

REV. DAVID R. MELVILLE, ET AL. * DOCKET NUMBER: SECTION:
VERSUS * 19TH JUDICIAL DISTRICT COURT
BOARD OF TRUSTEES OF THE * EAST BATON ROUGE PARISH
LOUISIANA ANNUAL CONFERENCE * STATE OF LOUISIANA
OF THE UNITED METHODIST *
CHURCH, SOUTH CENTRAL
JURISDICTION

MEMORANDUM IN SUPPORT OF PETITION FOR DECLARATORY AND
INJUNCTIVE RELIEF

MAY IT PLEASE THE COURT:

SUMMARY OF ARGUMENT

In this injunction action, Plaintiffs, as voting members of the defendant governing body of all United Methodist churches in Louisiana, seek immediate injunctive relief to stop the ongoing *ultra vires* divestment of the denomination’s assets in violation of the United Methodist Church’s (“UMC”) corporate by-laws. The governing body in Louisiana for the national/global denomination is The Louisiana Annual Conference (hereinafter the “Annual Conference”), whose corporate identity is a Louisiana non-profit corporation, the Defendant herein.¹ The Plaintiffs are clergy members of the Annual Conference which entitle each to vote for actions taken by the Annual Conference at convened legislative conferences for delegate members. This dispute involves the ongoing divestment of millions of dollars in uncompensated values for denominational assets in Louisiana which are subject to the ownership and supervision of the Annual Conference by its Bishop, executive administrative clergy and its governing Board of Trustees, all charged with the corporate duty for the protection of such assets in this state.

While this brief will explain in detail the corporate and connectional relationship of this major national denomination with its Annual Conference and its local churches² in Louisiana, it will first outline the Plaintiffs’ cause of action which is based upon two sources of seldom applied law. The first is our secular corporation law for *ultra vires* acts by corporate officers. The second are the principles nationally recognized under First Amendment law and known as ecclesiastical

¹ *Book of Discipline* ¶ 2512 (1) provides that an UMC annual conference may incorporate in its own name or in the name of its board of trustees.
² The “local church” is the term used in the Methodist *Book of Discipline* for individual worshiping congregations at the various houses of worship under the leadership a clergy person appointed to the church and its membership by the Bishop of the Annual Conference (hereinafter the “Local Church”).

law. The over-arching issue, however, is the ownership regime of the properties and assets of Local Churches throughout Louisiana over which the Annual Conference's trust and supervisory ownership interest is now being forfeited and released by the actions of Defendant. The Annual Conference's ownership of Louisiana immovable and movable properties is now being divested by the acts of its corporate representatives in violation of the foundational by-law principles of the United Methodist Church's governing property law. This is in response to certain disgruntled members in Local Churches, desiring to leave the denomination with the denomination's assets through the misapplication of church law to be more fully explained hereafter.

As a Louisiana non-profit corporation, the Annual Conference through its Board of Trustees, Bishop and administrative clergy, may not sanction, preside over, and conduct the ongoing proceedings outlined herein by which Local UMC Churches are attempting to disaffiliate with the denomination and to take over complete ownership of the church's denominational properties, except for a very limited exception hereafter discussed. The resulting release and transfer of UMC ownership of those properties by the Annual Conference may be enjoined under La. R.S. 12:208 (A) (2).³ The *ultra vires* action of a corporate board or its officers is invalid "by reason of the fact that the corporation was without capacity or power to perform such act."

Plaintiffs will present evidence of the actions that are currently being performed by the Annual Conference, hereinafter the Ongoing Disaffiliation Proceedings, in conjunction with Local Churches, which will lead to the loss of the Annual Conference's property.⁴ Under this injunction statute "the unauthorized act, conveyance or transfer . . . is being, or is to be, performed" as the result of the unauthorized Ongoing Disaffiliation Proceedings. Incidental to the Ongoing Disaffiliation Proceedings irreparable harm to the members of Local Churches is occurring as will

³The statute provides in pertinent part, as follows: **A.** Invalidity of an act of a corporation, or of a conveyance or transfer of movable or immovable property to or by a corporation, by reason of the fact that the corporation was without capacity or power to perform such act or to make or receive such conveyance or transfer, may be asserted only:

(2) In an action by a member against the corporation to enjoin the performance of any act or the transfer of movable or immovable property by or to the corporation. If the unauthorized act, conveyance or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may—if all of the parties to the contract are parties to the action, if the corporation is without capacity or power to perform the act or make or receive the transfer sought to be enjoined, and if the court considers such relief to be equitable—enjoin the performance of such contract, and in so doing may allow to the corporation, or to the other parties to the contract, compensation for any loss or damage sustained by any of them which may result from the action of the court in enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained. . . .

⁴ Evidence for purposes of the requested hearing on preliminary injunction will be adduced in accordance with Louisiana Code of Civil Procedure Article 3609 by verified pleadings, by supporting affidavits, or by proof as in ordinary cases, or by any or all of such methods, at the election of the party offering the proof.

be shown by the Plaintiffs. The evidence will also show that completed disaffiliation proceedings divesting denominational property in Local Churches have previously been directed and approved by the Annual Conference, causing the loss of the Defendant/corporation's property rights.

The Defendant's lack of by-law authority to give away the Annual Conference property and the vested nature those ownership rights will be shown to this Court as a matter of law—church or ecclesiastical law. In this respect, the Petition cites numerous provisions of the United Methodist Church's *Book of Discipline*, which sets forth the governing denominational by-laws, theological principles, and practices. Apart from religious doctrine, polity and practice addressed in the *Book of Discipline*, **this dispute concerns the well-settled UMC property ownership provisions set forth in the *Book of Discipline*.** Paragraphs 2501, et seq. Such UMC church ownership principles have been considered, adjudicated and protected in the Louisiana jurisprudence, and as will be shown herein, the Annual Conference is now in violation of such principles by the allowance for its property divestment by the Ongoing Disaffiliation Proceedings.

The leading case of the United States Supreme Court regarding church ownership disputes is *Jones v. Wolf*, 443 U.S. 595, (1979). There, the Georgia state court was allowed by the high court to resolve a church property dispute between majority and minority factions in a church. The Supreme Court's ruling reviewed the extent of state court involvement with a church property dispute under the First Amendment, observing as follows:

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general -- flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

Jones, supra. at 603-604.⁵

⁵ An appellate court in Ohio, interpreting *Jones, supra.* found that a court is not required to exclude a document or other written sources from its consideration because it contains passages of an ecclesiastical nature stating that *Jones, supra.* found that courts might review such documents in resolving church property disputes according to neutral principles of law but taking care at the same time not to rely on religious precept, while focusing on purely secular terms. *Southern Ohio State Exec. Offices of Church of God v Fairborn Church of God*, 61 Ohio App. 3d 526, 539; 573 N.E. 2d 172, 180-181. (March 29, 1989)

The primary property principle for ownership and control by the Annual Conference and all other annual conferences in the UMC denomination is paragraph 2501 of the *Book of Discipline*, which provides as follows:

¶ 2501. Requirement of the Trust Clause for All Property—1. **All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline.** This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the Discipline since 1797. It reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the Discipline. **The trust requirement is thus a fundamental expression of United Methodism whereby local churches and other agencies and institutions within the denomination are both held accountable to and benefit from their connection with the entire worldwide Church.** In consonance with the legal definition and self-understanding of The United Methodist Church (see ¶ 141), and with particular reference to its lack of capacity to hold title to property, **The United Methodist Church is organized as a connectional structure, and titles to all real and personal, tangible and intangible property held at jurisdictional, annual, or district conference levels, or by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline.** Titles are not held by The United Methodist Church (see ¶ 807.1) or by the General Conference of The United Methodist Church, but instead by the incorporated conferences, agencies, or organizations of the denomination, or in the case of unincorporated bodies of the denomination, by boards of trustees established for the purpose of holding and administering real and personal, tangible and intangible property. (emphasis added)

(hereinafter, the “UMC Trust Clause Protection”).

