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IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CASE NO. 77,067

WILLIAM HERMANSON and
CHRISTINE HERMANSON,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent,

HONIGMAN MILLER SCHWARTZ AND COHN

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT

BRIEF OF AMICUS CURIAE THE FIRST CHURCH OF CHRIST, SCIENTIST
IN SUPPORT OF PETITIONERS

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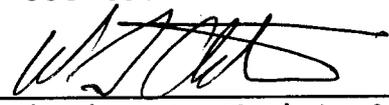
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I. STATEMENT OF THE CASE AND OF THE FACTS

The First Church of Christ, Scientist, in Boston, Massachusetts (the "Church"), as Amicus Curiae, respectfully submits this Brief in support of the appeal of William and Christine Hermanson from their conviction of felony child abuse and third degree murder as a result of the death of their daughter, Amy.

A. THE INTERESTS OF THE CHURCH
IN FILING THIS AMICUS BRIEF

The record below shows that the Hermansons were faithful Christian Scientists who conscientiously followed Christian Science tenets, teachings and practices in rearing their children and administering to their physical needs. See Petitioners' Brief at 6-11. Indeed, the State stipulated to this fact prior to the trial. (Id. at 4). Unfortunately, the Hermansons suffered the tragic loss of their child, Amy, despite their efforts to have her restored to health by following their sincerely-held belief in Christian Science healing in accordance with Church doctrine.

Their conviction in this case is, in effect, a determination that the Hermansons' Christian Science way of life and their conscientious practice of Christian Science healing is unlawful, i.e., third degree murder, because they relied on Christian Science healing for the health and physical well-being of their child, rather than conventional medical

treatment. Thus, the Hermansons were convicted and punished precisely because of their belief in, and reliance upon, Christian Science healing. Moreover, the conviction has the effect of deterring the Hermansons, as well as other Christian Scientists, from adhering to and relying upon Christian Science healing for the health and physical well-being of their children.

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The State's prosecution of the Hermansons constitutes a flagrant intrusion upon the rights of the Hermansons and all Christian Scientists to freely exercise their religion, and totally ignores a carefully drawn State scheme which both protects the State's legitimate concern for children's health while accommodating the religious beliefs of parents in accordance with the mandate of the United States and Florida Constitutions. The Church, which has supported and fostered the growth of Christian Science throughout the world, believes it has the right, duty and obligation to ensure that the Free Exercise rights of all Christian Scientists are protected, so as to preserve Christian Science, the Christian Science community, and the Christian Science way of life. It is with these fundamental views in mind that the Church argues that the convictions of the Hermansons should be overturned.

B. THE PROSECUTION OF THE HERMANSONS IS AN ASSAULT UPON THE CHURCH ITSELF, CHRISTIAN SCIENCE DOCTRINE, THE CHRISTIAN SCIENCE COMMUNITY, AND THE CHRISTIAN SCIENCE WAY OF LIFE

1. The First Church of Christ, Scientist, is a Well-Recognized Church or Religious Organization

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The First Church of Christ, Scientist, is one of only a few major indigenous American religious denominations. Founded in 1879 by Mary Baker Eddy, it was reorganized in 1892 into roughly federal form as "The Mother Church" in Boston, Massachusetts, and its "branch" churches. They number today about 2600 (97 in Florida alone), and are found in over 60 countries. The predominant representation is in the United States. For a more detailed history of the Church, see, e.g., Gottschalk, The Emergence of Christian Science in American Religious Life (Berkeley, University of California Press 1973).

Accurate recent statistics for membership in the Church are not available, but current estimates of those who practice Christian Science healing range between 350,000 and one-half million. The Church's influence has reached substantially beyond its numerical size, however. Religious historians have noted that Christian Science has "played a leading part in reawakening interest in spiritual healing among many mainstream denominations" and that it "has increasingly been perceived as anticipating the development of feminism in the religious world." Encyclopedia Britannica at 564 (15th Ed. 1984). "Mrs. Eddy and her message," Sydney Ahlstrom wrote in his acclaimed

1973 history of American religion, "have undoubtedly brought health, serenity and prosperity to many people. She dramatized a new approach to religion and biblical interpretation, and she clearly stimulated much interest in the ministry of healing which the Protestant churches had virtually abandoned, despite its prominence in the New Testament." Ahlstrom, A Religious History of The American People (New Haven, Yale University Press 1972) at 1025-26. "Her legacy," agrees religious historian Martin E. Marty, "was a religious movement that brought healing to hundreds of thousands. Its secret was an all-inclusive outlook on life that ennobled their days. Hers was one of the most impressive visions and achievements on the American spiritual landscape." Marty, Pilgrims In their Own Land: 500 Years of Religion in America (Boston, Little, Brown & Co. 1984) at 331.

The Church is also well known for its publication of the respected international newspaper, The Christian Science Monitor. Established in 1908, the newspaper has a wide reputation for its objective and thoughtful journalism and has won five Pulitzer prizes and many other awards. Monitorradio, part of the newspaper's broadcasting arm, is carried on some 200 Public Radio stations. "World Monitor -- A Television Presentation of The Christian Science Monitor," is a daily in-depth news analysis televised throughout the United States over the National Discovery Channel, a cable network. As a

1980 article in the Catholic Magazine, Sign, observed, "[o]ver the past century, Christian Science has earned respect . . . by the journalistic world leadership exercised by Mrs. Eddy's best known undertaking, The Christian Science Monitor, and by the simple, quiet dignity of its churches, its publications and its members' lives." Robins and Whitson, "Mary Baker Eddy's Christian Science," 59 Sign, No. 10 at 1721 (July/August 1980).

As the Church's publication of the Monitor suggests, while Christian Scientists have strong religious convictions, they are far from isolated from society. Although the Church eschews proselytizing, it is active and visible in its local communities. Each branch church sponsors a reading room in its community which is open to the public, providing literature and a quiet place for study, research and contemplation.

2. The Christian Science Faith must be Understood for a Proper Analysis of this Case Under the United States and Florida Constitutions

The Mother Church is operated in accordance with a manual and set of "Church By-Laws" published in a volume entitled Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts (the "Church Manual"). The Church Manual serves as the basic constitution of the Christian Science denomination.

