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Testimony in Opposition to House Bill no. 2626
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Introduction

My name is Attorney Mark E. Chopko. I present this testimony at the request of the Pennsylvania Catholic Conference in opposition to House Bill 2626. I am a Partner and Chair of the Nonprofit and Religious Institutions Practice Group of the law firm Stradley, Ronon, Stevens, and Young LLP, in the firm's Washington, DC office. I am also an adjunct professor of law at the Georgetown University Law Center where I co-teach a seminar on Church-State Law. For 20 years, I was the chief civil lawyer of the United States Conference of Catholic Bishops. In that capacity, I participated in approximately 30 cases in the United States Supreme Court involving a variety of issues of importance to the Catholic Church in the United States, especially cases involving the proper boundary between religion and government. I have also published more than 40 articles on various legal topics, including the regulation of religious institutions, the involvement of religious institutions in government programs, the liabilities of religious and nonprofit organizations, and other matters. Of particular importance to the work of the Committee is an article I wrote with my colleague Michael F. Moses, entitled "Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy," published in the

Georgetown Journal of Law and Public Policy (vol. 3, p387-452 (2005)). My practice involves representation of, for the most part, religious organizations facing problems in litigation, regulation, corporate governance, and structure.

I am a native son of Pennsylvania. I grew up in Kingston, Pennsylvania, attended the local Catholic high school (now reconstituted as the Good Shepherd Academy under the reorganization), and then matriculated to the University of Scranton. Although I have lived in the Washington, DC metropolitan area for more to than 30 years, my roots and sympathies are deep in Pennsylvania. My grandfathers were miners, and firmly committed to the cause of labor. I have vivid memories of one of my grandfathers receiving materials from the United Mine Workers well after his retirement on disability. I have found it personally distressing to read about the vociferous dispute going on in my home Diocese of Scranton over the reorganization of Church resources including the creation of a new school system. These are challenging times for the Church and its People as together they must face numerous problems, not the least of which is how best to organize the Church's resources of time, talent, and treasure to address the ongoing needs of the Church and the Community. I also understand how committed people can become outraged at what they perceive is injustice in the Church.

From what I have read about the situation in Scranton and Wilkes-Barre, the Bill under consideration in this House owes its genesis to a dispute between the Bishop of Scranton and some diocesan teachers arising out of the reconfiguration of the schools as a piece of a larger structural reconfiguration in the Diocese. One side in that dispute has successfully appealed to the support of members of the General Assembly.

I have been asked to critique this proposed legislation from the perspective of federal constitutional law given my background, scholarship, and experience. In brief, I believe the legislation to be constitutionally flawed –

- The Legislature is being asked to take sides in a religious dispute about the allocation of authority and responsibility in the Catholic school system in Scranton and violates principles of constitutional law involving Church Autonomy,
- The resulting legislation offends the Free Exercise Clause without compelling reason, and
- The regulatory inquiry described in the legislation is unconstitutionally entangling in violation of the Establishment Clause.

After a brief introduction of pertinent constitutional principles, I will expand each of these areas of critique.

Constitutional Background

As part of the Bill of Rights, the Establishment and Free Exercise Clauses were intended by the Framers to be complementary and comprehensive protections for religious liberty. "[T]he Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs, and buttressing this fundamental right was an equally firm, even if less explicit, prohibition against the establishment of any religion by government." *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972). While one of the purposes of the Religion Clauses is to protect personal religious liberty, it is also well established that another was to preserve the integrity of religious and governmental institutions. *School District of Abington Township v. Schempp*, 374 U.S. 203, 222 (1963). Each has the right to be free to conduct its work without interference by the other.

Under our constitutional framework, religious organizations have the right to be free of government control. This includes the freedom to preach, teach, minister, select ministers and other leaders, and to govern themselves according to their own religious principles. The failure to recognize and guarantee the freedom of churches from government control is a mark of an authoritarian society and inconsistent with the notion of a free people. Religious freedom is not something the government bestows or grants, but a right that inheres in a free people and in the church associations they form. The government must recognize this fundamental freedom if it is to govern itself legitimately. To refuse this freedom is a grave misuse of government power.

This right of churches to be free of government control, often referred to in a shorthand way as the Right of Church Autonomy, is a constitutive part of the liberty protected under the First Amendment. It is rooted in specific constitutional guarantees, including the freedom from Establishment, Free Exercise, Free Speech and in a right of free association implicit in these explicit guarantees. This sphere of Church Autonomy had been fairly well recognized for most of our constitutional history. Yet, in the last half-century, expanding government regulation in the United States has exponentially broadened the potential for government encroachment upon the legitimate autonomy of religious organizations. At the same time, much of the current concern in both the statutory and case law is for the welfare of individuals, rather than the institutions they form. The American imagination often pits the individual heroically against the state and other large, seemingly impersonal institutions. But, our constitutional heritage of religious freedom would be impoverished without strong religious institutions mediating where the authority of the State ends and the liberty of individuals and their institutions begins.

The legal recognition of this doctrine has roots in the 19th century. In *Watson v. Jones*, 80 U.S. 679 (1872), a schism in the Presbyterian Church over slavery led two factions to seek control of a local church in Louisville, Kentucky. Each claimed that the other had abandoned Presbyterian religious doctrine; each laid a claim to being the better Presbyterian. The Church's General Assembly, the body entitled to decide which view was correct, thought it had settled the issue, only to find that the disappointed faction had appealed to the courts to re-litigate the matter under the civil law. The Supreme Court eventually held that the General Assembly's decision about which faction was correct was entitled to deference, and beyond the purview of the courts to resolve. The Court said that members of the Church committed themselves, *as Church members*, to a discipline where the Assembly made these decisions, and that consent would be "vain" were those commitments subject to litigation in the civil courts. Ultimately the issue was not whether the members had a remedy, but where the remedy would lie, under religious or secular authority. The Court said that, although the focus of the litigation was the ownership of property (a facially secular matter and a common question for the courts), the courts must defer to religious authorities to avoid implicating the government in essentially a religious dispute. To this day, notwithstanding the veneer of a civil law concern, questions that really are about ecclesial discipline, faith, orthodoxy, and church law are not subject to interference under the civil law.

