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## **Mary Barley v. South Fla. Water Management District**

MR. CHIEF JUSTICE: THE NEXT CASE SO THE SUPREME COURT'S ORAL ARGUMENT CALENDAR IS MARY BARLEY VERSUS SOUTH FLORIDA WATER MANAGEMENT DISTRICT. MR. RUMBERGER.

MAY IT PLEASE THE COURT. ALL WE SEEK AT THIS POINT, FROM THIS COURT, IS THE OPPORTUNITY TO PROVE AT TRIAL THAT THE DISTRICTS TAX THE PETITIONERS, WHICH THERE ARE FIVE, VIOLATES ARTICLE II SECTION 7-B OF THE FLORIDA CONSTITUTION. THAT IS WHAT IS CALLED, AND WHICH YOU FOLKS HAVE HAD THE OPPORTUNITY TO LOOK AT SEVERAL TIMES, AMENDMENT V. AMENDMENT V, AS YOU KNOW, REQUIRES THAT INCLUDEERS WITHIN THE EAA PAY 100 PERCENT OF THE POLLUTION THAT THEY CAUSE. YOU HAVE HEARD THIS MATTER ON, AS I SAY, SEVERAL OCCASIONS, AND TO THIS POINT IN TIME IN THIS PARTICULAR CASE, WE STARTED IN THE TRIAL COURT IN ORLANDO, AND JUDGMENT ON THE PLEADINGS WAS GRANTED AGAINST US. WE THEN WENT TO THE DISTRICT COURT OF APPEALS, AND THE DISTRICT COURT, ALSO, FOUND THAT THE COURT, LOWER COURT, HAD MADE A GOOD JUDGMENT, AND, AGAIN, DENIED OUR APPEAL. AT THAT POINT, WE SOUGHT REFUGE WITH THE SUPREME COURT OF FLORIDA, YOU FOLKS, AND ARE NOW HERE, PLEADING VERY SIMPLY, FOR THE OPPORTUNITY TO PROVE OUR CASE. WE ARE NOT ASKING FOR YOU TO INTRUDE INTO THE LEGISLATIVE PURR VIEWS OR -- PURR VIEWS OR REQUIRE THE LEGISLATURE TO DO ANYTHING.

WHAT IS THE REMEDY THAT YOU SEEK?

WE SEEK A NEW TRIAL AND THE OPPORTUNITY TO PROVE OUR CASE.

AT THE END OF THE CASE, WHAT KIND OF JUDGMENT ARE YOU ASKING FOR?

WELL, WE WOULD SEEK A DECLARATION THAT THE CONSTITUTION AMENDMENT V REQUIRES THAT THE TAX CURRENTLY BEING IMPOSED ON NONPOLLUTERS, BE DECLARED UNCONSTITUTIONAL, AND THAT WE GO OUR WAY AND THAT THE DISTRICT NOT BE ALLOWED TO IMPOSE THEIR UNCONSTITUTIONAL TAX ON NONPOLLUTERS WITHIN THE EVERGLADES AGRICULTURE AREA.

WHAT IS THE FACTUAL ISSUE?

WHAT IS THE FACTUAL ISSUE?

YOU ARE SEEKING A TRIAL. WHAT WOULD BE THE FACTUAL ISSUE?

THE FACTUAL ISSUE, JUSTICE PARIENTE, WOULD BE THAT, AT THIS POINT IN TIME, WE BELIEVE THAT THE DISTRICT, SOUTH FLORIDA WATER MANAGEMENT DISTRICT, IS IMPOSING, ON NONPOLLUTERS, AN UNCONSTITUTIONAL TAX. THAT IS THE FACTUAL ISSUE.

IF THERE IS NOT A QUESTION AS TO THE INDIVIDUALS YOU REPRESENT ARE NONPOLLUTERS, OR IS THERE A QUESTION AS TO WHAT THE DEFINITION IS OF NONPOLLUTERS, UNDER THE --

TO THIS POINT IN TIME, WE HAVE NOT BEEN ABLE TO GET IN FRONT OF A COURT. WE CANNOT GET A DECISION. WE CANNOT GET A RECONCILIATION. WE CAN GET NOTHING FROM ANYBODY THAT MOVES THIS MATTER FORWARD. SO AT THIS POINT, WE CONTINUE TO PAY AN UNCONSTITUTIONAL TAX, AND WE DON'T WANT TO. WE DON'T BELIEVE WE ARE REQUIRED TO DO IT, AND THE ONLY WAY WE CAN DO THAT OR NOT DO IT, RATHER IS TO HAVE A DECLARATION

THAT WE SHOULD NOT BE PAYING AN UNCONSTITUTIONAL TAX, UNDER AMENDMENT V.

BUT FROM THIS COURT, WHAT YOU ARE REALLY ASKING US TO DO, AS I UNDERSTAND YOUR CASE, IS THAT YOU ARE ASKING US TO BASICALLY INDICATE THAT A CERTAIN PORTION OF AMENDMENT V IS, IN FACT, SELF EXECUTING. THIS WOULD BE THE ONLY WAY THAT YOU COULD GET BACK TO THE TRIAL COURT, ISN'T IT?

WELL, THAT IS AN ARGUMENT THAT WAS SET FORTH BY CHARLES HARRIS, OF THE DISTRICT COURT OF APPEALS. WE DON'T THINK -- WE THINK, FOR EXAMPLE, THAT IT IS SO CLEAR THAT ALMOST NOBODY COULD DOUBT THAT THE NONPOLLUTER SHOULD NOT BE REQUIRED TO PAY.

I UNDERSTAND THAT. BUT -- FROM THIS COURT.

YES.

WE WOULD HAVE TO SAY, THEN, THAT A PORTION OF AMENDMENT V IS THAT WE HAVE ALREADY SAID THAT AMENDMENT V IS NOT SELF EXECUTING, CORRECT?

YOU SAID IT IN AN ADVISORY OPINION.

CORRECT.

WHICH IS NOT NECESSARILY BELOW.

BUT NOW YOU ARE ASKING US TO COME BACK AND SAY THAT IS THERE IS A PORTION, AT LEAST AT PORTION OF THIS AMENDMENT WHICH IS NOT, WHICH IS, IN FACT, SELF-EXECUTING, AND THEREFORE YOU COULD GO BACK TO THE TRIAL COURT WITH THAT. IS THAT -- ISN'T THAT REALLY WHERE WE ARE AT IN THIS CASE?

WELL, THE PURPOSES OF THIS ARGUMENT, I WILL SAY YES.

AND SO HOW DOES IT ENTER PLAY WITH THE PREVIOUS OPINION, ADVISORY OPINION, WHICH SAYS THAT AMENDMENT V IS NOT SELF-EXECUTE SOMETHING.

WELL, I DON'T KNOW THAT THAT AMENDMENT WAS CLOSELY READ. I WOULD SUGGEST THAT -- IS NOT SELF-EXECUTING?

