

**IN THE SUPREME COURT OF IOWA**

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No. 20-0236

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**RYAN KOSTER,**

Plaintiff - Appellant,

v.

**HARVEST BIBLE CHAPEL – QUAD CITIES D/B/A HARVEST BIBLE  
CHAPEL – DAVENPORT, AND GARTH GLENN**

Defendants - Appellees.

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**APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR SCOTT COUNTY  
HONORABLE JUDGE TOM REIDEL  
HONORABLE JUDGE MARK FOWLER**

Case No. LACE 128726

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**DEFENDANTS-APPELLEES' FINAL BRIEF**

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

### **I. THE DISTRICT COURT DID NOT COMMIT ERROR IN GRANTING SUMMARY JUDGMENT ON THE BREACH OF FIDUCIARY DUTY CLAIM UNDER THE PRIVILEGE AFFORDED CHURCH COMMUNICATIONS MADE WITHIN THE CHURCH**

*Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19 (Iowa 2018)  
*Crippen v. City of Cedar Rapids*, 618 N.W.2d 562 (Iowa 2000)  
*Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003)  
*Kush v. Sullivan*, 836 N.W.2d 152, 2013 Iowa App. LEXIS 633 (2013)  
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*Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. App. 1993)  
*Serbian Eastern Orthodox Diocese for U.S. of America and Canada v. Millivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976)  
*Simpson v. Wells Lamont Corp.*, 494 F.2d 490 (5<sup>th</sup> Cir. 1974)  
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*Vione v. Tewell*, 12 Misc.3d 973, 820 N.Y.S. 682 (N.Y. Sup. Ct. 2006)  
*Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007)

### **II. RYAN KOSTER FAILED TO PRODUCE SUFFICIENT EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO EVERY ELEMENT OF HIS BREACH OF FIDUCIARY DUTY CLAIM AGAINST GLENN AND HBC.**

*Cox v. Miller*, 296 F.3d 89 (2<sup>nd</sup> Cir. 2002)  
*Crippen v. City of Cedar Rapids*, 618 N.W.2d 562 (Iowa 2000)  
*Destafano v. Grabrian*, 763 P.2d 275 (Colo. 1988).  
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*Doe v. Hartz*, 52 F.Supp.2d 1027 (N.D. Iowa 2009)  
*Doe v. Liberatore*, 478 F.Supp.2d 742 (M.D. Penn 2007)  
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*Langford v. Roman Catholic Diocese of New York*, 271 A.2d 494, 705 N.Y.S.2d 661 (N.Y.S. 2000)

*Lightman v. Flaum*, 97 N.Y.S. 128 (N.Y. App. 2001)

*Sanders v. Casa View Baptist Church*, 134 F.3d 331 (5<sup>th</sup> Cir. 1998)

*State v. Hesse*, 2009 Iowa App. LEXIS 201 (Iowa App. 2009)

### **III. THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON THE DEFAMATION CLAIM**

*Crippen v. City of Cedar Rapids*, 618 N.W.2d 562 (Iowa 2000)

*Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003)



## ROUTING STATEMENT

*Did the District Court commit legal error in granting summary judgment to a church and pastor under the qualified privilege afforded communications between a pastor and his church by the Ecclesiastical Shield of the United States Constitution?*

*Can the Iowa Courts adjudicate whether a pastor breaches a fiduciary duty by communicating about a parishioner with congregants of the church and church staff without infringing upon the religious, community-based discipleship practices of this church?*

*Does Iowa recognize a claim for breach of fiduciary duty against a pastor for breaching confidentiality or will it follow other jurisdictions and find the same to be a constitutionally protected claim of pastoral malpractice?*

These important questions are at the heart of this appeal brought by the Appellant against his former pastor and church. After the Appellant's wife accused him of molesting his daughter, and notified her church about the same, a Pastor at the church wrote three emails to the staff and the Appellant's former discipleship group to inform them of the situation and seek prayers. [App. pp. 578-580, 582]. The Appellant asserts that his Pastor shared confidential information about him in these e-mails, breached his fiduciary duty as a pastor in doing so, and committed defamation when he communicated about him within the church. The District Court granted summary judgment to the Appellees finding communications made within a church between its congregants are privileged under the Ecclesiastical Shield of the United States Constitution. [App. pp. 621-653; App. pp. 665-674].

Although the Appellant asserts this case should be routed to the Court of Appeals, the Appellees respectfully disagree and request it be retained by the Supreme Court.

- a. **This appeal involves substantial issues which, if reversed, could conflict with published decisions of the Iowa Supreme Court. [Iowa R. App. P. 6.1101 (b)].**

First, the Supreme Court should retain this case because the District Court's ruling that communications between a Pastor and a church are privileged was based on two holdings of the Iowa Supreme Court: *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003) and *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19 (Iowa 2018). Iowa R. App. P. 6.1101(b)(2020). In both of these cases, the Court found it would not entangle itself with communications between a pastor and his church. *See Bandstra*, 913 N.W.2d at 28 (holding "the means by which [the church] chose to counsel and advise the congregation is outside the purview of the government."); *Kliebenstein*, 663 N.W.2d at 407 (holding "[i]t is the general rule that the common interest of members of religious associations is such as to afford the protection of qualified privilege to communications between them in furtherance of their common purpose or interest."). Just as in *Bandstra* and *Kliebenstein*, this case involves a pastor

sharing information about one parishioner within the church community. Any reversal of this case could result in conflicting precedent on this issue in Iowa.

Also, this appeal will involve an interpretation of a crucial part of the *Kliebenstein* case. In *Kliebenstein*, the Court held the privilege afforded church communications, or the Ecclesiastical Shield over these communications, was lost when a pastor shared information “**outside of the congregation.**” *Kliebenstein*, 663 N.W.2d at 407 (emphasis). This Appeal will ask this Court to define what “outside of the congregation” means: communications to people that do not attend the church (Appellees’ position) or communications to people that are not formal members of the church (Appellant’s position). Since the Supreme Court decided *Kliebenstein*, it should be the one to decide whether a pastor communicating with a person that participates in the church’s discipleship practices yet resigned his formal membership is to be considered “outside of the congregation,” thereby negating or weakening the privilege.

**b. This case involves issues of first impression in Iowa regarding liability against pastors. [Iowa R. App. p. 6.1101 (c)].**

Although this Court has already ruled that it will not entangle itself with communications within a church, there are several important issues in this case of first impression. Iowa R. App. P. 6.1101(c)(2020). First, although the Iowa Supreme Court has had occasion to determine whether church

communications are privileged in defamation claims, it has not had the occasion to determine if that privilege extends to a breach of fiduciary duty claim.

Further, the Iowa federal court has recognized: “no decision of an Iowa court specifically explores whether a fiduciary or confidential relationship, and attendant duty, can exist between a member of the clergy, a diocese, or a bishop and an individual parishioner.” *Doe v. Hartz*, 52 F.Supp.2d 1027, 1059 (N.D. Iowa 1999). This case would allow the Supreme Court to set forth to what extent, if any, it allows a fiduciary duty claim to be brought against a pastor.

Finally, other jurisdictions have held there can be no viable claim against a pastor for sharing confidential information, as the same amounts to “pastoral malpractice” or “clergy malpractice” which entangles the Court in the proper standard of care of pastors. *See e.g. Hester v. Barnett*, 723 S.W.2d 544 (Mo. App. 1987), *Lightman v. Flaum*, 97 N.Y.2d. 128 (N.Y. App. 2001). This case allows the Iowa Supreme Court to render a decision as to whether a breach of fiduciary duty against a pastor for allegedly sharing confidential information is a viable claim for breach of fiduciary duty, or a constitutionally protected claim for pastoral malpractice.

For all these reasons, the Appellees request the Iowa Supreme Court retain this appeal.

### **STATEMENT OF THE CASE**

The Appellant, Ryan Koster (hereinafter “Mr. Koster”) asserts that his pastor breached his fiduciary duties and committed defamation by sending three e-mails to (1) his fellow pastors, (2) members of his former discipleship small group, and (3) church staff “divulging details of Ryan Koster’s marriage that were obtained in confidence.” [Appellant’s Brief, p. 15-17]. Mr. Koster readily admits that his pastor “sent the emails in his capacity as pastor of his church.” [Appellant’s Brief, p. 10].

The Iowa District Court of Scott County through the Honorable Tom Reidel and Mark Fowler followed this Court’s established precedent, as well as on point precedent from the United States Constitution and precedent from outside jurisdictions, and granted summary judgment to the Appellees asserting that communications by a pastor within his church are privileged from Court interference under the United States Constitution. [App. pp. 621-653; App. pp. 665-674]. The Appellant hereby appeals these decisions. [App. pp. 247-249].

