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## **Advisory Opinion to the Attorney General Re: Patients' Right to Know about Adverse Medical Incidents**

MARSHAL: HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE AND WELCOME TO THE FLORIDA SUPREME COURT. I WANT TO TAKE A PERSONAL PRIVILEGE, TO ACKNOWLEDGE A WONDERFUL VOLUNTEER THAT WE HAVE PRESENT IN THE COURTROOM TODAY, AND THAT IS OUR MARSHAL, WHO FORMALLY RETIRED AT THE END OF MAY, BUT HE HAS COME BACK ON A VOLUNTEER BASIS, TO BE HERE FOR THE ORAL ARGUMENT SESSIONS DURING THE CONTINUATION TO THE END OF MY TERM AS CHIEF JUSTICE, SO THANK YOU, COLONEL BARNES, VERY MUCH. WITH THAT, WE WILL GO RIGHT TO THE TOP OF THE DOCKET, AND WE HAVE THE PATIENTS' RIGHT TO KNOW. IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED FROM THE ATTORNEY GENERAL'S OFFICE.

MAY IT PLEASE THE COURT. I AM LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL. THIS MATTER IS BEFORE THE COURT ON THE REQUEST OF THE ATTORNEY GENERAL FOREIGN ADVISORY OPINION. ARGUING FOR THE PROPONENTS, WILL BE TIM McLENDON AND JON MILLS AND HAROLD MARDENBOROUGH WILL BE ARGUING FOR THE OPPONENTS.

CHIEF JUSTICE: YOU MAY PROCEED.

MR. CHIEF JUSTICE. MY NAME IS TIMOTHY McLENDON, AND I REPRESENT THE PATIENTS WHO ARE RESPONSIVE TO THIS TODAY. WE WOULD LIKE TO RESERVE EIGHT MINUTES FOR REBUTTAL. THE PATIENTS' RIGHT TO KNOW IS A CONSUMER INFORMATION AMENDMENT WHICH STATES THAT ANY PATIENT HAS THE RIGHT TO REVIEW THE RECORDS OF THEIR DOCTOR OR HEALTH CARE FACILITY.

LET ME ASK YOU THAT RIGHT OFF THE BAT, ABOUT THE PATIENT. NOW, WOULD I, IN READING THE SUMMARY OF THIS AMENDMENT, WOULD I BE REASONABLE TO CONCLUDE THAT THE PATIENT WHO HAS A RIGHT TO REVIEW, IS A PATIENT OF THE HEALTH CARE FACILITY OR A PATIENT OF THE PROVIDER?

IF, BY THAT, YOUR QUESTION IS WHETHER IT IS LINKED ONLY TO I MAY REVIEW ONLY MY DOCTOR OR MY HEALTH CARE FACILITY, I THINK IT IS PROBABLY BROADER THAN IT IS INTENDED TO BE CONSUMER INFORMATION, WHICH WOULD BE GATHERING COMPARATIVE INFORMATION.

SO SINCE I HAVE BEEN A PATIENT OF A HEALTH CARE PROVIDER IN FLORIDA, I CAN REQUEST TALLAHASSEE MEMORIAL, FOR INSTANCE, I CAN STILL REQUEST THE RECORDS OF ANY HEALTH CARE REVIEW AT THE BRADENTON HOSPITAL, IS THAT CORRECT?

YOU WOULD BE ABLE TO REQUEST RECORDS THAT RELATED TO ADVERSE INCIDENTS, YES, YOUR HONOR.

AT THE BRADENTON HOSPITAL?

IN A BRADENTON HOSPITAL.

RIGHT. AND DO YOU , MY CONCERN --

I THINK THERE WOULD BE --

MY CONCERN IS THAT, WHETHER A PERSON READING THIS, REALLY, WOULD BE LED TO BELIEVE THAT THIS IS , GIVES PATIENTS THE RIGHT TO REVIEW RECORDS OF HEALTH CARE FACILITIES , AND THAT WOULD LEAVE THE CONNOTATION THAT IT IS THE HEALTH CARE FACILITY THAT I WAS AT , AS OPPOSED TO I T JUST OPENING UP I T TO THE WORLD .

I THINK THAT, COMBINED WITH THE TITLE, YOUR HONOR , WOULD MAKE IT CLEAR THAT WE ARE TALKING ABOUT CONSUMER INFORMATION, AND THAT I T I S MEANT MORE BROADLY THAN SIMPLY THE ACQUISITION O F YOUR OWN INFORMATION .

WHY DIDN'T THEY SIMPLY SAY THAT THEN? WHY DIDN'T THEY SIMPLY SAY MEDICAL RECORDS CAN NO LONGER , ARE , ALL MEDICAL RECORDS ARE PUBLIC , PERIOD. AND THAT IS WHAT IT SAYS , RIGHT? THAT IS WHAT IT MEANS.

THAT CERTAINLY IS , AND OBVIOUSLY WE STILL WOULD NOT WANT TO DISCLOSE , WE, THE PRIVATE INFORMATION RELATED TO IDENTITIES OF OTHER PATIENTS, BUT WE THINK WE DO ESSENTIALLY WHAT YOU ARE SAYING. WE THINK THAT THE VOTER , THE AVERAGE VOTER OF REASONABLE INTELLIGENCE READING IT , WILL IN THE END UNDERSTAND THAT THE CHIEF PURPOSE IS TO MAKE RECORDS AVAILABLE AND THAT IT IS , THAT , AND PART OF --

BUT ISN'T THIS , ISN'T IT LIMITED? I MEAN, WHEN I LOOK AT THIS TITLE HERE, HOW DO YOU DETERMINE OR WHO DETERMINES WHAT IS ADVERSE ? IT SAYS ABOUT ADVERSE MEDICAL INCIDENTS , AND SO IF WE TAKE JUSTICE WELLS 'S EXAMPLE AND YOU WANT TO GO TO ANOTHER HOSPITAL , WHO DETERMINES WHAT IS THE INFORMATION THAT YOU COULD GET FROM THAT HOSPITAL?

WELL , WE ARE TALKING ABOUT RECORDS , YOUR HONOR, AND THIS IS , THIS IS SUCH A LIMITED AMENDMENT IN THE SENSE THAT I T INVOLVES THE CREATION OF NO NEW RECORDS. WHAT IT INVOLVES --

I KNOW IT DOESN'T REQUIRE THE CREATION OF A RECORD.

RIGHT.

BUT MY QUESTION TO YOU IS , WHO DETERMINES IF THE RECORD THAT I AM SEEKING IS ACTUALLY AN ADVERSE RECORD?

RECORD -- , BECAUSE IT SEEMS TO ME THAT I CAN'T JUST GET ANY RECORD FROM THE OFFICE. IT SEEMS TO B E ADVERSE RECORDS TO THE HOSPITAL OR THE DOCTOR.

THIS TRACKS THE FLORIDA BILL OF RIGHTS IN THE FLORIDA STATUTES, AND IN THE "PATIENTS' BILL OF RIGHTS" , IT EXPLAINS THE TYPE OF INCIDENTS THAT WOULD B E ADVERSE MEDICAL INCIDENTS , AND OUR SUMMARY ALSO MAKES IT CLEAR WHEN IT SPEAKS ABOUT INCIDENTS SUCH AS WOULD CAUSE INJURY OR DEATH. IT INVOLVES WRONG -SITE TREATMENT . IT REFERS --

THIS NOWHERE REFERS TO THE STATUTORY "PATIENTS' BILL OF RIGHTS" , RIGHT?

THE SUMMARY , ITSELF, DOES NOT.

NOR DOES THE AMENDMENT.

THE STATEMENT OF PURPOSE AND SOME OF THE DEFINITIONS DO CITE TO IT AND DO MAKE CLEAR USE OF THE TERMINOLOGY.

