Shriners Hospitals for Crippled Children v. Zrillic, 563 So. 2d 64 (Fla. 1990)

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The Florida Supreme Court recently struck the state's 57-year-old mortmain statute, section 732.803, on grounds that it violated both the federal and state constitutions. Previously, Florida was one of only five American jurisdictions that had valid mortmain statutes in effect. The primary intent of these modern mortmain statutes has been to protect the families of testators from improvident gifts by their decedents. The statutes have attempted to achieve this purpose either by limiting the amount of the testator's estate that may be left to charity or by setting a minimum amount of time that must elapse between the execution of the will and the death of the testator. This second type of restriction is intended to prevent death bed bequests to

1. See Ch. 16103, § 20, Laws of Fla. (1933) (enacting predecessor to section 732.803).
2. FLA. STAT. § 732.803 (1989) provides:
   (1) If a testator dies leaving lineal descendants or a spouse and his will devises part or all of the testator's estate:
      (a) To a benevolent, charitable, educational, literary, scientific, religious, or missionary institution, corporation, association, or purpose,
      (b) To this state, any other state or country, or a county, city, or town in this or any other state or country, or
      (c) To a person in trust for any such purpose or beneficiary, whether or not the trust appears on the face of the instrument making the devise, the devise shall be avoided in its entirety if one or more of the lineal descendants or a spouse who would receive any interest in the devise, if avoided, files written notice to this effect in the administration proceeding within 4 months after the date letters are issued, unless:
         (d) The will was duly executed at least 6 months before the testator's death, or
         (e) The testator made a valid charitable devise in substantially the same amount for the same purpose or to the same beneficiary, or to a person in trust for the same purpose or beneficiary, as was made in the last will or by a will or a series of wills duly executed immediately next to the last will, one of which was executed more than 6 months before the testator's death.
   (2) The testator's making of a codicil that does not substantially change a charitable devise as herein defined within the 6-month period before the testator's death shall not render the charitable gift voidable under this section.
4. The others are Georgia, Idaho, Mississippi, and the Virgin Islands. See infra notes 29-33 and accompanying text. The Florida Supreme Court in Zrillic does not include the Virgin Islands in its list of those jurisdictions with valid mortmain statutes, but it speaks in terms of states, not jurisdictions. Zrillic, 563 So. 2d at 69 n.5.
charity where the testator’s decision may be largely a result of a fear of impending death.\textsuperscript{4}

This Note examines the history and purpose of these statutes and their historic predecessors and how the various states have addressed the constitutional issues raised by the mortmain statutes.\textsuperscript{6} The Florida law and the supreme court’s recent decision in \textit{Zrillic} will then be discussed in light of how other courts, including earlier Florida courts, have resolved the issues raised by the mortmain statutes. Finally, some of the future implications of the \textit{Zrillic} decision will be briefly discussed.

\section{Historical Background of Mortmain Statutes}

As time has passed the purpose of the mortmain statutes has changed. There have been two distinct classes of mortmain statutes: those which existed in feudal times and those which are recognized as the modern mortmain laws.

\subsection{Feudal Origins}

As with many other property concepts, the original mortmain statutes arose in feudal England.\textsuperscript{7} They were created, in part, to resolve an increasing tension between the Crown, through its feudal overlords, and the Church.\textsuperscript{8} Giving to the Church became a popular means of easing the giver’s conscience and provided additional hope for salvation.\textsuperscript{9} However, this practice created considerable problems for the overlords, who were largely dependent on the feudal incidents of relief,\textsuperscript{10} wardship,\textsuperscript{11} marriage,\textsuperscript{12} and escheat.\textsuperscript{13}

\textsuperscript{5} W. McGovern, Jr., S. Kurtz & J. Rein, \textit{Wills, Trusts & Estates} § 3.11 (1988).
\textsuperscript{6} Technically, the modern statutes are not actually mortmain statutes. The mortmain statutes were those that placed direct restrictions on the power of religious organizations and other corporations to hold property. The modern statutes regulate a testator’s ability to make charitable devises and do not, as a general rule, limit the ability of charitable organizations to hold property. However, these modern statutes are still referred to as mortmain statutes. See 4A A. Scott & W. Frazier, \textit{The Law of Trusts} § 362 (4th ed. 1989).
\textsuperscript{8} D. Sutherland, \textit{The Assize of Novel Disseisin} 88-90 (1973).
\textsuperscript{10} Relief was a sum payable to the lord upon the death of the tenant. The tenant’s heirs had to pay this sum before the inheritance could be taken. J. Duxeminier & J. Krier, \textit{Property} 151 (2d ed. 1988).
\textsuperscript{11} Wardship was the right of the lord to act as guardian of the infant heir and the lands to be inherited by that heir. The lord was entitled to the profits from the land until the male heir reached 21 or the female heir reached 16, and the lord was only obligated to provide sustenance
These feudal incidents, which enriched the lord, matured upon the tenant either dying, getting married, or committing a felony. However, the Church could never do any of these things, thus leaving the overlord with no incidents to be had with respect to church-owned lands. As the lords began to suffer financially, their complaints to the King increased, culminating in the Statute of Mortmain of 1279. This statute prohibited religious organizations from holding land in dead hand control without the consent of the overlord. If a tenant granted lands into dead hand control, the immediate superior lord, whose rights of enrichment would be lost, was allowed a full year to enter and oust the grantees and hold the land by virtue of this forfeiture.

Since this was royal legislation, the Crown had the right to dispense of this law. Therefore, the Crown could give permission to the tenant to convey land to the church, typically for a fee to the Crown. Because this evoked much protest from the lords, in 1292 the Crown agreed not to give these licenses unless the immediate superior lord had previously granted consent. While this allowed for adequate pro-
tection of the interests of the overlords, the donor's heirs had no remedy in the event their decedent unlawfully alienated property, depriving them of any rights of inheritance which would have otherwise been had, subject to the payment of relief.22

Because other corporations had the same immortal qualities enjoyed by churches, the mortmain statutes were later extended to include these corporations.23 This inclusion of entities other than churches was a significant change in the focus of the mortmain statutes. The interests of the lords were being better protected, but at the expense of more entities than just the Church. That religious organizations were no longer singled out was a quality carried over in most of the modern mortmain statutes that regulated gifts to all charitable organizations and not just churches.24 However, since the Church also had considerable power in feudal England, along with the Crown, these statutes were continually modified, reflecting the balancing of powers between the Church and the Crown.25

