

# IN THE SUPREME COURT OF TEXAS

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No. 04-0360  
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IN RE NEXION HEALTH AT HUMBLE, INC.  
D/B/A HUMBLE HEALTHCARE CENTER,  
RELATOR

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ON PETITION FOR WRIT OF MANDAMUS  
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## **SUPPLEMENTAL PER CURIAM ON MOTION FOR REHEARING OF CAUSE**

On rehearing, the real party raised for the first time that the Federal Arbitration Act is “reverse preempted” by the McCarran-Ferguson Act, citing for authority the Houston court of appeals decision in *In re Kepka*. See McCarran-Ferguson Act, 15 U.S.C. § 1012(b); Federal Arbitration Act, 9 U.S.C. § 1, *et. seq.*; see also *In re Kepka*, \_\_\_ S.W.3d \_\_\_ (Tex. App.—Houston [1st Dist.] 2005). Because this issue has not been reviewed by the courts below, we decline to reach the issue and express no opinion as to the merits of this argument.

OPINION DELIVERED: October 14, 2005