THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,.....RESPONDENTS,

V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM
CLINTON BRANTLEY IS THE .....PETITIONER.

PETITIONER'S REPLY TO RETURN OF RESPONDENTS

Pursuant to Rules 221(a) and 240, SCACR, Petitioner Clinton Brantley replies to Respondents' Return to his Petition asking this Court to rehear its Opinion in Banks v. St. Matthew Baptist Church, Opinion No. 27317 (S.C.Sup.Ct. filed Sept. 25, 2013) (Shearouse Adv.Sh. No. 41 at 34-45). Nothing in Respondents' Return alters the fact that the Majority Opinion runs afoul of the *First Amendment* because it opens the door to civil court regulation of the process by which religious institutions decide matters of internal church governance and administration, as well as matters related to the spiritual mission of a church.

I. The allegedly defamatory remarks are intertwined with matters of internal church governance.

Respondents almost correctly state the posture of this case when they characterize the issue before this Court as whether allegedly defamatory remarks "are protected, because they were made during [Reverend Brantley's] request to the congregation for the removal of the Respondents from their positions as trustees." What Respondents studiously refuse to acknowledge, and what the Majority of this Court appears to have misapprehended, is that Reverend Brantley's comments are protected by the *First Amendment's* freedom of religion clause because they were made: 1) to the highest decision-making body of the St. Matthew Baptist Church ("Church"), 2) for the purpose of making Reverend Brantley's case concerning matters of internal church governance, 3) were entirely pertinent to and limited to his reasons why Respondents should be removed as Trustees, and 4) were not published by Reverend Brantley outside of this context. A plethora of defamation cases decided under similar circumstances support Reverend Brantley's position, (*see* Petition pp. 5-10, 15-16), whereas neither the Majority nor Respondents have produced a single defamation case that supports their position.

Both Respondents and the Majority appear to conflate allegedly defamatory remarks randomly made from the pulpit or the street corner with statements made to the highest ecclesiastical decision-making body of a religious institution for the purpose of deciding matters of internal church governance. The two kinds of statements fall into different analytical categories under a *First Amendment* analysis. As a result, the first may be justiciable by civil courts but the latter are not. No other court – state or federal – has held that civil courts can hear defamation claims based on statements made solely to decision-making bodies of religious institutions concerning matters of internal church governance or administration.

Respondents erroneously contend that Reverend Brantley's remarks exceeded the protective ambit of the *First Amendment* because: 1) they are not asking to be reinstated, 2) Reverend Brantley could have made his case to the congregation by making statements *other* than ones he made, and 3) Reverend Brantley could have asked Respondents privately to step down from their positions as Trustees. First, for purposes of determining whether civil courts can hear their defamation claim, it is irrelevant that Respondents are not asking to be reinstated. *See, e.g.*, Farley v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1287, 1290 (D. Minn. 1993) (rejecting the plaintiff's argument that the court could hear his defamation claim because he was not challenging the decision to terminate him); Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808, 810 (Md. Ct. Spec. App. 1996) (same). Second, having the determination of whether this case is judiciable turn on whether there were *other* statements Reverend Brantley could have made in order to make his case to the congregation invites precisely the kind of judicial scrutiny and oversight that the *First Amendment* prohibits, *i.e.*, the chilling effect that allowing civil courts to adjudicate defamation suits such as this one will have on intrachurch discussions concerning leadership decisions. Furthermore, by suggesting that Reverend Brantley could have made his case to the congregation using different words implicitly concedes that his statements were part and parcel of, and "intertwined in the congregation's decision to remove Respondents as trustees." (Return p. 3). In this case, a civil court cannot decide this defamation claim without considering issues of church governance and administration, as well as the trustees' role in the financial management of the Church's resources and in its spiritual mission. Third, Respondents have cited no case saying a defamation claim was judiciable because the defendant could have asked the plaintiffs to give up their Trustee positions within the church in private.[1]

[1] Furthermore, given the power struggle the Respondents described at the Church, *see* (Appx. p. 141, line 21 – p.