B. Mortmain in America

The forerunner of the American mortmain statutes was The Mortmain Act of 1736.26 This Act required that all charitable gifts and conveyances be evidenced by deed executed before two witnesses at least twelve months before the death of the donor, and recorded within six months of its execution.27 However, none of the English mortmain statutes were received as part of the common law; therefore, such provisions are only present in America where they have been enacted by state statute.28

At least twelve American jurisdictions29 have had mortmain30 statutes during this century. However, now that Florida's statute has

22. W. McGovern, S. Kurtz & J. Rein, Wills, Trusts & Estates § 3.11 (1988); see supra note 11.
26. 9 Geo. 2, ch. 36 (1736).
27. Id.
30. See supra note 6.
been declared unconstitutional, only four of those jurisdictions still have valid mortmain statutes in effect.\textsuperscript{31} Others have been repealed by the state legislatures\textsuperscript{32} or declared unconstitutional by the state courts.\textsuperscript{33}

The intent of these modern mortmain acts is significantly different from that of the original feudal acts. The feudal acts were intended to protect the feudal system by limiting the real property held by churches and other corporations\textsuperscript{34} incapable of providing feudal incidents. The modern acts, on the other hand, have been primarily intended to protect the families of those who make testamentary gifts to charitable organizations.\textsuperscript{35} The modern statutes attempt to protect the testator's family either by limiting the percentage of a testator's estate that may be bequeathed to charity or by setting a minimum time before the death of the testator that such bequests must be made.\textsuperscript{36}

Presumably, the limits on the maximum amount that may be bequeathed are primarily intended to protect the testator's family in the event they have been inadequately provided for elsewhere.\textsuperscript{37} Statutes that set a minimum time before the death of the testator that such charitable bequests must be made are primarily intended to prevent death bed bequests by those who may be more susceptible to pleas from over-reaching charities because of the fear of impending death.\textsuperscript{38} A fear is that religious organizations may otherwise prey on persons

\begin{itemize}
  \item An example of this type of corporation was a trading company. Stebbings, The Commercial Application of the Law of Mortmain, 10 J. LEGAL HIST. 37, 39 (1989).
  \item Mississippi's constitution and mortmain statute are notable exceptions to this rule, as they do, in fact, also place limitations on a charity's ability to hold property. MISS. CONST. ART. 14, § 270; MISS. CODE ANN. § 91-5-31 (Supp. 1990).
  \item RESTATEMENT (SECOND) OF TRUSTS § 362 comments b & c (1959).
  \item W. McGovern, S. Kurtz & J. Rein, WILLS, TRUSTS & ESTATES § 3.11 (1988).
\end{itemize}
on their death-bed. The protection of persons attempting to buy salvation during their final days has been an additional justification attributed to these acts. Obviously, it is more likely that those mortmain statutes that set a minimum time before the death of the testator that charitable bequests must be made serve this purpose better.

The manner in which these modern statutes operate is also different from that of the feudal statutes, reflecting the different concerns to which the modern statutes are addressed. The feudal statutes regulated all transfers of real property to churches and corporations. The modern statutes speak only to testamentary transfers. Thus, inter vivos transfers that would have been invalid under the feudal statutes are not addressed by the modern laws.

The statutes are not entirely effective in protecting the testator’s family because there are numerous ways for the provisions of the statutes to be avoided. For example, the statutes do not regulate inter vivos transfers. Thus, a person might give virtually her entire estate to charitable organizations up to the moment of death and, assuming no unlawful coercion or duress, the donor’s family may not be adequately supported. Additionally, careful drafting, such as naming a friend or collateral heir as residuary legatee, frequently will enable the testator’s wishes to be honored, thereby possibly leaving the family without adequate support. Because the statutes are so easily evaded, one commentator has said that “such restrictions serve little public purpose, and are mainly liability traps for attorneys.”

The state legislatures have enacted three basic types of modern mortmain statutes. They have enacted those that limit the amount of

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40. See Shriners Hosp. for Crippled Children v. Zrillic, 563 So. 2d 64, 69 (Fla. 1990). See also Bomes, supra note 37, at 356.
41. Bomes, supra note 37, at 351, 354, 357.
42. Id. at 354.
43. Id. at 357.
44. See W. McGovern, S. Kurtz & J. Rein, supra note 38, § 3.11.
45. However, assuming that self-impoverishment is contrary to human nature, it is unlikely that this would occur because people typically do not know when they will die.
46. This is so because a voided charitable bequest would pass through the residuary clause of the will. Florida’s mortmain statute has been interpreted to allow family members to challenge a charitable bequest only when they stand to benefit from its avoidance. Because the family members would take nothing where someone not named in the statute is named as residuary legatee, no one would have standing to challenge the bequest, and it would therefore stand. See infra notes 100-105 and accompanying text.
testamentary devise that may be given to charity, those that specify a minimum amount of time that must elapse between the execution of the will and the death of the testator, and those that contain both types of restrictions. Statutes that have set a maximum amount that may be devised to charity have typically spoken in terms of a percentage of the testator's total estate and have applied where the testator is survived by close relatives. These statutes have generally invalidated only the amount by which the bequest exceeded the statutory maximum. Those statutes that have required that a specified time elapse between the preparation of the will and the death of the testator have usually set the period at between one and six months. Statutes that have set both requirements have merely combined the characteristics of both in various ways.

There are, however, problems with all the modern mortmain statutes because they do not adequately serve their intended purposes. As noted earlier, careful drafting can allow a testator to defeat the statute and have the charitable bequests stand. Additionally, the statutes may be overly broad in that they allow the testator's heirs to invalidate charitable bequests where the testator made those bequests after much thought and with no undue coercion. Furthermore, it appears arbitrary and irrational that the right of a person to disinherit heirs should be unduly restricted if that decision is rationally made by a person capable of making such decisions. Finally, the invalidation of bequests made too close to the death of the testator may not actu-

48. The mortmain statutes of Iowa, New York, and the Virgin Islands have all been of this type. See supra notes 31-33.

49. The mortmain statutes of the District of Columbia, Florida, Mississippi, Montana, and Pennsylvania have all been of this type. See supra notes 31-33.

50. The mortmain statutes of California, Georgia, Idaho, and Ohio have all been of this type. See supra notes 31-33.

51. Iowa: 25% of the total estate; New York: 50% of the total estate; Virgin Islands: 50% of the total estate. See supra notes 31-33.

