

>> ALL RISE.  
HEAR YE, HEAR YE, HEAR YE,  
SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
ALL WHO HAVE CALLS TO PLEA,  
DRAW NEAR, GIVE ATTENTION, YOU  
SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.  
>> LADIES AND GENTLEMEN OF THE  
JURY, THE SUPREME COURT OF  
FLORIDA.  
PLEASE BE SEATED.  
>> WELCOME TO THE FLORIDA  
SUPREME COURT.  
OUR FIRST CASE FOR THE DAY IS  
GOVERNOR SCOTT VERSUS  
WILLIAMS.  
YOU MAY PROCEED.  
>> THANK YOU, YOUR HONOR.  
MAY IT PLEASE THE COURT, RAOUL  
CANTERO ALONG WITH DAVID AND  
THE SOLICITOR GENERAL FOR THE  
STATE OF FLORIDA, TIM, FOR THE  
APPELLANT.  
>> I'D LIKE BOTH SIDES TO BE  
SURE WE KNOW WHAT WE'RE  
DEALING WITH TODAY.  
>> YES, YOUR HONOR.  
>> I NEED TO BE SURE ON THE  
RECORD THAT WE'RE ALL CLEAR  
THAT THIS HAS NO IMPACT ON  
INDIVIDUALS WHO HAVE ALREADY  
RETIRED.  
>> ABSOLUTELY CORRECT.  
>> HAS NO IMPACT ON ANYONE  
WHO'S ALREADY ENTERED THE DROP  
PROGRAM.  
>> CORRECT.  
>> BECAUSE THEY'VE ALREADY  
ACCORDING TO THAT PLAN, THAT  
FIXES THEIR RETIREMENT DATE.  
>> THAT'S CORRECT.  
>> AND IT DOES NOT DEAL WITH  
EVERY CONCEIVABLE COLLECTIVE  
BARGAINING AGREEMENT OR  
INDIVIDUALS COVERED BY  
DIFFERENT AGREEMENTS  
THROUGHOUT FLORIDA.  
>> I WOULD GO FURTHER, YOUR  
HONOR, THAT THE ISSUE IN THIS  
CASE DOES NOT CONCERN WHETHER  
ANY SPECIFIC COLLECTIVE  
BARGAINING AGREEMENT HAS BEEN  
VIOLATED.

>> AND THAT QUESTION WILL  
REMAIN OPEN?  
>> THAT'S CORRECT.  
THAT IS NOT WAIVED.  
THE ONLY ISSUES HERE ARE THE  
CONSTITUTIONALITY, THE FACIAL  
CONSTITUTIONALITY OF WHAT WE  
CALL THE --  
>> I JUST NEED TO BE SURE THAT  
ALL OF US ON THE RECORD IS  
ABSOLUTELY CLEAR, NO DOUBT, NO  
QUESTION.  
>> ABSOLUTELY.  
AND IF YOU LOOK AT THE  
COMPLAINT DOES NOT RAISE AN  
ISSUE ABOUT ANY PARTICULAR  
CBA.  
>> THAT'S THE WAY I READ IT.  
I UNDERSTAND THAT.  
BUT MANY TIMES, AS YOU KNOW,  
THINGS CAN GET CONVOLUTED ONCE  
YOU START BECOMING INVOLVED IN  
ARGUMENTS.  
>> YES.  
>> BUT ONE OF THE ISSUES  
REALLY IS COLLECTIVE  
BARGAINING AS A WHOLE.  
>> CORRECT.  
>> WHETHER OR NOT THIS IMPAIRS  
COLLECTIVE BARGAINING AS A  
WHOLE.  
>> THAT'S ABSOLUTELY RIGHT.  
>> ALL RIGHT.  
>> I'D LIKE TO TALK FIRST  
ABOUT THE CONTRACT CLAUSE  
PROVISION UNLESS THE COURT HAS  
NO QUESTIONS ON THAT, BUT ON  
THE CONTRACT CLAUSE PROVISION,  
OBVIOUSLY WE RELY ON FLORIDA  
SHERIFFS.  
WE BELIEVE FLORIDA SHERIFFS IS  
DIRECTLY ON POINT.  
>> ON THAT QUESTION, BUT FOR  
THE STATUTE, IS YOUR ISSUE  
THAT THE APPELLEE'S ARGUMENT  
RESTS ON THE FLORIDA STATUTE  
THAT WAS INTERPRETED IN  
FLORIDA SHERIFF?  
>> YES, YOUR HONOR.  
>> SO AGAIN ABSENT THE  
STATUTE, WOULD THERE BE  
ANOTHER CONTRACTUAL CLAIM THAT  
COULD BE RAISED?  
>> NO, YOUR HONOR.  
>> SO WE'RE REALLY IN A WAY  
HERE ON AN ISSUE OF STATUTORY  
INTERPRETATION AND YOUR

POSITION IS THE FLORIDA  
SHERIFFS HAS ALREADY RESOLVED  
THAT ISSUE.

>> YES, YOUR HONOR.

>> IS THIS THE EXACT STATUTE  
THAT WE WERE TALKING ABOUT IN  
FLORIDA SHERIFFS?

>> YES.

>> THERE HAS BEEN NO CHANGE TO  
THAT STATUTE.

>> NONE WHATSOEVER.

NOT THAT PART OF THE STATUTE,  
THE LANGUAGE THAT WE'RE  
TALKING ABOUT.

BEFORE FLORIDA SHERIFFS AND  
BEFORE THAT STATUTE, THIS  
COURT HAD SAID THAT THE STATE  
COULD -- OR ANY GOVERNMENTAL  
AGENCY COULD CHANGE BENEFITS  
EVEN RETROACTIVELY.

SO WHAT THE STATUTE DID AND  
HOW FLORIDA SHERIFFS  
INTERPRETED THE STATUTE IS  
THAT AS A RESULT OF THE  
PRESERVATION OF RIGHTS  
PROVISION, NOW THE STATE CAN  
ONLY CHANGE BENEFITS  
PROSPECTIVELY.

AND I'D LIKE TO -- WHAT THE  
COURT SAID IN THE OPPOSITE  
ARGUMENT, THEY SAID THE  
OPPOSITE ARGUMENT WOULD IMPOSE  
ON THE STATE THE PERMANENT  
RESPONSIBILITY FOR MAINTAINING  
A RETIREMENT PLAN WHICH COULD  
NEVER BE AMENDED OR REPEALED  
IRRESPECTIVE OF THE FISCAL  
CONDITION OF THE STATE.

>> NOW, I GUESS THE BIGGEST  
THING THAT THEY'RE ARGUING IS  
THAT BY GOING FROM  
NONCONTRIBUTORY TO  
CONTRIBUTORY, THAT IS -- THAT  
WAS NOT THE CASE IN FLORIDA  
SHERIFFS.

SO COULD YOU ADDRESS -- LET'S  
-- AS TO MAKING IT A  
CONTRIBUTORY PLAN, WAS THAT A  
VESTED RIGHT BASED ON THE  
STATUTE THAT WENT INTO EFFECT  
THAT REALLY WASN'T AT ISSUE IN  
FLORIDA SHERIFFS?

>> THE ONLY WAY YOU CAN REACH  
THAT CONCLUSION IS BY  
ESSENTIALLY RECEDING FROM  
FLORIDA SHERIFFS, BECAUSE  
FLORIDA SHERIFF DRAWS A BRIGHT

LINE.

IF IT'S RETROACTIVE, IT'S NOT  
CONSTITUTIONAL.

>> THE TRIAL COURT MADE THE  
FINDING THAT THE CHANGES THAT  
WERE MADE WERE QUALITATIVE IN  
NATURE.

AND THAT'S HOW SHE  
DISTINGUISHED THE FLORIDA  
SHERIFFS CASE.

>> YES, YOUR HONOR.

>> HOW DO YOU RESPOND TO THAT?

>> THAT WAS EXACTLY MY NEXT  
SENTENCE, WHICH IS THE COURT  
SAID THAT.

NUMBER ONE, THERE'S NOTHING IN  
FLORIDA SHERIFFS THAT MAKES A  
DISTINCTION QUANTITATIVE  
CHANGES AND QUALITATIVE  
CHANGES.

THE COURT TALKED ABOUT  
RETROACTIVE VERSUS  
PROSPECTIVE.

AND ADOPTING THAT KIND OF A  
STANDARD WOULD MAKE IT  
UNWORKABLE AND IMPOSSIBLE OF  
THE LEGISLATURE TO DETERMINE  
WHETHER A COURT IS GOING TO  
HOLD THAT CHANGES ARE  
QUALITATIVE OR QUANTITATIVE OR  
SUFFICIENTLY QUALITATIVE TO  
AFFECT.

FLORIDA SHERIFFS DREW A BRIGHT  
LINE.

THE LEGISLATURE HAS RELIED ON  
THAT BRIGHT LINE, NOT JUST IN  
2011, BUT ALL THROUGHOUT SINCE  
FLORIDA SHERIFFS IN ADOPTING  
OTHER CHANGES.

