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T.M. v. State of Florida

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT THIS MORNING IS THE CASE OF T.M. VERSUS STATE. MR. HOWIE.

MAY IT PLEASE THE COURT. BRUCE HOWIE, THE PETITIONER FOR T.M.. WE ARE HERE CONCERNING CERTIFIED QUESTIONS TO THIS COURT FROM THE SECOND DISTRICT COURT OF APPEAL. THOSE CERTIFIED QUESTIONS ARE WHAT LEVEL OF SCRUTINY SHOULD THE COURT USE, IN REVIEWING THE CONSTITUTIONALITY OF A JUVENILE CURFEW ORDINANCE. SECOND, WHETHER THE PINELLAS PARK JUVENILE CURFEW ORDINANCE IS UNCONSTITUTIONAL, USING THAT STANDARD. THE SECOND DCA USED INTERMEDIATE OR HEIGHTENED SCRUTINY, IN MAKING THEIR REVIEW. WE ARE HERE TO ARGUE, AND THE ATTORNEY GENERAL, IT IN FACT, CONCEDES THAT STRICT SCRUTINY IS THE CORRECT LEVEL OF REVIEW. MY CLIENT WAS CITED, UNDER THIS ORDINANCE, FOR STANDING AT THE CURBSIDE OF A RESIDENCE IN A RESIDENTIAL NEIGHBORHOOD, IN PINELLAS PARK. AND SHE WAS CITED FOR A VIOLATION, BASED SOLELY ON THAT, AS SHE CONVERSED WITH FRIENDS. WE FEEL THAT THE --

THE FUNDAMENTAL RIGHT THAT YOU SAY IS INVOLVED HERE?

THE FUNDAMENTAL RIGHT IS THE RIGHT TO PRIVACY, THE RIGHT OF A PARENT TO RAISE A CHILD, AS PROTECTED BY ARTICLE I, SECTION 23.

TRY, IF YOU WILL, AT LEAST FOR ME, TO SEPARATE OUT THE PARENT AND THE MINOR, IN THAT WE HAVE HERE A CASE PERTAIN TO GET MINOR.

I UNDERSTAND THAT WE HAVE A CASE PERTAIN TO GET MINOR, YOUR HONOR. HOWEVER, WE ARE INVOLVED, HERE, IN RIGHTS THAT ARE INEXTRICABLY INTERTWINED, BETWEEN THE PARENT AND THE CHILD, THE RIGHTS OF THE CHILD CANNOT BE ARGUED, WITHOUT CONCERNING THE RIGHTS OF THE PARENT.

YOU KNOW, YOU DON'T AGREE THAT THE SECOND DISTRICT SEPARATED THEM?

I DON'T AGREE? I BEG PARDON?

THAT THE SECOND DISTRICT SEPARATED THEM?

I DON'T BELIEVE THAT THEY SHOULD HAVE. I DON'T BELIEVE THAT THEY DID. MY REVIEW OF THE OPINION WAS BASED UPON THEIR REVIEW OF THE CIRCUIT COURT DECISION, OVERTURNING THIS IS UNCONSTITUTIONAL, AS VIOLATIVE OF THE RIGHTS OF THE PARENT. THE --

WE ARE NOT TALKING, THOUGH, ABOUT ANY SANCTION BEING IMPOSED AGAINST THE PARENTS.

NOT IN THIS CASE. HOWEVER, I SHOULD POINT OUT THAT THE ORDINANCE CLEARLY ESTABLISHES A PRIMA FACIE VIOLATION BY THE PARENT, IF THE CHILD VIOLATION, UNLESS -- IF THE CHILD VIOLATES, UNLESS THE PARENT CAN PROVE ONE OF TWO AFFIRMATIVE DEFENSES.

OKAY. BUT WHAT IS THE FUNDAMENTAL RIGHT THAT WE ARE TALKING ABOUT, AS FAR AS THE CHILD IS CONCERNED?

THE CHILD'S RIGHT TO PRIVACY. IF THERE IS A RIGHT THE CHILD HAS, THERE IS THE RIGHT TO

PRIVACY, BY WHICH WE ENCOMPASS NOT ONLY THE CHILD'S RIGHT TO PURSUE LEGITIMATE ACTIVITIES BUT, ALSO, THE CHILD'S RIGHT TO BE RAISED BY THE PARENT, JUST AS THE PARENT HAS THE RIGHT TO RAISE THE MINOR.

SO IT IS THE RELATIONSHIP OF THE CHILD. YOU ARE NOT ASSERTING THAT THERE IS A RIGHT TO MOVEMENT.

NO. WE ARE NOT BASING OUR ARGUMENT ON THE RIGHT TO TRAVEL. CLEARLY, ALTHOUGH THE CHILD HAS A LIBERTY INTEREST IN TRAVELING, AS THE SECOND DCA POINTS OUT, AND THIS IS SUPPORTED BY SUCH CASES AS PAPA CHRISTO, WE ARE, REALLY HERE ABOUT THE CHILD'S PRIVACY RIGHT, UNDER THAT FUNDAMENTAL RIGHT WHICH, BOTH, THE CHILD AND THE PARENT ENJOY, STRICT SCRUTINY SHOULD APPLY. THE ORDINANCE IN THIS CASE IS ACTUALLY -- ATTEMPTS TO SUGGEST THAT THIS IMPROVES PARENTAL CONTROL OVER THE CHILD. ON THE CONTRARY. THE ORDINANCE CLEARLY DISTRUSTS A PARENT'S ABILITY TO RAISE A MINOR AND TO CONTROL THAT MINOR, AND IS ACTUALLY HOSTILE TO THE PARENT-CHILD RELATIONSHIP. THIS AFFECTS THE CHILD'S RIGHTS, AS WELL AS THE PARENT'S RIGHT, UNDER THESE CIRCUMSTANCES. THE ORDINANCE DOES THIS, FIRST OF ALL, BY NOT PROVIDING AN APPROPRIATE EXCEPTION THAT APPEARS IN EVERY CURFEW ORDINANCE THAT HAS BEEN UPHeld BY EVERY OTHER COURT, AND THAT IS WHAT IS REFERRED TO AS THE PARENTAL CONSENT EXCEPTION.

IF WE REACH THE POINT THAT WE ARE REFERRING TO THIS AS A FUNDAMENTAL RIGHT, IS THEY'RE -- IS THERE -- IS IT YOUR POSITION THAT IT MAKES A DIFFERENCE, WHETHER IT IS A JUVENILE OR AN ADULT? ONCE YOU HAVE REACHED THAT FUNDAMENTAL STAGE. CONSTITUTION, FOR INSTANCE, DOESN'T SAY THESE RIGHTS ARE APPLICABLE TO ADULTS.

NO. IT DOES NOT. THIS COURT, IN BB VERSUS STATE, IN RAY TW, AND OTHER CASES, HAVE RECOGNIZED THAT THE CHILD HAS THE FUNDAMENTAL RIGHT OF PRIVACY. THAT EXTENDS TO THE CHILD AS WELL AS TO THE ADULT. I DON'T SEE THE EXTENSION THERE, THAN IS GOOD WE ARE ADVOCATING THAT -- AND THAT IS WHY WE ARE ADVOCATING THAT STRICT SCRUTINY IS THE STANDARD OF REVIEW, BECAUSE WE HAVE FUNDAMENTAL RIGHTS.

EXPLAIN HOW THE ORDINANCE VIOLATES THAT.

