Case No. 80,311

In the

SUPREME COURT OF THE STATE OF FLORIDA

In Re: Matter of Patricia Dubreuil,

Petitioner,

vs.

South Broward Hospital District,

Respondent.

On Discretionary Review
of the District Court of Appeal,
Fourth District No. 91-1295

ANSWER BRIEF FOR RESPONDENT

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STATEMENT OF THE CASE AND OF THE FACTS

As there is no substantial dispute regarding the facts or issues to be resolved in this proceeding, Respondent adopts and incorporates the State of the Case and of the Facts presented in the Petitioner's Initial Brief, with the following minor clarifications:

1. Following the delivery of Petitioner's newborn child by Caesarean section, Ms. Dubreuil experienced severe loss of blood. It was determined by Petitioner's physicians that Ms. Dubreuil suffered from a blood condition such that her blood did not clot properly.

2. At the time of the Emergency Hearing conducted by the Circuit Court on April 6, 1990, Petitioner's bleeding condition had yet to abate.

In this Answer Brief, the Petitioner will be referred to by name as "Ms. Dubreuil," or simply "Petitioner." The Respondent, South Broward Hospital District, will be referred to as "the District."

SUMMARY OF ARGUMENT

Petitioner incorrectly asserts that the state has yet to articulate any interest in this matter, and that the interests of Memorial Hospital cannot be equated with the interests of the state. In making this argument, Petitioner confuses the issue of whether or not the State of Florida has appeared as a party at any point during this litigation with the issue of whether or not there has been any "state action" exercised by the hospital. Memorial Hospital is a public hospital owned and operated by the South Broward Hospital District ("the District"), a unit of local government under Florida law that enjoys sovereign immunity to the extent permitted by applicable Florida Statutes. As such, the actions of the District in seeking a declaratory judgment compelling the transfusion of the Petitioner constitute "state action" for purposes of constitutional review. Thus, contrary to Petitioner's suggestion, the District is not required to meet any heavier burden of proof than would the State of Florida itself under the stringent "compelling state interest" and "least intrusive means" test employed in the review of claims alleging the infringement of fundamental constitutional rights.

The District acknowledges the well-settled principle of law that a competent adult has the constitutional right to refuse medical treatment regardless of his or her medical condition. However, even fundamental constitutional rights may not be exercised in a vacuum; on occasion such rights must yield to a compelling state interest. A longstanding line of Florida caselaw holds that one such compelling state interest exists in those state actions that seek to protect the interests of innocent third parties. The District maintains that the Order of the Circuit Court, as affirmed by the District Court of Appeal, served a compelling state interest in preventing the potential abandonment of the Petitioner's minor children.

Although this Court has previously held that the state's interest in preserving a home with two parents for minor children is not sufficiently compelling to override the fundamental rights of a patient to decline life-saving medical treatment, the issue presented in this case has yet to be decided by any court. That issue can be stated succinctly as follows: is the state's interest in preventing the potential abandonment of minor children by insuring the maintenance of a home with **one parent** sufficiently compelling to override the fundamental rights asserted by the Petitioner. The District asserts that given the limited nature of the record evidence presented in this proceeding, sufficient evidence of potential abandonment was available to justify the forced transfusion of Patricia Dubreuil.

At the time of the Emergency Hearing before the Circuit Court, the undisputed evidence in this case shows that Petitioner suffered from a bleeding condition such that her blood did not clot properly. The Circuit Court was presented with a medical emergency in which the Petitioner, the mother of a newborn infant and three other minor children, faced death in the absence of a blood transfusion. The court was also aware that Petitioner, one of Jehovah's Witnesses, objected to the transfusion of any blood or blood products into her body.

