

>> ALL RISE.  
HEAR YE, HEAR YE, HEAR YE,  
THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.  
ALL WHO HAVE CAUSE TO PLEAD,  
DRAW NEAR, GIVE ATTENTION, YOU  
SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.  
LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.  
>> GOOD MORNING.  
WELCOME TO THE FLORIDA SUPREME  
COURT.  
THE FIRST CASE UP IS VENICE  
REGIONAL MEDICAL CENTER VERSUS  
SARASOTA COUNTY.  
WHENEVER YOU'RE READY.  
>> GOOD MORNING, YOUR HONOR, MAY  
IT PLEASE THE COURT.  
RAOUL CANTERO.  
I'M REPRESENTING SARASOTA DOCTOR  
HOSPITAL.  
WITH ME IS STEVE REPRESENTING  
CLIENTS.  
JEFF SMITH REPRESENTING VENICE  
REGIONAL HOSPITAL.  
HE RESERVED THREE MINUTES OF MY  
TIME FOR MR. SMITH.  
THE REASON FOR THIS CASE,  
INTERPRETATION OF ARTICLE III,  
SECTION, 11-A-12 OF THE FLORIDA  
CONSTITUTION WHICH PROHIBITS ANY  
SPECIAL LAW PERTAINING TO  
PRIVATE INCORPORATION OR THE  
GRANT OF A PRIVILEGE TO A  
CORPORATION.  
I THINK THERE ARE TWO VERY  
RELEVANT PHRASES IN THAT  
PROVISION THAT WE SHOULD DISCUSS  
TODAY.  
THE FIRST IS SPECIAL LAW.  
AND THE SECOND IS, A PRIVATE  
CORPORATION.  
SPECIAL LAW IS IMPORTANT BECAUSE  
THE LAW, THE CONSTITUTION  
PROHIBIT ASPECTS LAW WHICH BY  
DEFINITION APPLIES TO EITHER A

LOCAL COMMUNITY LIKE A COUNTY,  
OR A VERY LIMITED NUMBER OF  
PEOPLE.

THE DCA INTERPRETED THE  
CONSTITUTION TO EXPLORE THE  
UNIVERSE OF OTHER COUNTIES WHEN  
LOOKING AT A SPECIAL LAW.

I THINK THAT MISREADS THE  
CONSTITUTIONAL PROVISION BECAUSE  
SPECIAL LAW BY DEFINITION ONLY  
PERTAINS TO, IN THIS CASE, A  
PARTICULAR COUNTY.

SO THE UNIVERSE OF COMPANIES AND  
OTHER ENTITIES THAT WE'RE  
LOOKING AT SHOULD FOCUS ON IN  
THIS CASE SARASOTA COUNTY AND  
NOT COMPARE SARASOTA COUNTY TO  
OTHER COUNTIES IN THE STATE OF  
FLORIDA.

AND THIS COURT IN THE SEEGER  
CASE DID NOT--

>> I STARTED THERE TOO.

ARTICLE X SECTION 12-G.

DEFINES SPECIAL LAW AS LOCAL.

>> SOMEWHAT LOGICAL, YES.

>> I THOUGHT IT MIGHT BE HELPFUL  
ANALYTICALLY, NOT LOOK AT LOCAL  
LAW CATEGORY OF SPECIAL LAW BUT  
ANOTHER TYPE OF SPECIAL LAW.

AND MY QUESTION IS, IF THE  
LEGISLATURE PASSED A SPECIAL LAW  
THAT CONFERRED ON A SINGLE  
PRIVATE HOSPITAL CORPORATION IN  
FLORIDA NOT RELATED TO  
GEOGRAPHY, JUST XYZ HOSPITAL  
CORPORATION, A FOR-PROFIT  
CORPORATION, AND SAID THAT THAT  
CORPORATION WOULD RECEIVE  
PAYMENT FOR INDIGENT SERVICES  
FROM STATE OR LOCAL GOVERNMENT,  
WOULD THAT BE A BENEFIT  
CONFERRED ON THAT CORPORATION?

>> I WOULD SAY PROBABLY SO, YES.

>> AND WOULD THAT BE PROHIBITED  
BY THE PROVISION THAT WE'RE  
TALKING ABOUT?

>> I WOULD SAY PROBABLY SO.

>> OKAY.

>> BECAUSE THE OTHER SPECIAL  
LAW--

>> BECAUSE IT'S A PRIVILEGE AND IT'S A SPECIAL LAW?

>> RIGHT.

IN THIS CASE IT IS CLEAR THAT THE TYPE OF SPECIAL LAW WE'RE TALKING ABOUT IS A LOCAL LAW, BECAUSE A LAW APPLICABLE ONLY TO SARASOTA COUNTY.

>> BUT THE PROHIBITIONS REQUIRES TWO THINGS, ONE A PRIVILEGE. EVERYBODY AGREES THIS IS A PRIVILEGE AND TWO, A SPECIAL LAW.

>> YES.

>> SO WHY WOULD IT MATTER WHETHER THIS PARTICULAR SPECIAL LAW WAS A LOCAL LAW AS OPPOSED TO ANY OTHER TYPE OF SPECIAL LAW?

WE HAVE THE TWO THINGS REQUIRED FOR THE PROHIBITION.

WE HAVE THE PRIVILEGE AND WE HAVE A SPECIAL LAW.

THAT IS WHAT IS PROHIBITED.

>> I BEG TO DIFFER WITH YOUR INTERPRETATION OF, THAT IT'S A PRIVILEGE IN THIS CASE BUT THAT IS A SEPARATE ISSUE.

I THINK ON THE SPECIAL OR LOCAL LAW I THINK EVERYBODY AGREES THIS IS A LOCAL LAW.

>> WHY IS IT NOT A PRIVILEGE?

IT IS PAYMENT, WHICH IS A BENEFIT, TO THE HOSPITAL?

I MEAN THAT'S A PRIVILEGE, RIGHT?

>> BECAUSE THE SPECIAL LAW, AND I THINK THE DCA MISREAD THIS AS WELL, THE DCA SEEMED TO APPLY AND ASSUME THAT THE 1949 SPECIAL ACT GRANTED THIS REIMBURSEMENT PRIVILEGE TO PUBLIC HOSPITALS AND THE 59 ACT THEN GRANTED IT TO PRIVATE HOSPITALS.

THAT IS NOT WHAT HAPPENED.

THE '59 ACT GRANTED THE RIGHT TO SEEK REIMBURSEMENT TO BOTH PUBLIC AND PRIVATE HOSPITALS.

SO THE FIRST PARAGRAPH OF THE '59 SPECIAL ACT--

>> MAYBE YOU COULD EXPLAIN WHY A PAYMENT TO A HOSPITAL FOR THESE SERVICES WOULD BE A PRIVILEGE IF IT'S A SINGLE CORPORATION SPECIAL LAW BUT NOT A PRIVILEGE IF IT'S A LOCAL LAW, SPECIAL LAW?

>> THE WAY I INTERPRETED YOUR HYPOTHETICAL IS, FOR EXAMPLE, THERE IS A, ONE HOSPITAL IN DADE COUNTY NOBODY ELSE IS GETTING REIMBURSED.

>> THAT IS IT EXACTLY.

>> PUBLIC HOSPITALS ARE GETTING REIMBURSED.

THEY SAID WE'LL REIMBURSE THIS PRIVATE HOSPITAL.

THAT IS A PRIVILEGE, NOBODY ELSE, EVEN IN THAT COUNTY IS, AND EVEN NO OTHER PRIVATE HOSPITAL.

HERE WE HAVE TWO CORPORATIONS, NOT ONE.

>> UNDER OUR DEFINITION IT'S A PRIVILEGE BECAUSE IT'S A BENEFIT, CORRECT?

