

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1377

IN RE: Petition for Declaratory Decision from the Legislative Committee of the General Conference regarding the constitutionality of legislative petitions amended and/or approved by the Legislative Committee.

DIGEST OF CASE

The Judicial Council makes the following determination:

Petition 90032 is constitutional.

Petition 90033 violates ¶¶ 20, 58 and is unconstitutional.

Petition 90034 violates ¶¶ 20, 58 and is unconstitutional.

Petition 90035 violates ¶¶ 20, 58 and is unconstitutional.

Petition 90036 is constitutional.

Petition 90037 violates the principle of legality and is unconstitutional.

Petition 90038 violates the principle of legality and is unconstitutional.

Petition 90039 violates the principle of legality and is unconstitutional.

Petition 90040 violates the principle of legality and is unconstitutional.

Petition 90042 is constitutional.

Petition 90043 is constitutional.

Petition 90044 is constitutional.

Petition 90045, 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 90046 is constitutional.

Petition 90047 is constitutional.

Petition 90059 violates ¶¶ 33, 41 and is unconstitutional.

Petition 90066 violates ¶ 33 and is unconstitutional.

STATEMENT OF FACTS

On February 25, 2019, the Legislative Committee of the General Conference [hereinafter Petitioner] submitted to the Judicial Council a petition for declaratory decision to determine the constitutionality of legislative Petitions 90032-90040 (ADCA, p. 182-186), 90042-90047 (ADCA, p. 190-194), 90059 (ADCA, p. 201), and 90066 (ADCA, p. 201) as amended and/or passed by Petitioner.¹

The Council of Bishops, Revs. Keith D. Boyette, and Thomas Lambrecht filed briefs as

¹ The Petitions 90016 and 90017 (ADCA, pp. 168-169) are not before us.

Interested Parties. Lonnie Brooks, Revs. Tom Berlin, Adam Hamilton, Mark Holland, Cynthia Weems, Mike Slaughter, and Robert Zilhaber submitted briefs as *amici curiae*.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶ 2609.4 of *The Book of Discipline of the United Methodist Church, 2016* [hereinafter *The Discipline*]. As a “body created or authorized by the General Conference,” Petitioner has standing to file this request for Declaratory Decision under the same provision.

ANALYSIS AND RATIONALE

1. Constitutionality of Petition 90032

This Petition is constitutional. *See* JCD 1366 at 30-31.

2. Constitutionality of Petitions 90033, 90034, and 90035

Petitions 90033 and 90034 seek to amend ¶¶ 408.3 and 410.5 by adding the sentence: “Members of the council relations committee and administrative review committee shall not vote on this matter.”

Petition 90035 amends ¶ 422.5 by adding the sentence: “Members of the council relations committee and administrative review committee shall not have voted on the referral of requests for involuntary leave of absence or involuntary retirement.”

In JCD 1366, the Judicial Council held that Traditional Plan Petitions 2, 3, and 4 denied a bishop’s right to fair and due process because “there is no separation of prosecutorial and adjudicative functions.” *Id.* at 32. Particularly, the “same body that refers the complaint to the [Council Relations Committee] is also the final arbiter in administrative matters,” *id.*, and the members of the Administrative Review Committee “are still voting members of the [Council of Bishops], the body responsible for initiating and resolving complaints.” *Id.* at 33.

Although these amendments address the problem of comingling different functions, they fail to meet another constitutional requirement. “We note the conspicuous lack of any provision granting a bishop the right to appeal the findings of the COB. The finality of the COB’s decision is a clear violation of the constitutional guarantee of ‘a right to trial by a committee and an appeal.’” JCD 1366 at 33. Absent language granting such an appeal right, amended Petitions 90033, 90034, and 90035 violate Constitution, ¶¶ 20 and 58.

3. Constitutionality of Petition 90036

This Petition is constitutional. *See* JCD 1366 at 34.

4. Constitutionality of Petition 90037

This Petition violates the principle of legality and is unconstitutional. *See* JCD 1366 at 34-37.

