

>> ALL RISE.  
HEAR YE, HEAR YE, HEAR YE,  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, GIVE ATTENTION.  
YE SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA, THIS  
HONORABLE COURT.  
>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
>> GOOD MORNING.  
WELCOME TO THE FLORIDA SUPREME  
COURT.  
THE FIRST CASE ON THE DOCKET IS  
FLORIDA BANKERS ASSOCIATION  
VERSUS FLORIDA DEVELOPMENT  
FINANCE, ET AL.  
>> THANK YOU, YOUR HONOR.  
GOOD MORNING.  
MAY IT PLEASE THE COURT, MY NAME  
IS CECI BERMAN ON BEHALF OF THE  
FLORIDA BANKERS ASSOCIATION.  
THE ISSUE IN THIS CASE IS A VERY  
NARROW ONE.  
IT IS QUITE SIMPLY WHETHER THE  
REPAYMENT OF THE PACE LOAN UNDER  
SECTION 163.08 OF THE FLORIDA  
STATUTES ARE REALLY SPECIAL  
ASSESSMENTS OR NOT UNDER --  
>> I'VE GOT A COUPLE OF  
QUESTIONS.  
>> SURE.  
>> THIS WHOLE THING SEEMS TO BE  
A WONDERFUL FIRST, BUT YOU ALL  
DIDN'T PARTICIPATE BELOW.  
>> NO, YOUR HONOR.  
>> AND THAT'S NUMBER ONE, WE  
THINK TO ADDRESS.  
NUMBER TWO, EVEN IF YOU HAD, ARE  
YOU IN THE NATURE OF AN  
ORGANIZATION THAT REALLY HAS  
STANDING ANYWAY?  
I CAN UNDERSTAND THAT A BANK,  
WHO HAS A LOAN, CERTAINLY MAYBE,  
BUT YOU'RE LIKE AN ELKS CLUB.  
YOU'RE LIKE A GROUP OF VOLUNTARY  
-- IT'S NOT EVEN A MANDATORY  
ASSOCIATION, RIGHT?

SO THAT I HAVE A CONCERN WITH.  
AND DO WE REALLY GET INVOLVED IN  
IN THIS PROCEEDING ANALYZING  
WHETHER THIS IS A SPECIAL  
ASSESSMENT OR NOT?

I'M UNAWARE OF ANY OTHER FIELD  
OF LAW WHERE A SPECIAL  
ASSESSMENT HAS BEEN HOME  
RENOVATION.

IT'S BEEN SEWERS OR SOMETHING  
THAT'S ON PUBLIC PROPERTY THAT  
BENEFITS INDIVIDUAL PROPERTY.  
SO THOSE ARE THE AREAS OF  
CONCERN THAT I HAVE.

THIS SORT OF JUST ALL COMES AS A  
MASS OF PROBLEMS WITH WHAT  
APPEARS TO BE VERY  
WELL-INTENTIONED TYPE OF  
LEGISLATION.

CAN YOU HELP SORT THAT OUT FOR  
ME?

>> YES, YOUR HONOR.

AND I'LL TRY TO MAKE SURE I HIT  
EVERY QUESTION.

IF I DON'T, PLEASE LET ME KNOW.

>> OH, I WILL.

>> THE FIRST QUESTION I THINK  
WAS ABOUT STANDING GENERALLY AND  
THE FBA'S LACK OF PARTICIPATION  
IN THE PROCEEDINGS BELOW.

I THINK THIS COURT HAS ADDRESSED  
IT IN OTHER CASES BEFORE, THE  
ISSUE OF WHETHER FOLKS IN BOND  
VALIDATION PROCEEDINGS CAN  
APPEAR FOR THE FIRST TIME ON  
APPEAL.

THE ANSWER IS YES.

UNDER 60 PLUS YEARS OF PRECEDENT  
IN THIS COURT AND READING  
TOGETHER ALL OF THE STATUTES  
UNDER CHAPTER 75, THE ONLY WAY  
THEY CAN BE READ TOGETHER TO  
MAKE ANY SENSE, THEN YES,  
SOMEONE CAN APPEAR FOR THE FIRST  
TIME IN AN APPEAL.

AND THERE'S A REASON FOR THAT.  
BOND VALIDATION PROCEEDINGS ARE  
A DIFFERENT ANIMAL.

THEY ARE -- THEY HAVE  
CONSTRUCTIVE NOTICE.

THEY MOVE QUICKLY.  
THEY BECOME FINAL AS TO EVERYONE  
ONCE THE JUDGMENT'S VALIDATED.  
AND IN EXCHANGE FOR THAT, WE  
WANT TO MAKE SURE THAT EVERYONE  
GETS HEARD.

NOW, UNDER 75.06 THAT  
ESTABLISHES WHO IS A PARTY, AND  
IT INCLUDES PEOPLE WHO ARE NOT  
TRADITIONAL PARTIES.  
THEY ARE AUTOMATICALLY A PARTY.  
THEN WE MOVE ON TO SECTION  
75.07, WHICH IS TITLED  
INTERVENTION, BUT IT DOESN'T  
TALK ABOUT INTERVENTION THE WAY  
WE THINK ABOUT INTERVENTION.  
IT TELLS YOU HOW TO PROCEED,  
KIND OF LIKE FILING AN ANSWER TO  
A COMPLAINT.

WHAT DO YOU DO IF YOU HAVE  
SOMETHING YOU WANT TO BE HEARD?  
75.08 TELLS YOU YOU CAN APPEAL.  
NOW, HERE, WITH RESPECT TO THE  
FLORIDA BANKERS ASSOCIATION --  
AND HAVE I ANSWERED YOUR FIRST  
QUESTION?

>> THAT'S THE MEYERS LINE OF  
CASES.

>> EXACTLY.

>> CERTAINLY UNDERSTAND ALL  
THOSE.

WHY DON'T YOU HIT THE VOLUNTARY  
ASSOCIATION?

>> WITH RESPECT TO THE FLORIDA  
BANKERS ASSOCIATION, CERTAINLY  
IT HAS NOT BEEN BRIEFED AND IT'S  
ONLY SORT OF TANGENTIALLY BEEN  
ARGUED THAT THERE MIGHT BE A  
PROBLEM WITH ASSOCIATIONAL  
STANDING, BUT IF YOU LOOK AT THE  
TEST, WHICH IS A FEDERAL TEST  
AND GOES BACK TO THE U.S.  
SUPREME COURT IN THE HUNT CASE,  
YOU WOULD BE LOOKING AT WHETHER  
MEMBERS OF THE ASSOCIATION  
OTHERWISE HAVE STANDING TO SUE  
IN THEIR OWN RIGHT.

YOUR HONOR, YOU BROUGHT THAT UP,  
WHETHER AN INDIVIDUAL BANK MIGHT  
BE ABLE TO DO THAT.

THE INTEREST THE ASSOCIATION  
SEEKS TO PROTECT ARE GERMANE TO  
ITS PURPOSE.

CERTAINLY IN THIS INSTANCE WHAT  
THE FLORIDA BANKERS ASSOCIATION  
IS TRYING TO PROTECT ARE LIEN  
PRIORITY RIGHTS, WHICH ARE VERY  
IMPORTANT RIGHTS.

SO THAT'S GERMANE TO THE  
PURPOSE.

AND THE THIRD PRONG OF THAT TEST  
IS WHETHER THE CLAIM REQUIRES  
THE PARTICIPATION OF INDIVIDUAL  
MEMBERS IN THE LAWSUIT.

THIS PRONG DOES NOT NEED TO BE  
MET UNDER THE LAW WHEN THE  
ASSOCIATION IS SEEKING A  
DECLARATORY RELIEF ON BEHALF OF  
ITS MEMBERS, WHICH I WOULD  
ASSERT IS EXACTLY WHAT IS  
HAPPENING HERE TODAY, A REQUEST  
FOR A RULING THAT THE SUPER  
PRIORITY LIEN PROVISION IS  
UNCONSTITUTIONAL.

SO WHILE IT HASN'T REALLY BEEN  
CHALLENGED IN ANY DETAIL, IF IT  
HAD BEEN, THE FLORIDA BANKERS  
ASSOCIATION IS EXACTLY THE TYPE  
OF ASSOCIATION THAT OUGHT TO BE  
STANDING HERE IN THIS INSTANCE  
AND IS THE PERFECT ASSOCIATION  
OR ENTITY TO BRING THIS BROAD  
CHALLENGE THAT WILL AFFECT  
WHAT'S \$2 BILLION WORTH OF  
BONDS, EVERY JUDICIAL CIRCUIT IN  
FLORIDA EXCEPT FOR TWO AND  
MULTIPLE PIECES OF PROPERTY AND  
MULTIPLE MORTGAGE CONTRACTS.

>> IF THE BOND IS VALIDATED, IN  
YOUR VIEW DOES THAT FORECLOSE A  
CHALLENGE TO THE  
CONSTITUTIONALITY OF THE ACT  
WITH RESPECT TO THE IMPAIRMENT  
OF CONTRACT?