WELL, I DON'T KNOW THAT THAT AMENDMENT WAS CLOSELY READ. WHILE YOU ARE ALL VERY BRIGHT, ONE OF THE INTERESTING PARTS OF THAT IS THAT TWO PARTS OF THE AMENDMENT, NUMBER ONE THAT THE POLLUTER PAYS IS VERY CLEAR, AND IN ORDER TO DETERMINE HOW MUCH HE PAYS OR WHEN HE PAYS OR WHERE HE PAYS, ALL OF THAT SHOULD, IN FACT, BE SUBJECT TO ENABLING OR IMPLEMENTING LEGISLATION. THE OTHER SIDE OF THAT IS THERE IS A, ESSENTIALLY A NONMANDATORY TAX, A TAX WHICH IS NOT NECESSARY, A TAX WHICH IS, BY VIRTUE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BEING IMPOSED ON NONPOLLUTERS. THAT IS NOT REQUIRED. THAT IS NOT A "SHALL". THAT IS A "MAY" OR A "WILL". THAT IS NOT NECESSARY, AND WE ARE SAYING THAT THE TAX THAT IS CURRENTLY BEING APPLIED DOES NOT REQUIRE ANY SORT OF ENABLING OR IMPLEMENTING LEGISLATION BY THE LEGISLATURE, SO WE ARE NOT ASKING YOU TO DO ONE THING IN OUR INSTANCE, AS FAR AS THE LEGISLATURE IS CONCERNED. NOT ONE SINGLE THING.

SO MY FINAL QUESTION ON THIS, THEN, IS ARE YOU, THEN, MAINTAINING THAT THE PASSAGE OF AMENDMENT V OVERRULES OR MAKES NULL AND VOID THE STATUTORY PROVISION THAT ALLOWS THE MANAGEMENT DISTRICT TO LEVY THIS MILLAGE?

WOULDN'T A CONSTITUTIONAL PROVISION OVERRULE THE STATUTE, IF THEY ARE, IN FACT, IN

CONFLICT? MY SUGGESTION WOULD BE THAT, WHERE THEY ARE IN CONFLICT, IT WOULD OVERRULE IT, BUT I AM SAYING YOU DON'T EVEN HAVE TO GET TO THAT POINT. WHAT WE HAVE TO DO IS TO GET TO A TRIAL, AND WE HAVE TO PROVE OUR ALLEGATIONS.

MR. RUMBERGER, IF YOU ARE GOING TO DIVIDE YOUR TIME, I THINK BE COGNIZANT OF IT.

BEG PARDON?

I ASK YOU TO BE AWARE OF YOUR TIME.

76 SECONDS. IS THAT IT? WELL, ALL RIGHT. TIME PASSES WHEN YOU ARE HAVING A GOOD TIME. ALL RIGHT. I AM SORRY. I GUESS I WON'T BE ABLE TO FINISH IT. GO AHEAD, JOHN. JON MILLS, SCHOLAR. GOODMAN. -- GOOD MAN.

MAY IT PLEASE THE COURT. I WOULD LIKE TO, ALSO, MY NAME IS JON MILLS. I WOULD LIKE TO RECOGNIZE CO-COUNSEL AT TABLE, TIM McCHREND ONE, SUZANNE HILL AND CHRIS HILL. WE ARE SUGGESTING THAT THE AMENDMENT, AS WRITTEN BY YOU, IS CLEAR AND RESTRICTING. CONSTITUTIONAL POSITIONS LIMIT THE POWER OF GOVERNMENT. WE ARE SIMPLY SAYING THAT THE WATER DISTRICT'S AUTHORITY TO IMPOSE A TAX, BASED ON THE STATUTE, CANNOT STAND, IF IT IS DIRECTLY CONTRADICTORY TO THE TEXT OF THE CONSTITUTION. I WOULD SUGGEST, FIRST, IT DOESN'T -- YOU HAVE FOUND THAT THE STATUTE IS CONSISTENT, THAT THE EVERGLADES FOREVER ACT IS CONSISTENT WITH A CONSTITUTIONAL PROVISION. WE DON'T DISAGREE WITH THAT. THE EXERCISE OF DISCRETION TO LEVY THE MILL WAS DITO LEVY THE MIL WAS DISCRETION -- TO LEVY THE MIL WAS DISCRETIONARY. THERE ARE TWO FACTUAL QUESTIONS. THE FIRST FACTUAL QUESTION IS DID WE POLLUTE? THERE ARE TWO FACTUAL ISSUES THAT ARE COMPLICATED. THE QUESTION IS DID WE POLLUTE? IT IS IMPOSSIBLE FOR THOSE WHO DON'T LIVE IN THE EAA TO POLLUTE. THIS STATUTE SAYS ONLY THOSE IN THE EAA PAY.

MR. MILLS, HOW CAN WE AVOID, IF WE ALLOW THIS TO PROCEED IN THE COURTS, IN TERMS OF THE INDIVIDUAL ISSUES ABOUT WHO THE POLLUTERS ARE AND WHO AREN'T THE POLLUTERS AND HOW THIS IS GOING TO PLAY OUT, WOULDN'T WE BE, IN ESSENCE, SUBSTITUTING COURT ACTION FOR ORDINARILY WHAT WE WOULD EXPECT THE LEGISLATURE TO DO WITH THESE CONSTITUTIONAL PROVISIONS, IN TERMS OF NOW ENACTING, ENABLING LEGISLATION AS TO HOW THIS IS SUPPOSED TO WORK? AND WOULD YOU ADDRESS THAT CONCERN?

CERTAINLY. WE ARE NOW ASKING --

WON'T THAT BE TANTAMOUNT TO DOING THE SAME THING?

WE ARE WAY BEFORE ANY ISSUE OF THAT ARE A RISES. WE ARE ONLY -- OF THAT A RISES. WE ARE ONLY TAXPAYERS ASKING FOR PROTECTION AFTER CONSTITUTIONAL PROVISION WHICH IS QUITE NARROW, QUITE EXPLICIT, AND INTERPRETED BY YOU TO SAY THAT THOSE IN THE EAA SHOULD PAY 100 PERCENT OF THEIR POLLUTION. WE, AS TAXPAYERS IN THE WATER MANAGEMENT DISTRICT, ARE PAYING THAT. NOW, IN RESPONSE TO THE SELF-EXECUTING ISSUE, WHICH IS CRITICAL, I MEAN, I DO NOT THINK THAT THERE IS A FACTUAL QUESTION THAT WE ARE PAYING IN DIRECT CONTRAVENTION TO THE STATUTE. THE ISSUE IS, IS THERE AN EXCUSE? IN OTHER WORDS DOES THE CONSTITUTIONAL PROVISION MEAN NOTHING? DOES THE FACT THAT IT IS NOT SELF-EXECUTING MEAN THAT IT IS NONEXISTENT? I THINK YOU HAVE TO LOOK AT A SERIES OF YOUR OWN CASES DEALING WITH THE TEXT OF THE CONSTITUTION.

