

The LUTHERAN CLARION



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SB8, the Texas Heartbeat Act: What the Supreme Court Ruling May (or May Not) Mean

In May 2021, the Texas Legislature passed Senate Bill 8, the "Texas Heartbeat Act" (SB8). SB8 provides that, generally, a physician may not perform an abortion where there is a fetal heartbeat detected. In a 5-4 ruling issued on September 1, 2021, the U.S. Supreme Court declined to grant emergency injunctive relief against SB8. Some commentators view this as a signal that at least five Supreme Court justices are now prepared to overturn *Roe v. Wade*, the 1973 case that created a constitutional right to abortion. However, because of the unique procedural posture of SB8, there is no guarantee that the Supreme Court will, in fact, overturn *Roe v. Wade* merely because it declined to intervene at this time in the SB8 litigation.

When a state enacts a law that would restrict abortion, abortionists almost always rush to a friendly federal district court to challenge the constitutionality of the law. Often, the district court will grant a temporary injunction prohibiting enforcement of the law until the lawsuit is concluded (a "pre-enforcement challenge"). That's what initially happened here: Whole Woman's Health, an abortion clinic, sued in the U.S. District Court for the Western District of Texas, and that court issued an injunction against the enforcement of SB8. However, the State of Texas appealed, and the U.S. Court of Appeals for the Fifth Circuit overruled the District Court and allowed SB8 to take effect. Why?

SB8 has a unique enforcement mechanism. It specifically prohibits district attorneys, or other government officers who would normally enforce state statutes, from enforcing its provisions. Instead, only private citizens can enforce the law by a civil lawsuit. There are no criminal penalties against abortionists who violate its provisions, but only the possibility of monetary damages. This enforcement provision was designed to avoid a pre-enforcement challenge in federal court, and it worked.

Under U.S. Supreme Court precedents, a federal court does not technically enjoin state laws that may be unconstitutional; rather, the court can prohibit state government officials from enforcing them. Thus, the abortionist-plaintiffs sued a variety of Texas government officials, including the attorney general and "a class of defendants" including all Texas judges and court clerks. However, because none of the defendants had the ability under SB8 to initiate an action to enforce its provisions,

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Concordia Portland—Closed What does HotChalk's \$302M Lawsuit against Synod and Others Mean?

Introduction

The 2019 LCMS Convention considered three wide-ranging resolutions related to the structure and governance of the Concordia University System (CUS). This attention is overdue and critical to the future of both the CUS and the Synod. Three Concordia universities have closed in less than four years. It is not hyperbolic to suggest that we face a crisis. Litigation resulting from the closing of Concordia University Portland (CUP) bears particular risks for the Synod, Lutheran Church Extension Fund (LCEF), and CUS.

Closing of CUP and Resulting Lawsuit

CUP announced on February 10, 2020, that it would permanently "close at the end of the spring semester as a result of plummeting enrollment and high debt¹ . . .". Interim President Dr. Thomas Ries was quoted as stating that the financial condition of the university led to the decision."² CUP was the largest private university in Oregon.

CUP's closure was a shocking change of status from only six years earlier in 2014 when its revenue was a record \$173 million, and the excess of its revenues over expenses was \$10 million. The enrollment had climbed to 7,435, a 37 percent increase in a single year.³

The *Portland Business Journal* stated that a "lot of the enrollment and revenue growth resulted from the University's controversial partnership with California-based HotChalk, which partners with universities to create online degree programs, including Concordia's online graduate programs in education."⁴ By 2014, Concordia had become the leading provider of online degrees in teaching.

The closing of CUP resulted in HotChalk, CUP's online program management (OPM) partner, suing Synod, LCEF, CUS, and CUP and numerous other defendants on

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the Fifth Circuit determined that there was no relief that the federal courts could grant against SB8 at this point. The abortionists appealed to the Supreme Court and asked it to grant an injunction and overturn the Fifth Circuit's ruling. The Supreme Court declined to do so, though four of the nine justices voted to grant the injunction.

This is not the end of the story. First, if a lawsuit is filed under SB8 by a private citizen, any abortionist who is sued will likely raise as a defense that SB8 is unconstitutional (a "post-enforcement challenge"), and if that defense is not accepted, the case would likely be appealed to the Supreme Court. Second, SB8 can still be challenged in Texas state courts (lawsuits are ongoing). However, SB8 represents a creative approach that looked to procedural issues, rather than substantive law, in attempting to provide a different path to challenge the *Roe v. Wade* and related abortion precedents.

Mark O. Stern, Esq.

Chicago, IL

Mr. Stern currently serves as Secretary of the Board of Regents of Concordia Seminary, St. Louis. This article represents his views and does not speak on behalf of Concordia Seminary.

Excerpts from:**"Foundation, Formation, and Beatification: The Work of Concordia Seminary"**

Below are excerpts from the August 27, 2021, inaugural address of **Rev. Dr. Thomas J. Egger** of Concordia Seminary, St. Louis, MO. The Board of Directors of Lutheran Concerns Association commends President Egger for an inspiring address that points to a truly Lutheran seminary as envisioned by the founders of our beloved Synod. Thanks be to God and the electors for their dedicated work resulting in the election President Egger.

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At Concordia Seminary, I thank God that our faculty, our church body, and our supporters are wonderfully united in this crucial commitment: that the Word of God is the unshakeable foundation of our work. The Holy Scriptures, the inspired, unbreakable, prophetic and apostolic witness of the Old and New Testaments, this source of heavenly wisdom which reveals to us Jesus Christ and the Gospel of life: Upon this we are building,

The Lutheran Clarion—We Need Your Help!

The *Lutheran Clarion* is in year 14. We have NO paid staff or writers. We unabashedly strive to present and uphold God's inerrant word. Inflation has now taken hold. **Your continued and enhanced help is needed.** We urge you to help with the costs of preserving Confessional Lutheranism. Use the enclosed envelope. Mail your tax-deductible gift to Lutheran Concerns Association, 149 Glenview Drive, New Kensington, PA 15068-4921. Do it now. **Thank you!!**



even as we ourselves are being built.