OR COULD YOU IN AN INDIVIDUAL  
CASE, WHERE THE MONEY HAS BEEN  
-- BECAUSE IT'S -- UNLIKE A  
SPECIAL ASSESSMENT, THIS  
REQUIRES THE HOMEOWNER TO DO  
SOMETHING AFFIRMATIVE.

>> CORRECT.

>> WHICH IS WHY YOU'RE SAYING IT DOESN'T LOOK LIKE A SPECIAL ASSESSMENT, LOOKS LIKE A LOAN.

WOULD THERE BE A WAY TO CHALLENGE IT AT THAT TIME?

OR IS IT THE VIEW OF THE BANKERS ASSOCIATION -- AND THIS WOULD BE A QUESTION FOR THE APPELLEES, THAT IT'S FORECLOSED.

WE'RE MAKING A DECISION.

IT IS A SPECIAL ASSESSMENT AND THEREFORE IT DOES TAKE PRIORITY OVER THE MORTGAGES.

>> I THINK, YOUR HONOR, THAT DEPENDS IN PART ON WHAT THIS COURT DOES WITH RESPECT TO THE STANDING QUESTION.

IF THIS COURT FINDS THAT THE FLORIDA BANKERS ASSOCIATION HAS NO STANDING BECAUSE IT'S NOT A PARTY BECAUSE IT DID NOT APPEAR IN THE TRIAL COURT, THEN IT WAS NOT A PARTY UNDER SECTION 75.06 AND THAT MEANS IT'S NOT BOUND BY THE AMENDED FINAL JUDGMENT VALIDATING THESE BONDS.

AND IN ANSWER TO YOUR QUESTION, YES.

MULTIPLE CASES CAN COME UP TO, ONE BY ONE, ON A PIECEMEAL BASIS, AS THEY OCCUR THROUGHOUT THE STATE OF FLORIDA TO MAKE THIS CHALLENGE.

>> BUT THE WHOLE PURPOSE OF THIS ENTIRE PROCEEDING IS TO QUIET ALL OF THIS BACKGROUND NOISE SO PEOPLE CAN INVEST WITH CERTAINTY IN THESE KINDS OF THINGS?

HOW CAN THAT BE?

AND HOW CAN IT BE JUST BECAUSE YOU DON'T APPEAR, THAT MEANS YOU'RE NOT BOUND -- THAT CERTAINLY CAN'T BE THE LAW BECAUSE ALL THE OTHER CITIZENS OF THE COMMUNITY ARE BOUND THROUGH THE NOTICE PROVISION, RIGHT?

AND THEY CAN'T LATER ON, AFTER IT'S ALL OVER, COME BACK IN AND

SAY, WHOOPS, I DIDN'T PARTICIPATE, I'M NOT A PARTY, I'M NOT BOUND, CAN THEY?

>> WELL, I THINK THAT'S EXACTLY -- I AGREE, YOUR HONOR, THAT THIS IS EXACTLY WHAT YOU MENTIONED IS THE PURPOSE OF THESE PROCEEDINGS ARE THE PURPOSE OF THESE PROCEEDINGS. IT IS TO QUIET ALL OF THESE ISSUES, WHICH IS EXACTLY WHY PEOPLE LIKE THE FLORIDA BANKERS ASSOCIATION ARE ALLOWED TO PARTICIPATE.

>> AGAIN, I DON'T KNOW THAT YOU THEN -- IF WE VALIDATE THE BONDS, WHETHER -- SAY WE AGREE YOU CAN PARTICIPATE AND YOU'VE RAISED THIS CHALLENGE, OR WE DON'T, BUT NOW WE'RE AWARE OF A CONSTITUTIONAL ISSUE. BUT WE THEN HAVE ESSENTIALLY SAID THAT THE BASIS FOR THE BONDS, WHICH IS THE STATUTE, THAT THESE ARE TO BE CALLED SPECIAL ASSESSMENTS, THAT THAT ISSUE; THAT IS, THAT THEY'RE NOT SPECIAL ASSESSMENTS AS AN ISSUE IS FORECLOSED FROM BEING LITIGATED.

EVEN IF YOU HADN'T BROUGHT IT UP, DOESN'T THAT -- THE VERY FACT THAT THE ASSESSMENT -- THAT THE STATUTE SAYS IT AND THAT'S WHAT IT'S BASED ON, AGAIN, AS JUSTICE LEWIS SAID, ISN'T THAT THE PURPOSE OF THESE PROCEEDINGS, WHERE SOMETIMES OTHER ASSESSMENTS ARE CHALLENGES TO WHETHER THEY'RE REALLY VALID TO MAKE SURE THAT THEY ARE OR ARE NOT A VALID SOURCE FOR THE REPAYMENT OF THE BONDS.

>> WELL, JUSTICE PARIENTE, I THINK THAT AGAIN IT GOES BACK TO, THOUGH, THE ISSUE OF WHETHER THE FLORIDA BANKERS ASSOCIATION IS ALLOWED TO BE HERE TODAY TO MAKE THAT CHALLENGE. SECTION 75.09 BINDS ALL THESE

PEOPLE, BUT IT BINDS THESE  
PEOPLE WHO ARE MADE PARTIES  
UNDER SECTION 75.06.

>> AGAIN, I DON'T GET THAT  
EITHER BECAUSE WHAT JUSTICE  
LEWIS SAID.

IT CAN'T BE THAT IF YOU DON'T  
PARTICIPATE, YOU'RE NOT BOUND BY  
THE JUDGMENT AND COULD CHALLENGE  
IT.

I MEAN, THERE ARE PEOPLE THAT  
ARE GOING TO BE INVESTORS ARE  
GOING TO SAY, WAIT, I'M NOT  
INVESTING IN THIS ONE BECAUSE  
THERE'S SOME DOUBT AS TO WHETHER  
THESE ARE VALID SPECIAL  
ASSESSMENTS.

>> I DON'T THINK IT TURNS ON  
WHETHER YOU PARTICIPATED OR NOT.  
SO I TOOK YOU THROUGH THE  
STATUTES.

>> WELL, THEN -- YOU JUST SAID  
IF YOU'RE NOT PARTICIPATING,  
YOU'RE NOT BOUND BY IT.

I THOUGHT YOU JUST SAID THAT.

>> I'M SORRY.

IF I USED THE WORD PARTICIPATE,  
I MEANT TO USE THE WORD PARTY,  
WHETHER YOU ARE A PARTY.

>> YOU AGREE THAT -- DON'T YOU  
AGREE THAT EVERY -- THE STATE --  
EVERYONE IN THE STATE OF FLORIDA  
AND OUTSIDE THE STATE OF FLORIDA  
WILL BE BOUND BY WHAT OCCURS IN  
THIS BOND VALIDATION PROCEEDING  
AS TO THE UNDERLYING STATUTE,  
WHICH IS THE SOURCE OF THE  
REPAYMENT?

>> I AGREE, YOUR HONOR, BECAUSE  
I BELIEVE THAT ALL OF THOSE  
FOLKS ARE SUPPOSED TO BE PARTIES  
TO THE PROCEEDING UNDER SECTION  
75.06, IN WHICH CASE YES.

>> EVERYBODY IN THE WORLD'S A  
PARTY?

>> NO, YOUR HONOR.

THERE ARE CITIZENS, TAXPAYERS,  
PEOPLE WITH AN INTEREST IN  
PROPERTY --

>> WHAT ABOUT A BANK IN

NEW YORK?

>> I THINK A BANK IN NEW YORK WOULD BE A PARTY IF IT HAS A -- UNDER 75.06 AN INTEREST IN PROPERTY THAT WILL BE AFFECTED BY THE BONDS.

OTHERWISE, NO, YOUR HONOR, IT WOULD NOT BE A PARTY.

>> SO ANYONE THAT HOLDS A MORTGAGE ON PROPERTY AND WHERE THEY ARE, IF THEY HOLD A MORTGAGE ON PROPERTY, THEY'RE GOING TO BE COVERED BY PUBLIC SERVICE.

>> I BELIEVE SO.

OTHERS CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE TAXABLE PROPERTY WITHIN THE COUNTY, MUNICIPALITY OR DISTRICT.

SO IN ANSWER TO YOUR QUESTION, MAYBE.

IT WOULD DEPEND ON THE BANK'S INTEREST COUNTY BY COUNTY.

>> THEN THAT COMES BACK TO THE DUE PROCESS QUESTION WITH REGARD TO OUT-OF-STATE PEOPLE.

IT WOULD SEEM THE STATUTE MAY TRY TO DO THAT, BUT THEN WE'VE GOT A QUESTION OF WHETHER THAT IS SUFFICIENT NOTICE.

SO THAT'S A DIFFERENT -- THAT'S NOT EVEN ONE WE CAN EVEN LITIGATE TODAY.

>> CORRECT, YOUR HONOR.

>> THIS IS SO DIFFERENT BECAUSE IN A NORMAL, IF THERE'S SUCH A THING, SPECIAL ASSESSMENT CASE THERE'S EITHER A DEFINED GROUP THAT IS GOING TO BE SUBJECT TO THE SPECIAL ASSESSMENT.

THEY BASICALLY KNOW WHO THEY ARE.