This foundational ¶ 2501 principle of denominational property ownership for Methodism’s long history in this country has been set forth for over two centuries in most Louisiana deeds or other acts of transfer for the properties of local UMC church congregations. Even in the absence of the local Louisiana church’s deed containing an express trust clause in favor of the Annual Conference and denominational ownership, the leading Louisiana case recognized the Defendant’s ownership in a UMC church property where former members sought to take ownership. *Bd. Of Trustees of the Louisiana Annual Conference v. Revelation Knowledge Outreach Ministry, LLC*, 13-ca-814 (La. App. 5 Cir. 5/28/14) 142 So.3d 353 (hereinafter “*Revelation Knowledge*”). In the *Revelation Knowledge* case, the Defendant herein prevented a local church sanctuary from being usurped by former members of the UMC local church on the strength of the UMC Trust Clause Protection and other provision for church ownership in the *Book of Discipline*. The court of appeal is seen applying the *Book of Discipline* as ecclesiastical law to protect the Annual Conference’s ownership, outside of our general Civil Code provisions and in the complete absence of the Annual Conference’s ability in that case to even demonstrate a recorded deed in its favor. The Annual

Conference's ownership, which is now attempted to be protected in this suit by Plaintiffs, is the same ownership under the UMC Trust Clause Protection recognized in *Revelation Knowledge*.

The Ongoing Disaffiliation Proceedings for the divestment of the Annual Conference's ownership and trust control over Local Church properties are being conducted under a separate, recently enacted paragraph of the *Book of Discipline*, ¶ 2553, set forth below. That paragraph expressly states that it is a **limited exception** to ¶ 2501. Therefore, the essential issue before this Court presents a question of law regarding these two property provisions in the *Book of Discipline* and whether the Ongoing Disaffiliation Proceedings under ¶ 2553 are in violation of the UMC Trust Clause Protection for the Annual Conference's property under ¶ 2501.

In summary, while civil courts should seek to avoid church disputes surrounding religious doctrine and practice, this case is essentially a corporation law case where members of the organization seek to stop the corporate officials from wrongfully conveying institutional properties for nominal consideration in violation of the express by-laws for governance and care of those church properties. The Court can simply read and compare the two critical *Book of Discipline* paragraphs, ¶¶ 2501 and 2553, governing church properties and, after consideration of the facts revealing the Annual Conference's presiding over the Ongoing Disaffiliation Proceedings, decide that such proceedings are in violation of the corporate governing law of the Annual Conference. The ongoing irreparable injury, loss, damage or harm to the Methodist membership in Local Churches and the potential property loss to the UMC justify the requested injunctive action for the TRO and preliminary injunction now sought under La. R.S. 12:208 (A) (2) until the trial on the merits on the permanent injunction can take place. In this regard, it is noted that no showing of irreparable harm is required since Plaintiffs are seeking to cause Defendant to follow its church law.⁶

THE UNITED METHODIST CHURCH STRUCTURE FOR PROPERTY OWNERSHIP

⁶ *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99), 749 So. 2d 597, 599, established an exception to the irreparable harm requirement for instances when the plaintiff seeks a prohibitory injunction and that prohibitory injunction seeks only to order compliance with a prohibitory law: A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 555 So.2d 1370 (La. 1990). Once a plaintiff has made a *prima facie* showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists. See also *Yokum v. Pat O'Brien's Bar, Inc.*, 2012-0217 (La. App. 4 Cir 08/15/12), 99 So. 3d 74, 81 that said La. R.S. 12 208 A 2 makes no requirement for a showing of irreparable harm since the corporation officials or board of directors are violating the law of the prohibitory law of the corporations under its bylaws.

The Defendant is one of many incorporated annual conferences across our nation for the UMC. An annual conference's role and power makes it the central administrative body of the denomination "responsible to focus and guide the mission and ministry of The United Methodist Church within its boundaries." *Book of Discipline* ¶ 608. The numerous powers and duties of the Annual Conference over Louisiana local churches and the clergy are set forth in ¶ 604 of the *Book of Discipline*. A power relevant to this dispute includes "the power to make inquiry into the financial status of the local churches." *Book of Discipline* ¶ 604 (8). The Board of Trustee of the Annual Conference exercises authority over the conference properties and may take "necessary legal steps to safeguard and protect the interests and rights of the annual conference." *Book of Discipline* ¶ 2512 (3) and (4). Significantly, ¶ 2507 provides: "*Trustee, trustees, and board of trustees, as used herein and elsewhere in the Discipline may be construed to be synonymous with director, directors, and board of directors applied to corporations.*"

With this connectional structure and the Annual Conference's authority over Louisiana Local UMC Churches, the central principle for church property ownership and the denominational UMC Trust Clause Protection provides in pertinent part as follows:

[A]ll real and personal, tangible and intangible property held . . . by a local church . . . , shall be held in trust for The United Methodist Church and subject to the provisions of its *Discipline*. Titles are not held by The United Methodist Church or by the General Conference of The United Methodist Church, but instead by the incorporated [annual] conferences"

Book of Discipline ¶ 2501.

In addition to the role of the board of trustees for the incorporation status of the Annual Conference, footnote 1 *supra.*, and as "board of directors" for the Annual Conference, the primary executive, administrative, and ecclesiastical officers of the Annual Conference are clergy persons, the Bishop and the District Superintendents, whose responsibilities extend to the monitoring and appointing of the clergy for Local Churches and to administrative supervision over the affairs of the Local Churches. *Book of Discipline* ¶¶ 402 and 403. The Annual Conference has one presiding Bishop in Louisiana and various District Superintendents supervising the clergy and administering the Local Churches in certain geographic portions of Louisiana.

Important to this dispute concerning the Ongoing Disaffiliation Proceedings, the District Superintendent is the official representative of the Annual Conference who may authorize, convene, and preside over a church conference at a Local Church for denominational business, reporting, and actions voted upon by all professing members of the local church present at the

meeting (hereinafter the “Church Conference”). *Book of Discipline* ¶ 248. The current issue of disaffiliation under the *Book of Discipline* ¶ 2553 centers on Church Conference votes by congregations at the Local Church level that are being scheduled and allowed to be conducted by the Annual Conference at the present time and are the subject matter of this injunction action, with ancillary relief as *ultra vires* actions of Defendant.

The final connectional unit of the UMC is the General Conference of The United Methodist Church. Every four years, delegates elected by annual conferences and other global units of the UMC convene in the General Conference. The General Conference has full legislative power over the entire denomination “for all matters distinctively connectional”; however, the General Conference “has no executive or administrative power.” *Book of Discipline* ¶ 501. The General Conference of Methodism has for over two centuries legislated the UMC Trust Clause Protection now contained in ¶ 2501, which is the legislation governing this property dispute.