52. See supra notes 31-33 & 51.

53. District of Columbia: 30 days; Florida: 6 months; Idaho: will must be executed at least 120 days before the death of the testator unless the death is caused by an accident; Mississippi: 180 days, and the charity must dispose of the property within 10 years; Montana: 30 days; Pennsylvania: 30 days. See supra notes 31-33.

54. California: bequest must be made at least 30 days before testator's death but even if made before then may still not exceed one-third of the total estate; Georgia: maximum charitable devise of one-third of the estate unless the will is executed at least 90 days before the death of the testator; Ohio: if executed within six months of the death of the testator, the charitable devise may not exceed 25% of the estate. See supra notes 31-33.

55. W. McGovern, S. Kurtz & J. Rein, supra note 38, § 3.11.

56. Id.


58. Id.
ally further the intent of the mortmain statutes. Such a provision, in effect, creates an irrebuttable presumption that any bequest made close to death must have been unduly influenced by the testator's fear of impending death.59 This presumption is frequently untrue and fails to account for gifts to charities where a testator is aged and suffering from a terminal illness but happens to survive the execution of his or her will by a certain amount of time.60 Moreover, where such a provision applies even when the testator is killed in an accident, as did Florida's mortmain statute, the results may be wholly irrational.

II. HOW OTHER COURTS HAVE FOUND MORTMAIN STATUTES UNCONSTITUTIONAL

Other than Florida, at least four states have held their mortmain statutes to be unconstitutional.61 The arguments most often successful and most generally applicable to other mortmain statutes are that the statutes violate the equal protection and due process clauses of the fourteenth amendment of the United States Constitution.62

A. Equal Protection

The equal protection clause has been most often cited by courts as justification for invalidating mortmain statutes.63 Generally, the equal protection clause of the fourteenth amendment has been interpreted by the United States Supreme Court to require that varying classification or treatment of people must be based on criteria reasonably related to a legitimate state purpose.64 "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'"65

The equal protection problem with the mortmain statutes is that they create two classes of testators and two classes of beneficiaries,

60. Id. at 202-203, 442 N.E.2d at 156-157.
61. See supra note 33.
62. "[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.
64. Reed v. Reed, 404 U.S. 71, 76 (1971).
65. Id. (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)).
the creation of which has been held to lack a reasonable relationship to the purpose of the statutes. The problem with the categories is that the distinction is typically based solely on when the testator happened to die or on whether the beneficiary was a charitable or non-charitable entity, regardless of any influence that may have been exerted on the testator.

B. Due Process

The due process arguments, as applied to the minimum time before death statutes, have hinged on the irrebuttable presumption created when a charitable bequest is found to be in violation of the state's mortmain statute. The irrebuttable presumption created is that a bequest that was executed too close to the testator's death has been unduly influenced or made without adequate consideration. Since this presumption is not "necessarily or universally true in fact," it is violative of due process to establish such an irrebuttable presumption. The District of Columbia's mortmain statute was invalidated partially on this ground. However, it does not appear that future courts are likely to use this argument as grounds to invalidate other mortmain statutes, because the irrebuttable presumption doctrine, as applied to situations such as this, has been largely abandoned as it has become clear that its underlying arguments actually relied on an equal protection, rather than a due process, rationale. Thus, the same basic anal-

66. Hester, 23 Ohio St. 3d at 203, 492 N.E.2d at 157; Kinyon, 615 P.2d at 176; Estate of French, 365 A.2d at 624; Cavill, 459 Pa. at 411, 329 A.2d at 506.
67. See infra notes 159-167 and accompanying text for a more extensive discussion of the equal protection issue.

The courts have also addressed the establishment of categories affecting inheritance with regard to statutes limiting the inheritance rights of illegitimate children. See e.g., Trimble v. Gordon, 430 U.S. 762, 774 (1977) (holding an Illinois statute unconstitutional on grounds that it violated the equal protection clause because it did not reasonably promote a legitimate state interest); see also In re Estate of Burris, 361 So. 2d 152, 155 (Fla. 1978) (reaching the same holding as to Florida's statute).
69. Id.
70. Vlandis v. Kline, 412 U.S. 441, 452 (1973); Hester, 23 Ohio St. at 202, 492 N.E.2d at 156.
71. Estate of French, 365 A.2d at 623.
72. By masking substantive decisions in procedural language, the Supreme Court, in the irrebuttable presumption cases, confused due process and equal protection analysis. Irrebuttable presumption analysis allowed the Court to overturn legislative decisions without having to justify the use of judicial power as would an open use of substantive due process or equal protection analysis. The use of irrebuttable presumption language was a conceptually confused, if not dishonest, method of justifying independent judicial review of legislative classifications. The declining use of
ysis will be conducted using equal protection arguments, eliminating the need to engage in this perhaps intellectually dishonest irrebuttable presumption analysis.\textsuperscript{73}

III. THE HISTORY OF FLORIDA'S MORTMAIN STATUTE

The Florida legislature enacted the state's mortmain statute, invalidating charitable devises where the testator dies within six months of the execution of the will and is survived by a spouse or lineal heirs, in 1933.\textsuperscript{74}

A. Early Interpretations

The first case to construe Florida's mortmain statute was *Taylor v. Payne*.\textsuperscript{75} In *Taylor* the Florida Supreme Court established much of the interpretive framework on which future decisions would be built. As part of that framework, the court enunciated the intent of the Florida statute:

Our statute is not a mortmain act. The legislature never intended by the enactment of the statute to place any restriction upon the right of benevolent, charitable, educational, or religious institutions to take and hold property; but only to place a limitation upon the right of testators to dispose of their property to such institutions when the conditions that are detailed in the statute exist. The purpose of the statute is clear: it is to protect the widow and children from improvident gifts made to their neglect by the testator; the design of the statute being obviously to prevent testators who may be laboring under the apprehension of impending death from disposing of their estates to the exclusion of those who are, or should be, the natural objects of the testator's bounty.\textsuperscript{76}

This statement of intent has helped to shape the mortmain decisions of the Florida courts. Although the court questioned the wisdom of the statute,\textsuperscript{77} it consistently applied the law in light of this statement of intent.

\textsuperscript{73} Irrebuttable presumption analysis may evidence increasing willingness of justices to address directly the judicial role in reviewing legislatively created classifications.


\textsuperscript{74} Ch. 16103, § 20, Laws of Fla. (1933).

\textsuperscript{75} 154 Fla. 359, 17 So. 2d 615, 618 (1944) ("This is a case of first impression in this jurisdiction.").

