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IN THE
SUPREME COURT OF FLORIDA

Case No. 69,970

THE PUBLIC HEALTH TRUST
OF DADE COUNTY, FLORIDA,

Petitioner,

vs.

NORMA WONS,

Respondent.

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

BRIEF OF AMICUS CURIAE WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

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Statement of the Case and of the Facts

Although Amicus has no major objections to the Petitioner's Statement of the Facts and of the Case, Amicus would direct the Court to the opinion of the Third District Court of Appeal for a more objective presentation of the facts. As for specific disagreements with Petitioner's statement of the facts, Amicus points out that, contrary to Petitioner's statement that Norma Wons "lapsed in and out of consciousness" at the time she refused blood, see Petitioner's Brief on the Merits at 1, Dr. Cevetta testified, and the trial court found, that Norma Wons was competent when she made her refusal. (A. 35-36) Dr. Cevetta also testified that Norma Wons understood his question about her need for blood at the time she made her refusal. Id. Dr. Cevetta merely said that at the time of her refusal, Norma Wons was drowsy and tired due to her anemia.

Summary of Argument

Norma Wons refused blood because of her deeply held religious beliefs as one of Jehovah's Witnesses. Her religiously motivated refusal was protected by the guarantees of religious freedom and personal privacy found in the United States and Florida Constitutions. Centuries of Anglo-American common law also protected her right to be free from unwanted bodily invasion. Petitioner's attempt to violate these basic human rights for the sake of the perceived emotional needs of Norma Wons' minor children finds no support in the federal or state constitutions, the statutes enacted thereunder, nor in the common law.

Constitutional jurisprudence requires proof of a compelling state interest that will be immediately and gravely harmed by the exercise of fundamental constitutional rights. Sweeping generalities about the harm to be avoided do not suffice. The state must satisfactorily demonstrate that specific, intolerable harm will inevitably occur if the individual is allowed to exercise his fundamental rights. Even if such harm is proven, the state must employ the least restrictive, least intrusive means of protecting its interests.

On this appeal, Petitioner has fallen way short of establishing the requisite certainty, immediacy or gravity of the harm to be avoided, much less showing that there are no means of avoiding this alleged harm that are less intrusive than forced medical treatment. The state's allegedly compelling interest in the emotional welfare of minor children is too intangible and uncertain to support the deprivation of rights advocated by Petitioner. Indeed, the state's interest in

protecting the emotional welfare of minors by forcing their parents to engage in conduct contrary to their constitutionally protected rights appears to be unique to the circumstances of this case; in numerous other circumstances where this same interest is threatened the state does nothing even approaching the gross intrusion on individual liberty endorsed by Petitioner on this appeal.

In addition, Peitioner's attempt to elevate the state's interest in protecting the medical profession's integrity above the state's interest in protecting the individual's fundamental rights contradicts elementary principles of constitutional and common law. Nowhere does the federal or state constitution or the common law allow the interests of any profession or institution, no matter how laudable or beneficent, to supplant our law's supreme objective of guaranteeing to every person the maximum of individual freedom possible in ordered society.

Petitioner's conclusion that the state must coerce the individual in the extreme fashion illustrated by this case lacks even minimal proof of the specific, immediate, grave harm that must be avoided. Violation of fundamental constitutional and common law rights cannot be justified on such an infirm, if not nonexistent, foundation. The decision of the Third District Court of Appeal protecting Norma Wons' basic constitutional and common law rights is sound and should be affirmed.

ARGUMENT

AN ADULT'S RIGHTS OF RELIGIOUS FREE EXERCISE, PERSONAL PRIVACY, AND BODILY INTEGRITY ARE NOT OVERRIDDEN BY THE STATE'S INTEREST IN ENSURING THAT MINOR CHILDREN HAVE THE PHYSICAL OR EMOTIONAL SUPPORT OF BOTH OF THEIR NATURAL PARENTS

Jehovah's Witnesses and Blood

Jehovah's Witnesses firmly believe that God's Word, as recorded in the Holy Bible, prohibits absolutely their taking blood into their bodies. In the Bible book of Acts all Christians are commanded to "keep abstaining from . . . blood." Acts 15:28, 29. This directive against blood is consistent with Jehovah's previous prohibitions against blood given to all men after the Noachian flood, Genesis 9:4, 16, and later to the nation of Israel under the Mosaic law. Leviticus 17:14; 7:26, 27.

For Jehovah's Witnesses today, just as for Christians in the first century, abstaining from blood is a very serious matter. In the same passage from the book of Acts quoted above, Christians were also commanded to keep abstaining from idolatry and fornication. Acts 15:28, 29. Thus disobeying God's Word on the matter of blood is as serious a wrong as engaging in impure, idolatrous worship or sexual immorality, both of which prevent a person from entering into the Paradise earth promised under God's Kingdom rule. 1 Corinthians 6:9, 10; Psalms 37:10, 11, 29. See generally Watch Tower Bible & Tract Society of Pennsylvania, Jehovah's Witnesses and the Question of Blood 3-20 (1977) (Attachment 1); Watchtower, Apr. 15, 1985, at 12-15 (Attachment 2).

Jehovah's Witnesses view their relationship with their God, and their obedience to his Word, as immeasurably more important than any

temporal, physical benefit that might result from a blood transfusion. Witnesses well understand that their stand on blood is unusual and may, from a medical standpoint, reduce their chances of recovery.[1] Nevertheless Jehovah's Witnesses are resolute in their refusal of blood and are willing to face any increased medical risk because for them any medical risk does not begin to outweigh the grave spiritual loss they would risk by being forced to submit to a transfusion.

This is not to say that Jehovah's Witnesses lightly value physical life or that they want to die. They cherish and respect life and very much want to live. The fact that they seek medical help in the first place shows that they desire healthy physical life. But Jehovah's Witnesses want to live their lives in obedience to their Creator, the One who gives life in the first place. Psalms 36:9. Jehovah's Witnesses are confident that if they should lose their physical lives because of their refusal of blood, they will enjoy life again, everlasting life, by means of the resurrection promised by Jesus. John 5:28, 29; 11:25. Because receiving a blood transfusion would jeopardize and possibly preclude their prospects for everlasting life, see Mark 8:35, 36; John 12:25; Revelation 12:11; Job 2:3-5, Jehovah's Witnesses choose not to take this risk. A few more years of physical life on this earth simply are not worth losing out on everlasting life in the Kingdom to come.

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1. In light of recent mounting evidence of seemingly insoluble blood-borne diseases (e.g., AIDS, hepatitis), it is hardly a foregone conclusion that the refusal of blood under any circumstances is medically unreasonable.

Petitioner incorrectly implies that Jehovah's Witnesses' refusal of blood is simply a matter of who gives the consent. Petitioner suggests that if someone other than the Witness patient consents to the transfusion, the patient's conscience is not violated and the patient's physical life can be saved without forcing the patient to compromise her faith. See Petitioner's Brief on the Merits at 18-20. As is evident from the foregoing discussion, such third-party consent is completely at odds with the underlying scriptural basis for Jehovah's Witnesses' refusal of blood. For Jehovah's Witnesses, a forced blood transfusion is a gross physical violation. It is the transfusion, the blood itself, that is objectionable irrespective of who gives the consent.

> Jehovah's Witnesses are not looking for anyone else whether a doctor, a hospital administrator or a judge, to make these moral decisions for them. They do not want someone else to try to shoulder their responsibility to God, for in reality no other person can do that. It is a personal responsibility of the Christian toward his God and Life-Giver.

Watch Tower Bible & Tract Society of Pennsylvania, Jehovah's Witnesses and the Question of Blood at 20; Watchtower, Apr. 15, 1985 at 13. Petitioner's third-party-consent solution is no solution at all; it merely trivializes the grave spiritual importance this matter has for Jehovah's Witnesses.

State Authority over Fundamental Rights

"There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed . . . ." West Virginia State Board of Education v.

Barnette, 319 U.S. 624, 641, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628, 1639 (1943); see Art. I, § 1, Fla. Const. Only in those matters where the governed have ceded authority to the state does the state have any legitimate basis to restrict the individual's inherent or natural right to be free and secure in his private, personal affairs.

The reasons for such sharply circumscribed governmental authority are found in the pages of history. Our forebears well understood the oppression of those whose values or ideas were different from the majority's. See Everson v. Board of Education, 330 U.S. 1, 8-11, 67 S.Ct. 504, 508-09, 91 L.Ed. 711, 719-21 (1947); Barnette v. West Virginia State Board of Education, 47 F.Supp. 251, 253-54 (S.D.W. Va. 1942), aff'd, 319 U.S. 624 (1943); State ex rel. Singleton v. Woodruff, 153 Fla. 84, 87-89, 13 So.2d 704, 705-06 (1943). The men who drafted our Constitution enumerated in the Bill of Rights certain fundamental rights which the governed prudently wanted removed from the realm of state regulation.

