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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Case No. 2023-001491

On Petition for a Writ of Certiorari
to the South Carolina Court of Appeals

John Doe, Petitioner,

v.

Diocese of Charleston, a Corporation Sole, and The
Bishop of the Diocese of Charleston, in his official
capacity, Respondents.

PETITIONER'S REPLY

I.

The Maine court concluded that no American court had ever conferred immunity upon a charity in a case of intentional tort.

Citing with approval this Court's decision in *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973), the Supreme Judicial Court of Maine canvassed the law of every state and found that nowhere and at no time had immunity been granted to a charity in a case of intentional tort. *Picher v. Roman Catholic Bishop*, 974 A.2d 286, 295 (Me. 2009). If the respondents' able counsel could have contradicted this finding, they would have done so.

The respondents now tell the Court that the *Jeffcoat* and *Picher* decisions

somehow *support* the decision of our court of appeals. Petitioner's reply is no place to revisit in detail what these cases mean. Your petitioner is confident that the Court will agree, in the phrase of the Maine court, that the decision of our court of appeals, effectively reversing this Court's *Jeffcoat* decision, places South Carolina in a class by itself.

II.

Neither this Court nor any other has granted or withheld immunity on the basis of the kind of conduct which caused the intentional tort.

For the first time in their response to the certiorari petition, the respondents contend that immunity has been withheld only in cases where somehow the charity *qua* charity is the bad actor, as opposed to *respondeat superior* liability for the conduct of its agents or servants.

So far as we know, this new argument is not to be found anywhere in the extensive national case law dealing with the issue of immunity, for a good reason. The main basis for any grant of immunity — preservation of the charity's assets — is unrelated to the question of how the tort was committed. The result of liability is the same. The trust assets would be depleted.

An institution acts only by and through its agents and servants, at high level or low. The tort liability which results from intentional misconduct is the same. It makes no difference whether the conduct is that of nursing staff, as in *Jeffcoat*, or is that of an officer authorized to sign a lease foreseeably resulting in trespass by the lessee, as in *Peden*. The resulting tort and the resulting liability are the same.

Although perhaps unnecessary to add, the respondents have made no effort to show that none of the intentional torts alleged here are for liability which the respondents now seek to differentiate from *respondeat superior* liability.

CONCLUSION

Your petitioner again urges the Court to grant the writ.

Respectfully submitted,

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