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**Florida House of Representatives v. Charlie Crist
SC07-2154**

>> ALL RISE.

O YE, O YE, O YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL THOSE HAVING BUSINESS
BEFORE THIS COURT DRAW NIGH,
GIVE ATTENTION, AND YE SHALL BE
HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

>> GOOD MORNING.

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS.

WELCOME TO THE FLORIDA SUPREME
COURT AND OUR ORAL ARGUMENT
CALENDAR FOR WEDNESDAY, JANUARY
30th.

JUSTICE BELL IS NOT WITH US
THIS MORNING, BUT I ANTICIPATE
THAT HE WILL PARTICIPATE IN THE
DECISION.

CERTAINLY AS YOU ALL ARE WELL
AWARE, THE ARGUMENTS ARE ALL
TAPED AND AVAILABLE FOR ALL OF
US TO USE, SO THAT'S THE
STATUS.

THE CASE THIS MORNING IS THE
FLORIDA HOUSE OF
REPRESENTATIVES VERSUS THE
HONORABLE CHARLES CRIST.
PARTIES READY TO PROCEED.

MR. ^MILLS?

>> MAY IT PLEASE THE COURT.

MY NAME IS JON MILLS.

MY CO COUNSEL ARE TIM McLENDID
KNOW, JEREMIAH HAWKES AND
CARLOS MUNOZ JOINING US AT
THE TABLE.

WE ARE HERE TODAY BECAUSE A
DRAMATIC AND HISTORIC CHANGE IN
GAMBLING POLICY AND PUBLIC
POLICY IN THE STATE OF FLORIDA
THAT IS PURPORTED TO IMPLEMENT

CASINO GAMBLING ON INDIAN LAND
IN THE STATE.

>> LET ME ASK YOU THIS,
MR. ^MILLS.

IS YOUR POSITION, POSITION OF
YOUR PARTY THAT THE GOVERNOR
DOES NOT HAVE THE POWER AT ALL
TO INTER INTO A COMPACT OR ARE
YOU IN DISAGREEMENT WITH THIS
PARTICULAR COM-- CONTRACT --
COMPACT?

>> BY NATURE OF COMPACTS AS
DESCRIBED IN THE INDIAN GAMING
REGULATORY ACT, THEY ARE PIECES
OF PUBLIC POLICY, AND WE WOULD
REFER YOU TO THE VERY SPECIFIC

--

>> SO YOUR ANSWER IS THE
GOVERNOR DOESN'T HAVE THE POWER
TO ENTER INTO A COMPACT WITH A
TRIBE AT ALL.

>> THAT'S CORRECT.

>> NOW HASN'T THE GOVERNOR BEEN
NEGOTIATING IN SOME FORM OR
ANOTHER WITH THE KNOWLEDGE OF
THE LEGISLATURE TO ENTER INTO A
COMPACT SINCE 1991?

>> THE, NEGOTIATIONS HAVE BEEN
GOING ON FOR A LONG TIME, BUT
THE, THE QUESTION BEFORE THIS
COURT YOUR HONOR IS, IS THIS
PARTICULAR COMPACT LEGALLY
ENTERED INTO?

>> SO ARE YOU -- I MEAN THAT'S
WHAT I'M HAVING TROUBLE WITH
THAT WE PUT THE GOVERNOR OUT
THERE TO NEGOTIATE WITH THE
SEMINOLE INDIAN TRIBE, AND THEN
WE RUN INTO THIS TIME DEADLINE,
THE LEGISLATURE KNOWING THIS IS
GOING ON FAILS TO ACT, THEN WHY
ISN'T THE NECESSARY BUSINESS OF
THE GOVERNOR TO STEP IN WHEN
THE SECRETARY OF INTERIOR IS,
HAS FILED SUIT, OR HAS ISSUED
REGULATIONS?

>> THE NECESSARY BUSINESS OF
THE STATE, WHETHER IT INCLUDES
NEGOTIATING WITH A TRIBE OR
NOT, DOES NOT INCLUDE AGREEING
TO OTHERWISE ILLEGAL ACTIVITIES
IN THE STATE.

AND AGAIN -- WE HAVE TO GET
BACK TO THE SINGLE FOCAL POINT

IN QUESTION, THAT IS, DOES THIS GOVERNOR -- ANY GOVERNOR IN FLORIDA HAVE THE AUTHORITY TO EXECUTE A COMPACT?

THE QUESTION OF STATE LAW --

>> MR.^MILLS, I GUESS THIS GOES BACK TO WHETHER IF YOU CALL IT THE CHICKEN AND THE EGG, WHICH IS THE BROADER QUESTION OF DOES THE GOVERNOR HAVE GENERAL AUTHORITY TO ENTER INTO A COMPACT, AND IF WE ANALOGIZE OR INTO A CONTRACT.

THEN IF THE ANSWER TO THAT IS NO, YOU DON'T GO ANY FARTHER BUT WHAT IS WEAVED INTO THE ARGUMENT OF THE LEGISLATURE IS THAT THERE ARE SOME PARTS OF THE COMPACT THAT ARE PROHIBITED BY STATE LAW, SUCH AS THE, THE GAMING, THE, THE BANK GAMES. SO THAT, THAT'S, SO THE QUESTION -- IF WE STOP AT NUMBER ONE, WE DON'T GET TO TWO, SO THAT GOES BACK TO THE QUESTION.

WHAT IS YOUR LEGAL AUTHORITY FOR SAYING THAT THE GOVERNOR HAS NO AUTHORITY TO NEGOTIATE AND INTER INTO COMPACTS -- ENTER INTO COMPACTS WITH SOVEREIGN GOVERN -- OTHER GOVERN -- GOVERNMENTS, OFFICERS, ET CETERA.

WHAT IS THE AUTHORITY --

>> WELL, FIRST OF ALL, WE DON'T SUGGEST HE MAY OR MAY NOT HAVE THE AUTHORITY TO NEGOTIATE.

WHAT WE HAVE IS A COMPLETE -- COMPLETED COMPACT THAT PURPORTS TO HAVE LEGAL AUTHORITY IN THE STATE OF FLORIDA.

>> MR.^MILLS, WILL YOU PLEASE GO BACK --

>> THOSE ARE IT TWO DIFFERENT THINGS.

>> THE QUESTION HAS BEEN PRESENTED BY TWO DIFFERENT JUSTICES ASKING THE SAME QUESTION, AND I THINK REALLY WE NEED TO GET TO AN ANSWER.

>> ARE YOU TALKING ABOUT --

>> FUNDAMENTAL QUESTION.

>> THE NECESSARY BUSINESS

CLAUSE IN THE STATE
CONSTITUTION.

>> YES, SIR, I THINK THAT YOU
NEED TO GET TO THE VERY FIRST
QUESTION, AND THAT IS WHETHER
THERE IS POWER AT ALL TO ENTER
INTO A COMPACT, AND THEN LET'S
GO FROM THERE.

>> THE ANSWER IS NO.
THERE IS NOT A POWER TO ENTER
INTO AN INDIAN COMPACT BY THE
GOVERNOR INDIVIDUALLY.

>> OKAY.

>> SO YOU HAD AN, YOU HAD AN
INTERESTING ANSWER THERE,
THOUGH, WHERE IT SEEMS TO ME
THAT IF I'M MISQUOTING YOU, YOU
CORRECT ME, YOU SAID, WELL, THE
GOVERNOR DOES HAVE THE POWER TO
NEGOTIATE.

HOW CAN THERE BE ANY MEANINGFUL
NEGOTIATIONS IF HE ULTIMATELY
DOESN'T HAVE THE AUTHORITY TO
BIND THE STATE IN A, IN A, IN A
COMPACT?

HOW ABOUT, YOU KNOW, ONE OF THE
DIFFICULTIES THAT WE'RE HAVING
HERE IS, IS SORT OF THE SPECTER
OF HERE WE HAVE ALL THESE
MEMBERS OF THE HOUSE OF
REPRESENTATIVES, WE HAVE ALL
THESE MEMBERS OF THE STATE
SENATE, AND SO HOW, HOW DO YOU
PERCEIVE THAT THIS NEGOTIATION
THAT APPEARS TO BE MANDATED BY
FEDERAL LAW IS GOING TO GO ON
YOU KNOW, IF IT DOESN'T GO ON
WITH THE CHIEF EXECUTIVE
OFFICER OF THE STATE?

>> IT MAY WELL BE ABLE TO GO ON
WITH THE CHIEF EXECUTIVE
OFFICER OF THE STATE, BUT THE
ULTIMATE CONCLUSION, WE'RE
TALKING ABOUT A COMPLETED
COMPACT, AND TAKE FOR EXAMPLE
THE MANY SITUATIONS WHERE
STATES HAVE SUCCESSFULLY
NEGOTIATED COMPACTS THAT
INVOLVED THE LEGISLATURE, AND
WE HAVE VERY SPECIFICALLY CITED
AND MENTIONED TO YOU FIVE OTHER
SUPREME COURT CASES THAT HAVE
DIRECT -- DIRECTLY DEALT WITH
THIS SPECIFIC ISSUE, THE

SPECIFIC ISSUE BEING A COMPACT THAT IS PURPORTED TO BE CONCLUDED WITHOUT LEGISLATIVE INVOLVEMENT.

>> SO THOSE CASES, THOUGH, IN SOME CASES, THE LEGISLATURE GIVES THE GOVERNOR AUTHORIZATION AND NEGOTIATE.

IN OTHER CASES, THE GOVERNOR NEGOTIATED AND THE LEGISLATURE RATIFIES.

>> THAT'S RIGHT.

>> WHICH WAY ARE YOU ARGUING IS REQUIRED IN FLORIDA OR IS IT EITHER ONE AND WHY?

>> WELL, I WOULD SUGGEST IN FLORIDA THAT THIS COURT HAS CONTINUALLY POINTED OUT THAT THE SEPARATION OF POWERS IN FLORIDA IS MORE SEVERE AND MORE SERIOUS THAN IN MANY OTHER STATES.

SO THE LEGISLATURE CAN AUTHORIZE, AS A MATTER OF FACT, HOUSE BILL 209 BOTH DEALT WITH AUTHORIZATION AND RATIFICATION, BUT YOU RUN THE RISK IF YOU ONLY AUTHORIZE AND NOT RATIFY THAT THIS COURT MIGHT DETERMINE THAT THAT WAS UNREASONABLE DELEGATION OF AUTHORITY --

>> WELL, UNDER WHAT --

>> IF THE GOVERNOR GOES NEGOTIATE A CONTRACT, I THINK YOU STILL NEED, PARTICULARLY WHEN YOU HAVE CHAIN -- MAJOR CHANGES IN PUBLIC POLICY THAT DEAL WITH --

>> BUT, BUT MY PROBLEM WITH YOUR ARGUMENT IS THIS. WHAT IS THE, EITHER THE STATUTORY OR THE CONSTITUTIONAL BASIS FOR SAYING THAT THE GOVERNOR HAS TO GET THE AUTHORITY FROM THE LEGISLATURE IN ORDER TO, TO NEGOTIATE AND, AND ENTER INTO THIS KIND OF COMPACT?

