

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT  
NO. 2013 CW 0316  
[PARENTS OF MINOR CHILD]

VERSUS

GEORGE J. CHARLET, JR., DECEASED, CHARLET FUNERAL HOME, INC.,  
[THE PRIEST], AND THE ROMAN CATHOLIC CHURCH  
OF THE DIOCESE OF BATON ROUGE<sup>1</sup>

Judgment rendered **OCT 21 2013**

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On Application for Writ of Certiorari to the  
19<sup>th</sup> Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 580066  
Honorable R. Michael Caldwell, Judge

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ROMAN CATHOLIC CHURCH  
OF THE DIOCESE OF BATON ROUGE

*RUH, J CONCURS & ASSIGNS REASONS*

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**BEFORE: PARRO, KUHN, AND PETTIGREW, JJ.**

<sup>1</sup> Because this matter deals with delicate subjects, and for the protection of the parties involved, the record was sealed both at the trial court and on appeal, except for this appeal opinion. To further protect the privacy of the parties involved, the names have been omitted herein, and the parties will be referred to as the parents of the minor child (plaintiffs), the minor child, and the priest (defendant).

**PETTIGREW, J.**

The defendants, the priest and the Roman Catholic Church of the Diocese of East Baton Rouge (the Church), seek supervisory review of a trial court's denial of their motion in limine, which had sought to prevent the plaintiffs in this matter from "mentioning, referencing, and/or introducing evidence at trial of any confessions that may or may not have taken place" between plaintiffs' minor child and the priest, while the priest was acting in his official capacity as a Diocesan priest and hearing confession from his parishioner (the minor child). We granted certiorari to address the significant and *res nova* issue underlying the determination of the propriety of allowing such evidence: whether the priest is a mandatory reporter under Louisiana's Children's Code provisions. In reviewing the issue, *vis a vis* the trial court's written judgment, for the following reasons, we find this matter compels us to exercise the authority vested in us, by La. C.C.P. art. 927B, to raise on our own motion the peremptory exception of no cause of action, and grant same, in effect, dismissing all of plaintiffs' claims against the priest and the Church.

**FACTUAL BACKGROUND**

On July 6, 2009, plaintiffs, the parents of a minor daughter, filed a petition for damages suffered by them and their daughter as a result of the alleged inappropriate and sexual acts perpetrated on the minor child. They named as defendants: the alleged perpetrator, then-deceased George J. Charlet, Jr. (a well-known, long-time parishioner and active member of the Church, who died on February 9, 2009, while a criminal investigation into those allegations was pending); Charlet Funeral Home, Inc. (of which Mr. Charlet was the alleged President); the priest, for allegedly being a mandatory reporter who failed to report the abuse allegations; and the Church, alleging vicarious liability for the alleged misconduct of the priest in failing to report the sexual abuse, as well as for the negligent training and supervision of the priest. (The plaintiffs later added a claim against the Church alleging additional liability for the acts of Mr. Charlet, under the theory that he, too, was an employee of the Church parish; however, these claims were later dismissed by summary judgment.)

The parents alleged that in 2000, their family moved from Baton Rouge to Clinton, in East Feliciana Parish, and began attending Our Lady of the Assumption Catholic Church, where they met and became friendly with a parishioner, Mr. Charlet, as well as the priest, the pastor of the church. According to the petition, from the young age of eight years, through her adolescent years, their minor daughter viewed Mr. Charlet as a second grandfather.

The petition alleged that during the summer of 2008, when the minor daughter was approximately twelve years old, there began an exchange of emails (1-2 per day) from Mr. Charlet to the minor child, involving "words of inspiration" and daily Bible verses. It is alleged that the emails soon increased in frequency (5-7 per day) and also began taking on a more personal tone, "while being laced with seductive nuances." Mr. Charlet allegedly told the minor child to keep the nature of their email correspondence private and to herself, because "no person, other than God, would understand their mutual feelings for one another." The petition contains various other paragraphs (none of which are directly relevant to the issue herein) detailing the continued wrongful acts of Mr. Charlet, which culminated with kissing and fondling the minor child.<sup>2</sup>

The petition alleged that the minor child became confused and scared over the evolving "relationship" with Mr. Charlet, and that on three separate occasions, she decided to seek spiritual guidance through the Sacrament of Reconciliation with the defendant priest. The petition alleges that on Tuesday, July 15, 2008, and Tuesday, July 29, 2008, prior to the 6:30 p.m. mass at the church, as well as on at least one other occasion after July 29, 2008, the minor child related to the priest during her confession

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<sup>2</sup> The actual reports made by the minor child were that on several occasions, Mr. Charlet kissed her aggressively, sticking his tongue down her throat, and fondled her breasts underneath her shirt and bra. There are also specific allegations about a sexually-laced journal that Mr. Charlet wrote during a trip to Korea, detailing his desires that the girl be on that trip with him, and including an entry that he had taken a naked picture of himself in the shower to send her at a later time. He allegedly gave the 53-page journal to the minor child upon his return from that trip.

(the Sacrament of Reconciliation) that Mr. Charlet had inappropriately touched her, kissed her, and told her that "he wanted to make love to her." According to the petition, and consistent with the minor child's subsequent deposition testimony, the priest allegedly responded to her that she simply needed to handle the situation herself, because otherwise, "too many people would be hurt." The minor child testified that during one of those confessions, she told the priest what had happened and asked for advice on how to end it. According to her deposition testimony: "He just said, this is your problem. Sweep it under the floor and get rid of it."

Subsequent to these three confessions, during which the minor child relayed the sexual acts by Mr. Charlet to the priest, the abusive acts (fully detailed in the petition) continued. On one occasion, the minor child decided she needed to take the advice given to her by the priest during the confessions, and confront Mr. Charlet in person. She attempted to arrange a meeting with Mr. Charlet at his place of business, but when she arrived at the funeral home, she was surprised to find no one there other than Mr. Charlet, who then proceeded to sexually abuse her in his private office. The minor child became scared again, and instead of confronting him, she simply reminded him that her mother would be there shortly to pick her up; to which he responded, "We better go eat before I eat you up."

According to the allegations in the petition and the deposition testimony in the record, subsequent "meetings" were had -- one between the priest and Mr. and Mrs. Charlet, and another between the Charlets and the minor child's parents (the plaintiffs) -- concerning the "obsessive number of emails and phone calls" between Mr. Charlet and the minor child, and the seeming inappropriate closeness between the two that had been observed by various parishioners. Again, according to the allegations in the petition, after these meetings, Mr. Charlet contacted the minor child to let her know about the meetings. He informed her that he told them their relationship was mutual and appropriate; that he did not know if they believed him, but he assured her he would take care of making sure everyone believed their relationship was appropriate and mutual, and that she just "needed to play the game."

