

>> 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, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET
STATE IS SOWELL VERSUS PANAMA
COMMONS.
WHENEVER YOU'RE READY, COUNSEL.
>> MAY IT PLEASE THE COURT,
TIMOTHY DENNIS WITH THE FLORIDA
ATTORNEY GENERAL'S OFFICE.
>> WANT TO SPEAK UP A LITTLE?
>> YES, MA'AM.
>> ALSO WITH ME TODAY IS LOREN
LEVY, WHO'S REPRESENTING THE
PROPERTY APPRAISER.
AS THIS CASE IS JURISDICTIONALLY
BEFORE THE COURT ON THE
CONSTITUTIONAL ISSUE, I'M GOING
TO FOCUS MY ARGUMENTS ON THAT
PORTION OF THE BRIEF AND JUST
REST ON MY BRIEF WITH THE ISSUE
AS TO WHETHER PANAMA COMMONS WAS
ENTITLED OR NOT IN THE FIRST
INSTANCE TO THE EXEMPTION.
IN 2008 THEY APPLIED FOR A
LOW-INCOME HOUSE TAXING AND WERE
APPROVED.
THEY PUT PROPERTY UNDER CONTRACT
IN 2008 IN BAY COUNTY, FLORIDA,
WHERE THEY WERE GOING TO
CONSTRUCT THE PROJECT.
IN 2009, THE LEGISLATURE PASSED
AN EXEMPTION STATUTE THAT
BROADENED THE ADVALOREM TAX
EXEMPTION AVAILABLE TO
AFFORDABLE HOUSING PROVIDERS.
IT HAD PREVIOUSLY PROVIDED THAT

CORPORATIONS THAT OWN THE PROPERTY WERE ELIGIBLE FOR THE EXEMPTION.

THE 2009 LAW, WHICH WENT INTO EFFECT IN 2010, EXPANDED THAT EXEMPTION AND PROVIDED THAT FLORIDA LIMITED PARTNERSHIPS THAT OWNED THE PROPERTY WERE ALSO ELIGIBLE FOR THE EXEMPTION AS LONG AS THEIR SOLE GENERAL PARTNER WAS A 501(C)(3) CORPORATION.

PANAMA COMMONS CONSTRUCTED THE PROJECT, APPLIED FOR THE EXEMPTION IN 2012 AND RECEIVED IT.

IN 2013, THE LEGISLATURE REPEALED THE EXPANDED EXEMPTION FROM 2009 AND RETURNED THE EXEMPTION TO ITS ORIGINAL SCOPE. BEFORE THE DEADLINE FOR DENIAL, THE APPRAISER DENIED THEIR APPLICATION BECAUSE THEY HAD THE NOW PROHIBITED CORPORATE STRUCTURE.

THEY TOOK IT TO CIRCUIT COURT. THE CIRCUIT COURT RULED IN PANAMA COMMONS' FAVOR.

>> I JUST WANT TO MAKE SURE I UNDERSTAND THAT EVERY YEAR YOU HAVE TO APPLY FOR THIS EXEMPTION.

IT'S NOT YOU APPLY FOR IT ONE TIME AND YOU HAVE IT EACH YEAR.

>> RIGHT.

SOME EXEMPTIONS VARY, BUT I BELIEVE FOR AFFORDABLE HOUSING YOU HAVE TO AFFIRMATIVELY APPLY EVERY YEAR.

AND SO OUR ARGUMENT HERE TODAY ON THE CONSTITUTIONAL ISSUES, WE HAVE TWO ARGUMENTS.

THE 1ST DISTRICT HELD THAT THERE WAS A CONSTITUTIONALLY-PROTECTED EXPECTATION AND THAT JANUARY 1 PANAMA COMMONS HAD THE VESTED RIGHT TO THE PROPERTY TAX EXEMPTION.

WE HAVE TWO ARGUMENTS WHY WE THINK THE FIRST WAS WRONG.

AND OUR FIRST ARGUMENT IS THAT
IN FACT IF YOU LOOK AT THE --
WHAT THE LAW DOES, IT'S A LAW
ENACTED IN 2013, AND IT APPLIES
TO THE 2013 TAX YEAR.

SO WE DON'T BELIEVE THAT THAT'S
NECESSARILY RETROACTIVE IN THE
CONSTITUTIONAL SENSE.

THE LEGISLATURE ENACTED THE LAW
IN 2013.

IT ONLY APPLIED TO 2013 AND
FORWARD.

