

## Constitution Q&A

The following constitution questions and answers are offered to address issues that have surfaced since the 2010 Churchwide Assembly.

### ***Who has final authority to interpret the constitutions of the ELCA?***

The Secretary of the ELCA is the final interpreter of the governing documents of the ELCA as empowered by ELCA bylaw 13.41.04. If a board, committee, or synod disagrees with the secretary's interpretation, it may appeal to the Church Council. There is *no* other valid interpretation.

### ***Why do we closely follow the constitutions and procedures of the church?***

Congregations organize themselves for the sake of order and to clearly define the way we live together as a community of faith and how the three expressions of our church relate to one another for the sake of mission. It is essential that congregations of the Northwest Synod of Wisconsin follow *exactly* the provisions of local constitutions and the constitutions, bylaws, and continuing resolutions of the ELCA; and when something isn't provided for, that the local congregation diligently follow *Robert's Rules of Order*. Not only are constitutional directives and *Robert's Rules of Order* how congregations organize themselves to make decisions, but as an incorporated entities in the State of Wisconsin, congregations *must* legally follow its governing documents. Ultimately, the constitution protects the rights of members, congregations, and other entities of this church.

### ***Can a congregation hold membership in two church bodies?***

No. Some separatist groups have been claiming that provision 9.31 of the ELCA Constitution allows "dual rostering" of congregations. Such claims are erroneous and congregations should not be misled. Congregations cannot hold membership in two church bodies at the same time. The official interpretation by the Secretary of the ELCA is posted in the "Bishop's Toolkit" on the website of the Northwest Synod of Wisconsin under "No Dual Rostering for Clergy or Congregations."

The requirements for a congregation to be received into *and* remain a member of the ELCA are set out in ELCA Constitution 9.21. ELCA constitutional provision 9.22 specifically gives synods the responsibility to determine if a congregation meets the required criteria for recognition and maintenance on the roster of this church. These criteria include agreement to support the life and work of this church in both the governing documents of a congregation and in their practice. This matter is assigned to synods and the churchwide organization and is *not* reserved to congregations.

Indeed, a brief review of the Model Constitution for Congregations reveals which provisions are not mandatory and therefore are reserved to congregations. Everything else, including church affiliation (Chapter 6), is required and cannot conflict with the Model. Even the process for approval of amendments and exceptions is assigned to the synods. Those who assert that being "dual rostered" in two church bodies is permitted by the ELCA Constitution are ignoring the obvious, and trying to get others to take actions contrary to this church's governing documents.

### **Can a clergyperson be rostered in two church bodies?**

No. Constitutional bylaw 8.72.15.d. state, "Roster status in more than one church body is precluded in the Evangelical Lutheran Church in America." *From the Manual of Policies and Procedures for Management of the Rosters*: "An ordained minister of this church who enters the ordained ministry of another church body, or who joins a religious group or congregation of another church body (except as provided in 7.41.17.), or who serves a group schismatic from this church or from a congregation thereof, shall cease to be a member of this church. The ordained minister's name shall be removed from the roster of ordained ministers by the bishop of the synod, who shall report the action to the secretary of this church and to the next Synod Assembly." "Serves" may be read very broadly. The official interpretation by the Secretary of the ELCA is posted in the "Bishop's Toolkit" on the website of the Northwest Synod of Wisconsin under "No Dual Rostering for Clergy or Congregations."

### **Which constitution takes precedence – our congregation's constitution or the ELCA constitution?**

By virtue of being part of the ELCA, congregations are required to abide by the main constitution of the ELCA (see 9.21., 9.25., 9.52.). It is essential that you know the difference between those provisions where you must follow the constitution of the ELCA and where local constitution provisions (even if outdated) are permitted and in effect.

### **If a congregation has an old, unrevised constitution, may it be followed instead of the ELCA constitution for actions related to withdrawal from the denomination?**

No. A congregation must look to the ELCA Constitution provision 9.62 for the process to be followed when the congregation seeks to leave the ELCA. No matter what a particular congregation's constitution may say or not say about withdrawal from membership, the ELCA Constitution 9.62 controls because section 9.22 applies it to all ELCA congregations. Related provision \*C7.04 in the Model Constitution is a "condensed" version of 9.62 in the ELCA Constitution.

The most important requirements of 9.62 are that two congregational meetings are necessary, at least 90 days apart, and "consultation" with the synod bishop is mandated, as well as a two-thirds majority vote in both meetings. These special congregational meetings must be legally called and constituted, and the synod bishop must attend the second meeting. If the congregation leadership does not comply with all requirements, the members who want to stay may have rights to stop the withdrawal or retain the property.

