>> ALL RISE.
>> HEAR YE, HEAR YE, HEAR YE, SUPREME COURT OF FLORIDA IS IN SESSION.
ALL WHO HAVE CASE TO HEAR, DRAW NEAR, YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME COURT.
THE FIRST CASE ON THE DOCKET IS GRETNA RACING V. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.
JUSTICE QUINCE IS RECUSED IN THAT CASE.
COUNSEL, WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT, MY NAME IS MARC DUNBAR APPEARING ON BEHALF OF THE APPELLANT, AND I'M JOINED BY MY CO-COUNSEL, DAVID ROAM NICK.
THE CASE BEFORE YOU POSES A VERY SIMPLE QUESTION OF STATUTORY INTERPRETATION.
YOU ARE ASKED TO INTERPRET THE FOLLOWING PHRASE: IN A COUNTY-WIDE REFERENDUM HELD PURSUANT TO A STATUTORY OR CONSTITUTIONAL AUTHORIZATION AFTER THE EFFECTIVE DATE.
THIS IS LIKELY THE EASIEST CASE YOU'RE GOING TO DEAL WITH TODAY.
THE STANDARD OF REVIEW IS DE NOVO, AND THE CENTRAL QUESTION IN THIS CASE IS WHETHER THIS PHRASE ALLOWS THE REFERENDUM CONDUCTED BY GADSDEN COUNTY TO QUALIFY GRETNA RACING FOR SLOT MACHINES.
THIS CASE LIKELY WILL TURN ON THE INTERPRETATION OF A SINGLE WORD, AFTER.
>> DOESN'T IT, THOUGH, ISN'T THE FIRST QUESTION WHICH I GUESS

JUDGE MAYCAR DISAGREED WITH IS
BEFORE THE CONSTITUTIONAL
AMENDMENT, WHETHER THE
LEGISLATURE COULD AUTHORIZE SLOT
MACHINES IN THE STATE OF
FLORIDA.
BECAUSE IF THEY COULD, THEN
THERE REALLY WASN'T A NEED FOR A
CONSTITUTIONAL AMENDMENT.
WHAT AM I MISSING THERE?
>> WELL, WHAT YOU'RE MISSING,
YOUR HONOR, IS THAT THE
LEGISLATURE STEADILY BLOCKED
SLOT MACHINES TO PARI-MUTUEL
FACILITIES FOR A NUMBER OF
YEARS, AND THE PARI-MUTUEL
FACILITIES BYPASSED THE
LEGISLATURE AND PUT SLOT
MACHINES IN THE CONSTITUTION.
HOWEVER, THIS COURT PRECEDENT
GOING BACK TO--
>> WELL, CERTAIN OF THE
PARI-MUTUEL FACILITIES, BECAUSE
THAT DIDN'T APPLY TO THEM ALL.
>> IT DIDN'T APPLY TO THEM ALL,
YOUR HONOR, BUT WHAT HAPPENED
WAS THE SUPREME COURT BACK IN
THE 1930s AFFIRMED THE
LEGISLATURE'S ABILITY TO
AUTHORIZE OR SLOT MACHINES AND
EXPAND OR CONTRACT GAMING.
AND, ACTUALLY, THERE IS A SERIES
OF UNBROKEN CASES THAT GO ALL
THE WAY TO 2004 WHERE IT'S NEVER
BEEN DOUBTED THAT THE
LEGISLATURE IS THE POLICY-MAKING
ARM FOR THE EXPANSION OR
CONTRACTION OF GAMING SAVE ONE
LIMITED AREA X THAT IS A
STATEWIDE LOTTERY SUFFICIENT
ENOUGH TO AFFECT THE ENTIRE
COMMUNITY.
>> I GUESS ALL I'M SAYING WHEN
YOU SAID IT'S THE SIMPLEST CASE
WE'LL HAVE THIS MORNING IS JUDGE
MAKAR DISAGREED VEHEMENTLY WITH
THIS COURT'S 2004 OPINION AND
POINTED TO OTHER EARLIER CASES
THAT DISAGREED.
SO ALL I'M-- WE HAVE TO FIRST

GET TO THAT POINT BEFORE, OR DO
WE JUST SAY, NO, THE PRECEDENT'S
THERE, JUDGE MAKAR WAS WRONG AND
GO WITHIN R ON WITH-- GO ON
WITH OUR--
>> NONE OF THE THREE OTHER
JUDGES JOINED JUDGE MAKAR ON
THAT VIEW.
>> DOESN'T MATTER IF THERE'S A
CASE WE DECIDED THAT WE MISSED
IN 2004.
I MEAN, THAT'S ALL I'M ASKING.
>> RIGHT.
I THINK YOU GUYS CLEARLY PUT
THAT BEHIND IN 2004.
>> BUT IS THAT AN ISSUE IN THIS
CASE?
>> IT'S NOT AN ISSUE IN THIS
CASE.
ACTUALLY, THE ATTORNEY GENERAL
HAS REJECTED IT IN THEIR OWN
BRIEF.
>> CAN YOU GO BACK TO THE ONE
WORD?
>> THE ONE WORD IS AFTER, AND
THE ATTORNEY GENERAL WOULD LEAD
YOU TO BELIEVE IT IS MODIFYING
THE WORD IMMEDIATELY BEFORE IT,
AUTHORIZATION.
HOWEVER, THAT IS CONTRARY TO THE
RULES OF GRAMMAR.
AFTER IS UNEQUIVOCALLY-- AND
EVEN THEY ADMITTED IT IN THEIR
ANSWER BRIEF-- TELLS YOU WHEN.
WHEN IT TELLS YOU WHEN, IT IS AN
ADVERB AND AN ADVERB ONLY.
AND AN ADVERB, ACCORDING TO
BASIC RULES OF GRAMMAR, CAN ONLY
MODIFY A VERB.
AND IN THIS INSTANCE THE VERB IS
THE VERB FORM REFERENDUM HELD.
AFTER TELLS YOU WHEN THE
REFERENDUM NEEDS TO BE HELD.
THE REFERENDUM NEEDS TO BE HELD
AFTER THE EFFECTIVE DATE OF THIS
SECTION WHICH IS EXACTLY WHAT
GADSDEN COUNTY DID AND THE OTHER
FIVE COUNTIES THAT LOOKED AT
THIS STATUTE DEEMED THE LANGUAGE
UNAMBIGUOUS AND AUTHORIZE

REFERENDUM IN THEIR COUNTIES AS
WELL.
SO THAT'S WHY I WILL TELL YOU IT
HINGES UPON WHETHER YOU BELIEVE
AFTER CAN BE SOMETHING THAT IT
IS NOT.
IS THE, IN THIS INSTANCE, VERY
CLEARLY AN ADVERB, AND THE RULES
OF GRAMMAR MAKE THIS AN
UNAMBIGUOUS STATUTE WHICH
DOESN'T REQUIRE ANY LEAVING THE
WORDS, YOU APPLY THE WORDS AND
THEIR LOGICAL CONSEQUENCE IS
THAT GADSDEN COUNTY HAD A
REFERENDUM AND ENTITLED GRETNA
RACING FOR THEIR SLOT MACHINES
AND ENTITLED THEM TO THEM.
>> SAY YOU'RE RIGHT ABOUT THE
MEANING OF AFTER IN THIS
CONTEXT?
AREN'T THERE STILL SOME OTHER
QUESTIONS THAT WE HAVE TO
RESOLVE?
LIKE, FOR INSTANCE, WHAT THE
MEANING OF, WHAT THE SPECIFIC
STATUTORY OR CONSTITUTIONAL
AUTHORIZATION IS THAT ALLOWED
FOR A BINDING REFERENDUM ON THIS
QUESTION.
SO WOULD YOU ADDRESS THAT POINT?
>> SURE.
THE REFERENCE TO A STATUTORY OR
CONSTITUTIONAL AUTHORIZATION
REALLY GOES TO A COUPLE OF
POINTS, THE SPEAR V. OLSON CASE
WHICH TALKS ABOUT THE HOME RULE
OF COUNTY, BOTH CHARTER AND
NONCHARTER, BUT FOR SPECIFICALLY
WATT V. FIRESTONE THAT WAS NOT
ADDRESSED BY THE ATTORNEY
GENERAL AND WAS NOT ADDRESSED BY
JUDGE MAKAR IN HIS WITHIN-- HIS
OPINION.
>> THE SPECIFIC QUESTION THAT
WAS BROUGHT BY REPRESENTATIVE
WATT WAS AN EQUAL PROTECTION
QUESTION, AND THE QUESTION WAS
VERY SIMPLE.
MY VOTERS IN MY COUNTY THAT I
REPRESENT DO NOT HAVE THE