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

West Virginia State Board of Education v. Barnette, 319 U.S. at 638, 63 S.Ct. at 1185-86, 87 L.Ed. at 1638.

The characteristics of such fundamental rights were described in a recent Mississippi Supreme Court case in which the state sought to

compel a blood transfusion over the express refusal of an adult who was one of Jehovah's Witnesses:

> We are presented [the patient's] claim of two rights—a right to the free exercise of her religious beliefs and a right of privacy. If those rights be held to include the right, as a competent adult, to refuse a blood transfusion, the matter is at an end, unless the State can point to some competing right vested in it by some valid rule which is a part of our positive law. Rights are subject to compromise only when they collide with conflicting rights vested in others.
>
> To be sure, a right may be entailed. The freedom afforded [the patient] to exercise her religion and otherwise be let alone, though fundamental, is not without limits. Those limits, however, must be found within the right and the rule creating it. Once the right has been defined and shaped by the contours of the rule—the First, Ninth and Fourteenth Amendments to the U. S. Constitution . . . —it prevails against mere interests, public or private, no matter how compelling.
>
> By definition rights give the individual zones of unchecked discretionary action that others, whether private citizens or governmental authorities, may not invade. They are entitlements of an individual he or she may claim at his or her election. They may be claimed no matter how inconvenient society or its members may deem it. That they may be so claimed is what defines them as rights. They are, if you will, the individual's protection against the tyranny of the majority and against the power of the state. They are what gives meaning to that article of American faith: that each human being is unique, that by virtue of his humanity he possesses an unalienable and undeniable dignity and worth that he is entitled to the maximum basic personal liberty consistent with like liberty for each other.
>
> We give these theories reality when we enforce secured rights at times that society finds it most inconvenient, when compelling reasons are presented why in the absence of the right the individual and her (to others) puny claim ought be shunted aside.

In re Brown, 478 So. 2d 1033, 1036-37 (Miss. 1985) (citations omitted); see Ford, Refusal of Blood Transfusions by Jehovah's Witnesses, 10 Cath. Law. 212, 222-25 (1964).

Thus, at its core, the question of an adult's right to refuse medical treatment free from governmental interference is a question of authority: Who has the rightful authority to decide what form of medical treatment an adult will submit to, the individual adult patient or the state? The answer to this question requires an understanding of any constitutional and common law guarantees protecting the individual's right to make such decisions in keeping with his religious beliefs as well as an understanding of any paramount interests of the state that will suffer intolerable harm by allowing the individual to make such decisions for himself. Since the refusal of blood by one of Jehovah's Witnesses is a highly personal decision motivated by deeply held religious conviction, prima facie it is protected by the constitutional rights of religious free exercise and privacy and by the common law right of bodily integrity.

Free Exercise of Religion

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. This injunction applies to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213, 1218 (1940). It applies to state judicial as well as state legislative action. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 463, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488, 1500 (1958).[2]

2. West Virginia State Board of Education v. Barnette, 319 U.S. at 637, 63 S.Ct. at 1185, 87 L.Ed. at 1637 ("The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures"); cf. Shelley v. Kraemer, 334 U.S. 1, 15,

Although religious practices do not enjoy the same absolute protection as religious beliefs, Braunfeld v. Brown, 366 U.S. 599, 603, 81 S.Ct. 1144, 1146, 6 L.Ed.2d 563, 566-67 (1961), only those religious practices which pose some "substantial threat to public safety, peace or order" are without the protection afforded by the First Amendment. Sherbert v. Verner, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965, 970 (1963). A state "may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." Thomas v. Review Board, 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624, 634 (1981).[3]

Explaining what constitutes a "compelling state interest," the Supreme Court has said that "only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." Wisconsin v. Yoder, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15, 25 (1972). The Supreme Court has also pointed out that religious freedom has been "zealously protected, sometimes even at the expense of other interests of admittedly high social importance." Id. at 214, 92 S.Ct. at 1533, 32 L.Ed.2d at 24. "[N]o showing merely of a rational relationship to some colorable state interest [will] suffice; in this

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20, 68 S.Ct. 836, 843, 845, 92 L.Ed. 1161, 1181, 1184 (1948) ("judicial action is to be regarded as action of the State for the purposes of the Fourteenth Amendment . . . [and] is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy").

3. See NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 341, 9 L.Ed.2d 405, 421 (1963) ("The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."); Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231, 237 (1960).

highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" Sherbert v. Verner, 374 U.S. at 406, 83 S.Ct. at 1795, 10 L.Ed.2d at 972 (quoting Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315, 323, 89 L.Ed. 430, 440 (1945)).[4]

Florida's Declaration of Rights likewise provides that "[t]here shall be no law . . . prohibiting or penalizing the free exercise" of religion. Art. I, § 3, Fla. Const. This state constitutional provision 'merely reinforces the federal constitution's immunization of this liberty' from state interference. See State ex rel. Singleton v. Woodruff, 153 Fla. 84, 87, 13 So.2d 704, 705 (1943). Thus the Florida Constitution allows only the least restrictive limitations on religious freedom to protect compelling state interests. Like the District Court of Appeal below, many other courts have recognized the adult's constitutionally protected right to refuse allegedly life-saving treatment for religious reasons.[5]

An important aspect of religiously motivated refusal of

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4. See Barnette v. West Virginia State Board of Education, 47 F.Supp. 251, 253-54 (S.D.W. Va. 1942), aff'd, 319 U.S. 624 (1943); Note, The Refused Blood Transfusion: An Ultimate Challenge for Law and Morals, 10 Nat. L.F. 202, 212-13 (1965).

5. See In re Milton, 29 Ohio St. 3d 20, ___ N.E.2d ___ (1987); In re Brown, 478 So. 2d 1033 (Miss. 1985); Mercy Hospital, Inc. v. Jackson, 62 Md. App. 409, 489 A.2d 1130 (Ct. Spec. App. 1985), vacated on other grounds, 306 Md. 556, 510 A.2d 562 (1986); St. Mary's Hospital v. Ramsey, 465 So.2d 666 (Fla. 4th DCA 1985); In re Osborne, 294 A.2d 372 (D.C. 1972); In re Estate of Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965). See generally Paris, Compulsory Medical Treatment and Religious Freedom: Whose Law Shall Prevail?, 10 U.S.F.L. Rev. 1, 31-34 (1975).

treatment is that the refusal is a non-act or refusal to act rather than a positive, affirmative act. The distinction between nonfeasance and misfeasance, or omission and commission, is legally significant. While states have exercised their authority to limit or prohibit individual action, whether religiously or secularly motivated, to prevent harm to public health, safety or welfare, there is no precedent for prohibiting an individual's religiously motivated inaction when there is no grave and pressingly imminent danger to the public. See Note, The Refused Blood Transfusion: An Ultimate Challenge for Law and Morals, 10 Nat. L.F. 202, 207-09 (1965); Comment, The Right to Die—A Comment on the Application of the President and Directors of Georgetown College, 9 Utah L. Rev. 161, 163-68 (1964).

"Where the religiously grounded 'action' is a refusal to act rather than affirmative, overt conduct, the State's authority to interfere is virtually non-existent except only in the instance of the grave and immediate public danger." In re Brown, 478 So. 2d 1033, 1037 (Miss. 1985). As Justice Brennan explained, "we must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles." School District of Abington Township v. Schempp, 374 U.S. 203, 250, 83 S.Ct. 1560, 1586, 10 L.Ed.2d 844, 874 (1963) (Brennan, J., concurring) (emphasis omitted).

> [T]he common law has always been hesitant to impose liability for inaction as opposed to action. And one detects in constitutional decisions in a variety of contexts a sense of uneasiness, an intuition, that a compulsion to act contrary to indi-

> vidual judgment is undesirable when there is no external, compelling state interest to be served and no conflicting private right to be protected.

Byrn, Compulsory Lifesaving Treatment for the Competent Adult, 44 Fordham L. Rev. 1, 9 (1975) (footnotes omitted). Petitioner's reference to cases in which the state acted to prohibit affirmative conduct (e.g., polygamy and snake-handling) is therefore inapposite. See Petitioner's Brief on the Merits at 7-8 n.1. No affirmative conduct is present in this case. By forcing Norma Wons to submit to a form of medical treatment forbidden by her religious beliefs, the state compelled rather than prohibited affirmative conduct.

Privacy

Respect for individual autonomy in making important personal decisions is at the heart of the fundamental rights protected by the First Amendment of the United States Constitution and Article I of the Florida Constitution. The individual has the right to be left alone, to make important decisions affecting his life and his family in private, free from governmental interference. This right of privacy has been described as "the most comprehensive of rights," Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944, 956 (1928) (Brandeis, J., dissenting), because it is the foundation that underlies so many fundamental rights guaranteed to the individual by Anglo-American law. The rights of religious free exercise and of bodily integrity are but manifestations of the right of privacy. See In re Brown, 478 So. 2d 1033, 1039-40 (Miss. 1985). Indeed all matters of conscience, all matters within "the sphere of intellect and spirit,"

West Virginia State Board of Education v. Barnette, 319 U.S. at 642, 63 S.Ct. at 1187, 87 L.Ed. at 1640, are private and therefore beyond the reach of state regulation.