YOU SAID IT WOULD BE ADVERSE TO THE FACILITY. THAT IS NOT WHAT THIS AMENDMENT SAYS. THIS AMENDMENT SAYS THAT IT IS ANYTHING THAT COULD HAVE CAUSED DEATH. WHAT, IS THAT, DOES THAT MEAN THAT IT POSSIBLY COULD HAVE CAUSED DEATH OR INJURY OR IT PROBABLY COULD HAVE, WOULD HAVE CAUSED DEATH OR INJURY, OR THAT IT CERTAINLY WOULD HAVE CAUSED DEATH OR INJURY?

I THINK THAT WE ARE NOT TALKING ADVERSE TO THE FACILITY. WE ARE TALKING ADVERSE TO THE PATIENT, AND THAT THIS WOULD BE UNDER A REASONABLE STANDARD, WHERE THERE WAS, AND IF YOU LOOK AT THE, THE MEDICAL NEGLIGENCE, INTENTIONAL MISCONDUCT. THESE SORT OF EVENTS. WE ARE NOT TALKING, YES.

THIS CURRENT LAW, DOES IT REQUIRE DISCLOSURE OF, BECAUSE I GET CONFUSED BETWEEN ADVERSE MEDICAL INCIDENT, AS IT IS DEFINED IN 458, WHICH IS AN INCIDENT THAT ACTUALLY CAUSES INJURY OR DEATH, AND AS JUSTICE WELLS IS SAYING, THIS AMENDMENT SEEMS TO BE MUCH BROADER TO THAT AND INCLUDE INCIDENTS THAT COULD CAUSE INJURY. HOW IS SOMETHING THAT COULD POTENTIALLY CAUSE AN INJURY, ACTUALLY AN ADVERSE MEDICAL INCIDENT?

WELL, IT WOULD BE, IN THE SENSE THAT, IF THERE WERE MEDICAL NEGLIGENCE ATTACHED, MALPRACTICE. IT DOESN'T, BY INTENTIONAL MISCONDUCT.

DOES NEGLIGENCE INCLUDE INJURY?

IT WOULD.

DEFINED HERE, IT SAYS IT COULD CAUSE INJURY OR DEATH NOT DID CAUSE INJURY OR DEATH.

I THINK BY THAT, WE MEAN THAT IT WOULD BE LIKELY TO, SO WE ARE NOT TALKING ABOUT IN THE STANDARD OPERATING PROCEDURE. WE ARE TALKING ABOUT A MISTAKE OF SOME SORT OR THE INTENTIONAL MISCONDUCT THAT WAS LIKELY TO HAVE CAUSED SUCH AN INJURY OR THAT DID, IN FACT, CAUSE SUCH AN INJURY.

I AM SORRY, BUT THIS IS NOT LIMITED TO NEGLIGENCE OR INTENTIONAL CONDUCT. THIS IS ANY ACT, ANY OTHER ACT, RIGHT?

WITHIN THE CONTEXT OF NEGLIGENCE. FAULT. OF THE HEALTH CARE FACILITY OR HEALTH CARE PROVIDER.

IT SAYS, MEANS NEGLIGENCE, INTENTIONAL AND ANY OTHER ACT, RIGHT?

WITH RESPECT, IT IS MEANT TO BE BROAD. IT IS MEANT TO ALLOW COMPARATIVE INFORMATION, AND THIS IS, AS WE SAID, THIS IS INFORMATION WHICH, FOR THE MOST PART, IS ALREADY BEING GATHERED, UNDER STATE LAW, BUT IS NOT ABLE TO BE DISCLOSED TO PATIENTS AT THE CURRENT TIME. IT IS NOT DISCLOSEABLE. WHAT THIS AMENDMENT SEEKS TO DO, AND IT IS VERY LIMITED COMPARED TO OTHER AMENDMENTS THIS COURT HAS APPROVED, IS TO REVERSE THE EXEMPTION CURRENTLY EXISTING, THAT PROHIBITS RELEASE OF THE INFORMATION. WE ARE ONLY TALKING ABOUT RECORDS, RECORDS PRODUCED IN THE COURSE OF BUSINESS, SO THESE WOULD BE ADVERSE INCIDENTS, ADVERSE REPORTS, WHICH ALSO, UNDER THE PATIENT' BILL OF RIGHTS EXPLAINS WHEN MISTAKES HAPPEN AND THIS REPORT IS PREPARED. THIS IS INFORMATION THAT IS CURRENTLY NOT AVAILABLE TO CONSUMERS.

HOW DOES THE AMENDMENT AFFECT THE WORK PRODUCT DOCTRINE AND ATTORNEY/CLIENT PRIVILEGE?

I WILL SPEAK FIRST OF ALL , TO THE ATTORNEY/CLIENT PRIVILEGE, YOUR HONOR, BECAUSE THE OPPONENTS DO CLAIM THAT THIS WOULD HAVE A SEVERE IMPACT ON THE JUDICIAL BRANCH FOR THAT REASON. WE MAY NOT OBTAIN THAT THERE IS NONE WHATSOEVER ON THE JUDICIAL BRANCH, THAT THIS DOES NOT AFFECT ATTORNEY/CLIENT PRIVILEGE , AND THERE IS A COUPLE OF REASONS.

BEFORE WE GET TO THE JUDICIAL BRANCH, HOW DOES IT AFFECT THE PRIVILEGE ITSELF AND THE DOCTOR , NOT WHICH BRANCH IT IS GOING TO AFFECT BUT WHAT ABOUT THE PRIVILEGE AND THE DOCTRINE.

THE ATTORNEY/CLIENT PRIVILEGE , WE THINK IT DOES NOT AFFECT IT AT ALL. WE THINK THERE IS NO INTENTION HERE TO AFFECT THE ATTORNEY/CLIENT PRIVILEGE , USING RULES OF STATUTORY CONSTRUCTION, THINGS LIKE IN PARI MATERIA AND THE ISSUE OF GENERICITY, WOULD NOT PERTAIN TO ADVERSE INCIDENTS OF BUSINESS , AND FURTHERMORE AS THIS COURT IN THE 1961 OPINION TO THE GOVERNOR , REPEALING SUCH A LONG-HELD DOCTRINE AND ONE THAT IS BOTH STATUTORY AND JUDICIAL, BY IMPLICATION , IS STRONGLY DISFAVORED , ABSENT CLEAR INTENT TO THE CONTRARY , SO THAT IS ATTORNEY/CLIENT PRIVILEGE. AS FOR WORK PRODUCT PRIVILEGE , THE OPPONENTS ARE SPEAKING ABOUT A COUPLE OF DIFFERENT THINGS , I THINK TO THE EXTENT THAT THEY TALK ABOUT THE WORK PRODUCT PRIVILEGE THAT CURRENTLY EXISTS FOR PEER REVIEW GROUPS IN THE HOSPITALS, THIS IS A LEGISLATIVE EXEMPTION FROM PUBLIC RECORDS. THE INTENT OF THIS AMENDMENT IS TO REVERSE THAT LEGISLATIVE EXEMPTION , SO IT WOULD HAVE A CLEAR EFFECT, IN TERMS OF REDUCING THAT PRIVILEGE , AND INASMUCH AS IT RELATES TO THE RECORDS GENERATED BY THE PEER REVIEW GROUPS. WITH REGARD TO ATTORNEY WORK PRIVILEGE, THAT IS A PRIVILEGE HELD BY THE ATTORNEY, AND THAT WOULD ALSO NOT BE AFFECTED BY THIS AMENDMENT.

WHY DOESN'T THE AMENDMENT LIMIT ITSELF, THEN , TO THE PUBLIC RECORDS EXCEPTION OR EXEMPTION?