The Circuit Court was apprised of the fact that Petitioner was separated from her husband, who was the natural father of her four minor children, to the point that Petitioner's husband did not accompany Petitioner to the hospital on the night that this medical emergency arose. Moreover, unlike previous cases in which the spouse of an adult patient declining life-saving medical treatment has agreed with and supported the decision of that patient, in the present case Petitioner's husband vocally disagreed with the Petitioner's decision. Moreover, at the time of the Emergency Hearing, Petitioner's

husband evidenced no willingness or ability to assume responsibility for the care of the couple's minor children. Petitioner was unable to present any record evidence at the time of hearing regarding the care to be provided to her minor children in the event of her death.

Given the fact that the Petitioner submitted no evidence or argument relating to the care to be provided for her minor children in the event of her death until the filing of a Motion for Rehearing, the District submits that the Circuit Court Order permitting the forced transfusion of Patricia Dubreuil was, in fact, the least intrusive means of safeguarding the state's compelling interest in preventing the potential abandonment of Petitioner's minor children. As such, the District respectfully submits that the decision of the District Court of Appeal should be affirmed.

ARGUMENT

I. Memorial Hospital, A Public Hospital Owned and Operated by the South Broward Hospital District, A Unit of Local Government Under Florida Law, Exercised State Action When it Obtained an Order from the Circuit Court Authorizing the Compelled Transfusion of Blood into the Body of Patricia Dubreuil.

A. The South Broward Hospital District is a Unit of Local Government

Petitioner, in Section 1(b) of her Initial Brief, argues that the State of Florida has never appeared in or asserted any interest in this matter, and that the state is not a party to this litigation:

> This whole case turns on the alleged existence of an overriding state interest that the State of Florida has never articulated nor asserted in any case, including this one.[1] Rather, it is the Hospital (whose interests can hardly be said to be identical to the state's) that has urged the allegedly overriding "state" interest in innocent third parties. **Although it seems trite to say so, the Hospital is not the state.**

Initial Brief of Petitioner, at p. 10 (emphasis added). In support of this proposition, Petitioner relies upon a brief passage extracted from the opinion of the District Court below, and states "[a]s the District Court noted below, the 'state' is not and never has been a party to this litigation." Initial Brief of Petitioner, at p.10 (citing In re Matter of Patricia Dubreuil, 603 So.2d 538, 541 (Fla. 4th DCA 1992)).

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[1] Respondent will argue during the course of this Answer Brief that the South Broward Hospital District, a special district under the laws of Florida operating a public hospital, stands in the shoes of the state for purposes of demonstrating a compelling state interest. Moreover, in Public Health Trust of Dade County v. Wons, 541 So.2d 96 (Fla. 1989), the hospital seeking an order allowing the administration of life-saving blood transfusions to an adult patient who was one of Jehovah's Witnesses was Jackson Memorial Hospital ("Jackson"). Jackson is a public hospital operated by the Public Health Trust of Dade County, Florida, a unit of local government. Thus, Petitioner is incorrect in asserting that no overriding state interest has ever been asserted by the state in a case involving the administration of blood transfusions to a competent adult against the wishes of that adult.

However, Petitioner's argument in this regard mischaracterizes and misrepresents a statement made by the District Court in dicta during the course of rendering its opinion in Dubreuil. That statement, in its totality, reads as follows:

> Although the Supreme Court in Wons indicated that the burden is on the hospital to demonstrate abandonment, the court did not specifically address the dilemma, **inherent in most such cases**, that the "state" is not a party. This increases the heavy burden upon the court.

Dubreuil, 603 So.2d at 541 (emphasis added). Reading this passage in its entirety, it is readily apparent that the District Court was not holding or even implying that the District was not the "state," but was instead referring to the fact that a majority of cases involving issues of this nature can be expected to arise in settings where the party seeking to compel unwanted medical treatment is a **private hospital**. See e.g. McKenzie v. Doctor's Hospital of Hollywood, Inc., 765 F. Supp. 1504 (S.D. Fla. 1991)(reviewing Circuit Court Order granting private hospital's motion to perform a blood transfusion on a non-consenting adult patient who was one of Jehovah's Witnesses). Thus, the District Court never stated or held that the "state" was not a party to this litigation, or that the District was not able to stand in the shoes of the "state" for the purposes of demonstrating a compelling state interest sufficient to override the fundamental constitutional rights asserted by the Petitioner. In fact, such a holding could not have been made by the District Court given the record in this case.