The seminary's first president, C. F. W. Walther, once declared: "In this house, neither the word of man nor the wit and wisdom of man, but rather the Word of God and the entire Word of God, and that which serves the elucidation and application of that Word, shall be studied with unwearied diligence, day after day, from the first rays of the morning until late after nightfall." In the same vein, seminary president Ralph Bohlmann wrote that, throughout its history, "Concordia Seminary has been a very special kind of 'seed plot.' There the seed has consciously and consistently been the Word of God, in all its truth, purity, and power—not the notions of men." After 183 years of history, during which all too many seminaries around us have tragically let go of this confidence, we thank those who have preceded us and we thank God that an enduring confidence in the Scriptures has been passed on to us. And we, too, will endeavor to remain upon this same foundation.

There is darkness in our world, distress and anguish and gloom. We live in an age and a culture that seem increasingly lost and aimless and dark, even sometimes within the church and within our own hearts. But the Dawn of our world has already come; the Dayspring from on high, the True Sun is shining. From "the land beyond the Jordan, Galilee of the nations. The people who walked in darkness have seen a great light; those who dwelt in a land of deep darkness, on them has light shone.... For to us a child is born, to us a son is given."

The great 18th century Lutheran exegete Johann Albrecht Bengel famously connected the church's health to its attentiveness to Scripture. Bengel wrote: "Scripture is the foundation of the Church: the Church is the guardian of Scripture. When the Church is in strong health, the light of Scripture shines bright; when the church is sick, Scripture is corroded by neglect; and thus it happens, that the outward form of Scripture and that of the church usually seem to exhibit simultaneously either health or else sickness; and as a rule the way in which Scripture is treated is in exact correspondence with the condition of the Church."

What we confess about our Triune God and about our-

Group Dinners at the 2022 LCA Conference

Besides a great set of speakers, the conference will feature the popular Sunday and Monday night dinners where attendees can informally meet the speakers and discuss issues facing church and society.



The dinners will be at 6:30 pm in a private dining room at the conference site: Holiday Inn Purdue - Fort Wayne, 4111 Paul Shaffer Drive, Fort Wayne, IN 46825.

Reserve your seat by checking the appropriate box on the registration form on page

7. Please also make your entrée selection for each evening and include the cost of each dinner with your registration fee. You can choose from chicken, sliced beef, pork and strip steak. The prices include the tax and tip.

We make reservations way before the dinner, so to avoid missing out on these two great opportunities, please remember to check the appropriate boxes on the registration form.

Please send in your registration right away even if you intend to pay at the door on the day of the conference. We need to give the numbers to the hotel 72-hours ahead of time—and we know you don't want to miss any meals!

selves we confess from the Scriptures. To all that the Bible teaches us, to everything of which it bears witness, we say, "Yes. Amen. It is so." This posture of humble discipleship beneath the prophets and apostles undergirds our entire mission and vocation here. This is the posture adopted by our Lutheran Confessions, our *Concordia*. This was the conviction that I was taught by my professors here at this seminary. This is the conviction of my faculty colleagues. And, God help us, we will pass this conviction on to the next generation of pastors, deaconesses, missionaries, scholars, and leaders for our church.

Here at Concordia Seminary, one of Dr. Walther's students would later recall his "spontaneous witness of grace inside and outside the instruction periods." . . . Francis Pieper, apparently, had an even greater reputation for shaping persons and hearts. Dr. Theodore Nickel, himself a former student of Pieper's, writes: "When students and pastors who had Pieper as a professor would speak about their days as his students, they would refer not so much to his person, but to the fact that he made you love Christ. This was Pieper's greatest power: he always brought God's grace to bear upon your life. When students spoke of Dr. Pieper, they would say, 'When you think of him, you think of Christ.' He became a picture of God's grace walking in his classroom." This was my own experience as a student at this seminary—with many of my professors, none of whom were Walther or Pieper, by the way. And I hope that this continues to be the experience of our students today.

Lutheran Confessionals or Lousy Work Ethics?

The author received and read with interest most of the articles of the July 2021 *Lutheran Clarion*.

One held the author's attention, perhaps because he reads publications like the *Clarion* with more of a critical eye than is necessary. But as a result of Confessional Lutheranism abandoning clerical responsibilities as a result of a media/political hoax in March 2020, it is hard to see the "Confessional" in Lutheranism any more, if ever the author was able to. The author never thought he would live to see the day that those, who claim to have the correct understanding of the Word and claim to boldly confess it, would dare to lock the doors of church buildings that were owned by the congregants. Yes, the author was locked out of his own facility! And pastors, claiming they were showing "love," abandoned their Sunday duties and hid behind computer screens. After years and years of pastors teaching the importance of gathering for fellowship and sometimes even "blasting" home TV church-goers, they now reverted to that style and claimed they were faithfully carrying out their callings. (Does the word "hypocrite" or "hireling" ring a bell here?)

And even today, the author has not heard of one Lutheran "pastor" standing up in front of the people, who called him to lead them by teaching and example, and confess he has sinned against God and his people by acting like a hireling (a wide paint brush here but the author would love to hear about the brave men that didn't bow to Caesar). So, yes, the author has become very critical and untrusting of much of what "Confessional Lutherans" have to write or speak about.

One of the articles that caught the author's eye ("A Price too High to Pay") was written by Mr. Timothy Goegelein of Focus on the Family. What he wrote about also raised red flags about what we are teaching our students. Have we ever heard about paying our own way? Are we teaching young people to only attend college if there are government grants, loans and other financial assistance available? What has happened? The author went to four years of college in three and one-half years and received a Bachelor's Degree. No bank or college loans or grants. What the author did receive was pay from working two jobs that took him through college, and in the end he purchased a new Oldsmobile with cash....no loans or grants. The author, his wife and their four children moved to Ft. Wayne, rented a house, worked, and studied for three and one-half years. When the author left the seminary, they were debt free and had five children. (Yes, you may say that was in the "author's day." Don't think or say it! That has been heard before and it is just more crying!)

How about teaching our children the good old-fashioned Biblical work ethic? Schools do more harm than good when they encourage young people to attend when they can't afford it. The author doesn't recall any of the workers in the Scriptures begging others to pay for their education. That is what we are teaching young

people. To learn how to beg and try to get something for nothing. Kind of like glorified Halloween Trick or Treating.

It was almost hilarious, even though it was gut wrenching, when during the famous church shut-down hoax of bowing to Caesar, church bodies would appeal to their members for funds for the poor students who couldn't attend pre-sem or even seminaries because there were no jobs. Either the writers were lying or they were totally ill-informed.

