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**P. Dewitt Cason, etc., et al. v. Florida Department of Management Services
SC05-1484**

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE. THE SUPREME COURT OF THEGREAT STATE OF FLORIDA IS NOW IN SESSION . ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR , GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THE UNITED STATES , THE G REAT AND THIS HONORABLECOURT.LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SE ATED.

CHIEF JUSTICE: G OOD MORNING , LADIES ANDGENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE DOCK ET THIS MORN ING I S DeWITT CASON VERSUS FL ORIDA DEPARTMENT OF MANAGEMENT SERVICES. ARE THE PARTIES READY? ALL RIGH T.

MAY IT PLEASE THE COURT. MY NAME IS GEORGE REEVES , AND I REPRESENT THE PETITIONER IN THIS ACTION . MR . COUNSEL T ABLE MR . AJ DECKER , ALSO REPRESENTING THE PETITIONER AND THE REPRESENTATIVE OF THE CLERKOF THE COURT OF COLUMBIA COUNTY IN ITS OFFICIAL CAPACITY. THIS IS T O DO W ITH CHILD SUPPORT O RDER ENTERING FINALSUMMARY JUDGMENT WHERE THESTATE OF FLORIDA HAD FILED A CASE SEE KING T O ENJOIN THE ISSUANCE OF A TAX DEED AFTER A TAX CERTIFIC ATE HAD ALREADY BEEN IS SUED AND THE CERTIFICATE HO LDER HAD APPLIED F OR THE ISSU ANCE OF THE TAX DEED. THE CIRCUIT COURT ENTERED FINAL SUMMARY JU DGMENT AGAINST THE ST ATE, BECAUSE IT DETERMINED THAT THE STATEHAD NOT COMPLIED WITH THE NONCLAIM STAT UTE APPLICABLE TO CHALKINGS FOR ASSESSMENTS OF --

CHIEF JUSTICE: THAT IS N OT IN DISPUTE, CORRECT?

THERE IS NO FACTUAL DISPUTE. AFFIDAVITS WERE FILED ESTABLISHING ALL OF THE DATES AND THIS WAS FILEDALMOST A YEAR AFTER THE 60 DAYS.

CHIEF JUSTICE: AND IT IS NOT IN DISPUTE THE FACT WHETHER THIS PROPERTY IS OWNED BY THE STATE.

THAT HAS NOT YET BEEN DETERMINED, YOUR HONOR, BECAUSE FINAL SUMM ARY JUDGMENT WAS ENTERED EVEN BEFORE AN ANSWER WAS FILED. THE REASONING OF THE COURT WAS IT DIDN'T M ATTER WH ETHER IT WAS OPENED BY THE STATEOR NOT . -- WHETHER IT WAS OWNED BY THE STATE OR NOT .

CHIEF JUST ICE: SO DE ALING WITH TWO CONFLICTING POLICY ISSUES?

WE D ON'T FEEL THERE ARE CONFLICTING , I AND THERE ARE POLICY ISSUES TO BE EXPLORED , BUT SINCE THERE IS NO CONFLICT, WE DON'T THINK IT IS NEC ESSARY TO DE LVE INTO POLICY . STATUTE 401 SUBSECTION 2 REQUIRES THAT NO AC TIONS BE BROUGHT S I NCE 30 D AYS AFTER THE TAX RO LL. IT B RINGS N O DIFFERENCE BETWEEN CHALLENGE OF PR IVATE , GOVERNMENT OR ANY OTHER WAY .

JUSTICE : IS THERE A DIFFERENCE IN OUR LAW BETWEEN EXEMPTIONS AND IMMUNITY FROM TAXATION?

THERE IS A DIFFERENCE, AND THIS COURT HAS FOUNDSUCH A DIFF ERENCE, BUT WE D ON'T THINK

THAT DIFFERENCE IS MATERIAL IN THIS CASE BECAUSE THE STATUTE AT ISSUE DEPRIVED THE COURTS OF JURISDICTION WHO WOULD CONSIDER THE ISSUE OF WHETHER OR NOT THE ASSESSMENT WAS PROPER. FURTHER --

JUSTICE: I GUESS THE CORE ON LARRY QUESTION IS IT RELATES -- I GUESS THE CORE LATER QUESTION IS IT -- COROLLARY RELATES TO IT RELATES ONLY TO EXEMPTSS AND IT WOULDNT APPLY TO IMMUNITY IN THIS STATE.

WE DIDN'T THINK THAT WOULD BE THE CASE. YOUR HONOR, IN THE WARD VERSUS BROWN DECISION IT WAS HELD BY THIS COURT THAT , WHETHER CHALLENGED FOREXEMPTION , IMMUNITY OR ANY OTHER REASON , IT WOULD BE UNDER THE BROWN STATUTE.

CHIEF JUSTICE: IF WE HELD BROWN, WE WOULDN'T BE HERE TODAY , IF WE SPECIFICALLY HELD THAT IMMUNITY TAKES SOMEONE OUT OF THE NON-CLAIM STATUTE , WE WOULDN'T --

THAT IS OUR POSITION. THE FIRST DCA DIDN'T SEEM TO AGO GREECHLT THEY SEEMED TO FEEL THAT THESE STATUTES WOULDN'T APPLY TO THE STATUTE , WHICH WE DISAGREE .

JUSTICE: WARD AND BROWN DIDN'T DEAL WITH THE STATE.

IT DID NOT.

JUSTICE: MY CONCERN IS THAT IT JUST DOESN'T LOGICALLY FOLLOW THAT , IF THE STATE IS IMMUNE FROM TAXATION , OR THE FEDERAL GOVERNMENT IS IMMUNE FROM TAXATION , THAT A STATUTE HAVING TO DO WITH ASSESSMENT OF TAXES IS GOING TO APPLY , BECAUSE OF THE IMMUNITY. IT JUST SEEMS VERY SIMPLE SYLIGISM TO ME.

THE QUESTION , YOUR HONOR , IS WHETHER OR NOT THE LEGISLATURE INTENDED 171.792, THE NON-CLAIM STATUTE, TO APPLY TO EVERYONE IN THE STATE.

JUSTICE: COULD THE LEGISLATURE OVERCOME THE STATE'S IMMUNITY?

YES. IT CERTAINLY SCHOOL AND THE FIRST DC -- IT CERTAINLY COULD, AND THE FIRST DCA FOUND THAT IT COULD WAIVE THE STATE'S IMMUNITY FROM TAXATION.

JUSTICE: IF YOU WAIVE THAT, THE LEGISLATURE , WOULD YOU AGREE, WOULD HAVE TO DO THAT EXPRESSLY?

WE FEEL THEY HAVE AND THIS IS WHY , THEY ENACTED CREATING THE TIME LIMIT AFTER TWO VERY IMPORTANT THINGS HAD HAPPENED. FIRST OFF THE LEGISLATURE ENACTED 95.011 WHICH SAID THAT ALL STATUTORY TIME LIMITS APPLY TO THE STATE JUST AS THEY WOULD APPLY TO A PERSON. THAT WAS ENACTED A DECADE BEFORE, SO THAT STATUTE IS ON THE BOOKS AND A FUNDAMENTAL RULE OF CONSTRUCTION IS THAT THE LEGISLATURE IS DEEMED TO BE AWARE OF ALL PRIOR STATUTES, SO THEY HAD TO KNOW THAT THEY HAD ALREADY ENACTED A STATUTE MAKING THE STATE SUBJECT TO THESE TIME FRAMES.

