

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-225

JAN MALICHI,

Petitioner,

v.

ARCHDIOCESE OF MIAMI and
GALLAGHER BASSETT SERVICES, INC.,

Respondents.

PETITIONER'S BRIEF ON JU

BILLI

By: G.

Coral Gables

Email: billi@malichi.com

Tel: (305) 442-2701

Fax: (305) 442-2801

Counsel for Petitioner

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	I
TABLE OF AUTHORITIES.....	ii-iii
STATEMENT OF THE CASE AND THE FACTS.....	1-3
ISSUE ON APPEAL	4
SUMMARY OF THE ARGUMENT	4-5
ARGUMENT	5-10
 THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE FIRST DISTRICT’S OPINION IN THIS CASE, WHICH EXPRESSLY CONSTRUED A PROVISION OF THE STATE OR FEDERAL CONSTITUTION ON AN UNDISPUTED QUESTION OF FIRST IMPRESSION – THE INTERACTION BETWEEN FLORIDA’S WORKER COMPENSATION LAW AND THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE CONSTITUTION. 	
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF COMPLIANCE	11

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Bureau Cas. Ins. Co.,</u>	229 So.2d 232 (Fla. 1969) 8
<u>Doe v. Evans,</u>	814 So.2d 370 (Fla. 2002) 9
<u>Hightower v. Bigoney,</u>	156 So.2d 501 (1963) 7
<u>Malichi v. Archdiocese of Miami,</u>	945 So.2d 526 (Fla. 1 st DCA 2006) 2
<u>McClure v. Salvation Army,</u>	460 F.2d 553 (5 th Cir. 1972) 3
<u>Miranda v. Southern Farm Bureau Cas. Ins. Co.,</u>	229 So.2d 232 (Fla. 1969) 8
<u>Sigler v. State,</u>	881 So.2d 14 (Fla. 4 th DCA 2004) 6
<u>Thomas Smith Farms, Inc. v. Alday,</u>	182 So.2d 405 (Fla. 1966) 8
<u>Zingale v. Powell,</u>	885 So.2d 277 (Fla. 2004) 5
 <u>Statutes</u>	
Chapter 440, Fla. Stat.....	1

Constitution

Article V, Section 3(b)(3), Fla. Const. 3, 5

Article 1, Section 21, Fla. Const. 9

STATEMENT OF THE CASE AND FACTS

Petitioner¹ Jan Malichi, a Roman Catholic priest, filed a petition seeking workers' compensation benefits pursuant to Chapter 440, Florida Statutes. He asserted that while serving as an associate pastor with the Archdiocese of Miami, he suffered an injury lifting a television and in assisting another priest. (A. 2).

The Archdiocese responded to the petition for benefits by filing a motion for summary final order seeking dismissal based solely on lack of subject-matter jurisdiction. The Archdiocese asserted that the First Amendment precluded Father Malichi's workers' compensation claim, and filed a monsignor's affidavit stating that Father Malichi was an incardinated cleric under canon law and thus was not subject to Florida statutory law on workplace injuries. (A. 2-3).

The Archdiocese argued Father Malichi's employment relationship is governed exclusively by canonical law, and that his workers' compensation claim necessarily raised issues of ecclesiastical law, faith, religious doctrine and internal church organization. According to the Archdiocese, applying the workers' compensation law to Father Malichi would preclude his ability to maintain

¹ In this brief, we refer to Father Malichi as the Petitioner, as claimant, or by his name. We will refer to the Archdiocese of Miami as the Respondent, as the employer, or by its name. References to the separately bound appendix will be to the letter "A" and the appropriate page number. All emphasis in this brief is added unless otherwise indicated.

confidences, thus violating church law. Therefore, the Archdiocese argued, the constitutional church autonomy doctrine barred Father Malichi's claim. (A. 3).

In response to this attack on the court's subject matter jurisdiction, Father Malichi argued that the question of whether he is an employee for purposes of workers' compensation benefits does not require delving into matters of intrachurch governance, discipline or dogma, and therefore, the church autonomy doctrine does not facially bar his claim. (A. 3).

The judge of compensation claims accepted the Archdiocese's position, rejected Father Malichi's position, and dismissed the worker compensation claim. (A. 3).

On appeal, the First District Court of Appeal affirmed and held that a priest's workers' compensation claim is barred by the church autonomy doctrine of the First Amendment. Malichi v. Archdiocese of Miami, 945 So.2d 526 (Fla. 1st DCA 2006). In reaching this result, the First District stated it was dealing with an issue of first impression. The Court found the church autonomy doctrine is based on the Free Exercise Clause of the First Amendment, and that the doctrine prevents secular courts from reviewing disputes requiring an analysis of theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required. Under the doctrine, secular courts must accept the decision by the highest ecclesiastical authority on

such matters.

