

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1469

[Docket No. 1022-12]

IN RE: Review of a Bishop’s Ruling of Law on Questions Raised During a Special Session of the North Central Jurisdictional Conference Concerning the Legality of the Resolution *Covenant to Build BeLoved Community*.

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 advocate or declare non-compliance with Church law. The Resolution “Covenant to Build BeLoved Community” is a valid aspirational declaration, *except* for the sentence: “We will not restrict God’s calling based solely on a candidate’s sexual orientation or gender identity.” The decision of Bishop David Alan Bard is affirmed in part and reversed in part.

STATEMENT OF FACTS

On November 11, 2021, at the special session of the North Central Jurisdictional Conference [hereinafter NCJC], a resolution, entitled “Covenant to Build BeLoved Community” was presented to the body for consideration. After discussion, the resolution, as amended was approved. The relevant portion of the resolution reads:

LGBTQIA+ clergy and laity are a gift to the Church. We implore all in the NCJ to do no harm and to create a culture in which abundance and diversity can be celebrated and lived. Therefore, we urge all members of the NCJ to avoid pursuing charges for LGBTQIA+ clergy and allies, and request our episcopal leaders dismiss charges related to LGBTQIA+ identity or officiating same gender weddings. Because we are all beloved children of God, we, in the NCJ, implore all our conference leaders, boards and agencies, to bring no harm to LGBTQIA+ people. We will not restrict God’s calling based solely on a candidate’s sexual orientation or gender identity. We commit to doing good by pursuing healing and

reconciliation with all who have experienced harm and exclusion related to sexual orientation and gender identity.

We request the Mission Council in conjunction with the NCJ College of Bishops develop an exercise for the NCJ delegates to engage in conversation to understand the impact of homophobia, transphobia and heterosexism within United Methodist Churches during the next meeting of the jurisdiction.

Following the vote, a lay delegate to NCJC submitted the following Question of Law:

In accordance with Paragraphs 51 and 2609.6 of the United Methodist Book of Discipline and in light of Judicial Council Decisions # 886, 1201, 1292, 1340, 1343, 1344, and 1403 I respectfully ask and request a decision on the following questions of law about the section of the covenant statement just adopted by the 2021 North Central Jurisdictional Conference special session, particularly the section that begins with “LGBTQIA+ clergy and laity are a gift ...” and that ends with “We will not restrict God’s calling based solely on a candidate’s sexual orientation or 65 gender identity” (which appears on lines 58-65 on page two of the version of this statement that was emailed to delegates last night):

Does this section of the statement impermissibly negate, ignore, violate, encourage actions that are contrary to, or discourage the enforcement of Discipline paragraphs 304.1-3, 341.6, 362, 635, 2701, 2702, 2704, 2711, or other relevant church law? And if so, is this section null, void, and of no effect?

Does this section of the statement in any way limit or restrict the rights or obligations of bishops, district superintendents, counsels for the church, committees on investigation, trial courts, boards of ordained ministry, or district committees on ministry to fully comply with and uphold Paragraphs 304.1-3, 341.6, 362, 635, 2701, 2702, 2704, 2706, and 2711 of the Book of Discipline? If so, is this section of the statement null, void, and without effect?

On December 11, 2021, Bishop Bard issued his ruling, which reads in relevant part:

Judicial Council decision 886 clearly states that annual conferences “may not legally negate, ignore, or violate provisions of the *Discipline*.” The Council has 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). However, the Judicial Council in decision 1052 stated that “Annual Conferences are free to express their ideals and opinions as long as they do not attempt to negate, ignore, or contradict the *Discipline*,” and in decision 1120 affirmed that “an annual conference may adopt a resolution on human sexuality that is aspirational in nature.” In subsequent decisions (e.g. 1340, 1406), the Judicial Council has continued to affirm that annual conferences may adopt resolutions that are aspirational in nature. The Council has extended the same rights to jurisdictional conferences. “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*” (JCD 1340).

The resolution, “Covenant to Build BeLoved Community” arose out of conversations among delegates about the future United Methodist Church. The resolution itself is a mixture of aspirational statements, requests, and directives. The majority of the resolution is comprised of statements of values and exhortations, e.g. “we request;” “we implore;” “we encourage;” “we recommend.”

The particular paragraph which provides the focus for the requested ruling of law mirrors the language of the entire resolution, that is, it is comprised of statements of values joined by statements of encouragement or exhortation.

The opening statement of the resolution is rooted in values expressed in *Disciplinary* paragraph 161.G: *We affirm that all persons are individuals of sacred worth, created in the image of God. All persons need the ministry of the Church in their struggles for human fulfillment, as well as the spiritual and emotional care of a fellowship that enables reconciling relationships with God, with others, and with self.... We affirm that God’s grace is available to all.... We implore families and churches not to reject or condemn lesbian and gay members and friends. We commit ourselves to be in ministry with all persons.*

Following the opening sentences, members of the North Central Jurisdiction are “urged” to avoid pursuing charges against LGBTQIA+ clergy and allies. This is an aspirational and hortatory statement which encourages certain actions that are not otherwise deemed mandatory by The Book of Discipline. No one is required to file complaints.

A request is made of episcopal leaders to “dismiss charges related to LGBTQIA+ identity or officiating same gender weddings.” It is difficult to make a strong case that this statement represents a violation of The Book of Discipline. The resolution makes a request. Request language is aspirational and encouraging, not directive. Further, it is not clear precisely what is being requested. The aspiration is clear, namely, that judicial processes not be used against persons “related to LGBTQIA+ identity or officiating same gender weddings.” The Book of Discipline itself discourages the use of church trials, viewing them “as an expedient of last resort” (§2707). Bishops are given the authority to dismiss complaints, but only for cause and only after engaging in a process seeking a just resolution, which is not a part of the judicial process (§362). Is the request that certain complaints be dismissed at the point in the process where such action might be considered? Is the request that such complaints not be considered at all? Is the request to place such complaints in abeyance? That this is a request, and that the precise nature of the request is ambiguous speaks to the aspirational nature of this section of the resolution.

