

**JUDICIAL COUNCIL
OF THE UNITED METHODIST CHURCH
APRIL 2017 DOCKET
No. 0417-01**

IN RE: Petition for Declaratory Decision from the South Central Jurisdictional Conference concerning the application, meaning, and effect of ¶¶ 304.3, 310.2d, 341.6, 2702.1a), b), and d) of *The Book of Discipline 2012* in regard to the nomination, election, consecration, and/or assignment as bishop of a person who claims to be a “self-avowed practicing homosexual” or is a spouse in a same-sex marriage or civil union.

**REPLY BRIEF OF
THE WESTERN JURISDICTION COLLEGE OF BISHOPS**

On behalf of the Western Jurisdiction College of Bishops
Brief submitted by:
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Date: February 23, 2017

INTRODUCTION.

This Reply Brief addresses matters set forth in the Opening Briefs filed by Interested Parties and *Amici*. References to the Briefs are by name of Interested Party or submitter of an *amicus* brief. We use the same abbreviations used in our Opening Brief: “SCJ” for South Central Jurisdiction; “SCJ Petition” for the declaratory request in question; “WJ” for Western Jurisdiction; “JCD” or “JCMemo” for Judicial Council Decisions or Memoranda; and “2012 Discipline” for the *Book of Discipline of The United Methodist Church 2012*.

SUMMARY OF REPLY BRIEF.

To nullify the actions of the WJ Conference and College of Bishops in the nomination, election, consecration and assignment of Bishop Karen Oliveto, the Judicial Council has to:

1. Reverse its longstanding precedent on the scope of its jurisdiction under ¶2610.2f and its own Rules of Practice and Procedure.

2. Overlook the moot and hypothetical nature of the questions submitted for decision.
3. Ignore the Western Jurisdiction’s exclusive constitutional authority over the election and consecration of its own bishops.
4. Ignore that, as an elder in good standing, Bishop Karen Oliveto met all requirements for nomination, election, consecration and assignment as a bishop.
5. Ignore that bishops are only accountable to their jurisdictions, not other jurisdictions, the Judicial Council or even the General Conference.
6. Ignore that no provision in the *2012 Discipline* prohibits an elder in good standing from entering into a same-sex civil marriage.
7. Legislate where the General Conference has not legislated.
8. Try and convict Bishop Karen Oliveto on paper without the presumption of innocence and fair process to which she is constitutionally entitled.
9. And, perhaps most importantly, interfere with and preempt the General Conference’s direction to the Council of Bishops and the work of the Way Forward Commission.

The Judicial Council should not go down this path.

**THE JUDICIAL COUNCIL DOES NOT HAVE JURISDICTION
TO ENTERTAIN THE SCJ PETITION.**

The *2012 Discipline* vests exclusive power in each jurisdictional conference to elect and consecrate its own bishops. ¶27.2 provides that “jurisdictional conferences shall . . . elect bishops.”

¶46 provides:

“¶46. *Article II.*—The bishops shall be elected by the respective jurisdictional . . . conferences and consecrated in the historic manner . . .” (Emphasis added.)

The Constitution is clear that each jurisdiction elects its own bishops. Consecration is mandatory once elected. By its use of the word, “respective”, ¶46 says that no jurisdictional conference has any standing or say in another jurisdiction’s episcopal election. *See also*, Nelson *Amicus* Brief, pp. 8-9 for history of the origin of jurisdiction conferences and their exclusive autonomy over episcopal elections. In short, the business of a bishop’s election in the Western Jurisdiction is by constitutional definition not the business of the South Central Jurisdiction.

The SC Jurisdiction might have standing before the Judicial Council to argue that the Western Jurisdiction failed to follow disciplinary procedural rules regarding the election of bishops. This would be a matter arguably affecting elections in other jurisdiction conferences. However, the SCJ Petition makes no such challenge, nor could one be mounted given the record in this matter on the regularity of the election. *See*, WJ Comm’ee On Episcopacy *Amicus* Brief, pp. 2-3.

The Brewster Brief expresses concern over the possible transfer of a bishop with a same-sex orientation to another jurisdiction. (Brewster, p. 4.) Aside from its hypothetical nature, this concern is answered pointedly by ¶49(4) of the Constitution. The episcopacy committees in the receiving jurisdiction must approve the transfer. This is a constitutional fail-safe that will block any such transfer to an unwilling jurisdiction. Again, the South Central Jurisdiction cannot claim that the Western Jurisdiction Conference election and consecration affected or will affect business in the South Central Jurisdiction.

