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**State of Florida v. J.P. & State of Florida v. T.M.**

PLEASE RISE. HEAR YE HEAR YE, HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES. THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED. GOOD MORNING EVERYONE. ESPECIALLY APPRECIATE COUNSEL READY TO GO ON THE FIRST TWO CASES THAT WE HAVE THIS MORNING. BEFORE WE CALL THOSE CASES, THOUGH, I WANT TO WELCOME TWO GROUPS TO THE COURT THAT ARE PRESENT IN THE COURTROOM THIS MORNING. I KNOW THAT BOTH OF THOSE GROUPS ARE IN ATTENDANCE BECAUSE OF THE QUALITY OF THE ARGUMENTS THAT THEY'RE ABOUT TO HEAR FROM THESE VERY FINE ATTORNEYS THIS MORNING. FIRST OF ALL, LET ME WELCOME THE TEACHERS FROM THROUGHOUT THE STATE OF FLORIDA WHO ARE HERE AT FLORIDA SUPREME COURT, PARTICIPATING IN OUR JUSTICE TEACHING INSTITUTE. WE'RE VERY PLEASED TO HAVE THE CREAM OF THE CROP FROM FLORIDA'S TEACHERS HERE WITH US, STUDYING FLORIDA'S JUSTICE SYSTEM. WE WELCOME YOU AGAIN TO THE COURT. IN ADDITION, WE HAVE GOT A DISTINGUISHED GROUP FROM WINTER HAVEN, WINTER HAVEN CHAMBER OF COMMERCE LEADERSHIP GROUP. THIS IS A FINE GROUP, ONE OF THE WONDERFUL THINGS THAT FLORIDA CHAMBER OF COMMERCE, THE LOCAL CHAMBERS HAVE DONE IS CREATE THESE LEADERSHIP GROUPS AND COMMUNITIES ACROSS THE STATE OF FLORIDA, TAKE ON THE RESPONSIBILITY FOR THEIR LOCAL COMMUNITIES. SO WE WELCOME YOU FROM WINTER HAVEN THIS MORNING. WE APOLOGIZE TO COUNSEL FOR THE DELAY TO START THE CASE. SO WITH THAT, THERE ARE REALLY ARE TWO CASES. STATE VERSUS JC AND STATE VERSUS TM ET AL. THAT HAVE BEEN CONSOLIDATED BECAUSE THEY INVOLVE RELATED ISSUES. HAVE YOU ALL AGREED IN HOW YOU'RE GOING TO APPORTION YOUR TIME?

MAY IT PLEASE THE COURT. I WILL START WITH TEN MINUTES, MR. SANDERS.

VERY GOOD. ALL RIGHT, NOW WITH THAT THE STATE MAY PROCEED. GOOD MORNING AND WELCOME AGAIN.

THANK YOU YOUR HONOR. MICHAEL NEIMAND ON BEHALF OF THE STATE. THIS IS A SECOND TIME WE ARE BEFORE THIS COURT ON JUVENILE CURE FEW. THE FIRST TIME WE WERE HERE, IT WAS BASICALLY TO DETERMINE THE STANDARD OF REVIEW, DISTRICT COURT FIRST REVIEWED THE CURFEW UNDER THE HEIGHTENED SCRUTINY STANDARD OF THE PROTECTION CLAUSE. AND IT CAME UP BEFORE THIS COURT FIRST TIME I WAS RESPONDENT. SECOND TIME AROUND, I'M NOT. BECAUSE IT WENT WITH WACK DOWN UNDER STRICT SCRUTINY. THAT WAS BY AGREEMENT OF THE STATE. THAT THE STATE'S POSITION FROM DAY ONE. THIS COURT AGREED WITH THE CASE AND IT WAS SENT BACK TO SECOND DISTRICT COURT OF APPEAL TO DETERMINE WHETHER THESE CURE FUSE ARE CONSTITUTIONAL.

YOU SAID THE STATE AGREED FROM DAY ONE. WHEN THE CASE WAS TRIED AND THE TRIAL COURT, WAS EVERYONE OPERATING UNDER THE STRICT SCRUTINY?

NO, WAY MEAN, AS SOON AS ATTORNEY GENERAL GOT INTO THE APPELLATE ARGUMENT.

ONLY REASON I ASK IS BECAUSE OF THIS ISSUE WHETHER THERE SHOULD HAVE BEEN THE STATE HAVING AN OPPORTUNITY TO ACTUALLY PUT ON EVIDENCE REGARDING THEIR BURDEN OF PROOF.

THAT'S EXACTLY RIGHT. ATTORNEY GENERAL, WHEN WE GOT INTO THE CASE IN THE SECOND DISTRICT, OUR POSITION IN FRONT OF THE SECOND DISTRICT WAS STRICT SCRUTINY. BUT THESE CASES EMANATED IN 199 OF. IN 1996 THIS WAS HOT BUZZ ISSUE ACROSS THE LAND. JUVENILE CURFEWS. AND.

LET ME ASK YOU THIS. IF JUVENILE CURFEWS THAT ARE HERE, ARE THEY BEING ENFORCED NOW OR HAS THERE BEEN ANY KIND OF INJUNCTION AGAINST THE ENFORCEMENT OF THESE?

WELL, THEY ARE BEING INFORCED BECAUSE THEY HAVE BEEN FOUND TO BE UNCONSTITUTIONAL. THERE WAS NO STATISH -- STAY ISSUED FROM THE SECOND DISTRICT. BUT THERE HAS BEEN NO CIVIL INJUNCTION. THERE WAS ONE TIME A CIVIL ACTION AGAINST THE TAMPA, NOW PART OF THE RECORD. THAT WAS NEVER TAKEN TO THE SECOND DISTRICT COURT OF APPEAL. CIVILLY, THESE ISSUES HAVE NEVER BEEN RAISED BUT IN CIVIL ACTIONS, STATISTICS THAT WE PRESENTED TO THE SECOND DISTRICT, WERE BROUGHT FORWARD. IN THAT CASE OCCURRED AFTER THESE CASES. THESE CASES IN THE TAMPA CASES, WE TYPICALLY JUVENILE DELINQUENCY PETITIONS WHICH WERE DONE IN JUVENILE COURT WITH PUBLIC DEFENDER, STATE ATTORNEY, AND AS I WAS SAYING, HOT BUZZ ISSUE, MOTION TO DISMISS WAS FILED. IT WAS ARGUED.

WHAT HAVE THESE JUVENILES ACTUALLY DONE? I KNOW JP WAS CAUGHT RIDING HIM BICYCLE AT 2:00 IN THE MORNING. HAD HAD TM AND THE OTHER JUVENILES IN THE PINELLAS PARK CASE ACTUALLY?

AGAIN IT WASN'T ANYTHING TERRIBLE. IT WAS JUST BEING OUT AFTER THE HOURS. THEY WERE NOT COMMITTING CRIMES. IT WAS JUST A TYPICAL JUVENILE CURFEW SITUATION.

CAN YOU GO BACK TO YOUR EXPLANATION ABOUT WHY THE STATE CONCEDED ON THE STRICT SCRUTINY REVIEW BECAUSE OTHER COURTS THAT HAVE REVIEWED THIS ISSUE HAVE SAID THAT STRICT SCRUTINY DOES NOT APPLY, THERE IS A LESSER STANDARD. SO I'M WONDERING WHY THE STATE CONCEDED THAT ISSUE.

