IN THE SUPREME COURT
STATE OF FLORIDA

HALIFAX HOSPITAL MEDICAL CENTER,
Appellant,
vs.
NEWS-JOURNAL CORPORATION, etc.,
Appellees.

Case No.: 92,047

District Court of Appeal
Fifth District Case No. 96-3115

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

BRIEF OF AMICUS CURIAE FLORIDA HEALTH SCIENCES CENTER, INC.

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STATEMENT OF AMICUS CURIAE

Florida Health Sciences Center, Inc. ("FHSC"), is a not-for-profit Florida corporation and is a qualified, tax exempt entity pursuant to § 501(c)(3) of the Internal Revenue Code. FHSC, pursuant to Florida Statutes § 155.40 (Supp. 1996) entered into a Lease Agreement dated June 20, 1997 with the Hillsborough County Hospital Authority (the "Authority"), a public body corporate and a special district of the State of Florida. Pursuant to the Lease Agreement, which took effect October 1, 1997, FHSC became lessee of the real property and improvements known as Tampa General Hospital, a 976-bed acute care regional hospital, and became the transferee of substantially all of the other operating assets of the Authority.

FHSC has an interest in the adjudication of the constitutionality of Florida Statutes § 395.3035(4), which exempts from the requirements of Florida Statutes § 286.011 and Article I, section 24(b), Florida Constitution, certain meetings of the governing board of a public hospital "at which the written strategic plans, including written plans for marketing and services, are discussed or reported on." Although the transaction between FHSC and the Authority was debated vigorously in numerous public meetings, community forums and public hearings of the Authority, the Authority did conduct a series of closed strategic planning meetings under § 395.3035(4) prior to the public meetings, forums and hearings. A final determination that the strategic planning exemption is unconstitutional may result in a legal challenge to the meetings conducted by the Authority.

REFERENCES TO PARTIES AND TO THE RECORD

FHSC hereby adopts and incorporates by reference the party designations and record references set forth in the Initial Brief (Preliminary Statement) of Appellant, Halifax Hospital Medical Center.

STATEMENT OF THE FACTS AND THE CASE

The Authority hereby adopts and incorporates by reference the Statement of the Facts and the Statement of the Case contained in the Initial Brief of Appellant, Halifax Hospital Medical Center.

SUMMARY OF THE ARGUMENT

This case presents for review the decision in *Halifax Hospital Medical Center v. News-Journal Corp.*, 1997 WL 713567 (Fla. 5th DCA Nov. 14, 1997). FHSC, as amicus curiae, submits that the district court violated two fundamental canons of statutory construction in this case. First, the district court unnecessarily decided the case on constitutional grounds when it could have been disposed of otherwise. Because the district court held that the "Joint meetings between competitors simply do not qualify under any reading under the exemption," *Halifax*, 1997 WL 713567 at *2, there was no need for the court to pass upon the constitutionality of the statute. It should not have done so. *McKibben v. Mallory*, 293 So. 2d 48 (Fla. 1974).

Having improperly reached the constitutional question, the district court then erred by refusing to adopt a narrowing construction of the statute despite its concession that "It should not be difficult to do so." *Halifax*, 1997 WL 713567 at *2. This Court has repeatedly held that when an interpretation upholding the constitutionality of a statute is available and consistent with legislative intent, the court must adopt that construction of the statute. *Department of Insurance v. Southeast Volusia Hospital District*, 438 So. 2d 815 (Fla. 1983); *VanBibber v. Hartford Accident and Indemnity Insurance Co.*, 439 So. 2d 880 (Fla. 1983); *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981(Fla. 1981).

These issues will no doubt be addressed by the principals or by other amicus curiae. FHSC will limit this amicus brief to the presentation of a single point: If this Court determines that §395.3035(4) is unconstitutional, then it should expressly provide that the decision will operate prospectively only. In determining whether a statute is void *ab initio*, this Court has distinguished between statutes that are unconstitutional because the Legislature lacked the power to enact them

and those that violate the constitution because of the form in which they are enacted. If §395.3035(4) is unconstitutional, it is not because the Legislature lacks the power to enact exemptions to the Sunshine Law -- indeed, the constitution expressly grants that power to the Legislature. Rather, any constitutional defect in the statute is merely one of form.

Equitable considerations also favor a determination that such a decision should operate prospectively only. Because legislative enactments are presumed constitutional until invalidated by a final appellate decision, other hospitals have may well have conducted closed board meetings pursuant to §395.3035(4). To the extent that other hospitals did so, they would suffer tremendous hardship and perhaps irreparable harm if all such meetings were invalidated and those proceedings -- highly sensitive discussions of strategic plans -- became available to the public hospitals' private competitors.

ARGUMENT

IF THIS COURT DETERMINES THAT SECTION 395.3035(4) IS UNCONSTITUTIONAL, THEN IT SHOULD EXPRESSLY PROVIDE THAT THE DECISION WILL OPERATE PROSPECTIVELY ONLY.

