IN THE SUPREME COURT OF OHIO

MARK ALBRECHT, *et al.*,	:	
	:	
Plaintiffs-Respondents,	:	Case No.: 07-0507
	:	
v.	:	On Certified Question from the
	:	the United States District Court
BRIAN TREON, M.D., *et al.*,	:	for the Southern District of Ohio,
	:	Dist. Ct. Case No.: 1:06-CV-274
Defendants-Petitioners.	:	

PRELIMINARY MEMORANDUM OF AMICI CURIAE OHIO STATE CORONERS ASSOCIATION AND OHIO STATE MEDICAL ASSOCIATION IN SUPPORT OF DEFENDANTS-PETITIONERS

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I. INTRODUCTION

This case involves an important issue: whether relatives of a person who has died under sudden, unusual, or suspicious circumstances have a right, protected under the Fourteenth Amendment to the United States Constitution, to the body parts of the deceased which have been removed for forensic examination and testing and retained after the body has been returned to the family. Resolution of that issue necessarily requires this Court to address a fundamental issue of Ohio law: whether relatives of deceased persons have, under Ohio law, a property right in their deceased relative's tissue and organs removed for such forensic examination and testing. Because the resolution of this issue will significantly affect the way in which Ohio's County Coroners perform their duties and responsibilities, Amici Curiae Ohio State Coroners Association ("OSCA") and Ohio State Medical Association ("OSMA") respectfully urge this Court to answer the question certified to it by the United States District Court for the Southern District of Ohio.

The OSCA is a state-wide professional association comprised of Ohio's 87 County Coroners and one Medical Examiner, as well as their senior staff. Coroners are those licensed physicians who investigate sudden and/or suspicious deaths and perform autopsies in connection therewith, as well as those licensed physicians who investigate such deaths but do not perform autopsies. The mission of OSCA is to provide a forum for the discussion of various administrative, professional, and ethical issues and other matters affecting Ohio's County Coroners and the general public; to establish a continuing education curriculum; to sponsor educational seminars and to exchange professional experiences; to consider and encourage methods of improving and promoting the office of Coroner; and to further programs that enable the general public and other public officials to better understand and appreciate the vital role Coroners play in today's society.

The OSMA is a non-profit professional association founded in 1835 and is comprised of approximately 20,000 physicians, medical residents, and medical students in the State of Ohio. OSMA's membership includes most Ohio physicians engaged in the private practice of medicine, in all specialties. The OSMA strives to improve public health through education, to encourage interchange of ideas among members, and to maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

II. STATEMENT OF THE CASE AND THE FACTS

This putative class action was commenced in the United States District Court for the Southern District of Ohio on May 8, 2006. In their complaint, Plaintiffs allege that they are the next of kin of Christopher Albrecht, who died in Clermont County. Albrecht's body was taken to the Hamilton County Coroner's office, where an autopsy was performed. During the autopsy, Albrecht's brain was removed for forensic testing. Coroners often find it necessary to perform a detailed examination of a decedent's brain in order to determine the cause of death. Such examination requires the removal of the brain and its fixation in a solution of formaldehyde and salt for a period of three to fourteen days. This process allows the brain to solidify so that the coroner can obtain a cross section for further testing. Plaintiffs were not notified that Albrecht's brain had been removed. Albrecht's brain was not returned to Plaintiffs with his body, and was later disposed of in accordance with Ohio law. See R.C. 313.123(B)(1).

Plaintiffs seek to represent a class of beneficiaries or next of kin of decedents who have had organs removed and retained by Ohio county coroners since 1991. Plaintiffs also seek to certify a class of defendants consisting of the Boards of Commissioners and Coroners of eighty-seven (87) of Ohio's counties (all except Hamilton County). In their complaint, Plaintiffs seek declaratory, injunctive, and monetary relief under 42 U.S.C. § 1983. Plaintiffs' claims are premised upon an alleged deprivation of rights under the Fourteenth Amendment to the United

States Constitution. Plaintiffs allege that they have a property interest in Albrecht's tissue and organs, and that they were deprived of that property without due process of law.

