

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IVY HILL CONGREGATION OF	:	
JEHOVAH'S WITNESSES,	:	
Petitioner	:	
	:	
v.	:	No. 316 MD 2020
	:	
DEP'T OF HUMAN SERVS.,	:	
Respondent	:	<i>Electronically Filed Document</i>

**RESPONDENT'S BRIEF IN OPPOSITION TO THE
SECOND APPLICATION FOR SUMMARY RELIEF**

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BACKGROUND

The Child Protective Services Law (hereinafter the “CPSL”), 23 Pa. C.S. §§ 6301, *et seq.*, was enacted to encourage a more complete reporting of suspected child abuse. Under the CPSL, various persons, such as members of the clergy, are identified as mandatory reporters of suspected child abuse. 23 Pa. C.S. § 6311(a)(6). Relevant to this litigation, a member of the clergy is only relieved of the duty to make a report of suspected child abuse if the member of the clergy learns of the suspected child abuse during a confidential communication. *Id.* § 6311.1(b)(1). In order to exemplify “confidential communication,” the General Assembly incorporated a reference in the CPSL to Section 5943 of the Judicial Code, which states:

No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

42 Pa. C.S. § 5943 (hereinafter the “clergy-communicant privilege”).

The clergy-communicant privilege provides that a member of the clergy shall not be compelled, without consent of the disclosing individual, to disclose

information in any legal proceeding, trial or investigation that was obtained “in the course of his duties” . . . “secretly and in confidence[.]” *See id.*

Petitioner, the Ivy Hill Congregation of Jehovah’s Witnesses, is a religious entity located in Philadelphia, Pennsylvania. (Sec. Appl. for Relief ¶¶ 69, 71). Jehovah’s Witnesses, including Petitioner, believe any congregant who commits a serious sin requires spiritual counsel and assistance from the elders of the congregation. (*Id.* ¶ 45). To obtain spiritual counsel and assistance, congregants must disclose or confess private and sensitive information to elders. (*Id.* ¶¶ 46, 48). Although Jehovah’s Witnesses require a congregant to confess to three or more elders as part of the repentance and reconciliation with God, it is their belief that the principles of privacy and confidentiality apply with equal force to each communication regardless of the fact that the communication is with multiple elders. (*Id.* ¶¶ 51-52).

Respondent, the Department of Human Services, is the Commonwealth agency charged with administering and overseeing the implementation of the CPSL. (*Id.* ¶ 81). More specifically, the Department is administratively tasked with, among other things: promulgating regulations necessary to implement the CPSL; maintaining a toll-free hotline for reporting abuses and a statewide database of protective services; and, providing notice of reports of suspected child abuse to

appropriate county agencies and law enforcement to conduct investigations and initiate enforcement actions. (*See id.* ¶ 82); *see also* Resp't Ex. A¹ ¶ 10.

The CPSL is a statutory scheme governing the reporting and investigation of child abuse. (*Id.* ¶ 77). If a person, such as a member of the clergy, is obligated to report suspected child abuse, a written report must be submitted to the Department. (*Id.* ¶ 79); *see also* Resp't Ex. A ¶ 13. Section 6319 of the CPSL provides a criminal offense if a person who is required to report a case of suspected child abuse fails to do so. (*See id.* ¶ 80 citing 23 Pa. C.S. § 6319).

Notably, the only entities permitted to investigate or bring charges against a person for failing to report child abuse are law enforcement officials, not the Department. (*See id.* ¶ 83(g)); *see also* Resp't Ex. A ¶ 14. As it relates to elders at Ivy Hill Congregation, those relevant officials would be the Philadelphia District Attorney, because the congregation is located in Philadelphia or the State Attorney General. (*See* Sec. Appl. for Relief Ex. Y at 11, Request No. 14).

As permitted by the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531-7541, Petitioner seeks a declaration against Respondent to settle whether their elders are deemed members of clergy, as encompassed by the clergy-communicant privilege. (*See id.* at 4-5, Request No. 6). This is the only narrow declaration that is being

¹ Attached and incorporated herein as Respondent's Exhibit A is a true and correct copy of the unsworn affidavit of Amanda Dorris, Director of the Bureau of Policy, Programs and Operations for the Office of Children, Youth and Families.

sought because Petitioner is “*absolutely not* seeking a declaration . . . that some per se exemption to reporting applies[.]” (*See id.*) (citing Pet’s Br. in Opp. to P.O.s at 22) (emphasis in original).²

Alternatively, if the Court determines that the elders at Ivy Hill are not members of the clergy as encompassed by the clergy-communicant privilege, on the grounds that “members other than the leader [] are deemed clergymen or ministers” in the Jehovah’s Witnesses’ faith, Petitioner requests for the Court to declare this portion of the clergy-communicant privilege unconstitutional and sever it from the remainder. (*See* Sec. Appl. for Relief at 1-2).

