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Phantom of Brevard, Inc. v. Brevard County

SC07-2200 | SC07-2201

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

>> THE NEXT CASE ON THE
COURT'S CALENDAR FOR TODAY IS
PHANTOM OF BREVARD, INC, VERSUS
BREVARD COUNTY.

PARTIES READY TO PROCEED?
MR. SHUMAN.

>> THANK YOU.

MAY IT PLEASE THE COURT.
MY NAME IS MARK SHUMAN, WITH GRAY
ROBINSON, APPEARING HERE ON
BEHALF OF THE APPELLANT
PHANTOM OF BREVARD,
INCORPORATED.

THIS ACTION
INVOLVES A CHALLENGE BY
PHANTOM OF BREVARD TO THE
CONSTITUTIONALITY OF AN
ORDINANCE ENACTED BY BREVARD
COUNTY SEEKING TO REGULATE THE
SALE AND USE OF CONSUMER
FIREWORKS TO THE GENERAL
PUBLIC.

>> -- THAT WAS AN ACT --
SEEMED TO CONTEMPLATE -- VERY
ACTIVE INVOLVEMENT BY THE
COUNTY AND OTHER LOCAL
OFFICIALS.

>> YOUR HONOR --
>> JUST TRYING TO SORT OF --
GET THE ESSENCE.

I HAVE TWO DISTRICT COURT OF
APPEAL OPINIONS NOW.

>> WE HAVE ONE --

>> ONE OF THE ASPECTS OF IT,
KEEP GOING BACK AND FORTH
BETWEEN THIS PROVISION, AND IT
TALKED ABOUT UNIFORMLY APPLIED
THROUGHOUT THE STATE, BUT YET
THE SEEMING CONTEMPLATION THAT
CLEARLY COUNTY GOVERNMENT AND
OTHER LOCAL OFFICIALS WILL
HAVE TO BE HEAVILY INVOLVED IN
EITHER ENFORCING, OR THE

FURTHER REGULATION OF THIS
ACTIVITY.

SO MY FIRST QUESTION
TO YOU IS: UPON THE FACE OF THE
LEGISLATION DOESN'T THERE
ALMOST SEEM TO BE A
CONTEMPLATION OF LOCAL
ACTIVITY?

>> YOUR HONOR, THERE IS A
CONTEMPLATION OF ACTIVITY BY
LAW ENFORCEMENT OFFICIALS AND
OFFICIALS CHARGED WITH
ENFORCEMENT OF THE LAWS OF THE
STATE AS WELL AS LOCAL LAW
ENFORCEMENT DEPARTMENTS.

>> BUT ISN'T THAT -- YOU WOULD --
IN EVERY STATUTE, AND YOU TAKE
THE UNIFORM STATUTES ON
TRAFFIC, THE ONLY WAY THE
STATE DOESN'T GO -- NOT STATE
TROOPERS NECESSARILY THAT ARE
ENFORCING THE LAWS, I MEAN THAT
DOESN'T -- THAT MUSN'T -- YOU
DON'T NEED TO HAVE A WHOLE
STATEMENT ABOUT WHO IS
INVOLVED, IF WHAT YOU ARE
DOING IS SAYING "YOU DON'T DO
ANYTHING IN THIS LAW -- LOCAL
GOVERNMENT HAS NOTHING, NO
OTHER ROLE OTHER THAN TO
ENFORCE WHAT WE HAVE WRITTEN
REGARDING THE SALE OF
FIREWORKS, THEY CAN'T MAKE --
ONEROUS RESTRICTIONS,
CAN'T LIMIT THE SALE.

THAT IS
WHAT I HAVE A HARD TIME,
BECAUSE EVERY LAW PASSED IS
UNIFORM THROUGHOUT THE STATE,
AND EVERY LAW THAT IS --
CONTEMPLATES LOCAL LAW
ENFORCEMENT ENFORCING THAT
LAW, SO THAT WOULD MAKE
ALL THIS OTHER LANGUAGE IN
HERE JUST SURPLUSAGE.

>> YOUR HONOR, THE STATUTE AND
THE STEAM WITHIN THE STATUTE
SPECIFICALLY DESIGNATES WHAT
AUTHORITY LOCAL GOVERNMENTS,
INCLUDING BOARDS OF COUNTY
COMMISSIONERS HAVE, AND
SPECIFICALLY, YOUR HONOR, THE
STATUTE STATES THAT THE BOARD
OF COUNTY COMMISSIONERS ONLY

HAS AUTHORITY TO ENACT
REGULATIONS IMPACTING THE
PUBLIC DISPLAY OF FIREWORKS.
THIS IS REPEATED AGAIN --

>> THE STATUTE DOESN'T SAY
"ONLY."

>> THAT IS MY WORD, THAT IS MY
WORD.

>> TO BE CLEAR, THAT IS YOUR
GLOSS ON THIS.

>> IT DOES, YOUR HONOR,
SPECIFICALLY ALLUDE TO THE
ACTS THAT A BOARD OF COUNTY
COMMISSIONERS AND OTHER LOCAL
GOVERNMENTS CAN TAKE, FOR
EXAMPLE, YOUR HONOR, IN
SECTIONS 012 AND, YOUR HONOR,
JUSTICE PARIENTE,
ADDRESSING THE QUESTION THAT
YOU RAISED, IT SPECIFICALLY
SAYS THAT ANY STATE, COUNTY OR
MUNICIPAL LAW, RULE OR ORDINANCE
MAY PROVIDE FOR MORE STRINGENT
REGULATIONS FOR THE OUTDOOR
DISPLAY OF FIREWORKS, BUT IN NO
EVENT MAY ANY SUCH LAW, RULE,
ORDINANCE PROVIDE FOR LESS
STRINGENT REGULATIONS FOR
OUTDOOR DISPLAY.

PROVISION .02

THE STATE FIRE MARSHAL
DIVISION SHALL PROMULGATE RULES
TO CARRY OUT THE PROVISIONS OF
THE SECTION.

ALSO, THE SECTION
SAYS THE CODE OF FIREWORKS
DISPLAY WILL NOT GOVERN
DISPLAY OF ANY FIREWORKS
ON PRIVATE RESIDENTIAL
PROPERTY, SHALL NOT GOVERN
DISPLAY OF THOSE ITEMS WHICH
ARE UNDER OTHER SECTIONS.

>> IS THAT CASE ILLEGAL -- ISN'T
THAT TRUE INDIVIDUALS CAN'T BE

--

>> THAT IS CORRECT, YOUR HONOR.

>> THEY DON'T GO AHEAD AND DO
SOMETHING THERE, BECAUSE YOU
CAN'T DO IT.

>> THAT IS CORRECT, YOUR HONOR.

>> EVERYBODY IN THIS -- SEEMS
TO THINK YOU CAN --

>> EXCUSE ME.

SPECIFICALLY, YOUR HONOR,

SECTION .02

SPECIFICALLY MAKES THE INITIAL BLANKET DECLARATION THAT EXCEPT HEREINAFTER PROVIDED, THE RESALE RETAIL OF FIREWORKS IS PROHIBITED.

AND THIS STATUTE OR THIS SECTION, AGAIN, .02, AGAIN POINTS OUT WHAT POWER THE BOARD OF COUNTY COMMISSIONER HAS.

IT SAYS, SENTENCE TWO, THE BOARD OF COUNTY COMMISSIONERS SHALL HAVE POWER TO ADOPT REASONABLE RULES AND REGULATIONS FOR THE GRANTING OF PERMITS FOR SUPERVISED PUBLIC DISPLAY OF FIREWORKS BY FAIR ASSOCIATIONS.