To illustrate the point further, against the white heat of the Cold War, adherents of the Russian Orthodox Church were deeply divided about whether the traditional hierarchy had been "captured" by the Communist government in the Soviet Union. Each questioned the other's orthodoxy, and worried openly about doctrinal integrity under these conditions. In response to this conflict, the New York legislature passed a law transferring control of Russian Orthodox

churches from the hierarchy in Russia to the church's diocese in the United States, out of concern about the infiltration of atheistic or subversive influences by the Russian government into American life. In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), the Supreme Court held that taking sides in this dispute, even if one side claimed to be protecting U.S. citizens from Communist influences, was unconstitutional. Building on *Watson* and other cases, the Court said the Constitution broadly protects "a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. at 116.

The Church Autonomy cases establish a *per se* rule that interference in the internal affairs of a religious organization, interpreting religious doctrine, deciding orthodoxy, taking sides in a religious dispute, etc., are all forbidden to any branch of government. In cases like *Watson* or *Kedroff*, the Supreme Court did not ask or consider whether the governmental action was justified or compelled by some countervailing interest, even fear of political subversion. There was no consideration of a "compelling interest" or application of a balancing of interests test. The injection of the government into religious disputes was barred as unconstitutional. And that was the end of the inquiry.

The most recent Supreme Court case involving government interference in the affairs of religious organizations was decided almost 30 years ago. In that case, the Supreme Court decided that states were free, as a matter of internal practice, to follow the *Watson* line of cases and simply defer to the decisions religious authorities, *or* to apply a set of neutral and secular decision-making principles *if* the case itself involved a property dispute. *Jones v. Wolf*, 443 U.S. 595 (1979). In doing so, the Court did not think it was displacing its traditional jurisprudence on

religious questions. Rather, the Court believed it was signaling to religious organizations that they could and should order their property matters, the most common form of case involving religious organizations, to provide clearly in the deeds, title documents, trust documents, and other materials how property should be allocated should there be some division within the church community. 443 U.S. at 603-4. In the end, if a particular dispute could not be resolved without interpretation of religious matter or involvement in a religious question, a court was required to defer to church authorities. By allowing churches to anticipate disputes under a "neutral principles" jurisprudence, therefore, the Court did not diminish the principles of Church Autonomy. Courts should follow the path provided in church documents, and thus decide cases as the religious community would decide them.

In addition to this line of cases, favorable references to Church Autonomy are sprinkled liberally throughout Supreme Court decisions. Participation by the government "in the affairs of any religious organization[] or group[]" is included in an often-cited list of what the Establishment Clause forbids. *Everson v. Board of Education*, 330 U.S. 1, 16 (1947). The Court has recognized the need to preserve "the autonomy and freedom of religious bodies . . . ." *Walz v. Tax Commission*, 397 U.S. 664, 672 (1970). "[R]eligious organizations," one justice wrote, "have an interest in autonomy in ordering their internal affairs, so that they may be free to: select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 341 (1987) (Brennan, J., concurring). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in ... religion ... or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). It is constitutionally impermissible for governments to

"insinuat[e] themselves in ecclesiastical affairs or disputes." *McDaniel v. Paty*, 435 U.S. 618, 638 (1978) (Brennan, J., concurring). "[E]xcessive entanglement with religious institutions, which may interfere with the independence of the institutions," *Lynch v. Donnelly*, 465 U.S. 668, 687-88 (1984) (O'Connor, J., concurring), violates the Establishment Clause, one purpose of which is "to keep the state from interfering in the essential autonomy of religious life . . . by unduly involving itself in the supervision of religious institutions or officials." *Marsh v. Chambers*, 463 U.S. 783, 803-4 (1983) (Brennan, J., dissenting). Accord. *NRLB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). Thus, the government may not "obtrude itself in the internal affairs of any religious institution." *Lee v. Weisman*, 505 U.S. 577, 599 (1992) (Blackmun, J., concurring). These various statements reinforce the same basic point made in *Watson* and its progeny: government may not interfere with the faith, law, discipline, organization, or governance of churches, or lend its authority to one side or another in those disputes. Avoiding preference for one set of religious opinions was a perpetual concern of those who framed our Constitution. Such matters are none of the government's legitimate business.

Although the Supreme Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), is much-maligned by commentators, myself included, it remains the law of the land and the most common tool for measuring the lawfulness of government practices that undermine religious autonomy. In 1997, when the Supreme Court modified *Lemon's* familiar three-part test of purpose, effect, and entanglement, it noted the continued viability of "excessive entanglement" as a measure of the effect of unconstitutional inhibition of religion under the Establishment Clause. As there noted, the Court could not "ignore ... the danger that pervasive modern governmental power will ultimately intrude on religion ...." *Agostini v. Felton*, 521 U.S. 203, 233 (1997), *quoting Lemon*, 403 U.S. at 620. The "excessive entanglement" inquiry starts with

the premise that the institutions of government and those of religion are not walled off from each other, entirely and hermetically separate. Rather they interact. Modern religious institutions are subject to legitimate and reasonable regulation on matters of health and safety, and interact, entangle if you will, when their operations involve matters of mutual concern. What is forbidden is an entangling relationship that is excessive, where the governmental acts either by restricting directly or by chilling indirectly legitimate religious activity. Normally, that constitutional boundary line is drawn to exclude government from the religious concerns of religious institutions, broadly construed.

In 1990, the Supreme Court reformed its law governing interpretation of the Free Exercise Clause. In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Court abandoned its jurisprudence whereby all governmental burdens on religious exercise would be strictly scrutinized. Henceforth, if a law or rule were *neutral* with regard to religion and *generally applicable* to all similarly situated institutions, even if it creates an incidental burden on a religious adherent, the State would not be required to justify the imposition of the burden by showing the law furthers a compelling interest in the least restrictive way. On the contrary, unless the State acted with hostile regard to religion, the adherent must prove that the State action lacks a rational basis. 494 U.S. at 882-89. That is a difficult hurdle for the adherent to pass. At the same time, *Smith* preserved Church Autonomy claims from its doctrinal revision. The Court cited with approval and distinguished the line of cases noted above concerning Church Autonomy. 494 U.S. at 877. The lower courts have uniformly concluded that *Smith* does not overrule or undermine the rights of Church Autonomy recognized in these earlier decisions.