>> WHAT WOULD BE THE -- BUT  
THE OTHER CHANGES FROM THE  
TIME OF THE STATUTE UNTIL THIS  
OCCURRED HAVE ALL BEEN  
POSITIVE CHANGES FOR EMPLOYEES  
OF THE STATE OF FLORIDA.

>> RIGHT.

>> COULD THERE -- WHAT WOULD  
BE, FROM THE POINT OF VIEW OF  
THE LEGISLATURE AND THE  
GOVERNOR, ANYTHING THAT WOULD  
BE IMPERMISSIBLE TO DO?  
FOR EXAMPLE, COULD THE  
LEGISLATURE DECIDE TO NOT HAVE  
ANY PENSION -- MANDATORY  
PENSION PLAN?

>> AS LONG AS THERE'S NO  
RETROACTIVE EFFECT.

>> SO IT COULD ABOLISH THE  
PENSION PLAN COMPLETELY.

>> YES.

AND I THINK FLORIDA SHERIFFS  
EITHER EXPLICITLY SAID THAT OR  
IMPLIED THAT.

CONSTITUTIONALLY THEY WOULD BE  
ABLE TO DO IT.

>> EXPLAIN TO ME WHAT YOU  
BELIEVE THE LANGUAGE MEANS IN  
THE STATUTE WHICH TALKS ABOUT  
THIS IS NOW CONTRACTUAL RIGHT  
THAT EMPLOYEES ARE BASICALLY  
UNDER A CONTRACT AND THAT  
THOSE RIGHTS, THOSE  
CONTRACTUAL RIGHTS, CANNOT BE  
ABRIDGED IN ANY WAY.

>> WELL, EMPLOYEES ARE UNDER  
AN AT WILL CONTRACT.  
MOST EMPLOYEES IN THE STATE.  
OF COURSE WE'RE LEAVING  
COLLECTIVE BARGAINING  
AGREEMENTS ASIDE.

BUT MOST EMPLOYEES IN THE  
STATE AREN'T UNDER A WRITTEN  
CONTRACT.

THEY'RE UNDER AN ORAL  
CONTRACT.

I WOULD LIKEN IT TO AN ORAL  
LEASE, MONTH TO MONTH.

THE LANDLORD CAN'T SAY I'M  
GOING TO INCREASE YOUR MONTHLY  
RENTAL PAYMENT.

YOU OWE ME FOR LAST YEAR \$10 A  
MONTH.

OBVIOUSLY A LANDLORD CAN'T DO  
THAT.

BUT A LANDLORD CAN SAY, HEY,  
STARTING NEXT MONTH I'M GOING  
TO INCREASE YOUR RENT.

>> SO UNDER THAT KIND OF  
THEORY, THE ONLY OPTION AN  
EMPLOYEE WOULD HAVE IS TO SAY  
I'M JUST -- I'M NOT GOING TO  
BE AN EMPLOYEE ANYMORE.

>> YES.

>> I MEAN, THE FACT IS -- AND  
I THINK -- I DON'T KNOW IF YOU  
SPECIFICALLY POINTED OUT IN  
YOUR BRIEF -- THIS IS  
SOMETHING THAT HAS STRUCK ME.  
THE LEGISLATURE COULD HAVE  
DECIDED IN DEALING WITH THE  
SHORTFALL EITHER LAY OFF  
EMPLOYEES THAT WOULD HAVE  
EQUATED WITH THIS OR COULD  
HAVE REDUCED FURTHER THEIR

COMPENSATION.

>> THAT'S RIGHT, YOUR HONOR.  
THEY COULD HAVE DONE THAT.  
AND I WANT TO EMPHASIZE THAT  
THERE WAS A \$3.6 BILLION  
SHORTFALL.

THIS WASN'T -- THE CHANGES  
HERE DID NOT MAKE UP FOR ALL  
THAT SHORTFALL.

IT WAS ONLY ABOUT 30% OF IT.

>> SO WE REALLY DON'T -- IF WE  
FIND THAT THE STATUTE DOESN'T  
VEST CONTRACTUAL RIGHTS  
PROSPECTIVELY, THE ISSUE OF  
WHETHER THEY COULD HAVE GOTTEN  
-- THE LEGISLATURE COULD HAVE  
GOTTEN THE MONEY ELSEWHERE  
DOESN'T REALLY -- DOES THAT  
COME INTO PLAY?

>> NO.

>> THAT ONLY COMES INTO PLAY  
IF WE CONCLUDE THAT THE --  
THIS CREATES A BINDING  
CONTRACT, NOT BE ABLE TO ALTER  
BENEFITS FOR ANYBODY EMPLOYED  
AT THE DATE THE STATUTE WAS  
CHANGED UNTIL THEY LEAVE.

>> YES.

THE ONLY REASON I RECOGNIZE IT  
IS BECAUSE THIS COURT  
ADDRESSED THAT ISSUE AND SAID  
WE CAN'T INTERPRET THE STATUTE  
TO FREEZE THE FLORIDA  
RETIREMENT SYSTEM IN TIME SO  
THAT IT CAN NEVER BE CHANGED  
BECAUSE THE LEGISLATURE HAS TO  
HAVE THE FLEXIBILITY TO REACT  
TO CHANGING FINANCIAL  
CIRCUMSTANCES.

>> BUT I GUESS IT SEEMS TO ME  
FOR US TO GET INTO HOW -- IT  
WAS A BIG HOLE THAT YEAR, BUT  
THE ARGUMENT IS, WELL, THERE  
COULD HAVE -- THERE WERE A LOT  
OF OTHER SOURCES TO HAVE  
GOTTEN THAT INCOME.

IT SEEMS TO ME THAT WOULD BE  
INVOLVING THIS COURT.

I MEAN, I DON'T -- IN SOME  
KIND OF A POLICYMAKING  
DECISION.

>> CORRECT, A JUDGMENT CALL  
ABOUT WHERE YOU GET THE FUNDS  
TO MAKE UP FOR A SHORTFALL.  
THAT'S NOT SOMETHING THAT ANY  
COURT GETS INVOLVED IN.

THAT'S A LEGISLATIVE

PREROGATIVE.

I WANT TO ALSO CLARIFY, IN  
CASE THERE'S ANY CONFUSION,  
THAT THESE CHANGES DO OPERATE  
PROSPECTIVELY.

THE COURT BELOW CERTAINLY  
ASSUMED THAT, AND ALTHOUGH I  
THINK THERE'S BEEN SOME  
ARGUMENT THAT THERE IS  
RETROACTIVE APPLICATION, I  
WANT TO MAKE SURE THE COURT  
UNDERSTANDS THAT THERE IS  
NONE.

AS FAR AS THE EMPLOYEE  
CONTRIBUTION, THAT'S PRETTY  
CLEAR.

IT ONLY APPLIES TO EARNINGS  
AFTER JUNE 30 OF 2011.

>> HOW DO YOU RESPOND TO THE  
ARGUMENT BY THE EMPLOYEES OR  
THE PLAINTIFFS IN THIS CASE  
THAT HAD LEGISLATURE INTENDED  
FOR THESE RIGHTS NOT TO  
PERTAIN OR NOT TO APPLY TO  
FUTURE BENEFITS, THAT IT WOULD  
HAVE USED THE WORD ACCRUED IN  
THE PRESERVATION OF RIGHTS  
STATUTE?

>> THE WAY I RESPOND --  
>> THAT WOULD HAVE SOLVED IT.  
>> THE WAY I RESPOND, AS SOON  
AS THIS COURT'S DECISION IN  
FLORIDA SHERIFFS CAME OUT WITH  
THAT INTERPRETATION OF THE  
STATUTE, THERE WAS NO CHANGE  
TO THE STATUTE NECESSARY  
BECAUSE THE LEGISLATURE AGREED  
WITH THE COURT'S  
INTERPRETATION.

THE LEGISLATURE HAS HAD 30  
YEARS TO CHANGE THE STATUTE IF  
IT WANTED TO.

BUT ONCE IT HAD THAT  
INTERPRETATION IN FLORIDA  
SHERIFFS, IT WASN'T NECESSARY.

>> I GUESS THE PROBLEM, YOU  
KNOW, IF -- AND I'M TRYING TO  
FIGURE THIS OUT.

THE STATUTE -- IF THE STATUTE  
WAS CHANGED THE ARGUMENT  
REALLY WOULD BE WHATEVER WAS  
THE RIGHTS VESTED AT THE TIME  
OF THE STATUTE.

AND I GUESS THE QUESTION'S  
GOING TO BE COULD THE  
LEGISLATURE CHANGE THAT  
STATUTE AND THEREFORE -- YOU

KNOW, ASSUMING THAT IT DOES  
VEST RIGHTS PROSPECTIVELY,  
COULD THE LEGISLATURE THEN  
CHANGE THAT STATUTE OR ARE  
THEY BOUND TO WHATEVER THAT  
STATUTE SAYS IN 1972?

