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Rob Turner vs Hillsborough County Aviation Authority

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE COURT'S CALENDAR IS ROB TURNER, ACY, VERSUS -- ET CETERA, VERSUS HILLSBOROUGH COUNTY AVIATION AUTHORITY. MR. SHEPHERD.

WILL SHEPHERD FOR ROB TURNER, AS THE HILLSBOROUGH COUNTY PROPERTY APPRAISER. WE ARE HERE, TODAY, ON REVIEW OF A SECOND DCA DECISION, WHICH WE BELIEVE IS REALLY AN UNWARRANTED EXPANSION OF THE LAW, AS IT EXISTS, REGARDING THE STANDING OF A PROPERTY APPRAISER TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE. THERE WERE TWO ASPECTS TO THE SECOND DCA'S DECISION. THE FIRST RELATING TO THE COMMON LAW, WHICH, IN GENERAL, APPLIES TO ALL PUBLIC OFFICIALS. THE SECOND BEING A STATUTORY ENACTMENT, 194.036-1-A, WHICH SPECIFICALLY DEALS WITH PROPERTY APPRAISERS. THE COMMON LAW, AS IT IS, IS, REALLY, VERY NARROWLY RESTRICTED, ALREADY, AS TO WHEN A PUBLIC OFFICIAL MAY CHALLENGE THE CONSTITUTIONALITY OF A STATUTE. THE GENERAL RULE IS THAT THERE IS NO DECLARATORY JUDGMENT ACTION. THERE HAS TO BE AN ACTUAL CASE OR CONTROVERSY, WITH A COUPLE OF EXCEPTIONS. ONE, THE REED VERSUS KIRK AND DOR VERSUS MARKHAM CASES, WHERE THE COURT POINTED OUT THAT IF OTHERS PREVENT THE PUBLIC OFFICIAL FROM PERFORMING THEIR DUTIES, THAT IS A CASE WHERE A DECLARATORY JUDGMENT MAY BE BROUGHT, OR IF THERE IS INJURY TO A PERSON OR PROPERTY. PROPERTY APPRAISERS HAVE BEEN ELIMINATED BY THE STATUTE, AS I PREVIOUSLY CITED. THE SECOND ASPECT, IN NONDECLARATORY JUDGMENT ACTIONS, IS THE LAW SEEMS TO MAKE IT CLEAR THERE IS NO STANDING TO CHALLENGE A STATUTE DEALING WITH MINISTERIAL ACTS OF A PUBLIC OFFICIAL.

LET ME GO BACK. YOU ARE ACKNOWLEDGING OR YOU ARE INTERPRETING THE STATUTE AS SPECIFICALLY PROHIBITING AN AFFIRMATIVE LAWSUIT BROUGHT BY THE PROPERTY APPRAISER.

FOR DECLARATORY JUDGMENT.

IS THAT WHAT THE STATUTE SAYS?

I THINK, IF YOU READ, THERE IS TWO SENTENCES IN THE STATUTE. IN THE STATUTE, ITSELF, AT LEAST, I THINK, IS INTERPRETED BY THE SECOND DCA, IS ALMOST INTERNALLY CONFLICTING, BECAUSE THE FIRST SENTENCE IN THE STATUTE NOTES THAT THE PROPERTY APPRAISER CAN CHALLENGE, CAN FILE SUIT IN CIRCUIT COURT, IF THE PROPERTY APPRAISER DETERMINES AND AFFIRMATIVELY ASSERTS, IN ANY LEGAL PROCEEDING, THAT THERE IS A SPECIFIC CONSTITUTIONAL OR STATUTORY VIOLATION IN THE DECISION OF THE VALUE ADJUSTMENT BOARD. THAT SENTENCE APPEARS TO SAY THE PROPERTY APPRAISER CAN CHALLENGE SOMETHING THAT IS CONTRARY TO THE CONSTITUTION. NOW, THE SECOND SENTENCE SAYS, HOWEVER, THE PROPERTY APPRAISER MAY NOT INSTITUTE A SUIT TO CHALLENGE THE VALIDITY OF THE PORTION OF ANY STATUTE. I THINK THAT CAN ONLY BE READ AS PROPERTY APPRAISER CANNOT FILE A DECLARATORY JUDGMENT ACTION SOLELY TO CHALLENGE THAT STATUTE, WITH THAT BEING THE SOLE PURPOSE, AS OPPOSED TO WHEN YOU HAVE A MATTER WHICH IS A DISPUTE BETWEEN TWO PARTIES. I THINK THAT THE ONLY WAY TO READ THOSE TWO SENTENCES IS TO READ THE SECOND SENTENCES AS PROHIBITING A DECLARATORY ACTION. HOWEVER, THE FIRST SENTENCE DOES SAY THAT, IN A PROCEEDING, IF THE PROPERTY APPRAISER DETERMINES THE VALUE ADJUSTMENT BOARD IS INCORRECT AND THERE IS A CONSTITUTIONAL, SOME SORT OF

CONSTITUTIONAL ABERRATION THERE, THAT THE PROPERTY APPRAISER MAY GO FORWARD, SO I THINK THAT THE WAY TO READ THAT STATUTE IS TO SAY THAT IT PROHIBITS DECLARATORY JUDGMENT ACTIONS, BUT IT DOESN'T PROHIBIT THE CHALLENGING OF A CONSTITUTIONAL -- OF A STATUTE FROM A CONSTITUTIONAL STANDPOINT. ATLANTIC COAST RAILROAD CASE AND THE BARR VERSUS WATTS CASE IS THE SECOND PART OF THE RULE, WHICH DEALS WITH NO CHALLENGE TO THE STATUTE WHICH DEALS WITH MINISTERIAL ACTS OF A PUBLIC OFFICIAL, AND THE CASE IS VERY SPECIFIC, AND THEY MENTION MINISTERIAL ACTS, AND THIS COURT HAS GONE TO GREAT PAIN TO DISTINGUISH PUBLIC OFFICIALS WITH MINISTERIAL ACTS VERSUS OTHER ACTS, WHERE THEY ARE REQUIRED TO APPLY THE FACTS TO THE LAW AND MAKE A DETERMINATION OF WHAT THE LAW IS, WHICH IS A GREAT PORTION OF WHAT THE PROPERTY APPRAISER DOES IN EITHER ADMINISTERING VALUES, DETERMINING WHAT JUST VALUE IS OR ADMINISTERING EXEMPTIONS. CLEARLY THE PROPERTY APPRAISER, LIKE MOST PUBLIC OFFICIALS, HAS MINISTERIAL DUTIES. THE PROPERTY APPRAISER CANNOT SAY I AM NOT GOING TO AND PRAISE PROPERTY. THE TAX COLLECTOR CANNOT SAY I AM NOT GOING TO COLLECT TAXES. THOSE ARE THE MINISTERIAL DUTIES LAID FORT IN THE STATUTE.

CAN THE PROPERTY APPRAISER DECIDE THAT AN EXEMPTION IS UNCONSTITUTIONAL AND JUST SAY I AM NOT GOING TO APPLY IT? ISN'T THAT WHAT THE PROBLEM IS THAT WAS ADDRESSED BY THE SECOND DISTRICT OPINION?

