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**Jeffrey Woodard, et al. v. Jupiter Christian School, et al.
SC05-1986**

NEXT CASE ON THIS MORNING'S DOCKET IS WOODARD VERSUS JUPITER CHRISTIAN SCHOOL. GOT SOME VISITORS COMING IN , SO WE WILL WAIT UN TIL THEY ARRIVE. GOOD MORNING, MR . BRIAN. -- MR . BRYAN. I WANT TO WEL COME TO THE COURTROOM THE TEACHERS AND STUDENTS THAT ARE PARTICIPATING IN THE SUPREME COURT 'S SPONSORED APPELLATE M OOT COURT COMPETITION, AND SOME OF T HEM WILL BE ARGUING AFTER YOUR CASE. IF YOU WANT TO STAY AROUND AND WATCH THEM. ALL RIGHT. THE PAR TIES READY? MR. BOOTH.

YES, MA 'AM . MAY IT PLEASE THE COURT. MY NAME IS WILLIAM BOOTH. I AM WITH LEGAL AID SOCIETY OF PALM BE ACH COUNTY O N BEHALF THE PETITIONERS JEFFREY WOODARD AND C A ROL WOODARD. THIS SUIT AR ISES FROM AN EMOTIONAL DIST RESS CLAIM ARISING OUT OF THE BR EACH OF CONFIDENTIAL TO A CLERGYMAN . WE AS K THAT THE COURT CERTIFY AND THE REASO N IS AS FOLLOWS --

JUSTICE: WHAT IS THE BASIS OF THE DUTY? ANOTHER DUTY , JUDGE , I S GENERAL COMMON LAW DUT Y, THE DUTY OF FIDUCIARY RELATIONSHIP DEVELOPING HERE BETWEEN THE CHILD AND THE CHAPLAIN. WE D O INARTFULLY PLEAD IN THE COMPLAINT THAT WE SAY THE BREACH IS BASED ON A FEDISH YEAR AND STATUT ORY DUTY - - FIDUCIARY AND STATUTORY DUTY. WE PRIM ARILY RELY UPON WHEN THE CHAPLAIN APPROACHED THE CHILD, OFFERED CONFIDENCE AND TRUST. THE CHILD SEND THE TR UST AND THEN THE CHAPLAIN BETRAYED THAT TRUST.

JUSTICE: SO WHAT IS THE COMMON LAW CASE THAT YOU RELY ON FOR SUPPORT OF A COURT ACTION FOR BREACH OF FIDUCIARY DUTY OF A CHAPLAIN?

WE RELY ON THE GRACEY VERSUS E CCO CASE.

JUSTICE: THAT WAS A GENERAL STATUTE DEALING WITH SERVICES, LICE NSING AND THE SERVICES RENDERED BY THE COUNSELORS.

YOU ARE ABSOLUTELY RIGHT. IT DID, BUT UNDER THE GENERAL DUTY LAW OUT OF THIS COURT , AND THE CASEY B E LIEVE RESPONDENTS HAVE CITE D THE CLAY CASE . THE DUTY DOESN'T HAVE TO COME FROM LEGISLATIVE ENACTMENT . IT CAN COME FROM CASE LAW. IT CAN COME FROM FACTS AND CIRCUMSTANCES ARISE ING IN THE CASE. IN THIS CASE THE COURT ISSUED DOE AND THE RELATIONSHIP DUTY. THAT THE SOURCE CAN BE LEGAL , MATERIAL, MOR AL. ALL THAT IS NEEDED IS CONFIDENCE IS OFFERED , TRUST IS SEND AND THERE HAS BE EN A BETRAYAL OF THE TRUST. AND YOU HAVE A BREACH DUTY , OF FIDUCIARY DUTY. SO WE ARE RELYING MORE SO ON THE COMMON LAW . CAN CLERGY , COMMUNICATIONS WITH CLERGY ARE NOT HING BUT CONFIDENTIAL AND IF YOU LOOK AT THAT STATUTE COMPARED TO THE OTHER , THERE ARE NO EXCEPTION S TO , IN I N THAT STATUTE , RATHER THAN TO CITE THE PA TIENT PRIVILEGE AND THAT PRIVILEGE CAN BE WAIVED , SO IT IS A STRONG POLICY IN THIS STATE, EVIDENCED B Y THE LEGISLATURE.IT IS AN EVI DENTIARY PROVISION , BUT IT S T ILL SHOWS THAT IT A V ALUED RELATIONSHIP TO THE STATE.

CHIEF JUSTICE: BUT YOU ARE NOT RELYING ON THE EVIDENTIARY STATUTE TO GIVE R ISE TO A DUTY?

NO. NO. I THINK IT IS JUST , SHOWS THAT, WHAT THE POLICY IS HERE AND THAT IT IS IMPORTANT TO THE PEOPLE IN THIS STATE.

JUSTICE: WHILE YOU OR THAT POLICY ISSUE , COULD YOU TAKE A MINUTE OR TWO , TO ADDRESS THE ISSUE OF WHY WE SHOULD TREAT THIS AS AN ISSUE OF GREAT PUBLIC IMPORTANCE. WHAT WE SEE HAPPENING OUT THERE IN THE LAST SEVERAL YEARS IS TO A GREAT EXTENT , BECAUSE OF THE IMPACT OF THE "IMPACT RULE" , THAT A NUMBER OF COURTS ARE CERTIFYING QUESTIONS LIKE THIS , AND ORDINARILY AFTER ESTABLISHING PRINCIPLES OF LAW THAT CONTROL CAUSE OF ACTION SUCH AS THE "IMPACT RULE", THAT WE LET THE TRIAL COURTS AND THE DISTRICT COURTS OF APPEAL, THEN, SORT THAT OUT AND APPLY THAT LAW. WHY ISN'T THIS JUST A CASE WHERE THAT IN DEED HAS HAPPENED AND IF WE ACCEPT REVIEW IN THIS CASE , THEN IN ANY INSTANCE IN WHICH THE "IMPACT RULE" SHOULDN'T APPLY AND WE ARE GOING TO END UP WITH ALL OF OUR CIVIL CASELOADS UP HERE BEING THAT WAY, SO WOULD YOU ADDRESS THAT FOR A MINUTE , BECAUSE WE INDEED , IT IS ALMOST AS IF THE FLOODGATES HAD BEEN OPENED IN THE LAST SEVERAL YEARS , AND COURTS BELOW ARE SAYING, WELL , THERE WOULD BE CAUSE OF ACTION BUT THE "IMPACT RULE" AS WE INTERPRET IT , PREVENTS IT , BUT WE WILL JUST CERTIFY THE QUESTION TO THE FLORIDA SUPREME COURT . THEY DO N'T HAVE ANYTHING TO DO UP THERE. AND SO HELP SPEND A COUPLE OF MINUTES, WHY SHOULD WE TAKE THIS PARTICULAR CASE AND TREAT IT AS AN ISSUE OF GREAT PUBLIC IMPORTANCE ?

