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State of Florida vs Charles Bradford

YOU MAY BE SEATED.

NEXT CASE ON THE COURT'S DOCKET IS STATE VERSUS BRADFORD. MR. WHEELER.

MAY IT PLEASE THE COURT. I AM ROBERT WHEELER ON BEHALF OF THE SAFETY STATE OF FLORIDA THIS CASE. THE ISSUE INVOLVES STATUTE 8.234 SUBSECTION 8, WHICH IS COMMONLY KNOWN AS FLORIDA'S ANTI-SLINGS SLISTATION STATUTE. WHAT -- ANTI-SOLICITATION STATUTE. WHAT THIS DOES IS PROHIBIT MAKING A MOTOR VEHICLE TORT CLAIM FOR THE PURPOSE OF FILING A CLAIM FOR PERSONAL INJURY OR PIP BENEFITS.

WOULD YOU GO INTO THE ISSUE THAT WE DEAL WITH IN THIS CASE, AND IS IN EVERY AREA, AND WE SEE IN OTHER AREAS OF DISCIPLINE SITUATIONS, WHERE THIS BODY ATTEMPTS TO RESTRICT OF PROBLEMS ON COMMERCIAL SPEECH. HOW IS THIS, REALLY, DIFFERENT, FROM THOSE, THAT LONG LINE OF CASES THAT INDICATE THAT YOU JUST REALLY CAN'T DO THESE RESTRICTIONS, PARTICULARLY WHERE THIS IS NOT SOMETHING THAT IS ILLEGAL, WHAT IS GOING ON. IT IS NOT MISREPRESENTATION. IT IS NOT ILLEGAL, AND IT IS NOT ATTEMPTING TO DEFRAUD ANYONE. HOW CAN THAT BE UPHELD?

JUSTICE LEWIS, WHAT WE NEED TO LOOK TO, IN REGARDS TO DETERMINING THE CONSTITUTIONALITY OF THE STATUTE, FOR COMMERCIAL SPEECH, AS YOU KNOW, IS THE CENTRAL HUDSON TEST, AND THIS STATUTE MEETS THE ELEMENTS OF THAT TEST. WE HAVE SUBSTANTIAL STATE INTERESTS. THE STATUTE, DIRECTLY, ADVANCES THOSE STATE INTERESTS, AND IT IS NARROWLY DRAWN.

ISN'T THAT WHERE YOUR PROBLEM IS, WHETHER IT IS, IN FACT, NARROWLY DRAWN? ISN'T THAT WHERE YOU RUN INTO A LITTLE DIFFICULTY?

I THINK THAT IS ISSUE HERE. FROM MY JU:tQURKE, I DON'T SEE IT AS A DIFFICULTY, NO, JUSTICE SHAW.

DO YOU SEE IT AS NARROWLY NARROWLY-DRAWN AND LESS RESTRICTIVE AS THE SAME THING?

NARROWLY-DRAWN AND LESS RESTRICTIVE?

THAT'S RIGHT.

I COMPARE NARROWLY-DRAWN TO OTHER TYPES OF SOLICITATION, WHERE THERE IS A BLANKET BAN ON ALL TYPES OF SOLICITATION, WITH ATTORNEYS OR OTHER HEALTH CARE PROVIDERS. THAT IS NOT WHAT WE ARE DEALING WITH IN THIS CASE. THIS IS NOT A BLANKET BAN SOLICITATION. THIS IS A NARROWLY-DRAWN SOLICITATION THAT RESTRICTS SOLICITATION ONLY FOR THE PURPOSE OF FILING A PIP CLAIM OR FOR TORT LITIGATION.

THE OBVIOUSLY WAY TO -- THE OBVIOUS WAY TO NARROW IT WOULD BE TO WRITE, INTO IT, "INTENT TO DEFRAUD".

THAT'S CORRECT.

THAT WOULD BE THE OBVIOUS WAY TO NARROW IT. THAT WOULD BE THE LESS RESTRICTIVE,

AND HERE WE ARE TALKING ABOUT A FIRST AMENDMENT RIGHT. EVERYBODY GETS EXCITED, WHEN WE START TALKING ABOUT THAT PARTICULAR RIGHT. THAT IS WHERE THE PROBLEM IS.

JUSTICE SHAW, OTHER PORTIONS OF THE STATUTE HAVE THIS FRAUD ELEMENT IN IT. THIS -- THESE PORTIONS OF THE STATUTE WERE ENACTED A YEAR LATER. OBVIOUSLY -- FRAUD IS A VERY HARD THING TO PROVE, AND THIS CONSPIRACY WHICH IS TAKING PLACE IS A VERY HARD THING TO PROVE. THE STATUTE WAS NOT AS EFFECTIVE IN PROHIBITING THE INSURANCE FRAUD, WITHOUT REGULATING THE MEANS, IN ORDER TO ACHIEVE THE END. THE END WAS THAT THE STATE WANTED TO PROHIBIT THIS INSURANCE FRAUD. THEY HAD TO REGULATE THE MEANS, IN ORDER TO DO THAT, AND THE MEANS WAS TO PREVENT, TO PROHIBIT THE SOLICITATION FOR THE PURPOSE OF FILING A PIP CLAIM, AND THAT IS WHY IT IS NARROWLY DRAWN. WE NEEDED TO STOP THIS CONSPIRACY. WE NEEDED TO STOP THIS TYPE OF INSURANCE FRAUD, AND THIS WAS THE WAY THAT THE STATE COULD REGULATE THAT.

IF THAT WAS THE PURPOSE OF IT, WHY WOULDN'T IT BE VERY EASY TO ADD THE ELEMENT OF FRAUD, FOR THE PURPOSES OF FILING FRAUDULENT CLAIMS. INSURANCE FRAUD. THEN IT IS MADE ILLEGAL. BUT THE STATUTE DOES NOT HAVE THAT FRAUD ELEMENT, AND I THINK THAT IS WHAT THE QUESTION IS HERE HOW CAN YOU CLAIM IT IS NARROWLY DRAWN, WHEN IT LEAVES OUT FRAUDULENT INTENT OR PURPOSE?

BECAUSE THAT IS WHAT THE LEGISLATURE IS INTENDING.

DO YOU AGREE, AT THE OUTSET, IT DOES NOT HAVE A FRAUD REQUIREMENT?

YES, JUSTICE ANSTEAD, I AGREE. IF YOU LOOK AT THE HISTORY, IF YOU LOOK AT THE CLEAR INTENT, IF YOU LOOK AT THE STATUTORY CONSTRUCTION, A FRAUD ELEMENT, NO, IS NOWHERE TO BE FOUND. IN FACT, IT WOULD BE INCONSISTENT THAT, REALLY, THE FRAUD ELEMENT --

YOU SAY THE PURPOSE OF THE STATUTE IS SIMPLY TO FACILITATE THE PROSECUTION OF INSURANCE FRAUD CASES. ISN'T THAT WHAT YOU SAID?

THAT'S CORRECT.

IF THAT IS THE PURPOSE, THEN IT WOULD BE A SIMPLE MATTER, WOULD IT NOT, TO SIMPLY ADD THAT, FOR THERE TO BE A VIOLATION, THERE WOULD HAVE TO BE THAT INTENT TO DEFRAUD, TO FILE A FRAUDULENT CLAIM.