THAT IS WHAT THE PROBLEM IS, AND THE ARGUMENT SET FORTH BY THE SECOND DCA IS TO SAY THAT I AM THE IN-HOUSE COUNSEL FOR THE PROPERTY APPRAISER. WHEN WE LOOK AT AN EXEMPTION, I, AS A LAWYER, SAY WHAT DOES THE CONSTITUTION SAY. WHAT DOES THE CASE LAW SAY. WHAT DO THE STATUTES SAY. WE HAVE TO PUT ALL OF THAT TOGETHER, TO TRY TO INTERPRET THE LAW AND DETERMINE WHAT IT IS AND APPLY THE FACTS TO THAT LAW. THAT IS WHAT WE ARE ALL TRAINED TO DO. IT IS IRONIC FOR ME TO SAY, WELL, TO MY CLIENT, YOU ARE A PUBLIC OFFICIAL, SO I HAVE TO IGNORE THE CONSTITUTION WHEN I TELL YOU WHAT THE LAW IS.

I AM SAYING THAT IT CLEARLY STATES THEY ARE ENTITLED TO AN EXEMPTION, BUT SOMEBODY MAKES A DECISION THAT THAT EXEMPTION IS UNCONSTITUTIONAL, UNDER THE CONSTITUTION. ARE YOU SAYING THAT -- THAT THE PROPERTY APPRAISER HAS THE RESPONSIBILITY NOT TO ENFORCE THAT EXEMPTION, THAT THEY FIND TO BE UNCONSTITUTIONAL, AND THEN TO, THEREAFTER, BASICALLY FORCE THE PROPERTY OWNER TO AFFIRMATIVELY INSTITUTE AN ACTION AND THEN YOU END UP DEFENSIVELY DOING WHAT YOU COULDN'T DO OFFENSIVELY? DOES THAT MAKE SENSE?

WELL, IRONICALLY, PROBABLY A DECLARATORY ACTION WOULD BE THE BETTER WAY TO DO IT.

WELL, BUT, FOLLOWING UP ON JUSTICE PARIENTE, IF THERE WERE A HOMESTEAD EXEMPTION, THAT WOULD BE A MINISTERIAL ACT, CORRECT? I MEAN, YOU WOULD READ THE CONSTITUTION, AND IT HAS A HOMESTEAD EXEMPTION, AND SO COULD THE TAX APPRAISER CONSTITUTIONALLY CHALLENGE HOMESTEAD EXEMPTION?

WELL, I THINK WE HAVE TO UNDERSTAND THAT THIS AREA OF LAW, BECAUSE IT IS TAXATION, IS GROUNDED IN THE CONSTITUTION, SO WE LOOK AT THE STATUTES, AND WE HAVE TO LOOK AT THE CONSTITUTION AND THE STATUTES AND, IN FACT, THE CASE LAW.

APPLYING HOMESTEAD EXEMPTION IS A MINISTERIAL ACT, IS IT NOT?

IT IS IN FACT, AND ONCE YOU HAVE DETERMINED WHAT THE LAW IS, THE PROPERTY APPRAISER CAN'T SAY I AM NOT GOING TO GIVE YOU YOUR HOMESTEAD. THAT IS THE MINISTERIAL ACT ASPECT OF IT, BUT DETERMINING WHAT THE LAW IS AND APPLYING THE FACTS ON AN INDIVIDUAL BASIS IS SOMETHING MORE THAN A MINISTERIAL ACT. THAT IS A JUDGMENT WHICH THE PROPERTY APPRAISER HAS TO MAKE, EACH AND EVERYDAY, TO SAY WHAT IS THE LAW?

WHAT IS THE LAW AS IT STANDS RIGHT NOW, AND HOW AM I GOING TO APPLY THESE FACTS?

IS IT YOUR CLAIM THAT THIS STATUTE IS AMBIGUOUS, AS TO THE EXEMPTION? I MEAN HOW DO YOU GET TO IT BEING OTHER THAN A MINISTERIAL ACT, TO APPLY THE EXEMPTION?

I THINK THE ASPECT IS THAT IT IS OTHER THAN A MINISTERIAL ACT IS THE DETERMINATION OF WHETHER THE STATUTE, IN FACT, APPLIES TO THIS PIECE OF PROPERTY, AND THE STATUTE AND THE CONSTITUTION AND THE CASE LAW. ONCE AGAIN, I DON'T THINK A PUBLIC OFFICIAL CAN SAY, AND IN FACT, WE HAVE SITUATIONS THAT EXIST RIGHT NOW, I BELIEVE, WHERE THERE ARE TWO STATUTES, WHICH DON'T -- IN FACT, THE ONE REGARDING STANDING, HERE, WHICH SEEM TO INTERNALLY CONFLICT. WE HAVE TO BE ABLE TO APPLY ALL THE READINGS OF THE LAW THAT WE DO, AS A LAWYER, AND SAY WHAT DOES THIS STATUTE SAY. WHAT DOES THIS STATUTE SAY. HOW DO I INTERPRET THOSE TOGETHER.

LET ME GIVE YOU MORE OF A CONCRETE HYPOTHETICAL. AM I CORRECT THAT, IN FUCHS, THE THIRD DISTRICT HAS INVALIDATED THIS STATUTE, IN THE FUCHS CASE? IN THE THIRD DISTRICT?

WELL, THAT IS CORRECT. IN THE THIRD DISTRICT, THE FUCHS CASE OBVIOUSLY DID NOT FIND THAT THAT STATUTE PREVENTED THE PROPERTY APPRAISER. NOW, HOWEVER --

IN ESSENCE, THEY HAVE REMOVED THAT AS AN EXEMPTION. IS THAT CORRECT?

THE --

THEY HAVE SAID THAT THE PROPERTY HAS TO BE VALUED WITH THE IMPROVEMENTS ON IT, REGARDLESS OF THE FACT THE I AM PROMPTS. -- THE IMPROVEMENTS AREN'T -- I MEAN -- WELL, THIS IS A FRIENDLY QUESTION. OKAY.

WELL --

YOU ARE THE LAWYER, OKAY, FOR THE TAX PERSON, AND NOW YOU PICK UP THE FLORIDA LAW WEEKLY, AND YOU SEE THAT THE THIRD DISTRICT HAS RULED THIS WAY. NOW, WHAT DO YOU TELL YOUR BOSS?

I TELL THEM THAT THAT IS THE LAW IN THE STATE OF FLORIDA, AS OF THIS TIME.

SO WHAT DOES YOUR BOSS HAVE TO DO WITH REFERENCE TO, NOW, FOLLOWING THE LAW?

WELL, HE HAS TO -- HE HAS TO FOLLOW WHAT THE LAW IS, AS IT IS DETERMINED, AND IT REQUIRES, PARTICULARLY IN TAX LAW, LOOKING AT THE CONSTITUTION AND THE STATUTES AND THE CASE LAW AND MAKING A DETERMINATION OF -- TO WHAT THE LAW IS AT THE TIME.

BUT IT IS NOT PART OF THE PROBLEM. YOU SEEM TO BE ABLE, IN YOUR MIND, TO DIVIDE THE UNIVERSE INTO MINISTERIAL AND NONMINISTERIAL, IN A VERY CLINICALLY CLEAN FASHION, BUT ISN'T IT A MATTER OF FACT THAT THEY SORT OF BLEED OVER ON EACH OTHER THAT THE APPRAISER HAS TO DETERMINE WHETHER I AM GOING TO AND PRAISE THIS PROPERTY AND WHAT I AM GOING TO AND PRAISE IT AT AND -- A PRAISE IT AT AND ALL OF THESE ARE JUDGMENT CALLS, WHETHER TO GIVE IT A ZERO BALANCE OR THIS TYPE OF THING, SO CAN YOU RESOLVE THE CASE AS CLEANLY AS YOU ARE PRESENTING IT?