WHERE WOULD WE GET OUR DEFINITION OF POLLUTION? WOULD WE GOT IT FROM THE STATUTE? WHERE --

YOU DON'T HAVE TO GET THE DEFINITION OF POLLUTION. THE TRIAL COURT WOULD GET THE DEFINITION OF POLLUTION, AS IT STOOD AT THE TIME THAT THIS CONSTITUTIONAL PROVISION

PASSED, A THAN IS IN 403, THE STATUTES EXIST, THE WATER MANAGEMENT DISTRICT IS SMART ENOUGH TO KNOW WHAT WATER POLLUTION IS AND WHERE IT COMES FROM, SO THOSE ARE SERIOUS FACTUAL QUESTIONS OF WHICH THERE MUST BE A DETERMINATION, AND THAT IS WHY WE HAVE TO GO TO THE TRIAL COURT. THE ONLY WAY WE COULD BE PROHIBITED FROM HAVING THAT FULL HEARING, IS IF THIS CONSTITUTIONAL PROVISION WHICH YOU HAVE INTERPRETED TO MEAN SOMETHING,, MEANS NOTHING, AND WE ARE NOT ASKING TO LEVY A TAX. WE ARE SAYING THE TAX, AS LEVIED BY THE WATER MANAGEMENT DISTRICT IS IN DIRECT CONTRAVENTION. NOW, FOR EXAMPLE, THE WATER MANAGEMENT DISTRICT IS DOING WHAT THE LEGISLATURE COULDN'T DO. HOW CAN THAT BE? THE LEGISLATURE COULD NOT GO INTO SESSION TODAY AND PASS A STATUTE THAT TAXES NONPOLLUTERS IN THE WATER MANAGEMENT DISTRICT. THEY COULDN'T DO THAT.

BUT THE VERY PURPOSE OF THE ADVISORY OPINION WAS THAT THE GOVERNOR, THE EXECUTIVE AGENCIES WERE SEEKING GUIDANCE AS TO HOW THEY WERE TO COMPLY WITH THE MANDATE OF THE CONSTITUTION. THEY SAID HOW DO WE DO IT? OR CAN WE JUST GO AHEAD AND START PASSING RULES AND REGULATIONS TO DO IT? AND THIS COURT, IN ANSWER, WHETHER IT IS BINDING OR NONBINDING, SAID, NO, YOU CAN'T, IT IS NOT UP TO YOU TO DO IT. THE LEGISLATURE NEEDS TO ENACT ENABLING LEGISLATION, SO NOW WE ARE GOING TO BE IN A LAWSUIT WHERE WE ARE CRITIZING THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR DOING SOMETHING, ACTING CONSISTENTLY WITH THE STATUTE, BUT WHAT YOU ARE SAYING IS INCONSISTENTLY WITH A PROVISION THAT WE SAID THE LEGISLATURE NEEDS TO DEFINE.

THAT IS PRECISELY IF YOU WILL LOOK AT THE CASE, THE 1987 ADVISORY OPINION OF THE SERVICES TAX. WHICH FOUND THE SERVICES TAX FACIALLY CONSTITUTIONAL AND SAID WE CANNOT ADDRESS AN AS-APPLIED TEST. WE DON'T KNOW THE FACTS. YOU CANNOT REACH THAT CONCLUSION IN AN ADVISORY OPINION, ABOUT A PARTICULAR TAXPAYER, WITH RELATION TO THAT TAX, THAN IS WHAT WE ARE. YOUR ADVISORY OPINION DID NOT ADDRESS THIS ISSUE. COULDN'T. DIDN'T ADDRESS THE FACTS. DIDN'T ADDRESS HOW IT APPLIES TO US. DID NOT ADDRESS THAT WE ARE BEING TAXED IN DIRECT CONTRAVENTION TO THE CONSTITUTION.

WOULD YOU SAY THERE ARE TWO PARTS TO THIS CONSTITUTIONAL PROVISION, ONE WHICH SAYS THE LEGISLATURE IS GOING TO HAVE TO FIGURE OUT HOW, AMONG THOSE WHO POLLUTE, HOW THAT PAYMENT OR THAT APPORTIONMENT SHALL TAKE PLACE, BUT THAT THE CLEAR MANDATE OF THE CONSTITUTION IS A PROHIBITION AGAINST TAXING ANYBODY THAT DOES NOT POLLUTE?

IT WOULD AND LIMITATION ON ALL GOVERNMENT, INCLUDING THE LEGISLATURE IN THE FUTURE AND THE WATER MANAGEMENT DISTRICT NOW, AND THAT, UNFORTUNATELY, GOES WITH THAT OLD LATIN PHRASE EXCLUSIO ULTERIS, WHICH IS IN AS SKEW VERSUS SULLIVAN, IF YOU DESCRIBE AWAY TO DO SOMETHING IN THE CONSTITUTION, YOU CAN'T DO IT ANOTHER WAY. THAT IS YOUR OPINION, BASED ON THE TEXT OF THE CONSTITUTION AND THE TEXT OF THE PROVISION. THIS SAYS YOU TAX PEOPLE WHO POLLUTE WHO ARE IN THE EAA. THE CLEAR TAX FACTS ARE -- THE CLEAR FACTS ARE THAT YOU ARE TAXING PEOPLE WHO DID NOT POLLUTE, AND TERMS OF THE CONSTITUTION AND CAN IT RESTRICT THE LEGISLATURE FROM ACTING, CAN'T IT RESTRICT THE WATER MANAGEMENT DISTRICT FROM DIRECTLY VIOLATING IT, AND YOU HAVE NOT ADDRESSED THE QUESTION, YOU COULD NOT HAVE ADDRESSED THAT QUESTION IN YOUR PREVIOUS ADVISORY OPINION, BECAUSE YOU COULDN'T, AS OF THE 1987 CASE ON SERVICES TAX, YOU COULD NOT KNOW THE FACTS AND CIRCUMSTANCES OF AN INDIVIDUAL TAXPAYER, AND THAT IS WHO YOU HAVE BEFORE YOU NOW.

SO WHAT IS IT YOU WANT US TO SAY? I MEAN YOU WANT US --

TO REVERSE AND REMAND FOR A HEARING AND A TRIAL ON THE FACTS. IF WE LOSE, THAT IS FINE. WE HAVE HEARD PEOPLE SAY THAT THEY ARE PAYING THEIR FAIR SHARE AND MORE. IF THOSE ARE THE FACTS, THAT IS FINE. THE MILLAGE, THE RESTORATION OF THE EVERGLADES IS A

BIG PROJECT. THERE ARE A LOT OF DIFFERENT THINGS WHICH COULD BE EXPENDED. THERE IS NO SHORTAGE. IN THIS CASE, THIS CONSTITUTIONAL PROVISION SAYS, SPECIFICALLY, WHO PAYS AND HOW AND WE NEED THE OPPORTUNITY TO PROVE THAT WE ARE NOT POLLUTING, AND THAT THAT MONEY IS BEING DIRECTED TOWARDS A CONSTITUTIONALLY EXPLICITLY EXPLICITLY-PROHIBITED PURPOSE, BASED ON THE TEXT AND YOUR OPINION, AND WE WILL RESERVE THE REST OF ON YOUR TIME FOR RESUBTLE. -- THE REST OF OUR TIME FOR REBUTTAL.

THANK YOU. MR. MIDDLETON.

