

**JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH
FALL 2010 DOCKET
ITEM XXV**

**IN RE: Review of a Request for a Bishop's Decision of Law in the New York
Conference Regarding a Proposed Advertising Campaign in Light of ¶613.20**

Notice of Filing

In accord with the rules of Practice and Procedure of the Judicial Council, and of ¶2610.3 of *The 2008 Book of Discipline*, I, Kevin M. Nelson, home missionary, hereby certify that I caused copies of this INTERESTED PARTY BRIEF CONCERNING BISHOP JEREMIAH J. PARK'S RULING OF LAW AT THE 2010 SESSION OF THE NEW YORK ANNUAL CONFERENCE THAT A CERTAIN RESOLUTION WAS CONTRARY TO THE DISCIPLINE OF THE UNITED METHODIST CHURCH to be served as follows:

1. Via Federal Express by depositing the original and thirteen copies at the FedEx Office Ship Center at 600 W. 116th St, New York, NY 10027 on August 24, 2010 upon:

F. Belton Joyner, Jr.
Secretary, The Judicial Council
The United Methodist Church
1821 Hillandale Road, Suite 1-B, PMB 334
Durham, NC 27705

2. Via electronic mail transmission on August 24, 2010 upon:

F. Belton Joyner, Jr.
Secretary, The Judicial Council
judicialcouncil@umc.org

3. Via electronic mail transmission on August 24, 2010 upon:

Bishop Jeremiah Park
bishop@nyac.com

Robert G. Miller
Conference Secretary
RBOBGMILLR@aol.com
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X *Kevin M. Nelson*

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**JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH
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*IN RE: Review of a Request for a Bishop's Decision of Law in the New York Conference
Regarding a Proposed Advertising Campaign in Light of ¶613.20*

Submitted: August 24, 2010

**INTERESTED PARTY BRIEF CONCERNING BISHOP JEREMIAH J. PARK'S
RULING OF LAW AT THE 2010 SESSION OF THE NEW YORK ANNUAL
CONFERENCE THAT A CERTAIN RESOLUTION WAS CONTRARY TO THE
DISCIPLINE OF THE UNITED METHODIST CHURCH**

This brief is submitted by Dr. Dorothee Benz and Home Missioner Kevin M. Nelson, who submitted the question of law on June 11, 2010, and the Rev. Timothy J. Riss.

We believe that an annual conference, which “is the basic body in the Church” (2008 *Book of Discipline* ¶33) and “fundamental” (¶11), cannot be constrained by any other body or person from expressing and publicizing its testimony concerning the works and Word of God. Bishops cannot substitute their wisdom for the collective wisdom of the annual conference, any more than an annual conference can direct or constrain a bishop.

The Judicial Council should modify the ruling of law by Bishop Jeremiah Park by clarifying that the petition in question does not violate the *Discipline*; that ¶613.20 has no bearing on the petition; that annual conferences have reserved to them the right to interpret, proclaim, and advocate for the Gospel in the Church and in the world; affirming the right of principled dissent of an annual conference; and ruling that advertising an annual conference's witness, even in dissent, cannot be in violation of the *Discipline*.

I. Introduction

A. Basis for submission

Dr. Dorothee Benz, Home Missioner Kevin M. Nelson, and the Rev. Timothy J. Riss signed the original petition to the New York Annual Conference and are voting members of the New York Annual Conference, Dr. Benz made the verbal request for a decision of law, and Dr. Benz and Home Missioner Nelson signed and submitted the written request for a decision of law. As such, Dr. Benz and Home Missioner Nelson have been identified as interested parties in relation to this case. It is in these roles that we [Benz, Nelson, and Riss] file this brief.

