IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ELLENBETH WACHS,

Plaintiff,

vs.

STEVE BROWN, MATT COOPER, ED GOLLOBITH, GLORIA JULIUS, STEVE MILES, NAN OWENS, JAMES PETERSON and TRACY THOMAS,

Defendants.
_____/

Case No.: 11-CA-015545

Division: I

ATHEISTS OF FLORIDA, INC.,

Plaintiff,

vs.

ELLENBETH WACHS and JOHN KIEFFER,

Defendants.
_____/

Consolidated with

Case No.: 11-CA-015707

Division: L

JOHN W. MCKNIGHT,

Plaintiff,

vs.

ATHEISTS OF FLORIDA, INC. and ELLENBETH WACHS,

Defendants.
_____/

Consolidated with

Case No.: 2012-CA-002073

Division: F

MOTION TO DISMISS WACHS' AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

The Defendants, EDWARD GOLLOBITH, TRACY THOMAS, NAN OWENS, STEVE BROWN, MATT COOPER, GLORIA JULIUS, STEVE MILES, JAMES PETERSON,

WALLACE REINHARDT and ATHEISTS OF FLORIDA, INC. (collectively, the "Defendants"), hereby move this Court for entry of an Order dismissing the Amended Complaint filed by Ellenbeth Wachs ("Wachs"), and state that the same should be dismissed with prejudice for the following reasons:

SUMMARY OF ARGUMENT

Wachs has filed an Amended Complaint against the Defendants for Defamation in Count I, and for Declaratory Relief in Count II relating to her removal from the Atheists of Florida, Inc. ("AoF"). However, the Amended Complaint should be dismissed with prejudice because: (1) Wachs fails to state a cause of action pursuant to Fla. Stat. § 617.0842; (2) the statute of limitations has expired; (3) Wachs' failed to allege the requisite elements of declaratory relief and the proper subject of such a claim; (4) Wachs' failed to exhaust her administrative remedies; and (5) The Church Abstention Doctrine precludes this Court from having subject-matter jurisdiction over Wachs' claims.

LEGAL ANALYSIS

A. STANDARD FOR A MOTION TO DISMISS

In ruling on a motion to dismiss a complaint for failure to state a cause of action, all material allegations of the complaint are taken as true; and those allegations are then reviewed in light of the applicable substantive law to determine the existence of a cause of action. *Blue Supply Corp. v. Novos Electro Mechanical, Inc.*, 990 So. 2d 1157, 1159 (Fla. 3d DCA 2008). In deciding whether a pleading fails to state a cause of action, the trial court can only consider the four corners of the complaint and all attachment to the complaint in making its ruling. *Gladstone v. Smith*, 729 So. 2d 1002, 1003 (Fla. 4th DCA 1999). When a party attaches exhibits to their

pleadings, those exhibits become part of the pleading and the court will review those exhibits accordingly. *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994).

In the context of the Church Abstention Doctrine, a motion to dismiss can be a proper vehicle for raising First Amendment issues as a bar to the type of claims alleged herein. *House of God Which is the Church of the Living God, the Pillar & Ground of the Truth Without Controversy, Inc. v. White*, 792 So. 2d 491, 493 (Fla. 5th DCA 2001) , citing, *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. 3d DCA 1998), appeal dismissed, 737 So.2d 1077 (Fla.1999), cert. denied, 528 U.S. 1075, 120 S.Ct. 789, 145 L.Ed.2d 666 (2000) (finding that although trial court had subject matter jurisdiction over rabbi's breach of contract claim, the court lacked jurisdiction over his complaint for defamation and tortious interference because resolving these disputes would require the court to become excessively entangled with religious beliefs).

B. FAILURE TO STATE A CAUSE OF ACTION

Count II of the Plaintiff/Counter-Defendant Wachs' Amended Complaint asserting an action for declaratory judgment fails to state a cause of action as a matter of law, because "[a] board of directors may remove any officer at any time with or without cause." *Fla. Stat.* § 617.0842.

C. EXPIRATION OF STATUTE OF LIMITATIONS

Count II of the Plaintiff/Counter-Defendant Wachs' Amended Complaint asserting an action for declaratory judgment is barred by the one-year statute of limitations set forth in Florida's Not for Profit Corporations statute, which provides:

> (3) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which the defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

Fla. Stat. Ann. § 617.0607.