\textsuperscript{76} Id. See supra note 6 and accompanying text; supra note 35 and accompanying text.

\textsuperscript{77} "Whether the legislative philosophy behind such enactment is sound may be debatable." *Taylor*, 154 Fla. at 359, 17 So. 2d at 618.
Another key decision made by the court in *Taylor* was that testamentary devises that are contrary to the mortmain statute are not automatically void, but are voidable "at the election of the spouse, or children, blood or adopted, or their lineal descendants." This determination was important in that it provided a means by which the testator’s heirs could waive their rights to challenge the bequest. This holding is consistent with the court’s reading of the intent of the statute to include the prevention of "private wrongs" against the testator’s family as opposed to the prevention of "public wrongs" against society as a whole.

This case of first impression on the interpretation of Florida’s mortmain statute also presented the first opportunity for Florida’s Supreme Court to address the constitutionality of the statute. The appellants alleged that "the statute is violative of the organic law in that it deprives the testator and the legatees of the right to receive, enjoy and dispose of property without due process of law, and denies them the equal protection of the law in the acquisition and disposition of property." The court was not persuaded, however. In a passage that would later be vacated in *Zrillic*, the court held that there are no guarantees of the right to receive or dispose of property by will in either the federal or state constitutions. The court stated:

Therefore, the right of testamentary disposition of property does not emanate from the organic law, as contended by counsel, but is a creature of the law derived solely from statute without constitutional limitation. Accordingly, the right is at all times subject to regulation and control by the legislative authority which creates it. The authority which confers the right may impose conditions thereon, such as limiting disposition to a particular class or fixing the time which must ensue subsequent to the execution of the will before gifts to a particular class shall be deemed valid; or the right to dispose of property by will may be taken away altogether, if deemed necessary, without private or constitutional rights of the citizen being thereby violated.

After the *Taylor* decision, it seemed as though the Florida Supreme Court would not be at all receptive to future challenges to the constitutionality of the state’s mortmain statute.

78. *Id.*
79. *Id.* at 618-19.
80. *Id.* at 618.
81. *Id.* at 617.
82. *Id.*
The next case that brought the state's mortmain statute before the Florida Supreme Court was *In re Estate of Pratt.* The facts of this case presented a situation where it was clear that the testator's charitable devise was not influenced by his imminent death. Instead, the testator had made identical charitable bequests in a will executed more than six months before his death. Then, three days before his death, the testator executed a new will that contained the same charitable bequests as the previous will. This will expressly revoked all prior wills and codicils.

When the testator's heirs sued to invalidate the charitable bequests, the charitable organizations defended by saying that the new will merely reiterated a dispositive scheme enacted more than six months before the testator's death. The court, however, was not persuaded, and allowed the charitable devise to be voided by the testator's heirs. The court reasoned that even though the gift did not violate the legislative intent to protect against improvident bequests by those faced with impending death, and despite the policy of "giving as much effect as possible to the intention of the testator insofar as it is not inconsistent with some settled rule of law or public policy," the plain language of the statute required holding the gift voidable.

The court stated that, "[t]he statutory coverage is much more comprehensive than its apparent purpose would warrant[.]" However, the court also noted that "the restriction of its scope is a problem for the legislature." This argument was revisited by the court in later years in the context of equal protection challenges to the statute.

The court in *Pratt* rejected the argument that the doctrine of dependent relative revocation should be applied. This doctrine is used by courts to revive a bequest thought to be revoked by a subsequent instrument. It is invoked where the testator has made the subsequent revocation on the basis of a mistake of fact or law and where the intent of the testator is clear enough to allow the court to determine that the testator would have rather had the previous bequest stand if key parts of the subsequent bequest were invalidated. The court de-

83. 88 So. 2d 499 (Fla. 1956).
84. *Id.* at 500.
85. *Id.*
86. *Id.*
87. *Id.* at 501.
88. *Id.*
89. *Id.*
90. Shriners Hosps. for Crippled Children *v.* Zrillic, 563 So. 2d 64, 70 (Fla. 1990).
91. 88 So. 2d at 504.
clined to apply this doctrine because of, among other things, a supposed lack of clear intent from the testator.\textsuperscript{93} By refusing to apply this doctrine, the court pushed the balance of interests further in favor of the testator’s family to the detriment of the charitable organizations and the intent of the testator.\textsuperscript{94}

In response to the decision in \textit{Pratt}, the Legislature amended the mortmain statute to prevent situations where the reenactment of a prior charitable devise acts to actually invalidate that testamentary gift.\textsuperscript{95} The amendment provided that a charitable devise in a will executed within six months of the testator’s death would be valid where the testator’s will duly executed immediately next prior to such last will and more than six months before his death, made a valid charitable bequest or devise in substantially the same amount for the same purpose or to the same beneficiary, or to a person in trust for the same person or beneficiary as was made in such last will. The making of a codicil within the six-months period before testator’s death, which codicil does not substantially change a charitable devise or bequest as herein defined, shall not render such charitable gift ineffective under this section.\textsuperscript{96}

However, the clear intent of the legislature was again disregarded in favor of a strict reading of the statute in \textit{In re Estate of Blankenship}.\textsuperscript{97} There, the testator had enacted two wills within six months of her death, each of which contained substantially the same charitable bequests as her third to the last will, executed more than six months before her death. In overturning the district court of appeal,\textsuperscript{98} the Florida Supreme Court relied on the strict language of the amended statute. As the next prior will of the testator was not executed more

\textsuperscript{93.} \textit{Pratt}, 88 So. 2d at 501-505.

\textsuperscript{94.} This would have been an atypical application of the doctrine of dependent relative revocation. Usually, it is applied where the testator commits an act to revoke the will, such as tearing it up, instead of where, as here, the revocation occurs through a subsequent instrument. J. Dukeminier & S. Johnson, \textit{Wills, Trusts, & Estates} \textsuperscript{236} (4th ed. 1990).

\textsuperscript{95.} \textit{See In re Estate of Blankenship}, 114 So. 2d 519, 521 (Fla. 2d DCA 1959) ("Coming as it did at the next legislative session following the Pratt decision, the amendment obviously purports to mitigate the severity of the then existing statute.").

\textsuperscript{96.} Ch.57-243, \textsuperscript{1} 1957 Fla. Laws 461. The mortmain statute was still numbered section 731.19 at the time of the amendment. When a major overhaul of the probate code was undertaken in 1974, the section was renumbered to its present 732.803. Ch. 74-106, 1974 Fla. Laws 212-213, 232-233.