B. Text of Petition #2010-304

WHEREAS, Jesus lifted up the poor, welcomed women into his ministry, healed lepers, overturned the tables in the temple and was executed as a threat to religious and governmental authorities; he invited the outcast and the marginalized into God's kingdom and his ministry challenged the social norms of his day; and his call for us to follow him compels us to do the same; and

WHEREAS, the church therefore has a special obligation to welcome and defend those on the margins of our own society and to work for equality and justice for them; these include the poor, immigrants, people of color, people of non-Christian faiths, people with disabilities and lesbian, gay, bisexual and transgender people; and we have a particular obligation to fight for those singled out by our own denomination for discrimination, lesbian and gay people; and

WHEREAS, the UMC continues to lose members every year and a part of that decline can be traced to its prejudicial policies and pronouncements on homosexuality, which are offensive particularly to young people and which many rightly perceive as hypocritical from an organization that professes to follow Jesus; and

WHEREAS, LGBT people face significant hostility, discrimination, threats and violence in our society; there are over 1,000 documented hate crimes against LGBT people every year; 29 LGBT people were murdered because of their sexual orientation or gender expression in 2008 (the last year for which statistics are available);¹ anti-gay bullying in our schools is epidemic, 91% of LGBT middle-school students report harassment because of their sexual orientation, 39% have been assaulted and 63% have heard school staff make homophobic remarks;² 25-40% of homeless youth are LGBT;³ and the suicide rate among LGBT teens is two to three times the rate of suicide among other youth;⁴ and

WHEREAS, the UMC's and other Christian churches' own anti-gay positions and policies excuse and condone bias against LGBT people and the church must bear responsibility for contributing to the violence against LGBT people; and

WHEREAS, Christians become complicit in the physical and spiritual violence suffered by LGBT people when they do not speak out against their church's prejudice against LGBT people; and

WHEREAS, the vast majority of LGBT people think that Christianity is a homophobic religion and do not feel welcome in Christian churches; and

¹ National Coalition of Anti-Violence Programs.

² Gay, Lesbian and Straight Education Network.

³ Lambda Legal Defense and Education Fund.

⁴ US Department of Health and Human Services, Report of the Secretary's Task Force on Youth Suicide.

WHEREAS, no amount of advertising inviting people to “rethink church” will change the perception of Methodism as homophobic if it is not accompanied by an explicit repudiation of the UMC’s prejudice and discrimination; and

WHEREAS, the New York Annual Conference has stood in firm, consistent and persistent opposition to the UMC’s prejudice and discrimination against gay and lesbian people for over three decades; therefore be it

RESOLVED, that the New York Annual Conference advertise in New York and Connecticut LGBT publications and express in these advertisements its heartfelt regret for the harm inflicted on LGBT people through the UMC’s homophobia and discrimination, and further share in these advertisements that NYAC has long been opposed to UMC policy on homosexuality and welcome and invite LGBT people to worship in NYAC churches; and be it further

RESOLVED, that these advertisements be paid for through voluntary contributions, to be received by Methodists in New Directions.

FURTHER RESOLVED, that the wording and placement of these advertisements be the responsibility of Methodists in New Directions.

C. Text of Conference Minutes

Item number 3015 came to the floor. This is Petition #2010-304 in the Reports to Annual Conference 2010.

Bishop Park ruled this petition out of order. He explained that it was in conflict with the Discipline which governs disbursement of Conference funds to a gay caucus. It was then moved and seconded to amend the petition on page 39, line 29 to say “that the advertisements be the responsibility of MIND.” A vote was taken and the amendment was agreed to. Bishop Park ruled the amended petition still to be out of order. A new amendment to remove the words: “made by Annual Conference and congregations” was proposed, seconded and approved. Bishop Park again ruled the petition as amended out of order. A Conference member rose to ask for a bishop’s decision of law on why the petition as amended was ruled out of order. Bishop Park suggested that the petition could be tabled so that the language might be fine tuned by interested parties. The Conference member instead chose again to ask for a bishop’s ruling of law. Bishop Park asked the body if they would adopt the motion to challenge the bishop’s ruling. The vote sustained the ruling of the bishop. Bishop Park asked the Conference member to put her request for a bishop’s ruling in writing so that he could respond within the required 30 days.

D. Text of Request for Decision of Law

June 11, 2010

We request a ruling of law regarding in what way petition 2010-304 is in violation of the Discipline, and in particular whether it violates ¶613.20, which vests the Conference Council on Finance and Administration with the responsibility “to ensure that no annual conference board, agency, committee, commission, or council shall give United Methodists funds to any gay caucus or group, or otherwise use such funds to promote the acceptance of homosexuality...”, none of which this petition involves doing.

