Statement in Defense of Marriage Rights

Gregory S. Neal

On October 1, 2022, the Reverend Dr. Gregory S. Neal and Mr. Kade M. Rogers were married in a ceremony at Lakewood United Methodist Church in Dallas, Texas. Immediately following the wedding, complaints were filed with Bishop Michael McKee of the North Texas Conference against several of the parties involved: specifically, the officiants – the Reverend Michael House and the Reverend Jane Graner – and one of the grooms, Rev. Neal. A complaint was not filed against Mr. Rogers because it is not a chargeable offense for a United Methodist layperson to be married in a same-sex union. The complaint against Rev. Neal was for being married in a same-sex wedding and for authorizing that same-sex wedding in the church where he was then Senior Pastor. The following is Rev. Neal's formal response to the complaint regarding his marriage; it is broken into two sections with 5 corresponding parts: (1) the Digest, which briefly outlines Rev. Neal's arguments against the constitutionality of the complaint; and (2) the Substantiation of the Digest, in which each point in Rev. Neal's defense is extensively presented.

Digest:

1. My right to marry is established in Article XXI of the Methodist Articles of Religion. Article XXI asserts that I am neither required to make a vow of celibacy nor to abstain from marriage, and furthermore that I have the right to marry "at [my] own discretion." This Article, being part of the Doctrinal Standards of The United Methodist Church and protected by the First Restrictive Rule, takes precedence over the Social Principles' limitations and definitions regarding marriage (¶161.C) as well as over all other disciplinary stipulations and legislative actions regarding marriage (¶161.G, ¶304.3-footnote 1, ¶341.6, ¶2702.1b, *et al.*) that have been passed by General Conferences at a threshold-level less than that required by the First Restrictive Rule.

2. My fundamental right to marry under the secular laws of The United States of America is established by the USSC ruling in *Obergefell v. Hodges* (2015). Because the ruling establishes same-sex marriage as a civil right, all Disciplinary legislative actions prohibiting same-sex marriage or establishing such as a chargeable offense violate ¶162.J, which ensures "Equal Rights Regardless of Sexual Orientation." Additionally, the 1939 provision at the end of the Articles of Religion regarding the "Duty of Christians to the Civil Authority" applies in this case because multiple prior objections to homosexuality and same-sex marriage were, at least in-part, founded upon the illegality of both under secular law; homosexuality and same-sex marriage are no longer secular "crimes" chargeable under ¶2702.1c.

3. I challenge the constitutionality of the "incompatibility clause" in ¶161.G. For decades it has been used as the doctrinal substantiation for multiple legislative actions prohibiting the full inclusion of LGBTQ+ persons in the life and ministries of the UMC, notwithstanding its location in the Social Principles and lacking the supermajority approval required by the First Restrictive Rule for modifications to the Doctrinal Standards. If it is not a valid doctrine (and it is not, due to location and lack of Constitutional authorization as such), it cannot be used to substantiate these regulations (*e.g.* ¶341.6, ¶2702.1b); since it has been used as such, it and all legislative actions which depend upon it are *ipso facto* unconstitutional.

4. Furthermore, I challenge the constitutionality of ¶304.3-footnote 1, as codified by GC2019 in implementing Judicial Council Decision 1341, by which a person's status in a same-sex marriage automatically constitutes self-avowal as a practicing homosexual. Such a finding is built upon the common-law concept of marital consummation, which is not in-keeping with the current disciplinary stance on the fundamental nature of marriage (according to ¶161.C, consummation is neither required nor presumed for a marriage to be valid); in addition, it is eminently falsifiable, violates due process and the principle behind the "self-avowal shield," and violates the Fourth Restrictive Rule by removing the right to trial or appeal in its presumptive finding.

5. My marriage is in-keeping with the inclusiveness of The United Methodist Church as demonstrated both in Article IV of its Constitution and in recent legislative actions of its US Jurisdictions. In 2022 all five US Jurisdictions passed, with overwhelming majorities, a resolution entitled: *Queer Delegates' Call to Center Justice and Empowerment for LGBTQIA+ People in the UMC.* The impact of this resolution cannot be understated. Of particular note is the strong affirmation of "the spirit of the abeyance or moratorium" on complaints and charges against LGBTQ+ persons, as well as the call to "not pursue or resolve in an appropriately timely fashion through a non-punitive, just resolution process any complaints against clergy regarding their sexual orientation or clergy who officiate weddings of LGBTQIA+ persons."

