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City of Hollywood v. Colon Bernard Mulligan Docket Number: 04-990

THE NEXT CASE ON THIS MORNING'S CALENDAR IS CITY OF HOLLYWOOD VERSUS MULLIGAN. WE FINISHED A A LITTLE EARLY. MAKE SURE THAT JUSTICE BELL IS READY. THANK YOU. YOU KNOW, WE'LL JUST TAKE A MINUTE BREAK AND WE WILL BE RIGHT BACK OUT. THANK YOU.

THE MARSHAL: PLEASE RISE. .

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

CHIEF JUSTICE: HOPEFULLY THAT MAY HAVE BEEN MORE THAN A MINUTE OR TWO, BUT WE HAVE JUSTICE BELL WITH US NOW WHICH IS THE MOST IMPORTANT. THIS CASE IS THE CITY OF HOLLYWOOD VERSUS MULLIGAN. ARE THE PARTIES READY? ALL RIGHT. MR.^ABBOTT?

THANK YOU.

CHIEF JUSTICE: SWITCHING GEARS IN THIS CASE.

SWITCHING GEARS FROM THE LAST ONE. MY NAME IS DANIEL ABBOTT. I'M A CITY ATTORNEY FOR THE CITY OF HOLLYWOOD AND I'M REPRESENTING THE PETITIONER, THE CITY OF HOLLYWOOD IN THIS ACTION. THIS IS A CASE IN WHICH MR.^MULLIGAN AND A CLASS HAS CHALLENGED THE CITY OF HOLLYWOOD VEHICLE IMPOUNDMENT ORDINANCE. IT IS AN ORDINANCE THAT IS IDENTICAL IN ALL MATERIAL RESPECTS TO TO LOCAL ORDINANCES THAT APPEAR IN MORE THAN A DOZEN LOCAL GOVERNMENTS HERE IN THE CITY OF HOLLYWOOD. IT PROVIDES FOR THE BRIEF IMPOUNDMENT OF VEHICLES THAT ARE USED IN THE COMMISSION OF CERTAIN MISDEMEANOR OFFENSES SUCH AS THE SOLICITATION OF PROSTITUTION WHERE THE USE OF CONTROLLED SUBSTANCES SUCH AS MARIJUANA. IT IS AN ORDINANCE WHICH EXPRESSLY DOES NOT APPLY IN ANY MANNER IN WHICH THE FLORIDA CONTRABAND FORFEITURE ACT MAY APPLY. THAT IS ANOTHER ACT THAT DEALS WITH POTENTIAL PERMANENT FORFEITURE OF ASSETS.

ARE THERE TWO ISSUES OR THREE ISSUES? IF WE DECIDE THAT IN THE STATUTE THAT THE FORFEITURE STATUTE DID NOT PREEMPT ANY OTHER STATUTE, I MEAN, THAT A MUNICIPALITY WOULD HAVE THAT WAS NOT IN CONFLICT THEN THAT WOULD REALLY SOLVE YOUR PROBLEM?

I THINK IT WOULD. THERE IS --.

CHIEF JUSTICE: THAT WAS WHAT JUDGE MAY STATED.

THERE WAS AN ALTERNATIVE FINDING BY THE DISTRICT COURT OF APPEAL THAT EVEN IF THE ORDINANCE IS NOT PREEMPTED IT DOES THEN CONFLICT WITH THE FLORIDA CONTRABAND FORFEITURE ACT. THAT IS A CONCLUSION WITH WHICH WE DISPUTE AS WELL BUT I SUPPOSE IF THAT CONCLUSION IS CORRECT IT WOULD PROVIDE AN INDEPENDENT BASIS FOR THE AFFIRMANCE OF THE DISTRICT COURT'S OPINION SO WE DO HAVE TWO ISSUES TO DEAL WITH ON THE APPEAL. LET ME MOVE ON TO THE -- FIRST TO THE PREEMPTION ISSUE.

CAN I ASK YOU A QUESTION ABOUT THE ORDINANCE? DOES THE ORDINANCE APPLY SPECIFICALLY ONLY TO MISDEMEANORS?

YES, AND ONLY TO SPECIFICALLY ENUMERATED MISDEMEANORS SUCH AS THE SOLICITATION OF

PROSTITUTION AND THE POSSESSION OF CONTROLLED SUBSTANCES. AND IN ADDITION THERE IS EXPRESS LANGUAGE IN THE ORDINANCE THAT ANY CRIMINAL OFFENSE THAT MIGHT TRIGGER THE FLORIDA STATE STATUTE ON CONTRABAND FORFEITURE THEN THE ORDINANCE DOES NOT APPLY.

CHIEF JUSTICE: AND JUST ONE OTHER THING BEFORE YOU GET INTO THE MERITS AND AGAIN AS YOU SAY THIS IS SIMILAR TO STATUTES, ORDINANCES AND OTHER MUNICIPALITIES. IS THE IDEA THAT, AGAIN IF THEY ARE USING THE VEHICLE FOR PROSTITUTION BECAUSE YOU TAKE THE VEHICLE, BUT IF THEY PAY WHAT A \$500?

ADMINISTRATIVE FEE, YES, MA'AM.

CHIEF JUSTICE: FEE AND THE FEE IS BECAUSE YOU TOOK THE VEHICLE?

THE FEE OR THE ADMINISTRATIVE OFFENSES THAT ARE ARE INCURRED IN THE ENFORCEMENT OF THE ORDINANCE.

CHIEF JUSTICE: BUT IT IS A PUNITIVE STATUTE. IT IS INTENDED TO, BECAUSE IF YOU ARE JUST COVERING THE COSTS OF IMPOUNDMENT, WHAT DID YOU NEED TO IMPOUND IN THE FIRST PLACE?

I THINK IT IS TO REMOVE THE VEHICLE FROM BEING USED FOR A CONTINUING PATTERN OF CRIMINAL ENTERPRISE.

CHIEF JUSTICE: BUT ONLY UNTIL THEY GIVE YOU \$500.

YES, WELL, THE VEHICLE WILL BE RETURNED TO THE OWNER AFTER A FEW DAYS. I THINK THAT THE THOUGHT IS THAT PEOPLE WHO WERE IN POSSESSION OF CONTROLLED SUBSTANCES, OBVIOUSLY WILL NOT BE IN POSSESSION OF THOSE CONTROLLED SUBSTANCES ANY LONGER. THOSE THINGS WILL BE TAKEN AWAY, AND AS TO THE PROSTITUTION, IT HAS BEEN OUR LEGISLATIVE FINDINGS THAT THOSE THINGS USUALLY HAPPEN IN A CONTINUING ENTERPRISE OFTEN TIMES THE PERPETRATOR IS INTOXICATED. OBVIOUSLY WE HOPE THAT THOSE CONDITIONS ARE REMOVED AFTER A TEMPORAL SEPARATION FROM THE PERSON AND THE VEHICLE.

CHIEF JUSTICE: ARE YOU ALSO GETTING INTO THE FACT THAT THIS IS DONE BY AN ADMINISTRATIVE OFFICER VERSUS A JUDICIAL OFFICER?

I DIDN'T PLAN ON DOING THAT. THAT WAS AN ARGUMENT BEFORE THE FOURTH DISTRICT COURT OF APPEALS. IT WAS NOT THE BASIS OF THE FOURTH DISTRICT'S CONCLUSION AND IT HASN'T BEEN SUGGESTED BY THIS RESPONDENT THAT YOU SHOULD AFFIRM THE DECISION OF THE DISTRICT COURT BASED UPON ANOTHER GROUNDS. UNLESS THERE ARE QUESTIONS FROM THE JUSTICES I HAD NOT PLANNED ON SPENDING A LOT OF TIME ON THE ADMINISTRATIVE VERSUS THE JUDICIAL ASPECTS.

CAN I ASK ONE OTHER QUESTION ON THIS ORDINANCE BEFORE WE GET THERE AND THAT IS YOU KNOW IN A NORMAL PROCEEDING, WHEN A CAR IS IMPOUNDED OR EVEN IF YOU, YOU KNOW, HAVE A LOT OF OVERDUE PARKING TICKETS OR SOMETHING LIKE THAT AND YOUR CAR IS IMPOUNDED. YOU PAY A CERTAIN FEE TO GET IT BACK. NOW, IS THE \$500 THAT YOU HAVE UNDER THIS ORDINANCE IN ADDITION TO NORMAL IMPOUND FEES OR TOWING FEES?

IT IS IN ADDITION TO THE TOWING FEES, YES. WE DON'T COLLECT THE TOWING FEES. OBVIOUSLY THE TOWS COMPANY THAT PROVIDED THE THE SERVICE NEEDS TO BE COMPENSATED BUT THE ADMINISTRATIVE OFFENSE THAT COMES TO THE CITY OF HOLLYWOOD IS \$500. MOST VIOLATIONS

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IT REALLY LOOKS LIKE THIS IS MORE OF A FINE THAT'S IMPOSED PRIOR TO ANY ADJUDICATION,

RATHER THAN ANYTHING THAT REALLY HAS TO DO WITH AN IMPACT?

I WOULD RESPECTFULLY DISAGREE. THE FINE, AS YOU PUT IT, IS THE COST OF THE PROGRAM. OBVIOUSLY IT IS NOT A REVENUE GENERATOR FOR THE CITY AND THE CITY'S LEGISLATIVE FINDINGS SPECIFICALLY INDICATE THAT THE BASIS FOR THE ORDINANCE IS TO STOP A VEHICLE FROM BEING USED IN A CONTINUING PATTERN OF CRIME.

WHERE DOES THE MONEY GO? DOES THE MONEY JUST GO INTO THE CITY TREASURY?

