

Judicial Council of The United Methodist Church

Reply Brief for Docket 1021-23

In Re: Petition for 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.

Introduction

With respect to the authors who submitted briefs for Docket 1021-23 before the Judicial Council, I, Rev. David Horton, an elder in the Texas Annual Conference and author of another brief, wish to reply to two arguments made by the Revs. Boyette, Lambrecht, and Zilhaver and Mr. Lomperis in their brief.

The first argument is: “The right of the annual conference to vote to withdraw from the United Methodist Church is lodged in ¶33 in the exercise of rights not delegated to the General Conference.”¹ This argument makes a case for the meaning, application, and effect of ¶33 of *The Book of Discipline (Discipline)*, none of which can be true if the UMC is a connectional church as the *Discipline* defines (¶125) and several Judicial Council decisions have affirmed (see Decisions 139 and 1312).

The second argument is: “JCD 1366 also settles the authority that the annual conference has to act on its vote [to separate from the UMC] and legally effect a separation.”² This argument makes a case for the use of Decision 1366 in the matter of annual conference disaffiliation. The authors argue that Decision 1366 “settled” the matter of annual conference disaffiliation with the position that annual conferences in the United States may vote to separate from the UMC without an act of the General Conference to establish the standards and procedure for annual

¹ Boyette, et al., *Amicus Brief*, 10.

² *Ibid.* 15.

conference disaffiliation. However, such an application of Decision 1366 is not true to the meaning of Decision 1366; the matter is not “settled.”

These two arguments are about the meaning, application, and effect of ¶33 and Decision 1366. Together, they make the heart of the position that annual conferences in the United States may separate from the UMC without an act of the General Conference. For those who hold this position, the combined effect of ¶33 and Decision 1366 creates a pathway for annual conferences in the United States to separate from the UMC immediately at the will of the annual conference, with or without any action from the General Conference. However, this position is not grounded in an accurate interpretation of the meaning, application, and effect of ¶33 and Decision 1366. Paragraph 33 and Decision 1366 do not constitute a pathway for annual conferences in the United States to separate from the UMC. I will elaborate by discussing each of the two basic arguments in turn, and close with a request for relief.

1. The right of the annual conference to vote to withdraw from the United Methodist Church is *not* lodged in ¶33.

As the authors point out, the annual conferences are the “fundamental bodies” of the church (¶11). Unlike every other church body, the annual conference is in the unique position to claim “such other rights as have not been delegated to the General Conference under the Constitution” (¶33). If a right is not delegated to the General Conference in the enumerated powers of ¶16, then according to ¶33, that right is reserved to the annual conference. Judicial Council echoed this position in Decision 1366: “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.”³ There can be no doubt, then, that if a “subject matter” is not explicitly granted as a power of the General Conference, it must be counted as a right reserved to the annual conference.

However, where the argument of the authors overreaches is their interpretation that ¶33 allows for annual conferences to interfere in the connectional relationships of the church. The annual conference is the “fundamental” body of the church but that does not permit an annual conference to claim rights that, in the exercise of those rights, extend beyond the boundaries of that individual annual conference. The provisions of ¶33 are for the use of an annual conference within that annual conference. An annual conference may claim “such other rights as have not been delegated to the General Conference under the Constitution” so long as the annual conference is not reaching beyond its bounds for the application of those rights, for if it did, the annual conference would be effecting a change in the business, agenda, and operations of other bodies in the connection. The annual conference may reserve the right to claim all rights that are not delegated to the General Conference but solely for the purpose of business conducted within the bounds of the annual conference. Outside those bounds, jurisdiction lies with the one body in the church that has full power over all matters “distinctively connectional” (¶16) – the General Conference.

