

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BROWN

FIFTH JUDICIAL DISTRICT  
CIVIL DIVISION

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COURT FILE NO.: JV-09-68

In Re the Matter of the Welfare of  
The Child of Colleen and Anthony Hauser

**RESPONDENTS' CLOSING  
ARGUMENTS**

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Respondents, Colleen and Anthony Hauser, submit this legal memorandum in support of their closing arguments in this matter.

Thank you for this opportunity to address the Court by writing. I was so exhausted after Saturday, that a break was very necessary. It has also allowed me to condense some of my thoughts, so that, hopefully, we don't take your time.

Thank you to all, with your words of encouragement. And thank you to those on the other side, for genuinely believing in their position.

I also wish to thank all of the helpful doctors and professionals that assisted in the preparation of this case, including the Honorable Berkley Bedell, former Congressman from Iowa. The leadership given by these people working tirelessly for advancing medical freedom and medical opportunities is powerful and direct. We are all grateful for your dedication. The Hausers are grateful for the incredible amount of time and expertise that you have freely given for their son's care.

Most importantly, I thank Danny Hauser, a true Medicine man. This thirteen year old young man has turned this community upside down and inside out. A world is listening.

I respectfully submit that he is one of the more powerful medicine men around.

{To Shiree Oliver, Danny is a Medicine man by virtue of his ranking as a male in the family. That is contained in the Nemenhah Constitution that you could not understand. It is written in clear language.}

This is a simple case. This Court has always held, from day one, to the steadfast principle of protecting our children. We do not harm our children. We do not torture our children.

Yet the path advocated by the State is one of torture and criminal action.

There is a reason why 91% of the oncologists on staff at McGill Cancer Centre in Montreal do not take chemotherapy or allow their family members to take it for cancer treatment. It's too toxic, and not effective. This is exactly as the standard of medical care advocated and pronounced by Dr. Shealy.

This matter has been pummeled to death with the percentage of a 90% cure rate. And yet we come to find that a cure rate can be defined as "tumor shrinkage" but not the elimination of cancer, at all. In fact, given the statistics as provided to this Court, and demonstrated by a reputable, peer-reviewed, journal (*Clinical Oncology*, 2004; 16:549-560.), the real rate of survival hovers around 35-40%.

By the way, I realize that when I submitted this material to the Court, I did not attribute it to an author. The author is Mike Anderson, a writer and award-winning film maker from Los Angeles. Mr. Anderson contacted me concerning this information. It is significant because the numbers do not appear to be refuted by the cancer industry. I have provided to the Court the study published in *Clinical Oncology*, as well as Mr. Anderson's preliminary writing on the subject. We submit his report as Argument to the Court. His analysis supports the logical conclusions of Mr. and Mrs. Hauser. I submit the article from *Clinical Oncology*, as the Court has a continuing responsibility to ensure that all credible evidence is reviewed.

We further submit the argument of Dr. Robert Irons, and incorporate it, herein, by reference.

What is significant concerning the *Clinical Oncology* study, was a relative cure rate of 95% for Hodgkins, larger than the 90% given by Dr. Bostrom in his testimony.

The real number, or the absolute number of actual survivors for five years, was really 40.3%. In Australia, that number dropped to 35.8%.

Apparently, if a study predicts a 6% success rate, and they achieve 12%, the cancer industry reports that as a 50% increase in their success rates. It is unconscionable that the absolute numbers were not given to the Hausers in this particular matter. It is unconscionable that the cancer industry would perpetrate a number that does not stand up to actual fact. And it is unconscionable that we had to enter into an emotional issue when the true issue is the care of a thirteen-year-old young man, and the ability of that young man and his parents to realistically assess their best survival rates from reputable, peer-reviewed medical journals, before making their decision.

To condense the posture of this case, it looks like this:

A doctor went to a state official and said we have a 90% chance that this young man is going to die if he does not use my product.

By legal definition, if you use the product, it constitutes felony assault, and may very well constitute torture, when you force the use of the product against the will of the victim.

It will seriously damage the largest component of this young man's body: his immune system.

It may kill him.

Without question, it will cause serious disfigurement, including the fact that there will probably be no progeny of this thirteen-year-old young man.

It will cost \$92,900 just for the first round of chemotherapeutic agents and initial testing, and we will apply it five to six more times.

We cannot tell you the manner in which we can do this against the will of the child.

When we promise a 90% cure rate, that really only amounts to 40.3%, as measured by the best statistics available from our very own peer-reviewed medical journals.

We will not rebut a very prominent surgeon's opinion that chemotherapy constitutes torture.

We will make this application five or six more times, over the course of six months.

If the young man is still alive after that time, we will apply radiation to him.

We will do this against his religious beliefs, and we will try to convince the Court that his religion is not his.

Further, we will make sure that you cannot consider any other modes or options for health treatment, because they are not approved by a "standard of care" that does nothing to address this soul's individual consciousness.

If I brought a client in front of this Court and asked for permission to do this, you would look at me and ask that I be locked up, not just my client. If we would make a proposal to exercise torture on any of the detainees at Guantanamo, in the same measure as advocated by the doctors in this case, our country's reputation would be in a shambles. It is too easy to fall prey to that 90% number. This is a real case, involving real issues, and involving freedom of consciousness.

We initially came before the Court promising the following order of the Court. As your officer, I will continuously advocate following the rule of law. That is my consciousness.

As parents of their child, I strongly believed that Colleen and Anthony Hauser would follow the order of the Court, because they want to be by their son, at all costs. Their deep love, care, and affection for their son is without question. The fact that they have furnished a loving and caring home environment with good nutrition and good concepts of cancer survival is of paramount concern. With the help of nutritional professionals, including Dr. Kotulski, and others, the Hausers have sped up their knowledge concerning care for their child to the nth degree. They are motivated to learn. They will continue with their quest. They want their son to live!

They come before this court confounded by the idea that doctors are only allowed to recommend a specific “standard of care,” even in the light of other reasonable life saving potentials.

