



From the Vatican, 2 March 2016

Prot. N. 20160357

Mr. Joseph G. CANEPA
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New York, NY 10152
UNITED STATES OF AMERICA

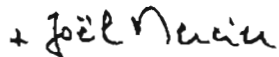
Dear Mr. Canepa,

I refer to the hierarchical recourse you have proposed against the extinctive union of the parishes of St. Andrew and of Our Lady of Victory, Manhattan.

Having studied the *acta* presented by the Ordinary, his votum and your own arguments concerning the question, this Congregation is now in a position to issue its own decision in the matter. Please find enclosed, for your information, a copy of this Dicastery's decree.

I assure you of my prayers and cordial best wishes, as I remain,

Sincerely yours in Christ,


✠ Joël Mercier
Titular Archbishop of Rota
Secretary

(With 1 Enclosure)



CONGREGATIO PRO CLERICIS

DECREE

Prot. No. 20160357

1. Whereas, following a Pastoral Planning Initiative in the Archdiocese of New York (U.S.A.), entitled *Making All Things New*, it was recommended to the Archbishop, His Eminence, Timothy Cardinal Dolan (hereinafter called “the Ordinary”), that the parishes of St. Andrew and of Our Lady of Victory, Manhattan, should be merged, in accordance with can. 515 §2, and that the church Our Lady of Victory should serve as the parish church;
2. Whereas on 30 June 2014 and 1 July 2014 the Ordinary consulted the Presbyteral Council on the proposal placed before him, in accordance with cann. 515 §2 and 127 §1, and the Presbyteral Council unanimously supported the proposal;
3. Whereas on 2 November 2014 the Ordinary, in accordance with can. 515 §2, issued a decree merging the parishes of St. Andrew and Our Lady of Victory, Manhattan, by way of an extinctive union, creating a new territorial parish, establishing that the church of our Lady of Victory would serve as the parish church, and providing that the church of St. Andrew would maintain a regular scheduled of Masses and other sacraments; in that decree the Ordinary set forth his motives for its issue, in accordance with can. 51;
4. Whereas on 8 December 2014, Mr. Joseph G. Canepa (hereinafter called “the recurrent”) wrote to the Ordinary, requesting a copy of his decree, with a view to considering recourse. Despite repeated requests, no copy of the said document was provided to the recurrent;
5. Whereas on 30 December 2014 the recurrent sent a request for hierarchical recourse to the Congregation for the Clergy (hereinafter called “the Congregation”) (cf. can. 1737 §1); the Congregation accepting that request for study by decretal letter of 4 March 2015 (cf. Art. 137 §1 *General Regulation of the Roman Curia*), and recognizing two objects, namely the revocation or amendment of the decree of the Ordinary ordering the extinctive union of the parishes, and the requested continuation of the weekly celebration of Mass and other sacraments in the church of St. Andrew;
6. However, the Congregation notes that the recurrent never sought revocation of the Ordinary’s Decision as communicated on 2 November 2014, in accordance with the norm of can. 1734 §§1-2. It is the established jurisprudence of the Holy See that parishioners have a lawful interest in the juridical status of their parish and, consequently, should they request it, have a right to receive a copy of a decree that affects that status. Non-

publication to parties who have a lawful interest is prejudicial to the proper exercise of their rights. However, in the matter to hand, the notification of 2 November 2014 communicated the Ordinary's Decision in an unequivocal manner. The Congregation holds that the recurrent ought to have understood the import of this notification as a communicating a true decision of the Ordinary and ought to have understood this as the moment to seek revocation of the Decision in accordance with c. 1734 §§1-2, as other parishioners did in many parishes of the Archdiocese of New York in November 2014. It is evident that the recurrent was sufficiently conversant with canon law to seek a copy of the decree as well as his right to propose hierarchical recourse. However, he failed to interpose any act of juridical significance prior to 8 December 2014, and then only by seeking a copy of the formal decree and signaling his intent to consider hierarchical recourse. In view of the fact that it is not only the faithful but also Ordinaries who enjoy the rights of due process, the Congregation cannot overlook these procedural errors regarding hierarchical recourse and hereby declares that the hierarchical recourse to hand was presented unlawfully. All that notwithstanding, the Congregation determines to examine not only the procedure but also the merit of this recourse.