This constitutes my response to the formal complaint issued against me for marrying Kade Rogers. I respectfully request that the complaint be resolved through a just resolution based upon these points, and that an abeyance on future charges related to my marital status be enacted until such time as the General Conference puts an end to the injustice being perpetrated against LGBTQ+ persons.

Substantiation of the Digest:

1. Article XXI As a Defense of a Right to Marry

The right to marry for all United Methodist clergy is clearly established and affirmed by Article XXI of the Methodist Articles of Religion:

> **Article XXI—Of the Marriage of Ministers**
> The ministers of Christ are not commanded by God's law either to vow the estate of single life, or to abstain from marriage; therefore it is lawful for them, as for all other Christians, to marry at their own discretion, as they shall judge the same to serve best to godliness.[1]

This article, protected by the First Restrictive Rule[2], comes to us from the 39 Articles of Religion of the Anglican Communion, where it is enumerated as Article XXXII. Originally adopted in 1553 following the Clergy Marriage Act of 1548, then updated and re-adopted in 1562, Article XXXII ensured that bishops, priests, and deacons of the Church of England would not be required to vow or maintain the Roman Catholic practice of clerical celibacy but were free to marry "at their own discretion, as they shall judge the same to serve best to godliness." Except for the change in clerical nomenclature, this Article has been retained substantially unaltered from its 1562 version.[3] As part of the Methodist Articles of Religion, it is protected by the First Restrictive Rule in the Church's Constitution and, as such, takes precedence over all other rules or regulations regarding marriage to be found within *The Book of Discipline, 2016*.[4]

Article XXI contains no limitations on the definition of marriage, nor does it define legality in purely ecclesial or civil terms. "God's law" is referenced regarding the lack of Scriptural warrants for the Roman Catholic practice of clerical celibacy, which should remind us that this article was originally drafted to ensure the civil and ecclesial right of all Anglican clergy "to marry at their own discretion."[5] This point bears amplification: in this Article the reformers of the Church of England were affirming that all clergy could decide for themselves if, when, and to whom they would marry. The "discretion" and "judgement" referenced in the doctrine is clearly on the part of the person being married, not on the part of the church or a civil authority. Indeed, rather than being required by

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[1] *The Book of Discipline of the United Methodist Church, 2016* (Nashville, Tenn.: United Methodist Publishing House, 2016), ¶104.3 - Article XXI.
[2] ibid, ¶17, which reads: ***Article I.***—The General Conference shall not revoke, alter, or change our Articles of Religion or establish any new standards or rules of doctrine contrary to our present existing and established standards of doctrine.
[3] Henry Wheeler, *History and Exposition of the Twenty-five Articles of Religion of the Methodist Episcopal Church*. (New York: Eaton & Mains, 1908), 350.
[4] For a few examples of the priority of the Doctrinal Standards over subordinate legislative actions, and even over the constitution of the church, see Judicial Council Decisions 86, 358, and 847.
[5] Wheeler, 350, 352-353.

ecclesial authority to abstain from marriage, as had been the case within Roman Catholicism, the clergy of the Church of England were at liberty to make such decisions *for themselves* – to marry or to remain celibate – guided solely by their own *discretion* and *judgement*.[6] No secular or ecclesial authority was permitted to dictate their decision to marry or remain single, nor could such dictate limits regarding whom they could marry: they were not restricted relative to the aristocracy nor, even, to matters of denominational affiliation; they were free to marry entirely at their own *discretion*.[7] It is at this precise point that ¶2702.1b, ¶161.C, ¶161.G, ¶304.3-footnote 1, and ¶341.6 all run afoul of Article XXI. In direct contradiction to the intent, wording, and spirit of Article XXI, these regulations deny the right of some clergy "to marry at their own discretion," and further require those same clergy to "abstain from marriage" and "vow the estate of single life." The General Conference, as aided by the Judicial Council, has done this based upon the perceived authority of the "incompatibility clause" and other statements made in ¶161.G, even though this legislation was passed at a much lower vote threshold than required by the First Restrictive Rule[8] and is thus undeniably inferior to the Doctrinal Standards.[9] The prohibition of same-sex marriage for clergy, and the subsequent mandate of lifetime clerical celibacy for the same, are therefore unconstitutional.

