

CONSTITUTIONS & BY-LAWS  
FOR  
CONGREGATIONS OF THE SOUTHEASTERN DISTRICT  
OF  
THE LUTHERAN CHURCH – MISSOURI SYNOD

A workshop presentation by Russ Boraas at the 2015 “Tending the Flame”

The purpose of this Workshop is to help congregations write well thought out, clear and useful sets of Constitutions and By-Laws. It is not an easy task, especially if the drafting committee has no prior experience. Hopefully, this workshop will help you profit by the experience of others and perhaps give you some useful examples.

**Why do we need a Constitution and a set of By-Laws?**

Every congregation needs a plan for its internal governance, which clearly states what the congregation believes, how decisions are made, and who is responsible for the various activities of the congregation. Having a plan in writing, if it is followed, avoids the need to rethink how to do things and avoids a great deal of controversy and disagreement. Also, the Constitution of The Lutheran Church Missouri Synod requires each member congregation to have a Constitution and By-Laws.

In the latter part of this paper, I have provided a set of sample Articles for a congregational constitution. When drafting them, I tried to follow the suggestions I have made elsewhere in this paper. I have not provided a set of by-laws for several reasons. First, most of the points I make in this paper are adequately demonstrated in the constitution. Secondly, we would not have time to discuss the by-laws within the hour and fifteen minutes allotted for this workshop at Tending the Flame. Thirdly, I did not have time to put it together. However, if there is interest, I will provide a sample set of by-laws at a later date.

**Why does our congregation’s Constitution and By-Laws have to be reviewed and approved by the Southeastern District?**

Again, the Constitution of the LCMS says that the congregations must send their constitutions and by-laws to the District to which they belong to be reviewed. If the constitution and by-laws are acceptable, they are then approved by the Board of Directors of the SED. This applies both to new constitutions and by-laws and to revisions to existing ones. Only after they are approved by the Board do they become effective. In the SED, the President has appointed a Constitution and By-Laws Task Force to review both new documents and revisions to old ones.

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The Task Force looks for heresy (I personally have never seen any heresy) and it looks for real pitfalls in the documents, which will not serve the congregation well. The Task Force frequently sends a congregation suggestions about how it could improve its documents, but it will generally recommend approval of even pretty seriously flawed documents. Sometimes, however, it is necessary to recommend that the Board of Directors not approve, until the congregation makes revisions. The Task Force tries not to substitute its own judgment, about how a congregation should be organized or how it should operate, for that of the congregation. Each congregation is entitled to organize itself how it will, even if the others might see the organization as problematic.

### **How should a congregation request District review and approval?**

Both new and revised sets of constitutions and by-laws should be sent to the Southeastern District President by e-mail, requesting that they be reviewed and approved. Clearly state whether these are new documents, which have not previously been approved, or whether the congregation has only made amendments to documents previously approved. It would be helpful if you could state when they were first approved and also when amendments to the documents were last reviewed and approved. The District has fairly complete files on prior approvals, but providing these dates will help the District President's administrative assistant provide accurate information to the Task Force.

It is much easier for members of the Task Force to do their work, if documents are transmitted to the District as attachments to e-mails. Please do not mail paper copies. When the e-mail is received by the President of the District, his administrative assistant will forward them to the Task Force by e-mail also. This saves both time and postage, but more importantly, it allows the Task Force keep the documents in electronic files and to make comments and suggest changes right on the face of the documents.

We greatly prefer that Constitutions and By-Laws be sent in MSWord documents. None of us work in pdf.

### **How to get started.**

First, get key leaders of the congregation together and discuss the type of congregational governance you want.

Try not to hurry the process. If possible start early and give yourselves much more time than you think you will need.

Do not just get a copy of documents from another congregation and copy them blindly, merely substituting the name of your congregation for the name in the sample. The same goes for model documents, including the sample paragraphs that I give you. The model you copy may describe a form of congregational governance that is just not the way your congregation wants to do things. It may be poorly written to start with. There are a lot of poorly written constitutions and by-laws out there. Even if you are confident that you have in your possession the best model documents available, it still requires careful

thought to adapt them to suit your congregation. Whatever you do, do not copy a set of documents from another denomination, because they may reflect doctrine and a form of governance, which are alien to the LCMS.