REFERENDUM AUTHORITY TO HAVE A
REFERENDUM TO AUTHORIZE SLOT
MACHINES.
THAT WAS THE SPECIFIC QUESTION
RAISED BY REPRESENTATIVE WATT.
AND THE COURT SAID, NO, THAT IS
NOT THE CASE.
YOU, YOUR COUNTY HAS, IF IT'S A
CHARTER COUNTY, CONSTITUTIONAL
AUTHORIZATION THROUGH ARTICLE
VIII, SECTION ONE.
IF YOU'RE A NONCHARTER COUNTY,
YOU HAVE SPECIFIC STATUTORY
AUTHORIZATION UNDER 125.01 AS
WELL AS THE CATCH ALL IN ARTICLE
VIII 1G.
>> DOESN'T THE FACTUAL CONTEXT
THERE DRAMATICALLY DIFFERENT
THAN WHAT WE HAVE HERE?
THE QUESTION WAS THERE WAS A
PROPOSED CONSTITUTIONAL
AMENDMENT THAT WOULD,
ESSENTIALLY, AUTHORIZE LOCAL
OPTION.
IT DIDN'T?
>> NO, IT DID NOT.
IT AUTHORIZED SLOT MACHINES AND
DIDN'T SAY ANYTHING ABOUT THE
LOCAL OPTION.
IT INFERRED, IT SAID IF A
COMMUNITY PASSES IT, YOU CAN
HAVE THEM.
BUT IT DIDN'T LIKE THIS--
>> WELL, I DON'T UNDERSTAND.
IF IT SAYS THAT, I DON'T
UNDERSTAND HOW THAT'S NOT LOCAL
OPTION.
>> IT DID NOT AUTHORIZE THE
OPTION.
>> WELL--
>> THE STATUTE, THAT WAS THE
SPECIFIC QUESTION, YOUR HONOR.
>> IF A PROPOSED CONSTITUTIONAL
AMENDMENT SAYS THAT THERE MAY BE
A LOCAL OPTION, IT AUTHORIZES
IT.
>> NO, IT DID NOT AUTHORIZE THE
LOCAL OPTION.
>> WELL, OKAY--
>> THAT WAS THE QUESTION--

>> IF YOUR POSITION DEPENDS ON THAT, I THINK YOU HAVE A PRETTY WEAK POSITION, BUT WE'LL MOVE ON.
>> HOW DOES IT NOT AUTHORIZE IT?
>> I WAS GOING TO SAY, IT ABSOLUTELY AUTHORIZES IT, BECAUSE IT ENVISIONS-- WHEN THE LEGISLATURE PASSED IT, IT KNOWS WHAT THE STATUTES ARE.
IT KNOWS THE INTERPRETATION OF THE HOME RULE AUTHORITY OF THE COUNTIES.
>> WHAT IS THE HOME RULE AUTHORITY OF THE COUNTIES, THE BASIC, THE BASIC HOME RULE AUTHORITY?
>> ANYTHING EXCEPT THAT WHICH IS DENIED BY THE LEGISLATURE.
>> ISN'T THE LANGUAGE, ISN'T IT THAT THE POWER TO CARRY ON COUNTY GOVERNMENT?
ISN'T THAT THE BASIC LANGUAGE--
>> IN 125.01 IT IS A BROAD CATCH-ALL TO EVERYTHING NOT DENIED TO IT, YOUR HONOR.
AND I WILL POINT OUT THAT THERE IS A CASE OF FLORIDA LAND COMPANY V. WINTER SPRINGS OUT OF THIS COURT, MOST RECENTLY INTERPRETED BY THE FOURTH IN A CASE CALLED ARCH STONE PALMETTO V. KENNEDY.
AND IN THAT CASE, THE ARCH STONE CASE, AT ISSUE WAS THE LEGISLATURE DENYING, TAKING AWAY THE REFERENDUM AUTHORITY THAT WAS ALLOWED TO THE LOCAL GOVERNMENT.
SO THE LEGISLATURE KNOWS HOW BROAD THE AUTHORITY IS.
AND IN THAT CASE, IT TOOK AWAY THE ABILITY FOR THE CITIZENS TO REQUIRE A DEVELOPMENT ORDNANCE TO SIT FOR REFERENDUM.
AND THE LEGISLATURE SAID, NO, WE CAN'T HAVE THIS.
WE CAN'T HAVE ZONING BY BALLOT.
SO IT PASSED THE STATUTE, 163.1367 THAT AFFIRMATIVELY

REMOVED THE COMMON LAW
REFERENDUM AUTHORITY FROM THE
LOCAL GOVERNMENT.
SO 125.01 IN THE CASES THAT
INTERPRETED THIS COURT'S CASES
ARE EXTREMELY BROAD X. FOR YOU
TO CONSTRUE THAT THE AUTHORITY,
IT DOESN'T EXIST HERE, YOU WOULD
HAVE TO BREAK AN INCREDIBLY LONG
LINE OF CASES.
AND IN OPINIONS YOU'VE WRITTEN,
YOUR HONOR, YOU HAVE SAID STARE
DECISIS IS EXTREMELY IMPORTANT.
>> NOW, WHAT OPINION OF THIS
COURT ARE YOU TALKING ABOUT?
BECAUSE WATT'S NOT AN OPINION OF
THIS COURT.
>> SPEAR V. OLSON, YOUR HONOR--
>> I UNDERSTAND.
>>-- IT TALKS ABOUT THE
INCREDIBLY BROAD AUTHORITY THAT
THE CONSTITUTION INFERS TO THE
COUNTIES.
AND THEN LATER INTERPRETIVE
OPINIONS OF 125.01 THAT'S
EXTREMELY, EXTREMELY BROAD.
>> LET ME ASK YOU THIS.
THE LANGUAGE THERE IN 125.01
STARTS OFF WITH A REFERENCE TO
THE POWER TO CARRY OUT COUNTY
GOVERNMENT.
I'M STRUGGLING A LITTLE BIT WITH
UNDERSTANDING HOW, WHAT
SPECIFICALLY IS AT ISSUE HERE
THAT RELATES TO THE POWER TO
CARRY OUT ON COUNTY GOVERNMENT.
BECAUSE WHAT WE'RE TALKING ABOUT
IS A REFERENDUM THAT WILL RESULT
IN REQUIRING THAT A STATE AGENCY
TAKE ACTION.
AND THERE'S A STATE POLICY,
BASIC POLICY AGAINST SLOT
MACHINES.
THERE ARE EXCEPTIONS TO THAT,
AND THE QUESTION IS WHETHER THIS
CAN FALL WITHIN ONE OF THESE
EXCEPTIONS.
AND I UNDERSTAND THAT THERE CAN
BE LOCAL OPTION IN CERTAIN
CONTEXT, IN CERTAIN

