

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1340

IN RE: Review of a Bishop's Decision of Law regarding the Untitled Resolution passed by the Northeastern Jurisdictional Conference.

DIGEST

Jurisdictional conferences are free to adopt resolutions that are aspirational in nature, and to express their ideals and opinions so long as they do not attempt to negate, ignore, or contradict *The Book of Discipline, 2012*. They may not pass resolutions that encourage a violation of Church law or discourage the enforcement of Church law. The Untitled Resolution adopted by the Northeastern Jurisdictional Conference is contrary to the Constitution and *The Discipline* and, therefore, null and void. The bishop's Decision of Law is affirmed.

STATEMENT OF FACTS

On Thursday, July 14, 2016, in the plenary session of the 2016 Northeastern Jurisdictional Conference, while Bishop Thomas J. Bickerton was presiding, the conference addressed the resolution entitled: "Stop The Church Trials: A Moratorium by Bishops Within the Northeastern Jurisdiction." Bishop Bickerton stated that while the College of Bishops believed the NEJ Conference is the setting to have healthy conversations around these types of challenges as presented by the resolution, their review of the petition also offered some challenges. Their statement was that unless the resolution is amended it is out of order as presented. The bishop stated his willingness to receive any amendments or substitutions to make the petition in order.

Amendments were made to the resolution and the body approved the amended resolution by a vote of 108 to 58. Bishop Bickerton declared the petition out of order.

A lay delegate asked that the bishops conduct further research on whether the resolution was in order before ruling it out of order. The College of Bishops met and discussed the matter. Bishop Bickerton then reported that the College conducted a thorough review of the resolution, "Stop the Church Trials," as amended. He reported that the College discerned that the title was not compatible with the content of the petition. A motion was made and seconded to strike the title. A vote was taken on the amended resolution with the title stricken, and the body supported it by a vote of 111 to 53.

After the plenary, reconvened on the evening of Thursday, July 14, with Bishop Mark J. Webb presiding, a clergy delegate of the Jurisdictional Conference submitted the following request for a Decision of Law:

I request a Decision of Law regarding the Untitled Resolution and whether it is in order considering Paragraph 20, 523 and 525 of our Book of Discipline as well as Judicial Council Decision 96 and 886 among others.

On August 17, 2016, Bishop Webb issued a Decision of Law, which reads in relevant part:

The proposed untitled Resolution concerns the annual conferences' administration of investigations and trials involving certain aspects of human sexuality. Specifically, and in

relevant part, it “requests of all CFA’s of the Annual Conferences of the jurisdiction to state that there are no funds available for initiating of investigations and trials based upon the sexual orientation or marital status of faithful United Methodists or involving clergy for conducting same-sex weddings.”

The Judicial Council has had many occasions to address matters involving human sexuality over recent years, setting forth very clear guidelines for permissible action in relation to existing Church Law. Under these guidelines, the Judicial Council has been clear that “[a]n annual conference may adopt a resolution on human sexuality that is aspirational in nature; however, an annual conference may not negate, ignore or violate the Discipline, even when the disagreements are based upon conscientious objections to those provisions.” Decision 1120; see also Decision 1111 (“Annual conferences may not negate, ignore or violate provisions of the Discipline with which they disagree, even when the disagreements are based on conscientious objections to the provisions.”). In addition to not being allowed to directly negate, ignore or violate the Discipline, the Judicial Council has held that annual conferences may not encourage other entities to violate Church law, or discourage the enforcement of Church law. Decisions 1262 and 1292. As a matter of comity and polity, these guidelines apply equally to jurisdictional conferences.

Here, the untitled proposed Resolution is not framed in permissible aspirational terms but, instead, expressly requests annual conferences, through their CFAs, to impose financial controls or, quite possibly, eliminate funding altogether for fair process proceedings involving specific prohibited aspects of human sexuality. The Discipline does not authorize annual conferences to impose financial controls or eliminate funding for fair process proceedings based on the nature of the charges. Rather the Discipline requires annual conferences to expend funds to ensure that all complaint proceedings, including those involving human sexuality, are fair and orderly.

For example, in every Church trial the “presiding officer may have legal counsel, who shall not be the conference chancellor, at the expense of the annual conference holding the trial.” *The Discipline* ¶ 2708[1]. Likewise, the annual conference must produce a “verbatim record of all proceedings ... by stenograph or other appropriate means,” which is a mandated expense and necessary for appellate process. *Discipline* ¶ 2710[8]. If venue is changed, “the cost of prosecution shall be borne by the conference where the case originated.” *Discipline* ¶ 2708[4]. And, on appeal, the “expense for counsel for the Church shall be paid by the annual conference.” *Discipline* ¶ 2716[4].

All of these are expenses that, under the Discipline, are mandatory and must be paid regardless of the charges brought. Neither the CFAs nor the annual conferences have the discretion to impose financial controls or limit the funding for them.

Accordingly, I find that by requesting that the CFAs confirm that the annual conferences have eliminated funding for certain fair process proceedings that cannot be eliminated under the Discipline, the untitled proposed Resolution requests the CFAs and the annual conferences to violate Church law or, alternatively, discourages the enforcement of Church law. Either way, the Resolution would be null, void and of no effect.