The Lutheran Church – Missouri Synod has a document entitled “Guidelines for Constitutions and By-Laws of Lutheran Congregations” on the Synod’s website. It is a valuable tool, but even it should not be copied blindly. In fact, there are portions, which could stand considerable improvement. A few of those areas will be discussed later.

Here are some suggestions for getting started:

1. Create a Constitution and By-Laws Committee.
2. Gather the right people. Enlist experienced lay leaders, the Pastor, and, if you can, members of the congregation with non-church organizational experience in business, government, the military, etc.
3. Think about the following things:
  - a. How is your congregation actually organized and governed now, as compared to how your present constitution and by-laws say it should be organized and governed. Some congregations have ignored their constitution and by-laws for years and operate quite differently than the constitution and by-laws say it should. This not only creates confusion, but also may have adverse legal implications when doing business with the outside world, such as when the congregation borrows money. If you depart from how the constitution and by-laws say things should be done, why does that happen? Is the way your congregation operates better or worse than the way the constitution and by-laws say it should operate?
  - b. How would you like your congregation to be organized and governed?
  - c. Given the size of your congregation, the ages of your members, and the willingness/ability of your members to participate in congregational governance, how many people can the congregation realistically get to fill offices, work on committees, etc.? Do not create a governance structure for a 600-member congregation when you only have 60 members. And, remember that most people don’t want to serve in congregational governance positions on a continuous basis nor would a congregation want the same people to be in charge all the time. Create a structure that allows the congregation to rotate people in and out of leadership roles.
  - d. What kind of a governance model do you want for your congregation? Do you want a congregation in which the lay members, working with the Pastor and other paid staff members, are intimately involved in decision

making and organizing the efforts of the congregation for things such as Sunday School, mission outreach, and charitable work in the community, or do you want what is sometimes called the “Carver Model” or “policy governance”, where the staff makes most of the decisions and decides what is going to be done in furtherance of policies set by the Church Council and/or Voters’ Assembly? This decision about how deeply the lay members of the congregation are going to be involved in directing the activities of the congregation is probably the most fundamental and most important decision the congregation will make. The Southeastern District operates on the “policy governance” model, with policy being established by the District’s triennial convention and by its Board of Directors. This is a fine model for the District headquarters, where the work is done primarily by the staff, not by members of local congregations, but I personally have grave reservations about its suitability for congregations, where the laity are close at hand and do much of the work. There is a wealth of experience, expertise and desire to participate in most congregations. Pastors and commissioned church workers, while educated in theology, etc., frequently lack business, legal, administrative, leadership, and other areas of experience and expertise, which lay members of the congregation may have. Furthermore, many pastors and commissioned church workers do not like to do this type of work. Others cannot do it well. Therefore, it maybe better to have the laity deeply involved in congregational governance and operations. If a pastor is an excellent administrator, the laity will recognize his skill and give him great latitude to administer. But if a pastor does not do this type of work well or is disinclined to do it, the laity can pick up the work. On the other hand, under a “policy governance” model, the pastor and commissioned church workers must be able to administer, organize and lead. That doesn’t always happen. Finally, a congregation should ask itself whether it wants to call a pastor to do “pastoral” work or to be an administrator? Is the congregation wasting his time, his true talents and his calling by the Holy Spirit, if it expects him to devote a great deal of his time to organizing and administering, which the laity could do? That having been said, there are growing, vibrant congregations, which operate with the “policy model” of constitution and by-laws.

4. It is probably best to choose one principle draftsman to do the writing. Another alternative is a small drafting subcommittee of two or perhaps even three people, who will have to work together very closely and confer frequently as they write. Make certain that you select draftsmen who not only write well, but who are able to imagine how the congregation should operate and who will invent the organization and procedures necessary to make congregation operate smoothly and effectively.
5. Having only one or two draftsmen also helps produce consistency in style, format and the use of terms. Get someone who writes well. But have others on the

committee contribute ideas and read and re-read drafts of the documents to see if the draftsman is producing what the committee wants. Also, reading drafts may stimulate ideas or help to find needs or problems, which have been overlooked. Re-reading can help to find terms and provisions, which are inconsistent within a document or inconsistent between the constitution and the by-laws.