CIRCUMSTANCES, BUT WHY IS THIS
WHOLE PROCESS THAT RESULTS IN A
REQUIREMENT OR A STATE AGENCY TO
ISSUE A LICENSE, STATE AGENCY, A
PART OF THE CARRYING OUT THE--
CARRYING ON COUNTY GOVERNMENT?
>> I'LL BE HONEST WITH YOU, YOUR
HONOR, I DON'T UNDERSTAND YOUR
QUESTION.
>> OKAY, THAT'S FINE.
>> I TRIED TO FOLLOW IT.
I APOLOGIZE.
>> THAT'S FINE.
>> I WILL POINT YOU TO THIS,
YOUR HONOR.
SECTION 125.01 SUB T AND W SAYS
COUNTIES SHALL HAVE ALL POWERS,
ALL POWERS NOT INCONSISTENT WITH
OR PROHIBITED BY LAW AND THAT
SUCH POWERS SHALL LIBERALLY, BE
LIBERALLY CONSTRUED.
ALL POWERS.
NOT JUST TO CARRY ON GOVERNMENT,
BUT ALL POWERS.
AND THAT IS-- RINGS WITH SPEAR,
WITH WATT AND WITH WHAT HAPPENED
HERE.
AND IN ORDER FOR YOU TO UNDO
THAT, YOUR HONOR, YOU ARE GOING
TO HAVE TO BREAK A LONG LINE OF
CASES AND HAVE TO REJECT STARE
DECISIS AS IT RELATES TO THE
FUNDAMENTAL AUTHORITY OF THE
COUNTY.
GADSDEN COUNTY FILED AN
EXTENSIVE BRIEF ON THIS BECAUSE
THIS ISSUE WAS RAISED FOR THE
FIRST TIME ON APPEAL.
YOU SAID THIS.
WHEN THE ATTORNEY GENERAL WROTE
THIS, SHE NEVER QUESTIONED THE
COUNTIES' AUTHORITY.
WHEN THE HEARING CONSIDERED IT,
THEY NEVER QUESTIONED THE
ACCOUNT'S TORT.
IT WAS ONLY UNTIL THE ANSWER
BRIEF IN THE FIRST DCA-- THE
FIRST WHICH WAS STRICKEN-- THE
SECOND BRIEF WHERE THEY RAISED
THIS NEW ISSUE.

NOBODY UP UNTIL THAT POINT
QUESTIONED THE COUNTY'S
AUTHORITY.
IN THE SECOND BRIEF WHEN THAT
ISSUE I WAS RAISED, GADSDEN
COUNTY TRIED TO GET INTO THE
CASE AND SAID, WAIT A SECOND,
WHOA, WAIT, YOU ARE ATTACKING
THE FUNDAMENTAL UNDERPINNING OF
COUNTY GOVERNMENT.
FILED A BRIEF.
THAT'S WHY THEY'RE PARTICIPATING
IN THIS CASE HERE.
IT WOULD BE A MONUMENTAL SHIFT
TO TAKE 125.01 AND THE
CONSTITUTIONAL PROVISIONS
RELATED TO COUNTY POWER AND SAY
THAT THEY DO NOT HAVE THAT
AUTHORITY.
ALL RIGHT.
CONTINUING ON, OR IF-- THERE
ARE A COUPLE OF ADDITIONAL
POINTS THAT I THINK ARE WORTH
NOTING.
THE ATTORNEY GENERAL WILL ARGUE
THAT SOME DEFERENCE SHOULD BE
AFFORDED THE AGENCY AND ITS
INTERPRETATION HERE.
S THIS IS NOT A SPECIFIC AREA OF
UNIQUE EXPERTISE.
THE AGENCY IS IN NO GREATER
POSITION TO INTERPRET AN ENGLISH
SENTENCE THAN THIS COURT.
AS HAS BEEN POINTED OUT IN
NUMEROUS OPINIONS, JUDICIAL
DEFERENCE IS NOT, TO AN AGENCY
CONSTRUCTION OF STATUTE IS NOT
REQUIRED IF THE STATUTE IS
UNRELATED TO THE REGULATORY
FUNCTIONS OF THE AGENCY, TO
QUOTE JUSTICE POLSTON.
IN THIS INSTANCE, THERE IS
NOTHING IN THIS DEFINITION THAT
REQUIRES A REGULATORY FUNCTION
OF THE AGENCY.
YOU ARE REQUIRED TO INTERPRET A
STATUTE THAT IS COMPLETE IN AND
OF ITSELF.
WITH THAT, YOUR HONORS, I HAVE
RESERVED SEVEN MINUTES FOR

REBUTTAL, I'LL GO AHEAD AND TAKE
MY SEAT UNLESS YOU HAVE OTHER
QUESTIONS.
THANK YOU.
>> COUNSEL?
>> MR. CHIEF JUSTICE AND MAY IT
PLEASE THE COURT, MY NAME IS
JONATHAN WILLIAMS.
I REPRESENT THE DEPARTMENT IN
THIS CASE.
THE LEGISLATURE DID NOT INTEND
TO LEGALIZE SLOT MACHINES
STATEWIDE WHEN IT CHANGED THE
ELIGIBLE FACILITY DEFINITION.
RATHER, BECAUSE ARTICLE X,
SECTION 23 IS THE ONLY PROVISION
OF FLORIDA LAW BE IT IN THE
STATUTES OR THE CONSTITUTION
THAT AUTHORIZES A COUNTY TO
LEGALIZE SLOT MACHINES THROUGH A
REFERENDUM.
AND BECAUSE THAT PROVISION ONLY
APPLIES TO MIAMI-DADE AND
BROWARD COUNTIES, THE EFFECT OF
THE ELIGIBLE FACILITY DEFINITION
IS ONLY TO ALLOW FACILITIES IN
OTHER COUNTIES TO LEGALIZE SLOT
MACHINES IF THE LEGISLATURE
APPROVES SUCH A REFERENDUM OR IF
THE VOTERS, THROUGH A
CONSTITUTIONAL AMENDMENT,
APPROVE SUCH A REFERENDUM.
THIS UNDERSTANDING IS CONSISTENT
WITH THE PLAIN TEXT OF THE
STATUTE, THE LEGISLATIVE
HISTORY, AND IT ALSO EXPLAINS
WHY THE LEGISLATURE LEFT 5511042
BAN ON SLOT MACHINES--
>> WOULD YOU HELP ME UNDERSTAND
IN LOOKING AT ALL THESE AND THE
ARGUMENTS, AND WE CAN GET ALL
WRAPPED UP IN ALL THE WORDS AND
PHRASES AND NEED AN ENGLISH
PROFESSOR TO TELL US WHAT THESE
THINGS MEAN AND GRAMMAR.
BUT JUST THE COMMON SENSE
PRACTICAL APPROACH TO THE
STATUTE.
WOULD IT BE OR WOULD IT NOT?
PLEASE ADDRESS THE ISSUE OF WITH

THIS AMENDMENT, WAS IT THE
LEGISLATURE SAYING THAT IF IN
THE FUTURE WE DO SOMETHING, THEN
YOU MAY DO SOMETHING ELSE?
>> THAT'S EXACTLY RIGHT, JUSTICE
LEWIS.
>> OKAY.
>> THAT'S NOT JUST IF WE DO
IT--
>> WELL, THAT'S THE KIND OF
THING THAT JUST TROUBLES ME.
I'M NOT SEEING, I DON'T
BELIEVE-- AND YOU CAN CORRECT
ME IF I'M WRONG-- I'M NOT
SEEING A CIRCUMSTANCE WHERE THE
LEGISLATURE SAYS, WELL, IF
SOMETIME DOWN THE ROAD WE DO
SOMETHING ELSE, THEN YOU CAN DO
SOMETHING ELSE.
RATHER THAN AN ACT OF THE
LEGISLATIVE BODY PASSING SOME
RULE, REGULATION, SOMETHING THAT
DOES SOMETHING TODAY.
NOT IF AND WHEN AND MAYBE.
IT'S SORT OF JUST A COMMON SENSE
PRACTICAL WONDER, I GUESS I
SHOULD SAY.
HELP ME WITH THAT.
>> CERTAINLY, JUSTICE LEWIS.
I APPRECIATE THAT CONCERN.
AND THE FACT IS THE LEGISLATURE
HAS DONE THAT BEFORE, AND WE'VE
CITED EXAMPLES IN OUR BRIEF
CONCERNING SETTING EDUCATIONAL
STANDARDS WHERE THE LEGISLATURE
TALKS ABOUT, YOU KNOW, HOW IT
MIGHT LEGISLATE IN THE FUTURE.
IT TALKS ABOUT ACTIONS THAT THE
LEGISLATURE MIGHT TAKE.
SO WHILE IT'S NOT IN THE MAIN
RUN OF STATUTORY PRACTICES,
THERE ARE OTHER STATUTES.
>> BUT THERE'S NOTHING IN THIS
PART OF THE STATUTE WHICH SAYS
OR ANY LICENSED PARI-MUTUEL
FACILITY THAT SAYS IN THE
FUTURE, THAT QUALIFIES THAT
DEFINITION.
THAT'S WHY I'M HAVING TROUBLE.
I MEAN, I CAN UNDERSTAND THEY

