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Rev. Samuel M. Waters
Ss. Peter & Paul Roman Catholic Mission

Petition for judgment to rescind the Decree of Excommunication of Archbishop Charles Chaput of Philadelphia against Rev. Samuel M. Waters and appeal to the Holy Father.

Enclosures:

- 1) Decree of Excommunication of Archbishop Charles Chaput against Rev. Samuel Waters
- 2) Letters, nine (9) in number, exchanged between Rev. Samuel Waters and the Archdiocese of Philadelphia.
- 3) Internet hyperlinks to OPEN LETTERS on Ss. Peter and Paul Roman Catholic Mission web page:
http://www.saintspeterandpaulrcm.com/open_letters.htm

1) Acknowledged facts by all parties:

Rev. Samuel Waters, a diocesan priest from the Archdiocese of Philadelphia, PA, ordained by John Cardinal Krol in 1982 served as a diocesan priest for eighteen years as a high school chaplain, teaching in schools [both elementary and secondary schools] and served for 8 years as a confessor of a retreat center for women. Fr. Waters also served in the USAF Reserves as a chaplain achieving the rank of Major. After experiencing a crisis of faith, Fr. Waters left the active priestly ministry in 2000 and he worked for nearly six years as a case worker and manager in Child Welfare services. In 2006 he began to study and learn Catholic tradition and developed a deep devotion for the doctrinal teachings and the immemorial ecclesiastical traditions of the Catholic Church. In 2008 he served with the Society of St. Pius X for two years in a period of formation in Catholic tradition. Since 2010 he has served as a chaplain for Ss. Peter & Paul Roman Catholic Mission in York, PA in the Diocese of Harrisburg, PA. Fr. Waters had no communication from the Archdiocese of Philadelphia from 2000 until receiving a letter in November 2012 from Msgr. Daniel Sullivan, Vicar of Clergy, Archdiocese of Philadelphia.

Ss. Peter & Paul Roman Catholic Mission (Mission) established in 2001 is a pious union of lay Catholics who, as posted on their web page: http://www.saintspeterandpaulrcm.com/about_us.htm

The members of Ss. Peter and Paul Roman Catholic Mission have joined together to work toward the sanctification of their souls by restoring to the Diocese of Harrisburg and defending the Ecclesiastical Traditions of the Roman Catholic Church, the patrimony and right of all Catholics. The primary focus of these efforts is the propagation of the traditional Roman Rite of the Mass as codified by Pope St. Pius V and traditional catechetical instructions for the purpose of promoting the greater glory of God and the conversion of souls to the Catholic Church "outside of which there is no salvation." The members observe holy Catholic obedience to our Holy Father, the Pope of Rome in all things that are not contrary to the constant tradition of the Catholic Church. The Members, in following the exhortation of Pope St. Pius X to "restore all things in Christ," bound together in acts of prayer and penance, will engage in any form of Catholic Action, which is related to the divine mission of the Church in extending the Kingdom of God to everyone; individuals, families and society. So help us God.

Furthermore, the members have pledged to offer the daily Rosary, a weekly day of fast (on Tuesday if possible), and a monthly one hour act of reparation before the Blessed Sacrament as a minimum to our Lord Jesus Christ and His Blessed Mother to win from Their Hearts the grace and blessing for the success of this enterprise.¹

The doctrinal, liturgical and moral beliefs of the Mission which have been submitted to the local ordinary and to Rome can be summarized as:

Ss. Peter and Paul Roman Catholic Mission claims that by virtue of our baptism, whose character both empowers and obligates us to profess our Catholic faith and to worship God in the external forum, we have the right to the "received and approved" immemorial traditions of our Church that are perfectly consonant with that faith we hold in the internal forum and by which our faith is visibly manifested, most importantly, we

possess the right to have the “received and approved rites customarily used in the administration of the sacraments” (Council of Trent). We affirm that these immemorial ecclesiastical traditions are not simple matters of Church discipline open to the free and arbitrary will of the legislator but rather, necessary attributes of the faith without which it is “impossible to please God.” We further hold that, although these rights can be duly regulated by properly constituted authority, they can never be conditionally exercised by required concessions or compromises of Catholic faith or morals.

We further publically avow that we have made every effort to insure that our consciences, according to Catholic moral principles, have been properly formed and that they are both true and certain on these questions that pertain to faith and worship; and have made every effort to conform our actions to our conscience which we as Catholics are morally obliged to do.

Mission Letter to Bishop Joseph McFadden, June 29, 2011

The masses offered at Ss. Peter & Paul Roman Catholic Mission are according to the immemorial traditions of our Church. We use the “received and approved rites of the Catholic Church customarily used in the solemn administration of the sacraments” (Council of Trent, Sess. VII, can XIII) that are prescribed in the **Tridentine** Profession of Faith of Pope Pius IV, *Iniunctum Nobis*. [.....] We affirm to you again that by virtue of our baptismal character, which obligates us to offer public worship to God, we necessarily possess the right from God to the immemorial traditions of our Church, in particular, the right to the “received and approved rites of the Catholic Church used in the solemn administration of the sacraments”(Tridentine Profession of Faith), which are the perfect outward manifestation of that Faith that we hold in the internal forum, without which “it is impossible to please God” (Heb. 11, 6). And, while acknowledging that these rights can be duly regulated by competent authority, they can never be conditionally exercised at the price of compromise of any Catholic doctrinal or moral truth.

