

**PARISHIONERS AND PARISH OF ST. ANSELM
C/O JOHN J. RYAN, JR
155 FORD ROAD
SUDBURY, MASSACHUSETTS 01776**

June 7, 2005

His Eminence, Dario Cardinal Castrillon-Hoyos
Prefect of the Congregation for the Clergy
00120 Vatican City State
Europe

Re: Supplement to Hierarchical Recourse Against Decree Of Suppression and
Confiscation

Your Eminence:

I, the undersigned, John J. Ryan, Jr., a member of the Catholic faithful and currently residing at 155 Ford Road, Sudbury, Massachusetts 01776, do hereby seek leave from the Congregation for the Clergy to submit this Supplement to Hierarchical Recourse Against Decree Of Suppression and Confiscation dated October 6, 2004 seeking a ruling that the decree by Archbishop Sean O'Malley of suppression of St. Anselm Parish in Sudbury, Massachusetts be declared null and void and no juridical effect. The purpose of this Supplement is to bring to the attention of the Congregation authoritative statements made subsequent to the petition dated October 6, 2004, 2004 ("Petition") demonstrating unequivocally that Archbishop O'Malley's suppression of St. Anselm Parish was in violation of Canon Law and therefore must be vacated. The first is the text of remarks of Pope John Paul II to the Bishops of Region IX of the United States of America made on November 26, 2004 at the Vatican and published on December 3, 2004. The second is a series of affidavits filed in the United States Bankruptcy Court for the Eastern District of Washington in the matter In Re: The Catholic Bishop of Spokane a/k/a The Catholic Diocese of Spokane, a Washington corporation sole, Debtor; Case No. 04-08822-PCW-11, Adversary Proceeding Committee of Tort Litigants v. The Catholic Bishop of Spokane, et al, Adversary Proceeding No. 05-80038 (hereinafter the "Spokane Bankruptcy Case"). A copy of the text of the affidavits are attached to this submission.

The Petition advanced, inter alia, that Archbishop Sean O'Malley erred in exercising his limited authority of suppression because he has admitted to "sacrificing" viable parishes (including St. Anselm Parish) so that the assets of the "sacrificial" parishes could be used to address Archdiocesan debt and the financial obligations of other "not viable" parishes. Copies of two letters dated 13 February 2004 and 27 July 2004 sent by the Most Reverend Richard G. Lennon, Vicar General and the text of Archbishop O'Malley's May 25, 2004 Remarks on Parish Reconfiguration make clear the intended use of the assets of suppressed parishes. These documents are attached to this submission. Also attached is the Decree for suppression of St. Anselm Parish signed by Archbishop O'Malley which clearly indicates that the assets of the parish are to be confiscated by the Archdiocese for its purposes. The Petition demonstrated that

Archbishop O'Malley made the fundamental error and therefore exceeded and abused his authority by assuming that the parishes within the Archdiocese of Boston and their patrimony existed for the benefit of the Archdiocese and that individual parishes could be "destroyed" through decrees of suppression and their property seized and confiscated by the Archbishop for some perceived "good" of the Archdiocese.

The Statement of Pope John Paul II

Pope John Paul II's remarks demonstrate irrefutably that the Archbishop of Boston made a fundamental error in assuming that individual viable parishes were tools of the Archdiocese and could be sacrificed for some perceived benefit of the Archdiocese. The proposition that the Diocese exists for the sake of the parishes and it is not the parishes that exist for the sake of the Diocese is well established (see Cordinen, James A., "The Vindication of Parish Rights," The Jurist no. 54 (1994) pp. 22-23). Pope John Paul II confirmed that position. Pope John Paul II said in the November 26, 2004 text that the parish is and must be the first and foremost place in the life and mission of the church, and that the Diocese exists in and for the parishes, and not the parishes for the Diocese:

Given the historical importance of the parish in the Church in the United States, a fundamental goal of your governance should be that of encouraging and coordinating the pastoral work carried out in the great network of parishes and related institutions which make up the local Church. The parish, in fact, is "pre-eminent among all the other communities in his diocese for which the bishop has primary responsibility: it is with the parishes above all that he must be concerned" ("Pastores Gregis" 45). The parish is, and should be, the first and foremost place where the faithful encounter and are invited to share fully in the life and mission of the Church. The diocese should always be understood as existing in and for its parishes.

