IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC002579
Lower Tribunal No. 1D99-4333

VIRGINIA M. CARNESI,

Petitioner;Appellant,

vs.

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHER HARRISON, individually and as Pastor Parish Relations Committee Chairman,

Respondents-Appellees.

PETITIONER-APPELLANT VIRGINIA M. CARNESI'S BRIEF ON THE MERITS

TROY A. RAFFERTY
Florida Bar No. 024120
TIMOTHY M. O'BRIEN
Florida Bar No. 055565
Levin, Papantonio, Thomas,
Mitchell, Echsner & Proctor, P.A.
316 South Baylen Street, Suite 600
P.O. Box 12308
Pensacola, Florida 32581
850-435-7000

Attorneys for Petitioner-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

This Court has accepted jurisdiction to entertain the appeal of Plaintiff/Appellant Virginia Carnesi ("Ms. Carnesi"). Ms. Carnesi appeals from an order of the Circuit Court of Escambia County in which the Circuit Court granted a motion for summary judgment granted in favor of all but one of defendants. In the Circuit Court, Ms. Carnesi filed a Complaint against Defendants Chester Harrison ("Mr. Harrison"), Ferry Pass United Methodist Church ("Ferry Pass U.M.C."), Pensacola District of the Alabama West Florida Conference of the United Methodist Church ("the District"), and the Alabama West Florida United Methodist Conference ("the Conference"). (R. 1.) In her Complaint, Ms. Carnesi sought civil redress for the sexual harassment inflicted upon her by Mr. Harrison; included in the Complaint were counts alleging hostile work environment sexual harassment, *quid pro quo* sexual harassment, battery, assault, and false imprisonment. (R.1 and Appendix 2). After the District, Church, and Conference (collectively referred to as "the church defendants") filed motions for summary judgment, the trial court, relying upon the authority of Doe v. Evans, 718 So.2nd 286 (Fla. 4th DCA 1998), granted summary judgment against the Plaintiff and in favor of these defendants. In so ruling, the trial court concluded that it lacked jurisdiction to entertain Ms. Carnesi's claims against these

Defendants because judicial review was barred by the Establishment Clause of the First Amendment to the United States Constitution. (R. 17 and Appendix 1). Ms. Carnesi appealed to the First District Court of Appeals; in a two to one decision, the appellate panel affirmed the decision of the trial court. Carnesi v. Ferry Pass United Methodist Church, 770 So.2d 1286, 1287 (Fla. 1ST DCA Nov. 16, 2000.) Ms. Carnesi then sought to invoke the discretionary jurisdiction of this Honorable Court; this Court accepted jurisdiction of this case on March 29, 2001.

STATEMENT OF FACTS

Ferry Pass U.M.C. is a religious located in Pensacola, Florida. (R. 1 at 1, R. 2 at 21). As a member congregation in the United Methodist Church, Ferry Pass is a member of the District amdConference. (R.1 at 1; R. 25 at 1196-1199 or App. 9 at 6-9).

Virginia Carnesi began working as the secretary/bookkeeper for Ferry Pass United Methodist Church ("the church") in February 1995. (R.1 at 2; R.2 at 22; R. 21 at 549-552 or Appendix 6 at 130-133). She was first interviewed and ultimately hired for the position by Defendant Chester Harrison, the chairman of Ferry Pass U.M.C.'s Pastor Parish Relations Committee ("PPRC"). (R.1 at 3; R. 21 at 550-556 or App. 6 at 131-137; R.24 at 1086-87, 1090 or App. 8 at 13-14, 17). As head of the PPRC, Mr. Harrison was responsible for the hiring and firing of lay or secular employees such as Ms. Carnesi; the PPRC participates in the hiring of all secular employees of the Church, but is not charged with hiring the pastor. (R.24 at 1089 or App. 8 at 16; R.21 at 555-557 or App. 6 at 136-137.) Defendant Harrison acted as Ms. Carnesi's supervisor and exercised control over her pay raises. (R. 21 at 560-61 or App. 6 at 141-42).