I THINK THE QUESTION SHOWS THE PROBLEM WITH THE "IMPACT RULE" AS THE STATE OF LAW IN THIS STATE. THAT IS THE WAY IT'S JUDGE FARMER DOWN BELOW IN HIS DISSENTING OPINION SHOWS THAT THERE IS PROBLEMS HERE. I THINK INTERESTING ENOUGH , I KNOW YOU HAVE THE CASE BEFORE YOU AND THERE IS NO DECISION BEFORE YOU, BUT THE SECOND DISTRICTS -- DISTRICT TREATS THE GRACIE CASE, IN FACT THE "IMPACT RULE" IS NOT APPLICABLE. THE FOURTH HAS SAID THAT THE "IMPACT RULE" JURISPRUDENCE FROM THIS COURT REQUIRES ME TO AFFIRM THE TRIAL COURT'S DISMISSAL AND CERTIFY IT TO THIS COURT SO IT SHOWS RIGHT THERE THAT WE MIGHT POSSIBLY HAVE A CONFLICT.

JUSTICE: THE SECOND DISTRICT HAD ANOTHER VERY SPECIFIC STATUTE TO RELY ON IN THAT CASE.

I AGREE.

JUSTICE: AND HERE AS YOU HAVE ACKNOWLEDGED IN ANSWERING JUSTICE PARIENTE'S QUESTION THAT THAT IS NOT THE CASE.

RIGHT.

JUSTICE: SO AREN'T WE REALLY THEN ON SORT OF A SLIPPERY SLOPE OF HAVING EVERY DISTRICT COURT , EVERYTIME A CASE COMES BEFORE THEM, WHERE THE "IMPACT RULE" PREVENTS THE CAUSE OF ACTION FROM GOING FURTHER, OF DOING WHAT THE COURT DID HERE?

WELL , I THINK THAT THAT IS WHY IT IS OF GREAT PUBLIC IMPORTANCE. IT IS ALMOST AS IF THE LOWER COURTS ARE SAYING, PLEASE HELP US OUT. IT IS AS IF JUDGE MAY , WHO WROTE THE MAJORITY OPINION BELOW , SAID I AM STRUGGLING WITH THIS CASE, MYSELF. I NEED TO SEND THIS TO THIS COURT. IF WE COULD HAVE SOME SORT OF A BRIGHT-LINE RULE ON THE "IMPACT RULE" THAT SAYS EITHER --

JUSTICE: HOW MANY CASES ARE WE GOING TO HAVE AROUND THE STATE OF FLORIDA.

THAT IS A GREAT QUESTION.

JUSTICE: WHERE THE CHAPLAIN AND A PRIVATE SCHOOL IS INVOLVED WITH A SITUATION LIKE

THIS, SO HOW IS THIS , THESE LIMITED CIRCUMSTANCES OR FACTS OF THIS CASE, REALLY , GOING TO GREATLY IMPACT THE REST OF THE STATE OF FLORIDA?

WELL, IT DOES BECAUSE OF THE RELATIONSHIP OF THE CLERGY WITH PENETENT AND THE IMPORTANCE OF RELIGION TO THE PEOPLE IN THIS STATE AND THE POLICY IN THIS STATE OF THE PEOPLE'S EMOTIONAL WELL-BEING. WE WANT TO ENSURE THE MENTAL HEALTH AND EMOTIONAL WELL-BEING. THIS ISN'T COUNSELING FOR THE POOR AND DISADVANTAGED. THIS IS AN OPPORTUNITY TO GO AND RECEIVE SOME SPIRITUAL GUIDANCE AND DEAL WITH THEIR TROUBLES. I THINK IF YOU DON'T ACCEPT JURISDICTION, EVEN IF YOU HAVE IT IN ORDERS , I THINK YOU CAN STILL DECLINE , AND IF YOU DON'T YOU ARE SAYING TO PEOPLE WHO RELY ON CLERGY , COUNSEL, THAT THIS RELATIONSHIP IS NOT AS IMPORTANT AS, SAY, THE PSYCHOTHERAPIST RELATIONSHIP THAT YOU HAVE IN GRACIE.

CHIEF JUSTICE: GETTING TO , ASSUMING THAT WE TAKE THE CASE, GETTING TO THE MERITS OF THE "IMPACT RULE" , JUDGE FARMER SEEMS TO IMPLY THAT THE "IMPACT RULE" , REALLY, WAS NEVER DESIGNED TO BE USED IN THESE SITUATIONS WHERE YOU ARE ONLY GOING TO HAVE PSYCHOLOGICAL DAMAGES . THAT IS WHEN YOU HAVE GOT A REACH OF FIDUCIARY RELATIONSHIP. I MEAN, THERE MIGHT BE SOME ECONOMIC HARM , BUT JUST MIGHT BE OTHER TYPES OF EXCEPTIONS THAT WE HAVE RECOGNIZED THAT THIS IS REALLY THE KIND OF TORT THAT IS , DOESN'T, THERE IS NO IMPACT INVOLVED. HOW , TELL ME , THOUGH , TO MEAS I LOOK BACK AT SOME OF THE EARLIER CASES , IT SEEMS THAT IT REALLY WAS WHY THE "IMPACT RULE" WAS , EVOLVED , WAS BECAUSE THERE WAS SOME QUESTION ABOUT SOME OF THESE CAUSES OF ACTION , LIKE A TELEGRAM NOT GETTING TO A PERSON, SO HOW DO YOU DISTINGUISH THOSE, THE EARLIER CASES AND THEN WHY IN THIS SITUATION , SHOULDN'T THE "IMPACT RULE" CONTINUE TO APPLY?

I THINK FOR OUR CASE, WE ARE SO CONSISTENT WITH THE GRACIE CASE, IT IS NOT A GREAT LEAP THAT THIS COURT WOULD HAVE TO TAKE TO FIND IN MY CLIENT'S FAVOR. IT IS REALLY A NARROW STEP. IT IS A COUNSELING RELATIONSHIP, A CONFESSORIAL WHERE MY CLIENT HAS CONFESSED SIN IN HIS EYE. SEEKING SPIRITUAL ADVICE, THE SAME TYPE OF THING THAT HAPPENED IN THE GRACIE CASE. WE ARE JUST GOING FROM THIS COURT'S DECISION IN GRACIE SAYING WE HAVE THE SAME POLICY CONCERN, THE SAME TYPE OF FACTS , DIFFERENT RELATIONSHIP CLERGY WITH PENETENT, THE SAME APPLICATION WHERE THERE WAS NO PHYSICAL IMPACT IN THE GRACIE CASE SHOULD CERTAINLY APPLY IN OUR CASE. IF YOU APPLIED THE EARLIER CASES OF SAUNDERS AND KIRKSEY, WE WOULDN'T BE HERE.

JUSTICE: LET ME LINK A STEP. IS YOUR CONCERN THE DISCLOSURE TO THE OTHER AUTHORITIES IN THE SCHOOL?

I AM SORRY ?

JUSTICE: IS YOUR CONCERN PARTICULARLY ABOUT MR . BELLHORNE , THAT HE DISCLOSED TO OTHER AUTHORITIES IN THE SCHOOL?

HE PROMISED TO THE CHILD THAT HE WOULDN'T RELAY THAT INFORMATION TO ANYONE, SO, YES THAT , IS A CONCERN.

