

IN THE SUPREME COURT OF OHIO

MARK ALBRECHT, etc., et al.,

CASE NO. 07-0507

Plaintiffs-Respondents,

vs.

On certified question of state law from the
United States District Court, Southern
District of Ohio, Western Division
Case No. 1:06-CV-00274

BRIAN TREON, M.D., et al.

Defendants-Petitioners.

**BRIEF OF AMICUS CURIAE OF MONREAL FUNERAL HOME IN SUPPORT OF
PLAINTIFFS-RESPONDENTS MARK ALBRECHT, et al.**

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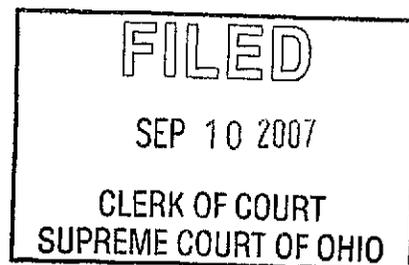


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I. INTEREST OF AMICUS CURIAE

This case is about whether the Albrechts had an interest in the organs of their deceased son such that they should have been told that his body released to them for burial after autopsy was missing his brain, which had been discarded as “medical waste” by the coroner. The question thus presented here, whether the next of kin have a protectable interest in the organs of their deceased kin, is an issue that affects not only the Albrechts, but anyone who has ever lost a loved one. The Petitioners’ and their Amici’s answer to this question in the negative, and their callous referral to the body and parts of loved ones as “dead carcasses” is an insult to all persons and organizations who go to great lengths to guarantee that every reasonable step is taken to bury a deceased with the utmost respect.

One such organization is Monreal Funeral Home, who submits this brief as Amicus Curiae in support of Plaintiffs-Respondents Mark and Diane Albrecht. Monreal Funeral Home has been helping families provide meaningful services for their loved ones since 1892. Monreal is committed to maintaining the high ethical standards of their profession. Legal developments relating to the field of death and dying are thus of direct interest to Monreal. The ability to determine the respectful disposition of the remains of a loved one is perhaps the most fundamental aspect of insuring that the wishes of the next-of-kin are carried out. The outcome urged in this litigation by the defense of denying the next-of-kin a protected right to direct the respectful disposition of all body parts after the entire autopsy process is concluded is contrary to this goal.

Monreal Funeral Home therefore supports the position of the Plaintiffs-Respondents, representing next-of-kin, in their objective to maintain a legally protected right to make the determination on the respectful disposition of all body parts of their deceased loved ones

following autopsy. The Amicus thus respectfully requests this Court answer the certified question in the affirmative.

II. STATEMENT OF THE CASE

The facts giving rise to this lawsuit occurred after the death of the Albrechts' son Christopher. After his death, an autopsy was performed by the Clermont county coroner, and his body was released to his parents for burial. However, Christopher's brain, which had been removed for examination, was retained by the coroner. This information was disturbingly never passed along to the Albrechts, who buried their son without his brain—which was thrown away by the coroner after the autopsy.

The Albrechts, deprived of their right to bury their deceased son in a condition that was complete as possible, brought this lawsuit on behalf of themselves and other similarly situated individuals, against the Clermont County Coroner as well as a defendant class of county coroners throughout the state.¹

The Petitioners then asked the District Court to certify the issue of next of kin's rights to this Court. The question which Judge Dlott certified is:

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

Judge Dlott's March 12, 2007 Order Granting Motions to Certify a Question to the Ohio Supreme Court at 12.²

¹ The lawsuit seeks to certify both a plaintiff class, and a defendant class, consisting of all county coroners within the state of Ohio, with the exception of Hamilton county, which was previously sued, and found liable in a case identical to the present one. *See Hainey v. Parrott*, (S.D. Ohio 2005), 2005 U.S. Dist. LEXIS 44837.

² R.C. 313.123(B), effective date August 17, 2006, attempted to prospectively abrogate the next of kin's rights with respect to remains that have been removed by the coroner for testing. This issue is further discussed in Respondents' Merits brief.

