CT Rally on Steps of Capitol
SB 1098 Bill
Wednesday, March 11, 2009

Bishop William E. Lori

I want to thank Archbishop Mansell and Bishop Cote for their magnificent leadership.

I'm proud to stand shoulder-to-shoulder with them in this fight!

With my colleagues, I want to thank our priests – our pastors, parochial vicars, - all our priests.

Bill 1098 was an attack on them and their leadership.

If only the legislators who launched that attack would tend to the fiscal affairs of the state – and do so half as well as our pastors and our parishes.

Brothers, we thank you!

Lay Catholics and other people of good will are here in large numbers. You're here because you love your Church and you love religious freedom.

Bill 1098 was an attack on you. It was an attack on the lay leadership of our parishes and in our dioceses.

It dismissed the hard work you do – your competence and effectiveness in serving and enabling the Church to stretch her resources to do the mission of the Church – a mission that greatly contributes to the common good.

Senator McDonald and Representative Lawlor owe you an apology!

I'm grateful to people of other faiths and many citizens who stood up to defend religious freedom.

This time it was the Roman Catholic Faith that was singled out for attack.

The next time it might be another religion!

With you I thank God for the Constitution and the 1st Amendment. This is what protects our God-given right to bring our convictions to the public square – without fear of retaliation from public officials.

Historically, laws like 1098 have been used to silence the Church.

Remember the Know Nothing Party? I hope they're not back!

Even a 1st year law school student would know that bill 1098 is unconstitutional. The 1st Amendment prohibits the state from forcing a church to organize contrary to its own laws and beliefs.

That's what 1098 tried to do.

It should never have been raised for a hearing.

Let's bury it for good!

While we're at it, let's bury all attempts to tamper with the religious corporation statute. Now there's a lot of loose talk on the part of public officials that this law might be unconstitutional. You'd think these folks might know that the CT Supreme Court upheld the constitutionality of this statute – and rather recently at that.

Legislators – leave our church alone!

The State has serious problems – and the Church is a big part of their solution.

Let freedom ring!

Statement of Canonical Counsel to the Diocese of Bridgeport Regarding Bill 1098

Sr. Elizabeth McDonough, OP, JCD, STL
Bishop James A. Griffin Professor of Canon Law
Pontifical College Josephinum

Proposed changes to Connecticut's existing religious corporation statutes are contrary to provisions of the Code of Canon Law of the Catholic Church which determine what is essentially constitutive of juridic institutes and juridic acts (Canon 86). The term "juridic" means this institute or act exists in, and is governed by, Church law. Juridic institutes in the Church include the diocese (Canon 369), parish (Canon 515), religious institutes (Canon 573), and the like.

Juridic acts are those executed by persons capable of doing so and which include constitutive elements of that act according to Church law and also fulfill the solemnities required for validity (Canon 124). What is "essential" to juridic institutes and juridic acts concerns (1) that which pertains to the essence or nature of a thing and (2) that which is fundamental and necessary and indispensable. Exceptions to these requirements—known as dispensations (Canon 85)--cannot be made by a Diocesan Bishop (Canon 86). For example, the Diocesan Bishop cannot dispense from consent exchanged by a man and a women which is constitutive to the juridic act of marriage.

Nor can the Bishop of a Diocese dispense from what constitutes the juridic institutes of the diocese or of the parish or of what constitutes juridic personality (Canons 114, §1; 115,§2; 118) or of ecclesiastical office (Canon 144), and the like. The Diocesan Bishop is not enabled in Church law to organize the diocese or a parish as he wishes contrary to ecclesiastical legislation.

A parish is a delineated community of the Christian faithful (Canons 204, 205) which is established by the Diocesan Bishop and explicitly placed under the pastoral care of a Pastor (Canon 515, §1, 523). A parish is a public juridic person by law (Canon 515, §3), which means that a parish has legal existence apart from the particular members of it as such.

In Church law there are juridic persons which are defined as *collegial* juridic persons of persons and those which are defined as *non-collegial* juridic persons of persons (Canon 115, §2). A *collegial* juridic person of persons is one wherein the members concur in making decisions which determine legal actions of the juridic entity. For example, a religious institute in the Church (such as the Jesuits or Dominicans) is a *collegial* juridic person of persons. A diocese is not a *collegial* juridic person of persons. Nor is a parish a *collegial* juridic person of persons. Neither the members of a diocese nor the members of a parish are competent in Church law to concur in making decisions which determine legal actions of the juridic entity as such. The laws governing a diocese and a parish are established by the Apostolic See in the Code of Canon Law. The earliest codifications of Church law have recognized these principles regarding internal Church organization.

Rights and obligations of the Pastor of a parish are determined in Church law in relation to multiple aspects of pastoral care (Canons 519, 528-530) and in relation to multiple aspects of

proper administration of the ecclesiastical goods of the juridic person of the parish (Canons 532, 1281-1288). The Catholic Church has an independent right to acquire, retain, administer and alienate temporal goods (Canon 1254, §1). The purpose of such temporal goods is to provide for divine worship, for sustenance of clergy and other ministers and for exercising works of the apostolate and of charity, particularly regarding those who are poor (Canon 1254, §2).

It is worthy of note that Church Law also specifically addresses the physical, social, cultural, moral and religious aspects of integrated education of the Christian Faithful with a view to the common good of society and responsible participation in civil affairs (Canons 795, 1136). Thus, it is not surprising that the Catholic Church is the largest private source of social and educational services for the common good of society.

Ecclesiastical goods (as such) are those which by law belong to public juridic persons in the Church (Canon 1257, §1). Ownership and control of the ecclesiastical goods of a juridic person pertain to that juridic person under the authority of the Roman Pontiff (Canon 1256). Among other matters, those responsible for proper administration of these ecclesiastical goods are to provide that "the ownership of ecclesiastical goods is protected by civilly valid means" (Canon 1284, §2, 2º). In Church law the Pastor fulfills this role (Canon 532), and he always serves under the authority of the Diocesan Bishop (Canon 519). All dioceses (Canon 492-494) and parishes (Canon 537) are also required to have a finance council composed of lay members who assist in a collaborative manner regarding the administration of temporal goods under the authority of the Bishop or Pastor (respectively). The norms of a parish finance council are to be determined by the Diocesan Bishop in keeping with Church law (Canon 537).

