Florida Dept. of Business & Professional Regulation v. Gulfstream Park Racing Association
SC05-2130 | SC05-2131

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE.THE SPRE JT OF -- THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR , G IV E ATTENTIONAND YOU SHALL BE HEARD. GOD SAVE TH ES E UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE ABLECOURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.PLEASE BE SE ATED.

CHIEF JUSTIC E: GOOD MORNING LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDASUPREME COURT. THE FIRST CASE ON THIS MORNING'S DOCK ET IS FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION VERSUS GULFSTREAM , BUT BEFORE I CALL THE PARTIES , I WANT TO AGAIN ACKNOWLEDGE THE STUDENTS F ROM THE FSU COLLEGE OF LAW SUMMER PROGRAM FOR UNDERGRADUATES , AND SEVERAL OF US WERE DELIGHTED TO BE A BLE T O TALK TO YOU YESTERDAY , AND TO ENCOURAGE YOU TO THINK AB OUT A CA REER I N THE LA W. HOPEFULLY AF TER LISTENING TO THESE FIRST TWO CASES , YOU WILL EVEN BE MORE CERTAIN A BOUT WANT ING TO PURSUE THAT CAREER, AND, A LSO , STUDENTS FROM THE KISER CO LLEGE L EGAL STUDIES PROGRAM ARE VISITING THE COURT TODAY AS PART OF THEIR APPELL ATE STUDIES PROGRAM. SO WELCOME , AND WITH THAT , THE PARTIES ARE RE ADY ? ALL RIGHT.MR . HARDING YOU MAY PROCEED.

THANK YOU . MADAM CHIEF JUST ICE , MY NAME IS MA JOR HARDING, AND I REPRESENT THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, AND I HAVE AT THE COUN SEL T ABLE J OE HELTON AND HAR RY PURNELL. THIS CASE COMES BEFORE THIS COURT FOR REVIEW, BECAUSE THE DISTRICT COURT HELD A STATUTE UNCONSTITUTIONAL. OF COURSE WE KNOW THE CASES COME HERE , STATE STA TUTES COME HERE WITH A PRESUMPTION OF CORRECTNESS , AND I N GAMBLING CASES, WE KNOW THAT THE COURTS HAVE SAID THAT THE STATE MAY EXERCISE G REATER CONT ROL AND EX ERCISE POLICE POWER IN THE BROADEST W AY, FO R THE PROTECTION OF THE PU BLIC .

IN YOUR OPINION , WHAT ISTHE CORRECT STANDARD THAT WE NEED TO AP PLY? IS THE , THE FIRST DISTRICT SAID WHETHER THERE IS ANY REASONABLE POSSIBILITY THAT IT WOULD APPLY TO ANOTHER SITUATION. SOME CASES HAVE SAID THEREIS NO POSSIBILITY. W HAT IS THE CORR ECT STANDARD?

WE THINK THAT THIS , THAT THE DISTRICT COURT E RRED IN ESTABLISHING A NEW STA NDARD , A REASONABLE POSSIBILITY STANDARD. NOT ONLY DID THEY APPLY A REASONABLE POSSIBILITY STANDARD TO A 199 -- WHAT THEY CLAIM TO BE A 1 996 AC T, BUT THE ACT IN EFFECT WAS A 1992 ACT. THE 25-M ILE LIMITATION WAS I N THE 1992 STAT UTE. IT WAS ACTUALLY IN THE STATUTE BE FORE 199 2. BUT THE DISTRICT COURT ER RE D IN APPLY ING A REAS ONABLE POSSIBILITY STAN DARD TO THIS CASE.

CHIEF JUST ICE: COULD YOU EXPLAIN THAT A LITTLE BITMORE, AS FAR AS THE HISTORY OF THIS PARTIC ULAR STATUTEAS IT RE LATES TO THE STATUTETHAT WAS THE 100-MILE LIMITATION. IN OTHER WO RDS, I HAD ASSUMED AND MAYBE INCORRECTLY, THEN , THE 100-MILE LIMITATION

HAD BEEN PUT INTO EF FECT AND THEN THIS LAW WAS PA SSED.

THIS , THESE VENUE S , T HESE RACING ESTABLISHMENTS WERE WITHIN THE 25-MILE LIMIT B EFORE THE 100-MILE BU FFER WAS CREATED. AND SO WHEN THEY WERE ESTABLISHING THE STANDARDS THAT WO UL D PROTECT THE ATTENDANCE AT THESE VENUES IN THIS 25 -MILE AREA , THEY ENACTED THE STATUTE IN 1992 AND SAID THERE COULD BE INNER T RACK WAGERING BETWEEN FACILITIES WITHIN THIS 25-MILE LIMIT, IF AL L OF THE P ARTIES AGREE TO IT .

JUSTICE: WELL, IF THE 100-MILE RADIUS WAS E NACTED A FTER THAT T IME , WOULDN'T THAT NE GATE, THEN , THE POSSIBILITY O F THEM HAVING THE CRITER IA FOR THE 25-MILE RADIUS ANY MORE ?

NO. THE 25-MILE RA DIUS WAS ESTABLISHED , AND IT IS OPEN TO BE ESTABLISHED IN OTHER PLACES AR OUND THE STATE , JUSTICE QUIN CE. THE , PARTICULARLY IN THE T AMPA BAY AREA , IF ONE-QUARTER HO RSE P ERMIT WAS GRANTED IN THE TA MPA BAY AREA , THAT WOULD C R EATE ANOTHER --

JUSTICE: S O THE 100-MILE RAD IUS DOESN'T APPLY TO QUARTER HORSES?

IT DOESN'T APPLY TO QUARTER HORS ES.

CHIEF JUSTICE: AGAIN THIS GOES TO THE PRACTICAL IMPOSSIBILITY , BASED ON THE TESTIMONY THAT WAS GI VEN THAT WAS UNREFUTED IS THAT QUARTER HORSE RA CING IS ESSENTIALLY NONEXIST TENT ANYMORE.

WELL, THAT IS INTERESTING , CHIEF JUSTICE PARIENTE. THE PERSON WHO TESTIFIED TO THAT AT THE TR IAL INDICATED THAT THE Q UARTER HORSE WAS NOT ECONOMICALLY FEASIBLE AT THIS TIME , AND THAT THERE HAD BEEN N O QUARTER HORSE RACING IN THE LAST FIVE YEARS, WHICH WOULD PU T IT AFTER THE 1996 ACT THAT HAD BEEN, THAT THEY WERE CHALLENGED.

