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City of Miami v. Patrick McGrath III

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS CITY OF MIAMI VERSUS McGRATH. MR. SEROTA.

YES. MAY IT PLEASE THE COURT. MY NAME IS JOSEPH SEROTA, FROM THE LAW FIRM OF WHITE SEROTA HELFMAN PASTORIZA AND GUEDES, FROM THE CITY OF MIAMI. I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL. THIS CASE AUTHORIZES THE CITY OF MIAMI TO ENACT AN ORDINANCE TO IMPOSE A 20 PERCENT SURCHARGE ON PUBLIC PARKING, BASED ON FLORIDA STATUTE 218.0537578. THE STATUTE PROVIDES THAT MUNICIPALITIES WHICH HAVE BEEN DECLARED IN A FINANCIAL EMERGENCY AND WHICH HAVE POPULATION OF 300,000 ON APRIL 1, 1999, MAY ENACT A PARKING SURCHARGE.

NOW, THIS IS A TWO-YEAR, THEY HAVE TO HAVE BEEN IN A FINANCIAL EMERGENCY FOR TWO YEARS, BEFORE ??

WITHIN TWO YEARS.

BETWEEN, WITHIN TWO YEARS OF THE ENACTMENT OF THEIR ORDINANCE?

IT IS, WHAT IT SAYS IS TO BE DECLARED IN A STATE OF FINANCIAL EMERGENCY PURSUANT TO THE SECTION, WE KNOW THE ?? WITHIN THE PREVIOUS TWO YEARS.

TWO YEARS BEFORE WHAT? BEFORE THEY ENACT THEIR ORDINANCE?

BEFORE THE ?? YES. BEFORE THEY ENACT THEIR ORDINANCE.

AND THEN IF THEY COME OUT OF THE FINANCIAL EMERGENCY, DOES THAT ORDINANCE STILL, IS IT IN PERPETUITY UNTIL IT SUNSETS?

THE LAW SUNSETS IN 2006. OUR POSITION IS, YES, IT WOULD REMAIN.

SO ONCE YOU MEET THAT PREDICATE, THAT YOU WERE TWO YEARS BEFORE YOU ENACTED THE ORDINANCE, YOU WERE IN FINANCIAL EMERGENCY, THE STATUTE PROVIDED THAT YOU COULD COLLECT THE FEE UNTIL 2006. THAT IS ??

THAT IS THE WAY WE INTERPRETS IT, AND WE BELIEVE THAT THE LEGISLATURE INTENDED, CERTAINLY, THAT CITIES THAT WERE IN FINANCIAL EMERGENCIES MIGHT VERY LIKELY NEED SOME PERIOD OF TIME AFTER THEY COME OUT.

COULD THE LEGISLATURE HAVE DONE THIS, PASSED THIS LAW, BY SAYING THAT THIS LAW PERTAINS TO MIAMI AND JACKSONVILLE?

COULD THEY HAVE?

YES. WOULD IT BE IN VIOLATION OF THE CONSTITUTION?

I THINK THAT THEY COULD HAVE CREATED, AS LONG AS THEY CREATE A CLASS, I THINK THAT IT WOULD, THAT WOULD HAVE BEEN, WELL, FIRST OF ALL, THERE IS THREE, WE BELIEVE THAT THERE IS THREE CITIES INVOLVED. BY CREATING A CLASS, BY NAMING PARTICULAR CITIES, IT

WILL, IT IS UNCLEAR, I WOULD SAY, IN THE CASE LAW. I BELIEVE THAT THERE ARE CASES THAT SAY THAT, IF YOU SIMPLY NAME THE CITIES AND THAT WOULD, IT IS AN IMPROPER DEVICE TO MIMIC THE CITIES. IN THIS CASE, HOWEVER, THAT IS NOT THE WAY THEY DID IT. THEY CREATED IT BY SETTING UP CERTAIN STANDARDS, WHICH ARE REASONABLE AND CREATE A REASONABLE STATUTE, SO ??

DO YOU HAVE A SPECIAL LAW, IF YOU JUST NAME ONE CITY?

THE CASE LAW WOULD SUGGEST THAT. IF YOU JUST NAME ONE CITY OR THAT IT WOULD BE, AND THERE ARE CASES THAT THIS COURT HAS ENTERED, IN WHICH THEY ARE A SINGLE SUBJECT, WHICH ARE IDENTIFIED THAT WAY, IN A CLASS.

THIS IS A MINOR MATTER, BUT I AM NOT SURE I UNDERSTOOD YOUR ANSWER TO THE OPENING QUESTION JUSTICE PARIENTE ASKED, ABOUT THE, INsofar AS THE FINANCIAL EMERGENCY OR PROBLEMS THAT, THE DATE OF WHEN THAT WOULD OCCUR. YOU SAID IT WAS THE, WITHIN TWO YEARS OF THE PASSAGE OF THE ORDINANCE, OR WITHIN TWO YEARS OF THE PASSAGE OF THE LAW BY THE LEGISLATURE?

IT IS WITHIN TWO YEARS OF PASSAGE OF THE ORDINANCE.

OKAY. NOT THE PASSAGE OF THE LAW BY THE LEGISLATURE.

IF I MAY. WITHIN THE PREVIOUS TWO YEARS OF BEING, I BELIEVE, BY THE PASSAGE OF THE LEGISLATURE.

OKAY.

I MEAN, THAT IS AN IMPORTANT ISSUE, IS IT NOT, BECAUSE THAT IS PART OF THIS ANALYSIS OF WHETHER ONLY AN IDENTIFIABLE CITIES WOULD BE COVERED BY THIS, AND THAT IT WOULD BE KNOWN AT THE TIME THAT THE LEGISLATION WAS PASSED. IS THAT CORRECT?

I BELIEVE SO.

YOU GO ON, NOW, THEN.

THE ISSUE HERE, IF I CAN SAY THE SINGLE ISSUE PRESENTED BY THIS APPEAL, IS WHETHER THE CLASSIFICATION OF CITIES CREATED BY THE STATUTE BEARS A REASONABLE RELATIONSHIP TO THE PURPOSE OF THE ACT, AND THAT IS TO USE A PARKING SURCHARGE TO PROMOTE FISCAL SOLVENCY. RESPONDENTS HAVE THE BURDEN TO SHOW THAT THIS CLASSIFICATION IS ARBITRARY. IT CANNOT DO THAT.

ISN'T THAT THE PROBLEM WITH THE DATE? ISN'T THAT THE MAJOR PROBLEM THAT, AS FAR AS THE LAW THAT EXISTED, THAT WAS DECLARED UNCONSTITUTIONAL, THAT, IF SOMEONE, IF ANOTHER CITY OBTAINED THE 300,000 OR MORE AFTER THE EFFECTIVE, AFTER APRIL OF 1999, THEY COULDN'T, AND THEY ALREADY IN FINANCIAL EMERGENCY, THEY ARE NOT ELIGIBLE, AND THAT THE ONLY MUNICIPALITY THAT FITS THESE TWO DISCREET CIRCUMSTANCES WAS THE CITY OF MIAMI, AND THAT IS WHY IT WAS CREATED, TO GIVE RELIEF TO THE CITY OF MIAMI. I AM JUST TRYING TO SEE HOW YOU GET AROUND THAT.

