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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

ROMAN CATHOLIC )  
ARCHDIOCESE OF NEWARK, )  
EMILIO MAZZA, and )  
DENNIS FLYNN, SR.; )  
 )  
Plaintiffs, )

v. )

Civil Case No. \_\_\_\_\_

CHRISTOPHER CHRISTIE, )  
in his official capacity as )  
Governor of New Jersey; and )  
JOHN JAY HOFFMAN, in his )  
official capacity as Attorney General of )  
New Jersey; )  
 )  
Defendants. )

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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## **INTRODUCTION**

This constitutional challenge seeks to vindicate the right of the Roman Catholic Archdiocese of Newark to sell cemetery monuments such as headstones to its parishioners when they are interred in the Archdiocese's own cemeteries. Prior to 2013, it had never been illegal for a religious cemetery to sell monuments to its parishioners in New Jersey. But when the Archdiocese began to sell monuments in 2013, the owners of monument businesses objected, eventually suing the Archdiocese in state court for "unfair" competition. After losing that lawsuit on the grounds that the Archdiocese was doing nothing illegal, the Monument Builders Association of New Jersey—the lobbying arm of the monument industry—lobbied the legislature for a new law making the Archdiocese's monument sales illegal, and prohibiting the Archdiocese from providing other services such as selling of cemetery vaults. This new law is directed specifically at the Archdiocese, which is the only religious entity in the state competing with monument businesses. The law, which interferes with the economic liberty of the Archdiocese solely for the purpose of private economic protectionism rather than for any legitimate public reason, violates the U.S. Constitution, specifically the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment, and the Contracts Clause of Article I, Section 10.

## **JURISDICTION AND VENUE**

1. Plaintiffs Roman Catholic Archdiocese of Newark ("Archdiocese"), Emilio Mazza, and Dennis Flynn, Sr. bring this civil rights lawsuit pursuant to: the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment, and the Contracts Clause of Article I, Section 10 of the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. Plaintiffs seek declaratory and injunctive relief against enforcement of the recent amendment to the Religious Corporations Law, Assemb. B. A3840, 2014-2015 Gen. Assemb., Reg. Sess. (N.J. 2015), codified at N.J. Stat. Ann. § 16:1-7.1, which prohibits private religious cemeteries from selling, manufacturing, installing, inscribing, conveying, and owning headstones, private family mausoleums, and other cemetery monuments for families seeking interment of a loved one in Plaintiff Archdiocese's cemeteries.

3. Plaintiffs seek declaratory and injunctive relief against enforcement of the recent amendment to the Religious Corporations Law, Assemb. B. A3840, 2014-2015 Gen. Assemb., Reg. Sess. (N.J. 2015), codified at N.J. Stat. Ann. § 16:1-7.1, which prohibits private religious cemeteries from selling vaults to families seeking interment of a loved one in Plaintiff Archdiocese's cemeteries.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

6. Plaintiff Roman Catholic Archdiocese of Newark is a religious society incorporated pursuant to N.J. Stat. Ann. §§ 16:1-1, *et seq.*

7. Plaintiff Emilio Mazza is a United States citizen and a resident of Edison, New Jersey.

8. Plaintiff Dennis Flynn, Sr. is a United States citizen and a resident of Emerson, New Jersey.

9. Defendant Christopher Christie is the Governor of New Jersey. He is sued in his official capacity.

10. Defendant John Jay Hoffman is the Acting Attorney General of New Jersey. He is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### The Archdiocese of Newark

11. Plaintiff Roman Catholic Archdiocese of Newark is an institution of the Roman Catholic Church.
12. An archdiocese is an administrative jurisdiction of the Catholic Church consisting of dioceses, which in turn consist of parishes.
13. The Archdiocese of Newark was founded in 1853 as the Diocese of Newark. At that time, it covered all of New Jersey.
14. The Diocese of Newark was elevated to an archdiocese in 1937 by Pope Pius XI.
15. The Archdiocese of Newark now covers Bergen, Union, Hudson, and Essex counties in northern New Jersey.
16. Approximately 1,300,000 Catholics live within the Archdiocese of Newark.
17. The Archdiocese is the smallest archdiocese in the United States in terms of geography, but one of the largest in terms of population.
18. There are 219 parishes within the Archdiocese.
19. The head of an archdiocese is an archbishop, who is appointed by the Pope.
20. The Archbishop is the pastoral, religious leader of the faithful within his archdiocese. An archbishop is responsible for providing the support and guidance necessary for Catholics to adhere to the teachings and disciplines of the Church. The archbishop also oversees the archdiocese's administrative affairs.
21. The Archbishop of Newark is John Myers. He was appointed on July 24, 2001.
22. The seat of the Archdiocese is the Cathedral Basilica of the Sacred Heart in Newark, New Jersey.

The Eleven Cemeteries of the Archdiocese

23. The Archdiocese of Newark operates eleven cemeteries in New Jersey on a nonprofit basis:
- a. St. Peter Cemetery, located in Jersey City, was established in 1849;
  - b. Holy Sepulchre Cemetery, located in East Orange, was established in 1859;
  - c. Holy Name Cemetery and Mausoleum, located in Jersey City, was established in 1866;
  - d. Mt. Carmel Cemetery, located in Tenafly, was established in 1880;
  - e. St. Mary Cemetery, located in East Orange, was established in 1887;
  - f. St. Andrew Cemetery, located in River Vale, was established in 1900;
  - g. Holy Cross Cemetery and Mausoleum, located in North Arlington, was established in 1915;
  - h. Saint Gertrude Cemetery and Mausoleum, located in Colonia, was established in 1933;
  - i. Maryrest Cemetery and Mausoleum, located in Mahwah, was established in 1935;
  - j. Gate of Heaven Cemetery and Mausoleum, located in East Hanover, was established in 1937;
  - k. Christ the King Cemetery, located in Franklin Lakes, was established in 1968 and is the newest archdiocesan cemetery.
24. Canon law requires the Church to provide consecrated ground for the burial of the faithful. Canon Law Society of America, Code of Canon Law §§ 1205, 1240-43 (1983).

25. As prescribed by the Order of Christian Funerals, Catholic funerals typically consist of three distinct rituals over two or three days: (1) the vigil (often called the wake); (2) a funeral mass for the deceased; and (3) commitment of the remains to the earth, i.e., interment.

26. The cemeteries of the Archdiocese of Newark are private and reserved for the Catholic faithful and their families. The cemeteries of the Archdiocese of Newark are not open to the general public.

