

SUBJECT TO FINAL EDITING

## JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

### DECISION NO. 1449

(Docket No. 0522-2)

IN RE: Petition for Declaratory Decision from the Council of Bishops on Questions Related to ¶ 2548.2 of the *2016 Book of Discipline*.

#### DIGEST

Paragraph 2548.2 establishes a process for the limited purpose of deeding and transferring church property to another denomination but does not apply to the membership of a local church. It may be used only together with or after processes effectuating fundamental changes in the membership and ministries of local churches, such as interdenominational local church mergers (¶ 2547) and ecumenical shared ministries (¶¶ 207-209). Subject to General Conference approval and ratification, the Council of Bishops is the body authorized to determine if an entity qualifies as “denomination” and to negotiate and enter into “an allocation, exchange of property, or comity agreement” within the meaning of ¶ 2548.2. Under ¶ 2548.2, an annual conference, by simple majority vote, may direct the board of trustees of a local church to transfer property to another denomination on four conditions precedent:

1. A written allocation, exchange of property, or comity agreement between The United Methodist Church and the other denomination must already exist that has been signed by the Council of Bishops and approved and ratified by the General Conference. The property transfer is not permitted if The United Methodist Church does not have a pre-existing agreement with the recipient denomination.
2. The agreement must comply with the connectional polity of the United Methodist Church and may not contain provisions not authorized or prohibited by Church law.
3. A charge or church conference must be conducted in accordance with ¶¶ 247-248. A resolution requesting the property transfer must be passed by a majority vote of the members present and voting pursuant to ¶ 2540.2 (unincorporated local church) or ¶ 2541.2 (incorporated local church).
4. The presiding bishop and a majority of the district superintendents and of the district board of church location and building must give their consent to the property transfer.

All four conditions must be met before an annual conference can exercise this right. Any use, implementation, or application of ¶ 2548.2, or exercise of this right by an annual conference without, apart from, prior to, or contrary to those four conditions would be unconstitutional, null and void, and of no legal force or effect. The General Conference enacted ¶ 2553 with the intent

that the process set forth therein be used for the stated purpose of “Disaffiliation of Local Churches Over Issues Related to Human Sexuality.” Therefore, the process in ¶ 2548.2 may not be used as a pathway for local churches to disaffiliate from The United Methodist Church.

#### STATEMENT OF FACTS

At their meeting of May 12, 2022, the Council of Bishops [hereinafter Petitioner] voted to submit a Petition for Declaratory Decision with the following questions:

***Question 1:*** What bodies within the United Methodist Church are “duly qualified and authorized representatives of both parties concerned” who must sign and approve a comity agreement under ¶ 2548.2?

***Question 2:*** What bodies within the United Methodist Church are required to determine and approve whether an entity is “another evangelical denomination” within the meaning of ¶ 2548.2?

***Question 3:*** What is required under the 2016 Book of Discipline to determine what is a “denomination” within the meaning of ¶ 2548.2?

***Question 4:*** Does the provision of ¶ 2548.2 that “the annual conference may instruct and direct the board of trustees of a local church to deed property to one of the other denominations represented in the Pan-Methodist Commission or to another evangelical denomination” violate the constitutional authority of an annual conference under ¶ 33 with respect to local church property, including the “constitutionally embedded separation of executive and legislative powers” noted as “settled principles of church law and polity” acknowledged in Judicial Council Decision 1257?

***Question 5:*** If ¶ 2548.2 is constitutional, may ¶ 2548.2’s authority to direct the local church to deed its property in accordance with that paragraph be exercised separately from any other process that results in the merger of the local church pursuant to ¶ 2547, disaffiliation pursuant to ¶ 2553, closure pursuant to ¶ 2549, or some other disposition of the local church deeding the property that results in termination of the local church as a unit of the United Methodist Church?

***Question 6:*** Must “an allocation, exchange of property, or comity agreement” within the meaning of ¶ 2548.2 comply with the connectional polity of the United Methodist Church as set forth in the 2016 Book of Discipline, including ¶¶ 206 – 213 of the Discipline?

***Question 7:*** May a comity agreement within the meaning of ¶ 2548.2 include provisions not authorized or prohibited by the 2016 Book of Discipline?

***Question 8:*** What vote is required for an annual conference to “instruct and direct the board of trustees of a local church to deed property” under the authority of ¶ 2548.2?

