

## Boy Scouts of America Update



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### LCMS responds to Boy Scouts' decision

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***Tuesday, Dec. 1, 2015***

Dear brothers and sisters in Christ,

The grace of our Lord Jesus Christ and the love of God and the communion of the Holy Spirit be with you all. Amen.

First, we apologize for the slow nature of this letter, realizing that congregations and individuals have been waiting for word from the Synod on this issue. However, the recent Boy Scouts of America (BSA) adult leadership standards change — effected by the BSA National Executive Board July 10, 2015, that lifted the BSA's ban on openly gay Scout leaders — caused great concern and has led us formally to dissolve the [Memorandum of Understanding \(MOU\)](#) between The Lutheran Church—Missouri Synod (LCMS) and the BSA. As of Dec. 1, 2015, the LCMS no longer has an official relationship with the BSA.

Second, while we understand the legal concerns that led to this new BSA direction, it is simply a place the church is not willing to go. At our summer 2013 meeting with the BSA, we were assured that changes concerning adult leadership would not be on the table, but that was not the case. We are now being told that the LGBT agenda, even with the most recent change, won't affect the content of Scouting or the BSA experience, but we do not believe that will be the case.

Third, it is important to know that the LCMS has never “endorsed” Scouting formally. Past Synod conventions determined that participating in Scouting was not a matter of fellowship and did not undermine our theological convictions or violate our position on unionism and syncretism. Therefore, the matter of Scouting was “left to the individual congregation to decide,” with each congregation having the responsibility to “establish its own policy as pastoral wisdom on the part of both the congregation and the ministry in its own particular situation dictates.” “Synod thus neither encourages nor discourages Scoutism in any congregation” ([1953 Convention Proceedings, pp. 555–556](#)). Unless the Synod in convention issues a change, this is still the case.

We have had an MOU with the BSA for some time that was based on mutual trust between the LCMS and the BSA. The memorandum was renewed periodically through the years by different LCMS presidents. The BSA's recent inconsistent direction on human sexuality and its policy changes, however, have led our office to conclude that such an MOU is, regretfully, no longer tenable, and thus our decision formally to dissolve the MOU between the LCMS and the BSA.

As congregations now consider their continued involvement with the BSA, we thought it important to share something of this past and recent history of the LCMS–BSA relationship. We also need to share potential legal concerns that chartering LCMS congregations should consider. Recent federal rulings, including the Supreme Court ruling in *Obergefell v. Hodges*, are shaping decisions by organizations such as the BSA. Previous rulings, including the *Boy Scouts of America v. Dale* decision, seem likely to no longer hold in court.

For instance, a recent BSA memorandum cites cases demonstrating that the BSA has been held to be a place of public accommodation in some states and not in others, noting there is no national determination of the issue. Interestingly, the memorandum readily acknowledges that cases that previously held that the BSA was not a place of accommodation were decided long ago when “the courts viewed homosexuals and the BSA in different lights,” and it ends the discussion by candidly saying, “A court could conclude that the BSA is a place of public accommodation based on the size and inclusiveness of the Scouting program.” Based on these comments, it appears that the law is growing stronger for those who might be in a position to file suit for discrimination against the BSA and, by extension, against chartered organizations, including LCMS congregations.

While legal speculation is just that, we are concerned that the legal boundaries are still being drawn with each court case, and we are concerned that LCMS congregations could be pulled into such a legal battle. **Congregations who continue their BSA charters after the Dec. 1, 2015, dissolution of the LCMS MOU should seek local legal counsel and guidance on how best to safeguard themselves legally.**

To that end, we are calling for the establishment of a task force to consider Scouting and the involvement of the LCMS going forward. The landscape and intersection of church and world — including Scouting — has drastically changed since our Synod's decisions on Scouting matters in the 1950s. We recognize that the BSA and other Scouting programs have a positive impact on the lives of many Lutherans and LCMS congregations and schools. However, the times demand we ask important questions. How should the church engage and be involved going forward? How does the church participate in a faithful way so that our children are able to be involved and the church's confession remains unhampered?

Again, we appreciate the patience of the church as we have been considering these issues over the past several months. We lament the fact that an MOU between the LCMS and the BSA is no longer possible. We pray that the Lord of the church will bless congregations and individuals as they consider the information shared here and chart a faithful course forward.

