

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE GUARDIANSHIP OF S.H.	:	CASE NO. 2013-1778
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	:	ON APPEAL FROM THE COURT OF
	:	APPEALS, NINTH APPELLATE
	:	DISTRICT
	:	
	:	COURT OF APPEALS
	:	CASE NO. 13CA0066-M
	:	
	:	TRIAL COURT
	:	CASE NO. 13 07 GM 00029
	:	
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**BRIEF OF *AMICUS CURIAE* 1851 CENTER FOR CONSTITUTIONAL LAW IN  
SUPPORT OF MEMORANDUM FOR JURISDICTION OF APPELLANTS, PARENTS OF  
S.H.**

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Maurice A. Thompson (0078548)  
 1851 Center for Constitutional Law  
 208 E. State St.  
 Columbus, Ohio 43215  
 Tel: (614) 340-9817  
 Fax: (614) 365-9564  
 MThompson@OhioConstitution.org  
*Attorney for Amicus Curiae  
 1851 Center for Constitutional Law  
 In Support of Appellants*

Clair E. Dickinson (0018198)  
 Nicholas P. Capotosto (0076436)  
 NiCole Swearingen-Hilker (0075967)  
 Brouse McDowell, LPA  
 388 S. Main St., Suite 500  
 Akron, Ohio 44308  
 Tel: (330) 535-5711  
 Fax: (330) 253-8601  
 cdickinson@brouse.com  
 ncapotosto@brouse.com  
 nhilker@brouse.com  
*Attorney for Appellee, Maria Schimer*

John C. Oberholtzer (0021578)  
 Oberholtzer & Filous, LPA  
 39 Public Square, Ste. 201  
 Medina, Ohio 44256  
 Tel: (330) 725-4929  
 Fax: (330) 723-4929  
 counsel@medinalaw.com  
*Attorney for Appellants,  
 Parents of S.H.*

Shorain L. McGhee (0075904)  
 4141 Rockside Road, Suite 230  
 Seven Hills, Ohio 44131  
 Tel: (440) 845-1666  
 Fax: (440) 886-5220  
 shorain@smcgheelaw.com  
*Attorney for Ward*

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## **INTEREST OF AMICUS CURIAE**

Formed to advance Ohioans' constitutional liberties, individual rights, and prosperity through limiting state and local government to its constitutional confines, the 1851 Center for Constitutional Law is dedicated to protecting Ohioans' control over their lives, their families, their property, and thus, ultimately, their destinies. In doing so, the 1851 Center has developed particular expertise in Ohio constitutional law, has authored numerous publications on this topic, and has achieved favorable results for Ohioans in numerous cases.

More pointedly, the 1851 Center is committed to protecting the individual rights of Ohioans and their families from unreasonable and unconstitutional interference by the state. Consistent with this mission, the 1851 Center drafted section 21, Article I of the Ohio Constitution, the Healthcare Freedom Amendment, and represented its advocates and sponsors. After the Amendment passed, the 1851 Center continued to provide guidance to lawmakers regarding application and interpretation of section 21, including publishing *A Policymaker's Guide to Following the Health Care Freedom Amendment* in January, 2013.<sup>1</sup> Without enforcement of the protections provided in the Ohio Constitution, the State could have unlimited discretion to interfere in individual and family decisions under the guise of acting in the best interest of a child when the parents are competent, intelligent, and fit.

### **EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The protection and preservation of the familial unit and parents' right to care, custody, and control of their children is one of the most sacred rights in the American tradition. "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and

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<sup>1</sup> [www.ohioconstitution.org/wp-content/.../Health-Care-State-Mandates.pdf](http://www.ohioconstitution.org/wp-content/.../Health-Care-State-Mandates.pdf) (accessed November 15, 2013).

upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”<sup>2</sup> This case involves issues of public and general interest, and raises novel and substantial constitutional questions regarding government interference in the medical decisions of parents and their children.