NO, THE ORDINANCE PROVIDES THAT IT PROVIDES FOR THE ADMINISTRATIVE OFFENSES IN ENFORCING THE ORDINANCE. PRACTICALLY SPEAKING THAT MEANS THE SPECIAL MASTER THAT HEARS THE ADJUDICATION OF THE CASE AND A LOT OF THE MONEY ALSO GOES TO THE POLICE OFFICERS FOR THEIR OVERTIME DUTIES. WE DON'T REALLY HAVE THE MANPOWER TO HAVE CONSISTENT PROSECUTORS.

IS THIS SET OUT IN A SEPARATE FUND?

THE ORDINANCE SPECIFICALLY CALLS FOR THE MONEY TO BE REDEDICATED TO THE ADMINISTRATIVE COSTS OF ADMINISTERING THE PROGRAM. I THINK THERE IS A PROVISION THAT SAYS IF THERE ARE EXCESS FUNDS THAT THOSE FUNDS WILL EVENTUALLY BE DELIVERED TO THE GENERAL FUND OF THE CITY BUT AGAIN THE THOUGHT IS --

DOES THE RECORD INDICATE WHAT THE HISTORY OF THAT IS, WHETHER THERE HAVE BEEN, IN FACT, EXCESS FUNDS?

I DON'T KNOW IF THE RECORD BELOW INDICATES THAT BUT IT IS MY UNDERSTANDING THAT THE ADMINISTRATIVE EXPENSES, THE AMOUNT THAT WAS SET WAS TARGETED TO COMPENSATE FOR THE ADMINISTRATIVE EXPENSES. IT IS NOT DESIGNED TO BE A REVENUE GENERATOR FOR THE CITY.

CHIEF JUSTICE: WE BETTER GET TO YOUR -- YOU ARE GOING TO GET OUT OF TIME HERE. LET'S GET TO THE SPECIFIC ARGUMENTS ALTHOUGH AS YOU CAN SEE THE COURT HAS SOME CONSIDERABLE AT LEAST QUESTIONS ABOUT HOW THIS IS REALLY ADMINISTERED AND IT MAY COME UP IN TERMS OF THE PREEMPTION.

THANK YOU, I APPRECIATE THAT. ON THE PREEMPTION ISSUE, OF COURSE THE CITY OF HOLLYWOOD AS ALL MUNICIPALITIES HAS LOCAL HOME RULE POWERS WHICH MEANS WE CAN ENACT LEGISLATION ON ANY SUBJECT WE WANT PURSUANT TO OUR POLICE POWERS UNLESS WE ARE EXPRESSLY PREEMPTED FROM DOING SO BY GENERAL LAW. THIS COURT HAS MADE THAT CLEAR ON A NUMBER OF INDICATIONS WHEN THE CONSTITUTION AND WHEN THE MUNICIPAL HOME RULE POWERS ACT SAYS WE CAN LEDGES LATE ON ANY ISSUE THAT HAS NOT BEEN EXPRESSLY PREEMPTED. THAT MEANS IT HAS TO BE EXPRESSLY PREEMPTED. THERE IS NO CONCEPT OF IMPLIED PREEMPTION OR FIELD PREEMPTION IN THE CITY OF HOLLYWOOD. I'M SORRY IN THE STATE OF FLORIDA. SO IF THE LEGISLATURE DOESN'T SPECIFICALLY SAY THAT LOCAL GOVERNMENTS CAN'T LEGISLATE ON A SUBJECT THEY CAN AND I THINK THIS COURT MADE THAT CLEAR BOTH IN THE TRIBUNE COMPANY VERSUS CANELLA CASE AND THE DAYTONA BEACH VERSUS DELPERSIO CASES IN 1985.

YOU AGREE YOU WOULD NOT BE ABLE TO LEGISLATE IN THE AREA IMPOUNDMENT OF VEHICLES FOR FELONY VIOLATIONS, DO YOU AGREE WITH THAT?

NO, I'M NOT SO SURE I WOULD. WE COULDN'T LEGISLATE INCONSISTENTLY WITH THE STATUTE. WE MIGHT CONFLICT BUT I THINK IN THIS CASE THERE IS NOT PREEMPTION LANGUAGE AT ALL.

I UNDERSTAND BUT I JUST WANT TO GET YOUR POSITION ON WHAT IF THIS ORDINANCE SAID FOR

FELONIES WE ARE GOING TO IMPOUND THE VEHICLE AND THE STATUTE SAYS THAT FOR FELONIES THESE ARE FORFEITED SO NOW YOU HAVE A BATTLE OF JURISDICTIONS AS TO WHO GETS THE CAR.

WELL, OBVIOUSLY THERE IS NEVER A BATTLE OF JURISDICTIONS. THE STATE STATUTE WILL ALWAYS PREVAIL OVER A MUNICIPAL ORDINANCE TO THE EXTENT THEY HAVE INCONSISTENT PENALTY PROVISIONS IT WOULD BE THE STATE STATUTE THAT WOULD PREVAIL BUT IT IS NOT AT ALL UNUSUAL FOR A MUNICIPALITY TO ESSENTIALLY ECHO A STATE STATUTE TO ENACT THE STATE STATUTE ALSO AS AN ORDINANCE. THOSE THINGS ARE VALID IF THEY DON'T CONFLICT WITH EACH OTHER. IT PROVIDES ANOTHER FORUM IN WHICH TO LITIGATE CASES AND THOSE SORTS OF THINGS ARE ROUTINELY UPHELD. WHAT'S THE EXPRESS PREEMPTION LANGUAGE HERE THAT IS ARGUED BY RESPONDENT AND BY THE COURT BELOW? IT IS LANGUAGE THAT SAYS LAW ENFORCEMENT AGENCIES SHALL UTILIZE THE PROVISIONS OF THE FLORIDA CONTRABAND FORFEITURE ACT. THAT'S ALL IT SAYS. IT DICTATES WE USE THE ACT, USE THE STATUTE AND WE DO USE THE STATUTE WHEN THE STATUTE APPLIES WE BEGIN PROCEEDINGS UNDER THAT FORFEITURE STATUTE AND WE FORFEIT ASSETS THAT WERE USED FOR CRIMINAL ENTERPRISES. BUT WE DON'T USE THE STATUTE WHEN IT DIDN'T APPLY AND THE STATUTE JUST SIMPLY DOES NOT APPLY TO MISDEMEANOR OFFENSES TO PROVIDE FOR IMPOUNDMENT AND THAT'S WHY WE HAVE THE ORDINANCE.

CHIEF JUSTICE: THAT'S WHY I'M NOT SURE I UNDERSTAND YOUR ANSWER TO JUSTICE CANTERO'S QUESTION WHICH WAS IF THIS WAS A FELONY WOULDN'T IT THEN CONFLICT IF YOU WERE GOING TO BE USING THESE PROCEDURES VERSUS THE PROCEDURES UNDER THE FORFEITURE ACT?

IT MIGHT VERY WELL CONFLICT. IT WOULD NOT BE PREEMPTED. I UNDERSTOOD THE QUESTION TO TALK ABOUT PREEMPTION. WE CAN ENACT LEGISLATION THAT IS SIMILAR TO STATUTE AND WE ARE NOT PREEMPTED FROM DOING SO. WE CAN'T PROVIDE FOR DIFFERENT PROCEDURES BECAUSE THAT WOULD CONFLICT THEN WITH THE STATUTE. IN ANY EVENT IT DOESN'T SEEM TO BE DIRECTLY RELEVANT IN THIS CASE BECAUSE THERE IS NO OVERLAP BETWEEN THE STATUTE AND IN THE ORDINANCE. AS SUGGESTED IN OUR INITIAL BRIEF, THE FLORIDA LEGISLATURE KNOWS VERY WELL ABOUT THE STANDARDS FOR PREEMPTION AND THEY ARE GOOD AT IT. WHEN THE FLORIDA LEGISLATURE WANTS TO PREEMPT, LOCAL ACTION IN A FIELD IN WHICH THE STATE HAS REGULATED THEY PROVIDE EXPRESS PREEMPTION AND THEY SAY IT VERY CLEARLY. THEY SAY WE EXPRESSLY PREEMPT LOCAL LEGISLATION ON THE ISSUE. THAT SORT OF LANGUAGE IS NOT PRESENT HERE. WE GAVE SOME EXAMPLES IN THE BRIEF FOR THE LEGISLATURE IN A CRYSTAL CLEAR MANNER SHOWS THEY KNOW HOW TO PREEMPT WHEN THEY INTEND TO PREEMPT. THIS MORE SORT OF GENERAL LANGUAGE THAT SAYS YOU SHALL UTILIZE THE PROVISION OF THE ACT IS MUCH MORE COMPARABLE TO THINGS LIKE THE CONDOMINIUM STATUTE AND OTHERS THAT WE HAVE CITED THAT HAVE NOT BEEN HELD TO PROVIDE FOR PREEMPTION. SO I THINK THERE IS NO EXPRESS PREEMPTION HERE. BUT LET'S GO ON. LET'S ASSUME EVEN IF THERE IS PREEMPTION, THE ISSUE IS WHAT ARE WE PREEMPTED FROM DOING AND I THINK THIS GOES TO JUSTICE CANTERO'S QUESTION. EVEN IF THERE IS PREEMPTION, WHAT IS IT SUGGESTED THAT WE ARE PREEMPTED FROM DOING? OBVIOUSLY IF IT IS SOMETHING MORE THAN WE ARE PREEMPTED FROM FORFEITING VEHICLES THAT ARE USED FOR FELONIES BECAUSE OF COURSE THAT'S NOT WHAT THE ORDINANCE IS DOING HERE SO WHAT IS IT SUGGESTED THAT THE STATE FORFEITURE STATUTE FOR FELONIES PROHIBITS US FROM DOING IN A PREEMPTIVE CONTEXT? NOW, REMEMBER, LOCAL GOVERNMENTS IMPOUND VEHICLES FOR A NUMBER OF CIRCUMSTANCES, AND I THINK WE'VE PROBABLY CITED A DOZEN STATUTES OR SO IN OUR VARIOUS BRIEFS, THAT STATUTORILY LOCAL GOVERNMENTS CAN IMPOUND VEHICLES USED IN THE VIOLATION OF A NUMBER OF STATUTES AND AS THIS COURT MADE CLEAR IN MILLER VERSUS STATE THERE ARE EVEN NONSTATUTORY FACTORS FOR YOU -- FOR A LOCAL GOVERNMENT TO IMPOUND VEHICLES. WE CAN IMPOUND EVEN IF IT IS NOT SPECIFICALLY STATUTORILY RECOGNIZED. LET'S TALK ABOUT JUST THE PRACTICAL IMPACT HERE. MR. MULLIGAN WAS ARRESTED FOR THE SOLICITATION OF PROSTITUTION. IN CONNECTION WITH THAT CUSTODIAL

