

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Dept. of Highway Safety & Motor Vehicles v. Robert Critchfield

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, EVERYONE. I APPRECIATE COUNSEL BEING READY TO GO ON THE FIRST CASE, AND SO WE WILL GET RIGHT TO BUSINESS. THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES VERSUS CRITCHFIELD. IF COUNSEL IS READY, YOU MAY PROCEED.

THANK YOU, YOUR HONOR. YOUR HONOR, I HAVE RESERVED FIVEMENTS FOR REBUTTAL, PLEASE.

CHIEF JUSTICE: FINE.

GOOD MORNING, AGAIN. IF IT PLEASE THE COURT, I AM CHARLIE McCOY FROM THE ATTORNEY GENERAL'S OFFICE HERE ON BEHALF OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. THIS IS AN APPEAL OF RIGHT FROM THE FIFTH DCA WHICH HELD CHAPTER 228 LAWS OF FLORIDA HAVE VIOLATED THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION. VERY BRIEFLY, THE CASE ARISES ON THESE FACTS THAT MR. CRITCHFIELD RECEIVED HIS FOURTH DUI CONVICTION IN 1987, AT WHICH TIME HIS REGULAR DRIVERS LICENSE WAS REVOKED. HE APPLIED FOR A HARP LICENSE IN 1995 WHICH WAS DENIED. IN 1999 HE APPLIED AGAIN --

DO THE FACTS REALLY AFFECT THE DISPOSITION?

IT GIVES YOU A LITTLE CONTEXT, YOUR HONOR. IN SHORT, HE WAS TOLD HE COULD NOT RECEIVE A HARP LICENSE BECAUSE OF THE -- A HARDSHIP LICENSE BECAUSE OF THE CHANGES IN THE LAW. THIS IS PURELY AN ISSUE OF FACT, YOUR HONOR. THE SECTION THAT AFFECTED HIM WAS SECTION 8, WHICH REVOKED YOUR DRIVERS LICENSE UPON THE FOURTH DUI BUT THE PRIVILEGE TO DRIVE ITSELF, AND THE DEPARTMENT IMPLIES THAT TO MEAN YOU ARE NOT EVEN ELIGIBLE FOR A HARDSHIP LICENSE. THE CORNERSTONE OF THE STATE'S ARGUMENT HERE IS THAT THIS LAW DOES THOUGHT VIOLATE THE SINGLE SUBJECT RULE BECAUSE THERE IS INDEED AN EXPLANATION FOR WHY THE LEGISLATURE CHOSE TO PUT THESE PROVISIONS INTO A SINGLE ACT AND THAT IS ALL OF THESE PROVISIONS RELATE TO DRIVERS LICENSING DIRECTLY OR REPRESENT CONDITIONS PLACED UPON THE HOLDING OF IT THAT LICENSE.

DON'T YOU HAVE TO STRETCH, WITH REFERENCE TO THE BAD CHECK PROVISIONS HERE, AND ACTUALLY GO AND FIND SOMETHING ELSE, TO TRY TO IN ANY WAY CONNECT A BAD CHECK PROVISION TO ALL OF THESE OTHER PROVISIONS? OBVIOUSLY THAT IS WHAT THE ISSUE IS.

YES, YOUR HONOR. IT IS ON ITS FACE, THE LEAST RELATED TO THE OTHER PROVISIONS, BUT LET ME HASTEN TO ADD THAT, AS LONG AS THE CONNECTION IS LOGICAL, THERE IS NOTHING IN THE CASE LAW THAT SAYS IT HAS TO BE FACIALLY APPARENT IN THE STATUTE. HERE IS HOW, WHY. SECTIONS ONE AND THREE ACTUALLY THE FIRST THREE SECTIONS OF THIS LAW WERE WHAT THE HOUSE BILL ORIGINALLY CONTAINED, AND THE FIRST SECTION, OF COURSE, RELATES TO REVOCATION OR SUSPENSION OF A LICENSE UNDER CERTAIN CONDITIONS FOR PASSING A WORTHLESS CHECK. SECTION 3 ESSENTIALLY RELATES TO HOW THAT CAN BE REINSTATED. IN BETWEEN IS SECTION 2, WHICH PROVIDES AN ALTERNATIVE TO BOTH PRETRIAL DIVERSION OR PROSECUTION FOR A BAD CHECK, IF A RECIPIENT IS WILLING TO ASSIGN IT FOR DEBT COLLECTION

OR SO FORT, THEN AFTER A CERTAIN AMOUNT OF TIME THE PROSECUTING ATTORNEY CAN DROP THE CASE OR WHATEVER. THE CONNECTION IS THIS. FIRST OFF, THE BURDEN PLACED ON THE LICENSE, THAT IS THE POSSIBILITY OF HAVING IT SUSPENDED OR REVOKED IF YOU DON'T APPEAR AT A PROSECUTION FOR A BAD CHECK IS ALLEVIATED SOMEWHAT BY THIS PROVISION.

WHEN YOU LOOK AT THE PROVISION, WE ARE TALKING ABOUT 832.10, CORRECT?

YES, YOUR HONOR.

WHEN YOU LOOK AT THAT PROVISION, HOW WOULD ANYONE, ANY PERSON JUST READING THAT PROVISION, MAKE THE LEAP THAT YOU SEEM TO BE MAKING, THAT THIS HAS SOMETHING TO DO WITH A POSSIBILITY OF NOT GETTING YOUR LICENSE SUSPENDED? I MEAN, WHAT COULD YOU READ IN THIS, THAT AN ORDINARY PERSON WOULD KNOW THAT THAT IS A POSSIBILITY?

WELL, YOUR HONOR, FIRST OFF, AND I THINK, EXCUSE ME, DON'T VERGE ON THE MISTAKE WHICH WE THINK THE FIFTH DCA DID, WHICH IS TO TAKE EACH PROVISION IN ISOLATION. THIS RELATES PARTICULARLY TO SECTIONS ONE AND THREE OF THE BILL. I DON'T THINK THAT THE CASE LAW HAS EVER SAID --

IS THERE ANY REFERENCE IN THIS PARTICULAR SECTION, TO THOSE SECTIONS, SO THAT ONE WOULD MAKE THAT LOGICAL CONCLUSION?

WELL, YOUR HONOR, IF I UNDERSTAND YOU CORRECTLY, YOUR QUESTION CORRECTLY, IT LOOKS LIKE YOU ARE SEARCHING FOR ON THE FACE OF THE LAW CONNECTION TO THE REMAINDER OF THE BILL, AND THIS COURT HAS NEVER REQUIRED THAT.

HOW WOULD, IF IT IS NOT THERE, WHAT YOU SEEM TO BE CONCEDED, THEN HOW WOULD A PERSON JUST READING THIS LAW MAKE THAT CONNECTION?

THEY HAVE TO READ THE SECTION BEFORE AND AFTER. THEY HAVE TO READ THE ENTIRE BILL, THE OTHER PORTIONS OF THE LEGISLATIVE ACT PROVIDE THAT CONNECTION. I AM NOT CONCEDED, I AM CONCEDED ONLY THAT THERE IS, ON ITS FACE, THAT SECTION 2 DOES NOT SAY DRIVERS LICENSE, AND THAT IS ALL THERE THAT I AM AGREEING WITH THE COURT.

WHERE, ANYPLACE ELSE IN THE BILL, DOES IT EXPLAIN THE RELY VAEPS OF THIS SECTION?

-- THE RELEVANCE I OF THIS SECTION? -- THE RELEVANCY OF THIS SECTION?