The face of the Amended Complaint asserts that Wachs was terminated as a member of AoF on November 6, 2011. The Amended Complaint was not filed until October 30, 2013, nearly two years later. The new claims for declaratory relief do not relate back to the filing of her original Complaint on December 5, 2011, because they do not arise out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. *Florida Rule of Civil Procedure* 1.190 sets forth the "relation back" doctrine, and provides:

> **(c) Relation Back of Amendments**. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.

Wachs' original Complaint set forth a single, straightforward cause of action for defamation in an eight-page pleading, attaching no exhibits. The conduct set forth in the original Complaint involved the alleged publication of defamatory statements. Wachs' Amended Complaint, on the other hand, consists of a 40-page Complaint, plus an additional 92 pages of exhibits, that documents in excruciating detail AoF's origins and historical trail of events leading up to her termination as a member in late 2011. The new claims asserted in the Amended Complaint simply did not arise out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.

"Time-barred claims cannot be disguised as amendments in order to resuscitate them by relation back where they raise completely "new and different" issues. See, e.g., *Lefebvre v. James*, 697 So. 2d 918, 920 (Fla. 4th DCA 1997) (where amendment contained "new cause of action," rule prohibited relation back to time original complaint was filed) (citing *School Bd. of Broward County v. Surette*, 394 So. 2d 147, 154 (Fla. 4th DCA 1981)); *Cox v. Seaboard Coast Line R.R.*, 360 So. 2d 8, 9 (Fla. 2d DCA 1978) (Rule 1.190(c) "does not authorize a plaintiff, under the guise of an amendment, to state a new and different cause of action").

D. FAILURE TO ALLEGE ELEMENTS OF AN ACTION FOR DECLARATORY RELIEF

Count II fails to allege the elements necessary to state a cause of action for declaratory relief. A plaintiff seeking declaratory relief must plead facts to show the following: (1) there is a bona fide, actual, present practical need for declaration; (2) declaration deals with present, ascertained, or ascertainable state of facts or present controversy; (3) some right or privilege of complaining party is dependent upon facts or law applicable to facts; (4) there is some person who has actual, present adverse interest in subject matter; (5) all adverse parties are presently before court; and (6) relief sought is not merely seeking advisory opinion. *La Gorge Palace Condo Ass'n, Inc. v. QBE Ins. Corp.*, 733 F. Supp. 2d 1332 (S.D. Fla. 2010). Count II of Wachs' Amended Complaint makes no such allegations.

Moreover, allegations in a petition for declaratory relief must show some useful purpose will be served by the relief sought. *Rhea v. District Bd. of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013). Much, if not all the relief requested is calculated to make Wachs feel better about her expulsion, and seeks to "clear her name". While the law recognizes the right to a "name clearing hearing" for public employees in certain contexts[1], no such hearing is available under Florida or Federal law for a private employees, much less to a member of a voluntary organization.

E. IMPROPER SUBJECT FOR DECLARATORY RELIEF

[1] To establish a deprivation of a liberty interest without due process of law, a plaintiff must show: "(1) a false statement (2) of a stigmatizing nature (3) attending a governmental employee's discharge (4) made public (5) by the governmental employer (6) without a meaningful opportunity for [an] employee name clearing hearing." *Buxton v. City of Plant City*, 871 F.2d 1037, 1042–43 (11th Cir.1989). Under this constitutional precedent, courts have found a right to a "name clearing hearing", but only if highly stringent standards are shown to exist. See, e.g., *Mclaughlin v. Hillsborough County*, 2012 WL 3243430 (M.D. Fla. 2012).

Absent a property interest, the governing body of a private social organization[2] is the final arbiter of the sufficiency of cause for expulsion. *La Gorce Country Club v. Cerami*, 74 So.2d 95 (Fla.1954); *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So.2d 262 (Fla. 4th DCA 1980). Specifically, in *Rosenberg v. American Bowling Congress*, 589 F.Supp. 547, 550 (M.D.Fla.1984), the applicable rule was summarized as follows:

> It is well settled under Florida law, however, that the governing body of a private membership organization is the final arbiter of the sufficiency of causes for suspension of a member, and that courts may not properly conduct a collateral inquiry into the merits of such an organization's decision to suspend a member. [Citations omitted].

