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IN THE
SUPREME COURT OF FLORIDA

CASE NO. 67,081

DONALD RASMUSSEN,

Petitioner,

vs.

SOUTH FLORIDA BLOOD SERVICE, INC.,

Respondent.

DISCRETIONARY REVIEW OF A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

BRIEF OF AMICUS CURIAE THE MIAMI HERALD PUBLISHING COMPANY

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SUMMARY OF ARGUMENT

This Court invoked its discretionary jurisdiction to review a decision of the Third District Court of Appeal reported as South Florida Blood Service, Inc. v. Rasmussen, 467 So.2d 798 (Fla. 3d DCA 1985), which certified the following question to be of great public importance:

> Do the privacy interests of volunteer blood donors and a blood service's and society's interest in maintaining a strong volunteer blood donation system outweigh a plaintiff's interest in discovering the names and addresses of the blood donors in the hope that further discovery will provide some evidence that he contracted AIDS from transfusions necessitated by injuries which are the subject of his suit?

Rasmussen, Id. at 804-805, n. 13.

Stated less argumentatively, the issue to be determined by this Court is whether a blood donee who claims to have acquired AIDS through blood transfusions required as a result of injuries sustained in an accident may obtain, under the discovery procedures of Rule 1.280 of the Florida Rules of Civil Procedure, the names and addresses of 51 blood donors.

This Court has jurisdiction under Article V, Section 3(d)(4), Florida Constitution, and should reinstate the trial court's order compelling the production of the names and addresses. If left undisturbed,

the Third District's decision would allow unsupportable privacy interests to block a litigant's access to information by means of lawful discovery.

The Third District below erroneously held that a list of people who donated blood to a state regulated community blood center is protected from compelled discovery by the right to privacy. In so holding, the Third District overlooked the fact that this Court has declined to recognize the putative right to disclosural privacy, and that even those courts which have suggested the right may exist would strictly limit its reach to facts relating to the most intimate details of one's private life. The voluntary donation of blood to a community blood center is not an intimate private fact.

Even if some cognizable disclosural privacy interest were presented by the disclosure of the blood donors' names, that interest would be outweighed by Rasmussen's need for the information to prosecute his claim. The disclosural privacy right is weak, to the degree it exists at all, and it is less weighty than Rasmussen's right of access to the courts to redress his injury and his entitlement to compulsory process, in the trial court's discretion, to enforce that right.

The Third District's concern with subsequent discovery into the private lives of the donors is pre-

mature and not ripe for adjudication at this time. Any such follow-up discovery would be subject to regulation by the trial court through appropriate protective orders.

Finally, the Third District's reliance on Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984), is inappropriate since that case involved no restriction on a litigant's right to compel discovery. The case dealt only with limiting the gratuitous subsequent disclosure of information obtained through discovery, where that information was itself protected by the right to engage in anonymous First Amendment activities. Rhinehart in no way supports the decision of the Third District to limit Rasmussen's access to the type of information sought in this case.

STATEMENT OF THE CASE AND FACTS

Donald Rasmussen was the victim of a May 1982 automobile accident, the subject of the underlying personal injury suit, in which he was struck by a motor vehicle while seated by the side of a road. The vehicle was apparently fleeing the scene of a prior accident. Rasmussen was taken to St. Francis Hospital in Miami Beach where he remained hospitalized for several months. During the course of this hospitalization for the treatment of the injuries sustained in the accident, Rasmussen received transfusions of 51 units of blood. Subsequently, in June 1983, he was diagnosed as having "acquired immune deficiency syndrome" ("AIDS"). Approximately one year later, on June 11, 1984, Rasmussen died.

