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Regarding House Bill 2626  
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**PERSONAL HISTORY AND QUALIFICATIONS**

My name is Nicholas Cafardi and I am the Dean Emeritus and Chaired Professor of Legal Process and Procedure at Duquesne University Law School in Pittsburgh, PA. At Duquesne, I teach the courses in Legal Process, Canon Law, Tax Exempt Organizations and Family law.

My education is : Bachelor in Philosophy, 1970, Gregorian University, Rome, Italy; Masters in Philosophy, 1972, Duquesne University, Pittsburgh, PA; Juris Doctor, *cum laude*, University of Pittsburgh School of Law; *Juris Canonici Licentiatus* (License in Canon Law) *summa cum laude*, 1987, University of St. Thomas Aquinas, Rome, Italy. *Doctor Iuris Canonici* (Doctor of Canon Law) *summa cum laude*, 2006, University of St. Thomas Aquinas, Rome Italy.

My professional employment Has been: 1975-1977, Legal Counsel to the Diocese of Pittsburgh; 1977-1981, Assistant Dean and Assistant Research Professor of Law, University of Pittsburgh School of Law; 1981-1988, Legal

Counsel to the Diocese of Pittsburgh; 1988-1993 General Counsel and Vice-President for Legal Services, Duquesne University; 1993 - 2005, Dean and Professor of Law, Duquesne University School of Law; 2005 - Present, Dean Emeritus and Chaired Professor of Legal Process and Procedure, Duquesne University School of Law.

I am the author with Cardinal Adam Maida of the basic handbook for the civil law organization of Catholic entities in the United States, *Church Property, Church Finances and Church Related Corporations*. I am also the author of a casebook and hornbook on tax exempt organizations published by Lexis Nexis, Matthew Bender.

As a canon lawyer, I have represented individuals and religious institutes before diocesan tribunals and the tribunals of the Holy See in Rome. As a civil and canon lawyer, I have advised dioceses and religious institutes on the proper civil law structures for their ministry in conformity with the canon law. Most recently, I acted as a canon law expert, testifying before the federal bankruptcy courts in both Portland, Oregon and Spokane, Washington.

I also wish to mention that I grew up in a union household. My father was a member of two unions, the local Carpenters District Council in Pittsburgh and the Ushers Union at Forbes Field and Three Rivers Stadium. The extensive education that I described earlier was paid for with union dollars, something that I am very grateful for and can never forget.

As an attorney for the Diocese of Pittsburgh in the early 1980's, I advised the then bishop of Pittsburgh, the Most Reverend Vincent M. Leonard, on a plan to recognize the teachers union in the Catholic grade schools of the diocese on a voluntary basis, by private agreement between the diocese and the teachers union, and without any government coercion. It is one of the accomplishments of my legal career of which I am the most proud. That voluntary system of collective bargaining is still in place and working well today in the Diocese of Pittsburgh.

### **CANON LAW OF THE ROMAN CATHOLIC CHURCH**

The Canon Law of the Catholic Church is the oldest, continually functioning legal system in the world. It dates back to collections of church law and discipline that were assembled in the first and second centuries of the common era. In the late middle ages and Renaissance period, it began to be collected and summarized in a more orderly fashion. A collection including Gratian's Decree, 1140, the Decretals of Gregory IX, 1234, the *Liber Sextus* of Boniface VIII, 1298, the *Clementina* of Clement V/John XXII, 1317, the *Extravagantes* of John XXII, 1325, and the *Extravagantes Communes*, 1500, was given official status by Gregory XIII in 1580, as the *Corpus Iuris Canonici*, the Body or Collection of Canon Law. The *Corpus Iuris Canonici*, together with the decrees of the Council of Trent and subsequent papal decrees, were the

canon law of the Catholic Church until 1917, when the *Codex Iuris Canonici*, or Code of Canon Law, was promulgated by Benedict XV. This Code of Canon Law replaced all previous legislation. In 1983, a revision of the Code of Canon Law, incorporating the theology of the Second Vatican Council, was promulgated by John Paul II.

The 1983 Code of Canon Law is the universal law for the entire western or Latin Church, and is currently in force for all archdioceses, dioceses and parishes in the United States of America, including the archdiocese and dioceses and parishes that make up the ecclesiastical Province of Philadelphia, which province is coterminous with the Commonwealth of Pennsylvania.

The Canon Law of the Roman Catholic Church is both a theological and a juridical discipline. It finds its fundamental rules in the experience of a society based on faith and having as its primary purpose the proclamation of the Gospels and the saving of souls. In the Christian community, an over-all obligation of theological origin exists prior to any law. It is the bond that binds the faithful to God and to each other. Canon Law gives direction in detail as to how to fulfill this principal obligation in daily life. Canon Law, in its essence, depends on a pre-existing theological reality. It is therefore impossible to read the juridic language of the Code of Canon Law without an awareness of the theological reality on which the law is based.

The Canon Law of the Roman Catholic Church, as the oldest continually

functioning legal system in the world, predates the American legal system by almost seventeen hundred years. It predates the English common law system by over a thousand years.

### **THE CANON LAW AS IT APPLIES TO CATHOLIC SCHOOLS**

Canon 794 of the 1983 Code of Canon Law states:

§1. The duty and right of educating belongs in a special way to the Church, to which has been divinely entrusted the mission of assisting persons so that they are able to reach the fullness of the Christian life.

§2. Pastors of souls have the duty of arranging everything so that all the faithful have a Catholic education.

Canon 795 states:

Since true education must strive for complete formation of the human person that looks to his or her final end as well as to the common good of societies, children and youth are to be nurtured in such a way that they are able to develop their physical, moral, and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life.