The Church Manual provides that the Bible and Mary Baker Eddy's Science and Health with Key to the Scriptures ("Science and Health"):

shall be [the believer's] only textbooks for self-instruction in Christian Science, and for teaching and practicing metaphysical healing.

Church Manual, Art. IV, Sec. 1 at 34.

Christian Scientists view Jesus' healing works, as well as his own victory over death and the grave, as demonstrating that all the ills and limitations of mortality can be overcome as one gains an understanding of man's true spiritual status.

Christian Science teaches that faith, to be really firm and effective, must rest not on blind belief, but on a reasoned understanding of God's presence and love. The faith of Christian Scientists is not in dogma, but in God's willingness and power to save humanity from evil of every kind.

3. Christian Science Healing is the Theological Heart of the Faith

The Church was established to "reinstate primitive Christianity and its lost element of healing." (Church Manual at 17). Physical healing was and remains the most striking aspect of Christian Science -- it is an essential part of Christian Science religious practice. To Christian Scientists, healing is not miraculous intervention, but a natural result of spiritual awakening viewed in terms of New Testament insights and values. In this sense, physical healing results from a reorientation of man towards God. Healing is the outcome of drawing closer to God, and healing is an important proof to Christian Scientists of God's care for man.

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Understanding these principles of Christian Science faith is necessary to appreciate the attitude of Christian Scientists towards medical treatment. A Christian Scientist, like anyone else, is a free moral agent -- free to voluntarily choose Christian Science means of healing or free to depart from his religion and choose medical (often called "material") means of healing. Science and Health states:

If patients fail to experience the healing power of Christian Science, and think they can be benefited by certain ordinary physical methods of medical treatment, then the Mind-physician should give up such cases
. . . .

Science and Health at 443. However, when the adherent turns to medicine, he or she is no longer practicing Christian Science. Medicine and Christian Science may not be combined. As the above passage from Science and Health suggests, a Christian Science practitioner must withdraw from a case if the patient turns to medicine. The patient is not benefited by attempting to combine modes of treatment that are incompatible.

Christian Science healing is accomplished through both audible and silent prayer. The healing process does not depend upon blind faith, willpower or mental suggestions. Rather, it calls for a systematic study of the Bible and of the Christian Science textbook, Science and Health; it calls for an understanding of God and His laws; and it calls for opening one's heart and mind to the love and the law of God. Spiritual healing is dealt with throughout the Bible and Christian

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Science literature, particularly in Science and Health, which devotes an 81-page chapter to "Christian Science Practice."

Christian Science healing through prayer involves turning completely to God for the answer to one's problems -- whether the problem be a physical ailment or a discord in the family. Christian Science healing is accomplished through drawing closer to God and experiencing more fully His love. Christian Scientists do not see this as merely an intellectual process, but rather a whole way of life involving deep prayer, moral regeneration, and an effort to live in accord with the teachings and spirit of the Bible.

For more than a hundred years now, Christian Scientists have practiced spiritual healing as a natural outcome of understanding and practicing biblical truths. They maintain a deep love for their families and their children and choose to rely on this method of healing not out of dogmatism, but because they have honestly come to feel -- often over four and five generations in a family -- that it is the most effective way of caring for themselves and their children.

Those relying on Christian Science for healing have available to them a well-established support system. The main support is the work of Christian Science practitioners, individuals who devote their full time to healing through prayer, or spiritual care. These individuals are approved for listing by the Church in The Christian Science Journal, after

having given evidence of moral character and healing ability. Practitioners determine their own charges, usually from seven to twenty dollars per day of care, and are paid by their patients. (Group health policies of major companies include coverage for such charges, as discussed infra.) The practitioner's work, however, is a religious vocation, a ministry of spiritual healing in its broadest sense.

Christian Scientists may also call upon the services of a Christian Science nurse, who provides such practical care as dressing of wounds for those relying on spiritual healing. Some Christian Science nurses are employed by visiting nursing associations which make nursing services available on a hourly basis for patients requiring occasional nursing care. There are also some twenty-six independently owned non-profit nursing care facilities in the United States for those relying on Christian Science care for healing.

Christian Scientists do not claim a perfect record of healing any more than do those involved in medical practice. But they hold that their record of healing is substantial and cannot be easily dismissed simply because there are cases, which tend to be widely publicized, where healings do not occur. As the Church noted in an article on Christian Science and the care of children, published at the request of The New England Journal of Medicine, "Christian Science practice is usually judged by its failures, whereas medicine is more often

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judged by its successes." Talbot, "Christian Science and the Care of Children: The Position of The Christian Science Church," 309 The New England Journal of Medicine, No. 126, at 1641-44 (December 29, 1983).

The same article reported on an analysis of the testimonies of physical healing published in Christian Science periodicals over a ten-year period:

A careful examination of these periodicals during the single decade 1971-1981 shows 647 testimonies concerning illnesses that had been medically diagnosed, in some cases both before and after a healing. The figure also includes 137 pediatric cases. These disorders include leukemia and other neoplasias both malignant and benign; diphtheria; gallstones; pernicious anemia; club feet; spinal meningitis; and bone fracture, among numerous others.

Id. at 1642.¹ The Church has been publishing such testimonies in both weekly and monthly periodicals since the late 1800's; collectively, they number over 50,000.

While there have been to date no statistically significant studies of the health of Christian Science children in relation to the general population, largely because of the practical difficulty of collecting pertinent medical data, what anecdotal evidence is available suggests that, at minimum, Christian

¹This study has now been published by the Church. "An Empirical Analysis of Medical Evidence in Christian Science Testimonies of Healing 1969-1988," Comm. on Publications, The First Church of Christ, Scientist, Boston, Mass. (Apr. 1989).

Science children do not as a group suffer from poorer health than their fellow citizens.²

Christian Scientists feel that a growing body of evidence substantiates their form of healing, and that it constitutes a reasonable and effective approach to health care. Their choice of spiritual care is not based upon some form of biblical prohibition -- as, for example, the view of the Jehovah's Witnesses that a particular passage of Scripture forbids blood transfusions. Nor is it a matter of Church compulsion.