The Judicial Council has issued only a single decision pertaining to Article XXI, however their treatment is plagued by multiple faults in both fact and reasoning while also failing to encompass the full scope of the Article's applicability to the question. In Decision 1185[10] the Judicial Council ruled that ¶2702.1 did not violate Article XXI for the following reasons:

(1) the definition of marriage presumed by the Anglican authors and Methodist adopters of the Article would not have included same-sex unions,
(2) the civil legality of same-sex unions is immaterial to Church law, and
(3) the Social Principles (in ¶161.C and ¶161.G) establish marriage as being heterosexual in nature, and that definition was presumed to apply to the term "marriage" in Article XXI.

These three points are each flawed in several respects. Relative to the definition of marriage, while it is true that the authors/adopters of the Article would not have included same-sex couples within their definition of marriage, neither would they have included the concepts of mutuality and equality between men and women[11], which is of principle importance for marriage as understood by ¶161.C; furthermore, while ¶161.C asserts that God blesses a marriage "whether or not there are children of the union," this was absolutely *not* the understanding of the authors/adopters of the Article.[12]

Relative to the civil legality of same-sex marriage, the Judicial Council's position was that such questions were immaterial to the Church, which is at liberty to define marriage apart from what the civil authority might determine. While this is true as far as it goes, we will further address elements of this issue in the next section; at this point, it suffices that the Judicial Council's opinion on legality has been rendered moot in the US due to the intervening changes in recognized civil rights.

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[6] ibid, 353-354.
[7] ibid, 352. Attempts were made to bar marriage to Roman Catholics, but this failed adjudication on multiple occasions; the only limitation that existed was that Anglican Clergy were required to marry in a CofE ceremony officiated at by CofE clergy. Even those limitations have changed.
[8] The legislation approving the Social Principles and Chargeable Offenses passed the General Conference with a simple majority vote; in order to change the Doctrinal Standards in *any* respect, the First Restrictive Rule requires a two-thirds vote of the General Conference followed by a three-fourths vote of the aggregate total of all Annual Conference lay and clergy membership.
[9] In Decision 358 the Judicial Council stated: "These three documents, while not specifically a part of the Constitution, are basic documents in the life and structure of our Church. The Articles of Religion and the Confession of Faith are given even greater protection than the Constitution itself. Change in them is made more difficult." If they have precedence even over the Church's Constitution, they have precedence over all other legislative actions.
[10] Judicial Council Decision 1185, issued on April 28, 2011, involved a "safe-harbor" provision of the New York Annual Conference for LGBTQ clergy; in response to a Bishop's Decision of Law, the Judicial Council ruled that the provision, as written, was in violation of the *Book of Discipline, 2008.*
[11] See ¶161.F for more.
[12] Wheeler, 351-352. Relative to Henry VIII, the issue of (male) children was argued as being of principle importance in establishing the validity of any marriage, and the lack thereof constituted sufficient grounds for annulment.

Relative to the authority of ¶161.C in establishing a definition of marriage, and that definition being applied to Article XXI in order to shield ¶161.C, ¶161.G, and ¶2702.1 *et al.* from violating Article XXI – this is circular reasoning. One cannot presume the very point which one is trying to prove, and yet this is precisely what the Judicial Council does in Decision 1185 when it states that ¶161.C has defined marriage so-as to rule out such a violation. Article XXI is primary; "any attempt to paraphrase, summarize, alter, or change"[13] it requires a vote commensurate with the First Restrictive Rule; ¶161.C lacked such a vote; therefore, ¶161.C, ¶161.G, and ¶2702.1 are in conflict with Article XXI.

In addition to the above flaws, Decision 1185 fails to address the historical context, intent, and wording of Article XXI regarding enforced clerical celibacy. To reiterate, the Article states that "The ministers of Christ are not commanded by God's law either to vow the estate of single life, or to abstain from marriage…." I am not asserting that "celibacy in singleness" violates Article XXI; quite the contrary, I view the principle of "celibacy in singleness" as a respectable standard and witness to our society. Rather, what's problematic is *enforced* "singleness" for some clergy due to their sexual orientation. The Judicial Council entirely ignores this critical portion of the Article and its direct application to today. It is here, as well as relative to the freedom to marry, that Article XXI is violated by multiple subordinate paragraphs in the Book of Discipline.