THE ORDINANCE VIOLATES THIS IN THREE WAYS, AND I AM COMPARING THAT TO THREE OTHER ORDINANCES, WHICH WERE UPHeld UNDER STRICT IMMEDIATE SCRUTINY. FIRST, THIS ORDINANCE DOES NOT HAVE A PARENTAL EXCEPTION. IF A PARENT DIRECTS A CHILD TO GO TO A STORE AND BUY A DOZEN EGGS FOR TOMORROW'S BREAKFAST, THE CHILD AND THE PARENT ARE, BOTH, IN VIOLATION OF THE ORDINANCE DURING CURFEW HOURS. THERE IS NO CONSENT EXCEPTION, SUCH AS YOU HAVE WITH ORDINANCES IN TAMPA OR METROPOLITAN DADE, WHICH ALLOWS FOR, AT LEAST, PERMISSION BY THE PARENT. SECOND, IT DOES NOT ESTABLISH AN ENFORCEMENT PROCEDURE, AS OTHER ORDINANCES DO. REQUIRING THE LAW ENFORCEMENT OFFICER TO MAKE A CERTAIN INQUIRY INTO THE REASON WHY THE MINOR IS OUT OF THE HOME.

FOLLOWING UP ON YOUR ANSWER TO THE QUESTION I JUST ASKED, DOES A MUNICIPALITY HAVE THE CAPABILITY OF SAYING THAT WE WANT TO PROTECT MINORS AND DRAWING A DISTINCTION BETWEEN MINORS AND ADULTS? AND, IF SO, WHERE DOES THAT LIE? WHAT DETERMINES THAT LINE?

THE LINE I WAS SUGGEST, IN THAT, IS WHERE THIS COURT SAID, ABSENT A DEMONSTRABLE HARM TO THE CHILD, THAT THAT DISTINCTION SHOULD NOT BE MADE, THAT THERE IS, BASICALLY, A SUBSTANTIAL LIKELIHOOD OF SIGNIFICANT HARM TO THE CHILD. THAT IS WHERE YOU HAVE THE COMPELLING GOVERNMENT INTEREST, IN DISTINGUISHING OR SEPARATING OUT A MINOR FROM AN ADULT.

WELL, IF THERE IS A COMPELLING STATE INTEREST, ALTHOUGH THERE IS A FUNDAMENTAL RIGHT

WE ARE DEALING WITH, THEN YOU ARE SAYING THAT THE SOVEREIGN OR THE MUNICIPALITY OF THE STATE CAN MAKE A DIFFERENCE?

YES. UNDER CERTAIN STANDARDS, THEY CAN. THEY HAVE TO, FIRST, DEMONSTRATE THE COMPELLING GOVERNMENT INTEREST, AND THEN THEY HAVE TO SHOW THAT THEY ARE USING THE LEAST INTRUSIVE MEANS IN PURSUEING THAT -- IN PURSUING THAT INTEREST, AND THE LINK BETWEEN THE TWO HAS TO BE ESTABLISHED.

NOTWITHSTANDING THE FACT THAT IT IS, CONCEDEEDLY, A FUNDAMENTAL RIGHT GUARANTEED UNDER THE CONSTITUTION.

THAT IS EXACTLY WHY WE INSIST ON STRICT SCRUTINY AND THOSE STANDARDS, BECAUSE THIS IS A FUNDAMENTAL RIGHT ENJOYED BY, BOTH, MINORS AND ADULTS. THE -- GOING BACK TO THE ISSUE OF THE STANDARD OF REVIEW, I WOULD POINT OUT THAT --

BEFORE YOU DO THAT, YOU SAID THE ORDINANCE FAILS BECAUSE IT DID NOT HAVE PARENTAL CONSENT. NO OFFICER PROCEDURE, AND WHAT WAS THE THIRD?

THERE WAS THE CREATION OF A PRIMA FACIE VIOLATION BY THE PARENT, UPON A VIOLATION BY THE MINOR. NO OTHER ORDINANCE DOES THAT. UNLESS A PARENT CAN AFFIRMATIVELY PROVE THAT THEY EITHER NOTIFIED AUTHORITIES THAT THE MINOR WAS MISSING OR THAT THEY HAD NO KNOWLEDGE, A LACK OF KNOWLEDGE AS AN AFFIRMATIVE DEFENSE, THAT THE CHILD WAS GOING TO VIOLATE THIS ORDINANCE, THEN THE PARENT IS GUILTY OF A CRIMINAL OFFENSE.

WHAT ABOUT THE FACT THAT THIS IS A CRIMINAL -- HAS CRIMINAL PENALTIES, WHEREAS THE STATE STATUTE UPON WHICH THIS IS BASED, IS A CIVIL STATUTE. IT PROVIDES FOR FINES, SO THAT HERE WE HAVE -- WAS THIS -- WAS YOUR CLIENT SUBJECT TO IMPRISONMENT BECAUSE OF WHAT SHE WAS DOING THAT NIGHT?

THAT'S CORRECT. A MAXIMUM OF SIX MONTHS OR A \$500 FINE.

AS A JUVENILE -- ADJUDICATED DELINQUENT AND CAPABLE OF BEING IN PRISON FOR SIX MONTHS.

THAT'S CORRECT. HOWEVER, WE DID RAISE A SEPARATE ISSUE THAT A SET TERM COULD NOT BE IMPOSED ON A JUVENILE, BUT THAT IS NOT UNDER REVIEW HERE.

MY QUESTION ON THAT IS, DOES ANY OF THE ISSUE THAT, WHEN YOU HAVE, IF YOU HAVE A COMPELLING INTEREST, THAT YOU MAY GO ABOUT IT BY USING THE LEAST INTRUSIVE MEANS, AND THE NARROWEST THE POSSIBLE MEANS, DOES THE -- THE NARROWEST POSSIBLE MEANS, DOES THE FACT THAT THIS IS A CRIMINAL VIOLATION, WHERE YOU ARE TRYING TO PROTECT CHILDREN, AND BY SO DOING YOU ARE MAKING THEM DELINQUENT, DOES THAT ENTER AND SHOULD THAT ENTER INTO OUR ANALYSIS IN THIS CASE?

YES. I BELIEVE IT SHOULD, AND THAT IS ONE OF THE MAJOR DISTINCTIONS BETWEEN THIS ORDINANCE AND 877.20.

THIS IS -- WHERE WE ARE IN THIS CASE IS THIS IS ON A FACIAL ATTACK.

YES. THAT'S CORRECT. THEY CANNOT LOOK TO 877 SUPPORT HERE. THEY DID NOT ADOPT IT, BUT TO ANSWER THE QUESTION, I AGREE THAT THIS IS NOT THE LEAST INTRUSIVE MEANS, WHEN YOU START IMPOSING CRIMINAL PENALTIES ON A JUVENILE, WHEN YOU START IMPOSING CRIMINAL PENALTIES, PRIMA FACIE, ON THE PARENT, THEN CLEARLY THE CITY IS NOT USING THE LEAST INTRUSIVE MEANS.

BUT YOUR ARGUMENT, IN ANSWER TO JUSTICE PARIENTE'S QUESTION, IS THAT BECAUSE THERE ARE CRIMINAL PENALTIES, THAT THAT MAKES IT FACIALLY UNCONSTITUTIONAL, RATHER THAN UNCONSTITUTIONAL AS APPLIED.

