IN THE SUPREME COURT OF FLORIDA

KATHLEEN DENISE WARREN and
THOMAS GEORGE SECCHIARI,

Petitioners,

v. Case No. 75,791

STATE OF FLORIDA,

Respondent.
_____/

ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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SUMMARY OF THE ARGUMENT

Discretionary jurisdiction exists, but there is no need to address an issue long-since resolved by this Court.

ARGUMENT

The issue which the petitioner seeks to bring before this Court in this cause, the constitutionality of Section 796.01, Florida Statutes, is also pending for review in Palmieri v. State, Second District Court of Appeal Case Nos. ***88-2586*** & ***88-*** 3107 (Notice to Invoke Discretionary Jurisdiction filed March 19, 1990), and Hicks v. State, Florida Supreme Court Case No. 75,742 (Notice to Invoke Discretionary Jurisdiction filed March ***20***, 1990). Therefore, the state adopts the previous jurisdictional brief served in Palmieri v. State on March ***28***, 1990 (attached hereto as Appendix A).

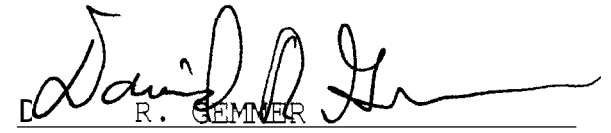
CONCLUSION

This Court should decline to take jurisdiction, and should adhere to the established principle that the legislature is the proper forum for correcting any problem with this statute.

However, if this Court does take jurisdiction, it should consolidate the matter with the companion cases of Palmieri v. State, Second District Court of Appeal Case Nos. 88-2586 & 88-3107 (Notice to Invoke Discretionary Jurisdiction filed March 19, 1990), and Hicks v. State, Florida Supreme Court Case No. 75,742.

Respectfully submitted,

ROBERT A, BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Manuel A. Machin, Esquire, 705 W. Azeele Street, Tampa, Florida, 33606, this 13th day of April, 1990.

DAVID R. GEMMER

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IN THE SUPREME COURT OF FLORIDA

KATHLEEN DENISE WARREN and
THOMAS GEORGE SECCHIARI,

Petitioners,

v. Case No. 75,791

STATE OF FLORIDA,

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_____/

A P P E N D I X

TO

JURISDICTIONAL BRIEF OF RESPONDENT

I N D E X

Appendix A - Jurisdictional Brief served March 28, 1990, Palmieri v. State

IN THE SUPREME COURT OF FLORIDA

EDWARD MICHAEL PALMIERI,
Petitioner,

v.

STATE OF FLORIDA,
Respondent

Case No.
2d DCA Case Nos. 88-2586 & 88-3107

ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF THE RESPONDENT

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OTHER AUTHORITY

Art. V § 3(b)(3), Fla. Const., 2

§ 796.01, Fla. Stat. (1987), 2

SUMMARY OF THE ARGUMENT

Discretionary jurisdiction exists, but there is no need to address an issue long-mince resolved by this court.

ARGUMENT

This court has discretionary jurisdiction. Art, V § 3(b)(3), Fla. Const. However, the statute has long been held to be valid by thir court, and there is no need to exercise jurie-diction merely to reaffirm precedent.

The etatute in question reads as follows:

> Keeping house of ill fame.--Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 796.01, Fla. Stat. (1987). Judge Coe's order holds, in relevant part:

> ORDERED AND ADJUDGED that this court hereby rules that Florida Statute 796.01, "Keeping House of I11 Fame" is unconstitutionally vague on its face.
>
> This Court further finds that the terms "ill fame", "prostitution", and "lewdness" are unconstitutionally vague as used in this statute.

R58.

The opinions in the second district held that only the term "ill fame" raised a question, but recognized this court's long-standing tradition upholding this statute.