WHEN THE STATE PROSECUTES UNDER THIS STATUTE AND HAS TO PROVE FRAUD, THAT TAKES THE BITE OUT OF THE STATUTE. THAT -- IT MAKES IT ALMOST UNENFORCEABLE. WHAT THE LEGISLATURE WANTED TO DO WAS TO REGULATE THE MEANS, AND THEY NEEDED TO REGULATE THIS PERSONAL TELEPHONE-TYPE SOLICITATION, WHICH IS OVER BEARING, WHICH IS VERY ONE-SIDED, AND WHICH THE COURTS HAVE SAID THAT CAN BE REGULATED, AND WHAT THEY WANTED TO DO WAS TO -- THAT WAS THE PROBLEM. A GRAND JURY REPORT, IN 1975, SAID THE PROBLEM THAT WE ARE HAVING IS WITH PEOPLE WITH THIRD PARTIES OR WITH CAIRO PRACKTORS WITH ATTORNEYS, GETTING -- CHIROPRACTORS WITH ATTORNEYS, GETTING MOTOR VEHICLE ACCIDENT REPORTS, CALLING VICTIMS THAT HAVE LITTLE OR NO INJURES.

BUT YOU SEE THERE MAY BE PROBLEMS LIKE THAT, AND, CERTAINLY, WE, FROM TIME TO TIME, REALLY DESPAIR OF THE FACT THAT, PERHAPS, WE DON'T HAVE MORE AUTHORITY OVER THE REGULATION OF LAWYERS IN THEIR ADVERTISING, IN THAT KIND OF THING. BUT THE U.S. SUPREME COURT HAS SET DOWN SOME RATHER CLEAR CONSTITUTIONAL RULES FOR US TO FOLLOW. HENCE JUSTICE LEWIS'S QUESTION TO YOU ABOUT THE FACT THAT THERE HAS BEEN A GREAT EMPHASIS, THERE, IN THE FIRST AMENDMENT RIGHTS, THAT YOU HAVE TO BE VERY, VERY NARROW. WE ARE NOT TALKING ABOUT REGULATION HERE. WE ARE, REALLY, TALKING ABOUT MAKING IT A CRIME, AND THEREFORE THIS CONDUCT IS PROHIBITED. IT IS NOT REGULATED. IF IS

PROHIBITED. -- IT IS PROHIBITED, AND THERE IS A CRIMINAL SANCTION, SO, BUT, THE QUESTION REMAINS IS THAT HOW DO YOU GET AROUND THE FACT, WHEN YOU CLAIM IT IS NARROWLY DRAWN, IF IT DOESN'T HAVE THIS PREREQUISITE OF FRAUD?

THE PROBLEM -- THE PROBLEM WAS, WITH INSURANCE FRAUD, IN REGARDS TO MOTOR VEHICLE ACCIDENTS, WHEN THESE VICTIMS OF MOTOR VEHICLE ACCIDENTS WITH LITTLE OR NO INJURES WERE BEING CONTACTED, AND THEN AFTER BEING CONTACTED, THEY WERE FOUND OUT IF THEY HAD PIP BENEFITS. IF THEY DID, THEY WERE REFERRED TO A CHIROPRACTORS. THEY, AS A RESULT OF THAT, THE CHIROPRACTORS TREATED, GAINED THEIR FEE. MORE CLAIMS, PIP CLAIMS FOR THE INSURANCE COMPANY, AND, THEN, AS A RESULT, THE ENTIRE PUBLIC WAS AFFECTED, BECAUSE THE MORE CLAIMS OR THE MORE TORT LITIGATION, THEN THAT RUTS --

WELL, IF THERE IS NO FRAUD GOING ON, WHAT IS WRONG WITH A PERSON GOING THEY HAVE BEEN INJURED IN SOME WAY, AND BEING TOLD THAT, IF YOU HAVE INSURANCE COVERAGE FOR IT, YOU SHOULD, ESPECIALLY, GO TO THE DOCTOR, BECAUSE YOUR STRNS WILL TAKE CARE OF IT?

THE -- YOUR INSURANCE WILL TAKE CARE OF IT?

THE STATE NEEDED TO STOP THIS INSURANCE FRAUD, AND TO STOP THIS INSURANCE FRAUD, THEY NEEDED TO REGULATE THE MEANS. THEY IDENTIFIED THIS MANNER, THIS SOLICITATION, THIS TELEPHONE SOLICITATION, WAS THE MANNER IN WHICH THEY WERE DOING IT, SO THEY NEEDED TO NIP IT IN THE BUD.

HAVEN'T THEY, WITH THAT NIP, THEN, TAKEN IN NOT ONLY THOSE CASES WHERE PEOPLE INTEND FOR INSURANCE COMPANIES TO BE DEPRAUD -- DEFRAUDED, IF THAT WAS THE PURPOSE. THEY HAVE TAKEN IN EVERYBODY THAT MIGHT SUGGEST THAT YOU GO TO THE DOCTOR, BECAUSE YOU HAVE INSURANCE THAT WILL COVER, IT AFTER YOU HAVE BEEN IN AN ACCIDENT OR AN INJURY.

NO, JUSTICE ANSTEAD.

IN OTHER WORDS THE INNOCENT, BECAUSE YOU AGREE THAT IT COVERS SITUATIONS WHERE THE SOLICITATION IS NOT FOR ANY PURPOSE TO DEFRAUD. RIGHT? YOU AGREE WITH THAT.

YES. I AGREE WITH THAT. SO THAT MEANS THAT IT COVERS INNOCENT CONDUCT, DOES IT NOT? -- CONDUCT, DOES IT NOT?

BUT THAT INNOCENT CONDUCT IS SUCH A TENUOUS SITUATION. THOSE, MAYBE OUT OF HUNDREDS OF THOUSAND OF HIS CASES, WE WOULD, POSSIBLY, HAVE THAT ONE SITUATION WHERE THE PERSON --

HOW WOULD THIS IDENTIFY TO A BILLBOARD, WHERE THE LAWYER ASKS THE QUESTION, ON THE BILLBOARD, IF YOU HAVE BEEN IN AN ACCIDENT, YOU KNOW, COME TO US FOR YOUR INSURANCE CLAIMS.

THAT WOULD NOT VIOLATE THE STATUTE. THAT WOULD NOT VIOLATE THE STATUTE, BECAUSE IT IS NOT A DIRECT PERSONAL SOLICITATION, THAN IS WHAT THIS STATUTE SEEKS TO PREVENT. IT IS THE DIRECT PERSONAL SOLICITATION THAT IS SO EGREGIOUS, IN THIS CASE. WHEN THEY CALL UP AND IT IS OVER BEARING AND IT IS ONE-SIDED, AND THE PERSON HAS,, OBVIOUSLY, UNDER GONE SOME TRAUMA IN RECENT TIMES, BUT HE IS NOT INJURED AND HE DOESN'T NEED MEDICAL TREATMENT. A REASONABLE PERSON, NUMBER ONE --

WAIT A MINUTE. WAIT A MINUTE.