In connection with the prosecution of his personal injury suit against William DeLoatche and Leonell Levia Monterroso, the alleged owner and operator of the vehicle, respectively, Rasmussen served respondent South Florida Blood Service, Inc. ("SFBS") with a subpoena duces tecum requesting, in essence, the names and addresses of the 51 donors whose blood he had received by transfusion. SFBS petitioned the trial court for the entry of an order quashing the subpoena or, alternatively, for the entry of a protective order. As grounds for its motion, SFBS stated that Rasmussen had failed to show good cause or justifiable reason for the invasion

of the alledgedly private and confidential records of the blood service and the blood donors. SFBS further argued that its review of the records showed that none of the 51 donors had been identified as an AIDS victim. Rasmussen responded to the motion by arguing that he needed the requested information to establish the claim that he acquired AIDS as a result of the blood transfusions he received while being treated for the personal injuries sustained in the automobile accident. The trial court denied SFBS's motion and ordered it to produce the requested material.

The Third District Court granted a petition for certiorari to review the trial court's order compelling SFBS to produce the names and addresses, and subsequently quashed the order based on alleged privacy, institutional, and societal interests. Thus, the Court barred Rasmussen's access to necessary information sought by means of lawful discovery holding that:

> [A]fter balancing all of the interests involved, the requested material should not be discovered. The complete denial of discovery is necessary to ensure the protection of both the donor's privacy interest and society's interest in a strong and healthy volunteer blood donation program.

Rasmussen, supra at 804.

The decision of the Third District vitiates Rasmussen's right to compulsory process to discover information which is absolutely necessary for the full

and appropriate redress of his injuries. It also contradicts prior decisions of this Court regarding any putative federal or state right to disclosural privacy which might be recognized. As will be demonstrated, there is no support for the Third District's position under either Florida or federal law.

ARGUMENT

I. NO CONSTITUTIONALLY-PROTECTED DISCLOSURAL PRIVACY INTEREST EXISTS WITH RESPECT TO THE INFORMATION THE TRIAL COURT ORDERED TO BE PRODUCED IN THIS MATTER.

A. The Federal Right to Disclosural Privacy, If It Exists At All, Is Limited To Such Disclosures Of Intimate Private Activities As Would Violate Our Concept Of Ordered Liberty.

Although a putative federal right to disclosural privacy has been suggested in dicta by several decisions of the United States Supreme Court, it has never been upheld in any decision by that Court. Nixon v. Administrator of General Services, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867, (1977); Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64, (1977); Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405, 1976).

This Court need not address in this case the issue of whether the asserted right to disclosural privacy exists, or should be recognized in some contexts, because the discovery material at issue here in no way implicates intimate personal facts. The United States Supreme Court in Paul v. Davis, supra, a case dealing directly with the scope of federal disclosural privacy rights, squarely held that the right could be implicated, if at all, only by disclosures of the details of one's

private life so intimate that our concept of ordered liberty would be violated:

> ...[O]ur other 'right of privacy' cases, while defining categorical description deal generally with substantive aspects of the Fourteenth Amendment. In Roe, the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit' in the concept of ordered liberty as described in Palko v. Connecticut, 301 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937). The activities detailed as being within this definition were ones very different from that for which respondent claims constitutional protection--in matters relating to marriage, procreation, contraception, family relationships, child rearing, and education. In these areas, it has been held that there are limitations on the State's power to substantively regulate conduct.

Paul v. Davis, 424 U.S. at 713, 96 S.Ct. at 1166. In Laird v. State, 342 So.2d 962 (Fla. 1977), this Court adopted this description and stated: "This statement of the scope of the constitutional right of privacy remains the definitive statement of the law in this area." Id. at 964.1/

1/ There is no privacy issue relating to unwarranted "intrusion" in this case because the production ordered by the trial court was limited only to the names and addresses of the 51 blood donors, which in no way intruded into the donors' private lives. There is no privacy issue relating to the "decision making" or "autonomy" rights of individuals in this case because the decision of the 51 donors to give blood has long since been made.

