

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1341

IN RE: Petition for Declaratory Decision from the South Central Jurisdictional Conference concerning the application, meaning, and effect of ¶¶ 304.3, 310.2d, 341.6, 2702.1a), b), and d) of *The Book of Discipline, 2012* in regard to the nomination, election, consecration, and/or assignment as bishop of a person who claims to be a “self-avowed practicing homosexual” or is a spouse in a same-sex marriage or civil union.

DIGEST

The Judicial Council has jurisdiction to review the Petition for Declaratory Decision of the South Central Jurisdictional Conference only with respect to the consecration of an openly homosexual bishop. To the extent that it pertains to the process of nomination, election, and assignment, the Petition is improper.

The General Conference acted within its constitutional authority when it established universal standards for the ministry in ¶¶ 304.3, 310.2(d), 341.6, 2702.1 (a), (b), and (d).

Paragraph 304.3 prohibits the consecration as bishop of a self-avowed practicing homosexual. A same-sex marriage license issued by competent civil authorities together with the clergy person’s status in a same-sex relationship is a public declaration that the person is a self-avowed practicing homosexual for purposes of ¶¶ 304.3 and 2702.1(b).

Under the long-standing principle of legality, no individual member or entity may violate, ignore, or negate Church law. It is not lawful for the college of bishops of any jurisdictional or central conference to consecrate a self-avowed practicing homosexual bishop.

Paragraph 310.2(d) requires that all clergy persons make a complete dedication to the highest ideals of the Christian life, including but not limited to, their commitment to abide by and uphold the Church’s definition of marriage and stance on homosexuality. An openly homosexual and partnered bishop is in violation of these minimum standards.

Paragraph 2702.1(a) (immorality) prohibits a person belonging to one of the six categories (bishop, clergy member of an annual conference, local pastor, clergy on honorable or administrative location, or diaconal minister) from practices that violate celibacy in singleness or fidelity in heterosexual marriage but does not apply to a bishop living in a same-sex marriage.

Paragraph 2702.1(b) (being a self-avowed practicing homosexual) incorporates the declaration in ¶ 304.3 as a chargeable offense. An openly homosexual and partnered bishop may be charged with being a self-avowed practicing homosexual.

Paragraph 2702.1(d) (disobedience to the order and discipline of The United Methodist Church) prohibits a person belonging to one of the six categories from violating a corresponding obligation to perform certain acts required or to refrain from conduct prohibited by Church law. An openly homosexual and partnered bishop is not in compliance with ¶ 310.2(d), violates a corresponding obligation imposed by Church law, and may be charged with disobedience. Bishops and clergy persons who actively participate in the consecration of a bishop who has been found to be a self-avowed practicing homosexual in an administrative and/or judicial process, are in violation of ¶ 304.3 and may be charged with disobedience.

Self-avowal does not nullify the consecration and cause removal from episcopal office but is a sufficient declaration to subject the bishop's ministerial office to review. *The Book of Discipline, 2012* [hereinafter *The Discipline*] requires the following process:

- (1) The jurisdictional or central conference committee on episcopacy must be informed regarding the declaration.
- (2) The jurisdictional or central conference may not ignore the report, but must initiate action to review the membership of the bishop's office, including filing a complaint. If the jurisdictional or central conference does not initiate such action, the president or the secretary of the college of bishops of the jurisdictional or central conference must initiate such action.
- (3) The supervisory response process must be initiated to review episcopal membership and office and have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation, and healing may be realized.
- (4) Pending the supervisory response process, the college of bishops, in consultation with the jurisdictional or central conference committee on episcopacy, may suspend the bishop from all episcopal responsibilities for a period not to exceed sixty (60) days.
- (5) A bishop may be placed in the retired relation regardless of age by a two-thirds vote of the jurisdictional or central conference committee on episcopacy if such relationship is found by said committee to be in the best interests of the bishop and/or the Church.
- (6) If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process shall monitor the fulfillment of the terms of the resolution.
- (7) If the supervisory response does not result in resolution of the matter, the president or secretary of the college of bishops may refer the matter as an administrative or judicial complaint.

At all times, the bishop's constitutional right to fair and due process must be protected. Until the completion of the administrative and/or judicial process, the bishop remains in good standing.

STATEMENT OF FACTS

On July 15, 2016, the delegates of the South Central Jurisdictional Conference voted to petition the Judicial Council to render a ruling in the nature of a declaratory decision. This Petition reads as follows:

Is the nomination, election, consecration, and/or assignment as a bishop of The United Methodist Church of a person who claims to be a "self-avowed practicing homosexual" or is a spouse in a same-sex marriage lawful under The Book of Discipline of the United Methodist Church. Specifically, What is the application, meaning and effect of ¶ 304.3, ¶ 310.2d, ¶ 341.6, and ¶ 2702.1 (a), (b), and (d) in regard to the nomination, election, consecration and/or assignment as bishop of a person who claims to be a "self-avowed practicing homosexual" or is a spouse in a same-sex marriage or civil union? Further —

- Does a public record that a nominee for the episcopacy is a spouse in a same-sex marriage disqualify that person from nomination, election, consecration and/or assignment as a bishop in The United Methodist Church?
- If a jurisdictional conference nominates, elects, consecrates, and/or assigns a person who, by virtue of being legally married or in a civil union under civil law to a same sex partner, would be subject to a chargeable offense, is the action of the jurisdictional conference null and void?
- Is it lawful for one or more of the bishops of a jurisdiction to consecrate a person as bishop when the bishop-elect is known by public record to be a spouse in a same-sex marriage or civil union?
- When a bishop, district superintendent, district committee on ordained ministry, Board of Ordained Ministry, or clergy session becomes aware or is made aware that a clergy person is a spouse in a same sex marriage or civil union of public record, does such information

in effect and in fact amount to a self-avowal of the practice of homosexuality as set forth in ¶ 304.3, related footnotes and related Judicial Council Decisions?

The maker of the motion, Dixie Brewster [hereinafter Petitioner], the Western Jurisdiction College of Bishops [hereinafter Respondent], and numerous *amici curiae* submitted briefs and exhibits in support of and opposition to the Petition. An oral hearing was conducted on April 25, 2017. Appearing on behalf of Petitioner was Rev. Keith Boyette, and on behalf of Respondent Richard Marsh, Assistant Counsel Llewelyn G. Pritchard and Bishops of the Western Jurisdictional College of Bishops Robert T. Hoshibata, Elaine J.W. Stanovsky, Minerva G. Carcaño, and Karen Oliveto.

JURISDICTION

The provisions granting us the jurisdiction to review a Petition for Declaratory Decision are ¶¶ 2610.1 and 2610.2(f). Paragraph 2610.1, entitled “Declaratory Decisions,” states:

The Judicial Council, on petition as hereinafter provided, shall have jurisdiction to make a ruling in the nature of a declaratory decision as to the constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof or of any act or legislation of a General Conference; and the decision of the Judicial Council thereon shall be as binding and effectual as a decision made by it on appeal. [emphasis added]

The underlined portion of this provision determines the scope of review. In other words, it controls *how far* our examination can go by limiting it to questions “as to the constitutionality, meaning, application, or effect of *The Discipline* or any portion thereof or of any act or legislation of a General Conference.” The second provision, ¶ 2610.2(f), reads:

The following bodies in The United Methodist Church are hereby authorized to make such petitions to the Judicial Council for declaratory decisions: ... (f) any jurisdictional conference on matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein.

