

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1379

IN RE: Petition for Declaratory Decision from the Council of Bishops regarding the constitutionality, meaning, application, and effect of Petition 90066 as amended.

DIGEST OF CASE

Paragraph 41 of the Constitution governs the narrowly defined circumstance of a local church transferring from one annual conference to another but does not apply to a local church seeking to exit The United Methodist Church. Under ¶ 33 of the Constitution, the annual conference as the basic body in the Church has the reserved right to make final decisions regarding the disaffiliation of local churches within its boundaries.

Any legislation of the General Conference permitting the “gracious exit” of a local church must require at a minimum that (1) the disaffiliation resolution be approved by a two-thirds majority of the professing members of the local church present and voting at the church conference, (2) the terms and conditions, including effective date, of the agreement between the annual conference and the exiting local church be established by the conference board of trustees in accordance with applicable church law and civil laws, and (3) the disaffiliation agreement be ratified by a simple majority of the members of the annual conference present and voting.

When taken together with the consent of the annual conference pursuant to ¶ 2529.1(b)(3), Petition 90066 as amended meets all three requirements and is constitutional and provides a means for the disaffiliation of a local church.

Our ruling with respect to the disaffiliation of a local church in JCD 1377 is modified.

STATEMENT OF FACTS

Acting as Legislative Committee, on February 25, 2019, the delegates to the 2019 Special General Conference amended and reported out Petition 90066, also known as the Taylor Disaffiliation Plan.¹ Subsequently, the committee passed a motion requesting the Judicial Council to determine the constitutionality of the Traditional Plan [hereinafter TP], including Petitions 90066 and 90059 (Boyette Disaffiliation Plan).² The following day, we rendered a

¹ See Daily Christian Advocate [hereinafter DCA], Vol. 2, No. 5 (February 26, 2019), pp. 440-445. Petition 90066 as originally submitted is printed in the Daily Christian Advocate, Vol. 1 [hereinafter ADCA], pp. 205-206.

² See DCA, Vol. 2, No. 5 (February 27, 2019), p. 467. The motion passed 437 to 371. The maker of the motion mistakenly invoked ¶ 2610 as the basis for the request. See *id.* at 464. That paragraph applies to acts of the General Conference, *not* a legislative committee. At the time the motion was made, the delegates acted as a *legislative committee*. The correct provision would have been ¶ 2609.4, which mandates that the “Judicial Council shall hear and determine the legality of any action taken by any body created or authorized by the General Conference...upon appeal by one-third of the members thereof...” Addressing the question whether a legislative committee was authorized to request a declaratory decision from the Judicial Council, the legislative chair cited JCD 1318 and 887 and answered it in the affirmative. See *id.* at 447. In JCD 1318, the Judicial Council accepted jurisdiction under ¶ 2609.4 for a request from the Judicial Administration Legislative Committee. In JCD 887, the Council did likewise but without citing the authority for jurisdiction.

declaratory decision, ruling both disaffiliation plans to be in violation of ¶¶ 33 and 41, therefore, unconstitutional. JCD 1377 at 3-4.

On February 26, during plenary session, the *Minority Report on Disaffiliation* was substituted for the majority report by a vote of 402 to 400.³ In adopting the minority report, the General Conference enacted a new ¶ 2553, which reads:

¶ 2553. Disaffiliation of a Local Church Over Issues Related to Human Sexuality—

1. *Basis*-- Because of the current deep conflict within The United Methodist Church around issues of human sexuality, a local church shall have a limited right, under the provisions of this paragraph, to disaffiliate from the denomination for reasons of conscience regarding a change in the requirements and provisions of the *Book of Discipline* related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, or the actions or inactions of its annual conference related to these issues which follow.

2. *Time Limits*--The choice by a local church to disaffiliate with The United Methodist Church under this paragraph shall be made in sufficient time for the process for exiting the denomination to be complete prior to December 31, 2023. The provisions of ¶ 2553 expire on December 31, 2023 and shall not be used after that date.

3. *Decision Making Process*--The church conference shall be conducted in accordance with ¶ 248 and shall be held within one hundred twenty (120) days after the district superintendent calls for the church conference. In addition to the provisions of ¶ 246.8, special attention shall be made to give broad notice to the full professing membership of the local church regarding the time and place of a church conference called for this purpose and to use all means necessary, including electronic communication where possible, to communicate. The decision to disaffiliate from The United Methodist Church must be approved by a two-thirds (2/3) majority vote of the professing members of the local church present at the church conference.