ARREST WE COULD HAVE IMPOUNDED THE VEHICLE NOTWITHSTANDING THE EXISTENCE OF THE IMPOUNDMENTS AT ALL BECAUSE THE VEHICLE WAS LOCATED IN THE RIGHT-OF-WAY. IT WOULD HAVE BEEN SAFE FOR NEITHER THE VEHICLE NOR FOR CARS PASSING THROUGH THE RIGHT-OF-WAY TO LEAVE THE VEHICLE THERE. GOVERNMENTS ROUTINELY WILL IMPOUND THE VEHICLE AND HAVE IT TOWED TO THE TOW YARD WHEN A CUSTODIAL ARREST IS MADE. NOW, IF MR.^MULLIGAN THEN WOULD HAVE HAD TO PAY TOWING FEES TO GET HIS VEHICLE BACK, AND IF HE COULDN'T HAVE PAID HIS TOWING FEES THAT CAR WOULD HAVE BEEN SOLD TO PAY FOR THE TOWING FEES. SO THIS CONCEPT THAT MR.^MULLIGAN AND OTHERS ARE --

DID HE HAVE THE SAME ADMINISTRATIVE FEE?

NO.

SPECIAL ADMINISTRATIVE FEE FOR THIS PARTICULAR ORDINANCE THEN?

THERE IS AN ADDITIONAL ADMINISTRATIVE FEE BUT THE POINT I WAS TRYING TO MAKE WAS TO SUGGEST THAT THIS CONCEPT THAT WE HAVE PUT SOMEBODY AT RISK OF LOSING THEIR VEHICLE IF THEY ARE FINANCIALLY UNABLE TO RECOVER THE VEHICLE IS CERTAINLY NOTHING NEW AND NOTHING THAT IS IMPOSED UNIQUELY BY THIS ORDINANCE. IT IS THE NATURE OF THE BEAST.

BUT IN THIS CASE YOU REALLY WOULD END UP FORFEITING THE VEHICLE IF YOU CAN'T PAY THE \$500 AND THERE IS SOMETHING IN THE ORDINANCE ABOUT A BOND, YOU WOULD FORFEIT THE BOND. IF SOMEONE COULD NOT POST THE BOND AND THEY DIDN'T HAVE THE \$500, THEN WHEN YOU END UP WITH A FORFEITURE OF A VEHICLE?

WELL, EVENTUALLY ONE COULD LOSE POSSESSION OF ONE'S VEHICLE BUT AGAIN THAT'S NOT NECESSARILY THE RESULT OF THE ORDINANCE THAT AGAIN IS THE POINT I TRIED TO MAKE BEFORE. THAT'S EXACTLY WHAT WOULD HAPPEN IF MR.^MULLIGAN COULDN'T AFFORD THE TOWING FEES WHICH I THINK IT IS CONCEDED THAT WE COULD IMPOSE. I THINK THE MERE FACT THAT ONE MIGHT LOSE POSSESSION OF AN ITEM ULTIMATELY THROUGH A PROCESS DOES NOT MEAN THAT YOU HAVE A FORFEITURE SCHEME AT WORK. WHEN I WANT TO GO INTO CITY HALL IN HOLLYWOOD I NEED TO GIVE MY DRIVER'S LICENSE TO SHOW THAT I AM ALLOWED TO BE THERE AND IF I DON'T PICK UP THE DRIVER'S LICENSE, WELL, EVENTUALLY THAT DRIVER'S LICENSE WILL BE DISCARDED AS SURPLUS PROPERTY. THE MERE FACT THAT SOMETHING MAY BE LOST IF YOU DON'T --

IN ORDER TO GO IN TO THE CITY HALL YOU HAVE TO GIVE YOUR DRIVER'S LICENSE UP?

JUST FOR SECURITY, YES, SIR.

HAS THAT BEEN TESTED BY ANY COURT?

NO, SIR.

TO ME THAT'S A RATHER POOR EXAMPLE FOR THE CITY OF HOLLYWOOD TO BE USING AS A BASIS UPON WHICH THEY ARE GOING TO IMPOSE RESTRICTIONS ON CITIZENS. IT IS THE CITIZENS' BUILDING. IT IS NOT THE CITY OFFICIALS' BUILDING THERE.

PERHAPS IT WAS A POOR ANALOGY. THERE ARE A NUMBER OF OTHER EXAMPLES I COULD HAVE USED WHERE ITEMS OF PERSONAL PROPERTY CAN BE LOST IF YOU DON'T RECLAIM THEM, AND THAT DOES NOT MEAN THAT ALL OF THOSE THINGS ARE FORFEITURE SCHEMES AND IT CERTAINLY DOESN'T MEAN THAT ALL OF THOSE --

IF THE AMOUNT OF THE FEE WERE FIXED AT \$20,000, DOES THAT CONVERT THIS THEN INTO A, YOU KNOW, I DON'T HAVE THE MONEY TO DO THIS SO YOU CAN TAKE MY VEHICLE?

I DON'T KNOW IF IT WOULD OR NOT. AS A LOCAL GOVERNMENT WE COULDN'T IMPOSE A FEE TO THAT EXTENT. WE ARE STATUTORILY LIMITED TO THE \$500. COULD IT EVENTUALLY BE A FORFEITURE. I THINK IT MIGHT VERY WELL BE, BUT WOULD THAT BE A FORFEITURE CONTRARY AND PREEMPTED BY THE VEHICLE? FORFEITURE, I DON'T THINK THAT IT WOULD BE.

WAS THE ARGUMENT THAT WAS MADE BEFORE THE COURT, THE LOWER COURT, I GUESS WOULD HAVE BEEN, DID IT START IN TRIAL IN THE CIRCUIT COURT?

IT STARTED IN THE CIRCUIT COURT AND WENT TO THE 4TH DISTRICT COURT OF APPEALS.

CHIEF JUSTICE: THE ARGUMENT WAS THE PREEMPTION ARGUMENT OR WAS THERE A DUE PROCESS ARGUMENT ALSO MADE?

AT BOTH THE TRIAL COURT AND THE APPELLATE COURT THERE WERE A NUMBER OF CHALLENGES TO THE ORDINANCE. THERE MUST HAVE BEEN A DOZEN OR SO. OF COURSE THE CITY OF HOLLYWOOD PREVAILED ON SUMMARY JUDGMENT AT THE CIRCUIT COURT LEVEL SO ALL CHALLENGES WERE REJECTED. THE 4TH DISTRICT HUNG THEIR HAT ON THE PREEMPTION.

CHIEF JUSTICE: SO WE HAVE CONCERNS IN TERMS OF HOW THIS IS OPERATING IN REAL LIFE? I MEAN ASIDE FROM THE PREEMPTION, BUT THE BEST THING WOULD THEN BE TO REMAND IT TO THE 4TH DISTRICT FOR THEM TO ADDRESS THOSE OTHER ISSUES THAT WERE RAISED?

WELL, IT MIGHT BE. I DEFER THOSE SORTS OF PROCEDURAL QUESTIONS TO --.

CHIEF JUSTICE: I JUST WANTED TO KNOW IF THE TRIAL COURT RECORD WAS NOT FULLY DEVELOPED BECAUSE THE SUMMARY JUDGMENT WAS ENTERED IN YOUR FAVOR?

WELL, THERE WERE CROSS MOTIONS FILED SO NEITHER PARTY SUGGESTED THAT THE RECORD WAS INCOMPLETE TO FORM THE BASIS OF AN OPINION. MY --.

CHIEF JUSTICE: SO THINGS LIKE WHERE THE MONEY GOES AND HOW MUCH IS THE ACTUAL, IS THIS REVENUE GENERATOR IS ALL IN THE RECORD?

I DON'T KNOW IF IT WAS OR NOT, BUT IT WAS NOT SUGGESTED THAT IT IS ABSENCE FROM THE RECORD WAS PREVENTED CONSIDERATION OF THE MATTER FOR SUMMARY JUDGMENT.

THAT'S NOT THE STANDARD FOR SUMMARY JUDGMENT. THE STANDARD FOR SUMMARY JUDGMENT IT MAY BE FOR ONE PARTY AND IT IS NOT A SUFFICIENT RECORD BUT FOR THE OTHER PARTY IT IS. THE MERE FACT THAT SOMEONE SAYS I WOULD LIKE TO SUMMARY JUDGMENT DOESN'T MEAN THAT THE OTHER PARTY IS AUTOMATICALLY ENTITLED THAT THERE ARE NO FACTS?

UNDERSTOOD, SIR, BUT IN THIS CASE THERE WERE CROSS MOTIONS FOR SUMMARY JUDGMENT AND NEITHER PARTY SUGGESTED THAT THE OTHER PARTY'S MOTION WAS NOT RIGHT BECAUSE OF THE ABSENCE OF EVIDENCE IN THE RECORD.

CHIEF JUSTICE: MR. ABBOTT, YOU ARE -- YOU'VE GOT ABOUT TWO AND A HALF MINUTES OF YOUR TOTAL TIME LEFT.

LET ME TAKE MY SEAT THEN. THANK YOU.