YES. THAT IS ONE OF THE REASONS WHY IT IS FACIALLY UNCONSTITUTIONAL. IT IS FACIALLY UNCONSTITUTIONAL, BECAUSE IT SETS UP THIS PRIMA FACIE VIOLATION SCHEME. IT IS FACIALLY UNCONSTITUTIONAL, BECAUSE IT INTRUDES INTO THE PARENT-CHILD REPOSITION RELINGS SHIP. IT IS FACIALLY UNCONSTITUTIONAL, BECAUSE IT IS VAGUE, RADICALLY ENFORCING ENFORCEMENT, AND IT IS FACIALLY UNCONSTITUTIONAL, BECAUSE IT SETS UP NO PROCEDURE FOR ENFORCEMENT.

IS THE ARGUMENT THAT THIS IS NOT THE LEAST INTRUSIVE MEANS?

THAT IS CLEARLY OUR STRONGEST ARGUMENT, AND, YES, I WOULD CHARACTERIZE IT AS A LINCHPIN OF OUR ARGUMENT, THAT, UNDER STRICT SKRAUT SCRUTINY, THE STATE MAY BE ABLE TO -- SCRUTINY, THE STATE MAY BE ABLE TO PRESENT COMPELLING INTEREST FOR PROTECTING MINORS, ALTHOUGH I THINK THAT PINELLAS PARK WENT ABOUT IT IN A VERY ODD FASHION, SINCE THEY DID NOT MAKE THE NEXUS BETWEEN THE COMPELLING INTEREST AND THE MEANS USED. THE ORDINANCE GOES FAR TOO FAR. I AM NOT SAYING THAT A MUNICIPALITY CANNOT HAVE A JUVENILE CURFEW ORDINANCE. WHAT I AM SAYING IS THAT THE ORDINANCE NEEDS TO RECOGNIZE THAT IT IS INTRUDING ON A FUNDANTAL RIGHT, BOTH OF MINORS AND ADULTS, AND THAT IN DOING THAT, IT NEEDS TO USE LESS INTRUSIVE MEANS THAN THE DRACONIAN METHODS USED IN THIS ORDINANCE.

BUT IF THE STATE HAD DETERMINED THAT JUVENILES BEING OUT AT -- AFTER A CERTAIN HOUR HAS BECOME A CRITICAL PROBLEM FOR, LET'S NOT SAY A STATE. LET'S SAY A CITY, HAS BECOME A CRITICAL AND MAJOR PROBLEM THAT HAS TO BE ADDRESSED, WHAT WOULD BE A LESS IN STRUS I HAVE METHOD THAN SAYING THEY CAN'T BE OUT AFTER THAT -- AFTER NINE O'CLOCK OR TEN O'CLOCK, WITHOUT PARENTAL A COMP NIMENT AND A LAUNDRY -- ACCOMPANIMENT AND A LAUNDRY LIST OF OTHER THINGS. YOU CAN GO TO CHURCH. YOU CAN GO TO YOUR FOOTBALL GAMES AND SO FORTH, BUT WHAT CAN BE LESS INTRUSIVE? HOW WOULD YOU MEET THIS WITH LESS IN STRUS TRUST I HAVE -- INTRUSIVE?

LET ME ADD DEGREES THE PREMISE, FIRST -- LET ME ADDRESS THE PREMISE, FIRST, THAT THEY HAVE ESTABLISHED A CRIME PROBLEM. PINELLAS DIDN'T DO. THAT WHEREAS ORLANDO CITES STATISTICS ABOUT JUVENILE CRIME, PINELLAS PARK NEVER ACTUALLY GOT AROUND TO SAYING THAT THEY HAVE AN EXPRESS PROBLEM.

BUT LET'S SAY THAT IS ESTABLISHED.

GIVEN THAT IT IS ESTABLISHED, IF THE COURT WERE TO LOOK AT ALL OF THE EXCEPTIONS THAT HAVE BEEN LISTED IN THIS ORDINANCE, THEY, ALL, RELATE TO PAST DECISIONS BY COURTS. TIBB VERSUS STRAWS BY THE FIFTH CIRCUIT. THE HUTCHENS CASE, THE SCHLIEFER VERSUS THE CITY OF CHARL OTSVILLE, ALL OF THESE -- CHARL OTS -- CHARLOTTESVILLE, ALL OF THESE WERE ORDINANCES, AND THEY ARE NOT EXCEPTIONS. THE EXCEPTION SHOULD BE THE PARENTAL CONSENT EXCEPTION, AND THERE SHOULD BE A PRELIMINARY REVIEW INTO THE EXCEPTIONS. WITHOUT THAT, YOU HAVE AN UNCONSTITUTIONAL ORDINANCE OF THE.

YOU ARE INTO YOUR REBUTTAL TIME.

THANK YOU.

MICHAEL NEIMAND, ON BEHALF THE STATE PARTICULARLY PINELLAS PARK.

ARE YOU FAMILIAR WITH SCRUTINY?

I HAVE WORKED ON THIS CASE AND I HAVE SEEN ITS DEVELOPMENT. I HAVE BEEN INVOLVED WITH THE LOCAL STATUTE, AND IT ALL DEVELOPED OUT OF THE CUSIP CASE OUT OF THE FIFTH DISTRICT, AND YOU HAVE A STRICT STANDARD. YOU DON'T HAVE A CONSTITUTIONAL RIGHT, I THINK IT IS CLEAR, UNDER THE U.S. CONSTITUTION, BUT I THINK YOU DO HAVE A RIGHT OF PRIVACY, UNDER THE STATE CONSTITUTION. THE FEELING IS IT CAN WITHSTAND THE STRICT SCRUTINY ANALYSIS OF EQUAL PROTECTION OR RIGHT OF PRIVACY, AND THAT IS WHY WE HAVE APPROACHED IT AS SUCH. IN ALL OTHER PROCEEDINGS, WE HAVE NEVER SPECIFICALLY WAIVED ANY OTHER ARGUMENT, BECAUSE WE BELIEVE THAT THIS TYPE OF ORDINANCE DOES WITHSTAND STRICT SCRUTINY, SO THE BEST POSSIBLE ANSWER IS, YES, IT IS A STRICT SCRUTINY ANALYSIS.

BUT, ONCE YOU GET THERE, THEN IT REQUIRES THIS FIT. IN OTHER WORDS, IT IS NOT ENOUGH TO SAY, WELL, YOU KNOW, IT SEEMS LIKE A GOOD IDEA, AND INTUITIVELY WE COULD SAY, WELL, IF YOU DON'T HAVE JUVENILES OUT AND ABOUT, AFTER ELEVEN O'CLOCK AT NIGHT, THERE IS GOING TO BE LESS OF A CHANCE THAT A JUVENILE IS GOING TO COMMIT CRIME, AND I GUESS YOU COULD SAY THAT ABOUT ADULTS, TOO. IT WOULD REALLY BE BETTER IF WE HAD SINGLE WOMEN THAT WEREN'T OUT AND ABOUT AFTER ELEVEN O'CLOCK, BECAUSE WE KNOW THAT IS WHEN THINGS CAN HAPPEN. THE QUESTION, THEN, BECOMES, THOUGH, UNDER STRICT SCRUTINY, DOES THE INTEREST, THE COMPELLING INTEREST IN REDUCING JUVENILE CRIME AND REDUCING VICTIMIZATION, IS IT SERVED, DOES THIS STATUTE ACCOMPLISH THAT, IN THE NARROWEST POSSIBLE SCOPE?

RIGHT.

IS THAT --

THAT IS ENOUGH. NOW, CLEARLY WE CANNOT DO THIS WITH ADULTS. A CURFEW WITHOUT AN EMERGEENT SITUATION, IS NOT VALID WITH ADULTS.

WHY NOT?

