Corey Franklin v. State of Florida

CHIEF JUSTICE: WE APPRECIATE YOU BEING READY AND WE KNOW THAT YOU ALL HAVE AGREED TO A TIME LIMIT HERE IN THESE TWO CONSOLIDATED CASES AND THE MARSHAL WILL ASSIST US AGAIN WITH HIS LIGHT SYSTEM. LET'S SEE HOW IT GOES WITH FRANKLIN VERSUS STATE.

ON BEHALF PETITIONER COREY FRANKLIN, AND MY COLLEAGUE WILL BE ADDRESSING THE ISSUE OF RETROACTIVITY. THE ADDITIONS OF SECTIONS 11 AND 13 TO THE CHAPTER VIOLATED THE LAWS IN THIS STATE'S CONSTITUTION, AND THE WAY THAT WE KNOW THAT IS THE FOLLOWING, THE SUBJECT CONTAINED IN CHAPTER 99.188 IS CLEAR. IF YOU, IF THIS COURT WERE TO LOOK AT TWELVE, OR RATHER ELEVEN OF THE 13 SECTIONS OF THE ACT, AS WELLS AS THE PRE -- AS WELL AS THE PREAMBLE OF THE ACT, IT LAYS OUT THE CLARITY THAT WHAT THE LEGISLATURE INTENDED WITH REGARD TO PASSING THIS ACT, WAS INCREASING PRISON SENTENCES FOR VIOLENT AND REPEAT OFFENDERS.

SO YOUR PROBLEM WITH THIS, ARE TWO DISCREET SECTIONS, 11 AND 13.

CORRECT, YOUR HONOR.

WHY DON'T WE JUST EXCISE THOSE? THAT IS WHAT THIS COURT HAS APPROVED DOING. I FORGET THE NAME OF THE CASE RIGHT NOW, BUT WE APPROVED DOING THAT, AND IT SEEMS TO ME THAT, IN THE, AN ACT OF COMEDY -- COMITY TOWARD THE LEGISLATURE AND PROPER ADMINISTRATION OF THE COURT SYSTEM IN THIS STATE, WHY ISN'T THAT THIS PROPER SOLUTION?

IN ORDER FOR THIS COURT, YOUR HONOR IS ASKING WHY DON'T WE SEVER THEM OUT? BECAUSE IN ORDER FOR THIS COURT TO DO THAT, GIVEN THIS COURT'S DECISIONS IN HEGGS AND THE EXPLANATION THAT THIS COURT GAVE IN TORE MILE VERSUS MOORE -- IN TORMEY VERSUS MOORE, AND THIS IS NOT THE ONLY CASES IN WHICH 24 COURT HAS SAID -- IN WHICH THIS COURT HAS SAID THIS, GOING BACK TO AS FAR AS CASES IN THE 1930s, THAT WHEN IT VIOLATES THE SINGLE SUBJECT RULE, IT IS NOT PROPERLY EXPRESSED IN THE TITLE AND HERE THEY ARE.

WHICH BRINGS US TO THE QUESTION HERE. WHAT IS THE TITLE OF A PARTICULAR ACT? IS THE TITLE HERE, AN ACT RELATING TO SENTENCING, OR IS THE TITLE HERE, ALL OF THE INFORMATION THAT IS CONTAINED THEREAFTER, THAT TALKS ABOUT EACH SUBSECTION? WHAT DO YOU SUBMIT IS THE TITLE HERE?

THE TITLE IS AND HAS ALWAYS BEEN IN THIS STATE, THE LONG TITLE, IF THERE IS A LONG TITLE THERE, ISN'T ALWAYS A LONG TITLE, BUT THAT IS AT THE FRONT OF THE ACT AND ALL OF THE LANGUAGE THAT FOLLOWS THE LANGUAGE, AN ACT RELATING TO, AND THAT ANSWER IS BASED ON TWO THINGS, YOUR HONOR, NUMBER ONE, NOT SOLELY WHAT THIS COURT SAID IN STORMY VERSUS MOORE BUT -- IN TORMEY VERSUS MOORE BUT CAN OVER AN AND BUNNELL AND HEGGS AND -- CONOVA AND BUNNELL AND HEGGS AND THOMPSON AND TORMEY, THIS STATE HAS ALWAYS LOOKED AT THE LONG TITLE, AND THE REASON THAT THAT IS THE WAY THIS COURT HAS ALWAYS DONE THAT, BECAUSE THAT IS WHAT IS BEFORE THE LEGISLATURE WHEN THE LEGISLATURE VOTES ON IT. THE LEGISLATURE DOESN'T VOTE ON THE SIMPLE LANGUAGE, FOR EXAMPLE AN ACT RELATING TO TOOTHBRUSHES. THE LEGISLATURE VOTES ON HERE IS THE SYNOPSIS OF EVERYTHING THAT THIS BILL DOES, AND THAT IS WHY THE TITLE MUST BE THE

LONG TITLE AND WHY IT IS IMPORTANT.

DOES THIS LONG TITLE CONTAIN REFERENCES TO THE TWO SUBSECTIONS THAT YOU ARE TALKING ABOUT?

IT DOES, YES, YOUR HONOR.

SO, THEN, UNDER THE LANGUAGE IN HEGGS, YOU COULD NOT SEVER THEM, BECAUSE THE TITLE AND THE SUBSECTIONS ARE BOTH THERE.

YES. THAT'S CORRECT, YOUR HONOR, AND THIS COURT EXPLAINED THAT THERE ARE VERY GOOD REASONS FOR NOT SEVERING UNDER THESE CIRCUMSTANCES, IN HEGGS, WHICH ARE THAT, IN ORDER TO DO THAT, THIS COURT WOULD HAVE TO ENGAGE IN AN ANALYSIS OF HOW WOULD THESE LEGISLATORS HAVE VOTED, IF THESE TWO SUBJECTS HAD NOT BEEN ADDED INTO THIS PARTICULAR CHAPTER LAW, AND THAT IS A VENTURE THAT THIS COURT HAS, AGAIN, REPEATEDLY SAID THAT IT DOES NOT INTEND TO DO.

SUBSEQUENTLY IN THIS CASE, THE LEGISLATURE VOTED UNANIMOUSLY, DID THEY NOT, IN THE REENACTMENT TO REMOVE THOSE TWO SECTIONS AFTER THE DECISION IN TAYLOR?

YES, YOUR HONOR, AND THAT, MAYBE IF THIS COURT WANTED TO ENGAGE IN THAT KIND AFTER FACT FINDING PROCESS THAT MIGHT BE A FACT THAT THE COURT WOULD CONSIDER. HOWEVER, I WOULD ALSO POINT OUT THAT THAT IS A LEGISLATURE SETTING THREE YEARS LATER THAT CONSIDERING THEY STAND FOR ELECTION EVERY TWO YEARS, WE DON'T KNOW IF THE MEMBERS OF THE LEGISLATURE WERE THERE THREE YEARS PRIOR, WHEN '98 AND '99 WERE ORIGINALLY PASSED AND ALSO CONSIDER THAT THAT IS A LEGISLATURE THAT HAS SEPARATION OF POWERS WORK IN ITS DISFAVOR AND HAD THE SYSTEM OF CHECKS AND BALANCES WORK, AND WE DON'T KNOW WHAT THEIR MOTIVATION IS WHEN THEY REENACT EVERY ONE OF THOSE SECTIONS T COULD BE ONE OF MANY THINGS, ALSO CONSIDERING THAT IT MAY BE DIFFERENT PEOPLE.

DO MOST STATES HAVE A SINGLE SUBJECT COWIN CONSTITUTIONAL PROVISION? YES? -- SINGLE SUBJECT CONSTITUTIONAL PROVISION? YES?

YES.

DO YOU KNOW WHAT THE MAJORITY OF STATES DO --

NO. I DON'T HAVE AUTHORITY ON WHAT STATES DO IN RELATED SITUATIONS.

JUDGE HOPE, IN CONCURRENCE, SUGGESTS THAT THE WAY TO DO IT IS TO NOT LOOK AT THE TITLE OF ACT, WHICH WOULD BE THE "THREE STRIKES" VIOLENT FELONY OFFENDER ACT, AND SINCE THAT IS ONLY, EVEN THOUGH THAT IS HOW THIS LAW IS COMMONLY REFERRED TO, THERE ARE ONLY TWO POSITIONS RELATE TO DO THAT, RIGHT? AND YOU ARE NOT SUGGESTING THAT WE BE THAT NARROW IN THE FINDING OF THE "THREE STRIKES"?

