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St. Vincent's Medical Center, Inc. v. Memorial Health Care Group, Inc.

SC06-1047

>> HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF THE FLORIDA
IS NOW IN 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.,,

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING FRIENDS, AND
WELCOME TO THE CALENDAR FOR
FRIDAY, JANUARY 5.

THE FIRST CASE ON THE CALENDAR
THIS MORNING IS ST. VINCENT'S
MEDICAL CENTER VERSUS MEMORIAL
HEALTH CARE.

>> MAY IT PLEASE THE COURT, MY
NAME IS MAJOR HARDING, AND I AM
HERE ON BEHALF OF ST. VINCENT'S
MEDICAL CENTER ASKING THIS COURT
TO REVERSE A DECISION BY THE
DISTRICT COURT IN HOLDING THAT A
STATUTE GRANTING AN EXCEPTION TO
THE CERTIFICATE OF NEED BE --
WAS RULED UNCONSTITUTIONAL BY
THAT COURT, AND IN DOING SO,
THEY ANNOUNCED THAT THEY WERE
USING A NEWLY AND RECENTLY
ENUNCIATED STANDARD, WHICH WAS
ENUNCIATED IN GULF STREAM, AND
WE ARE HERE AGAIN, AS WE WERE IN
JUNE, CHALLENGING THAT STANDARD
THAT WAS ANNOUNCED IN GULF
STREAM.

>> IN THIS CASE, DOES YOUR CASE
RISE OR FALL ON THE STANDARDS?
IT SEEMS TO ME, IT'S A
REASONABLE PROBABILITY STANDARD.
IT'S HARD TO SEE HOW THERE'S A

REASONABLE PROBABILITY THAT IT'S GOING TO APPLY TO ANYBODY ELSE, AND IF YOU USE ANY PROBABILITY, THAT MAYBE YOU COULD WIN ON THAT ONE.

>> THE STANDARD FOR 120 YEARS, JUSTICE CANTERO, HAS BEEN THE CLASS IS CLOSED IF THERE IS NO POSSIBILITY THAT ANYONE ELSE CAN ENTER IT.

AND THE CASES HAVE INDICATED IN EFFECT THAT IF IT IS CLOSED BECAUSE, LIKE IN MCGRAFT, BECAUSE OF A CERTAIN DATE THAT PRECEDED THE ENACTMENT OF THE STATUTE OR IF IT IS CLOSED AS IN ONE OF THE CASES, AS IF THE COUNTIES HAD BEEN NAMED, THEN THERE IS A NO POSSIBILITY THAT THERE CAN BE ANY OTHER PERSON ENTERING THE CLASS.

BUT HERE THE COURT HAS SAID THAT THE -- IF THERE IS A POSSIBILITY, AND IT DOESN'T MATTER IF THERE IS NOT A PROBABILITY, BUT IF THERE'S A POSSIBILITY, THAT SOMEONE ELSE CAN ENTER THE CLASS, THEN THE CLASS IS OPEN.

>> I HATE TO BRING UP THIS CASE, BECAUSE IT BRINGS UP SO MANY OTHER KINDS OF MEMORIES, BUT THIS RIDE REMINDS ME OF THE SCHIAVO CASE WHERE THE LEGISLATURE ENACTED A LAW THAT SEEMED TO APPLY ONLY TO ONE PERSON, GAVE THE GOVERNOR ONLY A CERTAIN PERIOD OF TIME TO STAY THE CASE, AND EVEN THOUGH IT COULD POSSIBLY APPLY TO SOMEBODY, IT WAS CLEARLY DIRECTED AT ONLY ONE PERSON, AND THIS SEEMS TO ME IN THAT SENSE PRECISELY THE SAME TYPE OF CASE.

>> WELL, JUSTICE CANTERO, THE COURT SAID IN THE SANFORD ORLANDO CASE, THAT IT DID NOT MATTER IF ONE COUNTY WAS THE REASON FOR THE ENACTMENT OF THE STATUTE, AND IT DID NOT MATTER IF THERE WAS NO PROBABILITY THAT OTHERS WOULD ENTER, BUT IF THERE WAS AN OPENNESS THAT THERE WAS A POSSIBILITY.

AND --

>> WHAT IF THE DISTRICT COURT,
INSTEAD OF DECIDING THE CASE THE
WAY THAT THEY DID HERE --

>> I'M SORRY?

>> INSTEAD OF DEAF SIDING THE
CASE THE WAY THEY DID, THEY WENT
IN YOUR FAVOR, AND THEN THEY
SAID IN THEIR OPINION, THAT IT
DOESN'T MATTER WHETHER OR NOT
THE IDEA OF THE LEGISLATURE WAS
BASED ON IRRATIONAL SPECULATION.
THAT WE STILL HAVE TO UPHOLD IT,
AND NOW YOUR OPPONENT WAS
STANDING WHERE YOU'RE STANDING.
AND SAYING, HOW CAN IT BE THAT
IRRATIONAL SPECULATION COULD
FORM THE BASIS, WOULD YOU BE
DEFENDING LANGUAGE AND WOULD YOU
URGE US TO SIMILARLY SAY THEN
THAT IT DOESN'T MATTER, IT COULD
BE BASED ON IRRATIONAL
SPECULATION, AND THAT THAT WOULD
STILL BE ALL RIGHT?

>> WELL -- AND I WOULD RESPOND
FIRST TO THAT JUSTICE ANSTEAD BY
SAYING THAT THE STATUTE COMES
HERE WITH A GREAT PRESUMPTION OF
STULT, AND THAT --
CONSTITUTIONALITY AND THAT THE
COURTS HAVE SAID THAT IT IS
REVIEWED WITH THAT PRESUMPTION
AND IT'S TO BE DECLARED
INVALID --

>> BUT WOULD YOUR RANGE INCLUDE
IRRATIONAL SPECULATION?

>> WELL, I WOULD SAY IN THIS
PARTICULAR CASE, JUSTICE
ANSTEAD, THAT THERE IS NO
IRRATIONAL SPECULATION, THAT
THIS IS OPEN.

>> LET'S JUST SAY THAT WE NOW,
IN SAYING, YOU KNOW, WHAT THE
POSSIBILITY MEANT, THAT IT
INCLUDES IRRATIONAL SPECULATION.
DO YOU THINK THAT WOULD BE A
SOUND PRINCIPLE?

>> I THINK THAT TO SAY THAT IN
AN OPINION WOULD BE
INAPPROPRIATE, BUT I WOULD SAY
THAT IN THIS CASE, THERE IS NO
IRRATIONAL SPECULATION --

>> HOW DOES THE DATE THAT IS
INVOLVED HERE AFFECT OUR

CONSIDERATION OF THIS, THAT IS, IF I UNDERSTAND IT CORRECTLY, TIME HAS JUST ABOUT RUN OUT FOR ANY OTHER FACILITY TO QUALIFY UNDER THIS PROPOSAL, IS THAT CORRECT, THERE IS A VERY NARROW TIME FRAME, ALSO PROVIDED HERE?