>> FOUR.

YES.

WELL, WE'RE NOT TAKING THE  
POSITION NOW THAT IF THE  
LEGISLATURE CHANGES THE  
STATUTE THEN, ANY RETROACTIVE  
-- ANY BENEFITS ALREADY  
ACCRUED ARE NO LONGER VESTED  
BECAUSE THERE WAS A  
CONTRACTUAL PROVISION UNTIL  
NOW THAT THEY DO VEST  
RETROACTIVELY.

>> COULD YOU EXPLAIN --  
BECAUSE I THOUGHT THAT THE  
COLLECTIVE BARGAINING ISSUE  
WAS GOING TO BE AN ISSUE THAT  
WOULD DISTINGUISH AT LEAST  
CLASSES OF EMPLOYEES, HOW --  
WHATEVER DECISION WE REACH,  
FIRST OF ALL, HOW DOES THIS  
IMPACT COUNTIES AND CITIES?

>> THEY ARE PART OF THE FRS.

>> THEY ARE, BUT THEY WERE --

>> LET ME CLARIFY THAT.

ALL THE COUNTIES ARE PART OF  
IT.

CITIES CAN BE PART OF IT, AND  
MANY CITIES ARE, BUT SOME  
CITIES AREN'T.

>> BUT I THOUGHT THERE WAS  
SOME ARGUMENT THAT THE AMICUS  
RAISED, THAT THERE MIGHT BE  
DIFFERENCES IN THE CITIES AND  
COUNTIES THAT SHOULD GIVE THEM  
MORE FLEXIBILITY OR WHATEVER  
IS DECIDED HERE, FOR BETTER,  
FOR WORSE, DOES THAT APPLY TO  
ALL CITIES AND COUNTIES?

>> IT APPLIES TO THEM AS FAR  
AS THE -- YOUR INTERPRETATION  
OF THE FRS IS CONCERNED, BUT  
IT DOESN'T APPLY TO ANY  
SPECIFIC COLLECTIVE BARGAINING  
AGREEMENT AND ARGUMENTS THAT  
PEOPLE MAKE THAT A COLLECTIVE  
BARGAINING AGREEMENT HAS BEEN  
VIOLATED.

THAT IS NOT AN ISSUE.

>> IN ANSWER IN AN EARLIER  
QUESTION, DID YOU SAY THE  
LEGISLATURE COULD IN FACT



ELIMINATE THE RETIREMENT  
PROGRAM COMPLETELY?  
>> GOING FORWARD.  
CONSTITUTIONALLY.  
>> AND SO THAT WOULD MEAN ALSO  
THAT THE LEGISLATURE COULD IN  
FACT INCREASE THE EMPLOYEES'  
CONTRIBUTION EVERY YEAR,  
COULDN'T THEY?  
>> THEORETICALLY, YES.  
GOING FORWARD, OBVIOUSLY.  
NOT GOING BACKWARD.  
BUT I DON'T WANT TO THINK  
ABOUT THOSE THINGS, YOUR  
HONOR.  
>> WELL, I'M SURE EMPLOYEES  
ARE.

>> ON THE ISSUE OF THE  
COLLECTIVE BARGAINING RIGHTS,  
WE ALSO THINK THAT THE CHANGES  
DO NOT IMPAIR ANY COLLECTIVE  
BARGAINING RIGHTS.  
>> HOW DOES THAT WORK?  
BECAUSE AS JUDGES WE DON'T  
ENGAGE IN COLLECTIVE  
BARGAINING.  
BUT ARE THERE -- IN TERMS OF  
POLICE AND FIREFIGHTERS, HOW  
-- DO THEY GET -- HAVE THE  
ABILITY TO NEGOTIATE FOR  
DIFFERENT PERCENTAGES FOR  
THEIR PARTICULAR CLASS OF  
EMPLOYEES?  
I KNOW THERE'S CERTAINLY THE  
SPECIAL RISK, BUT HOW DOES  
THAT WORK WITH THE STATE  
COLLECTIVE BARGAINING?  
>> WELL, THE STATE EMPLOYEES  
ARE -- ALL THE STATE EMPLOYEES  
ARE IN THE FLORIDA RETIREMENT  
SYSTEM.  
SO THE SYSTEM IS WHAT IT IS.  
THE EMPLOYEES CAN NEGOTIATE ON  
TWO DIFFERENT LEVELS.  
THEY CAN NEGOTIATE FOR  
BENEFITS OVER AND ABOVE THE  
FRS, EITHER ON A STATE LEVEL  
OR ON A COUNTY LEVEL OR  
MUNICIPAL LEVEL.  
AND I'LL GIVE YOU JUST AN  
EXAMPLE.  
EMPLOYEES CAN BARGAIN FOR THE  
RIGHT FOR LET'S SAY POLICE  
OFFICERS, ANY LAW ENFORCEMENT  
OFFICER UPON RETIREMENT  
RECEIVE A ONE THOUSAND DOLLARS

LUMP SUM PAYMENT FOR EACH YEAR  
OF SERVICE.  
THAT'S A RETIREMENT BENEFIT.  
THAT CAN STILL BE NEGOTIATED.

>> BUT HOW DOES -- FOR THE  
STATE OF FLORIDA, WHERE THE  
SALARIES ARE SET, I GUESS I'M  
JUST TRYING TO UNDERSTAND WHAT  
RIGHTS, IF THE STATE CAN JUST  
ELIMINATE THE RETIREMENT PLAN,  
IT'S NOT MUCH OF A BARGAINING  
POSITION.

>> WELL, YOUR HONOR, THE  
CONSTITUTION DOESN'T GUARANTEE  
SUCCESS.

IT GUARANTEES THE RIGHT TO  
COLLECTIVELY BARGAIN.

>> WELL, I GUESS IT SAYS -- ON  
BUT NOT REALLY ON -- HOW IS IT  
ON THE RETIREMENT PLAN YOU'RE  
SAYING THEY COULD GET MORE,  
BUT WHAT'S THEIR --

>> WELL, THERE'S ANOTHER  
PROVISION AS WELL I WANT TO  
TALK ABOUT, WHICH IS CHAPTER  
447.3093, ALLOWS EMPLOYEES TO  
BARGAIN FOR A CHANGE IN THE  
STATUTE.

AND THE GOVERNOR OR OTHER  
EXECUTIVE OF THE BARGAINING  
AGENCY, OF THE GOVERNMENT  
AGENCY, MAY REQUEST THE  
LEGISLATURE AS PART OF A  
COLLECTIVE BARGAINING  
AGREEMENT TO CHANGE THE  
STATUTE.

THAT DOESN'T OBVIOUSLY REQUIRE  
THE LEGISLATURE TO DO IT AND  
OFTENTIMES IT REQUIRES  
APPROPRIATIONS.

BUT THERE IS A PROVISION IN  
THE STATUTE THAT ALLOWS  
EMPLOYEES IN COLLECTIVE  
BARGAINING TO BARGAIN WITH  
THEIR EMPLOYERS THAT A STATUTE  
BE CHANGED, WHETHER IT'S THIS  
ONE OR ANY OTHER STATUTE.

>> WHAT IS THE QUID PRO QUO?  
IF YOU DON'T CHANGE IT, WHAT  
HAPPENS?

>> IF THEY DON'T CHANGE IT,  
THEN THE CBA RETAINS -- IS  
CONSIDERED WITHOUT THOSE  
STATUTORY CHANGES.

THAT'S WHAT THE STATUTE SAYS.

>> YOU'RE NOW ON YOUR REBUTTAL

TIME.

>> THANK YOU VERY MUCH FOR  
REMINDING ME AND I'LL SAVE THE  
REST OF MY TIME FOR REBUTTAL.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY  
NAME IS RON MEYER.

WITH ME IS LYNN HERN AND  
JENNIFER BLOOM.

LET ME FIRST ADDRESS THE  
SHERIFFS CASE.

I THINK TO UNDERSTAND  
SHERIFFS, YOU HAVE TO  
UNDERSTAND THE FACTS THAT WERE  
PRESENTED IN THAT CASE,  
BECAUSE THE LANGUAGE GOES WELL  
BEYOND WHAT THE FACTS DICTATE.  
THE FACTS WERE THAT IN 197--  
1970 A SPECIAL RISK WAS SET.  
THAT MEANS IF AN OFFICER  
COMPLETED YEARS OF SERVICE IN  
THE FUTURE, HE WOULD GET A 2%  
ADJUSTMENT TO HIS RETIREMENT  
BENEFIT.

IN 1974 WHEN THE STATUTE IN  
QUESTION IN THIS CASE, THE  
PRESERVATION OF RIGHTS  
STATUTE, WAS PASSED CREATING  
THE NONCONTRIBUTORY PENSION  
PLAN, THERE WAS A SEPARATE  
BILL, SENATE BILL 81, THAT WAS  
ALSO PASSED, THAT DID TWO  
THINGS.