IT IS RELEVANT THAT THE SECTIONS IMMEDIATELY BEFORE AND IMMEDIATELY AFTER RELATE TO DRIVERS LICENSE OR THEIR SUSPENSION AND REINSTATEMENT, AND THIS PROVIDES FOR --

WHERE IN OR BEFORE OR AFTER THOSE SECTIONS DOES IT REFER TO BAD CHECKS?

THE SAWYER COURT, WHICH WAS THE FOURTH DCA DECISION LAST SUMMER, WHICH OF COURSE, UPHELD THIS STATUTE INSERTIFIED CONFLICT.

I GUESS MY QUESTION IS DIFFERENT AND IT IS MORE SPECIFIC. OKAY. WHERE, IN THE SECTION BEFORE OR THE SECTION AFTER, DOES IT REFER TO ANYTHING ABOUT BAD CHECKS?

WELL, NOW, SECTION ONE --

IS THAT BECAUSE ARE CLAIMING, THAT THE SECTION BEFORE AND THE SECTION AFTER HAS SOME REFERENCE TO THIS BAD CHECK PROVISION?

IF I UNDERSTAND CORRECTLY, YES, YOUR HONOR. SECTION ONE OF THE BILL, EVEN THE CAPTION LINE SAYS SUSPENSION OF DRIVERS LICENSE, SO FORT AND WORTHLESS CHECK CASE. SECTION 3

SPEAKS TO NOTIFICATION, SUSPENSION, REVOCATION OR DISQUALIFICATION OF LICENSE AND THEN IN SECTION 2, WHICH IS THE ONLY PORTION THAT TROUBLED EITHER THE TRIAL COURT OR THE FIFTH DCA HERE, IT TALKS ABOUT THE ALTERNATIVE TO THE PRIVATE DEBT COLLECTOR ALTERNATIVE, AND WHILE IT DOES NOT MENTION DRIVERS LICENSE SPECIFICALLY, IT DOES CROSS-REFERENCE THE STATE ATTORNEYS AUTHORITY TO PROSECUTE FOR A BAD CHECK, AND IT WAS THAT LINK AND THAT SATISFIED THE SAWYER COURT, BECAUSE THEY FOUND THAT IN CHAPTER 832, WHICH IS THE CRIMINAL STATUTE FOR BAD CHECKS, IT MENTIONS CERTAIN CONDITIONS, IT MENTIONED THAT, THE POSSIBILITY OF REINSTATING A SUSPENDED LICENSE, PURSUANT TO CHAPTER 322. IT MENTIONED COSTS AND FEES WHICH HAVE TO BE PAID, WHICH ARE ALSO MENTIONED IN 322, THE DRIVERS LICENSE --

LET ME ASK YOU A QUESTION ABOUT THIS, AS FAR AS WHERE OUR STANDARD IS IN THIS. OBVIOUSLY WHEN WE LOOK AT MOST LEGISLATION, WE ARE TRYING TO UPHOLD THE CONSTITUTIONALITY, AND IF IT DOESN'T INVOLVE A FUNDAMENTAL RIGHT, YOU LOOK AT ANY CONCEIVABLE RATIONAL RELATIONSHIP, BUT NOW WHAT WE HAVE HERE IS AN EXPLICIT FLORIDA CONSTITUTIONAL PROTECTION THAT REQUIRES THERE BE A SINGLE SUBJECT, AND SO IS IT THE SAME SORT OF, LIKE, WELL, IF WE CAN THINK OF A CONCEIVABLE RELATIONSHIP, HOWEVER ATTENUATED, AND HOWEVER, THAT IT IS OUR OBLIGATION, THEN, TO FOLLOW THAT THROUGH, OR WHAT, OR HOW WOULD YOU ARTICULATE, IN THIS CONTEXT, OF SINGLE SUBJECT, DOES THE, YOU SAID IT DOESN'T HAVE TO BE FACIALLY APPARENT, BUT I GUESS WHAT JUSTICE ANSTEAD IS SORT OF ASKING IS WHAT, SHOULDN'T IT HAVE TO BE FACIALLY APPARENT, BECAUSE OTHERWISE WE ARE REALLY GUESSING ON SOME TYPE OF ATTENUATED LOGICAL CONNECTION THAT DOESN'T SEEM TO BE SUITED FOR THE PURPOSE OF THE SINGLE SUBJECT PROHIBITION.

NO, YOUR HONOR. DEFINITELY WOULD NOT WANT THIS COURT TO ADOPT A STANDARD THAT SAYS THAT EVERY SMALL SECTION OF A LEGISLATIVE ACT HAS TO EXPRESSLY MENTION THE SINGLE SUBJECT OR TOPIC, IN ORDER TO PASS MUSTER UNDER THE SINGLE SUBJECT RULE. NOW, IN THE GRANT CASE VERSUS STATE, WHICH YOU ALL DECIDED I THINK A COUPLE OF YEARS AGO, WHICH QUOTED JOHNSON VERSUS STATE FROM TEN OR TWELVE YEARS AGO, SAID THAT A REASONABLE EXPLANATION WOULD SATISFY THE SINGLE SUBJECT RULE. I THINK THAT LANGUAGE, TO ME, ECHOES THE MORE COMMONLY HEARD LANGUAGE IN THE CONTEXT, SAY, OF AN EQUAL PROTECTION CHALLENGE TO A STATUTE.

SO A REASONABLE EXPLANATION, AN OBJECTIVELY REASONABLE EXPLANATION OBVIOUSLY. IT HAS TO BE NOT JUST A POSSIBLE CONNECTION IN TERMS OF THE WHOLE UNIVERSE OF EXPLANATIONS.

NO. LET'S SAY PLAUSIBLE, YOUR HONOR. I DON'T --

DO WE KNOW, SINCE ONE OF THE PURPOSES OF THE SINGLE SUBJECT IS TO PREVENT THIS KIND OF LOG ROLLING, TO PUT SOMETHING IN AT THE LAST MINUTE THAT DOESN'T REALLY HAVE ANY RELATIONSHIP. DO WE HAVE ANY HISTORY HERE AS TO WHETHER THIS PROVISION, IN FACT WAS ACTUALLY PROPOSED AS PART OF THIS WHOLE SCHEME THAT YOU ARE POSITING EXISTED, WHICH IS WE ARE NOW GOING TO ALLOW SUSPENSION OF DRIVERS LICENSE FOR WORTHLESS CHECKS, BUT WE ARE GOING TO ALLOW THIS ADMINISTRATIVE OR PRIVATE COLLECTION BEFOREHAND. DO WE KNOW THAT IS IN FACT WHAT HAPPENED, OR DO WE KNOW THAT IT WAS ONE OF THESE ELEVENTH HOUR PUTTING IT IN BECAUSE THEY WANTED TO GET IT PASSED?

