

IN THE SUPREME COURT
STATE OF FLORIDA

YOLANDA G. MINAGORRI,

Petitioner,

vs.

Sup. Ct. Case No: SC07-1171

D.C.A. Case No: 3D06-3015

Cir. Ct. Case No: 00-293-CA

ARCHDIOCESE OF MIAMI, INC.

Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

On Appeal from the District Court of Appeal, Third District.

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TABLE OF CONTENTS

Table of Contentsi

Table of Citationsii

Preliminary Statement.....1

Statement of the Case and Facts.....1

Summary of the Argument2

Jurisdictional Statement.....3

Argument

I.

THE DECISION OF THE DISTRICT COURT IN THIS CASE EXPRESSLY CONSTRUES A PROVISION OF THE FEDERAL CONSTITUTION.....4

II.

THE DECISION OF THE DISTRICT COURT IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *MALIKI V. DOE*, 814 SO.2D 347 (FLA. 2002) AND *DOE V. EVANS*, 814 SO.2D 370 (FLA. 2002).....6

Conclusion8

Certificate of Service.....9

Certificate of Compliance.....9

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGES</u>
FLORIDA AUTHORITIES:	
<i>Archdiocese of Miami, Inc. v. Miñagorri</i> , 954 So.2d 640 (Fla. 3d DCA 2007).....	2
<i>Doe v. Evans</i> , 718 So.2d 286 (Fla. 4th DCA 1998).....	6
<i>Doe v. Evans</i> , 814 So.2d 370, 373 (Fla. 2002).....	7
<i>Maliki v. Doe</i> , 814 So.2d 347 (Fla. 2002).....	2-3, 6-7
FEDERAL AUTHORITIES:	
<i>Maruani v. AER Services, Inc.</i> , 2006 WL 2666302, 99 Fair Empl.Prac.Cas. (BNA) 561, 25 IER Cases 143 (D.Minn 2006).....	4-5
FLORIDA CONSTITUTION:	
Art. V, § (3)(b)(3), Fla.Const.....	3
RULES OF PROCEDURE:	
Fla.R.App.P. 9.030(a)(2)(A)(ii).....	3
Fla.R.App.P. 9.030(a)(2)(A)(iv).....	3
Fla.R.App.P. 9.210(a)(2).....	9

PRELIMINARY STATEMENT

The Petitioner, YOLANDA G. MINAGORRI, will be referred to in this brief as “MINAGORRI”. The Respondent, ARCHDIOCESE OF MIAMI, INC., will be referred to in this brief as the “ARCHDIOCESE”. Citations to the appendix of this brief shall be made as follows: (Appendix at ___)

STATEMENT OF THE CASE AND FACTS

MINAGORRI , was previously employed by the ACHDIOCESE, as the principal of St. Kevin Catholic High School. (Appendix at 2) The parties agree that MINAGORRI was a ministerial employee. (Appendix at 2) MINAGORRI asserts that she was physically and verbally assaulted by the Priest, who was her immediate supervisor. (Appendix at 2) MINAGORRI further asserts that when she complained of the alleged assault to the ARCHDIOCESE, she was terminated. (Appendix at 2) As the lower court explains:

In count II of her four count complaint, Miñagorri makes a Private Sector Whistleblower Act claim under section 448.102(3), which prohibits employers from taking retaliatory action against employees who object to or refuse to participate in activities, policies or practices of the employer which are “in violation of a law, rule, or regulation.” § 448.102(3), Fla. Stat. (2006).

(Appendix at 2)

The district court then found that the consideration of the claim by the court

would result in the excessive entanglement of the court in religious doctrine and found that the First Amendment of the United States Constitution deprived the circuit court of jurisdiction to hear the action.¹ (Appendix at 8) The opinion of the district court is reported at *Archdiocese of Miami, Inc. v. Miñagorri*, 954 So.2d 640 (Fla. 3d DCA 2007)

SUMMARY OF ARGUMENT

The decision of the district court expressly construed the First Amendment of the federal constitution to deprive the circuit court of jurisdiction to determine a whistleblower claim by a ministerial employee. The basis for the claim was that the religious institution had retaliated against the ministerial employee for reporting and objecting to a criminal assault and battery by the employee's immediate supervisor. This application of the ministerial exception to whistleblower claims has no prior precedent in Florida decisional law. Further, this decision has significant public policy ramifications, as it effectively allows a religious employer to punish its ministerial employees for resisting or reporting criminal acts.

Finally, the district court's decision is in direct conflict with this court's opinion in *Maliki v. Doe*, 814 So.2d 347 (Fla. 2002), where this court held that the

¹This action was a petition for a writ of prohibition. The district court granted relief but

State had a compelling interest and thus was not prohibited by the ministerial exception from interfering with the church's selection of clerics where criminal conduct was involved.

Thus MINAGORRI contends that this court should accept jurisdiction and give its construction to the First Amendment of the federal constitution in this instance and overrule the decision of the district court as not in compliance with *Maliki, supra*.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of the district court of appeal that expressly construes a provision of the State or Federal constitution. Art. V, § 3(b)(3), Fla.Const.; Fla.R.App.P. 9.030(a)(2)(A)(ii) Further this court has discretionary jurisdiction to review a decision of the district court of appeal that expressly and directly conflicts with the a decision of the supreme court or another district court of appeal on the same point of law. Art. V, § 3(b)(3), Fla.Const.; Fla.R.App.P. 9.030(a)(2)(A)(iv)

withheld the issuance of the writ out of courtesy. (Appendix at 2)

ARGUMENT

I.