Wachs' claim is in the nature of a wrongful termination suit by a former employee. Analogously, under well-established Florida law, "an employer may discharge an at-will employee for any reason, good or bad, unless the reason violates a specific statutory prohibition". *Bell v. Novartis Pharm. Corp.*, 808-CV-00030-EAK-EAJ, 2008 WL 2694893 (M.D. Fla. July 3, 2008).

The only possible jurisdictional basis for involving itself in this suit is a provision of the Florida Not For Profit Corporation Act, to the extent it provides "[a] member of a [non-profit] corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith. Fla. Stat. Ann. § 617.0607(1).[3] Here, Wachs blurs the distinction between her expulsion a member, and her removal as an officer. The only statutory duty relates to expulsion of Wachs as a member. The most recent version of the Bylaws attached to her Amended Complaint (June, 2011), sets forth the procedure for expulsion of a member, as follows:

Section 2. Conditions of Membership.

...

[2] Even though AoF is incorporated as a not-for-profit organization, it may still be characterized as a private social club. See, *Boca W. Club, Inc. v. Levine*, 578 So. 2d 14, 15 (Fla. 4th DCA 1991). "Boca West Club, Inc. was a Florida nonprofit corporation". *Id.* "There is no question that Boca West Club, Inc. is a private social club (a country club)". *Id.*

[3] But see, Section V, *infra*.

Membership terminates when a member fails to pay dues, resigns, dies, or is expelled.

Any member—including Life Members—may be expelled for seriously obstructing the organization's business, misappropriating the organization's name or funds or acting in a way that discredits the organization. The expulsion procedure consists of three steps:

Step 1. A formal expulsion proposal by any member shall be presented in writing to the president and two board members, selected at random by the president, where there is no conflict of interest, who will decide whether or not to expel the member.

Step 2. The expelled member will be allowed ninety (90) days to appeal to the entire board to have membership reinstated.

Step 3. If expelled, the membership fees from the current year shall be refunded to the expelled member.

The president shall notify the accused member as soon as the result of the appeal is known.

Wachs has failed to allege that a) the aforementioned procedure was not fair and reasonable and was not carried out in good faith; b) that no formal expulsion proposal by any member was ever presented in writing to the president; c) that the president and two board members did not decide to expel Wachs as member; and d) that Wachs exercised her right to appeal to the entire board to have her membership reinstated within ninety (90) days. Wachs did not, and cannot in good faith, make these allegations, thereby subjecting her Amended Complaint to dismissal.

F. THE COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THE CASE BECAUSE WACHS FAILED TO ALLEGE EXHAUSTION OF HER ADMINISTRATIVE REMEDIES

The courts will not interfere, at the instance of an aggrieved member of an association, to reinstate the member or enjoin his or her expulsion, until the member has exhausted all the remedies afforded by the constitution or bylaws of the association, or shows a good excuse for not having done so. See, generally, 6 *Am. Jur. 2d* Associations and Clubs § 38, and collection of cases cited therein. The face of Wachs' Amended Complaint shows that she had a right to an appeal within 90 days, and that she failed to exhaust those rights.

G. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER COUNTS I AND II, AS DOING SO WOULD AMOUNT TO EXCESSIVE INTERFERENCE IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT OF THE CONSTITUTION

As will be demonstrated below, courts generally have declined to allow recovery in defamation cases, in which the matter before the court involved an internal church matter based on the Establishment and/or the Free Exercise Clause of the First Amendment to the United States Constitution. Courts generally abstain when they are asked to review or decide conflicts between a church and its members or parishioners. Pursuant to the First Amendment, as interpreted by the United States Supreme Court, courts are precluded from making religious doctrinal decisions or encroaching on churches' rights to manage their own internal business or affairs.

i. AOF is a "doctrinal organization" and entitled to protection under the First Amendment

In the instant case, while the Board of AoF would deny that it is a "religious organization", the claims presented relate to "doctrinal" disputes[4], as the term has been used by the highest court of this land. The U.S. Supreme Court has "unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all". *Wallace v. Jaffree*, 472 U.S. 38, 52-53, 105 S. Ct. 2479, 2487-88, 86 L. Ed. 2d 29 (1985). The protections afforded under the First Amendment apply to any "religious" organization, including atheist organizations:

> Perhaps in the early days of the Republic these words were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing religious liberty and equality to "the infidel, the atheist[5], or the adherent of a non-

[4] The term "doctrinal" is equally applicable to an atheist organization as it is a religious organization, as it is defined as "of, pertaining to, or concerned with a particular principle, position, or policy taught or advocated". Random House Webster's College Dictionary.