Thus, the proposed changes to Connecticut's existing religious corporation statutes are clearly contrary to multiple provisions of the Code of Canon Law of the Catholic Church and directly violate the right of the Catholic Church to establish and govern itself according to its own system of law.

The legal system of the Catholic Church does refer certain matters to civil law insofar as these are not contrary to divine law or contrary to Church law. An example of this would be the civil law concerning contracts (Canon 1290). However, the requirement that the Pastor of a parish, as responsible for administration of ecclesiastical goods under the authority of the Diocesan Bishop, is to provide that "ownership of ecclesiastical goods is protected by civilly valid means" (Canon 1284, §2, 2º) cannot be validly interpreted as even suggesting that civil law can determine a single manner in which this can be accomplished. Rather, as currently existing Connecticut religious corporation statutes provide, it permits competent Church authority to decide the means most in keeping with the religious entity in question. The Catholic Church should be permitted to arrange the parish corporation as in current statutes, namely, through a corporation comprising the Bishop, the Vicar General, the Pastor, and two lay members. The current Statutes accommodate the ability of the Church to function in society in accord with Church law.

Respectfully submitted by
Sr. Elizabeth McDonough, OP, JCD, STL
Bishop James A. Griffin Professor of Canon Law
Pontifical College Josephinum

Kerry Robinson's Prepared Statement for the Judiciary Committee 03-10-09

Leadership Roundtable supports CT Bishops in opposition to proposed legislation

i. My name is Kerry Robinson. I am the executive director of the National Leadership Roundtable on Church Management, a national network of 200 senior level executives from the corporate, financial, philanthropic, judicial, educational and charitable sectors as well as from the Catholic Church itself. We are a nonprofit organization whose mission is to serve the Church by strengthening the management of human and financial resources in the Church. Our headquarters is in Washington, D.C. but my principle domicile is in New Haven, CT and I am an actively engaged Catholic in the Archdiocese of Hartford.

ii. I am an equally ardent supporter of the Church and impeccable financial management. I appear before you today to oppose Bill 1098. The goals of sound governance, financial transparency, accountability, exemplary stewardship and effective lay participation, can all be achieved without violating either the United States Constitution or the Church's own Canon Law – to which the Church is bound not only in the State of Connecticut, or in the United States, but in terms of the Church worldwide.

iii. The Leadership Roundtable has supported and worked with dioceses in Connecticut and throughout the country that have committed to implementing and adhering to standards of ethics and accountability and best practices in their temporal affairs. Dioceses and parishes across the country have at their disposal contemporary policies and procedures which are in full compliance with both civil and canon law statutory requirements. In the three and a half years that the Leadership Roundtable has been in existence, we have witnessed renewed and ongoing commitment to managerial excellence. Following recent high profile cases of financial mismanagement or embezzlement, Catholic parishes and dioceses within Connecticut (and indeed across the country) have established improved financial controls and increased financial audits and reporting.

iv. There are concrete examples of diocesan and parish measures taken that demonstrate commitment to effective stewardship of the temporal goods of parishes and Dioceses, within the existing structure of the Catholic Church, which violate neither the Constitution nor Canon Law. Three examples:

1. In the Diocese of Bridgeport:
    - Active Finance Councils in all parishes responsible for oversight of the parish's preparation of annual budgets, preparation and publication to parishioners of quarterly and annual financial reports.
    - Standard, not-for-profit, parish financial statements for quarterly and annual financial reporting for all parishes.
    - Web-hosted financial accounting and reporting system to assist local parish staff and for monitoring parish financial activity.
    - Comprehensive, online financial and administration manual for parish policies, procedures and controls, including 'from the basket to the bank' control of offertories.
    - Annual reviews by external auditing firms of parish compliance with financial policies, procedures and controls covering parishes with over

85% of parish revenues and expenses and the remaining parishes reviewed annually by Diocesan finance staff.
    - Whistle-blowing process established to allow parishioners to obtain answers to concerns about parish financial matters that they were unable to resolve at their parish.[1]
2. An archdiocese has produced consolidated financial reports for all diocesan entities as part of a commitment to financial transparency, publishing all financials on their website and ensuring that it is freely and easily read and comprehended by all.[2]
3. A diocese committed each of their 72 parishes to implement 55 Standards for Excellence, detailed performance benchmarks covering governance, financial, legal, fundraising, reporting and other aspects of administration.[3]

In each of these cases, Church authorities engaged professional assistance to ensure best practices were being followed and the expertise of qualified auditors, financial planners, lawyers and management specialists directed new policies, procedures, and accountability mechanisms.

v. In closing, the Leadership Roundtable strongly advocates for exemplary financial stewardship, for practices and systems that allow for financial transparency and accountability within our Catholic institutions, and for the particular expertise and competencies of laity to be utilized in service to these goals. I challenge the assertion by supporters of this proposal that the Church will not implement and adhere to high standards of financial transparency and accountability within the existing canonical and constitutional structures. We exist to serve the Church in exactly that pursuit and attest to the progress being made in all of these areas. We oppose this legislation. We support the Church. And we remain committed to serving the Church by strengthening temporal affairs and demonstrating to the faithful and the public at large that transparency and accountability are indeed being addressed seriously and effectively in the Church.