HOW WE GET AROUND IT IS FIRST OF ALL, BY SAYING THAT YOU HAVE THE CLASS IS A REASONABLE CLASS, AND THE CLASS IS NOT SIMPLY THE CITY OF MIAMI. IT IS A CLASS THAT INCLUDES THE OTHER TWO CITIES AS WELL. IT IS NOT, IT IS, THIS IS NOT A SINGLE SUBJECT CLASS. THIS IS A CLASS OF THREE CITIES, INCLUDING TAMPA OR JACKSONVILLE.

BUT IN ANSWER TO JUSTICE SHAW'S QUESTION, IF THE LEGISLATION SAID THE, THIS PERTAINS TO

JACKSONVILLE, I GUESS, IS ARGUABLE, IF IT DOES PERTAIN TO JACKSONVILLE. JACKSONVILLE, TAMPA AND MIAMI. IS THAT A SPECIAL LAW?

IF IT NAMED IT, I WOULD SAY IT IS. I WOULD SAY IT IS. BUT BY DESCRIBING IT IN THIS WAY, IT IS NOT.

NOW, WHAT IS THE PURPOSE FOR THE CONSTITUTIONAL PROVISION THAT PREVENTS THERE BEING SPECIAL LAWS ENACTED FOR NONADVALOREM TAXES? WHY IS THAT IN OUR CONSTITUTION? WHAT IS THE VALUE THAT IS BEING PROTECTED BY PROHIBITING THE LEGISLATURE FROM DOING THAT?

WELL, WITH ONE, IF THERE IS A SPECIFIC CITY INVOLVED, THERE ARE SPECIFIC ENTITIES THAT THERE NEEDS TO BE A REFERENDUM PASSED WITHIN THOSE CITIES. THAT WOULD BE IF IT IS A SPECIAL LAW, THEN YOU NEED TO HAVE A REFERENDUM.

I THOUGHT YOU COULDN'T HAVE A SPECIAL LAW FOR NONADVALOREM TAXES.

YOU CAN HAVE IT BY REFERENDUM.

WHAT IS DONE BY LOCKING IT IN A DISPUTE WITH THE REFERENDUM?

FIRST OF ALL, WE ARE TALKING ABOUT A FINITE PERIOD OF TIME. WE ARE TALKING ABOUT SEVEN YEARS, AND THAT THE LEGISLATURE CAN CREATE, FOR A LIMITED PERIOD OF TIME, CRITERIA, AND THOSE CRITERIA ARE REASONABLE CRITERIA, AND THEY DIRECTLY RELATE TO CHARACTERISTICS WITHIN THIS CLASS, BECAUSE THIS CLASS INCLUDES THE THREE LARGEST CITIES IN THE STATE.

BUT THERE IS NO EXCEPTION TO THIS SPECIAL LEGISLATION. THE GENERAL RULE OF IN VALIDATION, BASED ON THOSE CRITERIA, IS THERE? I AM HAVING DIFFICULTY UNDERSTANDING HOW YOU DISTINGUISH OUR PRIOR CASES IN WHICH WE HAVE SAID, IF THE EFFECT ENDS UP BEING THAT ONLY ONE OR ONLY TWO OR ONLY THREE ACTUALLY ARE GOING TO MEET THAT DEFINITION, AT THE TIME THE LEGISLATION IS PASSED, THAT THAT IS THE EQUIVALENT OF NAMING THOSE LOCAL GOVERNMENTS IN THE LEGISLATION.

WHICH I DON'T BELIEVE ??

I MEAN, ISN'T THAT WHAT OUR PREVIOUS CASES HAVE SAID?

I DON'T THINK SO. I MEAN, FOR EXAMPLE, BOTH ??

WHAT HAVE OUR PREVIOUS CASES SAID, THAT YOU HAVE TO NAME THEM?

NO. FOR EXAMPLE, GOLDEN NUGGET. IT WAS A CASE IN WHICH THIS COURT SAID, UPHELD A STATUTE, WHICH RELATED TO A TAX THAT COULD ONLY BE USED BY CONSTITUTIONALLY? CREATED HOME RULE CHARTER CITIES OR COUNTIES. THOSE WERE ONLY HILLSBOROUGH, MONROE AND DADE. THOSE ARE FINE EIGHT AND CERTAINLY IN THAT LEGISLATION, WHICH THIS COURT UPHELD, THEY COULD JUST AS WE WILL HAVE SAID THAT HILLSBOROUGH, DADE COUNTY, AND MONROE CAN USE THIS TAX.

BUT THAT CLASS COULD BE EXPANDED, COULD IT NOT?

BY AMENDING THE CONSTITUTION ONLY. IN OTHER WORDS, JUSTICE ANSTEAD, THIS COURT, BEFORE, HAS HAD, WHERE FIXED CLOSED CLASSES, BECAUSE THIS GETS BACK TO THE ISSUE OF CLOSED CLASS VERSUS OPEN CLASS. OUR POSITION IS THAT WHAT THIS COURT HAS DONE IN THE PAST IS NOT USED THAT KIND OF ANALYSIS. WHAT THIS COURT HAS DONE IS SAID, IS THIS CLASS

REASONABLY RELATED TO THE PURPOSE OF THE ACT? AND IN THE GOLDEN NUGGET CASE, THIS COURT SAID THAT, EVEN THOUGH THERE ARE THREE COUNTIES, AND ONLY THREE COUNTIES, UNLESS YOU AMEND THE CONSTITUTION, ABSOLUTELY UNDISPUTEBLY CLOSED CLASS, AND YOU COULD USE THE SAME ARGUMENT, THAT WHY NOT JUST NAME THEM, THIS COURT SAID IT WAS OKAY, BECAUSE THOSE THREE COUNTIES HAVE TOURIST-ORIENTED ECONOMIES, AND THEREFORE IT MAKES SENSE TO USE A CONVENTION TAX, WHICH BENEFITS TOURISM. THIS COURT, ALSO, SAID, IN THE CITY OF MIAMI BEACH CASE, THE CITY OF MIAMI BEACH CASE SAID, ON JANUARY 1, 1968, YOU HAVE TO HAVE AMENDED YOUR CHARTER AND YOU HAVE TO HAVE A ?? YOU HAVE TO HAVE POPULATION BETWEEN 330,000 AND 340,000 IN THE COUNTY OR OVER 900,000, AND YOU HAVE TO HAVE AMENDED YOUR CONSTITUTION, EXCUSE ME, YOUR CHARTER, BY JANUARY 1, 1968. AFTER THAT WILL TIME, IT IS ALL OVER. YOU COULD MAKE THE SAME STATEMENT. IN FACT, THIS COURT SAID THAT THE ONLY COUNTIES THAT FELL WITHIN THAT TIME PERIOD IN THE MIAMI BEACH CASE WAS DADE COUNTY AND BROWARD COUNTY, AND ON JANUARY 1, 1968, IT IS FIXED FOR ALL TIME. IF YOU HAVE NOT AMEND YOUR CHARTER BY THAT TIME, YOU CAN NEVER COME IN A CLOSED CLASS.

WHAT IS THE PURPOSE OF THE EXCLUSION OF SPECIAL LEGISLATION? WHAT IS THE UNDERLYING PURPOSE OF HAVING THE RULE THAT PROHIBITS THE LEGISLATURE FROM ACTUALLY ENACTING SPECIAL LEGISLATION THAT WILL ONLY COVER ONE OR TWO OR THREE LOCAL GOVERNMENTS?

