



Judicial Council Of The United Methodist Church  
 Conseil Judiciaire De L'eglise Methodiste Unie  
 Rechtshof Der Evangelisch-Methodistischen Kirche  
 Conselho Judicial Da Igreja Metodista Unida  
 Consejo De La Judicatura De La Iglesia Metodista Unida



**Submission of Brief**

**Docket Number** 1021-23

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**Authorities Cited In The Attached**

Brief \_\_\_\_\_

Reply Brief

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Book of Discipline paragraphs: 2610.1, 2609.11, 11, 16, 33, 601-56, 572, 40, 27.4, 31.4, 45, 48, 49, 20, 58, 2501, 2509, 2548, 2549, 2553, 2515, 2519, 34.1, 3

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**Wednesday, October 13, 2021:** Deadline for electronic filing of **BRIEFS** (electronic transmission by 11:59 p.m. Pacific Time USA [UTC-7 hours]) *Hard copies must also be provided (see below)*

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**BEFORE THE JUDICIAL COUNCIL OF  
THE UNITED METHODIST CHURCH**

IN RE: PETITION FOR DECLARATORY )  
DECISION FROM THE COUNCIL OF BISHOPS )  
ON QUESTIONS RELATED TO THE ) DOCKET 1021-23  
SEPARATION OF AN ANNUAL CONFERENCE )  
WITHIN THE UNITED STATES FROM THE )  
UNITED METHODIST CHURCH. )

**AMICUS CURIAE REPLY BRIEF OF KEITH BOYETTE, THOMAS LAMBRECHT,  
JOHN LOMPERIS, AND ROBERT ZILHAVER**

The above-named persons submit this *amicus curiae* reply brief in response to the declaratory decision request of the Council of Bishops on questions related to the separation of an annual conference within the United States from The United Methodist Church.

**JURISDICTION**

As argued in our opening brief, the Judicial Council has jurisdiction to decide Questions 1-3 of the Declaratory Decision request. Questions 4-6 are hypothetical, and as such, Judicial Council does not have jurisdiction to decide them.

The brief by Lonnie Brooks maintains that, “As demonstrated above, the [Council of Bishops] (COB) has unlimited authority to request a Declaratory Decision on any portion of the *Discipline* or legislative action of the General Conference, therefore making this request real and present. Thus, the question of whether its request is moot or hypothetical does not apply as a standard for determining the Judicial Council’s jurisdiction. By virtue of this request’s coming from the COB, the Judicial Council is presented with a real and present request and has jurisdiction” (Brooks Brief, at 3).

This argument is clearly in error. As argued in our opening brief, Questions 4-6 do not ask for a 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” (§ 2610.1). The questions do not reference any specific part of the *Discipline*, nor do they reference any act or legislation of General Conference, as required by § 2610.1. Therefore, the Judicial Council does not have jurisdiction to rule on these questions.

Furthermore, the Judicial Council has consistently refused jurisdiction in matters that are hypothetical, no matter how those matters came before the Council. JCDs 454 and 1229 relate to requests for declaratory decisions from the Council (or a College) of Bishops that the Judicial Council refused as being hypothetical. Just because the Council of Bishops requests a declaratory decision on a matter does not automatically make it “real and present.” It must concern an actual action taken or proposed to be taken. At this point, there have been no actions taken or proposed to be taken by any annual conference in the United States, which is the thrust of the declaratory decision request. Therefore, the Judicial Council does not have jurisdiction to rule on Questions 4-6.

The brief by William Lawrence maintains that the Judicial Council does not have jurisdiction to rule on any of the questions. “When nothing has been identified in the Constitution or church law that addresses the authority of an annual conference in the United States to separate from The United Methodist Church and when no act of General Conference defines it, Judicial Council jurisdiction is unauthorized. As Memorandum 1342 says, the Judicial Council takes no action if the General Conference did not enact something” (Lawrence Brief, at 3).

In Memorandum 1342 (decided April 28, 2017 – almost one year after the 2016 General Conference adjourned), the Judicial Council was asked to rule on the constitutionality of a petition pending before General Conference with the request being made while General Conference was in session. The petition which was the subject of the request was not acted upon by the General Conference and the General Conference adjourned. The Judicial Council held that under such circumstances, it would take no action. The petition it was being asked to review had not been adopted and there was no real controversy to be decided.

