

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN,
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA
SUPREME COURT.

MRS.†QUINCE WILL NOT BE ABLE
TO ATTEND THE ORAL ARGUMENT
TODAY, BUT WILL BE
PARTICIPATING IN THE CASE.
FIRST CASE OF THE DAY IS
CITRUS COUNTY HOSPITAL BOARD
VERSUS CITRUS MEMORIAL HEALTH
FOUNDATION.

>> MAY IT PLEASE THE COURT,
I'M BARRY RICHARD, AND I AM
COUNSEL FOR THE HOSPITAL
BOARD.

SITTING WITH ME AT COUNSEL
TABLE IS ASSISTANT ATTORNEY
GENERAL JOHN WHITNEY.

THE ATTORNEY GENERAL HAS
WAIVED ORAL ARGUMENT AND
STANDS ON ITS BRIEF WHICH
SUPPORTS THE CONSTITUTIONALITY
OF THE LAW AT ISSUE.

ALSO WITH ME IS WILLIAM GRANT,
GENERAL COUNSEL FOR THE
HOSPITAL BOARD.

THESE FACTS, YOUR HONORS, ARE
UNDISPUTED.

THE FOUNDATION WAS CREATED BY
A PUBLIC AGENCY.

THE ONLY MEMBER OF WHICH IS
THE HOSPITAL BOARD.

ITS SOLE PURPOSE FROM THE DAY
OF ITS CREATION UNTIL TODAY
HAS BEEN TO OPERATE A
GOVERNMENTAL FUNCTION
DELEGATED TO IT BY THE
HOSPITAL BOARD IN A FIELD THAT

IS HIGHLY REGULATED BY THE STATE AND BY THE FEDERAL GOVERNMENT BY VIRTUE OF THE FACT THAT IT HAS SIGNIFICANT IMPACT ON THE HEALTH AND WELFARE OF THE PEOPLE.

>> I ASSUME YOU'RE GOING TO THE ARGUMENT THAT BECAUSE IT HAS PUBLIC ATTRIBUTES, THAT SOMEHOW THE CONSTITUTIONAL PROHIBITION AGAINST IMPAIRMENT OF CONTRACT DOESN'T APPLY?

>> THAT'S CORRECT, YOUR HONOR.

>> HAVE WE IS THERE A CASE THAT SAYS THAT?

I MEAN,

>> IF I CAN, I WOULD LIKE TO REVERSE IT AND PUT IT THE OTHER WAY.

IN ADDITION TO WHAT I JUST MENTIONED, ALL OF THE PROPERTY OWNED BY THE HELD BY THE FOUNDATION AS PUBLIC PROPERTY, ALL OF ITS MONEY IS PUBLIC MONEY, AND IT SERVES NO PRIVATE INTEREST WHATSOEVER.

SO IN RESPONSE TO YOUR QUESTION, THERE IS NO CASE, STATE OR FEDERAL, THAT HAS EVER HELD THAT AN ENTITY WITH THOSE ATTRIBUTES IS INSULATED FROM LEGISLATIVE REGULATION BY THE IMPAIRMENT CLAUSE OF EITHER THE STATE OR FEDERAL CONSTITUTION.

NO CASE HAS EVER SO HELD. EVERY CASE TO WHICH THE IMPAIRMENT CLAUSE HAS BEEN APPLIED HAS INVOLVED AN ENTITY THAT SERVES SOME PRIVATE INTERESTS.

>> SO IF WHEN EXCUSE ME. WHEN SECTION 155.40 WAS CREATED, IT WAS CREATED FOR BY THE LEGISLATURE FOR WHAT REASON?

>> THE REASON THAT THE FOUNDATION ASSERTS AND IT'S FOUND ONLY IN THE MINUTES OF A

MEETING AT WHICH A CONSULTANT

>> NO.

I'M ASKING YOU WHY THE
LEGISLATURE AFTER THEY CREATE
THESE HOSPITAL DISTRICTS

>> RIGHT.

>> SAW FIT TO ALLOW
HOSPITAL DISTRICTS TO CREATE
CORPORATIONS THAT WOULD BE
ABLE TO EVADE RESPONSIBILITIES
ON PENSION PLANS AND OTHER
AND COMPETE IN THE PRIVATE
MARKET.

I GUESS THAT'S THE QUESTION
IS YOU SEE WHERE I'M MY
CONCERN ON THIS.

>> RIGHT.

I SEE EXACTLY WHERE YOU'RE
GOING, AND IT BRINGS UP THE
EXPLANATION BY THE FOUNDATION
AS TO WHY THEY WERE CREATED,
AND MY RESPONSE TO THAT IS
THAT INDEED MAY BE THE REASON
THEY WERE CREATED.

IT DOESN'T TELL US ANYTHING
ABOUT THE IMPAIRMENT CLAUSE.
IN THE FIRST PLACE, PRIVATE
AND PRIVATIZING, WHICH APPEARS
THROUGHOUT THE BRIEF OF THE
FOUNDATION, APPEARS NOWHERE IN
155.40 AS IT EXISTED AT THE
TIME OF THE CREATION.

IT APPEARS NOWHERE IN THE
CREATING DOCUMENTS.

IT APPEARS NOWHERE IN THE
AGREEMENTS THAT WE ARE DEALING
WITH HERE TODAY.

IT APPEARS ONLY IN THE BRIEF.
NOW, AS TO THESE TWO ISSUES,
THE FIRST ONE BEING TO GET OUT
FROM UNDER THE STATE'S PENSION
PLAN, THAT MAY WELL HAVE BEEN
THE PURPOSE OF IT, BUT THAT
DOESN'T TELL US ANYTHING ABOUT
THE IMPAIRMENT CLAUSE.

LET ME POINT OUT THAT SPECIAL
TAXING DISTRICTS SUCH AS THE
HOSPITAL ARE NOT SUBJECT TO
THE STATE'S PENSION PLAN TO

BEGIN WITH.

IN FACT, THEY HAVE TO APPLY TO
BE A PART OF IT.

THERE'S NOTHING ABOUT BEING IN
OR OUT OF THE PENSION PLAN
THAT TELLS US WHETHER AN
ORGANIZATION IS PUBLIC.

AND PARTICULARLY WHETHER OR
NOT IT IS SUBJECT TO THE
IMPAIRMENT CLAUSE.

>> WELL, LET ME WHAT IS IT
IN THE IMPAIRMENT CLAUSE THAT
SAYS THAT IT DOESN'T IT
ONLY APPLIES TO, QUOTE,
PRIVATE CORPORATIONS?

>> WELL, THE REASON FOR THE
IMPAIRMENT CLAUSE, WITHOUT
QUOTING FROM CASES, BUT GOING
BACK HISTORICALLY, THE REASON
FOR THE IMPAIRMENT CLAUSE WAS
TO KEEP THE STATE FROM
INTERFERING WITH CONTRACTS
ENTERED INTO BY PRIVATE
PARTIES.

AND SO IF YOU WERE DEALING,
FOR EXAMPLE, WITH A TRULY
PRIVATE HOSPITAL, HCA, FOR
EXAMPLE, THAT ENTERED INTO A
CONTRACT EITHER WITH ANOTHER
PRIVATE PARTY OR WITH THE
STATE, PRESUMABLY THEY HAVE
NEGOTIATED WHAT THEIR PRIMARY
PURPOSE IS, WHICH IS TO SERVE
PRIVATE INTERESTS, THEIR
STOCKHOLDERS OR WHATEVER OTHER
PRIVATE INTERESTS THEY HAVE,
AND THAT NEGOTIATION IS PART
OF THE CONTRACT.

SO WHAT THE IMPAIRMENT CLAUSE
SAYS IS THE STATE CANNOT JUST
STEP IN AND ABROGATE THE
INTERESTS THAT THEY NEGOTIATED
FOR EXCEPT UNDER APPROPRIATE
CIRCUMSTANCES.