COULD SAY IF SOMEBODY BUILDS A, YOU KNOW, 20-STORY BUILDING IN THE FUTURE, THIS WILL BE THE STANDARDS.
BUT JUST READING THE PLAIN LANGUAGE OF THIS I DON'T SEE HOW YOU GET THERE.
THAT'S-- THERE'S NOTHING IN THIS, THIS SECTION WHICH STARTS WITH "OR ANY LICENSED PARI-MUTUEL FACILITY" THAT QUALIFIES THE SCOPE OF WHO CAN APPLY FOR A, TO HAVE SLOT MACHINES IF THERE'S A COUNTY WIDE REFERENDUM.
>> WELL, BUT THERE HAS TO BE AN AUTHORIZATION TO HOLD THAT REFERENDUM.
GRETNA'S TALKED ABOUT ALL THE TIME ABOUT WHAT AFTER MODIFIES, BUT IT'S WHAT AUTHORIZATION MEANS.
AND AUTHORIZATION IN THE CONTEXT OF SLOT MACHINES MEANS SOMETHING LIKE THE ARTICLE X, SECTION 23 SPECIFIC AUTHORIZATION TO HOLD A REFERENDUM WITH THE LEGAL EFFECT OF CREATING AN EXCEPTION TO THE STATEWIDE BAN--
>> LET ME ASK THIS QUESTION, BECAUSE YOU'RE SAYING HELD PURSUANT TO A STATUTORY OR CONSTITUTIONAL AUTHORIZATION.
>> YES.
>> AND IF IT DIDN'T REQUIRE SOMETHING ADDITIONAL, THEY WOULDN'T HAVE PUT THAT PART IN.
IS THAT WHAT YOUR ARGUMENT IS?
>> YES, YOUR HONOR.
>> I GUESS MY QUESTION IS WHY IS IT IN AT ALL?
IN OTHER WORDS, IF IT WASN'T--
IT'S CREATING THIS FALSE SENSE THAT OTHER COUNTIES CAN DO THIS.
I MEAN, WHY WOULD YOU-- AND I'M NOT, I MEAN, WHY WOULD IT BE IN THERE?
YOU'RE SAYING, WELL, THEY'RE THINKING IN THE FUTURE IF THERE WAS A STATUTORY CONSTITUTIONAL

AMENDMENT, THIS WAS WHAT WE
WOULD DO.
BUT USUALLY AUTHORIZING
LEGISLATION OCCURS AFTER THE
CONSTITUTIONAL AMENDMENT.
SO IT JUST SEEMS BIZARRE, I
GUESS, THAT THAT WOULD BE WHAT
THE LEGISLATURE WAS INTENDING.
>> CERTAINLY.
SO IT'S NOT LIKE OTHER STATUTES
THAT PROVIDE AN IMMEDIATE RIGHT.
BUT WHAT IT DOES IS IT OUTLINES
THE TWO MECHANISMS AVAILABLE BY
WHICH YOU CAN BECOME AN ELIGIBLE
FACILITY.
YOU EITHER HAVE TO GET THE
CONSTITUTIONAL AUTHORIZATION, OR
YOU HAVE TO GET THE STATUTORY
AUTHORIZATION.
WHAT IT DOES IS IT NARROWS THE
SCOPE OF WAYS THAT OTHER
COUNTIES CAN GET, CAN HAVE
ELIGIBLE FACILITIES.
AND BY THE WAY, PRIOR TO THAT
TIME THERE WASN'T ANY PROVISION
AT ALL THAT ADDRESSED HOW
MIAMI-DADE AND BROWARD
FACILITIES COULD BECOME ELIGIBLE
FACILITIES.
SO IT PROVIDES INFORMATION ABOUT
WHAT THAT PATHWAY IS.
BUT WHAT IT CLEARLY DOESN'T DO
IS IT DOESN'T GO AHEAD AND
PROVIDE THE AUTHORIZATION,
BECAUSE THERE'S NOTHING LIKE
ARTICLE X, SECTION 23 IN THE
STATUTES OR IN THE CONSTITUTION
FOR ANY OTHER COUNTY AT ALL.
AND I'D POINT OUT THAT IT'S NOT
JUST THE WORD "AFTER" THAT
CLARIFIES HERE.
IT'S ALSO THAT WHEN THE
LEGISLATURE REFERS TO SPECIFIC
PROVISIONS OF EXISTING LAW IN
THIS DEFINITION OF ELIGIBLE
FACILITY, IT ACTUALLY CITES
THEM.
IN THE FIRST CLAUSE CITES
ARTICLE X, SECTION 23.
THE SECOND CLAUSE CITES ANOTHER

PROVISION, AND UNDER GRETNA'S
INTERPRETATION WHAT THIS
PURSUANT TO A STATUTORY OR
CONSTITUTIONAL AUTHORIZATION
DOES IS IT INVITES YOU TO GO
HUNTING THROUGH THE STATUTES AND
CONSTITUTION FOR SOME KIND OF
AUTHORIZATION THAT MAYBE THE
LEGISLATURE JUST OVERLOOKED.
WELL, OF COURSE, AS GRETNA
POINTS OUT, YOU SHOULD PRESUME
THAT THE LEGISLATURE KNOWS WHAT
THE LAW ACTUALLY IS, AND GRETNA
CAN'T EXPLAIN WHY THERE WOULD BE
THIS TOTALLY OPEN-ENDED
REFERENCE TO STATUTORY OR
CONSTITUTIONAL AUTHORIZATION
WHEN THE LEGISLATURE'S PERFECTLY
CAPABLE OF CROSS-REFERENCING
PRESENT LAW WHEN IT WANTS TO.
AND THAT'S JUST A FURTHER
INDICATOR THAT THERE WASN'T ANY
PRESENT AUTHORIZATION TO BE
CITED.
>> LET ME ASK YOU THIS, HOW DOES
SECTION 551.104, 551.104,
SUBSECTION TWO ENTER INTO THIS
ANALYSIS?
NOW, THAT'S THE PROVISION THAT
ACTUALLY HAS THE OPERATIVE
LANGUAGE ABOUT THE GRANTING OF
LICENSES.
>> THAT'S RIGHT.
AND SO 1042 AND 1041 ARE THE TWO
SEPARATE REQUIREMENTS THAT THE
DIVISION DETERMINED GRETNA
FAILED.
1041, OF COURSE, IS THE ONE THAT
REFERS TO ELIGIBLE FACILITY.
YOU HAVE TO BE AN ELIGIBLE
FACILITY IN ORDER TO SATISFY
1041.
1042, WHICH YOU'RE DISCUSSING,
IS THE PROVISION THAT SAYS IN
ORDER TO RECEIVE A LICENSE, IN
ORDER FOR THE DIVISION TO GRANT
A LICENSE, THAT IS, THE FACILITY
MUST BE IN A COUNTY THAT HAS
PASSED A REFERENDUM, QUOTE, AS
SPECIFIED IN ARTICLE X, SECTION

23 AND ARTICLE X SECTION 23 ONLY
SPECIFIES IN MIAMI-DADE AND
BROWARD COUNTY.
SO WHEN YOU TAKE THAT ALL
TOGETHER, WHAT IT SAYS IS YOU
CANNOT GRANT A SLOT MACHINE
LICENSE TO ANY FACILITY OUTSIDE
MIAMI-DADE AND BROWARD COUNTY.
AND, OF COURSE, GRETNA IS
OUTSIDE MIAMI-DADE AND BROWARD
COUNTY, AND THE LEGISLATURE DID
NOT REPEAL THAT PROVISION.
IT'S AN INDEPENDENT BAR TO
GRETNA RECEIVING A LICENSE, AND
THE ONLY WAY THAT GRETNA CAN WIN
THEN IS IF GRETNA CAN CONVINCE
YOU THAT THERE WAS AN IMPLIED
REPEAL.
AND, OF COURSE, WHAT YOU HAVE TO
DO WHEN YOU'RE CONSTRUING THESE
TWO SECTIONS, THE ELIGIBLE
FACILITY THIRD CLAUSE AND THIS
551.1042 SECTION IS TRY TO
HARMONIZE THEM.
YOU HAVE TO START WITH THE
PRESUMPTION THAT THEY CAN BE
HARMONIZED.
NOW, THERE ARE TWO SEPARATE
BARRIERS, AND THERE'S NOTHING
INCONSISTENT ABOUT SAYING YOU
CAN SATISFY CONDITION NUMBER
ONE, BUT YOU DON'T SATISFY
CONDITION NUMBER TWO AND,
THEREFORE, YOU LOSE.
>> WHAT'S THE PURPOSE?
I FIND THAT TO BE A NONSENSICAL
ARGUMENT.
THEY ARE IN CONFLICT, THERE'S NO
QUESTION ABOUT THAT.
WHY DO YOU-- IF YOU SAY, IF ONE
SAYS THIS IS AN ELIGIBLE
FACILITY AND THAT'S THE MOST
RECENT LEGISLATION, THAT
PREVAILS OVER PRIOR LEGISLATION,
CORRECT?
IF THERE'S A CONFLICT?
>> IF THERE IS A CONFLICT, YES.
>> OKAY.
>> HOWEVER--
>> SO IF WE SAY THAT IT'S AN