>> BUT BENEFIT NOT ENJOYED BY OTHER.

>> RIGHT, BUT WHAT THE CONSTITUTION SEEMS TO SAY IF YOU'RE GOING TO GIVE A BENEFIT TO A PRIVATE CORPORATION, YOU HAVE TO DO IT BY GENERAL LAW. YOU CAN'T DO IT BY SPECIAL LAW BECAUSE YOU'RE NOT GOING TO BE ABLE TO SINGLE OUT EITHER A SINGLE CORPORATION OR A CORPORATIONS BY LOCALITY.

I MEAN, TWO THINGS.

THAT'S--

>> AGAIN I DON'T THINK THIS IS A BENEFIT TO A PRIVATE CORPORATION BECAUSE IT'S A BENEFIT TO ALL HOSPITALS IN THE COUNTY.

EVERY HOSPITAL IN THE COUNTY HAS THE SAME RIGHT.

SO IT IS NOT LIKE PRIVATE HOSPITALS HAVE A RIGHT THAT PUBLIC HOSPITALS DON'T HAVE.

IT IS NOT LIKE THERE IS NO

PUBLIC HOSPITALS.  
THERE IS A PUBLIC HOSPITAL.  
THEY SPECIFICALLY MENTIONED IN  
THE SPECIAL ACT WE WILL  
REIMBURSE PUBLIC HOSPITALS.  
THEY DON'T SAY PRIVATE  
HOSPITALS.  
THEY SAY ALL OTHER HOSPITALS.  
IF ANOTHER PUBLIC HOSPITAL OPENS  
UP, OTHER PRIVATE HOSPITALS,  
EVERYBODY GETS THE SAME  
TREATMENT.  
THAT CAN NOT BE A SPECIAL  
PRIVILEGE TO A PRIVATE  
CORPORATION.  
IT'S A PRIVILEGE TO ALL  
HOSPITALS AND THERE IS NO  
PROHIBITION AGAINST THAT.  
>> HOW FAR DOWN DO YOU PEEL THE  
ONION TO MAKE THE COMPARISON  
WITH REGARD WHETHER THIS IS A  
SPECIAL BENEFIT BECAUSE OF THE  
CHANGES IN THE DELIVERY OF  
HEALTH CARE TODAY?  
FOR EXAMPLE, WE GO BACK TO THE  
'40s AND '50s, WE HAD  
FREESTANDING HOSPITALS AND HOW  
MOST HEALTH CARE WAS DELIVERED.  
THERE ARE PEOPLE THAT PROVIDE  
CARE FOR INDIGENT PATIENTS,  
OUTPATIENT CLINICS, SO HOW FAR  
DO WE GO?  
CALL IT A HOSPITAL WELL, IT  
PROVIDES SURGICAL PROCEDURES, WE  
WILL PAY THAT BUT WE WON'T PAY  
FOR THE OUTPATIENT SURGICAL  
CLINIC DOING THE SAME WORK.  
>> I HAVE TWO RESPONSES.  
A FEW RESPONSES, YOUR HONOR.  
FIRST OF ALL THAT MAY BE AN  
ISSUE FOR THE LEGISLATURE.  
NUMBER TWO, MAYBE EQUAL  
PROTECTION ISSUE WHERE CLINIC  
CAN SAY, HEY, WE SHOULD BE PAID  
TOO BUT IT IS NOT AN ISSUE UNDER  
THIS PROVISION OF THE  
CONSTITUTION AND NEITHER THE  
COUNTY--  
>> BUT YOU'RE MAKING THE  
ARGUMENT THIS IS NOT A BENEFIT

BECAUSE ALL HOSPITALS PARTAKE OF IT.

>> YES.

>> I'M SAYING ALL MEDICAL FACILITIES DON'T PARTAKE OF THAT BECAUSE OF THE CHANGES IN THE WAY-- YOU WOULD DISAGREE WITH THAT I'M SURE.

>> IT MAY BE A EQUAL PROTECTION ISSUE OR SOMETHING THAT THE LEGISLATURE NEEDS TO FIX BUT IT DOESN'T THEREBY MEAN THAT THERE IS A SPECIAL PRIVILEGE GIVEN TO PRIVATE CORPORATION, TO A PRIVATE CORPORATION HERE.

REMEMBER WE ALSO HAVE MORE THAN ONE PRIVATE HOSPITAL HERE SO IT IS NOT A PRIVATE CORPORATION.

>> OH, SO I MEAN YOU DRAW THE DISTINCTION IS THAT IF IT'S GIVEN TO TWO, EVEN THOUGH YOU MAY HAVE OTHERS THAT THAT IS STILL NOT A AN IMPROPER LOCAL ACT?

>> THE CONSTITUTION SAYS A PRIVATE CORPORATION AND--

>> THEN TWO DOESN'T VIOLATE IT, IS WHAT YOUR POINT WOULD BE.

>> YES.

IN LAWNWOOD THE COURT SAID TWO HOSPITALS IN ST. LOUIS COUNTY BUT THEY'RE BOTH LOANED BY THE SAME CORPORATION.

THE COURT FELT THAT WAS A RELEVANT FACT TO CONSIDER.

>> RIGHT.

>> LET ME EMPHASIZE WE'RE NOT SEEKING A WINDFALL HERE.

WE ARE NOT SEEKING ANY REIMBURSEMENT FOR ANYTHING, ANY SERVICE THAT SOMEONE ELSE IS REIMBURSING.

>> NO MEDICARE, MEDICAID ISSUES?

>> CORRECT.

YES.

UNFORTUNATELY, AND I DIDN'T KNOW THIS, IT MAY SURPRISE YOU, I DIDN'T KNOW UNTIL I WAS WORKING ON THE CASE, A LOT OF PEOPLE DON'T QUALIFY FOR MEDICAID.

SINGLE ADULT MALE WITHOUT CHILDREN, NOT QUALIFIED FOR MEDICAID.

ILLEGAL, UNDOCUMENTED IMMIGRANTS, DON'T QUALIFY FOR MEDICAID.

THERE IS APPARENTLY A LOT OF PEOPLE THAT DON'T QUALIFY AND THOSE ARE THE PEOPLE THAT WE WERE SEEKING REIMBURSEMENT FOR, NOT FOR PEOPLE THAT WERE OBVIOUSLY COVERED BY INSURANCE OR COVERED BY MEDICAID OR ANYTHING ELSEWHERE THEY GET REIMBURSED.

>> THIS IS NOT A BALANCED BILLING KIND OF CIRCUMSTANCE?

>> YES.

SO WE'RE ONLY SEEKING FOR AMOUNTS THAT ARE, THAT HAVEN'T BEEN REIMBURSED BY SOME ENTITY. AND WHATEVER THE AMOUNT IS, THAT IS NOT WITH WE ASKED THE CIRCUIT COURT TO DETERMINE.

THAT'S SOMETHING THAT CAN BE NEGOTIATED OR LITIGATED AT ANOTHER TIME.

THE ONLY THING WE ASKED FOR IS A DECLARATORY JUDGMENT THAT WE ARE ENTITLED TO REIMBURSEMENT UNDER THE SPECIAL ACT.

AS TO THE ISSUE OF, UNLESS THE COURT HAS ANY OTHER QUESTIONS ON THE ISSUE OF THE PRIVILEGE--

>> LET ME APPROACH IT A DIFFERENT WAY.

IN LAWNWOOD MEDICAL CENTER VERSUS SEEGER, THIS COURT DEFINED PRIVILEGE TO MEAN BROAD I ALSO, NOT ANY PARTICULAR TYPE OF BENEFIT OR ADVANTAGE BEING REQUIRED, JUST ANY BENEFIT OR ADVANTAGE.