>> THERE IS A PROVISION THAT AT SUNSET, ON -- IN 2008, BUT THE CASE IS TO BE REVIEWED ON THE BASIS OF THE DATE OF THE ENACTMENT AND THAT'S ONE OF THE THINGS WE THINK WAS INCORRECTLY DONE BY THE TRIAL COURT.

THE CASE WAS TRIED IN 2004, AND THE TRIAL COURT KEPT THROUGHOUT HIS FINAL JUDGMENT SAYING THAT THERE WAS -- THAT CURRENTLY, ST. VINCENT'S WAS THE ONLY HOSPITAL THAT WOULD APPLY.

>> ISN'T ONE OF THE ISSUES HERE WHETHER OR NOT A PROGRAM CAN BUILD UP TO A CERTAIN NUMBER OF PROCEDURES IN ORDER TO QUALIFY FOR THIS, AND PROCEDURES LIKE THAT DON'T OCCUR OVERNIGHT, DO THEY?

>> THAT'S CORRECT.

AND WHETHER OR NOT IT CAN BE DONE BETWEEN NOW AND 2008 IS PROBLEMATIC, BUT THAT'S NOT THE DETERMINING FACTOR THAT YOU AS A COURT ARE TO CONSIDER.

IT'S WHETHER OR NOT AT THE TIME OF ITS ENACTMENT, IT COULD BE DONE.

>> WE PREVIOUSLY LOOKED AT DATES, HAVE WE NOT?

>> I'M SORRY?

>> WE'VE PREVIOUSLY LOOKED AT DATES.

>> VERY DEFINITELY.

>> AND SAID WELL, FOR INSTANCE, LEGISLATION THAT IS PREDICATED ON POPULATION, IF THERE'S A CAP, IF THERE'S A DATE CAP, YOU KNOW, WHERE THAT RUNS OUT, THAT THAT'S A PROPER FACTOR FOR COURTS TO CONSIDER.

>> INTERESTINGLY ENOUGH, NEITHER CASE COULD FIND A CASE IN FLORIDA DEALING WITH THE SUNSET PORTION OF THIS, BUT WE DID FIND A NUMBER OF CASES IN OTHER

STATES AS HAVE BEEN CITED IN THE BRIEF, WHICH INDICATES THAT A SUNSET DATE DOES NOT HAVE ANY APPLICATION TO WHETHER OR NOT THIS IS A SPECIAL OR A GENERAL ACT.

>> HAVE YOU DONE ANY RESEARCH IN LEGISLATIVE HISTORY TO SEE WHO THE SPONSOR OF THIS LEGISLATION WAS?

>> OH, YES.

AND WE DON'T CONTEST THAT ST. VINCENT'S ASKS FOR IT AND WE DON'T CONTEST THAT ST. VINCENT'S BENEFITS FROM IT AND WE DON'T CONTEST THAT THERE MAY BE DIFFICULTY IN OTHER HOSPITALS APPLYING AND BEING APPROVED FOR THAT.

>> DOESN'T THAT SOUND AN AWFUL LOT LIKE THE DUCK, THAT IS IF IT WALKS LIKE A DUCK AND MOVES LIKE A DUCK AND QUACKS LIKE A DUCK AND HAS A TIME LIMITATION, THAT AREN'T WE COMING AWFULLY CLOSE WITHOUT ANY CONSIDERATION TO THIS REASONABLE POSSIBILITIES LANGUAGE TO JUST AS A VERY NARROW AND EXCLUSIVE APPLICATION?

>> BUT JUSTICE ANSTEAD, THE CASES HAVE BEEN FOR THE LAST 120 YEARS, DIFFERENT.

THEY HAVE SAID IF THERE IS A POSSIBILITY, AND THE LANGUAGE OF THIS STATUTE, THEY INDICATE THAT THEY WANTED A REPORT OF ANY OTHER HOSPITAL THAT HAD APPLIED AND WHETHER OR NOT THE APPLICATION HAD BEEN APPROVED, OR DISAPPROVED.

AND SO THERE WAS A CONTEMPLATION, EVEN BY THE STATUTE, THAT THERE WOULD BE OTHERS THAT WOULD BE COMING WITHIN THE CLASS.

AND SO --

>> WHAT WAS THE RATIONALE FOR THE TIME LIMITATION?

>> THE RATIONALE FOR THE TIME LIMITATION?

AT THE TIME IN 2003, WHEN THE STATUTE WAS ENACTED, IT WAS CONTEMPLATED THAT THE -- ALL

COULD BE DONE WITHIN THE TIME OF
2008 AND --

>> WHAT COULD BE DONE?

>> THAT ALL OF THE --

>> THAT ST. VINCENT'S --

>> ALL OF THE CONDITIONS THAT
HAD BEEN SET COULD PREENLLY HAVE
BEEN ACCOMPLISHED IN THAT PERIOD
OF TIME.

>> DID YOU HAVE THE OPPORTUNITY
TO FINISH JUSTICE CANTERO'S
ANSWER?

YOU WERE TALKING ABOUT THE
SANFORD CASE.

I WANTED TO BE SURE THAT YOU HAD
THE OPPORTUNITY TO FINISH YOUR
ANSWER.

>> THE SANFORD CASE SAYS IT DOES
NOT MATTER WHETHER, IN THIS
CASE, ST. VINCENT'S, WAS THE
REASON THE LEGISLATION WAS
WINDING ITS WAY I THINK THEY
EXPRESSED THAT, THROUGH THE
LEGISLATURE, NOR DOES IT MATTER
THAT THERE IS A BENEFIT TO
ST. VINCENT'S.

IF IT IS POSSIBLE FOR OTHER
FACILITIES TO COME WITHIN THIS
CLASSIFICATION, AND IF YOU LOOK
AT THE EVIDENCE IN THIS CASE,
NOBODY TESTIFIED THAT IT WAS
IMPOSSIBLE.

THEY TESTIFIED THAT THERE WOULD
BE DIFFICULTY, SURELY, AND EVEN
THE BRIEF OF OPPOSING COUNSEL
STATED IN REFERENCE TO
MS. GREENBERG, SHE DEMONSTRATED
THAT THE REQUIREMENTS FOR SUCH
AND NO OTHER FACILITY COULD
REASONABLY --

[INAUDIBLE]

PAGE 21 OF THEIR BRIEF AND --

>> BUT DOESN'T THE TRIAL JUDGE
ALSO SAY THAT THERE WAS NO --
THAT NO OTHER HOSPITALS COULD IN
FACT MEET THE CRY THEY'RE I
CAN'T OTHER THAN ST. VINCENT'S,
AND WHILE THEY DIDN'T USE THE
LANGUAGE, NO POSSIBILITY, BY
SAYING THAT NO OTHER HOSPITAL
OTHER THAN ST. VINCENT'S COULD
MEET THIS CRITERIA, SINCE THE
TRIAL JUDGE BASICALLY SAYING
THAT?

>> THE TRIAL JUDGE IS SAYING CURRENTLY ST. VINCENT'S IS THE ONLY ONE THAT CAN MEET THIS ACCORDING TO THE FINAL JUDGMENT, AND IF YOU LOOK AT THE FINAL JUDGMENT, IT CONSTANTLY -- THE FINAL JUDGMENT SAYS CURRENTLY, CURRENTLY, CURRENTLY.