THERE IS , THE MAIN REASON IS , YOUR HONOR , IS THAT THIS IS A CONSUMER INFORMATION AMENDMENT. THE OPPONENTS POINT OUT THAT SOME OF THE INFORMATION IS ACTUALLY AVAILABLE IN THE COURSE OF LITIGATION , THROUGH DISCOVERY. THE PROBLEM IS , IT IS ONLY BY THESE EXTRAORDINARY MEANS , UNDER THE SYSTEM AS IT CURRENTLY EXISTS , THAT WE HAVE ACCESS TO THE INFORMATION.

SO THIS IS BROADER THAN PUBLIC RECORDS EXEMPTIONS, REALITY. YOU ARE NOT JUST ASKING FOR ACCESS , CONSUMER ACCESS TO INFORMATION THAT IS DELIVERED TO A PUBLIC AGENCY .

WE ARE TALKING ABOUT RECORDS THAT ARE PRODUCED EITHER FILED OR REPORTED TO PUBLIC AGENCIES OR THAT ARE PRODUCED UNDER THE, BY THE COMMAND OF STATUTORY LAW , SO , YES , WE ARE TALKING ABOUT PUBLIC RECORDS IN THIS INSTANCES , AND THE IDEA , TO RETURN TO MY POINT, IS TO FACILITATE ACCESS, SO THAT IT DOES NOT JUST APPLY TO PEOPLE THAT ARE ALREADY IN LITIGATION BUT TO PEOPLE WHO ARE CONSIDERING TREATMENT , PEOPLE WHO ARE --

DOES IT , EVEN IF I AM NOT CONSIDERING A TREATMENT AT A PARTICULAR FACILITY OR WITH A PARTICULAR DOCTOR , I COULD STILL, UNDER THIS AMENDMENT, GET THAT INFORMATION FOR ANY OTHER PURPOSE, COULDN'T I?

THE INFORMATION WOULD BE AVAILABLE TO ALL PATIENTS .

WHY COULDN'T THE MIAMI HERALD USE THIS PROVISION, TO CONDUCT INVESTIGATIONS ?

TO THE EXTENT THAT THEY WERE, THAT THE REPORTER WAS A PATIENT , I THINK IT WOULD BE FAIRLY EASY MATTER TO GET MUCH OF THIS INFORMATION, UNDER THIS AMENDMENT, AND THEY WOULD BE , YES , AS ANY OTHER CITIZEN , THEY WOULD BE ENTITLED TO HAVE ACCESS TO THE RECORDS RELATE TO GET ADVERSE INCIDENT.

WHAT ABOUT A PATIENT. IF YOU ARE A DENTIST , CAN YOU GET A ONE COLOGIST RECORDS?

IT IS NOT TALKING ABOUT DENTISTS. IT I S TALKING ABOUT MEDICAL PATIENTS.

LET'S SAY YOU ARE CURRENTLY GOING TO A DOCTOR FOR A KNEE PROBLEM, CAN YOU THEN SEARCH RECORDS OF ONCOLOGISTS IN ANOTHER TOWN ?

UNDER THE AMENDMENT , YOU COULD DO A SPECIFIC SEARCH, AND YOU COULD REQUIRE A DROR A HEALTH CARE FACILITY , T O PRODUCE RECORDS O R TO REFER YOU , IF THE RECORDS ARE IN THE PUBLIC SECTOR IN THE AGENCY , TO RECORDS ABOUT ADVERSE INCIDENTS . BROAD ACCESS .

CHIEF JUSTICE: THE MARSHAL HAS REMINDED YOU THAT YOU ARE IN THAT TIME .

I SEE. THIS IS A VERY LIMITED AMENDMENT. THE SUMMARY MAKES IT CLEAR. WE RESPECTFULLY REQUEST THAT YOU ALLOW THE PEOPLE TO INCLUDE IT IN THEIR CONSTITUTION. THANK YOU.

CHIEF JUSTICE: COUNSEL.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS HALL MARDENBOROUGH , AND I AM HERE ON PAF THE FLORIDA DENTAL ASSOCIATION, AND WITH ME IS THE ASSOCIATE GENERAL COUNSEL OVER THERE , DON DENNIS . YOUR HONORS , WE ADDRESS THE MAJOR FLAWS WITH THIS AMENDMENT , SOMETHING THAT VOTERS ON -- .

WHY DON'T YOU START RIGHT THERE. WE TALKED ABOUT DENTISTS , DIDN'T WE , AND DOES THIS APPLY TO DENTISTS?

IT I S NOT CLEAR WHETHER IT APPLIES TO DENTISTS O R NOT. IT IS CERTAINLY NOT CLEAR THAT IT DOESN'T APPLY T O DENTISTS AND IF IT DOES PASS , DENTISTS WOULD CERTAINLY ARGUE THAT IT DOESN'T APPLY TO THEM . WE WOULD TALK ABOUT THIS LATER. IT IS CERTAINLY NOT SOMETHING THAT DO APPLY.

WHY STHOONT APPLY , IF I AM ABOUT TO GO TO A DENTIST AND WANT SOME INFORMATION ABOUT WHETHER OR NOT THIS DENTIST HAS EVER BEEN INVESTIGATED FOR ANY ADVERSE INCIDENTS , WHY SHOULDN'T I BE ABLE TO GET THAT INFORMATION? WHY SHOULDN'T THE DENTIST B E INCLUDED?

I AM NOT EVEN SURE HOW TO ADDRESS THAT, YOUR HONOR. THIS ISN'T ABOUT THE MERITS OF WHETHER IT SHOULD OR NOT. IT -- IN REALITY --

IF YOU READ THIS BROADLY , IT WOULD SEEM T O INCLUDE DENTISTS , CORRECT?

IF THERE WERE A PROBABLY FRAMED AMENDMENT THAT ALLOWED PATIENTS, A SPECIFIC KIND OF INFORMATION THAT THE PATIENTS OR THE VOTERS COULD UNDERSTAND THEY WERE VOTING ABOUT, THEN THERE NO PUBLIC POLICY REASON THAT IT WOULDN'T APPLY TO DENTISTS , BUT THE LANGUAGE OF THE AMENDMENT DOESN'T MAKE CLEAR WHETHER IT WOULD OR WOULDN'T AND THAT IS THE POINT.

WHICH LANGUAGE IN PARTICULAR ARE YOU REFERRING TO?

AS IT WAS IDENTIFIED , DISCUSSED BEFORE , IT TALKS ABOUT TRACKING THE LANGUAGE OF THE "PATIENTS' BILL OF RIGHTS" AND THE "PATIENTS' BILL OF RIGHTS" , THEN , NOT APPLYING TO DENTISTS. THIS DOESN'T REALLY CLEARLY IDENTIFY EITHER WAY , WHETHER IT APPLIES TO DENTISTS .

LET ME ASK YOU THIS, OUR REVIEW IN THESE MATTERS AS YOU JUST ALLUDED TO , IS VERY RESTRICTIVE .

CLEARLY .

CORRECT? AND SO AS FAR AS THE AMENDMENT ITSELF IS CONCERNED , WE ARE TALKING AT LOOK IT -- WE ARE LOOKING AT WHETHER IT IS A SINGLE SUBJECT OR NOT.

EXACTLY.

NOW, AS I UNDERSTAND YOUR ARGUMENT ON SINGLE SUBJECT , IS THAT YOU GO TO THE BASIS OF WHETHER IT AFFECTS MORE THAN ONE BRANCH OF GOVERNMENT THERE.

WHETHER IT SUBSTANTIALLY AFFECTS MORE THAN ONE BRANCH OF GOVERNMENT. CORRECT.