I HAVE -- I HAVE NOT SEEN A STATUTORY PROVISION OR A CONSTITUTIONAL PROVISION THAT SAYS THIS IS WHAT HAS TO HAPPEN.

>> YOU'RE -- I HAVE TO LOOK AT THE CHARACTERISTICS OF COMPACT, WHICH IF YOU READ A COMPACT, THIS OR MANY OTHERS IT LOOKS LIKE A PIECE OF LEGISLATION.

THE AUTHORITY IS --

>> IN WHAT WAY?

GIVE US SUBSTANTIVE LEGISLATION THAT IS INVOLVED IN THIS COMPACT.

>> THE ISSUES DEALING WITH THE ALLOCATION OF FUNDS, THE ISSUES DEALING WITH THE AUTHORIZATION OF CLASS III GAMING, SOME OF WHICH ARE SPECIFICALLY ILLEGAL IN FLORIDA.

THERE IS NO QUESTION THAT THOSE ISSUES ARE LEGISLATIVE IN NATURE.

AND IF YOU'RE LOOKING AT WHAT ARE -- WHERE IN THE FLORIDA CONSTITUTION IT'S, IT'S SIMPLY ARTICLE II AND IT IS THE LEGISLATIVE ARTICLE THAT SAYS THE LEGISLATURE IS THE PLENARY PUBLIC POLICY AUTHORITY IN THE STATE.

THE GOVERNOR DOES NOT GET TO IMPLEMENT PUBLIC POLICY BY HIMSELF.

>> LET ME ASK YOU.

IF YOUR POSITION IS THAT THE GOVERNOR DID NOT HAVE THE END POWER, THEN WHAT THE GOVERNOR DID WOULD BE VOID.

RIGHT?

>> THAT'S CORRECT.

>> IS THAT CORRECT?

OKAY.

WHAT HAPPENS THEN IN THIS SITUATION?

>> WELL --

>> DID, DID JUDGE MIDDLEBROOKS CONCLUDE THE ACTION IN THE FEDERAL COURT?

THAT, THAT WAS BROUGHT AGAINST THE SECRETARY?

>> NO, THE ACTION ISN'T CONCLUDED SO THERE ARE TWO THINGS THAT COULD HAPPEN. THE MOST LOGICAL RESULT IS A CONVERSATION WITH THE LEGISLATURE, WHICH HAS HAPPENED IN MANY OTHER STATES AND TO

LOOK FOR AN APPROVAL OF A COMPACT THAT WOULD BE IN ACCORDANCE WITH THE FLORIDA STATUTE AND PUBLIC POLICY.

>> WELL, I GUESS --

>> THE OTHER ISSUE --

>> THE UNDERLYING QUESTION IS DO THE SECRETARY'S PROCEDURES GO INTO EFFECT?

THE FIFTH CIRCUIT SAID THOSE PROCEDURES ARE INVALID.

>> RIGHT.

THE CURRENT STATUS OF THAT CASE WOULD -- IF THE SECRETARY ENTERED INTO PROCEDURES IT WOULD LIKELY BE CHALLENGED BY THIS STATE UNDER THE SAME THEORY OF UNITED STATES v. TEXAS, WHICH IS FOR THE SECRETARY TO ACTUALLY SIMPLY ENTER A CLASS III GAMING ORDER VIOLATES IN FACT THE PROCESS IN THE INDIAN GAMING REGULATORY ACT.

SO THERE IS A VERY GOOD CHANCE THAT IF THIS WAS DECLARED IN VALID AND WE ONLY RELIED ON THE CONTINUED CASE, THAT THAT CASE ITSELF WOULD LIKELY BE CHALLENGED AND CERTAINLY WOULD QUESTION THE AUTHORITY.

>> WELL, I UNDERSTAND THAT THERE'S THAT CASE OUT OF THE FIFTH CIRCUIT, BUT IN FACT THE SECRETARY'S REGULATION, IF IT IS IMPLEMENTED, WOULD BE SOMETHING THAT WOULD IMPACT THE STATE AS FAR AS SEMINOLE TRIBES BEING ABLE TO ENTER INTO CLASS III GAMING, CORRECT?

>> CORRECT.

>> OKAY.

AND SO IN ORDER TO DEAL WITH THAT, ISN'T THE NECESSARY BUSINESS OF THE GOVERNOR TO TRY TO WORK OUT AN ARRANGEMENT WITH THE SEMINOLE TRIBE BEFORE THE SECRETARY OF STATE ACTS? THE SECRETARY OF INTERIOR ACTS.

>> WELL, THIS IS A CONVERSATION ABOUT TIMING AND EXPEDIENCY. RATHER THAN THE ULTIMATE DETERMINATION OF WHAT'S A

CONSTITUTIONAL ACT.

-- DETERMINATION OF WHAT'S A
CONSTITUTIONAL ACT.

WE HAVE TO JUDGE WHAT'S A
CONSTITUTIONAL ACT, NOT WHETHER
IT WOULD BE EXPEDIENT, WOULD
FACILITATE OR VOID --

>> WELL WE HAVE TO DETERMINE
WHAT NECESSARY BUSINESS IS.

>> WELL, NECESSARY BUSINESS.
THE HISTORY OF THAT CLAUSE IS
WELL HANDLED IN THE FLORIDA
SENATE'S BRIEF, AND IT APPEARS
TO BE NECESSARY BUSINESS IS

DEALING WITH OTHER
ADMINISTRATIVE OFFICERS IN THE
STATE OF FLORIDA.

AND EVEN IF NECESSARY BUSINESS
IS SOMETHING BEYOND THAT, THE
NECESSARY BUSINESS CAN'T
INCLUDE REACHING A COMPACT THAT
IN FACT VIOLATES STATUTES IN
FLORIDA AND THE -- STATUTES IN
FLORIDA AND THE OVERALL
PRINCIPLES.

>> BUT IT SEEMS TO ME THAT WE
GO BACK TO THIS ISSUE, THAT IF
THIS COMPACT DIDN'T CONTAIN
THAT PROVISION REGARDING THE
BANK GAMES, THE CARD GAMES,
OBVIOUSLY BOTH MIAMI-DADE JUST
APPROVED SLOT MACHINES, SLOT
MACHINES IT'S INEVITABLE THAT
THOSE SLOT MACHINES WOULD HAVE
TO BE ON THE, IN THE, INDIAN
CASINOS.

YOU THEN HAVE THE, I THINK
THERE WAS -- I MEAN, THERE WAS
NOTHING ELSE OTHER THAN THESE
BANK GAMES, WHICH MAY BE THE
BIG TICKET.

I DON'T -- YOU KNOW, I DON'T
KNOW.

THAT IS SEEMS TO BE AGAINST
ANYTHING THAT'S CURRENTLY IN
FLORIDA LAW.

DO YOU AGREE WITH THAT?

THAT IS, AS FAR AS JUST BECAUSE
YOU SAID IT'S -- IT WAS
REMAKING LAW, BUT I DON'T SEE
OTHER THAN THE, THE BANK GAMES
ANYTHING ABOUT THIS THAT IS
AGAINST PUBLIC POLICY, PLUS
IT'S GIVING THE STATE, YOU

KNOW, MILLIONS OF DOLLARS,
WHICH, I THINK IF I'M
UNDERSTANDING YOU, YOU'RE
SAYING THE GOVERNOR DOESN'T
EVEN HAVE THE AUTHORITY TO
RAISE REVENUE FOR THE STATE,
THAT ONLY THE LEGISLATURE CAN
DO THAT.

SO GIVE ME THOSE TWO THINGS.

>> WELL, I THINK THAT'S WHAT
THE CONSTITUTION SUGGESTS.
FURTHERMORE, IN ORDER TO RAISE
THAT REVENUE, THE GOVERNOR HAS
GIVEN SOMETHING UP, WHICH IS A
POLICY CHOICE WHICH MAY INCLUDE
BANK GAMES AND OTHERS.

>> YOU JUST SAID SOMETHING.
WE ARE CLEAR WITH EVERYONE
HERE, YOU SAID THE CONSTITUTION
SUGGESTS THAT.

YOU ARE -- YOU AGREE THAT THERE
IS NOTHING EXPLICIT IN THE
CONSTITUTION THAT ALLOCATES
POWER REGARDING THE AUTHORITY
TO ENTER INTO COMPACTS TO -- WE
KNOW IT'S NOT IN THE JUDICIAL
BRANCH, TO EITHER THE
LEGISLATIVE OR TO THE EXECUTIVE
BRANCH?

>> THERE'S NOTHING IN THE
CONSTITUTION THAT SUGGESTS THAT
THERE IS A, THERE IS NOTHING
THAT SAYS ONE BRANCH OR ANOTHER
DOES COMPACTS, BUT THERE -- BUT
THERE IS A PLENARY POWER TO
MAKE PUBLIC POLICY.

>> AND IT ALSO DOESN'T SAY THE
GOVERNOR HAS ABILITY TO DO
THINGS THAT ARE IN HIS VIEW IN
THE PUBLIC POLICY OF THE STATE.

I MEAN, IT'S NOT JUST THE
LEGISLATURE THAT GETS TO --
THEY GET TO MAKE THE LAWS AND
ALLOCATE REVENUE.
BUT I HOPE THAT WE DON'T THINK
THE GOVERNOR OF THIS STATE ALSO
DOESN'T HAVE A PRETTY STRONG
VOICE IN SETTLE PUBLIC POLICY.

>> GOVERNOR'S TOTALLY ENTITLED
TO EXERCISE HIS JUDGMENT ON A
BROAD RANGE OF ISSUES, BUT THE
NATURE OF THIS COMPACT, AND

AGAIN I REFER YOU TO THE CASES
IN NEW MEXICO, KANSAS, THE
CONSENSUS OF THESE CASES IS
THAT THE NATURE OF A COMPACT IS
LEGISLATIVE.

AND THAT THAT VERY SPECIFIC ACT
OF APPROVING IT WOULD PUT THE
GOVERNOR OVER THE LINE IN TERMS
OF SEPARATION OF POWERS.

