

A Brief Report on the 2004 Convention of The Lutheran Church-Missouri Synod

Dear fellow pastors of the Treasure Valley Circuit,

Greetings to you in the name of our Lord Jesus Christ.

I thank you again for the privilege of serving as the delegate of our circuit to the 2004 LCMS convention. With the wealth of reports available through official communications and various websites, and because the convention proceedings will be mailed to you, I do not wish to burden you with another lengthy document. However, I do wish to point out what, in my opinion, are the most serious and significant resolutions to emerge from this convention.

1. Resolution 8-01a: To Amend Bylaws on Ecclesiastical Supervision and Dispute Resolution

Resolution 8-01a passed by a margin of 56%-44% after vigorous debate from the floor, resulting in a complete overhaul of the bylaws regarding the dispute resolution process. In open hearings and on the convention floor, the floor committee emphasized the need to revamp the bylaws in order to protect the reputations of members of synod. I wish to draw your attention to two facets of this bylaw revision.

a. Polity Changes

8-01a made two significant changes to LCMS polity. First, it removed the right of laymen to bring charges against a pastor or congregation of synod; although, if the DP becomes aware of a layman's grievance, he may pursue charges on his own. Second, while the language of the bylaw technically reads that members of synod may still pursue a complaint, they may only do so with permission from the presidents of the districts to which the parties belong. 8-01a effectively placed all church discipline into the hands of the Council of Presidents. The number of people in the LCMS who have the right to judge doctrine in any sort of official capacity has effectively been reduced from 2.5 million people to 36 men.

The new bylaws put a huge responsibility on, and only on, the district presidents and synodical president; and since it seems evident that district presidents differ in their interpretation and application of doctrine, it is difficult to see how any sort of consistent practice will be carried out.¹

¹ To understand the changes, consider a hypothetical case where an LCMS parish pastor ["Pastor A"] presides over a televised syncretistic service on the East Coast, and that another pastor ["Pastor B"] on the West Coast desires to pursue a complaint according to the dispute resolution process. One already feels sorry for Pastor B: if he simply declares Pastor A to be wrong, he will be accused of violating Matthew 18 (see part "b" on the next page) and instructed to follow the process; if he follows the process, then he will no doubt be accused of creating trouble and being unloving. In any event, Pastor B begins the process:

1. Pursuant to bylaws, Pastor B notifies his DP that he wishes to pursue a complaint. The DP first instructs him that he must travel to Pastor A and speak with him face-to-face before the complaint can continue, ostensibly in accordance with Matthew 18 (see "b. Scripture and the Confessions" below). The pastor may either spend his own money and time to travel across the country, or decline. If he is unwilling or unable to make the trip, the process ends and Pastor A's practice is vindicated.

Footnote continues on next page...

b. Scripture and the Confessions

A far more serious question than disenfranchisement is this: Does resolution 8-01a contradict Scripture and the Lutheran Confessions? Newly-minted bylaw 2.26.a.3 reads, “If bylaw 2.26 [the process described above] applies, the District President shall ensure that the accuser has carried out the guidelines of Matthew 18:15 face-to-face with the accused. *Even if the alleged violation of Article XIII is considered to be ‘public,’ this provision of Matt. 18:15 shall be followed.* The reputation of all parties is to be protected as commanded in the 8th Commandment” (Italics mine). Again, this revision of the dispute resolution process seems more concerned with preserving reputations than with repentance.

According to bylaw 2.26.a.3, one must meet face-to-face with the accused regarding a public sin. Does this provision exist in Matthew 18:15? How is this in agreement with the Large Catechism, which reads:

But where the sin is so public that the judge and everyone else are aware of it, you can without sin shun and avoid those who have brought disgrace upon themselves, and you may also testify publicly against them. For when something is exposed to the light of day, there can be no question of slander or injustice or false witness. For example, we now censure the pope and his teaching, which is publicly set forth in books and shouted throughout the world. Where the sin is public, appropriate public punishment should follow so that everyone may know how to guard against it. (LC 8th Commandment ¶284)

2. If Pastor B meets face-to-face with Pastor A, his DP may then determine that Matthew 18 has been fulfilled.

3. Pastor B’s DP may then notify Pastor A’s DP that Pastor B wishes to pursue a complaint.

4. Pastor A’s DP may then decide whether or not to begin a formal proceeding of complaint against Pastor A. If the DP decides not to begin a formal proceeding, the process ends, unless Pastor B goes to step 5.