The task before this Court is thus to determine the nature of the next of kin's interest. Whether this interest—however defined—rises to the level of constitutional protection, will then be an issue for the federal court. As Judge Diott noted in her Order:

The threshold question in this due process claim is whether, under Ohio law, there exists for the next of kin of a decedent upon whom an autopsy has been performed "an interest" in the decedent's tissues and organs removed and retained by the coroner for forensic examination and testing. If so, then regardless of the nature of that interest, it is a matter of federal law whether that interest rises to a level of a "legitimate claim of entitlement" protected by the Fourteenth Amendment.

Id. at 7; *see also Brotherton v. Cleveland*, (6th Cir. 1991), 923 F.2d 477 ("Although the existence of an interest may be a matter of state law, whether that interest rises to the level of a "legitimate claim of entitlement" protected by the due process clause is determined by federal law. This determination does not rest on the label attached to a right granted by the state but rather on the substance of that right.") (internal citations omitted).

III. LAW AND ARGUMENT

Introduction

The question in this case is the nature of the interest next of kin have in the organs of their deceased.

Petitioners and their Amici however, have tried to make this issue about coroners' rights to perform autopsies. They also attempt to confuse the issue by focusing on the distinction between various body parts. This is a red-herring. Undoubtedly the next of kin's rights must yield to the legitimate state interest to conduct autopsies, and proper procedures may result in the loss of gasses, fluids, and tissues. All of this is irrelevant. The question for this Court is the nature of the family's interest in the *organs* of their loved ones *after* the autopsy is completed. It is at this point that the family's interest becomes superior and their right to possess and direct the

disposition of the remains of their deceased loved ones vests. As is correctly noted in *Hainey v. Parrot* (S.D. Ohio, 2005), 2005 U.S. Dist. LEXIS 44837, 18-19:

Although it is a given that of necessity tissue and fluids will be destroyed a result of performing the autopsy, the right to take possession of what remains of the deceased's body following the completion of the autopsy in no way conflicts with the coroner's admittedly superior prior interest to take custody of the body and complete what procedures are necessary to determine the cause of death. The right and duty of the coroner to perform the autopsy can co-existent with the right to possess what is left of the remains following the autopsy for preparation, mourning, and burial.

Plaintiffs-Respondents' brief, supported by this Amicus, further explores this point and focuses in detail on Ohio's statutory and case law, which clearly supports the next of kin's protected interest in the organs of their deceased loved ones.

In fact, should this Court find differently, such a decision would be contrary to the legal precedent of the entire country. This is demonstrated by this Amicus brief, which surveys the case law throughout the United States dealing with the issue of decedent remains. Regardless of the "label" courts have put on the next of kin's interests (e.g. constitutional property interest, property interest, quasi-property interest or recognition under various tort theories), the unanimous consensus among the states is clear: individuals have the right to possess, make disposition of, and prevent harm to all the remains of their deceased loved ones. Not a single state has found to the contrary.

An early Mississippi case decision perhaps described the treatment of this issue best when it stated:

While at common law in ancient times the dead body was not regarded as property, and while the rights and dispositions of such bodies was entrusted to the ecclesiastical courts, this rule has never prevailed in its full extent in America, and modern authorities have abandoned that doctrine, and practically all of the authorities agree that, where a dead body is injured or mutilated, the next of kin, having the right to such body for disposition and burial, may recover damages. Some place the right to recover on one principle, and some upon another; but all

recognize the rights of the next of kin, and award compensation for any invasion or injury of such rights.

Western Union Tel. Co. v. Teague (Miss. 1918), 117 Miss. 401, 426, Ethridge, J. concurring.

The Amicus Curiae thus respectfully request this Court to accord with the legal precedent throughout the rest of the country, uphold these sacred rights, and answer the certified question in the affirmative.

**“Remains” of the Decedent Encompasses the
Entire Person, Including Organs**

Defendant-Petitioners and their Amici frame their arguments to divorce the parts of the decedent’s body (organs, limbs, eyes) from the protection given the next of kin to determine the disposition of the remains of their loved ones. See, e.g., Defendant-Petitioners’ Merits Brief pp. 8, 13. They cite no law to support this dichotomy, because the cases throughout the country do not recognize it. The term “remains” or “body”—chosen by the legislatures in state after state (including Ohio)—encompasses *all* of the deceased, not just the torso. As statutorily defined by the Ohio General Assembly, for example, “‘Dead body’ means a human body or part of a human body.” R.C. 3705.01(C).