SO I'M CURIOUS HOW WE GOT TO THAT BECAUSE PAYMENT WOULD BE A BENEFIT TO ADDING THE REQUIREMENT OF A SPECIAL BENEFIT WHEN THAT SEEMS INCONSISTENT WITH THAT LANGUAGE IN LAWNWOOD?

>> WELL WHAT THE COURT SAID A

PARTICULAR OR PECULIAR BENEFIT  
OR ADVANTAGE ENJOYED BY COMPANY  
OR CLASS BEYOND THE ADVANTAGE OF  
OTHER COMMON CITIZENS.

IF THIS HAD BEEN GRANTED TO, TO  
SARASOTA DOCTORS HOSPITAL AND  
NOBODY ELSE, THEN WE WOULD FALL  
WITHIN THAT CATEGORY.

>> ISN'T IT GRANTED TO PRIVATE  
HOSPITALS WITHIN THIS LOCALITY  
AND NOBODY ELSE?

>> NO IT IS PUBLIC HOSPITALS.

>> OUTSIDE OF SARASOTA COUNTY?

>> BUT IT IS GIVEN TO PUBLIC  
HOSPITALS AS WELL.

IT IS ENJOYED BY EVERY HOSPITAL.

>> IN SARASOTA COUNTY?

>> CORRECT.

THIS IS A SPECIAL LAW SO WE HAVE  
TO LOOK AT SARASOTA COUNTY.

THAT IS WHAT THE LAW APPLIED TO.

>> RIGHT.

I'M JUST NOT UNDERSTANDING WHY  
WE'RE CONFLATING BENEFIT, WHICH  
IS CLEARLY DEFINED TO MEAN ANY  
ADVANTAGE, WHICH WOULD INCLUDE A  
PAYMENT, WITH A TYPE OF SPECIAL  
LAW.

I MEAN THE BENEFIT'S THERE.

IT'S A PAYMENT.

WHETHER IT IS ONE CORPORATION OR  
A GEOGRAPHY IT IS STILL A  
SPECIAL LAW.

SO WE HAVE BENEFIT AND  
SPECIAL-- I THINK I HAVE--

>> I THINK WE'RE GOING TO HAVE  
TO AGREE TO DISAGREE ON THAT,  
YOUR HONOR.

BETWEEN THE TWO OF US YOU WIN.

IF THE COURT HAS NO OTHER  
QUESTIONS ABOUT THE, THAT  
PROVISION OF THE CONSTITUTION, I  
DON'T KNOW IF YOU HAVE ANY  
QUESTIONS REGARDING THE HOME  
RULE CHARTER PROVISION.

NOBODY, THE CIRCUIT COURT DIDN'T  
RULE ON IT.

THE DCA DIDN'T RULE ON IT.

I DON'T THINK YOU HAVE TO RULE  
ON IT BUT IF YOU HAVE ANY



QUESTIONS I CAN ADDRESS THOSE.  
>> THE VOTERS OF SARASOTA COUNTY DID NOT HAVE TO VOTE TO APPROVE THIS PARTICULAR SPECIAL LAW?  
>> CORRECT, YOUR HONOR.  
THERE'S--  
>> THAT WAS WHAT-- I KNOW IN 1959 THEY DID NOT, THERE WAS NO PROVISION FOR THAT, BUT ONCE IT BECAME A HOME RULE COUNTY--  
>> YES.  
>> THERE WAS NO PROVISION FOR THEM HAVING TO VOTE ON SUCH A, SEEMS A PRETTY SWEEPING KIND OF, COULD BE A VERY COSTLY KIND OF LAW?  
>> WELL, LET ME EMPHASIZE ONE THING ON THAT, YOUR HONOR.  
THE ACT WAS IN 1959.  
THE NEW CONSTITUTION IN 1968.  
IF YOU RULE NOW THE 1968 CONSTITUTION TRUMPS SPECIAL LAWS, THERE ARE LITERALLY THOUSANDS OF SPECIAL LAWS THAT CAN BE AFFECTED.  
THERE ARE 31 SPECIAL LAWS APPLICABLE, ONLY TO THE SARASOTA COUNTY HOSPITAL DISTRICT, JUST ON THAT NARROW AREA, THERE IS 31.  
ONLY TWO OF THOSE WERE PASSED ON BY THE ELECT -- FIRST ONE 1949, NEXT ONE IN 1969.  
29 OTHERS WERE PASSED BY LAW, BY NOTICE.  
NOBODY DISPUTES I DON'T THINK THAT THEY COMPLIED WITH THE NOTICE PROVISION IN THIS CASE.  
SO IF YOU SAY NOW WHEN 1968 CONSTITUTION WAS ENACTED, IN EVERY CHARTER COUNTY, SPECIAL LAWS THAT WERE ENACTED BEFORE THAT ARE NOW INVALID, I MEAN THAT IS GOING TO CAUSE A HOST OF CONSEQUENCES.  
>> SO HAS THE ISSUE BEEN DISCUSSED IN OTHER CASES?  
>> NO, YOUR HONOR.  
AND WE, BOTH SIDES I THINK HAVE KIND OF STRUGGLED TO FIND SOME

AUTHORITY FOR EITHER SIDE.  
THERE IS REALLY NO AUTHORITY ON  
POINT.

WE CITED THE ATTORNEY GENERAL  
OPINION FROM 1981 WHICH  
OBVIOUSLY IS NOT BINDING ON THIS  
COURT BUT I THINK IS VERY ON  
POINT.

THE ONLY AUTHORITY ON POINT,  
AND, THERE WERE 3 OR 4 QUESTIONS  
IN THAT CASE AS TO THE ATTORNEY  
GENERAL.

QUESTION TWO, ASKED, IF THIS  
RULE COUNTY ENACT AS CHARTER,  
DOES THE GOVERNING BODY HAVE THE  
POWER TO SUPERSEDE OR ALTER  
SPECIAL ACTS RELATING TO  
HILLSBOROUGH WHICH HAVE NOT BEEN  
APPROVED BY REFERENDUM?

THE ANSWER WAS WHILE ARTICLE,  
SECTION 1-C, ARTICLE 8 AUTHORITY  
RISES COUNTY GOVERNMENT  
ESTABLISHED PURSUANT TO GENERAL  
CHARTER NEITHER THAT SECTION OR  
OTHER IMPLEMENTING LEGISLATION  
EMPOWERS A CHARTER FORM OF  
COUNTY GOVERNMENT TO AMEND OR  
REPEAL ANY STATUTE.

THERE TOO FOR ENACTED BY THE BY  
THE STATE LEGISLATURE AND SAYS  
THE POWER GRANTED TO PROVIDE BY  
CHARTER FOR PRECEDENCE OF COUNTY  
ORDINANCES OVER MUNICIPAL  
ORDINANCE DOES NOT INCLUDE THE  
PROVIDE BY CHARTER PRECEDENCE  
OVER COUNTY LAWS ENACTED BY  
STATE LEGISLATURE OR DELEGATE  
ANY PART OF THE LEGISLATIVE  
POWER OF THE STATE TO  
THE COUNTY.

>> BASICALLY THE SPECIAL LAWS  
ARE GRANDFATHERED IN AT THAT  
POINT?

>> UNLESS THEY OTHERWISE  
CONFLICT WITH THE CONSTITUTION.  
FOR EXAMPLE, WE'RE TALKING ABOUT  
THE PROVISION ON PRIVATE  
CORPORATIONS.  
THAT WAS 1968.

WE DON'T DISPUTE THAT WE'RE NOW

SUBJECT TO THE SUBSTANTIVE  
PROVISIONS OF THE 1968  
CONSTITUTION.

WE DON'T DISPUTE THAT.