Even if this were not the case, burdens on Church Autonomy would be subject to a "compelling interest" analysis under one of the exceptions carved out in *Smith*. For example, the

Smith Court said that, if any Free Exercise claim is joined to another constitutional claim as a "hybrid," the state has the burden to prove that the invasion of the religious right is justified specifically by a truly "compelling interest" accomplished in the least invasive way. The recitation of some generic important interest is not enough; the compelling interest test is applied narrowly, specifically, and particularly. The Government must demonstrate why application of *this* rule to *this* religious agency advances its interest in a way that some less intrusive alternative could not. *Cf. Gonzalez v. O Centro Espirita Beneficente*, 546 U.S. 418 (2006) (decided under Religious Freedom Restoration Act); *Sherbert v. Verner*, 374 U.S. 398 (1963) (decided under Free Exercise Clause). In addition, if the government agency may assess and exempt secular causes from the sweep of regulation, the failure to consider the adequacy of a religious justification for an action is also strictly scrutinized. *Smith*, 494 U.S. at 884.

The basis, of course, for *Smith* "lowered scrutiny" is a situation where regulations are both religiously neutral and generally applicable. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). The Court in *Lukumi* said if a law targets religious beliefs, or infringes on or restricts practices because of their religious motivation, the law is not neutral. A lack of neutrality can be discerned both from the text of the enactment and from its motivation. Facial neutrality is not determinative. The absence of neutrality triggers strict scrutiny. Similarly, where a law applies only against conduct with a religious motivation, the law is not generally applicable. "A law that targets religious conduct for distinctive treatment or advances legitimate governmental interest only against conduct with a religious motivation will survive strict scrutiny only in rare cases." 508 U.S. at 546. In particularly instructive language, the Court reminds all:

> The Free Exercise Clause commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures. Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. 508 U.S. at 547.

Against this legal background, I assess the proposed Legislation.

Legislative Critique

A. The Bill takes sides in a Religious Dispute.

It is beyond serious contention that those who minister for a church may not litigate the terms and conditions of their ministry in the civil courts. *Rweyemamu v. Cote*, 520 F.3d 198 (2d Cir. 2008); *Petruska v. Gannon University*, 462 F.3d 294 (3d Cir. 2006); *EEOC v. Catholic University of America*, 83 F.3d 455 (D.C. Cir. 1996). This barrier to civil litigation over the terms and conditions of ministry extends even to such *pervasively secular* items as wages, place of employment, working conditions, and the allocation of resources. *See Bell v. Presbyterian Church*, 126 F.3d 328 (4th Cir. 1997) (economic reorganization). "The crux of the problem is that the 'terms and conditions' of employment at some point become inseparable from the

religious mission of the Church schools." *Caulfield v. Hirsch*, 1977 WL 15572 (E.D. Pa. 1977) (labor regulation). Certainly, in the above cases, litigants appealed, in a commonsense way, that the claims they advanced were entirely consistent with the doctrine of their Church. How could it be unconstitutional for the courts to enforce non-discrimination or economic justice principles already endorsed by the religious body itself? Nonetheless, the law bars litigation over the terms and conditions of a ministerial employee's work, called the "ministerial exception," because, as the legal discussion above already demonstrates, the involvement of state authorities in this kind of dispute would inevitably excessively entangle the government in a religious relationship, displace religious rules with secular rules, and ultimately interfere in the exercise of religious governance according to religious principles.

On its face, House Bill 2626 makes two concessions to the religiosity of the people involved and to the subject matter being regulated. First, it notes in the addition to Section 3(d) that "lay teachers or other lay employes [sic] at religious schools" are employed by "a religious organization in a ministerial capacity." Although the genius of labor regulation is that private parties themselves are forced to negotiate with each other, that regime is not self-enforcing. A party to this conversation, backed by the government, can now enlist the authority of the state to compel the other to talk, perhaps even to agree to its terms and conditions, supplanting the structures created by the proper religious authority. Moreover, the Bill, if enacted, opens the door to individual claims that a teacher was subjected to an "unfair labor practice." Thus, this Bill, if enacted, would interject the government eventually as an agent in compelling a religious organization to negotiate with – and litigate with – its "ministerial" employees over the terms and conditions of their ministry. This directly implicates the constitutional principles, discussed above.

Second, the Bill specifically exempts the operation of this new regime from the coverage of Pennsylvania's Religious Freedom Protection Act (Section 10.2(d)). That law commits Pennsylvania to robust protection of religious practices and recognized that even neutral and generally applicable regulatory schemes could burden religious practices in unintended ways. The Legislature promised protection of religious practices and religious institutions even in circumstances where there was no First Amendment protection after the reformation of the federal constitutional standard in *Smith* in 1990. One should not pretend, therefore, what the impact of this proposed legislation will be. It is directly to intrude on matters otherwise committed to the internal affairs of religious organizations. The exclusion from Pennsylvania law demonstrates the unconstitutional intention and a concern for whether this act would survive judicial scrutiny under the proper constitutional test.

Finally, it cannot be ignored for constitutional purposes that the genesis of this dispute is the conflict between the Bishop and some teachers in the reorganization of the school system in the Diocese of Scranton. See www.sdact.com/blog/2008/07/state-moves-on-catholic-teacher-labor.html ("The bill ... was in response to efforts by the Scranton Diocese Association of Catholic Teachers"); "Bill aims to aid Catholic teachers," Wilkes-Barre *Times Leader*, p1 (June 13, 2008). Members of the Legislature recognize they are intervening in an internal religious dispute. See www.sdact.com/blog/2008/06/scranton-diocese-rejects-request-for.html. The Bill itself was reported to be unveiled at a rally organized by the teachers on Public Square in Wilkes-Barre, see www.sdact.com/blog/2008/06/bill-unveiled-at-rally-for-catholic.html.

The dispute is rooted in a reorganization, a re-alignment of the internal administration of the Diocese, in ways it thinks will better serve the people and conserve its resources. The development of more inclusive structures through which to address employment concerns is part

of the reorganization. In the course and scope of this dispute, each side has challenged the other's commitment to Catholic social teaching. For example, "SDACT Response to Diocesan Statement of 'Misinformation'," found at www.sdact.com/blog/2008/03/sdact-response-to-diocesan-statement-of.html (see attached). As *its* understanding of a way of expressing Catholic social teaching on labor relations, the Diocese of Scranton has a new employee relations program that replaces all other structures including other bargaining representatives. "A Letter on Personnel Practices in Catholic Schools" found at http://www.dioceseofscranton.org/News/BishopMartino'sLetterOnPracticesInSchoolsFeb.19th2008.pdf. The teachers attack this program as a sham and contrary to Church teaching. The teachers have accused the Bishop of violating papal teaching and statements of the United States Catholic Bishops. The teachers' advocates and supporters appeal to a Catholic's right of free association. See Letter from Sr. Mary Priniski (Catholic Scholars for Worker Justice) to Bishop Joseph Martino, July 22, 2008, found at www.catholicscholarsforjustice.org/?q=statements. See also Statement at www.sdact.com/blog/2008/07/catholic-scholars-for-worker-justice.html. They invite their readers to visit a website entitled "The Catholic Labor Page" and then to judge for themselves which side is correct in its appeal to its catholicity.