IN OUR INITIAL BRIEF, WE ALSO ADDRESSED THIS UNDER THE PROCESS CLAUSE OF THE FLORIDA CONSTITUTION. THAT ISSUE WAS RAISED AS WELL. UNDER THE POLICY CLAUSE IS VERY SIMILAR ANALYSIS TO STRICT SCRUTINY UNDER THE EQUAL PROTECTION CLAUSE. THE ARGUMENT THAT WE HAVE MADE AND WE LOOKED AT AND THIS WAS UNDER THE PREVIOUS ADMINISTRATION OF THE ATTORNEY GENERAL'S OFFICE, THAT WE FOLLOWED THE QUBT CASE OUT OF THE FIFTH CIRCUIT. THAT WAS A CASE THE FIFTH CIRCUIT HELD UNDER STRICT SCRUTINY. SO WE DRAFTED OUR MODEL LEGISLATION UNDER THAT ANNUAL SIZE SO IT WOULD BE ABLE TO WITHHOLD ANY CHALLENGE. AND BECAUSE WE HAD THE RIGHT OF PRIVACY UNDER ARTICLE ONE, SECTION 23, WHICH IS LEAST INTERESTED MEANS COMPELLING GOVERNMENTAL INTERESTS AS OPPOSED TO NARROW RI TAILORED AND COMPELLING GOVERNMENTAL INTEREST, THOUGHT THAT WOULD BE THE BEST APPROACH TO THIS SITUATION. AND THAT'S WHY WE HAD PREVIOUSLY CONCEDED THAT POINT ON THE PRIOR APPEAL.

I AM NOT SURE I UNDERSTOOD WHAT YOU SAID. EVEN WHEN YOU'RE TALKING ABOUT A COMPELLING STATE INTEREST, EVEN IF THE STATE HAS SUCH AN INTEREST, YOU STILL HAVE TO HAVE IT NARROWLY TA LETTERED TO FURTHER THOUGHT INTERESTS. I THOUGHT YOU SAID YOU DIDN'T HAVE TO HAVE IT THEIR ROLLY TAILORED.

I SAID IT IS THE SAME STANDARD. THAT IS WHY WE CONCEDED ARTICLE ONE, SECTION 23. SAME STANDARD. ARTICLE ONE, SECTION 23, YOU HAVE TO FAR RILY TAYLOR INVASION OF THE RIGHT OF PRIVACY.

ARE YOU GOING TO DISTINGUISH TEN THE TAMPA AND PINELLAS PARK ORDINANCE AS FAR AS EXCEPTIONS AND ADDRESSING THIS NARROWLY TAILOREDDISH?

I THINK THE REAL ISSUE WE HAVE TO DELVE INTO, HOW DO WE APPLY STRICT SCRUTINY ANALYSIS TO A CURFEW CASE? THERE ARE THAT MANY CASES THAT DONE THIS. AS I INDICATED, QUTB CASE DID. AND SOME OF THE OTHER CASES TALKED ABOUT IT, DIDN'T FOLLOW IT, BUT SINCE WE ARE DEALING WITH STRICT SCRUTINY, I THINK THAT IS REALLY THE FOCAL POINT OF THE ARGUMENT. AND WE HAVE TO DETERMINE COMPELLING STATE INTEREST. I THINK --.

YOU AGREE THAT THE STATE IS IN ITS STRICT SCRUTINY ANALYSIS HAS TO CARRY ITS BURDEN OF PROOF AS OPPOSED --.

YES.

SO THAT'S WHY I ASKED ABOUT THE LACK OF A TRIAL RECORD IN THIS CASE, IN ORDER TO DEMONSTRATE THE COMPELLING STATE INTEREST AND THE NARROWLY TAILORED WAY, OR THE LACK OF NARROW TAYLORING OF ANY OF THESE ORDINANCES.

CORRECT. AND THAT'S WHY, -- IF -- GIVE ME A SECOND. I KNOW EXACTLY WHAT YOUR HONOR IS ASKING. WHAT WE HAVE IN PINELLAS PARK, WHICH WILL LEAD ME INTO TAMPA. WE HAD A HEARING. WE -- FIRST WE HAD A PROBLEM. THE LEGISLATIVE BODY DETERMINED THERE WAS A PROBLEM WITH JUVENILE CRIME AND JUVENILE VICTIMIZATION. THEY WANTED TO DO SOMETHING ABOUT THAT PROBLEM. HOW DO THEY KNOW THERE IS A PROBLEM? AS OPPOSED TO LOOKING AT CRIME SITUATION, THEY HAVE POLICE AUTHORITY TO COME WITH WITH STATISTICS THAT PRESENTS TO THEM EVIDENCE THAT THERE IS SOME PROBLEM WE HAD IN OUR TOWN OF JUVENILE CRIME, JUSTIFY NIM VICTIMIZATION. HOW ARE WE GOING TO TAKE CARE OF IT? THE LEGISLATION, OKAY, I HAVE A PROBLEM, I WANT TO TAKE CARE OF IT. THE WAY THEY DECIDED TO TAKE CARE OF IT IS PASS A JUVENILE CURFEW, AS ONLY ONE SMALL PART OF THE PROBLEM SOLVER. NOBODY EVER SAID JUVENILE CURFEW IS A CURE ALL TO THE PROBLEM OF JUVENILE VICTIMIZATION AND JUVENILE CRIME. THE STATE'S POSITION IS THAT FINDING BY THE LEGISLATURE, IF IT'S SUPPORTED BY STATISTICAL EVIDENCE OR SOME SORT OF EVIDENCE AND TOTAL EVIDENCE OR ANY EVIDENCE BEFORE THEM THAT THEY HAVE A PROBLEM IN THEIR CITY IS ENOUGH TO ESTABLISH A COMPELLING GOVERNMENTAL INTEREST. BECAUSE WE CAN REGULATE JUVENILE RIGHTS, AND WE CAN REGULATE THEM BECAUSE THEY'RE JUVENILES AND WE ARE DOING IN IT THE BEST INTEREST OF THE JUVENILES TO PREVENT HARM AND VICTIMIZATION.

YOU SAY IT DOESN'T MATTER IF IT IS ANECDOTAL OR STATISTICAL, AS LONG AS A MUNICIPALITY THINKS THERE IS A PROBLEM?

NOT KNOWS. I WOULD BE MORE COMFORTABLE OBVIOUSLY WITH STATISTICAL EVIDENCE. A LOST CASES SAY THIS IS SOMETHING THAT CLEARLY WE KNOW THAT JUVENILES OUT AT THE STREETS AT 2:00 IN THE MORK, TEN, 12, 14-YEAR-OLDS ARE LIABLE TO GET IN TROUBLE. EITHER BY DOING SOMETHING WRONG OR GETTING HURT.

DON'T YOU APPROACH, WHEN YOU PRESENT AN ARGUMENT LIKE THAT, THAT THERE JUST HAS TO BE EVIDENCE OF SOME PROBLEM? AREN'T YOU NOW REALLY TILTING THE SCALE THE OTHER WAY AND REALLY SAYING, WELL, AS SOON AS THE GOVERNMENT CAN IDENTIFY ANY PROBLEM, NO MATTER HOW COMPELLING, OR SERIOUS IT IS, THAT THAT'S ALL THAT THEY HAVE TO HAVE? AND THAT ALMOST SOUNDS LIKE A DEFERENTIAL STANDARD, THAT IS OF HAVING VIRTUALLY ANY REASON FOR ENACTING A SCHEME LIKE THIS, WHEREAS IF YOU LOOK BROADLY OUT THERE AT THE CASE LAW, ONCE YOU APPLY THIS COMPELLING INTEREST TEST, VERY FEW LAWS OR ORDINANCES ARE ABLE TO SATISFY THAT, ARE THEY NOT? ISN'T THAT FOR THE VERY REASON THAT YOU HAVE TO DO MORE THAN JUST SHOW THAT THERE IS SOME PROBLEM OUT THERE?

WELL, THAT'S WHY THEY'RE SAYING, YOU SHOW STATISTICAL EVIDENCE THERE IS A PROBLEM THERE. AND THAT'S NOT JUST SOME PROBLEM. THAT IS WITHIN YOUR COMMUNITY. YOU ARE HAVING A PROBLEM WITH JUVENILE VICTIMIZATION AND JUVENILE CRIME. I THINK FOR -- I THINK

THERE IS A DEFINITELY STANDARD AT THAT POINT IN TIME BECAUSE THAT'S A LEGISLATIVE DECISION THAT THEY HAVE A PROBLEM AND THEY HAVE CHOSEN TO ADDRESS THE PROBLEM IN THIS WAY. THEN THE QUESTION BECOMES IS, NOW THAT YOU HAVE IDENTIFIED THE COMPELLING INTEREST, BECAUSE THERE IS A COMPELLING INTEREST. NOW THAT YOU HAVE IDENTIFIED THE METHOD TO HANDLE THAT INTEREST, IS THAT METHOD NARROWLY TAILORED?