Letter to Bishop Joseph McFadden, September 3, 2011

The Mission has exchanged letters with the Diocese of Harrisburg in which they have explicitly and repeatedly stated to the local ordinary as a matter of conscience the doctrinal and liturgical justifications that form the ground in the formation of, what they hold to be, a true and certain conscience, which the faithful Catholic is obligated to obey, that justify their violation of particular canon laws for the purpose of fulfilling a higher law. These questions of doctrine and liturgy were first formally submitted to the late Bishop Nicholas Dattilo by a diocesan priest in 2001 requesting from him his judgment if there were anything in their doctrinal and/or liturgical positions that were contrary to the Catholic faith or morals. Bishop Dattilo made no reply beyond the public accusation of heresy and schism. The Mission then submitted the matter to the Congregation for the Doctrine of Faith in 2004 requesting a formal judgment. Cardinal Ratzinger took no action on the doctrinal and liturgical claims of the Mission and recommended referring the matter to the next local ordinary because Bishop Dattilo had died. Since that time the Diocese of Harrisburg has not repeated any accusation of heresy but has repeated the accusation of schism which, on every occasion, has been publically denied by the Mission. After the death of Bishop Dattilo, the Mission has repeatedly requested through their local ordinary a judgment from the Pope himself on the doctrinal and liturgical claims of the Mission.

Fr. Waters, after careful examination of the Mission's doctrinal and liturgical position has adopted that opinion as his own and has used this teaching as a justifiable defense of his actions against the accusations made by the Archdiocese of Philadelphia. These Mission letters are published on the Mission web page:

http://www.saintspeterandpaulrcm.com/open_letters.htm

2) Deficiencies in the Decree of Excommunication:

The Decree of Excommunication by Archbishop Charles Chaput against Fr. Samuel Waters states:

Since it has been proven, through an investigation, that Reverend Samuel M. Waters, a priest of the Archdiocese of Philadelphia, formally defected from the Catholic Church by joining “Saints Peter and Paul Roman Catholic Mission,” in York, Pennsylvania, a schismatic group, and since he has been contumacious in his intention to remain in schism rather than return to the full communion of the Roman Catholic Church, and

because his delict is public: it has been determined that he incurred a latae sententiae excommunication, in accord with Canon 1364 of the Code of Canon Law.
Archbishop Charles Chaput

Archbishop Charles Chaput has explicitly or implicitly affirmed as "proven" that the Mission, and therefore Fr. Waters, the following:

- a. That "Saints Peter and Paul Roman Catholic Mission, in York, Pennsylvania, (is) a schismatic group."
- b. That the Mission is not "subject to the Roman Pontiff."
- c. That the Mission is not in "communion with the members of the Church subject to the (Roman Pontiff)."
- d. That disobedience per se to a local ordinary constitutes schism.
- e. That the absence of anything less than "full communion" (i.e.: complete obedience) is necessarily "schism."
- f. That Fr. Samuel Waters and the Mission are acting with "malice," or willful and imputable "negligence" in violating particular laws.

3) Evidence and Arguments in support of the listed Deficiencies in the Decree of Excommunication. We answer that none of these affirmations by Archbishop Charles Chaput in his Decree have been "proven" and offer in reply the following evidence in rebuttal.

The only thing "proven" is that Fr. Waters is associated with the Ss. Peter and Paul Roman Catholic Mission (Mission) both as a chaplain and as Catholic and that he believes that the doctrinal, liturgical, canonical and moral claims of the Mission are true. Fr. Waters and the Mission hold and have publically professed that the immemorial ecclesiastical traditions, in particular, the "received and approved rites customarily used in the solemn administration of the sacraments" are, not simple accidents but necessary attributes of the Catholic faith. What is **not "proven"** is that the Mission is a "schismatic group" and that Fr. Waters therefore "formally defected from the Catholic Church by joining 'Saints Peter and Paul Roman Catholic Mission'.... a schismatic group."

The entire validity of the Decree of Excommunication is based upon the accusation that the Mission is "schismatic group". Schism is canonically defined as **"the withdrawal of submission (*subiectionis detrectatio*) to the Supreme Pontiff or from communion with the members of the Church subject to him" (Canon 751)**. An English translation of Canon 751 which defines schism as "refusal of subjection", or "refusal to be subject", to the Supreme Pontiff, would be an accurate translation of the Latin. The Mission has denied the charge of schism to the Diocese of Harrisburg and to Rome. Fr. Waters has denied that charge repeatedly in his communication to the Archdiocese of Philadelphia. He and the Mission admit to violation of specific canonical laws but have offered as justification for this action, in conformity with their Catholic formed consciences that they believe to be both true and certain, a necessary duty to obey a higher law.