\textsuperscript{97.} 122 So. 2d 466, 470 (Fla. 1960).

\textsuperscript{98.} \textit{In re Estate of Blankenship}, 114 So. 2d 519 (Fla. 2d DCA 1959), \textit{rev’d}, 122 So. 2d 466 (1960).
than six months before the death of the testator, the charitable bequest was not allowed to stand. Thus, because the testator had reiterated her charitable devise twice during the last six months of her life, instead of only the one time that the supreme court's interpretation of the amended statute allowed, the testator's wishes were disregarded. The court explained its reasoning as follows:

We point out that while the result of the statute seems to be illogical in cases where both the last will and the next to the last will are executed within six months of the death of testator, it is not so in those cases where the next to the last will is executed at least six months prior to the death of the testator. In any event it cannot be said that the results produced by a literal interpretation of the statute were not intended and foreseen by the legislature.99

B. Questions of Standing

Since they had already determined that a charitable devise was voidable by the heirs of the testator, the Florida courts soon had to decide if there were situations in which those heirs were without standing to challenge the bequests. In In re Estate of Lane,100 the court reaffirmed earlier statements from Taylor that voided bequests should pass through the residuary clause of the will and not through the laws of intestate succession. In so holding, the court employed a tactic that is paradoxical in the context of mortmain statutes: stating that the statute "must always be read in the light of the intent of the testator."101 Of course, the very premise on which mortmain statutes are based is that the intent of the testator should not be dispositive.

The result of passing the voided bequest through the residuary clause is evident where a friend or collateral relative is named as the residuary beneficiary.102 If a voided bequest passes through the residuary clause of the will, a testator can structure the will to eliminate any economic incentive for a spouse or heir to challenge the will. This could affect a spouse or heir's standing as evidenced by In re Estate of Shameia.103 There, the court held that a daughter, who would have been the testator's heir, had no standing to challenge a charitable devise where the residuary clause named a collateral relative as benefici-

99. Blankenship, 122 So. 2d at 469.
100. 186 So. 2d 257, 259 (Fla. 2d DCA 1966).
101. Id.
102. See, e.g., In re Estate of Shameia, 257 So. 2d 77, 78 (Fla. 2d DCA 1972).
103. 257 So. 2d 77, 78 (Fla. 2d DCA 1972).
As the residuary beneficiary was not among the class of people named as protected by Florida's statute, and as those named in the statute were denied standing by the court, the charitable devise was allowed to stand because no one had the power of avoidance. 105

C. Constitutionality

After Taylor v. Payne, 106 no court seriously addressed the constitutionality of the Florida mortmain statute until Zrillic. 107 Each case in which the issue was raised merely cited Taylor without any substantial discussion. One of the more recent examples of this was in 1984 in Arthritis Foundation v. Beisse. 108 The entire opinion of Arthritis Foundation is as follows:


Affirmed. 109

IV. FLORIDA STRIKES ITS MORTMAIN STATUTE: SHRINERS HOSPITALS FOR CRIPPLED CHILDREN V. ZRILIC

Finally, in May of 1990, the Florida Supreme Court revisited the constitutionality of the state's mortmain statute in Zrillic. 110 This resulted in an opinion by Justice Rosemary Barkett in which the Supreme Court reversed the Fifth District Court of Appeal 111 and held that Florida's mortmain statute violated both the federal and state constitutions. There are two main parts to the opinion: Justice Barkett's majority opinion and Justice Parker Lee McDonald's opinion concurring in the result and dissenting in part. 112

104. Id.
105. See supra note 46 and accompanying text.
106. 154 Fla. 359, 17 So. 2d 615 (1944).
107. 563 So. 2d 64 (Fla. 1990).
108. 456 So. 2d 954 (Fla. 4th DCA 1984).
109. Id.
110. 563 So. 2d 64 (Fla. 1990).
111. The opinion of the Fifth District Court of Appeals is reported at Zrillic v. Estate of Romans, 535 So. 2d 294 (Fla. 5th DCA 1988), rev'd 563 So. 2d 64 (Fla. 1990).
112. There was also a brief concurrence by Justice Stephen Grimes, but he did not go into great detail in his two paragraph opinion. See Zrillic, 563 So. 2d at 71.
A. The Facts of Zrillic

Lorraine Romans executed her last will on May 5, 1986.113 In this will, Ms. Romans expressly limited the inheritance of her daughter Lorraine Zrillic, the respondent, to "several sealed boxes of family antique dishes and figurines."114 As the residuary beneficiary of her will, Ms. Romans designated Shriners Hospitals for Crippled Children, one of the petitioners.115

Ms. Romans died on July 19, 1986, less than six months after the execution of her will.116 Ms. Zrillic requested the circuit court to issue an order voiding the charitable devise provision of her mother's will.117 Responses were filed by Shriners Hospitals and the copersonal representatives of Ms. Romans' estate.118 These respondents filed affirmative defenses alleging that Ms. Zrillic lacked standing to void the charitable devise because she was expressly disinherited and also alleging that Florida's mortmain statute was unconstitutional.119 The circuit court granted Ms. Zrillic standing to challenge the charitable devise of her mother's will but held the mortmain statute which allowed her to do so unconstitutional.120 Both parties appealed.121

B. The District Court Opinion

The opinion of the Fifth District Court of Appeal is reminiscent of Arthritis Foundation v. Beisse,122 in which the court merely relied on the findings of constitutionality from earlier cases.123 In this manner, the district court reversed the circuit court's holding that the statute violated the equal protection clauses of both the federal and state constitutions.124

113. Zrillic, 563 So. 2d at 65.
114. Mrs. Romans' will stated in part:
I have intentionally limited her inheritance since I have contributed substantially during my life for her education and subsequent monies I have been required to expend primarily due to her promiscuous type of life. My daughter, LORRAINE E. ZRILLIC has not shown or indicated the slightest affection or gratitude for at least five years preceding [sic] the date of this Will.
Id.
115. Id.
116. Id.
117. Id.
118. Id. at 65-66.
119. Id. at 66.
120. Id.
121. Id.
122. 456 So. 2d 954 (Fla. 4th DCA 1984).
123. Zrillic v. Estate of Romans, 535 So. 2d 294 (Fla. 5th DCA 1988), rev'd 563 So. 2d 64 (Fla. 1990).
124. Id. at 294.
C. The Supreme Court's Majority Opinion