In short, I reject Decision 1185 and its denial that ¶2702.1 *et al.* violates the context, wording, and spirit of Article XXI. Indeed, as I argue above, these subordinate legislative actions are all unconstitutional in as much as they restrict the freedom of clergy to marry "at their own discretion" and require enforced clerical celibacy for those whose marriage rights are denied.

2. The Fundamental Right to Civil Marriage and Our Duty as United Methodists to Civil Law

The United States Supreme Court's 2015 decision in *Obergefell v. Hodges* ensured that same-sex couples in all 50 states have the right to marry and to have their marriages recognized in whichever state they live. This decision wasn't limited to matters of simple legality but was rooted in the question of fundamental human rights.

> These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry.[14]

This ruling, combined with the Supreme Court's decision in *Lawrence v Texas*[15] striking down most laws criminalizing non-procreative sex and legalizing the practice of homosexuality, has changed the cultural and legal environment within which the Church functions as an advocate for human rights. Prior to these landmark decisions, the fundamental rights and liberties of LGBTQ+ persons were challenged in many areas of society as well as in the Church. Since these rulings have changed the legal environment, our society has become increasingly more accepting of LGBTQ+ persons both in the integrity of their private lives and in the public expression of their identities.[16] Unfortunately, this hasn't been the case among most Christian communities, including The United Methodist Church.

The United Methodist Church has long been on the forefront of progressive social activism in championing the civil rights of minorities and others who have suffered injustice at the hands of both the culture and civil authority. Unfortunately, the Church has also been slow to recognize its own participation in injustice or to stand with those

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[13] This language is taken directly from Judicial Council Decision 358 on the superiority of the Doctrinal Standards.
[14] *Obergefell v Hodges*, 576 U. S. ____ (2015), 22.
[15] *Lawrence v. Texas*, 539 U.S. 558 (2003)
[16] Which makes the recent resurgence of governmental discrimination and the rise in cultural bigotry and violence that we have recently experienced in some areas of the United States (particularly Texas) most striking.

who are oppressed; historically, the Church has eventually done so with honesty, humility, and grace, but usually only after a prolonged period of painful listening, introspection, and change. This has been true relative to the gender and racial injustices which have plagued the Church for decades (and which, in many ways, still plagues it), and it has been especially true for those of differing sexual orientations and identities. Indeed, the current fracturing of the UMC is rooted entirely in this question: will we, as a community of faith, begin to recognize the fundamental human rights that we are still officially denying, and will we make amends?

Amazingly, for many years the Church has been willing to affirm and commit itself, in at least some respects and contexts, to forwarding the civil rights of those who are on the LGBTQ+ spectrum. An often-ignored example from the Social Principles serves as a testament to this:

> J) *Equal Rights Regardless of Sexual Orientation*—Certain basic human rights and civil liberties are due all persons. We are committed to supporting those rights and liberties for all persons, regardless of sexual orientation.[17]

When ¶162.J was adopted into the Social Principles, the prevailing cultural and legal standards of our society didn't regard marriage as a basic human right for same-sex couples. Time, events, and the morphing of our cultural and legal institutions have passed the UMC by, and now marriage *is* understood by our society's legal and cultural ethos as being very much part of the "rights and liberties for all persons, regardless of sexual orientation." By no fault of its own, the Social Principles contradicts itself on these matters and ¶162.J calls the Church to do better.

This inclusive expansion in the cultural and legal understanding of civil liberty doesn't just impact our Social Principles; changes in our nation's laws on this matter have direct impact on the applicability of the *Book of Discipline* in several ways. This is true, in large part, because the 1939 provision at the end of the Articles of Religion regarding the "Duty of Christians to the Civil Authority" states that:

> It is the duty of all Christians, and especially of all Christian ministers, to observe and obey the laws and commands of the governing or supreme authority of the country of which they are citizens or subjects or in which they reside, and to use all laudable means to encourage and enjoin obedience to the powers that be.[18]

<u>In other words, the violation of civil law is a chargeable offense.</u> While the Judicial Council has correctly stated that the laws of the nation do not *dictate* the church's doctrinal or social stance[19], one of the several ways that changes in civil law impacts church law can be found in the applicability of ¶2702.1c to questions of same-sex marriage and homosexuality. Prior to 2015 regarding marriage, and 2003 regarding homosexuality, ¶2702.1c (and its prior equivalent) was a viable charge that could be, and sometimes was, leveled against gay clergy. The committing of a crime is a chargeable offense, and the Church recognized this fact and utilized it as a charge even when there were no criminal charges pending in secular courts. This is no longer the case today relative to either the practice of homosexuality or same-sex marriage in the United States, and hence ¶2702.1c can no longer be used in charging LGBTQ+ persons when they marry or for their sexual orientation.