Fr. Waters answering this charge of "schism" against the Mission said in his letter to the Archbishop Chaput of Philadelphia on August 17, 2013:

Your "decree" is based upon the accusation that the faithful Catholics of Ss. Peter & Paul Roman Catholic Mission [.....] is a "schismatic group." And it is this false judgment that forms the ground for your accusations and judgment against me. That allegation has been repeatedly and publicly denied. In my letter to Msgr. Sullivan in December 2012 I said:

Yes I am affiliated with Ss. Peter and Paul Roman Catholic Mission in York, PA however you err in saying that the Mission is "not in full communion with the Holy See." That is a charge of schism. Since the Mission and I both deny this allegation you must produce the documentary evidence of findings of fact and judicial determination from a canonical criminal trial that proves the charge. Until that is done, the charge of schism, of "not (being) in full communion with the Holy See," constitutes the sin of calumny.

[.....] It is public knowledge that at Ss. Peter & Paul Roman Catholic Mission Pope Francis and the local ordinary are named in the canon of the immemorial Roman rite of Mass offered each day. They are

specifically named in the intentions of the Rosary of Reparation offered before each public Mass. The papal flag is displayed in our sanctuary. You, like the former bishop of Harrisburg, confuse disobedience with schism. Consequently, the very ground of your "decree" has been in no way "proven." It is false accusation and again is formally denied."

Fr. Samuel Waters

It is a fact acknowledged by all that the Mission has appealed to the judgment of the Holy Father in Rome for the last ten years through their local ordinary and that appeal has been formally denied. In a letter from Bishop Kevin Rhoades, the former bishop of Harrisburg, in a letter of December 15, 2007, he said:

"I do not intend to submit your request to Rome, nor do I have plans to initiate a judicial process." Bishop Kevin Rhoades

The Archdiocese of Philadelphia also admits that Fr. Waters and the Mission have appealed to the definitive judgment of the Holy Father in Rome on specific matter of doctrine and worship. The only evidence offered that the Mission is in "schism" is that they are not approved by the bishop of Harrisburg, and thus are not in "communion with members of the Church subject to him (Roman Pontiff)." Msgr. Daniel Sullivan, Vicar for Clergy, Archdiocese of Philadelphia, said in a letter July 18, 2013:

The truth is that your Mission has never been in communion with the Bishops of Harrisburg after repeated exhortations to regularize the situation. Canon 751 indicates that schism applies not only to refusal of submission to the Roman Pontiff but also to refusal of "communion with the members of the Church subject to him," such as the Bishops of Harrisburg. While it is laudatory for anyone to pray for Pope and Bishop, **such seems inadequate to express genuine ecclesiastical communion** in light of your Mission's disciplinary inclinations.

Allow me now to draw your attention to Canon 1417 which notes that anyone of the faithful may introduce a case before the Holy See. Neither the Diocese of Harrisburg nor the Archdiocese of Philadelphia is obliged to make an appeal for you. It puzzles me how you refer to the infallible Chair of Peter and at the same time your Mission website contains references to "Modernist Rome." Canon 1417 supports the principle of subsidiarity whereby issues can be resolved at the level of the local Church.

Msgr. Daniel Sullivan

Msgr. Sullivan does not offer as proof of "schism" the charge of "**withdrawal of submission (*subiectionis detrectatio*) to the Supreme Pontiff**" by the Mission. His accusation of "schism" is based upon his claim that the Mission has "**withdrawn.... from communion with the members of the Church subject to (the Roman Pontiff) (Canon 751)**". Msgr. Sullivan, in his letter to Fr. Waters on December 13, 2012 described this disobedience to the local ordinary as "**not in full communion with the Holy See**" and in later communication called this disobedience "**schism**." Msgr. Sullivan and the past bishops of Harrisburg, and now Archbishop Chaput, conclude that a limited act of disobedience to the local ordinary, irrespective of any justifiable motive, is a "withdrawal from communion of members of the Church subject to the (Roman Pontiff)" and is therefore an act of schism. It is by this disobedience that he claims that the Mission "has never been in communion with the Bishops of Harrisburg," and therefore, are not "in communion with the members of the Church subject to him (Roman Pontiff)."

The Mission stated in a letter to the former ordinary, the late Bishop Joseph McFadden on August 17, 2011 regarding a accusation of "schism" published in the local newspaper:

This is a charge which we deny. It was made by your predecessor, Bishop Kevin Rhoades, again in a York Daily Record newspaper article. In a letter of July 31, 2007 we said to Bishop Rhoades:

We were disappointed to have the term "schismatic" used in describing the members of Ss. Peter and Paul Roman Catholic Mission. That is an accusation that we deny and believe that there is insufficient evidence

to justify its use especially without a formal canonical inquiry and judicial determination. Our Holy Father, Pope Benedict XVI does not use the term in reference to members of the Orthodox Church who formally deny his office and authority. Why then should it be used to describe those who profess the Catholic faith in its integrity? Your name and that of Pope Benedict are specifically recited in the canon of the Roman Rite of Mass that is offered at Ss. Peter & Paul Chapel. We believe a public retraction is in order.

