IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,970

THE PUBLIC HEALTH TRUST
OF DADE COUNTY, FLORIDA,

Petitioner,

vs.

NORMA WONS,

Respondent.

FILED
SID J. WHITE
JUL 1 1987
CLERK, SUPREME COURT
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Deputy Clerk

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APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

CASE NO. 86-985

RESPONDENT'S REPLY BRIEF TO
CHRISTIAN INFORMATION SERVICE, INC.'S
AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

Page

Table of Authorities i

ARGUMENT

QUESTIONS ABOUT "ORTHODOX" CHRISTIANITY'S VIEWS ON BLOOD TRANSFUSIONS ARE NONJUSTICIABLE AND ARE IRRELEVANT TO THE ISSUES IN THIS CASE 1

NORMA WONS' RIGHTS OF BODILY INTEGRITY, PRIVACY, AND RELIGIOUS FREE EXERCISE DO NOT DEPEND ON THE MEDICAL PROFESSION'S ASSESSMENT OF THE DEGREE OF BODILY INVASION OR THE PROGNOSIS OF A PROPOSED MEDICAL INTERVENTION 2

THE COURT ORDERED BLOOD TRANSFUSIONS ADMINSTERED TO NORMA WONS WERE REPUGNANT TO HER AND DEEPLY DISTURBED HER CONSCIENCE 10

QUESTIONS ABOUT THE INTERNAL DISCIPLINARY PROCEDURES OF JEHOVAH'S WITNESSES ARE NONJUSTICIABLE AND ARE IRRELEVANT TO THE ISSUES IN THIS CASE 16

CONCLUSION 18

Certificate of Service 19

Table of Authorities

Cases

Bartling v. Superior Court,
163 Cal. App. 3d 186, 209 Cal. Rptr. 220 (1984) 8

Bouvia v. Superior Court,
179 Cal. App. 3d 1127, 225 Cal. Rptr. 297 (1986) 7, 8

Cantwell v. Connecticut,
310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) 12

In re Conroy,
98 N.J. 321, 486 A.2d 1209 (1985) 2, 3, 7

In re Quinlan,
70 N.J. 10, 355 A.2d 647 (1976) 2

Wallace v. Jaffree,
105 S.Ct. 2479, 86 L.Ed.2d 29 (1985) 12

West Virginia State Board of Education v. Barnette,
319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) 8

Books

American Association of Blood Banks,
Technical Manual (9th ed. 1985) 9

Jonsen & Lister, Life-Support Systems,
in Encyclopedia of Bioethics (W. Reich ed. 1978) 4, 5

Markowicz, Whose Life Is It Anyway?,
in Legal and Ethical Aspects of Treating
Critically and Terminally Ill Patients
(A. Doudera & J. Peters eds. 1982) 4

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 (1983) 4, 5

Periodicals

Clarke, The Choice to Refuse or Withhold Medical
Treatment: The Emerging Technology and Medical-
Ethical Consensus, 13 Creighton L. Rev. 795 (1980) 8

Showalter, _Decisions to Forego Medical Treatment: The Preferred Medical, Ethical, and Legal Approach_, 29 Cath. Law. 286 (1984) 5, 6

Teff, _Consent to Medical Procedures: Paternalism, Self-Determination or Therapeutic Alliance_, 101 L.Q. Rev. 432 (1985) 6

Note, _Guaranteeing the Right to Privacy: A Proposal_, 17 Rutgers L.J. 615 (1986) 3

QUESTIONS ABOUT "ORTHODOX" CHRISTIANITY'S VIEWS ON BLOOD TRANSFUSIONS ARE NONJUSTICIABLE AND ARE IRRELEVANT TO THE ISSUES IN THIS CASE

At page one of its brief, Amicus Curiae Christian Information Service, Inc., (hereinafter CIS) acknowledges that the freedom to hold religious beliefs is absolute but then attacks the reasonableness of Respondent's religious beliefs by means of an appendix. Not only has the reasonableness of Respondent's religious beliefs never been an issue in this case but such an issue is nonjusticiable in a secular court. Respondent will not take the time or space to repeat the law prohibiting secular courts from assessing the reasonableness of religious beliefs. Respondent refers this Court to paragraphs 6 through 9 of her May 21, 1987, Motion to Limit the Contents of Christian Information Service, Inc., Amicus Curiae Brief, and to paragraphs 4 through 7 of her June 11, 1987, Motion to Strike Irrelevant or Non-Record Matters of Amicus Curiae Brief of Christian Information Service, Inc.