Although the United States Constitution does not explicitly mention any right of privacy, United States Supreme Court cases "long have recognized that the Constitution embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government." Thornburgh v. American College of Obstetricians, 106 S.Ct. 2169, 2184, 90 L.Ed.2d 779, 801 (1986). "[A] right of personal privacy, or a guarantee of certain areas or zones of privacy," Roe v. Wade, 410 U.S. 113, 152, 93 S.Ct. 705, 726, 35 L.Ed.2d 147, 176 (1973), has been recognized as one aspect of liberty protected by the Due Process Clause of the Fourteenth Amendment. Carey v. Population Services International, 431 U.S. 678, 684-85, 97 S.Ct. 2010, 2016, 52 L.Ed.2d 675, 684 (1977). The Supreme Court has explained that this right of personal privacy includes "the interest in independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599-600, 97 S.Ct. 869, 876, 51 L.Ed.2d 64, 73 (1977); see Carey v. Population Services International, 431 U.S. at 684-85, 97 S.Ct. at 2016, 52 L.Ed.2d at 684.

In his famous dissent in Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928), Justice Brandeis provides a good starting point for identifying the quintessential elements of those interests worthy of the protection afforded by the constitutional right of privacy. Justice Brandeis stated:

> The makers of our Constitution . . . sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

Id. at 478, 48 S.Ct. at 572, 72 L.Ed. at 756. Justice Brandeis' words were quoted in then-future Chief Justice Warren E. Burger's opinion in In re President and Directors of Georgetown College, Inc., 331 F.2d 1010 (D.C. Cir. 1964), a case in which one of Jehovah's Witnesses was forced to submit to a blood transfusion. Judge Burger said this:

> Nothing in this utterance suggests that Justice Brandeis thought an individual possessed these rights only as to sensible beliefs, valid thoughts, reasonable emotions, or well-founded sensations. I suggest he intended to include a great many foolish, unreasonable and even absurd ideas which do not conform, such as refusing medical treatment even at great risk.

Id. at 1017 (Burger, J., separate opinion).

No small amount of energy has been devoted to analyzing the Supreme Court's cases involving constitutionally protected private decisions. Many courts and commentators have offered their syntheses of the pertinent characteristics of personal decisions protected by the constitutional right of privacy. One commentator concluded that

> Insistence on the right to independence and autonomy in deciding one's fate is a common element of the privacy cases. . . . These specially protected decisions appear to fall into two categories. First, the Court protects decisions that are of a fundamental importance to the decision-maker. . . . Second, the Court shows special concern for "basic values that underlie our society" and for institutions that are "deeply rooted in our history and tradition."

Note, The Refusal of Lifesaving Treatment vs. The State's Interest in the Preservation of Life: A Clarification of the Interests at Stake, 58

Wash. U.L.Q. 85, 97-100 (1980); see Bowers v. Hardwick, 106 S.Ct. 2841, 2844, 92 L.Ed.2d 140, 146 (1986).

The Seventh Circuit Court of Appeals explained that these Supreme Court privacy cases deal with

> the individual's right to make certain unusually important decisions that will affect his own, or his family's, destiny. The Court has referred to such decisions as implicating 'basic values,' as being 'fundamental,' and as being dignified by history and tradition. The character of the Court's language in these cases brings to mind the origins of the American heritage of freedom—the abiding interest in individual liberty that makes certain state intrusions on the citizen's right to decide how he will live his own life intolerable.

Fitzgerald v. Porter Memorial Hospital, 523 F.2d 716, 719-20 (7th Cir. 1975) (footnotes omitted), cert. denied, 425 U.S. 916 (1976).

After reviewing these Supreme Court privacy cases, the court in Andrews v. Ballard, 498 F.Supp. 1038 (S.D. Tex. 1980), said that decisions an individual can make without unjustified governmental interference must meet two criteria: "First, they must be 'personal decisions.' They must primarily involve one's self or one's family. Second, they must be 'important decisions.' They must profoundly affect one's development or one's life." Id. at 1046 (citations omitted).

As Justice Stevens recently stated, "[T]he concept of privacy embodies the 'moral fact that a person belongs to himself and not others nor to society as a whole.'" Thornburgh v. American College of Obstetricians, 106 S.Ct. at 2187 n.5, 90 L.Ed.2d at 804 n.5 (Stevens, J., concurring) (quoting Fried, Correspondence, 6 Phil. & Pub. Aff. 288, 288 (1977)).

> "What a person is, what he wants, the determination of his life plan, of his concept of the good, are the most intimate expressions of self-determination, and by asserting a person's responsibility for the results of this self-determination we give substance to the concept of liberty."

Id. (quoting C. Fried, Right and Wrong 146-47 (1978)).

Although Justice Douglas once stated that the "right of privacy" included "the freedom to care for one's health and person," Doe v. Bolton, 410 U.S. 179, 213, 93 S.Ct. 739, 758, 35 L.Ed.2d 201, 188 (1973) (Douglas, J., concurring), the United States Supreme Court has never ruled on the issue whether an adult's right to refuse medical treatment is protected by the constitutional right of privacy. However, based on the criteria identified in the cases and commentary quoted above, a decision should be entitled to privacy protection if 1) it is a personal decision; 2) it is of fundamental importance to the person making the decision; and 3) it is a decision that historically and traditionally has been viewed as private to the individual.

There can be no question that decisions about one's own medical care are personal. As the court said in Andrews v. Ballard, such medical decisions

> are, to an extraordinary degree, intrinsically personal. It is the individual making the decision, and no one else, who lives with the pain and disease. It is the individual making the decision, and no one else, who must undergo or forego the treatment. And it is the individual making the decision, and no one else, who, if he or she survives, must live with the results of that decision. One's health is a uniquely personal possession. The decision of how to treat that possession is of a no less personal nature.

498 F.Supp. at 1047. For one of Jehovah's Witnesses, it is not merely

his physical health, but his personal relationship with his Creator, Jehovah God, that is at stake. Nothing could be more personal to him.

Likewise the fundamental importance of personal health care decisions to the patient hardly needs discussion:

> [I]t is impossible to discuss the decision to obtain or reject medical treatment without realizing its importance. The decision can either produce or eliminate physical, psychological, and emotional ruin. It can destroy one's economic stability. It is, for some, the difference between a life of pain and a life of pleasure. It is, for others, the difference between life and death.

Id. For one of Jehovah's Witnesses, it is the difference between safeguarding or losing irrevocably the opportunity for everlasting life under God's promised Kingdom. Nothing is as important as this to any person of faith. No man or human institution can give this back to the Witness patient if he loses it because of a forced blood transfusion.

Finally, the individual's right to bodily self-determination is a fundamental and time-honored right that is basic to the Anglo-American concept of liberty.

> Individuality and autonomy have long been central values in Anglo-American society and law. In general, the more intense and personal the consequences of a choice and the less direct or significant the impact of that choice upon others, the more compelling the claim to autonomy in the making of a given decision. Under this criterion, the case for respecting patient autonomy in decisions about health and bodily fate is very strong.

Shultz, From Informed Consent to Patient Choice: A New Protected Interest, 95 Yale. L.J. 219, 220 (1985). As discussed below under the heading of Bodily Integrity, our tradition and history have long respected the individual's right to decide for himself the type of

medical treatment he will submit to. When the exercise of this right is motivated by deeply held religious beliefs, the individual's actions are that much more private and protected from outside interference.

Unlike the United States Constitution, the Florida Constitution expressly provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into his private life." Art. I, § 23, Fla. Const. While United States Supreme Court precedent may be useful in construing and applying this state constitutional right, the Florida Supreme Court has stated that

> [s]ince the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985).