IT RAISED THE SPECIAL RISK  
CREDIT FROM 2% TO 3%, AND IT  
REQUIRED THOSE PEOPLE WHO WERE  
RECEIVING SPECIAL RISK CREDIT  
TO PAY NOT THE 6% THAT THEY  
PREVIOUSLY HAD BEEN PAYING,  
BUT 8%.

WELL, THERE WAS A CONFLICT  
BETWEEN THE TWO STATUTES.

ON ONE HAND WE HAD A STATUTE  
THAT PUT THE PROGRAM IN AS A  
NONCONTRIBUTORY PROGRAM.

ON THE OTHER HAND, WE HAD A  
STATUTE THAT SAID YOU WOULD  
HAVE TO PAY MORE CONTRIBUTIONS  
TO GET A HIGHER SPECIAL RISK  
CREDIT.

AND SO THAT WENT THROUGH SOME  
ANGST AND THE ATTORNEY GENERAL  
ULTIMATELY DECIDED THAT THE 3%  
PROVISION, THE INCREASE IN THE  
SPECIAL RISK, THAT COULD  
SURVIVE, BUT THE CONTRIBUTION

REQUIREMENT, THE 6% TO 8%,  
COULDN'T SURVIVE BECAUSE THE  
PLAN WAS NOW NONCONTRIBUTORY.  
SO, IN ESSENCE, AFTER PAYING  
THE 8% CONTRIBUTION FOR ABOUT  
THREE, FOUR MONTHS, THEY  
DIDN'T HAVE TO PAY IT ANYMORE,  
BUT THEY RETAINED THE 3%.

>> THAT'S NOT IN THE ACTUAL  
CASE, WHAT YOU JUST RECITED,  
IS IT?

>> THAT'S REFERRED TO IN OUR  
BRIEF.

>> NO.

THE ACTUAL OPINION.

>> NO.

IT'S NOT REFERRED TO IN THE  
ACTUAL CASE, BUT THE POINT  
HERE, YOUR HONOR, IS --

>> BUT I GUESS, JUST GOING  
BACK TO NOT BEING REFERRED TO  
IN THE ACTUAL CASE, SINCE --  
YOUR ARGUMENT I GUESS IS THAT  
IT'S DIFFERENT BECAUSE YOU  
CANNOT MAKE A NONCONTRIBUTORY  
PLAN CONTRIBUTORY.

THAT'S THE ARGUMENT.

>> VERY CLEARLY OUR POSITION  
IS THE -- WHEN YOU READ THE  
PLAIN LANGUAGE OF THE STATUTE,  
WHICH SAYS THAT ALL OF THE  
BENEFITS, THE RIGHTS OF  
MEMBERS OF THE RETIREMENT  
SYSTEM ESTABLISHED BY THIS  
CHAPTER ARE DECLARED TO BE OF  
A CONTRACTUAL NATURE, THOSE  
RIGHTS WERE TO A MANDATORY,  
NONCONTRIBUTORY SYSTEM.

AND THAT'S WHAT THE COURT IN  
SHERIFFS CLEARLY RECOGNIZED.

>> BUT I GUESS THAT'S WHERE  
I'M HAVING PROBLEM.

IF THEY HAD -- OBVIOUSLY HAD  
THE FACTS OF WHAT YOU'RE  
REFERRING TO, THAT THERE WERE  
TWO ISSUES TO BE DECIDED, AND  
THEY DECIDED, NO, YOU COULDN'T  
MAKE IT CONTRIBUTORY, I MEAN,  
OBVIOUSLY WE'D EITHER BE  
RECEDING OR AFFIRMING THAT.

SO I HAVE TROUBLE, I GUESS --

>> I'M SORRY.

I PERHAPS MISSTATED IT THEN,  
BECAUSE THIS WAS NOT AN ISSUE  
THAT WAS DECIDED IN SHERIFFS.  
THIS WAS THE ISSUE THAT LED TO  
THE CLAIM IN SHERIFFS THAT YOU

COULDN'T REDUCE THAT 3% BACK  
DOWN TO THE 2% IT WAS.  
AND THE REASON THAT WAS BEING  
ARGUED YOU COULDN'T IS BECAUSE  
THIS WAS A CONTRACTUAL BENEFIT  
THAT YOU COULDN'T IMPAIR.  
>> BUT THERE ISN'T ANYTHING IN  
SHERIFFS -- IN SHERIFFS THAT  
SAYS THAT THEY MUST KEEP A  
MANDATORY NONCONTRIBUTORY  
PLAN, THE STATE.  
WE DIDN'T -- IT WASN'T  
DISCUSSED.  
>> WELL, THE COURT DIDN'T  
ADDRESS THAT, BUT IN TWO  
PLACES IT TALKS ABOUT THAT THE  
LEGISLATURE HAS THE AUTHORITY  
TO MODIFY OR ALTER  
PROSPECTIVELY THE MANDATORY  
NONCONTRIBUTORY RETIREMENT  
PLAN FOR --  
>> BUT THAT'S A PRETTY BROAD  
STATEMENT, ISN'T IT?  
>> WELL, IT'S A BROAD  
STATEMENT, YOUR HONOR, BUT  
WHAT I THINK IT CLEARLY  
INDICATES IS IN SHERIFFS THEY  
WEREN'T ADJUDICATING ANYTHING  
OTHER THAN WHETHER A YEARS OF  
SERVICE CREDIT THAT HADN'T  
BEEN EARNED YET -- THERE WAS  
NO COMPLETION OF THE SERVICE  
REQUIRED -- COULD BE CHANGED.  
AND THE COURT SAID IT COULD --  
>> I UNDERSTAND YOU'RE DOING  
THE BEST YOU CAN ON THE FACTS  
OF THIS CASE, AND YOU I THINK  
DEVOTE MORE TIME TO ARGUING  
YOUR BRIEF THAT WE SHOULD  
RECEDE FROM SHERIFFS BECAUSE  
-- FOR VARIOUS REASONS.  
BUT DON'T WE -- IN LOOKING AT  
SHERIFFS DON'T WE HAVE TO PAY  
ATTENTION NOT JUST TO ALL THE  
FACTS THAT WERE SWIRLING  
AROUND THERE, BUT WE'VE GOT TO  
PAY ATTENTION, DON'T WE, TO  
THE ACTUAL REASONING OF THE  
CASE AND THE RULE THAT THEY  
STATE.  
AND THEY STATE IT REPEATEDLY  
AND UNEQUIVOCALLY.  
THEY SAY WE STRESS THAT THE  
RIGHTS PROVISION WAS NOT  
INTENDED TO BIND FUTURE  
LEGISLATURES FROM  
PROSPECTIVELY ALTERING

BENEFITS WHICH ACCRUE FOR  
FUTURE STATE SERVICE.  
I DON'T KNOW WHAT COULD BE A  
CLEARER STATEMENT OF A  
RATIONALE AND THE BASIS FOR  
THE DECISION THAN THAT  
STATEMENT.

>> AND THAT STATEMENT, YOUR  
HONOR, FLIES RIGHT IN THE FACE  
OF THE SETTLED LAW THAT SAYS  
WHERE THERE IS A CONTRACTUAL  
RIGHT INVOLVED, YOU CAN BIND

--

>> SO NOW WE MOVE ON TO  
WHETHER WE SHOULD RECEDE FROM  
THIS HOLDING AND THIS  
RATIONALE THAT IS IN THIS  
CASE.

AND I'D LIKE TO ASK YOU TO  
ADDRESS -- ONE OF THE THINGS  
YOU ASSERT IN YOUR BRIEF IN  
DOING YOUR ANALYSIS WHETHER IT  
WOULD BE APPROPRIATE TO RECEDE  
FROM OUR DECISION IN THE  
SHERIFFS CASE IS THAT THERE  
ARE NO RELIANCE INTEREST.  
THERE'S NO DETRIMENTAL  
RELIANCE.

AND MY QUESTION TO YOU IS HOW  
CAN YOU ASSERT THAT IN FACE OF  
THE REALITY THAT THE WHOLE  
STATE BUDGET IS BASED ON THE  
DECISIONS THAT WERE MADE WITH  
RESPECT TO THAT AND THE WHOLE  
STATE BUDGET WILL BE THROWN  
OUT OF BALANCE AND THE WHOLE  
STATE BUDGET WILL BE THROWN  
INTO CHAOS IF WE RECEDE FROM  
THAT DECISION?

>> YOUR HONOR, YOU'RE MAKING  
ASSUMPTIONS THAT WERE NEVER  
PART OF THE CASE HERE.  
THERE IS NO RECORD EVIDENCE OF  
THAT.

AT BEST, THE RECORD EVIDENCE  
SHOWS THERE WAS A BUDGETARY  
SHORTFALL AND THE LEGISLATURE  
DECIDED TO MAKE IT UP ON THE  
BACKS OF PUBLIC EMPLOYEES.  
NOW, THAT IS OF RECORD.  
BUT THAT'S NOT THE TEST, YOUR  
HONOR.