ELIGIBLE FACILITY BUT YOU CAN'T
GET A LICENSE, THIS WHOLE THINGS
MAKES NO SENSE.
DON'T WE HAVE TO MAKE SOME
COMMON SENSE OUT OF THIS WHOLE
THING THAT WE'RE FACED WITH?
>> WELL, I THINK YOU CAN MAKE
COMMON SENSE OUT OF THE GENERAL
PRESUMPTION THE LEGISLATURE'S
PRESUMED NOT TO HAVE FORGOTTEN
TO REPEAL SOMETHING IT INTENDED
TO-- THAT-- SORRY.
THE PROBLEM WITH THE ARGUMENT IS
THE LEGISLATIVE HISTORY HERE IS
ABSOLUTELY CLEAR.
AND YOU SHOULD LOOK TO THE
LEGISLATIVE HISTORY IF YOU
PERCEIVE THERE TO BE SOME
CONFLICT BETWEEN THE TWO
PROVISIONS BECAUSE THAT'S THE
WAY TO HELP YOU RESOLVE THE
APPEARANCE OF A CONFLICT.
BOTH IN THE 2009 AND 2010
SESSIONS, SPONSORS OF THE
LEGISLATION EXPLAINED
SPECIFICALLY THERE WOULD HAVE TO
BE A SUBSEQUENT AUTHORIZATION OF
A REFERENDUM, THAT THE COUNTIES
OF THE PARI-MUTUELS--
>> WE CAN'T-- CAN THE COURTS
LOOK TO SUBSEQUENT LEGISLATIVE
SESSIONS AND DISCUSSIONS THAT
MAYBE DIFFERENT PEOPLE HAVE
ABOUT SOMETHING AS TO WHAT
SOMETHING MEANT BY A DIFFERENT
GROUP OF PEOPLE THAT PASSED IT
AND USED THOSE WORDS?
>> WELL, TWO POINTS ON THAT.
FIRST, THE 2009 LEGISLATIVE
HISTORY IS CLEAR, AND WE'VE
CITED THAT.
SO THERE'S NO NEED TO LOOK AT
2010.
BUT 2010 IS NOT SUBSEQUENT
LEGISLATIVE HISTORY.
AND HERE'S WHY.
ALL THE LEGISLATURE DID IN 2009
WAS PROPOSE A CHANGE TO THE
STATUTES.
THAT LEGISLATION DID NOT BECOME

EFFECTIVE UNTIL THE LEGISLATURE
IN 2010 AUTHORIZED THE--
APPROVED THE SEMINOLE COMPACT
AND SPECIFICALLY CHANGED THE
LANGUAGE CONCERNING THE
EFFECTIVENESS OF THE REVISED
ELIGIBLE FACILITY DEFINITION.
SO BUT FOR THAT 2010 SESSION,
BUT FOR THAT 2010 LEGISLATION,
THE REVISED ELIGIBLE FACILITY
DEFINITION WOULD NOT HAVE COME
INTO LAW.
SO 2010 IS RELEVANT TOO.
BUT, AGAIN, WE DON'T NEED TO
LOOK AT 2010, BECAUSE 2009 IS
CLEAR.
YOU MIGHT BE WONDERING, WELL,
DIDN'T THEY CITE SOME LANGUAGE
IN THEIR REPLY BRIEF?
DIDN'T THEY PROVIDE SOME
SUPPLEMENTAL AUTHORITY AFTERWARD
THAT MAKES IT LESS CLEAR?
AND THE ANSWER IS, NO.
NEITHER THE QUOTATIONS FROM
REPRESENTATIVE GALVANO, NOR THE
LITTLE ENTRY IN THE SPREAD SHEET
SUPPLIED IN THE SUPPLEMENTAL
AUTHORITY OR CONTRADICTS THE
POSITION THAT THE DIVISION HAS
TAKEN HERE.
AND HERE'S WHY.
THE GALVANO COMMENTS ARE
ADDRESSING WHAT THE COMPACT
ALLOWS THE LEGISLATURE TO DO.
NOT WHAT THE LEGISLATURE HAS
DONE IN REVISING THE ELIGIBLE
FACILITY DEFINITION.
AND WE CAN TELL THAT FOR TWO, IN
TWO WAYS.
FIRST, THERE ARE REPEATED
REFERENCES TO THE COMPACT IN
THAT GALVANO EXCERPT, AND
SECOND, IT'S A DISCUSSION OF A
JAI ALAI FACILITY.
WELL, JAI ALAI GAMES ARE NOT THE
PATHWAY TO BECOMING AN ELIGIBLE
FACILITY UNDER THE THIRD CLAUSE.
YOU HAVE TO HAVE HORSE RACES IN
ORDER TO BECOME AN ELIGIBLE
FACILITY.

AND LOOKING AT THAT EXCERPT THAT
THEY PROVIDED AFTER-- IN THE
SUPPLEMENTAL AUTHORITY, THAT
LITTLE BOX IN THE SPREAD SHEET,
THE TWO INDICATORS THERE, AGAIN,
THAT IT'S NOT A CORRECT
REPRESENTATION OF WHAT THE FINAL
LAW WAS.
FIRST OF ALL, IT WAS TWO DAYS
BEFORE THE FINAL BILL WAS
INTRODUCED, AND IT REFERENCES,
AGAIN, GAMES, RACES OR GAMES.
AND GAMES, AS I SAID, ARE NOT A
PATHWAY TO BECOMING AN ELIGIBLE
FACILITY.
AND FURTHERMORE, WHAT IT DOES IS
IT TALKS ABOUT REFERENDA IN
COUNTIES THAT HAVE PASSED
REFERENDA OR DO PASS REFERENDA.
AND GRETNA ITSELF CONCEDES THAT
PRIOR PAST REFERENDA DON'T MAKE
YOU AN ELIGIBLE FACILITY.
SO NONE OF THAT LEGISLATIVE
HISTORY THEY'VE PROVIDED THERE
PROVIDES ANY CONFLICT.
SO WHAT YOU WOULD NEED TO DO TO
ADOPT GRETNA'S POSITION IS
DETERMINE THAT THE LEGISLATIVE
TEXT HERE IS SO CLEAR THAT THERE
IS NO POSSIBLE OTHER READING TO
BE PROVIDED.
AND RESPECTFULLY, ARTICLE X,
SECTION 23, IF I TOLD YOU THAT
DIDN'T AUTHORIZE THE REFERENDUM,
I WOULD EXPECT YOU TO LAUGH AT
ME AND SAY, OBVIOUSLY, THE PLAIN
TEXT OF ARTICLE X, SECTION 23
AUTHORIZES THE REFERENDUM.
BUT THE THIRD CLAUSE DOES NOT
AUTHORIZE A REFERENDUM.
AND WHAT GRETNA HAS RELIED ON
HERE ARE STATUTORY AND
CONSTITUTIONAL PROVISIONS THAT
LOOK NOTHING WHATSOEVER LIKE THE
ARTICLE X, SECTION 23 LANGUAGE.
AND SO THE NOTION THAT THESE
PRE-EXISTING AUTHORIZATIONS--
WHICH LOOK ABSOLUTELY NOTHING
LIKE THE LANGUAGE THAT CREATED
THE POWER OF MIAMI-DADE AND

