

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IVY HILL CONGREGATION OF
JEHOVAH’S WITNESSES,

Petitioner,

No. 316 MD 2020

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF HUMAN SERVICES,

Respondent.

RESPONSE TO PRELIMINARY OBJECTIONS

Petitioner Ivy Hill Congregation of Jehovah’s Witnesses, by and through its undersigned counsel, hereby responds to the Preliminary Objections by Respondent to the Petition for Review, and, in support of this response, avers as follows:

INTRODUCTION

Pages 1-3 of Respondent’s Preliminary Objections contain several un-numbered paragraphs under the heading “Introduction.” None of the statements in the Introduction form the basis for any preliminary objection, since no portion of the Introduction is incorporated by reference elsewhere in the pleading. *See* Prelim. Obj. at ¶¶ 22, 34, 50, 69, 84 (incorporating only the “above *numbered* paragraphs” (emphasis

added)). Accordingly, no response is required. Further, the Introduction contains pure allegations of law, to which no response is required, and, as such, they are denied.

By way of further response, the Introduction fundamentally mischaracterizes the issues in dispute and the claims made in the Petition for Review. Specifically, Ivy Hill is *not* seeking a declaration in Count I that “all of their communications” are entitled to a “blanket privilege[.]” *See* Prelim. Obj. at 2. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are “clergymen” under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., “in the course of his duties”; “in confidence”), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). *See* Petition for Review at 20, Prayer for Relief. To be clear, Ivy Hill is *absolutely not* seeking a declaration that every communication elders engage in with congregants is privileged and exempt from reporting under 23 Pa.C.S. § 6311.1(b)(1).

Moreover, Ivy Hill is also *not* seeking a declaration in Count II that the “disclosure exemption,” found in 23 Pa.C.S. § 6311.1(b)(1), should be severed from the Child Protective Services Law (CPSL). *See*

Prelim. Obj. at 2. To the contrary, Ivy Hill is seeking, as alternative relief to Count I, that if 42 Pa.C.S. § 5943 does not apply to the elders of Ivy Hill because of the “exception” therein (“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”), then that exception should be declared unconstitutional and severed from 42 Pa.C.S. § 5943. *See* Petition for Review at 24-25, Prayer for Relief.¹ To be clear, Ivy Hill is *absolutely not* seeking a declaration that 23 Pa.C.S. § 6311.1(b)(1) is unconstitutional or that it should be severed from the CPSL.

STANDARD OF REVIEW

Page 4 of the Preliminary Objections contains two un-numbered paragraphs under the heading “Standard of Review.” None of the statements in the Standard of Review form the basis for any

¹ If the Court reaches Count II and grants the precise relief requested therein, the Court would sever 42 Pa.C.S. § 5943 as follows:

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.

preliminary objection, since no portion of the Standard of Review is incorporated by reference elsewhere in the pleading. *See* Prelim. Obj. at ¶¶ 22, 34, 50, 69, 84 (incorporating only the “above *numbered* paragraphs” (emphasis added)). Accordingly, no response is required. Further, the Standard of Review contains pure allegations of law, to which no response is required, and, as such, they are denied.

RELEVANT FACTS²

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

² Ivy Hill denies that the facts set forth in this section of the Preliminary Objections are the only “Relevant Facts”; however, that same heading is used here solely for convenient cross-reference. To the extent that this heading and any other heading in Respondent’s Preliminary Objections are intended to make averments, the averments are, at best, conclusions of law to which no response is required, and, as such, they are denied.

10. Admitted.

11. Admitted.

12. Admitted.

RELEVANT STATUTORY FRAMEWORK³

13. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

14. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

15. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

16. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

17. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

18. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

19. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

³ See the foregoing footnote, noting the objection to the headings in Respondent's Preliminary Objections.

20. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

21. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

OBJECTION I

22. The foregoing responses are incorporated by reference as if set forth fully herein.

23. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

24. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

25. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, the remedial purpose of the Declaratory Judgment Act bears directly on the allegations in this paragraph: “This subchapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.”
42 Pa.C.S. § 7541(a).

26. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, the remedial purpose of the Declaratory Judgment Act bears directly on the allegations in this paragraph: “This subchapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. § 7541(a).

27. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

28. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, this paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are “clergymen” under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review.

29. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, it specifically denied that Ivy Hill lacks standing to pursue this pre-enforcement challenge. Ivy Hill has standing under the principles set forth in *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 509 (Pa. Cmwlth. 2019) (hereafter, *FOAC*), *appeal pending*, No. 29 MAP 2020 (Pa.); *see also Robinson Twp., Washington Cty. v. Commonwealth*, 83 A.3d 901, 924-25 (Pa. 2013). Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are “clergymen” under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review.

30. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill’s elders are currently under obligations to report to the Department when or if an allegation of child abuse comes to their attention, and must do so “immediately” if the allegation is reportable; this creates a substantial, direct, and immediate interest in the outcome of this

litigation. *See FOAC*, 218 A.3d at 509. Ivy Hill thus has standing, and any allegation to contrary is denied. Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are “clergymen” under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review.

31. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill’s elders are currently under obligations to report to the Department when or if an allegation of child abuse comes to their attention, and must do so “immediately” if the allegation is reportable; this creates a substantial, direct, and immediate interest in the outcome of this litigation. *See FOAC*, 218 A.3d at 509. Ivy Hill thus has standing, and any allegation to contrary is denied. Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are “clergymen” under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review.

32. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill's elders are currently under obligations to report to the Department when or if an allegation of child abuse comes to their attention, and must do so "immediately" if the allegation is reportable; this creates a substantial, direct, and immediate interest in the outcome of this litigation. *See FOAC*, 218 A.3d at 509. Ivy Hill thus has standing, and any allegation to contrary is denied. Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are "clergymen" under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review

33. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill's elders are currently under obligations to report to the Department when or if an allegation of child abuse comes to their attention, and must do so "immediately" if the allegation is reportable; this creates a substantial, direct, and immediate interest in the outcome of this litigation. *See FOAC*, 218 A.3d at 509. Ivy Hill thus has

standing, and any allegation to contrary is denied. Finally, at no point in the Preliminary Objections does the Department take a position on whether the elders at Ivy Hill are “clergymen” under 42 Pa.C.S. § 5943, which just furthers the legal uncertainties described in the Petition for Review

WHEREFORE, Petitioner Ivy Hill requests that the Court OVERRULE preliminary objection I.

OBJECTION II

34. The foregoing responses are incorporated by reference as if set forth fully herein.

35. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

36. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

37. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

38. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

39. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

40. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

41. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

42. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

43. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, under the CPSL, the Department is the *only* Commonwealth agency to whom a mandatory reporter is *required* to make a report of child abuse. *See* 23 Pa.C.S. § 6313(a)(1) (“A mandated reporter *shall immediately make an oral report* of suspected child abuse *to the department* via the Statewide toll-free telephone number under section 6332 (relating to establishment of Statewide toll-free telephone number) or a written report using electronic technologies under section 6305 (relating to electronic reporting).” (emphasis added)). It is the failure to speak *to the Department* that subjects a reporter to potential

or actual criminal sanction. *See* 23 Pa.C.S. § 6319(a)(1) (“A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities commits an offense if the person or official willfully fails to do so.”). Further, only if the mandated report speaks *to the Department* is the reporter *guaranteed* to be immune from criminal prosecution; a report to anyone else is subject to an additional layer of scrutiny regarding whether the report was in “good faith.” *See* 23 Pa.C.S. § 6319(a)(4) (“A report of suspected child abuse to law enforcement or the appropriate county agency by a mandated reporter, made in lieu of a report *to the department*, shall not constitute an offense under this subsection, *provided that the report was made in a good faith effort* to comply with the requirements of this chapter.” (emphasis added)).

Finally, to the extent this paragraph alleges the Department’s role with the CPSL is merely ministerial, that averment is specifically denied. The Department is charged with a host of responsibilities under the CPSL, which are much more than mere “administrative” responsibilities. *See generally* 23 Pa.C.S. chapter 63, subchapter C (describing “powers and duties of department”). Further, the

Department is specifically charged with issuing regulations under the CPSL. *See* 23 Pa.C.S. §§ 6306, 6348; *see also* Prelim. Obj. at ¶ 64 (“Among other things, the Department is tasked with promulgating regulations to implement the statute providing information regarding persons classified as mandatory reporters and the reporting requirements and procedures.”). In 1999 the Department fulfilled this regulatory mandate when it issued regulations specifically concerning the clergymen’s privilege. *See* 55 Pa. Code § 3490.14 (“Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), privileged communication between a required reporter and the person’s patient or client does not apply to situations involving child abuse and may not constitute grounds for failure to report as required by this chapter.”). Against the foregoing, any averment by the Department that it has no role, or no significant role, in the issues posed by the Petition for Review is denied.

44. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, under the CPSL, the Department is the *only* Commonwealth

agency to whom a mandatory reporter is *required* to make a report of child abuse. *See* 23 Pa.C.S. § 6313(a)(1) (“A mandated reporter *shall immediately make an oral report* of suspected child abuse *to the department* via the Statewide toll-free telephone number under section 6332 (relating to establishment of Statewide toll-free telephone number) or a written report using electronic technologies under section 6305 (relating to electronic reporting).” (emphasis added)). It is the failure to speak *to the Department* that subjects a reporter to potential or actual criminal sanction. *See* 23 Pa.C.S. § 6319(a)(1) (“A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities commits an offense if the person or official willfully fails to do so.”).

45. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

46. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

47. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, under the CPSL, the Department is the *only* Commonwealth agency to whom a mandatory reporter is *required* to make a report of child abuse. *See* 23 Pa.C.S. § 6313(a)(1) (“A mandated reporter *shall immediately make an oral report* of suspected child abuse *to the department* via the Statewide toll-free telephone number under section 6332 (relating to establishment of Statewide toll-free telephone number) or a written report using electronic technologies under section 6305 (relating to electronic reporting).” (emphasis added)). It is the failure to speak *to the Department* that subjects a reporter to potential or actual criminal sanction. *See* 23 Pa.C.S. § 6319(a)(1) (“A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities commits an offense if the person or official willfully fails to do so.”). Further, only if the mandated report speaks *to the Department* is the reporter *guaranteed* to be immune from criminal prosecution; a report to anyone else is subject to an additional layer of scrutiny regarding whether the report was in “good faith.” *See* 23 Pa.C.S. § 6319(a)(4) (“A report of suspected child

abuse to law enforcement or the appropriate county agency by a mandated reporter, made in lieu of a report *to the department*, shall not constitute an offense under this subsection, *provided that the report was made in a good faith effort* to comply with the requirements of this chapter.” (emphasis added)).

Finally, Ivy Hill specifically denies that it has failed to join any necessary or indispensable parties. The ***sixty-nine additional parties*** identified by the Department as purportedly necessary or indispensable (#1: The Attorney General; #2: The Pennsylvania State Police; #3-69: The sixty-seven county District Attorneys, *see* Prelim. Obj. at ¶ 49) are *not* entities under the CPSL to whom communications are mandatory; only communications to *the Department*, the Respondent here, are compulsory under the CPSL, and it is the Department who refers these compulsory communications to law enforcement. *See* 23 Pa.C.S. § 6313(a)(1) (“A mandated reporter shall immediately make an oral report of suspected child abuse to the department...”); 23 Pa.C.S. § 6334(c) (“If the department receives a report of suspected child abuse that also alleges that a criminal offense has been committed against the child, the department shall immediately transmit an oral

notice or notice by electronic technologies to the appropriate law enforcement official in the county where the suspected child abuse is alleged to have occurred.”). Moreover, employing the logic of the Department to its complete end, since every law enforcement agency in the Commonwealth could potentially investigate a child abuse allegation, presumably the list of “indispensable” respondents should include the over 1000 law enforcement agencies statewide. *See* U.S. Dep’t of Justice, *Census of State and Local Law Enforcement Agencies, 2008*, at 15 (July 2011) (listing Pennsylvania as having 1117 law enforcement agencies), available at <https://www.bjs.gov/content/pub/pdf/csllea08.pdf>. A holding that Ivy Hill needs to join over 1000 additional parties would be absurd. *See City of Philadelphia v. Com.*, 838 A.2d 566, 582-83 (Pa. 2003) (discussing disruptive nature of a requirement to join, among other parties, all police officers in the Commonwealth; holding a requirement to join all parties with “any interest” in a declaratory relief action “would result in an unwieldy judicial resolution process”).

In the end, it is that statutory requirement to speak, or not, *to the Department* under the CPSL that is at issue in this pre-enforcement challenge, and the Department is the appropriate, and *only*, party

necessary in a declaratory relief challenge under the CPSL of this type. *Cf. C.S. v. Com., Dep't of Human Servs.*, 184 A.3d 600 (Pa. Cmwlth. 2018) (declaratory relief action concerning provisions of CPSL where the Department's Bureau of Hearings and Appeals was the only respondent). Indeed, because of the specific statutory requirement to speak *to the Department* and no one else, the other entities identified by the Department do not have "rights [that] are so connected with the claims of the litigants that no relief can be granted without infringing on those rights." *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205 (Pa. Cmwlth. 2018).

48. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

49. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, under the CPSL, the Department is the *only* Commonwealth agency to whom a mandatory reporter is *required* to make a report of child abuse. *See* 23 Pa.C.S. § 6313(a)(1) ("A mandated reporter *shall immediately make an oral report* of suspected child abuse *to the department* via the Statewide toll-free telephone number under section

6332 (relating to establishment of Statewide toll-free telephone number) or a written report using electronic technologies under section 6305 (relating to electronic reporting).” (emphasis added)). It is the failure to speak *to the Department* that subjects a reporter to potential or actual criminal sanction. *See* 23 Pa.C.S. § 6319(a)(1) (“A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities commits an offense if the person or official willfully fails to do so.”). Further, only if the mandated report speaks *to the Department* is the reporter *guaranteed* to be immune from criminal prosecution; a report to anyone else is subject to an additional layer of scrutiny regarding whether the report was in “good faith.” *See* 23 Pa.C.S. § 6319(a)(4) (“A report of suspected child abuse to law enforcement or the appropriate county agency by a mandated reporter, made in lieu of a report *to the department*, shall not constitute an offense under this subsection, *provided that the report was made in a good faith effort* to comply with the requirements of this chapter.” (emphasis added)).

Finally, Ivy Hill specifically denies that it has failed to join any necessary or indispensable parties. The ***sixty-nine additional parties***

identified by the Department as purportedly necessary or indispensable (#1: The Attorney General; #2: The Pennsylvania State Police; #3-69: The sixty-seven county District Attorneys, *see* Prelim. Obj. at ¶ 49) are *not* entities under the CPSL to whom communications are mandatory; only communications to *the Department*, the Respondent here, are compulsory under the CPSL, and it is the Department who refers these compulsory communications to law enforcement. *See* 23 Pa.C.S. § 6313(a)(1) (“A mandated reporter shall immediately make an oral report of suspected child abuse to the department...”); 23 Pa.C.S. § 6334(c) (“If the department receives a report of suspected child abuse that also alleges that a criminal offense has been committed against the child, the department shall immediately transmit an oral notice or notice by electronic technologies to the appropriate law enforcement official in the county where the suspected child abuse is alleged to have occurred.”). Moreover, employing the logic of the Department to its complete end, since every law enforcement agency in the Commonwealth could potentially investigate a child abuse allegation, presumably the list of “indispensable” respondents should include the over 1000 law enforcement agencies statewide. *See* U.S.

Dep't of Justice, *Census of State and Local Law Enforcement Agencies*, 2008, at 15 (July 2011) (listing Pennsylvania as having 1117 law enforcement agencies), available at <https://www.bjs.gov/content/pub/pdf/cslllea08.pdf>. A holding that Ivy Hill needs to join over 1000 additional parties would be absurd. See *City of Philadelphia v. Com.*, 838 A.2d 566, 582-83 (Pa. 2003) (discussing disruptive nature of a requirement to join, among other parties, all police officers in the Commonwealth; holding a requirement to join all parties with “any interest” in a declaratory relief action “would result in an unwieldy judicial resolution process”).

In the end, it is that statutory requirement to speak, or not, *to the Department* under the CPSL that is at issue in this pre-enforcement challenge, and the Department is the appropriate, and *only*, party necessary in a declaratory relief challenge under the CPSL of this type. Cf. *C.S. v. Com., Dep't of Human Servs.*, 184 A.3d 600 (Pa. Cmwlth. 2018) (declaratory relief action concerning provisions of CPSL where the Department's Bureau of Hearings and Appeals was the only respondent). Indeed, because of the specific statutory requirement to speak *to the Department* and no one else, the other entities identified by the Department do not have “rights [that] are so connected with the

claims of the litigants that no relief can be granted without infringing on those rights.” *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205 (Pa. Cmwlth. 2018).

WHEREFORE, Petitioner Ivy Hill requests that the Court OVERRULE preliminary objection II.