CHIEF JUSTICE: WELL , THE ISSUE ISN'T WHAT DID THE LEGISLATURE INTE ND. IT IS WHAT THE ACTUAL EFFECT OF THE LEGISLATE IS?IN OTHER WORDS THE QUESTION THAT I M IGHT AS K IS WHAT WAS THE LEGISLATURE THIN KING , WHEN IT PASSED A LAW THAT AT THAT TIME , WOULD ONLY A F FECT ONE GEOGRAPHICAL AREA OF THE STATE , AND WHETHER IT INTENDED TO EFFECT THAT ONE GEOGRAPHICAL AREA, BUT WE ARE NOT SUPPOSED TO L OOK AT WHAT THE LEGISLATURE INTENDED. W E ARE SUPPOSED TO LOOK AT WHAT DID THE LAW , ACTUALLY , IN EFFECT LIMIT TO ONE GEOGRAPHICAL AREA , AND GOING BACK TO JUSTICE CA NTERO 'SQUESTION, IS THAT , AS THEREIS NO POSSIBILITY, THEN , OF IT AFFECTING ANY OTHER AREA.

AND THAT IS WHERE WE THINK THE DISTRICT COURT ANDTHE TRIAL COURT ERRED . IN CLASSIC MILE , THE LAW WAS DECLARED A SPECIAL ACT , BECAUSE THERE WOULD BE NO POSSIBILITY THAT WOULD EVER A PPLY TO ANY COUNTY , OTHER THAN M A RION .

JUSTICE: WAS THAT BECAUSEIT WAS RELATED TO A SPECIFIC DATE?

I AM SO RRY .

JUSTICE: WAS THAT CASE BECAUSE IT WAS RELA TED TO A SPECIFIC DATE O R A FI XED DATE IN THE STATUTE?

THE COURT SAID THAT THIS ACT IS CL EARLY A SPE CIAL LAW , BECAUSE IT APPLIES ONLY TO MARION COUNTY , AND THAT THERE IS NO POSSIBILITY THAT IT WOULD EVER APPLY TO ANY OTHER COUNTY BECAUSE OF THE DESCRIPTION OF T HE ACT. THE COURT FO UND THERE WAS ABSOLUTELY NO POSSIBILITY.

JUSTICE: SO IN ANSWER TO J USTICE CAN TERO 'S QUESTION , WHAT WOULD, WHAT STANDARD WOULD YOU SUGGEST WE APPLY?

THE STANDARD THAT THIS COU RT AND THE COURTS OF THIS STATE HAVE ESTABLISHED THROUGHOUT THE YEARS , AND THAT IS THIS ACT IS O KAY, IF THERE IS A POSSIBILITY .

JUSTICE: NO MA TTER HOW THEORETICAL?

NO MATTER HOW THEORETICAL, AND IF YOU LOOK , JUSTICE BELL, IF YOU LO OK AT THE CASES , THE BISCAYNE CASE , WHICH THE DCA RELIES ON , IT WAS NOT A SPECIAL ACT, BECAUSE IT WAS POSSIBLE THAT A F UTURE REFERENDUM WOULD TAKE P LACE THAT WOULD ALLOW THIS VENUE.

CHIEF JUSTICE: JUSTICE LEWIS HA S A QUESTION.

WHAT DO YOU SEE AS THE E VIL TO BE CONTROLLED BY THE PRINCIPLE OF LAW AND HOW IS IT THAT YOUR STANDARD SERVES THE PURPOSE OF REMEDYING THAT CONCEIVE ED EVIL OR WRONGFUL STAUD STATUTE ?

WELL , THE STATUTE WAS ENACTED FOR THE PURPOSE OF PROTECTING LIVE ATTENDANCE IN THE 25- MILE RADIUS BACK IN 1992, AND BEFORE. NOW , AS TECHNOLOGY HAS ADVANCED AND THEY WERE ABLE TO DO INNER TRACK WAGERING , THE LEGISLATURE DETERMINED THAT IT WOULD PROTECT THAT INTEREST, AND ALSO THOSE , THAT INTE REST WAS PASSED AT A HI GHER RATE THAN INNER T RACK WAGERING, AND SO THAT IS A REASONABLE RELATIONSHIP TO THE ACT AS A WHOLE. AND WHEN THEY EN ACTED THAT AND FOR THE FOUR YEARS FROM '92-TO- '96 AND NOBODY CONSENTED T O INNER TRACK WAGERING , THEY REDRAFTED AND AMENDED THE ACT TO LE SSEN THAT STANDARD , AND THEY INSTITUTED CARD ROOMS. THEY ALLO WED INNER TRACK WAGER ING UN DER CERTAIN CONDITIONS, AND A S THE TESTIMONY OF THE CHAIRMAN OF GULFSTREAM REVEALED IN THE H EARING , THE REVENUES HAD GREATLY INCR EASED.

JUSTICE: DO ESN'T , SPEAKING OF EVI LS , DOE SN'T THE "NO POSSIBILITY" IF THAT IS A STANDARD , IT SEEMS TO ME THAT IT COULD BE CONSIDERED TO BE JUST A COMMENT IN THOSE CASES CONCERNING WHAT WAS GOING ON IN THOSE PARTICULAR F ACTS , BUT DOESN'T THE "NO POSSIBILITY " , IF THAT IS A STANDARD, JUST FO STER SPECIAL ACTS? I MEA N , AND ISN'T A SPECIAL ACT SOMETHING THAT NE EDS TO BE SCRUTINI ZED , BECAUSE OTHERWISE YOU HAVE A BUNCH OF SPECIAL INTERESTS THAT ARE INVOLVED I N G E TTING THEIR OWN LEGISLATION.

JUSTICE WELL S, I THINK THE COURTS HAVE DEALT WITH THIS ISSUE NUMEROUS TIMES, AND THEY HAVE CONSISTENTLY COME UP, AND EVEN IN THE BISCAYNE CASE, SAID THAT THE STANDARD SHOULD BE NO POSSIBILITY , AND THAT ITWOULD BE OPEN TO ANOTHER --

JUSTICE: BUT DID N'T THE COURT IN THE BISCAYNE KENNEL C LUB CASE USE THE TERM "REASONABLE", AND IT SEEMS TO ME, HOW DO YOUDISTINGUISH THAT CASE AND IBELIEVE IT SUBPOENA ONE OF THE CASES THAT THE DISTRICT COURT RELIED ON. THE COURT SAID THAT THERE MAY BE SOME REASONABLE .

THAT, WE CONTEND , IS DICTA THAT WAS TAKEN FOR THE PURPOSE OF SUPPORTING THE DISTRICT COURT OP INION. THEY DO SAY THAT THE PR ESENT CONDITIONS ARE NOT THE CRITERIA. IT IS THE PROSPECTIVE APPLICATION OF FU TURE CONDITIONS THAT RE NDER S THE CLASSIFICATION CONSTITUTIONAL, IF OTHERWISE REASONABLE , AND SO WE SUGGEST --

JUSTICE: OTHE RWISE REASONABLE?