THE TEST IS THE TEST IN THE  
UNITED STATES TRUST AND AS  
THIS COURT HAS SAID IN CHILDS,  
AND THAT IS TO SAY THAT IF  
YOU'RE GOING TO -- IF -- THE

FIRST THING YOU DO IS YOU  
IDENTIFY WHETHER THERE'S A  
CONTRACT.

WE SUBMIT TO YOU AND THE TRIAL  
COURT FOUND VERY CLEARLY THAT  
THERE WAS A CONTRACT.

HOW COULD IT BE ANY MORE  
CLEAR?

>> WAIT A SECOND HERE.  
BUT WE'RE TALKING ABOUT --  
WHAT I'M TALKING ABOUT -- YOU  
GOT A LOT OF DIFFERENT  
ARGUMENTS.

I'M TALKING ABOUT YOUR  
SPECIFIC ARGUMENT THAT THE  
FACTOR -- RELATED TO THE  
FACTORS THAT WE ANALYZE WHEN  
WE DECIDE WHETHER TO RECEDE  
FROM A CASE.

AND ONE OF THOSE FACTORS WHICH  
YOU ACKNOWLEDGE AND DISCUSS AT  
SOME LENGTH IN YOUR BRIEF,  
ALTHOUGH I THINK YOU KIND OF  
GO OVER THIS ONE TOO QUICKLY,  
IS THE FACTOR OF RELIANCE.  
AND YOU ESSENTIALLY ASSERT  
THAT THERE ARE NO RELIANCE  
INTERESTS HERE.

AND MY QUESTION TO YOU IS HOW  
CAN YOU POSSIBLY ASSERT THAT?  
I MEAN, THE LEGISLATURE HAS  
OBVIOUSLY RELIED IN -- NOT  
JUST IN THE DECISIONS THEY'VE  
MADE THIS YEAR, BUT IN THE  
DECISIONS THEY'VE MADE  
PREVIOUSLY WHERE THEY'VE  
INCREASED RETIREMENT BENEFITS.  
AND IF THEY HAD KNOWN THAT WE  
WERE GOING TO PULL THE RUG OUT  
FROM UNDER THEM, THEY MIGHT  
HAVE BEEN MORE RELUCTANT TO  
INCREASE RETIREMENT BENEFITS  
THAT HAVE BEEN AWARDED IN THE  
YEARS SINCE SHERIFFS.

SO I CANNOT FATHOM HOW THERE  
ARE NO RELIANCE INTERESTS THAT  
ARE IMPLICATED HERE.

>> THE RELIANCE INTERESTS, AS  
WE UNDERSTAND THEM, DON'T  
NECESSARILY FOCUS ON WHETHER  
THE LEGISLATURE RELIES, BUT  
RATHER WHAT RELIANCE HAS BEEN  
MADE UPON THESE PARTICULAR  
CASES OR THIS PARTICULAR CASE  
--

>> BUT THIS IS A CASE -- THIS  
IS A CASE -- SHERIFFS IS A

CASE ABOUT THE POWER OF THE  
LEGISLATURE.

NOW, WHEN THE LEGISLATURE --  
WE MAKE THAT DECISION AND THEN  
THE LEGISLATURE ACTS ON THE  
BASIS OF THEIR UNDERSTANDING  
OF WHAT THAT CASE PERMITS AND  
DOES NOT PERMIT.

IT SEEMS TO ME TO FLY IN THE  
FACE OF REASON TO SAY THAT  
THEY HAVEN'T RELIED ON IT OR  
TO TAKE THE POSITION, WELL,  
IT'S JUST THE LEGISLATURE.

WE SHOULDN'T BE CONCERNED  
ABOUT WHETHER THEY'VE RELIED  
ON WHAT WE'VE DECIDED.

>> YOUR HONOR, I THINK YOU'VE  
JUMPED ME FROM THE APPLICATION  
OF SHERIFFS INTO WHY SHERIFFS  
IS WRONG AND I'M HAPPY TO  
CONTINUE TO DISCUSS THAT.

>> I MEANT TO DO THAT.

>> WELL, I KNOW YOU DID.  
BUT I CAUGHT YOU.

>> I CONFESS.

>> THE -- I WANT TO GO BACK  
FOR A MOMENT -- AND I WILL  
ADDRESS -- YOU KNOW -- WHAT  
THE TRIAL COURT FOUND WAS THAT  
THERE WAS A VERY CLEAR  
CONTRACTUAL RIGHT --

>> WELL, LET ME -- ON  
FINDINGS.

I THOUGHT THIS CAME UP ON  
SUMMARY JUDGMENT.

>> IT DID.

>> A FINDING THEN IS -- IT'S A  
LEGAL CONCLUSION.

>> CORRECT.

>> SO WE -- WHAT THE TRIAL --  
COURT DID, WE HAVE SEVEN OF US  
LOOKING AT IT, WHAT WE'RE  
DOING IS WE LOOK AT THAT  
STATUTE.

DO YOU AGREE WITH MR. CANTERO  
THAT BUT FOR THE STATUTE THERE  
IS NOT A SPECIFIC CONTRACTUAL  
RIGHT HERE?

>> THERE ARE CASES THAT WOULD  
SUGGEST THERE ARE CONTRACTUAL  
INTERESTS EVEN IN THE ABSENCE  
OF A STATUTE, BUT OUR CASE IS  
CENTERED ON THAT STATUTE.

>> AND HERE'S -- SO THE  
FINDING OF THE TRIAL COURT IS  
A LEGAL CONCLUSION.



>> CORRECT.  
AND YOU'RE FREE TO REVISIT  
HERE.  
>> THAT'S WHAT WE'RE HERE TO  
DO.  
>> CORRECT.  
>> IF I READ FLORIDA SHERIFFS  
VERY BROADLY, WHEN I HAD READ  
THE STATUTE, I MIGHT LOOK AT  
THAT STATUTE AND SAY I THINK  
THAT STATUTE'S VERY BROAD.  
BUT MY PROBLEM IS IS THAT WE  
HAVE GOT FLORIDA SHERIFFS,  
WHICH HAS BEEN THE LAW FOR 30  
YEARS, AND -- 40 YEARS,  
WHATEVER IT IS, AND IT SEEMS  
TO CLEARLY STATE THAT CHANGES  
CAN BE MADE PROSPECTIVELY  
BASED ON THAT STATUTE.  
HOW DO WE IN LIGHT OF THAT,  
UNLESS WE WERE TO RECEDE FROM  
FLORIDA SHERIFFS, SAY THAT THE  
STATUTE TRUMPS OUR  
INTERPRETATION OF THE STATUTE  
IN FLORIDA SHERIFFS?  
DO YOU UNDERSTAND WHAT I'M  
ASKING?  
>> I DO UNDERSTAND, BUT IT'S  
BECAUSE THE STATUTE PRESERVES  
THE RIGHTS OF THE CHAPTER AND  
THE RIGHT OF THE CHAPTER THAT  
VESTS FOR AN EMPLOYEE AT THE  
TIME OF EMPLOYMENT.  
THE CONTRACT IS BETWEEN THE  
EMPLOYEE AND THE FLORIDA  
RETIREMENT, THE STATE OF  
FLORIDA.  
>> NOW, TELL ME THIS, BECAUSE  
I'M TRYING TO FIGURE OUT  
LOOKING AT THIS, IF IT WASN'T  
-- WHY WOULD THE LEGISLATURE  
BIND ITSELF FOREVER, NO MATTER  
WHAT THE BUDGET CRISIS WAS, TO  
A PLAN THAT COULD NOT DECREASE  
BENEFITS, BUT ONLY INCREASE  
THEM?  
WHAT WOULD -- WHAT WOULD BE --  
OTHER -- VERSUS WHAT MR.  
CANTERO SAYS, IS THAT WHAT WAS  
AT STAKE IS THEY COULDN'T  
RETROACTIVELY GO, AND YOU'VE  
WORKED 30 YEARS AND NOW YOU'RE  
ABOUT TO ENJOY YOUR RETIREMENT  
AND THE STATE GOES, SO LONG,  
BYE BYE, IT'S ALL GONE.  
THAT TO ME, OF COURSE, IS A  
SIGNIFICANT INTEREST THAT

EVERY EMPLOYEE HAS, THAT WHAT THEY'VE EARNED IS -- REMAINS. BUT TO SAY THAT THEY WERE BINDING THEMSELVES TO NEVER REDUCE BENEFITS OR REQUIRE CONTRIBUTIONS, WHAT WOULD -- I'M JUST TRYING -- WHAT WOULD BE THE MOTIVATION OF THE LEGISLATURE TO GIVE SUCH A BROAD -- YOU KNOW, HANDCUFF THEM FOREVER.

>> IT'S A POLICY DECISION THAT THE LEGISLATURE CAN MAKE AND DID MAKE IN 1974.