Kerry A. Robinson, Executive Director, National Leadership Roundtable on Church Management 1350 Connecticut Avenue, NW Suite 825, Washington, DC 20036
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[1] The Diocese of Bridgeport, CT. Parish Finance Program (http://www.bridgeportdiocese.com/finances.shtml.) Contact: Mr Norm Walker, CFO.
[2] The Archdiocese of Boston, MA. Financial Transparency Project (http://www.rcab.org/Finance/HomePage0605.html.) Contact: James McDonough, Chancellor
[3] The Diocese of Gary, IN. Implementation of Standards for Excellence: An Ethics and Accountability Code for Catholic Parishes. Contact: Bishop Dale Melczek.

STATEMENT OF FATHER RICHARD RYSCAVAGE SJ ON PROPOSED LEGISLATION TO CHANGE THE CORPORATE GOVERNANCE OF THE CATHOLIC CHURCH IN CONNECTICUT - MARCH 11, 2009

THANK YOU MR. CHAIRMAN.I AM FATHER RICHARD RYSCAVAGE, A JESUIT PRIEST AND PROFESSOR OF SOCIOLOGY AT FAIRFIELD UNIVERSITY WHERE I DIRECT THE UNIVERSITY'S CENTER FOR FAITH AND PUBLIC LIFE. IN MY MANY YEARS DOING FEDERAL AND INTERNATIONAL PUBLIC POLICY WORK FOR THE U.S. CATHOLIC BISHOPS I HAVE NEVER ENCOUNTERED A MORE BRAZEN AND POORLY DRAFTED INTRUSION OF THE STATE INTO THE LIFE OF THE CHURCH THAN I SEE IN THE PROPOSED BILL 1098.

I WILL NOT ADDRESS THE UNCONSTITUTIONALITY OF THE BILL. I WANT TO CONCENTRATE ON ANSWERING THREE QUESTIONS

FIRST, COULD THIS LAW GIVE RISE TO HARMFUL EFFECTS IN OTHER AREAS OF SOCIETY?

A BISHOP IS CHARGED BY CHRIST TO CARE FOR THE POOR BUT THIS PROPOSED LEGISLATION SEPARATES THE BISHOPS AND THE POOR BY NAIVELY ATTEMPTING TO DISENTANGLE RELIGIOUS AUTHORITY OF THE PASTOR OR BISHOP FROM ANY FINANCIAL AUTHORITY. YOU CAN NOT SEPARATE ADMINISTRATIVE/BUDGETARY AUTHORITY FROM RELIGIOUS AUTHORITY. AS ANY RELIGIOUS LEADER WILL TELL YOU, A CHURCH BUDGET IS A MORAL DOCUMENT ; IT IS A RELIGIOUS DOCUMENT BECAUSE IT INDICATES THE SOCIAL, RELIGIOUS AND MORAL PRIORITIES OF THE CHURCH. CHOOSING AND ADMINISTERING THOSE FUNDING PRIORITIES ARE ESSENTIAL ELEMENTS OF A PASTOR AND BISHOPS RELIGIOUS LEADESHIP. TAKING AWAY THE ADMINISTRATIVE AND SUPERVISORY AUTHORITY OF THE BISHOPS AND PRIESTS WILL PREVENT THEM FROM SETTING THOSE SOCIAL PRIORITIES AND CONSEQUENTLY DISRUPT AND CONFUSE THE CHURCH'S CHARITABLE SERVICES IN THE STATE. DO I HAVE TO REMIND THE COMMITTEE THAT THE CATHOLIC CHURCH PROVIDES MORE SOCIAL, CHARITABLE AND EDUCATIONAL SERVICES THAN ANY OTHER PRIVATE INSTITUTION IN THE STATE? THIS BILL WOULD THREATEN THOSE SERVICES AT A TIME OF ECONOMIC CRISIS WHEN THE RESIDENTS OF YOUR STATE DEPEND ON CATHOLIC SERVICES MORE AND MORE. SO YES THIS BILL WILL HAVE MANY UNINTENDED CONSEQUENCES.

MY SECOND QUESTION: WHAT CAN I SAY TO THOSE CATHOLICS IN CONNECTICUT WHO SUPPORT THIS BILL?

TO USE THE PUBLIC LAW TO PUSH YOUR PRIVATE AGENDAS WITH THE CHURCH IS WRONG. YOUR SQUABBLES WITH THE CHURCH AUTHORITY SHOULD BE SETTLED INTERNALLY NOT THROUGH COERCIVE LEGISLATION. PROMOTION OF LAY LEADERSHIP AND REFORM OF CHURCH STRUCTURES MAY BE REASONABLE GOALS BUT THESE ARE NOT TOPICS THAT BELONG IN THE LEGISLATURE.

THE PASTORS AND BISHOPS OF CONNECTICUT ARE HONORABLE MEN WHO ARE GOOD FINANCIAL CUSTODIANS OF THEIR PARISHES. PLEASE DO NOT DISHONOR THEM BY TAKING THIS BILL SERIOUSLY. IF A COUPLE PRIESTS HAVE VIOLATED THEIR RESPONSIBILITIES, IT IS NOT THE ROLE OF THE STATE TO TRY TO ERADICATE THAT SIN. GOOD LAW IS NEVER BUILT ON A FEW NARROW EXCEPTIONS TO THE NORM. AND THE NORM FOR THE CATHOLIC CHURCH IN CONNECTICUT HAS BEEN AND CONTINUES TO BE GOOD RESPONSIBLE STEWARDSHIP OF ITS RESOURCES. I HOPE ALL CATHOLICS WILL AFFIRM THAT FACT.

AND MY THIRD QUESTION: WHY IS INSTITUTIONAL AUTONOMY SUCH AN ESSENTIAL PART OF RELIGIOUS FREEDOM?

FREEDOM OF RELIGION DOES NOT JUST MEAN FREEDOM OF WORSHIP. FREEDOM OF RELIGION ALSO MEANS INSTITUTIONAL AUTONOMY. YES THERE IS SOME FREEDOM OF WORSHIP IN CHINA, CUBA, AND VIETNAM BUT THERE IS NO RELIGIOUS FREEDOM THERE BECAUSE THE STATE DICTATES THE CHURCH GOVERNANCE. SO LET US NOT ADD CONNECTICUT TO THAT SAD LIST OF GOVERNMENTS WHO DENY THE CHURCH THE RIGHT OF SELF GOVERNMENT.