JUSTICE: SO IF I TAKE IT IN A CHURCH RELATIONSHIP, IF SOMEBODY WERE TO DO CONFESSORIAL TO A BREEZE AND THE PRIEST TOLD THE BISHOP, YOU WOULD SAY THERE WOULD BE A CAUSE OF ACTION FOR DISCLOSURE OF THAT BEYOND THAT RELATIONSHIP.

AS AGAINST , YOU ARE TALKING --

JUSTICE: THE COURT SHOULD INTERVENE IN THIS ACTION.

YES, WE ARE, BECAUSE WHAT HAPPENED HERE IN THIS CASE IN THE FACTS OF THIS CASE, THE CLERGY, THE CHAPLAIN SAID I WOULD LIKE TO COUNSEL YOU ON YOUR SEXUAL ORIENTATION. I WOULD LIKE TO TALK TO YOU ABOUT THAT. THAT IS THE ALLEGATION. AND OFFERS THE TRUST TO THE CHILD AND OFFERS THE OPPORTUNITY TO TALK ABOUT A SIN TO THIS CHILD AND HE PROMISES NOT TO DISCLOSE IT TO ANYONE. THAT IS THE FIDUCIARY FACTS OF THIS CASE THAT RESULTED IN TALKING ABOUT THE JUPITER CHRISTIAN MINISTER. THE PROBLEM THERE, TOO, IS THAT JUPITER CHRISTIAN SENT THE CHAPLAIN TO THE CHILD TO COUNSEL HIM ON THIS ISSUE, AND - -

JUSTICE: YOU HAVE PLED, YOU HAVE CAUSE OF ACTION PLED FOR FRAUDULENT INDUCEMENT, MISREPRESENTATION, BREACH OF CONTRACT. YOU HAVE COMMON LAW ACTION NOT PLED FOR INVASION OF PRIVACY. THERE ARE PLENTY OF REMEDIES AVAILABLE FOR ALL OF WHAT YOU ARE TALKING ABOUT, BUT THE PARTICULAR ONE IS THE BREACH OF A FIDUCIARY DUTY, RELYING ON GRACIE.

AND THAT IS THE ONLY COUNT THAT IS UP HERE.

CHIEF JUSTICE: JUSTICE LEWIS HAS A QUESTION.

I HAVE CONCERNS WITH EXTENDING GRACIE INTO THIS KIND OF SITUATION AND I SEE VERY DISTINCT DIFFERENCES WITH DOE VERSUS EVANS, SO MY CONCERN IS WE START DOWN THIS PATH. THIS IS A TEACHER, A SCHOOL SITUATION, CORRECT?

THAT'S RIGHT.

JUSTICE: AND SO WE HAVE PUBLIC SCHOOLS ALL OVER THE STATE. WE HAVE THESE KINDS OF RELATIONSHIPS, EDUCATIONAL RELATIONSHIPS, COUNSELORS, AND I AM HAVING TROUBLE EQUATING ALL OF THOSE, BECAUSE IF WE DO IT, IF WE SAY IT HAS NO APPLICATION, UNDER THESE CIRCUMSTANCES, THEN IT WOULD SEEM IT WOULD HAVE NO APPLICATION TO ANY OTHER SITUATION WITH TEACHERS. A TEACHER SITS DOWN AND WE ARE GOING TO COUNSEL ABOUT GRADES ALL OF THOSE KINDS OF THINGS AND THEN THAT IS RELEASED IN SOME FASHION, SO IT SEEMS TO ME THIS IS REALLY GOING WAY BEYOND WHERE WE WERE WITH GRACIE WHICH HAD THE PARTICULAR STATUTORY DUTY, DOE VERSUS EVANS, WHICH WAS AN ORGANIZED MARITAL COUNSELING CIRCUMSTANCE, SO DOESN'T THIS REALLY TAKE US IN A DIRECTION FAR, FAR BEYOND WHERE WE HAVE TREADED BEFORE?

NO, IT DOESN'T, AND I DON'T THINK THIS COURT NEEDS TO EVEN GO THAT FAR. AS I READ DOE, THAT IS A BROAD OPINION IN THAT FIDUCIARY RELATIONSHIPS CAN BE DEVELOPED FROM ANY SOURCE. LEGAL, MORAL SOURCES, THE SOURCE IS IMMATERIAL. ALL THAT WAS NEEDED IN THOSE OPINIONS AS REITERATED IN GRACIE IS THAT THERE NEEDED TO BE A CONFIDENCE PROPOSED IN ONE AND ACCEPTED BY ANOTHER AND OF USE, SO YOU COULD SAY THAT JUST A TEACHER/STUDENT RELATIONSHIP COULD BE FIDUCIARY IN NATURE, BUT WE ARE NOT ASKING YOU TO GO THAT FAR. LIMIT IT TO THE FACTS WITH A CLERGY AND A CHILD HERE, A LONG RECOGNIZED RELATIONSHIP WHERE CONVERSATIONS WITH YOUR CHAPLAIN ARE PRIVATE. BY NATURE IT IS FIDUCIARY, AND ON TOP OF THAT YOU HAVE THE CHAPLAIN HEAR, SAYING TO AND PROMISING TO THE CHILD THAT I AM NOT GOING TO TELL ANYONE, AND THUS YOU HAD THAT FIDUCIARY RELATIONSHIP HERE. I THINK THAT YOUR EXAMPLE WAS IF A TEACHER WAS COUNSELING ON GRADES, BUT THERE IS NO TRUST IMPOSED THERE. THERE IS NO CONFIDENCE.

JUSTICE: SECRECY IS THE TRUST, THE PRIVACY OF IT, THAT I WOULD RELATE THAT TO A NEIGHBOR, BOY, HE IS STRUGGLING IN SCHOOL THAT, IS A RELEASE OF THAT KIND OF INFORMATION, AND THAT IS A CONCERN OF GOING FAR BEYOND WHERE BOTH GRACIE AND DOE VERSUS EVANS WERE.

AGAIN, WE DON'T THINK YOU NEED TO GO THAT FAR, BUT LOOKING AT THE CHAPLAIN-PENETENT RELATIONSHIP, THERE IS A LONG-STANDING HISTORY THERE, RECOGNITION OF CONFIDENTIALITY, AND IT SUPPORTS, YOU WOULD AGAIN BE SUPPORTING THE LEGISLATIVE POLICY IN 95.05 THAT THESE RELATIONSHIPS ARE CONFIDENTIAL IN SEEKING SPIRITUAL ADVICE. JUST JUST I AM SENSING A CONTRA --

JUSTICE: I AM SENSING A CONTRADICTION IN YOUR ARGUMENT, BUT EARLIER YOU WERE NOT DEPENDING ON 990.505 AND NOW YOU KEEP REFERRING TO 90.505, AND AS IT SOUNDS IT THE FIDUCIARY DUTY THAT YOU ASSERT HERE IS A COMMON LAW DUTY SEPARATE AND APART FROM 90.505.

THAT IS CORRECT.

