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Judge mulls constitutionality of child abuse reporting law

By RANDALL CHASE - *Associated Press* - Monday, November 9, 2015

WILMINGTON, Del. (AP) - A state lawsuit against elders of a Jehovah's Witnesses congregation has prompted a judge to question the constitutionality of a Delaware law mandating the reporting of suspected child abuse.

The attorney general's office is suing elders of the Sussex County congregation for not reporting an unlawful sexual relationship between a woman and a 14-year-old boy, both of whom were congregation members.

State law requires any person, agency, organization or entity who knows or in good faith suspects that a child is being abused or neglected to call a 24-hour hotline. The law specifically states that the reporting requirements apply to health care workers and organizations, school employees, social workers, psychologists and law enforcement officials.

But the law also contains exemptions for attorney-client conversations and communications "between priest and penitent in a sacramental confession."

Francis McNamara, an attorney for the Jehovah's Witnesses congregation, argued Monday that they are covered by the clergy exemption, and that the judge should end the lawsuit before it goes to trial by ruling in their favor.

"The effectiveness of this statute cannot be limited to Catholic priests," he told Superior Court Judge Mary Johnston.

McNamara said he wasn't challenging the constitutionality of the law, but that in order to maintain its constitutionality, it must be read to protect any confidential conversation between a church member and a cleric acting in a ministerial role - not just the confessional booth in a Catholic Church.

"Which religion do we pick as having the proper confession?" McNamara asked.

Johnston wrestled with why a non-Catholic who confesses confidentially to a spiritual adviser that he or she did something wrong would not be covered by the law simply because that particular religion does not define congregational leaders as "priests" or include "confession" among its sacraments.

"How can that be constitutional?" asked the judge, who described the statute as "problematic" and suggested that it was "sloppily written."

"What does "sacramental" mean for purposes of the state?" Johnston asked deputy attorney general Janice Tigani.

Tigani conceded that the law could be unconstitutional if read as favoring a certain religion, but that Delaware lawmakers could have chosen other language had they wanted. She also said she was unaware of any similar law in any other state with the same wording.

Tigani, nevertheless, argued that there was no "confession" by the boy, who was taken to congregation elders by his mother after revealing the sexual relationship.

"They weren't confessing anything, at least within the eyes of the law ... because this was a victim," she said.

The conversations between congregation elders and the woman also are not covered by the confessional exemption, Tigani added, because the woman did not voluntarily seek out spiritual guidance but was instead approached by elders after they met with the boy and his mother.

But the judge noted that the woman, Katheryn Harris Carmean White, could have confessed while being interviewed by the elders, and that both she and the boy were excommunicated, suggesting that the boy may have been subjected to church punishment for "confessing" his own wrongdoing.

Department of Justice authorities say the boy reported to his mother in January 2013 that he and Carmean White, who worked as a teacher's aide at Seaford Middle School, had engaged in a sexual relationship. According to the complaint, the boy and his mother met that same day with two congregation elders.

Carmean White was arrested in February 2013 after the boy's mother went to authorities. She was sentenced to six years in prison after being convicted of third-degree rape, fourth-degree rape and child endangerment.

This story has been corrected to show the first name of the Jehovah's Witnesses lawyer is Francis, not Frank.

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