Once the Archdiocese asserted that Father Malichi was an incardinated cleric and not an employee, the First District concluded it must respect the relationship between the Church and its priest because “[t]he relationship between an organized church and its ministers is its lifeblood.... Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.” McClure v. Salvation Army, 460 F.2d 553, 558-59 (5th Cir.1972) (holding that the “ministerial exception” doctrine precludes judicial review of a minister's Title VII claim). Resolving an adversarial workers' compensation dispute would invariably interfere in the critical and constitutionally protected relationship between a church and its minister. Because the Archdiocese maintained an absolute ecclesiastical right to control and direct Father Malichi's duties and functions, the court concluded, any inquiry into this subject required the JCC to inquire into internal matters of church governance. This was found constitutionally impermissible. (A. 4-11).

Father Malichi now seeks this Court's discretionary review of that decision as one which expressly construes a provision of the state or federal constitution. See Art. V, Section 3(b)(3), Fla. Const.

ISSUE ON APPEAL

WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE FIRST DISTRICT'S OPINION IN THIS CASE, WHICH EXPRESSLY CONSTRUED A PROVISION OF THE STATE OR FEDERAL CONSTITUTION ON AN UNDISPUTED QUESTION OF FIRST IMPRESSION – THE INTERACTION BETWEEN FLORIDA'S WORKER COMPENSATION LAW AND THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE CONSTITUTION?

SUMMARY OF THE ARGUMENT

The issue in the First District, admittedly one of first impression, was whether the Free Exercise Clause of the First Amendment to the United States Constitution precludes judicial review of a Catholic priest's workers' compensation claim. The opinion below expressly construes the Free Exercise Clause and applies it to preclude a Florida statutory worker compensation claim. As such, this Court has jurisdiction to hear this matter.

This Court should exercise its jurisdiction because the instant questions involve not only important constitutionally protected religious principles, but also bars the courthouse door for an otherwise cognizable statutory worker compensation claim, in derogation of the strong public policy in establishing a forum for workplace injuries. In doing so, the opinion of the court ultimately denies Father Malichi any judicial forum to raise his claims, thereby implicating

state constitutional access to the courts principles. The complexity of the questions raised, and the competing constitutional and statutory policies, warrant their ultimate resolution by the this state's final arbiter of such questions and interests – the Florida Supreme Court.

ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE FIRST DISTRICT'S OPINION IN THIS CASE, WHICH EXPRESSLY CONSTRUED A PROVISION OF THE STATE OR FEDERAL CONSTITUTION ON AN UNDISPUTED QUESTION OF FIRST IMPRESSION – THE INTERACTION BETWEEN FLORIDA'S WORKER COMPENSATION LAW AND THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE CONSTITUTION.

With regard to the appellate standard of review, although the Supreme Court takes into consideration the district court of appeal's analysis of an issue of constitutional interpretation, the standard of review is de novo. Zingale v. Powell, 885 So.2d 277 (Fla. 2004).

Turning our attention to whether a basis exists for the exercise of this Court's jurisdiction, the question, we submit, is an easy one. Under Art. V, Section 3(b)(3), Fla. Const., this Court has discretionary jurisdiction to hear appeals from district court of appeal decisions which expressly construe the state or federal constitution. We respectfully submit our distinguished opponent will

readily concede the decision below does just that. The door to the courthouse for Father Malichi's statutory worker compensation claim was specifically closed by the appellate court's express construction and application of the Free Exercise Clause of the First Amendment to the United States Constitution to Father Malichi's claim. The First District discussed at length the constitutional provision and its application to these facts. With regard to this fundamental jurisdictional question, then, there is no real question – the opinion expressly construes the constitution and applies it to the case at bar.²

In this case of first impression, the First District found that the Free Exercise Clause absolutely barred judicial intervention of an internal employment dispute involving the Catholic church.³ The opinion below permits the relevant religious authority to define its relationship's scope and benefits, without regard to the public policies of this state or any scrutiny whatsoever by any court. In short, the

² Indeed, one court has made clear that where there is an express judicial construction of the state or federal constitution, a basis for Florida Supreme Court jurisdiction exists and certifying the question as one of great public importance would only be redundant. Sigler v. State, 881 So.2d 14 (Fla. 4th DCA 2004).

³ It should be noted that the First District limited its opinion to cases involving the Catholic church, and expressed no opinion on whether its holding might apply to a minister from another religious congregation or denomination on the same set of facts. This limitation should be of note to this Court because this issue is susceptible of recurrence in a variety of factual scenarios, and again demonstrates the need for the state's highest court to define and set the boundaries of this issue and its application for the lower courts of this state.

opinion states that “[o]nce the Archdiocese asserts that a [claimant] is an incardinated cleric and not an employee, we must respect that relationship[.]” (A. 4).