² Although the Second Application for Relief suggests a broader form of relief sought when describing the requested declaration as one that would entitle the elders of Ivy Hill to the protections afforded by the clergymen privilege (Sec. App. for Relief at 1-2), Petitioner acknowledged during discovery that despite its nuances in word choice, its request for relief has been consistent – a narrow declaration that its elders are “clergymen” under Section 5943 so that when circumstances warrant, the elders may relieve themselves of their duty as mandatory reporters. (Sec. App. for Relief at 1-2; *see also* Ex. Y at 4-5); *see also* Mem. Op. at 20-21 (“this case pertains only to who – specifically, Petitioner’s elders – may assert the privilege, not what content may be protected.”)

Because the Court is prevented from opining as to whether any given communication to an elder at Ivy Hill may otherwise meet the “in the course of his duties” and “secretly and in confidence” provisions of clergy-communicant privilege, it would be improper for this Court to broadly declare that the elders at Ivy Hill are “entitled to the protections afforded by the clergymen privilege” based upon the record before us.

SUMMARY OF THE ARGUMENT

If the rule in the civil court is that the churches are left to speak for themselves in matters of discipline and doctrine, (*see Henderson v. Hunter*, 59 Pa. 335, 343 (1868)), then it is unclear why Petitioner seeks a declaration from this Court, and against this Respondent, that their elders are clergymen as embodied by the clergy-communicant privilege. Petitioner logically accepts or has spoken for its elders that they are mandatory reporters of suspected child abuse as members of clergy. It is therefore unclear then why Petitioner is unable to speak for its elders to determine whether they are members of clergy as embodied by the clergy-communicant privilege. The requested declaration from this Court seems to amount to nothing more than an advisory opinion if entered against Respondent.

If the Court wishes to undergo a statutory analysis of the clergy-communicant privilege to determine if Petitioner is a member of the clergy, the Department does not take a position in that endeavor. The Department continues to respectfully oppose whether this Court has the jurisdiction to enter a declaration against it as to whether or not the elders at Ivy Hill Congregation are members of clergy as embodied by the clergy-communicant privilege.

For the reasons more fully expressed below, the Court should decline jurisdiction to hear this matter, presented against the Department, as there are no antagonistic claims present between the Petitioner and Respondent indicating

imminent and inevitable litigation between these two parties. Alternatively, even if the Court were to determine that no other party could have been appropriately named, the statute of limitations to bring this action has passed.

COUNTER QUESTIONS PRESENTED

A. Should the Second Application for Summary Relief be denied and the Petition be dismissed because this Court does not have jurisdiction to enter a declaration against the Department as to whether or not the elders at Ivy Hill Congregation are members of clergy as embodied by the clergy-communicant privilege? Suggested Answer: Yes.

B. Alternatively, should the Second Application for Summary Relief be denied and the Petition be dismissed as untimely because the statute of limitations to seek this relief has long since passed? Suggested Answer: Yes.

ARGUMENTS IN OPPOSITION

Although Petitioner moves, pursuant to Pennsylvania Rule of Civil Procedure 1035.2, for summary judgment, their request proceeds pursuant to Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure. Rule 1532(b) states that “[a]t any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear.” Pa. R.A.P. 1532(b). A court “must determine, based on the undisputed facts, whether either party has a clear right to the relief requested.” *Summit Sch., Inc. v. Dep’t of Educ.*, 108 A.3d 192, 195 (Pa. Cmwlth. 2015). “The record, for purposes of [a] motion for summary relief is the same as a record for purposes of a motion for summary judgment.” *Id.* at 195-96.