It seeks to answer two questions: *Who* can make the petition? And *what* must the petition address? The former pertains to *standing* and the latter to *subject matter jurisdiction*. As to standing, the jurisdictional conference is listed as a body authorized to make a petition. Since it meets the criterion of “any jurisdictional conference” under item (f), the South Central Jurisdictional Conference has standing to petition the Judicial Council for a Declaratory Decision. Regarding subject matter jurisdiction, item (f) mentions “matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein.” (*Id.*) [Emphasis added] Unlike the first one, the second question does not lend itself to easy answers. Here it is appropriate to state again our long-standing policy on jurisdiction as formulated in JCD 1114:

The Judicial Council has only such jurisdiction as is expressly granted to it by the Constitution and by the General Conference. Our lodestar principle has been that we may not assume jurisdiction to render a declaratory decision unless jurisdiction has been clearly vested in the Judicial Council... Our long-standing policy is to construe our jurisdiction strictly and with restraint.

Since this Petition for Declaratory Decision essentially asks us to review the acts of nomination, election, consecration, and assignment as bishop of a reportedly homosexual clergy person, the question of subject matter jurisdiction needs to be examined and determined separately for each act. Therefore, we must determine whether the episcopal nomination, election, consecration, and assignment constitute “matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein” to trigger jurisdiction under ¶ 2610.2(f).

I. Nomination

The annual conference is the primary body that nominates candidates for episcopal elections. “An annual conference, in the session immediately prior to the next regular session of the jurisdictional or central conference, may name one or more nominees for episcopal election” (§ 405.1). In most cases, as in this one, episcopal nominations are acts of the annual conference. The authority to review acts of an annual conference is granted by § 2609.6, which requires the Judicial Council to review a bishop’s decision of law. The Petition, however, was made under § 2610.2(f). In JCD 452, this body ruled that “the question must have a direct and tangible effect on the work of the body submitting the petition in order for the Judicial Council to have jurisdiction” [emphasis added] and affirmed this principle in JCD 1114. Concerning petitions for declaratory decisions from an annual conference, the Judicial Council in JCD 1160, said that it “must be germane to the regular business, consideration, or discussion of the annual conference and must have a direct and tangible effect on the work of the annual conference session.” [Citing JCD 29, 33, 301 and 452] An episcopal nomination affects directly the annual conference where it was made. Since the Petition originated in a conference *other than* the one making the nomination, it may not place the acts of the latter under judicial scrutiny. We, therefore, deny jurisdiction to review the nomination for episcopal election under § 2610.2(f).

II. Election

Jurisdictional and central conferences have the power and duty to elect bishops. Paragraph 27, Art. V, § 31, Art. IV Const. The Constitution specifically states, “The bishops shall be elected by the respective jurisdictional and central conferences...” (§ 46, Art. II Const.). This responsibility is reserved exclusively to jurisdictional and central conferences where the nomination takes place. The process of episcopal election is set forth in § 405.2. Therefore, episcopal elections are acts of jurisdictional or central conferences. Petitioner and *amici curiae* postulate that one jurisdictional conference has standing to request judicial review of an act of another jurisdictional conference because the election of an openly homosexual bishop qualifies as “matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein” (§ 2610.2[f]). This would contradict § 2609.3, which stipulates that the bishops and delegates of the jurisdictional or central conference where the act was taken may appeal to the Judicial Council. It essentially bars one jurisdictional or central conference (i.e. petitioning conference) from challenging the acts of another (i.e. electing conference). The General Conference would not have enacted this provision if jurisdiction could be obtained under § 2610.2(f). The bishops and delegates of the electing jurisdictional conference, and *only they*, have standing to request judicial review of the election of a reportedly homosexual bishop. No such appeal was made. Consequently, we lack jurisdiction to review the Petition as far as it pertains to the episcopal election.

III. Consecration

Unlike the nomination and election, the consecration of bishops is a connectional and covenantal act done *by and for* The United Methodist Church. The consecration of bishops is an *act of the Church*, not of the jurisdictional conference where the election takes place. Its distinctively connectional nature is underscored by the constitutional authority of the General Conference to determine the time and place, thereby ensuring continuity and consistency across all parts of the connection. Par. 46, Art. II Const. Further evidence of its church-wide import can be found in the language of § 415.6 stating, “As these [consecration] services are acts of the whole Church, text and rubrics shall be used in the form approved by the General Conference.” [emphasis added] The bishops who participate in the service of consecration act on behalf of the Church. During the examination by the presiding bishop, the bishop-elect vows to be an episcopal leader to “all God’s people.” (*The United Methodist Book of Worship*, pp. 702-704) The service of consecration, though carried out by the college of bishops of *one* jurisdictional conference, affects *all* jurisdictions and jurisdictional conferences and *all* members of The United Methodist Church. Since episcopal consecration services are distinctively connectional and covenantal, the Petition is not seeking judicial review of an act of another conference but an “act of the whole Church” (§ 415.6), which has a direct and tangible effect on the work of the petitioning body and, therefore, is permissible under § 2610.2(f). This important distinction is consistent with the longstanding policy whereby the “Judicial

Council has continued to construe such jurisdiction narrowly and to resist requests from one annual conference that affect work in another annual conference” (JCD 1272), and preserves the autonomy of conferences. For this reason, we have jurisdiction to review only the consecration of an openly homosexual bishop. However, our ruling must *not* be interpreted as opening the door for one jurisdictional or central conference to challenge the acts of another through petitions for declaratory decision. Jurisdiction is warranted *only* because of the unique nature and role of episcopal consecration services in our polity.

IV. Assignment

While the manner in which bishops are consecrated is fixed by the General Conference, the process of assignment is controlled by the jurisdictional conference. The Constitution grants jurisdictional conferences the authority to “make rules and regulations for the administration of the work of the Church within the jurisdiction, subject to such powers as have been or shall be vested in the General Conference” (§ 27.5, Art. V. Const.). [emphasis added] *The Discipline*, in § 406.1, specifically provides, “The jurisdictional committee on episcopacy, after consultation with the College of Bishops, shall recommend the assignment of the bishops to their residences for final action by the jurisdictional conference.” [Emphasis added] These provisions state unambiguously that the decision over *how* and *where* bishops are assigned is the exclusive responsibility of the concerned jurisdictional conference. Similar to the election, the assignment of bishops is an act reserved exclusively to the respective jurisdictional conference and, consequently, outside the jurisdictional grant of § 2610.2(f).

ANALYSIS AND RATIONALE

I. Scope of Review

We are limited to questions concerning the constitutionality, meaning, application, or effect of the disciplinary provisions listed in the Petition as they pertain to *the consecration* of an openly homosexual and partnered bishop. These provisions are: §§ 304.3, 310.2d, 341.6, and 2702.1 (a), (b), and (d). We shall examine them in this order.

II. Constitutional Authority of General Conference

Under our Constitution, the General Conference

shall have full legislative power over all matters distinctively connectional...[t]o define and fix the powers and duties of elders, deacons, supply preachers, local preachers, deaconesses, and home missionaries...[t]o define and fix the powers, duties, and privileges of the episcopacy...and to provide for the discontinuance of a bishop because of inefficiency or unacceptability. (§ 16, Art. IV Const.).

It is settled Church law that the General Conference has full legislative authority to set uniform standards for the ministry, which annual conferences shall not abrogate or modify. Therefore, it acted within its constitutional powers when it legislated §§ 304.3, 310.2(d), 341.6, and 2702.1 (a), (b), and (d). The annual conference may enact additional requirements that are not in conflict with the letter or intent of these disciplinary provisions. JCD 313, *aff'd*, JCD 318, 536, 823, 1321.