THE LEGISLATIVE HISTORY IS DETAILED BUT THE WAY I UNDERSTAND IT IS THIS. THE HOUSE BILL WAS NUMBER 3275 IN 1988. IT HAD THREE SUBSTANTIVE SECTIONS WHICH BECAME THE THREE SECTIONS OF THIS BILL, SO LET ME ASSURE YOU THAT THIS PRIVATE DEBT COLLECTOR ALTERNATIVE WAS THERE FROM THE BEGINNING. IT WAS NOT, THAT SECTION 2 WAS NOT PLUGGED IN AT THE LAST MINUTE. DURING THE LEGISLATIVE PROCESS, AND I DON'T RECALL EXACTLY HAD HOW FAR, BUT IT WAS LATE IN THE SESSION, THE REMAINING PROVISIONS OF THE

BILL WERE ATTACKED ON AS A WHOLE. THE WAY I UNDERSTAND IT, THOUGH, AND THIS, I THINK, IS IMPORTANT, THE MOTOR VEHICLE, LET'S CALL IT THE MOTOR VEHICLE PROVISIONS, WERE INDEPENDENTLY WORKING THEIR WAY THROUGH THE COMMITTEE AND, I DON'T THINK, HAD ANY SIGNIFICANT OPPOSITION, AND THIS TO ME, THE LEGISLATIVE HISTORY GIVES THE APPEARANCE MORE OF A MERGER LATE IN THE SESSION TO SAVE TIME. NOW, I WOULD CONTRAST THAT WITH -- CONTRAST THAT WITH TWO SINGLE SUBJECT CASES THAT YOU ALL INVALIDATED, THE STATE VERSUS THOMPSON AND THE STATE VERSUS HEGGS DECISION. THE SINGLE SUBJECT WAS RELATING TO OBTAINING DOMESTIC VIOLENCE INJUNCTIONS AND THE OTHER CAREER CRIMINALS AND CHANGING ENVIRONMENT, RESPECTFULLY, AND YOU -- RESPECTIVELY, AND YOU ALL HELD THAT THOSE WERE VILTED. IT WAS AN INTERESTING HISTORY -- THAT THOSE HAVE VIOLATED. IT WAS AN INTERESTING HISTORY AND THE MERGER OF TWO BILLS, BUT AS I RECALL THERE IT RAN INTO OPPOSITION EARLY AND COULD NOT GET OUT OF COMMITTEE. NOW, TO ME THAT WOULD RAISE A RED FLAG FOR LOG ROLLING, AND YOU DON'T THERE IS A HERE.

SO YOU ARE SAYING, AS I UNDERSTAND YOU, THE ORIGINAL BILL WAS REALLY A WORTHLESS CHECK BILL, BECAUSE IT CONTAINED THE PORTION ABOUT DRIVERS LICENSES, SUSPENDED FOR WORTHLESS CHECKS, AND THE WORTHLESS CHECKS NOW GOING TO PRIVATE DEBT COLLECTORS. IS THAT WHAT YOU ARE SAY SOMETHING.

YES, YOUR HONOR. THE ORIGINAL BILL BECAME THE FIRST THREE SECTIONS OF THIS SESSION LAW.

LET ME ASK YOU A QUESTION ABOUT REMEDIES. THAT IS THAT IT APPEARS THAT CONSISTENTLY THE ENTIRE LEGISLATION HAS BEEN STRUCK DOWN. THIS SAME SUBJECT RULE HAS BEEN VIOLATED.

YES, YOUR HONOR.

HAS THERE BEEN ANY COURT OR ANY ARGUMENT EVER MADE THAT, WHERE YOU HAVE AN ICE LIGHTED -- AN ISOLATED PROVISION THAT STANDS OUT IN CONTRAST, THEN, TO WHAT APPEARS TO BE A RATIONAL SCHEME OF OTHER RELATED PROVISIONS? THAT THE REMEDY WOULD JUST BE TO STRIKE THE ISOLATED PROVISION, AS OPPOSED TO THE OVERALL SCHEME?

YOUR HONOR --

BECAUSE THAT DOES APPEAR STRANGE TO ME, THAT THE WHOLE THING GOES DOWN, WHENEVER A, JUST A TINY PROVISION THAT SEEMED, APPEARS TO BE UNRELATED, IS PUT IN AN OTHERWISE SCHEME THAT IS CLEARLY SINGLE SUBJECT. DO YOU UNDERSTAND MY QUESTION?

YES, YOUR HONOR. I THINK MAYBE YOU ARE REACTING TO THAT FOOTNOTE IN THE FIFTH DCA'S OPINION THAT SAID THE STATE DIDN'T REQUEST SEVERANCE. IT IS AN INTERESTING FACET TO THIS CASE. THE REASON SEVERANCE WASN'T REQUESTED AT THE FIFTH DCA, I WAS NOT TRIAL COUNSEL AND CAN'T SPEAK TO THAT LEVEL. INTERESTING IN JULY OF 2000, YOU ALL ISSUED IN THIS HEGGS DECISION A VERY INFORMED DISCUSSION ON THE AVAILABILITY OF SEVERANCE IN THE SINGLE SUBJECT CONTEXT. YOU SAID IT WAS, ONE, WHEN IN AN APPROPRIATIONS BILL WHICH WE DON'T HAVE HERE AND THE SECOND WAS WHEN THE ODD PROVISIONS OUT, WHERE THE BILL ITSELF WAS REALLY A SINGLE SUBJECT CHALLENGE BUT THE TITLE DIDN'T COVER EVERYTHING THAT WAS IN THE BILL AND THEN YOU CAN STRIKE THE STUFF THAT WASN'T MENTIONED IN THE TITLE, AND WE DON'T HAVE THAT HERE, EITHER, AND IF YOU THINK ABOUT THAT IS REALLY CURE AGO TITLE DEFECT NOT A SINGLE SUBJECT, BUT THEN -- REALLY CURING A TITLE DEFECT NOT A SINGLE SUBJECT, BUT THEN LAST JULY, YOU ALL HAD STATE VERSUS TORMEY, AND I CAN'T FIND IT HERE BUT YOU CONCLUDED THAT THERE WAS MORE THAN ONE SUBJECT IN THE OPERATIVE PART OF THAT LEGISLATIVE ACT, AND THERE WAS A TITLE DEFECT. I DON'T REMEMBER EXACTLY WHAT, AND YOU STRUCK, YOU NEVERTHELESS STILL STRUCK THE PORTION OF THE ACT THAT CORRESPONDED TO THE DEFECT IN THE TITLE, FOR LACK OF A BETTER

WORD. I CAN'T ANSWER YOU BEYOND. THAT CERTAINLY I THINK EVERYONE HERE WOULD RATHER HAVE 80 PERCENT OF A LOAF THAN NONE AND SAY, OKAY, STRIKE SECTION 2, BUT FRANKLY I AM TROUBLED BY THE FACT THAT THERE IS NO SUBSTANTIVE ATTACK ON THE STATUTE. YOU ALL, THE COURT EXPRESSED CONCERN ABOUT SEPARATION OF POWERS IN THAT CONTEXT. I WOULD ASK YOU TO DO THIS. CONSIDER USING THIS CASE AS AN OPPORTUNITY TO RECONCILE THE HEGGS AND THE TORMEY DECISIONS ABOUT THE AVAILABILITY OF SEVERANCE. WITH THAT IN MIND, I DO WANT TO MOVE --

WHERE DOES THAT --

I AM SORRY, YOUR HONOR.

GO AHEAD.

I WANTED TO FOCUS ON YOUR OPERATION OF -- ON YOUR SEPARATION OF POWERS ARGUMENT THAT YOU WENT IN AND THAT YOU MENTIONED.