**THE UMC TRUST CLAUSE AND THE PRESENT DISPUTED ISSUE OF
DISAFFILIATION BY A LOCAL CHURCH--¶¶ 2501 AND 2553**

The practice of Methodist churches for over two centuries has made properties and houses of worship subject to a trust requirement which routinely has been written into the deeds of land to Local Church congregations. *Book of Discipline* ¶ 2501. The *Book of Discipline* expressly sets forth that the following clause shall be included in every deed of acquisition by a Local Church:

In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church; subject to the *Discipline*, usage, and ministerial appointments of said Church as from time to time authorized and declared by the General Conference and by the annual conference within whose bounds the said premises are situated.

Book of Discipline ¶ 2503. This provision or a similar one is most likely embodied in the deeds to most of the Local Churches in Louisiana which are now attempting to break the force of this trust requirement and remove their church properties from the UMC by disaffiliation. Even for those UMC Local Churches whose property deeds contain no trust clause language, the Louisiana jurisprudence, following ¶ 2503 (6), has held that a Local Church’s holding itself out as United Methodist and accepting the appointment of its clergy by the Bishop of the Annual Conference make all property of that church subject to the UMC Trust Clause Protection. *Revelation Knowledge, supra*.

A divisive current issue and conflict in Methodism and in our society as a whole concerns human sexuality. While this issue falls within theological and biblical policy of the Church, the

current stance of The United Methodist Church resolved by the specially held General Conference of 2019 must be defined and understood for this property dispute as will be seen below for consideration of the language of ¶ 2553. The 2019 General Conference was a special called session of that legislative body for deliberation on and resolution of the Church's stance on human sexuality.

The evidence will show that one of the primary matters involved in the Ongoing Disaffiliation Proceedings in the Local Churches of Louisiana is the issue of human sexuality and, in particular, the majority view of members that "the practice of homosexuality is incompatible with Christian teaching." *Book of Discipline* ¶ 304.3. The evidence will show that the Ongoing Disaffiliation Proceedings now being conducted by the leadership of the Local Churches are, however, **NOT** in any way being fueled and caused because the members of Local Churches are objecting as a matter of conscience to the current stance of The United Methodist Church against homosexuality (hereinafter the "2019 Current Stance Against Homosexuality").

After the last legislative session of the General Conference in 2019, the 2019 Current Stance Against Homosexuality of the Church is embodied in the following provisions of the Book of Discipline:

Paragraph 304.3—The practice of homosexuality is incompatible with Christian teaching. Therefore, self-avowed practicing homosexuals are not to be certified as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.

Paragraph 341.6—Ceremonies that celebrate homosexual unions shall not be conducted by our ministers and shall not be conducted in our churches.

Paragraph 2702.1—Chargeable Offenses. A bishop, clergy member of an annual conference, or diaconal minister may be tried when charged . . . with one or more of the following offenses: (b) practices declared by The United Methodist Church to be incompatible with Christian teachings, including but not limited to: being a self-avowed practicing homosexual; or conducting ceremonies which celebrate homosexual unions; or performing same-sex wedding ceremonies. . . .

Additionally, the 2019 General Conference made the UMC punishment against its clergy more onerous if convicted in a trial concerning the minister's conducting of same-sex marriage ceremonies. *Book of Discipline* ¶ 2711.3.

The theological and church governance stance reflected in the above paragraphs of the *Book of Discipline* served as the basis of the so-called **Traditional Plan**, debated and resolved by the reaffirming vote of the General Conference at its special session for the issue of human sexuality in 2019. The provision that "the practice of homosexuality is incompatible with Christian

teaching” was first enacted by the General Conference in 1972 and remains the central theological doctrinal stance of The United Methodist Church.

With the 2019 Current Stance Against Homosexuality now defined, **this property dispute** calls for the consideration and application of two legislative ownership provisions in the *Book of Discipline* concerning 1) the Annual Conference’s property right under the UMC Trust Clause (§ 2501) and 2) a Local Church’s right of a majority of its members to leave or disaffiliate with The United Methodist Church under § 2553 and receive all properties of the local church by the release of the Annual Conference’s trust right and ownership under § 2501. Those two property right paragraphs of the Book of Discipline, in pertinent part, provided as follows:

§ 2501. Requirement of the Trust Clause for All Property—1. All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline. This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the Discipline since 1797. It reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the Discipline. The trust requirement is thus a fundamental expression of United Methodism whereby local churches and other agencies and institutions within the denomination are both held accountable to and benefit from their connection with the entire worldwide Church. In consonance with the legal definition and self-understanding of The United Methodist Church (see § 141), and with particular reference to its lack of capacity to hold title to property, The United Methodist Church is organized as a connectional structure, and titles to all real and personal, tangible and intangible property held at jurisdictional, annual, or district conference levels, or by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline. Titles are not held by The United Methodist Church (see § 807.1) or by the General Conference of The United Methodist Church, but instead by the incorporated conferences, agencies, or organizations of the denomination, or in the case of unincorporated bodies of the denomination, by boards of trustees established for the purpose of holding and administering real and personal, tangible and intangible property.

Paragraph 2553—Disaffiliation of a Local Church Over Issues Related to Human Sexuality: 1. Basis-- Because of the current deep conflict within The United Methodist Church around issues of human sexuality, a local church shall have a limited right, under the provisions of this paragraph, to **disaffiliate from the denomination for reasons of conscience regarding** a change in the requirements and provisions of the Book of Discipline related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, or the actions or inactions of its annual conference related to these issues which follow. (emphasis added)

3. *Decision Making Process*—The church conference shall be conducted in accordance with § 248 and shall be held within one hundred twenty (120) days after the district superintendent calls for the church conference.

4. *Process Following Decision to Disaffiliate from The United Methodist Church*—**If the church conference votes to disaffiliate from The United Methodist Church, the terms and conditions for that disaffiliation shall be established by the board of trustees of the applicable annual conference. ***** The terms and conditions . . . shall be memorialized in a binding Disaffiliation Agreement between the annual conference and the trustees of the local church, acting on behalf of the members. That agreement must be consistent with the following provisions:

a) *Standard Terms of the Disaffiliation Agreement.* The General Council on Finance and Administration shall develop a standard form for Disaffiliation Agreements under this paragraph to protect The United Methodist Church as set forth in ¶ 807.9. The agreement shall include a recognition of the validity and applicability of ¶ 2501, notwithstanding the release of property therefrom. Annual conferences may develop additional standard terms that are not inconsistent with the standard form of this paragraph.

b) *Apportionments.* The local church shall pay any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments.

c) *Property.* A disaffiliating local church shall have the right to retain its real and personal, tangible and intangible property. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church.

d) *Pension Liabilities.* The local church shall contribute withdrawal liability in an amount equal to its pro rata share of any aggregate unfunded pension obligations to the annual conference. The General Board of Pension and Health Benefits shall determine the aggregate funding obligations of the annual conference using market factors similar to a commercial annuity provider, from which the annual conference will determine the local church's share. (emphasis added)

By the addition of ¶ 2553 to the *Book of Discipline*, a Local Church that opposes the Traditional Plan of church governance over the issues of human sexuality and the 2019 General Conference's changes to the *Book of Discipline* related to the prohibitions upon homosexuality (hereinafter a "Progressive Church") can, by a 2/3rds vote of its members at a Church Conference, disaffiliate and leave the United Methodist Church. **In other words, 2/3rds of the voting members of a Local Church may vote to disaffiliate "for reasons of conscience" if they believe that the 2019 Current Stance Against Homosexuality of The United Methodist Church is wrong.** Significantly, such disaffiliation by a Progressive Church is defined as a "**limited right**" for releasing the UMC Trust Clause Protections over denomination properties because the ¶ 2553 formula for removal of the UMC properties of such Local Church upon disaffiliation requires only a nominal payment defined under ¶ 2553 (4) (b) and (d) for divestment of the Local Church's property from The United Methodist Church without payment of fair market value.