THANK, YOUR HONOR. MAY IT PLEASE THE KOUMLPT PAUL MIDDLETON OF CARLTON FIELDS, ON BEHALF OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT. IT IS CLEAR THAT THIS IS CONTROLLED BY TWO PRINCIPLE LEGAL CONCLUSIONS THAT WERE REACHED BY THE COURT IN THIS CASE. NUMBER ONE IS A DECISION NOT EVEN IN DISPUTE BEFORE THIS COURT AND NOT LEGALLY BINDING. WHAT THAT MEANS, UNDER THE JURISPRUDENCE OF THIS COURT, WHERE YOU HAVE A NON-EXECUTING PROVISION, THAT IT IS NONOPERATIVE TO PROVIDE ANY RIGHTS TO THESE PARTICULAR PLAINTIFFS, WHICH CAN BE DECLARED, ENFORCED OR OTHERWISE BY THE JUDICIAL RELIEF THAT THEY HAVE REQUESTED HERE.

ISN'T THAT AN IMPORTANT ISSUE? IN OTHER WORDS CAN IT NOT BE SELF-EXECUTING, BUT CAN IT STILL BE VIOLATED, AND HAVE THE ABILITY OF A CITIZEN'S RIGHT TO COME INTO COURT, TO DEMONSTRATE THAT ITS PROVISIONS HAVE BEEN VIOLATEED?

IT CAN.

AREN'T THOSE TWO VERY DIFFERENT CONCEPTS THAT AREN'T MUTUALLY EXCLUSIVE?

THEY AREN'T MUTUALLY EXCLUSIVE. I DON'T THINK THEY, HOWEVER, JUSTICE ANSTEAD, COMPLETELY SEPARATE CONCEPTS, BECAUSE THAT IS THE SECOND LEGAL CONCLUSION REACHED BY THE LOWER COURTS HERE AND THAT IS THAT THERE IS NO INCONSISTENCY BETWEEN THE FUNDING PROVISIONS OF THE EFA AND AMENDMENT, AND WE ARE IN THE UNIQUE - - AND THE AMENDMENT V, AND WE ARE IN THE UNIQUE SITUATION, YES, IT WOULD BE UNCONSTITUTIONAL, AS THIS COURT, IN ITS ANALYSIS, 40 YEARS AG --.

LET'S ASSUME THAT THE WATER DISTRICT ACTUALLY HAD HEARINGS AND MADE FINDINGS OF FACTS, ITSELF, AND ACTUALLY CONCLUDED, IN THOSE FINDINGS OF FACTS, THAT THERE WERE A GROUP OF PROPERTY OWNERS THAT IT HAD CLEARLY DETERMINED, ITSELF, THROUGH THE PROCESS, WERE NOT CONTRIBUTING TO THE POLLUTION. AND NOTWITHSTANDING THOSE FINDINGS THAT THE DISTRICT, ITSELF, MADE, THAT IT DECIDED TO SPREAD THE COST OF FIGHTING THE POLLUTION AMONGST AND INCLUDED THOSE PROPERTY OWNERS. WOULDN'T THAT BE CLEARLY VIOLATIVE OF THIS CONSTITUTIONAL PROVISION?

I THINK WHAT WOULD VIOLATE THE CONSTITUTION IN THAT PLACE WOULD BE THE DISTRICT MAKING THAT DETERMINATION, BECAUSE IT WOULD, THEN, BE ENGAGING IN EXACTLY WHAT THIS COURT SAID THE LEGISLATURE HAS TO DECIDE. SO, NO, I DON'T THINK IN THAT INSTANCE, THE DISTRICT WOULD BE VIOLATING THE CONSTITUTION BY IMPOSING THE TAX, BECAUSE THE LEGISLATURE, AT THIS STAGE, HAS NOT MADE THAT DETERMINATION OF HOW TO DEFINE POLLUTERS WHO, BECAUSE IN ORDER TO DO THAT, YOU HAVE TO, ALSO, DETERMINE WHAT IS WATER POLLUTION, WITHIN THE CONTEXT OF AMENDMENT V. THOSE ARE THE VERY QUESTIONS THAT THIS COURT, IN ITS ADVISORY OPINION, SAID HAVE TO BE ANSWERED BY THE LEGISLATURE, BECAUSE THEY ARE INFUSED WITH VARIOUS POLICY QUESTIONS.

ISN'T THE WATER MANAGEMENT DISTRICT, IN EFFECT, DOING WHAT WE SAID TO THE GOVERNOR AND THE EXECUTIVE AGENCIES COULDN'T BE DONE? BECAUSE THE LEGISLATURE HAD TO ACT?

NO, YOUR HONOR.

ISN'T -- IS THE WATER MANAGEMENT DISTRICT NOW TAXING FOR THE COSTS OF FIGHTING THIS POLLUTION?

THERE IS TAX THAT IS BEING IMPOSED. THE .1 MIL THAT IS BEING IMPOSED --

IS THERE ANY DISPUTE THAT THIS TAX IS NOW BEING I AM -- IS NOT BEING IMPOSED TO FIGHT POLLUTION?

YES, YOUR HONOR, THERE IS.

IS THERE A FACTUAL QUESTION AS TO WHETHER OR NOT THE REVENUE FROM THIS TAX AND THIS TAX IS USED TO FIGHT --

IF THERE WERE A COMING NIECE NIECEABLE MATT -- A COGNIZABLE SITUATION, THERE WOULD BE --

I AM NOT TALKING ABOUT DEFINING POLLUTERS. I AM TALKING ABOUT WHETHER THERE IS A ISSUE THAT THIS TAX AND THE REVENUE FROM THE TAX IS BEING USED AGAINST THE POLLUTION. YOU ARE SAY AGO THAT THE REVENUE IS NOT BEING USED AGAINST THE POLLUTION?

IT DEPENDS HOW YOU INTERPRET IT. AGAIN, THIS IS A LEGISLATIVE VALUE JUDGMENT, BECAUSE WHAT THE LEGAL CONCLUSION THAT THEY HAVE ALLEGED THAT THEY WANT THIS COURT TO ACCEPT IS THAT THE .1 MIL THAT IS BEING TAXED ON ADVALOREM TAXPAYERS, WHICH IS BEING UTILIZED FOR THE EVERGLADES CONSTRUCTION PROJECT, THAT THAT IS EQUIVALENT TO USING IT FOR PURPOSES OF POLLUTION ABATEMENT. THAT, I SUGGEST, IS A LEGAL FALLY IS, BECAUSE YOU HAVE TO LOOK, FIRST, AT WHAT THE EVERGLADES CONSTRUCTION PROJECT IS, UNDER THE STATUTE, AND IT IS A MULTIPURPOSE, MULTIFACETED PROJECT THAT HAS POLLUTION ABATEMENT AS JUST ONE OF ITS FUNCTIONS.