The Lomperis Brief recognizes the longstanding jurisprudence of the Judicial Council interpreting ¶2610 to require that the petition for a declaratory decision demonstrate a direct and tangible effect on the work or business of the petitioning conference. (Lomperis, pp.6-7.) Instead of demonstrating a direct and tangible effect on the actual work or business of the South Central

Jurisdiction, the Lomperis Brief asks the Judicial Council to reverse its historic precedent and its standing Rule of Practice and Procedure restricting its review of petitions for declaratory decisions.

This is not the last petition for declaratory decision the Judicial Council will ever consider. There are sound jurisprudential reasons for cautiously exercising jurisdiction under ¶2610 and those reasons will continue to exist in the future. A conference “cannot use the mechanism of a request for declaratory decision to create Church doctrine or policy. Such power is within the sole legislative prerogative of the General Conference.” JCMemo 1200 (2011), Concurring Opinion of Jon R. Gray.

The boundaries of episcopal elections are exclusive to each jurisdictional conference. No jurisdictional conference can constitutionally cross that boundary and claim an interest in another jurisdiction’s episcopal election. The Judicial Council should reject the invitation to change its historic interpretation of ¶2610.2f and decline to exercise jurisdiction in this matter.

**THE WESTERN JURISDICTION’S NOMINATION, ELECTION,
CONSECRATION AND ASSIGNMENT OF A BISHOP
IN A CIVIL SAME-SEX MARRIAGE
DOES NOT NEGATE, IGNORE OR VIOLATE CHURCH LAW.**

The Brewster Brief argues that the *2012 Discipline* sets forth laws prohibiting an elder from entering into a civil same-sex marriage, and that both the WJ Conference and the WJ College of Bishops negated, ignored and violated these laws in the nomination, election, consecration and assignment of Bishop Karen Oliveto. (Brewster, pp. 6-8, 9-11.) In support, the Brief first cites to ¶161B¹ which reads, in relevant part:

“We support laws in civil society that define marriage as the union of one man and one woman.”

¹ The SCJ Petition did not ask for the application, meaning or effect of ¶161B.

¶161B appears in the Social Principles and is by definition “not to be considered church law”. (Preface to Social Principles, ¶159, p. 105.) *See*, JCD 1254 (2013) (¶161F-*Human Sexuality, 2012 Discipline* not church law); JCD 833 (1998) (¶65C- *Marriage, 1996 Discipline* not church law). The quoted language in ¶161B is not prescriptive, prohibitive or mandatory, but instead is declaratory and supportive. The language recognizes a marriage between a man and a woman, but it does not make a civil same-sex marriage unlawful or prohibit an elder from entering into a civil same-sex marriage.²

The Brewster Brief next cites the chargeable offense language in ¶2702.1a about not being faithful in a heterosexual marriage. This language does not speak at all to same-sex relationships or make such relationships unlawful. Lastly, the Brewster Brief cites ¶341.6 and its proscriptions against clergy performing same-sex marriages or unions. Again, this language does not say that civil same-sex marriages or unions are unlawful.

The Brewster Brief asks the Judicial Council to legislate where the General Conference has not legislated. In asking the Judicial Council to declare that the *2012 Discipline* prohibits an elder in good standing from entering into a civil same-sex marriage, the Brewster Brief argues for creation of a new law that the General Conference has not itself made. The Judicial Council knows that it is not a legislative body and cannot create law where none exists. *See e.g.*, JCD 833 (1998). Even if it so legislated, the Judicial Council could not impress its declaration of new law retroactively to invalidate action taken before the declaration. JCD 704 (1994).

The Lomperis Brief recites General Conference history in 2008 indicating the General Conference tabled efforts to add laws prohibiting elders from entering into a same-sex marriage. (Lomperis, p. 12.) The fact that these efforts did not result in a new law banning such marriages is further evidence that the *2012 Discipline* is silent on the legality of such marriages.

² The same principles apply with respect to ¶161F, cited in the Lomperis Brief. (Lomperis, p. 11.)

The WJ Conference and the WJ College of Bishops cannot be found to have negated, ignored or violated Church law regarding the nomination, election, consecration and assignment as bishop of an elder in good standing in a civil same-sex marriage where no such law exists in the *2012 Discipline*.