The evidence does not appear to be in dispute that, having failed to convince the Diocese to change its plans or the Bishop to change his mind despite the appeal to Catholic teaching and arguments about service and mission, the losing faction sought intervention by the Legislature. It matters not that the Bill does not expressly say which side best adheres to religious principle or even whether the operation of the amendment, if enacted, would contravene Church teaching or not. It does not matter that the target of animosity is the Bishop and not the Diocese or the Church. For these purposes, the Bishop is the proper ecclesial authority in the Diocese for the

Church. The Bill places a thumb on the side of concededly ministerial employees in their dispute with religious authorities.

In attempting to inject itself in the midst of a dispute between religious authorities and their ministerial employees, to legislate a proposed solution to a religious dispute over the organization of resources and the authority of the Bishop, and to remove the protections of Pennsylvania's religious freedom law from targeted religious employers, the proposed Bill, if enacted, would be unconstitutional. It should also be stressed that a theme of the Church Autonomy cases is *not* that those who are within the ambit of a religious organization are denied a remedy. The issue is where the remedy would lie. Here, some of the teachers of the Diocese contest the validity of the Bishop's exercise of his religious authority in setting a new structure of the diocesan school system. If those employees believe that the Bishop has violated some aspect of Catholic Church law, the remedy is not in the civil arena but with church authorities.

B. The Bill, if enacted, would violate Free Exercise Principles.

The Supreme Court has made clear that it is not the business of government to target religion or its practices for singular adverse treatment. Yet, that is precisely the effect of this Bill, if enacted. The language of the legislation is not neutral and generally applicable. First, it works a classification among concededly ministerial employees, separating clergy and religious teachers from lay teachers in religious schools. The language of its various provisions is overtly religious and, as noted above, is specifically aimed at extending the regulatory authority of the Commonwealth over the Church. Second, it has numerous provisions that can only be interpreted by means of the religious practices and standards of the religious employer that is

being subjected to labor board jurisdiction. Third, as noted above, the specific context of the legislation is to use the power of the Commonwealth to settle a dispute between a specific Catholic Diocese and some of its teachers. Thus, this Bill, if enacted, would not be subjected to deferential, but to strict, scrutiny review by the courts under *Smith*. As predicted by the Supreme Court text noted above, the likelihood that any such Bill would survive the scrutiny is small. See *Lukumi*, 508 U.S. at 546. In my view, because of its express targeting and non-neutrality on religious matters, it would be subjected to strict scrutiny, and it would fail that test.

Under a strict scrutiny analysis, the burden would shift to the Commonwealth to justify, not its general interest in promoting the rights of employees and collective bargaining as a preferred regime, but something more. It would have to show specifically why the application of the Commonwealth's labor rules, backed by the authority of the labor board, was the least restrictive way of enforcing some specifically compelling reason to include religious schools and religious ministerial employees within the sweep of Commonwealth labor law. To meet its evidentiary burden, the labor board would have to show that the application of Commonwealth authority was needed to prevent some grave injustice or violation of rights that could not be resolved in some other fashion.

Some argue that the intervention of the State is necessary to protect the rights of workers in religious institutions. Leaving workers on their own, it is said, subjects them to the whim of religious authorities with whom they might disagree. That was an argument made and rejected in a case under Title VII of the federal Civil Rights Act involving the Mormon Church. A custodial employee contested the application of Church doctrine to his position and a federal trial court agreed that this was discrimination. The Supreme Court rejected the argument and specifically acknowledged that workers in religious institutions might, as a result, have fewer

freedoms than their secular counterparts. But these situations are a byproduct of the decision to serve in religious institutions. *Amos*, 483 U.S. at n. 15. Moreover as recognized expressly by Justice Brennan in that case, drawing the line between religious and secular activities is exceedingly difficult and fraught with constitutional jeopardy for the government, either by overruling the religious authorities in specific cases or discouraging religious authorities from vigorously protecting their otherwise protected interests. Context matters for constitutional law, and the context in which this regulatory drama will be played is in a religious school between religious authorities and their ministerial employees. That context means that something more than a generalized concern for the rights of workers must be proved.

Not only would the government be re-defining work relationships between religious schools and their teachers, but also it would be displacing a church's dispute resolution process, based on Biblical principles in some Faith Communities and supplemented by centuries of teaching in others, with the tools of the modern regulatory state. It would – subtly or not so subtly – substitute its judgment for the judgment of religious authorities. In attempting to make the kind of case specific showing required under the compelling interest test, the labor board would very quickly collide with the Church Autonomy principles. Even if it did not, the chilling of otherwise legitimate religious expression, should pastors and Bishops decide not to assert their religious prerogatives lest they incite the government, has serious constitutional implications. Such a chilling effect infringes what the Free Exercise Clause was designed to protect – robust and free religious expression in word and in deed. This would injure the growth and future of religious schools when in the eyes of many they are needed most. The destruction of religious schools and the displacement of religious decision-making about the organization of religious resources are not only not compelling, but unreasonable.