OKAY. MAY IT PLEASE THE COURT, MY NAME IS RON GURALNICK AND I REPRESENT THE RESPONDENTS IN THIS CASE. THE FIRST ISSUE IS IS THE FLORIDA IMPOUNDMENT ORDINANCE ACT, IS IT A FORFEITURE OR IS IT AN IMPOUNDMENT? COUNSEL REFERRED TO IT AS A BRIEF IMPOUNDMENT. THAT IS NOT THE CASE. THIS IS STRICTLY A FORFEITURE ACT, AND A READING OF

THIS ACT SHOWS THAT IT IS. READING THE ORDINANCE ITSELF, I SHOULD SAY.

HOW WOULD YOU DEFINE -- OVER HERE, HOW WOULD YOU DEFINE THE WORD FORFEITURE?

I WOULD DEFINE IT IN THIS FASHION. IF PERSONAL PROPERTY IS TAKEN OR YOUR RIGHTS THEREIN TO IT AS A RESULT OF THE COMMISSION OF A CRIME AND IT IS TAKEN PERMANENTLY THEN THAT WOULD BE FORFEITURE. ON THE OTHER HAND, IF IT IS AN IMPOUNDMENT IT WOULD BE A TEMPORARY TAKING.

SO YOU AGREE THEN THAT THE FORFEITURE INCLUDES THE CONCEPT OF A PERMANENT TAKING?

YES, I DO.

SO EXPLAIN HOW THIS ORDINANCE, AS DESIGNED, IS LIKE THE FORFEITURE ACT ITSELF, A PERMANENT TAKING?

I WAS GETTING INTO THAT. IF A PERSON CANNOT PAY THE ADMINISTRATIVE FEE, OR IF THAT PERSON CANNOT PAY THE BOND, HE LOSES HIS VEHICLE. ONCE THEY FIND THAT HE IS RESPONSIBLE FOR WHATEVER MISDEMEANOR THAT HE WAS CHARGED WITH, HE LOSES THE VEHICLE. NOW, THAT'S NOT TEMPORARY. IT IS PERMANENT.

CHIEF JUSTICE: AGAIN, LET'S JUST ASSUME THE VEHICLE WAS IMPROPERLY PARKED AND IT WAS TOWED. AND THE PERSON CANNOT PAY THE TOWING FEES, IT IS GOING TO BE A PERMANENT -- IS THE VEHICLE GOING TO BE RETURNED IF THEY CAN'T PAY THE TOWING FEES?

WELL, THEY --.

CHIEF JUSTICE: IN OTHER WORDS, ANY POTENTIAL WHERE THE VEHICLE IS TAKEN HAS A POTENTIAL FOR A PERMANENT DEPRIVATION.

IT HAS THE POTENTIAL. IT COULD BE, IT COULD BE, BUT UNDER THIS PARTICULAR ORDINANCE WHICH IS THE ONE WE ARE ARGUING COUNSEL IS SAYING THAT THIS IS A TEMPORARY TAKING WHEN, IN FACT, IT IS NOT. IT IS A PERMANENT TAKING OF THE MOTOR VEHICLE.

CHIEF JUSTICE: THAT'S NOT THEIR INTENT. THEIR INTENT IS THAT IT BE A TEMPORARY TAKING AND ISN'T THAT CORRECT?

WELL, IT MAY BE THAT WHAT THEIR INTENT IS BUT IN ACTUALITY IN REALISM THE MAN IS LOSING OR THE WOMAN IS LOSING THEIR MOTOR VEHICLE.

THE LANGUAGE DOESN'T SAY THAT IF YOU ARE FOUND IN THESE CIRCUMSTANCES, THAT YOUR VEHICLE WILL BE FORFEITED, THAT IS THAT THE CITY WILL BECOME THE OWNER OF THE VEHICLE. IT DOESN'T DO THAT, DOES IT?

NO, IT DOESN'T.

SO ISN'T THAT A CLEAR DISTINCTION BETWEEN FLORIDA'S FORFEITURE STATUTE, WHICH CONTEMPLATES THE CITY OR SOME LAW ENFORCEMENT AGENCY TAKING THE PROPERTY PERMANENTLY AND BECOMING THE OWNER OF IT, AS OPPOSED TO THE POTENTIAL ANY TIME THERE MAY BE A CHARGE OR A LIEN APPLIED TO PROPERTY THAT EVENTUALLY THAT PROPERTY CAN BE SOLD TO SATISFY THAT LIEN IF THE PERSON RESPONSIBLE DOESN'T PAY AT ALL. SO I'M HAVING TROUBLE WITH YOUR ARTICULATION THAT THIS IS A FORFEITURE ORDINANCE. WOULD YOU ARTICULATE THAT TO US AGAIN? WHAT BASIS DO YOU HAVE FOR CLAIMING THAT THIS IS A FORFEITURE, THE PERMANENT TAKING OF PROPERTY BY THE CITY GOVERNMENT?

WELL, I THINK WE HAVE TO LOOK AT THIS. WHAT IS THE REALISTIC CONCLUSION. IF THE PERSON CANNOT PAY THE ALLEGED ADMINISTRATIVE FEE --

IF THEY CAN'T PAY YOU JUST AGREED THAT IF THEY CAN'T PAY THE FEE FOR TOWING THEN THEY ARE GOING TO END UP WITH THE VEHICLE BEING SOLD TO ENFORCE THE TOWING LIEN, AND THAT'S NOT A FORFEITURE, YOU AGREE, RIGHT?

YES, IF I MAY, I'M TRYING TO DIRECT MY ANSWER TO YOUR QUESTION SPECIFICALLY. LET'S SAY HE CAN'T PAY THE TOWING, AND SO AND THE WHO HAS THE VEHICLE NOW? IT IS THE TOWING COMPANY. WELL, THEY HAVE A LIEN ON THAT VEHICLE, AND SO THAT'S WHY THE VEHICLE COULD BE LOST PERMANENTLY IF THE PERSON COULDN'T PAY. BUT UNDER THIS PARTICULAR ORDINANCE, IF YOU CAN'T PAY THE FEE TO THE CITY, NOT TO THE TOWING COMPANY, IF YOU CAN'T PAY IT TO THE CITY YOU LOSE YOUR VEHICLE. THAT'S NOT TEMPORARY. THAT'S PERMANENT.

WELL, IF THE CITY HAD ITS OWN TOW TRUCKS, THE SAME THING WOULD OCCUR, WOULD IT NOT? IF THE CITY WAS THE ONE DOING THE TOWING?

BUT THAT'S NOT THE CASE. THAT'S NOT THE CASE. THEY ARE DEALING WITH THE TOWING COMPANY. SO IT IS NOT -- IT IS THE CITY THAT IS CAUSING THE PERMANENT LOSS OF THE VEHICLE. NOT THE TOWING COMPANY. THE ORDINANCE SAYS THAT YOU MUST PAY AND IF YOU DON'T THEY KEEP THE CAR.

IS IT YOUR POSITION THAT AFTER THIS OCCURS THAT THE CITY HAS NO RIGHT TO TAKE POSSESSION OF THE VEHICLE IN ANY WAY, EVEN THOUGH THEY HAVE FOUND THAT IT HAS BEEN USED AS THE SITE OF THE PROSTITUTION OR THE SITE OF THE DRUG OFFENSE? THEY HAVE NO RIGHT TO DO ANYTHING WITH THE VEHICLE?

WELL, OF COURSE THIS IS WHERE THE PREEMPTION ARGUMENT WOULD COME IN. RIGHT NOW I'M ADDRESSING MYSELF TO THE ARRESTED NO ONE'S ITSELF WHETHER IT IS AN IMPOUNDMENT, TEMPORARY, OR WHETHER IT IS -- UNDER THIS ORDINANCE, THERE ARE ONLY TWO PARTIES THAT ARE ARE NOTIFIED THAT THEY ARE ENTITLED TO A HEARING. ONE IS THE OPERATOR OF THE VEHICLE AND THE OTHER IS THE OWNER OF THE VEHICLE. THERE ARE OTHER OWNERS, THERE ARE OTHER PARTIES OR COMPANIES THAT HAVE INTEREST IN THESE VEHICLES SUCH AS A RENTER, A LESSOR OR A JOINT OWNER IF THEY DON'T GET NOTICE OF THIS HEARING THEY LOSE THE VEHICLE NOT BECAUSE THEY CAN'T PAY FOR IT BUT BECAUSE THEY SIMPLY ARE NOT NOTIFIED AND DON'T KNOW THERE IS A HEARING AND THEREFORE NOT DEFENDING AT THE HEARING THEY LOSE THE VEHICLE.

CHIEF JUSTICE: IT SEEMS TO ME AND I THINK WE'VE GOT TO BE SORT OF SEPARATE BETWEEN WHAT ARE THE POTENTIAL PROBLEMS THAT COULD ARISE IN THIS CASE AND YOU ARE HERE AS A CLASS ACTION AND I UNDERSTAND AN ISSUE WAS THAT THERE WASN'T SUFFICIENT NOTICE THAT MIGHT EXIST IF IT WAS A FINANCE COMPANY. SO I THINK WE OUGHT TO RESTRICT OURSELVES TO THE ISSUES THAT ARE BEFORE US. DID YOU RAISE THAT ISSUE IN THE TRIAL COURT, THAT IS THAT THE NOTICE PROVISIONS OF THE STATUTE WERE DEFECTIVE, CONSTITUTIONALLY DEFECTIVE?

ALL OF THESE ISSUES WERE ADDRESSED BEFORE THE TRIAL COURT.

CHIEF JUSTICE: DO YOU REPRESENT ANYONE IN YOUR CLASS THAT SAYS THAT THEY DIDN'T GET PROPER NOTICE? WAS THAT A CLASS ACTION?