A. Jurisdiction Over The Department Is Not Present.

Unique here is the fact that Petitioner seeks relief pursuant to the Declaratory Judgments Act, which grants courts the power to declare the rights, status, and other legal relations of a party when sought. *See* 42 Pa. C.S. § 7532. Courts may refuse to render or enter a declaration where such judgment would not terminate the uncertainty or controversy giving rise to the proceeding. *See* 42 Pa. C.S. § 7537. A declaratory judgment will not be rendered to decide future rights in anticipation of an event which may never happen, and a petition for declaratory judgment is properly dismissed where the proceeding may prove to be merely academic. *McCandless Twp. v. Wylie*, 100 A.2d 590 (Pa. 1953). Further, declaratory relief should be withheld when the request for relief is an attempt to adjudicate the validity of a defense to a potential future lawsuit. *Osram Sylvania Prods., Inc. v. Comsup Commodities, Inc.*, 845 A.2d 846 (Pa. Super. Ct. 2004).

1. The parties are not antagonistic to one another.

The vital factor in the assumption of jurisdiction over a request for declaratory relief is “[t]he presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be a practical help in ending the controversy[.]” *Gulnac by Gulnac v. South Butler Cty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991). “Only where there is a real controversy may a party obtain a declaratory judgment.” *Id.*

“A conflict need not have reached a full-fledged battle in order for a matter to be ripe for declaratory judgment.” *Pa. Indep. Oil & Gas Ass’n v. Dep’t of Env’tl. Prot.*, 135 A.3d 1118, 1128 (Pa. Cmwlth. 2015) (internal quotations omitted).

Rather,

if the differences between the parties concerned, as to their legal rights, have reached the state of antagonistic claims, which are being actively pressed on one side *and opposed on the other*, and actual controversy appears; where, however, the claims of the several parties in interest, while not having reached the active stage, are nevertheless present, *and indicative of threatened litigation in the immediate future*, which seems unavoidable, the ripening seeds of a controversy appear.

135 A.3d at 1128 (citing *Lakeland Joint Sch. Dist. Auth. v. Sch. Dist. of Twp. of Scott*, 200 A.2d 748, 751 (Pa. 1964) (emphasis added)).

Clearly, there must be two parties with opposing claims that are being actively pressed or, if not actively pressed, litigation must be threatened in the immediate future. As preserved by Respondent’s New Matter, there is no evidence that the Department actively opposes Petitioner’s legal opinion as to whether or not their elders are members of the clergy, as embodied by the clergy-communicant privilege; nor is there present any evidence that the Department has threatened litigation, in any form, against Petitioner or its elders, because the Department plays no role in the enforcement of the criminal offense provision of Section 6319 of the CPSL for failing to report. (*See Resp’t New Matter ¶ 88*).

In its Memorandum Opinion concerning Respondent’s Preliminary Objection as to joinder, this Court acknowledged that Petitioner was bringing a

pre-enforcement challenge to determine whether Petitioner’s elders are required to speak to DHS under the CPSL. Mem. Op. at 15. And, since the OAG is representing DHS in this litigation, any interest of other parties are indirect or incidental or are adequately represented by DHS. *Id* citing *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 582 (Pa. 2003). Respectfully, while these positions may have been appropriate for the argument of joinder, they do not then establish that the Department is the proper respondent in this litigation.

First, Petitioner’s standing is premised on a pre-enforcement challenge, but the only enforcement action of concern in this litigation is an action against a mandatory reporter – such as Petitioner’s elders – for failing to report an instance of child abuse to the Department. This is an enforcement action that cannot be brought by the Department. *See* Resp’t Ex. A ¶ 14; Sec. Appl for Relief ¶ 83(g).

As the Petition alleged, Petitioner’s “beliefs and practices are now at issue given *recent actual and threatened enforcement actions by the Commonwealth*[.]” (Pet. ¶ 3) (emphasis added). Petitioner evidences the recent actual enforcement action as one taken against an Amish bishop by the Lancaster County District Attorney – not an action taken by the Department. (*See* Pet. ¶ 47 and Ex. B & C). No other evidence has been placed in the record that is indicative of threatened litigation in the immediate future between Petitioner and Respondent.

Second, if Petitioner was concerned about the actions of the “Commonwealth,” Petitioner could have simply named the Commonwealth as the appropriate respondent in this matter, but failed to do so. In *City of Philadelphia*, petitioners sought declaratory relief against the Commonwealth and separately against various executive and legislative public officials. 838 A.2d at 575. The Supreme Court noted that “where a person’s official designee is already a party, the participation of such designee may alone be sufficient, as the interests of the two are identical, and thus, the participation of both would result in duplicative filings.” 838 A.2d at 582 (referencing *Leonard v. Thornburgh*, 467 A.2d 104 (Pa. Cmwlth. 1983), which held that the Governor need not participate in litigation involving a constitutional attack upon a tax statute, where his designee, the Secretary of Revenue, adequately represented his interests).