III. § 304.3

This provision reads:

While persons set apart by the Church for ordained ministry are subject to all the frailties of the human condition and the pressures of society, they are required to maintain the highest standards of holy living in the world. The practice of homosexuality is incompatible with Christian teaching. Therefore, self-avowed practicing homosexuals are not to be certified as candidates, ordained as ministers, or appointed to serve in The United Methodist Church. [footnotes omitted]

a) *Self-avowed practicing homosexual*

Footnote 1 to ¶ 304.3 defines “self-avowed practicing homosexual.” The term “self-avowed practicing homosexual” refers to a person making a *public declaration* that contains a *personal* and *objective* element. This is understood to mean a clergy person who:

- (i) openly acknowledges to a bishop, district superintendent, district committee on ordained ministry, board of ordained ministry, or clergy session (*public declaration*) that
- (ii) he or she is a homosexual (*personal* element),
- (iii) and engaged in sexual acts with a person of the same gender (*objective* element).

Only a public statement containing both personal and objective elements constitutes self-avowal within the meaning of ¶ 304.3. JCD 920, *aff'd*, JCD 944, 980, 1027, 1105.

b) *Same-sex marriage license and marital status*

The question arises as to whether a person legally married and living in a same-sex relationship is a “self-avowed practicing homosexual.” Marriage licenses issued by competent civil authorities under the laws of the state or province of the country where the clergy person resides are public records to which the Church must give credence within the framework of its institutions, laws, and procedures. A provision enacted by the Uniting Conference of 1939, which seeks to interpret Article XXIII, states:

Of the Duty of Christians to the Civil Authority

It is the duty of all Christians, and especially of all Christian ministers, to observe and obey the laws and commands of the governing or supreme authority of the country of which they are citizens or subjects or in which they reside, and to use all laudable means to encourage and enjoin obedience to the powers that be. [*The Discipline*, p. 70].

Though not part of the Constitution, this legislative enactment is a reminder that the Church, as the community of all Christians, may not disregard the lawful acts of civil authorities when they take the form of public solemnization and recording of marriage. As a public record, the same-sex marriage license, therefore, has the same effect as the personal element of “being a homosexual” in a public declaration. The marriage license alone, however, is not proof that the couple is engaged in physical sex. Respondent and *amici curiae* assert that marriage does not presume the act of physical sex between spouses or require physical union to be fulfilling. However, common understanding and practice in many parts of the world associate marital union with physical (sexual) union between spouses. We have no compelling reason to depart from this understanding of human relationships and find that a married clergy person’s status in a committed same-sex relationship is sufficient to create the rebuttable presumption that the couple is engaged in physical sex, thus providing the objective element of “engagement in sexual acts with a person of the same gender” of a public declaration. The presumption can be defeated by proffering rebuttal evidence to the trier of fact in an administrative and/or judicial process. For this reason, taken together, being legally married *and* living in a same-sex relationship is a public declaration containing both personal and objective elements and, therefore, constitutes *self-avowal* under ¶ 304.3.

c) *Prohibition of certification, ordination, and appointment*

Respondent claims that nothing in *The Discipline* expressly prohibits the consecration of an openly homosexual bishop, pointing out to ¶ 403, which provides, “Bishops and superintendents are elders in full connection.” The only qualification a person must have to be consecrated bishop is that he or she be an elder in full connection and in good standing at the time of consecration. This argument is erroneous because ¶ 304.3 expresses a qualification in the form of a prohibition. A ministerial candidate or minister *shall not* be a “self-avowed practicing homosexual” to be certified, ordained, and appointed to serve in The United Methodist Church. Consequently, if a person is a self-avowed practicing homosexual, he or she lacks the necessary qualification to be certified, ordained, and appointed. In our polity, bishops and elders are not two distinct orders but ministries. ¶ 403.1. Bishops remain elders after their consecration but

assume the role of general superintendents of the Church. ¶ 401. They are not exempt from the prohibition in ¶ 304.3 because they are elders in full connection. A clergy person who does not qualify for certification, ordination, and appointment on account of being a self-avowed practicing homosexual, is not qualified for consecration either. What is true for elders must also be true for elders who are bishops. Under the long-standing principle of legality, *The Discipline* contains the law of The United Methodist Church governing the conduct of lay and clergy members and regulating all aspects of Church life. No individual member or entity shall violate, ignore, or negate Church law. *See* JCD 96, 886, 920, 980, 1120, 1185. Therefore, it is not lawful for the college of bishops of any jurisdictional or central conference to consecrate as bishop a person who is a self-avowed practicing homosexual.

IV. ¶ 310.2(d)

This provision requires candidates for licensed or ordained ministry “to make a complete dedication of themselves to the highest ideals of the Christian life as set forth in ¶¶ 103-105; 160-166.” The footnote to this paragraph says that the intent of the General Conference in adopting ¶ 310.2d is “to elevate the standards by calling for a more thoroughgoing moral commitment by the candidate.” Although the Social Principles *per se* do not have the status of Church law, ¶ 310.2d incorporates ¶¶ 161B and 161F into “the highest ideals of the Christian life” by way of the citation “as set forth in ¶¶ 103-105; 160-166” so that they have the effect of Church law. The General Conference defined marriage as a union between a man and a woman and declared it to be the only form of marriage recognized by the Church to the exclusion of all other forms of marriages and unions. *See* JCD 1185. Read in its total context, ¶ 310.2(d) stipulates that ministerial candidates must agree to make a complete dedication of themselves to the highest ideals of the Christian life, *including but not limited to*, the Church’s stance on marriage and homosexuality as stated in ¶¶ 161B and 161F. Since a partnered homosexual clergy person is living in a union not recognized and permitted by Church law, he or she does not meet the minimum standards for certification, licensing, and ordination. If our ministerial candidates and ministers must meet these minimum standards, our bishops are all the more expected to dedicate themselves to the highest ideals of the Christian life not the least because

the role of the bishop is to faithfully practice, model and lead the spiritual disciplines of our faith and to call and inspire the clergy and laity within the Church to practice the Christian disciplines in their individual lives through the tradition of personal holiness. (¶ 403.1a) [emphases added]

Consequently, the complete dedication of oneself to the highest ideals of the Christian life is a minimum requirement for both the ordained ministry *and* episcopacy in The United Methodist Church. An openly homosexual and partnered bishop is *not* in compliance with these minimum standards. While self-avowal is inconsistent with ¶ 310.2(d), it does not automatically disqualify a bishop but is a sufficient declaration to subject his or her episcopal office to review under ¶ 413.

V. ¶ 341.6

Paragraph 341 contains a list of unauthorized conduct. Its sub-paragraph 6 states: “6. Ceremonies that celebrate homosexual unions shall not be conducted by our ministers and shall not be conducted in our churches.”

There is no indication in the record that a homosexual union took place. Since it clearly refers to the celebration of “homosexual unions,” this provision does not pertain to the consecration of an openly homosexual bishop.