HERE IT COULD BE ANY HOMEOWNER IN THE STATE OF FLORIDA THAT DECIDES -- CORRECT?

THAT DECIDES TO TAKE ADVANTAGE UNDER THE STATUTE.

NOW, THESE BONDS THAT WE ARE LOOKING AT IN THIS CASE ARE -- WHERE ARE THEY GOING TO BE



ISSUED?

>> THESE BONDS ARE GOING TO BE ISSUED IN EVERY JUDICIAL CIRCUIT IN FLORIDA EXCEPT FOR TWO.

>> IT'S VIRTUALLY THE WHOLE -- ANYBODY WHO IS IN THE FUTURE MAY WANT -- OTHER THAN TWO JUDICIAL CIRCUITS THAT WOULD WANT TO TAKE ADVANTAGE OF, AS WE PROBABLY ALL ACKNOWLEDGE, THE VERY WORTHY PURPOSES OF THIS ACT, CORRECT?

>> CORRECT, YOUR HONOR, ALTHOUGH I BELIEVE, IN FAIRNESS AND FULL DISCLOSURE, YOU HAVE TO BE ADVERSELY AFFECTED.

SO THERE COULD BE HOMEOWNERS OUT THERE WHO MIGHT NOT EVEN BE -- THAT'S NOT EVEN TRUE.

THEY WOULD STILL BE CITIZENS.

SO YOU'RE RIGHT, YOUR HONOR.

>> THEY GOT TO DO SOMETHING AFFIRMATIVE.

>> CORRECT.

>> AND HERE'S I GUESS WHAT -- AND MAYBE WE CAN'T SOLVE IT HERE.

SEEMS TO ME THAT FROM THE BANK'S POINT OF VIEW-- WHERE IS THE ACTUAL HARM?

THAT'S GETTING DOWN TO THE WEEDS QUESTION.

BUT IT WOULD SEEM TO ME AND MAYBE SOME OF THE MORTGAGES HAVE AGREEMENTS THAT THE PROPERTY OWNER CAN'T DO SOMETHING LIKE THIS UNLESS THEY GET THE AGREEMENT OF THE MORTGAGE HOLDER.

>> THAT'S TRUE, YOUR HONOR.

AND IN FACT IT'S UNCLEAR WHETHER THERE ARE ASSERTIONS THAT HAVE BEEN MADE THAT IT WOULD IMPROVE THE PROPERTY VALUE AND PERHAPS IT WOULD.

PERHAPS IT WOULDN'T.

IF WE TALK ANECDOTALLY AMONG FRIENDS AND I POUR \$100,000 INTO MY HOME, WE ALL TALK ABOUT HOW WE GET THE MONEY BACK FOR THE KITCHEN AND THE BATHROOM?

CAN YOU LIST THE HOME FOR  
\$100,000?

NOT NECESSARILY.

BUT TO ANSWER YOUR QUESTION,  
THESE SO-CALLED PROTECTIONS IN  
THE STATUTE DON'T MATTER FOR THE  
CHALLENGE THAT THE FLORIDA  
BANKERS ASSOCIATION IS MAKING  
TODAY.

THAT'S A SEPARATE CONTRACT  
IMPAIRMENT ISSUE THAT WE HAVEN'T  
REALLY TALKED TOO MUCH ABOUT,  
WHICH IS THE IMPAIRMENT YOU  
RAISED OF AN ABILITY TO A BANK  
TO NO LONGER ACCELERATE ITS LOAN  
OR NOT APPROVE ONE OF THE PACE  
LOANS.

THAT'S A DIFFERENT CONTRACT  
IMPAIRMENT AND THINGS LIKE THE  
ESCROW PROVISION ARE MEANT TO  
TRY TO OFFSET THAT.

>> BUT YOU AGREE IF THESE ARE  
CONSIDERED TO BE SPECIAL  
ASSESSMENTS, THIS IS SOMETHING  
THAT CAN BE ASSESSED AND TAKES  
PRIORITY OVER THE MORTGAGE.

>> WE AGREE.

IF THIS COURT FINDS THAT THESE  
ARE SPECIAL ASSESSMENTS, THEN  
THE LIEN PRIORITY PROVISION  
WOULD BE APPROPRIATE.

>> IN YOUR RESEARCH DID YOU COME  
ACROSS ANYWHERE ANY STATE WHERE  
THE IMPROVEMENT WAS TO SINGLE  
PARCELS OF PROPERTY RATHER THAN  
A COMMUNITY PROPERTY, LIKE A  
DRAINAGE SYSTEM OR SEWER SYSTEM?

>> DO YOU MEAN A PACE  
ASSESSMENT, YOUR HONOR?

>> NO.

NO.

ANY KIND.

>> NO.

>> THAT'S WHAT I'M LOOKING TO  
SEE, BECAUSE THE STATE'S CALLED  
IT A SPECIAL ASSESSMENT.

NOW, YOU CAN CALL A DONKEY A  
HORSE, BUT DOESN'T MAKE IT ONE,  
AND I DOUBT THAT THE DONKEY'S  
GOING TO WIN THE KENTUCKY DERBY.

BUT WHAT WE'RE LOOKING AT IS A QUESTION OF IF THIS COURT HOLDS THAT IT IS, IT SEEMS LIKE THE BANKS ARE IN SECOND POSITION.

>> I AGREE, YOUR HONOR. THAT IS ABSOLUTELY CORRECT. THE WHOLE ARGUMENT THAT THE BANKS ARE MAKING IS WHETHER THIS IS OR IS NOT A SPECIAL ASSESSMENT.

AND AS TO THE LIEN PRIORITY PROVISION, IF THIS COURT FINDS THAT IT IS, THEN THE LIEN PRIORITY PROVISION STANDS.

AND TO ANSWER YOUR --

>> IT SEEMS TO ME -- I GUESS I'M A LITTLE CONCERNED ABOUT THIS. I GUESS I'LL ASK ABOUT CANTERO, BUT THERE COULD BE SOME OTHER KIND OF -- SOMETHING THAT WOULD IMPROVE THE PROPERTY AND IT WOULD BE A GOOD IDEA TO DO, AND SO THE LEGISLATURE COULD IN FACT PASS SOME OTHER KIND OF LEGISLATION THAT WOULD CALL IT A SPECIAL ASSESSMENT AND WE'D BE IN A PRETTY DIFFICULT POSITION, IT SEEMS TO ME, IF WE VALIDATE THESE BONDS, THEN WHAT WOULD HAPPEN IN THE FUTURE FOR SOME OTHER KIND OF THING LIKE THIS?

>> THAT'S A VERY VALID CONCERN, YOUR HONOR.

AND THAT'S CORRECT.

THAT'S WHY WHEN THE GOVERNMENT ISSUES OR LEVEES A NON-ADVALOREM SPECIAL ASSESSMENT, ALTHOUGH IT IS NOT A TAX, THAT IS AN EXERCISE OF THE GOVERNMENT'S TAXING AUTHORITY, WHICH IS WHY WE CARE WHETHER SOMETHING IS A TAX OR A SPECIAL ASSESSMENT.

AND NOT ANYTHING UNDER THE SUN JUST BECOMES A SPECIAL ASSESSMENT.

AND THIS IS NOT ONE OF THOSE CONCERNS.

AND THAT IS A VALID CONCERN ABOUT WHAT COULD HAPPEN IN THE

FUTURE.

>> LET ME ASK YOU ABOUT MORTGAGES THAT ARE ENTERED AFTER THE EFFECTIVE DATE OF THE STATE THAT AUTHORIZES THIS.

WHY WOULD THERE BE ANY IMPAIRMENT OF CONTRACTS ISSUE WITH RESPECT TO MORTGAGES THAT ARE ENTERED AT A TIME WHEN THE LEGAL FRAMEWORK WITHIN WHICH THEY'RE ENTERED INCLUDES THIS CHARACTERIZATION OF THESE ARRANGEMENTS AS SPECIAL ASSESSMENTS?

>> IT'S A FAIR QUESTION, YOUR HONOR, BECAUSE WHEN PARTIES ENTER INTO CONTRACTS THEY DO SO AND THEY'RE ON NOTICE OF THE STATUTES.

BUT THAT'S WHEN YOU HAVE A VALID STATUTE.

JUST BECAUSE -- IF WE HAVE A STATUTE THAT HAS AN UNCONSTITUTIONAL PROVISION, THE UNCONSTITUTIONAL PROVISION DOESN'T STAND JUST BECAUSE EVERYBODY WAS AWARE IT WAS IN THERE WHEN THEY ENTERED INTO THE CONTRACT.

>> WHY WOULD IT BE UNCONSTITUTIONAL AS TO THOSE MORTGAGES THAT ARE ENTERED AFTER THE LAW WAS PASSED?

I'M STRUGGLING WITH WHY IT'S AN ISSUE AT ALL WITH RESPECT TO THIS.

>> I SEE, YOUR HONOR.

>> AND THAT'S A POINT THAT THE OTHER SIDE MADE, I THINK RATHER POINTEDLY, AND I DIDN'T THINK YOU REALLY EXACTLY RESPONDED TO IT, SO I'M ASKING YOU TO DO THAT NOW.