On April 6, 1990, the District initiated the legal action that forms the basis of this appeal by filing a Petition for Declaratory Judgment and seeking an Emergency Hearing before the Circuit Court of the Seventeenth Judicial Circuit of the State of Florida, in and for Broward County, Florida. That hearing was conducted the same day that the District filed its Petition. The jurisdictional allegations set forth in that Petition state as

follows:

> **The petitioner [the District] is a special taxing district under the laws of the State of Florida. As such, it is deemed to be a unit of local government of the type authorized by Ch. 165, Fla. Stat. It derives all of its jurisdiction, rights, powers and privileges from Ch. 24415, Laws of Fla. (1947), as amended**, which is sometimes referred to as its "charter". The Plaintiff is the owner and operator of the major health care facility commonly known as Memorial Hospital, 3501 Johnson Street, Hollywood, Broward County, Florida, which is a licensed 737-bed **public hospital.**

See Petition for Declaratory Judgment, at pp.1-2 (emphasis added). Therefore, it is apparent from the limited record in this proceeding that the District is a unit of local government operating a public hospital, and governed by those provisions of the Florida Statutes regulating the powers of special districts.

Ms. Dubreuil, the Petitioner in this appeal proceeding, was represented by counsel at the Emergency Hearing. During the course of the hearing, counsel for Ms. Dubreuil raised no objections to the jurisdictional allegations set forth by the District. Similarly, Petitioner failed to raise any arguments regarding the political or governmental status of the District in either the Motion for Rehearing filed with the Circuit Court or in any of the Briefs filed with the District Court of Appeals. As such Petitioner has waived its right to argue, at the eleventh hour, that the "state" has never articulated any interest in this matter.

B. Petitioner's Federal and State Constitutional Claims Are Not Actionable in the Absence of "State Action"

Petitioner has asserted that her state constitutional rights of personal privacy and religious freedom, as well as her federal constitutional rights of bodily self-determination and religious freedom were usurped by the Circuit Court's Order compelling the transfusion of blood against her express wishes. However, the language of each of the **state** constitutional provisions cited by the Petitioner clearly provides that there can be

no violation of an individual's constitutionally protected rights to privacy or religious freedom in the absence of **state action**. Violations of constitutional rights by private parties are simply not actionable.

In Werley v. State, 271 So.2d 814 (Fla. 3d DCA 1973), appellant stopped at a service station and used the station's rest room facilities. The station's operator, concerned that appellant had been in the rest room for a period of ten to fifteen minutes, looked through a hole in the rest room wall and noticed that the appellant was using drug paraphernalia. The station operator notified police, who subsequently arrested the appellant and seized the drug paraphernalia as evidence. After her Motion to Suppress the drug paraphernalia was denied and she was convicted, appellant claimed on appeal that her federal and state constitutional rights to privacy had been violated. The District Court rejected this argument, holding that "this is a constitutional right provided citizens under both the Federal and State constitutions from invasion of privacy by agencies of governmental units; **it is not a right protected from invasion of privacy by private citizens**." Id. at 815 (emphasis added).

Although the Werley decision predates the adoption of Article I, Section 23 by nearly eight years[2], it is apparent that the voters of the State of Florida sought to maintain this requirement of "state action". Florida's constitutional right of privacy provides that every natural person "has the right to be let alone and free from governmental intrusion into his private life...." Fla. Const. Art. I, § 23 (emphasis added). Similarly, Florida's constitutional protection of religious freedom provides that there "shall be no law respecting the establishment of religion or prohibiting or penalizing the free

[2] Article I, Section 23, was added to the Constitution of the State of Florida following a general election conducted on November 4, 1980.

exercise thereof." Fla. Const. Art. I, § 3 (emphasis added). Although no Florida case law addresses the requirement of state action with regard to Article I, Section 3, there can be little serious argument that such requirement does not exist. See Schreiner v. McKenzie Tank Lines, Inc., 432 So.2d 567 (Fla. 1983)(holding that a state action requirement, contained in language located in Article I, Section 2 of the Constitution of the State of Florida, stating that all natural persons are equal before **the law**, applies equally to inalienable rights and deprivation clauses contained in that Article).