AND WE S U GGEST THAT THE STANDARD OF NO POSSIBILITY , AND EVEN IF YOU LOOK AT THIS AND TAKE THE EVIDENCE THAT WAS PRESENTED IN THIS CASE , THE JU DGE ON PAGE 4 5 OF THE TRANSCRIPT , ACKNOWLEDGED , THE TRIAL JUDGE ACKNOWLEDGED THAT THERE WERE T WO

AREAS IN THE STATE THAT EX ISTED WITHIN THIS CLASSIFICATION. AND THAT WAS DOWN I N SO UTH FLORIDA. AND , A LSO , THE TESTIMONY WAS THAT , IF YOU WENT TO HILLSBOROUGH COUNTY WITH THE ADDITION OF ONE ADDITIONAL QUARTER HORSE , YOU COULD CREATE THIS 25- MILE LIMIT THAT WOULD FALL WITHIN THE CLASSIFICATION OF THE STATUTE .

CHIEF JUSTICE: THE PROBLEM AND I AM HE ARING THIS FROM CERTAIN QUESTIONSTHAT THE JUSTICES ARE ASKING , IS THAT THE , WHAT DO YOU SEE AS THE REASON FOR THE CONSTITUTIONAL PROHIBITION AGAINST SPECIAL ACTS ?

THE REAS ON FOR THE CONSTITUTIONAL, AND THAT HAS BEEN IN THE CONSTITUTION SINCE THE VERY BEGINNING , IS THAT WE SHOULD NOT USE THE POWER OF THE STATE TO AFFECT ONLY ONE SPECIFIC PERSON, ONE SPECIFIC AREA , OR ONE SPECIFIC PURPOSE.

CHIEF JUSTICE: AND SO HERE, IF WE KNOW AS A PRACTICAL MATTER THAT THERE WAS ONLY ONE AREA OF THE STATE THAT THIS ACT AFFE CTED , AND THAT THERE IS NO PRACTICAL POSSIBILITY OF IT AFFECT ING ANOTHER AREA OF THE STATE , DOESN'T THE EVIL THAT THE SPECIAL ACT , CONSTITUTIONAL PROVISION SPEAKS TO AD DRESS , I SN'T IT S ERVED BY THAT STANDARD AS OPPOSED TO THIS IDEA THAT , IF THERE IS SOME THEORETICAL POSSIBILITY SOMEWHERE IN THE NEXT CENTURY, THAT THAT ACT IS OKAY?

WE WOULD SUGGEST THAT , ONE , THE TESTIMONY IN THIS CASE DOES NOT SUGGEST ONLY THEORETIC AL POSSIBILITY. TWO , IF YOU LOOK AT BISC AYNE , THEY SAID IT WAS NOT A SPECIAL ACT BECAUSE THE F UTURE REFERENDUM COULD TAKE PLACE . CRENDON.IT WAS NOT A SPECIAL ACT, BECAUSE IT WAS POTENTIALLY AN ACT APPL ICABLE TO OTHER COUNTIES, AND THE SANFORD/ORLANDO KE NNEL CL UB WAS NOT A SPECIAL ACT , BECAUSE THE REQUIREMENT OF A TEN-YEAR HISTORY OF --

JUSTICE: SO YOU A GREE THERE HAS TO B E SOME POTENTIAL.

THERE HAS TO BE SOME POTENTIAL.

JUSTICE: THE QUESTION IS WHAT DEGREE OF POTENTIALITY MUST IT BE , PURELY THEORETICAL , LIKELY, POSSIBLE , WHAT WOULD YOU SUGGEST?

I THINK THAT IT IS VERY INTERESTING THAT THE TERM HAS BEEN USED THAT IT IS OPEN, UN LESS THE ACT CR EATES AN IMPENETRABLE BARRIER.

JUSTICE: S O IS ONE OF THEDISTRICTS YOU SUGGEST KEY WEST?

ONE OF THE DISTRICTS WAS FOR POTE NTIAL , WAS KEY WEST.

JUSTICE: AND THE FA CTS OF THAT CASE THAT THERE WAS ABSOLUTELY NO PRACTICAL WAYTO HAVE THIS IN KEY WEST?

BUT IT WAS POSSIBLE BECAUSE IT WAS OUTSIDE OF THE 100-MILE LIMIT.

JUSTICE: THEORETICCALLY POSSIBLE.

IT WAS T HEORETICCALLY POSSIBLE, AND THAT IS THESTANDARD THAT THE COURTS HAVE USED ALL DOWN THROUGH, AND IF YOU TAKE THE CR ANDON AND THE BISCAYNE AND IF YOUTAKE THE SANFORD/ORLANDOCASES, THOSE CONDITIONS WERE CERTAINLY THEORETICAL , AND UNTIL SUCH TIME AS THEY WOULD TAKE PLACE.

JUSTICE: COULD YOU DISTINGUISH , A NUMBER OF THE CASES THAT WE HAVE INVOLVE FIXED AREAS BECAUSE OF DATES. THAT IS THAT WE KNOW THE LIMITATION OF I T BECAUSE IT IS AS OF

A CERTAIN DATE O R POPULATION OR WHATEVER THE CASE MAY BE. MY CON CERN HE RE IS THAT, LET'S GO BACK TO THIS ISS UE ABOUT NOT CONSIDERING LEGISLATIVE INTENT. LET'S ASSUME AT THE HEARING THAT YOU B E BE L O AF IN -- THAT YOU HAD BE LOW IN THIS CASE, THAT VOLUMES OF TESTIMONY IN EVIDENCE WAS PRESENTED , THAT THE ABSOLUTELY ONLY REASON THAT THE LEGISL ATURE PASS ED THIS WAS TO G IVE RELIEF IN THIS ONE SINGLE P LACE IN THESTATE. THAT THERE REALLY WAS N O POLICY CONSIDERATION GI VEN O UTSIDE OF. WHAT IMPACT WOULD THAT HAVE ON OUR DECISION , THAT IT WAS ABSOLUTELY UNDISPUTED THAT THE ONLY FOCUS OF THE LEGISLATURE WAS TO GIVE RELIEF IN ONE PL ACE IN THE STATE , THAT THERE WAS NO INTENT T O EX TEND THIS PO LICY BROADLY THROUGHOUT THE STATE . WHAT IMP ACT WOULD THAT HAVE ON OUR --

FIRST, AS TO THE POPULATION, THE COURT HAS BEEN CONSISTENT THAT , I F AN ACT RELATES TO POPULATION AT A CERTAIN SPECIFIC TIME THAT , THAT CONSTITUTES A SPECIAL ACT, BECAUSE IT CANNOT BE REPLICATED.

JUSTICE: I AM MORE CONCERNED , THOUGH , WITH THE LATTER PART OF MY HYPOTHETICAL, AND THAT IS THAT THERE WAS VOLUMES OF EVIDENCE GIVEN THAT THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE AND EVERY, YOU KNOW THAT ABSOLUTELY THE ONLY FOCUS OF THIS LEGISLATION WAS TO GIVE RELIEF IN THIS ONE PLACE IN THE STATE .