JUSTICE: SO WHAT HAPPENS IF A STUDENT IN A HIGH SCHOOL STEALS PROPERTY FROM ANOTHER STUDENT'S LOCKER. WEEKS LATER FEELS GUILTY ABOUT IT AND WANTS TO TALK TO HIS UNCLE AND SAYS, UNCLE, I HAVE THIS PROBLEM, AND I JUST WANT TO CONFIDE IN YOU THIS, AND GIVE ME SOME ADVICE. I STOLE SOME PROPERTY, AND A COUPLE OF DAYS LATER THE UNCLE GOES TO THE PRINCIPAL OF THE SCHOOL AND SAYS WE WANT TO MAKE REPARATION. MY NEPHEW HAS STOLEN SOME PROPERTY AND HE WANTS TO GIVE IT BACK BUT I WANT YOU TO KNOW THE SITUATION. THE PRINCIPAL SAYS WE CAN'T HAVE THAT. WE HAVE A ZERO TOLERANCE POLICY AT THIS SCHOOL. WE ARE GOING TO EXPEL HIM. DOES NOW THE STUDENT HAVE A CAUSE OF ACTION AGAINST HIS UNCLE FOR REVEALING THAT CONFIDENCE?

IF YOU LOOK AT THE FACTS IN OUR CASE.

JUSTICE: LET'S STICK TO MY HYPOTHETICAL.

I WOULD SAY NO.

JUSTICE: YOU SAY NO WHY?

BECAUSE THERE IS A CRIME INVOLVED.

JUSTICE: BUT THERE IS AN INDIVIDUAL YOU SHALL YIELD DUTY, ACCORDING TO YOUR ARGUMENT, A FIDUCIARY DUTY, A CONFIDENCE, IS THERE A CRIME EXCEPTION TO THE EXCEPTION?

I AM SORRY TO INTERRUPT YOU. THE CHAP I KNOW DIDN'T SAY TO THE CHILD I AM NOT GOING TO TELL ANYONE UNLESS YOU COMMIT A CRIME THAT MAKES COMMON LAW SENSE. AND I THINK IN YOUR EXAMPLE AS WELL THERE, IS NO CONVERSATION OR AGREEMENT BETWEEN THE PARTIES THAT WHAT I AM TELLING YOU IS PRIVATE AND YOU WON'T BE TELLING IT.

JUSTICE: FROM WHAT I UNDERSTAND IN YOUR ARGUMENT HAD, THIS FIDUCIARY DUTY DOES NOT REQUIRE A PROFESSIONAL RELATIONSHIP. IT COULD BE A FRIENDSHIP OR A FAMILY RELATIONSHIP AS LONG AS CONFIDENCE IS REPOSED FROM ONE TO THE OTHER.

THAT SEEMS TO BE THE LAW IN THIS STATE.

JUSTICE: THAT IS YOUR ARGUMENT. WELL, NOT YET.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL.

I AM SORRY.

CHIEF JUSTICE: IT IS UP TO YOU. YOU CAN USE IT LIKE YOU WANT.

NO , UNL ESS YOU HAVE AQUESTION.

CHIEF JUSTICE: THANK YOU.

GO OD MORNING. IT IS AN H ONOR TO BE HERE. JUSTICE WELLS , D E ALING FIRSTWITH ONE OF THE QUESTIONS OR JUSTICE LE WIS , I GUESS IT WAS , THAT YOU RAISED, GRACIE DOES NOT APPLY IN THIS CASE BECAUSE GRACIE CREATES A STATUTORY DUTY OF CONFIDENTIALITY FOR PSYCHOTHERAPIST S, AND THAT VERY STATUTE EXPRESSLY EXCLUDES CLERGY PE RSONS , R ABIES , PRIESTS , AND -- RABBI S AND PRIESTS AND OTHER PERSONS OF MINISTER . THE STATE CANNOT LICENSE CLERICS. THAT IS THE WHOLE BA SIS O F THE FIRST AMEN DMENT. THE FIRST AME NDMENT PROTECTS FREEDOM OF REL IGION AND PROTECTS FR EEDOM OF EXPRESSION. THE STATE CAN'T COM E IN AND TELL A CLERGY PERSON WE ARE G OING TO REGULATE YOU AND TELL YOU WHAT YOU CAN AND CAN'T DO. WE ARE GOING TO LIC ENSE YOU.

CHIEF JUSTICE: I DON'T HEARING A CONSTITUTIONAL ARGUM ENT IN THIS CASE RA ISED THAT THERE IS A CAUSE TO THE ACTION BASED ON THE FIRSTAMENDMENT, AND IN DOE VERSUS E VANS AND I N MALECKY , HAVE YOU RAISED THE FIRST AMENDMENT?

I HAVE RAISED IN THE M OTION TO DIS MISS AND I HAVE RAISED IT IN FRONT OF THIS COURT WHERE THE REVIEW WAS DEPHILOSOPHY-, SO IT WAS RAISED IN -- WHERE THE REVIEW WAS DE NOVO , SO IT WAS RAISED IN THE FIRST AMENDED COMPLAINT.

CHIEF JUSTICE: THE HOOP THAT WE HAVE TO GET THROUGHWOULD BE IS THERE A CAUSE OF ACTION RECOGNIZED .

RIGHT.

CHIEF JUSTICE: THEN IF THERE IS, IS THERE A BA R UNDER THE FIRST AMEN DMENT T O ALLOW THAT CAUSE OF ACTION TO GO THROUGH?

JUSTICE PARIENTE , Y ES, YOU ARE EXACTLY RIGHT.

CHIEF JUSTICE: I WANT TO M AKE SURE , BECAUSE WE HAVE GOT THRO UGH THESE TWO HOOPS AND THEN GET TO WHETHER EVEN IF YOU HAD A CAUSE OF ACTION AND EVEN I F THE FIRST AMENDMENT DOESN'T BAR IT AND EVEN IF THE NATURE OF THECAUSE OF ACTION IS T LFER B REACH A -- IS NEVER BREACH A FIDUCIARY RELATIONSHIP IN A COUNSELING SITUATION WHERE THERE WON'T BE IMPACT, YOU HAVE TO GET TO THE IMPACT W OULD STILL APPLY. THERE WOULD HAVE TO BE EITHER A TOUCHING OR PHYSICAL IN JURY AR ISING FROM IT.

YOU ARE EXACTLY RI GHT. IT IS A VERY CIRCULAR ARGUMENT THAT THE OTHER SIDE HAS TO MAKE TO GET THERE. FIRST OF ALL , THERE HAS TO BE SOME DUTY OF CONFIDEN TIAL THERE HAS TO BE SOME RECOGNIZE -- CONFIDENTIALI TY. THERE HAS TO BE SOME RECOGNIZED TO RT. IF HE WAS NO CLERGY PERSON,THERE IS NO CONFIDENTIAL ITY ANYWHERE.

CHIEF JUSTICE: IT IS ALLEGED FOR PURPOSES OF THE POINT TO DISMISS IS THE COMPLAINT ARISE S FROM A CONFIDENTIAL RELATIONSHIP BETWEEN THE STUDENT AND A MEMBER OF THE CLERGY.

THEY HAVE NOT ARRIVED AT THE EV IDENCE CO DE THAT MAKES SOMEBODY A CLERGY PERSON.

