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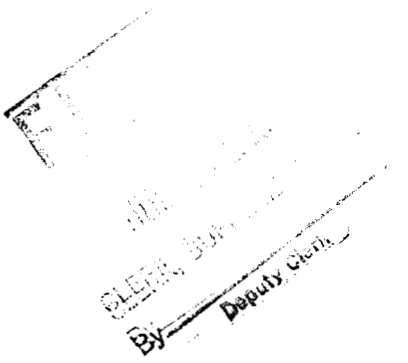
IN THE SUPREME COURT

OF FLORIDA

CASE NO. 68,191



DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Petitioner,

vs.

NATIONAL ADOPTION COUNSELING SERVICE, INC., et al.

Respondents.

ON THE DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL FOURTH DISTRICT

PETITIONER'S REPLY BRIEF

MORTON LAITNER, ESQUIRE
Dade County Health Department
1350 N.W. 14th Street
Miami, Florida 33125
305/324-2408

Attorney for Petitioner
Department of Health and
Rehabilitative Services

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STATEMENT OF THE CASE

In its answer brief Respondents on page 5 made the following statement. "On April 25, after the trial judge had announced his decision, the Department filed transcripts of telephone depositions." (R. 378, 414) Because of its importance, Petitioner has attached as Appendix I, a copy of one page of the April 22, 1985 transcript before Judge Lawrence L. Korda. Mr. Boone (trial counsel for the Respondents) stated, "we have done two depositions so far by telephone. And Mr. Laitner, to my surprise, filed both depositions for use at trial." (R. 542) The two (2) depositions which had been filed were the telephone depositions of Brian Harris Hessel, taken on March 28, 1985 at 2:55 p.m., (R. 414) and the telephone deposition of Martha Rachel Cohen, taken on March 28, 1985 at 2:05 p.m. (R. 378) It is the opinion of HRS that the depositions were filed directly with the court prior to its verbal ruling. The depositions having first been to the court in chambers and were then sent to the clerk's office for filing on April 25, 1985, the day the court signed the temporary injunction and sent the total trial file, with the aforementioned depositions, to the clerk's office.

As to the transcript of proceeding taken on February 7, 1985 (R. 552-602), the Motion for Temporary Restraining Order (HRS), (R. 603-608) and the Affidavit of Carol D. Hutcheson, (R. 609-617) the clerk of the court, in compiling the original record on appeal, contacted counsel for HRS and

advised counsel that the Clerk's office could not find the copies of the aforementioned documents and requested that the Department furnish the Clerk's office with them so that it could compile the original record on appeal. The Affidavit of Carol Hutcheson was an attachment to the Petitioner's Memorandum of Law which was mailed to opposing counsel on the 14th day of March, 1985. (R. 306)

STATEMENT OF THE FACTS

1. In the Respondents' Statement of facts, the Respondents ignore the fact that not only did the Department's complaint assert that the Respondents were an "unlicensed child placing agency", but the Department's Complaint for Temporary and Permanent Injunction also asserted that the Respondents were an unlawful referral service pursuant to Chapter 63.212(1)(g), Florida Statutes. (R. 1)

2. Respondents further overlook the fact that in the Department's prayer for relief in its complaint for temporary and permanent injunction, in paragraph E thereof, the Department prayed for the following:

"E. Grant the preliminary and permanent injunction and any other necessary and proper relief as the court finds just and proper as under the circumstances." (R. 4)

3. Respondents disregard the fact, that in the Petitioner's complaint for temporary and permanent injunction, that the Department alleged that Gitelman was ill-trained to handle the delicate task of dealing with prospective adoptive

parents and pregnant women, and could create serious traumas in these individuals' lives. (R. 4-5)

4. Paragraph 27 of the complaint clearly contended that the granting of an immediate preliminary injunction was of the utmost urgency if the welfare of pregnant females and prospective adoptive parents in their dealings with National Adoption Counseling Service, Inc., was to be protected from irreparable harm and injury. (R. 5)

5. Respondents continued to ignore the following facts when Respondents stated that National Adoption Counseling Service's business consisted of performing searches outside the State of Florida on behalf of couples. (See page 6, Statement of Facts, Respondents' Answer Brief.)

