IN THE SUPREME COURT
STATE OF FLORIDA

YOLANDA G. MIÑAGORRI,

Petitioner,

vs.

ARCHDIOCESE OF MIAMI, INC.

Respondent.
_____/

Sup. Ct. Case No: SC07-1171
D.C.A. Case No: 3D06-3015
Cir. Ct. Case No: 00-293-CA

PETITIONER'S REPLY BRIEF ON THE MERITS

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

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PRELIMINARY STATEMENT

The Petitioner, YOLANDA G. MIÑAGORRI, will be referred to herein as the "EMPLOYEE". The Respondent, ARCHDIOCESE OF MIAMI, INC., will be referred to herein as the "ARCHDIOCESE". The District Court's opinion below *Archdiocese of Miami, Inc. v. Miñagorri,* 954 So.2d 640 (Fla. 3d DCA 2007), will be cited using its Southern Reporter page number citation as follows: *Miñagorri*, at _____.

I. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DETERMINING THAT THE EMPLOYEE'S WHISTLEBLOWER CLAIM WAS BARRED.

Distilled to its essential argument, the ARCHDIOCESE asserts that it is immune from *all employment related civil actions* by ministerial employees because it is a religious organization. The First Amendment, however, simply does not bestow such broad and sweeping immunity. A religious organization may not receive Constitutional protection based on the First Amendment, unless religious doctrine or belief is implicated and the conduct sought to be regulated is rooted in religious belief. Matters of constitutional law do not turn on the status of the litigants. Yet, that is the rule of law advocating by the ARCHDIOCESE.

The EMPLOYEE acknowledges that civil courts may not review internal

church disputes involving matters of faith, doctrine, church governance, and polity. However, "[a]pplication of this general principle . . .to all factual situations involving civil damage actions between members and the church, employees and the church, and clergy and the church has not been universally defined by the United States Supreme Court nor been unanimously agreed to by state and federal courts considering the issues." *Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575, 580 (Mo. Ct. App. 2001). The United States Supreme Court has yet to consider the ministerial exception and has not endorsed the position advocated by the ARCHDIOCESE.[1] In fact, the United States Supreme Court's decisions support the EMPLOYEE's position that the First Amendment allows civil court adjudication of a claim when no religious doctrine or belief is implicated.

The ARCHDIOCESE bases its argument on several cases from the United States Supreme Court including *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94 (1952), *Serbian Eastern Orthodox v. Milivojevich*, 426 U.S. 696 (1976), and

[1] In the past, the United States Supreme Court has denied certiorari when it has been asked to address the application and scope of the "ministerial exception." *See, e.g., Petruska v. Gannon Univ.*, 462 F.3d 294 (3rd Cir. 2006), *cert. den.*, 127 S. Ct. 2098 (2007); *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036 (7th Cir. 2006), *cert. den.*, 127 S. Ct. 190 (2006); *Starkman v. Evans*, 198 F.3d 173 (5th Cir. 1999), *cert. den.*, 531 U.S. 814 (2000); *Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994), *cert. den.*, 513 U.S. 929 (1994); *Rayburn v. Gen. Conf of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. den.*, 478 U.S. 1020 (1986); *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), *cert.*

Gonzalez v. Roman Catholic Archbishop of Manilla, 280 U.S. 1 (1929). However, these cases do not support the position of the ARCHDIOCESE. For example, the court in *Kedroff,* held:

> Freedom to select the clergy, **where no improper methods of choice are proven**, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference.

Kedroff, 344 U.S. at 116. (Emphasis supplied)

It pushes the bounds of spirited advocacy for the ARCHDIOCESE to quote this provision from *Kedroff* as it did in its Answer Brief. The ARCHDIOCESE quoted this provision as: "[f]reedom to select the clergy ... must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." (Answer Brief, at page 8) Upon review of the entire sentence from *Kedroff* (instead of utilizing ellipses to eliminate vitally important language) it becomes clear that *Kedroff* does not support the ARCHDIOCESE's position. *Kedroff,* as set out above, does not support the District Court's decision that the First Amendment shields the ARCHDIOCESE from liability.