WHAT WE'RE SAYING IS, SPECIAL  
LAWS THAT WERE PROCEDURALLY  
ENACTED IN A VALID FASHION  
BEFORE THAT ARE NOT NOW  
DEFECTIVE BECAUSE THEY DIDN'T  
COMPLY WITH SOME PROCEDURAL  
ASPECT THAT DIDN'T EXIST AT THE  
TIME THEY WERE ENACTED.

UNLESS THE COURT HAS ANY OTHER  
QUESTIONS I SAVE THE REST OF MY  
TIME FOR REBUTTAL.

MR. SMITH WILL COME UP.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT.  
GEOFFREY SMITH ON BEHALF OF  
VENICE HMA, LLC, DOING BUSINESS  
AS VENICE REGIONAL MEDICAL  
CENTER.

I RESERVED MY BRIEF TIME THIS  
MORNING BECAUSE I WANTED TO  
ADDRESS THE LAWNWOOD VERSUS  
SEEGER DECISION AND I THINK IT  
IS VERY INSTRUCTIVE TO LOOK AT  
THAT CASE.

AND ALSO TO LOOK AT THE REASON  
WE HAVE THIS ARTICLE THREE,  
SECTION 12 PROVISION IN THE  
CONSTITUTION AND IN OUR BRIEF WE  
QUOTED A LAW REVIEW ARTICLE BY  
JUSTIN LONG THAT IS TITLED

"STATE CONSTITUTIONAL  
PROHIBITIONS ON SPECIAL LAWS."

AND I THINK IT REALLY KIND OF  
HITS THE NAIL ON THE HEAD, AND  
WHAT IT SAYS IS THAT THE INTENT  
OF THESE CONSTITUTIONAL CLAUSES  
PROHIBITING SPECIAL LAWS, AND,  
THAT SUCH CLAUSES WERE RATIFIED  
TO PROTECT THE PEEL OF EACH  
STATE FROM DOMINATION BY NARROW  
ECONOMIC ELITES, WHO WOULD USE  
THEIR ECONOMIC POWER TO WIN  
GRANTS AND PRIVILEGE FROM THE  
STATE LEGISLATURES.

STATE CONSTITUTIONAL  
PROHIBITIONS AGAINST SPECIAL

LAWS WERE SUPPOSED TO FIGHT THE CORRUPT FAVORS GARNERED BY PRIVATE INTERESTS AND TO ADDRESS THE PROBLEM OF CAPTURE OF THE POLITICAL PROCESS BY ECONOMIC ELITES AND ITS CONVERSION TO A SPOILS SYSTEM FOR THEIR OWN GAIN.

I THINK THAT PRETTY MUCH ELOQUENTLY SUMS UP WHY DO WE HAVE THIS CONSTITUTIONAL PROVISION?

WHEN YOU LOOK AT LAWNWOOD IT IS THE POSTER-CHILD WHY YOU HAVE THAT PROVISION.

>> BUT WOULDN'T ANOTHER WAY TO SAY THAT MAYBE IN THIS CONTEXT THAT PRIVATE HOSPITAL CORPORATIONS IN SARASOTA COUNTY SHOULDN'T BE ABLE TO USE THEIR POLITICAL INFLUENCE WITH THE STATE LEGISLATURE TO GET SOME BENEFIT IN THEIR PARTICULAR COUNTY THAT OTHER PRIVATE CORPORATIONS OUTSIDE OF SARASOTA COUNTY, DON'T HAVE?

>> I THINK I AGREE WITH WHAT YOU'RE SAYING AND I WOULD SAY THIS WHAT THE LEGISLATURE DID HERE, AND WE NEED TO LOOK WHAT'S AT ISSUE.

IN 1959 THE LEGISLATURE SAID, ALL HOSPITALS IN SARASOTA COUNTY CAN RECEIVE INDIGENT FUNDING. DIDN'T SAY ONLY PRIVATE HOSPITALS, ALL HOSPITALS CAN RECEIVE INDIGENT CARE REIMBURSEMENT.

THERE WAS NO LOBBYING BY A, CAPTURE OF THE POLITICAL SYSTEM BY AN ECONOMIC ELITE.

THERE WAS NO PRIVATE CORPORATION LOBBYING TO SAY, OH, PLEASE GIVE US A SPECIAL BENEFIT.

COMPARED TO LAWNWOOD, LAWNWOOD WAS A CASE THREE TIMES THEY WENT TO COURT AND THEY LOST.

THEY LOST UNDER THE GENERAL LAW OF MEDICAL ADMINISTRATIVE GOVERNANCE OF MEDICAL STAFF.

AND, THEN, WHEN THEY, AFTER THEY  
LOST THREE TIMES THEY WENT TO  
THE LEGISLATURE, YOU KNOW WHAT?  
WE'RE TIRED OF THIS.

WE'LL GET A SPECIAL LAW FOR  
ST. LUCIE COUNTY THAT ONLY  
APPLIES TO OUR TWO HOSPITALS, A  
PRIVATE COMPANY THAT OWNS THOSE  
TWO HOSPITALS IN ST. LUCIE  
COUNTY AND THE RULES WILL BE  
DIFFERENT FOR THOSE TWO  
HOSPITALS.

THAT IS A FAR CRY FROM A LAW  
THAT SAYS ANY HOSPITAL.

I MEAN JUST KIND OF FLIP THIS  
AND SAY, WHAT IF THERE WERE NO  
PRIVATE HOSPITALS IN SARASOTA  
COUNTY, IT WAS ALL  
PUBLICLY-OWNED HOSPITALS.

WOULD THE STALL STILL BE INVALID  
BECAUSE POTENTIALLY SOMEBODY  
MIGHT OPEN A PRIVATE HOSPITAL IN  
SARASOTA COUNTY SO IT'S A,  
BECAUSE IT GRANTS IT TO  
EVERYBODY IT IS A PRIVILEGE TO A  
PRIVATE CORPORATION.

AND I WOULD URGE YOU NO, THAT IS  
NOT THE CASE.

I SEE I'M RUNNING OUT OF TIME.  
MY LAST POINT THAT I WANT TO  
MAKE IS--

>> YOU REALLY ARE OUT OF TIME.  
YOU'RE OUT OF TIME.

>> OH, I AM OUT OF TIME?  
THANK YOU, YOUR HONORS.  
THANK YOU FOR YOUR TIME.

>> YOU WENT OVER 54 SECONDS.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I'M TOM MILICUT ON BEHALF OF  
SARASOTA COUNTY AND SARASOTA  
COUNTY STEVE DEMAISCH AND  
SARASOTA COUNTY ATTORNEY RICK  
ELBRECHT.

THIS IS PRIVILEGE AND A LOCAL  
LAW.

THE LAWNWOOD v. SEEGER CASE  
FROM THIS COURT DOESN'T TALK  
ABOUT WHAT WAS THE SITUATION IN  
PUBLIC HOSPITALS BECAUSE IT IS

NOT RELEVANT.

THE CONSTITUTIONAL PROVISION  
PROHIBIT AS PRIVILEGE TO A  
PRIVATE CORPORATION.

WHAT THE STATE OR WHAT THE  
COUNTY IS DOING FOR A PUBLIC  
ENTITY DOESN'T MATTER.

THAT IS WHY IF THERE IS GOING TO  
BE ANY COMPARISON IF YOU COMPARE  
SARASOTA COUNTY HOSPITALS TO  
HOSPITALS ELSEWHERE.

IF IT WAS ELSEWHERE IT WOULDN'T  
BE A SPECIAL OR LOCAL LAW.

YOU COULD DO THAT.

THERE MAY BE OTHER ISSUES,  
POLITICAL AND OTHERWISE DOING IT  
STATEWISE, BUT THE LEGISLATURE  
COULD DO IT STATEWIDE WITHOUT  
RUNNING AFOUL OF ARTICLE III.