A “public retraction” was not made. Instead, Bishop Rhoades replied on December 15, 2007, “I do not intend to submit your request to Rome, nor do I have plans to initiate a judicial process. My sole intention is to invite you to reconciliation with the Church.” Aside from a dereliction of duty, this reply constituted nothing more than a begging of the question. To “invite reconciliation with the Church” presupposes schism. We appealed for a judgment from the Pope through Bishop Rhoades on matters that pertain directly to the Catholic Faith and how it is visibly manifested in the external forum by our immemorial ecclesiastical traditions. We have a right to this judgment and Bishop Rhoades had a duty to help obtain it. [.....]

And schism is a grave accusation. This offence, when formal and culpable, incurs the Church’s extreme penalty, automatic (*latae sententiae*) excommunication, in accordance with Canon 1364, §1 of the Code of Canon Law. Excommunication has the effect of excluding the offender from being entitled to receive or administer any sacrament, and from being able to hold any office in the Church. According to Church law, schism is “the withdrawal of submission (*subiectionis detrectatio*) to the Supreme Pontiff or from communion with the members of the Church subject to him” (Canon 751), but exactly what acts constitute “withdrawal of submission” are not defined.

The Open Letters published on our internet web page contain letters addressed to the bishops of Harrisburg and to Rome over the last ten years. The letters formulating our doctrinal, liturgical, moral and canonical positions were reviewed before publication by several priests who have helped with our Mission, one of whom is a canon lawyer and another is a former professor of Thomistic philosophy at a major Catholic university. There is nothing in these letters that can support an accusation of schism, but that, of course, is a matter of opinion. I would be interested in hearing your arguments to explain how anyone who has for the last ten years publicly petitioned for a judgment from the Pope, and being denied that judgment has thereby evidenced “withdrawal of submission (*subiectionis detrectatio*) to the Supreme Pontiff.”
Ss. Peter & Paul Roman Catholic Mission

The Mission and now Fr. Waters have appealed to their ordinaries to the authoritative infallible judgment from the Holy Father whereby the attribute of infallibility which Jesus Christ has endowed His Church can be engaged. It is hypocritical to make the accusation of schism in the presence of a direct appeal to the authority of the Pope by the very persons who are refusing to further the appeal. Disobedience to the local ordinary in and of itself does not constitute schism. The Masses offered by Fr. Waters at the Mission are open to any faithful Catholic to attend. Even if one were to argue that disobedience to the local ordinary compromises communion with him personally, there is no logical reason to extend that restriction to all the faithful.

Summary of evidence that is documented in the Open Letters published on Mission's web page that they are not in a state of material schism:

1. The Mission published statement of purpose says, "The members observe holy Catholic obedience to our Holy Father, the Pope of Rome in all things that are not contrary to the constant tradition of the Catholic Church." (http://www.saintspeterandpaulrcm.com/about_us.htm)
2. Msgr. Mercurio Fregapane, a diocesan priest, formally submitted to Bishop Nicholas Datillo, at the request of the Mission, a petition for an official theological determination for any doctrinal or liturgical errors in the Missions claims; the petition was refused and Msgr. Fregepane was forced into retirement. (November 2001)
3. Mission formally petitioned the chapel be consecrated by the local ordinary; petition denied. (January 12, 2004)

4. Mission directly contacted the Congregation for the Doctrine of Faith, Joseph Cardinal Ratzinger, on two occasions requesting a judgment to determine if the Mission's doctrinal and liturgical teachings were heretical; petition denied and referred to local ordinary. (February 7, 2004 and on March 24, 2004)
5. Mission formally petitioned the local ordinary to perform or delegate a priest for the administration of the sacrament of Confirmation according to the "received and approved" traditional rite of the Roman Catholic Church; petition denied. (December 20, 2006)
6. Mission repeatedly petitioned through the local ordinary for a judgment from the Holy Father on the doctrinal and liturgical theological opinions held and defended by the Mission; petition denied. (Petition made in several letters over many years, Bishop Kevin Rhoades on December 15, 2007 categorically refused our petition to Rome.)
7. Mission displays papal flag in chapel sanctuary. (Picture seen on Mission web Home Page, <http://www.saintspeterandpaulrcm.com/>)
8. Mission specifically by name prays for Pope and local ordinary at Rosary of Reparation recited before each daily public Mass.
9. Mission prays for Pope and local ordinary by name in the canon of the "received and approved" immemorial rite of Mass publically offered each day at the chapel.
10. Mission provides Mass and sacraments to any faithful Catholic upon request demonstrating they have not "withdrawn from communion of members of the Church subject to the (Roman Pontiff)".
11. Fr. Samuel Waters petitioned through the Archdiocese of Philadelphia for a judgment from Rome on the doctrinal and liturgical teachings which he and the Mission hold. Fr. Waters was told by Msgr. Sullivan that it was not their legal responsibility. (July 18, 2013)
12. Msgr. Sullivan specifically cited as evidence for "schism" the fact that the Mission uses the "received and approved" immemorial Roman rite of Mass and not the Extra-ordinary form of the Novus Ordo given legal sanction by Pope Benedict XVI.