And yet, it is my recollection from Dr. Shealy that we can save 90% of children’s cancers by recommending an adequate supply of Vitamin D3. 90%! If we learn just one small thing from this case, let us start introducing our children to this vitamin throughout the school system. I realize the cost. Savings are significant.

The Hausers don’t stop there. They have integrated a process of pH balanced therapy that is and has been accepted in much of the world. This water machine that Danny told the Court (Kangen water) is found in practically every major hospital in Japan.

We have long known the history of pH balance. After World War II, the only survivors of Hiroshima and Nagasaki were the Japanese monks who focused on a diet of miso soup and short-grained brown rice, a pH balanced diet. They lived. The others died horrible deaths.

It is entirely fitting that Japan would be a leader in this “standard of care.” It would be a shame to preclude a modality of healing for a thirteen-year-old because we determined it is more fitting to torture and to assault the juvenile, with poisons he does not want.

The point is simple: the Hausers have elected forms of alternative healthcare that they believe to be more effective and more beneficial than those recommended by the cancer industry.

But I digress. I told you, before, my opinion that the Hausers would follow any direction of this Court, because they want and need to be by their son. What I saw in court was even more pronounced. This trial is the act of two loving parents who will go to any length to save their child from assault and torture. This is the right thing to do.

This is as it should be! This is the history of our country. This is the foundation of human values and human rights!

This Court has a long and strong history of protecting children. Now is the time to do so, according to the dictates of Danny and his family’s consciousness and spiritual being.

The fact remains, that there are an abundance of scientifically proven, medical therapies available for Danny. If this Court wants to intervene, consistent with their

conscious and religious beliefs, It must follow the reasonable path of healing as articulated by our evidence.

The Guardian Ad Litem takes no consideration of the spiritual path chosen by the parties. Nor does she give any power of the parents to help with the spiritual education of their son.

What is without question is the verification of Danny's status as a member of the Nemenhah band. This has not been refuted.

What is without question is that we, even the Guardian Ad Litem, must allow Danny's conscience to worship God as he sees fit. His conscience shall not be infringed. She cannot infringe upon it now. Nor shall she control or interfere with his right of conscience. Nor can the State. The State is attempting to do so, by their act.

We qualify our "liberty of conscience" in that we cannot exercise acts of licentiousness or justify practices inconsistent with the peace or safety of the State. We do not assault our children. We do not torture the juveniles of this state. We are a bright and shining beacon for freedom and justice for the rest of the world.

We look at this case in light of "all the surrounding circumstances." We understand and have propounded that "responsible medical authority" do not all believe in the cancer doctor's mantra: "Chemo is good."

We come to understand that healing is more than just a physical act of the administration of drugs or chemicals. It begins at the deep level of Soul, and continues through the mind, emotional and physical bodies.

The confidence of healing is of paramount concern. Danny holds this confidence, and is self-sufficient in his understanding of healing. He is self-actualized, and not in that

group of 99.2% of those people who will die in the next fifteen years, from their beliefs.  
This is solid medical evidence!

Conversely, the State wants to administer a potentially lethal medicine that Danny believes will kill him. No question, he believes he will die if he takes chemotherapy.

The State comes in and says, “We have to apply this toxic substance immediately! We’ll have to give him some counseling, before we do that, so he doesn’t feel that we’re torturing him. We have no time table on how to re-educate this young man. And we have no solution as to how we are going to get him past his present state of consciousness into ours.”

As Dr. Shealy explained, “It’s criminal!”

I realize the Court has moved this process along to eliminate the negative consequences upon this young mans being. However, these last several weeks have been equally hard on anyone who is expected to devote their entire being to healing.

What has happened is, by his very acts and deeds, Danny has become a torch bearer of an important message: the people of this state have the right to chose their own reasonable medical modality. We have the ability to go beyond those standards established by the courts, and the medical “religion”, and to go beyond the “standard of care” advocated and compelled upon all doctors in this state. (Just as an aside, remember that Dr. Bostrom reported on two individuals: Danny Hauser, and Danny’s treating physician. His treating physician at the time had made the error of not returning a phone call in a timely fashion.)

In this case, it is unconscionable that a cure rate summed up as 90% cannot guarantee that you are going to get rid of your cancer, only that you will manage the size of the tumor.

Is it a wonder that the parents relied upon “reasonable judgment” to reject Dr. Bostrom’s recommended course of treatment? A blood clot developed. It was going to take six months to dissolve, according to Dr. Bostrom. He listened to the testimony of Colleen Hauser, as she explained that it went away in a month! It went away after her application of alternative forms of healing.

Dr. Bostrom listened to Colleen Hauser, because he stayed the whole day on Friday, May 8, 2009, to hear her exclaim what he had previously said: it would be six months before we see any reduction in the tumor size. And we know that the tumor reduced substantially in that next month.

Is it a wonder she believes her modality of healing is working?

We heard the testimony of Dr. Bostrom, who indicated that Danny could be part of a study.

It is entirely reasonable for parents to reject experimentation upon their son, especially when his life is on the line.

It is ironic that the parents have to fight for their right not to have radiation on Danny, and yet, by the flip of a coin, if Danny is selected in one of the factions of the study group, he won’t get radiation. Wow! That is true science.

It is entirely reasonable for parents to reject the recommended therapy for their son. It is entirely reasonable for Danny to do so also. And it is easily understood that no one needs to get beat up by a bully.

If anyone came before this Court and advocated this course of treatment, without this magic “relative” survival number, I would pray that they would receive only a long jail sentence, and not be sent to prison.

The fact of the matter is, these parents have conducted a thorough examination of the relevant facts, and have made a decision that is entirely consistent with Danny’s health and well-being. They want more than the cancer industry provides. They want better for their son. They demand better.

Now is the time to recognize their choice. We open the door to those medical practices consistent with their consciousness and freedom.

There is a new paradigm that Danny Hauser brings to the table. Everyone, even thirteen-year-olds, possess a freedom of consciousness. No one has a right to infringe upon the consciousness of another, without their permission. The medical care demanded by Danny, and supported by his parents, is consistent with his state of mind. His parents are in the best place to determine Danny’s wellbeing. They have facilitated his care to the utmost degree.

