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The Crossings at Fleming Island v. Lisa Reinhardt Echeverri

SC07-1556

THE FINAL CASE ON OUR CALENDAR
THIS MORNING IS THE CROSSINGS
AT FLEMING ISLAND VERSE
ECHEVERRI.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I'M DON LESTER REPRESENTING
THE CROSSINGS OF FLEMING ISLAND
DISTRICT.

FOR PURPOSES OF TODAY'S
ARGUMENT I LIKE TO FOCUS OR
ZERO IN ON WHAT I THINK IS THE
KEY ULTIMATE ISSUE.

THAT IS, WHETHER THE SO-CALLED
DEFENSIVE POSTURE DICTA IN
LEWIS AND IN FUCHS
RECONCILED WITH THIS COURT AS
PREVIOUSLY ANNOUNCED RULES IN
ATLANTIC COAST.

>> LET ME ASK YOU A QUESTION
ABOUT THAT.

YOU MAY HAVE A POINT ULTIMATELY
AND JUSTICE BELL'S CONCURRING
OPINION IN SUNSET HARBOR WAS
ELOQUENT.

WE'VE ALREADY HELD SINCE 1922
YOU CANNOT USE OFFENSIVELY.

>> CORRECT.

>> YOU WANT US TO HOLD THAT YOU
CANNOT USE IT DEFENSIVELY.

>> CORRECT.

>> THEREFORE, WHEN A PUBLIC
OFFICIAL BELIEVES THAT A
STATUTE GOVERNING THE AD
VALOREM TAX OR ANYTHING IN THIS
FIELD IS UNCONSTITUTIONAL,
THEN, THERE IS NO WAY IN WHICH
TO CONTEST THE
CONSTITUTIONALITY OF THAT
STATUTE.

AND IF THE PUBLIC OFFICIAL
CANNOT CONTEST IT, WHO ELSE IS
THERE TO CONTEST IT?

>> JUDGE, IF I UNDERSTAND YOUR,
JUSTICE, IF I UNDERSTAND YOUR
QUESTION TO BE HOW WILL THE

ISSUE COME BEFORE THE COURTS, I WOULD HAVE SEVERAL RESPONSES. FIRST, THAT PRECISE ARGUMENT WAS MADE IN ATLANTIC COASTLINE AND JUSTICE WHITFIELD'S DISSSENT.

OBVIOUSLY CONSIDERED AND REJECTED BY THE COURT IN THE THAT CASE.

SECONDLY, NUMEROUS OPINIONS, HORN, LEWIS, THE KREST CASE AGAINST LANDIS, THIS COURT OBSERVED THE ATTORNEY GENERAL AS JUDICIAL OFFICER WITHIN THE EXECUTIVE BRANCH HAS AUTHORITY AND DUTY TO DO THAT.

MOREOVER, THIS COURT IN BOTH THE LEWIS AND THE HORN CASES AND IN OTHER CASES HAS RECOGNIZED THAT THESE OFFICIALS, IF THEY FEEL SO STRONGLY ABOUT IT, CAN BRING SUCH A SUIT IN THEIR INDIVIDUAL CAPACITY WITHOUT VIOLATING THE RULES SET FORTH IN ATLANTIC, WHICH IS DISOBEYING THE LAW PRIOR TO.

THEY CAN ALWAYS OBEY THE LAW, AND IN THEIR INDIVIDUAL CAPACITIES CHALLENGE THE STATUTE.

>> WHAT YOU'RE SAYING THEN IS THEY CAN DO IT BUT THEY DO IT INDIVIDUALLY?

>> CORRECT.

>> WILL YOU PLEASE ADDRESS, AND I'VE BEEN STRUGGLING WITH THIS, SEEMS TO BE VERY, VERY CLEAR, UNDER CHAPTER 194.036, IT SPECIFICALLY ADDRESSES A PROPERTY APPRAISER AND IT SAYS, QUOTE, THE PROPERTY APPRAISER DETERMINES AND AFFIRMATIVELY ASSERTS IN ANY LEGAL PROCEEDING THAT THERE IS A SPECIFIC CONSTITUTIONAL VIOLATION.

WHAT DO WE DO WITH THIS?

THEN IT GOES ON TO SAY THEY CANNOT INITIATE THIS AS A SEPARATE INDEPENDENT SUIT.

>> JUDGE, JUSTICE, WHAT THE WAY I READ THAT IS THAT THE LEGISLATURE, YOU KNOW, WAS CLEARLY TRYING TO, I THINK THIS

COURT LOOKS AT LEGISLATIVE ENACTMENTS FOR EXAMPLE AS THE COURT HELD IN THE SUN 'N LAKE CASE, YOU LOOK AT THESE STATUTES, PRESUMING THEIR CONSTITUTIONAL VALIDITY, INTERPRET THEM IN THE LIGHT OF EXISTING CONSTITUTIONAL PRINCIPLES OR PRECEDENT. I THINK IF WE LOOK AT IT THAT WAY, THE LEGISLATURE IS TRYING TO SAY, INTO ACCORD WITH THE SEPARATION OF POWERS DOCTRINE WHICH THIS COURT HAS PREVIOUSLY ENUNCIATED, THAT IS WHY WE WOULD PUT SUCH LANGUAGE IN THERE.

>> I'M SORRY, THAT IS NOT SPEAKING -- DOES IT NOT SAY THAT THE PROPERTY APPRAISER, THIS IS SPECIFIC AUTHORITY TO ASSERT IN A LEGAL PROCEEDING THAT THERE IS A SPECIFIC CONSTITUTIONAL VIOLATION? I DON'T THINK YOU ANSWERED THAT QUESTION.

>> I'M SORRY, I DID MISUNDERSTAND THE QUESTION.

194 --

>> .036.

>> RIGHT.

>> SPECIFICALLY TALKS ABOUT THE AUTHORITY OF THE PROPERTY APPRAISER, NOT EVERYBODY IN GOVERNMENT.

ARE WE NOT TALKING ABOUT A PROPERTY APPRAISER HERE?

>> YES, SIR.

>> AND IT SPECIFICALLY SAYS, ACKNOWLEDGES THAT THAT CAN BE DONE.

NOW, HAS THIS STATUTE BEEN CHALLENGED AS BEING UNCONSTITUTIONAL ITSELF?

>> THAT PROVISION OF LAW, 194?

>> YES, SIR.

>> I DON'T BELIEVE SO.

>> SO I'M TRYING TO UNDERSTAND, THIS STATUTE SPECIFICALLY SAYS, IT DOESN'T SAY YOU CAN GENERALLY SAY YOU CAN, YOU CAN CHALLENGE IT.

BUT IT SAYS SPECIFICALLY.

A SPECIFIC CONSTITUTIONAL OR

STATUTORY BUT A CONSTITUTIONAL VIOLATION.

>> I THINK I WOULD RESPOND TO THAT PERHAPS WAY I DID BEFORE BUT MAYBE TRY TO SAY IT A LITTLE MORE ARTICULATELY. I DON'T THINK THE LEGISLATURE BY ENACTMENT OF THAT STATUTE CAN TELL THIS COURT TO OVERRULE ITS PREVIOUS PRECEDENT, FOR EXAMPLE IN ATLANTIC AND IN BARR, WHICH THIS COURT DID SPECIFICALLY HOLD THAT, IF THE OFFICIAL IS ASSERTING THAT IT VIOLATES THEIR OATH OF OFFICE TO ENFORCE A STATUTE, THAT ALONE WILL NOT GIVE THAT --

>> WHY NOT?

