IN THE SUPREME COURT OF FLORIDA

LAWNWOOD MEDICAL CENTER, INC.,
d/b/a LAWNWOOD REGIONAL MEDICAL
CENTER AND HEART INSTITUTE,
A Florida corporation,

Appellant,

v.

Case No. SC07-1300
L.T. Case No. 1D06-2016

RANDALL SEEGER, M.D., as President
of the Medical Staff of Lawnwood
Regional Medical Center, Inc.,
d/b/a Lawnwood Regional Medical
Center and Heart Institute, and
Member of the Medical Executive
Committee of Lawnwood Regional
Medical Center and Heart Institute,

Appellee.

BRIEF OF AMICI CURIAE, AMERICAN MEDICAL ASSOCIATION AND FLORIDA MEDICAL ASSOCIATION IN SUPPORT OF APPELLANT AND IN SUPPORT OF AFFIRMANCE OF THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL

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INTEREST STATEMENT OF AMICI CURIAE

The American Medical Association (the "AMA"), an Illinois not-for-profit corporation, is a private, voluntary organization of physicians founded to promote the science and art of medicine and the betterment of public health. Its 240,000 members practice in all states, including Florida, and in all fields of medical specialization.

The AMA is the largest organization of physicians in the United States. The AMA House of Delegates, its ultimate policy-making body, regularly establishes and publishes policies concerning medical issues that represent the consensus viewpoint of America's physicians. The AMA's Council on Ethical and Judicial Affairs regularly publishes opinions concerning physicians' ethical obligations to their patients and to the medical community.

The Florida Medical Association (the "FMA") is a Florida not-for-profit corporation whose almost 20,000 members are licensed Florida physicians of all specialties. The FMA was created and exists for the purposes of securing and maintaining the highest standards of practice in medicine and of furthering the interests of its members. The FMA regularly participates in

legislative efforts, rulemaking proceedings, and litigation on behalf of its members.[1]

Amici have a strong interest in preserving the integrity and enforceability of hospital staff bylaws, including their self-governance provisions, as required by the accreditation rules of the Joint Commission on Accreditation of Healthcare Organizations.[2] Such interest arises from their members' knowledge of and experience in hospital governance and administration. It also arises from their determination that the public health is advanced when the courts give legally binding effect to those bylaws.

This case concerns the legal enforceability of medical staff bylaws. The medical staff, an association of licensed professionals within a hospital, is the only body with the necessary medical expertise and experience within a hospital to

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[1] The AMA and FMA appear on their own behalves and as representatives of the Litigation Center of the American Medical Association the State Medical Societies. The Litigation Center was formed in 1995 as a coalition of the AMA and private, voluntary, non-profit state medical societies to represent the views of organized medicine in the courts.

[2] "[T]he Joint Commission is the nation's predominant standards-setting and accrediting body in health care. [] The Joint Commission's comprehensive accreditation process evaluates an organization's compliance with these standards and other accreditation requirements. Joint Commission accreditation is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards." http://www.jointcommission.org/AboutUs/joint_commission_facts.htm.

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provide and oversee medical care. It is not simply a department in a hospital, subject to the same administrative controls as other hospital personnel. Its primary obligation, ethical and legal, is to the patient.

Hospitalized patients are best served when the medical staff as a whole accepts responsibility for their care. Such care is enhanced through constructive self-criticism, commonly called "peer review," within the medical staff membership. It is also enhanced when physicians are subject to the professional oversight of their fellow physicians and are freed from the over-influence of the economic interests of non-physicians when making decisions affecting their patients. Finally, it is enhanced when physicians are allowed to speak collectively within the hospital. All of these goals – joint patient responsibility, peer review and oversight, freedom from economic coercion, and a collective voice – are established and maintained within the hospital environment through enforceable medical staff bylaws. *Amici* submit this brief in order to impress upon this Court the legal and health policy considerations at stake in this suit.

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As an Appendix to this brief, *Amici* have attached various policy statements of the American Medical Association advocating the legal enforceability of hospital staff bylaws and the importance of allowing self-governance by the medical staff. The consensus viewpoint of America's physicians is that respect for the principles of legal enforceability and of medical staff self-governance is a necessary element of patient care in the hospital setting.