WELL, THERE IS NO RULE ABOUT ONE OR TWO OR THREE, BECAUSE THIS COURT HAS HELD UP, WHEN THERE IS ONE, SOMETIMES IT CAN BE OKAY. SOMETIMES IT CAN'T. BUT THE CONCEPT IS THAT, IF IT IS A LOCAL, IF IT APPLIES TO INDIVIDUAL CITIES, AND IT HAS NONADVALOREM TAXATION, IT NEEDS TO BE APPROVED BY REFERENDUM. OTHERWISE THIS, OTHERWISE THE LEGISLATURE CAN DO IT.

IS THE KEY WHETHER OR NOT THERE IS MORE THAN ONE? IS THAT WHAT YOU SAY THE KEY IS?

THE KEY IS WHETHER IT IS RATIONALLY RELATED, WHETHER THE CLASS ??

SO IT HAS NOTHING TO DO WITH ??

BUT THE NUMBERS ??

?? WHETHER IT ONLY APPLIES TO ONE OR A LIMITED NUMBER.

THIS COURT HAS HELD, IN AT LEAST THREE DIFFERENT OCCASIONS WHERE IT IS ONLY ONE AND IT IS A CLOSED CLASS OF ONE, THAT IT IS A SPECIAL LAW AND IMPROPER GENERAL LAW.

WHAT IS RATIONALLY RELATED TO SAY THAT, IF ANOTHER MUNICIPALITY WENT INTO FINANCIAL CRISIS BEFORE THE SUNSETTING, WHY COULDN'T, WHY SHOULDN'T THEY BE ALLOWED TO SIMILARLY ASSESS A TAX?

BECAUSE THIS IS A PARKING SURCHARGE, AND THE PARKING SURCHARGE, IT MAKES SENSE THAT YOU ONLY HAVE PARKING SURCHARGE WITHIN THE LARGEST MUNICIPALITIES, WHICH HAVE THE LARGEST DOWNTOWNS, WHICH WOULD BENEFIT FROM PUBLIC PARKING. I MEAN, IN MANY SMALLER TOWNS, ALL THAT THIS COURT HAS TO DO IS FIND ANY SET OF FACTS THAT COULD REASONABLY UPHOLD THE RATIONALE BASIS OF WHAT THE LEGISLATURE HAS DONE.

WELL, THAT IS, IN OTHER THAN IN A SPECIAL LAW CIRCUMSTANCES. I AM NOT SURE THAT THE CLOSED CLASS CONCEPT THAT YOU SEEM TO SAY HAS BEEN OVERRIDDEN, HAS, IN FACT, BEEN OVERRIDDEN, BECAUSE OTHERWISE THE SPECIAL LAW CIRCUMSTANCE WOULD BE, EXCEPTION OR THE PROHIBITION WOULD PROBABLY BE MEANINGLESS IN THIS AREA.

WELL, THIS COURT, AGAIN, HAS, IN GOLDEN NUGGET, WHERE THERE WAS ONLY THREE COUNTIES

THAT WOULD EVER HAPPEN, UNLESS YOU AMENDED THE CONSTITUTION, SAID ??

WELL, NOW, WHO, I THOUGHT THAT ANY MUNICIPALITY THAT, THEN, ADOPTED A HOME RULE CHARTER, WOULD BE ABLE TO QUALIFY UNDER THE GOLDEN NUGGET.

NO. THAT IS NOT CORRECT, BECAUSE UNDER THE GOLDEN NUGGET CASE, IT TALKS ABOUT STATUTE. I BELIEVE 120, HOME RULE CHARTER STATUTE, WHICH IS A CONSTITUTIONAL HOME RULE CHARTER STATUTE, OF WHICH THERE IS ONLY THREE, AND THIS COURT SPECIFICALLY STATED, IN THE GOLDEN NUGGET CASE, THAT DADE, HILLSBOROUGH AND MONROE ONLY POTENTIALLY MEET THIS DEFINITION BUT ONLY DADE COUNTY HAS ADOPTED IT. THE GOLDEN NUGGET CASE IS VERY COMPARABLE TO WHAT WE HAVE GOT HERE. THEY HAD THREE POTENTIAL CITIES, THREE POTENTIAL COUNTIES, AND ONLY THREE POTENTIAL COUNTIES, BECAUSE THAT IS WHAT THE CONSTITUTION ONLY NAMES THREE POTENTIAL COUNTIES.

BUT WHAT DO YOU READ THAT TO SAY, THAT IF YOU NAME THREE COUNTIES, IF THOSE THREE COUNTIES HAD BEEN NAMED, WOULD IT HAVE BEEN A SPECIAL ACT?

THIS COURT HAS ??

AS OPPOSED TO SAYING ALL COUNTIES WITH A POPULATION OF "X" AMOUNT, THIS APPLIES TO. IS THAT THE DISTINCTION YOU ARE TRYING TO MAKE?

JUSTICE SHAW, ALL THAT I CAN DO IS INTERPRET THE CASES THAT THIS COURT HAS RULED.

WHAT DO YOU THINK THEY SAY? THAT IS WHAT WE ARE TRYING TO GET FROM YOU.

WHAT I THINK THEY SAY IS THAT, IF YOU HAVE A CLASS, HOWEVER THAT CLASS IS CONSTITUTED, THAT IS REASONABLY RELATED TO THE PURPOSE OF THE ACT, THAT IT, EVEN IF IT IS A LIMITED CLASS, AND, AGAIN, THIS COURT HAS A LIMITED CLASS. THE GOLDEN NUGGET CASE WAS AN ABSOLUTE LIMITED CLASS, AND I BELIEVE THAT THIS COURT SAID IF IT IS REASONABLY RELATED ??

IF IT DEFINED HILLSBOROUGH, WOULD THAT BE A SPECIAL ACT?

ACCORDING TO THE GOLDEN NUGGET CASE, I DON'T KNOW IF IT WOULD BE OR NOT. ALL I CAN SAY IS THAT THIS COURT RULED IN GOLDEN NUGGET, THAT, IF YOU LIMIT IT TO EACH COUNTY, AS DEFINED IN 125.011, 125.011, LIMITS IT TO THE CONSTITUTIONAL COUNTIES, HOME RULE COUNTIES, AND THOSE ARE ONLY THREE, THIS COURT UPHELD IT.

DO YOU HAVE ANY OTHER CASES BESIDES GOLDEN NUGGET?

YES, I DO.

THAT THAT ?? BESIDES GOLDEN NUGGET?

YES, I DO.

THAT THAT PROPOSITION HAS BEEN HELD?

YES, I DO. THE CITY OF MIAMI BEACH CASE.

WHAT SEEMS TO BE THE COMMON THREAD THAT RUNS THROUGH THOSE CASES?

