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Florida Association of Professional Lobbyists v. Division of Legislative Information Services

SC08-791

Tuesday January 6, 2009

Florida Association of Professional Lobbyists v.
Division of Legislative Information Services

>>> PLEASE RISE.

>>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

THE NEXT MATTER ON THE COURT
AGENDA IS FLORIDA ASSOCIATION OF
PROFESSIONAL LOBBYISTS VERSUS
DIVISION OF LEGISLATIVE INFORMATION
SERVICES.

>> GOOD MORNING.

MY NAME IS MARK HERRON.

WITH ME IS RALPH (UNINTELLIGIBLE)

REPRESENTING APPELLANTS IN THIS
PROCEEDING, THE FLORIDA

ASSOCIATION OF PROFESSIONAL
LOBBYISTS AS WELL AS

INDIVIDUAL LOBBYISTS, AND I

HAVE A RESERVED FIVE MINUTES FOR
REBUTTAL.

WE ARE HERE ON

CERTIFICATION OF THREE

QUESTIONS FROM THE 11th

CIRCUIT WITH RESPECT TO

CONSTITUTIONALITY UNDER

FLORIDA'S CONSTITUTION OF

PROVISIONS OF SENATE BILL 6B,

WHICH WAS PASSED IN THE

SPECIAL SESSION IN 2005.

WITH RESPECT TO THAT

PROVISION OF LAW THE

APPELLANTS ARGUED THAT

PROVISIONS OF FLORIDA

CONSTITUTION DEALING WITH

SEPARATION OF POWERS PRECLUDE

THE LEGISLATURE FROM

EXERCISING POWERS WITH RESPECT

TO INVESTIGATING AND

RECOMMENDING PUNISHMENT AS

WELL AS PUNISHING

LOBBYISTS, OTHER PERSONS WHO

VIOLATED PROVISIONS OF THE

LOBBYIST REGISTRATION --

>> EXPLAIN TO ME, BECAUSE I'M

-- HAVING A -- YOU KNOW, A
HARD TIME UNDERSTANDING WHY
THE LEGISLATURE DOESN'T HAVE
THE AUTHORITY TO SAY THEY
WENT TOO FAR, AND --
PUNISHMENT BUT LOBBYISTS
BEFORE THE LEGISLATURE REGULATING
HOW MUCH MONEY IS
INDICATED OR ANY OF THESE
REGULATIONS THAT APPEAR TO BE
EXTREMELY REASONABLE, I'M NOT
SURE -- THERE IS NOT A
PROVISION IN THE CONSTITUTION YOU
ARE SAYING CONFLICTS WITH --

>> I THINK THERE ARE TWO
PROVISIONS IN THE CONSTITUTION
THAT THE LAW CONFLICTS WITH,
YOUR HONOR, THE FIRST ARTICLE
II SECTION 3 OF THE FLORIDA
CONSTITUTION WHICH
ESSENTIALLY SAYS THAT AS YOU
KNOW, THE -- THREE BRANCHES OF
GOVERNMENT.

>> WE KNOW THAT.

>> BUT THE SECOND PART OF THAT
AMENDMENT IS NO PERSON BELONGING
TO ONE BRANCH CHALLENGE,
EXERCISE ANY POWERS
APPERTAINING TO EITHER OF THE
OTHER BRANCHES UNLESS
EXPRESSLY PROVIDED HEREIN IN THE
CONSTITUTION.

>> WHO CAN REGULATE LOBBYISTS?
THE LEGISLATURE CAN PASS LAWS
DEALING WITH LOBBYISTS WE
DON'T DISPUTE THAT THEY CAN
PASS LAWS THAT REQUIRE
LOBBYISTS TO REPORT
COMPENSATION IN THE
POSTURE OF THIS CASE COMES
TO YOU THAT IS NOT IN DISPUTE
EITHER.

WHAT IS AT ISSUE IS
WHETHER THE LEGISLATURE CAN
GRANT ITSELF THE POWER TO
PROSECUTE THOSE LOBBYISTS --
AND -- IMPOSE PUNISHMENTS UPON
LOBBYISTS FOR VIOLATION, THOSE
ARE --

>> -- YOU ARE SUGGESTING -- ON
THE AMENDMENT -- CANNOT --
WITH THAT -- UNLESS THEY TAKE
TIME AND -- THAT IS TO --
BRANCH -- SEEMS TO --

>> THAT IS EXACTLY WHAT I'M SAYING IN THE SENSE --

>> THAT ONLY TRYING TO UNDERSTAND WHY IS IT THAT FUNDAMENTAL BRANCH OF THIS -- IS --

>> -- EXERCISING THE POWER OF THE JUDICIAL BRANCH AND -- EXERCISING THE POWER OF THE EXECUTIVE BRANCH WHEN THEY GO FORWARD, TO INVESTIGATE, PROSECUTE AND PUNISH THE LOBBYISTS.

>> WOULD YOU -- I WANT TO MAKE SURE OF SOMETHING. WOULD YOU RATHER THEY SET SOMETHING UP WHERE THEY ACTUALLY MADE -- FULL-BLOWN CRIME -- I THINK WHAT WE ARE -- WHAT I'M HAVING TROUBLE WITH A FACIAL CHALLENGE. WE DON'T HAVE A SITUATION HERE, BEFORE US, WHERE THERE HAS BEEN AN EXERCISE OF THIS AUTHORITY, AND THERE IS SOMETHING ABOUT THE EXERCISE WHERE THEY GO TOO FAR. AND SO YOU -- YOU AGREE THAT THEY CAN REGULATE.

>> UM-HMM.

>> IMPOSE FINES.

>> THEY CANNOT IMPOSE FINES. THE REASON THEY CAN'T DO THAT, BECAUSE THEY ARE NOT EXPRESSLY AUTHORIZED TO DO SO BY THE STATE CONSTITUTION WITH RESPECT TO LOBBYISTS' CONDUCT.

>> WHAT I BELIEVE YOUR OPPONENTS ARE ARGUING, THAT ARTICLE III SECTION 5 GIVES THE LEGISLATURE THE -- WHEN IN SESSION MAY COMPEL ATTENDANCE OF PRODUCTION OF DOCUMENTS OR OTHER EVIDENCE UPON ANY MATTER UNDER INVESTIGATION BEFORE IT, SO WHERE DOESN'T THIS ARTICLE GIVE THE HOUSE OF REPRESENTATIVES, THE SENATE, THE AUTHORITY TO DO WHAT THEY HAVE DONE IN THIS, IN THIS PARTICULAR ACT?