27. The Archdiocese provides interment to a tiny community of Coptic Christian immigrants, many of whom came to the United States to escape religious persecution in their native Egypt.

28. The Archdiocese permitted the interment of Coptic Christians only after determining, through the application of principles and norms on ecumenism, that the Copts are in communion with the Catholic Church on fundamental doctrinal issues. According to Roman Catholic discipline, the Code of Canon Law does not object to the reception of communion by Christians of Orthodox Churches such as the Coptic Christians. The Archdiocese also recognized that the Coptic community is too small to support its own cemetery of consecrated ground, and thus approved the Copts' request to be interred in the Holy Name mausoleum on a very limited basis as an act of religious fellowship.

29. Outside of the Copts, the Archdiocese is unaware of any other non-Catholic interments in the Archdiocese's cemeteries other than family members of parishioners. For example, a non-Catholic husband may be buried in an Archdiocese cemetery with his Catholic wife.

30. The Archdiocese is dedicated to preserving the remains of deceased Catholics in consecrated ground. The Archdiocese currently has no plans to acquire additional cemeteries, but

it will take over a Catholic cemetery within the Archdiocese if the diocese or parish no longer has the resources to maintain it. For example, the Archdiocese acquired the Mt. Carmel Cemetery, which was a modest churchyard cemetery, in 2014 from a financially strapped parish.

31. There are four basic ways to inter someone in the Archdiocese's cemeteries: (1) traditional burial in the ground; (2) interment in a private mausoleum; (3) interment in a community mausoleum; and (4) interment of cremated human remains in a columbarium, crypt, or grave.

#### Traditional In-Ground Burial

32. A traditional in-ground burial begins with the purchase of a right to interment within a cemetery plot.

33. The parishioner purchasing the right to interment does not acquire the land, but acquires a perpetual right to be buried in the designated cemetery plot.

34. A right to interment within a cemetery plot may be purchased prior to death as part of end-of-life planning. Buying a death-care item or service ahead of time is called a "pre-need" purchase.

35. A right to interment within a cemetery plot may also be purchased when the person dies, which is called an "at-need" purchase.

36. The price of the right to interment in a cemetery plot depends on where the cemetery plot is located, both in terms of which cemetery and where in the cemetery.

37. The Archdiocese posts price ranges for rights of interment in cemetery plots on its website and at each cemetery.

38. Some of the Archdiocese's oldest cemeteries, such as St. Peter Cemetery in Jersey City, are closed to new interment sales.

39. Other cemeteries have very limited space left. For example, Holy Sepulchre Cemetery—opened in 1859—is essentially full, though the Archdiocese periodically reclaims land by eliminating roads or pathways.

40. The current price of a right to interment within a cemetery plot ranges from \$750 to \$3,900 for two interments in a single plot.

41. It is also possible to combine cemetery plots for a larger number of family interments. For example, a family can purchase four plots for eight interments in the newly developed section of Holy Cross for \$7,200.

42. The Archdiocese sells approximately 750 rights of interment each year on a pre-need basis, and 450 rights of interment each year on an at-need basis for traditional cemetery burial. The pre-need sales frequently include more than one interment; a husband and wife, for example, may purchase rights of interment together on a pre-need basis.

43. Each year, the Archdiocese provides approximately 43 interment rights to indigent or low-income Catholics for free or at a reduced cost.

44. To its knowledge, the Archdiocese has never turned away a Catholic wishing to be interred within one of its cemeteries for lack of financial resources.

45. The next basic step for an in-ground burial is excavating the hole for the casket. The Archdiocese uses machinery and hand tools to dig the hole.

46. There is an interment fee of \$2,050 to \$2,400 depending on the day of the week and the time of day. The interment fee covers the excavation of the gravesite and the services associated with hosting the committal service and burial.

47. The next step is installation of the vault, if the family wishes to use one. A vault is a rigid, durable container for the casket. The vault is typically constructed from metal or



concrete. The purpose of the vault is to maintain the integrity of the cemetery surface. Caskets eventually fall apart and remains eventually decay. Without a vault, the ground above a collapsed casket could form a depression at the gravesite.

48. A vault typically costs \$1,000 to \$2,000 at retail.

49. Traditionally, the family purchases the vault from the funeral home.

50. The Archdiocese does not require vaults, but does recommend them.

51. Once the hole is excavated (and the vault is installed, if that option is selected), the casket is lowered into the ground as part of the burial ceremony.

52. After the ceremony, workers from the vault company secure the vault lid (if a vault is used), and cemetery workers fill in the hole.

53. Soil subsidence will occur for up to a year after burial, so cemetery workers will periodically add dirt to a gravesite as soil settles. Cemetery workers eventually plant grass on the gravesite.

54. The last basic step for a traditional in-ground burial is installation of the monument, which is sometimes called a headstone.

55. The purpose of the monument is to memorialize the decedent.

56. A monument is typically a piece of stone such as granite or marble that has, at minimum, the name of the decedent as well as a birth date and date of death. There can also be additional memorializing inscriptions such as "Rest in Peace," "Beloved Wife and Mother," or scriptural quotations.

57. A monument can be simple or elaborate, large or small.

58. A monument typically consists of a concrete or stone foundation on top of which the monument is installed.

59. In the past, monuments were usually handcrafted.

60. Today, most monuments are produced by machines in an assembly-line context.

61. Modern machinery can carve elaborate designs or even pictures into monuments.

62. The Archdiocese requires every monument installed in its cemeteries to have a cross on it as a symbol of the Catholic faith.

63. Typically, a monument is purchased from a private monument dealer after the burial has occurred.

64. The monument dealer pays an \$80 permitting fee to the Archdiocese to approve the monument design. This fee also includes inspections of the monument to ensure the quality and accuracy of its installation at the gravesite by, for example, checking that the proper headstone is installed on the proper cemetery plot.

65. Monument dealers frequently open shops near cemeteries. For example, there are several private monument dealers directly across the street from Holy Cross Cemetery in North Arlington.

66. Typically, the monument is the property of the decedent's estate or family. Generally speaking, the Archdiocese does not own the monuments affixed to the gravesites within its cemeteries.

#### Disposition in a Private Family Mausoleum

67. The next basic type of disposition is interment in a private family mausoleum.

68. A private family mausoleum is an above-ground structure, usually made of stone, designed to hold remains.

69. The Archdiocese requires every private family mausoleum installed in its cemeteries to have a cross on it as a symbol of the Catholic faith.