,000, BUT , IT -- NOW, BUT, IT, I AM HAVING A HARD TIME SEEING HOW IT DOES AFFECT MORE THAN ONE BRANCH OF GOVERNMENT, AS WE WOULD PUT A REASONABLE INTERPRETATION ON AFFECT OF A REASONABLE BRANCH OF GOVERNMENT. SIMPLY BECAUSE IT WOULD ALTER A DOCTRINE , EVEN IF IT IS THE ATTORNEY/CLIENT PRIVILEGE , HAVE WE EVER SAID THAT THAT WOULD BE SUFFICIENT TO KNOCK IT OUT ON A SINGLE SUBJECT BASIS?

NO , BUT YOU HAVE NEVER SAID IT WOULDN'T , AND I THINK THAT THE VERY NOTION OF SUBSTANTIAL IMPACT WOULD REQUIRE THAT FINDING.

BUT ISN'T THAT AN INCIDENTAL EFFECT? I MEAN , OBVIOUSLY YOU HAVE TO HAVE COURT CASES, YOU KNOW, TO DEFINE ALL THESE THINGS, AND THAT WILL AFFECT THE CASELOAD OF THE COURTS , AND THE CASELOAD OF THIS COURT , BUT THOSE ARE ALL , REALLY , INCIDENTAL EFFECTS , ARE THEY NOT, THAT, REALLY, ARE VIRTUALLY , THERE IS NOT AN AMENDMENT THAT YOU CAN PASS TO THE CONSTITUTION , THAT DON'T HAVE SOME INCIDENTAL EFFECTS ON ALL THREE BRANCHES OF GOVERNMENT.

YOUR HONOR , I AM NOT SURE IF WE ARE TALKING ABOUT THE SAME EFFECT OR IMPACT. THE IMPACT THAT WE ARE PROPOSING --

WHAT IS THE STRONGEST ONE IF YOU ARE MAKING THAT ARGUMENT? WHAT IS THE STRONGEST EFFECT OR IMPACT?

THE FIRST THING I WOULD LIKE TO DO IS POINT OUT WE ARE NOT ARGUING THAT BECAUSE COURTS MIGHT HAVE TO INTERPRET THIS , THAT IS AN IMPACT. OBVIOUSLY ANY AMENDMENT IS GOING TO HAVE TO BE ADDRESSED BY COURTS AT SOME POINT. THE MOST FUNDAMENTAL IMPACT IS THAT IT WILL EFFECTIVELY OVERRULE THE WORK PRODUCT PRIVILEGE THAT THIS COURT HAS PUT IN PLACE OR AT LEAST ADOPTED UNDER RULE 1.280-C.

ISN'T THAT WHAT ALL CONSTITUTIONAL AMENDMENTS DO? THEY OVERRIDE SOME PREEXISTING LAW, IN VIRTUALLY EVERY CASE, DO THEY --

ABSOLUTELY , AND , HOWEVER , THE RULES THAT THIS COURT HAS SET FORWARD HAVE SAID THAT , WHILE AN AMENDMENT CAN EFFECTIVELY OVERRULE ONE AREA OF GOVERNMENT, FOR EXAMPLE IN HERE THERE IS NO ARGUMENT ON ANY SIDE THAT THIS EFFECTIVELY TAKES OVER THE LEGISLATIVE FUNCTION OF IDENTIFYING THE POLICIES THAT SHOULD BE FORWARDED IN

THE PEER REVIEW STATUTES. THERE IS NO DOUBT THAT THE LEGISLATURE IS IMPACTED SUBSTANTIALLY , BUT THIS COURT HAS SAID THAT AN AMENDMENT CANNOT IMPACT SUBSTANTIALLY , TWO DIFFERENT AREAS OF GOVERNMENT , AND THAT IS WHAT THIS DOES. IT IMPACTS --

HOW ABOUT JUST VERY RECENTLY, THE PROPOSED AMENDMENT WITH REGARD TO CLASS SIZE , THAT WOULD REQUIRE LEGISLATIVE APPROPRIATIONS , PROHIBIT CERTAIN EXECUTIVE BRANCH ACTIVITIES , HOW WOULD THIS AMENDMENT BE VIOLATIVE BUT THAT PROPOSED AMENDMENT BE SUFFICIENT, THE FAR-REACHING IMPACT, AS I RECALL THE DECISION OF THIS COURT SAID THAT THAT WAS NOT TO COME ABOUT.

IT CERTAINLY WOULD HAVE FAR-REACHING RAMIFICATIONS BUT WE BELIEVE IN THIS CASE THAT THE RAMIFICATIONS ARE DIFFERENT, IN THAT THERE ARE SUBSTANTIALLY SEPARATE INTERESTS THAT THE LEGISLATURE HAS CONSIDERED IN ADOPTING PEER REVIEW STATUTES -- IN ADOPTING THE PEER REVIEW STATUTES AND THIS COURT ESSENTIALLY CODIFIED IN 1.280-C , BY RECOGNIZING LONG STANDING PRIVILEGES THAT APPLY TO LITIGANTS IN THE COURTS . BY ADOPTING THIS AMENDMENT , ESSENTIALLY WHAT HAPPENS IS WHATEVER MEDICAL PROVIDERS , BE THEY DENTISTS OR BE THEY DOCTORS OR HOSPITALS , EFFECTIVELY LOSE ANY OF THE PRIVILEGES THAT THIS COURT HAS RECOGNIZED FOR YEARS AND YEARS AND YEARS, ARE VERY IMPORTANT AND CRITICAL TO LITIGANTS THAT HAVE TO DEFEND THEMSELVES IN CASES.

I JUST WANT TO MAKE SURE I AM UNDERSTANDING THIS THIS. IS NOT A SINGLE SUBJECT VIOLATION IN THE INITIAL TRADITIONAL SENSE THAT THERE IS ANY LOG ROLLING. IT IS A PRETTY STRAIGHT , WHETHER , THERE MAY BE SOME VAGUENESS IN SOME OF THE TERMS, BUT AS FAR AS WHAT IT IS SEEKING TO DO IS IT IS TAKING A CLASS OF RECORDS THAT ARE NOW NOT OBTAINABLE AND SAYING THAT THERE IS A RIGHT TO OBTAIN THOSE , CORRECT? THAT IS THE EFFECT OF THIS AMENDMENT. NOW , WHO HAS THE RIGHT TO GET THEM AND WHAT RECORDS THOSE MAY, THAT IS WHAT WE HAVE BEEN TALKING ABOUT EARLIER, BUT AS FAR AS THE ACTUAL SUBJECT OF THIS , YOU ARE NOT , ARE YOU SAYING THAT THERE IS A SINGLE SUBJECT VIOLATION ? THAT IT HAS MORE THAN ONE SUBJECT IN IT ?

WELL , SINGLE SUBJECT HAS THE TWO DIFFERENT PARTS THAT HAS THE LOG ROLLING ARGUMENT.

BUT IN A WAY THAT , HAS BEEN A SERIES OF CASES THIS COURT HAS DEVELOPED, BUT IN THE INITIAL SENSE OF WHAT WE REALLY WANTED, WHAT THE CONSTITUTIONAL LIMITATION WAS, IS THAT WE WANTED TO MAKE SURE THERE WOULDN'T BE ANY LOG ROLLING. THERE ISN'T ANY OF THAT IN THIS CASE.