St. Pius V specifically declared regarding the "received and approved" immemorial Roman rite that:

"...this missal is hereafter to be followed absolutely, without any scruple of conscience or fear of incurring any penalty, judgment or censure, and may freely and lawfully be used... Nor are superiors, administrators, canons, chaplains, and other secular priests, or religious, of whatever title designated, obliged to celebrate the Mass otherwise than as enjoined by Us. ... Accordingly, no one whatsoever is permitted to infringe or rashly contravene this notice of Our permission, statute, ordinance, command, precept, grant, direction, will, decree and prohibition. Should any person venture to do so, let him understand he will incur the wrath of Almighty God and of the Blessed Apostles Peter and Paul."

Pope St. Pius V, Papal Bull, *Quo Primum*,

The Tridentine Codification of the "received and approved" traditional Roman Rite of the Mass.

Although every act of schism is an act of disobedience, not every act of disobedience is an act of schism. In the Archdiocese of Philadelphia there is a priest, Monsignor William Lynn, the former Vicar for Clergy, who is serving three to six years in prison after his felony child-endangerment conviction last year. Msgr. Lynn, in his obedience to his bishop helped in the criminal cover-up of predatory homosexual priests guilty of pederasty. Clearly, obedience has its limits. If Msgr. Lynn had disobeyed his ordinary by not covering-up the crime of pederasty would that have constituted an act of "schism"? The notion is absurd.

It is arbitrary and illogical for Msgr. Sullivan to imply that since Canon 751 does not say that "withdrawal of submission" to the Roman Pontiff, or to a bishop who is subject to the Roman Pontiff, has to be total in order to qualify as schism, partial withdrawal therefore suffices for the crime of schism to be committed. He says that the evidence provided by the Mission "seems inadequate to express genuine ecclesiastical communion." What "seems" to Msgr. Sullivan as schism hardly constitutes the proof.

With greater confidence it is reasonable to argue that since the canon does not say that partial withdrawal of submission is enough to qualify as schism, we should presume that the withdrawal has to be complete, both materially and formally, in order to be guilty of the offence of schism. Why? Because, the more lenient interpretation of Canon 751 is in harmony with the canonical principle expressed in Canon 18 of the Code: "Laws

which impose a penalty . . . are to be interpreted strictly.” Canon 18 means that whenever a penal law should require interpretation — as does Canon 1364, §1 in prescribing excommunication for “schism” — the correct interpretation will be that which employs a definition which favors charity to the accused. Only those actions which clearly and indisputably qualify as offences are understood to violate the law in question.

Msgr. Sullivan and Archbishop Chaput do exactly the opposite from what Canon 18 requires. The word "communion" in the phrase "communion to the members of the Church subject to (the Roman Pontiff)" is given a very broad interpretation to mean 'communion by absolute obedience to the local ordinary' and the term, "member, "a very narrow interpretation to mean 'only the local ordinary alone' and not all the faithful.

Canon 17 states that when there is some obscurity in the meaning of a law, “there must be recourse [on the part of the interpreter] to parallel places, if there be any, to the purposes and circumstances of the law, and to the mind of the legislator.” There are no “parallel places,” other than Canon 751 that explain what schism is. However, there are twenty-nine canons between Canon 1365 and Canon 1397 which implicitly explain clearly what schism is not. Specifically, these canons prescribe lesser penalties than excommunication for multiple forms of disobedience to the Supreme Pontiff, and therefore *a fortiori*, to a local ordinary. Since schism does incur excommunication, it logically follows that there are multiple forms of disobedience to the Supreme Pontiff, and therefore *a fortiori*, to the local ordinary, which do not reach the very grave level of schism.

Archbishop Chaput claims that the Mission is schismatic based upon a partial “withdrawal of submission” (i.e., disobedience) to the local ordinary which, in his opinion, qualifies materially as schism, but then offers no canonical evidence which clarifies, either explicitly or implicitly, just where the line is to be drawn between those graver forms of “partial withdrawal” which qualify as schism, and lesser forms which do not. Archbishop Chaput and Msgr. Sullivan bear the burden of proof and although they claim to have done this in their Decree of Excommunication they most certainly have not. They have not done this because it cannot be done. Schism is only mentioned in the two canons already cited. All Msgr. Sullivan could offer was that the Mission's evidence of submission to the Holy Father by such acts as a direct appeal to his authority through the local ordinary "seems inadequate to express genuine ecclesiastical communion" (July 18, 2013 Letter).

Canon 17 also stipulates that in interpreting a given canon, recourse “to the mind of the legislator” should be done. In Canon 751 it is evident that the mind of the legislator closely follows the teaching of St. Thomas Aquinas because the definition of schism in Canon 17 is it taken almost verbatim from him. In the *Summa Theologiæ*, IIa IIæ, Q. 39, a.1: St. Thomas says, “schismatics are those who refuse to be subject to the Roman Pontiff and who refuse communion with the members of the Church subject to him.” Consequently, the context for the definition of schism by St. Thomas is highly pertinent for an exact interpretation of Canon 751.