TO RESPOND TO--

>> DID I UNDERSTAND YOUR  
ARGUMENT TO SAY THAT AS LONG AS  
ANY PRIVATE HOSPITAL IS INCLUDED  
IN THIS, THAT IS VIOLATIVE OF  
THE CONSTITUTION?

>> IF IT'S A PRIVATE HOSPITAL,  
IF IT IS DONE BY SPECIAL OR  
LOCAL LAW, PRIVATE HOSPITAL IN A  
PARTICULAR COUNTY OR THEY SINGLE  
OUT CERTAIN PRIVATE HOSPITALS  
YES.

IF THEY DID IT STATEWIDE?

>> I'M ASSUMING THIS SPECIAL LAW  
SAYS ALL HOSPITALS AND THERE ARE  
PRIVATE HOSPITALS IN THE AREA,  
ARE YOU SAYING THAT BECAUSE  
THERE ARE PRIVATE HOSPITALS WHO  
COULD TAKE ADVANTAGE OF THIS,  
THAT IT IS A VIOLATION?

>> AS TO THE PRIVATE HOSPITALS,  
YES.

BECAUSE IT WOULD GRANT A  
PRIVILEGE, WE'RE TALKING ABOUT  
JUST PRIVATE HOSPITALS IN  
SARASOTA COUNTY FOR EXAMPLE, IT  
WOULD GRANT A PRIVILEGE--

>> SAME ORDINANCE, IT IS CLEAR  
IT IS APPLICABLE TO ALL  
HOSPITALS AND THERE ARE PUBLIC  
AND PRIVATE HOSPITALS.

AS LONG THERE ARE PRIVATE HOSPITALS WHO COULD TAKE ADVANTAGE OF THIS, IS A VIOLATION, THAT IS WHAT I UNDERSTAND YOUR ARGUMENT TO BE?

>> YES.

YES.

AND I THINK--

>> WHY ISN'T IT THE CASE WHEN WE CONSIDER THE WORD PRIVILEGE, WE DON'T THINK IN TERMS OF BEING SINGLED OUT FOR A BENEFIT?

SO THAT IF THERE IS A, YOU GET A BENEFIT BUT YOU'RE PART OF A BROADER CLASS RECEIVING A BENEFIT YOU'VE NOT ACTUALLY TO THEN A PRIVILEGE BECAUSE YOU HAVE NOT BEEN SINGLED OUT FOR THE BENEFIT?

>> YOUR HONOR, IF IT WAS DONE ON STATEWIDE BASIS I HAVE NO PROBLEM WITH THAT.

BUT IF YOU'RE SINGLING OUT THESE PRIVATE HOSPITALS IN SARASOTA COUNTY OR HILLSBOROUGH COUNTY, OR PICK A COUNTY, WE'RE IN FIVE COUNTIES.

>> MY QUESTION IS ABOUT THE WAY WE UNDERSTAND THE WORD PRIVILEGE.

>> YOUR HONOR, GIVING HUNDREDS OF-- ALLOWING PRIVATE HOSPITALS TO GET HUNDREDS OF MILLIONS OF DOLLARS FOR SARASOTA COUNTY SO PAY IT IS A PRIVILEGE.

I DON'T THINK THERE IS ANY DEBATE ABOUT THAT.

>> ISN'T IT SINGLING OUT THE SPECIAL LAW?

>> THAT IS WHAT MAKES IT A SPECIAL ABILITY OR LOCAL ACT.

>> WHEN YOU HAVE A SPECIAL LAW YOU'RE CONFERRING BY THE LEGISLATURE SOME NEED OR PUBLIC POLICY BY THE LEGISLATURE THAT THAT PARTICULAR GEOGRAPHICAL AREA SHOULD BE, HAVE SOME KIND OF BENEFIT TO THE AREA FOR SOME REASON, RIGHT?

>> YOUR HONOR, IF YOU'RE

GRANTING A BENEFIT I HAVE NO  
PROBLEM WITH THAT.

>> SO IF YOU'RE DEALING WITH  
THAT GEOGRAPHICAL AREA AND THEN  
YOU EVENLY WITHOUT SPECIFICATION  
WHETHER THEY'RE PUBLIC, PRIVATE,  
OR YOU MAKE NO DISTINCTION AS TO  
THAT HOW IS THERE SPECIAL  
PRIVILEGE ATTRIBUTABLE TO THE  
PRIVATE CORPORATION?

>> YOUR HONOR, IF YOU'RE  
DIRECTING THE COUNTY TO PAY THE  
PRIVATE CORPORATION TAX DOLLARS,  
AND YOU'RE SAYING THIS IS ONLY  
GOING TO HAPPEN IN SARASOTA  
COUNTY, IT IS NOT GOING TO  
HAPPEN IN ANY OTHER COUNTY IN  
THE STATE THAT IS PRIVILEGE TO  
THE PRIVATE HOSPITALS IN  
SARASOTA COUNTY.

IT IS FINE TO HAVE SPECIAL LAWS  
THAT CONFER BENEFITS TO THE  
COUNTY.

THAT IS ONE OF THE DIFFERENCES  
IN THE LAWS THEY TALK ABOUT.  
LOOK AT ALL-- LOOK AT 33  
ENABLING ACTS LET THERE BE  
DISTRICT IF THEY WANT TO PAY  
THEY CAN.

BEING ALLOWED, BEING FACILITATED  
ALLOWED SOMEBODY TO PAY IS FINE.  
MANDATING, MANDATING THE  
CORPORATIONS CAN COME DEMAND THE  
MONEY, THAT IS THE PRIVILEGE.

>> COULDN'T THE LEGISLATURE LOOK  
AT AN INDIVIDUAL COUNTY, LOOK AT  
THE LAY OF THE LAND SO TO SPEAK  
WHAT HOSPITALS ARE ABLE TO  
PROVIDE CARE, THOSE THAT ARE  
NOT, SEE WHICH ARE PUBLIC, WHICH  
ARE PRIVATE, THEN AS LONG AS  
THEY REQUIRE EVERYONE AND IT IS  
APPLICABLE TO EVERYONE, THEN WHY  
WOULD THERE BE SOME SPECIAL  
BENEFIT TO THE PRIVATE?

CAN'T THE LEGISLATURE MAKE THAT  
DETERMINATION THAT IS GOING TO  
APPLY TO EVERYONE THERE?

>> YOUR HONOR, LET'S, IF IT  
APPLIES TO THE PUBLIC AS WELL AS



THE PRIVATE IT IS STILL A  
BENEFIT TO THE PRIVATE.  
IT'S A BENEFIT TO THOSE PRIVATE  
CORPORATIONS IN SARASOTA COUNTY  
THAT NO OTHER PRIVATE  
CORPORATION IN THE STATE HAS.  
THAT MAKES IT A BENEFIT TO THAT  
PRIVATE CORPORATION.

>> SO WHAT YOU'RE SAYING IS, IF  
THERE IS A SPECIAL LAW, AND  
THERE'S SOME PAYMENT OR  
REIMBURSEMENT LIKE IN THIS CASE,  
REIMBURSEMENT FOR SERVICES  
PROVIDED, OF ANY KIND AND IT  
HAPPENS TO INCLUDE A PRIVATE  
CORPORATION IN THE MIX THEN THAT  
IS GOING TO BE UNCONSTITUTIONAL,  
INVALID?

>> IF THE STATE WANTS TO PROVIDE  
ITS OWN MONEY FOR THAT, THAT'S  
FINE.

YOU CAN'T CONFER THAT PRIVATE  
BENEFIT ON THE CORPORATION AND  
MAKE THE COUNTY DO IT.