I also find that the untitled Resolution is Unconstitutional. Under the Constitution of the United Methodist Church, only the General Conference has the authority to change trial process, including assigning a body within the Church with financial oversight over fair process proceedings. Indeed, the General Conference alone is charged with “provid[ing] a judicial system and a method of judicial procedure for the Church, except as herein provided.” Constitution ¶

16[7]. Given this broad expression of legislative authority, jurisdictional and annual conferences are preempted from enacting resolutions that would infringe upon the Discipline's fair and orderly judicial procedures. (Decision 736 [holding that annual conferences "may not adopt provisions in their sexual harassment policies and procedures which ... violate or conflict with fair process"]). Restrictions on fair process funding would also substantially interfere with the constitutionally protected "privileges of our clergy of right to trial by a committee and of appeal," which cannot be abolished. Constitution ¶ 20. The proposed untitled Resolution would also negate, ignore and violate these provisions in the Constitution.

RULING OF LAW

For these reasons, it is my ruling of law that the untitled Resolution adopted by the Northeastern Jurisdictional Conference on July 14, 2016 is out of order because it requests the CFAs and annual conferences to violate Church law, and negates, ignores and violates the Discipline and Constitution. I also rule that it is Unconstitutional.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶ 51 of the Constitution and ¶ 2609.6 of *The Book of Discipline, 2012* [hereinafter *The Discipline*] as modified by Judicial Council Decision [hereinafter JCD] 1244.

ANALYSIS AND RATIONALE

In its longstanding jurisprudence, the Judicial Council declared that annual conferences are free to adopt resolutions that are aspirational in nature, and to express their ideals and opinions so long as they do not attempt to negate, ignore, or contradict *The Discipline*. See JCD 1044, 1052, 1111. This body also ruled that an annual conference may not pass a resolution, if "the action ignores Church Law and encourages a violation of Church Law" (JCD 1262). Since jurisdictional conferences are composed of representatives of annual conferences and missionary conferences, these judicial precedents by extension apply to jurisdictional conferences as well. ¶ 23, Art. I Const.

The relevant part of the amended Untitled Resolution states:

THEREFORE BE IT RESOLVED: The Northeastern Jurisdiction hereby requests of all CFA's of the Annual Conferences of the jurisdiction to state that there are no funds available for initiating of investigations and trials based upon the sexual orientation or marital status of faithful United Methodists or involving clergy for conducting same-sex weddings and will promote the evangelistic, educational, missionary and benevolent interests of the church.

The issue here is whether the language of the Untitled Resolution is *aspirational* or *prescriptive* in nature. The record shows that the amendment was introduced to strike the prescriptive language from the original version. ("the Northeastern Jurisdiction hereby imposes a moratorium upon Bishops within the Northeastern Jurisdiction on initiating and processing of complaints..."). More specifically, we must ask if the action of the Northeastern Jurisdictional Conference, though couched in non-binding terms, ignores or encourages a violation of Church Law. Its purpose is not to request financial disclosure from Conference Councils on Finance and Administration [hereinafter CCFA] with respect to funds allocated for judicial proceedings because CCFAs are required to publish financial statements annually and make them available to individuals and entities *without* a resolution. ¶ 613.9 ("...to account to the annual conference for the disbursement of funds in accordance with budgets approved by the conference.").

Evidently, as the stricken title and text reveal, the goal was to impose a moratorium on church trials, and the means to accomplish it was not simply to state but *make certain* “that there are no funds available for initiating of investigations and trials.” The underlying intent of the Resolution is to discourage CCFAs from funding judicial proceedings, and by the same token, to encourage them to ignore and violate Church law. In other words, the Resolution was meant to be a call to action that runs counter to *The Discipline*. The bishop is correct in finding that “the untitled proposed Resolution requests the CFAs and the annual conferences to violate Church law or, alternatively, discourages the enforcement of Church law” (Decision of Law, *supra*).

While the Constitution gives jurisdictional conferences broad powers such as the authority “To promote the evangelistic, educational, missionary, and benevolent interests of the Church and to provide for interests and institutions within their boundaries” (§ 27.1, Art. V) and “To make rules and regulations for the administration of the work of the Church within the jurisdiction” (§ 27.5, Art V), it limits them with the clause “subject to such powers as have been or shall be vested in the General Conference” (*Id.*). The General Conference is vested with the power “To provide a judicial system and a method of judicial procedure for the Church” (§ 16.7, Art. IV). It preempted this legislative field by enacting Chapter Seven, entitled “Judicial Administration,” in *The Discipline*. Citing the disciplinary provisions dealing with the allocation of costs related to judicial proceedings, Bishop Webb correctly ruled that, “[g]iven this broad expression of legislative authority, jurisdictional and annual conferences are preempted from enacting resolutions that would infringe upon *The Discipline*’s fair and orderly judicial procedures” (Decision of Law, *supra*). To hold otherwise would impinge on a clergy person’s right to trial by a committee and of an appeal under § 20, Art. IV of the Constitution.

RULING

Jurisdictional conferences are free to adopt resolutions that are aspirational in nature, and to express their ideals and opinions so long as they do not attempt to negate, ignore, or contradict *The Book of Discipline, 2012*. They may not pass resolutions that encourage a violation of Church law or discourage the enforcement of Church law. The Untitled Resolution adopted by the Northeastern Jurisdictional Conference is contrary to the Constitution and *The Discipline* and, therefore, null and void. The bishop’s Decision of Law is affirmed.