

**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.**

**REPLY BRIEF OF DIXIE BREWSTER**

This reply brief is filed on behalf of Dixie Brewster, the maker of the motion before the 2016 South Central Jurisdictional Conference requesting the declaratory decision which has given rise to this matter. The Reverend Keith D. Boyette, an elder in the Virginia Conference of The United Methodist Church and an attorney licensed to practice law in the Commonwealths of Virginia and Kentucky, files this reply brief on Ms. Brewster’s behalf and at her request.

**I. THE JUDICIAL COUNCIL HAS JURISDICTION IN THIS MATTER.**

As anticipated in our opening brief, several of the amici curiae challenge the jurisdiction of the Judicial Council to consider the request for declaratory decision in this matter. The arguments advanced are unfounded and the decisions cited are distinguishable from the present case.

The *2012 Book of Discipline* grants jurisdiction to the Judicial Council “to make a ruling in the nature of a declaratory decision as to the . . . meaning, application, or effect of the *Discipline* or any portion thereof . . .” *Discipline*, ¶ 2610.1. The South Central Jurisdiction’s request falls within this jurisdictional grant as it seeks a ruling on the meaning, application, or effect of identified portions of the *Discipline* to an action of a jurisdictional conference. Thus the request is proper with respect to its subject.

The party requesting this declaratory decision is also proper. Paragraph 2610.2 (f) provides that such a request can be made by “any jurisdictional conference on matters related to

or affecting jurisdictions or jurisdictional conferences or the work therein.” Here, the party requesting the declaratory decision is a jurisdictional conference and the subject of the request is on “matters related to or affecting jurisdictions or jurisdictional conferences or the work therein.” The request addresses the nomination, election, consecration and assignment of persons as bishops of The United Methodist Church which is the primary and exclusive work of the jurisdictional conferences in the United States. *Discipline*, ¶¶ 46, 405. Each jurisdiction has an interest in how other jurisdictions interpret and apply the *Discipline* in the process of nominating, electing, consecrating and assigning a bishop because a person elected to the office of bishop is a bishop of the entire church and eligible to serve within the confines of any jurisdiction. *Discipline*, ¶¶ 49, 422.1.

Several of the *amici* argue that the Judicial Council does not have jurisdiction citing Decisions 255, 301, and 452, and Memoranda 1114, 1160, and 1329. Each of these decisions and memoranda are inapplicable to this matter.

In Decision 255, the Central Kansas Annual Conference sought a declaratory decision with respect to the action of the General Board of Pensions in denying benefits to a clergyperson connected to the annual conference. The dispute was between the clergyperson and the General Board of Pensions. The annual conference had no role in the determination of benefits for the clergyperson or the operation of the General Board of Pensions. The subject matter of the request did not relate to the work of any of the annual conferences. That is not the case here as the subject matter of the request relates directly to the work of all of the jurisdictional conferences.

In Decision 301, the Southeastern Jurisdictional Conference and the Florida Annual Conference sought a declaratory decision with respect to a statement adopted by the General

Conference. The statement did not direct the annual or jurisdictional conference to take any action and did not require the annual or jurisdictional conference to do anything. Thus, the Judicial Council held it did not have jurisdiction. Significantly, the Judicial Council stated, “The work of a conference must be affected in some direct and tangible manner before such a conference can seek judicial review of the status and meaning of a General Conference act.” Here the work of the jurisdictional conferences, including the South Central Jurisdictional Conference, is impacted in a direct and tangible manner because if, as argued, to take certain actions would negate, ignore or violate certain provisions of the *Discipline*, then all jurisdictional conferences, including the South Central Jurisdictional Conference, would be precluded from taking those actions.