70. As with a traditional, in-ground burial, the family purchases a right of interment from the Archdiocese. In the case of private family mausoleums, the right of interment is the right to build the monument within a cemetery and have family remains interred there.

71. Typically, the family then purchases the private family mausoleum from a private monument dealer, which, as with a conventional monument such as a headstone, installs the mausoleum.

72. A private family mausoleum often has elaborate design features such as metal doors or metal ornaments. It can have stained glass and special stonework.

73. A private family mausoleum memorializes the dead with an inscription of the family name on the exterior of the mausoleum. Each individual decedent is also separately memorialized with an inscription within the mausoleum next to the final resting place. The dealer who sells the monument typically performs the inscriptions.

74. The memorializing inscriptions serve the same purpose as a headstone in a traditional, in-ground burial.

75. Typically, as with conventional monuments at gravesites, the family owns the mausoleum.

76. A mausoleum can hold caskets or it can have niches for cremated human remains.

77. Mausoleum prices presently range from \$25,000 to hundreds of thousands of dollars.

78. Private family mausoleums are typically clustered in certain parts of cemeteries. The present cost of acquiring the land for a mausoleum is approximately \$200 per square foot.

#### Disposition in a Community Mausoleum

79. The next basic type of interment is disposition in a community mausoleum.

80. A community mausoleum is a large structure with many interment spaces.

81. As with a traditional, in-ground burial and interment in a private family mausoleum, the family purchases a right of interment in a community mausoleum from the Archdiocese. In the case of a community mausoleum, the right of interment is the right to be interred within a specific space within the mausoleum.

82. A typical interment space is 2.5 feet in width, 2.5 feet in height, and eight feet in length. These dimensions are designed to accommodate a single casket.

83. There are special interment spaces in community mausoleums that are sixteen feet in length. These spaces can accommodate two caskets, typically a husband and wife.

84. A community mausoleum can have thousands of spaces.

85. The community mausoleum at the Archdiocese's Holy Cross Cemetery, for example, has spaces for over 35,000 people. It is the largest community mausoleum in the United States.

86. In addition to being a final resting place, a community mausoleum serves the evangelical purpose of explaining and perpetuating the Catholic faith. Thus, the community mausoleums are beautiful structures with religious artwork. Much of the artwork is reclaimed stained glass from older churches in the Archdiocese that have closed over the years. Some of the artwork is newly commissioned.

87. The cost for a space in a community mausoleum depends on its location in the mausoleum. The present cost of a mausoleum space ranges from \$4,600 to \$40,000.

88. Prior to interment in a community mausoleum space, the casket is placed on a special tray and then both are sealed in industrial-grade plastic wrap. Each mausoleum space is vented to the outdoors.

89. Interment in a community mausoleum space consists of sliding the casket in lengthwise. The interment space is sealed by attaching an airtight sealing cover.

90. A granite or marble cover is then attached to the wall, concealing the sealing cover. This granite or marble cover becomes part of the interior wall of the community mausoleum.

91. Because the mausoleum is itself a structure that cannot collapse, there is no need for a separate vault. The mausoleum space serves the purpose of a vault in a traditional in-ground burial.

92. The decedent is memorialized by attaching lettering and other design features to the cover of the community mausoleum space. The lettering includes the name, birth date, and date of death. The cover of the mausoleum serves the same memorializing purpose as a headstone in a traditional in-ground burial. There are no headstones in a mausoleum.

93. The Archdiocese has always included the mausoleum covers as part of the transaction for the community mausoleum space.

94. The Archdiocese has also always handled the lettering and design of the mausoleum covers that memorialize the deceased parishioner.

95. Private headstone dealers do not sell mausoleum covers for the Archdiocese's community mausoleums; nor are private headstone dealers involved in any way in the community mausoleums.

#### Disposition of Cremated Human Remains

96. The last basic form of disposition is the interment of cremated human remains.

97. As with traditional in-ground burial or interment in a mausoleum, the first step in the disposition of cremated human remains is the purchase of interment rights.

98. The interment of cremated human remains can be done exactly like the interment of a body: in a grave, in a private family mausoleum, or in a community mausoleum.

99. As with the interment of a body, the price of interment rights for cremated human remains is based on the location of the interment in a cemetery, private family mausoleum, or community mausoleum.

100. Because they occupy far less space than a body, cremated human remains are often interred in specialized niches within the community mausoleums or in columbaria, which are structures for the disposition of cremated human remains.

#### The Inscription-Rights Program

101. The Archdiocese believes it has a religious duty to maintain its cemeteries in perpetuity in a manner that is respectful of the dignity of the dead.

102. The Archdiocese also believes that its cemeteries serve an evangelical purpose by conveying and reinforcing the Catholic view of Christianity. Thus, the cemeteries are filled with Catholic artwork and religious symbolism.

103. The Archdiocese also has a contractual obligation to those who purchased interment rights to maintain the cemeteries in a dignified fashion in perpetuity.

104. In recent years, the Archdiocese began grappling with how to carry out its religious and contractual duties to maintain the cemeteries in perpetuity in light of two basic problems.

105. The first problem is that maintaining the cemeteries is an enormous expense and the cost of doing so continues to rise. The cemeteries have approximately 176 employees who must accommodate approximately 3,600 new in-ground burials every year as well as take care of the nearly one million existing graves in 763 acres of cemetery space.

106. The second problem is that the Archdiocese, as a general matter, does not own the monuments in its cemeteries. The monuments, which have traditionally been purchased from private monument dealers, are the property of the decedent's family or estate.

107. As the monuments age, they can become dirty or even unsafe. The freeze/thaw cycle can be particularly hard on monuments. Water that seeps between the monument and its foundation (or between the pieces of a multi-stone monument) expands when it freezes. Over time, this can result in cracks or changes in the orientation of the monument that result in pieces shearing off or the total collapse of the monument.

108. There are over 500,000 monuments within the Archdiocese's cemeteries, many of which date back to the nineteenth century. Thousands of these monuments exhibit signs of significant wear and decay. Some monuments have fallen over completely. If it is safe and feasible, cemetery workers will try to right the monuments. But there are collapsed monuments in the older cemeteries that cannot be repaired or righted. There are also private family mausoleums in such poor condition that they are no longer safe for visitors.