Remarks of Pope John Paul II in Papal Message to Bishops on November 24, 2004.

Pope John Paul II continued his remarks by stating that "the entire Christian community needs to be encouraged to move 'from Mass to mission' ('Dies Domini' 45) in the pursuit of holiness and the service of the new evangelization." Id.

The Diocese of Spokane Affidavits

Consistent with the statement by Pope John Paul II that a Diocese exists for the parishes, the recent submission of sworn testimony by Bishop William S. Skylstad and Professor Nicholas P. Cafardi demonstrates the significant and grave error committed by the Archbishop of Boston in suppressing St. Anselm Parish for purposes of confiscating its assets to address Archdiocesan debt. Indeed, the Affidavit of William S. Skylstad dated May 27, 2005 ("Bishop Skylstad's Affidavit") and the Affidavit of Nicholas P. Cafardi dated May 27, 2005 (the "Cafardi Affidavit") filed in the Spokane Bankruptcy Case recite Canon Law principles that prove a gross violation by the Archbishop of Boston of his duties to protect and not commingle the assets of parishes. It is necessary to quote both Bishop Skylstad's Affidavit and the Cafardi Affidavit at

length because they make it clear that the suppression of parishes to satisfy diocesan debt is not only a violation of Canon Law but could warrant the penalty to the offending bishop of loss of ecclesiastical office. Bishop Skylstad and Professor Cafardi state that under Canon Law, the property of a parish cannot be used for debts of another parish or a diocese, the idea that a bishop would harm a parish to pay diocesan debt is “abhorrent” to the Canon Law, and, even in those circumstances when a bishop can legally close a parish, the patrimony should go with the parishioners, not to the diocese. These affidavits are a significant indictment of what the Archbishop of Boston has done to St. Anselm Parish.

As the Petition demonstrates, at the heart of St. Anselm Parish’s plea for review is the conduct of the Archbishop of Boston of admittedly confiscating parish assets, including those of St. Anselm Parish, solely because the “numbers” attending weekly Mass were by some unstated criteria “low” and the significant patrimony held by St. Anselm Parish (bank accounts and property valued in millions of dollars) could be used to extinguish Archdiocesan debt. Bishop Skylstad, the President of the United States Conference of Catholic Bishops, and Professor Cafardi characterize such conduct as a violation of Canon Law. In Bishop Skylstad’s Affidavit (attached hereto as Exhibit 2), he states, among other things, that:

7. . . . I am . . . the legislator for the laws and instructions specific to the Diocese of Spokane, which further elaborate the universal law, but must be in accord with it (CIC 391 n.2). . . . I am subject to the law, and liable to penalties, including loss of office, through violation of the law (e.g., CIC 1377).

After describing his general responsibilities as “Sanctifying, Teaching, and Governing,” (Bishop Skylstad’s Affidavit, paras. 8 - 13), Bishop Skylstad states that entities within the Diocese (in other words, parishes), “exercise a degree of independence and autonomy.” Bishop Skylstad’s Affidavit, para. 13, line 10.

Bishop Skylstad states that the civil structure of the Diocese of Spokane is, like the Archdiocese of Boston, a “corporation sole.” Bishop Skylstad’s Affidavit, para. 16. As a corporation sole, property is held in “trust”, and the corporation sole structure is in conformity with Canon Law because the Bishop is not the owner of ecclesiastical property: “He holds title to it ‘in trust.’” Id. Bishop Skylstad continues by stating that although some property belongs to the canonical entity or juridic person of the Diocese itself, “[m]ost of this property held in trust belongs to the canonical entities or juridic persons that constitute the parishes of the Diocese” Id.

