IN THE SUPREME COURT OF FLORIDA

CASE NO: 67,081

DONALD RASMUSSEN,

Petitioner,

v.

SOUTH FLORIDA BLOOD SERVICE, INC.,

Respondent.

DISCRETIONARY PROCEEDINGS TO REVIEW A DECISION OF THE THIRD DISTRICT COURT OF APPEAL CERTIFIED AS A QUESTION OF GREAT PUBLIC IMPORTANCE

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

This brief is filed on behalf of respondent, South Florida Blood Service, Inc. (hereafter "Blood Service"), in support of the opinion of the District Court of Appeal, Third District of Florida, entered in the case of South Florida Blood Service, Inc. v. Rasmussen, 467 So.2d 798 (Fla. 3d DCA 1985). The Third District granted the Blood Service's Petition for Writ of Certiorari, quashing the trial court's order which denied the Blood Service's motion to quash a subpoena and for a protective order. The Blood Service is not a party in the trial court. Donald Rasmussen, petitioner here, is the plaintiff in the trial court and is the party who subpoenaed certain records of the Blood Service, which are at issue in this proceeding.

References to the record on appeal will be designated "R."; references to the petitioner's appendix will be designated "A."; and reference to respondent's appendix will be designated "R.A."

STATEMENT OF THE CASE AND FACTS

Rasmussen's Statement of the Case and Facts is accurate, but the Court may wish to limit consideration to the facts that appear on the face of the opinion of the Third District. Nielsen v. City of Sarasota, 117 So.2d 731, 732 (Fla. 1960). The Third District majority opinion succinctly set forth the facts[1/] as follows:

> Donald Rasmussen has sued William DeLoatche and Leonel Levia Monterroso for personal injuries sustained when struck by a motor vehicle allegedly owned and operated by the defendants. It is that litigation which has led to the issue we must resolve.
>
> Rasmussen, while hospitalized because of the injuries he sustained in the accident, received fifty-one units of blood. He was subsequently diagnosed as having acquired immune deficiency syndrome (AIDS). Based on that diagnosis, and the opinion of a physician that the AIDS resulted from the transfusions received while hospitalized, Rasmussen served a subpoena duces tecum on SFBS. The subpoena sought 'any and all records, documents and other material indicating the names and addresses of the

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1/ Although all parties throughout these proceedings have indicated that Rasmussen received 51 units of blood at St. Francis Hospital, and the district court opinion so states, the actual number is 48 -- it is apparent that the transfusion records (A. 16-21) were misread.

> blood donors identified on the attached records of St. Francis Hospital regarding the plaintiff herein, Donald Rasmussen.'
>
> SFBS, not a party to the lawsuit, moved to quash the subpoena or for a protective order on the grounds that Rasmussen had failed to show good cause or justifiable reason for the invasion of the private and confidential records of the blood service and its volunteer donors. The motion was denied and SFBS was ordered to produce the requested material. [467 So.2d at 800; footnote omitted].

The district court granted certiorari and quashed the decision of the trial court, basing its opinion on several grounds. First, the district court pointed out that the Florida Rules of Civil Procedure provide for limitation on discovery in order to prevent annoyance, embarrassment, oppression or undue burden or expense. Second, the court considered and discussed the interests of Rasmussen on the one hand and blood donors and society on the other hand, balancing these interests and concluding as follows:

> We conclude by emphasizing that we are not deciding that a blood bank's records are immune from discovery in all cases. We are merely holding that on the facts of this case, after 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 donors' privacy interests and society's interest in a strong and healthy voluntary donation program. [467 So.2d at 804].

QUESTION CERTIFIED

All three judges on the district court panel agreed that this case was appropriate for certification as a question of a great public importance. The majority of the panel certified the following question to this Court:

> 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?

In his dissent, Judge Schwartz framed the certified question in a different way, but did agree to certifying the cause.