FACTS OF THE ONGOING DISAFFILIATION PROCEEDINGS IN LOCAL CHURCHES IN THE ANNUAL CONFERENCE

Plaintiffs will present evidence showing the details of the Ongoing Disaffiliation Proceedings that are now occurring in multiple Louisiana Local Churches. Many of those churches

will be identified, as Defendant has complete knowledge of the list of those churches and the steps the Annual Conference is taking with those churches to allow their disaffiliation under ¶ 2553. For some of those churches, the District Superintendents acting for the Annual Conference have already set dates for a Church Conference for an upcoming vote to determine if 2/3rds of the members are in favor of disaffiliation. The overall proceedings which the Annual Conference has required at the Local Churches, and which is generally outlined in ¶ 2553 is the following three-step process.

The first step, which is not expressly mandated in ¶ 2553, is called a period of church discernment about the possibility of disaffiliation for the denomination (hereinafter the “**Discernment Period**”). The Annual Conference has mandated this step for Local Churches yet has never defined the specifics of what must be discerned, contemplated and meditated upon by the members of the Local Churches. From the language of ¶ 2553, since the members’ “reasons of conscience” must inspire any vote for leaving the denomination, the Discernment Period should first define clearly from the various provisions of the *Discipline* the 2019 Current Stance Against Homosexuality of the denomination. The reaffirmation of the church’s harsh stance by the 2019 General Conference and that conference’s adoption of more onerous punishment to Methodist ministers should be reviewed with the congregation’s membership during the Discernment Period. In this discernment, prayerful discernment in the Local Church, a majority of the members and leadership might reach a conclusion as a matter of conscience that the 2019 Current Stance Against Homosexuality requires their Local Church to leave the denomination.

The Plaintiffs will show that the above description of a Discernment Period for disaffiliation under ¶ 2553 has not occurred at any Louisiana Local Church within their knowledge. There has been no Local Church in Louisiana that has taken the position with its members during the Discernment Period that the Local Church should disaffiliate from the denomination for the reason of the 2019 Current Stance Against Homosexuality, i.e., a position opposing the Traditional Plan. Plaintiffs will present with evidence that conclusion to the Court based upon actual knowledge of members and clergy who have experienced this Discernment Period process, and the Defendant will be asked to produce documentary evidence and knowledge of the Annual Conference officials about the Discernment process in Local Churches.⁷ With that evidence, again,

⁷ See the verified Petition and affidavits of Frank Bright and Rev. Fred B. Wideman attached thereto as part of evidence presented for purposes Plaintiff’s request for a temporary restraining order and a preliminary injunction.

there has been no Local Church in Louisiana that has taken the position with its members during the Discernment Period that the Local Church should disaffiliate from the denomination for the reason of the 2019 Current Stance Against Homosexuality.

The second step in the Ongoing Disaffiliation Proceedings is a Local Church's request to the District Superintendent to call a Church Conference under ¶ 248 of the *Discipline* to determine if 2/3rds of the Local Church members are in favor of disaffiliation. Subparagraph 3 of ¶ 2553 directs the Annual Conference and District Superintendent's role in disaffiliation for the calling of the Church Conference vote. The Local Church's request to the District Superintendent for the Church Conference is voted on by a Church Council vote of the leader/members of the Local Church as specified in ¶ 248. The Church Council of the Local Church is like a board of directors for the church elected by the membership. The evidence will show that these Church Council votes have occurred and dates for Church Conference votes for disaffiliation have been set by the Annual Conference through its District Superintendents and remain pending.

The third step is the vote of the Church Conference and the determination of whether the Local Church will disaffiliate from the denomination. The evidence will show that the Annual Conference has advised Local Churches, that the District Superintendents, in presiding over the Church Conference votes, will not define the vote to each member under the narrow dictates for that vote required in ¶ 2553. In other words, the **Defendant has not required the District Superintendent to delineate and define any vote at a Church Conference for the disaffiliation to be made pursuant to the "basis" and purpose of ¶ 2553, so that the 2019 Current Stance Against Homosexuality of the denomination be defined for each voting member and that each voting member expressly registers his or her vote in favor of disaffiliation for "reasons of conscience regarding a change in the requirements and provisions of the *Book of Discipline* related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals" resulting from the actions of the 2019 General Conference.**

The affidavit of Frank Bright attached to the Petition as Exhibit "B" to the Petition reflects one such church in Shreveport, Louisiana which is moving ahead with a vote to disaffiliate using flawed guidance. Paragraphs 5 through 12 of Mr. Bright's affidavit are illuminating. A reading together of these provisions, and in particular, paragraphs 5, 6, 8 and 11, indicate the First United Methodist Church of Shreveport ("FUMC-S") congregation are seeking disaffiliation from the United Methodist Church for reasons unrelated to opposition to the Traditional Plan. Lack of

oversight by the Defendant in FUMC-S' disaffiliation efforts is revealed clearly in paragraphs 9 and 10 of Mr. Bright's affidavit, where it is clear that after the period of discernment had ended, the District Superintendent for Defendant presented information to the church body that should have been presented prior to the beginning of the discernment period. The result of this lack of oversight is confusion by FUMC-S over their limited right of disaffiliation from UMC under ¶ 2553. Instead, FUMC-S seeks disaffiliation for reasons that have nothing to do with ¶ 2553, but instead over a desire to get control of their assets and complaints over the structure of the UMC. (See paragraphs 5, 6 and 7 of Mr. Bright's affidavit) Yet, Defendant has ratified a number of churches voting to disaffiliate without ensuring a validation of the specific requirements of ¶ 2553.

The Affidavit of Reverend Fred B. Wideman attached as Exhibit "C" to the Petition indicates the United Methodist Church of Homer voted to disaffiliate and said church is no longer a United Methodist Church, which means the Annual Conference confirmed the vote to disaffiliate. In paragraphs 4-6 of his affidavit, Rev. Wideman indicates his objection to simply allowing a church to disaffiliate on a 2/3 majority vote, which was not the intent of the General Conference when enacting ¶ 2553. Rev. Wideman does not object to a congregation following the strict guidelines of ¶ 2553. Rather, Rev. Wideman objects to the Defendant failing to properly set up a process for disaffiliation that conforms to ¶ 2553, while guiding Local Churches in this endeavor. Then, the Defendant, by necessity, must document the results of that process before ratifying a disaffiliation of a Local Church. See also Nancy Smith Walker's Affidavit attached as Exhibit "D"

In summary, the facts of the Ongoing Disaffiliation Proceedings in Local Churches will not show that members of those churches in their Discernment Period and votes at their Church Councils have expressed a conscientious objection opposing the 2019 Current Stance Against Homosexuality of the UMC. The majority of Local Church leaders and members now directing their churches toward disaffiliation have not expressed any motivation based upon a desire for an openness for the appointment of a gay pastor or for the marriage of self-avowed practicing homosexuals in their Local Churches.

