

No. 26-

IN THE
Supreme Court of the United States

DONALD CHRISTIAN, CHRISTOPHER BANNWOLF
AND CONCORDIA UNIVERSITY TEXAS
INCORPORATED,

Petitioners,

v.

THE LUTHERAN CHURCH – MISSOURI SYNOD,
A MISSOURI NONPROFIT CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DANIEL R. RICHARDS
CLARK RICHARDS
ALBERT A. CARRION, JR.
RICHARDS RODRIGUEZ
& SKEITH, LLP
611 West 15th Street
Austin, TX 78701
(512) 476-0005

RENEA HICKS
Counsel of Record
LAW OFFICE OF
MAX RENE HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231
rhicks@renea-hicks.com

Counsel for Petitioners

QUESTION PRESENTED

Differences over church-controlled governance led a university in Texas to remove itself from the church's university system. The church's two highest ecclesiastical bodies rejected the university's action and decreed that the university and its campus had to re-submit to church control, but the university refused to acquiesce. The church's nonprofit corporate arm, a Missouri citizen, then filed a diversity suit against the university and its officials, requesting judicial confirmation of the ecclesiastical ruling on state law grounds. The district court dismissed for lack of jurisdiction, finding an absence of the complete diversity required by 28 U.S.C. § 1332(a)(1) because the church, though unnamed as a plaintiff, is the real party to the controversy and, like the university defendants, a Texas citizen.

A split Fifth Circuit reversed, finding there was diversity jurisdiction. The court reasoned that judicial deference is owed to the church's assertion that church doctrine prevents it from being an actual party in the case and said the church autonomy doctrine prevents district courts from using neutral principles to independently determine whether complete diversity exists.

The question presented is:

Whether the church autonomy doctrine preempts a federal court's duty to use neutral principles of law to determine diversity jurisdiction.

PARTIES TO THE PROCEEDING

Petitioners Donald Christian, Christopher Bannwolf, and Concordia University Texas Incorporated were appellees in the court of appeals and defendants in the district court.

John Does 1-12 also were named defendants in the district court (*as unknown members of the university's board of regents*), but had not been served during the proceedings below.

Respondent The Lutheran Church – Missouri Synod, a Missouri nonprofit corporation, was appellant in the court of appeals and plaintiff in the district court.

CORPORATE DISCLOSURE STATEMENT

Concordia University Texas Incorporated, a Texas nonprofit corporation, has no parent corporation, and no publicly held corporation owns 10% or more of the stock of Concordia University Texas Incorporated.

DIRECTLY RELATED PROCEEDINGS

Concordia University Texas v. The Lutheran Church – Missouri Synod, an Unincorporated Association of Lutheran Congregations, and The Lutheran Church – Missouri Synod, a Missouri Corporation, No. D-1-GN-24-000358, in the 353rd Judicial Dist., Travis County, Texas (*stayed*)

The Lutheran Church – Missouri Synod, an Unincorporated Association of Lutheran Congregations, and The Lutheran Church – Missouri Synod, a Missouri Corporation v. Concordia University Texas, No. 03-25-00342-CV, in the Court of Appeals, Third Dist. of Texas (*stayed state district court proceedings on July 16, 2025*)

The Lutheran Church – Missouri Synod, an Unincorporated Association of Lutheran Congregations, and The Lutheran Church – Missouri Synod, a Missouri Corporation v. Concordia University Texas, No. 1:24cv00176-DAE, in the United States District Court for the Western District of Texas, Austin Division (*remanded to 353rd Jud. Dist., Travis County, Texas, on Feb. 3, 2025*)

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	iii
DIRECTLY RELATED PROCEEDINGS.....	iv
TABLE OF CONTENTS.....	v
TABLE OF APPENDICES	vii
TABLE OF CITED AUTHORITIES	ix
PETITION FOR A WRIT OF CERTIORARI.....	1
INTRODUCTION.....	1
OPINIONS BELOW.....	3
JURISDICTION.....	3
CONSTITUTIONAL, STATUTORY, AND CHURCH GOVERNANCE AND DECISIONAL DOCUMENTS INVOLVED.....	4
STATEMENT.....	4
REASONS FOR GRANTING THE WRIT	15

Table of Contents

	<i>Page</i>
I. It Is Important That The Court Resolve The Clash Between A Federal Court's Obligation To Independently Determine Its Own Jurisdiction And The Church Autonomy Doctrine's Protection Of Matters Of Religious Doctrine From Judicial Intrusion	15
A. The Ruling Undermines The Federal Courts' Unflagging Obligation To Independently Examine Their Own Jurisdiction In Diversity Suits	17
B. The Church Autonomy Doctrine Does Not Override A Church's Obligation To Abide By Neutral Secular Laws Such As The Diversity Statute	18
II. The Court Should Resolve A Circuit Split On When Federal Courts May Apply Neutral Principles Of Law To Disputes Involving Ecclesiastical Institutions.....	21
III. This Case Is A Proper Vehicle For Addressing The Question Presented For Review.....	24
CONCLUSION	27

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JUNE 4, 2026.....	1a
APPENDIX B – ORDER ADOPTING REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE, FILED FEBRUARY 3, 2025	27a
APPENDIX C – REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE, FILED NOVEMBER 20, 2024	49a
APPENDIX D – ORDER OF THE TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN, FILED JULY 16, 2025	70a
APPENDIX E – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED JULY 20, 2026.....	72a
APPENDIX F – ORDER DENYING PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JULY 9, 2026	75a
APPENDIX G — FIRST AMENDED COMPLAINT, FILED FEBRUARY 29, 2024....	77a

Table of Appendices

	<i>Page</i>
EXHIBIT A (excerpts).....	128a
EXHIBIT B (excerpts).....	132a
EXHIBIT C (excerpts).....	140a
EXHIBIT D.....	143a
EXHIBIT Q.....	145a
APPENDIX H – EXCERPTS OF THE LUTHERAN CHURCH—MISSOURI SYNOD, BOARD OF DIRECTORS POLICY MANUAL, MAY 19, 2023	152a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES:	
<i>Aetna Life Ins. Co. of Hartford v. Haworth</i> , 300 U.S. 227 (1937).....	8
<i>Americold Realty Trust v. Conagra Foods, Inc.</i> , 577 U.S. 378 (2016).....	11
<i>Arbaugh v. Y&H</i> , 546 U.S. 500 (2006)	17
<i>Belya v. Kapral</i> , 2026 WL 2408740 (2d Cir. Aug. 18, 2026)	24
<i>Belya v. Kapral</i> , 45 F.4th 621 (2d Cir. 2022), <i>cert. denied</i> , 143 S.Ct. 2609 (2023)	24
<i>Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Comm’n</i> , 605 U.S. 238 (2025)	19
<i>City of Austin v. Reagan Nat’l Advtsg. of Austin, LLC</i> , 596 U.S. 61 (2022).....	26
<i>City of Indianapolis v. Chase Nat’l Bank of City of New York</i> , 314 U.S. 63 (1941)	15, 17, 18

Cited Authorities

	<i>Page</i>
<i>Crowder v. Southern Baptist Convention</i> , 828 F.2d 718 (11th Cir. 1987), <i>cert. denied</i> , 484 U.S. 1066 (1988).....	23
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982).....	10
<i>Employment Div’n, Dept. of Human Resources of Oregon v. Smith</i> , 494 U.S. 872 (1990).....	16
<i>Great Southern Fire Proof Hotel Co. v. Jones</i> , 177 U.S. 449 (1900).....	16, 17
<i>Hain Celestial Group, Inc. v. Palmquist</i> , 607 U.S. 421 (2026).....	17
<i>Hutchison v. Thomas</i> , 789 F.2d 392 (6th Cir.), <i>cert. denied</i> , 479 U.S. 885 (1986).....	23
<i>In re Southwestern Bell Tel. Co.</i> , 235 S.W.3d 619 (Tex. 2007)	8
<i>Jackson v. Ashton</i> , 8 Pet. (33 U.S.) 148 (1834)	15
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979).....	14, 15, 22, 23

Cited Authorities

	<i>Page</i>
<i>Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America,</i> 344 U.S. 94 (1952)	20
<i>Matal v. Tam,</i> 582 U.S. 218 (2017)	26
<i>McNutt v. Gen'l Motors Acceptance Corp. of Indiana,</i> 298 U.S. 178 (1936)	18
<i>McRaney v. North American Mission Bd. of the Southern Baptist Convention, Inc.,</i> 157 F.4th 627 (5th Cir. 2025), <i>cert. denied</i> , 146 S.Ct. 1674 (2026)	20, 23
<i>Md. and Va. Eldership of the Churches of God v. Church of God at Sharpsburg Church, Inc.,</i> 396 U.S. 367 (1970)	22
<i>Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning,</i> 578 U.S. 374 (2016)	17
<i>Mississippi ex rel. Hood v. AU Optronics, Corp.,</i> 571 U.S. 161 (2014)	18
<i>Navarro Savings Ass'n v. Lee,</i> 446 U.S. 458 (1980)	18

Cited Authorities

	<i>Page</i>
<i>O’Connell v. U.S. Conference of Catholic Bishops,</i> 134 F.4th 1243 (D.C. Cir. 2025), <i>cert. denied</i> , 146 S.Ct. 2679 (2026)	24
<i>Our Lady of Guadalupe School v.</i> <i>Morrissey-Berru,</i> 591 U.S. 732 (2020)	20
<i>Owen Equip. & Erection Co. v. Kroger,</i> 437 U.S. 365 (1978)	17
<i>Presbyterian Church in the United States</i> <i>v. Mary Elizabeth Blue Hull Memorial</i> <i>Presbyterian Church,</i> 393 U.S. 440 (1969)	22, 23
<i>Puri v. Khalsa,</i> 844 F.3d 1152 (9th Cir. 2017)	24
<i>Roman Catholic Archdiocese of San Juan v.</i> <i>Feliciano,</i> 589 U.S. 57 (2020)	22
<i>Spector Motor Svc. v. McLaughlin,</i> 323 U.S. 101 (1944)	26
<i>Strawbridge v. Curtiss,</i> 7 U.S. (3 Cranch) 267 (1806)	17
<i>Watson v. Jones,</i> 80 U.S. (13 Wall.) 679 (1872)	3, 19

Cited Authorities

Page

STATUTES AND OTHER AUTHORITIES:

U.S. Const. amend. I	1, 4, 20, 22, 24, 26
28 U.S.C. § 1254(1).	3
28 U.S.C. § 1332.	8
28 U.S.C. § 1332(a)(1)	4, 17, 20
Sup. Ct. Rule 13.1	3
Sup. Ct. Rule 13.3	3
Sup. Ct. Rule 14.1(a)	25
L. Weinberger, <i>The Limits of Church Autonomy</i> , 98 Notre Dame L. Rev. 1253 (2023).	23

PETITION FOR A WRIT OF CERTIORARI

Donald Christian, Christopher Bannwolf, and Concordia University Texas Incorporated (collectively, “Concordia” or the “university”) respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Grounded in the First Amendment’s Religion Clauses, the church autonomy doctrine protects religious institutions from civil judicial interference on matters of faith, doctrine, and internal ecclesiastical governance. It does not, however, authorize the converse. Nothing in the doctrine permits religious institutions and their doctrines to interfere with core judicial functions such as determination of subject matter jurisdiction. The Fifth Circuit’s ruling flips these principles on their head, misapplying the first principle to force erroneous application of the latter principle.

It happened this way. The church determined through its ecclesiastical forums that the university, which had been part of its college system, was not allowed to govern itself, but instead had to resubmit to direct church governance and return control of the university campus to the church. The university did not agree and refused to accept the church’s new appointees to the university board of regents. The church enlisted its corporate arm to sue the university, with the corporate arm, but not the church, as the plaintiff.

The lawsuit, though, was on behalf of the church, and it sought to enforce the church’s claimed property rights

in the campus and its rights of ecclesiastical governance. Stated another way, the lawsuit asked a civil court to enforce purely ecclesiastical rulings based on church doctrine and internal rules of church governance using Texas's civil laws as the tool.

Instead of suing in state court, the suit was filed in federal court with jurisdiction based on diversity of citizenship. All the university defendants were Texas citizens. So was the church. But the church's corporate arm was not; it was incorporated in Missouri and, thus, a Missouri citizen. The only way into federal court was through complete diversity, and the only way to complete diversity was to have the corporate arm stand in for the church as a party.

The Fifth Circuit ruling as to which review is sought validated the strategy behind the church's forum choice. It required the federal district court to step aside from the normal course of jurisdictional inquiry in diversity cases and instead obey the church's insistence that its religious doctrines prohibit church participation as a party in civil litigation to enforce the church's ecclesiastical rulings.

The appeals court ruling reached this result by confining the application of neutral principles in intra-ecclesiastical legal disputes to the one area this Court has expressly applied it so far: church property disputes. As a consequence, under the rubric of a church autonomy analysis stripped of neutral principles considerations, a federal court has been compelled to accept the instruction of internal church doctrine as to subject matter jurisdiction in order to civilly adjudicate on the merits what the church insists is a matter of church doctrine

and internal ecclesiastical governance. *But see Watson v. Jones*, 80 U.S. (13 Wall.) 679, 730 (1872) (“[i]t belongs not to the civil power to enter into or review the proceedings of a spiritual court”).

This is a topsy-turvy version of church autonomy, enabled on the front end by the artificial confinement of the neutral principles approach strictly to disputes involving only church property. The federal circuits are split on whether neutral principles are thus confined, and the Court has never spoken directly to the question. This case presents the opportunity to resolve the circuit conflict and answer the question—and in the process reaffirm the independence of federal courts in determining for themselves their subject matter jurisdiction.

OPINIONS BELOW

The opinion of the court of appeals, Pet.App. 1a-26a, is reported at 178 F.4th 193 (5th Cir. 2026). The opinion of the district court, Pet.App. 27a-48a, is reported at 2025 WL 369979 (W.D. Tex. Feb. 3, 2025). The report and recommendation of the magistrate judge, Pet.App. 49a-69a, is reported at 2024 WL 5362162 (Nov. 20, 2024).

JURISDICTION

The court of appeals opinion issued on June 4, 2026. Pet.App. 1a. The court of appeals denied petitioners’ timely filed motion for rehearing on July 9, 2026. Pet. App. 75a-76a. The judgment issued seven days later, on July 16, 2026. Under Sup. Ct. Rules 13.1 and 13.3, the deadline for filing this petition is October 7, 2026. The Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL, STATUTORY, AND
CHURCH GOVERNANCE AND DECISIONAL
DOCUMENTS INVOLVED**

The First Amendment (U.S. Const. amend. I) provides in relevant part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]

28 U.S.C. § 1332(a)(1) provides in relevant part:

The district courts shall have original jurisdiction of all civil actions where the matter in controversy ... is between ... citizens of different States[.]

Pertinent provisions of internal governance and decisional documents of the Lutheran Church – Missouri Synod and its corporate arm are reproduced in the Appendix at Pet.App. 128a-154a.

STATEMENT

1. The Lutheran Church–Missouri Synod (“the Synod” or “the Church”) is an “association of self-governing Lutheran congregations and all its agencies” with nearly 6,000 congregations and 2 million baptized members. Pet.App. 80a (¶9); 128a (Const. Art. I); Pet. App. 134a (Bylaw 1.2.1(v)).¹ It disclaims status as a civil law entity, but also “acknowledge[s] its responsibility to

1. Appendix citations to “Const.” and “Bylaw” are to the Synod’s constitution and bylaws. The recited facts are from the first amended complaint, which had not been answered when the district court dismissed the lawsuit for lack of diversity jurisdiction.

be subject to civil authority.” Pet.App. 133a-134a (Bylaws 1.2.1(f)(2) & v)).

Membership in the Synod is held by congregations and ministers. Pet.App. 129a (Const. Art. V preamble). The Synod has a Texas district with Texas congregational and pastoral members. Pet.App. 139a (Bylaw 3.12.3.2); 87a (¶22).

To further its religious objectives, the Church has established a Synod-wide system of higher education called the Concordia University System. Pet.App. 87a (¶21); 132a (Bylaw 1.1.1(a); 138a (Bylaw 3.10.F)). The system is currently composed of six universities that the Synod treats as “agencies” of the Church. Pet.App. 85a (¶19); 86a (¶21); 132a (Bylaw 1.2.1(a)((1)) (universities are agencies); 134a (Bylaw 1.2.1(v)) (“Synod” includes the universities). The Synod through ecclesiastical declaration claims ownership of the properties of these universities. Pet.App. 143a (Synod in Convention Res. No. 4-04) (“Synod owns the properties of all agencies of the Synod”).

Prior to its removal, Concordia was one of the seven remaining universities in the Concordia University System. The school was formed a century ago in Austin, Texas, with a centrally located campus that moved to a new Austin location about twenty years ago. Pet.App. 87a-89a (¶¶ 22-25); 114a (¶60). The university has gone through several name changes in the intervening years and is now chartered as a nonprofit corporation in Texas and officially known as Concordia University Texas. *Id.* Concordia and its officials who were sued and served below are Texas residents. Pet.App. 78a (¶¶ 2-4).²

2. The defendant “John Does 1-12,” Pet.App. 78a (¶5), had not been named or served either when the district court dismissed

By the spring of 2022, strains in the governance relationship between Concordia and the Church were rising to the surface. Pet.App. 92a (¶29). By fall, the deterioration in relations was brought to a head when Concordia’s board of regents modified its corporate governance documents and separated the university from shared Synod governance. Pet.App. 92a (¶30). Concordia remained aligned with the Synod and continued to subscribe to the confessions of the Synod as outlined in the Church’s constitution, but would no longer be subject to the Church’s authority or governance. Pet.App. 95a (¶32); 96a (¶33). Instead of the Synod, Concordia’s board henceforth would choose the university’s board members (who still had to be members of the Church), and the university would be governed by its bylaws, not the Synod’s. Pet. App. 96a (¶34); 100a (¶38).

The Church claimed that Concordia’s actions triggered the Church’s conflict resolution procedures, which the Church describes as the “exclusive and final remedy” for such disputes. Pet.App. 134a (Bylaw 1.10.1.1). Excepted from this “exclusive remedy” proviso, however, are disputes concerning property rights unless such disputes involve “theological, doctrinal or ecclesiastical issues.” Pet.App. 135a (Bylaw 1.10.3(a)).

the case or when the appeals court decision issued. After the Fifth Circuit remand, the district court, on the parties’ agreed joint motion, stayed the proceedings pending disposition of this petition, but allowed the John Doe defendants to be named and served. Pet.App. 72a-74a. The plaintiff has since filed a second amended complaint, naming the twelve John Doe defendants and averring that they are all Texas citizens, with summonses issuing soon afterwards. *See* No. 1:23cv1042-DE, Doc. 68 (¶¶ 5-12) (W.D. Tex. Sept. 11, 2026); Doc. 70.

The Church presented Concordia's actions to the Church's Commission on Constitutional Matters ("CCM"), the ecclesiastical body created by the Synod to interpret Church governance documents and decide whether Church agencies such as Concordia are acting consistently with them. Pet.App. 79a (¶8). In the spring of 2023, the Church's CCM ruled that Concordia's actions separating its governance from ecclesiastical control were "without authority, and null and void." Pet.App. 107a (¶46). A few months later, the Synod in convention—"the highest governance authority in the church body," Pet.App. 80a (¶8)—affirmed the CCM's ruling and directed Concordia to "submit to the governance of the Synod." Pet.App. 108a (¶47); 150a-151a. The Synod in convention elected a slate of regents to the Concordia board that Concordia refused to seat, declining to accede to the Synod's demands. Pet. App. 101a (¶37); 108a (¶47).

Concordia then was sued in federal district court—but not by the Synod. The named plaintiff was the Church's nonprofit corporate arm, a Missouri citizen, defined as "Corporate Synod." Pet.App. 77a-78a (preamble & ¶1); 133a (Bylaw 1.2.1(f)).³ The Church created the Corporate Synod many years ago to carry out property and other civil law functions for the Church. Pet.App. 83a (¶15).

Asserting rights over Concordia's property arising from the university's superseded governance documents, the Corporate Synod sued Concordia "on behalf of the

3. "LCMS," the convention used below to denote the Corporate Synod, is confusing because the Synod and Corporate Synod share the name "Lutheran Church – Missouri Synod"—"LCMS" for short. For clarity, this petition refers to the Church's corporate arm as "Corporate Synod."

Synod.” It accused Concordia of “attempting to walk away with a historic property of the Synod” and requested “a judicial declaration confirming as a matter of law the Synod’s decision[.]” Pet.App. 80a (¶8); Pet.App. 108a (¶49); 115a (¶62 n.14). The suit presented only Texas state law claims and rested jurisdiction on diversity of citizenship under 28 U.S.C. § 1332. Pet.App. 78a (¶6); 111a-124a (¶¶ 53-81).⁴

Concordia’s motion to dismiss the lawsuit for lack of subject-matter jurisdiction and failure to join indispensable parties was referred to a magistrate-judge. Pet.App. 50a. The district court subsequently adopted the magistrate-judge’s report and recommendation in full. Pet.App. 48a.⁵

4. The claims were breach of contract (alternatively, promissory estoppel), breach of fiduciary duty, violation of the Texas Business Organizations Code, and tortious interference with contract. The plaintiff also asserted claims under the Texas and federal declaratory judgment statutes, Pet.App. 108a-109a (¶50), but neither statute provides its own cause of action. *See Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 240 (1937) (federal); *In re Southwestern Bell Tel. Co.*, 235 S.W.3d 619, 626 (Tex. 2007) (state). Monetary damages were requested, but only as an alternative to declaratory relief. Pet.App. 125a (¶85).

5. The same opinions dispose of a consolidated case—the “2024 case”—that is *not* part of this petition. It is a closely related action removed from state court. *Supra* at iv. A few months after the Corporate Synod sued Concordia in federal court, Concordia sued both the Synod and the Corporate Synod in Texas state court, essentially presenting mirror-image claims and seeking mirror-image relief. Pet.App. 53a. The Synod and Corporate Synod removed the case to federal court, where it was consolidated with this case. Pet.App. 28a n.1; 54a. Concordia moved to remand the removed action to state court, and the same order that dismissed this case

2. The magistrate-judge’s analysis begins by addressing Concordia’s argument that the Synod, not Corporate Synod, is the real party in interest and real party in controversy. Pet.App. 55a-58a. It finds that “the Synod holds the substantive rights at issue” in the case and rejects the Corporate Synod’s argument that the Synod is not a legal entity separate from the Corporate Synod. Pet.App. 56a. Rather, the rights that the Corporate Synod seeks to restore by the declaratory judgment action are the *Synod’s* rights; Corporate Synod could not show that it possesses those rights “independent of the Synod.” Pet. App. 56a-57a. To reach this conclusion, the magistrate-judge turned to the Church’s own bylaws, specifically Bylaw 1.2.1(r)’s definition of “Property of the Synod” and Bylaw 3.10.6.4(i). Pet.App. 57a.⁶ The “property of the Synod” includes all real property assets “titled or held in the name of corporate Synod ... or an agency of the Synod,” and Bylaw 3.10.6.4(i) vests ownership of university property in the Synod. Pet.App. 133a, 139a. The duties allegedly owed under the state law claims were owed to the Synod, not Corporate Synod. Pet. App. 57a-58a.

The district court adopted the magistrate-judge’s report and recommendation, but supplemented its analysis. Turning, as the magistrate-judge had, to the Church’s bylaws, the court found direct support for the

granted the remand motion. Pet.App. 48a. The remand order was not appealed. Pet.App. 6a n.2. The state court proceedings are stayed pending further order, Pet.App. 70a-71a, and the parties have agreed that the stay remains in effect through disposition of this petition. See <https://tinyurl.com/4762xphd> (status report of July 20, 2026).

6. The bylaws cited in the text correspond to the district court’s docket citations.

conclusion that the Corporate Synod and the Synod “are not one and the same.” Pet.App. 36a. Bylaw 1.2.1(f) specifically defines “Corporate Synod,” while a different provision, Bylaw 1.2.1(v), defines “Synod.” Pet.App. 133a-134a. The Synod’s existence as a separate entity from Corporate Synod led the court to conclude that the Synod was an unincorporated association under Texas law. Pet.App. 32a-36a.⁷

Next, the court rejected Corporate Synod’s argument that this conclusion violates the church autonomy doctrine. The argument was that a court cannot treat the Synod as a civil entity because the Church’s constitution and bylaws say it is not one. Pet.App. 37a; *Compare* Pet.App. 133a (Bylaw 1.1.1(f)(2)) (Synod acknowledges “responsibility to be subject to civil authority”). The court surveyed case authority on how neutral principles should be applied in such a situation and found no clear authority requiring courts “to defer to a church’s unilateral decision that it is not a civil entity.” Pet.App.38a-39a. It concluded that its jurisdictional inquiry would not disrupt the Church’s internal governance. Pet.App. 40a. Here, said the court, Corporate Synod had brought to the court a dispute about the Synod’s interest in Concordia’s new campus property—a “pure civil-law controversy.” Pet. App. 41a. Resolving that dispute did not require any inquiry into religious doctrine, so the church autonomy

7. The conclusion that the Church is an unincorporated entity made it unnecessary for the district court to consult Missouri corporate law to address the internal affairs doctrine issue. Pet. App. 36a-37a. The doctrine only deals with regulation of the internal affairs of a *corporation* as between states. *See, e.g., Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982). Regulation of unincorporated entities such as the Synod is not within the doctrine’s ambit.

doctrine was not a bar to deciding that the Church was an unincorporated association. *Id.* Corporate Synod urged the court to accept as binding authority the *post hoc* declarations of a Church official, Reverend Sias.⁸ The court declined, because the policy manual of the Synod’s board of directors recognized that the Synod itself had the capacity to be sued. Pet.App. 41a-42a. Once again using neutral principles, the court consulted the Church’s governance documents and concluded that the Synod “holds the substantive rights” in the lawsuit. Pet. App. 44a-45a. Because the Synod was an unincorporated association, and thus a citizen of every state in which its members reside, it was a Texas citizen. Pet.App. 46a.⁹ Because the Synod is a Texas citizen, and the Synod was found to be the real party to the controversy, complete diversity was destroyed, and the case was dismissed for lack of jurisdiction. Pet.App. 48a.

3. The Fifth Circuit found that diversity jurisdiction exists and reversed and remanded the case for further proceedings. Pet.App. 16a. The panel opinion was divided, with a lead opinion by Judge Jones and a concurring opinion by Chief Judge Elrod. Pet.App. 1a-16a; 17a-21a. Judge Graves dissented. Pet.App. 22a-26a.

a. The lead opinion starts by addressing the district court’s determination that the Synod had capacity

8. Reverend Sias’s views were not part of Corporate Synod’s live complaint. Corporate Synod did not submit them to the district court until after Concordia had moved to dismiss for lack of jurisdiction.

9. See Pet.App. 63a (citing *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016)).

to be sued—and by logical extension, to file a declaratory judgment action. Pet.App. 10a. Accusing the district court of “cherry-pick[ing]” among the Church’s internal governance documents, the opinion concludes that the church autonomy doctrine prevented the district court from consulting those documents at all in its jurisdictional analysis. Instead, the district court had to forego its own secular reading of the Church documents and instead defer to “the Church’s description of its polity, rooted in doctrine.” *Id.* The lower court’s secular reading of the ecclesiastical documents essentially “denied the Church’s self-identity.” Pet.App. 11a.

The opinion concedes that use of “neutral principles” of law has a place in church disputes: “Church autonomy is not violated when a court can apply” those neutral principles to disputes involving church property. Pet.App. 12a. But it confines this use of neutral principles to the real property context, finding it inapplicable in this case because—at least, for now—the dispute is “principally” about Church hierarchy. Pet.App. 12a-13a.¹⁰ The opinion finds that the district court could not make an “independent interpretation” of the Church’s governance documents. Pet.App. 13a. Then, the court declines to address Concordia’s argument that, by suing on diversity grounds to ask for judicial confirmation of an ecclesiastical ruling, the Church had waived any protections afforded it by the church autonomy defense, calling it an “unsettled issue” that did not need to be addressed. Pet.App. 14a. The opinion’s unavoidable conclusion, therefore, is that the Synod does not have capacity to sue and be sued.