WELL LET'S START THEN WITH WHAT PROBLEM WAS IDENTIFIED IN TAMPA AND WHAT PROBLEM WAS IDENTIFIED IN PINELLAS PARK? AND WHAT RECORD DO WE HAVE BEFORE THIS COURT THAT DEMONSTRATES THAT THERE WAS A VERY SIGNIFICANT PROBLEM, A SUFFICIENT PROBLEM THAT WOULD ALLOW THE GOVERNMENT TO INFRINGE ON FUNDAMENTAL RIGHTS THAT ARE INVOLVED HERE? THAT THE STATE CONCEDES ARE INVOLVED? WHAT DO WE HAVE IN THE RECORD THAT THOSE THERE WAS A CRISIS OR THAT THERE WAS A REALLY A VERY, VERY SERIOUS PROBLEM THERE?

WELL, OBVIOUSLY WE KNOW IN THE TAMPA CASE, THERE WAS NO RECORD CREATED. BECAUSE AT THE TIME, THAT IT OCCURRED, THERE WAS NEVER A PROPER HEARING. WHAT THE STATE ATTEMPTED TO DO --.

THERE WAS NO RECORD?

THERE WAS NO RECORD.

IN THE TRIAL COURT?

CORRECT.

THERE WAS A RECORD BEFORE THE CITY COUNCIL.

THE CITY COUNCIL DID NOT ACT IN A VACUUM.

WELL, WAS THERE STATISTICS PRESENT TODD THE CITY COUNCIL IN TAMPA?

YES. AND THOSE STATISTICS WERE PROVIDE TODD THE DISTRICT COURT REQUESTING JUDICIAL NOTICE. THE NOTICE WAS DENIED. AND THE OPINION WAS WRITTEN AS IF THOSE STATISTICS DID NOT EXIST AND THAT THE TAMPA CITY COUNCIL JUST ENTERED THEIR LEGISLATIVE ENACTMENT ON THE GENERAL CONCEPT ALLOW THEM TO PROTECT JUVENILES. UPON RECEIVING THAT INITIAL OPINION, THE STATE, AFTER A REMAND AT THAT POINT, A VERY LIMITED REMAND, TO HAVE THAT EVIDENTIARY HEARING. THE COURT HAD A PROBLEM WITH THE STATISTICS. AND WE KNOW THOSE EXISTED. THEN IT WOULD HAVE ONLY BEEN FAIR TO LET US GO DOWN AN PRESENT THOSE.

THAT NEVER HAPPEN.

THEY DENIED IT.

WHAT ABOUT THE PINELLAS PARK SITUATION?

WELL THE PINELLAS PARK STATISTICS WAS, THEY SHOWED THERE WAS A PROBLEM. THAT THEY HAD CERTAIN AMOUNT OF JUVENILE CRIME AND JUVENILE VICTIMIZATION.

WAS THERE A HEARING IN THE PRIL COURT?

YES THERE WAS.

TELL US WHAT WAS PRESENTED THERE.

WELL PRESENTED THERE WAS TWO YEAR STATISTICS WHICH SHOWED WHAT OCCURRED PRIOR TO

THE ENACTMENT OF THIS CURFEW AND AFTER THE ENACTMENT OF THE CURFEW. GRANTED, AFTER THE ENACTMENT OF THE CURFEW, THERE WERE MORE JUVENILE CONTACT BEEN BEFORE THE ENACTMENT OF THE CURFEW.

IN OTHER WORDS THE THERE WERE CONTACTS BECAUSE POLICE WERE ACTUALLY PICKING UP KIDS THAT WERE OUT AFTER THE HOURS?

THEY WERE STOPPING THEM AND GIVING THEM THE WARNINGS BECAUSE THAT'S WHAT THEY WERE SUPPOSED TO DO.

HOW CAN YOU TAKE WHAT HAPPENS AFTER THE ENACTMENT OF THE ORDINANCE AS JUSTIFICATION FOR ENACTING THE ORDINANCE IN THE FIRST PLACE? DON'T YOU HAVE TO DEMONSTRATE, IF THERE IS THIS COMPELLING GOVERNMENTAL INTEREST, IT HAD TO EXIST BEFORE THE ORDINANCE WAS ENACTED, SO WHAT EVIDENCE WAS PRESENTED IN THE PINELLAS PARK CASE?

THAT'S WHAT I'M SAYING YOUR HONOR. THERE WAS EVIDENCE, STATISTICAL EVIDENCE BEFORE AND AFTER AND IT SHOWED THAT AFTER THE CURFEW WAS ENACTED, ALL MAJOR CRIMES DECREASED DURING THE CURFEW HOURS.

THAT'S MY QUESTION TO YOU. I'M HAVING DIFFICULTY WITH YOU SAYING THAT PROOF THAT WE SUBMIT AFTER WE ENACT AN ORDINANCE IS THE REASON THAT WE ENACTED THE ORDINANCE. THAT IS THAT -- THERE HAS TO BE SOME BASIS BEFORE YOU ENACTED THE ORDINANCE THAT DEMONSTRATE THIS COMPELLING INTEREST THAT THE GOVERNMENT HAS, SUCH AS STATISTICS THAT WOULD SHOW THAT THERE WAS A HIGH RATE OF JUVENILE CRIME AND THAT IT OCCURRED AT THESE HOURS THAT THE CURFEW WOULD AFFECT. WAS EVIDENCE LIKE THAT PRESENTED AT THIS HEARING?

AT THE FIRST HEARING, YES, SIR.

SO IT --.

IT'S IN THE BRIEF.

THAT MOST JUVENILE CRIME E--.

MOTT MOST BUT SOME JUVENILE CRIME.

SOME JUVENILE CRIME. HOW IS THAT GOING TO ESTABLISH COMPELLING GOVERNMENTAL INTEREST FROM JUVENILE CRIME?

BECAUSE YOU HAVE A SITUATION WHERE YOU HAVE JUVENILES UNDER THE AGE OF 17 AND 18, DEPENDING UPON THE ORDINANCE, WHO ARE OUT BETWEEN THE HOURS OF 11 AND 6:00 AT NIGHT. AND THAT THE STATE HAS A RIGHT TO REGULATE THESE JUVENILE'S CONDUCT BECAUSE OF THE INTEREST IN PRO -- FROM TEKTING THE JUVENILES.

JUVENILE DELINQUENCY 10 YEARS ON THE BEVERAGE. WAS THIS THE BIG EFFORT TO REDUCE GANG ACTIVITY? OR WAS IT A LITTLE BEFORE THAT?

MID 90'S. GANG ACTIVITY IN 95.

ABOUT THAT TIME.

THIS WAS A HOT BUTTON ISSUE 10 YEARS AGO.

SO WAS THIS -- THAT'S OUR WHOLE PROBLEM IN THIS, BECAUSE OF THE WAY PARTICULARLY IN

TAMPA THERE WAS NO TRIAL RECORD DEVELOPED AND WHAT WAS GOING ON AND WHAT WAS JUST COMPREHENSIVE EFFORT TO TRY TO REDUCE GANG ACTIVITY, JUVENILE VICTIMIZATION AND CRIMINAL ACTIVITY. I, HAVING DONE IT ON THE BENCH FOR SO MANY YEARS, UNDERSTAND WHAT YOU'RE SAYING. BUT THE PROBLEM IS, THE RECORD WASN'T DEVELOPED.

I UNDERSTAND THAT. AND THAT'S WHY WE ASKED ONCE THE COURT -- ONCE WE GOT THERE, BACK THE SECOND TIME UNDER STRICT SCRUTINY. AND WE PROVIDED THE DIRECTIVES AND TOLD THE COURT WOULD NOT LOOK AT THEM, SOMETHING FOR THE TRIAL COURT. THAT IS WHEN WE ASKED TO GO BACK DOWN.