**THE JUDICIAL COUNCIL CANNOT ACT AS AN EPISCOPACY
OR INVESTIGATIVE COMMITTEE, MUCH LESS A TRIAL COURT.**

As stated in our Opening Brief, the Church does not discriminate on the basis of sexual orientation, either in its ordination of clergy or its election of bishops. (WJCOB, pp. 7-8.) *See*, JCD 1027 (2005). In his Concurring Opinion in JCD 1032 (2005), Keith Boyette acknowledged that ¶4 of the Constitution protects the “status” of sexual orientation:

“As we stated in Decision 1027, ‘no provision of the *Discipline* bars a person with a same-sex orientation from the ordained ministry of The United Methodist Church.’ Likewise, no provision of the *Discipline* bars a person with a same-sex orientation from membership in The United Methodist Church, and, in fact, I believe that ¶4 specifically prohibits the use of such orientation, as opposed to practice, as a basis for excluding a person from membership.” (Emphasis added.)

Given this, a “self-avowed” homosexual elder enjoys a protected “status” under ¶4 of the Constitution. This leaves “practicing”. We have addressed the legal principles applicable to “practicing” in our Opening Brief. The Judicial Council cannot reach the issue of “practicing” on the SCJ Petition.

Several of the Opening Briefs attach or refer to documents and other information. The Brewster, Lomperis and Zilhaver Briefs ask the Judicial Council to weigh these documents and information and make findings of fact regarding Bishop Karen Oliveto’s good standing as an elder, or the Western Jurisdiction’s authority to proceed with her nomination, election, consecration and assignment.³

³ The Judicial Council should also exercise caution in accepting the accuracy or completeness of some of this

The Judicial Council cannot do this. It is not an evidentiary body. JCD 702 (1993). It cannot arrogate itself to a supervisory or disciplinary role over elders or bishops. Not even the General Conference can legislatively confer supervisory or disciplinary authority over bishops because the Constitution confers and vests that authority exclusively in jurisdictional episcopacy committees. JCD 475 (1980) (“It is clear that ¶525.3 of the [1980] Discipline which purports to make bishops accountable to the Council of Bishops is in conflict with ¶55 of the Constitution and therefore unconstitutional.”) *See*, ¶50 of the *2012 Discipline*.

The Lomperis Brief asks the Judicial Council to create rebuttable presumptions, elevated burdens of proof, chargeable offenses and ministerial review processes that do not exist under the *2012 Discipline*. (Lomperis, pp. 19-20, 22-23.) Such relief is new to the *2012 Discipline* and Judicial Council precedent; far outside the pale of the SJC Petition and the Judicial Council’s powers; and squarely within the legislative prerogatives of the General Conference. None of this relief can be granted in this matter.

The Zilhaver Brief asks the Judicial Council to order a ministerial review of Bishop Karen Oliveto and her suspension during the period of the review. (Zilhaver, pp. 17, 22-23.) Again, such relief is beyond the pale of the SCJ Petition. It interferes impermissibly with the supervisory process mandated by the *2012 Discipline*. ¶¶ 50, 413; JCD 475 (1980).⁴

information. For example, the Lomperis Brief purports to quote a statement by Dr. William Lawrence regarding the WJ election of Bishop Karen Oliveto, referring to Exhibit J. (Lomperis Brief, p. 13.) The purported quotation does not appear in Exhibit J. The Lomperis Brief also quotes Bishop Ough, but omits the rest of his statement, referring to Exhibit K. (*Id.*) The full statement reads: “It appears to be a violation of current book of discipline, our current church law . . . There’s been no formal complaint brought against her at this point. So that’s why she has been able to move forward in this election process.” It is clear that Bishop Ough recognizes the primacy of the disciplinary process for ministerial review, as we argue in our Opening Brief.

⁴ Further, as pointed out in our Opening Brief, mandatory suspension is contrary to the *2012 Discipline*. ¶¶363.1d, 413.3a. The Zilhaver Brief cites JCD 920 (2001) for this proposition. The Judicial Council modified JCD 920 in JCD 930 (2002) and removed the mandatory suspension language in JCD 920.

As our Opening Brief shows, Bishop Karen Oliveto was an elder in good standing when nominated, elected, consecrated and assigned as a bishop. None of the opposition Briefs offer any factual rebuttal to this showing, except to ask this Judicial Council to declare the existence of a law that does not exist now, or to leap to factual conclusions about “practicing” that ignore disciplinary process, Judicial Council precedent, and the constitutional guarantees of the presumption of innocence and fair process.