>> AND THEY ARE NOT -- THEY ARE NOT -- SAYING THAT THIS LAW IS CONSISTENT WITH THAT PROVISION BECAUSE IF YOU READ FURTHER IN ARTICLE III, SECTION 5, IT SAYS EACH HOUSE MAY PUNISH BY FINE NOT EXCEEDING \$1,000, THE FINE IN THIS CASE IS \$5,000, IT IS IN THIS LAW.
AND -- TERM OF IMPRISONMENT NOT TO EXCEED 90 DAYS FOR BOTH FOR A PERSON, WHO HAS BEEN GUILTY OF DISORDERLY OR CONTEMPTUOUS CONDUCT IN ITS PRESENCE OR REFUSED TO OBEY LAWFUL SUMMONS OR ANSWER LAWFUL QUESTIONS.

>> ARE YOU SUGGESTING THIS SECTION OF ARTICLE III IS ONLY FOR THAT KIND OF CONDUCT? DISORDERLY OR CONTEMPTIOUS CONDUCT OR IS THAT 1,000 FINE LIMITATION ONLY FOR CONTENTIOUS CONDUCT.

>> I BELIEVE THAT THIS PROVISION THAT SAYS EACH HOUSE MAY PUNISH BY FINE LIMITS THE ABILITY TO PUNISH TO \$1,000 OR 90 DAYS IMPRISONMENT AND THAT PUNISHMENT IS ONLY LIMITED TO DISORDERLY OR CONTEMPTUOUS CONDUCT IN ITS PRESENCE, IF YOU GO DOWN --
>> IS THAT THE ONLY KIND OF CONDUCT, THAT THEY ARE AUTHORIZES UNTIL A ORDER OF THE JUDICIARY IS CONSTRUCTION AND APPLICATION OF JUDICIAL OPINIONS OF WHAT THE LAW MEANS.

--

>> [INAUDIBLE].

>> THE PROCESS, BOTH REGULATES.

>> TWO DIFFERENT ISSUES HERE JUDGE, YOUR HONOR ONE IS THE ISSUE OF -- RULES AND REGULATIONS PASSAGE AND ENACT MEANT OF LAWS THE LEGISLATURE HAS THAT POWER CLEARLY UNDER ARTICLE III SECTION 4 BUT WITH RESPECT TO THE ISSUE OF IMPOSING BEING ARE ARE PUNISHMENTS ESTABLISHING

PROCEDURES.

>> AGAIN --

>> [INAUDIBLE].

-- BECAUSE, IF YOU HAVE CERTAIN RULES, AND -- FOLLOW THOSE RULES -- SO --

>> AGAIN BUT THE RULE --

>> RELATED, BECAUSE I DON'T SEE HOW YOU CAN -- THIS IS NOT JUST STRIKING OUT CREATING PUNISHMENTS FOR NOW, REASON.

>> CRAIG PRSHT FOR LOBBYISTS FAILURE TO REGISTER AS LOBBYISTS FAILURE TO MAKE REPORTS AS LOBBYISTS.

>> TO PROCESS --

>> THEY DO NOT RELATE TO THE PROCESS OF THE ENACTMENT OF LAWS RELATING TO THE PROCESS OF REGULATING LOBBYISTS' CONDUCT.

>> BUT IT IS NOT JUST IN THE AIR I MEAN, THAT IS SUPPOSED TO BE -- I REALLY CAN'T FOLLOW THAT ARGUMENT A, IT IS BECAUSE -- DEALS WITH LEGISLATIVE BRANCH OF GOVERNMENT MUST BE ABLE TO IN SOME FASHION CREATE RULES AND REGULATIONS, THERE MUST BE INHERENT IN THAT SOME ABILITY TO BE ABLE TO HAVE SANCTIONS OR DISCIPLINE FOR FAILING TO FOLLOW THOSE.

--

>> I'M SAYING THEY CANNOT DO THAT, UNDER THE DOCTRINE OF SEPARATION OF POWERS, BECAUSE THEY ARE EXERCISING POWERS OF OTHER BRANCHES OF GOVERNMENT.

>> WHAT I'M CONCERNED ABOUT, MR. HERRON, WHERE -- HOW FAR WOULD YOU TAKE THE JUDICIAL SYSTEM THE JUDICIAL BRANCH OF THE GOVERNMENT, IN TO THE AFFAIRS OF THE LEGISLATIVE BRANCH I'M CONCERNED ABOUT THE REVERSE I'M CONCERNED WHERE IS THE POWER OF THE JUDICIAL BRANCH COME FROM, TO GO AND -- POLICE --

>> OUR OPERATION --

>> EXCUSE ME OUR -- YOUR HONOR DOES NOT INVOLVE THE JUDICIAL BRANCH IN INTERNAL AFFAIRS OF THE LEGISLATIVE BRANCH

WHATSOEVER.

>> HOW ARE THESE RULE TO BE ENFORCED THEN.

>> WELL -- UNDER -- OUR NOTIONS OF SEPARATION OF POWERS, IF YOU LOOK AT THE LAW, THE WAY THAT THE LEGISLATURE REGULATED DISCLOSURES OF EXECUTIVE BRANCH LOBBYISTS, AND THE ENFORCEMENT AUTHORITIES, RELATING TO THAT, IS THE WAY THAT THIS PROVISION OF LAW SHOULD HAVE BEEN SET UP WITH RESPECT TO LEGISLATIVE BRANCH LOBBYISTS, IT IS DELEGATED TO A COMMISSION, A COMMISSION THAT EXERCISES QUASIJUDICIAL POWERS, UNDER ARTICLE V --

>> SO, DOES THAT POWER COME FROM THE LEGISLATIVE BRANCH?

>> THAT POWER COMES FROM THE EXECUTIVE BRANCH ENACTING A LAW SETTING FORTH THE POLICY -- DELEGATING THE ENFORCEMENTS THAT HAVE LAW TO QUASIJUDICIAL AGENCY THAT IS AUTHORIZED --

>> HOW -- HOW?

>> LOGICALLY FLOW THEN, TO A SEPARATION OF POWERS IF IT STAYS WITHIN THE GENERAL GAMBIT OF A LEGISLATIVE BRANCH.