SUMMARY OF ARGUMENT

Although the District Court determined that the information sought by Rasmussen in this case is relevant, the Blood Service disagrees with this determination, for the reasons discussed in Point II of this brief. If relevancy does not exist, then Rasmussen is clearly not entitled to the information.

Even if the materials are deemed to be relevant, Rule 1.280(c) provides that a court may limit or prohibit discovery to protect a person from annoyance, embarassment, oppression, or undue burden or expense. It is particularly appropriate to protect third parties from such discovery.

There is substantial case law in the state of Florida in which the courts have held that the privacy and confidentiality of medical records of strangers to the pending litigation should be protected. In this case, the information which Rasmussen ultimately seeks are "medical records" entitled to protection. Under federal and state law, the Blood Service must employ full time licensed physicians with supervisory responsibility, and before volunteers may donate blood, they must provide a medical history and must be given a limited physical examination. Several provisions of state law provide for confidentiality of medical records maintained by blood banks. Although Rasmussen argues that he only requests the names and addresses of the donors, it is obvious that once this information is obtained, further information regarding the medical histories of the donors will be sought. The names and addresses themselves will be of no use to Rasmussen.

The Florida Legislature has recently passed a law relating to the threat of infectious diseases in this state, providing, inter alia, for confidentiality of the identities of persons whose blood is tested for infectious diseases and the test results themselves. This statute demonstrates a legislative intent and the legislature's perception of public policy to encourage persons who feel they may have AIDS or have been exposed to AIDS to obtain tests confirming or denying this, without fear of public disclosure of having taken the test, or

the test result. The anxiety which would be experienced by such persons, as recognized by the legislature, is the same kind of anxiety as would be experienced by the blood donors involved in this case, if their identities are revealed.

The citizens of this state have demonstrated their concern for privacy interests, by amending the constitution in 1980 to provide for the right of privacy. There is substantial case law both in the federal courts and in the state of Florida discussing the scope of constitutional privacy interests. Although the revelation of the names and addresses of a group of blood donors may not directly implicate the constitutional privacy interests, the other information that is obviously required by Rasmussen is the kind of personal information subject to the disclosural privacy interest.

Although Rasmussen states that in order to fully recover in this suit he must prove medical negligence, mistake or lack of proper care while in St. Francis Hospital, his evidentiary burden is not so great. He need not prove negligence on the part of the Blood Service to collect in this suit. Even if he were required to prove negligence, he would not be able to do so because it was not until late 1982 or early 1983 (after Rasmussen's transfusions) that there was sufficient evidence to suggest that AIDS could be transmitted through blood transfusions.

The information that Rasmussen seeks will be of little use to him. That information has little probative value because Rasmussen already possesses sufficient information to make a prima facie case that this AIDS was transfusion related. An employee of the Centers for Disease Control and a physician associated with Mt. Sinai Hospital have both testified that Rasmussen's AIDS was transfusion related. Additionally, even if Rasmussen can demonstrate that he needs to have some information to counter a possible suggestion by the defendants in this case that the AIDS was not transfusion related, the medical information he will obtain from these donors will be useless. It is impossible to prove in 1985 that even if someone does have AIDS or is in a high risk group in 1985 that he or she was infectious in 1982.

Aside from these evidentiary problems, the district court was correct in concluding that Rasmussen's interests in obtaining the information he seeks must be outweighed by the privacy interests of blood donors and the societal interests of maintaining a volunteer blood supply. As fully discussed in the amicus briefs filed in support of the Blood Service's position, the revelation of the names and addresses of the blood donors in this case, and the precedential value of such a decision, would do substantial harm to the all-volunteer blood supply that blood banks and blood service organizations in this country have fought hard to establish. The need for a sufficient supply of safe

blood is without a doubt a very important societal interest, which should be preserved and protected by this Court.

ARGUMENT

I.

FLORIDA LAW PROVIDES AMPLE SUPPORT FOR THE DISTRICT COURT'S DECISION IN THIS CASE.