NO. I AM SORRY.

WHAT ABOUT HIS SUGGESTION THAT THE WAY TO DEFINE THIS SUBJECT IS TO LOOK AT AN ACT RELATING, TO AND THEN SENTENCING. I MEAN, THAT WOULD, IS THAT SOMETHING THAT YOU WOULD AGREE IS A SIMPLE WAY TO DEFINE THIS SUBJECT?

IT COULD BE, BUT THIS COURT, I BELIEVE, SHOULD TAKE A LOOK AT THE ENTIRE ACT AS WELL AS THE PREAMBLE. THIS COURT HAS REPEATEDLY LOOKED AT THE PREAMBLE, TO DETERMINE WHETHER, WHAT IS THE MATTER THAT THE LEGISLATURE INTENDED TO ADDRESS, AND IT DOESN'T REQUIRE MUCH ANALYSIS HERE.

ARE YOU, SECTION 9 HAS TO DO WITH CHANGING THE CRIMINAL DEFINITIONS RELATEING TO MARIJUANA AND THE QUANTITIES. ARE YOU, DO YOU, HAS, I KNOW THAT IT WAS A SUGGESTION IN THE THIRD DISTRICT CASE THAT THAT HAD BEEN MADE THAT THAT WAS OUTSIDE THE SUBJECT. WHAT IS YOUR POSITION ON SECTION 9?

WE HAVE FOCUSED OUR POSITION ON SECTIONS 11 AND 13 AND HAVE NOT ADDRESSED THE CLAIM TO SECTION 9. I DON'T KNOW THAT IT IS REALLY NECESSARY, WHEN THOSE TWO SECTIONS SO CLEARLY VIOLATE THE SUBJECT.

IF THE COURT WERE INCLINED TO THINK ABOUT SEVERANCE AS A REMEDY, IT WOULD BE IMPORTANT TO CERTAIN OF THE CLIENTS THAT WERE SENTENCED UNDER SECTION 9. SO YOU ARE NOT PREPARED TO ADDRESS WHETHER SECTION 9 IS --

ARGUABLY SECTION 9, I DIDN'T ADDRESS IT IN MY BRIEF.

IT WOULD AFFECT YOUR CLIENT IN THE SAME WAY, REGARDLESS, IF WE ELECTED TO SEVER, YOUR CLIENT WOULD STILL BE --

MY CLIENT WAS AFFECTED BY SECTION 3 OF THE ACT AND ALSO SECTION 3 OF 210.

LEAVING, IF WE SEVERED --

CORRECT, BUT THIS HAS MORE FAR-REACHING CONSEQUENCES THAN JUST MY CLIENT.

I UNDERSTAND THAT, BUT SSTS YOUR CLIENT IS -- BUT AS FAR AS YOUR CLIENT IS CONCERNED, WHETHER NINE OR 1 -- WHETHER 9 OR 11, IT WOULD BE THE SAME EFFECT.

I WOULD URGE THIS COURT NOT TO CONSIDER SEVERANCE, BECAUSE HE IS BEING PROSECUTED BY AN ACT WHICH IS VOID. I AM IN MY REBUTTAL TIME. THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT.

THIS IS A WAY I UNDERSTOOD YOUR, THAT --

I HIM SORRY.

IS THAT? OKAY.

I WAS GETTING EXCITED.

CHIEF JUSTICE: HAVE YOU ALL RESERVED ANY, NOT RESERVED ANY TIME FOR REBUTTAL ON THIS CASE?

YES, YOUR HONOR, I RESERVED THREE MINUTES ON FOR REBUTTAL ON THIS CASE. THE WAY WE WERE GOING WAS THE ENTIRE --

BOTH CASES FIRST.

CORRECT.

CHIEF JUSTICE: ALL RIGHT. I GET EDUCATED AS WE GO ALONG HERE. SO YOU INTRODUCE YOURSELF. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. MacCONIGLIARO, ALONG WITH HUNTER CAROL.

COUNSEL, SINCE WE HAVE TIME, LET ME FOCUS YOU ON YOUR ARGUMENT, WHICH IS WHETHER THE SUBSEQUENTLY ENACTED LAW CAN BE APPLIED RETROACTIVELY, RIGHT?

THAT'S CORRECT, YOUR HONOR, ALTHOUGH I WILL SPEAK TO SINGLE SUBJECT AS WELL.

CAN YOU TELL ME, AFTER READING YOUR ARGUMENT, I AM STILL NOT CLEAR WHY THIS CASE ISN'T LIKE DAUB EARTH VERSUS FLORIDA. CAN YOU -- LIKE DULBERT VERSUS FLORIDA.

FIRST OF ALL, IN DALBERT, THE COURT WAS ABLE TO LOOK BACK AT THE EXISTING LAW IN FLORIDA AND SAY THAT WAS AN OPERATIVE LAW THAT GAVE NOTICE, GAVE VALID THOUGHTIES -- NOTICE, TO DALBERT IN THAT CASE, OF WHAT THE PUNISHMENT WOULD BE IF HE COMMITTED THE CRIME OF MURDER. IN THIS CASE WE DO NOT HAVE THE SAME SITUATION. HERE, ASSUMING WE GET TO THAT ISSUE, IT IS BECAUSE THE SINGLE SUBJECT --

AT THE TIME THAT YOUR DEFENDANT MR. GREEN, COMMITTED THE CRIME, THERE WAS A LAW OUT THERE THAT PROHIBITED, THAT WOULD MAKE HIM A HABITUAL FELONY OFFENDER, RIGHT? SO WHY ISN'T THAT AN OPERATIVE FACT, REGARDLESS OF WHETHER IT IS LATER OVERTURNED AS VIOLATING SINGLE SUBJECT, WHY WASN'T HE ON NOTICE THAT THE LEGISLATURE INTENDED TO CREATE THE STATUTE?

THE LAW WAS ON THE BOOKS AND IT WAS A FACT, BUT IT WAS NOT OPERATIVE. THIS COURT HAS SAID, SINCE 1930, THAT --

WHEN TALKING ABOUT AN OPERATIVE FACT, I DON'T THINK THE, THE U.S. SUPREME COURT WAS TALKING ABOUT OPERATIVE LAW. THE OPERATIVE FACT THAT THE LEGISLATURE INTENDED TO OUTLAW THIS CONDUCT. WHAT I AM CONCERNED ABOUT IS WE HAVE AN U.S. SUPREME COURT CASE OUT THERE SAYING THAT, EVEN IF THE DEATH PENALTY STATUTE, THERE IS NO GREATER PUNISHMENT THAN DEATH, AND A DEATH PENALTY STATUTE CAN BE REENACTED AND APPLIED RETROACTIVELY, BUT THEN THIS COURT IS GOING TO SAY, WELL, EVEN THOUGH A DEATH PENALTY, WHICH IS SUBSTANTIVE, A SUBSTANTIVE ACT CAN BE APPLIED RETROACTIVELY, IF YOU DON'T CROSS YOUR T'S AND DOT YOUR I'S, WE ARE NOT GOING TO APPLY THAT RETROACTIVELY, BECAUSE SINGLE SUBJECT IS MORE IMPORTANT THAN THE DEATH PENALTY. THAT SEEMS TO BE THE INCONGRUITY THAT WE WOULD PRODUCE.

WHAT THE COURT HAS SAID, I THINK THERE IS NOTHING INCONSISTENT, YOUR HONOR. THE COURT HAS SAID REPEATEDLY FOR DECADES THAT, A LAW PASSED, ENACTED IN VIOLATION OF THE SINGLE SUBJECT REQUIREMENT, IS NOT THE WILL OF THE MAJORITY. IT IS NOT A VALID LAW IN THAT SENSE.

ADDRESS THAT AS TO SEVERANCE, THOUGH, IF WE WERE TO SEVER SECTION 11 AND 13 OUT OF THE ACT, COULD YOU ADDRESS YOUR ARGUMENT, INCLUDING THAT CONCEPT?

IF, I AM SORRY, IF THE COURT WERE TO SEVER 11 AND 13 FROM?

DOES THAT NOT AFFECT THE ARGUMENT AVOID ADMONITIO AS OPPOSED TO AVOIDABLE?