Although the Florida appellate courts have had relatively few occasions to consider this recently adopted state constitutional right, the Winfield court explained that before the right of privacy attaches to some aspect of an individual's private life, "a reasonable expectation of privacy must exist." Id. at 547. As the following discussion of bodily integrity shows, individual's in Anglo-American lands have had a reasonable expectation of privacy (self-determination) in matters affecting their bodies for centuries. Thus, just as the Third District Court of Appeal concluded below, an adult's consent to or refusal of medical treatment is protected by Florida's constitutional

right of privacy. "[N]othing, in the last analysis, is more private or more sacred than one's religion or view of life . . . ." Wons v. Public Health Trust, 500 So.2d 679, 687 (Fla. 3d DCA 1987). "[T]he individual's right to make decisions vitally affecting his private life according to his own conscience . . . is difficult to overstate . . . because it is, without exaggeration, the very bedrock on which this country was founded." Id. The District Court of Appeal's conclusion is consistent with this Court's ruling in Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g 362 So.2d 160 (Fla. 4th DCA 1978), as well as with the decisions of many other courts in recent years.[6]

Since the right of privacy is a fundamental right under both the Florida and United States Constitutions, Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544, 547 (Fla. 1985); see Zablocki v. Redhail, 434 U.S. 374, 383-87, 98 S.Ct. 673, 679-81, 54 L.Ed.2d 618, 628-31 (1978), any significant state interference must be narrowly drawn to serve a compelling state interest by the least intrusive, least restrictive means available. See, e.g., Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d at 547; Zablocki v. Redhail, 434 U.S. at 383-87, 98 S.Ct. at 679-81, 54 L.Ed.2d at 628-31; Moore v. City of East

6. See, e.g., In re Brown, 478 So. 2d 1033, 1039-40 (Miss. 1985); Bartling v. Superior Court, 163 Cal. App. 3d 186, 193-96, 209 Cal. Rptr. 220, 224-25 (1984); In re Colyer, 99 Wash. 2d 114, 119-22, 660 P.2d 738, 741-42 (1983); Andrews v. Ballard, 498 F.Supp. 1038, 1044-51 (S.D. Tex 1980); Rennie v. Klein, 462 F.Supp. 1131, 1144-45 (D.N.J. 1978); Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 739, 370 N.E.2d 417, 424 (1977); Price v. Sheppard, 307 Minn. 250, 256-58, 239 N.W.2d 905, 910-12 (1976); In re Quinlan, 70 N.J. 10, 38-40, 355 A.2d 647, 662-63 (1976).

Cleveland, 431 U.S. 494, 499, 97 S.Ct. 1932, 1935-36, 52 L.Ed.2d 531, 537 (1977); Roe v. Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 727-28, 35 L.Ed.2d 147, 178 (1973).

Bodily Integrity

An assertion of a state interest in overriding an adult's refusal of medical treatment must also contend with the patient's natural or inalienable right to be master over his own body. Closely related to the right of personal privacy, this right of bodily integrity is fundamental to the individual's autonomy and self-determination. The following excerpts from many courts spanning many years testify to the long, deeply-rooted tradition of the adult's right to be secure in his person.

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. Union Pacific Railway v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734, 737 (1891).
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> [U]nder a free government at least, the free citizen's first and greatest right, which underlies all others—the right to the inviolability of his person, in other words, his right to himself—is the subject of universal acquiescence . . . . Pratt v. Davis, 119 Ill. App. 161, 166 (1905), aff'd, 224 Ill. 300, 79 N.E. 562 (1906).
>
> Anglo-American law starts with the premise of thorough-going self-determination. It follows that each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of life-saving surgery, or other medical treatment. Natanson v. Kline, 186 Kan. 393, 406-07, 350 P.2d 1093, 1104 (1960).
>
> [A] person of adult years and in sound mind has the right, in the exercise of control over his own body, to determine

whether or not to submit to lawful medical treatment. Cobbs v. Grant, 8 Cal. 3d 229, 242, 502 P.2d 1, 9, 104 Cal. Rptr. 505, 513 (1972).

Each of us has a right to the inviolability of our persons, a freedom to choose or a right of bodily self-determination, if you will. In re Brown, 478 So. 2d 1033, 1039 (Miss. 1985).

In our system of a free government, where notions of individual autonomy and free choice are cherished, it is the individual who must have the final say in respect to decisions regarding his medical treatment in order to insure that the greatest possible protection is accorded his autonomy and freedom from unwanted interference with the furtherance of his own desires. Rivers v. Katz, 67 N.Y.2d 485, 493, 495 N.E.2d 337, 341, 504 N.Y.S.2d 74, 78 (1986).

Legal recognition of the right of self-determination and personal autonomy, as reflected in the above-quoted statements, provides the basis of the patient's right of informed consent to medical treatment. See Canterbury v. Spence, 464 F.2d 772, 780 (D.C. Cir.), cert. denied, 409 U.S. 1064 (1972). The right of informed consent logically includes the right to refuse or not consent to treatment. See Clarke, The Choice to Refuse or Withhold Medical Treatment: The Emerging Technology and Medical-Ethical Consensus, 13 Creighton L. Rev. 795, 800 (1980) (Informed consent "necessarily presupposes the right to refuse rather than consent.").

The very foundation of the doctrine [of informed consent] is everyone's right to forego treatment or even cure if it entails what for him are intolerable consequences or risks, however warped or perverted his sense of values may be in the eyes of the medical profession, or even of the community, so long as any distortion falls short of what the law regards as incompetency. Individual freedom here is guaranteed only if people are given the right to make choices that would generally be regarded as foolish ones. Thus, the Jehovah's Witness or Christian Scientist should have the legal right to refuse—on religious grounds that may seem mistaken to most of the rest of us—the blood transfusion that is needed to save life . . . .

3 F. Harper, F. James & O. Gray, The Law of Torts § 17.1, at 562 (2d ed. 1986) (footnotes omitted; emphasis added).

In its recent report on making health care decisions, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research observed that the right of informed consent rests on two values: 1) the patient's own conception of his personal well-being, and 2) the patient's right of self-determination. See 1 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions: The Ethical and Legal Implications of Informed Consent in the Patient-Practitioner Relationship 2 (1982) [hereinafter cited as President's Commission, Making Health Care Decisions]. The President's Commission concluded that informed consent is rooted in the fundamental recognition that "adults are entitled to accept or reject health care interventions on the basis of their own personal values and in furtherance of their own personal goals." Id. at 2-3.

The Commission stated that the principle of self-determination "is best understood as respecting people's right to define and pursue their own view of what is good." Id. at 51. Furthermore, as the President's Commission observed, even when a patient refuses to accept a treatment that the physician views as life-sustaining, "the primacy of a patient's interests in self-determination and in honoring the patient's own view of well-being warrant leaving with the patient the final authority to decide." President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Deciding to

Forego Life-Sustaining Treatment: Ethical, Medical and Legal Issues in Treatment Decisions 44 (1983) [hereinafter cited as President's Commission, Deciding to Forego Life-Sustaining Treatment].

The President's Commission repeatedly emphasized the importance of respecting a patient's articulated personal values and goals.

> A patient's choice is binding when it is selected freely—that is, when the patient can decide in accord with his or her own values and goals.
>
> . . . .
>
> . . . For any medical intervention to be warranted, a patient must stand to gain more from having the treatment than from not having it. Since the benefit to be gained must be assessed in terms of the patient's own values and goals, practitioners should be cautious not to rule out prematurely a seemingly undesirable or less-than-optimal alternative that might offer what a particular patient would perceive as a benefit.

Id. at 45, 52.[7]

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7. In a few cases courts have limited an adult Witness' right to refuse blood because the transfusion was viewed as a simple, nonextraordinary medical intervention. See In re Quinlan, 70 N.J. 10, 40-41, 355 A.2d 647, 663-64 (1976), overruled on these grounds, In re Conroy, 98 N.J. 321, 370-72, 486 A.2d 1209, 1234-35 (1985). However, the question is not, What does the medical profession consider to be routine treatment? but, What does the adult patient subjectively view to be in his own best interests? Whether a given medical intervention is viewed as ordinary or extraordinary by health care professionals has nothing to do with the reasons underlying a Witness patient's religiously motivated refusal of blood. The Witness' decision is religious, not medical.

"[T]here is no basis for holding that whether a treatment is common or unusual, or whether it is simple or complex, is in itself significant to a moral analysis of whether the treatment is warranted or obligatory." President's Commission, Deciding to Forego Life-Saving Treatment at 87. "Whether care is 'ordinary' or 'extraordinary' should not determine whether a patient must accept or may decline it." Id. at 62. How the adult patient views the treatment, not the medical profession's view of the treatment, should control.

> [E]xtraordinary treatment is that which, in the patient's

For the Witness patient, there is no comparison between the burden and the benefit that will come from receiving blood. The possible benefit of extended physical life pales in comparison to the burden of losing out on everlasting life under God's promised Kingdom. In the context of the personal goals and values of one of Jehovah's Witnesses, a forced transfusion of blood is a gross physical violation and is always extraordinary and unacceptable no matter how routine or simple it is to health care providers.

Competing State Interests

Shaped by the constitutional requirement of a compelling state interest, the analysis applied to refusal of treatment cases is whether the individual's fundamental rights of free exercise of religion, personal privacy, and bodily integrity are overridden by some compelling interest of the state that will be immediately and gravely harmed by the patient's refusal of treatment. In the face of rights having the fundamental, time-honored stature of those supporting the Witness' refusal of blood, the state must present some monumental, well-

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> view, entails significantly greater burdens than benefits and is therefore undesirable and not obligatory, while ordinary treatment is that which, in the patient's view, produces greater benefits than burdens and is therefore reasonably desirable and undertaken. The claim, then, that the treatment is extraordinary is more of an expression of the conclusion than a justification for it.