Finally, before you get to the heart of my legal argument (below), I would ask the court to consider the definition of a medicine man. Again, like all these computer people, I go to Wikipedia for a first review.

Medicine man, Role in Native Society:

“The primary function of these “medicine elders” is to secure the health of the spiritual world, including the Great Spirit, for the benefit of the entire community.

Sometimes the help sought may be for the sake of healing disease, sometimes it may be for the sake of healing the psyche, sometimes the goal is to promote harmony between human groups or between humans and nature.”

I was talking to Lori Jensen-Lea, Attorney at Law, who is and has been very instrumental in helping with our legal writing for the Court. She indicates that her husband likes to listen to talk radio, including the sports radio stations. She indicates over the past two days, Danny has been the subject of their conversations.

The community, the state, the nation, and the world are listening to this case. On a personal level, I have had to increase my medical knowledge to levels I had never dreamed possible. For that I thank this young man. I have never seen a thirteen-year-old encourage and change the consciousness of a community, as Daniel Hauser has done here.

I realize that Ms. Oliver doesn't know what a Medicine man looks like. In seeing and understanding the changes brought about by this thirteen-year-old young man, we are coming to understand what a Medicine man does.

We are moving into a new arena of consciousness. We are rejecting a modality of treatment that is assaultive and torturous. We are relying upon our bodies to do what the good Lord intended: to heal.

## **LEGAL ARGUMENT AS APPLIED FROM THE FACTS**

### **I. TO FORCE DANNY HAUSER TO UNDERGO CHEMOTHERAPY IN THIS MATTER WOULD CONSTITUTE AN ASSAULT.**

Under Minnesota law, an assault is “an unlawful threat to do bodily harm to another with the present ability to carry the threat into effect.” *Dahlin v. Fraser*, 206

Minn. 476, 288 N.W. 851, 852 (1939). Mere words or threats are insufficient; the “display of force must be such as to cause plaintiff reasonable apprehension of immediate bodily harm.” *Id.* Minnesota Statute 609.02 defines assault as any act done with the intent to cause fear in another of immediate bodily harm or death.

Under common law, it was said that a patient normally must consent to medical treatment of any kind. Consent is required to maintain the right of personal inviolability: “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” (*Union Pacific Ry. Co. v. Botsford* (1891), 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734, 737. Viewing this right in the context of medical treatment, Justice Cardozo stated, “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages.” (*Schloendorff v. Society of New York Hospital* (1914), 211 N.Y. 125, 129-30, 105 N.E. 92, 93.) Courts have previously held that informed consent is a prerequisite to surgery. (*Pratt v. Davis* (1906), 224 Ill. 300, 79 N.E. 562.) Lacking consent, a physician cannot force medical care upon a patient, even in life-threatening situations. ( *Cf. In re Estate of Brooks* (1965), 32 Ill.2d 361, 205 N.E.2d 435 (right to refuse life-saving treatment found in first amendment free exercise of religion clause).)

Furthermore, because a physician must obtain consent from a patient prior to initiating medical treatment, it is logical that the patient has a common law right to withhold consent and thus refuse treatment. This right incorporates all types of medical

treatment, including life-saving or life-sustaining procedures. Many of our States have based the right to refuse life-sustaining treatment wholly or partly on this common law basis. (See, e.g., *Conroy*, 98 N.J. 321, 486 A.2d 1209; *Storar*, 52 N.Y.2d 363, 420 N.E.2d 64, 438 N.Y.S.2d 266; *Drabick*, 200 Cal.App.3d 185, 245 Cal.Rptr. 840; *Rasmussen*, 154 Ariz. 207, 741 P.2d 674; *Gardner*, 534 A.2d 947.)

Here, we are dealing with a mature 13-year-old boy whose wishes align with those of his parents. Danny Hauser does not want to undergo additional chemotherapy, and both he and his parents have made those wishes, as well as the reasons behind them, abundantly clear. To force the unwanted chemotherapy on him would amount to nothing short of an assault.

## **II. THE STATE CANNOT FORCE UNWANTED MEDICAL TREATMENT UPON DANNY HAUSER.**

### ***A. All Persons Have A Fundamental Liberty Interest To Stop Unwarranted Bodily Intrusions By The State.***

The Due Process Clause of the Fourteenth Amendment protects the fundamental liberties of citizens against unjustified intrusions by the state. *Michael H. v. Gerald D.*, 109 S. Ct. 2333, 2341 (1989) (plurality opinion). This Court described the scope of these traditional protections in *Meyer v. Nebraska*, 262 U.S. 390 (1923):

Without doubt, [liberty] denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

262 U.S. at 399.

Unwarranted physical invasions of the body are clearly prohibited. *Rochin v. California*, 342 U.S. 165, 172 (1952); *Skinner v. Oklahoma*, 316 U.S. 535, 541-43

(1942)(state prohibited from controlling, by sterilization, which convicts might reproduce because reproduction is a “basic liberty” cherished as “one of the basic civil rights of man”); *see also Winston v. Lee*, 470 U.S. 753, 763-66 (1985); *Schmerber v. California*, 384 U.S. 757, 772 (1966)( “The integrity of an individual's person is a cherished value of our society”); *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (“The makers of our Constitution ... conferred, as against the government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men”). Our Courts have likewise long recognized and protected an individual's right to self-determination, which allows a person to control decisions made about his own body. *See, e.g., Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)(“No right is held more sacred ... than the right of every individual to the possession and control of his own person”).

These traditional notions of autonomy fostered the doctrine of informed consent. As previously noted, in common law a doctor who administered medical treatment without consent committed a battery. *See W. Keeton, Prosser & Keeton on Torts* 189-90 (5th ed. 1984); *Slater & Baker v. Stapleton*, 95 Eng. Rep. 860 (K.B. 1767). Our Courts have also recognized the fundamental principle that medical treatment cannot be administered to an individual without informed consent to that treatment. *See, e.g., Bowen v. American Hospital Association*, 476 U.S. 610, 627-31 (1986)(plurality opinion); *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 803-04 (1986)(White, J., dissenting).