The requirement of state action also exists with regard to the federal constitutional claims raised by Petitioner. Ms. Dubreuil's alleges that her refusal of blood transfusions was protected by her right of religious free exercise under the First Amendment to the United States Constitution. "[T]he First Amendment restricts only state action, not private action." May v. Evansville-Vanderburgh School Corp., 787 F.2d 1105, 1109 (7th Cir. 1986). Petitioner also contends that her refusal of blood transfusions was protected by her Fourteenth Amendment liberty interest in controlling what is done to her own body. In order to obtain relief on a claim of this nature, Ms. Dubreuil must also allege and prove state action. See Heitmanis v. Austin, 677 F. Supp. 1347, 1357 (E.D. Mich. 1988)("Before this Court may assume jurisdiction over plaintiff's Fourteenth Amendment claims, there must be state or governmental action, private conduct, however wrongful it may be, cannot be challenged under the Fourteenth Amendment").

Thus, it appears that the Petitioner has confused the issue of whether the State of Florida is a party to this litigation with the issue of whether or not the District is properly permitted to assert the interests of the state. The appropriate determination is not whether the State of Florida is or has appeared as a party at any point in this dispute, but whether or not there has been any "state action." The District contends that

its actions in this matter constitute "state action", and that it is not required to satisfy any heavier burden than would the State of Florida itself under the stringent "compelling state interest" and "least intrusive means" test enunciated by this Court in Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544 (Fla. 1985), and reiterated in Wons, 541 So.2d at 97.

Lastly, the District strongly disagrees with the Petitioner's suggestion that Memorial Hospital sought a court order compelling the forced transfusion of Ms. Dubreuil solely out of concern for its potential liability, and not out of any sincere concern for the life of Ms. Dubreuil or the welfare of her minor children Petitioner contends that "[b]y presuming to act upon the sovereign's interests, hospitals can mask their true motives and use court orders to forcibly administer medical treatment as an 'anticipatory defensive strategy with respect to future claims for malpractice.'" See Petitioner's Initial Brief, at p.10 (quoting Matter of Storar, 420 N.E.2d 64, 77 (N.Y. 1981)(Jones, J., dissenting in part). As a public hospital operated by a unit of local government (the District), Memorial Hospital and its staff enjoy sovereign immunity, within the limitations established by Chapter 768, Florida Statutes. This well-settled proposition was first established in Eldred v. North Broward Hospital District, 498 So.2d 911 (Fla. 1986). In Eldred, this Court held:

> In conclusion, we find this special [hospital] taxing district is a constitutionally established local government entity charged with the responsibility to provide for the "public health ... and good" of the citizens within the district. The provisions of the 1968 Constitution leave no doubt that special taxing districts are included as one of four types of local government entities, along with counties, school districts, and municipalities. In our view, the legislature clearly intended the provisions of section 768.28(2) to include special taxing districts within the phrase "independent establishments of the state."

498 So.2d at 914. As a local government entity receiving sovereign immunity privileges,

it cannot seriously be argued that the District is not a state actor for purposes of constitutional review.

II. Preventing the Potential Abandonment of Minor Children Constitutes a Compelling State Interest Sufficient to Override the Fundamental Constitutional Rights Asserted by the Petitioner.