NOW WE'RE GETTING OVER INTO THE  
CHARTER PROBLEM TOO BUT THE  
CONSTITUTION DOESN'T SAY, IF YOU  
GIVE, THERE SHALL BE NO  
PRIVILEGE CONFERRED ON A PRIVATE  
CORPORATION UNLESS IT IS ALSO  
CONFERRED ON THE GOVERNMENT  
ENTITY IN THAT DISTRICT.

IT DOESN'T SAY THAT.

SAYS NO PRIVILEGE ON A PRIVATE  
ENTITY.

THE COMPARISON IS NOT PUBLIC TO  
PRIVATE.

>> THAT IS ALL IN THE DEFINITION  
OF PRIVILEGE, ISN'T IT?

>> I DON'T THINK THERE IS ANY  
QUESTION THAT HUNDREDS OF  
MILLIONS OF DOLLARS, HUNDREDS OF  
MILLIONS OF DOLLARS IS  
PRIVILEGE.

THIS COURT WRESTLED THAT THE  
LAWNWOOD WAS A PRIVILEGE,  
LIMITING WHAT SOMEBODY CAN DO.  
MANDATING A COUNTY PAID IS  
CLEARLY A PRIVILEGE.

I DON'T THINK THAT IS CLEARLY

DEBATABLE.

>> IF THIS WOULD WAS NOT PERMITTED WOULD THOSE HOSPITALS BE REQUIRED TO TREAT THOSE PATIENTS?

>> YES.

UNDER, AT THEIR CHOICE. WHEN THEY AGREE TO ACCEPT MEDICARE AND MEDICAID FUNDING THERE ARE CERTAIN FEDERAL REQUIREMENTS KICK IN REQUIRE THEY TREAT PATIENTS. THIS IS DISCUSSED IN THE BRIEFS AND DISCUSSED IN THE SECOND DISTRICT OPINION.

THEY COULD TURN THOSE PATIENTS, THEY COULD SAY WE'LL NOT ACCEPT THE FEDERAL FUNDING AND DO WHAT THEY WANTED.

THAT IS THE REASON YOU SEE IN PART OF THE STATE, ADVERTISEMENTS SAY COME TO OUR E.R. ROOM.

IT IS ONLY 10-MINUTE WAIT. THEY KNOW THEY WANT THE BUSINESS EVEN THOUGH THEY WON'T GET PAID FOR ALL OF IT.

TO FOLLOW UP--

>> TO CLARIFY FOR MEDICARE, MEDICAID PATIENTS THAT NOT THOSE PATIENTS AS EXPLAINED BY YOUR OPPOSING COUNSEL, FOR THOSE PATIENTS THEY STILL HAVE TO ACCEPT THOSE UNDER FEDERAL LAW?

>> THERE IS FEDERAL LAW THAT MANDATES.

I DON'T KNOW ALL THE NUANCES OF THAT, FEDERAL LAWMAN DATES TREATING SOMEBODY COMES THROUGH THE E.R. INITIALLY.

THE STATEMENT YOU HEARD ABOUT WE'RE NOT SEEKING FOR MEDICAID, I DON'T THINK THAT IS CORRECT BECAUSE IF YOU LOOK AT PAGE 23 OF OUR ANSWER BRIEF WE REFER TO A LETTER THEY SENT WHEN THEY'RE SENDING THESE CLAIMS IN.

THEY REFER TO SOME OF THESE PATIENTS NOT BEING ELIGIBLE FOR RETROACTIVE MEDICAID

APPLICATION.

I'M NOT SURE WHAT THAT IS,  
SOUNDS LIKE SOMETHING THE  
HOSPITAL DIDN'T APPLY FOR IN  
TIME.

MAYBE THEY'RE NOT ELIGIBLE  
BECAUSE THEY'RE SINGLE MEN AND  
THEY DON'T GET BUT THAT IS  
CHOICE THEY MADE.

THAT IS AN ECONOMIC CHOICE THEY  
MADE TO TAKE THIS KIND OF  
BUSINESS.

THEY DON'T GET TO SHIFT IT UNDER  
THE CONSTITUTION TO THE COUNTY.

>> THIS IS PROBABLY BEYOND THE  
SCOPE OF OUR QUESTION BUT I'M  
LOOKING AT PROCEDURAL POSTURE.  
IS AMOUNTS THEY'RE CLAIMING GO  
BACK HOW MANY YEARS?

WHEN YOU'RE TALKING ABOUT  
\$200 MILLION.

I THINK IT WAS UP TO 300 MILLION  
BY THE SECOND DISTRICT OPINION.  
IT GOES BACK TO, I WANT TO SAY,  
I THINK THAT LETTER I REFERRED  
TO WAS 2008.

>> SO THAT IS WHEN THE LAWSUIT  
WAS FILED?

>> I WOULD HAVE TO LOOK.

I THINK--

>> ARE THERE ANY DEFENSES OF  
ESTOPPEL OR THIS IDEA THIS HAS  
BEEN IN EFFECT, LOOKING HOW IT  
GOT REENACTED AND THERE MAYBE  
OTHER BASES TO SAY THERE ARE  
SOME PROBLEMS?

>> YOUR HONOR, WE HAVE NUMBER OF  
DEFENSES THAT WERE NEVER  
REACHED.

>> THAT IS NOT IN FRONT OF US.  
THAT IS NOT LIKE THIS ENDS UP,  
WITH HE OVERTURN, IF WE REVERSE  
THE SECOND DISTRICT IT IS NOT  
LIKE \$300 MILLION IS GOING TO  
THEIR COFFERS.

>> NO, THERE WOULD BE OTHER  
DEFENSES LITIGATED.

FOR EXAMPLE, WE SAY THE STATUTE,  
BECAUSE OF THE WAY IT IS WORDED  
IT DOESN'T APPLY AT ALL, THE

SPECIAL LAW.

WE SAY IT DOESN'T APPLY AT ALL  
BECAUSE THE WAY MEDICALLY  
INDIGENT IS DEFINED SOMEBODY WHO  
CAN'T GET CARE.

UNDER FEDERAL LAW THEY CAN GET  
CARE.

IT DOESN'T EVEN APPLY.

THAT IS A ISSUE THAT DIDN'T GET  
REACHED.

THE OTHER ISSUE THAT WE HAVE  
BRIEFED IS THE CHARTER HOME RULE  
ISSUE BECAUSE SARASOTA BECAME A  
CHARTER COUNTY IN 1972 AND UNDER  
ARTICLE 8 THAT IMPOSES FURTHER  
LIMITATIONS.

THE CHARTER RULE CONCEPT IS, TO  
ME COMPLICATED BUT EXPLAINED BY  
OUR CO-COUNSEL, MR. NEIGHBORS  
SAYING, THAT THE CONSTITUTION  
PUT AS LIMIT ON WHAT CAN BE DONE  
TO A CHART RULE POWERS, CHART  
COUNTY'S POWERS UNLESS APPROVED  
BIT ELECTORS.

THE QUESTION EARLIER POINTED OUT  
THERE IS NO DISPUTE THIS  
PROVISION TO MANDATE THESE  
PAYMENTS WAS NOT APPROVED BY THE  
ELECTORS.

>> NOW OPPOSING COUNSEL SAYS,  
THAT WOULD BE TANTAMOUNT TO A  
RETROACTIVE REPEAL OF ALL THOSE  
ACTIONS?

DO YOU DISAGREE WITH THAT?

>> I ABSOLUTELY DISAGREE WITH  
THAT.

>> WE WOULD HAVE TO HAVE A NEW  
REFERENDUM IN ALL THE LOCALES  
THROUGHOUT THE STATE TO SUPPORT  
A CONTINUED VALIDITY OF SPECIAL  
LAWS THAT MAY HAVE BEEN ENACTED  
BEFORE.

>> NO, YOU WOULD NOT, YOUR  
HONOR.

>> AND WHY NOT?

>> HERE'S WHY.