The parent-child relationship has long been held sacrosanct, as reflected by the decisions of the United States Supreme Court and the Ohio Supreme Court. Interference with this relationship allows the state, through appointment of an impersonal and unknowing guardian, to take the place of the child’s parent instead of relying on the expertise of the two people who love and care for their child each and every day. The issue here, whether a court can appoint a third-party guardian to compel a specific course of medical treatment that has a high likelihood of killing or sterilizing the child with a limited promise of success, and both the parents and child refused in favor of a different, less invasive treatment, will affect the future sanctity of the familiar unit, and undermine the parent-child relationship in Ohio.

The Fourteenth Amendment to the United States Constitution clearly provides protection to parents in the “care, custody, and control” of their children, including the right “to direct the upbringing . . . of children under their control.”<sup>3</sup> While the Federal Constitution provides a state with some constitutionally permitted control over parental discretion in dealing with children and their physical or mental health, the State has not met that high burden here, and the Ohio Constitution explicitly provides protection for the family in making health care decisions.

The Court of Appeals for the Ninth District exceeded its authority when it ordered the Medina County Probate Court to appoint a guardian for the limited purpose of making medical

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<sup>2</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526 (1972).

<sup>3</sup> *Cruzan by Cruzan v. Dir., Missouri Dep’t of Health*, 497 U.S. 261, 269, 110 S. Ct. 2841, 2846, 111 L. Ed. 2d 224 (1990).

decisions on behalf of minor child S.H. – to force S.H. to undergo chemotherapy treatment against her and her parents’ wishes. The Court of Appeals for the Ninth District relied on R.C. 2111.06, which provides unbridled discretion to the court to appoint a guardian when it is in “the best interest of the child.”<sup>4</sup> The statute does not provide any guidance for a court to make this determination, which does not satisfy Federal constitutional protections and Ohio constitutional protections afforded to parents.

Further, this case raises a unique and significant Ohio constitutional issue under section 21 of the Ohio Bill of Rights. Section 21 preserves the right and freedom of each Ohioan to choose health care and health care coverage. Section 21(A) provides that “No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.”<sup>5</sup> Section 21 has never been interpreted by this Court, or any other court. This is an appropriate case to apply Section 21(A) to its intended purpose: it preserves the right of parents and their children to choose their health care without compulsion and prevent forced health care.

Section 21, Article I of the Ohio Constitution was a citizen initiated constitutional amendment that passed on November 8, 2011, with sixty-six percent of the vote. In the official “argument in favor of Issue 3” that was approved by the Ohio Secretary of State and that Ohio voters reviewed on their ballots, included that the Amendment would “prohibit government from forcing you into . . . medical treatment *you don’t want*.”<sup>6</sup> Furthermore, the arguments in favor also stated, “You and your family should *never* be imprisoned, fined, or prosecuted for choosing health

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<sup>4</sup> R.C. 2111.06.

<sup>5</sup> Ohio Const. Art. I, Sec. 21.

<sup>6</sup> <http://www.sos.state.oh.us/sos/upload/ballotboard/2011/3-argument-for.pdf> (accessed November 15, 2013) (emphasis in original).

insurance or treatment different from government requirements.”<sup>7</sup> Consistent with section 21, Article I, and the intention of the citizens of Ohio, the order of the Court of Appeals for the Ninth District to appoint Schimer as guardian to force medical treatment that S.H. and her family did not want is inconsistent with the protections of the Ohio Constitution. The family was asserting their rights under the Ohio Constitution in choosing to pursue other treatments instead of continuing with invasive, debilitating chemotherapy for their daughter.

The outcome of this case will affect many Ohioans and their families. Parents make decisions on behalf of their children each and every day without considering whether the State or a third-party will assert an interest in their decision. Allowing an uninterested third-party, one that has never even met the family or the child, to assert an interest in an exceedingly important parental decision will completely undermine the parent-child relationship and the authority of parents in the custody, care and control of their children. Essentially, the State will live in each and every Ohioan’s home, waiting to determine whether a parental decision was in the State’s perceived best interest of the child. This would erode the fundamental right of parents in control of their children, and allow each child to easily become a ward of the State.