>> WELL, YOUR HONOR, I THINK THAT THE FLORIDA EXPERIENCE WHAT THEY HAVE DONE HERE IN FLORIDA IS UNIQUE AS OPPOSED TO WHAT OTHER STATES AS WELL AS THE FEDERAL GOVERNMENT HAS DONE WITH RESPECT TO THE REGULATION OF LOBBYISTS --

>> THAT DOESN'T MAKE --

>> [INAUDIBLE], IT SEEMS TO ME THAT YOU MIGHT HAVE -- -- [INAUDIBLE], ASSUMING -- TO -- ASSUMING -- CHALLENGES --

AND -- NOW YOU HAVE NO [INAUDIBLE] CHALLENGE THE IMPOSITIONED OF THE FINE, THAT POINT, YOU PERHAPS [INAUDIBLE] -- I'M HAVING DIFFICULTY -- SEEING THIS ARGUMENT MAY BE WE -- WHERE YOU ARE -- A PROBLEM

WITH HAVING SOME TYPE OF --.

>> THROUGH LAWS.

>> BUT OR WHO THEY CAN THEY --

THEIR OWN RULES DID I -- UNDER
WHAT CONDITIONS THE LOBBYISTS

--

>> THAT DEAL WITH THEIR POWERS
UNDER ARTICLE III SECTION 4 TO
DEAL WITH PROCEDURES AND
ORDERLY PROCEEDINGS BEFORE
COMMITTEES IT SAYS, THE
LEGISLATURE HAS THE ABILITY TO
PROMULGATE RULES OR PROCEDURE
WITH RESPECT TO PROCEEDINGS
BEFORE COMMITTEES.

THAT IS THERE.

>> LET ME ASK THIS, I.

>> WE'RE TALKING ABOUT
SOMETHING BEYOND THAT, EXCUSE
ME ON.

>> LET ME SEE IF I UNDERSTAND,
YOU AGREE THAT THE LEGISLATURE
COULD PASS THE RULES THAT SAID
YOU CAN'T -- THE LAW THAT SAYS
YOU CANNOT -- GIVE LEGISLATORS
OR THEIR STAFF ALL THESE GIFTS
AND THINGS LIKE THAT, THAT WAS
PROPER.

-- WHERE YOU ARE --

>> LEGISLATIVE POWER TO DO
THAT.

>> THEY HAVE THE POWER TO DO
THAT.

>> WHERE WERE YOU DRAWING THE
LINE THEN, IS THAT THEY HAVE
NO POWER TO PUNISH ANY
VIOLATION OF IT.

>> THAT IS CORRECT.

>> HMM.

>> THAT IS BECAUSE OF THE
ISSUES OF SEPARATION OF POWERS
AND THE LIMITATIONS UPON THEIR
ABILITY TO PUNISH.

>> HOW WOULD JUDICIARY -- I'M SORRY

-- HAVE THE AUTHORITY --

JUDICIARY WHAT WOULD HAPPEN, I
MEAN, TELL US HOW IT WOULD
COME TO THE JUDICIARY.

>> RIGHT NOW IT CAN'T COME TO
THE JUDICIARY AT ALL.

>> ASSUMING THEY SIMPLY PASSED
A STATUTE THAT SAYS LOBBYISTS
CAN'T DO THIS, THEY HAVE TO DO
THIS REPORTING.

>> RIGHTS.

>> THEN HOW DOES THE CASE GET TO THE COURT.

>> OKAY, I THINK THE PROPER WAY TO HAVE YOU WANT TO KNOW UNDER THE LAW DAY OR THE PROPER WAY, YOUR HONOR.

>> WELL, YOU SAID THEY COULDN'T DO THIS, WHAT --

>> THE PROPER WAY WOULD BE --

>> TO BE DELEGATED TO A COMMISSION TO ENFORCE, A COMMISSION THAT HAS QUASIJUDICIAL POWERS UNDER THE FLORIDA CONSTITUTION, SUCH LIKE AN ETHICS COMMISSION, A NEW COMMISSION, LEGISLATIVE PRACTICES COMMISSION, THAT THAT IS --

>> THAT IS NOT A JUDICIAL --

>> I'M GETTING THERE I'M GETTING THERE.

>> BUT THE FOCUS -- SEEMS LIKE YOUR ARGUMENT CUTS AGAINST THE PRACTICE OF ADMINISTRATIVE LAW.

>> THAT IS WHAT I'M TRYING TO GET TO YOU, CREATE THE COMMISSION --

>> EXPLAIN WHY IT -- DOESN'T DO THAT.

>> YOU CREATE THE COMMISSION, TO EXERCISE THE QUASI JUDICIAL POWERS THE COMMISSION THEN MAKES THE DECISION, AND THOSE DECISIONS ARE APPEALABLE TO THE JUDICIARY.

THOSE DECISIONS, JUST LIKE YOU WOULD HAVE WITH RESPECT TO ETHICS COMMISSION PROCESSING WHICH THE EXECUTIVE BRANCH LOBBYISTS HAVE TO GO THROUGH. THEY ARE -- SUBJECT TO THE ALMOST IDENTICAL LAWS UNDER EXECUTIVE BRANCH LOBBYING, THEY HAVE COMPLAINTS THAT THEY ARE ABLE TO BE FILED AGAINST THEM, THOSE COMPLAINTS ADJUDICATED BY THAT QUASIJUDICIAL ADMINISTRATIVE AGENCY, THE EXAMINERS QUASIJUDICIAL POWERS DECISIONS THAT ARE APPEALABLE --

>> DOESN'T THE GOVERNOR THEN,

HAVE THE ULTIMATE
DETERMINATION UNDER THE
STATUTE?

>> UNDER THAT STATUTE, BUT THAT
IS ONLY BECAUSE -- THE ETHICS
COMMISSION EXERCISES UNIQUE
POSITION IN FLORIDA LAW IN THE
SENSE THAT YOU HAVE STATEWIDE
OF THESE APPOINTED BY
LEGISLATIVE OFFICIALS AS WELL
AS THE GOVERNOR, THIS COURT
UNDECIDED THAT IS PART OF THE
LEGISLATIVE BRANCH AND AS A
RESULT, ITS DECISIONS HAVE TO GO
THROUGH THIS IMPOSITIONED BY
THE GOVERNOR.

BUT WITH RECENT TO ANY OTHER
ELECTIONS COMMISSION QUESTIONS
ARE QUASIJUDICIAL ORDER FINAL
ORDER FINDING A VIOLATION THAT
MATTER IS APPEALABLE TO
THE COURTS, THE COURT CAN
REVIEW THOSE, IN THIS CASE YOU
HAVE NO APPEAL OF THE COURTS.

