

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

*IN RE: Request for Declaratory Decision Regarding the
Constitutionality, Meaning, Application, and Effect of the
“Traditional Plan,” As Enacted During the 2019 Special Session) Docket No. 0419-01
of the General Conference of The United Methodist Church.)*

PETITION FOR RECONSIDERATION

SUBMITTED BY GENERAL CONFERENCE DELEGATES TOM BERLIN,
JAY BRIM, EVELYNN CATERSON, LONNIE CHAFIN, GINGER GAINES-CIRELLI,
ADAM HAMILTON, MARK HOLLAND, PHIL MOOTS, DAVE NUCKOLS,
DONNA PRITCHARD, AND CYNTHIA WEEMS

I. SUMMARY OF ARGUMENT

A. Identifying the Errors That Require Reconsideration of Decision 1378

Pursuant to Rule IX of Judicial Council’s Rules of Practice and Procedure, the under-
signed delegates to the 2019 Special Session of General Conference of The United Methodist
Church submit this Petition for Reconsideration, asking that the Judicial Council reconsider the
rulings made in Decision No. 1378.¹ As explained in detail below—and as amplified by the
opening and reply briefs these same delegates filed on March 18 and March 23, respectively²—
JCD 1378 is demonstrably erroneous. In particular, the Council’s application of the doctrine of
severability was deeply flawed for each of the following reasons:

- In the absence of a “severability clause” in any of the Traditional Plan’s composite peti-
tions—and more importantly, in the face of a legislative record that leaves no doubt about the

¹ Besides being delegates to the General Conference, Tom Berlin (Virginia), Dave Nuckols (Minnesota), and Donna Pritchard (Oregon-Idaho) served on the Commission on a Way Forward, giving them a particularly informed perspective on the overall objectives of Commission’s work, which, as the Judicial Council recognized in JCD 1360 was nothing less than “to develop a *complete* examination and possible revision of *every* paragraph in our Book of Discipline regarding human sexuality.” The brief’s other sponsors attended the Special Session as delegated for the annual conferences indicated: were delegates Jay Brim (Rio Texas), Lynn Caterson (Greater New Jersey), Lonnie Chafin (Northern Illinois), Ginger Gaines-Cirelli (Baltimore-Washington), Adam Hamilton (Great Plains), Mark Holland (Great Plains), Phil Moots (West Ohio), and Cynthia Weems (Florida).

² For the Council members’ convenience, copies of the delegates’ opening and reply briefs in this matter are attached hereto as Appendix A and Appendix B.

General Conference’s contrary intentions—it was error for the Council to adopt a “presumption of severability.”³

- Taken together, the manifest purpose of the “Way Forward” process as approved by the 2016 General Conference in the first instance; the singular focus of the 2019 Special Session; and the actions taken throughout those proceedings by the General Conference delegates, officers and committees alike—none of that can plausibly be squared with the Council’s reflexive characterization of the Traditional Plan as simply “consist[ing] of a series of petitions that were separately numbered, dealing with completely different paragraphs of *The Discipline*.”⁴ Repeating that exact refrain in three distinct places—and without once mentioning the Commission on a Way Forward, or “human sexuality,” or even the stated purpose of this called session of the General Conference—JCD 1368’s virtually exclusively focus on the bare mechanical functionality of the Traditional Plan’s composite petitions completely bypasses, and thereby obscures the reality that the legislative *plans* presented for action during the Special Session were the furthest thing from *ad hoc* collections of petitions “dealing with completely different paragraphs of the *Discipline*.”⁵ On the contrary, each *plan* was presented as a comprehensive, integrated response to the 2016 General Conference’s mandate that the “*entire* subject” of “human sexuality” be referred to “a special Commission . . . to develop a *complete* examination and possible revision of *every* paragraph in our Book of Discipline *regarding human sexuality*.”⁶

³ JCD 1378 at 2.

⁴ *Id.* at 6.

⁵ *Id.* at 6.

⁶ DCA, Vol. 4, No. 9 (May 19, 2016) at 2688 (emphasis added). *See also* JDC 1360 at 3 & n. 6 (Affirming that the legislative record of the 2016 General Conference establishes that the core purpose of the called special session would be to address legislative proposals that ultimately emanate from the Commission’s “‘complete examination’ of the subject of human sexuality” and “the ‘possible revision of every paragraph in our Book of Discipline regarding human sexuality’”).