>> -- LET'S SAY YOU ARE CORRECT, THAT IS WHERE THEY ARE LIMITED.

WHY CAN'T THEY AS PART OF THIS REGULATION THAT IS HIGHLY -- YOU KNOW, FIREWORKS -- VERY DANGEROUS, WHY CAN'T THEY REQUIRE LIABILITY INSURANCE?

I MEAN THAT IS THE ONE THAT I THINK IS -- YOU WANT THE WHOLE THING, YOU THINK THEY WENT TOO FAR IN A LOT OF WAYS, BUT THE FIFTH DISTRICT IS IN CONFLICT WITH THE SECOND DISTRICT ONLY ON LIABILITY INSURANCE.

MY QUESTION IS WHY ISN'T THAT -- JUST READING JUST THAT PART PART OF GRANTING A PERMIT -- YOU KNOW, WE ARE GOING TO LET -- I DO IT BUT YOU BETTER BE FINANCIALLY SECURE, THAT, IT SEEMS TO ME, IS A COMPLETELY APPROPRIATE PREREQUISITE TO GRANTING A PERMIT.

>> WE HAVE NO QUARREL, YOUR HONOR, WITH THE REQUIREMENTS THAT A BOND BE POSTED BY A LICENSEE AS PROVIDED IN SECTION .03 OF THIS ACT.

>> -- HARD FOR YOU NOT TO HAVE SINCE IT IS PROVIDED BUT -- WHAT I'M TALKING ABOUT IS WHY NOT SINCE -- YOU SAID THEY HAVE

AUTHORITY TO MAKE MORE
STRINGENT REGULATIONS
REGARDING THE PUBLIC DISPLAY
OF FIREWORKS, AND THE
PERMITTING PROCESS.

WHY ISN'T IT APPROPRIATE TO
SAY, YOU KNOW, A BOND IS ONE
THING, BUT LIABILITY INSURANCE
IS THE SUREST WAY TO MAKE SURE
THAT OUR CITIZENS ARE
PROTECTED IF SOMETHING GOES
WRONG.

>> YOUR HONOR, THE PHRASE
"PUBLIC DISPLAY OF FIREWORKS"
IS THE FULCRUM OF THIS ENTIRE
DISPUTE.

IF I MAY MIX A METAPHOR, THE
ISSUE HERE, YOUR HONOR, IS NOT
THE PUBLIC DISPLAY OF FIREWORKS.
THE APPELLANT PHANTOM OF
BREVARD IS A RETAIL SELLER
OF FIREWORKS.

IT HAS NO DISPUTE WITH THE RIGHT AND
OBLIGATION IMPOSED BY THE
STATUTE FOR LOCAL GOVERNMENTS,
INCLUDING BOARD OF COUNTY
COMMISSIONERS, TO REGULATE TO
THE EXTENT THEY FEEL
APPROPRIATE, PUBLIC DISPLAYS
OF FIREWORKS.

HOWEVER, YOUR HONOR, THIS ORDINANCE
ENACTED BY BREVARD COUNTY
SPECIFICALLY ATTEMPTS TO
IMPACT THE PRIVATE SALE AND
USE OF FIREWORKS.

>> WHO ARE YOU ALLOWED TO SELL
FIREWORKS TO --

>> WE ARE ALLOWED -- ALL
FIREWORKS SALES FACILITIES ARE
ALLOWED TO SELL FIREWORKS TO
THOSE PEOPLE WHO ARE
IDENTIFIED IN THE EXCEPTION
SECTION OF THE STATUTE, WHICH
IS FOUND IN SECTION .02.

>> AND WHO ARE THEY?
TO THAT --

>> THEY ARE, FOR EXAMPLE --
LET'S SEE IF I CAN GET THAT
QUICKLY FOR YOU --

>> THEY ARE THE ONES, THE --

>> I'M SORRY.

IT IS .04.

ACTUALLY, THERE ARE TWO
SECTIONS THAT ADDRESS IT, THE

BIRDS AT PARAGRAPH 007 -- THIS IS VERY INTERESTING, YOUR HONOR, MENTIONED THAT PARAGRAPH 007, YOUR HONOR, SPEAKS IN TERMS OF NOTHING IN THIS CHAPTER SHALL PROHIBIT THE USE OF FIREWORKS TO BE USED SOLELY, EXCLUSIVELY IN FRIGHTENING BIRDS FROM AGRICULTURE WORKS AND FICTION -- FISH HATCHERIES.

>> I THOUGHT YOU SAID BY "FICTION."

IT SEEMS LIKE A FICTION IN TERMS YOU HAVE -- AND I -- OBVIOUSLY, THESE TWO COUNTIES SEEM LIKE -- WE ALL SEEM THAT THIS IS -- IT IS NOT LIKE BIRDS JUST -- HAPPENED TO COME INTO THESE COUNTIES RIGHT AROUND JULY 4. WHAT HAPPENS -- ARE YOU TELLING ME THAT YOUR CLIENT DOES NOT SELL FIREWORKS TO THESE PEOPLE THAT PUT UP THEIR TENTS AND ALL AROUND THE COUNTIES ON -- IN THE DAYS LEADING UP TO JULY 4?

>> THAT WOULD BE THE WHOLESALE SALE OF FIREWORKS, YOUR HONOR, WHICH IS NOT IN ANY WAY IMPACTED BY THE STATUTE UNDER REVIEW HERE TODAY. THIS STATUTE DOES NOT PREVENT THE SALE BETWEEN FIREWORKS MANUFACTURERS AND WHOLESALERS OF FIREWORKS.

THE ONLY ISSUE WE ARE FOCUSING ON HERE TODAY, YOUR HONOR, IS WHETHER IN FACT ANY LOCAL GOVERNMENT, INCLUDING THE BOARD OF COUNTY COMMISSIONERS, HAS THE AUTHORITY TO ENACT LEGISLATION IMPACTING THE PRIVATE -- THE SALE OF FIREWORKS TO INDIVIDUALS.

YOUR HONOR, WITH REFERENCE TO THE FISH HATCHERIES AND BIRDS, THE STATUTE SPECIFICALLY PROVIDES THAT THE USE FOR SCARING AWAY BIRDS SHALL BE GOVERNED ENTIRELY BY THE RULE PRESCRIBED BY THE DEPARTMENT OF AGRICULTURE AND

CONSUMER SERVICES.

SO THE STATUTE ITSELF IN
PARAGRAPH OR SECTION .07
SPECIFICALLY SAYS THAT ONLY
THE -- DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES CAN ENACT
REGULATIONS AFFECTING THE USE
OF FIREWORKS FOR --

>> LET ME ASK YOU THIS --
BOTHERS ME THAT A -- IF THE
LEGISLATURE WAS GOING TO
PREEMPT THIS AREA OF
REGULATION, WHY DIDN'T IT JUST
SAY -- WHY DIDN'T IT JUST
SAY "WE ARE PREEMPTING THE
COUNTIES FROM DOING ANYTHING
IN THIS AREA"?

IT SEEMS TO ME WHAT
THE LEGISLATURE DID WAS SAYING
THAT WHAT WE HAVE REGULATED BY
THIS STATUTE SHOULD BE APPLIED
UNIFORMLY, ACROSS THE STATE.
BUT IT DOESN'T SAY THAT
ANYTHING WE HAVEN'T REGULATED
CANNOT BE REGULATED BY THE
COUNTIES.