Approximately two to three months after Ms. Carnesi began working for the church, Defendant Harrison began hugging Ms. Carnesi in a manner which Ms. Carnesi considered to be

inappropriate; Ms. Carnesi told Defendant Harrison hugging her in that manner, in the church, was inappropriate. (R.1 at 2; R. 21 at 574-579, 581-582, 585-586 or App. 6 at 156-61, 163-64, 167-68). Nonetheless, Defendant Harrison's hugging escalated into full-body contact wherein Defendant Harrison pulled Ms. Carnesi's body toward him so that his chest was rubbing against her breast and the rest of his body was up against hers. (R. 21 at 586 or App. 6 at 168.) Mr. Harrison engaged in unwanted touching, including touching Ms. Carnesi's breasts and buttocks. (R. 1 at 2; R.21 at 574 or App. 6 at 156; R.22 at 643, 676 or App 7 at 25, 58)

Beginning in or around October 1995, Defendant Harrison tried kissing Ms. Carnesi by forcefully shoving his tongue into her mouth. (R.1 at 2; R.21 at 576, 589, 591-93 or App. 6 at 158, 171, 173-75; R.22 at 642-43, 673-676 or App. 7 at 24-25, 55-58.). On numerous occasions, he approached her in the back room and pinned her up against the wall or counter; often, Mr. Harrison would lock the door while performing these acts upon Ms. Carnesi. (R. 21 at 597-598 or App. 6 at 181-182; R. 22 at 642-643, 675-677 or App. 7 at 24-25, 56-58.) Ms. Carnesi testified that Mr. Harrison grabbed her rear, pulled her close to him, and kissed her more than fifteen times during the length of her employment with the church. (R. 22 at 643-644 or App. 7 at 25-26.) On at least two of these occasions, Mr. Harrison pressed his erection against her as he

physically restrained her. (R.1 at 2; R.21 at 576, 591-92 or App. 6 at 158, 173-74; R.22 at 642-43, 673-676 or App. 7 at 24-25, 55-58.). Despite Ms. Carnesi's objections, Mr. Harrison would consistently come up behind Ms. Carnesi and hug her and kiss her without her consent. (R. 1 at 2-5; R.21 at 570-71 or App. 6 at 152-53; R. 21 at 574-576 or App. 6 at 158-160; R.22 at 674-76 or App. 7 at 56-58).

The harassment endured by Ms. Carnesi was pervasive and continuing. (R. 21 at 587 or App. 6 at 169). In addition to the menacing physical behavior, Mr. Harrison's harassment also included unwelcome verbal remarks. (R.21 at 581-82 or App. 6 at 163-64). The hostile environment created by Mr. Harrison was witnessed by others including Kathy Garner, Barrie Rommes. (R.21 at 570-572 or App. 6 at 152-54; R.22 at 673-75 or App 7 at 55-57). Ms. Carnesi repeatedly informed Mr. Harrison that his behavior was inappropriate and unwanted. (R.21 at 573-78 or App. 6 at 155-60).

In December of 1995, Defendant Harrison told Ms. Carnesi that she was not going to get a raise that year; however, he promised her if she "was a good little girl", that she would get a raise the next year. (R.22 at 671-72 or App. 7 at 53-54). Ms. Carnesi took the comment to mean that Defendant Harrison wanted to have sexual activity with her. (R. 22 at 641 or App. 7 at 53.) After Ms. Carnesi protested to Mr. Harrison about his uninvited, unwelcome,

and inappropriate behavior, he threatened to fire Ms. Carnesi if she told anyone. (R. 22 at 615 or App. 7 at 27.)