109. Maintaining these aging monuments presents financial and legal challenges.

110. The financial challenge is that, traditionally, the fees paid to the Archdiocese for interment did not include funds for the perpetual care of monuments. Care of monuments has traditionally been a family responsibility. Yet many family members do not provide for the long-term care of monuments, especially generations after the decedent has passed away. If the Archdiocese contacts a family member about the state of the monument for a long-dead, distant relative, the family member is very unlikely to take on the financial expense of repairing, maintaining, or replacing the monument.

111. The legal challenge is that, traditionally, the Archdiocese does not own the monuments. The families own the monuments. Consequently, in the absence of a special agreement otherwise, the Archdiocese does not have the right to move, alter, or repair monuments even if the funds and labor were available to do so.

112. To better provide for the overall care of the cemeteries, and monuments in particular, the Archdiocese implemented in 2006 what it now calls the “inscription-rights program.”

113. Under the inscription-rights program, a parishioner does not purchase a monument from a private monument dealer. Instead, the parishioner enters into a contract with the Archdiocese under the inscription-rights program.

114. Under the terms of the contract, the parishioner selects a monument from the many choices provided by the Archdiocese. The parishioner also chooses what the monument will say, the type of lettering, and other design features.

115. The contract for the inscription right imposes a duty on the Archdiocese to do three things: (1) obtain the monument inscribed according to the specifications of the parishioner; (2) install the monument in the parishioner’s burial space; and (3) provide for the perpetual maintenance of the monument.

116. The Archdiocese’s duty of perpetual maintenance under the inscription-rights program includes the replacement of monuments that are damaged beyond repair. The new monument will be delivered, installed, and inscribed at no cost to the parishioner or the parishioner’s family. For example, the Archdiocese has already replaced a private family mausoleum acquired in 2010, under the inscription-rights program, that was damaged beyond repair during Hurricane Sandy in 2012.



117. The parishioner may pay for the inscription right in full when the contract is formed or in installments.

118. The Archdiocese typically orders the monument on a pre-need basis when the contract is formed and the cost paid. The Archdiocese then takes delivery of the monument from the manufacturer in Vermont, called Rock of Ages. The Archdiocese then installs the monument on the cemetery plot the parishioner has selected. All of this occurs before the parishioner has passed away.

119. The Archdiocese then arranges for the final inscription of the date of death when the parishioner actually passes away.

120. The Archdiocese has also placed blank headstones from Rock of Ages above empty cemetery plots. This allows the Archdiocese to display various types of headstones. Parishioners may also purchase interment and inscription rights for any cemetery plot with a blank headstone.

121. In the alternative, a family member can obtain a monument through the inscription-rights program on an at-need basis after the parishioner has passed away.

122. The advantage of the inscription-rights program is that the Archdiocese, by retaining ownership of the monument, always has the right to maintain it and agrees to do so in perpetuity. This is also advantageous to the decedent and his or her family because they can be certain that the monument will be cared for in perpetuity.

123. Because monuments, like the decedents they memorialize, are never moved except at the specific request of the families and except when replaced due to damage, families generally do not care who, technically, owns the monument. Families want an arrangement that ensures that the monument, the remains, and the cemetery are best cared for. In the

Archdiocese's experience, families welcome the opportunity for the Archdiocese to retain ownership of the monument because that is one less responsibility for the family.

124. The inscription-rights program is also advantageous to the Archdiocese and the families who purchase inscription rights because funds that would otherwise have gone to private monument dealers stay within the cemeteries. These funds enhance the ability of the Archdiocese to operate and maintain the cemeteries overall. In addition, a fraction of the funds generated by the cemeteries are returned to the Archdiocese to support its charitable, educational, and religious missions. Thus, for parishioners, the inscription-rights program allows them the peace of mind associated with the care of their own gravesites as well as the opportunity to contribute financially to the wellbeing of the cemeteries and the Archdiocese.

125. The Archdiocese began what it now calls its inscription-rights program in 2006 solely with private family mausoleums.

126. Since 2006, fifty private family mausoleums have been added to the Archdiocese's inscription-rights program.

127. In 2013, the Archdiocese decided to expand its inscription-rights program to other types of monuments such as headstones.

128. The cost of inscription rights for a conventional monument, such as a headstone, ranges from \$1,000 to \$4,000, though it is possible to spend more for a larger, more ornate headstone.

129. Between 2006 and March 23, 2015, the Archdiocese has entered into approximately 600 inscription-rights contracts.

130. Of these approximately 600 contracts for inscription rights, it is a certainty that at some point in the future the Archdiocese will have to reinstall and re-inscribe some, if not all, of the monuments associated with those contracts.

The Monument Builders Object to the Inscription-Rights Program

131. Some private monument dealers and the Monument Builders Association of New Jersey objected to the Archdiocese providing headstones to parishioners through the inscription-rights program when the Archdiocese began doing so in 2013.

132. John M. Burns, Jr., the head of the Monument Builders Association, owns monument businesses near Archdiocese cemeteries.

133. Mr. Burns contacted the Archdiocese in 2013 to protest the expansion of the inscription-rights program to headstones and similar monuments.

134. During that conversation, Mr. Burns expressed the view that it was unfair for the Archdiocese to provide monuments to parishioners because doing so would negatively impact his business and the businesses of other monument dealers.

135. According to Mr. Burns, it is unfair for the Archdiocese to provide monuments because it is a nonprofit and thus not subject to the same taxes as a for-profit monument dealer.

136. According to Mr. Burns, it is unfair that the Archdiocese has ample land to display various kinds of monuments for parishioners trying to decide what kind to purchase.

137. According to Mr. Burns, it is unfair for the Archdiocese to provide monuments because, as a cemetery, it has a relationship with a person seeking interment there.

138. Mr. Burns also expressed the view that the Archdiocese had promised in 2006 not to expand its inscription-rights program beyond private family mausoleums.

139. The Archdiocese declined to stop its inscription-rights program in response to the objections of the Monument Dealers because the Archdiocese believed that it had a legal right to operate the program and was doing so for the welfare of parishioners, the cemeteries, and the Archdiocese as a whole.

The Monument Builders Sue the Archdiocese over the Inscription-Rights Program

140. On July 19, 2013, the Monument Builders Association sued the Archdiocese in New Jersey state court alleging that the inscription-rights program constituted a form of unfair competition under New Jersey public policy as set forth by the state courts in New Jersey common law.

141. The Monument Builders Association relied primarily on state court decisions from the 1960s and earlier for the proposition that, under New Jersey common law, it was unfair for cemeteries to sell monuments.

142. Many of the decisions upon which the Monument Builders Association principally relied predated the New Jersey Cemetery Act of 1971, which comprehensively reorganized New Jersey cemetery law.