IN OTHER WORDS, IF WHAT, IT SEEMS HAS HAPPENED OVER THE YEARS IS THAT WE'VE GONE FROM AN INTERPRETATION OF LEGISLATIVE POLICY THAT BECAUSE WE ORIGINALLY INTERPRETED THAT AND WE COMMENTED ON IT OVER THE YEARS THAT WE'VE ALMOST TRANSFORMED IT, YOU KNOW, TO SOMETHING ELSE.

SO, AREN'T WE, I MEAN, LET ME ASK TWO QUESTIONS.

>> OKAY.

>> ONE, AREN'T WE TALKING ABOUT LEGISLATIVE POLICY ON THIS ISSUE TO BEGIN WITH?

IT WAS THE LEGISLATURE THAT LOGICALLY, YOU KNOW, MADE THE CONCLUSION TO BEGIN WITH.

WAIT A MINUTE, WHATEVER WE'RE GOING TO DO, WE DON'T WANT MINISTERIAL OFFICIALS TO BE IN A POSITION TO SAY, WELL WHAT YOU DID IS UNCONSTITUTIONAL.

>> RIGHT.

>> WE WANT THEM TO SHUT UP AND DO WHAT WE TELL THEM TO DO, EXCUSE THE LANGUAGE.

>> SURE.

>> AND SO, WE ARE TALKING ABOUT, ARE WE NOT, LEGISLATIVE POLICY, WOULD YOU AGREE WITH THAT?

>> I THINK, I AGREE, YOUR HONOR --

>> ISN'T THAT THE CONTEXT

WE'RE -- NOT TALKING ABOUT CONSTITUTIONAL POLICY OR JUDICIAL POLICY OR EXECUTIVE BRANCH POLICY, OR WE'RE TALKING ABOUT THE INTENT OF THE LEGISLATURE.

SO THAT'S WHY I, IF THAT'S WHAT WE'RE TALKING ABOUT, AND THEN WE SEEMINGLY, AS THE CHIEF JUSTICE HAS QUOTED, IN THIS INSTANCE WITH THIS PARTICULAR MINISTERIAL OFFICER, THAT THE LEGISLATURE HAS SEEMINGLY NOW CREATED AN EXCEPTION TO THEIR OWN ORIGINAL POLICY.

>> RIGHT.

>> OF SAYING, BUT, YEAH, WE FEEL THAT WAY BUT WITH REFERENCE TO PROPERTY APPRAISERS, HERE'S WHAT WE HAVE TO SAY.

AND, YOU KNOW, AT LEAST ON ITS FACE, AS I THINK YOU REACTED TOO, SEEMS LIKE THEY PRETTY CLEARLY CREATED AN EXCEPTION TO THE ORIGINAL POLICY OF JUST, BE QUIET AND DO WHAT WE SAY, DON'T CHALLENGE IT.

SO HELP ME WITH THAT.

>> I'LL TRY.

FIRST, I THINK IT GOES BACK TO EARLIER JURISPRUDENCE OF THIS COURT AND, THIS COURT HAS PREVIOUSLY HELD ON ANY NUMBER OF OCCASIONS ALL THE WAY UP THROUGH FUCHS THAT THIS CONSTITUTIONAL OFFICER CANNOT INITIATE A CHALLENGE TO A STATUTE.

WE'RE EXPECTING THESE OFFICERS TO COMPLY WITH AND EXECUTE THE LAWS THAT THEY'RE OBLIGED TO DISCHARGE.

>> WHERE DOES THAT COME FROM?

>> I BELIEVE THAT COMES FROM EARLIER CONSTITUTIONAL JURISPRUDENCE OF THIS COURT.

>> BUT WASN'T THAT EARLIER JURISPRUDENCE, ON BASIS THAT A MINISTERIAL OFFICER IN SEPARATION OF POWERS CONTEXT HAS NO POWER TO DECLARE IS SOMETHING UNCONSTITUTIONAL.

>> CORRECT.

>> ONLY A COURT CAN.
THAT'S WHERE YOU HAVE TO DO IT,
IN JUDICIAL, THAT IS THE
DIVISION OF POWERS AND THAT
THAT MINISTERIAL OFFICER
DOESN'T HAVE THAT POWER.
ISN'T THAT REALLY THE, THE
ORINATION OF THIS CONCEPT?

>> I THINK IT IS.
AND I THINK THAT CONCEPT
CONTINUES THROUGH TO TODAY WITH
THE RECENT PRONOUNCEMENTS OF
THIS COURT IN LEWIS AND FUCHS,
AND SO FORTH THAT A LAW IS
PRESUMED TO BE VALID AND
OFFICER MUST OBEY AND CONFORM
THAT LAW UNTIL THE COURT SAYS
OTHERWISE.

>> WHY WOULDN'T IT CONFORM WITH
THAT POLICY AND ALSO ALLOW A
PUBLIC OFFICIAL TO CONTEST THE
CONSTITUTIONALITY, IF THE PUBLIC
OFFICIAL COULD ENFORCE THE
STATUTE AS WRITTEN AGAINST
PROPERTY OWNERS, BUT MAY FILE
A DECLARATORY JUDGMENT ACTION
SEPARATELY TO HAVE THAT
DECLARED UNCONSTITUTIONAL?

>> AND I THINK THAT REALLY,
THANK YOU FOR MENTIONING THAT,
JUSTICE CANTERO.
BECAUSE I THINK THAT REALLY
DOES ALLOW US TO SEE A
DISTINCTION HERE.
THE OFFICER CAN CHALLENGE
CONSTITUTIONALITY WHILE NOT AT
SAME TIME DISOBEYING THE LAW.
THAT SEEMS TO ME TO BE THE
ULTIMATE RUB.

IS THE OFFICER GOING TO BE
ALLOWED TO DISOBEY THE LAW,
TRIGGER THE LITIGATION, FORCE
THEM TO BE SUED AND THEN BASED
SOLELY ON THE FACT THAT THIS
OFFICER IS IN DEFENSIVE POSTURE
WITHOUT THE PUBLIC FUNDS
EXCEPTION OR PERSONAL INJURY
EXCEPTION BE ABLE TO CHALLENGE
THE CONSTITUTIONALITY.

>> OF COURSE I SIGNED ON TO
JUSTICE BELL'S CONCURRENCE.

>> RIGHT.

>> I'M SOMEWHAT SYMPATHETIC TO
HIS VIEW.

SEEMS TO ME WHAT YOU'RE DOING,
WHAT A PROPERTY APPRAISER IS
DOING MAKING HIS OR HER OWN
DETERMINATION OF
CONSTITUTIONALITY ENFORCING THE
PROPERTY OWNER TO FILE.

>> RIGHT.

>> THE PROPERTY OWNER DOESN'T
HAVE THE WHEREWITHALL TO
DO THAT, THEY HAVE ESSENTIALLY
BECOME A LAW UNTO THEMSELVES.
THAT WOULD BE YOUR POLICY
ARGUMENT FOR WHY THIS COURT
ALSO SHOULD BE LOOKING AT IT.
BECAUSE IT DOESN'T SEEM TO ME
THAT'S WHAT WE EXPECT IN OUR,
WOULDN'T WANT A POLICE OFFICER
TO SAY, I THINK THIS LAW IS
UNCONSTITUTIONAL AND NOT
ENFORCE IT.

>> RIGHT, RIGHT.

EXACTLY.

>> SAYING EXACTLY BUT IT SAYS
IN THE STATUTE, MAYBE THIS IS
ALL IN CONTRADICTION OF ONE
ANOTHER BUT IT SAYS IF THE
PROPERTY APPRAISER DISAGREES
WITH THE DECISION OF THE BOARD,
VALUE ADJUSTMENT BOARD, IT SAYS
HE OR SHE MAY TAKE IT INTO
COURT AND DO THESE THINGS.
HOW DOES THAT SQUARE WITH THAT?