Here, the topic of annual conference withdrawal is before The United Methodist Church as a consequence of JCD 1366. JCD 1366 is the law of the church (*Discipline* ¶ 2609.11). The Declaratory Decision Request seeks clarification on the constitutionality, meaning, application, or effect of actions authorized by JCD 1366 in light of the whole *Discipline* and certain paragraphs (Constitution ¶¶ 11, 16, 33 and *Discipline*, ¶ 572). Thus, the Judicial Council has jurisdiction to rule on questions that directly pertain to JCD 1366 (Questions 1-3).

Lawrence further maintains that JCD 1366 is “an historical precedent,” and as such, “may have symbolic and moral force for practical considerations but can hardly serve as legal authority to determine the validity of future decisions” (Lawrence, at 3, quoting from JCD 1366). The historical precedent referenced in JCD 1366 at page 43 was the action by the Swedish Annual Conference to withdraw and join a united church, which was an actual historical event. The Judicial Council’s reference to historical precedent referred to that historical event, not to its decision in JCD 1366. JCD 1366 is a decision of the Judicial Council and not “an historical precedent,” however much some may want to minimize its effect. Furthermore, the holding in JCD 1366 was the basis for JCD 1379, 1424, and 1425, which address aspects of the annual conference’s authority to govern “questions of withdrawal.” JCD 1366 therefore has legal

authority and can serve as the basis for the Judicial Council to assume jurisdiction to rule on Question 1-3.

## ANALYSIS

### **I. THE ANNUAL CONFERENCES HAVE AN INHERENT, RESERVED RIGHT TO SEPARATE UNDER CONSTITUTION, ¶33, AND HAVE AUTONOMY TO EXERCISE THAT RIGHT WITHOUT GENERAL CONFERENCE FIRST ESTABLISHING PROCEDURES AND REQUIREMENTS FOR SEPARATION.**

All of the briefs filed in this matter acknowledge that JCD 1366 must be dealt with in resolving the questions presented by the Declaratory Decision Request. JCD 1366 could not be clearer with respect to the fundamental question presented in that case: “[W]hether an annual conference can leave The United Methodist Church.” JCD 1366, at 43. The wording of the Judicial Council in answering this question was carefully chosen and based entirely on settled analysis of the Constitution of The United Methodist Church (UMC). Here are the salient quotes from JCD 1366:

- “[T]he silence of the Constitution on this subject matter does not inevitably mean that the framers intended to legally bar an annual conference from leaving the denomination, nor does it lead to the automatic inference that the topic has been exclusively assigned to the General Conference under the umbrella of ‘all matters distinctively connectional.’” JCD 1366, at 43.
- “If a particular subject matter is not expressly listed under ¶ 16 or elsewhere in the Constitution, the inference under our system of ‘enumerated powers’ must be that it falls under the category of ‘such other rights as have not been delegated to the General Conference under the Constitution’ in ¶ 33.” JCD 1366, at 43.
- **“An annual conference has the right to vote to withdraw from The United Methodist Church.”** Decision 1366, at 43 (emphasis added).

In JCD 1366, the Judicial Council described this right held by each annual conference as a “reserved right.” In other words, the right is inherent in the annual conference. The right does not come into being because of any action or lack of action by any other part of the UMC. Constitutionally, the right belongs to the annual conference. Because of its inherent nature, it does not require action by another part of The United Methodist Church to be activated. To hold otherwise would allow another part of the UMC to prevent the annual conference from being able to exercise a right entrusted to it by the Constitution. The holding of JCD 1366 is buttressed by the Constitution’s declarations that affirmatively identify “annual conferences as **fundamental bodies** of the Church,” Constitution, ¶ 11, and that state that “[t]he annual conference is the **basic body** in the Church.” Constitution, ¶ 33. (emphasis added).

As the Judicial Council noted in JCD 1366, the General Conference only has powers under our constitutional system to the extent that the Constitution specifically delegates powers to it as enumerated in ¶ 16. One of the powers enumerated and thus delegated to the General Conference is the power to “define and fix the powers and duties of the annual conferences.” Constitution, ¶16.3. The General Conference’s enumerated powers in ¶ 16, however, are not self-actualizing. The General Conference must act legislatively to exercise or actualize such powers. In other words, ¶ 16 powers must be activated by a specific action of the General Conference.