The law grants an enforceable interest to the next of kin for the specific reason of preventing acts which insult, disrespect, or remove parts from the intact body. Removal of organs violates this right, for the law grants the enforceable interest to the next of kin to receive *all* of their decedent, granting “the right to custody of the body; to receive it in the condition in which it was left, without mutilation”. *Carney v. Knollwood Cemetery Ass’n*, (Cuy. Cty, App., 1986), 33 Ohio App.3d 31, 36.

The caselaw nationally thus recognizes an enforceable interest against removal of body parts. Any other approach is incongruous since a person’s body is the sum of its parts.

Constitutional Protection

California, Florida, Indiana, Louisiana, Michigan, and Missouri law all recognize the possessory rights of the next of kin in their relatives' remains, including organs—rights which have been further recognized as constitutional property interests.

In California, these interests were recognized in the Ninth Circuit case of *Newman v. Sathyavaglswaran*, (9th Cir. 2002), 287 F.3d 786, wherein plaintiff parents brought due process violation claims against a coroner's office for removing the corneas of their deceased sons without notifying them and without their permission. The Ninth Circuit engaged in an extensive analysis of the treatment of the deceased—from Roman times—to early English and American common law—through to modern California case and statutory law, and ultimately concluded that California law recognizes the interest of the next of kin in the possession, control, and disposition of their deceased and all parts of the decedent's body. The Court found that these rights “[a]re all important components of the group of rights by which property is defined” and that “each of which carried with it the power to exclude others from its exercise, traditionally ... one of the most treasured strands in an owner's bundle of property rights.” *Id.* at 796-797 (internal quotations omitted) quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, (1982) 458 U.S. 419, 435-436, 73 L. Ed. 2d 868, 102 S. Ct. 3164.

Florida's Supreme Court found a “legitimate claim of entitlement” in the next of kin to “possession of the remains of a decedent for burial or other lawful disposition” noting the various state case law and statutes protecting these rights. *Crocker v. Pleasant*, (Fla. 2001), 778 So.2d 978, 986-987 (remanding to court below to determine whether defendant county's failure

to notify plaintiff parents of son's death before the county buried the deceased constituted a due process violation of parents' constitutional rights).³

Indiana law similarly gave the next of kin a "legitimate claim of entitlement" sufficient for due process protection in the organs of their deceased. *Martin v. Kim*, (D. Ind. 2005), 2005 U.S. Dist. LEXIS 20595, 13-14 (denying motion to dismiss where defendant coroner prevented plaintiff relative from receiving deceased's organ donation).

Louisiana and Missouri law provided for a constitutional property interest in the deceased in cases involving unauthorized experiments on stillborns (Louisiana) and unauthorized harvesting of organs (Missouri), regardless of the courts' subsequent finding that these rights were not violated. See *Mansaw v. Midwest Organ Bank*, (W.D. Mo. 1998), 1998 U.S. Dist. LEXIS 10307 (Missouri statute provided adequate protection of the interest); *Arnaud v. Odom*, (5th Cir. 1989), 870 F.2d 304 (Louisiana tort law provided proper post-deprivation remedy).

The Sixth Circuit, analyzing Michigan law, similarly found a constitutionally protected interest in a case brought by next of kin plaintiffs against defendants who removed plaintiffs' relatives' corneas and eyeballs without permission. *Whaley v. County of Tuscola*, (6th Cir. 1995) 58 F.3d 1111. The Court stated:

The Supreme Court of Michigan has repeatedly held that the next of kin "[are] entitled to possession of the body as it is when death comes, and that it is an actionable wrong for another to interfere with that right by withholding the body or mutilating it in any way."... In short, Michigan law is virtually identical to Ohio's with regard to the rights it grants in a decedent's body. The next of kin have the right to dispose of the body in limited circumstances, possess the body

³ Importantly, the Florida Supreme Court in *Crocker* expressly distinguished its previous holding in *State v. Powell*, (Fla. 1986), 497 So.2d 1188 which upheld the constitutionality of a narrowly drawn statute regulating disposition of corneal tissue, the purpose of which was to promote the state's interest in aiding its blind citizens. Likewise in the case sub judice we are not dealing with organs that are subject to statutory regulation regarding their disposition (at least not prior to August 2006); we are dealing with organs that were thrown out after government need from them ended.

for burial, and prevent its mutilation...we therefore hold that Michigan provides the next of kin with a constitutionally protected property interest in the dead body of a relative.