WELL , AS WE IDENTIFIED IN OUR ANSWER BRIEF , THERE IS SOME POTENTIAL PROBLEM HERE WITH LOG ROLLING , IN THAT , AS DISCUSSED BEFORE , THERE APPEARS TO BE ONE MAJOR PURPOSE OF THIS AMENDMENT , WHICH IS TO ALLOW PEOPLE TO FIND OUT DISCIPLINARY INFORMATION. THE PROPONENTS ' BRIEFS I HAD FADE ALL KIND OF REPORTS THAT THERE IS INSUFFICIENT INFORMATION AVAILABLE TO CONSUMERS , TO FIND OUT WHICH DOCTORS OR HOSPITALS HAVE BEEN DISCIPLINED FOR MISCONDUCT OR FOR COMMITTING MALPRACTICE, AND THEY SAY THAT, IN ORDER TO ALLOW THE CONSUMER MORE INFORMATION, WE NEED TO MAKE THAT S.U.V. AVAILABLE AND THAT WOULD BE ONE AREA THAT WOULD BE REPEALED. THEN THERE IS ANOTHER AREA , WHICH IS THAT THE LEGISLATURE REQUIRES THAT CERTAIN PROVIDERS , MAINLY HOSPITALS, HAVE TO CONDUCT INTERNAL PEER REVIEW INVESTIGATIONS , AND THAT WOULD BE REPEALED .

THAT IS NOT LOGICALLY RELATED TO ONE SUBJECT, WHICH IS DISCOVERING INCIDENTS THAT ARE CONSIDERED TO BE THE TYPE OF INCIDENTS THAT COULD GIVE RISE TO MALPRACTICE? IN TERMS OF , REALLY , WHERE THE STRENGTH OF YOUR ARGUMENT IS , ARE YOU SERIOUSLY CONTENDING THERE IS A SINGLE SUBJECT VIOLATION , IN THE STHAENS THERE IS MORE THAN

ONE SUBJECT EXPRESSED IN THE TILGINT AND IN THE CONTEXT OF THE AMENDMENT?

YES , YOUR HONOR, BECAUSE OF THE FACT THAT IT DOES REQUIRE VOTERS TO POTENTIALLY VOTE TO REPEAL CERTAIN RIGHTS, IN ORDER TO GET OTHER RIGHTS. THERE COULD BE A WHOLE CLASS OF VOTERS WHO THINK , HEY , I WANT TO BE ABLE TO MAKE SURE I CAN FIND OUT WHETHER THIS DOCTOR HAS BEEN DISCIPLINED OR HOW MANY LAWSUITS HAVE BEEN REPORTED TO THE DEPARTMENT OF HEALTH OR THAT KIND OF INFORMATION, BUT I AM NOT NECESSARILY IN FAVOR REPEALING DOCTORS' RIGHTS IN HOSPITALS , RIGHTS TO THEIR ATTORNEY/CLIENT PRIVILEGES. I AM NOT NECESSARILY IN FAVOR REPEALING THEIR WORK PRIVILEGE RIGHTS.

WHERE DOES IT SAY THAT THAT HAPPENS THOUGH?

NO , IT DOESN'T, BUT THE OTHER THING IT DOESN'T DO IS SAY THAT IT WON'T HAPPEN.

YOU COULD MAKE THE POINT THAT THE SINGLE SUBJECT WOULD BE DETERMINED BY THE FUNDAMENTAL PRINCIPLE OR THE FUNDAMENTAL PURPOSE OF THE AMENDMENT. PLUS YOU WOULD HAVE TO LOOK TO ANY CHALLENGES THAT COULD BE MADE TO THAT , SUCH AS AN ATTORNEY/CLIENT , WORK PRODUCT. IS THAT HOW WE SHOULD INTERPRET A SINGLE SUBJECT TYPE ARGUMENT FOR CONSTITUTIONAL AMENDMENTS?

I AM NOT SURE IF I UNDERSTAND BECAUSE MEAN BY CHALLENGES TO IT. YOU MEAN AT THIS STAGE OR LATER?

I AM SAYING THAT THIS DOESN'T MENTION ATTORNEY/CLIENT PRIVILEGE. YOU SAY THAT IS A POSSIBLE OUTCOME , SO THEREFORE IS THERE SOME LAW THAT SAYS THAT POSSIBLE CHALLENGES OR POSSIBLE OUTCOMES MUST BE OUTLINE , TO AVOID A SINGLE SUBJECT VIOLATION , AND IF SO , WHAT IS THE AUTHORITY FOR THAT?

I AM NOT SAYING POSSIBLE ONES, I AM SAYING ONES THAT , BY THE PLAIN LANGUAGE OF THE AMENDMENT, ITSELF.

WELL , WHERE IN THE PLAIN LANGUAGE, DOES IT SAY THAT THE WORK PRODUCT PRIVILEGE IS REPEALED OR DOES IT SAY THAT THE ATTORNEY/CLIENT PRIVILEGE?

IT SAYS PATIENTS HAVE A RIGHT TO HAVE ACCESS TO ANY RECORDS.

RIGHT.

UNQUALIFIED ANY. MADE OR RECEIVED IN THE COURSE OF BUSINESS BY A HEALTH CARE FACILITY OR PROVIDER, RELATING TO ANY ADVERSE MEDICAL INCIDENT.

SO IT DOES NOT ADDRESS THE PRIVILEGE , NOR DOES IT ADDRESS , EITHER , THE ATTORNEY/CLIENT OR THE WORK PRODUCT CONCEPT.

NO , IT DOES NOT.

DOES NOT. SO WHAT YOU ARE SAYING IS BECAUSE ARGUMENTS CAN BE PRESENTED, THEN , YOU MUST CONSIDER THAT AS BEING PART OF THE SINGLE SUBJECT ANALYSIS THEN?

ABSOLUTELY.

AND WHAT THE AUTHORITY THAT YOU MUST CONSIDER ALL OF THOSE POSSIBLE CHALLENGES , AS PART OF THE SINGLE SUBJECT ANALYSIS?

BECAUSE I THINK THAT THE COURT HAS TO CONSIDER THAT, BECAUSE WE ARE NOT HERE ABLE TO ADDRESS THE SPECIFIC MERITS ABOUT WHAT IT DOES SAY OR DOESN'T SAY -- WHAT IT DOES

SAY OR DOESN'T SAY , SIMPLY BY THE SCOPE OF REVIEW HERE, THE COURT HAS TO CONSIDER WHAT THE PLAINLANGUAGE OF THAT SAYS, IN ORDER TO DETERMINE WHAT THE IMPACT IS GOING TO BE ON PEOPLE AND THEN MAKE SURE THAT PEOPLE KNOW WHAT I T WOULD MEAN.

ISN'T THAT AN ARGUMENT , REALLY, TO THE CONTRARY O F YOUR ARGUMENT? THAT IS YOU HAVE EMPHASIZED THE WORD "ANY" , SO YOU HAVE EMPHASIZED THIS IS A VERY , VERY BROAD ACCESS TO MEDICAL RECORDS , CONSTITUTIONAL PROVISION , SO HOW DOES THAT VIOLATE THE SINGLE SUBJECT?

WELL , BECAUSE , IF "ANY" , MEANS THAT THEY CAN GETAHOLD OF WORK PRODUCT DOCUMENTS AND THE WORK PRODUCT PRIVILEGE IS GOINGTO BE REPEALED , THIS COURT HAS SAID THAT, NUMBER ONE , AN AMENDMENT SHOULDN'T IMPACT TWO DIFFERENT AREAS OF GOVERNMENT SUBSTANTIALLY , BUT ON THE OTHER HAND IF THERE IS GOING TO BE ANY RESTRICTION OF ONE OF THE AREAS O F GOVERNMENT'S POWERS , THEN THE PEOPLE NEED TO BE TOLD ABOUT IT.

ARE YOU ARGUING THAT THE PUBLIC IS NOT ON PROPER NOTICE OF WHAT THIS AMENDMENT PROVIDES, BY THE SUMMARY THAT --

ABSOLUTELY.

AND WHAT IS YOUR ARGUMENT ON THAT ISSUE?