With respect to annual conferences, the General Conference has exercised its ¶ 16.3 power through its enactment of ¶¶ 601-56 of the *Discipline*. While such disciplinary paragraphs address the exercise of powers by an annual conference, the failure of the General Conference to address an inherent power of the annual conference reserved to it under ¶ 33 does not remove such power from the annual conference. It just means that the General Conference for whatever reason has

not chosen to do more to exercise its enumerated powers to shape the exercise of the inherent reserved power of the annual conferences.

All of this is made abundantly clear in the following sentence in JCD 1366:

While the General Conference, under the authority of ¶ 16.3, **may** regulate the process and set the conditions for an annual conference to leave The United Methodist Church, the annual conference, having ‘reserved to it . . . such other rights as have not been delegated to the General Conference under the Constitution,’ exercises **autonomous** control over the agenda, business, discussion, and vote on the question of withdrawal.

JCD 1366, at 44 (emphasis added). Here, the General Conference has not regulated the process for an annual conference to leave. Nonetheless, the annual conferences still have the inherent, reserved right to leave and, under these circumstances, they have autonomy in implementing that right.

The COB further asserts, without citation of authority, that the General Conference must enact a comprehensive plan to provide a process for the annual conference to exercise its inherent, reserved right before it can do so. COB Brief, at 4. The argument that separation cannot occur in the absence of General Conference legislation is false. While it is conceded that General Conference *may* regulate the process and set conditions, legislation is not necessary to legitimize a vote to separate. Judicial Council decisions addressing the impact of the absence of specific enabling legislation defining what it means for an annual conference to restructure are instructive. In such decisions, the Judicial Council was asked to decide whether the lack of specific enabling legislation for ¶ 15.15 of the *2000 Discipline*, currently ¶ 16.15 of the *2016 Discipline*, prevented annual conferences from restructuring under disciplinary paragraphs that allowed restructuring. In response, the Judicial Council held that “the lack of specific enabling legislation for ¶ 15.15 does not preclude annual conference restructure under . . .disciplinary paragraphs allowing such. . . .” JCD 916. See also JCD 909. The Judicial Council noted that

“[w]hile it would be helpful for the 2004 General Conference to approve legislation that further defines what it means ‘to allow annual conferences to utilize structures unique to their missions ... annual conference do not have to wait until the General Conference passes additional enabling legislation.’” JCD 916. Likewise, a vote to separate from the UMC is not dependent on General Conference enacting additional legislation for an annual conference to exercise the right.

To adopt a contrary position flies in the face of JCD 1366’s recognition of the existence of the right entrusted to the annual conference. Essentially the COB argues that the Constitution does not grant the reserved right to the annual conference unless the General Conference acts first. Such a holding makes a mockery of the existence of reserved rights. The reserved right is not the creation of the General Conference. The General Conference’s inaction cannot preclude the exercise of the reserved right.

Contrary to the assertion in the brief filed by a group of current and former chancellors (Chancellors Brief at 2), “the notion that annual conferences in the United States might be allowed to secede from The United Methodist Church” as only beginning in 2018, is not true. The Puerto Rico Annual Conference, then a part of the Northeastern Jurisdiction, separated from the UMC with the process beginning over 50 years ago. In addition, the Judicial Council has followed a consistent standard that there is not inherent constitutional barrier to annual conferences withdrawing from the UMC. See JCD 470, 548, 805, and 1062.

Not only was JCD 1366 rightly decided, but the Judicial Council has reaffirmed its holding in this area in JCDs 1379 (at 4-5), 1424 (at 2), and 1425 (at 3). The Judicial Council should do so once again in this matter. JCD 215, cited by Lawrence at 5-6, addressed the question of who could grant an annual conference outside the United States, specifically in Cuba, autonomy. The Judicial Council declared in the “Decision” portion of its ruling, “Only the General Conference

of The Methodist Church is vested with power to grant autonomy to an overseas Annual Conference, Provisional Annual Conference, Central Conference or Provisional Central Conference which has been historically an integral part of The Methodist Church.” JCD 215 has been superseded by the General Conference’s adoption of ¶ 572 and by JCDs 1366, 1379, 1425, and 1425.

