

COMMENTARY ON DECREES FROM THE CONGREGATION FOR CLERGY  
UPHOLDING PETITION FOR RECOURSE  
MADE BY THIRTEEN PARISHES OF THE CLEVELAND DIOCESE

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I have been asked to make some observations about the DECREES from the Congregation for Clergy for the benefit of the laity of the diocese affected by them. The following seeks to explain the possible emphases used by the Congregation for Clergy in coming to its decision to uphold the petitions for recourse against the suppression/merger of parishes and closure of churches made by the Bishop of Cleveland. Since the DECREE for St James Parish was made public on the internet by WOIO; it will be used as the primary source, along with other information found in other DECREES for other parishes.

The DECREE from the Congregation for Clergy is divided into five parts.

- 1) The FACTS of the case: Articles 1—13
- 2) The LAW used (or not used) for the case and the consequences: Articles 14—17
- 3) DECISION and DECREE
- 4) The directive to the Bishop of Cleveland to ENACT the implications of this DECREE
- 5) The option of RECOURSE against the DECREE for the Bishop of Cleveland to the Apostolic Signatura

The FACTS used in the DECREE offer insights that the Congregation for Clergy may have considered as important to the *process*. The LAW used in the DECREE provides further insight that the Congregation for Clergy may have considered as a necessity for an act to be considered both *valid* and *licit*.

The first DECISION and DECREE upheld the petition for recourse regarding the merger of St. James Parish both *de procedendo* and *de decernendo*. The second DECISION and DECREE upheld the petition for recourse regarding the closure of St. James Church both *de procedendo* and *de decernendo*.

The directive was made to the Bishop of Cleveland to ENACT the implications of the DECREE. Should the Bishop of Cleveland decide not to take recourse to the Apostolic Signatura, he is required by law, to implement the stated directives.

The Bishop of Cleveland was informed that RECOURSE may be taken against the DECREE issued by the Congregation for Clergy, to the Apostolic Signatura. As law allows, this must be submitted within 60 days from the day he received the official DECREE. Should the Bishop of Cleveland decide to take recourse to the Apostolic Signatura; the status quo remains in effect concerning the thirteen (13) parishes, and their churches, until a DECREE is issued by the Apostolic Signatura. This new decree may either deny or uphold the recourse presented by the Bishop of Cleveland.

# CONGREGATIO PRO CLERICIS

## DECREE

Prot. No. 20120293

1. Whereas the Bishop Emeritus of Cleveland, Ohio, United States of America, the Most Reverend Anthony Pilla, initiated a pastoral planning process entitled Vibrant Parish Life, to study the vibrancy of parish communities, and possible sharing of resources among those parishes;

**Canon 120 §1** A juridic person is perpetual by its nature; nevertheless, it is extinguished if it is legitimately suppressed by competent authority or has ceased to act for a hundred years.

A fundamental right of a parish is the right to come into existence, to have that existence acknowledged, and to continue in existence. Once a community has been formed and recognized, it should remain. It should be permitted to live, be active and grow. There is a strong presumption in favor of its endurance in being.

The Decree Concerning the Pastoral Office of Bishops in the Church proclaimed by His Holiness, Pope Paul VI on October 28, 1965 (CHRISTUS DOMINUS) succinctly stated, “The parish exists solely for the good of souls.”(#31) “The same concern for the salvation of souls is to be the motive for determining or reconsidering the erection, suppression, or other modifications of parishes, and any other changes of this kind, which the bishop is empowered to undertake on his own authority.”(#32)

The initial goal named in this DECREE “to study the vibrancy of parish communities” is important when assessing the Bishop of Cleveland’s radical restructuring of the diocese. The amalgamation consisted of suppressing and/or merging parishes, with the intent to close or sell church buildings. The DECREE seemed to indicate that the Bishop of Cleveland did not consider the right of the parish to exist perpetually, nor did he consider the “vibrancy” of existing parishes to remain open “for the salvation of souls”.

The second goal: “sharing resources among parishes” could be accomplished in various ways as the law provides. Models for “possible sharing of resources among parishes” include “clustering” of two or more parishes or “merging” two or more parishes. Clustering supports the goal to enhance vibrant parish life and protects the faith centers of the people. Clustering was not an option for any of the parishes in the restructuring implemented by the Bishop of Cleveland. The Bishop of Cleveland chose to merge parishes, and in some cases “close” parishes. These options do not automatically promote vibrancy. Parish suppressions and mergers, when not implemented appropriately, or without just cause, decimate parish communities, disenfranchise parishioners, and alienate their patrimony (property). A benefit of the restructuring made by the Bishop of Cleveland was the acquisition of money, from the sale of the subsequently closed churches, which was planned for every parish that was suppressed, and not merged.

2. Whereas the Most Reverend Richard Lennon, after his appointment as Bishop of Cleveland in 2006, continued this study, in conformity with Canon 50 of the Code of Canon Law; this same pastoral planning process had considered broad diocesan trends concerning the situation of the declining number of the clergy and the ratio of priests to Catholic faithful, the general location of parish communities and churches, weekly attendance at Sunday Mass, finances, with a special emphasis on the vibrancy of the parish communities, judged by the above and other predetermined factors;

**Canon 50** Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured.

Canon 50 appears obvious to be so obvious that one wonders why it would be included in the law at all. Yet despite its commonsense reasonableness, it makes an important statement about the use (and indirectly, the abuse) of authority. The exercise of authority should not be arbitrary. Acts of governance are not acts of whimsy or caprice but actions intended to realize the common good and the salvation of souls. Thus, the legitimate use of authority requires information and consultation. Most particularly, those who will be affected by the act are to be informed and consulted.

The suppression of a parish is a formal act that extinguishes the existence of the public juridic person, known as the parish. The act of suppression ends the strong presumption in favor of the parish's endurance in being. A just cause is needed for suppression and cannot be imposed through an administrative process without a prior gathering of evidence. Otherwise it would be an act of imprudence rather than of good governance. The gathering of information is prescribed as a fundamental requirement of administrative action, though not a requirement for the validity of the act.

In the Diocese of Cleveland the pastoral planning process had a special emphasis on the vibrancy of the parish communities. The vibrancy of the parish was judged by diocesan trends and "other predetermined factors". Those "other predetermined factors" are not specified in the DECREE.

Stating that the pastoral planning process considered broad diocesan trends the DECREE lists some particular trends:

- 1) the situation of the declining number of the clergy
- 2) the ratio of priests to Catholic faithful
- 3) the general location of parish communities and churches
- 4) weekly attendance at Sunday Mass
- 5) finances

What is problematic in the recent restructuring of the Diocese of Cleveland was the "closing" of certain parishes that were not part of a merger. The consequences of this type of suppression of a juridic person, and the subsequent closing and sale of the church, should be implemented only for grave reasons, and be an act of last resort, as indicated by canon law. In the past few years, some bishops of various dioceses in the United States began to suppress large

numbers of parishes for the sole purpose of accumulating assets by selling church buildings. Those bishops absorbed those assets (cash) directly into their diocesan accounts with sole control over the use of that money. The Archdiocese of Boston was one of the first dioceses to attempt this. Subsequently, the Vatican initiated a letter to disallow this practice. Consequentially, bishops can no longer suppress parishes outright and claim the assets.

In response, bishops then began to use the “merger model” of parishes as a roundabout means to accomplish the same result; namely to suppress parishes; close some churches; sell various buildings, and constitute a new parish, with the money following the parishioners to the newly formed parish. As a result of various investment and debt issues this cash usually ended up in the diocesan assets in the end. The Bishops used the system to get the same result; cash into diocesan assets from the sale of church buildings of suppressed and merged parishes.

When the merger model is implemented, the parishes affected are all suppressed and a newly formed “merged parish” is constituted as the new juridic person. Civil law requires a legal process for implementation and the signing of formal documents to assure that the newly formed parish is in compliance with civil law particularly related to new conforming use. Canon law also requires a similar legal process and the signing of formal documents in order to be licit and valid. If the canon law process is illicit and invalid, the legality of the civil law documents and their effect are also questionable.

In a merger of parishes, one parish site remains open and its physical address is identified as the “seat of the newly constituted parish”. Most of the time a new name is given this new parish to connote the new juridic person. In some cases the Church building of the suppressed parishes remains open and is used for worship. These are called worship sites or some other title. All resources (patrimony) and debts of the suppressed parishes follow the people to the new “seat of the parish”. In other cases the Church buildings of the suppressed parishes are “relegated to secular but not unbecoming use” and sold. The money from the sale also belongs to the new merged parish.