Peace,

Rev. Dr. Matthew C. Harrison, president  
The Lutheran Church—Missouri Synod

Rev. Bart Day, executive director  
LCMS Office of National Mission

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The grace of our Lord Jesus Christ and the love of God and the communion of the Holy Spirit be with you all. Amen.

First, we apologize for the slow nature of this letter, realizing that congregations and individuals have been waiting for word from the Synod on this issue. However, the recent Boy Scouts of America (BSA) adult leadership standards change — effected by the BSA National Executive Board July 10, 2015, that lifted the BSA's ban on openly gay Scout leaders — caused great concern and has led us formally to dissolve the [Memorandum of Understanding](#) (MOU) between The Lutheran Church—Missouri Synod (LCMS) and the BSA. As of Dec. 1, 2015, the LCMS no longer has an official relationship with the BSA.

We deeply appreciate the continued patience of the LCMS as the Office of the President, the Commission on Theology and Church Relations (CTCR), the Synod's legal counsel and the Office of National Mission spent time examining the LCMS' history with Scouting, talking with LCMS pastors who are involved in Scouting as well as top leadership of the BSA, considering potential legal issues and looking into alternative Scouting programs. This continues to be no small undertaking.

## History

In a July 1, 2013, correspondence to Chief Scout Executive Wayne Brock, the LCMS spoke against the original proposed policy change concerning individual membership. Later that summer, an LCMS contingent went to Irving, Texas, to meet with BSA leadership to understand the reasons for the change. Following that meeting and further internal conversation, an Oct. 3, 2013, letter, supplemental materials and a newly signed MOU with the BSA were shared with the Synod.

The LCMS has never “endorsed” Scouting. Past Synod conventions determined that participating in Scouting was not a matter of fellowship and did not undermine our theological convictions or violate our position on unionism and syncretism. In the end, the matter of Scouting was “left to the individual congregation to decide,” with each congregation having the responsibility to “establish its own policy as pastoral wisdom on the part of both the congregation and the ministry in its own particular situation dictates.” “Synod thus neither encourages nor discourages Scoutism in any congregation” ([1953 Convention Proceedings](#), pp. 555–556). Unless the Synod in convention issues a change, this is still the case.

While we understand the legal concerns that led to this new BSA direction, it is simply a place the LCMS is not willing to go. At our summer 2013 meeting with the BSA, we were assured that changes concerning adult leadership would not be on the table, but that was not the case. We are now being told that the LGBT agenda, even with the most recent change, won't affect the content of Scouting or the BSA experience, but we do not believe that will be the case. Having the MOU no longer seems tenable.

It is important to note here that, to the best of our estimations, over half of the LCMS children involved in the BSA are not members of LCMS congregation charters and participate with the BSA under other organizational charters. Of the LCMS congregation charters, only about 20 percent of participants are LCMS children.

## Changes to Standards

In the document “Participation in Scout-type Organizations for Boys: Considerations for LCMS Churches and Individuals,” released Oct. 7, 2013, the following was shared:

In many cases, the decision whether to be involved in Scouting will not be congregational, but personal. Many LCMS Boy Scouts and Scout leaders are active in troops that are not chartered by LCMS churches. With respect to the matter of sexual morality, conscientious individuals will, therefore, need to consider the character and leadership of the specific troop where their son participates.

This is even more the case following the changes to adult leadership standards.

The document continues:

A common civil religiosity is beneficial and societally necessary in many ways, but the church should always recognize that civil religion is an undependable ally — if it is an ally at all. Moral consensus is breaking down dramatically in the U.S. The same is true in terms of theological consensus, which is shrinking among “churches,” to say nothing of society in general. Civil morality today goes little beyond a consensus that people with different moral convictions should not kill each other. As such, tolerance becomes the only real virtue. Moreover, the theology of civil religion is, frequently, nothing more than recognition of some kind of spiritual force at work in the world. Hence, if Scouting is to be valuable, it must be supplemented with genuine, truthful moral and theological content. Any conscientious LCMS participation in Scouting, whether by its churches or individually, must be aware that our highest loyalty is to the one God we trust, know, confess and serve in Christ Jesus.