10. The court concedes that a property dispute is “secondarily” present, but says the fact that the property issue will have to be addressed “down the line” does not render the neutral principles exception applicable to “the entire case.” Pet.App. 13a n.6.

The opinion next finds that the Corporate Synod is a real party to the controversy because it is more than a “mere nominal party.” Pet.App. 14a-16a. This conclusion is reached by judicially deferring to the Church’s own description of its polity, buttressed by a judicial interpretation of Church governance documents such as the bylaws and its policy manual. Pet.App. 15a. Because the Corporate Synod has a legal stake in the dispute “as the secular reflection of the Synod,” and given that complete diversity exists if the Church is not the real party to the controversy but Corporate Synod is, the lead opinion concludes that the district court erred in dismissing for lack of diversity jurisdiction. Pet.App. 16a.¹¹

b. Chief Judge Elrod concurred, agreeing with much of the lead opinion’s reasoning. Pet.App. 17a. In particular, Chief Judge Elrod agrees with Judge Jones’s opinion that the church autonomy doctrine prevented the district court from substituting its own inquiry for the Synod’s proffered ecclesiastical interpretation of its constitution, bylaws, and policies. Pet.App. 17a n.1. The concurrence goes on to say that the church autonomy doctrine requires a federal court to credit “the Church’s own conception of its nature and structure.” *Id.* Chief Judge Elrod, however, stops short of fully embracing the lead opinion’s application of the church autonomy doctrine because “chart[ing] the farthest limits of the church autonomy doctrine” was unnecessary *Id.* The concurrence instead rests its conclusion on an alternative theory, not endorsed by the lead opinion, that Corporate Synod is a

11. The opinion’s statement that the Corporate Synod was “forced” to seek judicial restoration of control over Concordia, Pet. App. 2a, begs the question of *where*. It did not have to be filed in federal court, because the Synod and Corporate Synod were free to resolve the dispute in state court. Pet.App. 28a.

real party to the controversy—thus establishing complete diversity—based on a holistic reading of the Church governance documents and their “general intent.” The case, says the concurrence, “can be decided by relying upon the Church’s corporate documents and declarations.” Pet.App. 17a. It concludes that the Synod does not own any property, that the Corporate Synod handles the Synod’s civil matters, and, therefore, that complete diversity exists because the Corporate Synod, not the Synod, is the real party to the controversy. Pet.App. 19a-21a.

c. Judge Graves dissented and would affirm the district court’s finding that “the Synod holds the substantive rights at issue here, and is therefore an indispensable party, defeating diversity jurisdiction.” Pet.App. 26a. The dissent cites *Jones v. Wolf*, 443 U.S. 595 (1979), for its application of neutral principles in lieu of the church autonomy doctrine and says that “a neutral principles application is equally appropriate” in this case. Pet.App. 22a. The reason, explains Judge Graves, is that the question before the court—whether the Synod is a real party in interest—is not a religious issue. *Id.* Rather, the question is one going to diversity jurisdiction, and “[j]urisdictional questions are exactly the kind of questions courts *must* answer.” *Id.* (emphasis added). It therefore was appropriate to rely on the Church’s governance documents to decide the issue, noting that the concurrence had done the same in its alternative analysis. Pet.App. 22a-23a.

It was the Church, not Corporate Synod, that adopted the ecclesiastical judgment of CCM and that chose the regents to replace the ones Concordia had chosen. Pet. App. 23a. These ecclesiastical rulings, the dissent points

out, were precisely what the Corporate Synod was seeking to have the federal court “confirm,” thus demonstrating that “the Synod holds the substantive rights at issue.” *Id.* Just as “compulsory deference to religious authority” is not required in church property disputes—again citing *Jones v. Wolf*—it should not be required in deciding the diversity jurisdiction question before the Fifth Circuit. *Id.* Determining the proper party here “is not a matter of doctrinal controversy.” Pet.App. 24a. Acknowledging no case authority squarely addresses the precise issue, the dissent relies on the Court’s stated principle that religious institutions do not have a general immunity from secular law and concludes that the Church does not “get[] to decide if it can or cannot be a party” to the lawsuit. *Id.* That is a court’s job.

REASONS FOR GRANTING THE WRIT

I. It Is Important That The Court Resolve The Clash Between A Federal Court’s Obligation To Independently Determine Its Own Jurisdiction And The Church Autonomy Doctrine’s Protection Of Matters Of Religious Doctrine From Judicial Intrusion

The Fifth Circuit ruling stretches the church autonomy doctrine past its “farthest limits” and displaces the power and duty of federal courts to determine their own jurisdiction—a power and duty this Court has staunchly guarded through its history, diversity jurisdiction cases included. *See, e.g., City of Indianapolis v. Chase Nat’l Bank of City of New York*, 314 U.S. 63, 69 (1941) (J. Frankfurter); *Jackson v. Ashton*, 8 Pet. (33 U.S.) 148 (1834) (C.J. Marshall).

Chief Judge Elrod’s concurrence recognizes the dilemma created by the lead opinion’s application of its expansive version of the church autonomy doctrine. The concurrence subscribes to Judge Jones’s articulation of the legal concept, but abjures joining the formal holding. It endorsed the opinion’s statement that the outer limits of the doctrine means that a federal court must bow to a church’s ecclesiastical interpretation of its constitution and bylaws. But at the same time, it was unable to join the full-throated holding that this formulation of the doctrine necessitates a federal court’s abandonment of its duty to make its own jurisdictional determination.¹²

Church doctrine cannot compel a federal court to passively accept jurisdiction over a legal dispute simply because—as this one does—it originates in an intra-ecclesiastical context. Judicial recognition of such a rule would be—and is here—antithetical to the most fundamental tenets of federal court jurisdiction. Religious beliefs do not excuse believers from being bound by otherwise valid laws. *Employment Div’n, Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-79 (1990). The diversity statute is undoubtedly an otherwise valid law.

A foundational legal principle, “inflexible and without exception,” is that a federal court’s “first and fundamental” duty is to make its own determination of jurisdiction. *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S.

12. Concordia disagrees with the concurrence’s suggested alternative solution, but that issue is not before the Court because it has not been decided by the Fifth Circuit. The appeals court may consider the alternative in the event of remand, but only in light of the Court’s determination of the Church’s status.

449, 453 (1900) (applying principle in diversity case). It is an “independent” obligation. *Arbaugh v. Y&H*, 546 U.S. 500, 514 (2006). Compelled deference to a church’s *post hoc*, self-described authority to sue and be sued surrenders judicial independence to ecclesiastical control.

Ceding the power and duty of a federal court to determine its own jurisdiction is a particularly egregious legal error in the context of this case for two reasons. First, it is inconsistent with the longstanding rules for how diversity of citizenship is supposed to be determined. Second, it inverts the principles underpinning the church autonomy doctrine.

A. The Ruling Undermines The Federal Courts’ Unflagging Obligation To Independently Examine Their Own Jurisdiction In Diversity Suits

For more than two centuries, the diversity of citizenship requirement presently in § 1332(a)(1) has required complete diversity of citizenship. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). No plaintiff may share state citizenship with any defendant. *Hain Celestial Group, Inc. v. Palmquist*, 607 U.S. 421, 435 (2026).

The statute is to be strictly construed, *see, e.g., Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 367 (1978), *City of Indianapolis*, 314 U.S. at 76, in order to keep state law actions in state court “to help maintain the constitutional balance between state and federal judiciaries.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 578 U.S. 374, 389-90 (2016). As the party asserting diversity jurisdiction, the Corporate Synod

bore the burden of overcoming the presumption against such jurisdiction and had to affirmatively establish the presence of diversity. *See, e.g., McNutt v. Gen'l Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 182-83 (1936).

But simply averring, as Corporate Synod did here, the facts said to support a claim of diversity is insufficient. A plaintiff does not get to unilaterally determine the appropriate plaintiff for diversity purposes. *City of Indianapolis*, 314 U.S. at 69. That determination—that duty—falls to the federal courts, which must “look[] beyond the pleadings” to ensure that a plaintiff is not improperly creating diversity jurisdiction. *Id.*; *Mississippi ex rel. Hood v. AU Optronics, Corp.*, 571 U.S. 161, 174 (2014). Citizenship, and hence diversity jurisdiction, requires a court to disregard nominal or formal parties and, instead, determine diversity based on the real parties to the controversy. *Navarro Savings Ass’n v. Lee*, 446 U.S. 458, 461 (1980).

B. The Church Autonomy Doctrine Does Not Override A Church’s Obligation To Abide By Neutral Secular Laws Such As The Diversity Statute

Taken together, the lead and concurring opinions of the appeals court subvert these well-established principles. Instead of determining whether the Church or Corporate Synod was the real party to the controversy by consulting the Church’s own documents from a secular perspective, the federal court had to set aside its independent duty and defer instead to “the Church’s description of its polity, rooted in doctrine.” Pet.App. 10a. The determinative description for purposes of the diversity inquiry became

Reverend Sias’s ecclesiastical gloss on the underlying documents, Pet.App. 17a n.1, not the federal court’s independent examination of them, which was placed off limits. Pet.App. 13a.

Using this construct, the appeals court held that the Synod could not be the real party to the controversy because it—that is, the Church—said it lacked the capacity to sue and that Corporate Synod was the real party to the controversy because the Church had told the district court that the Corporate Synod was more than a nominal party. This approach is highly debatable. *See Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Comm’n*, 605 U.S. 238, 259 (2025) (J. Thomas, concurring) (“church autonomy doctrine ... forbids treating religious institutions as nothing more than the corporate entities that they form”).¹³

According to the Fifth Circuit ruling, the Church could, by making irrebuttable ecclesiastical representations the district court has no choice but to accept, legitimately usurp the district court’s independence to determine its jurisdiction. It is a striking and extreme departure from this Court’s rules for determining the existence of diversity jurisdiction, with troubling implications that diminish the role of the federal judiciary in future church disputes.

13. A few paragraphs later, Justice Thomas’s concurrence explains that the seminal church autonomy case, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), recognized that the corporate body “was not itself the church,” but only a nominal title-holder and custodian of church property and that the church’s constitution and bylaws controlled the dispute’s outcome. *Catholic Charities*, 605 U.S. at 261.

The departure from established jurisdictional principles is even starker when the justification for the departure—the church autonomy doctrine¹⁴—is considered. The doctrine is grounded in the First Amendment’s Religion Clauses. *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). Broadly speaking, it prevents courts from deciding matters of religious faith and doctrine, including closely linked issues of internal church governance. *Id.* at 736, citing *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952). The doctrine’s reach, however, is limited. It does not provide churches and similar religious institutions a “general immunity from secular laws.” *Morrissey-Berru*, 591 U.S. at 746.

Here, though, the Church has been freed from the requirements all other federal litigants must satisfy to affirmatively establish complete diversity under a secular law, § 1332(a)(1). The rationale is that federal district courts must accede to a Church official’s declaration that under church doctrine the Church cannot be a party in civil courts. The official’s declaration made further inquiry off limits to the court. The result is that, under the guise of the church autonomy doctrine, the district court is being compelled by religious doctrine to decide that it has jurisdiction to adjudicate whether internal ecclesiastical rulings must be judicially affirmed. This result is the opposite of any prior judicial explication of

14. The doctrine also goes by other names, including ecclesiastical abstention and the ministerial exception. *See McRaney v. North American Mission Bd. of the Southern Baptist Convention, Inc.*, 157 F.4th 627, 635 n.2, 651-52 (5th Cir. 2025), *cert. denied*, 146 S.Ct. 1674 (2026).

what is required by the church autonomy doctrine. Instead of having to stay out of internal church affairs, the federal district court here is being compelled to use Texas law to intrude into those affairs.

This unfortunate detour from the main road mapped out by the church autonomy doctrine is the result of a misreading of this Court's precedents on a court's authority to use neutral principles of law to determine disputes arising in the ecclesiastical context. The lead opinion below held that judicial application of neutral principles of law in deciding intra-ecclesiastical disputes is confined to only one area of such disputes: disputes over church property. Pet.App. 12a-13a. Because it found that at this point this case is not a church property dispute, but rather one over church governance, use of neutral principles of law would be improper and instead the district court was bound to succumb to what the Church said its internal polity arrangements mean. And the Church said that only its corporate arm could be a plaintiff in this litigation, thus forcing diversity jurisdiction on the district court. It is important to maintenance of the independence of federal courts that this application of the church autonomy doctrine, which is such a major departure from a long line of this Court's precedents, be addressed by the Court.

II. The Court Should Resolve A Circuit Split On When Federal Courts May Apply Neutral Principles Of Law To Disputes Involving Ecclesiastical Institutions

The circuit courts are in conflict on whether the church autonomy doctrine allows use of neutral principles of law to decide intra-ecclesiastical disputes outside the limited sphere of church property disputes.

Judicial use of neutral principles of law to adjudicate church property disputes is consistent with the First Amendment’s church autonomy doctrine. In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), the Court held that courts do not impinge on the First Amendment values protected by the church autonomy doctrine merely by adjudicating disputes involving church property, as long as they use neutral principles of law in doing so. *Id.* at 449; *see also Md. and Va. Eldership of the Churches of God v. Church of God at Sharpsburg Church, Inc.*, 396 U.S. 367 (1970) (*per curiam*) (applying neutral principles in church property dispute). Subsequently, in *Jones v. Wolf*, 443 U.S. 595 (1979), the Court again held that use of neutral principles of law to adjudicate a church property dispute did not impinge on the constitutional values protected by the church autonomy doctrine. The First Amendment does not require adoption of a rule of “compulsory deference to religious authority in resolving church property disputes[.]” *Id.* at 605.

The Court has never confined use of neutral principles of law to the church property dispute context, but at the same time it has not yet affirmatively blessed use of such neutral principles outside that context. The question just has not yet been addressed by the Court. It has been suggested that this kind of issue—involving the interaction of neutral rules’ application to religious bodies and potential First Amendment limits on such rules—raises “difficult questions” that may “merit [Court] review.” *Roman Catholic Archdiocese of San Juan v. Feliciano*, 589 U.S. 57, 67 (2020) (J. Alito, joined by J. Thomas, concurring).

This suggestion is particularly apt because the federal appeals courts have been unable to settle on a rule for when the lower courts may employ neutral principles to decide these kinds of disputes. Efforts to establish articulable limits for the church autonomy doctrine have foundered, with one academic commentator describing the situation as being “in chaos.” L. Weinberger, *The Limits of Church Autonomy*, 98 *Notre Dame L. Rev.* 1253, 1270 (2023). The “big question,” it says, is whether the neutral principles applied in *Blue Hull* and *Wolf* can be applied “beyond the property context.” *Id.* at 1275.

Appeals courts are split on the answer to the question. The Fifth Circuit says “no.” Pet.App. 12a-13a; *see also McRaney*, 157 F.4th at 640 n.3 (Court has recognized only a “narrow exception” for certain church property disputes). The Sixth Circuit is in accord with the Fifth. *See Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir.) (neutral principles doctrine “never been extended to religious controversies in the areas of church government, order and discipline, nor should it be”), *cert. denied*, 479 U.S. 885 (1986). The Eleventh Circuit was less direct in its rejection of an expansion of the neutral principles doctrine beyond the property dispute context, but did, in fact, refuse to expand it. *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 727 (11th Cir. 1987) (declining use of neutral principles because “controversy bears only a tangential relationship to property rights”), *cert. denied*, 484 U.S. 1066 (1988).¹⁵

15. To be clear, Concordia’s position is that this case does involve a church property dispute, and the neutral principles approach should apply, even as tightly circumscribed by the Fifth Circuit. But that issue is subsidiary to, and included within, the more general jurisdictional issue presented.

On the other side of the split is the District of Columbia Circuit, joined by the Ninth Circuit. In *O’Connell v. U.S. Conference of Catholic Bishops*, 134 F.4th 1243 (D.C. Cir. 2025), *cert. denied*, 146 S.Ct. 2679 (2026), the court applied the neutral principles approach to consider a claim of fraud against a church. *Id.* at 1254. In *Puri v. Khalsa*, 844 F.3d 1152 (9th Cir. 2017), the Ninth Circuit refused to limit the neutral principles approach to church property disputes, extending its reach to a dispute over who should sit on a religious community’s board. *Id.* at 1164-65.¹⁶

The circuit split on whether the neutral principles approach applies in ecclesiastical-related disputes beyond the confines of those over real property is an additional reason why the Court should grant review in this case. The interaction of neutral principles with the church autonomy doctrine is a recurring issue in this important sphere of First Amendment law that is present in this case.

III. This Case Is A Proper Vehicle For Addressing The Question Presented For Review

A majority of the panel below espouses an expansive version of the church autonomy doctrine. The lead and concurring opinions champion a legal principle—in non-church-property disputes—that precludes a federal court

16. The Second Circuit appears to have joined the District of Columbia and Ninth Circuits on this point. In *Belya v. Kapral*, 45 F.4th 621 (2d Cir. 2022), *cert. denied*, 143 S.Ct. 2609 (2023), the court said that the neutral principles approach “goes beyond solely church property disputes.” *Id.* at 630 n.8. But when the case returned to the appeals court after summary judgment proceedings, the court concluded that church autonomy applied on the facts before it. *Belya v. Kapral*, 2026 WL 2408740 (2d Cir. Aug. 18, 2026).

from undertaking an independent, secular examination of church governance documents, forcing the court instead to give unalloyed deference to a church official's ecclesiastical exegesis of the meaning of the very same documents.

That one of the opinions below rests its holding on this principle, while another latches onto an alternate legal theory to avoid the full implications of the constitutional holding whose underlying analysis it supports, does not change the fact that this case fairly presents the question raised by the core holding presented for review. The church autonomy holding was essential to the outcome of the case and the judgment below: a finding diversity jurisdiction. Without the holding, there would have been no majority for the judgment of reversal by the appeals court.

If the Court grants review on the question presented and reverses on that threshold issue, two possible dispositions are presented, depending on whether the issue of the correctness of the district court's application of neutral principles is fairly included as a subsidiary issue to the question presented. *See* Sup. Ct. Rule 14.1(a). If the Court determines that neutral principles apply and that diversity jurisdiction is absent because the Church is the real party to the controversy, the Court may reverse and render judgment of dismissal of lack of jurisdiction.¹⁷ Alternatively, if the Court deems the subsidiary question not fairly included in the question presented, the case may

17. In this scenario, the Court could render judgment regardless of the concurrence's alternative analysis. This is because the concurrence's treatment of the Synod and Corporate Synod as being one and the same, Pet.App. 20a, would effectively have been rejected and, with such rejection, the concurrence alternative analysis fails.

be remanded for appeals court resolution of any issues the appeals court did not reach because of its error. *City of Austin v. Reagan Nat’l Advtsg. of Austin, LLC*, 596 U.S. 61, 77 (2022).

The first scenario ends the case as one outside federal court jurisdiction. The second scenario would have the consequence that on remand the Fifth Circuit would be free to assess whether the concurrence’s alternative ground for affirmance can garner a panel majority. But at that point, in light of the Court’s ruling on the Church’s status in the case, the underpinnings of the concurrence’s alternative analysis will have been either removed entirely or so altered that the alternate theory would have to be examined anew.

This Court has regularly emphasized that lower courts should avoid reaching constitutional issues if disposition on non-constitutional grounds would make doing so unnecessary. *See, e.g., Matal v. Tam*, 582 U.S. 218, 231 (2017), citing *Spector Motor Svc. v. McLaughlin*, 323 U.S. 101, 105 (1944). The lead opinion not only expands the First Amendment church autonomy doctrine at the expense of judicial independence in deciding questions of jurisdiction, it does so without consideration of less far-reaching non-constitutional alternative grounds. That very well could be because of disagreement with the concurrence’s alternative conclusion, which would explain reaching the constitutional issue. Whatever the underlying reasoning, reversing on the church autonomy ruling would either end the case as a federal court matter or leave to the appeals court on remand consideration of the other non-constitutional issues—but this time with the Church’s presence as the real party to the controversy established.

In any event, the church autonomy issue is fairly and squarely before the Court through the ruling below and the question Concordia presents. While the relevance of some of the facts may be subject to dispute, the essential facts themselves are not.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

DANIEL R. RICHARDS
CLARK RICHARDS
ALBERT A. CARRION, JR.
RICHARDS RODRIGUEZ
& SKEITH, LLP
611 West 15th Street
Austin, TX 78701
(512) 476-0005

RENEA HICKS
Counsel of Record
LAW OFFICE OF
MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231
rhicks@renea-hicks.com

Counsel for Petitioners

October 5, 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JUNE 4, 2026.....	1a
APPENDIX B – ORDER ADOPTING REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE, FILED FEBRUARY 3, 2025	27a
APPENDIX C – REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE, FILED NOVEMBER 20, 2024	49a
APPENDIX D – ORDER OF THE TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN, FILED JULY 16, 2025	70a
APPENDIX E – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION, FILED JULY 20, 2026.....	72a
APPENDIX F – ORDER DENYING PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JULY 9, 2026	75a

Table of Appendices

	<i>Page</i>
APPENDIX G — FIRST AMENDED COMPLAINT, FILED FEBRUARY 29, 2024 . . .	77a
EXHIBIT A (excerpts)	128a
EXHIBIT B (excerpts)	132a
EXHIBIT C (excerpts)	140a
EXHIBIT D	143a
EXHIBIT Q	145a
APPENDIX H – EXCERPTS OF THE LUTHERAN CHURCH—MISSOURI SYNOD, BOARD OF DIRECTORS POLICY MANUAL, MAY 19, 2023	152a

1a

**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED JUNE 4, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-50130

THE LUTHERAN CHURCH—MISSOURI SYNOD,
A MISSOURI NONPROFIT CORPORATION,

Plaintiff-Appellant,

versus

DONALD CHRISTIAN; CHRISTOPHER
BANNWOLF; JOHN DOES 1-12; CONCORDIA
UNIVERSITY TEXAS INCORPORATED,

Defendants-Appellees.

Filed June 4, 2026

OPINION

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1042

Before ELROD, *Chief Judge*, and JONES and GRAVES, *Circuit Judges*.

EDITH H. JONES, *Circuit Judge*:

In his first Epistle to the Corinthians, the Apostle Paul cautions believers against taking their disputes to

Appendix A

the secular courts. 1 *Corinthians* 6:1. Unfortunately, litigation within a church is sometimes unavoidable. In such cases, however, the courts of this country are infused with a history of religious tolerance and are guided more specifically by the First Amendment to interfere as little as possible in the affairs that constitute governance of ecclesiastical bodies. See *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746, 140 S. Ct. 2049, 2060, 207 L.Ed.2d 870 (2020); *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 633-34 (5th Cir. 2025).

The Lutheran Church—Missouri Synod, a Missouri nonprofit corporation, was forced to seek judicial restoration of control over Concordia University, an “agency” of the church in Austin, Texas. Taking advantage of the church’s unique governance structure, the University responded by asserting lack of diversity of citizenship. The district court agreed. It reached this result only by overlaying a secular corporate law interpretation on the church’s spiritually crafted governance documents, and then imposing Texas unincorporated association law on the Lutheran Church, whose special status has been recognized by Missouri law for more than a hundred years. The district court’s ruling quintessentially violated the church autonomy doctrine. The judgment of dismissal is REVERSED and REMANDED.

BACKGROUND

The Lutheran Church—Missouri Synod (“the Synod” or “the Church”) was founded in 1847. The Synod

Appendix A

incorporated under Missouri law a nonprofit corporation, the Lutheran Church—Missouri Synod (“LCMS”), to manage its civil affairs in 1894. LCMS was organized to reflect the Lutheran “two kingdoms” doctrine which “maintains a distinction between spiritual and secular authorities.” The Church believes its identity and mission are “not of this world” based on Biblical Scripture.

Although these entities share the same name, constitution, bylaws, board of directors, president, and officers, they have distinct roles. The Synod manages Church spiritual affairs like supervising doctrine and religious practice and governing the church body. LCMS manages the Synod’s civil affairs including its property, bank accounts, contracts, assets, and employees. In the same vein, LCMS is the Church’s legal representative and is the proper party to litigation according to its policy manual. Before the present case, the Church had never been sued.

To further the Synod’s objectives, it established universities as “agencies” of the Church. In 1925, LCMS bought and conveyed property in trust to Concordia in Austin, Texas, reserving restrictions and reversionary rights.¹ Although “Concordia is separately incorporated and responsible for its own day-to-day affairs,” its charter states that its business “shall be conducted and its affairs shall be controlled by a board of trustees to be elected

1. LCMS paid for the buildings, furniture, and library books. As an agency of the Synod, Concordia’s purpose was to advance the mission of “training ministers and teachers for service” in the Church.

Appendix A

in accordance with the Rules and Regulations of the Lutheran Church—Missouri Synod.” Concordia’s bylaws state that “[t]he University is . . . subject to the provisions of the constitution and bylaws of [LCMS].”

In November 2022, Concordia’s Board of Regents voted unilaterally to change its internal governing documents to reject the authority and governance of LCMS. The Church’s Commission on Constitutional Matters (“the CCM”) is its “judicatory body charged with resolving matters of Church governance.” The CCM concluded that Concordia’s amendments were “null and void . . . and unable to be put into practice.” The CCM ruled that Concordia was required to receive the CCM’s approval before changing its governance structure, and therefore, failure to obtain approval was “contrary to the Bylaws of the Synod.”

In August 2023, the CCM’s judgment was brought before the Synod meeting in convention, the Church’s highest authority, which adopted the CCM’s opinion and directed LCMS “to take all appropriate actions.” Two days later, the Synod in convention elected regents of Concordia’s board, but Concordia refused to seat them and insisted that the current board was “the sole governing body of the institution.”

LCMS was forced to sue Concordia, Donald Christian (the then-president of Concordia), Christopher Bannwolf (the then-chairman of the Concordia Board of Regents), and Does 1-12 (unknown members of the Concordia Board of Regents) (“2023 suit”). LCMS asserted federal jurisdiction on diversity grounds because LCMS is a

Appendix A

Missouri corporation and the defendants are Texas citizens. LCMS sought a declaratory judgment confirming the CCM and Synod in convention's judgments and asserted state law claims for breach of contract between LCMS and Concordia, promissory estoppel, breach of fiduciary duty, violations of the Texas Business Organizations Code, and tortious interference with a contract.

Concordia counter-sued LCMS in Texas state court, naming the Synod as a defendant that it characterized as an "unincorporated association" with a Texas residency ("2024 suit"). Asserting diversity of citizenship, LCMS removed the case to federal court, and the cases were consolidated. Concordia moved to dismiss LCMS's 2023 suit for lack of diversity jurisdiction, failure to prosecute in the name of the real party in interest, and failure to join an indispensable party. Concordia also moved to remand its 2024 suit to state court.

The magistrate judge issued a report and recommendation ("the R&R") regarding the motion to dismiss and motion to remand. The R&R found that "LCMS cannot show that it possesses rights with respect to Defendants that are independent of the Synod." It also found that the Synod is an "unincorporated association" under Texas law and as such, is "a citizen [for diversity purposes] of every state in which its members reside." The R&R acknowledged First Amendment implications of its conclusions and relied heavily on an interpretation of the Synod's bylaws and governing documents but still determined that this case is "a pure civil-law controversy" and "does not require inquiry into religious doctrine."

Appendix A

The district court adopted the R&R “in full,” granted Concordia’s motion to dismiss LCMS’s 2023 suit, and remanded Concordia’s 2024 suit to state court for lack of subject matter jurisdiction.² The district court made several additional findings pertinent to this conclusion.

First, the district court repeated that the Synod is an unincorporated association under Texas law that has the capacity to sue or be sued. TEX. BUS. ORGS. CODE §§ 252.001, 002, 007. Second, the district court determined that the Synod holds the substantive rights that it wants to enforce against Concordia and is therefore the “real party in interest” under Federal Rule of Civil Procedure 17. The Synod, in other words, had to be joined as a plaintiff by LCMS. But third, the district court reiterated that the Synod, as an unincorporated association, is a Texas citizen for the purposes of diversity jurisdiction because it bears the citizenship of all of its members.