**a. Nature of the Case**

Mr. Koster joined Harvest Bible Chapel of Davenport (hereinafter “HBC”) in 2005. [App. p. 8]. In August of 2007, Mr. Koster married Lisa White (f/k/a Lisa Koster, hereinafter “Lisa Koster”). [App. p. 42; Statement of Undisputed Facts No. 87]. HBC follows a religious practice within its church called “Biblical Soul Care,” where congregants of the church counsel one another using a “counseling in community” approach. [App. pp. 28 & 31; Statement of Undisputed Facts Nos. 30, 32, 40]. This is done most often in the context of small discipleship groups within the church, where members of the small group share personal information with one another as a form of “discipleship,” a practice that is more about “community than privacy.” [App. p. 31; Statement of Undisputed Facts No. 40]. While attending HBC, Ryan and Lisa Koster, began to experience problems in their marriage. [App. pp. 47-48; Statement of Undisputed Facts Nos. 121-129]. Although there were formal counseling options offered at HBC, where couples apply for marriage counseling with a trained individual and work with that person in contractually derived confidence, the Koster did not apply for formal counseling and rather elected to deal with their marriage problems through discipleship. [App. p. 37; Statement of Undisputed Facts Nos. 57-59]. The Koster began sharing intimate details of their marriage in formal small group

sponsored by the church, and with two other couples that they were close friends with, including one of the church's pastors Garth Glenn (hereinafter "Pastor Garth") and his wife Deanna. [App. pp. 37, 46 & 49-50; Statement of Undisputed Facts Nos. 57-59, 111, 130-139].

On April 28, 2015, Lisa Koster accused Ryan Koster of molesting their daughter. [App. p. 54; Statement of Undisputed Facts No. 162]. She notified HBC about these allegations, by reaching out to Pastor Garth and by sending emails to church staff members about the situation. [App. pp. 54-55; Statement of Undisputed Facts Nos. 163-164]. Lisa Koster contacted the authorities to start an investigation into the allegations. [App. p. 55; Statement of Undisputed Facts No. 169].

The next day, Pastor Garth, after learning of the situation with Ryan and Lisa Koster, drafted an e-mail to his fellow pastors and directors informing them about the allegations. [App. p. 578]. On May 3, 2015, Pastor Garth sent an e-mail to the Kosters' small group members informing them of the situation and asking them to "Pray. Pray. Pray." [App. pp. 579-580]. On May 12, 2015, Pastor Garth drafted an e-mail to the church staff to inform them of the situation and again ask them to pray. [App. pp. 582-583]. In February of 2016, the Iowa Department of Human Services found that "it was

not possible to determine, by more than half of the available evidence, that abuse occurred.” [App. p. 59; Statement of Undisputed Facts No. 190].

On March 7, 2017, Mr. Koster filed a lawsuit against HBC and Pastor Garth asserting that Pastor Garth:

- (1) breached a fiduciary duty by allegedly sharing “confidential information” about him to church staff and discipleship groups at the church.
- (2) Invaded his privacy by allegedly sharing confidential information about him to church staff and his discipleship group;
- (3) Defamed him by allegedly sharing false information about him to church staff and his discipleship group.

[See App. pp. 7-17].

**b. Relevant issues of the prior proceedings**

On April 12, 2018, HBC and Pastor Garth filed their First Motion for Summary Judgment in this matter. [App. pp. 18-20]. In the first Motion, the Court ruled in favor of HBC and Pastor Garth on the defamation and invasion of privacy claims finding these claims are barred by the protection of qualified privilege under the United States Constitution. [App. pp. 673-652]. The Court denied the Defendants’ Motion for Summary Judgment on the breach of fiduciary duty claim finding that because it was a claim for breach of confidentiality, a Court could determine whether a breach of this fiduciary



duty occurred without examining religion and triggering the Ecclesiastical Shield. [App. p. 635]. The Court held that “the duty to keep information confidential is a sufficiently neutral principle of law, and the present case does not require the Court to directly analyze HBC’s religious doctrine.” [App. p. 635]. What was **not** before the Court in that Motion was whether, even if the Court could analyze whether there was a breach of confidentiality as a neutral principle of law, it could not adjudicate Pastor Garth’s liability for sharing alleged confidential information within his church pursuant to the community-based discipleship practices in the church without interfering with HBC’s religious beliefs and practices. [App. pp. 665-666].

On November 16, 2018, Pastor Garth and HBC filed a Second Motion for Summary Judgment on the sole issue of punitive damages. [App. pp. 175-177]. The Court denied this Motion for Summary Judgment. [App. 654-664]. However, this decision is not subject to an appeal. [App. p. 247-249].

On October 24, 2019, HBC and Pastor Garth filed a Third Motion for Summary Judgment, this time asking the Court to take the First Motion for Summary Judgment ruling one step further and rule on whether even if the Court could find a breach of confidentiality using secular means, would the judgment in this matter infringe upon the church’s ability to practice Biblical Soul Care and community based counseling. [App. p. 193]. HBC and Pastor

Garth argued the United States Constitution prohibited the Court from entering judgment regarding whether a pastor breaches a fiduciary duty by communicating alleged confidential information to his staff and church community as infringing upon the religious practices of this church. [App. p. 193]. HBC and Pastor Garth asserted that the Constitution protected communications within the church community under the Ecclesiastical Shield. [App. p. 193]. HBC and Pastor Garth further argued that whether a pastor breaches confidentiality would be a pastoral malpractice claim which has been found impermissible under the Constitution. [App. pp. 215-216].

On December 21, 2019, the District Court granted the Appellees' Third Motion for Summary Judgment and held that "the breach of fiduciary duty claims arise from communication from Pastor Glenn to a small number of members of the church." [App. p. 671]. Citing *Kliebenstein v. Iowa Conference of United Methodist Church*, the Court held:

the common interest of members of religious associations is such as to afford the protection of qualified privilege to communications between them in furtherance of their common purpose or interest. Thus, communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such are qualifiedly privileged.

[App. p. 669 (citing *Kliebenstein*, 663 N.W.2d at 407.).]

On January 6, 2020, the Appellant filed a Motion to Enlarge and Reconsider. [App. pp. 225-234]. The Appellees resisted the same. [App. pp. 235-246].

**c. Disposition before the District Court**

On February 3, 2020 the District Court denied the Motion to Enlarge and Reconsider. [App. pp. 675-676]. This appeal followed. [App. pp. 247-249].

**STATEMENT OF FACTS RELEVANT TO THE ISSUES  
PRESENTED FOR REVIEW**

HBC is a church in Davenport, Iowa. [App. p. 23; Statement of Undisputed Facts No. 1]. This church’s denoted purpose is to follow the “Great Commandment (Matthew 22:37-39).” [App. p. 23; Statement of Undisputed Facts No. 3]. HBC believes that the Great Commandment is fulfilled as disciples of Jesus Christ are made. [App. p. 23; Statement of Undisputed Facts No. 3]. Discipleship is a core value and mission of HBC, and HBC sets up its programs and opportunities to specifically encourage an environment where the church congregation supports each other in their religious journeys. [App. p. 24; Statement of Undisputed Facts No. 6]. HBC openly tells the public and their congregation that:

We believe that discipleship is best accomplished in ministry to one another. It’s not about one or a small number of pastors bearing responsibility to care for

the entire congregation (citation omitted). Rather it's about all disciples using their God-given spiritual gifts to practice mutual ministry, in the context of a local church.

[App. p. 181; Statement of Undisputed Facts No. 260]. As a result of this discipleship mission, to use the words of the District Court, HBC believes that “members of the congregation should be intensely involved in one another’s lives.” [App. p. 665].

HBC’s discipleship beliefs are fulfilled through “Biblical Soul Care,” which is one of the fundamental belief systems and philosophies within HBC. [App. p. 665; App. p. 28; Statement of Undisputed Facts No. 30]. Biblical Soul Care is the name given for the counseling ministry within the church. [App. p. 28; Statement of Undisputed Facts No. 32]. However, HBC does not use the term “counseling” or as the church calls it “corrective care,” the same way we use the term in the secular world. [App. p. 29; Statement of Undisputed Facts No. 33]. “Corrective care” is “intense discipleship to bring to bear the scriptures and the truth of God’s word on a person’s situation and life at their request.” [App. p. 29; Statement of Undisputed Facts No. 33]. In other words, through the practice of Biblical Soul Care all of the members of the church use biblical instruction and do life on life ministry. [App. p. 28-30; Statement of Undisputed Facts Nos. 32, 33, 35]. Congregants at HBC are

taught that Biblical Soul Care involves “speaking the truth in love in your circle of influence.” [App. p. 30; Statement of Undisputed Facts No. 38].

This practice creates a “counseling in community” approach where the church does not “believe in hiding sin. We believe in confessing sin to God **and to one another.**” [App. p. 31; Statement of Undisputed Facts No. 41 (emphasis added)]. Ryan Koster knew of the discipleship beliefs in this church and accepted them. [App. p. 188; Statement of Undisputed Facts No. 271]. Mr. Koster knew that a fundamental tenant of HBC was that they teach to openly share sin amongst one another at a material time. [App. p. 188; Statement of Undisputed Facts No. 271].