This illustrates how a change in the cultural and legal context can have a direct impact on what the Church does; the Church is not separate from society and its laws, and changes in our nation's cultural and legal understanding of fundamental human rights must not be dismissed simply because there are discriminatory regulations against a specific minority group codified in the *Book of Discipline*. In 1967 the United States Supreme Court ruled in *Loving v. Virginia*[20] that interracial marriage was a "fundamental right" based upon the same grounds as were

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[17] ¶162.J

[18] ¶104, *Of the Duty of Christians to the Civil Authority.* See also Article XVI of the EUB Confession of Faith, which speaks even more clearly regarding human rights.

[19] Decisions 1185 and 1341 both affirm this concept, while also admitting that the Church cannot ignore legal reality.

[20] *Loving v. Virginia*, 388 U.S. 1 (1967)

later identified in *Obergefell v. Hodges*.[21] Prior to that decision (and far too often following it) clergy and lay members of the Methodist Church (and, after 1968, the UMC) treated interracial marriage as if it were a sin, with severe (often institutionalized) discrimination being the result. Over time The United Methodist Church accepted that racial equality was a matter of fundamental human rights, that it and its predecessor bodies had been guilty of violating those rights, and steps began to be taken which would make amends. It's long since passed the time for the UMC to do likewise relative to the full inclusion of, and marriage rights for, LGBTQ+ persons.

Under the Constitution of the United States of America, it is my civil right to marry. That civil right must be recognized and affirmed by the Social Principles at ¶162.J, and conflicting Principles and other legislative enactments should be set aside until they can be rescinded.

3. The Unconstitutionality of the Incompatibility Clause

¶161.G, the Social Principle dealing with "Human Sexuality," reads in-part:

> The United Methodist Church does not condone the practice of homosexuality and considers this practice incompatible with Christian teaching.[22]

The "incompatibility clause" has caused an extraordinary amount of damage to the Church since it was passed by GC1972. The history of its inclusion and the scope of the damage it has done have been detailed by multiple other authors, so I will not belabor that here.[23] Suffice it to say, ¶161.G has been used as the *doctrinal substantiation* for multiple legislative enactments prohibiting the full inclusion of LGBTQ+ persons in the life and ministries of the UMC. The weight of this should not be missed: a Social Principle makes a statement regarding "Christian teaching" on a particular issue, which is subsequently used as the doctrinal justification for legislative actions that restrict civil liberties and foster injustice and oppression within The Church. ¶161.G isn't referencing back to an Article in the Methodist Articles of Religion or the EUB Confession of Faith; it is making that doctrinal pronouncement of its own authority, without a substantive theological antecedent.[24] This is something that a Social Principle simply cannot do. And yet, this is precisely what the General Conference has done in direct contravention of the Constitution. William Lawrence traces the progression of unconstitutional legislation in this devastating summary:

> The General Conference altered the two Doctrinal Standards of the church by inventing the phrase "incompatible with Christian teaching," insisting that we must believe it, and basing church laws upon it. In a series of steps, stretching onward from 1972, those four words altered United Methodist theology and became a basis for nasty legislation.[25]
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> In the 1980 *Discipline*, the four words appeared in a footnote to a law. In 1996, the General Conference put a new law in the *Discipline* that assumes the four words have theological authority. "Since the practice of homosexuality is incompatible with Christian teaching," the law begins. Those four words became a theological norm that prohibited self-avowed practicing homosexuals from candidacy for ordination. Then, in 2004, the General Conference made those four words a basis for a chargeable offense that threatens the credentials of ministers who perform same-sex marriages. And in 2019, the General Conference used those four words as a theological basis for

[21] In *Loving* the Supreme Court ruled that laws banning interracial marriage violated the Equal Protection and Due-Process Clauses of the Fourteenth Amendment to the U.S. Constitution. For comparison, see the prior reference to *Obergefell v. Hodges.*
[22] ¶161.G
[23] For an excellent example of the history of the incompatibility clause, see Robert W. Sledge "The Saddest Day: Gene Leggett and the Origins of the Incompatible Clause." *Methodist History,* Vol 55:3 (April 2017) 145-179.
[24] ibid.
[25] William Lawrence, 2019, 'Four, Three, Two, One: Four Words, Three Rules, Two Standards, One Grace.' *UM- Insight,* accessed November 2022.