THAT DOESN'T APPLY IF YOU'RE
DEALING WITH A PUBLIC ENTITY.
A PUBLIC ENTITY IS CREATED, AS
THIS COURT SAID IN O'MALLEY,
SOLELY TO SERVE THE PUBLIC
WHICH, WHICH THIS ONE IS, AND

FOR THAT REASON REMAINS
PERMANENTLY SUBJECT TO
LEGISLATIVE LEGISLATIVE
OVERSIGHT.
NOW, IN THIS CASE HERE'S

>> WELL, YOU'RE USING
O'MALLEY, BUT O'MALLEY DEALT
WITH WHETHER A NOT WHETHER
THE LEGISLATURE COULD GRANT
PRIVILEGES TO A PRIVATE
CORPORATION, SO O'MALLEY
REALLY DOESN'T ANSWER THE
QUESTION HERE, DOES IT?

>> WELL, I AGREE WITH YOU, BUT
O'MALLEY TELLS US HOW WE
DETERMINE WHETHER AN ENTITY IS
PUBLIC OR PRIVATE.

AND WHAT IT TELLS US MAKES
SENSE.

AND ALL OF ITS EXPLANATION
APPLIES TO THE FOUNDATION.
NONE OF THE ELEMENTS THAT IT
TALKS ABOUT PRIVATELY.

AND I WOULD POINT OUT THAT
THERE HAS BEEN NO DISPUTE IN
THIS CASE, THAT EVERYBODY, THE
FOUNDATION, ALL OF THE JUDGES
ON THE LOWER COURT, HAVE
ACCEPTED THE PRINCIPLE THAT
THE ISSUE RESTS UPON WHETHER
IT'S PUBLIC OR PRIVATE.

THERE IS NO CASE LAW, THERE'S
NO HISTORY INVOLVING THE
IMPAIRMENT CLAUSE THAT TELLS
US THAT IF A PUBLIC ENTITY
ENTERS INTO A CONTRACT, THAT
THAT PUBLIC ENTITY IS FREE
FROM REGULATION FROM THE
LEGISLATIVE BODY THAT
ORIGINALLY BROUGHT IT INTO
BEING.

NOW

>> BUT THAT'S THAT'S
LEGISLATIVE BODY DIDN'T BRING
THIS CORPORATION INTO BEING.
THAT'S WHY I WENT BACK TO WHAT
SECTION 155.40.

WHAT IT SEEMED THAT HAPPENED
HERE IS THAT AFTER THE

LEGISLATURE CREATED THAT
STATUTE WITH A LOT OF
OVERSIGHT THROUGH THE DISTRICT
AS TO THIS PARTICULAR
HOSPITAL, THEY SAID, OH, WE
DON'T WE THINK WE NEED MORE
REGULATION, SO WE'RE GOING TO
GO AHEAD AND JUST AMEND THIS
PUT A STATUTE IN PLACE JUST
AS TO IT, THAT WE DIDN'T GO
FAR ENOUGH.

AND SO I DON'T KNOW HOW THEY
THEY DIDN'T CREATE THIS
CORPORATION.

AND THAT SEEMS TO ME TO BE AN
IMPORTANT FACTOR IN WHETHER
THEY CAN IMPAIR EXISTING
CONTRACTUAL RELATIONSHIPS
VALIDLY ENTERED INTO PURSUANT
TO OTHER LEGISLATION.

>> WELL, YOUR HONOR, THAT, OF
COURSE, IS ONE OF THE PRIMARY
AS A MATTER OF FACT, THE
PRIMARY THRUST OF THE
FOUNDATION'S ARGUMENT HERE,
WHICH IS THIS ENTITY, THE
FOUNDATION, WAS NOT CREATED
DIRECTLY BY THE LEGISLATURE,
BUT WHAT THEY FAIL TO TELL US
IS WHAT THE MATERIAL
DISTINCTION IS BETWEEN AN
ENTITY CREATED DIRECTLY BY A
STATUTE AND AN ENTITY CREATED
BY A LOCAL PUBLIC AGENCY UNDER
AUTHORIZATION FROM THE
LEGISLATURE.

AND WHAT'S MORE, THEY FAIL TO
EXPLAIN WHY THAT HAS ANY
RELEVANCE TO THE IMPAIRMENT
CLAUSE.

THERE IS NO QUESTION THAT THIS
ORGANIZATION CAME INTO BEING
BECAUSE IT WAS CREATED BY THE
BY GOVERNMENTAL UNITS.

EVERYBODY AGREES FOR THE SOLE
PURPOSE OF EXERCISING, OF
CONDUCTING A GOVERNMENTAL
FUNCTION.

IT'S NEVER HAD

>> BUT THERE ARE MANY

NOTFORPROFIT OR EVEN
FORPROFIT ORGANIZATIONS IN
FLORIDA THAT DO GOVERNMENTAL
TYPE SERVICES, PRIVATE PRISONS
OPERATIONS, CONTRACTS WITH DCF
INVOLVING FOSTER CARE SERVICES
AND DIFFERENT SERVICES FOR
CHILDREN, THERE ARE
CORPORATIONS THROUGHOUT
FLORIDA THAT CARRY ON
GOVERNMENTAL SERVICES.
CAN THE LEGISLATURE THUS COME
IN ON TOP OF THOSE CONTRACTUAL
RIGHTS AND OBLIGATIONS AND
CHANGE THEM AT WILL WITHOUT
WITHOUT ANY KIND OF
REPERCUSSION?

>> THE ANSWER, YOUR HONOR,
DEPENDS UPON THE NATURE OF
THAT ORGANIZATION.
AND THE ANSWER IS NO, NOT IN
EVERY CASE THEY CANNOT DO
THAT.
AND LET ME BEGIN MY POINTING
OUT THAT IN THE ENABLING ACT
THAT CREATED THE HOSPITAL
BOARD, NOT THE FOUNDATION, THE
HOSPITAL BOARD, IT REFERS TO
IT AS A NONPROFIT, PUBLIC
CORPORATION.
SO THE QUESTION AS TO WHETHER
IT IS A NOTFORPROFIT
CORPORATION OR IT IS CALLED AN
AGENCY IS NOT REALLY RELEVANT
TO WHAT WE'RE DEALING WITH
HERE.
BUT THE ANSWER TO YOUR
QUESTION IS THIS.
IF YOU HAVE A PRIVATE COMPANY,
A COMPANY THAT HAS THE
ATTRIBUTES OF PRIVACY, A
COMPANY THAT HAS A PRIVATE
HAS EITHER A PROFIT MOTIVE OR
SOMEHOW SERVES, EVEN IF IT'S
NOTFORPROFIT, PRIVATE
INTERESTS, THEY'RE NOT
GOVERNMENTAL INTERESTS, AND
THEY NEGOTIATE A CONTRACT WITH
THE STATE, I THINK THAT THEY

ARE PROTECTED TO A POINT,
BECAUSE BOTH THIS COURT AND
THE UNITED STATES SUPREME
COURT HAVE RECOGNIZED THAT
EVEN A CONTRACT BETWEEN TWO
PRIVATE PARTIES IS SUBJECT TO
OVERSIGHT IN AN AREA SUCH AS
THIS.

AS A MATTER OF FACT,
IRONICALLY, IT WAS THE 1ST
DISTRICT WHO SAID A HOSPITAL
IS SUBJECT TO CONTINUING
OVERSIGHT AND CANNOT CONTRACT
AWAY THE STATE'S POLICE POWER.
BUT BEYOND THAT ISSUE, I THINK
THAT IF YOU HAVE AN ENTITY
THAT CONTRACTS WITH THE STATE
THAT HAS PRIVATE INTERESTS
THAT IT SERVES AND THAT ARE
NEGOTIATED AS PART OF THAT
CONTRACT, THEY'RE ENTITLED TO
PROTECTION UNDER THE
IMPAIRMENT CLAUSE WITHIN
CERTAIN LIMITS.

THIS ENTITY HAS NONE OF THAT.
AND ONE OF THE THINGS THAT
O'MALLEY SAID AND, AGAIN,
WHILE I REALIZE O'MALLEY WAS
DEALING WITH A DIFFERENT
CONSTITUTIONAL ISSUE, I THINK
THAT ITS DESCRIPTION IS STILL
INSTRUCTIVE.

O'MALLEY SAID THAT IF THE SOLE
PURPOSE OF THE ENTITY IS TO
PERFORM A GOVERNMENTAL
FUNCTION AND IT HAS NO PRIVATE
INTERESTS, IT'S A PUBLIC
ENTITY.