Bishop Skylstad in his Affidavit continues by describing the relationship between the Diocese and the parish as recognized under Canon Law. Bishop Skylstad’s Affidavit, paras. 17 - 19. The endowment of “juridic personality” in parishes is “critical in appreciating the relationship between Diocese and parish.” Id. at 19. Bishop Skylstad describes the parish, with its “juridical personality,” as existing primarily to foster the faith of the community and its apostolic activity “Parishes do not exist as ‘profit centers’ for the Diocese.” Id. at para. 23.

Bishop Skylstad then makes one of many statements illustrating the error committed by the Archbishop of Boston. He states: “Because the parish is by the law itself a juridic person, the

property, assets and goods that it acquires belong to it.” Bishop Skylstad’s Affidavit, para. 25. He repeats that “it is inadequate and incorrect to assert that a parish is merely a territorial portion of a Diocese, because a parish enjoys the status of a juridic person.” Bishop Skylstad’s Affidavit, para. 26.

Bishop Skylstad then describes how, as legal entities, parishes are granted under Canon Law qualities “like natural persons.” Id. at 27. A parish has rights “to acquire, administer and alienate goods and assets.” Id. Canon Law requires a careful maintenance of separate autonomy and autonomous characteristics between a juridic person of the Diocese and a juridic person of the parish. Id. Neither the Bishop of the Diocese nor the pastor of the parish owns the goods of the parish, instead, “ownership pertains to the juridic person itself.” Id. at 28. A bishop’s responsibility is not to control the assets of a parish, but his responsibility is one of oversight. Id. at 31.

Bishop Skylstad states that neither he nor the Archbishop of Boston has “unfettered right to alienate the goods of the . . . Diocese, much less any right to alienate the goods of a parish.” Id. at 32. He continues by describing why the Archbishop of Boston’s conduct of taking control and selling parish properties for the benefit of the Archdiocese was wrong: the assets of a parish “are not my assets and not subject to my control in an unfettered manner. When a bishop acts as the trustee, for example, in the sale of parish property, he does not act as its owner. The parish is the owner and receives the benefit of the sale.” Id. at 33.

Beginning at paragraph 45 of his affidavit, Bishop Skylstad describes “how the system works” in the context of parish reconfiguration, property acquisition, and closures. After providing numerous examples of transfers and negotiations to accommodate the changing needs of parishes throughout his Diocese (Bishop Skylstad’s Affidavit, paras. 44 - 55), he describes how the proceeds of sales “belonged to the patrimony of” a parish and were transferred to the new parish. Bishop Skylstad’s Affidavit, para 56, lines 16-17. Bishop Skylstad gave another example of “how property held in trust by the corporation sole, but belonging to the juridic person of the parish,” was handled in a 1990 real estate sale. Id. at 58. The property must remain with the parish even after sale, because “the acquisition of church property comes about almost exclusively through donations, gifts and bequests of the Christian faithful. Administrators are bound to honor the intent of the donors as demanded both by Canon and civil law.” Id. at 59.

Bishop Skylstad describes further the regulation by Canon Law of the acquisition and alienation of “stable patrimony” as the Church identifies those assets such as parish land and buildings. Id. at 60. The “Bishop cannot alienate stable patrimony belonging to a parish . . .” The Bishop “cannot compel lower level administrators to alienate the stable patrimony of those juridic persons which they administer. He may offer guidance and suggestions, but he cannot compel an act of alienation.” Id. at 60.

Going directly to the issue of the invalidity of the conduct of the Archbishop of Boston in suppressing St. Anselm Parish, Bishop Skylstad states that a parish may be closed by the Bishop, but only when a parish so diminishes in population and material resources that it can no longer sustain its mission.” Id. at 61. As demonstrated in the Petition, there was no inability by St. Anselm Parish to sustain its mission. To the contrary, it was the abundance of parish resources

that so attracted the Archdiocese of Boston that it found it irresistible to suppress St. Anselm Parish in order to confiscate those resources.

