IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. 69,970

The Public Health Trust of Dade County, Florida

Petitioner,

vs.

Norma Wons,

Respondent.

Brief of Amicus Curiae

Christian Information Service, Inc.

ROBERT M. BUCKEL, ESQ.
Attorney for the Amicus Curiae
3003 Tamiami Trail No., Ste.275
Naples, Florida 33940
Telephone (813) 262-8000

TABLE OF CONTENTS

Table of Citations

Books and Publications Page

Bergman, Dr.Jerry Jehovah's Witnesses and Blood Transfusions, Personal Freedom Outreach, (1984) 1

Watchtower, September 9, 1981 23

Watchtower, September 15, 1981 23

Watchtower, July 1, 1963 23

Watchtower, January 15, 1961 23

The Watchtower Bible and Tract Society, The Truth That Leads to Eternal Life (1968) 22, 23

Summary of Argument

The Amicus Curiae, Christian Information Service, Inc., will respectfully request that the court affirm that the preservation of life is a valid State interest in the context of the refusal of medical treatment cases and as such is to be balanced against the individual's rights to privacy and freedom of religion.

That the court adopt a test wherein there is a balancing of the rights of the individual against the intersts of the State in the context of a refusal of medical treatment cases.

First, the threshold question to be decided is whether the individual has competently asserted his right to privacy and/or religious freedom.

When the right to privacy has been competently asserted or ascertained, the court may then weigh the degree of bodily intrusion and the prognosis of the individual when balancing the individual's right to privacy against the State's interest in preserving life and protecting third parties.

When the right to religious freedom has been competently asserted or ascertained as a ground for refusing medical treatment, then the trier of fact must determine from the individual what is the religious belief which is being asserted. Once the religious belief is defined, that the court can weigh the degree of intrusion on that belief and whether the patient is near death when balancing the individual's right to religious freedom against the State's interest in preserving life and protecting minor children.

The Amicus would bring to the court's attention the practice of the Watchtower Bible and Tract Society called "disfellowshipping". Such a practice is a factor in the context of refusal of blood transfusion cases, since it has the effect of "chilling" the individual's right to consent to a transfusion. In such a situation, the Jehovah's Witness who may wish to consent to a transfusion must hope that the court will order such a transfusion, since he or she cannot do so without the possible loss of family and friends.

THE POSITION OF ORTHODOX CHRISTIANITY ON THE QUESTION OF BLOOD TRANSFUSIONS AND JEHOVAH'S WITNESSES

In recognition that the right of religious belief, as opposed to practice, is absolute the Christian Information Service, Inc. will not go into a discussion of the Scriptural or historical aspects of blood transfusions, but attaches such a discussion as part of its Appendix hereto. Jehovah's Witnesses and Blood Transfusions, Dr. Jerry Bergman, Personal Freedom Outreach, (1984).

THE STATE INTEREST IN THE PRESERVATION OF LIFE IS A VIABLE STATE INTEREST IN THE CONTEXT OF BLOOD TRANSFUSION REFUSAL CASES.

Each competent person has a fundemental constitutional right to determine whether to accept or reject a particular course of medical treatment. This right finds it's source in the U.S. Constitution under the 1st Amendment's concept of religion and the 14th Amendment's right to privacy. To deprive a person of his right to refuse medical treatment on either ground, the State must show that it has an overriding interest.

When the case sub-judice was decided by Third District Court of Appeal, Chief Justice Schwartz filed his dissent to the majority's position wherein he stated:

> ...the fact that our high court will decide the question in any event, I deem an elaborate dissent unnecessary, suffice it to say that I believe that the State's interest in preserving the existence of Mrs. Wons' life and the quality of her minor children's are such that she may not be permitted to die. I would affirm.
>
> Wons v. Public Health Trust of Dade County, 500 So. 2d 679, 688 (3rd DCA 1987)

The two State interests, preservation of life and minor children, recognized by Chief Justice Schwartz were recognized by this court when it previously considered a refusal of medical treatment case in Satz v. Perlmutter, 379 So. 2d 359 (1980)

This court when it previously considered the refusal of medical treatment case adopted the rationale of Superintendent of Belchertow v. Saikewicz, 370 N.E. 2d 417 (Mass. 1970). [referred to as Saikewicz].