Annual conference disaffiliation has consequences outside the boundaries of the annual conference that wishes to separate from the UMC. For example, annual conference disaffiliation would seek to change the standards of church membership for all church members within the annual conference. The standards of church membership are an enumerated power of the General Conference because a United Methodist church member is a member of the *entire* UMC

³ JCD 1366, 43.

connection, not just of the local church within the bounds of the annual conference. In attempting to change the standards of church membership, the annual conference would be seeking to change a fundamental relationship that extends beyond the annual conference. Another example is the credentialing of elders and deacons. One is ordained a United Methodist elder or deacon no matter where on earth that person is. To effect a change in the credentialing of elders or deacons, which annual conference disaffiliation would seek to do, is a power that extends beyond the annual conference. This list is not meant to be exhaustive but instructive of the kind of impact annual conference disaffiliation would have for United Methodist relationships and bodies outside the boundaries of the annual conference that seeks to disaffiliate. An annual conference does not separate in a vacuum. Separation has immediate consequences for the connection.

Therefore, annual conference disaffiliation is a connectional matter. The authors state that “the right to permit or prohibit an annual conference from withdrawing from the connection” is “conspicuously absent” from the enumerated powers of the General Conference in ¶16.⁴ But simply because the framers did not foresee this issue or include every possible connectional issue in the enumerated powers of the General Conference does not mean that General Conference does not have jurisdiction over this and other connectional matters. No, annual conference disaffiliation is not expressly enumerated in ¶16, but it is faithfully included within “full legislative power over all matters distinctively connectional.”

Judicial Council Decision 1366 supports this position. As the Council of Bishops included in their request for a declaratory decision, Decision 1366 says: “*An annual conference has the right to vote to withdraw from The United Methodist Church. This reserved right, however, is not absolute but must be counterbalanced by the General Conference’s power to*

⁴ Boyette, et al., *Amicus Brief*, 9.

'define and fix the powers and duties of annual conferences' in ¶ 16.3." (emphasis added by request submitter). Note the use of the word "must" rather than "may." The reserved right of the annual conference "to vote to withdraw from The United Methodist Church" must be counterbalanced by the General Conference.

Decision 1366 also states "the annual conference [...] exercises autonomous control over the agenda, business, discussion, and vote on the question of withdrawal." Absent from this ruling is language of execution or effect of the "vote on the question of withdrawal." While the annual conference has the *right to vote on withdrawal*, that is not the same thing as *the right to withdrawal*. The annual conference has autonomous control over the vote to withdrawal, but the exercise of that vote introduces immediate consequences for bodies outside the boundaries of the annual conference, so the authority to exercise that vote must be granted by the body that is responsible for all connectional matters – the General Conference.

The authors cite Decision 916 as precedent for the "right of an annual conference to take action entrusted to it without enabling legislation having been adopted by the General Conference."⁵ In doing so, the authors argue the Judicial Council has already ruled that annual conferences may exercise the rights entrusted to it without waiting for enabling legislation from the General Conference. If annual conferences didn't have to wait then (in 2001), annual conferences who wish to separate shouldn't have to wait for General Conference approval now. The flaw in this argument has to do with the context of Decision 916. The context is the Northern Illinois Annual Conference desiring to restructure under ¶15.15 (now ¶16.15) before an act of General Conference that would authorize the restructuring. The Judicial Council ruled "the lack of specific enabling [...] does not preclude annual conference restructure" (Decision 916).

⁵ Ibid, 16.

Or simply, the restructuring could occur before an act of the General Conference. The matter in question was confined within the bounds of one annual conference. The restructuring did not interfere with or in any way change the business of other bodies in the connection, so a vote to restructure didn't need an act of General Conference to be valid. Therefore, Decision 916 should not be used as precedent for annual conference disaffiliation before an act of General Conference but should instead be used as precedent for how an annual conference may exercise "such other rights as have not been delegated to the General Conference" (§33) within its bounds and only within its bounds.

