RELIGIOUS LIBERTY

THE ISSUE: SB 360 Mandated reporters: clergy (Hill, D-San Mateo). SB 360 would directly undermine the First Amendment protection of the free exercise of religion by requiring clergy to report suspected child abuse or neglect, even if they acquired the knowledge or suspicion during a penitential communication. (OPPOSE)

HISTORY & BACKGROUND

The Child Abuse and Neglect Reporting Act (1980) identified professionals who regularly work with children and mandated that they report any suspected abuse or neglect to law enforcement. In 1997, the Act was amended to include clergy members as mandated reporters, but with an exemption: “a clergy member who acquires knowledge or reasonable suspicion of child abuse or neglect during a penitential communication is not required to make a report.” There are now 46 categories of mandated reporters listed in statute, including teachers, day care employees, social workers, peace officers, physicians, therapists, and athletic coaches.

Such stringent and widespread protection for children is right and important. It must continue unabated. There is no question that protecting children and young people is an urgent and pressing public priority, but this objective can be achieved without abrogating fundamental constitutional rights and trampling upon the rights of churches to exercise fundamental ministries. Those who abuse our children should be held accountable for their crimes but disregarding religious freedom is unnecessary. The sanctity of religious communications can be protected and respected and criminals brought to justice for their crimes. These two priorities are not mutually exclusive.

CHURCH TEACHING

The Catholic Church’s Code of Canon Law (983 & 984) states that the sacramental seal is inviolable: it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner for any reason. The Catechism of the Catholic Church (no. 1467) teaches that every priest who hears confessions is bound to keep absolute secrecy regarding the sins that his penitents have confessed to him. Canon 1388 states that a confessor who violates the seal of confession is automatically excommunicated.

TALKING POINTS

- SB 360 prevents Catholics and other people of faith to take part in the First Amendment right to confidentiality during spiritual counseling. In the Catholic faith, confession is sacred, a sacrament that cannot be broken for any reason whatsoever, resulting in excommunication for anyone who does.

- There is a lack of understanding of both the problem and the Sacrament of Reconciliation. Removing the exemption will not produce the desired results. It is highly unlikely that a perpetrator would bother to seek counseling/reconciliation if he/she knew the spiritual counselor would reveal the crime. Abusers are notorious for their secrecy and would be well aware that a confessor would be a mandated reporter.

- Clergy are already mandatory reporters in their administrative duties. We support that and would do nothing to change it. By inserting government into the confessional does nothing to protect children and young people and everything to erode the fundamental constitutional rights and liberties.