This court has never had a problem enforcing this statute:

> That a conviction may be had for operating or conducting a house of ill fame or a house known or notoriously reputed to be a resort of prostitutes or persons of lewd character is settled in this jurisdiction in the opinion and judgment in the case of King v. State, 17 Fla. 183. In that case, after setting forth some of the evidence that appeared in the record aa to character and reputation of the house there under consideration, this court said:
>
> "Other evidence of the same character was given under like objections, rulings and exceptions. Not only the reputation of the house so informed against, but also the reputation of those

> who visit it, ray be inquired into. It would be difficult to prove particular instances of the offense which gives charecter to such a house, in order to evict its keeper. It is this very character acquired by it as the resort of prortitutes and lewd person8 that maker it criminal in the eye of the law. Having established a reputation among the citizens of the district, that reputation ray be proved in the same way as may the general character of an individual witness.

Atkinson v. Powledge, 167 So. 4, 5 (Fla. 1936). See also Lashley v. State, 67 So.2d 648 (Fla. 1953); Powell v. State, 23 So.2d 727 (Fla. 1945) (cases showing no difficulty in proving ill fame).

Thus, in Atkinson and the other cases, this court has had no difficulty in concluding that "ill fame" has a concrete definition, provable by evidence, and, therefore, not vague. The remaining words held to be vague in Judge Coe's order have also been examined by this court and found adequate:

> The statute alleged to have been violated is section 5433, R.G.S., section 7576, C.G.L., and is as follows:
>
> "Keeping house of ill-fame.--Whoever keeps a house of ill-fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment not exceeding one year."
>
> So the charge is substantially in the language of the statute. The words "Prostitution" and "lewdness" each have a meaning so yell known that it is not necessary for their meaning tc be stated in an information.

State ex rel. Libtz v. Coleman, 177 So. 725, 725 (Fla. 1937) (emphasis added).

This court has also had occasion to examine all the essential elements of the statute:

> It appears that there are three elements of the offense denounced by the statute [section 7576, C.G.L. 1927, predecessor to section 796.01] which must be proven beyond a reasonable doubt in order to substantiate conviction; namely, the ill fame of the place in

question, its use for prostitution or lewdness, and its maintenance by the defendant.

Campbell v. State, 6 So.2d 828 (Fla. 1942). No question of the constitutionality of the rtatute was raised, suggesting that this court saw no problems at that tire. Even when viewed in a constitutional context, this court raised no suggestion of vagueness. In Carlson v. State, 405 So.2d 173 (Fla. 1981), the court undertook a constitutional analysis of the elements of section 796.01, for purposes of applying the test of Blockburner v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932) in a double jeopardy case. Even though constitutional issues were joined, again, the court found no constitutional infirmity for vagueness.

This court has also rejected all attacks on the use of the word "lewd" or "lewdness*'in statutory provisions as being vague. Bell v. State, 289 So.2d 388, 390 (Fla. 1973), and cases cited therein. The Bell decision rejected an attack on section 796.07(3)(a)'s prohibition against offering "to commit, or to commit, or to engage in, prostitution, lewdness or assignation" on the ground that "lewdness" was unconstitutionally vague. See also Law v. State, 355 So.2d 1174 (Fla. 1978) (rejecting attack on "lewdness" as being vague); Health Clubs. Inc. v. State ex rel. Eagan, 338 So.2d 1324 (Fla. 4th DCA 1976).

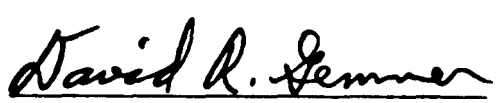
CONCLUSION

This court should decline to take jurisdiction, and should adhere to its determination in **Franklin v. State**, 267 So.2d 21 (Fla. 1971), that the legislature is the proper forum for correcting any problem with this etatute.

However, if this court does take Jurisdiction, it should consolidate the matter with the companion case of State v. Warm, No. 88-2884 (Fla. 2d DCA Jan. 19, 1990) (rehearing denied March 15, 1990), if the defendants in that case should decide to petition this court for review.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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OF COUNSEL FOR THE STATE