Major medical groups similarly conclude that a doctor cannot administer medical treatment without informed consent and that he must likewise stop such treatment when

consent is withdrawn. *See, e.g.*, President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, “Deciding to Forego Life-Sustaining Treatment” 43-44, 196 (U.S. Govt. Printing Office 1983) (“President's Commission”).

As argued in Respondents’ previous legal Memorandum, under the Due Process Clause, the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty or property without due process of law.” As the United States Supreme Court stated in *Meyer v Nebraska*, 262 U.S. 390 (1923), the

...Court has not attempted to define with exactness the liberty... guaranteed... it denotes not merely freedom from bodily restraint ...also... right ...engage in any of the common occupations of life, to acquire useful knowledge, ...to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized as common law as essential to the orderly pursuit of happiness by free men.

Further, as the United States Supreme Court has stated in *Yoder*: wide latitude is given to parental choices.

Like *Yoder*, the State of Minnesota has not demonstrated a compelling state interest needed to justify continued and repeated assaults upon a thirteen year old juvenile.

**B. *Incompetent Persons Retain Constitutional Rights.***

Respondents don’t agree that their 13-year-old son, Danny, is incompetent in this matter. At age 13, Danny is considered to be a “medicine man” in the Nemenhah Band and Okleveuha Native American Church of Sanpete. *See* Offer of Proof: Statement of Nemenhah Religious Principles (previously attached to Respondents’ Legal Memorandum of Law). “He has achieved the age of accountability. He has been accepted into the seminary. Danny Hauser is a minister of the Nemenhah church. This

is an honored position within the church. Danny Hauser is also an elder. By accepting to walk this spiritual path, he embraces a spiritual condition that he shall do no harm.” *Id.* at ¶ 2. However, Respondents include this argument in the event that this Court concludes that as a 13-year-old, Danny is incompetent to make informed decisions concerning his own medical care.

The protection of the Constitution has long been extended to persons unable to speak for themselves. Constitutional liberty and privacy interests of bodily integrity are not cancelled when a citizen is incompetent and thus cannot directly exercise those rights. Generally, parents or close family members are called upon to exercise the incompetent person's rights. In *Youngberg v. Romeo*, 457 U.S. 307 (1982), for example, our Supreme Court held that a profoundly retarded 33 year old man, with the mental age of an infant and no ability to speak, retained substantive liberty rights to reasonable safety in his confinement, freedom of movement and proper training in a state hospital. 457 U.S. at 315-16. His claim to those constitutional rights was properly raised on his behalf by his mother. *Id.* at 309-10. The Court did not hold that the severely retarded man lost his right to liberty simply because he was not competent to make decisions about his medical treatment or did not execute express directives prior to incompetency. *Id.* at 320-21.

Similarly, our Supreme Court has found that a retarded child who cannot express his own wishes nonetheless enjoys a “substantial [procedural] liberty interest in not being confined unnecessarily for medical treatment.” *Parham v. J.R.*, 442 U.S. 584, 600 (1979). The Court found that the “interest at stake is a combination of the child's and parents’” and it is exercised by the parents acting in the child's best interest. 442 U.S. at

600-02. The “statist notion” that a government agency rather than the parents should make the decision about how to exercise the child's liberty is “repugnant to American tradition.” *Id.* at 603. *See Thompson v. Oklahoma*, 108 S. Ct. 2687, 2693 n.23 (1988) (“Children, the insane, and those who are irreversibly ill with loss of brain function, for instance all retain ‘rights’, to be sure, but often such rights are only meaningful as they are exercised by agents acting with the best interests of their principals in mind”); *Jackson v. Indiana*, 406 U.S. 715, 717, 730-31 (1972)(“mentally defective deaf mute” with the mental level of an infant retained equal protection and due process rights to fair confinement); *Addington v. Texas*, 441 U.S. 418, 433 (1979)(allegedly mentally ill person retained procedural due process right to a determination of mental illness by a standard of proof greater than a preponderance of the evidence prior to commitment to a mental institution); *Breithaupt v. Abram*, 352 U.S. 432, 435-436 (1957)(unconscious man retained liberty interest; here those rights not violated by a blood test); *see also DeShaney v. Winnebago Dep't of Social Services*, 109 S. Ct. 998, 1002-03 (1989) (severely retarded boy retained substantive guarantees of liberty, here those rights were not violated by state omission to act); *Prince v. Massachusetts*, 321 U.S. 158, 165-66 (1944)(the “rights of children” to exercise their religion, the “child's right to receive” religious with secular schooling, and “children's rights to receive teaching in languages other than” English have been repeatedly guarded by this Court “against the state's encroachment”).

In the present case, Danny has unwaveringly expressed his wishes regarding chemotherapy. He does not want it. Thus, even if this Court considers him to be

“incompetent” for purposes of expressing his medical wishes, that alone does mean he loses all of his Constitutional rights in this matter.

C. ***The Concept Of Family Decisionmaking Is Deeply Rooted In The Traditions Of This Country.***

Danny Hauser retains the right to have his parents make his decision regarding medical treatment for him. Various state courts have recognized that incompetent persons and their families retain such rights:

Family members are best qualified to make substituted judgments for incompetent patients not only because of their peculiar grasp of the patient's approach to life, but also because of their special bonds with him or her. Our common human experience informs us that family members are generally most concerned with the welfare of a patient. It is they who provide for the patient's comfort, care, and best interest, and they who treat the patient as a person, rather than a symbol of a cause.”

*In re Jobes*, 529 A.2d 434, 445 (N.J. 1987).