THE ARGUMENT IS, NUMBER ONE , THAT THEY ARE NOT TOLD THE SCOPE OF THE PROBABLE EFFECT, AND PART OF THE PROBLEM HERE, YOUR HONORS , IS IF THE COURT WERE TO SAY RIGHT NOW, THIS ISN'T GOING TO AFFECT THE ATTORNEY/CLIENT PRIVILEGEAND IT IS NOT GOING TO AFFECT THE WORK PRODUCT PRIVILEGE , THERE IS MUCH LESS OF A CONCERN IN THAT REGARD.

ISN'T THIS READING OF YOUR LANGUAGE WHERE YOU HAVE EMPHASIZED THE WORD "ANY" FOR INSTANCE , THAT THAT PRETTY MUCH PUTS THE PUBLIC ON NOTICE THAT THIS IS A VERY BROAD ACCESS TO MEDICAL RECORDS IN THE CONSTITUTION?

YES BURKES IT DOESN'TTELL THEM THAT THIS IS GOING TO TAKE DOCTORS AND HOSPITALS AND TREELT THEM IN A FUNDAMENTALLY DIFFERENT MANNER THAN EVERY OTHER CITIZEN IN THE STATE OF FLORIDA, IN TERMS OF PRIVILEGES.

LET ME ASK YOU IN RESPECT TO OUR REVIEW OF THE SUMMARY , THE STATUTE SAYS THAT THE LANGUAGE OF THE SUMMARY HASTO BE UNAMBIGUOUS , CORRECT?

YES.

OKAY . NOW , IN THE WAY THAT WE HAVE INTERPRETED THAT LANGUAGE AND WHAT HAS TO BE ON THE BALLOT THROUGH ARMSTRONG VERSUS HARRIS , HAVE WE, WHAT , WHERE DO WE STAND ON WHAT UNAMBIGUOUS MEANS? IS IT UNAMBIGUOUS , AS FAR AS WHAT IT PORTRAYS AS TO WHAT IS IN THE AMENDMENT, OR I S IT UNAMBIGUOUS AS TO WHAT THE PUBLIC I S GOING TO BELIEVE IS BEING DONE , FLYING UNDER FALSE COLORS?

I THINK BOTH OF THOSE ARE TRUE. THE SUMMARY HAS TO ACCURATELY DEFINE THE GENERAL NOTION OF WHAT THE AMENDMENT SAYS, AND IT ALSO HAS TO TELL THE PUBLIC THE RELEVANT IMPORTANT IMPACT THAT THE AMENDMENT IS GOINGTO HAVE. OBVIOUSLY THE SUMMARY CAN'TSAY EVERYTHING IN THEAMENDMENT. WE UNDERSTAND THAT STATUTORILY IT IS RESTRICTED TO MUCH LESS WORDS THAN THE ACTUAL AMENDMENT SAYS , BUT IT STILL HAS TO PROVIDE THE PUBLIC WITH INFORMATION ABOUT SUBSTANTIAL IMPACTSTHAT THEY MAY NOT BE AWARE OF .

THAT WOULD INDICATE TO ME THAT YOUR POSITION IS THAT , RATHER THAN THIS COURT HAVING

A NARROW REVIEW , AS IT DOES UNDER SINGLE SUBJECT , UNDER THE BALLOT IT HAS A VERY BROAD REVIEW , BECAUSE WHAT IS AMBIGUOUS IS SOMETHING THAT NORMALLY WOULD BE A FACTUAL QUESTION BUT IT IS SOMETHING THAT THIS COURT IS GOING TO HAVE TO FIGURE OUT.

THIS COURT HAS REPEATEDLY HAD TO DETERMINE WHETHER OR NOT THE WRAL OUGHT -- THE BALLOT SUMMARY HAS TO INFORM THE VOTERS AS TO WHAT EXACTLY , NOT EXACTLY BUT WHAT GENERALLY, THE AMENDMENT IS GOING TO DO AND WHAT THE IMPACT IS GOING TO HAVE.

THAT IS DIFFERENT AGAIN. IF THE BALLOT SUMMARY ACCURATELY REFLECTS WHAT IS IN THE AMENDMENT , THAT IS WHAT WE LOOK TO , NOT AS TO WHETHER THIS AMENDMENT MAY HAVE , EITHER NARROWER OR BROADER IMPACT , DEPENDING ON HOW IT IS CONSTRUED IN LATER LITIGATION. WE HAVE NEVER , I MEAN , WE DON'T FIRST START AND SAY , OKAY, THIS AMENDMENT, EVEN THOUGH I WOULD LOOK AND SAY ANY RECORDS MADE OR RECEIVED IN THE COURSE OF BUSINESS, SIMPLY DOES NOT INCLUDE, AS YOUR , AS THE PROPONENT SAID , ATTORNEY/CLIENT PRIVILEGE , OR WORK PRODUCT , BECAUSE IT IS MADE OR RECEIVED IN THE COURSE OF BUSINESS.

OKAY.

SO I MIGHT THINK THAT , BUT WE ARE NOT HERE NOW , TO INTERPRET THOSE RECORDS, BUT IT SAYS IN THE COURSE OF BUSINESS. WE ARE NOT, IN LOOKING TO SAY THAT THE SUMMARY HAS TO MAKE , GIVE THE INTERPRETATION OF WHAT THOSE RECORDS ARE , HAVE WE EVER DONE THAT IN ANY CASE THAT YOU ARE AWARE OF?

I THINK THAT THE SUMMARY DOES HAVE TO TELL THE VOTERS WHAT THE EFFECT OF THE AMENDMENT IS GOING TO BE, AND IF WE ARE IN A SITUATION WITH WHAT WE ARE DEALING WITH IS SOMETHING AS CRITICAL AS AN ENTIRE CLASS OF FLORIDIANS ' RIGHTS TO WORK PRODUCT DEFENSES OR ATTORNEY/CLIENT PRIVILEGE, THEN ALL THIS HAS TO DO IS SAY THAT IT EXCLUDES THOSE. THOSE AREN'T INCLUDED IN HERE, BUT THE PROBLEM IS , EVEN THE AMENDMENT ITSELF , DOESN'T SAY THAT. THE AMENDMENT DOESN'T ADDRESS THAT THERE IS NO WAY FOR ANYBODY TO KNOW WHAT THAT IS GOING TO MEAN IN THAT REGARD.

BUT YOU ARE NEVER GOING TO HAVE, IN A PROVISION OF LAW , WHETHER IN A CONSTITUTION, A STATUTE OR WHATEVER, THAT CREATIVE LAWYERS AND OTHER HUMAN BEINGS ARE NOT GOING TO DEBATE MEANING OF , AND HASN'T THAT BEEN PROVEN , AND SO I AM CONCERNED ABOUT YOUR ANSWER? IS YOUR ANSWER TO JUSTICE PARIENTE'S QUESTION THAT , YES, THE LANGUAGE HAS TO BE SO PRECISE , THAT THERE CAN BE NO AMBIGUITY THAT COURTS MAY LATER HAVE TO SETTLE, AS TO THE MEANING?

IT DOESN'T HAVE TO BE ABSOLUTELY PRECISE , BECAUSE THERE IS NO SUCH THING AS AN ABSOLUTELY PRECISE SUMMARY, BUT IT HAS TO BE PRECISE ENOUGH TO INFORM THE VOTERS ABOUT THE PRACTICAL IMPACT OR THE PROBLEMS THAT -- YOU WOULD SAY, THEN , IF WE DIDN'T HAVE THE 75-WORD LIMIT AND WE DID WHAT THE LEGISLATURE DID A COUPLE YEARS AGO, THAT EVEN IF THEY SET FORTH THE WHOLE AMENDMENT ON THE BALLOT , IT WOULD STILL HAVE THE SAME PROBLEM THAT YOU ARE REFERRING TO .

