

MEMORIAL TWO

TO AUTHORIZE ELCA PARTICIPATION IN NATIONAL LEGAL ACTIONS IN SUPPORT OF VULNERABLE ELCA COMMUNITIES

WHEREAS on January 20, 2025, the United States of America’s Department of Homeland Security (DHS) issued a directive allowing immigration enforcement and police to conduct detainment and arrest actions in “sensitive areas” such as churches, schools, and healthcare facilities;¹ and

WHEREAS it is the view of numerous other religious bodies, organizations, and churches throughout the United States of America that this action constitutes a violation of First Amendment rights as it prevents the free expression and gathering of religious assembly by instigating fear among congregants and especially immigrant populations;² and

WHEREAS we recognize that twenty-seven Christian and Jewish denominations and religious organizations, including four out of six of the ELCA’s Full Communion partners, filed a lawsuit on February 11, 2025 by the Georgetown Law Institute for Constitutional Advocacy and Protection;² and

WHEREAS on February 14th, 2025, Presiding Bishop Elizabeth Eaton announced that the ELCA would not join this legal effort because “given the ELCA’s denominational structure and polity, the Churchwide organization would not be an appropriate plaintiff in these actions,” and “congregations can demonstrate that they can be harmed by this decision, and they would have standing in this lawsuit;”³ and

WHEREAS *Constitutions, Bylaws, And Continuing Resolutions of the ELCA* calls for the three expressions of this Church to “function as people of God through congregations, synods, and the churchwide organization, all of which shall be interdependent,”⁴ and does not explicitly forbid the Churchwide Organization from entering into legal action on behalf of the denomination; and

WHEREAS ELCA congregations and synodically-authorized ministries who are most at risk by the DHS directive are most likely to be mission developments and ethnic-specific ministries who may lack the resources to bring suit against the federal government on their own or are not willing to compromise their own safety risk with the exposure a federal lawsuit might bring, and would greatly benefit from care and solidarity from the interdependent relationship of the Church as specified throughout *Constitutions, Bylaws, And Continuing Resolutions of the ELCA*, be it

RESOLVED that the Northwest Washington Synod request the Churchwide Organization to develop educational and legal materials to help synods and congregations participate in national legal matters when needed; and be it further

RESOLVED that the Northwest Washington Synod request leadership of the Churchwide Organization, with prayerful discernment, to evaluate the constitutions of the three expressions of the ELCA, for the purpose of empowering faithful engagement in legal advocacy as a sign of solidarity with our most vulnerable congregations and ministries.

¹<https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse>

²<https://democracyforward.org/updates/sensitive-locations/>; <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2025/02/Mennonite-Church-USA-v.-U.S.-Department-of-Homeland-Security-Complaint.pdf>

³https://www.youtube.com/watch?v=pnho5l8iNoU&t=79s&ab_channel=EvangelicalLutheranChurchinAmerica

⁴ *Constitutions, Bylaws, And Continuing Resolutions of the Evangelical Lutheran Church in America*, Adopted 1987, updated 2024: Chapter 8.11

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1. What is the financial impact of this resolution on the churchwide budget? If expenditures are required, what are the sources of income anticipated to accomplish the purpose of the resolution? Legal fees for becoming a plaintiff in a lawsuit.
2. What are the personnel implications within our synod (or churchwide)?
Hiring a lawyer or consultant as outside counsel
3. Who will be responsible for the implementation of the resolution/memorial?
Presiding Bishop, Churchwide Council, Conference of Bishops, ELCA lawyers
4. How does this resolution enhance and forward the mission of the church and our synod?

This memorial allows the ELCA to better live out its mission as outlined in its Constitution. In this particular moment in history, it prepares us to better protect and defend communities and congregations who are vulnerable to actions by the federal government.

When the ELCA declined to participate in the multi-denominational and interfaith lawsuit in February 2025, it put the burden on individual congregations to “join” the lawsuit against the Department of Homeland Security. However, I have been in contact with Georgetown Law and learned it would be very difficult to sign on as a plaintiff to this suit after it was filed. Additionally, the congregations and ministries most directly affected are more likely to be small mission developments and ethnic-specific ministries, who may not have means to join a large lawsuit. Additionally, it may be dangerous to bring attention to themselves and their members at this time. By declining to join the lawsuit before it was filed, the ELCA failed to protect these congregations and members against the anti-immigrant actions of the federal government.