THAT'S WHAT WE'RE DEALING WITH
HERE.

IF YOU IF WE GOT TO THE
EDGES, IF WE FOUND A
CORPORATION THAT HAD SOME
PRIVATE INTERESTS AND SOME
PUBLIC THINGS THAT THEY DID,
IF YOU HAD WELL, I THINK A
GOOD EXAMPLE IS IF THIS
FOUNDATION, IF THIS HOSPITAL
BOARD, EXCUSE ME, WERE TO
CONTRACT WITH A PRIVATE

HOSPITAL CORPORATION, SUCH AS HCA, TO COME IN AND RUN THE HOSPITAL AND ALLOW THEM TO OBTAIN WHATEVER PROFITS THEY DESIRED WITHIN THE CONFINES OF THE CONTRACT, THEY WOULD BE PROTECTED BY THE IMPAIRMENT CLAUSE.

BUT KEEP THIS IN MIND.

THIS IS AN ENTITY THAT NOT ONLY HAS AS ITS SOLE FUNCTION THE CONDUCT OF A GOVERNMENTAL FUNCTION, BUT IT IS ENTIRELY SUPPORTED BY PUBLIC FUNDS AND THAT HCA WOULD NOT BE ABLE TO HAVE ALL OF ITS OPERATING DEFICIT PAID BY TAXPAYER MONEY RAISED BY AN AD VALOREM TAX ON THE CITIZENS OF CITRUS COUNTY. THE QUESTION IS IF WE WERE GOING TO SAY THAT AN ENTITY WITH THESE ATTRIBUTES AND NO PRIVATE ATTRIBUTES IS FREE AND IN CONTACT CAN UNILATERALLY REMOVE ITSELF FROM LEGISLATIVE OVERSIGHT, THEN WE'RE OPENING A PANDORA'S BOX.

>> FIRST OF ALL, I'M VERY CONCERNED ABOUT SORT OF MAKING THIS DISTINCTION AND SAYING THIS IS REALLY PUBLIC, BUT ALL THESE OTHER ENTITIES THAT WHERE THE GOVERNMENT HAS CHOSEN TO PRIVATIZE, THEY'LL BE SOMEWHERE, MAYBE PUBLIC SOMETIMES, MAYBE PRIVATE, BECAUSE REALLY DEALING WITH THE QUESTION THAT YOU CAN HAVE CONFIDENCE THAT WHEN YOU CONTRACT WITH A GOVERNMENTAL AGENCY, WHETHER THE LEGISLATURE CAN COME IN AFTER AND CHANGE THOSE CONTRACTUAL RELATIONSHIPS SO.

I'D BE YOU KNOW, BE ASKING IN THIS CASE FOR A VERY NARROW RULING THAT IS CANNOT POSSIBLY BE APPLICABLE TO ALL THESE HOST OF OTHER PRIVATIZED GOVERNMENTAL SERVICES.

DO YOU AGREE WITH THAT?
IF WE WERE TO AGREE WITH YOU,
IT HAS TO BE ON A VERY, VERY,
VERY NARROW BASIS?
>> IT DEPENDS.
I'M SORRY.
I HATE TO GIVE THAT KIND OF AN
ANSWER.
BUT HERE'S THE DISTINCTION I'M
TRYING TO DRAW.
>> BECAUSE I GUESS THE
DISTINCTION SEE, BECAUSE I
STILL GO BACK TO THIS.
WHEN YOU TALK ABOUT O'MALLEY,
THE CONSTITUTIONAL PROVISION
TALKS ABOUT NOT GIVING A
PRIVATE CORPORATION
PRIVILEGES, CORRECT?
>> THAT'S CORRECT.
>> I'M STILL STRUGGLING WITH
WHERE IN THE IMPAIRMENT OF
CONTRACT CONSTITUTIONAL
PROTECTION IT MAKES THE
DISTINCTION THAT YOU ARE
URGING US TO ADOPT; THAT IS,
THAT IT IF IT'S A PUBLIC
CORPORATION, THAT THE
LEGISLATURE CAN COME IN AND
IMPAIR THOSE CONTRACTS.
>> WELL, LET ME PUT IT THIS
WAY.
THE LEGISLATURE CAN PROVIDE
FOR THE CREATION OF A PUBLIC,
NONPROFIT ENTITY, AS THEY DID
WITH THE HOSPITAL BOARD.
IT CAN ALSO PROVIDE FOR THE
GOVERNMENTAL FUNCTION, TO AN
EXTENT, TO BE CONDUCTED BY A
PRIVATE ENTITY.
IT CAN DO THAT.
AND IN FACT THE CURRENT
WORDING OF 155.40, WHICH WAS
NOT THE WORDING AT THE TIME
THIS HAPPENED, AUTHORIZES A
HOSPITAL, A PUBLIC HOSPITAL
BOARD, TO LEASE OR SELL IT
EITHER TO A PUBLIC ENTITY,
WHICH CAN BE A NOTFORPROFIT
CORPORATION OR TO A PRIVATE
ENTITY.

AND I'M SUGGESTING THAT THE
JOB OF THIS COURT WHEN IT
DECIDES THE EXTENT TO WHICH
THE LEGISLATURE RETAINS THE
ABILITY OF OVERSIGHT AND
KEEP IN MIND THAT IT'S
UNDISPUTED THAT THE OVERSIGHT
THEY SOUGHT HERE WAS RELATED
TO MISMANAGEMENT AND MISUSE OF
PUBLIC FUNDS.

THE JOB OF THIS COURT IS TO
DECIDE IN EACH INSTANCE WHAT
DID THE LEGISLATURE CREATE.
IF IT IS TRULY PRIVATE OR IF
IT BALANCES IN FAVOR OF
PRIVACY

>> WELL, IN MOST OTHER
SITUATIONS IF SOMEBODY IS
MISUSING PUBLIC FUNDS, THERE
ARE LAWSUITS THAT CAN BE
BROUGHT TO DEAL WITH THAT, AS
OPPOSED TO JUST SAYING WE'RE
JUST GOING TO CHANGE THE
NATURE OF THE RELATIONSHIPS
EVEN THOUGH THEY'VE OTHERWISE
COMPLIED WITH SECTION
(INAUDIBLE) SO.

THAT'S MY CONCERN, IS THAT
LEGISLATURE THERE'S
SANCTITY OF CONTRACTS.
WHAT CAN THEY DO
RETROACTIVELY.

>> WHAT OCCURRED HERE IS THE
LEGISLATURE PERMITTED
HOSPITALS TO DELEGATE THIS
GOVERNMENTAL FUNCTION TO WHAT
THEY DIDN'T SAY WAS PRIVATE OR
PUBLIC.

THEY DIDN'T SAY ONE WAY OR THE
OTHER WHAT IT WAS.

IN THIS INSTANCE, IT WAS
DELEGATED TO AN ORGANIZATION
WHO HAD NO OTHER FUNCTION
EXCEPT GOVERNMENTAL, THE ONE
IT WAS DELEGATED

>> WELL, AND WASN'T IT ALSO
THE CASE THAT THE HOSPITAL
BOARD ACTUALLY CREATED IS
THAT NOT TRUE?

>> NOT ONLY DID THEY CREATE

IT, YOUR HONOR, THE MAJORITY OF THE BOARD WAS REQUIRED TO BE A MAJORITY OF THE HOSPITAL BOARD OF TRUSTEES.

>> SO THIS WAS NOT SOME ENTITY THAT APPROACHED THE HOSPITAL BOARD SAYING WE'LL ENTER THIS AGREEMENT WITH YOU.

THIS IS AN ENTITY THAT WAS SPECIFICALLY CREATED BY THE HOSPITAL BOARD TO CARRY OUT THESE PURPOSES.

>> YES.

AND INTERESTINGLY, FOR YEARS AFTERWARDS, THE MAJORITY OF THAT BOARD REMAINED THE SAME PEOPLE.

THE MAJORITY OF THAT BOARD REMAINED THE HOSPITAL BOARD TRUSTEES APPOINTED BY THE GOVERNOR, EVENTUALLY HAD TO BE CERTIFIED BY THE SENATE, MEETING ALL OF THE REQUIREMENTS OF THE FLORIDA ETHICS LAWS.

