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U.S.

Supreme Court Asked to Take Milwaukee Archdiocese Cemetery Dispute

Archdiocese aims to shield cemetery funds from alleged abuse victims

By **TOM CORRIGAN**

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The U.S. Supreme Court has been asked to weigh in on a dispute over whether the Roman Catholic Archdiocese of Milwaukee may shield a \$55 million cemetery maintenance trust from hundreds of alleged clergy sexual-abuse victims seeking compensation.

A lawyer for the cemetery trust said Tuesday that the trust filed a petition asking the Supreme Court for a final ruling on the fate of the cemetery funds. The move aims to appeal a March ruling from the U.S. Court of Appeals for the Seventh Circuit that a trust created to maintain the Archdiocese of Milwaukee's cemeteries isn't subject to federal laws protecting religious freedoms.

The appeals court's ruling "leaves religious freedoms vulnerable to encroachment by federal laws asserted in private litigation," lawyers for the cemetery trust wrote in the petition. "And it forces the scores of religious organizations that file under chapter 11 each year to choose between sacrificing their religious freedoms or facing financial ruin."

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If the Seventh Circuit's ruling stands, it could help more than 500 victims of alleged sexual abuse by the archdiocese's clergy argue that the funds should be included in the compensation they will receive as part of the archdiocese's long-running bankruptcy.

"There is no good reason for the Supreme Court to address this issue," said Marci Hamilton, a lawyer representing a committee of alleged victims in the archdiocese's bankruptcy. "In essence, they're tilting at windmills."

Throughout the bankruptcy, the archdiocese has argued that being forced to compensate victims with funds designated for its cemeteries would violate federal laws protecting its free exercise of religion. Victims have argued those laws don't apply and have accused the archdiocese of funneling money to the trust to keep it out of their reach.

In 2007, four years before the archdiocese filed for bankruptcy, Milwaukee Archbishop Timothy Dolan, now Cardinal Dolan of New York, transferred about \$55 million to a new trust created to provide for more than 1,000 acres of cemetery land. The land serves as the final resting place for more than 500,000 people, according to the archdiocese's website.

The archdiocese contends that the funds have always been intended to provide for its cemeteries. But in a letter to the Vatican the same year the trust was created, then-Archbishop Dolan suggested the transfer would help defend the funds against future lawsuits.

"By transferring these assets to the trust, I foresee an improved protection of these funds from any legal claim and liability," he wrote in the letter, a copy of which The Wall Street Journal has viewed.

Cardinal Dolan couldn't be reached for comment Tuesday.

The archdiocese sought chapter 11 protection in 2011 in the face of mounting abuse claims, giving rise to a battle over the cemetery trust. A district judge sided with the archdiocese in a 2013 ruling, which abuse victims appealed. The 7th Circuit reversed the district court, finding that neither the First Amendment nor a federal law intended to strengthen religious rights were applicable.

Timothy Nixon, a lawyer representing the cemetery trust, acknowledged the high court agrees to hear only a fraction of the thousands of cases it is asked to review each year. However, he thinks the trust's petition may have somewhat better odds, since several other federal appeals courts have made contradictory

rulings on similar issues.

“Think about where this country is right now,” he said. “We are debating the role of religion in a democratic society on a daily basis.”

Erwin Chemerinsky, a constitutional law scholar and dean of UC-Irvine’s School of Law, said the Supreme Court is unlikely to take the case.

“I think that the Seventh Circuit was very clear in ruling against the archdiocese,” he said. “I thought it was a very persuasive opinion.”

In its bankruptcy, the archdiocese is currently offering \$4 million to pay about 125 of the more than 500 people who have sought compensation, as well as another \$500,000 to provide lifetime therapy. To help fund its proposal, the archdiocese is proposing to borrow \$2 million from the cemetery trust, which alleged abuse victims say isn’t enough.

The archdiocese has spent about \$18 million in legal and professional fees since the inception of its chapter 11 case, according to a spokesman for the archdiocese.

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