Id. at 88 (emphasis added); accord In re Conroy, 98 N.J. 321, 370-72, 486 A.2d 1209, 1234-35 (1985); Showalter, Decisions to Forego Medical Treatment: The Preferred Medical, Ethical, and Legal Approach, 29 Cath. Law. 286, 312 (1984); Teff, Consent to Medical Procedures: Paternalism, Self-Determination or Therapeutic Alliance?, 101 L.Q. Rev. 432, 450-51 (1985).

established, well-defined interest to override that refusal. The case law in this area has identified four possible interests of the state that might override the individual's refusal of treatment. These possible interests are: 1) preservation of life; 2) protection of dependent third parties; 3) protection of medical profession's integrity; and 4) prevention of suicide. See, e.g., In re Conroy, 98 N.J. 321, 348-49, 486 A.2d 1209, 1223 (1985); Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g 362 So.2d 160 (Fla. 4th DCA 1978).

Petitioner argues that the state's interest in protecting third party dependents is of sufficient magnitude to override the overwhelming constitutional and common law precedent protecting religious free exercise, individual privacy and bodily integrity. And although Petitioner conceded before the Third District Court of Appeal that this state interest was the only interest at issue in this case, see Wons v. Public Health Trust, 500 So.2d 679, 687 (Fla. 3d DCA 1987), Petitioner now introduces the state's interest in protecting the medical profession's integrity in its brief. See Petitioner's Brief on the Merits at 16-17. Amicus will therefore address both of these allegedly compelling state interests.

Protection of Dependent Third Parties

The primary state interest advanced by Petitioner is that of protecting third parties who are dependent on the adult patient who is refusing treatment. More specifically, Petitioner argues that minor children have a "right" to the physical and emotional support of both of their natural parents and that the state's interest in protecting this

"right" overrides the parent's fundamental constitutional and common law rights of religious free exercise, personal privacy and bodily integrity. As support for this proposition Petitioner relies heavily on the case of In re President and Directors of Georgetown College, Inc., 331 F.2d 1000 (D.C. Cir.), reh'g denied, 331 F.2d 1010 (D.C. Cir.), cert. denied, 377 U.S. 978 (1964), as well as several other cases which have followed the Georgetown "rationale."

It should be noted at the outset of this discussion that four of the New York cases cited in Petitioner's brief as being consistent with the third-party-dependent "rationale" of Georgetown[8] have been overruled on this point by a more recent, controlling New York appellate decision. In Randolph v. City of New York, 117 A.D.2d 44, 501 N.Y.S.2d 837 (1986), modified on other grounds, N.Y.L.J., Mar. 23, 1987, at 7, col. 1 (N.Y. Mar. 19, 1987), the Appellate Division held that the presence of a surviving spouse removed any interest of the state in forcing a parent to submit to unwanted medical treatment to ensure parental support for minor children.

In Randolph the children allegedly in need of protection were a newborn child and three other pre-teens. The mother, one of Jehovah's Witnesses, suffered a massive hemorrhage after the delivery of the fourth child. In response to the argument that transfusions should have

8. See In re Winthrop University Hospital, 128 Misc. 2d 804, 490 N.Y.S.2d 996 (Sup. Ct. 1985); Crouse Irving Memorial Hospital v. Paddock, 127 Misc. 2d 101, 485 N.Y.S.2d 443 (Sup. Ct. 1985); In re Melideo, 88 Misc. 2d 974, 390 N.Y.S.2d 523 (Sup. Ct. 1976) (dicta); Powell v. Columbian Presbyterian Medical Center, 40 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1965).

been administered to the mother over her religious objections for the sake of the minor children, the Appellate Division stated that such a proposition was "without merit . . . . The State's interest in assuring parental support is satisfied where there is a capable surviving parent." 117 A.D.2d at 49-50, 501 N.Y.S.2d at 841.

The appellate court decision in Randolph controls the inferior trial court decisions relied on by Petitioner. See Kirby v. Rouselle Corp., 108 Misc. 2d 291, 296, 437 N.Y.S.2d 512, 515 (Sup. Ct. 1981); Lynch v. Quinlan, 65 Misc. 2d 236, 237, 317 N.Y.S.2d 216, 217 (Sup. Ct. 1970). Thus, contrary to the impression given by Petitioner's citation of the four New York cases listed above, the law in New York is that an adult has the right to refuse life-saving medical treatment even if he or she has minor children when the other spouse is present to provide for the children.

Even without the support of these four New York trial court decisions, the prominence given to the Georgetown decision in Petitioner's brief warrants this Court's thorough scrutiny of that decision. In Georgetown a doctor and hospital authorities orally petitioned a federal district court for an ex parte order permitting blood transfusions for an adult patient who evidently was in extremis. The petition was denied. Later the same day an "appeal" was taken to a single federal court of appeals judge who went to the hospital and, after visiting with the patient and her husband (both of whom were Jehovah's Witnesses), entered an order allowing the transfusions. Some

five months later, the appellate judge, J. Skelly Wright, issued an opinion in an attempt to justify his actions.

Judge Wright based his order on a number of factors, including the fact that the patient was the mother of minor children. On this point Judge Wright reasoned that the mother's refusal of blood was tantamount to abandonment of her children. Judge Wright, however, gave no consideration to the fact that the patient's husband was present to provide for the children's needs nor did he consider that other family members, relatives or friends could have provided such assistance. And although his order to allow blood would transgress the patient's fundamental First Amendment rights, Judge Wright gave no consideration to less intrusive means of safeguarding the supposedly compelling public interests he deemed were in need of protection. Indeed, the denial of the patient's petition for rehearing en banc suggests that the majority of the judges on the Court of Appeals for the District of Columbia would have affirmed the district court's denial of the hospital's petition. See 331 F.2d at 1010-18.

Petitioner relies on the Georgetown decision as support for its argument in spite of the fact that, on the merits, Judge Wright's decision has no precedential value. See id. at 1007. Georgetown is an anomaly. The opinions in the denial of the petition for rehearing, especially that of then-future Chief Justice Warren E. Burger, 331 F.2d 1015, as well as the Illinois Supreme Court's rejection of Georgetown in In re Estate of Brooks, 32 Ill. 2d 361, 368-69, 205 N.E.2d 435, 439-40 (1965), highlight the peculiar procedural background of the Georgetown

case, the decision's lack of substantive precedential value, and the doubtful merits of the hospital's position. Commentary on both the procedural and substantive aspects of Skelly Wright's solo 'appellate' review in Georgetown has been very harsh.[9]

Unfortunately for Jehovah's Witnesses, the fears expressed by Judge Miller in his dissent in Georgetown, 331 F.2d at 1010, 1011 (Miller, J., dissenting), and by commentators have become reality. Judge Miller feared that even though the case had no substantive precedential value, Judge Wright's actions would "be cited hereafter as precedents . . . for the summary administration of blood transfusions against the will of the patient." 331 F.2d at 1013. As the cases cited in Petitioner's brief highlight, this indeed has been the result. One commentator predicted that until

> guidelines are formulated defining the extent to which the first amendment freedom of religion inhibits a court's power to compel medical aid for both children and adults, judges confronted with dilemmas such as the one Judge Wright faced in [Georgetown] will undoubtedly continue to err on the side of preserving lives rather than on the side of protecting less tangible, though no less perishable, constitutional rights.

18 Vand. L. Rev. 772, 775 (1965). Again, the intervening twenty-some years have proved this prediction accurate. As Judge Miller grimly

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9. See, e.g., Note, Compulsory Medical Treatment: The State's Interest Re-Evaluated, 51 Minn. L. Rev. 293 (1966); Note, The Refused Blood Transfusion: An Ultimate Challenge for Law and Morals, 10 Nat. L.F. 202 (1965); 45 B.U.L. Rev. 125 (1965); 77 Harv. L. Rev. 1539 (1964); 26 Mont. L. Rev. 95 (1964); 16 S.C.L. Rev. 552 (1964); 39 Tul. L. Rev. 125 (1964); 113 U. Pa. L. Rev. 290 (1964); 18 Vand. L. Rev. 772 (1965); 41 Wash. L. Rev. 124 (1966). See generally Clarke, The Choice to Refuse or Withhold Medical Treatment: The Emerging Technology and Medical-Ethical Consensus, 13 Creighton L. Rev. 795, 816-17 (1980).

predicted in Georgetown: "This situation shows the truth of the adage that hard cases make bad law." 331 F.2d at 1015.

The example of Georgetown illustrates not only the wayward course a single judge may take when he is without the benefit of an adversarial hearing, but also the need for judicial restraint and thorough, non-emotional examination of the interests at play. There must be a precise, objective identification of the state interest that allegedly will be harmed by allowing an adult to refuse religiously objectionable medical treatment. Once identified, that interest must then be searchingly examined to determine if it is of such stature that the state will immediately suffer clear, unavoidable, intolerable harm.