Nine interested parties and *amici curiae* filed separate and joint briefs with the Judicial Council for this case.

### **Jurisdiction**

The Judicial Council has jurisdiction pursuant to ¶ 2610.1 of the *Book of Discipline, 2016* [hereinafter the *Discipline*].

### **Analysis and Rationale**

#### **Question 1**

Paragraph 2548.2 reads in full:

2. With the consent of the presiding bishop and of a majority of the district superintendents and of the district board of church location and building and at the request of the charge conference or of a meeting of the membership of the local church, where required by local law, and in accordance with said law, the annual conference may instruct and direct the board of trustees of a local church to deed church property to one of the other denominations represented in the Pan-Methodist Commission or to another evangelical denomination under an allocation, exchange of property, or comity agreement, provided that such agreement shall have been committed to writing and signed and approved by the duly qualified and authorized representatives of both parties concerned.

“The starting point of legal interpretation is the text of the relevant provisions in the *Discipline*, particularly the words used therein and their plain meaning.” JCD 1328, *aff’d*, JCD 1366. Though not defined in ¶ 2548.2, the meaning of the phrase “the duly qualified and authorized representatives of both parties concerned” can be inferred from the preceding terms “one of the **other** denominations” and “**another** evangelical denomination.” Grammatically speaking, the adjective ‘other’ and the determiner ‘another’ preceding a noun refer to an *additional* person, group, or object of the *same type or category* as one already mentioned, known, or implied. The counterpart to ‘another evangelical denomination’ can only be a denomination, not its sub-unit. Had the General Conference intended for the annual conference to be included in the phrase “both parties concerned,” it would not have used the terms “one of the other” and “another” to refer to its counterpart because the annual conference is *not* a

denomination and, therefore, cannot be considered a group of the same type or category as ‘another evangelical denomination.’ In this context, the group already mentioned, known, or implied is The United Methodist Church so that “the duly qualified and authorized representatives of both parties concerned” refer to the representatives of The United Methodist Church and of one of the denominations mentioned in ¶ 2548.2. For The United Methodist Church, the duly qualified and authorized representatives who can sign a comity agreement are the Council of Bishops. “The Council of Bishops shall have the authority to enter into ecumenical agreements with other Christian bodies.” ¶ 431.1. However, this authority is not unrestricted but subject to the oversight authority of the General Conference. That same provision also states that such ecumenical agreements “must be approved and ratified by General Conference, before coming into effect.” *Id.* See Question 2.

Answer to Question 1: **The duly qualified and authorized representatives of The United Methodist Church who can sign a comity agreement are the Council of Bishops. Any such agreement must be approved and ratified by the General Conference before coming into effect.**

## Question 2

Under the correct grammatical construction, the term “both parties concerned” denotes The United Methodist Church and one of the other denominations listed in ¶ 2548.2. *See supra* Question 1. The question then arises as to *who* has the authority to determine whether an entity is “another evangelical denomination” within the meaning of ¶ 2548.2. The right to make this determination necessarily entails the authority to engage in ecumenical relations. This authority has been entrusted to the Council of Bishops by the General Conference. The *Discipline* unequivocally states that, “[i]n formal relations with other churches and/or ecclesial bodies, the Council of Bishops shall be the primary liaison for The United Methodist Church. The ecumenical officer of the Council of Bishops shall be responsible for these relationships.” ¶ 431.2. Further, the “Council of Bishops shall have the authority to enter into ecumenical agreements with other Christian bodies.” ¶ 431.1. But the *Discipline* also requires that all such ecumenical agreements “be approved and ratified by General Conference, before coming into effect.” *Id.*

The objection was raised that, since “allocation, exchange of property, and comity agreement” is not listed in ¶ 431.1, it is exempt from the approval/ratification requirement. According to this theory, only agreements of formal ‘full communion’ relationships and

permanent membership in ecumenical organizations must be approved and ratified by the General Conference, the consequence being that an annual conference is entirely free to negotiate and enter into a comity agreement with any denomination without, apart from, and prior to General Conference action. However, this argument misses the point. Whether they are enumerated in ¶ 431.1 or not is immaterial because allocation, exchange of property, and comity agreements involve ecumenical relations with churchwide implications and, therefore, by their very nature are ‘matters distinctively connectional’ over which the General Conference has full legislative power under ¶ 16. Put differently, the Constitution, *not* a statute, is the source of General Conference’s full legislative power in matters of ecumenical relations. Thus construed, ¶ 431 stipulates that the Council of Bishops is the body authorized to make this kind of determination subject to the approval and ratification by the General Conference.