PRELIMINARY STATEMENT

Appellant, Lawnwood Medical Center, Inc., d/b/a Lawnwood Regional Medical Center and Heart Institute, shall be referred to as "Lawnwood." Appellee, Randall Seeger, M.D., as President of the Medical Staff, appears on its behalf, and will be referred to as "the medical staff." The statute that is the subject of this lawsuit shall be referred to as "the hospital governance law."

SUMMARY OF THE ARGUMENT

The relationship between a hospital and its medical staff is a special one, a relationship that directly impacts the nature of the care provided to the public. It is a relationship based on mutual trust. It is a relationship, however, where

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disagreements may arise. Because the hospital environment involves complicated, medical concerns, the optimal structure for resolution of controversies is to be found in the pre-dispute contract between the parties: the medical staff bylaws.

Lawnwood and its medical staff entered into a contract that provided procedures under which the parties could resolve their differences. Unfortunately, Lawnwood became dissatisfied with the contracted-for manner of making decisions. Instead of seeking to negotiate a different contract, the hospital sought legislative intervention.

The Florida Constitution prohibits the legislature from impairing the obligation of contracts. Art. I, Sec. 10, Fla. Const. The legislature violated this provision. There is a contract between the parties as defined by the medical staff bylaws. The hospital governance law completely rewrote the obligations the parties owed one another. Put simply, it impaired the contract.

The hospital governance law also violates the Florida Constitution because it gives special privileges to a single private corporation. *See* Art. III, Sec. 11(a)(12), Fla. Const.

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In simple terms, it gives special powers to a single private corporation. That is improper.

Finally, the law violates the Equal Protection rights of the physicians on the Lawnwood medical staff by creating two classes of hospitals and two classes of medical staffs. Both the Florida and United States Constitutions require citizens to be treated equally under the law. The hospital governance law here creates two classes of hospitals: one made up of all hospitals in the state other than those in St. Lucie County and one that includes only the two hospitals in St. Lucie County.[3] It also creates two distinct classes of medical staffs: one made up of all medical staffs in the state not in St. Lucie County, and one that includes only the staffs in St. Lucie County. Regardless of which constitutional standard is applied to test this intentional legislative distinction between the created classes, the distinction does not pass constitutional muster. There is no legitimate reason for making the distinction.

[3] By its terms, the hospital governance law applies only to counties in St. Lucie County. There are only two such facilities, Lawnwood and St. Lucie Medical Center. Both are owned by the same private corporation, Hospital Corporation of America, Inc. ("HCA").

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The hospital governance law does only one thing: it strips the medical staff at Lawnwood of the constitutionally guaranteed contractual rights that define how their disputes with Lawnwood should be handled and treats them differently than similar staffs across the state. Judge Ferris was right, and so was the First District Court of Appeal.

ARGUMENT

1. The Hospital Governance Law Impairs The Contractual Rights Of The Medical Staff Under The Medical Staff Bylaws, Violates The Equal Protection Clause And Improperly Grants A Special Privilege To A Private Corporation.

The legal issues in this appeal arise from a simple set of facts that logically require the rejection of the hospital governance law for very practical reasons: the legislature for the entire State of Florida granted a single private corporate entity a law that applies only to it and its medical staff in a single county. Both hospitals in St. Lucie County are owned by HCA; there are no others. More specifically, the law is intended, by its own terms and by the admission of Lawnwood, to "fix" a single contractual[4] relationship – that between Lawnwood's Board of Directors and its medical staff.

[4] As further evidence of the single goal of helping HCA, Section 3 of

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It matters not whether this Court agrees with the First District Court of Appeal's major reasoning that the law impaired the contracts held by the medical staff, or whether this Court agrees the law grants a special privilege to a private entity (Lawnwood/HCA), or whether this Court simply acknowledges the law does not even pass the standard applied to the Equal Protection challenge. Whatever the reasoning, one thing is obvious: a private corporation has no right to obtain a special law to strip a single medical staff of its contractual rights and to treat that medical staff differently than all other medical staffs in the state.

"[R]ights existing under a valid contract enjoy protection under the Florida Constitution." *Green v. Quincy State Bank*, 368 So.2d 451 (Fla. 1st DCA 1979). This protection is extensive. "Any conduct on the part of the legislature that detracts in any way from the value of the contract is inhibited by the Constitution." *Dewberry v. Auto-Owners Ins. Co.*, 363 So.2d 1077, 1080 (Fla. 1978).