AT THE TIME OF THE TWO CONTRACTS HERE, THE CONTRACT FOR THE LEASE AND THE CARE AGREEMENT WAS ENTERED INTO, BOTH BOARDS WERE CONTROLLED BY THOSE APPOINTED HOSPITAL BOARD MEMBERS.

THIS FOUNDATION UNILATERALLY REMOVED ITSELF FROM THAT SITUATION BY EXPANDING ITS BOARD.

IT WASN'T THE HOSPITAL BOARD.

IT WASN'T THE LEGISLATURE.

THE FOUNDATION ITSELF EXPANDED ITS BOARD UNTIL IT REACHED THE POINT WHERE THERE WEREN'T ENOUGH MEMBERS OF THE HOSPITAL BOARDS, FIVE PEOPLE, TO CONTROL IT ANY LONGER.

>> BUT THAT COULD HAVE BEEN SOLVED AS FAR AS THAT IT REQUIRED THAT THE ANY CHANGES TO THE ARTICLES OF INCORPORATION BE APPROVED BY THE HOSPITAL DISTRICTS, BY

THEM SO.

IF IT DIDN'T HAPPEN, I MEAN,
THAT WOULD HAVE BEEN THE
REMEDY FOR THAT.

>> THAT'S REQUIRED NOW.

>> IT WASN'T REQUIRED THEN?

>> NO, NOT AT THE TIME, WAS
IT?

EXCUSE ME.

SORRY.

YEAH.

IT WAS NOT REQUIRED UNDER THE
ORIGINAL 155.40.

THAT WAS ADDED, BY THE WAY
A NUMBER OF THINGS WERE ADDED
BY THE LEGISLATURE AFTER THE
ORIGINAL LAW WAS DECLARED TO
BE UNCONSTITUTIONAL BECAUSE IT
WAS AN OVERDELEGATION OF THE
LEGISLATIVE AUTHORITY TO THESE
VARIOUS ENTITIES, SOME OF
WHICH WERE PRIVATE AND SOME OF
WHICH WERE PUBLIC.

SO WE RETURN TO THIS ISSUE.

NOW, BEFORE MY TIME SUP, I
ALSO WANTED TO MENTION AND
I DON'T UNLESS THE COURT
HAS QUESTIONS, I WILL STAND ON
THE BRIEF THAT IMPAIRMENT
DOESN'T MEAN SOME NEBULOUS
IDEA THAT SOMEHOW YOU HAVE TO
DO SOMETHING YOU DIDN'T HAVE
TO DO BEFORE OR YOU DON'T HAVE
TO DO SOMETHING YOU HAD TO DO
BEFORE.

COURTS HAVE CONSISTENTLY HELD
THERE HAS TO BE AN IMPAIRMENT
OF A PARTICULAR PROVISION.

AND WE'VE ARGUED THAT THERE IS
NO IMPAIRMENT HERE OF ANY OF
THESE PROVISIONS.

AND THE FOUNDATION WAS UNABLE
TO RESPOND TO THAT IN THE
LOWER COURT.

WE'VE COME BACK NOW AND
THEY'VE COME UP WITH ONE.

>> WELL, THE IMPAIRMENT, ISN'T
IT HAVING TO DO WITH THE
CONTROL OF THE BOARD?

THAT'S THE HEART OF THE

MATTER, RIGHT?

>> YES, EXCEPT THAT NONE OF THE CONTRACTS THAT THEY HAVE WITH THE STATE ADDRESS THE ISSUE OF THE BOARD AND WHO IT'S COMPOSED OF AND WHAT CAN HAPPEN.

AND THEY CHANGED THAT, BECAUSE IN ITS INCEPTION IT HAD TO BE COMPOSED OF A MAJORITY OF THE BOARD.

AND THAT'S HOW IT WAS WHEN THE CONTRACTS WERE ENTERED INTO. AND THERE'S NOTHING IN ANY OF THESE CONTRACTS THAT SAID THAT, SO WHAT THEY DID IS THEY REVERTED TO THE ARTICLES OF INCORPORATION.

AND THAT STATEMENT IN SEVERAL CASES, THIS IS THE ARTICLES, CONTRACT WITH THE STATE.

BUT THE POINT WE'VE MADE IS THAT WE HAVE A STATUTE THAT MAKES IT MINISTERIAL.

SO BY ANY CONCEPT OF CONTRACT, THAT'S NOT THAT'S AN ILLUSORY CONTRACT AT BEST.

IT WAS DONE ONLY BY THEM.

THANK YOU, YOUR HONOR.

I'D LIKE TO RESERVE MY REMAINING TIME FOR REBUTTAL.

>> MAY IT PLEASE THE COURT, MY NAME IS GARY SASSO, AND I REPRESENT CITRUS MEMORIAL HEALTH FOUNDATION.

>> COULD YOU ADDRESS THAT SECOND POINT FIRST?

BECAUSE THAT DOES TROUBLE ME.

WHICH IS THIS IS TRULY AN IMPAIRMENT OF A CONTRACT AND LEAVING ASIDE FOR A MOMENT THE QUESTION OF THE ARTICLES OF INCORPORATION.

>> YES, YOUR HONOR.

THERE ABSOLUTELY IS IMPAIRMENT IN TWO RESPECTS.

THERE'S IMPAIRMENT OF THE ARTICLES OF INCORPORATION AND THERE'S AN IMPAIRMENT OF THE

HEALTH CARE AGREEMENT IN THE LEASE.

NOW, CCHB HAS CHARACTERIZED THE LONGTERM HEALTH CARE AGREEMENT AND LEASE AS VERY SIMPLE CONTRACTS REQUIRING THE LEASE OF THE PREMISES AND RENT AND THE PROVISION OF HEALTH CARE SERVICES.

IN FACT, THEY'RE VERY EXTENSIVE DOCUMENTS THAT GOVERN THE RELATIONSHIP BETWEEN THE PARTIES.

THERE'S A LIST OF REPORTS, OF FINANCIAL REPORTS, OPERATIONAL ACTIVITY REPORTS THAT HAVE TO BE PROVIDED.

THERE ARE DISPUTE RESOLUTION MECHANISMS.

THERE'S A MERGER CLAUSE THAT SAYS ON THESE SUBJECTS THIS IS THE AGREEMENT BETWEEN THE PARTIES.

AND IT CAN ONLY BE CHANGED BY WRITING AGREED TO BY THE PARTIES.

WHAT THE SPECIAL LAW DOES IS IT SWOOPS DOWN AND INSTALLS AN ENTIRELY NEW REGIME, DIFFERENT BALANCE OF CONTROLS AND REPORTING AND GOVERNANCE BY CCHB.

>> WELL, MR.†RICHARDS SAYS THAT YOU UNILATERALLY CHANGED THE STRUCTURE OF THE BOARD, WHEREAS THEY WERE SUPPOSED TO BE APPROVED BY THE DISTRICT.

>> THAT'S NOT CORRECT, YOUR HONOR.

FIRST, 155.40 DOES NOT REQUIRE THAT AMENDMENTS TO ARTICLES BE APPROVED BY THE TAXING DISTRICT.

IN THE SECOND PLACE, CONTEMPLATING THIS ARRANGEMENT, THE FOUNDATION WAS ALREADY IN EXISTENCE.

IT HAD BEEN INCORPORATED, NOT CREATED THROUGH ENABLING LEGISLATION BY A PUBLIC BODY

AS SUGGESTED.

IT WAS INCORPORATED AS A
CHAPTER 617 CORPORATION LIKE
MANY, MANY OTHERS.

>> WHO DID THAT?

>> CHARLES BLASTINGAME IN THE
NAME OF THE FOUNDATION.

IT WAS INSTIGATED BY HCCB BUT
WE DON'T KNOW HOW MANY
NONPROFITS ARE INCORPORATED.

>> BUT YOU DON'T DISPUTE THAT
THE HOSPITAL BOARD CAUSED

>> THEY CAUSED IT.

>> TO TAKE PLACE.

FOR THEIR BENEFIT AND AT THEIR
DIRECTION.

>> THEY CAUSED IT TO TAKE
PLACE, BUT VERY PURPOSEFULLY
CHOSE THE VEHICLE OF A CHAPTER
617 CORPORATION.

>> WHY DID THEY CAUSE IT TO
TAKE PLACE?