The decisions of our Supreme Court directly support this kind of family decisionmaking. Historically, this Court has acknowledged the importance of the family and has looked to the family to make decisions for, and to protect, incompetent or other family members who cannot speak for themselves. *See Michael H. v. Gerald D.*, 109 S. Ct. at 2342 (even greater than “historic respect,” historical “sanctity” has been “traditionally accorded to the relationships that develop within the unitary family”); *Lehr v. Robertson*, 463 U.S. 248, 256 (1983)(“The intangible fibers that connect parent and child ... are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self evident that they are sufficiently vital to merit constitutional protection in appropriate cases”); *Roberts v. United States Jaycees*, 468 U.S. 609, 618-20 (1984)(“family relations, and any relationships which foster creation and sustenance of the family, are” protected by the Court historically); *Parham v. J.R.*,

442 U.S. at 602 (“historically [the law] has recognized that natural bonds of affection lead parents to act in the best interest of their child,” citing 1 W. Blackstone, Commentaries 447; 2 J. Kent, Commentaries on American Law 190); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972)(the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”); *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965)(“the traditional relation of the family” is “a relation as old and as fundamental as our entire civilization”); *Prince v. Massachusetts*, 321 U.S. at 166 (there is a “private realm of family life which the state cannot enter”); *Pierce v. Society of the Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. at 399-400.

The President's Commission studied in detail the question of withholding or withdrawing treatment from incompetent patients. It concluded that the rights of self-determination and treatment with dignity for patients unable to voice their preferences are best protected by appointment of family members as surrogate decisionmakers. Families share a special bond. They are most knowledgeable about a patient's values and preferences and the “family is generally most concerned about the good of the patient.” *Id.* at 127-28. The family decisionmakers should be guided by the same two values important in decisionmaking for competent persons--promoting patient welfare and respecting patient self-determination. *Id.* at 132. The family members should attempt to reach the decision they believe the incompetent person would reach. *Id.* at 132-34. One specific factor that must be weighed is the impact of medical treatment decisions on the family of the incompetent person because “most people ... have an important interest in

the well-being of their families.” *Id.* at 135, 183, 192-93; *see also* Livingston, *Families Who Care*, 291 *Brit. Med. J.* 919 (1985).

As the Court will recall, Danny Hauser is an extremely mature, articulate 13-year-old. Regarding religion, Danny stated that his family goes to church every other Sunday, and they say the rosary on the Sundays that they do not go. They also say the rosary every day at night.

Danny was raised with the idea of natural healing. (Even in farming, the family follows the dictates of this consciousness to natural and not chemical.) Danny indicated that if he had a sore throat, they would put stuff on his chest, and it worked. They would use an ear cam for ear aches.

Concerning the Nemenhah Spiritual Path, Danny testified that he heard about it a year and a half ago through his mom’s friend who he identified. It means “I can do my body no harm.” Danny indicated that he is still in the process of learning the band’s way. He spoke about what it meant for traditional medicine, as well as the medicines that he himself took in the form of vitamins and food. All of his food is organic.

Danny was adequately able to recite the history of his illness, and gave appropriate cues as to good memory and competence to relate the information. After the first time they visited the hospital in January, Danny said, “I have had to come back, I couldn’t breath.” It was during that February time that he described as the next time, that they put the port in. It is a round circle underneath his skin, with a surgical scar. (To date, it has not been removed, as previously disclosed in Court.)

Danny explained: “Then they did chemo. I felt so sick. I think they waited a day.”

Danny indicated that he never talked to Dr. Bostrom about the chemo. He did say “I didn’t want to do it [meaning chemo]. I didn’t like the idea of it.” His reason was because of the side effects. “Mom told me about them, before I had it.”

Then he reported that they had all kinds of trouble after that. Danny disclosed that his aunt had cancer and chemo and was really sick, when he was age five. When asked why he did the first chemo, he indicated that he went along with his mom’s decision. He relied on her decision. They put the chemo in through the port. He would feel it right away. “I felt really sick. I couldn’t walk, barely. I was really weak.” He was sick to his stomach and threw up tons. His gut felt really sick. They stayed eleven days, and then went home. He was feeling really sick when they left and couldn’t get in or out of the car. He indicated that he was worse. It took a week after he was out to get around, as he could not walk very well. At home, he layed on the couch, and his stomach was still bad.

There were nurses at the home. Danny indicated that there was a blood clot, which started in the hospital. He didn’t like it, but it didn’t hurt. A nurse told him that if he moved his arm too much it could break off. If it went to his brain, he understood that he had less of a chance of living.

Danny was able to articulate with clarity the nature of his diet, and the routine. He understood the concept of not feeding the cancer with sugar, and eating food consistent with fighting his cancer.

Danny confirmed after other questioning, that he is a medicine man. He has been given no instruction, and no stuff to read about it. His mom told him that he is a medicine man. He also said, “If I keep doing what I’m doing now, I will get better. That

is a sure thing. If I had chemo, I'd fight. If I did take it, I'd probably die. The chemo would kill me."

Danny talked about having a loving family, who are cooperative with each other. "It is a happy place to live." He talked about how decisions are made in his family. He talked about the fact that not all the kids follow what mom and dad decide. He was asked "what if his parents told him to do chemo again?" He said, "I wouldn't do it, because it is poison." Even if his parents told him to do chemo, "I wouldn't do it." If his parents suggested more surgery, he would do that, but he wouldn't do chemo or radiation, he repeated for a third time. He was asked, "What if they said you really have to take chemo?" He said "I'd fight. I'd punch, then I'd kick them."

Mr. and Mrs. Hauser are extremely grateful to the Court for its delicate handling of a very difficult testimonial situation for their son and for their family.

Dr. James Joyce testified that the family is maintaining its medical vigilance in the care and assistance of Danny. He indicated that he was not qualified to take out the "O" ring, previously installed by Children's Hospital to administer the chemotherapeutic agents. Dr. Joyce did complain about an x-ray not being given. Mrs. Hauser indicated, later, that Dr. Kotulski had warned about the number of x-rays that she had been requesting. He indicated that Colleen was following medical advice based upon conversation with her attorney.

As an Officer of Court, the undersigned would like to assure your Honor that I have made no attempts to interfere with medical decisions. I was present at a meeting with Dr. Kotulski. He can verify the information provided.