When finances are the motivating force; parishes with Churches that would bring in the greatest income could be more easily targeted for suppression to provide a saleable asset. Since the money from the sale of the church property of suppressed and merged parishes follow the parishioners to the “seat of the new parish,” should the new parish already possess significant debt to the diocese, the resources collected could easily find their way to diocesan savings accounts. While no firm data exists there seems to be a trend to assign parishes with debt as the “seat of the new parish”. Often dioceses require parishes to invest their assets at the diocesan level. This investment plan allows parishes to gain interest on their savings; to borrow at a lower interest rate when needed; and permits the diocese to invest the overall principle using interest income to benefit diocesan operations. In other cases parishes with large assets are chosen for suppression but are not merged. In this case, the patrimony does not follow the parishioners; rather, the money from the sale of the Church, as well as the assets of the suppressed parish, is held by the bishop of the diocese. In both cases, the money is managed by the bishop.

The Bishop also had the option to cluster the parishes, resulting in the consolidation of resources; appointment of pastoral teams, (led either by a priest or appointed lay man/woman to function as the parish administrator while a particular priest is appointed to serve as the canonical pastor. This option would have answered the issue of declining clergy personnel and the ratio of priests to the Catholic faithful. Most important, it would have promoted and protected existing vibrant parish communities. The clustering model also allows the laity to be more involved in the administration of parishes.

A number of questions should be asked. Did the process produce sufficient data to judge the vibrancy of parish communities? If sufficient data was collected was it used without bias by the Bishop of Cleveland? Did the Bishop of Cleveland consider alternative possibilities for restructuring parishes that would better support the right of the parish to perpetual existence and support the salvation of souls? Why did the Bishop of Cleveland choose the outright suppression for some parishes and merger for so many other parishes? Was the bishop motivated toward the suppression model to achieve saleable assets? Why was the clustering model of parishes not considered?

3. Whereas in many of the parish "closings" and mergers within the Diocese, the parish Church was also closed and it was declared that Holy Mass and devotional visits were never again to take place within those edifices, those edifices in all instances being locked and in some instances being fenced off;

The DECREE stated "it was declared" that Holy Mass and devotional visits were never again to take place within the Churches. Declaring or saying something is not the same as issuing a decree. The lack of a valid decree by the Bishop of Cleveland is addressed below.

The DECREE cites parish "closings" and mergers. It is important to understand that the two terms are not equal. The "closure" or "suppression" of a parish, without any further act by the bishop, is not the same as a "merger" of a parish, where the bishop directs where the people of the suppressed parishes (within the merger) are to form the newly constituted parish.

In some instances, the Bishop of Cleveland only suppressed the parish and dispersed the people. The question must be asked: Why was the fundamental right of the parish to perpetually exist abandoned by the Bishop of Cleveland? What grave reason was used to simply suppress a public juridic person (parish) and to disperse the people, with no regard for the salvation of souls? Where do the people of the suppressed parish worship? Was this "good shepherding" by the Bishop of Cleveland whose primary concern is the "salvation of souls"? Where did the assets and debts of the suppressed juridic person (parish) go? Is this a violation of the USCCB's Pastoral letter on Stewardship? Is there ever a time when the bishop's authority to suppress a juridic person (parish) is balanced by the right of the juridic person (parish) to perpetually exist?

The DECREE went on to state that "in many of the parish "closings" and mergers within the Diocese, the parish Church was also closed". In some DECREES for other parishes the Bishop of Cleveland quoted, "the Church would be fenced so as to prevent the faithful from approaching."

The question can be asked: Why was this considered necessary by the Bishop of Cleveland and what was his true motivation? This seems to be an extreme measure for a Shepherd of souls. Did the Bishop of Cleveland act in haste and contrary to the intent of the process of recourse when he systematically and without hesitation shut down church buildings while recourse was pending? Did this action exercise the virtue of prudence that is required when the Bishop makes a formal decision? It is the usual understanding that when administrative recourse is in process, acts that injure the petitioning party are to be avoided; in this case, dispersing the parish family and locking the church building.

4. Whereas the Bishop of Cleveland was advised on several occasions that procedures leading to the possible merger of a parish (c. 515 §2) would not *ipso iure* enable him perpetually to close a Church to divine worship and the devotion of the faithful, His Excellency being invited to revisit his procedure to remedy any possible invalidating defects, but declining to do so;

**Canon 515§2.** It is only for the diocesan bishop to erect, suppress, or alter parishes. He is neither to erect, suppress, nor notably alter parishes, unless he has heard the presbyteral council.

*Ipsa iure* means “by the operation of law; by the act of the law; by the law itself.” The phrase is used to describe legal consequences that occur by the act of the law itself. When a legally significant fact occurs, other relationships are automatically changed by the law. In other words, procedures leading to the suppression or merger of a parish would not automatically enable the Bishop to permanently close a church building; with the unfortunate consequence that prohibits divine worship for the faithful, and permitting the building to be sold and used for other purposes.

It is clear that the Congregation for Clergy informed the Bishop of Cleveland many times that procedure he used for restructuring parishes contained invalidating defects. It is also clear that the Bishop of Cleveland did not heed the advice of the Congregation for Clergy. One of the invaliding defects was the Bishop of Cleveland’s misunderstanding that suppression or merger of the parishes would not *ipso iure* (defined above) relegate the church buildings to secular use that would allow them to be sold.

One could ask the question: Did the Bishop of Cleveland think his personal decisions were final and no one had the right to contradict them, seemingly not even the Congregation for Clergy? Not only could this be seen as presumptuous of the integrity of the Congregation for Clergy, but also harbors disregard for the hierarchical recourse process provided in the law, and minimized the right of the laity to take recourse against the Bishop’s administrative acts.

The Roman Pontiff makes use of the departments of the Roman Curia which perform their duties in his name, and with his authority, for the good of the churches and in the service of the bishops. The Congregation for Clergy is the hierarchical court of the Bishop of Cleveland. It is surprising that the Bishop of Cleveland showed little regard for their correction of his faulty understanding and application of Canon Law.

5. Whereas the process included an examination of the possible "closing" of the Parish of St. James, Lakewood, Ohio, a financially stable territorial parish of some 1500 families;

While this DECREE does not address the content or the value of the recourse documents presented in the name of St. James parish to the Congregation for Clergy, it is intriguing that the parish was described in language that depicts an already established vibrant parish. The questions must be asked: What criteria did the Bishop of Cleveland use to suppress and merge parishes and subsequently close the doors of the churches? What was the motivation driving the decision? Further, what rationale did the Bishop of Cleveland provide to reject the appeals sent to him?

6. Whereas on 4 February, 2009, with a stated view of fulfilling the requirements of canon 515§2, the Diocesan Bishop heard the opinions of the members of the Presbyteral Council regarding possible "closure" of St. James Parish;

**Canon 515§2.** It is only for the diocesan bishop to erect, suppress, or alter parishes. He is neither to erect, suppress, nor alter notably parishes, unless he has heard the presbyteral council.

The study “*Vibrant Parish Life*” enacted by Bishop Emeritus, Anthony Pilla, was continued by the present Bishop of Cleveland, beginning in 2006. Approximately three (3) years later, on 4 February 2009, the Bishop of Cleveland heard the opinions of the Presbyteral Council. This clearly indicated the first time the Presbyteral Council was consulted for opinion concerning the possible “closure” that is the suppression of the public juridic person, St. James Parish. The question to be asked is how could the Bishop of Cleveland make a prudent decision, affecting the Salvation of Souls, without appropriate consultation and study?

7. Whereas on 12 March, 2009, by letter to the Pastor and subsequent announcement in the Church, the Diocesan Bishop communicated his decision to "close" and merge St. James Parish with the *de facto* closing of St James Church, clearly indicating that the Church would no longer be allowed to be used for any function of Worship, thereby executing the provisions of c. 1222 §2 without implementing its procedures; there being likewise no provision made to apportion the parish territories among other existing territorial parishes;

**Canon 1222§2.** Where other grave causes suggest that a church no longer be used for divine worship, the diocesan bishop, after having heard the presbyteral council, can relegate it to secular but not unbecoming use, with the consent of those who legitimately claim rights for themselves in the church and provided that the good of souls suffers no detriment thereby.

*De facto* designates action that happens without lawful authority.

The DECREE described that the Bishop of Cleveland communicated his decision to “close” and merge the parish with the *de facto* closing of the church. When discussing a legal situation *de facto* designates action that happens without lawful authority. The DECREE also stated that the Bishop of Cleveland executed the provisions of closure of the Church without implementing the necessary procedures. In addition there was no provision for the parish territory to be amalgamated with other existing territorial parishes.