#### **STATEMENT OF THE CASE AND FACTS**

In addition to the facts presented in the Appellants’ *Motion for Jurisdiction, Amicus Curiae* offers the following facts from the record. This case arises from multiple proceedings in the Medina County Probate Court and the Court of Appeals for the Ninth District regarding appointment of Maria Schimer, Appellee, as guardian of minor child, S.H., for the purpose of making medical decisions on S.H.’s behalf. S.H. is a ten-year-old girl who resides with her father and mother, Andy and Anna Hershberger, Appellants, and their seven other children in Homerville,

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<sup>7</sup> *Id.*

Medina County, Ohio.<sup>8</sup> S.H. and her family are Amish, and her parents make a living raising and selling produce at a stand in front of their house.<sup>9</sup>

In April 2013, S.H. was admitted to Akron Children’s Hospital “for fatigue and an observable mass near her collarbone” and diagnosed with T-Cell Lymphoblastic Lymphoma.<sup>10</sup> S.H.’s doctors recommended she undergo chemotherapy, and Appellants consented, although they testified that “the doctors understated the risks to Sarah’s health if she underwent chemotherapy,” and “[t]he doctors did not tell the parents that once they consented to begin chemotherapy treatments, they could not withdraw their consent.”<sup>11</sup>

The short-term side effects of chemotherapy include “S.H.’s hair falling out, . . . fatigue and nausea and she will be at risk for uncontrolled bleeding and developing infections,” and the long-term side effects include that “she will become infertile, and she will have a higher risk of developing cardiovascular disease.”<sup>12</sup> Finally, “the treatment itself may damage her other organs and there is an increased risk of contracting other cancers. S.H. has a small but appreciable risk of dying from the treatment itself.”<sup>13</sup> After witnessing and caring for S.H. as she experienced these side effects, and believing that chemotherapy was killing S.H., Appellants chose to remove S.H. from the chemotherapy treatment at ACH and began to treat S.H. with natural, holistic medicine.<sup>14</sup>

S.H.’s doctor, Dr. Prasad Bodas, refused to accept the family’s decision, and notified Medina County Job and Family Services about Appellants’ decision to pursue other treatment,

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<sup>8</sup> Probate Court Judgment Entry, July 31, 2013, p. 1 (incorporated by reference to Probate Court Judgment Entry, September 3, 2013, p. 1).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* p. 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

which “refused to file neglect or dependency charges against the parents.”<sup>15</sup> Dr. Bodas then “referred the matter to the hospital’s ethics committee and legal staff to have a guardian appointed to make Sarah’s medical decisions.”<sup>16</sup>

Subsequently, on July 9, 2013, Appellee filed a motion for appointment of an emergency guardian for medical decision-making for S.H. and an application for the appointment of a limited guardian in the Medina County Probate Court.<sup>17</sup> Schimer sought to be appointed as a limited guardian to make medical decisions on behalf of S.H. – to force S.H. to undergo chemotherapy treatment. A hearing on Schimer’s application for limited guardianship was held on July 26, 2013, before Judge John J. Lohn.<sup>18</sup> On July 31, 2013, the probate court entered judgment denying Schimer’s application, and on August 27, 2013, the Ninth District reversed and remanded the decision of the probate court with instructions for the probate court to make a determination of guardianship without regard to the suitability of S.H.’s parents.<sup>19</sup>

On September 3, 2013, the probate court issued a second judgment entry and again denied Schimer’s application for guardianship.<sup>20</sup> The court noted that R.C. 2111.06 “is used most often in situations where a child’s parents consent to the establishment of guardianship and the proposed guardian is a family member or friend” and the court had “never seen the statute used against suitable parents to prevent them from making medical decisions for their child.”<sup>21</sup> The probate

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The application for appointment of an emergency guardian for medical decision-making was denied at a hearing before Magistrate Lorie K. Brobst on July 12, 2013. However, Judge Brobst did order Sarah to be examined at ACH and the doctor’s found that the tumor on her chest was smaller, the tumors in her kidneys possibly had been eradicated, and the cancer in her abdomen was still present.

<sup>18</sup> *Id.*

<sup>19</sup> *In re S.H.*, 2013-Ohio-4380, 2013 WL 5519847 (Ninth Dist. Oct. 1, 2013).

<sup>20</sup> Probate Court Judgment Entry, September 3, 2013.