7. Whereas 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 Congregation; thus having provided ample opportunity for all interested parties to respond, and having carefully examined the documents submitted by both the Ordinary and the recurrences, the Congregation judges as complete the documentation in its possession and proceeds, therefore, to its decision *per cartas*;
8. Whereas this Congregation notes that a Parish is a public juridical person (cf. can. 515 §3 CIC) and therefore enjoys the quality of perpetuity (cf. can. 120 §1 CIC) to allow it to reach the ends for which it is established, but also requiring the means sufficient for it to reach that purpose (cf. can. 114 §3 CIC). It is a "certain community of Christ's Faithful" constituted within a Particular Church (can. 515 §1 CIC), specifically established to facilitate the mission for which a Diocese exists (cf. cans. 368-369 CIC). The parochial community of Christ's faithful is necessarily an integral part of the diocesan community (cf. can. 515 §1 CIC). It is under the care and jurisdiction of the Bishop, and enjoys an intrinsically hierarchical relationship with him. It is for him to determine the most effective manner to ensure the means of salvation for *all* Christ's Faithful entrusted to his care, according to their state and condition of life and in accord with the norms of the universal law (cf. cann. 213 – 214; 383 §1 CIC);
9. Whereas it is for the Diocesan Bishop alone to alter a parish substantially, having heard the Presbyteral Council (cf. can. 515 §2 CIC), all the while avoiding arbitrariness and providing in the best manner for the pastoral care of all the faithful entrusted to him as the principle pastor of the Particular Church (Cf. Directory for the Pastoral Ministry of Bishops *Apostolorum Successores*, Introduction). To so alter a parish, the Diocesan Bishop requires a just cause (cf. *mutatis mutandis* cann. 120, §1; 121 CIC; Decree N. 45082/11 CA of the Supreme Tribunal of the Apostolic Signatura, 27 April 2011);
10. Whereas, with respect to the aggregation of the parish of St. Andrew, while requiring a Diocesan Bishop to consider the situation *ad rem* of a particular parish in the deliberation of a just cause, the law allows the Bishop to take into account the condition of the entire Diocese. A Decree of the Supreme Tribunal of the Apostolic Signatura of 22 May 2009 (prot. n. 37280/05 CA) stated, «*Decretum suppressionis feratur, denique, saltem*

summarie expressis motivis (cf. can. 51). Qua in re, "Episcopus diocesanus...iuxta suam prudentem discretionem procedure potest, excluso vero arbitrariedade" (decreta Congressus diei 3 maii 2002, prot. Nn. 33219/01 CA; 32220/01 CA; 32238/01 CA). Hac in ratione perpendenda, non solum condicio paroeciae consideranda est, verum etiam totius dioecesis, ut totius dioecesis saluti animarum meliore quo fieri potest modo, provideatur. Nullum tandem "ius christifidelium agnoscitur ad determinatam paroeciam, cum illis sufficiat paroecia quaedam, quae eorumdem curam pastorem expleat" (cf. v.g. decreta Congressus dierum 12 octobris 1995, prot. N. 25323/94 CA; 18 ianuarii 1996 prot. N. 25465/94 CA; 12 octobris 1995, prot. N. 25530/95 CA ». This was reiterated in a Decree of 27 April 2011 (Prot. N. 45082/11 CA): "sufficit proinde iusta causa; qua in ratione perpendenda, non solum condicio paroeciae consideranda est, verum etiam totius dioecesis, ut totius dioecesis saluti animarum et quidam etiam in futuro, meliore quo fieri potest modo provideatur";

11. As concerns the procedure followed, can. 50 requires that, before issuing a decree, the authority seek the necessary information and proofs and consult those whose rights can be harmed. Can. 515 §2 requires that the diocesan Bishop consult the Presbyteral Council before establishing, suppressing or notably altering a parish. Further, a decree is to be issued in writing and, when it contains a decision, the reasons for that decision must be given, at least in summary form (cf. can. 51). The acts show that a broad consultation took place as part of the *Making All Things New* process. The Ordinary consulted the Presbyteral Council on 30 June 2014 and 1 July 2014. The minutes of the meeting show that the Presbyteral Council unanimously favored the proposal. The Ordinary issued a motivated decree on 2 November 2014.
12. As concerns the decision taken to merge the two parishes, can. 515 §2 makes no provision as to the gravity of the cause required. Hence it is sufficient that a just cause be present (cf. Decrees of the Supreme Tribunal of the Apostolic Signatura 24048/93 CA, 6 December 1993 and 38159/06 CA, 18 April 2008). The just cause for this decision must primarily be the betterment of the pastoral provision for the salvation of souls (cf. Second Vatican Ecumenical Council, Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus*, 28 October 1965, 32) and the good of the faithful (cf. Congregation for Bishops, Directory for the Pastoral Ministry of Bishops, *Apostolorum Successores*, 22 February 2004, 214).
13. The motivating causes contained in the decree of 2 November 2014 are radical changes and shifts in demographics, a decline in the available number of priests, a declining number of faithful attending Sunday Mass on a regular basis, and the financial burdens placed on small parishes. The Congregation notes that the parish of St. Andrew is unusual insofar as it welcomes a greater number of faithful who perform devotional visits during the working day and who attend its weekday Masses than it does on Sundays. This is due to its location in the midst of various federal and other office buildings in lower Manhattan, where it serves as an important centre for the faithful who work there. The recurrent argues that the parish's finances are sound; however, the official statistics presented by the Archdiocese of New York paint a picture of inadequate finances, as discussed by the Presbyteral Council. The Congregation also notes that the recurrent's argument concerning the increase in the stable population of the area was also echoed in the discussion of the Presbyteral Council. Nevertheless, the Presbyteral Council supported the extinctive union of the parish of St. Andrew with that of Our Lady of Victory in view of the difficulties it has experienced. Finally, the Congregation notes that

the church of St. Andrew will continue to remain open to the daily access of the faithful and for the daily and Sunday celebration of Holy Mass with a regular schedule.