> ...the right of an individual to refuse medical treatment is tempered by the State's:
>
> 1. Interest in the preservation of life.
> 2. Need to protect innocent third parties.
> 3. Duty to prevent suicide.
> 4. Requirement that it help maintain the ethical integrity of medical practice.
>
> Satz v. Perlmutter, 362 So 2d 160, 162 (4th DCA 1978) [referred to as Perlmutter I] adopted by this court Satz v. Perlmutter, 370 So. 2d 359 (1980) [referred to as Perlmutter II]

Thus, Chief Justice Schwartz was working within the analytic framework set up by this court in refusal ofmedical treatment cases when he recognized the State's interest in the preservation of life and the interests of minor children as sufficient to override Mrs. Wons' right to refuse treatment.

The second Perlmutter State interest, the protection of innocent third parties, has been ably dealt with in the briefs of the Petitioner, Public Health Trust of Dade County, and for that reason will not be discussed herein except in passing. The Amicus Curiae, Christian Information Service Inc., will analyze the first Perlmutter state interest, the preservaton of life, in

the context presently before the court.

In the context of the refusal of medical treatment cases the foremost State interest has generally been the preservation of life. "The State interest in preserving life is commonly considered the most significant of the four State interests". Matter of Conroy, 486 A. 2d 1209, 1233 (N.J. 1985) Likewise, the court in Saikewicz, whose criteria was adopted in Perlmutter I, stated "...the most significant of the asserted State's interests is that of the preservation of life". Superintendent of Belchertown v. Saikewicz at 425.

This court has recognized that in a refusal of medical treatment case where the interests of the State come into conflict with the rights of the individual, a balancing test must be undertaken to determine whose interest should prevail. Satz v. Perlmutter I at 164. In the case of the State interest in the preservation of life, (or protecting minor children) the two rights of the individual which are typically involved are the right to privacy and freedom of religion. While both of the two rights are "fundemental", each flows from a different concept and they should be considered by a separate balancing test.

In regards to the patient's right of privacy, a balancing test should determine the magnitude or weight of the patient's interest by the degree of bodily invasion necessary to carry out the proposed treatment. Put differently, the State's interest decreases and the patient's right to privacy increases as the degree of bodily invasion grows.

Likewise, in regards to a State interest balanced against the patient's freedom of religion, the interest of the State

would weaken and the individual's interest in religious freedom would strengthen as the degree of infringement on the religious belief grew.

The Amicus will deal with a balancing test first for the individual's right of privacy and religious freedom as against the interests of the State. While the first prong of Perlmutter I, the preservation of life, will be the primary focus, it should be recognized that the interest of the State also includes protecting the rights of minors and the balancing tests proposed are applicable to a weighing of that state interest.

PRIVACY: WEIGHING THE INDIVIDUAL'S RIGHT OF PRIVACY AGAINST THE STATE'S INTEREST IN PRESERVING LIFE AND PROTECTING MINORS

Given the recognition that in the refusal of medical treatment context the individual's right to privacy is to be balanced against the state's interest in preserving life, Saikewicz at 427, the question then becomes what weight is to be given to the respective interests.

The weight to be given an individual's right to privacy grows as the degree of bodily intrusion increases. The weight to be given to the state's interest in preserving life grows with the prognosis as to the quality and length of the life that patient can reasonably expect if treated. In the Matter of Quinlan, 355 A.2d 647 (N.J. 1976), In re Matter of Quackenbush, 156 N.J. Super. 282, 383 A.2d 785 (1978), Satz v. Perlmutter [I], supra.

In the much publicized case of Matter of Quinlan, supra, Karen Quinlan was in a comatose condition suffering from severe brain damage which left her in a chronic persistent vegetative state. Id at 654-5. The court noted it was generally assumed that the condition was irreversible and that she could never be restored to a cognitive state. Id at 655. The issue before the court was whether Karen Quinlan should be taken off a respirator which experts concluded she needed to survive. Even with the respirator the expert testimony indicated that she would not survive a year. Id at 655.

The Quinlan court determined that Karen Quinlan's choice, had she been able to make it, would have been to remove the respirator. Id at 664. The court thus dealt with the threshold question of whether the right to privacy should be asserted in this instance. Where the individual is comatose or incompetent the court may look to other factors (family, friends, etc.) which indicate what the desire of the individual would have been if he or she were competent to make the decision. Matter of Conroy, supra.

Having found that Karen Quinlan would have asserted the right, the Court then identified the two elements to be weighed when balancing the right of privacy against the State's interest in preserving life:

> We think that the State's interest contra weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims . . . Her prognosis is extremely poor - she will never resume cognitive life. And the degree of bodily invasion is very great - she requires 24 hour intensive nursing care, antibiotics, the assistance of a respirator, a catheter and feeding tube. Id at 664.

Prognosis for recovery and the degree of bodily invasion are thus identified by the Quinlan court as the elements to be weighed when balancing the individual's right to privacy against the the State's interest in preserving his or her life.

