IN THE SUPREME COURT OF MISSOURI

FLOYD WILCUT, dec., and SHARON WILCUT,	)	
Appellants,	)	
v.	)	Case No. SC88618
INNOVATIVE WAREHOUSING,	)	
Respondents.	)	

On Appeal from the Missouri Court of Appeals

Eastern District, Division Three

Pursuant to Rule 83.03

Brief of Amicus Curiae

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Table of Contents

Table of Citations

Cases

Constitutional Provisions

Other Authorities\Books

Periodicals

POINT RELIED ON

The Labor and Industrial Relation Commission erred in denying workers' compensation death benefits to a widow on the basis that her husband's exercise of his sincerely held religious beliefs to refuse blood transfusions was "unreasonable" under Missouri's Workers' Compensation Law § 287.140.5, in that, the denial of benefits violated the Free Exercise Clause of the First Amendment to the United States Constitution because, absent a compelling governmental interest, a person may not be forced to choose between the exercise of his religious rights and participation in an otherwise available public program.

Lewis v. Califano, 616 F.2d 73 (3rd. Cir. 1980)

Montgomery v. Board of Retirement, 33 Cal.App.3d 447 (1973)

Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963)

Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981)

U.S. Const. amend. I

Mo. Const. art. 1 § 5

ARGUMENT

The Labor and Industrial Relation Commission erred in denying workers' compensation death benefits to a widow on the basis that her husband's exercise of his sincerely held religious beliefs to refuse blood transfusions was "unreasonable" under Missouri's Workers' Compensation Law § 287.140.5, in that, the denial of benefits violated the Free Exercise Clause of the First Amendment to the United States Constitution because, absent a compelling governmental interest, a person may not be forced to choose between the exercise of his religious rights and participation in an otherwise available public program.

May an employer, whose employee is seriously injured in a work-related accident, refuse to pay statutorily imposed workers' compensation benefits because of the employee's decision to refuse a particular form of medical treatment due to his sincerely held religious beliefs? The Missouri Court of Appeal answered in the negative.

The Missouri Constitution and the United States Constitution protect the right of the appellant, Mr. Wilcut, to freely exercise his religion. Mo. Const. art. 1 § 5, U.S. Const. amend. I. Mr. Wilcut's right of bodily self-determination is also constitutionally protected. U.S. Const. amend. XIV.

Jehovah's Witnesses accept all forms of medical treatment with the exception of blood transfusions. This sincerely held religious belief is based on their obedience to

Jehovah God's command "to keep abstaining . . . from blood." *Acts* 15:29.[1] As one of Jehovah's Witnesses, Mr. Wilcut's medical decision to refuse blood transfusions was an exercise of this sincerely held religious belief.

When an employee, such as Mr. Wilcut, refuses to accept a particular form of medical treatment because of his religious beliefs, the State is constitutionally precluded from assessing the "reasonableness" of that decision. Since the State may not sit as arbiter of religious beliefs, it may not sanction the denial of workers' compensation benefits on the basis that an employee's beliefs are "unreasonable." Rather, once an employee establishes that he is exercising a sincerely held religious belief, the responsibility falls upon the state to prove that it is using the least restrictive means to advance a compelling government interest. Only then is the burden on the exercise of an employee's constitutional rights, through the denial of compensation benefits, constitutionally permissible. Notably, the State's interest in conserving funds is not such a compelling interest.

As will be shown below, the Court of Appeals' determination that the employer may not evade its obligation to pay compensation benefits to the widow because of Mr. Wilcut's religiously-based refusal of blood transfusions harmonizes with the religious freedom and bodily self-determination protections accorded to all Missouri residents. As such, the Court of Appeal's conclusion properly respected the free exercise

[1] All Scriptural citations are from the *New World Translation of the Holy Scriptures*, Watchtower Bible and Tract Society of New York, Inc. (1984).

and personal liberty interests implicated in this case. Thus, this amicus brief will address the basis for Jehovah's Witnesses' refusal of blood and the resulting constitutional questions presented by this case.