>> SO WHAT DID YOU DEMONSTRATE 0
0
WOULD INDICATE EVEN IN THE FUTURE BEFORE 2008 SOME OTHER HOSPITAL COULD MEET THIS CRITERIA?

>> WELL, IF YOU WILL LOOK AT THE TRANSCRIPT OF THE TESTIMONY, WE PRESENTED THE TESTIMONY OF MRS. DUBECK, WHO WAS IN CHARGE OF CON APPLICATIONS AND SHE TESTIFIED THAT IT WAS POSSIBLE FOR OTHER HOSPITALS TO QUALIFY. SPRINGER TESTIFIED THAT --

>> POSSIBLE, BUT USING WHAT CRITERIA?

BECAUSE IN ADDITION TO THE 300 PROCEDURES THAT HAVE TO GO ON, HAVE TO BE CLOSED FACILITY AND OTHER CRITERIA, AND WILE IT SEEMS TO ME THERE ARE PEOPLE WHO TALKED ABOUT EACH OF THESE, NONE OF THEM ACTUALLY SAID THAT THERE WAS SOME OTHER HOSPITAL THAT COULD MEET EACH OF THOSE CRITERIA, IN ORDER TO GET THE EX99 EXEMPTION.

>> THEY TALKED ABOUT THE CLINIC LIKE THE CLEVELAND AND MAYO WHO CAME IN FROM OUT OF STATE WHO BOUGHT HOSPITALS AND CLOSED LET GO OF STAFF.

NO ONE SAYS IT IS ABSOLUTELY IMPOSSIBLE AND SURELY WE DON'T CONCEDE THAT THIS STATUTE BENEFITED ST. VINCENT'S --

>> WHAT WAS THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE OPPOSING PARTY BECAUSE THE FINAL JUDGMENT FOUND IN THEIR FAVOR AS TO THE POSSIBILITY OF HONTS CURRENTLY HAVING OPEN STAFF MODELS GOING TO A CLOSED STAFF MODEL BEFORE THE DEADLINE.

>> THE DOCTOR TESTIFIED THAT OF THE FIVE SCENARIOS THAT HE

POINTED OUT, FOUR WOULD BE IMPOSSIBLE.

ONE WOULD BE POSSIBLE, BUT REMOTE.

AND HE ALSO -- AND WE DON'T -- WE DON'T CONTEST THAT.

AND THAT'S NOT THE TEST.

PROBABILITY OF SOMEONE ELSE COMING INTO THE CLASS IS NOT THE TEST.

THAT'S WHAT THE --

>> LET'S GET BACK TO MY FIRST QUESTION, WHICH IS, IS IT THE CASE THAT IN ORDER FOR US TO RULE IN YOUR FAVOR, IN OUR CASE, WE WOULD HAVE TO SAY THAT THE STANDARD IS ANY POSSIBILITY, NOT REASONABLE POSSIBILITY?

>> THAT'S CORRECT.

AND THAT'S WHAT THE COURTS HAVE, IN THE MCGRAFT CASE, THEY SAID BECAUSE THERE WAS A PREVIOUS DATE AND JUSTICE ANSTEAD, IN RESPONSE TO YOUR CONCERN, THE CASES THAT HAVE PULLED THESE CENSUS CLASSIFICATIONS AND DECLARED THEM UNCONSTITUTIONAL, THOSE DATES WERE DATES THAT PRECEDED THE ENACTMENT OF THE STATUTE AND THERE WAS NO POSSIBILITY, BECAUSE THOSE CLASSIFICATIONS WERE SET OUT AS OF A CERTAIN DATE THAT PRECEDED THE ENACTMENT OF THE STATUTE, THAT THERE WAS NO POSSIBILITY, AND THE COURT SET OUT, IT WAS AS IF THOSE HAD BEEN NAMED AND WE WOULD CONTEND THAT UNLESS THERE IS A DATE PRECEDING OR IF THERE IS A NAME THAT CLOSES, THAT THE STATUTE --

>> YOU'VE USED THE WORD SEVERAL TIMES IN YOUR PRESENTATION OF PROBABILITY.

YOU SAID IT DOESN'T HAVE TO BE A PROBABILITY, BUT THAT'S NOT AT ISSUE HERE, IS IT?

THE ONLY ISSUE IS WHETHER OR NOT THE POSSIBILITY HAS TO BE BASED ON REASON, AS OPPOSED TO AN IRRATIONAL POSSIBILITY.

>> WELL, I WOULD RESPECTFULLY SAY THAT THE EVIDENCE IN THIS CASE DOES NOT POSE AN IRRATIONAL

SCENARIO TO ANSWER THIS QUESTION.

>> BEFORE YOU SIT DOWN, MR. HARDING, I WANTED TO ASK THIS QUESTION.

I KNOW ONE OF YOUR FAVORITE QUESTIONS ALSO IS ABOUT WHAT'S OUR STANDARD OF REVIEW. AND WHAT WE HAVE HERE, WHICH IS TO ME SOMEWHAT HYBRID WHEN WE HAVE A SPECIAL LAW, GENERAL LAW, IS THIS IDEA OF HAVING AN EVIDENTIARY HEARING AND A TRIAL JUDGE, RATHER THAN THE LEGISLATURE, MAKING FINDINGS OF FACT.

HAVE YOU CONTESTED ANY OF THE TRIAL COURT'S FINDINGS, IN OTHER WORDS, IS IT POSSIBLE ANOTHER TRIAL JUDGE COULD HAVE HEARD THE TESTIMONY THAT WAS PRESENTED AND CONCLUDED THAT THERE WAS A REASONABLE POSSIBILITY OF ANOTHER HOSPITAL MEETING THIS CRITERIA, OR DO YOU AGREE, EVEN FROM YOUR TESTIMONY, IN A LIGHT MOST FAVORABLE TO YOUR WITNESSES, IF THEY HAVE FOUND YOUR WITNESSES CREDIBLE, THAT THE BEST YOU COULD DO IS COME UP WITH THE REMOTE POSSIBILITY?

IS IT DEPENDENT ON THE CREDIBILITY FINDINGS OF THE TRIAL JUDGE, WHICH TO ME IS SORT OF A SLENDER THREAT TO BE HOLDING A STATUTE UNCONSTITUTIONAL, IF ANOTHER TRIAL JUDGE COULD LISTEN TO THE SAME TESTIMONY AND FIND THAT THERE WAS A REASONABLE POSSIBILITY OF ANOTHER HOSPITAL?

SO DID YOU PRESENT TESTIMONY THAT ANOTHER JUDGE COULD COME UP WITH DIFFERENT CONCLUSIONS OR ARE YOU AGREEING THAT THE JUDGE'S FINDINGS WERE REALLY THE ONLY WAY TO GO BASED ON THE EVIDENCE PRESENTED?

>> WE WOULD SAY THAT WE CERTAINLY PRESENTED EVIDENCE THAT THERE WAS A POSSIBILITY FOR OTHER HOSPITALS TO COME WITHIN THE STATUTE.