BROWARD COUNTY TO HAVE SLOT
MACHINES-- ARE WHAT THE
LEGISLATURE MEANT WHEN IT SAID
AUTHORIZATION?
THAT JUST ENTIRELY IGNORES THE
CONTEXT OF WHAT IT MEANS TO BE
AN AUTHORIZATION IN THE SLOT
MACHINE AREA.
AND, OF COURSE, THIS COURT HAS
REPEATEDLY SAID YOU HAVE TO
CONSIDER THE LANGUAGE IN
CONTEXT.
SO REALLY HERE AT WORST FROM THE
DIVISION'S PERSPECTIVE AND AT
BEST FROM GRETNA'S PERSPECTIVE,
AUTHORIZATION IS AMBIGUOUS.
AND THAT GETS YOU TO THE
LEGISLATIVE HISTORY.
AND ONCE YOU GET TO THE
LEGISLATIVE HISTORY, GRETNA
LOSES.
ONCE YOU GET TO THE SEMINOLE
COMPACT, GRETNA LOSES.
ONCE YOU GET TO THE FACT THAT
THE INDEPENDENT STATUTORY BAR ON
GRANTING SLOT MACHINES OUTSIDE
MIAMI-DADE AND BROWARD COUNTY IN
551.1042 STILL EXISTS AND THAT
IN BOTH SESSIONS THE LEGISLATURE
DID NOT REPEAL IT, GRETNA LOSES.
SO EVERY POSSIBLE INDICATOR OF
STATUTORY MEANING POINTS IN
FAVOR OF THE DIVISION.
AND I WANT TO BE CLEAR, I AM NOT
ABANDONING THE PLAIN TEXT.
IT'S GRETNA THAT HAS NEVER
PROVIDED ANY KIND OF ARGUMENT AS
TO WHAT AUTHORIZATION MEANS AND
IS FOCUSED ENTIRELY ON WHAT
"AFTER" MODIFIES.
>> CAN I ASK YOU JUST TO
CLARIFY, I KNOW THE
CONSTITUTIONAL ISSUE WAS RAISED
IN ONE OF THE AMICUS BRIEFS AS
TO WHETHER ITS SLOT MACHINES ARE
EVEN ALLOWED UNDER THE
CONSTITUTION.
I DON'T SEE-- YOU HAVE NOT
RAISED THE INTERPRETATION THAT
JUDGE MAKAR ADVANCES, THAT IT

WOULD BE UNCONSTITUTIONAL
ANYWAY.
IS THAT RIGHT?
>> THE DIVISION DOESN'T THINK
THAT THERE'S ANY NEED TO REACH
THAT ISSUE HERE BECAUSE THE
STATUTORY TEXT IS CLEAR.
AND REGARDLESS, ALL THE OTHER
INTERPRETIVE TOOLS
DEMONSTRATE--
>> WELL, THAT'S TRUE, BUT IF THE
LEGISLATURE NEXT YEAR SAYS WE'RE
GOING TO ALLOW SLOT MACHINES AND
DOES IT BY STATUTE AND
SPECIFICALLY AUTHORIZES IT AND
THERE'S A CONSTITUTIONAL
IMPEDIMENT, IT JUST SEEMS
THAT-- AND JUDGE MAKAR IS SO,
YOU KNOW, HE'S SO STRONG IN
SAYING WE JUST GOT IT COMPLETELY
WRONG.
AND I'M READING HOW HE SAID IT,
BECAUSE IN 2004 WE JUST
DISREGARDED PLAIN PRECEDENT.
NO ONE ELSE SEEMS TO AGREE WITH
IT, BUT THE IDEA OF THE STATE IS
JUST TO IGNORE WHAT HE SAYS, IS
THAT CORRECT?
>> WELL, I DON'T THINK YOU
HAVE-- WELL, I WOULDN'T SAY YOU
IGNORE IT.
>> WELL, YOU HAVE--
>> BUT, BUT I DON'T THINK YOU
NEED TO REACH IT HERE.
AND IF YOU'D LIKE ME TO ADDRESS
THE MERITS OF WHAT--
>> NO.
IF YOU HAVE IT IN YOUR BRIEF, I
DON'T WANT YOU TO, YOU KNOW, GO
THERE.
YOU'RE NOT RAISING THE
CONSTITUTIONAL ISSUE.
I THINK THAT'S--
>> YEAH.
IN A FOOTNOTE WE NOTED THAT
JUDGE MAKAR HAD ADDRESSED THAT
ISSUE.
NONE OF THE OTHER JUDGES
CONCURRED WITH HIS READING OF
GREATER LORETTA AND, OF COURSE,

GREATER LORETTA WAS DICTA AS TO
WHETHER SLOT MACHINES ARE
LOTTERIES.
BUT, AGAIN, THERE'S SIMPLY NO
NEED TO REACH THAT ISSUE HERE
BECAUSE THE PLAIN TEXT OF THE
STATUTE IN REQUIRING AN
AUTHORIZATION AND UNDERSTANDING
AUTHORIZATION IN CONTEXT MAKES
IT CLEAR THAT THERE IS NO
STATUTORY OR CONSTITUTIONAL
AUTHORIZATION FOR GRETNA TO HOLD
A SLOT MACHINE REFERENDUM HERE.
THIS WOULD HAVE BEEN A VERY,
VERY SIGNIFICANT EXPANSION OF
SLOT MACHINES UNDER FLORIDA LAW.
AND THERE IS NARY A MENTION IN
THE LEGISLATIVE RECORD OF THIS
KIND OF CHANGE.
THE LEGISLATURE, KEEP IN MIND,
IN 2010 PROMISED THE SEMINOLE
TRIBE THAT IT WOULD NOT ALLOW
SLOT MACHINES OUTSIDE OF
MIAMI-DADE AND BROWARD COUNTY IN
THE SEMINOLE COMPACT IN EXCHANGE
FOR A BILLION DOLLARS MINIMUM
OVER THE COURSE OF FIVE YEARS
AND CONTINUING PAYMENTS FOR THE
NEXT 15 YEARS THEREAFTER.
IF THE LEGISLATURE AUTHORIZED
SLOT MACHINES OUTSIDE OF
MIAMI-DADE AND BROWARD COUNTY,
THE LEGISLATURE WOULD HAVE GIVEN
UP THE RIGHT TO THOSE PAYMENTS.
THE NOTION THAT THE LEGISLATURE
PASSED A LAW THAT AT THE SAME
TIME APPROVED THIS COMPACT
PROMISING THE SEMINOLE TRIBE NOT
TO ALLOW SLOT MACHINES OUTSIDE
OF MIAMI-DADE AND BROWARD COUNTY
AND AT THE VERY SAME TIME IN THE
VERY SAME LEGISLATION MADE
EFFECTIVE THE REVISED ELIGIBLE
FACILITY DEFINITION, IT JUST
BLINKS COMMON SENSE.
WHY WOULD THE LEGISLATURE DO
SUCH A THING?
THERE'S NO EXPLANATION THAT
GRETNA HAS AT ALL.
IT'S NEVER OFFERED ANY