In the case of refusal of allegedly[10] lifesaving treatment by a parent with minor children, the state's burden is not met merely by showing that the patient has dependent children. The cases show that it is the child's possible loss of economic or physical support that creates the state interest. Courts in a number of jurisdictions have considered similar fact situations and, like the Third District Court of Appeal, have identified the physical support of the minor children as the important factor from the state's point of view. In the case of

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10. Dr. Cevetta did not testify that Norma Wons would die without blood. Dr. Cevetta said that "one might anticipate, based on the best available evidence, that she will die." (A. 31) Death was not a medical certainty. No medical prognosis is. Medical judgments are unavoidably uncertain. See President's Commission, Making Health Care Decisions at 85, 89. Cases in which doctors and hospitals had insisted that blood was necessary to avoid death have had successful outcomes without blood after the patient's refusal was upheld. See, e.g., In re Brown, 478 So. 2d 1033, 1036 n.1 (Miss. 1985); Mercy Hospital, Inc. v. Jackson, 62 Md. App. 409, 412, 489 A.2d 1130, 1131 (Md. Ct. Spec. App. 1985); In re Osborne, 294 A.2d 372, 376 n.6 (D.C. 1972).

Randolph v. City of New York, 117 A.D.2d 44, 49-50, 501 N.Y.S.2d 837, 841 (1986), modified on other grounds, N.Y.L.J., Mar. 23, 1987, at 7, col. 1 (N.Y. Mar. 19, 1987), discussed above, the Appellate Division held that the presence of a surviving spouse satisfied the state's interest in providing parental support for the couple's minor children.

Similarly in In re Osborne, 294 A.2d 372 (D.C. 1972), the District of Columbia Court of Appeals found no compelling state interest to override a father's refusal of blood even though he had two young children. The father, one of Jehovah's Witnesses, had, "through material provision and family and spiritual bonds, provided for the future well-being of his two children." Id. at 375. In St. Mary's Hospital v. Ramsey, 465 So.2d 666 (Fla. 4th DCA 1985), the Fourth District Court of Appeal held that a noncustodial father's provision of financial assistance for his minor daughter removed any state interest in compelling life-saving medical treatment over the father's religious objection. See also Mercy Hospital, Inc. v. Jackson, 62 Md. App. 409, 489 A.2d 1130 (Ct. Spec. App. 1985) (issue of "abandonment" not even raised where father would be present to care for newborn child), vacated on other grounds, 306 Md. 556, 510 A.2d 562 (1986); cf. In re Estate of Brooks, 32 Ill. 2d 361, 369, 205 N.E.2d 435, 440 (1965) (preventing minor children from becoming wards of the state is the possible overriding state interest). At the very least, the preceding cases show that the state's interest in preventing minor children from becoming wards of the state is easily met when there is a surviving spouse. Even if there is no surviving spouse, arrangements with other family members

or friends make the chances of the child's becoming a state welfare charge extremely remote.

Petitioner, however, like the trial court, argues that it is not merely the physical support of minor children but the emotional support from a mother or father that is the real object of the state's protection. Like the trial court, Petitioner implies that it is the intangible, emotional support of a caring, loving parent that must be safeguarded. In this way especially Petitioner relies on the Georgetown decision.

Is the state's interest in the emotional support of a child by both natural parents compelling enough to override a parent's fundamental constitutional and common law rights? If the emotional bond between natural parent and child is the real interest to be protected, should not the state be consistent in its protection of this allegedly compelling interest? How, then, does the state explain its general failure to do anything to single out adults with minor children for such special "protection" in other circumstances that threaten this same interest? The fact is, the state does nothing like what the trial court did and what the Petitioner argues for on this appeal. To safeguard a mother's life from a possibly life-threatening pregnancy, would the state force a Catholic woman to undergo an abortion for the sake of the minor children she already has? Would the state force a Christian Scientist parent to submit to conventional medical care in a life-threatening situation in order to safeguard the emotional well-being of that parent's minor children?

If the state's interest in ensuring minor children the emotional support of their natural parents is compelling enough to override the parents' fundamental constitutional and common law rights, a fortiori the children's interest in such support must be legally superior to the parents' exercise of those rights. But is this the case? If the children's interest is not legally superior to the parents' exercise of constitutionally guaranteed rights, then the children's interest certainly does not achieve such superiority simply because the state seeks to protect it.

Everyone, including Jehovah's Witnesses, agrees that the best interests of children are served by being raised by two loving parents and that a child's natural parents typically provide such loving care. However, out of recognition of this interest, does the state, by constitutional guarantee, common law tradition, or statutory privilege, give children the right to restrain a parent from otherwise legal conduct that may jeopardize the child's interest in the emotional support of both parents? For example, can a parent legally be prohibited from employment that will keep her away from home for significant periods of time? Can a parent legally be prohibited from employment or recreation that is unreasonably dangerous or life-threatening? See Note, The Refusal of Lifesaving Treatment vs. The State's Interest in the Preservation of Life: A Clarification of the Interests at Stake, 58 Wash. U.L.Q. at 105 n.110.

As one commentator said, cases where the state has stepped in to either restrict a parent's freedom of action or force religiously

objectionable action for the sake of minor children "go too far." Id. at 102.

> First, only rarely would refusal of treatment leave a child without support. The economic burden to the state is insufficient to justify deprivation of the patient's right. Second, states do not ordinarily force individuals to fulfill their obligations; rather, states force individuals to suffer the legal consequences of nonfulfillment. The state does not escort a parent to work to ensure child support; how, then, can a court justify forcing an unwilling patient to stay alive in order to achieve the same goal? Finally the "ultimate sanction" for child abandonment is court-ordered termination of parental rights. In refusing treatment, the parent is simply applying this ultimate sanction against himself or herself.

Id. (footnotes omitted). "To be consistently applied, the 'welfare of minors' rule should be available to compel elective surgery on parents if it would improve their ability to provide support and maintenance for their children, although it has never been extended that far and such an extension seems unlikely." Clarke, The Choice to Refuse or Withhold Medical Treatment: The Emerging Technology and Medical-Ethical Consensus, 13 Creighton L. Rev. 795, 817 (1980) (emphasis added). In short, uniform application of the rule Petitioner advocates would require state intervention whenever a parent's ability to provide support is threatened.

While children, like all of us, are grieved by the death of close family members and friends, the lasting effect that a parent's death would have on a minor child is not clearly or exclusively harmful. As the District Court observed, if the parent dies, the surviving children "will no doubt cherish the memory of a courageous mother who in time of peril stood by her religious convictions. Indeed, that is a

legacy which many living mothers would give anything to leave their children." Wons v. Public Health Trust, 500 So.2d 679, 688 (Fla. 3d DCA 1987).

> If rather, [the state's interest] is emotional support and training, would not the example of a parent who willingly died for her principles and in direct response to her understanding of God's command be a better example for a child than one who submitted to action in violation of her conscience?

Paris, Compulsory Medical Treatment and Religious Freedom: Whose Law Shall Prevail?, 10 U.S.F.L. Rev. 1, 18 (1975); see also Note, The Right to Die, 18 U. Fla. L. Rev. 591, 600 (1966).

The state's regulation of marriage dissolutions also belies its allegedly compelling interest in ensuring the emotional support of minor children by both of their natural parents. If ensuring children's emotional support is truly a paramount state interest, then the emotional welfare of minor children would be the most important factor in a divorce proceeding, perhaps even warranting the appointment of a guardian ad litem to protect this allegedly compelling interest. Moreover, if the parents were seeking their divorce for reasons that are not given a preferred status by the United States or state constitution, the children's interest would be that much more superior. Since divorce is generally recognized as harmful to a child's development,[11] by Petitioner's thinking the state's granting of divorces should be rare

11. "The severe impact of divorce on the mental health and long-term happiness of the child is well documented." Note, Making Parents Behave: The Conditioning of Child Support and Visitation Rights, 84 Colum. L. Rev. 1059, 1067 (1984) (citing J. Wellerstein & J. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce (1982)).

occurrences indeed. However, in this era of liberal, "no fault" divorce, this is hardly the case. See 5 Fla. Stat. Ann. 61.052 (Supp. 1987); Ryan v. Ryan, 277 So.2d 266 (Fla. 1973). The growth of the number of single-parent families and the accommodation of this phenomenon by, among other things, publicly funded child day-care programs suggest public acceptance of such non-traditional families. As the District Court observed, the state

> cannot mandate a two-parent, rather than a one-parent family; [the state] is solely concerned with seeing to it that minor children are cared for and are not abandoned. These children, without doubt, will be cared for if Mrs. Wons dies and, in this respect, will be no different than many well-adjusted children from one-parent extended families in this country.

Wons v. Public Health Trust, 500 So.2d 679, 688 (Fla. 3d DCA 1987).

In addition, if the state has such a compelling interest in protecting the emotional support a child receives from its natural parents, one would think that the state would protect this interest when such support was cut-off or impaired by another person's negligence. This, however, is not the case in Florida. The Second and Third District Courts of Appeal have declined to recognize a child's cause of action for loss of "parental consortium" resulting from a third party's negligent injury of the parent. In Clark v. Suncoast Hospital, Inc., 338 So.2d 1117 (Fla. 2d DCA 1976), the court cited the lack of common law precedent allowing a child's recovery for such a loss as well as numerous other considerations weighing against the creation of such a cause of action. See also Fayden v. Guerrero, 420 So.2d 656 (Fla. 3d DCA 1982), petition for review denied, 430 So.2d 450 (Fla. 1983). Thus, the state's allegedly compelling interest in protecting the emotional

bond between minor child and natural parent is not borne out by our social or legal customs.