JUSTICE QUINCE.

BEFORE YOU GO ANY FURTHER. YOU KEEP TALKING ABOUT DON'T NEED THE TREATMENT AND ALL THIS, BUT UNDER THIS STATUTE^{nr}, CLAIM, MEANING OF SECTION A, IF I WENT TO SOMEONE AND SAID, LOOK, YOU NEED TO GO TO XYZ PRACTITIONER. YOU WERE IN THIS ACCIDENT. YOU HAVE PIP. SO GO TO THIS PERSON AND HAVE YOURSELF CHECKED OUT. WHY WOULDN'T I BE COVERED, UNDER THIS STATUTE?

THAT WAS NOT A DIRECT SOLICITATION. IF YOU ARE A COMPANY --

HOW MUCH MORE DIRECT DOES THIS HAVE TO BE?

IF IT IS A COMPANY -- THESE COMPANIES WERE BROAD-BASED COMPANIES THAT WERE HIRED BY A CAIRO PRACT OR.

BUT -- CHIROPRACTOR.

WAIT A MINUTE. LOOK AT THE STATUTE. IT DOESN'T SAY YOU HAVE TO WORK FOR A COMPANY. ANY PERSON.

NO. THAT DOESN'T --

IF YOU SOLICIT SOMEONE TO COME GO TO THE DOCTOR -- TO GO TO THE DOCTOR.

CORRECT.

TO TELL THEM, DIRECTY& I AM STANDING RIGHT IN FRONT OF THEM AND I AM TELLING THEM, YOU WERE JUST IN AN ACCIDENT. YOU NEED TO GO SEE THIS CHIROPRACTOR, AND YOUR PIP WILL COVER IT. IT SEEMS TO ME THAT ALL OF THE ELEMENTS, UNDER THIS SUBSECTION, SAYS THAT I HAVE JUST COMMITTED A THIRD-DEGREE FELONY.

WELL, JUSTICE QUINCE, I THINK WHAT WE NEED TO LOOK AT IS THE DEFINITION OF SOLICITATION, THEN, AND WHETHER THAT FALLS UNDER LISS IS -- WHETHER THAT FALLS UNDER SOLICITATION, AND I DON'T THINK THAT DOES F IT IS A FRIEND OF YOURS, COMING UP AND SAYING, OH, I THINK YOU ARE HURT AND YOU NEED TO GO AND SEE THIS THE DOCTOR. THAT IS NOT THE DIRECT TYPE OF SOLICITATION THAT WE ARE TALKING ABOUT. THE SOLICITATION THAT WE ARE TALKING ABOUT IS AN ORGANIZED TYPE OF SOLICITATION, WHERE IT IS DONE BY TELEPHONE OR PERSONALLY, WHERE THAT COMPANY IS RECEIVING A FEE.

BUT YOU ARE READING THICKS INTO THE STATUTE, NOW, THAT ARE NOT -- READING THINGSNⁱ INTO THE STATUTE, NOW, THAT ARE NOT THERE. AS JUSTICE QUINCE POINTS OUT, THE STATUTE DOESN'T SAY WHAT YOU ARE SAYING.

NO, JUSTICE SHAW, THE STATUTE DOESN'T SPECIFICALLY SAY THAT, BUT I THINK WE CAN LOOK TO THE DEFINITION OF SOLICITATION FOR THAT TYPE OF INTERPRETATION. IT IS NOT FRIENDLY ADVICE. IT IS NOT SOMEBODY LOOKING AT A BILLBOARD, ADVERTISING. IT IS NOT SOMEBODY SEEKING OUT MEDICAL TREATMENT. IT IS THE DIRECT SOLICITATION --

SO IF I HAVE A COUSIN WHO IS A CHIROPRACTOR, AND I SAY GO SEE MY COUSIN WHO, IS A CHIROPRACTOR, DOES THAT MAKE ANY DIFFERENCE RENT? I AM JUST TRYING TO UNDERSTAND, HERE, WHAT YOU SEE, AS JUST FROM THE LANGUAGE OF THE START, AS THE LIMITATIONS IN THIS STATUTE.

THE LIMITATION THAT IS YOU ARE SEEKING IN THE STATUTE IS WHAT IS SOLICITATION AND WHAT IS NOT, AND, YES, I THINK THERE NEEDS TO BE SOME GUIDANCE AN AS TO WHAT IS AND

WHAT -- GUIDANCE AS TO WHAT IS AND WHAT IS NOT. THERE NEEDS TO BE SOME GUIDANCE, LOOKING TO THE FLORIDA BAR OR THE FLORIDA SUPREME COURT, AS TO WHAT MAKES THAT DETERMINATION.

DO THOSE CASES DEFINE? I DIDN'T READ THOSE CASES AS DEFINING THE WORD, QUOTE, SOLICITATION. WE LOOK TO THE DICTIONARY, AND IT DOESN'T GIVE THIS NUANCE THAT YOU ARE ADDING TO THE STATUTE, SO ARE WE SURE IS THAT THE U.S. SUPREME COURT'S DEFINITION OF SOLICITATION INCLUDES THIS VERY LIMITED, VERY SPECIFIC ASPECT?

I DON'T KNOW WHAT QUALIFIER YOU ARE SPEAKING TO.

YOU ARE TALKING ABOUT IT HAS TO BE IN PERSON AND IT IS PERSONAL AND IT IS INVASIVE. WE KNOW THAT THEY DISCUSSED THOSE TERMS, BECAUSE IT WAS TALKING ABOUT WHAT WAS HAPPENING IN SOME OF THE CASES, WITH REGARD TO THE 30-DAYTIME LIMIT FOR LAWYERS, BUT DID THAT CASE OR DID THAT COURT DEFINE SOLICITATION IN SUCH A MANNER THAT, IF YOU SAY SOLICITATION SAVES THE STATUTE, THAT WE DON'T HAVE A VAGUENESS ISSUE? OR PROBLEM, I GUESS I SHOULD SAY. I KNOW WE HAVE THE ISSUE.

I THINK THAT WE CAN LOOK TO THE CASE LAW, THAT DEFINITION OF SOLICITATION. THAT THEY TALK ABOUT WE, ALSO, LOOK TOWARDS COMMON SENSE AND TO DICTIONARY DEFINITIONS, BUT, YES, I THINK A SOLICITATION IS A% AND -- A PERSONAL TYPE CONTACT, BE IT BY TELEPHONE OR PERSONAL, THAT IS INTENDED FOR SOMEBODY. IT IS JUST NOT A -- IT IS NOT A CASUAL SUGGESTION. IT IS NOT AN ADVERTISEMENT. I MEAN, THERE ARE DISTINCTIONS THERE, AND I THINK THE COURTS DO SET THAT OUT FOR US.