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the hospital governance law is expressly limited not only to the geographical region of St. Lucie County, it is limited to hospitals owned by corporations.

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There are hundreds of hospitals in the State of Florida. By statute, each of these hospitals has its own medical staff. § 395.0191, Fla. Stat. (2005). However, the hospital governance law purports to grant a special power, the power to ignore a clear contract, to the hospitals in a single county and to strip the medical staffs there of their contractual rights. There is no legal justification for such a law to apply to only one county; it is clear the only purpose of the statute was to give special rights to Lawnwood. The legislature does not exist to provide private companies special powers such as these.

"It is well settled under federal and Florida law that all similarly situated persons are equal under the law. [A]ll statutory classifications that treat one person or group differently than others must appear to be based at a minimum on a rational distinction having a just and reasonable relation to a legitimate state objective." *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249 (Fla. 1987). "[T]here must be a logical connection between the classification involved and the stated purpose to be achieved by the statute" and where there is no "such logical connection," the law must be stricken. *Florida*

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Real Estate Comm'n v. McGregor, 336 So.2d 1156, 1159 (Fla. 1976).

Any of these tests requires a simple evaluation of 1) whether the staff has an interest warranting protection, and if so, 2) whether the state has a sufficient reason to ignore that interest. The medical staff at Lawnwood clearly has such an interest, and there is no good reason to ignore it.

Lawnwood acknowledges a "contractual relationship" exists, but suggests that the "nature and form of the parties' contract" somehow mitigates the level of protection that should be recognized. This is a specious suggestion. Courts across the nation have recognized medical staff bylaws confer a sufficient property interest to trigger due process requirements. *See, e.g., Ulrich v. City and County of San Francisco*, 308 F.3d 968 (9th Cir. 2002); *Northeast Ga. Radiological Assocs., P.C. v. Tidwell*, 670 F.2d 507, 510-11 (5th Cir. 1982). Surely such a right is worthy of protection in other constitutional contexts. The medical staff has the right to have the contract applied as negotiated and written.

The physicians on all medical staffs have as much right not to have their constitutional rights infringed as do any other

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citizens. The contractual rights provided by the bylaws have clearly been impaired. Impairment can be financial or otherwise. What matters is whether a law impedes *any* rights, substantive or procedural, of the parties. *State ex rel. Women's Benefit Ass'n v. Port of Palm Beach Dist.*, 164 So. 851, 856 (Fla. 1935). It cannot reasonably be argued that the physicians on the medical staff have no valuable economic and non-economic interests in the rights and privileges afforded by the Bylaws. The medical staff describes a number of them; Judge Ferris noted many, also.[5]

2. The Effect Of The Hospital Governance Law Is Contrary To Public Health And Welfare Because It Would Remove The Medical Staff's Power To Oppose Economic Credentialing.

All of these important constitutional concepts are addressed by counsel for Appellee. Why, however, are the AMA and the FMA so interested in this battle? Why do these entities care if the Florida legislature granted a special right to a single private corporation under these circumstances?

[5] The Bylaws restrict the manner in which the hospital can act without the medical staff's participation. As noted by Judge Ferris, the two must work together on issues such as "1) appointments, 2) granting of clinical privileges, 3) disciplinary actions, 4) all matters relating to professional competency and the smooth operation of the Hospital." App. to Initial Brief of Appellant, Tab C, pp. 15-17.

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The answer is simple. The hospital governance law does much more than Lawnwood has discussed in this case. This is not a case about fixing a problem with a few doctors, as suggested in Lawnwood's brief. Indeed, the record shows that justification has not existed for some time; the offending doctors have long been removed from the staff. The "crisis" alleged by Lawnwood is nothing more than an excuse to begin a process of taking control of medical decisions away from the medical staff and putting it in the unchecked hands of the board. A brief review of the "crisis" shows how clear this is.

1. There was never a crisis. What Lawnwood characterizes as a crisis was nothing more than a disagreement between the staff and the board about how to handle an issue about specific doctors. There are and were available state and federal remedies to deal with the situation.