I AM NOT SURE IF I UNDERSTAND BECAUSE ARE SAYING.

THAT , IF THE LANGUAGE OF THE WHOLE , THE TEXT OF THE WHOLE AMENDMENT WAS IN THE BALLOT SUMMARY --

RIGHT.

-- YOU WOULD STILL BE SAYING THE SAME PROBLEMS EXIST , THAT IT DOESN'T ACCURATELY INFORM THE VOTERS OF WHAT THE INTENT OF THIS AMENDMENT IS.

BECAUSE IT WOULD HAVE SOME AMBIGUITIES .

NOT NECESSARILY . THERE , THEY ARE GOING TO HAVE SOME AMBIGUITIES. THE PROBLEM IS , WHEN ALL YOU PROVIDE IS A SUMMARY, THAT VOTERS CAN LOOK AT THIS AND PRESUME THAT , THING THAT IS AS IMPORTANT AS ATTORNEY/CLIENT PRIVILEGE AND WORK PRODUCT ARE --

CHIEF JUSTICE: HOLD IT FOR A MINUTE THERE. HOW ABOUT COMING BACK TO THE MORE PRECISE ISSUE OF WHETHER OR NOT THE SUMMARY ACCURATELY REFLECTS THE CONTENT OF THE ACTUAL AMENDMENT , ITSELF. IS THAT , ARE YOU ARGUING THAT, THAT THE SUMMARY DOES NOT GIVE A REASONABLE REPRESENTATION, THAT IT IS MISLEADING HAD, THAT IT IS HIDE THE BALL , OR THAT THERE IS SOMETHING IN THE ACTUAL CONTENT THAT ISN'T REFLECTED IN THE SUMMARY?

I THINK THE QUESTIONS THAT WERE ORIGINALLY RAISED BY THIS COURT AT THE BEGINNING OF THE ARGUMENT, RAISED SOME LACK OF PRECISION AND TIE IN BETWEEN THE BALLOT SUMMARY AND THE AMENDMENT, ITSELF , BECAUSE OF THE FACT THAT , A REASONABLE --

WHAT IS MISSING FROM WHAT IS IN THE ACTUAL AMENDMENT , ITSELF , AND IS NOT DISCLOSED IN THE SUMMARY? WHAT IS MISSING SOMETHING.

AS WAS RAISED AT THE BEGINNING , ONE, THE AMENDMENT SIMPLY , OR THE SUMMARY SAYS IT WOULD GIVE PATIENTS THE RIGHT TO REVIEW , BUT THEN THE ACTUAL AMENDMENT ITSELF , PROVIDES A MUCH MORE -- .

TALKING, AGAIN, ABOUT THE AMBIGUITIES THAT ARE HERE.

WHAT I AM TALKING ABOUT IS , AN I AM PRECISION BETWEEN THE SUMMARY LANGUAGE AND THE AMENDMENT LANGUAGE. THE SUMMARY --

ISN'T THE DIFFERENCE , IN ANSWER TO JUSTICE PARIENTE 'S QUESTION ABOUT YEAH THE BALLOT -- ABOUT WHY THE BALLOT, IF THE WHOLE THING APPEARS ON THE BALLOT, AND IT IS NOT A SUMMARY , THEN THE STATUTE , HAVING TO DO WITH SUMMARIES , DOESN'T APPLY. ISN'T THAT CORRECT? I MEAN , THAT IS WHAT THE LEGISLATURE DID . IF THE WHOLE THING, IF THIS WHOLE AMENDMENT APPEARED ON THE BALLOT , AS OPPOSED TO A SUMMARY , THEN WE WOULDN'T BE DEALING WITH FLORIDA STATUTE 101.

YOU ARE RIGHT.

SO IT IS , FLORIDA STATUTE 101 THAT , INJECTS WHETHER IT IS AMBIGUOUS OR NOT INTO THIS QUESTION. IS THAT CORRECT?

IT CERTAINLY THE VEHICLE THAT INJECTS THE AMBIGUITY , ALONG WITH THE FACT THAT THE PROPONENTS CHOSE TO IDENTIFY THE FACT THAT IT IS -- CHOSENOT TO IDENTIFY THE FACT THAT A REASONABLE VOTER WOULD THINK THAT IF I AM A PATIENT , I WOULD BE ENTITLED TO GET RECORDS ABOUT AN ADVERSE MEDICAL INCIDENT , AS OPPOSED TO THE ACTUAL LANGUAGE OF THE AMENDMENT THAT ANY FLORIDA CITIZEN WHO -- CITIZEN WHO CALLS HIMSELF A PATIENT , CAN GET WHATEVER INFORMATION HE WANTS.

CHIEF JUSTICE: WITH THE HELP OF OUR QUESTIONS , WE HAVE USED UP ALL OF YOUR TIME . MR . MIMS.

MR . CHIEF JUSTICE -- MR. MILLS.

MR . CHIEF JUSTICE , MY NAME IS JON MILLS AND I AM CO-COUNSEL FOR THE PROPONENTS . I WOULD LIKE TO RETURN BRIEFLY TO THE SCOPE OF THE APPLICATION OF THIS AMENDMENT.

LET ME ASK YOU THIS , WHAT DOES OUR LANGUAGE, WHICH, IN WHICH WE SAY IN ARMSTRONG , THAT WE, THAT SOMETHING COULDN'T HAVE APPEARED ON THE BALLOT , IF IT WAS , " , FLYING UNDER FALSE COLORS? HOW DO WE MAKE A DECISION AS TO WHETHER SOMETHING IS FLYING UNDER FALSE COLORS?

EITHER YOU , THE STATUTE REQUIRES THAT YOU EXPRESS BOTH CHIEF PURPOSE AND NOT BE MISLEADING . IN OTHER WORDS IF YOU MISLEAD THE PUBLIC BY OVER INCLUSION , UNDER INCLUSION OR DECEPTIVE LANGUAGE , THEN YOU ARE MISLEADING , RETURN TO SAVE OUR EVERGLADES . IT INCLUDED A STATEMENT "SAVE OUR EVERGLADES", WHILE NOT INCLUDING THAT IN THE ACTUAL ACTIVITY IN THE TEXT, SO IT WAS VIEWED AS SLOGAN EARING. SO AS LONG AS YOU REPRESENT ACCURATELY WHAT IS IN THE TEXT , YOU DON'T VIOLATE THE SUMMARY.

DON'T YOU, HAVEN'T WE HAD CASES, THOUGH, WHERE, IF THERE IS AN IMPACT ON OTHER PROVISIONS OF THE CONSTITUTION , THAT THE SUMMARY DOES HAVE TO DISCLOSE THOSE THAT IMPACT , NOT A POTENTIAL IMPACT BUT AN ACTUAL IMPACT.

RIGHT A ACTUAL AND SUBSTANTIAL IMPACT,, SO AGAIN , THE WHOLE PURPOSE OF THIS PROVISION, BOTH THE SINGLE SUBJECT AND THE STATUTE, IS TO ADEQUATELY INFORM THE CITIZENS , SO THAT THEY CAN MAKE A RATIONAL DECISION , BASED ON THEIR KNOWLEDGE.

WELL , WHERE DO WE GO WITH THIS WHOLE ISSUE ABOUTWHETHER THERE ARE AMBIGUITIES IN THE AMENDMENT AN ITSELF , THAT ARE SUCH THAT EVEN IF THE SUMMARY ACCURATELY REFLECTS THE AMENDMENT, IT IS NOT , WE ARE NOT GOING TO REALLY KNOW WHETHER A PATIENT MEANS JUST A PATIENT OF THAT HEALTH CARE FACILITY OR JUST EVERYONE IN THE WORLD THAT ADVERSE MEDICAL INCIDENT MAY BE BROADER THAN CHAPTER 458OR IT MAY NOT BE. YOU KNOW, WHEN I READ THIS FIRST , I THOUGHT THIS LOOKED LIKE A VERY STRAIGHTFORWARDAMENDMENT THAT DID WHAT YOUR CO-COUNSEL SAYS IT, DOES AND THEN I AM HEARING THESE OTHER QUESTIONS THAT GO , MAYBE IT IS AMBIGUOUS .