IS THERE ANY DIFFERENT ANALYSIS, BECAUSE IN THIS CASE, WE ARE ACTUALLY CRIMINALIZING THE CONDUCT, WHEREAS, IN CENTRAL HUDSON, AND ALL THE OTHER CASES, WE ARE DEALING WITH A REGULATION OF A PROFESSION. SHOULD THE ANALYSIS BE STRICTER, BECAUSE WE ARE ADMITTEDLY TAKING INTO ACCOUNT THAT THERE COULD BE VERY INNOCENT -- THAT THERE IS INNOCENT CONDUCT THAT IS BEING CRIMINALIZED, OR IS -- IF THIS BEATS THE CENTRAL HUDSON TEST FOR COMMERCIAL SPEECH, THERE IS NO OTHER ADDITIONAL PROBLEM FOR THE FACT THAT IT IS, ALSO, BEING CRIMINALIZED?

NO, JUSTICE PARIENTE, I DON'T THINK THE FACT THAT THIS IS BEING CRIMINALIZED IS, REALLY, TAKEN INTO EFFECT. I THINK THE CENTRAL HUDSON TEST IS WHAT WE NEED TO ADDRESS.

WE COULD DO THE SAME EXACT. WE COULD CRIMINALIZE ATTORNEYS WHO WERE SOLICITING, WITHOUT A 30-DAYTIME LIMIT. ANY TIME LIMIT, FOR THEM TO SOLICIT CLIENTS FOR FILING PERSONAL INJURY CLAIMS. COULD WE CRIMINALIZE THAT, TOO, UNDER -- IF WE UPHOLD THIS PARTICULAR STATUTE?

IF YOU -- IF YOU ARE TALKING ABOUT CRIMINALIZE AGO BAR RULE, I DON'T SEE WHY THE LEGISLATURE CAN'T LOOK.

BUT THIS DOESN'T EVEN HAVE A LIMIT OF 30 DAYS. IN OTHER WORDS, IF AN ATTORNEY, IN THE FUTURE, THE LEGISLATURES SAY THAT, YOU KNOW WHAT? THERE ARE TOO MANY CLAIMS BEING FILED, AND WE THINK THAT THERE ARE A LOT OF REALLY INVALID CLAIMS, AND INSTEAD OF LETTING THE COURTS DECIDE WHICH ARE THE VALID OR INVALID CLAIMS, WE ARE GOING TO JUST SAY IT IS UNLAWFUL TO SOLICIT A PERSON, FOR THE PURPOSE OF FILING A PERSONAL INJURY CLAIM OR A MOTOR VEHICLE ACCIDENT LAWSUIT. ISN'T THAT SAME ANALYSIS APPLY, BASED ON WHAT YOU HAVE SAID HERE TODAY?

I THINK IT DOES, BECAUSE I THINK WHAT WE NEED TO LOOK TO IS THE HISTORY, AND YEAH THEY ARE CRIMINALIZING -- AND WHY THEY ARE CRIMINALIZING THE SOLICITATION IN THIS PARTICULAR STATUTE. I THINK THE GRAND JURY REPORT SETS THAT OUT, AS TO WHY THEY ARE

NOT REQUIRING ANY PROOF OF MEANS, IN ORDER TO ACHIEVE THE END. WE DO THAT IN OTHER SITUATIONS. WE DO THAT. WE CRIMINALIZE POSSESSION OF BURGLARY TOOLS, TO PREVENT BURGLARY, AND WE DRIMLIZE POSSESSION -- CRIMINALIZE POSSESSION OF DRUG PARAPHERNALIA, TO ELIMINATE DRUG USAGE.

YOU ARE SAYING THAT, IF I GO AND TELL A FRIEND OF MINE THAT IS IN AN ACCIDENT, AND TELL THEM TOLL GO TO SO-AND-SO CHIROPRACTOR -- AND TELL THEM TO GO TO SO-AND-SO CHIROPRACTOR, DID I UNDERSTAND YOU TO SAY THAT WOULD NOT BE SOLICITATION AT THAT POINT?

NO, JUSTICE SHAW. I DON'T BELIEVE THAT THAT WOULD BE SOLICITATION.

WHAT WOULD MOVE IT INTO SOLICITATION? WHAT WOULD SOMEONE HAVE TO DO, FOR IT TO BE SOLICITATION?

SOLICITATION IS WHEN YOU ARE SOLICITING SOMEBODY, PARTICULARLY TO GONi TO THAT HEALTH CARE PROVIDER, AND MAYBE NOT THAT YOU ARE RECEIVING A FEE OR THAT YOU ARE WORKING FOR HIM, BUT I THINK THAT THAT COULD BE A FACTOR, IN IT, ALSO.

GIVE ME AN EXAMPLE OF IT. I GUESS THAT IS WHAT I AMNi TRYING TO GET AT.

AN EXAMPLE OF SOLICITATION THAT WOULD FALL UNDER THE STATUTE?

WHAT WOULD CLEARLY FALL UNDER THE STATUTE.

WHAT WOULD CLEARLY FALL UNDER THE STATUTE IS EXACTLY THE FACTS THAT WE HAVE IN THE CASE AT HAND. WE HAVE A CHIROPRACTOR WHO HIRED AN OUTSIDE CONSULTING GROUP, AND WHAT THEY DID WAS THEY GO TO LAW ENFORCEMENT AGENCIES, OBTAIN MOTOR VEHICLE ACCIDENT REPORTS. THEY TAKE THE MOTOR VEHICLE ACCIDENT REPORTS, ANDNi THEY LOOK AT WHOEVER, WHATEVER VICTIMS WERE ON THAT REPORT. THEY DIRECTLY CONTACT THAT PERSON. THEY SAY DO YOU PIP BENEFITS? YOU NEED TO GO SEE THIS CHIROPRACTOR. DO YOU HAVE ANY SYMPTOMS. GO SEE HIM. AND THEY RECEIVE A FEE FOR DOING THAT.

YOU ARE IN YOUR REBUTTAL.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS CHARLES BRADFORD, AND I REPRESENT -- MY NAME IS MICHAEL DUTKO, AND I REPRESENT CHARLES BRADFORD. THIS HAS TO DO WITH A SOLICITATION --co THIS IS A STATUTE THAT IS SOLICITATION FOR BUSINESS. THE STATUTE WOULDN'T COVER SOMEBODY GOING AND TELLING THEIR RELATIVE THAT THEY SHOULD GO AND SEE A PERSON FOR MEDICAL TREATMENT. THE STATUTE DOESN'T COVER THAT.

I WOULDN'T THINK SO. AND IT SEEMS TO SUGGEST NOT. AND THE CASE LAW, FROM THE SUPREME COURT, THE UNITED STATES SUPREME COURT AND OTHERS, THAT TALK ABOUT THE CONCEPT AND THE TERM SOLICITATION, TALK IN CONCEPT OF A BUSINESS FOR BUSINESS PURPOSE. BUT THAT IS NOT PARTICULARLY CLEAR TO SIFT FROM THAT EXACTLY WHAT IT MEANS. WE KNOW WHAT HAS BEEN ALLEGED IN THIS CASE HAS TO HAVE GONE ON, BUT THERE ARE JUST A HOST OF POSSIBILITIES. ONE OF THE WORDS THAT WAS MENTIONED EARLIER HAD TO DO WITH THAT IS YOUR INTERPRETATION. YOU ARE READING SOMETHING INTO THAT. OUR PROBLEM HAS BEEN THAT PROSECUTORS ACROSS THE STATE HAVE READ INTO IT WHAT THEY HAVE CHOSEN TO READ INTO IT. WITH RESPECT TO THE QUESTION RAISED BY JUSTICE QUINCE EARLIER --

YOU ARE ASKING FACIAL --

YES, SIR. I AM ADDRESSING THE FACIAL, THE LANGUAGE OF THE STATUTE.