Christian Scientists do rely upon spiritual healing as a matter of deep religious conviction. But this reliance is seen by them as a rational, thoughtful, voluntary matter on the part of patients or those responsible for their welfare.

4. Christian Science Healing, as Practiced by Christian Scientists, is Incompatible With Medical Care

Christian Scientists respect the humanitarian motives of physicians and are grateful for their availability to the great majority of the public who want to use their services. However, Christian Scientists, in choosing to forego medical care, strive to practice and understand what they believe is a more consistently effective method of care -- the spiritual healing that was so much a part of New Testament Christianity.

²For example, in a letter to the Mother Church (a copy of which is attached hereto as Exhibit A), Connecticut General Life Insurance Company, which has provided life insurance on employees at the Church headquarters, pointed out that the loss rate among Christian Scientists is very favorable ("approximately 6.2% better than our 'average group'").

It is a fundamental part of Christian Science teaching that spiritual care cannot be simultaneously combined with medical treatment. Christian Science doctrine differs strongly from medical theory on the cause of disease and sickness.

Christian Scientists believe that God is the very source and substance of man's life and well-being, and that disease is mentally caused and stems from an over-all human alienation from God. Also, Christian Scientists believe that spiritual power, or the power of Spirit, is actually present to dissolve the limited views of man and the fears proceeding from them which result in disease.

Given the difference between the Christian Science belief in a purely spiritual approach to healing and medicine's material approach, it would simply not be in the interests of a Christian Scientist to seek healing through both spiritual and medical means simultaneously. Additionally, experience has shown that under usual circumstances the two healing methods cannot be effectively combined.

Without question, the physical health of children is of paramount concern to Christian Scientists. They want their children's health enriched and maintained by something more substantial, more enduring than medical techniques -- they seek the spiritual and moral underpinning and strengthening that comes through the present power of Christ.

To Christian Scientists, spiritual healing is part of a whole way of life involving prayer, study, moral regeneration and an effort to live in accordance with the teachings and spirit of the Bible. Christian Scientists believe, and have believed for over 100 years, that their practices are an effective way of caring for their own health and the health of their children.

The Church's teaching has consistently emphasized that spiritual healing of sickness is the only method of care consistent with a belief in Christian Science, and is the most effective way in which to care for one's health and physical well-being.

To a Christian Scientist, healing is a matter of consistent spiritual law which can be experienced through prayer and active Christian discipleship. Christian Scientists strongly uphold the theological viewpoint that sickness and pain are not part of God's will. They believe that these evils need to be actively opposed and that it is a mistaken understanding of the gospel to resign oneself to pain and sickness.

The healing of sickness is not only an essential element of Christian Science theology, it is a part of a whole religious way of life in which Christian regeneration is the focus. Christian Scientists consider sin, lack, sorrow, selfishness, ignorance, fear and all material mindedness, as well as sickness, to be within the range of human errors to be

corrected and overcome by an understanding of God. Christian Scientists feel, along with many other Christians, that spiritual healing should be regarded as a natural part of their Christian lives -- to take spiritual healing from them would be to remove the "theological heart" of their faith. Thus, the prosecution and conviction of the Hermansons severely threatens the very practice of Christian Science and the entire Christian Science way of life.

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If the State can coerce Christian Science parents via criminal prosecutions to substitute medical treatment for Christian Science healing, it would do great harm to Christian Science children, because of the conflicts it would produce between the Christian Science way of life and the State's secular health support systems. As a result, Christian Science children would be induced ultimately to abandon Christian Science and the Christian Science way of life.

In sum, medical treatment is in direct conflict with Christian Science doctrine and tradition, and the State's use of criminal prosecutions to force Christian Scientists to renounce their faith and, instead, to turn their children over to a secular, medical system would ultimately undermine Christian Science itself.

5. Section 415.503(7)(f), Fla. Stat. (1985), is Consistent With Statutory and Other Societal Recognition of Christian Science as an Alternative to Medical Treatment

The Christian Science approach to health care has been widely recognized by society in general as an alternative to medical treatment. At both the federal and State level, literally hundreds of laws and regulations have been adopted which acknowledge and accommodate the practice of Christian Science.³ There is also widespread recognition by the

³Summarized below are a few of the more significant areas of legislative enactment in which Christian Science has traditionally received an explicit accommodation:

Treatment of Children. Virtually all State statutes which protect children from parental neglect and abuse make express provisions for the right of parents to utilize spiritual care, and most expressly exclude the provision of such care as a basis for finding of "neglect" or "abuse". See, e.g., § 415.503(7)(f), Fla. Stat. (1985); Cal. Penal Code § 270 (West 1988); Cal. Penal Code § 11165.2 (West Supp. 1991); N.Y. Penal Law § 260.15 (McKinney 1980). Indeed, care by Christian Science practitioners in lieu of medical treatment, of itself, is specifically deemed not to constitute maltreatment of a child pursuant to some State statutes. See Conn. Gen. Stat. Ann. § 17-38d (1988); Wash Rev. Code § 26.44.020(3) (1989); Va. Code Ann. § 18.2-314 (1988).

Treatment of Elderly or Incapacitated Adults. Closely paralleling the subject of child abuse legislation is the more recent development of statutory protection of elderly, incapacitated or incompetent adults. No fewer than twenty-four States have passed such statutes, which include acknowledgment of the propriety of Christian Science care. Moreover, Conn. Gen. Stat. Ann. § 46a-15(e) (West 1986) specifically provides that care by Christian Science practitioners in lieu of medical treatment, of itself, shall not constitute a basis for implementation of protective services for elderly adults.

[Footnote Continued]

insurance industry of Christian Science healing as an acceptable alternative for responding to health problems.