[5] Because the Supreme Court affords atheists identical treatment as "churchs" and "religious organizations", this Court should treat them identically in analyzing the cases cited herein.

> Christian faith such as Islam or Judaism." *Wallace v. Jaffree*, 472 U.S., at 52, 105 S.Ct., at 2487.39 It is settled law that no government official in this Nation may violate these fundamental constitutional rights regarding matters of conscience. Id., at 49, 105 S.Ct., at 2485.

Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 590, 109 S. Ct. 3086, 3099, 106 L. Ed. 2d 472 (1989).

ii. <u>Count II requires the Court to become excessively entangled in Church governance in violation of the Church Abstention Doctrine</u>

The Florida Supreme Court, citing to the U.S. Supreme Court's opinion in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox*, 344 U.S. 94 (1952) has stated that the First Amendment to the Constitution of the United States provides churches with "the power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002). The Church Abstention Doctrine, as it is known, generally prohibits courts from taking subject matter jurisdiction over disputes involving the internal affairs of a church. *Id.*

When analyzing jurisdiction under the Church Abstention Doctrine, courts must consider the nature and substance of the claim to determine if the claim involves a prohibited inquiry. *Malichi v. Archdiocese of Miami*, 945 So. 2d 526 (Fla. 1st DCA 2006). Once the doctrine is triggered under the First Amendment, a civil court is precluded from further adjudicating the issue in question; the prohibition is a bar to subject matter jurisdiction. *Bilbrey v. Myers, 91 So. 3d 887 (Fla. 5th DCA 2012).*

Where the dispute concerns the church's form of governance, the First Amendment prohibits civil courts from adjudicating such matters. *Rosenberger v. Jamison*, 72 So. 3d 199 (Fla. 1st DCA 2011), review denied, 92 So. 3d 214 (Fla. 2012). *Rosenberg* involved an action by former church members, officers, and directors against the church, its pastor and former pastors, concerning whether the Church violated its articles of incorporation and bylaws in excluding

members. Under the Church bylaws, membership in the congregation automatically conveyed membership in the corporation. *Id.* The bylaws further detailed the procedure and grounds for terminating membership in the congregation. *Id.* In upholding the lower court's dismissal, the First DCA explained that it was evident from the complaint and testimony that exercising jurisdiction would have been tantamount to intervening on behalf of a group espousing particular doctrinal beliefs. *Id.*

In her declaratory relief Count, Wachs seeks to have this Court declare her status as acting president. (Amended Complaint, ¶ 166(g)). This type of relief presents "the danger of a church being forced to rehire a minister against its will". See, Christopher C. Lund, *In Defense of the Ministerial Exception*, 90 N.C. L. Rev. 1, 72 (2011), fn. 5, citing *Skrzypczak v. Roman Catholic Diocese Of Tulsa*, 611 F.3d 1238, 1246 (10th Cir. 2010) ("we conclude any Title VII action brought against a church by one of its ministers will improperly interfere with the church's right to select and direct its ministers free from state interference").

This is not a case where the Court can apply neutral principles of law to resolve a dispute between Church members. Rather, the Amended Complaint seeks relief that clearly requires the Court to delve into AOF's Bylaws and trace its historical, institutional procedures. Wachs has attached six versions of AOF's Bylaws to her Amended Complaint. See, Exhibits A, Composite B (two sets), E, E-1, and G. Wachs then asks this Court, *inter alia,* to "declare the invalidity of all purported Amendments to the Bylaws", to declare the "status" of all persons who purport to be Members of the Board of Directors of AoF, to declare whether the Bylaws allow the "current board members to meet without notice to other Board Members". (Amended Complaint, ¶ 166). Clearly, this case would require the Court to delve into, interpret, and apply Church doctrine and

institutional procedure, which would violate the First Amendment. Therefore, Count II of the Amended Complaint must be dismissed for lack of subject-matter jurisdiction.

iii. Count I for defamation requires the Court to become excessively entangled in Church affairs in violation of the Church Abstention Doctrine.