Id. at 1115, 1116.⁴

All of the above cases found the next of kin have a constitutional property interest in their loved ones' body and parts. The remainder of the states likewise grant a statutory or common law interest in the next of kin's rights to possess and dispose of their relative's remains, including organs and parts.

Property or "Quasi"-Property Rights

Arkansas, Alabama, Connecticut, Georgia, Kansas, Maryland, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, and West Virginia, all recognize a relative's right of possession of all the deceased's remains for burial purposes and have referred to such rights as "property" or more predominantly "quasi-property."⁵

⁴ As this Court will note, *Whaley* expressly refers to Ohio law, which it found to be "identical" to Michigan's "with regard to the rights it grants in a decedent's body." The reference to Ohio is from an earlier Sixth Circuit opinion, *Brotherton v. Cleveland*, (6th Cir. 1991), 923 F.2d 477, which examined whether Ohio law provided a property interest in remains to the next of kin and found in the affirmative. *Brotherton*, as well as Ohio's Uniform Anatomical Gift Act, and relevant appellate decisions, are discussed in greater detail in Respondents' Merits Brief.

⁵ See *Travelers Ins. Co. v. Smith*, (Ark. 1999), 338 Ark. 81; *Rollins v. Phillips*, (Alab. 1989), 554 So.2d 1006; *Janicki v. Hospital of St. Raphael*, (Conn. Super. Ct. 1999), 46 Conn. Supp. 204; *Bauer v. N. Fulton Med. Ctr.*, (Ga. Ct. App. 1999), 241 Ga. App. 568; *Perry v. Saint Francis Hosp & Medical Ctr.*, (D. Kan., 1995), 886 F.Supp. 1551; *Painter v. United States Fidelity & Guaranty Co.*, (M.D. 1914), 123 Md. 301; *Barela v. Frank*, (N.M. 1960), 67 N.M. 319; *Emeagwali v. Brooklyn Hosp. Ctr.*, (NY Misc. 2006), N.Y. Slip. Op 50221U; *Massey v. Duke Univ.*, (N.C. Ct. App. 1998) 130 N.C. App. 461; *Geiges v. Rosko*, (Pa. C.P. 1987), 1987 Pa. Dist. & Cnty. Dec. LEXIS 55; *Pierce v. Proprietors of Swan Point Cemetery*, (R.I. 1872); 10 R.I. 227, 238; *Simpkins v. Lumbermens Mut. Casualty Co.*, 200 S.C. 228 (S.C. 1942); *Mexican v. Circle Bear*, (S.D. 1985), 370 N.W.2d 737; *Trinity Universal Ins. Co. v. Turner Funeral Home*, (E.D. Tenn. 2003), 2003 U.S. Dist. LEXIS 27205; *Neese v. Sturtevant*, (Va. Cir. Ct. 1959), 46 Va. Cir. 473; *Goldman v. Mollen*, (Va. 1937), 168 Va. 345; *Herzl Congregation v. Robinson*,