I THINK IT WOULD, YOUR HONOR, BUT I WOULD LIKE TO ALSO ADDRESS THE SECOND PART OF JUSTICE CANTERO'S QUESTION. THE OTHER REASON THAT DALBER. IT IS NOT APPLICABLE HERE IS THAT THE CHANGES THAT WERE MADE IN THAT CASE WERE PROCEDURAL, IN FACT THEY WERE AMELIORATIVE AND THE COURT EMPHASIZED THAT IN ITS OPINION. WHAT HAPPENED WAS WE HAD A LAW ON THE BOOKS THAT VIOLATED DUE PROS NEXT ESSENCE, AND THE LEGISLATURE CORRECTED THAT, WITHOUT CHANGING THE CRIME, THE ELEMENTS OF THE CRIME, OR THE PUNISHMENT FOR THE CRIME, AND THE U.S. SUPREME COURT EXPLAINED THE ONLY THANK CHANGES THAT HAVE BEEN MADE ARE -- THE ONLY CHANGE THAT IS HAVE BEEN MADE ARE TO

THE PROCEDURE INVOLVED IN SELECTING THE SENTENCE, AND THE CHANGES THAT WERE MADE WERE FOR THE BENEFIT OF THE DEFENDANT. IN THIS CASE, IF THE SINGLE SUBJECT FLAW IN THIS LAW IN VALIDATES THE LAW, THEN THE CHANGE THAT HAS NOW BEEN MADE BY MAKING THE NEW LAW RETROACTIVE TO THE ORIGINAL LAW, IS DIRECTLY TO THE DETRIMENT OF THE DEFENDANTS.

HOW IS IT ANY LESS PROCEDURAL OR MORE SUBSTANTIVE THAN WHAT HAPPENED IN DALBERT? WHAT WE SAID, WAS, WELL, YOU DIDN'T FOLLOW THE RIGHT PROCEDURE. YOU DIDN'T ENACT A SINGLE SUBJECT HERE. YOU PUT MORE THAN ONE SUBJECT INTO THE ACT. ISN'T THAT A PROCEDURAL ISSUE? THEY NOW REENACTED IT AND INCLUDED ONLY ONE SUBJECT. HOW IS THAT MORE SUBSTANTIVE THAN THE DEATH PENALTY?

IT IS NOT PROCEDURAL, IN THE SENSE THAT HAVING NOT HAD A MAJORITY OF LEGISLATORS AGREE, IN AWAY THAT WE CAN SEE, ON THE SUBSTANTIVE LAW --

THAT IS AN ASSUMPTION. RIGHT? WE DON'T KNOW WHETHER A MAJORITY WOULD HAVE AGREED TO IT OR NOT.

IT IS A ASUMPTION THAT THIS COURT HAS MADE SINCE AT LEAST 1930, REPEATEDLY, IN CASE LAW.

LET ME GIVE YOU AND ASK YOU HOW YOU WOULD RESPOND TO THIS. LET'S ASSUME THAT THE LAW THAT WAS DECLARED UNCONSTITUTIONAL, WAS DECLARED UNCONSTITUTIONAL, SAY, IT WAS A FIRST AMENDMENT PROBLEM, AND IT WAS AN OVERLY BROAD, SO THAT WAS DECLARED TO BE UNCONSTITUTIONAL, AND THEN TWO YEARS LATER, THE LEGISLATURE PASSED THE LAW, AND THEY NARROWED IT, AND SOUGHT TO HOLD THAT IT WOULD BE RETROACTIVE TO THE DATE OF THE CRIME. WOULD THAT BE, I MEAN, THAT WOULD BE AN EXPOSE FACTOR VIOLATION -- AN EX POST FACTO VIOLATION, WOULD IT NOT?

I THINK SO, YOUR HONOR.

THAT WOULD AND VIOLATION OF THE SINGLE SUBJECT BECAUSE IT IS NOT IN THE SAME CLASS AS CONSTITUTIONAL RIGHTS AND DUE PROCESS. SORT OF WHAT IS HAPPENING IS DEFENDANTS ARE SORT OF GETTING THE ADVANTAGE OF SOMETHING THAT, REALLY, WAS NOT NECESSARILY MEANT TO ADVANTAGE THEM. IT WAS FOR THE, YOU KNOW, MAKE SURE THAT THE LEGISLATIVE PROCESS WAS YOU KNOW, HAD INTEGRITY. AND THAT THE PUBLIC HAD NOTICE AT THE TIME THE LAW IS PASSED, SO CAN YOU HELP US WITH THE IDEA THAT MAYBE THIS FEELS LIKE LESS OF A CONSTITUTIONAL RIGHT THAN, SAY, IF IT WAS DUE PROCESS OR YOU KNOW, SOMETHING THAT WE RECOLOGYNIZE AS -- RECOGNIZE AS A THE AMENDMENT RIGHT OR WHATEVER, IN TERMS OF -- AS A SIXTH AMENDMENT RIGHT OR WHATEVER, IN TERMS OF HOW WE SHOULD LOOK AT THE RETROACTIVITY ISSUE.

YES, YOUR HONOR. THE PEOPLE OF FLORIDA CHOSE TO IMPOSE THE SINGLE SUBJECT LAW ON THE LEGISLATURE. THAT REQUIREMENT, IT IS SOMETHING THE LEGISLATURE CAN MEET. IT IS SOMETHING THAT THEY SHOULD MEET, AND IT IS SOMETHING THAT, IF THEY DON'T MEET, IT AFFECTS CRIMINAL CASES, IT AFFECTS CIVIL CASES. WHETHER YOU ARE A PLAINTIFF OR A DEFENDANT, PERHAPS, IN A CIVIL CASE, YOU COULD BE EQUALLY AFFECTED BY THE INVALIDITY OF A LAW THAT FAILS TO MEET THE SINGLE SUBJECT REQUIREMENTS. THIS COURT'S CASE LAW HAS BEEN CLEAR OVER THE YEARS THAT A LAW PASSED IN VIOLATION OF THAT IS SIMPLY NOT THE WILL OF THE MAJORITY. IT COULD HAVE BEEN, IN AN AMALMATION OF MINORITY.

THIS COURT HAS, GIVEN THE FOR LACK OF A BETTER WORD, LIBERAL CONSTRUCTION OF WHAT "RELATED" MEANS, LIKE THIS COURT DID IN BIRCH, AND ALL OF THESE MATTERS, AS JUDGE SCHWARTZ SAID, HAVE SOME RELATION TO THE CRIMINAL LAW, IN AND OF THEMSELVES, AND THIS, WHY SHOULD THIS BE A TRICK? THAT IS SET UP, SO THAT THERE IS SOME METHOD BY

WHICH THIS COURT IS GOING TO STEP INTO WHAT IS PASSED LEGISLATION AND ON THE BOOKS, AND THEN HAVE A VERY TECHNICAL POSITION OF WHY THAT IS GONNA NOT RELATE TO THOUSANDS OF PEOPLE THAT ARE CONVICTED? I MEAN, WHY, WHY, WHY DO WE GO THROUGH THAT EXERCISE?

YOUR HONOR, IT IS AN EXERCISE THAT THE COURT HAS GONE THROUGH FOR DECADES. BECAUSE THE PEOPLE OF FLORIDA HAVE REQUIRED A SINGLE SUBJECT --

WE DIDN'T DO IT IN BIRCH, DID WE?

WE DID DO IT IN BIRCH. THE COURT DID IT IN BIRCH. THE COURT FOUND, THERE, THAT THERE WAS A COMPREHENSIVE LAW AT WORK. AND THE COURT HAS FOUND THAT IN SEVERAL OTHER CASES, AND THE COURT HAS REFUSED TO FIND THAT IN OTHER CASES, WHERE IT COULD NOT FIND EVIDENCE OF THAT. IN THIS CASE, IT WAS NOT A COMPREHENSIVE LAW. THE LEGISLATURE COULD NOT HAVE BEEN MORE CLEAR, BETWEEN THE TITLE, THE LONG TITLE, AND THE PREAMBLE, AND, WELL, BETWEEN THE TITLE AND THE PREAMBLE, THE LEGISLATURE COULD NOT HAVE BEEN MORE CLEAR, THE PURPOSE, THE SUBJECT, THE FOCUS OF THIS LAW WAS CRIMINAL SENTENCING. IT WAS NOT A COMPREHENSIVE BILL TO ADDRESS THE ISSUE OF CRIME IN FLORIDA.