1. Jehovah's Witnesses and the Use of Blood

a. Religious Beliefs

Jehovah's Witnesses believe that "[a]ll Scripture is inspired of God and beneficial for teaching, for reproving, for setting things straight." 2 *Timothy* 3:16. They therefore devote themselves to the study of God's Word, the Holy Bible, and strive to apply its counsel in all aspects of their lives. *See John* 17:3; *James* 1:22. In matters of health, the Witnesses view life as a gift from God, *Psalm* 36:9, and therefore believe they have an obligation to God to safeguard their health. 2 *Corinthians* 7:1. Accordingly, the Witnesses do not smoke, use illicit drugs or overindulge in alcohol. And while the Witnesses freely seek medical care, they obey the plain Scriptural directive to "keep abstaining . . . from blood." *Acts* 15:29.

As students of the Bible, Jehovah's Witnesses have always been obedient to the divine prohibition of blood. Before the advent of popular transfusion practice, the Witnesses, like many conscientious Christians throughout the centuries, were cognizant of and obedient to the command in the Bible book of Acts. In a discussion of chapter 15 of *Acts*, the November 15, 1892, issue of *Zion's Watch Tower* recognized the abiding validity of the original instructions given to Noah: "The eating of blood was forbidden, not only by the Jewish Law, but also before the Law was given. The same command was

given to Noah. See Deut. 12:23; Gen. 9:4." *Id.* at 350. Repeated discussions of this subject were considered by Jehovah's Witnesses over the next fifty years. *See The Watch Tower*, Apr. 15, 1909, at 371-72 (discussing *Genesis* ch. 9); *The Watch Tower*, Nov. 1, 1930, at 334 (same); *The Watchtower*, Dec. 1, 1938, at 356-57 (same); *The Watchtower*, Dec. 1, 1944, at 362 (discussing *Genesis* ch. 9 and *Leviticus* ch. 17).

With the conclusion of World War II and the growing use of transfused blood in civilian medical practice, the July 1, 1945, issue of *The Watchtower* magazine again reviewed Jehovah God's view of the proper use of blood from the time of Noah, through the time of the Law Covenant, down to the beginning of the Christian era. This issue of *The Watchtower* concluded:

> Seeing, then, that the Most High and Holy God gave plain instructions as to the disposition of blood, in harmony with his everlasting covenant made with Noah and all his descendants; and seeing that the only use of blood that he authorized in order to furnish life to humankind was the use of it as a propitiation or atonement for sin; and seeing that it was to be done upon his holy altar or at his mercy seat, and not by taking such blood directly into the human body; therefore it behooves all worshipers of Jehovah who seek eternal life in his new world of righteousness to respect the sanctity of blood and to conform themselves to God's righteous rulings concerning this vital matter.

Id. at 201. Since that time, the Witnesses' stand on blood has remained steadfast, notwithstanding the vicissitudes of transfusion practice. *See, Awake!*, Aug. 8, 1950, at 3-

12; Watch Tower Bible & Tract Soc'y Pa., *Blood, Medicine, and the Law of God* (1961); Watch Tower Bible & Tract Soc'y Pa., *Jehovah's Witnesses and the Question of Blood* (1977); Watch Tower Bible & Tract Soc'y Pa., *How Can Blood Save Your Life?* (1990); *Awake!*, Aug. 2006, at 3-12.

The Witnesses' stand on blood is often misunderstood as the exercise of a 'right to die.' Jehovah's Witnesses have no desire to die or 'sacrifice' or 'martyr' themselves. Moreover, a Witness patient's stand on blood is not simply a matter of consent. Some have wrongly assumed that if the blood is given without the patient's consent, his conscience would not be violated and his standing before his God would not be affected. Such notions are completely at odds with the underlying Scriptural basis for Jehovah's Witnesses' refusal of blood. For Jehovah's Witnesses, a nonconsensual blood transfusion is a gross physical violation. It is the transfusion, the blood itself, that is objectionable irrespective of how it is given.