143. The New Jersey Cemetery Act of 1971 exempted private religious cemeteries, such as those of the Archdiocese, from its strictures. N.J. Rev. Stat. 8A:1-2 (“‘Cemetery Company’ means a person, corporation, association or other entity that owns or operates a cemetery, but does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.”), *repealed by* Cemetery Act of 2003, N.J. Stat. Ann. § 45:27-2. Thus, while the Cemetery Act of 1971 forbade public, nonsectarian cemeteries from

selling monuments, religious cemeteries were permitted to do so because that prohibition did not apply to them.

144. New Jersey comprehensively reorganized its cemetery law again in 2003.

145. The Cemetery Act of 2003 tracked the Cemetery Act of 1971 in continuing to exempt private religious cemeteries, such as those of the Archdiocese, from its strictures. N.J. Stat. Ann. § 45:27-2 (“‘Cemetery Company’ means a person that owns, manages, operates or controls a cemetery, directly or indirectly, but does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.”). Thus, while the Cemetery Act of 2003 forbade public, nonsectarian cemeteries from selling monuments, religious cemeteries were permitted to do so because that prohibition did not apply to them.

146. In April 2014, the New Jersey state trial court conducted a six-day bench trial of the Monument Dealers Association’s lawsuit against the Archdiocese.

147. On April 29, 2014, the state trial court issued a written opinion in the Monument Builders Association’s lawsuit against the Archdiocese.

148. The decision rejected the Monument Builders Association’s claims in their entirety and entered judgment for the Archdiocese.

149. The state trial court held that the state judicial decisions on which the Monument Builders Association principally relied were inapposite because they did not involve private religious cemeteries.

150. The state trial court also held that the state judicial decisions on which the Monument Builders Association principally relied were irrelevant because the Cemetery Act of 2003 was the controlling law. The trial court held that it was not illegal for the Archdiocese to

provide monuments to parishioners through the inscription-rights program because the Cemetery Act did not forbid private religious cemeteries from selling monuments.

151. Up to the time of the state trial court decision in the Monument Builders Association's lawsuit against the Archdiocese, there was no statutory law in New Jersey forbidding a private religious cemetery from selling monuments.

152. The Monument Builders Association filed a timely notice of appeal.

153. The parties briefed the issues and the Appellate Division heard argument on June 2, 2015. On June 23, 2015, the Appellate Division affirmed the trial court in full.

The Monument Builders Successfully Lobbied the General Assembly to Target the Archdiocese

154. The Monument Builders Association did not pursue its interests solely in the courts of law. It also went to the New Jersey legislature to persuade it to pass a law forbidding private religious cemeteries from providing monuments.

155. The purpose of this proposed law, which eventually became Assembly Bill 3840, was to prevent the Archdiocese specifically from selling monuments.

156. At the time Assembly Bill 3840 was proposed and eventually passed, no private religious cemetery in New Jersey, other than those of the Archdiocese, was providing monuments to parishioners.

157. The Monument Builders Association's objective was to convince the General Assembly to pass a law that, had it existed, would have enabled the Association to have won its lawsuit against the Archdiocese instead of losing on the ground that it was not illegal under New Jersey law for a private religious cemetery to provide monuments.

158. On December 18, 2014, Assembly Bill 3840 passed the House by a vote of 63-10.

159. On December 18, 2014, Assembly Bill 3840 passed the Senate by a vote of 27-4.

160. Assembly Bill 3840, in subsection 1(a), prohibits a private religious cemetery from doing the following three things relevant to this Complaint:

- a. “The ownership, manufacture, installation, sale, creation, inscription, or provision, provision or conveyance, in any form, of memorials”;
- b. “The ownership, manufacture, installation, sale, creation, provision or conveyance, in any form, of vaults, including vaults installed in a grave before or after sale and including vaults joined with each other in the ground”; and
- c. “The ownership, manufacture, installation, sale, creation, provision or conveyance, in any form, of a mausoleum intended for private use, which shall not include a mausoleum built for use by or sale to the general public membership of a religious organization.”

161. Assembly Bill 3840 does not prohibit the Archdiocese from continuing to sell interment rights in its community mausoleums.

162. Nor does Assembly Bill 3840 prohibit the Archdiocese’s inscription of the marble and granite covers in its community mausoleums that serve the same function as a monument (such as a headstone for a traditional, in-ground burial).

163. No consumer groups supported Assembly Bill 3840.

164. The Monument Builders Association presented no evidence to the General Assembly (and there was none from any other source) that allowing any cemetery, secular or religious, to sell monuments presented actual consumer problems in any of the 47 states where cemeteries are allowed to sell monuments directly to consumers.

165. The Monument Builders Association presented no evidence to the General Assembly (and there was none from any other source) that allowing any cemetery, secular or

religious, to sell vaults presented actual consumer problems in any of the 47 states where cemeteries are allowed to sell vaults directly to consumers.

166. The Monument Builders Association presented no evidence to the General Assembly (and there was none from any other source) that any consumer who had participated in the Archdiocese's inscription-rights program had been harmed as a result, whether using the inscription-rights program for a traditional cemetery monument or for a private family mausoleum.

167. There is no evidence that the Archdiocese, which is allowed by law to sell tens or even hundreds of thousands of dollars' worth of interment rights for traditional burial plots or community mausoleums to individuals or families, presents a consumer-protection danger to parishioners if the Archdiocese also provides a monument to parishioners through the inscription-rights program.

168. There is no evidence that the Archdiocese, which regularly sells spaces in its community mausoleums for tens of thousands of dollars, presents a consumer-protection danger to parishioners who choose to be interred in a community mausoleum. There is no evidence of a consumer-protection danger despite the fact that the Archdiocese sells the marble or granite cover as part of the mausoleum space and that cover is the equivalent of a monument such as a headstone for a traditional in-ground burial.

169. There is no evidence that the Archdiocese, which since 2006 has sold approximately 51 private family mausoleums for approximately \$6,000,000 in revenue, has caused a consumer-protection problem for parishioners even though the mausoleums have memorial lettering on them that serves the same purpose as a monument such as a headstone in a traditional in-ground burial.



170. The Monument Dealers Association did not propose any statutory amendment short of banning the Archdiocese from providing monuments through the inscription-rights program.

171. The purpose of the Monument Builders Association's lobbying to the General Assembly was to prevent the Archdiocese from providing monuments because of the negative impact of the inscription-rights program on the revenue of the Association's members.