CHIEF JUSTICE: THOSE ARE STATUTES OF LIMITATIONS NOT JURISDICTIONAL BAR .

BUT THAT IS NOT WHAT THE LANGUAGE OF THE STATUTE SAYS. THE STATUTE SAYS A CIVIL ACTION OR PROCEEDING INCLUDING ONE BROUGHT BY THE STATE IS BARRED , UNLESS THE GOVERNMENT IN THE TIME PRESCRIBED IN THIS CHAPTER , 95 OR ELSEWHERE IN THE STATUTE.

CHIEF JUSTICE: DOESN'T THE STATUTE ONLY APPLY TO TAXPAYERS, AND IF THE STATE IS NOT A TAXPAYER, AGAIN, HOW CAN IT APPLY TO THEM ?

I AGREE IT APPLIES TO TAXPAYERS. I AGREE IF THE STATE IS NOT A TAXPAYER, IT DOES NOT APPLY TO THIS. IN THIS CASE THE STATE IS A TAXPAYER BECAUSE A TAXPAYER IS A TERM OF ART. IN CHAPTER 192 THE TAXPAYER IS STATUTORILY DEFINED AS THE PERSON IN WHOSE NAME THE PROPERTY IS ASSESSED AND IT FURTHER GOES ON TO COMMAND PROPERTY APPRAISERS TO ASSESS ALL PROPERTY INCLUDING PROPERTY NOT SUBJECT TO TAX. THAT IS WHY IF YOU PULL UP THE WEB SITE FOR LEON COUNTY, THE COURTHOUSE HAS AN ASSESSMENT ON IT. THEY DON'T TAX. THEY ARE NOT TRYING TO -- THEY DON'T OWE TAXES. THEY ARE NOT TRYING TO COLLECT TAXES BUT THEY ARE ASSESSED.

JUSTICE: THE STATE IS EXEMPT FROM TAXATION, CORRECT?

YES, MA'AM.

JUSTICE: AND THEN YOU HAVE TO FIND SOME SPECIFIC STATUTE WHICH WOULD ALLOW TAXATION, AND SO POINT TO ME THE SPECIFIC STATUTE IN THIS CASE, THAT WOULD ALLOW TAXATION OF THIS PROPERTY.

WELL, WE DON'T POINT TO ANY SPECIFIC STATUTE RIGHT NOW, BECAUSE IT IS IN DISPUTE AS TO WHETHER OR NOT THE STATE EVEN OWNS THE PROPERTY, BUT I DISAGREE WITH THE ANALYSIS THAT WE HAVE TO POINT TO A STATUTE, AND I THINK THE AUTHORITY FOR THAT IS THIS COURT'S OPINION IN LAKE WORTH POWERS VERSUS GERSHWIN, AND THIS -- VERSUS GERSHWIN, AND IN THAT CASE THIS COURT FOUND THAT A PREVIOUS CHALLENGE TO AVOID ASSESSMENT CAN BE BROUGHT AFTER THE 60-DAY TIME FRAME.

JUSTICE: NOW, ACTUALLY, THE QUESTION HERE IS NOT WHETHER THIS, AS JUSTICE CANTERO POINTED OUT, THERE IS A DIFFERENCE FOR HIS QUESTION, AND YOU AGREE, IS THERE A DIFFERENCE BETWEEN EXEMPTION AND IMMUNITY? AND WE MADE THAT SPECIFIC POINT IN CANAVERAL PORT AUTHORITY. ARE YOU FAMILIAR WITH THE CANAVERAL PORT AUTHORITY CASE?

YES, I AM, YOUR HONOR.

JUSTICE: WE MADE THAT SPECIFIC POINT THAT THERE IS A DISTINCTION, AND, BUT, WE RELIED THERE ON DICKINSON, AND DID DICKINSON RELY ON A STATUTORY BASIS FOR THE STATE BEING IMMUNE FROM TAXATION?

NO, YOUR HONOR. DICKINSON, IT IS MY UNDERSTANDING, RELIED ON EITHER COMMON LAW OR CONSTITUTIONAL BASIS, ALTHOUGH THERE IS NO SPECIFIC, I THINK, PROVISION IN THE CONSTITUTION.

JUSTICE: THAT IS THE ONLY ONE COME BACK TO MY QUESTION, IS, CAN THE LEGISLATURE, IF THIS COURT FOUNDED THE, IF IT HAS A CONSTITUTIONAL BASE, THEN THE LEGISLATURE COULDN'T DO AWAY WITH THE STATE'S IMMUNITY.

YOUR HONOR, MY ONLY RESPONSE TO THAT CAN BE COURTS HAVE HELD THAT THEY CAN, INCLUDING THIS COURT BELOW HELD THAT THEY COULD, AND THAT ISSUE HASN'T BEEN BRIEFED AWAY THAT THE STATE DOESN'T HAVE THE POWER TO WAIVE OR TO DO THIS IF IT DESIRES. THERE IS NO ARGUMENT THAT HAS BEEN MADE THAT SAYS IF EVERYONE AGREED THE STATUTE DID THIS, THE LEGISLATURE, IT WOULD BE BEYOND THE LEGISLATURE'S POWER, SO THAT ISSUE IS NOT BEFORE THE COURT.

JUSTICE: I WANT YOU TO FINISH THE ANSWER. DID YOU FINISH THE ANSWER?

YES.

JUSTICE: IT SEEM S AS THOUGH THE PRIOR CASE S THAT WERE ALL TALKED ABOUT , INTERPRETED SOME QUESTION O F AMBIGUITY OR N EED TO CONSTRUE A STATUTE IN THIS AREA. NONE OF THOSE INVOLVED THE STATE , SO COULD YOU SHARE WITH US WHY YOU BELIEVE THAT THOSE CASES SH OULD BE EXTENDED TO THE STATE AS WELL. AND LE T'S NOT TALK A BOUT LESSEES OR ANYTHING LIKE THAT. LET'S TALK ABOUT THE CAPITOLOVER HERE OR SOMETHING LIKE THAT .

IN THIS CASE, YOUR HONOR, THIS COURT IN LAKE WORTH POWERS VERSUS GERSTEN SPECIFICALLY FOUND THAT. THIS COURT RULED THAT THEY DECIDED TO SET OUT DEADLINES THAT WERE APPROPRIATE FOR ABSOLUTE, FOR BR INGING A CTION TO SAY CHALLENGE ABSOLUTELY V OID TAX ASSESSMENTS AND IN THEIR WORDS ON PROPERTY THAT IS NOT TAXA BLE BECAUSE OF SOVEREIGN IMMUNITY OR EXEMPT STATUS, SO THIS COURT FOUND THAT IN LAKE WORTH POWERS VERSUS GERSTEN , AND THIS COURT FOUND THAT IF TAX CERTIFICATE OR TAX DEEDS WERE ISSUED THERE ON, SUIT TO CANCEL THE SAME M UST BE BROUGHT WITHIN THE TIME ALLOWED BY S F -1 97 AND IF I CAN JUST POINT OUT THAT S F-1 9 7 IS TO TALLY GENERAL. IT DOESN'T SAY THE STATE MUST BRING AN ACTION WITH INA CERTAIN TIME. IT JUST SAYS PE OPLE IN GENERAL MUST BRIN G AN ACTION .