WELL, YOUR HONOR, THE COURT, I CAN'T SAY IT ANY BETTER THAN THE COURT DID IN HEGGS, AND YOU ALL TALKED ABOUT, WHEN THERE IS NO SUBSTANTIVE ATTACK ON A STATUTE, WHICH WE DON'T HAVE HERE OBVIOUSLY, JUST NUMBER OF SUBJECTS IN A BILL, THE LEGISLATURE, ACTING WITHIN ITS CONSTITUTIONAL AUTHORITY AS FAR AS THE SUBSTANCE, WHICH DO YOU PICK TO STRIKE? THIS IS NOT LIKE WHEN YOU HAVE A SMALL PROVISION AFTER LARGER LAW THAT IS HELD UNCONSTITUTIONAL AND IT IS ESSENTIALLY OUTSIDE THE LEGISLATURE'S AUTHORITY TO ENACT UNCONSTITUTIONAL LEGISLATION. I GUESS THAT IS A PARAPHRASE, AND SO THE COURT IS USING ITS INHERENT POWTER TO SAY THIS LAW IS OF NO EFFECT BUT HERE PUT YOURSELVES IN THE SHOES OF THE LEGISLATURE. WHAT WOULD THE LEGISLATURE WANT? CERTAINLY, IF THIS COURT ANNOUNCES THAT SEVERANCE IS AVAILABLE IN THIS CONTEXT, WE WOULD CERTAINLY PREFER THAT JUST SECTION 2, THE PRIVATE DEBT COLLECTOR ALTERNATIVE BE STRICKEN AND THE REMAINDER OF THE STATUTE STAND, BUT I CAN'T TELL YOU THOSE TWO KACHLTZ I CAN'T RECKON -- THOSE TWO CASES. I CAN'T RECONCILE THEM BEYOND THAT POINT, YOUR HONOR.

CHIEF JUSTICE: YOU WANTED US TO REMIND YOU AND THE MARSHAL PUT THE LIGHT ON.

I WOULD LIKE FOR THIS COURT TO CONSIDER THE POSSIBILITY OF HARMLESS ERROR IN THIS CASE. NOW, IT WASN'T RAISED BELOW, BUT I THINK IF YOU LOOK AT THIS STATUTE, AND DECIDE THAT SECTION 2 IS THE ODD SUBSTANCE OUT, THE ODD SUBJECT OUT, IT IS VERY, IT IS INNOCUOUS. I MEAN COMPARED TO SUSPENDING SOMEBODY'S LICENSE, WHY WOULD YOU HAVE A PROBLEM WITH A PRIVATE DEBT COLLECTOR ALTERNATIVE? WHY WOULD ANY REASONABLE LEGISLATURE FEEL LIKE I AM HAVING TO VOTE IN FAVOR OF SECTION 2 SO THE REMAINDER OF THE LAW WHICH IS WHAT I REALLY WANT CAN PASS, AND I WOULD SUGGEST THAT REMAINING ON SEVERANCE, THAT PERHAPS THE HARMLESS ERROR TEST WOULD PASS. ILL SAVE THE REMAINDER OF MY TIME.

GOOD MORNING. MY NAME IS MICHAEL SNURE AND I REPRESENT MR. CRITCHFIELD. I THOUGHT I WOULD START MY ARGUMENT DIFFERENTLY, BUT I WANT TO POINT OUT TO THE COURT A MISTAKE THAT HAS BEEN MADE WITH RELATION TO THIS BILL. THE RECORD DEMSTRAITS THE LEGISLATIVE HISTORY. THE INITIAL BILL ONLY CONTAINED PROVISIONS, WHAT WE NOW FIND AS PROVISIONS ONE AND THREE. THE PRIVATE DEBT COLLECTOR BILL WAS NOT PROPOSED BY REPRESENTATIVE ARNOLD, AS PREVIOUSLY -- BY REPRESENTATIVE ARNEUA, AS PREVIOUSLY INDICATED. WHERE THIS IS DETAILED IN THE RECORD BEGINS AT 136 AND RUNS THROUGH 181, THOSE PAGES. HOWEVER, THE PRIVATE DEBT COLLECTOR PROVISION WAS ADDED IN A SENATE AMENDMENT VERY LATE IN APRIL, OUR RESEARCH INDICATES.

LET ME, MR. SNURE, THE PRIVATE DEBT COLLECTOR PROVISION IN THIS SITUATION ONLY HAD

ONE PURPOSE. ON YOUR BEHALF, YOU ARE NOT INVOLVED WITH A PRIVATE DEBT COLLECTOR, CORRECT?

THAT'S CORRECT.

IT ONLY HAS A CERTAIN PURPOSE OF BEING A TECHNICAL BASIS TO, FOR THIS COURT TO HOLD THIS ENTIRE STATUTE UNCONSTITUTIONAL. AND THAT IS THE ONLY ARGUMENT THAT HAS BEEN ADVANCED HERE, RIGHT?

WELL, IN THE TRIAL COURT THERE WERE SEVERAL ARGUMENTS ADVANCED ABOUT THE NONRELATIONSHIP.

AND THE REASON THAT THE CASE IS HERE.

IT IS HERE BECAUSE THAT IS WHAT THE FIFTH SEIZED ON, YES, SIR.

OKAY. NOW, LET ME ASK YOU THIS. THERE IS NOTHING IN THE CONSTITUTION AS TO WHAT THE REMEDY IS FOR THE FACT THAT THERE IS A VIOLATION OF THE SINGLE SUBJECT, CORRECT?

NOT THAT I AM AWARE OF.

IT JUST SAYS THAT THERE SHALL BE BUT ONE SUBJECT.

THAT'S CORRECT.

NOW, WE, IF THERE WAS THIS PROVISION AND YOU WERE BEING, THERE WAS SOME ALLEGATION THAT THERE WAS AN INVOLVEMENT WITH A PRIVATE DEBT COLLECTOR, THEN IT WOULD APPEAR TO ME TO MAKE MORE SENSE TO HOLD THAT, BECAUSE THAT SINGLE PROVISION IS KIND OF THROWN INTO AND PERHAPS HID HE WITHIN A -- AND PERHAPS HIDDEN WITHIN A STATUTE THAT OTHERWISE PERTAINS TO ANOTHER MATTER, THAT IT WOULD MAKE IN SOME LOGICAL SENSE -- IT WOULD MAKE SOME LOGICAL SENSE TO STRIKE IT, BUT OTHER THAN JUST A VERY TECHNICAL ARGUMENT, HOW DOES IT MAKE LOGICAL SENSE THAT WE ARE GOING TO COME IN AND HOLD THE PROSECUTION OF THIS STATUTE INVALID? BECAUSE YOU CAN COMB THE STATUTES AND FIND THAT THERE IS THIS TYPE OF INCONGRUITY WITHIN IT THAT DOESN'T REALLY PERTAIN TO YOU?

WELL, TO DO OTHERWISE, I THINK, IN THIS CONTEXT, WOULD AMOUNT TO LEGISLATING FROM THE BENCH. WE CAN'T SAY, WHICH I DON'T THINK IT IS THE COURT'S PREROGATIVE TO SAY WHICH LEGISLATION SHOULD SURVIVE THIS AND WHICH SHOULDN'T. THE ONLY ARGUMENT IN THE CASES THAT WE HAVE CITED AND THE CASES THAT THE COURT HAS DECIDED IN THE LAST SEVERAL YEARS, HAS NOT OPTED UNDER THESE CIRCUMSTANCES, TO SAVE SOME PORTION OF THE BILL AND ELIMINATE SOME OTHER.

WHY NOT? IN OTHER WORDS, IF YOU HAVE WHAT APPEARS TO BE A VERY COMPREHENSIVE SCHEME, FOR INSTANCE, AN EXTENSIVE DETAIL ABOUT THE SCHEME AND THEN THE ODD MAN OUT IS STUCK IN THERE, AND WHY WOULDN'T IT BE MORE LOGICAL, IF YOU ARE SAYING THAT THE POISON PILL IS PUT IN THERE. TAKE THE POISON PILL OUT AND KEEP THIS EXTENSIVE SCHEME? WHY ISN'T THAT JUST A LOGICAL REMEDY, IN A CASE LIKE THIS?