Even today there are "Help Wanted" signs literally all over the country. If the colleges really cared about the students, they would point them in the direction of work instead of loans and grants.

Why don't we teach the young to learn a trade and then earn and pay their own way through college? That is what the author and his wife taught their children. That is what the disciples were taught. A book on church history claimed an Israelite man was not listened to until he was at least thirty years old. Was that why Jesus didn't begin his ministry until about age thirty? Hmmmmm! Just think of the quality of the pastors who actually know a trade and could make it on their own (like Paul) if push comes to shove. No more whining Mama's boys in the pulpit who are still wet behind the ears from lack of living and work skills trying to sound as if they know what they are talking about. When everything, including an education, is given away through low interest loans and grants, the person soon begins to think it is owed to him. Is that why we have so many little "popes" in Lutheran pulpits (and seminaries?) who are concerned more about "authority" instead of being true servants like Christ was/is? Oh, surely this would decrease the student population at first, but it would soon result in more highly qualified students. And surely another effect would be fewer employees in both secular and religious institutions which would also make for more quality in place of quantity in our education system.

The author is afraid it looks as if "Christian" colleges and secular colleges are appearing the same and having the same goals, both trying to latch onto the old sow hoping she has one more teat to spare. The one squealing the loudest expects to get first dibs. It is time we expose the poor work ethics being taught by "Christian" congregations and pastors, and, oh yes, colleges and seminaries as well. Poor work ethics do not belong among Lutheran "Confessionals."

Tom Zeller
Retired Pastor

Who is the Reader of the Readings?

As the ever downward spiral of biblical violations increase, we might seem to be losing sight of the issues that have a long history to them. Our shocked attention is being drawn toward same sex married pastors and even transgender bishops. As such, previous issues seem

less worthy of our discussion. Among these giants of sexuality issues does it seem too minor a thing to address the public readings during divine service? It is not as though this topic has not been written about with enough ink to empty a pen. Is there still reason to talk about, write about, and discuss the lectionary and its readers? I think so.

The 1985 CTCR document *Women in the Church* has said "Nevertheless, it is the opinion of the CTCR that the reading of the Scriptures is most properly the function of the pastoral office and should therefore not ordinarily be delegated to a layperson woman or man" (pg. 45). Stating that this is "properly the function of the pastoral office" leads us to look at this issue from the perspective of vocation. Whose vocation is the reading of scripture during the divine service? I Timothy 4:13 is normally the go to verse where Paul tells Timothy "until I come do (προσεχε) the readings (αναγινωσκει)." Timothy was the pastor in the city of Ephesus. This passage is clear that Paul intends for the pastor to carry out his vocation which includes the lectionary. There are prohibition passages used in the CTCR document mentioned above that congregations not do that which "might be perceived as an assumption of the pastoral role" (I Cor. 11:3-16; 14:33-35).

The readings of I Timothy 4:13 are the public readings of scripture in the gathered assembly as is indicated by the word αναγινωσκει. That word is used two other times in the New Testament. Once in Acts 13:15-27 where the Law and Prophets are read in the synagogue. Also in II Corinthians 3:14 where "old covenant" was read in the assembly which was not recognized because they did not acknowledge Jesus as the fulfillment of the "old covenant." The readings in the divine service are first and foremost the responsibility of the Called and Ordained Pastor of the congregation. Paul's admonition to Timothy was that he was to carry out his vocation. There is no indication by Paul anywhere in the New Testament to give this over to members for the sake of participation.

What to do if a pastor needs help due to multiple services on a Sunday morning or a weekend accompanied by Bible classes? Should there be need to assist the pastor to save his voice, especially at the lectern, the church has an office that has been established to help him. That office is the office of elder. Elders are elected by the congregation to assist the pastor when and where he deems it beneficial and fruitful for the sake of good order in the divine service. Since the elder stands in the place of the pastor, the elder ought to be male.

My allotted word number is now exceeded for this article. So much more should be said including the role of male in the church and in the home. At that I will leave this topic to be considered under the doctrine of vocation. The readings in divine service are the responsibility of the pastor. The pastor is to "do the readings" as Paul directs Timothy.

Rev. Dr. Brian Saunders
President, Iowa District East

LCMS President Matthew Harrison Moves to Withdraw Fellowship from Japan Lutheran Church

The following is **excerpted** from a letter of July 9, 2021, in which LCMS President Matthew Harrison informs the President of the Japan Lutheran Church (JLC) that he is enacting the process for withdrawing the LCMS from church fellowship with the JLC. The complete letter may be found and read at this web-address: <https://reporter.lcms.org/2021/harrison-calls-japan-lutheran-church-to-repentance>

FROM: The Lutheran Church—Missouri Synod, Office of the President, The Reverend Doctor Matthew C. Harrison, President of the Synod.

The Week of Pentecost VI, A.D. 2021,
July 9, 2021

Dear President Yoshida, . . .

It is with a heavy heart that I write this letter — one that I have been fervently hoping and praying (for over a decade) that I would not have to write. I appreciate your letter of June 4, 2021, providing an update on the discussions and decisions that took place at the most recent convention of the Japan Lutheran Church (JLC), conducted online on April 29, 2021. But I read with heartbreaking sadness and regret that the JLC has now officially done what we have long feared — and fraternally and repeatedly urged that it not do — to adopt the ordination of women to the pastoral office as its official doctrine and practice. You have amended your bylaws to remove the word “male” from the section on the qualifications of called pastors, thus contravening the Bible’s clear teaching that the pastoral office is to be entrusted only to qualified men.

As you well know, The Lutheran Church—Missouri Synod (LCMS) has, throughout its history, consistently held and “[declared] clearly and unequivocally . . . that the Scriptures teach that only men may hold the pastoral office” (1998 Res. 3-25A). There is no room whatsoever for compromise on this issue. This is a matter of sacred truth and we have a conscience-bound commitment as a confessional orthodox Lutheran church body to confess this truth and to remain faithful to it. We have tried in vain repeatedly to urge you to remain in this orthodox truth as it has been taught from the beginning. We have implored you to provide women with seminary level training and provide women opportunities to serve in varied consequential roles as deaconesses and in other church work positions, as the LCMS has fruitfully done.¹

One of the reasons that the JLC’s decision is so painful for me and for us as a church body is that, historically and ecclesiastically speaking, the LCMS “birthed” the JLC. The JLC grew out of mission work in Japan beginning in 1948, was organized as an autonomous church body in 1968, and became an LCMS partner church in 1971. For these many years we have recognized and

treasured the gift of altar and pulpit fellowship with you.² How tragic it is that the news of the JLC’s rupturing this fellowship by this convention action comes on the 50th anniversary of our joyous entrance into church fellowship. This grieves our hearts deeply, as the daughter turns from her mother. . . .