Dorothee Benz
Kevin M. Nelson

E. Text of Response to Request for Decision of Law

REASON FOR RULING PETITION #2010-304 OUT OF ORDER:

I ruled the resolution out of order because the resolution requires an advertisement in a public newspaper, which includes a phrase, “NYAC (New York Annual Conference) has long been opposed to UMC (United Methodist Church) policy on homosexuality.” This phrase as a public statement does not accurately define the standing of the New York Annual Conference as it relates to The United Methodist Church policy on homosexuality. That is, the New York Annual Conference has adopted resolutions in opposition to some United Methodist Church policy on homosexuality, but not all. Accordingly, specific United Methodist Church policy on homosexuality to which the New York Annual Conference has voted to express its opposition must be identified with reference to specific paragraphs of the Book of Discipline. Without specific references the advertisement could be construed to imply that the New York Annual Conference holds to a policy that is contrary to The United Methodist Church policy on homosexuality as established in the Book of Discipline or that it opposes specific United Methodist Church disciplinary paragraphs on homosexuality to which the New York Annual Conference has voted its support. The specificity is essential when the New York Annual Conference makes a public advertisement/statement as it relates to United Methodist policy in its name but does not have control of its wording.

F. Summary of Argument

- 1. A request for a decision of law was properly submitted to Bishop Park during the 2010 New York Annual Conference.**
- 2. Bishop Park’s written ruling of law neither addresses the written request for a ruling of law nor defends his oral statements about the potential violation of the *Discipline* in Petition #2010-304.**

Bishop Park changes the grounds on which he ruled the Petition out of order, does not refer to any of the parts of the written question, and does not make any specific reference to any disciplinary paragraph.

3. **Petition #2010-304 does not violate the *Book of Discipline*.**
4. **Judicial Council Decisions establish that petition #2010-304 was within the bounds of permissible expressions of an annual conference's aspirations and beliefs.**
5. **An annual conference has the right and responsibility to communicate its particular witness, both within and without the Church, including its dissent from positions the Church has taken.**

This responsibility is clear from key authorities on which we base our decisions: the *Book of Discipline*, the history and practice of the Church, and the Scriptures.

6. **Bishop Park, as the Presiding Officer, erred in his actions in relation to this matter in two significant ways.**

Bishop Park ruled Petition #2010-304 out of order prior to final action by the conference body, thus infringing on the ability of the body to act on issues properly submitted to it, and Bishop Park acted on his own initiative when conducting a vote to appeal the ruling of the presiding officer, absent a motion to that effect by any member of the body.

II. Argument

A. A request for a decision of law was properly submitted to Bishop Park during the 2010 New York Annual Conference.

During the business of the 2010 New York Annual Conference session, Petition #2010-204 was presented to the Annual Conference body. Bishop Park indicated his intention to rule this petition out of order on Disciplinary grounds, which sparked a number of attempts to revise the petition to Bishop Park's satisfaction (see I.C). After repeated failures to achieve this result, a request was made for a decision of law regarding in what ways the petition was in violation of the *Discipline*.

This request was made to the bishop under his role in ¶415.1:

¶415. Presidential Duties—1. To preside in the general, jurisdictional, central, and annual conferences.

And under the authority granted to him in Division III, Article VII of the Constitution of The United Methodist Church:

A bishop presiding over an annual, central, or jurisdictional conference shall decide all questions of law coming before the bishop in the regular business of a

session, provided that such questions be presented in writing and that the decisions be recorded in the journal of the conference...

[¶51]

And it is subject to review of the Judicial Council per ¶2609.6.

Per the provisions of ¶51 and ¶2609.6, the request for a decision of law was provided in writing on Friday, June 11, 2010, during the evening session of the 2010 New York Annual Conference. The substance of the request asked for an explanation of how the petition was in violation of the *Discipline*, specifically ¶613.20, of which, during the oral proceedings, Bishop Park had indicated the petition ran afoul (see I.D).

B. Bishop Park's ruling of law neither addresses the question posed nor defends the oral statements he made concerning advertising the Annual Conference's principled dissent from the United Methodist position on homosexuality.