<sup>21</sup> *Id.*

court explained how establishing guardianship for S.H. would be “in derogation of the Hershberger’s parental authority.”<sup>22</sup> Furthermore, Schimer “has never met Sarah, never been to her home, never spoken to her parents,” but Schimer has made statements to the press about the case.<sup>23</sup> The probate court concluded that “[t]his is a poor environment for therapy.”<sup>24</sup>

The probate court further considered that “[t]he parents’ medical decision-making powers would be suspended for two years under the current protocol,” which weighs against establishing guardianship, and explained that “chemotherapy is not certain to cure Sarah,” -- even if the treatments are successful, “there is a very good chance Sarah will become infertile and have other serious health risks for the rest of her life.”<sup>25</sup>

Schimer appealed the decision, and on October 1, 2013, the Court of Appeals for the Ninth District reversed the decision of the probate court, and ordered the Medina County Probate Court to appoint Schimer as guardian of S.H. for purposes of making medical decisions on S.H.’s behalf.<sup>26</sup> The Ninth District ignored constitutional safeguards, and instead found “the decision of the probate court is not based upon competent, credible evidence,” and that “the probate court did abuse its discretion in finding that it was not in the best interests of S.H. to appoint Schimer as guardian of S.H. for purposes of making medical decisions on S.H.’s behalf.”<sup>27</sup>

Relying on five New Jersey cases and one Washington case, the Ninth District wrongly reasoned that “it is well established in Ohio and in other jurisdictions, that, when parents cannot or will not consent to potentially life-saving treatment for a minor, then a court may appoint another to approve the procedure and thereby protect the child’s life and health.”

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<sup>22</sup> *Id.* p. 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* p. 4.

<sup>26</sup> *In re S.H.*, 2013-Ohio-4380, ¶ 40, 2013 WL 5519847, \*11 (Ninth Dist. Oct. 1, 2013).

<sup>27</sup> *Id.* ¶ 5, \*1.

## ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

**Proposition of Law:** Appellants' Proposition of Law Number 1 should be accepted because the Court of Appeals Order appointing a guardian to force chemotherapy upon a child of competent parents violates the State and Federal Constitution.

The overriding principle in cases between a parent and nonparent is that natural parents have a fundamental liberty interest in the care, custody, and management of their children.<sup>28</sup> This interest is protected most specifically by section 21(A), Article I of the Ohio Constitution, and by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>29</sup> “Since parents have constitutional custodial rights, any action by the state that affects this parental right . . . must be conducted pursuant to procedures that are fundamentally fair.”<sup>30</sup> Section 21(A) of the Ohio Constitution provides that “No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.”<sup>31</sup> Here, R.C. 2111.06 must be applied, construed, and interpreted consistent with the protections of the Federal and Ohio Constitutions.

In *Meyer v. Nebraska*, the United States Supreme Court determined that liberty “denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”<sup>32</sup> In *Meyer*, the Supreme Court explained that “this [family] liberty may not be interfered with, under the guise of protecting the public

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<sup>28</sup> *In re Hockstock*, 98 Ohio St.3d 238, 241, 2001-Ohio-7208, 781 N.E.2d 971 (2002) (citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388 (1982)).

<sup>29</sup> *Id.* (citing *Santosky*, supra; *In re Shaeffer Children*, 85 Ohio App.3d 683, 689–90, 621 N.E.2d 426 (1993)); Ohio Const. Art I, § 21(A).

<sup>30</sup> *Id.* at 241-42.(citing *Santosky*, 455 U.S. at 754; *In re Adoption of Mays*, 30 Ohio App.3d 195, 198, 507 N.E.2d 453 (1986)).

<sup>31</sup> Ohio Const. Art I, § 21(A).