LET ME TAKE THAT FOR FOR EXAMPLE, FOR THE ALIEN, SECTION -- THAT, FOR EXAMPLE, FOR THE ALIEN, SECTION 11, WHEN I WAS ON THE TRIAL BENCH, WE DEALT ALL THE TIME WITH PEOPLE SUBJECT TO DEPORTATION, THAT THEY KNEW WHEN THEY WERE, IN DETERMINING SENTENCING, THAT IF IT WAS A FELONY, WE WOULD TAKE IT INTO CONSIDERATION WHETHER THEY WERE CITIZENS OR NOT, KNOWING THAT THEY WOULD BE REPORTED TO IMMIGRATION AND DEPORTED AS A CONSEQUENCE. WE HAD TO TAKE THAT INTO CONSIDERATION AS PART OF THE PLEA COLLOQUY, SO HOW IS THAT NOT RELATED TO THE GENERAL PURPOSE THAT IS INDICATED IN THE LONG TITLE, AND EVEN THE SHORT ONE, OR THE PREAMBLE, THE INTENT TO MAKE SURE THAT VIOLENT PEOPLE DON'T CONTINUE TO COMMIT VIOLENT CRIMES ON THE PEOPLE OF THE STATE OF FLORIDA, TO REQUIRE THE CLERK TO NOTIFY THE FEDERAL AUTHORITIES THAT THIS PERSON IS IN PRISON, SO THERE IS SOME MECHANISM TO MAKE SURE THAT THE DEPORTATION PROCESS CARRIED OUT?

TWO REASONS, YOUR HONOR. FIRST, THE LEGISLATIVE HISTORY IS FAIRLY CLEAR, THE REASON THIS PROVISION WAS INCLUDED OR WAS CONSIDERED BY THE LEGISLATURE, WAS BECAUSE PEOPLE WHO WOULD NOT, WERE NOT BEING SENTENCEED TO JAIL TIME, WHO WERE UNDER SUPERVISION, WERE NOT BEING BROUGHT TO THE ATTENTION OF THE FEDERAL AUTHORITIES, AND THAT IS --

PEOPLE WHO COMMITTED VIOLENT CRIMES.

NO. PEOPLE WHO COMMITTED ANY OFFENSE, A MISDEMEANOR OR A FELONY.

RIGHT.

IT COULD HAVE BEEN LITTERING. SCALPING A FOOTBALL TICKET. UNDER THE NEW LAW, IT COULD BE ANYTHING THAT IS A SECOND-DEGREE MISDEMEANOR, VIOLENT, NONVIOLENT, FELONY, MISDEMEANOR, HABITUAL OR NOT. THE LEGISLATURE WAS ATTEMPTING TO GIVE THE INS AN OPPORTUNITY TO DEAL WITH THOSE PEOPLE WHO WERE NEVER GOING TO GET SENTENCES IN COURT. I KNOW MY TIME IS UP. MAY I FINISH?

CHIEF JUSTICE: YOU CAN FINISH ANSWERING THAT ONE QUESTION, YES. IF YOU HADN'T FINISHED. I THINK YOU SAID THERE WERE TWO REASONS, AND YOU ELABORATED ON THE FIRST. IS THERE A SECOND REASON?

YES, YOUR HONOR. JUSTICE, THE PROVISION IN SECTION 11, DOES NOT HAVE A NATURAL OR

LOGICAL CONNECTION TO THE ISSUE OF SENTENCING, ITSELF. I WILL LEAVE IT AT ALL.

THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. NOW GET BACK UP AND WE WILL GET OUR MUSICAL CHAIRS STRAIGHT END OUT.

I HAVE TO GET USED TO CONSOLIDATION. GOOD MORNING, MAY IT PLEASE THE COURT. I AM ASSISTANT ATTORNEY GENERAL MARY JOLLEY. I AM FROM DAYTONA BEACH AND HERE ON BEHALF THE STATE IN FRANKLIN. MY CO-COUNSEL IS KATHERINE BLANCO FROM THE TAMPA OFFICE. I WILL ADDRESS SINGLE SUBJECT AND SHE WILL ADDRESS THE RETROACTIVITY ISSUE.

CAN YOU ADDRESS WHAT RELATION SECTION 13 HAS TO THE REST OF THE ACT?

SURE. SECTION 13 IS THE AMENDMENT TO THE DEFINITION OF CONVEYANCE FOR PURPOSES OF THE BURGLARY STATUTE. SECTION 13 RELATES TO THE BURGLARY STATUTE, WHICH IS A QUALIFYING PREDICATE OFFENSE FOR THE NEW "THREE STRIKES" VIOLENT FELONY OFFENDER LEGISLATION THAT IS CREATED IN THE BILL, AS WELL AS THE PRISON RELEASEE REOFFENDER STATUTE, WHICH IS AMENDED IN THIS BILL, THE VIOLENT CAREER CRIMINAL SENTENCING STATUTE, WHICH IS AMENDED IN THIS BILL AND THE HABITUAL FELONY AND HABITUAL VIOLENT FELONY OFFENDER STATUTES, WHICH ALL AMENDED IN THIS BILL.

MY CONCERN IS THOSE STATUTES CONCERN SENTENCING, CORRECT?

CORRECT.

AND THE AMENDMENT TO THE BURGLARY STATUTE DOES NOT CONCERN SENTENCING. IT CONCERNS A SUBSTANTIVE CHANGE TO THE STATUTE.

I DON'T DISPUTE THAT, BUT I DO BELIEVE THAT IF YOU ARE NOW CONVICTED OF THIS BROADENED BURGLARY STATUTE, THAT IS ENHANCED PENALTIES AND A CONNECTION TO THIS COURT'S DECISION. IN HEGGS, YOU STRUCK DOWN A SINGLE SUBJECT VIOLATION, THE IN CONCLUSION OF DOME -- OF DOMESTIC VIOLENCE PROVISIONS. IN THAT BILL IN HEGGS, THERE WERE CHANGES TO THE GUIDELINES AND TO SUBSTANTIVE OFFENSES, WHICH HAD THIS COURT FOUND WERE REASONABLE AND LOGICAL. IT IS NOT A DIRECT RELATIONSHIP. THEY DON'T HAVE TO BE ON TOP OF EACH OTHER. IT NEEDS TO BE LOGICAL AND REASONABLE, AND THE REASON WHY THIS PROVISION EXISTS IS FOR THIS NOTION OF LOG ROLLING. LOG ROLLING WAS THE UNDERLYING RATIONALE FOR THE SINGLE SUBJECT CLAUSE. LOG ROLLING IS ESSENTIALLY WHEN THERE IS A BILL BUT IT IS A CLOAK FOR SIMILAR LEGISLATION, IN AN EFFORT TO GET AN UNFAVORABLE KIND OF SWALLOWED UP INTO A MORE FAVORABLE ONE, i.e. WHAT HAPPENED IN HEGGS AND THOMPSON, WHEN THESE EXTREMELY CONTENTIOUS, UNFAVORABLE DOMESTIC VIOLENCE PROVISION AS THAT WERE PRETTY MUCH DEAD IN THE HOUSE, CAME IN IN THE SENATE AND WERE THEN PUSHED THROUGH IN THE BILL. WE JUST DON'T HAVE THOSE FACTS HERE.

DO WE HAVE TO ENGAGE IN SOME FACT FINDING PROCESS OR MAKE A FINDING, APPARENTLY LIKE THE THIRD DISTRICT DID, OF WHETHER THE OFFENDING, ALLEGEDLY OFFENDING SECTIONS WERE CONTROVERSIAL OR NOT CONTROVERSIAL? THE THIRD DCA SEEMED TO SAY, WELL, BECAUSE NOBODY WOULD EVER THINK THAT THIS AMENDMENT TO THE BURGLARY STATUTE WOULD BE CONTROVERSEAL, THEN IT IS NOT LOG ROLLING, SO WE NOW HAVE TO ENGAGE IN SOME KIND OF, OR MAYBE THE TRIER OF FACT HAS TO ENGAGE IN A FACT FINDING PROCESS ABOUT WHETHER THIS WAS REALLY LOG ROLLING OR NOT LOG ROLLING AND HOW CONTROVERSIAL THE OFFENDING SECTIONS WERE?