## **II. ANSWERING ATTEMPTS TO MISCHARACTERIZE JCD 1366.**

The briefs of Lonnie Brooks and Chappell Temple support the foregoing analysis. Other briefs, however, seek to limit, diminish, mischaracterize, or blatantly twist the plain, cogent statements quoted above in JCD 1366. The Chancellors Brief flagrantly misrepresents the holding of JCD 1366. Chancellors Brief, at 4.

The Chancellors Brief demonstrates that the authors realize that JCD 1366 stands in the way of their desired outcome so the authors are content to try to prevail by rewriting the very holding of JCD 1366 to fit what they wished the decision said. Chancellors Brief, at 4. The entire argument advanced by these chancellors should be rejected because of their blatant effort to reinterpret, mischaracterize, and rewrite the express language of JCD 1366. Rather than JCD 1366 stating that the Constitution is “not offended” by legislation allowing an annual conference to disaffiliate as suggested by their brief (Chancellors Brief, at 4), JCD 1366 expressly recognizes that the right to leave is an inherent, reserved right of the annual conference. The argument, advanced in their brief (Chancellors Brief, at 7), the Lawrence brief at 5, and the Horton brief at 5, that there is no inherent, reserved right for an annual conference to leave because such an action is a distinctively connectional matter was expressly rejected by the Judicial Council (“the silence of the Constitution on this subject matter does not inevitably ...

lead to the automatic inference that the topic has been exclusively assigned to the General Conference under the umbrella of ‘all matters distinctively connectional.’”) JCD 1366, at 43.

The COB brief argues that those who would answer the first question of its declaratory decision request affirmatively “want to isolate a few lines from Decision 1366 as providing a unilateral *legal* right of an annual conference to vote to separate from The United Methodist Church.” COB Brief, at 3. Obviously, from the foregoing paragraphs, that is not our assertion. An annual conference cannot act to negate, ignore, or violate express provisions adopted by the General Conference as part of the *Discipline*. See JCD 886. If the *Discipline* contained provisions regulating the inherent, reserved right of an annual conference to leave the UMC, the annual conference would have to comply with those provisions. In the absence of such provisions, the annual conference is free to exercise its inherent, reserved right to leave entrusted to it by the Constitution. If there are disciplinary provisions that need to be addressed as part of the exercise of the inherent, reserved right, the annual conference must address those provisions.

### **III. AN ANNUAL CONFERENCE’S INHERENT RIGHT TO WITHDRAW DOES NOT NEGATE THE CONSTITUTIONAL POWERS OF JURISDICTIONS OR CENTRAL CONFERENCES.**

The COB also argues that recognizing the right of annual conferences to leave ignores “connectional issues related to annual conferences and episcopal areas that are the province of jurisdictional conferences.” COB Brief, at 4. This argument was rejected in JCD 1366 which states, “We agree with the submitter’s argument that the ‘withdrawal of an annual conference does not negate the constitutional power of jurisdictional or central conferences.” JCD 1366, at 44.

The COB brief (pp. 4-5), Lawrence brief (pp. 6, 14), and Horton brief (p. 3) raise the additional objection that an annual conference withdrawal would impinge upon the jurisdiction's authority to set "the number, names, and boundaries of the annual conferences and episcopal areas" (§ 40). Similar issues were already reviewed and addressed by the Judicial Council in JCD 1366. That ruling acknowledged, "The argument raised against this proposed legislation is that it violates the right of jurisdictional and central conferences to determine the boundaries of their annual conferences (§§ 27.4 and 31.4) and that annual conferences are not authorized to create or dissolve themselves." JCD 1366, at 43. While those parenthetically cited Constitution paragraphs are not the same as § 40, there is substantial overlap in the content of all three paragraphs in giving jurisdictional and central conferences authority to determine the *boundaries* of their associated annual conferences. As noted above, JCD 1366 concluded, "We agree with the submitter's argument that the 'withdrawal of an annual conference does not negate the constitutional powers of jurisdictional or central conferences.'"