Historically, this Court has exercised its jurisdiction to hear a case where a lower appellate court has expressly construed a constitutional provision for the first time. See, e.g., Hightower v. Bigoney, 156 So.2d 501 (1963). Our opponent will also need to concede that the First District’s interpretation of the Free Exercise Clause of the First Amendment to Florida worker compensation claims was the first time an appellate court in this state considered this constitutional question; hence use of the very first words from the lower court’s decision – “The issue before this court is one of first impression[.]” (A. 1).

Having explicitly established that there exists a constitutional basis for this Court’s jurisdiction to hear the instant matter, we next turn to the question of why this Court should exercise that jurisdiction. The question presented here involves an intersection of two important societal principles to the citizens of this state. In the first instance, this case involves the right of a Florida resident, to obtain worker compensation benefits under long existing statutory law. The Worker's Compensation Act of Florida is social legislation reflecting a policy designed to protect the workers of this State with respect to injuries produced by and arising out of and in the course of their employment. Any doubt concerning the

compensability of a particular claim is to be resolved in favor of coverage. Thomas Smith Farms, Inc. v. Alday, 182 So.2d 405, 406 (Fla.1966). Concomitantly, an exclusion from coverage is to be given limited scope by restrictive interpretation. Miranda v. Southern Farm Bureau Cas. Ins. Co., 229 So.2d 232, 235 (Fla.1969). This Court should consider the public policy foundations of worker's compensation claims in deciding whether to accept jurisdiction.

Against the serious and important policy concerns embodied in the Worker Compensation Act of Florida, we have an issue of the application of the Free Exercise Clause to the First Amendment. None of us involved in this case need expend much effort in describing the societal importance of the Free Exercise Clause. This nation was first founded out of a fervent desire to permit the free exercise of religious beliefs, and to ensure that these beliefs be permitted to flourish without onerous governmental intrusion. Accordingly, we have a situation presented in the case at bar in which this precious constitutional right must be juxtaposed against the long standing public policy surrounding the purpose and benefits of the Florida worker compensation system.

Given that the First District admitted it was writing on a blank slate involving these two important state interests, it is only appropriate that the highest court in the state be heard on the proper interpretation of the Free Exercise Clause

and its application to statutory worker compensation claims. When questions concerning the proper interpretation of the First Amendment have arisen in the recent past, it is this Court which has answered the call to analyze the issue and establish its appropriate application. Doe v. Evans, 814 So.2d 370 (Fla. 2002)(discretionary review exercised on decision expressly construing Free Exercise Clause of First Amendment with regard to religious organization's liability in tort). This case presents another such call to this Court for its definitive guidance.

The rule of law announced in this case – that of an absolute deference to the religious authority on a worker compensation claim – seriously warrants this Court's scrutiny. Its effect is to bar the courthouse door to one who otherwise has a lawful claim. In doing so, the First District opinion not only implicates both worker compensation public policy and religious freedom principles, but precludes access to the courts, one of this state's most precious and fundamental constitutional rights. Art. 1, Section 21, Fla. Const. The public policy encouraging fair access to the courts for those who are in good faith pursuit of their legal rights is significantly implicated by a ruling that does not permit any judicial forum for the claim in this case.

For all of the above reasons, this Court should exercise its discretion to address the competing constitutional and statutory interests raised by the ruling of

the court below. This Court should be the final arbiter on the important legal issues raised in this case.

CONCLUSION

Based on the foregoing rationale and authorities, Petitioner Jan Malichi respectfully requests that this Court exercise its discretionary jurisdiction in this matter, and accept this case for consideration on the important statutory and constitutional issues presented on their merits.

BILLBROUGH & MARKS, P.A.
Attorneys for Petitioner
100 Almeria Avenue, Suite 320
Coral Gables, Florida 33134
Tel: (305) 442-2701
Fax: (305) 442-2801

By: _____
G. Bart Billbrough, Esq.
Fla. Bar No.: 334261

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Raul De La Heria, Esq.**, De La Heria & Associates, P.A., counsel for Petitioner, 2100 Coral Way, Suite 500, Miami, FL 33145; **Warren Brown, Esq.**, Walton Lantaff Schroeder & Carson, LLP, counsel for Respondents, 9350 S.

Dixie Hwy, 10th Floor, Miami, FL 33156 and **J. Patrick Fitzgerald, Esq.**, general counsel to Archdiocese of Miami, 110 Merrick Way, Suite 3B, Coral Gables, FL 33134 by U.S. Mail on March 12, 2007.

By: _____
G. Bart Billbrough, Esq.
Fla. Bar No.: 334261

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing was typed in Times New Roman
14pt.

By: _____
G. Bart Billbrough, Esq.
Fla. Bar No.: 334261