However, shortly thereafter, the parents confronted their minor daughter about the emails and phone calls, at which time, she confessed to the true nature of the relationship with Mr. Charlet, including details of the inappropriate sexual contacts. The plaintiffs immediately contacted Mr. Charlet, ordering him to cease contact with their daughter. According to the petition, however, on a subsequent Sunday, the plaintiffs witnessed Mr. Charlet approach their daughter after church and hug her openly against her will. They then filed a formal complaint against Mr. Charlet with the East Feliciana Parish Sheriff's Department. According to the petition, the investigation was ongoing when, on February 9, 2009, Mr. Charlet died unexpectedly, after suffering a massive heart attack while in post-operative recovery, following knee-replacement surgery.

#### **APPLICABLE LAW**

In order to facilitate an understanding of the subsequent procedural history and a discussion and analysis of the issues presented, the law applicable to the parties' arguments and resolution of the issues is provided at this juncture.

Louisiana Children's Code article 603 provides definitions applicable throughout the Title VI of the Code. In relevant part, it provides, as follows (with emphasis added):

As used in this Title:

(1) "Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

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(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

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(15) "**Mandatory reporter**" is any of the following individuals....:

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(c) "Member of the clergy" is **any priest**, rabbi, duly ordained clerical deacon or minister, Christian Science practitioner, or other similarly situated functionary of a religious organization, ***except that he is not required to report a confidential communication, as defined in Code of Evidence Article 511***, from a person to a member of the clergy who, in the course of the discipline or practice of that church,

denomination, or organization, is authorized or accustomed to hearing confidential communications, *and under the discipline or tenets of the church*, denomination, or organization *has a duty to keep such communications confidential*. In that instance, he shall encourage that person to report the allegations to the appropriate authorities in accordance with Article 610.

Louisiana Code of Evidence article 511, entitled communications to clergymen, which is referenced in the foregoing Children's Code definitions provision, provides:

**A. Definitions.** As used in this Article:

(1) A "**clergyman**" is a minister, **priest**, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A **communication is "confidential"** if it is *made privately and not intended for further disclosure* except to other persons present in furtherance of the purpose of the communication.

**B. General rule of privilege.** A **person** has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication **by the person to a clergyman** in his professional character as spiritual adviser.

**C. Who may claim the privilege.** The **privilege may be claimed by the person** or by his legal representative. The clergyman is presumed to have authority to claim the privilege on behalf of the person or deceased person.

Louisiana Children's Code article 609, addresses mandatory, as well as permitted, reporting and provides, in pertinent part (with emphasis added):

A. With respect to mandatory reporters:

(1) ***Notwithstanding any claim of privileged communication, any mandatory reporter*** who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or that abuse or neglect was a contributing factor in a child's death *shall report* in accordance with Article 610.

(2) *Violation* of the duties imposed upon a mandatory reporter *subjects the offender to criminal prosecution* authorized by R.S. 14:403(A)(1).

Louisiana Revised Statutes 14:403, referred to in the Children's Code as the penalty provision for violations of the mandatory reporter laws provides, in pertinent part (with emphasis added):

403. Abuse of children; reports; waiver of privilege

A. (1)(a) *Any person who, under Children's Code Article 609(A), is required to report the abuse or neglect or sexual abuse of a child and knowingly and willfully fails to so report shall be guilty of a misdemeanor and upon conviction may be fined not more than five hundred dollars or imprisoned for not more than six months, or both.*

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B. In any proceeding concerning the abuse or neglect or sexual abuse of a child or the cause of such condition, *evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister or Christian Science practitioner and his communicant.*

**SPECIFIC FACTS, ALLEGATIONS, AND PROCEDURAL HISTORY RE: THE PRIEST AND THE CHURCH**

Specifically, as to the priest, the petition alleges that he was negligent in advising the minor child during her confessions on three separate occasions that she needed to handle the abusive relationship with Mr. Charlet by herself because too many people would be hurt if they found out. The petition seeks damages for this alleged negligent advising. The petition further specifically alleged that the priest is a "mandatory reporter" pursuant to La. Children's Code art. 603(15)(c), with a resulting mandatory legal duty, pursuant to La. Children's Code art. 609, to report the abuse to the proper local authorities and to the minor's parents. Thus, the plaintiffs allege the priest is also liable to them for his failure to immediately report the abuse, and that the Church is liable for the negligence of the priest as its employee, as well as its own alleged negligence in failing to train and supervise him as a mandatory reporter of child abuse.

**Motion In Limine At Issue Herein**

In February 2013, the priest and the Church filed a motion in limine, seeking to exclude at trial *all evidence*, including testimony by the minor child herself, about the confessions. The denial of that motion is the subject of this supervisory review and grant of certiorari. However, the defendants had also filed a motion for summary judgment, which was heard and decided prior to the ruling on the motion in limine. Although no review has been sought of the denial of the motion for summary judgment, the issues raised and the defendants' arguments in support of that motion are similar to, and often

overlap those advanced in support of the motion in limine. Also, they are pertinent to a full understanding of the issue before us on the propriety of the denial of the motion in limine. Therefore, to that extent, both motions will be discussed.

### **Summary Judgment**

First, defendants argued that any and all damages suffered by the minor child were at the hands of and due to acts of no one other than Mr. Charlet, not the priest. Moreover, they contended that the priest attained knowledge of these incidents of abuse through the Sacrament of Reconciliation, pursuant to which that communication was cloaked with a statutory confidentiality, as well as protected against disclosure by the Catholic Canon Law. They maintained that according to La. Children's Code art. 603(15)(c), a priest is classified as a mandatory reporter when the information is received while he is not performing his vocational ministry, but the statute specifically excludes the reporting of "confidential communications," as defined by Article 511 of the La. Code of Evidence. That codal article provides that a communication is confidential when relayed to a clergyman when it is made in private and not intended for further disclosure. See La. C.E. art. 511(A)(2). They further argued that the penal statute for failing to report, La. R.S. 14:403(B), also supports their claim of privilege, by providing:

In any proceeding concerning the abuse or neglect or sexual abuse of a child, ... evidence may not be excluded on any ground of privilege, *except in the case of communications between an attorney and his client or between a priest ... and his communicant.*

Defendants also argued that the priest is bound by the mandates of the Roman Catholic Church Law -- known as the Code of Canon Law -- which also preclude him from divulging information acquired through the Sacrament of Reconciliation. They attached to their motion the affidavit of Fr. Paul Counce, Judicial Vicar and canon lawyer for the Diocese, which explained in detail and cited the law of the Catholic Church, and the obligation of confidentiality that a priest has in relation to anything heard in confessions/reconciliations, which is cloaked by the "Seal of Confession." The affidavit attests that the "Seal" is absolute. Moreover, a violation thereof results in the "*in stanter*" excommunication of the priest -- the most severe penalty known to the Church.

The defendants maintained that it is undisputed that the only communications had between the minor child and the priest concerning the sexual acts committed by Mr. Charlet occurred during the Sacrament of Reconciliation; therefore, to compel the priest to disclose such communications under threat of statutory penalties, whether civil or criminal, would be to place his duty to his faith and his duty to abide by statutory authority into direct conflict. They maintained that to compel the priest to disclose such communications would entangle the State in matters of church doctrine, implicating the constitutional right of the free exercise of religion, protected by the First Amendment.<sup>3</sup> They claimed that the Louisiana Legislature recognized as much by enacting a statutory scheme that exempts such communications from the mandatory reporting provisions in the Children's Code.