The facts will also show the value of certain Local Church assets in churches now conducting Ongoing Disaffiliation Proceedings. This value of property loss to the Annual Conference will be compared to the nominal exit fee to be charged by the Annual Conference to the Local Church (hereinafter the "Exit Fee") under the formula set forth in ¶ 2553 (4) (b) and (d).

For example, to the extent that a corporation's board of directors allows valuable and sizeable property holdings of the corporation to be transferred to the ownership of another party for only a small percentage of value of such property, an *ultra vires* act occurs.

APPLICABLE LAW

A. The Annual Conference through its Board of Trustees and administrative officers has committed *ultra vires* actions subject to the injunction remedy of La R.S. 12:208 (A) (2).

From the starting point of review of Louisiana's corporation law, it is first significant that the UMC *Book of Discipline* notes that property provisions in the church law are generally subordinate to local law. Paragraph 2506 provides that "[a]ll provisions of the *Discipline* relating to property . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith the local laws shall prevail." Likewise, the Board of Trustees of the Annual Conference shall be considered "synonymously" as a "board of directors" of a secular non-profit corporation according to ¶ 2507 of the *Discipline*. A board of directors which divests property to the corporation's detriment and diminishment and in violation of corporate bylaw provisions for property management commits *ultra vires* acts and may be enjoined by action of its members. La. R.S. 12:208 (A)(2).⁸ La. R.S. 12:208 is found in Title 12, Chapter 2 under the heading "NONPROFIT CORPORATION LAW. The official comments to this provision say: "This section conforms the *ultra vires* doctrine's application to nonprofit corporations, in some respects, to its application to business corporations. See Comment to R.S. 12:42."

Like boards of directors in all Louisiana corporations, the Board of Trustees and administrative officers of the Annual Conference owe the corporate body a fiduciary duty

⁸ LSA-R.S. 12:208 A. (2) provides:

A. Invalidity of an act of a corporation, or of a conveyance or transfer of movable or immovable property to or by a corporation, by reason of the fact that the corporation was without capacity or power to perform such act or to make or receive such conveyance or transfer, may be asserted only:

(2) In an action by a member against the corporation to enjoin the performance of any act or the transfer of movable or immovable property by or to the corporation. If the unauthorized act, conveyance or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may--if all of the parties to the contract are parties to the action, if the corporation is without capacity or power to perform the act or make or receive the transfer sought to be enjoined, and if the court considers such relief to be equitable--enjoin the performance of such contract, and in so doing may allow to the corporation, or to the other parties to the contract, compensation for any loss or damage sustained by any of them which may result from the action of the court in enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained;

regarding the ownership and protection of church property. La. R.S. 12:226A provides in pertinent part, as follows:

“Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its members, and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances in like positions. . . .”

An *ultra vires* act is a breach of this fiduciary duty and subject to an injunction action by the corporate members.

“A member of a nonprofit corporation may bring an action against the corporation and its board of directors to enjoin the performance of an act by the corporation on the basis that the corporation lacked the capacity or power to perform the act.” *Slaydon v. Cold Springs Hunting Club, Inc. et al.*, (La. App. 3 Cir. 2003), 842 So.2d 1187, 1196, *citing*, La. R.S. 12:208. In *Slaydon*, the plaintiffs alleged that a hunting club’s board of directors wrongly issued a rule limiting the use of hunting dogs in violation of the club’s articles of incorporation. *Id.* at 1196. The appellate court found an error in the trial court’s finding that the board had the authority to issue the rule. *Id.* The appellate court further granted a permanent injunction, enjoining the defendants from terminating the membership of the appellants in violation of the unauthorized rule affecting member rights. *Id.* La. R.S. 12:208 “conforms the *ultra vires* doctrine's application to nonprofit corporations.” *Coe, Jr. v. Society of Louisiana Certified Public Accountants, et al.*, (La. App. 5 Cir. 2014), 142 So.3d 88, 89, *citing* to a footnote that states: “Under the *ultra vires* doctrine, a corporation may not act beyond the object for which the corporation was created, as defined by the law or its charter.” *Citing, Simon v. Sw. Louisiana Elec. Membership Corp.*, 267 So.2d 757, 759 (La. App. 3rd Cir. 1972)

In *Keeping Our Legacy Alive, Inc. v. Central St. Matthew United Methodist Church of Christ*, (La. App. 4 Cir. 2018), 318 So.3d 130, the court reviewed the trial court’s use of La. R.S. 12:208’s prescription of one year regarding a merger between two churches that affected church owned property. *Id.* at 134-135. The appellate court did not object to the use of 12:208 in what was an inter-church dispute, out of hand. Instead, the court found that the merger that the plaintiffs sought to invalidate was not an “act of a corporation” subject to R.S. 12:208. *Id.* at 136.

The jurisprudence recognizes that the UMC *Book of Discipline* is the church’s corporate bylaws, the failure of which to follow, may result in an *ultra vires* action:

The Book of Discipline is the governing instrument of the United Methodist Church. *See, e.g., Gen. Council on Fin. & Admin. of the United Methodist Church*

v. Superior Court of Cal., San Diego Cty., 439 U.S. 1369, 1370 (1978) (Rehnquist, Circuit Justice) (stating that the Book of Discipline "contains the constitution and bylaws of the Methodist Church"); *St. Paul Church, Inc. v. Bd. of Trs. of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541, 544 (Alaska 2006) ("The Book of Discipline is the book of law of The United Methodist Church." (quoting *Book of Discipline of the United Methodist Church* (Harriet Jane Olson et al. eds., 2000))); *Mills v. Standing Gen. Comm'n on Christian Unity*, 958 N.Y.S.2d 880, 881 (Sup. Ct. 2013) ("The Book of Discipline sets forth the law and doctrine of the Methodist Church.").

Church Mutual Insurance Company v. Etimani Ma'afu, (US Court of Appeals 10 Cir., 2016), No. 15-4126.

Significantly, the **Louisiana jurisprudence makes clear that the burden of proof in this breach of fiduciary/*ultra vires* act dispute is on the Annual Conference for its official's actions.** The person acting in the fiduciary capacity bears the burden of establishing that his transactions were legitimate. *Normat Industries Inc. v. Carter*, 477 So.2d 783 (La. App. 5th Cir. 1985). By law, the interested director must show not only that the action was fair to the corporation, but also that it was essentially an "arm's length" transaction. *Quartana v. Jenks*, 436 So.2d 1335, 1337 (La. App. 5th Cir.), writ denied 441 So.2d 1224 (La. 1983); *House of Campbell v. Campbell*, 172 So. 727 (La. 4 Cir. 1965).

B. As a matter of ecclesiastical law, state and national jurisprudence recognizes that courts may interpret and apply the UMC Trust Clause Protection from the Book of Discipline to protect the Annual Conference and denominational property interests.

