

>> 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.