8. Whereas on 17 March, 2009 Gina Gennaro and on 21 March 2009 Christine La Salvia et al, parishioners of St. James Parish, made a written request to the Diocesan Bishop to amend his decree;

Although the letter to the Bishop of Cleveland, to amend his decree was duly noted; there was no indication of the rationale for this request made to the bishop. One can properly conclude that this letter was cited to indicate that the parishioners met the appropriate procedural requirement of time, to present their recourse to the Bishop of Cleveland, as law allows. The substance of their case for recourse was not addressed in the DECREE. It would be of interest to know the case components that were presented, and if those concerns were brought to the Presbyteral Council for consideration.

9. Whereas on 16 April, 2009 the Diocesan Bishop rejected the request for amendment by means of a letter in response to the first recurrent, and on 21 April in response to the second.

The specific purpose for citing the letters of response written by the bishop (that rejected the request for amendment) indicated the procedure being used by the Bishop of Cleveland at the local level. The DECREE does not provide the reasons given by the Bishop of Cleveland for rejecting the request for amendment. Consequentially, they are not addressed in the DECREE. It would be of interest to know the reasons that were given, if any were provided at all.

10. Whereas on 4 May Christine LaSalvia et al., and on 21 April Gina Gennaro et al., within the prescribed canonical limit, made hierarchical recourse to the Congregation for the Clergy, canonical advocates Charles and Alessia Gullo later being chosen as Roman representatives for some of the recurrences;

Once again, the DECREE clearly indicated that the parishioners met the appropriate procedural requirement of time, to present their recourse to the Congregation for Clergy, as law allows. In addition, the appointment of canonical advocates indicates that the petition was accepted, opened, and following procedures according to canonical protocol.

11. Whereas the object of this recourse as indicated equally in the petitions of the recurrences is against the illicit merger of the parish and the closure of the Church building, as ordered by the Bishop; the Congregation, by reason of connection, responds with this sole decree to all petitions;

*Illicit* means not permitted, or not in accordance with law.

The DECREE cited the objective of the recourse; the *illicit* merger of the parish and the closure of the Church building, as ordered by the Bishop.

The Congregation for Clergy indicated that it would respond with one DECREE to all petitions because two separate groups filed recourse, at the same time, without seeming knowledge of the other party. Both groups followed the appropriate process for recourse, which is significantly important, as violations regarding process or proper time constraints, by



the petitioner, could render the petition invalid.

It is significant to note that a serious limitation of the present hierarchical recourse process was that the local parishioners, more often than not, did not know who was filing administrative recourse. As indicated above, it has happened that one person, or group, filed recourse incorrectly. Consequentially, the petition was denied. Meanwhile, other persons or groups followed the appropriate process correctly. At times, different objectives for recourse were made by two or more different groups, subsequently resulting in confusion, hard feelings and disappointment.

12. Whereas aside from the letter of 12 March 2009, this Dicastery finds no canonical decree, merging the parish of St. James, nor establishing a new territorial parish, which would clearly indicate the demarcation of the parish territory, the Congregation, then, takes as an indication of His Excellency's dispositions the 12 March, 2009 letter to the pastor of St. James, which was co-signed by Sister Therese Guerin Sullivan, S.P., Chancellor;

**Canon 51** A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision.

**Canon 474** For validity, acts of the curia which are to have juridic effect must be signed by the ordinary from whom they emanate; they must also be signed by the chancellor of the curia or a notary.

The Congregation for Clergy did not receive a formal canonical decree from the Bishop of Cleveland that suppressed the parish of St. James Parish, and established a new territorial parish and/or defined new parish boundaries. Instead, the Bishop of Cleveland sent a letter dated 12 March 2009 to the Pastor of St. James Parish, to show the intent of the bishop's decisions. Unbeknown to the Bishop of Cleveland, the Congregation for Clergy established a precedent in another case, where the "intent of the Bishop" was equated as an Administrative Act. It seemed that the Bishop of Cleveland intended this letter to be a form of a decree and intended that it would have juridic effect since the Chancellor was required to affix her signature to it.

13. An Hierarchical Recourse is by its nature a documentary process which proceeds on the basis of examination of authentic documents provided by interested parties at the request of the Dicastery: thus, having provided ample opportunity for all interested parties to respond, the Dicastery judges as complete the documentation in its possession and proceeds therefore to its decision *per cartas*;

This is the official "Conclusion of the Cause". The conclusion occurs when the parties declare that they have nothing else to add; the useful time prescribed to propose proofs has elapsed; or the case is considered instructed sufficiently. The Congregation for Clergy stated that it received all of the pertinent documents and would proceed to formulate its decision.

14. The law requires for validity that the Diocesan Bishop consult the Presbyteral Council in order to seek the advice of its members before coming to his decision regarding the suppression of a parish (canon 127 §2 and canon 515 §2). Finally, a legitimate decree should be issued, stating at least in a summary fashion the lawful motivations supporting the decision (canon 51), formalizing the Bishop's dispositions and making them manifest to those

who have interests in the matter.

**Canon 127§2 no.2** When it is established by law, that in order to place acts, a superior needs the consent or counsel of certain persons as individuals:

2/ if counsel is required, the act of a superior who does not hear those persons is invalid.

**Canon 515§2** It is only for the diocesan bishop to erect, suppress, or alter parishes. He is neither to erect, suppress, nor alter notably parishes, unless he has heard the presbyteral council.

**Canon 37** An administrative act which regards the external forum must be put in writing. Furthermore, if it is given in commissariat form, the act of its execution must be put in writing.

**Canon 51** A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision.

*Validity* means having legal force, due to having been executed, in compliance with the law.

The DECREE delineates what the law required for the valid suppression of a parish.

The Code of Canon Law clearly states that only the bishop is the competent authority in the diocese to erect, suppresses, or alter parishes. To erect a parish is to bring it into existence and to create a new (public) juridic person. To suppress a parish is to end its existence and to alienate the current (public) juridic person. To alter a parish admits a number of possibilities: e.g., to join two or more parishes; to divide a parish into more than one; to change a parish from territorial to personal, or vice versa; to modify parish boundaries, yet always altering the (public) juridic person. etc. The Bishop of Cleveland in some instances suppressed parishes and in other instances suppressed and merged parishes. The law requires the Bishop of Cleveland can erect, suppress, or alter parishes only after he has heard the Presbyteral Council. The Bishop of Cleveland was not obliged to follow the Presbyteral Council's recommendations. He was only required to hear or listen to their recommendations. If he did not hear or listen to the recommendations of the Presbyteral Council, his action to suppress or to suppress and merge parishes is invalid.

To fulfill the intent of the law the bishop must approach the presbyteral council before he has already made his decision. In order to make an informed recommendation, the presbyteral council must first have received detailed and necessary information regarding the parishes being considered for suppression or suppression and merger. This can only happen when the presbyteral council is involved throughout the whole process. The Presbyteral Council members cannot make well-formed conscience decisions without full and sufficient knowledge of all the facts. There exists no indication in the DECREE that the Bishop of Cleveland used the Presbyteral Council, and their required advice, in any meaningful way during the three year process (2006—2009) of study and planning for the radical restructuring of parishes. The DECREE revealed that the Bishop of Cleveland heard the Presbyteral Council one time, 4 February 2009. One month later, 12 March 2009, the parish of St. James was informed by letter of its suppression. The very close timing of these two acts

indicated that the Bishop of Cleveland brought finalized plans to the Presbyteral Council. It also indicates the probability that the Bishop of Cleveland made few if any adjustments to his plans to suppress and merge the parishes after consulting the Presbyteral Council. This is not what the law intends. It would be of interest to know the nature of the material that was presented to the Council members for consideration and action. Further, it would be of interest to know what the Bishop of Cleveland requested from the Council members, as an action item, during the sessions noted.

DECREES for other parishes indicated that the Bishop of Cleveland brought completed plans related to their restructuring to the Presbyteral Council at the same session in February 2009. These other parishes were also informed of their suppression by a letter dated 12 March 2009. It is a daunting task for any Presbyteral Council to objectively assess plans related to parish restructurings. There are numerous considerations that must be addressed always bearing in mind the salvation of souls. It would seem to be an impossible task to disagree with plans concerning one parish, let alone for so many other parishes presented at the same time. Further, when the plans are presented to the Presbyteral Council that is already finalized, one would question the force, fear, or pressure indirectly imposed upon the Council to endorse his intent or decree. It would be unreasonable to assume that the Presbyteral Council could fully understand the data gathered for so many parishes; evaluate the quality of the data gathered for so many parishes; and to come to an informed agreement for suppressing and/or merging the juridic person of so many parishes at a one or two day meeting. The question can be asked if this compressed process prevented or impeded the free and informed advice expected, as required in the law. If this were the case, then the validity of the suppressions and mergers must also be questioned on this fact.