Respondents apparently agree with Reverend Brantley that the Majority focused on the wrong aspect of this claim; however, the agreement ends there. Respondents urge that the "court's focus should be on the *intent* of the defamation law itself," claiming that "the defamation law is neutral both on its face and in its purpose ..." (Return p. 2). This novel concept – that defamation "law" is neutral on its face and in its application – is not supported by Malicki v. Doe, 814 So.2d 347 (Fla. 2002), which, as is explained in more detail below, involved a third-party tort claim against a religious institution based on sexual abuse and battery allegedly committed by one of its clergy. Moreover, Respondents' repeated attempts to analogize the defamation claims at issue here to the tragic and criminal cases of sexual abuse by clergy that have arisen over the past decades are misleading, needlessly inflammatory and should be rejected.

Respondents next assert that this Court's Majority Opinion "falls squarely within the over-arching law, and ... is supported by Florida Case Law ..." They are incorrect on both fronts. First, reliance on Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372 (1976), is misplaced because, as is explained herein and in Petitioner's Petition, Respondents' defamation claims cannot be completely resolved based on neutral principles of law. Similarly, the Majority Opinion is not consonant with All Saints Parish Waccamaw v. Campbell, 385 S.C. 428, 685 S.E.2d 163 (2009), which held that resolution of the property and corporate entity issues before it did not require this Court "to wade into the waters of religious law, doctrine, or **polity**," but rather, the issues could be resolved "though the application of neutral principles of property, trust, and corporate law." 385 S.C. at 445, 685 S.E.2d at 172 (emphasis added). It is only where "a civil court can **completely** resolve a church dispute on

143, line 11); *see also* (Appx. p. 188, lines 18-23) (Appx. p. 157, line 18 – p. 158, line 23) (Appx.159, line 20 – p. 160, line 4) (Appx. pp. 83-84, 87, 104), this suggestion is unlikely to have prevailed.

neutral principles of law [that] the *First Amendment* commands it to do so." Id., 685 S.E.2d at 172 (emphasis added). In the instant case, the Circuit Court cannot completely resolve the defamation claim without delving into matters of church "discipline, custom, and administration" and, therefore, the defamation claims cannot be resolved under neutral principles of law.

Nor is the Majority Opinion in line with Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979), where the U.S. Supreme Court was addressing a property dispute and the quoted language specifically is limited to the same: "We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church **property** dispute." 443 U.S. at 604, 99 S.Ct. at 3026 (emphasis added).[2]

Respondents apparently confuse the U.S. Supreme Court's ruling in Jones with this Court's ruling in All Saints Parish Waccamaw v. Campbell, 385 S.C. 428, 685 S.E.2d 163 (2009), where this Court held that "the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." 385 S.C. at 444, 685 S.E.2d at 172. All Saints relied on Morris Street Baptist Church v. Dart, 67 S.C. 338, 45 S.E. 753 (1903), where this Court made it clear that what it meant by "civil rights" were "rights growing out of a contract recognized by the civil law, or the right to the possession of property . . ." 67 S.C. at 342, 45 S.E. at 754. The applicable quote from Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996) instructs that, "[w]here . . . a church controversy necessarily involves **rights growing out of a contract recognized by the civil law**, or the **right to the possession of property**, civil tribunals cannot avoid adjudicating these rights, under the law of the land . . ." 325 S.C. at 52, 478 S.E.2d at 853. Although Reverend Brantley does not contend that the neutral

[2] Even within the arena of determining property rights, however, "where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property . . . [where] the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." 443 U.S. at 604, 99 S.Ct. at 3026.

principles of law approach is strictly limited to contract and property cases, the Majority ruling in this case virtually abolishes the protection heretofore provided to religious institutions to decide matters of internal church governance and administration free from state oversight and control. The "'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir. 1986).

With respect to Florida case law, Respondents refer specifically to Malicki, Bilbrey v. Myers, 91 So.3d 887 (Ct. App. Fla. 2012), and The House of God which is the Church of the Living God, the Pillar and Ground of the Truth Without Controversy, Inc. v. White, 792 So.2d 491 (Fla. Dist. Ct. App. 2001). None of these cases is applicable or controlling. Even assuming Florida court decisions carry disproportionate weight in South Carolina, Florida courts that have considered fact patterns even remotely similar to the one before this Court have determined they were barred by the *First Amendment* from hearing the defamation claims.