The Morris County, New Jersey Probate Court in Matter of Quackenbush, supra, was petitioned by the Morristown Memorial Hospital to appoint a guardian to consent to the amputation of both the legs of Robert Quackenbush. Id at 786. Mr. Quackenbush was a 72 year old man who lived as a semi-recluse in his trailer. He was divorced, had no children, and his parents and siblings were deceased. He had lived in his trailer with his 83 year old cousin who had recently been taken to a nursing home. Id at 786.

The expert testimony indicated that Mr. Quackenbush would die within three weeks without the operation, but with the operation the probability of recovery was good. Id at 787.

The court in Quackenbush found itself in a situation where, unlike Quinlan, the patient's prognosis was good if given the operation. When balancing the State's interest in preservation of life against the right to privacy, the crucial issue became the degree of bodily invasion to which the proposed treatment would subject Robert Quackenbush against his will.

> The extent of bodily invasion required to overcome the State's interest is not defined in Quinlan. Further, there is a sugestion of a need for a combination of significant bodily invasion and a dim prognosis before the individual's right of privacy overcomes the State's interest in preservation of life. Under the circumstances of this case, I hold that the extensive bodily invasion involved here - the amputation of both legs above the knee and possibly the amputation of both legs entirely - is sufficient to make the State's interest in the preservation of life give

> way to Robert Quackenbush's right of privacy to decide his own future regardless of the absence of a dim prognosis. Id at 789.

The Quakenbush court ruled that a poor prognosis and a substantial degree of bodily invasion were not both required in order for the right of privacy to outweigh the State's interest in the preservation of life. In Quackenbush, the degree of bodily invasion in the form of amputation of his legs was so great that it, even in the absence of a poor prognosis, was enough to outweigh any State interest in preserving his life.

In Superintendent of Belchertown v. Saikewicz, supra, the Massachusetts Supreme Court approved a similar balancing test. Joseph Saikewicz, a mentally retarded 67 year old man, suffered with acute mycloblastic monocytic leukemia. The issue was whether Mr. Saikewicz was to receive chemotherapy treatments. The probate court found that without chemotherapy treatment Joseph Saikewicz would probably die a painless death due to leukemia "within a matter of weeks or months" and with treatment he would live "probably . . . for a period of time of from 2 to 13 months". Id at 421, 422. The chemotherapy would not cure the leukemia and treatment has toxic side effects, including possible pain. Id at 421.

The Saikewicz court recognized the balancing done by the probate judge:

> Balancing these various factors, the judge concluded the following considerations weighed against administering chemotherapy to Saikewicz: "(1) his age (2) his inability to cooperate with treatment (3) probable adverse side effects of treatment (4) low chance of producing remission (5) the certainty that treatment will cause immediate suffering, and (6) the quality of life possible for him even if the treatment does bring

about remission".

> The following considerations were determined to weigh in favor of chemotherapy: "(1) the chance that his life may be lengthened thereby, and (2) the fact tht most people in his situation when given a chance to do so elect to take the gamble of treatment".
>
> Concluding that, in this case, the negative factors of treatment exceeded the benefits, the probate court ordered . . . no treatment be administered to Saikewicz . . . Id at 422.

In discussing the probate judges balancing, the Saikewicz court was satisfied that his decision was consistent with a proper balancing of State and individual interests. Id at 427. While the Saikewicz court reviewed the degree of bodily invasion that would be caused by chemotherapy treatment, the emphasis in Saikewicz was on prognosis. In reviewing the State's interest in preserving life the distinction was made between the State interest when the affliction is curable, as opposed to when "the issue is not whether but when, for how long, and at what cost to the individual that life may be briefly extended". Id at 426. Prognosis and the effect of chemotherapy were the measures weighed in Saikewicz to determine whether Mr. Saikewicz's right to privacy was overridden by the State's interest in the preservation of his life. But whereas Quackenbush emphasized the degree of bodily intrusion, Saikewicz emphasized the poor prognosis.

In Satz v. Perlmutter [I], supra, Abe Perlmutter, a 73 year old hospital patient in the final stages of amyotrophic lateral sclerosis (Lou Gehrig's Disease), requested that the hospital be restrained from preventing him from taking himself off a respirator. With no cure for the disease his life expectancy

with the respirator was short, without the respirator it was less than an hour. Id at 161.