172. The Monument Builders Association presented evidence to the General Assembly that the Archdiocese's inscription-rights program would negatively impact the revenue of the Association's members.

173. The Archdiocese has never been investigated by the government for any form of consumer complaint or consumer-related issue concerning the cemeteries.

174. Assembly Bill 3840 amended the Religious Corporations Law, N.J. Stat. Ann. §§ 16:1-1 *et seq.*, not the Cemetery Act.

175. Assembly Bill 3840 does not subject the Archdiocese or any other private religious cemetery to the Cemetery Act. Under Assembly Bill 3840, none of the provisions of the Cemetery Act or supervision by the New Jersey Cemetery Board apply to private religious cemeteries.

176. Assembly Bill 3840 is intended solely to prevent private religious cemeteries, such as those operated by the Archdiocese, from earning money from consumers who have traditionally been the customers of monument dealers or funeral homes.

177. Assembly Bill 3840 was passed by the General Assembly to be effective immediately.

178. Governor Christie exercised a conditional veto of the bill on February 5, 2015. Governor Christie did not object to its substantive content. He objected to the immediate effective date, which he believed would not provide the Archdiocese's parishioners who had made plans to participate in the inscription-rights program enough time to make alternative arrangements.

179. The House amended Assembly Bill 3840 following the conditional veto to extend the effective date to a year from the bill's enactment. On March 9, 2015, the amended bill passed the House by a vote of 68 to 7.

180. On March 16, 2015, the Senate approved the amendment to Assembly Bill 3840 by a vote of 31 to 2.

181. On March 23, 2015, Governor Christie signed amended Assembly Bill 3840 into law. This bill amended Chapter 1, Title 16 of the Revised Statutes of New Jersey.

182. The new law goes into effect on March 23, 2016.

Plaintiff Emilio Mazza

183. Plaintiff Emilio Mazza is a customer of the Archdiocese's inscription-rights program. Through the inscription-rights program, he acquired a private family mausoleum in Saint Gertrude Cemetery.

184. Plaintiff Mazza acquired the private family mausoleum in 2010 prior to the death of his wife. In addition to the private family mausoleum, Plaintiff Mazza also purchased the right to interment for the two adjoining cemetery plots so that his son and grandchildren can build private family mausoleums in the future. Plaintiff Mazza spent approximately \$233,000 to acquire the private family mausoleum.

185. Plaintiff Mazza's wife's remains are currently interred in his private family mausoleum. His wife passed away in 2010 after an extended illness.

186. Plaintiff Mazza's remains will be interred in his private family mausoleum upon his death.

187. Plaintiff Mazza acquired his private family mausoleum through the Archdiocese's inscription-rights program because he wanted to support the Archdiocese and Saint Gertrude Cemetery, and because of the Archdiocese's agreement to maintain the mausoleum in perpetuity.

188. If not for the inscription-rights program's agreement to own and maintain his mausoleum in perpetuity, Plaintiff Mazza may not have acquired his mausoleum from the Archdiocese.

189. Plaintiff Mazza highly values knowing that even after he passes away, his mausoleum will be maintained.

190. Plaintiff Mazza has received exemplary service from the Archdiocese and Saint Gertrude Cemetery, and is very pleased that he used the inscription-rights program to acquire a private family mausoleum for the interment of him and his wife.

Plaintiff Dennis Flynn, Sr.

191. Plaintiff Dennis Flynn, Sr. is a customer of the Archdiocese's inscription-rights program. Through the inscription-rights program, he acquired a headstone to memorialize his son, Dennis Flynn, Jr.

192. Plaintiff Flynn's son passed away unexpectedly in late 2012. He was interred in a cemetery plot in Maryrest Cemetery.

193. Nearly a year after his son's death, Plaintiff Flynn began the process of acquiring a headstone to mark his son's cemetery plot and memorialize his life. In 2013, Dennis acquired

the headstone currently placed on his son's grave through the Archdiocese's inscription-rights program.

194. The cost of the inscription right, which includes the headstone and its installation, was approximately \$4,300.

195. Plaintiff Flynn chose to use the inscription-rights program because he wanted to support the Archdiocese and Maryrest Cemetery, found the process of acquiring a headstone through the inscription-rights program convenient, and valued the Archdiocese's agreement to own and maintain the headstone in perpetuity.

196. If not for the inscription-rights program's agreement to own and maintain his monument, Plaintiff Flynn may not have acquired his monument from the Archdiocese.

197. Plaintiff Flynn has received exemplary service from the Archdiocese and Maryrest Cemetery and is pleased that he used the inscription-rights program to acquire a headstone for his son's cemetery plot.

198. Plaintiff Flynn and his wife intend to be interred with their son and have their names added to their son's headstone. Plaintiff Flynn and his wife take comfort knowing that the headstone memorializing their son's life, and that will memorialize their life, will be maintained in perpetuity.

#### The Archdiocese's Planned Vault Sales

199. The Archdiocese has concrete plans to sell vaults on a pre-need and at-need basis. If not for Assembly Bill 3840, the Archdiocese would begin to sell vaults on a pre-need and at-need basis.

200. A vault is a receptacle for a casket in a traditional in-ground burial.

201. A vault is a structural component of the burial space because its purpose is to prevent the soil from subsiding as the casket eventually collapses.

202. Parishioners currently purchase vaults through funeral directors who then arrange for the vaults to be installed at the time of interment.

203. The vaults will not be sold through the inscription-rights program.

204. The vault will be sold to the family but once installed, will remain the property and responsibility of the Archdiocese. The Archdiocese will sell the vault, order the vault from the dealer, supervise its installment by the dealer, and then oversee the burial of the vault once the casket of the deceased parishioner is lowered into it.

205. The Archdiocese believes that it is in the best position to help parishioners select an appropriate vault because the Archdiocese best understands the requirements of its own cemeteries.

206. The Archdiocese also believes that selling vaults will provide parishioners with another opportunity to contribute to the long-term care of the cemeteries and the Archdiocese as a whole.

207. There are many parishioners who would purchase vaults from the Archdiocese once the Archdiocese begins to offer vaults to parishioners.

#### Injury to Plaintiffs

208. On its face and as applied by Defendants, Assembly Bill 3840, codified at N.J. Stat. Ann. § 16:1-7.1 (2015), forbids religious organizations—for the first time in the history of New Jersey—from selling monuments as part of the operation of private religious cemeteries. Hence, the Archdiocese's inscription-rights program will be illegal when the statute goes into effect on March 23, 2016.