YOU SAID EVEN IN THE PINELLAS PARK, LOOK AT SPECIFICALLY AT JUDGE NORTHCUT AND HIS DISSENT. BECAUSE I HAVEN'T LOOKED BACK AT THIS. HE SAID ACTUALLY BURGLARIES, RESIDENCE INCREASED DURING THE PERIOD AFTER THE ENACTMENT OF THE ORDINANCE AND SO DID THE FIFTH CATEGORY, RUN AWAYS. IN OTHER WORDS, THAT IN FACT IT LOOKS LIKE IT WAS COUNTER PRODUCTIVE IN SOME OF THE AREAS THAT WE'D MOST THINK THAT WOULD BE CONCERNED ABOUT JUVENILES BEING OUT, THEY COULD BE COMMITTING BURGLARIES INSTEAD OF JUST BEING OUT ON THE STREET.

I UNDERSTAND. I'LL LET THE RECORD SPEAK FOR ITSELF ON THAT.

WE HAVE HELPED YOU ALONG. OUR QUESTIONS OF COURSE, WE ARE INTO REBUTTAL. IF YOU WANT TO SAVE SOME --.

LET ME BRIEFLY, AND I'LL GIVE MYSELF A COUPLE SECONDS FOR REBUTTAL. LET ME BRIEFLY GO ON TO THE LEAST INTRUSSIVE MEANS, ASSUMING WE CAN ESTABLISH COMPELLING STATE INTEREST. THE STATE WOULD THEN PERMIT THAT YOU DO NOT LOOK AT THE STATISTICS TO SEE WHETHER OR NOT IT'S AN EFFECTIVE. WHAT YOU LOOK AT ARE WHAT CONDUCT IS BEING PROHIBITED. AND FROM THE EXCEPTIONS WHICH YOU'RE LOOKING AT IN BOTH OF THESE, THE ONLY CONDUCT THAT IS BEING PROHIBITED IS THE AIMLESS ROAMING AROUND THE STREETS BETWEEN THE HOURS OF 11 AND 5:00.

I STILL AM NOT QUITE SURE OF WHAT YOUR ANSWER WAS TO JUSTICE ANSTEAD ABOUT THE STATISTICS. AND THAT IS, WAS THERE STATISTICAL OR ANY OTHER KIND OF INFORMATION SUBMITTED TO THE TRIAL JUDGE ABOUT THIS ORDINANCE? I KNOW THAT THE ORDINANCE ITSELF, THAT THE PINELLAS PARK ORDINANCE, ITSELF SAYS THAT IT IS BASED ON STATISTICAL EVIDENCE. WAS THAT STATISTICAL EVIDENCE ALSO PRESENT TODD THE TRIAL COURT?

I BELIEVE IN THE BRIEF ITSELF, THE TRIAL JUDGE AND I QUOTED THAT, SAID HE SAW THE STATISTICS. HE DIDN'T THINK IT WAS TRULY A COMPELLING INTEREST BUT EVERY ON COURT THAT HAS RULED ON THIS NEVER LOOKED AT THE SUFFICIENCY OF THE STATISTICS TO DETERMINE THE COMPELLING GOVERNMENTAL NEEDS. PINELLAS PARK, YES, THE TRIAL COURT DID IN FACT LOOK AT THE STATISTICS.

AND MADE IT PART OF THE RECORD?

YES, THEY WERE PART OF THE RECORD. INCLUDED FOR READING IN MY BRIEF. THANK YOU.

THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT, BRUCE HOWIE. A CHILD SHOULD NOT BE FORCED TO CHOOSE BETWEEN OBEYING A PARENT.

LET ME ASK YOU THIS. DO YOU -- THIS IS THE PINELLAS PARK?

YES, SIR.

AND DO YOU AGREE THAT THE CITY COUNCIL THERE HAS STATISTICS BEFORE IT AT THE TIME THAT IT ACTED?

NO, IT IS OUR POSITION THAT THE STATISTICAL ANALYSIS DID NOT OCCUR UNTIL MORE THAN SIX MONTHS AFTER THE ORDINANCE WAS PASSED.

WHAT RECORD DID THE CITY COUNCIL HAVE BEFORE IT?

I DON'T KNOW WHAT THE CITY COUNCIL HAD BEFORE IT. I ONLY KNOW THAT AT THE CIRCUIT COURT LEVEL, STATISTICS WERE PRODUCED AFTER THE FACT.

WHAT CONCERNS ME HERE, AND MAYBE YOU CAN SPEAK TO IT, IS THAT I'M CONCERNED ABOUT THE ROLE OF THE COURT AND THE ROLE OF THE LEGISLATIVE BODY. AND MAKING THESE DETERMINATIONS ON THE, THE FACTS. AND WHAT I UNDERSTAND THE DISTRICT COURT TO HAVE SAID, IS THAT THE -- THERE WAS IN THE PINELLAS PARK SITUATION A RECORD THAT, THAT WAS A BASIS FOR A CONCLUSION BY PINELLAS PARK THAT IT HAD A PROBLEM WITH JUVENILES BEING OUT ON THE STREETS DURING THE CURFEW HOURS. IS THAT NOT CORRECT?

THAT IS CORRECT. HOWEVER, THE STRICT SCRUTINY STANDARD IS NOT A DEFERENTIAL STANDARD.

WELL THAT'S WHAT I WANT TO TEST. YOU KNOW, WE HAVE A CASE OUT OF THIS COURT CALLED ESCHARTE HAVING TO DO WITH THE, A CONSTITUTIONAL TEST ON ACCESS TO THE COURTS. AND IT WAS A CASE IN WHICH THERE WAS -- THIS COURT MADE A DETERMINATION THERE THAT BECAUSE OF THE FACT THAT THE LEGISLATIVE BODY MADE DETERMINATIONS OF FACT THAT THE COURT'S ROLE WAS ONLY TO SET ASIDE THOSE, THAT DETERMINATION. IF THOSE -- THAT DETERMINATION WAS CLEARLY ERRONEOUS. NOW THE REASON THAT I'M CONCERNED ABOUT THAT IS THAT I DON'T UNDERSTAND WHY A SINGLE TRIAL JUDGE'S DETERMINATION OF WHAT IS A DANGER TO -- IN THE CITY OF PINELLAS PARK, SHOULD PREVAIL OVER THE DETERMINATION OF THE LEGISLATIVE BODY THAT THERE IS A PROBLEM. WHY IS THAT?

YOUR HONOR, I BELIEVE IN THIS CASE, THE CLEARLY ERRONEOUS STANDARD HAS BEEN MET. YOU HAVE THESE STATISTICS THAT SHOW THERE WERE 620 JUVENILE CONTACTS OVER 177 DAY PERIOD, APPROXIMATELY 6 MONTHS, INCLUDING THREE MONTHS OF SUMMERTIME VACATION FOR JUVENILES. AND THAT THERE WAS ACTUALLY AN INCREASE IN THE NUMBER OF JUVENILE CONTACTS AFTER THE ORDINANCE WAS PUT INTO EFFECT. WHAT WE HAVE GOING ON HERE ACTUALLY IS A STATISTICAL RECATEGORIZATION FROM SUBSTANTIVE CRIMES TO CURFEW ORDINANCES. FOR EXAMPLE, THE NUMBER OF INTERROGATION REPORTS DROPPED BY A FACTOR OF 89%. WELL, CLEARLY IF YOU STOPPED CALLING THEM FIELD INTERROGATION REPORTS AND START CALLING THEM JUVENILE CURFEW VIOLATIONS, YOU'RE GOING TO HAVE STATISTICAL DROP. IN ADDITION, THEY SUBSTITUTED OUT OR EXCLUDED ALL JUVENILE CURFEW ORDINANCE VIOLATIONS REGARDLESS OF WHETHER THEY ALSO INVOLVED SUBSTANTIVE CRIMES AFTER THE FACT.