In Paul v. Davis, supra, the United States Supreme Court held that public disclosure of facts as potentially embarrassing as a prior arrest record did not deprive that plaintiff of his asserted right to disclosural privacy. In that case, an individual sought damages and injunctive relief under the Civil Rights Act after the police distributed a circular that named him in a list of "active shoplifters." Although the plaintiff had been arrested for shoplifting, the charges were dismissed, and he filed a lawsuit based on the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. The Supreme Court, however, rejected the attempts to find a constitutional underpinning for the "affliction by state officials of a 'stigma' to one's reputation." Paul v. Davis, 424 U.S. at 699. The Court also rejected the specific claim of disclosural privacy as being "far afield" from the line of disclosural privacy cases it had previously decided. Id. at 713:

> He claims constitutional protection against the disclosure of the fact of his arrest on a shoplifting charge. His claim is based not upon any challenge to the State's ability to restrict his freedom of action in a sphere considered to be 'private', but instead on a claim that the State may not publicize a record of an official act such as an arrest. None of our substantive privacy decisions hold this or anything like this, and we decline to enlarge them in this manner.

Id.

Thus, while the United States Supreme Court

has mentioned the possible existence of a disclosural privacy interest, it has held that any such federal constitutional right to disclosural privacy would be limited to disclosures of only the most intimate private activities.

B. This Court Has Uniformly Declined To Recognize Any Disclosural Right To Privacy.

This Court has flatly refused to recognize a disclosural right to privacy under Florida law. See Michel v. Douglas, 466 So.2d 545 (Fla. 1985); Tribune Co. v. Cannella, 458 So.2d 1075 (Fla. 1984), Forsberg v. Housing Authority of the City of Miami Beach, 455 So.2d 373 (Fla. 1984); Florida Board of Bar Examiners re: Applicant, 433 So.2d 71 (Fla. 1983); Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So.2d 633 (Fla. 1980); Laird v. State, 342 So.2d 962 (Fla. 1977).

In Shevin, an independent consulting firm of psychologists was employed by the Jacksonville Electric Authority ("JEA") to conduct a nationwide search for a managing director. The consulting firm conducted interviews with employees of electric utility companies nationwide. It assured interviewees that their names were confidential. Eventually, the consulting firm's files contained names, addresses, employment information,

intimate biographical, sexual and familial data, and comments by the consultants regarding the candidate's personalities, living habits, and families.

A television station requested access to the firm's papers under the Public Records Act prior to the completion of the final report. When the request was refused, the television station and the State Attorney General applied for a writ of mandamus to compel production of the files as public record. The trial court granted the release, and the consultant appealed. The First District Court of Appeal found that the applicant's had a constitutionally-protected right of "personhood" which included the right to disclosural privacy as to the personal information given by them to the consultant under an assurance of confidentiality. Byron, Harless, Schaffer, Reid and Associates, Inc. v. Florida ex rel. Schellenberg, 360 So.2d 83, at 96 (Fla. 1st DCA 1978).

This Court reversed the First District disclosural privacy ruling and held that there was no federal or state right of disclosural privacy that would prevent public disclosure of the consultant's papers. Shevin, 379 So.2d at 638. This Court found no support in any language of the Florida Constitution to establish such a right and rejected the lower court's reliance on the "search and seizure" provision stating that it deals only with the collection of information and not its

dissemination. Id. at 639.

In 1980, shortly after this Court's decision in Shevin, the people of Florida passed an amendment to the Florida Constitution, Article I, Section 23 (the "privacy amendment"), which created a Florida Constitutional right "to be let alone and free from governmental intrusion into [one's] private life." The enactment of the privacy amendment in no way contradicts or overrules this Court's refusal to recognize a general disclosural state right to privacy in Shevin, particularly as it would apply to the information sought in this case. As this Court noted subsequent to the enactment of the privacy amendment in Michel v. Douglas, supra:

> We now turn to the District Court's third question. By its specific wording, Article I, Section 23 of the state constitution does not provide a right of privacy in public records. Additionally, we recently found no state or federal right of disclosural privacy to exist. Forsberg v. Housing Authority, 455 So.2d 373 (Fla. 1984).

Michel, 464 So.2d at 546 (emphasis added).

In Michel, this Court considered whether access to the personnel records of a tax-supported hospital should be barred under the terms of the privacy amendment, and, as noted above, held not only that the privacy amendment explicitly precluded a right of privacy in public records, but that no state or federal right of disclosural privacy was found to exist, citing Forsberg, supra.