First, Malicki addressed a tort claim for negligent hiring and supervision of a clergy who was accused of sexual battery and abuse.[3] Holding that the case pending before it was a civil dispute involving a third party, the Florida Supreme Court clearly stated that, "[i]ntrachurch disputes ... must be distinguished from disputes between churches and third parties." 814 So.2d at 356. As such, the analysis that controlled the outcome in Malicki is wholly inapplicable to this case, which involves an intrachurch dispute. In Malicki, the core inquiry was whether the church "reasonably should have foreseen the risk of harm to third parties," analogizing the case before it to third-party premises claims brought against religious institutions. 814 So.2d at 361, 364. Malicki is not remotely analogous to the instant case and, in fact, the Florida Supreme Court affirmed that "the First Amendment provides churches with the 'power to decide for

[3] The complaint in that case also alleged the clergy provided alcohol to a minor. 814 So.2d at 352.

themselves, free from state interference, matters of church government as well as those of faith and doctrine,'" 814 So.2d at 356, *citing* Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143 (1952). What neither Respondents nor the Majority of this Court have explained is how a church is free from state interference when church members and clergy alike can be subjected to defamation lawsuits based on statements made to the decision-making body of the church, for the purpose of making one's case concerning an issue of internal church governance.

In Bilbrey, the statements that plaintiff was homosexual were published to members of plaintiff's church and to his fiancée's father, as well as to various out-of-state church officials and the plaintiff's new pastor after plaintiff moved to another state. Bilbrey, is readily distinguishable from the instant case because, first, there was no indication in Bilbrey that the statements were made to a church decision-making body as part of the process of making a decision on church governance, which is the case here. Second, in Bilbrey, the pastor repeated the defamatory remarks to third parties outside of the church and, in fact, out of state, which is not the case here. In the case before the Court, there is no evidence that Reverend Brantley made any statements outside of the narrowly confined context of church governance proceedings.

Finally, House of God involved a claim that a pastor of a church called a parishioner "a 'slut' while standing at the church altar in front of the other clergy and church parishioners." 792 So.2d at 492. There was no allegation or evidence that the statements about the parishioner were made to an ecclesiastical decision-making body or that they were directed to issues of church governance, both of which are key facts in the instant case.

Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. Dist. Ct. App. 1998), cited in The House of God, involved a claim similar to the one pending before this Court. There, the plaintiff, a Rabbi, was under consideration for an extension of his contract with the Temple he

had been serving. At a meeting of the Temple's board of directors, a board member alleged he had undertaken an investigation of the Rabbi that revealed he had struck a senior Rabbi in a different Temple.[4] The contract was not renewed (although the Rabbi disputed this also), and the allegedly defamatory comments were repeated to the Temple congregation. The plaintiff brought defamation claims against both the Temple and the board member. The court dismissed both defamation claims based on the context and purpose of the allegedly defamatory statements, holding:

> The allegedly defamatory report and tortious interference occurred as part of this religious dispute and would require the trial court to weigh their effect on the board members as compared to the effects of the other considerations which clearly are religious disagreements. Inquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court.

712 So.2d at 777. Interestingly, in Goodman, the defamation claims were dismissed despite publication of the allegedly defamatory remarks beyond the strict confines of the religious institution's decision-making body. Thus, even under the narrow umbrella of Florida Case Law, the Majority Opinion is unsustainable.

II. Civil courts cannot adjudicate Respondents' defamation claim without becoming excessively entangled in matters of church governance and the spiritual mission of the Church.

Both Respondents and the Majority erroneously conclude that civil courts can hear this defamation claim because it can be decided without consideration of or delving into religious issues. This conclusion looks at only one part of the relevant test. As the First Circuit instructed in Natal v. Christina & Missionary Alliance, 878 F.2d 157 (1st Cir. 1989), "we deem it beyond peradventure that civil courts cannot adjudicate disputes turning on church policy and **administration** or on religious doctrine and practice." 878 F.2d at 1576 (emphasis added).