<sup>32</sup> 262 U.S. 390, 399 (1923); see also *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

interest” and held that parents have a fundamental right to control the education of their children.<sup>33</sup> “It is cardinal with us that the custody, care and nurture of the child reside first in the parents . . . . [for which reason this Court has] respected the private realm of family life which the state cannot enter.”<sup>34</sup> As a plurality of the Court has more recently explained, the “liberty interest at issue . . . – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.”<sup>35</sup>

The Court continues to recognize the importance of the American familial tradition, opining in *Wisconsin v. Yoder* that “[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”<sup>36</sup> Furthermore, the Supreme Court adhered to the general idea that “parents generally do act in the child’s best interests.”<sup>37</sup> The Court continued, “[t]he statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.”<sup>38</sup> This fundamental liberty interest under the Due Process Clause initiates the inquiry of “whether respondent’s constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests.”<sup>39</sup>

In *In re Guardianship of Stein*, the Ohio Supreme Court considered “whether the Summit County Probate Court exceeded its statutory authority when it appointed a guardian with the power to authorize the withdrawal of all life-sustaining support and treatment for Aiden Stein, an infant,”

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<sup>33</sup> 262 U.S. at 399-00.

<sup>34</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (internal citation omitted).

<sup>35</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O’Connor, J.) (plurality opinion).

<sup>36</sup> 406 U.S. 205, 232, 92 S.Ct. 1526 (1972).

<sup>37</sup> *Parham v. J.R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 2504 (1979).

<sup>38</sup> *Id.* at 602-03; 2504.

<sup>39</sup> *Cruzan by Cruzan v. Dir., Missouri Dep’t of Health*, 497 U.S. 261, 279, 110 S. Ct. 2841, 2851-52 (1990).

pursuant to R.C. 2111.06.<sup>40</sup> The court recognized that “a parent's desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’”<sup>41</sup> Balancing the interest of the parents and the state, the court recognized that the probate court has limited authority to appoint a guardian to make medical decisions on behalf of Aiden.<sup>42</sup> However in this case, the decision to withdraw life-supporting treatments went beyond the scope of making medical decisions.<sup>43</sup>

The parents’ parental rights were suspended, not terminated, therefore the “fact that a child is in a permanent vegetative state is not a sufficient reason to deny parents’ rights, absent evidence of abuse or neglect.”<sup>44</sup> The court quoted from *Santosky v. Kramer*, a 1982 United States Supreme Court case:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.<sup>45</sup>

Thus the court concluded that allowing the guardian power to remove life-supporting treatment for Aiden had the effect of terminating parental rights, and “the probate court exceeded its statutory authority” by doing so.<sup>46</sup>

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<sup>40</sup> *In re Guardianship of Stein*, 105 Ohio St. 3d 30 (2004).

<sup>41</sup> *Id.* at 34 (citing *Lassiter v. Dept. of Social Serv.*, 452 U.S. 18, 27, 101 S.Ct. 2153 (1981)).

<sup>42</sup> *Id.* at 33.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 36.

<sup>45</sup> *Id.* (citing 455 U.S. 745, 753–754, 102 S.Ct. 1388 (1982)).

<sup>46</sup> *Id.*

Instructive to the analysis here is a similar case from the Delaware Supreme Court where the Court held that State failed to demonstrate that it should have authority to force chemotherapy treatment on a child against parents wishes. In *Newmark v. Williams*, the Delaware Supreme Court considered a case where a three-year-old child suffered from a “deadly aggressive and advanced” form of pediatric cancer.<sup>47</sup> The child’s parents refused chemotherapy for their child on religious grounds and the Division of Child Protective Services petitioned for temporary custody of a child to authorize a hospital to treat the child's cancer with chemotherapy after the parents.<sup>48</sup> However, the focus, and ultimately the holding, of the Court was on the burden the State needed to meet in order to intervene in the parent child relationship.<sup>49</sup>

The Court recognized that “[p]arents enjoy a well established legal right to make important decisions for their children. Although this right is not absolute.”<sup>50</sup> In order to intervene in this protected relationship, the State had the “burden of proving by clear and convincing evidence” that intervening in the parent-child relationship is necessary to ensure the safety or health of the child.<sup>51</sup> The Court opined that courts give great deference to parental decisions involving minor children, as “the State is simply not an adequate surrogate for the judgment of a loving, nurturing parent.”<sup>52</sup> Applying *Cruzan*, the Court held that the State failed to meet their burden, and the child was not neglected when parents refused to accede to medical demands that the child receive radical form of chemotherapy having only 40% chance of success.<sup>53</sup> Furthermore, the Court stated that the “egregious facts of this case indicate that Colin's proposed medical treatment was highly invasive,