IT HAS A CERTAIN APPEAL TO IT. I HAVE TO ACKNOWLEDGE THAT TO THE COURT. ALL I CAN SAY IS THAT THIS VERY COURT HAS ELECTED NOT TO DO THAT, UNDER THESE CIRCUMSTANCES IN SEVERAL OF THE CASES. THOMPSON, JOHNSON, BUNNELL, MARTINEZ, THOSE CASES THAT WE HAVE CITED.

LET ME ASK YOU SORT OF ANOTHER WAY, NOT ABOUT THE REMEDY BUT ABOUT THE SINGLE

SUBJECT. IF THE, BECAUSE I AM LOOKING AT HOW IT ACTUALLY GOTTEN ACTED. IN 809 AND 810, WERE PUT IN AS PART OF THE SAME STATUTE, UNDER CHECKS AND DRAFTS. SO IF THIS STATUTE, THE ENACTING LEGISLATION HAD INCLUDED JUST 809 AND 810, ONE BEING THE SUSPENSION OF THE DRIVERS LICENSE FOR THE WORTHLESS CHECK AND THE OTHER BEING THE ALTERNATIVE, WOULD THAT BE, WOULD THAT HAVE BEEN A SINGLE SUBJECT VIOLATION?

JUST THOSE TWO SUBJECTS?

WELL, ONE RELATING TO DRIVERS LICENSE FOR WORTHLESS CHECK AND THE OTHER RELATING TO THE WORTHLESS CHECK.

HAD IT JUST BEEN THOSE TWO, I THINK I WOULD SAY THAT THEY AT LEAST RELATED TO WORTHLESS CHECKS.

WHY, SINCE, AGAIN, IN TERMS OF THIS, WHAT IS BEING PUT TOGETHER, IF THOSE TWO HAVE A CONNECTION, BECAUSE THAT IS REALLY WHAT THE FIFTH DISTRICT WAS SAYING THEY HAD NO CONNECTION TO DRIVERS LICENSE, BUT IF IT HAS THAT CONNECTION, AND SINCE THE OTHER, SINCE DRIVERS LICENSE, THEN, IS IN THERE, WHY ISN'T IT APPROPRIATE THAT THE OTHER, THAT THOSE ARE, THAT IS THE CONNECTION? IN OTHER WORDS 809 AND 810 ARE NOT ILLOGICAL. THEY ACTUALLY WERE INTENDED TO BE PART OF THE SAME BILL, IS THE WAY JUDGE KLEIN DESCRIBED IT, OR ELSE YOUR SINGLE SUBJECT VIOLATION SHOULD BE THAT THOSE TWO SECTIONS ARE JUST NOT RELATED TO THE REST OF EVERYTHING, WHICH AMENDED ALL THE OTHER PROVISIONS OF THE DRIVERS LICENSE, BUT I DON'T HER -- I DON'T HEAR THAT AS BEING --

NO, WE RAISED THAT IN THE TRIAL COURT, AND ACTUALLY HAD IT JUST BEEN, REMEMBER, NOW, ONE AND THREE WERE THE ORIGINAL PROPOSALS. TWO COMES IN AT THE VERY END, BUT HAD IT BEEN ONE, TWO AND THREE IN THE BEGINNING IN A BILL ENTITLED CRIMES, WORTHLESS CHECKS, WE WOULD NOT BE HERE. IN THE BEGINNING, WE SOUGHT TO STRIKE ALL THE OTHER DRIVERS LICENSE PROVISIONS. WE THOUGHT THAT WAS ALL UNRELATED. AND SO IN A SENSE, I AGREE WITH YOU, BUT YOU CAN'T SAY, BECAUSE ONE AND TWO RELATE TO WORTHLESS CHECKS, AND THEN IN ONE WE HAVE A NOTION OF DRIVERS LICENSES THAT WE CAN SOMEHOW SCOOP IN THE REST OF THIS STUFF.

SO YOU ARE SAYING THE FIFTH DIDN'T SEIZE ON YOUR BEST ARGUMENT. YOU HAVE A BETTER ARGUMENT?

WELL, THEY SEIZED ON AN ARGUMENT THAT I THINK SUBSECTION TWO IS VERY DIFFICULT TO RECONCILE, AND MIGHTY POINT OUT I BELIEVE THE SAWYER COURT IS MISTAKEN IN ITS REASONING AND I WOULD LIKE TO DEMONSTRATE THAT TO YOU. I DON'T KNOW TO WHAT EXTENT THIS COURT IS PERSUADED BY SAWYER, BUT THEY CLAIM THAT, BY FOCUSING ON, IN THE THIRD SUBSECTION OF THE BILL, THAT YOU CANNOT GET YOUR DRIVERS LICENSE REINSTATED UNTIL YOU HAVE HAD FULL PAYMENT OF RESTITUTION, COURT COSTS AND FEES INCURRED AS A RESULT OF A WARRANT OR CAPEAS BEING ISSUED, PURSUANT TO 832.09. THAT IS SUBSECTION ONE. BUT IN THE OPINION, THEY SAY THOSE COSTS AND FEES ARE DESCRIBED IN SUBSECTION 832.10. THAT IS THE SUBSECTION. THE PROVISION THE CRITCHFIELD PANEL FOUND TO HAVE NO CONNECTION. THAT IS JUST WRONG. CRITCHFIELD FOUND THE SECOND SUBSECTION TO HAVE NO CONNECTION, THE FIFTH DISTRICT DID, AND THE FOURTH HAS MISTAKENLY MISS APPRECIATED THAT. WE MADE ARGUMENT IN THE TRIAL COURT --

ACTUALLY THE WAY I READ IT, IT IS SECTION TWO THAT ADOPTS 82.10, AND THAT IS WHAT COURT IS TALKING ABOUT, SECTION THREE ADDS 322.251.

AND IF YOU LOOK AT THAT, 322.251 SAYS IN ORDER TO GET REINSTATED, YOU HAVE TO PAY BACK THE COSTS OF THE CAPEAS FOUND IN 832.09, WHICH WAS CREATED IN SUBSECTION ONE. THERE IS NO REFERENCE, THE CONNECTION THEY THOUGHT THEY HAD TO SUBSECTION TWO IS NOT THERE.

THAT CAME, FIRST OF ALL, THAT CAME MONTHS LATER.

WHAT THE FOURTH DISTRICT IS SAYING IN SAWYER, IS THAT SUBSECTION TWO RELATES TO SUBSECTION ONE, BECAUSE IT PROVIDES AN ALTERNATIVE FOR COLLECTING ON A CHECK, AND THEREBY NOT FILING A COMPLAINT, WHICH WOULD RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSES.

THAT IS THEIR ARGUMENT. SAWYER SAYS THAT THESE COSTS, REFERRING TO THE COSTS OF THE ISSUE OF THE WARRANT, DESCRIBED IN 832.10, WHICH IS SUBSECTION ONE --

832.10 IS SUBSECTION 2. 832.09 IS SUBSECTION 1.

THEY ARE MISTAKEN ABOUT THAT, THOUGH, BECAUSE THE COSTS OF THE WARRANT COME FROM SUBSECTION ON WARRANT, 832.09. WHAT I AM SAYING IS THEY MISS APPRECIATED THE EFFECT OF THAT. THERE ARE NO FEES ASSOCIATED WITH GETTING A WARRANT. IN A CAPEAS. IN TEN. IT IS IN 09. THEY HAVE MADE A MISTAKE IN SOME WAY THERE.