A. Petitioner's Fundamental Constitutional Rights and the Applicable Standard of Review

It is a well-settled principle of Florida law that "[a] competent individual has the constitutional right to refuse medical treatment regardless of his or her medical condition." In re Guardianship of Browning, 568 So.2d 4, 10 (Fla. 1990). The United States Supreme Court has held that individuals are protected by federal constitutional guarantees of the same nature. "The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261, 278 (1990). Moreover, the constitutional protection afforded to an individual do not lessen simply because the medical procedure involved might be classified as minor or trivial by a medical professional. Browning, 568 So.2d at 11, n.6.

In light of this line of precedent, Petitioner argues that the Order of the Circuit Court compelling life-saving blood transfusions, affirmed by the District Court below, violated her state constitutional rights to personal privacy and religious freedom, as well as her federal constitutional rights of bodily self-determination and religious freedom. Each of these claims, raising issues regarding "fundamental" constitutional rights is subject to review under the same stringent test.

Article I of the Constitution of the State of Florida enumerates a litany of fundamental individual rights that are granted to the citizens of this state. Included

among those fundamental rights are the right to free exercise of religion, Fla. Const. Art. I, § 3, and the right of privacy, Fla. Const. Art. I, § 23. In Winfield, 477 So.2d 544, this Court first articulated the breadth of Florida's constitutionally protected right of privacy, and determined:

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

Id. at 547 (emphasis added). This "compelling state interest" standard also applies to claims involving the alleged violation of the right of free exercise of religion, particularly where religious beliefs form the basis for a patient's refusal to consent to life-saving medical procedures. See Wons, 541 So.2d 97 (citing Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g 362 So.2d 160 (Fla. 4th DCA 1978).

Petitioner's federal constitutional claims must also be reviewed pursuant to the "compelling state interest" and "least intrusive means" test. In Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 137, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190, 197-98 (1987), the United States Supreme Court held that state infringements upon the free exercise of religion must be subjected to strict scrutiny, and "could be justified only by proof by the State of a compelling state interest." Similarly, in Gibson v. The Florida Bar, 798 F.2d 1564, 1569 (11th Cir. 1986), the court held that "[a]ll first amendment challenges are analyzed under a two part test that requires a 'compelling interest' and the 'least restrictive means' of achieving that interest." The District contends that the Order of the Circuit Court satisfies these rigorous standards.

In Satz, 379 So.2d at 360, this Court approved and adopted the opinion of the

Third District Court of Appeals, which articulated for the first time in Florida the standards to be applied when seeking to determine whether the State possessed a compelling interest in overriding the personal medical decisions of an individual. As enumerated in the District Court opinion:

> the right of an individual to refuse medical treatment is tempered by the State's:
>
> 1. Interest in the preservation of life.
> 2. Need to protect innocent third parties.
> 3. Duty to prevent suicide.
> 4. Requirement that it help maintain the ethical integrity of the medical profession.

Satz v. Perlmutter, 362 So.2d at 162. This Court has previously determined that the four criteria established in Satz must be reviewed in those cases involving the attempted compelled transfusion of Jehovah's Witnesses. See Wons, 541 So.2d at 97. In Wons, this Court refused to announce a blanket rule intended to cover all situations in which an individual Jehovah's Witness might refuse a blood transfusion over the advice and recommendations of medical professionals. Instead, it was held that in each such instance, "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 interests outweigh the patient's constitutional rights." Id. at 98. To date, Wons is the only case in which this Court has provided any direct guidance in resolving the issues presented in the instant dispute.

B. The Wons Decision

In Wons, this Court reviewed constitutional claims of a similar nature to those presented by the Petitioner in this appeal proceeding. Norma Wons entered Jackson

Memorial Hospital ("Jackson") in Miami, Florida, suffering from a condition known as dysfunctional uterine bleeding. Mrs. Wons, a practicing Jehovah's Witness, was informed by physicians that blood transfusions were required in order to save her life. Mrs. Wons, the mother of two minor children, refused to consent to such treatment on religious grounds. At the time she declined treatment, Mrs. Wons was conscious and was able to make an informed decision regarding her personal medical care.

