

IN THE SUPREME COURT OF OHIO

MARK ALBRECHT, etc., et al.,

CASE NO. 07-0507

Plaintiffs-Respondents,

vs.

BRIAN TREON, M.D., et al.

Certified Question from
United States District Court,
Southern District of Ohio,
Western Division

Defendants-Petitioners.

**BRIEF IN OPPOSITION TO PETITIONERS'
MOTION TO STRIKE BRIEF OF AMICI CURIAE**

Thomas L. Blust, Esq. (#0022166)
H. Elizabeth Mason, Esq. (#0051967)
Assistant Prosecuting Attorney
CLERMONT COUNTY PROSECUTOR'S OFFICE
CIVIL DIVISION
Administration Building, 3rd Floor, Suite 313
101 East Main Street
Batavia, Ohio 45103
(513) 732-7899 (513) 732-8171 fax
kshelton@co.clermont.oh.us

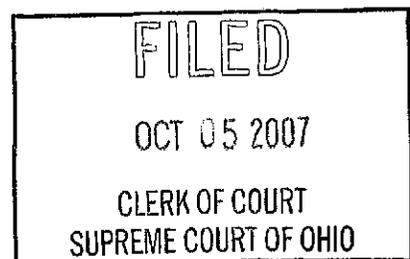
Attorney for Defendants-Petitioners

Dated: October 4, 2007

Patrick J. Perotti, Esq. (#0005481)
DWORKEN & BERNSTEIN CO, LPA
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391 (440) 352-3469 fax
pperotti@dworkenlaw.com

John H. Metz, Esq. (#0019039)
4400 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-3016
(513) 241-8844 (513) 241-6090 fax
metzlegal@aol.com

Attorneys for Plaintiffs-Respondents



BRIEF IN OPPOSITION TO PETITIONERS'
MOTION TO STRIKE BRIEF OF AMICI CURIAE

Now comes, Catholic League and Brunner Funeral Homes, amici curiae, by and through the undersigned counsel, and respectfully request that Petitioners' Motion to Strike be denied.

Petitioners argue that the brief was signed on the wrong page, in the signature block with the Proof of Service rather than a separate and additional signature block after the Conclusion. This was due to a clerical error in which the final page of the brief, page 20, was printed without a signature block. The brief was therefore signed, but on page 21, which also contains the Proof of Service.

There is a strong presumption that cases should be decided on their merits rather than procedural technicalities. In *DeHart v. Aetna Life Insurance Co.* (1982), 69 Ohio St.2d 189, 192, this Court held "that it is a fundamental tenant of judicial review in Ohio that courts should decide cases on the merits. ...Judicial discretion must be carefully -- and cautiously -- exercised before this court will uphold an outright dismissal of a case on purely procedural grounds." This Court further held:

- (1) appellant's counsel's mistake was inadvertent, correctible and made in good faith, not as part of a continuing course of conduct for the purpose of delay,
- (2) appellee suffered no prejudice from this error,
- (3) the Court... suffered no prejudice from this error since the entire record was before the court...,
- (4) the sanction... for a hyper-technical, clerical error is disproportionately harsh in view of the nature of the mistake, and
- (5) appellant should not be punished for a... technical error of his counsel.

DeHart, 69 Ohio St.2d at 192.

In the instant matter, all of these factors are present. The error was inadvertent, correctible, made in good faith, and is not a part of a continuing course of conduct for the purpose of delay. Neither this Court, nor the Petitioners, will be prejudiced.

For the foregoing reasons, your Amici respectfully request that this Court deny Petitioner's Motion to Strike Brief of Amici Curiae and to accept the resubmitted page 20 (attached) with the signed signature block, or in the alternative, ask this Court to treat the signature at the end of the brief as sufficient. Your Amici apologize for this clerical mistake.

Respectfully submitted,



Patrick J. Perotti, Esq. (#0005481)
DWORKEN & BERNSTEIN CO, LPA
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391 (440) 352-3469 fax
pperotti@dworkenlaw.com

John H. Metz, Esq. (#0019039)
4400 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-3016
(513) 241-8844 (513) 241-6090 fax
metzlegal@aol.com

Attorneys for Plaintiffs-Respondents

CERTIFICATE OF SERVICE

This is to certify that a copy of *Brief in Opposition to Petitioners' Motion to Strike Brief of Amici Curiae* was sent via email and by regular U.S. Mail on October 4, 2007, addressed as follows:

Thomas L. Blust, Esq.
H. Elizabeth Mason, Esq.
Assistant Prosecuting Attorney
CLERMONT COUNTY PROSECUTOR'S OFFICE
CIVIL DIVISION
Administration Building, 3rd Floor, Suite 313
101 East Main Street
Batavia, Ohio 45103

emason@co.clermont.oh.us

Attorney for Defendants-Petitioners

And as a courtesy to:

John H. Metz, Esq.
4400 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-3016

metzlegal@aol.com



Patrick J. Perotti, Esq.
DWORKEN & BERNSTEIN CO., L.P.A.
One of the Attorneys for Plaintiffs-Respondents

“Rather than another demonstration of the human’s ability to emotionally complicate the simplest matters, I think the way we get rid of the bodies of our fellow citizens is a unique demonstration of our humanity. We take great care with the bodies we know, and our grief at death is often exaggerated when there is no body.” Greg Palmer, *Death: The Trip of a Lifetime*, p. 284.

CONCLUSION

Taking body parts from a dead person’s body without telling the decedent or their family or having the basic human decency to ask permission goes against thousands of years of cultures and traditions. The present case does not involve government need or interest. The practice in question involves throwing away the brain of a deceased loved one, instead of deferring to the reasonable request of the next-of-kin, even though the government’s interest in and need for the brain has admittedly ended. This practice is anathema. No culture has condoned anyone to take body parts. Such behavior is so abhorrent that, in fact, it has been used as punishment against the deceased and their families.

The certified question should be answered in the affirmative.

Respectfully submitted,



Patrick J. Perotti, Esq. (#0005481)
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pperotti@dworkenlaw.com

John H. Metz, Esq. (#0019039)
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Cincinnati, Ohio 45202-3016
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