CHIEF JUSTICE: HO W DO YOU S QUARE 194.171.3 THAT SAYS BEFORE AN ACTION TO CON TEST A TAX ASSESSMENT MAY BE BROUGHT , THE TAXPAYER SH ALL P AY TO THE TAX COLLECTOR NOT LESS THAN THE AMOUNT OF THE TAX , WHICH THE TAXPAYER ADMITS IS IN GOOD FAITH IS OWING. I F THEY ARE IMMUNE , THEN HOW COULD THEY EVER , THE STATE, IF , AGAIN, IF WE ASSUME THIS STATUTORY SCHEME WAS INTEND TO APPLY TO THE STATE , HOW DOES THAT SECTION FIT IN?

I DON'T KNOW THAT THIS COURT HAS REACHED THE ISSUE, BUT THE L OWER APPELLATE COURTS HAVE DECIDED THAT, IF A TAXPAYER ASSERTS THAT HE DOES NOT OWE ANYTHING IN GOOD FAITH, HE IS FREE NOT TO POST ANY AMOUNT OF MONEY WITH THE REGISTRY OF THE COURT , AND IN MY OPINION, THAT STATUTE SPECIFICALLY ALLOWS FOR THE STATE. IF THE STATE IS SAYING IT IS IMMUNE, IT IS NOT REQUIRED TO PAY ANYTHING INTO THE REGISTRY OF THE COURT, JUST IF I WERE A PRIVATE ENTITY THAT HAD AN EXEMPTION FOR SOME REASON , I COULD GO TO COURT AND SAY I DON'T OWE ANYTHING AND NOT PAY ANYTHING. THE LOWER COURTS HAVE ALLOWED THAT. I DON'T KNOW --

JUSTICE: WHAT HAS THE CONSTITUTION, I T SAYS THERE SHALL BE NO TAX PURSUANT TO LAW, SO AGREE THERE IS NO TAX.

I AGREE WE HAVEN'T REACHED THAT ISSUE YET. SUMMARY JU DGMET WAS FILED BEFORE THE AL PS WAS FILED , AND JUST LIKE IN ANY CASE IF YOU ARE OUT OF TIME TO BRING THE CHALLENG E, IT DOESN'T M ATTER ABOUT THE SUBSTANTIVE ISSUE, AND JUST AS I N LAKE WORTH, IT SA ID THAT IF THE TAX, EVEN IF YOU ALLEGE A TAX CERT IFICATE OR TAX DEED IS ABSOLU TELY VOID BECAUSE OF SO VEREIGN IMMUNITY, IF YOU DON'T BRING THE ACTION IN THE TIME PRESCRIBED BY GENERAL STATUTES OF LIMITATIONS , IT IS B A RRED.

JUSTICE: DO YOU THINK THAT THAT IS A GOOD PUBLIC POLICY, THAT EVEN IF THE STATE IS NOT SUB JECT TO TAXATION , THAT BECAUSE THEY DID NOT FILE SOME KIND OF ACTION IN 60 DAYS , THAT THEY NOW ARE SUBJECT TO THOSE TAXES?

I THINK IT IS A VERY GOOD PUBLIC PO LICY , TWO VERY IMPORTANT BRIEFS. NUMBER ONE, THE PUBLIC POLICY EXPRESSED WHEN THE COURT , WHEN THE LEGISLATURE ENACTED 95.011, AND THAT STATUTE, THE LEGISLATURE MADE THE STATE SUBJECT , GENERAL STATUTES OF LIMITATION, PRESUMABLY THE SAME ARGUMENTS THAT WERE BROUGHT HERE WERE BROUGHT AT THAT TIME. IF THE STATE HAS LEGI TIMATE CAUSES OF ACTION, THE LEGITIMATE CAUSE OF ACTION MAY BE BARRE D BY THE STATUTES OF LI MITATION , BUT THE ARGUMENT FOR SUCH STATUTE IS SIMPLE FAIRNESS. WHATEVER IS GOOD FOR THE PRIVATE ENTITY --

JUSTICE: IS THAT BRINGING A CAUSE OF ACTION OR YOU ARE TALKING STATUTE OF LIMITATIONS?

IN 95 .011 IT DOESN'T SAY STATUTE OF LIMITATIONS. IT SAYS STATUTORY TIME LIMIT .

CHIEF JUSTICE: SO I GUESSEWE ARE DOWN TO THIS BOTTOM LINE, WHICH IS THAT YOU ASSERT THAT THE LEGISLATURE COULD WAIVE IMMUNITY , BUT IT WOULD HAVE TO B E EXPRESS , AND IS IT EXPRESS IN THIS STATUTE THAT THAT WAS INTENDED TO APPLY TO THE STATE? THAT IS WHERE WE ARE BACK AROUND TO , TO PUT, IF THAT IS TRUE, WOULD YOU AGREE THAT IF THERE IS ANY AMBIGUITY ABOUT IT , WE OUGHT TO EARN THE SIDE -- WE OUGHT TO ERR ON THE SIDE OF AFFIRMING THE STATE'S IMMUNITY FROM TAXATION.

WE DON'T FEEL THERE IS ANY AMBIGUITY HERE, YOUR HONOR .

CHIEF JUSTICE: WE FIND IF THERE IS ANY QUESTION , WE ERR ON THE SIDE OF THE LEGISLATURE DID NOT EXPRESSLY INTEND THIS TO APPLY TO THE STATE.

IF THERE ARE TWO POSITIONS OF EQUAL VALUE AND YOU CANNOT DECIDE BETWEEN THEM, THEN, YES , I THINK THAT MIGHT BE THE WAY TO GO. THERE IS NO AMBIGUITY HERE EVEN ALLEGED THAT WOULD CREATE THAT, BECAUSE THE STATUTES ARE CLEAR AND UNAMBIGUOUS, AND BECAUSE, YOUR HONOR, AT THE TIME THIS 194.171 WAS MADE A STATUTE OF NON-CLAIM , AT THAT TIME 95.011 WAS LIMITED SAYING GENERAL STATUTE , LIMITING TIME TO BRING SUIT AND LAKE WORTH HAD EXISTED FOR 12 YEARS THAT SAID THE STATE WOULD LOSE PROPERTY IF IT DID NOT BRING ACTIONS TO CONTEST CERTIFICATES AND DEEDS WITHIN THE RIGHT TIME FRAME. THE LEGISLATURE PRESUMABLY HAS TO BE AWARE OF BOTH AUTHORITIES, AT THE TIME THAT IT MAKES THE STATUTE A NON-CLAIM STATUTE, SO WHAT WE ARE SAYING IS IF YOU PRESUME A LEGISLATOR WAS LOOKING AT THOSE TWO AUTHORITIES AT THE TIME HE VOTED FOR THAT STATUTE THERE , IS NO WAY THAT HE COULD POSITION THAT HE WASN'T BINDING THE STATE. IT'S NOT POSSIBLE.