6. Allow yourselves enough time to set documents aside for a while and then come back and read them with fresh eyes. Errors and oversights pop out when you read the document with fresh eyes.
7. Resist the urge to try to write “like a lawyer”. By that I mean, do not try to make it sound like an early 20<sup>th</sup> Century will or deed. Short, simple sentences without any “lawyeresque” work best. Besides, lawyers don’t write like that anymore.
8. Select one or more good proof readers, who are NOT a part of the Constitution and By-Laws Committee. Have them read the documents after you think you have a finished product. Ask them to look for misspellings, improper punctuation, grammatical errors, inconsistency in the use of terms and capitalization of defined terms, inconsistency in formatting, etc. Does each sentence and paragraph make sense on the first reading or is it hard to understand without further explanation? If your proof readers haven’t read the documents before, they are much more likely to see the problems. People who have drafted the documents have a difficult time proof reading.
9. Make the final documents available to the entire congregation well before the congregational meeting to approve them. Ask for feedback, just in case this whole new group of proof readers finds errors, inconsistencies, and oversights or comes up with a good new idea. If that happens, convene the Committee immediately change the documents or agree on amendments to be adopted at the congregational meeting.
10. Be sure to tell the congregation that the documents need to be reviewed by the District’s Constitution and By-Laws Task Force and approved by the District’s Board of Directors before it becomes effective. To avoid disappointment or even anger, warn them that the constitution and by-laws, which they have voted to approve, may come back with required or suggested changes.

### **What is the purpose of having both a Constitution and By-Laws?**

For starters, the LCMS requires it. Section 2.2.1 of the Synod’s By-Laws state:

*“2.2.1 To apply for membership in the Synod a congregation shall have an approved constitution and bylaws.”*

The constitution is intended to be the basic law of congregational governance, which contains the really important matters, which should never be changed or which should not be changed without with great deliberation and discussion within the congregation. The by-laws are intended to contain the more voluminous details of how things are to be done. These details are more likely to need amending from time to time. For that reason, the constitution should be more difficult to amend than the by-laws.

The Lutheran Church – Missouri Synod itself has both a constitution and by-laws.

This is the same pattern followed in the United States by both the state and federal governments. All have a constitution, which has a very difficult amendment process. They also have statutory law, which can be changed every time Congress or the state legislature assembles.

I recommend that a congregation make it “difficult” to amend its constitution by requiring a “super majority” of those present and voting at a Voters’ Assembly. A two-thirds majority is common, but three quarters or even higher is fine, if that is what the congregation wants. The by-laws should be “easy” to amend by requiring only a “simple majority” of those present and voting (i.e., 50% plus 1 vote), so that changes can be made more easily.

A congregation may also want to establish a larger quorum (i.e., a larger number or percentage of the congregation’s Voting Members who must be present at a meeting) to make changes to the constitution than is required to make changes to the by-laws or to transact other business.

Because the constitution is the basic “law of the congregation” and is least subject to amendment, the constitution should include a section, which establishes the procedure for amending both the constitution and the by-laws and states the size of the majority vote needed to amend each. Putting amendment procedures in the constitution, which is difficult to amend, prevents an easy change to the “super majority” needed to amend the constitution and thereby protects the confessional standards of the congregation, which are contained in the constitution. If the amendment procedures were placed in the by-laws, the requirement for a super majority to amend the constitution could be destroyed with a simple majority vote to change the by-laws.

Some times we see the by-laws referred to as “the by-laws of the constitution”. This is inappropriate, because the by-laws are separate and distinct from the constitution, just as statutory laws in your state are separate from the state constitution. But, they are inter-related documents, so it is important to use the same terminology in both. For example, if you are going to call the voting members of the congregation, when gathered together to transact business, the “Voters’ Assembly”, then establish that term in the constitution and use it consistently in both documents. We frequently see documents, which are inconsistent and, for example, use “Voters’ Assembly”, “voter’s assembly”, “voters”, “congregational meeting”, “annual meeting”, etc. interchangeably. Even a worship

service is a “congregational meeting” of a sort, so this type of inconsistency can be confusing.