Since there can be no substantive legal discussion of an issue that is not justiciable in a secular court, Respondent has nothing to say in response to CIS's "argument" on this point except to emphasize that it is irrelevant and nonjusticiable. There is no legally right or wrong, or legally reasonable or unreasonable, religion or set of beliefs. The views of "orthodox" Christianity contribute nothing appropriate or useful to the resolution of this case.

NORMA WONS' RIGHTS OF BODILY INTEGRITY, PRIVACY, AND RELIGIOUS FREE EXERCISE DO NOT DEPEND ON THE MEDICAL PROFESSION'S ASSESSMENT OF THE DEGREE OF BODILY INVASION NOR ON A PROGNOSIS OF THE PROPOSED MEDICAL INTERVENTION

Respondent Norma Wons' right to control what is done to her body, to make her choice of medical treatment in private, free from governmental interference, and to freely practice her religion does not depend on some doctor's view of what is minimal as opposed to extensive bodily invasion, nor on some doctor's speculation as to the probable results of that invasion. CIS attempts to show that a "line of cases," including two New Jersey cases which no longer state New Jersey law on this point, represent the current thinking on this issue. Nothing could be further from the truth.

An adult's right to choose or reject a given mode of medical treatment depends on wholly personal reasons and not on the approval of a doctor. CIS is accurate in saying that the New Jersey Supreme Court in In re Quinlan, 70 N.J. 10, 355 A.2d 647 (1976), mentioned that the state had authority to force treatment on a nonconsenting patient when the proposed treatment constituted a "minimal bodily invasion" that would provide a "very good" prospect of recovery. Id. at 40-41, 355 A.2d at 663-64. However, CIS failed to inform this Court that the New Jersey Supreme Court subsequently abandoned this dictum.

In In re Conroy, 98 N.J. 321, 486 A.2d 1209 (1985), the

New Jersey Supreme Court adjusted its position and put itself in line with the overwhelming weight of authority on the question of minimal versus extraordinary medical intervention:

> We . . . find unpersuasive the distinction relied upon by some courts, commentators, and theologians between "ordinary" treatment, which they would always require, and "extraordinary" treatment, which they deem optional. The terms "ordinary" and "extraordinary" have assumed too many conflicting meanings to remain useful. To draw a line on this basis for determining whether treatment should be given leads to a semantical milieu that does not advance the analysis.
>
> . . . [T]he ordinary/extraordinary distinction is irrelevant except insofar as the particular patient would have made the distinction.
>
> . . . .
>
> . . . A competent adult patient has the right to decline <u>any medical treatment</u> . . . .

<u>In re Conroy</u>, 98 N.J. at 370-72, 374, 486 A.2d at 1234-35 (emphasis added). As one commentator explained, "The <u>Conroy</u> decision replaced the <u>Quinlan</u> court's sliding scale emphasis [by stating that] regardless of the prognosis or the degree of bodily invasion, a competent person may reject medical treatment at any time." Note, <u>Guaranteeing the Right to Privacy: A Proposal</u>, 17 Rutgers L.J. 615, 627 (1986).

The problem with CIS's minimal/extensive or ordinary/extraordinary criterion is that it completely ignores the patient's personal values and goals. What the medical profession considers to be routine or minimally invasive treatment has nothing

to do with the patient's subjective view of what is in his own best interests. "[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 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 87 (1983).

> Whether care is "ordinary" or "extraordinary" should not determine whether a patient must accept or may decline it. The terms have come to be used in conflicting and confusing ways, reflecting variously such aspects as the usualness, complexity, invasiveness, artificiality, expense, or availability of care. If used in their historic sense, however—to signify whether the burdens a treatment imposes on a patient are or are not disproportionate to its benefits—the terms denote useful concepts. To avoid misunderstanding, public discussion should focus on the underlying reasons for or against a therapy rather than on a simple categorization as "ordinary" or "extraordinary."

Id. at 62.

> We are not merely talking about medically extraordinary actions; rather, from an ethical or moral point of view, we must take into consideration all the circumstances of the actual situation. We cannot, therefore, label an I.V. as being either ordinary or extraordinary: the label depends upon the situation. We cannot label the respirator as being either ordinary or extraordinary: that depends upon the situation.