During most of her period of employment with the church, the Pastor was Reverend E. Bruce Fitzgerald; Reverend Fitzgerald wrote a glowing recommendation for Ms. Carnesi in late 1995 or early 1996 in which he described Ms. Carnesi as a very efficient, friendly, and professional worker, who handled her difficult job with "polish and precision." (R. 23 at 657 and Exhibit 2 thereto.) Despite Mr. Harrison's threats of reprisal, Ms. Carnesi reported these incidents of harassment to her supervisors at Ferry Pass U.M.C.: first, to Reverend Fitzgerald and the PPRC, subsequently, to Reverend Fitzgerald's replacement, Reverend Alton Moore. (R.1 at 2-3; R.21 at 598-602 or App. 6 at 180-184). However, Reverend Fitzgerald did not prevent Mr. Harrison from continuing to harass Ms. Carnesi and did not remove Mr. Harrison from his chairmanship of the PPRC. (R.1 at 3; R. 21 at 602-05 or App. 6 at 184-87; R. 22 at 678-80 or App. 7 at 60-62).

When Reverend Moore began working as pastor of the church in June 1996, Ms. Carnesi immediately let him know about Defendant Harrison's conduct. (R.23 at 671) Soon thereafter, Reverend Moore called Ms. Carnesi, Dr. Bill Renfroe, and Defendant Harrison to a meeting. (R.23 at 671) In the June 1996 meeting, Defendant Harrison, at Reverend Moore's urging, apologized to Ms. Carnesi for

his behavior and admitted his wrongdoings. (R. 23 at 617-618, 623-624 or App. 7 at 29-30, 35-36.) Ms. Carnesi accepted his apology because she felt Defendant Harrison owed her an apology for the many times that he had inappropriately kissed, hugged, and grabbed her. (R. 23 at 617-618, 623-624 or App. 7 at 29-30, 35-36.)

Reverend Moore chose to take no affirmative action to make sure that Mr. Harrison was stopped. (R.1 at 3; R.21 at 605-08 or App. 6 at 187-90). Instead of taking appropriate action to prevent the harassment, Ms. Carnesi was told she needed to seek other employment because nothing could be done to stop Chet, and no one else had been able to do so. (R.21 at 607-10 or App. 6 at 189-192). Reverend Moore contributed significantly to the hostile environment, often yelling and "getting up in Ms. Carnesi's face" about the situation. (R. 21 at 610-11 or App. 6 at 192-93; R.22 at 626-27, 636-38 or App. 7 at 8-9, 18-20). Ferry Pass U.M.C. ultimately terminated Ms. Carnesi's employment on July 29, 1996. (R. 22 at 654-655 or App. 7 at 66-67, and App. 11.)

The District as well as the West Florida Conference was aware of the harassment, Ms. Carnesi's allegations, and the decision to terminate Ms. Carnesi. (R.22 at 648-51, 62 or App. 7 at 30-33, 44; R.25 at 1209-10, 15-22, 50-52 or App. 9 at 19-20, 25-32, 60-62). The District and Conference failed to perform any investigation into Ms. Carnesi's allegations or her subsequent retaliatory

termination or take any remedial action or enforce the limited sexual harassment policy. (R.25 at 1228, 33, 40-44 or App.9 at 38, 53, 60-64; R. 26 at 1284 or App. 10 at 85).

ISSUE PRESENTED FOR REVIEW

Whether the trial court erred by granting summary judgment in favor of the church defendants in this sexual harassment case based on the Establishment Clause of the First Amendment where neither the complaining party nor the offending actor is a minister or ministerial employee and judicial review will not involve an investigation into religious or church doctrinal matters.

SUMMARY OF ARGUMENT

The Excessive Entanglement doctrine of the Establishment Clause of the First Amendment does not bar judicial review and enforcement of civil laws when neither the complaining party nor the offending actor is a minister or ministerial employee and judicial determination will not involve an investigation into religious or church doctrinal matters.

In the case *sub judice*, Ms. Carnesi was, at all times, a secular employees performing secular secretarial and bookkeeping duties for Ferry Pass U.M.C. During the course of her employment, she was sexually harassed by her supervisor, Mr. Harrison. As chairman of the PPRC, Mr. Harrison's duties were primarily the hiring, retention, and firing of the Ferry Pass U.M.C.'s secular employees. Despite knowledge of Mr. Harrison's sexual harassment of Ms. Carnesi, Ferry Pass U.M.C., the District, and the Conference allowed Mr. Harrison to remain in his position, took tardy and ineffectual corrective measures, and ultimately terminated Ms. Carnesi because Ferry Pass U.M.C. lacked the ability or desire to control Mr. Harrison's behavior.