JUSTICE: WERE THE TAX CERTIFICATES CANCELLED IN THIS CASE?

NO , YOUR HONOR. THE TAX CERTIFICATES ARE KIND OF IN LIMBO RIGHT NOW BECAUSE THERE WAS AN ACTION TO ENJOY THE ISSUANCE OF -- ENJOIN THE ISSUANCE OF A TAX DEED. THAT INJUNCTION WAS ISSUED , REVERSED BY THE CIRCUIT COURT AND THE DCA'S MANDATE REINSTATE SO WE ARE KIND OF IN LIMBO AT THAT POINT . THE OTHER ARGUMENT ON PUBLIC POLICY THAT JUSTICE QUINCE RAISED IS THERE IS A TREMENDOUS PUBLIC POLICY ISSUE HERE AS RAISED IN LAKE WORTH VERSUS GERSTEN , AND IN THAT THE COURT SAID THE POLICY INVOLVED IN SUCH LIMITING , THE POLICY INVOLVED IN SUCH LACHES, THERE MUST BE A TIME WHEN SUCH PROCEDURES MUST BE COMPLETED , SHOULD NOT BE JUDICIAL LY CONCERNED . INTERVENING RIGHTS HAVE ACCRUED. WHAT HAPPENS IN THESE CASES IF THEY PREVAIL , LOCAL GOVERNMENTS HAVE TO PAY BACK THIS MONEY AT 8 PERCENT SIMPLE INTEREST AND IF THAT HAPPENS WE HAVE TO SHIFT THE BURDEN FROM THE STATE NOT MANAGING ITS PROPERTY PROPERLY FROM THE LOCAL GOVERNMENT AND THE LOCAL GOVERNMENT HAS TO REFUND MONEY IT HAS EXPENDED AND NEX PENDED IT PROPERLY BECAUSE IT IS RELYING ON A 60-DAY STATUTE OF NON-CLAIM THAT SHOULD HAVE PROTECTED IT.

CHIEF JUSTICE: IF YOU WANT TO SAVE THE REST OF YOUR TIME FOR REBUTTAL.

YES, YOUR HONOR.

CHIEF JUSTICE: THANK YOU. MR. HUBEN ER.

MAY IT PLEASE THE COURT. LOUIS HUBEN ER WITH THE ATTORNEY GENERALS OFFICE ON BEHALF OF THE DEPARTMENT OF MANAGEMENT SERVICES. THE CERTIFIED QUESTION IS NARROW, IT

ASSUMES THAT PROPERTY IS OWNED BY THE STATE AND IS IMMUNE FROM TAXATION, AND IT SHOULD BE ANSWERED IN THE NEGATIVE FOR TWO REASONS. FIRST IS THAT SECTION 194.171 CONTAINS NO CLEAR AND UNMISTAKABLE STATEMENT BY THE LEGISLATURE THAT IT IS INTENDED TO APPLY TO THE STATE. AND THIS COURT HAS REPEATEDLY SAID THAT THAT IS ESSENTIAL TO ANY WAIVER OF THE STATE'S IMMUNITY OR TAX IMMUNITY.

JUSTICE: YOU SAY THE ISSUE IS VERY NARROW, BUT WE ARE ALL AWARE OF FACT THAT WE HAVE SORT OF A BROADER POLICY ABOUT THAT ALL PROPERTY IS TAXABLE, AND OVER THE YEARS WE HAVE DEVELOPED THIS CONCEPT OF, IF THE PROPERTY IS LEASED, FOR INSTANCE, TO PRIVATE ENTITIES, THAT THAT PROPERTY BECOMES TAXABLE. IS THAT CORRECT?

WELL, THAT IS TRUE BUT THAT IS BY STATUTE. THERE IS A STATUTE THAT SPECIFICALLY WAIVES IMMUNITY.

JUSTICE: THE DIFFICULTY THAT I YOU MEAN HAVING HERE WITH A SIMPLE ANSWER TO THIS QUESTION IS AS PROPERTY TAKES ON DIFFERENT FORM IN TERMS OF BEING TAXABLE AND NONTAXABLE, AS IT MAY GO FROM STATE OWNERSHIP TO PRIVATE LEASEHOLDS, HOW ARE WE TO DRAW THE LINES IN HERE, AND FOR INSTANCE LET'S SAY AS A HYPOTHETICAL THAT WE HAVE STATE PROPERTY LEASED TO A PRIVATE ENTITY AND THE PRIVATE ENTITY FALLS INTO A DEFAULT WITH PAYMENT OF TAXES AND WE HAVE THE SAME SORT OF THING OCCUR. DOES THE STATE HAVE A RIGHT, THEN, TO COME IN AND SAY WAIT A MINUTE. NO. ALTHOUGH WE HAVE LEASED THIS OUT ON A 99-YEAR LEASE, THAT THERE REALLY CAN'T BE AN IMPOSITION OF LIENS OR FORECLOSURE OF THOSE LIENS ON STATE PROPERTY. WORK ME THROUGH THAT HYPOTHETICAL.

WELL, THE LEGISLATURE HAS DONE ALL MY WORK FOR ME. THEY HAVE SPECIFICALLY ADDRESSED THAT IN TWO STATUTES, 197.432 PAREN 9 AND 196.199 PAREN 8, AND THOSE STATUTES SAY THAT, WITH RESPECT TO LEASE -- THOSE SAY THAT, WITH RESPECT TO LEASEHOLDS OF GOVERNMENT PROPERTY THAT, NO TAX CERTIFICATE CAN BE SOLD ON THOSE PROPERTIES AND ANY TAXES DUE, DO NOT BECOME ALIEN BUT CONSTITUTE A DEBT ANIMUS BE COLLECTED THROUGH OTHER LEGAL PROCESSES.

CHIEF JUSTICE: FOLLOWING UP ON JUSTICE ANSTEAD'S QUESTION, BECAUSE HERE AS YOU SAID, IT HAS NOT BEEN A DETERMINATION YET AS TO WHETHER THIS PROPERTY IS IN FACT IMMUNE.

UM-HUM.

CHIEF JUSTICE: SO WHAT YOU HAVE FOR THE COUNTY THAT HAS THIS SORT OF HYBRID TYPE OF PROPERTY, IS THAT INSTEAD OF SOME KIND OF MEAD NOTICE THAT THIS IS, CAN GO ON HOW LONG? IN OTHER WORDS THE STATE SCENARIO, THE STATE WOULD HAVE HOW LONG TO COMPLETE THE ASSESSMENT?

I DON'T THINK THAT THERE IS ANY TIME LIMIT ON THAT, BECAUSE --

CHIEF JUSTICE: WOULDN'T THE TIME LIMIT BE AT LEAST THE STATUTE OF LIMITATIONS TIME LIMIT?

BUT I DON'T THINK THERE IS A STATUTE OF LIMITATIONS THAT EXPRESSLY APPLIES TO THE SITUATION.

