

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 ANSWER TO PETITIONER’S APPLICATION FOR SUMMARY RELIEF

Respondent the Pennsylvania Department of Human Services (hereinafter “Department” or “Respondent”), by their undersigned counsel, respectfully submit this Answer to the Application for Summary Relief (hereinafter “Application”) filed by Petitioner Ivy Hill Congregation of Jehovah’s Witnesses (hereinafter “Ivy Hill” or “Petitioner”) in connection with their Petition for Relief.

The Petition and Application assert identical content and relief sought; however, because there are issues of dispute fact and for the same reasons identified in the preliminary objections simultaneously filed by the Respondent, this Application should be denied.

Petitioner requests that the Court declare that its elders are members of the clergy as defined by the clergy-communicant privilege found at 42 Pa. C.S. § 5943 and declare that these same elders are entitled to a blanket privilege protection for all of their communications. Or alternatively, if the Court does not hold the above,

to deem the statutory privilege to be either facially unconstitutional or unconstitutional as applied to Jehovah's Witnesses (of which Petitioner is but one congregation), under both the State and Federal Constitutions for violations of the Establishment Clause and Equal Protection provisions and to sever the disclosure exemption from the Child Protective Services Law (hereinafter the "CPSL"), 23 Pa. C.S. §§ 6301, *et seq.* See 23 Pa. C.S. § 6311.1(b)(1).

Petitioner filed their Application under Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure, which 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). An application for summary relief is properly evaluated according to the standards for summary judgment." *Myers v. Commonwealth*, 128 A.3d 846 (Pa. Commw. Ct. 2015). The court may grant a motion for summary relief if a party's right to judgment is clear and there are no material issues of fact in dispute. *Jubelirer v. Rendell*, 953 A.2d 514, 521 (Pa. 2008).

Despite Petitioners bold assertions (*see, e.g.*, Pet. ¶¶ 57-73), for the purposes of summary relief there are material issues of fact in dispute as related to the entitlement of their seven elders to the status of members of the clergy. Additionally, as presented in the Respondent's preliminary objections and incorporated herein, this Application also fails for several procedural reasons.

First, Ivy Hill lacks standing to bring the initial action because it has failed to aver that there is an actual controversy between the named parties. Second, Petitioner has failed to join necessary parties, who are the identified law enforcement officials tasked with investigating and enforcing the criminal provisions of the CPSL on behalf of the Commonwealth. Third, as to Count I of the Petition, Petitioner has failed to exhaust its administrative remedies by seeking to have the Department provide guidance as to the interplay between the mandatory reporting provisions and the application of the clergy-communicant privilege before seeking judicial intervention.

Further, even if the Petitioner overcomes these procedural hurdles, the Petitioner's claims are legally insufficient because the determination of an applicable privilege is done on a case-by-case basis. Strikingly, the most relevant question regarding the clergy-communicant privilege is not based on the member of the clergy's status, but whether the communication was made in confidence in the context of a penitential or spiritual matter. Here, Petitioner seeks for the Court to provide a blanket declaration that all of the communications between their elders and congregants are privileged – a request that has never before been granted.

For these reasons, Respondent requests that this Honorable Court dismiss Petitioner's Application for Summary Relief because Petitioner's right to relief is

not clear as inferred. Respondent shall submit the necessary brief in support of this response in accordance with the briefing schedule currently established.

Respectfully submitted,

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Date: July 31, 2020

Counsel for Respondent

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
Deputy Attorney General

CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on July 31, 2020, I caused to be served a true and correct copy of the foregoing document titled Respondent's Answer to the Application for Summary Relief to the following:

VIA ELECTRONIC FILING

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ORDER

AND NOW this _____ day of _____, 2020, upon consideration of Petitioner's Application for Summary Relief and Respondent's Answer thereto, it is hereby ORDERED that Petitioner's Application for Summary Relief is DENIED.

BY THE COURT:

Judge