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### STATEMENT OF THE CASE AND FACTS

Petitioner Robert Goodman is a Rabbi who was employed by Respondent Temple Shir Ami. [TB:18]<sup>1</sup> Respondent Ashenoff is a professional, private investigator, who at all times material to this case, served on the board of directors of Temple Shir Ami (the "Board of Directors") and on its executive committee (the "Executive Committee"). [R:651] [TB:93] [R:654-55] Appellee Temple Shir Ami is a reform synagogue which is congregational in structure<sup>2</sup> -- it is an entirely autonomous and independent congregation, without affiliation to any national religious organization. [R:475;494] It is simply governed by its own by-laws. Temple Shir Ami has no tribunal, court or other judicial body for resolving its disputes. [A:664]

In April 1991, Rabbi Goodman entered into a written employment contract (the "First Contract") with Temple Shir Ami to serve as its Rabbi for an initial term of two years ending on June 30, 1993. [TB:9; ExA] The First Contract provided that Rabbi Goodman could only be terminated for cause. It made no provision for venue or

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- 1 All references to the record on appeal in the Third District Court of Appeal are cited as [R:]. All references to the transcripts of the hearings held on October 30, 1996, January 23, 1997, and February 13, 1997 will be cited as [TA:], [TB:], [TC:] respectively. All references to the Exhibits are cited as [Ex], and to Appellants' Appendix to the Initial Brief in the Third District Court of Appeal as [A:].
  - 2 Courts have drawn a distinction between religious entities that are congregational versus hierarchical. Whereas hierarchical organizations have institutions established for resolving disputes within the organization, congregational organizations do not.

choice of law and did not indicate how disputes between the parties would be resolved.

In December 1993, approximately six months before the First Contract was to expire, the Board authorized Brian Mirson, then President of Temple Shir Ami, to negotiate a new contract with Rabbi Goodman with the term commencing on July 1, 1994. [TB:27] After several discussions, Mirson and Rabbi Goodman agreed on the material terms of the new contract which would extend for three years after the First Contract expired, with an option for two additional years (the "Second Contract"). [TB:28-30] Mirson prepared a memorandum outlining the material terms of the Second Contract (the "Memorandum"). [TB:30]

The Memorandum was presented to the Board of Directors at a board meeting held on February 9, 1994. [ExC:3] The Board of Directors approved and agreed to the terms of the Second Contract as set forth in the Memorandum. [ExC:3] The minutes of the meeting expressly and clearly state that the Board of Directors approved the Second Contract. The minutes were duly signed by the secretary of Temple Shir Ami. [ExC:3]

A few weeks after the February 9 board meeting, certain members of the Executive Committee discussed the possibility of repudiating the Second Contract. [R:575-580, 582] These discussions culminated in a telephone conference meeting of the Executive Committee held on Thursday, March 24, 1994. [R:595] During the meeting, the Executive Committee decided to reopen the issue of the Second Contract and to attempt to cancel the Temple

Shir Ami's approval of it. [R:595] Although the By-Laws of Temple Shir Ami clearly provide that any individual whose continued employment is being considered by the Executive Committee "shall have an opportunity to make a presentation on [his/her] own behalf," By-Laws, Article VII(E)(5), Rabbi Goodman was not advised that the meeting was going to take place, was not invited to attend the meeting, and was not able to address or respond to any of the allegations which were made against him at that meeting. [ExE:11] [TB:45-46]

The Executive Committee then called an emergency meeting of the Board of Directors to discuss Rabbi Goodman the very next evening. [TB:46] Temple Shir Ami's By-laws require that Board Members be given notice of a special meeting "at least three (3) days, or as soon as practical, prior to the Special Meeting."(Emphasis Added.) By-laws Article (V)(k). [ExE:8] No notice was given to members of the general congregation. [R:598]

At the emergency meeting, Ashenoff, the private investigator, said that he had undertaken an investigation of Rabbi Goodman. Ashenoff falsely and maliciously advised the Board that he had learned that Rabbi Goodman had viciously attacked another Rabbi at the temple where he had been employed prior to coming to work for Temple Shir Ami in 1991. [TB:93-94] The Executive Committee advised the Board of Directors that based on this new information, it recommended that Temple Shir Ami cancel the Second Contract set to begin on July 1, 1994. [TB:93] The Board of Directors then conducted a secret ballot and voted to oust Rabbi Goodman. [TB:96]

The next day, Mirson delivered a letter to the members of the congregation of Temple Shir Ami stating, in relevant part:

While meeting to discuss details of the Rabbi's contract, circumstances regarding the Rabbi's continued inappropriate conduct surfaced. Although no one action constituted reason for censure, the multitude of issues, along with the pattern of previous concerns, forced the Executive Committee to re-evaluate its position .... [T]he time has come for Rabbi Goodman and Temple Shir Ami to part company. (Emphasis added). [ExD:1]

In addition, the Board of Directors authorized and instructed its members and other representatives to call the congregants individually and advise them of the decision to repudiate the Second Contract. [R:82] During those conversations, numerous false statements were made to the congregants that Rabbi Goodman had not only committed a crime amounting to aggravated battery upon another human being but had also violated the confidences of congregants. [R:82]

Rabbi Goodman filed this action in September 1994. [R:1] Rabbi Goodman sued Ashenoff for damages for defamation and tortious interference with an advantageous business relationship and/or tortious interference with the Second Contract. [R:77-97] Rabbi Goodman sued Temple Shir Ami for breach of the First Contract<sup>3</sup> and the Second Contract, wrongful termination, and defamation. [R:77-97] The "wrongful termination" claim against Temple Shir Ami is

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3 Because it withheld Rabbi Goodman's paychecks and other payments due under the First Contract, Rabbi Goodman sued Temple Shir Ami for breach of the First Contract for withheld salary payments for work performed.

based on the fact that Temple Shir Ami's "termination" of Rabbi Goodman was in direct violation of its By-laws which require that:

- (a) The individual being considered [during the Executive Committee Meeting] shall have an opportunity to make a presentation on [his/her] own behalf. By-laws, Article VII(E)(5). (Emphasis added).
  
- (c) The President shall cause notice [for emergency meetings] to be issued to all Board members, at least three (3) days, or as soon as practical, prior to the Special Meeting. By-laws, Article VII(E)(4) and Article V(K). (Emphasis added).  
[EXE:10;118] [R:86-90]

In all of his claims against Temple Shir Ami, Rabbi Goodman seeks only damages. [TB:54]

In response to the Complaint, both Temple Shir Ami and Ashenoff filed motions to dismiss based on the First Amendment to the United States Constitution. [R:55-58, 130-134] After the trial court denied the Motions to Dismiss, the Appellees filed a Petition for Writ of Prohibition to the Third District Court of Appeal. The district court denied the Petition and sent the matter back to the trial court for a more complete development of the facts.

On remand, the trial court severely limited discovery and, after an evidentiary hearing, dismissed all of Rabbi Goodman's claims against Temple Shir Ami and Ashenoff on the basis that the issues raised in the action against the Temple were ecclesiastic in nature and outside the jurisdiction of the court.

Rabbi Goodman appealed to the Third District Court which, in large part agreed with the trial court, and affirmed the dismissal.



### ISSUE ON APPEAL

Whether this Court should exercise its discretionary jurisdiction and consider the merits of Rabbi Goodman's claims against Richard Ashenoff and Temple Shir Ami.

### SUMMARY OF THE ARGUMENT

The Court should take jurisdiction over this matter because it raises issues of great public importance. Rabbi Goodman has been denied access to the courts of Florida based on the Third District Court of Appeal's interpretation of the First Amendment to the United States Constitution. Such interpretation conflicts with Florida's constitutional guarantee of access to the courts.

The Court should also take jurisdiction because the decision of the Third District Court of Appeal is in conflict with a decision of this Court. This Court has previously ruled that Florida courts may consider cases involving the interpretation of a religious organization's rules of order especially where that religious organization is congregational. The Third District Court of Appeal's interpretation of the First Amendment is in conflict with this Court's prior decision.

Finally, the Court should take jurisdiction over this matter because policy decisions made by the Third District Court of Appeal in this case have serious consequences on a large number of citizens of the State of Florida. Accordingly, this Court is the appropriate body to make those policy decisions.

## ARGUMENT

I. The Court should take jurisdiction over this matter because it involves a matter of great public importance.

Petitioner urges the Court to take jurisdiction of this matter because it involves a matter of great public importance. Under the Fifth Amendment to the United States Constitution and Article I, Section 21 of the Florida Constitution, all citizens are guaranteed access to courts for "redress of any injury." The trial court's order and the district court's opinion in this case effectively deny the Petitioner access to the Courts of this State and the right to redress for wrongs committed against him. This is especially true because Rabbi Goodman has no "reasonable alternative means of redress" because the Respondent, Temple Shir Ami, is a congregational organization; it has no tribunal wherein internal disputes can be resolved. Furthermore, the Petitioner is being denied equal protection under the law simply on the basis that he is a religious leader.