Some congregations have been told that their constitutions trump ELCA constitutional provision 9.62 that specifies the process to follow if a congregation wants to terminate its relationship with the ELCA. That is incorrect; it is incorrect regardless of the date of or wording of the congregation's constitution and purported revisions to it. Under ELCA 9.22, "all congregations shall abide by the provisions of 9.21., 9.62., and 7.26." This provision has always been in the ELCA constitution. Thus, any congregation that has been part of the ELCA must comply with 9.62.

### **Can a congregation vote regarding ELCA affiliation at an annual meeting?**

No. ELCA constitutional provision 9.62 provides that both the first meeting and the second meeting must take place at a "legally called and conducted special meeting . . ." Special meetings are distinguished from annual meetings in Chapter 10 of the Model Constitution for Congregations, and they are distinct under non-profit corporation law. Note also that C10.02 specifies: "The call for each special meeting shall specify the purpose for which it is to be held and no other business shall be transacted." C10.03 specifies notice requirements, including announcement on two preceding Sundays and mail notice to members at least 10 days in advance of the date of the meeting. The requirement of a special meeting cannot be waived or modified by action of a Congregation Council.

### **How is a two-thirds majority vote calculated?**

Votes as prescribed by ELCA Constitution 9.62 must be approved by two-thirds of the voting members *present*.

Note that it is *not* just those present and voting who are counted to determine the two-thirds; *all* voting members present must be counted in order to determine the denominator of the fraction. This means that those voting members who do not vote or who abstain are the same as negative votes when calculating the two-thirds majority.

It also is important to point out the vote requirement in both 9.62.a. and 9.62.c. There must be a quorum present to transact business at a special meeting, and two-thirds of those present must vote in favor of the resolution for termination for the action to be adopted. (This is not the same as present and voting; two-thirds of all the voting members present must vote in the affirmative for passage.)

### **Is absentee voting permitted at congregational meetings?**

Absentee votes are allowed *only* if a congregation's constitution states that they are permissible. The absence of a prohibition on absentee ballots in the congregation's constitution does not mean, however, that they are permitted. *Robert's Rules of Order* governs the absence of a constitutional statement (see C10.07), and it prohibits absentee ballots (10<sup>th</sup> edition, pp. 409-414). Thus, if a congregation's constitution does not specifically permit for absentee ballots, they are not permitted.

### **If a congregation holds a successful first vote to leave the ELCA, what does the consultation period with the bishop entail?**

ELCA constitutional provision 9.62.c. states, "The bishop of the synod shall consult with the congregation during a period of at least 90 days." The bishop leads and is responsible for all aspects of the consultation. The content of the consultation will reflect the unique context of each congregation in consultation. The bishop determines how the consultation will be conducted, who participates, how many meetings or forums are necessary, whether mailings are sent, etc. The consultation may be minimal and involve few, or extensive with wide participation. 90 days is the minimum length of the consultation time. The bishop will request various congregational documents for review by the bishop, the ELCA Office of Secretary, and the legal counsel of the ELCA to ensure legality and good order.

### **Is it permissible for congregations to withhold mission support?**

No. Withholding mission support is unconstitutional and violates the governing documents of the church. Required provisions from *The Model Constitution for Congregations* include the following:

- \*C4.03. To fulfill these purposes, this congregation shall:
  - g. Motivate its members to provide financial support for the congregation's ministry and the ministry of other parts of the Evangelical Lutheran Church in America.
  - h. Foster and participate in interdependent relationships with other congregations, the synod, and the churchwide organization of the Evangelical Lutheran Church in America.
- \*C6.03. This congregation acknowledges its relationship with the Evangelical Lutheran Church in America in which:
  - b. This congregation pledges its financial support and participation in the life and mission of the Evangelical Lutheran Church in America.
- \*C8.04. It shall be the privilege and duty of members of this congregation to:
  - c. support the work of this congregation, the synod, and the churchwide organization of the Evangelical Lutheran Church in America through contributions of their time, abilities, and financial support as biblical stewards.
- \*C9.03. Consistent with the faith and practice of the Evangelical Lutheran Church in America,
  - c. Every pastor shall:
    - 4) endeavor to increase the support given by the congregation to the work of the churchwide organization of the Evangelical Lutheran Church in America (ELCA) and of (insert name of synod) Synod of the ELCA.