[4] Other concerns were raised during the board meeting regarding "disagreement over religious concepts," but these did not serve as the basis of the defamation claims.

Both the Respondents and the Majority gloss over the fact that hearing his defamation claim will inevitably entangle courts in matters of church governance and administration. In order to prove their defamation claim, Respondents must show that: "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones Street Pub., LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Respondents only address two of the four elements of a defamation claim, *i.e.*, whether the allegedly slanderous statements were made and whether the statements harmed Respondents' reputations. (Return p. 4). Thus, Respondents apparently concede that adjudication of whether the statements were true or false and whether they were privileged communications to the highest decision-making body of the church would embroil a civil court in matters of church governance and administration, as well as the spiritual aspect of the Trustees' leadership positions. That is, in fact, the case. "Questions 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." Patton v. Jones, 212 S.W.3d 541, 553-54 (Tex. App. 2006), *quoting* Heard v. Johnson, 810 A.2d 871 (D.C. 2002); Downs, 683 A.2d at 812 (same).

III. Respondents' attempts to distinguish cases relied on by Petitioner fail.

Respondents' unsuccessful attempt to distinguish some of the cases relied on by Petitioner reveals the fundamental weaknesses and flaws in their arguments.[5] First, Respondents

[5] Note that Respondents do not even assert that any of the following are distinguishable or inapplicable: Heard v. Johnson, 810 A.2d 871, 885 (D.C. Ct. App. 2002) (holding that, where a defamation claim flows entirely from an internal church dispute, "consideration of the claim in isolation is impossible"); Yaggie v. Indiana-Kentucky Synod, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994) (refusing to hear defamation claim involving statements which, although they "did not express any religious principles or beliefs," were made in the context of a church controversy concerning the ministerial style of the pastor); Patton v. Jones, 212 S.W.3d 541, 522 (Tex. App. 2006) (allegedly defamatory statements made in connection with an internal church decision-making process "are protected from

suggest that Downs can be distinguished from the instant case because there, the court refused to "disturb a church's decision regarding unsuitability of a candidate for priesthood." (Return p. 5). What Respondents miss is the fact that the plaintiff in Downs specifically made the same argument Respondents make here: that "the case was simply one of defamation and did not involve the internal ecclesiastical polices of the Church. He argued that he was not seeking review of any decision made by the Church, that he was not seeking reinstatement ..." 683 A.2d at 810. The Maryland Court held that was irrelevant that the allegedly defamatory statements did not "touch on church or religious doctrine," because "[w]hen the conduct complained of occurs in the context of, or is germane to, a dispute over the plaintiff's fitness or suitability to enter into or remain a part of the clergy ... it is difficult to see how the forbidden inquiry could be avoided." Id. at 812. Downs speaks directly to the issues under consideration by this Court.

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secular review, even if the statements do not expressly involve religious doctrine"); McClure v. The Salvation Army, 460 F.2d 553, 558 (5th Cir. 1972) (holding that "only in rare instances where a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate' is shown can a court uphold state action which imposes even an 'incidental burden' on the free exercise of religion"); Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 656 (10th Cir. 2002) (refusing to hear defamation claim because "the constitutional protection [of the *First Amendment*] extends beyond the selection of clergy to other internal church matters"); Bourne v. Center on Children, Inc., 838 A.2d 371, 380 (Md. Ct. Spec. App. 2003) (holding that statements made during decisions regarding "religious leadership positions" are protected by the First Amendment even if they are "invalid and unfair"); Anderson v. Watchtower Bible & Tract Soc. of N.Y., Inc., No. M2004-01066-COA-R9-CV, 2007 Tenn. App. LEXIS 29 *98 (Tenn. Ct. App. Jan. 19, 2007) (holding that "where the allegedly defamatory statements refer to or are based upon religious doctrine **or church governance**, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance") (emphasis added); Celnik v. Congregation B'Nai Israel, 131 P.3d 102, 107 (N.M. Ct. App. 2006) (holding that allegations that the defendants "intentionally disseminated one-sided and negative information" about the plaintiff with an intent to sway a congregational leadership decision was "precisely the type of religious debate that the church autonomy doctrine is intended to protect from judicial review"); Stepek v. Doe, 910 N.E.2d 655, 666-69 (Ill. Ct. App. 2009) (explaining that even if the allegedly defamatory statements did not require any interpretation of church doctrine and "irrespective of the fact that a court or jury could apply 'neutral principles of law' to the [defendants'] alleged statements to determine whether they were defamatory," "the absolute *first amendment* protection for statements made by Church members in an internal church disciplinary proceeding precludes the circuit court from exercising jurisdiction in this matter"); Farley v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1287, 1290 (D. Minn. 1993) (court held that it lacked jurisdiction to hear defamation claim arising out of a determination that the plaintiff did not possess the skills to develop his congregation into a financially self-sustaining church); or Schoenhals v. Mains, 504 N.W.2d 233, 234 (Minn. Ct. App. 1993) (holding civil courts lack jurisdiction to hear defamation claims related to church finance and allegations by the pastor that the plaintiffs had failed in their financial stewardship, created "division, animosity and strife in the fellowship," and fabricated lies).