The resolution next “implores all our conference leaders, boards and agencies, to bring no harm to LGBTQIA+ people.” The word “implore” is hortatory in nature, and here what is being encouraged is rooted in §161.G, *We implore*

families and churches not to reject or condemn lesbian and gay members and friends. We commit ourselves to be in ministry with all persons, as well as in our general rules to do no harm.

The statement about not restricting God's calling "based solely on a candidate's sexual orientation or gender identity" is, again, a statement of values whose implications cannot be determined abstractly or hypothetically. At the very least, the statement encourages fair treatment of LGBTQIA+ persons in church processes. Beyond that, its meaning is not clear.

Having examined the various statements in the paragraph of the resolution under review, the final question of the request for a ruling of law can be addressed. *Does this section of the statement in any way limit or restrict the rights or obligations of bishops, district superintendents, counsels for the church, committees on investigation, trial courts, boards of ordained ministry, or district committees on ministry to fully comply with and uphold Paragraphs 304.1-3, 341.6, 362, 635, 2701, 2702, 2704, 2706, and 2711 of the Book of Discipline?* Having argued that the language in this section of the resolution consists of statements of values and aspirational requests and exhortations, the resolution does not, therefore limit or restrict the rights or obligations of bishops, district superintendents, counsels for the church, committees on investigation, trial courts, boards of ordained ministry, or district committees on ministry to fully comply with and uphold Paragraphs 304.1-3, 341.6, 362, 635, 2701, 2702, 2704, 2706, and 2711 of The Book of Discipline.

As a statement about the future shape of The United Methodist Church, a statement which asserts important values and encourages consideration of how one might live into those values, this section of the resolution "Covenant to Build BeLoved Community" stands with the rest of the resolution approved by the North Central Jurisdiction.

Jurisdiction

The Judicial Council has jurisdiction under ¶ 2609.6 of *The Book of Discipline* —2016 [hereinafter the *Discipline*].

Analysis and Rationale

The Judicial Council consistently held that an "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." JCD 1120. *See also* JCD 1044, 1052, 1111. This right was later extended to jurisdictional conferences. In JCD 1340, we held that 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 Discipline*. In determining whether a conference resolution is proper under Church law, the Judicial Council distinguishes between *aspirational* and *prescriptive* language. While they are free to adopt resolutions with aspirational content, conferences are prohibited from passing resolutions that are prescriptive in nature. Prescriptive is a resolution if it “was meant to be a call to action that runs counter to *The Discipline*.” JCD 1468, *quoting* JCD 1340.

The resolution consists of statements containing words like ‘request,’ ‘urge,’ and ‘implore’ that express a particular viewpoint regarding the inclusion, treatment, and role of LGBTQIA+ persons in the Church. The bishop was correct in ruling that the “[r]equest language is aspirational and encouraging, not directive.” Decision of Law, *supra*. A request does not create the obligation to dismiss charges related to LGBTQIA+ persons because bishops and district superintendents are still bound by Church law. Like ‘request,’ the terms ‘urge’ and ‘implore’ are ambiguous and undefined and, therefore, can be reasonably construed to be aspirational statements advocating an inclusive vision of the Church.

However, the sentence “We will not restrict God’s calling based solely on a candidate’s sexual orientation or gender identity” crosses the line between aspirational and prescriptive as it is a declaration of non-compliance, namely an “action that ignores Church law and encourages a violation of Church law.” JCD 1292. As we have said in a companion case, such declaration is a departure from previous decisions in which the Judicial Council held that “the duty of the Board [of Ordained Ministry] is to conduct a careful and thorough examination and investigation, not only in terms of depth but also breadth of scope...including those provisions set forth in paragraphs that deal with issues of race, gender, sexuality, integrity, indebtedness, etc.” JCD 1468, *quoting* JCD 1343, 1344. The bishop erred in ruling:

The statement about not restricting God’s calling “based solely on a candidate’s sexual orientation or gender identity” is, again, a statement of values whose implications cannot be determined abstractly or hypothetically. At the very least, the statement encourages fair treatment of LGBTQIA+ persons in church processes. Beyond that, its meaning is not clear.

The issue here is not fair treatment of LGBTQIA+ persons but thorough examination and investigation of *all* candidates for ministry in The United Methodist Church. Therefore, we reverse the quoted portion of the bishop’s decision.

Decision

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 advocate or declare non-compliance with Church law. The Resolution “Covenant to Build BeLoved Community” is a valid aspirational declaration, *except* for the sentence: “We will not restrict God’s calling based solely on a candidate’s sexual orientation or gender identity.” The decision of Bishop David Alan Bard is affirmed in part and reversed in part.

March 7, 2023

Concur in Part and Dissent in Part

I respectfully dissent from the majority’s interpretation of our polity which leads them to reverse the presiding Bishop concerning the sentence “We will not restrict God’s calling based solely on a candidate’s sexual orientation or gender identity.” This sentence is consistent with the *Discipline*. The candidate must be meaningfully evaluated in a whole variety of aspects of his or her life. Indeed, this sentence is less problematic than other sentences that the Judicial Council has affirmed as aspirational. Also, there are no prohibitions or restrictions regarding gender identity in the *Discipline* and the denomination has never had a prohibition against ordaining a person solely because he or she is a homosexual. The restriction is against ordaining persons who are not celibate. Thus, I dissent from that portion of the majority opinion.

Beth Capen

March 7, 2023