As this Court pointed out a long time ago: "For every wrong there is a remedy." Holland v. Mayes, 155 Fla. 129, 19 So.2d 709 (1944). It is a matter of great public importance when any citizen is denied access to our Courts for redress of the wrongs committed against him.

Rabbi Goodman initiated this action four years ago to enforce a Contract voluntarily entered into by his employer. Since that time, the courts have done no more than close their doors to him even though it is absolutely clear that Rabbi Goodman has

absolutely no other redress for the wrongs committed against him. This case is not an isolated instance. Similar issues have arisen in other cases where religious organizations have raised the First Amendment to avoid their secular obligations and duties. See, e.g., Doe v. Evans, 23 Fa. L. Week D2077 (Fla. 4th DCA Sept. 9, 1998).

It is important that this Court consider and clarify this issue not only for the instant Petitioner but for all of those similarly situated.

**II. The Court should take jurisdiction in this matter because the decision of the District Court is in conflict with this Courts' Prior Decision.**

The lower court's ruling conflicts with a decision of this Court and other district courts. Part of the case brought by Rabbi Goodman involves the claim that Temple Shir Ami failed to follow its own bylaws in repudiating the Employment Contract it had with Rabbi Goodman by failing to provide him with an opportunity to be heard and by failing to provide adequate notice for the so-called emergency meeting. A determination by the Court as to whether or not the religious organization followed its own bylaws does not constitute a religious issue but is an issue that may properly be determined by the Courts.

In Epperson v. Myers, 58 So. 2d 150 (Fla. 1952), this Court held that civil courts have authority to decide disputes concerning a religious organization's failure to comply with its own rules of order. Other Florida courts have decided cases following this

precedent. See, e.g., Hemphill v. Zion Hope Primitive Baptist Church, 447 So. 2d 976 (Fla. 1st DCA 1984); Covington v. Bowers, 442 So. 2d 1068 (Fla. 1st DCA 1983); Umberger v. Johns, 363 So. 2d 63 (Fla. 1st DCA 1978). The lower courts' interpretation of the Constitution, refusing to even consider the claims grounded upon this established precedent, should be considered by this Court. Supreme Court review is necessary to clarify the confusion over different applications of the rule set forth in Epperson v. Myers that Florida Courts have jurisdiction to consider whether a congregational religious organization has followed its own rules of order.

**III. The Court should take jurisdiction to consider Rabbi Goodman's claims against Richard Ashenoff.**

Although recognizing that whether to dismiss Rabbi Goodman's claims against Richard Ashenoff was a closer question than those involved in Rabbi Goodman's claims against Temple Shir Ami, the trial court dismissed all of Rabbi Goodman's claims against Ashenoff. The district court affirmed the decision. In doing so, the lower courts made the decision that individual members of a religious organization are to be given the same protection as religious organizations. The consequence of their decision is that individuals associated with religious organizations, such as Ashenoff, may now commit torts against their religious leaders with complete impunity. There is no precedent in Florida to support such a decision. In fact, the Florida case most on point, dealing with a suit by a Rabbi against a member of the Board for

defamation, Schreidell v. Shoter, 500 So. 2d 228 (Fla. 3d DCA 1986), review denied, 511 So. 2d 299 (Fla. 1987), permitted the case to proceed and provided the Board member only a qualified privilege. The lower courts' interpretation of the First Amendment to the United States Constitution with respect to Ashenoff is completely unsupported by any Florida precedent. The immunity granted individuals associated with religious organizations by the opinion of the Third District Court of Appeal has substantial consequences on religious leaders within the state of Florida. It is therefore, important that the Supreme Court consider the policy implications of the position taken by the Third District Court of Appeal.

CONCLUSION

In light of the foregoing, Petitioner Rabbi Robert A. Goodman respectfully requests that the Court grant him review and consider his appeal.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

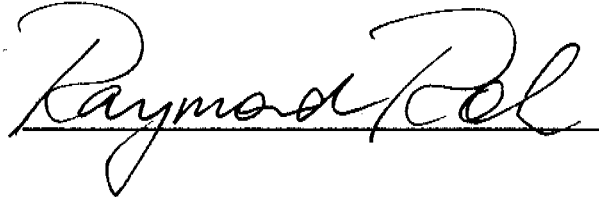
I HEREBY CERTIFY that a true and correct copy of the foregoing Brief On Jurisdiction was served by mail this 6th day of October 1998, upon the following:

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A handwritten signature in cursive script, appearing to read "Raymond Pol", is written over a horizontal line.