The Public Health Trust of Dade County, which operated Jackson, initiated proceedings in Circuit Court seeking to compel the transfusion of Mrs. Wons. Jackson argued that the refusal of medical treatment amounted to the abandonment by Mrs. Wons of her minor children, and that the second factor in the four-prong test enunciated in Satz, the protection of innocent third parties, was implicated. Mrs. Wons' husband, also one of Jehovah's Witnesses, appeared at the hearing on Jackson's Petition and testified that he supported his wife's decision to decline treatment. In an effort to rebut the arguments raised by Jackson, Mr. Wons stated **on the record** that he, along with Mrs. Wons' mother and brothers, would care for the minor children in the event of Mrs. Wons' death.

Despite the **record testimony** of Mr. Wons, the Circuit Court entered an order compelling the forced transfusion of Mrs. Wons. The Circuit Court reasoned that "minor children have a right to be reared by two loving parents, a right which overrides the mother's rights of free religious exercise and privacy." Wons, 541 So.2d at 97. The Third District Court of Appeal reversed this order, holding that Mrs. Wons' constitutional rights could not be overridden by the interests asserted by the state. On review, this Court held that "the state's interest in maintaining a home **with two parents** for the minor children does not override Mrs. Wons' constitutional rights of privacy and religion." Id.

at 98 (emphasis added). Thus, Wons determined that a compelling state interest does not arise from a parent's refusal of life-saving medical treatment in a situation that will leave minor children with **one remaining parent** who is willing and able to care for those minor children.

In his concurring opinion in Wons, Chief Justice Ehrlich noted that "[a]s there would be no abandonment in this case, we do not decide whether evidence of abandonment alone would be sufficient in itself to override the competent patient's constitutional rights." 541 So.2d at 99, n.1. This statement, coupled with the Court's holding that the state's interest in maintaining a home with **two parents** for minor children does not override constitutional rights of free exercise and privacy, has set the stage for the primary issue presented in this appeal proceeding: namely, is the state's interest in preventing potential abandonment of minor children by insuring the maintenance of a home with **one parent** sufficiently compelling to override the fundamental constitutional rights of a competent adult? The District respectfully argues that, given the limited nature of the record evidence presented in this proceeding, sufficient evidence of potential abandonment was available to justify the Order of the Circuit Court compelling the forced transfusion of Patricia Dubreuil.

C. The Circuit Court Order and the District Court's Review

Both the Petitioner and the District were represented by counsel at the Emergency Hearing conducted in this matter before the Circuit Court on April 6, 1990. The Court was informed by counsel that Patricia Dubreuil appeared at the emergency room of Memorial Hospital near midnight on the night of April 5, 1990, and was admitted to the hospital in an advanced state of pregnancy, requiring delivery by Caesarean section. Following delivery, it was discovered that Ms. Dubreuil suffered from a severe blood

condition, such that her blood did not clot properly. **Petitioner's bleeding condition had not fully stopped at the time of the Emergency Hearing**, and it was the opinion of Petitioner's physicians that Petitioner required blood transfusions in order to save her life. Thus, the Circuit Court was faced with an ongoing medical emergency. Moreover, the Circuit Court was made aware of the fact that, in addition to Petitioner's newborn infant, Ms. Dubreuil had three other minor children, ages 12, 6 and 4 years old respectively.

As noted previously, in the Wons case, the husband of Mrs. Wons appeared at the hearing on Jackson's Emergency Petition. At that hearing, Mr. Wons stated **on the record** that he, along with Mrs. Wons' mother and brothers, would care for the Wons' minor children in the event that Mrs. Wons died as a result of her refusal of a blood transfusion. This significant testimony contrasts starkly with the proceedings in the instant matter, in which **there was a complete lack of record evidence at the time of hearing regarding the care to be provided to the Dubreuil children in the event that Ms. Dubreuil died as a result of her refusal of a transfusion**. In fact, at the time of the Emergency Hearing, the only facts regarding the Dubreuil family that were available to the Circuit Court can be summarized as follows:

1. Petitioner was the mother of four children, a newborn and three other minors aged 12, 6 and 4.

2. Petitioner was separated from her husband, Luc Dubreuil, to the point where Mr. Dubreuil did not accompany his wife to the hospital, and to the point that Mr. Dubreuil had to be tracked down by the police and informed of his wife's medical emergency.