Respondents attempt to distinguish Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001), on the same basis. First, the Virginia Supreme Court decided the plaintiff's wrongful termination claim separately from his defamation claim. Therefore, the fact that Respondents are not seeking reinstatement in this case does not distinguish Jae-Woo from this case. Second, regardless of the non-religious nature of the statements,[6] the Virginia Supreme Court held that, because the allegedly defamatory statements were made during and part of internal church proceedings, the defamation claim could not "be considered in isolation, separate and part from the church's decision to terminate his employment." 553 S.E.2d at 516; *see also* Farley, 821 F. Supp. at 1290 (rejecting the plaintiff's argument that the court could hear his defamation claim because he was not challenging the decision to terminate him); Downs, 683 A.2d at 810 (same). The same is true here.

Respondents claim that Drake v. Moulton Mem'l Baptist Church of Newburgh, 93 A.D.3d 685 (N.Y. App. Div. 2012), also is distinguishable from the instant case because the plaintiffs in Drake "were seeking to be reinstated." (Return p. 6). First, there is no indication that that is what the plaintiffs were seeking or, if they were, that the court's ruling on the defamation claim related in any way to any claim for reinstatement. Second, although the plaintiffs in Drake alleged procedural irregularities in their removal, the court dismissed the defamation claims as nonjusticiable under the neutral principles of law doctrine because "resolution of the issues raised would necessarily involve an impermissible inquiry into religious doctrine or practice." 93 A.D.3d at 686. Therefore, Drake is precisely on point and this Court should reach the same conclusion.

[6] As is true in the instant case, in Jae-Woo, the allegedly defamatory remarks were not spiritual or religious in nature but, instead, regarded "misuse of church funds," which impugned the plaintiff's honesty and integrity. 553 S.E.2d at 514.

Respondents completely miss the point for which Petitioner cited Purdum v. Purdum, 301 P.3d 718 (Kan. 2013). In Purdum, the allegedly defamatory statements were admittedly secular. Nonetheless, precisely because of the context in which they were made (solely to a church tribunal with authority to make a decision regarding the marriage), they were protected from civil court review by the *First Amendment*. Because resolving the defamation claim would require the civil court to determine the truth or falsity of the statements, adjudicating the case necessarily would entangle the court in "the religious sincerity and conscience" of the defendant. 301 P.3d at 727. The same is true here. Furthermore, as was the case in Purdum, Reverend Brantley's defense undoubtedly will require the deposition of the decision makers – in this case, the voting members of the Church.

Respondents' attempt to distinguish Indiana Area Found. of the United Methodist Church, Inc. v. Snyder, 953 N.E.2d 1174 (Ct. App. Ind. 2011), is also fruitless because the ministerial exception covers church leaders other than ministers. The "ministerial exception," which allows religious institutions to hire and fire religious leaders without government interference, includes those "whose 'primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or super vision or participation in religious ritual and worship,' or any position that is 'important to the spiritual and pastoral mission' of the religious organization." Bourne v. Center on Children, Inc., 838 A.2d 371, 378-79 (Md. Ct. Spec. App. 2003), *quoting* Rayburn v. General Conf. of Seventh-day Adventists, 772 F.2d 1164, 1169 (4th Cir. 1985).