In the majority opinion, Justice Barkett recognized two issues to be resolved: "The threshold question is whether a lineal descendant, whose legacy was expressly limited by the decedent's will, has standing to set aside a charitable devise in that will. The second question concerns the constitutionality of section 732.803."125

1. Standing

The court set forth two elements that Ms. Zrillic needed to satisfy before she could be granted standing.126 First, she needed to be a lineal descendant of the testator.127 This element was admitted by the petitioners.128 Second, Ms. Zrillic had to be eligible to receive an interest in the devise, if voided.129

After identifying this second element as necessary for standing, the court unconvincingly established that Ms. Zrillic cleared this hurdle:

The general rule of construction is that the intent of the testator prevails. § 732.6005(1), Fla. Stat. (1985). However, allowing the testator's intent to control construction of section 732.803 would defeat both the plain meaning and the logic of the statute. Section 732.803 would serve no purpose if Zrillic is denied standing because the statute's only logical use is to give standing to one who otherwise would be deprived of a legacy. Any other conclusion would have the practical effect of denying everybody the right to contest such a will. Clearly the legislature must have intended the general rule of construction in section 732.6005(1) to give way to the specific, contrary purpose of section 732.803. Thus, we agree with the district court that Zrillic had standing to petition to avoid the devise.130

Perhaps a better way to reach this result would have been to look to the impact on the testator's estate if the charitable bequest was voided. In that event, the residue would pass through the intestacy statutes to Ms. Romans' heirs, including Ms. Zrillic.131 Since standing is to be given to one who will inherit in the event the bequest is

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125. 563 So. 2d at 66.
126. Id.
127. Id.
128. Id.
129. Id.
130. Id. (citations omitted).
voided,\textsuperscript{132} Ms. Zrillic's standing is clear. While it is true that section 732.6005(1) provides that the intent of the testator should govern, the testator's intent is irrelevant regarding the inheritance by heirs in cases involving total or partial intestacy.\textsuperscript{133}

2. The Constitutional Issues

After granting Ms. Zrillic standing, the court addressed the constitutionality of the mortmain statute.\textsuperscript{134} Two constitutional issues were discussed by the court: whether the statute "imposes an unreasonable restriction on a property owner's right to dispose of property by will,"\textsuperscript{135} as guaranteed by the state constitution,\textsuperscript{136} and whether the statute violates the equal protection clauses of the federal\textsuperscript{137} and state\textsuperscript{138} constitutions.\textsuperscript{139}

(a) Unreasonable Restriction on the Right to Will Property

The first step in this analysis is to determine whether the ability to dispose of property by will is a constitutionally protected right.\textsuperscript{140} In what is arguably one of the most important aspects of this case, the court held that such a right is protected by article I, section 2 of the Florida Constitution.\textsuperscript{141} After the court made a "common sense read-

\begin{itemize}
\item \textsuperscript{132} 563 So. 2d at 66.
\item \textsuperscript{133} See, e.g., In re Estate of Barker, 448 So. 2d 28 (Fla. 1st DCA 1984), in which expressly disinherited heirs were allowed to take under the intestacy statutes where the failure of the residuary clause resulted in partial intestacy:
\begin{quote}
In order to cut off an heir's right to succession a testator must do more than merely evince an intention that the heir shall not share in the estate—he must make a valid disposition of his property. . . . Accordingly, where some of the property is not disposed of by will, either because of the lapse of proposed legacies or for other reasons, the cases hold that the undisposed-of property will pass to those entitled under the statutes of descent, both where language in the will attempts to exclude such persons altogether from the benefits of the estate, and where the testator does make some provision for the person in question but specifies that such provision shall be all that such person is to receive.
\end{quote}
\item \textsuperscript{134} 563 So. 2d at 66-71.
\item \textsuperscript{135} Id. at 66-69.
\item \textsuperscript{136} FLA. CONST. art. I, § 2.
\item \textsuperscript{137} U.S. CONST. amend. XIV, § 1.
\item \textsuperscript{138} FLA. CONST. art. I, §2.
\item \textsuperscript{139} 563 So. 2d at 69-70.
\item \textsuperscript{140} See Taylor v. Payne, 154 Fla. 359, 17 So. 2d 615, 617 (1944); supra note 82 and accompanying text.
\item \textsuperscript{141} 563 So. 2d at 67.
\end{itemize}

\textbf{SECTION 2. Basic rights. — All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect
ing of the plain and ordinary meaning of the language\textsuperscript{1}\textsuperscript{142} of the constitutional provisions, it concluded that the carving out of an exception allowing regulation of inheritance and disposition rights of aliens indicates that those rights were protected as to everyone else, and therefore, subject only to reasonably necessary restrictions.\textsuperscript{143}

With regard to the authority holding that such testamentary rights are not constitutionally protected in our society, the court pointed out that such conclusions were based on notions of feudal law.\textsuperscript{144} Thus, if those feudal notions are inapplicable, the traditional distinction between "property" rights, which have always been protected, and "testamentary" rights, which have traditionally been viewed as unprotected, becomes irrelevant.\textsuperscript{145} This distinction

\begin{quote}
\textit{is inapplicable in our society where feudalism never existed and where property rights rest on an express constitutional foundation that is distinguishable from the common law roots of feudal England. Yet all too often courts have failed to thoroughly analyze the distinction, instead giving unquestioning allegiance to an antiquated way of thinking.}\textsuperscript{146}
\end{quote}

The next step of the court's analysis involved determining whether the restrictions placed by the mortmain statute on this constitutional right were reasonably necessary.\textsuperscript{147} Once again, the court cited the feudal origins of the mortmain statute and held that such restrictions on modern bequests are no longer reasonably necessary,\textsuperscript{148} and are therefore unconstitutional.\textsuperscript{149}

This lack of modern reasonable necessity is even more apparent given that Florida already has other constitutional and statutory protections for disinherited family members, who may be dependent or in financial need.\textsuperscript{150} For example, there are homestead exemptions from

\begin{flushright}
\textit{property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion or physical handicap.}
\end{flushright}

FLA. CONST. art I, § 2 (emphasis added by court).

\textsuperscript{142} 563 So. 2d at 67.
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id. at 68.
\textsuperscript{147} Id.
\textsuperscript{148} Id. at 68-69.
\textsuperscript{149} Id.
\textsuperscript{150} Id. at 69.
the bequest of real and personal property, a coverture restriction, provisions for an elective share, personal property exemptions, and a family allowance. Also, the fear of unscrupulous charities taking advantage of testators who face impending death is alleviated by statutes voiding bequests procured by "fraud, duress, mistake, or undue influence," and requiring that the testator be competent to execute such a will.