Biblical Soul Care is practiced two distinct ways within HBC. [App. p. 31; Statement of Undisputed Facts No. 40]. First, and at issue in this case, is informal Biblical Soul Care or “directive discipleship” where the focus is more “community than privacy.” [App. p. 31; Statement of Undisputed Facts No. 40]. This is a church practice where the congregants counsel one another in a community, most often through small discipleship groups. [App. p. 31; Statement of Undisputed Facts No. 40]. There is no formal confidentiality within small groups, yet the discipleship group agrees among each other that they are in a safe place to share and that they strive to keep information private within their group, or “circle of influence.” [App. p. 39; Statement of

Undisputed Facts No. 68]. In these discipleship groups, the members of the groups confess their sins and discuss often sensitive issues with one another. [App. p. 39; Statement of Undisputed Facts No. 70].

Because of the “counseling in community” within this church, it is common practice for sensitive issues to be known by members of the congregation. [App. p. 39; Statement of Undisputed Facts No. 70]. Because HBC intends this information to be kept within the church community only and not disseminated publicly, it has enacted a gossip policy to prevent members from discussing a church member outside of the church congregation. [App. pp. 39-40; Statement of Undisputed Facts No. 71]. This encourages an environment where information can be openly shared within the walls of the church, but not to the outside public. [App. p. 39-40; Statement of Undisputed Facts No. 71]. Open communication is important among the congregants of HBC pursuant to their discipleship beliefs and practices. [App. p. 184; Statement of Undisputed Facts No. 263].

Although not at issue in this case, in order to provide the Court context, there is also a second type of Biblical Soul Care which is more akin to what most people think of as formal biblical counseling. [App. p. 36; Statement of Undisputed Facts No. 52]. In this type of Biblical Soul Care a congregant fills out an application before participating. [App. p. 36; Statement of

Undisputed Facts No. 52]. This type of Biblical Soul Care is done by trained pastors and volunteers, **not** the church congregation as a whole. [App. p. 36; Statement of Undisputed Facts No. 53]. This includes options for marriage counseling, again through an application process. [App. p. 37; Statement of Undisputed Facts No. 57]. In this type of counseling, confidentiality is set forth in a written agreement between the Biblical Soul Care volunteer and the participant(s). [App. p. 37; Statement of Undisputed Facts No. 59]. Although this option was available to Mr. Koster and his wife, the Court should note that it was **not** chosen by the same. Mr. Koster did not fill out any application for formal counseling within the church, but rather chose to engage in the discipleship “counseling in community” practices in dealing with problems in his personal life and marriage. [App. pp. 36-37; Statement of Undisputed Facts No. 56]. Mr. Koster has openly admitted in this case that Pastor Garth never counseled him in this formal type of Biblical Soul Care. [App. p. 305; App. 592-601; Affidavit of Pastor John Cochran ¶ 33].

HBC also operates its church through a concept called “plurality of leadership.” [App. p. 38; Statement of Undisputed Facts No. 63]. At HBC the pastors get together, confess to one another, and pray for one another. [App. p. 38; Statement of Undisputed Facts No. 64]. The senior pastor described the practice as follows:

we value very much the wisdom that comes with an abundance of counselors, abundance of advisors. It's a concept found in Proverbs. And we often, as pastors, need the help of one another to make sure that we are thinking rightly, to make sure that we are applying the scriptures rightly, to make sure that we are speaking the truth in love, and just to have the emotional strength to serve our congregants the best we can.

[App. p. 38; Statement of Undisputed Facts No. 65].

Because of this belief in the plurality of leadership, as part of the operation of this church, it is a common practice at HBC for pastors and staff members to consult with one another regarding church members and attendees. [App. p. 38; Statement of Undisputed Facts No. 66].

Mr. Koster began attending HBC in 2005. [App. p. 41; Statement of Undisputed Facts No. 82]. He began attending small groups and serving in leadership roles throughout the church. [App. p. 41; Statement of Undisputed Facts No. 83].

Mr. Koster met Lisa White (f/k/a Lisa Koster) in 2006 through a small group at HBC. [App. p. 42; Statement of Undisputed Facts No. 85]. The two were married in 2007. [App. p. 42; Statement of Undisputed Facts No. 86]. Meanwhile, Mr. Koster met Pastor Garth through HBC and the two became friends, spending time together in and outside of church. [App. p. 42; Statement of Undisputed Facts No. 90]. After the Kosters married they started



spending a lot of time with Pastor Garth and his wife, Deanna. [App. p. 43; Statement of Undisputed Facts No. 92]. The couples took 4-5 vacations together and described their relationship as doing “life together.” [App. p. 44; Statement of Undisputed Facts No. 102]. In addition to the Kosters and the Glenns, Koral and Christie Martin were also close friends of the two couples. [App. p. 44; Statement of Undisputed Facts No. 102].

Beginning in 2008, the Kosters, Glenns, and Martins joined a small discipleship group comprised of approximately 10 other couples that were all involved in high school leadership roles at HBC. [App. pp. 44-45; Statement of Undisputed Facts No. 104]. The discipleship group included: Ryan and Lisa Koster, Garth and Deanna Glenn, Susie and Kyle Sebben, Marisa and Jim McClain, Andy and Angie Ellingson, Beth and Scott Voigt, Rob and Anna Isley, Christie and Koral Martin, and Jim and Deb Demarest. [App. p. 609; Affidavit of Garth Glenn Paragraph 16]. The small group was led by Pastor Garth. [App. p. 45; Statement of Undisputed Facts No. 106]. Under the doctrine of Biblical Soul Care, these individuals were part of the “circle of influence” for one another and disciplined one another under the religious tenants of HBC. [App. p. 609; Affidavit of Garth Glenn, Paragraph 17]. Although there was no formal confidentiality agreement signed for the small group, the members of the group agreed that the group was a safe place to

share and what was said there should stay between the group. [App. p. 45; Statement of Undisputed Facts No. 109]. In fact, Mr. Koster admits in his appeal brief that the “protocol” for this discipleship group was that conversations would “stay within the small group and not be disseminated more publicly.” [Appellant’s Brief, p. 11].

During the High School Leadership small group, problems started to develop in the Kosters’ marriage. [App. p. 46; Statement of Undisputed Facts 111]. Ryan and Lisa Koster began discipling or engaging in “corrective care” with the High School Leadership small group about their marital problems. [App. p. 46; Statement of Undisputed Facts No. 111]. The couple openly discussed problems with Mr. Koster’s use of pornography, masturbation, and intimacy issues within the High School Leadership small group. [App. p. 610; Affidavit of Garth Glenn, Paragraph 19].

In 2011 and 2012, Mr. and Mrs. Koster became parents to two children. [App. pp. 46-47; Statement of Undisputed Facts Nos. 115-116]. In 2013, Ryan and Lisa Koster’s marriage began to seriously deteriorate. [App. p. 49; Statement of Undisputed Facts No. 130]. The Glenns and Martins, as close personal friends, noticed the problems in the marriage. [App. p. 49; Statement of Undisputed Facts No. 132]. In fact, the Martins were also dealing with

marriage issues at the time. [App. p. 49; Statement of Undisputed Facts No. 131].

Therefore, in September of 2013, the Kosters, Martins, and Glenns decided to meet together outside of the High School Leadership small group to disciple each other further regarding all three couples' marriages. [App. p. 49; Statement of Undisputed Facts No. 132]. The couples called the group "Life Group." [App. p. 49; Statement of Undisputed Facts No. 132]. The wives in the group set up meeting times and locations. [App. p. 50; Statement of Undisputed Facts No. 135]. During these meetings the couples disciplined one another by discussing their personal lives. [App. p. 50; Statement of Undisputed Facts No. 136]. It is undisputed that this was not a formal small group in HBC and the church itself did not even know about Life Group. [App. pp. 51-52; Statement of Undisputed Facts Nos. 141, 146]. Pastor Garth was a participant in the group, also discussing issues of his own marriage. [App. p. 51; Statement of Undisputed Facts No. 145]. No applications were made, no small group forms were filled out and no confidentiality agreements were signed. [App. p. 53; Statement of Undisputed Facts No. 154]. Lisa Koster described the group as follows:

We sat, and really, just relax time where we asked each other how your week was going and we were very causal, and then we'd go around the room and

each couple would give an update on how things were going in their marriage.

[App. p. 50; Statement of Undisputed Facts No. 137]. Just as Mr. Koster had done in the High School Leadership small group, he discussed problems with his marriage in Life Group. [App. p. 53; Statement of Undisputed Facts No. 156]. Ryan Koster testified that he never told the members of Life Group that he wanted the information he shared to be kept confidential. [App. p. 188; Statement of Undisputed Facts No. 270].

According to Mr. Koster, during Life Group he shared the following information that he deems to be confidential:

Glenn directed Ryan to reveal everything about his sex life, which included among other things, **talking about looking at nude pictures, masturbation, foreplay with his wife.** [citations omitted]. Ryan never shared this information with anyone else and would not have shared it but for the express understanding that it would not be shared outside of Life Group.

[Appellant's Brief, p. 13-14 (emphasis added)]. Mr. Koster does not identify any other confidential information shared in Life Group to this Court. [Appellant's Brief, pp. 13-14].