Because the constitution and the by-laws are separate and distinct documents, it is best make that clear by putting them into separate electronic documents. If you do put them in one electronic file for convenience, be certain to distinguish between them with separate conspicuous captions for each document. Do NOT use a continuous numbering sequence for both the sections of the constitution and the by-laws, because this gives members of the congregation the impression that they are one document, not two.

### **Defined Terms.**

Some terms need to be defined and used consistently throughout the constitution and by-laws, as just stated. It is good practice to capitalize the initial letter of each word in these “defined terms” each and every time they appear, so that the reader knows exactly what meaning is intended. Ordinarily, a term is defined the first time it is appears in the documents. This would normally be located in the constitution.

Some of the most common terms, which need to be treated as defined terms are:

- Congregation. This maybe does not require definition, because other provisions will define who the members of the congregation are, but it is well to capitalize the noun whenever it used to refer to this particular congregation.
- Voters’ Assembly. (or whatever you choose to call the voters of the congregation gathered together to transact business)
- Church Council. This is the elected body, which has the authority to make decisions in between meetings of the Voters’ Assembly.
- The types of membership in the congregation (for example, Baptized, Confirmed, & Voting)
- The titles of officers of the congregation (for example, President, Vice President, Secretary, Treasurer, Financial Secretary)
- The titles of pastors or other staff members, if they are mentioned in the constitution and by-laws (for example, Pastor, Senior Pastor, Assistant Pastor)
- The names of permanent Boards (or committees or whatever you choose to call them)

### **Headings and Captions**

The headings or captions of articles, sections and paragraphs should just help you find the location of topics when you are looking through documents. They should not be a part of the provision itself. Frequently one finds whole pieces of text or lists, which would make no sense, if one did not refer back to the heading of the article, section or paragraph to get a hint as to what the writer was writing about. This is poor draftsmanship. Every paragraph and sentence should make sense on its own.

## **Avoid Repetition**

Draftsmen should try to deal with the same subject matter only once in a single place within the constitution or the by-laws, because when dealing with the same matter two or more times in the same document, the provisions at different locations are frequently in conflict with each other. The same applies to repeating the same subject matter in the by-laws after dealing with it in the constitution. The wording is seldom the exactly the same and changes in substance creep in. Even if the wording is exactly the same, what good comes of repeating it? On the other hand, it is fine, for example, to list the officers of the congregation in the constitution, but then put the details of their election, duties, etc. in the by-laws. Just don't repeat in the by-laws what you already put into the constitution.

## **Revising Constitutions and By-Laws**

Amending constitutions and by-laws is very similar to drafting entirely new documents, except that it is usually easier. Unless they are doing a major overhaul on their constitution and by-laws, most congregations have very specific ideas about what they want to change. The rest of the document remains the same and that makes the task much easier.

When the SED's Constitution and By-Laws Task Force reviews amendments to constitutions and by-laws, which have been previously reviewed and approved by the District, it generally tries to review just the changes to documents. In order to do that, the sending congregation has to tell us what its amendments are. We need to see both the deletions and additions to the old documents. Surprisingly, many congregations send revised documents for approval without showing what has been changed. Sometimes they show the new language, but fail to show what was deleted. When we ask them to tell us what changes were made, some congregations can do so, but many cannot, because they did not keep track of their changes as they made them. Some have not even kept a copy of their old documents and therefore cannot do a side-by-side comparison to figure out exactly what changes were made. Yet other congregations don't bother to figure out what changes they made, but rather send us a copy of the old documents and essentially tell us to figure it out for ourselves.

One would think that a congregational revision committee would need a marked up copy of the old documents just to be able to explain the proposed changes to the members of the congregation any way, so why not send it to the SED too?

When the Task Force is not shown what revisions were made, we have no option, but to treat the whole document as if it were an entirely new document. When this happens, it creates more work for the Task Force, slows the process, and sometimes even seems to irritate the sending congregation, which is upset because the Task Force required or suggested changes to long standing provisions, which the congregation had not changed.