The court noted the existence of these protections for the testator's family, while stating that the mortmain statute does not adequately serve its avowed purpose:

No similar protections are assured by section 732.803. To the contrary, the charitable devise restriction fails to protect against windfalls for lineal descendants who have had no contact with the decedent or who have been neglectful or abusive to the decedent but who may benefit from the avoidance of a charitable devise. It also fails to protect against windfalls for lineal descendants whose legacy was specifically limited by the decedent. Another significant flaw is that artful will drafting easily defeats the effect of the statute: If the testator names anybody other than a spouse or lineal descendent to take the charitable devise in the event the charitable devise fails, nobody would have standing to petition to avoid the charitable devise.

(b) Equal Protection

The other basis on which the court held the mortmain statute unconstitutional is that it violates the equal protection clauses of the federal and state constitutions. There are two different standards of inquiry that the courts utilize in equal protection analyses. If fundamental rights are limited, the law must be found to promote an "overriding or compelling interest of government" to be held valid. If the regulation deals merely with economics or social welfare, the test is

155. Id. § 732.403 (1989).
156. Id. § 732.5165 (1989).
157. Id. § 732.501 (1989); see Zrillic, 563 So. 2d at 69.
158. 563 So. 2d at 69 (citation omitted). This statement seems particularly ironic given the court's earlier granting of standing to Ms. Zrillic. See supra note 130 and accompanying text.
159. Id. See U.S. Const. amend. XIV; Fla. Const. art. I, § 2.
whether the law "rationally relate[s] to a legitimate governmental purpose." The Zrillic court applied the less stringent rational relationship test, but noted that it probably could have applied the more stringent test given its earlier finding that the right to devise property is now a constitutionally protected fundamental right in Florida. The court found that the statute creates classifications of people that are both too narrow and too broad, and that it therefore fails to establish a "rational distinction having a just and reasonable relation to a legitimate state objective." The statute is too narrow because it does not provide for the avoidance of bequests made to parties who are not named in the statute, but who may be in an equal or superior position to those named to influence deathbed bequests to themselves. Additionally, it does not affect many charitable gifts made without proper deliberation where such a bequest was made more than six months before the death of the testator. The statute is too broad because many bequests may be voided that were not impermissibly influenced or where there are no family members in need of protection.

The court summarized its equal protection holding as follows:

There is no rational distinction to automatically void a devise upon request when the testator survives the execution of the will by five months and twenty-eight days, but not when the testator survives a few days longer. Nor is it rational to apply the statute in cases where the testator dies suddenly due to an accident during the six-month period after making the charitable bequest. The effect of section 732.803 is to defeat the testator’s express intent without any reasonable relation to the evil sought to be

161. Id.
162. 563 So. 2d at 70 n.6. Although the court said it was applying a mere rational relationship test, it appears that the level of scrutiny actually applied was more stringent than the highly deferential standard that is usually implicated in the rational relationship test. See United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166 (1980), in which the Court seemed to say that the rational relationship test will virtually always result in upholding the statute if there are "plausible reasons" for the legislature's enactment of the statute. Id. at 179. However, it is possible that the Florida Supreme Court actually did apply a rational relationship test, but defined that test as did the dissenters in Fritz to require actual scrutiny of the statute even where "plausible reasons" for the legislation may be presented. Id. at 179, 182-198 (Brennan, J., dissenting).
163. 563 So. 2d at 69 (quoting Palm Harbor Special Fire Control Dist. v. Kelly, 516 So. 2d 249, 251 (Fla. 1987)).
164. "The statute does not protect against overreaching by unscrupulous lawyers, doctors, nurses, housekeepers, companions, or others with a greater opportunity to influence a testator. There is no reason to believe that testators need more protection against charities than against unscrupulous and greedy relatives, friends, or acquaintances." Id. at 70.
165. Id.
166. Id.
The classification established in section 732.803 does not draw a rational distinction, and it is neither just nor reasonably related to a legitimate governmental purpose.167

3. Concurrence by Justice McDonald

Justice McDonald concurred only in the sense that he, too, would deny Ms. Zrillic the relief that she seeks.168 He contended that Ms. Zrillic should be denied standing.169 In response to the majority’s holding of unconstitutionality,170 Justice McDonald discussed the reasons that Florida’s mortmain statute should once again be held constitutional.171

Justice McDonald’s based his belief that Ms. Zrillic should be denied standing to challenge the charitable bequest upon his reading of section 732.6005(1), Florida Statutes (1985).172 That statute provides: “The intention of the testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.”173 He stated that the clear intent of Ms. Romans should be given great deference, particularly where, as here, there are other lineal descendants who could take the property if the charitable bequest were voided, and those other lineal descendants have not been expressly disinherited.174 Based upon this deference to the testator’s intent, Justice McDonald felt that the only parties who could effectively challenge Ms. Romans’ charitable bequests were her grandchildren.175 Therefore, he concluded that Ms. Zrillic should be denied standing and that, unless the grandchildren brought suit to challenge the charitable bequests, the charitable provisions of the will should not be modified by the court.176

167. Id. (citations omitted).
168. 563 So. 2d at 71-73 (J. McDonald, joined by J. Overton, concurring in the result and dissenting in part).
169. Id. at 71.
170. Id. at 71-73.
171. Id.
172. Id. at 71.
174. 563 So. 2d at 71. Justice McDonald noted that Ms. Romans left grandchildren who were not expressly disinherited.
175. Id.
176. Id. It is unclear how far Justice McDonald would take this principle of deferring to the testator’s intent in cases of partial, or even total, intestacy. There may be other cases in which the intent of the testator is clear in a purported will but intestacy results because of faulty drafting or execution. For example, had Ms. Zrillic tried to raise a question about whether the will
As to the constitutionality of Florida’s mortmain statute, Justice McDonald relied heavily on precedent to support his opinion that the statute is constitutional.\textsuperscript{177} Citing \textit{Taylor v. Payne},\textsuperscript{178} Justice McDonald addressed the statutory nature of the right to bequeath property and found that such a right is not guaranteed by the “organic law.”\textsuperscript{179} Therefore, he stated that the right to pass property by will is subject to absolute regulation by the legislature, including the legislature’s right to totally abolish that right.\textsuperscript{180} Justice McDonald found no constitutional or societal changes that had occurred since \textit{Taylor} in 1944, which would justify reversing its mandate.\textsuperscript{181}

Although Justice McDonald acknowledged that “the facts of this case are not attractive for application of the statute,”\textsuperscript{182} he believes that the statute may be appropriate in some factual situations: “Surely one would have to say that, had the testator, in her last few days, succumbed to a television evangelist’s call to be with the Lord by delivering her property to his church and thus leave unprotected a physically handicapped child, a rational basis for the statute would exist.”\textsuperscript{183} However, Justice McDonald did not discuss the potential equal protection problems that may result from his realization that the state’s mortmain statute may be over-broad.