WHY WOULD IT BE NECESSARY TO
SET UP A SEPARATE ENTITY WITH
THE SAME PEOPLE ON BOTH
BOARDS?

>> THIS IS FUNDAMENTAL TO THIS
CASE, YOUR HONOR, AND TO
FINISH THE ANSWER WHICH IS
RELEVANT TO THE ANSWER TO
JUSTICE PARIENTE'S QUESTION,
RELEVANT TO THE QUESTION
YOU'VE ASKED, YOUR HONOR,
BEFORE THE HOSPITAL WAS LEASED
TO THE FOUNDATION, WHEN CCHB
HAD CONTROL OF THE BOARD, THEY
PURPOSELY CHANGED THE ARTICLES
TO TAKE THEMSELVES OUT OF THE
MAJORITY.

THEY HAD MAJORITY CONTROL.
THEY PURPOSELY CHANGED THE
ARTICLES SO THEY WOULD NO
LONGER HAVE A MAJORITY BECAUSE
THEY WANTED THIS TO HAVE
INTEGRITY AS A PRIVATE
CORPORATION.

>> AND UNDER THE STATE'S
CONTROL?

>> THIS, YOUR HONOR, IS WHY

IT'S CRUCIAL AND IT ALL
CONCERNS 1555.40.
SECTION 155.40 WAS ENACTED BY
THE LEGISLATURE PRECISELY TO
ENABLE PUBLIC TAXING DISTRICTS
LIKE CCHB TO PRIVATIZE,
CONTRACT OUT THE
OPERATION/MANAGEMENT OF
HOSPITALS THAT ARE
TAXSUPPORTED TO PRIVATE
CORPORATIONS LIKE THE
FOUNDATION.

NOW, PUBLIC HOSPITALS SPRUNG
UP TO MEET A NEED.
THERE WERE NO PRIVATE
HOSPITALS SERVING THESE NEEDS.
THE ROLE OF DISTRICTS LIKE
CITRUS.

ALL THIS IS MAPPED OUT IN
MEMORIAL HOSPITAL WEST
VOLUSIA.

THERE CAME A TIME WHEN PUBLIC
TAXES DISTRICTS WANTED TO GET
OUT OF THE BUSINESS OF
OPERATING, MANAGING HOSPITALS
AND THEY WANTED TO MOVE THE
HOSPITALS TO THE PRIVATE
SECTOR WHERE THEY COULD
COMPETE MORE EFFECTIVELY.

THEY STARTED TO DO IT.
THEY RAN INTO A PROBLEM IN
1980 WITH AN ATTORNEY
GENERAL'S OPINION THAT SAYS
THESE CREATURES, UNLIKE
CHAPTER 617 CORPORATIONS, ARE
CREATED BY ENABLING
LEGISLATION AND THEY CAN ONLY
DO WHAT THEY'RE EXPRESSLY
PERMITTED TO DO BY LAW AND
THEY DON'T HAVE THE POWER TO
OUTSOURCE THESE HOSPITALS.
ONLY 6% IS SUPPORTED BY TAX
FUNDS.

THEY DON'T HAVE THE POWER TO
OUTSOURCE IT.

SO THE LEGISLATURE CAME IN
>> WHEN YOU SAID ONLY 6% OF
WHAT IS SUPPORTED?

>> OF THE TOTAL REVENUES.
COUNSEL SAID FULLY FUNDED.

IT'S NOT FULLY FUNDED.

6% ON THE AVERAGE.

>> SO WHERE IS THE REST

>> THE REST COMES FROM
OPERATIONAL REVENUES AND
CHARITABLE CONTRIBUTIONS.

>> BECAUSE THE FOUNDATION WAS
CREATED TO RAISE MONEY FOR THE
HOSPITAL.

>> YES.

AND DONORS ARE RELYING ON THE
PRIVATE FOUNDATION STATUS OF
THIS.

IF WE HAVE TIME, I'LL TALK
ABOUT THE DARTMOUTH COLLEGE
CASE.

THESE NONPROFIT CORPORATIONS
HAVE TO HAVE INTEGRITY.

PEOPLE COUNT ON THEIR BEING
PRIVATE FOUNDATIONS.

NOW MOST OF ALL CCHB COUNTED
ON IT.

IT DIDN'T HAVE TO AVAIL ITSELF
OF THIS STATUTORY SCHEME.

IT COULD HAVE CONTINUED TO
OWN, MANAGE AND OPERATE THIS
HOSPITAL ALL BY ITSELF AND

WOULD HAVE ALL OF THE
PREROGATIVES IT NOW WANTS
THROUGH THE SPECIAL LAW.

INSTEAD, THEY PURPOSELY SOUGHT
TO OUTSOURCE TO ACHIEVE TWO
THINGS THAT COULD BE ACHIEVED
ONLY THROUGH A PRIVATE
CORPORATION.

ONE, THEY CALCULATED THEY
COULD SAVE OVER \$4 MILLION
OVER A FIVEYEAR PERIOD OF
TIME IF THEY COULD TAKE THE
EMPLOYEES OF THE HOSPITAL OUT
OF THE STATE RETIREMENT SYSTEM
AND PUT THEM INTO A PRIVATE
CORPORATION RETIREMENT PLAN.

THEY COULD ONLY DO THAT IF
THIS WERE A PRIVATE
CORPORATION.

SECOND, THEY WANTED THE
HOSPITAL TO PARTICIPATE IN
JOINT VENTURES WITH OTHER
PRIVATE GROUPS LIKE PHYSICIAN

GROUPS, BECOMING INCREASINGLY IMPORTANT, THAT WAS OFF LIMITS TO THE PUBLIC SECTOR ENTITIES LIKE CCHB.

SO THEY CHOSE PURPOSELY TO RESTRUCTURE, GIVE UP MAJORITY CONTROL OF THIS ORGANIZATION, TO GIVE IT INTEGRITY AS A PRIVATE FOUNDATION, ENTER INTO LONGTERM LEASE AND CONTRACT AGREEMENTS WITH THIS FOUNDATION, WHICH SAY ON THEIR FACE THAT THEY'RE BINDING. THERE WAS EVERY INTENTION TO BE BOUND BY THESE CONTRACTS WITH THIS PRIVATE FOUNDATION. NOW, THIS IS SIGNIFICANT BECAUSE ESSENTIALLY WHAT CCHB WANTS NOW IS A DOOVER.

AFTER LIVING UNDER THESE AGREEMENTS FOR 20 YEARS, THEY NOW HAVE A DISPUTE WITH MANAGEMENT ABOUT WHAT'S BEST FOR THE HOSPITAL AND THEY WANT A DOOVER.

SO THEY GO TO THE LEGISLATURE AND THEY SAY GIVE US ALL THE CONTROLS WE VOLUNTARILY GAVE UP TO ACHIEVE THESE PURPOSES FOR THE RETIREMENT PLAN AND JOINT VENTURES.

WE SET THIS FOUNDATION UP FOR CHARITABLE FOUNDATIONS.

FORGET ALL THAT.

WE WANT A DOOVER.

NOW, THIS COURT HELD IN AMERICAN TOBACCO CORPORATION THAT WHEN THE LEGISLATURE THROUGH A SPECIAL LAW EMPOWERS A PUBLIC AGENCY TO ENTER INTO CONTRACTS WITH THIRD PARTIES, THIS COURT WILL PRESUME THOSE CONTRACTS ARE INTENDED TO BE ENFORCEABLE.

>> WHY DOES THE FOUNDATION CARE?