Gonzalez, is also unhelpful for the ARCHDIOCESE. In *Gonzalez,* the Supreme Court noted, "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although

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den., 409 U.S. 1050 (1972).

affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." *Gonzalez,* 280 U.S. at 16. As the ARCHDIOCESE has not even alleged that its employment actions are "matter purely ecclesiastical", *Gonzalez* cannot offer the ARCHDIOCESE any defense.

In any event, the precedential value of the cases upon which the ARCHDIOCESE relies has been substantially undermined by later United States Supreme Court decisions. For example, in the Court's most recent decision involving church property, *Jones v. Wolf,* 443 U.S. 595 (1979), the Court held that while courts *may* defer to church authority to resolve disputes between factions, under the First Amendment they are not required to do so. Citing its precedent, the Court noted that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." However, the *Jones* Court held that a civil court could utilize neutral principles of law to resolve a dispute, provided that it "involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 602. The *Jones*, Court cautioned that application of the neutral principles of law approach was not "wholly free of difficulty." *Id.* at 604. The Supreme Court acknowledged that the neutral principles approach would require a civil court to examine religious

documents and that during such examination a court "must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts." *Id.* The Court concluded by noting that the First Amendment does not require a rule of "compulsory deference to religious authority" when no issue of doctrinal controversy is presented. *Id.* at 605.[2] Of particular relevance to this Court, the *Jones* Court observed, "The neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, ***hire employees***, or purchase goods." (Emphasis added). *Id.* at 606.

Finally, the EMPLOYEE asserts that the best cases to show the boundaries of the First Amendment protection available to the church in employment decisions are the U. S. Supreme Courts opinions in *Serbian E. Orthodox Diocese v.*

[2]Commentators have recognized that *Jones* is a departure from the United States Supreme Court's earlier decisions. *See e.g.* E. Ehrlich, *Taking the Religion Out of Religious Property Disputes*, 46 B.C. L. Rev 1069, 1077 (2005) ("The earlier practice of compulsory deference was based on the notion that because a religious institution was involved in a property dispute, the dispute was inherently religious in nature and therefore nonjusticiable by civil courts. The modern standard represents the revised understanding that church property disputes can be settled with neutral principles of law."); D. Steinberg, *Rejecting the Case Against the Free Exercise Exemption: A Critical Assessment*, 75 B.U.L. Rev. 241, n.121 (1995) (citing *Jones v. Wolf* and noting that "[g]iven subsequent case law, it is not clear whether church autonomy decisions such as *Milivojevich* remain good law. "); K. Reeder, *Whose Church Is It, Anyway? Property Disputes and Episcopal Church Splits*, 40 Colum. J.L. & Soc. Probs. 125, 141-42 (describing *Jones v. Wolf* as a "fresh take on church property disputes" and noting that the Supreme Court "announced a neutral principles test that relied exclusively on authoritative church documents that could be interpreted without invoking religious doctrine or deciding whether the local or national church has departed from understandings of the true church.")

Milivojevich, 426 U.S. 696, 708-09 (1976) and *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.,* 477 U.S. 619 (1986). The holding in the *Serbian E. Orthodox Diocese* opinion has been succinctly summarized by this court as follows:

> [I]n *Serbian E. Orthodox Diocese,* the Supreme Court held that the Illinois Supreme Court had no authority, consistent with the First Amendment, to adjudicate a dispute concerning a priest's defrockment by the mother church. 426 U.S. at 724-25, 96 S.Ct. 2372. In reversing the judgment of the state court, the Supreme Court explained:
>
> The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.... "To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ... religious law [governing church polity] ... would violate the First Amendment in much the same manner as civil determination of religious doctrine." For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

Malicki v. Doe, 814 So.2d 347, 356 (Fla. 2002) (Emphasis in the original) *Serbian E. Orthodox Diocese,* concerns an employment decision of a church dealing with a ministerial employee and the U.S. Supreme Court does not find a blanket exception. It is worth noting that *Serbian E. Orthodox Diocese*, was

decided some 4 years after *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), *cert. den.*, 409 U.S. 1050 (1972)[3], yet the court in *Serbian E. Orthodox Diocese*, mentions neither *McClure*, nor any broad sweeping ministerial exception. Rather the U.S. Supreme Court only says that civil courts are barred from resolving such disputes where the resolution "cannot be made without extensive inquiry by civil courts into religious law and polity." *Serbian E. Orthodox Diocese*, at 709.