A DISTINGUISHED JESUIT SCHOLAR OF CHURCH STATE ISSUES, JOHN COURTNEY MURRAY, INSISTED THAT RELIGIOUS INSTITUTIONS REQUIRE ONLY ONE THING OF THE STATE: FREEDOM FROM INTERFERENCE! THIS IS THE “PRINCIPLE OF PRINCIPLES” AS POPE LEO XIII PUT IT: THE FREEDOM OF THE CHURCH TO CARRY OUT ITS FULL MINISTRY WITHOUT STATE CONTROL. THIS IS NOT JUST ANOTHER CIVIL RIGHT; RELIGIOUS FREEDOM HOLDS A PRIVILEGED PLACE IN AMERICAN SOCIETY. INSTITUTIONAL RELIGIOUS AUTONOMY LIES AT THE VERY HEART OF THE AMERICAN EXPERIENCE. YOU TAMPER WITH THAT RELIGIOUS FREEDOM AT YOUR OWN POLITICAL PERIL.

CRAZY IDEAS ARE ALWAYS DISTRESSING IN THE PUBLIC SQUARE BUT SOMETIMES THEY ARE DANGEROUS AND WHEN THESE DANGEROUS IDEAS GET MANIFESTED IN A BILL BEFORE THE JUDICIARY COMMITTEE IT IS TIME FOR THEM TO BE QUICKLY PUT AWAY. ON GROUNDS OF POLITICAL PRUDENCE ALONE, I HOPE THE STATE OF CONNECTICUT WILL LEAVE THE LAW AS IT IS AND BACK AWAY FROM ANY ARROGANT AND ILL CONCEIVED LEGISLATION. THANK YOU.

STATEMENT OF MICHAEL P. SHEA
On Raised Bill No. 1098
"An Act Modifying Corporate Laws Relating to Certain Religious Corporations"

I am a partner at Day Pitney LLP in Hartford. I have represented churches and municipalities in First Amendment litigation, and I have specifically litigated the constitutionality of Connecticut's existing religious corporation statutes. Unlike those statutes, Raised Bill 1098 is unconstitutional because it would subvert the Church's chosen governance structure and thereby violate both the Free Exercise Clause and the Establishment Clause of the First Amendment, as well as similar provisions of our state constitution. Because other witnesses are addressing the grave constitutional flaws in the bill in detail, I will focus my remarks on the manner in which the bill radically departs from existing law by transforming a perfectly constitutional enabling statute into a state-imposed governance structure that violates the federal and state constitutions.

I. Connecticut's Existing Religious Corporation Statutes Are Constitutional Because They Defer to the Internal Rules Established by Each Denomination to Which They Apply

Connecticut's existing religious corporation statutes, including the very statute that this bill would amend, Section 33-279, are constitutional precisely because they respect, and do not interfere with, the internal governance structures of the churches to which they apply. For that reason, Connecticut courts, including our Supreme Court, have upheld the constitutionality of Connecticut's religious corporation statutes in decisions stretching back into the nineteenth century. Parish of Christ Church v. Trs. of Donations & Bequests for Church Purposes, 67 Conn. 554, 565 (1896) ("[i]t is the settled policy of this State to so frame its legislation that each denomination of Christians may have an equal right to exercise religious profession and worship, and to support and

maintain its ministers, teachers and institutions, in accordance with its own practice, rules and discipline; and this policy is *conformable to the provisions of our Constitution*." (emphasis added)); State ex rel. Barry v. Getty, 69 Conn. 286, 287 (1897) (same); Ross v. Ross, No. FA970162587S, 1998 Conn. Super. LEXIS 2248, at *19 (Conn. Super. Ct. June 17, 1998) ("[t]hese statutes do not control the internal working of those religious denominations and are not in violation of the first amendment [of the United States Constitution] nor Article seven [of the constitution of Connecticut]").

Connecticut's existing religious corporation statutes are enabling statutes. They allow religious groups to organize themselves and hold property as corporations, and thereby to benefit from the same rights and privileges enjoyed by other private groups that adopt the corporate form, including limited liability. They do not purport to allocate authority within religious groups, specify which individual members may vote, dictate any church's fiscal or administrative decisions, or otherwise interfere with the particular governance structure chosen by each separate denomination. To the contrary, they expressly *defer* to the rules imposed by each denomination. Thus,

- With respect to the Roman Catholic Church, Section 33-281 provides that the corporation shall "be subject to the general laws and discipline of the Roman Catholic Church."

- With respect to the Episcopal Church, Section 33-266 provides that "the manner of conducting the parish, the qualifications for membership of the parish and the manner of acquiring and terminating such membership, the number of officers of the parish, their powers and duties and the manner of their appointment," among other corporate governance matters, "shall be such as are provided and prescribed by the constitution, canons and regulations" of the Protestant Episcopal Church in Connecticut.

- With respect to the Lutheran Church, Section 33-278b(b) provides that, "[a]ll churches being members of the Lutheran Church in America shall have power to receive and hold by gift, grant or purchase all property, real or personal, according to the constitution, bylaws and constitutional

enactments of the Lutheran Church in America and of the synod to which such churches belong and shall have and exercise all the powers of bodies corporate by their trustees."

- Connecticut's generic religious corporation statutes – which allow any religious group to incorporate – contain similar provisions. For example, Section 33-264c(c) provides that "[a] religious corporation may, in its charter or bylaw or otherwise, adopt provisions relative to its membership, affairs and government …"; Section 33-264j(b) provides that "[n]othing in this part shall be construed as … requiring any [church or religious society established or incorporated prior to October 1, 1969] "to alter or change any rule of discipline, custom or usage in respect to its policy or government …."