The Defendants moved the District Court to certify a question of state law to this Court. In their motion, Defendants observed that the property rights protected under the Fourteenth Amendment are defined by state law and that this Court has not previously addressed the issue of whether next of kin have a protected property interest in the tissue and organs removed from their decedents during the performance of an autopsy. The District Court agreed, and on March 7, 2007, certified the following question of state law to this Court:

> Whether the next of kin of a decedent, upon whom an autopsy has been performed, have a protected right under Ohio law in the decedent's tissues, organs, blood or other body parts that have been removed and retained by the coroner for forensic examination and testing.

Albrecht v. Treon (S.D.Ohio March 12, 2007), No. 1:06-CV-274, slip op. at 12, 2007 WL 777864.

III. THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION

Plaintiffs' claims in this case represent an attempt to significantly expand the rights of next of kin to their decedent's tissues and organs. This attempted expansion is without any basis in the statutes of this state or the precedent of this Court and must be rejected. As explained in detail in the argument below, no Ohio court has ever held that a decedent's next of kin have a property interest in their decedent's tissue or organs removed during an autopsy. Indeed, at least one court has expressly rejected the notion that Ohio law vests a surviving custodian with property rights or "quasi-property rights" in the body of their decedent. See *Carney v. Knollwood Cemetery Ass'n* (Cuyahoga App. 1986), 33 Ohio App.3d 31, 37. See also R.C. 313.123 (classifying tissue and organs removed during autopsies as "medical waste" to disposed of by the coroner).

Properly performed autopsies are essential for the state's public health and law enforcement functions. Proper post-mortem medical examinations in unusual circumstances, or where the cause of death is not readily apparent, can assist in detecting disease and epidemics—potential threats to all Ohio citizens—and can assist in apprising the family of the deceased of congenital threats. When death results from violent or suspicious circumstances, forensic evidence obtained from autopsies provides invaluable assistance to Ohio's law enforcement officers and prosecutors thereby helping protect the citizens of Ohio. Indeed, in many instances, it is the evidence obtained from properly performed autopsies that forms the primary basis for arrest and conviction. A court-imposed hesitancy of Ohio's county coroners to remove tissue and organs for diagnostic testing and examination will only impede their ability to determine the cause, manner, and mode of death and to issue precise rulings on their findings. See R.C. 313.12, 313.121, 313.131, 313.15, & 313.19. This hesitancy can only harm Ohio and its citizens.

Initially, it must be observed that such lawsuits will only impede Ohio's County Coroners' ability to carry out their statutory duties and responsibilities and to properly perform autopsies. The Ohio Attorney General has described those duties and responsibilities:

> The coroner's office must be notified "[w]hen any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, when any person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances." In these circumstances, the coroner is responsible for determining the cause, manner, and mode of death. The coroner has express authority to take charge of the dead body, to subpoena and question witnesses, and to determine whether there is a need to perform an autopsy.
>
> The need for an autopsy is determined according to statutory standards, which allow certain exceptions for religious objections. * * * *If the county coroner determines that an autopsy is necessary, the coroner "is required by law to perform an autopsy, determine the true cause of death and to file a report of his conclusions."*

2006 Op. Ohio Att'y Gen. 2006-039 (Sept. 13, 2006) (emphasis added) (citations omitted).

> It is the duty of the coroner to determine the reasonable and true cause of death. * * * The county coroner is a public officer upon whom rests the duty to determine whether an autopsy is necessary. If in his opinion an autopsy is necessary, he is required by law to perform an autopsy, determine the true cause of death and to file a report of his conclusions.

Everman v. Davis (Montgomery App.), 54 Ohio. App.3d 119, 121-22, *appeal dismissed* (1989), 43 Ohio St.3d 702.

Once a coroner determines that an autopsy is necessary, the conduct of that autopsy is governed by statute:

> As used in this chapter, "autopsy" means the external and internal examination of the body of a deceased person, including, but not limited to, gross visual inspection *and dissection of the body and its internal organs,* photographic or narrative documentation of findings, microscopic, radiological, toxicological, chemical, or other laboratory analyses performed in the discretion of the examining individual *upon tissues, organs,* blood, other bodily fluids, gases, or any other specimens and *the retention for diagnostic and documentary purposes of tissues, organs,* blood, other bodily fluids, gases, or any other specimens as the examining individual considers necessary to establish and defend against challenges to the cause and manner of death of the deceased person.