A. National Adoption Counseling Service, a corporation organized under the laws of the State of Florida, (admitted in Respondents' answer brief at R. 24-25), (contract so reads verbatim in its first paragraph): "1. The Service agrees to commence to search for and on behalf of the client, both locally and nationally for a pregnant woman who desires to give up her child for adoption." (R. 16) (Emphasis Supplied.) The Fourth District Court of Appeals recognized the nexus in its opinion. National Adoption Counseling Service, Inc. v. State, Department of Health and Rehabilitative Services, 480 So.2d 250 (Fla. 4th DCA 1985) at 251.

B. Respondents contend that "National did not... promote, or any way market its services to couples desiring to adopt."

Mr. Gitelman, asked of an alleged prospective client, where she lived? Respondent learned that she lived in "Tallahassee". Gitelman replied "Oh Lord". Then Respondent promoted his referral service explaining his modus operandi, his eight thousand dollar ($8,000) fee, and by mailing his agreement and independent adoption statement. (R. 609-617) As to the Independent Adoption Statement, Gitelman demonstrated before the circuit court his ability to selectfully remember certain facts.

> "Q. You don't send them any forms or any other brochures explaining adoption?
> A. Not to my knowledge.
> Q. Mr.Gitelman, for the purpose of identification I'm now showing you a document entitled, "Independent Adoptions."
> A. Yes, this must be the first one. I just made this up.
> Q. Now, you're admitting this is sent out?
> A. No, it was sent out once, if it was.
> Q. Is this your document?
> A. I just said yes.
> Q. It has been sent out once?
> A. Once." (R. 56)

Further, Gitelman testified before the court he did not know if National Adoption Counseling Service was profitable. (R. 51) Nor how many of National's clients paid fees and did not receive children due to the pregnant women changing their minds. (R. 53) In fact, Richard Gitelman admitted he sent out brochures and his contract to people in Florida. (R. 55)

The Petitioner reiterates that NACS did work on a case with an alleged pregnant woman who was requested to come into the State of Florida to deliver her child by NACS. (R. 391) NACS further stated it would pay for her travel expenses to Florida and establish a place for her to stay while in Florida. (R. 408) NACS flew a woman to the State of Florida. (R. 427-

428).

While many of NACS' clients are from out-of-state, NACS has worked for prospective adoptive parents from within the State of Florida, who eventually were successful in adoption. (R. 371) Further, a pregnant Florida woman was also NACS' client. (R. 421)

The procedure outlined in the Respondents' Statement of the Facts clearly demonstrates the Petitioner's argument that the Respondents operate a referral service.

The Petitioner adheres to and adopts by reference in this Reply Brief the Statement of the Case and of the Facts contained in its initial brief in this cause. The parties will be referred to in this brief as they were in the Petitioner's initial brief. The symbols for reference used in the Petitioner's initial brief will also be used in this Reply Brief. The Petitioner, the Department of Health and Rehabilitative Services, as HRS. The Respondents, National Adoption Counseling Service, Inc. and Richard Gitelman are collectively referred to as NACS.

ARGUMENT

I. WHETHER HRS HAS STANDING TO MAINTAIN SUIT TO ENJOIN RESPONDENTS FROM ENGAGING IN UNLICENSED REFERRAL AND CHILD PLACEMENT ACTIVITIES WHERE NEITHER RESPONDENT WAS AN INTERMEDIARY?

The Petitioner and the Respondents in earlier briefs have used different statements of the questions presented. The Petitioner adheres to his original statement of the question presented.

The Petitioner answers the argument contained in the Respondents' brief on this question as follows:

(a) The HRS Complaint for Temporary and Permanent Injunction in the third paragraph alleges that NACS is an unlicensed child-placing agency as defined in Chapter 63.032, Florida Statutes, (Supp. 1984), is entitled, Definitions and reads in part: As used in this act, unless the context otherwise requires, the term:

(7) "Agency" means any child-placing agency licensed by the department pursuant to s. 63.202 to place minors for adoption.

Section 63.202(1), Florida Statutes (1984), authorizes HRS to license child welfare agencies that it determines to be qaulified to place minors for adoption. (Emphasis Supplied.)

In Section 63.202(2), Florida Statutes (1983), the Legislature mandated that no agency shall place a minor for adoption unless such agency is licensed by HRS.

At this juncture it appears abundantly evident that the Legislature desires HRS to regulate the child-placing agencies to guarantee qualified individuals are entrusted with their significant responsibility. Chapter 63, Florida Statutes, lays the foundation for HRS to seek injunctive relief. While Chapter 409, Florida Statutes, clearly delineates HRS' authority and standing to seek a temporary injunction. HRS by citing Section 409.401, Florida Statutes (1983), in its Motion for Temporary Restraining Order, never intended that it be read in a vacuum, but rather that the total statute be read by opposing counsel as well as the trial court.