³[Footnote Continued from Previous Page]

General Practice Accommodations. Most States have laws which specifically affirm the rights of their citizens to select the means of treatment of disease or illness in accordance with their personal dictates, religious beliefs or conscience, including Christian Science. See, e.g. Mass. Gen. Laws Ann., Ch. 111, § 70E (Law. Co-op. 1985). Additionally, many States have enacted statutes which specifically exempt Christian Science practitioners and facilities from various regulatory and licensing requirements in the health care field. See, e.g., Kan. Stat. Ann. § 39-941 (1986) (Christian Science facilities exempt from law regulating nursing care facilities); Mass Gen. Laws Ann., Ch. 111, § 73A (Law. Co-op. 1985) (Christian Science facilities exempt from law regulating hospitals, nursing homes and other institutions); Minn. Stat. Ann. § 144.572 (West 1989); Minn. Stat. Ann. § 144A.09, subd. 1 (West 1989) (Christian Science facilities exempt from law regulating health care institutions).

Numerous federal statutes and regulations also provide specific accommodation to Christian Science in the health care area, including: 42 U.S.C.A. § 1396a (West Supp. 1990) (exempting Christian Science facilities from Social Security Act requirements); 42 U.S.C.A. § 1320c-11 (West 1983) (Christian Science facilities specifically exempt from medical peer review of Medicare and Medicaid care); and 42 U.S.C.A. § 1396(d)(c) (West Supp. 1990) (Christian Science facilities specifically included among facilities in part of Social Security Act providing for assistance in the form of institutional services in such facilities).

Medical Assistance and Benefit Programs. Numerous State medical assistance programs cover reimbursement for healing by spiritual means, and many specifically authorize reimbursement for Christian Science care. See Miss. Code Ann. § 43-13-117 (Supp. 1990). State workmen's compensation laws specifically recognize Christian Science care. See Idaho Code § 72-432(6) (1989). Additionally, the Internal Revenue Service of the federal government has for over thirty years expressly recognized expenses incurred in connection with care by Christian Science practitioners and nurses as legitimate deductible medical expenses on federal income tax returns. See IRS Rev. Rul. 55-261, 155-18 I.R.B. 18; IRS Publication 17 (Rev. No. 85).

[Footnote Continued]

Nearly all of the major health insurance companies in this country expressly include coverage of Christian Science care under their group health insurance policies.⁴ Moreover, insurance benefits for Christian Science care have been authorized for many State and federal employees.⁵

³[Footnote Continued from Previous Page]

Certification of Disability. Numerous job disability and worker's compensation laws expressly permit the injury or illness of an employee (including a government employee) to be certified by Christian Science practitioners. See, e.g., Md. Code Ann., Art. 64A, § 37(a)(3)(ii) (1990); Tenn. Code Ann. § 8-38-125(2) (1988); Tenn. Code Ann. § 8-50-802(a)(5) (1988).

⁴Insurance companies which offer coverage for Christian Science care include:

Allstate Insurance Company; American General Group Insurance Company; American Mutual Liability Insurance Company; Bankers Mutual Insurance Company; Blue Cross of California; Blue Cross-Blue Shield, Massachusetts; The Colonial Life Insurance Company of America; Commonwealth Life Insurance Company; Connecticut General Life Insurance Company; Continental Assurance Company; The Equitable Life Assurance Society of the United States; Fireman's Fund Insurance Companies; General American Life Insurance Company; Great American Insurance; The Guardian Life Insurance Company of America; John Hancock Mutual Life Insurance Company; Hartford Life Insurance Company; Kemper Group; Life Insurance Company of North America; Massachusetts Mutual Life Insurance Company; Metropolitan Life Insurance Company; The Mutual Life Insurance Company of New York (MONY); Mutual of Omaha Insurance Company; New England Mutual Life Insurance Company; Northwestern Mutual Life Insurance Company; Pilot Life Insurance Company; The Prudential Insurance Company of America; State Farm Mutual Automobile Insurance Company; Sun Life Assurance Company of Canada; and The Travelers Insurance Companies.

⁵For example, the federal government's Mail Handler Health Insurance Plan, underwritten by CNA, which provides health
[Footnote Continued]

The above is only a partial summary of statutory law and insurance provisions which recognize Christian Science healing as a legitimate alternative to medical treatment. The statutes reflect the strong and consistent intent of the Congress and of State legislatures to preserve to Christian Scientists the guarantee of free exercise of their religious rights and equal protection accorded all persons under the United States and Florida Constitutions. They also reflect a well-founded recognition that Christian Scientists have historically cared for themselves and their families in a way that society finds acceptable. Section 415.503(7)(f), Fla. Stat. (1985), is clearly in line with the widespread accommodation of Christian

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⁵[Footnote Continued from Previous Page]

insurance for all federal civil service employees who select it, specifically authorizes benefits for Christian Science care at a Christian Science nursing facility. Another form of recognition of Christian Science healing by the federal government in the area of insurance includes health insurance provided by the federal government for members of the United States uniformed services and dependents. 10 U.S.C.A. § 1079(a)(4) (West Supp. 1990).

Additionally, at least fourteen states, including California, Delaware, Indiana, Maine, Massachusetts, Michigan, Missouri, Iowa, Oklahoma, Oregon, South Carolina, Vermont, Washington and Wisconsin, offer their employees, at some level of government, group health plans which honor claims for Christian Science care. See, e.g., Okla. Stat. tit. 74, § 1303(n) (West Supp. 1991) (Christian Science services specifically included under benefits provided under State employee's group health insurance).

Science evidenced by the statutes, regulations and insurance plans from across the country discussed above.

II. SUMMARY OF ARGUMENT

The prosecution of the Hermansons, to date, has stood the Religious Freedom Clause of the First Amendment to the United States Constitution, U.S. Const. amend I, on its head. Moreover, in prosecuting the Hermansons, the State of Florida has run roughshod over the Free Exercise rights provided for in Article 1, § 3 of the Florida Constitution, which forbids any law "prohibiting or penalizing the free exercise [of religion]," and which has been deemed to provide the same scope of protection as afforded by the First Amendment's Free Exercise clause. See Singleton v. Woodruff, 153 Fla. 84, 13 So.2d 704 (1943). These clauses prohibit the State of Florida from making any law (or prosecuting or conducting a trial) that would prevent individuals from freely believing their faith or freely practicing their religion. However, as a result of this prosecution, the Hermansons are no longer free to believe in their religious faith as they understand it, and are no longer free to practice that religion as they understand it. As the cases discussed below demonstrate, both results are prohibited by the First Amendment to the United States Constitution and by Article 1, § 3 of the Florida Constitution.