4. *Process Following Decision to Disaffiliate from The United Methodist Church*--If the church conference votes to disaffiliate from The United Methodist Church, the terms and conditions for that disaffiliation shall be established by the board of

³ See DCA, Vol. 2, No. 5 (February 27, 2019), p. 521. Listed as Calendar Item 19, the minority report reads (in relevant part):

Minority Report

Adopt Petition #90066 (ADCA, p. 205) with the following changes:

1. Delete what is printed as section 2553.3 in its entirety
2. In the section listed as section 2553.5, first sentence, replace “the resident bishop” with “the board of trustees”
3. Delete the first sentence section 2553.5g
4. Change the final sentence section 2553.5g, by replacing it with the following: “Payment shall occur prior to the effective date of departure.”
5. Delete the entirety of what is printed as sub-section 2553.5c, and re-number the rest accordingly.

DCA, Vol. 2, No. 2 (February 24, 2019), p. 386 (with editorial changes as noted in DCA, Vol. 2, No. 5 [February 27, 2019], p. 516). See also 2019 General Conference Legislation Tracking posted online at <http://www.umc.org/who-we-are/2019-general-conference-legislation-tracking>.

trustees of the applicable annual conference, with the advice of the cabinet, the annual conference treasurer, the annual conference benefits officer, the director of connectional ministries, and the annual conference chancellor. The terms and conditions, including the effective date of disaffiliation, shall be memorialized in a binding Disaffiliation Agreement between the annual conference and the trustees of the local church, acting on behalf of the members. That agreement must be consistent with the following provisions:

a) *Standard Terms of the Disaffiliation Agreement.* The General Council on Finance and Administration shall develop a standard form for Disaffiliation Agreements under this paragraph to protect The United Methodist Church as set forth in ¶ 807.9. The agreement shall include a recognition of the validity and applicability of ¶ 2501, notwithstanding the release of property therefrom. Annual conferences may develop additional standard terms that are not inconsistent with the standard form of this paragraph.

b) *Apportionments.* The local church shall pay any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments.

c) *Property.* A disaffiliating local church shall have the right to retain its real and personal, tangible and intangible property. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church.

d) *Pension Liabilities.* The local church shall contribute withdrawal liability in an amount equal to its pro rata share of any aggregate unfunded pension obligations to the annual conference. The General Board of Pension and Health Benefits shall determine the aggregate funding obligations of the annual conference using market factors similar to a commercial annuity provider, from which the annual conference will determine the local church's share.

e) *Other Liabilities.* The local church shall satisfy all other debts, loans, and liabilities, or assign and transfer them to its new entity, prior to disaffiliation.

f) *Payment Terms.* Payment shall occur prior to the effective date of departure.

g) *Disaffiliating Churches Continuing as Plan Sponsors of the General Board of Pension and Health Benefits Plans.* The United Methodist Church believes that a local church disaffiliating under ¶ 2553 shall continue to share common religious bonds and convictions with The United Methodist Church based on shared Wesleyan theology and tradition and Methodist roots, unless the local church expressly resolves to the contrary. As such, a local church disaffiliating under ¶ 2553 shall continue to be eligible to sponsor voluntary employee benefit plans through the General Board of Pension and Health Benefits under ¶ 1504.2, subject to the applicable terms and conditions of the plans.

h) Once the disaffiliating local church has reimbursed the applicable annual conference for all funds due under the agreement, and provided that there are no other outstanding liabilities or claims against The United Methodist Church as a result of the disaffiliation, in consideration of the provisions of this paragraph, the applicable annual conference shall release any claims that it may have under ¶ 2501 and other paragraphs of *The Book of Discipline of The United Methodist Church* commonly referred to as the trust clause, or under the agreement.

On March 6, 2019, the Council of Bishops [hereinafter Petitioner] filed a request for declaratory decision as to the constitutionality, meaning, application, and effect of Petition 90066 as amended.