In Forsberg, which was also decided after the enactment of the privacy amendment, this Court noted with approval that prior to the addition of Article I, Section 23, Fla. Const., it had refused to find a general right to disclosural privacy provided for in that document. Forsberg, 455 So.2d at 374. Separate and apart from the public records aspects of that case, this Court again declined to recognize a general right to disclosural privacy in Forsberg, Id., determining that, by its terms, the privacy amendment restricting governmental intrusions into one's private life does not create a right of disclosural privacy as construed in the prior decisions of this Court.

C. The Donation of Blood to a State-Regulated Community Blood Center Is Not An Intimate Private Activity Protected By The Putative Right To Disclosural Privacy.

The foregoing discussion clearly reveals there is no right to disclosural privacy implicated by this case. As was noted by this Court in Laird v. State, supra, where the Court was asked to recognize a federal right to privacy which would protect an individual's putative right to smoke marijuana in the privacy of his own home: "Here we do not face the intimacies of the marital relationship or of procreation." Laird, supra at 965. No such personal intimacies are present in the case at hand.

Since the decisions of this Court and of the United States Supreme Court have consistently held that any putative federal right to disclosural privacy would be limited in its application only to the most intimate and private facts or activities, no federal right to disclosural privacy was in any way violated by the simple discovery request upheld by the trial court and overturned by the Third District in this case. The voluntary donation of blood to a state-regulated community blood center which then disseminates that blood to the general public in accordance with state regulations is not an intimate private activity protected by any right to disclosural privacy.

II. EVEN IF THERE WERE A DISCLOSURAL PRIVACY INTEREST IN THE DISCOVERY MATERIAL SOUGHT, IT WOULD BE OUTWEIGHED BY RASMUSSEN'S RIGHT TO COMPULSORY PROCESS.

A. Access To The Records Reflecting The List Of Names And Addresses Of Blood Donors Sought By Rasmussen Is Of Absolute Necessity To His And His Survivors' Right And Ability To Recover In This Case.

The right of meaningful access to the courts for redress of injury is fundamental. Article I, Section 21, Florida Constitution. The right to engage a trial court's discretionary use of compulsory process to secure meaningful discovery for the redress of injuries pursuant

to rules approved by this Court is also a weighty interest. As this Court recognized in Mercer v. Raine, 443 So.2d 944 (Fla. 1983), a case dealing with the propriety of a trial court's use of compulsory process in imposing sanctions under Florida's discovery rules, "The purpose of the rules of civil procedure is to promote the orderly movement of litigation." Id. at 946. Here, Rasmussen engaged the trial court's compulsory supboena process to obtain only that information necessary for the fair, efficient and orderly prosecution of his case. If Rasmussen's right to meaningful access to the court encompasses anything, it must encompass the right to invoke the trial court's discretionary use of compulsory process to obtain the type of discovery sought in this case.

In considering Rasmussen's interest in obtaining access to the names and addresses ordered to be produced by the trial court, it must be noted that the defendants in the personal injury suit which gave rise to this matter have contested the fact that Rasmussen acquired AIDS as a result of the blood transfusion process, and have strenuously argued that Rasmussen may himself have been a member of a "high risk" group.2/ As Judge Alan Schwartz cogently noted in dissenting to the Third

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2/ Apparently Rasmussen disclosed in hospital records that he had been a user of intravenous drugs approximately ten years prior to his accident. This would arguably place him in what has statistically been identified as a "high risk" group since 17% of all AIDS victims are intravenous drug users.

District's opinion:

> Thus, far from a matter of purely tangential concern as in the cases cited supra, it of absolute necessity to [Rasmussen's] and his survivors' right and ability to recover that they secure information that one or more of the donors is suffering from or is a potential carrier of the lethal affliction.

Rasmussen, supra at 805.