Along this same vein, the United States Supreme Court has specifically held in *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986), that the First Amendment does not bar inquiry into the motivations for the employment decisions of religious based institutions. The court held that a state civil rights commission violates "no constitutional rights by merely investigating the circumstances of [the employee] discharge in this case, if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge." *Id.* at 628. The ARCHDIOCESE correctly notes that *Dayton Christian* was before the Supreme Court on federalism grounds, not church autonomy. (Answer Brief at 19). However, the ARCHDIOCESE misses the point of *Dayton Christian*. In *Dayton Christian*, the court determined that the Federal

[3]*McClure*, is generally credited with being the first case to establish a "ministerial exception." Shawna Meyer Eikenberry, Note, *Thou Shalt Not Sue the Church: Denying Court Access to Ministerial Employees*, 74 Ind. L.J.269, 274 (1998)

trial court should not have enjoined the state administrative proceedings because the proceedings themselves did not implicate First Amendment protections. The First Amendment did not prohibit the state investigating the reasons for the discharge, "if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge." *Id.* at 628. Obviously, had the state's investigation into the motivation for the employment action resulted in an "excessive entanglement", the court would have allowed the injunction to stand.

Therefore *Dayton Christian,* is directly contrary to the central premise of the ARCHDIOCESE's argument, that, "The process of attempting to separate arguably impermissible grounds for a decision from grounds stemming from church beliefs would itself excessively entangle the courts with religion." (Answer Brief at page 17) The United States Supreme Court in *Dayton Christian,* held that the inquiry does not implicate First amendment protections and should be allowed. *Id.*, at 628. The EMPLOYEE respectfully asserts that the Supreme Court's decision in *Dayton Christian* is the most relevant decision from the United States Supreme Court pertaining to the issues presented in this proceeding.

Finally, the most recent decision of the United States Supreme Court substantially supports the EMPLOYEE's position. *Employment Division Department of Human Resources v. Smith,* 494 U.S. 872 (1990), involved the First

Amendment rights of employees who were denied unemployment compensation for ingesting peyote (A controlled substance under state law). The employees asserted that ingesting peyote was a part of their religious practices and that the denial of unemployment compensation ran afoul of the First Amendment. Justice Scalia, writing for the majority in *Smith,* held that the First Amendment did not bar enforcement of the State law, because the Court has "consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* The Court further observed that holding in favor of the employees would result in "a private right to ignore generally applicable laws -- [which] is a constitutional anomaly." *Id.* As the ARCHDIOCESE has not alleged that the Florida whistleblower statute is anything other than a "valid and neutral law of general applicability," the First Amendment can offer the ARCHDIOCESE no protection.

II. THE ARCHDIOCESE WOULD NOT BE ENTITLED TO A WRIT OF CERTIORARI SHOULD THE COURT DETERMINE THAT A WRIT OF PROHIBITION WERE NOT AVAILABLE.

In its Answer Brief the ARCHDIOCESE asserts that even if this court determined that prohibition were improper, the District Court could have issued its

writ of certiorari and therefore accomplished the same result by a different means. (Answer Brief at pages 24-25) The cases cited by the ARCHDIOCESE stand for the proposition that where there is a "continuing violation of constitutional rights during the trial proceedings," *Belair v. Drew*, 770 So. 2d 1164, 1167 (Fla. 2000) or a "right to be free of litigation," *Tucker v. Resha,* 648 So.2d 1187 (Fla. 1994). The First Amendment is not invoked by the court's consideration of whether the discharge of an employee was based on religious grounds. *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628 (1986) Therefore certiorari would not lie.