Critically, the district court rejected LCMS’s argument that its analysis underlying these conclusions violated the First Amendment and the associated church autonomy doctrine. Instead, the district court claimed that the First Amendment allows “civil authorities to question a religious body’s own understanding of its structure.” The court drew the authority for that proposition from the “neutral principles” exception that has applied to church property disputes, and alleged that its approach “will not involve any change to the Synod’s governing documents” or “inquiry into religious doctrine.”

2. LCMS did not appeal the remand of Concordia’s 2024 lawsuit.

Appendix A

In sum, because LCMS did not join the Synod as an “indispensable” co-plaintiff, and because if joined, the Synod would defeat diversity, the 2023 suit must be dismissed for lack of diversity jurisdiction. LCMS timely appealed.

STANDARD OF REVIEW

“Issues of subject matter jurisdiction are questions of law reviewed *de novo*. *Nat. Oilwell Varco, L.P. v. Auto-Dril, Inc.*, 68 F.4th 206, 213 (5th Cir. 2023). The district court’s ruling is couched as a Rule 12(b)(1) dismissal on the pleadings, but since both parties introduced evidence outside the pleadings, the court is entitled to consider those in its deliberation. *See Crane v. Johnson*, 783 F.3d 244, 250-51 (5th Cir. 2015).

DISCUSSION

The dispositive issue on appeal is whether LCMS is a real party to the controversy for diversity purposes in light of the First Amendment’s church autonomy doctrine.³

LCMS asserts that the Synod, a strictly ecclesial body under Lutheran doctrine, does not have the capacity

3. This court does not reach issues about federal civil procedure Rules 17 (“real party in interest”) and 19 (“indispensable party”) or the Synod’s status as a legal entity. Our disposition of this appeal renders it unnecessary to decide other issues raised by LCMS, including the constitutional avoidance doctrine, the Texas Religious Freedom Restoration Act, and the Full Faith and Credit Clause’s internal affairs rule.

Appendix A

to sue or be sued. The Synod is barred by Church law from protecting its civil interests and cannot be a party to the lawsuit. But LCMS was deliberately incorporated pursuant to Missouri law to represent the Church in civil affairs. Consequently, there is diversity jurisdiction between LCMS and Concordia.

Concordia responds that the Synod is a Texas unincorporated association, and hence, a citizen of Texas because of its churches and members in Texas.⁴ Further, the Synod is a real party in interest to this suit. Concordia therefore advocates dismissal for lack of the Synod as an indispensable party. In addition, even if joined as a plaintiff, the Synod's Texas "citizenship" would destroy complete diversity with Concordia. We address the church autonomy doctrine followed by diversity.

4. The district court's erroneous holding supporting Concordia's position is jarring as a matter of corporate law and conflict of law principles. The Church has operated under its current structure with a Missouri nonprofit corporation acting as the Synod's civil entity since 1894. Supreme Court precedent and Texas law both hold "that a court—state or federal—sitting in one State will as a general rule decline to interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another state. . . ." *Rogers v. Guar. Tr. Co.*, 288 U.S. 123, 130, 53 S. Ct. 295, 297, 77 L.Ed. 652 (1933); *see also* TEX. BUS. ORGS. CODE § 1.102 ("[T]he law of the state or other jurisdiction in which that foreign government authority is located governs the formation and internal affairs of that entity" organized under the foreign authority's law).

*Appendix A***I. Church Autonomy Doctrine**

The church autonomy doctrine, a corollary of the First Amendment, protects religious institutions’ internal management decisions and doctrinal self-governance from judicial intrusion. See *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 635-36 (5th Cir. 2025). Courts cannot adjudicate controversies that “turn on the resolution . . . of . . . religious doctrine and practice.” *Id.* at 636 (quoting *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 606, 21 L.Ed.2d 658 (1969)). This doctrine’s shield is important because “[e]ven the very process of inquiry’ into a church’s internal affairs can ‘impinge on the rights guaranteed by the [First Amendment.]’” *Id.* (quoting *NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 502, 99 S. Ct. 1313, 1320, 59 L.Ed.2d 533 (1979)).

This court’s recent decision in *McRaney* informs our analysis. In *McRaney*, a pastor sued a constituent board of the Southern Baptist Convention after he was terminated from church leadership. *Id.* at 632. This court affirmed the summary judgment in favor of the Baptist entity because resolving the pastor’s claims “would require the district court to decide ‘matters of faith and doctrine.’” *Id.* at 650 (quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747, 140 S. Ct. 2049, 2060, 207 L.Ed.2d 870 (2020)). *McRaney* put it simply: “[c]ivil courts cannot adjudicate ecclesiastical matters.” *Id.* at 633.

Appendix A

The district court here did just that. It cherry-picked a few selections from the Church’s internal governance documents and concluded that “even LCMS recognizes the Synod’s capacity to be sued.” Without explanation, it gave no weight to the Church’s statements regarding its own formation and structure, even though these served to interpret and clarify its governing documents. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729, 20 L.Ed. 666 (1871) (“It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these [church] bodies as the ablest men in each are in reference to their own.”). Its invasive inquiry replaced the Church’s description of its polity, rooted in doctrine, with the court’s secular reading of the Church’s constitution, bylaws, and policies. The district court engaged in precisely the type of review that the doctrine seeks to prevent. *See Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 708, 96 S. Ct. 2372, 2380, 49 L.Ed.2d 151 (1976) (describing a state court’s “impermissibl[e] substitut[ion] [of] its own inquiry into church polity and resolution based thereon” as a fatal fallacy).

In *Milivojevich*, the Illinois Supreme Court ruled against the Orthodox Diocese based on the court’s own “interpretation of the Church’s constitution and penal code.” *Id.* The Supreme Court reversed. *Id.* at 698, 96 S. Ct. at 2375. The Supreme Court reasoned that “the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs,” and “the constitutional provisions . . . were not so express that the civil courts could enforce them without

Appendix A

engaging in a searching and therefore impermissible inquiry into church polity.” *Id.* at 721-23, 96 S. Ct. at 2386-87.

Here, the district court claimed that its ruling “will not involve any change to the Synod’s governing documents, nor will it require any inquiry into religious doctrine.” Contrary to *Milivojevich*, the court made both errors. First, as explained previously, the Synod and LCMS are designed as separate but integrated entities based on the Lutherans’ interpretation of Biblical Scripture. By imposing its own interpretation, the district court changed the meaning of the governing documents.⁵ Regardless, “change” is not the line at which the church autonomy doctrine begins to apply. Second, the district court essentially denied the Church’s self-identity, rooted in the “two kingdoms” doctrine, by finding that LCMS does not represent the Synod or does not share the same interest as the Synod. Yet “matters of religious ‘faith and doctrine’ are ‘closely linked to . . . matters of church government.’” *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 257, 145 S. Ct. 1583, 1596, 221 L.Ed.2d 881 (2025) (THOMAS, J., concurring) (quoting *Our Lady*, 591 U.S. at 746, 140 S. Ct. at 2060).

Concordia contends, and the district court echoes, that this case is merely a property dispute within a “neutral principles of law” exception to the church autonomy

5. Indeed, the court inexplicably failed to credit the explanatory affidavit of Reverend Sias, a designated spokesman, who corroborated the consistency of the Church’s organizing documents with the “two kingdoms” theology.

Appendix A

doctrine. True, the doctrine “does not grant ‘religious institutions . . . a general immunity from secular laws.’” *McRaney*, 157 F.4th at 636 (quoting *Our Lady*, 591 U.S. at 746, 140 S. Ct. at 2060). Church autonomy is not violated when a court can apply neutral principles to disputes involving church property. *See Jones v. Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 3025, 61 L.Ed.2d 775 (1979). In such cases, courts must “rel[y] exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.” *Id.* Moreover, LCMS asserts no general immunity from secular law.

But the property exception to the church autonomy doctrine is narrow. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733, 20 L.Ed. 666 (1871) (suggesting that an “individual right to property” that “*in no sense* depend[s] on ecclesiastical questions” would be appropriate for a civil court to adjudicate (emphasis added)). Real property disputes involving churches may require courts to “examine certain religious documents,” but courts “must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts.” *Wolf*, 443 U.S. at 604, 99 S. Ct. at 3026. In *Wolf*, the Court contrasted judicial examination of deeds or a corporate charter and a “Book of Church Order, which sets out the laws and regulations of [the affiliated] churches.” *Id.* at 604, 609, 99 S. Ct. at 3026, 3028. If the church’s identity is determined by applying secular laws and regulations, this would impermissibly “require a civil court to pass on questions of religious doctrine.” *Id.* at 609, 99 S. Ct. at 3028. Instead, deference is owed to the church’s determination of its identity. *Id.* The Supreme Court warned that even

Appendix A

a deed or corporate charter may “incorporate[] religious concepts.” *Id.* at 604, 99 S. Ct. at 3026. This is not to suggest that courts may *never* examine church documents, but the circumstances in which interpretation is required are limited.

The real property exception does not apply here. As pled, this case secondarily involves a property dispute but principally requires a determination of church hierarchy between Concordia and the Church represented by LCMS.⁶ And the issue of citizenship for diversity jurisdiction involves only church doctrine. Matters of church governance are not for the courts. *See Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir. 1974) (“Religious organizations . . . [have the] power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. . . .”). The exception would swallow the rule if we were to conclude that the district court correctly waded into matters of ecclesiastical hierarchy and representation by its independent interpretation of the Church’s governance documents.

6. In its complaint, LCMS acknowledges that a “real and justifiable controversy exists” concerning “LCMS’s rights with respect to [Concordia’s] property” and seeks, in part, placement of “a reversionary interest in [Concordia’s] property.” However, that a property issue will be addressed down the line does not render church autonomy irrelevant for the entire case. *See Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 606, 21 L.Ed.2d 658 (1969) (“But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.”).

Appendix A

Concordia alternatively contends that by filing suit on diversity grounds, the Church waived the “church autonomy defense.” Based on the preceding discussion, we need not address this unsettled issue. *See McRaney*, 157 F.4th at 645-46.

The implications of the district court’s denial of church autonomy are grave, as amici explain. First, religious institutions may be coerced into embracing a polity that is less susceptible to judicial reorganization, as opposed to a structure that aligns with their religious doctrines. Second, authorizing the judiciary to assign legal status to religious entities likely presents Establishment Clause issues. Third, religious institutions structured similarly to the Synod/LCMS with a national membership will be excluded from federal court on diversity grounds. The common theme is impermissible judicial encroachment on religious autonomy.

II. Diversity Jurisdiction

Concordia also maintains that irrespective of the Synod’s doctrinal incapacity to sue and be sued, LCMS is not a real party to the controversy. As such, “LCMS is a nominal party that must be ignored and diversity must be determined by [the] Synod’s citizenship.” Concordia is mistaken.⁷

7. The “real party to the controversy” inquiry for diversity purposes is different from that of FRCP 17’s “real party in interest” and FRCP 19’s “indispensable party,” although all three inquiries ask the same basic question: who is the proper party? All three issues were argued and became the basis of the district

Appendix A

Diversity jurisdiction exists in all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. § 1332(a). This statute requires “complete diversity,” meaning no plaintiff may share the same citizenship as any defendant. *Whalen v. Carter*, 954 F.2d 1087, 1094 (5th Cir. 1992) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806)). In establishing jurisdiction, the “citizens” must be “real and substantial parties to the controversy.” *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 460, 100 S. Ct. 1779, 1781-82, 64 L.Ed.2d 425 (1980). Federal courts “must disregard nominal or formal parties” and rest jurisdiction only upon the real parties. *Id.* at 461, 100 S. Ct. at 1782.

On multiple fronts, LCMS is far from a mere nominal party. Under the church autonomy doctrine, deference is owed to the Church’s description of its own polity, displayed by its interpretation of its own governing documents. From a litigation perspective, LCMS and the Synod share the same board of directors, their “legal representative,” which directs the legal actions of LCMS. Though the Synod has legal interests, LCMS formally and fully represents these interests. From a business perspective, LCMS owns property and enters into contracts. According to its bylaws and board policy manual, Concordia is “an educational institution” of LCMS, which is its “legal owner.” For example, in the case of Concordia’s dissolution or winding up, its assets are to be “transferred, conveyed, and distributed” to LCMS.

court’s rulings. However, arguments on appeal pivoted to focus on the “real party to the controversy” question.

Appendix A

Finally, diversity jurisdiction requires only a party against whom the judgment is effective. *See Corfield v. Dall. Glen Hills LP*, 355 F.3d 853, 864-65 (5th Cir. 2003). Every possible party need not be present in court. As this court explained,

The “real party to the controversy” test does not require a federal court to consider the citizenship of non-parties who have an interest in the litigation or might be affected by the judgment. The “real party to the controversy” test requires consideration of the citizenship of non-parties when a party already before the court is found to be a non-stake holder/agent suing only on behalf of another.

Id. at 865 n.10. LCMS has sufficient stake in the matter, as the secular reflection of the Synod, to be the proper party plaintiff.

For the foregoing reasons, the judgment of the district court dismissing for lack of diversity jurisdiction is REVERSED, and the case is REMANDED for further proceedings.

Appendix A

JENNIFER WALKER ELROD, *Chief Judge*, concurring:

I agree with much of Judge Jones’s reasoning.¹ However, I believe that this is a straightforward case that can be decided by relying upon the Church’s corporate documents and declarations. The district court opinion focuses on one subsection of the Lutheran Church-Missouri Synod’s Policy Manual to arrive at a conclusion

1. I agree with JUDGE JONES that the district court opinion errs in “replac[ing] the Church’s description of its polity, rooted in doctrine, with the court’s secular reading of the Church’s constitution, bylaws, and policies.” *Ante*, at 8. When a court “substitutes its own inquiry” for that of a faith community regarding that community’s own “polity,” it raises serious questions under the church autonomy doctrine. *See Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevic*, 426 U.S. 696, 708, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). Here, the district court opinion misapplies the doctrine when it gives insufficient weight to Reverend Sias’s declarations, the Church’s governing documents, and the Church’s own conception of its nature and structure. When the Church’s understanding of its polity and structure is credited, as the First Amendment requires, it is abundantly clear that LCMS is the real party to the controversy. Even short of that though, a review of the corporate documents renders the same result. We thus need not chart the farthest limits of the church-autonomy doctrine because it is not necessary to do so to decide this case.

For his part, JUDGE GRAVES apparently suggests that we should defer to the district court. *Post*, at 4 (noting that the district court “found that the Synod holds the substantive rights at issue” and that that court was “thorough and considerate in its analysis and correctly found that the church autonomy doctrine was not implicated”). But this case presents us squarely with a question of corporate law, so it is not appropriate to defer to the district court’s findings no matter how thorough or considerate they are.

Appendix A

that conflicts with both the best reading of the Church's corporate documents as well as the Church's own understanding of its structure. This was error. When considering the documents together and in context, it is clear that the LCMS is the real party to the controversy for purposes of diversity jurisdiction.

The district court opinion applies Texas law and relies on an application of Texas corporate law to arrive at the determination that the Synod was an unincorporated association with the capacity to sue or be sued in Texas. But in doing so, the district court opinion does not adhere to a key tenet of corporate law. An entity's documents, such as articles and bylaws, should be harmonized and construed as a whole with the objective of capturing the documents' "general intent." 8 Fletcher Cyclopedic of the Law of Corporations § 4195 (2025); see *Bd. of Ins. Comm'rs v. Great S. Life Ins. Co.*, 150 Tex. 258, 239 S.W.2d 803, 809 (1951) ("It is a generally accepted rule of contracts that '[w]here several instruments, executed contemporaneously or at different times, pertain to the same transaction, they will be read together although they do not expressly refer to each other.'"); *Crain v. Northern*, 2026 Tex. Bus. 4, ¶ 8, 730 S.W.3d 375, 381 (8th Div. 2026) ("When interpreting a company agreement, courts apply the general principles of contract construction." (citing *Abdullatif v. Choudhri*, 561 S.W.3d 590, 609-10 (Tex. App.—Houston [14th Dist.] 2018, pet. denied))). When multiple corporate documents are at issue, "the documents should be considered together." *Fletcher, supra*, § 4195; see also 15 Tex. Jur. 3d Corporations § 62 (2026) ("In construing corporate bylaws, courts apply the rules that

Appendix A

govern the interpretation of contracts” and “attempt to harmonize and give effect to every provision.”).

The district court opinion errs when it gives dispositive weight to § 4.18.4 of LCMS’s Policy Manual without harmonizing it with the document as a whole or with the Church’s other corporate documents. Specifically, the district court reads “Synod or Corporate Synod” to be evidence that the ecclesiastical component of the Church, the Synod, and LCMS were two separate legal entities, each with the capacity to sue and be sued. This reading is plausible only if § 4.18.4 of the Policy Manual is read in isolation.

As the documents describe, LCMS is, and has been for 125 years, the “civil law reflection” of the Church. The Church set up LCMS for the purpose of “carry[ing] out its secular functions, including the ability to sue and be sued.” The Synod’s bylaws declare that the role of LCMS, also called the “Corporate Synod,” is to assume the “responsibility to be subject to civil authority” for the Church. The documents explain that the Church, in keeping with its Two Kingdoms theology, has both an ecclesiastical component (the Synod) and a civil component (LCMS), and the civil component handles civil matters, including litigation, and assumes any responsibilities or liabilities that the Church may incur.

Taken together, the Church’s documents show why the district court opinion’s concern that “the Synod would not be subject to suit anywhere” is no concern at all. LCMS’s Policy Manual and bylaws specify that if the

Appendix A

ecclesiastical component of the Church incurs liability or must engage in litigation, the civil component of the Church, LCMS, bears full responsibility. So, contrary to JUDGE GRAVES’S concerns about “[g]eneral immunity,” *post*, at 207, Lutheran Church could not avoid suit based on its internal governance structure. If you sue the Synod, you sue LCMS. Thus, as JUDGE JONES notes, the Church does not enjoy—nor has it asserted—any general immunity from secular laws. *Ante*, at 201-02; *see Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746, 140 S.Ct. 2049, 207 L.Ed.2d 870 (2020).

The district court also understood the Policy Manual’s references to “the Synod’s general counsel” to indicate that the Synod is a separate legal entity. But reading this sentence in the context of the whole Policy Manual and the corporate documents leads to a different conclusion. Again, LCMS represents the Synod in matters of civil law. If the Synod—that is, the ecclesiastical component of the Church—is implicated in matters of civil law, LCMS handles the litigation. LCMS’s Board of Directors, though ultimately responsible for the entire Church’s legal decisions, selects and delegates certain duties to the general counsel. If the Church is involved in an “initiation of litigation, lawsuit, arbitration, or administrative proceeding,” the Board of Directors, often working through the general counsel, handles these matters. In this sense, then, the Church’s general counsel is the “Synod’s general counsel,” but this does not mean that the Synod is a separate civil body, much less an unincorporated association under Texas law.

Appendix A

Finally, the district court opinion errs when it focuses its analysis on a slice of LCMS's Policy Manual without accounting for the "general intent" of the Policy Manual and the correlated corporate documents. *See Fletcher, supra*, § 4195. The documents indicate that the Church took deliberate steps to place responsibility for the entire Church's civil matters in the hands of LCMS. This includes the Church placing "[a]ll assets, real or personal, tangible or intangible," in the "name of the corporate Synod, its nominee, or an agency of the Synod." This arrangement makes sense because, as the corporate documents repeatedly state, the Synod "is not a civil law entity" and does not own any property. Instead, it is the ecclesiastical component of the Church that facilitates the "exercise [of] the mind of the church on matters of its doctrine and religious practice" and "exercise[s] governance of the church body." Again, this does not mean that the Synod is "immune" from civil litigation. Rather, the ecclesiastical component's civil matters are handled by the civil component of the Church, LCMS.

To be sure, the district court opinion states that it reviewed the Church's constitution, bylaws, and LCMS Board of Director's Policy Manual. But its review of these documents does not appear to have been accompanied by an application of the principles of corporate law discussed here. As such, the district court opinion errs on its own terms when it sought to resolve this case on corporate law grounds. In my view, this is enough to warrant reversal.

Appendix A

JAMES E. GRAVES, JR., *Circuit Judge*, dissenting:

The district court found that the Synod: (1) holds the substantive rights at issue in this case, (2) is an unincorporated association with the capacity to sue or be sued, and (3) is an indispensable party that must be joined. Because I would affirm, I respectfully dissent.

Civil courts “exercise no jurisdiction” over a dispute that is “strictly and purely ecclesiastical in its character,” such as a “matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” *Watson v. Jones*, 80 U.S. 679, 733, 13 Wall. 679, 20 L.Ed. 666 (1871). However, courts can apply “neutral principles of law” to certain disputes. *Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). In *Jones*, the Supreme Court applied the neutral principles method to a property dispute. *Id.* A neutral principles application is equally appropriate here, because the question before us is not a religious issue. We have been asked to find the real party in interest. Whether the Synod is or is not a real party in interest affects diversity jurisdiction. Jurisdictional questions are exactly the kind of questions courts must answer. *See Martinez v. Am. Fed’n of Gov’t Emps.*, 980 F.2d 1039, 1042 (5th Cir. 1993) (“This court has a duty to determine whether it has jurisdiction over any case before it.”).

In analyzing this jurisdictional question, the district court considered the Church’s governing documents as well as Reverend Sias’ testimony. I agree with the

Appendix A

concurrence that it is appropriate to rely on the Church's corporate documents and declarations to decide the case. The neutral principles method "requires a civil court to examine certain religious documents, such as a church constitution," even though it "must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts." *Jones*, 443 U.S. at 604, 99 S.Ct. 3020.

The Synod's status as a necessary party to the suit is evident just from the Church's briefs—its own representations—where it states that "the Church makes its universities [like Concordia] 'agencies' of the Synod, subject to the Synod's ecclesiastical governance and LCMS's civil oversight." The Synod adopted the Commission's judgment against Concordia, and elected regents of Concordia's board to replace the current board. Even these descriptions of the Synod-Concordia relationship could suffice for the court to determine, as the magistrate judge and the district court did, that the Synod holds the substantive rights at issue.

The Church resists, arguing that district courts should always accept a "church's determination about how its polity should operate in the civil sphere." *Jones* cautions against that. In fact, the Supreme Court does not agree "that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." *Jones*, 443 U.S. at 605, 99 S.Ct. 3020. The same should be true for this jurisdictional dispute—whether the proper parties are

Appendix A

before the court is not a matter of doctrinal controversy. The Church next counters that “church autonomy is harmed when government encroaches upon the sphere of activity that is ‘the church’s alone.’” But the capacity to sue or be sued is simply not the church’s sphere alone.

No case squarely deals with the issue at hand. However, we recently provided a detailed review of disputes subject to the church autonomy doctrine. *See McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 636 (5th Cir. 2025), *cert. denied sub nom., McRaney v. N. AM. Mission Bd., Inc.*, ___ U.S. ___, 146 S.Ct. 1674, 224 L. Ed. 2d 16 (2026). These include matters of church governance: “the determination of religious polity, such as membership, matters of discipline and good standing, and the identification of the ‘true church’ amidst internecine disputes.” *Id.* The majority argues that the district court invasively inquired into the Church’s religious polity, in contravention of *McRaney*. Yet the issue before us is not one of “church discipline [or] the church’s understanding of its own membership,” *id.* at 639, and *McRaney* does not speak to whether a church gets to decide if it can or cannot be party to a suit.

There are good reasons to avoid extending the church autonomy doctrine. The doctrine “does not mean that religious institutions enjoy a general immunity from secular laws.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746, 140 S.Ct. 2049, 207 L.Ed.2d 870 (2020). As Concordia argues, the “Synod proposes that a religious institution can, merely by declaration of sincere religious belief, render itself completely immune to the

Appendix A

jurisdiction of all courts.” General immunity—regardless of the underlying dispute—cannot be the rule. During oral argument, the Church asserted that it does not intend to reverse its position at the conclusion of the suit and argue that Concordia sued the wrong party. Additionally, as the majority opinion points out, diversity jurisdiction does not require that every possible party be present in court, so long as we have *a* party against whom the judgment is effective. But there is a reason why courts must be careful to follow the rules of civil procedure. In resolving and concluding a case, we do not want to find that we cannot grant relief because the proper parties are not actually before us.

One other reason to be concerned with this application of the church autonomy doctrine is that it may lead to disparate treatment among differently structured religious groups. Groups that do not have a corporate representative like LCMS may be unable to disentangle their ecclesial bodies from litigation, and may be less likely to take their disputes to federal court based on diversity jurisdiction. The church autonomy doctrine should not apply differently according to how a religious group is organized. As *McRaney* warns, “[t]he church autonomy doctrine is triggered by the subject matter of the dispute, not the organizational structure of the disputants.” 157 F.4th at 650. Not only would there be disparate treatment among different religious groups because of their internal structure, but religious organizations would also stand alone among all other parties to a civil dispute. See *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 348

Appendix A

(5th Cir. 2020) (A “categorical[] insulat[ion of] religious relationships from judicial scrutiny . . . would necessarily extend constitutional protection to the secular components of these relationships, which would impermissibly place a religious leader in a preferred position in our society.” (citation modified)).

The district court found that the Synod holds the substantive rights at issue, and is therefore an indispensable party, defeating diversity jurisdiction. The district court was thorough and considerate in its analysis and correctly found that the church autonomy doctrine was not implicated.

I respectfully dissent.

27a

**APPENDIX B — ORDER ADOPTING
REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE, FILED FEBRUARY 3, 2025**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

No. 1:23-cv-01042-DAE

THE LUTHERAN CHURCH MISSOURI SYNOD,

Plaintiff,

v.

DONALD CHRISTIAN, *et al.*,

Defendants.

No. 1:24-cv-00176-DAE

CONCORDIA UNIVERSITY TEXAS,

Plaintiff,

v.

THE LUTHERAN CHURCH MISSOURI SYNOD, *et al.*,

Defendants.

Signed February 3, 2025

*Appendix B***ORDER ADOPTING REPORT AND
RECOMMENDATION**

Before the Court is a Report and Recommendation (“Recommendation”) filed by United States Magistrate Judge Dustin M. Howell. (Dkt. # 52.) On April 3, 2024, Defendants Concordia University Texas (“CTX”), Donald Christian (“Christian”), and Christopher Bannwolf (“Bannwolf”) filed a Motion to Dismiss in case 1:23-cv-1042-DAE (the “2023 case”). (Dkt. # 13) (2023 case). On April 3, 2024, Plaintiff CTX filed a Motion to Remand in the related case 1:24-cv-176-DAE (the “2024 case”). (Dkt. # 5) (2024 case). The parties timely filed their respective responses to each motion.

On November 20, 2024, Judge Howell submitted a Report and Recommendation recommending that the Court grant both motions. (Dkt. # 52) (2023 case).¹ On January 2, 2025, Lutheran Church—Missouri Synod (“LCMS”) filed Objections to the Recommendation. (Dkt. # 58) (2023 case). On January 8, 2025, CTX filed its response to the Objections. (Dkt. # 59) (2023 case).

The Court finds this matter suitable for disposition without a hearing. After reviewing the Recommendation and the information contained in the record, the Court **ADOPTS** the Recommendation. The Motion to Dismiss and Motion to Remand are **GRANTED**.

1. For purposes of this Order, the Court will primarily cite to the docket entries in the 2023 case, based on the parties’ agreed motion to consolidate these cases for the determination of the motions at issue here. (Dkt. # 18) (2023 case).

*Appendix B***BACKGROUND**

The Court agrees with Judge Howell’s recitation of the facts and incorporates them in full:

The parties include the Lutheran Church—Missouri Synod (“the Synod”), which is a religious denomination governed by its constitution and bylaws. (See Dkts. ## 11-1 (constitution), 11-2 (bylaws)) (2023 case). The eponymous Lutheran Church—Missouri Synod (“LCMS”) is a Missouri nonprofit corporation that, according to LCMS, is the Synod’s “civil law reflection” and referred to as “Corporate Synod” in the Synod’s bylaws. (Dkt. # 10 at 6-7) (2023 case). CTX is a Lutheran university in Austin, Texas, founded by affiliates of the Synod’s predecessor organization. (Dkt. # 13 at 3) (2023 case).

This lawsuit involves disputes regarding CTX’s November 2022 amendment to its Articles of Incorporation and Bylaws to provide for corporate self-governance separate from the LCMS and/or Synod and a reversionary interest in the university real property comprising the CTX main campus. (Dkt. # 1 at 6, 15) (2023 case).