3. Mr. Dubreuil was not one of Jehovah's Witnesses, and did not share his wife's spiritual beliefs. In fact, Mr. Dubreuil signed a consent form authorizing the hospital to administer blood transfusions to Petitioner against her express wishes.

See Circuit Court Order of April 11, 1990.

In seeking to determine whether this evidence is sufficient to satisfy the District's burden under the "compelling state interest" and "least intrusive means" test, it cannot be overemphasized that review must be limited to the record available to the Circuit Court **at the time of hearing**. Given the evidence as recited above, and given the fact that Petitioner offered the Circuit Court **no evidence** regarding provisions for the care of her children in the event of her death until the filing of a Motion for Rehearing, the District maintains that the Circuit Court Order compelling the forced transfusion of Ms. Dubreuil was the least intrusive means of safeguarding the state's compelling interest in preventing the potential abandonment of Petitioner's minor children.

This is not a case in which the court that is faced with the difficult decision of whether or not to override the express wishes of a competent adult patient to refuse life-saving medical treatment is presented evidence demonstrating that the patient's minor children will be cared for in the event of the patient's death. Under such circumstances, the District would agree that the law clearly requires that the wishes of the patient be respected. See, e.g., Norwood Hospital v. Munoz, 564 N.E. 2d 1017, 1025 (Mass. 1991) (Abandonment will not be found where "[t]here is no evidence in the record that [the husband] was unwilling to take care of the child in the event that Ms. Munoz died."); In re Osborne, 294 A.2d 372, 375 (D.C. Ct. App. 1972) (Upholding lower court decision refusing to appoint a guardian to give consent for the administration of a blood transfusion to an adult Jehovah's Witness where that adult patient "had, through material provision and family and spiritual bonds, provided for the future well-being of his two children."). In the instant proceeding, however, the Circuit Court was faced with a situation in which all of the evidence available and presented at the time of hearing suggested that Petitioner had made no arrangements for the care of her minor children.

While Petitioner contends that the decision of the Circuit Court, as approved by the District Court, will created an unfair "presumption" of abandonment in those cases in which single, divorced or separated adults with minor children seek to refuse necessary medical care without first making express provisions for the care of those minor children, the District disagrees. If indeed such a "presumption" arises, that presumption is easily rebuttable in the face of the presentation of any evidence that the patient has a spouse, extended family, or other guardian willing to assume responsibility for the patient's minor children. The requirement that a patient present minimal evidence of this nature is hardly a burden on the exercise of fundamental constitutional rights. Given the grave consequences resulting from the abandonment of minor children, the District suggests that the "presumption" referred to by Petitioner is a necessary safeguard in proceedings of this nature.

Petitioner argues forcefully in her Initial Brief that Luc Dubreuil, as the natural father of Ms. Dubreuil's four minor children, had a duty to assume the care of those children. "In this case, the known presence of a father with a statutorily mandated duty to provide for his children's care was an obvious less intrusive alternative [to the compelled transfusion of Ms. Dubreuil]." See Petitioner's Initial Brief, at p.32. The District does not argue that Mr. Dubreuil would not be required **by law** to care for his children. However, given the sad facts that Mr. Dubreuil was separated from his wife, did not accompany her to the hospital, disagreed with her decision, and made no effort to communicate to the Circuit Court any ability or willingness to assume his parental responsibilities, it is mere wishful thinking to suggest that Mr. Dubreuil was an appropriate guardian **in fact**. This conclusion is bolstered by the Motion for Rehearing filed in the Circuit Court by the Petitioner, in which it was stated that Ms. Dubreuil "has

an extended family as well as friends who are willing to assist in the rearing of Respondent's minor children in the event of her demise." See Motion for Rehearing, at p.2 (emphasis added). Thus, Petitioner herself suggested to the Circuit Court that she did not desire the care of her minor children to be left in the hands of Mr. Dubreuil.