This pattern of deference to the rules and governance regime established by each denomination is especially important – and constitutionally mandated – in the case of so-called hierarchical churches, that is, churches such as the Roman Catholic and Protestant Episcopal Churches whose internal governance structures vest ultimate spiritual, canonical and administrative authority in the church's religious leadership. The Rector, Wardens and Vestrymen of Trinity-St. Michael's Parish, Inc., et al. v. The Episcopal Church in the Diocese of Connecticut et al. The Episcopal Church in the Diocese of Connecticut et al. v. Trinity-St. Michael's Parish, Inc., 224 Conn. 797, 804 n.8 (1993) ("A hierarchical organization has been defined by the United States Supreme Court as a general organization of churches having similar faith and doctrine with a common ecclesiastical leader." (citing Kedroff v. St. Nicholas Cathedral, 334 U.S. 94, 110 (1952)).) The U.S. Supreme Court has repeatedly held that the First Amendment requires civil authorities, including courts and legislatures, to defer to the determinations and rules established by the leaders of a hierarchical church. See, e.g., Serbian E. Orthodox Church v. Milivojevich, 426 U.S. 696, 724-25 (1976) ("the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and

regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.")

Connecticut's existing religious corporation statutes follow this constitutional rule by enabling each denomination to govern itself and hold property for the purposes and in the manner that it sees fit. These statutes – which have been part of our laws in some form since the nineteenth century – further religious freedom by allowing specific religious groups to form legal structures that will facilitate their pursuit of their own religious beliefs. As our own Connecticut Supreme Court stated over a century ago in addressing an earlier version of these statutes, "[i]t is the settled policy of this State to so frame its legislation that each denomination of Christians may have an equal right to exercise religious profession and worship, and to support and maintain its ministers, teachers and institutions, in accordance with its own practice, rules and discipline; and this policy is *conformable to the provisions of our Constitution*." Trs. of Donations & Bequests for Church Purposes, 67 Conn. at 565 (emphasis added). More recently, the Connecticut Supreme Court cited the existence of these statutes as one factor indicating that the canons and other internal rules of the Episcopal Church were legally binding on its members and warranted deference from the courts in deciding a church property dispute. The Rector, Wardens and Vestrymen of Trinity-St. Michael's Parish, Inc., et al., 224 Conn. at 807 n.11. No court has ever found Connecticut's religious corporation statutes to be unconstitutional.

Other states have similar statutes, and those statutes, too, have been upheld by the courts, as long as they enable religious groups to govern themselves according to their own rules, traditions, and customs, and do not seek to interfere with the ability of each denomination to govern itself as it sees fit. See, e.g., St. Matthews Slovak Roman Catholic Congregation v. Wuerl, 106 Fed. Appx. 761, 767 (3d Cir. 2004) (Pennsylvania statute mandating deference by state to Roman Catholic Bishop in church property matters "merely reflects the constitutionally compelled prohibition against state meddling in religious affairs."); Dixon v. Edwards, 290 F.3d 699 (4th Cir. 2002) (citing Maryland statute subjecting lay officials of Episcopal churches to the constitution and canons of the Church in deciding property dispute in favor of Episcopal Bishop); see also Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 337 (1987) ("A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose. For a law to have forbidden 'effects' under [the Establishment Clause], it must be fair to say that the *government itself* has advanced religion through its own activities and influence.").

In short, Connecticut's existing religious corporation statutes are plainly constitutional, and require no revision. While there have been some suggestions in the media recently that our existing religious corporation statutes violate the Establishment Clause or somehow constitute state interference with, or preference for, particular religions, an examination of those statutes shows that such suggestions are baseless. Connecticut's religious corporation statutes have been upheld by the courts for over a century precisely because they do not entangle the State in religious governance but defer

to the rules adopted by each religious group, and thereby respect the religious freedoms of each such group.

II. Raised Bill 1098 Would Depart Radically from Existing Law By Imposing A Governance Structure On the Catholic Church That Is Hostile to Its Own Rules, Traditions, and Polity

Rather than showing deference, the proposed bill forces on the Roman Catholic Church rules that conflict with the traditions by which the Church has governed itself for some two thousand years. The bill would oust the Church's ordained leaders from its governance structure, strip them of authority over governance and financial matters, and impose a governance structure composed exclusively of the lay members of each congregation. That is interference by the State in religious matters – the reverse of the deference required by the First Amendment. Specifically, the bill would, among other things:

- strip the archbishop or any bishop of voting membership on the governing body of the corporation that controls Church property;
- require that the governing body be elected exclusively from lay members; and
- require that the pastor of the congregation be subject to the direction of any such body.

All of these changes radically depart from existing Section 33-279, which defers to the ecclesiastical authority of the Bishop and Pastor by reserving to them the powers to appoint lay members of the governing body and by refraining from specifying governance details such as who shall have the right to vote and which matters shall be within the control of the governing body. The bill reverses the deference of existing law and turns on its head the hierarchical structure of the Roman Catholic Church, which for

centuries has vested religious, governance, and administrative authority in its religious leaders – Bishops and pastors.

The violence that these dramatic changes would do to the Church's internal workings and its freedom to govern itself is in no way diminished by Section 1(h) of the bill, which would preserve the authority of the bishop or pastor only in "matters pertaining *exclusively* to religious tenets and practices." (Emphasis added.) This provision would sharply narrow the freedoms enjoyed by the Catholic Church and consistently recognized by the courts as part of the religious liberty enjoyed by all religious groups. This liberty includes freedom from state interference not only in matters of religious doctrine and practice but also in matters of church governance, administration, and finances. The courts have recognized that the way that a church governs itself and manages its fiscal affairs is often inextricably intertwined with its religious tenets. The "savings clause" in Section 1(h) does not save the bill; it underscores the bill's constitutional flaws.

