To Rescind LCMS 2004 Resolution 8-01A

Whereas, Article II of the Constitution of the Lutheran Church—Missouri Synod says that "The 2 Synod, and every member of the Synod, accepts without reservation: 1. The Scriptures of the Old 3 and the New Testament as the written Word of God and the only rule and norm of faith and 4 practice; 2. All the Symbolic Books of the Evangelical Lutheran Church as a true and 5 unadulterated statement and exposition of the Word of God...;" and

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Whereas, Article III of the Constitution says, "The Synod, under Scripture and the Lutheran Confessions, shall—1. Conserve and promote the unity of the true faith (Eph 4:3-6; 1 Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom 16:17), and heresy;" and

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Whereas, Article XIII of the Constitution says, "Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct, shall, after previous futile admonition, be expelled from Synod;" and

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The Stated Rationale for 2004 Res. 8-01A

Whereas, the 2004 LCMS Convention passed Resolution 8-01A, "To Amend Bylaws on Ecclesiastical Supervision and Dispute Resolution." The rationale(p.165 of Convention Proceedings) given for this lengthy 24-page resolution was to refine issues with "cases involving faculty members of the Concordia University System against whom charges were brought as well as those brought against District and Synod officials;" and

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Whereas, it would appear that the concerned cases cited were:

24 1. When two pastors in 2001 filed separate charges against the Synodical President (a) for 25 his participation in two joint services with pastors of the ELCA in an ELCA church and (b) for 26 his approval of a District President's participation in a prayer service with non-Christians and 27 Christians alike. The merit of these charges according to the Word of God were never 28 considered, because an opinion of the Committee on Constitutional Matters(CCM) forced the 29 charges to dropped. The CCM opinion (#01-2240, December 9, 2001) stated that the Synodical 30 Convention alone had jurisdiction to hear these charges and the Synodical Convention alone can 31 remove a Synodical President. When the Synodical Convention of 2004 arrived, it did not 32 address these charges at all, although 6 District conventions requested the Synod to address this 33 situation. 34

2. When in November 2001, charges were filed against a District President for participation in an unionistic and syncretistic prayer service (by what was, eventually, 18 pastors and congregations, throughout the Synod). When a LCMS Vice President decided the case against the District President in June of 2002, the Synodical President called up the decision for review by a Dispute Resolution Panel. Although the Dispute Resolution Panel acknowledged that this Vice President "went on to present a very thorough argument concerning the charges on the basis of the Holy Scriptures alone," the District President was exonerated by the Dispute Resolution Panel because of a CCM opinion that the District President followed the advice of his ecclesiastical supervisor and therefore could not be charged (CCM 02-2309, Feb 2003).

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3. When a complaint was filed against a LCMS Professor for teaching that the first eleven chapters of the Book of Genesis are not literally true and the notion that man evolved from a prehuman ancestor. That college's Board of Regents determined that said professor was "neither guilty of advocacy of false doctrine nor of failure to honor and uphold the doctrinal position of the [Missouri] Synod;" and

Whereas, it must be asked what "issues," 2004 Res. 8-01A seeks to refine, before we can judge if it will or has succeeded in its purpose. If those accused were not guilty and the process worked, then nothing should be done. If those accused were guilty and the process either did not find them guilty or they were let off on technical points, will these changes assure adequate prosecution. It would seem unusual to have a complete reworking of the Ecclesiastical Supervision and Dispute Resolution Process on account of only a few cases. Moreover, it must be asked whether 26 pages of new bylaws will help to clarify the 8 pages already present; and

Whereas, during the 2004 convention debate at least one delegate thought that the purpose of this resolution was to make it more difficult for members to file charges and thus avoid at least one of the above situations. This delegate urged passage of 2004 8-01A saying, "Let's make sure this never happens again!" The "this" was the embarrassing attention given to #2 above(lines 34-42); and

<u>District President Determines Whether to Initiate Formal Proceedings</u>

Whereas, prior to the passage of 2004 Res. 8-01A, each and every member of the Synod was bound to the Holy Scriptures as the only rule and norm of faith and life. The district president was required to act upon the facts of a written complaint of any person which stated that a congregation or an individual had acted in a way which could lead to the expulsion of a member from the Synod under Article XIII of the Constitution; (2001 Handbook, 2.27a) and furthermore, if the District President declined to suspend the member or failed to act within 90 days, the complainant could appeal to the Presidium of Synod (2001 Handbook 2.27b); and