This case is not about the examination of any religious doctrine. Rather, it focuses solely on the nature of the secular employment relationship between Ms. Carnesi and Ferry Pass U.M.C. Simply put, Ferry Pass U.M.C. was the employer of Ms. Carnesi; Mr.

Harrison was the supervisor retained by Ms. Carnesi's employer; Mr. Harrison utilized that position to sexually harass Ms. Carnesi; and Ferry Pass U.M.C. failed to take sufficient corrective action to remedy the problems and, instead, terminated Ms. Carnesi in a botched attempt to short circuit the problem by removing the focus of Mr. Harrison's untoward behavior. The Establishment Clause is not implicated by judicial review of these relationship and judicial enforcement of civil laws designed to give Ms. Carnesi a remedy for that which she has suffered.

ARGUMENT

I. STANDARD OF REVIEW.

This case is before this Court on appeal from the trial court's entry of summary judgment and the District Court of Appeal's affirmation of that order.

Pursuant to Florida Rule of Civil Procedure 1.510, a motion for summary judgment should be granted only if the moving party shows that there is no genuine issue as to any material facts. Trial courts should be very circumspect when granting a summary judgment motion. Moore v. Morris, 475 So.2d 666, 668 (Fla. 1985) (citation omitted). The law is well settled in Florida that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact; the trial court must draw every possible inference in favor of the party against whom summary judgment is sought. Id.; *see also* Wills v. Sears, Roebuck & Co., 351 So.2d 29 (Fla. 1977). Summary judgment should not be granted unless the facts are so crystallized that only one inference can be drawn and nothing remains but questions of law. Moore, 475 So.2d at 668 (citing Shaffrant v. Holness, 93 So.2d 94 (Fla. 1957)). If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if tends to prove the issues, it should be submitted as a question of fact to be determined by the jury. Id.

The standard of review of a trial court ruling on a pure issue of law is *de novo;* the appellate court need not defer to the trial court on the matters of law presented in the appeal. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So.2d 126, 130-31 (Fla. 2000); Rittman v. Allstate Ins. Co., 727 So.2d 391, 393 (Fla. 1ST DCA 1999). When reviewing a summary judgment order, the appellate court must view the evidence in the light most favorable to the non-moving party. Sierra v. Shevin, 767 So.2d 524, 525 (Fla. 3RD DCA 2000). "If the 'slightest doubt' exists, then summary judgment must be reversed." Id. (citing Hancock v. Department of Corrections, 585 So.2d 1068 (Fla. 1ST DCA 1991)).

II. THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT BAR JUDICIAL REVIEW AND ENFORCEMENT OF THE CIVIL REMEDIES AVAILABLE TO MS. CARNESI FOR THE SEXUAL HARASSMENT INFLICTED UPON HER BY HER SUPERVISOR, MR. HARRISON.

The trial court and District Court of Appeal erred by ruling that the Establishment Clause and/or Free Exercise Clause of the First Amendment to the United States Constitution precludes the assessment of civil liability against the church defendants. In the case *sub judice*, the application of the laws relied upon by Ms. Carnesi does not involve the examination of the church defendants religious doctrines nor does it require any determination as to the propriety of religious doctrines. While the church defendants are religious organizations, the legal issues presented are purely secular and do not implicate the religious freedoms protected by

the First Amendment.

As this Court is well aware, the Establishment Clause of the First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion" while the Free Exercise Clause of the First Amendment continues with the proscription "or prohibiting the free exercise thereof[.]" Through the Fourteenth Amendment, these clauses apply to the states. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). Under either of these clauses - - used interchangeably by reviewing courts - -an exercise of governmental authority is valid so long as it: (1) has a secular purpose; (2) neither inhibits nor advances religion as its primary effect, and; (3) does not creative "excessive entanglement" between church and state. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

The third element of the Lemon test is what is commonly called the Excessive Entanglement doctrine. Religious groups and institutions rely upon the Excessive Entanglement doctrine to place certain of their actions beyond the review of courts. In order to determine whether state interaction with religious institutions has resulted in an excessive entanglement in violation of the First Amendment, courts must examine the nature of the intrusion into religious administration, the character and purpose of the involved institutions, and the resulting relationship between the religious

institution and the state. Id. at 615.