The power to set boundaries entails within it the power to set the number and names of annual conferences and episcopal areas. After an annual conference withdrew, the next and every subsequent jurisdictional conference session would fully retain its authority to maintain or redraw the boundaries of its annual conferences and episcopal areas, to continue or change their names, and to make such decisions in ways that would potentially increase, decrease, or maintain the jurisdiction's overall number of annual conferences. The jurisdiction could accommodate the area vacated by the withdrawing annual conference and any remaining United Methodist congregations within that area however it wished. Within limits set only by General Conference, all subsequent sessions of jurisdictional conference would fully retain their authority to set the

number and boundaries of episcopal areas. An annual conference's withdrawal compromises none of these jurisdictional conference powers.

The referenced "submitter" in JCD 1366 was the Rev. Thomas Lambrecht. Fuller context of his argument which the Judicial Council accepted and quoted from in Decision 1366 directly addresses ¶40:

¶ 40 gives the jurisdictional and central conferences the power to determine "the number, names, and boundaries of the annual conferences and episcopal areas." If an annual conference were to withdraw, the jurisdictional or central conference would simply redraw the boundaries of existing annual conferences to include the vacated area (as was done in the case of Sweden) or form a new annual conference to cover the vacated area. The withdrawal of an annual conference does not negate the constitutional powers of jurisdictional or central conferences.

Lambrecht Opening Brief in JCD 1366, at 10.

The Chancellors' Brief, at 5, recognizes that JCD 1366 amounted to "rejecting the argument that allowing annual conference disaffiliation would violate the jurisdictional conference's constitutional power to determine the 'number, names and boundaries of annual conferences' in the United States."

We affirm the statement in the Horton brief recognizing that an annual conference withdrawing from the UMC "does not equate to a change in the names, number, and boundaries of the annual conferences in a jurisdiction if the jurisdictional conference has not voted to effect such a change." Horton Brief, at 15.

#### **IV. AN ANNUAL CONFERENCE'S INHERENT RIGHT TO WITHDRAW DOES NOT JEOPARDIZE THE "CONTINUATION OF THE EPISCOPACY."**

The COB's arguments related to the "continuation of the episcopacy," citing ¶¶ 45, 48, and 49, are inapposite. COB Brief, at 5. Nothing about an annual conference's decision to leave the UMC changes the nature and structure of the episcopacy as set forth in the Constitution and

*Discipline* of the UMC. The plan of episcopacy for the UMC remains unchanged despite an annual conference's exercise of its right to leave. Likewise, the vote of an annual conference to leave the UMC does not result in lay members voting on matters of ordination, character, and conference relations of clergy, as the vote to leave does not impact the status of clergy, who retain their ordination and who have been granted membership in the annual conference. Such clergy continue to be ordained and continue to maintain their conference relations with the separating annual conference unless they choose otherwise and then the decision is made by the clergyperson, not the separating annual conference.

**V. AN ANNUAL CONFERENCE'S INHERENT RIGHT TO WITHDRAW DOES NOT JEOPARDIZE THE RIGHT TO TRIAL, NOR DOES IT ENTAIL LAITY VOTING ON THE ORDINATION, CHARACTER, OR CONFERENCE RELATIONS OF CLERGY.**

The Lawrence Brief at 8, 13-15, the COB Brief at 5, and the Horton Brief at 4 object that an annual conference voting to separate would remove people from the denomination in violation of the right to trial extended to all clergy and laity (§§ 20, 58) and the restriction that in an annual conference, “the lay members may not vote on matters of ordination, character, and conference relations of clergy” with limited exceptions (§ 33).

Importantly, if clergy and laity depart from the UMC as part of an annual conference separation, it would be the result of those individuals choosing to leave the UMC, not the result of a person being disciplined for alleged wrongdoing. The *only* individuals who would be removed from membership in the UMC by an annual conference withdrawal would be those who *chose* to separate and/or *refused* to take advantage of options to remain United Methodist. When clergy or laity choose to leave the UMC, their right to trial becomes irrelevant. As JCD 691 states, “An ordained minister who withdraws under complaints or charges forfeits the

constitutional right to trial.” Furthermore, since the expressed concern is for individuals who would *not* be facing formal complaints, the broader language of JCD 1055 is also relevant: “The decision to surrender credentials before being presented with a formal complaint is presumed valid and works as a forfeiture of further rights.” When clergy choose actions or inactions that result in forfeiting their “further rights” under the *Discipline*, this includes the right to guaranteed appointments (in the case of elders) and the right to trial. And since ¶¶ 20 and 58 grant both clergy and laity a similar right to trial, the precedents that this and other rights are forfeited by clergy who choose to no longer remain United Methodist would also apply to laity.