>> I THINK I WOULD RESPOND TO
THAT BY SAYING I'M NOT SO SURE
THAT PRESUPPOSE THAT IS THE
PROPERTY APPRAISER HAS CHOSEN,
UNILATERALLY TO NOT FOLLOW THE
LAW BY DETERMINING, IN GOOD
FAITH.

NOBODY HAS QUESTION THE
BONAFIDES OF PROPERTY
APPRAISERS.

>> I STRUGGLE WITH THE CONCEPT
OF OFFICER OR APPRAISER, THIS
SAYS I CAN DO IT.

YOU SAY NOT.

YET I CAN GO OUT AND AS THAT
APPRAISER YOU SAY I CAN FILE AN
ACTION, I HAVE NO STANDING AS
AN INDIVIDUAL TO CHALLENGE IT.
I'M NOT IMPACTED BY IT AS AN
INDIVIDUAL YET I HAVE THAT
POWER TO DO IT.

THIS WHOLE AREA SEEMS SOMEWHAT

CONVOLUTED. EACH TIME YOU TURN
YOU RUN INTO YOURSELF AGAIN.

>> I AGREE.

I THINK THEREFORE IS SOME
CONVOLUTION HERE.

I'M NOT SURE I AGREE THAT THE
PROPERTY APPRAISER IN HIS OR
HER INDIVIDUAL CAPACITY DOES
NOT HAVE INDIVIDUAL STANDING.
THE COURT RULED IN THE LEWIS
AND HORN, RICKMAN RULE
REQUIRING SPECIAL INJURY DOES
NOT APPLY IF ONE IS ALLEGING
THAT THE LEGISLATURE OR
WHATEVER THE ENTITY IS EXCEEDED
ITS CONSTITUTIONAL AUTHORITY.

>> SO THE PROPERTY APPRAISER
THEN AS THE STATUTES COME OUT
CAN TAKE OFF THEIR NAME
PROPERTY APPRAISER AND GO AHEAD
AND FILE ALL THESE LAWSUITS
CHALLENGING THEM?

>> I DON'T THINK THAT'S A
PROBLEM.

I BELIEVE IT WAS THE HORN CASE
WHERE THIS COURT DID NOTE,
INITIALLY THAT WOULD BE THE
ATTORNEY GENERAL'S JOB AND
PERHAPS IT WOULD BE A BETTER
PRACTICE AND PROCEDURE TO GET A
CERTIFICATE THAT THE ATTORNEY
GENERAL IS NOT GOING TO FOLLOW
UP ON THIS.

SO WE DON'T HAVE MULTIPLICITY
OF SUITS.

>> I APPRECIATE YOUR BRINGING
THIS MATTER BACK TO US BECAUSE
OBVIOUSLY WE DIDN'T SETTLE IT
ALTHOUGH, FROM MY POINT OF
VIEW I THOUGHT WE HAD SETTLED
IT.

>> RIGHT.

>> AND BECAUSE ONE THING THAT
I'M CONCERNED ABOUT WE MADE
PRETTY CLEAR STATEMENTS HERE
RECENTLY THAT THIS STATUTE
STATUTE AND THE ANALYSIS WAS
THEN MADE BY THE FIRST DISTRICT
IS WHERE MAJORITY OF THIS COURT
IS ON THIS POINT AND THAT IS
THAT THERE IS A DEFENSIVE EXCEPTION.
I DON'T KNOW ANYTHING REALLY
HAS CHANGED CHANGED SINCE WE
CAME OUT WITH FUCHS.

IT WAS RAISED IN DISSENT IN
ROBBINS BUT ONLY DREW TWO
VOTES.

>> MAY I RESPOND TO THAT THIS
WAY, JUSTICE WELLS.

>> PLEASE.

>> THE ONLY, THE FIRST TIME
THAT THE DEFENSIVE POSTURE
EXCEPTION APPEARS AS FAR AS I
CAN TELL IN FLORIDA
JURISPRUDENCE IS THE LEWIS
CASE.

IN WHICH IT IS CLEARLY DICTA.
THE FUCHS CASE PICKS UP ON THAT
DICTA.

THE QUESTION TO ME AS I SEE IT
IS CAN THE DEFENSIVE POSTURE
STANDING ALONE WITHOUT PUBLIC
FUNDS AND PERSONAL INJURE BE
RECONCILED WITH ATLANTIC AND
BARR?

I SUGGEST IT NOT.

THE ONLY WAY YOU GET TO THAT
DEFENSIVE POSTURE, BY OFFICIAL
MAKING UNILATERAL DETERMINATION
TO NOT FOLLOW THE LAW AND BE
SUED.

>> I UNDERSTAND THAT BUT WE
ALSO HAVE TO RECOGNIZE WITHIN
THE ANALYSIS THAT WE ARE
DEALING WITH IN MOST INSTANCES
CONSTITUTIONAL OFFICERS AND THE
PROPERTY APPRAISER.

>> CORRECT.

>> AND THAT WE HAVE TO ASSUME
THAT THEY'RE ACTING IN GOOD
FAITH AND THAT, AND THAT THERE
IS THE ADDITIONAL FACTOR HERE
OF THE STATUTE WHICH WE WERE
REALLY DEALING WITH IN THE
ANALYSIS IN FUCHS.

>> I UNDERSTAND THAT.

YOUR HONOR, I GUESS, AND I'M
COMING UP ON MY FIVE MINUTES
RESERVED HERE, IF I COULD I
WOULD JUST RESPOND BY SAYING I
DON'T THINK IT'S THE ISSUE OF
THEIR GOOD FAITH OR NOT.
IN BOTH ATLANTIC AND IN BARR,
I'M SURE THOSE OFFICERS WERE
ACTING IN GOOD FAITH AND THEY
TOOK THE POSITION THAT IT WOULD
VIOLATE THEIR OATH OF OFFICE TO
FOLLOW THE LAW.

THAT WAS THE SEPARATION OF POWERS ISSUE THAT THIS COURT HAD A PROBLEM WITH AND WAS THESE OFFICERS NOT ONLY BELIEVING THAT, BUT FAILING TO FOLLOW THE LAW AS, BEFORE THIS COURT HAD MADE A DETERMINATION THAT THE LAW WAS CONSTITUTIONAL OR NOT.

AND I THINK YOU CAN HARMONIZE THE DICTA IN FUCHS AND IN LEWIS BY LOOKING AT THE CASES THAT LEWIS CITED TO.

ALL OF THOSE CASES DEALT WITH THE PUBLIC FUNDS DISBURSEMENT EXCEPTION AND COULD BE DECIDED ON THAT BASIS.

SO AS LONG AS THE DEFENSIVE POSTURE EXCEPTION IS COUPLED WITH ONE OF THE TWO TRADITIONAL EXCEPTIONS, PERSONAL INJURY OR PUBLIC FUNDS, I THINK IT CAN BE RECONCILED BUT, IF DEFENSIVE POSTURE ALONE WITHOUT THOSE TWO PREVIOUSLY RECOGNIZED EXCEPTIONS IS ALLOWED, THEN I DON'T THINK CAN YOU RECONCILE THAT WITH THE CONCERNS IN ATLANTIC COASTLINE AND BARR ABOUT THE SEPARATION OF POWERS ISSUE.

>> IS THERE, BECAUSE OF THE NATURE OF THIS OFFICE OR SOMETHING BECAUSE THIS DEALS WITH THE PROPERTY APPRAISER'S OFFICE, NOT SOME OF THESE OTHER THINGS.

>> RIGHT.

>> SO ISN'T THAT A WAY?

WE LOOK AT THIS IN A DIFFERENT POSTURE.

FUCHS WAS SPECIFICALLY ADDRESSING THE STATUTE.

SO AS A PROPERTY APPRAISER FIT INTO A DIFFERENT CATEGORY THAN, I DON'T KNOW, THE DOG CATCHER?

