

11 B  
6 A

IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,522

MAURICE SKOBLOW,

Petitioner,

v.

AMERI-MANAGE, INC., ROBERT A.  
BURTON, JOHN PITRELLI, ELSA  
DOMINGUEZ, BARBARA McMURTREY,  
JACKIE DALE and PAUL UHRIG,

Respondents.

---

FILED  
BY *M*  
CLERK OF COURT

---

PETITIONER'S BRIEF ON JURISDICTION

---

Robert Weisberg, Esquire  
LIPMAN & WEISBERG, P.A.  
5901 Southwest 74th Street  
Suite 304  
Miami, Florida 33143-5186  
Telephone: (305) 662-2600

COOPER, WOLFE & BOLOTIN, P.A.  
500 Roberts Building  
28 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 371-1597

Counsel for Petitioner

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Case and Facts	1
Summary of Argument	2
Argument	
THIS COURT HAS JURISDICTION BECAUSE THE THIRD DISTRICT CONSTRUED THE IMMUNITY PRO- VISIONS OF THE STATE AND FEDERAL CONSTITU- TIONS. THIS COURT SHOULD EXERCISE JURIS- DICTION BECAUSE THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE AND HAS BEEN CERTI- FIED TO THIS COURT IN ANOTHER CASE.	3
Conclusion	6
Index to Appendix	7
Certificate of Service	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Estate of Finch, 372 So.2d 532 (Fla. 1979)	3
Estate of Murphy, 340 So.2d 107 (Fla. 1979)	3
Jollie v. State, 405 So.2d 418 (Fla. 1981)	5
Maine v. Thibotot, 448 U.S. 1, 100 S.Ct. 2502 (1980)	4
Spooner v. Dep't of Correction, 11 FLW 402 (Fla. 1st DCA, Feb. 13, 1986), pending on rehearing	5
 <u>Other Authorities</u>	
U.S.Const., amendment 11	1,2,3,4,5
Art. V, § 3, Fla.Const.	3
Art. X, § 13, Fla.Const.	1,2,3,5
42 U.S.C. § 1983	1,2
Steinglass, The Emerging State Court § 1983 Action: A Procedural Review, 38 U.MIA.L.REV. 381 (1984)	4

STATEMENT OF THE CASE AND FACTS

This is a petition to review a decision of the Third District Court of Appeal which construes the immunity provisions of the state and federal constitutions.

The facts of this case are set out fully in the decision of the Third District, which is attached as an appendix to this brief. Plaintiff had sued Defendant Ameri-Manage for damages under 42 U.S.C. § 1983. The trial court entered summary judgment in favor of Ameri-Manage. The Third District affirmed. It held that Ameri-Manage was an agent of the state and was entitled to the state's immunity. In the course of ruling on the state's immunity from suit under § 1983, the Third District construed both the eleventh amendment to the United States constitution and Art. X, § 13 of the Florida constitution. It stated:

Absent an unequivocal expression of intent by either the United States Congress to overturn a state's eleventh amendment immunity, or a state legislature to waive the state's sovereign immunity, a state and its agencies are immune from civil rights actions brought against them pursuant to section 1983 in both federal and state courts.

(A. 3)(emphasis added). It applied the eleventh amendment to a suit in state court. Then the court found that the state constitution could apply to a federal cause of action by concluding that the immunity provision of the Florida constitution could bar a § 1983 action. (A. 3-4). Plaintiff sought review in this Court.

SUMMARY OF ARGUMENT

This Court has jurisdiction over the decision of a district court of appeal which construes a provision of the state or federal constitution. The decision here construed the immunity provisions of both the federal and state constitutions. Although the eleventh amendment to the United States constitution only limits the jurisdiction of federal courts, the Third District held that it would also limit the jurisdiction of the state courts. And although the Third District was ruling on the scope of a federal cause of action under 42 U.S.C. § 1983, it held that the immunity provision of the state constitution would override that federal right.

This Court therefore has the power to take discretionary jurisdiction. This Court should exercise that power here because an almost identical issue has been certified to this Court in another case. It would be in the interest of the courts and all parties to take jurisdiction in this case, as well as in the certified question case.

## ARGUMENT

THIS COURT HAS JURISDICTION BECAUSE THE THIRD DISTRICT CONSTRUED THE IMMUNITY PROVISIONS OF THE STATE AND FEDERAL CONSTITUTIONS. THIS COURT SHOULD EXERCISE JURISDICTION BECAUSE THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE AND HAS BEEN CERTIFIED TO THIS COURT IN ANOTHER CASE.