The law understands that a wise bishop must listen to the appropriate persons or groups, in order to come to the most serious decision, to suppress a juridic person who has a fundamental right in the law to perpetual existence. A bishop always remains entirely free to listen to the advice and wisdom of other groups (e.g., diocesan and parish pastoral councils, religious institutes, episcopal council, etc.) and individuals (e.g., vicars general, episcopal vicars, vicars forane, pastors, parishioners, etc.) when making serious decisions that affect a juridic situation or rights. A bishop can only make a prudent last and best judgment when he authentically seeks the counsel of persons and groups, carefully deliberates upon that particular knowledge, while discerning the movement of the Spirit, in the decision-making process.

The law requires that a legitimate decree be issued by the bishop for his decision to have the force of law. A legitimate decree is to a) state the lawful reasons supporting the decision; b) clearly state the bishop's decision; and c) finally, makes public the decision to those who have interests in the matter.

The issuance of a decree of the bishop's decision is more strictly structured in the law because such decrees more frequently affect a person's juridic situation and rights. Administrative acts that decide such an issue are similar to judicial sentences. Like judicial sentences, they are subject to appeal to a higher authority. Although a person aggrieved by an administrative act can make recourse to the administrator's hierarchical superior for any just

reason, recourse to an administrative court can only be made if it is alleged that the act is illegitimate. That is, the act has violated the law in some way.

As a protection to all parties, the law requires that the logic for the decision be publicly made evident. The bishop must give the *reasons* that led to the conclusion, and the logic of the *evidence* that has led to his decision. The inclusion of the reasons for the decision provides a concrete foundation for determining the legitimacy or illegitimacy of his decision-making process. For this reason, it is not enough for the bishop to simply communicate his conclusion. The law gives no exceptions or qualifications to this requirement, as this offers a more concrete protection of rights.

15. In this matter, the Bishop of Cleveland was given sufficient time to present to this Dicastery information which would solidify the decisions he made, and to forward all of the acts pertinent in the matter to this Congregation. The absence of any decree indicating and formalizing the dispositions of the Bishop made in the letter of 12 March, 2009 is troubling. Even should this document be taken as a manifestation of the Bishop's dispositions in the matter, which is the essence of a decree, it can be clearly seen that it lacks the requisite elements indicated by the canons. Hence, the Bishop of Cleveland is held to have acted in violation of the law on procedural grounds with regard to canon 515 §2.

**Canon 515§2** It is only for the diocesan bishop to erect, suppress, or alter parishes. He is neither to erect, suppress, nor alter notably parishes, unless he has heard the presbyteral council.

The DECREE clearly stated that the Bishop of Cleveland is held to have acted in violation of the law on procedural grounds regarding canon 515§2. Earlier in Article#4 the DECREE reveals that the Bishop of Cleveland was invited to revisit his procedure to remedy any possible invalidating defects, but declined to do so. He was given sufficient time to provide information that would solidify the basis for his decisions. He was given sufficient time to forward all acts pertinent in the matter. The Bishop of Cleveland did not send a decree indicating and formalizing the dispositions he made in the 12 March 2009 letter. The 12 March 2009 letter lacked the requisite elements indicated in the law for it to be a decree and thus it did not carry the force of law.

16. Regarding relegation of St. James Church to secular but not unbecoming use, it is noted that the Bishop's letter of 12 March, 2009 omits any specific reference to the relegation of the church to secular but not unbecoming use, or to the canonical process required by canon 1222 §2. It is apparent from the acts, however, that the Diocesan Bishop did in fact arrive at a decision to implement the effects of the process envisioned by canon 1222§2 without fulfilling its procedures. The Bishop's letter to the parish administrator of 12 March, 2009 is quite specific, indicating that the Church would not be used after the "suppression" of the parish. In doing so, an essential element for the validity of the relegation of a church to secular but not unbecoming use was omitted, i.e., the required consultation of the Presbyteral Council regarding the matter (canon 127 §2 and canon 1222§2). The Bishop of Cleveland, even after being advised as to shortfalls by the Congregation's letter of 8 September, 2009 (Prot. N. 20092603) refused to clarify the matter either by allowing the Church to remain open or by following the procedure for relegation. By the law itself, such an omission renders invalid the Bishop's decision to implement the effects of canon 1222 §2, i.e., the permanent closure of St. James and its concomitant relegation to secular but not unbecoming use.

**Canon 127§2** When it is established by law that in order to place acts a superior needs the consent or counsel of certain persons as individuals:

1/ if consent is required, the act of a superior who does not seek the consent of those persons is invalid.

2/ if counsel is required, the act of a superior who does not hear those persons is invalid.

**Canon 1222§2.** Where other grave causes suggest that a church no longer be used for divine worship, the diocesan bishop, after having heard the presbyteral council, can relegate it to secular but not unbecoming use, with the consent of those who legitimately claim rights for themselves in the church and provided that the good of souls suffers no detriment thereby.

The DECREE again points out the limitations of the letter 12 March 2009 that the Bishop of Cleveland intended to be a form of decree and have juridic effect since the Chancellor was required to affix her signature to it. While this letter is not available here, the DECREE stated that if it was intended to be used to “close” the Church of St. James it omitted any specific reference to the relegation of the church to secular but not unbecoming use, or to the canonical process required by canon 1222§2. This canon covers situations of grave need when the church still is able to be used for divine worship or when it is possible to restore it to such use.

While the acts are not available here, the DECREE stated that it is apparent (from these acts) that the Bishop of Cleveland did in fact arrive at a decision to implement the effects of the process envisioned by canon 1222§2 without fulfilling its procedures. The letter from the Bishop of Cleveland was quite specific, indicating that the Church would not be used after the “suppression” of the parish. In doing so, an essential element for the validity of the relegation of a church to secular but not unbecoming use was omitted. Specifically, the Bishop of Cleveland did not engage the required consultation of the Presbyteral Council regarding the matter as required for the act to be valid.

The DECREE emphasized one particular element of the process required to relegate a church to secular but not unbecoming use, namely, the consultation of the Presbyteral Council. However, the diocesan Bishop must observe all the requirements of the law. He must:

- 1.) Determine if there is a grave reason to close a church.
- 2.) Consult the Presbyteral Council for his act to be valid,
- 3.) Have the consent of those who legitimately claim rights for themselves in the church for his act to be valid.
- 4.) Determine that the good of souls would not be harmed.
- 5.) Determine that the proposed use of the place will not be unbecoming, which judgment should be made in keeping with cultural variables and local circumstances.

Those who could lawfully claim rights for themselves in the church would in every case be the juridic person or persons who own the church property. For example, when a parish owns the church building and the land on which it was built, the Bishop would have to obtain the consent of the Pastor (canons 515, §3; 532) to implement canon 1222§2. A physical person might also be able

to claim rights, e.g., a major donor to the church whose donation was accepted on the condition that the church would continue in use as a sacred place for a certain period (canon 1284, §1, 3°).

The DECREE references a letter dated 8 September 2009 (Prot. N. 20092603) sent to the Bishop of Cleveland advising him of shortfalls in his process and documents. The Bishop of Cleveland refused to clarify the matter either by allowing the Church to remain open or by following the procedure for relegation. By the law itself, such an omission renders invalid the decision by the Bishop of Cleveland to permanently close St. James Church and its simultaneous relegation to secular but not unbecoming use.

The DECREES of the other parishes who took recourse cited the same letter with the same directive. Thirteen (13) Church closings were illicit and invalid per the DECREES from the Congregation for Clergy. The Bishop of Cleveland ignored this correction and closed forty-three (43) Churches after the date of this letter. Did the Bishop of Cleveland actually follow all of the procedures required in the law for alienation of church property for those other parishes?

For the thirteen (13) parishes who took recourse to the Congregation for Clergy the status of those parishes and the Churches were to be placed on hold until their recourse was upheld or denied. Recourse alleged that the Bishop acted illicitly when making his decisions in this matter and therefore the juridic person was still in existence. As decided in this DECREE the Bishop of Cleveland did develop illicit and invalid decrees. The Bishop acted in error: without seeking canonical advice; or ignoring canonical advice; and/or received poor canonical counsel.