>> THE FOUNDATION HAS BEEN OPERATING UNDER THESE AGREEMENTS FOR 20 YEARS. THEY'VE GONE OUT AND THEY'VE

HIRED A MANAGEMENT TEAM.
THEY HAVE EMPLOYEES.
THEIR EMPLOYEES ARE NO LONGER
IN THE STATE RETIREMENT
SYSTEM.
THEY'RE SOLICITING CHARITABLE
CONTRIBUTIONS.
THEY HAVE DEEPEASED FEELINGS
ABOUT WHAT'S IN THE BEST
INTEREST OF THIS HOSPITAL AND
HOW TO SERVE THE POPULATION OF
CITRUS COUNTY.
THERE'S A DISPUTE BETWEEN
THESE PARTIES.
THE WAY TO RESOLVE THIS
DISPUTE IS CONTINUE LITIGATION
THAT'S GOING ON WHERE THEY'RE
SUING EACH OTHER OVER THEIR
CONTRACT OBLIGATIONS.
THIS IS JUST LIKE LONGWOOD
WHERE THE BOARD SAID OUR
MEDICAL FACULTY IS RUNNING
AMOK.
THEY'RE HARMING PATIENTS.
THEY'RE COMMITTING HEALTH CARE
FRAUD.
WE NEED TO TAKE CONTROL OF OUR
OWN HOSPITAL.
THAT WAS THE BOARD OF A
CORPORATION THAT WANTED TO
TAKE CONTROL OF THEIR OWN
HOSPITAL.
THE COURT SAID YOU CANNOT DO
SO BY GETTING A SPECIAL LAW
THAT OVERRIDES YOUR GOVERNANCE
DOCUMENTS WITH YOUR MEDICAL
STAFF.
AVAIL YOURSELF OF OTHER
REMEDIES.
GO TO COURT.
GO TO THE REGULATORY AGENCY.
THIS HOSPITAL IS REGULATED BY
THE JOINT COMMISSION ON
HOSPITAL ACCREDITATION.
IF THERE ARE ANY ISSUES THERE,
THEY CAN BE RESOLVED THROUGH
REGULATORY REGIME.
THEY'RE CONTRACT REMEDIES.
THERE'S LITIGATION ABOUT
FIDUCIARY OBLIGATIONS.

AND INSTEAD OF ALLOWING THAT TO PLAY THROUGH AND FINISH ITS COURSE, WHAT'S HAPPENED HERE IS AN EFFORT BY CCHB TO CIRCUMVENT THE REMEDIES THAT ARE AVAILABLE TO THESE PARTIES, GO TO THE LEGISLATURE, GET A SPECIAL LAW AND OVERRIDE ALL OF THAT. AMONG OTHER THINGS, THIS SPECIAL LAW TAKES AWAY FROM THE FOUNDATION ALL OF ITS REMEDIES OF LAW AND EQUITY AND ARBITRATION AND SAYS YOU HAVE TO CHANNEL ALL DISPUTES NOW THROUGH THE PUBLIC DISPUTE RESOLUTION MECHANISM. THE HOSPITAL CARE AGREEMENT, LEASE ALL HAVE THIS MERGER AGREEMENT. THE ONLY AUTHORITY THAT THE STATE AND CCHB HAVE CITED TO JUSTIFY THIS ARE O'MALLEY, WHICH WE'VE ALREADY DISCUSSED, WHICH HAS NOTHING TO DO WITH THIS CASE. IT'S A CASE THAT INVOLVES A DIFFERENT PROVISION OF THE CONSTITUTION INVOLVING BENEFITS TO A PRIVATE CORPORATION AND THAT INVOLVED AN ENTITY THAT WAS CREATED BY ENABLING LEGISLATION AND BY ITS RELATIONSHIP TO THE STATE WAS LEGISLATIVE, NOT CONTRACTUAL. IT'S BEDROCK LAW IN FLORIDA AND THROUGHOUT THE COUNTRY THAT A CORPORATE CHARTER HAS CONSEQUENCES. ONCE GRANTED, IT'S A CONTRACT WITH THE STATE. AND WE'VE HEARD SEVERAL TIMES TODAY, WELL, YOU NEED TO HAVE PRIVATE INTERESTS, YOU NEED TO BE MAKING MONEY, FORPROFIT. THAT WOULD DENIGRATE ALL THE NONPROFIT CHARTERS IN THE COUNTRY TODAY. DARTMOUTH INVOLVED A NONPROFIT

CORPORATION.

CHIEF JUSTICE MARSHALL WROTE
IN A SITUATION VERY MUCH LIKE
THIS WHERE THE BOARD OF
DARTMOUTH FILED A PRESIDENT,
UPSET PEOPLE IN NEW HAMPSHIRE.
THEY PASS A LAW TAKING OVER
THE BOARD OF THE COLLEGE,
PUTTING THE GOVERNOR AND
PUBLIC PEOPLE IN CONTROL
SAYING YOU'RE SERVING THE
PEOPLE, THE GOVERNMENT, THE
GOVERNMENT'S INTEREST IN THIS
STATE.

WE HAVE A RIGHT TO HAVE
ACCOUNTABILITY.

CHIEF JUSTICE MARSHALL WROTE,
SURE, THERE'S A PUBLIC
PURPOSE.

THAT'S THE CONSIDERATION FOR
THE CONTRACT THAT YOU GRANTED
THEM.

AND THAT'S ENFORCEABLE UNDER
THE CONTRACT CLAUSE.

>> IF THERE IS AN IMPAIRMENT,
WOULD YOU AGREE WITH THE OTHER
SIDE THAT (INAUDIBLE)?

>> WELL, THE ONLY THING WE ARE
CHALLENGING, YOUR HONOR, IS
SECTION 16 OF THE SPECIAL LAW,
WHICH ALL APPLIES
RETROACTIVELY TO THE

FOUNDATION AND ALL DENIGRATES
THE CONTRACT RIGHTS AND THE
ARTICLES AND THE HOSPITAL

>> THERE WOULD BE SOME ITEMS
WITHIN SECTION 16 THAT WOULD
NOT BE IMPAIRED.

WOULDN'T YOU AGREE?

>> ALL OF THE ITEMS IN 16 ARE
CODIFIED IN STATUTE.

EVEN IF THEY INVOLVE EXISTING
PRACTICES, THEY'RE SUBJECT TO
CHANGE.

THE FOUNDATION HALLS THE
HAS THE RIGHT TO CHANGE ITS
ARTICLES F. THEY'RE NOW EM
BOLDED EMBODIED IN A
STATUTE, THAT HAS BEEN

CODIFIED IN LAW.

>> SECTION ITEM 12 OF
SECTION 16, ALL RECORDS OF THE
NOTFORPROFIT CORPORATION
SHALL BE PUBLIC RECORDS UNLESS
EXEMPT BY LAW.

THAT'S NOT AFFECTED BY YOUR
IMPAIRMENT OF CONTRACTS
ARGUMENT, IS IT?

>> WELL, THAT PROVISION IS IN
THE LEASE RIGHT NOW, WHICH CAN
BE AMENDED BY THE PARTIES AND
IT'S NOW BEING MADE A MATTER
OF LEGISLATIVE DICTATE.
IT IMPAIRS THE RIGHT OF THE
PARTIES TO CONTRACT AS THEY
WISH.

THERE'S NO GOOD REASON FOR
SECTION 16 EXCEPT TO SERVE THE
WILL OF CCHB, TO SEIZE CONTROL
OF THIS FOUNDATION AND TO TAKE
AWAY FROM THE FOUNDATION THE
RIGHT OF SELFGOVERNANCE.

THAT'S WHY SECTION 16

>> DID THE 1ST DISTRICT
CONSIDER THE SEVERABILITY
ARGUMENT?

>> THAT ARGUMENT WAS NOT MADE
IN THE 1ST DISTRICT.

THEY DID NOT PARSE THROUGH
SECTION 16 AND SAY THIS
PROVISION'S OKAY, THAT ONE
ISN'T.

THE ARGUMENT THEY'RE MAKING IN
THIS COURT IS DIFFERENT FROM
THAT.

THEY'RE SAYING THAT WE BROUGHT
A FACIAL CHALLENGE TO THE
SPECIAL LAW AND THAT THERE HAS
TO BE SEVERABILITY APPLIED TO
THAT.

WE DID NOT CHALLENGE THE
SPECIAL LAW IN ITS ENTIRETY.

AT WHICH OF IT IS A
RECODIFICATION OF THE ORGANIC
DOCUMENTS.

AND SECTION 16 IS THE FOCUS OF
OUR ATTENTION AND THE FOCUS OF
THE 1ST DISTRICT COURT OF
APPEALS ORDER.

THEY HAVE NOT PARSED THROUGH THIS.

>> AND YOU DON'T THINK WE SHOULD.

>> WE DON'T THINK WE SHOULD WE SHOULD.

THAT ARGUMENT HAS NOT BEEN MADE.