Schools are an expression of deeply felt religious beliefs of the sponsoring religious communities. Historically, in diverse religious communities, religious schools have taken on the task of educating the "whole child." Educating the whole child has always been understood as including the child's spirituality and inculcating in the child a sense of religious identity in accord with the teachings of the sponsoring community. The Supreme Court has recognized historically that religious schools serve different purposes. *Board of Education v. Allen*, 392 U.S. 236 (1968). Although the state has an interest in overseeing and even promoting the secular education provided in the schools, the state is prohibited from scrutinizing any religious aspects of the school. In disqualifying religious schools from direct governmental assistance, the Supreme Court was clear that the mission of the religious school was to evangelize, teachers were an integral part of the evangelization mission of the school, and evangelization cannot be accomplished by "neutrals." *Lemon*, 403 U.S. at 618. On this basis, the Court rejected the plea of the National Labor Relations Board to police the organization of the labor force of the Catholic school system in Chicago. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). In part, that decision reflects the rational conclusion, rooted in the constitutional framework, that is not the business of good government to promote intrusion into the internal operations of religious institutions. Cf. *Holy Trinity Church v. United States*, 143 U.S. 457 (1890); *McCormick v. Hirsch*, 460 F.Supp. 1337 (M.D. Pa. 1978). Attempts to justify increased intrusion in these circumstances, when measured against this constitutional yardstick, would not only fail strict scrutiny but also be irrational for Free Exercise purposes.

C. The Bill, if enacted, promotes rather than avoids "Excessive Entanglement"

I respect the lengths to which the Committee and drafters have gone to assure that the regulatory scheme to be enacted does not directly allow Commonwealth authority to trump religious concerns. This is commendable. In my experience however, I believe that, if enacted, the Bill would set in place a regime that inevitably will involve unconstitutional entanglements with religious schools. Specifically, the Bill provides that employees may show that a proffered religious reason for taking a particular action is a pretext, that is, a cover-up, a lie. That analysis of motive invites the finder of fact to scrutinize the sincerity, centrality, and plausibility of a religious authority's determination. Except in a rare case, there is no way that can be done without violating the Constitution.

In declaring the application of the National Labor Relations Act to Catholic schools unconstitutional, the Seventh Circuit placed great weight on the reality that even nominal bargaining over exceedingly secular items eventually intrudes on religious freedom. *Catholic Bishop of Chicago v. NLRB*, 559 F.2d 1112 (7th Cir. 1977). In part for this reason, when the Supreme Court affirmed that opinion in 1979, it opined that the "very process of inquiry" necessary to resolve a labor case would result in excessive entanglement between a religious school and the government. 440 U.S. at 502. I recognize that other courts have reached contrary conclusions. In doing so, however, no court thought the concern was illegitimate, only that it could be confined or at least minimized. Indeed in one case, the court stressed at length that it would not permit any consideration of the validity of a religious motive. That concession is based on the recognition that constitutional concerns of religious schools are legitimate and the problem of excessive entanglement is real. *Catholic High School Association v. Culvert*, 753 F.2d 1161 (2d Cir. 1985). Other courts rely on *Culvert* to sustain their belief that the imposition of the state regulatory program can be hopefully narrow and safely cabined, noting the obligation

is only to bargain, not to agree. *Hill- Murray Federation v. Hill-Murray School*, 487 N.W.2d 857 (Mn. 1992). While others, also citing *Culvert*, might say their state's regulatory scheme is "less Leviathan." *South Jersey Catholic School Teachers Ass'n v. St. Teresa School*, 150 N.J. 575 (1997). In no case, however, is the concern of the religious schools deemed either unwarranted or illegitimate. So too here: the Bill vainly attempts to wall off religious matters from scrutiny.

The wall of separation under this proposed legislation is not "high and impregnable," as Jefferson once wrote about the Religion Clauses of the First Amendment. It is porous or perhaps even illusory, as it allows for "second guessing." There is some case authority, for example, *Culvert* and its progeny, that suggests employment decisions of religious organizations can not be subject even to a limited pretext inquiry: "[T]he First Amendment prohibits the State Board from inquiring into an asserted religious motive to determine whether it is pretextual." 753 F.2d at 1168. That inquiry suggests that an "either-or" analysis must be used. Either the religious organization decided on religious grounds or it did not. "To avoid [an] unconstitutional result, the Board therefore may order reinstatement of a lay teacher at a parochial school only if he or she would not have been fired otherwise for asserted religious reasons." 753 F.2d at 1169. While this is an important constitutional limitation, it does not go far enough, because it still allows a reviewing board or court to decide whether something is "religious" or not with no guidance on that subject. Moreover, that limitation on state authority is not the scheme adopted by this Bill, which permits a religious explanation to be subjected to state scrutiny in every case. To draw constitutional lines would require every case to be adjudicated by religious schools or by teachers to decide the meaning of key terms in the act like "ministerial," or "pretext," or even "religious grounds." The allocation of resources by teachers, schools, and their representatives

will be enormous, and be better spent on the educational mission of the schools and the welfare of their teachers.

In individual cases, for example, would a labor board have the authority to decide whether a pastor was telling the truth about the termination of a teacher for conduct not in conformity with Church teaching? If a Church teaches its members not to join unions, as some do, are those beliefs to be accepted as true and sincere or as evidence of anti-union animus? Moving beyond the realm of reasons that are framed in religious language, the labor board will encounter even more difficulty in meeting its duties under the Bill, if it is enacted.

To take a pertinent example framed in secular language, how does one decide whether a reorganization of a school system is a secular or a religious concern? Are concerns about the absence of financial or other support among community members, the possible diversion of support from one charitable cause to a school subsidy, the conformity of class size to teacher staff (and vice versa) entirely secular? It is difficult to see how a labor board could evaluate these factors by pretending there were no underlying religious questions to decide whether the loss of teacher positions was an unfair labor practice or a responsible and prayerful action to re-shape the delivery of religious charity. Some might say that those decisions are subject to secular legal review, and that result is reasonable and foreseeable under this Bill. A situation where a Church says it must reorganize its schools for doctrinal reasons, after all, is rare. But the self-understanding and religious motivations of a religious community sweep more broadly. Church administrators today are keenly aware of the balance between limited resources and unlimited human need. A decision to place a charitable dollar in one human service usually means some other human service goes without. If a religious administrator re-orders resources in ways that deliver more services to a needy population with fewer resources, sacrificing some jobs and

some facilities in the process, the resulting decision seems to me to be a "religious decision." Accord *Bell v. Presbyterian Church, supra.* That those who lost their jobs would disagree seems human nature. The issues confronting the proposed regulatory scheme are who will decide and on what basis?