NO. I THINK, JUSTICE, YOU MAKE A GOOD POINT. THERE IS GOING TO BE A GRAY AREA THAT THE COURTS MAY, IN ONE CASE VERSUS ANOTHER, HAVE TO DETERMINE AS TO WHAT IS A MINISTERIAL ACT AND WHAT IS NOT. I THINK, EVENTUALLY, CASES DEALING WITH WRITS OF MANDAMUS PROBABLY GIVE THAT GUIDANCE ALREADY. A WRIT OF MANDAMUS IS ONLY APPROPRIATE, WHEN IT IS A CLEAR DUTY OF THE PUBLIC OFFICIAL, A MINISTERIAL ACT THAT HE

IS RETUS FUSING -- REFUSING TO FOLLOW.

LET'S FOLLOW-UP ON JUSTICE ANSTEAD'S QUESTION ABOUT FOLLOWING THE LAW. YOUR EXEMPTION THAT YOU ARE TALKING ABOUT IS THE ONE INVOLVING THE PERMANENT SEAT HAD GONE IN SOME KIND OF SPORTS FACILITY, CORRECT?

THAT'S CORRECT.

AS OPPOSED TO THE ONE INVOLVED IN SUBSTANTIAL COMPLETION.

THAT'S CORRECT.

AT THE TIME THAT THE PROPERTY APPRAISER AND THE VALUE ADJUSTMENT BOARD MADE THEIR DECISIONS IN THIS CASE, WAS THERE ANY CASE LAW INTERPRETING THAT PARTICULAR EXEMPTION?

NO. ONLY A CIRCUIT COURT CASE. NOW, YOU KNOW, IRONICALLY, AS A LAWYER, WHAT I WOULD HAVE WENT FORWARD WITH THIS CASE IN THE CIRCUIT COURT, HAD I GOT AN OPPORTUNITY, WAS, FIRST, TO ARGUE THAT THE STATUTE IS CONSTITUTIONAL. HOWEVER, ITS APPLICATION TO THIS PIECE OF PROPERTY WOULD HAVE RESULTED IN A DENIAL OF THE EXEMPTION. I DIDN'T GET THAT CHANCE, BECAUSE THE CASE WAS DISMISSED IMMEDIATELY, SO IN THIS PARTICULAR INSTANCE, GETTING DOWN TO THE FACTS OF THIS SPECIFIC CASE, ALL WE SAID WAS, WHICH WE ARE REQUIRED TO DO BY STATUTE, IS SAY THAT THE ADJUSTMENT BOARD'S DECISION VIOLATES THE CONSTITUTION.

BUT BEFORE THAT, THE PROPERTY WAS APPRAISED OR ASSESSED AT \$5 MILLION, WITHOUT GRANTING ANY PORTION OF IT A GOVERNMENTAL TAX EXEMPTION, YET THERE IS A GOVERNMENTAL TAX EXEMPTION FOR SPORTS FACILITIES WITH PERMANENT SEATING. SO HERE WE ARE SAYING THAT EITHER YOUR BOSS DENIED THE EXEMPTION, EVEN THOUGH IT WAS CLEARLY ALLOWED, BECAUSE SOMEONE SAID THIS IS UNCONSTITUTIONAL, OR THERE WAS, GOING BACK TO JUSTICE SHAW'S ISSUE, THERE IS A GRAY AREA. WELL, DOES IT REALLY APPLY OR NOT, AND THEN THERE IS SOMETHING OTHER THAN JUST A DETERMINATION THAT IT IS UNCONSTITUTIONAL. DO YOU SEE A DIFFERENCE IN THAT SCENARIO, ONE WHERE IT IS, AGAIN, A PUBLIC OFFICIAL SAYING I AM NOT GOING TO APPLY THIS EXEMPTION, BECAUSE IT IS UNCONSTITUTIONAL, VERSUS I HAVE GOT TO GO -- MY DECISION IS NOT TO GIVE AN EXEMPTION, BECAUSE I AM NOT RULING ON THE CONSTITUTIONALITY, BUT IN MY JUDGMENT, IT DOESN'T APPLY. IS THERE TWO -- IS THERE ANYTHING IN THIS RECORD TO TELL US WHICH IT WAS AND DO YOU THINK IT SHOULD MATTER?

WELL, I DON'T THINK THERE IS ANYTHING IN THE RECORD. AS A GOOD ATTORNEY, I WANT TO BE ABLE TO PRESENT ALL OF THOSE ARGUMENTS, ONE, THAT THE STATUTE, AS APPLIED, TO THIS PIECE OF PROPERTY, WOULD NOT APPLY. SECOND, THAT, PERHAPS, THE STATUTE IS UNCONSTITUTIONAL. SO EITHER IT IS UNCONSTITUTIONAL ON THESE FACTS, AS APPLIED TO THESE FACTS, IF YOU WERE TO GRANT THAT EXEMPTION, OR IT IS UNCONSTITUTIONAL ON ITS FACE. I WOULD ARGUE THAT THE PROPERTY APPRAISER CAN'T ARGUE BOTH, AND THAT WOULD HAVE BEEN OUR INTENTION.

HOW CAN WE EFFECT WAIT, AND MAYBE IT IS TRYING TO UNDERSTAND WHAT THE PURPOSE OF THE LEGISLATURE, SAYING WE DON'T WANT PROPERTY APPRAISERS DOING THESE KINDS OF THINGS, WHETHER YOU CAN ALLOW SOMEONE TO GO IN THE BACK DOOR AND DO SOMETHING THAT THEY CAN'T DO DIRECTLY, AND IF YOU ARE SAYING, WELL, THAT IS JUST NOT A GOOD POLICY, PROPERTY APPRAISERS OUGHT TO BE ABLE TO MAKE DECISIONS ABOUT CONSTITUTIONALITY AND GO IN AND CHALLENGE, WHICH IS, I THINK, WHAT YOU WERE SAYING. THAT IS A BETTER, MORE DIRECT WAY, BUT IF IT IS THE LEGISLATIVE POLICY NOT TO, HOW CAN WE AUTHORIZE SOMETHING THE OTHER WAY? TO GO THE OTHER WAY? BY SAYING IT IS NOT

CONSTITUTIONAL. THEREFORE I AM NOT GOING TO GIVE YOU THIS EXEMPTION.

WELL, I THINK YOU ARE RIGHT, FROM A PUBLIC POLICY STANDPOINT. PROBABLY THE BETTER WAY WOULD BE TO DO IT DECLARATORY ACTION. I THINK THAT THE LEGISLATURE HAS, PERHAPS, PREEMPTED THAT, BUT I THINK THAT THE LAW AS IT EXISTS -- WE ARE NOT ASKING FOR AN EXPANSION OF THE LAW. CLEARLY IT IS CHANGED. I THINK THERE ARE CLEARLY MINISTERIAL DUTIES.

WE DON'T KNOW THAT YOU DON'T HAVE A STANDING, BECAUSE THERE IS NOT ENOUGH OF A RECORD.