THE COMMON THREAD IS THE SIGNIFICANT PUBLIC PURPOSE. THAT IS WHAT THE COMMON THREAD IS. IN GOLDEN NUGGET, THIS COURT SAID THAT IT HELD THAT BECAUSE OF THE IMPORTANCE OF THE TOURIST INDUSTRY AND BECAUSE THESE THREE COUNTIES ARE, HAVE

TOURIST-ORIENTED ECONOMIES, THEN THEREFORE THEY DID IT. THE SAME THING IN THE MIAMI BEACH CASE. IT SAID THE EXACT SAME THING. THIS COURT HELD THAT, BECAUSE IN THE MIAMI BEACH CASE, IN THE MIAMI BEACH CASE, THE COURT FOUND THAT THERE WAS ONLY TWO CITIES THAT WOULD EVER, EVER BE ABLE TO USE THAT TAX. EVER BE ABLE TO USE IT! JUST TWO! AND THIS COURT MADE THE SAME CONCLUSION. IT SAID THAT, IN LIGHT OF THE PURPOSE OF 67.930, THIS IS THE MIAMI BEACH CASE, AND THE STATE'S INTEREST IN THE PROMOTION AND FURTHER DEVELOPMENT OF THE TOURIST INDUSTRY, WE HOLD THAT THE FOLLOWING CLASSIFICATIONS ARE REASONABLE. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

IN ANY CASE, THIS COURT HAS HELD THAT, IF YOU HAVE A REASONABLE BASIS AND YOU HAVE A STRONG PUBLIC PURPOSE, AND IN REBUTTAL, I WOULD LIKE TO TAKE THE TIME TO TALK ABOUT IT, THAT THIS IS THE MOST SIGNIFICANT PUBLIC PURPOSE YOU CAN HAVE, AND THAT IS TO UPHOLD THE FISCAL SOLVENCY OF CITIES AND TO CONTINUE TO PROVIDE SERVICES TO THOSE CITIES.

MAY IT PLEASE THE COURT. MY NAME IS TOM KORGE, REPRESENTING THE APPELLEE, PATRICK McGRATH. I AM HERE WITH MY CO-COUNSEL MARK HEISE, AND I WILL BE SPEAKING FOR ALL THE APPELLEES, YOUR HONORS. THE ULTIMATE DECISION TO BE DECIDED BY THE COURT IS WHETHER THE CITY WILL GET A REFUND OF THE CITY'S ILLEGAL PARKING TAX. THE THIRD DISTRICT HAS OVERTURNED IT AS AN UNCONSTITUTIONAL SPECIAL LAW, BECAUSE IT SPECIFIES BY POPULATION SIZE, THAT IT IS FIXED AND FROZEN ON A PARTICULAR DATE.

I WAS GOING TO ASK, HOW DOES, MECHANICALLY HOW DO YOU GO ABOUT DOING THAT?

I AM SORRY.

THE REFUND. ANOTHER REFUND.

HOW ARE THESE SURCHARGES PAID?

IF YOU GO AND PAY AT A PARKING LOT, YOU PAY AN UPCHARGE OF 20 PERCENT ON THE CHARGE. IF YOU PAY IT WEEKLY, YOU PAY IT WEEKLY. IF YOU PAY IT MONTHLY, ON A MONTHLY PACES. THE TAX IS IMPOSED AS A TRANSACTION.

WOULD I HAVE TO SHOW A RECEIPT IF I PARKED FOR AN HOUR, AND PAY THE SURCHARGE?

IN RESPECT TO GETTING THE MONEY BACK, THIS IS A CLASS ACTION, AND I DARESAY NOT ALL OF THE MONEY WILL ULTIMATELY BE REFUNDED, BECAUSE I WOULD SUSPECT WE ARE NOT GOING TO BE ABLE TO IDENTIFY EVERY SINGLE PERSON WHO HAS PAID THIS TAX. THAT IS NOT THE ISSUE HERE. THE ISSUE HERE IS WHETHER IT MUST BE REFUNDED. AND IF IT MUST BE REFUNDED, THEN WE ARE GOING TO HAVE TO GO BACK TO THE TRIAL COURT FOR CLASS CERTIFICATION AND PUT TOGETHER PROCEDURES, NONE OF WHICH HAS BEEN DONE YET, TO NOTIFY THE CLASS WITHIN THE CONFINES OF DUE PROCESS, SO THAT THEY WILL HAVE AN OPPORTUNITY TO CLAIM THEIR REFUND.

HOW ABOUT COMING BACK, THOUGH, TO THE ILLEGALITY OF THE TAX, AND THAT IS THAT YOUR OPPONENT SAYS THAT CLEARLY THERE ARE CASES OUT THERE, WHERE WE HAVE, IN ESSENCE, APPROVED THE SAME SORT OF SITUATION IN PRIOR DECISIONS, AND THAT WE SHOULD LOOK TO, IF THERE IS ANY, REALLY, RATIONAL BASIS, PUBLIC POLICY FOR THE PASSING OF THIS LEGISLATION THAT WE SHOULD UPHOLD IT. THAT IS THE THIRD DISTRICT GOT IT WRONG, IN TERMS OF THEIR HOLDING, SO WOULD YOU PLEASE ADDRESS THAT.

OBVIOUSLY I DON'T THINK THE THIRD DISTRICT GOT IT WRONG. MORE TO THE POINT, THE CASES

THAT OPPOSING COUNSEL HAS BROUGHT TO YOUR ATTENTION ARE DISCUSSED THOROUGHLY IN OUR BRIEFS, AND THEY ARE NOT ON POINT. FIRST, DEALING WITH THE GOLDEN NUGGET CASE, THAT WAS NOT A CLOSED POPULATION CLASSIFICATION. THAT WAS A CLASSICS OF COUNTIES OPERATING ?? A CLASSIFICATION OF COUNTIES OPERATING UNDER HOME RULE CHARTER, AND THE CLASS WAS OPEN TO ANYBODY THAT OPERATES UNDER A CONSTITUTIONAL HOME RULE CHARTER. THERE WAS UNIFORMITY OF TREATMENT, WITH RESPECT TO EVERY MEMBER OF THAT CLASS. IN THE CASE OF THE CITY OF MIAMI BEACH RESORT TAX OR WHATEVER TYPE OF TAX THAT WAS, IN THAT CASE, THERE WAS A POPULATION CLASSIFICATION, AND IT WAS OPEN.

BEFORE YOU LEAVE THAT POINT, BUT YOU ONLY HAD, I THINK, THREE COUNTIES OR SOMETHING THAT HAD HOME RULE AT THAT POINT.

THAT'S CORRECT.

IS THAT CORRECT?

THAT IS ABSOLUTELY CORRECT.

SO PRACTICALLY, YOU DID HAVE A CLOSED CLASS.

NO. THAT IS NOT THE PRACTICAL IMPORT. THE PRACTICAL IMPORT IS IT WAS A CLOSED CLASS, BECAUSE EVERYBODY WHO QUALIFIED THAT THAT CLASS RECEIVED THE SAME TREATMENT. NOW, LET'S GO BACK TO THAT STATUTE. EVERYBODY WHO CAN QUALIFY IN THIS CLASS, EVERYBODY WITH A POPULATION OF 300,000 OR MORE. NO. IF HIALEAH INCREASES ITS POPULATION SIZE OR ORLANDO OR ST. PETERSBURG OVER 300,000, THEY WILL NOT QUALIFY IN THIS CLASS, BECAUSE THE CLASS WAS FROZEN ON APRIL 1, 1999. THAT IS WHAT MAKES IT AN UNCONSTITUTIONAL SPECIAL LAW.

THIS IS THE TWO-YEAR RETROSPECTIVE LOOK AT WHOEVER IS DECLARED IN THE CLASS?