>> YOUR HONOR, WE WOULD SUBMIT
THAT THE UTILIZATION BY THE
LEGISLATURE OF THE PHRASE "THE
UNIFORMLY APPLIED THROUGHOUT
THE STATE" CONSTITUTES --
ALTHOUGH IN -- THAT EFFORT TO
EXPRESSLY PREEMPT TO THE STATE
THE FIELD OF THIS REGULATION,
BUT ALSO, YOUR HONOR --

>> COULD I JUST ASK FOR THE
AUTHORITY FOR THAT KIND OF
STATEMENT, BECAUSE GENERALLY
WE DON'T PREEMPT BY
IMPLICATION OR OTHER THAN
DIRECT WORDS, WHAT AUTHORITY
DO YOU SUGGEST WE FOLLOW TO
SUPPORT THE PROPOSITION YOU JUST
ASSERTED?

>> THAT THE PHRASE -- BE
ENFORCED UNIFORMLY THROUGHOUT
THE STATE?
IS THAT THE PHRASE,
YOUR HONOR?

>> YOU SAID THAT THAT -- SO WHAT
IS THE AUTHORITY?

>> YOUR HONOR, IN THIS CASE,
WE WOULD RESPECTFULLY

SUBMIT AN EXEMPTION OF THE LEGISLATIVE HISTORY.

>> TELL US WHAT YOU SAY THEY DID NOT DO RATHER THAN WHAT THEY DID.

I WENT THROUGH THAT VERY CAREFULLY, AND IT SEEMS AS THOUGH YOUR ARGUMENT IS ENTIRELY PREDICATED UPON WHAT THE LEGISLATURE DID NOT DO, RATHER THAN INTERPRETING THE STATUTE.

>> THEY DID NOT DO IT, YOUR HONOR, BUT AFTER CONSIDERATION OF PERHAPS DOING IT, IT WAS SOMETHING IN TERMS OF GRANTING SPECIFIC AUTHORITY WITHIN THE STATUTE TO ALLOW LOCAL GOVERNMENTS, INCLUDING BOARDS OF COUNTY COMMISSIONERS, TO ENACT MORE STRINGENT LEGISLATION, WHAT WAS IN FACT DISCUSSED.

>> BUT, AGAIN, WE CAN'T GET TO THAT DISCUSSION IN THE NEGATIVE UNTIL WE FIND THAT THERE IS SOMETHING ABOUT THE STATUTE ITSELF THAT IS AMBIGUOUS OR REQUIRES US TO GO THERE.

BUT THEN, AGAIN, I'M NOT SURE THAT WE HAVE A CASE THAT SAYS WE RELY UPON THAT NEGATIVE DISCUSSION OR WHAT THEY DID NOT DO IN LEGISLATIVE HISTORY, RATHER THAN WHAT THEY DID DO.

>> WELL, YOUR HONOR --

>> THERE IS A DIFFERENCE YOU ARE TRYING TO PROVE A POSITIVE BY A NEGATIVE.

>> WE'VE GOT TWO EXAMPLES IN THIS CASE WHAT THE LEGISLATURE DIDN'T DO.

FIRST -- LET ME ADDRESS THE FIRST --

>> I WANT TO BE SURE YOU ANSWER JUSTICE WELLS' QUESTION. I WANT TO KNOW YOUR AUTHORITY FOR TELLING HIM THAT.

>> I WAS GOING TO CONTINUE MY RESPONSE TO JUSTICE WELLS BY DISCUSSING THE

ADOPTION OF DEVELOPMENT
OF THE DOCTRINE OF IMPLIED
PREEMPTION, MY UNDERSTANDING IS
THAT EXPRESSED PREEMPTION MAY ONLY
BE FOUND IN CASES WHERE THE
LEGISLATURE USES WORDS
INDICATING THAT --

>> I JUST -- MY QUESTION, SINCE
IT IS

EXPRESSLY PREEMPTED AND --
AND SINCE THE LEGISLATURE
REALLY DOESN'T SPEAK
SPECIFICALLY TO THIS MATTER
ABOUT THE INSURANCE IN THIS
CHAPTER, WHY ISN'T, YOU CAN
APPLY WHAT THEY HAVE ADDRESSED
UNIFORMLY, BUT WHAT THEY
HAVEN'T ADDRESSED, WHY ISN'T
THAT SOMETHING THAT THE
COUNTIES HAVE THE POWER TO DO?

>> YOUR HONOR, THE ISSUE OF
INSURANCE IS NOT ONE THAT THE
APPELLANT HERE IS CONCERNED
WITH.

WE HAVE NEVER RAISED ANY ISSUE
WITH THE AUTHORITY OF COUNTY
COMMISSIONS AND OTHER LOCAL
GOVERNMENTS --

>> YOU COULD DISAGREE WITH THE
FIFTH DISTRICT ON THAT?

>> I HAVE NOTHING, I THINK
THEY'RE ENTITLED TO ENACT,
BECAUSE THE STATUTE SAYS,
BOARDS OF COUNTY COMMISSIONERS
ARE ENTITLED TO HAVE A BOND
POSTED BY THE LICENSEE IN AN
AMOUNT IN EXCESS OF \$500.

CERTAINLY WHAT BREVARD COUNTY
DID IN THAT REGARD IN OUR VIEW
IS JUSTIFIABLE.

WE ARE ONLY TAKING ISSUE, YOUR
HONOR, WITH THE EFFORT BY
BREVARD COUNTY IN THIS CASE TO
REGULATE THE SALE AND USE OF
CONSUMER FIREWORKS TO MEMBERS
OF THE GENERAL PUBLIC.

WE HAVE NO QUARREL WITH THE
COUNTY'S EFFORTS TO REGULATE
THE PUBLIC DISPLAY OF
FIREWORKS.

THERE'S SPECIFIC LANGUAGE --

>> WHAT SPECIFIC SECTION OF THE
ORDINANCE DO YOU HAVE A PROBLEM
WITH?

I THINK WE WERE TALKING ABOUT THIS INSURANCE PORTION OF THE ORDINANCE.

SO WHAT SECTION OF THE ORDINANCE ARE WE TALKING ABOUT?

>> LET ME RESPECTFULLY DIRECT, IF I MAY, YOUR HONOR, THE COURT'S ATTENTION TO THE APPENDIX, TO THE INITIAL BRIEF AND WE WILL SEE, YOUR HONOR, THAT IN THE, IN THE STATUTE, ITSELF, THERE IS AN EXCEPTION SET FORTH AT SECTION .05.

LET ME SUBMIT THAT.

IT'S AT .04, THAT SAYS, NUMBER ONE, ALL SALES TO THE PUBLIC ARE PROHIBITED, EXCEPT THAT NOTHING SHALL BE, NO LAW SHALL BE ENACTED TO PROHIBIT THE SALE OF FIREWORKS TO BE USED BY A PERSON HOLDING A PERMIT FROM THE ANY BOARD OF COUNTY COMMISSIONER FOR THE, FOR DISPLAY, COVERED BY SUCH PERMIT --

>> I UNDERSTAND WHAT THAT, STATUTORY SECTION SAYS.

>> I NEED THIS TO GET YOU INTO THE SECTION OF THE ORDINANCE, YOUR HONOR.

>> IF YOU COULD NAME THE SECTIONS FOR ME IT WOULD GIVE ME A LOT OF HELP BECAUSE I THOUGHT WE WERE TALKING ABOUT SOMETHING ELSE.