>> THAT IS WHY -- BUT AGAIN.

>> AGAIN --

>> I WAS ANSWERING THE
QUESTION.

>> BUT THE ANSWER -- FOR EVERY
TIME AN ADMINISTRATIVE
AGGREGATION EXERCISES QUASIJUDICIAL
FUNCTION COULDN'T WE
SAY THAT IS ALREADY A SEPARATION
OF POWERS EXAMINING QUASIJUDICIAL
FUNCTION THAT IS TO
ME THE FALLACY IN YOUR
ARGUMENT IS IT IS NOT LIKE A
BLACK-AND-WHITE SITUATION WHEN
IT COMES TO SEPARATION OF --

>> BUT IT IS THE EXERCISE OF
THE POWERS OF THE JUDICIARY
THAT VIOLATES ARTICLE TWO
SECTION 3.

>> YOU ARE INTO YOUR REBUTTAL
IF YOU COULD LIKE TO SAVE
TIME.

>> I WOULD, THANK YOU VERY
MUCH.

>> MAY IT PLEASE THE COURT.
ON BEHALF OF THE
APPELLEES, DEFENDANTS IN THE
COURT BELOW, AND WITH ME IS --
REPRESENTING THE --
>> THE LEGISLATURE HAS

ANYTHING LIKE THIS OCCURRED IS THERE PRECEDENT THAT WOULD HELP OTHER THAN GENERAL IDEAS OF SEPARATION OF POWERS.

>> LET ME BEGIN WITH HISTORICAL OBSERVATION, SECTION 11.05, IS FOUND IN THE STATUTE BOOKS AS FAR BACK AS 1978.

AND AT THAT TIME, WHAT IT REGULATED WAS A BIT DIFFERENT, FROM WHAT IT REGULATES NOW, AND THAT HAS -- HE EVOLVED OVER THE YEARS TERMS OF THE DEGREE AND NATURE OF THE REGULATION BUT NO ONE IN ALL THAT TIME HAS EVER ASSERTED TO MY KNOWLEDGE, THAT THE LEGISLATURE CANNOT ADJUDICATE VIOLATIONS OF LAWS OR ITS RULES BY PERSONS THAT PRACTICE BEFORE THAT BODY.

NOT UNTIL THIS CAME ALONG A COURT CENTURY AFTER 198.

>> WHAT ARE SOME OTHER EXAMPLES HOW THEY HAVE EXERCISED THAT AUTHORITY -- IN THE STATUTE --

>> WHAT ARE OTHER -- EXAMPLES OTHER -- [INAUDIBLE] WHERE THEY ACTUALLY PASSED REGULATIONS --

>> IN THE EARLY 90S, THEY PASSED A VERY COMPREHENSIVE LAW WHICH WAS THE SUBJECT OF THE 11th CIRCUIT DECISION IN FLORIDA ASSOCIATION OF -- LOBBYISTS -- MEGGS RIDER EXTENSIVE REPORTING OF EXPENDITURES THAT LOBBYISTS MADE TO IN THE COURSE OF LOBBYING INCLUDING GUESTS THINGS THAT HAVE NATURE BY LAW ENACTED IN 2003 IS NOW PROHIBITED THE ONLY THING THAT THEY ARE RIDER TO REPORT NOW ARE THE -- ARE THE COMPENSATION THAT THEY RECEIVE AND.

>> I'M UNDERSTANDING.

>> THE ARGUMENT TODAY BY MR. HERRON IS THAT HE IS NOT OBJECTING TO ALL THESE -- PROPOSED -- SUBSTANCE, WHAT

REGULATIONS ARE HE IS SAYING
THE WAY -- [INAUDIBLE] IS THE
VIOLATION SEPARATION OF POWERS
NOT ATTACKING THE
REASONABLENESS OF THE
REGULATION.

HE IS SAYING CONCEDED THAT
THE LEGISLATURE HAS THE
INHERENT AUTHORITY TO REGULATE
AND PASS LAWS REGULATING
LOBBYING BEFORE IT BUT IT DOES
NOT HAVE THE AUTHORITY TO
EXECUTE THAT LAW, IN OTHER
WORDS, IT CANNOT INVESTIGATE
COMPLAINTS, IT CANNOT HOLD
HEARINGS --

>> I DO NOT EVEN KNOW HE
SAID THAT I DON'T KNOW IF HE
MAY BE HE -- [INAUDIBLE] THE
ISSUE IS CAN THEY BE THE
JUDGE, THE JURY FOR THE
PROSECUTOR THE JUDGE THE JURY
SO TO SPEAK --

>> CERTAINLY THEY CAN, AND
THAT -- THAT ACTIVITY IS NOT
PROHIBITED BY THE SEPARATION
OF OUR POWERS -- BUT THE.

>> AN EXAMPLE WHERE IT HAS
BEEN DONE BEFORE, AGAIN HE IS
NOT ATTACKING THE REGULATION
YES, IT IS JUST THE WAY JUST
-- SUMMONS -- 5,000 DOLLAR
FINE.

>> RIGHT, THAT IS THAT IS
SOMETHING NEW BUT THE POWER TO
ENFORCE THEIR REGULATIONS
STATED IN SECTION 11.045 SINCE
1978.

NOW I CAN'T GIVE YOU AN
EXAMPLE WHERE IT IS ACTUALLY
BEEN ENFORCED BECAUSE THOSE
THINGS ARE TO MY KNOWLEDGE ARE
NOT REPORTED, BUT --

>> I WANT TO UNDERSTAND, MR.
HERRON'S LAST ARGUMENT WAS IS
THAT REALLY -- I WOULD --
INTERPRET IT MORE AS ACCESS TO
COURTS ARGUMENT AS OPPOSED TO
A SEPARATION OF POWERS
ARGUMENT IN THAT HE IS SAYING
IN THE EXECUTIVE BRANCH ETHICS
COMMISSION EXAMPLE THAT THERE
IS THROUGH THE WHOLE BODY OF
ADMINISTRATIVE LAW THEN A WAY

A PROCEDURE BY WHICH A
AGGRIEVED PERSON CAN GET INTO
THE COURT TO MAKE
DETERMINATION AS TO WHETHER
THE ADMINISTRATIVE PROCEDURE
OF DISCIPLINE HAS BEEN
FOLLOWED, AND THE LEGISLATURE
HAS NOT PROVIDED THAT IN THIS
ACT SO THAT WELL, WHETHER
THERE IS -- AT SOME POINT,
ACCESS TO THE COURTS, IS NOT A
QUESTION -- I SUBMIT IS
PRESENTED BY THIS CASE NOBODY
HAS BEEN DISCIPLINED NOBODY
HAS SOUGHT REVIEW, WHETHER
THERE IS B B JUDICIAL REVIEW
UNDER WHAT CIRCUMSTANCES THERE
IS NO CONTEXT TO MAKE THAT
DETERMINATION.