Petitioner and Beth Ann Cook filed briefs as interested parties. In addition, Lonnie Brooks, Warren Light, John Lomperis, and Thomas Starnes wrote separate briefs as *amici curiae*.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶¶ 2609.1 and 2610.1 of *The Book of Discipline 2016* [hereinafter *The Discipline*]. The Petitioner has standing to request a declaratory decision pursuant to ¶¶ 2609.1 and 2610.2(b) of *The Discipline*.

ANALYSIS AND RATIONALE

In JCD 1377, we held that the *pre*-minority-report version of Petition 90066 violated ¶ 33 because, “[b]y sidestepping the mandatory annual conference ratification, the proposed legislation infringes upon ‘such other rights [of the annual conference] as have not been delegated to the General Conference under the Constitution.’” JCD 1377 at 4 (quoting JCD 1366 at 45 and Constitution, ¶ 33). Our analysis was based in part on JCD 1366 in which we applied ¶ 41 and ruled a similar provision in the TP unconstitutional on the grounds that the “proposed legislation improperly substitutes the 55-percent majority for the two-thirds supermajority requirement” and “completely omits the annual conference as the body ratifying any local church vote to change affiliation.” JCD 1366 at 45.

Since then, supporters and opponents of the TP alike have argued convincingly that ¶ 41 does not apply to a disaffiliating local church because this provision governs, as the heading says, the narrowly defined circumstance of “Transfer of Local Churches,” or in constitutional terms, a “local church [requesting to] be transferred from one annual conference to another in which it is geographically located.”⁴ Constitution, ¶ 41.1. We agree. Consequently, we determine that ¶ 41 is inapplicable when a local church seeks to exit The United Methodist Church.

However, under the principle of enumerated powers, “all matters distinctly connectional,” over which the General Conference has full legislative power, must be expressly listed in the Constitution.⁵ Constitution, ¶ 16. Since the disaffiliation of local churches is *not*

⁴ See Opening Brief of Beth Ann Cook, p. 5 (“...however, ¶ 41, by its very terms, is only applicable to the transfer of a local church from one annual conference to another annual conference in The United Methodist Church and does not provide for a ‘mandatory annual conference ratification’ in all situations of a local church changing its affiliation with The United Methodist Church.”); Opening Brief of John Lomperis, p. 5 (“...the plain-sense language of ¶41 is that, in the Constitution’s own words, it only applies to situations in which a congregation seeks to ‘transfer from one annual conference to another [i.e., another UMC annual conference] in which it is geographically located,’ and that nothing in the actual language of ¶41 indicates that it is intended to address congregations leaving The United Methodist Church altogether.”); Opening Brief of Thomas Starnes, p. 8 (“Specifically, we do not believe the Constitution requires annual conference approval by a two-thirds majority vote in the circumstances contemplated by Petition 90066 and similar “disaffiliation” petitions. By its terms, Constitution ¶ 41 expressly applies only to a transfer of a local church from one UMC annual conference to another UMC annual conference. In that particular circumstance, the Constitution not only requires the approval of both annual conferences, but requires supermajorities to approve the transfer at both the church conference and annual conference level.”).

⁵ See JCD 5 (Interim Judicial Council): “The powers of a General Conference are enumerated in Paragraph 15 [now ¶ 16] (Art. IV, Division One, Part I) of the Constitution.” [emphasis added].

mentioned among the enumerated powers of the General Conference, this subject matter has “not been delegated to the General Conference under the Constitution,” and, therefore, the final decision concerning exiting local churches belongs to the annual conference as part of its “reserved rights.” Constitution, ¶ 33.

In light of the foregoing conclusions, the parts of our ruling in JCD 1377 that address the question of local church disaffiliation are hereby modified. Any legislation of the General Conference permitting the “gracious exit” of a local church must have the following minimum requirements:

- (1) Approval of the disaffiliation resolution by a two-thirds majority of the professing members of the local church present and voting at the church conference.
- (2) Establishment of the terms and conditions, including effective date, of the disaffiliation agreement between the annual conference and the exiting local church by the conference board of trustees in accordance with applicable Church law and civil laws.
- (3) Ratification of the disaffiliation agreement by a simple majority of the members of the annual conference present and voting.

