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S. J. WHITE

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CLERK, SUPREME COURT

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Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. 77,067

WILLIAM HERMANSON and
CHRISTINE HERMANSON,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent,

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT

REPLY OF AMICUS CURIAE TO RESPONDENT'S RESPONSE
TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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By: 

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INTRODUCTION

The First Church of Christ, Scientist (the "Church"), as Amicus Curiae, respectfully submits this Reply to Respondent's Response to Motion for Leave to File Amicus Curiae Brief (the "Response"). Respondent asserts that this Court should deny the Church's Motion for Leave to File Amicus Curiae Brief, because the brief submitted by the Church "does not address the issue raised in this appeal" (Response at p.3), and because the discussion of Christian Science set forth by the Church in its Statement of the Case and Facts is "religious propaganda." (Response at p.2).

Respondent has misread the Church's Amicus Curiae Brief, which not only properly addresses the question certified by the Second District Court of Appeal, but also contains a description of Christian Science and the widespread acknowledgement and accommodation of Christian Science which is essential to a proper analysis of the certified question.

ARGUMENT

The question certified by the Second District Court of Appeal was:

[i]s the spiritual treatment proviso contained in Section 415.503(7)(f), Florida Statutes (1985), a statutory defense to a criminal prosecution under Section 827.04(1), Florida Statutes (1985)?

In response to the certified question, the Church's Brief demonstrates that the Second District's Opinion, which renders § 415.503(7)(f), Fla. Stat. (1985), inoperative and unavailable

to the Hermansons in this case, is contrary to the Florida and United States constitutional mandates, as well as the carefully balanced statutory scheme created by the Florida legislature. The Church's Brief shows that § 415.503(7)(f), Fla. Stat. (1985), was properly designed to accommodate fundamental religious freedoms established in the United States and Florida Constitutions. Moreover, the decisions of the United States Supreme Court and the Florida Supreme Court which are discussed in the Church's brief clearly demonstrate that § 415.503(7)(f), Fla. Stat. (1985), in providing the spiritual care defense, strikes a delicate (but necessary) balance between the protection of free exercise rights and the State's need to act when it perceives a threat to a child's health and welfare.

Contrary to Respondent's assertion that "the Statement of the Case and Facts contained in the Church's Amicus Curiae brief appears to be nothing more than religious propaganda . . ." (Response at p.2), the Church's discussion of the Christian Science faith, the Christian Science way of life, and the accommodation of Christian Science in our society is crucial to a proper analysis of the certified question. Indeed, the Church's brief demonstrates that § 415.503(7)(f), Fla. Stat. (1985), provides an explicit accommodation to the Christian Science approach to health care which is entirely consistent with society's widespread acknowledgment and accommodation of the practice of Christian Science, as well as with constitutional mandates.

CONCLUSION

As set forth above, the Church's Amicus Brief clearly addresses the certified question, and contains a forthright discussion of Christian Science which is essential to a proper analysis of that question. Accordingly, the Church respectfully requests that its Motion for Leave to File Amicus Curiae Brief be granted.

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Dated: February 28, 1991

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HONIGMAN MILLER SCHWARTZ AND COHN

DECLARATION OF SERVICE BY MAIL

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by U.S. mail, this 28th day of February, 1991, to:

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