R.C. 313.123(A)(1) (emphasis added). Thus, to properly perform an autopsy, the coroner is required to dissect "the body and its internal organs," to conduct examinations and tests on the decedent's tissues and organs, and, as necessary, to retain tissues and organs "for diagnostic and documentary purposes." See also *National Ass'n of Medical Examiners ("NAME") Standard B4: Forensic Autopsy Performance*; *NAME Standard G26: Specimens for Laboratory Testing.*

Moreover, once tissues and organs are removed during the course of an autopsy, Ohio statutory law governs its disposal. With a limited exception for the religious beliefs *of the decedent*, R.C. 313.123(B)(2), the statute directs that tissue and organs removed from a body during an autopsy are not to be returned to the decedent's next of kin:

> [R]etained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy *are medical waste and shall be disposed of* in accordance with applicable federal and state laws . . . .

R.C. 313.123(B)(1) (emphasis added). Lawsuits designed to obtain possession of a decedent's tissue and organs—or, as here, to impose monetary damages for their proper retention and disposal—will prevent Ohio's County Coroners from complying with their duty and obligation under Ohio law of disposing of those tissues and organs as medical waste. Quite simply, compliance with an order requiring the return of tissue and organs, other than in a case involving the decedent's religious beliefs, will require a County Coroner to disregard the command of R.C. 313.123(B)(1). Thus, Ohio's County Coroners are placed in the untenable position of either violating a court order regarding the removal, testing, and disposition of a decedent's tissues and organs or failing to follow the dictates of Ohio law.

Forcing Ohio's coroners to repeatedly respond to lawsuits for damages commenced by decedent's relatives will also subject Ohio's counties and their coroners to financial hardship.[1] In the absence of a ruling by this Court, Ohio's counties and their coroners will continue to be subjected to lawsuits such as the one at bar. The expense of such litigation alone will drain county financial resources and hamper the ability of many County Coroners to adequately do their jobs, especially those serving in the State's smaller and less prosperous counties.

Ohio's County Coroners should not be subjected to case-by-case judicial control of the performance of their duties and responsibilities. Rather, Amici Curiae OSCA and OSMA maintain that whether notice is required, and if so, what notice, and whether and under what circumstances tissue and organs may be removed and retained during the course of an autopsy,

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[1]For example, Hamilton County, the one county not a putative defendant in this class action, lost on summary judgment in a similar case. *Hainey v. Parrott* (S.D.Ohio Sept. 28, 2005), No. 1:02-CV-733, 2005 WL 2397704. While the case was pending on appeal, the county settled the case for $6,000,000. Amici Curiae OSCA and OSMA maintain that *Hainey* was wrongly decided, but, in any event, *Hainey* was decided prior to the General Assembly's recent enactment of R.C. 313.123, which now controls the disposition of tissue and organs removed during the performance of autopsies. Both *Hainey* and R.C. 313.123 are discussed in further detail in the Argument below.

are issues for the Ohio General Assembly, not for the courts. Courts are not proper vehicles for regulating the performance of autopsies in Ohio.

This Court can, by answering the question certified to it by the District Court, end the confusion and settle, once and for all, the rights under Ohio law of next of kin in a decedent's tissues and organs removed for examination and testing during an autopsy. Although Amici Curiae urge the Court to answer the question in the negative, they maintain that the Court's resolution of the issue, whatever the outcome, will provide needed guidance to Ohio's County Coroners. Amici Curiae, therefore, respectfully urge the Court to issue an order agreeing to answer the certified question and directing the parties to fully brief this important issue.

IV. ARGUMENT

Proposition of Law:

THE NEXT OF KIN OF A DECEDENT, UPON WHOM AN AUTOPSY HAS BEEN PERFORMED, DO NOT HAVE A PROTECTED RIGHT UNDER OHIO LAW IN THE DECEDENT'S TISSUES, ORGANS, BLOOD, OR OTHER BODY PARTS THAT HAVE BEEN REMOVED AND RETAINED BY THE CORONER FOR FORENSIC EXAMINATION AND TESTING.

A. Standard For Certification

S.Ct.Prac.R. XVIII, § 1 provides:

> The Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, determines there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court, and issues a certification order.

"[A]nswering certified questions serves to further the state's interests and preserve the state's sovereignty . . . ." *Scott v. Bank One Trust Co.* (1991), 62 Ohio St.3d 39, 42. Under these standards, this Court should answer the question certified to it by the District Court, and it should answer that question in the negative.