I THINK YOU ARE RIGHT. I THINK THE COMPLAINT DOESN'T GET INTO THE DETAIL OF -- ALL WE DID WAS SIMPLY ARGUE WHAT THE STATUTE REQUIRES YOU GET TO -- REQUIRES US TO SET FORTH IN THE COMPLAINT. WE WEREN'T ABLE TO GO ON BEYOND THAT.

DO YOU EMBRACE THE IDEA THAT THE APPRAISER CAN DO CERTAIN THINGS, IN AN INDIVIDUAL CAPACITY, THAT HE CAN'T DO IN HIS OFFICIAL CAPACITY, AND IF SO, DOES THAT MAKE MUCH SENSE?

WELL, I THINK THE PROBLEM WITH INDIVIDUAL CAPACITY, IS, UNLESS -- AN INDIVIDUAL TAXPAYER, AS A TAXPAYER, YOU HAVE TWO OPTIONS. ONE, YOU CHALLENGE THE CONSTITUTIONALITY, WHICH THEY CAN DO, OR, TWO, YOU HAVE TO SHOW SPECIAL INJURY.

BRINGING SUIT. AS AN APPRAISER, THEN HE CAN TURN RIGHT AROUND AND BRING SUIT AS AN INDIVIDUAL. DOES THAT MAKE A LOT OF SENSE?

THAT IS TRUE AS AN INDIVIDUAL. I DON'T KNOW THAT IT DOES MAKE A LOT OF SENSE. AS AN INDIVIDUAL, OF COURSE, THE PROPERTY APPRAISER IS LIKE ANY OTHER TAXPAYER. GOING TO FORK OUT SOME SERIOUS MONEY TO CHALLENGE AN EXEMPTION, JUST BECAUSE HE IS A GOOD SAM AIR TAN. I HAVE NOT FOUND THE TAX CASE IN FLORIDA WHERE THE TAXPAYER SAID, BY GOSH, I DON'T THINK THIS EXEMPTION IS CORRECT, SO I AM GOING TO SPEND MY HARD-EARNED MONEY TO FIGHT IT, WHICH IS WHY WE MADE THE ARGUMENT THAT I THINK THE LAW ALLOWS THE PROPERTY APPRAISER TO CHALLENGE THESE NONMINISTERIAL-TYPE ISSUES, AND WHY I THINK THAT IS, PROBABLY, GOOD POLICY.

YOU ARE IN YOUR REBUTTAL. IF YOU WISH TO SAVE SOME TIME, YOU MAY. IF YOU WISH TO CONTINUE, YOU MAY.

I THINK, ACTUALLY, I WILL CONTINUE. SUFFICE TO SAY I THINK THAT THE CASES OUT THERE DO DISTINGUISH BETWEEN A MINISTERIAL AND NONMINISTERIAL DUTY. IT IS NOT ALWAYS GOING TO BE A CLEAR LINE. THERE ARE ALWAYS GOING TO BE THOSE GRAY AREAS THAT THE COURT IS GOING TO HAVE TO DECIDE. I THINK THAT 194.036-1-A SIMPLY LIMITS THE DECLARATORY ACTIONS. I DON'T THINK IT LIMITS THE COMMON LAW BEYOND THAT, AND OBVIOUSLY WE WOULD ARGUE THAT THIS IS A DEFENSIVE ACTION AND THAT IT --

YOU DON'T WANT PUBLIC OFFICIALS SUING AGENCIES AND SO FORTH THAT THEY ARE HEADING AND THAT TYPE OF THING, AND I UNDERSTAND THAT, BUT WHERE PUBLIC MONIES ARE ON THE LINE, WHAT IS WRONG WITH AN APPRAISER SAYING THE PEOPLE OF FLORIDA ARE GOING TO LOSE OR THE COUNTY IS GOING TO LOSE, AND I OUGHT TO BRING THAT?

I THINK YOU ARE RIGHT. I THINK IT IS HARD TO MAKE THAT DISTINCTION. IF YOU ARE TALKING ABOUT PUBLIC FUNDS, THE CONSTITUTION SAYS EVERYONE PACE TAXES AND THEN THERE IS -- PAYS TAXES AND THEN THERE IS THESE EXEMPTIONS OUT THERE, THE COLLECTION OF FUNDS OR DISBURSEMENT OF FUNDS, THAT IS STILL PUBLIC MONIES THAT ARE AT-RISK.

IN 99% OF THE CASES, THAT IS WHAT IT IS GOING TO BE ABOUT IS MONEY, SO WHAT DO YOU THINK THE LEGISLATURE HAD IN MIND, WHEN IT SAID THAT THEY CAN'T BRING SUIT?

I THINK THE LEGISLATURE HAD IN MIND DECLARATORY ACTIONS. IF YOU LOOK AT 194.181 SUB6, WHICH DEFINES THE PARTIES TO A TAX SUIT, IT SAYS THAT THE PUBLIC OFFICIAL AFFECTED SHALL BE -- SHALL BE THE PARTY PLAINTIFF, IF THE CONSTITUTIONALITY OF THE STATUTE IS AT ISSUE. THE LEGISLATURE SEEMS TO BE SAYING YOU CAN CHALLENGE CONSTITUTIONALITY, BUT WE DON'T WANT PROPERTY APPRAISERS JUST FILING DECLARATORY ACTIONS OVER ANY LAW THAT COMES OUT THERE, BECAUSE THEY HAVE TO GO AND THEY HAVE TO DO THEIR DUTIES. WE WOULD HAVE BREAKDOWN OF THE WAY GOVERNMENT FUNCTIONS.

BUT THERE IS LITIGATION, THEN IT IS ALL RIGHT FOR THE PUBLIC APPRAISER, BUT SHORT OF LITIGATION BY SOMEONE OTHER THAN THE PROPERTY APPRAISER, THEN HE CAN'T DO IT. IS THAT IT?

THAT'S CORRECT. THAT'S CORRECT. THANK YOU.

THANK YOU. MR. BRYNER.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. I AM STEVE BRANNOCK OF HOLLAND AND NIGHT, HERE ON BEHALF OF THE NEW YORK YANKEES PARTNERSHIP. I WILL BE PRESENTING ARGUMENTS ON BEHALF OF ALL OF THE RESPONDENTS, THE YANKEES, THE SPORTS AUTHORITY AND THE AVIATION AUTHORITY. IT IS LONG SETTLED IN FLORIDA THAT GOVERNMENTAL OFFICIALS DON'T HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE STATUTES UNDER WHICH THEY OPERATE. THEY HAVE TO ENFORCE THE LAW NOT CHALLENGE THE LAW. THAT PRINCIPLE WAS ALREADY LONG ESTABLISHED, WHEN THIS COURT ISSUED ITS LEADING OPINION ON THAT SUBJECT IN 1922, THE ATLANTA COASTLINE RAILROAD CASE, WHERE IT SPECIFICALLY HELD THAT PUBLIC OFFICIALS DO NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF STATUTES. THAT WAS REAFFIRMED PIE THIS COURT IN THE BARR VWATTS DECISION, WHERE THIS COURT ARTICULATED IN A MATTER THAT I DON'T THINK I CAN IMPROVE UPON.

WHAT ARE THE EXCEPTIONS?

I THINK THE ONLY VALID EXCEPTION IS THE PUBLIC FUNDS EXCEPTION, WHERE A HIGH-LEVEL GOVERNMENT OFFICIAL MAY CHALLENGE THE CONSTITUTIONALITY OF THE STATUTE, IF IT IS GOING TO PREVENT THE IMMEDIATE AND ILLEGAL DISBURSEMENT OF GOVERNMENTAL FUNDS. THERE ARE SEVERAL CASES FROM THIS COURT, HOLDING THAT THAT IS A LIMITED EXCEPTION.