Markowicz, Whose Life Is It Anyway?, in Legal and Ethical Aspects of Treating Critically and Terminally Ill Patients 99 (A. Doudera & J. Peters eds. 1982); see also Jonsen & Lister, Life-Support

Systems, in Encyclopedia of Bioethics 840-48 (W. Reich ed. 1978).

Emphasizing the importance of the patient's view of what is acceptable or unacceptable medical treatment, as well as the subjectivity of the labels put on different types of medical treatment, the President's Commission stated:

> [E]xtraordinary treatment is that which, in the patient's 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.
>
> . . . [I]t is better for those involved in the difficult task of establishing policies and guidelines in the area of treatment decisions to avoid employing these phrases. Clarity and understanding in this area will be enhanced if laws, judicial opinions, regulations, and medical policies speak instead in terms of the proportionate benefit and burdens of treatment as viewed by particular patients.

President's Commission, Deciding to Forego Life-Sustaining Treatment at 88-89 (emphasis added).

Another commentator said this:

> Each patient is different. Each has his or her own attitudes toward serious illness, his or her own emotional and spiritual needs, his or her own temporal obligations, his or her own tolerance for suffering. What may seem beneficial to one may be overly burdensome to another. Medical treatment cannot, therefore, be classified a priori as "ordinary" or "extraordinary," "obligatory" or "nonobligatory." The decision must be made by or for each person based on a thorough consideration of all the facts of the case and with the patient's wishes or best interests foremost in mind.

Showalter, Decisions to Forego Medical Treatment: The Preferred Medical, Ethical, and Legal Approach, 29 Cath. Law. 286, 312 (1984).

Still another commentator stated:

> [T]he doctor cannot intuitively know precisely what constitutes health or well-being for a particular patient. The optimum "outcome" is not necessarily to be equated with the technically successful result of a given operation, but may embrace a prognosis of the patient's subsequent medical and psychological condition and ability to function, as well as other social and financial considerations where relevant.
>
> . . . There is no a priori reason to assume that a doctor or surgeon possesses the kind of psychological or moral insight that would enable him to decide unaided what is most appropriate. The relative importance which patients attach, for example, to quality as against length of life, and to physical integrity and appearance as against diminution of pain, may reflect personal values, circumstances and priorities of which the surgeon, in particular, is initially unaware and may never become sufficiently apprised.

Teff, Consent to Medical Procedures: Paternalism, Self-Determination or Therapeutic Alliance, 101 L.Q. Rev. 432, 450-51 (1985).

For Respondent, there was no comparison between the burden and the benefit from receiving blood. The possible benefit of extended physical life paled in comparison to the burden of losing out on everlasting life in God's promised Kingdom. Under no medical circumstance would this lopsided comparison have changed for Norma Wons. In the context of her personal goals and values,

the transfusion of blood was an extraordinary and repulsive procedure, no matter how routine or minimal it was to Petitioner and its personnel.

In addition to its 'minimal-versus-extensive-bodily-invasion' argument, CIS argues that the doctor's prognosis should also have a bearing on the court's decision to force treatment against the patient's will—the better the prognosis, the less freedom the patient should have to refuse the treatment. CIS in essence argues that a patient should have the right to decline a mode of treatment only when the patient is terminally ill or when, in the doctor's opinion, the treatment will be inefficacious.

The right to choose treatment in accord with one's deeply held religious beliefs or personal goals and values does not turn on the patient's life expectancy or the efficacy of the treatment but on the fact that the patient is an individual human being who deserves the dignity and honor of having decisions about his own medical care respected. As the New Jersey Supreme Court said in In re Conroy, 98 N.J. 321, 355, 486 A.2d 1209, 1226 (1985):

> Ms. Conroy's right to self-determination would not be affected by her medical condition or prognosis. . . . [A] young, generally healthy person, if competent, has the same right to decline life-saving medical treatment as a competent elderly patient who is terminally ill. . . . [A] competent person's common-law and constitutional rights do not depend on the quality or value of his life.