>> IN ORDER TO -- WE GO INTO,
LOOKING INTO THE FUTURE, THIS
CASE IS GOING TO ESTABLISH SOME
VERY SIGNIFICANT PRECEDENT WITH
REGARD TO THE, THE
RELATIONSHIPS BETWEEN THESE TWO
BRANCHES, AND WE SEE, IN THE
FUTURE THINGS SUCH AS WATER,
AIR, THINGS OF VERY SIGNIFICANT
IN ADDITION TO WHETHER THIS IS
OR IS NOT.

IS IT YOUR VIEW THAT A GOVERNOR
WOULD NOT HAVE THE ABILITY TO
ENTER INTO COMPACTS WITH
GOVERNORS OF OTHER STATE WITH
REGARD TO WATER RIGHTS, AIR
RIGHTS, POLLUTION, THESE KINDS
OF THINGS?

BECAUSE THIS IS REALLY A
BROADER QUESTION THAN JUST A --

>> WELL, IN FACT WE ENUMERATED
A NUMBER OF COMPACTS THAT THE
GOVERNOR'S ENTERED INTO, AND
ALL THOSE WERE AUTHORIZED BY
THE LEGISLATURE.

AS A MATTER OF FACT, THERE'S A
COMPACT THAT'S BEEN ENTERED
INTO WITH THE SEMINOLE TRIBE
DEALING WITH WATER SO THIS
DOESN'T CONSTRAIN THE ABILITY
OF OTHER COMPACTS.

>> HOW ABOUT OTHER STATES,
THOUGH?

HOW ABOUT OTHER STATES?

>> OTHER STATES?

FLORIDA HAS ENTERED COMPACTS
THAT INVOLVE OTHER STATES, AND
THOSE HAVE BEEN AUTHORIZED, SO

--

>> WELL, IN ORDER TO DECIDE
THIS CASE, DO WE NEED TO REACH
THE BROADER ISSUE OF WHETHER
THE GOVERNOR IS EVER AUTHORIZED
TO EXECUTE COMPACTS OR CAN WE

NARROWLY DECIDE WHETHER HE WAS AUTHORIZED TO ENTER INTO THIS COMPACT?

>> I SEE I'M RUNNING OUT OF TIME BUT I WOULD LIKE TO RESERVE BUT I WILL ANSWER THAT IN THAT YOU CAN CERTAINLY MAKE THAT DECISION ON THIS COMPACT.

YOU CAN SAY THAT THIS COMPACT EXCEEDS THE AUTHORITY OF THE GOVERNOR IN TERMS OF LEGISLATIVE AUTHORITY AND VIOLATES THE SEPARATION OF POWERS.

>> WELL MY QUESTION IS THE OPPOSITE OF THIS IS THIS IS A PROCEEDING, SO ARE WE HERE JUST TO ANSWER HIS AUTHORITY WHETHER TO ENTER IN THESE KINDS OF AGREEMENTS AND IS THE QUESTION OF THE, THE PARTICULARS OF THIS AGREEMENT REALLY LEFT FOR ANOTHER DAY AND SOME KIND OF DECLARATORY JUDGMENT ACTION OR SOMETHING ELSE?

IS THAT REALLY A QUESTION THAT YOU ANSWER IN A QUO WARRANTO PROCEEDING?

>> YOU HAVE THE ENTIRE LEGAL ISSUE IN THE QUO WARRANTO PROCEEDING.

YOU HAVE THE COMPACT AS IT EXISTS. THE QUESTION IS DOES THAT COMPACT AS IT EXISTS VIOLATE THE FLORIDA CONSTITUTIONAL LAW?

SO YOU, YOU, THERE'S NO NEED FOR ANY OTHER ACTION BECAUSE THERE ARE NO NEED FOR ANY OTHER FACTS.

>> I'M GOING TO GIVE YOU OPPORTUNITY TO -- YOU'RE GOING TO HAVE PLENTY OF TIME. SO YOU HAVE THE OPPORTUNITY TO -- DID YOU HAVE THE OPPORTUNITY TO FINISH JUSTICE CANTERO'S ANSWER TO HIS QUESTION? I WANT TO BE SURE THAT YOU'RE AFFORDED THAT OPPORTUNITY. THAT WAS ON THE DO WE HAVE TO DECIDE A BROADER ISSUE OR THE MORE NARROW ISSUE IS WHERE HE

WAS PROBING AND I WOULD LIKE FOR YOU TO BE SURE THAT YOU HAVE THE OPPORTUNITY TO ANSWER THAT.

>> WELL, I THINK YOU HAVE TO DECIDE THE, THE CASE BEFORE YOU AS A QUO WARRANTO PROCEEDING ON WHETHER THE GOVERNOR HAS THE AUTHORITY TO ENTER INTO THIS COMPACT AND WE SUGGEST HE DOESN'T HAVE THE AUTHORITY TO DO THAT.

WE ALSO SUGGEST THAT AS A MATTER OF LAW THAT BECAUSE COMPACTS ARE IN THE NATURE OF LEGISLATION THERE PROBABLY CANNOT BE A COMPACT THAT WOULDN'T REQUIRE RATIFICATION.

THANK YOU.

>> MR. KISE.

WE RECOGNIZE THAT OUR QUESTIONING DOES TAKE UP SOME OF YOUR TIME AND WE'LL ACCOUNT FOR THAT.

OKAY.

>> MAY IT PLEASE THE COURT.

CHRISTOPHER KISE ON BEHALF OF THE GOVERNOR.

THE PETITIONERS, I THINK AS THIS COURT HAS JUST HEARD TAKE A NEAR LIMITLESS VIEW OF LEGISLATIVE POWER AND THEY SEEM TO --

>> LET ME NARROW THE ISSUE THOUGH.

IT SEEMS THAT IGRA IS DESIGNED TO LEVEL THE PLAYING FIELD AND TO SAY THAT IF A STATE ALLOWS GAMBLING FOR SOME PEOPLE IN SOME AREAS THEN IT MUST ALLOW INDIAN GAMING, BUT THIS COMPACT SEEMS TO GO BEYOND LEVELING THE PLAYING FIELD AND ALLOW THE TYPES OF BANK CARD GAMES THAT ARE NOT ALLOWED ANYWHERE IN FLORIDA AND IN FACT YOU HAVE A PART OF THE AGREEMENT IS EXCLUSIVITY.

NOT ONLY ARE YOU ALLOWED TO IT BUT WE AGREE THAT NOBODY ELSE IN FLORIDA IS GOING TO BE ALLOWED AND IF THEY ARE, YOU DON'T HAVE TO PAY US ANYMORE

MONEY.

IS THAT AN ACCURATE
DESCRIPTION?

>> IT IS AN ACCURATE
DESCRIPTION OF SOME OF THE
PROVISIONS OF THE COMPACT BUT I
THINK WE HAVE TO FOCUS --

>> AND THOSE ARE THE PROVISIONS
THAT I AM CONCERNED ABOUT,
WHICH IS THAT IT GOES BEYOND
LEVELING THE PLAYING FIELD AND
IT RENDERS LEGAL IN --
TERRITORY GAMBLING THAT IS NOT
LEGAL ANYWHERE ELSE IN THE
STATE.

AND THAT SEEMS IT TO BE A CLEAR
CHANGE OF PUBLIC POLICY AND,
AND A CHANGE IN SUBSTANTIVE
LAW.

>> THAT'S WHERE I WOULD
RESPECTFULLY DISAGREE WITH YOUR
HONOR BECAUSE IT IS NOT, IT IS
NOT AS MR. ^MILLS SAID OR IS THE
PREMISE OF I THINK YOUR
QUESTION, AND THAT IS THAT
THERE IS SOME DRAMATIC AND
HISTORIC CHANGE IN PUBLIC
POLICY.

THE CHANGE IN PUBLIC POLICY
TOOK PLACE BEFORE THIS GOVERNOR
EVER TOOK OFFICE.

THE PEOPLE, NOT EVEN THE
LEGISLATURE, THE PEOPLE OF THE
STATE OF FLORIDA BY STATEWIDE
REFERENDUM MADE AN EXPRESSION
AS TO THE PERMISSIBILITY OF
CLASS III GAMING IN THIS STATE.

>> NOW LET'S -- BECAUSE WE ARE
GOING TO GET INTO SOMETHING
THAT IS, I DON'T KNOW WHICH
LAYER ITS ON.

BUT YOU'RE GOING BACK TO THE
QUESTION OF WHETHER UNDER IGRA
THAT WHEN YOU SAY IF A STATE
PERMITS SUCH GAMBLING AND
GAMBLING IS ALLOWED AND THAT
ISSUE AS TO WHETHER BECAUSE
SLOT MACHINES, WHICH ARE CLASS
III ARE ALLOWED, THEN THAT BY
IGRA STANDARDS MEANS THE STATE
WOULD HAVE TO AUTHORIZE ANY
CLASS III GAMING.

IS THAT, IS THAT WHAT YOU'RE

SAYING NOW?

>> NOT EXACTLY, YOUR HONOR,
BECAUSE I'M NOT SAYING THAT IT
WOULD HAVE TO.

WHAT I'M SAYING IS THAT IS A
FEDERAL QUESTION.

WHAT WE ARE DEALING WITH IS THE
IMPLEMENTATION OF FEDERAL
POLICY A MATTER ABOUT WHICH THE
LEGISLATURE HAS NO ROLE.

>> THEN, THEN WHAT YOUR SAYING
IS THAT THIS IS SIMPLY, THIS
COMPACT IS MINISTERIAL, AND
THAT'S CERTAINLY ANYONE THAT
HAS READ IT KNOWS THERE IS
NOTHING MINISTERIAL ABOUT THIS
COMPACT.

ARE YOU SAYING THAT IT SIMPLY,
THAT ALL THE GOVERNOR WAS DOING
WAS FILLING IN THE BLANKS OF
SOMETHING THAT HE HAD NO POWER
TO CHANGE THE TERMS OF?

>> NO, YOUR HONOR.

WHAT I'M SAYING IS THE GOVERNOR
IS DOING WHAT EXECUTIVES LIKE
THE GOVERNOR DO EVERY DAY, THEY
INTERPRET AND APPLY LAW AS IT
IS WRITTEN.

THAT DOESN'T CHANGE THE LAW
THAT'S WRITTEN ON THE BOOKS --

>> CAN WE GET BACK TO WHAT
JUSTICE CANTERO SAID?

THERE'S A STATUTE THAT
SPECIFICALLY PROHIBITS BANK
GAMES IN THE STATE OF FLORIDA.

SO BE EXPLICIT.

BANK GAMES, I MEAN I DID NOT
KNOW THIS, YOU KNOW, BEFORE I
PREPARED FOR THIS, ARE GAMES
AGAINST THE HOUSE, SO THERE,
WHEN WE THINK OF LAS VEGAS AND
THE, YOU KNOW, PLAYING THOSE,
YOU KNOW, BLACKJACK AND
BACCARAT THAT YOU GOT THE GUY
THAT DEALS OUT THE CARDS AND
YOU'RE PLAYING AGAINST THE
HOUSE.