SFBS's additional representation that none of the 51 blood donors whose names and addresses are being sought is now suffering from AIDS merely highlights Rasmussen's need to discover the requested information. Far from aiding in the resolution of the disputed facts concerning Rasmussen's acquisition of AIDS, this claim implies that Rasmussen could not have acquired AIDS from any of these donors. The claim is, in fact, misleading since it has now been determined that one need not himself have developed AIDS in order to transmit the disease. As noted in Judge Schwartz's dissenting opinion:

> The fact that the petitioner has stated that none of the fifty-one is now suffering from AIDS is plainly insufficient. (In fact, without more, that representation unfairly weighs against Rasmussen's interests in proving his claim.) This is true both because the statement is a unilateral one in which the plaintiff has no means of testing and because, we are told, one need not himself have developed the disease in order to transmit it.

Id. at 805, n. 1. Clearly, Rasmussen has a very substan-

tial interest in obtaining access to the information ordered to be produced by the trial court in order to respond to these claims and properly prosecute his case.

B. Even If Some Degree Of Disclosure Of Personal Facts Was Involved, A Blood Donor's Minimal Interest In Not Disclosing His Or Her Identity Would Be Outweighed By The Harm Inflicted On Rasmussen By The Denial of Meaningful Discovery Preventing The Appropriate Prosecution Of His Case.

Even if there were a disclosural privacy interest in the names and addresses sought in this case, that right could not be the basis for denying Rasmussen the right to take meaningful discovery for the redress of the injury he suffered. Any right to disclosural privacy which may be recognized with respect to the information sought in this case would be, at best, a weak right. As this Court noted in Florida Board of Bar Examiners re: Applicant, 443 So.2d, 71 (Fla. 1983), since the disclosural right of privacy is a weak interest, it must, in balance, give way when confronted with a "compelling state interest." Id. at 76.3/

3/ Even those few federal courts which recognized a disclosural right of privacy have acknowledged it is a weak right that is outweighed by interests that need not be "compelling." The great weight of federal authority stands for the proposition that weak disclosural privacy rights must give way to any substantial interest in disclosure. Compare Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978), cert. denied, 439 U.S. 1129 (1979),

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The Third District has itself acknowledged that discovery rules are designed to advance an individual's right of access to the courts for the resolution of disputes. In Rasmussen, 467 So.2d at 803, the Court emphasized that, "The discovery rules are designed to advance the state's interest in the fair and efficient resolution of disputes," Id. at 803, and also stated that: "The value we place on our dispute resolution system is evidenced by Article I, Section 21, of the Florida Constitution which guarantees that '[t]he courts shall be open to every person for redress of any injury,...'" Id. at 803, n. 10. Thus, even if some degree of disclosure of personal facts were involved in the discovery sought in this case, a blood donor's minimal interest in not disclosing his or her identity would necessarily be outweighed by Rasmussen's interest in petitioning the court to compel meaningful discovery in this case.

In Forsberg, supra, this Court held that privacy

3/ (continued)

with J.P. v. DeSanti, 653 F.2d 1080, 1090 (6th Cir. 1981), in which the court stated, "The Constitution does not encompass a general right to nondisclosure of private information." See also, Barry v. City of New York, 712 F.2d 1554 (2nd Cir. 1983); St. Michael's Convalescent Hospital v. California, 643 F.2d 1369 (9th Cir. 1981); McElreth v. Califano, 615 F.2d 434 (7th Cir. 1980); United States v. Choate, 576 F.2d 165 (9th Cir.), cert. denied, 439 U.S. 953, 99 S.Ct. 350 (1978); O'Brien v. DiGrazia, 544 F.2d 543 (1st Cir. 1976), cert. denied, 431 U.S. 914, 97 S.Ct. 2173 (1977); McNally v. Pulitzer Publishing Co., 532 F.2d 69 (8th Cir. 1976), cert. denied, 429 U.S. 855, 97 S.Ct. 150 (1976).

interests do not prohibit the disclosure of even the most personal information included in public housing tenant files, since access to that information was necessary to promote this state's policy of holding governmental agencies, their officials, and their employees publicly accountable. Forsberg, 455 So.2d at 375. While SFBS is not a governmental agency, it is a highly regulated public service agency, and as such, it should not be allowed to circumvent its own public accountability as a result of the specious privacy claims it is purportedly asserting on behalf of the 51 blood donors. SFBS clearly has a great self interest in not disclosing the names and addresses of the blood donors involved in this matter, since the secrecy of that information will almost certainly thwart any further inquiry into the procedures and manner in which the blood was collected or given. If SFBS can halt this type of inquiry here, it may be able to avoid any claims as to its own liability in such matters.