THE FACT THAT THEY REFERRED TO THE WRONG SECTION, TO ME DOESN'T GO TO THE POINT, WHICH IS DOES SECTION DOES SECTION 2, WHICH CREATES AN ALTERNATIVE, RELATE TO SECTION ONE, WHICH IS WHAT RESULTS IN A SUSPENSION OF YOUR DRIVERS LICENSE FOR PASSING A WORTHLESS CHECK, SO NOW WE HAVE GOT A RELATIONSHIP BETWEEN PASSING A WORTHLESS CHECK AND SUSPENSION OF A DRIVERS LICENSE, AND THEREFORE SECTION 2 TALKS ABOUT AN ALTERNATIVE, SO THAT YOUR LICENSE IS NOT SUSPENDED, BY GETTING A COLLECTION AND NOT FILING A COMPLAINT, WHICH WOULD AUTOMATICALLY RESULT IN A SUSPENSION OF THE DRIVERS LICENSE. WHY ISN'T THAT A RELATIONSHIP BETWEEN TWO AND ONE?

WITH ALL DUE RESPECT, BECAUSE I DON'T THINK SUBSECTION TWO DOES WHAT YOU HAVE SUGGESTED. IT, TO THE EXTENT THAT IT IS AN ALTERNATIVE, AS WAS APPOINTED OUT, IT IS NOT EXPLAINED THAT IT IS AN ALTERNATIVE. IT IS NOT A STATE ATTORNEY ALTERNATIVE. IT IS A PRIVATE ALTERNATIVE FOR THE PAYEE OF THE CHECK, THE PERSON TO WHOM THE LOSS HAS OCCURRED, TO SEEK TO COLLECT IT IN SOME OTHER WAY, SORT OF AUTHORIZING THAT. THERE IS NO LANGUAGE IN THERE THAT SUGGESTS IF, IT THIS IS A PAYEE'S OPTION, BY THE WAY. IT IS NOT A BAD CHECK WRITER'S OPTION. IT IS A PAYEE'S OPTION. THE CONNECTION, AGAIN, WITH ALL DUE RESPECT, I THINK IS TENUOUS. IT IS, AS THE COURT HAS POINTED OUT, THERE IS LANGUAGE WHERE THIS COURT HAS SAID, IF, US EVENINGS -- ESSENTIALLY IF YOU HAVE TO STRETCH, IT IS NOT THERE. THIS IS NOT PART OF THE ORIGINAL BILL. WE CAN'T SAY THAT REPRESENTATIVE ARNOLD, THIS IS WHAT HE INTENDED.

IT BEING SECTION TWO?

YES.

I THOUGHT I HEARD FROM THE ATTORNEY GENERAL THAT IT WAS IN FROM THE BEGINNING.

ABSOLUTELY NOT. AS I SAY, IT IS IN THE HISTORY, IN THE RECORD. THE ORIGINAL BILL WAS SUBSECTION ONE CREATING A SUSPENSION FOR FAILING TO APPEAR ON A BAD CHECK. SUBSECTION TWO OF THE ORIGINAL BILL WAS HOW YOU GET IT REINSTATED.

WHAT YOU ARE SAYING, OKAY, SO THEN WE GO BACK TO THIS, THAT 809 AND 810 ARE REALLY NOT RELATEED.

THEY DIDN'T START FROM THE SAME BILL.

I THOUGHT I ASKED YOU BEFORE IF THOSE WERE THE ONLY TWO SECTIONS, ONE AND TWO, WHETHER THERE WOULD BE A SINGLE SUBJECT SLILTION, AND YOU SAID -- VIOLATION, AND YOU

SAID YOU THOUGHT YOU WOULD HAVE A HARDER TIME MAKING THAT ARGUMENT. I THINK THAT IS REALLY, IF THOSE ARE SOMEHOW LOGICALLY RELATED, THEN I THINK YOU HAVE A HARDER TIME SHOWING THERE IS AN ENTIRE SINGLE SUBJECT VIOLATION, BUT AS SAY, IF THERE IS NO REAL RELATIONSHIP BECAUSE YOU SAY SOMEBODY IS GOING TO BE PROSECUTED FOR A BAD CHECK AND ON THE OTHER HAND A DEBT COLLECTOR TRYING TO ENFORCE A BAD CHECK ANOTHER WAY, HOW IS THAT RELATE HAD? IT IS NOT RELATED.

WELL, AT BEST, ALL IT HAS IS THAT IT DEALS WITH WORTHLESS OR BAD CHECKS.

HAS THE WORD "WORTHLESS CHECK" IN IT.

IN THE END, THE ANALYSIS THAT SOME OF THIS COURT'S DECISION HALVES EMPLOYED, YOU HAVE LOOKED AT THE TITLES OF THE STATUTES TO SEE WHETHER THIS IS AN ACT RELATING TO WORTHLESS CHECKS THAT PRIMARILY RELATES TO DRIVERS LICENSE AND REPLETE IN THE STATE'S BRIEF IS REFERENCES TO HOW IT IS ALL RELATED TO ONE SUBJECT, WHICH IS DRIVING, DRIVERS LICENSE, HOW YOU KEEP OR LOSE YOUR DRIVING PRIVILEGE, YET IT IS ENTITLED CRIMES, WORTHLESS CHECKS.

LET'S TALK ABOUT THE TITLES, BECAUSE SECTION ONE CREATES 832.09, SUSPENSION OF DRIVERS LICENSE AFTER WARRANT OR CAPEAS IS ISSUED IN A WORTHLESS CHECK CASE AND SECTION TWO CREATES SECTION 832.10, WHICH IS ALTERNATIVE TO BAD CHECK COLLECTION FEES OR ALTERNATIVE COLLECTION. SO WHY DON'T THOSE TITLES SUGGEST TO THE READER THAT SECTION TWO RELATES TO SECTION ONE, BECAUSE 832.10 CREATES AN ALTERNATIVE TO 832.09?

WELL, BECAUSE I DON'T THINK IT DOES CREATE AN ALTERNATIVE TO 832.09. 832.09 IS A SANCTION FOR FAILING TO APPEAR AT YOUR ARRAIGNMENT IN A BAD CHECK CASE. AN ALTERNATIVE TO A DIVERSION PROGRAM HAS, REALLY, NOTHING DO WITH FAILING TO APPEAR. IT REVOLVES AROUND A CHECK ISSUE, BUT 832.10 ASK NOT DIRECTLY RELATE TO 09, IN THE SENSE THAT 09 HAS NOTHING TO DO WITH THE DIVERSION PROGRAM. IT IS JUST WHAT HAPPENS WHEN YOU FAIL TO APPEAR. YOU LOSE YOUR DRIVERS LICENSE. AGAIN, THIS IS PLUGGED IN AT THE VERY END, AND IF YOU FOLLOW THE LEGISLATIVE HISTORY, YOU WILL SEE THAT THERE, I BELIEVE THERE WAS A DIVERSION PROGRAM RECOMMENDED IN -- RECOMMENDED AND THAT CAME OUT AND THIS CAME IN.