On August 1, 2023, LCMS filed a federal lawsuit against CTX asserting claims for declaratory judgment, breach of contract, breach of fiduciary duties, and violations of the Texas Business Organization Code. (Dkt. # 1) (2023 case). On February 29, 2024, LCMS filed its Amended Complaint. (Dkt. # 11) (2023 case).

Appendix B

In January 2024, approximately four months after LCMS filed its 2023 suit, CTX sued LCMS and the Synod in Travis County, Texas. (Dkt. # 1-1) (2024 case). In the 2024 suit, CTX seeks declaratory judgment that: the CTX board of regents had authority to make the amendments to CTX's governing documents, that the Synod and LCMS do not have the authority to elect regents to CTX's board, that CTX did not breach any fiduciary duty owed to the Synod or LCMS, and that neither the Synod nor LCMS is entitled to any reversionary interest in CTX's new campus property or to damages associated with the loss of that property interest. (*Id.*) The 2024 case was thereafter removed to federal court on February 21, 2024. (Dkt. # 1) (2024 case).

CTX moves to dismiss LCMS's 2023 suit against it for lack of subject-matter jurisdiction and failure to join indispensable parties. (Dkt. # 13) (2023 case). CTX also moves to remand the 2024 case. (Dkt. # 5) (2024 case). The motions center on the same arguments: that the Synod is both a non-diverse (Texas) defendant capable of being sued and a proper party to this case and therefore, it would be improper for this Court to exercise jurisdiction over any claim. (Dkt. # 52 at 5) (2023 case).

APPLICABLE LAW**I. Review of Report and Recommendation**

The Court must conduct a de novo review of any of the Magistrate Judge's conclusions to which a party has specifically objected. See 28 U.S.C. § 636(b)(1)(C) ("A

Appendix B

judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). The objections must specifically identify those findings or recommendations that the party wishes to have the district court consider. Thomas v. Arn, 474 U.S. 140, 151 (1985). A district court need not consider “[f]rivolous, conclusive, or general objections.” Battle v. U.S. Parole Comm’n, 834 F.2d 419, 421 (5th Cir. 1987). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Findings to which no specific objections are made do not require de novo review; the Court need only determine whether the Recommendation is clearly erroneous or contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989).

II. Motion to Dismiss

Federal courts are courts of limited jurisdiction, possessing “only that power authorized by Constitution and statute.” Gunn v. Minton, 568 U.S. 251, 256 (2013) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” Energy Mgmt. Servs., LLC v. City of Alexandria, 739 F.3d 255, 258-59 (5th Cir. 2014) (quoting Kokkonen, 511 U.S. at 377).

In considering a motion to dismiss for lack of subject matter jurisdiction, “a court may evaluate (1) the complaint

Appendix B

alone, (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” Den Norske Stats Oljeselskap As v. HeereMac Vof, 241 F.3d 420, 424 (5th Cir. 2001) (citation omitted).

DISCUSSION**I. Whether the Synod is an Unincorporated Association Under Texas Law**

The Recommendation concludes that the Synod is an unincorporated association under Texas law. (Dkt. # 52 at 8, 13, 16) (2023 case). LCMS objects to this finding on the basis that the Magistrate Judge misinterprets and misapplies the law arising under Chapter 252 of the Texas Business Organizations Code, which is Texas’s codification of the Uniform Unincorporated Nonprofit Association Act (“TUUNAA”). (Dkt. # 58 at 4) (2023 case). LCMS also argues the Recommendation violates Texas’ “internal affairs doctrine” as formalized in the Texas Organizations Code in mandatory, non-discretionary terms. (*Id.* at 3.) Finally, LCMS argues the Recommendation violates the First Amendment and Church Autonomy Doctrine. (*Id.* at 20.) The Court addresses each objection in turn.

A. Texas Law Objection

LCMS claims that the formation of LCMS as a nonprofit corporation precludes the existence of Synod as a separate unincorporated association. (*Id.* at 13.) According to LCMS, TUUNAA is not intended to, and does not,

Appendix B

create a parallel “unincorporated nonprofit association” where a group has already “chosen to incorporate.” (*Id.* at 6.)

The issue of a “parallel” entity in a church-type dispute has been recognized amongst some Fifth Circuit district courts, albeit briefly. For instance, in Turner v. Church of Jesus Christ of Latter-Day Saints, the church and its “separate” corporate entities similarly argued that the LDS Church was not a proper party defendant, and as such could not be considered for purposes of determining diversity jurisdiction. No. 3:95-CV-1354-P, 1996 WL 34447787, at *1 (N.D. Tex. Feb. 22, 1996). As LCMS argues here, the defendants claimed that once a church decides to incorporate, “there is simply no remaining ‘unincorporated association’ amenable to suit.” *Id.* at *3. The Turner court concluded that because there is no clear, controlling substantive law regarding the citizenship or capacity of the noncorporate form of a church, and because the court must resolve such uncertainties in favor of plaintiffs, the plaintiffs’ motion to remand was granted. *Id.* at *4. Application of the fraudulent joinder standard on its face demonstrated that the church and its corporate entities failed to meet their burden. *Id.*

In Hebert v. Thorton, that court also considered the issue of whether the LDS Church, as a secular organization, separate and distinct from the incorporated aspect of the church corporation, could be deemed an “unincorporated association” for purposes of establishing diversity jurisdiction. No. CIV.A. 12-0607, 2014 WL 896795, at *5 (E.D. La. Mar. 6, 2014). The court concluded

Appendix B

that the addition of the LDS Church was clearly an attempt of fraudulent joinder as the church corporation admitted on the record that it was the plaintiff's employer, and that LDS is a non-diverse, spiritual organization without assets, money, or a representative for which it would use during trial. *Id.* at *7. However, this case did not apply the TUUNAA and instead applied Louisiana law.

In a Texas Supreme Court case, the church there argued the inverse of what LCMS and the Synod contend here. There, the church complained that the lower courts erred in abating, and subsequently dismissing, its action against a private company "because that lawsuit belonged to [the church] rather than to a similarly-named, nonprofit corporation." Christi Bay Temple v. GuideOne Specialty Mut. Ins. Co., 330 S.W.3d 251, 252 (Tex. 2010). The church submitted that it brought its suit as an unincorporated religious association because that is how it has always operated. *Id.* at 252-53. The insurance company argued, as LCMS and the Synod argue here, that "the church ceased to exist as an [unincorporated] association in 1980 when the non-profit corporation, bearing the same name and a similar affiliation with the Pentecostal Church of God, was created." *Id.* at 253. The defendant claimed that "upon becoming a corporation the church lost the capacity to litigate as an unincorporated association." *Id.* The Texas Court found that there was no evidence that the church lacked capacity, including any evidence that the church transferred any property or assets to the non-profit or conducted any activity or ministry as a non-profit corporation. *Id.*

Appendix B

The Court concludes it is not against Texas law to recognize the Synod as an unincorporated association. Indeed, the Texas Supreme Court has also recognized that churches may be deemed an unincorporated association pursuant to the TUUNAA, even where the church creates a corporation for the purposes of acquiring property. See Episcopal Diocese of Fort Worth v. Episcopal Church, 602 S.W.3d 417, 421, 430 (Tex. 2020). Here, unlike Hebert, the Synod does have a “legal representative” capable of representing the Synod as an unincorporated association, as dictated in the Synod’s Bylaws. (See Dkt. # 11-2 at 95) (“The Board of Directors of the Synod is the legal representative of the Synod and the custodian of all the property of the Synod.”).

LCMS spends a considerable amount of its objections discussing the underlying intent and general purposes of the TUUNAA. (See Dkt. # 58 at 6-13.) According to LCMS, “step one of TUUNAA is to determine if the alleged ‘unincorporated nonprofit association’ is already incorporated. If so, there is no step two.” (Id. at 13.) The Court does not read TUUNAA as implementing such a requirement. When construing a Texas statute, the Fifth Circuit abides by the same rules of statutory construction applied by Texas courts. Wright v. Ford Motor Co., 508 F.3d 263, 269 (5th Cir. 2007). “[I]t is a cardinal rule in Texas that a court construes a statute, ‘first by looking to the plain and common meaning of the statute’s words.’” Fitzgerald v. Advanced Spine Fixation Sys., Inc., 996 S.W.2d 864, 865 (Tex. 1999) (quoting Liberty Mut. Ins. Co. v. Garrison Contractors, 966 S.W.2d 482, 484 (Tex. 1998)). According to Texas courts, “[i]f the statutory language is

Appendix B

unambiguous, the judge’s inquiry is at an end.” Gonzalez v. Guilbot, 315 S.W.3d 533, 540 (Tex. 2010). Clear text is assumed to be determinative of legislative intent. Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433, 437 (Tex. 2009).

Applying those principles, the plain language of the Texas Business Organization Code states that a “[n]onprofit association” means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. Tex. Bus. Orgs. Code § 252.001. This definition may include religious organizations, such as a church. See Tex. Bus. Orgs. Code § 2.002 (stating that the purpose of a nonprofit entity may include “religious” purposes). LCMS is a Missouri nonprofit corporation. (Dkt. # 11-2 at 2) (2023 case). The Synod is not. While LCMS may act *on behalf* of the Synod, it is *not* the Synod itself. In other words, the two entities are not one and the same. (See id. at § 1.2.1(f)&(v)) (defining “Synod” and “Corporate Synod” separately). Therefore, it is an appropriate application of unambiguous Texas law that the Synod may be classified as an unincorporated nonprofit association as the Synod is an organization existing for a common, nonprofit purpose. (See Dkt. # 12-2 at 3) (the Synod defining itself as an association).

Next, the Court concludes the Recommendation does not violate the internal affairs doctrine. Rule 17(b) provides that—with certain exceptions not applicable here—the determination of whether a party, other than a corporation or an individual, has the capacity to sue or be

Appendix B

sued “shall be determined by the law of the state in which the district court is held[.]” Fed. R. Civ. P. 17(b). Texas law expressly permits unincorporated associations, including religious non-profits, to sue or be sued. See Tex. R. Civ. P. 28 (“Any . . . unincorporated association . . . may sue or be sued in its . . . common name for the purpose of enforcing for or against it a substantive right”); see also Tex. Bus. Orgs. Code § 252.007 (“A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial . . . proceeding[.]”). The Court need not look to Missouri law, where LCMS is incorporated, to determine whether the Synod has the capacity to be sued. The lawsuits are in the Western District of Texas; therefore, Texas law applies.

Therefore, the Court **OVERRULES** LCMS’s objection under Texas law and the internal affairs doctrine.

B. First Amendment Objection

LCMS argues the finding that the Synod “is an unincorporated nonprofit association civil law entity answerable to the secular authority of man” violates the First Amendment and Church Autonomy Doctrine. (Dkt. # 58 at 20) (2023 case). LCMS maintains that the Synod does not exist as a civil entity because it says so in the Synod’s constitution and bylaws. (Dkt. # 23 at 6) (2023 case).

The First Amendment forbids government intrusion in “matters of church government” and secures church autonomy for internal management decisions that are

Appendix B

essential to the institution’s central mission. Our Lady of Guadalupe Sch. v. Morrissey-Berru, 591 U.S. 732, 746 (2020). However, “[t]he First Amendment does not categorically insulate religious relationships from judicial scrutiny, for to do so would necessarily extend constitutional protection to the secular components of these relationships.” McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc., 966 F.3d 346, 348 (5th Cir. 2020) (internal quotations omitted).

“A court may exercise jurisdiction over a controversy if it can apply neutral principles of law that will not require inquiry into religious doctrine, interference with the free-exercise rights of believers, or meddling in church government.” In re Lubbock, 624 S.W.3d 506, 513 (Tex. 2021). Under the neutral-principles methodology, “courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities, while deferring to religious entities’ decisions on ecclesiastical and church polity questions.” Id. (citing Masterson v. Diocese of Nw. Tex., 422 S.W.3d 594, 596 (Tex. 2013)). “[C]ourts should consider not only whether a neutral principle exists without regard to religion, but also whether the application of neutral principles would impose civil liability upon a church for complying with its own internal rules and regulations or resolving a religious matter.” In re Lubbock, 624 S.W.3d at 513.

The Supreme Court has previously declined to answer the difficult question as to the degree to which the First Amendment permits civil authorities to question a

Appendix B

religious body's own understanding of its structure and the relationship between associated entities. Roman Cath. Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano, 589 U.S. 57, 67 (2020) (Alito, J., concurring). Asserting a violation of the religious autonomy doctrine, the church in Acevedo Feliciano claimed, "the Free Exercise and Establishment Clauses of the First Amendment require courts to defer to 'the Church's own views on how the Church is structured.'" Id. at 62. The church argued that courts must follow the church's lead in recognizing the separate legal personalities involved. Id. Had the church been recognized as a "legal personality", the church would have been required to make payments of benefits for a pension plan for employees of its Catholic school. Id. at 59. Concluding that the Court of First Instance lacked jurisdiction to issue the payment and seizure orders, the Supreme Court did not reach the First Amendment argument. Id. at 63. Thus, there is no clear case law requiring courts to defer to a church's unilateral decision that it is not a civil entity.

LCMS contends that if adopted, the "[R]ecommendation would completely rewrite and restructure the chosen polity and governance of a religious organization." (Dkt. # 58 at 20) (2023 case). According to LCMS, Synod's chosen polity and governance structure compartmentalizes the ecclesiastical and spiritual matters of the global congregations for the Synod's purview while, on the other hand, creates LCMS to engage and interact with civil secular society on all other matters, including this lawsuit. (Id. at 24.)

Appendix B

CTX responds that this is not a case in which the nature of claims and relief sought would require judicial interference in how churches conducted internal matters from religious employment to doctrinal compliance. (Dkt. # 59 at 16) (2023 case). CTX further claims that LCMS does not provide a single case in which the Church Autonomy Doctrine has barred the application of neutral principles of law to questions of capacity. (*Id.* at 17.)

LCMS relies on Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojeovich, 426 U.S. 696, 713 (1976) to support its First Amendment objection. In Milivojeovich, the Supreme Court held that “civil courts are bound to accept the *decisions of the highest judicatories* of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.” *Id.* at 713, 725 (emphasis added). In other words, the holding specifically addressed that when ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, civil courts accept their decisions as binding upon them. *Id.* at 725. There, the dispute centered over control of the Serbian Eastern Orthodox Diocese and the reorganization of the church. *Id.* at 699, 708. Thus, there is at least clear law that a church’s final adjudication on an ecclesiastical decision is binding on civil courts.

The Court agrees that the purpose of the Magistrate Judge’s inquiry into the corporate status, or lack thereof, of the Synod was to externally determine whether it has the capacity to be sued. The Recommendation does not alter or reorganize the Synod’s internal governance. The

Appendix B

lawsuits at issue involve a dispute regarding the Synod's interest in CTX's new campus property, which is a pure civil-law controversy. (Dkt. # 52 at 17) (2023 case). The campus property dispute revolves around LCMS's alleged voluntary waiver of its reversionary interest and CTX's alleged refusal to recognize that interest. (*Id.*) Thus, the resolution of the property dispute will not involve any change to the Synod's governing documents, nor will it require any inquiry into religious doctrine. (*Id.* at 18.) The substance and nature of the property claims are not so inextricably intertwined with matters of doctrine or church governance so as to apply ecclesiastical abstention. In re Lubbock, 624 S.W.3d at 514.

LCMS also asserts that although it relied extensively on the Declaration of Rev. Dr. John Sias, who serves as Secretary for LCMS in its Response to Motion to Dismiss (Dkt. # 23-1) (2023 case), the Magistrate Judge did not mention it in his Recommendation. (Dkt. # 58 at 29) (2023 case). LCMS cites Dr. Sias's declaration as support for its arguments that Synod does not exist as a separate civil entity from LCMS and to explain the ecclesiastical meanings in the governance documents. (*Id.*) In reviewing not only the Synod's constitution and bylaws, but also the LCMS Board of Director's Policy Manual ("LCMS Policy Manual"), the Court finds that even LCMS recognizes the Synod's capacity to be sued. For instance, in the LCMS Policy Manual, Section 4.18.4-Responding to Litigation provides the following:

- The LCMS Board of Directors recognizes that any response to litigation brought against the ***Synod or***

Appendix B

Corporate Synod [LCMS] may impact the Synod, its agencies, and members. Cooperation in such responses is therefore a necessity. (Id. at § 4.18.4.2)

- The Chief Administrative Officer, in consultation with the **Synod’s general counsel** and when necessary the Executive Committee of the Board, shall select legal counsel **to represent the Synod in each case of litigation brought against the Synod or an agency of Corporate Synod.** General counsel shall supervise all responses to litigation brought against the Synod, including without limitation all filings, discovery, and negotiating settlements.

(Dkt. # 13-5 at 62) (2023 case). LCMS itself recognizes that litigation may be brought against either the Synod or LCMS (Corporate Synod). As such, a finding that the Synod has the capacity to be sued does not violate the Synod’s decision regarding polity and governance.

Therefore, the Court **OVERRULES** LCMS’s objection to the Magistrate Judge’s finding that the Synod is an unincorporated association and has the capacity to sue or be sued in Texas. However, the inquiry does not end here in deciding whether to adopt the Recommendation. The Court next addresses whether the Synod holds the substantive rights at issue here to be deemed a real party in interest, real party in controversy, and an indispensable party for Rule 17(a) purposes.

*Appendix B***II. Whether the Synod Holds the Substantive Rights**

The Recommendation concludes that the Synod holds the substantive rights at issue here and LCMS cannot show that it possesses rights with respect to Defendants that are independent of the Synod. (Dkt. # 52 at 8) (2023 case). Therefore, the Magistrate Judge recommended the 2023 action should be dismissed for failure to prosecute in the name of the real party in interest. (*Id.* at 9.)

Federal Rule of Civil Procedure 17(a) requires that an action “be prosecuted in the name of the real party in interest,” which is defined as the party “holding the substantive right sought be enforced,” although “not necessarily the [party that] will ultimately benefit from the recovery.” *In re Signal Intern., LLC*, 579 F.3d 478, 487 (5th Cir. 2009) (quoting *Farrell Constr. Co. v. Jefferson Parish, La.*, 896 F.2d 136, 140 (5th Cir. 1990)). “The purpose of this requirement ‘is to assure a defendant that a judgment will be final and that res judicata will protect it from having to twice defend an action, once against an ultimate beneficiary of a right and then against the actual holder of the substantive right.’” *Id.* (quoting *Farrell*, 896 F.2d at 142).

LCMS objects to the finding that the Synod holds the substantive rights at issue here on the basis that it is a purely ecclesiastical religious entity, and it incorporated LCMS as its civil law entity to assert and respond to all civil law claims. (Dkt. # 58 at 27) (2023 case). However, LCMS does not object to the reasoning behind the Magistrate Judge’s finding.

Appendix B

In the Recommendation, the Magistrate Judge concludes that even if LCMS held title to the real property at issue in this case, it would belong to the Synod. (Dkt. # 52 at 8) (2023 case). The Synod's bylaws acknowledge that LCMS (as "Corporate Synod") may hold title to certain property, but that property is considered property of the Synod. (See Dkt. # 11-2 at 3) (2023 case) (defining "property of the Synod" as "[a]ll assets, real or personal, tangible or intangible, whether situated in the United States or elsewhere, titled or held in the name of corporate Synod, its nominee, or an agency of the Synod"). Indeed, in the LCMS Policy Manual, Section 6.3.3-Property of Synod held by Colleges, Universities, and Seminaries as defined in Bylaw 1.2.1(r), LCMS asserts "Each institution of higher education of the Synod shall hold title to properties presently owned or at any time hereafter acquired by it subject to a reversionary interest or possibility of *reverter in favor of the Synod* in such form and stating such conditions as shall be established by the Board of Directors of the Synod." (Dkt. # 13-5 at 80) (2023 case). Resolution 4-04 also provides: "The Synod owns the properties of all agencies of the Synod, including its institutions of higher education, regardless of how such properties are titled (Bylaw 3.51 i)." (Dkt. # 13-6 at 1) (2023 case). Thus, the relief sought in these lawsuits would necessarily include a declaration clarifying either LCMS and/or the Synod's interest, if any, in CTX's new campus property. (Dkt. # 52 at 15) (2023 case).

The Magistrate Judge further reasoned that LCMS fails to demonstrate that it is a party to any contract between CTX and the Synod, why any Defendant owes

Appendix B

fiduciary duties to LCMS as opposed to the Synod, or why duties any Defendant owes under that Code flow to LCMS as opposed to the Synod. (Id. at 8-9.)

With respect to the contract and fiduciary claims, the Amended Complaint makes clear that the Synod is the party that would benefit from a declaration to enforce its rights against CTX. (See Dkt. # 11 at 32) (2023 case) (“[U]ntil and unless this Court affords LCMS the declaratory relief requested herein, the unlawful CTX Amendments have caused, and will continue to cause, **loss to Synod** for the CTX Amendments purportedly and **wrongfully strip Synod of all its rights** under the CTX governance documents.”) (emphasis added).

Therefore, the Court **OVERRULES** LCMS’s objection to the finding that the Synod holds the substantive rights in the lawsuits.

III. Whether the Synod is a Citizen of Texas for Diversity Jurisdiction

A defendant may remove a civil action from state court to federal court if the federal court has original jurisdiction over the case. 28 U.S.C. § 1441(a). District courts have original jurisdiction over actions between citizens of different states where the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). Diversity jurisdiction requires complete diversity—meaning that no plaintiff may share citizenship with any defendant. Flagg v. Stryker Corp., 819 F.3d 132, 136 (5th Cir. 2016).

Appendix B

Because the Magistrate Judge found that the Synod is an unincorporated association it is a citizen of every state in which its members reside. (Dkt. # 52 at 13) (2023 case). LCMS objects to the diversity finding on the general basis (again) that the Synod is not an unincorporated association. (Dkt. # 58 at 29) (2023 case). As discussed above, the Court concludes that the Synod is classified as an unincorporated association under Texas law. Accordingly, this objection is **OVERRULED**.

The Recommendation found that LCMS could not show that the Synod is not a citizen of Texas for the purposes of diversity jurisdiction. (Dkt. # 52 at 13) (2023 case). In the Fifth Circuit, it is well-settled that an unincorporated association is deemed a citizen of every state in which its members reside. Hummel v. Townsend, 883 F.2d 367, 369 (5th Cir. 1989). Here, the Synod admits it has members (i.e., member congregations and individuals) in Texas. (Dkt. # 11 at 16) (2023 case). LCMS does not specifically object to this finding. Therefore, the Court finds the Recommendation that the Synod is a Texas citizen is not clearly erroneous or contrary to law.

IV. Whether the Improper Joinder Doctrine Applies

When removal is premised on diversity jurisdiction, the presence of an improperly joined non-diverse defendant will not defeat jurisdiction. Salazar v. Allstate Tex. Lloyd's, Inc., 455 F.3d 571, 574 (5th Cir. 2006). A defendant establishes improper joinder by demonstrating the plaintiff's inability to state a viable claim against the non-diverse defendant. Smallwood v. Ill. Cent. R.R. Co.,

Appendix B

385 F.3d 568, 573 (5th Cir. 2004) (en banc). “Ordinarily, if a plaintiff can survive a Rule 12(b)(6) challenge, there is no improper joinder,” though the Court may “pierce the pleadings and conduct a summary inquiry” where plaintiff has “misstated or omitted discrete facts that would determine the propriety of joinder.” *Id.* Any doubts as to the propriety of removal are resolved in favor of remand. Smith v. Bank of Am. Corp., 605 F. App’x 311, 314 (5th Cir. 2015).

In conducting a 12(b)(6)-type analysis, the Magistrate Judge found that CTX has plausibly stated a claim for declaratory judgment against the Synod regarding its alleged reversionary interest in CTX’s new campus property. (Dkt. # 52 at 14) (2023 case). LCMS does not object to this finding.

Applying Texas law, the Magistrate Judge reasoned that a declaratory judgment is available when (1) there is a justiciable controversy that is (2) real and substantial and (3) capable of resolution by the declaration sought. Sw. Elec. Power Co. v. Lynch, 595 S.W.3d 678, 683-86 (Tex. 2020). Moreover, the Magistrate Judge concluded that Synod’s status as a religious denomination does not bar CTX’s suit. (Dkt. # 52 at 16) (2023 case). The Court finds this analysis is not clearly erroneous or contrary to law.

In sum, the Recommendation provides that (1) the Synod is an indispensable party that must be joined, (2) the Synod’s joinder as a Texas entity defeats this Court’s diversity jurisdiction, and (2) CTX has plausibly stated a state-law claim against the Synod. Accordingly, the

Appendix B

magistrate recommends that the Court grant the motion to dismiss, (Dkt. # 13) (2023 case) and motion to remand (Dkt. # 5) (2024 case).

CONCLUSION

For the reasons above, the Court **ADOPTS** U.S. Magistrate Judge Dustin M. Howell's Report and Recommendation in full as the opinion of this Court. (Dkt. # 52) (2023 case). Defendants Concordia University Texas, Donald Christian, and Christopher Bannwolf's Motion to Dismiss in case 1:23-cv-1042-DAE (Dkt. # 13) is **GRANTED WITHOUT PREJUDICE**.

Plaintiff Concordia University Texas's Motion to Remand in related case 1:24-cv-176-DAE (Dkt. # 5) is **GRANTED**. Further, the Court **REMANDS** this case to the 353rd District Court of Travis County, Texas for lack of subject-matter jurisdiction.

IT IS SO ORDERED.

SIGNED: Austin, Texas, February 3, 2025.

s/ David Alan Ezra
David Alan Ezra
Senior United States District Judge

**APPENDIX C — REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE,
FILED NOVEMBER 20, 2024**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

No. 1:23-CV-01042-DAE

THE LUTHERAN CHURCH MISSOURI SYNOD,

Plaintiff,

v.

DONALD CHRISTIAN, *et al.*,

Defendants.

No. 1:24-CV-00176-DAE

CONCORDIA UNIVERSITY TEXAS,

Plaintiff,

v.

THE LUTHERAN CHURCH MISSOURI SYNOD, *et al.*,

Defendants.

*Appendix C***REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE DAVID A. EZRA
UNITED STATES SENIOR DISTRICT JUDGE

Before the Court are Defendants Concordia University Texas (“CTX”), Donald Christian (“Christian”), and Christopher Bannwolf’s (“Bannwolf”) motion to dismiss for lack of subject-matter jurisdiction and failure to join indispensable parties, Dkt. 13 in case 1:23-cv-01042-DAE (“the 2023 case”), and Plaintiff CTX’s motion to remand, Dkt. 5 in related case 1:24-cv-00176-DAE (“the 2024 case”).¹ After the District Judge granted the parties’ agreed motion to consolidate these cases for the determination of the motions at issue here, Dkt. 18 (2023 case), the Judge referred the motions for a report and recommendation by the undersigned.² Having considered the parties’ motions and all related briefing, the undersigned recommends that the District Judge grant both motions.

I. BACKGROUND

The Lutheran Church—Missouri Synod (“the Synod”) is a religious denomination governed by its constitution

1. Docket entries 10, 13, and 17 in case 1:24-cv-00176-DAE are duplicates of docket entries 23, 26, and 30 in case 1:23-cv-01042-DAE, respectively.

2. This case was reassigned to Senior District Judge David A. Ezra on August 9, 2024. Dkt. 31.

Appendix C

and bylaws. *See* Dkts. 11-1 (constitution), 11-2 (bylaws) (2023 case). The eponymous Lutheran Church—Missouri Synod (“LCMS”) is a Missouri nonprofit corporation that, according to LCMS, is the Synod’s “civil law reflection.” Dkt. 10, at 6-7 (2023 case). Referred to as “Corporate Synod” in the Synod’s bylaws, LCMS acknowledges therein its “responsibility to be subject to civil authority.” Dkt. 11-2 (2023 case).