Additionally, the defendants asserted that the Diocese cannot be held liable, because the church itself has no duty to report, *even if* the plaintiffs' misaligned claims that the priest is a mandatory reporter were to be upheld.

Finally, the defendants asserted that there is no private right of action against a mandatory reporter for the failure to report; the statutory remedy being limited to criminal prosecution pursuant to La. R.S. 14:403. Although there is no Louisiana jurisprudence, defendants cite several cases from other jurisdictions with similar mandatory reporting statutes that have held that there is no private cause of action for a violation of such a statute -- the remedy therefor being limited to criminal prosecution by the state. The underlying reasoning for such a finding in those cases is that the duty is owed to the general public -- for the protection of its minor children -- and not to any one person in particular.

Plaintiffs opposed the motion for summary judgment on several fronts; only those pertinent to the motion in limine are presented here. They argued -- without admitting --

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<sup>3</sup> We note that the constitutional issue is certainly implicated in this case. However, the parties advised this court during the oral argument that in accordance with the long-standing jurisprudence that precludes this court from determining the constitutionality of a statute until after such determination has been made by a trial court, they had separately and subsequently raised that specific issue and that that proceeding is currently pending in the trial court. Accordingly, we need not address or decide that issue.

that *even if* the priest were statutorily exempt from the definition and obligations of a mandatory reporter, the only thing excluded would be the knowledge acquired by the priest during the minor child's confession. They maintained the evidence derived from Ms. Charlet's deposition reveals that separate and apart from any information received directly from the minor child during her confessions, the priest himself had independently observed and discussed his concerns about the interaction between Mr. Charlet and the minor child, and that he expressed those concerns with them. During that meeting, according to Ms. Charlet's deposition, the priest advised the Charlets to speak with the minor child's mother and he advised Mr. Charlet to end his friendship with the minor child. Thus, to the extent that the priest independently observed and voiced concerns about seemingly inappropriate relations between Mr. Charlet and the minor child, plaintiffs argued that he indeed *did* have the statutory duty as a mandatory reporter, since this information was acquired outside the confidential communication, and is not cloaked with the privilege of a confidential communication. Thus, plaintiffs maintained, a genuine issue of material fact exists as to whether, to this extent, the priest was a mandatory reporter under La. Children's Code arts. 603 and 609, such that summary judgment is precluded.

Plaintiffs additionally maintained that any privilege attaching to the confessional communications had been waived by the minor child, the "holder" of the privilege, by and through her consent and disclosure of the communications. They also submitted an affidavit executed by them and the minor child, expressly "waiving" her privilege regarding her confession.

Finally, plaintiffs disputed the defendants' claim that reporting the information was against Catholic Canon Law, and even argued that pursuant to Catholic Canon Law, the priest had a duty to report the abuse, and the Church is vicariously liable for the priest's breach of that duty. In support of this position, plaintiffs submitted into evidence relevant portions of the Code of Ethics and Behavior for Adults who Minister with Minors in the Diocese of Baton Rouge ("Diocesan Code of Ethics") and guidelines regarding sexual abuse of children. However, as will be seen below, our ultimate issue obviates discussion of this argument, and no further explanation of plaintiffs' argument is necessary.

In denying the motion for summary judgment, as to the priest's duty to report, the trial court expressly found genuine issues of material fact as to what the priest knew, when he knew it, when he got that information, if that information was acquired somehow other than during the confession, and ultimately, what duty the priest may have had at that point. The trial court noted some of the factual issues indicated that there "may have been some sort of duty on the part of the priest for what he observed and upon which he commented outside of the confessional and outside of what [the minor child] may have told him in the confessional." However, the trial court also added:

So I have made my position perfectly clear that while the law may give the plaintiffs the right to inquire as to what went on in that confessional, I'm not going to hold [the priest] to any standard of having to say what went on and to violate his vows to the Church. But I believe there are certain factual issues of things that he observed outside the confessional which could conceivably create a duty on his part to have taken more action than he took.

Thus, while the trial court *denied* the motion for summary judgment on the failure to report issue, it is clear that the ruling encompassed a finding that the confession itself was confidential and protected from disclosure.

### **Denial of Motion in Limine**

In denying the defendants' motion in limine, thereby allowing the plaintiffs to present evidence of the confession, the trial court noted the apparent inconsistency in the Children's Code articles: one provision stating that clergy is excepted from being a mandatory reporter for anything that is a confidential communication (Art. 603(15)(c)), and the other mandating reporting "notwithstanding any claim of privileged communication" (Art. 609). However, the court then noted that the privilege, granted by Code of Evidence Art. 511, clearly belongs to the communicant, such that it can be waived by the communicant. Thus, the trial court found the testimony of the minor child regarding the confessions was relevant and, certainly, as the holder of the privilege, she was entitled to waive it and testify. When pressed by the defendants' counsel as to whether that meant that the trial court was holding that the priest also had a duty to report, the trial court stated, "Yes, at this point, there may be some duty based on [Art.]

609." The trial court also noted that its earlier ruling also permitted questioning of the priest concerning any other information acquired by him about the abuse outside of the confessional. The trial court, although denying the motion, also commented that "I certainly recognize the conundrum with which [the priest] is presented, and I know his solution to that is going to be that he is not going to say anything about any confession." The motion in limine was denied by judgment dated February 22, 2013.

### **DISCUSSION/ANALYSIS**

#### **IS A PRIEST A MANDATORY REPORTER PURSUANT TO LOUISIANA'S CHILDREN'S CODE?**

The parties maintain and argue that the pivotal issue underlying the dispute of whether the motion in limine was properly denied, allowing evidence to be submitted concerning the occurrence and/or contents of a confession between the minor daughter and the priest is whether a Catholic priest -- or any member of the clergy -- is exempt from Louisiana Children's Code art. 609's mandatory child abuse reporting requirements, pursuant to La. Child. Code art. 603(15)(c), when the facts allegedly giving rise to the duty to report were learned during the Sacrament of Reconciliation.

Defendants maintain that under the facts of this case, the priest is exempt from the mandatory reporter requirements. Thus, they assert that the priest is shielded from having to testify as to any facts learned during that confession. Moreover, they maintain that since the priest has no duty to report, there can be no breach of said duty, rendering *any and all* testimony or evidence regarding the Sacrament of Reconciliation and/or the contents revealed therein irrelevant to the purported cause of action by plaintiffs against the priest and the Church for the breach of said duty. For the following reasons, we agree, and find the trial court erred.