CAN YOU SEE WHERE THIS COURT WOULD STRIKE A SECTION AND WOULD NOT BE LEGISLATING? YOUR POSITION IS A THAT, NO MATTER HOW IN CONGRESS UNIT OR DIMINIMOUS THE SECTION IS, THAT IF THIS COURT STRIKES IT, WE ARE GETTING CLOSE TO LEGISLATING, BECAUSE WE DON'T KNOW WHETHER THE BILL WOULD HAVE PASSED WITHOUT IT. IS IT, IS THAT AN ABSOLUTEIST POSITION YOU ARE TAKING?

SOMETHING ABOUT ORAL ADVOCACY, I REMEMBER DON'T EVER TAKE AN ABSOLUTIST POSITION.

LET ME BACK OFF THAT A LITTLE.

IF YOU ARE ASKING CAN I CONCEIVE, NOT OFF THE TOP OF MY HEAD. I HAVE THOUGHT ABOUT THE SEVERANCE ISSUE, AND I JUST CAN'T CONCEIVE A TIME WHEN THE COURT COULD NOT BE QUESTIONED ABOUT PICKING AND CHOOSING. GRANTED, THERE MAY BE TIMES WHEN IT SEEMS VERY ATTRACTIVE. THIS MAY BE ONE OF THOSE TIMES. I THINK THERE IS MORE TO THE PROBLEM IN THIS LEGISLATION THAN JUST FACT THAT THIS SUBSECTION DOESN'T FIT OR THAT THE FIFTH HAS RULED THAT THIS DOESN'T FIT. IT BEGAN WITH THE ORIGINAL PROPOSAL, THE ATTACKING ON, THE LOG ROLLING, ALL OF THE THINGS THAT THIS COURT HAS SAID IN ITS DECISIONS THAT WE ARE TRYING TO PREVENT BY THE SINGLE SUBJECT RULE. WE ARE NOT JUST TRYING TO PREVENT ONE SPURIOUS PROVISION FROM BEING PUT IN A BILL. WE ARE TRYING, IT IS THE COURT'S OVERSEEING OF THE LEGISLATIVE PROCESS. THIS IS A PROCESS WHERE IT COULD BE ARGUED THAT IT WAS ABUSED. THERE WERE MANY THINGS ADDED AT THE VERY LAST MINUTE,

INCLUDING THIS ONE SUBSECTION. PERHAPS IF, BY CHANCE, THEY HAD ALL RELATED, WE WOULDN'T BE HERE.

THE PROVISION THAT YOUR CLIENT IS GOING TO END UP EITHER HAVING A PERMANENT REVOCATION OF HIS DRIVERS LICENSE, WAS THAT ADDED AT THE END?

CLOSE TO THE END, YOUR HONOR, IT WAS. I HAVE THE --

THERE WERE VARIOUS -- I MEAN, THERE IS VARIOUS AMENDMENTS OF THE DRIVERS LICENSE STATUTE THAT CONTINUES AFTER YOU GET PAST SECTIONS ONE AND TWO, CORRECT?

THE, THERE WAS, THE ORIGINAL BILL, WE KNOW, WAS PROPOSED BEFORE APRIL 1. ON APRIL 1, THERE WERE AMENDMENTS THAT DID NOT DEAL WITH WHAT THE SECTION THAT AFFECTS MY CLIENT, CHX, BY THE WAY, IS SUBSECTION 9. THAT IS THE SECTION THAT TOOK AWAY THE OPPORTUNITY OF A PERSON WHO HAD BEEN REVOKED PERMANENTLY, TO APPLY FOR A LICENSE. IT HAD ALWAYS BEEN A PERMANENT REVOCATION, AND THERE HAD ALWAYS BEEN THE ELIGIBILITY FOR A HARDSHIP LICENSE. WHAT SUBSECTION NINE DID IS DELETE THAT ELIGIBILITY FOR A PERSON WHO HAD HAD FOUR DUI'S TO APPLY FOR A HARP LICENSE, BUT TO ANSWER YOUR QUESTION, THE OTHER AMENDMENTS, THE LARGE SENATE AMENDMENT CAME ON APRIL 28. IT WAS APPROVED ON APRIL 30 AND THE SESSION ENDED ON MAY 1 OF '98, SO IT CAME VERY LATE.

YOU HAVEN'T MADE AN ARGUMENT, OR DID YOU MAKE ONE BEFORE THAT, THAT SECTION, THE ONE THAT YOU ARE, THAT ELIMINATES YOUR CLIENT'S ABILITY TO APPLY FOR A HARDSHIP LICENSE, NOT RELATED TO THE OTHER PROVISIONS OF THE STATUTE.

WE DID IN THE TRIAL COURT. IN OUR MOTION FOR SUMMARY JUDGMENT, IT WAS OUR POSITION THAT ALL THE DRIVERS LICENSE PROVISIONS HAD NOTHING TO DO WITH THE WORTHLESS CHECK PROVISIONS. THEY WERE SO DISPARATE, AND WE EVEN IDENTIFIED SOME OTHER SECTIONS, SIX AND SEVEN, ALSO. SIX IS THE SECTION THAT AMENDS THE FINES FOR SPEEDING, GIVING YOU A WARNING FOR THE FIRST FIVE MILES OVER THE SPEED LIMIT.

SO THAT IS AS GOOD AN ARGUMENT, WHY ISN'T THAT A BETTER ARGUMENT, TO SAY THAT, REALLY, COMBINING WORTHLESS CHECKS, EVEN WITH THE SUSPENSION OF THE DRIVERS LICENSE, HAD NOTHING TO DO WITH ALL OF THE OTHER AMENDMENTS TO, SUCH AS THIS ONE.

WELL, THE THINGS THAT, THERE WERE MANY WAYS TO ANALYZE IT, AND TAKING AWAY THE ONE SECTION THAT SIMPLY, THE WHOLE PURPOSE OF THE SECTION WAS TO BRACKET OUT AND LINE THROUGH THIS ELIGIBILITY FOR A HARP LICENSE, ACCEPT IN THE MOST GENERAL WAY RELATING TO TRAFFIC LAW, CERTAINLY HAD NOTHING TO DO WITH WORTHLESS CHECKS OR OTHER SUSPENSION ISSUES. IT COULD BE ANALYZED IN A NUMBER OF DIFFERENT WAYS, AND ONE OF THE THINGS WE HAVE SFRUING HE WOULD WITH IS COMING -- WE HAVE STRUGGLED WITH IS COMING UP AND SIMPLY ASKING THE COURT TO DECIDE WHAT THE FIFTH DISTRICT DID. WE ASK YOU TO ANALYZE IT ON YOUR OWN, DE NOVO AND COME UP WITH YOUR OWN REASONING. IT IS REALLY QUITE A HODGEPODGE OF THINGS. THANK YOU.

CHIEF JUSTICE: THANK YOU.

THANK YOU, YOUR HONORS. LET ME BEGIN BY SAYING OBVIOUSLY WE DISAGREE ON READING OF THE LEGISLATIVE HISTORY. IF MY RECOLLECTION IS INCORRECT, I APOLOGIZE TO THE COURT BUT I DID NOTE THAT COUNSEL ADMITTED FROM THE START THERE WAS AN ALTERNATIVE OR DIVERSIONARY PROGRAM FROM THE BEGINNING. I WOULD, ALSO, POINT TO YOU THAT THERE WERE A NUMBER OF SIMILAR BILLS ALL --

IS IT CORRECT THIS HAS NOT BEEN REENACTED?

NEW YORK CITY YOUR HONOR. THE LEGISLATURE HASN'T RECODIFIED THE STATUTES SINCE 1999. WHICH ONLY BROUGHT YOU UP THROUGH 1997 CHBLTS SO THE WINDOW -- 1997, SO THE WINDOW HASN'T CLOSED.