**Answer to Question 2: Subject to General Conference approval and ratification, the Council of Bishops determines which entities qualify as “another evangelical denomination.”**

### **Question 3**

The General Conference did not define “denomination,” nor did it establish criteria for making such determination. As explained above in Question 2, this question is left to the discretion of the Council of Bishops subject to the approval and ratification by the General Conference.

**Answer to Question 3: Subject to General Conference approval and ratification, the Council of Bishops determines which entities qualify as “another evangelical denomination.”**

### **Question 4**

The Constitution vests the General Conference with the power to define and fix the powers and duties of annual conferences (¶ 16.3), of the episcopacy (¶ 16.5), and the power to enact such other legislation as may be necessary (¶ 16.16). In exercising its constitutional powers, the General Conference adopted legislation in 1948 (now codified as ¶ 2548.2 in the *Discipline*), granting annual conferences the right to direct the board of trustees of a local church to deed church property to another evangelical denomination under an allocation, exchange of property, or comity agreement.

The cited Decision 1257 has no bearing on this case because of the different factual circumstances. At issue there was the improper delegation of power *by* an annual conference *to* its committees, which was held to be a breach of the separation of powers doctrine. Under scrutiny here is a General Conference legislation conferring authority on an annual conference to enforce the transfer of church property. However, this annual conference authority is neither unrestricted nor unqualified. Under ¶ 2548.2, an annual conference may exercise this right on **four conditions precedent**:

First, a written allocation, exchange of property, or comity agreement between The United Methodist Church and the other denomination must already exist that has been signed by the Council of Bishops and approved and ratified by the General Conference. The conditional clause “provided that such agreement *shall have been* committed to writing and signed and approved” is cast in the present perfect continuous tense, which means that an agreement was written, signed, and approved sometime in the past and continues to exist in the present time. The property transfer under ¶ 2548.2 is not permitted if The United Methodist Church does not have a pre-existing agreement with the recipient denomination.

Second, the agreement must comply with the connectional polity of the United Methodist Church and may not contain provisions not authorized or prohibited by the *Discipline*. See *infra* Questions 6 and 7.

Third, a charge or church conference must be conducted in accordance with ¶¶ 247-248. A resolution requesting the property transfer must be passed by a majority vote of the members present and voting pursuant to ¶ 2540.2 (unincorporated local church) or ¶ 2541.2 (incorporated local church).

Fourth, the presiding bishop and a majority of the district superintendents and of the district board of church location and building must give their consent to such request. They may not approve the property transfer if *any* of the first three conditions are not met at the time when they consider the request.

The record shows that, to this date, no such allocation, exchange of property, or comity agreement exists between The United Methodist Church and the Global Methodist Church. The language of ¶ 2548.2 makes it clear that all four conditions must be met cumulatively *before* the annual conference can invoke and exercise this right. This would exclude any interpretation to the effect that ¶ 2548.2 permits the unilateral and simultaneous approval of the comity agreement *and* property transfer by the annual conference. With these four conditions tightly circumscribing the authority of an annual conference, ¶ 2548.2 does not violate the separation of powers and, therefore, is constitutional. Conversely, any use, implementation, or application of ¶ 2548.2, or

exercise of this right by an annual conference **without, apart from, prior to, or contrary to** the four conditions would be unconstitutional, null and void, and of no legal force or effect.