On April 28, 2015, Lisa Koster alleged that she came into her daughter's room and her daughter told her that her father had touched her inappropriately. [App. p. 54; Statement of Undisputed Facts No. 162]. On

April 28, 2015, Lisa sent emails to staff members at HBC and contacted Pastor Garth accusing Mr. Koster of molesting her child. [App. p. 164; Statement of Undisputed Facts No. 164]. Lisa sought a protective order against Mr. Koster on April 29, 2015. [App. p. 55; Statement of Undisputed Facts No.165] .

After the molestation allegations came to Pastor Garth, and the information started to come into the church, he wrote an e-mail on April 29, 2015, pursuant to this plurality of leadership beliefs, to inform his fellow pastors about the situation with the Kosters. [App. p. 56; Statement of Undisputed Facts No. 172; App. p. 578]. Pastor Garth stated he “desired to keep [the fellow pastors] informed of the situation and gain their spiritual insight and discernment.” [App. p. 610; Affidavit of Garth Glenn, Paragraph 20].

On May 3, 2015, Pastor Garth authored an e-mail to the members of the High School Leadership small group members that had previously disciplined the Kosters. [App. p. 57; Statement of Undisputed Facts No. 175]. Pastor Garth explained the reasoning behind sending his e-mail as follows:

On May 3, 2015, I drafted an e-mail to the High School Leadership Small Group members regarding the situation. Under the doctrine of Biblical Soul Care, these individuals disciplined one another and had learned of the problems in the Kosters’ marriage directly from the Kosters during the High School Leadership Small Group. As a discipleship group, these individuals had been personally

connected and involved in the Koster marriage. I sent this e-mail as part of our customary practice of discipleship to provide these individuals who were discipling Ryan and Lisa Koster with information so they could wisely and effectively respond to the situation and quash any gossip.

[App. p. 610; Affidavit of Garth Glenn, Paragraph 22]. Pastor Garth stated this sharing of information with the discipleship group is a practice to allow the “circle of influence to help disciple one another in accordance with their biblical mandate.” [App. p. 611; Affidavit of Garth Glenn, Paragraph 23]. He asked them to pray for the Kosters. [App. pp. 579-580].

On May 12, 2015, Pastor Garth sent an email to the administrative support staff of HBC regarding the Kosters’ child abuse allegations. [App. p. 57; Statement of Undisputed Facts No. 178]. Pastor Garth had learned the staff of HBC started to receive questions about the situation within the church and so his email was sent to inform them regarding the situation. [App. p. 611; Affidavit of Pastor Garth Glenn, Paragraph 25].

Mr. Koster asserts that Pastor Garth breached his fiduciary duties as a pastor by “divulging details of Ryan Koster’s marriage that were obtained in confidence.” [Appellant’s Brief, p. 10]. It is undisputed that everything said by Mr. Koster in Life Group was said in front of 5 other people, and not made one-on-one to Pastor Garth. [App. p. 188; Statement of Undisputed Facts No. 272]. The only breach of fiduciary duty asserted to this court is a breach of

confidentiality in the sending of the three-emails. [Appellant’s Brief, p. 16]. Mr. Koster asserts that Pastor Garth breached his fiduciary duties by sharing “highly intimate details about his marriage and sexual history that he did not share with anyone else.” [Appellant’s Brief, p. 24].

Mr. Koster has identified in this case that the fiduciary relationship between him and Pastor Garth was “pastor and parishioner.” [App. p. 187; Statement of Undisputed Facts No. 265]. Mr. Koster testified that he never thought of Pastor Garth as a psychologist, psychiatrist, licensed social worker, or marriage counselor. [App. p. 62; Statement of Undisputed Facts Nos. 203-205].

Although Mr. Koster asserts his pastor shared confidential information that he told to him during Life Group, he testified under oath that there are no statements in the e-mails that came from things Mr. Koster said in Life Group. [App. p. 188; Statement of Undisputed Facts No. 269]. Mr. Koster admits that Pastor Garth stated his observations and his opinions, and did not share things that Ryan Koster said in Life Group. [App. p. 188; Statement of Undisputed Facts No. 273]. In fact, in none of the e-mails are there any “highly intimate” details of the Koster marriage or their sexual history, including the information that Mr. Koster states was confidential: “looking at nude pictures, masturbation, and foreplay with his wife.” [App. pp. 578-583].

## ARGUMENT

### **I. THE DISTRICT COURT DID NOT COMMIT ERROR IN GRANTING SUMMARY JUDGMENT ON THE BREACH OF FIDUCIARY DUTY CLAIM UNDER THE PRIVILEGE AFFORDED CHURCH COMMUNICATIONS MADE WITHIN THE CHURCH**

#### **a. Preservation of Error**

The Appellees agree that this issue was preserved for appeal by the filing of the Notice of Appeal dated February 9, 2020. [App. p. 247-249].

#### **b. Standard of Review**

“The scope and standard of review of summary judgment rulings are well established.” *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). “The court reviews such rulings for correction of errors at law.” *Id.* “If the record shows no genuine dispute of a material fact and that the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.” *Id.* The Court probes “the summary judgment for legal error.” *Kush v. Sullivan*, 836 N.W.2d 152, 2013 Iowa App. LEXIS 633 (Iowa App. 2013).

#### **c. Argument**

Mr. Koster filed this breach of fiduciary duty claim against Pastor Garth and his church HBC. [App. p. 7-17]. It is undisputed that the fiduciary relationship at issue in this case is pastor and parishioner. [App. p. 187;



Statement of Undisputed Facts No. 265]. Mr. Koster asserts his former pastor breached fiduciary duties by allegedly communicating confidential information (i.e. sending three e-mails) about him and his marriage to fellow pastors, staff at HBC, and his former discipleship small group at the church. [Appellant's Brief, pp. 15-16]. The Appellant has confirmed that all e-mails written in this case by Pastor Garth were done "in his capacity as a pastor of his church." [Appellant's Brief, p. 10]. It is further undisputed that the communications in this case occurred **within the church community, not the general public**. [Appellant's Brief, p. 10]. The District Court granted summary judgment for the Appellees holding that Pastor Garth's e-mails within his church were privileged by the Ecclesiastical Shield of the United States Constitution. [App. p. 669].

In order to reverse this ruling, the Appellant must show that the Court's ruling constituted legal error. However, the Court's decision is not only supported by two cases decided by the Iowa Supreme Court, but is also supported by cases throughout the country. In fact, although the Appellant has filed this appeal claiming legal error, he has failed to present this Court even one case that supports that there can be an actionable claim against a pastor for breach of fiduciary duty for disclosing alleged confidential

information within his church community. For these reasons, the Court should affirm the District Court.

*i. The United States Constitution prohibits court scrutiny on ecclesiastical matters or court interference in religious doctrine or practices.*

The finder of fact in this case would be tasked with determining whether a pastor breaches his fiduciary duties by telling his congregation alleged confidential information about another congregant. A finder of fact would be unable to make this determination without determining the proper standard of care for a pastor at HBC, and without infringing upon HBC's fundamental practices of discipleship and plurality of leadership. It is this type of entanglement with religious entities that our Constitution, and Iowa law prohibits.

Our Nation has a fundamental belief in the separation of church and state. *Serbian Eastern Orthodox Diocese for U.S. of America and Canada v. Millivojevich*, 426 U.S. 696, 706, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). This belief has led to Courts refusing to insert themselves into matters of a religious institution. Under most circumstances the First and Fourth Amendment preclude civil courts from adjudicating church fights that require extensive inquiry into matters of ecclesiastical cognizance. *Id.* "Only on rare occasions where there exists a compelling government interest in regulation of public,

health, safety, and general welfare will courts venture into ecclesiastical matters.” *Simpson v. Wells Lamont Corp.*, 494 F.2d 490 (5<sup>th</sup> Cir. 1974).

Courts are cautious “not to interfere with the doctrinal beliefs and internal decisions of the religious society.” *Id.* However, in this appeal, the Appellant asserts that the open sharing of information through HBC’s discipleship doctrinal beliefs violates the law. This would require the Court to analyze this religious doctrine, and provide judgment on the same. “The Free Exercise Clause protects religious relationships, including the counseling relationship between a minister and his or her parishioner, primarily by preventing the judicial resolution of ecclesiastical disputes turning on matters of religious doctrine or practice.” *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 336 (5<sup>th</sup> Cir. 1998).

“The government may not impose a regulation that would substantially burden a religious practice based on sincerely held religious beliefs unless the lack of the regulation would significantly hinder a compelling state interest.” *Turner v. Church of Jesus Christ of Latter Day Saints*, 18 S.W.3d 877, 889 (Tex. App. 2000). A judgment finding that this church that openly shares sin in a community type counseling environment could not share certain information would be detrimental to the known religious practice of this church. [App. pp. 613-620].