Today, just as after the Flood and just as after the first apostolic council in the first century, Jehovah's Witnesses are firmly resolved to obey God's Word on blood. As sincere Christians, the Witnesses will continue to apply God's Word in their lives and will follow the example of the first-century Christians and other conscientious Christians throughout the centuries who have been obedient to God in abstaining from blood.

b. Nonblood Medical Management

Although Jehovah's Witnesses refuse blood transfusions, they actively seek nonblood alternatives in their medical care. Such alternative treatments have been widely

recognized by the medical and legal communities. As cited in *Awake!*, the *Wall Street Journal* reported, "[b]loodless surgery, . . . [o]riginally developed to accommodate Jehovah's Witnesses, . . . has gone mainstream, with many hospitals promoting their bloodless-surgery programs to the general public." *Awake!*, Aug. 2006, at 12. In sum, although Witness patients refuse blood products because of their firmly held religious convictions, they willingly seek and accept nonblood alternatives in their medical treatment.

2. Constitutional Protection of Jehovah's Witnesses' Choice of Nonblood Management

a. Free Exercise of Religion

Missouri constitutionally accords its citizens "a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . that no person shall, on account of his religious persuasion or belief, . . . be molested in his person or estate." Mo. Const., art. 1, § 5. In addition, the First Amendment of the United States Constitution provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. This injunction applies to the states through the 14th Amendment, *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), and reaches state judicial as well as state legislative action. *See NAACP v. Alabama*, 357 U.S. 449, 463 (1958).

Similarly, under the federal constitution, burdens on religious freedom are subject to "strict scrutiny and [can] be justified only by proof by the State of a compelling interest." *Hobbie v. Unemployment App. Comm'n*, 480 U.S. 136, 141 (1987). "[O]nly those interests of the highest order ... can overbalance legitimate claims to the free exercise of

religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Religious freedom has been "zealously protected, sometimes even at the expense of other interests of admittedly high social importance." 406 U.S. at 214. "[N]o showing merely of a rational relationship to some colorable state interest [will] suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" *Sherbert v. Verner*, 374 U.S. 398, 406 (1963). Only those religious practices which pose some "substantial threat to public safety, peace or order" are outside the First Amendment's protection. 374 U.S. at 403. As the Supreme Court emphasized, "[t]he compelling interest standard . . . is not 'watered down' but 'really means what it says.'" *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993). In short, as one of Jehovah's Witnesses, the decedent had a state and federal constitutional right to refuse blood as a matter of his religious free exercise. *See In re Brooks*, 205 N.E.2d 435, 442-43 (Ill. 1965); *In re Brown*, 478 So. 2d 1033 (Miss. 1985); *In re Milton*, 505 N.E.2d 255, 260 (Ohio 1987).

b. Bodily Self-Determination

In addition to the federal and state constitutional protections of religious freedom, under Missouri law, Mr. Wilcut possessed a personal right to refuse unwanted medical treatment. *Cruzan v. Harmon*, 760 S.W.2d 408 (Mo. 1988), *aff'd, Cruzan v. Missouri Dep't of Health*, 497 U.S. 261 (1990) ("The common law recognizes the right of individual autonomy over decisions relating to one's health and welfare. . . . If one can consent to treatment, one can also refuse it."). This fundamental right of bodily integrity

is also protected as a liberty interest under the due process clause of the federal constitution. *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 281 (1990); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

United States Supreme Court decisions "long have recognized that the Constitution embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government." *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 772 (1986). In fact, the Supreme Court has said that "[i]t is settled now ... that the Constitution places limits on a State's right to interfere with a person's most basic decisions about ... bodily integrity." *Planned Parenthood v. Casey*, 505 U.S. 833, 849 (1992). In *Cruzan*, the Supreme Court said it was indisputable that "the Due Process Clause [of the 14th Amendment] protects an interest in life as well as an interest in refusing life-sustaining medical treatment." 497 U.S. at 281; *see also* 497 U.S. at 278 ("The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions."). Similarly, the Supreme Court has held that prison inmates suffering from mental disorders possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause." *Washington v. Harper*, 494 U.S. 210, 221-22 (1990). "The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." 494 U.S. at 229.

At the heart of this 14th Amendment liberty interest in bodily integrity or self-determination "is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Planned Parenthood v. Casey*, 505 U.S. at 851. As Louis Brandeis said in his famous dissent in *Olmstead v. United States*, 277 U.S. 438, 478 (1928):

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations.