>> WELL, THAT'S AN INTERESTING QUESTION.

HOW FAR DO YOU EXTEND THIS DOCTRINE THEN?

I THOUGHT ABOUT THAT.

AND I'M NOT ASKING THIS COURT, THIS COURT CAN LIMIT AND I THINK I CRAFTED MY BRIEF THAT

WAY, TO LIMIT IT TO THE
PROPERTY APPRAISER BECAUSE WHAT
I CONSIDER TO BE THE
MINISTERIAL NATURE OF THAT
OFFICE.

THIS COURT PREVIOUSLY HELD
COMPTROLLERS BACK WHEN WE HAD
THOSE INVOLVED PUBLIC FUNDS
OBVIOUSLY THAT WAS A LITTLE BIT
DIFFERENT.

I DON'T SEE ANYTHING OTHER THAN
MINISTERIAL DUTIES THAT IMPOSED
BY CONSTITUTION IN STATUTE ON A
PROPERTY APPRAISER THAT WOULD
EVER IMPLICATE
THE PERSONAL INJURY PUBLIC
FUNDS EXCEPTIONS.

IF THERE ARE --

>> SAVED SOME OF YOUR TIME.

>> YES, SIR.

THANK YOU.

>> PLEASE THE COURT.

MY NAME IS LARRY LEVY.

I REPRESENT THE APPELLEE TODAY,
THE PROPERTY APPRAISER.

LET ME MAKE SOME COMMENTS IF I
WILL.

THE CASE I CITED IN MY BRIEF
MAKES IT VERY CLEAR THAT IS THE
LEWIS CASE.

DEPARTMENT OF EDUCATION VERSUS
LEWIS.

DO IT DEFENSIVELY.

>> LET ME ASK YOU A QUESTION.

OVER HERE.

YOU AGREE THAT THOSE
DISCUSSIONS WERE DICTA, RIGHT?
IN LEWIS?

>> WHAT NOW?

>> WAS DICTA.

IT DIDN'T REALLY ADDRESS
ATLANTIC COAST?

>> NO, SIR.

I THINK THEY WERE EXACTLY WHAT
THEY WERE SAYING.

>> LET ME ASK YOU IN SECTION
193.06 THAT JUSTICE LEWIS IS
TALKING ABOUT, THAT IS IN THE
CONTEXT, VALUE ADJUSTMENT BOARD
DECISION, CORRECT?

>> THAT IS LITTLE DIFFERENT
ANIMAL, YES, SIR.

>> THAT IS NOT WHAT WE HAVE
HERE, CORRECT?

>> NO, SIR, IT'S NOT.

>> IN THAT IT ALLOWS
DEFENSIVELY FOR THE PROPERTY
APPRAISER TO CONTEST THE
CONSTITUTIONAL, TO SAY OR
ALLEGE THAT IN THAT DECISION OF
THE VALUE ADJUSTMENT BOARD
THERE WAS SOME CONSTITUTIONAL
STATUTORY VIOLATION IN THE
DECISION OF THE BOARD, ISN'T
THAT WHAT THAT STATUTE IS
ADDRESSING?

>> YES, SIR. THAT'S RIGHT.
LET ME JUST ADDRESS THAT
STATUTE.

>> SO WE'RE TALKING ABOUT A
DIFFERENT ISSUE TODAY THAN WE
WERE TALKING ABOUT IN THE FUCHS
CASE THEN?

>> WE'RE TALKING ABOUT HERE IS A
PROPERTY APPRAISER DEFENDING
HIS WORK PRODUCT.

>> SO IT'S DIFFERENT THAN IN
FUCHS?

>> YES, SIR.
VERY DIFFERENT FROM THE FUCHS.
STATUTE IN FUCHS, PARTICULAR
STATUTE THAT YOU'RE TALKING
ABOUT, THAT SERIES OF STATUTES
CAME INTO BEING IN THE MID
'70s.

>> TAX -- IS THE TREND.

>> YES, SIR.
PRIOR TO THAT IF A BOARD RULED
AGAINST A PROPERTY APPRAISER HE
COULD NOT DO ANYTHING.
HE HAD NO AUTHORITY TO DO
ANYTHING.
SIMPLY HAD TO GO HOME.
NO MATTER WHAT THEY DID.
THEY HAD A SITUATION IN OVER IN
GADSDEN COUNTY, SPOONER CASE
CAME HERE WHICH IS EXACTLY THAT
SITUATION.
THE VAB WENT HAYWIRE.
BROUGHT THE DOR IN.
WE GOT TO FIX THIS. WE DON'T
WANT THIS ANYMORE.
>> EVEN NOW UNDER 194.1815 OF
THE SAME CHAPTER IF CITIZEN OR
TAXPAYER HAS A QUESTION ABOUT
THE CONSTITUTIONALITY OF THE
STATUTE, THAT CITIZEN DOES NOT
SUE THE PROPERTY APPRAISER.

THAT CITIZEN SUES THE HEAD OF
THE DEPARTMENT OF REVENUE.

>> NO, SIR.

THEY WOULD SUE THE PROPERTY
APPRAISER.

NOT NECESSARILY
CONSTITUTIONALITY.

JUST SAYS THAT, IF IT'S IN
VIOLATION OF THE CONSTITUTION,
HE HAS TO ADD THE DEPARTMENT OF
REVENUE AS PROPERTY APPRAISER.
ALWAYS HAS.

>> ASSESSMENT OF ANY TAX IS
CONTESTED ON THE GROUNDS IT IS
CONTRARY TO THE STATE
CONSTITUTION, THE OFFICIAL OF
THE STATE GOVERNMENT
RESPONSIBLE FOR THE OVERALL
SUPERVISION OF THE ASSESSMENT
SHALL BE MADE A PARTY.

>> SHALL BE ADDED, MADE A
PARTY, PREVIOUSLY UNDER THAT
SAME STATUTE IT SAYS WHOS THAT
TO BE A PARTY DEFENDANT.
IT LISTS PROPERTY APPRAISER.

>> I GUESS WHAT MY BASIC
POLICY QUESTION IS, UNDER YOUR
SCENARIO AND ARGUMENT, THERE
ARE THE 67 PROPERTY APPRAISERS
WHO ARE PRIMARY MINISTERIAL
OFFICERS, DO YOU AGREE?

>> WELL, THEY'RE, THEY DON'T --
THEY'RE CALLED CONSTITUTIONAL
OFFICERS BECAUSE THEY EXERCISE
PART OF THE SOVEREIGNTY OF
GOVERNMENT IN TAXATION.

>> THEY DON'T COLLECT OR
DISBURSE FUNDS, CORRECT?

>> THEY CONTROL THEM.

THE STATUTORY ADMONITION TALKS
ABOUT CONTROL AND DISBURSEMENT.
THEY CONTROL THE MONEY COMING
IN.

THAT'S WHAT TAXATION DOES.

THE COLLECTOR DOES NOT
SPECIFICALLY DISPERSE.

HE DISTRIBUTES TO THE COUNTY
AND SCHOOL AND CITIES.

>> WHO COLLECTS THE MONEY WHEN
IT COMES IN?

IS, DOES THE PROPERTY APPRAISER
COLLECT MONEY?

>> NO, SIR.

THE PROPERTY APPRAISER --

>> DOES THE PROPERTY APPRAISER
DISPERSE MONEY.

>> NO. HE EXTENDS TAXES.

>> VALUATION.

>> NO. HE EXTENDS TAXES.

CALCULATES TAXES AND EACH PART
AND COLLECTOR COLLECTS IT.

>> HE DOES THAT IN -- EVERY ONE OF
THE 67 DO THAT UNDER THE
REGULATION AND SUPERVISION OF
THE DEPARTMENT OF REVENUE,
CORRECT?