NO. THE TWO-YEAR LOOK-BACK RULE IS VERY SIMPLY THAT, IF YOU MEET THE POPULATION CLASSIFICATION THERE, IS ANOTHER PART OF THE CLASSIFICATION THAT NEEDS TO BE MET AS WELL, AND THAT IS THAT THE MUNICIPALITY HAS TO BE DECLARED IN A STATE OF FINANCIAL EMERGENCY, UNDER THE EXISTING STATUTE THAT WE ARE DEALING WITH RIGHT NOW. IT HAS BEEN DECLARED IN A STATE OF FINANCIAL EMERGENCY, WITHIN THE PRIOR TWO FISCAL YEARS. AS A RESULT, IF, IN THIS CASE, IN 1999, WHEN THE TAX WAS IMPOSED, THE CITY OF MIAMI WAS NOT DECLARED IN A STATE OF FINANCIAL EMERGENCY. IT HAD ALREADY EMERGED FROM A STATE OF FINANCIAL EMERGENCY, BUT UNDER THE STATUTE AS WRITTEN, IT COULD STILL IMPOSE THE TAX FOR A LIMITED PERIOD, LOOKING BACK TWO YEARS TO ITS PRIOR TWO FISCAL YEARS.

AND THEN IT WOULD, I JUST WANT TO MAKE SURE HOW IT OPERATES. AND THEN THE TAX WOULD BE IMPOSED UNTIL 2006?

NO. THEN THE TAX CAN BE IMPOSED UNTIL THEY ARE NO LONGER IN THE CLASS. REMEMBER THERE ARE TWO PARTS TO THE CLASS. POPULATION AND HAS BEEN DECLARED IN A STATE OF FINANCIAL EMERGENCY WITHIN THE PREVIOUS TWO FISCAL YEARS.

SO IF SOMEBODY, ANOTHER MUNICIPALITY HAD MET THE POPULATION THRESHOLD BUT DIDN'T HAVE A FINANCIAL EMERGENCY FOR TWO YEARS BEFORE THE EFFECTIVE DATE OF THE LEGISLATION, AND THEY WENT INTO FINANCIAL EMERGENCY, THEY COULDN'T HAVE THAT TAX?

THAT IS LITERALLY THE WAY IT IS WRITTEN. THAT'S CORRECT. AND IT WAS WRITTEN THAT WAY. LET ME EMPHASIZE IT WAS WRITTEN THAT WAY, BECAUSE WHEN IT WAS WRITTEN, THE CITY OF MIAMI WAS NO LONGER IN A STATE OF FINANCIAL EMERGENCY. THIS STATUTE WAS, IN TRUTH

AND FACT, WRITTEN FOR THE CITY OF MIAMI. IT WAS WRITTEN IN 1999, THE CITY HAD BEEN OUT OF A STATE OF FINANCIAL EMERGENCY IN 1999. IT HAD A DEAL WITH THE GOVERNOR, AN INTERLOCAL AGREEMENT OR INTERCOOPERATION AGREEMENT, WHERE THEY WOULD BE UNDER THIS FINANCIAL OVERSIGHT FOR TWO YEARS AFTER THEY ?? EXCUSE ME, THREE YEARS AFTER THEY HAD BEEN OUT OF A STATE OF FINANCIAL EMERGENCY. THEY HAD A TWO-YEAR LOOK-BACK THAT THEY PUT INTO THE STATUTE. THIS WAS ALL DRAFTED JUST FOR THE CITY OF MIAMI, JUST FOR THEIR CIRCUMSTANCE.

COULD YOU EXPLAIN, BECAUSE I AM NOT SURE I TOTALLY UNDERSTAND. TELL ME WHY IT IS THAT THE CONSTITUTION PREVENTS THE LEGISLATURE FROM ENACTING SPECIAL LAWS THAT ALLOW MUNICIPALITIES TO IMPOSE NONADVALOREM TAXES AND, ALSO, CAN THEY GET AROUND THAT BY DOING THIS BY LOCAL REFERENDUM, OR IS THAT A FREE STANDING, IS THAT PART OF THE SPECIAL LAW CONSTITUTIONAL, PROHIBITION NOT APPLY?

ARTICLE VII FLATLY PROHIBITS NONADVALOREM TAXATION BY LOCAL GOVERNMENT, EXCEPT PURSUANT TO GENERAL LAW. IT IS RIGHT THERE, SECTION 1?A. YOU CAN'T MISS IT. THERE IS NO EXCEPTION WHATSOEVER. IT IS NOT IMPOSED BY NONADVALOREM TAX. IT IS NOT ALLOWED.

WHAT IS THE CONSTITUTIONAL PURPOSE FOR THAT PROHIBITION, REGARDLESS REGARDING NONADVALOREM TAXES. IT IS MUCH EASIER TO GIVE IT AWAY PIECEMEAL BY SPECIAL LAW THAN BY A SPECIAL LAW THAT APPLIES UNIFORMLY. I CAN ONLY ASSUME THE REASON FOR THAT IS, AND THIS COMES FROM YOUR ALACHUA COUNTY VERSUS ADAMS CASE. I CAN ONLY ASSUME THE REASON FOR THAT IS BECAUSE POLITICALLY, IT IS MUCH EASIER TO ?? ?? [TECHNICAL DIFFICULTIES] THIS COURT HAS RECOGNIZED THAT VERY PRINCIPLE IN THE CASE OF ALACHUA COUNTY VERSUS ADAMS.

CAN THE LEGISLATURE CURE IT BYPASSING A BROADER LAW AFTERWARDS?

CAN IT GENERALLY? YES. CAN IT IN THIS CASE? IT CAN CURE IT PROSPECTIVELY BUT NOT RETROSPECTIVELY. IT HAS NOT CURED IT RETROSPECTIVELY HERE BECAUSE THEY SAID ON SO. WHEN YOU GO TO THE AMENDMENT PASSED IN SPECIAL SESSION B, YOU HAVE AN AMENDMENT DATE THAT IS PROSPECTIVE. ITS EFFECTIVE DATE IS NOVEMBER 30, 2001. SO IT DOESN'T CURE THE PROBLEM RETROSPECTIVELY.

IS THERE ANY INDICATION IN THAT LEGISLATION THAT THE LEGISLATURE INTENDED IT TO APPLY RETROSPECTIVELY?