III. Conclusion

Connecticut's religious corporation statutes have allowed religious organizations to govern themselves according to their own laws for over a century. They have withstood challenges in the courts precisely because they further the exercise of religion in accordance with the practices, traditions, and rules of each denomination. They are plainly constitutional, and I urge this Committee not to tamper with them.

Just as plainly, however, the bill before this Committee is unconstitutional for the reasons set forth by me and other witnesses. This Committee should reject this bill and leave Connecticut's religious corporation statutes alone.

EXCERPTS OF TESTIMONY BEFORE THE INFORMATIONAL HEARING ON RAISED BILL NO. 1098 AT THE GENERAL ASSEMBLY IN HARTFORD (3/11/09)

MSGR. CHRIS J. WALSH, PH.D., PASTOR, SAINT JOSEPH ROMAN CATHOLIC PARISH, SHELTON, CT

In addition to being pastor of St. Joseph Catholic Church in Shelton, CT, I am also adjunct (part-time) professor of dogmatic theology at St. Joseph Seminary in Yonkers, NY. As you may know, following the dramatic event of the Second Vatican Council from 1962-65, a gathering of all the Catholic bishops in the world in Rome, there has been much debate within the Catholic Church over the proper way to interpret and implement this historic council. Some have taken the actively reformist position that the Council called for major substantive revisions in the governing constitution of the Church itself.

This reformist position, which has not been adopted by the official hierarchy of the Church – nor, in my opinion, corresponds with the views of the vast majority of Catholics themselves – is represented in Connecticut by a group of Catholic laity called Voice of the Faithful, among others. From 2003-2004 I was the official liaison of the Diocese of Bridgeport to the Voice of the Faithful chapter in Fairfield County. This group publicly issued in late 2004 a widely publicized document called "Counsel and Consent as Christian Virtues: Five Proposals for Structural Change in the Catholic Church." I cannot fail to note the striking similarities between the proposals presented in this document and the language of the present bill no. 1098.

For example, under the section entitled "A Proposal for Ownership by the Faithful," the Voice of the Faithful document recommends that "[a] Parish Corporation consisting of *all the registered parishioners* [emphasis added], the bishop, and the pastor should be established as the owner of parish property. This may require changes in the Civil Law." It furthered urged that "[t]he registered

parishioners should *elect ten or more members (as needed) as directors and officers of the Corporation* [emphasis added]. . . . The bishop and the pastor should be *ex officio* officers of the Corporation."

While the chairmen of the Judiciary Committee, explaining the origin of bill no. 1098, have referred only to certain "devout Catholic constituents" who urged them to raise it, the press in covering this story has repeatedly quoted local lay Catholics involved with Voice of the Faithful, as well as Professor Paul Lakeland, the director of the Center for Catholic Studies at Fairfield University. Professor Lakeland, I might point out, is the author of a 2003 book entitled *The Liberation of the Laity.* In that book he calls for "the liberation of the laity from the systemic oppression under which they suffer" at the hands of the Church hierarchy. He writes: "First, it will be necessary for the laity to take charge of their own liberation. It cannot be the work of bishops or priests, though they can certainly assist. *The primary way they can help is by standing aside. . . . Those who have occupied that center stage can stand aside willingly or be pushed aside. That is up to them* [emphasis added]." (pp. 215-16)

These striking coincidences between the changes proposed by bill no. 1098 and the agenda of Voice of the Faithful and the views of a particular Catholic theologian lead one to conclude that the state of Connecticut is attempting to insert itself – and even more outrageously, take a partisan position – in an internal theological and ecclesial dispute of the Catholic Church. This is egregiously inappropriate for a legislative body to do, and therefore I urge you to reject raised bill no. 1098.

STATEMENT OF JOHN GARVEY
BEFORE THE CONNECTICUT JUDICIARY COMMITTEE
ON RAISED BILL 1098
MARCH 11, 2009

Members of the Judiciary Committee:

Thank you very much for allowing me to say a few words about Raised Bill 1098. My name is John Garvey. I am the Dean of Boston College Law School, and the immediate Past President of the Association of American Law Schools. I am the author of RELIGION AND THE CONSTITUTION (Aspen, 2d. ed. 2006), the leading textbook on the subject of law and religion. It has been adopted at law schools across the country.

Raised Bill 1098 is intended to "revise the corporate governance provisions applicable to the Roman Catholic Church." Under existing law parishes are incorporated and have five members – the bishop, the vicar general, the pastor, and two lay people appointed annually by the clerical members.[1] The corporation "shall at all times be subject to the general laws and discipline of the Roman Catholic Church . . . ."[2] Under the proposed law parish corporations would be governed by a board of directors with 7-13 lay members elected from the congregation. The bishop, though an ex officio member of the board, would have no right to vote. The pastor of the church would report to the board of directors "with respect to administrative and financial matters." These would include "strategic plans and capital projects," "outreach programs and other services . . . provided to the community."[3]

Let me begin my remarks with a history lesson. The first amendment to the United States Constitution begins with the statement, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Though there is disagreement about the outer edges of this prohibition, everyone agrees that it was intended to forbid the creation of an established church at the federal level. When the fourteenth amendment was adopted, the same rule was applied to the states.[4] The British have an established church, the Church of England. Its head is Queen Elizabeth. She appoints bishops and archbishops, on the advice of the Prime Minister. Its assets are managed by the Church Commissioners, a group that answers to Parliament, and that includes among its members the Prime Minister, the Lord

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[1] Conn. Gen. Stat. Ann. § 33-279.
[2] Conn. Gen. Stat. Ann. § 33.281.
[3] Raised Bill No. 1098, § 1(e)-(f).
[4] Everson v. Board of Education, 330 U.S. 1 (1947).

Chancellor, the Home Secretary, the Speaker of the House, and a few other government officials. This is what it means to have an established church – not just that the government contributes taxes to support it, but that the government controls its personnel and property. In America we chose instead to protect religious liberty and to forbid religious establishments.