THAT'S NOW NOT ALLOWED IN ANY
PART OF THIS STATE IS THAT
CORRECT.

>> ANY PART THAT'S NOT
SOVEREIGN LAND, THAT'S CORRECT.

>> ALL RIGHT AND THERE IS NOTHING IN THE EXPRESSED OR IMPLIED -- OR HOW IT'S BEEN INTERPRETED OF THE FEDERAL LAW THAT WOULD SAY THAT THIS STATE WOULD BE REQUIRED BECAUSE SLOT MACHINES ARE NOW AUTHORIZED TO REQUIRE THERE TO BE BANKED GAMING ON INDIAN RESERVATIONS?

>> I WOULD RESPECTFULLY DISAGREE WITH THAT BECAUSE IT DEPENDS ON HOW YOU INTERPRET THE PHRASE SUCH GAMING UNDER IGRA AND THE I THINK THE MORE RATIONAL INTERPRETATION OF THAT SUCH GAMING MEANS THAT. COURTS HAVE GONE EITHER WAY AND WHAT GOVERNOR HAS DONE HERE IS WHAT GOVERNOR'S DO EVERY DAY. WHAT HE NEEDS DO. HE HASN'T CHANGED THE BATTLE PLAN. HE HAS SIMPLY TAKEN POLICY THAT IS SET, BOTH FEDERAL POLICY AND STATE POLICY AND WHERE IT INTERSECTS HE MADE A DECISION BECAUSE HE NEEDS TO MAKE A DECISION.

>> BUT THE WHOLE NATURE OF IGRA AND WHAT IT SETS OUT AS THE SUPREME COURT OF NEW YORK SAID, THE COURT OF APPEALS IN NEW YORK, AND THAT IS THAT THERE IS A WHOLE LIST OF POLICY DECISIONS THAT ARE MADE BY ENTERING INTO ONE OF THESE COMPACTS WITH THE TRIBES. AND I, WHY ISN'T THE STATE OF NEW YORK'S COURT OF LAST RESORT CORRECT?

THAT IN INSTANCES IN WHICH YOU HAVE THOSE TYPE OF POLICY DECISIONS, THAT THAT'S QUINTESSENTIAL A LEGISLATIVE DECISION TO MAKE?

>> I THINK YOUR QUESTION GOES TO THE POINT WE'RE TRYING TO MAKE, YOUR HONOR, RESPECTFULLY, AND THAT IS THAT YOU HAVE TO LOOK AT SUBSTANCE OVER FORM. THE PETITIONERS ARE SAYING THAT A COMPACT, A CONTRACT, THE GOVERNOR HAS NO AUTHORITY TO,

TO ENGAGE IN THAT ACTIVITY, AND WHAT WE'RE SAYING IS YOU NEED TO LOOK AT THE PARTICULARS AND I BELIEVE THE CASE YOU ARE LOOKING AT IS THE PATAKI CASE, THE NEW YORK CASE WHERE THERE WAS AN ALTERATION IN THE SCOPE OF AN EXISTING AGENCY'S FUNCTIONS, WHERE ANY GOVERNOR RUNS INTO A PROBLEM CONSTITUTIONALLY IS WHERE THE GOVERNOR STEPS INTO THE LEGISLATIVE ARENA THAT SIMPLY HAS NOT HAPPENED WITH THIS COMPACT BECAUSE THERE IS NO ALTERATION OF THE SCOPE OF EXISTING AGENCIES OR RESPONSIBILITY. THERE IS NO CREATION OF A NEW STATE AGENCY, THERE'S NO WAIVER OF SOVEREIGN IMMUNITY. I MEAN ALL OF THESE SPECIFIC POINTS --

>> BUT THERE IS THE PERMISSION TO ALLOW BANK, BANKED CARD GAMES, THAT IS UNLAWFUL IN THE STATE OF FLORIDA, THAT SEEMS TO ME TO BE QUINTESSENTIALLY A POLICY DECISION.

>> BUT YOUR HONOR, RESPECTFULLY, YOUR QUESTION PRESUMES THAT IS A MATTER OVER WHICH THE LEGISLATURE HAS SOVEREIGNTY IN THE FIRST PLACE AND ON SOVEREIGN INDIAN LAND, THEY HAVE NO ROLE THERE.

>> IGRA DOES NOT REQUIRE A STATE TO ENTER INTO A COMPACT? IS THAT CORRECT.

>> IT REQUIRES -- ONE OF TWO THINGS WOULD'VE HAPPENED HERE.

WE WOULD'VE ENTERED INTO A COMPACT OR AS REPRESENTED BY THE SECRETARY'S RATHER UNEQUIVOCAL LETTER --

>> BUT THE PROCEDURES DON'T ALLOW BANKED CARD GAMES.

>> WELL, I THINK THAT'S AN OPEN QUESTION.

THAT'S THE POINT IS THAT FEDERAL LAW WAS GOING TO BE IMPLEMENTED BY AN EXECUTIVE, WHETHER IT BE THE SECRETARY OF THE INTERIOR THAT'S AN

EXECUTIVE OR WHETHER IT BE THE GOVERNOR --

>> I THOUGHT THE PROPOSED PROCEDURES DID NOT PROVIDE FOR BANKED CARD GAMES.

>> THE PROPOSED PROCEDURES PROVIDED FOR SLOTS, WHICH AGAIN,, I WOULD, I WOULD POINT OUT THAT THE PETITIONER'S CLAIM EVEN THAT'S OFF THE TABLE WHICH FRANKLY IGNORES ALL THE PROVISIONS OF IGRA AND IT'S UNDERLYING SUBSTANCE AND THE QUESTION IS WHAT WOULD HAPPEN AFTERWARDS AND I BELIEVE JUSTICE WELLS ASKED THAT EARLIER --

>> WELL, MY QUESTION SPECIFICALLY WAS, DOES IGRA REQUIRE A STATE TO INTO A COMPACT AND THE I THINK THE ANSWER IS NO, IT REQUIRES A STATE TO NEGOTIATE.

>> THE POINT OF NEGOTIATION IS ENTRY OF A COMPACT.

I MEAN, OTHERWISE, IGRA GIVES THE STATES TWO CHOICES.

EITHER ENTER IN A PROJECT OR FACE PROCEDURES.

THOSE ARE THE CHOICES AND YOU ARE CORRECT TO SAY YOU DON'T HAVE TO ENTER INTO A CONTRACT BUT THEN WHAT HAPPENS IS THE POLICY IS DICTATED TO YOU. FLORIDA HAD TWO CHOICES. I'M SORRY.

>> LET'S SAY -- AGAIN I THINK YOU HAVE AN UPHILL ANSWER ON THIS ISSUE OF WHETHER BANKED CARD GAMES ARE REQUIRED ONCE THERE ARE SLOT MACHINES ARE AUTHORIZED.

I THINK THE WEIGHT OF AUTHORITY INTERPRETING FEDERAL LAW HAS GONE AGAINST YOU ON THAT BUT THERE IS THE SECOND ASPECT OF THAT THAT JUSTICE CANTERO HAD BROUGHT UP EARLIER, THE EXCLUSIVITY PART, WHICH IS IT'S NOT JUST SAYING AND THIS IS WHY OBVIOUSLY GULF STREAM IS INTERESTED, IT'S NOT SAYING THAT, THAT THE SEMINOLE TRIBES CAN HAVE THE BANKED CARD GAMES

BUT IT IS SAYING NOBODY ELSE
OTHER THAN THE TRIBES CAN HAVE
BANKED CARD GAMES OR THE, THE
AGREEMENT WILL BE INVALID, IS
THAT CORRECT?

>> WELL, YOUR HONOR, THE
GOVERNOR CERTAINLY COULDN'T SAY
THAT ANYONE ELSE HAS BANKED
CARD GAMES BECAUSE THAT WOULD
BE TERRITORY IN THE STATE OF
FLORIDA OVER WHICH THE
LEGISLATURE --

>> I AM NOT SAYING -- BUT HE IS
SAYING THAT THEY WILL HAVE --
HE IS GRANTING THEM EXCLUSIVE
RIGHTS.

>> HE'S INTERPRETING THE
FEDERAL STATUTE AND APPLYING IT
IN THIS CIRCUMSTANCE TO PROTECT
THE, THE FINANCIAL AND PUBLIC
INTEREST OF THE STATE.

IT'S AN OPEN QUESTION UNDER
FEDERAL LAW AS TO WHAT EXACTLY
SUCH GAMING MEANS, AND THERE
ARE INTERPRETATIONS EITHER WAY,
AND AGAIN, FRANKLY, I THINK
THAT THE, THE, THE MOST LOGICAL
INTERPRETATION IS IN FACT THE
WORD SUCH GAMING MEANS JUST
THAT, THE RUMSY CASE, THE
LEADER OF THE FACT ON THE CASE
THAT TAKES THE ALTERNATE VIEW
GOES THROUGH AN INCREDIBLE
CONTORTION TO ARRIVE AT THE
PROPOSITION THAT THE SAME
LANGUAGE USED TWICE IN THE SAME
STATUTE MEANS TWO DIFFERENT
THINGS.

>> I HAVE ANOTHER WAY OF ASKING
WHETHER THE CRIMINAL LAW HAS
BEEN ALTERED.

IF BEFORE THIS COMPACT WAS
ENTERED INTO WELL, IF ANYONE OR
ANY FACILITY, PARI-MUTUEL WAS
ENGAGED IN BANKED CARD GAMES,
THAT'S A CRIME, CORRECT?
A MISDEMEANOR?

>> AS LONG AS THAT -- ANYONE
THAT WAS ENGAGED IN THAT
ACTIVITY IN THE STATE OF
FLORIDA THAT WAS SUBJECT TO
REGULATION BY THE STATE OF
FLORIDA, THAT'S A VERY
IMPORTANT POINT RESPECTFULLY,

YOUR HONOR, THAT WE'RE NOT DEALING -- THIS MIGHT AS WELL BE A BOAT TO NOWHERE.

>> YOU'RE NOT SAYING THAT BEFORE THE COMPACT THE SEMINOLE TRIBES COULD'VE ENGAGED LAWFULLY IN FLORIDA IN BANKED GAMES.

>> CERTAINLY NOT BECAUSE THE COMPACT -- IGRA PROVIDES THERE'S TWO WAYS TO GO ABOUT -- THE ONLY WAY THAT THE INDIAN TRIBES CAN ENGAGE IN CLASS III GAMING ACTIVITIES ASSUMING PREREQUISITE IS MET IS THROUGH COMPACT OR PROCEDURES BUT FEDERAL LAW, THAT'S EXACTLY THE POINT, IT'S FEDERAL LAW.