Nevertheless, according to Justice McDonald, the Legislature’s right to set limitations on devises of property overcomes any problems with the statute.\textsuperscript{184} “It may be that in today’s society the legislature should not effect legislation like section 782.803, but that is for it to decide. Our role is to decide whether the legislature could do so and, contrary to the majority’s views, I believe it can.”\textsuperscript{185}

V. Future Implications

The Florida Supreme Court’s comments about past decisions giving “unquestioning allegiance to an antiquated way of thinking”\textsuperscript{186} re-

\textsuperscript{177} Id. at 71-73.
\textsuperscript{178} 154 Fla. 359, 17 So. 2d 615 (1944).
\textsuperscript{179} 563 So. 2d at 72.
\textsuperscript{180} Id. at 72-73.
\textsuperscript{181} Id. at 73.
\textsuperscript{182} Id. at 72.
\textsuperscript{183} Id.
\textsuperscript{184} Id.
\textsuperscript{185} Id. (emphasis in original).
\textsuperscript{186} Id. at 68.
garding feudal traditions in our modern law may leave some questions as to the vulnerability of other artifacts from feudal times. For example, such concepts as the Rule against Perpetuities may be subject to a stricter analysis regarding their constitutional applicability to modern times. Such an abolition may not be as extreme as it may seem, as at least three states have already abolished the common law Rule against Perpetuities. However, because of the potential havoc such changes could wreak on the estate tax laws, this may be a controversy the Florida courts will wish to avoid.

The abolition of the state’s mortmain statute is not likely to have great impact on the drafting of wills in Florida. While charitable organizations may benefit somewhat and the intent of the testator may be better protected, it is not likely that there will be any large-scale effects. The relatively small number of cases that have been reported during the Florida statute’s history seems to indicate that its provisions have not been violated very often. Nevertheless, there is now one less statutory trap of which the careful will drafter must be aware.

It is possible, however, that the legislature may believe that some restrictions on death-bed bequests are desirable to prevent improvident gifts to the detriment of the testator’s family. Given the decision in Zrillic, there may not be any way that section 732.803 could be modified to pass constitutional muster, even if the legislature chose to do so.

Arguably, the equal protection arguments could be addressed fairly easily by modifying the scope of those bequests that would be voidable. For example, where the death is caused by an accident, charitable bequests might not be voidable. Also, any charitable bequests that

188. For a discussion of the comparison between mortmain statutes and the Rule against Perpetuities see Hornstein, Corporate Control and Private Property Rules, 92 U. PA. L. REV. 1, 11-12 (1943) ("The Law of Mortmain was designed to prevent too much land getting into the power of a single, undying owner... The Rule against Perpetuities, in turn, endeavored to prevent wealth being kept in certain directed channels for too long a time[,]" (emphasis in original)).
191. See White, Remember the Mortmain, 56 FLA. B.J. 853 (1982).
192. Id.
193. See supra note 183 and accompanying text for Justice McDonald’s discussion of when such a restriction may be desirable.
194. It is not entirely unlikely that the legislature would choose to do so given that the statute has not been repealed despite it having been found constitutional as recently as 1984 in Arthritis Foundation v. Beisse, 456 So. 2d 954 (Fla. 4th DCA 1984).
had been continuously in the testator’s wills dating back at least six months before the testator’s death might not be voidable. Other similar changes could be made to section 732.803 that would allow that statute to pass equal protection muster on all points raised by the Florida Supreme Court.\footnote{195}

However, it may not be possible for the mortmain statute to be so modified as to respect the fundamental right to will property that is now found in the Florida Constitution.\footnote{196} This analysis is supported by the court’s statement that, “neither the ancient purpose nor the modern justification underlying the restriction on charitable devises is well served by section 732.803. The statute is not reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution.”\footnote{197} This seemingly thorough condemnation of restrictions of this type indicates that there may be no possible change that would serve an effective purpose and still satisfy the majority of the Florida Supreme Court. It will be difficult to overcome the court’s decision that the purposes for which the mortmain statute was intended are not legitimate state purposes.\footnote{198}

For example, the legislature would be hard-pressed to modify the statute in such a way that would protect against over-reaching charities, protect needy dependents, and still “protect against windfalls for lineal descendants who have had no contact with the decedent or who have been neglectful or abusive to the decedent but who may benefit from the avoidance of a charitable devise.”\footnote{199} Furthermore, it would be difficult for a statute to “protect against windfalls for lineal descendants whose legacy was specifically limited by the decedent,”\footnote{200} while closing loopholes through which careful drafting could carry the will.\footnote{201}

\section*{VI. Conclusion}

It is unclear whether the approach taken by the court in \textit{Zrillic} was ideal for effectively resolving the problems with the state’s mortmain statute while still serving the objectives for which it was intended. That the statute was held to violate the equal protection clauses of the federal and state constitutions was consistent with what other states

\begin{itemize}
\item \footnote{195}{563 So. 2d at 69-71.}
\item \footnote{196}{Id. at 66-69.}
\item \footnote{197}{Id.}
\item \footnote{198}{Id. at 69.}
\item \footnote{199}{Id.}
\item \footnote{200}{Id.}
\item \footnote{201}{Id.}
\end{itemize}
have held and reasonably justified given the over- and under-inclusive-
ness of the statute. However, the court's holding that there is state
constitutional right to devise property may not have been as well-ad-
vised. It seems as though it effectively precludes the legislature from
modifying the mortmain statute to accomplish those goals that may
arguably be socially desirable. More importantly, though, this newly-
revealed constitutional right may spawn challenges to other statutory
limitations on the right to dispose of property by will. It will be inter-
esting to watch the impact that Shriners Hospitals for Crippled Chil-
dren v. Zrillic will have in the years to come.