Thus, Respondents' attempt to distinguish cases based on the fact that they are only "voluntary trustees" is answered by their own admission that their role as Trustees of St. Matthews involved both supporting the spiritual mission of the Church, (Appx. p. 137, lines 4-8

(agreeing that purchase of the apartments was "intertwined with the church's ministry")) (Appx. p. 138, lines 2-18 (discussing the role of the Trustees is to "support . . . the spiritual ministry of the church")) (Appx. p. 144, lines 11-12 (discussing trustees "carrying out the trustee ministry")), and church governance, (Appx. p. 150, lines 20-23 (agreeing that Trustees take part in decisions that related to church governance)) (Appx. p. 137, lines 9-13 (same)), and that the election and removal of Trustees is a matter of church governance. (Appx. p. 151, lines 4-17).[7]

Respondents' attempt to distinguish Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986) factually from the present case is likewise unsuccessful. First, it is unclear that the plaintiff in Hutchison was seeking reinstatement. His complaint alleged improper application of the Methodist Discipline, "'fraudulent or collusive or arbitrary' action, as well as defamation, intentional infliction of emotional distress, and breach of contract." 789 F.2d at 392. Second, as is the case here, the allegations against the plaintiff were not grounded in religious concepts but, instead, centered on his inability to get along with church members. In addition, Respondents do not contest the holding in Hutchison that, "'neutral principles' doctrine has never been extended to religious controversies in the areas of **church government**, order and discipline, nor should it be." 789 F.2d at 396 (emphasis added).

Finally, Petitioner did not cite either Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963) or McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (Ct. App. 2012) as cases that are factually analogous to the instant case. Sherbert holds that civil courts can regulate even religious conduct or actions taken inside a church building where that conduct or those actions "invariably posed some **substantial threat to public safety, peace or order**." 374 U.S. at 403, 83 S. Ct. at 1793 (emphasis added). Defamation claims rarely, if ever, rise to this level of

[7] *See also* (Appx. p. 15 (the Church by-laws provide that "[t]he officers of this church shall be the pastor, the church staff, a clerk, the deacons, a moderator, a treasurer, and trustees")).

concern. *See, e.g.*, Heard, 810 A.2d at 883 (observing that "[u]nder most circumstances, defamation is one of those common law claims that is not compelling enough to overcome *First Amendment* protection . . ."); Yaggie, 860 F. Supp. at 1198 (explaining that "[o]nly on rare occasions where there exists a compelling governmental interest in the regulation of [public] health, safety, and general welfare have the courts interfered in ecclesiastical matters," regardless of whether the ecclesiastical dispute fails "to touch on church or religious doctrine"); Patton, 212 S.W.3d at 553-54 ("Under most circumstances, defamation is one of those common law claims that is not compelling enough to overcome *First Amendment* protection ... because resolution of the claim would require impermissible inquiry into the church's bases for its action.... Questions 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").

McCain demonstrates the willingness of South Carolina courts to insert themselves inappropriately into the middle of internal church governance and administration. The instant case provides an opportunity for this Court to reverse that trend, and bring South Carolina jurisprudence back in line with that of every other federal and state jurisdiction by holding that civil courts are barred by the *First Amendment* from hearing Respondents' defamation claims.

In addition to the cases cited in Reverend Brantley's Petition, *see also* Ex parte Tom Bole, 103 So. 3d 40 (Ala. 2012); Trice v. Burress, 137 P.3d 1253 (Okla. Civ. App. 2006), and Seefried v. Hummel, 148 P.3d 184 (Colo. App. 2005). In Bole, the complaint focused on statements provided to a church administrative body as part of an investigation, as well as email communications that were circulated after the decision was made, asserting among other things that the plaintiff misappropriated funds from the church. The Alabama Supreme Court held that

civil courts could not adjudicate the defamation claim because any "determination into whether Bole's statements were false would require an inquiry into details of 'the Conference's investigations, findings and reasoning,'" because the comments were intertwined with the underlying investigation, resolution and ultimate decision to remove the pastor. Moreover, the court acknowledged that adjudicating the defamation claim "could have a chilling effect on communication among members of a congregation regarding church leadership." 103 So.3d at 72. The same is true here.