WE'RE TALKING HERE ABOUT A  
SPECIAL LAW THAT LIMITS, THAT  
LIMITS THE COUNTY'S POWER.  
ONE OF THE COUNTY'S FUNDAMENTAL

POWERS HOW WE WILL SPEND OUR MONEY WE RAISED, OUR TAX DOLLARS.

THIS MANDATES IT BE GIVEN TO THESE HOSPITALS.

THE LAWS WE'RE TALKING ABOUT THAT GIVE COUNTIES MORE POWER, THOSE ARE FINE.

LIKE THE PINELLAS COUNTY CASE THAT IS CITED, GIVING COUNTY MORE POWER.

>> LET'S RESTATE IT THEN. IT WOULD REPEAL ALL SPECIAL ACTS THAT RESTRICT LOCAL POWERS? THAT'S WHAT YOU'RE SAYING?

>> IF IT RESTRICTS IT IN THE FASHION THIS DOES, YES.

I THINK IT WOULD BE A CASE-BY-CASE BASIS.

>> I UNDERSTAND.

WELL, THAT IS THE CATEGORY YOU'RE SAYING THAT THAT AT THAT POINT IT AUTOMATICALLY REPEALS ANYTHING THAT RESTRICTS THE COUNTY'S POWERS.

>> IF THE COUNTY HAS BECOME A CHARTER COUNTY.

>> RIGHT.

>> YES.

>> IS THERE ANY, ARE THERE ANY CASES THAT ADDRESS THAT AND COME TO THAT CONCLUSION?

>> YOUR HONOR I DON'T THINK THERE IS, AS MY COLLEAGUE MENTIONED EARLIER, I DON'T THINK THERE IS ANY CASE DIRECTLY ON POINT ON THIS WE THINK BIRDSONG IS CLOSEST CASE.

IT WAS A TAX, REFERENCE PAGE 3 IN THE OPINION TO BE PROVIDED BY LOCAL LAW.

ONCE THE CONSTITUTION CAME IN '68 THE COURT SAID YOU CAN'T DO IT ANYMORE.

>> YOU MAY NOT DO IT ANYMORE BUT THE QUESTION DOES IT RETROACTIVELY REPEAL?

>> THAT, THIS COURT HELD THAT IN BIRDSONG THAT LOCAL SALES TAX WAS REPEALED BY VIRTUE OF THE 68

CONSTITUTION.  
IN EFFECT REPEALED.  
THINK THAT I IS, I THINK THERE  
THAT THERE IS NO CASE LAW ON IT  
IS BECAUSE, BEFORE YOU GET TO  
ARTICLE VII, YOU LOOK AT ARTICLE  
III, IT'S A PRIVILEGE.  
A PRIVATE CORPORATION, IT IS UP  
CONSTITUTIONAL.  
TO GO TO ARTICLE VIII.  
IT IS SOMETHING, SPECIAL ACT  
ELECTORS HAVEN'T PROVED.  
YOU DON'T GET TO THAT BECAUSE IT  
IS STRICKEN UNDER ARTICLE III.  
IT IS AN CONSTITUTIONAL UNDER  
ARTICLE III SO YOU DON'T REACH  
ARTICLE VIII.  
TO RESPOND BRIEFLY TO A POINT  
MADE BY BENIS, LOOK AT ANSWER  
BRIEF 17, PAGE 17 OF OUR  
ANSWER BRIEF, THERE IS EVIDENCE  
VENICE LOBBIED FOR THIS IN 1959.  
WE LOOK AT THAT EVIDENCE.  
WE DON'T THINK THAT IS MATERIAL.  
THAT MAY BE ONE OF THE REASONS  
WHY WE HAVE THE PROHIBITION IN  
ARTICLE III BUT IT'S A  
PROHIBITION.  
THE FACT THAT IS MAY HAVE, MAYBE  
OUT OF THE COMPLETE LARGESS OF  
THE LEGISLATURE CREATING  
SOMETHING CREATE A  
CONSTITUTIONAL PROVISION, IT IS  
STILL UNCONSTITUTIONAL BECAUSE  
NOBODY LOBBIED FOR IT.  
UNLESS THERE ARE ANY FURTHER  
QUESTIONS?  
YIELD THE REST OF THE TIME TO  
MR. WALLACE.  
>> MAY IT PLEASE THE COURT.  
DAVID WALLACE FROM THE BRUNING  
FIRM IN SARASOTA ON BEHALF OF  
THE HOSPITAL DISTRICT.  
WITH ME IS CAROLYN KALISH, CHIEF  
LEGAL OFFICER FOR THE HOSPITAL  
DISTRICT.  
I WOULD DRESS A COUPLE POINTS  
MR. ELLIGETT DID NOT REACH.  
VOID FOR VAGUENESS ISSUE.  
THAT IS ONE OF THE ALTERNATIVE

ARGUMENT WAS NOT REACHED EITHER AT THE TRIAL COURT OR AT THE SECOND DISTRICT.

I'M GOING TO FIRST TOUCH UPON SEVERABILITY.

THE THIRD PARAGRAPH OF SECTION 8, PAREN 9, IS THE ONLY PARAGRAPH IN THE ENTIRE 2003 SPECIAL ACT THAT RELATES IN ANY WAY TO PRIVATE HOSPITALS.

THE SECOND DISTRICT APPLIED THIS COURT'S DECISION, THE FOUR-PART TEST AND FOUND THAT THAT PARAGRAPH, WHICH IS ACTUALLY, CALLING IT A PARAGRAPH, IT IS ACTUALLY ONLY ONE SENTENCE IS SEVERABLE FROM THE REMAINDER OF THE SPECIAL ACT.

THE SPECIAL ACT AS A WHOLE IS ABOUT 20 PAGES LONG.

WE'RE TALKING ABOUT ONE SENTENCE IN 20 PAGES.

THE SPECIAL ACT AS WE HEARD WAS PASSED IN 1949 WITHOUT SECTION 8 PAREN NINE, WHICH WAS ADDED 10 YEARS LATER IN 1959.

SO THE DISTRICT WAS UP AND RUNNING AND OPERATING PUBLIC HOSPITAL SYSTEM FOR A DECADE WITHOUT SECTION 8 PAREN 9.

THAT IS ONE OF THE THINGS NOTED BY THE SECOND DISTRICT WITH REGARD TO SEVERABILITY.

THAT TELLS US OF COURSE WE DON'T HAVE TO GUESS AS TO WHETHER THE LEGISLATURE WOULD HAVE PASSED THE SPECIAL ACT WITHOUT THIS SECTION.

WE KNOW THAT THEY DID.

WE KNOW THAT THEY DID IN 1949.

ONE OF THE ISSUES THAT CAME UP WITH REGARD TO SEVERABILITY IN THE BRIEFING IS THE QUESTION OF HOW MUCH TO SEVER.

THE TRIAL COURT SEVERED JUST THE ONE PARAGRAPH WHICH I SAID IS ONE SENTENCE.

THE SECOND DISTRICT DID THE SAME THING.

THE APPELLANTS RAISED THE

QUESTION WHETHER IT MORE APPROPRIATE TO SEVER THE ENTIRETY OF SECTION 8 PAREN 9. OUR POSITION ON THAT IS PRETTY SIMPLE.

WE DON'T THINK IT IS NECESSARY TO SEVER THE ENTIRE SECTION 8 PAREN 9.

BUT WE'RE OKAY WITH IT AND WE AGREE WITH IT, WE'RE NOT OPPOSED TO IT IN PARTICULAR BECAUSE THE ALTERNATIVE ARGUMENTS THAT WE'VE RAISED, THE HOME RULE ARGUMENT MR. ELLIGETT ADDRESSED, VAGUENESS ARGUMENT RAISED BY THE DISTRICT, BOTH THOSE ARGUMENTS REGARD TO THE ENTIRETY OF SECTION 8, PAREN 9.