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 93,832

RABBI ROBERT A. GOODMAN,  
Plaintiff/Petitioner,

vs.

TEMPLE SHIR AMI, INC.,  
a Florida non-profit  
corporation, and  
RICHARD ASHENOFF,

Defendants/Respondents.

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APPENDIX TO PLAINTIFF/PETITIONER'S PETITION TO  
INVOKE DISCRETIONARY JURISDICTION

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- A. Opinion of the Third District Court of Appeal filed on June 3, 1998.
- B. Order denying Motion for Rehearing entered on July 29, 1998.



NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 1998

RABBI ROBERT A. GOODMAN,

\*\*

Appellant,

\*\*

vs.

\*\*

CASE NO. 97-1477

TEMPLE SHIR AMI, INC.,  
et al.,

\*\*

LOWER TRIBUNAL

CASE NO. 95-16006

\*\*

Appellees.

\*\*

Opinion filed June 3, 1998.

An appeal from the Circuit Court of Dade County, Margarita Esquiroz, Judge.

Macaulay, Zorrilla & Robin and Raymond L. Robin, for appellant.

Peter A. Miller; Melvin S. Black; Robert S. Glazier; Clark D. Mervis, for appellees.

Before COPE, FLETCHER, and SORONDO, JJ.

FLETCHER, Judge.

Rabbi Robert A. Goodman appeals the trial court's dismissal for lack of jurisdiction of his complaint for defamation and for breach of his employment contract against his former employer,

Goodman was then employed, following which Rabbi Goodman's employment was terminated by the Chicago temple, which, in turn, prompted Rabbi Goodman to unjustifiably file and prosecute an action against that temple. Rabbi Goodman's recounting of the altercation and its aftermath (in his deposition) is diametrically opposed to Ashenoff's version. It is this report by Ashenoff (and other comments) that is the basis of Rabbi Goodman's defamation claim and his action for tortious interference with an advantageous business relationship against Ashenoff.

The Temple's board of directors voted against "renewing" the first contract. (From Rabbi Goodman's perspective, the board actually determined not to honor his second contract.) The members of the Temple were advised of the board's action -- which advice included repetition of Ashenoff's statements. After these events Rabbi Goodman served until his first contract expired on June 30, 1994, and not thereafter. By agreement, Rabbi Goodman attended a conference in Chicago, as provided by the first contract.

Rabbi Goodman subsequently filed suit, alleging four basic claims: (1) against the Temple for breach of the second contract by terminating his employment as the Temple's spiritual leader; (2) against the Temple and Ashenoff for defamation; (3) against Ashenoff for tortious interference; and (4) against the Temple for breach of the first contract (for sums unpaid by the Temple for service as its Rabbi and for reimbursement of his expenses for the Chicago conference). The trial court, after limited discovery on jurisdiction, dismissed Rabbi Goodman's suit, stating:

**PAGE(S) MISSING**

court. See, e.g., Young v. Northern Ill. Conference of United Methodist Church, 21 F.3d 184 (7th Cir.), cert. denied, 513 U.S. 929 (1994). Thus we affirm the trial court's dismissal of Rabbi Goodman's complaint with the following exception as to the first contract.

Rabbi Goodman served as the Temple's spiritual leader until the conclusion of the first contract, on June 30, 1994. Notwithstanding his service (according to the complaint), the Temple has failed to pay all the compensation due him and has failed to reimburse his expenses advanced by him for the Chicago conference. This claim does not create excessive entanglements with religious beliefs, and thus does not preclude civil court intervention. See Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354 (D.C.Cir. 1990).

Accordingly, the trial court's dismissal order is reversed as to Rabbi Goodman's claim under the first contract. The order is otherwise affirmed. The cause is remanded for further proceedings consistent herewith.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 1998  
WEDNESDAY, JULY 29, 1998

RABBI ROBERT A. GOODMAN,  
Appellant,

vs.

TEMPLE SHIR AMI, INC.,  
et al.,  
Appellee.

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\*\*  
\*\* CASE NO. 97-1477  
\*\* LOWER  
\*\* TRIBUNAL NO. 95-16006  
\*\*  
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Upon consideration, appellant's motion for rehearing is hereby denied. COPE, FLETCHER and SORONDO, JJ., concur. Appellant's motion for rehearing en banc is denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of  
Appeal Third District

By

  
Deputy Clerk

cc: Raymond  
Clark D. Meade  
John S. Freud

Peter A. Miller  
Robert S. Glazier  
Melvin S. Black

/NB