Laypeople are members of the UMC primarily in and through their congregations. Any layperson who chose to remain a member of a UM congregation while it left the denomination, as a result of an annual conference withdrawal, would not lose their professing membership in her local church. And this collective withdrawal would not involve any question of discipline of any alleged transgression by this individual, and so a church trial would be irrelevant.

Clergy are members of their annual conferences. Clergy who chose to remain members of their annual conference while it transfers out of the UMC would continue to be clergy members of the annual conference, albeit with a different denominational affiliation. Again, this collective withdrawal would not involve any discipline or accusation of wrongdoing against conference clergy, and so a church trial would not be relevant. Furthermore, ¶ 33 would not be violated for the simple reason that the laypeople who voted to support the withdrawal of the annual conference would not have thereby voted to make any sort of individual or collective judgment about the “character” of clergy in their annual conference, nor would they have granted or removed the clergy’s ordination or “*conference* relations.”

## **VI. SUMMARY OF ARGUMENT WITH RESPECT TO QUESTIONS 1-3.**

For all of the foregoing reasons as well as those stated in our opening brief, the Judicial Council should reaffirm that an annual conference of the UMC may separate from the UMC. The Judicial Council should further hold that annual conferences can vote to separate from the UMC without General Conference first establishing procedures and requirements for separation. Such an annual conference vote is effective according to the terms of the motion adopted under the authority of ¶ 33 of the Constitution and JCD 1366. The Judicial Council should hold that *Discipline* ¶ 572 does not provide universally binding minimum standards in every circumstance of annual conferences seeking to separate from the UMC. Finally, the Judicial Council does not have jurisdiction over all other matters raised (questions 4-6) by the Declaratory Decision Request because the questions posed are hypothetical.

## **VII. REPLY TO ARGUMENTS ADVANCED IN RESPONSE TO QUESTIONS 5 AND 6.**

As argued in our opening brief, the Judicial Council does not have jurisdiction to rule on these questions because they are hypothetical and they do not reference any portion of the *Discipline* nor any action or proposed action of the General Conference.

In response to Question 5(c), the Wespeth brief proposes a series of eminently reasonable suggestions about how particular matters related to pensions could be resolved in the event that an annual conference withdraws to unite with another denomination. However, the brief illustrates the hypothetical nature of Question 5 and invites the Judicial Council to legislate to fill in a potential void. The Judicial Council should rule that Question 5 is hypothetical and refrain from legislating, a role not entrusted to the Judicial Council.

In response to Question 5(d), the Chancellors' brief argues that the withdrawal of an annual conference "would not extinguish the trust that requires all annual conference assets to be dedicated to the use and benefit of The United Methodist church as a whole." Chancellors' Brief, at 8. In summary, they argue: 1) The trust clause governs all church property and is for the benefit of the entire denomination (§ 2501.1). 2) The trust clause is irrevocable (§ 2501.2). 3) The trust clause can only be released as the Discipline specifies (§ 2501.2). 4) The Discipline does not specify that a withdrawing annual conference can release the trust clause to keep its property. 5) Paragraph 2509.2 allows any property-holding entity to file suit to uphold denominational interests in the trust (not just for that entity's property, but for all denominational interests). 6) Therefore, if an annual conference withdraws from the UMC, its property must remain in the UMC.

The above assertions ignore some countervailing information. The annual conference is the sole arbiter of local church property and the sale, transfer, or release of the trust regarding such property. Paragraphs 2548, 2549.2c, and 2553 all stipulate that the annual conference must approve the sale, lease, disposal of local church property or the release of the trust clause to that local congregation. The annual conference is the only body that has authority to do so. Therefore, all local church property in an annual conference that withdraws from the UMC can be sold or transferred to the local congregation as part of that act of withdrawal.

The annual conference has control over its own property. Paragraph 2515 states, "No annual conference property shall be sold, transferred, or leased for a term that exceeds twenty years, or mortgaged or purchased without the consent of the annual conference." That implies the annual conference has authority to sell, transfer, or lease its property (and as the rest of the paragraph makes clear, that includes local church, Wesley Foundation, and campus ministry property). The

withdrawing annual conference, like any other annual conference, has the authority to transfer its property to its successor annual conference as part of its act of withdrawal (see, for example, JCD 64).