MY ANSWER IS TWOFOLD TO THAT, JUSTICE CAN'T CAT. FIRST OF ALL, NO, FIRST OF ALL -- JUST AT THIS TIME CANTERO. FIRST OF ALL, NO, FIRST OF ALL WE LOOK AT WHAT IS VALIDITY HERE. WE

LOOK AT IT AS A WHOLE AND SEE IF THE REASONS ARE LOGICALLY AND REASONABLY CONNECTED AND THE ANSWER IS KNOW AND INITIALLY WE DON'T NEED TO DO THAT. WE KNOW WHAT THE LEGISLATURE DID AND WHY THEY DID IT, LET'S NOT GET INTO THE LEGISLATURE MINUTIA PROCESSES. HOWEVER, THE LEGISLATURE DID LOOK AT THAT AND VIOLATING SINGLE SUBJECT AND THAT IS WHY I ALLUDE TO HEGGS. BECAUSE THIS IS SINGLE SUBJECT AND SO DISTINCT FROM THAT, THOSE CASES WHERE YOU HAVE HAD VERY CONTENTIOUS, THIS WAS AN IMPORTANT PIECE OF LEGISLATION WHICH PASSED 102-TO-15 IN THE HOUSE AND 35-TO-0 IN THE SENATE. IT WAS POPULAR. ANOTHER OFFENDING 11 AND 13 HAVEN'T BEEN REENACTED, HAVE THEY?

CORRECT. THEY HAVE NOT.

AND SO DOES THAT OFFER SOME EVIDENCE THAT THOSE WERE ACTUALLY, ALTHOUGH THEY LOOK LIKE THEY ARE NONDESCRIPT, THAT MAYBE THOSE WERE PUT IN, IN ORDER TO PASS THEM? THEY COULDN'T HAVE PASSED ON THEIR OWN. HOW, AT WHAT POINT DO YOU, DOES THE COURT, IS THAT AN APPROPRIATE TYPE OF AN ANALYSIS FOR THE COURT?

NOT IF THEY ARE REASONABLY AND LOGICALLY CONNECTED, WHICH IS OUR POSITION THAT THEY ARE, AND I WILL ADDRESS SECTION 11, IN TERMS OF I THINK JUSTICE BELL, YOU HIGHLIGHTED WHY DEPORTATION IS SO IMPORTANT TO SENTENCING. NOW, IF A REPEAT OFFENDER, NOW INS IS NOTIFIED, THEY WILL BE DEPORTED, THAT IS CERTAINLY THE FOCUS OF THIS BILL IS RECIDIVISM. SECTION 11 DEALS WITH THAT. A DEPORTED ALIEN WILL NOT REOFFEND, AND THAT IS THE OVERALL FOCUS OF THIS BILL, AND THAT IS WHAT YOU NEED TO LOOK AT, AND YOU NEED TO READ IT AS A WHOLE AND FIND IF THESE TWO PURPORTEDLY ERRANT PROVISIONS ARE REASONABLY AND LOGICALLY CONNECTED.

HOW WOULD WE KNOW, THE SECOND ELEMENT IS NOTICE. HOW WOULD AN AVERAGE PERSON READING THIS AND LOOKING AT, I TEND TO AGREE WITH JUDGE COPE, THE FIRST PART RELATING TO SENTENCING, HOW WOULD AN AVERAGE PERSON BE ON NOTICE THAT CHANGING THE DEFINITION OF RAILROAD CAR OR WHATEVER IT IS IN SECTION 13 WOULD BE IN THIS STATUTE?

I AM SORRY. IT IS INCLUDED IN THIS LENGTHY TITLE. IT IS AN ACT RELATING TO SENTENCING, BUT THE TITLE OF THIS BILL, AND THAT IS WHY ALL, ANY BILL IN A SECTION MUST BE INCLUDED IN THE TITLE, BECAUSE THE TITLE IS THE INDICIA OF NOTICE. EVERYTHING IS IN THE TITLE, SO THE TITLE STARTS WITH AN ACT RELATING TO, AND THEN IT GOES ALL THE WAY DOWN TO THE PROVISION WHERE IT PROVIDES FOR WHEN THE EFFECTIVE DATE IS. IT IS THAT LONG TITLE AND THAT DOES PROVIDE THE NOTICE, THAN IS WHAT SUPPORTS THIS NOTION THAT THERE WAS NO SINGLE SUBJECT VIOLATION HERE. THERE WAS THIS, THERE WAS NO LOG ROLLING IN THIS INSTANCE, BECAUSE THESE TWO PROVISIONS WERE INCLUDED IN THE TITLE.

WHAT IS THE SUBJECT OF THIS BILL?

THE SUBJECT OF THE BILL IS IT IS AN ACT RELATING TO SENTENCING. THAT IS HOW IT BEGINS, BUT THE OVERALL FOCUS, GIVEN THE CHANGES AND THE PREAMBLE, IS IT IS DESIGNED, AND ITS FOCUS IS RECIDIVISM AND REPEAT OFFENDERS AND MANDATORY MINIMUM PROVISIONS, AND THAT IS WHAT THE PREAMBLE IS PRETTY CLEAR IN ITS 35-SENTENCE PREAMBLE, THAT IS WHAT THIS WAS DESIGNED TO DO.

JUST, NONVIOLENT AND VIOLENT OR VILEENT?

NO, IT IS NONVIOLENT. IT ALSO DEALS WITH DRUG CRIMES AND IMPOSING MANDATORY MINIMUM PROVISIONS, SO IT IS BOTH. IT INCORPORATES THIS WHOLE NOTION OF SENTENCING.

HOW DOES THAT DETER RECIDIVISM?

IF YOU GET A MANDATORY MINIMUM SENTENCE AS DEFENDANT GREEN HERE DID, CLEARLY ON RECIDIVISM, YOU KNOW YOU ARE GOING TO GO IN AND SERVE A CERTAIN TIME AND NOT GET CREDIT. IT IS DETERRENCE. RECIDIVISM, IT CAN SERVE TO DETER AND NOT BE A REPEAT OFFENDER, SO IT IS AN OVERALL FOCUS AND REMEMBER THE LEGISLATURE HAS THE DISCRETION TO CREATE AND ELECT BILLS WITH WIDE LATITUDE AND COMES BEFORE THIS COURT WITH THE PRESUMPTION OF VALIDITY.

SO YOUR ARGUMENT WOULD ALSO BE THAT WE DON'T NEED TO LOOK AT WHETHER WE SHOULD SEVER ANY OF THE PORTIONS OF THE SECTIONS FROM THE ENTIRE BILL?

NO. WE HAVE AN ALTERNATE POSITION. OF COURSE, JUSTICE QUINCE, THAT SEVERABILITY WOULD BE APPROPRIATE IN THIS INSTANCE. I WILL ADDRESS THAT.

IF THAT IS THE CASE, THEN HOW DO YOU GET AROUND THE LANGUAGE IN HEGGS THAT TALKS ABOUT THE FACT THAT, IF WE ASSUME THAT SECTION 11 AND 13 ARE, IN FACT, VIOLATIVE OF THE SINGLE SUBJECT, THEN HOW DO YOU GET AROUND THE LANGUAGE IN HEGGS THAT TALKS ABOUT THE FACT THAT IT IS ALSO IN THE TITLE AND IT IS ACTUALLY A SECTION, SO YOU ARE NOT GOING TO BE ABLE TO SEVER THE PORTION.

I THINK, BECAUSE OF THE UNIQUENESS OF THIS ACT, MAKES IT DISTINGUISHABLE FROM HEGGS, THAT I DON'T THINK THIS COURT NEEDS RECEDE FROM HEGGS TO FIND SEVERABILITY IN THIS INSTANCE, BECAUSE AS JUSTICE BELL POINTED OUT, THESE PROVISIONS HAVE BEEN REENACTED. THE LEGISLATURE CLEARLY WANTED TO CREATE THIS LAW, SPECIFICALLY THE POPULAR LEGISLATION ABOUT THE "THREE STRIKES" VIOLENT FELONY OFFENDER.

THOSE TWO HAVE NOT BEEN REENACTED.

