

IN THE SUPREME COURT OF FLORIDA

Case Nos. SC04-2323/SC04-2324/SC04-2325

JOHN ELLIS “JEB” BUSH, *et al.*,
Appellants,

v.

RUTH D. HOLMES, *et al.*,
Appellees.

On Direct Appeal from the First District Court of Appeal

**MOTION OF THE UNITED STATES OF AMERICA FOR LEAVE TO
FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS AND
URGING REVERSAL**

GREGORY R. MILLER
United States Attorney

R. ALEXANDER ACOSTA
Assistant Attorney General

E. BRYAN WILSON
Assistant United States Attorney
Northern District of Florida
111 North Adams Street
Fourth Floor
Tallahassee, FL 32301

DAVID K. FLYNN
ERIC W. TREENE
GORDON TODD
CONOR DUGAN
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403

Pursuant to Florida Rule of Appellate Procedure 9.370, the United States of America respectfully moves this Court for leave to file an *amicus curiae* brief in the above-styled proceeding. Prior to filing this motion and its brief in the above-styled case, the United States of America obtained consent of all parties to file as *amicus curiae*.

This case raises important issues involving the right of individuals to be free from discrimination based on religion under the Free Exercise Clause of the First Amendment. In particular, this case raises important questions about the scope of the U.S. Supreme Court's decision last term in *Locke v. Davey*, 124 S. Ct. 1307 (2004), and the degree to which a State may depart from the Free Exercise principle of nondiscrimination on the basis of religion in order to seek greater separation of church and state than that required by the federal Constitution. The United States has a significant interest in the proper application of *Locke*, as set forth more fully in the Interest of the Amicus section of its brief.

WHEREFORE, because the parties have granted consent and because of the United States' important interest in this case, the United States respectfully requests this Court to grant its motion for leave to participate in this proceeding as *amicus curiae*.

DATED: January 25, 2005

Respectfully submitted,

R. ALEXANDER ACOSTA
Assistant Attorney General

GREGORY R. MILLER
United States Attorney
Fla. Bar No. 284777
E. BRYAN WILSON
Assistant United States Attorney
Northern District of Florida
Fla. Bar No. 604501
111 North Adams Street
Fourth Floor
Tallahassee, FL 32301
(850) 942-8430

DAVID K. FLYNN
ERIC W. TREENE
GORDON TODD
CONOR DUGAN
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
202-514-4541

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MOTION OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS AND URGING REVERSAL has been delivered on January 25, 2005, via Federal Express next-day delivery, to:

BARRY RICHARD
M. HOPE KEATING
Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, FL 33302

RAQUEL A. RODRIGUEZ
Office of the Governor
The Capitol, Rm. No. 209
Tallahassee, FL 32399

DANIEL WOODRING
NATHAN A. ADAMS, IV
Florida Department of Education
325 W. Gaines Street
Tallahassee, FL 32399-0400

RONALD G. MEYER,
Meyer and Brooks, P.A., 2544
Blairstone Pines Drive
Tallahassee, FL 32302

CLINT BOLICK
CLARK NEILY
Institute for Justice
1717 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

KENNETH SUKHIA
Fowler, White, Boggs, Banker, P.A.
Post Office Box 11240
Tallahassee, FL 32302

And by U.S. Mail to the following:

ROBERT H. CHANIN
JOHN M. WEST
ALICE O'BRIEN
(National Education Ass'n)
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth Street, N.W.
Suite 1000
Washington, D.C. 20005

ELLIOT M. MINCBERG
JUDITH E. SCHAEFFER
People For the American Way Foundation
2000 M Street, N.W., Suite 400
Washington, D.C. 20036

PAMELA L. COOPER
Florida Education Association
118 North Monroe Street
Tallahassee, FL 32399-1700

STEVEN R. SHAPIRO
American Civil Liberties Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004

RANDALL MARSHALL
American Civil Liberties Union Foundation of Florida, Inc.
4500 Biscayne Blvd., Suite 340
Miami, FL 33137

JOAN PEPPARD
Anti-Defamation League
2 South Biscayne Blvd.
Suite 2650
Miami, FL 33131

DAVID STROM
American Federation of Teachers
555 New Jersey Avenue, N.W.
Washington, D.C. 20001

STEVEN M. FREEMAN
STEVEN SHEINBERG
Anti-Defamation League
823 United Nations Plaza
New York, NY 10017

MICHAEL A. SUSSMAN
National Association for the Advancement of Colored People
Law Offices of Michael A. Sussman
25 Main Street
Goshen, NY 10924

AYESHA N. KHAN
Americans United for Separation of Church and State
518 C Street, N.E.
Washington, D.C. 20002

MARC D. STERN
American Jewish Congress
15 East 84th Street
New York, NY 10028

JEFFREY P. SINENSKY
American Jewish Committee
165 East 56th Street
New York, NY 10022

JULIE UNDERWOOD
(Florida School Boards Ass'n)
General Counsel
National School Boards Ass'n
1680 Duke Street
Alexandria, VA 22314

CHRISTOPHER M. KISE
LOUIS F. HUBENER
ERIK FIGLIO
Office of the Solicitor General
PL 01, The Capitol
Tallahassee, FL 32399-1050

GREGORY R. MILLER
United States Attorney