SO ARE YOU SAYING THEN THAT THERE WAS NO STATISTICAL INFORMATION OR OTHER TYPE EVIDENCE OF, THAT WAS GIVEN TO THE PINELLAS PARK CITY COUNCIL, GIVEN TO THE TRIAL JUDGE? I MEAN, BECAUSE THE ORDINANCE CLEARLY SAYS THAT THEY WERE GIVEN THIS KIND OF INFORMATION AND IT'S BASED ON THAT THAT THEY MADE THE FINDINGS THAT ARE ALLEGEDLY SUPPORTS THE COMPELLING STATE INTEREST.

ALL I UNDERSTAND IS THAT THEY WERE GIVEN A SET OF FIGURES SAYING THERE WERE 620 JUVENILE CONTACTS OVER THIS PERIOD OF TIME AND THEY BREAKDOWN INTO THESE CATEGORIES OF SUBSTANTIVE OFFENSES.

WAS -- WHEN YOU SAY THIS PERIOD OF TIME, ARE YOU TALKING ABOUT THE PERIOD OF TIME PRIOR TO THE ENACTMENT OF THE ORDINANCE? OR ARE YOU STILL TALKING ABOUT THE PERIOD OF TIME AFTER THE ORDINANCE WAS IN EFFECT?

PRIOR TO THE ENACTMENT OF THE ORDINANCE. I WOULD POINT OUT THAT SIMPLE ARITHMETIC TELLS US THERE WERE FEWER THAN FOUR JUVENILE CONTACTS PER NIGHT. WHICH IS HARDLY EPIDEMIC.

SO THIS DOESN'T -- I GUESS WE'RE NOT REALLY CONCERNED ABOUT JUVENILE CONTACTS. WE'RE TALKING ABOUT ACTUAL, THE PURPOSE OF THE ORDINANCE IS STATED TO BE TO REDUCE JUVENILE CRIME AND JUVENILE VICTIMIZATION AND PROTECT THE GENERAL PUBLIC. WELL WAS THERE ANY INFORMATION GIVEN ABOUT THE JUVENILE CRIME SITUATION? OR THE JUVENILE VICTIMIZATION SITUATION THAT WOULD SUPPORT THE ORDINANCE?

TO MY KNOWLEDGE, NO, THERE WAS NOT YOUR HONOR. THERE WERE JUST RAW STATISTICS.

BUT STATISTICS, NO STATEMENTS FROM LAW ENFORCEMENT OFFICERS, SCHOOL OFFICIALS, TRUANCY OFFICERS? NOTHING ELSE? SOMEBODY JUST CAME IN THERE AND DROPPED OFF SOME STATISTICS.

THEY'RE SIMPLY NOTING IN THE RECORD TO THAT EFFECT.

WHEN YOU HAD THE HEARING, SO WE GET BACK TO WHAT JUSTICE WELLS WAS ASKING ABOUT, WE WOULD HAVE QUESTION OF WHAT KIND OF RECORDS BEFORE THE CITY COUNCIL. THEN THE RECORD BEFORE THE TRIAL COURT. DID THE STATE INTRODUCE INTO EVIDENCE WHATEVER IT WAS THAT THE PINELLAS PARK COUNCIL CONSIDERED AT THE TIME THAT IT PASSED THE ORDINANCE? IS THAT IN THIS RECORD BASED ON WHATEVER THE STATE INTRODUCED IN THE TRIAL COURT?

NOT NECESSARILY. THE ONLY THING THAT THE PINELLAS PARK ATTORNEY PRESENTED AT THE CIRCUIT COURT LEVEL WERE THE STATISTICS OF THE BREAKDOWN THAT WAS PRESENTED IN PAYABLE 18-20 OF THE STATE'S BRIEF IN THIS MATTER.

AND THAT WAS THE SIX MONTH PERIOD AFTERWARDS?

YES, YOUR HONOR.

SO THAT DOESN'T SPEAK TO WHAT JUSTICE QUINCE IS ALSO ASKING. WHAT WAS -- WHAT DID THE PINELLAS PARK COUNCIL HAVE BEFORE IT IN TERMS OF EVIDENCE, FACTUAL EVIDENCE BEFORE IT PASSED THIS ORDINANCE?

TO MY KNOWLEDGE, THEY HAD SIMPLY THE STATISTICS. I AM NOT AWARE, THE RECORD DOES NOT SHOW.

DO WE KNOW THEY UNLIKE TAMPA CHOSE IT WOULD BE ANYONE UNDER 18D AND 17-YEAR-OLDING WERE SUKTED TO THIS ORDINANCE, WHEREAS THE TAMPA IS 17 AND UNDER?

WE SIMPLY HAVE NO BASIS FOR THAT. EVEN THEIR OWN RESOLUTION CLAUSES DO NOT SET THAT OUT.

DO WE KNOW WHY THERE IS NOT AN ERRANT EXCEPTION FOR, IN THE PINELLAS PARK?

NO WE DO NOT. AGAIN, THE WHEREAS CLAUSE AT THE BEGINNING OF THE ORDINANCE SIMPLY DON'T GIVE US A BASIS FOR THAT.

WHAT WERE THE DEFENDANTS DOING AT THE TIME THEY WERE ARRESTED?

MY CLIENT WAS SPENDING THE NIGHT WITH A GIRLFRIEND AT HER RESIDENCE IN A RESIDENTIAL NEIGHBORHOOD. AT APPROXIMATELY 1:00 IN THE MORNING, THEY BOTH STEP TODD THE CURB TO TALK TO TWO BOYS WHO DROVE UP IN A CAR. THEY WERE FOUND AT THE CURBSIDE BY THE POLICE OFFICER TALKING IN FRONT OF A RESIDENCE, IN A RESIDENTIAL NEIGHBORHOOD. MY CLIENT HAD HER MOTHER'S PERMISSION TO BE THERE.

WOULD YOU ADDRESS THE TAYLORING ASPECT OF THE STATUTE, OR THE ORDINANCES WE ARE DEALING WITH? IT SEEMS TO ME THERE HAS BEEN A GREAT EFFORT TO TAYLOR THESE THINGS AND CREATE A NUMBER OF EXCEPTIONS. HOW MANY MORE EXCEPTIONS WOULD BE NECESSARY, WHAT TYPES OF EXCEPTIONS IN YOUR VIEW ARE NECESSARY TO PRESERVE AN ORDINANCE OR STATUTE SUCH AS THIS?

THAT IS THE PROBLEM WITH THIS ORDINANCE. IN AN EFFORT TO COME UP WITH EXCEPTIONS THAT MEET PAST CASE LAW, I'M AFRAID THERE HAS BEEN A BAUCH MADE OF THIS ORDINANCE. THERE ARE AM EXCEPTIONS THAT SIMPLY HIGHLIGHT THE PROBLEM WITH PASSING AN ORDINANCE IN THE FIRST PLACE. IF YOUR -- IF YOUR OBJECT IS TO PREVENT THE END LESS ROAMING OF THE STREETS, THEN YOU PASS AN ORDINANCE AGAINST THE AIMLESS ROAMING OF THE STREETS. THERE ARE MANY DEFENSES THAT CAN BE BUILT IN. THERE ARE AT LEAST FOUR DIFFERENT WAYS IN WHICH THE LEAST INTRUSSIVE MEANS ARE NOT USED HERE. PRINCIPAL OF WHICH IS THE IMPOSITION OF CRIMINAL SANCTIONS ON BOTH THE PARENT AND THE CHILD FOR A VIOLATION OF THIS ORDINANCE BY THE CHILD. THERE IS THE USE OF A STRICT SCRUTINY STANDARD, A MANDATORY PRESUMPTION PLACED UPON THE PARENT IF THE CHILD VIOLATES. UNLESS THE PARENT CAN COME UP WITH TWO VERY STRICTLY DEFINED AFFIRMATIVE DEFENSES, INCLUDING LACK OF KNOWLEDGE. IT IS UNIQUE THAT LACK OF KNOWLEDGE MUST BE PROVED BY THE DEFEND IN A CASE LIKE THIS. THERE IS THE LACK OF A PARENTAL CONSENT EXCEPTION. A PARENT CANNOT DIRECT THE CHILD. THE CHILD IS FORCED TO CHOOSE BETWEEN OBEYING THE PARENT AND OBEYING THE LAW.