>> DO YOU -- [INAUDIBLE]
COMPLETION TO DETERMINE IF --
REGULATION -- REVIEWED
SOMEWHERE ELSE, CAN'T YOU --

>> WHAT I WAS -- HOW I WANTED
ANSWER THAT IS THIS THAT THE
ACT ITSELF DOES NOT PROVIDE
FOR REVIEW, THE --

>> [INAUDIBLE] SENSE OF PART
OR FOR A CONSTITUTIONAL --
[INAUDIBLE]

>> SOME TYPE OF REVIEW BUT I
SUBMIT THAT IT WOULD BE -- IT
WOULD BE VERY LIMITED, I
SUBMIT THAT -- THAT THE
LEGISLATURE CAN EXERCISING
THESE POWERS OF INVESTIGATION,
FACT FINDING, DRAWING
CONCLUSIONS OF LAW IMPOSING A
PENALTY IS EXERCISING A POWER
THAT IS SHARED WITH BOTH OF
THE OTHER BRANCHES.

WE HAVE MADE ANALOGY IN OUR
BRIEF TO THE POWER OF THE
LEGISLATURE TO PUNISH CONTEMPT
IDENTICAL TO YOU AUTHORITIES
AUTHORITY TO PUNISH
CONTEMPTUOUS BEHAVIOR IN
COURTS EACH ENGAGE IN HIS
SOMEWHAT PROSECUTORIAL
FUNCTION APPLIES THE LAW
IMPOSES A PENALTY THE
LEGISLATURE HAS SAME RIGHT TO
DO THAT TO PERSONS WHO ENGAGE
IN UNACCEPTABLE BEHAVIOR

BEFORE IT AS THE COURTS DO,
AND -- BY THE SAME --
>> -- FROM -- [INAUDIBLE]
SAYING THAT VIEW -- ASKING YOU
IS DOES THIS HAVE HAVE TO BE
FORM BY WHICH THE AGGRIEVED
PARTY CAN -- A GOVERNMENT,
WHETHER THERE IS -- AGAIN --
[INAUDIBLE] DUE PROCESS
ARGUMENT.

>> THEY HAVE NEVER MADE A DUE
PROCESS ARGUMENT THAT ASSERTS
THAT THE CASE AUTHORITY IN OUR
BRIEF SAYS THERE IS NO DUE
PROCESS RIGHT TO JUDICIAL
REVIEW.

THEY ARE ENTITLED THE
CONSTRAINT ON THE LEGISLATURE
IS WHATEVER CONSTRAINT IS
IMPOSED BY THE CONSTITUTION.
THE CONSTITUTION DOES NOT
PROVIDE FOR JUDICIAL REVIEW OF
THESE TYPES OF ACTIONS OF THE
LEGISLATURE, HOWEVER --

>> SAYING WHAT -- WHAT IS --
SECTION 5 WHERE DOES
CONSTITUTION, IF THE
LEGISLATURE HAD THIS INHERENT
POWER TO IMPOSE FINES, PUNISH
WHY THE PARAGRAPH THAT SET
FORTH THAT HAS TO DEAL WITH
HOW THEY COMPEL WITNESSES,
PRODUCTION OF DOCUMENTS, AND
FINES, UP TO [INAUDIBLE]

DOLLARS, AND IF THAT IS ALL
PART OF THE -- INHERENT -- OR
POWERS -- WITH YOU ARE THEIR
FUNCTION TO ME THAT ALMOST IS
AGAINST IT YOU SAY WELL IF YOU
TAKE THAT ARTICLE, AND BY
OMISSION OR BY THE FACT THAT
THAT HAD TO BE APPROXIMATE IN
-- HAD TO BE IN THEIR

CONSTITUTION COULDN'T HAVE
HAVE SAID JUST INHERENT --

>> I DON'T THINK IT HAD TO BE
IN THERE THE THEORY OF OUR
STATE CONSTITUTION IS THAT IT
IS A LIMITATION ON THE
LEGISLATURE'S EXERCISE OF
AUTHORITY, NOT A GRANT OF POWER
TO THE LEGISLATURE.

SO ALTHOUGH THE CONSTITUTION
MAY PROVIDE THAT CERTAIN

CONSTRAINTS THAT DOES NOT IMPLY THAT THE LEGISLATURE IS OTHERWISE LIMITED IN WHAT IT MAY DO.

>> WHAT WOULD HAPPEN IF UNDER THE ACT IF A 5,000 DOLLAR FINE WAS IMPOSED AND LOBBYISTS SAID I'M NOT PAYING IT?

>> I BELIEVE THE LAW PROVIDES FOR AUTOMATIC SUSPENSION OF THE LOBBYIST IF THE FINE IS NOT PAID.

>> SO IS THAT THE ONLY THING THAT WOULD HAPPEN THAT THE LOBBYIST JUST WOULD NOT BE ABLE TO COME BEFORE THE LEGISLATURE?

>> WELL -- I THINK THE LEGISLATURE WOULD TRY TO FIND SOME WAY TO COLLECT THAT -- THAT PENALTY.

>> TWO THINGS WOULD HAPPEN, ONE IS THAT THE LOBBYISTS COULDN'T COME BEFORE THE LEGISLATURE AND, SECONDLY, WOULD YOU HAVE TO GO TO COURT TO BE ABLE TO TRY TO ENFORCE THAT?

>> I THINK IT WOULD BE -- I THINK IT WOULD HAVE -- BE EQUIVALENT OF A JUDGMENT THAT COULD BE ENFORCED IN COURT, THAT IS TRUE.

I'M NOT SAYING THE LEGISLATURE MAY TREAT ANYONE ANY WAY IT WANTS, IN THE COURSE OF ONE OF THESE INVESTIGATIONS IT MIGHT CONDUCT.

IT IS CONSTRAINED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

I THINK A GOOD EXAMPLE OF THAT IS THE U.S. SUPREME COURT CASE IN GROPPI VERSUS LESLIE CONSTRAINED BY ANY OTHER PROVISION OF THE CONSTITUTION THAT LIMITS ITS ACTION.