EXPLANATION FOR DOING THESE TWO FUNDAMENTALLY INCONSISTENT ACTIVITIES AT THE SAME TIME.
AND SO AGAIN, GRETNA HAS A MAJOR PROBLEM IN ITS STATUTORY INTERPRETATION THEORY THAT IT JUST CAN'T EXPLAIN, BECAUSE THOSE ARE TWO SECTIONS OF THE EXACT SAME LAW, 2010, CHAPTER 201029 THAT UNDER GRETNA'S READING DO FUNDAMENTALLY OPPOSED THINGS.
AND, AGAIN, THIS COURT-- UNDER ITS PRIOR PRECEDENT-- NEEDS TO PRESUME THAT THE LEGISLATURE DID NOT INTEND TO UNFURL, TO DISENTANGLE THE SEMINOLE COMPACT AT THE SAME TIME THAT IT MADE THE DEAL.
THAT SIMPLY DOESN'T MAKE ANY SENSE.
AND ABSENT SOME EXCEPTIONALLY STRONG INDICATION THAT THE LEGISLATURE ACTUALLY MEANT TO DO THAT, AND THERE IS NONE HERE, THE COURT SHOULD NOT ADOPT THAT READING OF THE STATUTE.
SO REALLY WHAT IT COMES DOWN TO IS WHETHER GRETNA HAS PROVIDED A SUFFICIENT ARGUMENT TO CONVINCE THE COURT THAT AUTHORIZATION HAS TO MEAN WHAT IT SAYS IT MEANS ON THE FACE OF THE STATUTE, WHAT GRETNA SAYS IT MEANS ON THE FACE OF THE STATUTE.
BECAUSE AS I'VE SAID, EVERY OTHER TOOL OF STATUTORY CONSTRUCTION POINTS IN THAT DIRECTION, IN THE DIRECTION OF THE DIVISION'S INTERPRETATION.
AND JUST-- ALTHOUGH I'VE SAID THAT THE GRAMMATICAL ISSUE IS NOT ESSENTIAL TO THE OUTCOME OF THIS CASE BECAUSE THEY SIMPLY HAVEN'T ADDRESSED WHAT "AUTHORIZATION" MEANS, THE GRAMMAR SUPPORTS THE DIVISION.
IF I SAY DELIBERATION AFTER ARGUMENT IS HELPFUL TO A COURT IN DECIDING THE OUTCOME, I THINK

THE COURT WOULD UNDERSTAND THAT ARGUMENT THAT "AFTER" CREATES A RELATIONSHIP BETWEEN THOSE TWO NOUNS.
THE NOTION THAT AN "AFTER" PRAISE CAN ONLY REFER, CAN ONLY MODIFY A VERB, IT'S JUST NOT HOW WE USE ENGLISH.
AND THE NOTION THAT THE LEGISLATURE INTENDED ALL OF THIS TO TURN ON FIGURING OUT WHAT AFTER MODIFIES IS NOT THE CORRECT OUTCOME.
THERE IS NO AUTHORIZATION FOR GADSDEN COUNTY TO HOLD A SLOT MACHINE REFERENDUM, AND FOR THAT REASON THE DIVISION PROPERLY DENIED GRETNA'S LICENSE.
THANK YOU.
>> THANK YOU.
>> THANK YOU, YOUR HONOR.
PICKING UP ON THE QUESTION, THE ATTORNEY GENERAL AND JUDGE MAKAR SAID THAT GRETNA CAN'T EXPLAIN WHAT STATUTORY AND CONSTITUTIONAL AUTHORIZATION MEANS.
THE ISSUE'S BEEN RAISED DESPITE THE FACT THAT WE'VE EXPLAINED IT IN EVERY BRIEF.
JUDGE BENTON EXPLAINED IT IN HIS MAJORITY, THEN DISSENTING OPINION, AND IT'S VERY CLEAR.
STATUTORY AND CONSTITUTIONAL AUTHORIZATION REFERS TO THE HOME RULE AUTHORITY OF THE COUNTIES.
NONCHARTER COUNTIES RECEIVE THEIR HOME RULE AUTHORITY FROM THE STATUTE, STATUTORY AUTHORIZATION.
CHARTER COUNTIES RECEIVE IT FROM THE CONSTITUTION--
>> HERE'S THE PROBLEM, HERE'S THE PROBLEM, THOUGH, THAT HAS BEEN POINTED OUT THAT IS OF CONCERN, IS, FIRST OF ALL, THE CONTEXT OF WHEN THIS WAS HAPPENING.
BUT IF THERE'S-- IF IT'S PLAIN, IT'S PLAIN.

BUT IF IN THE FIRST PART OF THE STATUTE THEY SPECIFICALLY REFER TO THE SECTION, YOU KNOW, SPECIFIC SECTION ARTICLE X, SECTION 21 WHICH AUTHORIZED DADE AND BROWARD TO HAVE SLOT MACHINES IN THEIR PARI-MUTUEL FACILITIES AND THEY DON'T-- THEN THEY GO WITH THIS OTHER FOR THE REST OF THE COUNTIES, IT'S JUST-- AND CONSTITUTIONAL OR STATUTORY AUTHORIZATION AND THERE'S NO REFERENCE, IT SEEMS NOT TO BE CONSISTENT WITH WHAT MR. WILLIAMS IS SAYING IS A HUGE, A HUGE TURN FOR THE LEGISLATURE WHICH IS TO BASICALLY SAY THAT IN 65 OTHER COUNTIES YOU JUST HAVE TO HAVE A REFERENDUM, AND YOU, IF YOU'RE HOME RULE, I GUESS, AND YOU'RE FINE.
WHY WOULDN'T THEY THEN REFERENCE HOME RULE AUTHORITY?
SO THAT'S WHAT IS NOW PARTICULARLY TROUBLING ME ABOUT WHAT THIS LEGISLATIVE INTENT WAS IN LIGHT OF THE WHOLE HISTORY OF, AS YOU SAID, THEY HAD TO GET A CONSTITUTIONAL AMENDMENT TO EVEN GET THE-- YOU KNOW, THE LEGISLATURE WAS NEVER GOING TO AUTHORIZE SLOT MACHINES.
WHAT'S THE ANSWER?
>> WELL, IT ACTUALLY IS A VERY SIMPLE ANSWER, AND OPERATING FROM THIS ASSUMPTION, THE LEGISLATURE KNOWS THE WORDS IT USES AND USES THEM INTENTIONALLY.
THE FIRST CLAUSE REFERS SPECIFICALLY TO THE CONSTITUTIONAL SEVEN THAT WERE ELIGIBLE UNDER ARTICLE X, SECTION 23.
THAT'S THE FIRST CLAUSE.
SO THE REFERENCE TO IT IS REALLY JUST A CROSS-REFERENCE TO A STATUTE IMPLEMENTING THAT CONSTITUTIONAL AMENDMENT.

THE SECOND CLAUSE, WHICH WAS
PART OF THE 2009 ENACTMENT, THE
REFERENCE TO SECTION 125.01 IS
NOT AN AUTHORIZATION.
DOESN'T HAVE ANYTHING TO DO WITH
AUTHORIZING.
IT'S A CLASSIFICATION OF A
PERMIT HOLDER LOCATED IN
MIAMI-DADE COUNTY.
125.01 IS A PURE CLASSIFICATION
STATUTE REFERRING TO MIAMI-DADE
COUNTY.
IT DIDN'T AUTHORIZE A
REFERENDUM, DIDN'T SPEAK TO A
REFERENDUM.
IT ACTUALLY ALLOWED THE PERMIT
HOLDER THAT MET THAT
CLASSIFICATION TO NOT HAVE TO
SIT FOR A REFERENDUM.
THEN YOU GO TO THE THIRD CLAUSE.
THE THIRD CLAUSE AT ISSUE, AND
LET ME GIVE YOU A LITTLE BIT OF
CONTEXT.
IN 2009 WHEN THE LEGISLATURE
CONVENED AT AN EXTRAORDINARY
SPECIAL APPROPRIATION CONFERENCE
COMMITTEE ON GAMING, THERE WERE
TWO BILLS THAT WENT IN THERE,
AND THIS IS THE SUPPLEMENTAL
AUTHORITY.
YOU HAD THE SENATE'S POSITION
WHICH WAS SLOT MACHINES AS A
MATTER OF RIGHT TO EVERY
PARI-MUTUEL IN THE STATE OF
FLORIDA.
THAT WAS THE SENATE BILL THAT
WENT INTO CONFERENCE.
NO REFERENDUM, NO LOCAL
GOVERNMENT CHECK, NOTHING.
A MATTER OF RIGHT.
YOU HAD THE HOUSE POSITION OF NO
MACHINE GAMING OTHER THAN THE
CONSTITUTIONAL SEVEN.
AND THEY CONVENE THEIR
CONFERENCE.
NOW, THE ATTORNEY GENERAL WOULD
HEED YOU TO BELIEVE THAT IN
TRYING TO COME TO THE MIDDLE,
THEY ACTUALLY WENT BEYOND THE
HOUSE'S POSITION.