THERE IS NO CONSTRUCTION OF THIS STATUTE, WHICH COULD BE NARROW, WHERE THE STATUTE COULD BE NARROWED TO SAVE IT?

I THINK THAT THERE IS. I THINK THAT, IN HISⁿ PIN, IN THE BRAD -- IN HIS OPINION, IN THE BRADFORD OPINION, BEFORE THE FOURTH DISTRICT COURT OF APPEALS, I THINK^{co} JUDGE POLE ENATTEMPTED TO -- POLLEN MADE THAT DISTINCTION THAT THIS WAS MADE WITH THE INTENT TO DEFRAUD. I FIND IT INCONSISTENT, ESPECIALLY WITH THE STATUTE, THIS MORNING, THE PETITIONER, IN SUPPORT OF THIS STATUTE, CONTINUES TO^{co} RELY ON AND CITE THIS DADE COUNTY GRAND JURY REPORT THAT DETERMINED THERE WAS FRAUD RAMPANT WITHIN THE SYSTEM. PEOPLE CONTACTING ACCIDENT VICTIMS AND OTHER PEOPLE. IF FRAUD IS THE EVIL TO BEⁿ ADDRESSED, THEN IT SEEMS ONLY LOGICAL THAT FRAUD IS THE ELEMENT TO BE INCLUDED IN THE STATUTE. WITH RESPECT TO THE QUESTION ARE -- QUESTION RAISED EARLIER, BY JUSTICE LEWIS AND JUSTICE PARIENTE, THERE WERE OTHER STATUTES OF A REGULATORY NATURE THAT REGULATE WE, AS LAWYERS, AND OTHER PROFESSIONALS, AS TO CONTACTING PROSPECTIVE CLIENTS --

BUT THE U.S. SUPREME COURT HAS ALLOWED SOME DEGREE OF NARROWING OF THE CONCEPT OF COMMERCIAL-FREE -- COMMERCIAL FREE SPEECH, IN INSTANCES IN WHICH THERE IS A DIRECT, IN-PERSON VISIT.

YES, SIR.

OR IN THE 30-DAY LIMITATION, SO^{co} THERE ARE -- THERE IS NARROWING, WHICH THE US SUPREME COURT HAS ALLOWED UNDER THE CIRCUMSTANCES.

YES. WITH RESPECT TO SOME OF THOSE REGULATORY PROVISIONS, FLORIDA BAR VERSUS WENTFORD IS THE ONE THAT IS MOST OFTEN KRIED, IN MINE AS WELL AS THE AMICUS BRIEFS, BUT IN THAT REGARD, THE FOCUS WAS NOT ON FRAUD. THE FOCUS WAS ON THE PROTECTION OF THE RECENTLY RECENTLY-INJURED MOTORIST OR CLAIMANT OR PROSPECTIVE CLAIMANT OR PATIENT, ANⁿ SOME DEFERENCE TO THAT PERSON, AND, IN FACT, THE LANGUAGE IN FLORIDA BAR VERSUS WENTFORT, REALLY, FOCUSED ON THE VULNERABILITY, I THINK, OF A PROSPECTIVE CLIENT OR PATIENT AT A PARTICULAR TIME, AND THEN THE LANGUAGE, ALSO, HAD TO DO WITH THE FACT THAT THE -- THAT ATTORNEYS ARE TRAINED IN THE ART OF PERSUASION, SO THAT A PERSON'S VULNERABILITY MAY BE EXPLOITED. THAT TIES INTO EXACTLY WHAT I WAS SAYING. THAT IS NOT THE ARGUMENT THAT THE STATE, AT ANY POINT, HAS GIVEN, IN SUPPORT OF THE CONSTITUTIONALITY OF OR THE APPLICABILITY OF THIS STATUTE. TIME AND TIME, AGAIN, THE ARGUMENT SEEMS TO BE THAT WHICH IS PUT FORTH THIS MORNING, AND THAT IS THE DADE GRAND JURY REPORT, PREVENTION OF FRAUD, AND IT IS ON THE OTHER END OF THAT EQUATION. I WOULD SUGGEST TO YOU THAT, IF THERE WAS EMPEICAL DATA, ANECDOTAL DATA, SOMETHING ON THE OTHER END, SOME PERSON WHO WAS CONTACTED BY THE PREVAT GROUP OR SOME OTHER GROUP OUT THERE, MADE THE CLAIM THAT THEY WERE SPECIFICALLY ENDORSED OR SOMETHING LIKE THAT, I THINK, THEN, SOME VIEW TOWARDS NARROWING OR OPPOSING APPROPRIATE TIME AND PLACE, TYPE, RESTRICTIONS ON THE STATUTE, MIGHT BE APPROPRIATE, BUT AS DRAFTED, AS WRITTEN, AND AS APPLIED TO THIS CASE, SUBSECTIONⁿ 8 APPEARS TO CONSTITUTE A TOTAL BAN ON SOLICITATION, AS A STRICT LIABILITY-TYPE OF STATUTE. THE PRIMARY ARGUMENT THAT WE HAVE RAISED, IN THE COURT BELOW, AND THAT WHICH I THINK IS THE STRONGEST, AS I APPEAR BEFORE THIS COURT THIS MORNING, HAS TO DO, EXACTLY, WITH APPLICATION OF THAT CENTRAL HUDSON TEST, AND WHETHER THE -- CLEARLY, AT THE OUTSET, THE FIRST STEP OF THE TEST HAS TO DO WITH WHETHER OR NOT THE SPEECH, THE COMMERCIAL SPEECH INVOLVED, IS LAWFULLY, NONDECEPTIVE, NONMISLEADING. THAT HAS NEVER BEEN AN ISSUE. THE SECOND STEP HAS TO DO WITH THE --

WOULDN'T YOU HAVE TO AGREE, THOUGH, THAT THE NO-FAULT SYSTEM IS VULNERABLE TO THE VERY TYPE OF CONCERN THAT THE STATE IS RAISING HERE, AND THAT IS THAT YOU GO AND GET AN ACCIDENT REPORT TO FIND PEOPLE We' HAVE BEEN INVOLVED IN AN ACCIDENT, AND THEN THOSE PEOPLE CAN BE SHEPHERDED TO A MEDICAL PROVIDER, WHO IS IN IT FOR THE SOLE PURPOSE OF GETTING SOME TYPE OF MEDICAL BILLS BUILT UP, WHICH CAN BE, REGARDLESS OF FAULT, ASSESSED AGAINST THE NO FAULT CARRIER. NOW, THERE HAS TO BE SOME ABILITY TO HAVE THAT SYSTEM PROTECTED. WOULDN'T YOU AGREE?