BECAUSE THE RIGHTS OF JUVENILES AND ADULTS IS NOT COME EXTENSIVE. WE, AS A -- IS NOT CO EXTENSIVE. WE, AS A SOCIETY AND A LEGISLATIVE BROAD I, HAVE DETERMINED -- LEGISLATIVE BODY, HAVE DETERMINED THAT WE CAN PROTECT CHILDREN THAT AFFECTS CHILDREN AND LIMITS THEIR FREEDOM AND LIMITS THEIR MOVEMENT RIGHTS, THAT WE CAN NOT DO WITH ADULTS.

NONE OF THESE DISTRICT CASES, THE DADE COUNTY CASE, THERE WASN'T ANY REAL ANALYSIS IN THE ORANGE COUNTY, IN THE ORLANDO CASE. THE FIRST DISTRICT CASES THAT, THREW OUT ORDINANCES, THEY DIDN'T, REALLY, DEAL WITH IT ON THE BASIS OF STRICT SCRUTINY OR HEIGHTENED SCRUTINY.

THOSE ARE ONE OF THE EXCEPTIONS. ANOTHER METROPOLITAN DADE COUNTY CASE WAS A '95 CASE.

BUT THEY HAD THE EXCEPTIONS.

AND THEY HAD THE EXCEPTIONS, CORRECT. BUT WHAT THIS COURT, NOW, THE SECOND DISTRICT HAS DEALT WITH THAT ISSUE.

CORRECT.

AND GIVEN US A CERTIFIED QUESTION, AND I TAKE IT, FROM YOUR ANSWER, THAT YOU ARE SAYING THAT THAT THE CERTIFIED QUESTION SHOULD BE ANSWERED THAT STRICT SCRUTINY APPLIES.

CORRECT. AND UNDER THIS STRICT CIRCUMSTANCE, WE DO HAVE COMPELLING NEED AND THE INTRUSIVE MEANS. I DON'T THINK THAT WE HAVE TO FIND STATISTICS THAT KEEPING JUVENILES OFF THE STREET AFTER ELEVEN O'CLOCK DURING WEEK NIGHTS AND -- WEEKNIGHTS AND TWELVE O'CLOCK ON THE WEEKENDS, IS NOT GOING TO PREVENT CRIME OR VICTIMIZATION. I THINK THAT IS A FACT THAT, AT THIS DAY AND AGE, WE HAVE TO ACCEPT THAT, THAT IT IS DANGEROUS LATE AT NIGHT.

I WANT TO JUST FOLLOW THROUGH WITH WHAT I WAS ASKING YOU ABOUT, WHICH IS THE STATE STATUTE, AND WE ARE TALKING ABOUT WHETHER YOU COULD DO THIS WITH ADULTS. THE STATE STATUTE DEFINES MINOR AS ANY PERSON UNDER 16 YEARS OF AGE. THE STATE STATUTE MAKES THIS A CIVIL INFRACTION, WHICH, TO ME, IS A PRETTY BIG DISTINCTION, AGAIN, THIS IDEA THAT YOU ARE GOING TO FIGHT JUVENILE CRIME BY MAKING JUVENILES CRIMINALS, BY VIOLATING THE STATUTE.

CORRECT.

HOW GOOD THAT ALL WORK? -- HOW DOES THAT ALL WORK? IN OTHER WORDS YOU NEED THE LOCAL ORDINANCE, TO GIVE ALL OF THIS EFFECT, AND IT SAID YOU CAN PROVIDE RESTRICTIONS MORE STRINGENT OR LESS STRINGENT. WHAT IS THE STATE'S POSITION, MAKING WHAT WAS INTENDED BY THE STATE, AT LEAST, TO LOOK LIKE IT WAS A CIVIL INFRACTION, INTO CRIMINAL VIOLATIONS FOR BOTH CHILDREN AND PARENTS.

FIRST OF ALL, THAT IS A LOCAL OPTION LAW. THAT IS NULL AND VOID, UNLESS THE CITY OR MUNICIPALITY ADOPTS IT, AND EVEN BY ADOPTING THEIR OWN ORDINANCE, DOES NOT ADOPT THAT, UNLESS IT SPECIFICALLY SAYS WE ADOPT THAT, BUT, HOWEVER, AS TO THE AGE FACTOR, THE REASON THAT THE LOCAL OPTION LAW, IS BECAUSE IT IS A GENERAL LAW FOR MUNICIPALITIES AND COUNTIES TO ENACT, BUT EACH COUNTY, EACH MUNICIPALITY HAS TO DETERMINE, ON THEIR OWN, WHAT LEVEL IS A JUVENILE, WHAT AGE LEVEL. WE SEE THAT ALL OF THE TIME, IN TERMS OF VOTING RIGHTS AND DRINKING RIGHTS. THERE IS A BIG DIFFERENCE BETWEEN WHAT A JUVENILE IS, BASED UPON AN ORDINANCE OR A LAW.

WOULD YOU BE ABLE ON -- YOU COULDN'T, CERTAINLY, ON THE RIGHT TO VOTE, SAY IT COULD BE --

NO. NO. BUT WHAT I AM SAYING --

IS THAT A PROBLEM?

NO. BECAUSE WHAT I AM SAYING IS SOCIETY, LEGISLATIVELY OR SOCIETY CAN DETERMINE WHAT THE LEVEL OF THE JUVENILE IS, BASED UPON THE PROBLEM.

SO HOW DID PINELLAS PARK FIGURE THAT THEIR 16 TO 18 YEAR OLD ARE --

THE LEGISLATIVE DETERMINATION THAT HE MADE WAS THAT THEY WERE HAVING A PROBLEM AT THE 18-YEAR-OLD LEVEL.

UNDER 18. ISN'T AT 18, YOU COULDN'T DO IT.

I AM MINCING WORDS. RIGHT.

SAME PERSON WHO CAN'T GET A DRINK OR --

RIGHT. THEY TOOK THE VOTING AGE AND NOT THE DRINKING AGE. THE DRINKING AGE IS 21,000?

COULD YOU PASS A STATUTE THAT -- IS 21 NOW?

COULD YOU PASS A STATUTE 21 AND UNDER, COLLEGE TOWNS, THAT KIDS --

I THINK THERE WOULD AND GREATER PROBLEM WITH THAT, BECAUSE ALCOHOL IS PARTICULARLY A DIFFERENT PROBLEM. I THINK WE, REALLY, LOOK AT THE JUVENILE COURT SYSTEM, WHICH ENDS AT 18, AND I THINK THAT IS A FAIR PRONOUNCEMENT. ANYTHING UNDER THAT WOULD BE OF LEGISLATIVE CONCERN. AS TO THE PENALTY ISSUE, TRUE THE STATE LOOKED AT IT AS A CIVIL PENALTY, AND SOME OF THE MUNICIPALITIES ARE LOOKING AT IT AS A CRIMINAL PENALTY, BUT IN EFFECT, IT IS, REALLY, NO DIFFERENT THAN THE STATE HANDLING THE TRUANCY PROBLEM.

BUT ISN'T THE SIGNIFICANT PART, THOUGH, IF WE ARE LOOKING AT RIGHTS, MAYBE THE JUVENILE DOESN'T HAVE A RIGHT TO JUST BE ANYWHERE HE OR SHE WANTS AT TWELVE O'CLOCK AT NIGHT, BUT IF IT IS CRIMINAL, IT MEANS THAT A POLICE OFFICER CANNOT ONLY ARREST THE PERSON, BUT CAN'T THEY SEARCH AND SEIZE THAT PERSON AS WELL, SO THAT WE ARE, REALLY, GETTING INTO A WHOLE OTHER LEVEL, THAT BECAUSE SOMEBODY IS ENGAGED IN INNOCENT BEHAVIOR, THAT THEY ARE, NOW, NOT ONLY SUBJECT TO CRIMINAL PENALTIES BUT SUBJECT TO SEARCH AND SEIZURE?