CAN THE PUBLIC OFFICIAL GET AN OPINION FROM THE ATTORNEY GENERAL ON AN ISSUE LIKE THIS?

I THINK THEY COULD GET AN OPINION FROM THE ATTORNEY GENERAL.

WHAT HAPPENS IF THEY GET A FIN I DON'T KNOW FROM THE -- AN OPINION FROM THE ATTORNEY GENERAL THAT SAYS THAT THE STATUTE AND THE OPINION OF THE ATTORNEY GENERAL IS UNCONSTITUTIONAL?

WHAT THIS COURT HAS HELD IS THAT ONLY THIS COURT OR ONLY THE COURTS CAN DETERMINE WHETHER A STATUTE IS UNCONSTITUTIONAL. -- IS UNCONSTITUTIONAL.

WHAT HAPPENS IF THEY GET AN OPINION FROM THE ATTORNEY GENERAL THAT SAYS, IN HIS OPINION, THE STATUTE IS UNCONSTITUTIONAL?

I THINK THEY NEED TO FOLLOW THE LAW AND NOT CHALLENGE THE LAW. THERE MAY BE AN

EXCEPTION --

IN OTHER WORDS WHEN THEY GET THAT OPINION, THEY STILL CANNOT FOLLOW THE OPINION. IS THAT --

BECAUSE THE ATTORNEY GENERAL HAS NO MORE POWER TO DECLARE A STATUTE UNCONSTITUTIONAL THAN ANY OTHER OFFICIAL. IN THE ATLANTIC RAILROAD CASE INVOLVED, THE TREASURER AND THE ATTORNEY GENERAL WERE INVOLVED AND THIS COURT SAID THAT THEY DIDN'T HAVE THAT POWER.

YOU SAID THAT, IN THE FUCHS CASE, IF THIS WERE THIS EXEMPTION AS OPPOSED TO THE EXEMPTION THAT WAS IN QUESTION THERE, THAT THE TAX APPRAISERS ALL OVER THE -- ASSESSORS ALL OVER THE STATE WOULD HAVE TO FOLLOW THAT LAW, DECLARING THE EXEMPTION UNCONSTITUTIONAL.

RIGHT. I THINK THE LAW --

EVEN THOUGH THE STATUTE SAID SOMETHING DIFFERENT AND NO COURT IN THEIR DISTRICT HAD RULED THAT WAY.

I THINK, UNDER THOSE CIRCUMSTANCES, IF A COURT IN ANOTHER DISTRICT COURT OF APPEAL HAD RULED THAT THE STATUTE WAS UNCONSTITUTIONAL, IN THAT CASE THE PROPERTY APPRAISER COULD FOLLOW THE DECISION, IF THE COURT -- I THINK THERE IS LAW THAT SUGGESTS THAT IF ONLY ONE DISTRICT COURT OF APPEAL HAS RULED ON AN ISSUE, THEN THAT IS BINDING PRECEDENT, EVEN IN OTHER DISTRICT COURT OF APPEALS, UNTIL THERE IS A DISTRICT COURT OF APPEAL DECISION TO THE CONTRARY, SO IN THAT CASE IT IS THE COURT THAT HAS DECLARED THE STATUTE UNCONSTITUTIONAL, AND ALL THE PROPERTY APPRAISER IS DOING IN THAT CASE IS FOLLOWING THE DECISION OF THE COURT. THAT IS VERY DIFFERENT FROM THE PROPERTY APPRAISER MAKING AN INDEPENDENT DETERMINATION THAT THE STATUTE IS UNCONSTITUTIONAL, SECOND-GUESSING THE LEGISLATURE, SECOND-GUESSING THE WILL OF THE MAJORITY AND BRINGING THAT CHALLENGE.

HOW WOULD YOU EXPLAIN THIS SCHEME TO THE PUBLIC? THAT IS THAT THE PEOPLE THAT ARE MOST AFFECTED BY THESE EXEMPTIONS AND EXAMINING THE CONSTITUTION OR WHATEVER AND THEREFORE PRESUMABLY WOULD BE AMONGST THE MOST KNOWLEDGEABLE, IN THAT THEY RECEIVE EXPERT LEGAL ADVICE AND THAT KIND OF THING, CAN'T RAISE THIS ISSUE ON BEHALF OF THE PEOPLE AND THE COURTS. HOW WOULD YOU EXPLAIN THIS TO THE PUBLIC?

FIRST, I WOULD DISAGREE WITH THE PREMISE. I DON'T THINK THAT THEY ARE THE INDIVIDUAL THAT IS MOST AFFECTED BY THE STATUTE. IT IS THE TAXPAYERS THAT ARE MOST AFFECTED BY THE STATUTE. THEY ARE ONES THAT HAVE THE DIRECT AND PECUNIARY INTEREST IN THE STATUTE, AND IF THERE ARE TAXPAYERS THAT FEEL THAT THERE HAS BEEN A MISAPPLICATION OF THE TAX BURDEN, THEY CAN BRING THAT CHALLENGE. IN FACT IT SUGGESTS THAT THE VERY REASON THAT A PROPERTY APPRAISER OR ANOTHER GOVERNMENT OFFICIAL CAN BRING THAT CHALLENGE IS BECAUSE THEY DON'T HAVE A DIRECT INTEREST. MR. SHEPHERD SAID SOMETHING VERY INTERESTING, WHICH IS IF THEY WERE DOING IT AS AN INDIVIDUAL, THEY WOULD HAVE TO BE SHELLING OUT THEIR OWN MONEY FOR THE CHALLENGE, AND THAT IS THE POINT. THERE ARE LOTS OF PRESUMPTIONS IN PLACE THAT PROTECT AGAINST A STATUTE BEING --

I GUESS THE QUESTION I AM ASKING YOU IS HOW DO YOU EXPLAIN TO THE PUBLIC THAT THEIR LOCAL TAX ASSESSOR SEES THIS STATUTE AND HE READS THE CONSTITUTION AND HE GETS LEGAL ADVICE, AND THE ADVICE SAYS, YOU KNOW, THIS CAN'T POSSIBLY BE CONSTITUTIONAL. IT IS GOING TO COST US, IN THIS COMMUNITY, MILLIONS AND MILLIONS OF DOLLARS, TO GRANT THESE EXEMPTIONS. AND -- HE BELIEVES THAT SINCERELY, AND HE IS THE ONE THAT HAS GOT TO DO THE PRALS -- APPRAISE ALWAYS AND CERTIFY THE TAX ROLLS AND WHATEVER, AND HE

ACKNOWLEDGED THE OPINIONS BUT HE CAN'T DO ANYTHING WITH IT. HOW WOULD YOU EXPLAIN TO THE PUBLIC THAT THAT PERSON THAT HAS THAT ADVICE AND ALL OF THAT CAN'T DO ANYTHING WITH IT OR ABOUT IT?

THERE IS SOME ATTRACTIVENESS TO THAT ARGUMENT.

I AM ASKING YOU TO EXPLAIN TO THE PUBLIC WHY THE PUBLIC OFFICIAL CAN'T DO ANYTHING ABOUT IT.