AND MR. DUBECK, SPRINGER,

DR. LUKE ALL TESTIFIED THAT
THERE WAS A POSSIBILITY, EVEN
DR. SAGEN SAID THAT THERE WAS A
POSSIBILITY THAT ANOTHER
HOSPITAL COULD COME IN UNDER THE
CLOSED -- UNDER THE --

>> PUTTING IT ANOTHER WAY, WAS
THERE TESTIMONY ON YOUR SIDE
THAT THERE WAS A REASONABLE
POSSIBILITY?

>> NO, THERE IS TESTIMONY ON OUR
SIDE THAT IT WAS POSSIBLE.

>> BUT THAT'S, AGAIN, WHAT
JUSTICE CANTERO IS ASKING IS
REALLY TO MAKE SURE THAT IT WAS
THE TESTIMONY STILL ABOUT THIS
REMOTE STANDARD BEING CRITICAL.
THAT IS, THAT IT'S SURE
SOMETHING COULD HAPPEN TOMORROW,
BUT IT'S REALLY SPECULATION.

>> YOU REVIEW THIS, IF I
UNDERSTAND YOUR QUESTION
CORRECTLY, YOU REVIEWED THIS ON
A DE NOVO BASIS, IN THAT YOU
REVIEW THE TESTIMONY THAT HAS
BEEN GIVEN AND WE WOULD SUGGEST
THAT THERE'S NO WAY THAT THIS
TESTIMONY COULD BE VIEWED AS
OVERCOMING THE PRESUMPTION
BEYOND A REASONABLE DOUBT.

>> YOU'RE WELL INTO YOUR
REBUTTAL.

>> ONE QUICK QUESTION.
THE WAY IT WAS FIRST PHRASED IS
THAT A THEORETICAL POSSIBILITY.
IS YOUR POSSIBILITY ANYTHING
MORE THAN JUST A THEORETICAL
POSSIBILITY?

WAS THERE ANY PRACTICAL
POSSIBILITY THAT THIS COULD EVER
OCCUR OR SIMPLY A THEORETICAL
POSSIBILITY?

>> THE TESTIMONY THAT WAS
PRESENTED AND WHAT WE HOLD IS
THAT THERE IS AN ABSOLUTE
POSSIBILITY THAT OTHER HOSPITALS
CAN COME IN AND QUALIFY FOR THE
EXEMPTION UNDER THE STATUTE.
AND I DON'T KNOW, JUSTICE BELL,
WHETHER THAT ANSWERS YOUR
QUESTION IN REGARD TO
THEORETICAL OR NOT, BUT WHETHER
IT IS THEORETICAL OR WHETHER IT
IS ACTUAL, IF IT IS THEORETICAL

THAT SOMEONE ELSE COULD COME IN UNDER THE STATUTE, THEN THE STATUTE SHOULD BE DECLARED A GENERAL LAW.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS STEVE ECENIA, AND I'M HERE REPRESENTING MEMORIAL HOSPITAL AND FOSSETT HOSPITAL.

>> I THINK IT'S BEEN AGREED THAT THIS CASE RISES OR FALLS ON THE STANDARD.

IF IT'S A REASONABLE POSSIBILITY, YOU WIN.

IF IT'S ANY POSSIBILITY, HE WINS, IT SEEMS LIKE.

MY DISCOMFORT WITH THE REASONABLE POSSIBILITY STANDARD IS THAT IT SEEMS SO MALYABL.

WHAT IS A REASONABLE POSSIBILITY, SO IF WE GO WITH A STANDARD LIKE THAT, HOW WOULD YOU DEFINE THE STANDARD SO IT'S NOT DEPENDENT UPON ANY APPELLATE JUDGE'S JUDGMENT ON WHETHER IT'S POSSIBLE, REASONABLY POSSIBLE OR NOT?

AND WE HAVE SOME KIND OF REAL STANDARD THAT WE CAN USE, THAT TRIAL COURTS CAN USE IN DETERMINING WHETHER THERE'S A POSSIBILITY?

>> WELL, THAT'S A GREAT QUESTION.

AND I CAN'T TELL YOU HOW TO DEFINE THE STANDARD.

I DO THINK THOUGH, THAT WHEN WE LOOK AT THIS CASE, AND WE LOOK AT THE DECISIONS OF THIS COURT, IN CLASSIC MILE, IN MCGRATH, IN SOME OF THE EARLIER DECISIONS OF THE COURT THAT DEAL WITH THIS DECISION, OUR CASE FALLS INTO THAT THOSE CATEGORIES, AND THE TRIAL JUDGE CONDUCTED A TWO DAY TRIAL IN THIS CASE, LISTENED TO A LOT OF EVIDENCE AND DETERMINED THAT THERE WAS NO POSSIBILITY, AND I WOULD QUIBBLE WITH THE CHARACTERIZATION THAT HE FOUND THAT THERE WAS NOBODY AT THE TIME OF THE ENACTMENT ON PAGE 437 OF THE TRIAL TRANSCRIPT, THE COURT FINDS UNDER THE EVIDENCE

PRESENTED THAT THERE ARE NO HOSPITALS IN FLORIDA THAT WOULD POTENTIALLY BE ABLE TO SATISFY THAT CRITERIA.

>> BUT LET ME GO -- IT'S REALLY A FOLLOWUP TO WHAT I WAS ASKING ABOUT THE STANDARD OF REVIEW. THE JUDGE MADE FIND TIONZ FINDINGS AS THE FIRST DISTRICT FOUND, THE JUDGE HEARD EXTENSIVE CONFLICTING EXPERT TESTIMONY AND ULTIMATELY FOUND THE APPLE APT'S WITNESSES TO BE MORE CREDIBLE.

IN THE EARLIER CASES, THEY WERE FACTS THAT WERE UNDISPUTED, THE DATE WAS FIXED, YOU COULD LOOK TO IT AND EVERYBODY -- YOU KNOW, YOU WOULD HAVE A LEGAL STANDARD.

WHAT CONCERNS ME IS THAT IF THERE IS CONFLICT IN WHAT THE EXPERTS SAID ABOUT HOW POSSIBLE THIS WAS, THEN WHY -- THAT FOR US, THAT THE SUPREME COURT -- AT THE SUPREME COURT LEVEL TO DECIDE THAT A STATUTE IS CONSTITUTIONAL OR UNCONSTITUTIONAL, BASED ON WHAT A SINGLE TRIAL COURT JUDGE, SEEMS TO DESTROY THE PRESUMPTION OF CONSTITUTIONALITY, SO WHAT I'D LIKE YOU TO JUST ADDRESS FOR A MOMENT IS UNDERSTAND THERE WAS A TWO DA EVIDENCE -- TWO DAY EVIDENTIARY HEARING, COULD SOMEBODY LOOKING AT THIS, ANOTHER JUDGE, REASONABLY COME UP AND SAY NO, IT WASN'T JUST A THEORETICAL POSSIBILITY.