The Book of Discipline contains a chapter devoted to church property. (Chapter Six). According to the *Discipline*, the pertinent language of ¶ 2501 sets forth the UMC Trust Clause Protection as follows: "[A]ll real and personal, tangible and intangible property held . . . by a local church . . . shall be held in trust for The United Methodist Church and subject to the provisions of its *Discipline*. Titles are not held by The United Methodist Church or by the General Conference of The United Methodist Church, but instead by the incorporated [annual] conferences"

Carrying out the trust protection mandated by ¶ 2501, the *Discipline* in ¶ 2503 sets forth express trust language which all written instruments conveying real property to Local Churches for purposes of worship or as parsonages "shall contain." Additionally, the *Discipline* later provides:

[T]he absence of a trust clause ... in deeds and conveyances executed previously or in the future shall in no way exclude a local church or church agency, or the board of trustees of either, from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local church or church agency or the board of trustees of either, of its responsibility and accountability to The United

Methodist Church, including the responsibility to hold all of its property in trust for The United Methodist Church; *provided* that the intent of the founders and/or a later local church or church agency, or the board of trustees of either, is shown by any or all of the following:

- a) the conveyance of the property to a local church or church agency (or the board of trustees of either) of The United Methodist Church or any predecessor to The United Methodist Church;
- b) the use of the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; or
- c) the acceptance of the pastorate of ordained ministers appointed by a bishop or employed by the superintendent of the district or annual conference of The United Methodist Church or any predecessor to The United Methodist Church.

Book of Discipline ¶ 2503 (6).

A case that illustrates the proper enforcement of the UMC Trust Clause Protection and ¶ 2501 is *Peninsula-Delaware Conf. of the United Methodist Church v. Short*, 2011 Del. Ch. LEXIS 4 (Del. Chanry Ct. 2011). In that case as the court described it, a schism arose in a local church of the annual conference over the appointment of a women minister to the church by the bishop of the annual conference. The board of trustees led efforts to disaffiliate with the United Methodist Church, renamed the corporate entity for the church, and possess and own the church facilities and its assets. The annual conference filed suit to enforce its ownership under the UMC Trust Clause Protections and prevailed in the action. The court first properly set forth the First Amendment jurisprudential principles for the application of ecclesiastical law as follows:

The United States Supreme Court has encouraged the civil courts to resolve property disputes between religious bodies in accordance with "neutral principles of law." *Jones v. Wolf*, 443 U.S. 595, 602-03, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). Under this approach, a court considers "the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." *Id.* at 603. The court may not consider "doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 602 (quoting *Md. and Va. Eldership Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1970)).

The Delaware court in its conclusion for the enforcement of the UMC Trust Clause Protections observed: "The law, however, takes a longer view and considers not only the interests of the present congregants, but also the desires of those congregants who preceded them dating back to the original grantors. Those individuals contributed their property and devoted their energies to an affiliation with the United Methodist Church." This the long-standing legislative policy objective of the UMC Trust Clause Protections at stake in the present dispute.

Revelation Knowledge, supra. is the leading Louisiana case recognizing and applying the UMC Trust Clause Protections against the former UMC members' desires and actions to take the

denominational property of a Local Church to form a new church body. The Louisiana Fifth Circuit Court of Appeal granted ownership relief **to the Defendant, herein, the Board of Trustees of the Louisiana Annual Conference of the Southcentral Jurisdiction**, to reclaim the Local Church property in a possessory action. In the case, the former members of a Local Church that had been closed by the action of the Annual Conference simply acted in the name of the former church and deeded the church property to the defendant, Revelation Knowledge Outreach Ministries, LLC. Without any deed standing in the name of the Louisiana Annual Conference and with the prior 1974 deed to the Local Church containing no trust clause in favor of the denomination or Annual Conference, the Fifth Circuit Court of Appeal granted the Annual Conference's possessory action, and the ownership claim of the disassociating former members was defeated.

This UMC jurisprudence and other UMC cases nation-wide demonstrate secular courts acting with neutral principles to simply apply the express language of the ownership and trust provisions of the *Book of Discipline*. This is ecclesiastical law involving schisms in the background by disgruntled member of a local court, but that are resolved under neutral principles that govern UMC property ownership.

Demand for a Temporary Restraining Order and/or Preliminary Injunction:

Selected provisions of the Louisiana Code of Civil Procedure which speak to the granting of injunctive relief, including the ancillary remedies of granting a temporary restraining order and holding a hearing on preliminary injunction are set forth in pertinent part as follows:

Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary restraining order

A. An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law; provided, however, that no court shall have jurisdiction to issue, or cause to be issued, any temporary restraining order, preliminary injunction, or permanent injunction against any state department, board, or agency, or any officer, administrator, or head thereof, or any officer of the state of Louisiana in any suit involving the expenditure of public funds under any statute or law of this state to compel the expenditure of state funds when the director of such department, board, or agency or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

B. No court shall issue a temporary restraining order in cases where the issuance shall stay or enjoin the enforcement of a child support order when the Department of Children and Family Social Services is providing services, except for good cause shown by written reasons made a part of the record.

C. During the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, except in cases where prohibited, in accordance with the provisions of this Chapter.

D. Except as otherwise provided by law, an application for injunctive relief shall be by petition.

Art. 3602. Preliminary injunction; notice; hearing

A preliminary injunction shall not issue unless notice is given to the adverse party and an opportunity had for a hearing.

An application for a preliminary injunction shall be assigned for hearing not less than two nor more than ten days after service of the notice.

Art. 3603. Temporary restraining order; affidavit or affirmation of irreparable injury and notification efforts

A. A temporary restraining order shall be granted without notice when all of the following occur:

(1) It clearly appears from specific facts shown by a verified petition, by supporting affidavit, or by affirmation as provided in Article 3603.1(C)(3) that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.

(2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

B. The verification or the affidavit may be made by the plaintiff, or by his counsel, or by his agent.

Art. 3604. Form, contents, and duration of restraining order

A. A temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed in the clerk's office and entered of record; shall state why the order was granted without notice and hearing; and shall expire by its terms within such time after entry, not to exceed ten days, as the court prescribes. A restraining order, for good cause shown, and at any time before its expiration, may be extended by the court for one or more periods not exceeding ten days each. The party against whom the order is directed may consent that it be extended for a longer period. The reasons for each extension shall be entered of record.

Art. 3605. Content and scope of injunction or restraining order

An order granting either a preliminary or a final injunction or a temporary restraining order shall describe in reasonable detail, and not by mere reference to the petition or other documents, the act or acts sought to be restrained. The order shall be effective against the parties restrained, their officers, agents, employees, and counsel, and those persons in active concert or participation with them, from the time they receive actual knowledge of the order by personal service or otherwise.

Art. 3606. Temporary restraining order; hearing on preliminary injunction

A. When a temporary restraining order is granted, the application for a preliminary injunction shall be assigned for hearing at the earliest possible time, subject to Article 3602, and shall take precedence over all matters except older matters of the same character. The party who obtains a temporary restraining order shall proceed with the application for a preliminary injunction when it comes on for hearing. Upon his failure to do so, the court shall dissolve the temporary restraining order.

