

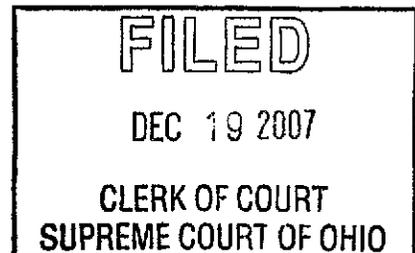
IN THE SUPREME COURT OF OHIO

MARK ALBRECHT, et al., : Case No. 07-0507
Respondents, :
- vs - :
BRIAN TREON, M.D., et al., : Certified Question from
Petitioners. : United States District Court,
Southern District of Ohio,
Western Division

PETITIONERS' RESPONSE TO RESPONDENTS MOTION
FOR LEAVE TO FILE A RESPONSE

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Respondents herein request the Court to permit them to file another document in support of their position on the certified question of law. As an initial matter, the Court's Rules of Practice are clear with regard to the question of supplemental briefing: except in certain limited circumstances not applicable to the case at bar, it is prohibited. SCtR VI, section 8.

Respondents' assertion that "[t]he procedural posture here is somewhat unusual" is not correct. On the contrary, the procedural posture of this matter is exactly what is contemplated by the Rules of Practice of this Court. Because either side in a case in dispute may request certification of a question of law, the Rules state: "The petitioner shall proceed under the provisions of S.Ct.Prac. R. VI that are applicable to an appellant and the respondent shall proceed under the provisions applicable to an appellee." SCt R XVIII, section 7. To be sure, there is nothing unusual about this procedure where, under both Ohio and federal rules, the moving party invariably makes the initial and final statement to the court.

Further, it is important to clarify Respondents' misstatement regarding the allotment of

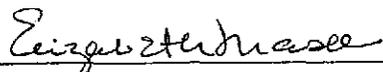
oral argument time requested by Petitioners and ordered by the Court. The November 15, 2007, Joint Motion of Petitioners and Amici Curiae Sixty-Five (65) Ohio Counties, et al., clearly delineates the request for the allotment of oral argument time to counsel representing Sixty-five (65) Ohio Counties, the County Commissioners Association of Ohio, the Buckeye State Sheriff's Association, the Ohio Association of Chiefs of Police, the Ohio Prosecuting Attorneys Association and the Ohio Society of Pathologists. To be sure these amici are numerous but it is equally clear from the record, that these amici joined in the filing of a single, twenty-nine page merit brief and a single, twenty-page reply. The Joint Motion makes no reference to the participation of Amicus National Association of Medical Examiners (nor to the participation of the State of Ohio, the Franklin and Cuyahoga County Board of Commissioners or the Franklin and Cuyahoga County Coroners). Respondents' argument that they must be permitted to respond to the arguments of amici not participating in the Joint Motion is falsely premised.

Regardless of the participation of particular amici in the oral argument, Respondents' argument that there is a need to submit yet another response brief to address "global assertions and undocumented submissions" is moot. Further, the identity of the individual participating in oral argument before the Court is inconsequential because the legal arguments, as they have been extensively and exhaustively briefed to the Court, remain unchanged. Respondents' have had the advantage of an additional twenty days' extension of time within which to respond to the briefs of Petitioners and amici, such extension demonstrating the extent to which Respondents have seized the opportunity to address the merits of their position on this question of law. Indeed, at the end of the briefing period, Respondents' counsel filed a merit brief as well as two, additional briefs of Amici Curiae Catholic League, Brunner and Monreal Funeral Homes.

Based on the foregoing, Petitioners respectfully request the Court to deny Respondents' Motion for Leave to file an additional brief.

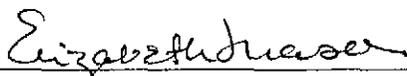
Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Brief has been served upon John H. Metz, Esq., counsel of record for Respondents, at his office, 441 Vine Street, 44th Floor, Cincinnati, Ohio 45202-3016, and upon Patrick J. Perotti, Esq., counsel for Plaintiffs-Respondents, at his office, Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077, by ordinary U.S. mail, postage prepaid, this 14th day of December, 2007.


Elizabeth Mason (0051967)
Assistant Prosecuting Attorney