OBJECTION III

50. The foregoing responses are incorporated by reference as if set forth fully herein.

51. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

52. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

53. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

54. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

55. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

56. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

57. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

58. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

59. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL

or otherwise, *and the Department has identified none in its Preliminary Objections.*

60. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

61. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

62. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL

or otherwise, *and the Department has identified none in its Preliminary Objections.*

63. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

64. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

65. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative

remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

66. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

Finally, the averment in this paragraph that Ivy Hill could ask the Department for guidance does not mean that an administrative remedy exists. Indeed, it is absurd to suggest that because a person can exercise basic rights of free speech and can ask an agency to opine on something, that, therefore, this ability to ask a question somehow shows the availability of an administrative remedy. Moreover, Ivy Hill wishes to put this so-called “remedy” to the test here, and thus anticipates that the Department will supply an answer to this question in the brief in support of the preliminary objections: Are the elders of the Ivy Hill Congregation of Jehovah’s Witnesses “clergymen” under 42 Pa.C.S. § 5943?

67. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

68. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it failed to exhaust any administrative remedy; indeed, no such remedies exist under the CPSL or otherwise, *and the Department has identified none in its Preliminary Objections.*

WHEREFORE, Petitioner Ivy Hill requests that the Court OVERRULE preliminary objection III.

OBJECTION IV

69. The foregoing responses are incorporated by reference as if set forth fully herein.

70. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

71. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

72. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

73. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied. By way of further response, Ivy Hill specifically denies that it is seeking a declaration that *all* of its elders' communications are statutorily privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are "clergymen" under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., "in the course of his duties"; "in confidence"), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). *See* Petition for Review at 20, Prayer for Relief.

74. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it is seeking a declaration that

all of its elders' communications are statutorily privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are "clergymen" under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., "in the course of his duties"; "in confidence"), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). See Petition for Review at 20, Prayer for Relief.

75. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

76. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

77. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

78. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

79. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further

response, Ivy Hill specifically denies that a declaration about the status of its elders would be a futile or meaningless remedy. To the contrary, the conditions under which communications are privileged have been explained by the Supreme Court in *Commonwealth v. Stewart*, 690 A.2d 195 (Pa. 1997), but what has not been explained by that Court or any court or agency is *who* specifically has right to invoke the privilege. That is, who is a “clergyman” under the law is unresolved, and that is what triggered the present controversy. With that resolved by a declaration from this Court, then the Ivy Hill elders will be able to guide their conduct by applying the *Stewart* principles to specific communications.

80. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

81. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. Further, this paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

82. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. Further, this paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

83. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that a declaration about the status of its elders would be a futile or meaningless remedy. To the contrary, the conditions under which communications are privileged have been explained by the Supreme Court in *Commonwealth v. Stewart*, 690 A.2d 195 (Pa. 1997), but what has not been explained by that Court or any court or agency is *who* specifically has right to invoke the privilege. That is, who is a “clergyman” under the law is unresolved, and that is what triggered the present controversy. With that resolved by a declaration from this Court, then the Ivy Hill elders will be able to guide their conduct by applying the *Stewart* principles to specific communications. Finally, Ivy Hill specifically denies that it is seeking a declaration that *all* of its elders’ communications are statutorily

privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are “clergymen” under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., “in the course of his duties”; “in confidence”), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). *See* Petition for Review at 20, Prayer for Relief.

WHEREFORE, Petitioner Ivy Hill requests that the Court OVERRULE preliminary objection IV.

OBJECTION V

84. The foregoing responses are incorporated by reference as if set forth fully herein.

85. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

86. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

87. This paragraph contains an averment about the Petition for Review, and the Petition, being in writing, speaks for itself, and all characterizations thereof are denied.

88. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

89. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it is seeking a declaration that *all* of its elders' communications are statutorily privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are "clergymen" under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., "in the course of his duties"; "in confidence"), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). See Petition for Review at 20, Prayer for Relief.

90. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it is seeking a declaration that *all* of its elders' communications are statutorily privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are "clergymen" under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., "in the

course of his duties”; “in confidence”), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). *See* Petition for Review at 20, Prayer for Relief.

91. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

92. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied.

93. This paragraph avers a conclusion of law to which no response is required, and, as such, it is denied. By way of further response, Ivy Hill specifically denies that it is seeking a declaration that *all* of its elders’ communications are statutorily privileged. To the contrary, Ivy Hill is seeking only a *narrow* declaration that its elders are “clergymen” under 42 Pa.C.S. § 5943, and thus, *if the statutory conditions about a given communication are otherwise met* (i.e., “in the course of his duties”; “in confidence”), then the elders are subject to the exemption to reporting in 23 Pa.C.S. § 6311.1(b)(1). *See* Petition for Review at 20, Prayer for Relief.

WHEREFORE, Petitioner Ivy Hill requests that the Court OVERRULE preliminary objection V.

Respectfully submitted,

Dated: August 10, 2020

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