WHAT IS THE STANDING TO CONSIDER THE ISSUE OF THE PARENT'S CONSTITUTIONAL RIGHT AND REPRESENT THE JUVENILES? IS THAT SOMETHING THAT'S BEEN CONSIDERED ALL THROUGHOUT IN IN OTHER WORDS, LOOKING AT THIS SEPARATELY HOW THIS WOULD IMPACT A PARENT WHO WAS FOUND TO KNOWINGLY ALLOW THEIR CHILD TO BE OUT AFTER HOURS?

THE RIGHTS OF THE CHILD AND THE RIGHTS OF THE PARENT ARE INEXTRICABLY INTERTWINED HERE. UP CANNOT SPEAK OF THE CHILDS RIGHT WITHOUT SPEAKING OF THE PARENTS RIGHT. THE RIGHT OF THE CHILD TO BE RAISED BY THE PARENT. THE PARENTS RIGHT TO DIRECT THE CHILD. ALL ONE AND THE SAME. IT IS THE RELATIONSHIP THAT IS AFFECTED HERE.

YOU AGREED TO DIVIDE YOUR TIME.

THANK YOU.

THANK YOU VERY MUCH. COUNSEL?

PLEASE THE COURT, MY NAME IS RICHARD SANDERS, FOR THE RESPONDENT JP.

MR. SANDERS? DOES THE SECOND DISTRICT IN ITS OPINION FINDS THAT THERE IS A COMPELLING STATE INTEREST, BUT THAT IT WAS NOT NARROWED THESE ORDINANCE, OR THE JP ORDINANCE, THE TAMPA ORDINANCE, WAS NOT NARROWLY TAILORED TO FURTHER THOSE INTERESTS, NOW DO YOU AGREE BECAUSE, AS I READ YOUR BRIEFS, IT SEEMS TO ME THAT AT CERTAIN POINTS YOU SEEM TO ACCEPT THAT THERE MIGHT BE A COMPELLING STATE INTEREST HERE. BUT YOU ALSO GO OFF ON THE NARROWLY TAILORED. DO YOU AGREE THERE IS A COMPELLING STATE INTEREST?

IN VERY, THERE IS THERE IS COMPELLING STATE INTEREST HERE. YOU CAN PHRASE THAT SEVERAL WAYS. THERE IS NO QUESTION IN MY MIND THAT REGARDLESS HOW YOU PHRASE IT, THIS CURFEW IS NOT NAY RILY STAY LORD -- TAILORED TO PROMOTE THOSE INTERESTS. TO ME THE STATISTICS ARE ABSOLUTELY IRRELEVANT, BECAUSE IF ALL YOU HAVE TO DO TO --.

WOULD YOU AGREE THAT THE TAMPA CITY COUNCIL PRIOR TO ENACTMENT OF THE ORDINANCE, DID IN FACT HAVE STATISTICAL EVIDENCE PRESENTED TO THEM ABOUT THE JUVENILE CRIMES AND JUVENILE VICTIMIZATION PROBLEM IN THE CITY?

WELL, THE RECORD DOESN'T REFLECT THAT. WE HAVE SOME STATISTICS THAT THE STATE PRESENTED, WHICH WERE EXPERT JUDICIAL NOTICE WAS DENIED. I'LL QUOTE WHAT THIS SAYS. THIS IS FROM THE CLERK OF COURT IN THE TAMPA CITY COUNCIL. THE ATTACHED DOCUMENTS REPRESENT TRUE AND CORRECT COPIES OF DOCUMENTS RECEIVED AND FILED DURING A PUBLIC HEARING FOR THE CITY COUNCIL. THERE IS NOTHING IN HERE THAT SAYS ANYBODY IN CITY COUNCIL EVEN LOOKED AT THESE STATISTICS, MUCH LESS CONSIDERED THESE STATISTICS AS BEING STRICTLY IMPORTANT WHEN THEY ENACT CURFEW.

HAS ANYONE LOOKED AT THE MINUTES OF THE CITY COUNCIL MEETING?

I HAVE, YES.

WAS THERE A FULL PRESENTATION BY LAW ENFORCEMENT, SCHOOL OFFICIALS, AND OTHER PARENTS AND OTHERS INTERESTED?

THE MINUTES, I DIDN'T BRING IT WITH ME, THE MINUTES AS I RECALL ARE NOT COURT REPORTER TRAN SKRIPT SORT OF THINGS. THEY'RE LITTLE SCRATCHED NOTES BASICALLY I ASSUME BY DEPUTY CLERK. IT IS KIND OF HARD TO SEE WHAT'S GOING ON THERE. AS I RECALL, THEY HAD SOME LETTERS FROM COMMUNITY ORGANIZATIONS FROM PEOPLE AND SOME PEOPLE CAME IN AND TESTIFIED OR SAID A FEW WORDS. BUT WHAT EXACTLY WAS SAID AND CONSIDERED, YOU SIMPLY CAN'T TELL BY READING THE MINUTES.

CAN I GO BACK, YOU HAD SAID THAT OF COURSE AS COMPELLING STATE INTEREST. ARE YOU SAYING THAT JUST THE IDEA THAT SOMETHING IS DESIGNED TO REDUCE CRIME, THAT THAT IS -- REDUCING CRIME IS A COMPELLING STATE INTEREST IN A VACUUM? COULD YOU EXPLAIN A LITTLE MORE THE NATURE OF YOUR CONCESSION ABOUT WHY THERE IS A COMPELLING STATE INTEREST IN THIS CASE?

I DON'T THINK THERE IS ANY QUESTION PREVENTING CRIME AND PREVENTING VICTIMIZATION IS A COMPELLING STATE INTEREST. THERE IS NO QUESTION ABOUT THAT.

YOU COULDN'T SAY THAT ADULTS, AFTER 11, THEY HAD TO STAY IN THEIR HOUSES BECAUSE WE, BECAUSE THAT'S WHEN CRIME OCCURS, OR THEY COULDN'T DRIVE THEIR CAR AFTER A SATURDAY NIGHT AT 11 O'CLOCK BECAUSE THAT'S WHEN DRUNK DRIVING OCCURS.

EXACTLY. MY POINT IS, THESE STATISTICS ARE IRRELEVANT REGARDLESS WHAT THEY PROVE. BECAUSE IF ALL YOU HAVE TO DO TO JUSTIFY A CURFEW IS PRODUCE STATISTICS THAT SAY SOME PEOPLE ARE COMMITTING CRIMES AND SOME PEOPLE ARE BEING VICTIMIZED DURING THESE HOURS THAT THE CURFEW APPLIES, THEN YOU CAN JUSTIFY PHI A CURFEW THAT APPLIES 24 HOURS A DAY TO EVERYBODY.

LET ME GO BACK, BECAUSE I'M VERY CONCERNED HERE ABOUT THE BASIC PROCEDURES THAT WE ARE USING IN THIS ANALYSIS. AND THAT IS, DO WE START FROM THE PREMISE THAT THE ORDINANCE IS CONSTITUTIONAL BY REASON OF THE FACT THAT IT'S PASSED BY THE CITY OF TAMPA?

I BELIEVE YOU DO, YES.

SO WE PRESUME -- SO THEN WE GO TO -- YOU BRING A CLAIM SAYING THAT IT'S UNCONSTITUTIONAL. SO IS THE BURDEN ON YOU?

I FIGURE -- FIRST THING YOU HAVE TO DECIDE IS DOES THE ORDINANCE THAT YOU'RE CHALLENGING, THE CURFEW ORDINANCE IN THIS CASE, DOES IT INFRINGE UPON FUNDAMENTAL RIGHTS OF ANYBODY?

BUT FIRST LET ME GO BACK TO MY BASIC QUESTION. IS THE BURDEN ON YOU TO COME INTO COURT, TO DEMONSTRATE THAT WHAT THE CITY DID WAS UNCONSTITUTIONAL?

I THINK THAT'S CORRECT, YES.

SO THEN YOU'RE GOING TO PRESENT EVIDENCE.