ABSOLUTELY. AND I THINK THAT, BY READING INTO THE STATUTE, AND THAT IS WHERE I THINK JUSTICE POLLIN, MAYBE, HAD THE FORESIGHT TO REALIZE THAT, WITHOUT GRAFTING OUT THE INTENT OF THE LANGUAGE THAT IS INTENDED TO DEFRAUD, IT IS TOO FAR AND TOO PERVASIVE. IN ADDRESSING THAT LANGUAGE WITHIN, YOU ARE SUGGESTING THAT, IF WHAT THE COURT IS SUGGESTING IS THAT, IN THE COURSE OF LISS IS TIGE A PATIENT -- OF SOLICITING A PATIENT, IT HAS BEEN SUGGESTED TO THEM HOW TO STATE THEIR CLAIM, HOW TO COMPLAIN OF A PARTICULAR INJURY, SOME SEED OF FRAUD, THEN I THINK THAT THE STATUTE WOULD APPLY TO THAT SITUATION. IF WE INCLUDE THAT INTENTS7 TO DEFRAUD LANGUAGE. THAT HAS NEVER BEEN AN ISSUE HERE, IN THIS CASE. IN BRADFORD, AND OUR FACTS ARE DIFFICULT TO DISTILL FROM THE RECORD. IT, REALLY, THE CASE ROSEANNE FALLS ON MANY PLEADINGS AND NOT A LOT OF LIVE TESTIMONY, BUT WHAT WAS UNDISPUTED IN BRADFORD IS THAT FIVE DOCUMENTED, AND THERE WAS, POSSIBLY, A SIXTH, ACCIDENT VICTIM, WAS REFERRED TO HIS OFFICE BY THE PREVAT GROUP, AND OF THOSE FIVE, TWO PEOPLE RECEIVED, SHOWED UP AND RECEIVED TREATMENT TREATMENT THAT WAS NOT IN -- RECEIVED TREATMENT THAT WAS NOT IN DISPUTE. IT WAS LEGITIMATE, IT WAS NOT FRAUDULENT. HEALTH CLAIM FORMS WERE SUBMILENi -- SUBMITTED, AND IN FACT AT LEAST ONE OF THOSE PATIENTS WENT ON TO AN ORTHOPEDIC SURGEON AND HAD BACK SURGERY. THERE WAS NO QUESTION AS TO THE LEGITIMACY OF THE CLAIMS. THERE WERE THREE OTHER PEOPLE SENT OVER TO THE OFFICE THAT DIDN'T END UP RECEIVING TREATMENT, FOR WHICH HEALTH CLAIM FORMS WERE SUBMITTED, SO WHAT I AM SUGGESTING TO THE COURT IS THE ANECDOTAL TYPE OF ANALOGIESNi AND SUGGESTIONS AND SITUATIONS, THAT THE PETITIONER SEEMS TO BE RAISING, ARE JUST THAT. THEY ARE NOT SUPPORTED BY THE FACTS AND THE RECORD, CERTAINLY FROM THIS CASE. I HAVE HAD THE BENEFIT OF REVIEWING THE BRIEFS, THE AMICUS BRIEFS FILED BY THE FOLKS IN JACKSNiILLE AND THE FOLKS IN MIAMI, AND ESPECIALLY IN THE HANSBOROUGH CASE, WHICH IS A MORE RECENT OPINION THAN OURS SET FORTH, IT SEEMS, ALSO, TO DEAL WITH ONE PARTICULAR SITUATION, WHERE THERE WAS ONE CLAIM SENT IN, AND THERE WAS NO QUESTION AS TO THE LEGITIMACY OF THE CLAIM.

ARE THESE PERSONAL SOLICITATIONS?

THESE ARE TELEPHONIC SOLICITATIONS.

AND, AGAIN, WE ARE ON JUST MOTIONS TO DISMISS. THE RECORD DOESN'TNi REFLECT WHETHER THERE IS THE -- WHAT THE NATURE OF THE SOLICITATION WAS. WAS IT JUST IF YOU HAVE BEEN INJURED, HERE IS A GOOD CHIROPRACTOR TO GO TO, OR YOU SHOULD GO TO THIS CHIROPRACTOR, BECAUSE THE CHIROPRACTOR IS GOING TO TELL YOU WHETHER YOU ARE INJURED. DO WEcINOW ANYTHING ABOUT THAT?

THERE WAS -- FIRST OF ALL, THE ACCIDENT REPORTS WERE PURCHASED FROM THAT LIST OF PEOPLE TO CALL. GENERALLY IT IS CONTAINED IN THE INDEX THAT THE STATE HAS SUBMITTED WITH ITS BRIEF, SORT AFTER SCRIPT THAT WAS FOLLOWED BY PEOPLE CALLING, INDIVIDUAL PEOPLE, AND IT WAS DETERMINED OR IT WAS SUGGESTED THAT IF, INDEED, THEY WERE INJURED, THEY WERE ELIGIBLE FOR SERVICES AND INITIAL CONSULTATION, FREE CONSULTATION, BY A GOOD REPUTABLE CHIROPRACTOR IN A PARTICULAR AREA, THEN THEY WERE DIRECTED THERE AND LEFT TOokNi MAKE THE APPOINTMENT AND SHOW UP ON THEIR OWN. THERE WAS NO --

IS THERE ANY RECORD AS TO WHAT THE ARRANGEMENT WAS BETWEEN THE CHIROPRACTIC PHYSICIAN AND THE PERSON THAT WAS MAKING THE SOLICITATION?

YES, SIR, AND THAT RECORD WAS THAT THE CHIROPRACTIC PHYSICIANS HAD ENTERED, AT VARIOUS LEVELS, CONTRACTUAL AGREEMENTS WITH THE PREBECK GROUP IN THIS CASE, THAT THE PREBECK GROUP WOULD DO THE MARKETING, SOLICITING. CERTAIN CHIROPRACTORS WOULD DO THE WORK THAT WAS REFERRED TO.

ON A FLAT-FLEE BASIS OR WHAT ARRANGEMENTS?

THAT IS CONFUSING IN THE RECORD. GENERALLY I WILL TELL YOU THAT, WITH FORCE SOME OF THE OTHER CASES, IT WAS SOMEWHAT OF A FLAT FEE, X AMOUNT OF DOLLARS FOR SO MANY REFERRALS. IN THIS CASE, IT WAS, THE FACTS WERE THAT SOME MONEY WAS PAID FOR WHAT WAS SUPPOSED TO BE TEN REFERRALS. FIVE OR SIX SHOWED UP, BUT TO SOME EXTENT, THAT SEEMS TO BE UNDISPUTED, THAT THE PERVASIVE PRACTICE, AROUND THE STATE, WAS THAT PEOPLE WERE PAYING A FEE IN RESPECT FOR REFERRALS.

WOULD AWE R -- WOULD YOU AGREE THAT, IN SOME OF THESE CASES, IT FALSE WITHIN THE PARAMETERS OF SOLICITATION, SUCH AS SOLICITATION AT HOSPITALS? DID THE STATE DO THAT? THAT THAT IS NOT AN UNREASON UNREASONABLE SOLICITATION?

I THINK THAT THAT IS AN INAPPROPRIATE SOLICITATION.

HOW ABOUT WHEN IT MAKES REFERENCE TO THE COURTS?