BUT NOBODY EVER GOT TO THAT POINT. I MEAN, THAT MAY BE A VALID DEFENSE THAT YOU WOULD HAVE, THAT IT REALLY ISN'T BEING USED FOR POLLUTION ABATEMENT, SO THIS IS, THEY ARE BARKING UP THE WRONG TAX, SO TO SPEAK, BUT YOU ARE NOT REALLY SUGGESTING THAT, UNDER THIS AMENDMENT, THAT THE CONSTITUTIONAL AMENDMENT, THAT THE LEGISLATURE COULD GO AND SAY YOU KNOW, I THINK WE ARE GOING TO DEFINE POLLUTER AS EVERY TAXPAYER IN THE STATE OF FLORIDA BECAUSE WE REALLY DECIDED THAT EVERY TAXPAYER OUGHT TO SHARE THE COSTS OF POLLUTION ABATEMENT. COULD THEY DO THAT UNDER -- IS THAT -- IS THE AMENDMENT THAT OPEN ENDED, TO SAY THAT THAT COULD NULLIFY WHAT THE VOTERS WANTED BY DEFINING POLLUTER AS ANY TAXPAYER?

THEY COULDN'T NULLIFY THE INTENT OF THE VOTERS. I WILL START THERE. BUT ON THE OTHER HAND, WHETHER THEY COULD DEFINE IT THAT WAY, I WOULD SUGGEST THAT IT WOULD AND DETERMINATION OF WHETHER IT WAS RATIONALLY BASED ON SOMETHING, AND OBVIOUSLY THAT IS NOT HERE NOW. WE DON'T THOUGH IF THEY WERE GOING TO DEFINE POLLUTERS IN A RATIONAL SENSE, WHETHER THAT WOULD AND BASIS FOR DEFINING IN THAT SENSE.

WHAT IF THIS COURT SAID THAT THE CONSTITUTIONAL PROVISION WASN'T, IN FACT, SOMEHOW EXECUTING, THAT WHO AND WHAT WAS AND WAS NOT A POLLUTER NEEDED TO BE DEFINED. THE REASON THAT THIS COURT SAID THAT IT WASN'T SELF-EXECUTING WAS THAT, AS FAR AS HOW TO ALLOCATE THE COSTS AMONG THOSE WHO DID POLLUTE, REALLY, WAS A LEGISLATIVE JUDGMENT. ISN'T THAT, AND I GUESS I AM GOING TO WHAT JUDGE HARRIS SAID IN HIS DEFENSE, ISN'T THAT TWO DIFFERENT ASPECTS OF THIS AMENDMENT? THAT IS EVERYONE WHO DOES POLLUTE SHALL PAY THEIR FAIR SHARE, BUT THOSE THAT DO NOT POLLUTE DON'T PAY. THAT IS OTHERWISE THE AMENDMENT MEANT NOTHING, AND ISN'T IT THAT LATTER PART THAT IS THE PROHIBITION THAT COULD BE VIOLATED BY THE MANNER IN WHICH THE SOUTH FLORIDA WATER

MANAGEMENT DISTRICT IS IMPOSEING THIS TAX?

I RESPECTFULLY DISAGREE WITH YOU, YOUR HONOR, AND FOR A COUPLE --

I DIDN'T THINK THAT YOU WOULD AGREE.

FOR A COUPLE OF REASONS. FIRST, THE SO-CALLED SECOND PROVISION OF NONPOLLUTERS WILL NOT PAY FOR POLLUTION, THAT IS NONEXISTENT IN AMENDMENT V. THAT IS ARGUMENT OF COUNSEL CONCERNING HOW TO INTERPRET IT. WHAT AMENDMENT V IS A LIABILITY PROVISION THAT IS DIRECTED TO THE LEGISLATURE TO IMPLEMENT LEGISLATION, IN ORDER TO IMPOSE LIABILITY ON THOSE RESPONSIBLE FOR POLLUTING THE EVERGLADES.

ISN'T IT A LIMITATION OF GOVERNMENTAL POWER ON THIS -- A LIMITATION THAT THE GOVERNMENT WOULDN'T ORDINARILY HAVE, THAT IS DECIDING HOW GOVERNMENT FUNDS ARE SPENT FOR VARIOUS PUBLIC INTERESTS ISSUES, CONCERNS IN THIS STATE. IT IS A LIMITATION ON THE POWER OF THE GOVERNMENT TO TAX IN THE AREA OF POLLUTION ABATEMENT.

I WOULD SUBMIT THAT IT IS NOT A LIMITATION ON TAXING AND SPENDING. IT IS A LIABILITY PROVISION. IT DOESN'T MENTION TAXING AND SPENDING. IT SIMPLY SAYS THAT THOSE WHO LIVE IN THE EVERGLADES, THE EAA, SHOULD BE PRIMARILY RESPONSIBLE FOR THE ABATEMENT OF THE COSTS OF THAT POLLUTION, AND UNTIL THAT TERM IS DEFINED BY THE LEGISLATURE, AND THERE ARE A NUMBER OF SIGNIFICANT TERMS, AND THE OTHER PART OF YOUR QUESTION, YOUR HONOR, I THINK, ALSO, MISCONSTRUED THE ORIGINAL ADVISORY OPINION, ONE OF THE SPECIFIC POLICY QUESTIONS LEFT OPEN BY AMENDMENT V FOR THE LEGISLATURE WAS WHAT CONSTITUTES WATER POLLUTION? HOW WILL ONE BE ADDED AS A POLLUTER, AND THEN IT GOES ON TO HOW WILL IT BE ASSESSED? THAT IS A PIECE OF IT.

SO IN THE MEANTIME IT SEEMS TO ME THAT, UNTIL THE LEGISLATURE ACTS, THE WATER MANAGEMENT DISTRICT, THEN, IS FREE TO TAX ANYONE IN THAT PARTICULAR AREA, WHETHER THE POLLUTION IS POLLUTION OR LEGAL POLLUTION, THAT SEEMS TO BEAR WHAT THIS CASE BOILS DOWN TO.

THAT, YOUR HONOR, I THINK IS INCONSISTENCY, AND WHAT THIS COURT HELD IN THE ADVISORY OPINION, AFTER EXAMINING THE ISSUE, IS THAT THERE IS NO PROVISION IN AMENDMENT V FOR THE EVERGLADES ACT. AND IN THE EARLY DECADES, BACK UNTIL THE LAST CENTURY, IS WHEN YOU HAVE A NEW AMENDMENT TO A CONSTITUTION, THE COURT LOOKS AT THAT TO DETERMINE WHETHER THERE IS CONSISTENCY. IF IT IS CONSISTENT, THERE IS ONE THING, BUT IN ORDER TO INVALIDATE THE STATUTORY AUTHORITY THAT EXISTED PRIOR TO THAT AMENDMENT ON A NONSELF-EXECUTING PROVISION OF THE CONSTITUTION, THE INCONSISTENCY HAS TO BE TOTAL. IT HAS TO BE OBVIOUS AND NECESSARY, AND IF THERE IS ANY WAY TO HARMONIZE, IT THE COURTS ARE REQUIRED TO DO THAT, WHICH MEANS THAT THE EXISTING LEGISLATION REMAINS IN EFFECT, AND THAT IS PRECISELY WHAT THE ISSUE WAS BEFORE THIS COURT, WHEN GOVERNOR CHILES ASKED FOR THIS ADD -- ADVISORY OPINION.