SECTIONS 11 AND 13 HAVE NOT BEEN REENACTED, AND I THINK THIS DEMONSTRATES THAT THAT IS THE IMPORT, AND THAT IS WHAT THIS BILL, NOTWITHSTANDING MY SINGLE SUBJECT, I MEAN CLEARLY THIS IS AN ALTERNATIVE ARGUMENT, BUT I THINK BECAUSE OF THE UNIQUENESS OF THIS AND THE MINIMALIST PROVISIONS THAT THERE IMPORT, AND IN GREEN THIS IS A NARROW INSTANCE IN WHICH SEVERABILITY SHOULD BE CONSIDERED BY THIS COURT.

HOW ABOUT CRITCHFIELD? WERE THERE CONTROVERSIAL OR NONCONTROVERSIAL?

IN CRITCHFIELD, IT IS UNIQUE. THAT WENT THROUGH AN EVOLUTION DURING ITS DRAFTING STAGE. IT STARTED OUT WITH THE ERRANT SECTION REGARDING PRIVATE DEBT COLLECTION OF WORTH LESS CHECKS. IT STARTED OUT IN THE HOUSE AND WENT TO THE SENATE THAT WAY AND THEN ADDED VEHICLE REGISTRATION AND DRIVER REGISTRATIONS. THE TITLE AND OVERALL FOCUS CHANGED, AND IT WAS BECAUSE OF THAT, IT CREATED ALL OF THESE SECTIONS WHICH DIDN'T APPEAR TO HAVE ANY RELATION TO ONE ANOTHER. WE DON'T HAVE THIS HERE. THIS ALWAYS STARTED OUT AS THE "THREE STRIKES" VIOLENT FELONY OFFENDER LAW AND IT STAYED THE COURSE THE ENTIRE WAY.

BUT THE WHOLE PROS, I HEARD THAT THE -- PROS, I HEARD THAT THE "THREE STRIKES" LAW WAS STRICKEN DOWN, I FIG RURD USE IT WAS A -- I FIGURED IT WAS A LAW DEALING WITH JUST "THREE STRIKES", AND NOW THE AMALGAM, IT SEEMS TO -- AMALMATION, IT SEEMS TO ME THAT IN CRITCHFIELD, IT TRIED TO ARGUE THAT THAT WAS ALL RELATED, SO WHAT IS TROUBLING YOU KNOW, IN TERMS OF TRYING TO GO BACK ON THE SEVERANCE ISSUE, IT SEEMS TO ME THAT WHAT THE STATE WOULD REALLY BE ARGUING IS, FIRST OF ALL I THINK WE WOULD HAVE TO RECEDE FROM HEGGS AND ALL OF OUR OTHER CASES, IS REALLY ALMOST A STANDING ISSUE, THAT UNLESS YOU ARE, IF YOU HAVE GOT, IF YOU HAVE BEEN SENTENCED OR AFFECTED BY THE POPULAR PROVISION, THEN YOU DON'T GET TO GET RELIEF, BUT IF YOU WERE SENTENCED UNDER AN UNPOPULAR PROVISION, THEN YOU COULD GET RELIEF. ISN'T THAT REALLY WHERE WE WOULD BE SORT OF HEADED, YOU KNOW, IF WE WOULD BE GUESSING AS TO WHAT WOULD HAVE

GOTTEN PASSED WITHOUT THE OTHER, AND THEN SAY, LOOK, ONE WHO, YOU KNOW, IF IT IS A PROVISION THAT WE KNOW THIS LEGISLATURE WOULD HAVE PASSED NO MATTER WHAT, THAT WE WOULD NOT HONOR THE SINGLE SUBJECT CONSTITUTIONAL PROVISION?

ACTUALLY I THINK THAT IS WHAT DISTINGUISHES THIS CASE FROM HEGGS, BECAUSE IN THAT CASE, WE DID HAVE THIS SORT OF UNPOPULAR LEGISLATION THAT CAME IN AND WAS PASSED AND WE DON'T GO THROUGH THAT WITHOUT --

THE HEGGS DEFENDANTS WEREN'T UNDER THE UNPOPULAR PART.

THAT'S CORRECT.

OKAY. AND WHAT, I JUST WANT TO MAKE SURE I UNDERSTAND, IF THESE TWO, 11 AND 13 WERE SUCH, LIKE SORT OF PLAIN VANILLA, NONCONTROVERSIAL, HOW COME THEY DIDN'T GET REENACTED, IF IT WAS SUCH AN IMPORTANT PART OF SENTENCING AND THE WHOLE SCHEME THAT WAS BEING PROPOSED?

I CAN ONLY PONDER AS TO WHY THEY DID NOT GET REENACTED. I THINK, I GUESS IT IS THE IMPORT OF WHAT THE REST OF THE BILL WAS DOING IN CREATING THIS NEW IMPORTANT LEGISLATION THAT THE LEGISLATURE WANTED TO GET THAT THROUGH, AND I THINK THAT THAT SUPPORTS THIS NOTION. THIS ACT, IF YOU SEVER OUT SECTION 11 AND 13, THE OVERALL FOCUS OF THIS ACT STAYS THE SAME. NOTHING IS CHANGED BY THAT, AND THAT IS WHY SEVERANCE --

WHY WOULD THAT NOT ALWAYS BE THE CASE? IT SEEMS TO ME YOU ARE ADVOCATING FOR A RULE OF LAW THAT BASICALLY, BY RULE OF LAW, WE CHANGE THE FLORIDA CONSTITUTION, BECAUSE THAT IS THE WHOLE PURPOSE. OF COURSE IT IS UNRELATED, SO THEREFORE YOU CAN SEVER IT. WELL, THEN, IT DOESN'T VIOLATE THE CONSTITUTION, WHEN THAT IS WHAT THE CONSTITUTION SAYS YOU CANNOT DO. WHAT IS IT THAT IS SO VAGUE AND AMBIGUOUS ABOUT THE CONSTITUTIONAL PROVISION THAT NEEDS THIS KIND OF SEVERABILITY ANALYSIS? OR WHERE DO YOU FIND THAT IN A CONSTITUTIONAL PROVISION?

THE SINGLE SUBJECT PROVISION OF THE CONSTITUTION IS SILENT AS TO A REMEDY. IT DOESN'T PROVIDE WHAT HAPPENS WHEN THERE IS A VIOLATION, SO IT DOESN'T PRECLUDE THIS COURT FROM CONSIDERING SEVERABILITY N THIS INSTANCE, THIS COURT HAS SEVERED --

THAT VIOLATES, WHAT YOU ARE SAYING IS THAT IT IS JUST A JUDICIAL REMEDY, SOMETHING THAT VIOLATES THE FLORIDA CONSTITUTION SO CLEARLY, THEN WE HAVE TO COME UP WITH SOME KIND OF REMEDY FOR IT, WHY IS IT NOT JUST CONTRARY TO THE FLORIDA CONSTITUTION AND IT IS INVALID LAW?

IT BECOMES, I THINK BECAUSE WE HAVE TO LOOK AT WHAT HAPPENS WHEN WE DO DECLARE A STATUTE SUCH AS THIS UNCONSTITUTIONAL, AND ITS EFFECT. THAT IS THE THING, IT IS ALSO A NOTION THAT THIS COURT IN JUDICIAL EFFICIENCY SHOULD CONSIDER SEVERANCE.

WHAT PART OF THE CONSTITUTION TELLS THAT THE CONSTITUTION IS TO BE AMENDED OR BENT OR CHANGED, DEPENDING UPON WHAT THE IMPACT IS GOING TO BE LATER ON, IF SOMETHING CLEARLY VIOLATES THAT CONSTITUTION?

THIS COURT HAS A DISCRETION TO CREATE A REMEDY, AND THIS PROVISION OF THE CONSTITUTION DOES NOT PRECLUDE THAT. I DON'T THINK WE ARE WORKING, WE ARE NOT MESSING WITH THE SINGLE SUBJECT PROVISION OR ANY OTHER PROVISION OF THE CONSTITUTION BIRTION CREATING A REMEDY HERE.

WHAT GIVES THIS COURT AUTHORITY TO REWRITE THE CONSTITUTION? THAT IS WHAT I AM LOOKING FOR.

I DISAGREE WITH THE NOTION THAT WE ARE REWRITING. WHAT WE ARE DOING IS DECLARING SOMETHING UNCONSTITUTIONAL AND THEN COUP WITH A WORKABLE RESULT THAT WILL DEAL WITH THE RAMIFICATIONS OF THAT FINDING. I AM IN MISS BLANCO'S TIME. SHE MAY WANT TO ADDRESS THAT AS WELL. THANK YOU.