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It is especially difficult to understand how the Hermansons were prosecuted and convicted, in view of Florida's accommodation of this very kind of religious belief and practice through § 415.503(7)(f), Fla. Stat. (1985). That section, which the Second District labeled the "spiritual treatment proviso" states as follows:

. . . a parent or other person responsible for the child's welfare legitimately practicing his religious beliefs, who by reason thereof does not provide specified medical treatment for a child, may not be considered abusive or neglectful for that reason alone

Further, § 415.511, Fla. Stat. (1985), states that:

[a]ny person, official, or institution participating in good faith in any act authorized or required by [§ 415.503(7)(f)] shall be immune from any civil or criminal liability which might otherwise result by reason of such action.

Not only is such an accommodation made in Florida, but it is constitutionally required under these facts, as the cases below show.

The Second District seemed to affirm the Trial Court's action based on its view that the Religious Freedom clauses are "defenses" available to the Hermansons, who must carry the burden of convincing the jury that they are entitled to the "defenses." The Second District concluded as follows:

. . . these jury questions provide no reason to reverse when the broader freedom of religion defense was before the jury who rejected it as an excuse for the Hermansons' conduct.

Second District Opinion at 28, n. 11. (Emphasis added).

However, the Free Exercise clauses of the United States and Florida Constitutions are not a "defense," an "excuse for the Hermansons' conduct," or a jury question. The First Amendment to the United States Constitution and Article 1, § 3 of the Florida Constitution stand as absolute prohibitions against State infringement. It is generally conceded that the only issues for a jury in a trial involving religious freedom is whether the church involved is well-recognized and whether the individuals sincerely believed what they said they believed. See United States v. Ballard, 322 U.S. 78, 87, 64 S.Ct. 882, 88 L.Ed. 1148, 1154 (1944) ("When the triers of fact undertake [to find the truth or falsity of religious beliefs], they enter a forbidden domain."). In this case, the State stipulated to both issues before trial and presented no proofs on these issues at trial. The Second District conceded that neither issue was contested at trial.

Despite this, the Hermansons were tried before a jury by the State and convicted, and that conviction was upheld by the Trial Court and by the Second District. A more blatant abuse of Free Exercise rights could hardly be imagined.

III. ARGUMENT

A. PROSECUTION OF THE HERMANSONS TO DETER THEM AND OTHER CHRISTIAN SCIENCE PARENTS FROM RELYING ON CHRISTIAN SCIENCE HEALING FOR THEIR CHILDREN DIRECTLY VIOLATES THE FREE EXERCISE RIGHTS OF ALL CHRISTIAN SCIENTISTS

1. This Prosecution Violated the Hermansons' Right to Freely Believe That Their Daughter Would Be Healed Through Christian Science

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It is obvious from the proceeding in this case that the Hermansons were prosecuted and convicted not for what they did, but for what they failed to do: they failed to obtain medical treatment for Amy. This was an omission, not a commission. Yet, this failure to act was the direct result of the Hermansons' deeply-held religious beliefs that Amy would be healed through Christian Science, and that to seek medical treatment would be inconsistent with Christian Science, and, indeed, would possibly cause the Christian Science care to be ineffective.

This is not a case of physical abuse, callous conduct or inadvertent action. The Hermansons were caring for Amy in the most efficacious way they knew; they sincerely believed in the power of Christian Science healing to protect the health and physical well-being of their child. They had seen its effectiveness again and again. These Christian Science beliefs are protected against prosecution. The State cannot intrude upon these beliefs, and certainly cannot force parents to renounce these beliefs by compelling them to seek medical treatment for their children -- a course of action unequivocally at odds with their religious principles.

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This is not the same question as whether the State has the right to intervene and take custody of the child for the purpose of providing medical treatment, which is a remedy that exists under Florida law, § 415.503(7)(f) Fla. Stat. (1985), and which the State, in fact, followed in this case. Nor is it merely an obligation to report illness, which is also part of the State law scheme. Rather, after the death of the child, the State has prosecuted the parents themselves, claiming they are criminally liable for failing to affirmatively engage in conduct that was repugnant to their own personal religious convictions and that was in conflict with their sincerely-held religious beliefs as to the efficacy of Christian Science healing. Such conduct by the State is far in excess of what Florida's statutory scheme contemplates; this conduct by the State places an intolerable and unnecessary burden upon religious freedom.

When the Trial Court below submitted to the jury whether or not the Hermansons were "legitimately practicing [their] religious beliefs," § 415.503(7)(f), Fla. Stat. (1985), it improperly placed before the jury the efficacy of the Hermansons' sincerely-held religious beliefs. The jury could not possibly decide the question given to it without determining what was or was not the proper practice of

Christian Science.⁶ Indeed, the United States Supreme Court has held, in unmistakable terms, that the First Amendment to the Constitution of the United States prohibits a court from inquiring into the truth of sincerely-held religious beliefs:

Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.

United States v. Ballard, 322 U.S. at 87, 88 L.Ed. at 1154.

Furthermore, in asking the jury to determine whether the defendants were guilty of criminal misconduct in relying on Christian Science healing, the State implicitly required a determination to be made by the jury as to whether Christian Science care is a reasonable or acceptable method of care. This is, in essence, requiring the jury to determine whether Christian Science beliefs in this regard are true or false; Ballard squarely prohibits such a determination.

⁶Of course, the three questions submitted by the jury demonstrate beyond doubt that that is exactly what the jury thought it had to do. The Second District attempts to cover up the obvious by surmising that the jury was deciding the issue of "sincerity," even though the State had previously stipulated to the sincerity of the Hermansons, and the Second District had previously admitted that the Hermansons' sincerity had never been put at issue by the State. Because sincerity was never an issue, the jury had no role in this trial.