The government also cannot get involved “concerning the structure, leadership, or internal policies of a religious institution.” *Id.* Prohibiting a pastor from consulting about one parishioner with their fellow staff and pastors would interfere with the leadership of this church, which is done in a plurality approach. [App. pp. 613-620]. “Civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity in matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.” *Id.*

The Iowa Supreme Court has followed the lead of the federal courts and has held that “The First and Fourteenth Amendments to the United States Constitution prohibit courts from interfering with ecclesiastical decision making.” *Pierce v. Iowa-Missouri Conference of Seventh-Day Adventists*, 534 N.W.2d 425 (Iowa 1995). The Iowa Supreme Court has recognized that the Free Exercise Clause “safeguards the free exercise of the chosen form of religion.” *Rudd v. Ray*, 248 N.W.2d 125 (Iowa 1976). Specifically in this case, Mr. Koster knowingly attended HBC, understanding that they openly share information within their walls pursuant to its religious beliefs. [App. p. 28; Statement of Undisputed Facts No. 31].

“The Free Exercise clause preserves the right to believe and profess whatever religious doctrine one desires.” *Id.* The government therefore:

May not compel affirmation of religious belief, **punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status**, or lend its power to one or the other side in controversies over religious authority or dogma.

*Id.* (emphasis added).

The District Court found this matter barred by the Ecclesiastical Shield of the United States Constitution because at the heart of this dispute is HBC's deeply held religious belief and practice of community-based discipleship with and between its congregants. If a ruling is allowed as to what information a pastor can share with his congregants, HBC's discipleship practices, Biblical Soul Care, and plurality of leadership approach would be punished. [App. p. 613-620].

The District Court held that Pastor Garth's "communications were made in furtherance of HBC's congregation's common interest in discussing the Koster's divorce and moral conduct." [App. p. 673]. The Court recognized that entering a judgment as to what information a pastor can share within his church would have a "concomitant chilling effect on churches autonomy to manage their own affairs." [App. p. 673; citing *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007)]. The District Court held that the United States Constitution prohibits this Court from entering a judgment that would

substantially infringe upon HBC's ability to practice Biblical Soul Care within its church environment. [App. pp. 665-674].

*ii. The District Court's ruling is supported by two Iowa Supreme Court cases: Kliebenstein and Bandstra.*

The District Court based its decision that the e-mails at issue in this lawsuit were subject to a qualified privilege under the Ecclesiastical Shield of the Constitution because the e-mails were shared by Pastor Garth within the congregation in furtherance of HBC's religious doctrines and practices. [App. p. 673]. This decision is supported by two Iowa Supreme Court cases: *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003), and *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19 (Iowa 2018).

The Iowa Supreme Court in *Kliebenstein* analyzed a claim against a church for defamation. *Kliebenstein*, 663 N.W.2d at 405. In March of 1999, the Plaintiff and her husband were members of Shell Rock United Methodist Church. *Id.* at 405. At the time Jerrold Swinton was the church superintendent. *Id.* Mr. Swinton visited the church one Sunday morning after he was informed of problems with the congregation. *Id.*

Mr. Swinton wrote a letter, signed by the members of the Staff Parish Committee and mailed the letter not only to members of the congregation at the church, **but also to other people that did not attend the church that**

**lived in the Shell Rock Community.** *Id.* (emphasis added). This letter described a situation where the Plaintiff whispered scornfully in Mr. Swinton’s ear and told him that a pastor needed to leave the church. *Id.* The letter accused the Plaintiff of having the spirit of “Satan.” *Id.* The letter went on to advise that the Staff should call a church conference and strip Jane Kliebenstein of church offices. *Id.*

The Plaintiff filed suit for defamation asserting that the letter attacked the Plaintiff’s integrity and moral character and damaged her reputation in the community. *Id.* Following discovery, the Defendants moved for summary judgment under the Establishment Clause of the federal and state constitution. *Id.* at 406.

The Iowa Supreme Court held that this controversy, where a church was sending a letter with claims against a member, implicated “the Establishment Clauses of the federal and Iowa constitutions.” *Id.* at 406.

The Iowa Supreme Court allowed court scrutiny in this matter, however, because the letter at issue was also sent to members of the general public that had no relationship to the church community. *Id.* at 406-407. It recognized that **if this letter had only been divulged solely to the members of Shell Rock UMC**, the Plaintiff’s claim would have no viability. *Id.* at 406

(emphasis added). This is because the Court recognized that it is a “general rule that:

the common interest of members of religious associations is such as to afford the protection of qualified privilege to communications between them in furtherance of their common purpose or interest. Thus, communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such are qualifiedly privileged.

*Id.* at 406-407. The Court held that the fact that Swinton communicated about the Plaintiff **outside of the congregation with the regular public that did not attend this church** weakened “this ecclesiastical shield.” *Id.* at 407. The Court found that publishing outside of the congregation went “beyond the group interest.” *Id.*

In contrast, the Iowa Supreme Court in *Kliebenstein* cited to a Minnesota Court of Appeals case: *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. App. 1993). *Id.* at 407. In *Schoenhals*, a church Pastor asked the Plaintiff to sign a guaranty on behalf of the church. *Schoenhals*, 504 N.W.2d at 234. The guaranty provided that the guarantors would split the profits from the sale of the church in the event of a default. *Id.* The Schoenhals complied and signed the guarantee. *Id.* The church fell behind on payments and the Plaintiffs discontinued their contact with the Church. *Id.* The church pastor then drafted a Letter of Transfer/Termination of Membership which **he read**



**out-loud to the entire congregation.** *Id.* at 235. In this letter the reasons for termination of membership included “backbiting, railing accusations, division, lying, and some of the most serious sins found in the Bible.” *Id.* at 234. The Plaintiff asserted that the allegations of lying were unrelated to church doctrine and, therefore, was not barred by the Establishment clause. *Id.* at 236. However, the Court found:

Moreover, we believe that the fact that the letter was disseminated only to other members of the Church strengthens the conclusion that Mains’ statements involved and were limited to Church discipline. The Schoenhals’ claim clearly involves an internal conflict within the Church, which is precluded by the First Amendment.

*Id.*

*Kliebenstein* stands for the proposition that communications made within the church community are privileged. *Kliebenstein*, 663 N.W.2d at 407. It is only when these communications are sent to more than just church members that the shield is lost. *Id.* at 408. The District Court’s decision is in line with the *Kliebenstein* “general rule” regarding privilege for communications made within the church community. It is undisputed in this matter that all of the individuals that received the e-mails at issue were part of HBC’s religious organization and community, and no e-mails went to the general public.

Mr. Koster attempts to get around *Kliebenstein* by arguing one individual from his former small group that received the e-mail, Jim Demarest, had withdrawn his *formal* membership from HBC. (emphasis added) [Appellant’s Brief, p. 40]. However, it was undisputed before the District Court that “Mr. Demarest had previously ended formal membership with HBC, but he continued to participate in certain activities, such as Small Group.” [App. p. 646]. In fact, there is no requirement that someone be a member of the church to participate in HBC small groups. [App. p. 611; Affidavit of Garth Glenn, Paragraph 24]. Jim Demarest had reached out to Pastor Garth by email stating he had been emailing with Mr. Koster monthly in the practice of continued discipleship. [App. p. 611; Affidavit of Garth Glenn, Paragraph 24]. The Court found that because Mr. Demarest was still a part of the church community through discipleship, “he had a similar interest in learning the information in the emails as the rest of congregation.” [App. p. 647]. The Plaintiff provided no evidence to dispute that Mr. Demarest was no longer involved in HBC through discipleship practices. The Court in *Kliebenstein* found that the shield is lost when communications go to people that do not have any connection with the church community and made no requirement that formal membership be issued to protect the shield. *See Id.* at 408. Clearly, members of the general public that do not attend a church do

not have a common interest in Ryan Koster's marriage and then divorce. However, Jim Demarest was part of Ryan Koster's discipleship group, even without formal membership to the church, and, therefore, had a common interest along with the other members of the discipleship group. The District Court's Ruling is in line with the *Kliebenstein* precedent and contains no legal error.

In *Bandstra v. Covenant Reformed Church*, the Iowa Supreme Court provided its most recent interpretation of the law in regard to communications occurring within a church. *Bandstra*, 913 N.W.2d at 19. *Bandstra* involved a defamation claim made against a church for communications that a church made **to its members regarding personal details of other members**, the exact thing that Ryan Koster is critical of Pastor Garth doing in this case. *Id.* at 48. The Iowa Supreme Court recognized that in the clergy context a statement loses its privilege only if it's made to individuals outside of the congregation. *Id.*

In *Bandstra*, two female parishioners brought claims against their church, Covenant Reformed Church ("Covenant"). *Id.* at 19. In 2003, Covenant hired Patrick Edouard to be a pastor in its church. *Id.* at 31. The Plaintiff, Valerie Bandstra, and her husband began to experience trouble in their marriage, and Valerie chose to seek counseling from Edouard. *Id.*

Edouard invited Valerie to come to the basement of his home for counseling. *Id.* During counseling Edouard and Valerie engaged in sexual intercourse, which the Plaintiffs contended was against her will. *Id.* In 2009, Valerie's sister, Patty, confided in her that Edouard had tried to kiss her during a counseling session. *Id.* at 32. Valerie then confronted Edouard telling him that he was using his pastoral position and trust that he received as a counselor to have sexual relationships with women. *Id.*

Meanwhile, Anne Bandstra (Valerie's sister-in law) began to counsel with Edouard. *Id.* During counseling, Edouard engaged in a sexual relationship. *Id.* In December of 2013, Anne and Valerie's husbands found out about the abuse and went to the elders. *Id.* Edouard admitted to inappropriate conduct with Anne and voluntarily offered his resignation. *Id.* at 32-33.