5. If Pastor B still desires to pursue a complaint, he must now petition the synodical president to remove Pastor A’s DP from office. If the SP removes the DP, then Pastor B goes back to step 3 with the new DP. If the SP does not remove the DP, then the process ends unless Pastor B goes to step 6.

6. If Pastor B still wishes to call Pastor A to repentance according to bylaws, he must now petition the COP to remove the SP from office for his failure to remove the DP from office. If the vote to remove the SP receives less than 75% among the district presidents, the process ends. If the vote receives at least 75% in support of removal, a ballot is sent out to all LCMS congregations. If at least 25% of all congregations return a ballot, and if at least 51% of those ballots are in favor of removal, then the SP is removed from office and the 1st VP takes his place. If the ballot does not remove the SP from office, the process ends and there is no further step for Pastor B to take.

7. If the SP is removed from office, and Pastor B still wishes to call Pastor A to repentance according to bylaws, Pastor B must now return to step 5. If the new SP removes Pastor A’s DP for refusing to pursue the complaint, then the district 1st VP becomes district president, and Pastor B must return to step 3. If the new SP refuses to remove Pastor A’s DP from office, then Pastor B must go to step 6; if the removal of the new SP is successful, he must go back to step 7, if he has not yet died of old age.

Please note: *After all of this, a complaint has never been filed against Pastor A for a televised syncretistic service!*

According to the interpretation of bylaw 2.26.a.3, how are John the Baptist (Matt. 3:7), St. Paul (Gal. 2:11-14) and the Lord Jesus Himself (Matt. 12:34) not guilty of violating Scripture?

And if bylaw 2.26 is not in agreement with our doctrinal norms, how should pastors respond?

2. Amendment A

I sent you a previous e-mail regarding Amendment A.² Since then, and especially in the past month, Amendment A has received a lot of attention, including a front-page Reporter story on its necessity and a letter from Floor Committee 7 urging its passage.

² The text of that e-mail read as follows:

LCMS congregations have received a ballot from the secretary of the synod regarding changes to the constitution and bylaws, which require approval from congregations. One of these, Amendment A, is a change in the LCMS Constitution, resulting from Resolutions 7-02A and 7-21 of the 2004 convention. Having studied this at length at the convention, I would counsel you to give it diligent study. Furthermore, I would urge you to vote to defeat Amendment A.

The effect of this change is to remove authority from the Board of Directors. At present, the BOD holds a supervisory position above other boards, committees and commissions; this provides a central authority to monitor and control the finances of synod. Amendment A would make the BOD *equal* to other synodical boards—sort of a board in charge of properties, I suppose. This in turn solidifies the argument that the BOD must submit to all decisions of the Commission on Constitutional Matters, a commission appointed by the synodical president.

I believe that this constitutional change is unwise for three reasons.

1. The synod is experiencing significant financial troubles right now, and it is vital that the board of directors retain a centralized financial supervision of other synodical entities.

2. Amendment A hurts the system of checks and balances within the LCMS. It effectively places all decisions of the BOD (*elected* by the synod in convention) under the CCM (a committee *appointed* by the synodical president). Until the Lord returns, checks and balances are important for all of us. No matter who is the synodical president, Amendment A is not a good idea.

3. Amendment A grew out of the struggle between the CCM and the BOD after the BOD set aside eight CCM opinions. Among those opinions was 02-2309, in which the CCM said that a member of synod may not be charged for false doctrine or practice as long as he has received permission from his ecclesiastical supervisor. In my opinion, a vote in favor of Amendment A expresses support for this troubling polity. (Because the convention failed to set aside this CCM opinion, it remains in place anyway. However, Amendment A's passage would give it added legitimacy.)

As I recall, the resolution [7-21] which resulted in Amendment A was passed on the morning of the final day of convention. (You know what that's like—a rush to get as much accomplished as possible before the final gavel.) When brought to the floor, only one speaker commented on it before the question was called and the vote taken. I believe that many delegates did not understand the effects of the resolution. However, this constitutional change does not take effect unless two-thirds of the congregations who respond vote in favor of it. I would urge you to give this matter prayerful consideration, and I would encourage you to vote against Amendment A.

As Amendment B is receiving no similar treatment, one must conclude that Amendment A is extremely important. Furthermore, the PR blitz is a bit puzzling since those who want Amendment A passed maintain that it changes nothing;³ it would therefore seem that its failure would be of no great consequence.

Further questions are raised by the floor committee mailing. The fourth Q&A reads:

Question:

Does the amendment to the Constitution limit the authority of the Board of Directors?