Ballard involved a Government indictment against the founders of the "I AM" movement which alleged that the Ballards used the mails to defraud by means of false and fraudulent representations, pretenses and promises concerning, among other things, the power to heal the sick. The District Court had ruled that the jury was prohibited from inquiring into the truth of the representations made by the defendants because they constituted religious beliefs, but the U.S. Court of Appeals had reversed, ruling that the jury should have considered the question of the truth of the representations. The Supreme Court held that no inquiry could be made into the representations of the Ballards, all of which, the Court said, qualified as religious doctrines or beliefs:

Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. West Virginia State Bd. of Edu. v. Barnette, 319 U.S. 624, 87 L.Ed. 1628, 63 S.Ct. 1178, 147 ALR 674. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove.

They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The

miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.

Ballard, 322 U.S. at 86-87, 88 L.Ed. at 1154.

The Ballard decision was followed in the case of Founding Church of Scientology v. United States, 409 F.2d 1146 (D.C. Cir.), cert. den., 396 U.S. 963, 90 S.Ct. 434, 24 L.Ed. 427 (1969). Commenting on the Ballard decision, the U.S. Court of Appeals for the District of Columbia Circuit said:

[U]nder Ballard it seems unlikely that a disgruntled former adherent could sue a church for fraud and deceit because it had collected money from him on the basis of allegedly "false" doctrines concerning salvation, heaven and hell - or for that matter on the basis of doctrines, such as those of the Christian Scientists, concerning the cause and cure of disease.

Id. at 1156, n.32 (Emphasis added).

More recently, the U.S. Supreme Court in Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. _____, 110 S.Ct. 1595, 108 L.Ed.2d 876, reh. denied, 494 U.S. _____, 110 S.Ct. 2605, 110 L.Ed.2d 285 (1990), upon which the Second District relied in affirming the Hermansons' conviction, recognized the absolute protection provided by the First Amendment's Free Exercise clause to religious beliefs:

The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment

obviously excludes all 'governmental regulation of religious beliefs as such.' Sherbert v. Verner, [374 U.S. 398, 402, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)]. The government may not compel affirmation of religious belief, see Torcaso v. Watkins, 367 U.S. 488 (1961), punish the expression of religious doctrines it believes to be false, United States v. Ballard, 322 U.S. 78, 86-88 (1944), impose special disabilities on the basis of religious views or religious status, see McDaniel v. Paty, 435 U.S. 618 (1978); Fowler v. Rhode Island, 345 U.S. 67, 69 (1953); cf. Larson v. Valente, 456 U.S. 228, 245 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, see Presbyterian Church v. Hull Church, 393 U.S. 440, 445-452 (1969); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 95-119 (1952); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708-725 (1976).

Id. 108 L.Ed.2d at 884.

The Hermansons' belief that Christian Science would heal Amy was a religious belief. Thus, for the Hermansons, Christian Science healing was an essential aspect of spiritual redemption and regeneration for Amy and for them. Similarly, whether their views about the effectiveness of prayer to cure the sick are correct is not a question for either a court or a jury to decide. At all times, the Hermansons' belief in Christian Science healing remained within the domain of their conscience; that belief was thus clearly manifest within the sphere of intellect and spirit which the Free Exercise clauses of the United States and Florida Constitutions protect.

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The State's obvious attempt to deter or eliminate Christian Science healing of children through prosecution of the Hermansons is nothing less than a direct attack on the freedom to believe in the power of prayer, long recognized to be "deep within the religious convictions of many" and beyond the power of government to invade. United States v. Ballard, 322 U.S. at 86. As such, this prosecution and conviction directly infringes upon the protection provided by the First Amendment and by Article 1, § 3 of the Florida Constitution by restricting a religious belief, not only of the Hermansons, but of an entire religious denomination.

The statutory scheme created by the Florida legislature in § 415.503(7)(f), Fla. Stat. (1985), was obviously intended to accommodate the fundamental religious freedoms that are at issue here. By ignoring this scheme and applying instead a criminal statute as a method of bypassing the careful balance between religious freedom and State power that otherwise existed, the Second District has substituted an improperly restrictive view of religious liberty for the principled approach mandated by the Florida legislature, which approach happens to be consistent with the Florida and United States constitutional mandates.

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2. This Prosecution and Conviction Violated the Hermansons' Right to Freely Practice Their Religion As They Sincerely Believed It

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In addition to protecting an individual's right to freely believe his religious faith, the First Amendment to the United States Constitution and Article 1, § 3 of the Florida Constitution protect religious practice, religious culture, religious community and parental control over the religious upbringing of children. Indeed, the Supreme Court has readily recognized that the First Amendment protects not only traditional religious practices such as sermons, masses and sacraments, but other activities that are essential to the worship of God and the dissemination of His word. Murdoch v. Pennsylvania, 319 U.S. 105, 108-109, 63 S.Ct. 870, 87 L.Ed. 1292 (1942).

More significantly, the First Amendment protects religion itself, religious culture and religious way of life. The government cannot extinguish minority religious sects; it cannot endanger minority faith under threat of criminal prosecution; and it cannot force the migration of religious minorities to more tolerant regions. See Madison, J., Memorial Remonstrance Against Religious Assessments, reprinted in Writings of James Madison, p. 183 (G. Hood Ed. 1901); and Everson v. Board of Education, 330 U.S. 1, 9-10, 67 S.Ct. 504, 91 L.Ed. 711, reh. denied, 330 U.S. 855, 67 S.Ct. 962, 91 L.Ed. 1297 (1947).

The broad extent of the First Amendment's protection of a religious way of life, as well as parental control over the religious upbringing of their children, was illustrated by the Supreme Court in Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), a case involving the Old Order Amish religion. In Yoder, Amish parents were convicted of violating Wisconsin's compulsory school attendance law requiring children to attend school until the age of sixteen. This requirement was contrary to Amish religious teachings and the Amish way of life. The United States Supreme Court reversed the convictions, holding that the convictions violated the Free Exercise rights of the defendants, and explicitly ruling that the First Amendment protects more than personal belief; it protects "the way of life of the Amish faith community" and "parental control over the religious upbringing and education of their minor children." Id., 406 U.S. at 218, 231.