Additionally, despite the fact that other entities can file suit to “protect denominational interests” (§ 2519.2), it is not obvious what entity could hold title to an annual conference’s property if it was forfeited under such a suit. Once the annual conference has withdrawn, there is no other United Methodist annual conference in that area. The jurisdiction or central conference would have to meet and redraw boundaries in order to create an annual conference that would cover the area vacated by the withdrawing conference. That would take time, and in the meantime, the withdrawing annual conference would continue to hold title to its property and could transfer it as stipulated above. Certainly, no local church or conference or general church agency is permitted under the *Discipline* to assume title to an annual conference’s property.

Given that the annual conference is the “basic” and “fundamental” body of the church, has exclusive right under the *Discipline* to enforce the trust clause for itself and its member churches and agencies, and has total authority over the disposal of its property, the withdrawing annual conference may dispose of its property as it sees fit.

Should the Judicial Council take jurisdiction of questions 5 and 6, it should rule that the matters raised in these hypothetical examples are all covered by existing paragraphs in the *Book of Discipline*. The Judicial Council has ruled that an annual conference may not legally negate, ignore, or violate provisions of the *Discipline* (JCD 886). Therefore, any action taken by an annual conference to withdraw from the UMC and align with another denomination must comply with relevant provisions of the *Discipline* in the handling of the matters raised in the questions.

For example, the COB brief raises the issue of guaranteed appointment (technically, security of appointment, ¶¶ 334.1, 337.1). The brief raises the hypothetical situation of an annual conference withdrawing from the UM Church and whether that would deprive an elder of security of appointment. COB Brief, at 11-12. The withdrawal of the annual conference would not automatically change the status of an elder. The elder’s membership would be contingent upon his or her decision of whether to align with the new denomination along with their annual conference. An elder is at liberty to decide not to so align and could remain a part of the UMC. If the elder did not choose to continue to remain with the UMC, security of appointment would no longer apply to such an elder by virtue of the elder’s decision to be part of the separating annual conference. However, if the elder decided to remain in the UMC, by virtue of the elder’s decision to do so, the elder would continue to have security of appointment. Whether security of appointment continues is the result of the elder’s decision, not the action of the separating annual conference.

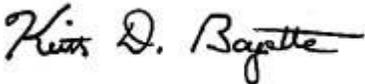
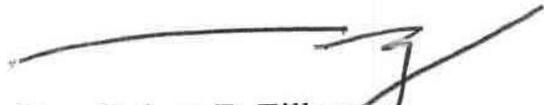
The COB brief also raises a question of whether such an action destroys the plan of itinerant general superintendency. “The COB respectfully submits that not allowing an elder in full connection rights to dissent and transfer to another annual conference in a manner that does away with the security of appointment is therefore unconstitutional as destroying the plan of itinerant general superintendency pursuant to ¶¶ 45 and 48 of the Constitution” COB Brief, at 11-12. Since the withdrawing annual conference would have to comply with the *Discipline* in its withdrawal, it could not do so “in a manner that does away with the security of appointment” for United Methodist elders. It would have to allow clergy who wanted to dissent and separate from the annual conference in order to remain United Methodist, and thus maintain all rights as United

Methodist clergy. Therefore, such annual conference withdrawal does not “destroy the plan of itinerant general superintendency” and is constitutional.

### **RELIEF REQUESTED**

1. Responding to the first question of the declaratory decision request, the Judicial Council should reaffirm that the Constitution of The United Methodist Church gives annual conferences the right to vote to withdraw.
2. Responding to the second question of the declaratory decision request, the Judicial Council should rule that *Discipline* ¶572 expressly does not provide universally binding minimum standards for any annual conference in the United States seeking to separate from the UMC.
3. Responding to the third question of the declaratory decision request, the Judicial Council should rule that annual conferences can vote to separate from the UMC without General Conference first establishing procedures and requirements for separation.
4. Responding to the fourth question of the declaratory decision request, the Judicial Council is without jurisdiction to rule because the question is hypothetical. If it does rule, the Judicial Council should rule that such an annual conference vote would be effective according to the terms of the motion adopted under the authority of ¶ 33 of the Constitution and JCD 1366.
5. Responding to the fifth question of the declaratory decision request, the Judicial Council is without jurisdiction to rule because the question is hypothetical.
6. Responding to the sixth question of the declaratory decision request, the Judicial Council is without jurisdiction to rule because the question is hypothetical.