Art. 3609. Proof at hearings; affidavits

The court may hear an application for a preliminary injunction or for the dissolution or modification of a temporary restraining order or a preliminary injunction upon the verified pleadings or supporting affidavits, or may take proof as in ordinary cases. If the application is to be heard upon affidavits, the court shall so order in writing, and a copy of the order shall be served upon the defendant at the time the notice of hearing is served.

At least twenty-four hours before the hearing, or such shorter time as the court may order, the applicant shall deliver copies of his supporting affidavits to the adverse party, who shall deliver to the applicant prior to the hearing copies of affidavits intended to be used by such adverse party.

The court, in its discretion, and upon such conditions as it may prescribe, may permit additional affidavits to be filed at or after the hearing, and may further regulate the proceeding as justice may require.

Art. 3610. Security for temporary restraining order or preliminary injunction

A temporary restraining order or preliminary injunction shall not issue unless the applicant furnishes security in the amount fixed by the court, except where security is dispensed with by law. The security shall indemnify the person wrongfully restrained or enjoined for the payment of costs incurred and damages sustained. However, no security is required when the applicant for a temporary restraining order or preliminary or permanent injunction is seeking protection from domestic abuse, dating violence, stalking, or sexual assault.

The case of *Yokum v Pat O'Brien's Bar, Inc.*, 99 So. 3d. 74 (La. App. 4 Cir. 8/15/12) is instructive on the application of the foregoing provisions, including indicating that a showing of irreparable harm is not required of Plaintiffs herein. In *Yokum, supra.*, the court said:

“In order for a plaintiff to meet his burden of proof at a hearing on a preliminary injunction, he must make a *prima facie* showing that he will prevail at the trial on the permanent injunction. See La. C.C.P. art. 3601; *Mary Moe, J.L.C. v. Louisiana Bd. of Ethics*, 03 2220, p. 9 (La.4/14/04), 875 So.2d 22, 29. The standard of proof to obtain a preliminary injunction on a *prima facie* showing is, however, “less than that required for a permanent injunction.” *Historic Restoration, Inc. v. RSUI Indem. Co.*, 06 1178, p. 11 (La.App. 4 Cir. 3/21/07), 955 So.2d 200, 208.” *Yokum, supra* at 80,

“Typically, a plaintiff must make a showing that he will suffer irreparable harm before a court issues a preliminary injunction. See La. C.C.P. art. 3601. The Supreme Court, however, in *Jurisich v. Jenkins*, 99 0076, p. 4 (La.10/19/99), 749 So.2d 597, 599, established an exception to the irreparable harm requirement for instances when the plaintiff seeks a prohibitory injunction and that prohibitory injunction seeks only to order compliance with a prohibitory law:” A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, when the conduct to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 555 So.2d 1370 (La.1990). Once a plaintiff has made a *prima facie* showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists. *Yokum, supra.* at 81.

Plaintiffs are enforcing the provisions of the Book of Discipline that have the power of law, though it is church law. Therefore a showing of irreparable loss, damage or harm is not required as a pre-requisite to the Court's granting unto Plaintiffs injunctive relief, including the issuance of a temporary restraining order or preliminary injunction against the Defendant, which is committing ultra vires acts in failing to follow church law.

On the other hand, Plaintiffs and the Defendant are suffering irreparable harm as shown from the verified pleadings filed in this case, including the affidavits of Mr. Bright and Rev. Wideman. As such, even if irreparable harm is a requirement prior to the issuance of injunctive relief, including ancillary remedies related thereto, such as showing is made by the Plaintiffs.

Furthermore, La. R.S. 12:208 A 2 makes no requirement for a showing of irreparable harm since the corporation officials or board of directors are violating the law of the prohibitory law of the corporations under its bylaws. This provision is a grant to Plaintiffs to cause the Defendant to conform to church law and cease committing Defendants *ultra vires acts*. In the present case, Plaintiffs seek a temporary restraining order and after hearing, a preliminary injunction to restrain and enjoin the Defendant from convening and conducting any Church Conference at a Local Church or approving the results of any Church Conference at a Local Church voting to disaffiliate from the United Methodist Church under the jurisdiction of the Louisiana Annual Conference where the results permit the church seeking disaffiliation to remove from trust the church's properties dedicated to the United Methodist Church and similarly restraining, enjoining and prohibiting any persons acting or claiming to act on Defendant's behalf.

In the granting of a temporary restraining order, CCP Art. 3610 requires the Court to assess the security required of a litigant to protect the Defendant in the interim between the issuance of the TRO and the hearing on the preliminary injunction, unless otherwise not required by law.⁹ The amount of a bond addresses itself to the discretion of the trial court. *Louisiana Granite Yard, Inc. v. LA Granite Countertops, L.L.C.*, App. 2 Cir.2010, 47 So.3d 573, 45,482 (La.App. 2 Cir. 8/18/10), rehearing denied, writ denied 51 So.3d 733, 2010-2354 (La. 12/10/10).

The facts and circumstances of the case bear on the security the Court may require of Plaintiffs. The issuance of a TRO by this Court prohibiting any vote by a Church Conference will have no economic effect on the Defendant during the time before a full hearing for the requested preliminary injunction herein. Also, other than Church Conference votes which are the subject of the requested TRO, Ongoing Disaffiliation Proceedings may otherwise continue until the hearing on the preliminary injunction. Furthermore, this action of the Plaintiffs attempts to stop *ultra vires* acts of the Defendant, which is failing to follow the law of the *Book of Discipline*. Accordingly, the Court, in its discretion should set a very low bond as mentioned in LSA-CCP Art. 3610 in connection with the grant by the Court unto Plaintiffs of the TRO and/or a Preliminary Injunction, described herein and prayed for below.

C. There is no administrative remedy the Plaintiff's must seek prior to bringing this action to seek judicial relief against the wrongful divestment of the corporate properties of the

⁹ Except in those specific circumstances allowed by law, the granting of a temporary restraining order (TRO) and preliminary injunction requires the posting of a bond to protect against the wrongful issuance of the TRO and/or preliminary injunction, although a permanent injunction requires no bond. *Apasra Properties, LLC v. City of New Orleans*, App. 4 Cir.2010, 31 So.3d 615, 2009-0709 (La.App. 4 Cir. 2/11/10), rehearing denied.

institution, the Louisiana Annual Conference, which is the subject matter of this suit under La. R.S. 12:208 (A) (2).

In the structure of the United Methodist Church, a body known as the Judicial Council is given limited authority over certain matters pertaining to the interpretation of the provisions of the Book of Discipline at sessions of the General Conference or involving rulings of the application of the Discipline by bishops in the church. Paragraph 56 of the Book of Discipline defines the jurisdiction of the Judicial Council as follows:

¶ 56. Article II.—The Judicial Council shall have authority: 1. To determine the constitutionality of any act of the General Conference upon an appeal of a majority of the Council of Bishops or one-fifth of the members of the General Conference and to determine the constitutionality of any act of a jurisdictional or central conference upon an appeal of a majority of the bishops of that jurisdictional or central conference or upon the appeal of one-fifth of the members of that jurisdictional or central conference. 2. To hear and determine any appeal from a bishop's decision on a question of law made in the annual conference when said appeal has been made by one-fifth of that conference present and voting. 3. To pass upon decisions of law made by bishops in annual conferences. 4. To hear and determine the legality of any action taken therein by any General Conference board or jurisdictional or central conference.