#### **Rules of Statutory Construction/Interpretation**

Very recently, the Louisiana Supreme Court reiterated the rules that apply when determining the true meaning of a statute:

The fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the legislature to enact the law. *In re: Succession of Boyter*, 99-0761, p. 9 (La. 1/7/00), 756 So.2d 1122, 1128. The rules of statutory

construction are designed to ascertain and enforce the intent of the legislature. *Id.*; *Stogner v. Stogner*, 98-3044, p. 5 (La. 7/7/99), 739 So.2d 762, 766. Legislation is the solemn expression of legislative will, and therefore, interpretation of a law involves primarily a search for the legislature's intent. La.Rev.Stat. § 1:4 (2004); La. Civ.Code art. 2; *Lockett v. State, Dept. of Transp. and Development*, 03-1767, p. 3 (La. 2/25/04), 869 So.2d 87, 90. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. Civ.Code art. 9; *Lockett*, 03-1767 at p. 3, 869 So.2d at 90-91; *Conerly v. State*, 97-0871, p. 3-4 (La. 7/8/98), 714 So.2d 709, 710-11.

The meaning and intent of a law is determined by considering the law in its entirety and all other laws on the same subject matter and placing a construction on the provision in question that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting it. *Boyer*, 99-0761 at p. 9, 756 So.2d at 1129; *Stogner*, 98-3044 at p. 5, 739 So.2d at 766. The statute must, therefore, be applied and interpreted in a manner that is consistent with logic and the presumed fair purpose and intention of the legislature in passing it. *Boyer*, 99-0761 at p. 9, 756 So.2d at 1129. This is because the rules of statutory construction require that the general intent and purpose of the legislature in enacting the law must, if possible, be given effect. *Id.*; *Backhus v. Transit Cas. Co.*, 549 So.2d 283, 289 (La. 1989). It is presumed the intent of the legislature is to achieve a consistent body of law. *Stogner*, 98-3044 at p. 5, 739 So.2d at 766.

La. Civ. Code art. 13 provides that, where two statutes deal with the same subject matter, they should be harmonized if possible. *Kennedy v. Kennedy*, 96-0732, 96-0741, p. 2 (La. 11/25/96), 699 So.2d 351, 358 (on rehearing). It is a well-settled rule of statutory construction that all laws dealing with the same subject matter must be construed *in pari materia*. La. Civ.Code art. 17 [(1870)]; *Reed v. Washington Parish Police Jury*, 518 So.2d 1044, 1047 (La. 1988). Statutes are *in pari materia* — pertain to the same subject matter — when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object. 2B Sutherland Stat. Const. § 51:3, p. 222 (7th ed. 2012).

**Pociask v. Moseley**, 2013-0262 (La. 6/28/13), \_\_\_So.3d\_\_\_, 2013 WL 3287125 (2013).

Guided by these precepts, we find as follows. Pursuant to the clear language of La. Child. Code art. 603(15)(c), a "member of the clergy," which includes a priest, *is not required* to report a "confidential communication" *as defined in the Code of Evidence Article 511*. As defined in Art. 511, a communication made to a clergyman is confidential when it is made privately and not intended for further disclosure. Thus, any communication had between the minor child and the priest, during the minor child's confession with that priest, is a confidential communication, under La. C.E. art. 511. It is also equally clear that any alleged confession between the minor child and the priest

in this case is a "confidential communication" as defined in Article 511. To the extent that the plaintiffs attempt to imply that the minor child's conversation with the priest in this case was not "truly" a confession, because she was not confessing her own sin in the course of relaying the alleged abuse, we reject such argument as not supported by the facts. We further note that this argument is belied by the plaintiffs' own allegations in their petition and otherwise, and the fact that the minor child chose to disclose the abuse to the priest during the Sacrament of Reconciliation. We note that even the minor child, in her deposition, testified that she was under the clear impression that she was going to "confession" when she spoke with the priest about the alleged abuse. Therefore, the record clearly established that the communication was had while in confession; therefore, it is statutorily defined to be a confidential communication.

Given that the communication shared during confession is a confidential communication made to a clergyman, pursuant to the dictates of La. Child. Code art. 603(15)(c), the priest "***is not required to report***" the communication, even if it concerns allegations of sexual abuse of a child. Therefore, it is axiomatic that the priest, under these circumstances, is not, and cannot be, a mandatory reporter. Accordingly, La. Child. Code art. 609, which addresses mandatory reporters, and mandates the reporting of any child abuse or neglect, "[n]otwithstanding any claim of privileged communication," is simply and wholly inapplicable. To interpret Art. 609 as applicable to priests as mandatory reporters, as argued by the plaintiffs, and apparently as found by the trial court, runs afoul of the rules of statutory construction, because such interpretation would render the exemption in La. Ch.C. art. 603(15)(c) meaningless. Nevertheless, a violation of the duty to report set forth in La. Children's Code art. 609(A)(1) is subject only to criminal prosecution authorized by La. R.S. 14:403(A)(1); however, the penalty for such a violation is negated by La. R.S. 14:403(B) when the communication is between a priest and his communicant.

In addition to comports with the aforementioned principles of statutory construction, we find further support for our conclusion -- that the Children's Code does not render a priest a mandatory reporter -- by reviewing the legislative history of the

statutory scheme for mandatory reporting and discerning the legislative intent. "Member of the clergy" was added as a class of "mandatory reporters" by amendment to La. Child. Code art. 603, in 2003, adding them to the list of defined mandatory reporters. The definition, as stated before, includes that a priest ***is not required to report a confidential communication***. The 2003 comments to that article address the reasons for the amendment, and the limitations that were intended, as follows:

The scope of the definition of "mandatory reporters" of child abuse has always recognized that priests, rabbis, pastors or other religious ministers typically provide counseling to members of their congregations *and that many denominations consider those communications, such as the confessional, to be sacrosanct and nondisclosable*. Respecting that policy, former law included religious ministers within the category of "mental health/social service practitioner" but exempted them from mandatory reporting if the knowledge of abuse or neglect arose out of a "confession or other sacred communication". *In 2003, the legislature created a special category for members of the clergy and continued exemption for "confidential communication", the term used by the Evidence Code. Code of Evidence Article 511, which governs communications to clergymen, defines the privileged confidential communication as one "made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication."* Members of the clergy who exclusively provide spiritual counseling are not required to report disclosures of abuse made in the course of a confidential communication. However, the legislature also recognized that members of the clergy may also engage in other roles, such as administrative and organizational work as well as provide supervision for other clergy or lay workers. *The exemption from reporting does not extend to nonconfidential communications given to a priest or other minister during administrative, supervisory, or secular counseling or other type of conference.*

La. Children's Code art. 603, 2003 Comments (Emphasis added.) Thus, it was clearly envisioned and intended that members of the clergy were to be given a special exemption, via the exclusion of confidential communications as defined in Code of Evidence art. 511, unlike other mandatory reporters, pursuant to La. Ch.C. art. 609, who may also possess communication privileges, such as physicians, psychologists, and other mental health/social service practitioners, but who must nonetheless, report.

Thus, it appears axiomatic that a priest who learns of alleged sexual abuse during confession (Sacrament of Reconciliation) is not a mandatory reporter, and

therefore, not subject to the mandatory reporting requirements of La. Ch.C. art. 609.<sup>4</sup> Because we have concluded that the priest is not a mandatory reporter, there can be no private or civil cause of action against him for any breach of a statute inapplicable to him; thus, any evidence or testimony, by anyone, regarding the occurrence of a confession, or the subject matter thereof, is wholly inadmissible, irrelevant, and non-probative. Accordingly, the motion in limine, seeking to exclude all such evidence, should have been granted. We find the trial court erred, and hereby, reverse that denial, and grant said motion.