CHIEF JUSTICE: SO WHAT ABOUT THE SITUATION, AGAIN, THE COMPETING POLICY BETWEEN SAYING IT IS REASONABLE, MAYBE 60 DAYS MIGHT BE TOO SHORT FOR THE STATE TO GET A PROPERTY OWNER THROUGHOUT THE STATE, BUT CAN THEY COME IN FIVE YEARS FROM NOW AND SAY THIS WASN'T --

THERE IS NO IMPEDIMENT TO THAT.

CHIEF JUSTICE: BUT DON'T YOU SEE THAT AS PROBLEM?

IT IS ONE THAT, IF IT IS A PROBLEM, THAT THE LEGISLATURE SHOULD TAKE NOTICE OF AND ADDRESS, BUT AT THIS POINT, AT THE TIME THERE IS NO STATUTE OF LIMITATIONS ON THAT, AND FRANKLY, IF THE PROPERTY IS IMMUNE, THEN THERE IS NO MONEY DUE, SO THE TAX AUTHORITY IS NOT LOSING ANYTHING.

JUSTICE: YOUR OPPONENT MENTIONED ABOUT THE COUNTY COURT BEING, I ASSUME THAT SOME NOTICE IS SENT TO THE COUNTY, BUT IN THIS CASE WAS THE STATE EVER NOTIFIED? WAS THERE ANY EVIDENCE IN THE RECORD THAT THE STATE WAS ON NOTICE AS BEING ASSESSED?

THERE IS NO EVIDENCE IN THE RECORD ON THAT POINT.

JUSTICE: SO THE NOTICE WAS JUST THROUGH THE PRIVATE ENTITY THAT WAS RUNNING THE CAMP?

LET ME CLEAR UP A MISCONCEPTION. THE CORRECTION OF PRIVATIZATION CREATURE IS IN STATUTE AND WITHIN THE DEPARTMENT OF MANAGEMENT SERVICES. IT CREATED THE FLORIDA DIRECTIONAL FINANCE CORPORATION, WHICH WAS THE NONPROFIT CORPORATION, WHOSE MEMBERS CONSISTED OF THE DIRECTOR OF THE CORRECTION PRIVATIZATION COMMISSION, ANOTHER MEMBER OF THAT COMMISSION, AND THE EXECUTIVE DIRECTOR OF THE COMMISSION, SO IT WAS A STATE INSTRUMENTALITY THAT HELD THE TITLE TO IT. THERE HAS NEVER BEEN ANY QUESTION ABOUT THAT, BUT SOMEHOW, AND IT IS NOT CLEAR OF RECORD, THE PROPERTY APPRAISER GOT THE IMPRESSION THAT IT WAS A PRIVATE ENTITY OR THAT SOMEHOW THE PROPERTY WAS SUBJECT TO TAXATION.

JUSTICE: BOTTOM LINE HERE, THIS ISN'T A CASE WHERE THE STATE WAS GIVEN NOTICE AFTER ASSESSMENT AND DIDN'T OBJECT TO IT.

I CANNOT SAY THAT IT WAS.

JUSTICE: WHAT?

I CANNOT SAY THAT. WE DON'T KNOW.

JUSTICE: WE DON'T KNOW.

CHIEF JUSTICE: JUSTICE CANTERO.

JUSTICE: ISN'T THE PURPOSE OF SECTION 194.171 WHICH PROVIDES A 60-DAY LIMIT TO ALLOW THE ASSESSMENT ENTITY, COUNTY, MUNICIPALITY, TO HAVE SOME KIND OF CERTAINTY ABOUT THE TAXES THAT IT IS GOING TO BE ABLE TO COLLECT IN ORDER TO BUDGET ITS AFFAIRS FOR THE UPCOMING YEAR?

THAT IS TRUE TO A POINT, BUT, A GAIN, IF THE STATE IS IMMUNE, THAT IS REALLY --

JUSTICE: I AM ASKING IS THAT THE PURPOSE RIGHT NOW. ISN'T THAT THE PURPOSE?

YOU HAVE SAID INWARD VERSUS BROWN LESS THAN TWO YEARS AGO, THAT THE PURPOSE OF THE STATUTE IS TO ENSURE THAT TAXES OWED ARE PROMPTLY PAID, AND UNDISPUTED REVENUES ARE AVAILABLE TO THE TAXING AUTHORITY. SO THAT IS --

JUSTICE: ISN'T AN OTHER PURPOSE AND WHY WE HAVE A 60-DAY LIMIT IS SO THAT ASSESSING -- ASSESSING ENTITY KNOWS THIS IS THE AMOUNT THAT IS GOING TO COME IN SO NOW WE CAN BU

DGET OUR UPCOMING YEAR, SO IF IT ASSESSEST AMOUNT FOR THESTATE AND IT ASSUMES BECAUSETHE STATE HAS NOT FILED SOMETHING WITHIN 60 DAYS, THAT IT IS GOING TO BE COLLECTING THOSE TAXES AND BUDGETS ITSELF FOR THE UPCOMING YEAR, BASED ON THAT ASSESSMENT. DOESN'T IT VIOLATE THE PURPOSE OF THE STATUTE TO ALLOW THE STATE TO COME IN TEN YEARS LATER , ACCORDING TO YOU AND SAY , O H, NO BY THE WAY , WE DON'T OWE TAX OWES THAT AND WE ARE IMMUNE AND SO TOUGH .

IF THE LEGISLATURE HAD MADE THAT A PART OF THESTATUTE , I WOULD AGREE WITH YOU BUT IT DID NOT

JUSTICE: ISN'T THAT WHAT IT DID IN 95.0111 , WHICH SAYS THAT IT SHALL BE BAR RRED IF PRESCRIBED WITHIN THE TIME IN THIS CHAPTER OR IF PRESCRIBED ELSEWHERE WITHIN THE TIME LIMITS PRES CRIBED ELSEWHERE .

THAT IS A PROCEDURAL STATUTE THAT DOES NOT WAIVE ANY SUBSTANTIVE RIGHT OF THE STATE.IT DOES NOT WAIVE THE STATE'S TAX IMMUNITY. AND --

JUSTICE: LET'S SAY IF THE STATE IS IMMUNE FROM SUIT FOR PERSONAL INJURY , AND THE STATE DOESN'T DO ANY THING WITHIN THE TIME OF THESTATUTE OF LIMITATIONS, THEN THAT RIGHT, TOO, IS GONE. IT IS WAI VED. SO IT SEEMS LIKE 95.011 SEEMS TO HOLD THE STATE TO THE STATUTE OF LIMITATI ONS , EVEN WHERE IT HAS A SUBSTANTIVE RIGHT.

ONLY WHERE IT HAS FROM OBLIGATION UNDER STATUTE TO DO SOME THING. THEN IT M UST DO IT WITHIN THE TIME THAT OTHER LITIGANTS MUST DO IT , BUT I T HAS, IT DID NOT ANSWER THE QUESTION OF WHETHER 194 .171 APPLIES PER SE .