Answer to Question 4: **NO.**

### Question 5

Prefaced by the heading “Deeding Church Property to Federated Churches or Other Evangelical Denominations,” ¶ 2548.2 pertains solely to the deeding and transfer of church property. Notably, this provision does **not** address the question of local church **membership**, which is clearly distinct from and cannot be equated with “property.” Therefore, it would flout conventional rules of statutory construction to read “membership” into ¶ 2548.2. Disaffiliation under ¶ 2553 involves *both* church membership *and* property, with the main difference that the membership departs from The United Methodist Church, whereas in ¶ 2548.2 the property is the object of the transfer. Hence, this begs the question of whether ¶ 2548.2 is an appropriate pathway for local churches seeking to exit from the connection. The missing membership element leads to the conclusion that ¶ 2548.2 was not intended to be used as a stand-alone and self-contained process, but is a supplementary procedure for the limited purpose of deeding/transferring church property that may be used only together with or subsequent to processes effectuating fundamental changes in the membership and ministries of local churches, such as interdenominational local church mergers under ¶ 2547, of which § 6 references ¶ 2548 (“Where property is involved, the provisions of ¶ 2548 obtain.”), and ecumenical shared ministries under ¶¶ 207- 209, which also references ¶ 2548. Any use or application of ¶ 2548.2 to accomplish the disaffiliation of local churches would not only defy logic but also subvert the clearly stated purpose of this disciplinary paragraph.

It stands to reason that, if disaffiliation of local churches could be accomplished under ¶ 2548.2 or *any* other provision of the *Discipline*, the special session of General Conference in 2019 would not have gone through the trouble of enacting ¶ 2553 and (redundantly) labeling it “Disaffiliation of Local Churches Over Issues Related to Human Sexuality.” The rational conclusion must be that, in adopting ¶ 2553, the 2019 General Conference intended that the process set forth therein be used for the stated purpose because there is no other provision available in the *Discipline*.

Under a long-standing rule of statutory interpretation, special legislation supersedes general legislation. JCD 424 (holding that “there is another rule of statutory construction that as between general and specific legislation the latter controls.”). Undoubtedly, ¶ 2553 is a *special* legislation adopted by a *special* General Conference for the *specific* purpose of permitting local

churches to disaffiliate from The United Methodist Church with their property under certain terms and conditions. Consequently, ¶ 2553 controls in matters of local church disaffiliation.

Answer to Question 5: **NO.**

### **Question 6**

“All decisions and actions by official bodies and their representatives must be based on and limited by the Constitution and the *Discipline*.” JCD 1366. Consequently, all persons and bodies involved in the process under ¶ 2548.2 must adhere to Church law in discharging their duties. Likewise, any allocation, exchange of property, or comity agreement must comply with the connectional polity of the United Methodist Church as set forth in the *Discipline*.

Answer to Question 6: **YES.**

### **Question 7**

Any allocation, exchange of property, or comity agreement containing provisions not authorized or prohibited by the *Discipline* would be contrary to the principles of connectionalism and legality. All persons and bodies involved in the process under ¶ 2548.2 are prohibited from signing, approving, ratifying, and enforcing any agreement that violates Church law and polity.

Answer to Question 7: **NO.**

### **Question 8**

“Where there is no stipulation regarding the number of votes required, simple majority vote is all that is necessary to approve an action.” JCD 1076, *aff’d*, JCM 1442. Paragraph 2548.2 contains no stipulation regarding the number of votes required to approve an annual conference action.

Answer to Question 8: **Simple majority vote is all that is necessary for an annual conference to “instruct and direct the board of trustees of a local church to deed property” under the authority of ¶ 2548.2.**



## Decision

Paragraph 2548.2 establishes a process for the limited purpose of deeding and transferring church property to another denomination but does not apply to the membership of a local church. It may be used only together with or after processes effectuating fundamental changes in the membership and ministries of local churches, such as interdenominational local church mergers (§ 2547) and ecumenical shared ministries (§§ 207-209). Subject to General Conference approval and ratification, the Council of Bishops is the body authorized to determine if an entity qualifies as a “denomination” and to negotiate and enter into “an allocation, exchange of property, or comity agreement” within the meaning of § 2548.2. Under § 2548.2, an annual conference, by simple majority vote, may direct the board of trustees of a local church to transfer property to another denomination on four conditions precedent:

1. A written allocation, exchange of property, or comity agreement between The United Methodist Church and the other denomination must already exist that has been signed by the Council of Bishops and approved and ratified by the General Conference. The property transfer is not permitted if The United Methodist Church does not have a pre-existing agreement with the recipient denomination.
2. The agreement must comply with the connectional polity of the United Methodist Church and may not contain provisions not authorized or prohibited by Church law.
3. A charge or church conference must be conducted in accordance with §§ 247-248. A resolution requesting the property transfer must be passed by a majority vote of the members present and voting pursuant to § 2540.2 (unincorporated local church) or § 2541.2 (incorporated local church).
4. The presiding bishop and a majority of the district superintendents and of the district board of church location and building must give their consent to the property transfer.