### **NO CAUSE OF ACTION**

However, and more significantly, we are compelled in this matter to exercise the authority granted us under La. C.C.P. art. 927B to notice, on our own motion, the peremptory exception of no cause of action, grant the same, and dismiss the plaintiffs' suit against the priest and the Church in its entirety.

In considering whether a petition states a cause of action, a court must accept all well-pleaded facts in the petition as true. The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts of the pleading. **Evans v. Louisiana Bd. of Parole**, 2012-2053 (La. App. 1 Cir. 6/7/13)(unpublished).

### **Negligent Advising**

In addition to alleging that the priest breached a purported duty to report (which we have found to lack merit because a priest under the facts of this case is not a mandatory reporter), the plaintiffs' petition alleges that the priest was negligent in the advice he gave the child during confession.

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<sup>4</sup> We note that the record also contains evidence clearly establishing that the confidentiality owed to all communications had during a confession is also included in the mandates of the Roman Catholic Church law, known as the Code of Canon Law, pursuant to which a priest is precluded from divulging information acquired through the Sacrament of Reconciliation. The confidentiality attached to such information is cloaked by the "Seal of Confession," which is absolute, and a violation thereof results in the "*in stante*" excommunication of the priest -- the most severe penalty known to the Church. Because we have found that the priest is not a mandatory reporter under the Louisiana Civil Law, we are neither faced with nor need to decide whether any such law which may mandate reporting is in conflict with the First Amendment's Constitutional mandate of separation between Church and State.

First, we note that the plaintiffs cite no basis, nor do we know of any under Louisiana law, for imposing a duty on a clergy member, the breach of which would sustain a private or civil cause of action. We note that a cause of action in malpractice is available against a physician or other mental health or social service provider, which may include elements of negligent advice; however, that duty emanates from the professional skills and training and dispensation of mental health services and is adjudged by the standard of care established within that profession.

Additionally, any such alleged "negligent advice" in this matter occurred during the Sacrament of Reconciliation, which we have already found to be a "confidential communication," the disclosure of which is prohibited. Furthermore, the giving of advice, including the allegedly negligent spiritual advice in this matter, is by definition, voluntary suggestions based on personal opinion, given based on the facts with which one is presented, in an effort to guide and direct another's decisions, actions, or thoughts. Such advice does not lead to imposition of a duty which would be impossible to dictate, and much more so to monitor and adjudge. Spiritual advice is also subjective at best, and not susceptible of being adjudged "wrong" or "right." Indeed, as noted by the second circuit in **Lann v. Davis**, 34-892 (La. App. 2 Cir. 8/22/01), 793 So.2d 463, a case in clergy malpractice, based on allegations that a pastor negligently revealed personal and confidential information that was disclosed during private spiritual counseling, in upholding the sustaining of an exception of no cause of action:

A pastor who provides counseling services usually does so under the aegis of his church, and is not subjected to the same standards as a state-licensed psychiatrist or social worker. Distinctively faith-based religious principles may guide pastoral counseling; courts therefore abstain from ruling on such counseling, lest they create an "excessive entanglement" which is prohibited by the First Amendment. In short, courts have no right to interpret religious doctrines.

*Id.* at p. 4; 793 So.2d at 466.

#### **Cause of Action for Breach of Mandatory Reporter Provisions?**

Moreover, and more significantly, we find it important to note that *even if* we found the priest in this matter to be a mandatory reporter, there is no civil cause of action and no civil remedy for any alleged violation of that statute.

Louisiana Children's Code art. 609A(2) clearly and expressly provides: "Violation of the duties imposed upon a mandatory reporter subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(1)." Louisiana Revised Statutes, Title 14, is a criminal statute. Specifically, La. R.S. 14:403(A)(1) provides that anyone who knowingly and willfully fails to report (if required to do so under La. Ch.C. art. 609) shall, upon conviction, be fined not more than five hundred dollars or imprisoned for not more than six months, or both. There are no civil remedies provided in the entire statutory scheme. Accordingly, we find there is no civil remedy, and therefore, no civil cause of action for an alleged breach of the mandatory reporter duty to report. That remedy is expressly delegated to criminal law enforcement. See Fontenot v. Manpower [Motivation], Educ. and Training, Inc., 594 So.2d 998, 999-1000 (La. App. 3 Cir. 1992), where the trial court's judgment sustaining the defendants' exception of no cause of action and dismissing the suit, ruling plaintiffs have no civil remedy under La. R.S. 23:1691, which is a criminal statute, was affirmed. Cf. Keller v. Aymond, 98-843 (La. App. 3 Cir. 12/23/98), 722 So.2d 1224, 1227, writs denied, 99-0199 and 99-0219 (La. 4/1/99), 742 So.2d 551 and 552, cert denied, 528 U.S. 963, 120 S.Ct. 397, 145 L.Ed.2d 310 (1999), where the court held that the Electronic Surveillance Act, La. R.S. 15:1301 et sequitur, provides specific remedies in the form of criminal fines and imprisonment for the "willful" interception, disclosure, and use of the communication, *and also* provides specific civil remedies in the form of monetary damages, including attorney fees and punitive damages, against any person who intercepts, discloses, or uses such information. No such civil remedies are provided in this matter.

### CONCLUSION

Therefore, to the extent that the trial court's ruling left remaining any cause of action against the priest, for any reportable information to which he may have been privy outside of the confessional, the judgment is hereby reversed.

For the foregoing reasons, we hereby raise and grant the peremptory exception of no cause of action, based on our review of the petition and the absence of any

allegations supporting a viable civil cause of action against the priest and/or the Church in this matter. Accordingly, the plaintiffs' claims against the defendants/relators, the priest and the Church, are hereby dismissed in their entirety, with prejudice. Costs of this grant of certiorari are assessed to the plaintiffs.

**THE TRIAL COURT'S JUDGMENT ON THE MOTION IN LIMINE IS REVERSED, AND THE MOTION IN LIMINE IS HEREBY GRANTED; PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION RAISED AND GRANTED; PLAINTIFFS' CLAIMS AGAINST THE DEFENDANTS/RELATORS, THE PRIEST AND THE CHURCH, ARE HEREBY DISMISSED.**

[PARENTS OF MINOR CHILD]

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

GEORGE J. CHARLET, JR., DECEASED,  
CHARLET FUNERAL HOME, INC. [THE PRIEST],  
AND THE ROMAN CATHOLIC CHURCH OF  
THE DIOCESE OF BATON ROUGE

FIRST CIRCUIT

2013 CW 0316

KUHN, J., concurring.