VI. ¶ 2702.1(a), (b), (d)

a) Immorality

Here the question is whether a clergy person living in a same-sex marriage of public record commits immorality. Petitioner asserts that, since same-sex marriage is not recognized and permitted by Church

law, ministers must be in one of two permitted marital statuses, celibately single *or* faithfully married, and, therefore, anyone whose marital status does not fit either one may be charged with immorality under ¶ 2702.1(a). We disagree. This view is not supported by the disciplinary language or judicial precedent. *The Discipline* states that a clergy person who is “not faithful in a heterosexual marriage” is subject to this chargeable offense, not someone who is “not living in a heterosexual marriage.” The difference here is between illicit *sexual practice* and *marital status*. Immorality prohibits sexual practice, *not* marital status. The prohibited practice here is adultery and non-celibacy. The Judicial Council ruled that, “persons who have a heterosexual orientation who practice that orientation in prohibited ways – by not practicing fidelity in marriage and celibacy in singleness as required by ¶ 304.2 – are subject to chargeable offenses” (JCD 1027). [emphasis added] Further, in JCD 1151, we upheld the conviction of a clergy person charged with, *inter alia*, immorality “who is married, [and] engaged in an ongoing adulterous, sexual relationship with a woman whom he knew to be married.” [Emphasis added] Likewise, in JCD 1332, we affirmed the ruling of a Committee on Appeals, which held that immorality applied to acts of adultery committed by a clergy person while in a heterosexual marriage. Our jurisprudence on this chargeable offense does not support Petitioner’s claim that immorality pertains to clergy persons who are spouses in a same-sex marriage.

b) Practices declared to be incompatible with Christian teachings

(i) Being a self-avowed practicing homosexual

To be considered “a self-avowed practicing homosexual” under ¶ 304.3, a person must make a public declaration that contains a *personal* and *objective* element. *See supra*. The question arises as to whether ¶ 2702.1(b) applies the same standard for “being a self-avowed practicing homosexual.” In JCD 984, the Judicial Council ruled that, “[i]n determining what constitutes a chargeable offense under ¶ 2702.1(b) of the *Discipline*, one must look to the pronouncements of the General Conference codified in the *Discipline*,” and ¶ 304.3 being one of them. Under the rationale of JCD 984, the legal standard developed under ¶ 304.3 applies to ¶ 2702.1(b). For a person to be charged with “being a self-avowed practicing homosexual,” he or she must:

- (1) openly acknowledge to a bishop, district superintendent, district committee on ordained ministry, board of ordained ministry, or clergy session (*public declaration*) that
- (2) he or she is a homosexual (*personal* element)
- (3) and engaged in sexual acts with a person of the same gender (*objective* element).

A person’s same-sex marital status is a public declaration containing both personal and objective elements, and, therefore, constitutes self-avowal under ¶ 304.3. *See supra*. Such person may be charged with “practices declared to be incompatible with Christian teachings,” particularly, with “being a self-avowed practicing homosexual” under ¶ 2702.1(b), but can submit rebuttal evidence to the trier of fact in an administrative and/or judicial process to defeat the presumption.

(ii) Conducting ceremonies which celebrate homosexual unions and conducting same-sex wedding ceremonies

The record contains no reference that such ceremonies were conducted. Since it applies to clergy persons who conduct or officiate one of these covenantal acts, this chargeable offense cannot be invoked to review the legality of an episcopal consecration.

c) Disobedience to the order and discipline of The United Methodist Church

To meet the *personal* element of this chargeable offense, a person must belong to one of the six categories listed in ¶ 2702.1: bishop, clergy member of an annual conference, local pastor, clergy on honorable or administrative location, or diaconal minister. In addition, disobedience carries with it the corresponding obligation to perform acts required or to refrain from conduct prohibited by Church law. The *objective* element is the violation of this corresponding obligation by act or omission. A person may be charged

with this offense only when he or she fulfills both personal and objective elements. By their ordination, clergy members are

accountable to The United Methodist Church, accept its Doctrinal Standards and *Discipline* and authority, accept the supervision of those appointed to this ministry, and be prepared to live in the covenant of its ordained ministers (§ 304.1[j]).

In JCD 694, the Judicial Council ruled that “It is the responsibility of pastors in charge to perform their duties in compliance with the Discipline and be obedient to the Order and Discipline of the Church.” Later, in JCD 833, the Council stated that “the legislative enactments of the General Conference regarding the duties and powers of ministers are binding on ministers in the connection and their conduct must conform to those provisions.” [emphasis added] Therefore, clergy members whose conduct does not conform to Church law or who fail to be obedient to the order and discipline of the Church may be charged with disobedience.

(i) Living in same-sex marriage or union

To meet the requirements for certification, licensing, ordination, and remaining in good standing ministerial candidates and ministers must agree to make a complete dedication of themselves to the highest ideals of the Christian life, including but not limited to, upholding the Church’s stance on marriage and homosexuality. § 310.2(d). *See supra*. Put differently, compliance with the definition of marriage as a union between a man and a woman is a corresponding obligation all clergy members must fulfill. In adopting §§ 161B and 161F and incorporating them into § 310.2(d) by way of reference, the General Conference made it amply clear that the *only* form of marriage recognized and permitted by Church law for clergy members is the union between a man and a woman. The Judicial Council affirmed this position in JCD 1185, stating, “The Church’s definition of marriage as contained in *The Discipline* is clear and unequivocal and is limited to the union of one man and one woman.”

A partnered homosexual bishop is living in a marriage or union *not* recognized and permitted by the Church, does not comply with § 310.2(d), and, therefore, violates a corresponding obligation imposed by Church law. Since a partnered homosexual clergy person fulfills the personal and objective elements, he or she may be charged with disobedience to the order and discipline of The United Methodist Church.

(ii) Participation in the consecration of an openly homosexual and partnered bishop-elect

The Petition asks if it is lawful for one or more of the bishops of a jurisdiction to consecrate a person as bishop when the bishop-elect is known by public record to be a spouse in a same-sex marriage or civil union. The answer depends on whether the bishop has been found to be “a self-avowed practicing homosexual” in an administrative and/or judicial process. Although § 304.3 disallows the consecration of an openly homosexual bishop, only the trier of fact in an administrative and/or judicial process can properly determine if such person meets the criteria of “a self-avowed practicing homosexual.” Absent such determination, a clergy person remains in good standing. There is no provision in *The Discipline* making it lawful to deny consecration to a duly elected episcopal candidate in good standing without fair and due process, even if there are serious concerns about his or her same-sex marital status at the time of consecration. Episcopal leaders who participate in the service of consecration of a duly elected bishop in good standing are fulfilling a responsibility specifically assigned to them by *The Discipline*. § 415.6.

However, *after* a clergy person has been found to be “a self-avowed practicing homosexual” in an administrative and/or judicial process, the consecration of such person constitutes *prohibited conduct*. At this stage, failure to comply with the prohibition violates the corresponding duty and, therefore, fulfills the objective element of disobedience. Individuals belonging to one of the six categories listed, such as bishops and clergy members, who *actively* participate in the consecration service are subject to the complaint process and may be charged with disobedience. The prohibited conduct must have the form of leadership or provide some tangible assistance to qualify as act of disobedience. The presiding bishop,

bishops laying hands on bishops-elect, worship leaders, and worship assistants carry out essential roles as active participants in the service of consecration and, therefore, may be charged with disobedience.