The argument against bringing suit in this case seems to hang on the issue of legal standing. Would the Churchwide Organization have standing in this suit? Churchwide leadership decided they do not. However, they could have decided to join their ecumenical and interfaith partners in this effort and let the experts of Georgetown Law or the judge decide the issue of standing. By declining to fully explore the issue of standing with our ecumenical and interfaith partners, the ELCA failed to provide protection and solidarity to diverse ministries of this Church.

Many members of the ELCA believe that Churchwide leadership could have joined the lawsuit, despite their excuse of “ELCA polity.” The ELCA Constitution does not prohibit this action. In fact, it calls the Church to support and defend members, as well as to interface with government, as noted in the memorial. This memorial calls for a re-interpretation of the Constitution and empowers ELCA leadership to act differently in the future. Additionally, we quote from the document “How Strategic and Authentic is our Diversity” to remind ELCA leadership of their commitments to important minority communities in our midst.

Explanation:

On January 20, 2025, the nation learned that churches, schools, and healthcare facilities would no longer be considered “sensitive areas” for immigration law enforcement; our communities would now be at risk of a law enforcement action at any time, even during public worship services. Immediately, congregations of all denominations and religions began to worry about the impact this would have on their communities, especially those with a high percentage of immigrants and undocumented people among their attendees.

On January 27, 2025, a group of Quaker meetings (congregations), authorized by a meeting of their regional body (yearly meeting), brought a lawsuit against the Department of Homeland Security (DHS). They were represented by the nonprofit organization Democracy Forward. Their lawsuit claimed the DHS decision to rescind the “sensitive area” policy infringes on religious freedom to freely gather as guaranteed in the First Amendment of the Constitution.

Then on February 11, 2025, a similar lawsuit was filed by Georgetown Law against the DHS by a group of 27 more religious denominations, organizations, and clergy groups, alleging the same First Amendment claim. Many of the ELCA’s ecumenical partner denominations are plaintiffs in the lawsuit, including the Episcopal Church, the Presbyterian Church (U.S.A.), the Christian Church Disciples of Christ, multiple conferences of the United Church of Christ and United Methodist Church.

Was the ELCA invited to join this lawsuit? We do not know for sure, but assume so.

Whatever the answer, we know that on February 14, 2025, ELCA Churchwide leadership put out a video in which Presiding Bishop Elizabeth Eaton explained that the ELCA would not be joining the lawsuit as a denomination, but instead, Eaton stated that “congregations can demonstrate that they can be harmed by this rescission, and they would have standing in this lawsuit.” This was 3 days after the lawsuit had been filed.

After the video was published, ELCA pastors took it upon themselves to follow Eaton’s directive and find out how to join the lawsuit. In conversation with the original Quaker plaintiffs and then Georgetown Law, they learned that it would be almost impossible to join this suit after it was filed. New plaintiffs would have to show a very “high bar” in terms of impact in order to show standing. In effect, once Churchwide leadership declined to participate, it made it almost impossible for individual congregations to join the suit, despite what was said in the video on February 14th.

There has been much debate throughout the ELCA since this video and its decision became public. Many have questioned the accuracy of Bishop Eaton’s statement. Is it true that our polity keeps us from entering into a legal action of this measure? Or is ELCA leadership choosing to interpret our Constitution in this way? Are they purposefully leaving our immigrant congregations and ministries to fend for themselves without the protection of the national denomination, or does our polity actually prohibit that? Either way, the structure of our Church is perpetuating a system that neglects those already at the margins, those who do not speak the majority language or come from the majority ethnic heritage or even enjoy status as a long-time congregation. Our communities most at risk from the actions of the federal government are mission developments, ethnic-specific

communities, outreach programs, BIPOC pastors and deacons, and the people they gather for worship and service. Before we shrug our shoulders and blame our inaction on “polity,” we should at least take time to thoroughly assess our polity and Constitution to see if this was the right course of action, so we do not fail our siblings most at risk again.