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IN THE SUPREME COURT OF FLORIDA

SID J. WHITE

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CASE No. 94,450

CLERK SUPREME COURT  
By K. T.  
Chief Deputy Clerk

JANE DOE,

Petitioner,

vs.

WILLIAM DUNBAR EVANS, III, CHURCH OF THE  
HOLY REDEEMER, INC., THE DIOCESE OF SOUTHEAST  
FLORIDA, INC. and CALVIN O. SCHOFIELD, JR.,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

On Discretionary Review from  
The Fourth District Court of Appeal

Renzulli & Rutherford, LLP  
300 East 42nd Street  
New York, New York 10017  
(212) 599-5533

and

Barwick, Dillian, Lambert & Ice, PA  
999 Brickell Avenue  
Miami, Florida 33131  
(305) 358-6001

Attorneys for Church of the Holy Redeemer, Inc., The Diocese of  
Southeast Florida, Inc. and Calvin O. Schofield, Jr.

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CERTIFICATION OF SIZE AND STYLE OF TYPE USED

It is certified that the size and style of type used in this brief is 12 point Courier New, a font that is not proportionately spaced.

**STATEMENT OF THE CASE AND FACTS**

The Respondents adopt the facts as stated in the opinion of the Fourth District Court of Appeal. Jane Doe's Statement of the Case and Facts, for the most part, is taken from this opinion. Jane Doe's conclusion, however, that the Fourth District made a distinction between the alleged criminal and non-criminal conduct of a religious figure is erroneous. The Fourth District merely determined that the adjudication of Jane Doe's claims would necessarily implicate an excessive governmental entanglement with religion. Any such distinction between criminal and non-criminal acts was merely incidental to its findings.

**SUMMARY OF THE ARGUMENT**

The Court should not exercise its discretionary jurisdiction over this case. Although this Court has discretionary jurisdiction to review a decision of a lower court which expressly construes a provision of the federal constitution, the conclusions drawn by the lower court are unexceptional and within the majority of the courts throughout the nation that have addressed these issues. The Fourth District Court of Appeal's decision was based on the established constitutional mandate that the First Amendment to the Constitution of the United States prohibits a secular court's inquiry into

church law, policies or practices, which, necessarily, would be required to examine the merits of Jane Doe's claims.

Jane Doe erroneously argues in her jurisdictional brief that the Fourth District held that all common law negligence claims against churches and church officials are barred by the First Amendment to the Constitution of the United States. In addition, Jane Doe incorrectly argues that churches and their supervisory officials are "constitutionally immune from common law civil actions arising from non-criminal conduct." As a consequence, Jane Doe maintains that this Court should resolve the resulting "constitutional doubts" by accepting jurisdiction over this matter.

Contrary to Jane Doe's assertions, the Fourth District did not hold that all common law negligence claims against churches and church officials are barred by the First Amendment. Only those claims, such as negligent hiring, retention and supervision and breach of fiduciary duty, which would require a secular court to interpret church law, policies or practices, are barred. Furthermore, the Fourth District did not hold that churches and supervisory officials are immune from liability for all civil actions arising from non-criminal conduct. The Fourth District merely noted differences of opinion throughout the nation and remarked that some jurisdictions do not find that the First

Amendment is a bar to a civil action based upon criminal conduct. It is respectfully submitted that these issues do not rise to the level of "constitutional doubt" such that this Court should exercise its discretionary jurisdiction over this case.

**ARGUMENT**

**I. The Fourth District Did Not Create Constitutional Doubts or Grant Carte Blanche Immunity to Churches and Ecclesiastical Officials**

Jane Doe has clearly misread and misinterpreted the opinion of the Fourth District Court of Appeal in this case. A close reading of the opinion of the district court shows that there are no constitutional doubts which "unnecessarily endanger the public." In addition, churches and ecclesiastical officials were not given "carte blanche" immunity for their tortious conduct. There is no need, therefore, for this Court to review the district court's opinion in this case.

Jane Doe argues in her jurisdictional brief that churches and their supervisory officials are constitutionally immune from common law civil actions arising from non-criminal conduct and that this has created some "constitutional doubt" which this Court should resolve. Jane Doe's premise, however, is flawed. Churches and supervisory officials are not constitutionally immune from all

civil actions and the district court never disputes this issue. The district court merely found that the First Amendment bars a claim for negligent hiring, retention and supervision, under these circumstances, because a church defendant's conduct in hiring, retaining or supervising a priest or other church member is guided by religious doctrine or practice. The district court also found that a secular court similarly would be forced to review and interpret church law, policies and practices if it were called upon to determine whether a fiduciary duty is owed to a parishioner by a church entity and, if so, whether that fiduciary duty was breached. The scope of the district court's decision falls far short of Jane Doe's contention that church officials can now enjoy "carte blanche" constitutional immunity against all civil actions to the detriment of all Floridians.

