

NO. 14-220

IN THE
SUPREME COURT OF THE UNITED STATES

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE
OF BATON ROUGE AND
THE REVEREND M. JEFFREY BAYHI,
Petitioners,

v.

ROBERT D. MAYEUX AND LISA M. MAYEUX
Respondents,

On Petition for a Writ of Certiorari to the
Supreme Court of Louisiana

AMICUS CURIAE BRIEF OF CONFRATERNITY OF
CATHOLIC CLERGY IN SUPPORT OF
PETITIONERS

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Question Presented

Can the Courts and legislatures of the United States force religions to accept government controlled definitions of what constitutes the Sacrament of Penance/Confession and impose civil and/or criminal penalties on churches and priests for failure to conform and report as directed?

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MOTION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE¹

Pursuant to Court's Rule 372(b), Father John Trigilio as President of the Confraternity of Catholic Clergy moves to file an accompanying brief in support of the petition for a writ of Certiorari. Counsel for both Petitioner and Respondent have consented to the filing of this brief.

The issue presented by the Petition is whether a court can posit liability for a priest's failure to report certain communications to public authorities on the court's own determination of whether those communications constitute "confession per se", or whether it must respect the Church's own view that such communications are confessional and absolutely protected from disclosure by the priest on penalty of automatic excommunication. [Petitioner's Brief, p.(2)]

This issue has profound consequences for the individual priest involved, all Roman Catholic and Orthodox priests, along with the vast majority of Protestant Ministers, Rabbi and other clergy who are involved in spiritual counseling of a confessional nature.

IDENTITY AND INTEREST OF AMICUS CURIAE

The Confraternity of Catholic Clergy is a national association of Catholic priests and deacons. We are also affiliated with the CCC in Australia, in Great Britain and in Ireland. As ordained clergy, we are vehemently opposed to any and all requests or demands from any government, court, individual or organization to break the inviolable seal of confession. Second only the Sacrament of the Holy Eucharist (Holy Mass & Holy Communion), the Sacrament of Penance (Confession) is sacrosanct to each and every one of us. Since the foundation of the Church by Jesus Christ himself as He instituted it on the ministry of Saint Peter and his successors (Matthew 16:18), the integrity and absolute confidentiality of the Seal of Confession has been, will be and remains totally inviolable. No priest can ever break the seal and thus compromise the confidentiality of the Sacrament. He must endure imprisonment or death before divulging the secrets heard in the confessional. Every priest has taken that vow seriously for more than 2,000 years. Violating it would be a major and total violation of our First Amendment right to freedom of religion and religious liberty. Not even the Pope as supreme head of the Catholic Church can request a priest to reveal the identity of the penitent and/or the content of the confession, regardless of the permission given by the penitent. Compromising this

¹ This brief is filed with the consent of all parties; consent of Petitioner filed with Supreme Court September 12, 2014; consent of respondent given by phone September 19, 2014. This notice was not timely. No counsel for a party authored this brief in whole or in part, and no person or entity aside from Confraternity of Catholic Clergy, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief. Confraternity of Catholic Clergy has no parent corporation and no stock. Sup.Ct.R. 29.6

confidentiality would be more grave and more serious than violating the doctor/patient or attorney/client confidentiality as this involves the salvation of souls. Any priest who breaks the seal is automatically excommunicated and only the Bishop of Rome (the Pope) can remit and absolve such a crime. The CCC urges all courts and legislatures to respect, honor and defend the religious rights of Catholics to practice our faith, especially those of us who as ordained ministers answer to the highest authority, Almighty God.

Father John Trigilio is a Roman Catholic Priest from the Diocese of Harrisburg, Pennsylvania, and is the President of the Confraternity of Catholic Clergy and more importantly and relevant to the issue before the court is a parish priest at two parishes (Our Lady of Good Counsel and St. Bernadette's) where he frequently hears confessions and counsels individuals with spiritual and moral problems who want and expect confidentiality)

The issue before the Court will have a profound effect on all ordained priests in the United States who administer the sacrament of reconciliation. These priests will be facing excommunication from the church if they breach the seal of confession or the possibility of a contempt finding by the Court or a penalty like jail if they do not. Accordingly, the amici and their members are extremely interested in this case.

SUMMARY OF ARGUMENT

The Supreme Court of Louisiana erred by denying Petitioner's Motion in Limine since the Seal of Confessional prevents the trial court from forcing Father Bayhi from testifying about anything regarding the confession, even that there was a confession. This would be a violation of his First Amendment right, to a free exercise of his religion.

It would also interfere with the Catholic Church's right to determine what is a confession.

REASONS FOR GRANTING THE PETITION

Petitioners argument is well reasoned and focuses on the consequences of the Court's not granting an immediate review.

The Reverend Bayhi obviously has much at stake as do all clergy including the Amici and their penitents who expect confidentiality in their spiritual and/or confessional conversations.

The Catholic Clergy are bound by Church Law not to reveal what has been disclosed to them in the Sacrament of Reconciliation. The goal of the Sacrament is to return the penitent to the state of Grace and to free his or her conscience of the consequences of past immoral behavior on a spiritual level.

If this Court does not remand for further review or grant review itself as prayed for, at least one clergyman will be forced to make a decision that will subject him to penalties imposed by either the state or his Church.

The Louisiana Supreme Court's Decision needs to be reviewed, remanded or overturned since the decision as it stands violates the First Amendment rights of the Reverend M. Jeffrey Bayhi, interferes with the right of religious organizations to determine it's own beliefs and practices and is destructive of the seal of confession.