2. There was no law requiring the staff to do anything more than it did. Lawnwood suggests the hospital governance law simply "clarified" or "enabled" the hospital board to comply with existing laws. If there were existing laws governing the dispute between the board and the medical staff, those laws would have controlled the considerable litigation that arose

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from the dispute. The very fact that Lawnwood sought a legislative fix is the best evidence it did not have any law to support the desired takeover of control from the medical staff.

3. There was never a reason to provide a "local" fix. It is entirely illogical that there would exist such an important state need to ensure hospital boards cannot be "handcuffed" by medical staffs that would not require state-wide action. If there were some inherent problem with the manner in which the board-medical staff relationship is described in the Lawnwood Bylaws, that contractual relationship would be a danger anywhere such a contract existed.[6]

Amici believe it is important for the Court to understand that the impairment of the medical staff's contracted rights over control will impact not only the physicians at Lawnwood, but the public at large. The medical staff must have some of the control in a hospital setting to ensure patients are properly cared for and economic interests do not have an improper effect on patient care.

[6] At oral argument below, counsel for Lawnwood offered that the contract between the board and the medical staff at Lawnwood is somehow aberrant in Florida. There is no evidence in the record to support that contention; counsel should not be permitted to argue that before this Court.

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Medical staffs retain important levels of autonomy through medical staff bylaws like the ones here. They have the power to participate in important decisions about medical care, about staffing, and about credentialing. They retain the power to participate in the decisions that will affect themselves and their fellow physicians. They retain the power to ensure economics do not become the primary focus of decision-making.

Absent the hospital governance law, Lawnwood's board holds much of the power to make certain decisions, but this power is tempered by the contractual obligation to act "reasonably" and with "good cause."[7] This well-defined relationship has an inherent value, which the constitution prohibits the legislature from impairing and which requires even handed treatment by the state. Conversely, the hospital governance law ignores the language of the bylaws and provides that the power of the Lawnwood board is "not limited by the authority of its medical staff." App. to Initial Brief of Appellant, Tab A, p. 3.

The impairment of this contractual balance of responsibilities and powers significantly affects the public.

[7] The term "good cause" is a measurable standard applied by Florida courts for years. It provides a benchmark the parties, and courts, can apply in the event of a dispute between the parties. *Cf. Florida Beverage Corp. v.*

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There is often a tension between medical staffs (who may be focused more on patient care) and hospitals (which may be more focused on the "business" of medical care). There is an ongoing national concern that hospitals desire to engage in "economic credentialing" to maximize perceived loyalty, referrals and other practices designed to increase their profitability.[8]

"Economic credentialing is the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges."[9] Doctors across the nation are concerned about this practice because it elevates economics over patient care. *See, e.g., Statement on Economic Credentialing*, American Society of Anesthesiologists[10] ("The Society condemns the practice known as 'economic credentialing,' by which decisions related to medical staff privileges are based on considerations unrelated to

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Florida Dep't of Bus. Prof. Reg., 503 So.2d 396 (Fla. 3d DCA 1987).

[8] While this Brief is mostly focused on economic credentialing, the hospital governance law impairs the entire concept of self-governance enjoyed by the medical staff. This self-governance fosters a sense of collective responsibility in the medical staff. It also provides an environment conducive to constructive suggestions and collective assistance within the medical staff. All of this leads to more effective peer review, which leads to better medical care for patients.

[9] http://www.ama-assn.org/ama/pub/category/10303.html

[10] http://www.asahq.org/publicationsAndServices/standards/18.pdf

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quality of care"); *Policy 23*, American College of Medical Quality[11] (economic credentialing impedes the professional's role as the patient's advocate, represents an inappropriate basis for credentialing, and should be considered professionally unacceptable"); *Economic Credentialing (Policy 400191)*, American College of Emergency Physicians[12] ("ACEP strongly opposes the use of economic factors unrelated to quality of care or professional competency either in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges, or in evaluating physician performance within other health care organizations")(this statement was reaffirmed in October 2007); Kusske, The Harm of Economic Credentialing, *American Association of Neurological Surgeons Bulletin*, Vol. 10, Issue 2[13] ("This type of [economic] credentialing is inappropriate.")