Counsel can find no authority that prohibits NACS from reading all of Chapter 409, Florida Statutes. Ironically, NACS' contract mandates that the Respondents are subject to all of Florida's statutes, including Chapter 409.175, Florida Statutes.

> "14. In the event any dispute arises between the parties to this Agreement, the parties hereto agree that this Agreement shall be construed in accordance with the laws of the State of Florida and, furthermore, agree to submit to the jurisdiction of the courts of the State of Florida." (R. 18) (Emphasis Supplied.)

But once one reads 409.175(9)(a), Florida Statutes, the issue of standing by HRS to enjoin the Respondents is immediately put to rest.

The Legislature desired to protect the health and safety of children by providing for the establishment of licensing requirements for child-placing agencies.

HRS alleged throughout its Complaint for Temporary and Permanent Injunctive relief (R. 1-5), and in its Memorandum of Law (R. 301), that NACS was an unlicensed child-placing agency. A prudent review of the rules and regulations dealing with licensure of child-placing agencies, found at 10C-15.82 et seq., Florida Administrative Code, would alert the prudent reader to read all of Chapter 409, Florida Statutes, as well as specifically advising the reader to study Section 409.175, Florida Statutes, of the particular authority given HRS by the Legislature to seek compliance with licensing requirements to the fullest extent possible by reliance on civil actions such as temporary injunction. HRS cited Rule 10C-15.83, Florida Administrative Code, in its Memorandum of Law. (R. 301)

One of HRS' witnesses testified:

"You can't send children out of the state, and Chapter 409 of Florida Statutes, the interstate compact, which needs really to be read in conjunction with 63 when talking about this type of case, expressly prohibits bringing children into the state. (R. 582) This witness did not advise the court nor NACS not to read all of Chapter 409.

Regrettably, the alarm may not have been as loud as NACS may have desired, but NACS was alerted to the issue of HRS' standing to seek temporary injunctive relief against an unlicensed child-placement agency and illegal referral services.

Section 409.175, Florida Statutes, does empower HRS to enjoin NACS because NACS arranges for the placement of

children in adoptive homes.

Section 409.175(2)(d), Florida Statutes (1984), reads:

> "Child-placing agency" means any person, corporation, or agency,public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to Chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home. (Emphasis Supplied.)

Section 409.175(3)(b), Florida Statutes (1984), reads as follows:

> (b) A person or agency, other than a parent or legal guardian of the child or an intermediary as defined in s. 63.032, shall not place or arrange for the placement of a child in a family foster home, residential child-caring agency, or adoptive home unless such person or agency has first procured a license from the department to do so. (Emphasis Supplied.)

NACS on page 20 of its answer brief states, "The Department did not establish or purport to show that the services provided by Respondents involve placing children in adoptive homes." Here NACS neglects to mention the critical words found in the statute, "or arranges for the placement of a child." NACS neglected or ignored the argument found in Petitioner's Memorandum of Law. (R. 294-295) (See App. 2, paras. 3-9)

Respondents on page 21 of their answer brief state, "The Department has never tried to enforce the licensing provision of Section 409.175 against Respondents." However, HRS need not enforce Section 409 licensing notification provisions against an illegal referral service pursuant to Section 63.212, Florida Statutes (1983), which the department contended in its complaint that NACS is.

Section 63.212(1)(e), Florida Statutes (1983), reads in part:

> (1) It is unlawful for any person: (e) to charge or accept any fee or compensation of any nature from anyone other than a licensed agency for making a referral for or in connection with adoptions.

NACS' total illegal procedure is one of referral for which a fee of eight thousand ($8,000) dollars is given to and accepted by NACS for the referral of a name and address and telephone number of a pregnant woman or a woman with a newborn infant to prospective adoptive parents for and in connection with adoption.

HRS clearly proved that NACS arranges for the placement of children which is in violation of Section 409.175(3)(b) (Supp. 1984).

Respondents' contend on page 21 of its answer brief that the Petitioner's proof did not show a violation of Section 409.175, Florida Statutes (Supp. 1984).

Section 409.175(3)(b), Florida Statutes, clearly forbids a person or agency other than a parent or legal guardian of the child or an intermediary as defined in s. 63.032 to arrange for the placement of a child in an adoptive home unless such person or agency has first procured a license from HRS to do so.