As Bishop Ough stated in his news release regarding the WJ election:

“The authority to elect bishops is constitutionally reserved to the jurisdictional and central conferences. Any elder in good standing is eligible for election as a bishop of the church. An elder under an unresolved complaint is still considered to be in good standing.”⁵

**THE JUDICIAL COUNCIL CANNOT COMPEL THE WJ CONFERENCE
OR COLLEGE OF BISHOPS TO TAKE SUPERVISORY ACTION.**

Episcopal supervision is vested exclusively in the committee on episcopacy of the respective jurisdictional conferences. ¶50; JCD 475 (1980). The Judicial Council cannot compel the WJ Conference or College of Bishops to take supervisory action. Neither is this relief requested in the SCJ Petition.

The fact that the President of the Judicial Council decided to identify the WJ Conference and its President as “Interested Parties” on the day before opening briefs were due does not change this result. The President of the Judicial Council cannot confer jurisdiction over or compel action on the part of the WJ Conference or its President where the Constitution vests that authority exclusively in the WJ Committee on Episcopacy.

This is not an appeal from a bishop’s decision of law. For that reason alone, the Decisions cited in the Brewster Brief in part I are inapplicable. (Brewster, pp.5-6, citing JCDs 911, 1111,

⁵ UMNS, “COB President Addresses Western Jurisdiction Episcopal Election Results”, 7/15/2016 @ <http://www.umc.org/news-and-media/cob-president-addresses-western-jurisdiction-episcopal-election-results>

1115, 1120 and 1250.) The only other Decision cited is JCD 1185 (2011) which concerned a jurisdictional conference policy, not an episcopal election. There is no provision in the *2012 Discipline* or Judicial Council precedent that authorizes the Judicial Council to nullify an episcopal election on the grounds set forth in the SCJ Petition.

**THE JUDICIAL COUNCIL SHOULD NOT INTERFERE WITH
OR PREEMPT THE WORK OF THE WAY FORWARD COMMISSION.**

On May 18, 2016, the Council of Bishops offered its “Offering For A Way Forward” to the delegates at the 2016 General Conference, stating in part:

“We recommend that the General Conference defer all votes on human sexuality and refer this entire subject to a special Commission, named by the Council of Bishops, to develop a complete examination and possible revision of every paragraph in our *Book of Discipline* regarding human sexuality.”⁶ (Emphasis added.)

Later that same day, the General Conference voted to accept the recommendation of the Council of Bishops.⁷

Every disciplinary paragraph cited in support of the SCJ Petition concerns human sexuality. And every disciplinary paragraph cited in support of the SCJ Petition is the subject of at least one, and in most cases several petitions deferred by General Conference action on May 18, 2016. (See, **Exhibit 4** to WJCOB Opening Brief.)

If the Judicial Council declares new law on the SCJ Petition, or nullifies the Western Jurisdiction’s nomination, election, consecration and assignment of Bishop Karen Oliveto, it will necessarily interfere with and preempt the Way Forward Commission. The Judicial Council should respect the recommendation of the Council of Bishops and the vote of the General

⁶ “An Offering For A Way Forward”, 5/18/2016 @ http://s3.amazonaws.com/Website_Properties/general-conference/2016/documents/council-bishops-statement-offering-way-forward-may-18-gc2016.pdf.

⁷ UMNS, “GC2016 puts hold on sexuality debate”, 5/18/2016 @ <http://www.umc.org/news-and-media/bishops-ask-for-hold-on-sexuality-debate>.

Conference to defer all matters on human sexuality to the Way Forward Commission. This body of nine persons should not purport to speak for the entire denomination.

CONCLUSION.

Episcopal elections are constitutionally and exclusively reserved to the respective jurisdictional conferences. The WJ nomination, election, consecration and assignment of Bishop Karen Oliveto did not and does not have any direct and tangible effect on the work or business of the SC Jurisdiction. The Judicial Council should decline jurisdiction on the SCJ Petition.

There is no law in the *2012 Discipline* prohibiting an elder from entering into a civil same-sex marriage. Accordingly, neither the WJ Conference nor the WJ College of Bishops negated, ignored or violated Church law in the nomination, election, consecration and assignment of Bishop Oliveto.

Under the Constitution, the supervisory process for bishops is vested exclusively in the jurisdictional episcopacy committees. The Judicial Council can neither direct parties to this matter to take supervisory action, nor interfere with this supervisory process.

For the reasons stated, the Judicial Council cannot nullify the Western Jurisdiction's nomination, election, consecration or assignment of Bishop Karen Oliveto.

Respectfully submitted,
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CERTIFICATE OF SERVICE

This certifies that a copy of the Reply Brief of the Western Jurisdiction College of Bishops was emailed to all parties and *amici curiae* listed below on February 23, 2017.

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Updated 2/14/17

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