In Decision 452, the General Council on Ministries requested a declaratory decision on the method of election of the Jurisdictional Committees on Episcopacy and the Interjurisdictional Committee on Episcopacy. The Judicial Council cited the disciplinary provisions setting forth the objectives, functions and authority of the General Council on Ministries and observed that the General Council on Ministries had no role in the election of the members of the Jurisdictional Committees on Episcopacy and the Interjurisdictional Committee on Episcopacy. To the contrary here, all of the jurisdictional conferences, including the South Central Jurisdictional Conference, are involved in the nomination, election, consecration and assignment of bishops.

In Memorandum 1114, the West Ohio Annual Conference sought a declaratory decision with respect to the meaning, application and effect of an amendment to a disciplinary provision that addressed the relationship between the General Conference and the Interjurisdictional Committee on the Episcopacy. Once again, the subject matter addressed by the request did not involve the work of any annual conference, let alone the petitioning annual conference. The

language of the opinion in Memorandum 1114 supports jurisdiction here because the nomination, election, consecration and assignment of bishops is part of the regular business, consideration and discussion of every jurisdictional conference. Here the nomination, election, consecration and assignment of bishops is an “action taken or to be taken” by every jurisdictional conference, including the South Central Jurisdictional Conference.

In Memorandum 1160, the Northern Illinois Annual Conference sought a declaratory decision on whether an action taken by a General Conference in amending the *Discipline* superseded a decision of the Judicial Council. In its opinion, the Judicial Council noted that “[t]he Judicial Council has no jurisdiction to answer questions from an annual conference that do not relate to *annual conferences or the work therein.*” (emphasis added). The Judicial Council grounded its decision in the fact that the Northern Illinois Annual Conference had made no showing that the subject matter of the declaratory decision request related to “annual conferences or the work therein.” The amended disciplinary provision related to church membership, a matter for local churches, not annual conferences. Here, the very subject matter of the request relates to jurisdictional conferences or the work therein as noted above.

Memorandum 1329 involves a request for a decision of law, not a declaratory decision, and thus is irrelevant to the issue here.

Here, the Judicial Council should adopt the cogent reasoning and declaration of Ruben Reyes in his Dissenting and Concurring Opinion in Memorandum 1200:

[I]n order for an annual conference [here jurisdictional conference] to gain access to the Judicial Council via petition for declaratory decision under ¶ 2610, it is sufficient for jurisdictional purpose that the subject matter relates to the annual conferences or their work, not necessarily limited to the petitioning conference. The matter or matters taken up need not be peculiar, exclusive, or confined to the business, agenda, or work of the petitioner annual conference. It

may also relate to or affect other or all annual conferences, especially those similarly situated. The door of the Judicial Council ought to be open to an annual conference initiative concerned not only with their own valid interest and causes but also with those of other annual conferences. Note is to be keenly taken on the plural form of the connected critical terms – annual conferences [here jurisdictional conferences] – in sub-¶ 2(j). The settled pertinent rules of statutory construction mandate that words should be given their ordinary meaning; general words should be understood in their general sense; when the law does not distinguish, courts should not distinguish. **Annual Conferences** certainly include one, some, or all such level of conference in the church. This construction acquires cogency because a petition by an annual conference for declaratory decision pertains to the constitutionality, meaning, application, or effect of the Discipline or part of it or any act or legislation of the General Conference. In principle, such a decision on constitutional or disciplinary issues raised by a petitioning annual conference has a repercussion on many, or possibly all, annual conferences. Considered with our vital tenet of connectionalism, it is discernible that what affects one annual conference can affect all annual conferences, particularly of the same jurisdiction or region. What is good policy for one conference would likely be good for others in the same situation. What salutary principle applicable to one may apply to all. That, hopefully, would redound to the good order and discipline of the annual conferences of the Church linked together worldwide.

(emphasis in original).

The Judicial Council has jurisdiction over the South Central Jurisdictional Conference's request for declaratory decision for all the reasons set forth in the opening brief of Dixie Brewster as well as here. The subject matter of the request for declaratory decision clearly relates to the jurisdictional conferences, including the South Central Jurisdictional Conference, and a ruling by the Judicial Council would be applicable to all jurisdictional conferences, including the South Central Jurisdictional Conference.