In *House of God, supra*, the Plaintiff alleged that the Church's called her a "slut" while standing at the church altar in front of the other clergy and church parishioners. Her slander action against the church was dismissed at the pleading stage based on the excessive entanglement argument because resolving the claim would require the Court to become excessively entangled with Church policies, practices, and beliefs. *Id.*, at 492.

Here, Wachs' defamation claims are based entirely on the provision in the Bylaws set forth verbatim on Section B, *supra*, to the effect that she was expelled for "seriously obstructing the organization's business, misappropriating the organization's name, misappropriating the organization's funds, and acting in a way that discredits' the organization" (see Amended Complaint, § 143). By stating the reasons for her dismissal in a letter to the members, and then posting the reasons on the AoF website, the Plaintiff's defamation claims are matters uniquely relating to the Atheist movement, a doctrinal organization. The Plaintiff's pleadings admit as much, claiming "the defendants' defamation had its intended effect causing Plaintiff to lose her reputation, standing and position within the Atheist/Humanist community". (Amended Complaint, § 162).

As such, Wachs' claims would clearly require the Court to become excessively entangled with AoF affairs in violation of the First Amendment, and ample Florida law interpreting and applying the Church Abstention Doctrine. In line with the cited precedent, including *House of God, supra*, Wachs' lawsuit should be dismissed at the pleading stage based on the excessive entanglement argument. In doing so, the Court would be following the majority view in the

nation. See, e.g., *Cha v. Korean Presbyterian Church of Washington*, 553 S.E.2d 511, 517 (Va. 2001), cert. denied, 535 U.S. 1035 (2002) ("most courts that have considered the question whether the Free Exercise Clause divests a civil court of subject matter jurisdiction to consider a pastor's defamation claims against a church and its officials have answered that question in the affirmative"). The Virginia Supreme Court decision in *Cha* involved facts nearly on point with the instant case. In *Cha*, the plaintiff pastor alleged that he was defamed and wrongfully terminated after being falsely accused by a church deacon of "the misuse of Church funds" ($100,000), just like Wachs here. *Id.* at 512-513. The Virginia Court held that "plaintiff's allegations of defamation against the individual defendants cannot be considered in isolation, separate and apart from the church's decision to terminate his employment. ... [I]f a civil court were to exercise jurisdiction of the plaintiffs [lawsuit] under these circumstances, the court would be compelled to consider the church's doctrine and beliefs because such matters would undoubtedly affect the plaintiff's fitness to perform pastoral duties and whether the plaintiff had been prejudiced in his profession. Neither the Free Exercise Clause nor [the] Constitution of Virginia permits a civil court to undertake such a role". Id. at 516-517. As such, the court held that "it lacked subject matter jurisdiction to review the plaintiff's claims against the [church]." *Id.* at 515.

iv. <u>Survey of out-of-state case barring intra-church defamation claims</u>

The following are representative opinions in several other jurisdictions that dismiss clergy defamation claims, which appear to be the trend.

- ***Heard v. Johnson***, 810 A.2d 871, 883 (D.C. 2002) (stating that under "most circumstances, defamation is one of those common law claims that is not compelling

enough to overcome First Amendment protection surrounding a church's choice of pastoral leader," and dismissing the plaintiff pastor's defamation claim).

- ***Thibodeau v. American Baptist Churches of Connecticut***, 994 A.2d 212, 222 (Conn. App. 2010), certification denied, 3 A.3d 74 (Conn. 2010) (pastor's defamation claim concerned "letters published by members of the defendant [church] within the church community containing allegedly false statements about the plaintiff with respect to his fitness for ministry. This claim arises out of the defendant's relationship with the plaintiff, and its resolution would require an impermissible inquiry into the defendant's bases for its action and its ground for evaluating ministers.").
- ***Stepek v. Doe***, 910 N.E.2d 655 (Ill. App. 2009), appeal denied, 919 N.E.2d 366 (Ill. 2009) (priest accused of sexually abusing minors).
- ***Reynolds v. Wood***, 998 So.2d 1058, 1059-1060 (Ala. App. 2007), rev. denied (Ala. June 20, 2008) (dismissing a deacon's defamation claim based on statements a pastor made about him during a sermon, holding that "courts may not decide the truth or falsity of such statements and, therefore, may not entertain claims pertaining to those issues. Furthermore, as a matter of policy, we have strong reservations about restricting the religious speech of a pastor from his pulpit.").
- ***Seefried v. Hummel***, 148 P.3d 184, 190 (Colo. App. 2005), rev. denied, 2006 WL 2590062 (Colo. 2006) (dismissing the plaintiff's defamation claim because "the statements at issue were made in the context of a meeting convened by the church and its board for church members to discuss whether Richard Seefried should be terminated as pastor.").