There can be no question that Rasmussen's interest in the information requested is more important than the transparent efforts of SFBS and the defendants in this action to escape responsibility for the negligent collection of tainted blood. Access to that information is clearly vital to the fair and appropriate adjudication of Rasmussen's claims.

C. Any Interest The Blood Donors May Have In Maintaining The Confidentiality Of Information Beyond What Is Currently Sought Is Not Ripe For Adjudication.

The Third District has attempted to bolster its holding that the names of blood donors to community blood banks are "private facts" with wholly premature concerns about subsequent compelled discovery into the private sex lives of the donors. If, upon receipt of the list of donors, Rasmussen attempts to engage in burdensome or oppressive discovery into the private lives of the donors, there will be full and ample opportunity for any adversely effected party to seek a protective order, should one be appropriate.

There may, in fact, be no need for any such probing discovery. Upon receipt of the list of names, Rasmussen may discover that one or more of the donors have died from or are suffering from AIDS by simply checking the names against public death records or other records maintained by the Center for Disease Control, United States Department of Health and Human Services. He may discover all are perfectly healthy. Those on the list with AIDS, or who may themselves be in a "high risk" group, may be willing to disclose this fact under the circumstances of this case, or, as Judge Schwartz suggests, there may be donors who are ill, but do not know they may be suffering from AIDS. Any such

individuals might find Rasmussen's discovery beneficial. In any event, any issues relating to the discoverability of the donors health conditions are simply not "ripe" for judicial review.4/

III. THE THIRD DISTRICT COURT OF APPEAL ERRED IN RELYING ON SEATTLE TIMES CO. V. RHINEHART TO SUPPORT ITS DECISION TO LIMIT ACCESS TO THE INFORMATION SOUGHT IN THIS CASE.

A. The Rhinehart Decision In No Way Limits A Litigant's Right To Compel Discovery From A Nonparty.

In Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984), a religious group known as the Aquarian Foundation, the spiritual leader of the group, and certain members of the foundation, filed suit against the petitioner, a newspaper company, seeking to recover monetary damages for alleged defamations and invasions of privacy.

During the course of extensive discovery, the respondents refused to disclose certain information

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4/ See, e.g., Johnson v. Sikes, 730 F.2d 644, 648 (11th Cir. 1984), which states: "The ripeness doctrine involves both jurisdictional limitations imposed by Article III's requirement of a case of controversy and prudential considerations arising from problems of prematurity and abstractness that may present insurmountable obstacles to the exercise of the court's jurisdiction even though jurisdiction is technically present....The basic rationale is 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements .... The problem is best seen in a twofold

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regarding the names, addresses, and contributions of the foundation's members, as well as significant information regarding the actual membership of the organization. Pursuant to the discovery rules of the State of Washington, which are modeled on the Federal Rules of Civil Procedure, the trial court issued an order compelling the respondents to identify all donors who made contributions during the five-year period prior to the filing of the suit, along with certain information on the amounts donated. Rhinehart, Id. at 2203, 81 L.Ed.2d at 22. The trial court also required the respondents to divulge enough membership information to substantiate any claims of diminished membership. Thus, contrary to the implication of the Third District, Rhinehart, supra, in no way limited a litigant's right to compel discovery from either parties or nonparties. Discovery was permitted in Rhinehart.

4/ (continued)

aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" Id. at 648.

The decisions of this Court have also upheld the principle that appeals are not intended to settle mere abstract questions, but only to correct or address injurious errors actually affecting the rights of the parties involved. See, e.g., Sandstrom v. Leader, 370 So.2d 3, 6 (Fla. 1979); Sarasota-Fruitville Drainage District v. Certain Lands Within Said District Upon Which Drainage Taxes for the Year 1952 Have Not Been Paid, 80 So.2d 335, 336 (Fla. 1955); Cottrell v. Amerkan, 35 So.2d 383, 384 (Fla. 1948).

