *Discipline*, Nonetheless, the matters for which reconsideration are sought cannot be allowed to stand in the light of their fundamental violation of the *Discipline*.

Respectfully submitted,
WESTERN JURISDICTION
COLLEGE OF BISHOPS

Bishop Grant Hagiya, President
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