This has been extremely troubling for the more than fifty (50) additional parishes that were restructured and for so many of the faithful who lost their long held centers of worship. Why did the Bishop of Cleveland proceed with the closure of all of the Churches of suppressed parishes after he had been warned by the Congregation for Clergy? How could the Bishop of Cleveland not know that he should not have changed anything in the parishes: personnel, ministry, finances, memberships, etc., until after the Congregation for the Clergy issued its DECREES to the recourses presented by the people? Did the Bishop of Cleveland know that he could not sell any of the church buildings during the recourse? Did the Bishop of Cleveland find out that he could not sell the Churches only after he locked the Church doors? Even civil law prevents the sale of property that is still in litigation.

What is most troubling about the Bishop's closure of the church buildings and abandoning the parish resources; both personnel and material, is the violation to the principle of Stewardship. This unfortunate side-effect will now require a lot more money and additional resources to reopen the closed buildings, hire professional help, and jump-start a complex parish organization. Hopefully the Bishop will not use this to attempt to "prove" that the parishes were not "vibrant" in the first place and therefore his decision to suppress them should stand. What is truer is that the Bishop did not function as the "good steward" of the goods of the parish. The Bishop's decisions appear to have brought distress to the faith life of the people; the disposal of temporal goods, and disorder to the financial resources of the parish by his own imprudent and hasty acts. Since the suppression of parishes was invalid and the closing of the Churches was illicit and invalid, any attempted legal and financial changes would also be invalid.

The abandonment of the church buildings of the “closed” and “merged” parishes should not have happened while the recourse was in process. The recourse proceeded for a number of years. The actions of the Bishop of Cleveland, both during the restructuring process, and the time of appeal, has caused chaos for communities of the people who were directed to go to other parish sites or were simply dispersed; hurt feelings between individuals and between groups; and most important, distress to the faith life of the people. It would be very informative to investigate how many people of the newly merged parishes physically registered at a new parish and/or attend weekly liturgy. It would also be very informative to investigate if the weekly collection of the newly merged parishes has increased over the combined ordinary offerings of the parishes prior to the suppression and mergers. It would also be very informative to investigate if the Bishop’s Annual Appeal dropped in its redemption rate, thus causing a serious detriment to the social services that may have received operational support accordingly. The Apostolic Signatura has ordered such data to be collect by at least one other diocese where a large number of parishes have been suppressed and merged and Churches have been closed. Buildings that are closed and unused develop structural issues, environmental issues and become less inhabitable. While the recourse is in process the Bishop of Cleveland cannot sell those buildings and closed buildings lose their saleable value, particularly during a time when Real Estate has experienced its worst volatility in years, with no anticipated change over the next five years.

All of the above indicates clearly that the Bishop of Cleveland created discord among the people he is to shepherd in love. The premature closing of these buildings points to poor stewardship on the part of the Bishop of Cleveland. Resources needed for parish life have been lost or damaged during the time the buildings were closed and the business of the parish has been abandoned. For most parishes, should they be reopened, much more will be required than simply dusting the kneelers, to get the life of the parish up and running.

17. It is evident from the acts that the grave cause required by canon 1222 §2 for the relegation of a church to secular but not unbecoming use has not been demonstrated. Jurisprudence does not recognize such relegation to be implicit in the decree suppressing or amalgamating a parish (cf. Decree of the Supreme Tribunal of the Apostolic Signatura of 1 July 2010, par. 7: *"Iurisprudencia Signaturae Apostolicae negat reductionem ecclesiae implicite statui posse in decreto suppressionis paroeciae."* Prot. no. 38691/06 CA). It is evident, therefore, that the requirements of law for the licit and valid relegation of a church to secular but not unbecoming use have not been met, and that St. James Church has not been lawfully and validly relegated to secular but not unbecoming use.

It is particularly noteworthy that, in the final article of the DECREE, the Congregation for Clergy states that it was evident from the acts that the grave cause required by canon 1222.2 for the relegation of a church to secular but not unbecoming use was not demonstrated. Jurisprudence does not recognize such relegation to be implicit in the decree suppressing or merging a parish. Since the requirements of the law for the licit and valid relegation were not met, St. James Church was not lawfully and validly relegated to secular but not unbecoming use.

Addressing the above facts in the last article of the DECREE greater importance was placed upon them by the Congregation for Clergy. If the Bishop of Cleveland could not formulate grave reasons for closing Churches, and neglected to issue a decree; then what was he true intent? The motivation of the Bishop of Cleveland for the restructuring of more than fifty (50) parishes and closing their churches should also seriously be investigated.

Therefore:

The Congregation hereby decrees that this petition for recourse as presented, with regard to the merger of St. James Parish (canon 515, §2) does have canonical basis in law and in fact, so is upheld both *de procedendo* and *de decernendo*.

The Congregation further decrees that this petition for recourse as presented, with regard to the closure of St. James Church (canon 1222 §2) does have canonical basis in law and in fact and so is upheld both *de procedendo* and *de decernendo*.

*De procedendo* means to use the procedure. *De decernendo* means to discern.

The first decision of the DECREE upholds the petition for recourse regarding the suppression of St. James Parish both *de procedendo* and *de decernendo*. Not only did the Bishop of Cleveland not follow the correct procedure, but he also failed in his discernment when he suppressed St. James Parish.

It is unusual for the Congregation for Clergy to uphold a petition for recourse regarding suppression of a parish based on *de decernendo* (*discernment*). The recourse is upheld here because the Bishop of Cleveland did not discern properly since he did not give the logic, or the reasons that led to his decision to suppress the parish. His discernment was thus faulty. The petition for recourse was also upheld *de procedendo* (*procedure or process*) because the Bishop of Cleveland did not issue a legitimate decree. The petition for recourse was upheld *de decernendo* as a result of the errors and omissions *de procedendo*.

The DECREE made it clear that ultimately the decision to suppress the parish still belongs to the bishop. But the bishop's decision had to be grounded in logic and reasoning. In this particular case the Congregation for Clergy did not find the logic, or reasoning, in the Bishop's actions. If they had, such evidence would have been formulated in the decree. The Congregation for Clergy does not seem to be questioning the bishop's judgment on the need to close/merge parishes. Rather, they have questioned the way he implemented the restructuring, and the fact that he did not give reasons for supporting his actions.

Second, the DECREE upheld the petition for recourse regarding the closure of St. James Church both *de procedendo* and *de decernendo*. The Congregation for Clergy has indicated that the Bishop of Cleveland not only failed in using the appropriate procedure to close St. James Church, but he also failed in his discernment in the decision-making process.

Summarily, the Bishop of Cleveland omitted any specific reference to relegation in documentation he presented to the Congregation for Clergy. The recourse is upheld *de decernendo* because the Bishop of Cleveland did not discern properly. He did not first hear the Presbyteral Council and did not give a grave cause why the church could no longer be used for divine worship. His discernment was thus faulty. The petition for recourse was also upheld *de procedendo* because the Bishop of Cleveland did not use the procedure required in the law and did not issue a decree of any kind. The petition for recourse was upheld *de decernendo* as a result of the errors and omissions *de procedendo*.



Recently, similar decisions have been issued for other dioceses that have prevented bishops from closing Churches. Other bishops followed the procedural norms. But it has become extremely rare for bishops to be able to cite grave reasons why a church building considered for closing cannot be used in any way for divine worship.

In general, the hierarchical courts have indicated that a Bishop cannot suppress Churches unless the reasons given in the canons are present. The Bishop may have the option to merge parishes. However, once merged, the Bishop cannot simply close a church and disallow its use for worship, because it is no longer a parish church. Canon law provides for a variety of models for parish administration and worship. The hierarchical courts seem to indicate that a bishop needs to think more creatively when restructuring parishes within the diocese. In Rome's eyes, it is not correct for a bishop to suppress or merge a parish and then merely indicate the church building is no longer suitable for public worship as a result of the suppression/merger. One only needs to look at all the churches in Rome that no longer belong to a parish but retain the status of a Church to see that this is so. In addition, there is the concept of "titular sees". This is an episcopal see of a former diocese that no longer functions, sometimes called a "dead diocese." The church is kept alive in a place where it once existed, even if it no longer exists there.

The Bishop of Cleveland is instructed to enact the implications of this Decree.

The objective of this recourse is against the illicit act by the Bishop of Cleveland. After careful reading of the decision in the DECREE one finds that it upheld the objective of the recourse: namely, the Bishop of Cleveland did not act in accordance with the law.