The trial court did issue a protective order prohibiting the petitioner from publishing, disseminating, or using the information in any way except where necessary to prepare for and try the case, but the court did no more than restrict a litigant's right to gratuitously disclose to others certain information obtained through compelled discovery. Id. at 2203-2204, 81 L.Ed.2d at 22-23.5/

In fact, the restrictions adopted by the Court in Rhinehart relate only to limits on the timing of a litigant's subsequent dissemination of information obtained through discovery. As the Court stated:

> In this case, as petitioners argue, there certainly is a public interest in knowing more about respondents. This interest may well include most--and possibly all--of what has been discovered as a result of the court's order under Rule 26(b)(1). It does not necessarily follow, however, that a litigant has an unrestrained right to disseminate information

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5/ Both the Washington Supreme Court and the United States Supreme Court in affirming this discovery Order recognized that court orders which limit a party's right to disseminate discovery material constitute state action subject to scrutiny under the First Amendment. Rhinehart, 104 S.Ct. at 2205-2206, 81 L.Ed.2d at 24-26. Both Courts required the production of the requested information over claims that access to that information would violate the religious group's members' First Amendment rights to freedom of religion and freedom of association. The Supreme Court also held that it would not restrict the dissemination of the information if it were gained from other sources. Id. at 2209-2210, 81 L.Ed.2d at 29.

> that has been obtained through pre-trial discovery....
>
> ....
>
> Finally, it is significant to note that an order prohibiting dissemination of disscovered information before trial is not the kind of classic prior restraint that requires exacting First Amendment scrutiny....In sum, judicial limitations on a party's ability to disseminate information discovered in advance of trial implicates the First Amendment rights of the restricted party to a far lesser extent than would restraints on dissemination of information in a different context.

Rhinehart, Id. at 2206-2208, 81 L.Ed.2d at 26-27 (emphasis added).

Since the Court in no way limited a litigant's access to information obtained through discovery, and was merely concerned with restrictions on the timing of the litigant's gratuitous disclosure of information which itself is protected under the First Amendment, (see infra), Rhinehart in no way supports the opinion of the Third District below.

B. The Rhinehart Decision Is Also Inapposite Because It Was Predicated Upon Compelling First Amendment Interests Not Implicated In This Case.

It is apparent that substantial and compelling First Amendment interests were implicated in the Supreme

Court's decision to limit the dissemination of the information involved in Rhinehart. As the Court stated:

> The facts in this case illustrate the concerns that justifiably may prompt a court to issue a protective order. As we have noted, the trial court's order allowing discovery was extremely broad. It compelled respondents--among other things--to identify all persons who had made donations over a five-year period to Rhinehart and the Aquarian Foundation, together with the amounts donated. In effect, the order would compel disclosure of membership, as well as sources of financial support.

Rhinehart, 104 S.Ct. at 2209, 81 L.Ed.2d at 29. The Rhinehart court noted that the right to engage in anonymous First Amendment activities is well-settled. See Talley v. California, 362 U.S. 60 (1960); NAACP v. Alabama ex rel. Patterson, 375 U.S. 449 (1958). Granting both compelled discovery and a right to gratuitously disseminate the identities of members of a religious foundation, as well as information regarding their monetary contributions, would needlessly violate clearly established First Amendment rights. The case at hand presents no such compelling First Amendment interests since the order compelling production overturned by the Third District required only the revelation of the names and addresses of the 51 blood donors, information unrelated to the First Amendment interests in

freedom of religion and freedom of association implicated in Rhinehart. The scope of First Amendment protection does not encompass a right to give blood anonymously to public blood banks.

CONCLUSION

Based on the foregoing reasons, the decision of the Third District Court of Appeals should be reversed and the Circuit Court's Order requiring the production of the records and information sought pursuant to the Florida Rules of Civil Procedure should be reinstated.

Respectfully submitted,

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