Bishop Park's written ruling refers to no disciplinary paragraphs and does not address how the petition was in violation of the *Discipline*. He focuses on whether the New York Annual Conference could accurately claim to be in dissent on United Methodist policy when resolutions have been made "in opposition to some United Methodist Church policy on homosexuality, but not all." Whether or not this is true, this is not a disciplinary question. Annual Conferences are allowed to pass resolutions that are wrong, although it is hoped that they would not. The Presiding Officer cannot rule motions that are mistaken or wrong-headed out of order in any event.

Bishop Park's written ruling also does not support the statements he made at the Annual Conference session concerning the expenditures of funds and the advertising of New York Annual Conference's principled dissent. Bishop Park, according to the Minutes of the session (see I.C), only declared that the petition was out of order because of the disciplinary ban on providing "Conference funds to a gay caucus."

C. Petition #2010-304 does not violate the *Book of Discipline*.

Bishop Park's words during the Conference session indicate that his concerns were with funds passing through a Conference agency, which motivated the Conference to amend the petition twice (see I.C). This forms the basis for evaluating whether or not Petition #2010-304 violates the *Discipline*, and it is this position which ought to be rejected by the Judicial Council, and the Bishop's ruling ought to be modified to clarify that this petition does not violate the *Discipline*.

The relevant provision in this case is ¶613.20 which states:

¶613. Responsibilities—The [Conference Council on Finance and Administration] shall have the authority and responsibility to perform the following functions:

20. *To ensure that no annual conference board, agency, committee, commission, or council shall give United Methodist funds to any gay caucus or group, or otherwise use such funds to promote the acceptance of homosexuality or violate the expressed commitment of the UMC “not to reject or condemn lesbian and gay members and friends” (§161.F). The council shall have the right to stop such expenditures. This restriction shall not limit the Church’s ministry in response to the HIV epidemic; nor shall it preclude funding for dialogs or educational events where the Church’s official position is fairly and equally represented.*

The actions called for in Petition #2010-304 would not be carried out by any annual conference board, agency, committee, commission or council, do not involve the expenditure of conference funds, and do not call for the promotion of homosexuality; thus, they do not fall under the jurisdiction of the Conference Council on Finance and Administration, are not subject to the provisions of ¶613.20 and would not violate those provisions even if these actions were subject to ¶613.20.

Additionally, despite criticizing various UMC policies contained in the *Discipline* as relates to sexuality, Petition #2010-304 does not take the step of violating any of those policies and thus does not violate the *Discipline*.

D. Judicial Council decisions establish that petition #2010-304 was within the bounds of permissible expressions of an annual conference’s aspirations and beliefs.

In Decision 886, the Judicial Council announced the principle that annual conferences may not legally negate, ignore or violate provisions of the *Discipline* with which they disagree, even when the disagreements are based on conscientious objections to those provisions. Petition #2010-304 does none of these things.

In Decision 1120, the Judicial Council stated that “a resolution may express disagreement with the current language of the *Discipline* and may express its aspirational hopes, but an annual conference may not legally negate, ignore or violate provisions of the *Discipline*, even when the disagreements are based upon conscientious objection to those provisions.” Petition #2010-304 expresses disagreement with the current language of the *Discipline* and expresses the NYAC’s “heartfelt regret for the harm inflicted on LGBT people through the UMC’s homophobia and discrimination,” and it calls for action inviting LGBT people to worship in NYAC churches, but it does not “legally negate, ignore or violate provisions of the *Discipline*.”

In Decision 913, the Judicial Council affirmed a bishop’s decision of law that was requested after the Desert Southwest Annual Conference adopted a resolution entitled “We will not be silent.” The resolution was determined by the Judicial Council to be permissible because it did not contain language that negated, ignored or violated the *Discipline*. Again, Petition #2010-304 similarly does not contain language that negates, ignores, or violates the *Discipline*.

In Decision 1044, the Judicial Council affirmed a bishop's decision of law regarding a previous resolution adopted by the Baltimore-Washington Annual Conference that pledged to model inclusive behavior in the acceptance of members into local congregations. The Baltimore-Washington resolution in that case was determined to be aspirational in nature and did not violate the *Discipline*. In Decision 1120, the Judicial Council reaffirmed the position that an annual conference may adopt a resolution on human sexuality that is aspirational in nature. Similar to the resolution in question in Decision 1044, Petition #2010-304 is likewise aspirational in nature, particularly when it calls for action inviting LGBT people to worship in NYAC churches.