In July 2010 I was elected president of the LCMS. Even before I was formally installed into office, I wrote a letter on Aug. 27, 2010, to then-President Rev. Yutaka Kumei and the members of the JLC indicating that “my heart is filled with sadness that the Executive Committee of the JLC is considering recommending the ordination of women to your church’s convention. Such a decision would bring shame to the LCMS as a sister church of the JLC in that our witness to you was not strong enough to prevent such a decision.” . . .

We shared with you the fulsome orthodox Lutheran and biblical teaching. We shared with you the CPH book, *Ordination of Women?* with its many distinguished Lutheran authors (including women) explicating the truth of the Scriptures: that women are to be honored and respected, are intellectual equals with men, and gifted to serve in significant roles in the church and her institutions; yet it is the Lord’s mandate, delivered by His apostle, that women may not serve as pastors.³ Regarding the public explication of the texts, the inerrant Word states:

Women should remain silent in the churches. They are not allowed to speak, but must be in submission, as the law says. If they want to inquire about something, they should ask their own husbands at home; for it is disgraceful for a woman to speak in the church.

Or did the word of God originate with you? Or are you the only people it has reached? If anyone thinks they are a prophet or otherwise gifted by the Spirit, let them acknowledge that what I am writing to you is the Lord’s command. But if anyone ignores this, they will themselves be ignored. (1 Cor. 14:34–38) . . .

[A]s noted above, this serious matter must now be brought to the Synod convention. . . .

We know that your position is the result of many years of training pastors in a joint seminary under the influence of the LWF and ELCA. We are not at all naïve about how false teaching attacks the authority of the blessed Word of God, salvation through faith alone in Christ’s atoning death and physical resurrection, divinely ordered human sexuality, and more.

I pray for your repentance and your return to fellowship in Christ in the truth of His Word. . . .

Sincerely, with a heavy heart and in true Christian love,

Rev. Dr. Matthew C. Harrison

President

The Lutheran Church—Missouri Synod

¹ On the Scriptural teachings of male and female. . . , see both the brief overview, “The Service of Women: A Christian Response,” www.lcms.org/Document.fdoc?src=lcm&id=2263, and the detailed study, “Man as Male and Female: Created in the Image of God,” *Concordia Theological Quarterly* 68, no. 1 (January 2004),

www.ctsfw.net/media/pdfs/jastrammanasmale.pdf.

- 2 On the Lutheran understanding of church fellowship . . . , see *The Lutheran Understanding of Church Fellowship*, Office of the President and the Commission on Theology and Church Relations, February 2000, <https://files.lcms.org/wl/?id=8svVqez77tPmYIXQb9apNKrNSyQHOYm>.
- 3 Matthew C. Harrison and John T. Pless, eds., *Women Pastors? The Ordination of Women in Biblical Lutheran Perspective*, 3rd ed. (St. Louis: Concordia Publishing House, 2012).

Facing Despair with Faith

It's time to start re-thinking what happens at church now that the kids are back in school and we can get back to the routines that we took off for the summer. The school children are faced with the depression of nine more months of sitting in classes (thank you post-COVID practices). Adults and parents are faced with the extra expenses of everything attached to the school year. And the empty-nesters start thinking of what we can do for Halloween, Thanksgiving, Christmas and every other event that requires us to recognize the grandkids in some unique way. It might even become depressing when we see things piling up around us.

Depressing times have happened to everyone — at least once in their life. For some, it gets deeper.

When we think of Martin Luther, we think of a man who was fiercely dedicated and who fought for truth and life with vigor. During his lifetime, Luther had been struck by lightning, thrown into prison, lived under house arrest, had numerous attempts taken on his life, lost some of his children to deadly diseases and suffered from a serious heart condition. Most of the time, Luther was relentless in his determination to stand up to every adversity and put the brightest outlook on everything. On one occasion, however, Luther was completely down. We don't know exactly why that was, but Luther was depressed because things were going badly. He stayed up most of the night sulking over his problem in his study.

As he sat there in the wee hours of the morning, he looked up and saw his wife, Katy, standing in the doorway. She had a look of despair on her face, too.

"What's wrong?" Luther asked her.

"Haven't you heard the terrible news?" she asked. "God is dead!"

Luther soon realized Katy was play acting. He scolded her for such a terrible thing to say about God. But Katy wasn't impressed.

She lectured him right back: "And if God isn't dead, what right do you have, His servant, a Christian man, to be depressed and downcast?"

She was right. No one who believes in our faithful God has the right to be downcast and depressed. Yet it happens all the time. If anyone slips into despair, they're living as though God was dead—unable to hear our prayers and respond to our needs.

As long as God is alive, however, we have no need to despair. The same living God who brought us to this day is the same God who loves us and cares for us in days

we don't even know about yet.

But like Luther, St. Paul, St. Francis, St. Ambrose, Moses or many of the disciples, we all sometimes get down. We forget to keep our eyes on Jesus and, like St. Peter, we sink into the stormy seas of depression and despair. Jesus Christ died for our human race and this world. He now lives at the right hand of God! We can't be regarded as hopeless. Through faith, we're reminded of what Jesus Christ has done for us and for what purpose God sent Him into this world.

"For God so loved the world, that he gave his only Son, that whoever believes in him should not perish but have eternal life."

There's a church I passed by on some country road in our district. The marquee said "God will be faithful if we only trust in Him."

But is God faithful because we trust Him? God is always faithful! His faithfulness doesn't depend on us, but is solely based on His unending and unchanging faithfulness and love for us in Christ Jesus.

If indeed He is faithful, He also cares for us. Hearing Jesus say "I will be with you to the end of the age" means we should trust Him. Even if our faith in Him falters, His faithfulness is new to us every day.

If we worry, as we often do, we show signs that we no longer fully trust Jesus. It's like taking His promise that He will always be with us and care for us, with all the evidence of how He has cared for us up to this day, and throwing it back in His face and saying, "That promise is just not good enough for my troubles today!"

Holy Scripture reminds us that God is faithful and just. He does forgive our sins. We can always depend on His welcoming grace.