In Pennsylvania, not only is the Attorney General statutorily charged with defending the constitutionality of all enactments passed by the General Assembly, but he or she is separately charged with representing the Commonwealth and all Commonwealth agencies in any action brought by or against them. *See* 71 P.S. § 732-204(a)(3), 204(c). It was significant to the Supreme Court in *City of Philadelphia* that the Commonwealth, who was represented by the Attorney General, was an appropriate designee to respond to a facial constitutional attack upon an act of the General Assembly. 838 A.2d at 583-84.

Distinguishable here is that the Department is not a proper designee of the Commonwealth as it does not have any antagonistic claims against the Petitioner, or its elders. *See, e.g., Tork-Hiis v. Commonwealth*, 735 A.2d 1256, 1259 (Pa. 1999) (The Commonwealth and its agencies are not one and the same, but rather constitute distinct and separate legal entities that are not interchangeable). To the extent that it was previously suggested that representation alone, of the Department by the Office of Attorney General as statutorily required, equates to the Department adequately representing the interests of any other necessary party, such is not a proper extraction of the dicta in *City of Philadelphia*.

Nothing has been presented on the record to evidence that the parties have antagonistic claims; nor is the Department the proper respondent simply because the Attorney General is statutorily obligated to provide representation. As such, Respondent respectfully requests that this Honorable Court deny the Application for Summary Relief and dismiss the Petition for Review because the Court does not have jurisdiction over Respondent due to a lack of antagonistic claims.

2. The Department does not conduct criminal investigations for failing to report instances of child abuse and is therefore not a properly named respondent in this matter.

Additionally, in *City of Philadelphia*, the Pennsylvania Supreme concluded that only the “public officers charged with the enforcement of the challenged statute” are necessary parties in a declaratory judgment action. 838 A.2d at 569-

570 (citing *White House Milk Co. v. Thomson*, 81 N.W.2d 725, 729 (Wis. 1957)).

This Court extended the rationale of the Supreme Court and provided that the more practical approach towards a validity challenge to legislation, “is to name as respondents those public officers who play a role in creating the challenged regulation” “and/or enforcing the challenged regulation[.]” See *Public Advocate v. Brunwasser*, 22 A.3d 261, 274 (Pa. Cmwlth. 2011).

Section 6319 of the CPSL identifies that it is a criminal offense for a person who is required to report a case of suspected child abuse to willfully fail to do so. (See Sec. Appl. for Relief ¶ 80). Notably, the only entities permitted to investigate or bring charges against a person for failing to report child abuse are law enforcement officials. (See *id.* ¶ 83(g)); see also Resp’t Ex. A ¶¶ 14-15. “Law enforcement official” is a defined term under the CPSL that includes: the Attorney General; a Pennsylvania district attorney; a Pennsylvania state police officer; or a municipal police officer. 23 Pa. C.S. § 6303. As it relates to Petitioner, the relevant officials would be the Philadelphia District Attorney, because Petitioner is located in Philadelphia, or the State Attorney General. (See Sec. Appl. for Relief Ex. Y at 11, Request No. 14).

In order to survive preliminary objections, Petitioner made a blanket averment that the Department is tasked with conducting investigations under the CPSL in order to present the parties in an antagonistic manner. (Pet. ¶ 8 *citing*

generally 23 Pa. C.S. § 6334.1). This section of the CPSL, however, provides that the Department shall establish procedures regarding how it responds to reports of suspected child abuse. 23 Pa. C.S. § 6334.1. Unambiguously, Section 6334.1 of the CPSL requires the Department to provide notice of the reported abuse to appropriate county agencies and law enforcement officials to investigate. *Id.* Nothing within this section of the CPSL authorizes the Department to play a role in enforcing the provisions at issue in this litigation.

Further, this averment is not present in Petitioner's Second Application for Summary Relief, and for good reason. Nothing within the CPSL provides the Department the authority to investigate an occurrence of failing to report suspected child abuse. When further requests for information were sought during discovery as to the authority for the contention that the Department determines whether a criminal offense may have been committed, Petitioner responded that it relied upon 23 Pa. C.S. § 6334(c). (Sec. Appl. for Relief Ex. Y at 11 – Request No. 15). Again, Section 6334(c) requires the Department to immediately transmit notice of a report of suspected child abuse to the appropriate law enforcement official. 23 Pa. C.S. § 6334(c).