E. An annual conference has the right and responsibility to communicate its particular witness, both within and without the Church, including its dissent from positions the Church has taken.

Going beyond the question of whether or not petition #2010-304 "legally negates, ignores or violates provisions of the *Discipline*," it is the opinion of the writers of this brief that any Christian community's right and responsibility to communicate its witness is clear from Scripture, the Book of Discipline, and the Book of Resolutions. It would seem unnecessary to argue this point.

It might be more controvertible to permit dissent as a part of a body's witness. But dissent is a common way to witness to the movement of the Holy Spirit in Scripture, in the history and practice of the Church, and in the perfecting of church teaching.

We see the Holy Spirit at work within the canon of Sacred Scripture. Although there are stories of dissent that are presented as warnings against disobedience (as in the murmuring tradition in Exodus and Numbers and the breaking apart of the kingdom of David and Solomon into two states); the prophetic witness is almost always one of dissent. Further, there are instances when the Holy Spirit has allowed the people of God to come to a decision about the correct way to tell the divine story, and then permitted a dissenting view also to enter the canon. Consider Luke, who dissents from the accounts of many others, especially Mark, who "have undertaken to set down an orderly account of the events that have been fulfilled among us" (Luke 1:1), so that he writes his own version of the events. Consider Paul, who dissents from the decisions of the apostles in Jerusalem (Galatians 2:5), refusing to check with them after his conversion (Galatians 1:17), confronting Peter in front of the church in Antioch (Galatians 2:11-14), and berating the Galatians for being "bewitched" by emissaries of those apostles (Galatians 3:1). And consider the famous dissent of James from Paul's doctrine of justification by faith: "Faith without works is also dead" (James 2:26). Besides these, there are some equally compelling dissenting passages in the Old Testament, like the books of Chronicles, which dissent in specific places from the history already provided by the Deuteronomistic historian in the books of Samuel and Kings. The Word of God is expressed in contradictory ways, endorsing multiple perspectives in the Church, encouraging dissenting witnesses as agents of revelation and spiritual growth.

In the history and practice of the Church, the Holy Spirit has been visible in dissenting witnesses throughout. The multiple perspectives of the New Testament authors bloom with the expansion of the Church, and we begin to develop a concept of heresy. Yet what is heretical to one generation can seem like the unseen work of the Holy Spirit to another. We can note that, in recent years, the Roman Catholic Church has lifted the excommunication of Martin Luther and asserted that his doctrines were essentially correct. In our own tradition, John Wesley gives us a notable example by championing Jacob Arminius, a Dutch theologian who dissented from Calvinist orthodoxy. And, of course, the Wesley brothers dissented frequently from the policies and practices of the Church of England in their day; in spite of this, much of their work is honored in Anglicanism today.

But it is not just in theology that the Church has found value in principled dissent; it is also in polity. No history of Methodism in America can be written without telling of deep conflicts that were resolved in one direction only to be reversed years later. The first schismatic moment in American Methodism occurred with the Annual Conference at Fluvanna in 1779, which found Francis Asbury in dissent against the majority of the preachers, who formed a presbytery and ordained themselves. In 1781, Asbury's principled dissent was acknowledged as correct, and he was made the regular president of the annual conferences. In the early nineteenth century, many Methodists agitated for laymen to have decision-making power in the conferences. Their dissent was vindicated when the Methodist Protestant Church reunited in 1939 with the Methodist Episcopal Church and the Methodist Episcopal Church, South, to form The Methodist Church with equal lay and clergy representation at all levels of conferencing (except charge conferences). The Rock River Annual Conference sent Frances Willard as one of its two lay delegates to the General Conference of 1888, but General Conference refused to seat female delegates until 1904. The New York East Annual Conference dissented against the formation of the segregated Central Jurisdiction in 1939; its delegates voted against reunion. Now racial segregation is unthinkable in United Methodism. New York Annual Conference has dissented from the General Conference's legislation on homosexuality for decades. In 1984 a brief was prepared by this Conference for the case which resulted in the Judicial Council's Decision No. 544, and we sent two clergy to make a presentation to the Council at a hearing in Evanston, Illinois. We are still dissenting. Sometimes, but not always, the movement of the Holy Spirit in the Church has allowed a minority to persuade the majority. The normal and accepted way this happens is through allowing the minority to express and publicize its dissent.