VII. Procedural Requirements

Although a self-avowed practicing homosexual clergy person cannot be legally consecrated as bishop, self-avowal does *not* nullify the consecration and cause removal from office but amounts to a sufficient declaration to subject such person's membership in his or her ministerial office to review under ¶ 413 of *The Discipline*. In JCD 920, our landmark ruling, we outlined the process that must be followed when a clergy person makes a public declaration containing personal and objective elements:

Where a clergy person makes a declaration such as that quoted above, a bishop may not take unilateral action not to appoint such a person. The annual conference must be informed of the declaration, and the annual conference, and/or the resident bishop or district superintendent must initiate proceedings to subject her membership in her ministerial office to review under ¶ 359.1 [now ¶ 363]. While proceedings are conducted to address the issues of character and conference relations according to fair and due process, the bishop, with the recommendation of the executive committee of the board of ordained ministry, [may] place the clergy person on suspension under ¶ 359.1(c) [now ¶ 363.1(d)]. The clergy person [may] be relieved of all clergy duties, but not from appointment during such suspension. [JCD 920, *as modified by*, JCD 930. *See* JCD 944, 980, 1027, 1105]

Based on JCD 920 as modified by JCD 930, the following process applies for a purportedly openly homosexual and partnered bishop:

- (1) The jurisdictional or central conference committee on episcopacy must be informed regarding the declaration per ¶ 50, Art. IV Const. and ¶¶ 413.3 and 523, since bishops elected by or administering in a jurisdictional or central conference are amenable for their conduct to their jurisdictional or central conference.
- (2) The jurisdictional or central conference may not ignore the report, but must initiate action to review the membership of his or her episcopal office, including filing a complaint. If the jurisdictional or central conference does not initiate such action, then the president or the secretary of the college of bishops of the jurisdictional or central Conference must initiate such action. ¶413.2
- (3) The supervisory response process must be initiated to review episcopal membership and office and have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation, and healing may be realized. ¶ 413.1
- (4) Pending the supervisory response process, the college of bishops, in consultation with the jurisdictional or central conference committee on episcopacy, may suspend the bishop from all episcopal responsibilities for a period not to exceed sixty (60) days. ¶ 413.3(a).
- (5) A bishop may be placed in the retired relation regardless of age by a two-thirds vote of the jurisdictional or central conference committee on episcopacy if, after not less than a thirty-day (30) notice in writing is given to the affected bishop and hearing held, such relationship is found by said committee to be in the best interests of the bishop and/or the Church. ¶ 408.3(a).
- (6) If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process shall monitor the fulfillment of the terms of the resolution. ¶413.3(d).
- (7) If the supervisory response does not result in resolution of the matter, the president or secretary of the college of bishops may refer the matter as an administrative or judicial complaint. ¶413.3(d).

“At all times, the constitutional right of the clergy person to trial by a committee and an appeal shall be preserved, ¶¶ 20 and [58], and fair and due process shall be observed.” (JCD 920)

RULING

The Judicial Council has jurisdiction to review the Petition for Declaratory Decision of the South Central Jurisdictional Conference only with respect to the consecration of an openly homosexual bishop. To the extent that it pertains to the process of nomination, election, and assignment, the Petition is improper.

The General Conference acted within its constitutional authority when it established universal standards for the ministry in ¶¶ 304.3, 310.2(d), 341.6, 2702.1 (a), (b), and (d).

Paragraph 304.3 prohibits the consecration as bishop of a self-avowed practicing homosexual. A same-sex marriage license issued by competent civil authorities together with the clergy person's status in a same-sex relationship is a public declaration that the person is a self-avowed practicing homosexual for purposes of ¶¶ 304.3 and 2702.1(b).

Under the long-standing principle of legality, no individual member or entity may violate, ignore, or negate Church law. It is not lawful for the college of bishops of any jurisdictional or central conference to consecrate a self-avowed practicing homosexual bishop.

Paragraph 310.2(d) requires that all clergy persons make a complete dedication to the highest ideals of the Christian life, including but not limited to, their commitment to abide by and uphold the Church's definition of marriage and stance on homosexuality. An openly homosexual and partnered bishop is in violation of these minimum standards.

Paragraph 2702.1(a) (immorality) prohibits a person belonging to one of the six categories (bishop, clergy member of an annual conference, local pastor, clergy on honorable or administrative location, or diaconal minister) from practices that violate celibacy in singleness or fidelity in heterosexual marriage but does not apply to a bishop living in a same-sex marriage.

Paragraph 2702.1(b) (being a self-avowed practicing homosexual) incorporates the declaration in ¶ 304.3 as a chargeable offense. An openly homosexual and partnered bishop may be charged with being a self-avowed practicing homosexual.

Paragraph 2702.1(d) (disobedience to the order and discipline of The United Methodist Church) prohibits a person belonging to one of the six categories from violating a corresponding obligation to perform certain acts required or to refrain from conduct prohibited by Church law. An openly homosexual and partnered bishop is not in compliance with ¶ 310.2(d), violates a corresponding obligation imposed by Church law, and may be charged with disobedience. Bishops and clergy persons who actively participate in the consecration of a bishop who has been found to be a self-avowed practicing homosexual in an administrative and/or judicial process, are in violation of ¶ 304.3 and may be charged with disobedience.

Self-avowal does not nullify the consecration and cause removal from episcopal office but is a sufficient declaration to subject the bishop's ministerial office to review. *The Discipline* requires the following process:

- (1) The jurisdictional or central conference committee on episcopacy must be informed regarding the declaration.
- (2) The jurisdictional or central conference may not ignore the report, but must initiate action to review the membership of the bishop's office, including filing a complaint. If the jurisdictional or central conference does not initiate such action, then the president of the president or the secretary of the college of bishops of the jurisdictional or central conference must initiate such action.

- (3) The supervisory response process must be initiated to review episcopal membership and office and have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation, and healing may be realized.
- (4) Pending the supervisory response process, the college of bishops, in consultation with the jurisdictional or central conference committee on episcopacy, may suspend the bishop from all episcopal responsibilities for a period not to exceed sixty (60) days.
- (5) A bishop may be placed in the retired relation regardless of age by a two-thirds vote of the jurisdictional or central conference committee on episcopacy if such relationship is found by said committee to be in the best interests of the bishop and/or the Church.
- (6) If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process shall monitor the fulfillment of the terms of the resolution.
- (7) If the supervisory response does not result in resolution of the matter, the president or secretary of the college of bishops may refer the matter as an administrative or judicial complaint.

At all times, the bishop's constitutional right to fair and due process must be protected. Until the completion of the administrative and/or judicial process, the bishop remains in good standing.

Member Beth Capen did not participate in this decision.
First Alternate Warren Plowden participated.

Dissenting Opinion

We respectfully dissent. We would decline to take jurisdiction of this petition. We are prayerfully aware of the importance to the future of our church of the issues before us. We also know with certainty that decisions must be made to bring appropriate closure to the gaping differences among us on the faithful way to resolve these questions. Our difference with the majority revolves simply around which are the proper body or bodies for making these decisions. This Judicial Council, like all judicial bodies, is restricted to deciding those matters over which we clearly have jurisdiction. We have consistently held:

The Judicial Council has only such jurisdiction as is expressly granted to it by the Constitution and by the General Conference. Our lodestar principle has been that we may not assume jurisdiction to render a declaratory decision unless jurisdiction has been clearly vested in the Judicial Council. Our long-standing policy is to construe our jurisdiction strictly and with restraint. JCD 1114.

The majority relies on consecration of bishops as the jurisdictional "hook" that gives jurisdiction to the Judicial Council because consecration of bishops is an act on behalf of the whole church. We are convinced that this is an elevation of consecration of bishops that has no limiting meaning for jurisdictional purposes. After all, no consecration can occur without nomination or election. Or, take baptism—it is an act clearly carried out on behalf of the whole church. Indeed, is not connectionalism itself a principle that defines acts, legislation, decisions, and anything done in furtherance of connectionalism "acts on behalf of the entire church"? In short, taking jurisdiction in this case renders meaningless the jurisdictional limitations in all of *Discipline* 2012 ¶ 2610.2. The Discipline is quite clear on the jurisdictional limits for petitioning for a declaratory decision. Because we find no authority for taking jurisdiction in this case in the Constitution of the United Methodist Church, *the Discipline*, or any Judicial Council decision, we must respectfully dissent.