THAT ESTABLISHES THE GROUND RULES OF THE GAME.

ONCE THE STATE MAKES THE FUNDAMENTAL POLICY CHOICE TO ALLOW CLASS III GAMING, IT IS NOW -- THAT POLICY CHOICE IS NOW REMOVED FROM STATE.

THEY HAVE DONE IT AND SO THE LEGISLATURE HERE HAS NO ABILITY TO TAKE THAT BACK BECAUSE THE CLASS III GAMING COMPACT WAS NOT MADE BY THE LEGISLATURE IT WAS MADE BY THE PEOPLE SO IT'S NOT EVEN A STATUTE THAT CAN BE REPEALED THE ONLY WAY TO UNRING THAT BELL WOULD BE TO PROMOTE A CONSTITUTIONAL AMENDMENT AND TO PULL IT OFF OUR CONSTITUTIONAL SO WE HAVE EVEN A FURTHER STEP REMOVED FROM LEGISLATIVE AUTHORITY HERE SO WHAT THE GOVERNOR HAS DONE APPROPRIATELY AS HE DOES EVERY DAY IS MAKE A BATTLEFIELD DECISION.

IT'S SUPER BOWL WEEK, CALL INAUDIBLE.

YOU DIDN'T REWRITE THE PLAYBOOK.

THE PLAYBOOK SAYS HERE ARE THE GROUND RULES.

THE FEDERAL GROUND RULES AND THE STATE GROUND RULES.

THE GOVERNOR TAKES THE CIRCUMSTANCES AS HE FINDS THEM AND HE MAKE AS DECISION BASED ON THOSE CIRCUMSTANCES AND IT'S

NOT A POLICY CHOICE.
THE POLICY CHOICE WAS ALREADY
MADE.

>> YOU -- I KNOW YOU'RE IN
YOUR, MR. ^RICHARDS' TIME BUT I
HAVE TO ASK THIS QUESTION.
YOU SAY THE GOVERNOR MAKES THREE
KINDS OF DECISIONS EVERY DAY.
UNDER THE LAW IN THIS STATE, AN
EXECUTIVE BRANCH AGENCY CANNOT
ENTER INTO CONTRACTS THAT ARE
GOING TO OBLIGATE THE STATE
UNLESS THE LEGISLATURE
AUTHORIZES THEM TO DO THAT.
IS THAT CORRECT?

>> CAN'T ENTER INTO A CONTRACT
THAT OBLIGATES THE STATE TO
SPEND REVENUE.
ANY CONTRACT THAT ENCROACHES
UPON THE LEGISLATIVE
AUTHORIZATION, APPROPRIATE
MONEY, HAS TO HAVE
AUTHORIZATION.

>> SO WHAT TYPE OF CONTRACTUAL
AGREEMENTS DOES THE GOVERNOR
ENTER INTO EVERY DAY?

>> VERY FEW.
MY POINT IS NOT THAT THE
GOVERNOR ENTERS INTO CONTRACTS
EVERY DAY.

MY POINT AND I MAY NOT HAVE
ARTICULATED IT CORRECTLY IS
THAT THE GOVERNOR MAKES
DECISIONS ABOUT THE
INTERPRETATION OF LAW EVERY
DAY.

YOU CAN'T EVERY SINGLE DAY GO
BACK TO THE LEGISLATURE AND ASK
WHAT DID YOU MEAN BY THIS.

YOU CAN'T ASK CONGRESS EVERY
DAY WHAT DID YOU MEAN BY THIS
YOU TAKE THE LAW AS YOU FIND IT
YOU INTERPRET IT TO THE BEST OF
YOUR ABILITY AND YOU APPLY T.
THAT DOESN'T MEAN THAT YOU
REWROTE THE LAW.

THANK YOU.

>> MAY IT PLEASE THE COURT.
I'M BARRY RICHARDS AND I AM
COUNSEL FOR THE SEMINOLE TRIBE
OF FLORIDA.

WITH THE COURT'S PERMISSION I'D
LIKE TO BEGIN BY ADDRESSING THE
ISSUE THAT WAS LAST DISCUSSED,

WHICH IS THE ISSUE OF THE BANKED CARD GAMES. AND I'D LIKE TO APPROACH WHAT MR.^{CIS} HAS SAID FROM A SLIGHTLY DIFFERENT PERSPECTIVE, ALBEIT SUPPORTING THE SAME POSITION THAT HE HAS. WHAT WE ARE REALLY DISCUSSING ON THE ISSUE OF BANKED CARD GAMES IS NOT THE RESPECTIVE POWERS OF THE LEGISLATURE AND THE GOVERNOR IN FLORIDA BUT AN INTERPRETATION OF FEDERAL LAW.

THE PHRASE IN FEDERAL LAW IN IGRA WHICH IS AMBIGUOUS SAYS THAT IF A STATE ALLOWS ANY PERSON FOR ANY PURPOSE TO ENGAGE IN CLASS III GAMING THEN THE TRIBES SHALL BE ENTITLED TO ENGAGE IN SUCH GAMING.

CLEARLY AN AMBIGUITY. THAT HAS BEEN INTERPRETED BY DIFFERENT COURTS THREE DIFFERENT WAYS.

THE MOST EXPANSIVE INTERPRETATION IS THAT IF A STATE ALLOWS ANY CLASS III GAMING, THE TRIBE SHALL BE ENTITLED TO ENGAGE ALL CLASS III GAMING.

THE MOST RESTRICTIVE INTERPRETATION HAS BEEN THAT THE TRIBE IS LIMITED TO THE PRECISE GAMES THAT HAVE BEEN APPROVED BY THE STATE, AND THE MIDDLE GROUND HAS BEEN THAT IT IS A CATEGORICAL ISSUE.

THAT IF THE STATE PERMITS CARD GAMES, THEN THE TRIBE CAN ENGAGE IN CARD GAMES.

>> WELL, WHY ISN'T THE, YOUR MIDDLE INTERPRETATION, THAT IS, THAT THE TRIBE CAN ONLY ENGAGE IN THOSE KINDS OF CLASS III GAMES THAT OTHERS IN THE STATE CAN DO, WHY ISN'T THAT MORE REASONABLE?

BECAUSE THAT WOULD BE IN KEEPING WITH PUBLIC POLICY?

>> WELL, I THINK IT IS REASONABLE, BUT I DON'T KNOW THAT YOU AND I MEAN THE SAME THING BY CATEGORICAL.

THOSE -- THE CASES I'M
REFERRING WOULD CALL CARD GAMES
CATEGORICAL, WHEEL GAMES
CATEGORICAL, DICE GAMES,
CATEGORICAL.

>> WELL I AM TALKING ABOUT
THOSE SPECIFIC KINDS OF GAMES.

IN BROWARD COUNTY YOU CAN HAVE
THE SLOT MACHINES SO WHY ISN'T
IT REASONABLE THAT ONLY THOSE
KINDS OF GAMES THAT YOU CAN
HAVE AT THESE PARI-MUTUEL
PLACES, THOSE ARE THE SAME
KINDS OF GAMES THAT YOU HAVE TO
OFFER TO THE SEMINOLE TRIBE.

>> YOUR HONOR, I THINK THAT
WHAT YOU WERE SAYING MAKES
PERFECTLY GOOD SENSE AND WOULD
BE APPLICABLE IF WE ASSUME THAT
WHEN THE FEDERAL COURTS
EVENTUALLY GET AROUND TO
INTERPRETING THE AMBIGUITY IN
THE FEDERAL LAW, THAT WHAT THEY
SAY IS THAT THE TRIBES ARE
LIMITED TO THE TYPES OF GAMES,
TYPES AS YOU ARE USING THE
TERM, THAT THE STATE OTHERWISE
PERMITS.

THE PROBLEM IS WE DO NOT HAVE A
DEFINITIVE INTERPRETATION, AND
MY POINT IS THAT WHAT THIS
COURT IS BEING ASKED TO DO
ON THIS ISSUE IS NOT DECIDE A
QUESTION OF SEPARATION OF
POWERS BUT INTERPRET AN
AMBIGUITY IN A FEDERAL LAW, AND
I THINK THAT WHAT THIS MR. ^KISE
WAS SAYING IS THAT THE GOVERNOR
IN THE FIRST INSTANCE SETTLED
THIS NEGOTIATION BY
INTERPRETING ADMINISTRATIVELY
THAT AMBIGUITY.

>> SO DO WE HAVE THE RIGHT
RIGHT NOW UNDER THIS PROCEEDING
TO INTERPRET IT IN A MANNER
SUGGESTED BY THE PETITIONERS,
AND THAT IS THAT THE SPECIFIC
TYPE OF GAME IS WHAT THE, THE
SEMINOLES ARE NOW ENTITLED TO?

>> THAT BEGS ANOTHER QUESTION,
YOUR HONOR.
COME GOES TO THE ADVISORY

OPINION.

IN MY OPINION, YOU SHOULD NOT
DO THAT, BUT --

>> MY QUESTION S CAN WE DO
THAT?

>> WELL YOU CAN CERTAINLY, CAN
DO THAT, YOUR HONOR, AND I
DON'T KNOW ANYBODY WHO WOULD BE
ABLE TO TELL YOU THAT YOU COULD
NOT.

[LAUGHTER]

BUT, BUT THE, THE POINT HERE --

>> WE DID A PRETTY GOOD JOB IN
THE BRIEFS

[LAUGHTER]

>> WELL, --

[LAUGHTER]

IN THE BELIEF THAT I HAVE MADE
WHATEVER POINT I'M GOING TO
MAKE WITH THIS COURT WITH
REGARD TO THIS INTERPRETATION
QUESTION BECAUSE WHAT I'M
SAYING TO THE QUESTION IS THAT
THIS IS FOR ANOTHER DAY
INTERPRETING THAT STATUTE AND
IT DOESN'T REQUIRE THE COURT TO
MAKE THAT INTERPRETATION IN
ORDER TO MAKE THIS DECISION OF
SEPARATION OF POWERS.

>> WELL, LET ME ASK YOU THAT I
ASKED MR. ^MILLS AS FAR AS IF IT
IS DETERMINED THAT THE GOVERNOR
DID NOT HAVE THE POWER TO END,
ENTER INTO THIS COMPACT WHAT IS
THE STATUS OF THIS MATTER HERE
IN THAT MATTER?

>> IN MY OPINION, IT RETURNS TO
JUDGE MIDDLEBROOKS ON THE
TRIBE'S CLAIM THAT THEY ARE
ENTITLED TO, TO PROCEDURES --

>> HAS HE SET ANOTHER TIME?