In my experience, the pretext inquiry necessarily involves difficult questions like the above. Few cases are clear and concrete – for example, a teacher discharged for violating clear moral teaching of the employing religious school but who claims nonetheless the school violated the anti-discrimination laws. Even in those cases, claimants invite courts to look into the application of a religious school's moral code. A reviewing court might, for example, ask whether the code is applied uniformly in contrast to a church that sees each moral case's facts and circumstances as different, and involving concepts like personal responsibility for sin, scandal, mercy, forgiveness, and justice. Most cases are muddy, and therefore invite entangling fact-finding and decision-making. In those cases, the Bill, if enacted, invites either of two results. One is unsatisfying but unlikely; the other, unconstitutional.

On the one hand, the language of the Bill that exhibits an intention to insulate religious schools from governmental scrutiny could be construed broadly. If a religious school articulates any reason anchored in religious language for its actions, even the most secular-appearing, the board is obliged to accept it as its determination unless the school is plainly lying. In all but a rare case, every teacher would lose. In this interpretation, the opening of labor board regulation, assuming it is otherwise constitutional under Church Autonomy principles for purposes of argument, would seem to extend a false hope of relief to the targeted beneficiaries, teachers in religious schools some of whom the Legislature believes have been unjustly treated by religious authorities. On the other hand, at least in disputed cases where the matter under review "sounds

secular," the labor board would be allowed to probe the decision-making process for the sincerity and plausibility of religious motives for the underlying action. Moreover although the board may not define or interpret religious doctrine, there is no barrier to the board deciding to enforce or apply it in specific cases, for example, a where a church's teaching and the individual's complaint do not diverge. To apply the *Chicago Bishop* language here, that "very process of inquiry" is intrusive and that "very process" is why both the United States Supreme Court and the Pennsylvania Supreme Court counseled restraint in such cases. Restraint is the wiser and constitutional course. To do as the language of the Bill would provide, excessively entangles the Commonwealth with religious questions in violation of the Establishment Clause.

Saturday, March 8, 2008

SDACT RESPONSE TO DIOCESAN STATEMENT OF "MISINFORMATION"

See today's media coverage connected to the post below:

Wilkes-Barre Citizen's Voice

Diocese strikes back at union

Scranton Times-Tribune

Diocese answers union's claims

Yesterday, the Diocese released for insertion in this Sunday's bulletin a leaflet entitled: "Facts Regarding False Accusations Made by Scranton Diocese Association of Catholic Teachers."

Last week we were told that missives such as this constitute "dialogue." It is only fair then that we too speak our mind. So here goes point by point:

"SDACT Accusation: The Diocese of Scranton has acted in violation of Church teaching on unions; especially the 1891 encyclical of Pope Leo XIII entitled Rerum Novarum. (On Capital and Labor)
Fact: Rerum Novarum shows no objection to programs such as the diocesan Employee Relations Program. Paragraph 49 reads, '...it is most clearly necessary that workers' associations be adapted to meet the present need. It is gratifying that societies of this kind composed of either workers alone or of workers and employers together are being formed everywhere, and it is truly to be desired that they grow in number and in active vigor.' Neither the civil law nor the Canon Law of the Catholic Church require the recognition of unions in Catholic schools. A union, then, is not required, essential or mandated."

SDACT Response:

Rerum Novarum was only the first of many labor encyclicals put out by the Church, but in no way was it the last word on the right to found labor unions that rise from the desire of the workers. Without going year by year and encyclical by encylical or through various statements

made by several conferences of US Catholic bishops, here is what current official Scranton Diocesan School Policy #417 has to say on the issue:

"Catholic social teaching strongly supports the rights of lay teachers to organize and to bargain collectively. A corollary of the right of lay teachers to organize is the right which they possess to determine the agency or organization which is to represent them in the collective bargaining process. Catholic lay teachers also have the right to free elections, full negotiations, mediation, conciliation and similar services under the auspices of a neutral body."

Secondly, this is what Pope John Paul II had to say in his encyclical, Laborem Exercens:

"In a sense, unions go back to the medieval guilds . . . Their task is to defend the existential interests of workers in all sectors in which their rights are concerned. ***The experience of history teaches that organizations of this type are an indispensable element of social life,*** *especially in modern industrialized societies. Obviously, this does not mean that only industrial workers can set up associations of this type.* ***Representatives of every profession can use them to ensure their own rights.*** *Thus there are unions of agricultural workers and of white-collar workers; there are also employers' associations. All, as has been said above, are further divided into groups or subgroups according to particular professional specializations."*

For more on the Church and labor, we suggest you view the website "The Catholic Labor Page." ,and then you be the judge.

"SDACT Accusation: By not recognizing SDACT, the Diocese of Scranton is now out of the Catholic mainstream. Moreover, contrary to the above citation from Rerum Novarum, SDACT claims that a union is "the only real representation that provides for justice and dignity for workers anywhere."
Fact: Not every diocese has a union in its Catholic schools. In Pennsylvania alone, where unions have a long history in secular employment, teachers laboring in the dioceses of Harrisburg and Erie are not unionized. Other dioceses in the nation do not have unions. Are all of them violating Catholic teaching? Are they denying justice and dignity to their workers? While unions are appropriate in some situations, they are not the only means to achieve justice for workers. By establishing the Employee Relations Program, the Diocese of Scranton has shown a commitment to Catholic social teaching consonant with other Catholic dioceses in Pennsylvania and the nation as a whole."

SDACT Response: *Six of Pennsylvania's eight dioceses have unions. And to answer the question posed above. If an employer anywhere is denying teachers or other workers the right to freely formed labor unions to represent them, then "yes" they are denying justice and dignity to their workers as well. If the workers do no want a union, and that too is their free choice, then so be it.*

"SDACT Accusation: Teachers in Diocesan Catholic schools are grossly underpaid. Although money is not their primary aim, they need a union to ensure they are paid a "living wage."

Fact: On February 28, classes at Holy Redeemer High School in Wilkes-Barre had to be cancelled because a majority of the teachers refused to report for work. The average salary for the 67 full-time teachers at Holy Redeemer is $49,100. This does not include administrators. Salaries for teachers range from $23,400 to $61,465. The various salary ranges and the number of teachers in each range are:

15 teachers: $60,000 - $70,000
15 teachers: $50,000 - $60,000
20 teachers: $40,000 - $50,000
11 teachers: $30,000 - $40,000
6 teachers: $20,000 - $30,000 (these are first- and second-year teachers)

These figures do not include health care benefits, which total $536,946. This is the amount paid by the Diocese; it does not include the employee contribution. In addition, children of Holy Redeemer teachers who attend Catholic schools are receiving free tuition totaling $146,000."