>> I WILL DO THAT NOW.

ON ITS FACE IT'S UNCONSTITUTIONAL BECAUSE THE STATUTE STATES WE HAVE A SINGLE PROPERTY OWNER VOLUNTARILY SIGNING UP FOR A LOAN AGREEMENT AND ENTERING INTO THAT LOAN

AGREEMENT AND THEN THE STATUTE SAYS ON ITS FACE THAT IT WILL COLLECT THE REPAYMENT AS A SPECIAL ASSESSMENT, SO IT'S ALL RIGHT THERE ON THE FACE OF THE TEXT OF THE STATUTE AND WE DON'T HAVE TO GO FURTHER. AND WE KNOW THAT UNDER FLORIDA LAW THAT IT IS AN IMMEDIATE CONTRACT IMPAIRMENT WHEN YOU SUPERSEDE A LIEN POSITION. I MEAN, THAT'S BEEN IN THE LAW FOR MANY YEARS.

>> BUT, AGAIN, WHAT HE'S SAYING IS THE LIEN, THE MORTGAGE CREATED AFTER THE STATUTE. SO HOW CAN A STATUTE OR A LIEN THAT IS PRIOR IN TIME SOMEHOW AFFECT A LATER LIEN?

>> WELL, IT IS OUR POSITION THAT THAT'S -- FOR LACK OF A BETTER TERM, IT'S A PERMANENT IMPAIRMENT. ANYTIME THAT THAT HAPPENS, IT'S JUST INAPPROPRIATE. IT'S WRONG. IT'S AN IMPAIRMENT.

>> THE LEGISLATURE CAN'T IMPAIR A CONTRACT THAT DOESN'T EXIST, I DON'T THINK. I MEAN, I'M JUST HAVING TROUBLE UNDERSTANDING THAT CONCEPT.

>> BECAUSE WHEN THE CONTRACT IS ENTERED INTO, LET'S SAY, POST --

>> IT IS SUBJECT TO THE LEGISLATIVE ENACTMENT.

>> AND AT THE TIME THAT'S ENTERED INTO, YOU'VE BARGAINED FOR A FIRST PRIORITY LIEN POSITION BECAUSE THERE'S NO --

>> SO ALL SUBJECT TO THE LEGAL FRAMEWORK WITHIN WHICH WE'RE OPERATING, RIGHT?

>> ABSOLUTELY. THAT ASSUMES THE LEGAL FRAMEWORK IS VALID ON ITS FACE. OUR ARGUMENT IS THAT THE LEGAL FRAMEWORK ITSELF WAS INVALID FROM THE GET-GO.

SO EVEN PROSPECTIVELY THE  
FRAMEWORK DOESN'T HOLD UP.  
>> INVALID FOR REASONS OTHER  
THAN IMPAIRMENT OF CONTRACT.  
>> YEAH.  
IT'S IMPAIRING THE PROPERTY  
INTEREST OF THE MORTGAGEE WHEN  
IT LESSENS THE VALUE OF THE  
CONTRACT.  
SURE, THE MORTGAGEE KNOWS THAT  
MIGHT HAPPEN SOMEDAY, BUT IT'S  
INAPPROPRIATE UNDER FLORIDA LAW.  
THIS IS NOT SOMETHING THEY'RE  
ARGUING FOR THE FIRST TIME IS  
IMPAIRMENT.  
THAT'S A WELL-SETTLED PROBLEM  
UNDER FLORIDA LAW.  
SO EVEN PROSPECTIVELY THIS  
STATUTE DOES THAT.  
THAT'S UNCONSTITUTIONAL TO DO  
THAT IN THE FIRST PLACE.  
I CAN TELL I'M NOT ANSWERING  
YOUR QUESTION PROBABLY.  
>> EITHER YOUR ARGUMENT IS  
OPAQUE OR I'M OPAQUE.  
>> WELL, I DON'T MEAN TO BE  
OPAQUE.  
>> I UNDERSTAND.  
I DON'T MEAN TO BE, EITHER.  
>> MY ARGUMENT IS SIMPLY THAT IT  
IS UNCONSTITUTIONAL ON ITS FACE  
AND THAT'S TRUE WHETHER IT'S  
RETROSPECTIVE OR PROSPECTIVE.  
I SEE I'M EATING INTO MY  
REBUTTAL TIME.  
THANK YOU.  
>> MAY IT PLEASE THE COURT,  
RAOUL CANTERO REPRESENTING FDFC.  
>> IS THERE ANY TIME IN ANY LAW  
WHERE THE IMPROVEMENT TO A  
SINGLE PRIVATE PARCEL OF  
PROPERTY, INDIVIDUALLY, ONE AT A  
TIME, HAS BEEN CONSIDERED A  
SPECIAL ASSESSMENT?  
I MEAN, THAT'S THE KEY.  
LET'S FACE IT.  
IN HONESTY, THIS IS THE KEY ON  
THE PRIORITY AND HOW IT GETS  
PAID BACK.  
>> YES, WHETHER THIS -- I MEAN,

IF YOU CONSIDER THIS A SPECIAL ASSESSMENT, THEN EVERY OTHER DOMINO FALLS.

>> RIGHT.

>> GAILEY VERSUS ROBERTSON, WHICH WAS THE FIRST CASE THAT SAID THAT A SPECIAL ASSESSMENT AFFECTS EVEN PREEXISTING MORTGAGES, IN THAT CASE THE OWNER HAD ASKED FOR A PROPERTY -- NOT HIS PROPERTY, BUT THE ROAD IN FRONT OF HIS HOUSE TO BE PAVED.

>> AGAIN, THAT'S WHAT IT APPEARS, THAT ALL OF THE SPECIAL ASSESSMENTS ARE THIS KIND OF THING, A ROAD, A DRAINAGE SYSTEM, A SEWER SYSTEM, SOMETHING THAT IS ON LIKE PUBLIC PROPERTY BUT NOT DIRECTED SOLELY TO ONE INDIVIDUAL PARCEL.

>> THERE'S NOTHING IN THE STATUTORY DEFINITION OR IN THIS COURT'S CASES OR IN ANY OTHER CASE THAT SAYS THAT IT'S A REQUIREMENT THAT A SPECIAL ASSESSMENT ONLY BE ON PUBLIC PROPERTY.

THE ONLY REQUIREMENT IS THAT IT HAVE A SPECIAL BENEFIT TO PARTICULAR PROPERTIES.

>> WELL, I MEAN, THAT'S LIKE ANY SECOND MORTGAGE FOR HOMEOWNERS FOR A HOME IMPROVEMENT LOAN.

I CAN LOOK AT THIS AND SAY DETROIT AND SOME OF THE BLIGHTED CITIES, THEY COULD COME RIGHT BACK AND WE COULD COME IN AND ALL THE PROPERTY OWNERS COULD BORROW THROUGH A PROGRAM LIKE THIS HUNDREDS OF THOUSANDS OF DOLLARS SO THAT THE PROPERTY IS THEN INDIVIDUALLY SUPPOSEDLY WORTH MORE AND CONTINUE TO SUBJECT THE MORTGAGE HOLDERS TO A BACK POSITION.

I JUST -- I'VE NEVER -- IT JUST SEEMS -- SEEMS MORE THAN WEIRD.

>> I CAN SPEAK TO THOSE OTHER EXAMPLES, BUT I'LL TELL YOU ON

THIS EXAMPLE IT MEETS ALL OF THE REQUIREMENTS AND DEFINITIONS OF A SPECIAL ASSESSMENT.

>> WHERE DO WE FIND THAT DEFINITION?

>> WELL, IT'S IN THE STATUTE AND IT'S IN THE CASES.

IT HAS TO HAVE A SPECIAL BENEFIT TO THE PROPERTY AND HAS TO BE COMMENSURATE WITH THE COST.

>> SO IT'S NO DIFFERENT THAN A HOME IMPROVEMENT LOAN.

>> NO.

IT IS VERY DIFFERENT.

I CAN EXPLAIN WHY IT'S DIFFERENT FROM A LOAN.

BUT ALSO IN THIS COURT'S CASE OF THE CITY OF GAINESVILLE IT SAID IF IT'S AN IMPROVEMENT TO PROPERTY, THEN IT'S A SPECIAL ASSESSMENT.

>> BUT DOES THAT SPECIAL ASSESSMENT HAVE TO BE AN IMPROVEMENT TO THE PROPERTY -- TO PROPERTIES IN GENERAL AND NOT TO SPECIFIC PROPERTY?

BECAUSE IN THIS INSTANCE YOU HAVE TO BUY INTO IT.

AND SO YOU DON'T GET ANY BENEFIT IF YOU DON'T AFFIRMATIVELY SAY I WANT THIS ENERGY-SAVING WHATEVER ON MY PROPERTY.

BUT I THOUGHT -- AND YOU CAN TELL ME.

THE SPECIAL ASSESSMENTS REALLY RUN TO ALL OF THE PROPERTY, AND THERE REALLY ISN'T ANY NEED TO BUY INTO IT OR NOT.