The Department plays no role in enforcing the challenged clergy-communicant privilege or the criminal provision attached to mandatory reporters for failing to report child abuse and is, therefore, not the appropriately named

respondent in this litigation. (*See* Respondent’s New Matter ¶¶ 88). The Department is charged with administering and overseeing the implementation of the CPSL. (*See* Sec. Appl. for Relief ¶¶ 81). But its administrative tasks are not being challenged here.

In light of the practical approach advanced in *Public Advocate*, because the Department neither played a role in creating the challenged legislation nor does the Department play a role in enforcing the challenged legislation, the Department is not the proper party to have a declaration entered against it as it relates to the issues in this litigation. As such, Respondent respectfully requests that this Honorable Court deny the Application for Summary Relief and dismiss the Petition for Review as the Department is not the proper respondent.

3. If broadly construed, Petitioner ultimately seeks an advisory opinion or validation to a defense to a future lawsuit.

Finally, Respondent asserts that broad declaratory relief entitling the elders at Ivy Hill to the protections afforded by the clergy-communicant privilege should be withheld as it attempts to seek an advisory opinion or a validation to a defense to a potential future lawsuit. (*See* Resp’t New Matter ¶¶ 90-91).

Actions seeking “[a] declaratory judgment must not be employed to determine rights in anticipation of events which may never occur . . . or as a medium for the rendition of an advisory opinion which may prove to be purely academic.” *Pa. Indep. Oil & Gas Ass’n*, 135 A.3d at 1128; *see also* *Petition of*

Capital Bank & Trust Co., 6 A.2d 790, 792 (Pa. 1939) (“Parties are not entitled to a declaratory judgment on remote questions, or to aid them in another transaction”).

Declaratory relief should be withheld when the request for relief is an attempt to adjudicate the validity of a defense to a potential future lawsuit. *Osram Sylvania Prods., Inc. v. Comsup Commodities, Inc.*, 845 A.2d 846 (Pa. Super. Ct. 2004). The clergy-communicant privilege is an evidentiary privilege which provides that a member of the clergy shall not be compelled to disclose information in any legal proceeding, trial or investigation that was obtained “in the course of his duties” . . . “secretly and in confidence[.]” *See* 42 Pa. C.S. § 5943.

A declaration as to whether the elders at Ivy Hill are members of clergy as embodied by the clergy-communicant privilege may clarify whether the elders can assert the privilege, but for the reasons discussed *supra*, it nonetheless amounts to an advisory opinion if the declaration is entered against the Department.

To the extent that Petitioner argues for a broader form of relief in that the elders of Ivy Hill are entitled to the protections afforded by the clergy-communicant privilege, such should also be denied. That is because this Court cannot adjudicate the validity of a defense to a potential lawsuit and such would occur if the Court were to opine as to whether any given communication to an elder at Ivy Hill may otherwise meet the “in the course of his duties” and “secretly

and in confidence” provisions of clergy-communicant privilege. *See* Mem. Op. at 20-21 (“this case pertains only to who – specifically, Petitioner’s elders – may assert the privilege, not what content may be protected.”)

With or without the narrow declaration as to who may assert the privilege, nothing prevents the elders of Ivy Hill from invoking the clergy-communicant privilege. *See Henderson v. Hunter*, 59 Pa. 335, 343 (1868) (The rule in the civil court is that the churches are left to speak for themselves in matters of discipline and doctrine.) Any individual who believes they are the possessor of an evidentiary privilege may invoke it. It is up to the courts, however, to determine on a case-by-case basis whether the individual who invoked the privilege shall be compelled to disclose information. Relevant here, information is that which was obtained in confidence in the context of a penitential or spiritual matter. *See Commonwealth v. Stewart*, 690 A.2d 195, 198 (Pa. 1997) (the mere fact that a communication is made to a member of the clergy is not sufficient alone to invoke the clergy-communicant privilege); *see also Commonwealth v. Patterson*, 572 A.2d 1258, 1265 (Pa. Super. Ct. 1990) (Courts must look to the circumstances of the communication in question to determine whether a communicant’s statements were made in secrecy and confidence to a clergyman in the course of his duties.)