Even the children of Israel grumbled that they were facing a wilderness where there was no food or shelter. They were actually willing to trade their new-found freedom and hope of the Promised Land in exchange for the certainty of full bellies in slavery if they returned to Egypt. Bondage and a full belly in exchange for the freedom they had from the almighty hand of God showed their faithless consideration of our faithful God, even though He always showed just the opposite—that He is faithful.

God didn't forget. He didn't abandon even the harshest of grumblers, the most chronic of complainers or even the most rebellious of scoffers among the Israelites. He preserved them all!

Each day, without fail, for 40 years—over 15,000 times—God faithfully supplied enough food to feed millions of freed Israelites, gave them water from a solid rock, gave them victory over every enemy and led them to the Promised Land.

Where did Moses get the strength to withstand the whiners and complainers by the millions out of the nation of Israel? Where did St. Peter eventually get his strength to stand up against the threats of death, rather than deny his God in Christ? Where did Martin Luther get his strength to stand on the truth of Scripture alone, or any of the saints for that matter?

Through faith, confession and prayer, strong men of faith realize that God is always close by and is always faithful. God's Word assures us that fears, doubts and depression are driven away by the power of His Word and through the work of the Holy Spirit.

Without God's Spirit's guidance and presence, we might have the right to be depressed and in fear. But the power of God's children is not in their own ability. Through faith, we have access to God's faithful providence and can withstand the combined powers of people, the sin-filled world, the fiery darts of Satan and our own fragile human flesh.

The presence of God and the assurance which comes from the sacred cross of Jesus Christ lifts us above hopelessness and despair to the joy of forgiveness of our sins and victory unto life everlasting through Jesus Christ our Savior.

It isn't an absence of faith that lets us slip into worry and doubt or depression. It's the constant barrage of those unseen attacks from the world, Satan and our own flesh that try to erode away our gift of faith and send us to deep despair. Mighty men of God suffered with the same doubts and fears, but through faith they drew on the strength that is beyond their understanding—the strength that comes from God's Word to claim a miraculous victory over all things.

May we be led to always draw on the power of the faithfulness of our God, to stand tall in the face of wrongs, to give power in the midst of what seems impossible and to shine as a bright light in a dark and depressed world that needs to know that God is *not* dead. He is alive and He is with us in Word, Sacrament and worship to serve us, and to serve us continuously each day until He finishes the job of leading us to His eternal Promised Land through the same Lord and Savior Jesus Christ, our ever-living Redeemer.

Maybe, even in this truth from God, we might be able to face the next school year or whatever else the world might throw in our path. God is faithful and He will do it!

Rev. Dr. Roger Paavola
President, Mid-South District

The above article by Dr. Paavola appeared in the September 2021 issue of the Mid-South Lutheran, the District's insert in The Lutheran Witness. Article used with permission.

Concordia Portland—HotChalk
Continued from page 1

April 17, 2020.⁵ These defendants include The Lutheran Church—Missouri Synod (Synod); Lutheran Church Extension Fund (LCEF), Concordia University System (CUS); Concordia University, St. Paul; CUP; CUP Foundation; members of the Board of Regents of CUP; and several CUP administrators.

The three key targeted defendants are Synod, LCEF,

and CUS. The causes of action against these three include fraud, fraudulent transfer, breach of duty of good faith and fair dealing, alter ego and corporate veil piercing, and interference with contractual relations. The largest damage amount that HotChalk is claiming is \$302,105,410, jointly and severally, against Synod, LCEF, and CUS. HotChalk has calculated the \$302,105,410 as a combination of a "termination fee" and "recoupable advance" derived from an Administrative Services Agreement, (ASA) that HotChalk and CUP signed in February 2018. This was only two years before the announcement of CUP's closure. Incredibly, this ASA had a 20 year term in which CUP had agreed to pay HotChalk a revenue share over the term of the ASA of 60% of CUP's tuition revenue. CUP would only retain 40%. The Regents of CUP approved the ASA and Dr. Charles Schlimgert, president of CUP for 35 years until his resignation in July 2018, signed it.

Relationship Between CUP and HotChalk

The relationship between CUP and HotChalk began in 2009. The current Amended Complaint of HotChalk in the Oregon litigation describes the 12 year history from the perspective of HotChalk as follows:

Beginning in 2009, HotChalk and Concordia worked together to become leaders in online education, especially for teachers and other education professionals seeking masters and doctoral degrees in education. In exchange for a share of Concordia's tuition revenue, HotChalk provided a variety of services to help develop, implement, and support nonacademic aspects of Concordia's online graduate education program. HotChalk and Concordia established the online education business model to support working people wanting to further their professional education. Under most school-district contracts, teachers who wanted pay raises needed to complete additional graduate-level coursework. As a result, many of Concordia's students—working as both teachers and graduate students—preferred the flexibility afforded by online classes.

HotChalk and Concordia's online program experienced immediate success and was hailed as a model for online education. This rapid growth was occurring as "brick and mortar" campuses, including Concordia, faced significant challenges, including declining enrollment, increasing expenses, and reduced revenue.

The success of the parties' business plans made Concordia a model for other struggling small universities. In approximately 2013, in connection with a *qui tam* lawsuit brought by former employees, the Department of Justice began reviewing whether HotChalk and Concordia complied with certain U.S. Department of Education regulatory requirements related to incentive compensation and outsourcing limitations. Despite a series of court rulings in HotChalk and Concordia's favor in the underlying case that prompted the government inquiry, HotChalk and Concordia chose to settle with the United States and

the plaintiffs, admitting no wrongdoing.⁶ After the settlement and consistent with the related agreement, HotChalk and Concordia worked on restructuring their arrangement and entered into a new, 20-year agreement that was active at the time of the Concordia closure.

HotChalk and Concordia entered into this new, 20-year agreement, the Administrative Services Agreement ("Agreement"), on February 14, 2018. . . . This new Agreement was structured to address U.S. Department of Education concerns.

Under the Agreement, HotChalk received weekly "revenue-share" payments, also called the "Bundled Services Fee," which were calculated as a portion of the tuition payments made by Concordia's students. Concordia owed HotChalk, payable on a weekly basis (with certain amounts deferred, as discussed below), 60% of Concordia's tuition revenue; and HotChalk was responsible for a proportional amount of operational expenses. In exchange for the weekly revenue-share payments, HotChalk provided, among other things, services related to supporting Concordia's marketing, recruiting, enrollment, student support services, and information technology, all supervised and controlled by Concordia.