A. The Rules of Civil Procedure Provide for Limitations or Prohibitions on Discovery in Cases Such as This.

Although parties are entitled to broad discovery, allowable discovery is not without bounds. Relevancy is clearly a fundamental requirement. The district court assumed that the information sought by Rasmussen is relevant. The Blood Service never conceded that point and would ask the Court to revisit the issue. In order to be relevant, discovery must be directed to the issues which are raised in the pleadings.

> Material sought to be discovered must relate to the issues involved in the litigation in which an attempt to compel is made.

Everglades Protective Syndicate, Inc. v. McKinney, 391 So.2d 262, 263-64 (Fla. 4th DCA 1980). As recognized in Equifax Corporation v. Cooper, 380 So.2d 514, 516 (Fla. 5th DCA 1980):

> Any other rule would transform every lawsuit into a fishing expedition, and would seriously impede the orderly and expeditious disposition of litigation.

As will be more fully addressed in Point II A, infra, the information sought by Rasmussen is of little relevancy, because (1) Rasmussen already has sufficient information

available to him to prove that his AIDS was caused by the blood transfusions he received, so that even if he is able to show that any of the donors have AIDS or are in high-risk groups, such evidence will be merely cumulative; and (2) even if Rasmussen is able to show one or more of the donors has AIDS or is in a high-risk group at present, that will not prove that any such donors were infectious in 1982.

Even where materials sought to be discovered are relevant, Rule 1.280(c) provides that a court may limit or prohibit discovery to protect a person from annoyance, embarrassment, oppression, or undue burden or expense. It must be remembered that neither the Blood Service nor its volunteer blood donors are parties in the trial court. Third parties, even more so than actual parties to the litigation, are to be protected from harassment or inconvenience. See, e.g., Collins and Aikman Corp. v. J.P. Stevens & Co., 51 F.R.D. 219, 221 (D. S.C. 1971), which noted in regard to Federal Rule 26 (the counterpart of Florida Rule 1.280):

> There appear to be quite strong considerations indicating that the discovery would be more limited to protect third parties from harassment, inconvenience, or disclosure of confidential documents.

As will be demonstrated in this brief and in the amicus curiae briefs supporting the Blood Service's position, there exist substantial and important policy reasons for protecting volunteer blood donors from embarrassment and annoyance.

B. Florida Law Protects the Privacy and Confidentiality of Medical Records of Non-Parties.

In Argonaut Insurance Company v. Peralta, 358 So.2d 232 (Fla. 3d DCA 1978), cert. denied, 364 So.2d 889 (Fla. 1978) the Third District condemned disclosure of the medical records of strangers to a lawsuit. Peralta has since been followed by an unbroken line of cases protecting the privacy and confidentiality of medical records of strangers to the pending litigation. North Broward Hospital District v. Lucas, 448 So.2d 622 (Fla. 4th DCA 1984); Leikensohn v. Cornwell, 434 So.2d 1030 (Fla. 2d DCA 1983); North Miami General Hospital v. Royal Palm Beach Colony, Inc., 397 So.2d 1033 (Fla. 3d DCA 1981); Fidelity and Casualty Company of New York v. Lopez, 375 So.2d 59 (Fla. 4th DCA 1979); Teperson v. Donato, 371 So.2d 703 (Fla. 3d DCA 1979); American Health Plan, Inc. v. Kostner, 367 So.2d 276 (Fla. 3d DCA 1979).

