IN THE SUPREME COURT OF FLORIDA

Case No. SC05-873

Petition for review of
District Court of Appeal Case No. 1D03-3325

THE WICCAN RELIGIOUS COOPERATIVE OF FLORIDA, INC.,

Petitioner,

v.

JIM ZINGALE and THE FLORIDA DEPARTMENT OF REVENUE

Respondent.

RESPONDENT'S JURISDICTIONAL ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts cites facts not present within the four corners of the First District's majority opinion. These facts cannot be considered by this Court for purposes of jurisdictional review and must be disregarded.[1] The following paragraph summarizes the facts as contained within the four corners of the decision on review.

Petitioner, The Wiccan Religious Cooperative of Florida, Inc., brought various constitutional challenges against sales tax exemption statutes and alleged that it was improperly and unlawfully denied a renewal of its certificate of exemption from Florida sales and use tax. The trial court granted the Florida Department of Revenue's motion for summary judgment, ruling that Petitioner had standing and that the challenged statutes were constitutional. The trial court also ruled that Petitioner failed to exhaust its administrative remedies regarding obtaining a renewal of its certificate of exemption. Petitioner appealed the trial court's ruling that section 212.06(9), Florida Statutes, is facially constitutional, and argued that the trial

[1] As this Court has stated, "the only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). "[W]e are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here." Id. at 830, n.3.

court erred because the statutory tax exemption clearly violates the United States Constitution Establishment Clause and Free Press Clause. The Department argued in its response that Petitioner was without standing to bring such a challenge. The district court agreed that Petitioner lacked standing and reversed the trial court on the standing issue. The court held that the Petitioner benefits from the tax exemption and "fails to have the adverse interest necessary for standing and is not the proper party to assert the instant constitutional challenge." Wiccan Religious Cooperative of Florida, Inc. v. Zingale, 898 So. 2d 134 (Fla. 1st DCA 2005). The court did not address the constitutionality of the tax statute.

SUMMARY OF ARGUMENT

I. The First District's decision does not conflict with decisions of this Court or other district courts of appeal. Each of the cases cited by Petitioner addresses the standing of taxpayers to challenge taxing or spending statutes. The court rejected Petitioner's argument that it was a taxpayer and did not apply the taxpayer exemption to the general standing requirements.

II. The First District's decision does not expressly construe article III, section 2 of the United States Constitution. The decision merely applies relevant case law on standing. Mere application of relevant case law does not provide a basis for this Court's review.

ARGUMENT

I. THE FIRST DISTRICT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL OR THIS COURT

The First District's decision does not conflict with the cases cited by Petitioner. Each of the cases cited by Petitioner concerns a taxpayer challenge to an appropriations or tax statute. Although Petitioner alleges in its initial brief to this Court that it was a taxpayer bringing a challenge to a tax statute, no such facts appear within the four corners of the court's opinion. The First District did not recognize Petitioner as a taxpayer and apparently rejected Petitioner's attempts to characterize itself as such. Because the court did not conclude Petitioner was a taxpayer, it did not rule on the issue of taxpayer standing. The court applied well-established case law on standing and held that Petitioner "fails to have the adverse interest necessary for standing and is not the proper party to assert the instant constitutional challenge." Wiccan, 898 So. 2d at 136.

Each of the three cases cited by Petitioner as conflicting with the First District's decision involves a challenge by taxpayers to appropriations acts or tax statutes and is therefore distinguishable from the decision on review. In Department of Administration v. Horne, 269 So. 2d 659 (Fla. 1972), taxpayers brought a declaratory judgment action seeking to declare portions of a general appropriations

act unconstitutional. The Court held that the taxpayers' allegations, that portions of the appropriations act were unconstitutional, presented a valid exception to the general standing requirement and no showing of special injury was required. Accordingly, the Court held that the taxpayers' allegations satisfied "the requirement for 'standing' to attack an appropriations act." Id. at 662.

In Paul v. Blake, 376 So. 2d 256 (Fla. 3d DCA 1979), the court considered whether a county taxpayer has standing to bring a declaratory decree and injunctive action against public officials of the county when the action seeks to enjoin the grant of certain tax exemptions as unconstitutional. The court held that "the taxpayer has standing to bring such an action without making a showing that the grant of such exemptions inflicted a special injury upon him which is distinct from that sustained by every other taxpayer in the county." Id. at 258. Relying on this Court's holding in Horne, the court stated:

> One exception to the special injury standing requirement in taxpayer suits has been established. A taxpayer may institute such a suit without a showing of special injury if he attacks the exercise of the state or county's taxing or spending authority on the ground that it exceeds specific limitations imposed on the state or county's taxing or spending power by the United States Constitution or the Florida Constitution.

Id.

In Dep't of Education v. Lewis, 416 So. 2d 455 (Fla. 1982), the Court

considered whether the Florida Department of Education, State Board of Education, and the Commissioner of Education, in his official capacity, had standing to bring a complaint seeking a declaratory judgment that portions of an appropriations bill were unconstitutional. The Court held that although the appellants did not have standing in their official capacity, certain appellants did have standing as ordinary citizens and taxpayers to bring a constitutional challenge to the appropriations bill at issue. Id. at 459.

Each of the cases discussed above concern constitutional challenges by taxpayers to the state or county's taxing or spending authority. Petitioner is not a taxpayer bringing such a challenge and the district court did not characterize Petitioner as a taxpayer in its decision. As the court noted, Petitioner is a religious organization that benefits from the sales tax exemption it attempted to challenge. Accordingly, the court applied general standing requirements and did not apply the taxpayer standing exception. The First District's decision does not conflict with Horne, Lewis, or Blake.

II. THE FIRST DISTRICT'S DECISION DOES NOT EXPRESSLY CONSTRUE A PROVISION OF THE UNITED STATES

CONSTITUTION

The First District's decision does not expressly construe Article III, Section 2 of the United States Constitution. The First District's opinion does not cite the constitutional provision and merely applies relevant case law on standing. For purposes of this Court's jurisdiction, this Court has held that an opinion or judgment does not construe a provision of the constitution unless it undertakes "to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." Ogle v. Pepin, 273 So. 2d 391, 392 (Fla. 1973) (quoting Armstrong v. City of Tampa, 106 So. 2d 407, 409 (Fla. 1958)). Mere application of existing case law does not provide a basis for this Court's jurisdiction. The First District's decision does no more than apply relevant case law to the case at issue. The decision does not expressly construe a provision of the state or federal constitution.

CONCLUSION

Petitioner has presented no valid basis for the exercise of this Court's jurisdiction in this case. Because this Court lacks jurisdiction to review the district court's opinion, Respondents respectfully request that this Court enter an order denying review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by **U.S. Mail,** postage prepaid, to Heather Morcroft, Counsel for Petitioner, 5278 Fayann St., Orlando, FL 32812, this ____ day of June, 2005:

_____
JAMES A. MCKEE
Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)(2), I certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.

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JAMES A. MCKEE
Deputy Solicitor General