HotChalk's Amended Petition quoted above refers to the 2013 *qui tam* lawsuit brought by former employees of HotChalk.⁷ That lawsuit is enlightening as it describes the conduct of both HotChalk and CUP related to HotChalk's recruitment of students, and provision of enrollment activities, educational curriculum, faculty, and classes for CUP's online degree programs. The enrollment specialists at HotChalk worked out of a Phoenix call center and had authority to enroll students for CUP, ignore CUP's standard admission policies, and increase enrollment numbers to increase HotChalk's compensation.

The result of this 12 year relationship was a disaster for CUP. Multiple Oregon print media publications provide an eye-opening financial and educational perspective. Writer Molly Young of *The Oregonian/OregonLive* analyzed this relationship as early as October 21, 2016.⁸ Young's observations as to CUP included the following:

The Northeast Portland college now bestows more Master of Education degrees than any other public or private nonprofit school in the country, thanks to a popular online teaching program that helped quadruple the college's revenues in five years.

The meteoric growth came at a price to Concordia. The small Christian school has paid more than \$160 million to a private contractor hired to handle aspects of the online graduate degree program. Students know little about the Silicon Valley company or its outsized role.

Concordia and HotChalk Inc. drew rebuke last year after the U.S. Education Department concluded a two-year investigation into their relationship. A federal

prosecutor said the arrangement appeared to violate laws that keep colleges from paying incentives for recruitment, or from outsourcing more than half an educational program to an unaccredited party.

"HotChalk would recruit students, cover all enrollment activities and provide the educational curriculum, faculty, and classes" for at least some of Concordia online degree programs, said a July 2015 letter that summarized the government's findings.

Concordia and HotChalk soon signed a \$1 million settlement that admitted no wrongdoing in the case, started as a whistleblower suit by former HotChalk employees.

. . .

Concordia denied all of the allegations in the federal lawsuit, and HotChalk said it is not possible to draw accurate conclusions from the case.

Concordia spokeswoman Madeline Turnock said in a written statement that HotChalk has no role in enrollment, admission or financial aid decisions at Concordia, and the college provides "100 percent" of its academic programs.

An in-depth analysis by The Oregonian/OregonLive, drawing on publicly available documents and cached versions of the university's web pages, uncovered an unusual degree of interdependence between Concordia and its contractor. Together, the two transformed the university.

. . .

Federal student loans heavily financed the growth. Concordia students in 2014-2015 received more from the government's leading graduate loan program than students at any Ivy League school but Columbia.

Between the tax years that began in July 2009 and in July 2014, Concordia's annual revenues grew fourfold to \$173 million, and its year-end surplus went from \$1 million to \$10 million,

. . .

Concordia's growth strategy was not without risks.

A dramatic enrollment increase, a shift toward teaching most students online and heavy spending on marketing are all warning flags identified by the National Consumer Law Center, a nonprofit consumer advocacy group, in a 2014 report about online education.

. . .

The degree of Concordia's financial connection to HotChalk appears to be unusual, based on a review of IRS filings.

Now, the post mortems of CUP's collapse are brutal. Derek Newton of *Forbes*, relying in part on reporting by *The Oregonian*, stated in "A New Normal, A College Undone By Greed":⁹

. . . the school was eaten alive, devoured from the inside by a for-profit company it hired to run its online programs.

. . . School leaders "bet the college's future" on a deal with a company called HotChalk. In the deal, HotChalk

would manage many, even most, of the details of the college's online programs, specifically their graduate programs in education. Things such as marketing, recruitment, enrollment, course design and delivery would all be handled by the outside company. In exchange, HotChalk would get a cut of the tuition revenue.

...

... The school paid the company \$62 million in 2014, representing "nearly half of all tuition and other revenue" the school took in, according to the paper.

...

... Even many public schools are sharing revenue with, and shoveling hundreds of millions of dollars to, private, for-profit companies to "manage" their online programs. Some of those agreements call for the private company to take 50%, 60% even 80% of student tuition.

...

At HotChalk, for example, three of the six "senior leaders" listed on its website previously worked for Apollo Education, owner of the infamous for-profit, largely online, University of Phoenix. ... Most of the non-Apollo leaders have close ties to Bertelsmann, which invested \$230 million in the company in 2015.

...

... Much of the heartburn over the closure there has been focused on the decision by school leaders to move ahead with a local fundraiser when they knew the school may close, to wait until after the "drop" deadline to tell students, to have handsomely paid administrators while the school cratered, and to have signed such a bad deal with HotChalk in the first place.

... What was bad was signing a revenue-sharing deal with a for-profit company in the first place.

Synod's Pending CUS Governance Model Proposal

Synod, at its 2019 convention, passed several resolutions directed to university education.¹⁰ These included 7-01A To Amend Bylaws Related to Structure and Governance of the Concordia University System, 7-02 To Nurture Our Lutheran System of Higher Education, 7-03 To Direct a Collaborative Process to Propose a New Governance Plan, and 7-04A To Advance the Prior Review Process for CUS Institution Presidential Candidates.

This process has proceeded with the "Official Notice: CUS governance model proposal and request for comment" that Synod posted on March 12, 2021. Synod's Board of Directors had approved dissemination of an initial governance model that had been developed by the 2019 Res. 7-03 Committee to "Strengthen all CUS institutions' connection to the Synod" and "to strengthen [their] confessional Lutheran identity." The objective of this effort is to obtain comments from members, officers, boards, commissioners, and other agencies of Synod, resulting in the submission of a final proposed governance model as an overture to the 2023 Synodical Convention.

Where Are We Now?

Synod is asking us to consider Resolution 7-03 and provide comment and feedback in preparation for the 2023 Convention. This request has to be considered in relation to the pending HotChalk litigation. HotChalk is claiming that Synod, LCEF, and CUS caused the failure of CUP as legal alter egos of CUP by interfering in CUP's process of choosing a new president of CUP, and refusing to provide financing to CUP until CUP closed its "Gender and Sexuality Resource Center." When CUP failed to do so, HotChalk claims that Synod and LCEF forced CUP to close by starving CUP of operating funds.