I WOULD ENCOURAGE YOU , JUSTICE, TO LOOK AT THE LEGISLATIVE ANALYSIS O F THE 1996 ACT , BUT I WOULD , ALSO , ASK YOU TO KEEP IN MIND THAT THIS 25-MILE WAS EN ACTED IN 1992. IT WAS NOT CH ANGED IN '96. THE COND ITIONS WERE --

JUSTICE: WHAT I AM GIVING Y OU IS A HYPOTHETICAL ANDASKING YOU TO YOU ADDRESSTHE HYPOTHETICAL.

WELL --

JUSTICE: WHAT IMPACT IN MY HYP OTHETICAL , THE UNDISPUTED EVIDENCE THATTHERE WAS INTENT JUST TO SERVE THIS ONE PLACE.

I THINK THE STANDARD , THE SANFORD/ORLANDO CASE STATED THAT IT MATTERS NOT , W HEN A LL THE LEGISLATION WAS WINDING ITS WAY THRO UGH THE HOUSE AND THE SEN ATE, THAT THE MEMBERS WERE A WARE THAT IT WOULD ONLY BENEFIT SEMINOLE. NEITHER DOES IT MATTER THAT , ONCE THE LA W WAS PASSED , SEMINOLE WAS THE ONLY TRACK TO BENEFIT FROM IT. THE CONTRO LLING POINT ISTHAT, EVEN THOUGH THIS CLASS DID IN FACT APPLY TO ONLY ONE TRACK , IT I S OPEN ANDHAS THE POTENTIAL OF APPLYING TO OTHER TRACKS.

CHIEF JUSTICE: THANK YOUVERY MUCH , AND I WANT TO MAKE SURE YOU SAVE TIME FOR REBUTTAL.

I AM WELL INTO MY REBUTTAL. THANK YOU.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS CYNTHIA T UNE ICLIFF.I AM AND -- CYNTHIA TUNICLIFF.I AM HERE T O DAY WITH THE FIRM OF PENNINGTON , MOORE , WILKINSON , B ELL AND DUNBAR.

CHIEF JUSTICE: DO YOU WANT TO START , EVEN THOUGH WE ARE NOT SUP POSED TO HEAR LEGISLATIVE HISTORY, APPARENTLY FROM THAT LA STCASE, WHAT IS THE ACTUAL EVIDENCE OF WHY THIS LAW WAS PASSED? DO WE HAVE THAT IN THE RECORD?

THE , DESCRIBING THIS AREA OF THE STATE AS THAT AREA OFTHE STATE WHERE THERE ARE THREE OR MORE HORSE RACE P ERMIT HOLDERS HAS REALLY BEEN USED FOR A NUMBER OF

YEARS TO DESCRI BE THAT PARTICULAR AREA OF DADE ANDBROWARD COUNTY . THE STAFF ANALYSIS IN THE 1996 LEGISLATION DESC RIBES THIS A S THAT AREA O F THE STATE IN DADE AND BROWARD COU NTY , SO IT IS NOT, IT HAS ALWAYS , THE AREA OF THE STATE WAS WHERE THERE ARE THREE OR MORE HORSE RACE PERMIT HOLDERS IS UNIVERSALLY BEEN HELD TO BE THAT AREA OF THE STATE, CHARACTERIZED AS THAT AREA OF THE STATE IN DADE ANDBROWARD COUNTY .

JUSTICE: BUT EVEN YOU AGREE THAT THAT IS NOT THE STANDARD THAT WE APPLY. YOU AR GU E IT IS A REASONABLE POSSIBILITY STANDARD.

YES.

JUSTICE: SO EVEN UNDER YOUR CONSTRUCTION, IT DOESN'T MATTER WHAT THE LEGISLATURE INTENDED AT THETIME, IF THERE WAS A REASONABLE POSSIBILITYACCORDING TO YOU , THAT IT WOULD APPLY SOME WHERE ELSE.

I THINK THAT'S RIGHT , B UT THE ANALYSIS THAT IS USED WHEN YOU ARE LOOKING AT SPECIAL ACTS IS WH ETHER THE STATUTORY CLASSIFICATION IS ARBITRARY.THAT IS THE FIRST THIN G YOU LOOK AT AND THEN WHETHER THERE IS A REASON ABLE RELATIONSHIP BETWEEN THE CLASSIFICATION AND THESUBJECT MATTER OF THE REGULATIONS .

CHIEF JUSTICE: THAT SOUNDS LIKE A TEST , A DUE PROCESS TEST, AND I DON'TSEE YOU PRESSING O N A DUE PROCESS CHALLENGE AP ART FROM THE SPECIAL ACT CHALLENGE. IS THAT CORRECT?

THAT'S COR RECT , BU T THE TESTS ARE VERY SIMILAR , AND IN THIS COURT IN CLASSIC M ILE , SAID A STATUTE RELATING TO A SUBDIVISION OF THE STATE B ASED U PON PROPER DISTINCTION AND DIFFERENCES , IS A GENERAL YOU LA W. AND HELD THE STATUTE THEREAN INV ALID SPECIAL LAW , SAYING BECAUSE THE FACT ORS WERE ME RELY A DESCRIPTIVE TECHNIQUE AND ARBITRARILY DISTINGUISHED THE STATUTORY CLASS FROM THE GENERALCLASS. AND IT WENT ON TO SA Y THAT THE CLASSI FICATION SCHEME F AILS TO DIST INGUISH AMONGTHE COUNTIES OF FLORIDA , ANY MEANINGFUL WAY.

CHIEF JUSTICE: I GUESS WHAT I WA NTED TO GET AT BEFORE WE GO INTO YOUR ANALYSIS OF WHE THER IT IS A POSSIBILITY , NO POSSIBILITY, OR REASONABLE POSSIBILITY , IS YOU SAID WHEN THEY PASSED THIS LAW THAT THEY KN EW THEY WERE DESCRI BING ONE AREA OF THE STATE. MY QUESTION WAS WHY WAS IT PASSED? WHAT WAS THE BARTERING OR SPECIAL INTERESTS GOING ON THAT LED TO THIS PARTICULAR LEGISLATION ? IS THERE ANYTHING IN THE RECORD?

WELL, THE TRIAL COURT F OUND, AND I THINK IF YOU LOOK AT THE TRIAL COURT'S ORDER , H E SAYS THAT IT IS SIMPLY WHAT GULFSTREAM HAD TO GIVE UP , TO PERHAPS GET OTHER THING INS THE STATUTE.