CTX is a Lutheran university in Austin, Texas, founded by affiliates of the Synod’s predecessor organization. Dkt. 13, at 3 (2023 case).³ LCMS states that since CTX’s inception, the Synod and LCMS have supported CTX with financial resources. Dkt. 11, at 9 (2023 case). In particular, LCMS alleges that it has deeded property in trust to CTX and provided funding. *Id.* LCMS also states that it conditionally waived its reversionary interest in the CTX main campus property to allow CTX to purchase new campus property—an interest LCMS asserts it possesses, and that CTX has failed to recognize, in the new property. *Id.*

The Synod’s bylaws refer to CTX as the Synod’s “agency,” which is defined as “[a]n instrumentality . . . which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s objectives.”⁴ As such, LCMS contends that CTX

3. The parties do not dispute that CTX is a resident of Texas. Dkt. 11, at 1 (2023 case) (admitting that CTX is a Texas non-profit corporation); Dkt. 13, at 3 (2023 case).

4. LCMS emphasizes that as an agency of the Synod, CTX is not “a civil law agent in a civil law principal-agent relationship,

Appendix C

is subject to the Synod’s bylaws and constitution and that CTX’s board of regents governs and operates the university as a fiduciary of the Synod. Dkts. 11, at 7, 12; 11-2, at 148 (2023 case).

In its 2023 suit, LCMS alleges that after taking a series of steps to support CTX’s eventual separation from the Synod—including changing the purpose of CTX as a corporation and applying for CTX’s own 501(c)(3) status—the CTX board of regents amended various governing documents to “fundamentally change [CTX’s] standing with the Synod.” Dkt. 11, at 12 (2023 case). LCMS asserts that these purported amendments were made in violation of Synod bylaws, under which the amendments would have required the approval of the Synod’s board of directors. *Id.*; Dkt. 11-2, at 112 (2023 case); *see, e.g.*, Dkt. 11-13, at 4 (2023 case) (adding language to the CTX bylaws stating that CTX is “aligned with, but not subject to the authority of or governance by the Lutheran Church—Missouri Synod”). According to LCMS, the amendments inhibit the Synod’s ability to participate in CTX’s governance and “make it clear that the CTX [board of regents] now only recognizes its own governance authority and no authority of the Synod” or its bylaws. Dkt. 11, at 16 (2023 case). Specifically, LCMS asserts that the amendments take away the Synod’s ability to elect or appoint any CTX regent and “remove [the Synod’s] mechanisms of ecclesiastical supervision” over CTX. *Id.* at 16-18.

but rather an instrumentality formed or authorized by the Synod to be formed to accomplish the Synod’s objectives[.]” Dkt. 11, at 4 n.4 (2023 case).

Appendix C

LCMS further alleges that these actions were “orchestrated” by CTX president Christian and CTX board chairman Bannwolf, who are named as defendants in the 2023 suit. *Id.* at 18. Additionally, LCMS sues John Does 1-12, who LCMS states are “unknown individuals who serve or served at the relevant time as [CTX regents] and unlawfully” voted in favor of the amendments at issue. *Id.* at 2. Through the 2023 suit, LCMS seeks a declaratory judgment voiding the amendments at issue, along with other forms of declaratory relief. *Id.* at 23-24. It also brings claims of breach of contract against CTX (in the alternative, promissory estoppel) and breach of fiduciary duty against all defendants. *Id.* at 24-30. Finally, it claims that CTX and Donald Christian violated the Texas Business Organizations Code, and that Christian tortiously interfered with the contract between CTX and LCMS. *Id.* at 30-33.

In January 2024, approximately four months after LCMS filed its 2023 suit, CTX sued LCMS and the Synod in Travis County, Texas. In the 2024 suit, CTX seeks declaratory judgment that the CTX board of regents had authority to make the amendments to CTX’s governing documents, that the Synod and LCMS do not have the authority to elect regents to CTX’s board, that CTX did not breach any fiduciary duty owed to the Synod or LCMS, and that neither the Synod nor LCMS is entitled to any reversionary interest in CTX’s new campus property or to damages associated with the loss of that property interest. Dkt. 1-1 (2024 case).

Appendix C

LCMS removed CTX’s 2024 suit to federal court. *See* Dkt. 1 (2024 case). CTX now moves to remand. Dkt. 5 (2024 case). Arguing that the Synod is both a non-diverse (Texas) defendant capable of being sued and a proper party to this case, CTX asserts that it would be improper for this Court to exercise jurisdiction over any claim. *Id.* at 10-11. CTX also moves to dismiss LCMS’s 2023 suit against it for lack of subject-matter jurisdiction and failure to join indispensable parties. Dkt. 13 (2023 case). It states that the Synod is the real party in interest, the real party in controversy, and an indispensable party that must be joined, and that the Synod’s joinder as a Texas entity defeats this Court’s diversity jurisdiction. *Id.* at 10-20. LCMS responds that the Synod is not a “legal entity” capable of being sued. Dkt. 10, at 2 (2024 case). As such, LCMS argues, the Synod is not a proper party to either suit, and this Court may exercise jurisdiction over both suits as between citizens of Texas (CTX and other defendants) and a citizen of Missouri (LCMS). *Id.*

II. MOTION TO DISMISS**A. Legal Standards**

To establish Article III standing, a plaintiff must demonstrate that she has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “Standing is an issue upon which the party invoking federal jurisdiction, the plaintiff, bears the burden of persuasion.” *Friends of the*

Appendix C

Earth, Inc. v. Crown Cent. Petroleum Corp., 95 F.3d 358, 361-62 (5th Cir. 1996); *see also Tex. Cable & Telecomms. Ass’n v. Hudson*, 265 F. App’x 210, 216 (5th Cir. 2008) (“The burden of establishing the elements of standing is on the party seeking jurisdiction in the federal courts.”) (citing *Lujan*, 504 U.S. at 561). In addition to these constitutional limitations, courts impose “prudential limitations on justiciability includ[ing] that a plaintiff generally may not rest [its] claim to relief on the legal rights of third parties even if [it] has alleged injury sufficient to satisfy article III.” *Ensley v. Cody Resources, Inc.*, 171 F.3d 315, 319 (5th Cir. 1999). “The real party in interest is the person holding the substantive right sought to be enforced. . . . Conversely, a party not possessing a right under substantive law is not the real party in interest with respect to that right and may not assert it.” *Farrell Const. Co. v. Jefferson Par., La.*, 896 F.2d 136, 140 (5th Cir. 1990) (citing *United States v. 936.71 Acres of Land*, 418 F.2d 551, 556 (5th Cir. 1969); *Lubbock Feed Lots, Inc. v. Iowa Beef Processors*, 630 F.2d 250, 256-57 (5th Cir. 1980)); Fed. R. Civ. P. 17(a) (“An action must be prosecuted in the name of the real party in interest.”). “A federal court sitting in diversity must look to state law to determine which party holds the substantive right.” *Farrell*, 896 F.2d at 140.

B. Discussion

In their motion to dismiss the 2023 case, Defendants CTX, Christian, and Bannwolf (collectively, “Defendants”), argue that the Synod is a citizen of Texas as well as a real party in interest, real party in controversy, and an indispensable party. Dkt. 13, at 14-21 (2023 case).

Appendix C

Fundamentally, Defendants argue that this case cannot proceed without the Synod, and this Court should either dismiss the action or join the Synod—a move that would defeat this Court’s diversity jurisdiction. *Id.* LCMS responds that the Synod is not a Texas citizen and—paradoxically, given its repeated assertions that the Synod created LCMS—that the Synod is not actually an entity separate from LCMS. *See* Dkt. 10, at 19 (2024 case). Therefore, according to LCMS, the Synod is not a proper party to this suit, and this Court should *not* dismiss the case or join Synod. *Id.* at 3.

The undersigned begins with Defendants’ argument that this action should be dismissed for failure to prosecute in the name of the real party in interest. Fed. R. Civ. P. 17(a). While LCMS asserts claims for relief on behalf of itself and the Synod, the Synod holds the substantive rights at issue here. *See, e.g.*, Dkt. 11, at 23 (2023 case) (demonstrating that LCMS brings claims “on behalf of itself and the Synod”). In its complaint, LCMS asks this Court to award declaratory relief restoring all its “rights, title, and interest related to CTX.” Dkt. 11, at 34 (2023 case). Yet, in its response to the motion to dismiss, LCMS states that the Synod is not a legal entity “separate” from LCMS, and in fact LCMS was created to carry out the Synod’s secular functions. Dkt. 10, at 6 (2024 case). To the extent LCMS asserts rights with respect to any Defendant, those rights are the Synod’s. *Id.* at 8-9 (“In short, where Synod as an ecclesiastical body . . . has interests at law, LCMS, Inc. is the legal entity formed by Synod that represents Synod before the law.”); *cf. S. Cent. Jurisdictional Conference of United Methodist Church v.*

Appendix C

S. Methodist Univ., 674 S.W.3d 334, 383-84 (Tex. App.—Dallas 2023, pet. granted) (permitting a church conference to bring certain claims on its own behalf, as opposed to permitting a *separate entity* to bring claims on behalf of a religious denomination).

LCMS cannot show that it possesses rights with respect to Defendants that are independent of the Synod. *See Friends of the Earth*, 95 F.3d at 361-62 (imposing the burden to show standing on the party invoking federal jurisdiction). For example, even if LCMS held title to the real property at issue in this case, it would belong to the Synod: the Synod’s bylaws acknowledge that LCMS (as “Corporate Synod”) may hold title to certain property, but that property is considered property of the Synod. *See* Dkt. 11-2, at 3 (defining “property of the Synod” as “[a]ll assets, real or personal, tangible or intangible, whether situated in the United States or elsewhere, titled or held in the name of corporate Synod, its nominee, or an agency of the Synod”); *Id.* at 148 (showing that ownership of university property is vested in the Synod).

Further, to the extent the Synod’s governing documents constitute a contract between CTX and the Synod, LCMS does not show why it is a party to that contract. *See* Dkt. 11, at 24 (2023 case). In addition to its claims for declaratory relief, LCMS brings a breach-of-contract claim against CTX. While the analogy to corporations is an odd fit here given that the Synod is an unincorporated association,⁵ under Texas law, “a

5. *See* *infra* Part III(B).

Appendix C

corporation's governing documents . . . are a contract both between the members or shareholders themselves and between the corporation on one side and the individuals or shareholders on the other." *S. Methodist Univ.*, 674 S.W.3d at 363. LCMS does not show that it is CTX's corporate parent or that LCMS is merely a "member" or "shareholder" of the Synod. The same reasoning applies to LCMS's tortious-interference-with-contract claim against Christian, which relies on the existence of a contract between LCMS and CTX. *See* Dkt. 11, at 33 (2024 case) (setting out tortious interference with contract claim). Relatedly, LCMS fails to demonstrate why any Defendant owes fiduciary duties to LCMS as opposed to the Synod. *See* Dkt. 11, at 28-29 (2023 case). And as for LCMS's Texas Business Organizations Code claims, it similarly fails to show why duties any Defendant owes under that Code flow to LCMS as opposed to the Synod. *See id.* at 30-32.

The undersigned notes that if permitted to sue in only LCMS's name, the Synod would be positioned to invoke the subject-matter jurisdiction of the federal courts in every state except Missouri, regardless of the citizenship of the Synod's members. Finally, this Court's dismissal of the 2023 case would not foreclose LCMS and the Synod from seeking relief in state courts. For the foregoing reasons, the undersigned recommends that the District Judge grant Defendants' motion to dismiss, Dkt. 13 (2023 case).⁶

6. Rule 17(a)(3) provides that this Court "may not dismiss" this action for failure to comply with its requirements "until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action." Fed. R. Civ. P. 17(a)(3). The Fifth Circuit has recognized

*Appendix C***III. MOTION TO REMAND****A. Legal Standards**

Federal courts are courts of limited jurisdiction possessing “only that power authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Energy Mgmt. Servs., LLC v. City of Alexandria*, 739 F.3d 255, 258-59 (5th Cir. 2014) (quoting *Kokkonen*, 511 U.S. at 377).

A defendant may remove any civil action from state court to a district court of the United States that has original jurisdiction. 28 U.S.C. § 1441(a). District courts have original jurisdiction over all civil actions that are between citizens of different states and involve an amount in controversy more than \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).⁷ Diversity jurisdiction “requires

that the purpose of this provision is to “prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made.” *Wieburg v. GTE Sw. Inc.*, 272 F.3d 302, 308 (5th Cir. 2001) (quoting Fed. R. Civ. P. 17(a) advisory committee’s note to 1966 amendment). The district court retains discretion to dismiss the action where there was no such understandable mistake. *See id.*

7. In removals based on diversity jurisdiction under 28 U.S.C. § 1332(a), “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C.

Appendix C

complete diversity—if any plaintiff is a citizen of the same State as any defendant, then diversity jurisdiction does not exist.” *Flagg v. Stryker Corp.*, 819 F.3d 132, 136 (5th Cir. 2016) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806)). “A civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2).⁸

However, “the improper joinder doctrine constitutes a narrow exception to the rule of complete diversity.” *Cuevas v. BAC Home Loans Servicing, LP*, 648 F.3d 242, 249 (5th Cir. 2011). To establish improper joinder, the removing party has the “heavy” burden, *id.*, to demonstrate either: “(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” *Smallwood*

§ 1446(c)(2). CTX does not dispute that the amount-in-controversy requirement is met. *See* Dkt. 1, at 3-4 (2024 case).

8. In its notice of removal, LCMS argues that this Court has jurisdiction over the 2024 case because it implicates federal questions. Dkt. 1, at 2 (2024 case). However, because CTX’s state-court complaint does not present a federal claim, this case may not be removed based on federal-question jurisdiction. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (“The presence or absence of federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.” (internal citations omitted)).

Appendix C

v. Ill. Cent. R.R. Co., 385 F.3d 568, 573 (5th Cir. 2004). Only the doctrine’s second prong is before the Court here.

Under the second prong of the improper-joinder doctrine, a defendant must establish “that there is no possibility of recovery by the plaintiff against an in-state defendant,” which stated differently means “that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.” *Id.* A court evaluates the reasonable basis of recovery under state law by “conduct[ing] a Rule 12(b)(6)-type analysis” or “pierc[ing] the pleadings and conduct[ing] a summary inquiry” where plaintiff has “misstated or omitted discrete facts that would determine the propriety of joinder.” *Id.*; *see also Int’l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 207 (5th Cir. 2016) (stating that a court may use either analysis, but it must use one and only one). If there is a reasonable basis for recovery under state law for any of CTX’s claims against the non-diverse defendant, this Court must remand. *See Smallwood*, 385 F.3d at 573.

In conducting a 12(b)(6)-type analysis, federal pleading standards apply. *Int’l Energy Ventures*, 818 F.3d at 207. Accordingly, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although “detailed factual allegations” are not necessary, a plaintiff

Appendix C

must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. The statements in the complaint must be sufficiently detailed to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Id.*

The party seeking removal “bears the burden of establishing that federal jurisdiction exists and that removal was proper.” *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). Any doubts as to the propriety of removal are construed in favor of remand. *Smith v. Bank of Am. Corp.*, 605 F. App’x 311, 314 (5th Cir. 2015). A district court is required to remand the case to state court if, at any time before final judgment, it determines that it lacks subject-matter jurisdiction. 28 U.S.C. § 1447(c).

B. Discussion

In support of its motion to remand, CTX argues that the Synod has capacity to sue and be sued, and that because the Synod is a non-diverse party to the removed 2024 suit, this Court may not exercise diversity jurisdiction over that suit. Dkt. 5, at 2 (2024 case). LCMS responds that because the Synod is not capable of being sued, it is improperly joined in this suit. Dkt. 10, at 21 (2024 case).

First, LCMS cannot show that the Synod is not a citizen of Texas for the purposes of diversity jurisdiction. Neither party offers any evidence other than that

Appendix C

contained in the Synod's governing documents regarding its citizenship.⁹ The Synod's bylaws define the Synod as "the association of self-governing Lutheran congregations and all its agencies on the national and district levels." Dkt. 11-2, at 3 (2023 case). There is no evidence that the Synod is incorporated. Therefore, the undersigned finds that the Synod is an unincorporated association. As such, it is a citizen of every state in which its members reside. *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016) (adhering to its "oft-repeated" rule that diversity jurisdiction in a suit involving an unincorporated entity depends on the citizenship of the entity's members). Because, by its own admission, the Synod has members (i.e., member congregations and individuals) in Texas, the Synod is a Texas citizen. *See, e.g.*, Dkt. 11, at 16 (2023 case) (referring to the "Texas District" of the Synod); *see also* Dkt. 11-1, at 7 (2023 case) (describing the Synod's division into districts). And because the Synod is a Texas citizen, this Court should exercise jurisdiction over the 2024 case only if there is "no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant." *Smallwood*, 385 F.3d at 573.

As described above, the undersigned next evaluates whether there is any possibility of recovery by CTX against the Synod as an in-state defendant. *See id.* A 12(b)(6)-type analysis is appropriate to determine whether the Synod was improperly joined. *See id.* Among

9. The undersigned notes that if LCMS's implication that the Synod is not an unincorporated association because it is not a "civil law entity" were accepted, the Synod would not be subject to suit anywhere.

Appendix C

other claims, CTX brings an action for declaratory judgment that “[n]either Synod nor LCMS have or are entitled to any property interest, including a reversionary interest, in and to CTX’s campus property.” Dkt. 1-1, at 7 (2024 case).

The undersigned finds that CTX has plausibly stated a claim for declaratory judgment against the Synod regarding its alleged reversionary interest in CTX’s new campus property. Under Texas law, “[i]f resolution of a dispute does not require a determination of which party owned title at a particular time, the dispute may properly be raised in a declaratory judgment action, if the requirements of the Texas Declaratory Judgments Act are satisfied.” *Meekins v. Wisnoski*, 404 S.W.3d 690, 695 (Tex. App.—Houston [14th Dist.] 2013, no pet.).¹⁰ A declaratory judgment is available under Texas law when

10. This dispute is properly brought as a declaratory-judgment action, not a trespass-to-try-title action. Under the Texas Property Code, a trespass-to-try-title action “is the method of determining title to lands, tenements, or other real property.” Tex. Prop. Code § 22.001(a). However, because this dispute involves a nonpossessory interest in real property, a declaratory judgment action is appropriate. See *Lance v. Robinson*, 543 S.W.3d 723, 735-36 (Tex. 2018) (“The trespass-to-try-title statute . . . only applies when the claimant is seeking to establish or obtain the claimant’s ownership or possessory right in the land at issue.”); *El Dorado Land Co. v. City of McKinney*, 395 S.W.3d 798, 803 (Tex. 2013) (“Simply put, both the possibility of reverter and the right of reentry are future interests in real property.”); see also *I-10 Colony*, 393 S.W.3d at 475 (“[I]n other words, if the determination only *prospectively* implicates title, then the dispute does not have to be brought as a trespass-to-try-title action.”).

Appendix C

(1) there is a justiciable controversy that is (2) real and substantial and (3) capable of resolution by the declaration sought. *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683-86 (Tex. 2020). There is a real and substantial justiciable controversy here, since the parties genuinely dispute LCMS and/or the Synod’s reversionary interest in CTX’s new campus property, which may be affected by the recent purported bylaw amendments. *See id.*; Dkt. 11, at 21 (2023 case) (alleging that “CTX is attempting to walk away with a historic property of the Synod without any say from its former religious denomination”). A declaration clarifying LCMS and the Synod’s interest, if any, in CTX’s new campus property would resolve the conflict. *See id.*

The Synod has capacity to sue and be sued under Texas law. Whether an entity has capacity to be sued depends on whether or not it is a corporation. *See Fed. R. Civ. P. 17(b)*. While a corporation’s capacity to be sued is based on the law under which it was organized, the capacity of *all other non-individual parties* is determined by the law of the state where the court is located, subject to exceptions not at issue here. *Id.* The parties to this case do not argue that the Synod is a corporation subject to Rule 17(b)(2). However, the parties dispute whether the Synod is an entity separate from LCMS. *See* Dkts. 5, at 13 (2024 case) (arguing that the Synod’s governing documents explicitly differentiate between the Synod and LCMS); 10, at 6 (2024 case) (stating that LCMS “is a legally formed Missouri nonprofit corporation, and the Synod is its ecclesiastical body and not a separate legal entity”). Regardless of its organizational relationship to LCMS, the Synod is a non-corporation, non-individual

Appendix C

“party” to the 2024 suit, and as such, whether it may be sued depends on Texas law.¹¹

LCMS does not show that under Texas law, the Synod may not be sued. The Texas Business Organizations Code permits suits against “nonprofit association[s],” defined as “unincorporated organization[s], other than one[s] created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose.” Tex. Bus. Orgs. Code § 252.007 (permitting suit); § 252.001 (defining “nonprofit association”). The undersigned finds that the Synod qualifies as a “nonprofit association” under these criteria. There is no evidence that the Synod is incorporated or that it was created by trust. As illustrated by its constitution, the Synod was formed for a “common, nonprofit purpose.” *See* Dkt. 11-1, at 1-2 (2023 case) (describing the Synod’s objectives). Therefore, as an unincorporated, nonprofit association, the Synod may be sued. *Id.* § 252.007 (“A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial . . . proceeding[.]”).

The Synod’s status as a religious denomination does not bar CTX’s suit. Initially, Texas courts have permitted

11. LCMS repeatedly asserts that the Synod may not be sued because it is “not a civil law entity” according to its bylaws. *See, e.g.*, Dkt. 10, at 6 (2024 case). However, LCMS fails to cite any authority demonstrating that the Synod is not subject to Rule 17(b) for the purposes of determining which law applies here. Further, LCMS cites no authority—other than its own bylaws—for the proposition that as a so-called non-“civil law entity,” the Synod may not be sued.

Appendix C

suits against churches classified as unincorporated associations. *See, e.g., Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417, 430 (Tex. 2020); *see also* Tex. Bus. Orgs. Code § 2.002 (stating that the purpose of a nonprofit entity may include “religious” purposes). While churches have a “fundamental right under the First Amendment to decide . . . matters of church governance as well as those of faith and doctrine,” the First Amendment does not bar all claims against religious bodies. *In re Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021). Courts may exercise jurisdiction over a controversy involving a church if they can “apply neutral principles of law that will not require inquiry into religious doctrine, interference with the free-exercise rights of believers, or meddling in church government.” *Id.* (citing *Westbrook v. Penley*, 231 S.W.3d 389, 398-400 (Tex. 2007)). In determining whether this “ecclesiastical abstention” doctrine applies, courts look to the plaintiff’s claims to determine whether the controversy requires engagement with ecclesiastical matters or is merely “a civil-law controversy in which the church happens to be involved.” *Id.* at 514; *see also Shannon v. Mem’l Drive Presbyterian Church U.S.*, 476 S.W.3d 612, 622 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (holding that to determine whether the ecclesiastical abstention doctrine applies, “courts must look to the substance and effect of a plaintiff’s complaint to determine its ecclesiastical implication”).

CTX’s action regarding the Synod’s interest in CTX’s new campus property is a pure civil-law controversy. *See In re Lubbock*, 624 S.W.3d at 513. First, the events leading to the campus property dispute—involving LCMS’s

Appendix C

voluntary waiver of its reversionary interest and CTX's alleged refusal to recognize that interest—occurred around 2006 or 2007, more than 10 years prior to CTX's purported bylaw amendments. Dkts. 1-1, at 4 (2024 case); 11, at 9 (2023 case). More importantly, the property dispute does not involve any change to CTX's governing documents and does not require any inquiry into religious doctrine. *See In re Lubbock*, 624 S.W.3d at 513. Finally, the undersigned notes that the Texas courts have exercised jurisdiction over suits against churches involving pure property disputes. *See, e.g., Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 608 (Tex. 2013) (holding that the trial court had jurisdiction over a property dispute involving a church).

Therefore, because CTX has plausibly stated a state-law claim against the Synod and the Synod's Texas citizenship defeats this Court's diversity jurisdiction, the undersigned recommends that the District Judge grant the motion to remand, Dkt. 5 (2024 case).

IV. RECOMMENDATION

In accordance with the foregoing discussion, the undersigned **RECOMMENDS** that the District Judge **GRANT** Defendants' motion to dismiss, Dkt. 13 (2023 case) and **GRANT** CTX's motion to remand, Dkt. 5 (2024 case).

The referral of these motions to the United States Magistrate Judge should now be canceled. The undersigned notes that should the District Judge accept these

Appendix C

recommendations, the pending referred motions in this matter would be denied as **MOOT**. Dkts. 39 (2023 case); 44 (2023 case); 23 (2024 case).

V. WARNINGS

The parties may file objections to this report and recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after the party is served with a copy of the report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED November 20, 2024.

s/ Dustin M. Howell
DUSTIN M. HOWELL
UNITED STATES MAGISTRATE
JUDGE

70a

**APPENDIX D — ORDER OF THE TEXAS COURT
OF APPEALS, THIRD DISTRICT, AT AUSTIN,
FILED JULY 16, 2025**

TEXAS COURT OF APPEALS,
THIRD DISTRICT, AT AUSTIN

NO. 03-25-00342-CV

THE LUTHERAN CHURCH—MISSOURI SYNOD,
AN UNINCORPORATED ASSOCIATION OF
LUTHERAN CONGREGATIONS; AND THE
LUTHERAN CHURCH—MISSOURI SYNOD,
A MISSOURI CORPORATION,

Appellant,

v.

CONCORDIA UNIVERSITY TEXAS,

Appellee.

Filed July 16, 2025

FROM THE 353RD DISTRICT COURT OF
TRAVIS COUNTY, NO. D-1-GN-24-000358,
THE HONORABLE CATHERINE MAUZY,
JUDGE PRESIDING

ORDER

PER CURIAM

Appellant The Lutheran Church—Missouri Synod, an
Unincorporated Association of Lutheran Congregations;

Appendix D

and The Lutheran Church—Missouri Synod, a Missouri Corporation has filed a motion to stay trial-court proceedings and this interlocutory appeal in the interests of comity and judicial economy, to protect the parties' rights, and to avoid potentially conflicting rulings. *See* Tex. R. App. P. 29.3. Appellant explains that an earlier-filed federal lawsuit between the parties has been appealed to the U.S. Court of Appeals for the Fifth Circuit and its disposition will address, among other things, a key issue about who is a proper party to this interlocutory appeal. Appellant notes that the Fifth Circuit granted expedited review and set oral argument for August 4, 2025, in the case styled *The Lutheran Church—Missouri Synod, a Missouri nonprofit corporation v. Donald Christian; Christopher Bannwolf; John Does 1-2; Concordia University Texas, Incorporated*, No. 25-50130. Appellant requests that the Court stay trial-court proceedings and this appeal until the Fifth Circuit appeal is resolved.

We grant the motion and stay trial-court proceedings in Cause No. D-1-GN-24-000358 and this appeal. We direct appellant to file a status report within seven days of the Fifth Circuit's issuance of its opinion in Cause No. 25-50130. The trial-court proceedings and this appeal will remain stayed until further order of this Court. All trial-court and appellate deadlines will be tolled during the stay.

It is ordered on July 16, 2025.

Before Chief Justice Byrne, Justices Crump and Ellis

**APPENDIX E — ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION, FILED JULY 20, 2026**

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF TEXAS AUSTIN DIVISION

Case No. 1:23-cv-1042-DAE

THE LUTHERAN CHURCH – MISSOURI SYNOD,
A MISSOURI NONPROFIT CORPORATION,

Plaintiff,

v.

DONALD CHRISTIAN, CHRISTOPHER
BANNWOLF, CONCORDIA UNIVERSITY
TEXAS, INC., & JOHN DOES 1-12,

Defendants.

**AGREED ORDER GRANTING STAY
PENDING PETITION FOR CERTIORARI**

The Court, having considered the parties' Joint Agreed Motion for Stay Pending Petition for Certiorari orders as follows:

1. The Lutheran Church – Missouri Synod, a Missouri nonprofit corporation (“LCMS”) may amend its pleadings solely to name specific individual defendants in place of current John Doe defendants (the “Amendment”) and may seek to obtain service

Appendix E

of summons on such individuals (the “Service”); provided, however, that nothing in this order or the agreement of the parties constitutes waiver of any defenses available to such defendants in the event they are named and served. Such Amendment is without prejudice to LCMS’s right to amend and/or seek leave to amend once the Court lifts the stay, pursuant to the Federal Rules of Civil Procedure, Local Rules and/or any scheduling order entered by the Court.