Whereas after the passage of 2004 Res. 8-01A, the District President alone determines whether to initiate formal proceedings. The District President alone determines whether to make use of a Referral Panel to help him in determining whether to initiate formal proceedings(2.26c, p. 167 of Convention Proceedings, or 2004 Handbook 2.14.5; Note: From this point on all references will be to the 2004 Handbook, rather than to Convention Proceedings p. 165-184). "The action to commence expulsion of a congregation or individual from membership in the Synod is the sole responsibility of the district president who has the responsibility for ecclesiastical supervision of such member" (2004 Handbook 2.14.1). The decision of the District President alone (or his Referral Panel) not to initiate formal proceedings "shall terminate the matter." (2004 Handbook 2.14.5.2); There is no recourse or appeal for the accuser if the District President refuses to initiate formal proceedings. If the District President concludes in his opinion that the facts do not form a basis for expulsion, then nothing will be done. 2004 Res. 8-01A has removed from congregations and pastors of the LCMS their right to initiate formal proceedings to investigate and discipline erring members of Synod;

Whereas, the effect of 2004 Res. 8-01A is that the Word of God is not the only rule and norm of faith and practice in the LCMS(Article II of LCMS Constitution), until a District President thinks that it is. Furthermore, if a District President do not consider a complaint to justify a formal proceedings, then the Word of God, as the only rule and norm, will not be applied, and the

members of Synod have no recourse for appeal. The matter is terminated.

District President Required to Follow Human Opinions

Whereas after the passage of 2004 Res. 8-01A, the District President alone determines whether to ask an opinion of the Committee on Constitutional Matters(CCM) and/or the Commission on Theology and Church Relations(CTCR). Should the District President decide to ask a decision of the CCM and/or CTCR, the District President is required to follow human council, even if it should contradict the Word of God. It says, "The District President must follow any opinion received from either the CCM or the CTCR, which shall be rendered within 30 days or such additional time as the district president may allow" (2004 Handbook 2.14.3.a);

Whereas, the effect of 2004 Res. 8-01A is that the Word of God is not the only rule and norm of faith and practice in the LCMS(Article II of LCMS Constitution), but a District President is bound to follow the decisions of human councils, even if the Word of God says otherwise. The example cited in lines 34-42 of this overture is just such an example where human councils trumped the Word of God; and

District President Determines Which Bylaw to Follow

Whereas after the passage of 2004 Res. 8-01A, "The District President **shall require** the accuser to follow the correct bylaw provision under the circumstance, if any...." There are primarily two tracks for complaints. (Let it be noted that as a result of 8-01A, there are completely separate bylaws for complaints against a District President 2.15, Synodical President 2.16, etc. The merit of these special cases will not be considered in this resolution.) The District President alone will determine whether the facts are such that it could lead to the expulsion of a member from the Synod(Bylaw 2.14), or if the facts should be considered a matter for Dispute Resolution(Bylaw 1.10), in which disputes, disagreements, or offenses are to be settled by Synod's system of reconciliation and conflict resolution. If a District President doesn't view the complaint to be against the Word of God, he could force the complainant to follow the Dispute Resolution (Bylaw 1.10) track, in order to get the complainant to "reconcile."

Whereas, this decision of whether the dispute is a matter that could result in expulsion or a matter for Dispute Resolution is not of small importance.