WE THINK THE RIGHT ANSWER, SEVER ONE SENTENCE, IF YOU SEVER THE ENTIRE SECTION THAT SEVERS THAT AS WELL.

THE OTHER ISSUE I HAD IS THE VAGUENESS ISSUE.

A PROVISION CAN BE VOID FOR VAGUENESS IF A PERSON COMMON INTELLIGENCE MUST GUESS AT ITS MEANING.

THE PROVISION I WANT TO FOCUS IN ON, JUSTICE LEWIS MENTIONED ABOUT THE CHANGES IN HEALTH CARE.

THE DEFINITION IN THE STATUTE ABOUT MEDICALLY-INDIGENT PERSON MUST BE ONE UNABLE TO PROVIDE HIMSELF OR HERSELF WITH SUCH NECESSARY HOSPITAL SERVICES AND WE'VE HEARD, AND WRITTEN ABOUT IN THE SECOND DISTRICT OPINION, THAT UNDER THE FEDERAL TALA AND STATE PARALLEL STATUTE, A PATIENT WHO WALKED INTO THE DOOR OF AN EMERGENCY ROOM IN ONE OF THESE HOSPITALS AND PRESENT HIMSELF OR HERSELF FOR CARE, IS REQUIRED TO BE TREATED UP TO THE POINT OF STABILIZATION UNDER THE, NOW EXISTING STATE AND FEDERAL LAWS.

AND SO WHEN YOU LOOK BACK AT THE



DEFINITION OF MEDICALLY-INDIGENT PERSON THE OPERATIVE PHRASE I WOULD SAY IS THE UNABLE TO PROVIDE.

IN OUR INTERPRETATION OF THAT, THAT PERSON UNDER THE CURRENT STATE AND FEDERAL LAWS IS ABLE TO PROVIDE THEMSELVES WITH THE NECESSARY CARE AND CLEARLY BECAUSE THE APPELLANTS ARE CLAIMING HUNDREDS OF MILLIONS OF DOLLARS IN REIMBURSEMENT FOR THOSE SAME PATIENTS, FROM THE RECORD IT IS CLEAR THAT THE VAST MAJORITY OR ALL OF THEIR CLAIMS ARE EMERGENCY PATIENTS, THAT THERE IS A DIFFERENCE OF OPINION FUNDAMENTAL DIFFERENCE OF OPINION AS TO WHAT THAT DEFINITION MEANS.

WE'VE ALSO ALLUDED TO OTHER PROVISIONS IN THE STATUTE, PICKING ON WHAT JUSTICE LEWIS SAID.

THERE'S A QUESTION AS TO WHETHER SOMETHING 50 YEARS AGO WAS HOSPITALIZATION TYPE SITUATION OR A SERVICE ONLY PROVIDED IN A HOSPITAL, IF IT IS A PROVIDED IN A HOSPITAL NOW BUT COULD HAVE BEEN PROVIDED IN AN OUTPATIENT CLINIC IS THAT SOMETHING, THAT DEFINITION UNCLEAR?

WOULD THE COUNTY HAVE TO PAY FOR THAT UNDER THE COMMON UNDERSTANDING OF THAT PHRASE NOW?

UNDER THE MODERN HEALTH CARE SETTING.

SO, I SEE I'M DOWN TO MY LAST FEW SECONDS.

IF THERE ARE ANY QUESTIONS.

>> ACTUALLY YOU'RE OVER.

>> I'M SORRY.

>> THANK YOU.

>> THANK YOU.

>> I WANT TO ADDRESS JUSTICE LEWIS'S QUESTION ABOUT THE CLINICS.

THE FEDERAL LAW IN TALA REQUIRES

HOSPITALS TO TAKE INDIGENT PATIENTS TO POINT EVER STABILIZATION. DOESN'T REQUIRE CLINICS TO DO SO.

I THINK THAT IS DISTINCTION. THEY DON'T SAY IF THEY NEED TO BE REIMBURSED OR WHO WILL PAY FOR THAT.

REGARDING JUSTICE LAWSON'S POINT, I THINK IF WE TAKE THAT ANALYSIS TO ITS LOGICAL CONCLUSION, IT WOULD REWRITE THE CONSTITUTIONAL PROVISION TO SAY THAT NO GENERAL LAW GRANTING A PRIVILEGE TO A CORPORATION BECAUSE YOU'RE LOOKING AROUND THE ENTIRE STATE WHAT OTHER LAWS ARE DOING.

I THINK WE NEED TO FOCUS ON THE FACT IT'S A SPECIAL LAW.

IN THIS CASE A LOCAL LAW.

>> DIDN'T WE THOUGH, THIS COURT SEEMS TO ME IS THAT WE SAME ISSUE WITH REGARD TO THE GAMBLING INDUSTRY AND THE DEFINITION FOR A PARTICULAR KIND OF RACING TRACK ONLY MET JUST ONE BY DEFINITION.

IT DIDN'T NAME IT, BUT BY DESCRIPTION.

AND DIDN'T WE ALREADY ADDRESS THAT?

>> THIS IS WHAT YOU HAVE ADDRESSED, YOUR HONOR.

THOSE LAWS, AS I RECALL, AS I RECALL THOSE CASES THE ISSUE THERE WAS WHETHER IT WAS A GENERAL LAW OR A SPECIAL LAW. THEY WERE PASSED AS GENERAL YOU LAWS, AND ISSUE IS, WAS IT REALLY A SPECIAL LAW THAT NEEDED TO BE PASSED AS A SPECIAL LAW.

>> BECAUSE IT ONLY APPLIED TO THE ONE?

>> BECAUSE IT ONLY APPLIED. IT WAS SLIGHTLY DIFFERENT ISSUE THERE.

WE'RE CLEAR, EVERYBODY AGREES THIS IS A SPECIAL LAW.

I ALSO WANT TO EMPHASIZE THAT  
THERE ARE 11 OTHER COUNTIES THAT  
ARE AUTHORIZED TO REIMBURSE  
PRIVATE COMPANIES.

THE DIFFERENCE OF COURSE IS  
THEY'RE NOT REQUIRED TO, THEY'RE  
AUTHORIZED BUT A PRIVILEGE IS A  
PRIVILEGE.

IF IT IS A PRIVILEGE TO REQUIRE  
THEM TO REIMBURSE THEN IT'S A  
PRIVILEGE TO AUTHORIZE THEM TO  
REIMBURSE.

SO WE HAVE TO TAKE THOSE  
COUNTIES INTO ACCOUNT AS WELL.  
THERE IS 11 OF THOSE.

REGARDING RETRO ACTIVE MEDICAID,  
WHAT THAT MEANS IS, YOU CAN  
APPLY FOR MEDICAID ON DAY ONE.  
YOU'RE A EMERGENCY PATIENT, YOU  
DON'T HAVE MEDICAID.

YOU CAN APPLY ON THAT DAY.

90 DAYS LATER YOU CAN GET  
APPROVED AND IT IS APPROVED  
RETROACTIVE TO DAY ONE.

SO YOU GET MEDICAID BENEFITS FOR  
THAT DAY ONE.

THAT IS WHAT RETROACTIVE  
MEDICAID MEANS.

THERE IS A LOT OF PATIENTS GO  
IN.

THEY DON'T HAVE MEDICAID.

WE'LL APPLY FOR YOU, THEY APPLY  
BUT DIDN'T GET APPROVED.

UNLESS THE COURT HAS ANY  
QUESTIONS I'M DONE.

I ASK YOU TO QUASH THE SECOND  
DCA'S DECISION.

THANK YOU VERY MUCH.

>> THANK YOU ALL FOR YOUR  
ARGUMENTS.