No state recognizes a property right in the traditional sense of the word ... body parts are not items for sale.⁶ Rather, property interests as used by these courts refer to the next of kin's rights to possess, control, and dispose of their loved ones' remains including organs—rights courts across the country have continually protected. *See Massey v. Duke Univ.*, (N.C. Ct. App. 1998) 130 N.C. App. 461, 464 *quoting Parker v. Quinn-McGowen Co.*, (N.C. 1964) 262 N.C. 560, 561-62, 138 S.E.2d 214, 215-16 (emphasis added) (“Our law recognizes that the next of kin has a quasi-property right in the body--not property in the commercial sense but a right of possession for the purpose of burial--and that there arises out of this relationship to the body an emotional interest which should be protected and which others have a duty not to injure intentionally or negligently [t]he survivor has the legal right to bury the body as it was when life became extinct.”); *Trinity Universal Ins. Co. v. Turner Funeral Home, Inc.*, (E.D. Tenn. 2003) U.S. Dist. LEXIS 27205, 29-30 (internal citations and quotations omitted) (“Interference with this "quasi-property right" of possession of a dead body for disposition is... not for the injury done to the dead body, but is for the wrong or trespass on the plaintiff's right to the undisturbed possession and control of the body”); *Rollins v. Phillips*, (Alab. 1989), 554 So. 2d 1006, 1009 (“Although there is no right of property as such in a dead body, the courts have recognized that a quasi-property right in dead bodies vests in the nearest relatives of the deceased, arising out of their duty to bury their dead. This right ... may include rights to possession and custody of the body for burial.”); *Painter v. United States Fidelity & Guaranty Co.*, (Md. 1914)(“The right [next of kin's quasi-property right] is not a property right in the

(Wash. 1927), 142 Wash. 469; *Whitehair v. Highland Memory Gardens*, (W. Va. 1985), 174 W. Va. 458.

⁶ The term “quasi-property” in fact stems from courts’ efforts to avoid “commercializing” the deceased, while still recognizing the next of kin’s right of possession. Michelle Bray, *Personalizing Personalty: Toward a Property Right in Human Bodies* (1990), 69 Tex. L. Rev. 209, 225.

general meaning of property right, but is extended for the purpose of determining who shall have the custody of the body in preparing it for burial. And courts of equity will protect those having this right from unreasonable disturbance.”); *Sanford v. Ware*, (Va. 1950) 191 Va. 43, 48 (“Although there is no right of property in a commercial sense in the dead body of a human being, the right to bury and preserve the remains is recognized and protected as a quasi-property right.”).

As such, interference with these rights has consistently given rise to civil liability. As the Supreme Court of Arkansas explained:

Courts have generally based civil liability for wrongful acts with regard to a dead body on the interference with the right of burial. Further, courts have recognized that there is a right to a decent burial which is guarded by the law, corresponding to the common law duty to bury one's dead in order to maintain public health and decency. Courts have, to a great extent, based civil liability for wrongful acts with regard to a dead body on the interference with the right of burial, recognizing that interference with the rights of person to bury the body of her spouse or kin is an actionable wrong, whether by mutilation of the body after death, the withholding of the body, or the conveyance of a communication which delays the person so entitled. The rights to possession, custody, and control of the body for the purpose of burial are within the protection of the law, and a willful violator of such rights may become liable for damages. The Restatement of Torts takes the view that one who intentionally, recklessly, or negligently withholds the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body.

Travelers Ins. Co. v. Smith, (Ark. 1999), 338 Ark. 81.

The examples of this in the case law are numerous. For instance, a Pennsylvania court denied the defendant's motion to dismiss where plaintiff class members asserted the medical examiner removed the decedents' brains without privilege or consent. *Buel v. Mirchandani*, (Phila. Co. CP 1992), 24 Phila. 393 citing *Papieves v. Kelly*, (Pa. 1970), 437 Pa. 373, 263 A.2d 118, 121 (“recovery may be had for serious mental or emotional distress caused by the intentional and wanton acts of mishandling a decedent's body.”). North Carolina and Kansas

have recognized causes of action for next of kin plaintiffs where the defendants had removed the deceased's eyes or corneas against next of kin wishes. See *Massey*, 130 N.C. App. 461; *Perry v. Saint Francis Hosp. & Medical Ctr.*, (D. Kan. 1995), 886 F.Supp. 1551. New York and Connecticut recognized claims for disposing (New York) and dissecting (Connecticut) plaintiff parents' stillborn remains without permission. *Emeagwali v. Brooklyn Hosp. Ctr.*, (NY Misc. 2006), N.Y. Slip. Op 50221U; *Janicki v. Hospital of St. Raphael*, (Conn. Super. Ct. 1999), 46 Conn. Supp. 204. Alabama determined that a coroner may be found liable for conducting an unauthorized autopsy. *Rollins v. Phillips*, 554 So.2d 1006. The West Virginia Supreme Court reversed dismissal of a plaintiffs' action against a contractor who mishandled relatives' bodies during their exhumation and reburial. *Whitehair v. Highland Memory Gardens*, (W. Va. 1985), 174 W. Va. 458.