NO. NOT IN THAT. AND IN THE SUBSEQUENT RATIFICATION, WHICH RATIFIED THE CITY'S ORDINANCE, IT WAS INTENDED TO RATIFY IT, AND I CAN ONLY ASSUME THAT THE CITY WENT TO THE LEGISLATURE TO GET THAT IN THE HOPES OF KEEPING ITS MONEY. THAT ALSO DOES NOT APPLY THE AMENDMENT RETROSPECTIVELY, BECAUSE IT CANNOT BE APPLIED RETROSPECTIVELY. THIS AMENDMENT IS INCAPABLE OF THAT. HOW DO YOU IMPOSE A PARKING TAX RETROSPECTIVELY. THIS LEGISLATURE ENACTED AN INCREASE IN THE SALES TAX EFFECTIVE JANUARY 1 OF 2001. HOW ARE THEY GOING TO COLLECT IT? SAME THING HERE. IT IS REALLY NOT POSSIBLE. IF MUNICIPALITY GOES INTO, YOU KNOW, RECEIVERSHIP OR IN FINANCIAL EMERGENCY, LIKE TAMPA AND NEXT MONTH, AND THEY PUT TOGETHER A PLAN, FINANCIAL RECOVERY PLAN THAT INCLUDES THE TAX, YOU KNOW, A 20 PERCENT PARKING SURCHARGE, THEY ADOPTED IN JULY, CAN THEY MAKE IT RETROACTIVE TO MARCH 1? I DON'T THINK SO, AND I THINK YOUR COONLINE CASE SAYS THAT. THAT WAS THE VERY ISSUE IN COONLINE. I THINK THIS COURT CLEARLY INDICATED THAT NOT ALL RETROACTIVE TAXES ARE POSSIBLE. YOU COULDN'T CURE, YOU TOLD THE LEGISLATURE IN NO UNCERTAIN TERMS, LEGISLATURE, YOU CANNOT CURE THE COMMERCE CLAUSE BY IMPOSING A RETROACTIVE TAX ON THE IN-STATE INTERESTS THAT WERE FAVORED BY THE UNCONSTITUTIONAL TAX THAT YOU HAD DECLARED THIS, THIS COURT HAD DECLARED UNCONSTITUTIONAL.

WOULD YOU ADDRESS THE REFUND ISSUE IN MORE BROAD TERMS.

YES. THIS COURT IS DIVIDED ON WHETHER REFUNDS, WHETHER THE CITY CAN INVOKE EQUITY TO AVOID THE REFUND. THE MAJORITY SAYS, IF A CITY CAN INVOKE EQUITY TO AVOID A REFUND, AND THAT MAJORITY RULE IN DRYDEN VERSUS MADISON COUNTY IS VERY CLEAR THERE ARE THREE CONDITIONS. THE FIRST IS GOOD FAITH RELIANCE ON THE STATUTE. THE SECOND IS THAT THE TAXES APPLY ACROSS THE BOARD. THAT IS, IT IS NOT DISCRIMINATORY. AND THE THIRD IS THAT THE TAXES ARE USED TO BENEFIT THE TAXPAYERS. GOOD USE HERE. ANOTHER WAY OF SAYING THAT THE CITY HAS TO COME WITH CLEAN HANDS TO INVOKE EQUITY, THE STATUTE, ON ITS FACE, IS UNCONSTITUTIONAL. THE CIRCUIT COURT RULED IT CONSTITUTIONAL. YOU READ THE CIRCUIT COURT'S OPINION AND YOU WONDER HOW THE JUDGE ARRIVED AT THAT CONCLUSION. PER CURIUM, SHE WAS REVERSED, BASED ON 70 YEARS OF PRECEDENT FROM THIS COURT.

SO IS THIS SOMETHING, THOUGH, THAT THIS COURT, IF WE UPHOLD THE OPINION OF THE, ESPECIALLY THE THIRD DISTRICT, THE REFUND ISSUE, REALLY, AND WHETHER YOU MEET THE CRITERIA OF DRYDEN OR NOT, HAS NOT BEEN LITIGATED CORRECTLY, CORRECT?

IT DOESN'T NEED TO BE LITIGATED. LET ME EXPLAIN WHY. I WILL GO THROUGH THE OTHER TWO CRITERIA. FIRST OF ALL, WITH RESPECT TO GOOD FAITH RELIANCE, WHEN THE THIRD DISTRICT RULED THEY COULDN'T CONTINUE TAKING A TAX WHICH THEY HAVE DONE, SO FOR THAT PER CURIUM, THE TAX HAS TO BE NONDISCRIMINATORY. IT IS VERY CLEAR FROM DRYDEN, AND THIS TAX IS CLEARLY DISCRIMINATORY. UNDER THE STATUTE, THE CLAUSE ONLY APPLIES TO COMMERCIAL PARKING, FACILITIES. IT DOES NOT APPLY TO RESIDENTIAL PARKING, AND RESIDENTIAL PARKING, IN FACT, IS EXEMPT FROM THIS TAX. THE THIRD REQUIREMENT, A COMMENSURATE BENEFIT, IS TOTALLY LACKING HERE BY STATUTE. UNDER THE STATUTE, PARAGRAPH 5?B EXPRESSLY DIRECTS THE CITY, AS A MATTER OF LAW, TO TAKE 60 TO 80 PERCENT OF THESE PARKING TAXES TO USE IT TO REDUCE ADVALOREM TAXES OR OTHER NONADVALOREM TAXES AND THE BALANCE TO INCREASE YOUR RESERVES AT A CERTAIN LEVEL AND AFTER THAT MEET THAT SERVICE. NO BENEFIT WHATSOEVER IS PROVIDED TO THE TAXPAYERS, SO UNDER NORMAL CIRCUMSTANCES, YES, YOU COULD GO TRY THE ISSUE, BUT STATUTE, ON ITS FACE, INDICATES THAT THERE IS NO EQUITY HERE, THAT THE CITY CAN INVOKE, EVEN IF THEY ACTED IN GOOD FAITH, WHICH QUITE FRANKLY I DON'T THINK THEY DID. THEY WENT TO THE LEGISLATURE. THEY ASKED THE LEGISLATURE TO ENACT IT. THEY SOLD IT AS A SPECIAL LAW. THEY PACKAGED IT UP UNDER THE GUISE OF A GENERAL LAW, AND HERE WE ARE.

THE QUESTION ABOUT THE LEGISLATION THAT WAS PASSED IN NOVEMBER, THERE IS AN ARGUMENT YOU MAKE THAT ASSUMING THAT THIS COULD BE SORT OF SUPERIMPOSED OR SUBSTITUTED FOR THE LAW THAT WAS IN EFFECT IN 1999, THAT WHAT THEY HAVE DONE, EVEN THOUGH THEY HAVE TAKEN OUT THE DATE OF APRIL OR AUGUST OF 1999, THEY CHANGED THE REQUIREMENT CONCERNING FINANCIAL EMERGENCY, AND THAT YOUR ARGUMENT IS THAT THAT WOULD NOT EVEN APPLY TO THE CITY OF MIAMI?

THAT'S CORRECT. I DO WANT TO POINT OUT THAT THEY DID NOT CORRECTLY CURE THE CLOSED POPULATION CLASSIFICATION, AND I WILL GET BACK TO THAT IN A MINUTE, BUT WITH RESPECT TO THE TWO-YEAR LOOK BACK, AS I CALL IT, THEY TOOK OUT THE TWO-YEAR LOOK-BACK, WHICH MEANS THAT THE MUNICIPALITY HAS TO BE DECLARED IN A STATE OF FINANCIAL EMERGENCY, WHEN IT IMPOSES THE TAX, NOT IN A PRIOR FISCAL YEAR, SO, AND IT STARTS TO BE MORE LOGICAL, APPLYING THE STATUTE IN THAT RESPECT. THE RESULT OF THAT IS THAT, BECAUSE THE CITY WAS NOT IN A STATE OF FINANCIAL EMERGENCY IN 1999, WHEN IT FIRST IMPOSED THE TAX AND STILL IS NOT, THE CITY COULD NOT AND CANNOT IMPOSE THIS TAX. NOW, GOING BACK TO THE FROZEN POPULATION CLASSIFICATION, WHAT THEY DID IS THEY CREATED A RATHER PECULIAR POPULATION CLASS. IT NOW READS 300,000 OR MORE ON OR AFTER APRIL 1, 1999. WELL, THE CITY OF MIAMI, ON APRIL 1, 1999, EVERYONE ADMITS, HAD A POPULATION OF 300,000 OR MORE, NO MATTER WHAT HAPPENS IN THE FUTURE. IF THE CITY DROPS DOWN TO