THERE REALLY WERE OTHER HOSPITALS THAT COULD SATISFY THESE CRITERIA, WAS THERE TESTIMONY LIKE THAT OR IS IT REALLY THAT, WHEN IT COMES DOWN TO IT, EVERYTHING IS JUST REALLY -- WOULD BE SPECULATION TO COME UP WITH ANOTHER HOSPITAL SATISFYING THESE CRITERIA?

DO YOU UNDERSTAND MY QUESTION? WHAT I'M CONCERNED ABOUT, USUALLY WE SAY IT'S GREAT WE'RE GOING TO BE HERE, EVIDENTIARY HEARING WAS HAD, YOU HAVE CREDIBILITY DETERMINATIONS, AND THAT'S WELL DEFINED IN MOST

TYPES OF CASES, WE DEFER TO THAT, BUT IT SEEMS TO ME, BUT WHEN CONSTITUTIONALITY OF THE STATUTE IS AT STAKE, THAT THAT IS NOT THE BEST WAY TO MAKE DETERMINATIONS, SO I JUST WANT TO MAKE SURE IN FAIRNESS TO EVERYBODY, THAT WE UNDERSTAND THAT THIS TESTIMONY, WHEN IT CAME DOWN TO IT, REALLY WAS ALL ABOUT SPECULATION, AT LEAST FROM YOUR POINT OF VIEW AS OPPOSED TO SAYING WELL THE JUDGE MADE EXTENSIVE FINDINGS, MADE CREDIBILITY DETERMINATIONS AND FOUND THESE EXPERTS MORE CREDIBLE.

>> WELL, I CERTAINLY WOULD CONTEND THAT IN ANY COURT, THE EVIDENCE WAS SO OVERWHELMINGLY IN FAVOR OF OUR POSITION AND THE FACT THAT NO ONE ELSE COULD POSSIBLY QUALIFY, I MEAN, THIS WAS A GOLDBERG CONTRAPTION OF THE STATUTE THAT YOU COULD TAKE POTENTIALLY PARTS OF IT OUT. IF YOU TOOK OUT THE REPEALING DATE, THE CLOSED MEDICAL STAFF, COULD YOU THEN SPATIALLY HAVE HAD A CONSTITUTIONAL STATUTE? PERHAPS YOU COULD HAVE. BUT WHEN YOU LAYER ALL OF THESE DIFFERENT REQUIREMENTS ON THERE, IT'S LIKE SAYING, WELL, WE COULD HAVE A HOSPITAL AND YOU COULD SAY ANY HOSPITAL THAT WAS HIT BY A METEOR HAD THE POTENTIAL TO QUALIFY. WELL, SOMEBODY MIGHT BE HIT BY A METEOR, THAT COULD HAPPEN AND YOU COULD SAY THAT'S AN OPEN CLASS, BUT I THINK THAT -- AND I UNDERSTAND WHAT YOU'RE GRAPPLING WITH, BUT I THINK YOU HAVE TO LOOK AT THE INTERRELATIONSHIP BETWEEN WHETHER THIS IS A CLOSED CLASS AND WHETHER THE CLASSIFICATION SCHEME IS REASONABLE.

>> SO THEN REALLY WHAT THE FIRST DISTRICT SAID WHEN THEY SAID THERE WAS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS, WHAT YOU WOULD SAY IS

THAT REALLY IN THIS CASE, THERE WAS NO EVIDENCE THAT COULD POINT TO ANY REAL -- ANY POSSIBILITY OF THIS BEYOND SPECULATION, AND THAT THAT WAS THE -- ALL OF THE EXPERTS AGREED TO THAT.

>> WELL, I MEAN, I THINK CERTAINLY -- YOU KNOW, I COULD NOT TELL YOU THAT THEIR EXPERTS WOULD HAVE AGREED TO THAT POSITION.

I THINK THEIR EXPERTS CONCOCTED SUCH LUDICROUS EXAMPLES THAT NO REASONABLE TRYER TRIER OF FACT COULD HAVE LIST END TO THAT IT WOULD AND COME AWAY WITH THE CONCLUSION THAT SOMEBODY ELSE COULD HAVE QUALIFIED.

THEY WERE BRINGING IN EXAMPLES OF SITUATIONS THAT DIDN'T EVEN -- THERE WERE -- DR. LUKE BROUGHT IN EXAMPLES OF WHAT WAS HAPPENING IN TEXAS.

WELL, TEXAS IS DEREGULATED. THE EVIDENCE DEMONSTRATED THAT THERE ARE ONLY TWO HOSPITALS IN THE STATE THAT HAVE CLOSED MEDICAL STAFF.

THOSE ARE THE MAYO CLINIC, WHICH IS ONE OF THE PARTIES IN THIS PROCEEDING, BECAUSE THE MAYO CLINIC OWNS ST. LUKE'S AND THE CLEVELAND CLINIC.

THE CLEVELAND CLINIC HAD JUST REPLACED ITSELF, SO THE IDEA OF THEM DOING THAT AGAIN AFTER A SIX YEAR PROTRACTED PROCEEDING WAS NOT CREDIBLE.

THE MAYO CLINIC WAS INVOLVED IN THIS PROCEEDING.

DR. SAGEN PRESENTED A LOT OF TESTIMONY AND EVIDENCE ABOUT THE DIFFICULTY IN CLOSING A MEDICAL STAFF AND I WOULD ACKNOWLEDGE -- HE SAID IT WOULD POTENTIALLY BE POSSIBLE, BUT THAT THE ODDS WERE SO OVERWHELMINGLY AGAINST IT AS TO MAKE IT PRACTICALLY IMPOSSIBLE, AND SO AT THE END OF THE DAY, THE ONLY FACILITY THAT THIS COULD HAVE APPLIED TO WAS THE MAYO CLINIC AND ST. VINCENT'S, AND GIVEN THAT THE 2008 REPEALING DATE, I WOULD

ALSO TAKE EXCEPTION TO A COMMENT
CLOSING COUNSEL MADE REGARDING
NO OTHER STATUTE HAVING AN
ENDING DATE.

THE STATUTE IN MCGRATH WILL A
REPEALER DATE OF JUNE 30, 2006.

>> WOULD YOU GIVE ME YOUR
THOUGHTS ON -- OR THE GUIDING
PRINCIPLE THAT OUGHT TO PREVAIL
HERE?

I MEAN, WHAT IS -- WHAT IS THE
EVIL THAT THE CONSTITUTION IS
ADDRESSING IN RESPECT TO THIS
DIFFERENTIATION BETWEEN GENERAL
LAW AND SPECIAL LAW?

>> WELL, I THINK THAT THE EVIL
THAT THE CONSTITUTION IS TRYING
TO ADDRESS IS TO PREVENT THE
LEGISLATURE FROM CREATING A LAW
THAT'S GOING TO BENEFIT A
SPECIAL PLACE OR A SPECIAL
PERSON OR SPECIAL THING WITHOUT
GOING THROUGH THE NOTICE
REQUIREMENTS IN A LOCAL AREA TO
MAKE THE PEOPLE WHO ARE AFFECTED
BY THAT AWARE OF THAT.

AND IT'S A FAIRLY SIMPLE
PROCESS.