JUSTICE: ACCO RDING TO THE ARGUMENT TODAY THEY ARE NOT RELYING ON THE EVIDENCE CODE. THEY ARE RELYING ON A COMMON L AW DUTY.

IT IS DIFFICULT FOR ME TO UNDERSTAND SOMETIMES WHAT THEY ARE RELYING ON BUT EITHER WAY YOU GO THERE , IS NO COMM ON LAW DUTY OF CONFIDENTIALITY ANYWHERE BETWEEN A HIGH SCHOOL TEACHER ESPECIALLY AT PRIVATE CHRI STIAN SCHOOL,AND A STUD ENT. THAT IS

WHY GRACIE BECOMES IMPORTANT BECAUSE THE DUTY OF CONFIDENTIALITY I N GRACIE AROSE OUT OF STATUTE WHICH SAYS THE STATE SA ID IF WE L ICENSE YOU AS A PSYCHOTHERAPIST, YO U HAVE TO KEEP EVERYTHING YOU HEAR CONFIDENTIAL, AND THE STATE SAYS CLERGY PERSONS ARE EXEMPT FROM THAT STATUTE.

CHIEF JUSTICE: BECAUSE THAT IS THE CIRCULAR , THAT IS THE FIRST AMENDMENT ISSUE A BOUT NOT BEING ABLE TO LICENSE CLERGY, BUT YOU ARE ACT UALLY GOING WITH WHAT JUDGE STONE SAYS, WHERE HE QUESTIONS WHETHER THIS TEACHER WAS ACTUALLY A CLERGY MEMBER , CORRECT?

THAT IS CORRECT. THAT IS THE FIRST LEG OF THE ARGUMENT, AND I THINK THAT SHOULD END THE CASE.

CHIEF JUSTICE: I GUESS THAT, I F , BUT , IF WE , WE WOULD HAVE TO T AKE THIS CASE , TO REALLY SAY, NO , THERE WASN'T EVEN A CLERGY RELATIONSHIP, AND HOW WOULD WE DETERMINE THAT , WITHOUT THEIR BEING SOME K IND OF A HEARING ON EXACTLY THE NATURE OF THIS PERSON WAS .

YOUR HONOR, IF YOU LOOK AT THE PLEADINGS IN THIS CASE WHICH IS WHAT WE HAVE TO GO WITH AT THE MOTION TO DISMISS LEVEL. THE PLEAD INGS SAY THAT THERE WAS NO FOR MAL RELIGIOUS ORGANIZATION INVOLVED . THAT JU PITER CHRISTIAN WAS A CHRISTIAN SCHOOL BUT NOT INVOLVED WITH ANY PARTICULAR DENOMINATION. IT SAYS THAT MR. BELL HORNE WAS CHAPLAIN OF THIS SCHOOL THAT WAS NOT INVOLVED WITH ANY PARTICULAR RELIGIOUS DENOMINATION, THEN YOU GO TO THE EVIDENCE CODE AND THE EVIDENCE CODE REQUIRES THAT SOMETHING NOR MALLY RECOGNIZED AS RELIGION BE INV OLVED IN ORDER FOR THE CLERGY PRIVILEGE TO APPLY .

JUSTICE: ISN'T THERE A SECTION OF THAT THAT ACTUAL INDICATES THAT IF YOU BELIEVE THAT SOMEONE IS A CLERGY PERSON AND YOU TREAT THEM IN THAT FA SHION, THAT THEY CAN FIT THE DEFINITION OF BEING A MEMBER OF THE CLERGY?

JUSTICE QUINCE THAT, REASONABLE BELIEF IS BASED U PON SOMEONE'S REASONABLE BELIEF THAT SOMEONE MEETS THE REQUIREMENTS. I FOUND A N OUT-OF-STATE CASE WHICH SAYS THAT THAT IS THE PURPOSE OF THE REASONABLE BELIEF REQUIREMENT. IN OTHER WORDS, IF YOU REASONABLY BELI EVE THAT SOMEBODY IS A CATH OLIC PRIEST , THAT QUALIFIES .

JUSTICE: BUT WE HAVE A CHILD HERE WHO IS AT A RELIGIOUS SCHOOL, AND DON'T YOU THINK UNDER THOSE CIRCUMSTANCES RESPEC T AND THIS PERSON HELD HIMSELF OUT TO BE THE CHAPLAIN AT THIS SCHOOL. WOULDN'T THAT FIT INTO BEING A REASONABLE BELIEF THAT THIS PERSON WAS A MEMBER OF THE CLERGY?

JUSTICE QUINCE, LOOKING AT THE EVIDENCE CODE, THE REASONABLE BELIEF HAS TO BE THAT THE PERSON IS A PRIEST OR SOMETHING OF A DENOMINATIONS USUALLY REFERRED TO AS A CHURCH. THE ALL EGATION , THE SPECIFIC ALLEGATION INS THIS CASE ARE THAT THERE WAS NO CHURCH INVOLVED, AND THE EXA MPLE IS, IF PU BLIC AND - - IF PUB LIX APPOINT ADD CHAPLAIN , WOULD SOMEONE GO TO THE CHAPLAIN AT PUBL IX AND SAY I CONFESS A CRIME AND THEN CL AIM THAT THEY HAD REASONABLE BELIEF --

CHIEF JUSTICE: THE CR IME IS NOT AN EX CEPTION HERE. THE ALLE GATION --

ANY CONFESSION.

CHIEF JUSTICE: I GUE SS YOU CAN'T CONTEST IT AT THIS POINT IS FIRST OF ALL THE CHAPLAIN WAS TO MINISTER TO HIGH SCHOOL TEENAGERS. IT WAS ALSO ALLEGED THAT IT WAS NOT, THAT THE ADMINISTRATORS OF THE CHRISTIAN SKROOL DI RECTED - - SCHOOL DIRECTED BELL HORNE

TO MEET WITH HIM , TO QUESTION AND COUNSEL WITH HIM ABOUT THE SEXUAL ORIENTATION , SO IT WAS ACTUALLY THE SCHOOL THAT DIRECTED THIS STUDENT , UNDER THESE ALLEGATIONS , TO SEEK COUNSEL. HE, THEN, SOUGHT COUNSEL AND THE ALLEGATION IS THAT HE SOUGHT SPIRITUAL ADVICE UNDER A PROMISE OF CONFIDENTIALITY, AND THEN THE ALLEGATION FURTHER IS THAT THE CHAPLAIN , RATHER THAN KEEP IT CONFIDENTIAL AND JUST MINISTER HIM , DISCLOSED TO THE LEADERS WHO, THEN , THREW HIM OUT OF SCHOOL. I MEAN, THAT IS WHAT WE HAVE GOT TO BE TAKING AS THIS --

YOU CAN TAKE THAT AS TRUE BUT ALSO THERE ARE FACTS PLEADED IN THIS COMPLAINT. THE SCHOOL NEVER SAID IT EXPELLED THIS YOUNG MAN FOR BEING GAY AND THEY HAVE ACTUALLY , ONE OF THE COUNTS THEY WANT THE SCHOOL TO SAY THEY EXPELLED HIM BECAUSE HE WAS GAY .