St. Thomas makes it clear that schism is a particular kind of disobedience, a distinct kind of sin. "Objection 2: Further, a man is apparently a schismatic if he disobeys the Church. But every sin makes a man disobey the commandments of the Church, because sin, according to Ambrose (De Parad. viii) 'is disobedience against the heavenly commandments.' Therefore every sin is a schism." St. Thomas replies (Q. 39, a.1, ad 2) that the "essence of schism is in rebelliously disobeying [the Church's] commandments. I say 'rebelliously' because the schismatic shows obstinate scorn for the Church's commandments and refuses to submit to her judgment. Not every sinner does that; and so not every sin is schism." The specific examples given by St. Thomas in Q. 39, a.2.1, taken from the book of Numbers 16:30 and II Kings 17, make it clear that "rebelliously" is to be understood in the strict meaning of the term, as when subjects reject completely the authority of the lawful leader. In the passage from the Book of Numbers, Core, Dathan, and Abiron, their followers, families and all their possessions were swallowed up by the earth in punishment for their total rejection of the authority of Moses. These men "stood up against Moses and Aaron, (and) they said: 'Let it be enough for you, that all the multitude consisteth of holy ones, and the Lord is among them: Why lift you up yourselves above the people of the Lord?'" The rebellion of Core repudiated the entire authority of Moses to rule. In the second example, St. Thomas mentions the ten tribes of Israel under Jeroboam, who completely separated themselves rejecting the legitimate authority of Reboam, the King of Judah who was the son of Solomon in the line of King David (I Kings 12: 26-33).

Every authoritative theologian after St. Thomas follows his criterion for the definition of schism. The 1913 Catholic Encyclopedia says that: **“not every disobedience is schism; in order to possess this character it must include, besides the transgression of the commands of superiors, denial of their Divine right to command”** (vol. 13, p. 529a, s.v. “Schism”). Likewise, the magisterial *Dictionnaire de Théologie Catholique* (DTC), possibly the greatest compendium of orthodox Catholic theology, explains the difference between heresy and schism:

"Schism and disobedience: The two things are so evidently similar, so closely related, that many confuse the two, or find difficulty in distinguishing them. . . . Cajetan (commenting on St. Thomas' definition of schism) makes some very neat and satisfying precisions. He distinguishes three points of application, or three possible motives for disobedience. First, disobedience might concern simply the matter of the thing commanded, without calling in question the authority or even the personal calibre of the superior: thus, if I eat meat on Friday because I don't like fish, that is not schism, but simple disobedience. Secondly, the disobedience might focus on the person who holds authority, denying for one reason or another his competence in some particular case, or judging him to be mistaken, . . . while still respecting his office. This still is not schism. . . . Schism does occur when someone . . . **'rejects a command or judgment of the Pope by reason of his very office, not recognising him as a superior, even while believing that he is'** (cum quis papæ præceptum vel iudicium ex parte officii sui recusat, non recognoscens eum ut superiorem, quamvis hoc credat)." *Dictionnaire de Théologie Catholique*

The last clause in the above citation from DTC — “even while believing that he is [a lawful superior]” — makes it clear that he is referring to "formal schism." "Material schism" is committed by all those — and only those — who completely reject the authority per se of a lawful superior. But the offence becomes formal only in the case of those who do so with malice, that is, when knowing that the superior in question is in fact lawful, but nonetheless refusing absolutely to submit to his authority in any way.

In fine, the consensus of every authoritative theologian is that the only kind of disobedience to the Roman Pontiff, *a fortiori* to the local ordinary, which constitutes material schism is the total repudiation of the Pope's authority wherein one denies his duty to obey anything at all which he commands. Then, in order for the schism to be formal as well as material, and thus, culpable before God, it is necessary for the offender to be acting in bad conscience, out of pride or passion, which leads him to suppress and deny the Pope's jurisdiction over himself, while knowing deep down that he is committing a sin in doing so. That is, he must be acting with malice and/or culpable negligence. Fr. Waters and the Mission have repeatedly denied both malice and culpable negligence and have, as well, explained in detail, how they have arrived at the formation of a true and certain Catholic conscience which they have submitted to the infallible authority of the Holy Father for his definitive judgment.

Since "malice" and "negligence" were denied, imputability of any delict worthy of "excommunication" is impossible until "malice" and/or "negligence" are established. In a letter to Archbishop Charles Chaput on September 14, 2013, Fr. Samuel Waters said:

To be specific, the law "presupposes imputability" of fault because it presupposes grave "malice or negligence." Canon 1321: "No one is punished unless the external violation of a law or precept... is gravely imputable by reason of malice or negligence." "Malice" (dolus), the direct intent to violate the law per se has been denied. "Negligence" relates to "culpability" (culpa) in being ignorant of the law or in failing to use due diligence. The public letters from Ss. Peter & Paul Roman Catholic Mission to the Diocese of Harrisburg and to Rome, and my exchanges with the Archdiocese of Philadelphia demonstrate that ignorance of the law or failure in due diligence are not in question and cannot be the reason for imputability. If the delict is imputable, it is so for reasons of malice and malice has been, and is, denied. The question concerns "malice," that relates to the direct intention to violate the law per se. Violation of any law for the purpose of fulfilling a duty to a higher law cannot be attributed to malice.