CHIEF JUSTICE: I SAW THAT,BUT I AM TRYING TO REACHBACK TO SEE WHAT BASIS IN THE RE CORD THAT STATEMENT HAD. IT SO UNDED LIKE SOME BARTERING THAT GULFSTREAM SAID, OKAY , WE W I LL DO THIS IF YOU GIVE US SOMETHING E LSE , AND I DIDN'T SEE ANY EVIDENCE OF WHAT THAT WAS.

I THINK THAT . MR. DON TESTIF IED THAT ALL OF THESE PARI-MUTUEL WAMINGERSSTATUTES ARE NEGOTIATED T YP E OF STATUTES AND THAT THIS WAS TO GIVE , JUST DESCRIBING THAT AREA OF THE STATE TO GIVE THE DOG TRACKS AND JAI ALAI AND HARNESS PROTECTION UNDER THIS INNER TRACK WAGERING STATUTE. THAT PORTION OF THE STATUTEWAS NOT THERE IN 1 9 92 , AND 1992 DID USE THE P HRASE "THREE OR MORE HORSE RACE PERMIT HOLDERS " BUT IT DID NOT LIMIT THE RESTRICTION ON INNER TRACK WA GERING AS IT DOES, DID IN '96. IT LIMITED IT ONLY , INNER T RACK WAGERING ONLY IF EVERYONE A GREED TO IT IN THE '92 STATUTE. IN '96 IS WHEN

THEY PUT ALL OF THESE PARAMETERS ON INNERTRACK WAGERING FROM HORSE TO DOG AND DOG TO JAI ALAI .

JUSTICE: YOU ARE CUTTINGTO THE CHASE OF POPULARITY -- YOUR O P PONENT SUGGESTS THAT THE EVILS TO BE PROTECTED ARE AGAINST LAWS THAT APPLY TO ONE PERSON , ONE PLACE, ONE TIME. AND SUGGESTS THAT THE "NO POSSIBILITY" STANDARD BETTER SERVES THAT INTEREST. HOW DOES YOUR SUGGESTED TEST , NO REASONABLE POSSIBILITY, IN YOUR V IEW , BETTER SE RVE THE PURPOSE THAT THAT R UL E IS DESIGNED TO IMPACT .

BECAUSE U NDER THE ANALYSIS THAT COULD HAPPEN IN ANYBODY'S WIL DEST IMAGINATION , UNDER CONCEIVABLE CIRCUM STANCES , I AM CONVINCED THAT LAWYERSCAN COME UP WITH THAT CIRCUMSTANCE AND THAT HYPOTHETICAL SOMETIME IN THE FUTURE. THAT SIM PLY WAS A W RITE THE SPECIAL PRO VISION LAW PROVISION OU T OF THE CONSTITUTION. WHAT WE ARE HERE A BOUT IS WHETHER THERE IS A REASONABLE POSSIBILITY THAT THAT CA N BE REPL ICATE ED. THAT HAS TO BE THE STANDARD. OTHERWISE THAT PROVISION OF THE CONSTITUTION WOULD BE A T THE WHIM OF VERY CL EVER LAWYERS.

JUSTICE: AT WHAT PO INT DO YOU APPLY THAT STANDARD? IS IT AT THE TIME THAT THAT STATUTE WAS EN ACTED OR SOME LATER TIME?

I THINK IT IS APPLIED AT THE TIME THE STATUTE IS ENACTED.

JUSTICE: AND THIS WAS ENACTED IN 199 2?

'96.

JUSTICE: THE 25-MILE LIMIT WAS '96?

THE STATUTE THAT LIMITED THIS PARTICULAR AREA PASSED IN 1996, BECAUSE THIS AREA THAT WE ARE TALKING ABOUT HAS THREE HORSE RACE PERMIT HOLDERS. JAI ALAI , DOG TRACK ANDHARNESS. THAT WAS NOT THE STATUTE THAT WAS PASSED IN 1992. IT IS A DIFFERENT STATUTE.

CHIEF JUSTICE: JUSTICE ANSTEAD.

WELL , HOW ABOUT THE , SPECULATING THAT WE KNOW THAT , WITH THE WHIMS OF THE MARKETPLACE OUT THERE AND OTHER FACTORS , WHY ISN'T IT A REASONABLE POSSIBILITY THAT Q U ARTER HORSE RACING COULD BECOME ENORMOUSLY POPULAR AGAIN OR THAT AN ENTREPENEUR COULD SAY THAT I SEE A REAL, B OY, THE RA TINGS OF WAT CHING THE TRI PLE CROWN RACES AND EVERYTHING ELSE ARE JUST GOING WILD , AND ALLOF A SUDDEN FLORIDA IS THE NUMBER ONE HORSE BREEDING STATE. WE CHANGED THE NAME OF THE STATE TO THE BLUEGRASS STATE AND TAKE N IT A WAY FROM KENTUCKY, AND THAT THEY ARE ADVOCATING CA LLING IT THE QUARTER HORSE STATE, AND WHYDOES THAT INVOLVE NOT A REASONABLE POSSIBILITY ? YOUR OPP ONENT AL ALLUDED TO THE TESTIMONY OF THE EXPERT , AND HE WAS TALK ABOUT APPARENTLY SOMETIME AFTER THE PASS AGE , AS FAR AS WHAT THE MA RKET CONDITIONS WEREOUT THERE, SO WHY ISN'T I T A REASONABLE POSSIBILITY THAT Q UARTER HORSE RACING COULD BECOME POPULAR AGAIN AND THIS COULD HAPPEN?

I THINK YOU NEED TO LOOK AT BE YOND QUARTER HORSE ANALYSIS, THOUGH , BECAUSE OF THE MILEAGE LIMITATION , THE 100-. MILES: AGE LIMITATION I S -- 100- MILE , MILEAGE LIMITATION , IS ONCE YOU HAVE A HARNESS TRACK, YOU CAN NE VER HAVE ANOTHER ONE BECAUSE OF THE RESTRICTION, AND ONCE YOU PUT EITHER A JAI ALAI OR DOGTRACK OR HARNESS IN KEY WEST , THEN YOU HAVE LIMITED THAT MARKET. THIS MARKET CAN NEVER BE REPLICATED IN THE STATE OF FLORIDA BECAUSE OF THE MILEAGE.

JUSTICE: A T THE TIME OF THE ENA CTMENT OF THE STATUTE WHICH YOU SAY IS 1996 , THERE WAS QUARTER HORSE RACING GOING ON?

I BE LIEVE SO .

JUSTICE: SO WHY WAS IT NOT, THEN , A REASONABLE POSSIBILITY THAT THIS WOULD APPLY IN 1996 TO OTHER AREAS, BECAUSE THERE WAS ST ILL QUARTER HORSE RACING OCCURRING AT THAT TIME?