In Perlmutter [I] each of the four possible State's interests for denying an individual's right to refuse medical treatment were examined. In reviewing the State's interest in preserving life the court employed a balancing test similar to the line of cases discussed herein. The question, as framed by the court, was not would Mr. Perlmutter die, but simply how long would he live and at what cost in terms of more pain and suffering. Thus, like the Saikewicz situation, the poor prognosis even with treatment and the degree of bodily invasion were found to outweigh any State interest in the preservation of life.

> In the case at bar the condition is terminal, the patient's situation wretched and the continuation of his life temporary and totally artificial. Id at 162.

The line of cases above indicate that in order for the State's interest in preserving life to override the individual's right of privacy, the prognosis should be good and the degree of bodily invasion not be substantial. It would thus appear that where either the prognosis is bad or where the bodily invasion is substantial, then the State's interest in preserving life does not override the right to privacy. Likewise, where the bodily invasion is minimal and the prognosis good, then the State's interest in preserving life overrides the individual's right to privacy.

While the measure of bodily intrusion will have to be made on a case by case basis, the degree of intrusion by a blood transfusion has been commented on:

> The nature of Karen's care and the realistic chances of her recovery are quite unlike those of the patients discussed in many of the cases where treatments were ordered. In many of those cases the medical procedure required (usually a transfusion) constituted a minimal bodily invasion and the return to functioning life were good.

Matter of Quinlan at 664. (See also Matter of Quackenbush at 789).

In the case before the court, the blood transfusion ordered by Judge Newbold was done with minimal bodily intrusion and a good prognosis. (Appendix to Petitioner's Brief, p. 32).

In the case before the court, the interest of the State is not limited to only preserving life, but also consists of the interest in protecting third parties. Given the minimal intrusion on the patient's privacy balanced against the good prognosis and two strong state interests requires affirming the order of Judge Newhold.

FREEDOM OF RELIGION BALANCED AGAINST THE STATE'S INTEREST IN PRESERVING LIFE AND PROTECTING MINORS

The individual's right to exercise his religious beliefs is also a fundemental right, but like the right to privacy not absolute. The right to religious freedom must be balanced against the State's interest preserving life. St. Mary's Hospital v. Ramsey, 465 So. 2d 666, 668 (1985).

In the context of freedom of religion, the interest of the state should weaken and the individual's interest in religious freedom should stregthen as the degree of infringement on the religious belief grows. The logic of such a manner of weighing the individual's rights against the State's interest is similar to that outlined above in the right to privacy cases. Where an intrusion on an individual's religious belief is such that it effects an individual's right to eternal salvation, as he or she believes it, then the intrusion is great. But where an intrusion on an individual's religious belief does not effect his or her spiritual life or salvation, as he or she believes it, then the intrusion is substantially weaker.

It is important to recognize that before any measure of "intrusion" on an individual's right of religious freedom can be determined, the particular religious belief that individual holds must be ascertained. What is the religious belief is determined solely by what the individual believes it is, that is to say it is a purely subjective determination. Once the trier of fact has determined from the individual what the religious belief is, he is in a position where he can determine if the

proposed intrusion is a minimal or substantial intrusion on the individual's right to religious freedom. Again, it is the individual who defines what is his or her belief.

The inquiry as to what are an individual's beliefs has been undertaken by the courts. ex. rel. Swann v. Pack, 527 S.W. 2d 99 (Tenn. 1975), United States v. Kuch, 288 F. Supp. 439 (D.D.C. 1968). Such inquiry may be made as to what beliefs are central and primary, as opposed to collateral. State v. Whittingham, 19 Ariz. App 27, 504 P.2d 950 (Ariz. 1973), People v. Woody, 61 Col.2d 716, 394 P.2d 813 (Cal. 1964)

In measuring the degree of intrusion on religious freedom in the context of blood transfusion refusals, the courts have made an important distinction based upon two different beliefs held among individual Jehovah's Witnesses on the spiritual affect of a court ordered blood transfusion. A distinciton has been made where the individual Jehovah's Witness's interpretation of religious doctrine was that she must die rather than consent to a blood transfusion, as opposed to an individual whose interpretation is that he or she must die rather than receive a blood transfusion. Applicaton of the President and Directors of Georgetown College, Inc., 331 F. 2d 1000 (D.C. Cir. 1964) Where to receive a blood transfusion, court ordered or otherwise, is believed by the individual Jehovah's Witness to result in the loss of eternal life - the intruson on his religious freedom is substantial. Contrariwise, where the individual Jehovah's Witness believes that he is forbidden to consent to a blood transfusion, but that a court ordered transfusion has no effect

on his conscience or prospect for eternal life - the intrusion on his religious freedom is minimal. Having determined the degree of intrusion on the religious belief, the court can then weigh the right to religious freedom against the intersts of the state. A line of cases have recognized this distinction and the importance of it grows when examined in light of individual Jehovah's Witness dilemma due to possible excommunication for consenting to a blood transfusion.