YOU CONDUCT A HEARING.

IT'S ALMOST LIKE THE FOUNDERS OF
THE CONSTITUTION BELIEVED THAT
THERE NEED TO BE -- THERE NEEDS
TO BE A DUE PROCESS FOR THESE
TYPES OF LAWS, BECAUSE THEY DO
TREAT SEPARATE PERSONS
DIFFERENTLY AND THAT PEOPLE
OUGHT TO HAVE AN OPPORTUNITY TO
WEIGH IN ON THAT.

AND I THINK THAT WITH YOU
CONCOCT A REGULATORY SCHEME, AND
WE WOULD SAY THAT THE
DESCRIPTIVE PHRASES THAT
CHARACTERIZE THIS LEGISLATION
ARE NO DIFFERENT THAN THE, YOU
KNOW, EVILS THAT HAVE BEEN FOUND
IN OCALA BREEDERS, WHERE YOU
HAVE THIS MAZE OF CRITERIA AND
THEN A TIE BREAKER PROVISION,
THAT SAYS IF ANYBODY ELSE
APPLIES FOR THIS --

>> IS THIS SIMILAR TO GULF
STREAM?

>> WELL, I THINK THAT THERE'S
STRE FACTUAL DISTINCTIONS

BETWEEN THIS CASE AND GULF STREAM.

AND AS I'VE READ THIS CASE, I'VE READ GULF STREAM AND I'VE READ THE BRIEFS IN GULF STREAM, THERE WAS SO MANY DIFFERENT ISSUES THERE WITH REGARD TO THE PARAMUTUAL LEGISLATION, AND THIS COURT HAS MADE UNIQUE DISTINCTIONS --

>> WOULD THE SAME STANDARD APPLY?

>> IN TERMS OF A REASONABLE POSSIBILITY.

>> AS TO WHAT THE STANDARD SHOULD BE?

>> I DON'T THINK --

>> IS IT AN ABSOLUTE POSSIBILITY THAT --

>> IN ANY VIEW, WHETHER THERE'S ANY POSSIBILITY OR THERE'S A REASONABLE POSSIBILITY, SO WOULD WE FALL WITHIN THE STANDARD THAT THE COURT IN GULF STREAM ARTICULATED?

YES.

WOULD WE FALL UNDER A MORE STRINGENT STANDARD?

I WOULD SAY YES.

AND I THINK THE STANDARD OF REVIEW, I WOULD CERTAINLY ARGUE IS NOT DE NOVO, BUT IT'S COMPETENT, SUBSTANTIAL EVIDENCE WITH RESPECT TO THE FACTUAL FINDINGS, AND YOU POSED A GREAT QUESTION, JUSTICE PARIENTE, BECAUSE IT'S DIFFICULT TO KNOW IN WHICH INSTANCE SHOULD YOU LOOK AT THE SPATIAL VALIDITY OF A STATUTE WITHOUT EVIDENCE AND IN MOST OF THESE CASES, YOU KNOW, THE PARTIES WILL EITHER AGREE THAT THE CLASS IS CLOSED AND THERE HASN'T BEEN EXTENSIVE TESTIMONY, BUT THE MORE YOU CREATE STATUTORY SCHEME THAT INVOLVES SO MANY ARGUE -- ARBITRARY DISTINCTIONS, HERE YOU HAD TO HAVE TWO WILLING PEOPLE, A BUYER AND A SELLER, THE HOSPITAL WITH THE CLOSED MEDICAL STAFF, MOVING ITS MEDICAL STAFF AND THE WHOLE HOSPITAL AND CLOSING THE MEDICAL STAFF, I MEAN, IT JUST CRUMBLES

UNDER THE WEIGHT OF THESE DESCRIPTIVE PHRASES, AND YOU KNOW, IT WAS A VERY CLEVER ATTEMPT TO DISGUISE OR TO SUGGEST THAT THE CLASS MAY BE OPEN, AND I WOULD ARGUE THAT POTENTIALLY --

>> WELL, IT IS, REGARDLESS OF WHETHER IT IS A REASONABLE POSSIBILITY, WHICH I UNDERSTAND JUSTICE PARIENTE'S QUESTION AS WHENEVER WE TALK ABOUT REASONABLENESS IN THE TORT CONTEXT, WE ARE THINKING OF SOME ISSUE OF FACT.

BUT IN THIS TYPE OF CONTEXT, WHERE WE'RE DEALING WITH SOMETHING THAT THE LEGISLATURE HAS DONE, IT IS -- THE POSSIBILITY, SOMETHING THAT IS A LEGAL QUESTION, OR IS IT A FACTUAL QUESTION?

>> WELL, I THINK IT'S A LITTLE BIT OF A MIXED BAG.

I THINK IT DEPENDS UPON WHAT THE STATUTE -- I MEAN, SOME STATUTES YOU COULD READ AND BE SO CLEAR THAT THEY SAY WHAT THEY SAY. HERE, THERE'S NO DEFINITION IN THE STATUTES OF WHAT A CLOSED STAFF IS, AND THAT'S WHAT I THINK REQUIRED US TO GO TO THE TRIAL COURT AND MAKE EVIDENTIARY FINDINGS.

YOU KNOW, IF THE PHRASES ARE SO CLEAR IN THE STATUTE THAT THEY'RE NOT SUSCEPTIBLE OF DIFFERING INTERPRETATIONS, AND DIFFERING CONCLUSIONS, THEN I WOULD SAY IT'S CLEARLY A QUESTION OF LAW.

>> WAS THERE ANY HEARINGS IN THIS CASE, THAT IS BEFORE THE LEGISLATURE, DID THEY HAVE HEARINGS --

>> ABSOLUTELY.

IN EVERY INSTANCE -- WELL, I DON'T WANT TO GO OUTSIDE THE RECORD, AND IN THE RECORD, THERE WAS A STAFF ANALYSIS THAT WAS -- THE JUDGE -- WE HAVE SUBMITTED A TREMENDOUS NUMBER OF DOCUMENTS RELATED TO WHAT HAPPENED IN THE LEGISLATIVE PROCESS.

THE TRIAL COURT REFUSED TO ACCEPT A LOT OF THAT IN TERMS OF TESTIMONY, IN TERMS OF -- THERE WERE A NUMBER OF HEARINGS, BUT HE DID ACCEPT AND TAKE JUDICIAL NOTICE OF THE STAFF ANALYSIS OF THE BILL, IN IN AHCA'S STAFF ANALYSIS OF THE BILL THAT THIS WAS A LAW DESIGNED CLEARLY TO BENEFIT ST. VINCENT'S.