HERE IS MY EXPLANATION WHY THERE IS A HIGHER VALUE AT STAKE HERE. THE ARGUMENT THAT YOU ARE MAKING HAS A --

I AM NOT MAKING AN ARGUMENT. WHAT I AM ASKING YOU TO DO IS AS IF I WERE THE PUBLIC AND YOU ARE SAYING MR. JOHN Q CITIZEN, THE PUBLIC OFFICIAL HAS A OPINION AND ALL THIS ADVICE AND HE CAN'T DO ANYTHING. HE IS POWERLESS TO DO ANYTHING. WHY IS THAT?

BECAUSE AS I SAID BEFORE, THERE IS A HIGHER VALUE AT STAKE. IF A PROPERTY, IF WE LOOK AT A GOVERNMENT OFFICIAL, CHALLENGING A BAD LAW, THERE IS A LOT OF ATTRACTIVENESS TO THAT, BUT UNFORTUNATELY EXPERIENCE SHOWS US THE THE PUBLIC OFFICIALS DON'T JUST CHALLENGE BAD LAWS. THEY CHALLENGE LAWS THAT ARE PERFECTLY APPROPRIATE, AND WHEN THEY DO THAT, THEY AT WHAT TIME THE WILL OF THE MAJORITY AND FORCE THE CITIZENS OF THIS STATE TO EXPEND TIME AND MONEY, LIKE THE TAXPAYERS AT ISSUE HERE AND DOING NOTHING MORE THAN ENFORCING THE PROPERTY APPRAISER OR ANOTHER GOVERNMENTAL OFFICIAL TO COMPLY WITH THEIR OBLIGATIONS, UNDER THE LAW.

WHY IS IT, THOUGH, THE RESPONSE TO THAT -- WHY ISN'T, THOUGH, THE RESPONSE TO THAT THAT, IF YOU HAVE GOT A TAX APPRAISER THAT IS DOING THAT IN HIS COMMUNITY, TO SUCH A WIDESPREAD EXTENT, THAT HE IS GOING TO BE PUNISHED BY THE VOTERS, BECAUSE THE VOTERS ARE GOING TO RESPOND TO THE TAX APPRAISER DOING THAT? HOWEVER, WE ARE SETTING UP A -- REALLY AN ARTIFICIAL POLICY, GOING BACK TO A BY GONE DAY, WHEN THINGS WERE A MUCH SIMPLIR POS-- SIMPLER POSTURE, WHEREAS NOW, AS JUSTICE SHAW SAYS, YOU HAVE A LOT OF GRAY AREAS THAT COME OUT OF THE LEGISLATURE THAT HAVE TO BE COMPARED WITH WHAT THE CONSTITUTION SAYS, AND THAT THE PERSON THAT IS IN THE BEST POSITION TO GET THAT DETERMINED IS THE PERSON THAT HAS THE EXPERTISE OF APPLYING IT AND THEREFORE THE TAX APPRAISER SHOULD BE ABLE TO GO INTO COURT AND GET IT DETERMINED, JUST AS THE TAX APPRAISER COULD GO TO THE ATTORNEY GENERAL, TO TRY TO GET SOME HELP IN UNDERSTANDING IT.

THE PROBLEM IS WHAT IS THE PRINCIPLE DISTINCTION, THOUGH, IF WE ALLOW THE PROPERTY APPRAISER TO MAKE THE CHALLENGE HERE? IF THE PROPERTY APPRAISER CAN MAKE THIS CHALLENGE, THEN ANY PUBLIC OFFICIAL IN FLORIDA CAN MAKE A CHALLENGE TO ANY STATUTE WITH WHICH THEY DISAGREE. THERE MAY BE PERFECTLY JUSTIFIABLE CIRCUMSTANCES WHERE THE PUBLIC OFFICIAL IS ACTING IN GOOD FAITH, BUT THERE ARE LOTS OF CIRCUMSTANCES WHERE THAT PUBLIC OFFICIAL HAS A PURE AND SIMPLE DISAGREEMENT WITH THE LEGISLATURE, AND IN RULING THAT THE PROPERTY APPRAISER CAN MAKE THIS CHALLENGE, YOU ARE, ALSO, SAYING THAT ANY OTHER PUBLIC OFFICIAL CAN MAKE A CHALLENGE TO ANY STATUTE WITH WHICH THEY DISAGREE. THERE IS NO DISTINCTION. EVERY LEGISLATIVE ENACTMENT HAS ITS PROPONENTS AND EVERY LEGISLATIVE ENACTMENT HAS ITS DETRACTORS. THERE ARE THOSE THAT --

YOU AGREE THAT THERE HAS BEEN THIS EXCEPTION CARVED OUT THAT THE PROPERTY APPRAISER OR ANY OTHER PUBLIC OFFICIAL COULD DO IT DEFENSIVELY?

I DO NOT AGREE WITH THAT.

YOU DO NOT AGREE WITH THAT.

NO. THERE IS SOME TALK ABOUT A DEFENSIVE EXCEPTION. UNTIL THE FUCHS V ROBBINS CASE OR THE COMPANION CASE TO THIS COURT, THERE IS NO COURT IN FLORIDA THAT HAS EVER APPLIED THE DEFENSIVE USE EXCEPTION. INTERESTINGLY GO BACK TO THE ATLANTIC CASE AND THE BARR CASE, TWO LEADING CASES IN THE STATE OF FLORIDA REGARDING THIS TOPIC. THOSE WERE BOTH ATTEMPTS BY DEFENDANTS TO APPLY THE CONSTITUTIONALITY OF THE STATUTE DEFENSIVELY. IN THE ATLANTIC CASE, YOU HAD AN ACTION BEING BROUGHT INTENSE AGAINST THE GOVERNOR, THE TREASURER AND THE ATTORNEY GENERAL, TO FORCE THEM TO COMPLY WITH A STATUTE. THEY, THEN, RAISE THE CONSTITUTIONALITY OF THAT STATUTE DEFENSIVELY, AND THIS COURT SPECIFICALLY HELD THAT YOU DON'T HAVE THE POWER TO DO. THAT ONLY THIS COURT, ONLY THE COURTS CAN DETERMINE THE CONSTITUTIONALITY OF THE STATUTE, SO WE DON'T THINK THAT THERE IS ANY DEFENSIVE USE EXEMPTION. IT A ROSE IN DICTA, IN THE DEPARTMENT OF EDUCATION V LEWIS CASE, WHERE THIS COURT INDICATED THAT THERE WAS SUCH AN EXCEPTION AND CITED TO SEVERAL CASES, THE PORTLAND CEMENT CASE AND A COUPLE OF OTHER CASES. IN NONE OF THOSE CASES WAS THERE ANY ARGUMENT ABOUT A DEFENSIVE CHALLENGE EXCEPTION, SO WE THINK THAT ALL OF THOSE CASES RESTED UPON THE FACT THAT THERE WAS AN IMMINENT DISBURSEMENT OF PUBLIC FUNDS, AND THAT IS WHY THE COURT RULED THE WAY IT DID IN THOSE CASES, AND THERE IS NO DEFENSIVE USE EXCEPTION, AND CERTAINLY THERE WAS ABSOLUTELY NOTHING DEFENSIVE ABOUT WHAT THE PROPERTY APPRAISER DID IN THIS CASE. HERE THE PROPERTY APPRAISER CHOSE TO IGNORE A STATUTORY EXEMPTION. 196.012-6, SPECIFICALLY --

NOW, YOUR OPPONENT SAYS THAT THAT IS NOT SO CLEAR-CUT THAT THAT IS WHAT HAPPENED. HOW DO WE -- HOW -- WHAT BASIS DO YOU HAVE FOR STATING THAT THAT IS WHAT HAPPENED? THAT IS A CLEAR TAKING SOMETHING THAT MUST HAVE BEEN CLEARLY APPLICABLE AND SAYING I AM NOT PLYING IT BECAUSE IT IS NOT CONSTITUTIONAL?