5. Constitutionality of Petition 90038

This Petition violates the principle of legality and is unconstitutional. *See* JCD 1366 at 37-38.

6. Constitutionality of Petition 90039

This Petition violates the principle of legality and is unconstitutional. *See* JCD 1366 at 38.

7. Constitutionality of Petition 90040

This Petition violates the principle of legality and is unconstitutional. *See* JCD 1366 at 38.

8. Constitutionality of Petition 90042

This Petition is constitutional. *See* JCD 1366 at 46-47.

9. Constitutionality of Petition 90043

This Petition is constitutional. *See* JCD 1366 at 48.

10. Constitutionality of Petition 90044

This Petition is constitutional. *See* JCD 1366 at 49.

11. Constitutionality of Petition 90045

The second sentence of this Petition is unconstitutional. *See* JCD 1366 at 49-51.

12. Constitutionality of Petition 90046

This Petition is constitutional. *See* JCD 1366 at 51.

13. Constitutionality of Petition 90047

This Petition is constitutional. *See* JCD 1366 at 51-54.

14. Constitutionality of Petitions 90059 (Disaffiliation-Boyette) and 90066 (Disaffiliation-Taylor)

Petition 90059 adds a new ¶ 2549. Sub-paragraph b) requires for disaffiliation the affirmative vote of “fifty-five percent (55%) of the church’s professing members present and voting at a duly called church conference or two-thirds (66.7%) of the members present and voting at a duly called charge conference.” The 55-percent majority threshold is in conflict with the two-thirds majority requirement of Constitution, ¶ 41.

Petition 90066 adds a new ¶ 2553. Section 4 of this proposed provision, entitled “Decision Making Process,” sets forth the procedure for a local church to disaffiliate from The United Methodist Church. The last sentence reads: “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.” This language meets the first supermajority requirement of Constitution, ¶ 41.

However, both Petitions completely omit the annual conference as the body ratifying a local church vote to change affiliation. “By 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 1366 at 45, *quoting* Constitution, ¶ 33. If an annual conference is to play a vital role in planting new churches and ministries, it must also be given a role in the disaffiliation process of local churches within its boundaries. Petitions 90059 and 90066 infringe upon the reserved rights of the annual conference in ¶ 33 and are, therefore, unconstitutional.

RULING

The Judicial Council makes the following determination:

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February 27, 2019

Ruben Reyes was absent.

Warren Plowden, first lay alternate, participated in this decision.

Dissent

Petitions 90059 and 90066 add provisions to *The Discipline* which allow local churches

“disaffiliate based upon the local church's declaration that it is in irreconcilable conflict for reasons of conscience with the doctrine or moral teachings and requirements of *The Book of Discipline of The United Methodist Church*, or with the way in which such requirements are being enforced, or with the resolution of those matters adopted by the 2019 General Conference” (Petition 90059) and “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” (Petition 90066). Petition 90059 requires the affirmation vote of 55% of the professing members voting in a church conference or two-thirds of those voting in a charge conference. Petition 90066 requires an affirmation vote of two-thirds of the professing members voting in a church conference.

Today the Judicial Council holds this legislation to be unconstitutional for failing to comply with ¶ 41 of *The Discipline*. That paragraph allows a local church to “transfer from one annual conference to another in which it is geographically located.” It is a very narrow provision which deals only with **transfers** within the United Methodist Church, and not **disaffiliations** in which a local church leaves the annual conference **and** The United Methodist Church. Our holding to the contrary in JCD 1366 was erroneous and should be overruled.

This legislation allows a local church to follow the steps provided therein and consummate a disaffiliation without the consent of the annual conference. The Council concludes its holding of unconstitutionality with the statement that “[i]f an annual conference is to play a vital role in planting new churches and ministries, it must also be given a role in the disaffiliation process of local churches within its boundaries.” This sentence is a statement of policy which seeks to legislate for the General Conference. It is not grounded in ¶ 33 or ¶41.

We respectfully dissent.

W. Warren Plowden Jr.

Dennis Blackwell

J. Kabamba Kiboko