SDACT RESPONSE: *First, we make no apologies for what our teachers earn. Even those at the top of the scale fall far behind others in the teaching profession. Moreover, those who have reached the top have done so after no less than 37 years, and with advanced degrees (at least two have PhD's). Were these public school teachers, they would have been long since retired, but lack of sufficient pension neccesitates otherwise. Moreover, cited are only the salaries at Holy Redeemer. Salaries elsewhere in the Diocese are considerably lower.*

"SDACT Accusation: The Diocese has hired a 'union busting' firm, and/or used anti-union websites, to help shape its personnel practices.

Fact: The Diocese has not hired a 'union busting' firm, nor used anti-union websites or other such resources. The Diocese does consult with a Wilkes-Barre law firm specializing in labor relations, just as SDACT consults with a Philadelphia law firm with expertise in this area of the law."

SDACT RESPONSE: *If it walks like a duck and quacks like a duck, it is still a duck (it does not have to be a specialized duck). In any case, this was not our charge but that of experts in the field of labor relations. Go to the following link for a related story;"Expert: Bishop's message anti-union"*

"SDACT Accusation: The Diocesan Employee Relations Program is a sham, and representatives on the program's Employee Councils were hand picked by the Diocese or the school administrations, or somehow were coerced into participating.
Fact: Representatives for the Employee Councils were chosen by their peers. Each school was instructed to conduct a secret ballot election to accomplish this. The Employee Relations Program covers teachers as well as support staff such as aides, administrators, office staff, cafeteria staff and maintenance personnel. The program involves the formation of Employee Councils, Wage and Benefit Committees, Health Care Sub-Committees and Grievance Committees for each of the four regional school systems that were established last year in the restructuring of Diocesan Catholic schools."

SDACT RESPONSE: *We have already addressed this issue above, but we'll say it again. Not being freely chosen and established by workers themselves, this type of company union can never have legitimacy. It would be an illegal creation in any other workplace in America.*

"SDACT Accusation: When Bishop Martino stated in a letter published in local newspapers that 'This association's leaders have reasons based on self-interest for wanting to retain their role in some of our schools,'SDACT President Michael Milz charged that this was a 'despicable'
union-busting tactic. In a subsequent letter to the Bishop, Mr. Milz claimed that 'We do not request recognition out of greed or avarice...'
Fact: Prior to the decision regarding its recognition, SDACT's dues-paying membership had significantly declined from 282 in 2001 to 219 in 2007. There are currently 713 lay teachers employed in the Diocese of Scranton. Despite the 63-person reduction in membership, SDACT's leadership received the following annual stipends:Michael Milz, as executive vice president of National Association of Catholic Schools Teachers: $25,660,Michael Milz, as president of SDACT: $12,872, Jim Lynch, as vice president of SDACT: $5,000
(Source: Form LM-3 Labor Organization Annual Report, U.S. Department of Labor, Office of Labor-Management Standards, as of Dec. 31, 2006 - the most recent period for which data is available.)"

SDACT RESPONSE: *"Yes it is dispicable to characterize the motives of our officers as motivated by self-interest, and now by allusion to greed and avarice, as well. (Moreover, the use of "we," cited above, was in reference to all of our teachers, not the union leadership). Stipends for union officers are determined by the elected members of the*

Association's Executive Board and thus reflect the will of the membership. As noted, those stipends are public record and published yearly by the Labor Department and IRS. Were those officers to return to their second jobs which they gave up years ago to serve the union, they would be substantially better off financially. "Stipend" is indeed the correct term - defined as "small coin or a contribution in small coin." Mike Milz, our Association President, prior to serving in both union roles, which constitute a second-full time job, made more money bartending for far fewer hours than he puts in at present.

Finally, Jim Lynch, Association Vice-President, is set for retirement at the end of the present school year. President Milz, is following close behind. The current campaign, as every teacher and parent knows, has nothing to do with their self-interest and continuing to receive their stipends. They are both concerned only with the future of Catholic education and the welfare of those who will follow in their footsteps.

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As chair of Stradley Ronon's Nonprofit & Religious Organizations Practice Group, Mark Chopko advises nonprofit and religious organizations in various matters including structural, business, governance, regulatory and general litigation. A major emphasis of Mr. Chopko's practice focuses on constitutional law, and sensitivity to the boundary between religion and government.

Mr. Chopko represents clients across the United States and in Europe. He is involved in defending organizations facing complex, high profile, multi-million dollar damage claims against several entities in the denominational structure and advising religious entities in bankruptcy proceedings. He has been involved in protecting a religious institution's rights to follow its religious teachings in its own workplace and organizing its assets by balancing obligations under religious law as well as secular law. He is involved in litigation arguing that a law reviving lapsed civil claims for damages is unconstitutional. Mr. Chopko also advises clients on regulatory and public policy matters, and assists organizations confronting the need to reorganize, whether for liability planning purposes or to assure that the civil structures accord with the polity of the denomination or any other reason.

Mr. Chopko has more than 20 years of experience serving as the principal legal officer to the U.S. Conference of Catholic Bishops (USCCB) – an organization that provides a framework by which the Catholic Bishops of the United States addresses important issues of national policy and matters affecting church life.

During his tenure with the USCCB, Mr. Chopko led a seven-lawyer staff that handled comprehensive litigation, corporate, tax, intellectual property, employment and government contracts services.

He was also the public contact for the USCCB on all legal matters, including church-state, Supreme Court cases, bankruptcy, complex litigation and bioethics. Mr. Chopko has participated in more than 30 Supreme Court cases as counsel for the Catholic Bishops as well as other religious groups, in friend-of-the-Court briefs. He is also nationally known for his work on the tort liability of nonprofit entities.

He currently serves as an advisor to an American Law Institute project on stating the law of nonprofit organizations. Mr. Chopko has also been a member of the Nonprofit and Association Committee of the Association of Corporate Counsel (America), the Religious Liberty Committee of the National Council of Churches, and a Fellow of the International Academy of Freedom of Religion and Belief.

Mr. Chopko is an adjunct professor of law at Georgetown University where he teaches a seminar on church-state law. He has lectured widely in the United States and in Europe on liability trends, church-state relations, legal ethics for church lawyers, assisted suicide and a variety of other topics, at conferences hosted by bar associations, colleges and universities, lawyer guilds and religious organizations. Mr. Chopko is also the published author of more than 40 articles on topics including church-state affairs, education, bioethics and liability issues.