HRS' proof showed that the Respondents were not licensed by HRS as a child-placing agency nor intermediaries, and that Respondents for an eight thousand ($8,000) dollar fee arranged for eventual placement of children in adoptive homes.

Respondents further contend that the State of Florida

cannot enjoin a Florida corporation carrying out most of its business activities in Florida from referring the names, addresses and telephone numbers of out-of-state natural mothers or pregnant women to out-of-state prospective couples.

In McInerey v. Ervin, 46 So.2d 458 (Fla. 1950), a case involving wires used to transmit interstate messages about horse racing, it was decided that a statute making it unlawful for public utilities knowingly to lease private wires for use in dissemination of information in furtherance of gambling, which required the filing of such contracts, and making them prima facie unlawful and placing the burden on the contracting person to show unlawful use, does not impose an undue burden on interstate commerce.

The Court expounded:

> The legislature has always been permitted to impose more severe methods to suppress moral evils than it has other evils. We are convinced that these and other provisions of Chapter 25015 do not run counter to the commerce clause of the Federal Constitution. It may be that other efective means could have been employed, but this was a matter for legislative determination.
>
> [4] The cases are legion in which the Supreme Court of the United States and the state Supreme Courts have adjudicated points similar to that involved in this case. The net result of these holdings is that there is no hard and fast rule to determine when a state Statute lays an undue burden on interstate commerce in violation of the Federal Constitution. Every case must turn on its peculiar facts. These facts must answer the question, whether or not Congress has entered the field, and if it has not, does the State regulation disrupt lines of

> communication essential to uniformity. If Congress has not entered the field, the States may feel free to do so, and even when Congress has entered the field, if the State regulation does not disrupt or interfere with lines of communication where uniformity is essential, the State regulation will not be held unduly burdensome.
>
> [5] The law is settled in this country that the commerce clause was not intended to inhibit the States from promulgating and enforcing police regulations even though such acts may incidently or indirectly affect interstate commerce. Boston & Maine Railroad Co. v. Armburg, 285 U.S. 234, 52 S.Ct. 336. 76 L.Ed. 729;...
>
> Many other state and Federal cases could appropriately be added to this list. They are predicated on the generally accepted ground that the State is the primary judge of, and may, be statute or other appropriate means, regulate any enterprise, trade, occupation or profession if necessary to protect the public health, welfare or morals. The case of Sligh v. Kirkwood, 237 U.S. 52, 35 S.Ct. 501, 59 L.Ed. 835, might be held to conclude the case at bar. This was a Florida case, very similar in some aspects to this case. The Court held unequivocally, that the State had power to prescribe and enforce regulations to prevent the production of impure foods within its borders, that such articles were not the legitimate subject of trade or commerce, nor could the exercise of State power to destroy them be considered as the regulation of commerce, prohibited by the Federal Constitution.

In the case at bar it is shown that Gitelman uses his Florida telephone line to contact and to transmit information about infants and pregnant women for a rather substantial fee to desperate couples who are unable to bear children.

The Florida Legislature in Section 63.212(1)(e), Florida Statutes, (1983), created a penalty to suppress the moral evil

of people charging and accepting fees for making a referral for or in connection with an adoption.

Respondents have not shown that Congress has entered the field of adoption referral regulation. Ergo, the Florida Legislature may feel free to do so under its police powers.

NACS' unconscionable activities of cursing and threatening his clients and pregnant women, via his telephone lines for the purpose of handsomely enriching himself need not be considered a line of communication where uniformity is essential.

Respondents contend that the referral of children or unborn children for a fee by a private entrepreneur is not the legitimate subject or trade or commerce, nor within the protection of the commerce clause of the Constitution. The sale whether direct or indirect, of an infant or an unborn child is not of a mercantile article. Children, whether born or unborn are not legitimate subjects of trade and commerce.

The dissemination of information enabling one to make thousands of dollars for the referral of the name, address and phone number of an unfortunate impregnanted female does not reach the dignity of a disruption of lines of communication essential of uniformity.

The legislative intent found in Chapter 63, in conjunction with Chapter 409,is to allow HRS to seek injunctive relief against referral services and unlicensed child-placement agencies.

Section 63.022, Florida Statutes (1983), clearly shows the legislature's intent to protect the well-being of persons being adopted and their natural and adoptive parents.

In Chapter 63, Florida Statutes (1983), the state agency entrusted to carry out numerous adoption responsibilities is HRS. One of the mandated responsibilities is the enjoining of intermediaries in Section 63.092(9), Florida Statutes, for violating the provisions of Section 63.092.