The Supreme Court's decision in Yoder clearly gives a broad sweep to the First Amendment when it comes to protecting a religious culture, religious community and religious way of life. The Court noted that the Amish community was characterized by its fundamental belief that salvation requires life in a church community separate and apart from the world or worldly influence, and that the concept of life aloof from the world and its values was central to the Amish faith. Id., 406

U.S. at 210. The Court emphasized that the Amish community focused on informal learning through doing; a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society. Id., 406 U.S. at 211.

Furthermore, the Court found that the traditional Amish way of life was not merely a matter of personal preference, but one of deep religious conviction, intimately related to daily living, and that while the Amish mode of life had come into increasing conflict with contemporary society, the Amish had steadfastly adhered to the fundamentals of their faith.

Finally, in viewing the impact of Wisconsin's Compulsory Education Law on the Old Order Amish Church, the Court said:

It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent . . . and carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they [the Amish] must either abandon belief and be assimilated in society at large, or be forced to migrate to some other more tolerant region.

Id., 406 U.S. at 218. Thus, the Court explicitly ruled that the First Amendment protects more than personal belief; it protects the Amish way of life and the rights of parents to control the religious upbringing and education of their children. Id., 406 U.S. at 218, 231.

Just as the Amish way of life, aloof from society, with a focus on goodness rather than intellect, lay at the theological heart of the Amish religion, so too does Christian Science healing lie at the theological heart of Christian Science. Christian Science, much like the Amish religion, lies outside the mainstream of our contemporary secular society. Christian Science emphasizes spirituality rather than materialism. The Christian Science way of life is not merely a matter of personal preference, but one of deep religious conviction shared by an organized group of Christian Scientists who intimately relate their Christian Science faith to their daily living. Christian Science attitudes towards life, family and the well-being of children have remained constant for over one hundred years, despite unparalleled evolution in human knowledge respecting medical treatment. Thus, there can be little question that Christian Science provides a "lifestyle" for Christian Scientists which distinguishes it within contemporary society.

The Christian Science community is characterized by a fundamental belief that through spiritual power, man can achieve salvation and heal disease. Christian Science focuses on belief, prayer, devotion and understanding of God, as the means of exercising spiritual power to achieve salvation and heal disease, rather than medical knowledge, surgical skill, and prescription drugs. Christian Science has persisted and

provided for itself in maintaining the health and well-being of the Christian Science community for well over a century.

The prosecution of the Hermansons threatens the Church, the Christian Science religion, the Christian Science Community and the entire Christian Science way of life. The State's insistence that Christian Science parents must now seek out and provide medical treatment instead of Christian Science care for their children (as apposed, for example, to merely standing aside to permit the State to provide such treatment if ordered by the court, as a sensible reading of the Florida statutory scheme would seem to contemplate), definitely conflicts with and undermines Christian Science doctrine; it chills the rights of all Christian Scientists to rely upon spiritual healing for their children; it forces Christian Scientists to act contrary to their belief in spiritual power by substituting medical treatment for spiritual care in administering to the physical needs of their children; and it forces Christian Scientists, against their will, to assimilate into a secular society that is focused on medicine, doctors and drugs as the authoritative means of curing human illnesses and ailments.

There can be little question that, just as the Old Order Amish Church was concerned about the integration of its children into contemporary society by means of compulsory education laws requiring high school attendance, so too is the Church concerned that the State's insistence upon parents

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themselves being forced to provide medical treatment for Christian Science children would turn them away from the Christian Science system of care.

Thus, the State's prosecution of the Hermansons is no less than an assault upon the Church itself, Christian Science doctrine, the Christian Science community and the Christian Science way of life. This is an assault that threatens to undermine Christian Science as it is known today -- precisely the kind of assault against which the Free Exercise clauses of the United States and Florida Constitutions were intended to protect.

Moreover, the cases relied upon by the Second District in affirming the conviction of the Hermansons on constitutional grounds actually provide strong support for the opposite view in this case. The Second District relied upon Smith, supra, for the proposition that the Free Exercise clauses of the United States and Florida Constitutions do not relieve an individual of the obligation to comply with a law which incidentally requires performance of an act that his religious belief forbids, if the law is not specifically aimed at the particular religious practice and is otherwise constitutional as applied to persons who violate the law for nonreligious reasons. The United States Supreme Court in Smith held that Oregon's denial of unemployment compensation to individuals who were discharged for work-related misconduct was not

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unconstitutional where the misconduct, the sacramental use of peyote, was a felony under a criminal statute of general application that was not aimed at the religious practice. However, in reaching its decision, the Smith court specifically distinguished its holding from the situation presented here, where a statute specifically accommodates the conduct in question:

[A] society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use.

Smith, 108 L.Ed.2d at 893. Because the Florida legislature has explicitly made an accommodation for what the Hermansons did here, see § 415.503(7)(f), Fla. Stat. (1985) and § 415.511, Fla. Stat. (1985), the decision in Smith is not authority for upholding the Hermansons' conviction.

Further, the Smith court distinguished Yoder, because Yoder was a "hybrid" case which involved not only Free Exercise issues, but also presented other constitutional issues such as strong parental interests in the religious upbringing of their children:

Yoder said that 'the court's holding in [Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed.2d 1070 (1925)] stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record,

more than a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment.'

Smith, 110 L.Ed.2d at 887, n. 1, quoting Wisconsin v. Yoder, 406 U.S. at 233. (Emphasis added). The issues presented here, as in Yoder, include those of free exercise of religion plus the rights of parents to direct the religious upbringing of their children. These rights are precisely those which the Smith Court held were entitled to the constitutional protection provided in Yoder.

Moreover, in addition to involving, as did Yoder, the combination of Free Exercise issues and parental rights issues to which the United States Supreme Court in Smith found its decision inapplicable, this case is also a "hybrid" which warrants special attention because it involves constitutional rights of privacy. A person's fundamental right to be left alone from governmental interference is explicitly protected by Article I, § 23 of the Florida Constitution, which states that: "[e]very natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein." This provision has been held to establish a fundamental right of privacy in the medical treatment context in cases such as Satz v. Perlmutter, 362 So.2d 160 (Fla. Dist. Ct. App. 1978), aff'd, 379 So.2d 259 (Fla. 1980), where the court upheld a patient's right to refuse

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medical treatment "based upon 'the constitutional right to privacy . . . an expression of the sanctity of individual free choice and self-determination.'" Id. at 162, quoting Superintendent of Belchertown v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417, 426 (1977).