IT IS A CLASS ACTION. ONE PARTY IS REPRESENTATIVE OF THE CLASS. HE COULDN'T HAVE SUFFERED ALL OF THOSE PARTICULAR --

CHIEF JUSTICE: MY QUESTION IS WHETHER IT IS CONSTITUTIONAL ON ITS FACE OR RATHER THAN

IMPLIED. WHY DON'T YOU GO TO THE PREEMPTION ARGUMENT AS TO WHAT YOUR BEST -- BECAUSE IF JUDGE MAY IS CORRECT THAT IS THAT THE FORFEITURE STATUTE APPLIES ONLY TO FELONIES AND DOES NOT PREVENT THE MUNICIPALITY FROM ACTING WHEN IT IS A MISDEMEANOR THEN YOU WOULD NOT PREVAIL, CORRECT?

RIGHT.

CHIEF JUSTICE: OKAY.

IT IS OUR POSITION UNDER THE FORFEITURE ACT WHICH STATES THAT IT IS APPLICABLE TO ALL LAW ENFORCEMENT AGENCIES OF WHICH THE HOLLYWOOD POLICE DEPARTMENT IS ONE OF, THEY MUST COMPLY WITH ALL OF THE PREREQUISITES OF THE FLORIDA CONTRABAND FORFEITURE ACT.

CAN YOU FORFEIT A VEHICLE, INITIATE FORFEITURE PROCEDURES FOR A MISDEMEANOR IN THE STATE OF FLORIDA?

IT IS OUR CONTENTION THAT YOU CANNOT, NOT AT ALL.

CHIEF JUSTICE: SO HOW DOES IT PRECLUDE THEN IF IT DOESN'T APPLY TO MISDEMEANORS HOW DOES IT PRECLUDE A MUNICIPALITY FROM ACTING IF IT ACTS APPROPRIATELY FROM IMPOUNDING A VEHICLE THAT IS USED IN A MISDEMEANOR ON A TEMPORARY BASIS?

SORRY. BECAUSE BY APPLICATION OF THE ACT THAT THEY MUST FOLLOW TO ALL LAW ENFORCEMENT AGENCIES, THE ACT GOES ON LATER TO SAY IN THEIR DESCRIPTION OF WHAT PROPERTY MAY BE FORFEITED, AND THAT IS FOR FELONIES. SO, THEREFORE, IT IS OUR CONTENTION THAT THE LEGISLATURE IS EXPRESSLY STATING THAT THEY ARE PROHIBITING INTERVENTION WITH THIS ACT BY FORFEITING VEHICLES FOR MISDEMEANORS ONLY BECAUSE IT IS APPLICABLE TO FELONIES.

CHIEF JUSTICE: BUT YOU ARE SAYING THE MORE DRASTIC IDEA THAT WHEN THE STATE OR A GOVERNMENTAL ENTITY STEPS OUT TO -- WITH THE INTENT OF OBTAINING TITLE TO A VEHICLE OR A PROPERTY THAT THEY MUST FOLLOW THE PROCEDURES SET FORTH IN THE FORFEITURE ACT, BUT THAT MISDEMEANORS ARE NOT GOING TO BE THE CLASS OF CASES IN WHICH FORFEITURE, AS IT IS UNDERSTOOD WITHIN THE ACT, IS COVERED. THAT YOU CAN'T FORFEIT A VEHICLE FOR PROPERTY BECAUSE SOMEBODY HAS COMMITTED A MISDEMEANOR?

EXACTLY. THAT IS OUR CONTENTION AND IF I MAY ADDRESS THE COURT WITH A RHETORICAL QUESTION THIS MIGHT SOLVE THIS WHOLE ISSUE RESPECTFULLY. WHY ON EARTH WOULD OUR LEGISLATURE PROVIDE ALL OF THE DUE PROCESS RIGHTS ACCORDING TO ONE WHO IS CHARGED WITH A FELONY TO PROTECT HIS PROPERTY RIGHTS AND DEALING WITH THE FORFEITURE OF A MOTOR VEHICLE AND YET COMMIT A MUNICIPALITY TO FORFEIT THE SAME VEHICLE THAT COULD BE FORFEITED UNDER THE FLORIDA CONTRABAND FORFEITURE ACT AND NOT PROVIDE ALL OF THOSE SAME DUE PROCESS RIGHTS TO SOMEONE WHO IS CHARGED WITH A MERE MISDEMEANOR.

WELL, COUNSEL'S RESPONSE TO THAT IS THAT THERE IS NO IMPLIED PREEMPTION UNLESS THE STATUTE SPECIFICALLY STATES THAT THIS PREEMPTS. THAT'S THE POSITION. WHAT IS YOUR POSITION WITH REGARD TO THE IMPLIED OR ARE YOU CONTENDING THAT THIS IS EXPRESS AND IF SO, WHICH LANGUAGE DO YOU RELY ON FOR THE EXPRESS?

IF I MAY BE SO BOLD.

YOU MAY.

THANK YOU. IT IS MY CONTENTION THAT, AND THEN I'LL GET ON TO IMPLIED. IT IS MY

CONTENTION THAT THE LEGISLATURE BY SAYING THAT THIS ACT IS -- MUST BE FOLLOWED BY ALL LAW ENFORCEMENT AGENCIES AND THE FORFEITURE MAY BE FOR FELONIES ONLY, IS EXPRESSLY STATING, PERHAPS IN ANOTHER WAY THEN WE EXPRESSLY STATE, BUT THAT IS DIRECTLY SAYING THAT IN THE STATUTE.

SO IT IS YOUR POSITION AS A MATTER OF LAW THAT IS AN EXPRESS PREEMPTION AND THAT COUNSEL, THAT YOUR OPPOSITION'S STATEMENT THAT IT MUST SAY THIS PREEMPTS IS NOT THE CORRECT STATEMENT OF WHAT EXPRESS PREEMPTION IS?

I'M NOT SAYING THAT IS THE CORRECT STATEMENT. I'M SAYING IT CAN BE STATED IN MANY DIFFERENT WAYS.

YOUR OPPOSITION IS SAYING THAT'S THE ONLY WAY YOU CAN HAVE EXPRESS PREEMPTION, AND YOU ARE SAYING THAT'S NOT THE LAW?

I'M NOT SAYING THAT. I'M SAYING THAT THERE IS ALSO IMPLIED PREEMPTION HERE TO ADDRESS THAT QUESTION. WHAT IS IMPLIED PREEMPTION? IMPLIED PREEMPTION IS WHEN OUR LEGISLATURE TAKES A CERTAIN AREA AND PERVADES THAT AREA AND SAYS TO A DEGREE WHAT WE ARE DOING IS PREEMPTING A CERTAIN AREA AND THAT'S WHAT THEY DID HEAR, -- HERE, AND TO SUPPORT THAT. IF YOU TAKE A LOOK AT THE FLORIDA CONTRABAND FORFEITURE ACT, I MEAN IT COVERS THIS ENTIRE AREA.

HOW CAN WE HANDLE THE ARGUMENT THEN IF YOU SAY IT COVERS THE WHOLE FIELD THEN IF WE WERE TO ACCEPT THAT ARGUMENT HOW DOES IT DEAL WITH THE OTHER ISSUES RAISED IN THE AMICUS BRIEF EXCEPT FOR ABOUT MARINE VESSELS, AIRCRAFT, OTHER INSTANCES IN WHICH VEHICLES ARE TAKEN BECAUSE OF OTHER VIOLATIONS OF OTHER STATUTES THAT ARE NOT REALLY INCLUDED WITHIN THE FORFEITURE ACT?

BECAUSE IMPLIED PREEMPTION WOULD COVER THE ENTIRE AREA OF FORFEITURES.

SO WOULD THAT RESULT THEN IN THE INVALIDATION OF ANY OTHER STATUTE OR ACT THAT HAD TO DO WITH THE TAKING OF A VESSEL OR VEHICLE?

YOU REALIZE I'M TALKING ABOUT WHAT THE AMICUS RAISED, AND IF WE ACCEPT YOUR ARGUMENT THAT THIS IS AN IMPLIED PREEMPTION BECAUSE IT COVERS THE ENTIRE FIELD IN WHICH A MUNICIPALITY OR THIS STATE MAY TAKE A PARCEL OF PROPERTY OR A PIECE OF PROPERTY, TANGIBLE PROPERTY, WOULDN'T THAT INVALIDATE ALL OF THOSE OTHER ORDINANCES AND STATUTORY PROCEEDINGS?

NOT NECESSARILY SO.

WHY NOT?

I DON'T KNOW WHAT ALL OF THOSE OTHER --

THEY ARE LISTED IN THE AMICUS BRIEF ALL OF THE OTHER INSTANCES IN THE STATUTE WHERE OUTSIDE OF THIS ACT THAT VEHICLES ARE TAKEN AS A RESULT OF VIOLATIONS OF ORDINANCES OR STATUTES OR TRAFFIC PROVISIONS.

I WOULDN'T SAY SO, NO, I WOULDN'T SAY SO. I THINK THAT WE ARE DEALING SPECIFICALLY IN THIS PARTICULAR CASE WITH A VEHICLE IMPOUNDMENT ORDINANCE. WE HAVE A FLORIDA CONTRABAND FORFEITURE STATUTE THAT IF OUR LEGISLATURE PREEMPTS THAT ENTIRE AREA AS FAR AS THIS PARTICULAR CASE IS CONCERNED, AS FAR AS THE IMPOUNDMENT ORDINANCE WITH THE CITY OF HOLLYWOOD, OF FORFEITING MOTOR VEHICLES I WOULD HAVE TO SAY IT WOULD APPLY ON A CASE BY CASE BASIS WE HAVE TO DEAL WITH THOSE WHEN WE GET TO THEM AND TO

THOSE PARTICULAR CASES UNDER OTHER ORDINANCES, AND THAT WHICH I DON'T KNOW WHICH ORDINANCES WE ARE SPECIFICALLY REFERRING TO, SO I DON'T KNOW THE LANGUAGE OF THOSE ORDINANCES. I WOULD HAVE TO SAY THAT ON A CASE BY CASE BASIS AND THIS IS ONE OF THOSE CASES, WE HAVE TO DEAL WITH THIS -- WITH THE FLORIDA CONTRABAND FORFEITURE ACT AS OPPOSED TO THIS PARTICULAR ORDINANCE AND THE PRECEPTS OF THAT PARTICULAR ORDINANCE. EVERY ORDINANCE HAS DIFFERENT LANGUAGE BUT THE FLORIDA CONTRABAND FORFEITURE ACT DOES NOT AND IF OUR LEGISLATURE, EITHER EXPRESSLY OR IMPLIABLY COVERS THE ENTIRE AREA AND PREEMPTS THE INVOLVEMENT OF A MUNICIPALITY FOR THIS PARTICULAR ORDINANCE, THEN I WOULD SAY THAT THE AREA IS COVERED AND THEY CANNOT INVADE THE PREEMPTION.