I KNOW JANUARY 14th WAS THE
LAST DATE THAT I SAW, WHICH HE
EXTENDED.

>> HE ASKED FOR A STATUS
REPORT, WHICH HE WAS GIVEN LAST
WEEK, AND HE HAS NOT SCHEDULED
ANOTHER DATE YET.

BUT IN, IN OUR OPINION, BASE
SAID UPON THE POSTURE WE WERE
IN AT THE TIME, BASED UPON THE
DECISION OF THE 11th CIRCUIT,
THE TRIBE WOULD ABSOLUTELY BE

ENTITLED IF, IF THIS IS
DECLARED INVALID TO PROCEDURES
FROM THE SECRETARY --

>> AND THE PROCEDURES WOULD BE
INCLUDE EVERYTHING BUT NON, BUT
BANKED CARD GAMES AND WOULD
GIVE NO REVENUE TO THE STATE.

>> IT WOULD INCLUDE CLASS III
SLOT MACHINES, NO CARD GAMES,
NO REVENUE TO THE STATE, NO WAY
FOR THE STATE TO REGULATE THE
GAMING.

>> AND I'M SURE THE GOVERNOR IN
GOOD FAITH THOUGHT THAT THAT
WAS WHERE HE WAS BUT OUR
CONCERN STILL GOES BACK TO
WHETHER HE, WHETHER UNDER THE
SEPARATION OF POWERS, THE
ABILITY TO ENTER INTO COMPACTS
ARE WITHIN THE EXECUTIVE
BRANCH, AND I HAVE ANOTHER WAY
TO ASK YOU THIS.

DOES THE LEGISLATURE NOW, YOU
KNOW IN THE BALANCE OF POWERS
IF SOMEBODY, IF THE LEGISLATURE
DOES SOMETHING, IT'S
UNCONSTITUTIONAL COMES TO THE
COURT, WE INVALIDATE IT IF IT'S
UNCONSTITUTIONAL, IS THERE
SOMETHING NOW THAT THE
LEGISLATURE WHEN THEY MEET IN
MARCH CAN DO THAT WILL
INVALIDATE THIS CONTRACT, IN
OTHER WORDS, THIS COMPACT.
OR ARE THEY NOW WITHOUT ANY
ABILITY TO OVERRIDE WHAT THE
GOVERNOR HAS DONE?

>> LET ME TAKE IT IN THE ORDER
THAT YOU ASKED THE QUESTIONS.
JUSTICE PARIENTE.

AS TO THE QUESTION OF THE
RESPECTIVE POWER, IT HAS BEEN
NOTED BOTH BY THE BENCH AND I
THINK BY MR. ^MILLS THAT THE
FLORIDA CONSTITUTION DOES NOT
SPEAK TO THIS ISSUE AT ALL.
THIS COURT HAS SAID, THE FIRST
DISTRICT HAS SAID THAT UNDER
THE FLORIDA CONSTITUTION, IT
DOESN'T OPERATE ON SOME
NEBULOUS CONCEPT OF POLICY AND
AS ONE OF YOUR HONORS HAS SAID,
THE GOVERNOR, AND THIS COURT,
ALL THREE BRANCHES AFFECT

POLICY ALL THE TIME.

WHAT THE FLORIDA CONSTITUTION SAYS, AND I THINK IT'S THE ONLY MANAGEABLE -- I THINK IT'S THE ONLY MANAGEABLE RULES THAT ONE BRANCH CANNOT INTERFERE WITH OR EXERCISE THOSE POWERS THAT HAVE BEEN EXPRESSLY AND EXCLUSIVELY GRANTED TO ANOTHER, ANOTHER BRANCH.

THAT'S WHAT IT SAYS.

>> SO THE QUESTION BECOMES IF THE CONSTITUTION DOESN'T SPEAK AT ALL TO A CERTAIN POWER, DOES THAT MEAN THE POWER BELONGS TO THE LEGISLATURE AS ARE RESIDUAL POWER OF THE LEGISLATURE OR TO THE GOVERNOR.

>> IN FLORIDA, ON THIS ISSUE, AND THIS IS ONE OF THE REASONS THIS IS UNIQUE, THERE IS NO RESIDUAL POWER WHEN IT COMES TO GAMING ON AN INDIAN RESERVATION, WHICH IS WHY I DISAGREE WITH MR. ^MILLS THAT THE LEGISLATURE HAS PLENARY POWER OVER POLICY.

THAT IS TRUE --

>> WELL IF THE CONSTITUTION DOESN'T PROHIBIT THE LEGISLATURE FROM DOING SOMETHING, THEY CAN DO IT, BUT AS TO THE GOVERNOR, THE CONSTITUTION HAS TO EXPRESSLY PROVIDE FOR THE POWER TO ALLOW THE GOVERNOR TO EXERCISE IT.

>> I BELIEVE THE CONSTITUTION DOES PROVIDE FOR THAT POWER, SO LONG AS HE DOES NOT ENCROACH UPON A SPECIFIC FUNCTION OF THE LEGISLATURE --

>> COULD YOU RETURN TO JUSTICE PARIENTE'S QUESTION.

>> YES.

>> THAT I BELIEVE SHE ASKED YOU IS THERE SOMETHING THAT THE LEGISLATURE CAN DO WHEN THEY COME BACK INTO SESSION IN MARCH TO OVERTURN OR AFFECT THIS COMPACT, EVEN UNDER YOUR SCENARIO THAT THE GOVERNOR HAD THE AUTHORITY TO BEGIN WITH TO ENTER INTO THE COMPACT?

YOU KNOW, WE'RE --

>> RIGHT.

>> WE'RE GOING TO OBVIOUSLY STAY HERE UNTIL WE HAVE THE ANSWERS TO, TO THESE QUESTIONS.

>> YES, SIR.

>> BUT WOULD YOU TAKE THAT QUESTION HEAD ON AS DIRECTLY AS YOU CAN.

>> I BELIEVE THERE'S NOTHING THE LEGISLATURE CAN UNDO WHAT HAS BEEN DONE BUT I BELIEVE THAT THEY HAD 16 YEARS IN WHICH THEY COULD'VE DONE SOMETHING, AND HERE'S THE REASON.

--

>> WELL, WAIT, LET ME -- BUT CAN'T THEY, IF THEY, FOR EXAMPLE, DECIDE, AND THEY SAY, WE'RE GOING TO GIVE, WE'RE GOING TO PASS A LAW AND LET ALL PARI-MUTUEL FACILITIES HAVE BANKED CARD GAMES.

THEY CAN DO THAT, CAN'T THEY?

>> OF COURSE.

>> AND WON'T THAT -- WHAT WILL THAT DO TO THE COMPACT?

>> OF COURSE.

AND THIS COMPACT DOESN'T ATTEMPT TO TELL THE LEGISLATURE

--.

>> BUT DOESN'T THAT INVALIDATE THE COMPACT BY ITS TERMS IF THERE'S NO LONGER EXCLUSIVITY.

>> WELL, IT WOULD ELIMINATE THE PAYMENTS TO THE STATE OF FLORIDA.

IT WOULD NOT INVALIDATE THE COMPACT BUT THE STATE WOULD CEASE TO GET THE PAYMENTS.

>> SO THEY -- AS FAR AS -- SO THAT'S THE ONLY -- SO THERE'S NOTHING ELSE THAT THE -- SO THE LEGISLATURE COULD DO THAT TO OVERTURN THE POLICY IF IT'S A POLICY DECISION OF EXCLUSIVITY, CORRECT.

>> YES, YOUR HONOR, AND, AND IN ADDITION, THEY COULD APPROVE THE COMPACT, WHICH THIS IS -- THAT'S WHY THIS IS AN ADVISORY OPINION BEFORE THE LEGISLATURE

SPEAKS TO THE ISSUE.

>> SO WOULD YOU ADVISE THIS COURT TO DEFER DECISION UNTIL AFTER THE LEGISLATIVE DECISION?

>> THE ANSWER IS THAT I BELIEVE THAT WITH RESPECT TO THE ISSUE OF JURISDICTION, AND THIS BEING AN ADVISORY OPINION, I CERTAINLY THINK THE COURT SHOULD NOT NECESSARILY DEFER BUT SHOULD NOT TAKE UP THIS ISSUE --

>> I DON'T KNOW HOW, -- HOW IT IS IT AN ADVISORY OPINION IF GAMING HAS BEGUN AT THE SEMINOLE TRIBE CASINOS? I MEAN IT SEEMS TO ME IT'S A PRETTY LIVE CONTROVERSY.

>> LET ME ADDRESS THAT AND IF THE COURT WILL PERMIT ME I DO WANT TO GET BACK TO THE ORIGINAL QUESTION AND JUST FINISH THAT UP BEFORE I SIT DOWN BUT IN RESPONSE TO YOUR QUESTION, YOUR HONOR, SOMETIMES, YOU KNOW, WE ALL LEARN YOU WANT TO BE RESPONSIVE TO EVERY QUESTION BUT SOMETIMES YOU HAVE MULTIPLE QUESTIONS.

[LAUGHTER]

>> WE KNOW THAT.

>> WE HAVE TO PUT IT IN ORDER.

THE ANSWER, YOUR HONOR, IS THAT I'M SORRY NOW I'VE LOST MY PLACE.

ABOUT WHAT THE LEGISLATURE COULD DO WHEN THEY COME BACK TO SESSION.

>> RIGHT.

THE REASON THAT IT'S ADVISORY IS BECAUSE IT, THIS QUESTION POSED FOR THIS COURT TO OPINE ON REALLY DOESN'T INVOLVE CONDUCT BY THE GOVERNOR BUT CONDUCT BY THE LEGISLATURE BECAUSE WHAT THE SPEAKER IS REALLY ASKING THIS COURT TO TELL HIM IS WHETHER OR NOT THE LEGISLATURE, THE RAMIFICATIONS LEGALLY OF WHETHER OR NOT THE LEGISLATURE SPEAKS TO THIS BEFORE IT SPEAKS TO IT, AND

THAT'S THE ESSENCE OF AN
ADVISORY OPINION.

THAT'S WHY WE BELIEVE IT'S AN
ADVISORY OPINION, AND THAT'S
THE ONLY REASON THAT I TOOK
THAT POSITION.

IF I CAN GET BACK TO THE OTHER
POINT I WAS GOING TO MAKE,
WHICH I THINK REALLY IS
CRITICAL HERE, FOR 16 YEARS AS
THE COURT HAS NOTED, WHILE FOUR
GOVERNORS HAVE BEEN
NEGOTIATING WITH THE TRIBE,
AND DURING EIGHT OF THOSE
YEARS, WHILE THE LEGISLATURE
HAS HAD BILLS BEFORE IT THAT
WOULD'VE ADDRESSED THIS
QUESTION OF WHAT PART SHOULD BE
PLAYED BY THE LEGISLATURE, THE
LEGISLATURE HAS CHOSEN NOT TO
SPEAK.