SECTION 16 IS AN ATTEMPT TO TAKE AWAY RIGHTS THAT ARE NOW AMENABLE TO CONTRACT PROCESS BY THE FOUNDATION.

BESIDES, IF YOU APPLIED SEVERABILITY ANALYSIS, YOU HAVE TO ASK DOES SECTION 16 HAVE ANY INTEGRITY IF YOU STRIP AWAY 99.9% OF IT.

WHY LEAVE THIS PROVISION OR THAT PROVISION?

WOULD THE LEGISLATURE HAVE GONE TO THE TROUBLE OF DOING THIS IF THEY COULDN'T PROVIDE CCHB WITH A DOOVER.

ALL THE REST OF IT IS JUST DRESSING.

>> CAN YOU ADDRESS THE BASIC ISSUE THAT MR.†RICHARDS STARTED WITH, WHICH WAS THAT PRIVATE/PUBLIC THAT IT'S PUBLIC ESSENTIALLY PUBLIC, BUT NOT CREATED BY THE LEGISLATURE, THAT THE IMPAIRMENT OF CONTRACT CONSTITUTIONAL PROVISION DOES NOT APPLY?

>> THERE'S ABSOLUTELY NO SUPPORT FOR THAT, YOUR HONOR. THIS COURT ESSENTIALLY REJECTED THE PREMISE OF THAT ARGUMENT AND IT'S DECISION IN KECK AS RECENTLY AS 2012. LET ME TALK A LITTLE BIT ABOUT KECK BECAUSE IT'S CRITICAL TO THIS ISSUE.

IN THAT CASE, AS IN MANY SITUATIONS, THE COURT DEALT WITH A PRIVATE CORPORATION THAT WAS SET UP TO DEAL WITH AN ASPECT OF PUBLIC NEED. IN KECK IT WAS TO OPERATE A

PART OF THE JACKSONVILLE
TRANSIT SYSTEM.

AND THE CORPORATION THERE HAD
BEEN RECOGNIZED AS A PRIVATE
CORPORATION FOR PURPOSES OF
LABOR RELATIONS PURPOSES.

AND THE ARGUMENT WAS MADE,
WELL, IF THEY HAVE THAT, THEY
CAN'T GET SOVEREIGN IMMUNITY,
WHICH REQUIRES THEY BE FOUND
TO BE A STATE AGENCY.

AND HERE'S WHERE WE DISAGREE
WITH MR.†RICHARDS, THAT THIS
IS ALL ABOUT LABELING.

IT'S NOT.

PUBLIC IS ONE THING FOR ONE
PURPOSE, ANOTHER FOR ANOTHER.
AND WHAT THIS COURT SAID IN
KECK IS IMPORTANT.

WE HAVE TO BE PRECISE ABOUT
THE CONTEXT AND THE CRITERIA.
THE COURT SAID THE SOVEREIGN
IMMUNITY STATUTE, THE
UNDERPINNING OF THIS WHOLE
ARGUMENT.

WE HAVE STATUS IN THE
FOUNDATION.

THEREFORE, GIVING UP THE
PRIVATE CORPORATE STATUS OF
IT, WHICH IS CHARTERED INTO
BEING UNDER CHAPTER 617,
FORGET ABOUT ALL THAT, YOU
HAVE SOVEREIGN IMMUNITY
STATUS.

THE COURT SAID SOVEREIGN
IMMUNITY STATUS SETS FORTH
THREE DISTINCT CATEGORIES.
ONE, THOSE ENTITIES THAT
COMPRISE THE STATE ITSELF,
INCLUDING EXECUTIVE
DEPARTMENTS, THE LEGISLATURE,
JUDICIAL BRANCH, INDEPENDENT
ESTABLISHMENTS OF THE STATE.
TWO, POLITICAL SUBDIVISIONS OF
THE STATE, COUNTIES AND
MUNICIPALITIES.

AND, THREE, CORPORATIONS
ACTING PRIMARILY AS
INSTRUMENTALITIES OF THE
STATE.

AND THE COURT SAID THE CORPORATION IN KECK FALLS IN THAT THIRD BUCKET. IT'S NOT IN THE FIRST BUCKET, WHICH IS AN ALTER EGO FOR THE STATE OR AN ENTITY FOR THE STATE OR AN ENTITY THAT COMPRISES THE STATE ITSELF. AND THAT'S TRUE OF THE CORPORATION HERE. IN BETTERSON WE WERE DEALING WITH A CORPORATION SET UP TO MANAGE A PRISON SYSTEM. THAT WAS THE ONLY REASON IT WAS SET UP. BUT IT WAS A PRIVATE CORPORATION. AND THE ARGUMENT WAS MADE THEY DON'T QUALIFY AS A STATE AGENCY. THEREFORE, THEY CAN'T BE A STATE AGENCY FOR SOVEREIGN IMMUNITY PURPOSES.

>> BUT STILL WHAT I'M ASKING IS ASSUMING WHATEVER THEY ARE, I'M STILL NOT SEEING WHERE IN THE CONTRACT'S IMPAIRMENT CLAUSE, WHERE IT IS BETWEEN A AND B AND C IS RELEVANT TO WHETHER THERE'S BEEN AN IMPAIRMENT OF CONTRACT.

>> IT'S NOT THERE. THERE IS NO DISTINCTION IN THE CONTRACT IMPAIRMENT CLAUSE. IT SIMPLY SAYS CONTRACTS SHALL NOT BE IMPAIRED.

>> WELL, IN THE DARTMOUTH COLLEGE CASE WAS THE DISTINCTION BETWEEN A PUBLIC AND PRIVATE CORPORATION OF ANY SIGNIFICANCE?

>> YES, YOUR HONOR. HERE'S WHAT CHIEF JUSTICE MARSHALL

>> AND HE DECIDED THAT IT WAS A PRIVATE CORPORATION AS OPPOSED TO A PUBLIC CORPORATION.

>> NOT EXACTLY, YOUR HONOR. HERE'S WHAT CHIEF JUSTICE

MARSHALL SAID.

THE ARGUMENT WAS MADE THIS
IS AN INSTITUTION.

IT'S SET UP TO SERVE PUBLIC
INTERESTS.

IT NEEDS TO BE CONTROLLED BY
THE PUBLIC.

IT WAS CHARTERED BY BRITAIN
BEFORE THE REVOLUTION AND
CHIEF JUSTICE MARSHALL HELD
THAT IT WAS SUCH A STRONG
PROPERTY INTEREST AND CONTRACT
RIGHT IT SURVIVED THE
REVOLUTION.

AND HE SAID THIS, THAT THERE
MAY BE AN INSTITUTION FOUNDED
BY GOVERNMENT AND PLACED
ENTIRELY UNDER ITS IMMEDIATE
CONTROL, THE OFFICERS OF WHICH
WOULD BE PUBLIC OFFICERS,
AMENABLE EXCLUSIVELY TO
GOVERNMENT NONE WILL DENY, BUT
IS DARTMOUTH COLLEGE SUCH AN
INSTITUTION?

IS EDUCATION ALTOGETHER IN THE
HANDS OF GOVERNMENT?

DOES EVERY TEACHER OF YOUTH
BECOME A PUBLIC OFFICER?

HE THEN ADDRESSED THE ARGUMENT
THIS WAS A PUBLIC CHARTER.

IT WAS GRANTED BY THE PUBLIC.

AND HE CONSIDERED WHETHER THE
ACT OF INCORPORATION CHANGES
T. AND HE SAID NO.

WELL, DOESN'T THE FACT THAT
IT'S DOING A PUBLIC PURPOSE.

AND HE SAID THE OBJECTS FOR
WHICH A COOPERATION IS CREATED
ARE UNIVERSAL.

THEY ARE BENEFIT TO THE
COUNTRY AND THIS CONSTITUTES
THE CONSIDERATION AND IN MOST
CASES THE SOLE CONSIDERATION
OF THE GRANT.

THE BENEFIT TO THE PUBLIC IS
CONSIDERED AS AN AMPLE
COMPENSATION FOR THE FACULTY
IT CONFERS AND THE CORPORATION
IS CREATED.

SO YES, THERE WAS DISCUSSION

OF PUBLIC PURPOSE AND PUBLIC BENEFIT, BUT IT WAS ALL TO ESTABLISH THE IN VIOLABILITY OF THE CONTRACT.