YOUR ARGUMENT REALLY BREAKS DOWN TO THE FACT THAT THE LEGISLATURE BY ONLY DEALING WITH FELONIES INTENDED THAT THERE COULD BE NO FORFEITURE OF VEHICLES WHEN A MISDEMEANOR IS INVOLVED; IS THAT YOUR FINAL -- IS THAT YOUR UNDERLYING ARGUMENT HERE?

NO, NOT TOTALLY BECAUSE I AM ALSO SAYING THAT OUR LEGISLATURE IMPLIABLY PREEMPTED THE ENTIRE AREA. IF YOU LOOK AT HOW PERVASIVELY THEY COVERED THIS IN THE FLORIDA CONTRABAND FORFEITURE ACT, WHO IT APPLIES TO, WHAT PROPERTY MAY BE FORFEITED, WHAT MUST BE DONE WITH THE FUNDS THAT ARE SECURED FROM THOSE FORFEITURES, WHAT THEY EVEN WENT SO FAR TO SAY WHAT PUNISHMENT MAY BE IMPOSED AGAINST A MUNICIPALITY IF THEY DON'T USE THE MONEY IN THE APPROPRIATE MANNER AS SET FORTH IN THE ORDINANCE. I MEAN, THEY HAVE TOTALLY COVERED THIS AREA, AND I THINK WE MUST ALSO LOOK AT IT THIS WAY. IF YOU FEEL THAT THERE IS A STRONGER OR STRONG IMPLIED PREEMPTION AGREEMENT, PREEMPTION DOCTRINE HERE THAT WAS MET BY THE LEGISLATURE, THIS WOULD ALSO SUPPORT THE ARGUMENT THAT THEY MEANT EXPRESSLY TO PREVENT A MUNICIPALITY FROM SECURING FORFEITING PROPERTY, AUTOMOBILES, FOR MERE MISDEMEANORS.

CHIEF JUSTICE: IS THERE ANYTHING IN THE HISTORY OF THE FORFEITURE ACT THAT SUPPORTS YOUR VIEW THAT THE LEGISLATURE INTENDED TO LIMIT MUNICIPALITIES FROM ACTING WITH RESPECT TO IMPOUNDMENT?

WELL, YOU KNOW, THERE ARE A PLETHORA OF CASES THAT DEAL WITH PREEMPTION WHETHER IT IS EXPRESS OR WHETHER IT IS IMPLIED.

CHIEF JUSTICE: MY QUESTION WAS IS THERE ANYTHING IN THE LEGISLATIVE HISTORY THAT WOULD INDICATE THAT ISSUE WAS DEBATED?

I CAN'T ANSWER THAT QUESTION.

CHIEF JUSTICE: ANOTHER QUESTION I HAVE FOR YOU. WHETHER THIS IS CATEGORIZED OR CHARACTERIZED AS A FEE, FINE OR PENALTY, DOES THE RECORD BEFORE THE TRIAL COURT ESTABLISH THAT IT IS A PENALTY AS OPPOSED TO A FEE TO COVER ADMINISTRATIVE COSTS? WHAT DOES THE RECORD REVEAL ABOUT THAT? DOES IT MAKE A DIFFERENCE IF IT IS \$100, \$200, \$500, A THOUSAND DOLLARS? AGAIN THE CITY ATTORNEY SAID YOU CAN'T BE MORE THAN \$500.

I DON'T -- THIS WAS SOME TIME AGO. I DON'T RECALL THAT THAT WAS AN ISSUE THAT THE COURT RELIED UPON. HOWEVER, I WOULD REMIND YOUR HONOR THAT EVEN THE JUDGE, JUDGE THOMAS LINCH, WHO UNFORTUNATELY RULED AGAINST MY CLIENT AND ACCEPTED THE -- RULED IN FAVOR OF THE MOTION FOR SUMMARY JUDGMENT BY THE MUNICIPALITY, EVEN HE SAID AND I QUOTE, THIS ORDINANCE DOESN'T PASS THE SMELL TEST. HE HAD GREAT RESERVATIONS EVEN THOUGH HE RULED AND I THINK INCORRECTLY AS THE 4TH DISTRICT IN A VERY WELL REASONED OPINION FOR THE REVERSAL INDICATED BUT EVEN HE HAD GREAT RESERVATIONS ABOUT THIS ORDINANCE.

CHIEF JUSTICE: WELL, THAT'S WELL AND GOOD. WE'RE DECIDING THIS AS A MATTER OF LAW. AND THE QUESTION GOES BACK TO SO YOU SAY YOU DON'T KNOW WHAT THE RECORD ESTABLISHES AS TO WHETHER THIS IS AN AMOUNT THAT COVERS THE PROCESSING OF THE TAKING OF THE VEHICLE ON A TEMPORARY BASIS OR IS ACTUALLY ONE THAT ENRICHES THE COFFERS OF THE CITY AS A FINE OR A VIOLATION OF THE LAW?

I THINK THAT THE -- IT WAS AGREED BY MY OPPOSING COUNSEL WHERE THAT MONEY WENT AND IF YOU COMPARE THAT TO WHERE THE MONEY IS SUPPOSED TO GO UNDER THE FLORIDA CONTRABAND FORFEITURE ACT, AND YOU WILL FORGIVE ME. I DON'T REMEMBER EVERY LITTLE PROVISION OF THE ACT BUT IT WILL NOT MATCH. THEY ARE NOT -- WHERE THEY ARE SUPPOSED TO.

CHIEF JUSTICE: BUT YOUR POSITION IF THEY ARE NOT SEEKING TO DEPRIVE THE DEFENDANT OF HIS PROPERTY PERMANENTLY, THEN YOU ARE STILL SAYING THAT THEY'VE GOT TO -- I MEAN SO THEN NOTHING CAN HAPPEN IF A -- IN THE STATE OF FLORIDA IF A DEFENDANT USES A VEHICLE IN THE COMMISSION OF A MISDEMEANOR, NOTHING CAN HAPPEN TO THE VEHICLE? AND THAT WAS WHAT THE LEGISLATURE INTENDED?

I AM SAYING THAT THE -- YES, THE FLORIDA CONTRABAND FORFEITURE ACT DOES NOT INCLUDE MISDEMEANORS, BECAUSE IT EXPRESSLY AND IMPLIEDLY PREEMPTS THE AREA FROM A MUNICIPALITY FORFEITING PROPERTY WHICH IS A RESULT OF A MERE MISDEMEANOR. NOW, CERTAINLY THAT PERSON WOULD FACE CRIMINAL PROSECUTION, AND THERE MAY BE PENALTY.

CHIEF JUSTICE: YOU WOULD AGREE WITH ME IF THE VEHICLE WAS IMPROPERLY PARKED AND THE DEFENDANT WAS ALSO INTOXICATED, COULD THEY REMOVE THE VEHICLE?

SURE, THEY COULD. THAT WOULDN'T BE PERMANENT. HE WOULD GET HIS VEHICLE BACK. THIS IS A PERMANENT TAKING IF ONE CANNOT PAY OR IS NOT NOTIFIED. IT IS AS SIMPLE AS THAT IF I MAY BE SO BOLD.

CHIEF JUSTICE: YOUR TIME HAS EXPIRED.

CAN I RESPOND? LET ME GET TO THE CONFLICT SITUATION.

CHIEF JUSTICE: NO, YOU ARE EXPIRED. 20 MINUTES IS UP.

I'M SORRY. I WILL RELY ON MY BRIEF FOR THE CONFLICT.

THANK YOU, MAY IT PLEASE THE COURT.

CHIEF JUSTICE: LET'S TALK A LITTLE BIT ABOUT THE SMELL TEST OF THIS AS FAR AS WHETHER IT IS A PENALTY. I'M VERY CONCERNED ABOUT THE FACT THAT THIS IS DONE IN ADMINISTRATIVE PROCEEDING AND WHILE I MAY NOT AGREE WITH EVERYTHING THAT THE RESPONDENT HAS JUST SAID, WHAT DOES CONCERN ME IS WHETHER THERE ARE LESS PROTECTIONS FOR A DEFENDANT CHARGED WITH A MISDEMEANOR THAN THE CONSTITUTION WOULD REQUIRE. COULD YOU ADDRESS THAT?

SURE. LOCAL GOVERNMENTS HANDLE MATTERS ADMINISTRATIVELY AND THEY DO IT IN A NUMBER OF CONTEXT AND THEY ARE ALLOWED TO DO THAT. SPECIFICALLY IN THE SUBJECT OF CODE ENFORCEMENT SOMETIMES WE ALLEGE THAT PEOPLE HAVEN'T MAINTAINED THEIR PROPERTY IN CONFORMANCE WITH OUR CODES AND THAT MATTER IS LITIGATED THROUGH ADMINISTRATIVE AGENCIES WITHIN THE CITY. AND THAT'S OKAY. ADMINISTRATIVE AGENCIES DON'T HAVE JURIES AND THE LIKE AND THAT HAS ALWAYS WITHSTOOD SCRUTINY. AT THE END OF THE DAY ANY FINAL ADMINISTRATIVE DECISION IS CHALLENGED IN A COURT OF LAW SO ULTIMATELY AT THE END OF THE DAY IF THERE IS ANY DISCUSSION THAT ONE'S CASE ISN'T BEING

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UNDER THIS PROCEDURE, THE CITY MAKES THE DECISION TO TAKE THE VEHICLE, AND THEN THE CITY MAKES THE DECISION AS TO WHETHER THE TAKING WAS PROPER TO THE EXTENT OF WHETHER THE \$500 FEE CAN BE CHARGED. ISN'T THAT THE WAY THIS WORKS?