The first case setting out a balancing test based on the "consent/receive" distinciton was Application of the President and Directors of Georgetown College, Inc., 331 F. 2d 1000 (D.D.C. 1964) (hereinafter referred to as Georgetown). Mrs Jesse Jones was brought to the hospital by her husband for emergency care, having lost two thirds of her body's blood supply from a ruptured ulcer. Mrs Jones, age 25, was the mother of a seven month year old child. Both Mrs Jones and her husband were Jehovah's Witnesses. Id at 1006. The physicians confirmed that Mrs Jones would die without blood transfusions and there was a better than 50% chance of saving her life with them. Id at 1007. The treatment proposed by the hospital was not a single transfusion, but a series of transfusions. Id at 1003.

Judge Wright, after application by the hospital to allow the transfusions, visited the hospital. Judge Wright then spoke to the patient's husband, Mr. Jones, who "advised me that, on religious grounds, he would not approve a blood transfusion for his wife. He said, however, that if the court ordered the transfusion, the responsibility was not his". Id at 1006-1007. Likewise, when Judge Wright questioned Mrs Jones whether she

would oppose a court ordered blood transfusion, she stated "that it would not then be my responsibility". Id at 1007.

The statements of Mr. and Mrs Jones delineated for Judge Wright their belief that they could not consent to a blood transfusion, but would not resist receiving a blood transfusion if ordered by the court. Seeing a blood transfusion as a minimal intrusion on Mrs Jones' religious freedom, Judge Wright ordered a limited number of transfusions for a limited time as required only to save her life. Id at 1003.

> Death, to Mrs Jones, was not a religiously commanded goal, but an unwanted side effect of a religious scruple . . . Mrs Jones had no wish to be a martyr. And her religion merely prevented her consent to a transfusion. If the law undertook the responsibility of authorizing the transfusion without her consent, no problem would be raised with respect to her religious practice. Thus, the effect of the order was to preserve for Mrs Jones the life she wanted without sacrifice of her religous beliefs. Id at 1009.

One year after the Georgetown case there arose the widely quoted federal decison of United States v. George, 239 F. Supp. 752 (D. Conn. 1965) wherein the court was faced with a situation quite similar to that in Georgetown. Elishas George was a 39 year old Jehovah's Witness hospitalized for a bleeding ulcer. Mr. George was married and the father of four children. Id at 753 The Veteran's Hospital orally applied to the court for an order permitting a transfusion. The court, being informed that the patient's condition was "precarious but not extreme" refused the hospital's application. Id at 752. Seven hours later Mr George's condition became critical and the government's attorney applied in writing. Id at 753.

Judge Zampano then went to the hospital and interviewed Mr George who told him he would rather die than agree to a blood transfusion, but would receive one if the court so ordered with a clear conscience.

> When the court introduced himself, George's first remarks were that he would not agree to be transfused but would in no way resist a court order permitting it, because it would be the court's will and not his own. His "conscience was clear", and the responsibility for the act was "upon the court's conscience" . . .
>
> . . . The court advised George it had no power to force a transfusion upon him, and he was free to resist the transfusion, even by the rather simple physical maneuver of placing his hand over the area to be injected by the needle. George stated he would "in no way" resist the doctor's actions once the court order was signed. Id at 753

The court then signed the order allowing the hospital to administer as many blood transfusions as in the physician's opinion were necessary to save the patient's life. Id at 753.

The testimony of Elishas George clearly defined his religious belief to Judge Zampano. While Mr. George was unable to consent to a court ordered blood transfusion due to his religious belief, he was able to receive a blood transfusion with "a clear conscience". When Mr. George defined this religious belief, Judge Zampano was able to balance the degree of intrusion a blood transfusion would have on that belief against the interest of State.

The court in George used the same approach as in Georgetown and adopted it's rationale. Id at 754. The George court also inferred that the prognosis of the patient was an important element in the balancing test. When Mr. George's condition was "precarious but not extreme" the court refused to act. Id at

752. But when the patient's condition was extreme the court did act. Id at 753.

The analysis used in George was applied to a different belief with a different result at In the Matter of Osborne, 294 A.2d 372 (D.C. 1972). Charles Osborne, a 34 year old father of two children, was admitted to the hospital with injuries and internal bleeding as a result of a tree falling on him. When the need for a blood transfusion arose, Mr. Osborne, being a Jehovah's Witness, refused and the hospital applied to the Superior Court for permission for the transfusion. Id at 373.