All four conditions must be met before an annual conference can exercise this right. Any use, implementation, or application of § 2548.2, or exercise of this right by an annual conference without, apart from, prior to, or contrary to those four conditions would be unconstitutional, null and void, and of no legal force or effect. The General Conference enacted § 2553 with the intent that the process set forth therein be used for the stated purpose of “Disaffiliation of Local Churches Over Issues Related to Human Sexuality.” Therefore, the process in § 2548.2 may not be used as a pathway for local churches to disaffiliate from The United Methodist Church.

August 22, 2022

## Separate Opinion

Although I concur with the essential elements and result of the majority's decision, I write separately because I take different approach in my analysis. When the Council of Bishops submitted their petition for a declaratory decision, they set forth the crux of the issue in the following paragraph:

Various annual conferences have pending resolutions related to ¶ 2548.2. Examples of these annual conference resolutions are attached hereto collectively as Exhibit D. All of the resolutions seem to characterize ¶ 2548.2 as a means of disaffiliation or separation of a local church from the UMC. However, ¶ 2548.2 does not expressly pertain to, or authorize, the disaffiliation or separation of a local church. Instead, that paragraph appears limited to the deeding of property without any reference to what may happen to the local church after the property is deeded. Paragraph 2547.6, which is related to interdenominational local church mergers, provides that “[w]hen property is involved, the provisions of ¶2548 obtain.” That paragraph appears to confirm that ¶ 2548.2 addresses only issues of property and not a process for disaffiliation or separation.

The Council of Bishops is correct. Paragraph 2548.2 does not expressly pertain to, nor authorize, the disaffiliation of a local church. Paragraph 2548.2 addresses only issues of property and not a process for disaffiliation. The various Resolutions that were annexed to their petition erroneously cite and rely upon paragraphs in the *Discipline* which are wholly unrelated to the disaffiliation process.

Further, there is no “separation” process in our polity for churches in the United States. There is only the process of disaffiliation which was afforded to local churches by the 2019 Special Session of General Conference for a specific and limited period of time. Additionally, local church mergers are *not* akin to disaffiliation, nor is a Federated Churches akin to a disaffiliated church.

It is apparent from the Resolutions that there are some congregations who seek to disaffiliate from the United Methodist denomination by circumventing the requirements set forth in ¶ 2553. Any such actions are impermissible. The General Conference has provided a specific method of departure for a local church to depart and be released of its connectional relationship and obligations under the Trust Clause [¶ 2501 et seq] and that method is set forth in the 2016

*Discipline* in Chapter Six — Church Property — *Section VIII. Disaffiliation of Local Churches Over Issues Related to Human Sexuality*, ¶ 2553. Disaffiliation of a Local Church Over Issues Related to Human Sexuality. Local churches may not circumvent the requirements of ¶ 2553 by arguing that their departure comes under some other paragraph in the *Discipline*. Nor may they rely upon potential proposed legislation that might be considered at a future General Conference (such as those references that were made to the *Protocol for Reconciliation and Grace through Separation*). Proposed legislation has no bearing or effect.

As such those Resolutions pertaining a local congregation's denominational severance, including a *release of its connectional obligations under the Trust Clause*, which rely upon paragraphs other than ¶ 2553, are improper, null and void. A congregation may not circumvent the action of the 2019 Special Session of the General Conference and subvert the requirements that the General Conference has set forth in Section VIII of Chapter Six in the *2016 Discipline*.

It must be emphasized that ¶¶ 2547, 2548, and 2549 are wholly unrelated to ¶ 2553, which always involves an on-going active congregation and which was enacted for the limited and narrow purpose of providing qualified congregations with a brief opportunity to disaffiliate from the UMC *pursuant to issues related to human sexuality*. The act of disaffiliation is in direct contradiction to this denomination's long-standing polity of connectionalism. It is an anathema to that connectional cornerstone which distinguishes our denomination from most other Protestant Churches.

Given that the paragraphs referenced in the Resolutions are predicated upon a mistaken or erroneous application and interpretation of the *Discipline*, the questions that arose from their misapplication are likewise flawed and irrelevant in these circumstances wherein local churches are seeking to disaffiliate from the denomination.