209. The Archdiocese will halt its inscription-rights program as a direct result of the passage of Assembly Bill 3840. The Archdiocese will not sell inscription rights any longer on either a pre-need or at-need basis once the statute is effective.

210. Although written in generic language, the specific purpose of Assembly Bill 3840 was to make the Archdiocese's inscription-rights program illegal. At the time Assembly Bill 3840 was enacted, the Archdiocese was the only religious organization in New Jersey providing monuments as part of the operation of its private religious cemeteries.

211. But for the passage of Assembly Bill 3840, the Archdiocese's inscription-rights program will not be illegal when the law goes into effect.

212. But for the passage of Assembly Bill 3840, the Archdiocese would continue its inscription-rights program by providing monuments, including private family mausoleums, on an at-need basis and by entering into pre-need contracts.

213. When it goes into effect, Assembly Bill 3840 will impair the Archdiocese's 600-plus, preexisting inscription-rights contracts with parishioners because the Archdiocese owns all of the monuments associated with those contracts, but Assembly Bill 3840 will make it illegal for the Archdiocese to own monuments as of March 23, 2016. The Archdiocese's ownership of those hundreds of monuments is the foundation of its contractual obligation to the parishioners associated with those monuments.

214. Under Assembly Bill 3840, it will be illegal for the Archdiocese to maintain ownership of the approximately 600 monuments under the preexisting inscription-rights program. The Archdiocese will have to transfer ownership of the monuments before the effective date of the law (March 23, 2016), but there is no market for inscribed monuments affixed to the earth above a cemetery plot (which may or may not yet contain the remains of someone). The

families have already paid the full value of the monument to the Archdiocese and thus are not going to buy the monuments from the Archdiocese. Third parties are not going to buy the monuments, and the Archdiocese would never sell them to third parties. The Archdiocese cannot assume that it can give ownership to the respective families because the whole point of the inscription-rights contract is that the families do not wish to bear the burden of owning the monument in perpetuity. In addition, the Archdiocese does not wish to bear the obligation of maintaining the monuments in perpetuity without the rights associated with ownership, such as the ability to remove, replace, and re-inscribe monuments when necessary.

215. But for the passage of Assembly Bill 3840, the Archdiocese would be able to fulfill its obligations under existing inscription-rights contracts to replace monuments—including the delivery, installment, and inscription of replacement monuments—that will become damaged in the future.

216. The Archdiocese has a concrete intention of selling vaults for those parishioners who want a vault as part of a traditional in-ground burial.

217. Assembly Bill 3840 expressly prohibits private religious cemeteries from selling vaults.

218. But for the passage of Assembly Bill 3840, the Archdiocese would implement its plan to sell vaults on both an at-need and pre-need basis.

219. Because Assembly Bill 3840 was passed for the specific purpose of halting the Archdiocese's inscription-rights program, enforcement of Assembly Bill 3840 against the Archdiocese by Defendants is a certainty. In addition, if the Archdiocese were to sell monuments illegally after Assembly Bill 3840 goes into effect, Defendants would enforce consumer-fraud prevention statutes such as the criminal prohibition on "theft by deception," which makes it a

crime to obtain property through misrepresentation, including misrepresentation about the law. *See* N.J. Stat. Ann. § 2C:20-4.

220. When Plaintiff Mazza dies, he intends to provide for the inscription of the date of his death on the private family mausoleum that he purchased through the inscription-rights program. Plaintiff Mazza wants to pay the Archdiocese to perform this final inscription. The Archdiocese wants to provide this final inscription. If Plaintiff Mazza dies after the effective date of Assembly Bill 3840, it will be illegal for the Archdiocese to perform this final inscription. But for the passage of Assembly Bill 3840, the Archdiocese would be certain to perform the final inscription upon the death of Plaintiff Mazza.

221. By entering into an inscription-rights contract with the Archdiocese, Plaintiff Mazza paid for the guarantee that the Archdiocese would own the private family mausoleum where his wife is interred and where he will be interred. Assembly Bill 3840 has made it illegal for the Archdiocese to own the mausoleum, which impairs the fundamental obligation in the inscription-rights contract between Plaintiff Mazza and the Archdiocese.

222. By entering into an inscription-rights contract with the Archdiocese, Plaintiff Mazza paid for the guarantee that his private family mausoleum will be maintained in perpetuity. But for the passage of Assembly Bill 3840, the Archdiocese would be able to fulfill its contractual obligation to Plaintiff Mazza to replace his private family mausoleum in the circumstance that it becomes damaged beyond repair.

223. When Plaintiff Flynn dies, he intends to provide for the inscription of the date of his death on the headstone that he purchased through the inscription-rights program. Plaintiff Flynn wants to pay the Archdiocese to perform this final inscription. The Archdiocese wants to provide this final inscription. If Plaintiff Flynn dies after the effective date of Assembly Bill



3840, it will be illegal for the Archdiocese to perform this final inscription. But for the passage of Assembly Bill 3840, the Archdiocese would be certain to perform the final inscription upon the death of Plaintiff Flynn.

224. By entering into an inscription-rights contract with the Archdiocese, Plaintiff Flynn paid for the guarantee that the Archdiocese would own the headstone above his family plot where his son is presently buried and where he and his wife will one day be buried. Assembly Bill 3840 has made it illegal for the Archdiocese to own the headstone, which impairs the fundamental obligation in the inscription-rights contract between Plaintiff Flynn and the Archdiocese.

225. By entering into an inscription-rights contract with the Archdiocese, Plaintiff Flynn paid for the guarantee that his family's headstone will be maintained in perpetuity. But for the passage of Assembly Bill 3840, the Archdiocese would be able to fulfill its contractual obligation to Plaintiff Flynn to replace his family's headstone in the circumstance that it becomes damaged beyond repair.

## **CONSTITUTIONAL VIOLATIONS**

### **Count I** **(Due Process)**

226. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 225 of this Complaint as if fully set forth herein.

227. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to pursue legitimate occupations, subject only to regulations that are rationally related to a legitimate government purpose.

228. The amendment to New Jersey's Religious Corporations Law violates Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42

U.S.C. § 1983 on its face and as applied by forbidding religious corporations from selling vaults or monuments, such as headstones and private family mausoleums, to parishioners wishing to inter themselves or loved ones in a private religious cemetery.

