

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC-002579

VIRGINIA M. CARNESI,

Petitioner,

vs.

FERRY PASS UNITED METHODIST CHURCH,
PENSACOLA DISTRICT OF THE ALABAMA
WEST FLORIDA UNITED METHODIST CONFERENCE,
ALABAMA WEST FLORIDA UNITED METHODIST
CONFERENCE, and CHET HARRISON, individually
and as Past Parish Relations Committee Chairman,

Respondents.

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, FIRST DISTRICT
LOWER TRIBUNAL CASE NO.: 1D99-4333

**RESPONDENT FERRY PASS UNITED METHODIST CHURCH'S
ANSWER BRIEF**

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TEXTUAL REFERENCES

Petitioner Virginia Carnesi shall be referred to as "Carnesi" or "Petitioner".

The Ferry Pass United Methodist Church shall be referred to as "Ferry Pass" or "Church".

The multi-member Pastor Parish Relations/Staff Parish Relations Committee at the Ferry Pass United Methodist Church shall be referred to as the "PPRC".

STATEMENT OF FACTS

Carnesi asserts Chester Harrison was her "secular supervisor" at Ferry Pass. (Petitioner's Brief p. 24) This is not an accurate characterization of Mr. Harrison's role at Ferry Pass. The First District Court of Appeal found that Carnesi's claims were based upon the actions of a volunteer (Harrison), rather than another employee. Carnesi v. Ferry Pass United Methodist Church, 770 So.2d 1286 (Fla. 1st DCA 2000). At the time of Carnesi's employment, Harrison was a church member who volunteered on the PPRC, and he then served in the capacity of Chairman of that multi-member committee. (R. pp. 1087-88) The PPRC, acting as a committee, reviewed the hiring, the firing, and the compensation of church employees. (R. pp. 1147-51)

SUMMARY OF THE ARGUMENT

Both the trial court and the First District Court of Appeal correctly found that the courts may not review the issues raised by Carnesi in her complaint against Ferry Pass United Methodist Church. To do so would result in an excessive entanglement with religion, which is constitutionally prohibited. The United Methodist Church is an hierarchical institution, and internal discipline and governance at the individual church level is addressed by a church committee in accordance with the teachings of the Book of Discipline of the United Methodist Church. By applying the rule of law to church doctrine expressed in the Book of Discipline, the civil court system would impermissibly infringe upon the freedom of the United Methodist Church to act in a manner it deems appropriate from an ecclesiastical perspective when addressing the complaints of an employee of the Church. To submit the Church's decision making process to review by a civil tribunal would destroy the constitutionally mandated separation between church and state and would also infringe upon the rights of a group to freely associate.

THE EMPLOYMENT DECISIONS OF THE FERRY PASS UNITED METHODIST CHURCH, A MEMBER OF THE HIERARCHICAL STRUCTURE OF THE UNITED METHODIST CHURCH, ARE ENTITLED TO BE FREE FROM REVIEW BY THE CIVIL COURTS.

This case does not involve criminal activity against a minor¹, nor a claim unconnected with communicative activity and involving only individual conduct which is otherwise criminally prohibited², nor a program of governmental aid to religious institutions for the benefit of children¹. The cases addressing these circumstances have been discussed in detail either by Carnesi or in the briefs submitted to this Court in the Doe v. Evans case, but they hold no particular significance to the resolution of this case.

This case is about whether the rights of a group to come together to worship and conduct their internal affairs in the manner deemed appropriate by the Church as a governing body should be subject to an invasive and searching governmental inquiry, in particular by the courts. Specifically, it is a case about whether judicial inquiry into the very heart of the Methodist discipline is constitutionally appropriate. It is important to the resolution of this question that the United States Supreme Court has recognized the First Amendment's freedom of association can be implicated where the freedom of a group to come together to worship is imperiled by governmental action. Free exercise of religion and freedom of association under the First Amendment are not mutually exclusive concepts. Rather, they are inter-related, and, in an appropriate case, each freedom must be taken into account in examining the potential for inappropriate governmental intrusion. See Department of Human

¹ Agostini v. Felton, 521 U.S. 203 (1997). This case carries a strong admonition by the Supreme Court to avoid assuming the overruling by implication of its prior case law. Id. at 237.

Resources of Oregon v. Smith, 494 U.S. 872, 882 (1990); see also Boy Scouts of America v. Dale, 530 U.S. 640 (2000), discussed infra at pp. 9-10. It is simply not the role of the courts to review and pass judgment upon the values and beliefs held by an organization, and particularly a religious organization. See Boy Scouts of America, 530 U.S. at 651.