In 2002, in recognition of his support for the religious bar, Mr. Chopko was elected an honorary member of the Church Law Society of the Czech Republic. *The National Law*

PRACTICE AREAS

Nonprofit & Religious Organizations

Litigation

Business

Government & Public Affairs

BAR ADMISSIONS

District of Columbia

Pennsylvania

COURT ADMISSIONS

U.S. Supreme Court

U.S. Court of Appeals for the District of Columbia Circuit

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the District of Columbia

EDUCATION

J.D., *cum laude*, Cornell Law School, 1977

B.S., *summa cum laude*, University of Scranton, 1974

MEMBERSHIPS

Adjunct Professor, Georgetown University Law Center

Advisor, American Law Institute

District of Columbia Bar Association

Fellow, International Academy of Freedom of Religion and Belief

Honorary Member, Church Law Society, Prague, Czech Republic

Religious Liberty Committee, National Council of the Churches of Christ

Member, Nonprofit Forum

National Diocesan Attorneys Association

PUBLICATIONS

Click here for a list of

Journal also named him "corporate counsel of the week" for his work on the Bishops' Charter for the Protection of Children and Young People, and in Supreme Court victories upholding school vouchers and limiting the imposition of the death penalty.

Additionally, in 2004, the *National Journal* magazine profiled him as one of ten people "whose ideas will help shape the debates over [church-state] issues." That same year, the University of Scranton recognized Mr. Chopko as a distinguished alumnus.

RECENT PUBLISHED WORKS

- "American and Catholic: Reflections on the Last Century in Catholic Church-State Relations," DePaul University Centennial Series (J. Halstead ed.) (forthcoming)

- "Civil and Canon Law Issues in the Discipline of Catholic Clergy," Keynote Address to the Canadian Canon Law Society (Anglophone section) (October 2007), forthcoming in Studia Canonica (2008) (with Ronny E. Jenkins).

- "The Intersection of Canon Law and Secular Law in the United States," Proceedings of the 25th Meeting of the Canon Law Society of Great Britain and Ireland (2007), reported in 9 Ecclesiastical Law Journal 324-26 (Cambridge University 2007).

- "Political Activity and Churches," 24(1) Church 12 (Spring 2008).

- "Constitutional Reflections on the Parish: An Entity in the Fabric of the Church," Colloquium sponsored by the Dominican School of Philosophy & Theology (July 2006), 46:1 Chicago Studies 86 (Spring 2007)

- "Looking Towards a Higher Law," 75 *Fordham L. Rev.* 2841 (2007) (tribute to Father Charles Whelan, SJ, lawyer and educator)

- A Response to Timothy Lytton: "More Conversation is Needed," 39 *Connecticut Law Review* 897(2007) (how litigation frames public policy debates)

- "An Overview on the Parish and the Civil Law," Symposium on Parish Structures by the School of Canon Law, Catholic University of America (March 2006), published in 67 *The Jurist* 194 (2007)

- "No One Thought THIS Could Happen! Crisis Management in Nonprofits," ACCA Annual Meeting (October 2006) (faculty member)

- "Derivative Liability," in Religious Organizations in the United States, 591 - 631 (Serritella, Berg, et al, eds., Carolina Academic Press 2006)

- "Regulatory Impacts on Nonprofit Corporate Activities," 46(3) *Catholic Cemetery* 15 (March 2006)

- "Current Constitutional Confrontations," Proceedings of the National Diocesan Attorneys Association (April 2005) (with Thomas Berg)

- "Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy," 3 *Georgetown Journal of Law & Public Policy* 387 (2005) (with Michael Moses)

- "Continuing the Lord's Work and Healing His People: A Reply to Lupu and Tuttle," 2004 *Brigham Young University Law Review* 1897

- "Church and State Relations," in John Paul II: A Light for the World, 105 (Walsh, ed. 2003)

- "Shaping the Church: Overcoming the Twin Challenges of Secularization and Scandal," 53 *Catholic University Law Review* 125 (Dec. 2003); Text from the Catholic University Brendan Brown Lecture also published in Origins, Vol. 32 (33), p. 546 (Jan. 30, 2003)

- "Scandal in the Church: A Challenge to Patrimony & Structure," 43(11) *Catholic Cemetery*, 16 (Nov. 2003)

• "Under the Microscope: Crisis Management in Non-Profits," ACCA Annual Meeting (October 2003) (faculty member)

• "Stating Claims Against Religious Institutions," 44 *Boston College Law Review* 1089 (2003)

• "The Challenge of Liberty for Religion in the United States," Paper for the Ecclesiastical Law Society, Church of England, Conference on Religious Freedom and Human Rights at Trinity Hall, Cambridge (March 2001), published in M. Hill, ed., Religious Liberty and Human Rights (Univ. of Wales, Cardiff, 2002)

• "New Approaches for Constitutional Defenses," Proceedings of National Diocesan Attorneys Association Meeting (April 2001)

• "Church Structures and Financial Relationships with Government in the United States," Paper for the Church Law Society Conference (Prague, Sept. 7, 2000), translation published in Czech as "Struktury církve a její finánční vztahy státním orgánçm v USA," Issue 17 Revue Církevního Práva (*Church Law Review*) 185 -202 (2000)

• "Emerging Liability Issues for NonProfit Entities," ABA Tort and Insurance Practice Section, Conference on Liabilities of Religious, Educational, and NonProfit Entities -- Keynote (June 2000), published in 8 *Charity Law & Practice Review* 1 (London, UK 2002)

• "Liability Issues for NonProfits and Associations," ACCA Annual Meeting (October 1999) (faculty member)

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• "Responsible Public Policy at the End of Life," 75 *Detroit Mercy Law Review* 557 (1998)

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• "Public Lives and Private Virtue," Symposium Issue on Faith and the Law 27 *Texas Tech Law Review* 1035 (1996). Article also reprinted in Can A Good Christian Be A Good Lawyer? (Baker & Floyd eds. 1998)

• "The Bishops' Call to Political Responsibility," 84(9) *Liguorian* 22 (Sept. 1996)

• Book Review - "Respect for Individual Rights as a Precondition for Democracy," Review of Freedom's Law by Ronald Dworkin, *National Catholic Register* (Sept. 15, 1996)