This case presents a question considered before in **People v. Philips** (N.Y. Ct. Gen. Sess. 1813), i.e., "whether a Roman Catholic Priest can in any case be justifiable in revealing the secrets of a sacramental confession?" In that landmark case, addressing freedom of religion and the priest-penitent evidentiary privilege, defendant Phillips and his wife were indicted for a misdemeanor of receiving stolen goods. Upon being questioned by the authorities, the person whose property had been stolen reported that he had received the restitution of his effects from the hands of his pastor, Reverend Anthony Kohlmann. William Sampson, *The Catholic Question in America* (1813) (reporting **People v. Philips**, supra.), Vol. 1. p. 5. When the Reverend Pastor was summoned and questioned, he excused himself from answering questions touching the restitution of the goods and the persons involved. **Id.** When the matter was sent to the Grand Jury, the Reverend Pastor was subpoenaed to attend, but he respectfully declined to answer the questions. The matter proceeded to trial, where the Reverend Pastor again sought to be excused. The ministerial basis for the Reverend Pastor's request that the Court excuse him from testifying is set forth in detail below, in pertinent part:

Were I summoned to give evidence as a private individual (in which capacity I declare most solemnly, I know nothing relatively to the case before the court) and to testify from those ordinary sources of information from which the witnesses present have derived theirs, I should not for a moment hesitate, and should even deem it a duty of conscience to declare whatever knowledge I might have; as, it cannot but be in the recollection of this same honorable Court, I did, not long since, on a difference occasion, because my holy religion teaches and commands me to subject to the higher powers in civil matters, and to respect and obey them. But if called upon to testify in quality of a minister of a sacrament, in which my God himself has enjoined on me a perpetual and inviolable secrecy, I must declare to this honorable Court, that I cannot, I must not answer any question that has a bearing upon the restitution in question; and that it would be my duty to prefer instantaneous death or any temporal misfortune, rather than disclose the name of the penitent in question. For, were I to act otherwise, I should become a traitor to my church, to

my sacred ministry and to my God. In fine, I should render myself guilty of eternal damnation.

Lest this open and free declaration of my religious principles should be construed into the slightest disrespect to this honorable Court, I must beg leave again to be indulged in stating as briefly as possible, the principles on which this line of conduct is founded. I shall do this with the greater confidence, as I am speaking before wise and enlightened judges, who, I am satisfied, are not less acquainted with the leading doctrines of the Catholic Church, than with the spirit of our mild and liberal Constitution.

The question now before the court is this: Whether a Roman Catholic Priest can in any case be justifiable in revealing the secrets of sacramental confession? I say, he cannot: the reason whereof must be obvious to everyone acquainted with the tenets of the Catholic Church respecting the sacraments. For it is, and ever was a tenet of the Catholic Church, that Jesus Christ, the divine Founder of Christianity, has instituted seven sacraments, neither more nor less. It is likewise an article of our faith, that the sacrament of penance, of which sacramental confession is a component part, is one of the said seven sacraments. It is, in fine, the doctrine of the Catholic Church that the same divine Author of the sacraments has laid the obligation of a perpetual and inviolable secrecy on the minister of said sacrament.

This obligation of inviolable secrecy enjoined on the minister of the sacrament of penance is of divine institution as well as confession itself: it naturally flows from the very nature of this sacrament, and is so essentially connected with it, that it cannot subsist without it. For, when the blessed Saviour of mankind instituted the sacrament of penance, as the necessary means for the reconciliation of the sinner, fallen from the grace of baptism by mortal sin, he unquestionably did it with the intention, that it should be frequented and resorted to be the repenting sinner. Now, it is self evident, that if Christ our Lord had not bound down his minister in the sacrament of penance to a strict and perpetual silence, it would be wholly neglected and abandoned; for we want neither great learning nor deep sense to conceive, that, in that supposition, the last of the temptations of a sinner would be to reveal all his weaknesses and most hidden thoughts to a sinful man like himself, and one perhaps in many respects inferior to himself, and whom he knows to be at full liberty to divulge and disclose whatever may be intrusted to him. In short, the thing speaks for itself: Christ the incarnate Wisdom of God would have manifestly demolished with one hand, what he was erecting with the other; unless we believe that he has affixed by a divine and most sacred law the seal of inviolable secrecy, to all and every part and circumstance of what is communicated to his minister through the channel of confession.

If therefore, I or any other Roman Catholic Priest (which God forbid, and of which Church History during the long lapse of eighteen centuries scarce ever furnished an example) if, I say, I should so far forget my sacred ministry, and become so abandoned as to reveal either directly or indirectly, any part of what has been entrusted to me in the sacred tribunal of penance, the penalties to which I should thereby subject myself, would be these: 1<sup>st</sup>. I should forever degrade myself in the eye of the Catholic Church, and I hesitate not to say, in the eye of every man of sound principle: the world would justly esteem me as a base and unworthy wretch, guilty of the most heinous prevarication a

priest can possibly perpetrate, in breaking through the most sacred laws of his God, of nature, and of his Church.

2dly. According to the canons of the Catholic Church I should be divest of my sacerdotal character, replaced in the condition of a Layman, and forever disable from exercising any of the Ecclesiastical functions.

3dly. Conformably to the same canons, I should deserve to be lodged in close confinement, shut up between four walls to do penance during the remainder of my life.

4thly. Agreeably to the dictates of my conscience, I should render myself guilty, by such a disclosure, of everlasting punishment in the life to come.

Having thus briefly stated to this honorable Court, my reasons for not answering the questions of the Attorney General, in the present instance, I trust they will not be found trivial and unsatisfactory.

**Id.** at p. 8-12.

In this posture, the exemption claimed by the Reverend Pastor was raised for the first time in this country. **Id.** at p. 13. Counsel for the Reverend Pastor urged that the exemption was protected by the New York state constitution and by the common law. With respect to the constitution, he asserted the exemption was secured by the state constitution's protection of "free exercise and enjoyment of religious profession and worship." **Id.** at p. 30. "Every thing essential to that object, is by necessary implication, secured by the constitution; unless it leads to acts of licentiousness, or to practices inconsistent with the peace or safety of the State." **Id.** at p. 31. In support of the argument, the rhetorical question was posed, "Is auricular confession dangerous to the peace or safety of the State?" **Id.** at p. 33. Regarding the common law, the exemption was supported by the known principles that the law would not compel any man to answer a question that subjected him to a penalty or forfeiture, impaired his civil rights, or degraded, disgraced, or disparaged him. **Id.** at pp. 14 and 36. Counsel urged that man was neither bound to accuse himself of a crime nor was he bound to subject himself to a penalty or forfeiture. **Id.** at p. 36.<sup>1</sup>

William Sampson, an Irish Protestant lawyer and political exile, argued on behalf of the Clergy and Trustees of St. Peter's Roman Catholic Church. He urged, in part,

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<sup>1</sup> This concurrence presents only a brief reference to some of the arguments of counsel and of the decision of the **Phillips** court.

how our United States Constitution provided explicit authority to support the claimed exemption:

The constitution stands in need of no such illustrations. It is simple, and precise, and unequivocal.... The people whose will it speaks, were not of any one church ... but of many and various sects, all of whom had suffered more or less in Europe for their religious tenets, and many of whom had unrelentingly persecuted each other.... The catholics it is true, bore the hardest burthen of all; but the others would be very sorry, I believe, to put aside our constitution and resume their ancient condition. And God forbid it should be so...." [**Id.** at p. 77.]