>> WELL, THE LEGISLATURE HAS DETERMINED THAT THESE SPECIAL ASSESSMENTS NOT ONLY IMPROVE THE PROPERTY ITSELF, BUT IT ALSO A BENEFIT TO SURROUNDING PROPERTIES AND THE STATE ITSELF BY REDUCING --

>> SO HOW DOES -- IF I BUY INTO IT AND I WANT THIS SPECIAL ENERGY-SAVING ON MY PROPERTY, HOW DOES THAT AFFECT MY NEIGHBOR FIVE DOORS DOWN?



>> WELL, YOU'RE USING LESS  
ELECTRICITY, SO YOU'RE NOT USING  
THE GRID AS MUCH AS YOU WOULD  
OTHERWISE, SO OTHER PEOPLE CAN  
USE THE GRID AND --

>> WHY WOULDN'T OTHER PEOPLE  
HAVE TO PAY FOR IT?

>> NO.

OTHER PEOPLE DON'T.  
THEY'RE BENEFITING, BUT THEY'RE  
NOT BENEFITING IN THE CONCRETE  
WAY THAT THE INDIVIDUAL OWNER  
IS.

AND THERE'S BEEN NO ARGUMENT  
THAT IT'S UNCONSTITUTIONAL  
BECAUSE ONLY THE PARTICULAR  
PROPERTY IS BENEFITING.

>> NO.

I THINK WHAT IS MORE -- AGAIN,  
WHETHER WE CALL IT A DONKEY,  
HORSE.

I'M SURE YOU HAVE SOME OTHER  
THOUGHTS OF WHAT WE COULD CALL  
IT.

>> AN ASSESSMENT.

>> WELL, THE LEGISLATURE DID  
CALL IT AN ASSESSMENT, BUT JUST  
I THINK THE EXAMPLE OF A  
BLIGHTED AREA IS A PERFECT  
EXAMPLE, THAT YOU HAVE IN AN  
AREA, YOU'VE GOT A HOMEOWNER  
WHO'S GOT A RUNDOWN PROPERTY AND  
THEY APPLY FOR A LOAN -- I MEAN,  
THEY APPLY FOR MONEY TO IMPROVE  
IT.

IT BENEFITS THE NEIGHBORHOOD AND  
IT BENEFITS THE SURROUNDING  
HOMEOWNERS.

FIRST OF ALL, I'M NOT SURE THAT  
YOU COULD ASSESS THE OTHER  
HOMEOWNERS FOR THAT IMPROVEMENT.  
AND IT WOULD BE AGAINST THE  
PROPERTY, BUT THAT WOULD BE A  
LOAN.

IT JUST DOESN'T SEEM LIKE IT HAS  
THE CRITERIA TO CALL IT A  
SPECIAL ASSESSMENT OTHER THAN  
THE LEGISLATURE DECIDED TO CALL  
IT THIS SO THAT THEY COULD MAKE  
SURE THERE WOULD BE PRIORITY

OVER THE EXISTING MORTGAGES.

>> AND IT ALSO DOESN'T HAVE ALL THE INDICIA OF A LOAN.

THIS ASSESSMENT RUNS WITH THE PROPERTY, NOT WITH THE BORROWER, WHICH IS A BIG DISTINCTION.

>> WELL, THAT'S ONLY -- I MEAN, BUT THE BASIC PROTECTION FOR A MORTGAGE HOLDER IS THE PROPERTY, NOT THE PROPERTY OWNER.

SO HAVING IT RUN WITH THE PROPERTY IS OF A BENEFIT TO THE STABILITY -- YOU KNOW, THAT THE MONEY'S NOT GOING TO BE BORROWED -- OR LENT TO THE HOMEOWNER UNLESS THEY'RE SURE IT'S GOING TO -- I MEAN, DO THEY HAVE A CHOICE?

IN OTHER WORDS, IF THE HOMEOWNER ASKS, THEY WANT THIS SOLAR PANELS, IS THAT INCLUDED?

>> YES.

>> DOES THE AUTHORITY THAT'S LOANING THE MONEY HAVE A CHOICE AS TO WHETHER THEY'RE GOING TO GIVE IT TO THEM?

>> THERE'S NO AUTHORITY LOANING THE MONEY.

I THINK THAT'S WHERE THE MISCONCEPTION IS.

THESE ARE BONDS THAT ARE BEING ISSUED.

THE INDIVIDUAL, LOCAL GOVERNMENTS, THEY DON'T LOAN MONEY TO THE HOMEOWNER. THEY PAY CONTRACTORS AND THEN THOSE BONDS ARE SOLD IN ORDER TO REPAY THAT.

THERE'S NO LOAN GOING ANYWHERE

--

>> SO JUST GIVE IT -- SO IN PLAIN -- LIKE HERE IT IS.

I WANT SOLAR PANELS.

>> YES.

>> SO WHAT HAPPENS?

WHERE DO I GO?

>> YOU GO TO A CONTRACTOR IN A CITY THAT HAS THIS PROGRAM, AND THE CONTRACTOR CONTRACTS WITH THE CITY.

THE CITY PAYS THE CONTRACTOR,  
AND THEN THEY SIGN THE  
ASSESSMENT AGREEMENT.

>> AND THEY COME OUT AND MAKE  
THE IMPROVEMENTS ON THE  
PROPERTY.

>> YEAH.

>> SO IT'S A QUESTION OF WHETHER  
THE MONEY IS PAID FROM THE  
SOURCE OR PAID FROM -- I MEAN,  
IN A REGULAR HOMEOWNER'S LOAN,  
THE BANKS WILL DISTRIBUTE TO THE  
CONTRACTORS AS WELL.

I MEAN, THE FUNDING SOURCE  
GENERALLY DOES DISTRIBUTE TO  
WHOEVER IS PERFORMING THE WORK.  
I DON'T SEE THAT CHANGES THE  
NATURE OF WHAT IT IS.

>> WELL, ALSO THERE'S NO  
FORECLOSURE PROVISION.  
IT'S COLLECTED THROUGH THE  
UNIFORM COLLECTION METHOD IN  
197.3632.

IT'S COLLECTED IN ANNUAL  
ASSESSMENTS.

SO LET'S SAY YOU HAVE A PROPERTY  
THAT YOU HAVE SOLAR PANELS ON  
AND YOU PAY \$20,000 FOR THOSE  
SOLAR PANELS.

YOU ONLY PAY \$2,000 A YEAR OR  
\$1,000 A YEAR IF IT'S 20-LIFE.  
LET'S SAY THERE'S A LITTLE  
INTEREST.

\$1100 A YEAR.

LET'S SAY THERE'S A DEFAULT.  
IT'S NOT ACCELERATED AT THAT  
POINT.

YOU JUST OWE THAT \$1100.

>> BUT IT'S STILL IN FRONT OF OR  
HAS A PRIORITY TO THE MORTGAGE.

>> OH, CLEARLY.

YES.

I'M NOT ARGUING THAT.

>> YEAH.

I MEAN, THAT'S THE PROBLEM,  
THOUGH.

>> BUT IF THE PROPERTY IS  
FORECLOSED ON AND THERE HAVE  
ONLY BEEN \$2,000 PAID BACK, THE  
AMOUNT OF THE SPECIAL ASSESSMENT

THAT TAKES PRIORITY OF THE MORTGAGE, IS IT THE \$20,000?

>> NO, IT'S NOT.

IT'S JUST THE AMOUNT DUE THAT YEAR.

SO IT'S REALLY \$1,000.

>> SO IT'S NOT COLLECTED LIKE ANY OTHER ASSESSMENT OR TAX IS COLLECTED?

YOU KNOW, USUALLY ON YOUR STATE -- WELL, I GUESS THOSE COME THROUGH THE MORTGAGE PEOPLE.

SO YOU JUST PAY IT BACK TO WHOEVER DID THE PROPERTY OR --

>> YOU PAY IT TO THE CITY, THE CITY OR THE COUNTY, THROUGH THE TAX ASSESSMENT.

>> BUT SO YOU ARE BILLED BY --

>> YOU'RE BILLED ANNUALLY, YES, BY THE CITY.

CORRECT.

LIKE ANY OTHER ASSESSMENT.

IT'S INCLUDED WITH ALL THE OTHER ASSESSMENTS AND TAXES.

>> A LOT OF THOSE ARE INCLUDED IN YOUR -- WHEN YOU GET YOUR STATEMENT EVERY MONTH.

>> IT'S NOT MONTHLY.

IT'S ANNUALLY ALONG WITH THE ANNUAL TAXES.

AND UNDER THE STATUTE THE MORTGAGEE HAS THE RIGHT TO REQUIRE THAT THE ESCROW PAYMENTS BE INCREASED IN ORDER TO BE ABLE TO PAY THAT OFF EVERY YEAR.

>> LET'S GO BACK TO JUSTICE PARIENTE'S QUESTION, WHEN THE PROPERTY OWNER APPLIES.

THE STATUTE SAYS A PROPERTY OWNER MAY APPLY TO THE LOCAL GOVERNMENT FOR FUNDING.

WHAT DOES THAT LOCAL GOVERNMENT LOOK AT TO DETERMINE WHETHER OR NOT THEY'RE GOING TO GRANT THIS?