NO, SIR. I DISAGREE WITH THAT. THE INITIAL DECISION TO IMPOUND THE VEHICLE IS MADE BY CITY OF HOLLYWOOD EMPLOYEE, A POLICE OFFICER, BUT THE DECISION AS TO WHETHER OR NOT THERE WAS PROBABLE CAUSE IS MADE BY AN INDEPENDENT SPECIAL MASTER. IT IS NOT BY A CITY EMPLOYEE. IT IS MADE BY -- IT IS MADE BY A THIRD PARTY AND OF COURSE ULTIMATELY AGAIN.

HOW IS THAT PERSON SELECTED?

SELECTED BY THE CITY, YES, SIR.

BY THE CITY?

YES, BUT THAT PERSON DOESN'T ANSWER TO US. THEY ARE EMPLOYED TO PROPERLY INTERPRET THE STATUTE, AND, AGAIN, I THINK THE DECISION OF THE SPECIAL MASTER.

WHO DOES THAT PERSON ANSWER TO? I'M CONFUSED THEN BY YOUR ORDINANCE HERE. I THOUGHT THAT PERSON WAS SOMEBODY THAT WAS SELECTED BY THE CITY, PAID BY THE CITY.

WE DO, WE DO PAY FOR THAT, PAY FOR THAT.

AND THE PERSON WHOSE CAR IS UNDER, WHO HAS BEEN REMOVED FROM THEM AND IS SUBJECT TO THE TITLE BEING TRANSFERRED DOESN'T HAVE ANY SAY IN THE SELECTION OF THE MASTER?

WE DO HAVE A SAY IN THE SELECTION OF THE SPECIAL MASTER, BUT I THINK IT IS A LEAP FROM THAT PROPOSITION TO SUGGEST THAT WE DO NOT HAVE AN IMPARTIAL DECISIONMAKER. OUR STATUTES ARE BASED UPON THE PREMISE THAT SPECIAL MASTERS ARE INDEPENDENT FINDERS OF FACT NOTWITHSTANDING WHO IS PAYING FOR THEM. OUR ENTIRE SYSTEM OF CODE ENFORCEMENT IS BASED UPON THAT. IN OTHER WORDS ANY TIME WE CITE SOMEBODY FOR A PROPERTY STANDARDS VIOLATION SOMEBODY COULD SAY, YES, BUT THE SPECIAL MASTER IS ULTIMATELY BEING PAID BY THE CITY. CHAPTER 162 HAS NEVER BEEN EFFECTIVELY CHALLENGED SUGGESTING THERE ARE NOT IMPARTIAL DECISIONMAKERS MAKING FACTUAL FINDINGS.

CHIEF JUSTICE: YOUR TIME IS UP AND JUSTICE ANSTEAD HAS ASKED LEAVE TO ASK ONE ADDITIONAL QUESTION.

WOULD IT BE YOUR POSITION THAT BECAUSE THE STATE STATUTE DOESN'T PROVIDE FOR FORFEITURE FOR A MISDEMEANOR VIOLATIONS, THAT THE CITY COULD PASS A FORFEITURE ORDINANCE COVERING MISDEMEANOR VIOLATIONS, AND, THEREBY, HAVE FORFEITURES? IN OTHER WORDS AN EXPRESS ONE, NOT ONE WHERE WE ARE ARGUING ABOUT WHETHER THIS IS FORFEITURE OR NOT, BUT WHETHER THE CITY LOOKING TO THE STATE STATUTE SAID, WELL, THE STATE DIDN'T INCLUDE MISDEMEANORS AND IN THEIR SCHEME AND THEREFORE WE ARE GOING TO DO IT WITH YOUR ORDINANCE AND SO WE ARE GOING TO HAVE CITY OF HOLLYWOOD MISDEMEANOR FORFEITURE CODE. COULD THE CITY DO THAT?

I THINK WE PROBABLY COULD NOT. I THINK LOCAL GOVERNMENTS IMPOSE LESSER PENALTIES FOR LESSER MISS DEDUCT -- MISCONDUCT. IF WE WERE TRYING TO ECHO THE SAME PENALTIES BUT DEMAND A LESSER QUANTUM OF WRONGDOING I THINK THAT WOULD CONFLICT WITH THE STATUTE SO I THINK WE CAN FOR A LESSER MISCONDUCT WE CAN IMPOSE A LESSER PENALTY

AND THAT'S WHAT WE ARE DOING HERE.

HAVEN'T YOU THEN MORE OR LESS CONCEDED THAT THE STATUTE PREEMPTS ANY FORFEITURES FOR CRIMINAL CONDUCT OTHER THAN FELONIES?

IF IT WERE THE SAME PENALTY, IF WE WERE TO HAVE A FORFEITURE ORDINANCE. IN OTHER WORDS, IF WE WERE TO ECHO THE PENALTIES AS CONTAINED IN THE FORFEITURE STATUTE, BUT REQUIRED ONLY A MISDEMEANOR OFFENSE, THEN I THINK THAT WE WOULD PROBABLY BE PREEMPTED FROM THAT, BUT THAT'S NOT WHAT WE ARE DOING HERE. THE FORFEITURE STATUTE.

CHIEF JUSTICE: YOU ARE WAY OVER YOUR TIME AND I THINK YOU HAVE RESPONDED TO JUSTICE ANSTEAD'S QUESTIONS. THANK YOU VERY MUCH. THE COURT WILL TAKE ITS MORNING RECESS OF 15 MINUTES.

THE MARSHAL: PLEASE RISE. .

THE FLORIDA SUPREME COURT HAS PRESIDED OVER A STATE LEGAL SYSTEM THAT HAS CHANGED DRAMATICALLY. IN 1846, FLORIDA WAS THE LEAST POPULUS SOUTHERN STATE WITH ITS MAJOR CITIES CONCENTRATED IN A NORTHERN AGRICULTURAL BELT DOMINATED BY A PLANTATION ECONOMY. TODAY A FAR MORE COSMOPOLITAN FLORIDA RANK AS A WORLD WIDE TOURIST DESTINATION WITH THE VAST MAJORITY OF ITS RESIDENTS CONCENTRATED IN THE SOUTHERN REGION THAT WAS LARGELY A TROPICAL WILDERNESS JUST OVER A CENTURY AGO. THIS IS THE FLORIDA SUPREME COURT. A HISTORIC BUILDING THAT HOUSES A POWERFUL INSTITUTION. I'M BUZZ CON OVER. BEFORE I TALK WITH YOU ABOUT THE HISTORY AND STRUCTURE OF THIS INSTITUTION I'D LIKE TO INTRODUCE SOMEONE TO YOU. THE WOMAN WHO OVERSEES THE ENTIRE JUDICIAL SYSTEM FOR THE STATE OF FLORIDA, THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT, BARBARA PARIENTE.

WELCOME TO THE FLORIDA SUPREME COURT. I AM PRIVILEGED TO TALK TO YOU TODAY ON BEHALF OF ALL SEVEN OF THE COURT'S JUSTICES, AND AS THE SECOND WOMAN TO SERVE AS CHIEF JUSTICE SINCE THIS COURT FIRST MET EARLY IN 1846. IN OUR STATE, THE FLORIDA SUPREME COURT, HEADS THE THIRD BRANCH OF GOVERNMENT, THE JUDICIAL BRANCH. THE CASES THAT ARE HEARD IN THIS COURTROOM OFTEN MARK MILESTONES IN FLORIDA'S EVOLVING HISTORY. IN THE LAST 50 YEARS ALONE, DECISION AFTER DECISION HAS ENDED FORMS OF DISCRIMINATION THAT AFFECTED WOMEN, MINORITIES, AND OTHERS. THE WORK OF STATE COURTS LIKE OURS IS INDISPENSABLE TO OUR NATION. MORE THAN 95% OF THE JUDICIAL ACTIVITY IN THIS COUNTRY TAKES PLACE IN STATE COURTS, RATHER THAN IN THE FEDERAL COURTS. IN CREATING OUR STATE CONSTITUTION, OUR FOUNDERS FOLLOWED THE EXAMPLE IN THE UNITED STATES CONSTITUTION BY CREATING THREE SEPARATE BRANCHES OF GOVERNMENT. THE FOUNDERS OF OUR NATION AND STATE ENVISIONED THAT THREE DISTINCT AND INDEPENDENT BRANCHES WOULD EACH ACT AS A CHECK OR BALANCE ON THE OTHER. PREVENTING ANY ONE BRANCH FROM GAINING TOO MUCH POWER. IMPORTANTLY, OUR FOUNDERS DETERMINED THAT LIBERTY COULD BE PRESERVED ONLY IF THE JUDICIAL BRANCH AND ITS JUDGES ARE INDEPENDENT OF THE OTHER TWO MORE POLITICAL BRANCHES OF GOVERNMENT. OUR FOUNDERS ALSO ENVISIONED THAT JUDGES SHOULD BE CHOSEN IN A MANNER THAT IS FREE OF PARTISANSHIP. IN FACT, THE ESSENTIAL PREREQUISITE FOR SERVICE AS A JUDGE IS AN ABSOLUTE COMMITMENT TO IMPARTIALITY AND NEUTRALITY. THE MEN AND WOMEN WHO SERVE THE JUDICIAL BRANCH ARE PART OF THE ONE INSTITUTION OF GOVERNMENT THAT WAS DELIBERATELY DESIGNED NOT TO BE INFLUENCED BY PREVAILING POLITICAL MOOD. INSTEAD OF BENDING TO POLITICAL MOODS OF THE DAY OUR JUDGES ARE ACCOUNTABLE TO THE PEOPLE IN A FAR LARGER SENSE THROUGH THE JUDGE'S DUTY TO UPHOLD THE CONSTITUTION AND THE ENDURING VALUES AND RIGHTS IT PROVIDES AND GUARANTEES. THAT DUTY IS CRITICALLY IMPORTANT BECAUSE IT GUARANTEES THAT YOU AS AN INDIVIDUAL WILL HAVE YOUR FUNDAMENTAL RIGHTS PROTECTED IN OUR COURTS. WHAT RIGHTS? THE RIGHT TO SPEAK