> ordering a bishop to refuse to ordain a minister or consecrate a bishop who may be a homosexual outlaw.[26]
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> In four words, from 1972 to the present day, the General Conference has altered our Doctrinal Standards. By declaring the practice of homosexuality "incompatible with Christian teaching," the General Conference declared that the practice of homosexuality was theologically prohibited. In effect, the General Conference said that the practice of homosexuality is theological heresy, like transubstantiation.[27]

The Social Principals are not doctrines, are not binding as laws, and do not carry the authority of the Doctrinal Standards. They were not passed by the two-thirds majority vote of the General Conference that is required of Constitutional amendments; they were not confirmed by the three-fourths majority aggregate of the lay and clergy membership of the Annual Conferences, as required by the First Restrictive Rule for changes or additions to the Doctrinal Standards; they, and the subsequent changes made to them, were approved by a simple majority vote of the General Conference. As such, ¶161.G, in its own authority, *cannot* state what constitutes "Christian teaching," nor can it subsequently be used as justification for legislative enactments by the General Conference.[28] In doing this, the General Conference violated the Church's Constitution and, as a direct result, all legislative actions that stem from that violation (*e.g.* ¶304.3-footnote 1, ¶341.6, ¶2702.1b, *et al*.) also violate the Constitution. They are unjust and foster oppression in every way that they present themselves. They are not valid laws, and I challenge their constitutionality as well as their ethical standing. They are not binding, and our baptismal vows call us to resist them.

4. Marriage is Not Evidence for Self-Avowal as a "Practicing Homosexual"

While the unconstitutionality of ¶304.3-footnote 1 has already been demonstrated, I want to take a moment to address it here because it plays a role in my case, as it does in the case of any UM clergyperson who is married to someone of the same sex.

In response to Judicial Council Decision 1341, the 2019 General Conference added content to the operative footnote at ¶304.3. That footnote, in its entirety, now reads:

> 1.*"Self-avowed practicing homosexual"* is understood to mean that a person openly acknowledges to a bishop, district superintendent, district committee of ordained ministry, Board of Ordained Ministry, or clergy session that the person is a practicing homosexual; or is living in a same-sex marriage, domestic partnership or civil union, or is a person who publicly states she or he is a practicing homosexual. See Judicial Council Decisions 702, 708, 722, 725, 764, 844, 984, 1020, 1341.[29]

The addition is: "…or is living in a same-sex marriage, domestic partnership or civil union,…" and was added in response to the Judicial Council's ruling that a same-sex marriage license is a public document which constitutes a person's self-avowal as a "practicing homosexual." Their reasoning is flawed in multiple respects, partially conflicts with our Social Principles on the nature of marriage, violates the original protective intention of "self-avowal," is rebuttable in several ways, and moreover is unconstitutional because it violates the Fourth Restrictive Rule through establishing a "guilty until proven innocent" condition prior to trial of fact.

In the Judicial Council's ruling, they state the following:

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[26] ibid.
[27] ibid.
[28] See Judicial Council Decision 86 (1952) for a similar example of how a legislative enactment cannot override, modify, or further define a Doctrinal Standard through theological pronouncements without a threshold vote commensurate with the First Restrictive Rule.
[29] ¶304.3 footnote 1 as found in the BODAddendum&Errata_Dec2019.pdf

> As a public record, the same-sex marriage license, therefore, has the same effect as the personal element of "being a homosexual" in a public declaration. The marriage license alone, however, is not proof that the couple is engaged in physical sex. Respondent and *amici curiae* assert that marriage does not presume the act of physical sex between spouses or require physical union to be fulfilling. However, common understanding and practice in many parts of the world associate marital union with physical (sexual) union between spouses.[30]