The Blood Service is operated in conformity with Federal Food and Drug Administration Regulations, 21 C.F.R. §640 et seq. The Blood Service is also licensed by the state under Chapter 483 of the Florida Statutes and is governed by the Department of Health and Rehabilitative Services Regulations, Chapter 10 D-41.21 et seq., Fla. Admin. Code. In accordance with both the federal and state regulations, the Blood Service employs full time licensed physicians with supervisory responsibility for the operation of the Blood Service. Before volunteers may donate blood, they must provide a medical history and must be given a

limited physical examination. 21 C.F.R. §640.3(a). The medical records on each donor are maintained in accordance with state and federal regulations. These medical records are treated as confidential information under Rule 10D-41.34(5)(c) Fla. Admin. Code (relating to records of specimens). Furthermore, although certain blood bank information is public record, Florida Statute §381.601(6)(b) maintains the confidentiality of medical records maintained by the blood banks.

Rasmussen undoubtedly takes the position that the information sought by the subpoena duces tecum in this case does not constitute "medical records." Although that may technically be true, it is quite apparent that Rasmussen seeks much more than simply the names and addresses of the blood donors involved in this case. If that is all the information Rasmussen requested, such information would be useless to him. Obviously, it is personal data and the medical history of the blood donors that are sought by Rasmussen. Whether he obtains such information directly from the Blood Service or in interviews or depositions with the blood donors, the result is the same -- Rasmussen seeks medical records, which are protected under Florida case law and are confidential under Florida Statutes and the Florida Administrative Code.

C. The Florida Legislature Has Demonstrated that the Public Policy of this State is to Protect the Identities of Persons Suspected of Having Infectious Diseases.

By Chapter 85-52, the Florida Legislature created §381.606 which relates to the threat of infectious diseases, the testing for such diseases, and the confidentiality of test results. First, the statute provides that the secretary of the Department of Health and Rehabilitative Services may declare that a threat to the public health exists when there is the occurrence of an infectious disease that may be transmitted from human to human through serologic or other means, and that after such declaration, the secretary shall order preventative, treatment, and ameliorative measures as shall be advisable from medical and public health perspectives. Second, the statute authorizes the secretary to direct that a system of alternative testing sites be established through county public health units or through other means for voluntary serologic testing of individuals to identify those persons who may have, or be at risk of developing, an infectious disease. Third, the statute provides that testing sites shall report the specific results of the test to the individual receiving the test. Finally, the legislature provided:

> No person may be compelled to identify or provide identifying characteristics which, if disclosed, would identify any individual who receives or has received a serologic test. Any person who discloses the serologic test result to another person, unless the disclosure is to the person receiving the test, is guilty of a misdemeanor of the first degree...

The only exceptions to this requirement are if the person receiving the test gives written consent for disclosure of the test results, or if the information is disclosed pursuant to the standard practice of medicine or public health, including consultation between physicians to determine diagnosis and treatment, or if the test results are disclosed during medical or epidemologic research without the individuals' names or identifying characteristics.

A review of the Senate Staff Analysis and Economic Impact Statement on S.B. 1038 (R.A. 1-2) makes it clear that the statute was passed with AIDS in mind. The Staff Analysis also provides:

> Under the bill, the confidentiality of those receiving a serologic test would be preserved in order to encourage honesty in disclosure about high risk status and to assure all donors that positive test results would not be used against them. [R.A. 2].

By the passage of this statute, the legislature has indicated that it is the public policy of this state to encourage persons who feel they may have or have been exposed to an infectious disease such as AIDS, to obtain tests confirming or denying same, without fear of public disclosure of having taken the test, or the test results. The same kind of potential for personal harm which the legislature recognized would exist in people who believe they have, or have been exposed to, infectious diseases such as AIDS, or public disclosure of same, obviously will exist in blood donors whose names are made public,

associated with AIDS, and used in civil litigation such as the present case. As will be discussed further in this brief, and as cogently articulated in the amicus briefs supporting the position of the Blood Service, persons who are associated in any way with AIDS are subjected to ostracism, employment prejudice and social avoidance. Such persons, whether they have AIDS, have been exposed to AIDS, are in a high-risk group or merely associated with the AIDS threat, naturally experience a great deal of anxiety and fear. It does not take a great deal of imagination for one to predict the anxiety and harm that will be experienced by a blood donor when his name is publicized as being in a group of people who donated blood to a person who later contracted AIDS.