"[T]here is no practical or logical reason to limit the exercise of

this right [to refuse treatment] to 'terminal' patients." Bouvia v. Superior Court, 179 Cal. App. 3d 1127, 1139, 225 Cal. Rptr. 297, 302 (1986); see also Bartling v. Superior Court, 163 Cal. App. 3d 186, 193, 209 Cal. Rptr. 220, 223 (1984) (lower court erred "when it held that the right to have life-support equipment disconnected was limited to comatose, terminally ill patients").

If a person's right to choose treatment in private according to her religious convictions or personal goals and values is recognized only when the treatment is not important or when the patient is near death anyway, "it does not amount to much of a right." Clarke, The Choice to Refuse or Withhold Medical Treatment: The Emerging Technology and Medical-Ethical Consensus, 13 Creighton L. Rev. 795, 816 n.106 (1980). As the United States Supreme Court said in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943): "[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." Id. at 642, 63 S.Ct. at 1187, 87 L.Ed. at 1639.

CIS's minimal invasion and prognosis arguments ask this Court to put a patient's rights of bodily integrity, privacy, and religious free exercise completely in the hands of doctors whenever questions about choice of treatment arise. Does a competent

adult's right to choose medical treatment as he sees fit, to control what is done to his body, to make decisions affecting his own body in private, and to freely practice his religion turn on the medical profession's views of what is minimally invasive or what is a good prognosis?

To assume, as CIS and Petitioner do, that all blood transfusions are life-saving and free from serious complication is to ignore the reality of medical science. With debate raging over the problems of AIDS and other blood-related diseases,* it would be the height of foolishness to give the medical profession *carte blanche* authority to decide what should or should not be compulsory treatment—the subject is too controversial to admit of any medical standard. Nowhere in the law is there support for vesting such authority in the medical profession. Rather it is the patient, the individual, who must decide for herself what is best for her. CIS's arguments on this point should be given short shrift.

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* *See* American Association of Blood Banks, *Technical Manual* 326 (9th ed. 1985) (listing hemolysis; febrile nonhemolytic reaction; anaphylaxis; urticaria; noncardiac pulmonary edema; fever with shock; congestive heart failure; graft-vs-host disease; posttransfusion purpura; alloimmunization to red blood cell or white blood cell antigens, platelets or plasma proteins; iron overload; hepatitis; AIDS; and protozoal infection as some immediate and delayed adverse effects of blood transfusions).

THE COURT ORDERED BLOOD TRANSFUSIONS ADMINSTERED TO NORMA WONS WERE REPUGNANT TO HER AND DEEPLY DISTURBED HER CONSCIENCE

Using the foregoing minimal invasion and prognosis arguments as a pattern, CIS goes to considerable lengths to manufacture a second "line of cases" that allegedly requires secular courts to closely examine the beliefs of patients who refuse medical treatment. CIS argues that it is not enough for the patient to refuse a mode of treatment for religious reasons. According to the 'authority' marshaled by CIS, a court must undertake a detailed assessment of the 'degree of intrusion or infringement on the patient's religious beliefs' before deciding to uphold or override the patient's rights of religious free exercise, privacy, and bodily integrity. If the court determines that the intrusion or infringement on the patient's religious beliefs will be minimal, then the medical treatment should be ordered.

The basis of CIS's proposition is that there are "two different beliefs" among Jehovah's Witnesses on the question of blood. Relying on judicial interpretation of the actions and words of Witness patients in the cases of In re Georgetown College, United States v. George and In re Osborne, CIS readily concludes that while some of Jehovah's Witnesses view the transfusion of blood as religiously objectionable, other Witnesses view merely their consent to blood as objectionable. CIS argues that if a Witness patient simply refuses to consent to a blood transfusion

but is not careful to refuse the blood itself, the Witness patient's religious objection to blood is minimal and so should be overridden by a court ordered transfusion.

Respondent Norma Wons utterly rejects CIS's artificial distinction between consent to and receipt of blood. CIS's argument completely misrepresents and demeans Respondent's beliefs on the subject. Contrary to CIS's argument, Respondent fully agrees with the discussion of Jehovah's Witnesses' stand on blood as presented at pages 4 to 6 of the Brief of Amicus Curiae, Watchtower Bible and Tract Society of New York, Inc., the Witnesses' parent organization. Watchtower's discussion accurately presents the views of Respondent and her family.