250,000 IN POPULATION, IT STILL IS ELIGIBLE, UNDER THE STATUTE, TO USE IT. ACCORDING TO THE CITY'S THEORY, UNTIL THE STATUTE SUNSETS, BUT THE HARSH REALITY IS THAT THAT IS NO DIFFERENT THAN NAMING THE CITY OF MIAMI. SO ANOTHER WAY TO READ THE STATUTE IS THE STATUTE APPLIES TO THE CITY OF MIAMI AND ANY MUNICIPALITY WITH A RESIDENT POPULATION OF 300,000 OR MORE, AFTER APRIL 1, 1999, SO YOU SEE WE HAVE GOT A SPECIAL LAW STILL IN HERE, AND THEN THEY TRIED TO OPEN THE CLASS FOR EVERYBODY ELSE, BUT THEY HAVE KEPT IT CLOSED FOR MIAMI. MIAMI IS IN THERE, NO MATTER WHAT.

WHAT WAS, WHAT, THIS IS A PRACTICAL MATTER. YOU HAD A CITY THAT WAS IN FINANCIAL DISTRESS, AND YOU HAD A LEGISLATURE THAT WANTED TO TRY TO DO SOMETHING TO ASSIST THE CITY IN GETTING OUT OF THAT FINANCIAL EMERGENCY. WHAT OTHER OPTIONS, I MEAN, WASN'T THIS A GOOD SOLUTION?

WELL, FIRST OF ALL, IT IS A MATTER OF POLICY, IT IS A BAD SOLUTION, BECAUSE THE MONEY DIDN'T GO FOR THE PURPOSE OF RESTORING THE CITY'S FINANCIAL HEALTH. IT WENT AS TAX CUTS TO THE RESIDENTS! SO IN TERMS OF POLICY, IT IS BAD POLICY, BUT, YOU KNOW, THIS COURT ISN'T HERE TO RULE ON WHAT IS GOOD POLICY AND BAD POLICY.

I GUESS I AM STILL TRYING TO UNDERSTAND THE CONSTITUTIONAL VALUE THAT WE ARE PROTECTING, BECAUSE IT DOES SEEM THAT OUR CASES, THE GOLDEN NUGGET, CITY OF MIAMI, IT IS REALLY HARD TO SEE WHERE THAT LINE IS DRAWN, WHEN YOU ARE HAVING LIMITED CLASSES, EVEN THOUGH THEY ARE NOT, QUOTE, CLOSED CLASSES, BUT AS A PRACTICAL MATTER THEY ARE CLOSED BECAUSE THE CONDITIONS ARE SO NARROW THAT YOU CAN ACTUALLY NAME WHO, WHICH MUNICIPALITIES THEY WOULD BE, SO IF YOU ARE LOOKING TO ENACT THE LAW THAT IS ONLY GOING TO AFFECT TWO OR THREE MUNICIPALITIES, WHETHER YOU NAME THEM OR WHETHER YOU DESCRIBE THEM, AND I AM NOT SURE I SEE THE DIFFERENCE FROM A CONSTITUTIONAL SENSE, YOU KNOW.

I THINK WHAT YOU ARE REALLY ARGUING IS THAT, YOU KNOW, MAYBE THE COURT HAS GONE TOO FAR IN REACHING TO FIND STATUTES THAT ARE marginally constitutional, TO BE constitutional. BUT ONE THING IS VERY CLEAR. IF YOU CAN USE A CLOSED POPULATION CLASSIFICATION, TO EFFECTIVELY DESCRIBE THE MUNICIPALITY, SO THAT NOBODY ELSE CAN EVER QUALIFY, THEN YOU GO THROUGH THE CONSTITUTION. THERE ARE A WHOLE SERIES OF LIMITS AND RESTRICTIONS ON THE ENACTMENT OF SPECIAL LAWS, AND THEY BECOME MEANINGLESS. TOTALLY, TOTALLY MEANINGLESS, AND THAT IS A MAJOR POINT. I MEAN, THAT ALONE MAKES THIS AN EXTREMELY IMPORTANT CASE. IF YOU ALLOW THE LEGISLATURE, AS YOU HAVE NEVER DONE BEFORE, AND AS THEY CLEARLY KNEW THAT POPULATION CLASSIFICATION CANNOT BE CLOSED, KATIE?BAR?THE?DOOR FOR THE LEGISLATURE! IT IS EASY. I CAN FIGURE OUT LOTS OF WAYS. JUST GET THE LATEST STATE CENSUS AND RUN YOUR NUMBERS. IT IS EASY TO DO, AND IT IS GOING TO BE A MESS. IT IS GOING TO BE AN ABSOLUTE MESS. YOU KNOW, IN TERMS OF THIS OVERALL CASE, THERE IS REALLY NO QUESTION, NONE WHATSOEVER, THAT THE CLOSED POPULATION CLASSIFICATION IS PROHIBITED BY, YOU KNOW, 70 YEARS OF PRECEDENT. THAT IS WHY, WHEN THE CONSTITUTION WAS REVISED, THE POPULATION, AFTER ALL, REPEALED AND REENACTED AS LOCAL ORDINANCES, THE LEGISLATURE CLEARLY SAW AND EXPLAINED THAT THIS IS A CONTINUING CONSTITUTIONAL PROBLEM.

WOULD YOU JUST, I STILL, I AM STILL HAVING TROUBLE WITH HOW YOU TRIED TO DISTINGUISH THIS CLASSIFICATION FROM THE GOLDEN NUGGET CLASSIFICATION, BECAUSE IN THE GOLDEN NUGGET CLASSIFICATION, WASN'T THAT CLASSIFICATION FIXED AT THE TIME THAT THE STATUTE WAS ENACTED, SO THAT IT WAS ONLY TWO OR THREE COUNTIES, ALSO? ALTHOUGH THEY REFERRED TO IT AS, IN TERMS OF HOME RULE, PURSUANT TO THE STATUTE AND THE CONSTITUTIONAL PROVISION, IT STILL WAS A VERY LIMITED CLASS. CORRECT?

YES.

SO HOW DOES THAT DIFFER? I DON'T UNDERSTAND HOW IT DIFFERS FROM THIS CLASS.

WELL, THE COURT, IN GOLDEN NUGGET, FOUND THAT THERE WAS A REASONABLE RELATIONSHIP BETWEEN CONSTITUTIONAL, OPERATING UNDER A CONSTITUTIONAL HOME RULE CHARTER AND THE PURPOSE OF THE STATUTE. THEY FOUND THAT. ONCE THEY FOUND THAT, THEY WENT, AND IT WAS CLEAR THAT IT WAS OPEN CLASS. IT WAS NOT A ??

SO IN THIS INSTANCE, YOU ARE SAYING THAT THERE IS NO RATIONAL RELATIONSHIP BETWEEN THE 300,000 POPULATION REQUIREMENT AND THE PURPOSE OF THE ??