- ***Hiles v. Episcopal Diocese of Massachusetts***, 773 N.E.2d 929 (Mass. 2002) (priest's defamation claim concerned being called a "liar" by his leaders);
- ***Jackson v. Presbytery of Susquehanna Valley***, 697 N.Y.S.2d 26 (N.Y. App. 1999) (defamatory statements reflected "adversely upon [the plaintiffs] fitness to continue serving as a minister").
- ***Jeambey v. The Synod of Lakes and Prairies***, 1995 WL 619814 (Minn. App. 1995) (dismissing the plaintiff minister's defamation claim based on statements in the defendant church's newspaper that plaintiff engaged in "sexual misconduct").
- ***Yaggie v. Indiana-Kentucky Synod***, 860 F.Supp. 1194 (W.D. Ky. 1994), aff'd, 64 F.3d 664 (6th Cir. 1995) (table) (pastor sued his church for defamation concerning a bishop's statement that the plaintiff needed "psychiatric treatment" and "resigned" his position, but the court held that the First Amendment barred plaintiff's claim).
- ***In re Godwin***, 293 S.W.3d 742, 746-749 (Tex. App. 2009) (court did not have jurisdiction over a defamation claim by a church member against a church and its pastor based on a written statement the pastor "read to the congregation from the pulpit" accusing the plaintiff of attempting to bribe other church members because the statement "was directed to church governance and maintaining harmony within the congregation").
- ***Brady v. Pace***, 108 S.W.3d 54, 55-60 (Mo. App. 2003) (church member's defamation claim against church pastors barred where the defendants stated, like Pastor Cooke here, that the plaintiff was "sowing discord" within the church; the court affirmed the JNOV for defendants, holding that the court was "without jurisdiction" because the "libelous remarks are clearly related to Defendants' belief that [plaintiff's] conduct within the

church required he be disciplined," and "the remarks were made to people associated with the Church" and thus "fall within the scope of First Amendment protection.").

- ***Schoenhals v. Mains***, 504 N.W.2d 233, 234-236 (Minn. App. 1993) (court dismissed church members' claim for defamation based on a letter a pastor wrote and "read to the entire congregation" stating that the plaintiffs were expelled from the church because of their desire "to consistently create division" and due to plaintiffs "lying").

The majority of states interpret the First Amendment broadly to protect not simply "religious" questions (as determined by secular courts), but the entire church disciplinary process from being second-guessed by courts. They recognize that just because an allegedly defamatory statement sounds secular in nature when viewed in isolation does not mean that it is "nonreligious." As explained in Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808 (Md. App. 1996):

> [q]uestions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light of religious precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church. ... The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.

Id. at 812-813 (citation and internal quotations omitted).

In sum, the interpretations of the First Amendment in these jurisdictions is robust, broadly protecting religious institutions even when church members seek damages for statements made within the context of church discipline.

CONCLUSION

Based upon the foregoing arguments and citations of authority, dismissal of the Amended Complaint with prejudice is appropriate.

WHEREFORE, the Defendants, EDWARD GOLLOBITH, TRACY THOMAS, NAN OWENS, STEVE BROWN, MATT COOPER, GLORIA JULIUS, STEVE MILES, JAMES PETERSON, WALLACE REINHARDT and ATHEISTS OF FLORIDA, INC. (or so many of them who have been duly served in this action), hereby move this Court for entry of an Order dismissing the Amended Complaint, and for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to **Robert H. Buesing, Esq.**, (rhbuesing@trenam.com; sguida@trenam.com) Trenam Kemker, P.O. Box 1102, Tampa, Florida 33601-1102; **John W. McKnight, Esq.**, (Publicrecordslaw.mcknight@gmail.com), 4834 W. Gandy Blvd., Tampa, Florida 33611-3003; and **John Kieffer**, (johnkieffer1234@aol.com), 535 15th Street North, St. Petersburg, Florida 33705 via electronic mail on this 15th day of November, 2013.

/s/ R. Gale Porter
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