BECAUSE OF THE MILEAGE RESTRICTIONS ON OTHER TYPES OF PARI-MUTUEL S. YOU CANNOT REPLICATE THIS AREA BECAUSE YOU CAN NEVERPUT IN ANOTHER HARNESS TRACK IN OR OTHER PARI NUMBER, ANDYOU CAN'T PUT A HARNESS TRACK IN TAMPA BECAUSE OF THE MILEAGE RESTRICTION. THAT CAN'T BE REPL ICATED THERE, AND ONCE YOU PUT A HARNESS TRACK IN THE KEYS , THEN YOU CAN'T REPLICATE THIS AREA BECAUSE YOU CAN'T PUT ANY OTHER .

JUSTICE: WHEN WAS THE 100- MILE LIMITATION ENAC TED?

I THINK IT WAS ENACTED I N 1992. I THINK IT WAS '92.

CHIEF JUSTICE: IS THAT IMPORTANT THAT IT WAS ENACTED BE FORE THE '96 LEGISLATION , THE PETITIONER S , APPELLANTS CLAIM THAT REALLYIT WAS JUST, IT WAS REALLY '92 AND THIS WAS JUST AN AMEND MENT. I AM NOT SURE IF THAT IS SIGNIFICANT OR NOT.

I THINK IT COULD BE, BECAUSE I THINK THAT, IF THE LEGISLATURE IS PRESUMED TO KNOW WHAT THE LAWS ARE, THEN PREVIOUSLY ENACTED, AND IF IT KN EW THE 100-MILE LIMIT WHEN IT DESCRIBED THIS AREA AND SET UP T H OSE CRITERIA FOR INNER TRACK WAGERING , I W OULD A SSUME IT KNEW THAT THAT AREA COULD NOT BE REPLICATE ED .

CHIEF JUSTICE: I AM NOT S URE THAT I TO TALLY UNDERSTAND YOUR ARGUMENT. IT SEE MS IMPORTANT. YOU SAY THAT THERE WAS NO WAY NO HOW THAT THIS MARKET COULD BE REPLIC ATED, THEN YOU WOULD BE HAPPY WITH THE NO POSSIBILITY STANDARD , BUT I THOUGHT THAT THE IS SUE WAS THAT THEORETICCALLY , A QUARTER HORSE RACE TRACK COULD BE PUT IN THE TAMPA BAY AREA. IF THERE IS AN EXCEPTION FOR THE NU MBER OF TRACKS FOR QUARTER HORSE RACING , WHICH GOD KNOWS WHY THAT IS , BUTTHAT IS WHAT IT IS .

I THINK THAT IS --

CHIEF JUSTICE: WHY IS THAT? DO YOU KNOW WHY THAT WAS? WHY QUARTER HORSE RACING WAS EXEMPTED FROM THAT 100- MILE ?

I DO NOT. I ASSUME THAT IT HAD TO DO W ITH.

CHIEF JUSTICE: SPECIAL INTERESTS ?

PROBABLY.

CHIEF JUSTICE: SO I N THE TAMPA BAY AREA , IS IT POSSIBLE TO HAVE A QUARTER HORSE RACETRACK, ANDWOULDN'T THAT, THEN , BE ANOTHER AREA O F THE STATE THAT WOULD BE AF FECTED BY THIS PROHIBITION?

I THINK YOU COULD SAY , IF THERE WAS ANOTHER QUARTER HORSE PERMIT IN TAMPA , THAT THERE WERE THREE RACE HORSE PERMIT HOLDER S IN THAT AREA OF THE STATE . THOROUGHBREDS. BUT THE AREA IN DADE ANDBROWARD COUNTY THAT IS THESUBJECT OF THIS STATUTE , CANNOT BE REPLICATED IN TAMPA BAY BECAUSE THERE IS NO, CAN NEVER BE A HARNESS TRACK, BUT IF , BUT THERE COULD BE THEORETICCALLY , THREE HORSE RACE PERMITS.

CHIEF JUSTICE: AND THEN THEY WOULD BE SUBJECT TO THE LIMITATION.

YES.

CHIEF JUSTICE: IN TERMSOF DESCRIBING IT, IT WOULD BE FINE IF , BUT FOR THIS QUARTER HORSE EXCEPTION , IF , BUT WITH THAT EXISTING, THAT SEEMS TO R A ISE , AND I THINK THAT JUSTICE CAN TERO 'S QUESTION THAT IS THAT THERE WAS QUARTER HORSE RACING BACK WHEN THIS WAS ENACTED , I SN'T THAT AN IMPO RTANT CONSIDERATION? AS TO WHETHER THERE WAS AT THAT TIME A REASONABLE POSSIBILITY THAT THERE WOULD BE ANOTHER AREA OF THE STATE AFFECTED?

I THINK YOU HAVE TO LO OK, IT DEPENDS ON HOW YOU LOOK AT THE STATUTE. WE MAIN TAIN THAT THIS AREA OF THE STATE THAT IS IN D ADE AND BROWARD COUNTY SUBJECTTO THE STATUTE , HAS THREE HORSE RACE PERMIT HOLDER S . A HARNESS TRACK , JAI ALAI, AND DOG TRACK. THAT AREA CANNOT BE REPLICATED.

CHIEF JUSTICE: BUT THAT IS NOT THE TEST.THE TEST IS WHETHER , AGAIN , WHETHER THERE IS NO POSSIBILITY OR REASONABLE POSSIBILITY --

I THINK UNDER EI THER, IGUESS THAT IS WHAT I WAS TRYING, UNDER EITHER OF THOSE TESTS , I BEL IEVE THAT --

JUSTICE: BUT IT SEEMS TO BE THAT THOSE THREE TYPES THAT ARE IN B ROWARD COUNTY COULD NOT BE REPLICATED BUTTHREE OF A DIFFERENT TYPE COULD IN FACT BE REPLICATED , SO DOES THAT MA KE A DIFFERENCE , AS LONG AS THERE ARE THREE PERMIT HOLDER S , T HEY DON'T HAVE TO BE THE S AME THREE TY PES THAT ARE IN B ROWARD COUNTY, DO THEY?

THEY HAVE TO BE UNDER THESTATUTE , THREE HORSE RACE PERMIT HOLDERS. THAT IS HOW THIS AREA IS DESCRIBED.

JUSTICE: SO THEORETICLYYOU COULD HAVE TWO OF THE SAME KIND?

YOU HAVE TO HAVE THREE HORSE RACE PERMIT HOLDERS.

CHIEF JUSTICE: SO WHAT IS THE THREE? THOROUGHBRED.

AND STANDARD BRED. QUARTER HORSE.

CHIEF JUSTICE: WHAT IS HARNESS HORSE?

THAT IS NOT. THAT IS A HORSE RACE PERMIT HOLDER.

CHIEF JUSTICE: I THOUGHTTHAT WAS ANOTHER CATEGORY.

IT I S A DIFFERENT CATEGORY.

CHIEF JUSTICE: ALL RIGHT.