The DECREE recorded the multiple directives from the Congregation for Clergy to the Bishop of Cleveland to correct his errors and to resolve discovered omissions so that he could be in accordance with the law. He did not do so. Therefore, the implications of the DECREE directed the Bishop of Cleveland to use the procedures required by law, receive counsel from the Presbyteral Council, and write a legitimate decree to resolve this.

Nowhere in the DECREE did the Congregation for Clergy relate cause and effect between the recorded errors and omissions found in the documents and the status of the suppressed and merged parishes, or to the closed churches. Because the DECREE is silent about this, the implications of this Decree did not direct the Bishop of Cleveland to change the status of parishes and churches.

Out of pastoral solicitude toward the people that he has been sent to shepherd, the Bishop of Cleveland can return the parishes and the Churches to their original status, as his own authority provides. The resistance and hurt caused by the Bishop of Cleveland's illicit decisions could very well be a sign of an imprudent and poorly conceived plan and that plan would better be abandoned. If the Bishop chose to return the status to the parishes and reopen the churches, he could do so immediately, in order to avoid more damage to the people, their parishes, and the thirteen (13) church buildings. If the Bishop of Cleveland chooses this action, everything is to be reinstated to the condition before the publication of the letter dated 12 March 2009. All patrimony of the parishes is to be returned to the proper parishioners. This patrimony would

include, but not be limited to: financial assets, art objects, and other movable goods. It would seem reasonable for the diocese to provide assistance; personnel, financial, legal and anything else to reinstate the public juridic person to its original status. While the parishioners of the thirteen (13) parishes may desire the Bishop of Cleveland to do this, there is nothing in the Decree that mandates the Bishop to do so, or to do so immediately.

In the Archdiocese of Miami, approximately two (2) years after the previous Archbishop suppressed various ethnic parishes (African American and Haitian) the new Archbishop surprised the people by reinstating some parishes, and reopened the Churches for regular worship, by his own authority.

In the Archdiocese of New Orleans, the newly appointed Archbishop, who was not responsible for the suppression of parishes or closing of churches; had, after many months of dialogue with the parishioners of a suppressed ethnic (African American) parish, brought healing with the people, and made arrangements for those parishioners to use the Church for weekly devotional services. The Church has remained open, but is now owned and managed by a local Catholic group.

Should the Bishop of Cleveland decide instead to enact the implications of the DECREE he should begin to do so once his decision is made. He should at that time inform the thirteen (13) parishes of his decision. This will allow them to properly inform him of any further information they consider pertinent. To implement the implications of the DECREE, the Bishop of Cleveland is to return to the beginning of the process and start anew to assure that the procedures followed conform to the directives in the DECREE. The Congregation for Clergy has clearly delineated in the DECREEE what the Bishop of Cleveland should have done and how he should have done it.

The intent of the DECREE cannot be met by the Bishop of Cleveland by merely editing the documents he originally submitted in the acts for the purpose of the recourse. The Bishop must follow, to the letter, the procedures found in the law. Two separate procedures must be accomplished to enact the implications of the DECREE: first, the possible suppression of the parish and second the possible relegation of the church to secular but not unbecoming use. The Presbyteral Council must be involved from the beginning, in an ongoing way, in any corrective process initiated by the Bishop, as the law intends. The future of each parish is to be addressed separately. Ample time should be extended for serious discussion that involves the rights that a public juridic person holds for perpetual existence.

Parish data collected years ago should be revisited by both the Bishop of Cleveland and the Presbyteral Council. Should any data need correction or further clarification; this should be done and the new data be used in the deliberation. Should any further data be offered by the parishioners or anyone else; it should be welcomed and used in the deliberation.

Canon law provides for various options for Parish Administration. As such, keeping the parish open, as well as the consideration of different types of reconfiguration; should be honestly deliberated in order to come to a reasoned decision about what is in the best interest for each parish and would support the fundamental purpose of a parish: namely, the salvation of souls.

Special care should be used in all discussions about the possible suppression of a parish without its being part of a merger, and/or any decision made be based on reasons given in the law. Reasons for any final decision must be based on clear application of truthful facts. The obligation of the Presbyteral Council to give free and informed counsel is required in the law. They should be allowed to speak freely, question appropriately, and clarify frequently without force, fear, or pressure of any kind. If this is absent, the validity of the decision and subsequent decree can be questioned. Following deliberation where the Bishop of Cleveland truly listens to the counsel of the Presbyteral Council required in law; he is free to make his own decision and to issue a decree that delineates his reasons for his decision. The writing of a legitimate decree as described in the law is essential.

Once the decree is published, recourse can be taken to the Congregation for Clergy against this new decree as was done before by the thirteen (13) parishes. Each parish would make its own petition for recourse. The process would need to be followed by both the Bishop and the parish. The objective of this recourse would again be against the illicit act of the Bishop of Cleveland regarding procedure and/or the content in the decree regarding the suppression of the parish and the relegation of the Church to secular but not unbecoming use.

Should the recourse be denied by the Congregation for Clergy; the people can then appeal the decision of the Decree to the Apostolic Signatura. The usual procedures for the Apostolic Signatura apply. Here the recourse would be against the illicit act of the Congregation for Clergy regarding procedure and/or the content in the Decree denying the recourse. Should the Apostolic Signatura give a full hearing to this petition; a formal letter of such indication will be sent to the appealing party. This letter would include, but not be limited to, a list of approved advocates appointed to the Apostolic Signatura to be chosen by those appealing; and the necessary administrative fee to be sent directly to the Apostolic Signatura. The process begins once a person on the list agrees to be the advocate and the agreed fee for the service of the advocate is confirmed and sent directly to the advocate. This formal hearing has in the past taken at least two years.

The Apostolic Signatura recently publicized its preference for keeping churches open. Usually permission for such closure is now being denied. The hierarchical court typically informs the bishop of this fact rather quickly which precludes a formal hearing. This happened in the Diocese of Allentown. The authority of the Bishop to suppress and merge parishes continues to be upheld. The permission to relegate the churches to secular but not unbecoming use has generally been denied. As a result, the Churches remain open for worship and devotional services; now called worship sites or some other name. The Apostolic Signatura intends that regular worship take place in the Church and the people be afforded access for devotional services. The Church retains its original name. The plan by the Bishop to sell the churches was now impossible. The plan to make money from the sale of these buildings became instead a responsibility to spend money to maintain them into perpetuity.

**Canon 1222 §1** If a church cannot be used in any way for divine worship and there is no possibility of repairing it, the diocesan bishop can relegate it to secular but not unbecoming use.

**Canon 1222§2** Where other grave causes suggest that a church no longer be used for divine worship, the diocesan bishop, after having heard the presbyteral council, can relegate it to secular but not unbecoming use, with the consent of those who legitimately claim rights for themselves in the church and provided that the good of souls suffers no detriment thereby.

The two paragraphs for canon 1222 require grave cause for relegating a church to secular but not unbecoming use. The possibility envisioned in canon 1222§2 must rise at least to the level of the causes in canon 1222§1. The sacred character of a place for Divine worship requires that it remain a holy place, and not sold to the highest bidder.

Jurisprudence on the question of church closings is developing rapidly. This year the topic is receiving considerable attention during the US bishops' *ad limina* visits to the Holy See. Both the Congregation for Clergy and the Apostolic Signatura now make a clear distinction between the legitimate reasons to merge parishes and legitimate reasons to close a church. No longer considered legitimate reasons for closing a church are:

1. The shortage of priests
2. The church is in close proximity to another church.
3. The church is no longer considered necessary for worship when a parish is suppressed or merged.
4. The maintenance for a building no longer needed as a church for Divine worship is a financial burden to the parish.

The Holy See recognizes the possibility for a parish to have more than one church, and in certain instances for a church to exist apart from a parish. And finally, while worship may not be celebrated on a weekly basis within a church, the edifice is to be maintained for the good of the faithful.

Recognition of the permanence conferred by dedication of a space to sacred use, once called "consecration" and now called "dedication" trumps the merely utilitarian values of cost-savings and need. The Holy See now requires a bishop demonstrate substantially grave reasons to overturn the act which permanently handed that space over to Divine worship.

The above facts have serious implications for the Bishop of Cleveland should he decide to enact the implications of the DECREE. The Presbyteral Council would be wise to pay attention to these implications when they give their counsel to the Bishop of Cleveland. It would be prudent for all to take into consideration the preference of the hierarchical courts and the consequences of their directives concerning closing churches. More than likely these courts will be consistent in their directives should they be asked to evaluate decisions made by the Bishop of Cleveland concerning the churches of the thirteen (13) parishes.