Clearly then, if the Court provides a broad declaration that the elders are entitled to the protections afforded by the clergy-communicant privilege, the Court

is simply providing validity to a defense to a potential future lawsuit. Because it would not be proper for the Court to provide such broad relief, and because the Department is not the proper respondent to have a declaration entered against it, Respondent respectfully requests that this Honorable Court deny the Application for Summary Relief and dismiss the Petition for Review.

B. Petitioner’s Claim Is Barred by the Statute of Limitations

To the extent that this Court determines that it has jurisdiction over the Respondent and the Respondent is the appropriate party for a declaration to be entered against, Respondent alternatively argues that the Petition is untimely. Petitioner has identified that it has been seeking a resolution to this matter since, at least, 1998. (*See* Pet. Ex. A). Respondent asserts that Petitioner is outside of the applicable statute of limitations period. (*See* Respondent’s New Matter ¶ 89).

“Judicial relief based on a declaratory judgment or decree may be granted whenever necessary or proper, subject to Chapter 55 (relating to limitation of time).” 42 Pa. C.S. § 7538. The general rule under Chapter 55 is that an “action . . . must be commenced within the time specified in or pursuant to this chapter unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute.” 42 Pa. C.S. § 5501. Any civil action or proceeding which is neither subject to another limitation specified nor excluded from the application of a period of limitation set by Section 5531, must be commenced within six years. 42

Pa. C.S. § 5527(b). Clearly there are time limitations for actions seeking a declaratory judgment. *Glendon Civic Ass'n v. Borough of Glendon*, 572 A.2d 852, 854 (Pa. Cmwlth. 1990).

This action brought by Petitioner is neither subject to another time limitation specified in Chapter 55 nor is it the type of action identified in Section 5531, which may be commenced at any time. Petitioner has identified that it has been seeking a resolution to this matter since, at least, 1998. (*See* Pet. Ex. A). In the produced exhibit, the Watchtower Bible and Tract Society of New York, Inc., “which serves the interests of Jehovah’s Witnesses throughout the United States,” sought clarification from the Office of Attorney General regarding child abuse reporting obligations. (*Id.*) Clearly the Society, on behalf of Jehovah’s Witnesses, was keeping apprised of changes in legislation, but the OAG responded that it was prohibited by law from giving an opinion to the Society and recommended that the Society refer its questions to private counsel. (*Id.*)

Notwithstanding the awareness by Petitioner of their perceived lack of clarity in the law, Petitioner still made an untimely application to this Court for relief. The General Assembly amended the CPSL on April 15, 2014, to include the reference to the clergy-communicant privilege at issue here, which relieves a mandatory reporter of the duty to make a report of suspected child abuse if the information was disclosed during a confidential communication made to a member

of the clergy. Pub. L. 414 No. 32 (Apr. 15, 2014) (codified as 23 Pa. C.S. § 6311.1).

Petitioner filed its Petition for Review with this Court on May 20, 2020, which is more than six years after the amendments were made to the CPSL concerning the provision at issue in this litigation. Because the requested declaratory relief is not otherwise limited by statute, the relevant statute of limitations for this action is six years. Since Petitioner has filed their Petition outside of the relevant limitations period, this Court should dismiss the Petition as untimely.

CONCLUSION

Respondent respectfully requests that this Honorable Court deny the Second Application for Summary Relief and dismiss the Petition for Review.

Respectfully submitted,

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CERTIFICATE OF WORDCOUNT

Although Respondent's brief is in excess of the page limits provided by Rule of Appellate Procedure 2135(a) , Respondent certifies that their brief otherwise complies with the word count limits in 2135(d) as their brief only includes 4560 words.

s/ Nicole R. DiTomo
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Senior Deputy Attorney General

CONFIDENTIAL INFORMATION CERTIFICATION

I certify that this filing complies with applicable state and local rules and the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, which require filing confidential information and documents differently than non-confidential information and documents.

s/ Nicole R. DiTomo
NICOLE R. DITOMO
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CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Senior Deputy Attorney General, Office of Attorney General, hereby certify that on October 29, 2021, I caused to be served a true and correct copy of the Respondent's Brief in Opposition to the Second Application for Summary Relief to the following:

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Senior Deputy Attorney General