It is also instructive to note that Florida law provides a procedure whereby a parent can designate a "preneed guardian" in the event that death or incapacity renders that parent incapable of fulfilling his or her parental responsibilities. Section 744.305, Fla. Stat. (1991), provides that "[a] competent adult may name a preneed guardian by making a written declaration that names such guardian to serve in the event of the declarant's incapacity." Ms. Dubreuil executed no such declaration. The District suggests that disputes of this nature could be avoided in the future if competent adults desiring to decline life-saving medical procedures exercised their rights under Fla. Stat § 744.305.

The United States Supreme Court has previously held that a parent's fundamental free exercise rights are not absolute. "To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation ... if it appears that parental decisions will jeopardize the health or safety of the child, **or have the potential for significant social burdens**." Wisconsin v. Yoder, 406 U.S. 205,233-34, 92 S.Ct. 1526, 1542, 32 L.Ed.2d 15 (1972). In the present case, it is indisputable that permitting Petitioner to refuse life-saving blood transfusions would not jeopardize the health and safety of her minor children. However, it is equally indisputable that, given Mr. Dubreuil's apparent unwillingness to assume responsibility for his children, the potential for significant social burden existed in the factual scenario presented to the Circuit Court.

CONCLUSION

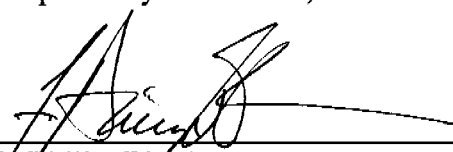
The South Broward Hospital District exercised state action when it filed a Motion for Declaratory Judgment and sought an emergency hearing seeking to obtain an order compelling the forced transfusion of Patricia Dubreuil. The District is a unit of local government under Florida law, and is entitled to sovereign immunity within the limitations provided by Florida statutory law. As such, the District is not required to satisfy any heavier burden of proof than would the State of Florida itself under the stringent "compelling state interest" and "least intrusive means" tests established by this Court for the review of fundamental constitutional rights claims.

Although Patricia Dubreuil's decision to refuse the blood transfusions proposed by her physicians was protected by her federal and state constitutional rights of privacy, bodily self-determination, and religious free exercise, it is indisputable that the freedom to exercise even fundamental constitutional rights is not absolute. Florida case law has consistently held that an individual's fundamental constitutional rights may be narrowly limited when necessary to serve a compelling state interest in the protection of innocent third parties.

In the present case, the Circuit Court Order compelling the forced transfusion of the Petitioner was the least intrusive means available of protecting the State of Florida's compelling interest in preventing the potential abandonment of Patricia Dubreuil's minor children. At the time that the emergency hearing in this matter was conducted, there was a complete lack of evidence regarding any provisions made by the Petitioner for the care of her minor children in the event of her death. Moreover, Ms. Dubreuil's husband, who was separated from the Petitioner and who vocally disagreed with Petitioner's decision to decline the required transfusion, demonstrated no willingness or

ability to assume the care of those minor children in the event of his wife's death. For these reasons, the Order of the Circuit Court, as affirmed by the District Court of Appeal, should be affirmed by this Court.

Respectfully submitted,



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WE HEREBY CERTIFY that pursuant to Florida Rule of Appellate Procedure 9.420(c)(2), true and correct copies of this Answer Brief were sent by overnight delivery to the following on this 15th day of March, 1993:

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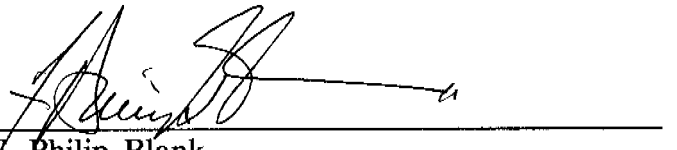

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