"[U]se of the certification procedure is most appropriate when the question of state law is

new or state law is unsettled." *Transamerica Ins. Co. v. Duro Bag Mfg. Co.* (6th Cir. 1995), 50 F.3d 370, 372. "Novel or unsettled questions of state law may be appropriate for certification where certification will save time, energy and resources, or where there are conflicting federal interpretations of an important state law question which would otherwise evade state court review." *Metz v. Unizan Bank* (N.D. Ohio 2006), 416 F. Supp.2d 568, 574 (citations omitted).

As noted by the District Court in its order certifying the question now before this Court, the question of Ohio law presented is determinative of the outcome of this case. *Albrecht v. Treon,* slip op. at 4. Moreover, as also noted by the District Court, this Court "has never addressed the issue of whether next of kin have a protected right under Ohio law in the decedent's body parts removed and retained for forensic examination." *Albrecht v. Treon,* slip op. at 10. Accordingly, this Court should agree to answer the certified question.

B. The Viability Of Plaintiffs' Due Process Claim Is Dependent Upon Their Property Rights As Defined By State Law.

Although Plaintiffs' due process claim is, by its very nature, a federal constitutional cause of action, its resolution is dependent upon their property rights as defined by Ohio law:

> A procedural due process limitation . . . does not require that the government refrain from making a substantive choice to infringe upon a person's life, liberty, or property interest. It simply requires that the government provide "due process" before making such a decision. The goal is to minimize the risk of substantive error, to assure fairness in the decision-making process, and to assure that the individual affected has a participatory role in the process. The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard "in a meaningful manner."

Howard v. Grinage (6th Cir. 1996) 82 F.3d 1343, 1349 (citation omitted). "Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents v. Roth* (1972), 408 U.S. 564, 577. See also *State ex rel.*

Horvath v. State Teachers Retirement Bd. (1998), 83 Ohio St.3d 67, 73, 1998-Ohio-424 ("While [petitioner's] argument supposes a constitutional property right . . . any property right . . . would have to be a product of some source independent of the federal Constitution, such as state law."), *cert. denied* (1999), 525 U.S. 1179. "[P]roperty rights are defined by state law." *State ex rel. R.T.G., Inc. v. State* (2002), 98 Ohio St.3d 1, 11, 2002-Ohio-6716 (citations omitted). Indeed, this Court recently accepted certification of a question from federal courts presenting issues of property rights under Ohio law, the resolution of which was dispositive of the plaintiffs' federal due process claims. *McNamara v. Rittman* (2005), 107 Ohio St.3d 243, 2005-Ohio-6433.

C. Under Ohio Law, Next Of Kin Do Not Have A Property Interest In A Decedent's Tissues And Organs Removed During An Autopsy For Examination And Testing.

Plaintiffs asserted before the District Court, and are likely to assert here, that the extent of their state-law property interest in their deceased son's body, including all of its tissue and organs, is now well-settled. In support of this assertion, Plaintiffs will direct this Court's attention to two decisions of the federal courts applying what they believed was Ohio law. See *Brotherton v. Cleveland* (6th Cir. 1991), 923 F.2d 477; *Hainey v. Parrott* (S.D.Ohio Sept. 28, 2005), No. 1:02-CV-733, 2005 WL 2397704. Amici Curiae maintain that *Brotherton*'s holding is a questionable statement of Ohio law, and, in any event, the court did not in that case address the precise issue now before this Court: the property rights of next of kin in their decedent's tissue and organs removed during autopsies for examination and testing. Moreover, the decision in *Hainey* represents a completely unwarranted and unsupported expansion of the holding in *Brotherton* and should be rejected by this Court.

Although this Court has never addressed the issue, several Ohio Courts decided prior to *Brotherton* ruled that a dead body is not property. In *Hadsell v. Hadsell* (Allen Cir.Ct. 1893), 3 Ohio C.C. 196, the court held that "[a] dead body is not property." 3 Ohio C.C. at 199.

Brotherton, 923 F.2d at 482 (citations omitted).