IF THE LEGISLATURE HAD SPOKEN,
IF THE LEGISLATURE HAD PASSED A
BILL THAT SET FORTH A PROCEDURE
WHEREBY BOTH BRANCHES SHOULD
SPEAK TO THIS, THERE MIGHT HAVE
BEEN AN ARGUMENT.

>> YOU'RE NOT SUGGESTING THAT
WE APPLY THE DOCTRINE OF
LATCHES TO THE ACTIONS OF THE
COURT?

>> NOT AT ALL, YOUR HONOR.
I'M SAYING IN AN AREA IN WHICH
THE, IN WHICH THE CONSTITUTION
DOES NOT SPEAK TO WHICH BRANCH
HAS THE POWER TO ACT.

>> BUT THE LEGISLATURE -- THE
LEGISLATURE HAS THE POWER OR
NOT REGARDLESS OF WHETHER IT
DECIDED TO EXECUTE A COMPACT.
IF, IF IT HAD THE AUTHORITY TO
EXECUTE IT, AND IT DECIDED, IT
TOOK NO ACTION FOR 16 YEARS, I
GUESS THAT SEEMS TO ME A
DECISION NOT TO EXECUTE A
COMPACT.

IF YOU DIDN'T HAVE THE POWER,
THEN, EVEN IF IT HAD DONE SO
WITHIN THE LAST 16 YEARS, IT
WOULD'VE BEEN INVALID SO IT
SEEMS TO ME IT'S FAILURE TO ACT
IN THE LAST 16 YEARS IS
IRRELEVANT ONE WAY OR THE OTHER
TO WHETHER THE GOVERNOR OR THE

LEGISLATURE HAS THE POWER TO EXECUTE THE COMPACT.

>> I THINK IT'S NOT FOR THIS REASON, YOUR HONOR.

AGAIN, AND THIS IS UNIQUE, BY THE WAY.

I DON'T THINK THAT THIS IS NECESSARILY AN ISSUE THAT WOULD EVER APPLY TO ANYTHING ELSE BECAUSE OF THE VARIETY OF UNIQUE CIRCUMSTANCES THAT WE DON'T HAVE TO GET INTO BUT THAT THE COURT IS AWARE OF, BUT GETTING BACK TO THE ISSUE, THE ONLY THING THE CONSTITUTION SAYS ABOUT SEPARATION OF POWERS IS THAT ONE BRANCH SHALL NOT EXERCISE AND IT HAS BEEN INTERPRETED TO MEAN OR INTERFERE WITH THE EXERCISE OF AN EXCLUSIVE POWER GRANTED TO THE OTHER BRANCH EXPRESSLY BY THE CONSTITUTION.

THE CONSTITUTION DOESN'T SPEAK TO THIS.

WHAT I'M SAYING IS THAT IF THE LEGISLATURE HAD CHOSEN TO SET OUT SOME PROCEDURE IT MIGHT BE ARGUABLE THAT BECAUSE THE LEGISLATURE HAD THE POWER TO PASS THAT LAW, THAT THEREFORE THE EXECUTIVE BRANCH SHOULD BE HELD TO CONFORM WITH THAT PROCEDURE THEY SET FORTH BUT THE LEGISLATURE HAS CHOSEN NEVER TO SPEAK TO IT SO ALL THAT WE ARE LEFT WITH IS THE QUESTION OF WHETHER THE GOVERNOR HAS ENCROACHED UPON AN EXCLUSIVE POWER OF THE LEGISLATIVE BRANCH.

THAT'S THE ONLY THING WE'RE LEFT WITH.

>> AND IN ANSWERING THAT QUESTION, DON'T WE HAVE TO DECIDE WHETHER THIS COMPACT VIOLATES THE LAWS OF FLORIDA. BECAUSE IF IT CHANGES THE FLORIDA LAW, THAT SEEMS TO ME AN EXCLUSIVE PROVINCE OF THE LEGISLATURE.

>> IF, IF IT CHANGES A FLORIDA LAW OVER WHICH THE LEGISLATURE HAD ANY POWER TO ACT IN THE

FIRST PLACE BECAUSE --

>> WELL IN THE UNITED STATES HAS SAID THAT FLORIDA HAS THE POWER TO MAKE CRIMINAL LAWS ON TRIBAL LANDS THAT IT MAKES CRIMINAL IN THE STATE, CORRECT.

>> YES, BUT THE UNITED STATES SUPREME COURT IN THE CABAZONE CASE, WHICH IS THE CONTROLLING CASE, HAS SAID THAT WITH REGARD TO GAMING FLORIDA HAS NO LAWS BECAUSE THE ISSUE OF WHETHER IT'S CRIMINAL OR NOT CRIMINAL IS A QUESTION OF FEDERAL LAW AND THAT ONCE THE STATE ALLOWS CLASS III GAMING AT ALL THAT UNDER FEDERAL LAW IT IS CONSIDERED REGULATORY, NOT CRIMINAL FOR PURPOSES OF THAT FEDERAL ACT THAT GRANTED FLORIDA THE ABILITY TO ENFORCE FEDERAL LAW ON INDIAN LANDS SO WHAT WE ARE LEFT WITH IS IGRA IS THE SOLE SOURCE OF LAW WITH RESPECT TO FLORIDA'S AUTHORITY ON INDIAN RESERVATIONS REGARDING GAMING.

AND FLORIDA'S CRIMINAL LAWS DO NOT APPLY.

ONLY IGRA APPLIES, AND MY ONLY POINT HERE IS THAT WE, YOU CANNOT SAY THAT THE GOVERNOR CANNOT ENTER INTO ANY KIND OF AN AGREEMENT IN THIS SET OF CIRCUMSTANCES PERIOD BECAUSE THERE IS NO SOURCE OF LAW TO CONCLUDE THAT.

YOU HAVE TO SAY WHAT IS IN THE AGREEMENT.

AND IS THERE ANYTHING IN THE AGREEMENT BY WHICH THE GOVERNOR HAS ENCROACHED UPON AN EXCLUSIVE POWER OF THE LEGISLATURE?

AND THAT'S WHAT WE'RE TALKING ABOUT.

>> MR. RICHARD, YOU'RE WELL BEYOND YOUR TIME.

IF YOU COULD DRAW YOUR REMARKS TO A CONCLUSION, IF YOU WANT TO HAVE A CONCLUDING REMARK BECAUSE WE HAVE USED UP SOME OF YOUR TIME.

>> I APPRECIATE THE COURT'S COURTESY UNTIL WAITING UNTIL I HAD MADE MY CONCLUDING REMARKS, SO THANK YOU.

>> OKAY.

MR. ^MILLS.

>> MAY IT PLEASE THE COURT. TO RESPOND TO THE LAST QUESTION, THERE REALLY IS NO AMBIGUITY THAT THE CRIMINAL LAW OF FLORIDA WILL APPLY.

>> CAN I JUST --

>> THERE IS THE FEDERAL -- THE DEPARTMENT OF INTERIOR'S OWN REGULATIONS SAY IT MAKES IT UNLAWFUL FOR TRIBES TO OPERATE PARTICULAR CLASS III GAMES THAT LAW COMPLETELY AND AFFIRMATIVELY PROHIBITS, SO THERE ISN'T ANY AMBIGUITY.

>> I WANT TO JUST GO BACK TO THE QUESTION ABOUT THE SEPARATION OF POWERS AND THE FACT THAT IT'S NOT SET FORTH. WOULD THE GOVERNOR HAVE ANY ARGUMENT IF IT WAS THE LEGISLATURE THAT BOTH, YOU KNOW, THEY DESIGNATED SOMEBODY TO NEGOTIATE AND THEY THEN NEGOTIATED THE COMPACT? IS, AGAIN, GO BACK TO THIS ISSUE THAT THE LEGISLATURE ACTUALLY IS, IS THIS SOLE RECIPIENT OF THIS POWER BUT IT CAN GIVE IT TO ANOTHER BRANCH IF IT GIVES SPECIFIC GUIDELINES TO DO IT?

IS THAT YOUR ULTIMATE IF WE HAD TO GO BACK TO WHAT THE MAJOR HOLDING --

>> AS I UNDERSTAND THE QUESTION, THE LEGISLATURE COULD DELEGATE OR AUTHORIZE ANOTHER PARTY TO NEGOTIATE FOR THE STATE OF FLORIDA. AND COULD RATIFY.

IT DOESN'T HAVE TO BE THE GOVERNOR.

THE IMPORTANT THING DYING.

>> BUT, THE IMPORTANT QUESTION IS THE LEDGE -- YOUR CONTENTION IS IT'S THE LEGISLATIVE POWER EXCLUSIVELY TO ENTER INTO COMPACTS BECAUSE COMPACTS

INCLUDE POLICY DECISIONS THAT
ARE QUINTESENTIALLY
LEGISLATIVE?

>> EXACTLY.

BUT WHAT ALSO TO CONFIRM THE
PREVIOUS QUESTION THAT IN THIS
COMPACT, THE FACT THAT YOU CAN
IDENTIFY ONE PARTICULAR LAW
THAT WAS EXPLICITLY VIOLATED
WOULD BE ENOUGH TOO SAY THAT
THIS COMPACT VIOLATES IT.

>> WELL, IS IT YOUR POSITION IN
TERMS OF EARLIER -- THAT THE
GOVERNOR HAD THE AUTHORITY TO
NEGOTIATE THEN UNDER THE, THE
WAY THAT, THAT IF YOU COULD
DRAW UP THE PROCEDURE, THAT THE
GOVERNOR AFTER ENTERING INTO A
COMPACT AND WOULD -- THEN WOULD
CALL A SPECIAL SESSION OF THE
LEGISLATURE OR WOULD SUBMIT
THIS AT THE REGULAR SESSION OF
THE LEGISLATURE?

IS THAT -- IS THAT THAT HE
WOULD NEGOTIATE --

>> THAT IS CERTAINLY A
POTENTIAL AND THE GOVERNOR
COULD CALL A SPECIAL SESSION OF
THE LEGISLATURE AT ANY TIME TO
ADDRESS, TO ADDRESS THIS ISSUE.