THE DECISION OF THE DISTRICT COURT IN THIS CASE EXPRESSLY CONSTRUES A PROVISION OF THE FEDERAL CONSTITUTION.

The district court in this case determined that the circuit court lacked jurisdiction to consider MINAGGORRI's private sector whistleblower claim under the ministerial exception of the First Amendment of the United States Constitution. The ministerial exception is usually applied in cases where the action of the religious institution is challenged based on traditional employment related statutes such as Title VII, the Americans With Disabilities Act, etc. In this case though the district court applied the ministerial exception to deprive the circuit court of jurisdiction to determine a private sector whistleblower claim based on the assertion that the religious employer retaliated against the employee for reporting and resisting criminal assault and battery.

The only case discovered by the undersigned which has specifically addressed the issue of whether a whistleblower claim against a religious institution, based on allegedly criminal conduct, is barred under the First Amendment is the case of *Maruani v. AER Services, Inc.*, 2006 WL 2666302, 99 Fair Empl.Prac.Cas. (BNA) 561, 25 IER Cases 143 (D.Minn 2006). In *Maruani*, the court considered

whether a whistleblowers claim by a Kosher butcher would be dismissed where the employer asserted that the Kosher butcher was terminated for failing to follow orthodox jewish law and was not “god fearing in the public eye”. *Maruani*, at 2-3. The Kosher butcher claimed that he was terminated for, among other things, refusing to participate in an illegal scheme to recruit illegal aliens as workers and launder money with which to pay them. *Maruani*, at 3. The court found that:

Clearly, the state regulations at issue, namely providing protection for workers compensation filers and whistleblowers is compelling. AER does not contend that this is not a legitimate state interest.

*

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*

[T]he Court acknowledges that even a “limited judicial review of a discharge decision places some burden on [defendant] and raises the possibility that the court will inquire into religious doctrine.” However, the mere possibility of a burden on AER's religious beliefs does not outweigh the compelling state interests in protecting workers compensation claimants and whistleblowers under this particular set of facts.

Maruani, at 10.

It is this same compelling state interest that weighs in favor of this court exercising its discretionary jurisdiction and determining the significant constitutional issue of whether the First Amendment prohibits the State of Florida from protecting ministerial employees from retaliation for reporting and resisting criminal acts.

II.

THE DECISION OF THE DISTRICT COURT IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *MALIKI V. DOE*, 814 SO.2D 347 (FLA. 2002) AND *DOE V. EVANS*, 814 SO.2D 370 (FLA. 2002)

This court has previously considered the interplay of the criminal laws with the ministerial exception. In *Maliki v. Doe*, 814 So.2d 347 (Fla. 2002) the court quoted the opinion of the Fourth District Court in *Doe v. Evans*, 718 So.2d 286 (Fla. 4th DCA 1998) as:

[W]e are persuaded that just as the State may prevent a church from offering human sacrifices,² it may protect its children against injuries caused by pedophiles by authorizing civil damages against a church that knowingly (including should know) creates a situation in which such injuries are likely to occur. *We recognize that the State's interest must be compelling indeed in order to interfere in the church's selection, training and assignment of its clerics. We would draw the line at criminal conduct.*

Doe v. Evans, 718 So.2d 286, 289 (Fla. 4th DCA 1998)

This court then went on and rejected the above statement of law as being too low of a standard.

[W]e reject the distinction that the Fourth District drew in *Evans*, 718 So.2d at 289-90, that would apparently allow a negligent supervision

²This example demonstrates the absurdity of the district court's decision, under this decision, should a minister object to the offering of human sacrifices as illegal, the church could fire the minister and be totally protected from all legal consequences under the ministerial exception.

claim against a church defendant only if the underlying sexual misconduct involved criminal activity (e.g., sexual assault and battery, as in this case). As the United States Supreme Court explained in *Lukumi Babalu Aye* and *Smith*, strict scrutiny will not be triggered by neutral laws of general applicability that are not intended to “infringe upon or restrict practices because of their religious motivation.” *Lukumi Babalu Aye*, 508 U.S. at 533, 113 S.Ct. 2217; *see Smith*, 494 U.S. at 884-85, 110 S.Ct. 1595. Moreover, this “neutral principles of law” doctrine applies in both the criminal and the civil context.

Maliki, t 364.

See also, *Doe v. Evans*, 814 So.2d 370, 373 (Fla. 2002)

As both *Maliki*, and *Evans*, reject requirement that the conduct involve criminal activity as too low of a standard it is beyond dispute that conduct involving criminal activity is outside the ministerial exception. Again, strong public policy considerations weigh in favor of this court exercising its discretionary jurisdiction and determining the significant constitutional issue of whether the First Amendment prohibits the State of Florida from protecting ministerial employees from retaliation for reporting and resisting criminal acts.

CONCLUSION

This court has discretionary jurisdiction to review the decision of the below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to:

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by regular U.S. mail this 11th day of July, 2007.

George T. Reeves

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

George T. Reeves