Raised Bill 1098 would like to improve the corporate governance of the Roman Catholic Church. If I may speak colloquially, what it tries to do is make the Church more "democratic." It takes control of the parish corporation away from the clergy (the bishop, the vicar general, and the pastor) and gives it to the congregation. The pastor would report to a board chosen from the congregation on matters concerning the parish's "plans," "programs," and "services."[5] This is a form of church government we find congenial in New England. The Puritans who settled in Connecticut adopted it in their churches, which today we call Congregational. It is the prevailing form of governance in Baptist churches and Disciples of Christ. At the Last Judgment we may learn whether it is the arrangement Jesus preferred for his followers.

Right now, though, that is a matter that divides Christian churches. Catholics, Episcopalians, the Russian Orthodox Church, Mormons, and some Lutheran churches are organized in a hierarchical fashion, with bishops and priests exercising authority other church members don't have. This form of organization derives from theological beliefs – understandings of how God speaks about the Church in the gospels and Christian tradition.[6] The bill you are considering would like to make the Catholic Church less hierarchical and more congregational. If Connecticut had an established church you could do this. When Oliver Cromwell was Lord Protector he undertook to make the Church of England more congregational. In America, though, this kind of action has been unconstitutional since the dawn of the republic.

This is not a controversial point. In the last century no member of the Supreme Court was more admired for his progressive views than Justice Brennan. Here is what he said about this issue in 1976. The case involved the American branch of the Serbian Orthodox Church, headquartered in Yugoslavia. In 1963 the Mother Church defrocked the American bishop (Milivojevich) and split the American diocese in three parts. Some American church members were unhappy with this, because they feared that Tito's communist government had infected the Mother Church. Milivojevich resisted the order, saying, "I do not recognize this communist decision from

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[5] Section 1(h) of the bill proposes to leave with the bishop and the pastor their rights "in matters pertaining *exclusively* to religious tenets and practices" (emphasis added).

[6] See, for example, the Catechism of the Catholic Church ¶¶ 880, 894-895 (1994). And compare this view with Normal H. Maring and Winthrop S. Hudson, A Baptist Manual of Polity and Practice chs. 3-5 (rev. ed. 1991).

Belgrade."[7] The Illinois Supreme Court sided with Milivojevich. The Supreme Court reversed. Here is what Justice Brennan said:[8]

> the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs[. The] Mother Church constitution commit[s] such questions [to the leaders of the Church]. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952), stated that religious freedom encompasses the "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

It does not matter, as some have suggested, that Connecticut's bill was drafted at the behest of unhappy Catholic parishoners. In any large organization there will be disgruntled members. Some members of the Serbian Orthodox Church were unhappy with the hierarchy in *Milivojevich*. Some Episcopalians are unhappy with their hierarchy for ordaining a gay man as bishop of New Hampshire.[9] It is not the prerogative of the government to provide relief for these unhappy members by giving them control of their church, its personnel, or its property.

Raised Bill 1098 is unconstitutional, then, because it violates the first amendment rule that the legislature cannot dictate the structure of church government.

The bill is unconstitutional for a second reason as well. This amendment, taking control of the church corporation away from the clergy and giving it to the congregation, applies only to the Catholic Church. The general rule for forming religious corporations in Connecticut is stated at the beginning of Title 33, Chapter 598 of the General Statutes: "Three or more persons uniting for public worship may form a [religious] corporation[.]"[10] The corporation decides for itself what "provisions relative to its membership, affairs and government" it wants to adopt.[11] Part II of the Chapter has provisions designed to fit the particular needs of several large denominations, though it is important to understand that these are accommodations, not legislative improvements on the churches' own structures. Ecclesiastical societies in communion with the Episcopal Church are denominated "parishes" (as that Church calls them).[12] And

> [t]he manner of conducting the parish, the qualifications for membership of the parish . . . , the numbers of the officers of the parish, their powers and

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[7] John T. Noonan, The Believer and the Powers That Are 326 (1987).
[8] Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 721-722 (1976).
[9] See Episcopal Church Cases, 198 P.3rd 66 (Cal. 2009).
[10] Conn. Gen. Stat. Ann. § 33-264a (2005).
[11] Id. § 33-264c.
[12] Id. § 33-265.

> duties and the manner of their appointment . . . shall be such as are provided and prescribed by the constiitution, canons and regulations of said Protestant Episcopal Church in this state.

Methodists and Lutherans are given the same flexibility. "The trustees of each Methodist Church shall be elected . . . in such . . . manner as the discipline of the Methodist Church may prescribe."[13] "The trustees of each Augustana Evangelical Lutheran congregation shall be elected by the ballot of such electors as are by the rules and regulations of such congregations competent to vote for trustees . . . ."[14] Catholics are given the same kind of accommodation by the existing § 33-279. It locates control of parish corporations (as does the Code of Canon Law[15]) in the bishop, the vicar-general, and the pastor. The two lay members are appointed annually by the ecclesiastical members. Raised Bill 1098 dictates for Catholics alone that the religious corporation must be governed by a board of directors of 7-13 members elected from the congregation, and that the pastor must report to the board.

This resembles the amendment Minnesota passed to its charitable solicitation statute in 1978. That law subjected churches who got more than 50% of their contributions from nonmembers to registration and reporting requirements. Justice Brennan, writing again for the Court in *Larson v. Valente*, made this interesting observation:[16]

> The legislative history discloses that [an earlier draft] would bring a Roman Catholic Archdiocese within the Act, that the legislators did not want the amendment to have that effect, and that an amendment deleting the [offending] clause was passed in committee for the sole purpose of exempting the Archdiocese from the provisions of the Act. On the other hand, there were certain religious organizations [the Moonies] that the legislators did not want to exempt from the Act.