It cannot be forgotten that the purpose of religious protections embodied in the First Amendment is to allow the belief and profession of whatever religious doctrines one espouses; nonetheless, the First Amendment does not excuse anyone of the duty to comply with valid or neutral laws of general applicability. Employment Div., Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872, 879-80 (1990).

The First Amendment does not prohibit courts from opening their doors to hear legal disputes involving religious organizations. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969). A court can apply neutral principles of law to churches without impinging upon the First Amendment; the First Amendment only prohibits the court from injecting itself into controversies which directly involve underlying questions of religious doctrine and practice. Id.

In the State of Florida, the District Courts of Appeal are split regarding whether the Excessive Entanglement doctrine should be applied to a church's employment relationship with its secular employees. In Doe v. Evans, 718 So.2d 286 (Fla. 4TH DCA 1998), *rvw. granted*, 735 So.2d 1284 (Fla. 1999), the Fourth District Court of Appeal held that the doctrine does apply to preclude the secular

employee's claim whereas in Doe v. Malicki, 771 So.2d 545 (3RD DCA 2000), the Third District Court of Appeal held that the doctrine does not apply to such a situation. *See also* The House of God Which is the Church of the Living God, The Pillar and Ground of the Truth Without Controversy, Inc. v. White, 26 Fla. L. Weekly D399, D400 (Fla. 4TH DCA Feb. 2001) (declining to follow Malicki). In the case *sub judice*, the First District Court of Appeal, from which the instant appeal arises, relied upon, adopted, and went beyond the Fourth District's decision in Evans. Carnesi, 770 So.2d at 1287.

The Evans court ruled that a church's decision to hire a minister necessarily is guided by religious doctrine and practice; therefore, in order to review the church's supervision and retention of that minister "would necessarily entangle the court in issues of the church's religious law, practices, and policies. . . . A court faced with the task of determining a claim of negligent hiring, retention, and supervision would measure the church defendants' conduct against that of a reasonable employer; a proscribed comparison." Evans, 718 So.2d at 291.

In stark contrast, the Third District more recently held that there is no doctrinal implication associated with the review of a church's employment relationships with its lay or secular employees. Malicki, 771 So.2d at 546-47. In so ruling, the Malicki court reasoned:

> In their complaint, the plaintiffs alleged that they were both employees and parishioners of the defendant church, that they were sexually assaulted and/or battered by Father Malicki while working at the defendant church, and that, despite knowing that Father Malicki had committed several sexual assaults and/or batteries, he was retained by the defendants as a priest and given the task of supervising plaintiffs. The issue to be determined by the court, therefore, is whether the defendants had reason to know of Father Malicki's misconduct and did nothing to prevent reasonably foreseeable harm from being inflicted upon the plaintiffs. *This determination is one governed by tort law and does not require inquiry into the religious doctrines and practices of the Catholic church.*

Id. at 547-48 (emphasis added).

This Court must now determine whether it will adopt the position of the First and Fourth Districts, thereby broadening the application of the Excessive Entanglement doctrines to deny the law's several protections to secular employees of religious organizations or whether it will adopt the position of the Third District, thereby ruling that a church's employment relationship with its secular employees is not exempt from the civil laws of the

state and country.

In Ms. Carnesi's case, it is important to recognize that the facts under consideration implicate the protections of the Excessive Entanglement doctrine far less than did the facts underlying the Malicki decision because neither Ms. Carnesi nor Mr. Harrison were members of the church's clergy. Rather, they both were hired and/or retained by the church to effectuate the daily managerial and administrative needs of the church (management of secular employees for Mr. Harrison and bookkeeping and secretarial duties for Ms. Carnesi); their employment does not implicate or relate to the religious beliefs of the Methodist church. For this reason alone, this Court should rule that the Excessive Entanglement doctrine does not apply to a religious organization's employment relationship with its secular employees.