It is only logical that if a statute allows a state agency to seek injunctions against licensed doctors and lawyers who are given intermediary status, that the same state agency should be allowed to seek injunctive relief against the untrained and unlicensed referral agents or child-placing agencies.

As to the Respondents' argument found on page 24 of its answer brief concerning Adoption Hot Line II, 402 So.2d at 1308, in footnote number 2, the Third District Court stated exactly the language it would permit in permanent injunction against Adoption Hot Line.

> 2. The order appealed from is, in fact much broader than the statement of the trail judge at the close of proceedings below:
>
> ...[T]his Court enters its permanent injunction against Adoption Hot Line from any manner, any operation dealing with the placement of children or running any ads or, in any manner, counseling expectant mothers or mothers with children or parents with children and attempting to find suitable homes for them or to send them to attorneys or prospective adoptive parents, in any manner that would involve the operation that is usually and ordinarily limited to licensed child placing agencies, responsible attorneys and responsible physicians. (Emphasis Supplied).

> We note, however, that unless the words "usually and ordinarily" were changed to "legally", this statement would also be too extensive.

Comparing the NACS case to the Court's statement in Adoption Hot Line II, concerning the performance of a referral consistent with Chapter 63, Id. at 1308, NACS could not charge its contractual eight thousand ($8,000) dollar referral fee because to do so would be in direct violation of Chapter 63.212(1)(e), Florida Statutes (1983).

Further, Third District Court in the Adoption Hot Line II, case clearly understood that the purpose of the permanent injunction was to protect against any unlawful activity under Chapter 63, Supra. 402 So.2d at 1308. (Emphasis Supplied.)

Respondents act as if they appeared before the trial court with clean hands concerning their alleged activities on behalf of only adoptive couples and natural mothers who are not residents of Florida.

Respondents cannot fantasize away the following facts:

1. NACS sending its contract to an alleged Florida adoptive couple in Tallahassee, Florida. (R. 609-617)

2. NACS contract agrees to commence a local search for and on behalf of his prospective adoptive couple. (R. 16)

3. NACS did work on a case with an alleged pregnant woman who was requested to come into the State of Florida to deliver her child by NACS. (R. 391) NACS further stated it would pay for her travel expenses to Florida and establish a place for her to stay while in Florida. (R. 408) NACS flew

pregnant woman to Florida. (R. 427-428)

4. While many of NACS' clients are from out-of-state, NACS has worked for prospective adoptive parents from within the State of Florida, who eventually were successful in adoption. (R. 371) Further, a pregnant Florida woman was also NACS' client. (R. 421)

II. WHETHER THE TEMPORARY INJUNCTION WAS PROPERLY GRANTED TO ENJOIN ADVERTISING AND PLACEMENT AND REFERRAL ACTIVITIES OF AN UNLICENSED "ADOPTION COUNSELING SERVICE" IN THAT PROBABLE INJURY TO THE PUBLIC WAS EVIDENT IN THE OBVIOUS AND IMMEDIATE POTENTIAL FOR A BLACK-MARKET-SALE NETWORK, ATTENDANT WITH IMPROPER AND HIGHLY PROBABLE "UNSUITABLE" PLACEMENTS AND REFERRALS OF CHILDREN IN VIOLATION OF THE LAW.

Respondents contend that in the Department's complaint in this case it either directly states or implies that all activities alleged to be contrary to statute occurred in the past. A careful reading of the complaint shows that in paragraph 27 HRS contended that the granting of the preliminary injunction was of the utmost urgency if the welfare of pregnant females and prospective adoptive parents, in their dealings with NACS, were to be protected from irreparable harm and injury. (R. 5)

Surprisingly, Respondents contend that a pregnant woman residing in Florida who is on the telephone with Gitelman, who was flown into the state by NACS and who is being browbeaten into giving up her future child by Gitelman, is not within the Department's legal sphere of concern. (R. 28-29).

The aforementioned type of behavior by NACS clearly demonstrates the need for a temporary injunction, proving irreparable harm caused by NACS on one desperate financially

strapped pregnant female living in Florida.