Although §381.606 does not directly provide for confidentiality of donor identities in an AIDS case, the legislative intent and declaration of public policy are clear. Only unqualified approval of the district court opinion will be consistent with the legislative intent and public policy as declared by the legislature.

D. Florida (and Federal) Constitutional Provisions Protect Citizens From Unwarranted Invasion of Privacy.

The citizens of this state amended the Florida Constitution in 1980, to specifically provide for the right of privacy:

> Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise

> provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law. [Article 1, §23, Fla. Const.].

As pointed out by the district court in this case, there are two recognized zones of privacy. The first, requiring application of a compelling state interest test, is the decision-making or autonomy zone of privacy interests, which is limited to highly personal matters such as marriage, procreation, contraception, family relationships and education, and as such, is not at issue here. The second zone of privacy involves the interest in avoiding disclosure of personal matters. Relevant cases discussing this zone of privacy are Whalen v. Roe, 429 U.S. 589, 598-600 (1977); Plante v. Gonzalez, 575 F.2d 1119, 1127-28 (5th Cir. 1978), cert. denied, 439 U.S. 1129 (1979); Florida Board of Bar Examiners re: Applicant, 443 So.2d 71, 76 (Fla. 1983). The district court described this privacy interest as "essentially an interest in confidentiality." 467 So.2d at 802.

As astutely recognized by the district court, it is evident that Rasmussen needs more than just the names and addresses of the donors. His intent, rather, is to establish that Rasmussen developed AIDS as a result of transfusion. He will try to do this by showing that one or more of the donors has AIDS or is in a high-risk group.[2/] Rasmussen would have to probe

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2/ As pointed out in Point II, infra, even if a person now has AIDS or is in a high risk group, this fact does not prove (cont'd)

into the most intimate details of the donors' lives, including their sexual practices, drug use and medical histories. This kind of information has been recognized as entitled to protection. Priest v. Rotary, 98 F.R.D. 755 (N.D. Cal. 1983) (discovery of plaintiff's sexual history prohibited); Lampshire v. Proctor & Gamble Co., 94 F.R.D. 58 (N.D. Ga. 1982) (identity of subjects of a Centers for Disease Control study entitled to protection). The district court thus concluded that an order allowing or compelling discovery in this case could impinge on the constitutionally protected right to disclosural privacy. The court further discussed the balancing test which is necessary once the constitutionally protected right to disclosural privacy is evident. This will be discussed in Point II, infra.

In order to avoid duplication, the Blood Service will not provide additional argument on the constitutional principles involved in this case. Rather, the Blood Service hereby adopts the argument contained in the amicus brief filed by the Council of Community Blood Centers under Point II(B)(1)(b) and (c) of its brief.

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that person's infectivity in 1982.

II.

IN THE BALANCING OF INTERESTS INVOLVED IN THIS CASE, THE INTERESTS OF BLOOD DONORS AND SOCIETY MUST PREVAIL OVER THE INTERESTS OF RASMUSSEN.

A. The Information Rasmussen Seeks Will Be of Little Use to Him.

Rasmussen points out correctly that Florida law recognizes that an increase or aggravation of an injury caused by the negligence, mistake or lack of medical attention given to an injured party is recoverable against the original wrongdoer (Rasmussen brief at p. 5). Rasmussen then states that full recovery "against the defendants below will, therefore, turn on the answer to a single question: What was the source of Rasmussen's AIDS?" Missing from Rasmussen's analysis is the fact that under Florida law, the liability of the original wrongdoer is not limited to situations where the injured person receives negligent medical treatment following the initial injury. The initial tortfeasor is responsible for any injury which is inherent in or flows directly from the tortious conduct. Thus, to fully recover from the defendants in this case, Rasmussen need not prove any negligence in the donation of the blood, the collection of the blood by the Blood Service, or the transfusion procedure.