Judge Joiner strenuously objected to the *Brotherton* majority's holding and, citing *Everman, Carney, Hayhurst,* and *Hadsell,* stated that "Ohio law has made it very clear that there is no property right in a dead person's body." *Brotherton,* 923 F.2d at 483 (Joiner, J., dissenting). Judge Joiner expressly rejected the notion that Ohio's anatomical gift statute created property rights in the next of kin:

> Plaintiff attempts to create a property right by pointing to Ohio statutes which plaintiff asserts give a decedent's next of kin certain rights relating to that body for the purpose of organ donation. Ohio Rev. Code §§ 2108.02(B), 2108.60. This argument is not persuasive for several reasons. The alleged rights do not constitute a property right. Section 2108.02(B) of the statute gives designated persons limited rights to donate body parts of a deceased and it places certain duties on the coroner. Section 2108.60 gives rights to a coroner to remove corneas in described situations and imposes certain duties on him. Neither statute speaks in terms of giving property rights to a surviving relative. As the district court recognized, basically all plaintiffs have under that statute is a right to consent, and that is not enough.

Brotherton, 923 F.2d at 483 (Joiner, J., dissenting) (citation omitted). Judge Joiner concluded by stating that the majority was "wrong in its holding that the procedural requisites for dealing with non-property can rise to become property and be protected by the fourteenth amendment," and that "the 'bundle of rights' in the plaintiff, in light of the common law history and the express purpose of the two statutes, is virtually nonexistent." *Brotherton,* 923 F.2d at 484 (Joiner, J., dissenting).

Following the decision in *Brotherton,* the Sixth Circuit had another occasion to consider a similar issue—this time applying Michigan law—not in a case involving anatomical gifts, but rather involving an autopsy performed over the objections of the next of kin:

> There is no merit in the procedural due process claim founded on the state statutory requirement that the medical examiner make a diligent effort to notify the next of kin as to the decision to perform an autopsy. Whatever the nature of the right created by the statute there is an insufficient liberty or property interest under this statute to create a valid procedural due process claim. Although the

> notice requirement in the state statute does not appear to be discretionary, it does not purport to establish a right to control the dead body. We would distinguish this case from *Brotherton v. Cleveland*, 923 F.2d 477 (6th Cir.1991). In *Brotherton* the plaintiff had an "aggregate of rights granted by the state of Ohio" to control disposition of the body, including the corneas, and thus had a right to refuse removal of corneas for purposes of a cornea transplant. *Id.* at 482. In this case, the state left the decision as to autopsy to the discretion of the medical examiner, allowing the autopsy with or without the permission of the next of kin.

Montgomery v. County of Clinton (6th Cir. 1991), 940 F.2d 661, 1991 WL 153071 at 2, unpublished.

In *Hainey, supra,* the United States District Court for the Southern District of Ohio considered, under Ohio law, a case similar to the one now before this Court. The coroner had performed an autopsy that required the removal of certain tissue and organs. The organs not required for fixation and further examination and testing were resealed in the body cavity, and the body was released to the funeral director for preparation and burial. The brain, however, was retained for fixation and additional forensic examination and was subsequently disposed of in accordance with established procedures. The decedent's next of kin subsequently brought suit alleging a due process violation.

The *Hainey* court correctly noted that *Brotherton* was distinguishable from the case before it:

> At first blush, the holding in *Brotherton* appears to establish a property interest in the decedent's remains in a very broad fashion. The question is whether *Brotherton* is distinguishable from the facts of this case in any meaningful way. An important but not necessarily dispositive point of distinction is that in the present case, the coroner's decision to retain the deceased's brain was determined to be forensically or scientifically necessary to determine the cause of death. As noted above, this decision appears to be completely within the purview of the coroner. In contrast, *Brotherton* involved what amounted to state-sanctioned grave robbing. Additionally, because of the time required to fix the brain for proper forensic examination, the coroner was in the unenviable position of having to either: a) advise grieving next-of-kin that he would not release the body of their relative for several weeks, thereby prolonging and perhaps exacerbating the mourning and grieving process for persons already distraught because their relative died under circumstances requiring an autopsy; or b)

> releasing the body to the next-of-kin and then, following completion of the neuropathology conference, performing the somewhat gruesome task of informing that them that [*sic*] their decedent's brain was available for recovery if they so desired. It appears that the coroner's policy of not notifying the next-of-kin that he had retained the brains of their decedents was motivated by nothing more than a desire to avoid inflicting additional unnecessary pain on Plaintiffs.

Hainey, 2005 WL 2397704 at*5 (footnotes omitted). Notwithstanding these very significant differences, the court concluded that they "do not take this case outside the broad holding in *Brotherton* that there is a substantial and protectable constitutional interest in the dead body of a relative or loved one." *Hainey,* 2005 WL 2397704 at*5.