>> SO COULD THEY EVER REPEAL THAT?

COULD THEY REPEAL THE STATUTE?

>> THEY COULD, BUT THEY CAN'T REPEAL THE VESTED CONTRACTUAL RIGHTS.

LET ME CORRECT SOMETHING THAT I THINK IS IN YOUR ASSUMPTION THERE AND THAT IS THAT YOU CAN'T EVER CHANGE IT.

AND THAT'S SIMPLY NOT TRUE. THE LEGISLATURE IN SENATE BILL 2100 DID CHANGE THE PENSION PROGRAM CREATED IN THIS STATUTE PROSPECTIVELY FOR EMPLOYEES COMING ON BOARD AFTER JULY 1 OF 2011.

AND THAT'S NOT IN THIS CASE. THOSE EMPLOYEES CAN BE ASKED TO CONTRIBUTE.

>> SO IT'S REALLY A QUESTION OF WHAT OUR DEFINITION OF PROSPECTIVE VERSUS RETROACTIVE.

>> WELL, I THINK IT'S VERY CLEARLY THAT.

>> WELL, EXCEPT THAT AN EMPLOYEE -- IT'S NOT EMPLOYEES THAT HAD -- AGAIN, I GUESS I'M TRYING TO UNDERSTAND THIS, THAT IT'S EMPLOYEES -- DON'T HAVE THOSE RETIREMENT BENEFITS UNTIL THEY WORK THAT DAY OR WEEK OR YEAR.

SO FOR -- THEIR YEARS OF SERVICE WILL DETERMINE WHAT THEY GET.

IF THE EMPLOYER SAYS YOU'RE GONE, THEY GET WHATEVER THEY HAD AS OF THE DATE THAT THEY'RE TERMINATED.

>> BUT UPON BECOMING EMPLOYED, WHAT THE PRESERVATION OF

RIGHTS STATUTE SAYS IS YOU  
HAVE A RIGHT TO A  
NONCONTRIBUTORY SYSTEM.  
MAYBE YOU DON'T HAVE THE RIGHT  
TO RIDE IT OUT, BUT YOU HAVE  
THAT RIGHT.  
YOU CAN'T TAKE THAT RIGHT  
AWAY.  
>> DO YOU DISTINGUISH BETWEEN  
COLA AND NONCONTRIBUTORY?  
>> NO, I DON'T.  
IT'S A DIFFERENT ARGUMENT.  
>> IT CAN'T BE THE SAME  
ARGUMENT.  
>> THE COLA WAS IN THE -- IT  
IS IN THE STATUTES, CHAPTER  
121, AND WAS IN THE STATUTE  
WHEN THE PRESERVATION OF  
RIGHTS PROVISION WAS ENACTED.  
SO AN EMPLOYEE WHO CAME IN  
BETWEEN 1974 AND JULY 1, 2011  
HAD A CONTRACTUAL ENTITLEMENT  
TO TWO THINGS: A  
NONCONTRIBUTORY SYSTEM WITH A  
COLA.  
AND ALL WE'RE SAYING IS YOU  
CAN'T IMPAIR THAT CONTRACTUAL  
RIGHT.  
YOU CAN CHANGE IT  
PROSPECTIVELY.  
AND THEY DID.  
THEY ELIMINATED IT  
PROSPECTIVELY FOR EMPLOYEES  
COMING ON BOARD.  
THEY CAN CHANGE IT -- THEY CAN  
MAKE CHANGES, SO UNITED STATES  
TRUST CASE SAYS, IF THEY'RE  
INSUBSTANTIAL CHANGES.  
AND PERHAPS THE 3%/2%  
CORRECTION THAT WAS MADE UNDER  
REVIEW IN SHERIFFS WOULD HAVE  
BEEN VIEWED AS AN  
INSUBSTANTIAL CHANGE.  
>> LET ME ASK YOU THIS.  
HOW DOES THAT FIT IN WITH THE  
NOTION THAT BEFORE YOU ARE  
ENTITLED TO ANYTHING, THAT YOU  
HAVE TO VEST?  
SO IS THERE A DIFFERENCE  
BETWEEN EMPLOYEES WHO HAVE  
VESTED AND EMPLOYEES WHO HAVE  
NOT INVESTED -- VESTED AS TO  
WHETHER OR NOT THIS STATUTE IS  
APPLICABLE?  
>> WE DON'T BELIEVE THERE IS A  
DIFFERENCE YOUR HONOR.  
>> YOU DON'T THINK THERE IS?

>> NO.  
BECAUSE, FIRST OF ALL, THE  
STATUTE DOESN'T TALK ABOUT  
BENEFITS ALREADY EARNED.  
SHERIFFS PULLED THAT OUT OF  
THIN AIR.  
THE STATUTE DOESN'T.  
THE STATUTE SAYS RIGHTS OF  
MEMBERS OF THE RETIREMENT  
SYSTEM ESTABLISHED BY THE  
CHAPTER.  
AND THE RIGHT OF A VESTED OR  
NONVESTED EMPLOYEE IS TO A  
NONCONTRIBUTORY SYSTEM WITH A  
COLA.  
SO, YOU KNOW, I DON'T THINK  
THE INVESTING ISSUE --  
>> BUT I GUESS I'M A LITTLE  
CONCERNED ABOUT THAT BECAUSE  
IT SEEMS TO ME THAT YOU ARE  
NOT EVEN ENTITLED TO THE  
BENEFITS OF THIS UNLESS YOU  
HAVE IN FACT VESTED.  
>> WELL, YOU'RE NOT ENTITLED  
--  
>> WHY WOULDN'T THERE BE A  
DIFFERENCE?  
>> YOU'RE NOT ENTITLED TO THE  
BENEFITS UNLESS VESTED BECAUSE  
THAT'S PART OF THE CHAPTER  
THAT'S MADE A CONTRACT FOR  
YOU.  
IN OTHER WORDS, YOU'RE LIVING  
UNDER THE TERMS OF THE  
CONTRACT.  
THAT'S NOT TO SAY THAT YOU  
HAVE A DIFFERENT CONTRACT WHEN  
YOU'RE VESTED OR NOT VESTED.  
THE CONTRACT IS FOR A  
NONCONTRIBUTORY SYSTEM WITH A  
COLA AND THAT'S WHAT'S BEEN  
IMPAIRED HERE.  
>> SO YOUR ARGUMENT REALLY  
BREAKS DOWN TO PROSPECTIVE  
MEANS ONLY THOSE EMPLOYEES WHO  
START THEIR EMPLOYMENT WITH  
THE STATE AS OF THE EFFECTIVE  
DATE OF THE NEW STATUTE.  
>> YES, YOUR HONOR.  
>> SO I IMAGINE YOU DISAGREE  
WITH THE CONTENTION THAT  
HOPEFULLY WILL NOT EVER HAPPEN  
THAT THE STATE COULD ELIMINATE  
THE PLAN COMPLETELY?  
>> WE BELIEVE THEY COULD  
ELIMINATE IT COMPLETELY  
PROSPECTIVELY, BUT NOT FOR THE

PEOPLE WHO ARE IN IT.  
YOU CAN'T CHANGE THE GAME IN  
THE MIDDLE OF THE GAME, YOUR  
HONOR.  
THAT'S AN IMPAIRMENT OF  
CONTRACT AND THAT'S PROSCRIBED  
BY THE CONSTITUTION.  
>> BUT ON THAT WHOLE POINT,  
PUTTING ASIDE RIGHTS THAT  
PEOPLE HAVE UNDER COLLECTIVE  
BARGAINING AGREEMENTS,  
EMPLOYEES OF THE STATE CAN BE  
DISCHARGED.  
>> OF COURSE THEY  
CAN.  
>> THERE CAN BE REDUCTIONS IN  
FORCE.  
I HAVE A HARD TIME  
UNDERSTANDING HOW WHEN SOMEONE  
DOES NOT HAVE A RIGHT, A  
CONTINUING RIGHT TO  
EMPLOYMENT, THEY HAVE A  
CONTINUING RIGHT TO A  
PARTICULAR BENEFIT OF  
EMPLOYMENT.  
THAT STRIKES ME AS AN ANOMALY.  
>> EVEN AN EMPLOYEE WHO WORKS  
A YEAR HAS AN ENTITLEMENT TO A  
NONCONTRIBUTORY COLA  
PROVISION.  
IT MAY NOT PRODUCE ANY MONEY  
FOR HIM, BECAUSE HE HASN'T  
VESTED, BUT THAT'S THE RIGHT  
THAT THE PRESERVATION OF  
RIGHTS CLAUSE GIVES TO HIM.  
AND THAT RIGHT CHANGES ONCE HE  
VESTS.  
THEN HE HAS A RIGHT TO GET  
MONEY BACK WHEN HE GETS FIRED  
OR QUILTS.  
AND WHEN HE GETS ALL THE WAY  
TO THE END AND HE RETIRES, HE  
HAS A DIFFERENT RIGHT TO A  
FULL RETIREMENT BENEFIT, YOUR  
HONOR.  
LET ME USE THE LAST BIT OF MY  
TIME TO ADDRESS THIS  
COLLECTIVE BARGAINING ISSUE,  
BECAUSE IT'S SO IMPORTANT.  
ARTICLE I SECTION 6 GIVES TO  
PUBLIC EMPLOYEES THE RIGHT TO  
COLLECTIVE BARGAINING.  
THAT'S BEEN CONSTRUED AS BEING  
AN EFFECTIVE RIGHT.  
IN THE CITY OF TALLAHASSEE  
CASE, THIS COURT SAID THAT ONE  
OF THE ELEMENTS OF A MANDATORY

SUBJECT FOR COLLECTIVE  
BARGAINING IS RETIREMENT  
BENEFITS, AND IT STRUCK DOWN A  
STATUTE THAT USED TO BE IN  
CHAPTER 447 THAT SAID PUBLIC  
EMPLOYEES COULDN'T NEGOTIATE  
OVER PENSION BENEFITS, FOUND  
IT UNCONSTITUTIONAL AS A CLEAR  
ABRIDGEMENT OR RIGHT OF THE  
RIGHT OF A COLLECTIVE  
BARGAINING.