In this regard, this Court should examine the holdings of how the courts of other states have declined to apply the Excessive Entanglement doctrine to religious institutions' employment relationships with their secular employees.

In Minnesota, for instance, the court had to determine whether the Minnesota Labor Relations Act ("MLRA") could be applied to religious schools. Hill-Murray Federation of Teachers v. Hill-Murray High School, 487 N.W.2d 857 (Minn. 1992). In Hill-Murray, secular teachers from a religiously affiliated school elected to

form a collective bargaining unit under the MLRA; the Minnesota Court of Appeals held that the state could not recognize the bargaining unit because the Excessive Entanglement doctrine forbade the application of the MLRA to religiously affiliated schools. Id. at 859.

On appeal, the Minnesota Supreme Court reversed the appellate court and ruled that the First Amendment did not preclude utilization of the MLRA remedies by the secular employees of the school. Id. at 862-63. In so ruling, the Hill-Murray court relied upon the United States Supreme Court holding in Smith:

> We hold that the right to free exercise of religion does not include the right to be free from neutral regulatory laws which regulate only secular activities within a church affiliated institution. The application of the MLRA to labor relations at Hill-Murray does not violate the free exercise clause of the Federal Constitution. The hold otherwise would, in the words of the United States Supreme Court, allow Hill-Murray to "become a law unto [itself]." Smith, 494 U.S. at 879 (citing Reynolds v. United States, 98 U.S. 145, 167 (1879)).

Id. at 863 (alterations in original). Reflecting upon the church-state relationship created and/or affected by the MLRA, the court observed, as did the United States Supreme Court, that "'total

separation is not possible in an absolute sense [and s]ome relationship between government and religious organizations is inevitable.'" Id. at 863-64 (quoting Lemon, 403 U.S. at 614).

As should this Court, the Hill-Murray court observed that the level of state involvement with the religious institution was minimal because the "potential entanglement" did not include the potential for state-mandated religious beliefs or interference with the practice of religious beliefs: "Allowing lay teachers . . . to bargain collectively will not alter or impinge upon the religious character of the school. The first amendment wall of separation between church and state does not prohibit limited governmental regulations of purely secular aspects of a church school's operation." Id. at 864.

In Welter v. Seton Hall Univ., 608 A.2d 206, 213 (N.J. 1992), the Supreme Court of New Jersey reached a similar conclusion when it determined that the First Amendment did not preclude enforcement of Title VII's prohibition of sexual discrimination. In Welter, a nun who worked as a teacher at a Catholic university sued under Title VII of the Civil Rights Act of 1964. Id. The university defended on the grounds that the First Amendment rendered it immune from the application of Title VII. Id. at 214. The New Jersey Supreme Court found that defense without merit: "Only when the underlying dispute turns on doctrine or polity should courts

abdicate their duty to enforce secular rights. Judicial deference beyond that demarcation would transform our courts into rubber stamps invariably favoring a religious institution's decision regarding even primarily secular disputes."

In so ruling, the Welter court examined the duties of employment performed by the nun. Because the nun's duties as an instructor at a religious university were secular rather than ecclesiastical, she could pursue a Title VII claim against the organization notwithstanding the ministerial exception to Title VII. Id. at 214-15. "[A]n employee's function under the employment relationship at issue rather than whether the employee holds ecclesiastical office determines whether the court should abstain from entertaining the dispute." Id. at 215.

In the instant case, there is no sustainable dispute to the fact that Ms. Carnesi performed secular duties for Ferry Pass U.M.C. as did Mr. Harrison. Likewise, the church defendants have not contended that Mr. Harrison's actions and their responses thereto were somehow motivated or mandated by Methodist doctrine. As with Hill-Murray and Welter, the First Amendment protections do not mandate the dismissal of Ms. Carnesi's claims.