WELL, IN ANSWERING THAT QUESTION, AND ONE OF THE FACTS BROUGHT OUT BY MR. HOWIE IS THAT THERE ARE NO STANDARDS. NOW, SINCE WE ARE DEALING WITH POLICE AND THEY HAVE TO ENFORCE THE ORDINANCE, BEFORE THEY CAN ENFORCE THE ORDINANCE, THEY CAN'T JUST SAY OH, YOU LOOK LIKE A JUVENILE. I AM GOING ARREST YOU. THEY HAVE TO HAVE PROBABLE CAUSE FOR ARREST. THEY HAVE TO DETERMINE WHETHER OR NOT THERE IS A VIOLATION OF THE ORDINANCE, AND AFTER DETERMINING WHETHER THEY ARE UNDER 18 AND WHETHER THEY DO NOT MEET ONE OF THE EXCEPTIONS, CLEARLY IF THEY ARE WATER AGO McDONALD'S UNIFORM OR COMING FROM WORK AND -- WEARING A McDONALD'S UNIFORM OR COMING FROM WORK AND THEY ARREST THEM, THEN ANYTHING THAT FLOWS FROM THAT WOULD BE SUPPRESSED, OBVIOUSLY, BUT IF THEY GO THROUGH THE PROCEDURE THAT IS REQUIRED BY ANY LAW ENFORCEMENT ARREST, THERE IS NOT ONE CRIMINAL STATUTE IN THE BOOK THAT SAYS, IF YOU COMMIT A BURGLARY, THE OFFICER HAS TO, FIRST, FIND OUT THIS AND THAT AND THAT, AND ALL OF THE NICETIES TO DETERMINE --

WHAT IS THE COMPELLING STATE NEED HERE?

WELL, THE COMPELLING STATE NEED --

IS IT TO PROTECT THE JUVENILE, OR IS IT TO PROTECT THE PUBLIC FROM THE JUVENILE, OR DOES IT MAKE ANY DIFFERENCE?

WELL, I THINK THE PRIMARY REASON FOR JUVENILE CURFEW IS TO PROTECT THE JUVENILE FROM SOCIETY, BEING OUT ON THE STREETS, BEING PREY TO BIGGER, STRONGER JUVENILES, ADULTS, PEOPLE WHO PREY ON CHILDREN. THERE IS NOBODY ELSE OUT ON THE STREETS AT THOSE HOURS OF THE NIGHT, AND I WOULD SAY THAT, IN ANY JUVENILE CURFEW SITUATION, SHOULD BE THE PRIMARY COMPELLING STATE INTEREST. CLEARLY JUVENILE --

DOES IT MAKE ANY DIFFERENCE?

I DON'T THINK IT DOES, BUT I AM SAYING THAT, IF I AM LISTING, AND I HAVE LISTED THEM, BECAUSE I HAVE BEEN LITIGATING THIS, AND THE LISTS THAT I HAVE COMPILED SAY, YES, THAT THE STRONGEST ONE I HAVE LOOKED AT IS PREVENTING JUVENILE VICTIMIZATION AND THEN PREVENT --

THIS WAS THE SHOWING THAT WAS MADE, THAT THERE WAS A NEED OUT THERE TO PROTECT JUVENILES FROM JUVENILES.

YES. AND FROM ADULTS AND FROM CRIME.

THERE ISN'T ANY SHOWING THAT WAS MADE. THAT IS NOT --

IF THE LEGISLATIVE FINDING --.

YOU ARE CLAIMING THAT WE CAN TAKE JUDICIAL NOTICE, IN EFFECT.

DON'T WE DO THAT, EACH TIME A LEGISLATIVE BODY STATES A NEED? YOU KNOW, I HAVE BEEN DOING THIS A LONG TIME. ANY OTHER FINDING IN LEGISLATIVE HISTORY, FOR ANYTHING THAT THE FLORIDA LEGISLATIVE SAYS, IN THEIR PREAMP ELSE BE A -- PREAMBLES, AND THAT IS THE SITUATION -- IN THE PREAMBLES, AND THAT IS THE SITUATION THAT WE HAVE HERE --.

BUT WE ARE NOT TALKING ABOUT EVIDENCE THAT, IN A PARTICULAR COMMUNITY, THERE IS NOT A SERIOUS PROBLEM WITH JUVENILES BEING THE VICTIMS OF CRIMES PARTICULARLY THE VICTIMS OF CRIMES --

I THINK IT IS SELF EVIDENCE.

I UNDERSTAND THAT. I AM TRYING TO CLEAR UP. NONE OF THAT IS IN THIS RECORD, IS THAT CORRECT?

NO. IT DOESN'T HAVE TO BE IN THE RECORD.

LET ME COME BACK TO YOUR INITIAL -- ONCE YOU SAY THAT IT IS SUBJECT TO STRICT JUST SCRUTINY ANY, AND NOW WE GO -- SCRUTINY, AND NOW WE GO TO THIS LEAST INTRUSIVE MEANS, WE KNOW THAT THERE IS A STATUTE ON THE BOOKS THAT THE LEGISLATURE HAS, REALLY, GIVEN AS A MODEL, IF YOU WILL, THAT ATTEMPTS TO DO THE SAME THING, BUT IN THAT PARTICULAR MODEL, ONLY OFFERS CIVIL SANCTIONS OR WHATEVER. HOW CAN YOU DEFEND, THEN, THE IMPOSITION OF CRIMINAL SANCTIONS AS A LESS INTRUSIVE MEANS, OVER CIVIL SANCTION THAT IS THE STATE LEGISLATIVE BODY HAS OFFERED UP AS A MODEL? I AM HAVING -- IF WE GO FROM STRICT SCRUTINY TO THE LEAST INTRUSIVE I HAVE ---INTRUSIVE, WOULD YOU AGREE THAT HAVING A MORAL SANCTION IS SIMILAR TO HAVING A CIVIL SANCTION?

I AM SAYING, BEFORE WE HAVE TO GET THERE, IF WE HAVE A VALID ENACTMENT, IN TERMS OF THE LEAST INTRUSIVE MEANS, NOW, WHAT IS THIS JUVENILE CURFEW MEANT TO DO? IF YOU LOOK AT THE JUVENILE CURFEW, THE ONLY THING THIS JUVENILE CURFEW IS MEANT FOR AND THE ONLY THING IT GOES AFTER, IS ROAMING THE STREETS AT NIGHT, BETWEEN THE HOURS OF 11:00 P.M. AND 6:00 A.M. ON WEEKNIGHTS AND 12 TO SIX O'CLOCK -- TWELVE TO SIX ON THE WEEKENDS.

THAT, ALSO, ENTAILS GOING TO THE STORE TO GET THE EGGS, AN ONE-PARENT FAMILY AND THERE IS NO FOOD AT HOME.

IT IS NOT JUST ROAMING THE STREETS AT NIGHT. IN OTHER WORDS IT CAN BE VARIED CONDUCT.

BUT IN THAT SITUATION, IF YOU LOOK AT IT, THERE IS AN EMERGENCY SITUATION THERE. IS AN ERRANT SITUATION.