Apart from the dubious factual merit of HotChalk's claims, the pending case will not go to a jury trial until April or May 2023. That jury trial will likely take one month. In the meantime, the trial judge will be making rulings on motions to dismiss by Synod, LCEF, and CUS. In December 2021, the trial judge will consider motions by Synod, LCEF, and CUS to dismiss HotChalk's claims, in part, based on First Amendment grounds. One should also add that the cost of attorney's fees in defending against HotChalk will be enormous.

Final Observations

Much of the attention given to CUP over the years has been directed at the pro-LGBTQ stance of CUP and the Gender and Sexuality Resource Center. The concerns that so many have expressed are legitimate and Biblical.

What is missing from these discussions and debates is the reality that CUP's delegation of its admission process to HotChalk made it inevitable that CUP would accept significant numbers of students who were neither Christian nor committed to standards of Biblical conduct and character.

What is also missing is that CUP's ASA with HotChalk, as it was in effect at least as early as 2013, and renewed in February 2018, doomed CUP to financial failure. The U.S. Department of Education's regulatory action against CUP and HotChalk should have been sufficient for CUP to terminate its relationship with HotChalk prior to 2018. These two issues of HotChalk's failure to comply with federal law in compensating its enrollment specialists and the one-sided ASA in HotChalk's favor in being paid 60% of CUP's tuition receipts, should have been warning signs to Synod, LCEF, and CUS as early as 2016 that CUP was pursuing a vision that would inevitably result in its disintegration.

Conclusion

Quite simply, CUP should have applied the wisdom of Proverbs 6:27. "Can a man take fire into his lap without getting his clothes burned?"¹¹ Instead, CUP took fire into its educational, religious, and financial bosom when it contracted with HotChalk. The "burning" of its clothes was inevitable.

Disclaimer

The opinions the author has expressed are solely his own. The content is based primarily on public infor-

mation. The primary sources of this information include the filed pleadings and court decisions in *HotChalk, Inc. v. Lutheran Church - Missouri Synod, et al.*, Case No. 20cv15620, Circuit Court, State of Oregon, Multnomah County. The author listened to a lengthy public hearing in this case on September 17, 2021. Other sources include the extensive coverage of CUP in numerous Oregon print media outlets going back to 2016, as indicated in the footnotes. The author is not privy to any confidential information related to the pending HotChalk case described in detail above. The author has not talked with any attorney or known witness involved in the pending HotChalk case.

The author has made numerous references to the pending case and the 2013 case in the U.S. District Court, Arizona. Pleadings in those two cases provide valuable factual and legal background. But pleadings are not evidence.

James D. Runzheimer, Attorney
Arlington, TX

- 1 <https://www.bizjournals.com/portland/news/2020/02/10/concordia-university-to-close-at-end-of-semester.html> by Mathew Kish.
- 2 *Ibid.*
- 3 *Ibid.*
- 4 *Ibid.*
- 5 *HotChalk, Inc. v. Lutheran Church - Missouri Synod*, Case No. 20cv15620, Oregon Circuit Court, Multnomah County.
- 6 *HotChalk's Amended Petition* fails to disclose that the two entities were assessed a penalty of \$1 million. *HotChalk* paid the entire amount.
- 7 *Regina Calisesi, et al., v. HotChalk, Inc., Concordia University, et al.*; Case 2:13-cv-01150-NVW; U.S. District Court, Arizona.
- 8 https://www.oregonlive.com/portland/2016/10/concordia_gained_thousands_of_new_students_-_and_a_federal_inquiry.html
- 9 <https://www.forbes.com/sites/dereknewton/2020/03/01/a-new-normal-a-college-undone-by-greed/>
- 10 Proceedings of the 2019 (67th) LCMS Convention, Resolutions, pages 165-174.
- 11 AAT, William F. Beck, Leader Publishing Company, New Haven, Missouri. Copyright 1976, Mrs. William F. Beck.

2022 LCA Conference Speakers January 17, 2022

- **Rev. Christopher S. Esget**, *The Madness of Deneathor: Rescuing Missouri from the Pyre*.

Rev. Esget is 5th Vice-President of the LCMS, representing the East-Southeast Region. He is Senior Pastor at Immanuel Lutheran, Alexandria, VA, where he has served since 2001. Rev. Esget attended Concordia Theological Seminary, Fort Wayne, where he earned a Master of Divinity in 1997 and a Master of Sacred Theology in 2005. He and his wife, Kassie live in Alexandria, VA; they have one son.

- **Dr. Gerhard Mundinger**, *Higher Education: Challenges and Opportunities for the Confessing Church*, update 7-03 and LIMOS (Lutheran Identity and Mission Outcome Standards)

Dr. Gerhard H. Mundinger, Jr., has been has been an academic and Private Practice Cardiothoracic Surgeon for more than 35 years. He received his electrical engineering and medical degrees at the University of Colorado, *Magna Cum Laude*. He completed his general and vascular surgery residency at Johns Hopkins University School of Medicine in Baltimore, MD. He completed a two-year fellowship in surgical oncology at the National Cancer Institute, National Institutes of Health, Bethesda, MD, as well as a cardiothoracic surgery fellowship at the University of Michigan, Ann Arbor. Dr. Mundinger holds an honorary doctor of laws from Concordia University Wisconsin. He is chairman of the Board for the Concordia University System. Dr. Mundinger and his wife Sue have been married 52 years and are blessed with 3 children and 6 grandchildren.

- **Rev. David P. Ramirez**, *The Great Awakening: What Are We Going to Do about It?*

Rev. Ramirez is the pastor of St. Paul's, Union Grove, WI. He earned his M.Div. in 2008 and STM in 2020 from CTS, Fort Wayne. His thesis is entitled "Martin Luther and Religious Liberty." His current focus of research and study has been on the three estates--particularly the duties that civil government has in regards to religion and the question of resistance to legitimate authority. He also is a member of the Planning Committee for the Bugenhagen Conference. He and his wife Lisa have eight children.

- **Rev. Kevin D. Robson**, *Received and Delivered: The Future of LCMS Mission*.

Rev. Robson has served as the Chief Mission Officer of the LCMS since May 2015. Prior to this appointment, he served for nine years as pastor of Prince of Peace Ev. Lutheran, Baxter, MN. He earned a Master of Divinity degree from Concordia Theological Seminary, Fort Wayne, in 2001. He has completed course work and is currently researching a final dissertation project for the Doctor of Ministry degree from CTS. Robson and his wife, Peg, reside in Kirkwood, MO; they have one son.