Answer:

No. The Board continues to have the authority delegated to it by the Bylaws and Articles of Incorporation.⁴

This is interesting, as the ballot sent to congregations is entitled:

- Constitutional Amendment A -
(Places limitations on the authority of the Board of Directors, Art. XI F 2)

In the Floor Committee's letter, Amendment A has since been re-titled, "To Amend Constitution Regarding Officer and Board Responsibilities."

Does Amendment A change the constitution? One's answer will depend upon one's understanding of the constitutional duties of the BOD and CCM. If one believes that the BOD has always had these limitations place upon it and has always been under the authority of the president-selected CCM,⁵ then the answer is no. If one believes the opposite, then the answer is yes. If the BOD has always had these limitations placed upon it, it is curious that this never came to light until the present difficulties within the synod.

The seventh Q&A reads as follows:

Question:

Is it legal to withhold "ultimate authority" from the Synod Board of Directors?

Answer:

Yes. *The First Amendment to the United States Constitution requires that the government involve itself in the operation of a church only to the extent necessary to protect the interests of the government. The church is free to organize and govern itself as it deems consistent with its religious beliefs.* These issues were studied in detail by Floor Committee 7 and the convention itself. The Synod's legal counsel provided detailed information concerning the requirements of Missouri law both to Floor Committee 7 and to the convention itself. (Italics mine)

³ See "Amendment meant for 'clarification' draws opposition," <http://www.lcms.org/pages/internal.asp?NavID=6035>

⁴ October 12, 2004 letter to congregations.

⁵ The tenth Q&A asks, "Are the members of the CCM chosen by the President?" This is followed by an answer of 97 words, none of which are "yes" or "no." The short answer is, "Yes."

This is also the argument put forth by the three legal opinions which contradicted the Bryan Cave legal opinion held by the Board of Directors. One of the three lawyers who made this argument in L. Martin Nussbaum of Colorado, who wrote:

"Based upon our review of the cases articulating the First Amendment Doctrine of Church Autonomy nationally, in Missouri, and in cases involving The Lutheran Church—Missouri Synod itself, *we think it almost inconceivable that any court would attempt to refashion the Synod's faith-based polity* where it conflicted with provisions of the Missouri Non-Profit Corporation Act."⁶

Nussbaum also argued on behalf of the Archdiocese of Boston, claiming that lawsuits against the Archdiocese for negligent ecclesiastical supervision of pedophile priests could not go forward "because examining that relationship - between priests and their supervisors - in civil court violates the constitutional freedom of religion."⁷ Nussbaum lost the case. In considering the Nussbaum argument, please remember the origin of the conflict between the BOD and CCM was the BOD's setting aside of CCM opinions, including Opinions 02-2296 and 02-2320 which stated that a member of synod may not be disciplined if he received prior permission from his ecclesiastical supervisor. (At least the new bylaws under 8-01a above have a separate section to deal with sexual predators.) At best, this is a tenuous rationale on which to base the amendment of a constitution.

In any event, now that we've gone this far, the question is moot. In its October 2004 meeting, the CCM ruled that, since Amendment A only clarifies the synodical constitution, the bylaw changes will take effect no matter the votes of the congregation. If the amendment fails by a 20-1 margin, it will still take effect.⁸ Once again, pastors and congregations should give some due consideration to the topic of disenfranchisement of voters in synod.

⁶ <http://www.lcms.org/pages/internal.asp?NavID=4714>, italics mine

⁷ "Judge Rules Church Suits Can Proceed," Boston Globe, 2/20/2003, page A1. Nussbaum exhibits an excruciating misunderstanding of the Two Kingdoms not unknown in Roman Catholicism: "In making the religious liberty argument, lawyers for the Archdiocese of Boston argue that a plaintiff victory would require the court to 'modify the church's understanding of forgiveness and grace.' During a court hearing in the case, attorney L. Martin Nussbaum, the First Amendment specialist hired by the archdiocese, said the church sincerely believes that people can change. 'Some of the greatest leaders in church history are, as the church would say, redeemed sinners, but as our civil justice might say, former criminals,' Nussbaum argued." http://www.boston.com/globe/spotlight/abuse/stories4/032403_defense.htm

⁸ "Question: If proposed Constitutional Amendment A entitled "To Amend Constitution Regarding Officer and Board Responsibilities" as set forth in Resolution 7-21 of the 2004 convention of the Synod is not passed by a 2/3 majority vote, will the implementation or validity of any other resolutions or changes to the bylaws passed at the 2004 convention be affected?