The best way to show what was amended is to send documents in which the deleted words are still shown, but they are stricken through. New wording is underlined. To make it even easier to spot amendments, it helps if both deletions and additions are shown in bold face print, while unchanged wording is left in normal print.

Some draftsmen like to use “track changes” or comparable tool on their computer. It is quicker for them, but after two or three people have worked on a document, it can be quite confusing. Also, all deletions are not shown. For that reason, we prefer the more laborious, but clearer practice of lining through deletions and underlining additions.

### **Keeping track of your amendments**

When the constitution and by-laws are adopted it is a good practice to type right on the documents the date on which they were adopted and the date on which they were approved by the Board of Directors of the Southeastern District. Each time amendments are made, add a line showing when they were amended by the congregation and approved by the SED. It is best if this record is located conspicuously at the beginning of the document, so that anyone picking up a paper copy or opening up a computer file can see immediately the date of the latest amendment and know whether or not he has in his possession the current document under which the congregation is operating. Without this sort of a record, it is easy to for a person such as the church secretary or the congregational President to pick up an obsolete copy and work from it and distribute it to others.

Here is an example of how it can be done right after the title and before the text of the document:

**By-Laws  
of  
Trinity Evangelical Lutheran Church  
Richmond, Virginia**

Adopted by the Voters’ Assembly May 16, 2004  
Amendments adopted December 4, 2005  
Amendments adopted December 10, 2006  
Amendments adopted May 31, 2009  
Amendments adopted September 23, 2012

Approved by District September 15, 2004  
Approved by District March 16, 2005  
Approved by District March 18, 2006  
Approved by District September 17, 2009  
Approved by District January 16, 2012

### **Should a Congregation be incorporated?**

There are a number of advantages to being incorporated. First, at least in the Commonwealth of Virginia, there is no need to have court appointed Trustees to hold title to the congregation’s property and to represent it in legal matters. Secondly,

incorporation provides an added layer of protection for individual officers and members from the debts of the congregation or any judgments against it. I recommend it.

When incorporating, a congregation will need the assistance of a lawyer. In Virginia “Articles of Incorporation” must be prepared and filed with the Virginia State Corporation Commission”. The name of the state agency will be different in different states, but the process is likely to be about the same.

Be careful about what your lawyer puts into the Articles of Incorporation. The Constitution and By-Laws Task Force recently reviewed Articles of Incorporation drawn up by a very competent attorney who had worked with the congregation on a number of things. The lawyer apparently had used some provisions, which she normally used for not-for-profit corporations, in which the corporation pledged to “. . . . *circumscribe its powers and activities as may be necessary to enable it to continue to qualify as a tax-exempt organization under Section 501(c)(3) of the [Internal Revenue] Code.*” This meant, that if the Internal Revenue Service, in compliance with legislation or a court order or a Presidential directive, should at some future time require churches to perform same sex marriages in order to retain tax exempt status, this LCMS congregation would “circumscribe its activities” by performing same sex marriages.

The LCMS has blanket tax-exempt status for all its member congregations at the present time. There is no need for a congregation to apply to the IRS for tax-exempt status and there is certainly no reason to pledge to the State Corporation Commission that it will do everything required by the IRS to retain tax-exempt status.

I would suggest that a congregation say as little as possible in its articles of incorporation. This congregation was somewhat different, however, because it intended to use its Articles of Incorporation in lieu of a Constitution. It therefore included in the Articles its confessional statement and many other things that one would not ordinarily include in Articles of Incorporation.

Is it possible to use Articles of Incorporation in lieu of a congregational Constitution?

The By-Laws of the Missouri Synod require all member congregations to have both a Constitution and By-Laws, which have been reviewed by a committee of the District to which the congregation belongs and approved by the District’s Board of Directors. See: By-Laws Section 2.2. Unfortunately, the LCMS Treasurer’s Handbook says in passing that Articles of Incorporation can substitute for a Constitution. Obviously, the By-Laws of the Synod trump the Treasurer’s Handbook, so all congregations need to have an approved set of Constitution and By-Laws. And, as shown in the situation described above, it can be dangerous to try to write complex Articles of Incorporation with the intent of using them in lieu of a Constitution. Furthermore, a congregation can amend its constitution by itself, without paying an attorney and paying additional filing fees to the State Corporation Commission.