In short, the 14th Amendment liberty interest protects the individual's right "'to be free from unwarranted governmental intrusion into matters ... fundamentally affecting a person.'" *Planned Parenthood v. Casey*, 505 U.S. at 851 (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972)). Therefore, Mr. Wilcut's state common law right of individual autonomy and federal constitutional liberty interests in bodily integrity protected his right to refuse blood. [2]

[2] *See also In re Duran*, 769 A.2d 497 (Pa. Super 2001); *Stamford Hospital v. Vega*, 674 A.2d 821 (Conn. 1996); *In re Dubreuil*, 629 So.2d 819 (Fla. 1993); *Norwood v. Hospital v. Munoz*, 564 N.E.2d 1017 (Ma. 1991); *Fosmire v. Nicoleau*, 551 N.E.2d 77 (N.Y.

3. The Religious Clauses Preclude an Assessment of the Reasonableness of the Decedent's Religiously-Based Medical Decisions

This is not a case in which the decedent sought an economic advantage over his employer through the expedient invocation of a religious principle. *See also* Pomeroy, *Reason, Religion, and Avoidable Consequences: When Faith and the Duty to Mitigate Collide*, 67 N.Y.U. L. Rev. 1111, 1138 (1992); *cf. United States v. Lee*, 455 U.S. 252, 263-64 n.3, (1982) (Stevens, J., concurring). As one of Jehovah's Witnesses, Mr. Wilcut refused to accept blood transfusions because of his sincerely held religious convictions. Thus, it was the accident occurring in the scope of Mr. Wilcut's employment, not his pre-existing, deeply-held, constitutionally protected religious convictions that created this situation.

When an employee, such as Mr. Wilcut, refuses to accept a particular form of treatment because of his religious beliefs, a court is constitutionally precluded from assessing the "unreasonableness" of that decision. Rather, a court should assess, 1) whether his refusal of treatment (i.e., blood transfusions) was the result of a sincerely held religious belief, 2) whether the denial of benefits would constitute a burden upon the free exercise of the decedent's religion, and 3) whether denying benefits is the least restrictive means to achieve a compelling state interest justifying the substantial infringement of the decedent's First Amendment rights.

1990); *In re E.G.*, 549 N.E.2d 322 (1989); *Public Health Trust v. Wons*, 541 So.2d 96 (Fla. 1989); *In re Osborne*, 294 A.2d 372 (D.C. 1972).

a. The State May Not Assess the Reasonableness of a Religious Belief

It is constitutionally impermissible for a court to assess whether a religion belief system is reasonable, or whether a specific religious beliefs are reasonable, in determining whether there was an "unreasonable refusal to submit" to medical treatment under the Missouri Workers' Compensation Laws. Mo. Rev. Stat. § 287.140.5. That inquiry—by its very nature—would lead a court to preferring one religion over the other. That a court cannot do. As noted by the United States Supreme Court, "[T]he 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which . . . prefer one religion over another." *Everson v. Board of Education*, 330 U.S. 1, 15 (1947). Moreover, in matters of health-care decisionmaking, the patient's individual, subjective values must be respected. Since "[m]edical decisions involve both uncertainty and conflicts of judgment and value[,] [n]either experts nor society can judge what is best for an individual better than the individual herself." Shultz, *From Informed Consent to Patient Choice: A New Protected Interest*, 95, 292 Yale L.J. 219 (1985).

b. The Government Cannot Compel a Person to Choose Between the Exercise of a First Amendment Right and Participation in an Otherwise Available Public Program

The United States Supreme Court has long held that "a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." *Thomas v. Review Board of the Indiana*

Employment Security Division, 450 U.S. 707, 716 (1981). *See also Sherbert v. Verner*, 374 U.S. 407 (1963). Under such a test, one of Jehovah's Witnesses cannot be forced to choose between his free exercise of religion, by abstaining from blood transfusions, and the public program of workers' compensation benefits.

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas, at 717-18. The state may justify such an inroad on religious liberty by only "by showing that it is the least restrictive means of achieving some compelling state interest." *Id.*

The *Thomas* Court's application of the *Sherbert* test remains the law of the land. "[G]overnmental actions that substantially burden a religious practice must be justified by a compelling governmental interest." *Employment Division, Department of Human Resources of Oregon v. Smith*, 491 U.S. 872, 883 (1990). While the *Smith* Court noted that the *Sherbert* test has been confined to the unemployment compensation field, there is no functional difference to its application to the workers' compensation field. "[W]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Id.* at 884.