Moreover, even if it were assumed for the sake of argument that Jehovah's Witnesses have "two different beliefs" regarding the spiritual consequences of receiving a court ordered blood transfusion, CIS's minimal-spiritual-intrusion argument fails on its own terms. At the outset of its discussion, CIS several times refers to the effect that the religiously abhorrent treatment will have on the patient's conscience and suggests that if the patient will suffer emotional or spiritual trauma, the intrusion would be more than minimal and therefore would unconstitutionally infringe the patient's religious freedom. However, in the body of its discussion, CIS gives no attention to the offense to the patient's conscience or sensibilities but focuses solely on the

effect the compelled treatment will have on the patient's prospects for everlasting life. CIS carefully presents the Georgetown College, George and Osborne cases to support its proposition that unless the patient believes she will lose everlasting life, the intrusion on religious free exercise and freedom of conscience is minimal and therefore no bar to court ordered treatment.

Thus CIS does not follow through on its own analysis. CIS bases its consent-vs-receipt argument on the patient's beliefs about her prospects for eternal life or salvation but ignores the patient's conscience and the emotional and spiritual trauma caused by a forced transfusion. In this way CIS misportrays the beliefs of Respondent and in essence says Jehovah's Witnesses are entitled to First Amendment free exercise protection only when they believe state action threatens their everlasting life. Quite to the contrary, the First Amendment unstintingly protects the individual's freedom of conscience in matters of religion; First Amendment protection is not limited merely to governmental action that the individual believes will deprive her of everlasting life.

"[T]he individual's freedom of conscience [is] the central liberty that unifies the various clauses of the First Amendment." Wallace v. Jaffree, 105 S.Ct. 2479, 2487, 86 L.Ed.2d 29 (1985). As the Supreme Court said in Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), "Freedom of conscience . . . cannot be restricted by law." Id. at

303, 60 S.Ct. at 903. The same would hold true for trial courts called upon to make decisions in cases such as the present one. To accept CIS's argument and allow court ordered medical treatment whenever a patient does not believe her everlasting life will be lost ignores the serious offense to the patient's conscience and dignity as well as the emotional trauma that will come from being forced to submit to religiously abhorrent treatment.

Simply because one of Jehovah's Witnesses does not believe her God will deprive her of everlasting life if she is forced to submit to a transfusion against her will should not provide a basis for court ordered treatment. Respondent believes the Almighty God Jehovah is a just God (Psalm 37:28; Isaiah 61:8), and that he will not hold a person morally or spiritually culpable for matters over which she had no control. For example, Respondent believes that Jehovah would not consider a woman to be a fornicator if she were forcibly raped despite her efforts to resist. But despite the lack of moral or spiritual culpability, the trauma and offense to the woman's dignity and conscience cannot be denied.

Respondent views the transfusion she was compelled to submit to in the same way. The scriptural directive to 'abstain from blood' is plain. (Acts 15:28, 29) The idea of taking blood into the body is abhorrent to Respondent. Being forced to submit to a transfusion was not only a gross violation of Respondent's physical integrity but was repulsive to her sensibilities as a

Christian and deeply offended her conscience. To say that the freedom of religion afforded by the First Amendment to the United States Constitution does not stand as a barrier to such an outrageous assault on individual dignity and freedom of conscience is to belittle the individual and ignore the essence of the First Amendment.

CIS's delicate dissection of the issue of consent misses the point. The law traditionally requires a patient's consent before any treatment can be administered. Thus refusal of consent traditionally has protected the patient from unwanted treatment. But consent is not the real issue, the blood is. Respondent would not consent to blood under any circumstances. For Respondent, the blood itself was detestable. If consent in any way, shape or form would have resulted in a transfusion, then Respondent would have and did refuse to give such consent, not because consent in itself is so important but becasue it would have led to the actual receipt of blood. Refusal of consent is merely a means to avoid what is truly objectionable, the blood itself.

And just because Respondent believes she would not be held morally or spiritually responsible for receiving a forced blood transfusion does not mean she was somehow willing to 'accept' the transfusion, as CIS argues. Artful distinctions between refusing consent and refusing the blood itself are the creation of judges and attorneys seeking to rationalize the imposition of their

subjective views on an unpopular religious minority.

