

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1303

IN RE: Request for a Declaratory Decision from the Council of Bishops Regarding Legislation Called Plan UMC Revised Proposed for the 2016 General Conference

DIGEST

This matter is deferred until the Spring 2016 meeting of the Judicial Council.

STATEMENT OF FACTS

At its meeting in Berlin, Germany, on May 5, 2015, the Council of Bishops voted to request a declaratory decision from the Judicial Council on proposed legislation that has been submitted as a petition to the 2016 General Conference and that is known as “Plan UMC Revised.” In acting to request a declaratory decision, the motion adopted by the Council of Bishops included the following stipulation:

The action taken was in no way in support or opposition of Plan UMC but made in order to better facilitate the work of GC 2016.

As delivered to the Judicial Council by Bishop Warner H. Brown, Jr., the President of the Council of Bishops, the formal request included the full text of the proposed legislation known as “Plan UMC Revised” and specified the following request:

The Council of Bishops requests a declaratory decision whether the proposed legislation entitled “Plan UMC Revised” would be unconstitutional if enacted, including, but not limited to, (a) whether the proposed legislation violates ¶¶ 16.8, 16.9, 47 & 49 of the Constitution; (b) whether it unlawfully delegates legislative authority reserved to the General Conference; (c) whether it unconstitutionally interferes with the general oversight authority of ¶¶ 45—49 of the Constitution; and (d) if any part of Plan UMC Revised is unconstitutional, whether there are other parts of the proposed legislation that may be constitutionally implemented if the legislation is enacted.

Several individuals submitted briefs on the matter.

On October 21, 2015, the Judicial Council conducted an Oral Hearing on the matter in St. Louis, Missouri. Bishop Gregory Palmer spoke for the Council of Bishops, as the petitioner. The Rev. Dr. Clayton Oliphant and Mr. Lonnie D. Brooks spoke on behalf of the proposed legislation, in response to the request of the Council of Bishops.

JURISDICTION

The Judicial Council has jurisdiction under ¶ 2609.2 of the 2012 *Book of Discipline*.

ANALYSIS AND RATIONALE

During its Oral Hearing on October 21, 2015, the Judicial Council heard from the principal author of the proposed legislation known as “Plan UMC Revised” that this is “new legislation” to be considered by the General Conference. Although it is a revision of the legislation known as Plan UMC, which was adopted by the General Conference in 2012 and declared unconstitutional by the Judicial Council (*See* Decision 1210), those who have prepared and proposed this legislation for consideration by the 2016 General Conference seek to have it treated as new legislation that has been drafted without the constitutional defects that were identified in prior legislation by Decision 1210.

During the same Oral Hearing, the Council of Bishops reaffirmed the position that it took in petitioning the Judicial Council for a declaratory decision—namely that its Council was neither in support of nor opposed to the substance of “Plan UMC Revised” as it has been drafted and submitted to the 2016 General Conference. In acting to request a declaratory decision from the Judicial Council, the Council of Bishops has said its request was “made in order to better facilitate the work” of the 2016 General Conference.

Although questions have been raised about whether the Judicial Council actually has jurisdiction to deal with this matter, it is clear that the Council has jurisdiction. The 2012 *Book of Discipline*, in ¶ 2609.2, clearly confers upon the Judicial Council the “jurisdiction to determine the constitutionality of any proposed legislation when such declaratory decision is requested...by the Council of Bishops.”