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<sup>47</sup> *Newmark v. Williams*, 588 A.2d 1108, 1108 (Del. 1991).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 1110.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

painful, involved terrible temporary and potentially permanent side effects, posed an unacceptably low chance of success, and a high risk that the treatment itself would cause his death.”<sup>54</sup>

Here, R.C. 2111.06 allowed the probate court unlimited discretion to consider the evidence and testimony presented and make a decision in the best interest of S.H., which was to not appoint a guardian to force S.H. to receive invasive chemotherapy. Then, the Court of Appeals for the Ninth District exceeded its authority in holding that the probate court abused its discretion in applying R.C. 2111.06, instead imposing its own views, reinterpreting the evidence presented, and ordering the probate court to appoint a guardian. The Ninth District, like *In re Stein*, exceeded its authority under Ohio law in ordering the probate court to appoint a limited guardian to force S.H. to receive invasive chemotherapy treatment.

Moreover, Appellant’s were not afforded the safeguards provided to parents under the Ohio juvenile statutes in a child abuse, neglect, or dependency action because the Medina County Job and Family Services declined to file a complaint against the Appellants after ACH filed a complaint to obtain court orders for medical treatment for Sarah. While Dr. Bodas believes that S.H. chances of “success” is 85%, compared to 40% in *Newmark*, that is not the determinative factor for this Court. This Court should carefully consider the parents’ fundamental right to make medical decisions for their child. Here, the side effects here are just as debilitating as the in *Newmark*.

The short-term side effects include “S.H.’s hair falling out, she will suffer fatigue and nausea and she will be at risk for uncontrolled bleeding and developing infections.”<sup>55</sup> The long-term side effects include “she will become infertile, and she will have a higher risk of developing cardiovascular disease.”<sup>56</sup> Finally, “the treatment itself may damage her other organs and there is

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<sup>54</sup> *Id.* at 1118.

<sup>55</sup> *In re S.H.*, 2013-Ohio-4380, ¶18, 2013 WL 5519847, \*6 (9th Dist. Oct. 1, 2013).

<sup>56</sup> *Id.*

an increased risk of contracting other cancers. S.H. has a small but appreciable risk of dying from the treatment itself.”<sup>57</sup> The State here has not met their burden to show to that Schimer, rather than S.H.’s loving, caring and fit parents, should make the decision that will affect the future of S.H.’s life and the manner in which S.H. lives her life moving forward, and the order of the Court of Appeals for the Ninth District is inconsistent with the protections of the Ohio Constitution.

The United States Constitution is merely a floor where protection begins. The Ohio Constitution provides greater protection for individual rights than the United States Constitution, which the Ohio courts have independently recognized: “[i]ndeed, unlike the federal Bill of Rights, the Ohio Constitution begins with its own Bill of Rights, thereby emphasizing the prominence our Constitution affords to the protection of individual rights.”<sup>58</sup>

The United States Supreme Court has repeatedly stated that state courts are free to construe their state constitutions so as to provide different, and broader, protections of individual liberties than offered by the United States Constitution.<sup>59</sup> Further, the United States Supreme Court accepts state court interpretations of state constitutions as final, “as long as the state court plainly states that its decision is based on independent and adequate state grounds.”<sup>60</sup> While the federal courts have been hesitant to recognize a parent’s fundamental right to control the medical care of their child, the Ohio Constitution provides this protection to Ohio parents and children.

In *Steele v. Hamilton Cty. Cmty. Mental Health Bd.*, the Ohio Supreme Court held that “[t]he right to refuse medical treatment” are “rights inherent in every individual.”<sup>61</sup> Section 1,

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<sup>57</sup> *Id.*

<sup>58</sup> *Preterm Cleveland v. Voinovich*, 89 Ohio App. 3d 684, 627 N.E.2d 570 (1993).

<sup>59</sup> *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293, 102 S.Ct. 1070, 1077 (1982); *see also California v. Greenwood*, 486 U.S. 35, 43, 108 S.Ct. 1625, 1630 (1988).