FIRST OF ALL , AMBIGUITY STANDING ALONE, IS NOT AVIOLATION OF THE SINGLE SUBJECT RULE, BUT RETURNING TO SCOPE , YOU HAVE TO KEEP IN MIND WHAT THIS DEALS WITH. IT DEALS WITH PATIENT REQUESTS OR POTENTIAL PATIENT REQUESTS, NOT PERSON OFF THE STREET. IT DEALS WITH , IN THE COURSE OF BUSINESS , AND ADVERSE MEDICAL INCIDENT. SO LET ME FOCUS ON THIS , BECAUSE I THINK THE QUESTIONS WERE IMPORTANT. THIS REQUIRES ONLY THE DISCLOSURE OF THAT WHICH I S ALREADY COLLECTED AS A PARTYOF LAW. THIS IS A SIMPLE AMENDMENT , DIRECTED TO OVERRULE !!ING A N EXEMPTION.

WHERE DOES IT SAY THAT?

IT SAYS , WHEN YOU READ PATIENTS' RIGHT TO KNOW ABOUT MEDICAL INCIDENTS , THAT THIS IS TO DISCLOSE, IN THE COURSE OF BUSINESS , I T DEFINES ADVERSE MEDICAL INCIDENT.

DOES IT DEFINE I T MORE NARROWLY IN THE STATUTE THAN IT DOES I N THIS AMENDMENTTHOUGH?

I WOULD SAY ACTUALLY THE STATUTE THE STATUTE , QUALIFIES MEDICAL INCIDENT . THIS IS AN ADVERSE MEDICAL INCIDENT, SO THE PURPOSE OF THIS, AND I REPRESENT TO YOU THE PURPOSE OF THIS IS TO DISCLOSE INFORMATION COLLECTED ON ADVERSE MEDICAL INCIDENTS THAT ARE CURRENTLY EXEMPTED TLCHT IS AN EXEMPTION , AND THE PROBLEM -- EXEMPTED. THERE IS A EXEMPTION , AND THE PROBLEM THAT WE ARE QUESTIONING IS CONSUMERS , CONSUMER BEING A PROSPECTIVE PATIENT, THE RIGHT TO OBTAIN THAT INFORMATION. THE RIGHT TO OBTAIN THAT INFORMATION IS FUNDAMENTAL TO THEIR HEALTH CARE CHOICE.

WHY DOESN'T IT DEFINE MEDICAL INCIDENT AS IT IS IN THE STATUTE? BECAUSE IT , DO YOU

AGREE OR DISAGREE THAT THE DEFINITION IN THE AMENDMENT, IS MUCH BROADER THAN THE DEFINITION IN THE STATUTE, BY INCLUDING "COULD HAVE CAUSED " ?

COULD. ADVERSE MEDICAL INCIDENT. WHEN YOU ARE COLLECTING INFORMATION ON THAT, COULD HAVE CAUSED , AN ADVERSE MEDICAL INCIDENT , I S STILL COLLECTIVE, AS I UNDERSTAND IT, SO IF THIS IS NOT COLLECTED , IF THIS INFORMATION IS NOT COLLECTED PURSUANT TO THE REQUIREMENTS, IT DOESN'T BECOME A PUBLIC RECORD.

SO NOW , WE ARE IN A SITUATION WHERE THE MIAMI HERALD GOES TO REQUEST THE RECORDS OF BRADENTON HOSPITAL. AND THE HOSPITAL , THEY REQUEST THEM AND THEY OBJECT , AND NOW WE ARE GOING TO HAVE A LAWSUIT, AND NOW AT THAT POINT , A COURT IS GOING TO HAVE TO MAKE DECISIONS AS T O WHETHER MIAMI HERALD IS A PATIENT , WHETHER THEY WOULD , IF THEY ARE DOWN IN MIAMI, WOULD THEY , REALLY , HAVE NO INTENT OF GOING TO BRADENTON , BUT THEY ARE , IS THAT HOW THIS WOULD HAVE TO --

I THINK THAT WOULD BE A PRETTY SIMPLE CONCLUSION FORA COURT .

BUT IT HAS TO, YOU KNOW , RIGHT NOW WE ARE --

I WOULD SAY NO , IS ANYBODY GOING TO KEEP THE MIAMI HERALD FROM ASKING? OF COURSE NOT. IF THEY ASK , I THINK THEY HAVE TO COMPLY WITH BEING A PATIENT, AND THAT IS DEFINEDIN HERE . IT MEANS AN INDIVIDUAL WHO HAS SOUGHT, IS SEEKING , IS UNDERGOING OR HAS UNDERGONE CARE OR TREATMENT AT A HEALTH CARE FACILITY OR BY A HEALTH CARE PROVIDER.

WELL, IN TRUTH AND IN FACT , THAT WOULD MEAN ANY REPORTER THAT WAS BORN IN FLORIDA , CORRECT, BECAUSE HE WOULD I S --

ASSUMING THAT THEY WERE SEEKING INFORMATION --

ASSUMING HE WAS BORN IN A HOSPITAL OR SHE.

I GUESS WE HAVE TO ASSUME THAT ABOUT MOST REPORTERS. I THINK , IF YOU, THIS IS NOT INTENDED TO BE TERRIBLY NARROW, BUT IT IS , THE PURPOSE OF THIS IS CONSUMER , AND , AGAIN , THERE IS A REFERENCE TO THE CONSUMERS' BILL OF RIGHTS HERE , ANDTHAT IS THE SECTION WHICH SAYS , DEALING WITH GENERALLAW RELATED T O A PATIENT'S RIGHTS AND RESPONSIBILITIES , AND THAT IS A REFERENCE TO THE "PATIENTS' BILL OFRIGHTS" , WHICH, REALLY, IS A STEP FORWARD BUT DOESN'T DO QUITE ENOUGH , AND I ALSO WANTED TO REFER BACK TO THE QUESTION O N ATTORNEY/CLIENT. SOMEONE , I THINK IT WAS JUSTICE LEWIS , SAID IT DOESN'T MENTION ATTORNEY/CLIENT. WELL , IT DOESN'T , YOU CAN'T IMPLIEDLY REPEAL A MAJOR COMMON LAW RIGHT. THIS IS A COURT-MADE STATUTE. THE DISTINCTION IN WORK PRODUCT , IS THAT IS A STATUTE.THE LEGISLATURE HAS CREATEDTHE WORK PRODUCT EXEMPTION. THE PEOPLE ARE ENTITLED TO OVERRIDE IT. IN FACT, THAT IS WHAT ALL THIS SUGGESTS. CAN'T EFFECT THE ATTORNEY/CLIENT PRIVILEGE. DOESN'T PORTEND TO. THE SUBJECT OF THIS IS, DOES NOT INCLUDE. THAT THERE FOR WE WOULD SUGGEST , YOUR HONOR , THAT THIS IS A NARROW SPECIFIED AMENDMENT , DEALS WITH MAKING PUBLIC RECORDS AVAILABLE TO THE CONSUMERS. THE SUMMARY O F THIS FAIRLY REPRESENTS WHAT IT INTENDS TO ACCOMPLISH . THANK YOU.

CHIEF JUSTICE: THANK YOU . THANK YOU ALL VERY MUCH, ESPECIALLY I N RESPONDING TO OUR CONCERNS.