Canon 800 states:

§1. The Church has the right to establish and direct schools of any discipline, type, and level.

§2. The Christian faithful are to foster Catholic schools, assisting in their establishment and maintenance according to their means.

Canon 803 states:

§1. A Catholic school is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which ecclesiastical authority recognizes as such through a written document.

§2. The instruction and education in a Catholic school must be grounded in the principles of Catholic doctrine; teachers are to be outstanding in correct doctrine and integrity of life.

§3. Even if it is in fact Catholic, no school is to bear the name Catholic school without the consent of competent ecclesiastical authority.

Canon 804 states:

§1. The Catholic religious instruction and education which are imparted in any schools whatsoever or are provided through the various instruments of social communication are subject to the authority of the Church. It is for the conference of bishops to issue general norms about this field of action and for the diocesan bishop to regulate and watch over it.

§2. The local ordinary is to be concerned that those who are designated teachers of religious instruction in schools, even in non-Catholic ones, are outstanding in correct doctrine, the witness of a Christian life, and teaching skill.

Canon 805 states:

For his own diocese, the local ordinary has the right to appoint or approve teachers of religion and even to remove them or demand that they be removed if a reason of religion or morals requires it.

Canon 806 states:

§1. The diocesan bishop has the right to watch over and visit the Catholic schools in his territory, even those which members of religious institutes have founded or direct. He also issues prescripts which pertain to the general regulation of Catholic schools; these prescripts are valid also for schools which these religious direct, without prejudice, however, to their autonomy regarding the internal direction of their schools.

§2. Directors of Catholic schools are to take care under the watchfulness of the local ordinary that the instruction which is given in them is at least as academically distinguished as that in the other schools of the area.

## **CANONICAL CONCLUSIONS**

I would like to draw a number of conclusions from these canons:

First, the diocesan bishop, often referred to in the canons as the “ordinary”, is entrusted by the Code of Canon Law with the responsibility and also the authority to establish and oversee Catholic schools, that is to say schools whose major concern it is to make sure that the Catholic faith is handed down from generation to generation.

Second, this is an administrative task, but it is also a theological task because it involves the propagation of the faith, which is the bishop’s primary duty.

Third, this education is an education of the whole person, not simply an education in the three R’s. It includes the moral education of the person as well, or as Canon 795 says: “children and youth are to be nurtured in such a way that they are able to develop their physical, moral, and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life.”

Fourth, teachers in Catholic schools are the bishop’s collaborators in this theological ministry. They are not simply employees, but are rather co-ministers with the bishop in his ministry of Catholic education. This is why the Code of Canon law is so particular in requiring that those who teach in

Catholic schools be, as Canon 803 says, “outstanding in correct doctrine and integrity of life.”

Fifth, teachers in Catholic schools, in their exercise of the ministry of education with the diocesan bishop are office holders in the Church, and their office exists in a stable manner to further a spiritual purpose. (Canon 145, §1).

Sixth, as a result, teachers in Catholic schools do not simply teach by what they say in the classroom; they also teach by how they live their own lives. Their vocation to teach in a Catholic school is an office in the Church and a true ministry that they exercise together with the bishop; it is more than a job as you and I might use that term.

### **CHURCH-STATE PROBLEMS**

It should be evident from the above that the application of the state-enforced labor relations model between a diocesan bishop and his co-ministers in the propagation of the Catholic faith, namely teachers in Catholic schools, would impede if not destroy this co-ministry. It would require the diocesan bishop to use the mechanisms of the state to deal with what is not, at base, a secular but rather a religious and spiritual relationship. Should the proposed legislation be adopted, the church-state conflicts that it would propagate are enormous.



For example, if the teachers in a Catholic school choose to be represented by a particular secular bargaining agent, should that union's publicly stated goals, principles or prior public actions be at odds with the teachings of the Catholic Church, the bishop could not, consonant with his role as chief teacher in the diocese, endorse that union's participation in the ministry of Catholic education, even remotely.

Or if that union sought to bargain over matters of Catholic doctrine or Canon Law, or even the application of that doctrine or law to everyday situations in the lives of its members, in ways that would limit the bishop's canonical authority to be the final arbiter of such theological or canonical matters in the diocese, the bishop could not participate in such a bargaining process.

In the diocese, a diocesan bishop must be able to assure, unhampered by state oversight or union involvement, that religiously-grounded discipline is observed in the Catholic schools, and that the public actions and statements of teachers in those schools, his co-ministers in the apostolate of Catholic education, are compatible with their obligations as ministers and witnesses in their lives and in their teaching of the Gospel truths that Catholic schools are created to propagate.

A secular model of employee relations should not be forced on any ministry of the Church, with a governmental agency acting as the arbiter or

referee of the bishop's duties under that model. The ecclesiastical ministry must be free to choose its own path, in keeping with its own doctrines and teachings. It is particularly inappropriate for a government law-making body to take sides in an intra-church dispute over the organizational structure of that ministry - where it will be provided, how and by whom.

### **CONCLUSION**

Although I have spoken primarily as a canon lawyer, I do not want to omit my concerns as a civil lawyer who has worked with and for church bodies. I am especially concerned in the present situation that my state legislature is proposing to utilize the coercive power of government to intervene in an intra-church dispute. The very language of your bill - that you are exempting the coverage of Pennsylvania's Religious Freedom Restoration Act in this instance - should alert you to that danger. And finally, as a Catholic, I am particularly concerned that my Church is a target of the state's coercive power in a situation - namely the performance of the Catholic ministry of education - where the state has no role and does not belong.