EXHIBIT A

Affidavit of Amanda Dorris

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IVY HILL CONGREGATION OF	:	
JEHOVAH’S WITNESSES,	:	
Petitioner	:	
	:	
v.	:	No. 316 MD 2020
	:	
DEP’T OF HUMAN SERVS.,	:	
Respondent	:	

UNSWORN AFFIDAVIT OF AMANDA DORRIS

I, Amanda Dorris, declare that the following is true and correct and made on personal knowledge:

1. I am the Director of the Bureau of Policy, Programs and Operations (“BPPO”) for the Office of Children, Youth and Families (“OCYF”).
2. The OCYF is an office within the Department of Human Services (“DHS”).
3. I first became Director in October 2019 and I manage four divisions that relate to services and IT initiatives for Pennsylvania’s child welfare system.
4. Within one of those divisions is ChildLine – the hotline administered by DHS, pursuant to the Child Protective Services Law (“CPSL”), for the purposes of reporting alleged child abuse. *See* 63 P.S. §§ 6301, *et seq.*

5. For various reasons, including an effort to encourage more complete reporting of suspected child abuse, the CPSL was amended to establish mandated reporters of child abuse. *See* 63 P.S. §§ 6302, 6311.

6. Under the Child Protective Services Law, DHS was required to establish a toll-free telephone number (“ChildLine”) to permit individuals to report cases of suspected child abuse or to report that a child is in need of general protective service. 63 P.S. § 6332(a).

7. Answering calls to the toll-free number, 24 hours a day, seven days a week is a ChildLine caseworker or supervisor. *See* 63 P.S. § 6333.

8. When a call comes in to report alleged abuse, the caseworker captures the report into a statewide database. *See* 63 P.S. § 6331.

9. There are no scripted prompts, however, a caseworker attempts to learn through the course of an interview whether the reported conduct meets the definition of “child abuse” (*see* Section 6303(b.1)) and whether the individual responsible for the act or failure to act meets the definition of “perpetrator” (*see* Section 6303(a)) to determine where to transmit the report. *See* 63 P.S. § 6334.1.

10. Once those details are learned, ChildLine personnel process the report by designating a referral type, identifying allegations, and will then transmit the report to the county, the applicable District Attorney’s office, or to the OCYF regional office. 63 P.S. § 6334(b)-(f). Additional recipients of these reports may

also include other programming licensing agencies within the Department of Human Services.

11. Information in the database may include the details specified by Section 6336 of the CPSL and are indefinitely retained unless expunged or removed pursuant to the provisions of Sections 6337, 6338, and 6338.1.

12. The CPSL identifies specific adults who are mandated to report suspected child abuse, if the mandated reporter has a reasonable cause to suspect that a child is a victim of child abuse under one of the listed circumstances. *See* 63 P.S. § 6311(a)-(b).

13. If a mandatory reporter makes an oral report to DHS through ChildLine, they are required to also make a written report which can be mailed or faxed directly to the Regional OCYF Office or County Children and Youth Agency (CCYA). The mandated reporter may also choose to submit a written report electronically through the online portal found here:

<https://www.compass.state.pa.us/cwis/public/home>. *See* 63 P.S. § 6313(a).

14. A person required by the CPSL to report a case of suspected child abuse or to make a referral may be charged criminally by law enforcement for willfully failing to report. 63 P.S. § 6319(a).

15. DHS is not a law enforcement agency as defined by the CPSL. 63 P.S. § 6303. In certain circumstances, referrals may pose a conflict of interest for the

assigned county Children and Youth office. CPS referrals with a conflict of interest shall always be assigned to the appropriate OCYF Regional Office. There may be other instances when conflicts of interest arise that the assigned county is unable to comfortably mitigate. These occasions can result in the referral being reassigned to an adjacent county to assess and/or provide services.

16. The alleged perpetrator(s) are permitted to participate in the investigation; they are subsequently notified of the results of the investigation; and they are able to appeal the results of the investigation.

17. ChildLine case workers are given training on the CPSL, on how to capture reports and transmit them to appropriate officials, and are given opportunities to handle simulated calls for approximately 3 months' worth of training.

18. Training is provided to ChildLine case workers to identify that they are not permitted to give legal advice.

19. While the CPSL doesn't require it, the Department could also receive reports of alleged abuse through written correspondence. *See* 63 P.S. § 6312.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

Executed On: 9-2-21

Amanda Dorris
Amanda Dorris
Director, Bureau of Policy, Programs and
Operations
Office of Children, Youth and Families
Department of Human Services