It was obvious that Dr. Joyce was not aware of alternative forms of therapy. He does live by the standard of do no harm, but does not want to force a resolution.

Given the testimony of Danny Hauser, Respondents submit that despite his age of 13, there can be no question that Danny is an articulate, well-educated and competent young man. However, even if this Court considers him to be incompetent, Danny Hauser retains a constitutional liberty right against unwarranted bodily invasions ordered by the state. He retains the right to a decision about medical treatment which reflects his beliefs and values. And he retains the right to have that decision made by an appropriate surrogate decisionmaker - his parents.

**III. THE GUARDIAN AD LITEM'S TESTIMONY CONSTITUTES AN IMPERMISSIBLE IMPOSITION OF A RELIGIOUS TEST.**

Religious freedoms are constitutionally protected by both the United States Bill of Rights, as well as by our Minnesota Constitution. Specifically, these documents state:

U.S. Bill of Rights: Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Minnesota State Constitution: Article I, Bill of Rights

**Sec. 16.** Freedom of conscience; no preference to be given to any religious establishment or mode of worship. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of

the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

**Sec. 17.** Religious tests and property qualifications prohibited. No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

“Religious liberty is a precious right.” *State v. Hershberger*, 462 N.W.2d 393, 398 (Minn.1990). The people of this state have always cherished religious liberty, and the high importance of protecting this right is demonstrated by its treatment in our constitution, where it appears even before any reference to the formation of a government. *State by Cooper v. French*, 460 N.W.2d 2, 8-9 (Minn.1990). The Minnesota Supreme Court has consistently held that article I, section 16 of the Minnesota Constitution affords greater protection against governmental action affecting religious liberties than the First Amendment of the federal constitution. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 864-65 (Minn.1992); *Hershberger*, 462 N.W.2d at 397. “Whereas the first amendment establishes a limit on government action at the point of *prohibiting* the exercise of religion, section 16 precludes even an *infringement* on or an *interference* with religious freedom.” *Hershberger*, 462 N.W.2d at 397. Thus, government action that is permissible under the federal constitution because it does not prohibit religious practices but merely infringes on or interferes with religious practices, may nonetheless violate the Minnesota Constitution. *Id.*

Minnesota courts employ a heightened “compelling state interest balancing test” when determining whether a challenged law infringes on or interferes with religious practices. *Hill-Murray*, 487 N.W.2d at 865. The test has four prongs: (1) whether the

objector's beliefs are sincerely held; (2) whether the state regulation burdens the exercise of religious beliefs; (3) whether the state interest in the regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means. *Id.*

As the Court will recall, the Guardian Ad Litem had stipulated to the genuineness of both the parents' and Daniel's religious beliefs. However, during trial, the Guardian Ad Litem broke her word when said she was now challenging the agreed upon Pre-Trial Stipulation. Mr. and Mrs. Hauser have been prejudiced, because they were not adequately informed that this would be an issue for trial. In fact, they were told the opposite.

As argued in Respondents' previous Memorandum, parents have a significant interest in establishing a spiritual path for their child. The State may not come in and qualify that path. To do so violates State and Federal Constitutional Protections.

The qualification by the Guardian Ad Litem is limited in this situation. While she indicated that she read the Constitution of the Nemenhah Spiritual Path, she testified that she did not understand it. She further testified that she did not see any of the principals embodied in the way of life of the Hausers. She could not tell the Court why Danny is a medicine man.

On the contrary, the Hausers have demonstrated an ability to walk their path in all aspects of their lives. They will do no harm. They eat food from the land, not polluted by pesticides and herbicides. They use oils, herbs, and other remedies to promote and maintain healthy bodies. They act as a harmonious family together.

In the present case, Danny's Guardian Ad Litem has attempted to qualify his membership and beliefs in the Nemenhah spiritual path. Her doing so constitutes an

impermissible religious test, in violation of both the Federal and Minnesota Constitutions. There is no evidence contradicting Danny's beliefs in the Nemenhah faith or its spiritual path, or that these beliefs are anything but sincere. Certainly, the interference that is being advocated in this case, that of forcing Danny to undergo chemotherapy when such treatment is in direct violation of these religious beliefs burdens Danny's exercise of his religious beliefs. The state has failed to demonstrate a compelling interest in this matter that would justify imposition of the propounded medical treatment in violation of Danny's religious beliefs.

**IV. MINNESOTA PHYSICIANS ARE NOT ALLOWED TO PRACTICE AND/OR TESTIFY ABOUT ANY TYPE OF ALTERNATIVE MEDICAL CARE OUTSIDE OF THE MINIMALLY ACCEPTED STANDARD OF CARE FOR MEDICAL DOCTORS**

Notably, none of the medical experts who testified in this case addressed the fact that, pursuant to the Medical Practices Act, had they testified that any alternative form of treatment was acceptable for Danny Hauser's cancer, they would be subjected to suspension and/or revocation of their medical license.

The Minnesota Medical Practices Act is codified at Minn. Stat. § 147, et al.

Specifically, Minn. Stat. § 147.091 addresses grounds for disciplinary action, and states:

Subd. 1. Grounds listed. The board may refuse to grant a license or may impose disciplinary action as described in section 147.141 against any physician. The following conduct is prohibited and is grounds for disciplinary action:

\* \* \*

- (k) Engaging in unprofessional conduct. Unprofessional conduct shall include any departure from or the failure to conform to the minimal standards of acceptable and prevailing medical practice in which proceeding actual injury to a patient need not be established.

The forms of disciplinary action set forth in Minn. Stat. § 147.141 include both revocation and suspension of a physician's medical license. Thus, there is good reason that none of the physicians who testified in this matter could testify that the Hausers' proposed alternative type of treatment for Danny's cancer was acceptable.

Over the years, there have been several cases throughout the country wherein physicians have lost their licenses for practicing forms of medicine considered by some to be below the minimum accepted "standard of care." In Minnesota, the standard of care to be applied is that standard of skill and learning ordinarily possessed and exercised under similar circumstances by physicians in good standing in the same or similar localities. *Swanson v. Chatterton*, 281 Minn. 129, 134, 160 N.W.2d 662, 666 (1968).