When seeking advice from the Presbyteral Council, the Bishop of Cleveland might suggest clustering as a better option for reconfiguration of the thirteen (13) parishes. The study "*Vibrant Parish Life*" initiated years ago was intended to study the vibrancy of parish communities and to promote the vibrancy through consolidating resources.

Clustering is the most common structure to “share resources among parishes”. The parishes that are clustered all remain in existence: they remain independent juridic persons according to the law. As a cluster they share resources. These could include, but are not limited to, the sharing of human resources, such as one priest, one principal, one Parish Administrator, one DRE, one secretary, etc for overall parish governance. Sometimes, especially in rural areas, there is a lay administrator (religious sister, lay woman, lay man) appointed by the bishop, as the Director for Parish Life, to manage the day to day operations and ministries; with one or more priests assigned to supply the sacramental needs for all of the parishes that form the cluster.

In addition, various leadership models should be considered, as canon law allows, considering the appointment of pastoral teams led by one priest, and/or the appointment of Parish Life Coordinators to administrate local parish communities under the appointment of one canonical pastor. Such options, including clustering, provide viable options to the problem of declining numbers of the clergy and the ratio of priests to the Catholic faithful. Most important, considering all options, as law allows, promotes and protects existing vibrant parish communities. The Cluster model for parishes engages the laity to be more involved in the administration of their parishes. Parishes that are clustered all remain in existence: they remain independent juridic persons in the law. In clustered parishes the Churches remain open and are used for regular worship and devotional services. The clustering model does not provide a provision for church buildings to be abandoned and sold.

Since the hierarchical superiors and hierarchical courts for the most part do not support relegating churches to secular but not unbecoming use, it would seem imprudent for the Bishop of Cleveland to use his authority to suppress parishes with the unfortunate side-effect of opened church buildings that are no longer supported by former parishioners; that would require ongoing preventive maintenance, absorb assets, and not be used to their full capacity. If these buildings are not used for religious purposes, they become a taxable liability, and owners would be required to pay property tax to the civil authorities. Utilizing these buildings for other purposes to generate income could result in fines associated with Pastors or Administrators that are not familiar with current tax code attached to unrelated business income. This would only add to additional financial stress.

Recourse against this Decree may be made before the Supreme Tribunal of the Apostolic Signatura within the peremptory time limits established in the Apostolic Letter *motu proprio Antiqua Ordinatione*, Art. 34 §1.

The Bishop of Cleveland is informed that he can take recourse against the DECREE to the Apostolic Signatura. The Bishop is to use the process described in *Antiqua ordinatione* and follow it exactly. He has 60 days from the date he received the formal DECREE, 14 March, 2012, to begin the appeal. The days are counted as consecutive days including weekends. It is understood that the Bishop would inform the parishes of his intention to appeal to the Apostolic Signatura.

The recourse is between the Bishop of Cleveland and the Congregation for the Clergy. The parishioners are not part of the recourse. There is nothing for them to do. The Bishop can appeal one, or some, or all of the thirteen (13) Decrees. He is to appeal each DECREE individually.

The norms for the Second Section of the Apostolic Signatura, the administrative court of the Apostolic See, state that the appeal to the Apostolic Signatura require that the Bishop of Cleveland demonstrate that the Congregation for Clergy violated some law either in the decision-making process or in the procedure used in coming to their decision in the DECREE. The Bishop's argument would use the articles in the DECREE to show the violation of the law or the procedure made by the Congregation for Clergy.

This is significantly problematic for the Bishop of Cleveland because there is really nothing he can take recourse against. The Congregation for Clergy stated that the Bishop of Cleveland did not provide them with the documents they requested; the Congregation stated that the Bishop did not give his reasons for the suppression or merging of the parishes; and the Congregation indicated that the Bishop did not issue a separate decree relegating the parish churches to secular but not unbecoming use. If in fact the Bishop of Cleveland did not do those things, there is not much chance of appeal.

	Seal	
Mauro Cardinal Piacenza <i>Prefect</i>		Celso Morgia Iruzubieta <i>Secretary</i>

Given at the Seat of the Congregation for the Clergy  
1 March 2012

## FINAL THOUGHTS

First of all, by law the Bishop is the competent authority in the diocese to modify any parish and he needs no Holy See involvement to do so. In addition, the Holy See has never in the past substituted its own judgment on the substantive issue of suppression of any parish since that decision rests with the diocesan bishop alone.

While the Bishop has the competent authority to suppress a parish one can question how this is to be balanced with the fundamental right of the parish to continue in existence. The law seems to place more restrictions on closing the church and on the consultation required to allow it to be sold; and less restrictions on suppressing a parish that has the fundamental right to exist perpetually.

The law assumes that the fundamental right to perpetual existence of the parish would be valued and protected by the Bishop, the shepherd of the Diocese because the parish exists primarily for the salvation of souls. The same concern for the salvation of souls is to be the motive for determining or reconsidering the erection, suppression, or altering of parishes. How does the suppression of a parish protect the salvation of souls? The law does not envision a need to protect the parish because it holds the presumption that the parish has the right to perpetual existence.

The authority of the Bishop to suppress a parish is upheld without exception because the law understands that the Bishop would use his authority in service: with solicitude towards the people he shepherds, and to protect the patrimony and temporal goods of the parish. The law never envisioned a Bishop to suppress a parish with the intent or motivation to close and sell its church. In addition, the law did not anticipate that a Bishop would implement whole sale suppression of parishes as has occurred in the United States for several years; initially occurring in the Archdiocese of Boston and more recently in the Diocese of Cleveland, with numerous dioceses in between.

Finally, some attention should be reviewed to the more than fifty (50) parishes that were affected by *Vibrant Parish Life—Phase II*. Twenty-nine (29) parishes were “closed” and the churches were also “closed”. Thirty-nine (39) parishes were merged in some way into seventeen (17) “new parish seats”. The other churches left over from the mergers were “closed”. Thirteen (13) parishes took recourse to the Congregation for Clergy. Thirty-seven (37) parishes did not take recourse and they will not benefit from the decisions from the Congregation for Clergy upholding the recourses. Most probably the “closing” or merging of those thirty-seven (37) parishes, and the closing of those many other churches, was also illicit and invalid. Since those decrees, and those procedures, were not challenged, nor could ever be challenged, we will never know.

The pain caused by this restructuring, and subsequently imposed upon the parishioners of the Diocese of Cleveland is something that needs to be seriously addressed. The tragedy of this matter exists in how many souls have already been affected. The Congregation for Clergy identified the grave cause in the Bishop’s error, but what is of extreme gravity is the woundedness of the people of the Diocese of Cleveland. Such imprudent decision-making scarred the parishioners deeply and violated the sacred trust relationship that people desire in Episcopal leadership and his trusted advisors. It is not surprising that the parishioners of the Diocese of Cleveland have lost their confidence in the Bishop of Cleveland. The decisions to be made now will either open the door for healing to begin, or drive the parishioners into further isolation for generations to come. Will it be a time for healing? Will it be a time of greater destruction? The answer lies in the authentic recommendations that the Presbyteral Council will provide to the Bishop; and his ability to not just hear, but to truly listen, in order to make a prudent, last and best judgment, in what is the right thing to do for the Salvation of the Souls, and the overall good of the Church of Cleveland.