If CIS really means what it says about an offense to the patient's conscience being a non-minimal intrusion on religious beliefs that would prevent court ordered treatment, then Respondent's disgust for blood transfusions should end the inquiry. Regardless of questions of salvation and everlasting life, Respondent viewed the introduction of blood into her body as repulsive; her conscience was deeply offended and disturbed by the court ordered transfusion. Thus, even if one were to apply CIS's standard, the conclusion would be that the trial court committed serious error if it believed that the blood transfusions it ordered would only minimally intrude on Respondent's conscience and sense of dignity.

QUESTIONS ABOUT THE INTERNAL DISCIPLINARY PROCEDURES OF JEHOVAH'S WITNESSES ARE NONJUSTICIABLE AND ARE IRRELEVANT TO THE ISSUES IN THIS CASE

At page twenty-two of its brief, CIS goes into a discussion of the general beliefs, practices, and internal disciplinary procedures of Jehovah's Witnesses, making numerous factual assertions having no basis in the record of this case. CIS then raises an issue about these internal disciplinary procedures that has never been raised by the parties in this lawsuit. To the extent it is even proper for CIS to present this discussion and raise this issue, Respondent replies that both the discussion and the issue raised are irrelevant and rely on non-record factual assertions that grossly misportray Respondent's beliefs and practices as one of Jehovah's Witnesses.

CIS's primary argument is that the internal disciplinary procedures of Jehovah's Witnesses somehow "chilled" Respondent's decision to accept a blood transfusion. Respondent utterly rejects this argument. The scriptural prohibition against blood is plain. (Acts 15:28, 29) Respondent was obeying that scriptural directive when she refused blood. Respondent was in no way "chilled" by any other considerations but was motivated purely by her desire to serve her God obediently. Respondent has been one of Jehovah's Witnesses for over twenty years. She and her family have freely and voluntarily chosen to study the Bible and practice their religion in association with Jehovah's Witnesses. They can just as

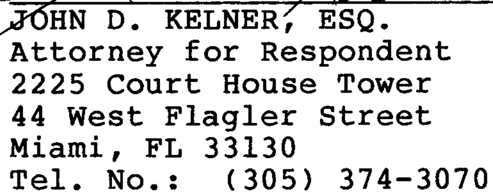
freely and voluntarily quit that association, change their beliefs, and accept all the blood they want, if that is their decision. CIS's argument about the 'chilling' effect of Jehovah's Witnesses' internal disciplinary procedures has no factual basis in the record of this case and therefore is irrelevant and contributes nothing to the resolution of this appeal.

In addition, even if this Court were inclined to entertain this factually unfounded and completely novel argument about the 'chilling' effects of Jehovah's Witnesses' internal disciplinary procedures, the Court must then be ready to lower itself into all of the factual assertions presented for the first time in CIS's Amicus Brief. Only after a thorough evaluation of these 'facts' will this Court be in a position to make the assessment of Respondent's religious beliefs and practices that CIS wants the Court to make. Respondent submits that this Court is not at liberty to make such an assessment. Questions about the wisdom, propriety or reasonableness of religious beliefs, practices, and internal church procedures are not justiciable in secular courts. _See_ Respondent's Motion to Limit the Contents of Christian Information Service, Inc., ¶¶ 6 to 9 (May 21, 1987); Respondent's Motion to Strike Irrelevant or Non-Record Matters of Amicus Curiae Brief of Christian Information Service, Inc., ¶¶ 4 to 7 (June 11, 1987). Again, consideration of CIS's 'chilling' effects argument contributes nothing to the resolution of this appeal.

CONCLUSION

It is obvious to Respondent that CIS has no real interest in assisting this Court with the resolution of the issues that have been litigated by the parties in this case. CIS really wants to argue about the beliefs and practices of Jehovah's Witnesses, to turn this case into a debate over the reasonableness of the theology and practices of Jehovah's Witnesses. CIS is entitled to its views, teachings, and criticisms, but this case has not been and should not be transformed into a forum for such nonjusticiable disputes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief 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; MARTIN G. BROOKS, P.A., 300 Hollywood Federal Building, 4600 Sheridan Street, Hollywood, Florida 33021; DONALD T. RIDLEY, ESQ., 25 Columbia Heights, Brooklyn, New York 11201; and ROBERT M. BUCKEL, ESQ., Catalano, Fisher, Buckel and Johnson, Chartered, 3003 Tamiami Trail No. #275, Naples, Florida 33940, this 29th day of June, 1987.

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