2. Except for the Amendment and the Service, which shall not be affected by this order or the agreed stay, all parties have agreed, and it is hereby ordered, that all proceedings in this case shall be stayed as follows:
 - a. Until October 8, 2026; or
 - b. If, by October 7, 2026, Concordia University Texas, Inc., Donald Christian, and Christopher Bannwolf file a petition for writ of certiorari with the Supreme Court of the United States (the “Petition”), seeking review of the opinion and judgment of June 4, 2026 of the United States Court of Fifth Circuit Court of Appeals, then the stay remains in effect until the later of:
 - i. the day after the Supreme Court denies review of the Petition; or.
 - ii. If the U.S. Supreme Court grants the Petition, then the day after the Supreme Court’s final disposition of the case on review.

74a

Appendix E

Signed this 20th day of July, 2026.

/s/ David Alan Ezra
David Alan Ezra
Senior United States District Judge

AGREED:

/s/ Andrew F. MacRae
Steven C. Levatino / Andrew F. MacRae
Counsel For Plaintiff
The Lutheran Church – Missouri Synod

/s/ Daniel R. Richards
Daniel R. Richards
Counsel For Defendants
Concordia University Texas, Inc.,
Donald Christian and Christopher Bannwolf

75a

**APPENDIX F — ORDER DENYING PETITION
FOR REHEARING OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED JULY 9, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-50130

THE LUTHERAN CHURCH—MISSOURI SYNOD,
A MISSOURI NONPROFIT CORPORATION,

Plaintiff-Appellant,

versus

DONALD CHRISTIAN; CHRISTOPHER
BANNWOLF; JOHN DOES 1-12; CONCORDIA
UNIVERSITY TEXAS INCORPORATED,

Defendants-Appellees.

Filed July 9, 2026

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1042

ON PETITION FOR REHEARING

Before ELROD, *Chief Judge*, and JONES and GRAVES, *Circuit
Judges.*

76a

Appendix F

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED.

**APPENDIX G — FIRST AMENDED COMPLAINT,
FILED FEBRUARY 29, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Case No. 1:23-cv-1042-RP

THE LUTHERAN CHURCH—MISSOURI SYNOD,
A MISSOURI NONPROFIT CORPORATION,

Plaintiff,

v.

DONALD CHRISTIAN, CHRISTOPHER
BANNWOLF, CONCORDIA UNIVERSITY
TEXAS, INC., & JOHN DOES 1-12

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff, The Lutheran Church—Missouri Synod, a Missouri nonprofit corporation, (“LCMS” or “Plaintiff”), submits this First Amended Complaint against Donald Christian, Christopher Bannwolf, Concordia University Texas, Inc. (“CTX”) and John Does 1–12 (“Does”). Plaintiff and Defendants may be referred to collectively as “Parties.”

*Appendix G***I. Parties**

1. LCMS is a Missouri non-profit religious corporation authorized to do business in Texas, with its principal place of business in St. Louis, Missouri. For purposes of this proceeding, LCMS may be served by and through its attorney, Steven Levatino, Levatino|Pace PLLC, 1101 S. Capital of Texas Hwy., K-125, Austin, Texas 78746.

2. Donald Christian is a Texas resident. He may be served through his counsel of record.

3. Christopher Bannwolf is a Texas resident. He may be served through his counsel of record.

4. Concordia University—Texas, Inc. (CTX) is a Texas non-profit corporation. It may be served through its counsel of record.

5. John Does 1–12 are unknown individuals who serve or served at the relevant time as regents on the CTX Board of Regents and unlawfully voted to amend the CTX charter, bylaws, and policy manual. Through the discovery process, they will be identified, named, and served as defendants in this lawsuit.

II. Jurisdiction and Venue

6. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Plaintiff is a Missouri citizen; the Defendants are Texas citizens; and the amount in controversy exceeds \$75,000.00.

Appendix G

7. Venue is proper in this district and division pursuant to 28 USC § 1391(b)(1) and 124(d)(1), as a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this judicial district and division. Further, CTX's principal place of business is in this district and this division.

III. Introduction

8. This is a dispute concerning the governance of CTX, a religious university that is an “agency” (as defined below) of the ecclesiastical denomination known as The Lutheran Church—Missouri Synod (the “Synod”).¹ The key issues central to this case have already been decided internally by the Synod's Commission on Constitutional Matters (“CCM”). The CCM was established by the Synod to interpret the Synod Constitution, Bylaws and resolutions and ensure that the governing instruments of the Synod and its agencies are in accord with the Synod Constitution and Bylaws. The CCM has concluded that

1. The Synod, as used throughout this First Amended Complaint, is the church body or religious denomination, established in 1847 and consisting of voluntary, self-governing, member congregations, individual members (ministers), and all Synod agencies (defined later). Synod, as explicitly stated in its Bylaws, is not a civil law entity (Bylaw 1.2.1 (v)). LCMS, also as used throughout, also known as “Corporate Synod” in Synod Bylaws (Bylaw 1.2.1 (f)), is the civil law entity incorporated by the Synod in 1892 to carry out its business, property, and civil law functions, including the right to sue and be sued. LCMS has the authority, pursuant to the Synod's Constitution and Bylaws and its Articles of Incorporation, to make the claims and assertions in the First Amended Complaint for the benefit of the Synod.

Appendix G

CTX—a university established and supported by the Synod—violated the Synod Bylaws and Constitution when the CTX Board of Regents (“CTX BOR”) amended CTX’s charter, bylaws and policy manual without the required prior approval of the CCM and without the other approvals required by the Synod. CTX’s purported changes to its governing documents attempt to sever CTX’s relationship to Synod under the Synod Constitution and Bylaws. CTX has refused to recognize or abide by CCM’s final and binding decision. CTX also has refused to recognize or abide by a decision by the Synod in convention (which is the highest governance authority in the church body) on August 1, 2023, that affirmed the CCM decision. Accordingly, LCMS brings this suit for a judicial declaration confirming as a matter of law the Synod’s decision on the matter. LCMS also seeks judgment restoring the CTX charter, bylaws, and policy manual to their state immediately prior to their unlawful amendments and/or requiring specific performance of the contract between LCMS and CTX. In the alternative LCMS seeks actual damages of at least \$111,147,678.

IV. Factual Background**A. The Synod**

9. The Synod, established in 1847, is a religious denomination in which self-governed Lutheran congregations, principally in the United States, voluntarily profess and seek to maintain and live out a common faith. This is done in accordance with the Synod Constitution and Bylaws, which define their shared confession and

Appendix G

ecclesiastical polity. Its membership includes nearly 6,000 congregations, which include nearly 2 million baptized members.

10. The Synod in convention has adopted and set out its confessional beliefs, polity, and church governance in a constitution (the “Constitution”) (Exhibit A). The Constitution, among other things, lays out the Synod’s core religious beliefs and practices, including its confession, objectives, powers, and conditions of membership. It details 10 objectives² that the Synod shall endeavor to achieve. Two of these objectives focus on training of ministers and education: 1) to “recruit and train pastors, teachers, and other professional church workers and provide opportunity for their continuing growth” (*see* Constitution, Art. III 3, p. 11 (Exhibit A)); and 2) to enable congregations of the Synod “to support synodical colleges, universities, and seminaries.” *Id.* at Art. III 5, p. 11 (Exhibit A).

11. The Constitution also provides that the Synod in convention “may adopt bylaws” and such bylaws “are binding regulations for the Synod and its conduct and governance.” *See* Constitution, Art. XIV, p. 20 (Exhibit A).

2. The objectives are all subject to the confession of the Synod, the Scripture and the Lutheran Confessions (Constitution Article II), as well as to the Constitutional Preamble, “Reason for the Forming of a Synodical Union: 1. The example of the apostolic church. Acts 15:1–31. 2. Our Lord’s will that the diversities of gifts should be for the common profit. 1 Cor. 12:4–31” (p. 11 (Exhibit A)).

Appendix G

Such bylaws (the “Bylaws”) have been adopted and were in force at the time of the relevant CTX actions (Exhibit B).³

12. The Synod’s meeting in convention is the highest authority in the Synod, exercising primary legislative authority and reserving the right to give direction to all officers and agencies of the Synod (Bylaw 1.4.1, p. 25 (Exhibit B)). Delegates of the Synod’s member congregations have since 1847 met regularly in convention. When in convention, the Synod decides matters of doctrine and religious practice and exercises ecclesiastical governance of the church body and its agencies.⁴

13. Some Synod agencies, including CTX, are separately incorporated. In this case, CTX, as an agency of Synod, exists primarily to fulfill the ecclesiastical and church-worker education and training objectives of the Synod.

14. Subject to direction by the Synod in convention, the Synod is led by its president (the “President”), six vice presidents, a secretary, a board of directors (“LCMS-

3. At all times applicable to the claims in this First Amended Complaint, the operative Synod Bylaws were the 2019 Synod Bylaws, which are attached as Exhibit B.

4. Under the Synod Bylaws, an “agency” of the Synod is not a civil law agent in a civil law principal-agent relationship, but rather an instrumentality formed or authorized by the Synod to be formed to accomplish the Synod’s objectives, missions and ministries in society. *See* Synod Bylaw 1.2.1 (a), p. 21 (Exhibit B).

Appendix G

BOD”)⁵ and other officers as allowed under the Synod Bylaws. *See* Synod Bylaws, pp. 34, 136–47 (Exhibit B).

15. The Synod in 1894 incorporated what is now known as LCMS, the Missouri nonprofit corporation.⁶ Synod did so to carry out its property, business, and civil law functions, including the ability to sue and be sued. The Synod does not exist as a civil entity or unincorporated association.⁷

5. LCMS-BOD is the Board of Directors of the Synod and also of LCMS, its civil law entity.

6. The nonprofit corporation LCMS, originally formed in 1894 as the “German Evangelical Synod of Missouri, Ohio, and other States,” has had its governing documents amended in convention from time to time. This includes convention action to establish LCMS’s present name, which is identical to that of the Synod, to restate the articles in 1956, and to adopt the provisions of Missouri’s “General Not-for-Profit Corporation Act” in 1967. The Missouri nonprofit corporation LCMS has the same Constitution and Bylaws as the Synod, the church body or ecclesiastical denomination. The members of LCMS are the same members as the members of the Synod. The officers of LCMS are the same as those of the Synod. The Synod convention is the “ultimate authority of the corporation” (*i.e.*, LCMS) just as it is the “legislative authority” of the ecclesiastical denomination (*i.e.*, Synod).

7. Any attempt to declare the member congregations of the Synod to constitute a purported unincorporated association, as has been already attempted by Defendant CTX in seeking to dismiss this action, would run roughshod over the Synod’s long-standing, definitive, and exclusive exercise of its rights to establish its polity and form of legal association in the free exercise of its religious beliefs and to incorporate and represent itself before the state, as LCMS.

*Appendix G***B. LCMS**

16. LCMS is the civil law corporation formed by the ecclesiastical denomination, the Synod. LCMS, also known in the Bylaws as “Corporate Synod,” exists to carry out the business, property, and legal affairs of the Synod, utilizing the powers granted it by the Synod convention and expressed in the Synod Constitution and Bylaws and the Amended and Restated Articles of Incorporation (“Articles”) the Synod has set forth for LCMS (Exhibit C). The objectives of LCMS are spelled out in the Articles, and include among other things, to: 1) “support the establishment and maintenance of theological seminaries, colleges, universities, and other institutions of learning to train ministers of religion-ordained, ministers of religion-commissioned, and laity for service” in the Evangelical Lutheran Church; 2) “spread the Gospel of Jesus Christ throughout the world by every means possible;” 3) “provide assistance and resources to . . . schools, . . . and agencies of the Synod for the dissemination of the Christian Gospel;” and 4) “establish and conduct all such enterprises and endeavors and to exercise such further power as may be necessary or expedient to carry out the objectives stated in the Constitution of The Lutheran Church—Missouri Synod.” *See* Articles, Art II, p. 203 (Exhibit C).

17. Pursuant to Constitution Article XI.E.2, LCMS, specifically its board of directors, exercises the legal authority therein detailed on behalf of the Synod. *See* Constitution, p. 17 (Exhibit A). This includes resorting to civil law, on behalf of the Synod, for aid in implementing the Synod’s determination as to who is to govern its

Appendix G

universities, and by what mechanism of ecclesiastical governance, or in its seeking equitable remedy in lieu thereof.

18. LCMS is not an agency of the Synod as described in the Synod Bylaws; rather it is the Synod's civil law entity. *See* Synod Bylaw 1.2.1 (f)(1), p. 22 (Exhibit B). LCMS, as one of the corporate entities formed by the Synod in convention, facilitates, performs, oversees, and coordinates, on behalf of the Synod and the Synod's member congregations, various ministries in the United States as well as in other countries. LCMS assists in coordinating resources of Synod member congregations and has supported the establishment and maintenance of a number of synodical colleges, universities, and seminaries in the United States (including CTX, which was founded by LCMS in 1926 to foster the objectives, mission, and ministries of the Synod).

C. Concordia Universities

19. The Synod has, through LCMS and other instrumentalities, carried out the ecclesiastical educational and training objectives of its Constitution in part by establishing or facilitating the establishment of numerous colleges and universities in the United States. There are currently six Synod universities, of which Defendant CTX is one. One of the primary functions of the Synod universities is the education of "church workers," who after graduation can go to seminary to become ordained ministers or without seminary become commissioned ministers of Synod congregations (*e.g.*, music directors,

Appendix G

youth ministers, teachers, administrators and other non-ordained ministerial functions). Thus, the establishment and furtherance of a university such as CTX within Synod is a foundational objective of Synod and core to its central beliefs in that the university develops and educates its future ministers and leaders. Further, the university trains “laity for service in the Evangelical Lutheran Church” under the Synod’s ecclesiastical governance. *See* Synod Bylaws 3.6.6.1; 3.10.6.1; 3.10.6.6 (h–i), pp. 130, 165 and 169–70 (Exhibit B).

20. In pursuit of such objectives, the Synod’s ecclesiastical polity includes a board of regents for each university. The board of regents specifically is charged with “determining that the charter, articles of incorporation, constitution, and bylaws of the institution conform to and are consistent with those of Synod,” and to carry out their responsibilities “in a manner reflecting the highest degree of integrity and honesty consistent with the Scriptures, the Lutheran Confessions, the Constitution, Bylaws, and resolutions of the Synod . . .” (Bylaws 3.10.6.4(i)(2), 1.5.2 (b), pp. 168, 29 (Exhibit B)).

21. Each university authorized to be established by the Synod is an “agency”⁸ of Synod (Constitution Art. III). *See* Synod Bylaw 1.2.1, p. 21 (Exhibit B). Agencies of the Synod include each board, commission, council, seminary, university, college, district, Concordia Plan Services, and Synod-wide corporate entity. *Id.* In this case CTX, as an agency of the Synod, is in existence solely because of

8. See Footnote 4.

Appendix G

the efforts of the Synod, its members and LCMS, and is subject to the Constitution and Bylaws of Synod. The Synod universities are required to follow the Synod Constitution and Bylaws as well as the regulations of the Concordia University System (CUS), which is a synod-wide corporate entity established by the Synod and delegated certain authorities with respect to the Synod universities. CUS has supported the Synod universities, including CTX, through various means including, historically, through subsidies, grants and financing.

D. CTX

22. In 1923, the Synod started exploring the establishment of a Synod college and coeducational parochial high school in the Austin area. The establishment of the college in 1926 would fulfill Synod's objectives set out in Article III of the 1924 edition of the Constitution (1924) (Exhibit G).⁹ The establishment of the college would assist Texas members of the Synod by preventing them from having to travel long distances to receive a Lutheran education; provide educational opportunities to Texas Lutherans; and draw and train, from Texas and surrounding regions, new ministers to teach the beliefs of the Synod. The establishment of the college also served other objectives of the Synod including unifying the Synod faith, furthering the Kingdom of God, and training ministers and teachers for service to the Synod. *See* 1924 Constitution, Article III 1, 2 & 3, pp. 1–2 (Exhibit G).

9. Constitution, Article III (3)—“training of ministers and teachers for service in the Evangelical Lutheran Church.”

Appendix G

23. After establishing that Austin, Texas, was the most suitable location for the new college, in 1925 LCMS picked and purchased a property near the University of Texas. LCMS also authorized and paid for the construction of buildings on the property and furniture, and assisted with funding and the purchasing of books for the library, these being the first of many significant expenditures essential to the foundation, maintenance, and expansion of the new institution. The original name of the new college was Lutheran Concordia College of Texas. Over the years, the institution changed its name several times, until it settled on its current name of Concordia University Texas (CTX).

24. Whatever name it operated under, the school was recognized within the Synod as a mission and ministry of the Synod (*i.e.*, an agency) fulfilling the objectives of the Synod and LCMS. The Synod and LCMS have planned, established and supported the school over the last 100 years. Members of Synod congregations send their children to CTX and pay its tuition in order that they may receive a Lutheran education. They also make donations to CTX because it is a Synod school. Further, Synod and its other agencies, councils, commissions and Synod-wide entities (*e.g.*, Concordia University System, The Lutheran Church—Missouri Synod Foundation, and the Lutheran Church Extension Fund—Missouri Synod) also have supported CTX through making their resources available to CTX for its benefit. Historically, CTX has acknowledged and admitted that CTX is a part of the Synod and openly and regularly called on the Synod as a whole to support it. Additionally, CTX accepted and abided by the Synodical

Appendix G

form of governance set forth in the Synod Bylaws, which assured Synod members of CTX's ecclesiastical fidelity to the Synod, until November 2022.

25. LCMS has supported CTX through the years by deeding property in trust to CTX; through direct funding including yearly subsidies, interim financing, grants, facilitation of debt service, and guarantying loans for CTX, among other benefits; and in 2006, conditionally waiving its reversionary interest in the CTX main campus property to facilitate CTX selling that property and moving the campus to a new location, based on the obligation of CTX to reestablish the reversionary interest in the new campus property. Such reversionary interest is required, in part, to be granted by CTX to LCMS pursuant to Resolution 4-04 adopted by the delegates of the Synod at its 2004 convention. *See* Synod Resolution 4-04 (Exhibit D). To date, CTX has failed to follow through with that obligation, instead refusing to recognize LCMS's reversionary interest in the CTX campus.

E. Transferred Property and CTX Governance Documents

26. In 1950, in an effort to assist CTX, LCMS approved a transfer of the property comprising CTX to CTX in "trust" for the school's benefit. *See* October 20, 1950, LCMS-BOD Minutes (Exhibit E). Certain deeds in question transferring title from LCMS to CTX contained reversionary clauses and use restrictions that identified certain circumstances under which CTX property reverted to LCMS. At about the same time as the approval

Appendix G

to assign the school property to CTX in trust, CTX¹⁰ was “chartered” under the laws of the State of Texas, as a non-profit corporation, the incorporators being the members of the Board of Control elected by the Synod in convention or serving *ex officio* under the Bylaws of the Synod, their having been authorized by Synod Bylaw to “perform such acts as to effect the corporate existence of the corporation” (1949 Bylaw 6.37 b)(Exhibit R). The name of the corporate entity was Lutheran Concordia College of Texas. Prior to the filing of the CTX Charter (the “CTX Charter”), CTX had operated as a nonincorporated college of the Synod. The purpose of the incorporated entity was for the “support and maintenance” of an educational institution. The business of this new corporation was directed to be “conducted and its affairs . . . controlled by a board of trustees to be elected in accordance with the Rules and Regulations of the Lutheran Church—Missouri Synod,” as had been its original incorporators. *See* CTX Charter (Exhibit F).

27. During the ensuing 72 years, the CTX Charter was amended seven times. However, until 2022, none of those amendments affected the governance of the university. The pre-November 8, 2022, amendments included: (1) three name changes (1965, 1995, and 2017); (2) an amendment making CTX perpetual in nature (1968); (3) an amendment declaring that CTX has no members and providing guidance on dissolution (2000); and (4) an

10. CTX has operated under various names over that last century. For purposes of this First Amended Complaint, any reference to CTX or the “school” incorporates any legal name under which the school was previously operating.

Appendix G

amendment changing the purpose of the corporation to align with federal law regarding a non-profit institution (May 2, 2022) (the “May 2022 Amendment”) (Exhibit H).¹¹ CTX’s governance documents received scrutiny from the CCM for deficiencies in those documents, taken as a whole, prior to the May 2022 Amendment, of which CTX had been notified. *See* CCM Opinion Op. 18-2894, September 14–15, 2018 (Exhibit I). Notably, those amendments made to the CTX Charter prior to the May 2022 Amendment were distinguishable from the May 2022 Amendment and the Charter Amendment made on November 8, 2022, as discussed below in that they did not fundamentally alter the relationship between the CTX and the Synod.

28. Thus, for nearly 100 years CTX operated pursuant to the governance set forth in the Synod Constitution and Bylaws, openly participating in Synod’s polity, agencies, and church life, including receiving regents elected by the Synod in convention, as well as those regents appointed or designated by Synod officers. CTX also has sent representatives to the Synod convention, as allowed only to, and required of synodical colleges and universities. Further CTX has participated as a member in the Concordia University System, and CTX’s president has participated ex-officio as a vice-president thereof and a member of its advisory council. CTX has also held itself out as a synodical school to solicit contributions from member congregations and individuals of the Synod. In totality, CTX has benefited from this inclusive and close

11. The May 2022 Amendment was not approved by the CCM or LCMS prior to CTX filing the document with the Texas Secretary of State.

Appendix G

relationship by inducing the Synod and its agencies and LCMS to support it and Synod parents to send their children and money to a Synod university.

F. Facts Giving Rise to this Lawsuit

29. CTX is governed and operated by the CTX BOR as a fiduciary of the Synod. *See* Bylaw 3.10.6.4 (i)(1), pp. 167–68 (Exhibit B). In May 2022, the CTX BOR, without prior notice to or permission from the CCM as required under the Synod Bylaws, amended the CTX Charter by changing the purpose of the corporation to align with federal law regarding a non-profit institution, evidencing CTX preplanning the actions taken by the CTX BOR in November 2022. *See* Synod Bylaw 3.9.2.2.3, p. 141 (Exhibit B); *see* May 2022 Amendment (Exhibit H). CTX also took additional actions to distance itself from the Synod, including applying for its own 501(c)(3) tax exempt status and discontinuing use of LCMS group tax exemption and, sometime prior, discontinuing use of services provided by Synod-wide corporate entities, including placing all financing with parties other than the Lutheran Church Extension Fund and withdrawing from the health insurance plan managed by Concordia Plan Services. These actions further demonstrate the planning undertaken by CTX BOR prior to their egregious action in November 2022.

30. On November 8, 2022, the CTX BOR, without prior notice to or permission from the CCM, as required under the Synod Bylaws, and without the approvals required to be obtained prior to a governance change

Appendix G

separating an institution from Synod governance (Bylaw 3.6.6.4 (i), p. 132 (Exhibit B)), amended various governing documents, purporting to fundamentally change its standing with the Synod. In particular, the CTX BOR purported to amend: 1) the CTX Charter, originally filed in April 1950 with the Texas Secretary of State (Exhibit F); 2) the CTX Bylaws (“CTX Bylaws,” Exhibit J); and 3) the CTX Policy Manual (Exhibit K). The CTX BOR did so through 1) a Certificate of Amendment filed with the Texas Secretary of State on November 8, 2022 (“Charter Amendment,” Exhibit L); 2) Amended and Restated Bylaws of Concordia University Texas (“Bylaw Amendment,” Exhibit M); and 3) a new board policy manual (“Policy Manual Amendment,” Exhibit N). (The CTX Charter, CTX Bylaws, CTX Policy Manual, Synod Constitution and Synod Bylaws are collectively referred to herein as the “CTX governance documents.”) The Charter Amendment, the Bylaw Amendment and the Policy Manual Amendment are collectively referred to herein as the “CTX Amendments.”

31. CTX amended the CTX Charter with a new Article II (Nov. 2022). The new Article II states:

Concordia University Texas is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organization described under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal

Appendix G

*tax code. Within the scope of the foregoing purposes, and not by way of limitation thereof, **the corporation is dedicated to the support and maintenance of any educational institution of higher learning that is aligned with, but not subject to the authority of or governance by the Lutheran Church-Missouri Synod.** To enable the corporation to carry out such purposes, it shall have the power to do any and all lawful acts and to engage in any and all lawful activities, directly or indirectly, alone or in conjunction with others, which may be necessary, proper, or suitable for the sustainment of any and all lawful purposes for which the University is organized under the TBOC.*

See Exhibit L at p.7 (bold emphasis added). This new Article II amended and deleted the previous Article II that was added in May 2022, also without CCM approval, which stated the following (Deleted Article II (May 2022)):

Concordia University Texas is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organization described under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

See Exhibit H, at p.7.

Appendix G

32. The Charter Amendment also created a new Article V Board. New Article V (Nov. 2022) states:

*[T]he Management of the affairs of the corporation is vested in its Board of Regents in accordance with the Bylaws. The number of Regents may be increased or decreased in accordance with the Bylaws; however, the number of Regents shall not be decreased to fewer than three (3). **All determinations regarding the university's alignment with the Lutheran Church-Missouri Synod, including but not limited to, the university's subscription and adherence to the Confession of the LCMS as currently outlined in Article II of the LCMS Constitution, and qualifications of board members and the presidency, will be subject to and determined by the sole and exclusive discretion of the Board of Regents.***

See Exhibit L at p. 7 (bold emphasis added). This new Article V amended and deleted the previous Article V, which stated the following (Deleted Article V (April 1950)):

*The business of this corporation shall be conducted and its affairs shall be controlled by a board of trustees **to be elected in accordance with the Rules and Regulations of the Lutheran Church—Missouri Synod.** The first name and addresses of the trustees for the first year are as follows: . . .*

See Exhibit F at p. B-1 (bold emphasis added).

Appendix G

33. CTX amended the CTX Bylaws with the following new Sections 2.4 and 2.5:

Section 2.4. Alignment; Confession. The University is and shall, without being subject to the authority of or governance by the Lutheran Church—Missouri Synod, operate as an educational institution that is aligned with the Lutheran Church—Missouri Synod and subscribes to the Confession of the LCMS as currently outlined in Article II of the LCMS Constitution. . . .

Section 2.5 Board Retains Discretion. All determinations regarding the university's alignment with the Lutheran Church—Missouri Synod, including but not limited to, the university's subscription and adherence to the Confession of the LCMS as currently outlined in Article II of the LCMS Constitution, and qualifications for board members and the presidency, will be subject to and determined by the sole and exclusive discretion of the Board of Regents.

See Exhibit M at p.2 (bold emphasis added). These new Sections 2.4 and 2.5 replaced provisions in the CTX Bylaws which acknowledged the obligations of CTX fidelity to the Synod Constitution and Bylaws (Deleted Sections 2.4 and 4.2):

Appendix G

Section 2.4. Affairs of the University. The University is and shall operate as an educational institution of The Lutheran Church-Missouri Synod, a Missouri not-for-profit corporation, subject to the provisions of the constitution and bylaws of the Lutheran Church-Missouri Synod as contained in the Handbook of the Lutheran Church-Missouri Synod, as may from time to time be amended, modified or supplemented (the “LCMS Handbook”).

Section 4.2. Duties of the Board of Regents. In exercising its relationship to The Lutheran Church-Missouri Synod (the “Synod”) and to the Board for University Education of the Synod, the Board of Regents shall assume the responsibilities as defined in the LCMS Handbook. The Board of Regents shall develop policies which delineate their responsibilities and duties as well as those of the President of the University. The Board shall elect a Chairman, Vice Chairman, and Secretary responsible for leading and conducting the efforts of the Board and for the recording of the actions of the Board.

See Exhibit J at p. 2 (bold emphasis added).