While a proper request from the Council of Bishops has clearly been delivered to the Judicial Council, there remains a subtle but important consideration about the merits of

rushing quickly to assess the constitutionality of one piece of proposed legislation when other proposed legislation may also exist on the same issues that the “Plan UMC Revised” seeks to address. The Constitution of The United Methodist Church states, in Division Two, Section II, Article IV (¶ 16) that “The General Conference shall have full legislative power over all matters distinctively connectional...” In one specification under that constitutional authority, the General Conference shall do the following:

- “provide for the organization, promotion, and administration of the work of the Church outside the United States of America” (¶ 16.4),
- “initiate and...direct all connectional enterprises of the Church and...provide boards for their promotion and administration” (¶ 16.8), and
- “determine and provide for raising and distributing funds necessary to carry on the work of the Church.” (¶16.9)

The Council of Bishops made its request of the Judicial Council “in order to better facilitate the work of GC2016.” That intent, combined with a specific selection of one piece of proposed legislation that is delivered to the Judicial Council with a request for a declaratory decision on its constitutionality, could intrude into the “full legislative authority” of the General Conference—even with the disclaimer that the Council of Bishops takes no position on the proposed legislation.

The Council of Bishops has the authority to petition the Judicial Council for a declaratory decision (¶ 2610.2b) and that authority includes petitions involving proposed legislation (¶ 2609.2). Thus, the Council of Bishops acted with appropriate authorization in seeking a declaratory decision from the Judicial Council. Further, the Judicial Council has jurisdiction to “determine the constitutionality of any proposed legislation when such declaratory decision is requested by...the Council of Bishops.” (¶ 2609.2) However, the disciplinary authority of the Council of Bishops and the jurisdictional authority of the Judicial Council cannot be viewed in isolation from the constitutional authority held by the General Conference, which has “full legislative power over all matters distinctively connectional...” (¶ 16) The Council of Bishops, in seeking a declaratory decision about proposed legislation, and the Judicial Council, in making a declaratory decision about a piece of proposed legislation, must be careful not to intrude into the “full legislative power” that is conferred by the Constitution upon the General Conference.

During its Oral Hearing, the Judicial Council asked the presenters if they were aware of other proposed legislation on the matters addressed by “Plan UMC Revised.” The response from the petitioner, that is the Council of Bishops, was that they were not aware of any others. The response from the authors of “Plan UMC Revised” was that

they, too, were unaware of any but volunteered that they would be surprised if there were not other legislative proposals.

By selecting one and only one item of proposed legislation, with the intent “to better facilitate the work” of the General Conference, the Council of Bishops potentially risks intruding into the “full legislative authority” of the General Conference. Similarly, by making a declaratory decision on one item of proposed legislation prior to the time when the Church will have access to all proposed legislation, the Judicial Council potentially risks intruding into the “full legislative authority” of the General Conference. The Judicial Council, in taking an early action to fulfill its jurisdictional authority on a request for a declaratory decision on the constitutionality of proposed legislation, could potentially place a constitutional seal of approval on one proposed legislative item. And that could intrude into the “full legislative authority” of the General Conference.

It is quite possible that one or more other items of proposed legislation, besides “Plan UMC Revised,” which take similar or different approaches to the legislative tasks assigned to the General Conference under ¶ 16, might also deserve advance consideration as to their constitutionality. Indeed, it might be the case that very different legislative approaches all could be constitutional without yielding the same organizational results.

The full body of proposed legislation that will be considered by the 2016 General Conference is not yet known—certainly not by the presenters at the Oral Hearing held in St. Louis on October 21, 2015. It would be an untimely intrusion into the full legislative process for the Judicial Council to reach a constitutional determination on the only piece of legislation that the Council of Bishops has seen on this topic. In a more timely way, it will be possible for the Council of Bishops to decide whether other proposed legislation might similarly be sent to the Judicial Council for constitutional assessment. In a more timely way, it will also be possible for the Judicial Council to receive briefs from other parties interested in other proposed legislation affecting the matters that are addressed by “Plan UMC Revised.” Then, it will be possible for the Judicial Council to honor both this request and any other considerations that might be affected by our declaratory decision.

To that end, the Judicial Council will defer any action on this specific, singular request until the Spring 2016 meeting of the Judicial Council.

DECISION

This matter is deferred until the Spring 2016 meeting of the Judicial Council.

Beth Capen was absent.

Kabamba Kiboko was absent.

Randall Miller, first lay alternate, participated in this decision.

Timothy K. Bruster, first clergy alternate, participated in this decision.

October 24, 2015