Missouri's Workers' Compensation Law creates such a system of exemptions involving "individual government assessment of the reasons for the relevant conduct." *Id*. Notably, section 287.140.5 does not mandate that a claimant for death or disability benefits submit to all medical recommendations of his doctors, nor could it. This would violate the fundamental right of bodily self-determination of all working Missourians. Nevertheless, the unreasonable refusal eligibility criteria spelled out in section 287.140.5 invites "consideration [by the commission] of the particular circumstances behind the applicant's" refusal of medical treatment. *Smith* 491 U.S. 872 at 884. In doing so, the statutory scheme creates a "mechanism for individualized exemptions." *Id.*

Where a state recognizes a wide range of personal reasons for making medical decisions, it cannot arbitrarily refuse to give similar consideration to religious reasons. For a state to regard "'religious claims less favorably than other claims'" is to subject "religious observers [to] unequal treatment." *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 148, (1987) (Stevens, J., concurring) (quoting *Bowen v. Roy*, 476 U.S. 693, 722 n.17 (1986) (Stevens, J., concurring in part)).

> Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt. "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders."

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. at 534 (1993) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring)); *cf. Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 592, ("even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment").

If the law were to recognize only secular, nonreligious reasons for making medical decisions, the law would discriminatorily be judging religious reasons "to be of lesser import than nonreligious reasons." *Church of Lukumi Babalu, Aye, Inc. v. City of Hialeah*, 508 U.S. at 537 . Hence, "to consider a religiously motivated resignation to be 'without good cause' tends to exhibit hostility toward religion, not neutrality, towards religion," *Bowen*, 476 U.S. at 708 (plurality opinion). So too a determination that a religiously-motivated refusal of treatment is "unreasonable" exhibits hostility. A statute or common law rule that excepts religion-motivated conduct from the category of "reasonable" conduct meriting certain favorable treatment is

> of paramount concern when [such] a law has the incidental effect of burdening religious practice. The Free Exercise Clause "protect[s] religious observers against unequal treatment," *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 148 (1987) (Stevens, J., concurring in judgment), and inequality results when a [court] decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation.

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. at 542, 543 .

While the dissent in the appellate decision fails to recognize the burden the Commission's position places on religion, it does correctly identify that the State's interest in this case 'is money.' *Wilcut v. Innovative Warehousing*, 2007 WL 1745624 (Mo. Ct. App. June 19, 2007) (Romines, J., dissenting). Although this may be an important consideration, denying the widow $292.04 per week is hardly a compelling interest when compared with the exercise of decedent's First Amendment freedoms. In *Thomas,* the United States Supreme Court found that the State's interest in preventing a financial burden on the unemployment fund did "not justify the burden placed on free exercise of religion." *Thomas* at 719.[3] Nor does the interest in savings workers' compensation funds justify the burden in this case.

c. Protections Accorded by Other Jurisdictions

In this regard, *Montgomery v. Board of Retirement*, 33 Cal. App. 3d 447 (1973), is particularly instructive. In *Montgomery*, the appellant declined to submit to surgery for a uterine tumor because her religious beliefs forbid the internal use of drugs or surgery. *Id.* at 449, 450. The Board of Retirement originally denied Ms. Montgomery's claim for disability benefits because her condition was correctable by surgery and, without surgery,

[3] Some might argue that to compel payment of benefits when one has acted according to religious beliefs would favor religion and thus violate the Establishment Clause. However, the United States Supreme Court has found that in such circumstances, no Establishment Clause violation exists. *See Thomas* at 719.

would lead to her permanent disability and death. *Id.* at 450. The California Court of Appeal reversed the Board's decision and held that forcing an employee to abandon the precepts of her religion or forfeit disability retirement benefits substantially infringed on her First Amendment right to free exercise.