In the face of this reality, what accounts for Petitioner's argument in support of the trial court's actions? It appears obvious that it is the humane desire to protect the parent-child relationship. While as a general principle we all want humane, compassionate judges, "[c]ourt decrees draw . . . authority . . . from the belief that the major influence in judicial decision is not fiat but principles which bind the judges as well as the litigants and which apply consistently among all men." A. Cox, The Warren Court 21-22 (1968). Consistent application of principle, not unreasoned acquiescence to emotion, is needed when minor children are in the picture.

Petitioner's Georgetown-based reasoning is really only a matter of degree. Norma Wons' refusal of blood was disregarded by the trial court because blood was considered to be life-sustaining and she had two minor children. What if either of these two factors were different? Is a patient's right of informed consent inversely proportional to the number of minor children she has? Indeed, is any adult's freedom of activity restricted in proportion to the number of children she has? Moreover, does the right to consent to or refuse medical treatment vary with the state's or the medical profession's view of the risk created by the treatment decision? And if the risk to be avoided is loss of emotional support for minor children, what if the parent has not been lovingly caring for her children to begin with?

Like Skelly Wright in the Georgetown decision, the circuit

court below produced from his own mind and heart[12] a supposed state interest superior to fundamental, time-honored rights explicitly expressed in the state and federal constitutions and well-defined by centuries of common law. Such free-wheeling judicial conduct is too creative and too subjective to be anywhere within the bounds of discretion. As Benjamin Cardozo said in The Nature of the Judicial Process 141 (1921):

> The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains.

See also 16 S.C.L. Rev. 552, 558 (1964) ("The humanitarian considerations of the court, of course, must be given high respect, but courts should decide cases on rules of law, not of conscience."). Propelled by Skelly Wright's immodest exploits in Georgetown, Petitioner argues for a result not guided by well-settled legal principles but rather on the basis of its own vision of what should be done under the circumstances.

Sweeping claims about the need to preserve the lives of par-

12. "I'll take judicial notice of the fact that, in my opinion, the two children here, one 12 and one 14, would be denied an intangible right they have to be reared by two loving parents, and not one, and I'll take judicial notice of the fact that for the most part the love and the parentage of two parents is far better than one, and that we would end up therefore with better citizens. . . . I think that the right of these two children to be reared by two parents is an overriding reason." (A. 46-47)

ents with minor children have an emotional appeal that facilely avoids both the constitutionally required scrutiny of the state's authority to act and the search for less restrictive alternatives. As the United States Supreme Court has said, "[w]here fundamental claims of religious freedom are at stake . . . we cannot accept such a sweeping claim; despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote." Wisconsin v. Yoder, 406 U.S. 205, 221, 92 S.Ct. 1526, 1536, 32 L.Ed.2d 15, 28 (1972); see Roe v. Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 728, 35 L.Ed.2d 147, 178-79 (1973).[13]

Assuming proof of a compelling state interest, the state must use the least restrictive means available before it can compel violation of an individual's religious beliefs and practices. The means chosen should be closely tailored to require the least intrusive violation of the individual's religious freedom. See generally L. Tribe, American Constitutional Law § 14-10 (1978). Although addressing legislative action, the following quote applies with equal force to judicial action:

13. Examples of such generalized, conclusory reasoning are found in several Witness blood cases. In United States v. George, 239 F.Supp. 752 (D. Conn. 1965), and John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971), "transfusions were ordered simply on the basis of a desire not to let the patient die, irrespective of the patient's wishes and without sound legal analysis supporting the court order." Showalter, Decisions to Forego Medical Treatment: The Preferred Medical, Ethical, and Legal Approach, 29 Cath. Law. 286, 295 & n.48 (1984). Another commentator cited Georgetown, United States v. George, and Powell v. Columbian Presbyterian Medical Center, 49 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1965), as examples of cases that "totally ignore the first amendment issues" present. Note, The Refusal of Lifesaving Treatment vs. The State's Interest in the Preservation of Life: A Clarification of the Interests at Stake, 58 Wash. U.L.Q. 85, 97 & n.56 (1980).

> It is not sufficient for the State to show that [forced transfusions of parents who are Jehovah's Witnesses] further a very substantial state interest [i.e., the emotional support of minor children]. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with "precision," NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963); United States v. Robel, 389 U.S. 258, 265, 88 S.Ct. 419, 424, 19 L.Ed.2d 508 (1967), and must be "tailored" to serve their legitimate objectives. Shapiro v. Thompson, [394 U.S. 618,] 631, 89 S.Ct. [1322,] 1329 (1969). And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means." Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960).

Dunn v. Blumstein, 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274, 285 (1972).

Thus, if the minor child's emotional needs are the true interest, the state should at a minimum empirically establish that societally unacceptable emotional or psychological harm would unavoidably follow from the adult's possible injury or death due to refusal of blood. If grave emotional harm is satisfactorily proven to be imminent, the state should then show that alternatives less intrusive and less restrictive than forced medical treatment will not adequately protect the child from that societally unacceptable harm. Are there medical alternatives to the use of blood? Is there a surviving spouse? Has the patient made arrangements with relatives or friends in case he is unable to provide support after his hospitalization? 41 Wash. L. Rev. 124, 128-29 (1966). Are family, relatives, friends, or others willing and ready to provide such support even if the patient has made no such arrangements beforehand? See Note, Compulsory Medical Treatment: The

State's Interest Re-Evaluated, 51 Minn. L. Rev. 293, 301 (1966); 113 U. Pa. L. Rev. 290, 294 (1964).

Each of these alternatives is a possible means of providing emotional and physical support for minor children without violating the patient's rights of free exercise of religion, personal privacy and bodily integrity and without burdening the state with "abandoned" children. Even if there were no spouse, family, relatives, friends or others to provide such support, is the possible economic burden on the state and emotional burden on the children compelling enough to justify deprivation of the parent's constitutional and common law rights? See 41 Wash. L. Rev. 124, 128 (1966).

Use of state power to coerce adults to satisfy the perceived emotional needs of minor children is highly questionable in a free society, especially when the state coercion violates the parent's fundamental constitutional liberties. "The notion that the individual exists for the good of the state is, of course, quite antithetical to our fundamental thesis that the role of the state is to ensure a maximum of individual freedom of choice and conduct." In re Osborne, 294 A.2d 372, 375 n.5 (D.C. 1972).

> Human dignity is enhanced by permitting the individual to determine for himself what beliefs are worth dying for. Through the ages, a multitude of noble causes, religious and secular, have been regarded as worthy of self-sacrifice. . . . Nations still insist on the prerogative to engage in mass killing for furtherance of the "national interest," "wars of liberation," or the "defense of democracy." Bodily control, self-determination, and religious freedom are beneficial both to the individual and to the society whose atmosphere and tone are determined by the human values which it respects.

Cantor, A Patient's Decision to Decline Life-Saving Medical Treatment: Bodily Integrity Versus the Preservation of Life, 26 Rutgers L. Rev. 228, 244-45 (1973) (footnotes omitted); see President's Commission, Making Health Care Decisions at 42 ("For some, health is a paramount value; for others—citizens who volunteer in time of war, nurses who care for patients with contagious diseases, hang-glider enthusiasts who risk life and limb—a different goal sometimes has primacy.").

An adult's constitutional and common law rights of free exercise of religion, personal privacy and bodily integrity deserve the heightened protection guaranteed by the federal and state constitutions and by the common law. To summarily conclude that support of minor children overrides an individual's fundamental constitutional and common law rights is to avoid a rigorous analysis of the issue. Even assuming that the state's interest in ensuring emotional and physical support for minors is compelling, there appear to be numerous less restrictive alternatives. The mere presence of minor children should not give the state license to override a parent's fundamental rights.

Protection of Medical Profession's Integrity

Although this Court has previously held that a patient's right to refuse medical treatment is not overborne by the state's interest in the ethical integrity of medical practice, see Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g 362 So.2d 160 (Fla. 4th DCA 1978); St. Mary's Hospital v. Ramsey, 465 So.2d 666 (Fla. 4th DCA 1985), Petitioner nevertheless cites and quotes John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971), see Petitioner's Brief on the

Merits at 16-17, in support of its argument that the health care profession's commitment to cure illness and save life supersedes the adult's constitutional rights of privacy and religious free exercise.[14]

In balancing the medical profession's ethical interests against the adult patient's religiously motivated refusal, it is elementary to understand that the adult's constitutional and common law rights are pitted against the medical profession's moral or ethical duty. The distinction between rights and duties is significant. The fundamental, common law right of bodily self-determination as protected by the patient's legal right of informed consent testifies to the fact that the individual's rights are superior to the doctor's duty. Certainly the doctor's duty to cure illness and save life does not give him license to administer medical treatment whenever and wherever he pleases. See W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts 375 (5th ed. 1984); 3 F. Harper, F. James & O. Gray, The Law of Torts § 18.6 at 718-19 (2d ed. 1986).