On December 15, the elders sent a letter **to the entire congregation** explaining that they had accepted Edouard's resignation. *Id.* at 33 (emphasis added). The letter stated Edouard's "sins are of such a nature that they warrant[ed] [the] acceptance of his resignation" but did not disclose the nature of the misconduct. *Id.* at 33.

On December 27, Anne and Valerie were summoned to an elder board meeting where they were asked to confess their sins in regard to this situation.

*Id.* After this meeting, on January 14, 2011, the Board of elders sent another letter **to the entire congregation** that stated:

During the past four weeks the Consistory has learned of a prolonged period of sexual immorality and/or inappropriate contact between Patrick Edouard and multiple women congregant members. These members will remain unnamed by the Consistory and we admonish the congregation that they remain unnamed by you also. In love for the body of Christ, we must demonstrate our forgiving love for these members by being prudent with our speech and persistent in prayer for us all. We are thankful for those members who came before the Elders and eagerly desire to remain a part of us. We whole-heartedly accept them.

*Id.* at 33 (emphasis added). Although this letter did not identify the women by name, the congregation had become aware of which women came forward with the allegations. *Id.*

The church then continued to discuss this matter amongst the elders and the congregation, regarding the topic of whether what happened to these women was sexual assault or not. *Id.* at 33-34. Valerie and Anne filed suit, alleging among other things that the church made defamatory statements to the congregation against Anne and Valerie. *Id.* at 35. The church moved for summary judgment, asserting the statements were qualifiedly privileged and could not give rise to a defamation action. *Id.* On June 1, 2018, the Iowa

Supreme Court, unanimously affirmed the grant of summary judgment to the church dismissing the claims for defamation. *Id.* at 50.

The Court in *Bandstra* found that the way a church chooses “to counsel and advise the congregation is outside the purview of the government.” *Id.* at 41. *Bandstra* is now the second opinion in Iowa that supports that “communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such are qualifiedly privileged.” *Id.* at 48 (citing *Kliebenstein*, 663 N.W.2d at 407). Just like in *Bandstra*, the claim made against HBC is that its pastor communicated information about a member to **other members of the church community and staff within the church**. Therefore, *Bandstra* further supports the District Court’s finding that these communications made and kept within the walls of the church are privileged. *See Id.* at 50 (stating “the elders were therefore speaking to members of the church about the conduct of other members in their capacity as such”).

Although the Appellant asserts *Bandstra* and *Kliebenstein* were defamation claims and thus distinguishable, it would not follow that the Court would want to protect these communications for one claim, but open them up to litigation for another. There has no holding in this Court that qualified

privilege under the U.S. or Iowa Constitutions only applies to defamation claims.

- iii. ***Neutral principles of law cannot be applied to a pastor communicating with his fellow pastors and congregation regarding a parishioner without infringing upon the practices of this religious institution.***

Appellant next argues that the District Court erred in finding that this matter was privileged under the Ecclesiastical Shield of the United States Constitution because he asserts this matter can be decided without looking to religious practices. [Appellant’s Brief, p. 34]. “The right to free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribe (or prescribes) conduct that his religion prescribes (or proscribes).” [Appellant’s Brief, p. 34 (*citing Bandstra*, 913 N.W.2d at 42)]. However, the law of confidentiality in the case of a church that openly communicates sin through community discipleship does proscribe conduct that HBC prescribes and practices.

Originally, when this issue came before the Court on the First Motion for Summary Judgment, the District Court found that the breach of fiduciary duty claim was not protected by the Ecclesiastical Shield because it was possible for the Court to determine whether a breach of confidentiality occurred using secular means only. The Court held:

Under the Establishment Clause, a religious institution cannot be immune from tort actions when it is possible for a court to decide the action using only neutral principles of law as opposed to directly analyzing religious doctrine. The duty to keep information confidential is a sufficiently neutral principle of law, and the present case does not require the Court to directly analyze HBC's religious doctrines.

[App. p. 635].

However, the District Court only stopped half way through the appropriate analysis in the First Motion because it was not asked to further decide, even if there is a secular, neutral principle behind the duty to keep something confidential, whether judgment on this issue could infringe upon a religious practice, here Biblical Soul Care.

In contrast, in the Third Motion for Summary Judgment the Court was tasked to complete the analysis and in doing so based its decision upon *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007), a case directly on point with the case at hand. In *Westbrook*, a pastor who was also a licensed professional counselor, directed his congregation to shun the Plaintiff for engaging in a “biblically inappropriate relationship.” *Id.* at 391.

The Plaintiff in *Westbrook* experienced marital difficulties with her husband and obtained counseling from her pastor. *Id.* at 392. During her sessions, the Plaintiff confided in her pastoral counselor that she had an extra-



marital affair. *Id.* The pastor then wrote a letter to church Elders, who in turn published the letter to the members of the church, which explained that the Plaintiff intended to divorce her husband and that she had a “biblically inappropriate” relationship with another man. *Id.* at 393. The letter further stated the members of the church should shun the Plaintiff for her behavior. *Id.*

The Plaintiff filed suit against the pastor alleging claims for defamation, negligence, breach of fiduciary duty, and intentional infliction of emotional distress. *Id.* at 394. The church moved to dismiss on constitutional grounds stating that this was an ecclesiastical dispute. *Id.* The trial court granted the Motion to Dismiss. *Id.* The Court of Appeals affirmed, except for one claim for breach of fiduciary duty, which it held was a purely secular issue. *Id.* The Plaintiff’s argument was that her pastor breached “this secular duty to maintain confidentiality.” *Id.* at 399. Westbrook argued the same thing that Mr. Koster asserts here that “deciding whether Westbrook breached a secular duty of confidentiality as a licensed professional counselor would not. . . require resolution of a theological matter.” *Id.* at 396.

However, as the Texas Supreme Court found, it is not enough to say that confidentiality could be evaluated through secular means; if evaluating a secular duty would have a negative effect on a religious practice then that

Court evaluation violates the Establishment and Free Exercise Clauses. *Id.* at

397. The Court held:

But Penley's argument goes to only one area of constitutional concern and ignores another. While it might be theoretically true that a court could decide whether Westbrook breached a secular duty of confidentiality without having to resolve a theological question, that doesn't answer whether it's doing so would unconstitutionally impede the church's authority to manage its own affairs. Churches have a fundamental right to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. It is a core tenant of the First Amendment jurisprudence that, in resolving civil claims, courts must be careful not to intrude upon internal matters of church governance.

*Id.* at 397.

The District Court in ruling on the Third Motion for Summary Judgment did not err in finding that although breach of confidentiality could be a purely secular issue, the matter is still privileged because this information was shared through a religious practice and because judgment could not be entered by the Court without intruding upon internal matters of church governance and religious practices of HBC. It was not error for the Court to follow the precedent of *Westbrook* and find this claim violates the Constitution because any judgment would infringe upon HBC's fundamental

right to practice community-based discipleship and the open sharing of sin pursuant to their beliefs.

- iv. *The Appellant has failed to cite a single case to indicate that a claim for breach of fiduciary duty against a pastor for disclosing confidential information is not barred by the Ecclesiastical Shield.***

Although the Appellant asserts that it was legal error for the District Court to find that this matter was privileged under the Ecclesiastical Shield, he has failed to cite a single case in any jurisdiction to support that there can be a viable claim for breach of fiduciary duty against a pastor for sharing alleged confidential information within his church community.

Rather, the Appellant only cites *Vione v. Tewell*, 12 Misc. 3d 973, 820 N.Y.S. 682 (N.Y. Sup. Ct. 2006) as being “instructive.” [Appellant’s Brief, p. 25]. In *Vione*, the Court held that the Constitution did not protect the Court from determining whether a pastor breached his fiduciary duties by having an affair with the parishioner’s wife, while simultaneously acting as the couple’s marriage counselor. *Id.* at 682. However, this is not a case involving sexual abuse, which can never be a viable religious practice. In cases of sexual abuse in a pastoral counseling relationship, a Court can determine whether a pastor should or should not sexually abuse his or her congregant without having to address religious tenants or infringe upon the same.

In contrast, in this case the Court would be tasked to determine whether Pastor Garth's religious practice of community discipleship within his church violated a fiduciary duty of confidentiality. The Court would be tasked with determining what information can or cannot be shared by a pastor within the church. The senior pastor of HBC provided an affidavit to the District Court providing that "if our pastors or ministry leaders were prevented or limited in sharing information about other members sins and struggles within the confines of the church it would adversely affect our religious beliefs." [App. pp. 613-620]. Any adjudication as to how a church is allowed to communicate with its members necessarily results in either judicial affirmance or disaffirmance of the propriety of the church's religious doctrine, which is not permitted by the government as a matter of law.