<sup>60</sup> *Arnold v. Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993); *citing Michigan v. Long*, 463 U.S. 1032, 1041, 103 S.Ct. 3469, 3476-77 (1983).

<sup>61</sup> 90 Ohio St. 3d 176, 180-81, 736 N.E.2d 10, 15-16 (2000).

Article I of the Ohio Constitution, which provides that “[a]ll men are, *by nature*, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety,” ensures that every Ohioan is provided with “personal security, bodily integrity, and autonomy.”<sup>62</sup>

The Ohio Healthcare Freedom Amendment to the Ohio Constitution’s Bill of Rights preserves the freedom to choose health care and health care coverage. The 1851 Center drafted, advised, and continues to provide guidance regarding the Healthcare Freedom Amendment explicitly to protect Ohioans’ from this exact type of government intrusion. Section 21(A) states: “No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.”<sup>63</sup> Further, the jurisdiction of the probate court and, by statute, the guardian, are limited by the Ohio Constitution. “It is a well-settled principle of law that probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution.”<sup>64</sup>

Furthermore, if the order of the Court of Appeals for the Ninth District were permitted to stand, this would lead to an absurd interpretation of R.C. 2111.06. R.C. 1.47 provides that “in enacting a statute, it is presumed that: . . . a just and reasonable result is intended.”<sup>65</sup> This Court has a duty to avoid unreasonable or absurd results<sup>66</sup>, and here permitting the order of the Court of Appeals for the Ninth District to remain in force would be unreasonable and absurd -- it permits a

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<sup>62</sup> *Id.*

<sup>63</sup> Ohio Const. Art. I, §21.

<sup>64</sup> *In re Guardianship of Spangler*, 2010-Ohio-2471, 126 Ohio St. 3d 339, 346, 933 N.E.2d 1067, 1074 (2010); *citing Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988).

<sup>65</sup> R.C. 1.47(C).

<sup>66</sup> *Stutzman v. Madison Cty. Bd. of Elections*, 93 Ohio St.3d 511, 518, 2001-Ohio-1624, 757 N.E.2d 297, 304 (2001) (*citing State ex rel. Commt. for the Referendum of Ordinance No. 3543-00 v. White*, 90 Ohio St.3d 212, 218, 736 N.E.2d 873, 878 (2000)).

court to issue an order that violates the Ohio Constitution. Therefore, the Ninth District acted inconsistently with the Ohio Constitution when it ordered the probate court to appoint a guardian for S.H..

### CONCLUSION

For the foregoing reasons, Appellant's respectfully request that this Court accept jurisdiction, and adjudicate this important matter.

Respectfully submitted,



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Maurice A. Thompson (0078548)  
1851 Center for Constitutional Law  
208 E. State Street  
Columbus, Ohio 43215  
Tel: (614) 340-9817  
Fax: (614) 365-9564  
[MThompson@OhioConstitution.org](mailto:MThompson@OhioConstitution.org)  
*Attorney for Amicus Curiae*  
*1851 Center for Constitutional Law*  
*In Support of Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing will be served via e-mail upon the following:

Clair E. Dickinson (0018198)  
Nicholas P. Capotosto (0076436)  
NiCole Swearingen-Hilker (0075967)  
Brouse McDowell, LPA  
388 S. Main St., Suite 500  
Akron, Ohio 44308  
Tel: (330) 535-5711  
Fax: (330) 253-8601  
cdickinson@brouse.com  
ncapotosto@brouse.com  
nhilker@brouse.com  
*Attorney for Appellee, Maria Schimer*

Shorain L. McGhee (0075904)  
4141 Rockside Road, Suite 230  
Seven Hills, Ohio 44131  
Tel: (440) 845-1666  
Fax: (440) 886-5220  
shorain@smcgeeelaw.com  
*Attorney for Ward*

John C. Oberholtzer (0021578)  
Oberholtzer & Filous, LPA  
39 Public Square, Ste. 201  
Medina, Ohio 44256  
Tel: (330) 725-4929  
Fax: (330) 723-4929  
counsel@medinalaw.com  
*Attorney for Appellants,  
Parents of S.H.*

  
Kelsey E. Hackem