## Dealing with “Obergefell v. Hodges”

On June 26, 2015, the United States Supreme Court handed down its decision in Obergefell v. Hodges, deciding by a slim 5 to 4 majority that the U. S. Constitution requires all States to allow persons of the same sex to be married under the state marriage laws. This presents a real challenge to Christian congregations, which believe that God ordained marriage to be between a man and a woman only.

There are powerful forces within the United States, which will attempt to compel congregations to perform same sex marriages. First and most powerful is the Federal government. Under President Obama or another president pushing a homosexual agenda, tax-exempt status could be taken away from church bodies, which refuse to do same sex marriage. The tax deductibility of contributions to those church bodies would almost certainly be lost at the same time.

At the state level, pastors are now authorized by state law to perform marriages, which are legally binding upon the bride and groom and upon those who deal with them. From that legal status as spouses flow retirement benefits, joint filing status on income tax returns, the right to make health and other decisions for a comatose or incompetent spouse, etc. etc.

This authorization to make legally binding marriages may well be taken away from Christian pastors either by state legislatures or by the courts.

Also at the state level, the real estate tax and state income tax exemptions may be taken away from congregations, which refuse to do same sex marriage.

Another threat is lawsuits by same sex couples seeking to be married in a church, which refuses to do same sex weddings. They may not be members of your congregation, they may not be Christians, and they may not particularly like your facilities, but they may ask to be married in your church by your pastor or by someone else, just so you will refuse and give them the grounds for filing a lawsuit against you. The object will be to compel your congregation to submit or to at least cause the congregation damage in the form of litigation costs and possibly money damages.

Given the prospect of these threats, it appears to me that the best defense a congregation will have is found in the 1<sup>st</sup> Amendment to the U. S. Constitution:

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

We will have to rely on the portion, which says that “Congress shall make no law . . . . prohibiting the free exercise thereof” as our defense. This means, of course, that if

Congress can make no such law, then neither presidential executive orders nor court decisions can either.

The question for congregations is “How can we best prepare ourselves to invoke the “free exercise” clause in our own defense?”

I have seen and heard suggestions that congregations should establish a written policy saying that their pastors will not perform same sex marriages and that the congregation’s facilities may not be used for such weddings, wedding receptions or other events. The LCMS “Information on Marriage Policies for Member Congregations”, referred to below, makes that suggestion and suggests that the written policy be placed in the congregation’s policy manual or some such place.

I disagree. I do not think that adequately prepares us for the onslaught, which is coming. To defend our congregations, we must demonstrate to the state and federal bureaucracies and courts, that our position on same sex marriage is a fundamental religious conviction, not a mere customary practice. A mere policy statement in a policy on weddings or facility use is not adequate. Rather, to invoke the “free exercise of religion” clause of the 1<sup>st</sup> Amendment, we need a clear statement of religious belief in our congregational Constitutions saying that for Biblical reasons, we believe marriage to be only between one man and one woman.

“Why put it in the Constitution?” some might ask. My answer is that we place our most important matters of faith and governance in our constitutions, including our confessional statements. This is a confessional statement and should logically be placed in the Article of the constitution where we recite our adherence to the Bible, the Book of Concord, the Augsburg Confession, etc. In addition, Americans are taught that a “Constitution” is the supreme law of the nation or a state. When they see that it is in our “Constitution”, they will better realize the importance we place upon it.

The LCMS has published some very helpful documents on its website. One of them is “A Plan for Ministry to Homosexuals and their Families” (The Task Force on Ministry to Homosexuals and their Families, The Lutheran Church – Missouri Synod, 1999). Even more helpful for the present problem is “Information on Marriage Policies for Member Congregations”, which can be found at:  
[http://lcmsed.org/diyFiles/Marriage\\_Policies\\_for\\_LCMS\\_Member\\_Congregations\\_131119.pdf](http://lcmsed.org/diyFiles/Marriage_Policies_for_LCMS_Member_Congregations_131119.pdf)

I have drafted a constitutional provision on marriage, which is located in Article III of the sample constitutional provisions below. I hope congregations of the District will find it to be a useful starting point.