THEY PASSED SURPLUS OF LANGUAGE ENVISIONING SOME ENACTMENT IN THE FUTURE WITH ADDITIONAL HURDLES BEYOND THE SENATE'S POSITION OR THE HOUSE'S POSITION AT THE TIME.
THAT'S ILLOGICAL, AND IF YOU WERE THERE, YOU UNDERSTOOD WHAT THEY WERE TRYING TO DO.
THEY WERE TRYING TO MEET IN THE MIDDLE.
AND THE COLLOQUY OF GALVANO, OR REPRESENTATIVE GALVANO MAKES A LOT OF SENSE FROM THIS STANDPOINT.
BEING A PARI-MUTUEL AT THE TIME, WE DID NOT KNOW WHEN THE LANGUAGE WAS COMING OUT WHETHER THE PARI-MUTUELS WERE GOING TO HAVE SLOT MACHINES AS A MATTER OF RIGHT.
AND THE MEMBERS WERE ASKING THAT.
ARE THE PARI-MUTUELS ENTITLED TO A REFERENDUM?
ARE THE PARI-MUTUELS ENTITLED TO THE MACHINES?
THE LANGUAGE THAT CAME OUT PUT A VERY CLEAR TWO-STEP PROCESS FOR THE PARI-MUTUELS.
FIRST, YOU HAVE TO GET A COUNTY COMMISSION TO AUTHORIZE THE REFERENDUM.
THAT'S WHAT THAT LANGUAGE MEANS.
SECOND, YOU HAVE TO PASS THE REFERENDUM.
AND GUESS WHAT YOU CANNOT DO?
BECAUSE THEY USE THE PHRASE STATUTORY AND CONSTITUTIONAL AUTHORIZATION, YOU CANNOT AVAIL YOURSELF OF A CITIZENS' INITIATIVE.
YOU CANNOT BYPASS YOUR ELECTED OFFICIALS.
JUSTICE PERRY IN THE CIRCUIT COURT, PERFECT EXAMPLE.
BREVARD AND SEMINOLE COUNTY, TWO VERY DIFFERENT COUNTY COMMISSIONS AND TWO VERY DIFFERENT VIEWS ON GAMING.

YOU WOULD NEVER GET THE SEMINOLE COUNTY COMMISSION TO APPROVE A REFERENDUM FOR THE SLOT MACHINES FOR THE PARI-MUTUELS IN THAT COUNTY.
HOWEVER, BREVARD COUNTY DID.
THEIR COUNTY COMMISSIONERS LOOKED AT THE STATUTE, SAW THEM UNAMBIGUOUS, AUTHORIZED A REFERENDUM, AND THEIR VOTERS PASSED IT.
THAT'S EXACTLY WHAT WAS ENVISIONED.
SO THIS WHOLE IDEA THAT, OH, MY GOSH, THREW IT OPEN, NO.
IT REQUIRED A TWO-STEP PROCESS.
AND HERE'S SOMETHING ELSE THAT'S IMPORTANT.
WHEN YOU PULL A PARI-MUTUEL PERMIT IN THE BEGINNING, THERE'S A STATUTE THAT ENTITLES YOU TO YOUR REFERENDUM.
THE COUNTY CANNOT BLOCK IT.
THE LEGISLATURE KNEW THAT WAS IN 550.
THEY KNEW THE PARI-MUTUELS WANTED AN ENTITLEMENT TO THEIR SLOT MACHINES.
THEY KNEW THE SENATE POSITION WAS FOR AN ENTITLEMENT.
THE CONFERENCE COMMITTEE SAID, NO, NO, WE'RE NOT GOING TO DO WHAT WE DID, WE'RE NOT GOING TO GASH TEE YOUR REFERENDUM.
YOU'RE GOING TO HAVE TO EARN IT FROM THE ELECTED OFFICIALS ON THE COUNTY COMMISSION.
THAT IS WHY THE LANGUAGE IS SO IMPORTANT, AND THEY KNEW WHAT THEY WERE WRITING WHEN THEY DID THAT.
>> WOULD YOU ADDRESS THE LANGUAGE OF SECTION 551.104 SUBSECTION TWO AND HOW THAT FITS INTO THE ANALYSIS?
>> ABSOLUTELY.
AND I THINK JUDGE BENTON DID A GREAT JOB IN HIS DISSENT GOING THROUGH THIS.
THAT LANGUAGE, TO JUSTICE LEWIS'

POINT, IS IN DIRECT CONFLICT.
AND IF THE LANGUAGE IS TO BE CONSTRUED THE WAY THE ATTORNEY GENERAL WOULD SUGGEST, WE HAVE TO GO DOWN AND PULL ALL OF THE SLOT MACHINES OUT OF THE HIALEAH RACE TRACK RIGHT NOW BECAUSE THEY'RE NOT ELIGIBLE UNDER THAT CONSTITUTIONAL CROSS REFERENCE.
AS I MENTIONED EARLIER, THE LEGISLATURE WAS VERY SPECIFIC IN 2009 AND CREATED A SPECIAL CLASSIFICATION JUST FOR PERMIT HOLDERS IN SECTION 125.011 COUNTIES.
MIAMI-DADE.
THAT IS IN DIRECT CONFLICT WITH THE LANGUAGE THAT YOU HAVE REFERENCED.
AND THERE ARE ACTUALLY THREE OTHER CONFLICTS WHERE THAT LANGUAGE FROM 2005 WAS NOT CORRECTED BY THE LEGISLATURE.
AND THE CONFLICT IS 180 DEGREES OPPOSED.
IF YOU WERE TO CONSTRUE THAT AS A BLOCK, YOU HAVE TO CONSTRUE THAT AS A BLOCK ON HIALEAH.
AND THE DIVISION KNEW THAT.
AT THE HEARING OFFICER, THEY EVEN SAID THAT THE SUBSEQUENT ENACTED LANGUAGE MUST CONTROL.
>> TO WHAT EXTENT SHOULD WE OR MAY WE LOOK TO THE SURROUNDING EVENTS SUCH AS THE SEMINOLE COMPACT, AND WHAT IMPACT, IF ANY, DOES THAT HAVE ON THIS DISCUSSION?
THE STATE SAYS, LOOK, YOU KNOW, THIS AGREEMENT IS THERE, AND THESE ARE TWO ABSOLUTELY CONFLICTING PROVISIONS.
SO WHAT, WHAT DO YOU SAY ABOUT THAT?
>> WELL, ONE, I WOULD SAY IT'S CLEAR AND UNAM--
>> I'M SORRY, WHAT?
>> IT'S CLEAR AND UNAMBIGUOUS, AND YOU TONIGHT NEED TO LOOK TO THE LEGISLATIVE HISTORY, BUT THE

COMPACT IS NOT IN CONFLICT.
THE LEGISLATURE RESERVED TO ITSELF, IT SAID IF GAMING EXPANDS, TWO THINGS CAN OCCUR.
AND THE SEMINOLE REVENUES DROP DONE 1.37 MILLION, THEY CAN WITHHOLD MONEY.
IN ADDITION, THE LEGISLATURE SAID IF THE COURTS OR THE ADMINISTRATIVE AGENCY AUTHORIZE GAMING OUTSIDE OF DADE AND BROWARD, THERE'S A WHOLE YEAR THAT THE LEGISLATURE CAN RECONVENE, LOOK AT THE EXPANSION.
THE SEMINOLE MONEY GOES IN A TRUST AND THEN, GUESS WHAT?
THEY MAKE THE POLICY CALL ON WHETHER THE COURTS OR THE AGENCY WERE RIGHT ORBIT.
AND THAT'S EXACTLY WHAT WE'RE ASKING YOU TO DO HERE.
THIS IS THE PLACE WHERE WORDS ARE INTERPRETED.
THAT'S WHERE POLICY ARGUMENTS ARE MADE.
AND I WOULD SAY IT'S CLEAR AND UNAMBIGUOUS.
PLEASE INTERPRET THE WORDS.
AND IF FOR SOME REASON THE LEGISLATURE DISAGREES, THEY WILL CHANGE IT.
BUT THEIR WORDS WERE INTENTIONAL AND MEAN WHAT THEY SAY, AND GRETNA RACING'S ENTITLED TO THEIR SLOT MACHINE LICENSE.
>> THANK YOU FOR YOUR ARGUMENT.
>> THANK YOU VERY MUCH.