**d. Conclusion**

In order for a finder of fact to enter judgment in this case, it would have to determine whether a pastor can share alleged confidential information within the walls of his church between his fellow pastors and his congregation under their religious practices and beliefs. The District Court found that pastor's communications within his church pursuant to his religious practices were privileged by the Ecclesiastical Shield of the U.S. Constitution and this decision is valid under the Constitution, established Iowa precedent and

precedent throughout the United States. Therefore, the Court should affirm the District Court’s Ruling granting summary judgment to the Appellees.

**II. RYAN KOSTER FAILED TO PRODUCE SUFFICIENT EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO EVERY ELEMENT OF HIS BREACH OF FIDUCIARY DUTY CLAIM AGAINST GLENN AND HBC.**

**a. Preservation of Error**

The Appellees agree that this issue was preserved for appeal by the filing of the Notice of Appeal dated February 9, 2020. [App. p. 247-249].

**b. Standard of Review**

“The scope and standard of review of summary judgment rulings are well established.” *Crippen*, 628 N.W.2d at 565. “The court reviews such rulings for correction of errors at law.” *Id.*

**c. Argument**

Mr. Koster next asserts that he produced “sufficient evidence to create a genuine issue of material fact as to every element of his breach of fiduciary duty claim. . . .” [Appellant’s Brief, p. 17]. However, he failed to establish an actionable duty and breach.

**i. *The claimed fiduciary duty arises only from the role of pastor and congregant which has been deemed insufficient to raise a claim for breach of fiduciary duty.***

First and foremost, Mr. Koster failed to present an actionable duty in this matter. Mr. Koster has testified that the fiduciary relationship between

him and Pastor Garth was that of a pastor and parishioner. [App. p. 187; Statement of Undisputed Facts No. 265]. There is no claim, nor any evidence in the record, that Pastor Garth’s fiduciary duty arose from secular counseling. [App. pp. 61-62 & 187; Statement of Undisputed Facts Nos. 202-205, 265]. In fact, Mr. Koster has testified that he did not see Pastor Garth as a psychologist, psychiatrist, licensed social worker, or marriage counselor. [App. pp. 61-62; Statement of Undisputed Facts Nos. 203-205]. This is an important distinction which precludes the claim in this case.

In *Doe v. Hartz*, 52 F.Supp.2d 1027 (N.D. Iowa 1999), the Iowa Federal Court held that it does not believe that the “status as a priest, standing alone, is enough to establish a fiduciary duty to all and sundry to refrain from certain conduct.” *Id.* at 1064. The Court went on to state “rather, in those cases permitting a breach-of-fiduciary duty claim against a member of the clergy to go forward, the claim was allowed because something more than a general priest-parishioner relationship was the basis for the fiduciary duty.” *Id.* at 1065.

Courts in other jurisdictions have found that breaches of fiduciary duty in regard to pastoral counseling occur when the pastors “hold themselves out” to be duly qualified individuals to provide secular counseling. *See Sanders*, 134 F.3d at 336. The Court in *Sanders* allowed a claim for breach of fiduciary

duty, and distinguished it from a claim of clergy malpractice because the counselor “held himself out as possessing the education and experience of a professional marriage counselor” and therefore his actions could be judged as a marriage counselor not as a pastor. *Id.*

There was no evidence in the record before the District Court that Pastor Garth at any time held himself out to have professional or secular counseling experience. Mr. Koster testified that he knew that Pastor Garth did not have any seminary degree, was not a psychologist, psychiatrist, licensed social worker, and he did not think of him as a marriage counselor. [App. pp. 60-62; Statement of Undisputed Facts Nos. 195; 202-205]. In fact, he states to this Court in his appeal brief that Pastor Garth sent his emails “**as a pastor of his church,**” not as a secular counselor. [Appellant’s Brief, p. 11 (emphasis added)].

Appellant asserts that “several courts have recognized that marriage counseling gives rise to a fiduciary relationship to a pastor and congregant.” [Appellant’s Brief, p. 21]. However, the cases cited by the Appellant all stand for the fact that the pastor must hold himself out to be a secular marriage counselor or be accused of sexual abuse before the fiduciary relationship can be actionable. In *Doe v. Evans*, 814 So.2d 370 (Fla. 2002), the Court found a fiduciary duty against a pastor performing marital counseling, but only

because that pastor held himself “out as qualified to engage in marital counseling.” *Id.* at 375. In *Destafano v. Grabrian*, 763 P.2d 275 (Colo. 1988), the Court held that the issue before them was whether a member of the clergy, “who holds himself out as being trained and capable of conducting marital counseling is immune from any liability for harm caused by his counseling by virtue of the first amendment.” *Id.* at 283. The Court noted that the priest at issue held “himself out to the community as a professional and trained marriage counselor.” *Id.* at 284. The Court explained that a “member of the clergy who represents himself as a competent marital counselor, has a duty to employ the degree of knowledge, skill, and judgment possessed by members of that profession in the community.” *Id.* In *Doe v. Liberatore*, 478 F.Supp.2d 742 (M.D. Penn 2007) the Court found that it recognized a “breach of fiduciary duty claims against a priest accused of sexual misconduct.” *Id.* at 773.

- ii. A pastor divulging confidential information has been found in other jurisdictions as not giving rise to a breach of fiduciary duty claim.*

Mr. Koster’s claim against Pastor Garth stems from his assertion that Pastor Garth shared confidential information that he learned in a pastoral counseling relationship in e-mails, and said action amounts to a breach of fiduciary duty. Although Iowa has yet to rule on a case involving this topic,



this matter has been considered throughout the country and found not to be a non-actionable claim for clergy malpractice.

The Second Circuit has held that claims for breach of confidence against the clergy would be barred by the Establishment and Free Exercise Clause as the same would require “the trier of fact to determine the true religious rules governing the revelation of communications between clergy and congregants.” *Cox v. Miller*, 296 F.3d 89, 105 (2<sup>nd</sup> Cir. 2002).

In *Hester v. Barnett*, 723 S.W.2d 544 (Mo. App. 1987), the Plaintiffs who were husband and wife asked their pastor to come into their home and counsel them regarding their marriage. *Id.* at 550. The Plaintiff asserted that the Pastor assured them that the communications between him and them would be kept in the strictest confidence and not divulged to anyone outside of the Hester family. *Id.* The husband and wife then confided in their pastor that their children had disciplinary and behavioral problems and the Pastor offered family counseling to the entire family. *Id.* Notwithstanding the promises of confidentiality, Pastor Barnett divulged to the deacons and members of the community the confidential communications from the family without their authority. *Id.* Pastor Barnett lied about the communications and stated the Hesters abused their children and treated them cruelly. *Id.* The Plaintiffs filed suit for defamation against Pastor Barnett and asserted a claim

for ministerial malpractice based on the divulging of information from the counseling sessions. The Missouri Court found that ministerial malpractice is “the breach of a professional duty unique to that profession.” *Id.* The Court found that this claim was properly dismissed because even though there is a spiritual advisor/communicant privilege codified in Missouri, it was not intended to go beyond a judicial proceeding, let alone justify a cause of action for its breach. *Id.* at 554. The Court stated: “the tradition that a spiritual advisor does not divulge communications received in that capacity, moreover, even if a tenant of ministerial ethics, as Count I pleads, describes moral, not a legal duty.” *Id.* The Court found that “in the absence of a legal duty, a breach of a moral duty does not suffice to invest tort liability.” *Id.*

In *Lightman v. Flaum*, 97 N.Y.2d. 128 (N.Y. App. 2001), the Court looked at whether there was a fiduciary duty of confidentiality upon members of the clergy that subjects them to civil liability for the disclosure of confidential communications. *Id.* In *Lightman*, the Plaintiff Chani Lightman initiated a divorce proceeding against her husband. *Id.* at 131. She also sought an order for temporary custody of her children. *Id.* In opposition to the application, her husband submitted two affidavits from two rabbis apparently intending to show that his wife was jeopardizing the Orthodox Jewish upbringing of the children by not following religious law. *Id.* The Rabbi

further stated in the affidavit that the Plaintiff had stopped her religious bathing so she did not have to engage in sexual relations with her husband. *Id.*

Lightman filed suit arguing that the Rabbis disclosed confidential communications about her in her divorce proceeding, thereby breaching a fiduciary duty with her. *Id.* In support of her argument the Plaintiff cited the clergy-penitent privilege in New York. *Id.* The Court held that the clergy-penitent privilege was unknown at common law. *Id.* at 134. It was “enacted to respond to the urgent need of people to confide in, without fear of reprisal, those entrusted with the pressing task of offering spiritual guidance so that harmony with one’s self and others can be realized.” *Id.*

The Defendants argued that clerics cannot be compared to secular professionals in regard to confidentiality because the secular practitioners derive their professional authority from the issuance of their licenses. *Id.* at 135. The Court found there to be a distinction between confidential communications under the rules and regulations that govern secular professionals and information cloaked by an evidentiary privilege under a statute. *Id.* The Court found it important that other fiduciary relations, such as an attorney or a health care professional had specific Codes of Professional Responsibility which created a duty for them to keep confidences. *Id.* In contrast, clerics are free to engage in religious activities without the State’s

permission and there is no comprehensive scheme that regulates the clergy-congregant spiritual counseling relationship. *Id.* The Court stated: “although plaintiff understandably resents the disclosure of intimate information she claims she revealed to defendants in their role as spiritual counselors” there could be no cause of action for breach of a fiduciary duty involving the disclosure of oral communications between a congregant and a cleric. *Id.* at 137.