In doing so, the court undertook a two-pronged analysis. First, after determining that Ms. Montgomery's refusal of surgery was the result of her sincerely held religious beliefs, the court considered whether the denial of benefits would place a burden on the practice of the appellant's religion. *Id.* at 450. On this issue, the court noted:

> The denial of disability retirement forces appellant to choose between following the precepts of her religion and forfeiting the disability retirement benefits on the one hand and abandoning one of the precepts of her religion in order to cease to be permanently disabled and return to work on the other hand. In effect, the appellant may not practice her religion and receive benefits.

Id. at 451.

Second, the court assessed whether any compelling state interest justified the substantial infringement on Ms. Montgomery's right to free exercise. *Id.* at 452, 453. In doing so, the court rejected the respondent's claim that the State's interest in the preservation and financial integrity of the disability and retirement fund would be compromised by permitting the appellant to receive benefits. *Id.* As such, the court concluded that there was no compelling state interest justifying the denial of benefits to Ms. Montgomery.

Similarly, in *Lewis v. Califano*, 616 F.2d 73 (3d Cir. 1980), the federal Court of Appeals for the Third Circuit held that a 55-year-old woman could be entitled disability benefits even though she refused to undergo surgery because of her religious belief in faith healing. Although Ms. Lewis was initially denied benefits because the medical evidence suggested that "she would be cured if she underwent a hysterectomy" and "[her] condition was remediable with surgery," the appellate court vacated the district court's summary judgment order and remanded the case for further evaluation and consideration. *Id.* at 75. By doing so, the appellate court rejected the district court's holding that Mrs. Lewis' "religious beliefs do not qualify as good cause for her decision to decline remedial surgery" as this was inconsistent with

> the agency['s] . . . determin[ation] that in disability cases the balance between the government's financial interest and the individual's religious interest in declining surgery must be decided in favor of the individual's First Amendment religious rights.

Id. at 74, 78.

In the present case, the decedent was injured in the scope of his employment. The employer and its insurer, rather than fulfilling their statutory obligations, now want to put Jehovah's Witnesses in the position of either having to violate their fundamental, deeply-held religious beliefs or forego full compensation for their injuries. The state has no compelling interest in burdening victims of employment-related accidents in this way.

Neither the Missouri Constitution nor the United States Constitution permits the state to require an innocent party to forgo a constitutional right to benefit from otherwise available public program. Thus, the Court of Appeals correctly held that Mr. Wilcut's widow is entitled to death benefits.

CONCLUSION

"[R]espect for the individual ... is the lifeblood of the law." *Illinois v. Allen*, 397 U.S. 337, 351 (1970) (Brennan, J., concurring). Floyd Wilcut had dedicated his life to serving his God, Jehovah. *Luke* 10:27. Nothing was more important to him than doing Jehovah's will. As a Christian, he strove to imitate Jesus in his obedience to his Father. *John* 4:34; 1 *Peter* 2:21; 1 *Corinthians* 11:1. Blood transfusion was abhorrent to his sensibilities. That Mr. Wilcut's choice of nonblood management may seem unusual, ill-advised or 'unreasonable' to some in the medical profession or even to many in the public at large is of no moment. "[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Mr. Wilcut's religiously based medical decisions did not cause the automobile accident nor place him in the hospital. There is no compelling governmental interest that would justify burdening the exercise of his religious beliefs. Mr. Wilcut's widow should not be denied death benefits because the state disagrees with her husband's religiously-based treatment decisions. Mrs. Wilcut

is entitled to full recovery for her husband's employment-related death. The defendant should fulfill its statutory obligations to pay death benefits to Mrs. Wilcut.

Dated: September ____, 2007

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b)

The undersigned certifies that this Brief complies with Rule 84.06(b) of this Court; and that this Brief contains _____ words according to the word count feature of Microsoft Word 2003 software with which it was prepared. The accompanying disk has been scanned for viruses, and to the best of our knowledge is virus-free. This Brief also meets the standards set out in Mo. Civil Rule 55.03.

_____

CERTIFICATE OF SERVICE

I Max W. Custer, Jr., hereby certify that on September ___, 2007, I served two true and correct copies of this document upon each attorney of record via overnight mail:

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I also served an original and nine copies upon the Clerk of Court via overnight mail.

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