THIS STATUTE DIDN'T BAN  
COLLECTIVE BARGAINING.

IT CLEARLY DIDN'T DO THAT.  
BUT ITS EFFECT DID, BECAUSE  
WHAT IT DID IS RATHER THAN  
GIVE THE AFFECTED EMPLOYEES,  
WHICH ARE ALL PUBLIC  
EMPLOYEES, COUNTY, CITY,  
STATE, ANY SUBDIVISION, THE  
RIGHT TO HAVE MEANINGFUL  
COLLECTIVE BARGAINING TO  
DISCUSS IT, TO TRY AND COME TO  
SOME AGREEMENT -- TO EXERCISE  
ITS DISCRETION TO IMPLEMENT  
THAT AGREEMENT.

THE POINT IS NONE OF THAT  
OCCURRED AND NONE OF THAT  
COULD OCCUR UNDER THIS STATUTE  
BECAUSE THE STATUTE WAS SIMPLY  
CRAFTED, DICTATED AND PUT INTO  
PLACE WITHOUT ANY RIGHT OF  
PUBLIC EMPLOYEES TO NEGOTIATE  
OVER THE CHANGE, TO DETERMINE  
WHETHER THERE ARE DIFFERENT  
ALTERNATIVES THAT SHOULD BE  
PURSUED.

AND THAT DOESN'T MEAN THAT  
THEY GET, AS MR. CANTERO SAYS,  
THE CONSTITUTION DOES REQUIRE  
THE RIGHT TO AFFORD THESE  
EMPLOYEES COLLECTIVE  
BARGAINING.

AND THE STATUTE SIMPLY CUTS  
OFF ANY MEANINGFUL COLLECTIVE  
BARGAINING RIGHTS AND  
THEREFORE THERE'S A SEPARATE  
IMPAIRMENT ISSUE HERE, AN  
IMPAIRMENT OF THE RIGHT OF  
PUBLIC EMPLOYEES TO HAVE A  
VOICE IN THEIR WAGES, HOURS  
AND TERMS AND CONDITIONS OF  
EMPLOYMENT, WHICH MEANS  
RETIREMENT, WHETHER YOU'RE AT  
THE STATE OR LOCAL GOVERNMENT  
LEVEL.

>> SO UNDER THE CIRCUMSTANCES

WE HAVE HERE, IF THE  
COLLECTIVE BARGAINING  
AGREEMENT PROHIBITS CHANGES IN  
RETIREMENT, THEN THAT'S AN  
INDIVIDUAL PLAN AND THAT PLAN  
COULD NOT BE CIRCUMVENTED,  
RIGHT?

>> WELL, THAT'S TRUE.

>> BUT IF THE PLAN HAS A  
CLAUSE THAT SAYS THIS IS  
SUBJECT TO FUTURE LEGISLATIVE  
CHANGES, THEN IT WOULD NOT  
PROTECT AGAINST THIS.

IS THAT REALLY WHY THAT THESE  
COLLECTIVE BARGAINING  
AGREEMENTS REALLY ARE ALL  
DIFFERENT.

I WAS A LITTLE SURPRISED  
READING THEM AT THE VAST  
DIFFERENCES FOR THE SAME TYPE  
OF EMPLOYMENTS.

IT SEEMS TO BE SAYING THAT.

>> THEY'RE ALL DIFFERENT  
BECAUSE DIFFERENT GROUPS OF  
PUBLIC EMPLOYEES GO TO THEIR  
EMPLOYERS AND THERE ARE  
DIFFERENT NEEDS.

>> I UNDERSTAND.

BUT THE POINT IS THESE  
CONTRACTS -- AM I  
MISUNDERSTANDING IT?

SOME OF THEM SEEM AS THEY  
WILL PROTECT AGAINST THESE  
KINDS OF CHANGES.

>> THAT'S TRUE.

>> AND OTHERS DO NOT.

I MEAN SPECIFICALLY.

>> THAT'S TRUTHLY TRUE.

>> AND SO WHY WOULD WE NOT  
THEN LOOK TO THOSE TO ENFORCE  
THE CONTRACTUAL RIGHTS THAT  
ARE THERE?

SEEMS TO ME IT STRENGTHENS  
YOUR ARGUMENT.

>> YOU CAN CERTAINLY DO THAT,  
YOUR HONOR.

>> BUT YOU JUST CAN'T  
BLANKETLY SAY IF I HAVE A  
CONTRACT THAT SAYS THAT THE  
EMPLOYER CAN DO X, THEN WHEN  
EMPLOYER DOES X, YOU COME IN  
AND SAY THAT VIOLATES  
COLLECTIVE BARGAINING.

I'M MISSING THAT.

>> NO.

YOU'RE NOT MISSING.

IT'S TRUE THAT IF THERE'S A

CONTRACT THAT PROTECTS AGAINST  
IT, THAT'S A DIFFERENT  
IMPAIRMENT ISSUE.  
BUT THE POINT I WANT TO MAKE  
AND BE CLEAR ON IS THE RIGHT  
OF EMPLOYEES TO EFFECTIVE  
COLLECTIVE BARGAINING ISN'T  
DEPENDENT UPON THE EXISTENCE  
OF A CONTRACT.  
>> HOW ABOUT IF IT WAS  
CONTRACTED AWAY?  
>> IF THEY (INAUDIBLE) IT  
AWAY, THAT'S A DIFFERENT  
ISSUE.  
BUT WE'D NEVER GET THERE UNDER  
THIS STATUTE BECAUSE THEY  
SIMPLY FROM TALLAHASSEE HIGH  
SAID THIS IS THE SYSTEM AND  
THERE'S NO ROOM TO DISCUSS IT.  
>> BUT MY POINT IS IS I'M  
TRYING TO UNDERSTAND HOW IF A  
CONTRACT EXISTS SAYING THE  
EMPLOYER CAN DO THIS, HOW YOU  
-- HOW ONE COULD HOLD THAT  
THAT VIOLATES SOMEONE'S  
RIGHTS.  
I GUESS I'M NOT ASKING --  
>> IF THERE'S A CONTRACT THAT  
EXISTS THAT SAYS WE HAVE  
BARGAINED AND GIVE UP YOUR  
RIGHT TO NEGOTIATE OVER --  
>> NO.  
GIVE UP -- NO.  
A CLAUSE -- IT'S NOT GOING TO  
SAY THAT.  
IT'S GOING TO SAY SOMETHING TO  
THE EFFECT CAN ALTER THE  
BENEFITS.  
>> THAT'S A DIFFERENT  
CIRCUMSTANCE.  
>> RIGHT.  
BUT, I MEAN, IF THAT'S THE  
CASE, IF --  
>> THAT'S NOT THE -- THAT'S  
NOT THE ABRIDGEMENT OF  
COLLECTIVE BARGAINING THAT  
WE'RE TALKING ABOUT.  
>> BUT, AGAIN, IF THAT'S THE  
CIRCUMSTANCE, YOU CAN HAVE  
WHAT -- YOU'RE SAYING YOU CAN  
HAVE A CONSTITUTIONAL  
VIOLATION OF YOUR RIGHTS EVEN  
THOUGH YOU'VE CONTRACTED THAT  
AWAY.  
>> CONCEIVABLY, YES.  
YOU'D HAVE TO LOOK AT --  
>> SO THERE'S NO WAIVER, NO



CONSENT?

>> THOSE WOULD START GETTING  
INTO AS APPLIED CHALLENGES.

>> I UNDERSTAND.

THAT'S WHY IT SEEMS TO ME I'M  
TROUBLED BY THIS.

>> THE FACIAL PROBLEM WITH  
THIS STATUTE, YOUR HONOR, IS  
THERE'S NO ROOM FOR ANY  
COLLECTIVE BARGAINING.