YES, SIR,. IF YOU ASK ME WHAT MY PERSONAL OPINION IS, I ABSOLUTELY THINK THAT THAT WOULD BE APPROPRIATE TO BAN OR RESTRICT THAT.

YOUR VIEW IS THAT YOU COULD NOT RESTRICT SOLICITATION OF THIS TYPE IN THE COURT SYSTEM OR IN THE HOSPITAL?

I THINK BOTH COULD BE RESTRICTED, YES, SIR, I DO.

RESTRICTED.

YES, SIR.

SO WHAT WOULD WE DO, THEN, WITH THOSE CERTAIN CIRCUMSTANCES WITHIN THE STATUTE, THAT THERE MAY BE SOME AREAS THAT, MAYBE, WE CAN, WITHIN CONSTITUTIONAL PARAMETERS, DEAL WITH THAT? IS IT NECESSARY TO TO SAY OUT THE ENTIRE STATUTE, OR WOULD IT BE ONLY AS APPLIED?

I, REALLY, STRUGGLE WITH THE ANSWER TO THAT QUESTION, AND IT KIND OF GOES BACK TO MY INABILITY TO INTERPRET EXACTLY WHAT WAS INTENDED IN THE STATUTE, TO START W BUT I THINK, I THINK THAT THE ANSWER TO THAT QUESTION, REALLY, WOULD LIE, MORE, IN SOME ANALYSIS OF THE OTHER END OF THE EQUATION. I DON'T THINK EITHER OF THOSE SITUATIONS, REALLY, WOULD ADDRESS THE FRAUD ISSUE, BUT IF THE EVIL TO BE ADDRESSED OR, IF THE ISSUE TO BE PROTECTED THERE IS THE PATIENT OR THE PARTICULAR CLAIMANT, I THINK SOME RESTRICTIONS LIKE ARE APPLIEDnr TO ATTORNEYS AND OTHER PROFESSIONALS MIGHT BE APPROPRIATE, AND I THINK THAT WOULD BE, FRANKLY I THINK THAT THAT PRACTICE WOULD BE OFFENSIVE, AND I THINK THAT THERE ARE APPROPRIATE RESTRICTION THAT IS COULD BE DRAFTED. BUT IF YOU READ, FURTHER, IN THE STATUTE, AFTER IT DISTINGUISHS THESE PARTICULAR PLACES AND SITUATIONS, I THINK THE LANGUAGE IS -- THE LANGUAGE IS -- OR ANYWHERE -- AND THAT IS WHAT, REALLY, IS MEANT BY THAT. IF WE GO BACK AND TAKE A LOOK AT THE HISTORY TRI, WE KNOW THE ANSWER -- AT THE HISTORY, WE KNOW THAT THE

ANSWER REQUIRED MONETARY HISTORY, AND THANK HAS BEEN PASSED. THE MONETARY SUBSIST TENS IS NOT SHIFTED TO THE NATURE OF THE INJURY, KIND OF, THRESHOLD FOR TORT CLAIMS. IS THAT YOUR UNDERSTANDING AS WELL?

THAT IS MY UNDERSTANDING, AND THAT IS ADDRESSED, I THINK, VERY ARTICULATELY, IN THE BRIEF FILED FROM THE NASH-CROHN I KNOW CASE IN JACKSONVILLE -- CRONIN CASE IN JACKSONVILLE. THEY HAVE ADDRESSED WHERE THAT SPECIFICALLY IS WHERE THIS STATUTE IS INCLUDED IN THE STATUTORY SCHEME. AND THE NO-FAULT ADDRESSED AFTER THE INITIAL PASSAGE OF SECTION 8. THAT IS ADDRESSED THERE.

WHAT ABOUT THE IMPACT ON THE STATUTE, THAT WHICH MAY BE ABLE TO BE SAVED AND THAT WHICH WE CANNOT SAVE.

I DON'T THINK THAT -- I DON'T KNOW THAT THAT, IN ITSELF, HAS A SIGNIFICANT IMPACT.

OKAY.

I DO KNOW THAT, IN THE ANALYSIS THAT WE HAVE CONSIDERED, THE EVIL THAT THE STATE, NOW, ADDRESSES, WITH RESPECT TO THE SITUATION THAT EXISTED IN THE GRAND JURY REPORT AND THE STATE, THEN, OF THE FLORIDA NO FAULT, THIS STATUTE WAS ARGUABLY ADDRESSED TO COMBAT THAT. I THINK THE MODIFICATION OR THE AMENDMENT TO THE FLORIDA STATUTE, LIP NATURE THE \$-- ELIMINATING THE \$1 NOW CAP IN THE NO -- THE \$1,000 CAP IN THE NO FAULT AND NOW MAKING IT MORE SUFFICIENT TO THE PATIENT, MINIMIZES OR AT LEAST LESSENS THE CONCERN ABOUT THE POTENTIAL FOR FRAUD, BUT THE PROBLEM, HERE, REMAINS THE SAME, AND THAT IS PERFECTLY INNOCENT -- N TO SOLICIT BUSINESS, AND ON THE OTHER HAND, IT IS NOT ILLEGAL TO SUBMIT APPROPRIATE HEALTH CLAIM FORMS FOR REIMBURSEMENT FROM PIP INSURANCE, BUT BY IMPMINGS OF THIS STATUTE -- BUT BY IMPOSITION OF THIS STATUTE AND CERTAINLY BY THIS STATUTE OF THIS CASE BEFORE THE COURT, A THIRD-DEGREE FELONY HAS BEEN CREATED BY TWO INDIVIDUALco COMPONENTS THAT ARE INNOCENT ACTIVITY, AND I WOULDni JUST POINT OUT THAT, BEYOND THIS BEING A THIRD-DEGREE FELONY IS APPLIED IN THIS CASE, IN THE NASH-CRONIN CASE, IT WAS TAKEN TO THE NEXT EXTENT. THAT IS THE CASE FROM JACKSONVILLE, WHERE A VIOLATION OF 8.17, UNDER THE INSURANCE FRAUD STATUTE, WAS CITED AS PREDICATE ACT FOR A RICO PROSECUTION, A RACKETEERING PROSECUTION.

IN THIS CASE, IS THE ANALYSIS ANY DIFFERENT THAN IF THIS WAS JUST A REGULATION ENACTED BY THE DEPARTMENT? WHO REGULATES CHIROPRACTORS? THE DEPARTMENT OF BRINGSNESS AND PROFESSIONAL -- BUSINESS AND PROFESSIONAL REGULATION?

ULTIMATELY BUT THERE IS A BOARD OF CHIROPRACTIC.

IF THIS WAS PASSED BY THEM, IS OUR ANALYSIS CENTRAL JUST HUDSON, OR IS THERE ADDITIONAL ANALYSIS, BECAUSE WE ARE DEALING WITH A CRIMINAL STATUTE?

I THINK THAT THIS MUST BE MORE STRICTLY CONSTRUED, BECAUSE IT IS A CRIMINAL STAUD. IT HAS BEEN -- THAT POINT HAS BEEN ADDRESSED IN THE BRIEF. THE REGULATORY BOARDS ARE FREE TO PASS WHATEVER REGULATIONS THOSE -- WITHIN THE PROFESSION THAT THIS EVENING ARE APPROPRIATE.