Equally applicable to the Petition is Bishop Skylstad's statement regarding the use of the patrimony of a parish that has been closed. Whereas the Archbishop of Boston has plans to confiscate all of the assets and patrimony of St. Anselm Parish, Bishop Skylstad states unequivocally that those assets should follow the parishioners to their new parish:

61. . . . What happens to its stable patrimony [after a parish is closed]? The basic rule is: the money goes where the parishioners go. The parishioners of the extinct juridic person (or a parish that has ceased to operate) will be joined to an existing juridic person (parish), or a new juridic person will be formed out of two or more parishes. This new juridic person acquires the rights and obligations -- and the stable patrimony of the former juridic persons.

Bishop Skylstad then states that he concurs with all the statements in the Cafardi Affidavit, he concurs in the opinions of the Cafardi Affidavit, and it is his sacred "sworn duty to follow the mandates of Canon Law as outlined in the Affidavit of Nicholas Cafardi. Id. at 62.

The Cafardi Affidavit (attached hereto as Exhibit 3) contains the compelling, although disturbing, conclusions that the conduct of the Archbishop of Boston are not only a clear violation of Canon Law but would subject him to penalties for his seizure of parish assets to pay archdiocesan debt. After providing his credentials (Cafardi Affidavit, paras. 2 - 5), and a background of the history and application of Canon Law in the Roman Catholic Church (id. at 6 - 13), Professor Cafardi first addresses, and characterizes as a "distortion," the position taken by the claimants in the Spokane Bankruptcy Case. That position, identical to the position taken by the Archbishop of Boston, is that the Diocese, as a corporation sole under the civil law, and with power to "suppress" under Canon Law, is the owner of all parish property and can, either by virtue of legal compulsion and bankruptcy, or through the process of suppression, acquire parish properties for the satisfaction of Diocesan debt. Professor Cafardi concludes that "such a conclusion would create an ecclesiastical system which is out of conformity with the Code of Canon Law and which, as a result, does not exist." Cafardi Affidavit, para. 16. He concludes that "the result would be a complete distortion of the Roman Catholic Church's doctrine, polity, and governance." Id.

Professor Cafardi, consistent with Bishop Skylstad, states that under Canon Law, a parish is a separate legal entity from the diocese, with its own status as a public juridic person. Cafardi Affidavit, para. 17. He makes the following points:

18. In the Code of Canon law, a public juridic person is an aggregate of persons or an aggregate of things, constituted by operation of law or by an act of competent ecclesiastical authority as its own legal person, existing independently of other persons, endowed with its own rights and duties, and owning its own property, apart from the property of other juridic persons. CIC, canons 113-116.

19. **Parish property is**, almost entirely, the result of the offerings of the faithful to the parish **for the use of the parish**. Under the Code of Canon Law, gifts made for a particular purpose **must be used only for that purpose**.¹ CIC, canon 1267, §3.
20. Under the Code of Canon Law, property given to the pastor of a parish is presumed to be property given to the parish itself. CIC, canon 1267, §1.
21. Under the Code of Canon Law, the pastor of a parish, and not the diocesan bishop, is the administrator of all parish property. CIC, canon 532. The diocesan bishop is neither the owner nor the administrator of parish property.
22. Under the Code of Canon Law, the Catholic Church has an innate right to acquire, retain, administer and alienate temporal goods in pursuit of its proper ends, *independently of civil power*. CIC, canon 1254, §1.
23. Under the Code of Canon Law, all juridic persons are capable of acquiring, retaining, administering and alienating property. CIC, canon 1255.
24. Under the Code of Canon Law, **the property of a parish is not the property of the diocese nor of the diocesan bishop**. CIC, canon 1256.