The Judicial Council's argument here is incomplete, for they are obfuscating what they mean by "common understanding." By this, they are referencing, in part, the Common Law presumptions in multiple western cultures relative to the act of consummation, by which a marriage was understood as being validly established only through the act of physical sex; indeed, even more troubling, in some Common Law jurisdictions consummation was only accepted, and the marriage presumed to be valid through the act of procreation.[31] This understanding no longer coordinates with judicial concerns relative to marriage in most of the US, does not reflect the wording of marriage licenses in most civil jurisdictions[32], no longer reflects the culture's nominal expectations for when sexual activity begins within relationships, and directly conflicts with the Church's Social Principles on the fundamental character of marriage. Indeed, the respondent and the *amici curiae*'s assertion that "marriage does not presume the act of physical sex between spouses or require physical union to be fulfilling" is manifestly true and in keeping with ¶161.C, where it is stated:

> 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 believe that God's blessing rests upon such marriage, whether or not there are children of the union.[33]

Setting aside the repeated assertions that marriage is between a man and a woman (another problem entirely, settled by the unconstitutionality of the incompatibility clause and the immoral and unjust restrictions on marriage rights as discussed above), it is imperative to note that nowhere in the cited Social Principle is sexual relations presumed as being requisite in marriage … even to the point of affirming that procreation is *not* considered essential for "God's blessing" to be upon such a union. "Love, mutual support, personal commitment, and shared fidelity" are all absolutely possible entirely apart from the physical "practice" of sex. In short, the Judicial Council's presumption that the practice of sex is somehow essential to marriage – which it would have to be for it to be presumed to be present by virtue of a marriage license – lacks substantiation within the *Book of Discipline.*

Undaunted by these extraordinary faults in their reasoning, they continue:

> We have no compelling reason to depart from this understanding of human relationships and find that a married clergy person's status in a committed same-sex relationship is sufficient to create the rebuttable presumption that the couple is engaged in physical sex, thus providing the objective element of "engagement in sexual acts with a person of the same gender" of a public declaration. The presumption can be defeated by proffering rebuttal evidence to the trier of fact in an administrative or judicial process. For this reason, taken together, being legally married and living in a same-sex relationship is a public declaration containing both personal and objective elements and, therefore, constitutes self-avowal under ¶ 304.3.[34]

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[30] Judicial Council Decision 1341

[31] See: John Hardon (1985). "Consummated Marriage". *Catholic Dictionary*. Image Books, 91. See also: George Monger (2004) *Marriage Customs of the World: From Henna to Honeymoons*. ABC-CLIO, 24-28.

[32] Marriage licenses in the State of Texas, as well as in most of the US, do not reference or explicitly authorize sexual activity.

[33] ¶161.C

[34] Judicial Council Decision 1341

Again, their argument is specious for the prior outlined reasons. Additionally, they affirm that it is rebuttable but in so-doing place upon the defendant the burden of administratively or judicially proving a negative, something which is notoriously difficult to achieve. They are also presuming "guilt" rather than "innocence" on a matter which has potentially devastating discriminatory consequences for the accused, and this constitutes an unjust reversal of nominal due process (relative to this last point, see below for remarks on the Fourth Restrictive Rule).

Be that as it may, here is such a rebuttal:

> I, Gregory Scott Neal, do solemnly affirm that my marriage to Kade Michael Rogers does not constitute self-avowal as a practicing homosexual. My marriage is a public self-avowal of my love for Kade, our bond of mutual support, and our personal commitment and shared fidelity to each other. No other presumptions should be drawn from the fact of our marriage, nor does the wording of our marriage license lend itself to any further presumption.

Requiring such a rebuttal is admittedly unsatisfying, should be embarrassing to the trier of fact, and constitutes an unconscionable and humiliating intrusion into a married couple's right to privacy. And yet, there it is.

Finally, we come to the question of the Fourth Restrictive Rule, which the Judicial Council's decision and the General Conference's codification in ¶304.3-footnote 1 violates. It must first be admitted that the Judicial Council realized the problem they created for themselves relative to the constitutionality of their ruling as it pertains to the Fourth Restrictive Rule. They established the possibility of rebuttal in an attempt to avoid such a conflict; however, as has already been stated, their provision presumes guilt rather than innocence, requires the proof of a negative, and involves an extraordinary violation of personal privacy which is nowhere required of those who are not homosexuals. Additionally, it should be noted that the original purpose of the "self-avowal" barrier was to protect against violations of the Fourth Restrictive Rule by ensuring that automatic presumptions like this were *not* made and that "witch hunts" to root out homosexual clergy could not be conducted; an affirmative self-avowal of "practicing" became the required benchmark used to establish the objective fact, not innuendo, assumptions, presumptions, property records, marriage licenses, or other forms of "evidence" obtained by often questionable means. In breaching the barrier established by the principle of affirmative self-avowal through verbal or written assent to the proper ecclesial authority, the Judicial Council has opened the door to other forms of investigative intrusion and further undermined the protections guaranteed in the Fourth Restrictive Rule for clergy and laity.