For example, in *Sinz v. Owens*, 33 Cal.2d 749, 205 P.2d 3 (Cal. 1949), the court stated that the standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, *Trindle v. Wheeler*, 23 Cal.2d 330, 333, 143 P.2d 932; *Pearson v. Crabtree*, 70 Cal.App. 52, 232 P. 715, noted in 14 Cal.L.Rev. 70; VII Wigmore on Evidence, sec. 2090(a), .p. 453, unless the conduct required by the particular circumstances is within the common knowledge of the layman. *Engelking v. Carlson*, 13 Cal.2d 216, 88 P.2d 695. And competency of an expert 'is in every case a relative one, i.e. relative to the topic about which the person is asked to make his statement.' II Wigmore on Evidence, 3rd Ed., sec 555, p. 634.

"The criterion in this regard is not the highest skill medical science knows; 'the law exacts of physicians and surgeons in the practice of their profession only that they possess and exercise that reasonable degree of skill, knowledge, and care ordinarily

possessed and exercised by members of their profession under similar circumstances.’”

41 Am.Jur., Phys. & Surg., sec. 82 p. 201. The proof of that standard is made by the testimony of a physician qualified to speak as an expert and having in addition, what Wigmore has classified as ‘occupational experience the kind which is obtained casually and incidentally, yet steadily and adequately, in the course of some occupation or livelihood.’ *Sinz*, 205 P.2d at 5, citing 2 Wigmore on Evidence, 3rd Ed., sec. 556, p. 635. He must have had basic educational and professional training as a general foundation for his testimony, but it is a practical knowledge of what is usually and customarily done by physicians under circumstances similar to those which confronted the defendant charged with malpractice that is of controlling importance in determining competency of the expert to testify to the degree of care against which the treatment given is to be measured.

The courts have encountered some difficulties in stating a general rule by which to measure the qualifications of a physician to testify of the issue of standard of care. As developed by succeeding decisions, it has not been uniformly phrased either in language or in substance, but originally, and for reasons of practical necessity, it was based upon geographical considerations which stemmed from the variations in facilities in various communities.

The *Sinz* court stated, “It has been said that the theory supporting the rule that the expert must be familiar with the degree of care used in the particular locality where the defendant practices ‘is that a doctor in a small community or village, not having the same opportunity and resources for keeping abreast of the advances in his profession, should not be held to the same standard of care and skill as that employed by physicians and

surgeons in large cities.” 205 P.2d at 6, citing *Warnock v. Kraft*, 30 Cal.App.2d 1, 3 85 P.2d 505, 506. But the law recognizes that: ‘The duty of a doctor to his patient is measured by conditions as they exist, and not by what they have been in the past or may be in the future. Today, with the rapid methods of transportation and easy means of communication, the horizons have been widened, merely by utilizing the means at hand in the particular village where he is practicing. So far as medical treatment is concerned, the borders of the locality and community have, in effect, been extended so as to include those borders readily accessible where appropriate treatment may be had which the local physician, because of limited facilities or training, is unable to give.’ *Tvedt v. Haugen*, 70 N.D. 338, 294 N.W. 183, 188, 132 A.L.R. 379, 386.

*U.S. v. Burzynski Cancer Research Institute*, 819 F.2d 1301 (C.A.5 Tex.,1987) involved a lawsuit by the United States against Dr. Stanislaw R. Burzynski and the Burzynski Cancer Research Institute (together referred to as Dr. Burzynski), seeking to enjoin them from violating the Federal Food, Drug, and Cosmetic Act by interstate distribution of a product used in cancer chemotherapy, antineoplastons, on the ground that the antineoplastons were “new drugs” within the meaning of the Act, and were being distributed without prior approval by the Food and Drug Administration. Dr. Burzynski manufactured the natural type of antineoplastons from urine, and synthetic forms, called antineoplastons 10, from various chemicals. The district court issued an injunction granting most of the relief sought by the government. It also directed Dr. Burzynski to bring his research and manufacturing facility into compliance with FDA's current good-manufacturing procedures, ordering the FDA in turn to act promptly on their submission

for approval. *Id.* at 1305. The order, however, expressly allowed Dr. Burzynski to continue manufacturing and prescribing the drug in Texas. *Id.*

Next, in 1992, in *Guess v. Board of Medical Examiners of the State of North Carolina, et al.*, 967 F.2d 998 (1992), Dr. George Guess' medical license was revoked after the Board charged that he engaged in "unprofessional conduct." *Id.* at 1000. This conduct involved his prescribing homeopathic medicines in the course of his medical practice which, the Board contended, "departs from and does not conform to the standards of acceptable and prevailing medical practice in the State of North Carolina." *Id.* The Board's decision was overturned by the Superior Court of Wake County, which decision was upheld by the North Carolina Court of Appeals. *Id.* at 1001. The appellate court found that there was an implicit requirement that "the non-conforming practices endanger or harm the public in some way." *Id.*, citing *In re Guess*, 95 N.C.App. 435, 382 S.E. 459, 461 (1989). This decision was overturned by the North Carolina Supreme Court. Dr. Guess' writ of certiorari to the U.S. Supreme Court was denied, so he then brought an action seeking an injunction for violation of his First and Fourteenth Amendment rights. The District Court concluded that it had no jurisdiction to her Guess' claims. *Id.* On appeal, this decision was upheld, and the court also found that the patients' claims, who sought to obtain homeopathic care from Guess, could also not be relitigated. *Id.* at 1005.

This issue, that of the minimum prevailing standard of care, was again addressed in *Gonzalez v. New York State Dept. of Health*, 232 A.D.2d 886, 648 N.Y.S.2d 827 (N.Y.A.D. 3 Dept., 1996). *Gonzales* involved a proceeding pursuant to CPLR article 78 to review a determination of the Administrative Review Board for Professional Medical

Conduct which, *inter alia*, placed petitioner on probation and ordered him to participate in the State-sponsored Physician Prescribed Education Program.