>> THIS PARTICULAR SECTION, OR TO PROHIBIT THE USE OF FIREWORKSES BY RAILROADS OR OTHER TRANSPORTATIONS AGENCIES IN QUARRYING OR FOR BLASTING AND USED IN THE SHOW, THEATER OR SIGNAL CEREMONIAL PURPOSES.

IF I CAN RESPECTFULLY DIRECT THE COURT'S ATTENTION TO TAB 7 OF OUR APPENDIX WHICH HAS THE ORDINANCE AS IT WAS AMENDED IN 2006 AND SPECIFICALLY, AT PAGE 8, WHERE AT PARAGRAPH 2-K, THE FOLLOWING PROVISION IS CONTAINED IN THE ORDINANCE.

QUOTE, ANY PERSON WHO SEEKS TO USE FIREWORKS FOR SIGNAL, OR CEREMONIAL PURPOSES, IN ATHLETICS OR SPORTS MUST

PROVIDE EVIDENCE OF A BONAFIDE CEREMONY, CEREMONIAL PURPOSE AND DESCRIBE THE TYPE OF ACT ATHLETIC OR SPORTS EVENT WHICH THE FIREWORKS WILL BE USED FOR CEREMONIAL PURPOSE.

HOW IN HEAVEN'S NAME, NUMBER ONE, WHO WILL DECIDE WHEN BONAFIDE CEREMONIAL PURPOSE IS?

>> IS THAT RAISED IN THE FIFTH DISTRICT OPINION?

>> NO, IT WASN'T, NO, IT WASN'T, YOUR HONOR.

>> YOU ASKED THE QUESTION, YOU'RE THE CHIEF.

>> NO.

SO, THIS ALL SEEMS LIKE WE'RE NOW AT A DIFFERENT STAGE THAN WE WERE WHEN WE WERE LOOKING AT WHAT THE FIFTH DISTRICT DID.

>> WELL, YOUR HONOR, WITH RESPECT, IF NOT THE SPECIFIC WORDS IN THE ORDINANCE THAT WERE DISCUSSED, CERTAINLY THE OVERARCHING PRINCIPLES THAT THE EFFORTS BY THE COUNTY WERE ENCROACHING ON AN AREA EXCLUSIVELY RESERVED TO THE STATE.

>> BECAUSE THEY DEFINED CEREMONY?

ARE YOU SAYING THAT IS VAGUE, THERE IS SOMETHING VAGUE ABOUT THE DEFINITION OF CEREMONY?

>> YES.

>> AND THAT CHALLENGE, THAT PART WAS UNCONSTITUTIONALLY VAGUE WAS RAISED BEFORE THE FIFTH DISTRICT?

>> THAT HAS NOT, THAT IS INCIDENTALLY VAGUE BUT --

>> WHAT IS, GIVE US, BECAUSE YOU'RE FAST OUT OF TIME, WE CAN READ, TELL US THE SECTIONS OF THIS ORDINANCE THAT YOU SAY ARE, UNCONSTITUTIONAL.

>> ALL OF THE SECTIONS THAT ATTEMPT TO IMPOSE UPON SELLERS OF FIREWORKS ANY REQUIREMENTS THAT THEY OBTAIN --

>> COULD YOU JUST GIVE US THE NUMBERS?

I MEAN BECAUSE, SECTION 10 IS THE ONE ABOUT INSURANCE THAT I

THOUGHT WAS THE SECTION THAT WE REALLY WERE DEALING WITH HERE. IF THAT ISN'T THE SECTION OF THE ORDINANCE, THEN TELL US WHICH SECTIONS OF THE ORDINANCE YOU MAINTAIN.

>> YOUR HONOR, I RESPECTFULLY DIRECT THE COURT'S ATTENTION AGAIN TO TAB 7, THE ORDINANCE AS IT WAS AMENDED AND RESPECTFULLY DIRECT THE COURT'S ATTENTION TO PARAGRAPHS 2-G, TO H, TO, J, AND 2-K, AS WELL AS 2-L.

ALL OF WHICH SUBSECTIONS IMPOSE UPON THE SELLER OF FIREWORKS, AND THE PURCHASER OF FIREWORKS OBLIGATIONS TO OBTAIN PERMISSION FROM CITY AND STATE AUTHORITIES AND TO OBTAIN, AND TO MAINTAIN RECORDS THAT WAS NOT AUTHORIZED.

>> THOSE FOUR SUBSECTIONS OF 2?

>> THAT'S CORRECT.

>> ARE THE ONLY THINGS THAT ARE REALLY BEFORE THE COURT?

>> THAT IS THE NULL OF IT, YOUR HONOR.

>> HOW ABOUT SECTIONS 7 AND 8 WHICH THE FIFTH DISTRICT SAYS WERE THAT THEY FOUND THEM INVALID?

YOU DISAGREE?

>> WE HAVE NO QUARREL WITH THOSE SECTIONS.

>> WHAT IS THE CONFLICT ISSUE YOU HAVE QUARREL WITH?

>> THE CONFLICT ISSUE, YOUR HONOR, THE POSITION OF THE APPELLANT, BY EXPRESS PREEMPTION OR IMPLIED PREEMPTION THE STATE HAS PREEMPTED TO ITSELF THE AUTHORITY TO REGULATE THE SALE OF, AND USE OF FIREWORKS GENERALLY.

THAT IN CHAPTER 791, THE LEGISLATURE HAS GRANTED TO THE LOCAL GOVERNMENTS THE RIGHTS TO CONTROL A CERTAIN ASPECT OF FIREWORKS USE AND SALES, AND THAT IS LIMITED ONLY TO THE PUBLIC DISPLAY OF FIREWORKS.

>> MAKE SURE I UNDERSTAND THEN.

WHAT YOU'RE SAYING THAT, IT
PREEMPTS TOTALLY ANY PRIVATE
SALE, SALE FOR PRIVATE USE OF
FIREWORKS?

>> IT PREEMPTS TOTALLY, YOUR
HONOR, ANY REGULATION --

>> I'M UNDERSTANDING, FOR
PRIVATE USE OF FIREWORKS?

>> THAT'S CORRECT.

OTHER THAN AS PERMITTED BY THE
STATUTE, CHAPTER 791.

YOUR HONOR, IT'S VERY, VERY
INTERESTING, IN TERMS OF --

>> SO THEN PRIVATE SALES REMAIN
YOU UNREGULATED IN THE STATE OF
FLORIDA?

>> NOT UNREGULATED, YOUR HONOR,
UNREGULATED BY LOCAL
GOVERNMENTS.

>> WHAT'S THE STATE REGULATION
THEN?

>> THE STATE HAS ELECTED NOT TO
REGULATE IT.

>> THEY HAVE REGULATED, AGAIN,
SO WE MAKE SURE, YOU CAN ONLY
SELL TO PEOPLE WHO ARE HAVING
LEGITIMATE CEREMONIES.

>> THAT'S CORRECT.

>> YOU CAN ONLY SELL TO PEOPLE
THAT WANT TO SCARE AWAY BIRDS.

>> THAT'S CORRECT.

>> AND YOU CAN ONLY SELL TO
THOSE THAT ARE WORKING IN ROCK
QUARRIES.

>> THAT'S CORRECT.

>> AND YOU CANNOT, AND THE
STATE, THIS DOES NOT ATTEMPT TO
REGULATE THE PRIVATE SALE TO
CONSUMERS BECAUSE THAT'S
PROHIBITED BY GENERAL LAW.