The hospital filed a petition with Judge Bacon of the Superior Court which held a hearing the night of the accident wherein the patient's wife, brother and grandfather testified for no transfusion. Judge Bacon was initially concerned about the capacity of Mr. Osborne to make a decision and only after counsel for the hospital confirmed that Osborne was lucid was the petition denied. Id at 373. The following day a request for reconsideration was made and denied after Judge Bacon considered the needs of the children. Id at 374. An expedited appeal was then made to the District of Columbia Court of Appeal who directed Judge Bacon to conduct a third hearing at the bedside of the patient. Id at 373.

The first reason a bedside hearing was ordered was to determine if Mr. Osborne was competent to make a rational decision, particularily in view of the possible impairment of judgment due to drugs. Id at 374. As in the privacy cases the threshold question is: Has the individual asserted his

individual right to freedom of religion? Once it has been ascertained that the right has been asserted, the courts balance the interests of the State against it.

The second reason for the Court of Appeals ordering the bedside hearing was to direct Judge Bacon to ask Mr. Osborne if he would be deprived of the opportunity for "everlasting life" if a transfusion were ordered by the court. Id at 374. When so questioned Mr. Osborne responded "yes" and expressed his belief that he would be deprived of everlasting life even if he involuntarily received a transfusion. Id at 375.

The Osborne court recognized that some Jehovah's Witnesses hold to the belief that they must refuse consent to a transfusion, but that a court ordered transfusion has no detrimental effect on their spiritual salvation.

> An additional consideration which impelled us to order that bedside hearing was doubt on the initial record whether the patient, if forced to undergo the blood transfusion, would consider himself blameless to the extent that his religious life would be unaffected...
>
> In United States v. George ...the court was faced with a patient who took the view that if forced "[h]is 'conscience was clear' and the responsibility for the act was 'upon the court's conscience'..." Id at 753. The patient in George stated that he would not resist a court ordered blood transfusion. **It seemed possible that the same view would be taken by this patient if he were questioned in the same way.** Id at 375 (emphasis added).

The Osborne court went on to recognize that other Jehovah's Witnesses believe they cannot receive an involuntary transfusion without losing eternal life.

> However, he [Charles Osborne] expressed the belief that he was accountable to God, in the sense of a loss of everlasting life, if he unwillingly received whole blood through transfusion. Id at 375

The Osborne court implies that had Mr. Osborne held the same belief as Mr. George on the effect which a court ordered blood transfusion would have on his religious life, then the ruling in George would have been adopted by the Osborne court.

In Osborne, the court clearly recognized that the degree of intrusion a court ordered blood transfusion would have on the religious belief of Elihas George was minimal, since it had no effect on his conscience or his chances of everlasting life because he had not consented to it. The court further recognized a court ordered transfusion would require a substantial intrusion on the religious belief of Charles Osborne who believed it would deprive him of everlasting life regardless of whether he consented or not.

The Osborne analysis was adopted in Florida through St. Mary's Hospital v. Ramsey, 465 So 2d 666 (9th DCA 1985). Ramsey dealt with a 27 year old Jehovah's Witness who was in need of a blood transfusion due to a kidney disease. Id at 667.

The decision does not disclose any statements of the patient, Mark Ramsey, but the court summarized his belief as:

> ...this particular patient is a Jehovah's Witness and his deeply held faith teaches that ingestion of whole blood will deny him both resurrection and eternal life. Id at 668

Such a belief put Mark Ramsey in the parameters of the Osborne decision, wherein to receive whole blood would deprive him of eternal life. The court in Ramsey cited "In the Matter of

Osborne" as the sole authority for holding Mark Ramsey's individual rights outweigh the State's interest in perserving his life.

Since Mr. Ramsey's belief as stated by the court was that the receiving of a blood transfusion would cost him eternal life, the intrusion on his religous belief would have been substantial - the Fourth District Court of Appeal ruled accordingly in denying a court ordered transfusion.