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14. Although John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971), is often cited as the leading case recognizing the state's compelling interest in the medical profession's integrity, it has since been overruled on this point by subsequent New Jersey Supreme Court decisions. See In re Conroy, 98 N.J. 321, 351-53, 486 A.2d 1209, 1224-26 (1985); In re Quinlan, 70 N.J. 10, 40-41, 355 A.2d 647, 663-64 (1976); see also Cantor, Conroy, Best Interests, and the Handling of Dying Patients, 37 Rutgers L. Rev. 543, 550-51 (1985). Unfavorable criticism of the Heston decision has been voiced by courts and commentators alike. See In re Brown, 478 So. 2d 1033, 1039 (Miss. 1985) (describing Heston decision as "in a word, wrong"); Paris, Compulsory Medical Treatment and Religious Freedom: Whose Law Shall Prevail?, 10 U.S.F.L. Rev. 1 (1975); Note, Compulsory Medical Treatment and Constitutional Guarantees: A Conflict?, 33 U. Pitt. L. Rev. 628 (1972); 6 U. Rich. L. Rev. 412 (1972); 3 Seton Hall L. Rev. 444 (1972); 76 Dick. L. Rev. 606 (1971).

Courts and commentators that have thoroughly considered the state's alleged interest in the ethical integrity of the medical profession have concluded that it is clearly inferior to the individual's constitutional and common law rights: "[T]he State's interest . . . in maintaining the ethical integrity of the medical profession, while important, cannot outweigh the fundamental individual rights here asserted. It is the needs and desires of the individual, not the requirements of the institution, that are paramount." Rivers v. Katz, 67 N.Y.2d 485, 495 n.6, 495 N.E.2d 337, 343 n.6, 504 N.Y.S.2d 74, 80 n.6 (1986)

> [E]ven if doctors were exhorted to attempt to cure or sustain their patients under all circumstances, that moral and professional imperative, at least in cases of patients who were clearly competent, presumably would not require doctors to go beyond advising the patient of the risks of foregoing treatment and urging the patient to accept the medical intervention. If the patient rejected the doctor's advice, the onus of that decision would rest on the patient, not the doctor. Indeed, if the patient's right to informed consent is to have any meaning at all, it must be accorded respect even when it conflicts with the advice of the doctor or the values of the medical profession as a whole.

In re Conroy, 98 N.J. 321, 352-53, 486 A.2d 1209, 1225 (1985) (citations omitted).

> [I]f the right of the patient to self-determination . . . is to have any meaning at all, it must be paramount to the interests of the patient's hospital and doctors. The right of a competent adult patient to refuse medical treatment is a constitutionally guaranteed right which must not be abridged.

Bartling v. Superior Court, 163 Cal. App. 3d 186, 195, 209 Cal. Rptr. 220, 225 (1984).

The New York Court of Appeals has also stated that

> the patient's right to determine the course of his own medical treatment [is] paramount to what might otherwise be the doctor's obligation to provide needed medical care. . . . [A] doctor cannot be held to have violated his legal or professional responsibilities when he honors the right of a competent adult patient to decline medical treatment.

In re Storar, 52 N.Y.2d 363, 377, 420 N.E.2d 64, 71, 438 N.Y.S.2d 266, 273 (1981); accord Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 743-44, 370 N.E.2d 417, 426-27 (1977).

> The doctrine of informed consent is grounded precisely on the premise that a physician's judgment is subservient to the patient's right to self-determination. Furthermore, the law of tort imposes a liability on any physician who renders treatment without or beyond authorization. The skill of the physician, or the fact that the treatment benefited the patient is no defense.
>
> What is striking in the rulings that rank the doctor's conscience higher than a religious conscience is that the latter enjoys constitutional protection while the former does not. Sound judicial policy demands that fundamental constitutional guarantees ought not to be disregarded or compromised unless the opposing interest is likewise entitled to constitutional concern or some compelling public interest is being protected. Neither is at stake in the physician's exercise of his professional judgment in adult blood transfusion cases.

Paris, Compulsory Medical Treatment and Religious Freedom: Whose Law Shall Prevail?, 10 U.S.F.L. Rev. at 26 (footnotes omitted); accord Byrn, Compulsory Lifesaving Treatment for the Competent Adult, 44 Fordham L. Rev. at 29 ("The rule of the supremacy of the 'doctor's conscience' finds no real support in law.").

Finally, in commenting on the case of John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 583, 279 A.2d 670, 673 (1971), one observer said this:

> It is somewhat remarkable, however, that the court should even endeavor to maintain that the interests of the hospital and

> medical practitioners in discharging the accepted and recommended procedures of their profession are to be accorded a status which is superior to the patient's interest in freely asserting his right to maintain the immunity of his person and in freely exercising his religious beliefs. Fundamental constitutional guarantees should not be disregarded or compromised unless the opposing interest likewise is entitled to constitutional protection or the limitation on constitutionally recognized rights manifests an attempt to protect or promote the interests of the general public. As the right of the physician to freely exercise his professional obligations is nowhere afforded constitutional recognition and no more benefit is to be derived by allowing physicians and hospitals to act in accordance with their professional judgment than would be advanced by having such individuals respect the decisions of their patients, the court's attempt to justify its decision on this basis is both unsupportable and unacceptable.

Note, Compulsory Medical Treatment and Constitutional Guarantees: A Conflict?, 33 U. Pitt. L. Rev. 628, 636 (1972); see also 64 Mich. L. Rev. 554, 559 (1966) ("It cannot be asserted, however, that the interest of society in the canons of ethics of any particular profession outweighs its interest in the 'canons' of the Constitution.").

As the above authorities repeatedly state, if the patient's right to control his own body is to have any meaning at all, that right must be superior to the medical profession's interest in providing "needed" medical care. If it were any other way, individual autonomy would be lost.

Summary

Protection of minor children is a legitimate state concern, but protection of fundamental human rights is also a state concern. Indeed the latter is mandated by the state and federal constitutions and by the common law. The immediate emotional appeal of the parent-child

relationship should not be permitted to obscure the preferred position our scheme of government gives to the fundamental rights of religious freedom and personal privacy. As Justice Brandeis warned, "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Olmstead v. United States, 277 U.S 438, 479, 48 S.Ct. 564, 579, 72 L.Ed. 944, 957 (1928) (Brandeis, J., dissenting). "There is not a religious persecution in history that was not justified in the eyes of those engaging in it on the ground that it was reasonable and right and that the persons whose practices were suppressed were guilty of stubborn folly hurtful to the general welfare." Barnette v. West Virginia State Board of Education, 47 F.Supp. 251, 253 (S.D.W. Va. 1942), aff'd, 319 U.S. 624 (1943).

While Jehovah's Witnesses do not refuse blood to accomplish their own demise, they are willing to risk even death to maintain their integrity to their God. Job 2:3-5. Jehovah's Witnesses have deep faith that if they should die because of their refusal of blood, they will be resurrected into the Paradise earth promised by God's Kingdom if they have lived their lives obedient to the instructions found in God's Word. Jehovah's Witnesses love their children dearly and want them to be healthy, well-adjusted individuals. Witness parents help their children come to a knowledge of Jehovah God and his son Christ Jesus. They study the Bible with their children and teach them the importance of obedience to God's will. Among God's rules for Christians is the scriptural prohibition against blood. A Christian parent who maintains his stand

on blood even in the face of death provides an example of integrity and faith that cannot be taught by mere words.

Conclusion

"[R]espect for the individual . . . is the lifeblood of the law." Illinois v. Allen, 397 U.S. 337, 351, 90 S.Ct. 1057, 1064, 25 L.Ed.2d 353, 363 (1970) (Brennan. J., concurring). Such respect is mandated by both the United States and Florida Constitutions in matters of religion and personal privacy. The common law also requires such respect in matters of bodily integrity. Freedom and self-determination in matters of religion and personal privacy should not be curtailed simply because the majority disapproves or does not understand. "[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." West Virginia State Board of Education v. Barnette, 319 U.S. at 642, 63 S.Ct. at 1187, 87 L.Ed. at 1639.

The state's interest in ensuring that minors are supported by their natural parents is valid and understandable. But that is only the beginning of the matter. Fundamental constitutional and common law rights should not be set aside merely on the basis of a court's subjective assessment of the problem. The trial court erred when it placed the state's interest in protecting the perceived emotional needs of Norma Wons' sons ahead of Norma Wons' rights of religious free exercise,

personal privacy, and bodily integrity. The District Court corrected this error. This Court should now affirm the District Court's decision.

Respectfully submitted,

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