JUSTICE: I AM NOT SURE THAT WE HAVE REALLY ANSWERED THE QUESTION THAT JUSTICE ANSTEAD HAS POSED , BECAUSETHE GOVERNMENT CAN EN GAGE IN ALL SORTS OF ARRANGEMENTS WITH OTHER FOLKS, AND YOU COULD ALWAYS MAKE ARGU MENTS AS TO , W ELL , THE STATE IS REALLY THE OWNE R AND THEREFORE IT IS IMMUNE AND THIS IS NOT REALLY A LEASE THIS. IS JUST SOME OTHER KIND OF A ARRANGEMENT, SO WOULDN'T IT THROW ALL OF THOSE INTO A , JUST AN OPEN EN DED SITUATIONWITH RE GARD T O A CHALLENGING TAXES OR I AM NOT SURE IUNDERSTAND YOUR POSITIONWITH REGARD TO HOW YOUR POSITION WOULD OPERATE IN ALL OF THOSE CIRCUMSTANCES , WHEN CLEARLY THERE ARE CASES WHERE THAT PROPERTY IS SUBJECT TO TAX PROPER LY.

WELL , I SUPPOSE THAT IS WHY WE HAVE THE PREDATORY -- DECLARATORY JUDGMENT ACT. IF THERE IS SOME DI SPUTE ANDTHE PROPERTY APPRAISER OR TAXING AUTHORITY THINKS THAT STATE PROPERTY IS SUBJECT TO TAXATION OR PRO PERTY THAT IS CLAIMED TO BE STATE PROPERTY IS SUBJ ECT TO TAXATION , THEY CAN RESOLVE IT THAT WAY, BUT THE LEGISLATURE HASN'T C REATED A MECHANISM FOR THAT , AND IT CLEARLY DID NOT DO SO IN 194.171. THE STATE DOES NOT EVEN MENTION IN THAT STATUTE , FURTHERMORE --

CHIEF JUSTICE: DID YOU FINISH ANSWERING JUSTICE LEWIS'S QUESTION?

I WOULD JUST LIKE TOPOINT OUT ONE THING WITH RESPECT TO CHAPTER 194 , AND THAT IS THAT THE VERY FI RS T SECTION , 194.011, SAYS THAT , AND THIS IS THE CHAPTER WE ARE TALKING ABOUT, E ACH TAXPAYER WHOSE PROPERTY IS SUBJECT TO AD VALOREM TAXESSHRX BE NOTI FIED THE ASSESSMENT OF EACH ACTI ON. IN THIS CASE THE TAXPAYER I S SOMEONE WHO IS SUBJECT TO AD VALOREM TAXES. THAT IS NOT THE STATE.

JUSTICE: BUT IN THIS CASE , THE PROPERTY APPR AISER MA DETHE DETERMINATION THAT THIS PROPERTY WAS SUBJECT TO AD VALOREM TAXES , AND SO WE WOULD ASSUME THAT THE PROPERTY APPRAISER SENT SOME KIND OF NOTICE TO SOMEONE . SHOULDN'T IT BE INCUMBENT UPON THE PE RSON OR ENTITY THAT RECEIVES THIS TAX NOTICE, WHETHER THEY BE LIEVE THAT

THEY ARE SUBJECT TO THE TAXES OR NOT , TO HAVE TO DO SOMETHING ? IF THE STATE OR WHAT EVER CORPORATION YOU SAY WAS FORMED TO ADMINISTER THIS PROPERTY, RECEIVED THE NOTICE, ISN'T IT THEN INCUMBENT UPON THEM TO DO SOMETHING ?

WE DON'T KNOW EXACTLY WHAT HAPPENED IN THIS CASE .

JUSTICE: LET'S JUST ASSUME FOR THE SAKE OF THIS ARGUMENT THAT A NOTICE OF AD VALOREM TAXES WAS RECEIVED ON THIS PROPERTY. THEN SHOULDN'T THEY HAVE TO DO SOMETHING FROM THERE?

THAT WOULD BE THE WISE THING TO DO. BUT THE PROBLEM YOU ARE REALLY ADDRESSING HERE IS THAT THESE NOTICES COME INTO THE STATE AND IN VARIOUS WAYS . SOMETIMES THEY DON'T COME DIRECTLY. SOMETIMES THEY DON'T COME AT ALL, SO THAT THE TIME GOES BY , UNDER NON-CLAIM STATUTE , AND THE STATE DOESN'T EVEN KNOW ABOUT WHAT , ABOUT THE ASSESSMENT. SO IT WOULD CERTAINLY BE ADVISABLE FOR THE STATE TO TAKE SOME ACTION , BUT IT IS REALLY NOT SET UP TO DO THAT. I MEAN , THE STATE OWNS 6 MILLION ACRES OF UPLANDS AND INTERNAL DELAND.

JUSTICE: IF I WERE TO OWE TAXES, THE SAME THING WOULD HAPPEN TO ME. IS THAT CORRECT?

THAT IS BECAUSE AS AN INDIVIDUAL, YOU KNOW IF YOU OWN REAL PROPERTY, THAT THAT PROPERTY IS SUBJECT TO TAXATION. THE STATE DOESN'T KNOW THAT, BECAUSE IT IS NOT SUBJECT TO TAXATION .

LET'S GO THROUGH THIS. I WANT TO UNDERSTAND HOW 197.432-9 WORKS WHERE YOU HAVE GOT THREE POSSIBLE SITUATIONS WITH PROPERTY. YOU EITHER , IT IS NOT UP FOR DISCUSSION. IS PROPERTY OWNED BY THE STATE FOR A GOVERNMENTAL PURPOSE AND PROPERTY OWNED BY THE STATE LEASED TO A NONGOVERNMENTAL AGENCY OR IT IS PRIVATE PROPERTY . IN THE SITUATION WHERE IT IS PRIVATE PROPERTY , AND THE TAXES AREN'T PAID , THE , AND THE TAXPAYER DOES NOT TIMELY GET INVOLVED IN CONTESTING IT , THAT PROPERTY CAN BE SOLD , CORRECT?

CORRECT .

CHIEF JUSTICE: NOW, IN A SITUATION WHERE THE PROPERTY IS OWNED BY THE STATE BUT LEASED TO A NONGOVERNMENTAL AGENCY, THAT PROPERTY IS SUBJECT TO AD VALOREM TAXATION, CORRECT?

CORRECT . THE LEASEHOLD --

JUSTICE: UNDER WILLIAMS , THE WILLIAMS LINE OF CASES OUT OF WEST FLORIDA , CORRECT ?

CHIEF JUSTICE: WHAT YOU ARE SAYING IN THAT SITUATION, THE PROPERTY CANNOT BE SOLD , BUT IF THE DEFENSE IS NOT RAISED WITHIN THE TIME PERIOD , THEN IN FACT HOW IS THE COURT OR THE TAXING ENTITY TO KNOW THAT STATUS , AND THAT IS WHY IT SORT OF BRINGS ME BACK TO WHAT JUSTICE ANSWERED INITIALLY, IS HOW CAN SOMEONE EVEN TAKE ADVANTAGE OF 197.432-9 , IF NOBODY HAS MADE THE ASSERTION THAT IT IS PROPERTY THAT IS OWNED BY THE STATE?

WELL , THEY SHOULD KNOW THAT IT IS LEASED PROPERTY. I MEAN , THAT WOULD BE THE RESPONSIBILITY OF THE PROPERTY APPRAISER TO KNOW THAT .

CHIEF JUSTICE: BUT IN THIS SITUATION YOU ARE SAYING IT IS NOT THAT IT WAS LEASED PROPERTY. IT IS ACTUALLY IT WAS ALWAYS OWNED AND ALWAYS OPERATED BY A GOVERNMENTAL AGENCY? THAT IS THE CONTENTION?

