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IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 68,522

MAURICE SKOBLOW,

Petitioner,

v.

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

Respondents.
_____/

RESPONDENTS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The Respondents accept the Petitioner's Statement of the Case and Facts with the exception of the assertion that the Third District Court of Appeal "applied the eleventh amendment to a suit in state court." (Petitioner's Jurisdictional Brief, p.1). The district court had a correct understanding of the distinction between a state's eleventh amendment immunity from suit in the federal court and the state's sovereign immunity from suit in the state courts; that the district court understood this distinction can be readily seen from the discussion in Footnote 1 of the court's opinion.

SUMMARY OF ARGUMENT

The Eleventh Amendment to the United States Constitution provides for immunity from suit by an individual against a state or its agencies in federal court. The Eleventh Amendment immunity is an application on the federal level of the states' sovereign immunity. That sovereign immunity which the Eleventh Amendment "is but an exemplification" cannot be waived except by a clear expression of intent by the State Legislature or the United States Congress. The district courts of appeal which have addressed this issue, as well as the United States Eleventh Circuit Court of Appeals, are in accord that the State of Florida has not waived its sovereign immunity from suit in federal civil rights actions. More importantly, the Third District Court of Appeal did not rule on the issue of whether the State of Florida has waived its sovereign immunity from federal civil rights actions. The district court merely set forth the well-established rule with regard to the waiver of sovereign immunity and cited supporting authority. While it is understandable why the Plaintiff's Bar desires to drive a sword through the State's sovereign shield of immunity, there is no clarion call for this Court to review that issue today.

ARGUMENT

THIS COURT SHOULD DECLINE JURISDICTION BECAUSE THE THIRD DISTRICT COURT OF APPEAL DID NOT EXPRESSLY RULE ON THE ISSUE OF WHETHER THE STATE OF FLORIDA HAS WAIVED ITS SOVEREIGN IMMUNITY FROM SUIT IN FEDERAL CIVIL RIGHTS ACTIONS.

This Court should decline to exercise its discretionary jurisdiction to review the decision of the district court of appeal under s. 3, Art. V, State Const., and Rule 9.030, Fla.R.App.P. The Petitioner asserts that the Third District Court of Appeal expressly construed the Eleventh Amendment to the United States Constitution and Art. X, s. 13, of the Florida Constitution in its decision. While the district court in its decision did mention the issue of waiver of sovereign immunity, the court did not directly rule on this issue. The court stated the general rule regarding waiver and cited applicable case law. The district court made the fact clear that it was not ruling on this issue in its decision at page 4 stating: "The plaintiff does not argue that the Florida legislature has waived the state's sovereign immunity so as to allow civil rights actions against it." Skoblow v. Ameri-Manage, Inc., et al., Case No. 85-1741 (Fla. 3d DCA, February 18, 1986).

Thus, there is no need for this Court to take jurisdiction in this case to review the district court's decision.

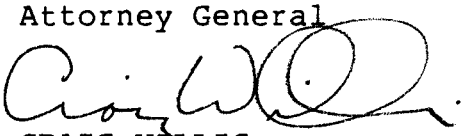
As to the Petitioner's reliance on another decision in another district, Spooner v. Department of Corrections, 11 F.L.W. 402 (Fla. 1st DCA, February 13, 1986) that case should be wholly irrelevant to this Court's decision whether to exercise its discretionary jurisdiction in this case. In Spooner a Motion for Rehearing is pending, a copy of which is included in the Appendix. The Motion for Rehearing points out that there is no divergence of authority on the federal level on the certified question. Citing, Gamble v Florida Department of Health and Rehabilitative Services, 779 F.2d 1509 (11th Cir. 1986). However, whether the district court decides to withdraw or modify the certified question, and if not, whether this Court ultimately takes jurisdiction in the Spooner case, are questions independent of the decision whether to exercise discretionary jurisdiction in this case. Respondents assert that there is no need to take jurisdiction in this case.

CONCLUSION

For the foregoing reasons, Respondent urges this Court to decline to take jurisdiction in this case.

Respectfully submitted,

JIM SMITH
Attorney General



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Brief on Jurisdiction was forwarded by U.S. Mail to Counsel for Petitioner, **LIPMAN & WEISBERG, P.A.**, 5901 Southwest 74th Street, Suite 304, Miami, Florida 33143-5186 and **COOPER, WOLFE & BOLOTIN, P.A.**, 500 Roberts Building, 28 West Flagler Street, Miami, Florida 33130 on this 16th day of April, 1986.

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