In determining the case before the court, Wons v. Public Health Trust of Dade County, consideration should be given to exactly what was the religious belief being asserted by Norma Wons. Is it a belief such as in Osborne and Ramsey that to receive even a court ordered blood transfusion would result in the loss of eternal life? If so, then the intrusion on her religious belief by a court ordered blood transfusion is substantially great. Or is her belief similar to Elihas George whose belief forbid him only from consenting to a blood transfusion, but if the court ordered the transfusion it would not effect his eternal life and left his "conscience clear". If the latter belief is held, then a blood transfusion is a minimal intrusion on her belief. The Amicus notes with interest the comment of Norma Wons after the court ordered transfusion when questioned on whether she believed she would be punished by God:

> "No, it was done against my wishes", she said. "In God's eyes I will not be blamed".
>
> Miami Herald, January 19, 1987 (Page 3 of Appendix to Petitoner's Reply Brief)

Likewise, the Order of Judge Newbold recites only her failure to consent. (Paragraphs 3,4 and 7 of the Order, pages 51-52 of

Appendix to Petitioner's brief)

That Norma Wons, who already received a court ordered blood transfusion, is spiritually blameless clearly indicated that she holds a belief like that in George. If she had a belief similar to that in Osborne she would be accountable to God even though the transfusion was involuntary. Thus, the intrusion on the right of religious freedom of Mrs Wons has been minimal.

At this point Amicus would suggest that, as in the privacy cases, the condition of the patient, be considered an element to be weighed along with the degree of intrusion on the religious belief. Where the Jehovah's Witness is not near death, then his right to religious freedom should not be overriden by the interests of the State and his refusal of a blood transfusion honored. It is only when the intrusion on his religious belief is minimal and he is near death that the interest of the State should override the right to religious freedom.

Under this analysis the order of Judge Newhold should be affirmed, but any further proposed blood transfusions to Mrs Wons be subject to a balancing test which takes into consideration the seriousness of her conditon at that time.

While it is the belief of the individual which is paramount, the belief of the majority of Jehovah's Witnesses in Florida is that if a court ordered blood transfusion is administered to a Jehovah's Witness without his or her consent, then he or she remains spiritually blameless. Such a belief attributes the sin or "blood guilt" to the court which ordered the transfusion and holds the individual Jehovah's Witness

spiritually blameless, as noted by Judge Wright in Georgetown at 1009.

This court is fortunate in having the Watchtower Bible and Tract Society appear before it as an Amicus Curiae. The brief submitted by the Amicus Curiae, Watchtower Bible and Tract Society, seems to imply that the official teaching of the religion is that a court ordered blood transfusion given against the consent of the Jehovah's Witness results in a loss of his or her spiritual life.[1] With the Amicus, Watchtower Bible and Tract Society, appearing before the court, the question which we pose to and request that the court ask the Watchtower Bible and Tract Society, is specifically:

> UNDER THE OFFICIAL TEACHINGS OF THE WATCHTOWER BIBLE AND TRACT SOCIETY, WHAT "GRAVE SPIRITUAL LOSS" WILL A JEHOVAH'S WITNESS INCUR WHO IS ADMINISTERED A COURT ORDERED BLOOD TRANSFUSION TO WHICH SHE OR HE HAS NOT CONSENTED?

---

[1] "It is the transfusion, the blood itself, that is objectionable irrespective of who gives the consent." Brief of the Amicus Curiae, Watchtower Bible and Tract Society, at Page 6.

". . . 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." Brief of the Amicus Curiae, Watchtower Bible and Tract Society, at page 5.

THE PRACTICE OF THE WATCHTOWER BIBLE AND TRACT SOCIETY IN EXCOMMUNICATING ANY JEHOVAH'S WITNESS WHO CONSENTS TO A BLOOD TRANSFUSION "CHILLS" THE RIGHT OF THE INDIVIDUAL TO CHOSE LIFE.

Certain cases reviewed herein such as In the Matter of Osborne, supra, reveals an adament Jehovah's Witness who obviously would prefer death than compromise in any fashion his belief on refusing a blood transfusion. Yet a review also reveals another pattern wherein the Jehovah's Witness is equivocal and appears to be saying "yes and no" at the same time.

In United States v. George, supra, Elihas George who had been a Jehovah's Witness for less than two years would not even so much as put his hand on his arm to prevent a transfusion, but would not consent to the transfusion. Mr. George did not move to set aside the initial court order requiring a series of transfusions. Likewise, when a series of blood transfusions were ordered for Mrs. Jones in Georgetown she did not move to set aside the order until ten days after it had become "functus officio" by it's own terms and her life was no longer in danger. Id at 1003, footnote 8.

The inconsistent behavior in George and Georgetown may be understood when one realizes the dilemma the Jehovah's Witness finds himself in when requiring a life saving blood transfusion due to the practice of the Watchtower Bible and Tract Society in "disfellowshiping" persons who consent to a transfusion.

When a person enters the Jehovah Witness organization he or she is encouraged to associate only with other Jehovah's Witnesses, since all other persons are part of the devil's system which the Watchtower Bible and Tract Society refers to as

"Babylon the Great". The Truth That Leads to Eternal Life, Watchtower Bible and Tract Society of New York, Inc., p. 133 (1968).