34. CTX further amended the CTX Bylaws regarding the appointment of regents in new Section 4.3, the first paragraph of which reads as follows:

Appendix G

Section 4.3. Number, Qualifications, Elections, and Term of Office. *The Board shall have up to twenty (20) but at least ten (10) members. The number of Board members may be increased or decreased by the affirmative vote of a majority of the then-serving Board of Regents; however, at no time shall the Board have fewer than three (3) members as required by the TBOC. A Board member need not be a resident of the State of Texas. All appointments to the Board shall be for three (3) year terms. No person shall serve more than three (3) consecutive terms. After serving a total of three (3) terms, a Board member may be eligible for reconsideration as a Board member after two (2) years have passed since the conclusion of such Board member's service. All Board members shall be approved by a majority vote of the Board."*

See Exhibit M at p.3 (bold emphasis added). This new Section 4.3 replaced provisions in the CTX Bylaws which required CTX regents to be elected or appointed in accordance with the requirements set forth in the Synod Constitution and Bylaws (Deleted Sections 4.3, 4.4 and 6.5), which stated:

Section 4.3. Number, Qualifications, Election and Term of Office. *The number, qualifications, election and term of office of the Board members shall be as set forth and governed by the provisions of the LCMS Handbook.*

Appendix G

Section 4.4. Removal; Filling of Vacancies.

The removal of any member of the Board and the filling of vacancies shall be as set forth and governed by the provisions of the LCMS Handbook and the Policy Manual.

Section 6.5. Term of Office; Filling of Vacancies:

Removal. *Each officer of the University shall hold office until his successor is chosen and qualified in his stead or until his earlier death, resignation, retirement, disqualification or removal from office; provided however that the term of office shall be governed by and as set forth in the LCMS Handbook.*

See Exhibit J at pp. 2-3, 5.

35. The amendments to the CTX Charter and CTX Bylaws described above are an attempt by the CTX BOR to affect the ability of the Synod to participate in the governance of CTX. These amendments also make it clear the CTX BOR now only recognizes its own governance authority and no authority of the Synod or the Synod Bylaws. For instance, while under the pre-November 8, 2022, CTX Bylaws, CTX was “subject” to the Synod constitution and bylaws (*see* Exhibit J at § 2.4), under the Bylaw Amendment, CTX claims it is merely “aligned”¹²

12. “Alignment” between the Synod and a CUS university is not a relationship which is permitted, contemplated or defined under the Synod Bylaws. Rather, the concept of CTX being “aligned” with the Synod, which is proposed by CTX, is a hollow relational statement which requires neither adherence nor fidelity

Appendix G

with the Synod. *See* Charter Amendment Article V (Exhibit L); Bylaw Amendment § 2.5 (Exhibit M).

36. The cumulative purported effect of all the CTX Amendments was the removal of all references to CTX being subject to the Constitution and Bylaws of the Synod. Further, the Charter Amendment and Bylaw Amendment purport to assert that future CTX BOR members will be elected pursuant to the CTX Bylaws, as amended by the Bylaw Amendment, and not the Synod Bylaws. In effect, this would result in no CTX BOR member being elected or appointed in the future by the Synod or Texas District of Synod, where CTX is located. Before the Charter Amendment and Bylaw Amendment, 10 of the up to 18 CTX regents were elected or appointed as follows: four of CTX's board of regents were elected by the Synod in convention; another four of CTX's board of regents were elected by the Texas District of Synod; the president of the Texas District of Synod was appointed to the CTX BOR as an ex officio member; and one regent was appointed by the Praesidium (Synod President and six Synod Vice-Presidents) of Synod, all pursuant to, and in accordance with, the Synod Bylaws. *See* Synod Bylaw 3.10.6.2, pp. 165–66 (Exhibit B). Each was also elected or appointed as a fiduciary of the Synod. *See* Synod Bylaw 3.10.6.4 (i)(1) and 3.10.6.5, pp. 167–69 (Exhibit B).

to Synod doctrine and practice. CTX becomes the sole arbiter of whether such alignment with Synod adequately exists. It is antithetical to Synod's polity and impermissible under the Synod Constitution and Bylaws, as confirmed by the CCM in CCM Opinion 23-3006 (Exhibit P).

Appendix G

37. After the CTX Amendments, positions on the CTX BOR purportedly will be filled solely by the sitting CTX BOR, thereby disregarding the process for election and appointment of regents set forth in the Synod Bylaws and in the CTX governance documents. This cuts off any Synod participation in the election or appointment of the governing body of the university. Evidencing this is CTX's recent refusal to seat CTX regents elected by the Synod in convention on August 3, 2023, in accordance with the Synod Bylaws. In refusing to seat such regents, CTX stated:

I am writing in regard to your purported election to the Concordia University Texas Board of Regents at the recent convention of the Lutheran Church-Missouri Synod. As you are likely aware, the CTX Board changed its governing documents in November 2022 to make it the sole-governing body of the institution. The current CTX Articles of Incorporation and Bylaws call for the CTX Board to select all of its Regents and, consequently, do not allow for Regents to be elected or appointed externally by someone else. Hence, persons elected or appointed elsewhere (in this case, at the LCMS convention) cannot be recognized as members of the Board.

See Exhibit O (August 4, 2023, letters to Synod-elected regents from Chairman Christopher Bannwolf of CTX BOR).

Appendix G

38. The CTX Amendments also purport to remove the mechanisms of ecclesiastical supervision set forth by the Synod for its continued regulation of the teaching and practice of its doctrine in its agency, CTX, and its continued participation in determining who will be, with regard to CTX, its ministers. These would include the president of CTX, who is charged to be the “spiritual, academic, and administrative head” of the institution (Synod Bylaw 3.10.6.6), and the theological faculty of CTX (Bylaw 3.10.6.7.3). *See* Synod Bylaws, pp. 169, 173 (Exhibit B). So, in effect the CTX BOR, by only following part of its controlling governing documents, seeks to deprive the Synod of the right to enforce its ecclesiastical governance of an agency in accordance with the doctrine and practice of the Synod and thus deny its right to free exercise of religion.

39. The above actions were primarily orchestrated by Donald Christian, the current President of CTX, and Christopher Bannwolf, the Chairman of the CTX BOR (collectively the “Individual Defendants”). The Individual Defendants have been the primary architects of the CTX improper action to unilaterally change CTX governance documents. Through statements and actions, the Individual Defendants made known their disdain for LCMS and Synod governance oversight of CTX and their wish that CTX be governed under a new relationship in which CTX, through a board of regents solely picked by the CTX BOR, was no longer subject to the Synod Constitution and Bylaws or Synod governance oversight. The Individual Defendants have sought to create a new polity in the Synod, wherein Synod agencies

Appendix G

can unilaterally break from the Synod, without Synod consent, and foist a new polity on the Synod that is dictated by the few on the CTX BOR voting in favor of amendment (approximately 12 members in November 2022) instead of the Synod (including its nearly 6,000 member congregations, whose delegates form the highest legislative assembly of the Synod). *See* Synod Bylaw 1.4.1, p. 25 (Exhibit B). They were also repeatedly reminded in person and in correspondence of their duties to the Synod as defined by the Synod Bylaws, under which they were inducted into office.

40. Disregarding their duties, the Individual Defendants conspired to break CTX away from the governance structure set forth in the Synod Bylaws and interfered with the historic contractual relationship between CTX and LCMS and the ecclesiastical fidelity of CTX to the Synod that had existed for nearly 100 years. They have as a result caused harm to LCMS and the Synod, for which Individual Defendants are financially liable up to and including the full value of CTX, which has been stripped from the Synod through their tortious actions. Pursuant to the most recent financial statement of CTX available to LCMS for the period ending June 30, 2022, CTX has net assets of \$111,147,678, for which residual value the Plaintiffs seek damages from the Individual Defendants.

41. The effect of the changes purported to be made pursuant to the CTX Amendments—if legal—would allow the CTX BOR to unilaterally take itself out of any ecclesiastical supervision or governance oversight by

Appendix G

Synod. First, as detailed above, the Bylaw Amendment makes clear that the regents on the CTX BOR are no longer chosen as detailed in the Synod Bylaws. This has resulted or will result in the Synod and the Texas District no longer being able to elect and appoint ten board members on the CTX BOR. Second, CTX's obligation to follow the Synod Constitution and Bylaws has been deleted and CTX makes clear it will only look within to see if actions are permitted or whether what is being taught is theologically correct. As a result, after passing the CTX Amendments, CTX claims it is no longer subject to the Synod Constitution and Bylaws. This has already manifested itself, with CTX refusing to seat Synod-appointed regents, the CTX BOR voting in new regents of CTX in violation of the Synod Bylaws, and CTX refusing to respond or provide records in response to legitimate requests, even simply for information, by LCMS-BOD pursuant to its authority under the Synod Constitution and Bylaws.

42. While the amended CTX Bylaws have provisions that may appear on their face to be consistent with CTX's Lutheran identity (*e.g.*, regents must be members of Synod member congregations and must subscribe to Synod teachings), these bylaws ring hollow since CTX's continued subscription to Lutheran doctrine and practice, and the determination as to whether faithful adherence to such doctrine and practice is occurring, is subject to the CTX BOR review and discretion alone, thereby removing all accountability to the Synod and LCMS. *See* Bylaw Amendment §§ 2.4 & 2.5 (Exhibit M). The CTX BOR has thus overthrown established and practiced mechanisms of

Appendix G

church governance to appropriate to itself the university it formerly stewarded on behalf of the Synod.

43. Further, the Bylaw Amendment permits any future CTX BOR to amend the CTX Bylaws by a simple majority and without the approval of the CCM or other Synod approvals specifically required for significant governance changes. *See* Bylaw Amendment, Article 8 (Exhibit K). Whereas the CTX Bylaws, prior to the Bylaw Amendment, included a provision that they were subject to the Synod Constitution and Bylaws, the Bylaw Amendment purports that CTX is no longer subject to the Synod Constitution and Bylaws. The bottom line is the CTX BOR could ostensibly vote tomorrow to change the direction of the school as it sees fit, including dropping its so-called “alignment” with the Synod and its Lutheran identity. In fact, according to CTX’s understanding of its ability to disregard Synod governance oversight, the CTX BOR could vote tomorrow that CTX will no longer be a Christian school. According to the CTX BOR, CTX no longer has to answer to LCMS or the Synod, a confessional church of which it was an agency, mission and ministry for nearly 100 years.

44. While CTX’s leadership has tried to claim its actions were the creation of a new vision for it to operate with the Synod, the reality is CTX’s action has created disharmony within the Synod that has caused substantial harm and had a profound impact on the Synod. Their acts fly in the face of the Synod law such as CCM Op. 23-3006, which states:

Appendix G

Constitutional and Bylaw provisions dealing with governance of the institutions—including the assignment of ecclesiastical supervision and oversight to responsible officers and the entrusting of institutional governance to the regents, jointly and severally, acting as fiduciaries of the Synod—are intended to preserve for the ministry and mission of the Synod the institutions that the member congregations, acting through the Synod, have created, sustained, and relied on (Bylaw 1.1.1 [b]).

See Exhibit P, p. 134. While claiming to maintain the substance, CTX has jettisoned all ecclesiastical oversight and governance mechanisms the Synod and LCMS have rightfully set forth to safeguard that substance. CTX’s actions are therefore nothing short of a slap to the face of the Synod and an attempt to create its own polity without the participation of the Synod. A historic agency of the Synod has cast aside a century of work of LCMS and the Synod, all for the glory of the Kingdom of God, by the stroke of a pen and without any participation of the Synod or LCMS.

45. CTX is attempting to walk away with a historic property of the Synod without any say from its former religious denomination. In doing so, it fails to look to the established relationship between the parties and the fact that, as an historic “agency” of the Synod (as defined in the Synod Bylaws), the CTX BOR operated the university for the benefit of the Synod pursuant to its fiduciary duty

Appendix G

to the Synod. It fails also to recognize that its governance documents historically included the Synod Constitution and Bylaws—documents CTX now claims are no longer applicable.

46. Prior to filing this lawsuit, LCMS-BOD has taken all measures it could to get CTX to reverse course and reestablish its charter, bylaws, and policy manuals to the same that existed before November 8, 2022. All its efforts have been to no avail. The CTX BOR continues to defy the Synod and the will of LCMS-BOD that CTX remain subject to the Synod Constitution and Bylaws. CTX's improper actions have even been brought by LCMS-BOD to the CCM, which is the authoritative commission in the Synod with respect to the interpretation of the Synod Constitution and Bylaws. *See* Synod Bylaw 3.9.2.2, pp. 140–41 (Exhibit B); and Articles at Article V, p. 204 (Exhibit C). LCMS-BOD formally submitted a series of ten questions to the CCM related to actions taken by CTX, including the purported adoption of the CTX Amendments, and requested that the CCM issue an opinion with respect to such questions. On March 30, 2023, after requesting and receiving input from the affected parties,¹³ the CCM issued its opinion that CTX's actions in changing its governing documents pursuant to the CTX Amendments were in violation of the Synod Constitution and Bylaws, without authority, and null and void. It further found that individuals on the CTX BOR who voted to change the governing documents without CCM prior

13. CTX, though given an opportunity to provide input, failed to respond to the CCM request.

Appendix G

approval were in violation of the fiduciary duties they owed to the Synod under the Synod Constitution and Bylaws. *See* Exhibit P.

47. After being advised of the CCM opinion, the CTX BOR continued in its defiance of the Synod and LCMS-BOD and refused to correct its wrongful actions. The CCM opinion was further confirmed by the delegates of the Synod acting in convention on August 1, 2023, in their Resolution 7-03 (Exhibit Q), pursuant to which the Synod demanded that CTX “submit to the governance of the Synod as laid out in its Constitution and Bylaws.” CTX has yet to accept that demand from the Synod. As a result, LCMS is left no other alternative than to come to the courts to seek judicial relief to right the equitable and constitutional wrong inflicted by CTX.

V. Causes of Action & Damages**Count One: Declaratory Judgment (CTX)**

48. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out in full.

49. A real and justifiable controversy exists between LCMS and CTX concerning LCMS rights under the CTX governance documents and the CTX Amendments, and LCMS rights with respect to CTX’s property.

50. LCMS petitions the Court pursuant to the Texas Declaratory Judgments Act, chapter 37 of the Texas

Appendix G

Civil Practice & Remedies Code, and/or the Federal Declaratory Judgments Act, 28 U.S.C. § 2201, on behalf of itself and Synod, its ecclesiastical denomination, for a declaration confirming the CCM decision, as ratified by the Synod convention, and/or independently that the Defendants violated the CTX governance documents when CTX illegally amended the CTX Charter, the CTX Bylaws, and the CTX Policy Manual in violation of the Synod Constitution and Bylaws.

51. LCMS further petitions the Court for a declaration that: CTX has breached its contract with LCMS and the Synod by violating CTX's governance documents to the detriment of LCMS and the Synod, or alternatively that CTX is liable to LCMS under a theory of promissory estoppel; CTX, the Individual Defendants, and John Does 1–12 have breached their fiduciary duties to LCMS and the Synod; and CTX and Donald Christian have violated the Texas Business Organizations Code.

52. LCMS further seeks a declaration that:

- a. The CTX governance documents with amendments through December 31, 2021, are the effective governing documents of CTX and that all actions taken by CTX or its representatives in May 2022 and on November 8, 2022, to improperly amend the CTX governance documents are null and void;
- b. The May 2022 Amendment to the CTX Charter is null and void, and any actions taken

Appendix G

by CTX or its representatives based upon such May 2022 Amendment are similarly void, to include the appointment of any new CTX regents not accomplished in compliance with the Synod Constitution and Bylaws.

c. The Charter Amendment, Bylaw Amendment and Policy Manual Amendment made on November 8, 2022, to the CTX Charter, CTX Bylaws, and CTX Policy Manual are null and void, and any actions taken by CTX or its representatives based upon such Charter Amendment, Bylaw Amendment and Policy Manual Amendment are similarly void, to include the appointment of any new CTX regents not accomplished in compliance with the Synod Constitution and Bylaws.

d. The Synod and LCMS retain the long-standing and permanent governance relationship with CTX and all rights associated therewith, guaranteed by CTX's governance documents including the Synod Constitution and Bylaws;

e. CTX enact upon its property a reversionary interest in favor of LCMS as is required by the Synod Constitution and Bylaws;

f. CTX, CTX BOR and the Individual Defendants owe fiduciary duties to the Synod as described in the Synod Bylaws; and

Appendix G

g. Any future amendment to the CTX governance documents must comply with the Synod Constitution and Bylaws, including that the CCM must approve such changes before being adopted by the CTX BOR.

Count Two: Breach of Contract (CTX)

53. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out in full.

54. A corporation's governing documents are a contract between the members or shareholders themselves and between the corporation on the one hand and the individual members or shareholders on the other. Moreover, the Texas Business Organizations Code authorizes a nonprofit corporation to issue an instrument evidencing membership rights, voting rights and/or ownership rights.

55. In this instance, the CTX governance documents represent a legally binding contract between CTX and LCMS granting LCMS various valuable rights including, but not limited to the following:

- a. the express right of the Synod, through its national convention, to elect four members of the CTX BOR;
- b. the express right of the Texas District of the Synod, acting in convention, to elect four members of the CTX BOR;

Appendix G

- c. the express right of the Praesidium of the Synod to appoint one member of the CTX BOR;
- d. the express right to participate in the prior approval panel for the appointment of the President of CTX (*see* Synod Bylaw 3.10.6.6.2, pp. 171-173 (Exhibit B));
- e. the express right to approve any changes to CTX governance documents;
- f. The express right to effect ecclesiastical supervision over the doctrine taught and practiced in the institution, including prior approval of theological faculty and the removal, through ecclesiastical discipline, of rostered faculty and administration from office.

By enacting the CTX Amendments on November 8, 2022, CTX—and in particular the John Does on the CTX BOR who voted for the amendments and not to undo the amendments—breached the binding contract between CTX and LCMS.

56. LCMS, in all business, property and legal aspects, performed under this contract at all relevant times, and is ready, willing and able to continue to perform. LCMS therefore requests the Court order specific performance under the breached contract, and require Defendants to perform the acts required by the contract and/or undo the actions performed in violation. Alternatively, by breaching the contract, CTX has caused damages to LCMS in the

Appendix G

form of the loss of valuable contractual rights valued at least \$111,147,678, for which LCMS sues.

Count Three: Promissory Estoppel (Alternative Claim-CTX)

57. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out in full.

58. In the alternative, if the various governing documents do not constitute a binding contract between LCMS and CTX, then LCMS seeks relief under promissory estoppel.

59. The elements of promissory estoppel in Texas are: (1) a promise, (2) foreseeability by the promisor of the promisee's reliance thereon, and (3) substantial reliance by the promisee to his detriment. Here, CTX made multiple promises to LCMS, intending and thus foreseeing that LCMS rely upon them; and LCMS substantially relied on those promises to its detriment.

60. CTX has on multiple occasions made promises to LCMS upon which LCMS reasonably, foreseeably and substantially relied. In 1950, in an effort to assist CTX in management of the university, LCMS-BOD authorized deeding and subsequently did deed the university real property to the newly-incorporated CTX in "trust" for the benefit of LCMS and its members. CTX promised to maintain that property in trust, and LCMS foreseeably, substantially and detrimentally relied upon CTX's

Appendix G

promise. Throughout CTX's existence, based on CTX promises, the Synod and LCMS foreseeably, substantially and detrimentally also provided significant direct funding and other financial support. This included providing subsidies to assist CTX remaining viable. Further in 2006, this time assisting CTX with financial matters and relocation of the CTX campus at the request of CTX, LCMS conditionally waived its reversionary interest in the university real property comprising the CTX main campus, with CTX having a corresponding obligation to reestablish the reversionary interest in LCMS favor, as is required by Resolution 4-04 passed by the Synod in convention in 2004. *See* Exhibit D.

61. LCMS foreseeably, substantially and detrimentally relied upon CTX's promise to comply with the Synod Constitution and Bylaws set forth in the CTX governance documents, the Synod Constitution and Bylaws establishing the binding effect of resolutions passed by the Synod in convention, and the obligation of the CTX BOR to comply with the same. *See* Synod Constitution Article VIII C, p. 14 (Exhibit A); Synod Bylaws 1.4.4 (a)(5), p. 26 (Exhibit B). CTX regents further assumed their positions pledging to Synod that they would govern the university subject to the Synod Constitution and Bylaws. LCMS foreseeably, substantially and detrimentally relied upon CTX's promise.

62. CTX and the CTX BOR have now violated all of these promises and the reality of CTX's position

Appendix G

in the Synod to the detriment of LCMS and Synod,¹⁴ which detrimentally relied on CTX's historic governing dynamic and statements of fidelity to the Synod, by amending the CTX governance documents in violation of the Synod Constitution and Bylaws. As a result, LCMS is entitled to equitable relief against CTX to enforce CTX's repeated and long-standing promises, and the CTX governance documents, and require CTX to follow the Synod Constitution and Bylaws, void the unlawful CTX Amendments and put in place the reversionary interest in the CTX property in favor of LCMS. In the alternative, LCMS should be awarded reliance damages for the loss of CTX, which in this case is valued at more than \$111,147,678.

63. Had it known that the CTX BOR would take such hostile actions against LCMS and Synod, as evidenced by its narrow understanding of the CTX governance documents, Synod would have long ago sought action from more friendly and oath-following CTX regents to specifically amend the CTX governance documents to specifically prohibit CTX from amending the CTX governance documents without the express written authorizations required by Synod Bylaws for such amendments. However, the Synod did not take such an action based on its detrimental reliance on the historical polity of the Synod and the relationship between the Synod

14. LCMS alleges that CTX, if allowed to separate itself unilaterally from the Synod, contrary to Synod's polity, would use Texas law to defeat rightful church governance. LCMS as the civil law entity established by the Synod is the proper party to pursue civil remedies on behalf of Synod.

Appendix G

and CTX, the obligation of the CTX BOR, whose very positions and governance responsibilities are set forth in the Synod Bylaws, to act strictly in accordance with and not to exceed the authority granted to them in the Synod Constitution and Bylaws, and all prior boards of regents of CTX openly and freely considering the CTX governance documents to include the Synod Constitution and Bylaws.

Count Four: Breach of Fiduciary Duty (CTX, Individual Defendants, John Does 1–12)

64. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out fully.

65. CTX, the Individual Defendants, and John Does 1–12 owe a fiduciary duty to Synod, which includes the obligation to comply with the Synod Constitution and Bylaws including maintaining the CTX governance documents in accordance with the Synod Constitution and Bylaws and complying with the resolutions passed by the Synod in convention. *See* Constitution, Article VIII C, p. 14 (Exhibit A); and Synod Bylaws 1.4.4(a)(5), p. 26, 3.10.6.4(i)(2), pp. 167–86 (Exhibit B). The CTX regents act in such a special relationship to the Synod it gives rise to fiduciary duties owed under Texas law. In fact, the Synod Bylaws specifically state the regents act as fiduciaries of the Synod. *See* Synod Bylaws 3.10.6.4 & 3.10.6.5, pp. 167–69 (Exhibit B).

66. CTX, the Individual Defendants and John Does 1–12 violated this fiduciary duty by failing to grant the

Appendix G

revisionary interest in the CTX property to LCMS in violation of Resolution 4-04 (Exhibit D) and by attempting to implement the CTX Amendments—the amendments to the CTX Charter, the CTX Bylaws and the CTX Policy Manual—all without the permission of (or even notice to) the Synod. CTX further breached this fiduciary duty when it refused to seat the four new regents elected to the CTX BOR at the Synod convention on August 3, 2023, and instead appointed new regents to the CTX board of regents in violation of the Synod Bylaws. *See* Exhibit O (August 4, 2023, letters to Synod-elected regents from chair of CTX BOR).

67. As a result of these breaches of fiduciary duty, the current governing documents of CTX—as implemented by the CTX BOR—are no longer subject to the Synod Constitution and Bylaws. As such, CTX, the CTX BOR and the Individual Defendants have breached their duty to protect Synod interests in that as it stands now, Synod has no governance oversight of CTX, including without limitation ensuring it is theologically sound and teaching in accordance with Synod belief. Moreover, CTX can now be changed at a whim by the CTX BOR to a school not sharing the confession of the Synod, or sold without permission of the Synod, which will cause the loss of an historic Synod university.

68. This outcome would be an egregious result considering LCMS was operating within its rights when it originally deeded the university, including the real property, to CTX in trust. Such an arrangement is

Appendix G

specifically allowed by Chapter 81 of the Acts of the Texas Legislature, which provided as follows:

Any religious, charitable, educational or eleemosynary institution so organized under the laws of this State ***may acquire, own, hold, mortgage, and dispose of and invest its funds in property, real and personal for the use and benefit of, under the discretion of and in trust for such electing, controlling, and parent body*** [. . .] ***provided further that any such board or association heretofore incorporated may accept the benefits of this Act by filing with the Secretary of State its written acceptance thereof . . .***

Tex. Rev. Civ. Stat. Ann. Art. 1409 (Vernon 1925) (emphasis added).

69. Further, under Texas law, CTX, the Individual Defendants and John Does 1–12 have duties of loyalty, care, and obedience to LCMS and Synod. *In re Est. of Poe*, 648 S.W.3d 277 (Tex. 2022) (three duties of a fiduciary—obedience, loyalty, and due care); *Gearhart Indus., Inc. v. Smith Int’l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984) (The duty of obedience requires a director to avoid committing ultra vires acts, *i.e.*, acts beyond the scope of the powers of a corporation as defined by its charter or the laws of the state of incorporation).

70. By the actions of the CTX BOR, the Individual Defendants and John Does 1–12, the individual regents

Appendix G

who voted to unlawfully amend the CTX governance documents, breached their fiduciary duties to the LCMS and Synod by acting beyond the CTX BOR's authority, as defined in the CTX governance documents, by purporting to amend those documents without first obtaining Synod's approval by and through the CCM, and by then knowingly directing the filing of the materially false Charter Amendment with the Texas Secretary of State, amending the CTX Charter.

71. The Individual Defendants and John Does 1–12 also breached fiduciary duties to the Synod by purporting to divest it of its enumerated rights under the CTX governance documents, to include the rights to: (i) elect and remove regents; (ii) receive the grant of a reversionary interest in CTX assets and real property; (iii) ensure theologically correct teaching by CTX theology professors; (iv) participate in the prior approval panel for the appointment of, and supervision of, one of the Synod's foremost ministers and the "spiritual head" of the institution, the CTX president; (v) prevent amendments to the CTX governance documents without CCM's prior approval; and (vi) require certain approvals prior to any action to separate a Synod university from Synod governance.

72. LCMS seeks a declaration that the CTX Amendments are null and void, and requiring CTX to follow the CTX governance documents that existed prior to May 2022. Alternatively, in the unlikely event LCMS does not recover all declaratory relief sought herein, LCMS is entitled to damages caused by these breaches

Appendix G

of fiduciary duties to equal at least \$111,147,678, which is the estimated value of the university.

Count Five: Violations of Texas Business Organizations Code (CTX and Donald Christian)

73. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out in full.

74. CTX and Donald Christian have committed multiple violations of the Texas Business Organizations Code (“TBOC”), and have caused significant damage to the Synod and LCMS in the process.

75. CTX is a nonprofit corporation organized under the laws of the State of Texas. Texas law requires nonprofit corporations to enact articles of incorporation, also known as a certificate of formation, or in this case the CTX Charter. *See* TBOC § 3.005. Any certificate of amendment to articles of incorporation (or a charter) must contain an express statement that the amendment has been approved “in the manner required by this code and the governing documents of the entity.” *See* TBOC § 3.053(4). Further, under Texas law, it is a class A misdemeanor to file with the Texas Secretary of State a certificate of amendment to articles of incorporation containing “a false statement of material fact[.]” *See* TBOC §§ 4.007, 4.008. Further, Texas law prohibits CTX and Donald Christian from actions inconsistent with the limitations contained in

Appendix G

the CTX governance documents. *See* TBOC §§2.113 (a);¹⁵ 3.0005(B).¹⁶ CTX and Donald Christian trampled all over LCMS rights and benefits under the TBOC.

76. Prior to November 8, 2022, the CTX Charter granted governance rights and benefits to the Synod and LCMS by requiring all members of the CTX BOR to be appointed pursuant to the “Rules and Regulations of the Lutheran Church-Missouri Synod.” *See* Exhibit F at pp. B-1—B-2. Prior to November 8, 2022, the CTX Bylaws also required CTX to follow the Synod Constitution and Bylaws including the Synod Bylaw which required pre-approval of the Synod, by and through the CCM, of any changes to CTX governance documents before filing them with the Texas Secretary of State. *See* Synod Bylaw 3.9.2.2.3, p. 141 (Exhibit B). By purporting to amend the CTX Charter and the other CTX governance documents in violation of the CTX governance documents, including the Synod Constitution and Bylaws, CTX violated the TBOC, and took away LCMS and Synod rights and benefits in doing so.