Other examples of appropriate uses of §33 are the annual conference Boards of Ordained Ministry and the application of §2553. Boards of Ordained Ministry are required for each annual conference (see §635), yet the business and agenda of each Board of Ordained Ministry is set by that Board. A Board of Ordained Ministry in one annual conference may operate differently from those in other annual conferences, and it may not interfere with or otherwise change the business and agenda of those Boards. As a body within the annual conference, the Board reserves the right under §33 to set its own business and agenda so long as they do not conflict with the *Discipline*. Further, when applying the local church disaffiliation procedure in §2553, the Judicial Council ruled in Decisions 1424 and 1425 that annual conferences may "develop additional procedures and standard terms that are not inconsistent with those established by the General Conference in § 2553." In adding procedures and terms to local church disaffiliation, the annual conference is acting under the authority of §33 to exercise a right that is not delegated to the General Conference. Additional procedures and terms apply to local churches in that annual conference and that annual conference only.

The argument made by the authors, that “the right of the annual conference to vote to withdraw from the United Methodist Church is lodged in ¶33,” is incorrect because ¶33 applies to rights of the annual conference that may be exercised within the bounds of the annual conference. Annual conference separation is a connectional matter and as such has consequences that extend beyond the bounds of the annual conference. Therefore, annual conference separation is not one of the rights provided by ¶33.

2. Judicial Council Decision 1366 does *not* grant annual conferences the authority to separate from the United Methodist Church without an act of General Conference.

The authors argue that Decision 1366 settled the matter of annual conference disaffiliation. When read alongside ¶33, the argument goes, Decision 1366 allows annual conferences – indeed, any annual conference, not just those in the United States – to separate from the UMC without an act of the General Conference to establish conditions and procedures for disaffiliation. I’ve already argued that this is an incorrect interpretation of ¶33, but what about Decision 1366?

Decision 1366 does not allow annual conferences to separate from the UMC without an act of General Conference because Decision 1366 balances the powers of the annual conference with the powers of the General Conference. As stated above, Decision 1366 says, “This reserved right [of an annual conference to vote to disaffiliate], however, is not absolute but must be counterbalanced by the General Conference’s power to ‘define and fix the powers and duties of annual conferences’ in ¶ 16.3.” (emphasis added). Decision 1366 does not allow for an application of ¶33 (rights of the annual conference) that is not balanced with the provisions of ¶16 (rights of the General Conference). Because annual conference disaffiliation is a

connectional matter, an annual conference may take up such a vote but the power to exercise and effect the vote must be defined and fixed by the General Conference. Decision 1366 makes this distinction between the right to vote (in this case, for annual conference disaffiliation) and the right to effect a vote: the former is authorized by ¶33, and the latter must be authorized by General Conference under ¶16.

The *amicus curiae* brief filed by “Various Chancellors of The United Methodist Church” makes another crucial distinction: that of the holding and the dicta.⁶ It is worth quoting at length here:

[T]he Judicial Council’s *holding* in JCD 1366 was simply this: *It is constitutional for the General Conference to enact legislation that allows annual conferences to withdraw from The United Methodist Church, subject to whatever procedures and conditions may be established by the General Conference.* So limited, JCD 1366 does not bless the unilateral disaffiliation of annual conferences; it holds merely that the Constitution is not offended by General Conference legislation that allows annual conferences to disaffiliate upon meeting such conditions as the General Conference may prescribe.

What Decision 1366 does *not* do is dictate “unilateral disaffiliation.” It holds a position; it does not dictate a pathway. And the position is not disaffiliation without conditions and procedures established by General Conference, but rather the constitutionality of what General Conference may choose to do, in this case, “enact legislation that allows annual conferences to withdraw from the United Methodist Church.” Indeed, that was the original context of Petition 90041 to which Decision 1366 was a response- the constitutionality of an act of General Conference to establish annual conference disaffiliation conditions and procedures. Decision 1366 has to do with what General Conference is allowed to do, not what annual conferences are allowed to do.

