

IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA, ET AL.,           \*\*  
   Appellants,                               \*\*  
 vs.   \*\*  
 WADE POWELL, ET UX.,               \*\*  
 ET AL.,   \*\*  
   Appellees.                               \*\*

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Case No. 67,755

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 NOV 1 1985  
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BRIEF OF THE EYE BANK ASSOCIATION OF AMERICA, INC. AS AMICUS CURIAE

The Eye Bank Association of America, Inc. (EBAA) is a national organization of not-for-profit eye banks dedicated to providing the gift of sight to those without vision. Its members enabled nearly 24,000 Americans to receive sight-restoring corneal transplants in 1984.

The cornea is the clear surface at the front of the eye. Vision is reduced and sometimes eliminated when the cornea becomes cloudy from swelling, injury, infections, chemical burns or congenital disease. In a corneal transplant operation, a disc-shaped segment of a defective cornea is removed and replaced by donor tissue. Today, the operation has a nearly 95% success rate in saving the eye and in improving vision.

Corneal donation does not adversely affect a donor's appearance. Indeed, with or without removal of the corneal tissue, the eyes of a decedent must be capped in any event to maintain a normal appearance, because eyes lose their shape upon death as the vitreous humor, which fills the eye, recedes. By contrast with this natural disfigurement, corneal removal, involving removal of only the outer surface of a portion of the eye, is not disfiguring. In exchange for this minimal intrusion of a decedent's body, new sight can be provided for living persons.

Unfortunately, EBAA members and other eye banks are not presently able to respond to the needs of a great many persons who could benefit from this simple sight-giving operation. More than 3,000 Americans are now waiting for corneal transplants because of a shortage of available tissue.

Expanding the application of successful corneal transplantations in the United States and thus restoring sight to a great many needy persons faces two problems: inadequate quantities of tissue available solely through donation, and the unacceptable quality of much of the tissue received by donation. As much as two-thirds of the tissue received by outright donation is surgically unsuitable for use, because of the advanced age of the donors at the time of death.

The most important development in overcoming both of these problems has been the adoption of Medical Examiner corneal removal statutes. These laws authorize a medical examiner, in cases committed by law to the medical examiner's or coroner's jurisdiction, to permit the removal of corneal tissue from the decedent provided that neither the decedent before death nor the decedent's next-of-kin prior to removal objects to the procedure. The corneal tissue is entrusted to a duly qualified, not-for-profit eye bank and shortly thereafter is transplanted to a person or persons in need.

The growing adoption of such Medical Examiner statutes represents a development of profound importance to the health of thousands upon thousands of Americans, and to the welfare of states which have such laws and the nation as a whole. Because blind persons cannot drive and cannot engage in normal employment or otherwise lead fully productive lives, they are often dependent on the state for the basic necessities of life. Thus, in addition to the individual suffering of those who must make their way in the world without sight, the economic burdens of blindness on taxpayers and governments at all levels is tremendous.

Medical Examiner statutes, because they make available younger, healthier eye tissue, are a major contributor to the present day 95 percent success rate of corneal

transplant operations. As the record in this case demonstrates, tissue obtained through the Medical Examiner statute in Florida has averaged 30 years of age, and more than four-fifths of that tissue is surgically suitable for transplantation.

Perhaps the most hopeful development in sight restoration today is the progress being made in corneal transplantation for very young children. Transplantation is now routinely performed on young children and teenagers, and just this year a transplantation was successfully performed on a 19-day-old baby. These young people now have full and productive lives ahead of them, instead of lives of blindness or repeated surgery. Equivalent age eye tissue would simply not be available in the absence of Medical Examiner laws.

Of the eleven Medical Examiner statutes similar to Section 732.9185 which have been adopted since 1975, not one has been successfully challenged on constitutional grounds. Such statutes have twice been upheld in recent decisions of the highest court in two states, Michigan and Georgia.

The most recent court to address the constitutional issues presented by this case was the Supreme Court of Georgia in Georgia Lions Eye Bank, Inc. v. Lavant, Docket No. 42-351, decided on October 9, 1985. A copy of that decision is attached hereto for convenient reference.

In the Georgia Lions case, a parent contended that the removal of corneal tissue from her infant child pursuant to the Georgia Medical Examiner law was a violation of her constitutional rights, because she had received no notice of the intended removal and had no realistic opportunity to object. The trial court held the Georgia statute violative of due process on the ground that it deprives a person of a property right in the corpse of his next-of-kin, and fails to provide notice and an opportunity to object. The Supreme Court concluded, however, in accordance with all relevant modern authority, that the parents had no property right or any other constitutionally protected right in the decedent's body.

The Michigan Court of Appeals reached the same conclusion in the context of a parent's challenge based on a claim of privacy rights under the constitution. Tillman v. Detroit Receiving Hospital, 360 N.W. 2d 275 (Mich. Ct. App. 1984). The Michigan Supreme Court recently sustained the constitutionality of the statute by denying an application for appeal from the decision in Tillman.

The decision of the court below in this case, if allowed to stand, would have an extremely unfortunate impact on many if not most of the Floridians who are now and will be in need of corneal tissue for transplantation. More generally, a determination of unconstitutionality of the

Florida statute could have a profound effect upon the success of future sight restoration efforts in other states as well.

The brief of Appellants ably sets forth the facts and the law governing this case, and The Eye Bank Association of America fully supports Appellants' position and argument. For the reasons stated above and in the brief of Appellants, we urge this Court to reverse the judgment of the court below and uphold the validity of Florida Statutes Section 732.9185.

Respectfully submitted this 1st day of November, 1985.



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