WELL THAT WAS THE PART I WAS GETTING TO. I DON'T THINK YOU NEED TO PRESENT EVIDENCE. IF THE COURT DECIDES, AND THIS IS A QUESTION OF LAW. IF THE COURT DECIDES THAT THIS CHALLENGE REGULATION TO CURFEW IN THIS CASE INFRINGES ON FUNDAMENTAL RIGHTS, THE BURDEN IS THEN ON THE STATE TO PROVE THAT IT SERVES A COMPELLING INTEREST IN THE NARROW, LEAST RESTRICTIVE MEANS. THAT'S MY UNDERSTANDING OF CONSTITUTIONAL JURISPRUDENCE. OF COURSE THAT IS DIFFERENT FROM USING THE RELATION TEST, IN WHICH THE FACTUAL BURDEN WOULD SHIFT MORE TO THE ONE CHALLENGED IN THE ORDINANCE TO PROVE THIS IS AN IRRATIONAL REGULATION THAT THEY'RE CHALLENGING HERE. IF IT IS A FUNDAMENTAL RIGHT INVOLVED AND COMPELLING STATE INTEREST APPLIES, MY UNDERSTANDING IS THE STATE'S BURDEN TO PROVE THE FACTUAL MATTER.

SO YOU RAISED THE ISSUE. SO THEN BY FILING A COMPLAINT, AND THEN YOU GO TO A HEARING AND SOME AT THAT POINT, THE TRIAL JUDGE IS TO MAKE A DETERMINATION AS A MATTER OF LAW AS TO WHETHER THIS ORDINANCE INFRINGES UPON A FUNDAMENTAL RIGHT? IS THAT YOUR ANALYSIS?

THAT IS A QUESTION OF LAW. AND IF THE TRIAL COURT MAKES THE DETERMINATION THAT THERE IS A FUNDAMENTAL RIGHT BEING INFRINGED, THEN I THINK IT BECOMES A FACTUAL MATTER STATE HAS TO PROVE, THAT THERE IS A COMPELLING INTEREST HERE. ALTHOUGH WHETHER THERE IS A COMPELLING INTEREST I THINK IS MORE A QUESTION OF LAW TOO. BUT THEN THE QUESTION OF WHETHER IT'S NARROWLY TAILORED TO SERVE THAT COMPELLING INTEREST IN THE LEAST RESTRICTIVE MATTER, THAT IS WHEN YOU GET INTO FACTUAL QUESTIONS.

WHAT I'M TRYING TO GET TO IS WHERE DOES THE PRESENTATION OF EVIDENCE OF WHAT THE CITY COUNCIL DID, OR WHAT IT HAD BEFORE IT WHEN IT ACTED, WHERE IN YOUR VIEW DOES THAT FIT WITHIN THIS PROCEDURAL POSTURE?

MORE AS A GENERAL MATTER?

IN THIS CASE.

OBVIOUSLY IN THIS CASE, IN THE COURT THERE WAS NOTHING PRESENTED, AS FAR AS THE TAMPA CURFEW GOES, AS TO WHAT THE PRESUMED JUSTIFICATION WAS FOR ENACTING THIS CURFEW. NOW, I THINK, IF I UNDERSTAND WHAT YOU'RE SAYING IS, WHAT IS THE COURT'S BURDEN IF IT COMES BEFORE THE COURT AND THERE IS NO STATISTICS PRESENTED AT THAT POINT, DO YOU JUST DEFER TO WHAT THE LEGISLATURE DETERMINED? IS THAT SORT OF WHAT YOU'RE ASKING?

I'M TRYING TO GET THAT OUT HERE, AS TO WHOSE ROLE IS WHAT HERE.

FROM A JUDICIAL PERSPECTIVE, IF YOU GET INTO THE COURT AND THIS THING IS BEING CHALLENGED, I THINK YOU GET INTO FACTUAL QUESTIONS ON THE QUESTION OF WHETHER THE CHALLENGED ORDINANCE IS NARROWLY TAILORED, I THINK IT IS THE STATE'S BURDEN TO PROVE THE FACTUAL MATTERS IT IS IN FACT NARROWLY TAILORED TO SERVE THE COMPEL INTERESTS THEY'RE DEPOSITED IN THE LEAST RESTRICTIVE MEANS. OTHERWISE THERE IS NO FACTUAL PREDICATE UPON WHICH A COURT CAN MAKE THAT DETERMINATION. THE FACT THAT THE LEGISLATURE HAS MADE THAT DETERMINATION, THAT COMES INTO PLAY THAT SAYS THAT YOU PRESUME THE ORDINANCE TO BE CONSTITUTIONAL IN THE FIRST PLACE. BUT ONCE YOU MAKE A DETERMINATION OF LAW, THERE IS A FUNDAMENTAL RIGHT INVOLVED HERE, AGAIN THE NOTION WHETHER IT IS A COMPELLING INTEREST IS ALSO A QUESTION OF LAW THE COURT CAN DETERMINE WITHOUT EVIDENCE. BUT ONCE YOU GET BEYOND THOSE POINTS --.

BUT WHAT, HOW DOES THE COURT MAKE THAT DETERMINATION WITHOUT EVIDENCE? AS TO WHAT IS A COMPELLING STATE INTEREST AND WHAT IS NOT?

WELL IN THIS CASE, AS I SAID, THERE IS NO QUESTION THE STATE HAS COMPELLING INTEREST IN PREVENTING CRIME AND PREVENTING VICTIMIZATION. I DON'T THINK YOU NEED STATISTICS TO PROVE THAT. THAT TO ME IS JUST A MATTER OF COMMON SENSE. BUT MY PETITION IS THAT HAS NOTHING TO DO WITH THE AGE OF THE PEOPLE BEING AFFECTED BY THE CURFEW. IN OTHER WORDS, YOU HAVE THE SAME COMPELLING INTEREST REGARDLESS OF THE AGE OF THE PERSON COMMITTING THE CRIME OR THE AGE OF THE PERSON BEING VICTIMIZED BY THE CRIME.

AS A MATTER OF LAW?

AS A MATTER OF LAW, YES.

WHAT DO YOU DO ABOUT BELLOTTI?

BELLOTTI STANDS FOR THE PROPOSITION AS I UNDERSTAND IT, THAT WHEN YOU'RE DEALING WITH A REGULATION THAT AFFECTS OR INFRINGES UPON FUNDAMENTAL RIGHTS, WHETHER FOR ADULTS.

BELLOTTI BEING UNITED STATES SUPREME COURT CASE.

RIGHT. THAT THERE IS NO DOUBT THAT THE STATE CAN REGULATE THE BEHAVIOR OF JUVENILES AND MINORS TO A GREATER EXTENT THAN IT CAN REGULATE THE SAME BEHAVIOR AS APPLIED TO ADULTS. THE QUESTION IS WHY? AND BELLOTTI ATTEMPTS TO ANSWER THAT QUESTION. AS I READ BELLOTTI, WHAT BELLOTTI SAYS IS WHEN YOU'RE DEALING WITH FUNDAMENTAL RIGHTS, THE STATE HAS ADDITIONAL INTEREST -- IF THE STATE HAS ADDITIONAL INTERESTS, COMPELLING INTERESTS, THAT APPLY TO MINORS, THAT DO NOT APPLY TO ADULTS, THOSE ADDITIONAL INTERESTS MAY GIVE THE RIGHT -- GIVE THE STATE THE RIGHT TO REGULATE THE BEHAVIOR OF MINORS TO A GREATER EXTENT THAN IT REGULATES THE BEHAVIOR OF ADULTS. IF THE CHALLENGE REGULATION SERVES THOSE ADDITIONAL COMPELLING INTERESTS, COMPELLING FOR MINORS AS ONE COMMON STATER -- COMMENTATOR CALLED IT, IN THE LEAST RESTRICTIVE MATTER. MY POSITION HERE IS IN THE ABSTRACT, STATE COMPELLING INTEREST THAT COULD CONCEIVABLY JUSTIFY A CURFEW ON MINE QLORS, AND I THINK IT IS UNDISPUTED THAT YOU COULD NOT IMPOSE A CURFEW LIKE THIS ON ADULTS. BUT THE ADDITIONAL COMPELLING INTEREST THAT COULD CONCEIVABLY JUSTIFY A CURFEW AS APPLIED TO MINORS, WOULD BE THE ONES THAT OCCUR IN BELLOTTI. NAMELY PROTECTING CHILDREN FROM THE CONSEQUENCES OF THEIR OWN POOR DECISIONS BY ATTEMPTING TO ENSURE THAT PARENTS ARE INVOLVED IN THE MAKING OF THOSE DECISIONS. THEREFORE, STRENGTHENING THE PRANT TAKE ROLE AND THE FAMILY AND ALL THAT SORT OF THING. MY POSITION IS THIS CURFEW IS NOT EVEN REMOTELY NARROWLY TAILORED, THERE IS NOT EVEN ATTEMPT TO NARROWLY TAYLOR THIS TO PROMOTE

THOSE COMPELLING INTERESTS, WHICH COULD CONCEIVABLY IN THE ABSTRACT JUSTIFY A CURFEW ON MINORS, GIVEN THE PREMISE THAT YOU COULD NOT IMPOSE A CURFEW LIKE THIS ON ADULTS.