The Respondents do not maintain, and the district court does not suggest, that the First Amendment is an absolute bar to finding a religious institution liable for its tortious conduct. See, Strock v. Pressnell, 527 N.E.2d 1235, 1237 (Ohio 1988) ("It is well settled that clergy may be sued for the torts they commit. For example, religious leaders have been held liable for obtaining gifts and donations of money by fraud, . . . for the kidnaping of a minor, . . . for unlawful imprisonment, [and] for homosexual

assault . . . ."); see, also, Epperson v. Myers, 58 So.2d 150 (Fla. 1952) (defendant pastor enjoined from occupying church property or acting as pastor); Covington v. Bowers, 442 So.2d 1068 (Fla. 1st DCA 1983) (trial court as fact finder could find that procedure used for pastor's dismissal accorded with church custom); Hemphill v. Zion Hope Primitive Baptist Church, 447 So.2d 976 (Fla. 1st DCA 1984) (temporary injunction brought against fired pastor to enjoin him from acting in that capacity and seeking an accounting did not violate constitutional requirement of separation of church and state). Neither Jane Doe nor Floridians in general are unduly prejudiced by the district court's findings. In addition to demanding criminal penalties, Jane Doe has the ability to bring causes of action against the alleged perpetrator, William Dunbar Evans, for any intentional torts, including assault and battery.

The obstacle arises, however, when causes of action brought against religious institutions are premised upon their status as a religious institution. Religion was clearly the foundation for Jane Doe's relationship with the Respondents; it was not merely incidental to it. This is not a case in which neutral principles of tort law can be applied by a secular court because the calling (hiring), supervision and retention of a priest, and any fiduciary duty there may be between a parishioner and a religious



institution, involve internal church governance which impermissibly entangles the court in ecclesiastical decisions of the Episcopal Church. The Fourth District determined, therefore, that the First Amendment was implicated.

Jane Doe also argues in her jurisdictional brief that the opinion of the Fourth District "rests upon the 'fulcrum' of a specious distinction; that the criminality of the church agent's conduct controls as to whether or not the First Amendment will bar civil redress against the church's supervisory authorities." The Fourth District Court's opinion in this case, however, does not rest upon this distinction. The Fourth District cites to the decision of the Fifth District Court of Appeal in Doe v. Dorsey, 683 So.2d 614 (Fla. 5th DCA 1996), rev. denied, 695 So.2d 699 (Fla. 1997), and recognized that the Fifth District, in *dicta*, commented that it would "draw the line at criminal conduct" and, under those circumstances, "interfere" in the church's selection, training and assignment of its clerics. The Fourth District, contrary to Jane Doe's representations, did not adopt this reasoning. In fact, the Fourth District did not have to address this issue because there was no claim by Jane Doe that she did not consent to the relationship with William Dunbar Evans or that the Respondents' conduct was criminal in nature. Any contention that the Fourth

District Court's decision was based upon this "criminality" distinction is not supported by a reading of the opinion. As a consequence, the district court did not raise any "manifest doubts" which this Court needs to address. This Court should not exercise its discretionary jurisdiction over this case.

CONCLUSION

Church of the Holy Redeemer, Inc., The Diocese of Southeast Florida, Inc. and Calvin O. Schofield, Jr., respectfully request that the Court deny the petition for discretionary review.

Respectfully submitted,

Renzulli & Rutherford, LLP  
300 East 42nd Street  
New York, New York 10017  
(212) 599-5533

and

Barwick, Dillian, Lambert & Ice, PA  
999 Brickell Avenue  
Miami, Florida 33131  
(305) 358-6001

By: 

THOMAS E. ICE  
Florida Bar No. 521655


Attorneys for Church of the Holy Redeemer, Inc., The Diocese of Southeast Florida, Inc. and Calvin O. Schofield, Jr.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5<sup>th</sup> day of February, 1999 to: Randy D. Eillison, Esq., 1645 Palm Beach Lakes Blvd., Suite 350, W. Palm Beach, FL 33401-2289; David S. Rutherford, Esq., Renzulli, & Rutherford, 300 E. 42 Street, 18th Floor, New York, NY 10017, Edward Campbell, Esq., 1675 Palm Beach Lakes Blvd., 7th Floor, P.O. Drawer 4178, W. Palm Beach, FL 33402; and William R. King, Esq., P.O. Box 12277, Lake Park, FL 33403-0277.

BARWICK, DILLIAN, LAMBERT & ICE, P.A.  
Attorneys for Respondents  
Suite 555  
999 Brickell Avenue  
Miami, FL 33131  
(305) 358-6001  
(305) 358-6003-Facsimile

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

  
THOMAS E. ICE  
Florida Bar No. 521655