>> THOSE ARE THE PRIVATE SALES
TO CONSUMERS THAT ARE
PERMISSIBLE BY VIRTUE OF THE
STATUTE AND NOW --

>> IF YOU'RE A HOMEOWNER THAT
SAYS, I LIKE TO HAVE SOME
FIREWORKS ON JULY 4th, THAT'S
NOT, AND YOU TRY TO BUY SOME
FROM YOUR COMPANY, YOU CAN'T
SELL THEM, CORRECT.

>> THAT'S INSUFFICIENT.

THAT'S CORRECT.

IT DOESN'T COMPLY WITH THE
STATUTE.

>> THERE IS NO NEED TO DO ANYMORE REGULATION BECAUSE IT'S PROHIBITED?

>> THAT'S CORRECT.

THE ISSUE THEN BECOMES ONE, YOUR HONOR, OF FOR EXAMPLE, WHAT AUTHORITY DOES THE LOCAL GOVERNMENT HAVE TO REQUIRE A PURCHASER OF FIREWORKS FOR ONE OF THE PERMITTED USES TO OBTAIN ADDITIONAL PERMITS THAN THOSE PROSCRIBED, PRESCRIBED BY THE LEGISLATURE.

AGAIN I POINT TO THE BIRD, SCARING AWAY BIRD SECTION, .07, WHERE IT SAYS ONLY THE DEPARTMENT OF AGRICULTURE CAN MAKE SUCH RULES AND REGULATIONS.

YOUR HONOR, IN TERMS OF --

>> MR.^SHUMAN, YOU'VE GONE WELL OVER YOUR TIME, INCLUDING YOUR REBUTTAL TIME.

IF YOU WOULD JUST SUM UP FOR US YOUR POSITION ON THIS.

>> YOUR HONOR, THE POSITION OF THE APPELLANT IS THAT, EXAMINATION OF THE STATUTE TOGETHER WITH ITS LEGISLATIVE HISTORY, TOGETHER WITH THE ACTIONS TAKEN AT NOT TAKEN BY THE LEGISLATURE, IN 2004 WHERE THEY AGAIN DECIDED NOT GRANT LOCAL GOVERNMENT THE AUTHORITY TO MAKE MORE STRINGENT REGULATIONS, WHEN TAKEN TOGETHER WITH THE LANGUAGE WITHIN THE STATUTE, THAT SPECIFICALLY IDENTIFIES CITY OFFICIALS AND GOVERNMENTAL OFFICIALS WHO ARE AUTHORIZE TO DO SPECIFIC ACTS, ALL OF WHICH INDICATES BOTH EXPRESS AND IMPLIED PREEMPTION BY THE STATE, THAT THIS EFFORT BY BREVARD COUNTY IS BEYOND WHAT IS AUTHORIZED BY STATUTE, IS IN CONFLICT WITH STATE LAW AND IS THERE FOR UNCONSTITUTIONAL.

>> THANK YOU VERY MUCH, MR.^SHUMAN.

>> THANK YOU VERY MUCH. YOUR HONOR.

>> MR.^KNOX?

>> MAY IT PLEASE THE COURT.
MY NAME IS SCOTT KNOX.
I AM REPRESENTING BREVARD
COUNTY.

TO GO TO THE ISSUE RAISED BY
JUSTICE WELLS AND CONFLICT AND
REASON FOR THE CONFLICT IS, THE
REASON FOR THE CONFLICT IS, THE
SECOND DISTRICT COURT OF
APPEALS FOUND THE MILLION
DOLLAR INSURANCE POLICY IN THIS
CASE WAS JUSTIFIABLE UNDER
LOCAL REGULATIONS AND THE FIFTH
DISTRICT SAID NO.

>> WHAT ABOUT THE FOUR
SUBSECTIONS OF SECTION 2 OF THE
ORDINANCE?

WAS THAT DISCUSSED?

I MEAN I DON'T RECALL THAT THE
FIFTH DISTRICT EVEN ADDRESSED
THOSE?

>> YOUR HONOR, THE FIFTH
DISTRICT AND SECOND DISTRICT
BOTH FOUND THOSE TO BE
UNOBJECTIONABLE HOW THE COUNTY
WENT ABOUT PROVIDING HOW THE
COUNTY WENT ABOUT PROVIDING A
WAY TO CHECK ON PEOPLE APPLYING
TO BUY FIREWORKS.

WHAT HAPPENS, IT'S NOT IN THE
RECORD BUT I THINK THE SECOND
DISTRICT ALLUDED TO IT, IT'S
KIND OF A SHAM WHEN PEOPLE GO
IN SIGN FORMS SAYING I'M A
WHOLESALE.

I SELL OR I WANT TO SCARE BIRDS
BECAUSE I'M AUTHORIZED TO DO
THAT.

>> BEFORE WE GET AWAY FROM THE
CONFLICT ISSUES, I UNDERSTAND,
I GUESS, I TAKE IT THAT YOU
WOULD CONTEND THAT WE HAVE NOW
A SITUATION WHICH THE ONLY
CONFLICT BETWEEN THE FIFTH AND
THE SECOND WAS ON THIS ISSUE
ABOUT THE INSURANCE?

>> THAT'S CORRECT, YOUR HONOR.

>> SINCE THERE HAS BEEN A
CONCESSION BY YOUR OPPONENT AS
TO THE FACT THAT THE COUNTY
COMMISSION COMPANY REGULATE IN
THAT AREA, THAT THAT RESOLVES
THE CONFLICT?

>> WELL, I THINK, THERE IS

MAYBE A MISUNDERSTANDING ON THE PART OF MR. SHUMAN ABOUT WHAT THAT -- THERE ARE TWO PROVISIONS THAT DEAL WITH THE MILLION DOLLAR INSURANCE POLICY ONE DEALS WITH SELLERS OF INSURANCE AND OTHER DEALS WITH PEOPLE WHO DISPLAY --

>> SELLERS OF INSURANCE.

SELLERS OF FIREWORKS.

>> THAT'S CORRECT.

I'M, YOU'RE CORRECT.

YOUR HONOR.

THERE ARE TWO DIFFERENT PROVISIONS.

THE ONE THAT THE FIFTH DISTRICT FOUND OBJECTIONABLE THAT FOUND SELLERS OF FIREWORKS TO POST A MILLION DOLLAR INSURANCE POLICY.

>> I THOUGHT HE SAID HE DIDN'T OBJECT TO THAT PART?

>> I DON'T THINK HE DOES.

HE IS TALKING ABOUT THE PUBLIC DISPLAY ONE I BELIEVE.

>> THAT ONE, HE MENTIONED 2-G, H, J, K, L.

IS FINANCIAL RESPONSIBILITY IN ONE OF THOSE?

>> 2-G, H, K -- I DON'T THINK SO.

I DON'T THINK IT'S IN THAT ONE.

>> YOU MAY HAVE -- SOUNDS LIKE YOU ONE WON THIS CASE.

>> I'M HAPPY, IF THAT'S THE CASE.

>> NOW WE HAVE ANOTHER ISSUE THOUGH.

WHICH, I GUESS, THAT SINCE WE HAVE IT HERE AND ASSUMING IT IS BRIEFED APPROPRIATELY, WHAT DO YOU THINK ABOUT 2-G, H, J AND L?

IN OTHER WORDS, IS THE PRIVATE SALE HAS THAT BEEN PREEMED NOT NECESSARILY THE PUBLIC DISPLAY.

>> 791 ABSOLUTELY PROHIBITS RETAIL SALES AND USE OF FIREWORKS, PERIOD.