>> NOT SPECIFICALLY.

THEY DO IT UNDER THEIR OWN
STATUTORY AUTHORIZATION.

THEY WOULD DO IT WITHOUT THE
DEPARTMENT OF REVENUE INVOLVED.

>> I GUESS THE POINT I'M TRYING
TO GOT TO CONSISTENCY IN THE
STATE.

UNDER YOUR VIEW, ANY INDIVIDUAL
PROPERTY APPRAISER CAN
CHALLENGE THE CONSTITUTIONALITY
OF A STATUTORY EXEMPTION OR ANY
OTHER STATUTE RELATED TO
ASSESSMENT?

>> WELL IT WOULD HAVE TO BE OF
A STATUTORY EXEMPTION OR SOME
THINGS THAT DIRECTLY AFFECTED
HIS DUTY AND PREVENTED HIM
BEING THE PROPER CONSTITUTIONAL
OFFICER IN ASSESSING PROPERTY.

>> WAIT A SECOND.

>> MA'AM?

>> MY PREMISE, AND MAYBE WE
WERE DEALING WITH THE DIFFERENT
SITUATION BECAUSE WE HAD THE
VALUE ADJUSTMENT BOARD IN FUCHS
BUT IS THIS CONCEPT THAT, BY
WHAT OCCURRED IN THIS CASE THE
PROPERTY APPRAISER HAD TO
DISREGARD A STATUTE PASSED BY
THE LEGISLATURE, CORRECT?

>> THAT WAS PART OF IT.

HE HAD TO RECOGNIZE THAT A
CONSTITUTIONAL AMENDMENT
FAILED.

>> THEY HAD TO IGNORE A
STATUTE?

HE HAD TO SAY THE STATUTE DOES
NOT APPLY

>> YES, MA'AM.

>> NOT JUST, BUT DOES IT APPLY
BECAUSE THE STATUTE IS NOT

CONSTITUTIONAL?

>> HE SAYING IT ISN'T, YES,
MA'AM.

>> THAT IS DIFFERENT.

THEY COULD MAKE DECISIONS TO
SEE IF THE STATUTE APPLY OR IT
DOESN'T.

AND THEIR GOAL IS TO GET AS
MUCH MONEY INTO THE COUNTY AS
POSSIBLE, CORRECT?

>> HE DOESN'T GET TOO MUCH
INVOLVED IN TRYING TO GET MUCH
MONEY.

YES, MA'AM.

>> BECAUSE I GUESS IT WOULD BE,
THE OTHER OPTION WOULD BE THEY
ACTUALLY GIVE EXEMPTIONS WHERE
CONSTITUTIONALLY PEOPLE AREN'T
REQUIRED TO DO IT BECAUSE THEY
THINK ANOTHER STATUTE IS NOT
CONSTITUTIONAL.

I GUESS MY PROBLEM WITH IT IS
THAT IN ANY OF EVENT WHETHER
IT'S GOOD FAITH, BAD FAITH,
POLITICALLY MOTIVATED OR NOT,
THEY ARE DISREGARDING A LAWFUL
STATUTE AND THEY ARE THEN
REQUIRING TAXPAYER TO BRING A
LAWSUIT.

AND --

>> THAT'S TRUE.

>> SEEMS TO ME, AGAIN, UNDER
WHAT CIRCUMSTANCE DO WE END UP
SAYING THAT REALLY PUTTING THE
PROPERTY APPRAISER BEING PLACED
AND RAISING IN DEFENSIVE
POSTURE WHEN WE KNOW IT'S THE
PROPERTY APPRAISER BY IGNORING
THE STATUTE THAT CREATED THIS
SITUATION TO BEGIN WITH?

>> LET ME SEE IF I CAN ANSWER
YOUR QUESTION LIKE THIS.

IF THE STATUTES ARE IN THERE,
194.036 HAD NOT BEEN ENACTED,
PROPERTY APPRAISER WOULD STILL
HAVE TO DEFEND THE LAWSUITS
EXACTLY THE SAME WAY.

>> YOU'RE NOT RELYING ON --

>> THEY'RE NOT INVOLVED IN
THIS.

>> YOU'RE NOT RELYING ON
194.036?

>> WE'RE NOT UNDER 036.

>> OKAY.

>> SO YOU'RE NOT RELYING ON THAT. SO YOU'RE SAYING THAT, IT IS JUST PART OF THE PROPERTY APPRAISER'S CONSTITUTIONAL DUTY TO IGNORE LAWFULLY PASSED STATUTES?

>> IF, IF IT, IF HE HAS A REASONABLE DOUBT AS TO THE VALIDITY OF THE STATUTE AND IT PREVENTS HIM FROM COLLECTING ASSESSMENT OF PROPERTY.

>> HOW IS THAT NOT DIRECTLY CONTRARY TO ATLANTIC COASTLINE?

>> IT'S CONTRARY TO ONE OF THE STATEMENTS IN ATLANTIC COASTLINE.

IT'S CONSISTENT WITH THE STATEMENTS IN CITY OF PENSACOLA VERSUS KING, STATE v. HALE, LEWIS, THE OTHER CASE.

CONSISTENT WITH THE ACTION. QUITE A FEW CASES READ IT LIKE THIS.

THIS IS EXCEPTIONS.

OR THE CITING FROM OLD CASE THE COHN CASE, HEAL SAID THE SAME THING.

WHERE HE IS CHARGED WITH A CONTROL AND DISPERSEMENT OF PUBLIC FUNDS.

NOW HE HAS THE TOTAL CONTROL OVER WHAT MONEY IS COMING INTO THAT TREASURY, INTO THE COUNTY COFFERS.

NOBODY ELSE HAS IT.

HE IS ONLY ONE.

>> IF WE ACCEPT YOUR ARGUMENT, A CLERK OF THE COURT, THERE IS NEW STATUTE PASSED TO RAISE ADDITIONAL REVENUES FOR THE STATE AND THE CLERK OF THE COURT REASONABLY AND HONESTLY BELIEVE THAT THAT IMPOSING THAT STATUTE VIOLATES A CONSTITUTIONAL PROVISION, THEN THE CLERK OF THE COURT COULD REFUSE TO --

>> KNOWS.

>> WHY NOT?

>> HE IS NOT A CONSTITUTIONAL SOVEREIGN.

HE IS NOT EXERCISING ANY PART OF THE SOVEREIGNTY IN COLLECTION OF TAXES.

ONLY PROPERTY APPRAISER HIS.

>> HE IS CONSTITUTIONAL OFFICER COLLECTING FEES.

>> HE IS COLLECTING FEES.

THE ASSESSOR IS THE ONLY PERSON, PROPERTY APPRAISER IS ONLY PERSON IN THE COUNTY THAT CAN HAVE ANYTHING TO DO WITH HOW MUCH MONEY COMES IN FROM AD VALOREM TAXES.

>> YOU'RE LIMITING THIS TO PROPERTY APPRAISERS.

>> SIR?

>> YOU'RE LIMITING YOUR ISSUE TO PROPERTY APPRAISERS.

SEEMS TO ME THERE IS AT LEAST A POTENTIAL FOR BROADENING A HOLDING THAT A PUBLIC OFFICIAL WHO IS IN CHARGE OF APPLYING AND IMPLEMENTING A STATUTE, MAY VIOLATE THE STATUTE IF THAT PUBLIC OFFICIAL BELIEVES, EVEN IN GOOD FAITH THAT THE STATUTE IS UNCONSTITUTIONAL.