⁶ “Various Chancellors of The United Methodist Church”, 4

The authors point out the significance of the word “may” in Decision 1366. “While the General Conference *may* regulate the process and set conditions, such regulation is optional.”⁷ Yet the word “may” here is not to mean “optional” but is closer to “on occasion.” The word “may” also appears in ¶33: the annual conference “shall discharge such duties and exercise such powers as the General Conference under the Constitution *may* determine” (emphasis added). Again, the word “may” here does not mean it is “optional” for the General Conference to grant to or withhold a power from the annual conference. Rather, it simply means the General Conference may “on occasion” determine the duties and powers of the annual conferences. A similar reading is needed for Decision 1366: the General Conference process and conditions for annual conference separation are not optional but may on occasion be granted by the General Conference to the annual conferences.

The authors also cite Decisions 1424 and 1425 as affirmations of the right of annual conferences to disaffiliate without an act of the General Conference, yet annual conference disaffiliation is not the matter in question in these decisions. Both decisions have to do with the right of an annual conference to supply additional terms and conditions to *local church disaffiliation* under ¶2553. Here, the Judicial Council did indeed affirm Decision 1366 but not as precedent for annual conference disaffiliation; rather, Decision 1366 was used as precedent for the right of the annual conference to set its own terms and conditions for local church disaffiliation so long as the procedures do not conflict with ¶2553. The Judicial Council cites the most salient language of Decision 1366 in Decisions 1424 and 1425, that the “annual conference [...] exercises autonomous control over the agenda, business, discussion, and vote on the question of withdrawal.” (Decisions 1424 and 1425), but here the matter is local church

⁷ Boyette, 16

withdrawal, not annual conference withdrawal. Further, the Judicial Council reaffirms its stance on the balance of powers between the annual conference and the General Conference: “The Constitution established a sound balance of powers between the General Conference and annual conferences, ensuring that no single body has absolute authority in matters of disaffiliation.” (Decisions 1424 and 1425, emphasis added.) Here again is the heart of the matter: the Judicial Council affirms the balance of powers between annual conferences and the General Conference in matters of disaffiliation, and the Council use the same core logic in Decision 1366.

Decision 1366 does *not* grant annual conferences a unilateral pathway to separate from the United Methodist Church without an act of the General Conference, but rather holds that the General Conference may, on occasion, grant to the annual conferences the right to effect a disaffiliation vote.

Request for Relief

Judicial Council, thank you for reading and considering this reply brief. In closing, I ask the following relief:

1. Rule that annual conference disaffiliation is a connectional matter, and therefore:
2. Rule with the opinion that ¶33 applies to rights that remain within the bounds of an annual conference and do not extend beyond those bounds to effect a change in connectional matters;
3. Rule that Decision 1366 holds what is constitutional for General Conference to do and does not constitute a pathway for annual conferences to separate from the UMC without General Conference conditions and procedure.

Respectfully Submitted,



Rev. David Horton
Elder, Texas Annual Conference of The United Methodist Church

Leadership Team

Rev. Dr. John Stephens, Elder, Texas Annual Conference

Rev. Emily Chapman, Elder, Texas Annual Conference

Rev. Lindsay Kirkpatrick, Elder, Texas Annual Conference

Mr. Sidney Earnheart, Laity, Texas Annual Conference

Affidavit of service:

In addition to submission to the Judicial Council, electronic copies of this brief have been sent to the following interested parties. I will send electronic copies to any additional interested parties or *amici curiae* identified by the secretary of the Judicial Council.

Bishop Cynthia Fierro Harvey

Bishop Thomas Bickerton

Bishop Tracy Smith Malone

Bishop Ough

William A. Waddell Jr.

Rev. Dr. Maidstone Mulenga

Bryan Mills Esq

Lonnie Brooks

Rev John R. Wilson

Rev. David Horton

Rev. Chappell Temple

Rev. Dr. William Lawrence

Sheila Saegh Henretta

Thomas E. Starnes Esq.

Robert Zilhaver

Rev. Keith Boyette

Rev. Tom Lambrecht

John Lomperis