Trice involved a member of a church who served as a youth director. After he was terminated from that position, the minister of the church told some church youths that the reason the plaintiff had been terminated was because he was "questioning his sexuality." The Oklahoma court held that it lacked jurisdiction to hear plaintiff's defamation claim against the pastor[8] under the *First Amendment* because, even though the statement was made six months after the decision to terminate his position, the statement "related to the ostensible reason for his termination, conveyed from the pastor to a member of the congregation concerning the conduct of another member." 137 P.3 1258.

Seefried involved allegedly defamatory statements that were made during a meeting called to discuss concerns about the pastor, during which a petition seeking his removal was signed and submitted to the church's board of directors. The statements related to a payment dispute between James Seefried, who owned a computer business, and the defendants, who worked for James' company and also were members of a church pastored by his brother, Richard. The allegedly defamatory statements concerned this secular employment dispute, which became an issue within the church and ultimately lead to Richard's dismissal as pastor.

[8] As is the case here, the plaintiff dismissed his defamation claim against the church entity. 137 P.3d at 1257 n.5.

The court dismissed the defamation claim brought by James and his company, holding that the statements were protected by the *First Amendment* because they:

> 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. ... **It does not matter whether, as plaintiffs allege, the offending statements were secular in nature or that James Seefried was not an associate pastor at the time the statements were made**. The statements giving rise to plaintiffs' defamation and other claims related directly to a church process that resulted in Richard Seefried's termination as a pastor. Accordingly, **evaluation of the statements in isolation of this process**, with respect to any of plaintiffs' claims here, **is not possible. Whether a statement has a defamatory meaning is predicated on context**. [citation omitted] Thus, the court here would be required to assess in its entirety a church meeting convened by the church to discuss dissatisfaction with, and the possible discharge of, its pastor.

148 P.3d at 190-191 (emphasis added). The court expressed its "serious concerns that to allow as actionable church members' comments about their church leaders made at church meetings would inhibit the free and open discourse essential to a religious institution's selection of its minister. Such a result could chill expressions of dissatisfaction from church members and thereby intrude upon the autonomy of religious institutions to freely evaluate their choice and retention of religious leaders." Id. at 101. The same chilling effect results from the Majority's Opinion in this case. Whether it is the pastor, another Trustee or a participating member of the Church, any future discussion of whether an individual should serve in a Church leadership capacity will be clouded by the threat of a defamation suit if people freely speak their minds and express their opinions, regardless of whether their comments directly relate to religious or spiritual matters, or to managerial style or management of Church funds. This is precisely the result the *First Amendment* aims to avoid.

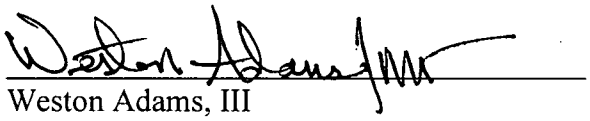
CONCLUSION

For all the reasons stated herein and in his Petition, Petitioner Brantley respectfully requests this Court to rehear its Opinion in this case and hold that civil courts lack subject matter jurisdiction to hear Respondents' defamation claims under the *First Amendment* of the United States Constitution and Article I, Section 2 of the South Carolina constitution.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

November 27, 2013



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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,.....RESPONDENTS,

V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM
CLINTON BRANTLEY IS THE .....PETITIONER.

PROOF OF SERVICE

I certify that I have served the **Petitioner's Reply to Return of Respondents** on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on the 27th day of November 2013, addressed to all attorneys of record:

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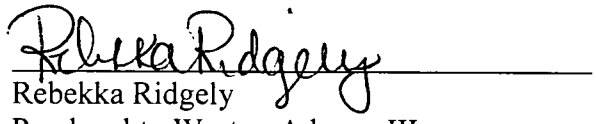

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