>> WELL, THEY HAVE TO LOOK AT THE LAST THREE YEARS AND MAKE SURE THERE'S BEEN NO DEFAULT ON ANY MORTGAGE.

THEY HAVE TO LOOK AT THE -- WHETHER THE HOMEOWNER IS CURRENT

ON THE MORTGAGE.  
THERE'S A NOTICE THAT'S SENT OUT  
TO THE MORTGAGEE AS WELL.  
AND THEY HAVE TO MAKE SURE THAT  
THE CONTRACTOR IS A LICENSED  
CONTRACTOR AND IN GOOD STANDING.  
>> THERE IS NO CONSIDERATION OF  
THE VALUE OF THE HOME OR THE  
VALUE OF THE IMPROVEMENTS  
COMPARED TO THE HOME OR THINGS  
OF THAT NATURE.  
IN THE SAME SENSE OF AN  
UNDERWRITING, LIKE A LOAN.  
>> YES, IN THE SENSE THAT THE  
IMPROVEMENTS CANNOT EXCEED 20%  
OF THE VALUE OF THE HOME UNLESS  
THERE IS AN AUDIT PERFORMED, AN  
ENERGY AUDIT, THAT DETERMINES  
THAT THE ENERGY SAVINGS WILL  
EXCEED THE ANNUAL ASSESSMENT.  
>> SO DOES THE MORTGAGEE THEN  
WHEN THEY GET NOTICE, DO THEY  
HAVE A RIGHT TO PARTICIPATE TO  
SAY THAT THIS SHOULD NOT BE  
APPROVED?  
>> NO.  
>> SO WHY DO THEY GET NOTICE?  
>> WELL, BECAUSE THEN THEY CAN  
REQUIRE THE HOMEOWNER TO  
INCREASE THE AMOUNT OF THE  
ESCROW.  
>> AND THAT'S IN -- IS THAT IN  
ALL MORTGAGE AGREEMENTS, THE  
ESCROW PART?  
>> I CAN'T SAY WHETHER IT'S IN  
ALL OF THEM OR NOT, BUT I'M SURE  
IT'S IN MANY.  
>> IF WE VALIDATE THESE BONDS,  
EITHER BECAUSE WE SAY THEY'RE --  
LET'S JUST SAY WE DON'T AGREE  
THAT MEYERS WAS CORRECT AND THEY  
DON'T HAVE STANDING AND THEY  
CAN'T BRING IT UP FOR THE FIRST  
TIME.  
IS THIS THEN THE ISSUE OF  
WHETHER IT IS A SPECIAL  
ASSESSMENT, VALID SPECIAL  
ASSESSMENT, VERSUS AN INVALID --  
OR A LOAN, IS THAT ISSUE FOREVER  
CLOSE THE ATTACK ON THE

CONSTITUTIONALITY OF THIS  
STATUTE WITH REGARD TO THAT  
ISSUE?

>> I WOULD SAY YES.

>> EITHER WAY.

>> YES.

BECAUSE THE JUDGMENT ITSELF SAYS  
THAT IT'S -- DETERMINES THAT  
IT'S SPECIAL ASSESSMENT.

SO IF THIS CASE WOULD NEVER HAVE  
BEEN APPEALED, THE JUDGMENT  
WOULD STAND.

THAT WOULD BE THE DETERMINATION  
OF THE VALIDITY OF THE BONDS.

>> SO I DON'T KNOW.

DO YOU TAKE THE POSITION THAT  
THEY CANNOT PARTICIPATE, THEY  
DON'T HAVE STANDING?

>> YES.

>> AND THAT THEY CAN'T RAISE THE  
CONSTITUTIONALITY OF THE STATUTE  
FOR THE FIRST TIME ON APPEAL?

>> YES.

AND WE ALSO TAKE THE POSITION  
THAT EVEN IF THEY COULD, THIS  
PARTICULAR ARGUMENT, THAT IT'S A  
LOAN AND NOT AN ASSESSMENT, WAS  
NEVER MADE BELOW.

THERE WAS A ONE-PARAGRAPH  
SUMMARY ARGUMENT BY THE BROWARD  
COUNTY STATE ATTORNEY WHO ARGUED  
THAT THIS CONTRACT.

NEVER MENTIONED WHY.

>> I AM SYMPATHETIC TO THIS IDEA  
WE DON'T ENTERTAIN ISSUES FOR  
THE FIRST TIME FROM ENTITIES  
THAT WEREN'T PARTIES.

BUT WHEN I SEE ALL OF THE  
AMICUS, THIS IS LIKE A WIN/WIN  
FOR JUST ABOUT EVERYBODY IN THE  
STATE OF FLORIDA.

>> MUNICIPALITY UTILITIES AND  
THE SIERRA CLUB.

>> TRULY.

BUT THE FACT THAT IT'S GREAT, WE  
STILL HAVE A GROUP, WHICH IS I  
GUESS THE MORTGAGE HOLDERS, THAT  
MAY NOT THINK THIS IS SO GOOD  
FOR THEM BECAUSE IT'S IMPAIRING  
THEIR PRIORITY.

SO WE HAVE TO -- IN FAIRNESS --  
BUT DOESN'T IN THIS CASE,  
DOESN'T THAT BEHOOVE THE COURT  
THEN TO MAKE SURE THAT  
EVERYONE'S HEARD AND THAT WE  
CONSIDER THIS AND NOT JUST  
RUBBER STAMP IT, THAT WE  
CONSIDER THIS ARGUMENT AND LAY  
IT TO REST?

I MEAN, ISN'T THAT --

>> I DON'T MIND -- WELL, I  
CERTAINLY DON'T MIND YOU  
AFFIRMING -- IF THAT'S WHAT  
YOU'RE ASKING ME, BY ALL MEANS.

>> LET ME ASK YOU, AT THE BOND  
VALIDATION HEARING, DO THEY HAVE  
TO GO INTO HOW THEY COME UP WITH  
THE AMOUNT OF THE BOND?

BECAUSE ONE OF THE OTHER THINGS  
THAT STRUCK ME IS THAT THIS IS A  
VOLUNTARY PROGRAM, RIGHT?

>> IT'S VOLUNTARY IN THE SENSE  
THAT THE HOMEOWNER --

>> THE HOMEOWNER --

>> UNLIKE A USER FEE, ONCE YOU  
RECEIVE IT, THE PAYMENTS ARE  
VOLUNTARY.

>> I UNDERSTAND THAT.  
BUT MY CONCERN IS REALLY AS THE  
WHOLE HOW -- WAS THERE ANY  
EVIDENCE PRESENTED ABOUT THE  
AMOUNT OF THE BONDS?

BECAUSE IT SEEMS TO ME  
THEORETICALLY, ANYWAY, THAT YOU  
HAVE ALL THESE BONDS, AND  
EVIDENTLY THE BONDHOLDERS ARE  
SOMEHOW GOING TO HAVE TO GET  
REPAID, RIGHT?

>> RIGHT.

>> SO IF PEOPLE DECIDE THEY  
DON'T WANT THIS, SO VERY FEW  
PEOPLE SIGN UP FOR IT, WHAT  
HAPPENS THEN?

>> WELL, THE BONDS WOULD ONLY BE  
ISSUED AT THE POINT WHERE THE  
ASSESSMENTS ARE MADE AND THE  
AGREEMENTS ARE SIGNED.

>> SO WHAT THIS BOND VALIDATION  
REALLY IS WOULD BE IS A -- THE  
ALLOWANCE OF PERIODIC ISSUANCES

OF BONDS.

>> CORRECT.

JUSTICE PERRY, I DON'T KNOW IF YOU -- OKAY.

>> WOULD YOU WALK THROUGH -- YOU SEEM TO BE MAKING AN ARGUMENT, BECAUSE OF THE MANNER IN WHICH THE PAYMENT IS MADE, THAT THAT SOMEHOW MAKES A DIFFERENCE.

LET ME WALK THROUGH THIS WITH YOU AND SEE IF I UNDERSTAND IT, AND CORRECT ME IF I'M WRONG.

LET'S ASSUME JUST A ROUND NUMBER OF \$20,000 AND THERE'S AN EXISTING MORTGAGE ALREADY ON THE PROPERTY AND THE MONEY COMES OUT AND THEY'RE PAID TO THE CONTRACTOR.

THE IMPROVEMENTS ARE MADE.

AND THE HOMEOWNER'S THEN BILLED THE FIRST YEAR, \$1,000, LET'S SAY.

HOMEOWNER PAYS.

BUT THEN WE GET TO YEARS TWO AND THREE.

HOMEOWNER DOES NOT PAY.

SHORTLY AFTER THAT OR AT THE SAME TIME THE HOMEOWNER DEFAULTS ON THE MORTGAGE.

SO WE'VE GOT A MORTGAGE HOLDER WHO HAS AN INTEREST TO PROTECT.

THAT FIRST \$2,000 THAT'S OUTSTANDING GOES BACK TO THE REPAYMENT OF IT AS A PRIORITY OVER THE MORTGAGE, CORRECT?

>> YES.

>> OKAY.