BUT JUST SAYING THAT IT IS NOT COMPLETELY 100 PERCENT INCONSISTENT IS DIFFERENT THAN SAYING, THAT AS APPLIED, IT IS BEING APPLIED IN AN UNCONSTITUTIONAL MANNER. WE COULDN'T POSSIBLY HAVE MADE THAT DECISION, BECAUSE THERE WERE NO FACTS IN FRONT OF US.

YOUR HONOR, LET ME SUGGEST TO YOU, IN LOOKING AT GOVERNOR CHILES'S SPECIFIC REQUEST FOR ADVICE FROM THIS COURT, THAT VERY POSSIBILITY APPLIES IN AND WHY THIS OPINION WAS REQUESTED. HE SAYS THAT THERE WERE TWO FUNDING SOURCES THAT EXIST UNDER THE EVERGLADES FOREVER ACT, PREEXISTING AMENDMENT V. THAT IS THE AD VALOREM TAX, THE .1 MIL THAT THEY ARE TAXING AND THE AGRICULTURAL INTEREST TAX THAT IS ASSESSED IN THE AGRICULTURAL INTERESTS OF THE EAA, AND BECAUSE OF THE UNCERTAINTY OF THE LANGUAGE

IN AMENDMENT V, WHETHER THE GOVERNOR COULD CONTINUE THE DIRECTION OF THE DISTRICT AND DEP, TO CONTINUE THAT PROGRAM UNDER THOSE FUNDING ALLOCATIONS, THAT IS THE VERY QUESTION THAT WAS ASKED IN THE FIRST PLACE, AND I WOULD SUGGEST THAT THERE WOULD BE NO OTHER REASON FOR THIS COURT TO HAVE ADDRESSED THAT CONSISTENCY ARGUMENT, AS IT DID IN THE OPINION, BUT TO ANSWER THE VERY QUESTION THAT IS PRESENTED IN THIS CASE.

JUSTICE SHAW.

WHAT IS TOO SIMPLISTIC ABOUT THIS ANALYSIS IS THAT, PRIOR TO AMENDMENT V, THE WATER DISTRICT COULD IMPOSE A TAX TAX, AND -- A TAX, TAN COULD BE CHALLENGED. DO YOU AGREE WITH THAT -- AND IT COULD BE CHALLENGED. DO YOU AGREE WITH THAT?

ANY TAX COULD ALWAYS BE CHALLENGED, YOUR HONOR. I AM NOT SURE WHAT I AM ANSWERING.

BUT THEY COULD GET IN COURT PRIOR TO THAT.

THEY CERTAINLY HAVE BEEN IN COURT.

AND APPARENTLY YOU ARE PROPOSING THAT IT IS AMENDMENT V THAT IS KEEPING THEM FROM GETTING INTO COURT ON A HEARING.

I AM NOT SAYING THAT AMENDMENT V IS NOT KEEPING THEM FROM GETTING INTO COURT. THEIR ENTIRE ACTION IS PREMISED ON AMENDMENT V. THEY CLAIM TO HAVE RIGHTS, UNDER AMENDMENT V. OUR POSITION, AS BELOW, AS WELL AS ADOPTED BY THE TRIAL COURT AND THE FIFTH DCA, THAT THEY HAVE NO RIGHT TO A TRIAL. THIS IS NOT A DENIAL OF ACCESS TO COURTS. THEY HAVE BEEN TO COURT AND HAVE HAD THEIR ARGUMENT ON THE MERITS AND LOST.

BUT IF AMENDMENT V IS NOT SELF-ACTIVATING, THEN WE ARE BACK TO THE WATER DISTRICT HAVING ALL THE RIGHTS THAT IT HAD BEFORE, AND NOTHING HAS CHANGED. SO --

UNTIL --

-- I DON'T UNDERSTAND HOW YOU ARE ANNOUNCE THAGARD KEL, I MEAN AMENDMENT V IMPOSES THIS ADDITIONAL BURDEN UPON THEM.

I AM SORRY, YOUR HONOR. WE AREN'T CLAIMING AMENDMENT V IMPOSES AN ADDITIONAL BURDEN ON ANYONE. WE ARE JUST SAYINGN OF THEIR CLAIM DOES NOT EXIST. THEY DO NOT HAVE A JUDICIALLY JUDICIALLY-COGNIZABLE CLAIM, BECAUSE THE PREMISE IS THE RIGHTS OF AMENDMENT V THAT DO NOT EXIST, UNTIL THE LEGISLATION DEFINES THEM.

WOULD THAT CLAIM EXIST, ABSENT AMENDMENT V?

NO. THEIR CLAIM IS PREMISED ON AMENDMENT V. WITHOUT IT, THEY HAVE NO CLAIM. YOUR HONOR, THE -- I WOULD LIKE TO MENTION A COUPLE OF THINGS ABOUT THIS SWORD AND SHIELD ANALOGY WHICH RUNS THROUGHOUT THE BRIEFS, AND WE HEARD A LITTLE BIT TODAY. I THINK IT IS A FALL EERB US ARGUMENT -- A FALECIOUS ARGUMENT BECAUSE THEIR ANALOGY OF THE SWORD AND THE SHIELD IS SIMPLY THE FLIP SIDE OF THE COIN, AND THE PROBLEM THAT YOU HAVE WITH THIS IS THERE IS NO WAY THAT THEY CAN PROVE A CASE BEFORE THE JUDICIARY, WITHOUT HAVING THE COURTS DEFINE THE PARAMETERS OF AMENDMENT V AND SO FORTH, FOR WHATEVER RELIEF THEY ARE GOING TO REQUEST, AND PIE WAY OF WHICH THIS COURT HAS ALREADY SAID THE LEGISLATURE HAS TO DECIDE. BY WAY OF EXAMPLE, THE MOST BASIC PROPOSITION HERE THAT THEY ARE NONPOLLUTERS, WHAT I WOULD SUGGEST THE AMEND COMPLAINT IN ITS TOTAL DOESN'T SUPPORT, BUT I WILL COME BACK TO THAT, BUT ACCEPTING



THAT AT THIS POINT, HOW WOULD THEY PROVE TO A COURT THAT THEY ARE NONPOLLUTERS? THE ONLY WAY TO PROVE THAT IS FOR THE COURT TO, FIRST, DEFINE WHAT A POLLUTER IS VERSUS A NONPOLLUTER, WHICH, IN TURN REQUIRES A DETERMINATION OF WHAT WATER POLLUTION IS. THESE ARE ALL, AGAIN, WHAT THIS COURT SAID THE LEGISLATURE HAS TO ANSWER, SO WE SUBMIT THAT THEY CAN'T DO. THAT BY WAY OF EXAMPLE, I STARTED TO MENTION BEFORE, THE .1 MIL, AGAIN, IS GOING TOWARDS THE EVERGLADES CONSTRUCTION PROJECT, BUT THAT HAS A MULTIFACETED PROJECT. HOW DOES THE LEGISLATURE, HOW DO YOU DETERMINE WHAT IS THE TOTAL COST OF THAT PROJECT IS ATTRIBUTABLE TO THE POLLUTION ABATEMENT COST VERSUS THE HYDRO IMPROVEMENT COST, VERSUS THE VALUE THAT THE LEGISLATURE HOLDS?