Indeed, in Public Health Trust of Dade County v. Wons, 541 So.2d 96 (Fla. 1989), this Court held that an adult had a lawful right to refuse a blood transfusion, without which she may die, pursuant to the practice of her religion. In so holding, this Court found that the individual's constitutional rights of privacy and religion were not overridden by the State's interest in maintaining a home of two parents for the minor children. Id. at 98. Thus, since this case presents issues involving Free Exercise rights, parental rights and rights of privacy arising under both the United States and Florida Constitutions, it is truly a "hybrid" case, to which the U.S. Supreme Court decision in Smith, by its own language, is inapplicable.

Additionally, while the Second District noted that, under Yoder, "[t]he state may intervene when it appears that the parents' decision 'will jeopardize the health or safety of the child, or have potential for significant social burdens.'" Second District Opinion at 18, quoting Wisconsin v. Yoder, 406 U.S. at 234, the criminal prosecution evidenced here goes far beyond the type of State intervention which is appropriate

under Yoder. Indeed, as cited above, the Yoder court insisted that, when Free Exercise interests are coupled with parental interests, "more than merely a 'reasonable relation to some purpose within the competency of the State' is required" in order to uphold State intrusion into First Amendment rights. Yoder, 406 U.S. at 233. (Emphasis added).

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In this case, the prosecution of the Hermansons fails to establish even a "reasonable relation" to the State's interest in protecting the health of children, much less the stronger showing required under Yoder. Indeed, prosecuting Christian Science parents after the death of a child in an attempt to protect the health of other unknown children is not only a draconian measure of severely limited effectiveness in achieving its intended purpose (it assumes that Christian Science parents will stop practicing their religion under threat of prosecution -- a dubious assumption), but, if it is effective in its intended purpose, it has a prospective, chilling effect on Christian Scientists in practicing their beliefs, which is the very kind of overt religious coercion by the State that is prohibited by the First Amendment and by Article 1, § 3 of the Florida Constitution.

The unwarranted nature of the State's attack on the Free Exercise rights of Christian Scientists is further illustrated by the fact that the State has alternative means to pursue its goal of protecting children which are less intrusive with

respect to Free Exercise rights. The appropriate course of State intervention, one which respects Free Exercise rights while satisfying the State's need to act when it perceives a threat to a child's health and welfare, was prescribed by the Florida legislature in § 415.503(7)(f), Fla. Stat. (1985). Section 415.503(7)(f), which provides that "a parent or other person responsible for the child's welfare legitimately practicing his religious beliefs, who by reason thereof does not provide specified medical treatment for a child, may not be considered abusive or neglectful for that reason alone . . . ," also provides that this exception does not

[p]reclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined herein, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Accordingly, the State of Florida already has an effective, established mechanism for State intervention where deemed necessary by public authorities to protect children -- a mechanism which does not directly attack the practice or beliefs of Christian Science parents. In fact, this procedure was actually followed by the State in this very case.

It might be asserted that requiring the State to rely upon a case-by-case approach to determining whether the State has a right to intervene would place an undue burden on the State

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when it seeks to protect the welfare of children, in that the State would be required to seek a court order to provide treatment in each case a child was thought to be in danger. However, this is exactly what the legislature has wisely mandated. Furthermore, this Court, in striving to protect Free Exercise rights against invasion by State interests, rejected the same contention in Wons, 541 So.2d 96. Indeed, in response to concerns expressed by a county-operated hospital that problems would be created in future cases by the inconvenience of taking each treatment refusal case to court for an emergency judicial hearing, the Florida Supreme Court in Wons held that a case-by-case recourse to the courts was appropriate:

While we understand the [county hospital's] dilemma, these cases demand individual attention. No blanket rule is feasible which could sufficiently cover all occasions in which this situation will arise. Thus, it will be necessary for hospitals that wish to contest a patient's refusal of treatment to commence court proceedings and sustain the heavy burden of proof that the state's interest outweighs the patient's constitutional rights."

Id. at 98. (Emphasis added).

Accordingly, this Court has mandated that the government, in order to intervene in cases in which it believes that the free exercise of religious rights poses a threat to the health and welfare of citizens, must resort to judicial proceedings on a case-by-case basis for the authority to intervene. Resort to judicial proceedings to obtain an order mandating treatment,

as prescribed in § 415.503(7)(f), Fla. Stat. (1985), is therefore the course the State must follow when it believes that the health of a child is adversely affected by the religious beliefs of the child's parents. Attacking the parents' religious beliefs through criminal prosecution after-the-fact not only fails to offer any protection to children, but is anathema to the provisions of the First Amendment, which this Court so carefully sought to uphold in Wons.

IV. CONCLUSION

The State's attempt to force Christian Science parents to forsake their faith threatens the theological underpinnings of Christian Science and jeopardizes the entire Christian Science community. This is not simply a matter of parents who are merely asked to report their children's illness and step aside to permit the State to act. If Christian Scientists must forsake Christian Science healing for their children, and affirmatively provide medical care in direct contravention of their beliefs, the theological heart of Christian Science is seriously at risk and the whole Christian Science way of life is in jeopardy.

This case admittedly poses troubling and emotional issues. The death of any child is a tragic loss, and one which is felt by no one more than the parents who loved and cared for their child as best they knew. But, the tragedy of this child's

death has been compounded by the State's prosecution and conviction of parents who believed sincerely that they were doing what was best for the health and welfare of their child. What these Christian Science parents did (or did not do), in good faith and in accordance with deeply-held religious beliefs, is not the kind of situation to which the felony child abuse statutes of this State were directed, particularly when the very statutes that expressly address the issues involved here provide sensitively balanced mechanisms for protecting children while accommodating religious belief.

Accordingly, the opinion of the Second District should be reversed, and the Trial Court instructed to enter a judgment of acquittal.

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