RIGHT. THERE WAS A LEASE INVOLVED. I DON'T KNOW WHAT CAUSED THE CONFUSION IN THIS CASE. THE PROPERTY APPRAISER.

CHIEF JUSTICE: YOU SEE WHAT I AM ASKING ABOUT IS YOU ARE SAYING THE PROPERTY APPRAISER OR THE TAX COLLECTOR, WHATEVER ENTITY IS INVOLVED AT THE PARTICULAR TIME, SHOULD KNOW THIS, BUT THE IDEA OF 197 IS FOR EVERYTHING TO BE, ALL THE CARDS ON THE TABLE WITHIN A SHORT TIME NOT TO BE ABLE TO COME IN YEARS LATER AND SAY YOU MISTAKENLY SOLD THIS PROPERTY, BECAUSE THIS WAS PROPERTY THAT WAS LEASED TO A NONGOVERNMENTAL AGENCY, BUT IT WAS ALWAYS GOVERNMENTAL PROPERTY. I MEAN, STATE PROPERTY.

WELL, OBVIOUSLY THERE IS A CERTAIN APPEAL TO THAT BUT THE PROBLEM IS THAT IT IS SOMETHING THAT IS WITHIN THE AUTHORITY OF THE LEGISLATURE TO DEAL WITH, IT HAS NOT STRUCTURED THE LAWS IN THAT FASHION.

CHIEF JUSTICE: IS THIS THE FIRST TIME THIS HAS COME UP? THERE ARE NO OTHER CASES ON THIS --

I KNOW THAT THERE ARE OTHER CASES IN LITIGATION WHERE PROPERTY APPRAISERS HAVE MISUNDERSTOOD, PERHAPS, THAT LEASES OF SUBMERGED LAND FOR LEASES HAVE VIEWED THE SUBMERGED LAND AS PART OF THE UPLANDS, NOT REALIZING IT WAS SOLVENT LAND AND THERE ARE -- SOVEREIGNTY LAND, AND THERE ARE CASES ON THAT RIGHT NOW, AND THAT IS HOW I WOULD ADDRESS THE TRILOGY -- TRILOGY OF CASES THAT IS RELIED ON, NEPTUNE VERSUS BROWN, WARD, NOT A SINGLE ONE OF THEM ADDRESSED STATE PROPERTY OR PROPERTY THAT WAS IMMUNE FROM TAXATION, SO THE, ALL THE LINE OF REASONING IN THOSE CASES SIMPLY HAS NOT BEEN APPLIED TO THE STATE. THE REFERENCE IN LAKE WORTH TOWERS TO IMMUNE PROPERTY OF THE STATE AND IN WHICH THE TAX CERTIFICATE WAS ISSUED WAS --

CHIEF JUSTICE: I AM STILL STRUGGLING WITH YOU SAYING THERE WAS AN OPEN ENDED TIME PERIOD TO CHALLENGE IT, BECAUSE, AGAIN, IS, WHAT IF THE PROPERTY WAS ALREADY SOLD? WOULD THEY COME IN AND SAY IT -- COULD THEY COME IN AND SAY IT WAS IMPROPERLY SOLD? DON'T WE HAVE SOME ISSUES OF CLEAR TITLE, SO THAT THE LEGISLATURE AT LEAST WOULD INTEND SOME TIME PERIOD TO BE APPLICABLE TO THE, SOMEONE MAKING A CLAIM THAT THIS IS IMMUNE FROM TAXATION.

WELL, A GAIN THE LEGISLATURE JUST HAS TO DO THAT, AND I THINK -- CHIEF IT WOULD BE, NO, THEY DID IT. THEY DID IT IN 197.

WELL, BUT TO THE EXTENT THAT TAX EARTH TICKETS ARE ISSUED -- TAX CERTIFICATES ARE ISSUED OR TAX DEEDS ARE ISSUED, I THINK THAT PRESENTS A CLEAR OPPORTUNITY FOR THE STATE TO TAKE ACTION WHICH IT DID HERE.

JUSTICE: I GUESS IT REALLY FOCUSES IF THERE IS NOT A STATUTORY BASIS, CAN'T WE BE A -- CAN THERE BE AN ESTOPPEL OR LACHES APPLIED TO THE STATE IN THE SITUATION BETWEEN THE COUNTY AND THE STATE?

I ACKNOWLEDGED THAT LACHES IS A POSSIBILITY IN EVERY ESTOPPEL CASE, I GUESS, IS DIFFERENT AND HAS TO BE DECIDED UP ON THE FACTS, AND THERE IS NO CLAIM IN THIS CASE THAT THE STATE SHOULD BE ESTOPPED. THE TOTAL RELIANCE IS ON THE NON-CLAIM STATUTE, AND THIS COURT HAS SAID IN AT LEAST ONE CASE, BASS VERSUS PRESTIGE, THAT SOMEBODY WHO HAD ACQUIRED STATE PROPERTY THROUGH A MURPHY ACT DEED AND OCCUPIED IT FOR A LONG PERIOD OF TIME AND BUILT IMPROVEMENTS AND PAY TAXES ON IT, THEN THE STATE WAS -- WAS ESTOPPED TO MAKE A CLAIM ON IT, SO THERE IS A POSSIBILITY OF ESTOPPEL ON A CASE-BY-CASE BASIS, BUT OTHERWISE THERE IS NO LIMITATION THAT APPLIES TO THE STATE.

ONE FINAL WORD , THE LAKE WORTH TO WERS , I THINK I SAID THE STATE WAS D I C T A , INsofar AS IT SUGGESTED THAT THE STATE SHOULD PROCEED TO HAVE A TAX DEED CANCELLED UNDER 197. THERE WAS A STATUTE IN EXISTENCE IN 197 AT THAT TIME THAT G A VE THE STATE FOUR YEARS FR OM THE TIME THE TAX DEED WAS ISSUED, AND THAT STATUTE SURVIVED IN CHAPTER 95 NOW , AND WE HAVE BROUGHT THIS ACTION EVEN BEFORE THE TAX DEED WAS ISSUED, SO EVEN BY THE COURT 'S L OGIC IN LAKE WORTH TOW ERS, THIS ACTION WAS TIMELY.

CHIEF JUSTICE: THA NK YOU. REBUTTAL ?

CONCERNING THE ISSUE OF NOTES, IN THIS ACTION THE STATE BROUGHT AN ACTION IN CIRCUIT COURT TO ENJOIN THE ISSUANCE OF A TAX DEED. THE BASIS SET O UT IN THAT COMPLAINT WAS THAT THE STATE OWNED THE PROPERTY. THERE WAS NE VER AN ISSUE A BOUT NOTICE DURX PROCESS OR ANYTHING SIMILAR. THAT HAS BEEN TOTALLY WAIVED. IT IS NOT AT ISSUE IN THE STATE .

