

CAUSE NO. \_\_\_\_\_

CONCORDIA UNIVERSITY TEXAS  
Plaintiff,

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IN THE DISTRICT COURT

v.

THE LUTHERAN CHURCH – MISSOURI  
SYNOD, an unincorporated association of  
Lutheran congregations, AND  
THE LUTHERAN CHURCH – MISSOURI  
SYNOD, a Missouri Corporation,  
Defendants.

\_\_\_\_\_ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff CONCORDIA UNIVERSITY TEXAS files this Original Petition for Declaratory Judgment against Defendants THE LUTHERAN CHURCH – MISSOURI SYNOD, an unincorporated association of Lutheran congregations and THE LUTHERAN CHURCH MISSOURI SYNOD, a Missouri corporation, and respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Tex. R. Civ. Pr. 190.3 (Level 3).

**II. PARTIES**

2. Plaintiff Concordia University Texas (“CTX”) is a Texas nonprofit corporation doing business in Travis County, Texas.

3. Defendant The Lutheran Church – Missouri Synod is an unincorporated association of Lutheran Congregations with members in Travis County, Texas, and other counties throughout the state of Texas (“Synod”). Synod may be served through its President Reverend Matthew Harrison at its home office located at 1333 S. Kirkwood Road, St. Louis, MO 63122.

4. Defendant The Lutheran Church – Missouri Synod is a Missouri non-profit corporation doing business in Texas (“LCMS”). LCMS may be served through its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **III. VENUE AND JURISDICTION**

5. Venue is mandatory in Travis County as this is an action to quiet title to real property located in Travis County. Venue is also proper in Travis County because a substantial part of the events or omissions giving rise to this claim occurred in Travis County. The Court has jurisdiction over this suit for declaratory relief. Tex. Const. Art. V, § 8.

### **IV. FACTUAL BACKGROUND**

6. Concordia University Texas is a private, faith-based coeducational institution of liberal arts and sciences offering undergraduate and graduate degrees. It was founded in 1926 as a boys’ high school, called Lutheran Concordia College of Texas, on a 20-acre site north of downtown Austin. Over the years, the school grew from a high school to a junior college, a four-year college, and then a university. It joined the Synod’s Concordia University System (“CUS”) in 1993.

7. The Lutheran Church-Missouri Synod is made up of two entities. One entity, called Synod, is an ecclesiastical body and an unincorporated association of Lutheran Congregations from across the country. Synod has a constitution and bylaws often referred to as the “Handbook of the Lutheran Church-Missouri Synod” or the “LCMS Handbook.” The second entity, LCMS, is the corporate form of the Synod. LCMS is incorporated in Missouri.

8. In 2000, LCMS requested that CTX grant it a reversionary interest in CTX’s campus. CTX agreed and conveyed title to that property to LCMS. LCMS subsequently reconveyed the property to CTX with a recorded reversionary interest.

9. In 2007, CTX sold the original campus and moved to its current 389-acre campus in northwest Austin. It renamed itself Concordia University Texas. Neither LCMS nor Synod have ever owned or held any interest in CTX's current campus.

10. To effectuate the sale of CTX's original campus, LCMS waived its reversionary interest. Neither LCMS nor Synod requested a reversionary interest in CTX's new campus.

11. CTX was incorporated in Texas as a non-profit corporation in 1950. It has no members. Article V of its founding charter stated: "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."

12. Between April 29, 2022, and November 8, 2022, the CTX board of trustees elected in accordance with the Rules and Regulations of the Lutheran Church – Missouri Synod decided to amend the corporation's charter and bylaws as follows.

13. On April 29, 2022, CTX amended the "purpose" clause in its charter in connection with an application to the Internal Revenue Service to secure its own 501(c)(3) tax exemption rather than remain under the LCMS's group tax exemption. The amendment was approved by a majority vote of the Board of Regents. CTX filed a Certificate of Amendment with the Texas Secretary of State on May 2, 2022 to amend the "purpose" clause.