- **Rev. Dr. John Wille**, *Confession vs. Mission: A False Dichotomy in the LCMS*.

Dr. Wille has been President of the South Wisconsin District since 2016. Dr. Wille is a graduate of Wisconsin Lutheran Seminary, Thiensville. He entered the LCMS by colloquy in 1983. Rev. Wille has served congregations in Ohio, Central Illinois and South Wisconsin. He served as a church planter for 16 years; he was founding pastor of Good Shepherd Lutheran, Tomah, WI. As part of the LCMS Council of Presidents, Dr. Wille has chaired multiple convention floor committees. Dr. Wille serves on the Board of Regents at Concordia University Wisconsin, and on the Regents for Concordia Seminary St. Louis. Rev. Wille and his wife, Lynette, have been married for 42 years. They are blessed with three daughters and six grandchildren.

LUTHERAN CONCERNS ASSOCIATION ANNUAL CONFERENCE

Monday, January 17, 2022

"Do not be conformed to this world." Romans 12:2 (NKJV)

The conference will be held Monday, January 17, 2022, at the Holiday Inn Purdue - Fort Wayne, 4111 Paul Shaffer Drive, Fort Wayne, IN 46825; 260-482-3800. The Holiday Inn rate is \$129.00 plus tax. To get this rate, make your room reservation by December 1, 2021. The Group Code (by phone) is Lutheran Concerns. The link to the hotel is <https://tinyurl.com/yr7yu4nr>

Dine with the Speakers and the LCA Board of Directors! On Sunday and Monday evenings a private dining room at the Holiday Inn has been reserved for conference attendees. Conference attendees will be dispersed among the speakers and LCA board members. Be sure to reserve your place right away by checking the appropriate box(es) and selecting your meal(s) on the registration form below. Everyone will dine at their own expense; the dining cost must be paid with the conference registration. Please register before the conference even if you pay at the door.

A New York Deli lunch will be provided at 12:15 p.m., for everyone registered for the full day. If you register for a half day and you want the lunch, the cost is \$29. Seminary students and seminary personnel will pay \$10 for the lunch.

Conference Schedule

Morning

6:45 am - Registration Opens
 7:30 am - 8:10 am - Bible Study (**Rev. Joe Fisher**)
 8:10 am - 8:20 am - Opening Devotion (**Rev. Dr. William Weinrich**)
 8:20 am - 8:30 am - Welcome from the LCA (**Mr. Walter Dissen, Esq.**) and greeting from a representative of the Indiana District.
 8:30 am - 9:00 am - Guest Speaker - **Rev. Dr. John Wille**,
 "Confession vs. Mission: A False Dichotomy in the LCMS."
 9:00 am - 9:25 am - Questions and Answers
 9:25 am - 9:50 am - Break
 9:50am - 10:20 am - Guest Speaker - **Rev. Kevin Robson**,
 "Received and Delivered: The Future of LCMS Mission."
 10:20 am - 10:40 am - Questions and Answers
 10:40 am - 11:10 am - Guest Speaker - **Rev. David P. Ramirez**,
 "The Great Awakening: What Are We Going to Do about It?"
 11:10 am to 11:30 am - Questions and Answers

Afternoon

1:10 pm to 1:40 pm - Guest Speaker - **Dr. Gerhard Munding**,
 "Higher Education: Challenges and Opportunities for the
 Confessing Church, update 7-03 and LIMOS."
 1:40 pm to 2:00 pm - Questions and Answers
 2:00 pm to 2:30 pm - Guest Speaker - **Rev. Chris Esget**, "The
 Madness of Denethor: Rescuing Missouri from the Pyre."
 2:30 pm to 2:50 pm - Questions and Answers
 2:50 pm to 3:15 pm - Break
 3:15 pm to 4:30 pm - **Panel Discussion with All Presenters**
 4:30 pm to 4:40 pm - Closing Remarks and Closing Prayer
 (Rev. Jerome E. Panzigrau)
 5:00 pm - LCA Annual Business Meeting (Paid Members Only)
 6:30 pm - LCA Dinner (by Reservation Only)

12:00 noon - 1:10 pm - New York Deli buffet lunch served in the meeting room.



2022 LCA Conference Registration Form

Holiday Inn Perdu-Fort Wayne • 4111 Paul Shaffer Drive • Fort Wayne, IN 46825 • 260-482-3800

Printed Name _____

Address _____

Phone Number _____

Email Address _____

Dinner: Sunday, January 16, 6:30pm (choose one entrée) *

- ☐ Boneless Breast of Chicken \$37.00
☐ Sliced Beef Sirloin Medallion \$40.00
☐ Pan Seared Pork Chop \$38.00

Dinner: Monday, January 17, 6:30 pm (choose one entrée) *

- ☐ Chicken Parmesan \$37.00
☐ New York Strip Steak \$49.00
☐ Pan Seared Pork Chop \$38.00

* Prices include tax and tip.

Annual LCA membership fee (\$35) enclosed. _____

Paid LCA Member conference registration fee (\$110) enclosed. _____

Paid LCA Member half-day conference registration (\$40) encl. _____

Non-Member conference registration fee (\$120) enclosed. _____

Non-Member half-day conference registration fee (\$45) encl. _____

Seminary students & personnel registration fee waived. New York Deli lunch (\$10) enclosed _____

Half-day Conference New York Deli lunch (\$29) enclosed. _____

Dinner Sun, Jan 16, 6:30 pm (\$37 or \$40 or \$38) enclosed. _____

Dinner Mon, Jan 17, 6:30 pm (\$37 or \$49 or \$38) enclosed. _____

Total Enclosed: _____

Even if you pay at the door, please send in your registration ahead of time.

Please indicate any special dietary requirements on this form. If your dinner plans change, please email jpanzigrau@comcast.net as soon as possible.

Make check payable to **LUTHERAN CONCERNS ASSOCIATION**. Please detach this registration form and mail to
 Lutheran Concerns Association • 149 Glenview Drive • New Kensington, PA • 15068-4921

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Faithful Lutherans who are members of LCMS congregations are invited to submit articles of approximately 500 words for consideration. Inquiries are welcome. Manuscripts will be edited. Views and judgments expressed in articles are the author's own and do not necessarily represent those of LCA. Please email articles to Mr. Walter Dissen (wdissen@aol.com; 757-436-2049).

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