III. SHOULD THIS COURT QUASH THE DISTRICT COURT'S WRIT OF PROHIBITION IT SHOULD ALSO REVERSE THE DISTRICT COURT'S DENIAL OF APPELLATE ATTORNEY'S FEES TO THE EMPLOYEE.

The ARCHDIOSCESE apparently misapprehends the point of the EMPLOYEE's argument in section II of the Amended Initial Brief. The point of this section was to request that, should this court reverse the District Court's issuance of the writ of prohibition, then this court should also reverse the District Court's denial of attorneys fees to the EMPLOYEE. This is a point which seems self evident, yet the EMPLOYEE did not want there to be any confusion as to what

she was requesting on this appeal.

Concerning the EMPLOYEE's request for attorney's fees for the matters before this Court, that issue has been raised and argued by the EMPLOYEE in her motion for attorneys fees served on January 11, 2008 and filed on January 14, 2008. In such motion, the EMPLOYEE similarly requested that should she prevail before this Court, herein this court should award the EMPLOYEE her reasonable attorneys fees pursuant to the statutory authority cited therein. Had the ARCHDIOCESE wished to make arguments concerning the request for fees before this court it should have done so by response to the motion for attorneys fees served no later than 10 days after the date of service of the motion. Fla.R.App.P. 9.300(a) Having failed to serve any response as required by the rules, the ARCHDIOCESE has waived the right to oppose the award of fees as requested. *Homestead Insurance Co. v. Poole, Masters & Goldstein, C.P.A.,* 604 So.2d 825 (Fla. 4th DCA 1991)

IV. SINCE THE ISSUE PRESENTED HAS NEVER BEEN ADDRESSED BY EITHER THIS COURT OR THE U.S. SUPREME COURT, THIS COURT'S DECISION IS NEEDED AND THE DISCRETIONARY REVIEW IS PROPER.

Neither the ARCHDIOCESE nor the EMPLOYEE have cited to the court any decision of either this court or the U.S. Supreme Court ruling upon whether

there is a specific "ministerial exception" under the First Amendment to the U.S. Constitution. Further no decision of either court has ever held that the First Amendment provided so broad and sweeping a protection as that found in the instant case. For these reasons discretionary review is appropriate and needed.

Additionally, Florida law is not as consistent with regards to this issue as the ARCHDIOCESE would have the court believe. For example, in the case of *Hemphill v. Zion Hope Primitive Baptist Church, Inc.*, 447 So.2d 976 (Fla. 1st DCA 1984) the court affirmed a temporary injunction against a terminated pastor barring him from acting as pastor of the church. The court found that the temporary injunction did not violate the First Amendment.

> Appellant contends that the trial court's order is in violation of the provision in the First Amendment to the United States Constitution which prohibits government interference in ecclesiastical matters. <u>According to appellant, the court cannot determine whether he was rightfully fired without construing matters of church doctrine, an activity clearly prohibited by the First Amendment</u>. However, when the controversy turns on whether a minister's discharge was accomplished in accordance with the corporate charter, ecclesiastic matters do not come into play and the civil courts are an appropriate forum for the type of relief sought here.

Hemphill, at 977.

It is incongruous to allow a religious organization to benefit from the First Amendment when it is named as a defendant in a civil action, (as was done below)

yet hold that the First Amendment is no impediment to civil court adjudication when a religious organization invokes the jurisdiction of a civil court against a ministerial employee (as was done in *Hemphill*). Review is necessary and proper to harmonize the state of Florida law on this issue.

CONCLUSION

This Court should quash the writ of prohibition issued by the district court and remand this action with instructions to enter an order awarding the EMPLOYEE her reasonable attorney's fees for work performed before the district court.

Respectfully submitted,
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By:_____

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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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CERTIFICATE OF COMPLIANCE

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

_____
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