

Court still needs to weigh final angle of Bridgeport documents case

WASHINGTON - The Supreme Court's decision not to continue a stay on the release to newspapers of Diocese of Bridgeport documents in settled sexual abuse cases doesn't quite close the door on the issue.

Still pending is a separate petition asking the court to overturn the original ruling in favor of the newspapers. However, the high court's refusal to continue the stay is being seen by some court-watchers as an indication the diocese's efforts to keep the documents sealed has hit the end of its very long road.

The Supreme Court Oct. 5 ended a stay that had temporarily blocked the release of the diocesan records related to sexual abuse cases to four newspapers that sued for access to them. Upholding lower courts, the Connecticut Supreme Court in May ordered the diocese to release 12,000 pages of depositions, exhibits and legal arguments in 23 lawsuits involving six priests.

Most of the lawsuits were settled for undisclosed amounts in 2001, with the agreement that the individual settlements and the documents should remain sealed.

But the Connecticut courts ruled that documents submitted to the court and the abuse victims as a part of pretrial proceedings could be turned over to the newspapers.

The complex legal case has bounced among Connecticut's courts since 2002, when first The New York Times and then three other newspapers - the Hartford Courant, the Boston Globe and The Washington Post - sued for access to the material.

As the diocese explains on its Web site posting on the background, ultimately the state Supreme Court ruled that the diocese had waived its privileges to keep the documents secret by turning them over to victims and their attorneys as part of pretrial procedures.

The state courts essentially said the door had been left open by that pretrial release

and the diocese therefore could not claim the information was protected by the confidentiality agreement. Because the settlement ensured there would be no trial, the court said the argument that the material should remain confidential to assure a fair trial no longer outweighed the public's right to access what by then were "judicial documents."

Last summer, the U.S. Supreme Court first denied, then approved a temporary stay blocking the release. On the opening day of the 2009 term, the court without comment declined to continue the stay.

Attorneys for the diocese and the newspapers are set to meet in Superior Court in Waterbury, Conn., Nov. 9 to work out details of how the information will be released and what documents will remain confidential, explained Ralph W. Johnson III, the attorney for the Bridgeport Diocese.

However, there's still that separate "certiorari," or cert petition, pending at the U.S. Supreme Court. It asks the court to overturn the Connecticut Supreme Court ruling in favor of the newspapers.

That petition could be among hundreds that the high court will consider in a conference Oct. 30, though petitions often carry over to several of the justices' conferences, held two or three days a month. It's quite possible that the documents could be released before the cert petition is addressed in a conference, making the whole effort moot.

The cert petition asks the court to weigh the diocese's claim that the religion clauses of the First Amendment protect the autonomy of the church to choose its own ministers and to determine their suitability. The diocese argues that the state Supreme Court undermined that right by ruling that the church waived the privilege when it complied with the court order to release personnel files.

The petition also asks the high court to decide what materials released before a trial are public documents, since pretrial information is routinely kept private. The diocese says the outcome of the case "could set precedent on the privacy rights of all citizens, companies and organizations."

“If the Connecticut Supreme Court’s decision is allowed to stand,” the diocese says, “the indiscriminate release of pretrial documents concerning matters long settled will harm the reputations of innocent people.”

University of Texas law professor Douglas Laycock, one of the leading religious liberties experts in the country, told Catholic News Service that the court’s Oct. 5 refusal to continue the stay on releasing the documents probably foretells that the U.S. court will not hear the appeal of the Connecticut ruling.

“If the court was seriously interested in hearing the case, it would have continued the stay,” Laycock said.

Johnson, the diocese’s attorney, sees it differently.

“It takes five justices to get a stay, but four to grant a cert petition,” he said.

Johnson told CNS the implications of letting the Connecticut ruling stand are potentially dramatic. “The question is whether anything in Connecticut is protected” since the pretrial documents in the abuse cases were ruled to be open for release.

He pointed to an August article in the Connecticut Law Tribune in which two intellectual property attorneys voiced concerns that the state court’s ruling undermines the legal process.

“If faced with the prospect of having confidential information disclosed to third parties, even years after the termination of the dispute, parties may be wary of ... producing information in discovery for fear that information will later be filed with the court,” wrote attorneys Patrick M. Fahey and Susan F. Murphy.

Laycock, however, is not convinced that the Connecticut Supreme Court’s ruling will have a significant impact on anyone other than the Bridgeport Diocese or possibly the other Connecticut Catholic dioceses: the Hartford Archdiocese, the Norwich Diocese and the Ukrainian Eparchy of Stamford. He said only Connecticut law and court procedures were at issue in the case, for one thing.

“The Connecticut Supreme Court’s decisions are only a burden in Connecticut,” he noted.

As to the prospect of the Supreme Court taking the diocese's case to delve into possible First Amendment implications on a church's rights, Laycock said "it's been 30 years since the court took on internal church governance," and he thinks it unlikely the justices would use this case to step back into that arena.