*This canonical commentary was prepared by a canon lawyer, Sr. Kate Kuentler to respond to requests for clarification from appealing parishioners from several Cleveland parishes and at the request of FutureChurch. Sister Kate has given permission to provide her cell phone number: 618-578-9995 for those who may have questions about this document. And here is a bit of background information about her:*

*Sister Kate Kuentler PHJC, JCD received her doctorate in Canon Law from the Pontifical University of St. Thomas Aquinas in Rome, Italy. She also has a BA in education, and an MA in theology. Sister Kate comes with a background as a former diocesan tribunal lawyer, teacher, parish catechetical director, and diocesan director of religious education. She is a writer for the catechetical program, “Seasons of Faith” and is published in Italy, England, Germany, and the United States. Sr. Kate recently moved to Rhode Island where she has opened a private practice. Her focus is working for the rights of laity and their role in the Catholic Church.*

*Sr. Kate assisted several parishes in Cleveland whose appeals were upheld by the Congregation for the Clergy effective 3/1/2012. She has also successfully assisted other parishes around the US with their appeals to the Vatican.*

*Sr. Kate is the author of the canonical information FutureChurch sent to all appealing Cleveland parishioners when they first learned of the closings and mergers on March 12, 2009. For the next several months FutureChurch distributed a steady stream of canonical information from Sr. Kate to parishioners trying to determine whether or not to appeal their parish's closing/merger or not.*

*Thanks for your interest in this important watershed moment for the rights of Catholics in the Church*

*Sr. Chris Schenk CSJ*

***About FutureChurch*** *Headquartered in Cleveland, Ohio, FutureChurch is a national coalition of 3,500 parish centered Catholics striving to educate fellow Catholics about the seriousness of the priest shortage, the centrality of the Eucharist (the Mass), and the systemic inequality of women in the Catholic Church. FutureChurch makes presentations throughout the country, distributes education, advocacy and prayer resources and recruits activists who work for changes that will provide all Roman Catholics the opportunity to participate fully in Church life and leadership.*

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## CONGREGATIO PRO CLERICIS

### DECREE

Prot. No. 20120293

1. Whereas the Bishop Emeritus of Cleveland, Ohio, United States of America, the Most Reverend Anthony Pilla, initiated a pastoral planning process entitled *Vibrant Parish Life*, to study the vibrancy of parish communities, and possible sharing of resources among those parishes;
2. Whereas the Most Reverend Richard Lennon, after his appointment as Bishop of Cleveland in 2006, continued this study, in conformity with Canon 50 of the Code of Canon Law; this same pastoral planning process had considered broad diocesan trends concerning the situation of the declining number of the clergy and the ratio of priests to Catholic faithful, the general location of parish communities and churches, weekly attendance at Sunday Mass, finances, with a special emphasis on the vibrancy of the parish communities, judged by the above and other predetermined factors;
3. Whereas in many of the parish "closings" and mergers within the Diocese, the parish Church was also closed and it was declared that Holy Mass and devotional visits were never again to take place within those edifices, those edifices in all instances being locked and in some instances being fenced off;
4. Whereas the Bishop of Cleveland was advised on several occasions that procedures leading to the possible merger of a parish (c. 515 §2) would not *ipso iure* enable him perpetually to close a Church to divine worship and the devotion of the faithful, His Excellency being invited to revisit his procedure to remedy any possible invalidating defects, but declining to do so;
5. Whereas the process included an examination of the possible "closing" of the Parish of St. James, Lakewood, Ohio, a financially stable territorial parish of some 1500 families;
6. Whereas on 4 February, 2009, with a stated view of fulfilling the requirements of c. 515 §2, the Diocesan Bishop heard the opinions of the members of the Presbyteral Council regarding possible "closure" of St. James Parish;
7. Whereas on 12 March, 2009, by letter to the pastor and subsequent announcement in the Church, the Diocesan Bishop communicated his decision to "close" and merge St. James Parish with the *de facto* closing of St. James Church, clearly indicating that the Church would no longer be allowed to be used for any function of Worship, thereby executing the provisions of c. 1222 §2 without implementing its procedures; there being likewise no provision made to apportion the parish territories among other existing territorial parishes;
8. Whereas on 17 March, 2009 Gina Gennaro and on 21 March Christine La Salvia *et al.*, parishioners of St. James Parish, made a written request to the Diocesan Bishop to amend his decree;
9. Whereas on 16 April, 2009 the Diocesan Bishop rejected the request for amendment by means of a letter in response to the first recurrent, and on 21 April in response to the second;

10. Whereas on 4 May Christine LaSalvia *et al.*, and on 21 April Gina Gennaro *et al.*, within the prescribed canonical limit, made hierarchical recourse to the Congregation for the Clergy, canonical advocates Charles and Alessia Gullo later being chosen as Roman representatives for some of the recurrences;
11. Whereas the object of this recourse as indicated equally in the petitions of the recurrences is against the illicit merger of the parish and the closure of the Church building, as ordered by the Bishop; the Congregation, by reason of connection, responds with this sole decree to all petitions;
12. Whereas aside from the letter of 12 March 2009, this Dicastery finds no canonical decree, merging the parish of St. James, nor establishing a new territorial parish, which would clearly indicate the demarcation of the parish territory, the Congregation, then, takes as an indication of His Excellency's dispositions the 12 March, 2009 letter to the pastor of St. James, which was co-signed by Sister Therese Guerin Sullivan, S.P., Chancellor;
13. An Hierarchical Recourse is by its nature a documentary process which proceeds on the basis of examination of authentic documents provided by interested parties at the request of the Dicastery: thus, having provided ample opportunity for all interested parties to respond, the Dicastery judges as complete the documentation in its possession and proceeds therefore to its decision *per cartas*;
14. The law requires for validity that the Diocesan Bishop consult the Presbyteral Council in order to seek the advice of its members before coming to his decision regarding the suppression of a parish (cf. c. 127 §2 and c. 515 §2). Finally, a legitimate decree should be issued, stating at least in a summary fashion the lawful motivations supporting the decision (cf. c. 51), formalizing the Bishop's dispositions and making them manifest to those who have interests in the matter.
15. In this matter, the Bishop of Cleveland was given sufficient time to present to this Dicastery information which would solidify the decisions he made, and to forward all of the acts pertinent in the matter to this Congregation. The absence of any decree indicating and formalizing the dispositions of the Bishop made in the letter of 12 March, 2009 is troubling. Even should this document be taken as a manifestation of the Bishop's dispositions in the matter, which is the essence of a decree, it can be clearly seen that it lacks the requisite elements indicated by the canons. Hence, the Bishop of Cleveland is held to have acted in violation of the law on procedural grounds with regard to c. 515 §2. 4 4
16. Regarding relegation of St. James Church to secular but not unbecoming use, it is noted that the Bishop's letter of 12 March, 2009 omits any specific reference to the relegation of the church to secular but not unbecoming use, or to the canonical process required by c. 1222 §2. It is apparent from the acts, however, that the Diocesan Bishop did in fact arrive at a decision to implement the effects of the process envisioned by c. 1222 §2 without fulfilling its procedures. The Bishop's letter to the parish administrator of 12 March, 2009 is quite specific, indicating that the Church would not be used after the "suppression" of the parish. In doing so, an essential element for the validity of the relegation of a church to secular but not unbecoming use was omitted, i.e., the required consultation of the Presbyteral Council regarding the matter (cf. c. 127 §2 and c. 1222 §2). The Bishop of Cleveland, even after being advised as to shortfalls by the Congregation's letter of 8 September, 2009 (Prot. N. 20092603) refused to clarify the matter either by allowing the Church to remain open or by following the procedure for relegation. By the law itself, such an omission renders invalid the Bishop's decision to implement the effects of c. 1222 §2, i.e., the permanent closure of St. James and its concomitant relegation to secular but not unbecoming use. 4

17. It is evident from the acts that the grave cause required by c. 1222 §2 for the relegation of a church to secular but not unbecoming use has not been demonstrated. Jurisprudence does not recognize such relegation to be implicit in the decree suppressing or amalgamating a parish (cf. Decree of the Supreme Tribunal of the Apostolic Signatura of 1 July 2010, par. 7: "*Iurisprudencia Signaturae Apostolicae negat reductionem ecclesiae implicite statui posse in decreto suppressionis parociae.*" Prot. no. 38691/06 CA). It is evident, therefore, that the requirements of law for the licit and valid relegation of a church to secular but not unbecoming use have not been met, and that St. James Church has not been lawfully and validly relegated to secular but not unbecoming use. Therefore:

The Congregation hereby decrees that this petition for recourse as presented, with regard to the merger of St. James Parish (c. 515, §2) does have canonical basis in law and in fact, so is upheld both *de procedendo* and *de decernendo*.

The Congregation further decrees that this petition for recourse as presented, with regard to the closure of St. James Church (c. 1222 §2) does have canonical basis in law and in fact and so is upheld both *de procedendo* and *de decernendo*.

The Bishop of Cleveland is instructed to enact the implications of this Decree.

Recourse against this Decree may be made before the Supreme Tribunal of the Apostolic Signatura within the peremptory time limits established in the Apostolic Letter *motu proprio Antiqua Ordinatione*, Art. 34 §1.

  
Mauro Cardinal Piacenza  
Prefect



  
✠ Celso Morgia Iruzubieta  
Titular Archbishop of Alba marittima  
Secretary

Given at the Seat of the  
Congregation for the Clergy  
1 March 2012

**From:** Carlo Gullo [crlgullo@tin.it](mailto:crlgullo@tin.it)  
**Subject:** Cleveland  
**Date:** March 6, 2012 6:47 AM  
**To:** [pxb3@rcn.com](mailto:pxb3@rcn.com)

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