DO YOU AGREE OR DISAGREE THAT THE EVIDENCE HAS T O BE THAT THERE WAS POSSIBILITY , NO POSSIBILITY AT THE TIME OF ENACTMENT. DO YOU AGREE WITH THAT?

YES .

JUSTICE: AND WAS THE PRESENTATION BEFORE THE TRIAL COURT ABOUT THE POSSIBILITY REGARDING THE HORSE, THE QUARTER HORSES , WAS THAT AS TO THE DATE OF THE ENACTMENT?

YES, AND THAT IS WHY WE HAVE THE EVIDENTI ARY A ERING HEARING.IF YOU LOOK -- EVIDENTIARY HEARING.IF YOU LOOK AT THE ORDER ER ON SUMMARY JUDGMENT , THE TRIAL JUDGE WANT ED TO MAKE SURE THAT THAT WAS HEARD, WHAT WAS HAPPENING AT THE T IME OF ENACTMENT, AND HE SAID AND SPECIFICALLY SAID THAT AT NO TIME FROM THE TIME OF ENACTMENT AND AT NO TIME SINCE HAS THIS C LASS EVER BEEN OPENED , B ASED O N THE EVIDENCE HE WAS LOOKING FOR. I WOULD SUBMIT THAT THE REASONABLE NESS STANDARD I S NOT A NEW STANDARD BUT A STANDARD THAT HAS BEEN IN THE LAW SINCE WE STA RTED LOOKING AT THESE ISSUE S OF SPECIAL LAWS.IF YOU LOOK AT CASE LAW, THIS COURT IN C ITY OF MI AMI VERSUS --

JUSTICE: WHAT DO THESE CASES TELL US , THEN , ABOUT THE STANDARD OF REVIEW OF REASONABLE? IS IT A WHAT TYPE OF REVIEW?

I THINK THE STANDARD OF REVIEW HAS BEEN DE NOVO FOR SPECIAL LAW.I MEA N, THAT IS THE STANDARD THAT THIS COURT APPL IES. I THINK IF YOU LOOK AT THE WELL-REASONED OPIN ION OF THE TRIAL JUDGE HE RE, I THINK HE SPECIFICALLY AND VERY RIGHTFULLY SO AND C I TED THE LAW THAT THE ISSUE IS , ON SPECIAL LAWS AS RELATES HER E, WAS A MI XED QUESTION OF LAWAND FACT, SO I THINK THAT THE DCA ACCEPTED THAT ANDSAID THAT THE FACTS THAT WERE FOUND BY THE TRIAL COURT , THEY WOULD ACCEPT IT AS DE NOVO STANDARD FOR THE LEGAL ISSUES THAT WERE RAISED, SO I THINK THAT IS WHAT --

JUSTICE: WHEN WAS THE QUARTER HORSE EXCE PTION PASSED? IS THAT PART OF THE '92 LEGISLATION OR IS THAT IN '96?

I DON'T KNOW , YOUR HO NOR .

JUSTICE: PARDON?

I DON'T KNOW. I DON'T KNOW WHEN IT WAS PASSED.

JUSTICE: THAT IS NOTIMPORTANT?

IT HASN'T BEEN IMPORTANT. IT MUST BE IMPORTANT NO W BUT IT HASN'T BEEN IMPORTANT UP UNTIL THIS MOMENT.

JUSTICE: WE HAVE ALL OF THESE DATES, YOU SEE , THAT , AND S O IF WE HAVE ONE REGULATION THAT SAYS ONETHING ABOUT THE 25- MILE AND THEN WE HAVE THE 100-MILE, AND THEN WE HAVE WHAT I AM REFERRING TO AS THE QUARTER HORSE EXCEPTIO N. NOW, IF THE QUARTER HORSE EXCEPTION DI DN'T EX IST IN ' 92, WHEN THIS ORIGINAL ACTWAS PASSED , IT WOULD MAKE A DIFLENS , W OULD IT NOT ? -- A DIFF ERENCE , WOULD IT NOT?

MY PART NER , WHO IS MUCH MORE FAMILIAR WITH THEACTUAL WORKINGS OF THE PARI-MUTUEL LAW , SAID THAT IT HAS BEEN IN EXISTENCE, THE QUARTER HORSE PERMIT EXCEPTION TO THE MILEAGE S INCE '92.

JUSTICE: LET ME ASK ONEQUESTION. WHAT IS THE BURDEN OF PROOF? I NOTICE THAT THE TRIALJUDGE APPLIED A PREPONDERANCE OF THE EVIDENCE. ON PAGE 9 OF HIS ORDER , HE WROTE THE PREPONDERANCE OF EVIDENCE IN FLORIDA LEGISLATIVE SCHEMES SUPPORTS THAT THE CLASS WAS CLOSED ATTHE TIME OF ENACTMENT . I SUMMARIZED IT , BUT THAT IS THE STANDARD. IF THE STATUTE IS TO BE PRESUMED CONSTITUTIONAL , WOULDN'T IT BE MORE APPROPRIATE TO APPL Y A CLEAR AND CONVINCING EVIDENCE?

I THINK THE TRIAL COURT WAS RIGHT IN TE RMS OF LOOKING PAST THE FACTS THAT HE WAS LOOKING AT, IN TERMSOF THE MIXED QUESTION OF LAW AND FACT . I WOULD LIKE TO SAY THAT,

IN THIS COURT --

CHIEF JUSTICE: BUT IT WAS YOUR BU RDEN TO SHOW EITHER THAT THERE WAS NO POSSIBILITY OR NO REASON ABLE POSSIBILITY , CORRECT?

YES.

CHIEF JUSTICE: SO IT STARTS WITH A PRESUM PTION , YOU AGRE E IT MUST START WITH A PRESUMPTION OF CONSTITUTIONALITY.

YES. Y ES.

JUSTICE: AND --

AND THIS COURT IN GRAFFFRAMED THIS QUESTION WHETHERIT IS ALLOWED T O FR AME ON MUNICIPALITIES AS TO CLASSIFICATION. AND IN THE 19 48 CASE WHICH THE DISTRICT COURT OF APPEAL C ITED , CA RTER VERSUS NORMAN, IT STATES THAT THE CLASSIFICATION MUST BE JUSTAND REASONABLE. THE ARBITRARY CLASSIFICATION OF COUNTIES BY POPULATION FOR THE PURPOSE OF AVOIDING THE ORGA NIC REQUIREMENT OF PUBLICATION OF NOTICE OF INTENTION TO APPLY TO THE LEGISLATURE FOR THE PASSAGE IS NOT PERMITTED OR SANCTIONED BY --

CHIEF JUSTICE: THAT IS ONLY ONCE YOU G ET TO WHETHERIT IS ONLY OPERATING ON ONE DESIGNATED CLASS. YOU, THEN , G O TO WHETHE R IT IS ARBITRARY. CORRECT? OTHERWISE YOU ARE JUST DOING A NORMAL DUE PRO CESS ANALYSIS.