Having established that Canon Law treats property donated to the parish as property of the parish and not the diocese, Professor Cafardi states that it would contradict Canon Law for someone like the Archbishop of Boston to treat property of the parish as if they were the goods of the Archdiocese.

26. The Council further stated that **to make the goods of one public juridic person available for the debts of another public juridic person would contradict the basic separateness and legal autonomy of juridic persons**, one from another. Acta Consilii I, Nota, No. 3, Communications I (2004) 24, at 25. This opinion and a certified English translation is attached as Exhibit “D.”

Accordingly, contrary to the position taken by the Archbishop of Boston, the assets of a parish are not available to satisfy creditors of a diocese.

27. . . . As the Pontifical Council for the Interpretation of Legislative Texts has stated, **making the goods of one public juridic person (e.g. the parish) available for the debts of another (e.g. the diocese) is a violation of Canon Law** because it destroys the legal autonomy of these public juridic persons, one from another.

¹ Boldface type throughout has been added for emphasis.

Professor Cafardi underscores that it is a violation of Canon Law to treat parish property that is in the name of the bishop for civil law purposes as property of the Diocese:

33. . . . the bishop of a diocese is not the owner of parish property under the Canon Law. **If title to parish property is placed in the name of the bishop or the diocese for purposes of legal convenience it does not divest the parish of its rights** in the property, inasmuch as such a divestiture would violate the Canon Law.

Accordingly, when a bishop takes legal title to parish property in the name of the corporation sole, he takes bare legal title and the beneficial interest is and remains with the parish:

34. When a bishop takes legal title to parish property in the name of the corporation sole, it must be presumed that he is doing so in conformity with the Code of Canon Law. For that reason, the **bishop as corporation sole can only hold bare legal title to parish property. Under the Canon Law, the beneficial interest is with and remains in the public juridic person of the parish.**
35. When the Corporation Sole statute, the Articles of Incorporation and the Canon Law of the Roman Catholic Church are read together, in complimentary and not contradictory fashion, as they must be, it is clear that the **bishop as corporation sole is not the owner of parish property, but rather that he holds bare legal title to such property in trust for the public juridic persons of the parishes.**

Professor Cafardi characterizes as “incorrect” the position taken by the claimants in the Spokane Bankruptcy Case, -- the same position being taken by the Archbishop of Boston -- that the presiding bishop has absolute and complete control over the property of the Diocese. Instead, “the corporation sole only places bare legal title to certain real estate in the office of the bishop, not in the bishop himself, the exercise of which office is bound by the Canon Law of the Roman Catholic Church, which law does not give the office of bishop absolute and complete control over parish assets.” *Id.* at 37.

Professor Cafardi also refutes the authority of the Archbishop of Boston to dispose of the parish property held in the name of the Diocese. Cafardi Affidavit, para. 38. Professor Cafardi says that it is incorrect to treat parishes as “merely unincorporated divisions of the corporation sole; instead, the parish’s “relationship to the corporation sole is that the corporation sole holds certain assets that are, under the Canon Law, the **property of individual parishes**, and that **are**, civilly restricted assets of the corporation sole **held for the sole use and benefit of those stable communities of the faithful that are the individual parishes.**” *Id.* at 39.

Professor Cafardi unequivocally rejects the model adopted by the Archbishop of Boston that parishes can be suppressed and their assets seized when he has Diocesan debts to pay.” Id. at 40. Instead, Professor Cafardi recognizes parishes as:

stable communities of the faithful, with a stable pastor, which constitute the most immediate means for individual Catholics to work out their salvation. Among those means are the parish assets, the parish property, both real and personal, that make liturgy and sacraments possible and works of charity sustainable, assets that primarily have their origins in the contributions that the parishioners made to the parish for this purpose, to aid in their salvation. **The idea that a bishop, or someone standing in his place, would harm a parish to pay diocesan debts is abhorrent to the Canon Law.** It would violate the highest principle of the Canon Law, which is that every law exists for the salvation of souls. CIC, canon 1752.

