

OPINION | COMMENTARY | CROSS COUNTRY

## How a Crony Regulation Buried Catholic Tombstone Sales

Monument firms, fed up with competition from the Newark Archdiocese, pray for politicians' protection.

By **ADAM O'NEAL**

April 22, 2016 6:41 p.m. ET

Andrew Schafer takes his work overseeing the Archdiocese of Newark's cemeteries seriously. "The headstone is more than just a granite rock, in the sense of our faith," he says. "For generations to come, that headstone is going to evangelize the church, our belief in resurrection." Mr. Schafer says that cemeteries are one of the church's ministries, or missions. But a state law that went into effect last month creates an uncertain future for the archdiocese's cemeteries—and sets a bad precedent for economic freedom in New Jersey.

The Archdiocese of Newark operates 11 cemeteries in the Garden State, serving the 1.3 million Catholics under its jurisdiction. More than 3,500 burials take place each year, and about one million graves already occupy much of the 763 acres owned and maintained by the church. The multimillion-dollar operation employs dozens of people and, until recently, provided a wide range of services and products for Catholics.

For instance, in the early 1980s, the archdiocese began to sell "inscription rights" for its community mausoleums. Someone could buy the right to be interred in a crypt with a custom inscription, and the cemetery would maintain the resting place in perpetuity. The program expanded in 2006 to small, private family mausoleums and generated millions of dollars in revenue.

About three years ago, after requests from parishioners, the church moved into another market: inscription rights for tombstones. For a fee, someone could be buried under a custom memorial stone in one of the archdiocese's cemeteries. The church owned the



PHOTO: GETTY IMAGES

actual stone, as well as the plot of land, but the deceased maintained the right to be interred there forever. The archdiocese would maintain the site and fix damage that comes with time.

Private headstone dealers didn't like the new competition. "We saw the monument business coming to an end in the state of New Jersey, at least in our local

sales area," says John Burns, president of the Monument Builders Association of New Jersey. He estimates that when the archdiocese began offering tombstones, within eight months the church had captured a third of the market.

Mr. Burns's group filed a lawsuit in July of 2013, arguing that the church's entrance into the market was unfair. When the court ruled that the archdiocese's offering wasn't illegal, the association sought to make it so. The Monument Builders Association, with an assist from New Jersey's influential Funeral Directors Association, lobbied the state legislature to ban religious cemeteries from selling headstones.

Lawmakers heard a two-pronged pitch: that the archdiocese had numerous tax advantages that gave it an unfair edge, and that the church used its religious authority to pressure grieving consumers and prevent them from shopping around.

The bill easily passed in both chambers. Gov. Chris Christie—a Roman Catholic and personal friend of Newark Archbishop John J. Myers—signed it into law last March, albeit with a one-year delay on implementation. The governor's office declined to comment for this article.

Archbishop Meyers has taken a strong personal interest in the law, and says he is willing to fight as long as necessary. The church filed a court challenge last year calling the law unconstitutional. But the Monument Builders and Funeral Directors associations have moved for a dismissal, and the district court has yet to respond. Meanwhile, the law has kicked in, forcing the church to end the inscription program.

The church's suit claims that the law "interferes with the economic liberty of the

Archdiocese solely for the purpose of private economic protectionism rather than for any legitimate public reason.” It suggests that “as a result of the new law, it is illegal for the Archdiocese to perform its contractual obligations to own any monuments.”

The Institute for Justice’s Greg Reed, who is representing the church, allows that the archdiocese has tax advantages, but points out that it can sell only to parishioners and that its revenue must be devoted to the diocese. Further, he argues, while monument dealers only provide a stone, the church offered a better service: perpetual care for the memorial.

“No consumer group supported the law we’re challenging,” Mr. Reed says, adding that parishioners never complained about the program. “Consumers should be free to choose, and those who wish to further support the archdiocese by buying a monument there ought to be able to do that.”

Entrenched businesses are hearing none of it. Monuments man Mr. Burns, a Roman Catholic, admits the church has gotten under his skin. “I mean, we’re good neighbors,” he tells me. “They’re not good neighbors. They want to rape these businesses across the street and put them out.”

Some consumers see it differently. Dennis Flynn, a plaintiff in the case, approached the archdiocese about purchasing a headstone several months after his son died in 2012. “It’s not like going shopping for a new car. I don’t want to have to go from lot to lot,” he says, adding that he was turned off by impersonal advertisements from monument dealers that misspelled his son’s name. “Now anyone who feels the same way as I do, that option has been taken away from them. I don’t understand.”

*Mr. O’Neal is an assistant editorial features editor at the Journal.*

WHAT TO READ NEXT...



**JOURNAL REPORTS: LEADERSHIP**  
**Singapore Is Taking the ‘Smart City’ to a Whole New Level**



**MAIN STREET**  
**Curt Schilling the Science Guy**



**U.S. NEWS**  
**Archdiocese of Chicago Facing Parish Closures**



**POLITICS AND POLICY**  
**Judge Upholds North Carolina Voter-ID Law, Other Restrictions**

Copyright 2014 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit [www.djreprints.com](http://www.djreprints.com).