- Finally, there is no basis—none at all—for the Judicial Council’s pivotal conclusion that Traditional Plan advocates had no choice but to leave in place the unconstitutional aspects of the Traditional Plan—enacting them “as is”—because “[b]ringing the TP into alignment with the Constitution would have necessitated ‘dividing the question,’”⁷ which the Presiding Officer (Bishop Cynthia Harvey) disallowed.⁸ In truth, as a matter of basic parliamentary procedure, the issue of “dividing the question” was entirely distinct from, and *did nothing whatsoever to impede*, the making of motions to amend any of the Traditional Plan’s multiple constitutionally infirm petitions. Indeed, the legislative record proves this point beyond any doubt. During the plenary session on February 26, Traditional Plan advocates *successfully* moved to amend one of the Traditional Plan’s constitutionally infirm petitions—namely, Petition No. 90037—and from all that appears in the legislative record, they simply chose to “stand pat” when it came to every other petition that the Judicial Council had previously invalidated.

B. Manifest Injustice Will Result if Decision 1378 Stands

Although the errors identified above are sufficient to support reconsideration under the Judicial Council’s rules, it is not hyperbole to say that correcting those errors is also needed “in order to prevent a manifest injustice.”⁹ For many (including the undersigned delegates), the principal injustice is the prospect that the *Discipline’s* human sexuality provisions will not only continue in effect after January 1, 2020, but that they will be reinforced by enhanced enforcement provisions embedded even in the truncated iteration of the Traditional Plan enacted at the Special Session. But that is not the injustice being pressed in this Petition for Reconsideration.

⁷ JCD 1378 at 6-7.

⁸ *Id.* at 7 (citing *Daily Christian Advocate (DCA)*, Vol. 2, No. 5 (Feb. 27, 2019), at 512).

⁹ *Judicial Council Rules of Practice and Procedure*, R. IX.A.

The manifest injustice occasioned by the immediate implementation of piecemeal provisions of the Traditional Plan is nothing less than the betrayal of the 2016 General Conference’s plainly stated purpose in approving the Way Forward process recommended by the Council of Bishops, and of Commission on a Way Forward’s faithful and dedicated efforts to fulfill that purpose. It is no exaggeration to say that in May 2016, when the General Conference convened in Portland, Oregon, the denomination’s connectional bonds appeared to many to have frayed to the breaking point—more so than at any time since 1844, when long-simmering disagreements over the institution of slavery finally boiled over and tore the church asunder. Making matters worse, the General Conference “was facing . . . an onslaught of 56 distinct legislative petitions proposing scores of distinct ‘solutions’ to the quadrennial debate over human sexuality issues that have dominated General Conference sessions for nearly a half century.”¹⁰

Seeking to break that pattern, the 2016 General Conference adopted the Council of Bishops’ recommendation to “refer this entire subject [of human sexuality] to a special Commission . . . to develop a complete examination and possible revision of every paragraph in our Book of Discipline regarding human sexuality.”¹¹ The stated objective, the Bishops explained at the time, was to “lead the church toward new behaviors,” principally by “step[ping] back from attempts at legislative solutions” hatched and debated in scores, convening instead a focused group of faithful United Methodists to labor together and distill focused recommendations for consideration and action at a “two-to-three-day gathering” of a “called General Conference in 2018 or 2019.”¹² But more than that, the ultimate objective was nothing less than to avert impending schism by

¹⁰ JDC 1360 at 1.

¹¹ *Id.* at 3 (quoting *DCA*, Vol. 4, No. 9 (May 19, 2016) at 2488).

¹² *DCA*, Vol. 4, No. 9 at 2488.

seeking “a way forward for profound unity on human sexuality and other matters”—a unity that “allows for a variety of expressions to coexist in one church.”¹³

Now, with the blessing imparted by JCD 1378, the stated objective for convening a Special Session of the General Conference has been stood on its head. In lieu of an integrated and comprehensive approach that addresses the “entire subject” of “human sexuality,” the denomination has been handed a truncated version of a plan that, far from allowing “for a variety of expressions to coexist in one church,” is now being championed by Traditional Plan advocates as just the first advance in an effort to “enhance” enforcement of the Discipline’s existing human sexuality provisions, which they insist must remain the “one unified moral stance” of The United Methodist Church on the issues of marriage and sexuality. Unsurprisingly, the evidence abounds that the unity of the church is now more imperiled than ever.