SO WHAT THE COUNTY HAS ATTEMPTED TO DO IS MAKE SURE IF YOU'RE GOING TO QUALIFY TO PURCHASE FIREWORKS YOU HAVE TO

QUALIFY FOR AN EXEMPTION UNDER THE STATUTE.

THOSE EXEMPTIONS ARE WHOLESALERS, MANUFACTURERS, DISTRIBUTORS AND PEOPLE WHO WANT TO SCARE BIRDS.

SO WHAT THE COUNTY HAS DONE, IS ADOPT AN ORDINANCE PROVIDES PROCEDURES AND PROVIDES PROOF THAT YOU QUALIFY FOR ONE OF THOSE EXEMPTIONS.

WE BELIEVE WE HAVE THE AUTHORITY TO DO THAT BECAUSE WE'RE CHARGED WITH ENFORCEMENT OF THE ORDINANCE.

>> SO YOU'RE MAKING SURE THERE IS NOT A SHAM GOING ON BECAUSE, I GUESS, I DON'T KNOW, WE HAVE IN OUR RECORD WHAT LED UP TO THE ADOPTION OF THE ORDINANCE BUT NONE OF US, MOST OF US HAVE LIVED IN FLORIDA OUR WHOLE LIVES OR GOOD PART OF IT, WE KNOW AS DAULTON OBSERVED THERE DOESN'T SEEM MUCH INTEREST IN SCARING OF BIRDS, EXCEPT FOR JULY 4th AND FOR THE NEW YEAR.

>> ABSOLUTELY RIGHT, YOUR HONOR.

SECOND DISTRICT ALLUDED TO THE FACT THAT IT'S A SHAM WAY PEOPLE GO IN AND BUY THINGS. THAT IS WHAT THE COUNTY IS TRYING TO GET TO.

>> YOUR OPPONENT'S DISCUSSION APPARENTLY OF RETAIL SALES TO PRIVATE USERS OF FIREWORKS, IF I CAN USE THAT.

WHERE IN THE FIFTH DISTRICT'S DECISION DO THEY DEAL WITH THE LEGALITY OF ANY ORDINANCES ADDRESSING THESE RETAIL SALES TO PRIVATE PERSONS IN THE ORDINANCE?

DO THEY?

>> THEY DON'T ADDRESS THAT ISSUE.

>> THAT'S NOT ON THE FACE OF THE FIFTH DISTRICT'S OPINION?

>> NO.

I THINK THE FIFTH DISTRICT UPHELD THE PROVISIONS THAT SEEM TO REQUIRE THE PROCESS AND THE PROOF SUPPORTING THE

EXEMPTIONS.

THERE ARE A COUPLE OF PROVISIONS THEY DIDN'T LIKE AND THOSE ARE REALLY KIND OF INCONSEQUENTIAL --

>> AS FAR AS YOU KNOW, THE COMPLAINT THAT YOUR OPPONENT IS ADDRESSING WAS NOT EXPLICITLY ADDRESSED BY THE FIFTH DISTRICT?

>> THINK THE FIFTH AND SECOND BOTH UPHELD THOSE PROVISIONS.

>> BUT THEY DID, AS AN OFFICER OF THE COURT, THEY DID IN FACT BEFORE THE FIFTH AND THE SECOND, ATTACK THOSE PROVISIONS ABOUT THE PRIVATE SALE?

>> IN THE, I DON'T BELIEVE -- I BELIEVE THE WHOLE THING WAS BASED UPON PREEMPTION, YOUR HONOR.

THAT WAS A WHOLE DISCUSSION OF THE FIFTH.

>> ALL RIGHT.

SO THEREFORE IT MAY NOT EVEN BE PRESERVED.

THAT'S WHAT WE NEED TO UNDERSTAND.

IF THEY DIDN'T SPECIFICALLY, ONE EITHER IS PREEMPTED OR OTHERWISE WE'RE NOT HAVING A FALLBACK BUT LOOK AT THESE PROVISIONS THEY'RE UNCONSTITUTIONALLY VAGUE, THOSE KINDS OF ARGUMENTS WEREN'T MADE?

>> THE ONLY ISSUES THAT WERE DISCUSSED IN THE FIFTH WERE THE PREEMPTION, PRIMARILLY PREEMPTION AND FINANCIAL RESPONSIBILITY.

>> WERE YOU A PARTY TO --

>> YES I WAS.

>> THAT ISSUE, THAT OUR FALLBACK IS THAT THESE SPECIFIC PROVISIONS ARE UNCONSTITUTIONAL, 2-G, H, J, K, L, WERE NOT SPECIFICALLY RAISED OR WERE THEY?

>> NO. THOSE WERE ALL TALKED ABOUT IN CONTEXT OF PREEMPTION AND CONFLICT WITH THE STATE LAW.

ARGUMENT MADE IN THE FIFTH WAS

THIS WHOLE ORDINANCE CONFLICTS WITH STATE LAW AND PREEMPTED BY STATE LAW.

>> THE ORDINANCE REGARDING PRIVATE SALE?

>> WE DON'T, WE DON'T PROHIBIT PRIVATE SALES.

THE STATE PROHIBITS THOSE.

WHAT WE SAY IS, WE PROHIBIT EVERYTHING THE STATE PROHIBITS. ALL WE'RE GOING TO MAKE SURE IS YOU QUALIFY FOR THE EXEMPTIONS, PERIOD.

>> WHAT ABOUT HIS ARGUMENT THAT IT ONLY ALLOWS REGULATION WITH REGARDS TO THE PUBLIC SALE? PUBLIC SALE?

>> YOU MEAN PUBLIC OUTDOOR DISPLAYS? I WOULD COMPLETELY DISAGREE WITH THAT.

>> PUBLIC DISPLAYS.

WHAT WE HAD AT THE BEGINNING.

>> THERE ARE THREE THINGS THAT STATUTE SPECIFICALLY ALLOWS.

ONE IS THE REGULATION OF SUPERVISED PUBLIC DISPLAYS.

ANOTHER IS THE REGULATION, OR STRINGENT REGULATIONS ON

OUTDOOR DISPLAYS WHICH ARE DIFFERENT THAN PUBLIC

SUPERVISED DISPLAYS AND THE BOND REQUIREMENT FOR THE PUBLIC SUPERVISED DISPLAYS.

THOSE ARE THREE THINGS THE STATUTE DWELL, ACTUALLY GETS TO.

OTHER STATUTES, SPECIFICALLY 125.56, AND CHAPTER 633.05.

ALLOW THE COUNTY TO

AMEND FIRE PREVENTION CODE INCLUDING USE OF BUILDING WHERE FIREWORKS ARE SOLD.

THAT IS WHERE I THINK THE FINANCIAL RESPONSIBILITY IN ISSUE IS SUPPORTABLE.

>> WHAT ABOUT THIS QUESTION WITH REGARD TO DEFINING THE CEREMONIAL USE?

THAT SEEMS TO BE SOMETHING THAT IS IN CONFLICT.

IT APPEARS YOUR OPPONENT SAYS, THE STATUTE ALLOWS CEREMONIAL USE.

THERE IS NO SHORT AUTHORITY GRANTED AS I UNDERSTAND THE

ARGUMENT IN THIS STATUTE TO
REGULATE CEREMONIAL, YET
YOU DEFINE IN THIS PARTICULAR
COUNTY WHAT YOU CONSIDER TO BE
CEREMONIAL AND COULD THAT
NOT LEAD TO DIFFERENT CEREMONIAL
CATEGORIES THROUGHOUT THE
67 COUNTIES OF FLORIDA?