The Common Law and the laws of these United States have recognized many privileges protecting from disclosure confidential communications. The Attorney-Client privilege, the Doctor-Patient privilege, the spousal privilege are among those easily recognized. None of the privileges come close to the priest-penitent relationship with respect to the consequences of disclosure of a confidential or confessional communication.

ARGUMENT

A) THE SEAL OF CONFESSION NEEDS THE PROTECTION OF THE SUPREME COURT OF THE UNITED STATES; SINCE IT IS A GOD GIVEN RIGHT, IT IS UNALIENABLE

In the second sentence of the *Declaration of Independence*, Thomas Jefferson and all the signers acknowledged that some truths are "self-evident" and "certain unalienable rights" come from our Creator.

Rights that are given by our Creator and not given by legislatures (or Courts) and therefore cannot be taken away by legislatures (or Courts). They are "unalienable"

The Confraternity of Catholic Clergy submits that the seal or veil of secrecy which surrounds the Confessional (when the penitent pulls the door shut behind him and the priest puts on his stole and slides the screen shut) is one of the Creator given unalienable rights.

This court now has the opportunity to make a strong statement to all courts, legislatures and judges who think this right to secrecy has somehow been created and given by legislatures or courts, that they are wrong, and that unalienable means we "don't go there", since the right is "Creator" given.

The seal of the confessional is 2000 years old, it is found written in the Church law, and Common law, predating our constitution by hundreds of years. This was before the founding fathers even thought a constitution was needed, because European Kings and governments meddled in people's religion the people fled to what became the United States. Religious freedom spurred them on and they made sure it was put in the First

Amendment.

The Petition filed by the Diocese of Baton Rouge and the Reverend M. Jeffrey Bayhi poses the question as to “who- the Church or the State gets to determine the meaning, content and requirements of the Catholic Sacrament of Reconciliation.” (Pet. For Writ of Certiorari p.2)

Reverend John Trigilio and the Confraternity of Catholic Clergy propose that to allow the state to determine what constitutes “confession” interferes with their First Amendment right to the free exercise of religion and interferes with the Catholic Church’s right to determine what constitutes the Sacrament of Reconciliation and the duties of her priests to keep the seal of confession sacrosanct.

B) MAY THE TRIAL COURT FORCE THE PRIEST TO BREAK THE
SEAL OF CONFESSION

As Mr. Justice Brandeis stated in his dissenting opinion in *Olmstead v. United States*, 277 U.S.438, 478, 48 S. Ct. 564, 572, 72L.Ed.944, 956(1928)

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. *They conferred, as against the government, the right to be let alone- the most comprehensive of rights and the right most valued by civilized men.* (Emphasis added)

Forty years later in *Katz v. U.S.* 389 U.S.347(1967), *Olmstead* was overturned. The Fourth Amendment protects privacy of phone conversations.

Here, the spiritual/ confessional rights of penitents and priest confessors are implicated, and the Confraternity of Catholic Clergy asks that the Court “protect Americans in their beliefs” and confer “as against the government, the right to be let alone-the most comprehensive of rights and the right most valued by civilized men”.

To rule otherwise will possibly make priests in the confessional agents of the police with the possible unintended consequence that some sort of “Miranda” warnings would be required to inform each penitent that what they say in confessional “may be used against them” *Miranda v. Arizona*, 384 U.S.436(1966) And now with *Berghius v. Thomkins* 560 U.S.370(2010) suspects who know their silence rights and don’t “unambiguously” invoke them many find they have waived their right.

The Priest-Penitent relationship is one of the greatest importance. The confidential nature of the relationship allows the penitent to not only be forgiven of serious sin, to be restored to the sacramental life of grace but to receive spiritual guidance as to how to deal with the matter at hand in the future.

Given the delicacy and greatness of this ministry and the respect due to persons, the church declares that every Priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitent's lives. This secret which admits of no exceptions is called the "sacramental seal", because what the penitent has made known to the priest remains "sealed" by the sacrament. (Catechism of the Catholic Church parag. 467)

A Catholic who has committed a grave sin feels great relief after confessing that sin and receiving absolution.

The spirited effects of the sacrament of penance are:

- Reconciliation with God by which the penitent recovers grace;
- Reconciliation with the church;
- Remission of the eternal punishment incurred by mortal sins;
- Remission, at least in part, of temporal punishments resulting from sin;
- Peace and serenity of conscience and spiritual consolation;
- An increase of spiritual strength for the Christian battle.

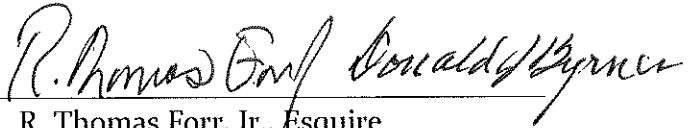
(Catechism of the Catholic Church, parag. 1496)

The Petitioner's brief at p.6 delineates a priest's thoughts about breaking the seal of confession. The thought of breaking the seal is anathema to every priest. This guarantee of the seal of confession is what enables many who have committed grave crimes or sins against society or against their own family to reconcile themselves with God, the church and society. Can anyone imagine a repentant murderer or a rapist confessing his crimes to a priest or clergyman if he knew it could be reported to the authorities? Even law enforcement, before taking a statement about a crime, wants to make certain that the statement is knowingly and voluntarily given and advises the statement could be used against the perpetrator. If the seal can be broken, is this what we are asking priests to do? If so, then it is against the tenets of their faith and would result in their excommunication.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,
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