>> OKAY.

THANK YOU.

>> WELL, FIRST I KNOW THAT  
JUSTICE PERRY WANTED TO ASK A  
QUESTION.

PERHAPS I CAN ANSWER IT.

I DON'T KNOW.

>> IT SEEMS AS IF THE  
EMPLOYEES' POSITION IS  
TANTAMOUNT TO -- ANALOGOUS TO  
A STUDENT ENTERING COLLEGE ON  
A CERTAIN CATALOG.

>> A CERTAIN WHAT?

>> CATALOG.

ONCE HE ENTERS ON THAT  
CATALOG, THAT'S HIS CONTRACT.  
THAT DOESN'T MEAN HE'S GOING  
TO GRADUATE.

BUT THE GREJ CANNOT CHANGE  
THAT -- THE TERMS THAT HE --  
UPON WHICH HE ENROLLED.

I THINK HE'S SAYING THAT THIS  
IS ANALOGOUS TO THE STATE.

IT'S NOT NECESSARILY THAT  
YOU'RE GOING TO FINISH.

YOU'RE NOT GUARANTEED TO  
FINISH.

BUT YOU CANNOT CHANGE AS LONG  
AS YOU'RE THERE.

>> THERE WOULD BE NO RIGHT TO  
A CATALOG ANYWAY IN AN  
UNIVERSITY --

>> I'M JUST MAKING THIS  
ANALOGY.

>> EXACTLY.

I THINK THAT IS KIND OF THE  
POSITION THEY'RE TAKING.

BUT UNDER THAT SAME ANALOGY,  
THE UNIVERSITY CAN CHANGE THE  
CATALOG.

THERE'S NO --

>> THEY CAN CHANGE IT, BUT IT  
WOULDN'T AFFECT THE STUDENT --

>> THE CLASSES THAT HE TOOK  
BEFORE.

>> PRECISELY.

NOR GOING FORWARD.

>> CORRECT.

YES.

>> SO ISN'T IT -- THAT'S --  
THE STATE IS BASICALLY  
CHANGING THE TERMS --

>> I HAVEN'T TALKED ABOUT THAT  
SPECIFIC ANALOGY.

THE ONE I WAS MAKING THAT I  
THOUGHT WAS ON POINT IS TO A  
MONTH-TO-MONTH LEASE.

>> I UNDERSTAND THAT, BUT I  
THINK THAT'S A LITTLE  
DIFFERENT, BECAUSE THE  
EMPLOYEE HAS THE CONTRACT  
RIGHT ONCE HE'S EMPLOYED  
WHETHER TO VEST OR NOT.  
AS LONG AS HE'S THERE, IT  
SEEMS TO ME THE PROVISION  
WOULD STILL BE APPLICABLE TO  
HIM.

>> WELL, THIS COURT IN FLORIDA  
SHERIFFS SAID, AS I THINK  
JUSTICE CANADY QUOTED OUT, WE  
STRESS THAT THE RIGHTS  
PROVISION WAS NOT INTENDED TO  
BIND FUTURE LEGISLATURES FROM  
PROSPECTIVELY ALTERING  
BENEFITS.

>> I UNDERSTAND.

AND I'M SAYING THE SAME THING.  
YOU CAN PROSPECTIVELY CHANGE  
IT, BUT NOT TO THOSE EMPLOYEES  
THAT WERE THERE.

>> THAT'S NOT WHAT -- LET ME  
-- THAT LEADS ME TO ANOTHER  
STATEMENT.

MY OPPONENT WAS SAYING THAT IN  
FLORIDA SHERIFFS IT DIDN'T  
APPLY TO THE EMPLOYEES, BUT IN  
FACT IN FLORIDA SHERIFFS THE  
LEGISLATURE REDUCED THE  
PERCENTAGE OF CREDIT FROM 3%  
TO 2%, EVEN FOR THOSE  
EMPLOYEES THAT REMAIN IN THE  
SYSTEM, NOT FOR NEW EMPLOYEES  
COMING IN, BUT SPECIFICALLY  
FOR EMPLOYEES THAT ARE STILL  
IN THE SYSTEM AS LONG AS IT  
WAS PROSPECTIVE AND NOT  
RETROACTIVE.

SO FLORIDA SHERIFFS PRECLUDES  
THAT ARGUMENT.

>> I GUESS HIS -- BUT THE  
ARGUMENT WAS -- AND I'M -- IS  
THAT THERE'S A DIFFERENCE,  
QUALITATIVE, BUT THE TWO

ELEMENTS OF THE PLAN HAS TO BE  
THAT IT'S NONCONTRIBUTORY AND  
THAT IT HAS COLA.  
THAT'S WHAT I THOUGHT.  
WHICH -- AND THE SPECIAL RISK  
WOULD BE A DIFFERENT TYPE OF  
BENEFIT.  
>> BUT THE SAME PRINCIPLES  
APPLY.  
>> WELL, BUT FLORIDA SHERIFFS  
DIDN'T DEAL WITH THE  
NONCONTRIBUTORY OR  
CONTRIBUTORY.  
>> CORRECT.  
BUT IT DIDN'T SPEAK IN TERMS  
OF QUALITATIVE CHANGES OR  
ANYTHING LIKE THAT.  
IT WAS VERY CLEAR ABOUT  
RETROACTIVE VERSUS  
PROSPECTIVE.  
AND IT GIVES THE LEGISLATURE  
VERY CLEAR GUIDANCE ON WHAT IT  
CAN DO TO REACT TO CHANGING  
FINANCIAL CIRCUMSTANCES.  
>> WHEN IT COMES TO THE  
PERCENTAGE OF WHETHER YOU'RE  
GOING TO DECREASE OR INCREASE  
THE STATE EMPLOYEES' PAY, DOES  
THE RIGHT OF COLLECTIVE  
BARGAINING REQUIRE THAT THE  
LEGISLATURE OR SOME ENTITY  
FIRST COLLECTIVELY BARGAIN  
WITH THE PARTICULAR PUBLIC  
EMPLOYEES' UNION BEFORE THEY  
MAKE THAT CHANGE?  
>> NO, YOUR HONOR, AND THIS  
COURT IN THE STATE VERSUS PBA  
CASE DECLINED TO REQUIRE THE  
LEGISLATURE WHEN IT WAS GOING  
TO CHANGE BENEFITS AND IN THAT  
CASE THERE WAS A CHANGE OF  
BENEFITS.  
THE COLLECTIVE BARGAINING  
AGREEMENT WAS GOING TO PROVIDE  
FOR ANNUAL LEAVE OF 17 1/3  
HOURS A MONTH AND THE  
LEGISLATURE CHANGED IT TO 13  
HOURS A MONTH.  
THIS COURT SAID WE'RE NOT  
GOING TO REQUIRE THE  
LEGISLATURE THAT GO AND  
NEGOTIATE WITH ALL THE  
BARGAINING UNITS.  
IT WOULD BE IMPOSSIBLE.  
>> WELL, I GUESS I'M STILL NOT  
SURE ON COLLECTIVE BARGAINING.  
IF THEY HAVE THE RIGHT TO

BARGAIN REGARDING COLLECTIVE  
-- REGARDING RETIREMENT, YOU  
DON'T AGREE WITH THE IDEA THAT  
THEY -- THAT SOMEONE ON BEHALF  
OF THE STATE HAS TO FIRST TRY  
TO NEGOTIATE WITH THE PUBLIC  
EMPLOYEES.

MAYBE THEY'D TAKE OTHER --  
SAY, HEY, LISTEN, PLEASE LEAVE  
OUR PENSION, BUT YOU CAN  
REDUCE OUR PAY, SOMETHING THAT  
WOULD BE -- BECAUSE THIS IS  
MORE MEANINGFUL FOR THESE  
REASONS.

>> YOUR HONOR, THAT WOULD BE  
-- IT'S UNWORKABLE.

IT'S IMPOSSIBLE BECAUSE NOT  
ONLY ARE THERE 11 STATE  
BARGAINING UNITS THAT BARGAIN  
WITH THE STATE, BUT THERE'S  
ALSO A MYRIAD, LITERALLY  
HUNDREDS OF BARGAINING UNITS  
ON THE COUNTY AND LOCAL LEVEL  
THAT THEY WOULD HAVE TO  
NEGOTIATE WITH BECAUSE THE FRS  
DOESN'T APPLY JUST TO STATE  
EMPLOYEES.

IT APPLIES TO EVERY COUNTY,  
SCHOOL BOARDS, UNIVERSITIES  
AND MANY MUNICIPALITIES, OVER  
100 MUNICIPALITIES.

HOW CAN YOU NEGOTIATE WITH ALL  
THOSE TO MAKE A CHANGE TO THE  
FRS?

>> THANK YOU FOR YOUR  
ARGUMENTS.

>> WE WOULD ASK YOU TO  
REVERSE.

THANK YOU VERY MUCH.