The Book of Discipline itself assumes that the Church is sometimes wrong. In "Our Theological Task," ¶104, page 83, we read: "Too often, theology is used to support practices that are unjust. We look for answers that are in harmony with the gospel and do not claim exemption from critical assessment." Is that "critical assessment" only to come from outside the Church? Or only from fragmented, disorganized voices from within the Church? If an annual conference cannot provide a "critical assessment" or call the church to revise a theology that is being "used to support practices that are unjust," then how can the annual conferences petition the General Conference for any meaningful changes whatsoever? This would be an absurdity.

We must conclude that The United Methodist Church expects that people will come together under the guidance of the Holy Spirit to persuade the Church to change. It further follows that we cannot be silent about the work and Word of God among us, and annual conferences have the right and responsibility to advertise their principled dissent.

That this right and responsibility is only seen implicit in the *Discipline* is no argument against it. The right and responsibility of Judicial Council members to file dissenting and concurring opinions is similarly not expressed in the *Discipline*.

In the case of Petition #2010-304, Bishop Park seemed to assert that it was contrary to the *Discipline* to advertise the New York Annual Conference's dissent or to communicate its openness to ministry with homosexual people. This implication should be rejected.

F. Bishop Park, as the Presiding Officer, erred in his actions in relation to this matter in two significant ways.

- 1. Bishop Park ruled the petition out of order prior to final action.**
As the minutes reflect, Bishop Park repeatedly indicated his intention to rule this petition out of order. The end result was that at no time did the conference body have the opportunity to vote on a final version of this petition. This raises a serious issue regarding the limits of the power of bishops in their role as presiding officer of the annual conference and the right of the conference body to consider items properly submitted to it for their action.

If bishops, in their role as presiding officer, can rule petitions out of order prior to final action by the conference body, what is to stop a bishop from pushing this envelope further and further, perhaps even to the point of ruling petitions and various other items submitted to the body out of order before the body ever even has a chance to consider them? The Judicial Council should instruct bishops not to rule petitions out of order prior to final action by the conference body.

- 2. Bishop Park acted independently of the conference body in calling for a vote to appeal the ruling of the presiding officer.**

As reflected in the minutes, "*A Conference member rose to ask for a bishop's decision of law on why the petition as amended was ruled out of order. Bishop Park suggested that the petition could be tabled so that the language might be fine tuned by interested parties. The Conference member instead chose again to ask for a bishop's ruling of law. Bishop Park asked the body if they would adopt the motion to challenge the bishop's ruling.*"
(emphasis added)

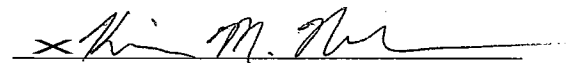
When Bishop Park asked the body to vote on adopting the motion to challenge the ruling of the chair, he acted independently of the body in calling for such a vote. Perhaps Bishop Park misunderstood part of the statement made when requesting the decision of law, but regardless, no motion was made by any member of the body to appeal the ruling of the presiding officer, which thus resulted in confusion regarding what Bishop Park was asking the body to vote on at that moment. In any event, a request was made for a decision of law and only a request for a decision of law, which is what this case relates to.

The vote taken by Bishop Park is thus null and void, of no meaning, and should be disregarded by the Judicial Council and this case should be weighed on its merits as a request for a decision of law.

III. Conclusion

The Judicial Council should modify the ruling of law by Bishop Jeremiah Park by clarifying that the petition in question does not violate the *Discipline*; that ¶613.20 has no bearing on the petition; that annual conferences have reserved to them the right to interpret, proclaim, and advocate for the Gospel in the Church and in the world; by affirming the right of principled dissent of an annual conference; and by ruling that advertising an annual conference's witness, even in dissent, cannot be in violation of the *Discipline*.

Respectfully submitted,



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