AND EVEN IF WE LIMIT IT TO OFFICERS THAT ARE DESIGNATED IN THE CONSTITUTION WE HAVE COUNTY SHERIFFS, WE HAVE THE ATTORNEY GENERAL, WE HAVE THE GOVERNOR, WE HAVE SEVERAL OTHER EXECUTIVE OFFICIALS WHO COULD USE A HOLDING LIKE THAT AND SAY, LOOK, WE'RE USING IT DEFENSIVELY BUT, WE JUST, WE BELIEVE THAT IT'S UNCONSTITUTIONAL AND WE'RE NOT GOING TO APPLY THE STATUTE AND WE'RE GOING TO WAIT UNTIL WE GET SUED AND ARGUE WHY IT'S UNCONSTITUTIONAL.

THAT'S THE BASIC PROBLEM SOME OF US ARE HAVING.

>> LET ME ANSWER YOUR QUESTION LIKE THIS.

EARLIER CASES ONE HELD THAT THE STATE ROAD DEPARTMENT COULD DO IT BECAUSE IT WOULD HAVE TO EXPEND MONEY AND COULD CHALLENGE IT.

YOU HAVE TWO THAT I'VE CITED IN THE BRIEFS; YOU HAVE THE GREEN CASE, THE DICKINSON CASE, BOTH SAID THE STATE COMPTROLLER CAN DO IT.

AND THE REASON FOR IT IS
BECAUSE YOU HAVE THE PUBLIC
FUND ELEMENT OF IT INVOLVED.
YOU HAD, --

>> WHY ISN'T A BETTER
JURISPRUDENCE ACROSS
THE STATE --

>> SIR?

>> WHY ISN'T IT BETTER
JURISPRUDENCE ACROSS THE STATE
TO SAY A PUBLIC OFFICIAL MUST
ENFORCE THE LAW AS WRITTEN
UNTIL IT'S DECLARED
UNCONSTITUTIONAL AND IF THAT
PUBLIC OFFICIAL BELIEVES THAT A
STATUTE IS UNCONSTITUTIONAL,
THE OFFICIAL CAN FILE A
DECLARATORY JUDGMENT ACTION IN
THE MEANTIME TO HAVE IT
DECLARED SO BUT, MUST ENFORCE
IT UNTIL A COURT DETERMINES
OTHERWISE?

>> THEN YOU WOULD HAVE TO HAVE
A LEGISLATIVE ENACTMENT
AUTHORIZING THE PROPERTY
APPRAISER TO DO THAT.
SEE HE DOESN'T HAVE THE
AUTHORITY TO INITIATE SUITS
EXCEPT WHAT WAS DONE IN 194 IN
THE '70s.

HE CAN'T FILE A SUIT.
HE CAN ONLY DEFEND HIS
ASSESSMENTS.

>> ALLOW --

>> SIR?

>> LET THE LEGISLATURE AMEND
THE STATUTE.

>> AND THE OTHER SIDE --

>> OR LET THE PROPERTY
APPRAISERS, GET, WHO HAVE, I'M
SURE YOU HAVE AN ORGANIZATION
LIKE THE CLERKS, LOBBY THE
LEGISLATURE TO CHANGE WHAT THEY
PERCEIVE TO BE AN
UNCONSTITUTIONAL LAW.

>> WELL, I CAN'T REALLY ANSWER
WHY SOMETIMES THE LEGISLATURE
DOES THINGS IT DOES BUT --

>> LET ME ASK YOU --

>> THEY DO.

>> LET ME ASK YOU A SOFTBALL
QUESTION.

>> ALL RIGHT, SIR.

>> TO PLAY IT OUT BECAUSE PART

OF THE LANGUAGE IN THESE DECISIONS HAVE HAD TO DO WITH THE OFFICIAL HAVING SOME PERSONAL STAKE OR EXPOSURE TO THE THING.

LET'S SAY THAT THE LEGISLATURE PASSED A LAW AND THEY HAD A PROVISION IN THERE THAT SAID THE APPRAISER, HERE'S THE STANDARDS FOR APPRAISING PROPERTY AND EVERYTHING. AND THEN THEY HAD A CLAUSE, BUT IN THE CASE WHERE THE PROPERTY OWNER IS A FEMALE, THE APPRAISER SHALL DOUBLE THE VALUATION PREVIOUSLY DETERMINED OKAY?

>> I DON'T THINK HE WOULD DO IT.

>> TELL ME, TELL ME, WHAT THE PROPERTY APPRAISER IS TO DO IN A SITUATION LIKE THAT.

>> I THINK --

>> DIFFERENTIATE FOR ME THE OFFICIAL LIABILITY OR THE PERSONAL LIABILITY, WHAT WOULD, HOW WOULD THAT PLAY OUT? BECAUSE I'M TRYING TO GIVE OBVIOUSLY AN EXTREME EXAMPLE.

>> I UNDERSTAND.

>> BUT ON THE OTHER HAND, LOOKING AT OUR HISTORY, THAT SO WHAT WOULD HAPPEN IN A CASE LIKE THAT?

>> I WOULD THINK THAT, I WOULD CERTAINLY HOPE THAT THE PROPERTY APPRAISERS THAT I REPRESENT WOULD NOT DO IT. THAT WE'RE NOT GOING TO DISCRIMINATE.

>> COULD YOU AS YOUR OPPONENT ARGUED IN THAT CASE RAISE THAT QUESTION WITH THE ATTORNEY GENERAL AND SEEK THE ATTORNEY GENERAL'S HELP IN CHALLENGING THE CONSTITUTIONALITY OF THAT LAW?

>> I DON'T KNOW IF HE COULD OR NOT BUT IT'S A ROUNDABOUT WAY TO GO.

PERHAPS THE ATTORNEY GENERAL SAYS I'M TOO BUSY.

THEY DON'T HAVE TO DO ANYTHING. THEY, HE DOESN'T HAVE TO FILE

-- WHERE HE WANTS TO FILE.

>> I DON'T KNOW IF YOU HAVE READ, I DON'T WANT TO CATCH YOU OFF-GUARD, SECTION 194.181, SUBPARAGRAPH 6, SAYS, IN ANY SUIT IN WHICH THE VALIDITY OF ANY STATUTE OR REGULATION FOUND IN OR ISSUED PURSUANT TO CHAPTERS 192 TO 197, INCLUSIVE, IS CONTESTED, THE PUBLIC OFFICER AFFECTED MAY BE A PARTY PLAINTIFF.

>> YES, SIR.

>> SO THAT SEEMS TO AUTHORIZE A PROPERTY APPRAISER, IF AFFECTED BY THE CONSTITUTIONALITY OF A STATUTE WITHIN 192 TO 197, TO FILE A DECLARATORY JUDGMENT ACTION.

>> I WOULD BEG TO DIFFER, YOUR HONOR.

THAT IS PART OF STATUTE NAMING DEFENDANTS TO LAWSUIT.

THE DEPARTMENT OF REVENUE IS NAMED AFTER THE ASSESSOR AND PROPERTY APPRAISER AND --

>> SAYS THE PUBLIC OFFICER AFFECTED MAY BE NAMED TO A PARTY PLAINTIFF.

>> YES, SIR.

THAT PARTICULAR PART OF IT, HAS NEVER BEEN TESTED AS TO WHAT ACTUALLY IT IS INTENDED TO MEAN.

IT'S BEEN THERE A LONG TIME.

>> BUT AGAIN, MAYBE THAT IS BETTER THING FOR SOMEONE TO TEST, WHETHER THEY CAN GET A LAWFUL DETERMINATION OF SOMETHING THAT IS OBVIOUSLY OF CONCERN TO PROPERTY APPRAISERS.

>> YOU HAVE TO DECIDE WHO WOULD THE PROPERTY APPRAISER SUE?

YOU GOT TO HAVE A PARTY.

ONLY PERSON THEY CAN SUE IS THE ONE WITH INTEREST, TO BE THE PROPERTY OWNER.