WE HAVE, OF COURSE, THE HISTORY FROM THE VALUE JUDGMENT BOARD, WHERE THE ONLY ARGUMENT MADE BY THE PROPERTY APPRAISER WAS THAT 196.012-6 IS NOT CONSTITUTIONAL AND SHOULDN'T BE APPLIED. IF THE PROPERTY APPRAISER COULD SEE, AND IF YOU ASKED THE PROPERTY APPRAISER, HOW CAN YOU GET TO YOUR \$5 MILLION ASSESSMENT, AND THE ONLY ANSWER TO THAT IS I CAN GET TO MY \$5 MILLION ASSESSMENT, IF 191.016 IS UNCONSTITUTIONAL. HE DIDN'T COME BACK IN A REHEARING AND SAY WAIT A SECOND. THERE ARE SOME FACTUAL ISSUES THAT HAVE TO BE DEVELOPED IN THIS CASE ABOUT WHETHER OR NOT THIS PARTICULAR PROPERTY FITS WITHIN THE PARAMETERS OF 191.012-6. THERE IS NOTHING IN THE RECORD ABOUT THAT. A DISPUTE AS TO WHETHER THIS PARTICULAR PROPERTY FITS INTO THOSE PARTICULAR PARAMETERS OF THAT EXEMPTION. IT IS UNDISPUTED, SO THE ONLY ANSWER TO THIS IS IT CONSTITUTIONAL OR IS IT NOT?

THE STATUTE THAT LIMITED THE AUTHORITY OF THE PROPERTY APPRAISER TO INSTITUTE ACTIONS THAT DO NOT EXIST, WOULD YOU STILL BE ARGUING THAT IT IS THIS COURT'S PRECEDENT THAT IS THE LIMITING FACTOR, VERSUS THE STATEMENT OF THE LEGISLATURE? IN OTHER WORDS IS THAT THE -- OTHER THAN THIS COURT'S PRECEDENT, IS THERE ANYTHING ELSE IN THE LEGISLATURE -- IN THE LEGISLATIVE ENACTMENTS THAT WOULD PROHIBIT THE PROPERTY APPRAISER FROM DOING WHAT HE DID IN THIS CASE?

THERE ARE TWO PRONGS TO OUR ARGUMENT. ONE IS THE ATLANTIC CASE, THE BARR CASE AND ITS PROGENY, AND THE SECOND CASE IS THE STATUTE THAT MR. SHEPHERD WAS DISCUSSING, THAT SPECIFICALLY STATES THAT THE PROPERTY APPRAISER DOES NOT -- CANNOT INSTITUTE, QUOTE, A SUIT TO CHALLENGE THE VALIDITY OF ANY PORTION OF THE CONSTITUTION OR OF ANY DULY-AND ACTED LEGISLATIVE -- DULY OWEN ACTED LEGISLATIVE ACT OF THIS -- DULY ENACTED LEGISLATIVE ACT OF THIS STATE. THE PROPERTY APPRAISER CLEARLY DOES NOT HAVE THE POUR OTHER -- -- THE POWER --

YOU ARE NOT SAYING IF IT WAS A DECLARATORY ACTION OUTSIDE OF THE TAX DISPUTE, THAT THAT IS LIMIT SOMETHING.

I DO NOT BUY THAT, BECAUSE THAT SECTION IS WITHIN THE SECTION THAT IS ENTITLED "APPEALS FROM DECISIONS OF THE VALUE ADJUSTMENT BOARD", SO WE ARE SPECIFICALLY IN THAT STATUTE REFERRING TO WHAT POWER THE PROPERTY APPRAISER HAS TO TAKE AN APPEAL FROM THE DECISION OF THE VALUE ADJUSTMENT BOARD, AND THERE ARE A NUMBER OF LIMITATIONS SET FORTH IN THAT STATUTE. THE AMOUNT IN CONTROVERSY HAS TO CROSS A PARTICULAR THRESHOLD. THE VARIANCE BETWEEN WHAT THE PROPERTY APPRAISER SUGGESTS AND THE VAB SUGGESTS HAVE TO BE BEYOND A CERTAIN THRESHOLD. THAT IS TO PREVENT LITIGATION OVER SUMS OF MONEY THAT ARE JUST TOO SMALL.

HOW LONG HAS THAT STATUTE BEEN ON THE BOOKS?

IT WAS ON THE BOOKS PRIOR TO THE MARK MAN DECISION. I THINK 1973, IF I AM NOT MISTAKEN, BUT I WOULD HAVE TO GO BACK.

WE DON'T HAVE ANY LEGISLATIVE HISTORY AS TO WHY THAT PARTICULAR PROVISION WAS ENACTED?

NONE THAT I HAVE SEEN.

WHAT KIND OF CONSTITUTIONAL VIOLATIONS, UNDER THE FIRST PART OF THE SENTENCE, IN 1-A, CAN THE PROPERTY APPRAISER ASSERT? IF HE CANNOT ASSERT ANY OF THE CONSTITUTIONAL VIOLATIONS WE ARE TALKING ABOUT TODAY?

IF THE VALUE ADJUSTMENT BOARD IGNORED ANOTHER STATUTORY PROVISION OR IF THE VALUE ADJUSTMENT BOARD IGNORED A CONSTITUTIONAL PROVISION.

HOW ABOUT IF THEY APPLY THE PROVISION UNCONSTITUTIONALLY? THAT IS PROHIBITED? THEY CANNOT -- YOU CANNOT MAKE THAT ASSERTION?

IF THEY HAVE APPLIED A PROVISION OF THE CONSTITUTION UNCONSTITUTIONALLY, YES, THE PROPERTY APPRAISER COULD MAKE THAT DECISION.

BUT THEY COULD NOT CHALLENGE UNDER THAT EXCEPTION A STATUTE, THE APPLICATION OF AN UNCONSTITUTIONAL STATUTE IS YOUR VIEW. AND WHAT IS IN THE LANGUAGE THAT WE CAN RELY ON TO PULL THAT FORT, BECAUSE IT SEEMS TO SAY ASSERTS THAT THERE IS A SPECIFIC CONSTITUTIONAL STATUTORY VIOLATION OF THE DECISION OF THE BOARD.