The Third District expressly construed the eleventh amendment to the United States constitution and Art. X, § 13 of the Florida constitution in its decision in this case. It held that a state is immune from suit in state court under the eleventh amendment to the United States constitution. And it held that the immunity provision of the state constitution could preclude a federal claim in state court. These constructions of the federal and state constitutions give this Court jurisdiction. Art. V, § 3(b)(3), Fla.Const. Further, this Court should exercise its jurisdiction because the question is one of great importance and has already been certified to this Court by the First District in another case.

This Court has discretionary jurisdiction to review decisions which construe provisions of the state and federal constitutions. See Estate of Finch, 372 So.2d 532 (Fla. 1979); Estate of Murphy, 340 So.2d 107 (Fla. 1979) (each applying similar provision of 1968 constitution providing for direct appeal of trial court decisions which expressly construe the constitution). The Third District here construed the eleventh amendment of the United States constitution to apply to the jurisdiction of state

courts, although it only applies on its face to federal court.

The eleventh amendment states:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Third District construed this provision to extend to the jurisdiction of state court.

Absent an unequivocal expression of intent by either the United States Congress to overturn a state's eleventh amendment immunity, or a state legislature to waive the state's sovereign immunity, a state and its agencies are immune from civil rights actions brought against them pursuant to section 1983 in both federal and state courts.

(A. 3) (emphasis added).

This issue of the scope of the eleventh amendment has arisen in several cases throughout the country. Each one has held that the eleventh amendment does not apply in state court. See generally Steinglass, The Emerging State Court § 1983 Action: A Procedural Review, 38 U.MIA.L.REV. 381, 407 & nn. 117, 118 (1984) ("Because the eleventh amendment is not applicable in state courts, some plaintiffs unable to obtain full relief in federal court have bifurcated their claims and sought retroactive relief in state court"). Although the scope of the amendment should be determined by federal law, the Third District ignored the only United States Supreme Court decision on the issue. Maine v. Thibotot, 448 U.S. 1, 9, n.7, 100 S.Ct. 2502, 2507, n.7 (1980) ("No Eleventh Amendment question is present, of course, where an ac-

tion is brought in a state court since the Amendment, by its terms, restrains only "[t]he Judicial power of the United States").

A similar issue has already been certified to this Court by the First District Court of Appeal. Spooner v. Dep't of Correction, 11 FLW 402 (Fla. 1st DCA, Feb. 13, 1986), pending on rehearing.<sup>1/</sup> In light of the importance of this question and the First District's certification of a similar issue in Spooner, this Court should exercise its discretion and take jurisdiction in this case. Cf. Jollie v. State, 405 So.2d 418 (Fla. 1981).

In addition to construing the eleventh amendment, the Third District also construed the immunity provision of the state constitution, Art. X, § 13. That provision states:

**Suits against the state.**--Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

The Third District held that this would apply to suits under 42 U.S.C. § 1983, i.e., only the state would have the power to authorize a civil rights suit. But an action under § 1983 is created by federal law. It should not be subject to the limitations of state law. The Third District's broad construction of sovereign immunity should be reviewed.

---

<sup>1/</sup> The precise certified question is whether the eleventh amendment immunity has been waived by passage of certain risk management statutes. However the underlying assumption of the certified question is that the eleventh amendment limits state court jurisdiction.



CONCLUSION

For the foregoing reasons, Petitioner requests this Court to take jurisdiction in this case.

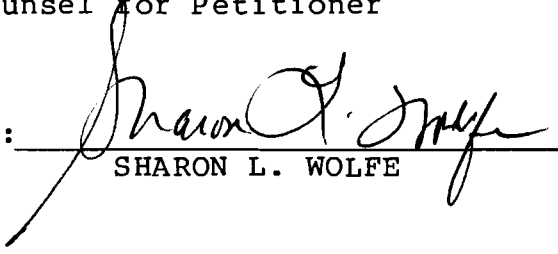
Respectfully submitted,

Robert Weisberg, Esquire  
LIPMAN & WEISBERG, P.A.  
5901 Southwest 74th Street  
Suite 304  
Miami, Florida 33143-5186  
Telephone: (305) 662-2600

COOPER, WOLFE & BOLOTIN, P.A.  
500 Roberts Building  
28 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 371-1597

Counsel for Petitioner

By: \_\_\_\_\_

  
SHARON L. WOLFE