Carnesi's claims are based on alleged violations of Florida law, both statutory and common law. (R. pp. 1-13) Carnesi suggests that the ministerial exception to judicial review of employment related decisions should not preclude suit against Ferry Pass because the plaintiff here is not a minister or ministerial employee and the court's review will not delve into doctrinal matters. (Petitioner's Brief pp. 8, 15-17) This position is not consistent with the holding of Doe v. Evans, in which the plaintiff's claims against a church were found to be barred, irrespective of the fact the plaintiff was neither a minister nor a ministerial employee. Doe v. Evans, 718 So.2d 286 (4th DCA 1998), rev. granted, 735 So.2d 1284 (Fla. 1999). Carnesi's conclusion a court will not be required to delve into matters of Church doctrine in addressing the complaint against Ferry Pass is likewise incorrect.

In addressing whether judicial inquiry into the matters raised by Carnesi will result in an excessive entanglement with religion, it is important to determine whether the existence of the multimember PPRC permits Ferry Pass to assert the ministerial exception to employment anti-discrimination laws, which, in this case, will include common law claims based on the employment relationship. Of necessity, this discussion will also address the fact judicial review would intrude upon matters of church doctrine in a hierarchical church organization.

The ministerial exception has been used often to preclude application of federal employment laws in cases involving employees performing primarily religious functions. See, e. g. Powell v. Stafford, 859 F.Supp. 1343, 1346 (D. Colo. 1994). But, the application of this exception "has not

been limited to members of the clergy." Sanchez v. Catholic Foreign Society of America, 82 F.Supp. 2d 1338, 1344 (M. D. Fla. 1999). Rather, the exception has been extended to laypersons whose primary duties consist of church governance. Id. It is undisputed that the PPRC in a Methodist Church is intimately involved in the governance of an individual church. (R. pp. 290-294, 1203) Accordingly, the function of the PPRC should entitle the Church to assert the ministerial exception as it is recognized in the case law, regardless of the fact that the individual members of the PPRC are typically lay members of the church.² See Epperson v. Myers, 58 So.2d 150 (Fla. 1952) (conduct of routine church business is purely ecclesiastical and civil courts have consistently declined to assume jurisdiction over such matters); Powell v. Stafford, 859 F.Supp. 1343, 1346 (D. Colo. 1994) (the more pervasively religious an institution, the less religious an employee's role needs to be to risk First Amendment infringement by application of employment anti-discrimination laws).

The function of the PPRC in the Church will be hindered if secular laws regulating employment are applied in review of the actions taken and decisions made by the committee. This matter involves the decisional process of the PPRC, which is the heart of discipline and governance in the Methodist Church. The PPRC is a part of the hierarchical structure established by the United Methodist Church which adjudicates disputes over discipline and government, and the court should decline to exercise jurisdiction to inquire into matters reviewed or decided by the PPRC. See Franzen v. Poulos, 604 So.2d 1260 (Fla. 3rd DCA 1992). The role of the PPRC in the Church's self governance supports the conclusion reached by the lower court that the courts should not review or

⁵ This argument is not meant to suggest that the volunteer members of the PPRC cannot be held responsible for their individual conduct toward Church employees. Petitioner's claims against volunteer PPRC member Chester Harrison remain pending in the lower court.

interfere with the PPRC's employment related decisions regarding Church employees.

Judicial review of the method by which a Methodist Church addresses employment issues through its PPRC is a matter which will, without doubt, lead to excessive entanglement with the Church's religious doctrines. A civil court should not review a church's doctrinal teachings. In fact, the Doe v. Evans court specifically mentioned this very issue with respect to a United Methodist Church and the issues raised by potential judicial review of the Methodist Book of Discipline. Doe v. Evans, 718 So.2d at 293. A review of the actions of the PPRC in dealing with internal employment issues would result in a judicial review of the doctrinal teachings expressed in the Book of Discipline. With respect to the Church, its "policies undoubtedly differ from the rules of another employer, and may require the non-secular employer to respond differently" in the face of allegations of improper conduct affecting its employees. Doe v. Evans, 718 So.2d at 293.

The First Amendment's right to associate as a group—here for the purpose of spiritual worship and conducting the business of the Church—should also be considered. See Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 882 (1990). The United States Supreme Court issued an instructive First Amendment opinion on the issue of associational freedom since the time this case was submitted to the First District Court of Appeal.