AND IF, IF AN OUTGROWTH OF THIS
DECISION WAS THAT, THEN THE
GOVERNOR COULD CALL A SPECIAL
SESSION AND THERE COULD BE A
PUBLIC DISCUSSION.
WHICH HAS BEEN LACKING HERE AND
A PUBLIC DEBATE WHICH HAS BEEN
SO MUCH A PART OF THE GAMBLING
ISSUE IN THE STATE OF FLORIDA

--

>> BUT IF THE GOVERNOR COULD
NEGOTIATE AND THEY, SINCE
THIS CONTRACT HAS, THIS COMPACT
HAS GONE TO EFFECT, THERE
HASN'T BEEN A REGULAR SESSION
OF THE LEGISLATURE, AND THE
LEGISLATURE IS SAYING THAT IT
SHOULD RATIFY, WHY IS UNTIL THE
SESSION IS COMPLETE AND THERE
IS NO ACT EITHER TO REJECT OR
RATIFY, WHY SHOULD THE COURT BE
INVOLVED --.

>> THE CURRENT STATUS ITS IN

EFFECT.

IT'S GONE -- IT HAS BEEN
TREATED AS A COMPACT AND THE,
THE SECRETARY ALLOWED THE
PERIOD OF TIME TO PASS.

IT'S IN EFFECT.

GAMING IS GOING ON.

>> BUT THAT BRINGS US FULL
CIRCLE AROUND TO WHETHER THIS
REALLY SHOULD BE DEALT WITH,
QUOTE, AS A QUO WARRANTO
BECAUSE THE ISSUE IN A QUO
WARRANTO IS WHETHER THE OFFICER
EXCEEDED THE OFFICER'S
AUTHORITY.

>> WELL, YOUR HONOR, THAT
ACTUALLY IS THE PRECISE
QUESTION, AND I, FOR EXAMPLE,,

>> BUT IT'S NOT A PRECISE
QUESTION, IT SEEMS TO ME, IF
THE, WE -- THE GOVERNOR COULD
GO AHEAD AND ENTER INTO A
CONTRACT.

>> WELL --

>> WHAT SEEMS TO ME, AND I
THINK IT'S PERFECTLY RATIONAL
IS IT YOUR, YOU'RE LOOKING,
YOU'RE ASSERTING THAT THIS IS
SOMEWHAT LIKE A TREATY.
THAT THE PRESIDENT GOES OUT AND
NEGOTIATES A TREATY WITH
FOREIGN NATIONS AND THEN COMES
BACK AND BRINGS IT TO THE
SENATE FOR RATIFICATION.
BUT WE DON'T HAVE THAT TYPE OF
PROVISION IN THE STATE
CONSTITUTION.

>> WE DO NOT, AND BUT WE ALSO
DO NOT HAVE THE AUTHORITY FOR
THE GOVERNOR TO NEGOTIATE
EXCLUSIVELY MATTERS THAT
DIRECTLY AFFECT EXISTING
STATUTES, AND I AND I AGREE
WITH JUSTICE CANTERO'S POSITION
THAT THE LEGISLATURE HAS ACTED.

IT HAS ACTED BECAUSE OF THE
EXISTING STATUTES.

WE CAN OF COURSE THE GOVERNOR
CAN CALL A SPECIAL SESSION.
WE CAN CONSIDER HIS PROPOSALS
AND IT COULD BE NEGOTIATED.
NOW, THE ISSUE OF WHAT SUCH

GAMING MEANS WAS BROUGHT UP.
I WANTED TO EXPAND ON THAT
BECAUSE IT'S CLEAR THE FLOW OF
CASES ON THAT HAS CONCLUDED
THAT EACH GAME WILL BE
EXAMINED.

THE RUMSY CASE IS GOOD LAW.
THE ATTORNEY GENERAL OF THE
STATE OF FLORIDA OPINION TO
WHICH WE REFERRED HAS
THOROUGHLY CONSIDERED WHETHER
IF YOU APPROVE THE LOTTERY,
YOU'VE APPROVED CASINO
GAMBLING.

IT SIMPLY IS ILLOGICAL AND IT
ISN'T THE LAW AND THERE IS EVEN
A 1993 CASE BY JUDGE MARCUS IN
SUPREME COURT THAT DOES A
EXPOSITION ON WHETHER ONE CLASS
II MEANS ALL CLASS II AND HE
SAYS NO AND I THINK THAT'S A
VERY LOGICAL POSITION BUT WE
COME BACK TO, IF YOU WERE
ENTITLED TO INTERPRET FLORIDA
LAW.

THAT'S WHAT ALL OF THOSE HIGH
COURTS SAID THAT CONSIDERED A
COMPACT THAT WAS EXECUTED BY
THE GOVERNOR.

IT'S A QUESTION OF STATE LAW.
EVEN THERE WAS A FEDERAL COURT,
THE 10th CIRCUIT IN PUEBLO
SANTA ANA REVIEWED THE CASE IN
WHICH THE SUPREME COURT SAID
IT'S UNLAWFUL FOR THE GOVERNOR
TO ENTER INTO A COMPACT AND
THEY SAID IT IS A DECISION OF
STATE LAW.

IT IS A DECISION OF THE NEW
MEXICO SUPREME COURT.

>> WHAT IF THE GOVERNOR
WOULD'VE EXECUTED A COMPACT THAT
PERMITTED SLOT MACHINES ON
INDIAN LAND?

>> WELL, OUR POSITION WOULD BE
THAT IF HE DID THAT, HE
NEGOTIATED SOMETHING AWAY.
AND THAT THERE IS A SERIES OF
POLICY DECISIONS.

OF COURSE, AS SOMEONE HAS
SUGGESTED, THAT ISN'T THE
COMPACT THAT IS BEFORE YOU
TODAY.

BEFORE WE -- BUT WE SUGGESTED

ITS DIFFICULT FOR ANY COMPACT
BECAUSE IT'S COMPREHENSIVE
POLICY NATURE WHICH IS THE
CONCLUSION OF SEVERAL OF THESE
COURTS THAT WE HAVE REFERRED
TO.

THE CONSENSUS OF WHICH IS IT'S
FUNDAMENTALLY A LEGISLATIVE
POSITION.

>> NOW WHEN YOU SAY THAT, THAT
IS THAT IF IT'S JUST SIMPLY
ALLOWED THE SLOT MACHINES AND
EVERYTHING THAT EVERYONE AGREES
IS ALLOWED IN FLORIDA, AND IT
BROUGHT REVENUE INTO THE STATE
THAT BECAUSE IT INVOLVED POLICY
IT MAKES ME THINK OF EVERY TIME
WHEN THE COURT INTERPRETS A
STATUTE AND PEOPLE THAT DON'T
LIKE -- OUR DECISION SAY WE ARE
ENGAGED IN POLICYMAKING.

AS WE SAID BEFORE, THE
GOVERNOR, WE HOPE, IS ENGAGED
EVERY DAY IN POLICYMAKING SO
SIMPLY GIVING IT THAT LABEL
DOESN'T MAKE IT
UNCONSTITUTIONAL, DOES IT,
MR. ^MILLS.

>> I UNDERSTAND THAT BUT AGAIN
YOU CAN REFER TO THIS
PARTICULAR COMPACT.
AND I THINK YOU HAVE TO KEEP IN
MIND THAT THE COMPACT UNDER
MATTER OF LAW IS NEGOTIATED
WITH THE STATE AND THE GOVERNOR
IS NOT THE STATE.

THAT, THAT IS --

>> THE LEGISLATURE IS NOT THE
STATE EITHER.

>> THE LEGISLATE IS NOT THE
STATE EITHER.

>> WHO IS THE PARTY?

>> IGRA.

>> WHO IS DEFENDING THE CASE?

>> THE ATTORNEY GENERAL.

>> THE EXECUTIVE BRANCH.

>> THE EXECUTIVE.

BUT, BUT BACK AGAIN TO WHAT IS
A COMPACT AND WHEN YOU LOOK AT
IGRA AND IT DEFINES A COMPACT
AND IT SAYS HOW IT'S TO BE
NEGOTIATED, IT'S TO BE
NEGOTIATED BETWEEN TWO
SOVEREIGNS, THE INDIANS AND THE

STATE.

AND SO IT'S A MATTER OF STATE POLICY AS TO WHAT SHOULD BE CONTAINED TO THAT AND WHO COULD BIND THE STATE.

>> MR.^MILLS, IF YOU WILL BRING YOUR REMARKS TO A CONCLUSION, WE HAVE NOW BALANCED OUT THE EXCESSIVE TIME.

>> YOUR HONOR, WE WOULD SIMPLY CONCLUDE THAT WE THINK THAT THIS, THIS COMPACT AS IT STANDS BEFORE YOU IS UNCONSTITUTIONAL, EXCEEDS THE GOVERNOR'S POWER, AND THAT THIS COURT IS IN A POSITION TO MAKE THAT DECISION.

>> LET ME -- BEFORE YOU DO SIT DOWN, THE QUESTION WAS ASKED OF MR.^RICHARDS OR HE, HE MADE A STATEMENT TO THE EFFECT THAT IF THE COURT STEPPED IN AT THIS POINT WITH AN ADVISORY OPINION AS TO WHETHER IT WAS LEGAL OR ILLEGAL OR -- WE WOULD BE DEALING WITH SOMETHING BEFORE THE LEGISLATURE ACTED.

CAN THE LEGISLATURE IN A SESSION THAT'S GOING TO BEGIN IN MARCH STEP IN AND DEAL WITH THIS PROBLEM AND REALLY REMOVE THE ISSUE?

>> IF, IF THIS COURT WERE TO SIGH THAT THIS WAS VALID, NO, OTHER THAN TO ENACT CERTAIN TYPES OF LAW.

>> WELL, BEFORE IT DIDN'T SAY ANYTHING.

>> THE COURT DOESN'T SAY ANYTHING.

THIS IS THE LEGISLATURE IS IN A POSITION WHERE THERE IS A VALID COMPACT THAT IS ENTERED INTO TO AND IS BEING IMPLICATED.

-- IMPLEMENTED.

>> AS JUSTICE PARIENTE SAID, THE LEGISLATURE CAN CERTAINLY DEAL WITH THE EXCLUSIVITY.

>> IT CERTAINLY COULD AND IT COULD ENTER ANY TYPE OF POLICYMAKING DECISION BUT AS WAS SUGGESTED IT WOULD APPEAR THE REST OF THE COMPACT WOULD

REMAIN IN PLACE.

THE ISSUE OF THE CAN COMPACT IS
LEGAL IS A DECISION FOR THE
COURT.

>> IT WHAT THE TIME IS GOING TO
BECOME UNBALANCED SO WE THANK
BOTH SIDES FOR VERY QUALITY
ARGUING, THE ARGUMENTS THAT
HAVE BEEN MADE IN ARGUING TO
THE COURT IN COMING TO
SOME CONCLUSION FOR DECIDING THIS
MATTER WE THANK BOTH SIDES FOR
ALL THE WORK YOU'VE DONE.
THE COURT WILL STAND IN RECESS.

>> ALL RISE.

>> THE COURT IS IN RECESS.
THANK YOU.