FREELY, WORSHIP WHERE AND HOW YOU WISH, AND TO HAVE YOUR CASE DECIDED BY A JURY OF YOUR PEERS. ALSO, THE CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS ENSURE THAT YOUR DISPUTE WITH ANOTHER OR WITH THE STATE WILL BE RESOLVED FAIRLY, NO MATTER HOW WEAK OR HOW POWERFUL YOU OR THE OTHER PARTY MAY BE. NO ONE, NOT EVEN A MAJORITY OF VOTERS OR PUBLIC OPINION CAN DEPRIVE YOU OF THESE FUNDAMENTAL RIGHTS THAT APPEAR IN BOTH OUR FEDERAL AND STATE CONSTITUTIONS. THAT IS THE VITAL GUARANTEE THAT OUR CONSTITUTIONS PROVIDE AND OUR COURTS ENFORCE. WE CALL THIS THE RULE OF LAW. THE BASIC IDEA THAT NO ONE IS ABOVE THE LAW AND EVERYONE IS ENTITLED TO THE PROTECTION OF THE LAW. EVERY DAY JUDGES STRIVE TO UPHOLD THE PROMISE OF EQUAL JUSTICE UNDER LAW IN SUBSCRIBED ABOVE THE ENTRANCE OF -- INSCRIBED ABOVE THE NATIONS OF OUR NATION'S HIGHEST COURT. THE LAW PROTECTS US ALL. AS YOU LEARN MORE ABOUT OUR JUSTICE SYSTEM, AND THE FLORIDA SUPREME COURT I HOPE YOU WILL KEEP IN MIND THE CRUCIAL ROLE THAT COURTS OF LAW, INCLUDING THIS COURT, PLAY IN THIS ONGOING TWO CENTURY-OLD EXPERIMENT IN DEMOCRACY THAT WE CALL AMERICA. .

ONCE EVERY MONTH ATTORNEYS APPEAR BEFORE THE FLORIDA SUPREME COURT TO MAKE THEIR ARGUMENTS.

I APPRECIATE COUNSEL BEING READY TO GO ON THE FIRST CASE.

THEIR WORK IN THE COURTROOM HAS SHAPED MORE THAN A CENTURY AND A HALF OF SUPREME COURT CASES. THESE, IN TURN, HAVE CREATED MODERN FLORIDA. IN 1846, FOR EXAMPLE, THE VERY FIRST CASE WAS DECIDED BY THE FLORIDA SUPREME COURT INVOLVING THE ENFORCEMENT OF SLAVERY. YET BY 1975, THE FIRST AFRICAN-AMERICAN JOINED THE COURT AS A JUSTICE. HE WAS QUICKLY FOLLOWED BY THE FIRST AFRICAN-AMERICAN CHIEF JUSTICE WHO PRESIDED OVER THE COURT FROM 1990 TO 1992. AND BY ITS FIRST AFRICAN-AMERICAN WOMAN WHO JOINED THE COURT IN 1999. DURING A DIVESTITURE THAT DREW A CAPACITY AUDIENCE OF 500. [APPLAUSE]

IN THE FLORIDA OF 1846, COURT CASES HELD THAT WOMEN HAD FEW RIGHTS. BUT IN 1985, THE FIRST WOMAN WAS APPOINTED TO THE COURT AND LATER WOULD SERVE AS ITS CHIEF JUSTICE FROM 1992 TO 1994. JUST AS THE MEMBERSHIP OF THE COURT HAS INCREASINGLY AFFECTED THE DIVERSITY OF THE STATE SO HAVE ITS COURTS BECOMING AMONG THE MOST MODERN IN THE NATION. UNTIL 1973, FLORIDA'S COURTS WERE A HODGEPODGE WITH SOME COURTS EVEN USING THE FINES THEY LEVIED ON PEOPLE TO FINANCE THEIR BUDGETS. THIS GAVE THEM A STRONG INCENTIVE TO ENGAGE IN WHAT SOME CALLED CASH REGISTER JUSTICE. LEVYING FINES ACCORDING TO THEIR OWN FINANCIAL NEEDS. IN 1972, A GROUP OF LEADERS THAT INCLUDED THEN GOVERNOR RUBEN^ASKEW PERSUADED THE VOTERS TO AMEND THE STATE CONSTITUTION. WHAT THEY AIMPROVED WAS SWEEPING. THE OLD HODGEPODGE OF COURTS WAS TOSSED OUT ALONG WITH CASH REGISTER JUSTICE. IN ITS PLACE WAS SUBSTITUTED A UNIFORM STATEWIDE SYSTEM OF COURTS THAT HAD ONLY FOUR LEVELS. THESE, IN TURN, WERE DIVIDED INTO TWO KINDS OF APPELLATE COURTS AND TWO KINDS EVER TRIAL COURTS. AT THE TOP WAS THE STATE SUPREME COURT WITH ITS SEVEN JUSTICES. IMMEDIATELY BELOW THE SUPREME COURT WERE THE FIVE DISTRICT COURTS OF APPEAL WHICH NOW HAVE MORE THAN 60 JUDGES. BELOW THIS LAY THE TRIAL COURTS, THE MAIN TRIAL COURTS ARE ARE CALLED THE CIRCUIT COURTS DIVIDED INTO 20 SEPARATE CIRCUITS THROUGHOUT THE STATE. THERE ARE MORE THAN 500 CIRCUIT JUDGES. THE MOST NUMEROUS AT ANY LEVEL BECAUSE MOST OF THE STATE'S TRIALS OCCUR THERE. BELOW THE CIRCUIT COURTS ARE THE COUNTY COURTS, WHICH HEAR MINOR CASES LIKE TRAFFIC ISSUES AND SMALL CLAIMS. THERE ARE MORE THAN 275 COUNTY JUDGES WITH AT LEAST ONE IN EACH OF THE 67 COUNTIES. MOST LEGAL CASES IN FLORIDA BEGIN IN THE TRIAL COURTS, AND MANY OF THESE MATTERS ARE DECIDED BY JURIES THAT CONSIST OF SIX FLORIDA RESIDENTS. THERE IS ONE EXCEPTION. FOR DEATH PENALTY CASES THERE MUST BE 12 JURORS. AFTER TRIAL, THE LOSING PARTY HAS A RIGHT TO BRING AN APPEAL. MOST OF THESE GO TO THE DISTRICT COURTS OF APPEAL ALTHOUGH THERE ARE A FEW NOTABLY DEATH PENALTY

CASES THAT GO DIRECTLY TO THE STATE SUPREME COURT. IN MOST CASES, THE APPEAL TO THE DISTRICT COURT WILL BE THE LAST CHANCE FOR OVERTURN A TRIAL COURT RULING. HOWEVER, A SMALL PERCENTAGE OF CASES PRESENT ISSUES THAT ARE SO NOVEL OR COMPLEX THAT THEY MUST BE DECIDED BY THE SUPREME COURT. THE IDEA IS THAT AS THE COURT OF LAST RESORT, THE SUPREME COURT IS THE ONLY TRIBUNAL IN THE STATE THAT CAN ENSURE THAT THE LAW IS UNIFORM THROUGHOUT FLORIDA. IT IS IMPORTANT TO NOTE THAT THE MAJORITY OF CASES HEARD BY THE SUPREME COURT ARE CIVIL AND NOT CRIMINAL CASES. PERHAPS THE MOST FAMOUS AND HISTORIC CASES BEFORE THE FLORIDA SUPREME COURT INVOLVED APPEALS IN THE DISPUTED PRESIDENTIAL ELECTION OF 2000.

THE COURT TODAY HAS ISSUED ITS OPINION IN THE CASE OF ALBERT GORE, JUNIOR, VERSUS CATHERINE HARRIS, GEORGE W. BUSH AND OTHERS.

THE MOST UNIQUE ASPECT OF THOSE CASES INVOLVE THE TECHNOLOGY USED BY THE COURT TO GIVE THE PUBLIC UNPRECEDENTED ACCESS.

WE WILL HAVE ORAL ARGUMENT THIS MORNING IN THE CASE OF GORE VERSUS HARRIS.

TO THIS DAY THE TWO MAJOR PRESIDENTIAL ELECTION CASES NOTE THE ONLY APPEALS EVER HEARD BY ANY COURTS THAT WERE BROADCAST LIVE FROM START TO FINISH ON ALL OF THE MAJOR WORLDWIDE TELEVISION NETWORKS. AT THE SAME TIME MILLIONS OF PEOPLE WORLDWIDE WERE ABLE TO DOWNLOAD DOCUMENTS IN THESE FAMOUS CASES DIRECTLY FROM THE FLORIDA SUPREME COURT WEBSITE.

WHILE IT STARTED AT A -- AS AN INSIGNIFICANT 19TH CENTURY COURT IN AN INSIGNIFICANT STATE. NO ONE COULD CALL THAT TODAY. WOMEN AND MEN HAVE TURNED THE FLORIDA SUPREME COURT INTO AN ADVANCED MODERN COURT MAKING IT A MODEL FOR THE NATION AND THE WORLD. I'M BUZZ CONOVER. THANKS FOR COMING TO THE FLORIDA SUPREME COURT.

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