I THINK THAT, IS THAT NOT PART
OF WHAT THE ARGUMENT HERE IS
THEN?

>> THERE IS TWO ISSUES THERE,
YOUR HONOR.

ONE IS IF YOU LOOK CAREFULLY AT
STATUTE YOU CAN'T BUY BLANK
CARTRIDGES FOR USE IN CEREMONIAL
USES IN SPORTING EVENTS
OR FOR USE BY THE MILITARY.
IF YOU LOOK CAREFULLY I THINK
THAT'S WHAT IT SAYS.

HOWEVER OUR ORDINANCE SAYS YOU
CAN BUY FIRE WORKS FOR THOSE
PURPOSES WHICH MAY BE CONFLICT
WITH THE STATE STATUTE AS A
MATTER OF FACT.

ASSUMING THAT IS VALID
PROVISION THE DEFINITION OF
CEREMONIAL IS LEFT BLANK BY
THE LEGISLATURE.

THEY DON'T TELL YOU BY WHAT
THAT IS.

SO WHAT WE DID IN OUR
ORDINANCE --

>> I UNDERSTAND, WOULD THAT NOT
LEAD TO THE POSSIBILITY YOU'RE
FACING 67 DIFFERENT DEFINITIONS
WHAT IS CEREMONIAL?

>> ONLY IF THE 67 COUNTIES USE
DIFFERENT DICTIONARIES BECAUSE
THE DEFINITION CAME OUT OF THE
DICTIONARY.

>> STATE STATUTE WOULD BE SAME
BECAUSE WE FOLLOW COMMONHELD

--

>> THAT'S CORRECT.

>> DOES THAT ANSWER OUR
QUESTION THOUGH?

BECAUSE YOU HAVE USED THAT
DICTIONARY, DOES THAT ANSWER
THOUGH THE FUNDAMENTAL
QUESTION, WHETHER IT IS VALID
TO LET YOU DO THAT?

YOU KNOW, YOU UNDERSTAND WHAT
I'M SAYING?

IS A, BY PUTTING IT AN
ORDINANCE, BECAUSE ONCE YOU SAY
THAT'S WHAT YOU HAPPEN TO
ADOPT, OKAY, IT'S ALL RIGHT,
BUT IF YOU ALLOW THE COUNTIES
TO DO THAT, WHAT'S TO STOP PALM
BEACH COUNTY OR DADE COUNTY
FROM NOT FOLLOWING THAT
PARTICULAR DICTIONARY?
YOU'RE SAYING, OURS IS VALID.
YOU'RE NOT SAYING WHETHER YOU
CAN DO IT OR NOT WITH THAT
STATEMENT.

>> WELL, NO, I THINK WE DO HAVE
THE AUTHORITY TO FILL IN THE
BLANKS THE LEGISLATURE LEFT IN
THE SECTION.

I THINK WE'RE EMPOWERED TO
ENFORCE THE LAW.

>> BUT THAT, YOU MUST CONCEDE
THEN, COULD LEAD TO 67
DIFFERENT FILLING IN THE
BLANKS?
IF THEY DON'T USE YOUR
DICTIONARY.

>> THEORETICALLY IF THEY DON'T
USE THE DICTIONARY WE USE.

>> WHAT PART OF THE FIFTH
DISTRICT'S OPINION DOES THE
COUNTY DISAGREE WITH AND SEEK
REVIEW OF?

>> PART SEEKING DEALING WITH
THE INSURANCE, YOUR HONOR.
THE MILLION DOLLAR INSURANCE
POLICY FOR SELLERS OF
FIREWORKS.

THAT'S THE PART WE WERE UPSET
WITH.

>> SECTION 10, IS THAT SECTION
10.

>> THAT'S SECTION 10, YOUR
HONOR.

>> OF THE ORDINANCE.
SO YOU DISAGREE WITH WHAT THE
FIFTH SAID ABOUT THAT
PARTICULAR SECTION?

>> UNFORTUNATELY --

>> YOUR OPPONENT APPARENTLY
DOESN'T DISAGREE WITH?

>> HE DOESN'T.

I'M SHOCKED HE DOESN'T BUT I'M
HAPPY HE DOESN'T.

>> THAT SECTION, DOES THE FIFTH
DISTRICT'S DETERMINATION ON

THAT SECTION CONFLICT WITH THE
SECOND DISTRICT'S?

DID THEY --

>> YES.

>> ADDRESS THAT?

>> YES, YOUR HONOR.

>> THE SECOND DISTRICT?

>> SECOND DISTRICT SAID IT WAS
OKAY TO HAVE THAT PROVISION.

IT WAS LEGITIMATE BUSINESS
REGULATION.

FIFTH DISTRICT SAID IT WAS
CONTRADICTION OF THE UNIFORMITY
REQUIREMENT.

THAT IS THE CONFLICT.

>> THERE WERE TWO OTHER
PROVISIONS THE FIFTH DISTRICT
STRUCK DOWN.

ONE ABOUT LABELING.

ARE YOU, NOT SUING THOSE --

>> WE'RE NOT CONCERNED ABOUT
THOSE, YOUR HONOR.

>> THAT PART CAN BE UPHELD?

>> YES.

>> JUST THE INSURANCE AREA?

>> THAT'S THE BIG PROBLEM FOR
THE COUNTY, YES, YOUR HONOR.

>> LET ME TAKE YOU BACK TO THE
LANGUAGE AT THE BEGINNING OF
THE CHAPTER ON UNIFORMITY.

IF I UNDERSTAND YOUR POSITION
ON THIS, IT IS THAT THE STATUTE
SPECIFICALLY CONTEMPLATES THAT
COUNTIES AND MUNICIPALITIES
WILL BE INVOLVED IN THE
ENFORCEMENT OF THE PROHIBITION,
THE VERY PROHIBITIONS IN THE
STATUTE WITH RESPECT TO THE
SALE OF RETAIL, RETAIL SALE OF
FIREWORKS, IS THAT CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> AND THAT THE PROVISIONS IN
THE ORDINANCE, THESE TWO 2-G,
H, J, AND L THAT HAVE BEEN
REFERRED TO, ARE THE COUNTY'S
EFFORT TO ENFORCE WHAT THE
LEGISLATURE HAS PROVIDED FOR?

>> THAT'S CORRECT, YOUR HONOR.

>> WELL, LET ME UNDERSTAND
THEN, HOW, IF THE COUNTY IS
SETTING UP A SPECIAL PROVISION
HERE FOR ENFORCEMENT, HOW WE
CAN SAY THAT THE ENFORCEMENT IS
UNIFORM?

AND THAT THE APPLICATION OF THE STATUTE IS UNIFORM, IF YOU'VE GOT SPECIAL PROVISIONS WITH RESPECT TO ENFORCEMENT THAT DON'T EXIST IN OTHER COUNTIES? THAT'S WHAT, THAT'S WHAT I STRUGGLE WITH HERE WHEN I LOOK AT THIS LANGUAGE ABOUT THIS CHAPTER SHALL BE APPLIED UNIFORMLY THROUGHOUT THE STATE. WHEN THEY TALK ABOUT APPLIED, THEY GO ON TO TALK ABOUT IMMEDIATELY ENFORCEMENT OF THIS CHAPTER SHALL REMAIN WITH LOCAL LAW ENFORCEMENT. SO IT SEEMS WHEN THEY TALK ABOUT, APPLIED, THEY'RE TALKING ABOUT ENFORCEMENT.