BUT THE STATUTE ISN'T DEFINED BY THE EMERGENCY IN THIS STATUTE. THAT STATUTE TALKS ABOUT LIFE-THREATENING OR LIFE AND DEATH. I CAN SEE IT, IF IT IS A PARENTAL CONSENT FOR FOOD, BUT WE ARE TALKING ABOUT, BASICALLY, I MEAN, AM I MISREADING IT? IT SEEMS TO ME THAT WHAT THEY ARE SAYING IS EMERGENCY IS. FOOD FOR A CHILD OR 16-YEAR-OLD IS NOT AN EMERGENCY IN THE STATUTE.

IT COULD BE, SUBJECT TO INTERPRETATION, BUT, CLEARLY, CLEARLY, THEN, YOUR HONOR, THE REAL QUESTION ON THAT, THAT IS A LIMITED ISSUE, IS WHETHER OR NOT THAT IS A PROPER LEGISLATIVE DETERMINATION WHETHER OR NOT TO HAVE CHILDREN OUT, NOT ACCOMPANIED BY AN ADULT, DURING THOSE HOURS, AND THAT IS WHAT WE, REALLY, ARE TALKING ABOUT.

YOUR OPPONENT SAYS THAT THIS ORDINANCE FAILS BECAUSE IT DOES NOT PROVIDE FOR PARENTAL CONSENT, THAT THERE IS NO PROCEDURE FOR AN OFFICER TO FOLLOW, AND THAT THERE IS A PRIMA FACIE VIOLATION ON THE PART OF A PARENT, IF A CHILD VIOLATES THIS CURFEW. AND HE SAYS THAT THOSE HAVE BEEN PART OF THE ORDINANCES, WHICH HAVE BEEN UPHELD. DO YOU AGREE THAT THIS ORDINANCE DOES NOT CONTAIN THOSE ISSUES, AND IF THEY DON'T CONTAIN THEM, WHY ARE THEY NOT --

OKAY.

-- FATAL?

EXCUSE ME. AS TO THE PARENTS, THIS IS A STRICT LIABILITY ISSUE. A LOT OF THE ORDINANCES THAT I HAVE DEALT WITH HAVE THE STRICT LIABILITY ISSUE. UNLESS YOU HAVE COME OUT AND RENOUNCED THE ABILITY TO CONTROL YOUR CHILD, YOU ARE RESPONSIBLE FOR YOUR CHILD. IN TERMS OF THE TRUANCY ISSUES THAT I WAS TRYING TO BRING OUT BEFORE, AN ADULT IS RESPONSIBLE FOR MAKING SURE THAT CHILD IS IN SCHOOL, AND WE DO PUNISH THE CHILD, WHO IS UNDER 16, WHO IS A PERPETUAL TRUANT, SO THIS -- THE FACT THAT IT IS A STRICT LIABILITY STATUTE NOT A PROBLEM. THE FACT THAT THERE ARE NO STANDARDS, IN TERMS OF, WELL, YOU FIRST HAVE TO ASK THE JUVENILE HOW WOULD THEY BE, WHERE THEY ARE COMING FROM, WHAT THEY ARE DOING. THAT IS NO PROBLEM. BECAUSE YOU DON'T HAVE TO WRITE COMMON SENSE INTO LEGISLATIVE ENACTMENTS. THIS IS HOW YOU HAVE TO ENFORCE IT. HOW DO YOU ARREST SOMEBODY, WITHOUT PROBABLE CAUSE? HOW DO YOU DETERMINE PROBABLE CAUSE? YOU ASK QUESTIONS. AND THEREFORE, THAT IS NOT A PROBLEM, AND THAT HAS, NEVER, BEEN A PROBLEM. SOME OF THE ORDINANCES SPECIFICALLY SAY. THAT SOME OF THE ORDINANCES DON'T. QUITE FRANKLY, IF IT WAS UP TO ME, EVERY TIME I HAVE SPOKEN TO A MUNICIPALITY, I HAVE URGED THEM TO ADOPT THE STATE STATUTE. I THINK IT IS A BETTER STATUTE. IT IS MORE CONCISE, CLEARLY TO THE POINT --

THE STATE STATUTE DOESN'T HAVE A PARENTAL CONSENT.

NO. NO. BECAUSE YOU DON'T HAVE TO.

DON'T YOU RUN THE RISK OF A SITUATION IN WHICH A PARENT SENDS A CHILD OUT, TO GET BREAD, AND SO THE CHILD HAS EITHER GOT TO BE IN VIOLATION OF THIS ORDINANCE OR IN VIOLATION OF WHAT HIS PARENT TELLS HIM TO DO?

WELL, THEN, THE PROBLEM WITH THAT IS, AGAIN, NOT LOOKING AT THE FOCAL -- IS NOT LOOKING AT THE FOCAL POINT OF THE ENACTMENT, AND THAT IS, IF THERE IS A COMPELLING STATE INTEREST TO KEEP JUVENILES OFF THE STREET, FOR THEIR OWN PROTECTION, WHAT IS A NOTE FROM A PARENT GOING TO DO, WHEN THE INDIVIDUAL IS ACCOSTED, TO GET THE GROCERY MOUNTAIN. HE IS GOING TO -- MONEY. HE IS GOING TO SAY DON'T ROB ME. MY MOTHER ALLOWED ME TO BE ON THE STREET AT NOT -- AT NIGHT. THAT IS, REALLY, A RED HERRING IN ALL OF THIS. CAN'T WE MAKE THE ENACTMENT AND HAVE COMPELLING --

YOU ARE LEAVING THE RIGHT OF A CHILD AND ENCROACHING OVER TO WHAT YOU SAID WE COULD NOT DO, AS FAR AS AN ADULT. THAT ADULTS -- THERE ARE SOME THINGS AS JUVENILE CAN BE PROHIBITED FROM DOING THAT WE CAN'T PROHIBIT ADULTS FROM DOING. RIGHT. WE CAN'T PROHIBIT ADULTS FROM GOING OUT, BUT WE CAN PROHIBIT THE ADULTS FROM SENDING THE CHILD OUT, BECAUSE THAT IS NOT ONE OF THOSE FUNDAMENTAL INTERESTS IN HIS CHILD RAISING IT THAT THE STATE CANNOT GET INVOLVED IN.

BUT ISN'T IT ONE OF THE THREE STATEMENTED REASONS FOR THE ORDINANCE TO -- STATED REASONS FOR THE ORDINANCE TO ENHANCE PARENTAL CONTROL? SO INJUSTICE WELLS'S HYPOTHETICAL, THAT WOULD RUN CONTRARY TO IF THE PARENT SAYS I MADE A DECISION. I WANT -- MY CHILD CAN GO TO THIS LATE-NIGHT MOVIE. HE IS 17, AND IT IS A MOVIE I WANT THIS CHILD TO SEE. UNDER THIS ORDINANCE, I CAN'T DO THAT. SO HOW DOES -- WHICH IS THE FIRST ONE. HOW DOES IT FURTHER THAT ASPECT, WHICH IS, FORGET HOW IT IS PHRASED, BUT IT HAS TO DO WITH ENHANCING PARENTAL THRESHOLD.

IN MATERIALS OF ENHANCING PARENTAL CONTROL, WHEN YOU LOOK AT THE HISTORICAL ASPECT OF THAT ISSUE, IT IS A CONCERN OF THE BREAKDOWN OF THE NUCLEAR FAMILY OF THE TWO-PARENT FAMILY, AND THE CONCERN THAT THE ONE PARENT, WHO, AND THE ONE-PARENT FAMILY DOES NOT HAVE THE WHEREWITHAL, THE TIME, THE EFFORTS. SHE IS WORKING HER JOB AND SLEEPING AND HAS TO GET SOME SLEEP. SHE MIGHT BE WORKING AT NIGHT, TO SUPERVISE CHILDREN. SUPERVISE 16, 17, 14, 15. WE DON'T KNOW WHAT AGE. AGAIN, THAT IS HOW YOU ARE LOOKING AT THAT ASPECT OF IT, AND THE FACT THAT THEY CAN MAKE THE DECISION TO OVERRULE THE STATE'S DETERMINATION THAT IT IS DANGEROUS OUTSIDE. THAT IS WHY THIS IS A LOCAL OPTION ORDINANCE, NOT A STATEWIDE ORDINANCE.