CHIEF JUSTICE: THAT, AGAIN, A FACTUAL DISPUTE. THAT IS WHAT IS ON THE BOOKS HERE AS TO A, THE CAUSE OF ACTION, AND I GUESS WHAT I WANT, IF WE ASSUME THE CAUSE OF ACTION EXISTS , ISN'T THIS ONE OF THE KINDS OF TORTS THAT IS A CAUSE OF ACTION FOR BREACH OF A FIDUCIARY RELATIONSHIP, WHERE THE DAMAGES ARE ALWAYS GOING TO BE PREDOMINANTLY EMOTIONAL. LIKE THERE ISN'T GOING TO BE A PHYSICAL IMPACT IN A BREACH OF A FIDUCIARY RELATIONSHIP. SO EITHER THE "IMPACT RULE" DOESN'T APPLY OR SHOULDN'T , CONSISTENT WITH THE LINE OF CASES WHICH TALK ABOUT TORTS WHICH ARE PREDOMINANTLY EMOTIONAL, SUCH AS INVASION OF PRIVACY, A LEGAL MALPRACTICE CASE. THIS FALLS INTO , IF IT IS A RECOGNIZED TORT , EITHER IT IS AN EXCEPTION TO THE "IMPACT RULE " OR THE "IMPACT RULE" NEVER INTENDING TO APPLY TO SOMETHING LIKE THIS?

YOUR HONOR , THAT QUESTION MEETS THE FIRST AMENDMENT HEAD ON , AND THAT IS WHY FIRST AMENDMENT ISSUES KEEP GETTING INVOLVED IN THIS. FIRST OF ALL , THERE IS NO RECOGNIZED TORT IN THIS SITUATION, AS JUDGE CROW RULED BELOW , BUT SECONDLY IF THERE WAS A RECOGNIZED TORT OF SOME SORT, BASED ON A CONVERSATION WITH A CLERGY PERSON , WHETHER THAT CLERGY PERSON HAS A RELIGIOUS DUTY TO DISCLOSE TO HIS SUPERIORS OR NOT , IS A QUESTION OF RELIGIOUS LAW THAT THIS COURT CAN NOT GET INTO.

JUSTICE: LET ME ASK YOU A QUESTION GOING BACK TO INJURIES. IF THIS INDIVIDUAL HAD PLUNGED A KNIFE INTO THIS YOUNG MAN'S CHEST AND TORN HIS HEART OUT , WOULD THAT HAVE BEEN A -- AND TORE HIS HEART OUT, WOULD THAT HAVE BEEN AN ACTIONABLE TORT?

YES.

JUSTICE: AND SPEAKING WORDS AND INFORMATION ABOUT HIM AND THEY TEAR THE SAME HEART OUT , THAT IS DIFFERENT.

YOU ARE NOT DEALING WITH A CRIME IN A TECHNICAL VIEW . THE LIGHTMAN CASE OUT OF NEW YORK HAS GREAT EXPLANATION FOR WHY YOU CAN'T GET INTO A RABBI OR CLERGY OR MINISTER, SHOULD TELL OR NOT TELL , REMEMBER WE ARE NOT DEALING WITH NEGLIGENCE. THIS IS AN INTENTIONAL ACT. THEY HAVE ALLEGED THIS AS A NEGLIGENCE ACTION WHERE MR . BELLHORNE NEGLIGENTLY INFLICTED EMOTIONAL DAMAGES.

JUSTICE: LET'S SAY THAT HE NEGLIGENTLY PUT A KNIFE IN THE YOUNG MAN'S HEART.

THERE ARE NO ISSUES INVOLVED IN THAT. IT IS PRETTY CLEAR THAT PHYSICAL HARMING SOMEBODY IS NOT THE BASIS FOR ANY RELIGIOUS VIEWS IN ANY RELIGION THAT I KNOW OF , AT LEAST NOT THAT WE RECOGNIZE IN THE UNITED STATES, BUT TELLING OR NOT TELLING GOES TO THE VERY HEART OF THE RELIGIOUS VIEWS. A RABBI MAY VERY WELL HAVE TO TELL THE HUSBAND , IF IN THE CASE OF LIGHTMAN , THAT HIS WIFE WAS CEREMONIALY UNCLEAN , AND A CATHOLIC PRIEST MIGHT NOT HAVE THAT OBLIGATION. THIS COURT AND NO SECULAR COURT IN AMERICA CAN COME IN AND LOOK AT THAT AND MAKE THAT KIND OF DETERMINATION.

CHIEF JUSTICE: IF THE ALLEGATION IS, IF HE PROMISED HIM THAT HE WASN'T GOING TO TELL , AND THEN HE TOLD , HOW IS THAT NEGLIGENT? I MEAN , THAT IS , I HAVE GOT TO LOOK BACK AT THE COMPLAINT.

IT STILL GOES BACK TO THE DUTY. IS THERE A DUTY OF CONFIDENTIALITY? I CAN PROMISE YOU NOT TO TELL SOMETHING, AND WHETHER OR NOT YOU WOULD BE ABLE TO SUE ME WOULD BE BASED UPON WHETHER OR NOT I HAD SOME DUTY OF CONFIDENTIALITY, NO MATTER WHAT I SAID TO YOU. IF I WENT AND TOLD MY NEIGHBOR A SECRET AND SAID PROMISE THAT YOU WON'T TELL AND THAT NEIGHBOR WENT AND TOLD, I WOULD HAVE NO CAUSE OF ACTION. CHIEF NOW WE GO BACK TO THE VERY BASIS THAT YOU ARE RAISING THE FIRST AMENDMENT , SHOWS THAT YOU ARE AT LEAST ASSERTING THAT THERE IS A RELIGIOUS TRUST INVOLVED , AND THAT IS WHY , I MEAN TRADITIONALLY WHETHER IT A RABBI OR PRIEST , THAT THERE ARE DISCUSSIONS THAT ARE BETWEEN A CONGREGANT AND THEIR CLERGY THAT IS TRADITIONALLY UNDERSTOOD TO BE CONFIDENTIAL , AND SO IT IS NOT THE SAME AS GOING TO YOUR NEIGHBOR OR TALKING TO YOUR NEIGHBOR.

I DISAGREE WITH THAT , YOUR HONOR, BECAUSE SOME RELIGIONS MAY TAKE A DIFFERENT VIEW OF THAT. FOR INSTANCE THE JEWISH RELIGION TAKES THE VIEW APPARENTLY AT LEAST IN SOME SYNAGOGUES IN NEW YORK THAT THERE IS A RELIGIOUS DUTY TO DISCLOSE CONFIDENTIAL CONVERSATIONS AND THE COURTS CLEAR IN THAT IT CAN'T BE DONE AND MY CASE IS THE ARGUMENT FROM THE OTHER SIDE IS EITHER MR . BELLHORNE WAS A CLERGY PERSON OR HE WASN'T AND AS JUDGE CROW RULED, IF HE WASN'T A CLERGY PERSON THAT OUGHT TO BE THE END OF THE STORY AND IF HE WASN'T A CLERGY PERSON THERE , IS NO STATUTORY LAW OF COMMON DUTY THAT WOULD APPLY AND IF IT DIDN'T BAR THE CLAIM , THE "IMPACT RULE" WOULD BAR THE CLAIM, AND IF THE "IMPACT RULE" DIDN'T BAR THE CLAIM , THERE ARE AT LEAST THREE OR FOUR LEVELS THAT YOU GET INTO IN WHY THIS COURT SHOULDN'T EXERCISE JURISDICTION IN THIS CASE. YOU GET INTO THAT.