Lacking malice, there can be no "gravely" formal imputability. Your letter implies that you agree that "malice," being denied, has not been proven, yet you pretend that since "culpability" has not been denied it is therefore assumed and therefore punishable by law. There are no grounds for this assumption. Malice is the "evil

quality of an act by which it is opposed to the dictates of right reason" (Attwater). It is the presupposition of malice that permits *latae sententiae* penalties. When "malice" is denied, it is denied with regard to the act itself, to its motive (ends), and to the circumstances in which the act is done. It should be manifest that without malice, "imputability" worthy of excommunication is impossible. But just for the record, I deny "culpability" as well as I deny "malice." In either case, you have no right to publicly declare that a *latae sententiae* censure has been imposed without proving the presence of malice when it has been formally and repeatedly denied. In the older Code of Canon Law, Canon 2218, 2, not only the circumstances which excuse from all imputability, but also those that excuse for grave imputability, likewise excuse for all penalty.
Fr. Samuel Waters

Fr. Waters denied malice in his first letter communicated to Msgr. Daniel Sullivan and later, denied any grounds for negligence as well as malice to Archbishop Chaput. The letters from the Archdiocese of Philadelphia to Fr. Waters never address the question of malice which they continued to presume as evident without proof. Nor did they at any time give any consideration to the question of mitigating circumstances, that is, the questions of true and certain Catholic conscience, or to the grounds on which that conscience has been formed. The only comment on this question was by Msgr. Sullivan who pointed out that a conscience can be "erroneous" but he offered no evidence whatsoever that Fr. Waters or the Mission were acting under an erroneous conscience.

A canonical crime is an *external* and *morally imputable* violation of a law to which a sanction is attached. Every crime is a sin but not every sin is a crime. Archbishop Chaput, has demanded that Fr. Waters disobey a morally true and certain conscience without making any effort to explain why or how his conscience may possibly be "erroneous." He has without evidence or investigation assumed that a crime exists that is both *notorious in law* and *notorious in fact*. The possibility that the crime, if it exists at all, is *formally occult* was never considered as possible by Archbishop Chaput. Furthermore, Archbishop Chaput has made no admission that there exists a hierarchy of law, no effort to distinguish a possible conflict in law, or the criteria to determine in the conflict of law which law must necessarily be obeyed. Archbishop Chaput in this judgment divorces Catholic morality from canon law. The purpose of canonical inquiry is no longer to ascertain truth but to use the law as tool of ideological coercion.

Lastly, even if the Mission and Fr. Waters were guilty of material schism, canon law operates to mitigate or eliminate canonical penalties under certain circumstances. For example, Canon 1323.4 provides that one is not liable to a penalty who, when violating a law, "acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience, unless the act is intrinsically evil or tends to the harm of souls." The acts of the Mission and Fr. Waters, that is, the preaching of integral Catholic doctrine and morals and the practice and defense of the immemorial ecclesiastical traditions, particularly, the "received and approved rites customarily used in the solemn administration of the sacraments," can never be, "intrinsically evil or tend to the harm of souls." The Mission has publically professed for more than ten years that they, and now Fr. Waters, hold that the "immemorial ecclesiastical traditions" are necessary attributes of the faith not simple accidents subject to the free and independent will of the legislator. The defense of a "necessary attribute of the faith" is held by the Mission and Fr. Waters to be of "extreme necessity" and that was documented by Fr. Waters in his letter to Archbishop Chaput on September 14, 2013 said:

If you want to excommunicate me then you must do it for the specific doctrinal and liturgy claims that I and Ss. Peter & Paul Roman Catholic Mission have publically professed and that we affirm are necessary attributes of our faith. The masses offered at Ss. Peter & Paul Roman Catholic Mission are according to the immemorial traditions of our Church. We use the "received and approved rites of the Catholic Church customarily used in the solemn administration of the sacraments" (Council of Trent, Sess. VII, can. XIII) that are prescribed in the Tridentine Profession of Faith of Pope Pius IV, *Iniunctum Nobis*. We affirm to you again that by virtue of our baptismal character, which obligates us to offer public worship to God, we necessarily possess the right from God to the immemorial traditions of our Church, in particular, the right to the "received and approved rites of the Catholic Church used in the solemn administration of the sacraments" (Tridentine Profession of Faith), which are the perfect outward manifestation of that Faith that we hold in the internal forum, without which "it is impossible to please God" (Heb. 11, 6). And, while acknowledging that these rights can be duly regulated

by competent authority, they can never be conditionally exercised at the price of compromise of any Catholic doctrinal or moral truth. We affirm that these matters in question are of "extreme necessity" for the salvation of souls. And, as Gratian said, "Necessity knows no law."