Furthermore, there are multiple paragraphs throughout the *Discipline* that are related to these matters of local church relationship changes and ecumenical affiliations which bear upon the context and interpretation of the paragraphs at issue herein and, when read and understood together, provide greater clarity and clearly distinguishes the disaffiliation process provided in

¶2553 by the 2019 Special Session of General Conference from those provisions that were already set forth in the Discipline. [see, e.g., ¶ 6, ¶13.2, ¶13.3, ¶¶207-211 Ecumenical Shared Ministries, ¶ 227, ¶ 339 footnote 33, ¶¶ 431-442 Ecumenical Relationships, ¶ 502.1b, **¶¶ 570-575 Autonomous Methodist Churches, Affiliated Autonomous Methodist Churches, Affiliated United Churches, Covenanting Churches, Concordat Churches**]. It is particularly in reference to ¶¶ 570-575 that my interpretation differs somewhat from the majority, albeit with the same net result.

As set forth in an amicus brief submitted by one of our denomination's chancellors:

If ¶ 2548.2, which had been in the *Discipline* for 70 years at that time, had already established a process for local church disaffiliation, then adding a paragraph like ¶ 2553 (or any of the numerous alternative disaffiliation proposals presented for action at the 2019 Special Session and thereafter to the since-postponed 2020 General Conference) was wholly unnecessary. The undeniable fact is that nearly everyone—including the advocates for each of the competing plans to address the denominational impasse on human sexuality issues—concurred at the time that new General Conference legislation would be required if congregational disaffiliation (while retaining all assets) was to be allowed, because no such provision had ever previously been included in the *Discipline*.

In truth, it is only more recently that the argument that ¶ 2548.2 provides an alternative pathway to disaffiliation gained any traction. The timing of this emerging reliance on ¶ 2548.2 is perhaps explained by disappointment among those that are planning to withdraw that the terms imposed by ¶ 2553 are more rigorous than those they hoped would be adopted at the repeatedly continued General Conference of 2020. But such factors hardly justify adopting a construction of ¶ 2548.2 that (a) contradicts the intent of the General Conference in adopting that provision for entirely distinct purposes in 1948; (b) exceeds the limited reach of the express terms of ¶ 2548.2; and (c) all but nullifies the General Conference's direction in ¶ 2553, which conditions disaffiliation upon the satisfaction of terms that are entirely absent from ¶ 2548.2.

The Council of Bishops was correct in their initial understanding that there was a misplaced reliance upon other sections in Chapter Six of the *2016 Book of Discipline*. In the matters at hand, only Section VIII of Chapter Six controls. Any Resolutions that do not comport fully with the General Conference mandates found in Section VIII, ¶ 2553, and their Annual Conference's requirements compiled thereto, must be ruled null and void.

Resolutions pertaining to a local congregation's disaffiliation, including release of its connectional obligations under the Trust Clause, which are predicated upon disciplinary paragraphs other than ¶ 2553, are improper. A congregation seeking to disaffiliate from The United Methodist Church may not subvert the action of the 2019 Special Session of the General Conference and circumvent the disaffiliation mandates and minimum requirements that the General Conference has set forth in Section VIII of Chapter Six in the *2016 Discipline*. Any Resolutions that do not comport fully with the General Conference disaffiliation mandates found in Section VIII, ¶2553, and their Annual Conference's requirements compiled thereto, must be ruled null and void.

Beth Capen

August 22, 2022

### **Dissenting Opinion**

I appreciate and applaud the work of my Judicial Council colleagues for rendering Decision 1449. However, I respectfully dissent from their holding. Paragraph 431.1 does not give the Council of Bishops, as the ruling suggests, the authority to define an evangelical denomination, to determine what constitutes a denomination nor sign a comity agreement. Rather, ¶ 431.1 authorizes the Council of Bishops to submit to General Conference recommendations for approval. The majority's ruling invests authority within the Council of Bishops that the General Conference has not given them in the *Book of Discipline*. Furthermore, the holding fails to acknowledge that ¶ 1504.23 provides that ¶ 2548.2 is an additional option for congregations to change their connectional relationship with the United Methodist Church. On this basis, I dissent.

Dennis L. Blackwell

August 22, 2022