THE LEGISLATURE MOVES, UNTIL THEN THERE IS NO WAY OF KNOWING WHAT A POLLUTER IS IN FLORIDA.

NOT IN THE CONTEXT OF AMENDMENT V, NO, YOUR HONOR, AND THAT IS WHAT THIS COURT DECIDED IN ITS ADVISORY RULING.

UNLESS THE LEGISLATURE MOVES, WE CANNOT TELL WHO IS POLLUTE WAG IN FLORIDA. THE COURTS CANNOT MAKE THAT DECISION.

I WOULD SUGGEST THAT IS CORRECT. AGAIN, REFERRING TO THIS COURT'S ADVISORY OPINION, THERE IS GOOD REASON FOR IT, TOO. THE COUNSEL HERE, TODAY, AND IN THEIR BRIEFS, HAS SUGGESTED THE COURT CAN DECIDE THAT, REFERRING TO THE STATUTES AT THE TIME, AND MENTIONED 403.

BUT COULD MAKE THAT DECISION BEFORE AMENDMENT V, THE COURTS COULD HAVE MADE THAT DECISION WHO WAS POLLUTING, IF THE WATER DISTRICT WANTED TO IMPOSE A TAX.

IF THERE WERE SOME CONTEXT FOR IT, YOUR HONOR, BUT, AGAIN, WHAT WE ARE TALKING ABOUT IS WHAT DOES IT MEAN WITHIN THE CONTEXT OF AMENDMENT V, SO BEFORE AMENDMENT V, THERE WAS NOTHING TO DEFINE. AGAIN, YOU HAVE TO GO BACK TO WHAT THE BASIS OF THEIR ACTION IS. SO THAT IS WHY IT IS OUR POSITION THAT THEIR WHOLE ARGUMENT ABOUT INCONSISTENCY CANNOT BE ACCEPTED AS ANY KIND OF FACTUAL ALLEGATION. IT IS PURELY A LEGAL CONCLUSION THAT SHOULD NOT --

CAN THE LEGISLATURE SUPPORT THE WILL OF THE PEOPLE BY SIMPLY REFUSING TO ACT? I MEAN, NOW THIS HAS BEEN HOW MANY YEARS AFTER OUR ADVISORY OPINION, AND THERE HAS BEEN IN LEGISLATION. WHAT ARE THE TAXPAYERS' REMEDY IN THAT SITUATION, WHERE THERE IS A CONSTITUTIONAL REMEDY, WHERE WE SAY IT IS NOT SELF-EXECUTING, WHERE WE SEE IT NEEDS LEGISLATIVE HELP, AND THE LEGISLATURE SAYS WE ARE TOO BUSY DOING OTHER THINGS. WE ARE GOING TO PASS ON THIS ONE. WHAT HAPPENS? WHO MAKES THAT DECISION IN THAT VOID? JUST WILL OF THE PEOPLE IS FRUSTRATED, OR THE COURTS COME IN?

THIS IS, YOUR HONOR, WHERE YOU RUN INTO THE SO-CALLED CONSTITUTIONAL CRISIS, THE SEPARATION OF POWERS. I WOULD POSIT TO YOU THAT THAT IS NOT THE SITUATION SO YOUU THE LEGISLATURE, HERE, HAS NOT REFUSED TO ACT. IN FACT THERE WERE THREE BILLS PROPOSED IN 1988 AND NONE OF THEM SURVIVED, BUT NONETHELESS THEYaQt IN THE DADE CLASSROOM TEACHERS CASE, THIS COURT ADDICT ANED THAT, WHERE YOU HAVE -- DIC. IT WAS THAT THE LEGISLATION WAS NOT REPRESENTATIVE OF THE FACTS. IN THIS CASE, YOU MIGHT HAVE TO FASHION A REMEDY.

LET ME SEE IF WE CAN BOIL IT DOWN TO WHAT THIS ARGUMENT IS ABOUT IS WHETHER, TO SEE IF YOU CAN AGREE WITH THIS, AND I WOULD LIKE, IN REBUTTAL, YOUR OPPONENTS TO COMMENT ON IT, IS WHETHER AMENDMENT V RENDERS UNCONSTITUTIONAL, A TAX BY THE WATER MANAGEMENT DISTRICT FOR POLLUTION ON THOSE OTHER THAN THOSE WHO HAVE BEEN

DETERMINED TO BE PRIMARILY RESPONSIBLE. IS THAT THE ISSUE?

WELL, OTHER THAN HAVING BEEN DETERMINED TO BE PRIMARILY RESPONSIBLE, I WOULD AGREE.  
OKAY.

THEY ARE ALLEGING THAT THEY ARE NONPOLLUTERS OR THAT THEY ARE CONTRIBUTING MORE THAN THEIR FAIR SHARE FOR THE POLLUTION.

AND WHAT THEIR ARGUMENT IS THAT THE CONSTITUTIONAL AMENDMENT MEANS THAT THERE IS A CONSTITUTIONAL BAR TO FURTHER TAX, UNDER THE EVERGLADES FOREVER ACT. AND THOSE PEOPLE WHO CAN BE TAXED, CONSTITUTIONALLY, ARE RESPONSIBLE FOR THAT PROVISION.

I THINK YOU HAVE TO ANSWER THAT QUESTION TODAY, BECAUSE I HAVE HEARD MR. RUMBERGER SAY THAT THAT WAS JUDGE HARRIS'S POSITION AND THEN KIND OF CAME AROUND AND ACCEPTED IT, BUT I DON'T KNOW THAT THAT IS ACCURATE OF THEIR POSITION.

AM I CORRECT THAT IT IS YOUR POSITION THAT THAT CONSTITUTIONAL AMENDMENT DOES NOT RENDER UNCONSTITUTIONAL, THE TAX THAT WAS BEING APPLIED PRIOR TO THE ADOPTION OF THIS AMENDMENT IN 1966, PURSUANT TO THE "EVERGLADES FOREVER" ACT?

CORRECT, YOUR HONOR, AND THAT AGAIN, GOES BACK TO THE BASIC LEGAL PROPOSITIONS, AS FOUND BY THIS COURT, AS FOUND BY THE LOWER COURTS IN THIS CASE, THAT THERE IS NO INCONSISTENCY BETWEEN THOSE BETWEEN -- BETWEEN THOSE PROVISIONS, AND UNDER THE RULE, IF IT IS NOT INCONSISTENT, IT REMAINS IN EFFECT, UNTIL REPEALED OR MODIFIED BY THE LEGISLATURE, AND SO THAT IS THE SITUATION WE ARE IN RIGHT NOW. AGAIN, IT WAS THE DIRECTION OR ADVICE FROM THIS COURT TO THE GOVERNOR'S OFFICE ON THIS VERY ISSUE OF WHETHER THOSE PROJECTION COULD GO FORWARD UNDER THOSE FUNDING ALLOCATIONS THAT WERE IDENTIFIED IN THE REQUEST FOR ADVISORY OPINION, GIVEN THE LANGUAGE OF AMENDMENT V, AND THIS COURT SAID THERE WAS CONSISTENT, QUOTED THE RULE THAT SAYS IT REMAINS IN EFFECT AND THEREFORE THAT HAS, OF COURSE, BEEN THE COURSE OF ACTION SINCE THAT TIME, IN RELIANCE ON THIS COURT'S ADVISORY OPINION, SO, YES, YOUR HONOR, THAT IS OUR POSITION.