In our view, the determination of our jurisdiction in this matter requires a reference to the Constitution of The United Methodist Church to ascertain the reach of powers granted under the Constitution to the Council of Bishops, the General Conference, and jurisdictional conferences. The constitutional provisions and provisions of the

Discipline that inform our decision are: Constitution ¶47, Art.3, *Book of Discipline 2012*, Constitution ¶16, Art. IV (2), and Constitution ¶ 27., Art. V(1). These provisions spell out clearly the powers given to each body.

Paragraph 47, Article III states, in relevant part: There shall be a Council of Bishops composed of all the bishops of The United Methodist Church. The council shall...plan for the general oversight and promotion of the temporal and spiritual interests of the *entire Church* and for carrying into effect the rules, regulations, responsibilities prescribed and enjoined by the General Conference.... [emphasis added]

Paragraph 16, Article IV(5) states: The General Conference shall have full legislative powers over all matters distinctively connection all, and in the exercise of this power shall have authority as follows:....To define and fix the powers, duties, and privileges of the episcopacy.

Paragraph 27, Article V(1) states: The jurisdictional conferences shall have the following powers and duties and such others as may be conferred by the General Conference: (1). To promote the evangelistic, educational, missionary, and benevolent interests of the Church and to provide for interests and institutions *within their boundaries* (emphasis added).

Taken together, these constitutional provisions make clear that the Council of Bishops and the General Conference have general responsibility and powers over the entire church. The limits of the power of jurisdictional conferences are "interests within their boundaries". Thus, that which the Constitution limits cannot be expanded except by amendment of the Constitution which has clearly not happened in this case. Certainly even an arguable power to petition for declaratory decisions cannot overcome the limitations on the grant of power in the Constitution. The general organization of the United Methodist Church makes clear that the two bodies with general powers over the entire church are the Council of Bishops and the General Conference. All other bodies are either subdivisions or constituent parts of the whole.

It is against the backdrop of this Constitutional structure and the organization of the entire church that the Judicial Council is asked to decide jurisdiction in this case. The jurisdiction of the Judicial Council to review declaratory decisions is based upon the grants of jurisdiction found in ¶¶ 2610.1 and 2610.2(f) of the *Discipline*.

Paragraph 2610.1 is the general grant of jurisdiction which reads in part:

The Judicial Council, on petition, as hereinafter provided, shall have jurisdiction to make a ruling in the nature of a declaratory decision as to the constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof or of any act or legislation of a General Conference....

Paragraph 2610.2 defines the bodies in The United Methodist Church which are authorized to make such petitions to the Judicial Council for declaratory decisions. The entirety of ¶ 2610.2 lists the discrete bodies so authorized. The relevant portions of that section for this appeal are ¶ 2610.2 (a), (b), and (f) which state:

The following bodies in The United Methodist Church are hereby authorized to make such petitions to the Judicial Council for declaratory decisions: (a)the General Conference, (b) the Council of Bishops;....(f)any jurisdictional conference *on matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein*...(emphasis added).

The language of these sections, taken together with the relevant provisions of the Constitution, is fully consistent with the constitutional structure of the church so long as subsection (f) is interpreted in light of the constitutional restriction that the powers of jurisdictional conferences is limited by "interests within their boundaries." That limitation on the powers of jurisdictional conferences gives substantive meaning to the phrase "on matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein in 2610.2 (f)).

Our long-standing precedent holds that the above language limits the jurisdiction of the Judicial Council to those matters relating to or affecting the jurisdiction or jurisdictional conference submitting the petition. Although the plain language of the provision, read alone, suggests the possibility than any jurisdiction could raise any declaratory question affecting any other jurisdiction or the whole church, the mere statement of that possibility proves that the

provision cannot mean that. Otherwise, the entire phrase "relating to or affecting jurisdictions or jurisdictional conferences or the work therein" would be superfluous and without meaning. Under that reading, the Judicial Council would be given jurisdiction over declaratory decisions which would equate with the full scope of the jurisdiction granted under ¶ 2610.1.

This is precisely the effect of the majority's holding that there is jurisdiction here. By taking jurisdiction in this case because, in the majority's view, consecration of bishops is an act of the entire church, the majority has made the power of jurisdictions and jurisdictional conferences to invoke the jurisdiction of the Judicial Council for declaratory decisions coterminous with the powers of both the General Conference and the Council of Bishops. This thereby renders meaningless the limitation in 2610.2(f) that the Judicial Council has jurisdiction to issue declaratory decisions sought by jurisdictions or jurisdictional conferences "affecting the body filing the petition".

The current *Rules of Practice and Procedure* of the Judicial Council codify the long-standing precedent of this body confirming the consistent reading of ¶2610 (f):

Such petitions must meet two conditions: (1) it must be a matter which affects the body filing the petition and (2) it must involve the constitutionality, meaning, application, or effect of the *Discipline* or some portion thereof, or some act of the General Conference (Rules of Practice and Procedure of the Judicial Council, revised 10/28/2016, Appendix B. Pp.12-14.

The majority here reads out this long-standing limitation on jurisdiction and extends the jurisdiction of the Judicial Council to any request for a declaratory decision from any jurisdiction or jurisdictional conference on any topic regardless of its specific effect on that jurisdiction or jurisdictional conference.

The decision to take jurisdiction here illustrates the importance of the limitations on jurisdiction of the Judicial Council. By deciding which questions affect the entire church and are therefore within the purview of the Judicial Council's authority, one single jurisdiction, without showing the specific impact on that jurisdiction, can bypass entirely the General Conference and the Council of Bishops, thus asking this 9-member Judicial Council to make decisions that, under the Constitution and the general jurisdictional provisions of ¶ 2610.1 should come through the Council of Bishops or the General Conference, both of which are explicitly empowered to petition for a declaratory decision on all matters enunciated in ¶ 2610.1. This case demonstrates the overarching importance of jurisdictional limits that require matters (in this case declaratory decisions) raised to impact or directly affect the petitioning body. The merits question in this case clearly impacts the entire church--as the majority concludes. Under the controlling provisions of the *Discipline*, jurisdiction to issue declaratory decisions on matters that impact the entire church is granted only when such petitions are filed by the Council of Bishops or the General Conference.

The *Discipline* contains no evidence at all that the General Conference intended to delegate to jurisdictional conferences any greater power to request declaratory decisions than all of the other bodies listed in ¶ 2610.2(c), (d), (e), (g), (h)), (i), and (j). Further, against the backdrop of the Constitution and the organizational structure of the entire Church,, we find no expressed or even implied intent to delegate to the Judicial Council jurisdiction over any petition coming from any jurisdictional conference or jurisdiction when that jurisdiction is not impacted more directly than the entire church. Indeed, in referring to this petition, the bishop of the South Central Jurisdiction conceded that the impact on that jurisdiction is the same as that on the entire church. The clear intention of the Constitution and ¶ 2610.2(a) and (b) is that the right to petition for declaratory decisions on matters that relate to the entire church is reserved to the Council of Bishops and the General Conference and no subsets or constituent bodies thereof.