Respectfully submitted,

 <p>Rev. Keith D. Boyette 4545 Empire Court Fredericksburg, VA 22408 Phone: 540-538-3202 Email: president@wesleyancovenant.org</p>	 <p>Mr. John Lomperis c/o United Methodist Action 1023 15<sup>th</sup> St NW – Ste 200 Washington, DC 20005 Phone: 872-230-2149 Email: jlomperis@mail.harvard.edu</p>
 <p>Rev. Thomas A. Lambrecht 1903 Whitelaw Drive Spring, Texas 77386 Phone: 920-475-6000 Email: revtom5@sbcglobal.net</p>	 <p>Rev. Robert F. Zilhaver 30 East Main, Suite 202 Uniontown, PA 15401 Phone: 814-591-1990 Email: rzilhaver99@gmail.com</p>

**AFFIDAVIT OF SERVICE**

An electronic copy of this brief has been sent to each person identified by the Judicial Council as having filed a brief in Docket #1021-23.

April 22, 2022

Secretary of the Judicial Council  
c/o L. Smith  
1215 Shady Lane  
Durham, NC 27712

Greetings in the Name of Jesus Christ,

It is with a heavy heart that we request that Warren Plowden and Luan-Vu Tran recuse themselves from participating in Judicial Council Docket Item 1021-23 in Re: Petition for a Declaratory Decision From the Council of Bishops on Questions Related to the Separation of an Annual Conference Within the United States from The United Methodist Church. We make this request under the provisions of ¶2607 *Confidentiality and Ex Parte Communication*. Should Mr. Plowden and Rev. Tran decline to recuse themselves, we move that the remaining members of the Judicial Council disqualify Mr. Plowden and Rev. Tran from participating in deliberations and the decision of this matter.

It has come to our attention that these two members were present during the Chancellor's meeting in Denver, Colorado from April 7-9, 2022. They were present during a presentation and discussion of substantive matters regarding separation of an annual conference from The United Methodist Church by Bishop Cynthia Fierro Harvey, President of the Council of Bishops, and Bishop Thomas J. Bickerton, President-Elect of the Council of Bishops. They also listened to the comments and observations of others that addressed the merits of the matter. Their presence and active participation resulted in their engaging in *ex parte* communications about a matter pending before the Judicial Council without other participants in the matter being present. These communications were substantive in nature and not merely procedural.

This is a clear violation of “¶2607. *Confidentiality and Ex Parte Communication*—1. The members of the Judicial Council will not permit discussion with them on matters pending before them or that may be referred to them for determination, save and except before the Judicial Council session.”

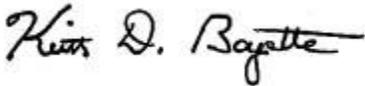
The presence and participation of Mr. Plowden and Rev. Tran in these presentations and discussions risks tainting this important decision and tarnishes the reputation, integrity, and ability of other members of the Judicial Council to render an objective and impartial decision in this matter.

In addition, subsequent to the referenced meeting, a group of current and former chancellors submitted a brief in this matter. Some, most, or all these Chancellors would appear to have been present and participated in the presentation and the following discussion with the

Judicial Council members present and participating. Once again, as the public learns of these events, the obvious inference is that the current and former chancellors shared their positions in the presence of these Judicial Council members and sought to influence the opinions of such members. Such conduct leads to the conclusion that there has been collusion between persons presenting arguments to the Judicial Council and those charged with deciding this matter for a desired outcome. The only way this impropriety can be remedied is either through Mr. Plowden and Rev. Tran recusing themselves or the remaining Judicial Council members disqualifying them from participation.

For any hope that a decision on this matter might carry a moral, effective, and accepted outcome, members Tran and Plowden of the Judicial Council should recuse themselves from this docket item or be disqualified from participation by other members of the Judicial Council.

Respectfully submitted,



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