THANK YOU.

AND IN TERMS OF THE CONSISTENCY, THEY HAVEN'T, WE HEARD AGAIN, TODAY, THAT THEY AREN'T CONTESTING THIS COURT'S CONCLUSION ON CONSISTENCY. I SUGGEST THAT THEY -- I SEE I AM OUT OF TIME.

THANK YOU. MR. MIDDLETON. -- THANK YOU. MR. MILLS. MR. MILLS, WOULD YOU RESPOND TO WHAT WE ARE DEALING WITH HERE, THE FACT THAT WHAT THE BOTTOM LINE OF YOUR CONTENTION IS THAT, BY THE PASSAGE OF THIS AMENDMENT THAT TAX ON, THIS TAX ON THOSE WHO CLAIM NOT TO BE PRIMARILY RESPONSIBLE FOR THE POLLUTION OF THE EVERGLADES, IS UNCONSTITUTIONAL, BY REASON --

AS APPLIED BY THE WATER MANAGEMENT DISTRICT. IT DOES NOT DECLARE THE STATUTE UNCONSTITUTIONAL. THE WATER MANAGEMENT DISTRICT HAD DISCRETION UNDER THAT STATUTE, TO LEVY OR SPEND IT FOR A DIFFERENT PURPOSE. THEY DIDN'T HAVE TO ACT UNCONSTITUTIONALLY. IT IS NOT -- WE DON'T DISAGREE THAT THE EFA, AS YOU FOUND, IS CONSISTENT. ALSO YOU SAID THE EFA DOES NOT ENACT. IN OTHER WORDS THERE IS MORE TO DO. I MEAN, YOU SAID THAT. AND THAT, IN OTHER WORDS, THE LEGISLATURE WOULD HAVE MORE TO DO TO IMPLEMENT ARTICLE V. WE ARE GIVING YOU A NONCONSTITUTIONAL CRISIS WAY TO ADDRESS AN UNCONSTITUTIONAL ISSUE.

BUT THE LANGUAGE OF THE STATUTORY, OF THE CONSTITUTIONAL AMENDMENT IS NOT GO IN TERMS OF BARRING THE TAX -- DOES NOT TALK IN TERMS OF BARRING THE TAX. IT DOES TALK IN TERMS OF FICTIONING LIABILITY, DOESN'T IT?

IT TALKS IN TERMS OF LIMITING THE POWER OF GOVERNMENT TO TAX. IT SAYS THAT, IF YOU ARE GOING TO TAX FOR THIS PURPOSE, THIS IS THE ONLY WAY TO DO IT. YOU HAVE TO LIVE IN THE EAA, AND YOU HAVE TO POLLUTE. WE DO NOT LIVE IN THE EAA, AND WE DO NOT POLLUTE. YOU CANNOT TAX US. TO SAY THAT THIS CAN GO ON FOREVER --

IN THE AMENDMENT, IT DOESN'T SAY ANYTHING ABOUT A TAX, BARRING A TAX. IT SAYS THAT THOSE IN THE EVERGLADES, AGRICULTURE AREA, WHO CAUSE WATER POLLUTION, SHALL BE PRIMARILY RESPONSIBLE FOR PAYING THE COST.

AND THAT IS THE POINT EARLIER MADE THAT, IF YOU DESCRIBE AWAY A THING HAS TO BE DONE, YOU CANNOT DO IT IN A SUBSTANTIALLY DIFFERENT WAY. THIS IS NOT ONLY A SUBSTANTIALLY DIFFERENT WAY. IT IS DIRECTLY OPPOSITE. IN OTHER WORDS YOU HAVE A CONSTITUTIONAL DESCRIPTION, AS AUGMENTED BY THIS COURT'S DECISION, WHICH YOU SAID 100 PERCENT IS WHAT PRIMARILY MEANS, THERE ISN'T A SPLIT, AND, AGAIN, WE ARE NOT DECLARING OR SUGGESTING THE STATUTE SHOULD BE DECLARED UNCONSTITUTIONAL. LET ME, IF I MAY, RETURN TO A SELF-EXECUTING ONE MORE TIME. THERE ARE A SERIES OF CONSTITUTIONAL PROVISION THAT IS ARE NOT SELF-EXECUTING THAT ARE QUITE USEFUL. ONE OF THE THING THAT IS WE DON'T WANT TO DO IS SEND AGENCIES TO THE CONSTITUTION, LEAVING THROUGH IT TO DETERMINE WHAT THEY ARE GOING TO TRY TO COMPLY W THERE IS A CASE THAT YOU DEALT WITH, LONG, SAPS VERSUS PERLMUTTER, DEALING WITH THE PRIVACY AMENDMENT, WHICH HAS BEEN FOUND NOT TO BE SELF-EXECUTING, WHERE JUSTICE RUMBERGER SAID PREFERENCE FOR TREATMENT CANNOT SHACKLE THE COURTS, WHEN PROTECTING LEGAL INTERESTS ARE AT STAKE. WE ARE 23409 NOT ASKING YOU TO -- WE ARE NOT ASKING YOU TO COMPEL TO DO SOMETHING. WE ARE ASKING YOU TO PROTECT THE INTERESTS AT STAKE. WE HYPOTHESIZE THERE IS ANOTHER THERE, IS AN ENGLISH-ONLY PROVISION OF THE FLORIDA CONSTITUTION, WHICH IS NOT SELF-EXECUTING. COULD THE WATER MANAGEMENT DISTRICT, IN ITS WISDOM, DECIDE TO MAKE FINNISH THE LANGUAGE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT? IT IS A CONFLICT WITH THE NON-SELF-EXECUTING PART OF THE FLORIDA CONSTITUTION. THE CONSTITUTION HAS TO ACTUALLY MEAN SOMETHING, AND IF WE CAN SAY YOU CAN HAVE A PROVISION OF THE CONSTITUTION WHICH THE FACTS AND EVIDENCE WILL SHOW THAT A STATE AGENCY HAS IGNORED, WHICH THE LEGISLATURE COULD NOT, NO ONE CAN ARGUE THAT POINT, THE LEGISLATURE COULD NOT WORK OUT, WALKOUT TODAY AND PASS THE TEXT WAY THIS IS BEING IMPLEMENTED. IT IS IN A WAY ASTONISHING, AND, I THINK, A DANGEROUS PRESS DEBT, TO ALLOW -- PRECEDENT, TO ALLOW A PROVISION OF THE CONSTITUTION TO BE IGNORED.

THANK, MR. MILLS.

THANK YOU.

APPRECIATE COUNSELS'S ASSISTANCE IN THIS CASE.