BUT YOU ARE SPEAKING ABOUT THE STATE'S LEGISLATIVE DETERMINATION OF A COMPELLING STATE NEED. ISN'T THERE A PREREQUISITE? CAN THE LEGISLATURE JUST, OUT OF THIN AIR, SAY THERE IS THIS NEED, OR MUST THERE BE STUDIES DONE, OR IS THERE A PREREQUISITE, BEFORE THE LEGISLATURE CAN SAY THERE IS A COMPELLING STATE NEED TO KEEP CHILDREN OFF THE STREET? CAN IT JUST -- OFF THE STREET? CAN IT JUST, OUT OF THE BLUE --

I BELIEVE, WHEN YOU LOOK AT THE OPINIONS FROM THIS COURT ON THE ABILITY TO LEGISLATE HEALTH AND WELFARE ITEMS, THAT IT HAS CHILDREN IN MIND. COMMON KNOWLEDGE THAT, IN THIS DAY AND AGE, JUDICIAL NOTE HIS THAT IT IS NOT SAFE TO BE OUT ON THE STREETS LATE AT NIGHT. I PARTICULARLY DON'T THINK YOU NEED A LEGISLATIVE PROPOSAL.

THERE DOESN'T HAVE A TO BE ANY FINDINGS TO -- THERE DOESN'T HAVE TO BE ANY FINDINGS TO SUPPORT THIS? THE LEGISLATURE CAN JUST PASS A LAW AND SAY THERE IS THIS NEED. WE KNOW IT.

I THINK IT IS A GIVEN. WOULD I BE MORE COMFORTABLE WITH A STUDY FIRST? OBVIOUSLY.

NO. NOT WHETHER YOU ARE COMFORTABLE OR NOT. MY QUESTION IS CAN THE LEGISLATURE --

YES. I BELIEVE THEY CAN.

OUT OF THE BLUE.

I DON'T THINK IT SOUTH OF THE BLUE. I THINK IT IS A GIVEN, A JUDICIALLY-NOTICED FACT THAT WE HAVE A PROBLEM LATE AT NIGHT. THAT WE ARE NOT A SAFE SOCIETY. THAT WE CAN NO LONGER --

IF THEY CAN JUST DO IT THAT WAY, HOW IS THAT TESTED THEN? HOW CAN THAT EVER BE TESTED AT AN APPELLATE LEVEL?

WELL, CLEARLY IN THIS CASE, WE HAVE THE STATISTICS THAT WERE DONE AFTERWARDS.

LET'S SAY I CHALLENGE WHETHER THERE IS A NEED. MAYBE I LOOK AT IT DIFFERENTLY FROM THE LEGISLATURE. THE LEGISLATURE SAYS THERE IS A NEED. MAYBE A CITIZEN SAYS THERE IS NO NEED. AND WANTS TO CHALLENGE THAT THAT-FINDING, AND WE DON'T HAVE -- TO CHALLENGE THAT FINDING, AND WE DON'T HAVE ANY OBJECTIVE TO LOOK AT. HOW IS THAT

DONEA?

I THINK TO LOOK AT THE ARGUMENT THAT HAS BEEN THROUGHOUT EVERY CASE THAT HAS COME FORWARD THAT, THERE HAS NEVER BEEN A CHALLENGE TO THE FACT THAT THERE AREN'T ANY LEGISLATIVE FINDINGS THAT, TO KEEP CHILDREN OFF THE STREETS LATE AT NIGHT WILL PROTECT THEM. THEY WILL PROTECT THEM FROM HARM, FROM OTHER ADULTS, FROM HARM FROM OTHER CHILDREN, PROTECT THEM FROM, MAYBE, COMMITTING CRIMES.

BUT YOU TAKE THAT AS A GIVEN.

YES, I DO. I THINK, IN TODAY'S DAY AND AGE, I THINK IT IS A GIVEN. I DON'T THINK YOU CAN SAY OTHERWISE. WE ALL SEE. THAT WE ALL READ IN THE PAPER. WE ALL KNOW WHAT IS GOING ON. THIS IS NOT THE 50s AND '60s. WE HAVE A PROBLEM THAT -- AND '60s. WE HAVE A PROBLEM THAT WE ARE TRYING TO RECTIFY IN ONE OF MANY WAYS THIS. IS MERELY A TOOL THAT IS BEING USED TO KEEP THE STREETS SAFE FOR EVERYBODY, AND TO KEEP THE CHILD OFF THE STREET AT NIGHT IS NOT THAT GREAT OF AN IMPOSITION UPON SOCIETY. I DON'T THINK IT IS A GREAT IMPOSITION UPON THE PARENT, THEMSELVES.

IT IS, WHERE YOU HAVE A STATE THAT HAS DETERMINED THAT THE RIGHT OF PRIVACY IS SO IMPORTANT THAT IT HAS PUT IT THAT RIGHT IN ITS CONSTITUTION.

WELL, THAT IS WHAT WE ARE ARGUING RIGHT OF PRIVACY. EXACTLY. I AM NOT HEARSAYING THERE IS A RATIONAL BASIS TEST. I UNDERSTAND WE HAVE A HIGH BURDEN TO MEET, AND WHAT I AM SAYING IS I THINK THE JUVENILE CURFEW, ITSELF, IS A VALID ENACTMENT. NOW, EACH ONE MIGHT BE TWEAKED A LITTLE BIT DIFFERENTLY, AND THAT DOES NOT MAKE THEM FACIALLY UNCONSTITUTIONAL. IT MIGHT BE UNCONSTITUTIONAL AND APPLIED. WE MIGHT HAVE TO SEVER OUT A POSITION, A SMALL PART OF IT, BUT IT, REALLY, DOES NOT MAKE THE GREATER ISSUE, AND THAT IS WHAT WE ARE HERE, FOR THE GREATER ISSUE. IS THERE A COMPELLING STATE NEED, AND ARE THESE LAWS MADE IN THE LEAST INTRUSIVE WAY? WHAT DO THEY ATTEMPT TO REGULATE? NOW, IF WE HAVE A PENALTY PROBLEM --

MR. NEIMAN, YOUR TIME IS UP.

THANK. I AM SURE THE COURT UNDERSTANDS MY POSITION. THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. THIS ORDINANCE DOES NOT MERELY PREVENT THE AIMLESS ROAMING OF CHILDREN IN THE STREETS OF PINELLAS PARK. IT, IN FACT, MOST TRAVEL IS ACTUALLY SANCTIONED OR CONDONED BY THIS ORDINANCE. IT SPEAKS OF INTERSTATE AND INTRASTATE TRAVEL. WHAT IT PROHIBITS IS A CHILD THAT REMAINS IN PLACE, PURSE PURSEURING -- PURSUING LEGITIMATE ACTIVITIES, SUCH AS SEEING A MOVIE, GOING TO A RESTAURANT OR GETTING BREAD FOR TOMORROW'S BREAKFAST. ON THE QUESTION --

THERE ORDINANCE DOES HAVE, WITHIN IT, FINDINGS, BASED UPON WHAT IT SAYS IS BASED UPON STATISTICAL TODAY AND REPORTS OF LAW ENFORCEMENT OFFICIALS, AND STATES THAT THERE IS A SUBSTANTIAL PORTION OF CRIME IN THE COMMUNITY AND MAKES VARIOUS TYPES OF STATEMENTS THAT IT SAYS ARE FINDINGS WITHIN IT. AND THE COURT WOULD, IN CASES THAT WE HAVE DEALT WITH LEGISLATIVE FINDINGS, SAY THAT WE DEFER TO THOSE FINDINGS MUCH ISN'T THAT CORRECT?