It did not need to be so. And it need not be so even now, if the Judicial Council grants this Petition for Reconsideration. As outlined above, and as amplified further below, well-established precedent regarding the doctrine of severability, when read in light of the legislative record, demands the conclusion that the Traditional Plan adopted by a bare majority in St. Louis must be invalidated in its entirety.

II. THE COUNCIL ERRED BY ADOPTING A PRESUMPTION OF SEVERABILITY

In upholding the few portions of the Traditional Plan that survived constitutional scrutiny, the Judicial Council reasoned that, “absent clear evidence to the contrary, we are guided by the presumption of severability.” JCD 1378 at 2. This was an erroneous application of the doctrine of severability. The U.S. Supreme Court has made clear that in cases where the statute does *not* include a severability clause, the operative “presumption is that the legislature intends an act to be

¹³ *Id.*

effective as an entirety,” such that if any provision is found to be unconstitutional, “the presumption is that the remaining provisions fall with it.” *Carter v. Carter Coal Co.*, 298 US 238, 312 (1936) (emphasis added). In this case, the Traditional Plan contained no severability clause. It is true, as the Council observed, that the absence of such a clause is not dispositive. But it does mean that the burden falls on Traditional Plan advocates to defeat the presumption that the legislature intended for the Traditional Plan to be effective as an entirety.

Furthermore, if one is to take seriously the rule that the primary evidence of the General Conference's intent is to be found in the “language, meaning, structure, and purpose” of the legislation itself, it is difficult to reach any other conclusion than that the General Conference—in 2016 and again during the Special Session—was seeking to enact composite legislation that would comprehensively every provision in the Book of Discipline that concerns human sexuality. The entire design and order of the Special Session bore this out. Thus:

- Before the delegates gathered in St. Louis, the Commission on the General Conference determined that “[p]etitions that compose a plan will be considered together as one unit.” DCA Vol. 2, No. 1 (Feb. 23, 2019) at 263.
- After the voting to prioritize the plans was completed, each composite plan would thereafter “be brought to the floor of the legislative committee for perfection and a committee vote in order according to the prioritization.” *Id.*
- None of this precluded offering amendments during the committee process. On the contrary, amendments to cure constitutional defects to both the Traditional Plan and the One Church Plan were made in Legislative Committee.
- In unique circumstances, in which it made sense for the body to “uncouple” one or more petitions from the plan to which it was technically attached, that was

accomplished by the General Conference itself. Thus, for example, on February 21, 2019, the Committee on Reference ruled on “a request to 'decouple' the two Wespath petitions, numbers 90016 and 90017, from the One Church Plan since it was the original intent of Wespath that these petitions be considered no matter what plan is selected by the General Conference.” DCA, Vol. 2, No. 4 (February 24, 2019) at 283. Since the Wespath petitions “do not relate specifically to any one plan,” the Committee on Reference “ruled unanimously that these petitions be considered separately from the One Church Plan.” Id.

III. TRADITIONAL PLAN ADVOCATES WERE ENTIRELY FREE TO MOVE TO CURE BY AMENDMENT THE UNCONSTITUTIONAL PORTIONS OF THE TRADITIONAL PLAN

In a critical portion of JCD 1378, the Judicial Council reasons that advocates of the Traditional Plan were effectively prevented from “bringing the TP into alignment with the Constitution” because that “would have necessitated ‘dividing the question,’ that is, dividing the TP into separate petitions for debate and voting.” In fact, nothing about the rules governing dividing the question—or voting on a series of petitions as a package—prevented any delegate from making motions to amend any particular provisions of any particular petition, and then engaging in debate on those motions. In fact, that was done on select TP petitions, both in the legislative committee and in the plenary. In the end, however, it was Traditional Plan advocates, that opted to amend just one of the defective provisions and to move to terminate debate and move to a vote on the Traditional Plan in its entirety.

For all of the foregoing reasons, the undersigned delegates respectfully request reconsideration of JCD 1378

Respectfully submitted,

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