Although the district court declared §395.3035(4) unconstitutional, it failed to consider or discuss what effect, if any, its decision would have on meetings conducted by *other* public hospitals pursuant to this exemption. If this Court affirms the district court's holding that § 395.3035(4) is unconstitutional, then it should consider this broader question and determine whether such a holding is to operate retroactively -- perhaps invalidating any public hospital board meetings that were conducted in good faith reliance on the statute -- or prospectively only. FHSC urges this Court to expressly make any such ruling one that operates prospectively only.

As a fundamental principle of law, legislative acts are presumed constitutional until invalidated by a final appellate decision. *Deltona Corp. v. Bailey*, 336 So.2d 1163, 1166 (Fla. 1976); *In Re: Estate of Caldwell,* 247 So.2d 1 (Fla. 1971); *State ex rel Atlantic Coast Line Railroad v. Board of Equalizers,* 84 Fla. 592, 94 So. 681 (1922). Any meetings that might have been conducted by the governing boards of other public hospitals in Florida in reliance on the exemption were conducted in good faith, based upon the Legislature's presumptively constitutional grant of an exemption specifically for that purpose.

Although some early decisions suggest that the Court has no discretion to make finding of unconstitutionality operate prospectively only, *see State ex rel Nuveen v. Greer,* 88 Fla. 249, 102 So. 739 (Fla. 1924), more recent decisions furnish ample authority to do as well as some general guidelines for the Court to consider. In *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976), the

"prospective constitutional invalidity." *Deltona Corp.*, 336 So.2d at 1166. In *City of Miami v. Bell*, 634 So.2d 163 (Fla.), *cert.denied*, ___ U.S. ___, 115 S. Ct. 316, 130 L.Ed. 2d 278 (1994), this Court held that a decision invalidating a city ordinance that authorized the reduction of disability pension benefits for retirees in an amount equal to any worker's compensation benefits they received for the same disabling event would not be applied retroactively. *See also Aldana v. Holub*, 381 So.2d 231 (Fla. 1980) (Medical Mediation Act); *ITT Community Development Corp. v. Seay*, 347 So.2d 1024 (Fla. 1977) (tax statute); *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (Fla. 1973) (tax statute); *City of Tampa v. Birdsong Motors*, 261 So. 2d 1 (Fla. 1972)(municipal ordinance).

Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991), is particularly instructive. There the Court held that Ch. 90-201, Laws of Florida, a comprehensive revision of the workers' compensation laws, was unconstitutional, but that its decision would operate prospectively only. As this Court explained:

> In determining whether a statute is void *ab initio*, however, this Court seemingly has distinguished between the constitutional authority, or power, for the enactment as opposed to the form of the enactment. . . . Here, we are declaring Chapter 90-201 unconstitutional not because the Legislature lacked the power to enact it, but because of the form of its enactment.

582 So.2d at 1174 (citations omitted). Here, the district court declared § 395.3035(4) unconstitutional not because the Legislature lacks the power to enact exemptions -- indeed, Article I, Section 24(c) expressly grants the Legislature such power -- but because of the form of the exemption that was enacted.

Equitable considerations should also be taken into account when deciding if a finding of unconstitutionality should be made to operate prospectively only. *See Deseret Ranches of Florida, Inc. v. St. Johns River Water Management District*, 406 So.2d 1132 (Fla. 5th DCA 1981), *aff'd in*

part and rev'd in part on other grounds, 421 So. 2d 1067 (Fla. 1982) (holding Ch. 77-382, Laws of Florida, which created the Greater St. Johns River Basin, unconstitutional but relying upon equitable considerations and the potential hardship to the district in determining that holding would operate prospectively only). FHSC urges the Court to consider the tremendous and perhaps irreparable harm that may befall Florida's public hospitals if such a decision were to apply retroactively to invalidate any closed meetings already conducted by public hospital boards. The practical effect of such a ruling would be that any action taken at a closed meeting would be void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla.), *cert. denied*, 307 So. 2d 448 (Fla. 1974). Sunshine violations can be cured by "independent final action in the sunshine." *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). But if strategic plans must be discussed publicly to "cure" any potential invalidity, then the cure is surely worse than the disease. Such disclosure would threaten the public hospitals' broad, long-term strategic plans, and it could result in the irretrievable loss of potential strategic options by revealing the options under consideration to the competition. This would enable the private competition either to usurp such strategic options for themselves or to take action to thwart the public hospitals' ability to capitalize on those strategic opportunities.

Thus, retroactive invalidity of the exemption would create precisely the unfair competitive advantage -- the unlevel playing field -- that the Legislature sought to eradicate when it granted the exemption. The potential loss of such strategic opportunities could result in drastic financial consequences to public hospitals, imperiling their fiscal health as well as their ability to continue to provide indigent and charity care to the uninsured and underinsured populations as hospitals of last resort.

CONCLUSION

The district court unnecessarily reached the constitutional question instead of disposing of this case on nonconstitutional grounds. It compounded its error by refusing to adopt a narrowing construction of the statute when such a construction was available. For these reasons, the decision of the district court should be reversed. If this Court affirms the district court's determination that §395.3035(4) is unconstitutional, however, then it should expressly provide that the decision will operate prospectively only.

Respectfully submitted,

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