NO, I AM NOT SAYING. THAT I AM SAYING THERE IS NO RATIONAL RELATIONSHIP BETWEEN THE 300,000 OR MORE ON APRIL 1, 1999. THERE IS NOTHING SPECIAL ABOUT APRIL 1, 1999. THAT IS WHAT I AM SAYING. MR.^CHIEF JUSTICE

THANK YOU, COUNSEL.

THANK YOU. MR.^CHIEF JUSTICE

REBUTTAL.

HOW MUCH TIME DO I HAVE REMAINING? OKAY. THANK YOU. FIRST OF ALL, I WOULD LIKE TO CLARIFY SOMETHING THAT I SAID EARLIER. IT IS, THE CLASS IS CREATED, IF YOU HAVE, IF IT IS TWO YEARS PRIOR TO THE TIME THAT YOU PASSED THE ORDINANCE, NOT AT THE TIME THE LEGISLATURE, SO I JUST WANTED TO CLARIFY THAT. BUT ??

IS THERE A DISAGREEMENT ON THAT? BECAUSE IT SOUNDS LIKE YOUR COUNSEL SAYS IT IS TWO YEARS BEFORE ??

I DON'T THINK SO. BECAUSE WE STILL HAVE THREE CITIES THAT ARE INVOLVED. WE HAVE BEEN TALKING AND LITIGATING THIS THING, AS THOUGH WE HAVE GOT THREE POTENTIAL CITIES INVOLVED, AND IN ORDER TO DO THAT, I THINK YOU NEED TO DO IT BETWEEN TWO YEARS PRIOR TO THE ORDINANCE.

HAS ANOTHER CITY TRIED TO LEVY THIS TAX?

THEY HAVE NOT BEEN DECLARED FINANCIAL EMERGENCY, ALTHOUGH THEY HAVE MET THE SECOND ONE.

BUT YOU WOULD AGREE, IF IT IS INTERPRETED AS HAVING TO BE TWO YEARS BEFORE THE DAY OF THE LEGISLATION.

IT WOULD ONLY BE ONE.

THAT WOULD SORT OF DESTROY, THAT WOULD BE COUNTER TO YOUR ARGUMENT. THAT WOULD NOT BE RATIONAL.

CORRECT. BUT IT IS TWO YEARS BEFORE THE TIME THEY PASSED THE ORDINANCE, WHICH IS RATIONAL, BECAUSE IT RELATES TO THE SIZE AND WHAT THEY ARE USING. I WOULD LIKE TO FOLLOW UP, IF I COULD WITH JUSTICE QUINCE'S POINT. I THINK THEY ARE IRREFUTABLE, AND THE ONLY THING IT SAYS WITHIN THE GOLDEN NUGGET IS THAT IT OPERATE UNIFORMLY AMONGST THE CLASS. THERE IS NO QUESTION HERE THAT, IF JACKSONVILLE OR TAMPA OR THE CITY OF MIAMI MEET THOSE CRITERIA, THEN THEY GET THAT SAME RESULT, SO IT IS DOES OPERATE UNIFORMLY BETWEEN THE CLASS, AND THAT IS WHAT THE LAW ALLOWS. GOLDEN NUGGET IS IRREFUTEBLY CLOSED. THIS COURT UPHELD IT. AND WHAT THIS COURT DID IS, IT LOOKED AT THE PUBLIC POLICY. WHAT COULD BE MORE SIGNIFICANT PUBLIC POLICY THAN A CITY WHO IS IN

FINANCIAL EMERGENCY? THE CITY IS IN EMERGENCY, AND THE CITY CAN'T PROVIDE SERVICES TO ITS CITIZENS. WHAT COULD BE MORE IMPORTANT THAN THAT, AS OPPOSED TO TOURISM OR THE CITRUS INDUSTRY, WHICH IS, OF COURSE, VERY IMPORTANT TO THIS STATE, BUT WHAT COULD BE MORE IMPORTANT THAN THIS PUBLIC POLICY? IF IT IS UPHeld IN THOSE CASES, IT HAS GOT TO BE UPHeld HERE.

WHAT ABOUT THE CLASSIC MILES CASE?

CLASSIC MILES IS A SINGLE-MEMBER CLASS. THIS IS NOT A SINGLE-MEMBER CLASS, AND I THINK THAT CLASSIC MILE CAN BE DEFINED THAT WAY.

IS THAT IRREFUTABLE, THAT THERE WERE TWO OTHER MUNICIPALITIES THAT QUALIFIED?

I THINK IT IS IRREFUTABLE.

IS THAT IN THE RECORD? I THOUGHT THAT ONE OF THE MUNICIPALITIES HAD UNDER 300, AND THE OTHER IS NOT A MUNICIPALITY, BEING JACKSONVILLE.

I THINK THE RECORD IS CLEAR THAT THEY WERE OPERATED AS THOUGH THERE WERE THREE, AND I DON'T WANT TO TAKE MY TIME, BUT I BELIEVE THAT THE RECORD REFLECTS THAT THERE WERE THREE MEMBERS OF THIS CLASS. SO IT DOES OPERATE UNIFORMLY WITHIN THAT CLASS. I WOULD LIKE TO TURN TO THE QUESTION, IF I COULD, BRIEFLY, THE QUESTION OF REFUND, ALTHOUGH, OF COURSE, WE BELIEVE THAT IT IS SUSTAINABLE AND THIS COURT SHOULD UPHOLD THIS CLASSIFICATION, BASED ON GOLDEN NUGGET AND BASED ON THE CITY OF MIAMI BEACH AND BASED UPON THE IMPORTANT PUBLIC PURPOSE THAT IS HELD HERE. BUT IN THE EVENT THAT THIS COURT WERE TO SAY THAT, FOR SOME REASON, IT IS AN IMPROPER GENERAL LAW, CERTAINLY A REFUND SHOULD NOT BE REQUIRED. THIS IS DISTINGUISHABLE FROM KUHNLINE. IT WAS A CASE WHERE THE LEGISLATURE HAD NO RIGHT WHATSOEVER TO PASS THE LAW.

IS THAT ISSUE BEFORE US? IS THE REFUND ISSUE BEFORE US? IN OTHER WORDS, THE TRIAL COURT UPHeld THIS. IS THAT CORRECT?

YES, IT DID.

THE THIRD DISTRICT THAT INVALIDATED IT, AND NOW ASSUMING WE APPROVE THAT DECISION, THE THIRD DISTRICT DID NOT MAKE ANY PROVISIONS OR TAKE UP THE ISSUE OF REFUNDS, DID IT?

NO, IT DID NOT. IT DID NOT. IT DID NOT ADDRESS IT. WE BELIEVE THAT THE ISSUES, AS THEY ARE FRAMED BY THE RECORD, ESTABLISH THAT THERE WAS NO, THE ISSUE OF WHETHER THERE WAS GOOD FAITH, I THINK, IS REALLY A MATTER OF A LEGAL DECISION FOR YOU, BASED UPON WHAT IS CLEARLY AN UNCERTAIN AREA OF LAW.

WOULD YOU AGREE WITH YOUR OPPONENT, THEN, THAT WE SHOULD ADDRESS IT, SHOULD WE UPHOLD THE THIRD DISTRICT.

YES. WE WOULD ASK YOU TO ADDRESS IT, TO THE EXTENT THAT YOUR HONORS FEEL YOU CAN. WE BELIEVE IT IS AN IMPORTANT ISSUE AND THAT YOU SHOULD. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, YOUR TIME IS UP. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.