The disagreement over the practice of economic credentialing is being played out across the nation between hospitals and medical staffs. *See e.g. Baptist Health v. Murphy*, 226 S.W.3d 800 (Ark. 2006)(litigation over hospital's

[11] http://www.acmq.org/policies/policy23.pdf
[12] http://www.acep.org/practres.aspx?id=29194
[13] http://www.aans.org/library/Article.aspx?ArticleId=10030

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requirement physician sign economic credentialing policy). Once such policies go into effect, it is very difficult for physicians to challenge them. *See* Danello, *Economic Credentialing: Where Is It Going?*[14](*citing Rosenblum v. Tallahassee Mem'l Reg. Med. Ctr.*, No. 91-589 (Fla. Cir. June 1992)(upholding decision to deny privileges to cardiologist who directed program at competing hospital); *Knapp v. Palos Comm. Hosp.*, 465 N.E.2d 554 (Ill. 1984), *cert. denied*, 493 U.S. 847 (1989) and others).

In simple terms, the problem is that the most significant power medical staffs have to prevent economic credentialing is the power they maintain through medical staff bylaws. If those are not enforceable, nothing is left to protect the public from the deleterious effects of economic credentialing. If the medical staff has no meaningful input on decisions, there is an insufficient check on hospitals' ability to make decisions that affect patient care, based primarily on economics.

The best defense to economic credentialing is the participation of the medical staff in making decisions about how the hospital operates. The AMA formally opposes economic

[14] http://library.findlaw.com/2003/Dec/17/133216.html

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credentialing[15] and advises physicians and medical staffs about how to fight the practice. The recommended strategies focus on ensuring the medical staff opposes economic credentialing in various ways. These include: 1. Developing bylaw provisions which clearly articulate membership and privilege criteria, including a provision prohibiting economic credentialing; 2. Encouraging medical staff involvement in the development of medical staff development plans and strategic planning activities; and 3. Encouraging medical staff involvement in the development of conflict of interest policies.[16]

The Bylaws that existed at Lawnwood before the hospital governance law was enacted gave the medical staff the ability to implement the AMA strategies. *See* App. To Initial Brief of Appellant, A. 15-16. The medical staff could make recommendations on initial appointments to and advancement of the staff; creation of departments, specialties and subspecialties; creation of utilization plans; the grant of privileges; evaluation of potential exclusive arrangements; denial of staff membership for particular privileges; decisions

[15] The FMA also formally opposes the practice, even seeking legislation prohibiting the practice. *Economic Credentialing*, Annals of Emergency Medicine, Vol. 30, Issue 6, pp. 759-64 (1997).

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about termination or limitation of privileges; discipline; and the appeals of disciplinary hearings. The hospital could only ignore these recommendations if it had good cause to do so. Thus, the medical staff retained significant power to act as it believed appropriate on issues related to, among other things, the practice of economic credentialing. The hospital governance law removes this bargained-for power, and will harm both the physicians and the public.

It is *Amicis'* position that economic credentialing is a terrible thing for doctors and patients and that medical staff self-governance is critical to ensure optimal patient care. They recognize, however, that this Court is not the forum to expect that policy decision to be made. What *Amici* do expect, however, is that the debate on this extremely significant issue will be held in the open and in a manner that puts all Floridians on notice of the issue and the consequences. The public is not served by permitting private corporations to improperly use the legislative process to begin the process of wresting control of hospitals from those who advocate for the patients.

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[16] http://www.ama-assn.org/ama/pub/category/10303.html

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Lawnwood's suggestion that the hospital governance law is not really about economic credentialing, or that *Amici's* interest in this issue is misplaced because this is somehow only about protecting the public in St. Lucie County, should be rejected. Notwithstanding the language that "in no event shall a decision regarding medical staff privileges be made entirely upon economic considerations," App., Tab A, p. 4, the language used in the hospital governance law would be very easy to avoid. The use of the term "entirely" gives Lawnwood the power to adopt economic credentialing policies which stop just short of using economics as the sole determinant and still arguably comply with the law. However, the hospital governance law removes the medical staff's balancing power against any attempt by the board to adopt such policies. This cannot be permitted, especially not under circumstances like those in this case.

CONCLUSION

For all the reasons stated herein, this Court should affirm the decision of the First District Court of Appeal.

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