Each of the provisions of ¶ 2610.2 except ¶ 2610 (f) limits the jurisdiction to seek declaratory decisions to matters relating to those bodies. Paragraph 2610(f) is the linguistic outlier that does not contain explicit limiting language. Nonetheless, it is clear that jurisdictions and jurisdictional conferences do not have full authority over the whole church and therefore could not have authority to seek declaratory decisions that affect the whole church generally. Further, as a matter of statutory construction, ¶ 2610.2(f) is contained near the end of a listing of bodies each of which is limited in its jurisdiction. Had the General Conference intended that jurisdictional conferences or jurisdictions have the full scope of authority granted to the General Conference or the Council of Bishops, subsection (f) would have followed subsection (b) before the provisions limiting the remaining bodies to those matters affecting those bodies. Instead, on the face of the section, jurisdictional conferences and jurisdictions are

among the listing of those bodies with limitations on their ability to petition for declaratory decisions. We would, therefore, hold that the Judicial Council has no jurisdiction over this petition since the matter does not involve the South Central Jurisdiction or the work therein in any manner different from the impact on the entire church.

In every judicial body there is a seductive and persistent impulse to try to make decisions that will assist an organization, government, or society itself work through intractable, contentious, divisive, or simply difficult problems. That impulse derives from worthy and honorable motives to help bring closure to disagreements and make progress toward a better or more unified future. Laudable as these motives are, every judicial body must resist them and stay meticulously attentive to the jurisdictional boundaries that bind it. Otherwise, judicial decision-making supplants the regular institutional processes of the organization. Each decision-making body in any organization has its assigned role and jurisdiction. It falls to judicial bodies to constrain their actions to their clearly-assigned jurisdiction and to reserve to other decision-making bodies or individuals the full extent of their assigned powers. This case is a good example. The Constitution and *Discipline* ¶ 2610.2, taken together, assign to the General Conference and the Council of Bishops authority to petition the Judicial Council for declaratory decisions on behalf of the entire church under the plenary authority of the two bodies. The jurisdiction of the Judicial Council, when the petition is submitted by a jurisdiction or jurisdictional conference, should be limited to declaratory decisions that relate to or affect directly the work of those bodies in a manner different from the impact on the entire church.

We are aware of the challenging issues and the strong feelings relating to the merits issues presented in this petition. We also have high regard and the utmost respect for our Judicial Council colleagues who have a differing view of our jurisdiction in this case. We remain prayerful and hopeful that the Church will find "a way forward". We would, however, find that we have no jurisdiction to review this petition and dismiss the petition for lack of jurisdiction.

N. Oswald Tweh
Deanell Reece Tacha

Concurring and Dissenting Opinion

I partly concur with the majority in its ruling that the Judicial Council has jurisdiction with respect to the consecration of an openly homosexual bishop. But since there can be no consecration without prior nomination and election, I join the dissenting and concurring opinion of my esteemed colleague, Warren Plowden, on the invalidation of the nomination and election also. This is consistent with my dissenting and concurring opinion in Memorandum No. 1200 on the meaning and application of ¶ 2610.2(j) pertaining to any annual conference, which is parallel to sub ¶ 2(f) involving any jurisdictional conference.

That the Judicial Council has received dozens, nay, scores of letters and communications expressing alarms and anxieties over the simultaneous election of a particular bishop in the Western Jurisdictional Conference is loud and clear enough indication that what affects that jurisdiction is affecting in a very tangible way other jurisdictions and jurisdictional conferences. But the Constitutionally-guaranteed fair process must be observed.

Ruben T. Reyes

Concurring and Dissenting Opinion

Par. 56 *Article II.* of the Constitution enumerates four specific instances in which the Judicial Conference has "authority" to act. It then enumerates a fifth instance in which the Judicial Council will "have such other duties and powers as may be conferred upon it by the General Conference.

The General Conference undertook to give the Council additional powers and duties when it enacted ¶ 2610 of *The Discipline of the United Methodist Church 2012 ("The Discipline")*. ¶ 2610.1 gives us "jurisdiction to make a ruling in the nature of a declaratory decision as to the constitutionality, meaning, application, or effect of the *Discipline* or

any part thereof or of any act of legislation of a General Conference”

Par. 2610.2 then lists ten bodies which are authorized to make such a petition for a declaratory decision. One of these is a jurisdictional conference:

(f) any jurisdictional conference on matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein; (emphasis added).

A plain reading of this phrase renders the conclusion that jurisdictional conference A can petition us on matters relating conferences B, C, D, etc. If the General Conference intended to adopt legislation which restricted a petition from a jurisdiction to matters which occur only within that jurisdiction, it would have used the singular of jurisdiction and jurisdictional conference. There is nothing elsewhere within the four corners of ¶ 2610 which would limit a petition for a declaratory decision to matters “relating to or affecting” only the petitioning jurisdictional conference.

The General conference knows how to legislate so as to grant jurisdiction in cases in which the petition must come from the annual conference or jurisdiction in which the complained of action took place. See ¶ 2609.3 which incorporates a portion of ¶ 56, *Article II* of the Constitution. See also ¶ 2610.2 (c), (g), (h), and (i). It did not do so with regard to (f)

In our prior jurisprudence, we have discovered that a request for a declaratory decision is limited to those situations in which the request has a direct and tangible effect on the work of the jurisdictional conference submitting the petition. JCD 452, Memorandum Decision 1200, and others. Happily, however, in this case, the election and consecration of a bishop has a direct and tangible effect on the work of jurisdictions, annual conferences, the General Conference and, and in fact, the entire church.

Although, bishops are nominated, elected, certified and consecrated within a jurisdictional conference, such nominations, elections and consecrations are for the whole church. Bishops are elders whose ordination is recognized throughout the connection; such recognition allows that person to serve anywhere in the global church. See JCD 1321.¹ Moreover, elders who are elected to the Episcopal office of bishop are elected for the entire church and are eligible to serve within the confines of any jurisdiction. See *Discipline* ¶¶ 49, 422.1.

Consecration is a connectional and covenantal act done *by and for* The United Methodist Church. It is *an act of the church*, not the jurisdictional conference where it takes place. The service of consecration is an act of the whole church. An elder who is elected and consecrated is a bishop for the entire Church, not just the jurisdictional or central conference which elected and consecrated him or her.

I therefore concur with the conclusion reached by the majority that we have jurisdiction to entertain the petition from the South Central Jurisdiction which asserts that the Western Jurisdiction negated, ignored and violated provisions of The Discipline when it elected and consecrated Karen Oliveto as a bishop of the Church.ⁱⁱ

On October 1, 2014, Robin Ridenour and Karen Oliveto were married in the City of San Francisco by Reverend Angela Brown as recorded in a License and Certificate of Marriage, Local License Number 4301438008559 issued by the City and County of San Francisco. The Respondent conceded at oral argument that this was a same-sex marriage that has not been dissolved.

The fact of this marriage and that Karen Oliveto has entered into a homosexual unionⁱⁱⁱ was not news to the Western Jurisdiction when it met in Scottsdale, Arizona beginning on July 13, 2016. During Plenary Session 4 on July 14, the First Elected Delegates from the conferences making up the Western Jurisdiction issued a call for a Closed Combined Delegation Meeting to have a conversation about the possibility of electing an openly gay or lesbian clergy person to the episcopacy.^{iv}

After opening statements about confidentiality—asking attendees to refrain from recording or posting information from the session—three questions were discussed in groups at tables:

1. What does it mean to consider persons of all sexual orientating to be qualified to be bishop?
2. What would it mean for your local church if your bishop was not straight?
3. What would it mean for your Annual Conference if your bishop was not straight?