CHIEF JUSTICE: MY PROBLEM IS A MAJORITY OPINION , IF YOU CORRECT , BETTER TO TAKE THE CASE AND MAKE THAT CLEAR , BECAUSE RIGHT NOW THE MAJORITY OPINION ASSUMES A CAUSE OF ACTION . IT DOES NOT ASSUME ANYTHING ABOUT THE FIRST AMENDMENT AND ASSUMES, THOUGH HAD, THAT THE "IMPACT RULE" MAYBE APPLIES RESPECT DEPENDING ON WHETHER WE CREATE ONE MORE EXCEPTION , AND DOESN'T AGREE WITH JUDGE FARMER , WHO SAYS IT IS NOT AN EVEN A "IMPACT RULE" CASE, BECAUSE THIS IS AN EMOTIONAL DAMAGE TORT NOT A PHYSICAL INJURY TORT, SO THAT IS THE PROBLEM I HAVE WITH NOT, IF YOU ARE RIGHT , THAT WE LEAVE THAT OUT THERE .

I FEEL PRETTY CERTAIN I AM RIGHT, YOUR HONOR, OR I WOULDN'T BE HERE. THE PROBLEM THIS COURT - -

CHIEF JUSTICE: I GUESS YOU HAVE NO CHOICE. IT MAY BE I GUESS SOMEONE ELSE COULD HAVE BEEN HERE.

I COULD HAVE SENT SOMEONE ELSE. THE PROBLEMS THAT YOU ARE DEALING WITH , WITH WHAT THE FOURTH DISTRICT DID , IS THIS COURT HAS DE NOVO JURISDICTION. THIS IS A DE NOVO APPEAL. YOU CAN THROW THE CERTIFIED QUESTION OUT. YOU CAN REWRITE THE CERTIFIED QUESTION. YOU CAN ANSWER IT IN THE NEGATIVE. YOU CAN ANSWER IT IN THE AFFIRMATIVE. AS I READ THE CASE LAW , YOU CAN DO JUST ABOUT ANYTHING YOU WANT TO, ONCE YOU ACCEPT JURISDICTION. THAT MEANS YOU COULD HOLD THAT, IF MR. BELLHORNE IS A CLERGY PERSON, THERE IS NO CAUSE OF ACTION BECAUSE OF THE FIRST AMENDMENT AND BECAUSE THE EVIDENCE CODE CAN'T OVERRULE RELIGIOUS LAW. IF MR . BELLHORNE WAS NOT A CLERGY PERSON AS JUDGE STONE OPINED IN HIS CONCURRING OPINION , THERE IS SIMPLY NO DUTY, AND I WOULD LIKE TO ADD BEFORE MY TIME RUNS OUT AND BEFORE I FORGET, THE EVIDENCE CODE LIMITS THE

PRIVILEGES IN THIS STATE TO THE PRIVILEGES CREATED , NUMBER ONE, BY STATUTE , NUMBER TWO TO THE CONSTITUTION, AND NUMBER THREE IN THE EVIDENCE CODE, ITSELF. THERE IS NO STATUTE, THERE IS NOTHING IN THE CONSTITUTION, THERE IS NOTHING ANYWHERE THAT CREATES A COMMON LAW DUTY OF CONFIDENTIALITY IN THIS STATE. THERE IS NOTHING, THERE IS A PRIVILEGE WHICH DEALS WITH CLERGY PERSON, BUT THAT IS , I THINK --

JUSTICE: LET ME ADDRESS THAT JUST TO DO VETAIL ON WHAT JUSTICE PARIENTE WAS SAYING BECAUSE I HAVE THE SAME CONCERN. IF YOU ACCEPT THE ARGUMENT THAT 505 GIVES RISE TO THE DUTY, THEN 503 THE PRIVILEGE IS THE JOURNALIST PRIVILEGE, SO IF ONE WERE TO DISCLOSE , IN CONFIDENCE , TO A JOURNALIST AND THAT JOURNALIST TURNED AROUND AND PRINTED IN THE NEWSPAPER, IF WE ACCEPT THIS ARGUMENT , MY CONCERN IS THE NEXT STEP IS SOMEBODY WOULD BRING A CAUSE OF ACTION AGAINST THE JOURNALIST, ALLEGING A BREACH OF THE DUTY OF CONFIDENTIALITY IN 503.

FIRST OF ALL PRIVILEGE --

JUSTICE: IF YOU HAD PRIVILEGE IN 505 WOULD AND DUTY, THEN IT IS VERY SIMILAR THAT THE PRIVILEGE IN 503 ALSO GIVES RISE TO A DUTY. I THINK IT WOULD AND JUST SO --

I THINK IT WOULD AND JUST SO MY POSITION IS CLEAR , THE EVIDENCE CODE DOES NOT CREATE DUTIES OF CONFIDENTIALITY. THE EVIDENCE CODES DEAL WITH TESTIMONIAL PRIVILEGE . THERE ARE TWO CASES CITED THAT DEAL WITH THAT , ONE OF THEM INVOLVED A HUSBAND TELLING A LAW ENFORCEMENT AGENCY THAT HIS WIFE WAS THE PERSON THAT HAD BEEN INVOLVED IN SOME SORT OF TRAFFIC INFRACTION, AND THE COURT IN THAT CASE SAID, WELL, MAYBE IT WAS PRIVILEGED COMMUNICATION BUT THAT DOESN'T MEAN THAT LAW ENFORCEMENT CAN'T USE THAT INFORMATION TO BRING CHARGES AGAINST THE WOMAN, AND THE OTHER ONE INVOLVED A LAWYER WHICH DISCLOSED OTHERWISE CONFIDENTIAL COMMUNICATIONS , AND IN THIS CASE IF MR . BELLHORNE CAME INTO COURT AND THIS PRIVILEGE HADN'T BEEN WAIVED , WHICH IT PROBABLY HAS BEEN BY THE FILING OF THIS LAWSUIT , THEY COULD PREVENT MR . BELLHORN -- MR . BELLHORNE , PERHAPS IF HE WAS A CLERGY PERSON FROM TESTIFYING. THAT DOESN'T MEAN THAT MR . BELLHORNE DOESN'T HAVE A DUTY OR OBLIGATION OR LIABILITY FOR BREACH THAT CREATES A CAUSE OF ACTION . THE EVIDENCE CODE DOES NOT CREATE A PRIVATE CAUSE OF ACTION. IT CREATES TESTIMONIAL PRIVILEGES. ARE THERE ANY OTHER QUESTIONS I CAN ADDRESS?

CHIEF JUSTICE: IT SEEMS YOU HAVE COVERED THE GROUND.

THANK YOU.

CHIEF JUSTICE: REBUTTAL.