15. “This subchapter does not authorize a domestic entity or a managerial official of a domestic entity to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the entity *contained in its governing documents*, this code, or other law of this state” (emphasis added).

16. “The certificate of formation may contain other provisions not inconsistent *with law relating to the organization*, ownership, governance, business, or affairs of the filing entity” (emphasis added).

Appendix G

77. The Charter Amendment executed by Donald Christian on behalf of CTX and filed with the Texas Secretary of State on November 8, 2022, contains the materially false statement that “[t]he amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.” *See* Exhibit L at p. 8. CTX and Donald Christian had knowledge that the statement was materially false because they knew that CTX had not obtained the Synod’s and/or the Synod Convention’s prior approval and authorization, by and through the CCM, to the amendment of the CTX Charter pursuant to the Charter Amendment as required by the CTX governance documents.

78. The CTX Amendments—passed in violation of the CTX governance documents—have caused substantial loss to Synod as CTX is currently conducting its affairs outside the CTX governance documents as existed prior to November 8, 2022, including the Synod Constitution and Bylaws. Actual damages cannot adequately compensate for such loss and, therefore, LCMS on its behalf, and on behalf of its related ecclesiastical denomination, has first and foremost sought declaratory relief.

79. However, until and unless this Court affords LCMS the declaratory relief requested herein, the unlawful CTX Amendments have caused, and will continue to cause, loss to Synod for the CTX Amendments purportedly and wrongfully strip Synod of all its rights under the CTX governance documents. Under Sections 4.007 and 4.008 of the Texas Business Organizations

Appendix G

Code, LCMS is authorized to bring this action to recover all damages, which in this case is at least \$111,147,678, court costs, and reasonable attorney's fees caused by the unlawful conduct of CTX and its representatives.

Count Six: Tortious Interference with Contract
(Donald Christian)

80. LCMS incorporates herein by reference the allegations contained in the preceding paragraphs as if set out in full.

81. LCMS had a valid contract with CTX regarding governance of the university. The contractual relationship was created through nearly 100 years of continual operation of CTX pursuant to the CTX governance documents, including the Synod Constitution and Bylaws. Donald Christian entered into an intentional and continuing scheme to interfere with this contractual relationship between CTX and LCMS. Claiming to care for the Synod in public statements, but at the same time scheming to harm through his actions, Donald Christian finally was successful in carrying out a long-term plan to breach the historic polity of the Synod, cause schism in the Synod, and interfere with existing the contractual relationships between CTX and LCMS. Upon information and belief, the CTX BOR would not have taken the precipitous action to unilaterally change the CTX governance documents on November 8, 2022, but for the insistence and interference of Donald Christian in preventing the CTX BOR from exercising their fiduciary duties to the Synod. The resulting interference by Donald Christian proximately

Appendix G

caused LCMS injury in losing valuable contractual rights. As a result, the Synod has lost its historic ministry and governance oversight with respect to CTX and has been damaged through the loss of CTX in the amount of at least \$111,147,678. Plaintiff seeks this amount as damages against Donald Christian and all other damages allowed by law.

VI. Attorney's Fees

82. LCMS has been required to obtain the services of the undersigned attorneys to protect its rights. LCMS has incurred, and continues to incur, attorney's fees and costs to protect its rights by this lawsuit. LCMS is entitled to recover its reasonable and necessary attorney's fees under the Texas Declaratory Judgment Act, the Federal Declaratory Judgments Act and/or section 38.001 of the Texas Civil Practice & Remedies Code. Therefore, LCMS is entitled to recover all of its costs, expenses, and reasonable and necessary attorney's fees incurred in the prosecution of this lawsuit.

VII. Jury Demand

83. LCMS demands a jury trial upon all issues of disputed fact and has tendered the appropriate fee.

VIII. Conditions Precedent

84. All conditions precedent to LCMS claims for relief have been performed, excused, waived, occurred, or otherwise satisfied.

*Appendix G***IX. Conclusion and Request for Relief**

85. LCMS hereby seeks to recover from CTX all declaratory relief necessary to restore the parties to their rights, obligations and status quo prior to CTX's improper conduct in amending the CTX governance documents without authority. Alternatively, LCMS requests the relief and damages, as described above. LCMS also seeks to recover its attorney's fees and costs.

86. LCMS therefore respectfully requests that Defendants be cited to appear and answer herein, and on final trial, that Plaintiff be awarded a judgment against Defendants, jointly and severally, for the following:

- a. Declaratory relief as described herein and as may be just and necessary to afford LCMS all relief required to restore to LCMS all its rights, title, and interest related to CTX;
- b. Alternatively, in the unlikely event LCMS is not granted declaratory relief sufficient to fully restore to LCMS all its rights, title, and interest related to CTX, LCMS seeks specific performance under its contract with CTX, or alternatively, all actual damages caused by CTX, the Individual Defendants, and John Does 1–12's unlawful and wrongful conduct, which amount is believed to be at least \$111,147,678;
- c. Attorney's fees;

Appendix G

- d. Court costs;
- e. Post judgment interest as allowed by law;
and,
- f. All other relief, at law and in equity, general
and special, to which LCMS may be justly
entitled.

Respectfully submitted,

By: /s/ Steven Levatino

Steven C. Levatino

State Bar No. 12245250

Levatino|Pace PLLC

1101 S. Capital of Texas Hwy.

Bldg. K, Suite 125

Austin, Texas 78746

T: 512-637-1581

F: 512-637-1583

steven@lpfirm.com

By: /s/ Andrew MacRae

Andrew F. MacRae

State Bar No. 00784510

MacRae Law Firm PLLC

3267 Bee Cave Road

Suite 107, PMB 276

Austin, Texas 78746

T: 512-565-7798

andrew@macraelaw.com

127a

Appendix G

By: /s/ Gregg Kronenberger
Gregg R. Kronenberger
State Bar No. 24039998
Kronenberger Law Firm, PLLC
1101 S. Capital of Texas Hwy.
Bldg. K, Suite 125
Austin, Texas 78746
T: 512-777-4141
F: 512-402-3313
M: 512-923-3158
gregg@gkronenberger.com

Attorneys for Plaintiff

Appendix G

EXHIBIT A (excerpts)

**CONSTITUTION OF
THE LUTHERAN CHURCH—MISSOURI SYNOD**

Preamble

Reason for the Forming of a Synodical Union

1. The example of the apostolic church. Acts 15:1-31.
2. Our Lord's will that the diversities of gifts should be for the common profit. 1 Cor. 12:4-31.

Article I Name

The name of the synod organized under this constitution shall be: The Lutheran Church—Missouri Synod.

* * *

Article IV Powers

The Synod in convention is empowered to and has formed corporate entities which shall have legal powers:

1. To purchase, hold, administer, and sell property of every description in the interest of the Synod;
2. To accept, hold, administer, and, if deemed advisable, dispose of legacies, donations, commercial papers, and legal documents of every description in the interest of its work.

Appendix G

Article V Membership

Membership in the Synod is held and may be acquired by congregations and individuals, ministers of religion—ordained and ministers of religion—commissioned, of the Evangelical Lutheran Church who confess and accept the confessional basis of Article II.

A. Voting Members

All organized congregations that have joined the Synod hold voting membership.

B. Individual Members

Individual members of the Synod, who are non-voting except for those pastors exercising the vote of a member congregation or congregations, are the following:

1. Pastors, ordained ministers, called and installed to a member congregation
2. Pastors, ordained ministers, whose congregations do not hold membership in the Synod
3. Ordained ministers, not called and installed to a congregation, serving in a capacity recognized in the Bylaws of the Synod
4. Commissioned ministers equipped for service in an auxiliary office of ministry designated in, and serving in a capacity recognized by, the Bylaws of the Synod

Appendix G

5. Candidates for the office of the ministry, ordained ministers, or for an auxiliary office, commissioned ministers, having formerly been installed to a first call within the Synod
6. Emeriti of the office of the ministry, ordained ministers, or of an auxiliary office, commissioned ministers.

* * *

Article VII Relation of the Synod to Its Members

1. In its relation to its members the Synod is not an ecclesiastical government exercising legislative or coercive powers, and with respect to the individual congregation's right of self-government it is but an advisory body. Accordingly, no resolution of the Synod imposing anything upon the individual congregation is of binding force if it is not in accordance with the Word of God or if it appears to be inexpedient as far as the condition of a congregation is concerned.
2. Membership of a congregation in the Synod gives the Synod no equity in the property of the congregation.

* * *

Appendix G

Article XI Rights and Duties of Officers

* * *

E. Composition and Duties of the Board of Directors

* * *

2. The Board of Directors is the legal representative and custodian of all the property of The Lutheran Church—Missouri Synod, directly or by its delegation of such authority to an agency of the Synod. It shall exercise supervision over all property and business affairs of The Lutheran Church—Missouri Synod except in those areas where it has delegated such authority to an agency of the Synod or where the voting members of the Synod through the adoption of bylaws or by other convention action have assigned specific areas of responsibility to separate corporate or trust entities, and as to those the Board of Directors shall have general oversight responsibility as set forth in the Bylaws. For the purposes of this article, The Lutheran Church—Missouri Synod includes both the Synod formed by this Constitution and the Missouri corporation formed by the Synod.

* * *

Appendix G

EXHIBIT B (excerpts)

BYLAWS

* * *

1. RELATIONSHIPS WITHIN AND THROUGH THE SYNOD

* * *

1.2 Definition of Terms

1.2.1 The following definitions are for use in understanding the terms as used in the Bylaws of The Lutheran Church—Missouri Synod:

(a) ***Agency***: An instrumentality other than a congregation or corporate Synod, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s Objectives (Constitution Art. III).

(1) Agencies include each board, commission, council, seminary, university, college, district, Concordia Plan Services, and each synodwide corporate entity.

(2) The term “agency of the Synod” does not describe or imply the existence of principal and agency arrangements as defined under civil law.

* * *

Appendix G

(f) ***Corporate Synod:*** The Lutheran Church—Missouri Synod, the Missouri nonprofit corporation, including its offices, boards, commissions, and departments.

(1) “Corporate Synod” is not an agency of the Synod.

(2) The Lutheran Church—Missouri Synod, in referencing the laws of the State of Missouri in these Bylaws and in the Synod’s Articles of Incorporation, intends to acknowledge its responsibility to be subject to civil authority. In all such references, however, the Synod intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri.

* * *

(h) ***District:*** A division of the Synod as determined by a national convention of the Synod.

* * *

(r) ***Property of the Synod:*** All assets, real or personal, tangible or intangible, whether situated in the United States or elsewhere, titled or held in the name of corporate Synod, its nominee, or an agency of the Synod. “Property of the Synod” does not include any assets held by member congregations, the Lutheran Church Extension Fund—Missouri Synod,

Appendix G

or by an agency of the Synod in a fiduciary capacity (including, for purposes of example, the funds managed for the Concordia Plans by Concordia Plan Services and certain funds held by The Lutheran Church—Missouri Synod Foundation).

* * *

(v) **Synod:** Refers collectively to the association of self-governing Lutheran congregations and all its agencies on the national and district levels. The Synod, as defined herein, is not a civil law entity.

* * *

1.10 Dispute Resolution of the Synod

* * *

1.10.1.1 * * * Therefore, the Synod in the spirit of 1 Corinthians 6 calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute.

* * *

*Appendix G****Exceptions***

1.10.3 This chapter provides evangelical procedures to remedy disputes only and does not set forth procedures for expulsion from membership (Constitution Art. XIII and Bylaw sections 2.14-2.17) nor does it set forth procedures for boards of regents' supervision of faculty and administration as specified in Bylaws 3.10.5.7.5-3.10.5.7.9, 3.10.6.7.1, and 3.10.6.7.53.10.6.7.5.2. While Christians are encouraged to seek to resolve all their disputes without resorting to secular courts, this chapter does not provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod:

- (a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and

* * *

3. NATIONAL ORGANIZATION AND RESPONSIBILITIES**3.1 National Conventions**

3.1.1 The national convention of the Synod shall afford an opportunity for worship, nurture, inspiration, fellowship, and the communication of vital information. It is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals.

Appendix G

It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members.

* * *

3.3 Elected Officers of the Synod

* * *

Board of Directors

3.3.4 The Board of Directors of the Synod is the legal representative of the Synod and the custodian of all the property of the Synod. It shall be accountable to the Synod in convention for the discharge of its duties.

* * *

3.3.4.7 The Board of Directors shall serve as the custodian of all the property of the Synod as defined in Bylaw 1.2.1 (r). Except as otherwise provided in these Bylaws, it shall have the authority and responsibility with respect to the property of the Synod as is generally vested in and imposed upon a board of directors of a corporation.

* * *

137a

Appendix G

3.9 Commissions

* * *

Commission on Constitutional Matters

3.9.2 The Commission on Constitutional Matters exists to interpret the Constitution, Bylaws, and resolutions of the Synod and ensure that the governing instruments of the Synod and its agencies are in accord with the Constitution and Bylaws of the Synod.

* * *

3.9.2.2 The Commission on Constitutional Matters shall interpret the Synod's Constitution, Bylaws, and resolutions upon the written request of a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod.

* * *

(c) An opinion rendered by the commission shall be binding on the question decided unless and until it is overruled by a convention of the Synod.

* * *

3.9.2.2.3 The Commission on Constitutional Matters shall examine the articles of incorporation, bylaws, and policy manuals of every agency of the Synod to ascertain

Appendix G

whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.

* * *

3.10 Other Councils, Committees, and Boards

* * *

F. Concordia University System Boards of Regents

3.10.6 Each college and university of the Synod, with its president and faculty, shall be governed by a board of regents, subject to general policies set by the Synod, including those established by the Concordia University System.

3.10.6.1 In exercising its relationship to the Synod and to the Concordia University System as set forth elsewhere under Bylaw 3.6.6 and following, the board of regents of each institution shall consider as one of its primary duties the defining and fulfilling of the mission of the institution within the broad assignment of the Synod.

* * *

3.10.6.4 The board of regents of each institution shall become familiar with and develop an understanding of pertinent policies, standards, and guidelines of the Synod and the Board of Directors of Concordia University System.

139a

Appendix G

* * *

(i) It shall operate and manage the institution as the agent of the Synod, in which ownership is primarily vested and which exercises its ownership through the Board of Directors as custodian of the Synod's property, the Board of Directors of Concordia University System, and the respective board of regents as the local governing body.

* * *

Committee for Convention Nominations

* * *

3.12.3.2 In preparation for the following convention, the remaining districts shall elect in the same manner:

* * *

Texas

* * *

Appendix G

EXHIBIT C (excerpts)

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
THE LUTHERAN CHURCH—MISSOURI SYNOD**

Article I Name, Duration, Registered Office, and Agent

- a. The name of this corporation shall be “The Lutheran Church—Missouri Synod.”
- b. The period of duration of this corporation is perpetual.
- c. The address of the registered office of this corporation is 1333 S. Kirkwood Road, St. Louis, Missouri 63122.
- d. The name of the registered agent of this corporation is CT Corporation System.

Article II Objectives

The objectives and purposes of this corporation are:

- a. To unite in a corporate body Evangelical Lutheran congregations that acknowledge and remain true to the Book of Concord of the year of our Lord 1580 as a true exhibition of sound Christian doctrine.
- b. To assist in the establishment of Evangelical Lutheran congregations and preaching stations.

Appendix G

- c. To assist, advise, and protect member congregations and ministers of religion—ordained and ministers of religion—commissioned of The Lutheran Church—Missouri Synod, to provide for their ecclesiastical supervision in matters of doctrine and practice and their administration of official duties, and to acknowledge and assert the protections granted by the First Amendment to the Constitution of the United States.
- d. To support the establishment and maintenance of theological seminaries, colleges, universities, and other institutions of learning to train ministers of religion—ordained, ministers of religion—commissioned, and laity for service in the Evangelical Lutheran Church.
- e. To spread the Gospel of Jesus Christ throughout the world by every means possible.
- f. To provide assistance and resources to the congregations, schools, Sunday schools, preaching stations, and agencies of the Synod for the dissemination of the Christian Gospel.
- g. To establish and conduct all such enterprises and endeavors and to exercise such further power as may be necessary or expedient to carry out the objectives stated in the Constitution of The Lutheran Church—Missouri Synod.

*Appendix G****Article III Membership***

Membership in this corporation is held and may be acquired by congregations, ministers of religion—ordained and ministers of religion—commissioned, as defined by the Constitution and Bylaws of this corporation, who confess and accept the Lutheran Church-Missouri Synod. The member congregations of The Lutheran Church-Missouri Synod shall be the voting members of this corporation. . . .

* * *

Article VI Property

This corporation shall have power to acquire by gift, grant, demise, devise, bequest, purchase, or otherwise, property of every kind and description, real, personal, or mixed; to hold and use such property and deal with, or dispose of, any or all such property by sale, exchange, or gift, when necessary or expedient to carry out the objects and purposes of this corporation; to receive, maintain, and administer endowments, legacies, pension funds, retirement funds, and such other general or trust funds as may be necessary for the operation of said corporation or for the accomplishment of its purposes; provided that all such property shall be acquired, dealt with, or disposed of in a manner not in conflict with the laws of the State of Missouri or of the laws of any state in which said property is located.

* * *

143a

Appendix G

EXHIBIT D

**To Direct Establishment of Reversionary
Interests on College, University,
and Seminary Properties**

RESOLUTION 4-04

Overture 4-35 (CW, p. 217)

WHEREAS, The Synod owns the properties of all agencies of the Synod, including its institutions of higher education, regardless of how such properties are titled (Bylaw 3.51 i); and

WHEREAS, The Board of Directors of the Synod, acting pursuant to its authority over property matters, has reviewed the titles to the properties of the institutions of higher education and has determined that such properties are in some cases held in the name of the institution of higher education, in some cases in the name of the institution of higher education subject to a reversionary interest in the Synod, and in some cases held in the name of the Synod, and thereupon resolved in 1998 that all properties of the institutions of higher education shall be titled in the name of each institution subject to a reversionary interest in the Synod; and

WHEREAS, Several of the Synod's educational institutions have not executed deeds and other legal documentation necessary to the establishment of reversionary interests to their properties in favor of the

Appendix G

Synod; therefore be it Resolved, That each institution of higher education of the Synod shall hold title to properties presently owned or at any time hereafter acquired by it subject to a reversionary interest or possibility of a reverter in favor of the Synod in such form and stating such conditions as shall be established by the Board of Directors of the Synod except as provided by such Board; and be it further

Resolved, That the Board of Regents and officers of each institution of higher education of the Synod shall, and are hereby directed to, take all actions and execute all deeds, resolutions, statements, and legal documents necessary to carry out the terms of this resolution where permitted by law.

Action: Adopted (10)

(When the committee introduced the resolution it added the words where permitted by law at the end of the final resolve. After discussion, the resolution was adopted as presented [Yes: 748; No: 352].)

* * *

145a

Appendix G

EXHIBIT Q

To Call Concordia University
Texas Leadership to Repentance

RESOLUTION 7-03

**Reports R1, R14, R64 (CW, 1-3, 64-69, 173-79);
Overture 7-18 (CW, 359); Report LR67 (TB, 1:30-34)**

WHEREAS, Concordia University Texas (CTX), since its founding in 1926 by The Lutheran Church—Missouri Synod (LCMS), has operated and been governed under the Constitution and Bylaws of the Synod; and

WHEREAS, On Nov. 8, 2022, a majority of the CTX Board of Regents (BOR) voted to take action unilaterally to modify the CTX bylaws and articles of incorporation (the “governing documents”) in an attempt to make the BOR a self-appointing, self-perpetuating board, no longer subject to the Bylaws of the Synod; and

WHEREAS, This purported separation was in direct contradiction to the Constitution and Bylaws, which the officers of the Synod and its agencies are obligated to uphold and implement (See Bylaw 1.4.3 and 1.4.5); and

WHEREAS, The Fourth Commandment requires that we honor our authorities, the Seventh Commandment protects the property of all, and the Ninth and Tenth Commandments protect us from all evil desires which lead to the breaking of all the other commandments; and

Appendix G

WHEREAS, This purported separation has caused great offense and division within the Church body; and

WHEREAS, Many throughout the Synod recognize that this action, if allowed to stand, will deprive the Synod and its congregations of an institution to train and certify men and women for professional church work and to aid the church in its mission to vigorously make known the love of Christ to all students enrolled at the university; and

WHEREAS, The report, “Ecclesiastical Visitation of Concordia University Texas” (Report R64, *Workbook*, 173-79), makes it clear that CTX has undergone significant mission and theological drift away from LCMS doctrine and practice on many issues, including Diversity, Equity, and Inclusion (DEI), especially programs that relate to sex, gender, marriage, and family, leading the university away in significant mission drift from the biblical positions and practices of the LCMS; and

WHEREAS, The President of the Synod, Synod Board of Directors (BOD), and Concordia University System (CUS) BOD admonished the CTX BOR that it did not have authority unilaterally to modify its governing documents, and that its purported separation, action was illegitimate, null and void and contrary to the Bylaws; and

WHEREAS, The President of the Synod, the Synod BOD, and the CUS BOD engaged in extensive communications with the CTX BOR, including in-person meetings and multiple correspondence (“Walking Away: Concordia University Texas Holds to ‘III-Advised Course,’” *Reporter*,

Appendix G

June 2023), in an effort to persuade the CTX BOR to correct its illegitimate and wrongful purported separation and to restore CTX's governing documents to be compliant with the Bylaws; and

WHEREAS, The Synod BOD submitted to the Commission on Constitutional Matters (CCM) several questions regarding the CTX BOR Nov. 8, 2022, action, and its purported attempt to unilaterally change CTX's governing documents, both with respect to the process CTX followed and with respect to the action taken; and

WHEREAS, Upon receiving the questions from the Synod BOD, the CCM, pursuant to Bylaw 3.9.2.2 (b), invited input from the President of the Synod, the Synod BOD, the CUS BOD, the boards of regents of all CUS universities, the CUS President, and Synod legal counsel, providing ample time for all of these interested persons and entities to provide input regarding the questions presented by the Synod BOD; and

WHEREAS, The CTX BOR, accordingly, was given notice of the questions submitted by the Synod BOD to the CCM and was given ample time to provide input with respect to those questions before the CCM issued its opinion; and

WHEREAS, CCM Opinion 23-3006 ("University Board of Regents Unilateral Separation") concludes, in part, as follows:

- Bylaw 3.3.4.10 authorizes the Synod Board of Directors to obtain from any agency of the Synod

Appendix G

all records and other information relative to the property of the Synod and to matters over which the Board of Directors has general oversight.

- That every board and every university of the Synod is an “agency” of the Synod as defined in Bylaw 1.2.1(a).
- That every agency of the Synod is bound by the Constitution, Bylaws, and Resolutions of the Synod (Bylaw 1.4.5) and therefore any action taken by an agency which contradicts the Constitution, Bylaws, or resolutions of the Synod is null and void.
- That a Synod university which wishes to change its articles of incorporation or its bylaws is required to receive advance approval from the CCM under Bylaw 3.9.2.2.3 (a) and failure to do so makes any such change null and void and unable to be put into practice.
- That the boards of regents and individual members of the CUS universities have a fiduciary duty to the Synod under Bylaw 3.10.6.4 (i).
- That a board of regents of a CUS university does not have authority to unilaterally change its governance model from that described in Synod Bylaws or to unilaterally amend its articles or bylaws without prior approval.

Appendix G

- That any purported change to the bylaws or articles of incorporation of a CUS university made without the approval of the CCM is “null and void.”
- That individual members of a CUS university board of regents each have a duty to comply with the Synod Constitution Bylaws, and resolutions.

and

WHEREAS, Bylaw 3.9.2.2 (c) states that an opinion rendered by the CCM “shall be binding on the question decided unless and until it is overruled by a convention of the Synod”; and

WHEREAS, On April 4, 2023, the CTX BOR took action to affirm its illegitimate and wrongful purported separation; and

WHEREAS, Following the issuance of CCM Op. 23-3006, in a letter dated May 9, 2023, the Synod BOD, pursuant to its authority under Bylaw 3.3.4.10, as referenced in the CCM Opinion, requested information from the CTX BOR relating to the Synod BOD oversight responsibility; and

WHEREAS, In a letter from its chairman dated May 17, 2023, the CTX BOR refused to provide the information requested by the Synod BOD, asserting that CTX is not subject to the Bylaws; and

WHEREAS, The CTX BOR, the CTX president and certain CTX administrators have steadfastly refused to

Appendix G

accept the advice and admonition of the President of the Synod, Synod BOD, and CUS BOD, and have overtly and directly defied the final and binding CCM Op. 23-3006; and

WHEREAS, Neither the CTX BOR nor any of its members nor the CTX president and administration have sought to overrule CCM Op. 23-3006; therefore be it

Resolved, That the Synod in convention affirm CCM Op. 23-3006 in its entirety; and be it further

Resolved, That the Synod in convention affirmatively conclude that the CTX BOR members who voted in favor of the April 4, 2023, action that affirmed the CTX BOR's purported separation have acted in direct conflict with the Constitution and Bylaws, as well as CCM Op. 23-3006; and be it further

Resolved, That the Synod in convention affirmatively conclude that the CTX president and those CTX administrators who have advocated for and supported the purported separation have acted in direct conflict with the Constitution and Bylaws; and be it further

Resolved, That the Synod in convention encourage the appropriate ecclesiastical supervisors to investigate and to determine any appropriate disciplinary action that should be taken against the CTX president and any member of the CTX BOR who is a rostered church worker; and be it further

151a

Appendix G

Resolved, That the Synod in convention encourage the President of the Synod, LCMS BOD, the CUS and its board, and the appropriate district presidents to take all appropriate actions to address this situation; and be it further

Resolved, That the Synod in convention call upon the CTX president, those CTX administrators who have advocated for and supported the purported separation, and the CTX BOR to submit to the governance of the Synod as laid out in the Constitution and Bylaws; and be it further

Resolved, That the Synod in convention call upon the CTX president, those CTX administrators who have advocated for and supported the purported separation, and the CTX BOR to repent for having broken the Fourth, Seventh, Ninth, and Tenth Commandments, and to apologize publicly for the illegitimate and wrongful purported separation; and be it finally

Resolved, That the President of Synod stand prepared to grant holy absolution to those who repent and want to do better by rescinding their actions resulting in reconciliation and restoration.

Action: Adopted (5)

[Yes: 716; No:283]

152a

**APPENDIX H — EXCERPTS OF THE LUTHERAN
CHURCH—MISSOURI SYNOD, BOARD OF
DIRECTORS POLICY MANUAL, MAY 19, 2023**

The Lutheran Church—Missouri Synod

Board of Directors

Policy Manual

Edition of 5/19/2023

* * *

4.14.2.2 The following matters require Board action:

* * *

(h) Legal and Governmental

* * *

(3) Approval to initiate any and all lawsuits, arbitrations, or administrative proceedings on behalf of the Synod or Corporate Synod. In cases of emergency, the Executive Committee of the Board may make such decisions. In an instance of emergency where time is of the essence, the executive committee shall make a decision which shall be subject to ratification by the BOD.

* * *

Appendix H

4.18 Legal Policies for Corporate Synod and Subordinate Agencies

* * *

Scope

4.18.1.1 The Board of Directors, administrators, employees of Corporate Synod, other Synod members, and interested parties

Definitions

* * *

4.18.1.3 Corporate Synod: See Bylaw 1.2.1 (d).

4.18.1.4 Synod: See Bylaw 1.1.1 (v).

* * *

Policy

4.18.3.2 The Lutheran Church—Missouri Synod Board of Directors recognizes that any participation in litigation by the Synod, including by an agency of the Synod, may have an adverse effect on the Synod as a church organization, and that litigation must, therefore, be entered into only when it has been determined that such is likely to serve the best interests of the Synod and, when applicable, all of the Synod's avenues for conflict resolution have been exhausted.

Appendix H

4.18.3.3 No litigation proceeding shall be commenced by the Synod or any of its officers, executives, or staff without the prior approval of the Board of Directors, or in cases of emergency in which time does not permit obtaining a decision from the full Board, by the Executive Committee of the Board.

* * *