...

The constitution is remediate of many mischiefs, and must be liberally construed. It is also declaratory, and pronounces toleration.... If its authors are yet alive, or if looking down from a happier abode, they have now any care of mortal things, how must they rejoice to see it flourish, to see that all these churches, are but so many temples of one only living God, from whence his worshippers no longer sally forth with tusk and horn to gore each other, but meet like sheep, that are of one shepherd, but of another fold. [**Id.** at pp. 91-92.]

Finding merit in the positions advanced by the priest and the Catholic Church, the **Philips** decision,<sup>2</sup> upheld the exemption claimed, finding that the witness and his brethren were "protected by the laws and constitution of this country, in the full and free exercise of their religion."<sup>3</sup> **Philips** addressed the enquiry at hand as an important one to all religious denominations, and because paraphrasing the Court's eloquent findings would subtract from its import, I set forth the following excerpts of the Court's decision:

The question then is, whether a Roman catholic priest shall be compelled to disclose what he has received in confession – in violation of his conscience, of his clerical engagements, and of the canons of his church, and with a certainty of being stripped of his sacred functions, and cut off from religious communion and social intercourse with the denomination to which he belongs.

This is an important enquiry; [i]t is important to the church upon which it has a particular bearing. It is important to all religious denominations, because it involves a principle which may in its practical operation affect them all ....

...

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<sup>2</sup> Mayor De Witt Clinton authored the opinion of the court.

<sup>3</sup> Because there was no evidence against the defendants in the Phillips case, they were acquitted. **Id.** at p. 114.

It is a general rule, that every man when legally called upon to testify as a witness, must relate all he knows. This is essential to the administration of civil and criminal justice.

But to this rule there are several exceptions – a husband and wife cannot testify against each other, except for personal aggressions – nor can an attorney or counselor, be forced to reveal the communications of his client – nor is a man obliged to answer any question, the answering of which may oblige him to accuse himself of a crime, or subject him to penalties or punishment. [**Id.** at pp. 96-98].

Whether a witness is bound to answer a question, which may disgrace or degrade him, or stigmatize him by the acknowledgement of offences, which have been pardoned or punished, or by the confession of sins or vices, which may affect the purity of his character, and the respectability of his standing in society, without rendering him obnoxious to punishment, is a question involved in much obscurity, and about which there is a variety of doctrine, and a collision of adjudications.

After carefully examining this subject, we are of opinion that such a witness, ought not to be compelled to answer. [**Id.** at p. 99].

...

[I]n the case now pending, if we decide that the witness shall testify, we prescribe a course of conduct by which he will violate his spiritual duties, subject himself to temporal loss, and perpetrate a deed of infamy....

There can be no doubt but that the witness does consider, that his answering on this occasion, would be such a high handed offence against religion, that it would expose him to punishment in a future state – and it must be conceded by all, that it would subject him to privations and disgrace in this world....

It cannot therefore, for a moment be believed, that the mild and just principles of the common Law would place the witness in such a dreadful predicament; in such a horrible dilemma, between perjury and false swearing: If he tells the truth he violates his ecclesiastical oath – If he prevaricates he violates his judicial oath – Whether he lies, or whether he testifies the truth he is wicked, and it is impossible for him to act without acting against the laws of rectitude and the light of conscience.

The only course is, for the court to declare that he shall not testify or act at all. And a court prescribing a different course must be governed by feelings and views very different from those which enter into the composition of a just and enlightened tribunal, that looks with a propitious eye upon the religious feelings of mankind, and which dispenses with an equal hand the universal and immutable elements of justice. [**Id.** at pp. 102-03.]

...

But this is a great constitutional question, which must not be solely decided by the maxims of the common law, but by the principles of our government ...; upon the ground of the constitution, of the social compact, and of civil and religious liberty.

Religion is an affair between God and man, and not between man and man. The laws which regulate it must emanate from the Supreme Being, not from human institutions. Established religions, deriving their authority from man, oppressing other denominations, prescribing creeds of orthodoxy, and punishing non-conformity, are repugnant to the first principles of civil and political liberty, and in direct collision with the divine spirit of Christianity. Although no human legislator has a right to meddle with religion, yet the history of the world, is a history of oppression and tyranny over the consciences of men. And the sages who formed our constitution, with this instructive lesson before their eyes, perceived the indispensable necessity of applying a preventative, that would forever exclude the introduction of calamities, that have deluged the world with tears and with blood, and the following section was accordingly engrafted in our state constitution:

And whereas we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance, wherewith the bigotry and ambition of weak and wicked princes have scourged mankind, [t]his convention doth further in the name, and by the authority of the good people of this state, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state, to all mankind. Provided, that the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

...

A provision conceived in a spirit of the most profound wisdom, and the most exalted charity, ought to receive the most liberal construction. Although by the constitution of the United States, the powers of congress do not extend beyond certain enumerated objects; yet to prevent the danger of constructive assumptions, the following amendment was adopted: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In this country there is no alliance between church and state; no established religion; no tolerated religion – for toleration results from establishment – but religious freedom guaranteed by the constitution, and consecrated by the social compact.

It is essential to the free exercise of a religion, that its ordinances shall be administered – that its ceremonies as well as its essentials should be protected. The sacraments of a religion are its most important elements.

...

It has been contended that the provision of the constitution which speaks of practices inconsistent with the peace or safety of the state, excludes this case from the protection of the constitution, and authorized the interference of this tribunal to coerce the witness. In order to sustain this position, it must be clearly made out that the concealment observed in the sacrament of penance, is a practice inconsistent with the peace or safety of the state.

...

There is in fact, no secret known to the priest, which would be communicated otherwise, than by confession – and no evil results from this communication – on the contrary, it may be made the instrument of great good....

The language of the constitution is emphatic and striking, it speaks of acts of licentiousness, of practices inconsistent with the tranquility and safety of the state; it has reference to something actually, not negatively injurious. To acts committed, not to acts omitted – offences of a deep dye, and of an extensively injurious nature: It would be stretching it on the rack so say that it can possibly contemplate the forbearance of a Roman catholic priest, to testify what he has received in confession, or that it could ever consider the safety of the community involved in this question. To assert this as the genuine meaning of the constitution, would be to mock the understanding, and to render the liberty of conscience a mere illusion. It would be to destroy the enacting clause of the proviso – and to render the exception broader than the rule, to subvert all the principles of sound reasoning, and overthrow all the convictions of common sense.

If a religious sect should rise up and violate the decencies of life, by practicing their religious rites, in a state of nakedness; by following incest and a community of wives. If the Hindoo should attempt to introduce the burning of widows on the funeral piles of their deceased husbands, or the Mahometan his plurality of wives, or the Pagan his bacchanalian orgies or human sacrifices. If a fanatical sect should spring up ... and pull up the pillars of society, or if any attempt should be made to establish the inquisition, then the licentious acts and dangerous practices, contemplated by the constitution, would exist, and the hand of the magistrate would be rightfully raised to chastise the guilty agents.