AND GENERALLY YOU DON'T, YOU GENERALLY DEFEND SUITS FROM PROPERTY OWNERS.

ACCOMPLISH THE SAME THING. IF IT'S TAXABLE AS IN THIS CASE

WHEN THE CONSTITUTIONAL AMENDMENT FAILED, YOU PUT IT ON

THE TAX ROLL, YOU CAN ACCEPT IT OR CHALLENGE IT.

IF I HAVE ANY TIME LEFT CAN I ADDRESS MY OTHER ISSUE?

>> YOU DO HAVE FIVE MINUTES LEFT.

>> I DO?

ALL RIGHT.

THE OTHER ISSUE WHICH I BROUGHT TO THE COURT WAS WE THINK THAT THE DETERMINATION BY THE TRIAL COURT WHICH WAS UPHELD BY THE DISTRICT, THAT SAID THIS DISTRICT PROPERTY IS EXEMPT, IS ERRONEOUS.

WE THINK IT'S IN CONFLICT WITH THIS COURT'S DECISION IN GAINESVILLE, AND WHOLE LOT OF OTHER CASES THAT DEAL WITH WHAT CONSTITUTES A GOVERNMENTAL PURPOSE.

THE DISTRICT IS AN INDEPENDENT DISTRICT. IT WAS COMMUNITY DEVELOPMENT DISTRICT. IT WAS CREATED AT THE INSTANCE OF THE DEVELOPER.

WHEN YOU HAVE THOSE SITUATIONS THEY'RE FINANCING VEHICLES. THIS COURT SAID IN FRONTIER PROPERTIES IT'S NOT A GOVERNMENTAL, GOVERNMENT LIKE A COUNTY OR A CITY.

IN THIS CASE YOU HAD A DEVELOPER THAT STARTED IT OUT, THE GOLF COURSE, THE BAR, THE RESTAURANT, AND THE TIDE SHOP WERE NEVER OWNED BY THE DISTRICT TO START WITH.

SOME YEARS AFTER THE LOTS ARE SOLD AND EVERYTHING IS MOVING ALONG GOOD, THEN THE DEVELOPER SAYS I'M GOING TO GET OUT OF THE GOLF COURSE BUSINESS AND SELL OUT.

SO, HE IS READY TO DO THAT NOW. AND THEN THE DISTRICT, HE SAID I'LL SELL IT TO THE DISTRICT.

SO THE DISTRICT BORROWED 6.5 MILLION I THINK AND SIGNED A CONTRACT FOR \$180,000 A YEAR TO PAY THE MANAGEMENT COMPANY OF THE DEVELOPER TO DO EXACTLY THE SAME THING IT HAD BEEN DOING BEFORE -- GOLF COURSE.

>> WHAT IS THERE TO PROHIBIT A PUBLIC ENTITY FROM HIRING A MANAGEMENT COMPANY TO MANAGE THE PROPERTY?

PUBLIC ENTITIES DO THAT ALL THE TIME.

DOESN'T MAKE IT INTO A PRIVATE PROPERTY, NOR PRIVATELY OWNED, OR PRIVATELY OPERATED.

>> SOME DO IT AND SOMETIMES THEY LEASE IT BUT THEY DO IT'S TAXABLE.

>> LEASING IS DIFFERENT. I DON'T THINK THERE IS ANY LEASE HERE.

>> MANAGEMENT AGREEMENT FOR 9.9 YEARS.

AT 180,000 A YEAR AND THEY PAID THEM 6.2 MILLION.

>> IS THE PROPERTY MAKING A PROFIT?

IS THE GOLF COURSE SUPPOSED TO MAKE A PROFIT?

>> THEY MAKE \$180,000 A YEAR IN FEES.

>> BUT ARE THEY SUPPOSED TO MAKE A PROFIT?

>> THEY'RE PROFIT-MAKING COMPANY, YES, SIR.

>> NOT WHETHER THEY'RE PROFIT-MAKING COMPANY. IS THE GOLF COURSE --

>> I DON'T HAVE ANY IDEA.

>> -- SUPPOSED TO BE MAKING A PROFIT?

>> IT'S SUPPOSED TO MAKE ENOUGH TO RETIRE ENDEBTNESS AND PAY THE CONTRACT OBLIGATION.

IT'S A PRIVATE COMPANY.

IT DOESN'T CLAIM --

>> IS THE MANAGEMENT COMPANY SUPPOSED TO BE RECEIVING ANY OF THE PROFITS FROM THE GOLF COURSE?

>> YES, SIR.

>> THEY'RE RECEIVING PROFITS?

>> NO. IT RECEIVES A FEE.

>> RECEIVES A FEE BUT DOES NOT RECEIVE PROFITS?

>> THAT'S TRUE.

>> IS IT OPEN TO THE PUBLIC?

>> SIR?

TO ANYBODY.

FEES ARE 2500 TO \$3800.

FEE, IT'S A MONTHLY FEE WHEN YOU GO THERE.
JUST LIKE OTHER COURSES THAT ARE IN THE COUNTY.
IN GAINESVILLE THIS COURT SUGGESTED ON TELECOMMUNICATIONS PART OF IT, THAT WHEN THE CITY DECIDED IT WAS GOING TO GO INTO THE TELECOMMUNICATION BUSINESS IT DIDN'T APPEAR TO OFFER ANYTHING OTHER THAN, ANYTHING NEW.

THEY CLAIMED THIS IS BETTER FOR THE PUBLIC WELFARE.
THIS WOULD NOT BE EXCLUSIVE BECAUSE IT WAS ORIGINALLY OWNED BY THE MANAGEMENT COMPANY DEVELOPER AND STILL IS.
STILL IS OPERATED BY THEM EXACTLY THE SAME WAY.
AND IS NOT ESSENTIAL BECAUSE IT WAS NOT PART OF THE DISTRICT TO START WITH.

>> WAS GOLF COURSES ONE OF THOSE QUINTESSENTIAL KINDS OF AREAS WHERE WE HAVE PUBLIC GOLF COURSES ALL OVER THE UNITED STATES?

IT'S NOT A NEW AREA LIKE TELECOMMUNICATIONS.

>> AND A LOT OF PRIVATE ONES TOO.

>> RIGHT.

BUT WE HAVE JUST ABOUT EVERY COUNTY YOU FIND THERE IS PUBLIC GOLF COURSE.

>> SOMETIME I WOULD SAY YES. SOMETIMES I WOULD SAY NO. SEE IN A GOLF COURSE.

HAS A LITTLE COURSE OUT THERE. IT DEPENDS.

I THINK THAT'S WHAT IS THE CITY OF GAINESVILLE POINTED OUT. IT SAID IT HAD TO BE ESSENTIAL TO IT.

COULD NOT HAVE BEEN ESSENTIAL TO THE DISTRICT BECAUSE IT WASN'T THERE TO START WITH. IT WASN'T OWNED BY THE DISTRICT TO START WITH.

OWNED BY DEVELOPER. PRIVATE DEVELOPMENT.

THEY COULD GET MEMBERSHIP THERE.

OPEN TO THE PUBLIC.

NOW -- SIR?

>> DOES THE CONCEPT YOU'RE SAYING THESE MEMBERSHIP FEES AND THOSE KINDS OF THINGS, DOES THAT TAKE, IS THAT SOMETHING WE SHOULD BE LOOKING AT?

THIS IS REALLY OPERATING LIKE A PRIVATE COUNTRY CLUB UNDER THE NAME OF BEING SOMETHING PUBLIC?

>> LATTER PART IS WHAT YOU JUST SAID, YES, SIR.

>> IS IT?

>> THAT IS PERTINENT.