YES.

AND YOU DIDN'T -- FINDINGS. ISN'T THAT CORRECT? AND YOU DIDN'T CHALLENGE THEM BELOW.

YES. MY ONLY CHALLENGE WAS, WHEN THEY BRING OUT STATISTICS AFTER THE FACT TO SAY, SEE, WE WERE RIGHT, CLEARLY THAT CANNOT BE VIEWED AS AIDING THE PREMISE UNDER WHICH

THE ORDINANCE WAS ENACTED IN THE FIRST PLACE. THAT WAS OUR ONLY ARGUMENT THERE.

AS FAR AS LEGISLATIVE FINDINGS, HOW DOES THE FACT THAT THERE ARE LEGISLATIVE FINDINGS DIFFER, WHEN YOU ARE APPLYING THE RATIONALE BASIS TEST, VERSUS INTERMEDIATE SCRUTINY AND STRICT SCRUTINY. IS THERE -- MY UNDERSTANDING WAS, WHEN WE ARE DEALING WITH STRICT SCRUTINY, WE DON'T JUST ACCEPT THE FINDINGS, AS WE WOULD WITH A RATIONAL BASIS.

THAT'S CORRECT, BECAUSE THE INTEREST TEST OR THE INTEREST BARRIER IS SUBSTANTIALLY REDUCED TO ONE, A RATIONAL BASIS CONNECTING THE MEANS USED AND THE PURPOSE SERVED. IT DOESN'T EVEN HAVE TO BE AN IMPORTANT OR SIGNIFICANT GOVERNMENT INTEREST. CLEARLY RATIONAL BASIS DOESN'T APPLY HERE. THE ISSUE OF EMERGENCY ERROR, AND I WOULD, FOR PURPOSES OF CLARIFICATION, POINT OUT THAT EMERGENCY IS VERY DEFINITELY DEFINED IN THE ORDINANCE, AND AN EMERGENCY ERRAND CLEARLY WOULD NOT ENCOMPASS CERTAIN DIRECTIONS GIVEN BY A PARENT TO A MINOR, TO GO OUT AND PERFORM AN ERRAND.

THERE IS, ALSO, A PHRASE, WHAT IS IT, UNNECESSARILY REMAINING. IS THAT USED?

THAT'S CORRECT. HERE IS A CONFUSING POINT ON THAT, IN BOTH 877 AND THIS ORDINANCE. THEY GO TO THE TROUBLE OF DEFINING REMAINING, AND REMAINING MEANS REMAINING NECESSARILY, BUT THEN THEY GO FURTHER, AND THEY SAY TO BE OR REMAIN IN A SPAB ESTABLISHMENT -- AN ESTABLISHMENT OR PUBLIC PLACE. IT IS SOMEWHAT MEANINGLESS THAT THEY HAVE DEFINED THE WORD WE MAND OR REMAINED UNNECESSARILY. STILL WE FEEL THIS CONTRIBUTES, STILL, TO THE VAGUENESS OF THIS ORDINANCE. THE ISSUE OF STRICT LIABILITY, NO OTHER ORDINANCE IN THE RECORD, HERE, HAS STRICT -- A STRICT LIABILITY BASIS FOR THE PARENTS' GUILT OR FINDING THE PARENTS GUILTY.

HOW DO YOU RAISE, BEING THAT YOU ARE REPRESENTING THE CHILD, THE PARENTS' ATTACK ON THE CONSTITUTIONALITY OF THAT PART OF THE STATUTE?

BECAUSE THIS ORDINANCE DELIBERATELY COMBINES THE INTERESTS OF THE PARENT WITH THE INTEREST OF THE CHILD. THEY SPEAK OF HOW THE PARENT IS RESPONSIBLE, IF THE CHILD VIOLATES.

BUT COULDN'T YOU JUST, IF THAT WERE TRUE, I MEAN, THAT COULD BE SEVERED. WOULDN'T THAT BE SOMETHING THAT COULD BE SEVERED OUT, IF IF WERE JUST -- IF IT WERE JUST A QUESTION OF THE PARENTS. THE VIOLATION BEING INAPPROPRIATE AND, ALSO, YOU HAVE GOT THE TRUANCY STATUTES. WHY ISN'T IT LIKE THAT, THAT IT IS A APPROPRIATE THING, IF YOU DECIDE IT IS NOT A GOOD THING FOR THE CHILDREN TO BE OUT ON THE STREETS AT ELEVEN O'CLOCK. THE PARENTS HAVE GOT TO TAKE CONTROL, AND IF THEY DON'T KNOW WHERE THEIR KID IS, THEN THEY ARE GOING TO BE LIABLE CRIMINALLY?

I DON'T THINK IT CAN BE SEVERED, FOR THAT VERY REASON. IF THE PARENT DIRECTS A CHILD TO PERFORM AN ERRAND, AND THAT CHILD ON BASE THE PARENT -- OBEY, THE PARENT -- OBEYS THE PARENT, THEN THAT CHILD IS GOING TO COME UNDER CRIMINAL SANCTIONS. CONVERSELY, IF THE MINOR CHILD IS OUT, DOING WHAT THE PARENT SAYS TO DO AND VIOLATES, THE PARENT, IN TURN, HAS A PRIMA FACIE VIOLATION. THERE IS NO WAY OF SEVERING THE MINOR'S AND THE PARENT'S INTERESTS IN THIS REGARD. THE ORDINANCE, IN FACT, DELIBERATELY FUSES THOSE INTERESTS TOGETHER. THEY ARE INEXTRICABLE. ADMITTEDLY THE RIGHTS AREN'T COME EXTENSIVE BUT THE -- AREN'T CO EXTENSIVE, BUT THE PENALTIES ARE. THE CONCERN ABOUT WE LIVE IN A DANGEROUS SOCIETY, I WOULD POINT OUT, WE, ALSO, LIVE IN A 24/7 SOCIETY, A SOCIETY THAT ALLOWS US TO DO OUR SHOPPING AND OUR BANKING AND OUR OTHER TRANSACTIONS 24 HOURS A DAY, AND SINGLE PARENTS OFTEN RELY ON THIRTEEN AGERS TO PERFORM CERTAIN TASKS AND ERRANDS. THIS ORDINANCE DISENFRANCHISES THOSE PARENTS, AND BY IMPOSING THIS RESTRICTION ON PEOPLE UNDER THE AGE OF 18, PREVENTS OR DISRUPTS

THE PARENT/CHILD RELATIONSHIP. WE ASK THE COURT TO APPLY STRICT SCRUTINY, TO DECLARE THIS ORDINANCE UNCONSTITUTIONAL, TO REVERSE THE SECOND DISTRICT COURT OPINION, AND TO UPHOLD THE DISMISSAL OF THE CHARGE AGAINST T.M.. THANK YOU.

THANK YOU, MR. HOW I. THE COURT WILL TAKE -- MR. HOWIE. THE COURT WILL TAKE A 15-MINUTE RECESS. THANK YOU. THE MARSHAL: PLEASE RISE.