If Rasmussen did have to prove negligence on the part of the blood donors, the Blood Service, or St. Francis Hospital, he would not be able to do so. He received his blood

transfusions during his hospitalization from May to October 1982. At that relevant time, it was not known in the medical or research community that AIDS was transmissible by blood transfusions. It was not until late 1982 or early 1983 that sufficient evidence was available to support the possibility of transmission of AIDS by blood transfusions. Minutes of Workshop on Experience with HTLV-III Antibody Testing, etc., Food and Drug Administration, National Institutes of Health, Centers for Disease Control, July 31, 1985 at p. 10 (R.A. 3-14). After it was suspected that AIDS could be transmitted through blood transfusions, the Blood Service timely followed the recommendations of the American Association of Blood Banks, the Council of Community Blood Centers and the American Red Cross, as well as guidelines issued in March 1985 by the Federal Food and Drug Administration to screen donors for AIDS symptoms. Lifeline (Publication of South Florida Blood Service), Spring '83 at 9 (R.A. 16). It was not until March of 1985 that there was any method available to detect possible infectious units of blood collected by blood banks. CCBC Newsletter (March 4, 1985) at 3.

There is no blood bank liability without fault, and there is no fault unless the defect in the blood was detectable or removable through the reasonable use of scientific procedures or techniques. §672.316(5) Fla. Stat.; Williamson v. Memorial Hospital of Bay County, 307 So.2d 199 (Fla. 1st DCA 1975).

Aside from these considerations, the information sought by Rasmussen will be of little use to him, because of the lack of probative value in the information, and because he already possesses sufficient information to make a prima facie case that his AIDS was caused by blood transfusion. Rasmussen suggests that the Blood Service's opposition to providing the information sought by Rasmussen may be based upon a self-motivated interest in keeping its "potential total failure to screen high risk groups from donation by available methods" from surfacing. (Rasmussen brief at p. 9). As already demonstrated, there were no available methods to screen high risk groups from donation, or to even know at the time (1982 or earlier) that AIDS could be transmitted through transfusions. The Blood Service's other response to this "self motivation" argument is simply that the Blood Service does not disagree with the proposition that Rasmussen's AIDS was transfusion related. All available expert opinions agree on that fact.

Rasmussen takes issue with the assertion (which is admittedly not in the present record but which was included in the District Court opinion) that the Blood Service at some unspecified time in the past checked a list of persons whose blood was received by Rasmussen at St. Francis Hospital and has stated as a fact that none of those persons appear in lists of idenitified AIDS victims. (Rasmussen brief at p. 6-7). Rasmussen's point is that the Blood Service has provided the

defendants in the trial court with ammunition to counter Rasmussen's assertion that his AIDS was transfusion related. As already pointed out, the Blood Service does not take issue with the assertion that Rasmussen's AIDS was transfusion related. Furthermore, the fact that none of the donors' names appeared on lists of identified AIDS victims as of mid-1984[3/] proves nothing. First, in light of the fact that the cross referencing was done more than a year ago, the situation could easily have changed by now. The incubation period for AIDS could be as long as five years. Additionally, however, it is impossible to prove in 1985 that someone who now has AIDS or is now in a high risk group gave blood in 1982 or earlier that led to a recipient's AIDS, as diagnosed in 1983. The information would be relevant only if it could be proved that the donor in fact had AIDS or the AIDS virus at the time of the blood donation and that it could be transmitted through the donation of his blood.