On all fours is the North Carolina Court of Appeal's holding in Smith v. Privette, 495 S.E.2d 395 (N.C. App. 1998). In Privette, church staff employees filed suit against church

defendants, alleging that the church's minister had sexually harassed them and that the church defendants had negligently supervised and retained the minister. Id. at 396. After the trial court dismissed the claims against the church defendants on First Amendment grounds, the North Carolina Court of Appeal reversed the entry of summary judgment and determined that no excessive entanglement would result by the application of sexual harassment laws to the church defendants. Id. at 398.

In so ruling, the court observed that reviewing the church defendants' responses to the minister's sexual harassment of the church employees would not require any analysis of religious doctrine and, therefore, the First Amendment did not apply. Id. Of particular importance was the fact that the church defendants, understandably, did not claim that the sexual misconduct was part of the tenets or practices of the Methodist Church. Id. As the court reasoned:

> Certainly, a contrary holding - - that a religious body must be free from any responsibility for wholly predictable and foreseeable injurious consequences of personnel decisions, although such decisions incorporate no theological or dogmatic tenets - - would go beyond First Amendment protection and cloak such bodies with an exclusive immunity greater than that required for the

preservation of the principles constitutionally safeguarded.

Id. (citation omitted); *see also* Bollard v. The California Province of the Society of Jesus, 196 F.3d 940, 946-47 (9TH Cir. 1999) (citation omitted).

As with Privette, there is no excessive entanglement between the civil remedy sought by Ms. Carnesi and church doctrine. Ms. Carnesi's claims do not involve conduct which is part of the practices or tenets of the Methodist church. Additionally, and most notably, the claims in Ms. Carnesi's case, unlike those in Privette, do not involve the decision to hire or discharge a minister or ministerial employee. Rather, it involves only the decision to reprimand or discharge the church's *secular supervisor* of the church's *secular employees*. Therefore, no First Amendment concerns are implicated.

This Court should also consider the following cases which echo the analyses engaged in by the state courts above. *See* Koolau Baptist Church v. Department of Labor and Industrial Relations, 218 P.2d 267, 272 (Haw. 1986) (holding that, because the focus of the subject state laws was the "economic and social aspect of the employment relation," First Amendment does not excuse church from complying with state labor laws for lay employees); Konkle v. Henson, 672 N.E.2d 450, 456 (Ind. App. 1996) (concluding that where

underlying conduct was not religiously motivated, "the court is simply applying secular standards to secular conduct which is permissive under First Amendment standards. . . . To hold otherwise would be to extend the protections beyond that included within the First Amendment and cloak churches with an absolute immunity for their actions"); Moses v. Diocese of Colorado, 863 P.2d 310, 320 (Colo. 1993), *cert. denied*, 511 U.S. 1137 (1994) (holding that claim for negligent hiring and supervision of pastor was not based solely on ecclesiastical and disciplinary matters and, thus, First Amendment did not preclude claim).

Federal courts have reached similar conclusions. *See* Smith v. Raleigh Distr. of North Carolina Conf. of United Methodist Church, 63 F. Supp. 2d 694 (E.D.N.C. 1999) (ruling that judicial review of former church employee's Title VII claims against church did not violate the First Amendment). "Of course, churches are not - - and should not be - - above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts. *Their employment decisions may be subject to Title VII scrutiny, where the decision does not involve the church's spiritual functions*." Id. (citation omitted, emphasis in original); *see also* EEOC v. Mississippi College, 626 F.2d 477 (5TH Cir. 1980), *cert. denied*, 453 U.S. 912 (1981) (applying Title VII to promotion of secular teacher in religious educational

institution); EEOC v. Southwestern Baptist Theological Seminary, 651 F.2d 277 (5TH Cir. 1981), *cert. denied*, 456 U.S. 905 (1982) (holding that application of Title VII to religious organization's administrative and support staff was not barred by the First Amendment); Lukaszewski v. Nazareth Hosp., 764 F. Supp. 57, 61 (E.D. Penn. 1991) (holding that, because the Age Discrimination in Employment Act is a neutral law of general applicability to any employer, it does not target or discriminate against religious organizations in any way; consequently, the Free Exercise Clause is not implicated); Bollard, 196 F.3d at 948 ("Title VII has an obvious secular legislative purpose, and . . . its principal effect neither advances nor inhibits religion").