## **II. THE QUESTIONS ON WHICH A DECLARATORY DECISION IS REQUESTED ARE NOT MOOT AND HYPOTHETICAL.**

The brief filed on behalf of the Western Jurisdiction College of Bishops argues that the questions contained in the declaratory decision request are moot and hypothetical. A question is moot if the controversy addressed by the question has been resolved. The questions propounded in the declaratory decision request most decidedly have not been resolved. They addressed circumstances that existed when asked and which continue to exist because one or more of the jurisdictional conferences undoubtedly will be asked to consider the nomination, election, consecration and assignment of a person who claims to be a self-avowed practicing homosexual or is a spouse in a same-sex marriage again in the future.

The circumstances addressed by the questions contained in the declaratory decision request existed when asked as demonstrated by the statements made during floor debate on the motion asking for the declaratory decision request. The maker of the motion, a person who spoke in favor of the motion and the presiding bishop all addressed the pending nomination and potential election of Karen Oliveto in the Western Jurisdiction during the debate and voting on the motion. *See* the video at <https://vimeo.com/176664651>. In addition, the presiding bishop referenced the fact that the pending nomination and potential election of Karen Oliveto in the Western Jurisdiction was addressed by the petition. *See* July 21, 2016 Letter from Bishop Cynthia Fierro Harvey to Rev. Luan-Vu “Lui” Tran attached to this docket matter in the records of the Judicial Council.

The questions raised in the declaratory decision request are not hypothetical. Even without reference to the circumstances associated with the nomination, election, consecration and assignment of Karen Oliveto the questions raised define a real controversy. When the two

exhibits filed with the opening brief of Dixie Brewster are also taken into account, the controversy addressed by the questions become even more specific.

All one has to do is read rulings of law by the bishops of The United Methodist Church over the course of time to see how the phrase “moot and hypothetical” is thrown about without reflection as a catchphrase to avoid addressing actual controversies pending before The United Methodist Church. The questions presented by the South Central Jurisdictional Conference in this declaratory decision request are neither moot nor hypothetical.

### **III. THE REQUESTED RULING DOES NOT IMPINGE ON A CLERGYPERSON’S RIGHT TO FAIR PROCESS & TRIAL.**

Several of the briefs filed in this matter spend considerable time addressing the fair process and trial rights of clergypersons set forth in the Constitution and *Discipline*. As noted in the opening brief of Dixie Brewster, no clergyperson’s right to fair process and trial are impinged by the declaratory decision requested. The focus of the requested declaratory decision is on the legality of a jurisdictional conference engaging in an action which negates, ignores or violates the *Discipline*. If a jurisdictional conference negates, ignores or violates the *Discipline*, then its action is null, void and of no effect. See Decisions 866, 1250 and other Decisions cited in the opening brief of Dixie Brewster.

The consequence of the action of a jurisdictional conference being declared null, void and of no effect is that the state which existed immediately before its unlawful action is restored. Here, if the application of the requested ruling in response to the South Central Jurisdictional Conference’s declaratory decision request is that the nomination, election, consecration and assignment of a person as bishop is rendered null, void and of no effect, then that person remains an elder in The United Methodist Church. Any complaints pending against that person continue

in supervisory process and proceed to trial if appropriate. All of that person's fair process and trial rights which attach to membership in the order of elders are safeguarded. No person has a right or entitlement to be elected bishop in The United Methodist Church.

**IV. THE *DISCIPLINE* ESTABLISHES WHAT CONSTITUTES A MARRIAGE IN THE UNITED METHODIST CHURCH AND ALL OTHER RELATIONSHIPS WHICH PURPORT TO BE MARRIAGE ARE UNLAWFUL.**

Several of the briefs filed by *amici curiae* in this matter assert that it is not unlawful for a pastor in The United Methodist Church to be married to a person of the same gender. Such an argument strains credulity. Despite numerous provisions adopted by the General Conference over the past more than forty years which make clear that marriage is defined in a specific, biblical way, these *amici curiae* assert that the lack of a prohibition of other forms of relationship as a marriage would mean that the church permits such relationships. Under this reasoning, although our church's position is that marriage is between two people – one man and one woman, it would be fine for persons in The United Methodist Church to be parties to a polygamous marriage because such a marriage is not explicitly prohibited in the polity of The United Methodist Church. And yet our church does not recognize polygamous marriages as being lawful marriages in which our elders can be participants.