As congregations now consider their continued involvement with the BSA, we also need to share potential legal concerns that chartering LCMS congregations should consider. Recent federal rulings, including the Supreme Court ruling in *Obergefell v. Hodges*, are shaping decisions by organizations such as the BSA. Previous rulings, including the *Boy Scouts of America v. Dale* decision, seem likely to no longer hold in court.

## **BSA Memorandum**

At the time of the announced adult leadership standards change, the BSA issued several documents, including one memorandum titled “Effect of Changes in Adult Leadership Standard on Religious Chartered Organizations.” This memorandum, prepared by BSA legal counsel (Hughes Hubbard & Reed, LLP), was shared with LCMS legal counsel for review.

The memorandum emphasizes that the BSA has long permitted each chartered organization to select adult leaders in accordance with the chartered organization’s values. It asserts that, even though the BSA may not exclude homosexuals from adult leadership positions, its policies give special deference to religious chartered organizations and do not require one to accept a leader whose espoused personal beliefs are in conflict with its religious principles.

The BSA contends that religious organizations’ concerns, such as that excluding homosexuals from leadership in Scouting will make them vulnerable to lawsuits by any potential leaders they exclude, should be allayed by defenses available under the First Amendment to the Constitution of the United States and under accommodation statutes.

The memorandum states that, “Most, if not all, places of public accommodation laws exempt religious organizations,” but the section fails to provide ample legal citations to verify support for such a conclusion. Moreover, this section of the memorandum ends with the note that state and local statutes prohibiting discrimination on the basis of sexual orientation and exemptions in those statutes for religious organizations vary from state to state.

The memorandum cites cases demonstrating that the BSA has been held to be a place of public accommodation in some states and not in others, noting there is no national determination of the issue. Interestingly, the memorandum acknowledges that cases that previously held that the BSA was not a place of accommodation were decided long ago when “the courts viewed homosexuals and the BSA in different lights,” and it ends the discussion by candidly saying, “A court could conclude that the BSA is a place of public accommodation based on the size and inclusiveness of the Scouting program.” Based on these comments, it appears that the law is growing stronger for those who might be in a position to file suit for discrimination against the BSA and, by extension, against chartered organizations, including LCMS congregations.

The memorandum next identifies defenses the BSA sees for religious chartered organizations under the First Amendment, but the legal analysis is not particularly helpful. It gives a summary of the right to associate under the First Amendment and then focuses on the Establishment Clause and the Free Exercise Clause, quoting heavily from the Supreme Court’s opinion in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. Unfortunately, the BSA’s suggestion that Scout leaders would or should be viewed as ministers within the “ministerial exception” doctrine under the First Amendment, as affirmed in *Hosanna-Tabor*, is uncertain at best. Scout leaders are not considered ministers by the Synod. They are not “rostered” church workers, and Scout troops are not religious

organizations.

While legal speculation is just that, we are concerned that the legal boundaries are still being drawn with each court case, and we are concerned that LCMS congregations could be pulled into such a legal battle. **Congregations who continue their BSA charters after the Dec. 1, 2015, dissolution of the LCMS MOU should seek local legal counsel and guidance on how best to safeguard themselves legally.**

## The Way Forward

We had hoped to share that the LCMS was ready to sign an MOU with a Christian adventure, character and leadership movement for young men — Trail Life USA (TL). As we have previously shared, discussions have been ongoing with TL. Further consultation with the CTCR on the matter makes it clear that more conversation needs to take place, as it would be premature to wholly endorse TL.

The challenge posed by the BSA is obvious: Its consistently “nonsectarian” stance means it is in perennial danger of encouraging religious syncretism and moral relativism. TL is subject to neither of those tendencies, but an uncritical involvement in TL could be just as problematic for any confessional Lutheran, for he or his congregation could easily be drawn into a theological perspective that is anti-sacramental, Arminian in its view of conversion and legalistic in its understanding of sanctification.

To that end, we are calling for the establishment of a task force to consider Scouting and the involvement of the LCMS going forward. The landscape and intersection of church and world — including Scouting — has drastically changed since our Synod’s decision on Scouting matters in the 1950s. We recognize that the BSA and other Scouting programs have a positive impact on the lives of many Lutherans and LCMS congregations and schools. However, the times demand we ask important questions. How should the church engage and be involved going forward? How does the church participate in a faithful way so that our children are able to be involved and the church’s confession remains unhampered?

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Peace,

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