While the First Amendment concerns and the policies lying thereunder always are worthy of careful application, a reviewing court cannot lose itself and apply the protections beyond the purpose for which they were intended. The issue in this case is straightforward: whether the Excessive Entanglement doctrine should be applied to afford religious institution an immunity from civil lawsuits involving its secular employees and their secular supervisors. This Court should refuse to create a second-class stratus of citzenry comprised of secular employees of religious institutions. For these reasons, this Court should reverse the entry of summary judgment and remand this case to the Circuit Court

of Escambia County.

CONCLUSION

For the foregoing reasons, on *de novo* review, this Court should determine that the Escambia County Circuit Court and the First District Court of Appeal erred by denying the law's civil protections to secular employees of religious institutions. This Court should hold that the Excessive Entanglement doctrine was not implicated by the underlying facts of Ms. Carnesi's cases, thereby reversing the two to one opinion of the First District Court of Appeals, reversing the entry of summary judgment entered by the Escambia County Circuit, and remanding to the Escambia County Circuit for a trial on the merits.

CERTIFICATE OF SERVICE AND OF FONT SIZE

I HEREBY CERTIFY that the foregoing brief was typed in Courier New 12 font, a font that is not proportionally spaced. I FURTHER CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **STEPHEN F. BOLTON, ESQUIRE,** Hook Bolton, et al., P.O. Box 30589, Pensacola, Florida 32503, **KATHY J. MAUS, ESQUIRE,** Butler, Burnette & Pappas, 3520 Thomasville Road, Suite 102, Tallahassee, FL 32308, **MICHAEL KEHOE, ESQUIRE,** Fuller, Johnson & Farrell, 700 South Palafox Place, Suite 170, Pensacola, Florida 32501, and **W. H. F. WILTSHIRE, ESQUIRE,** Harrell, Wiltshire, P.A., 201 East Government Street, Pensacola, Florida 32501, by hand delivery on the ___ day of April, 2001.

_____
TROY A. RAFFERTY
Florida Bar No. 024120

_____
TIMOTHY M. O'BRIEN
Florida Bar No. 055565
Levin, Papantonio, Thomas,
Mitchell, Echsner & Proctor, P.A.
316 South Baylen Street, Suite 600
Post Office Box 12308
Pensacola, Florida 32581
850/435-7000
Attorneys for Plaintiff/Appellant

APPENDIX

1. FINAL JUDGMENT FOR DEFENDANTS FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT OF THE UNITED METHODIST CONFERENCE, AND ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE (R. 17)

2. AMENDED COMPLAINT (R. 1)

3. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW (R. 8)

4. FERRY PASS UNITED METHODIST CHURCH'S MOTION FOR SUMMARY JUDGMENT (R. 10)

5. MOTION FOR FINAL SUMMARY JUDGMENT OF ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE (R. 12)

6. DEPOSITION OF VIRGINIA CARNESI TAKEN 1-5-98 (R. 21)

7. DEPOSITION OF VIRGINIA CARNESI TAKEN 1-6-98 (R. 22)

8. DEPOSITION OF CHESTER HARRISON TAKEN 11/11/98

9. DEPOSITION OF CHARLES WILLIAM AVERY, VOLUME I, TAKEN 11/9/98.

10. DEPOSITION OF CHARLES WILLIAM AVERY, VOLUME II, TAKEN 11/11/98.

11. LETTER OF TERMINATION DATED 7/29/96.

12. 11/16/2000 OPINION OF FLORIDA FIRST DISTRICT COURT OF APPEAL, IN VIRGINIA M. CARNESI VS. FERRY PASS UNITED METHODIST CHURCH, ET AL., CASE NO. 1D99-4333.