All these cases grant a protected interest in the next of kin to the remains of their loved ones "in the condition as when life became extinct." No case has followed the path demanded by the Defendant-Petitioners, of granting interest in and protection to the body, but not its parts. Ohio should not step in the opposite direction.

Tort and Statutory Protection

A third group of states, Colorado, Hawaii, Idaho, Illinois, Kentucky, Maine, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Texas, Vermont, and Wisconsin, while declining to use the term "property" or "quasi-property", nonetheless likewise recognize next of kin's interest in their loved ones' remains.⁷

⁷ *Culpepper v. Pearl St. Bldg. Inc.*, (Colo., 1994), 877 P.2d 877; *Guth v. Freeland*, (Haw. 2001), 96 Haw. 147, 155; *Brown v. Matthews Mortuary*, (Idaho 1990), 118 Idaho 830; *Leno v. St. Joseph Hospital*, (Ill. 1973), 55 Ill. 2d 114; *Louisville & N. R. Co. v. Hall*, (Ky. 1927), 219 Ky. 528; *Bourgoin v. Stanley Med. Research Inst.*, 2005 Me. Super. LEXIS 157 (Me. Super. Ct. 2005); *Contreras v. Michelotti-Sawyers & Nordquist Mortuary*, (Mont. 1995), 271 Mont. 300;

These courts make a point of focusing on the personal rights of the deceased's relatives, rather than on any property right itself. See *Culpepper v. Pearl St. Bldg. Inc.*, (Colo., 1994), 877 P.2d 877 (rejecting the “fictional theory that a property right exists in a dead body” but recognizing intentional emotional distress claims noting “in reality...the primary concern of the right is not the injury to the dead body itself, but whether the improper actions caused emotional or physical pain or suffering to the surviving family members.”); *Leno v. St. Joseph Hospital*, (Ill. 1973), 55 Ill.2d 114, 117 (“while in the ordinary sense, there is no property right in a dead body, a right of possession of a decedent's remains devolves upon the next of kin in order to make appropriate disposition thereof, whether by burial or otherwise.”)⁸ These states typically protect the right of the next of kin by recognizing emotional distress causes of action in this regard. See e.g. *Brown v. Matthews Mortuary*, (Idaho 1990), 118 Idaho 830; *Guth v. Freeland*, (Haw. 2001), 96 Haw. 147, 155; *Louisville & N. R. Co. v. Hall*, (Ky. 1927), 219 Ky. 528; *McPosey v. Sisters of Sorrowful Mother*, (Okla. 1936), 177 Okla. 52.

Interestingly, Defendant-Petitioners cite two Ohio appellate decisions which rejected the “quasi-property” label. These cases provide no support to the defense because they each granted a protected interest to the next of kin in the full remains of their deceased. As more fully discussed in Respondents’ merits brief, these courts’ views are consistent with the substantive interest of the next of kin “quasi-property” states protect. See *Carney v. Knollwood Cemetery Ass’n* (1986), 33 Ohio App.3d 31, 36 (noting “[t]he policy of the law to protect the dead and preserve the sanctity of the grave comes down to us from ancient times.”); *Everman v. Davis*

Thompson v. Pierce, (Neb. 1914), 95 Neb. 692; *Glatzer v. Dinerman*, (N.J. Ch. 1948), 142 N.J. Eq. 88; *McPosey v. Sisters of Sorrowful Mother*, (Okla. 1936), 177 Okla. 52; *Pillous v. Linn-Benton Memorial Park Assn*, 228 (Ore. 1961), 228 Ore. 324; *Curlin v. Curlin*, (Tex. App. 1921), 228 S.W. 602; *Jobin v. McQuillen*, (Vt. 1992), 158 Vt. 322, 325; *Scarpaci v. Milwaukee Co.*, (Wis. 1980), 96 Wis. 2d 663.