Should a Jehovah's Witness fail to adhere to certain of the mandates set out by the the Watchtower Bible and Tract Society he or she is subject to being excommunicated from the Jehovah's Witness organization. This status of being excommunicated is referred to by the Watchtower Bible and Tract Society as being "disfellowshiped." Watchtower, September 9, 1981, p.23.

Should a Jehovah's Witness be "disfellowshiped", all other Jehovah's Witnesses are forbidden to associate with him or her by giving even so much as a greeting to that person. Watchtower, September 15, 1981, p. 25. There is to be no communication with a "disfellowshiped" person, unless necessary to conduct business or legal obligations. Watchtower, July 1, 1963, p.413. This treatment of a "disfellowshiped" person is required to be carried out by family members who are Jehovah's Witnesses, as well as, friends and acquaintances. Watchtower, September 15, 1981, p.29. Should a Jehovah's Witness in good standing associate with one who is "disfellowshiped", then that Jehovah's Witness is subject to also being disfellowshiped. Watchtower, September 15, 1981, p. 25-26.

The voluntary acceptance of a blood transfusion by a Jehovah's Witness is a grounds disfellowshipment as it is considered a violation of God's law as interpreted by the Watchtower Bible and Tract Society. Watchtower, January 15, 1961, p. 63-74.

A court ordered blood transfusion to a Jehovah's Witness does not constitute grounds for disfellowshipment.

The answer for a Jehovah's Witness who finds himself in this dilemma is best stated by Judge Wright in Georgetown:

> . . . If the law undertook the responsibility of authorizing the transfusion without her consent, no problem would be raised with respect to her religious practice. Thus, the effect of the order was to preserve for Mrs. Jones the life she wanted without sacrifice of her religious beliefs. Id at 1009.

In reality Judge Wright was preserving for Mrs. Jones more than just her life he was also delivering her from the prospect of being shunned by her family and friends for chosing life.

Should a Jehovah's Witness require a blood transfusion to remain alive then he or she in the absence of intervention by the State, faces only two options both of which put him or her in a "no win" situation. Only a court ordered blood transfusion will preserve their life, while allowing them to avoid being "disfellowshiped" with it's emotional toll.

C O N C L U S I O N

The Amicus Curiae, Christian Information Service, Inc., would respectfully request that the court affirm that the preservation of life is a valid State interest in the context of the refusal of medical treatment cases and as such is to be balanced against the individual's rights to privacy and freedom of religion.

That the court set forth the clear and logical test below whereby the courts in the State of Florida can balance the rights of the individual against the intersts of the State in the context of a refusal of medical treatment case.

First, that this court set the threshold question to be whether the individual has competently asserted his right to privacy and/or religious freedom.

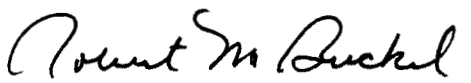
When the right to privacy has been competently asserted or ascertained when the individual is incompetent, that the court weigh the degree of bodily intrusion and the prognosis of the individual when balancing the individual's right to privacy against the State's interest in preserving life and protecting third parties.

When the right to religious freedom has been competently asserted or ascertained as a ground for refusing medical treatment, that the trier of fact determine from the individual what is the religious belief which is being asserted. Once the religious belief is defined, that the court weigh the degree of intrusion on the belief and whether the patient is near death when balancing the individual's right to religious freedom

against the State's interest in preserving life and protecting minor children.

The Amicus would finally request that in the case before the court be analyzed under the foregoing tests and that Judge Newbold's order be affirmed.

Respectively submitted,



Robert M. Buckel

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Brief of the Amicus Curiae, Christian Information Service, Inc., a Florida corporation not for profit, was mailed to AURORA ARES, Assistant County Attorney, Jackson Memorial Hospital/Public Health Trust Division, 1611 N.W. 12th Avenue, Executive Suite C, Room 108, Miami, Florida 33136, and to JOHN KELNER, ESQUIRE, Kelner and Kelner, 2215 Amerifirst Building, One S.E. Third Avenue, Miami, Florida 33131, and to MARTIN G. BROOKS, ESQUIRE, 300 Hollywood Federal Building, 4600 Sheridan Street, Hollywood, Florida 33021 on this 1st day of June, 1987.

ROBERT M. BUCKEL, ESQUIRE
Catalano, Fisher, Buckel
and Johnson Chartered
3003 N. Tamiami Trail, #275
Naples, Florida 33940
(813) 262-8000