THE BAR, THE LIQUOR LICENSE OF THE BAR AND RESTAURANT, THAT WAS IN THE NAME OF THE MANAGEMENT COMPANY, NOT THE DISTRICT.

THE SHOP, THEY SELL CLOTHES.

THAT WAS HELD TAXABILITY.

GOLF COURSE IS WAS HELD EXEMPT.

>> LET'S MAKE SURE, RESTAURANT, BAR AND CLOTHING STORE ARE NOT SUBJECT?

>> NO, MA'AM.

THE SWIMMING POOL IS EXEMPTED.

THE SWIMMING POOL WAS DIFFERENT NOW.

I SAY IT WRONG I'M SORRY.

>> THE PRO SHOP --

>> PRO SHOP IS TAXABLE.

>> IS TAXABLE.

>> PRO SHOP, BAR, RESTAURANT, CLUBHOUSE WAS TAXABLE.

SWIMMING POOL, TENNIS COURTS WERE EXEMPTED.

PARK AREA WAS EXEMPTED.

620 ACRES OF, I THINK THEY CALL IT CONSERVATION LAND WAS HELD TAXABLE.

AND SOME OTHER STRIPS OF

PROPERTY WERE HELD TAXABLE.

BUT THE GOLF COURSE WHEN TITLE MOVED WAS EXEMPTED, HELD EXEMPT.

>> I KNOW I HAVE JUST A COUPLE OF MINUTES.

JUST BRIEFLY ON THE SECOND

ISSUE RAISED BY THE RESPONDENT.

I THINK THE COURT IS AWARE FROM

EVEN A BRIEF REVIEW OF THE

RECORD THAT THE TRIAL COURT

THOROUGHLY CONSIDERED VARIOUS

PARCELLS OF THE DISTRICT.
FOUND SOME OF THEM EXEMPT FROM
AD VALOREM TAXATION, SOME NOT.
WHAT THEY DID FIND OR WHERE THE
TRIAL COURT DID FIND AS EXEMPT,
WE BELIEVE AND CONTENDED AT
FIRST DISTRICT COURT OF APPEAL
WAS BASED ON COMPETENT
SUBSTANTIAL EVIDENCE.

THAT THE FIRST DISTRICT --

>> HOW MUCH IS THE MEMBERSHIP
FEE?

>> SORRY.

>> THERE IS MEMBERSHIP FEE TO
PLAY AT THIS GOLF COURSE?

>> NO. MEMBERS OF THE PUBLIC
CAN PLAY THERE WITHOUT HAVING
TO PAY A MEMBERSHIP FEE.

THERE ARE MEMBERS.

SO THERE --

>> GENERALLY OPEN TO THE
PUBLIC?

>> ABSOLUTELY.

>> GOT TO PAY THE GREENS FEES?

>> ABSOLUTELY.

I LIVE IN JACKSONVILLE.

I CAN DRIVE DOWN THERE PAY A
GREEN FEE AND RENT A CAR AND I
CAN PLAY.

THAT'S NOT AN ISSUE.

>> SO WHAT'S THE PURPOSE OF THE
MEMBERSHIP FEES?

>> YOU KNOW, QUITE FRANKLY I'M
NOT SURE THAT WAS REALLY EVEN
ADDRESSED AT TRIAL LEVEL AND --

>> THERE IS SOMETHING
DISCONCERTING ABOUT THAT MAKES
IT SOUND LIKE A COUNTRY CLUB.

>> IF I WERE TO SPECULATE, YOUR
HONOR, I WOULD SAY, MAYBE,
THERE IS SOME PART OF THE CLUB
OR MAYBE IT'S ACCESS TO THE BAR
AREA.

WELL, NO, I GUESS THE BAR WAS
OPEN TO THE PUBLIC AS WELL.
I QUITE FRANKLY DON'T KNOW THE
ANSWER TO THAT I WAS NOT TRIAL
COUNSEL.

I APOLOGIZE.

>> WAS IT CONTESTED BELOW
MEMBERSHIP FEES MADE IT A
PRIVATE ENTITY?

>> CERTAINLY THE FACT THAT
MEMBERSHIP FEES WERE CHARGED

WAS BEFORE THE TRIAL COURT AND,
I THINK MR. ^LEVY DID INCLUDE
THAT AMONG HIS ARGUMENTS.

>> THERE WAS NO EVIDENCE
PRESENTED ON WHAT MEMBERSHIP
GOT YOU?

>> YOUR HONOR, THERE MAY VERY
WELL HAVE BEEN, I JUST HAVE TO
APOLOGIZE SAY I DON'T KNOW THAT
FROM THE RECORD.

I DON'T RECALL THAT.

REALLY TO CONCLUDE IN MY
REMAINING 38 SECONDS, WE WOULD
ASK THIS COURT TO LOOK AT THE
REASONING AND RATIONALE IN SUN
'N LAKE WHICH WE'RE ASKING
COURT TO APPROVE AND DISAPPROVE
THE ZINGALE DECISION.

WE BELIEVE SUN 'N LAKE ANALYSIS
OF AND UNDERSTANDING OF
ATLANTIC COASTLINE AND BARR,
CORRECTLY PERCEIVED OR
CHARACTERIZED THE SITUATION
BEFORE IT, WHICH WAS --

>> I TAKE IT WHAT YOU WOULD ASK
THE COURT TO DO WOULD BE TO
LIMIT ITS STATEMENTS IN FUCHS
TO WHAT MR. ^LEVY WOULD, WOULD,
CONCEIVE WERE, HAVING TO DO
WITH APPEALS FROM THE
ADJUSTMENT BOARD?

>> THAT OR, IF ALSO IN
CONJUNCTION WITH OTHER TWO
RECOGNIZED EXCEPTIONS BY THIS
COURT SINCE 1922, PUBLIC FUNDS
OR PERSONAL INJURY, I DON'T
THINK THOSE APPLY HERE BUT, I
THINK THE DICTA IN FUCHS AND
LEWIS CAN BE HARMONIZED WITH
ATLANTIC IF THOSE
QUALIFICATIONS WERE ADDED.

>> SO WHY WOULD WE NOT JUST
ADDRESS THIS FOR WHAT IT IS
RATHER THAN SOME BROAD
STATEMENT FOR EVERY OFFICER IN
THE STATE OF FLORIDA IS
ADDRESSED TO THIS CASE?
THIS IS AN APPRAISER AND HOW
THIS ARISES?

IF THAT'S THE CASE, FUCHS
ADDRESSES WHAT IT ADDRESSES AND
THAT STATUTE APPLIES.

>> RIGHT.

>> SO IT'S REALLY DICTA.

IT'S WHAT THAT CASE IS ABOUT.
YET WE'RE SAYING THAT IS NOT
REALLY EVEN AN ISSUE HERE.
>> THE REASON I CALL IT,
CHARACTERIZE IT AS DICTA, YOUR
HONOR, IT REFERS BACK TO THE
LEWIS DICTA.
>> BECAUSE IT RELIED ON SOME
OTHER CASES?
>> RIGHT THAT'S WHY I
CHARACTERIZED IT THAT WAY.
IF I MIGHT RESPOND ONE MORE
THING THAT YOU SAID.
>> SURE.
>> I HAVE NO PROBLEM, AND I
THINK THE COURT CAN SEE I
DRAFTED MY BRIEF TO DEAL
SPECIFICALLY WITH PROPERTY
APPRAISERS.
I'M NOT NECESSARILY ASKING THIS
COURT TO MAKE A BROAD
CONSTITUTIONAL STATEMENT.
>> ALL RIGHT.
THANK YOU VERY MUCH.
THE COURT WILL TAKE THE CASE
UNDER ADVISEMENT.
WILL STAND IN RECESS UNTIL
TOMORROW MORNING.
>> ALL RISE.