THIS CONSTITUTION IN FLORIDA DOESN'T SIMPLY PROTECT MAKING MONEY.

IT DOESN'T SIMPLY PROTECT FORPROFIT CORPORATIONS.

IT PROTECTS NONPROFIT CORPORATIONS AS WELL.

NONPROFITS ARE BEING USED EVERY DAY TO PRIVATIZE IMPORTANT GOVERNMENT PROGRAMS AND PURPOSES.

CHILDS VERSUS UNITED FACULTY OF FLORIDA INVOLVES A SITUATION WHERE WE WERE TALKING ABOUT A CONTRACT WITH PUBLIC EMPLOYEES WHOSE SOLE PURPOSE, THEIR SOLE JOB WAS TO DISCHARGE PUBLIC FUNCTIONS. THAT'S ALL THEY DID.

BUT WHAT THE COURT SAID IS THAT WHEN THE PARTIES LOOK LIKE THEY TRY TO ENTER INTO A CONTRACT HERE WITH THESE PUBLIC EMPLOYEES, WE'RE GOING TO PRESUME THAT CONTRACT IS BINDING.

IF WE DON'T, IT FAILS FOR LACK OF MUTUALITY.

THEY HAVE A RIGHT TO CONTRACT. THIS CHAPTER 617 CORPORATION HAS A RIGHT TO CONTRACT.

THESE PARTIES HAVE EVIDENCED EVERY INTENTION TO ENTER INTO BINDING CONTRACTS.

THEY SAID IT IN THE DOCUMENT ITSELF.

THIS COURT HAS SAID TIME AND TIME AGAIN WHEN PARTIES HAVE DONE THAT AND WHEN THE LEGISLATURE THROUGH GENERAL LAW HAS EMPOWERED PUBLIC ENTITIES, WE WILL ENFORCE IT.

WITH ALL RESPECT, WE SUGGEST THAT THE 1ST DISTRICT COURT OF APPEALS WAS CORRECT IN HOLDING THAT THIS SPECIAL LAW

RETROACTIVELY AND
IMPERMISSIBLY INVADES THE
CONTRACT RIGHTS OF THIS
FOUNDATION AND THAT DECISION
SHOULD BE AFFIRMED.

THANK YOU.

>> THANK YOU.

REBUTTAL?

>> MAY IT PLEASE THE COURT,
THERE ARE JUST A FEW ITEMS
THAT I'D LIKE TO ADDRESS.
FIRST OF ALL, COUNSEL SAID
THAT ONLY 6% OF THE REVENUE OF
THE FOUNDATION IS TAX DOLLARS.
THAT'S A BIT MISLEADING.
ALMOST ALL OF THE MONEY, WITH
A VERY SMALL PERCENTAGE WHICH
IS CHARITABLE CONTRIBUTIONS,
IS PUBLIC MONEY, BECAUSE IT
EITHER COMES FROM THE
OPERATION OF PUBLIC ASSETS OR
TAX DOLLARS AND THAT 6%
REPRESENTS OVER \$90 MILLION
SINCE '03.

BUT MOST IMPORTANTLY, THAT
MONEY COMES TO THEM BECAUSE
THEY ARE ENTITLED BY VIRTUE OF
LAW IN THEIR AGREEMENTS TO
HAVE THEIR DEFICITS TAKEN CARE
OF BY TAX DOLLARS RAISED BY AD
VALOREM TAXES.

THERE ARE NO PRIVATE
CORPORATIONS THAT ARE ENTITLED
TO THAT.

IF THEY WERE, IT WOULD BE AN
ILLEGAL DELEGATION.

SECOND, JUSTICE PERRY SAID
WHEN THIS CORPORATION WAS
CREATED, WAS IT THE INTENTION
THAT IT BE TAKEN OUT OF STATE
CONTROL?

AND DESPITE COUNSEL'S
CONTINUAL REFERENCE TO THE
WORD PRIVACY WHICH APPEARS
NOWHERE RELEVANT TO THIS CASE,
THE ANSWER IS NO, THERE IS
NOTHING IN THE DOCUMENTS THAT
RESULTED IN THIS ENTITY
SUGGESTING THAT IT WAS THE

INTENT OF ANYBODY TO TAKE IT
OUT OF STATE CONTROL.

>> WELL, IT WAS WHEN THE
CHANGE WAS MADE TO ALLOW
ADDITIONAL BOARD OF DIRECTORS,
THAT'S WHEN THE CONTROL WAS
LOST, RIGHT?

>> THAT'S CORRECT, YOUR HONOR,
BUT THAT LEADS TO THE NEXT OF
THE LAST TWO THINGS I HAVE TO
COMMENT ON.

THE FIRST IS THAT COUNSEL SAID
YOU CAN ONLY TAKE AN ENTITY
OUT OF THE STATE'S PENSION
SYSTEM IF IT'S PRIVATE.

I DON'T KNOW WHAT HIS
AUTHORITY IS FOR THAT, BUT
THEY HAVE CITED NONE, NOT IN
ORAL ARGUMENT, NOT IN THEIR
BRIEFS.

AND THE FACT IS, AS I
MENTIONED, SPECIAL TAXES
DISTRICTS ARE NOT PART OF THE
STATE PENSION SYSTEM.

THEY HAVE TO APPLY FOR IT.
AND THERE IS NOTHING NOW,
THE LEGISLATURE MAY PROVIDE
FOR AN ENTITY TO REMOVE ITSELF
FROM A CERTAIN STRUCTURE OF
STATE GOVERNMENT IN ORDER NOT
TO BE PART OF THE PENSION
SYSTEM, BUT THAT DOESN'T MEAN
THAT IT'S SUDDENLY PRIVATIZED
FOR PURPOSES OF THE IMPAIRMENT
CLAUSE.

COUNSEL SAYS THAT THE FACT
THAT THE FOUNDATION HAS
SOVEREIGN IMMUNITY IS THE
UNDERPINNING OF OUR ARGUMENT.
IT IS NOT AND I THINK THE
COURT UNDERSTANDS THAT IT IS
NOT.

BUT IT DOES RAISE AN
INTERESTING POINT, WHICH IS
THIS.

FOR 26 YEARS THIS ENTITY
REPRESENTED ITSELF VIGOROUSLY
TO COURTS AND STATE AGENCIES
AS A PUBLIC ENTITY FOR THE
PURPOSE OF OBTAINING CERTAIN

PRIVILEGES, IMMUNITIES AND BENEFITS, ONE OF WHICH THAT IT GOT FROM EIGHT SEPARATE COURTS WAS RECOGNIZING THAT IT WAS ENTITLED TO SOVEREIGN IMMUNITY.

AND WHEN IT SOUGHT FROM ACA SPECIAL PRICING PRIVILEGES, IT SAID I'M NOT SAYING IT IT SAID THROUGH ITS COUNSEL THAT ONE OF THE REASONS THAT THEY SHOULD GET THOSE SPECIAL PRICING PRIVILEGES IS THAT THEY WERE A PUBLIC ENTITY. AND THE REASON WE KNOW THAT IS BECAUSE IN THEIR WORDS THEY HAD SOVEREIGN IMMUNITY, WHICH IS ONLY AVAILABLE TO THE STATE AND ITS AGENCIES.

SO THIS RAISES ONE MORE QUESTION, WHICH IS WHATEVER ELSE WE TALK ABOUT AND IF WE'RE TALKING ABOUT JUSTICE PARIENTE'S NARROW RULING, I WOULD SUGGEST TO THIS COURT WHEN AN AGENCY FOR 26 YEARS HAS TAKEN THAT POSITION, IT SHOULD NOT BE PERMITTED TO COME INTO COURT NOW BECAUSE IT SUDDENLY DECIDED THAT IT DOESN'T LIKE WHAT'S HAPPENED AND CHANGE ITS POSITION FROM WHAT IT SAID AND FROM WHAT IT OBTAINED BENEFITS, PRIVILEGES AND IMMUNITIES FOR 26 YEARS THAT ARE NOT AVAILABLE TO PRIVATE ENTITIES.

THANK YOU, YOUR HONORS.

>> THANK YOU FOR YOUR ARGUMENTS.