Responses to the questions were summarized by table and reported to the conversation:

The overall sentiment was that we really want the best candidate for this time. We followed the question and reflection time with a brief discussion around “legal” implications of electing an openly gay or lesbian person to serve. (emphasis in original).

The balloting for the election of a bishop began on Friday morning, July 15. By Ballot #3 the field had been narrowed to seven candidates (Daily Proceedings, p. 28). The balloting continued throughout the day and into the evening when on Ballot #16 there were three candidates remaining. Dr. Oliveto led the voting on each of the ballots taken thus far. After Ballot #16, the other two remaining candidates withdrew their candidacies, and on Ballot #17 Dr. Oliveto was elected unanimously. (Daily Proceedings, pp. 35-36.

She then addressed Plenary Session 7:

Bishop-Elect Karen Oliveto gave a speech to the delegates of the Western Jurisdiction to remind us that we are moving in the right direction but we are not there yet. She asked the delegates, “Are we able?” and the delegates replied, “Yes we are able!” (emphasis added) (Daily Proceedings, p. 36.)

Following which:

Bishop Hagiya led the group in a benediction celebrating this historic event (emphasis added)(Daily Proceedings, p. 36.).

The conclusion is unescapable that by this point in the proceedings, the Western Jurisdiction knew full well that it was acting unlawfully when it elected a self-avowed practicing homosexual as a bishop of the Church. I reach the conclusion that Dr. Oliveto is a self-avowed practicing homosexual because by this point in the proceedings, the conclusion is equally unescapable that her bishop, district superintendent, the delegates to the Western Jurisdiction session on July 15, 2016, and as a result of the media flurry surrounding her election, “all the ships at sea” were on notice as to her status as a self-avowed practicing homosexual.

The Discipline provides in ¶ 304.3 that the “practice of homosexuality is incompatible with Christian teaching. Therefore, self-avowed practicing homosexuals are not to be certified as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.” A clergy person who does not qualify for certification or ordination on account of being a self-avowed practicing homosexual is not qualified for election and consecration as a bishop. The proscription in ¶ 304.3 includes all self-avowed practicing homosexual ministerial candidates and ministers, and therefore, precludes the consecration of a self-avowed homosexual bishop elect.

The *Discipline* is the law of the Church which regulates every phase of the life and work of the Church. As such, annual conferences may not legally negate, ignore or violate the provisions of the *Discipline* with which they disagree, even when the disagreements are based upon conscientious objections to those provisions.

JCD 886. The Judicial Council applied the holding of JCD 886 to jurisdictional conferences in JCD 1250.

There are right and wrong ways to go about changing provisions in *The Discipline* with which one disagrees. Unfortunately for the Church, the ways and means chosen by the Western Jurisdiction were simply wrong; and the persons in the Western Jurisdiction who took this action well knew it.

The election, certification, consecration and assignment of Karen Oliveto as a bishop of the church was accomplished solely by the *ipse dixit* of the delegates and leaders of the Western Jurisdiction. It negated, ignored and violated provisions of *The Discipline* and is null, void and of no effect resulting in the invalidation of Karen Oliveto’s episcopal office.

W Warren Plowden Jr.

Appendix to Plowden Concurring and Dissent
[reformatted for inclusion in this document]

First Elected **Delegates** Call for Closed Combined **Delegation Meeting 14** July 2016

After hearing several sideline conversations about the possibility of electing an openly

gay or lesbian clergyperson to the episcopacy, the first elected delegates gathered together and decided it would be best for the Western Jurisdiction if we were able to have that conversation together. Some of the concerns with calling for a closed session involved:

- creating safe space for all voices to be heard; and
- allowing opportunities for varying opinions and questions to be addressed; and
- demonstrating a healthy way to "talk" with each other; and
- sharing information, per United Methodist polity as It Is and as it shall be with a new and pending disciplinary language.

The first elected delegates were careful to identify two skilled facilitators who would be sensitive to the overall nature of such a conversation. The caution was that we did not want to present the conversation in a way that would skew votes, advocate for candidates, or reform opinions. The ultimate goal was to have an open conversation and allow questions and even more dialogue to follow. We believed that whether we do or do not elect an openly gay or lesbian clergyperson this time, the desire to do so would not go unnoticed nor would that desire dissipate. We believed having the conversation, as a body, establishes a good foundation for future dialogue and establishes a model future delegations may employ. The decision to close the session was about limiting outside influence or distraction. We are aware there are many allies of varying opinions who are present at Jurisdictional Conference and conversations by such factions may not always help us in the ways that benefit us most.

The conversation during the closed delegation meeting began with opening statements about confidentially-asking attendees to refrain from recording or posting information from the session. The questions addressed at tables in small groups were:

- What does it mean to consider persons of all sexual orientations to be qualified to be bishop?
- What would it mean for your local church if your bishop was not straight?
- What would it mean for your Annual Conference if your bishop was not straight?

After several minutes of responding to those questions, each group sent forth a person to summarize the table's responses to the third question. Answers ranged from "Some would leave if we were to elect a gay bishop" to "Some would leave if we do not elect a gay bishop." Other responses also included: questions that pushed back on the body to consider what it means to live as beloved community and many other sentiments that let us know we have much work to do and more relationship building must take place in our local churches and Annual Conferences. The overall sentiment was that we really want the best candidate for this time. We followed the question and reflection time with a brief discussion around "legal" implications of electing an openly gay or lesbian person to serve. The relevant legislation was posted online so delegates could see the information and know how complaints against bishops could be handled in the future, if 2/3 of annual conferences approve the constitutional change needed to enact the new legislation [reference: Petition 60912 approved at 2016 General Conference].

We are grateful for the care and compassion of the Western Jurisdiction delegates and for the grace-filled conversations that continue.

First Elected Delegates [Yellowstone: Tyler Amundson and Don McCammon; Alaska: Jo Anne Hayden and Carlo Rapa nut; Pacific Northwest: Marie Kuch-Stonovsky and Mary Huycke; Rocky Mountain: Douglas Palmer and Kent Ingram; California-Nevada: Emily Allen and Jeffrey Kuan; Desert Southwest: Jim Nibbe/ink and Don Hurlbert; Oregon-Idaho: Jan Nelson and Danna Pritchard; California-Pacific: Raso Rios and Cedrick Bridgeforth]

-
- i. "Ordination in the United Methodist Church is not local, nor provincial, but worldwide."
 - ii. I have been urged adopt the position that because ¶ 27, Article V of the Constitution gives jurisdictional conferences powers and duties "[t]o promote the evangelistic, educational, missionary, and benevolent interests of the church and to provide for interests and institutions *within their boundaries* (emphasis added), subsection (f) of ¶ 2610.2 should be similarly be limited petitions which address "interests within their boundaries." I reject this reading of *The Discipline*. The fact that the Constitution authorizes jurisdictions to undertake the missional activities listed in ¶ 57 does not mean that the General Conference in the exercise of its authority under ¶56, Article II 5. to enact ¶ 2610 was limited to granting jurisdictions the privilege of petitioning us only with respect to activities which occur within their boundaries.
 - iii. Same sex marriages are homosexual unions. Heterosexual marriages are between one man and one woman.
 - iv. I have attached as an Appendix to this opinion the full report of this "closed conversation" as it appears in the Daily Proceedings of the Western Jurisdictional Conference held in Scottsdale from Wednesday, July 13 - Saturday, July 16, 2016.