>> I KNOW WE'VE DEALT WITH THIS IN AT LEAST ONE CASE INVOLVING PARENTAL NOTIFICATION AND NORMALLY IN MOST LAWS, WE SAY, IT'S PRESUMED CONSTITUTIONAL IF THERE'S ANY -- AND THE STANDARD BEING A DUE PROCESS STANDARD, IF THERE'S ANY PRATTNAL BASIS, AND -- RATIONAL BASIS AND WE COME UP WITH A REASON, SO GOING BACK TO THIS ONE AND MAKING SURE, BECAUSE WE'VE DWOT TO BE CONSISTENT WITH GULF STREAM AND THE STANDARD, WE HAD THAT CASE UNDER CONSIDERATION, IS IF THE LEGISLATURE DOES ITS OWN FINDINGS AND COMES UP WITH THE FACT THAT THEY DON'T SEE THIS AS A SPECIAL LAW, THEY HAVE, WHETHER THEY'VE DONE IT CLEVERLY OR NOT, HAVE SAID NO, WE'VE DESIGNED IT SO IT CAN APPLY TO OTHER ENTITIES.

WHAT IS THE OVERWHELMING CONSTITUTIONAL REASON FOR NOT DEFERRING TO THOSE TYPE OF FINDINGS?

>> WELL, I WOULD SAY THAT IF THAT HAS OCCURRED, PERHAPS THERE SHOULD BE THAT DEFERENCE, BUT IN THIS INSTANCE, THERE WERE NO FINDINGS, AND I DON'T THINK THAT THERE'S ANY REASONABLE -- THE ONLY SUGGESTION OF A RATIONALE FOR THE STATUTE OR FOR A SUGGESTION THAT THIS SOMEHOW FURTHERS PUBLIC POLICY, WAS SUPPLIED BY COUNSEL FOR ABALESE AND THAT SUGGESTION WAS THAT THE LEGISLATURE COULD HAVE DONE THIS IN ORDER TO OPEN UP OPPORTUNITIES FOR OTHER -- FOR CONTINUATION OF OPEN HEART SURGERY PROGRAM AT FACILITIES

THAT WERE LEAVING.

WELL, THERE WAS NO EVIDENCE PRESENTED IN THIS CASE AS TO WHAT WOULD HAPPEN TO THE OPEN HEART SURGEONS AT ST. LUKE'S ONCE THE MAYO CLINIC MOVES, THEY COULD STAY THERE, THEY COULD LEAVE, THEY COULD ALL GO, SO THERE WAS NO FINDING BY ANYBODY EITHER IN THIS TRIAL COURT LEVEL OR IN THE LEGISLATURE AS TO THERE BEING SOME OTHER BASIS, OTHER THAN BENEFIT ST. LUKE'S AND ST. VINCENT'S FOR PASSING THIS STATUTE.

SO I DON'T BELIEVE THAT THERE WAS ANY FINDING OF THAT NATURE ANYWHERE ALONG THE WAY. HOWEVER, I THINK, YOU KNOW, CERTAINLY I WOULD AGREE AND THE CASES HAVE CONSISTENTLY SAID, YOU KNOW, IF THERE IS ANY -- IT'S TWO PRONGS.

I THINK IF THE CLOSE IS CLOSED, IT'S CLOSED.

IN OUR VIEW, WE PRESENTED EVIDENCE THAT WE THINK DISDISPOSITIVELY DEMONSTRATES THAT THE CLASS IS CLOSED AND WE THINK THE TRIAL COURT FOUND IT IS CLOSED FOR NOW AND FOR ANYBODY THAT COULD HAVE COME IN BEFORE THE STATUTE EXPIRED.

>> BUT IS THERE SOMETHING WRONG WITH OUR STANDARD, IF THE SANFORD CASE SAYS YOU DON'T LOOK AT WHETHER THE INTENT WAS TO BENEFIT AN INDIVIDUAL.

YOU SAID THE PURPOSE OF THIS GENERAL SPECIAL LAW IS NOT TO -- TO MAKE SURE THAT LAWS AREN'T PASSED TO BENEFIT INDIVIDUAL PEOPLE, SO WHY SHOULDN'T THE STANDARD BE, YOU KNOW, LOOK TO SEE IF IN FACT WHAT IS GOING ON IS DESIGNED TO BENEFIT A PARTICULAR INDIVIDUAL AND STOP THIS KIND OF LIKE HAVING TO HAVE EVIDENTIARY HEARINGS OR, YOU KNOW, ENGAGING -- ENGAGE IN SOME KIND OF JUDICIAL FACT FINDING, THAT THE LEGISLATURE DIDN'T SEE FIT TO ENGAGE IN?

>> I THINK IF THE COURT WERE

INTERESTED IN ENUNCIATING THAT TYPE OF A STANDARD, THAT THERE COULD BE A GREAT BENEFIT TO THAT, BECAUSE I THINK THERE IS A LOT OF, IN THESE CASES, GOING BACK AND FORTH.

YOU CAN GO THROUGH A LOT OF THESE CASES AND FIND THOSE TYPE OF QUESTIONS --

>> WE WOULD HAVE TO RECEDE FROM A LONG LINE OF CASES TO DO THAT.

>> YOU WOULD HAVE TO DO THAT. AND THE TROUBLE WITH THIS AREA OF LAW, IT IN A LARGE PART HAS BEEN FRAMED BY THE PARAMUTUAL INDUSTRY AND IN THE PARAMUTUAL INDUSTRY, YOU HAVE SO FEW PERMIT HOLDERS.

I THINK IN ORLANDO, SANFORD ORLANDO, THERE WERE ONLY TWO OF THOSE TYPE OF PERMIT HOLDERS IN THE STATE, SO IF YOU PASS A GENERAL LAW THAT APPLIES TO THOSE PERMIT HOLDERS, YOU'RE ONLY AFFECTING TWO PARTIES TO BEGIN WITH, SO I THINK THAT A LOT OF THOSE CASES REST ON VERY FINE FACTUAL DISTINCTIONS.

THEY REST ON THE FACT THAT THE COURTS HAVE FOUND IN UPHOLDING A LOT OF THOSE STATUTES, THAT THE PARAMUTUAL INDUSTRY -- IN SEVERAL OF THOSE CASES WHAT HAPPENED WAS --

>> IN OTHER WORDS, YOUR POSITION IS THOSE STATUTES WERE GOOD BETS?

>> WHAT HAPPENED WAS THERE WERE STATUTES THAT SAID IF A TRACT DOESN'T HIT A CERTAIN AMOUNT OF REVENUE FOR A PERIOD OF TIME, WE'RE GOING TO LET IT MOVE OR WE'RE GOING TO LET IT CREATE ANOTHER TYPE OF FACILITY.

WELL IF UPHOLDING THE CONSTITUTIONALITY OF THOSE STATUTES, WHAT THIS COURT HAS SAID ALMOST UNIFORMLY, THE POLICE POWER IS USED, YOU KNOW, A LITTLE BIT MORE ARBITRARILY IN PARAMUTUAL, THAT IN EACH OF THOSE INSTANCES, THE BENEFIT TO THE STATE WAS INCREASING THE STATE COFFERS, SO WE'RE GOING TO

LET THEM DO THAT AND I THINK YOU CAN RATIONALIZE THOSE KINDS OF CASES AND SAY THAT THERE IS A REASON THAT THOSE STATUTES WERE UPHELD.

IN THIS CASE, THE ONLY -- THERE'S NO STATEWIDE BENEFIT. THERE'S NO GENERAL BENEFIT TO ANYBODY OTHER THAN ST. LUKE'S AND ST. VINCENT'S, AND YOU KNOW, IT'S FUNNILY, JUSTICE ANSTEAD, I WAS SITTING IN THE SHOWER THINKING ABOUT, WELL --

>> SITTING IN THE SHOWER?