AND IF THE LEGISLATURE VIOLATES SOMEBODY'S FUNDAMENTAL RIGHTS OR DUE PROCESS RIGHTS, I THINK THERE IS RELIEF AND A REMEDY.

>> I DO NOT THINK

THE CONSTITUTION REQUIRES
AUTOMATIC JUDICIAL REVIEW OF A
DECISION THAT IMPOSES A FINE
ON SOMEBODY FAILING TO TIMELY
FILE THEIR REPORT, OR FOR
ACCEPTING A GIFT OR SOME OTHER
VIOLATION.

>> I THINK EVEN IF THERE WAS
THAT RIGHT THAT IS NOT WHAT
HAS BEEN RENOVATED HERE HE
ISING RAISING A SEPARATION OF
POWERS ARGUMENT WHICH IS --
>> EXACTLY, I THINK WE NEED TO
GET BACK TO THAT I WOULD SAY,
HE HAS -- THE APPELLANTS
HAVE MISUNDERSTOOD WHAT
SEPARATION OF POWERS ARGUE OR
DOCTRINE MEANS, WHAT IT MEANS
AND THIS COURT HAS SAID IT,
THAT IF THE POWER IS NOT
EXCLUSIVE TO ONE BRANCH THEN
THE EXERCISE OF THAT POWER
BY ANOTHER BRANCH IS NOT
UNCONSTITUTIONAL.

ALL THESE POWERS OF
INVESTIGATION, FACT-FINDING
APPLYING LAW TO THE FACT
EXISTS IN EACH BRANCH, THEY
EXIST IN THE EXECUTIVE BRANCH.
I MEAN THEY -- THEY MAKE A
DETERMINATIONS ABOUT LICENSES,
AND THE GRANT AND REVOKE
LICENSES, PERMITS, ENGAGE
IN FACT FINDING APPLY THE LAW
TO THE FACTS OR THEY MAY
IMPOSE PATENTLY MAY REVOKE
LICENSES, SHARED
LAWYERS.

>> JUSTICE PARIENTE'S ORIGINAL
QUESTION WAS IS THERE ANOTHER
SITUATION OR OTHER SITUATIONS
WHERE THE LEGISLATURE -- EXCUSE
ME -- SIMILAR TO THIS, SET UP
A COMMITTEE THAT WOULD
INVESTIGATE AND MAKE FACT
FINDINGS AND THEN GIVE IT TO I
GUESS THE PRESIDENT OF THE
SENATE?

IS THAT HOW IT WORKS?
OR THE SPEAKER OF THE HOUSE
TO MAKE THE ULTIMATE DECISION?

>> THOSE ARE -- THERE ARE SOME,
AND I'M NOT THOROUGHLY
FAMILIAR WITH THEM, BUT THEY

ARE IN CHAPTER 11, AND YOU CAN LOOK AT THOSE, THERE ARE OTHER COMMISSIONS -- STANDING COMMISSIONS THAT HAVE SET UP, AND JOINT -- JOINT COMMITTEES, AND THINGS OF THAT NATURE THAT DO INVESTIGATIONS, MAKE FINDINGS, AND MAKE REPORTS.

>> AND -- DO YOU KNOW IF UNDER THESE OTHER KINDS OF COMMISSIONS THEY HAVE THE SAME KIND OF AUTHORITY TO ISSUE FINES, OR --

>> I'M NOT SURE THAT THERE IS -- THAT ANY OF THE OTHER PROVISIONS ACTUALLY IMPOSE FINES.

>> I JUST WANT TO MAKE SURE -- SINCE BEING BROADCAST PUBLIC AS I UNDERSTAND THIS IS THE LAWSUIT WAS BROUGHT TO THE ASSOCIATION OF LOBBYISTS -- LEON CIRCUIT.

>> RIGHT --

>> [INAUDIBLE]

>> STATE DEFENDANTS MOVED IT TO FEDERAL COURT, THERE WERE FEDERAL ISSUES, CLAIM OF VIOLATION OF THE FIRST AMENDMENT, VAGUENESS.

>> -- SOME OTHER ISSUES.

>> [INAUDIBLE] WHAT I GUESS WHAT IS CRAZY HERE WE ARE ANSWERING QUESTIONS FOR THE 11th CIRCUIT DECISION WHEN THEY HAVE ALREADY NOW DECIDED THAT REGULATIONS THEMSELVES ARE NOT UNCONSTITUTIONALLY VAGUE -- [INAUDIBLE], THEY JUST WANTED US TO ADJUDICATE UNDER THE FLORIDA PROSECUTION -- NOT -- [INAUDIBLE] FEDERAL PROSECUTION -- UNDER THE FLORIDA CONSTITUTION, WHETHER THERE IS A SEPARATION OF --

>> RIGHT.

>> -- POWERS VIOLATIONS --

>> I THINK THAT IS PRINCIPAL QUESTION BEFORE.

YOU SHOULD NOT BE WORRIED ABOUT -- PROBLEMS DOWN THE ROAD BECAUSE --

>> WELL, THIS IS A FACIAL CHALLENGE, AS YOU SAY.

>> WE ARE BEING ASKED THIS WE ARE JUST BEING ASKED SPECIFIC QUESTIONS BY THE 11th CIRCUIT, THE INTERPRETATION OF OUR CONSTITUTION.

>> RIGHT, RIGHT, AND I THINK THE REASON IT WAS REMOVED INITIALLY WAS WE THOUGHT THAT THE FEDERAL QUESTIONS REALLY PREDOMINATED IN THE COMPLAINT, AND IT WAS REMOVED, THOSE WERE ADJUDICATED, ALL IN FAVOR OF THE STATE, AND WHAT WAS APPEALED TO THE 11th CIRCUIT WERE ONLY STATE CONSTITUTIONAL ISSUES.

SO THAT IS WHY THEY CERTIFIED IT HERE.

>> AS FOR ME, I'M NOT BOTHERED BY -- IF THERE IS ANYTHING ELSE YOU COULD REMOVE, FEEL FREE TO DO IT.

>> WE WILL KEEP THAT IN MIND.