We further affirm that no Catholic, regardless of ecclesiastical dignity, possess the authority to harm the faith. The new "doctrinal" teachings of the "pastoral Council" which form the justification for the mutation of our immemorial ecclesiastical traditions do not bind the conscience of any of the Faithful. It is not just us, but every Catholic who would benefit from the authoritative infallible judgment on these matters of faith and worship. You would be doing a great service to the Church to demand with us from Rome a dogmatic declaration on the authority of Vatican II, defining infallibly its doctrinal teachings and explicitly condemning what constitutes the "hermeneutic of rupture," and lastly, definitively declaring whether or not "the received and approved rites customarily used in the Catholic Church for the solemn administration of the Sacraments" (Trent, Canon 13, On the Sacraments) are matters of simple discipline open to the free and arbitrary will of the legislator or, as we hold, necessary attributes of the faith that make it known and communicable, the rightful patrimony of every Catholic, that no ecclesiastical "pastor whatsoever" possesses the authority to suppress or alter so that they are "changed into other new rites."

The Mission has sent to the last three bishops of Harrisburg and to the Archdiocese of Philadelphia a copy of the book by Kenneth C. Jones, Esq., *Index of Leading Catholic Indicators*, which statistically documents the moral, doctrinal and institutional collapse of the Catholic Church since the end of Second Vatican Council as evidence that a state of necessity exists in the Church today. But even if Fr. Waters and the Mission are incorrect in their belief that a "state of necessity" exists because necessary attributes of our faith are being unjustly denied, that error would still excuse from any *latae sententiae* penalty. Canon 1323.7 says that no one is liable to a penalty who, when violating a law or precept, "without negligence thought that one of the circumstances mentioned (i.e., necessity) existed..." Canon 1324.1 says that the penalty is diminished for one who "thought in culpable error that one of the circumstances [necessity] was present" (°8). Under Canon 1324.3, where the penalty is diminished, "the accused is not bound by a *latae sententiae* penalty."

These above facts and arguments demonstrate that even a state of material schism is extremely improbable, and formal schism impossible, much less, "proven" as Bishop Chaput affirms. The local ordinaries of Harrisburg over the last ten years have accused the Mission of being in "schism" and it is from these unsubstantiated opinions alone from which Bishop Chaput has taken his unproven assumptions which are nothing more than calumny. At the same time the bishops of Harrisburg were calling the Mission members schismatics, they were denying their repeated petitions for a formal judgment from the Holy Father in Rome. Bishop Rhoades even made the accusation of schism at the same period in which he assisted in the ceremonial instillation of a Lutheran "bishop" which took place in the Catholic cathedral in Harrisburg. Every Catholic is morally obligated to apply the natural and divine law to insure that, as far as humanly possible, before any act done or omitted, their conscience is both true and certain. The Catholics at the Mission have done this and until the doctrinal and liturgical truths are clarified by the authoritative infallible declaration of the Holy Father, they have not only a right but duty to do exactly as they are doing. It is the hierarchy in the Diocese of Harrisburg and the Archdiocese of Philadelphia who have failed in their duty to the Mission and Fr. Waters. The charge of "schism" is nothing more than an excuse to justify their negligence to address matters that are considered by the Mission as necessary attributes of their faith. Apparently for Archbishop Chaput, the doctrine of Religious Liberty does not apply to Catholics faithful to the traditions of our Church.

Fr. Samuel Waters, respectfully requests that the Decree of Excommunication issued by Archbishop Charles Chaput, Archbishop of Philadelphia, be nullified and any attempt to reduce him to the lay state by opposed. And, in addition to this request, he submits, with the Mission, a direct appeal to the Holy Father for an infallible judgment employing the attribute of infallibility which Jesus Christ has endowed His Church on the doctrinal, liturgical, and moral claims of Ss. Peter and Paul Roman Catholic Mission which are affirmed in the OPEN LETTERS published on the Mission web page: http://www.saintspeterandpaulrcm.com/open_letters.htm

ⁱ Quotation from Ss. Peter & Paul Roman Catholic Mission web page:

http://www.saintspeterandpaulrcm.com/about_us.htm

The Tridentine Profession of Faith of Pope Pius IV [*Iniunctum Nobis*] prescribes adherence to the “received and approved rites of the Catholic Church used in the solemn administration of the sacraments.” The ‘received and approved rites’ are the rites established by custom, and hence the Council of Trent refers to them as the “received and approved rites of the Catholic Church *customarily used* in the solemn administration of the sacraments.” [Sess. VII, can. XIII]. Adherence to the customary rites received and approved by the Church is an infallibly defined doctrine: The Council of Florence defined that “priests ... must confect the body of the Lord, each one according to the custom of his Church” [*Decretum pro Graecis*], and therefore the Council of Trent solemnly condemned as heresy the proposition that “the received and approved rites of the Catholic Church customarily used in the solemn administration of the sacraments may be changed into other new rites by any ecclesiastical pastor whosoever” [Sess. VII, can. XIII]. Resting on this solid doctrinal foundation, Pope Pius VI condemned the idea that “‘recalling it (the liturgy) to greater simplicity of rites, by expressing it in the vernacular language or by uttering it in a loud voice’ as if the present order of the liturgy received and approved by the Church, had emanated in some part from the forgetfulness of the principles by which it should be regulated” as “**rash, offensive to pious ears, insulting to the Church, favourable to the charges of heretics**”. — *Auctorem Fidei*
Fr. Paul Kramer, *Suicide in Altering the Faith in the Liturgy*

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