14. On November 8, 2022, CTX filed a charter amendment with the Texas Secretary of State. Among other changes, the amendment modified Article V to read:

The 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 for board members and the presidency, will be subject to and determined by the sole and exclusive discretion of the Board of Regents.

15. The Charter amendment was approved by a majority vote of the Board of Regents held on November 8, 2022.

16. CTX also modified its bylaws on November 8, 2022. Article Eight of its bylaws before and after November 8, 2022 states: “The power to alter, amend or repeal these Bylaws or adopt new bylaws shall be vested in the Board provided that any such changes shall be approved by a simple majority of the Board.”

17. Prior to the November 2022 amendments, Section 2.4 of CTX’s bylaws read:

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...

CTX’s pre-November 2022 bylaws contained several other references to Synod’s constitution and bylaws.

18. On November 8, 2022, a majority of CTX’s Board of Regents voted to amend CTX’s bylaws to remove all references to the LCMS Handbook. Among those changes, Section 2.4 was modified to read:

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...

19. The bylaw amendments also added a new Section 2.5, which reads:

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.

20. Since November 8, 2022, LCMS and Synod dispute the validity of the CTX charter and bylaw amendments.
21. Since November 8, 2022, Synod has attempted to elect and seat new regents to CTX's board. CTX informed the individuals elected by Synod that they would not be recognized as regents on CTX's board because their election was not in accordance with the CTX bylaws.
22. Synod and LCMS contend that the actions taken by CTX's Board of Regents to modify CTX's governance documents are null and void, that CTX and its Board have breached fiduciary duties to Synod and LCMS, that CTX is required to include a reversionary interest to LCMS in the deed to its current campus property, and alternatively that CTX owes damages to LCMS and Synod equivalent to net value of CTX's property.

#### **V. CAUSE OF ACTION: DECLARATORY JUDGMENT**

23. Pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code, Plaintiff requests and is entitled to a declaratory judgment, including (but not limited to) the following:
  - a. CTX's Board of Regents had the authority to amend CTX's Articles of Incorporation on April 29, 2022 under CTX's governing documents and/or under the Texas Non-profit Corporations Act, Tex. Bus. Org. Code § 22.001 et. seq.
  - b. The April 29, 2022 amendment to CTX's Articles of Incorporation is valid and enforceable.
  - c. CTX's Board of Regents had the authority to amend CTX's Articles of Incorporation on November 8, 2022 under CTX's governing documents and/or the Texas Non-profit Corporations Act, Tex. Bus. Org. Code § 22.001 et. seq.

- d. The November 8, 2022 amendment to CTX's Articles of Incorporation is valid and enforceable.
- e. The CTX Board of Regents had the authority to amend the CTX Bylaws on November 8, 2022 under CTX's governing documents and/or the Texas Non-profit Corporations Act, Tex. Bus. Org. Code § 22.001 et. seq.
- f. The November 8, 2022 amendment to the CTX Bylaws is valid and enforceable.
- g. Synod and LCMS do not have the authority to elect regents to CTX's Board of Regents after November 8, 2022.
- h. CTX, its officers, and regents did not violate a fiduciary duty to either Synod or LCMS.
- i. Neither Synod nor LCMS have or are entitled to any property interest, including a reversionary interest, in and to CTX's campus property.
- j. Neither Synod nor LCMS are entitled to damages or financial compensation by CTX or its officers or regents.

#### **VI. CONDITIONS PRECEDENT**

24. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

#### **VII. ATTORNEY'S FEES**

25. Plaintiff is entitled to recover reasonable and necessary attorney's fees that are equitable and just under Texas Civil Practice & Remedies Code §37.009, and as otherwise allowed by law.

## VIII. PRAYER

Plaintiff respectfully requests that Defendants be cited to appear and answer and that judgment issue granting Plaintiff all relief requested herein and all such further relief to which Plaintiff may show itself justly entitled at law and in equity.

Respectfully submitted,

*/s/ Daniel R. Richards* \_\_\_\_\_

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