THAT IS NOT AN AUTOMATIC THAT OCCURS AFTER TWO YEARS?

NO, YOUR HONOR. THE BILLS, IN THE LAST TWO SESSIONS IN PARTICULAR, TO RECODIFY OR DECLARE THE STATUTORY FORM THE OFFICIAL LAW OF FLORIDA, HAVE NOT PASSED. I WANT TO QUICKLY REMIND THE COURT THAT THE HARM HERE THAT IS BEING CONSIDERED IS NOT NECESSARILY THAT THERE IS TWO SUBJECTS, BUT BECAUSE OF TWO SUBJECTS THERE, IS LOG ROLLING. HERE, IF YOU LOOK AT ALL OF THESE PROVISIONS AGAIN, THERE IS NO WAY TO CONCLUDE THAT SOMEONE WOULD FEEL COMPELLED TO VOTE FOR SECTION TWO BECAUSE THEY WERE REALLY IN FAVOR OF ALL OF THE REMAINDER, AND I THINK THAT IS WHAT YOU HAVE GOT TO KEEP IN MIND. AND THE OTHER THING THAT IS CLOSELY RELATED IS DON'T LET YOUR ANALYSIS TURN ON JUST FLUKE OF BILL DRAFTING. YOU SEE --

WAS THIS WHOLE CONCEPT OF THE PRIVATE DEBT COLLECTION EVER CODIFIED SOMEPLACE ELSE? I MEAN, WAS THIS AN EXPANSION OF SOMETHING THAT ALREADY EXISTED, OR WAS THIS JUST A NEW KIND OF PROCEDURE THAT WAS BEING ENACTED IN THIS PARTICULAR LEGISLATION?

I CAN'T ANSWER THAT, YOUR HONOR. I KNOW THAT BAD CHECKS, OF COURSE, HAD BEEN CRIMINALLY SANCTIONED FOR SOME TIME. BUT --

IN MY ESTIMATION, IT GOES TO YOUR WHOLE ARGUMENT ABOUT THIS LOG ROLLING THING. IF THERE WAS NEVER ANY KIND OF SCHEME SIMILAR TO THIS BEFORE, AND YOU HAVE THIS STATUTE THAT DEALS WITH ALL THESE DIFFERENT THINGS ABOUT REVOCATION OF DRIVERS LICENSES AND WHEN YOU CAN HAVE THEM REINSTATED AND ALL OF THESE OTHER DRIVING KIND OF PROVISIONS, I AM NOT SURE THAT YOUR ARGUMENT ABOUT THERE IS NO LOG ROLLING HOLDS WATER, WHEN YOU HAVE GOT A COMPLETELY DIFFERENT KIND OF SUBJECT ABOUT HIRING PRIVATE PEOPLE TO COLLECT YOUR DEBTS FOR YOU. EVEN THOUGH SOMEWHERE SOMEWHERE ALONG THE LINE, IF THAT DOESN'T HAPPEN, THE STATE ATTORNEY CAN STILL PROSECUTE YOU, AND THIS DRIVERS THING COULD HAPPEN.

LET ME POINT OUT TO YOUR HONOR THAT ALL OF SECTIONS ONE, TWO AND THREE CREATED NEW STATUTES, SO AT THE TIME IT APPEARS THAT THIS WAS THE FIRST TIME THAT THE LAW PROVIDED FOR AUTOMATIC SUSPENSION OF LICENSES, IF YOU DIDN'T APPEAR, WHEN YOU ARE BEING PROSECUTED FOR WORTHLESS CHECKS, AND THE LEGISLATURE DECIDED AS TO ALLEVIATE SOME OF THAT BURDEN, BY PROVIDING THE POSSIBILITY OF PRIVATE DEBT COLLECTION.

IS THERE A SIMILAR PROVISION IN THE BAD CHECK LAWS, THAT IS THAT THE CLAUSE THAT PROVIDED FOR BAD CHECKS, DO THEY HAVE A PROVISION, TOO, THAT NOTIFIES THE PUBLIC THAT THERE IS A PROVISION NOW THAT THE PROSECUTION CAN BE A VIEDED, AND THAT IS IN THE -- AVOIDED AND THAT IT IS IN THE HANDS OF THE PAYEE THAT WILL BAR A PROSECUTOR FROM ACTUALLY BRINGING AN ACTION, IF YOU CAN CONVINCED THE PAYEE TO GO THROUGH A PRIVATE DEBT COLLECTION PROCESS HERE THAT YOU REALLY ARE PUTTING THE AUTHORITY FOR PROSECUTION, IF I UNDERSTAND IT CORRECTLY, IN THIS, IN THE HANDS OF THE PAYEE, IS THAT CORRECT?

NOT QUITE CORRECT, YOUR HONOR.

IS THERE A PROVISION LIKE THAT IN THE STATUTE?

IN THIS LAW, IT SAYS THE STATE ATTORNEYS' AUTHORITY TO PROSECUTE IS NOT AFFECTED, BUT THE CHAPTER 832, WHICH HAS THE CRIMINAL PENALTIES FOR BAD CHECKS, DOES CROSS-REFERENCE 322, AS, AND YOU CAN LOOK AT THE SHORT RATIONAL OF THE SAWYER DECISION, TO

SEE THAT IN MORE DETAIL. I DO WANT TO POINT OUT AND THIS KIND OF RELATES TO YOUR ANALYSIS AND THE HARMLESS ERROR POINT THAT DON'T LET THIS TURN ON A FLUKE OF BILL DRAFTING. IT WOULD HAVE BEEN JUST AS EASY, INSTEAD OF HAVING A NEW SECTION ONE AND SECTION TWO HERE THAT TURNED INTO 832.09 AND.10, TURNED INTO A VERY LARGE PARAGRAPH. WOULD YOU EXPECT EVERY SENTENCE OF THE PARAGRAPH TO MENTION DRIVERS LICENSE LICENSE/WORTHLESS CHECKS?

EVERY TIME YOU MAKE THAT ARGUMENT, WE COULD KIND OF COMBINE ALL OF THIS, AND THE SAME THING WOULD HAVE BEEN TRUE WITH THE DOMESTIC VIOLENCE KIND OF SITUATION, IDENTICAL KIND OF SITUATION?

YOUR HONOR, I THINK THE DOMESTIC VIOLENCE WAS DISTINCTIVE BECAUSE IT WAS NOT MUTUALLY CIVIL AND CRIMINAL STATUTES. AS I UNDERSTAND IT, THERE WAS A WHOLE LOT OF NEW LAW ABOUT THE REMEDIES --

IT IS NOT THE RECOVERY OF A WORTHLESS CHECK BY THE PARTIES TO THAT, ALSO, THE DIFFERENCE BETWEEN CIVIL AND THE ENFORCEMENT FROM THE DRIVERS LICENSE STANDPOINT.

NOW, YOU ALL DID SAY IN THE DO YOU REMEMBER AND CASE WHICH WE CITE -- IN THE DURAN CASE WHICH WE CITED IN THE BRIEF, A SINGLE PROVISION DOES NOT CREATE DUAL SUBJECTS. HERE HAD THEY CHOSEN TO PUT IT INTO ONE LARGE PARAGRAPH MR. CHIEF JUSTICE

WE HAVE GONE WELL OVER YOUR TIME.

THANK YOU, YOUR HONOR. I APPRECIATE IT. WE ASK YOU ALL TO REVERSE THE FIFTH.

CHIEF JUSTICE: THANK YOU VERY MUCH.