ALL RIGHT. WELL, IF THE BOARD INTERPRETS THE CONSTITUTION INCORRECTLY, IF THE BOARD INTERPRETS THE STATUTE INCORRECTLY, THEN THE PROPERTY APPRAISER, THAT IS ONE OF THE GROUNDS UPON WHICH THE PROPERTY APPRAISER MAY APPEAL THE DECISION OF THE VAB. THAT IS VERY DIFFERENT, THOUGH, FROM THE PROPERTY APPRAISER, HIMSELF, ARGUING THAT AN EXEMPTION THAT WAS APPLIED BY THE VAB IS UNCONSTITUTIONAL. WHAT THE LEGISLATURE WAS SAYING IS, IF THERE IS A CONSTITUTION ISSUE PRESENTED, PROPERTY APPRAISER THAT, IS ONE OF THE CIRCUMSTANCES IN WHICH YOU CAN GO AND TAKE AN APPEAL FROM THE VAB DECISION, BUT WE WANT TO MAKE IT ABSOLUTELY CLEAR THAT YOU CAN NOT CHALLENGE THE CONSTITUTIONALITY OF A STATUTE UNDER THIS PROVISION, AND THAT IS THE PURPOSE OF THE LAST SENTENCE, WHICH COULD NOT BE ANY CLEARER. THE PROPERTY APPRAISER DOES NOT HAVE THE ABILITY TO CHALLENGE ANY PORTION --

DOES THE LEGISLATURE HAVE THE POWER TO ELIMINATE A COMMON LAW STANDING CIRCUMSTANCE, IF OTHERWISE IT IS VALID? ANOTHER LEGISLATURE HAS THE POWER TO REGULATE SUBSTANTIVE RIGHTS, AND SUBSTANTIVE RIGHTS INCLUDE THE POWER TO SUE AND

THE POWER TO BE SUED. THEY CAN PUT LIMITATIONS ON THE POWER TO SUE. ULTIMATELY THAT WILL HAVE AN EFFECT ON STANDING, BUT THIS COURT HAS RULED, IN DECISIONS LIKE THE FORD AND ROGERS CASE AND THE AFTER ILL A CASE, BUT THE -- AND THE AVILLA CASE, BUT THE LEGISLATURE RULING TO GRANT SUBSTANTIVE POWERS DOES NOT MEAN THAT THEY ARE INTRUDING INTO RULE-MAKING, SO I THINK IT IS CLEAR THAT THE LEGISLATURE HAS THE POWER TO GRANT THE PROPERTY APPRAISER THE POWER TO SUE OR LIMIT THE POWER TO SUE. IN THE BURNS CASE, IT SPECIFICALLY SAID THAT THE POWERS OF THE PROPERTY APPRAISER ARE NOT GRANTED BY THE CONSTITUTION. THEY ARE GRANTED BY THE LEGISLATURE AND REGULATED BY THE LEGISLATURE. HERE IS A VERY SPECIFIC PROVISION BY THE LEGISLATURE THAT STATES THAT THE PROPERTY APPRAISER DOES NOT HAVE THE POWER TO RAISE THIS CHALLENGE. SO, AGAIN, A DECISION THAT THE PROPERTY APPRAISER HAS THE RIGHT TO MAKE THIS CHALLENGE COMES AT A GREAT COST. THE COST IS THAT ESSENTIALLY THIS COURT IS RULING THAT ANY OTHER PUBLIC OFFICIAL CAN HALL EVENING ANY OTHER -- CAN CHALLENGE ANY OTHER STATUTE WITH WHICH THEY DISAGREE AND THEREBY THWART THE WILL OF THE MAJORITY. WE THINK THAT THIS COURT HAS ALREADY STATED, VERY ARTICULATELY, IN BOTH THE ATLANTA COASTLINE CASE AND THE BARR CASE, WHY THIS EVENING IT WAS WRONG AND WE THINK THOSE DECISIONS WERE CORRECT AND SHOULD BE AFFIRMED. IF THERE ARE NO OTHER QUESTIONS.

THANK YOU. REBUTTAL.

I THINK IT IS VERY INTERESTING THAT THE ARGUMENT IS ALWAYS THE PROPERTY APPRAISER MUST FOLLOW THE LAW, AND THAT IS WHY THE OTHER SIDE ARGUES PROPERTY APPRAISER DID NOT FOLLOW THE LAW. THE PROPERTY APPRAISER HAS TO FOLLOW THE LAW. BUT THEIR DEFINITION OF THE LAW IS UNLIKE ANY DEFINITION OF THE LAW THAT I AM AWARE OF, WHICH IS AFTER READING THIS STATUTE --

ISN'T THAT A RATHER CLEAR STATEMENT THAT YOUR OPPONENT LAST REFERRED TO? WITH REFERENCE TO LIMITING THE POWER OF THE PUBLIC OFFICIALS TO BRING AN ACTION? ISN'T THAT A RATHER CLEAR STATEMENT IN THE STATUTE?

I THINK THAT THE STATUTE REFERS TO A DECLARATORY ACTION. I THINK, IF YOU READ THOSE TWO SENTENCES, THE ONLY WAY YOU CAN MAKE THAT STATUTE INTERNALLY CONSISTENT IS TO READ THAT SECOND --

IN TURN, POLICY WISE, WHY WOULD THE LEGISLATURE LIMIT THIS BRINGING OF DECLARATORY ACTIONS, UNLESS THAT IS AN EXPRESSION OF POLICY? WE REALLY DON'T WANT PUBLIC OFFICIALS TO BE CHALLENGING THE LAWS THAT WE PASS. WE WANT THEM TO OBEY THEM.

PERHAPS THE RATIONALE THERE IS, UNLESS THERE IS A CASE IN CONTROVERSY, YOU ARE RIGHT. A PROPERTY APPRAISER SHOULDN'T BE ABLE TO JUST PICK OUT A STATUTE AND SAY I AM GOING TO CHALLENGE THIS STATUTE HIM GOING TO CHALLENGE THIS STATUTE. I DON'T LIKE WHAT THIS SAYS, BECAUSE THEN YOU WOULD HAVE A PROPERTY APPRAISER TRYING TO RECREATE THE LAW, AND IT SHOULD BE LIMITED. THE STANDING IS VERY LIMITED, AS OF RIGHT NOW, TO THESE MINISTERIAL DUTIES, WHERE THE PROPERTY APPRAISER HAS TO INTERPRET THE LAW, HAS TO MAKE A DECISION AS TO A SPECIFIC TAXPAYER. THE PUBLIC OFFICIAL CANNOT RUN AMOK. THERE IS A VERY NARROW, NARROW OPPORTUNITY.

BUT YOU ARE SAYING THE PUBLIC OFFICIAL CAN CREATE THE CASE IN CONTROVERSY. BY A CONTRARY INTERPRETATION.

IRONICALLY, IN THIS CASE WE ARE TALKING ABOUT EXEMPTION. EXEMPTION, AS STATED BY THIS COURT, IS A PRIVILEGE NOT A RIGHT, SO IT IS, REALLY, THE TAXPAYER WHO COMES TO THE PROPERTY APPRAISER AND SAYS I WOULD LIKE THIS PRIVILEGE, IF I AM ENTITLED TO IT UNDER THE LAW. THE PROPERTY APPRAISER HAS TO BE ABLE TO MAKE THAT DETERMINATION, BY LOOKING AT ALL OF THE LAW. AND I THINK, IF YOU COMPLETELY FORECLOSE THIS, YOU HAVE

ELIMINATED THE RELIEF VALVE THAT THE PUBLIC LOOKS TO. TAXATION IS A PRETTY SENSITIVE ISSUE. IT IS A LOT OF WHAT THIS COUNTRY WAS BASED ON, AND WHEN TAX LAWS ARE SET FORTH UNEQUALLY AND IN EQUITYBLY AND THERE IS NO RELIEF VALVE FOR SOMEBODY TO CORRECT THAT, THAT IS WHERE YOU GET BIGGER PROBLEMS.

THANK YOU.

THANK YOU.

THANK YOU, COUNSEL.