"Opinion: It is the opinion of the Commission on Constitutional Matters that the proposed amendment to Article XI F 2 states more clearly what the existing language already means. Any amendment to the Bylaws which is consistent with the former Article XI F 2 would similarly be consistent with proposed Article XI F 2. As such, the answer to the question presented is that if the proposed Constitutional Amendment A entitled "To Amend Constitution Regarding Officer and Board Responsibilities" as set forth in Resolution 7-21 of the 2004 convention of the Synod is not passed by a two-thirds majority vote, it would not effect the implementation or validity of any other resolutions or changes to the bylaws passed at the 2004 convention." (CCM Minutes, October 6-8, 2004. <http://www.lcms.org/graphics/assets/media/CCM/CCMOct.6-8-04.pdf>)

3. Resolution 3-08a: To Affirm the Conclusions of the 1994 CTCR Report: *The Service of Women in Congregational and Synodical Offices*

Among other clauses, this resolution (which passed by only 52.6%) states, “Resolved, That the Synod affirm that women on the basis of the clear teaching of Scripture may not serve in the office of pastor nor exercise any of its distinctive functions, and that women may serve in humanly established offices in the church as long as the functions of these offices do not make them eligible to carry out ‘official functions [that] would involve public accountability for the function of the pastoral office’...”

While the floor committee stated that “affirming” does not mean “accepting” or “adopting” the CTCR document, it was unable to define the legal meaning of “affirm.” Furthermore, given that laymen may be licensed in the LCMS to preach and administer the Sacraments, it is unclear exactly what “functions” are “distinctive” to the pastoral office. If a layman can preach, then why not a woman?

To be clear, this resolution does not clearly permit women to preach or administer the Sacraments. However, it clearly permits women to serve as elders and congregational presidents, and further adds to the confusion of the LCMS doctrine of the Holy Ministry.

4. Resolution 3-06A: To Commend CTCR Report on Guidelines for Participation in Civic Events

The convention also commended the CTCR Report, “Guidelines for Participation in Civic Events.” This report stipulates that it is not to be applied to “certain events following September 11, 2001,”⁹ such as any events which took place in Yankee Stadium on September 23, 2001. One wonders why this is the case, when the document makes applications like:

Participation [in civic events] must be avoided, however, when leaders of various religious communities conduct these ceremonies in such a way as to give the impression that those present share common religious beliefs, especially in regard to the nature and identity of God, the way of salvation and the hope of everlasting life.¹⁰

The CTCR then goes on to make indeterminate determinations like these:

On the one hand, participation in such events (when no restriction is placed on the nature or content of one’s Christian witness) would seem to provide a valuable opportunity to bear witness to Christ and the truth of his Gospel in a public context in which (one may presume) many of those present do not know and desperately need to hear this saving truth. On the other hand, the valid concern exists that participation in such a context might convey a tacit approval of the syncretistic and relativistic perspectives that pervade our culture and society. *Given the realities, challenges, needs and opportunities that exist in our present culture, this may well be an irresolvable tension.*¹¹

⁹ *Guidelines for Participation in Civic Events*, p. 4

¹⁰ *Ibid*, 17.

¹¹ *Ibid*, 18-19. Italics mine.

*The members of the Commission disagree about the issue of so-called “serial” or “seriatim” prayers involving representatives of different religious (Christian and/or non-Christian) groups or churches... The majority of the Commission believes that in some instances it may be possible and permissible for LCMS pastors to participate in such an event....*¹²

Thus the document concludes:

Clarity in doctrine and practice and charity in our dealings with one another are both essential to the church’s life and witness, if the church is to be about the business given to her by her Lord. *Christian charity must prevail hand in hand with confessional clarity*, therefore, in order for these considerations and guidelines for participation in civic events to be of service to Christ’s church and to our walking together in The Lutheran Church—Missouri Synod.¹³

Since the CTCR is unable to put forth much in the way of confessional clarity, one must conclude that, within the LCMS, participation in syncretistic events will be judged only by “Christian charity.” This is not quite accurate, however; participation and Christian charity will be determined by the ecclesiastical supervisors of the synod, per Resolution 8-01a.

Over sixty other resolutions were passed. However, I believe that these are the most significant of them all. These will reshape the polity, confession and mission of the LCMS, and it is left to pastors and congregations ask these questions: What does each of these decisions do to the Gospel? And what will we do about it?

Respectfully submitted,

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¹² Ibid, 19. Italics mine

¹³ Ibid, 23. Italics mine.