THEY ARE NOT FREE. BECAUSE IF IT IS COMMERCIAL SPEECH, THEY ARE, STILL, BOUND BY CENTRAL HUDSON, SO INi AMco ASKING, BEYOND THE CENTRAL HUDSON TEST, WHICH IS A FAIRLY STRICT TEST, IS THERE ANY ADDITIONAL ANALYSIS THAT WE ARE REQUIRED TO MAKE, BECAUSE IT IS -- NOT ONLY IS IT INNOCENT CONDUCT, BUT IT IS INNOCENT CONDUCT NOT ONLY THAT IS BEING REGULATED BUT BEING CRIMINALIZED?

YES, MA'AM. WE HAVE ADDRESSED IN THE BRIEF, BUT THE CONSTRUCTION IS A STRICTER CONSTRUCTION, AS THIS IS A CRIMINAL STATUTE.

STRICTER THAN WHAT PRONG IS DIFFERENT THAN THE FOUR PRONGS OF CENTRAL HUDSON, IF IT MEETS CENTRAL HUDSON? WHAT ELSE HAS TO BE MET?

IF THIS SFAUT MET CENTRAL HUDSON, I DON'T THINK -- IF THIS STATUTE MET CENTRAL HUDSON, I DON'T THINK ANYTHING ELSE --

WE, REALLY, CAN'T ANALYZE IT ANY DIFFERENTLY THAN IF IT WAS A REGULATION PASSED BY A PROFESSION THAT IS STILL BOUND TO ALLOW REASONABLE COMMERCIAL SPEECH BUT, ALSO, TO REQUIRE CERTAIN PARAMETERS. CORRECT?

YES, MA'AM.

OKAY. IS THE BAILEY VERSUS MORALES CASE, WHERE THE FIFTH DISTRICT COURT OF APPEALS, FIFTH CIRCUIT, DECLARED A TEXAS STATUTE UNCONSTITUTIONAL, IS THAT STATUTE THE SAME AS THIS STATUTE?

NO, MA'AM. THAT IS A REGULATORY STATUTE.

BUT IT IS THE SAME CONDUCT THAT IS BEING REGULATED?

IT IS, BECAUSE I COME BACK TO THE POINT THAT I MADE MAID BEFORE. IT WASN'T DESIGNED TO COMBAT INSURANCE FRAUD. IT WAS DESIGNED TO ADDRESS WHAT WE TALKED ABOUT EARLIER, CONCERNS FOR THE PARTICULAR PEOPLE BEING CONTACTED, AND IN SOME WAY TO TRY TO ENHANCE PROFESSIONISM AND ENSURE THE INTEGRITY OF THE CHIROPRACTORS THAT WORK, BUT IT WASN'T DESIGNED AS A CRIMINAL STATUTE, WITH SOME STATED INTENT TO COMBAT INSURANCE FRAUD. AND THAT, BY THE WAY, ALSO, STEMS FROM AN EARLIER CASE FROM THE SAME COURT, INNOVATIVE DATA SYSTEMS VERSUS MORALES, WHERE, IN THAT CASE, THE PRACTICE OF PURCHASING AUTOMOBILE REPORTS WAS DETERMINED TO BE -- IN TEXAS, THOUGH, THE FIFTH DISTRICT COURT OF APPEALS, SEEMS TO BE BLENDING, STEP-BY-STEP, INTO AN ISSUE THAT I THINK WE ARE STRUGGLING WITH IN THIS STATUTE THAT IS THE COMPONENT PARTS ARE LAWFULLY AND LEGITIMATE, BUT BROUGHT TOGETHER IN OUR STATUTE, SUBSECTION 8, IT IS CRIMINALIZED OTHERWISE INNOCENT CONDUCT. THANK YOU FOR THE COURT'S TIME. ANY OTHER QUESTIONS?

THANK YOU.

THANK YOU. !9qy".

MAY IT PLEASE THE COURT. JUSTICE PARIENTE, TO ANSWER A FEW OF YOUR QUESTIONS, IF I MAY, THE SOLICITATION SCRIPT HAD A SPECIFIC QUESTION AS TO WHETHER OR NOT THAT PERSON HAD PIP WEB FITS. I THINK IT IS -- PIP BENEFITS. I THINK IT IS QUESTIONABLE AS TO IF THEY DID NOT HAVE PIP BENEFITS, WHETHER THEY WOULD HAVE BEEN REFERRED TO THE CHIROPRACTOR IN THE FIRST PLACE. I THINK THAT WAS PROBABLY A LIMITATION, IF THEY DIDN'T HAVE PIP BENEFITS, I THINK THE CONVERSATION, SAFE TO ASSUME, ENDED RIGHT THERE.

YOU MEAN IF THEY HAD OTHER INSURANCE BENEFITS?

COULD THEY HAVE OTHER INSURANCE BENEFITS?

I MEAN, EVEN IF THEY HAD OTHER INSURANCE BENEFITS?

WE ARE DEALING WITH THE REQUIRED PIP BENEFITS. I DON'T KNOW IF THAT WAS A QUESTION IN

THE SCRIPT, BUT WE ARE DEALING WITH THE REQUIRED \$10,000 MINIMUM PIP BENEFIT, SO I THINK THAT IS WHAT THEY WERE LOOKING AT SPECIFICALLY. ANY OTHER BENEFITS, THROUGH OTHER HEALTH CARE PROVIDERS, WOULD, OF COURSE, KNOW, WOULD BE SOUGHT OUT BY THE VICTIM. I WANT TO ADDRESS THE BAILEY CASE. THAT CASE IS VERY DIFFERENT. I MEAN, IT IS CLEARLY DISTINGUISHABLE. THAT, THE BAILEY CASE OUT OF THE FIFTH, THAT WAS DIRECT. THAT WAS PERSONAL, A RESTRICTION ON ALL SOLICITATION, AND, IN FACT, THEY TALK IN THAT CASE, ABOUT HOW THAT WOULD EVEN RESTRICT SOLICITATION OF A CHIROPRACTORS THAT WOULD WANT TO GO TO A NURSING HOME AND LECTURE THE PATIENTS, THERE, ABOUT THE BENEFITS OF CHIROPRACTIC CARE FOR TREATMENT OF THE ART RIGHT, I AND THAT IS EXACTLY WHY IT WAS TOO BROAD. IN OUR CASE, WE ARE DEALING SPECIFICALLY WITH PERSONAL OR TELEPHONE SOLICITATION. THAT IS THE EVIL THAT HAS BEEN ADDRESSED HERE. THAT IS WHAT HAS BEEN ADDRESSED, THE EVIL THAT HAS BEEN ADDRESSED IN OTHER CASES IN THE SUPREME COURT, THAT THEY FOUND THAT THAT IS OVER BEARING, AND THAT IS WHAT DISTINGUISHES THIS -- DISTINGUISHES THIS CASE FROM THE BAILEY CASE.

THANK YOU. YOUR TIME IS UP. THANK YOU, COUNSEL.