“While a claim of clergy malpractice may require a court to examine ecclesiastical doctrine, a claim of breach of fiduciary duty raises secular issues, which can be adjudicated using neutral principles of law.” *Langford v. Roman Catholic Diocese of New York*, 271 A.D.2d 494, 501, 705 N.Y.S. 2d 661 (N.Y.S. 2000). Unlike claims for clergy malpractice, a claim for breach of fiduciary duty does not necessarily require a court to become heavily entangled in religious doctrine and practice.” *Id.* But simply calling a claim one of “breach of fiduciary duty” is not sufficient to avoid the challenge. Rather, the Court needs to look at the claim made against the Pastor to determine if this is, in fact, a claim of clergy malpractice.

In the case at hand, the Appellant asserts that a pastor who sent e-mails to his congregation breached his fiduciary duties as a pastor. To determine if this is so, the Court would have to heavily entangle itself in the proper

standard of care for pastors in their church/religious practice and what pastors can or cannot communicate to their congregation. Because the Constitution would prohibit such an entanglement, Appellant cannot establish a fiduciary duty in this case.

*iii. The undisputed facts establish that Iowa Code 622.10 does not apply in this matter because all statements made to Pastor Garth were made in front of a group of people.*

The Appellant also did not set forth evidence to establish a breach of confidentiality against Pastor Garth. Mr. Koster asserts that Pastor Garth's duty to keep information confidential arises from Iowa Code § 622.10. [Appellant's Brief, p. 26]. The Appellant states: "Iowa law establishes a privilege of confidentiality for counselors and members of the clergy that prohibits them from being allowed to disclose any confidential communications properly entrusted to the person in the person's professional capacity." [Appellant's Brief, p. 26]. Although it is correct that under Iowa Code § 622.10 communications between a member of the clergy and a congregant can be privileged, the Iowa Court of Appeals has specifically held that the privilege may be lost if the statements are made "in the presence of third persons." *State v. Hesse*, 2009 Iowa App. LEXIS 201 \*15 (Iowa App. 2009). It is undisputed that all statements in this case that Mr. Koster claims were confidential were made in "Life Group" where Pastor Garth and Mr.

Koster were surrounded by 4 other people (Deanna Glenn, Lisa White, Christie and Koral Martin). Accordingly, any potential privilege was waived by Mr. Koster at the time of utterance of the statements.

*iv. Ryan Koster did not produce sufficient evidence to support the e-mails contained any confidential information.*

Appellant argues the specific “confidential” information he provided to Pastor Garth in Life Group, and that could not be shared, as:

. . . Glenn directed Ryan to reveal everything about his sex life, **which included**, among other things, **talking about looking at nude pictures, masturbation, foreplay with his wife** [citations omitted]. Ryan never shared this information with anyone else and would not have shared it but for the express understanding that it would not be shared outside of Life Group.

(emphasis added) [Appellant’s Brief, p. 13]. Appellant asserts that Pastor Garth breached his fiduciary duties by sending three e-mails containing the above confidential information. [Appellant’s Brief, pp. 15-17].

However, nowhere in those three e-mails does Pastor Garth divulge or reveal Appellant’s prior conversations about looking at nude pictures, masturbation, or foreplay with his wife. [Appellant’s Brief, p. 13]. In fact, Ryan Koster testified and conceded there are **no statements** in the e-mails that come from statements he made in Life Group. [App. p. 188; Statement of Facts No. 269]. Rather, he admitted that Pastor Garth stated his

observations and his opinions on the situation, not something that Ryan had actually told him in confidence in Life Group. [App. pp. 188-190; Statement of Facts Nos. 273, 275, 281]. Therefore, he failed to present evidence of breaches of confidentiality in this matter.

**d. Conclusion**

Although the Appellees assert that the District Court properly decided this matter on privilege grounds under the Ecclesiastical Shield of the Constitution, the Appellant's argument that he presented sufficient evidence to support his claim for breach of fiduciary duty is not supported by the record. For these reasons the Court should affirm the District Court's decision.

**III. THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON THE DEFAMATION CLAIM**

**a. Preservation of Error**

The Appellees agree that this issue was preserved for appeal by the filing of the Notice of Appeal dated February 9, 2020. [App. p. 247-249].

**b. Standard of Review**

“The scope and standard of review of summary judgment rulings are well established.” *Crippen*, 628 N.W.2d at 565. “The court reviews such rulings for correction of errors at law.” *Id.*

**c. Argument**

Appellant argues that the District Court erred in determining that the e-mails were qualifiedly privileged. In order to reverse this decision, the Appellant would have to show that the District Court committed a legal error in this regard.

It is undisputed that the e-mails at issue were drafted by Pastor Garth “in his capacity as a pastor of his church” and were sent to (1) fellow pastors, (2) members of the High School Leadership small group and (3) staff at HBC. [Appellant’s Brief, p. 10; 15-17]. Pastor Garth stated that he sent the e-mails following his religious tenants of both plurality of leadership and the practice of Biblical Soul Care. [App. pp. 606-612]. The District Court based its decision finding these e-mails to be subject to qualified privilege on *Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W.2d 404 (Iowa 2003). The Court cited the decision which held:

the common interest of members of religious associations is such as to afford the protection of qualified privilege to communications between them in furtherance of their common purpose or interest. Thus, communications between members of a religious organization concerning the conduct of other members. . . as such are qualifiedly privileged.



*Id.* at 406-407. Due to the discipleship beliefs of HBC, and the open sharing of sin amongst each other, the Court found that Pastor Garth had a proper interest in sharing this information with congregants.

Appellant attempted to get around the *Kliebenstein* decision by arguing that the Court should not allow the privilege because Jim Demarest was no longer a “member” of the church. The Court reviewed the facts in the record and found that it was undisputed that although Jim Demarest had ended his formal membership, he still participated in discipleship groups within HBC. [App. p. 647; App. p. 611; Affidavit of Garth Glenn Paragraph 24]. “The Court conclude[d] that Mr. Demarest’s formal membership (or lack thereof) is not salient in light of the fact he continued to actively participate in relevant activities.” [App. p. 647]. In *Kliebenstein*, the Court held that the qualified privilege could be lost by the fact the letter went out to the public that did not attend the church. Here, all recipients of the e-mail were a part of the church community, whether through employment or discipleship groups.

The District Court also found that Pastor Garth had a proper interest in sharing the information based on the security issue of the allegation of molestation and in furtherance of their common interest of discussing the Koster’s divorce and Appellant’s conduct (i.e. counseling in community or

discipleship within the church). Therefore, the Court did not err in finding these statements subject to qualified privilege.

**d. Conclusion**

The District Court's ruling on qualified privilege is in line with established precedent, contains no legal error, and should be affirmed.

**CONCLUSION**

The Appellate Court's standard of review is for correction of errors at law. The District Court's grant of summary judgment is in line with Iowa precedent and is not contradicted by any authority provided by the Appellant. A court of law cannot render judgment on whether a Pastor advising his church and fellow staff about another member breaches his fiduciary duty as a pastor without opening the door of analyzing the proper standard of care of a pastor, and infringing upon HBC's religious doctrine of open communication and discipleship practices of "counseling in community."

The Iowa Supreme Court has held that the way a pastor chooses to advise and counsel his congregation about a parishioner is "outside the purview of the government" and this Court would sway from that opinion, and the protections of the Ecclesiastical Shield if it reversed the District Court.

For all these reasons the Appellees respectfully request the Court affirm the District Court and provide any other relief the Court deems just and equitable.

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**REQUEST FOR ORAL ARGUMENT**

The Appellees respectfully request oral argument on this Appeal.

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This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1) and 6.903(1)(g)(1) or (2) because:

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/s/ Amanda M. Richards  
Amanda M. Richards

December 8, 2020

**CERTIFICATE OF SERVICE AND FILING**

I certify that on the 8<sup>th</sup> day of December, 2020, I, the undersigned, did file electronically this Appellees’ Final Brief and Request for Oral Argument with the Clerk of the Iowa Supreme Court using the Electronic Document Management System.

I certify that on the 8<sup>th</sup> day of December, 2020, I, the undersigned, did serve this Appellees’ Final Brief and Request for Oral Argument on the attorney for the Appellant via electronic service of the Electronic Document Management System. Upon information and belief, the attorney for the Appellant is a registered filer pursuant to Iowa R. Civ. P. 16.201.

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