WE ARE GOING TO HAVE TO ASK YOU TO END ON THAT NOTE BECAUSE OF OUR TIME. THANK YOU.

THANK YOU.

MR. MARSHAL, HOW MUCH TIME?

I CAN TALK VERY FAST.

WE KNOW IN THE TAMPA ORDINANCE, THE BURDEN THAT WAS ASSUMED IN THE TRIAL COURT WAS HEIGHTENED REVIEW, NOT STRICT SCRUTINY.

WELL IN FACT, IN THE CON COURSE, -- WHEN YOU GO BACK TO BOTH THESE RECORDS,.

I DIDN'T MEAN TO UPSET.

YOU NO, NO, I HAVE BEEN COMING HERE MANY YEARS. FIRST TIME I ACTUALLY LOST MY VOICE. ACTUALLY IN THE TRIAL COURT, THERE WASN'T A HEIGHTENED SCRUTINY AT ALL. IT WAS ALMOST AS IF LET'S FLY BY AIR. THE PROBLEM THAT I SEE OUT OF THESE CASES HERE.

IS THAT -- I'M TRYING.

THAT IS WHY NO EVIDENCE WAS PRESENTED. BECAUSE THEY DIDN'T LOOK AT IT FROM HEIGHTENED. ALMOST A RATIONAL BASIS. THIS WAS SUCH A NEW ISSUE AT THE TIME. WE ARE TALKING ABOUT 1996. AND THIS COURT DIDN'T DECIDE TISSUE TILL 2001, FIVE YEARS FROM THE TIME THE INITIAL MOTIONS WERE FILED AND THE HEARINGS WERE HELD.

SO THE TAMPA CASE IT SHOULD BE REMANDED FOR THERE TO BE A NEW TRIAL BASED ON STRICT SCRUTINY?

I MEAN, THAT'S WHAT I'M SAYING FROM WAY HEAR TODAY. MY POSITION WOULD BE THAT TO ANALYZE THE JUVENILE CURFEW, IF THERE IS A SUFFICIENT HEARING WITH THE EVIDENCE BROUGHT FORWARD BOTH ON THE ANECDOTAL EVIDENCE AND STATISTICAL EVIDENCE BROUGHT TO THE LEGISLATIVE BODY AND THAT LEGISLATIVE BODY DETERMINES THAT THERE IS A PROPERTY IN THE -- PROBLEM IN THE COMMUNITY, THAT WILL STF THE COMPELLING STATE INTEREST AND THAT IS A DEFINITELY SHAL RULING BASED ON CLEARLY ERRONEOUS STANDARD. THE QUESTION OF LAW COMES TO THIS COURT TO REVIEW DE NOVO IS THE EXCEPTIONS AS TO WHETHER THOSE NAY ROLY TAILORED TO MEET THOSE NEEDS. IN BOTH CASES WE ARE SOMEWHAT DEFICIENT IN THE ACTUAL RECORD IN THE TRIAL COURT BECAUSE LIKE I SAID, THEY BOTH HAPPENED IN 1996 AND WE --.

I GUESS I'M ASKING, SO ARE YOU ASKING THIS COURT RATHER THAN TO UPHOLD WHAT THE SECOND DISTRICT DID, TO HAVE IT SENT BACK.

FOR PROPER HEARING. I HATE TO SAY THAT. I HAVE BEEN DOING THIS FOR 10 YEARS. BUT I THINK REALISTICALLY THAT IS WHAT I ASKED THEM TO DO BEFORE WHEN THEY SENT IT UP HERE.

YOU HAVE BEEN VERY FRANK ABOUT WHAT THE SORT OF THING OF THE DAY BACK IN THE MID 90s. AND I HAD THOUGHT THAT SOME OF THESE ORDINANCES ACTUALLY WERE PASSED NOT BECAUSE THEY WERE PARTICULARLY CONCERNED ABOUT JUVENILE VICTIMIZATION BUT BECAUSE THERE WAS A LOT OF BUSINESS OWNERS IN SOME OF THESE MUNICIPALITIES THAT FRANKLY DIDN'T WANT THESE KIDS OUT NEAR, OUT AT NIGHT, NOT REALLY DOING MUCH IN

TERMS OF ANY REAL -- ANYTHING OF ECONOMIC BENEFIT. WAS THAT ANYTHING THAT -- IS THAT IN THE RECORD AT ALL AS FAR AS THE TAMPA?

NO, BUT FROM, SINCE WE'RE TALKING ABOUT NON-RECORD MATERIAL, I HAVE BEEN CONSULTED THROUGHOUT THE STATE ON CURFEWS AND I WAS INVOLVED IN THE PASSING OF THE ORDINANCE A AND WHICH WAS, I MEAN STATUTE, WHICH IS A LOCAL OPTION ORDINANCE. THE WHOLE CONCEPT IS THE ORDINANCE WAS THAT IF YOU HAVE A PROBLEM, YOU PASS IT. WHEN I TALKED TO MUNICIPALITIES, I SAY WELL WHAT KIND OF CRIME ARE YOU HAVING? WELL WE HAVE, YOU KNOW, SOMEBODY STOLE A COW THE OTHER NIGHT UP IN PASCO COUNTY. THEY ARE SCREAMING WE WANT CURFEW. I SAY THAT IS NOT GOING TO MAKE IT BECAUSE YOU DON'T HAVE A COMPELLING INTEREST. YOU HAVE ONE PROBLEM.

SO THERE SHOULD BE THE SELECTIVE USE OF THE ORDINANCE IS WHAT YOU'RE SAYING? YOU'RE ADVISING THEM NOT TO PASS ONE IF YOU DON'T HAVE A PARTICULAR PROBLEM.

IT WOULDN'T BE CONSTITUTIONAL. THAT IS WHY WE DID A LOCAL OPTION. I THINK IF YOU LOOK AT MOST OF THE CASES, EITHER ORDINANCES OR THEY'RE LOCAL OPTION LAWS THAT A PARTICULAR MUNICIPALITY HAS TO MEET THE BURDEN IN THE ORDINANCE TO SHOW THEY NEED THAT ORDINANCE BEFORE IT CAN BE UPHELD.

CAN I ASK ONE QUESTION?

YES, GO AHEAD.

WHY DID IT CHANGE FROM CIVIL TO CRIMINAL SANCTIONS?

OH, I WISH I KNEW THAT QUESTION. WE WERE TELLING EVERYBODY PLEASE CALL US BEFORE YOU PASS THIS. BECAUSE WHEN WE PUT THIS IN THE LEGISLATURE, WE KNEW THIS SHOULDN'T BE CRIMINAL PENALTY. BECAUSE IF YOU ARE TRYING TO PROTECT THE JUVENILE, DON'T PUT HIM IN THE SYSTEM.

KEN, WE APPRECIATE YOUR CANDOR. THANK YOU VERY MUCH. THANK YOU ALL THREE OF YOU VERY MUCH. THE COURT WILL NOW STAND IN RECESS.

PLEASE RISE.