Accordingly, there is no possibility that the constitutionality of ¶ 2553 or its misuse by the Defendant in Louisiana can be presented by Plaintiffs to the Judicial Council at this time. Moreover, Plaintiff's rights as members of a Louisiana non-profit corporation provide them the express civil remedy in this case under La. R.S. 12:208 (A) (2). The Book of Discipline as stated above places the civil remedy sought herein as superior for the resolution of this Louisiana corporate property dispute. The present evolving facts that the Plaintiffs will present to this Court are that over \$50,000,000 in the church assets of just one, of many, Local Churches is now being divested from the Annual Conference in Ongoing Disaffiliation Proceedings for which Defendant's has taken no action to protect its property interest under ¶ 2501.

While the Judicial Council has addressed in certain instances rulings by United Methodist bishops in other conferences about specific issues in ongoing disaffiliation proceedings in other UMC annual conferences, the Judicial Council has never overruled the narrow directive of the language of ¶ 2553 freely allowing members to vote to leave the denomination and remove the Local Church property from an annual conference's ownership protections for reasons other than their conscientious objections to the Current 2019 UMC Stance against Homosexuality. In fact in a recent ruling the Judicial Council adopted as its opinion a ruling of a bishop of with Wisconsin annual conference, which stated:

1. Paragraph 2553 was intended for a limited purpose, and the Wisconsin Annual Conference has a responsibility to the denomination to see that it is faithfully executed. To do so, it is important that, in the process of discernment, a congregation considering disaffiliation articulate its reasons for disaffiliating and evaluate its role in The UMC. The requirement that the congregation "explain

how the current Discipline or actions or inactions of the annual conference have affected the mission and unity of the congregation” provides a framework consistent with Paragraph 2553 to explore the congregation’s relationship to The UMC and whether that relationship gives rise to an application of Paragraph 2553.

Judicial Council Opinion # 1459, February 28, 2023.

CONCLUSION

The law of The United Methodist Church regarding church property ownership gives deference expressly to this Court and other secular courts to decide a property dispute and to apply the corporation law rules for the protection of a non-profit corporation’s property. In the Chapter of the *Discipline* concerning church ownership of property, ¶ 2506 says “[a]ll provisions of the *Discipline* relating to property . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith the local laws shall prevail.” In a similar manner, the *Discipline* directs that the Defendant Board of Trustees shall be considered “synonymously” as a “board of directors” of a secular non-profit corporation. *Book of Discipline* ¶ 2507. Accordingly, this Court may enjoin the Board of Trustees of the Annual Conference for *ultra vires* actions that divest the property rights of the Annual Conference in violation of our Title 12 provision and the fiduciary duty to the Plaintiffs as members of the Annual Conference. This case is therefore no different from a case where a corporate board of directors, in direct violation of the corporation by-laws, allows valuable property to be lost and transferred out of the corporation with only nominal insufficient compensation in return. The corporate member’s remedy in Title 12 is an injunction action.

The special UMC title and trust ownership provisions in the *Book of Discipline* are ecclesiastical law, yet analogous to Civil Code rules governing the ownership relationship between a usufructuary and a naked owner. The vesting of ownership and the stability of land titles are policies worthy of our general property law and church property law, which make clarity in legislative ownership statutes desirable. “When the law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislation.” La. C.C. art. 9. Plaintiffs ask this Court to interpret the plain language of the “limited right” of a Local Church to disaffiliate under ¶ 2553. This is a statutory interpretation case, pure and simple.

The ¶ 2553 disaffiliation right is set forth in the following language: “[T]he local church shall have a limited right . . . to disaffiliate from the denomination for reasons of conscience

regarding a change in the requirements and provisions of the *Book of Discipline* related to the **practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference.**” The language in bold is what has been outlined above in this brief and labeled as the 2019 Current Stance Against Homosexuality. Plaintiffs have shown that what was “resolved and adopted” by votes at the 2019 General Conference was the denomination’s strong stance against homosexuality. Methodist church members in Local Churches, upon seeing the new harsh changes that were “adopted” and the reaffirmation of the *Discipline*’s provisions against homosexuality, “resolved” legislatively in 2019, could believe for “reasons of conscience” that the new limited right to leave Methodism—disaffiliate—should be exercised by their Local Church, if 2/3rds of the overall membership’s beliefs were the same. The only unambiguous meaning for these operative words for this disaffiliation statute is that **2/3rds of the voting members of a Local Church may vote to disaffiliate “for reasons of conscience” if they believe that the 2019 Current Stance Against Homosexuality of The United Methodist Church is wrong.**

One other important clue from the language of ¶ 2553 concerns its direct reference to ¶ 2501 and its Trust Clause protection which must be honored in the disaffiliation process. In part 4 (a), ¶ 2553 addresses a “Disaffiliation Agreement” to be executed between a disaffiliating church and the Annual Conference and its Board of Trustees after the church members have voted to disaffiliate. It states: “[t]he agreement shall include recognition of the validity and **applicability** of ¶ 2501, notwithstanding the release of property therefrom.” By its own language a ¶ 2553 disaffiliation effects a “release of property” from the Annual Conference which was previously owned and protected for The United Methodist Church under ¶ 2501. The ¶ 2501 rule of protection for denominational property is that a majority of the members of the Local Church cannot just simply vote for any reason to leave the denomination and take the property with them. The Trust Clause rule of ¶ 2501 prevents the “release of property” for all reasons that disgruntled members might harbour. ¶ 2553, therefore, allows as one narrow exception the release of property for a specific reason by a majority of members that disagree with the Current 2019 UMC Stance Against Homosexuality.


Importantly, this Court is NOT being asked by Plaintiffs to rule on matters of religious doctrine, polity and practice of the UMC. The denomination’s 2019 Current Stance Against Homosexuality is fixed in the *Discipline* and decided, and there is no dispute over the theology

and doctrine from which that stance became church law in 2019. The neutral-principle analysis for this Court is simply whether the Annual Conference's property rights can be divested because the exception to ¶ 2501's trust right, which is ¶ 2553, allows memberships of Local Churches to leave the UMC with the denominational assets because of a conscientious belief that the 2019 Current Stance Against Homosexuality is wrong. Showing evidence of that sentiment, or lack thereof, in the Ongoing Disaffiliation Proceedings, the Plaintiffs are not seeking a ruling of this Court on doctrine, but a ruling barring the Annual Conference's use of ¶ 2553 because no such objection by Local Church members exists in opposition to the 2019 Current Stance Against Homosexuality.

The Court should grant the TRO as requested by Plaintiffs and set low bond in connection therewith until the hearing on the Preliminary Injunction prayed for by Plaintiffs. Security for the Preliminary Injunction will be addressed at the hearing once other facts are revealed.

Respectfully submitted,

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CERTIFICATE

The undersigned attorney certifies to this Court that on the date expressed below, a copy of the foregoing **MEMORANDUM IN SUPPORT OF PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF** was hand delivered and/or emailed to George Anding, Esq., in his capacity as agent for service of process and general counsel for the Defendant in this action on this 15th day of March, 2023.

Baton Rouge, Louisiana, this 15th day of March, 2023.



DAVID M. COHN, LBR #4237