>> BUT I AM GOING BACK TO SOMETHING YOU SAID BEFORE, ONE OF THE -- OF THE EXPRESS DISTINCTIONS IN THE FLORIDA CONSTITUTION IS THAT THE COURT IS GIVEN THE POWER TO REGULATE THE LAWYERS, IT HAS THE POWER TO REGULATE THOSE BY EXPRESS CONSTITUTION PROVISION TO APPEAR BEFORE THE COURT. NOW THAT IS NOT SOMETHING THAT IS EXPRESSLY IN THE LEGISLATIVE ARTICLE; CORRECT? I MEAN YOU MADE THE COMMENT THAT THERE IS SOME SIMILARITY BETWEEN THE FACT THE COURT CAN REGULATE THOSE WHO APPEAR BEFORE IT AND THE LEGISLATURE SHOULD HAVE SAME LAWYER, BUT NO, THAT IS NOT EXPRESSLY GIVEN IS DESPITE -- NO, THE POWER TO REGULATE LAWYERS IS NOT EXPRESSLY GIVEN. IT IS EXPRESSLY GIVEN TO THIS COURT.

WHAT WE NEED TO THINK ABOUT, REALLY, IS -- IS WHAT IS LOBBYING, AND AS DEFINED IN THIS LEGISLATION, IT SIMPLY MEANS INFLUENCING OR SEEKING TO INFLUENCE LEGISLATION OR GAIN THE GOOD

WILL OF LEGISLATOR OR EMPLOYEE OF LEGISLATURE, AND THE SAME THING IN THE EXECUTIVE BRANCH THINKING TO INFLUENCE AGENCY POLICIES, AND GARNER GOOD WILL FROM SOMEONE, ANYONE CAN DO THAT, WHO IS A REGISTERED LOBBYIST.

THAT IS NOT THE PRACTICE OF LAW.

AND I THINK WHAT IS DISPOSITIVE OF THAT QUESTION IS THIS COURT'S 1979 DECISION IN PACE VERSUS STATE WHERE IT SAID THAT LEGISLATURE MAY ADDRESS, AND ADDRESS AND PUNISH CONDUCT HARMFUL TO PUBLIC WELFARE EVEN IF CONDUCT WOULD ALSO BE SUBJECT TO DISCIPLINE, REGULATION BY THE COURT AS THE PRACTICE OF LAW. SO I THINK REALLY THAT THERE -- THERE IS NO QUESTION HERE THAT THEY ARE NOT -- THEY -- THEY ARE NOT BEING REGULATED IN THE PRACTICE OF LAW, BECAUSE INFLUENCE LEGISLATION IS NOT PRACTICE OF LAW.

>> THE FLORIDA BAR WE HAVE TO APPROVE RULES REGULATING THE FLORIDA BAR HAS SAID THAT -- INVOLVED THE STATE LEGISLATIVE LOBBYING SHALL NOT BE TREATED AS THE PRACTICE OF LAW SO IT SEEMS TO ME THAT -- THAT THAT THOROUGHLY BINDS US, BUT RULES THAT WE'VE ALREADY APPROVED THAT DISTINGUISHES THIS.

>> I THINK THE OVERWHELMING CASES FROM OUR JURISDICTIONS THAT WE HAVE DECIDED, THAT SAY THE SAME THING, THAT LOBBYING IS NOT THE PRACTICE OF LAW.

>> SOMEBODY, I HAVE NEVER BEEN IN A FIRM THAT -- EMPLOYED LOBBYING LEGAL PRACTICE, HOW THEY SEPARATED OUT, AND -- BUT CAN THE BAR PUNISH A LAWYER WHO HAS BEEN UNETHICAL -- [INAUDIBLE]

>> WELL, IF IT CONSTITUTES A VIOLATION OF ONE OF THE RULES REGULATING THE BAR -- ABSOLUTELY.

>> BUT IS IT STILL THEN WE GO
BACK TO THEY WEREN'T
PRACTICING LAW DOING IT, BUT

--

>> WELL --

>> DID NOT HAVE THE --

>> I THINK YOU HAVE -- YOU
HAVE PUNISHED LAWYERS FOR
MISDEEDS IN ETHICAL
MISCONDUCT THAT DON'T
VOLUNTARILY PRACTICE OF LAW
DISBAR LAWYERS COMMITTING
CERTAIN CRIMES THAT HAVE
NOTHING TO DO WITH THE PARAGRAPH
LAW AND FOR OTHER MATTERS THAT
ALTHOUGH MAY NOT BE A CRIME ARE
SO INHERENTLY UNETHICAL CANNOT
BE TOLERATED.

SO I REALLY THINK THAT --

>> THAT WOULD BE ANOTHER
REASON WHY IT WOULDN'T -- ON
OUR POWER IF IT IS NOT --

WOULD HAVE TO BE A
[INAUDIBLE], FLORIDA BAR, TO
PROSECUTE A LAWYER -- BEHAVIOR

--

>> RIGHT.

>> REACH THAT AFTER YOUR
POSITION WOULD [INAUDIBLE]
QUESTIONS.

>> THERE IS ONE OTHER ISSUE
THAT WAS CERTIFIED TO THE
COURT, AND THAT INVOLVES
THE ENACTMENT OF THE LAWS,
11th CIRCUIT TACKLE THAT --

>> I THINK -- JUDGE MICKLE GOT
IT RIGHT IN SHORT ANSWER
TO THAT QUESTION THAT IS ON
THE FIRST DAY OF THE SPECIAL
SESSION EACH -- EACH HOUSE
INTRODUCED BY TWO-THIRDS VOTE
A BILL THAT REGULATED LOBBYING.
SO THE BUSINESS OF REGULATING
LOBBYING WAS BEFORE EACH
HOUSE, AND AFTER THAT THE
HOUSE DID NOT HAVE TO
INTRODUCE BY TWO-THIRDS VOTE
THE SENATE BILL AS SENATE BILL
6B, ALTHOUGH IT DID DO SO,
AND THE RECORD REFLECTS THAT
THE RULES WERE WAIVED,
REQUIRING READING ON THREE
SEPARATE DAYS, AND THERE WAS
THREE READINGS THE LEGISLATURE

COMPLIED WITH THE
CONSTITUTION.

>> -- ASSUMING THEY HADN'T, IS
THERE SOMETHING SIMILAR TO
SINGLE SUBJECT -- DOES THAT --
NOT -- TRYING TO THINK WHAT IT
IS --

>> REENACTMENT --

>> I DON'T KNOW THAT THAT HAS
EVER BEEN ARGUED IN THIS
PARTICULAR CONTEXT.

I REALLY CAN'T ANSWER THAT, IF
THERE ARE NO FURTHER QUESTIONS
I WILL --

>> THANK YOU.