When the church defines marriage in a specific way, such a definition implicitly declares all other relationships which might claim the title of marriage to be unlawful with the polity of The United Methodist Church. The United Methodist Church has positively defined what marriage is for The United Methodist Church. Marriage is explicitly defined as being a relationship between one man and one woman. Paragraph 161B of the *Discipline* states, "We affirm the sanctity of the marriage covenant that is expressed in love, mutual support, personal commitment, and shared fidelity between a man and a woman. . . . We support laws in civil



society that define marriage as the union of one man and one woman.” This definition of marriage excludes all other definitions of marriage and makes such other definitions unlawful in The United Methodist Church.

Thus, when the New York Annual Conference sought by conference policy to permit clergy to enter into same-sex marriages in contravention of the *Discipline*, the Judicial Council, in Decision 1185, held that the New York Annual Conference had acted in such a way as to negate, ignore or violate the *Discipline*. In other words, any form of marriage other than that defined by the General Conference in the *Discipline* was unlawful under our church’s polity.

In Decision 1185, the Judicial Council stated,

The General Conference has legislative authority for all matters that are distinctly connectional and is the only body authorized to define legislatively the words ‘lawful’ and ‘marry.’ The General Conference is the only body empowered to adopt legislation; the General Conference has done so including ¶ 161B in defining marriage by limiting it to ‘the marriage covenant that is expressed in love, mutual support, shared commitment, and fidelity between a man and a woman.’ This definition is within the power and authority of the General Conference to define ‘marriage’ for the entire Church.

The Judicial Council proceeded to note that the New York Annual Conference’s resolution and policy under review in Decision 1185 was

aimed at permitting clergy who wish to enter into same sex marriage to do so at their discretion. Paragraph 604.1 provides that an annual conference, ‘for its own government, may adopt rules and regulations not in conflict with the Discipline of The United Methodist Church.” The action of the New York Annual Conference in adopting Resolution 2010-305 is a violation of ¶ 604.1 of the *Discipline*. This resolution and policy could arguably be advanced as some safe haven from the complaint process for those clergy who choose to enter into a same sex marriage at their discretion under the auspices of the proposed resolution and policy. An annual conference has no authority to offer clergy immunity from administrative or judicial complaint processes by adopting a resolution and policy that is clearly contrary to the *Discipline*.

The Judicial Council, in Decision 1185, concluded, “The Church’s definition of marriage as contained in the *Discipline* is clear and unequivocal and is limited to the union of one man and one woman.” As a consequence, any other form of marriage not limited to the union of one man and one woman is unlawful. As the Judicial Council noted in Decision 1185, ¶ 2702.1(a) defines immorality in part as “not being celibate in singleness or not faithful in a heterosexual marriage.” By explicit action of the General Conference codified in the *Discipline* clergy in The United Methodist Church, including persons in the office of bishop, may either be single or in a heterosexual marriage. It is unlawful for clergy to be a party to a same-sex marriage. Such a marriage is contrary to the *Discipline* of The United Methodist Church.