Id. at 40.

The “**abhorrence**” that follows conduct of destroying parishes so that their assets can be used to pay diocesan debts is further underscored by Professor Cafardi’s recitation that only diocesan assets are available for diocesan creditors:

43. Under the Code of Canon Law, **the property of a parish cannot be used for the debts of any other public juridic person, including the debts of the diocese.** To do so would destroy the juridical autonomy of the individual public juridic persons of the parish as separate from the diocese. **Only diocesan assets are available for diocesan creditors.**

Professor Cafardi further states that any conduct by a diocesan bishop that is used to destroy the legal autonomy of a parish, as occurred with St. Anselm Parish when it was purportedly suppressed last year to pay Archdiocesan debt, would be contrary to the universal law of the Church and would be void:

44. The **bishop’s right to legislate** for the diocese and the parishes within the diocese does not and **cannot destroy the legal autonomy of the parishes in Canon Law.** **Any such legislation by a diocesan bishop that attempted to destroy the legal autonomy of individual parishes would be contrary to the universal law of the Church and would be void.**

Disturbing and unsettling is that Professor Cafardi goes so far as to suggest that conduct by a bishop or archbishop which uses parish assets to address diocesan debts and creditors would be a violation of Canons, subjecting the bishop or archbishop to the loss of ecclesiastical office:

45. A diocesan bishop is subject to the Code of Canon Law in the same way that every baptized Catholic is subject. Should a diocesan bishop violate the canons, he is subject to penalties for those violations, including the penalty of loss of ecclesiastical office.

The statements made and adopted by both Bishop Skylstad and Professor Cafardi demonstrate the invalidity under Canon Law of the decree of suppression of St. Anselm Parish. The Catholic Church does not support the position of the Archbishop of Boston; it rejects that he has unfettered “discretion” to suppress a functioning and financially and spiritually viable parish because of his perceived need to satisfy archdiocesan debt. The Catholic Church’s official position in the Federal Bankruptcy Court in the State of Washington is that creditors of the diocese have no rights to parish assets because those assets, although “legally” titled to the bishop as corporation sole under civil law, are held in “trust” for the parishes.

The conduct of the Archbishop of Boston is philosophically and morally inconsistent with the three points the Catholic Church is advancing in the Spokane Bankruptcy Case: (1) Canon Law recognizes that parish property is held in trust for its parishioners; (2) a parish and its assets cannot be sacrificed for the “good” of the archdiocese; and (3) if a need exists to close a parish the patrimony of that parish follows the parishioners to the new parish created.

In light of the foregoing reasons as well as the reasons set forth in the Petition, the degree of suppression of St. Anselm Parish in Sudbury, Massachusetts cannot stand as it is a violation of Canon Law. The degree of suppression of the St. Anselm Parish in Sudbury, Massachusetts must be vacated and revoked.

Conclusion

Accordingly, the recent text from Pope John Paul II and the Affidavits of Bishop Skylstad and Professor Cafardi prove beyond dispute that the entire premise of Archbishop Sean O’Malley’s “reconfiguration” plan within the Archdiocese of Boston has been fundamentally flawed, particularly as it has been carried out against St. Anselm Parish. The “reconfiguration” plan executed in the Archdiocese of Boston has proceeded on the assumption that individual parishes and their patrimony existed and could be manipulated, suppressed and their assets confiscated for the perceived “benefit” of the Archdiocese. The Archbishop of Boston has admitted to using his power of suppression to “sacrifice” viable, financially attractive parishes for some perceived good of the Archdiocese -- the good in this case being financial relief from debt created by mismanagement of pension funds and the sexual abuse crisis. Because this improper assumption was the cornerstone for the decision to suppress St. Anselm Parish (as well as other viable parishes), the decree of suppression of St. Anselm Parish must be revoked, rescinded, and declared null and void.

Sincerely in Christ,

John J. Ryan, Jr, for myself and on behalf of
the others signing the Petition