>> TURN THE PODIUM OVER TO
MR. HERRON.

>> REBUTTAL.

>> YES, MA'AM.

I GOT A LOT OF -- TOPICS TO
HIT QUICK.

WITH RESPECT TO
HAD THE LEGISLATURE EVER DONE
ANYTHING LIKE THIS OR DO THEY
HAVE ANY OTHER MECHANISMS LIKE
THIS, THE ANSWER IS NO.

NO WAY.

THEY DO NOT.

THIS IS -- THIS IS UNIQUE IN THE
SENSE THAT -- FOR THEM TO TAKE
UPON THEMSELVES THE POWER TO
BE JUDGE, JURY AND EXECUTIONER
DOESN'T EXISTS ANYWHERE ELSE.

>> BUT THERE ARE OTHER
INSTANCES WHERE THEY HAVE
COMMITTEES THAT DO
INVESTIGATIONS.

>> WITHOUT A DOUBT, AGAIN THE
THRUST OF OUR ARGUMENT IS
THE ABILITY TO PUNISH THE ACT,
TO IMPOSE A FINE, THE
SEPARATION OF POWERS ESSENCE
THAT WE ARE BRINGING BEFORE
THE COURT SO THAT EXECUTIVE
BRANCH DOES THAT.

>> THE EXECUTIVE BRANCH DOES
THAT BECAUSE THEY HAVE
QUASIJUDICIAL, QUASIJUDICIAL
POWERS UNDER ARTICLE V, SECTION
ONE.

>> WITH RESPECT TO THE --
THE QUESTION ABOUT WHY IS
ARTICLE III, SECTION 5 THERE,
IT IS A LIMITATION UPON THE

LEGISLATURE POWER TO PUNISH IF WE FOLLOW THE ARGUMENT OF THE APPELLEES, THEY WOULD SAY THAT IT IS JUST A MERE SUGGESTION.

AND SO THIS 1,000 DOLLAR LIMITATION MEANS NOTHING, 90-DAY THING MEANS NOTHING.

IF THEY WANTED TO THEY COULD PUNISH SOMEBODY BY IMPRISONMENT UP TO A YEAR BECAUSE THIS MEANS NOTHING.

>> I DON'T THINK THAT IS WHAT THEY SAID, I MEAN I DIDN'T GET THAT FROM THE ARGUMENT.

THE ARGUMENT AS I WAS SAYING -- IS GIVEN -- IN THIS SPECIFIC POWER, THAT MUST I MEAN THEY MIGHT NOT HAVE POWER IN OTHER WAYS BUT I THINK YOU WOULD AGREE WE ALL AGREE THAT WHAT THAT SAYS, THAT WHEN IT RELATES TO CONTEMPT THAT IS GOING TO BE THE LIMIT OF WHAT THEY CAN DO TO THAT, I WOULD GO FURTHER TO SAY THAT IT IS THE LIMIT AS TO WHAT THEY CAN DO EVEN WITHOUT CONTEMPT.

>> WHAT THEORY, I THINK THAT IS -- AGAIN, WE DO STATUTORY CONSTRUCTION.

I THINK THAT IS PROBABLY CLOSEST TO YOUR BEST ARGUMENT.

WHAT THEORY, WHAT CASE LAW WOULD ACTUALLY SAY THAT IT IS CONSTRUING THAT CONSTITUTION THAT BECAUSE THEY HAVE DONE IT SPECIFICALLY THERE, THAT MUST IMPLY THAT THEY DIDN'T MEAN TO HAVE IT DONE OR THE PEOPLE -- NOT THEM BUT THE PEOPLE DIDN'T MEAN TO HAVE THE LEGISLATURE DO IT IN

--

>> I THINK IT COMES FROM THE THEORY THAT THE STATE CONSTITUTION IS A LIMITING DOCUMENT AND, THEREFORE, IF IT IS NOT LIMITING THAT POWER IN ALL INSTANCES TO PUNISH, THEN THEY WOULD HAVE AN UNLIMITED POWER TO PUNISH

NOTWITHSTANDING.

>> SEEMS LIKE A DIFFERENCE BETWEEN WHEN YOU TRY TO IMPOSE A FINE ON SOMEONE THE ONLY RESULT IF THEY CHOOSE NOT TO PAY, THAT THEY SIMPLY CAN'T PRACTICE BEFORE THE LEGISLATURE ANYMORE.

THERE IS A DIFFERENCE BETWEEN THAT AND WHERE SOMEBODY HAS CONTEMPT POWERS, WHERE YOU ARE GOING TO PAY THIS, OR YOU MAY BE EVEN SUBJECT TO IMPRISONMENT, THOSE ARE -- SPECIFICALLY PROVIDED FOR BY CONSTITUTIONAL GROUNDS, AND -- PERMITTED BY LAW -- ANY DIFFERENCE HERE --

>> I THINK THERE IS A SIGNIFICANT DIFFERENCE, YOU CATEGORIZE IT A MERE -- THEY CAN'T APPEAR BEFORE THE LEGISLATURE, IT IS A DEPRIVATION OF LIVELIHOOD FOR TWO YEARS.

THAT IS WHAT THIS IS ALL ABOUT.

THAT IS THE PUNISHMENT NOTWITHSTANDING THIS SUSPENSION IF THEY DON'T PAY, THEY ARE -- THEY ARE BEING PUNISHED AND DEPRIVED OF A LIVELIHOOD TWO YEARS.

THAT IS ONE OF THE PUNISHMENTS THAT IS IN THIS LAW, SO NOT JUST MERELY YOU CAN'T APPEAR TILL YOU PAY.

THEY HAVE THE ABILITY TO KEEP THEM FROM WORKING TWO YEARS IN THAT --

>> AGAIN, WOULDN'T THAT THEN -- WOULDN'T THAT THEN BE AS APPLIED CHALLENGE, AS APPLIED CHALLENGE IN DUE PROCESS?

>> AGAIN, WE DON'T SEE IT THAT WAY BECAUSE OF THE FACT THAT THE LEGISLATURE DOESN'T HAVE THIS INHERENT POWER TO PUNISH. THEY HAVE THE POWER TO MAKE LAWS.

AGAIN, I'VE GOT FOUR SECONDS.

I WILL SIT DOWN.

THANK YOU.

>> THANK YOU VERY MUCH, THANK
YOU BOTH FOR YOUR ARGUMENT.

>>> THE NEXT CASE ON THE
COURT'S AGENDA IS HOGAN VERSUS