>> THAT'S THE NATURE OF A SPECIAL ASSESSMENT.

>> THAT'S THE NATURE OF A SECOND LOAN AS WELL.

AND, AGAIN, YOU CAN CALL IT, MR. CANTERO.

YOU KNOW, I RESPECT YOU.

BUT JUST BECAUSE SOMEBODY PUTS A NAME ON SOMETHING, YOU KNOW AS WELL AS I DO, YOU CAN CALL IT ANYTHING, BUT UNLESS -- I HAVE NEVER SEEN A CASE WHERE IT IS BENEFITS TO AN INDIVIDUAL



HOMEOWNER AND THAT IT IS  
QUALIFIED AS A SPECIAL  
ASSESSMENT.

I AGREE THAT THAT'S A -- GO  
AHEAD.

I'M SORRY.

IF YOU NEED TO ANSWER, PLEASE  
DO.

>> THERE'S ALSO NOT BEEN A CASE  
THAT REJECTS THAT APPROACH.  
THIS IS SOMETHING -- THIS HASN'T  
HAPPENED BEFORE.

>> JUST BECAUSE IT'S NOVEL  
DOESN'T MAKE IT CORRECT.

>> DOESN'T MAKE IT INCORRECT.  
THAT'S MY POINT.

>> WELL, IT FLIES IN THE FACE OF  
IMPAIRING OF EXISTING CONTRACTS,  
CONTRARY TO THE UNITED STATES  
CONSTITUTION.

>> I THINK YOU'RE HAVING THE  
CONCLUSION BEFORE THE PREMISE.  
YOUR PREMISE IS THAT IT'S NOT AN  
ASSESSMENT.

IF IT'S NOT AN ASSESSMENT, THEN  
YOU MAY BE CORRECT.

BUT IF IT IS AN ASSESSMENT, THEN  
IT'S NOT AN IMPAIRMENT OF  
CONTRACT.

>> I CAN AGREE WITH THAT, WITH  
YOU.

BUT MY POINT BEING IS JUST  
BECAUSE THE FLORIDA LEGISLATURE  
CALLS SOMETHING A CERTAIN NAME  
WHEN IN TRUTH AND IN FACT AND  
EFFECT IT OPERATES AS SOMETHING  
ELSE, I DON'T THINK THE COURTS  
HAVE TO ACCEPT THAT.

>> WELL, YOUR HONOR, YOU'RE  
RIGHT THAT JUST BECAUSE, BUT THE  
LEGISLATURE DOES DESERVE  
DEFERENCE IN DECIDING WHAT IS A  
SPECIAL ASSESSMENT AND IN  
DECIDING WHAT HAS BOTH PRIVATE  
BENEFITS TO A HOMEOWNER AND  
BENEFITS TO THE PUBLIC AS WELL.  
AND LET'S KEEP IN MIND THAT  
THESE SPECIAL ASSESSMENTS GO NOT  
JUST TO ENERGY EFFICIENCY, NOT  
JUST TO ENERGY DEPENDENCE, BUT

ALSO TO HURRICANE PREPAREDNESS.

>> I UNDERSTAND ALL THE BENEFITS.

I'M NOT DEBATING WITH YOU THE GREAT IDEA OR IDEALS OF A PROGRAM SUCH AS THIS.

BUT THE PROBLEM IS IS IN THE PRIORITY THAT I HAVE WITH IT.

>> AND I THINK YOU'LL ALSO AGREE THAT A HURRICANE PREPARED HOME BENEFITS NOT JUST THAT HOME, BUT THE NEIGHBORS AROUND THAT HOME.

>> AND I WOULDN'T DISPUTE THAT, EITHER.

BUT, AGAIN, THE DOLLARS THAT ARE BEING SPENT ARE NOT BEING SPENT ON A PUBLIC PROJECT.

THEY'RE BEING SPENT ON A PRIVATE HOME PROJECT.

AND SO, AGAIN, IT COMES DOWN TO NOMENCLATURE.

>> NO CASE IN FLORIDA HAS DECIDED THIS ISSUE ONE WAY OR THE OTHER.

>> I CAN ACCEPT THAT.

>> THIS IS THE CASE IN 31 STATES NOW, INCLUDING FLORIDA.

THERE'S 30 OTHER JURISDICTIONS AND DISTRICT OF COLUMBIA THAT HAVE THESE PACE PROGRAMS WITH SPECIAL ASSESSMENTS.

>> AND YOU MAY HAVE ANSWERED THIS.

I JUST WANT TO MAKE SURE.

THE \$20,000 IS LOANED OR PAID, AND THEY PAY BACK YEARLY, OR IT'S ON THEIR TAX BILL, RIGHT, AS A SPECIAL ASSESSMENT?

>> YES.

>> YEAR TWO IT'S FORECLOSED ON.

THE ENTITY THAT HAS ADVANCED THAT MONEY CANNOT GET BACK ANYTHING MORE THAN -- CAN IT GET BACK THE \$18,000?

>> NO, NOT AT ALL.

IT'S LIKE TAXES ON THE HOUSE.

YOU DON'T FOR CLOSE ON TAXES FOR THE NEXT 20 YEARS.

YOU JUST FORECLOSE ON --

>> THAT INDICIA, WAS THAT

CRITICAL IN PUTTING THIS TOGETHER?

>> IT'S CRITICAL TO THE PROGRAM, YOUR HONOR.

AND THIS IS WHY.

BEFORE NOW, ENERGY EFFICIENCY AND ENERGY INDEPENDENCE HAS NOT BEEN AFFORDABLE TO ANY HOMEOWNERS AROUND THE COUNTRY. THIS ALLOWS A HOMEOWNER TO SPEND \$20,000 ON SOLAR PANELS AND LATER, THREE YEARS LATER, IF THAT HOMEOWNER SELLS THE HOUSE, THEY'RE NOT RESPONSIBLE FOR THAT \$20,000.

IT STAYS WITH THE HOUSE.

SO HOMEOWNERS ARE MORE COMFORTABLE MAKING THESE KINDS OF IMPROVEMENTS BECAUSE THEY KNOW THAT THEY'RE NOT GOING TO BE STUCK WITH THEM FOREVER IF THEY SELL THE HOUSE.

>> BUT THE DECISION WHETHER TO ADVANCE THIS MONEY, THEY LOOK AT THE FINANCIAL VIABILITY OF THE HOMEOWNER, TOO.

BECAUSE YOU SAID THEY LOOK AT WHETHER THEY'RE CURRENT. AND IS THAT UNDER THE STATUTE?

>> YES.

THE STATUTE REQUIRES THAT. AND THEY REQUIRE THAT THERE'S BEEN NO DEFAULT EITHER IN THE LAST THREE YEARS OR THE PERIOD IN WHICH THIS HOMEOWNER HAS OWNED THIS HOME.

>> SO YOU ARE LOOKING TO HOMEOWNER, EVEN THOUGH THEY'RE NOT GOING TO BE PERSONALLY LIABLE, YOU'RE LOOKING TO THEIR FINANCIAL STABILITY.

>> YES.

THERE'S PROVISIONS BECAUSE THEY UNDERSTOOD THE ISSUE WITH THE MORTGAGES SO THEY WANTED TO PROTECT MORTGAGEES.

>> SO ONCE A HOUSE IS FORECLOSED ON, LET ME MAKE SURE I UNDERSTOOD WHAT YOU SAID.

>> YES, YOUR HONOR.

>> AND THEY'RE \$2,000 IN ARREARS  
OF A \$20,000 LOAN.

>> ASSESSMENT.

>> WELL, ASSESSMENT.

THEN THE \$18,000, WHOEVER BUYS  
THE HOUSE IN FORECLOSURE OR  
HOWEVER, IS SUBJECT TO THE  
\$18,000 THAT'S STILL OWED ON THE  
SOLAR PANEL.

>> IS SUBJECT TO \$2,000 PER  
YEAR.

IF THEY SELL THE HOME, THEN THEY  
DON'T HAVE TO PAY THE REST OF  
THAT \$18,000.

>> BUT YOU WOULD ADMIT IF  
THERE'S A FORECLOSURE OR IF THEY  
SELL THE HOUSE, THE VALUE THAT  
IS GOING TO BE PAID FOR THE  
HOUSE IS GOING TO BE AFFECTED BY  
THAT OUTSTANDING LIABILITY ON  
THE SPECIAL ASSESSMENT.

NOW, IT MAY BE IT WILL BE A WASH  
BECAUSE WHAT'S BEEN INSTALLED  
WILL EQUAL THE VALUE.

IT MAY BE IT WILL BE A PLUS  
BECAUSE WHAT'S BEEN INSTALLED IS  
MORE THAN WHAT'S OUTSTANDING.  
BUT IT MIGHT BE THE OTHER WAY,  
TOO, WHERE IT'S JUST GOING TO BE  
-- IT'S GOING TO BRING DOWN THE  
VALUE BECAUSE -- THAT'S GOT TO  
BE TAKEN INTO ACCOUNT BY PEOPLE  
WHO BUY IT.

I MEAN, ANY RATIONAL PERSON  
WOULD TAKE THAT INTO ACCOUNT,  
WOULDN'T YOU ADMIT?