Amici Curiae respectfully suggest that the *Hainey* court improperly expanded the holding of *Brotherton* to encompass situations where tissue and organs are removed and retained for additional forensic examination and testing. This expansion is unwarranted and completely unsupported by Ohio law. As noted above, the *Hainey* decision places Ohio's County Coroners in the untenable position of either violating a court order regarding the removal, testing, and disposition of a decedent's tissues and organs or failing to follow the dictates of Ohio law.

Following the holding in *Hainey,* the Ohio General Assembly enacted R.C. 313.123, effective August 8, 2006. To the extent there existed any doubt on this issue at the time of the decision in *Hainey,* that doubt has been removed by the legislature. R.C. 313.123(B)(1) now expressly governs Ohio County Coroners' disposition of retained tissue and organs and unequivocally removes any suggestion that Ohio law confers property rights therein upon the next of kin.

> [T]issues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy *are medical waste and shall be disposed of in accordance with applicable federal and state laws*, including any protocol rules adopted under section 313.122 of the Revised Code.

(emphasis added).

Amici Curiae are mindful and respectful of the rights of decedents and their next of kin to

attend to the proper preparation and burial of the body. These rights, however, do not, under Ohio law, rise to the level of a protectable property interest in the decedent's tissue and organs when the removal and retention of those tissue and organs is required for forensic testing and examination. See *Albrecht v. Treon*, slip op. at 8 ("That Ohio law affords next of kin a protected right in the 'body' of the decedent is beyond dispute. However, this does not, as Plaintiffs suggest, automatically confer to the next of kin a protected right in 'body parts' of a decedent removed and retained by the coroner for forensic examination and testing.").

Plaintiffs in this case, like the plaintiffs in *Hainey,* maintain that they are entitled to notice of such removal and retention, and ultimately, the return of tissue and organs. Indeed, Ohio law provides for such notice and return in the limited instance where the "coroner has reason to believe that the autopsy is contrary to the deceased person's religious beliefs." R.C. 313.123(B)(2). See *Albrecht v. Treon,* slip op. at 8 ("Arguably, if the Ohio legislature recognized a protected right in a decedent's tissues and organs removed and retained by the coroner for forensic examination, the statute would not confine return of the specimens to a religious decedent's next of kin."). This statutory right is limited in scope so that Ohio's County Coroners can properly perform their duties and responsibilities, and exercise their professional judgment, free from outside influences.

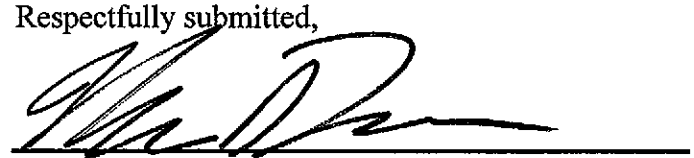
If the legislature believes that greater rights of notification and return should exist, it may always amend R.C. 313.123. But Amici Curiae maintain that the issues of whether notice is required, and if so, what notice, and whether and under what circumstances tissue and organs may be removed and retained during the course of an autopsy, are issues for the Ohio General Assembly, not for the courts. Courts, like the District Court in this case, are not proper vehicles for regulating the performance of autopsies in Ohio. To subject Ohio's County Coroners to case-by-case judicial control of the performance of their duties and responsibilities under Ohio law

would be unprecedented and unwise.

V. CONCLUSION

For the foregoing reasons, Amici Curiae Ohio State Coroners Association and Ohio State Medical Association respectfully urge this Court to answer the question certified to it by the United States District Court for the Southern District of Ohio and to direct the parties to fully brief the issue presented.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Preliminary Memorandum of Amici Curiae Ohio State Coroners Association and Ohio State Medical Association in Support of Defendants-Petitioners* was served via regular U.S. mail, postage prepaid, upon the following this 10tth day of April, 2007:

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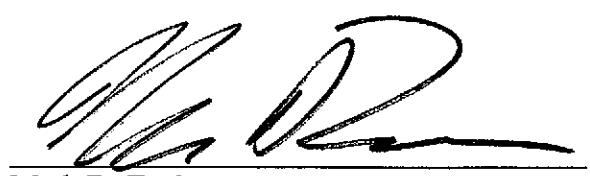

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