I THINK, W ELL , THE WAY I HAVE READ THE CASE LAW IS, YOU LOOK T O WHETHER THECLASS , WHETHER IT IS AN ARBITRARY CLASSIFICATION. ONE OF THE ELEMENTS THAT YOU LOOK AT OR THE PR IMARY ELEMENT YOU LOOK AT IN MAKING THAT ANALYSIS IS WHETHER THE CLASS IS OPEN OR CLOSED .

CHIEF JUSTICE: I DON'T READ OUR LAW THAT WAY AND I GUESS WE WILL TAKE A LOOK , BECAUSE IT SEEMS TO ME WHEN YOU ARE TALKING ABOUT ARBITRARINESS, THEN YOU ARE TALKING ABOUT DUE PROCESSANALYSIS, IN OTHER WORDS WHETHER A CLASSIFICATION BEARS THE REASONABLE RELATIONSHIP TO A LEGITIMATE LEGISLATIVE PURPOSE . BUT IF , I ASKED YOU AND YOU SAID, NO, YOU YOU ARE NOTMAKING A STRAIGHT DUE PROCESS AR GUMENT. CORRECT?

YES.

CHIEF JUSTICE: OK AY.

AND I THINK THAT , THE SECOND PRONG OF THE TEST WHEN YOU ARE LOOKING AT ASPECIAL LAW IS WHETHER IT IS REASONABLY RE LATED TO THE REGULATION.

CHIEF JUSTICE: BUT YOU HAV E TO GET, FIRST, TO DECIDE THAT THAT CLASSIFICATION IS OPEN OR CLOSED, BEFORE YOU GO TO THE SECOND PART.

THAT IS RIGHT , BUT THE CASE LAW WHEN IT IS DE ALING WITH THAT ISSUE , THE FI RST PRONG WH ICH I AM TALKINGABOUT , TALKS ABOUT AND HAS SINCE THIS 1948 CASE AND THROUGH CLASSIC MILES AND THROUGH CITY OF MI AMI VERSUS McGRATH , HAS TALKED ABOUT THAT IN TERMS OF MEANINGFUL NESS AND ARBITRARINESS AND WHETHER YOU ARE LOOKIN G AT THAT PRON G TO SEE WHETHER THE CLASS IS OPEN OR CLOSED.

CHIEF JUSTICE: WITH OUR HELP YOU HAVE USED YOUR TIME. THA NK YOU VERY MU CH.

THANK YOU VERY MUC H.

CHIEF JUSTICE: REBUTTAL.

THANK YOU , AND THE VERY SHORT TIME THAT I HAVE , I WOULD LIKE TO MAKE FOUR POINTS. ONE IS THAT --

CHIEF JUSTICE: YOU ARE VERY OPTIMISTIC .

BUT I PUT YOU ON NOTICE.

JUSTICE: WELL , TO REL IEVE YOU OF HAVING FOUR POINTS , HELP ME WITH THE DATES. YOU HAVE POI NTED OUT THAT THE '96 LEGISLATION WAS IMPORTANT , BUT OF COURSE OUR FOCUS HAD TO ALL BE BACK IN ' 92 , DO ESN'T IT?

THAT IS CORRECT , AND JUSTICE ANSTEAD , THE RE WAS NO EVIDENCE PRESENTED AT THE TRIAL , RELATED T O 19 92. AS A MA TTER OF FACT , IN 1996 , QUARTER HORSE RACING WASGOING ON. AND AS THE TESTIMONY OF . MR. DON , THE C HAIR OF GULFSTREAM, HE INDICATED IN 2004, THAT THERE HAD NOT BEEN RACE INS THE LAST FIVE YEARS , WHICH WOULD PUT IT A FTER 1996 -- 5-TO-7 YEARS , WHICH WOULD PUT IT A FTER 1996.

AND QUARTER HORSE EXI STED IN 199 2?

THE QUARTER HORSE, ALL OF THE PARI-MUTUELS WAS SUNSETTED BEFORE 1992 AND REENACTED IN 1992. IN 1996 , BE CAUSE OF THE IMPACT OF THE LO TTERY , ALL OF THE PARI-MUTUELS GOT TOGETHER WITH THE LEGISLATURE AND THERE IS TESTIMONY PRESENTED , IT WAS A COLLABORAT IVE EFFORT. THIS ACT DID NOT JUST APPLY TO GULFSTREAM. THIS ACT APPLIED TO EVERYONE , AND THEY, AS A MATTER OF F ACT, IN THE TRIAL , THE C HAIR OF GULFSTREAM SAID, I F WE WERE FREE TO DO INNER TRACK WAGERING WITHOUT THIS RESTRICTION, WE WOULD NOT NECESSARILY DO IT, AND THEY , A LSO , S AI D THAT THEY COULD NOT SPEAK FOR CA LDER NOR COULD THEY SPEAK FOR THE OTHER TRACK. ONE OTHER THING THAT I THINKWOULD BE IMPORTANT IS THAT, SINCE THIS TRIAL WAS MENTIONED IN THE B RIEF , HIALEAH HAS LOST ITS PERMIT , AND THESE FACT ORS CH ANGE THE CONFIGURATION OF THESE 25-MILE LIMITS. IF JEFFERSON COUNTY CLOSED ITS RACETRACK , IT WOULD SIGNIFICANTLY , AS THE EVIDENCE REFLECTS, IT WOULD SIGNIFICANTLY CHA NGE THE 100-MILE LIMIT AND THE PLACEMENT OF ADDITIONAL , OF ADDITIONAL.

CHIEF JUSTICE: DID YOU GET TWO O F YOUR FOUR POINTS IN? WE WILL G IVE YOU , GO AHEAD WERE WE WILL GIVE YOU ONE M ORE MIN UTE.

I THINK IN CONCLUSION THAT IT WOULD BE IMPORTANT TO INDICATE THAT THE LEGISLATURE CANNOT CO MPLYWITH THE SPECIAL ACT NOTICE , IF SOMETHING THAT HAPPENED IN THE FUTURE THAT IS NOT IN IS EXISTENCE AT THE TIME OF THE LEGISLAT URE, THAT THEY CANNOT BE H E LD TO ACCOUNT FOR THAT, AND CERTAINLY THIS IS , WAS A GENERAL REASONABLE RELATIONSHIP ENACTED IN 1996 FOR THE BENEFIT AND PROTECTION OF THE ECONOMIC VIABILITY OF THE RACES AND, A LSO , TO PROTECT THE INTEGRITY OF THE LAW , AND SO WE WOULD ASK THIS COURT TO REVERSE THE DCA AND HOLD THIS LAW CONSTITUTIONAL. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOUVERY MUCH.