>> YES, YOUR HONOR.

AND AS WITH ANY SPECIAL  
ASSESSMENTS, SPECIAL ASSESSMENTS  
ASSUME THAT THERE'S GOING TO BE  
AN IMPROVEMENT TO THE PROPERTY.  
DOES A CONNECTION TO A SEWER  
LINE NECESSARILY IMPROVE THE  
PROPERTY?

WE DON'T KNOW.

BUT THAT'S AN ASSUMPTION THAT  
THE LEGISLATURE IS ENTITLED TO  
MAKE AND THAT'S WHAT IT MADE IN  
THIS CASE.

AND IT MADE A LOT OF FINDINGS

ABOUT NOT JUST THE IMPROVEMENT TO THE PROPERTY AND HOW IT BENEFITS THE PROPERTY, BUT THE IMPROVEMENT TO THE NEIGHBORHOOD AND TO THE STATE IN HAVING THIS. I THINK THOSE FINDINGS DESERVE DEFERENCE, NOT CONCLUSIVE, BUT NOT DEFERENCE.

I KNOW I'VE GONE OVER MY TIME. THANK YOU FOR YOUR INDULGENCE AND I ASK YOU TO AFFIRM.

>> MISS BERMAN, I'LL GIVE YOU TWO MINUTES REBUTTAL TIME SINCE WE HELPED YOU USE MOST OF YOUR TIME.

>> THANK YOU, YOUR HONOR. FOLLOWING UP ON THE LINE OF QUESTIONING WE JUST HAD, WHAT'S COMING ABOUT IS YOU JUST HEARD ALL THESE STATES HAVE PACE PROGRAMS.

THAT'S EXACTLY RIGHT. THERE'S NOTHING WRONG WITH HAVING ONE HERE IN FLORIDA. BUT NOT EVERY STATE HAS A LIEN PRIORITY PROVISION BECAUSE EVERY STATE'S GOT DIFFERENT LEVELS OF HOW STRONG THE CONTRACT CLAUSE IS.

FLORIDA HAS A VERY STRONG CONTRACT CLAUSE AND STATES, AS THE AMICUS BRIEF POINTS OUT, OTHER STATES DO NOT HAVE THAT PRIORITY LIEN PROVISION. SOME STATES DO ALLOW IT. IT DEPENDS ON THAT STATE'S CONSTITUTION.

WE CAN HAVE THIS SUCCESSFUL PROGRAM WITHOUT THE LIEN PRIORITY PROVISION.

EVERYTHING WE JUST TALKED ABOUT WOULD STILL BE IN PLAY, WOULD STILL HAPPEN, JUST WITHOUT THE IMPROPER CONSTITUTIONAL INFRINGEMENT THAT HAPPENS WITH LIEN PRIORITY.

IT DOES DECREASE THE VALUE OF THE CONTRACT.

>> WHAT HAPPENS IF IT'S NOT A LIEN PRIORITY AND THE HOUSE GOES

INTO FORECLOSURE OR FOR WHATEVER REASON THE HOMEOWNER DOESN'T PAY?

WHAT HAPPENS TO THAT AMOUNT? SAY THE HOUSE IS SOLD FOR WHATEVER THE MORTGAGE IS.

>> FRANKLY, YOUR HONOR, IT WOULD BE AS IT EXISTS IN OTHER STATES. IT WOULD JUST BE BEHIND THE LINE THE MORTGAGE LOAN HERE FOR THE IMPROVEMENTS THAT WERE DONE TO THE HOME.

SIMPLY PUT, YOUR HONOR, IT JUST WOULD NOT HAVE THE LIEN PRIORITY PROVISION, WHICH, AS I WAS MENTIONING, IS A VALUABLE ASPECT OF THE CONTRACT.

>> BUT YOU AGREE THEY COULDN'T -- AT A MORTGAGE FORECLOSURE SALE, THIS IS NOT WIPED OUT. IT WOULD RUN WITH THE PROPERTY SO THAT WHOEVER PURCHASES THE PROPERTY PURCHASES IT WITH THE -- THIS AMOUNT BEING A YEARLY ASSESSMENT BY THE AUTHORITY.

>> YES, YOUR HONOR.

AND I WILL ACKNOWLEDGE THAT'S THE ONE KIND OF STRANGE THING, IF YOU WILL.

>> WELL, IT MAY BE AN IMPORTANT THING TO WHAT IT IS, BECAUSE NO LOAN WOULD HAVE -- THAT WOULD NOT BE WHAT WOULD HAPPEN IN A TRADITIONAL SECOND LOAN OR IMPROVEMENT LOAN.

>> THAT'S TRUE IN A STANDARD LOAN.

THAT'S WHY WE'VE ARGUED THAT THIS IS MOST LIKE A LOAN.

IT MAY NOT BE A LOAN, BUT IT'S CERTAINLY NOT A SPECIAL ASSESSMENT.

>> BUT THE ARREARS WOULD NOT BE RUN WITH THE PROPERTY.

IT WOULD STILL -- OR WOULD IT?

>> I'M SORRY, JUSTICE QUINCE. I DIDN'T HEAR ALL THE QUESTION.

>> I SAID THE PART THAT WAS IN ARREARS, THE PART OF THIS ASSESSMENT THAT WAS IN ARREARS,

WOULD THAT STILL RUN WITH THE PROPERTY IF IT WAS NOT AN ASSESSMENT?

>> FRANKLY, YOUR HONOR, AS THE STATUTE'S WRITTEN, IT SAYS THAT IT WOULD.

IT REALLY SHOULD NOT BECAUSE IT'S NOT AN ASSESSMENT AND IT SHOULD BE TREATED LIKE A LOAN. BUT THE STATUTE DOES SAY THAT IT RUNS WITH THE LAND.

IT DOES READ THAT WAY, YOUR HONOR.

>> BUT IF IT'S NOT AN ASSESSMENT, IT WOULD NOT. BUT UNDER THE STATUTE IT STILL WOULD, EVEN IF IT'S NOT -- WELL, THE STATUTE DOESN'T CONTEMPLATE THAT IT'S NOT AN ASSESSMENT.

>> EXACTLY, YOUR HONOR.

>> BUT IF IT'S NOT AN ASSESSMENT, THEN WHAT WOULD HAPPEN TO WHAT IS IN ARREARS? NOT THE FUTURE PAYMENTS, BUT WHAT WOULD HAPPEN TO WHAT'S IN ARREARS?

>> OH, I SEE, YOUR HONOR. THANK YOU FOR CLARIFYING. WHAT WOULD HAPPEN TO WHAT'S IN ARREARS, BACK TO MY EARLIER ANSWER, WOULD SIMPLY BE THAT IT'S UNPAID AND THEN THE --

>> THE HOMEOWNER WHO HAD IT ORIGINALLY WOULD BE ON THE HOOK FOR THAT.

>> THAT'S CORRECT. AND THAT'S WHY THE HOMEOWNER UNDERGOES I'LL CALL IT A CREDIT CHECK.

THE HOMEOWNER HAS TO BE EVALUATED FOR WHETHER THE HOMEOWNER IS A PROPER BORROWER FOR THIS IMPROVEMENT FUNDING. IF I MAY -- YES, YOUR HONOR.

>> BUT IN THIS PARTICULAR CASE, THE VALUE OF THE PANELS CANNOT EXCEED THE VALUE OF 6% OF THE VALUE OF THE HOUSE?

>> CANNOT EXCEED 20%.

>> 20% OF THE VALUE OF THE

HOUSE.

SO THEN THIS WOULD NOT HAVE ANY  
IMPACT IN A BLIGHTED AREA?  
BECAUSE THEY PROBABLY COULDN'T  
REACH THAT THRESHOLD, COULD  
THEY?

>> I'M SORRY.

I DON'T --

>> THIS 20%.

>> RIGHT, YOUR HONOR.

>> IF THE AREA IS BLIGHTED.

>> OKAY.

>> IT COULDN'T REACH THAT  
THRESHOLD.

THEREFORE, IT WOULDN'T APPLY IN  
THE BLIGHTED AREA, WOULD IT?

>> I'M SORRY, YOUR HONOR.

THE MAX -- THE VALUE WOULD NOT  
APPLY?

>> IF THE AREA IS BLIGHTED, THE  
HOUSE IS WORTH \$40,000, \$20,000  
PANEL, THEY COULDN'T GET IT.

>> NO, NOT WITHOUT CERTAIN  
EXCEPTIONS.

NOW, WHAT WE HAVE ASSERTED, OF  
COURSE, THOUGH, IS YOU COULD  
STILL HAVE MORE OUT IN A LOAN  
THAN THE VALUE OF THE PROPERTY.  
IF IT'S 90% OF THE VALUE AND YOU  
ADD 20% ON, NOW YOU'RE AT 110%  
AND YOU'RE UNDER WATER ON HOW  
MUCH FINANCING IS ON THE  
PROPERTY.

>> I THINK YOUR TIME IS UP.

>> THANK YOU, YOUR HONOR.

>> THANK YOU.

THANK YOU FOR YOUR ARGUMENTS.