Upon examination of the *post*-minority-report language, we find that ¶ 2553 satisfies the first two conditions. The legislation lacks a provision stating that the disaffiliation agreement is subject to ratification by the annual conference. Although the board of trustees, cabinet, and other conference officials are mandated to participate in the decision-making process under ¶ 2553.4, their role “in facilitating the change of affiliation...is not sufficient to make up for the annual conference’s involvement.” JCD 1366 at 45. As we recently ruled in JCD 1371, the decision of the board of trustees, though important and necessary, cannot be a substitute for the action of the annual conference. “The Annual Conference is to maintain its role in decision-making.” *Id.* at 3.

As a stand-alone piece of legislation, Petition 90066 falls short of the third requirement. However, its constitutionality, meaning, application, and effect should not be determined in isolation. If upheld, this legislation will be codified as ¶ 2553 in *The Discipline* and must be construed in relation to other pertinent disciplinary paragraphs. Fortunately, there is a provision elsewhere in *The Discipline*, which supplies the missing requirement. Paragraph 2529, placed under “Section VI. Local Church Property” and entitled “*Charge Conference Authority*,” which provides, in § 1(b)(3):

b) Regardless of whether the charge conference elects to incorporate the local church, the local church:

- (3) cannot sever its connectional relationship to The United Methodist Church without the consent of the annual conference. [emphasis added]

Although the previous sub-sections pertain to the powers and duties of the charge conference, § 1(b)(3) places a restriction on the local church as a whole but also, by extension, the *church conference* because the latter is integral part of the former. *The Discipline*, ¶ 248.⁶ Here is the ingredient found to be missing in JCD 1377, which was already in *The Discipline*. Under ¶ 2529.1(b)(3), the church conference cannot resolve to sever its ties with The United Methodist Church “without the consent of the annual conference.” As a policy, the prohibition of exit

⁶ Entitled “*Church Conference*,” ¶ 248 states:

To encourage broader participation by members of the church, the charge conference may be convened as the church conference, extending the vote to all professing members of the local church present at such meetings [emphasis added].

without annual conference consent is closely related to ¶ 2553, which sets forth the process for congregations deciding to leave the denomination. Even though ¶ 2553 contains no reference to ¶ 2529.1(b)(3), it is indisputable that both provisions regulate the same subject matter, namely the disaffiliation of local churches, and, thus, should be read together. Paragraph 2529.1(b)(3) does not say whether the consent must be obtained *before* or *after* the church conference action, nor does it indicate the majority (*simple* or *supermajority*) required for the annual conference action. Absent specific language to the contrary, this provision can reasonably be construed as requiring ratification (*i.e.* consent after) by simple majority of the members of an annual conference.⁷

Save for ¶ 2529.1(b)(3), the legislation under review would fall short of the third requirement and run afoul of the Constitution. “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. In deference to the legislative branch, we reluctantly declare amended Petition 90066 constitutional but stress at the same time that the General Conference bears the responsibility to legislatively address the deficiency identified in ¶ 2553.

RULING

Paragraph 41 of the Constitution governs the narrowly defined circumstance of a local church transferring from one annual conference to another but does not apply to a local church seeking to exit The United Methodist Church. Under ¶ 33 of the Constitution, the annual conference as the basic body in the Church has the reserved right to make final decisions regarding the disaffiliation of local churches within its boundaries.

Any legislation of the General Conference permitting the “gracious exit” of a local church must require at a minimum that (1) the disaffiliation resolution be approved by a two-thirds majority of the professing members of the local church present and voting at the church conference, (2) the terms and conditions, including effective date, of the agreement between the annual conference and the exiting local church be established by the conference board of trustees in accordance with applicable church law and civil laws, and (3) the disaffiliation agreement be ratified by a simple majority of the members of the annual conference present and voting.

When taken together with the consent of the annual conference pursuant to ¶ 2529.1(b)(3), Petition 90066 as amended meets all three requirements and is constitutional and provides a means for the disaffiliation of a local church.

Our ruling with respect to the disaffiliation of a local church in JCD 1377 is modified.

April 25, 2019

⁷ To construe ¶ 2529.1(b)(3) as requiring consent by the annual conference *prior* to the church conference action would be inconsistent with ¶ 2553.4, which stipulates that the terms and conditions of the disaffiliation agreement be established by the board of trustees *after* “the church conference votes to disaffiliate from The United Methodist Church.” As a matter of law and practicality, until a church conference passes the disaffiliation resolution and the board of trustees approves the terms and conditions, there is nothing for the annual conference to consent to.