Petitioner, who specialized in the area of nutritional therapy and who typically treated patients with advanced and incurable cancer, was charged by the Office of Professional Medical Conduct (hereinafter OPMC) with 15 specifications of misconduct. The charges stemmed from petitioner's treatment of six incurable cancer patients who had either (1) exhausted conventional treatment options, or (2) rejected the only conventional treatment options remaining.

A Hearing Committee found that petitioner was negligent and incompetent on more than one occasion and ordered the suspension of petitioner's license to practice medicine for three years, but stayed the suspension subject to petitioner's compliance with certain probationary conditions. *Id.* at 829. On appeal, Petitioner asserted that the Board's determination should be annulled because the charges reflected a bias against alternative medicine and because his professional conduct was assessed according to the standards to which conventional practitioners are held, which were inconsistent or irrelevant to his therapy, especially in light of the fact that his patients fully consented to such nonconventional therapy. *Id.* However, the court disagreed, and found these assertions to be without merit. Both the Hearing Committee and the Board recognized that alternative medicine involves a different treatment regime, but held him to the same standard of care to which all physicians in New York are held. *Id.*

According to the American Law of Medical Malpractice 3d, cancer treatments are divided into four main types: surgery, radiation therapy (including photodynamic therapy), chemotherapy (including hormonal therapy and molecular targeted therapy),

and biologic therapy (including immunotherapy and gene therapy). 3 Am. Law Med. Malp. § 16:4. There are no non-conventional treatment options recognized as a valid cancer treatment. Thus, for any medical doctor to take the stand and testify in this case that the alternative treatment options propounded in this case are in fact valid options was simply not going to happen, as any such treatment options would be outside the accepted standard of care for oncologists. Such doctors would testify under the fear of license suspension or revocation pursuant to Minn. Stat. § 147.191.

Consequently, if the Court determines to be involved in this matter, and allows the free exercise of religion standard to prevail, it will be necessary to allow a medical practitioner to proceed, without regard to the prevailing medical standard.

The real issue is freedom of choice of health care. The types of remedies elected by Daniel and his parents are based upon sound and fundamental principles of medicine. Some of these principles go back hundreds of years.

It is imperative that the Court review the Hausers' choices, consistent with all medical options, not just those provided by cancer doctors. In *Hoftbauer*, nutritional therapy was discussed thirty years ago. Here, parental choice has been adequate, measured against the method adopted by “an ordinarily prudent and loving parent, solicitous for the welfare of this child and anxious to promote this child’s recovery.” *People v Pierson*, 176 N.Y. 201 (1903). A choice of treatment is acceptable in light of all of the surrounding circumstances and not totally rejected by all responsible medical authority. We have looked in to those circumstances, and found that there is a plethora of other available options. Many of them are utilized by the Hausers for the benefit of Daniel.

Helen Healy, M.D., was able to articulate exact specifications necessary to promote health and recovery for Daniel. Dr. Norm Shealy expounded upon some of the various theories of health for cancer, many of which have already been adopted by Danny: vitamins including D3, C, K, B's, diet, and Ph balanced water. Dr. Shealy was arguably the most vociferous of all the witnesses. He confirmed many of the principles that the Court could view throughout the case. Colleen Hauser's personal insistence that a positive attitude and freedom of mind be maintained, consistent with her religious and spiritual values, is of primary concern. Danny exhibits this as seen by his happy disposition, and willingness to share, once his comfort level has adjusted to the new surroundings.

Dr. Shealy is a very experienced neuro-surgeon with many inventions to his credit, and with over forty years of experience and over 30,000 patients. He was very direct on his opinion concerning the present matter. He testified that hope, mood and belief system directly affect a patient's ability to survive. It depends more on being happy versus being unhappy. Danny is happy now. His parents have fostered a happy relationship.

Dr. Shealy indicated that he has dealt with malignant tumors in the brain and the nervous system. He personally hates chemotherapy. He hates watching people die from the complications of chemotherapy. He does not believe in chemotherapy, personally, and would not allow it to his own body. More people are killed by it than cured, he indicated. He further stated the overall life extension was four months, and that followed six months of extreme torture.

Dr. Shealy believed that the actions of the reporting doctor here were morally unethical and constituted malpractice. He further believed that the spiritual law had been violated because the actions of the State as well as the medical community infringed upon the consciousness of another, without their permission. He discussed this case with a number of theologians dealing with this issue. He opined that the actions of the State were “criminal”.

Dr. Shealy indicated that healing has to deal with a firm belief system and he cited to the Hiddelberg study performed upon 13,000 patients over a twenty-year period of time dealing with four main categories of personality types, given psychometric tests. The numbers were remarkable, for those who suffered life-long depression, life-long anger, or a combination of both. Those who were self-actualized or autonomous, according to the study, accounted for only .8% of the deaths during the period of the study. 99.2% of all the other deaths occurred for the top three categories.

Dr. Shealy talked of other studies and opined that children, by age twelve, are spiritually advanced enough to make a decision concerning their care. This number has not been refuted by any of the other witness in this case, except for the Guardian ad Litem.

Dr. Shealy further talked of a situation that he was personally involved in, concerning a young Jehovah Witness child whose parents and child refused any blood, during surgery. He performed the operation consistent with the spiritual values of the family, successfully. Three other doctors turned the child down, because they thought they needed blood. Twenty years later that child, now a man, thanked the doctor for his courageous operation.

Here, we must exercise the beautiful, medical and scientific standard of care consistent with the consciousness of the patient, as advocated by the respondents' qualified medical experts.

Anything less is a violation of spiritual laws, and our laws that so reflect an enlightened understanding of the issue.

### **CONCLUSION**

The consciousness of America has changed to reflect our growing commitment to our children. We do not subject any child to assault or torture. We propound a simple principle:

“Do all you have agreed to do. ... Do not encroach on other persons space or property.”  
Richard Maybury

Dated this 12<sup>th</sup> day of May, 2009

Respectfully Submitted,

CALVIN P. JOHNSON LAW FIRM, LLC.

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