Interfaith Statement on California Senate Bill 360 as a Threat to Religious Freedom

The undersigned represent a variety of American religious communities. Many of us share with the Roman Catholic Church the ancient Christian doctrine and practice of sacramental confession. Those who are not Catholic do not follow the doctrines of the Roman Catholic Church, including belief in sacramental confession. However, we are all one with American Roman Catholics in condemning the attack on religious freedom that the current version of California Senate Bill 360 represents.

Whatever SB 360’s intentions, it should not include provisions that undermine the fundamental First Amendment right to religious freedom for all American citizens and all American religious communities – a constitutional guarantee necessary to the health of our democracy.

Unfortunately, SB 360 as currently written would have that effect. The bill would employ the power of government to destroy the seal of sacramental confession as understood by the Catholic Church. The law would require priests to report to state authorities sexual abuse information obtained in confessions by other clergy or church employees.

As with spousal privilege and attorney-client privilege, the inviolability of sacramental confession has repeatedly been affirmed by U.S. courts. Privilege in key relationships -- legal, spiritual and marital -- is necessary because those bonds are central to who we are as human persons. SB 360 rightly does not address them, and should not address the sacramental seal of confession. The affirmation of the inviolability of the seal of confession reflects the structure and intent of the Constitution’s guarantee of religious freedom for all Americans and their religious communities. The First Amendment expressly denies government the power to coerce religious institutions on matters fundamental to their existence.
The sacrament of confession is one such matter for the Roman Catholic Church. According to Catholic doctrine, confession is the sacrament through which the sinner is restored to communion with God. A Catholic who fails to confess grave sin and to perform penance is rendered “incapable of eternal life” (Catechism of the Catholic Church, paragraph 1861). Catholic priests must not under any circumstance break the seal of confession. Mandating that a Catholic priest do otherwise forces him to choose between civil penalty and deep moral injury. His priestly vows allow no exceptions for protecting what he hears during confession, and from whom. Over the centuries Catholic priests have accepted torture and death rather than disclose the names of confessors or the contents of a confession.

In the early years of our nation, a New York district attorney demanded that a priest reveal the name of a man who had confessed stealing. The priest, Fr. Kohlman, told the court that “it would be my duty to prefer instantaneous death or any other temporal misfortune rather than disclose the name of the penitent in question. For, were I to act otherwise,... I would render myself guilty of eternal damnation.” The court ruled, in People vs. Phillips (1813), that the Constitution did not permit the city government to coerce Fr. Kohlman’s testimony.

Destroying the inviolability of confession would cause grave damage to the American system of religious freedom. If government at any level arrogates to itself the power to force religious institutions to abandon their most sacred doctrines, a critical barrier against tyranny will have been breached.

At a practical level, SB 360 is highly unlikely to achieve its putative objective – the reduction of sexual abuse. First, confession is often not undertaken face-to-face in order to preserve the anonymity of the penitent. In such cases the priest does not know who is confessing. Second, the provisions of SB 360 could worsen the problem by discouraging confession and its intended result – a turning away from grave sin. There is no reason to believe that those guilty of sexual abuse would be more likely to confess this crime to a priest who is required by law to turn them in. The potential public good of confession may, therefore, also be undermined. In breaking the bond of trust between confessor and penitent that the seal serves to uphold, the very real opportunity for amending the life of the penitent through confession, penance, and pastoral counselling will have been lost.

This is neither one church’s problem nor one religious community’s problem. It is a national plague, and weakening religious freedom is not the cure. We pledge to work assiduously to root out the sexual abuse which is afflicting our nation.
Should this provision remain part of SB 360, it will almost certainly be overturned in the courts. This increases our concern about its overreach. We call upon the California legislature to amend SB360 and retain the exemption in current law which protects the seal of confession so fundamental to Catholicism, and at the same time protects the American system of religious freedom so critical to the welfare of American faith communities and to democracy itself.

When the government attempts to interfere with the millennia old teachings of a church, all of us are greatly concerned. Such a disregard for the beliefs of one community of faith puts all of us at risk. Today it is the Catholics. Tomorrow it could be another Christian community, Jews, or Muslims whose beliefs are targeted. We are united in saying “no” to such interference.

Sincerely,

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