14. Regarding demographic changes, the recurrent has not presented convincing evidence of an increased membership of the parish. With regard to the financial situation, the Congregation does not doubt the generosity of the faithful, but the financial evidence presented demonstrates that the parish of St. Andrew in deficit most years, especially if rental income is excluded, leading to an increasing debt.
15. With regard to the decline in the number of priests, the recurrent argues that the parish of St. Andrew was under the governance of a religious order willing to continue its presence there. Neither the Congregation nor the recurrent can know the factors which influence discussions between and Ordinary and a religious community, and given the decrease in the number of religious priests available to serve in the Archdiocese by 38% in the last twenty years, the Ordinary has good reason to seek to make adequate provision for the staffing of parishes into the future.
16. The Ordinary is only required to show a just cause for his decision, and he has presented several, motivated by the salvation of souls and the good of the faithful, which are related both to the conditions prevailing or that soon will prevail in the Archdiocese of New York and to the parishes of St. Andrew and Our Lady of Victory.
17. As concerns the second object of this recourse, namely that a regular weekly Mass and sacramental schedule should be restored in the church of St. Andrew, the Congregation notes that the Ordinary has so provided. In this regard, the Congregation notes the significance of the church of St. Andrew as a centre of sacramental, devotional and apostolic activity in an atypical urban environment. It seems evident that the Ordinary is also conscious of this and has provided accordingly.
18. The Congregation notes that the competent authority for the direction of the sacred liturgy in a parish is the Pastor, who does so under the direction of the Ordinary (cf. can. 528 §2). The Ordinary, for his part, exercises his role of directing, promoting and guarding liturgical life through the issue of particular law (cf. can. 835 §1, 838 §§1, 4), which binds the whole Diocese, and which Pastors are obliged to follow.
19. The Congregation notes that it remains for the Pastor to fulfil his duties as an administrator of ecclesiastical goods (cf. cann. 532; 1279 §1) with regard to the maintenance and décor of the churches of St. Andrew and Our Lady of Victory (cf. cann. 1120; 562) and to see that they do not perish or suffer damage (cf. can. 1284 §2, 1^o) under his stewardship. This duty also extends to those things necessary for the sacred use of the churches and access to them by the faithful. Vigilance over the administration of the Pastor belongs to the Diocesan Ordinary (cf. can. 1279 §1), from which it follows that the faithful have the right to seek his intervention in the case of neglect (cf. can. 212 §2, Decision of the Supreme Tribunal of the Apostolic Signatura N. 47343/12 CA, 10 May 2013).
20. In this regard, the Congregation notes that the recurrent's arguments concerning the debt ascribed to the parish of St. Andrew by the Archdiocese of New York. This debt now passes to the parish that results from the extinctive union here under consideration. As such, although a juridical person is responsible for the prudent administration of its

affairs, it is incumbent that a process of parish reorganisation such as *Making All things New* results in parishes that are in a better position to meet their costs and whose financial obligations to the diocese are organised along sustainable lines (cf. can. 1263).

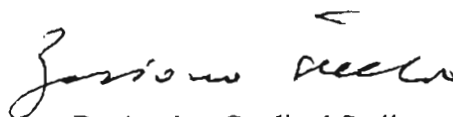
21. As concerns membership of the Parish of Nativity of the Blessed Virgin Mary and the Holy Rosary, the Ordinary has provided that this shall extend to all members of the originating parishes, provided that they have a domicile or quasi-domicile in the newly merged parish. Notwithstanding the custom in the United States to register those who participate actively in the life of the parish, the aforementioned principal enunciated is correct and constitutes a principal of universal law.

Therefore:

This Congregation hereby decrees that this petition for hierarchical recourse, as presented, against the decree of the Archbishop of New York of 2 November 2014, enacting an extinctive union of the parishes of St. Andrew and Our Lady of Victory, Manhattan, in the Archdiocese of New York, does not have any canonical basis either in law or in fact and is rejected, both *in procedendo* and *in decernendo*.

Recourse against this Decree may be made before the Supreme Tribunal of the Apostolic Signatura within the peremptory time limit established by the Apostolic Letter *Motu Proprio, Antiqua Ordinatione* 34 §1.

Given at the Seat of the
Congregation for the Clergy
2 March 2016



Beniamino Cardinal Stella
Prefect



✠ Joël Mercier
*Titular Archbishop of Rota
Secretary*