WHAT, HOW DO YOU, HOW DO WE END UP WITH UNIFORM ENFORCEMENT OF THE CHAPTER WITH IF WE HAVE COUNTIES THAT HAVE DIFFERENT ORDINANCES THAT THEY BELIEVE HELP THEM ENFORCE IT?

>> WELL, YOUR HONOR, THE ANSWER TO THAT IS FAIRLY STRAIGHTFORWARD FROM OUR POINT OF VIEW.

THE STANDARDS IN THE STATUTE, CHAPTER 791 AREN'T CHANGED BY OUR ORDINANCE.

THE EXEMPTIONS ARE NOT CHANGED. ALL WE'RE REQUIRING PROOF THAT YOU QUALIFY UNDER THOSE EXEMPTIONS AND UNDER THOSE STANDARDS.

THE STANDARDS ARE THERE.

>> SOME COUNTIES WOULD REQUIRE PROOF.

OTHER COUNTIES WOULD NOT REQUIRE PROOF.

SO TO THE EXTENT THAT YOU'RE REQUIRING PROOF AND ANOTHER COUNTY, AS PART OF YOUR ENFORCEMENT OF THE STATUTE, AND OTHER COUNTIES AREN'T REQUIRING PROOF, HOW CAN WE SAY, THAT THE ENFORCEMENT IS UNIFORM?

THAT'S WHAT ESCAPES ME.

IT SEEMS LIKE IT'S UNIFORM JUST BY DEFINITION.

>> THEY'RE ALL ENFORCING THE SAME STANDARDS AND EXEMPTIONS.

>> BUT THEY'RE DOING IT IN

DIFFERENT WAY.

>> WELL, IT'S APPLIED UNIFORMLY
THOUGH.

THOSE STANDARDS AND EXEMPTIONS
ARE APPLIED UNIFORMLY.

THAT'S WHAT THE STATUTE SAYS,
YOU HAVE TO APPLY UNIFORMLY.
HOW YOU GET THERE IN TERMS OF
ENFORCING IT MAY BE DIFFERENT
IN DIFFERENT COUNTIES.

IF YOU DON'T WANT TO USE, DON'T
WANT TO REQUIRE PROOF AND
PEOPLE SIGN WHOLESAL
AFFIDAVITS AND LET THEM GET
AWAY WITH IT, THAT'S ENTIRELY
UP TO THAT COUNTY'S BUSINESS.

>> SO WHEN IT SAYS THAT THE
CHAPTER SHALL BE APPLIED
UNIFORMLY YOU WOULDN'T
UNDERSTAND THAT TO BE
EQUIVALENT TO SAYING THAT,
CHAPTER SHALL BE ENFORCED
UNIFORMLY?

>> NO, I WOULDN'T, YOUR HONOR.

>> I GUESS, THIS IS WHERE I WAS
HAVING TROUBLE BIT.

IF YOU COMPARE THIS STATUTE
WITH THE MULTIPLE OTHER
STATUTES THAT DO REQUIRE LOCAL
ENFORCEMENT, I MEAN THERE IS
PERMITTING PROCESS ENVISIONED,
CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> IF THEY DON'T SET OUT A
WHOLE LOT ABOUT PERMITTING
PROCESS IN THE STATUTE.

>> THEY SPELL OUT NOTHING IN
THE PERMITTING EXCEPT THAT YOU
CAN GET ONE.

>> REALLY THERE, THAT'S WHERE,
TO ME IT STARTS TO HAVE SOME
TEETH BECAUSE, THE VERY FACT
THAT THERE'S A PERMITTING
PROCESS REQUIRED BUT NOTHING
SPECIFIED SEEMS TO SHOW A
PARTNERSHIP OF, YOU KNOW, WITH
STATE, LOCAL PARTNERSHIP ABOUT
WHAT YOU NEED TO DO TO GET THE
PERMIT.

WOULD YOU --

>> I WOULD ABSOLUTELY AGREE,
YOUR HONOR.

>> OTHERWISE, BECAUSE, I CAN'T
IMAGINE THAT EVERY LAW IN THE

STATE SHOULDN'T BE APPLIED
UNIFORMLY.

I MEAN THAT'S THE WHOLE IDEA
ABOUT STATE LAWS.

THEY'RE APPLIED UNIFORMLY.

>> THAT'S CORRECT, YOUR HONOR.

I AGREE.

SO FROM MY POINT OF VIEW, YOUR
HONOR, THE MAJOR ISSUES, THE
MILLION DOLLAR INSURANCE
POLICY, I BELIEVE THE COUNTY
HAS A BROAD HOME RULE AUTHORITY
TO REQUIRE THAT WITHIN THE
FRAMEWORK OF THE ENFORCEMENT
RESPONSIBILITIES.

BUT EVEN MORE SIGNIFICANTLY
BECAUSE THE COUNTY HAS THE
ABILITY TO ENFORCE THE,
FPA-1124 WHICH DEALS WITH
THE USE OF
BUILDINGS WHERE THESE FIREWORKS
ARE SOLD, WE HAVE, I THINK
ALMOST EXPLICIT, IF NOT IMPLIED
AUTHORITY TO REQUIRE THAT KIND
OF INSURANCE.

>> I HAVE A QUESTION, WHICH, I
DON'T KNOW, IN THE RECORD BUT
ALWAYS BEEN THE THING THAT I'VE
WONDERED.

THE TENTS THAT GO UP BEFORE
JULY 4th, ALL AROUND THE STATE,
WHO, HOW DOES THAT HAPPEN?
IS THAT ALL -- IN OTHER WORDS
IS THAT ALL ILLEGAL?

>> WELL, I THINK THAT'S THE
ISSUE, THAT'S WHY WE HAVE THIS
ORDINANCE BECAUSE WHAT HAPPENS,
TENT IS UP.

PEOPLE WALK IN, SIGN AFFIDAVIT
I'M WHOLESALER AND THEY WALK
OUT.

>> I SEE.

SO THEY HAVE TO, WHO GOT THE
FIRE WORKS TO BEGIN WITH?

>> THAT WOULD BE THE FOLKS THAT
DISTRIBUTE THEM TO, THEIR
CLIENTS OR, WHOEVER THEY SELL
THEM TO.

>> SO THERE'S A WHOLESALE SALE,
BUT THAT WHOLESALE SALE, IS
THAT ALLOWED, A WHOLESALE SALE?

>> WHOLESALE SALE IS PERMITTED
UNDER THE STATUTE BUT WHETHER
YOU QUALIFY AS A WHOLESALER

REGISTERED WITH THE STATE OF
FLORIDA AS REQUIRED IS AN ISSUE
THAT WE, THAT'S WHAT WE HAVE
THIS ORDINANCE FOR.

>> SO THERE ARE ACTUALLY ON THE
GROUND, THERE ARE PEOPLE THAT
SIGN THESE PERMITS IN THE TENTS
SAY THEY'RE USING IT TO SCARE
AWAY BIRDS?

>> YES, THERE ARE THOSE.
AND THAT'S WHY WE HAVE THE
ORDINANCE.

>> I'LL HAVE TO TRY THAT NEXT
TIME.

>> WE WANT YOU TO PROVE IT.
I DON'T HAVE MUCH MORE TO
OFFER, YOUR HONOR.

>> THANK YOU VERY MUCH,
MR.^KNOX AND MR.^SHUMAN.
YOU HAVE ALREADY USED MORE THAN
ALL OF YOUR TIME ALSO.
SO I THANK BOTH OF YOU FOR YOUR
ARGUMENT.

>> [INAUDIBLE].

>> THANK YOU.
WE TAKE THAT INTO CONSIDERATION.

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