> Article IV. —**The General Conference shall not do away with the privileges of our clergy of right to trial by a committee and of an appeal**; neither shall it do away with the privileges of our members of right to trial before the church, or by a committee, and of an appeal.[35]

While the presumption of self-avowal is rebuttable by an affirmative statement in the negative, this doesn't repair the fact that such a finding, which occasions an extraordinary rebuttal, is made *entirely* apart from a "trial by a committee" and lacks even the possibility of appeal to higher authority. The rebuttal is not an appeal, even though that is how the Judicial Council appears to view it. Rather, the rebuttal is a response to *presumed guilt* rather than innocence. As such, it violates the sense and wording of ¶17, Article IV and is, therefore, unconstitutional.

5. Marriage is Contextual to The United Methodist Church in its US Jurisdictions.

My marriage is contextual to the inclusivity of The United Methodist Church as established in Section 1, Article IV, of the Church's Constitution. Here, in language too striking to ignore, it is unequivocally affirmed that "all persons are of sacred worth," that the ministries of the church are open to "…all persons without regard to race, color, national origin, status, or economic condition," and that "no conference or other organizational unit of the Church shall be structured so as to exclude any member or any constituent body of the Church because of race,

[35] ¶17, Article IV.

color, national origin, status or economic condition."[36] My marriage is contextual to this affirmation of radical inclusivity in as much as questions of marriage or singleness are among the several identities that were originally intended by the term "status." While some have argued that same-sex marriage should not be granted the protections afforded in the Constitution under the term "status," their argument is usually circular because it is based upon appeals to those limitations that were imposed by *later* and *subordinate* Social Principles. If anything, and as illustrated above in points 2 and 3, those limitations on the nature of marriage are unconstitutional precisely because they violate Section 1, Article 4 of the UMC's Constitution. Additionally, the question of applying the term "status" to same-sex marriage (and, therefore, to one's sexual identity and orientation) is now moot because the Judicial Council, itself, has done precisely that in Decision 1341! [37]

The contextuality of my marriage to the inclusivity of the Church is also substantiated through the overwhelming adoption, by all five US Jurisdictional Conferences meeting in 2022, of the resolution entitled: *Queer Delegates' Call to Center Justice and Empowerment for LGBTQIA+ People in the UMC.* Points 2, 3, and 4 of this resolution merit quoting here:

> "Therefore be it resolved that the 2022 South Central Jurisdiction of The United Methodist Church:…"
>
> 2. Affirms the spirit of the abeyance or moratorium as proposed to the General Conference, as referenced above, until changes can be made in The United Methodist Book of Discipline.
>
> 3. Implores our member Annual Conferences to either not pursue or resolve in an appropriately timely fashion through a non-punitive, just resolution process any complaints against clergy regarding their sexual orientation or clergy who officiate weddings of LGBTQIA+ persons;
>
> 4. Urges that as a Jurisdiction we either not pursue or resolve in an appropriately timely fashion through a non-punitive, just resolution process any complaints against Bishops regarding their sexual orientation or those who officiate weddings of LGBTQIA+ persons;[38]

The impact of this aspirational resolution cannot be understated, and particularly not when considering that substantially similar versions of it were approved by all five US Jurisdictions, including the Southeastern Jurisdiction. There is significant undeniable support for the full-inclusion and marriage rights of LGBTQIA+ laity and clergy within the US Church. My marriage to Kade Rogers is situated within this context.

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On December 16, 2022, Bishop McKee issued an abeyance on the complaint. This defense, while presented to Bishop McKee in late November 2022, has never received a responce, nor was it the operative basis for the abeyance.

[36] ¶4, Article IV.
[37] See the quote referenced by footnote 34, above.
[38] *SCJC 2022 Guidebook*: Conference Business: "QUEER DELEGATES' CALL TO CENTER JUSTICE AND EMPOWERMENT FOR LGBTQIA+1 PEOPLE IN THE UMC" - Resolution 22-03.