MS. BALNCO, I THINK YOU HAVE EIGHT MINUTES. WE COMBINED HOW THIS SCHEME WAS DESIGNED SO YOU MAY PROCEED.

I BELIEVE THAT THE COURT HAS GRACIOUSLY ALLOWED US TWO MINUTES OF REBUTTAL, SO ESSENTIALLY I HAVE SIX AT THIS POINT IN TIME AND IN WHICH OPPOSING COUNSEL, I BELIEVE, WILL HAVE THREE. MAY IT PLEASE THE COURT. MY NAME IS KATHRYN BALNCO FROM WITH THE ASSISTANT ATTORNEY -- WITH THE ATTORNEY GENERALS OFFICE IN TAMP A THE STATUTE, WE BELIEVE, SHOULD BE UPHELD AGAINST A SINGLE SUBJECT VIOLATION CHALLENGE. HOWEVER, REACHING THE EXPOS FACTOR -- THE EXPOS FACT-, THE RETROACTIVITY -- THE EXPOS FACT-, THE RETROACTIVITY EW, WHEN TAYLOR WAS ISSUED, IN MEAD RESPONSE TO TAYLOR, THE LEGISLATURE WAS IN SESSION IN 2002 AND REENACTED FIVE SEPARATE BILLS. JUSTICE PARIENTE HAS INQUIRED WITH RESPECT TO THE FACT THAT TWO MINOR PIECES OF LEGISLATION WHICH THE LEGISLATURE HAS DEEMED MINOR BY THEIR OWN PREAMBLE, WERE NOT INCLUDED. ESSENTIALLY THAT MAY BE INDICATIVE OF THE FACT THAT SEVERANCE, ALTHOUGH SO SELDOM EMPLOYED, COULD BE EMPLOYED IN THIS PARTICULAR CASE IF NECESSARY, ASSUMING THIS COURT WERE TO FIND --

YOU ARE SAYING THAT A LEGISLATURE THAT BASICALLY WAS PASSING ALL THESE OTHER BILLS, WOULD THINK, WELL, WE WILL WAIT FOR THE COURT TO SEVER THE OTHER TWO PROVISIONS, AND WE WON'T HAVE TO WORRY ABOUT REENACTING THEM?

NO, YOUR HONOR. WHAT HAPPENED WITH RESPECT TO THE 2002 LEGISLATIVE REENACTMENTS, SPECIFICALLY THE LEGISLATURE STATES IN THEIR PREAMBLE, WE DO NOT BELIEVE THAT THESE BILLS COULD NOT BE JOINED AS ONE. HOWEVER, BECAUSE WE ARE IN SESSION AND MEAD RESPONSE TO ENSURE THAT THERE IS NO BREAK INTENDANT CONSEQUENCES OF THESE BILLS -- BREAK IN ATTENDANT CONSEQUENCES OF THESE BILLS, WE ARE READD DEINGS DRESING. IN TAYLOR -- -- READDRESSING.

THEY MAKE UP ALL OF THE BILLS BUT 11 AND 13, THEY DIDN'T JOIN IN, 11 AND 13.

THAT IS THEIR PARAPHRASE. WHAT THEIR LANGUAGE WAS, YOUR HONOR, WAS CAUTIONARY LANGUAGE WITH RESPECT TO EACH THE BILLS, SAYING BY VIRTUE OF THIS REENACTMENT, WE ARE NOT AGREEING THESE BILLS COULD NOT BE INCLUDED AS ONE. HOWEVER --.

WE AGREE WITH THAT, RIGHT? NO ONE HAS SAID THAT EVERYTHING OTHER THAN 11 AND 13 COULDN'T BE JOINED AS ONE.

WELL, BECAUSE OF THE SINGLE SUBJECT VIOLATION FOUND IN TAYLOR, THE ENTIRE STATUTE WAS DECLARED VOID. NOW, CERTAINLY IT IS THE STATE'S POSITION THAT 11 AND 13 WERE PROPERLY CONSIDERED AS PART OF THE ORIGINAL 99-188 ENACTMENT. ABSOLUTELY. THERE IS NO VIOLATION. I THINK SUBSECTION 11, AS JUSTICE BELL HAS POINTED OUT, IT REQUIRES DELIVER OF JUDGMENT AND -- DELIVER OF JUDGMENT AND SENTENCE -- DELIVERY OF JUDGMENT AND SENTENCE TO INS. HOW MUCH CLOSER CAN YOU GET THAN REQUIRING THOSE SENTENCING DOCUMENTS BE DELIVERED?

I DON'T WANT TO INTERRUPT YOU, BUT IF YOU ARE GOING TO SPEND THE TIME ADDRESSING ANOTHER ISSUE.

THANK, YOUR HONOR. I APOLOGIZE. I WAS TRYING TO ADDRESS THE QUESTION. IF I MAY GET

DIRECTLY TO DALBERT AND ITS APPLICATION WITH RESPECT TO THE RETROACTIVITY AND WHY THIS PARTICULAR STATUTE CAN BE RETROACTIVELY APPLIED, THERE IS ESSENTIALLY TWO QUESTIONS YOU MUST ASK. WAS IT THE LEGISLATURE'S INTENT THAT IT BE APPLIED RECEIPT-ACTIVELY AND THAT IS UNMISTAKABLE IN THIS CASE AND WAS THERE A VIOLATION OF EXPOSE FACTOR?

THE TIME LINE IN DALBER. IT IS CRITICAL. HE COMMITTED HIS FIRST-DEGREE MURDERS IN APRIL -- IN DECEMBER OF 1991 AND APRIL OF 1992. THAT SUMMER IN JUNE OF 1992, THE SUPREME COURT DECIDED FURMAN, STRIKING THE DEATH PENALTY AS CRUEL AND UNUSUAL, AND A NATIONWIDE RESPONSE WAS THEREAFTER RESULTED FROM THE FURMAN DECISION AND IN JULY OF 1972, THE FLORIDA SUPREME COURT DECIDED IN DONALDSON VERSUS SACK, THAT FLORIDA STATUTE COULD NOT WITHSTAND THE FURMAN DECISION AND THE FLORIDA DEATH PENALTY STATUTE WAS UNCONSTITUTIONAL. AS A RESULT THOSE INMATES ON DEATH ROW, THOSE DEATH PENALTY PRISONERS, THEIR SENTENCES WERE COMMUTED TO LIFE AS A RESULT OF ANDERSON AND DONALDSON. NOW, LATE IN 19 AM 2, THE -- IN 1972, THE FLORIDA LEGISLATURE PASSED A NEW DEATH PENALTY STATUTE. AT THAT TIME, THUS THERE WAS A NEW DEATH PENALTY STATUTE IN EFFECT AT THE TIME OF DALBERT'S TRIAL. HOWEVER, AT THE TIME HE COMMITTED HIS MURDERS, THE FORMER DEATH PENALTY STATUTE, WHICH HAD BEEN DECLARED UNCONSTITUTIONAL, WAS THE STATUTE IN EFFECT AT THE TIME OF THE MURDERS. DALBER. IT WAS TRIED AND CONVICTED AND HE WAS SENTENCED TO DEATH. HE CLAIMED IN THE UNITED STATES SUPREME COURT, THAT THERE WAS AN EX POST FACTO VIOLATION. ACCORDING TO DALBERT, THERE WAS NO DEATH PENALTY IN EFFECT AT THE TIME OF HIS CRIMES. THAT PARALLELS THE ARGUMENT THAT GREEN IS PRESENTING TODAY, THAT THERE WAS NO LAW IN EFFECT AT THE TIME OF HIS CRIMES. THE UNITED STATES SUPREME COURT SPECIFICALLY REJECTED THAT ARGUMENT, FINDING THAT IT WAS HIGHLY TECHNICAL AND THAT THE LAW IN EFFECT AT THE TIME OF HIS CRIMES PUT HIM ON NOTICE, SO THE NOTION --

LET ME SEE IF I UNDERSTAND, I AM NOT SURE I UNDERGO THE TIMEING IN DALBERT. DALBERT COMMITTED HIS CRIME ON A DATE AFTER THE STATUTE HAD BEEN DECLARED UNCONSTITUTIONAL.

NO. BEFORE, YOUR HONOR.