In Boy Scouts of America v. Dale, 530 U.S. 640 (2000), the Court reviewed a New Jersey statute prohibiting discrimination on the basis of sexual orientation. In addressing this issue, the Court had to balance the First Amendment freedoms of a private organization against New Jersey's interest in eliminating discrimination. The Supreme Court determined that New Jersey's law, at least as it related to prohibition of discrimination against homosexuals, did not serve a compelling state interest. The Supreme Court then held that the New Jersey statute would violate the First Amendment rights of the Boy Scouts of America if that organization was required by the law to

permit a homosexual male to serve as an assistant scout master of a New Jersey Boy Scout troop. Id. at 656-59. The Court recognized that actions of local governments which may unconstitutionally burden First Amendment freedoms can take many forms. The specific form of intrusion cited by the Supreme Court was an impermissible intrusion into an association's internal structures or affairs, which in the Dale case involved requiring a group to accept members it did not desire to accept. Id. at 648. Here, the intrusion would be requiring Ferry Pass (and indeed all Methodist churches) to conform their doctrinal teachings to secular law and submit the manner of internal church governance set forth in the Book of Discipline to judicial scrutiny.³

In order to avoid an excessive entanglement with religion, it must be recognized that the Church has a method for dealing with internal church grievances, including employment issues, which is prescribed by its Book of Discipline. While this method may not be viewed as consistent with the practice in the secular world, it cannot be required by the secular world to be consistent. To do so would violate the very constitutional provision which is intended to insure a separation of church and state and to protect the freedom to associate.

The government's interest in eradicating sexual harassment is certainly important, but it is not compelling in this instance.⁴ By inquiring into the policies and practices of the Methodist

³ The petitioner in Doe v. Evans questioned the wisdom of allowing courts to speculate regarding theoretical entanglement issues. (Doe v. Evans, Petitioner's Initial Brief on the Merits, p. 24) Yet, the United States Supreme Court noted that it defers both to an association's assertion regarding the nature of its expression and the association's views on what would impair its expression. Boy Scouts of America, 530 U.S. at 653.

⁴ See, e. g. Kimel v. Florida Board of Regents, 120 S.Ct. 631 (2000) (state employee is barred from suing state for age discrimination where Congress had no evidence age discrimination by the states rose to the level of a constitutional violation when Congress enacted age discrimination in employment act); Powell v. Stafford, 859 F.Supp. 1343 (D. Colo. 1994) (government's interest in eradicating employment discrimination is not compelling viewed in light of the

Church, as those policies and practices are expressed in the Book of Discipline and carried out by a PPRC, a civil court would of necessity pass upon the doctrinal teachings of the Methodist Church. The hierarchical organization of the Methodist Church extends its teachings with respect to a PPRC and the PPRC's governance of the Church to dealings with employees of the Church. Based upon the constitutional requirement of separation of church and state, Ferry Pass must be left to address these issues in a manner which comports with the teachings of the Church as expressed in the Book of Discipline. For a civil court to review and comment upon and, in essence, approve or disapprove of the teachings contained in the Book of Discipline, will clearly result in an excessive entanglement with religion. The risk of excessive entanglement by such review cannot constitutionally be permitted.

fundamental right of a church to determine who can be trusted with the spiritual functions of the church); Doe v. Evans, 718 So.2d 286 (4th DCA 1998), rev. granted, 735 So.2d 1284 (Fla. 1999) (First Amendment prohibits an inquiry into church law, policies, or practices, with the possible exception of clear criminal conduct); Public Health Trust of Dade County v. Wons, 541 So.2d 96 (Fla. 1989) (individual's decision to decline life saving medical treatment was supported by constitutional religious rights and was not overridden by state's interest in protecting individual's minor children).

CONCLUSION

The facts of this case have been considered fully by both the trial court and by the First District Court of Appeal. Each determined that the facts of this case, which were presented and were considered in the context of the Methodist Church, suggest that the dispute between the parties should be handled by the Church through its process for internal governance and not by the courts. Both the trial court and the First District considered the details of the Methodist teachings and discipline in reaching this conclusion. For these reasons, as well as the reasons expressed in this brief, this Court should affirm the judgment below.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this brief have been provided by U. S. Mail to Supreme Court for the State of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927, and that a copy of the foregoing was furnished to:

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**CERTIFICATE OF COMPLIANCE WITH FONT
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This is to certify that this brief complies with the font requirements of Rule 9.210 and that the font used in Courier New 12-Point.

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1 The protection of minor children is admittedly important, but even that interest has not always been found sufficiently compelling to allow an intrusion on religious freedoms by the state. See Public Health Trust of Dade County v. Wons, 541 So.2d 96 (Fla. 1989) (individual's decision to decline life saving medical treatment was supported by constitutional religious rights and was not overridden by state's interest in protecting individual's minor children).

² Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). This case is important for its recognition of the related associational aspect of religious expression, which is itself subject to First Amendment protection. See *infra* p. 5.

, nor intentional targeting of a religious organization by an ordinance or law

²² Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993).