>> WE WON'T GET INTO DETAILS.

>> STANDING IN THE SHOWER THINKING IF IT WALKS LIKE A DUCK, TALKS LIKE A DUCK, IT IS A DUCK, AND I THINK THAT'S WHAT WE'VE GOT HERE, IT'S A DUCK, AND THERE'S NO QUESTION THAT THE COURT LOOKED AT THIS, NOT ONLY AT THE TIME THE LEGISLATION WAS ENACTED, BUT PROSPECTIVELY AS WELL.

AND WE THINK YOU NEED TO UPHOLD THE OPINIONS WITHOUT REGARD TO WHETHER IT'S A REASONABLE POSSIBILITY.

I KNOW YOU'RE GRAPPLING WITH THAT ISSUE WITH THE GULF STREAM CASE, AN WE JUST FEEL THAT THIS CASE IS DIFFERENT BECAUSE THE FACTS ARE SO CLEAR, THAT THERE WAS NO OTHER -- NOBODY ELSE THAT COULD APPLY.

I THINK THE FACTS OF GULF STREAM ARE QUITE COMPLICATED, THAT STATUTE INVOLVED A WHOLE REWRITE OF THE PARAMUTUAL LEGISLATION.

>> WHAT WAS THE TRIAL COURT'S SPECIFIC FINDING, DID THE TRIAL COURT FIND THAT THERE WAS NO POSSIBILITY OR THERE WAS NO REASONABLE POSSIBILITY?

>> WELL, THIS IS AN EXACT QUOTE FROM THE TRANSCRIPT AND THE COURT FINDS UNDER THE EVIDENCE PRESENTED THAT THERE ARE NO OTHER HOSPITALS IN FLORIDA THAT WOULD POTENTIALLY BE ABLE TO SATISFY THAT CRITERIA AND I -- SO I THINK MY VIEW IS HE FOUND THAT THERE WAS NO POSSIBILITY,

NOT EVEN A REASONABLE
POSSIBILITY.

NO -- AND I CERTAINLY -- I WISH
I COULD COME HERE TO YOU AND
TELL YOU THAT I'VE THOUGHT THIS
THROUGH AND THIS IS THE STANDARD
THAT OUGHT TO APPLY.

I DO THINK THE CLASSIC MILE WAS
A WELL-REASONED DECISION AND IT
SERVES AS A GOOD STANDARD FOR
THIS COURT IN TERMS OF UPHOLDING
THIS CASE, WITHOUT REGARD TO
GULF STREAM, AND I THINK THAT
SOME OF THESE ISSUES NEED TO BE
CLEARER, AND I'VE DONE SEVERAL
OF THESE SPECIAL LAW CASES, AND
THEY'RE DIFFICULT WHEN YOU GO
THROUGH THE WHOLE VOLUME OF
CASES, YOU KNOW, THEY WIND AND
THEY WEAVE THEIR WAY THROUGH,
BUT I THINK BECAUSE OF THE
PARAMUTUAL INDUSTRY BEING SO
INVOLVED, IT HAS A TREMENDOUS
IMPACT ON HOW THESE
CLASSIFICATIONS ARE MADE, BUT IN
THIS INSTANCE, I THINK THE COURT
SHOULD SEND THE LEGISLATURE A
CLEAR MESSAGE, IF YOU WANT TO
TREAT SPECIAL PARTIES SPECIALLY,
YOU KNOW, USE THIS PROCESS THAT
THE CONSTITUTION IS AFFORDED.

>> THANK YOU.

WITH OUR HELP, YOU'VE EXHAUSTED
ALL OF YOUR TIME.

REBUTTAL?

>> IN THE NINE SECONDS THAT I
HAVE LEFT IN MY -- I HAVE FOUR
POINTS THAT I WOULD LIKE TO --

>> GOOD LUCK.

>> TO MAKE, AND IF IT PLEASE THE
COURT, MAY I DO THAT?

>> PLEASE DO.

>> FIRST OF ALL, TO ANSWER YOUR
QUESTION, JUSTICE CANTERO, YES,
IT DOES CHANGE THE STANDARD FROM
AN OBJECTIVE TO A SUBJECTIVE
STANDARD, AND WE SUGGEST THAT
THAT IS A NEW WAY TO LOOK AT
THIS, AS INDICATED BY THE
OPINION.

WE'RE DEALING WE'RE WITH THE
REVIEW OF A FINAL JUDGMENT, NOT
A TRANSCRIPT.

AND I WOULD SUGGEST THAT THE

FINAL JUDGMENT DEALS WITH CURRENTLY, CURRENTLY, CURRENTLY, AND DOES NOT MAKE THE FINDINGS NECESSARY TO HOLD THIS TO BE A SPECIAL ACT.

IN THE CASE OF BISCAYNE KENNEL, THE COURT SAID -- THE COURT APPROVED A FINDING BY THE TRIAL JUDGE, BUT SAID THE PLAINTIFF'S FACTS AND FIGURES, WHICH THEY SAY ESTABLISH A GREAT IMPROBABILITY OF OTHER CASE TRACKS EVER FALLING WITHIN THIS CLASSIFICATION, THE VALIDITY OF LEGISLATIVE CLASSIFICATION IS NOT DEPENDENT UPON THE PROBABILITY OF OTHERS ENTERING OR LEAVING THE CLASS.

THE PRESENT CONDITIONS ARE NOT THE CRITERION, IT IS THE PROSPECTIVE APPLICATION OF FUTURE CONDITIONS THAT RENDERS THE CLASSIFICATION CONSTITUTIONAL AND SO WE WOULD SUGGEST THAT ALSO IN MCGRATH, I'M NOT CERTAIN WHAT MY OPPOSING COUNSEL WAS REFERRING TO, BUT IN THE HOLDING IN MCGRATH, IT SAYS IN CONCLUSION, TYING THE POPULATION THRESHOLD TO AN ANCHORING DATE OF APRIL 1, 1999, A DATE THAT PRECEDED THE EFFECTIVE DATE OF THE LEGISLATION CREATED AN ARBITRARY CLASSIFICATION, AND FINALLY, I WOULD SAY THAT THE STATE HAS A GREAT INTEREST AND THE LEGISLATURE HAS A GREAT INTEREST IN ENSURING APPROPRIATE MEDICAL CARE TO THE CITIZENS OF THIS STATE AND TO DISMISS THE CASES THAT HAVE BEEN CITED AS PARAMUTUAL AS NOT BEING RELEVANT, I THINK IS INAPPROPRIATE, SO WE WOULD SUGGEST AND URGE THIS COURT TO REVERSE THE DISTRICT COURT AND DETERMINE THAT THIS ACT IS IN FACT A GENERAL ACT.

THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH, TO BOTH COUNSEL FOR FINE PRESENTATIONS. WE'LL TAKE THIS MATTER UNDER ADVISEMENT.

THANK YOU VERY MUCH.