BEFORE THE STATUTE --

JUST LIKE GREEN, HIS CRIMES WERE COMMITTED BEFORE THE STATUTE HAD BEEN DECLARED UNCONSTITUTIONAL, ON WHATEVER GROUNDS. ESSENTIALLY, THE DEFENSE WOULD HAVE US IN THIS PARTICULAR CASE, GIVE A SINGLE SUBJECT VIOLATION AN EX-ALTERNATED STATUS OVERDUE -- A KPALTED STATUS OVERDUE -- AN EXALTED STATUS OVER, DUE PROCESS VIOLATIONS, OVER --

YOU HEARD THE ARGUMENT.

I DID, YOUR HONOR.

SAYING THAT A LAW HAD BEEN BROADLY PASSED AND IT WAS, FOR FIRST AMENDMENT PURPOSES, WAS DECLARED UNCONSTITUTIONAL, AT THE TIME THAT THE DEFENDANT COMMITED THAT CRIME, THAT THE LEGISLATURE COULD SUBSEQUENTLY COME AND PASS A BILL AND SAY THAT, NOW WE ARE NARROWING IT, AND WE ARE GOING TO APPLY IT RETROACTIVELY. WOULD THAT BE A EX POST FACTO VIOLATION?

AS NARROWED, IT WOULD, YOUR HONOR. THE ISSUE, THOUGH, WAS WHETHER THE LAW WAS IN EFFECT AT THE TIME OF THE CRIME. SINGLE SUBJECT VIOLATIONS IS THE ONLY EXAMPLE WHERE CLEARLY AN UNCON CONSTITUTIONAL STATUTE -- UNCONSTITUTIONAL STATUTE, NO DOUBT IN ANYONE'S MIND IF IT HAS BEEN DECLARED UNCONSTITUTIONAL, WELL, IF IT IS IN VIOLATION

EVERY SINGLE SUBJECT, THAT IS A CONSTITUTIONAL VIOLATION THAT IS CUREABLE. IT IS CUREABLE BY ANNUAL REENACTMENT. NOW, WHY SHOULD THAT BE GIVEN AN EXALTED STATUS? <$$?.

IT IS CURED BY REENACTMENT. IT DOESN'T APPLY RETROACTIVELY BY THOSE DEFENDANTS THAT COMMITTED THE CRIME AT THE TIME THE LAW WAS UNCONSTITUTIONAL, DOES IT?

NO, YOUR HONOR, BUT BY THE SAME TOKEN NO ONE SAID THAT THE PREFURMAN LEGISLATION COULD HAVE BEEN ADOPTED JUST BY ANNUAL REENACTMENT AND THAT COULD HAVE CURED THE UNCONSTITUTIONALITY. THEY ARE VIOLATING THE SINGLE SUBJECT VIOLATION FAR BEYOND ANY OTHER ALLEGED CONSTITUTIONAL VIOLATION, AND IT IS CERTAINLY THE STATE'S POSITION THAT DALBERT AND DEAN CONTROLS. THIS DEFENDANT WAS ON FAIR WARNING.

WAS NOT THERE AN ARGUMENT IN DALBERT, WHICH ARGUED THE CHANGES, WHICH MADE IT MORE FOR THE BENEFIT OF THE DEFENDANT, AND IT WAS, THAT WAS THERE FOR WHY IT WASN'T A EX POST FACTO VIOLATION?

THAT IS NOT INCLUSIVE, YOUR HONOR. AS A MATTER OF FACT, THE DALBERT OPINION SAYS THAT, THE PETITIONER ARGUES THERE WAS NO DEATH PENALTY IN EFFECT IN FLORIDA AS OF THE DATE OF HIS ACTIONS BUT THIS SOPHISTICATED ARGUMENT MOCKS THE SUBSTANCE OF THE EX POST FACTO CLAUSE. WHETHER IN THE FUTURE IT WOULD WITHSTAND CONSTITUTIONAL ATTACK, IT CLEARLY INDICATED FLORIDA'S VIEW OF MURDER AND THE SEVERITY OF PUNISHMENT.

WASN'T THE SUBSEQUENT REENACTMENT A BENEFIT TO THE DEFENDANT AND WASN'T THAT REALLY, WHY, IF SOMETHING BENEFITS A DEFENDANT, IT IS NOT A EX POST FACTO PROBLEM.

THE DEFENSE IN DALBERT ARGUED THAT HE WAS CONVICTED AT A TIME OR HE COMMITTED HIS CRIMES AT A TIME WHEN THERE WAS NO DEATH PENALTY IN EFFECT, SO THAT WAS NOT THE DISPOSITIVE REASONING OR THE RATIONALE SET FORTH IN DALBERT, AND CERTAINLY WE BELIEVECAL WERT CONTROLS THIS PARTICULAR -- WE BELIEVECAL PERT -- WE BELIEVE DALBERT CONTROLS THIS PARTICULAR SITUATION, WHERE AN EIGHTH AMENDMENT VIOLATION CERTAINLY DOES NOT CONTROL A SINGLE SUBJECT VIOLATION.

CHIEF JUSTICE: YOU HAVE USED UP YOUR TIME.

THANK YOU, YOUR HONOR. I HAVE USED UP MY REBUTTAL. THANK YOU.

CHIEF JUSTICE: HOW MUCH TIME DOES MS. HAD WALSH HAVE? ALL RIGHT. -- DOES MS. WALSH HAVE? ALL RIGHT.

THE DEATH PENALTY HAS BEEN IN THIS STATE FOR A VERY, VERY LONG TIME. WHAT WAS DECLARED UNCONSTITUTIONAL IN DALBERT WAS NOT THE DEATH PENALTY BUT THE PROCEDURAL APPLICATION, THE WAY THE PROCEDURES IN WHICH THE DEATH PENALTY APPLIED, RENDERED THE PENALTY IN VIOLATION OF THE CONSTITUTION.

BECAUSE OF THAT VIOLATION, THE WHOLE STATUTE WAS STRUCK DOWN. NOBODY COULD BE CONVICTED UNDER THE DEATH PENALTY, REGARDLESS OF THE PROCEDURES THAT YOU USED, UNTIL THE STATEN ACTED A NEW LAW, RIGHT?

BUT PEOPLE -- UNTIL THE STATE ENACTED A NEW LAW, RIGHT?

BUT PEOPLE WERE ON NOTICE FORM THE FACT THAT THEY COULD IMPLEMENT ILLEGAL OR UNCONSTITUTIONAL PROCEDURES MAY HAVE BENEFITED SOME DEFENDANTS UNTIL THE POINT WHERE THOSE PROCEDURES COULD BE VALIDLY REENACTED, BUT THAT IS COMPLETELY DIFFERENT, THEY ARE ON NOTICE THAT THERE ARE NO GOOD PROCEDURES FOR THIS INTERIM

PERIOD OF TIME PERHAPS, BUT THE DEATH PENALTY IS THE DEATH PENALTY, AND PEOPLE ARE ON NOTICE ON. THAT HOWEVER, HERE THE VERY --

PEOPLE ARE ON NOTICE ABOUT THIS STATUTE, ABOUT THIS ACT?

NO, BECAUSE THE VERY QUESTION BEFORE THIS COURT AND I THINK THIS ADDRESSES JUSTICE PARIENTE'S CONCERN AS WELL, IS THIS REALLY A LAW? THE TREE THREE STRIKE VIOLENT FELONY OFFENDER WAS CREATED BY THIS VERY PIECE OF LEGISLATION THAT IS UNDER ATTACK. IT IS NOT LIKE THERE HAVE BEEN PROVISIONS FOR DECADES IN FLORIDA THAT PUT PEOPLE NOTICE TO ENHANCE PENALTIES. THIS IS THE LAW ITSELF, AND THE REASON WHY THE SINGLE SUBJECT CLAUSE IS IMPORTANT AND IS NOT GIVEN EXALTED STATUS, BUT IT IS MORE AND MUST BE ENFORCED, IS -- BUT IT IS IMPORTANT AND IT MUBEN FORCED, IS BECAUSE IT DEALS -- AND IT MUST BE ENFORCED, IS BECAUSE IT DEALS WITH THE VERY FACTOR OF THE LAWS AND IF THE LAWS VIOLATE THE CONSTITUTION, THEN THE LAWS SHOULD NOT BE ENACTED FOR THAT PERIOD OF TIME.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT IS GOING TO TAKE A TEN-MINUTE RECESS BEFORE WE HEAR THE LAST CASE.

MARSHAL: PLEASE RISE.