But until men under pretence of religion, act counter to the fundamental principles of morality, and endanger the well being of the state, they are to be protected in the free exercise of their religion. If they are in error, or if they are wicked, they are to answer to the Supreme Being, not to the unhallowed intrusion of frail fallible mortals.

We speak of this question, not in a theological sense, but in its legal and constitutional bearings. Although we differ from the witness and his brethren, in our religious creed, yet we have no reason to question the purity of their motives, or to impeach their good conduct as citizens. They are protected by the laws and constitution of this country, in the full and free exercise of their religion, and this court can never countenance or authorize the application of insult to their faith, or of torture to their consciences.

**Id.** at pp. 108-114.

Two hundred years after this landmark case was decided, the priest and the Roman Catholic Church invoke the same protected exercise of religion in the matter before this court. And the law protecting freedom of religion remains the same. Thus, our state's legislature has accordingly provided that a priest is not required to report a

confidential communication under Louisiana Children's Code article 609's mandatory child abuse reporting requirements. Premised on our nation's bill of rights, the provisions of La. Ch. Code arts. 603(15)(c), 609, and La. C.E. art. 511, collectively acknowledge that the priest is "not required" to report a "confidential communication" made by a person to a priest.<sup>4</sup> To subject a Catholic priest to such mandatory reporting would be clearly violative of the First Amendment of the United States Constitution.

The Religion Clauses of the First Amendment of the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."<sup>5</sup> The first of the two Clauses, commonly called the Establishment Clause, commands a separation of church and state. The second, the Free Exercise Clause, requires government respect for and noninterference with the religious beliefs and practices of our Nation's people. **Cutter v. Wilkinson**, 544 U.S. 709, 719, 125 S. Ct. 2113, 2120, 161 L. Ed. 2d 1020 (2005). These two Clauses, while expressing complementary values, are frequently in tension. **Locke v. Davey**, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004). The basic purposes of these Clauses, however, are to "assure the fullest possible scope of religious liberty and tolerance for all." **School Dist. of Abington Township v. Schempp**, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963), concurring opinion of Justice Goldberg, joined by Justice Harlan.<sup>6</sup>

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<sup>4</sup> These statutes cannot be interpreted without contemplating their Constitutional underpinnings.

<sup>5</sup> Likewise, La. Const. art. 1, § 8, provides, "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."

<sup>6</sup> Relevant to this point is the following pertinent excerpt from "A Letter Concerning Toleration" by John Locke, 1689:

The toleration of those that differ from others in matters of religion is so agreeable to the Gospel of Jesus Christ, and to the genuine reason of mankind, that it seems monstrous for men to be so blind as not to perceive the necessity and advantage of it in so clear a light. ... [H]owever, that some may not color their spirit of persecution and unchristian cruelty with a pretence of care of the public weal and observation of the laws; ... I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other ....

...

It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general and to every one of his subjects in particular the just possession of these things belonging to this life. If anyone presume to violate the

Notably, the role of religion in American life has been officially acknowledged by all three branches of government from at least 1789. **Van Orden v. Perry**, 545 U.S. 677, 686, 125 S. Ct. 2854, 2861, 162 L. Ed. 2d 607 (2005), citing **Lynch v. Donnelly**, 465 U.S. 668, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984). Our United States Supreme Court observed in **School Dist. of Abington Township v. Schempp**, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963):

It is true that religion has been closely identified with our history and government .... The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself .... It can be truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as ... in duty bound, that the Supreme Lawgiver of the Universe ... guide them into every measure which may be worthy of his [blessing ... .]' " **Id.**, at 212-213, 83 S.Ct. 1560.

Our Constitution acknowledges this country's religious foundation by the use of the phrase, "in the Year of our Lord." The Declaration of Independence opens with references to "Nature's God and the "Creator" and closes with an appeal to "the Supreme Judge of the World" and "divine Providence." Amar, Akhil R. America's

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laws of public justice and equity, established for the preservation of those things, his presumption is to be checked by the fear of punishment, consisting of the deprivation or diminution of those civil interests, or goods, which otherwise he might and ought to enjoy....

...

In the second place, the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God....

...

In the third place, the care of the salvation of men's souls cannot belong to the magistrate .... In the variety and contradiction of opinions in religion, wherein the princes of the world are as much divided as in their secular interest, ... one country alone would be in the right, and all the rest of the world put under an obligation of following their princes in the ways that lead to destruction.... [M]en would owe their eternal happiness or misery to the places of their nativity.

These considerations ... seem unto me sufficient to conclude that all the power of civil government relates only to men's civil interests, is confined to the care of the things of this world, and hath nothing to do with the world to come.

Unwritten Constitution: the precedents and principles we live by. New York, Basic Books, 2012. Print.<sup>7</sup>

I acknowledge that the free exercise of religion is not without some government restriction. Where people's actions are found to be subversive of good order, limitations on such action have been upheld. **Braunfeld v. Brown**, 366 U.S. 599, 603-04, 81 S.Ct. 1144 (1961).<sup>8</sup> But here, as recognized in the **Philips'** case, the Priest's compliance with the doctrines of the Roman Catholic Church, i.e., that he not divulge any information obtained during the Sacrament of Reconciliation, is not in anyway subversive of good order and does not otherwise pose any substantial threat to public safety, peace or order; on the contrary, the Church's doctrines are the foundation of these things. Because the alleged actions of the Priest and the Roman Catholic Church of the Diocese of Baton Rouge are protected by the Free Exercise Clause of the First Amendment, plaintiffs have not set forth a cause of action against them. Accordingly, I concur in the majority's opinion.

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<sup>7</sup> The First Prayer of the Continental Congress, 1774, The Office of the Chaplain, United States House of Representatives petitioned, the "Lord our Heavenly Father," "high and mighty King of kings," "Lord of lords," "O God of wisdom," and "Jesus Christ, Thy Son and our Savior" to "direct the councils of this honorable assembly" to "enable them to settle things on the best and surest foundation."

<sup>8</sup> In **Braunfeld**, 366 U.S. at 604, the Court noted that Thomas Jefferson articulated this general point that legislative power may reach people's actions when they are found to be in violation of important social duties in stating, as follows:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

<sup>8</sup> Works of Thomas Jefferson 113.

The **Braunfeld** Court also referenced the words of Oliver Ellsworth, a member of the Constitutional Convention and later Chief Justice, who wrote:

But while I assert the rights of religious liberty, I would not deny that the civil power has a right, in some cases, to interfere in matters of religion. It has a right to prohibit and punish gross immoralities and impieties; because the open practice of these is of evil example and detriment.

Emphasis added. Written in the Connecticut Courant, Dec. 17, 1787, as quoted in 1 Stokes, Church and State in the United States, 535.

**Braunfeld**, 366 U.S. at 604-605, 81 S.Ct. at 1146.