JUSTICE: LET ME COME BACK TO THE HAUNT THAT I HAVE IN THIS CASE AND THAT IS THAT JUDGE I RVIN IN THE FIRST DISTRICT'S OP INION C ITES TO DICKINSON AND CITES TO THE ADOPTION BY THIS COURT OF ORLANDO UTILITIES VERSUS MILLIGAN IN WHICH THIS COURT SAID THE STATE IN ITS POLITICAL SUBDIVISION LI KE A COUNTY , ARE IMMUNE FROM TAXATION, SINCE THERE IS NO POWER TO TAX THEM . CITING TO AL FRED, WHICH SAYS THAT, RE ALLY, WHAT WE ARE DEALING WITH IS A SEPARATION OF POWERS ISSUE BASICALLY, IN THAT YOU COULDN'T GIVE THE LEGISLATURE THE POWER T O TAX THE GOVE RNOR 'S BUILDING , WITHOUT RUNNING INTO A PRO BLEM OF SEPARATION OF POWERS. AND SO HAVE WE IN ANY CASE THAT YOU HAVE FO UND , RETREATED FROM DIC KINSON OR RET REATED FROM THOSE CASES OR PORT CANAVERAL?

I HAVE NOT FOUND A CASE WHERE YOU HAVE RETREATED FROM THE HO Lding IN DIC KINSON. HOW EVER, I WOULD AS SERT THE DICKINSON CASE STANDS FOR THE PROPOS ITION OF SUBSTANTIVE LAW THAT YOU CANNOT TAX THEM , THESE ENTITIES SUBSTANTIVELY. THE CASES THAT DEAL WITH THE PROCEDURAL REQUIREMENTS, WHETHER OR NOT THE STATE CAN LOSE ITS PROPERTY IF IT FAILS TO FO LLOW THE CORRECT PROCEDURE, HAVE ALSO NEVER BEEN RETREATED FROM. THE LAKE WORTH CASES VERSUS G ERSTEN SPECIFICALLY HOLD THAT TRUSTEES VERSUS BASS SPECIFICALLY HOLDS THAT PROPERTY OF THE TRUSTEES, WHICH WOULD BE IMMUNE PROPERTY UNDER THE CASES THAT YOU ARE TALKING ABOUT, THAT THAT PROPERTY IS L OST BECAUSE THE STATE FA ILED TO BRING ITS ACTION TIMELY. THERE THEY USED THE DOCTRINE LESS EQUITABLE ESTOPPEL , BUT THE POINT IS THE SA ME. IF IT IS IMMUNE , EQUITABLE ESTOPPEL WOULD APPLY NO MORE THAN THIS STATUTE, THE NON-CLAIM STATUTE THAT WE ARE TALKING ABOUT. HOW CAN EQUITABLE STATUTE BE PROPER AND THE NON-CLAIM STATUTE NOT BE PROPER? WHEN THE STATE CONC EDES THAT LACHES COULD APPLY OR ESTOPPEL COULD APPLY , THEY CONCEDE EVERYTHING, BECAUSE IF THEY CONCEDE EVERYTHING , THEN THE STATE PROPERTY DOES NOT PASS OUTSIDE THE TAX SCHEME ALL TOGETHER. IT DOESN'T DO THAT LIKE IN THE CALIFORNIA CASE. THEY CIT ED TO THE COURT WHERE THIS HAPPENED. IT IS A CALIFORNIA CASE AND THERE THEY HAD GOTTEN AN ACTUAL JU DGMENT THAT SWITCHED TI TLE FROM ONE ENT AT THIS TIME TO THE OTHER. THE JUDGMENT HAD -- FROM ONE ENTITY TO A THE OTHER, AND IT HAD SWITCHED FROM ONE ENTITY TO A NOTHER AND THEY SAID, NO, WHAT EVER HAPPENS IF IT FLOWS OUTSIDE OF THE TAX SCHEM E, THE STATE CAN ALWAYS GET IT BAC K. THAT HAS NOT HAPPENED IN THE STATE OF FLORIDA. PARTICULARLY THE STATE HAS ESTOPPEL IN BASS AND IF IT DOESN'T CHALLENGE TAX CERTIFICATE AND DEEDS IN GENERAL, I T SAYS GE NERALLY PEOPLE MUST B RING ACTIONS WITHIN FOUR YEARS, SO THOSE CASES DEAL WITH THE PROCEDURE. THE C ASES I THINK, YOUR HONOR , JUSTICE WELLS CITES , DEAL WITH THE SUBS TANCE .

JUSTICE: SO ON THAT PROCEDURE, THEN , BOTTOM LINE, YOU AG REE WITH JUDGE I RVIN , THAT THE LEGISLATURE MUST EXPRESS ITS INTENT TO D O SO IN CLEAR AND UNMISTAKABLE TERMS.

I AGREE WITH WHAT HE SAID THAT THE LEGISLATURE CAN WAIVE. I AGREE THAT THIS STATUTE --

JUSTICE: DO YOU THINK THAT IT HAS TO DO IT IN CLEAR AND UNMISTAKABLE TERMS?

I DON'T THINK IT HAS TO DO IT ANYMORE CLEARLY THAN IS DONE IN 194.171, BECAUSE IN THAT CASE THEY ENACTED THE STATUTE, REALIZING THAT THE STATE WAS SUBJECT TO GENERAL STATUTES OF LIMITATIONS. IN LAKE WORTH --

JUSTICE: BOTTOM LINE, IT IS SO CLEAR IN THIS STATUTE THAT YOU ARE HAVING TO REFER TO OTHER STATUTES TO IMPLY ITS CLARITY.

IT IS JUST AS CLAIR AS THIS COURT FOUND THE CLARITY IN CHAPTER 197 IN LAKE WORTH TOWERS VERSUS GERSTEN. THOSE STATUTES WERE NO MORE CLEAR THAN 194.171.

JUSTICE: THE STATE SEEMS TO SAY YOU CITE IT AS THE HOLDING IN THE CASE AND YOU SAY THAT IS JUST DICTA IN THE CASE.

LET ME CONCEDE ONE THING. THERE IS NO ENTITY THAT I CAN FIND THAT WAS A GOVERNMENTAL ENTITY.

JUSTICE: WE ARE COMING BACK NOW TO THE INITIAL QUESTION.

BUT THE POINT IS YOUR HONOR I AM NOT CITING THAT CASE TO SAY THIS COURT SHOULD NOT CEDE FROM THAT CASE. I AM CITING THAT CASE TO SAY THE LEGISLATURE WAS AWARE OF THAT CASE AT THE TIME THAT IT ENACTED 194.171. THE ESSENTIAL PART OF DICTA GOES AWAY AT THAT POINT. HOW IN THE WORLD IS A MEMBER OF THE LEGISLATURE, THEY SAY A MEMBER OF THE LEGISLATURE LOOKS AT THIS CASE AND SAYS THIS IS DICTA SO I AM NOT GOING TO WORRY ABOUT IT AND I WILL VOTE FOR THE STATUTE ANYWAY, KNOWING THE STATE IS NOT BOUND. THAT IS PREPOSTEROUS AND I AM NOT CITING IT.

CHIEF JUSTICE: WITH OUR HELP YOU HAVE USED UP YOUR TIME. THANK YOU VERY MUCH. THANK BOTH SIDES FOR BEING VERY RESPONSIVE TO OUR QUESTIONS AND VERY WELL PREPARED. THANK YOU.