- A. If reconciliation and conflict resolution are applied to a doctrinal complaint that should result in expulsion, the point at issue will not be agreement or disagreement with the Word of God, but the complainant will be subjected to an examination of his supposed "vengeful" attitude or his personal animosity, or even his lack of forgiveness for his brother in Christ. Therefore the word of God will not be applied to the complaint and false teaching or practice(called "heresy" in Article III of LCMS Constitution) will be allowed to remain.
- B. If procedures to determine "thus saith the Lord," are applied to a simple non-doctrinal disagreement among members, a possible decision to remove a member from Synod will result though the member has not violated Article XIII, which is based on the Word of God. This situation is called "schism" in Article III of LCMS Constitution. We do not want members of Synod to be removed simply because someone has a disagreement or a personal vendetta against them; and

District President Requires Matthew 18:15 face-to-face

Whereas after the passage of 2004 Res. 8-01A, "If bylaw 2.14 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 of the Constitution is considered to be 'public,' this provision of Matthew 18:15 shall be followed. The reputation of all parties is to be protected as commanded in the Eighth Commandment" (2004 Handbook 2.14.c); and

Whereas, this interpretation of Matthew 18, in which there is no distinction made between public and private sins, disregards what the Book of Concord says in the Large Catechism.

"All this{My note: concern for following Matthew 18} has been said regarding secret sins. But where the sin is quite public so that the judge and everybody know it, you can without any sin avoid him and let him go, because he has brought himself into disgrace, and you may also publicly testify concerning him. For when a matter is public in the light of day, there can be no slandering or false judging or testifying; as, when we now reprove the Pope with his doctrine, which is publicly set forth in books and proclaimed in all the world. For where the sin is public, the reproof also must be public, that every one may learn to guard against it" (284).

Whereas, this 'gag' order, which 2004 Res 8-01 has placed upon the discussion of public sins, cannot be allowed to stand. As it is, all of Jesus' public rebukes of the Pharisees and St. Paul's public rebuke of St. Peter(Galatians 2:14), would be reasons for a District President to dismiss a complaint under 2004 Res. 8-01A. And it could also be argued that a complainant who disobeyed Res. 8-01A might even be disciplined under Article XIII for not following "the conditions of membership laid down in Article VI." The delegates should also consider 1 Corinthians 5:1-5, 3rd John 9-10 and St. John 2:14-17. Our Synod should not be allowed to go against the Word of God and the Lutheran Confessions, by prohibiting a public response to public sins; and

The Hearing Panel is Private, Closed Door

Whereas, if the District President determines that the facts form a basis for your expulsion, the District President will provide you a written notification of your suspended status and his request to expel you from the Synod. You have 15 days to request a "Hearing Panel," whose purpose is "to hear the matter and render a final decision unless appealed." This hearing panel will be made up of three district presidents, one chosen by you, one by the District President and another by those two District Presidents already selected. Although this last point might not be against Scripture, there are two practical concerns of this hearing panel; and

Whereas, (1) prior to the passage of 2004 Res. 8-01A, District Presidents were excluded from serving on appeal panels, because they were the one who had made the decision concerning the complaint. After the passage of 1004 Res. 8-01A, **the District Presidents themselves**—who determine whether there will be a formal proceedings, and then rule on the merits of the complaints they decide to hear—**are the only ones to serve on the hearing panels** to decide an appeal of a District President's decision to expel; and

Whereas, (2) what is most distressing is that these hearing panels made up of District Presidents will be a private, closed door court. 2004, Res. 8-01a says, "The hearing panel shall be private,

attended only by the persons involved and the witnesses who can substantiate the facts relevant to the matter" (2.14.7.7b). Although the Panel will issue a written decision(2.14.8.2), the deliberations which led to the decision shall be sealed(2.14.7.7j). The accused will be told the decision, but there is no obligation to list the reasons for the expulsion or reinstatement; and

Whereas, in the old system of adjudication set up in 1965 and before the changes to Dispute Resolution in 1992, private court trials included several checks to insure transparency, impartiality, and justice, while maintaining a concern for the reputation of the accused.

- A. The jury had an equal number of clergy and laity (1983 Handbook bylaw 8.15a).
- B. Synodical officials, including District Presidents, could not serve on these juries (1983 Handbook bylaw 8.15c).
- C. The formal decision required not only a statement of the facts and conclusions, but also the reasons for the conclusions(1983 Handbook bylaw 8.65); therefore be it

Resolved that the Lutheran Church-Missouri Synod, gathered in convention, **rescind the 2004 LCMS convention Res. 8-01A**("To Amend Bylaws on Ecclesiastical Supervision and Dispute Resolution.").

Approved on Sunday, January 28, 2007

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