For all of these reasons as well as those expressed in the opening brief of Dixie Brewster, the nomination, election, consecration and/or assignment as a bishop of The United Methodist Church of a person who is a spouse in a same-sex marriage would be an act which would legally negate, ignore and violate these provisions of the *Discipline* and as such would be null, void and of no effect. The *Discipline* repeatedly makes clear that an ordained person, and thus a bishop, must be celibate in singleness and faithful in marriage (*see* ¶¶ 304.2, 310.2d, and 2702.1a), and expressly defines marriage as heterosexual marriage between one man and one woman. As demonstrated in Exhibit 1 to the Opening Brief of Dixie Brewster, Karen Oliveto is a party to a same-sex marriage, a marriage which is not recognized as lawful in our *Discipline*. She has chosen to not be either single or in a heterosexual marriage, the only two lawful categories for a clergyperson in The United Methodist Church. Her nomination, election, consecration and assignment by the Western Jurisdiction was an act which legally negated, ignored and violated the *Discipline* on that basis alone, regardless of whether she is or was sexually intimate with her

“spouse.” While it is reasonable to presume sexual intimacy as part of a marriage – even a marriage which is unlawful under the *Discipline*, the Judicial Council can declare the nomination, election, consecration and assignment of Karen Oliveto by the Western Jurisdiction to be null, void and of no effect solely on the basis of her being in a marriage which is not lawful.

**V. THE JUDICIAL COUNCIL MUST NOT DEFER DECISION IN THIS MATTER PENDING ACTION BY OTHER ENTITIES NOR CAN IT REFER THIS MATTER TO ANY OTHER ENTITY.**

At least one of the *amici curiae* argue in its brief that the Judicial Council should “defer to General Conference action with the Way Forward Commission”, citing Decision 1321. One thing that United Methodists seem to have become particularly adept at is seeking to avoid issues for as long as possible. Such a practice is neither wise nor healthy.

The Bishops’ Commission on a Way Forward has a very specific mandate. That mandate does not include ignoring ongoing violations of church law or creating an atmosphere of anything goes until the Commission concludes its work. The Commission’s work is advisory. It can either be adopted or rejected by either a Special General Conference or the next General Conference. In the meantime, the Judicial Council and other entities of The United Methodist Church are to fulfill their responsibilities as outlined in the *Discipline*.

In electing Karen Oliveto a bishop, the Western Jurisdictional Conference proceeded with malice aforethought. They knew that they were acting contrary to the polity of The United Methodist Church. They set aside time at their jurisdictional conference to weigh carefully what they were doing. *See* Exhibit 2 to the opening brief of Dixie Brewster. Following the election of Karen Oliveto, one delegate to the Western Jurisdictional Conference, Lonnie Brooks of the Alaska Conference, said the election of Oliveto was the Western Jurisdiction declaring its

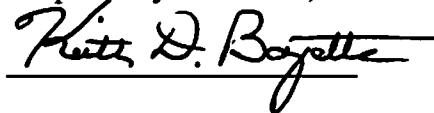
independence from The United Methodist Church. See Kathy Gilbert, “Western Jurisdiction Elects Openly Gay United Methodist Bishop,” United Methodist New Service, July 15, 2016, <http://www.umc.org/news-and-media/western-jurisdiction-elects-openly-gay-united-methodist-bishop> (accessed February 21, 2017).

It is now incumbent on the Judicial Council to provide the declaratory decision requested by the South Central Jurisdictional Conference, to declare that the nomination, election, consecration and assignment as a bishop of The United Methodist Church of a person who claims to be a “self-avowed practicing homosexual” or is a spouse in a same-sex marriage is an action which negates, ignores and violates the provisions of the *Discipline* and is therefore null, void and of no effect, and to apply that declaration to the actions of the Western Jurisdictional Conference in electing Karen Oliveto a bishop.

#### CONCLUSION

For all of the reasons expressed in this reply brief and in the opening brief of Dixie Brewster, we request that the Judicial Council issue the declarations and grant the relief requested in the opening brief of Dixie Brewster at pages 12-13.

Respectfully Submitted,

A handwritten signature in black ink that reads "Keith D. Boyette". The signature is written in a cursive style and is positioned above a horizontal line.

Rev. Keith D. Boyette on behalf of Dixie Brewster

#### CERTIFICATION

I certify that a copy of this reply brief has been forwarded by email on February 23, 2017 to each of the persons identified as interested parties or amici curiae in this matter listed below:

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