229. There is no rational basis for prohibiting anyone from selling a vault or monument to the public, much less a rational basis for prohibiting religious corporations from selling vaults or monuments to parishioners wishing to inter themselves or loved ones in a private religious cemetery. The absence of any rational basis for the amendment to New Jersey's Religious Corporations Law is evident in the fact that the General Assembly passed the law, and Defendant Christie signed it, in response to lobbying by industry groups seeking to protect their revenue, not in response to any actual or even perceived risk to the public from private religious cemeteries.

230. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

Count II  
(Equal Protection)

231. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 230 of this Complaint as if fully set forth herein.

232. Assembly Bill 3840 does not forbid the Archdiocese from selling the right to interment in spaces in its community mausoleums for full bodies and cremated human remains. The interment right for a mausoleum includes a marble or granite front for a mausoleum space that includes memorializing lettering such as the name of the decedent, the dates of birth and death, and any other statement the deceased or their family wishes to make. The interment rights for cremated human remains in a niche within a community mausoleum also include a plaque

with memorializing lettering such as the name of the decedent, the dates of birth and death, and any other statement the deceased or their family wishes to make.

233. The marble or granite front or plaque for a niche serve the exact same memorializing purpose as a monument such as a headstone for a traditional, in-ground burial. But under Assembly Bill 3840, it is legal for the Archdiocese to sell a marble or granite front or a plaque for a niche in a community mausoleum, yet illegal for the Archdiocese to sell a monument such as a headstone.

234. There is no rational basis for forbidding the Archdiocese from selling a traditional monument such as a headstone while allowing the Archdiocese to sell memorializing covers or plaques for its community mausoleums. The distinction Assembly Bill 3840 makes between a headstone above a gravesite (illegal for the Archdiocese to sell) and a marble or granite cover for a community mausoleum space (legal for the Archdiocese to sell) is arbitrary. This distinction exists only because monument dealers sell headstones but they do not sell memorializing covers or plaques for community mausoleums. The sole purpose of this distinction is to protect the private financial interests of the headstone dealers.

235. There is no rational basis for forbidding the Archdiocese from selling private family mausoleums while allowing the Archdiocese to build and operate community mausoleums. The distinction Assembly Bill 3840 makes between a private family mausoleum (illegal for the Archdiocese to sell) and community mausoleums (legal for the Archdiocese to build, operate, and sell interment rights within) is arbitrary. This distinction exists only because monument dealers sell private family mausoleums but do not build or operate community mausoleums. The sole purpose of this distinction is to protect the private financial interests of the headstone dealers.

236. There is no rational basis for forbidding the Archdiocese from selling vaults for burials. A vault is just a box for a casket that is designed to shore up the soil comprising the gravesite. A vault is a structural component of the burial space itself. The distinction Assembly Bill 3840 makes between a vault (illegal for the Archdiocese to sell) and a mausoleum space (legal for the Archdiocese to sell) is arbitrary. The vault and the mausoleum space are structural components of the interment space. This distinction exists only because funeral directors, who have traditionally sold vaults, do not want the Archdiocese selling them. The sole purpose of this distinction is to protect the private financial interests of the funeral directors.

237. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

Count III  
(Contracts Clause)

238. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 237 of this Complaint as if fully set forth herein.

239. The Contracts Clause of Article I, Section 10 of the U.S. Constitution prevents states from impairing the obligation of contracts without a legitimate public justification that substantially outweighs the harm inflicted on the contracting parties.

240. Here, there is no legitimate public justification for Assembly Bill 3840 because the only purpose of the amendment to the Religious Corporations Law is to protect the private revenue of monument sellers.

241. The Archdiocese has entered into approximately 600 inscription-rights contracts that predate the passage of Assembly Bill 3840 amending the Religious Corporations Law. As a result of the new law, it is illegal for the Archdiocese to perform its contractual obligations to

own any monuments. In addition, the Archdiocese cannot replace any monument in the future that is damaged beyond repair because replacing a monument would necessarily involve owning, installing, and inscribing the new monument.

242. As a result of the new law, Plaintiff Mazza's inscription-rights contract with the Archdiocese for his private family mausoleum is impaired because the Archdiocese will not be able to fulfill its contractual duty to own, inscribe, or replace his private family mausoleum.

243. As a result of the new law, Plaintiff Flynn's inscription-rights contract with the Archdiocese is also impaired. The Archdiocese will not be able to fulfill its contractual duty to own, inscribe, or replace his family's headstone.

244. The amendment to New Jersey's Religious Corporations Law violates the Contracts Clause because the harm inflicted on the contracting parties—the Archdiocese and its parishioners, such as Plaintiffs Mazza and Flynn—outweighs the legitimate public justification, which does not exist, for impairing the contracts. The absence of any legitimate public justification for impairing the contracts is evident in the fact that the General Assembly passed the law, and Defendant Christie signed it, in response to lobbying by industry groups seeking to protect their revenue, not in response to any actual or even perceived risk to the public from private religious cemeteries.

245. Unless Defendants are enjoined from committing the above-described violations of the Contracts Clause, Plaintiffs will continue to suffer great and irreparable harm.

Count IV  
(Privileges or Immunities)

246. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 245 of this Complaint as if fully set forth herein.

247. The Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to pursue legitimate occupations, subject only to regulations that are rationally related to a legitimate government purpose.

248. The amendment to New Jersey's Religious Corporations Law violates Plaintiffs' privileges or immunities under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on its face and as applied by forbidding religious corporations from selling vaults or monuments to parishioners wishing to inter themselves or loved ones in a private religious cemetery.

249. There is no rational basis for prohibiting anyone from selling a vault or monument to the public, much less a rational basis for prohibiting religious corporations from selling vaults or monuments to parishioners wishing to inter themselves or loved ones in a private religious cemetery. The absence of any rational basis for the amendment to New Jersey's Religious Corporations Law is evident in the fact that the General Assembly passed the law, and Defendant Christie signed it, in response to lobbying by industry groups seeking to protect their revenue, not in response to any actual or even perceived risk to the public from private religious cemeteries.

250. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

**Request for Relief**

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. A declaration that Assembly Bill 3840, codified as N.J. Stat. Ann. § 16:1-7.1, is unconstitutional on its face and as applied to the Archdiocese's inscription-rights program and vault sales;
- B. An injunction permanently enjoining Defendants from enforcing Assembly Bill 3840, codified as N.J. Stat. Ann. § 16:1-7.1, in violation of Plaintiffs' constitutional rights;
- C. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
- D. All further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 20th day of July, 2015.

**INSTITUTE FOR JUSTICE**

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