YES , YOUR HONOR. I WOULD LIKE TO COMMENT ON SOMETHING THAT JUSTICE LEWIS RAISED , AND IT KIND OF GOES TO JUDGE FARMER 'S DISSENT, WHERE TALKING ABOUT HUMILIATION AND DISTRESS THAT THE CHILD SUFFERED AS A RESULT OF THE EXPLOSION OF HIS PRIVACY . IT WAS EQUATED THIS WOULD IMPRISON HIM FOR LIFE. WE ARE NOT DEALING WITH SOMETHING SLIGHT. TO THIS CHILD IT WAS A MAJOR ISSUE AND A MAJOR CONFLICT FOR HIMSELF. HE WAS A DEVOUT CHRISTIAN IN A RELIGIOUS SCHOOL SINCE NINTH GRADE AND WAS GOING TO BE A SENIOR WHEN THIS OCCURRED. THIS IS A MAJOR ISSUE FOR THIS CHILD AND THEN TO HAVE IT REVEALED AND NOT AT HIS WILLING , IS NOTHING BUT EMOTIONAL DISTRESS. I THINK THAT IS VERY IMPORTANT.

CHIEF JUSTICE: BUT DOES YOUR CAUSE OF ACTION HINGE ON THAT HE , THE PERSON WHO WAS DISCLOSED TO , IS A MEMBER OF THE CLERGY ?

IT WOULD IN C. -- DOES IT HINGE ON THAT? AT THIS STAGE OBVIOUSLY THE ALLEGATIONS NEED

TO BE TAKEN AS TRUE , AND THEY SAY THAT THE CHILD REASONABLY HAS A BELIEF THAT THIS GENTLEMAN IS A CHAPLAIN FOR HIMSELF , AND THE WAY THE CHAPLAIN APPROACHED HIM , IT WAS I AM COMING TO YOU AND I WOULD LIKE TO COUNSEL YOU SPIRITUALLY ABOUT YOUR SEXUAL ORIENTATION . THERE IS A BELIEF AND IT IS REASONABLE THAT THIS MAN --

CHIEF JUSTICE: WHAT ABOUT THE FIRST AMENDMENT THEN?

THE FIRST AMENDMENT, WELL , UNDERSTAND, TOO , IT WAS RAISED IN A MOTION TO DISMISS BELOW AND NEVER PASSED ON , NEVER ARGUED IN THE FOURTH.

CHIEF JUSTICE: IT WAS NOT A POINT RAISED IN APPEAL, OR ON APPEAL ?

THE FOURTH OBVIOUSLY DID NOT PASS ON IT.

CHIEF JUSTICE: IT IS DIFFERENT. WAS IT RAISED IN THE BRIEF OF JUPITER CHRISTIAN IN THE FOURTH DISTRICT? NO?

NO , IT WAS NOT AND IT HAS BEEN RAISED HERE AGAIN WITHOUT ANY LOWER COURT PASSING ON THE ISSUE. WHETHER THERE IS ENTANGLEMENT --

JUSTICE: WAS IT PART OF THE MOTION TO DISMISS?

IT WAS PART OF , YES , THE MOTION TO DISMISS, BUT JUDGE CROW, THE TRIAL COURT'S RULING DOES NOT PASS ON IT.

JUSTICE: I KEEP GETTING CONFUSED BY YOUR ARGUMENT BECAUSE AT TIMES YOU SEEM TO BE RELYING ON 95.05 AND OTHER TIMES YOU -- 90.505 AND OTHER TIMES YOU SAY IT DOESN'T MATTER. HE HAPPENED TO BE A MEMBER OF THE CLERGY HERE BUT HE DOESN'T NECESSARILY HAVE TO BE TO CREATE THIS CAUSE OF ACTION. AS I UNDERSTAND YOUR ARGUMENT, YOU ARE SAYING IF THERE IS ANY KIND OF RELATIONSHIP CREATED THERE, WHERE SOMEBODY IS REPOSING A CONFIDENCE IN SOMEBODY ELSE , AND THAT PERSON VIOLATES THAT CONFIDENCE, THERE IS A DUTY AND A BREACH OF A DUTY.

THAT'S RIGHT. I AM RELYING ON THAT , AND TO CLEAR IT UP I AM NOT RELYING ON 90.505. I KEEP SAYING 90.505 AS A POLICY ARGUMENT THAT WE VALUE THAT RELATIONSHIP . A PENETENT'S RELATIONSHIP WITH A CHAPLAIN, AND WE DO RELY MORE, THOUGH, ON THE GRACIE CASE THAT THIS IS A BROAD DUTY. AND --

JUSTICE: IT SEEMS TO ME IF YOU TAKE THAT TO ITS LOGICAL CONCLUSION, THAT IF I HAVE A RELATIONSHIP WITH SOMEONE AND VERY CLOSE RELATIONSHIP, MY CONFIDENCE, WHATEVER , THEN UNDER YOUR ANALYSIS , THERE IS THEN A FIDUCIARY RELATIONSHIP BETWEEN THE TWO OF US , AND THAT PERSON CANNOT DIVULGE MY CONFIDENCE WITHOUT BEING SUBJECT TO ME SUING THEM .

IT SURE SEEMS TO ME IN LOOKING AT THE LAW THAT IT COULD BE THAT BROAD, BUT THIS COURT DOES NOT HAVE TO GO THAT FAR. LOOKING AT THE RELATIONSHIP IN WHICH THIS RELATIONSHIP WAS DEVELOPED , THERE IS ALONG STANDING --

JUSTICE: HOW DOES THIS , IF WE TAKE OUT THE CLERGY PORTION OF IT , HOW DOES THIS RELATIONSHIP DIFFER FROM THE RELATIONSHIP I JUST POSITED TO YOU?

-- I JUST POSITED TO YOU?

THE RELATIONSHIP --

JUSTICE: A GOOD FRIEND WHO I HAVE REPOSED TRUST AND CONFIDENCE IN OVER THE YEARS.

I THINK THAT HAS TO BE ALSO WITHIN THE LAW, SOME SUPERIORITY IN POSITION IN A SENSE, FROM VULNERABILITY ON BEHALF OF A CHILD, AND THERE WAS SOME VULNERABILITY HERE. THIS CHILD WAS STRUGGLING WITH HIS SEXUAL ORIENTATION AND WE HAVE THAT ASPECT AS WELL, AND THE TRUST DEVELOPS THERE, AND ACCEPTED BY THE CHILD. MAYBE IN TALKING WITH A FRIEND, YOU MIGHT EXPECT YOUR SECRETS WITH YOUR FRIEND TO BE PRIVATE. I AM NOT SURE THAT IS A FIDUCIARY RELATIONSHIP. I SEE MY --

CHIEF JUSTICE: YOUR TIME IS UP. YES. THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: THE COURT WILL TAKE THIS MATTER UNDER ADVISEMENT. THE COURT WILL BE IN RECESS. WE HAVE FINISHED A LITTLE BIT BEFORE TEN O'CLOCK, SO MISS PITTS, IS IT, IF WE START A LITTLE BEFORE 10:30 WILL THAT BE OKAY? WE WILL BE IN RECESS FOR 25 MINUTES.

MARSHAL: PLEASE RISE.