This lack of neutrality was fatal. "The clearest command of the Establishment Clause," Justice Brennan said, "is that one religious denomination cannot be officially preferred over another. . . . This constitutional prohibition of denominational preferences is [also] inextricably connected with the continuing vitality of the Free Exercise Clause."[17]

It makes no difference that the Connecticut bill discriminates against Catholics rather than members of the Unification Church. It may be that in the current political climate, bishops in the Catholic Church are an easier target than the Reverend Moon. But whether that is true or not, the

[13] Id. § 33-268.
[14] Id. § 33-277.
[15] Code of Canon Law, cans. 515, 532, 537, 1256.
[16] 456 U.S. 228, 254 (1982).
[17] Id. at 244-245.

constitutional rule of denominational neutrality applies to all churches large and small.

I appreciate the opportunity to speak about this bill. I am sorry to say that I think it is very ill considered. Rarely have I seen a proposal advanced at this level of government that is so plainly unconstitutional.

SHREDDING THE FIRST AMENDMENT
IN THE CONSTITUTION STATE

Remarks of
Carl A. Anderson
Supreme Knight, Knights of Columbus

Hartford, Connecticut
March 11, 2009

Legislators here in the “Constitution State” have declared war on the First Amendment. Make no mistake — the ill-conceived Bill 1098 which you have heard so much about is an attack that exclusively targets the Catholic Church. It would strip our bishops and priests of their ability to administer dioceses and parishes.

This bill would wrest authority over Church affairs from pastors, bishops and dioceses and instead turn over control to a series of elected boards, explicitly excluding the bishops and pastors from voting.

In effect, this bill states we cannot trust our priests and bishops. It is an insult to every priest in the State of Connecticut.

We are here today to say that our priests and bishops should be treated with respect. We are here to say that every person of religious belief in Connecticut should be treated with respect.

The bill was written and rushed before committee without even the courtesy of a call to any of Connecticut’s Catholic bishops. We deserve better!

Under a law like this, it is not too much to say that the Catholic Church would no longer be “catholic.” Boards — independent of their bishops — could create parishes more unique than universal. Some denominations prefer such a set up, but the point is that every denomination must remain free to choose.

For this reason, it is precisely the free exercise of religion that is at stake in this bill.

Though this attack is surprising today, it is not unprecedented. Many states, including Connecticut, once maintained anti-Catholic laws that shock our modern understanding of religious freedom.

In Connectict, Catholics were legally forbidden from holding public office, or owning land into the nineteenth century. In fact, it took the “Constitution State” nearly three decades after ratification of the U.S. Constitution to grant something resembling First Amendment religious freedom to Catholics.

Even **then** attacks continued. “Know-Nothings” often tried to restrict the actions of the Catholic Church. One of their favorite tools was “trusteeism” – precisely what Bill 1098 would impose.

There has never been any doubt that government-mandated trusteeism was simply a tool to impose severe, unconstitutional limits on the Catholic Church.

Though the stated purpose for this bill is to prevent financial mismanagement of parishes, the bill's sponsors ignore two facts: not only are such incidences incredibly rare, but the Catholic Church has adopted effective measures to prevent a repeat of such situations.

And so the bill is not only unconstitutional, it's unnecessary.

The bill's sponsors might consider history's verdict on the Know-Nothings - whose tactics they have now adopted, for these Connecticut politicians are not only on the wrong side of the First Amendment, but on the wrong side of history.

It has been more than 150 years since a state was misguided enough to attempt such legislation, and for good reason.

In 1855, in the State of New York, the Know-Nothings scored a victory with the passage of the Putnam Bill in that state's legislature. This bill forced trusteeism on the Catholic Church, and created serious legal problems for its administration. It also presented the same fiction as the current bill: priests and bishops should focus only on matters of faith.

The Putnam Bill was repealed in 1863.

But Bill 1098 turns the clock back more than 150 years. We must not return to the darkest period for religious freedom in our country's history — a time marked by bigotry and intolerance. The bill's sponsors may *know nothing* about history – but we do and they should!

The lesson from the nineteenth century is that the power to impose structures that grant or take away authority of church leaders at the discretion of government officials is the power to intimidate and ultimately to destroy.

As New York's Bishop Hughes said in 1842: "Every religious denomination in this country … has a right to regulate, according to its own rules, the questions of ecclesiastical discipline pertaining to its Government. Deny this right, and you destroy religious liberty."

If a state can so easily brush aside the First Amendment and tell one church how it must be organized and operated today, it can easily do the same to any other religion tomorrow.

Those of us who live in Connecticut should be especially sensitive to our First Amendment liberties.

Consider this: Back in 1801, a group of 26 Connecticut churches known as the Danbury Baptist Association wrote to President Thomas Jefferson to ask his help in challenging a state law that established the Congregational Church as the state church of

Connecticut. His letter bears directly on the issue we face with Bill 1098. This is what President Jefferson said in his letter:

> "Believing with you that religion is a matter that lies solely between man and his God, that he owes account to none other for his faith or his worship...I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "*make no law respecting an establishment of religion*, or prohibiting the free exercise thereof," thus building a wall of separation between church and state."

President Jefferson considered our First Amendment to be an: "expression of the supreme will of the Nation in behalf of the rights of conscience."

We call upon Connecticut legislators to stand with Jefferson, and protect our Catholic Church and every Church in Connecticut!

The bill doesn't stand a chance against a court challenge of its constitutionality. But even introducing this Bill sends a dangerous message to all religious leaders that will chill freedom of religion and free speech as religious leaders are forced to consider whether what they say will subject them to government interference and intimidation.

How ironic that lawmakers from the "Constitution State," have proposed this archaic measure.

In closing, I would like to say something about all the talk about this bill having been made in response to the concerns of the laity. As the leader of the Knights of Columbus -- the largest organization of the laity in the U.S. and Connecticut, let me tell you what <u>we</u> are concerned about:

- We are concerned that our bishops and priests are treated with respect;
- We are concerned that this legislature have procedures that are fair and deliberate and not a rush to judgment;
- We are concerned that our First Amendment religious liberties be protected.
- And may the God who gave us liberty bless the State of Connecticut and the deliberations of this Legislature.

Thank you.