(1989), 54 Ohio App.3d 119, 122 (“[t]here is no issue in this case of the possessory right of a spouse or other appropriate member of the family to the body of the deceased person for the purpose of preparation, mourning and burial. This right is recognized by law and by the decisions.”)

The state of Arkansas grants protection to the next of kin to the remains, including organs, by statute, entitling the next of kin to notice of organ removal and entitling them to require the return of the organ or part, post autopsy. See, generally, Ark. Stat. Ann. § 82-434. As noted by the Eighth Circuit in *Fuller v. Marx*, (8th Cir. 1984), 724 F.2d 717, the “rights Mrs. Fuller had in her husband's internal organs... were ... protected by the Arkansas statute”.

It is noteworthy that Defendant-Petitioners insist that Ohio could not follow a similar regime, because it would be too complex, costly and outright burdensome to do so.

That is curious, since both Franklin and Hamilton counties have been doing exactly that for *several* years, very successfully with no problem.

CONCLUSION

All three lines of cases dealing with the issue of the next of kin’s interest—constitutionally protected property interests, quasi-property interests, tort claims interests—show that regardless of the theory, the underlying nature of the right is the same: it is a protected right to possess, control, and dispose of their deceased relatives. The case law demonstrates a grant of the enforceable interest in the entirety of the person including organs and parts. Case after case upheld enforceable rights—from a constitutional basis, a statutory basis, or a common law basis—against acts which gave the next of kin the remains of their deceased with missing organs or parts. Holding that the Albrechts’ had a protected interest in their son’s organs after the

coroner completed his autopsy is thus consistent with the case law throughout the rest of the country.

The decision in this case implies much less than the Defendant-Petitioners claim, but much more than they admit.

This case has nothing to do with the ability to conduct a full autopsy without interference. That is a right the coroner has which everyone acknowledges. The parade of horrors alleged by the coroner is disingenuous. It is *after* the coroner is completely finished and has no more need, at all, that the issue is joined. The law throughout the country has broadly granted the right and protection to the family to decide the respectful disposition of all of the remains of their loved ones. Ohio equally does so. Our case law is not confined as the defense argues, and rather prohibits exactly those acts which cause the family to receive the body in a condition different "than when it was left." Our statutory law gives the next of kin the "prior right" to control the disposition of the dead body, and Ohio statutes are very clear that the 'dead body' means not only the body, but *any part of it*. R.C. 3705.01(C). The suggestion by the defense that this Court should hold the next of kin have no interest in the organs of their loved ones, post autopsy, would put Ohio in a position contrary to nearly all of the rest of the country.

Your Amici would like to close this brief by leaving this Court with a passage from the opinion of Justice Joseph H. Lumpkin.

Death is unique. It is unlike aught else in its certainty and its incidents. A corpse in some respects is the strangest thing on earth. A man who but yesterday breathed and thought and walked among us has passed away. Something has gone. The body is left still and cold, and is all that is visible to mortal eye of the man we knew. Around it cling love and memory. Beyond it may reach hope. It must be laid away. And the law--that rule of action which touches all human things--must touch also this thing of death. It is not surprising that the law relating to this mystery of what death leaves behind cannot be precisely brought within the letter of all the rules regarding corn, lumber and pig iron. And yet the body must be buried or disposed of. If buried, it must be carried to the place of burial. And

the law, in its all-sufficiency, must furnish some rule, by legislative enactment or analogy, or based on some sound legal principle, by which to determine between the living questions of the disposition of the dead and rights surrounding their bodies. In doing this the courts will not close their eyes to the customs and necessities of civilization in dealing with the dead and those sentiments connected with decently disposing of the remains of the departed which furnish one ground of difference between men and brutes.

Louisville & Nashville R.R. Co. v. Wilson, (Ga. 1905), 51 S.E. 24, 25.

Your Amici, on behalf of the Respondents, respectfully request this Court recognize these customs and sentiments the Justice speaks of and answer the certified question, whether Respondents have a protected interest in the organs of their loved ones, in the affirmative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of Brief of Amicus Curiae of Monreal Funeral Home in Support of Plaintiffs-Respondents Mark Albrecht, et al., was sent via email and by regular U.S. Mail on September 10, 2007, addressed as follows:

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