The granting or denying of a temporary injunction is a matter within the discretion of the trial court. and the exercise of such discretion of the trial court will not be disturbed on appeal unless a clear showing is made that there was an abuse. e.g., Northwestern National Insurance Co. v. Greenspun, 330 So.2d 561, 563 (Fla. 3d DCA 1976); Stirling Music Co. v. Feilbach, 100 So.2d 75, 76 (Fla. 3d DCA 1958). In exercising its discretion, the court is guided by established rules and principles of equity jurisprudence, in view of the particular facts presented in the case. Jennings, 360 So.2d at 435; Muss v. City of Miami Beach, 312 So.2d 553, 554 (Fla. 3d DCA), cert. denied, 321 So.2d 553 (Fla. 1975). The trial court must take a balancing-type approach, balancing the possible beneficial results on the other, Murphy v. Daytona Beach Humane Society, 176 So.2d 922, 926 (Fla. 1st DCA 1965); Stirling Music Co., 100 So.2d at 76, and the threatened hardships associated with the issuance or denial of the injunction with the degree of likelihood of success on the merits. Florida Medical Association v. U.S. Department of Health, Education and Welfare, 601 F.2d 199, 203 n.2 (5th Cir. 1979; Louis v. Meissner, 530 F. Supp. 924, 925 (S.D. Fla. 1981).

The Department presented the Circuit Court with more than sufficient proof to balance the beneficial results of the temporary injunction with any detrimental effects caused NACS. Respondents contend that Petitioner's complaint does not provide a clear, distinct and unequivocal allegation of imminent harm,

(Answer Brief at 31) ignoring paragraph 27 of the complaint which has been previously cited in this reply brief.

A CLEAR LEGAL RIGHT - Respondents continually contend that they engage in purely interstate commerce. The facts recited in this reply brief on pages 4-5 show said statement to be a sham.

The issues of interstate commerce and free speech have been addressed in other portions of this reply brief and Petitioner will not enlarge this reply brief with their repetition. But the Department is not attempting to enjoin the out-of-state activities of NACS' out-of-state clients, nor of the out-of-state pregnant women who have the misfortunes of dealing with NACS. The department is only seeking to enjoin NACS, a Florida corporation doing business in Florida, from committing its unlawful acts.

As to the Respondents' "child" argument found on page 33 of Respondents' answer brief, the court must estop the Respondents from said argument based upon Respondents offering a live eight (8) day old child to one of its clients, namely Barbara Hessel, for $10,000. (App. 4)

Further, based on Respondents' advertisements which ask for "children". (R. 5A)

Additionally, based upon the Respondent's questionnaire, contract and independent adoption procedure, which make numerous references to the "child". This issue has been previously presented to the Circuit Court in Memorandum of Law presented by HRS. (R. 295-298, App. 6)

As to Respondents' First Amendment argument found on page 34 of the answer brief, the Adoption Hot Line II, 402 So.2d 1307 (Fla. 3d DCA 1981), case did give the Department the language for a legally sufficient permanent injunction against Adoption Hot Line in footnote number 2. The Adoption Hot Line II case serves as a basis for the limiting of NACS' commercial speech when such speech is unlawful, and legally limited to child-placing agencies, responsible attorneys and responsible physicians. The Respondents' activity is not only commercial activity, it is illegal commercial activity. [See Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights, 413 U.S. 376 (1973) at 388. Petitioner, contends newspapers and the Respondents can be forbidden from publishing a want ad proposing the sale of children, born or unborn, for eight thousand dollars. Petitioner contends that Respondents' advertisement is untruthful and misleading speech, which has never been protected for its own sake. [See Virginia State Board of Pharmacy v. Virginia Citizens Council, Inc., 425 U.S. 748 (1976) at 771.

III. WHETHER THERE IS EXPRESS AND DIRECT CONFLICT OF DECISIONS ON WHICH THIS COURT MAY ACCEPT JURISDICTION OF THIS CASE?

Petitioner rather than restating the argument already submitted in its jurisdictional brief to this court by the Petitioner on the express and direct conflict issue, provides in its Appendix a copy of said document. (App. pgs. 10-14)

CONCLUSION

The decision of the Fourth District Court of Appeals concerning HRS' standing should be reversed and the Circuit Court's temporary injunction reinstated.

Respectfully submitted,

MORTON LAITNER, ESQUIRE
Attorney for Petitioner
Dade County Health Department (HRS)
1350 N.W. 14th Street
Miami, Florida 33125
Tel: 305/324-2408

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Reply Brief with Appendix was mailed on this 28th day of July, 1986, to Arthur J. England, Jr., Esquire, and Charles M. Auslander, Esquire, of Fine, Jacobson, Schwartz, Nash, Block, and England, P. A., 2401 Douglas Road, Miami, Florida 33145.

MORTON LAITNER, ESQUIRE