Assuming that some procedure could be set up, satisfactory to all parties to this cause, to verify, on an anonymous basis, that the donors involved here are not on any lists of identified AIDS victims, then the only type of information which Rasmussen might glean from interviews with, investigation of or

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3/ Presumably, the comparison of the donors' names to the list of AIDS victims occurred sometime after the subpoena was served on the Blood Service on June 6, 1984 but before the July 25, 1984 service date of the amicus brief filed on behalf of counsel of Community Blood Centers in the Third District, which is the source of the Third District's reference to this matter.

deposition of the donors, is intimate details about their private lives. Rasmussen would have to pursue the possibility that one or more of the donors were in a high risk group, which would necessitate inquiring or investigating about such personal things as sexual habits, drug use and medical histories. Even if such an inquiry were to be allowed by this Court, the Blood Service suggests that the information obtained from such an inquiry would have such a tenuous relationship to the fact of Rasmussen's AIDS, as to be of no probative value.

As matters now stand, Rasmussen has the testimony of a Centers for Disease Control employee and a physician associated with Mt. Sinai Hospital (R. 41-42; 62) that Rasmussen's AIDS is transfusion related, and presumably, Rasmussen will be able to produce one or more additional experts at trial to testify in the same way. If Rasmussen, however, is permitted to pursue the donor information he requests, he would end up with one of the following three possibilities: (1) he could determine that one or more of the donors actually does have AIDS; (2) he could determine that none of the donors have AIDS and none of the donors have any high-risk characteristics; or (3) he could determine that none of the donors have AIDS but one or more of them are in a high-risk group. The first possibility, even if it exists, has no probative value because even if someone has AIDS now, that does not mean he had AIDS and was infectious in 1982 or earlier when he donated blood. Even so, the information could be

obtained in a less intrusive manner than by allowing Rasmussen to have the names and addresses of all of the donors and to allow his attorney to contact these people directly. Obviously, some method could be formulated to establish this information, while preserving the confidentiality of the donors' identities. If the second possibility occurs, then Rasmussen has actually hurt his case, because that state of affairs will counter-balance the other testimony Rasmussen has to establish that his AIDS is transfusion related. If the third possibility occurs, as the Blood Service has already suggested above, the probative value of the evidence will be so tenuous, as to be inadmissible at trial.

B. The Privacy Interests of Donors and the Societal Interests in Maintaining a Volunteer Blood Supply are Stronger Than any Poorly Demonstrated Need of Rasmussen.

The suggestions and analysis provided in the foregoing section of this brief are provided only to demonstrate to the Court that Rasmussen's need of the requested information is not at all clear-cut. This should be kept in mind in balancing Rasmussen's interests with the privacy interests of the blood donors and the societal interests of maintaining an adequate volunteer blood supply. Even if the situation were different and Rasmussen were able to clearly show to the Court that he needed the information in order to prove his case, the competing interests of the blood donors and society would have to prevail. Since Rasmussen's need for the information is not

clear-cut, it is even more clear that the interests of the donors and society must prevail.

In order to avoid redundancy, the Blood Service hereby adopts the arguments contained in the amicus briefs that are filed in support of the Blood Service's position, insofar as they discuss the privacy interests of blood donors and the societal interests of maintaining a volunteer blood supply and the probable damage to the volunteer blood supply if donor information is not kept confidential. The Blood Service does, however, have a few additional arguments on these points.

Very important to the analysis of this case is the consequence of a person being associated with AIDS (by his name being identified as one of a group of donors of blood given to a person who later developed AIDS) even if the donor does not have AIDS, and is not in any high-risk group. This Court can take judicial notice of the recent substantial publicity engendered by the AIDS threat, and can easily come to the common-sense conclusion that a person who is even associated with AIDS, as would occur in this case, would likely be subjected to ostracism, avoidance, or discrimination, at least to some extent. Pains should be taken to avoid such a result, not only to protect the donors involved in this case, but to protect others who may find themselves in the same position in other cases in the future.

CONCLUSION

Based on the foregoing arguments and authorities, and on the arguments contained in the amicus briefs supporting the position of respondent in this cause, the decision of the District Court of Appeal, Third District of Florida should be approved.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on the Merits was served by mail this 10th day of October on all counsel on the attached service list.

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