IT DIDN'T GO BACK AND TAKE THEIR
EXEMPTION AWAY IN 2012.

NOW, THERE'S NO QUESTION
JANUARY 1 IS AN IMPORTANT DATE
IN THE ADVALOREM TAXING
CONTEXT.

IT IS THE DATE THAT THE PROPERTY
APPRAISER LOOKS TO TO DETERMINE
USE, OWNERSHIP AND VALUE OF
THE PROPERTY.

BUT THAT'S NOT THE END OF
THE STORY.

IT'S AN ANNUAL TAX.

YOU KNOW, EXEMPTIONS HAVE TO BE
APPLIED FOR.

THE PROPERTY APPRAISER HAS TO
REVIEW THOSE EXEMPTIONS.

THE PROPERTY APPRAISER PREPARES
A ROLL, SUBMITS IT FOR REVIEW.

IN AUGUST THEY SEND OUT TRIM
NOTICES TO THE PROPERTY OWNERS
ADVISING THEM OF WHAT THEIR
EXPECTED TAXES MIGHT BE.

>> YOU'RE NOT JUST DESCRIBING
THIS CASE, RIGHT?

YOU'RE DESCRIBING HOW THE
EXEMPTIONS WORK IN GENERAL.

>> YES, MA'AM, EVERY YEAR.

>> I GUESS MY QUESTION IS IN
TERMS OF EXPECTATIONS, HERE IT
WAS THAT BECAUSE THEY'RE A
LIMITED PARTNERSHIP, RIGHT,
THEY'RE NOW NO LONGER ENTITLED
TO THE EXEMPTION.

COULD THERE BE A SITUATION --
AND MAYBE IT'S NOT THE ONE
BEFORE US -- WHERE THE ABILITY
TO OBTAIN THE EXEMPTION; IN

OTHER WORDS, YOU HAVE SETTLED EXPECTATIONS.

SAY YOU'VE HAD IT FOR 20 YEARS IN A CERTAIN FORM OF BUSINESS ENTITY, AND BECAUSE IT JUST CHANGES, YOU DON'T HAVE THE OPPORTUNITY TO CHANGE YOUR BUSINESS ENTITY TO CONFORM WITH THE NEW EXEMPTION.

WOULD THAT BE -- I MEAN, THAT MAY NOT BE THIS CASE, BUT CAN YOU FORESEE THAT A STRICT APPLICATION, WHAT YOU'RE SAYING IS THERE CAN NEVER BE SETTLED EXPECTATIONS BECAUSE OF THE WAY THAT THE PROCESS WORKS.

COULD BE TOO BROAD A HOLDING THAT DOESN'T NECESSARILY NEED TO BE THE HOLDING FOR THIS CASE TO, YOU KNOW, UPHOLD THIS CONSTITUTIONALITY.

>> YOUR HONOR --

>> DO YOU UNDERSTAND WHAT MY QUESTION IS?

>> I BELIEVE SO AND I'LL --

>> IN FACT, THE IDEA THAT MAYBE THERE COULD BE A WAY TO GET THE EXEMPTION.

YOU THOUGHT YOU HAD SET UP YOUR BUSINESS THE WAY YOU WOULD OBTAIN IT, AND THEN THE LAW CHANGES IT AFTER YOU'VE DONE IT AND THE IDEA THAT YOU CAN CHANGE IT AGAIN QUICKLY TO GET THE EXEMPTION, YOU HAVE ALREADY HAD THAT EXPECTATION.

>> WELL, OF COURSE, THIS COURT IN THE DAYTONA BEACH AND STRAUGHN CASES HAS HELD THAT YOU CAN'T HAVE AN ANTICIPATION THAT A TAX EXEMPTION WILL GO ON FOREVER BECAUSE THE LEGISLATURE HAS THE UNQUESTIONED AUTHORITY TO REPEAL TAX EXEMPTIONS. NOW, THE ISSUE IN THIS CASE IS --

>> HOW WOULD THIS BE -- IN THE ADVALOREM TAX CIRCUMSTANCES, JANUARY 1'S A MAGIC DATE. USE OF PROPERTY, AGRICULTURAL,

BUSINESS, FAIR MARKET VALUE, IS THE PROPERTY COMPLETED, EVEN THOUGH IT MAY BE COMPLETED 20 DAYS LATER AND THE CO HAS ISSUED THE PROPERTY THEN BECOMES ITS FULL AND BEST USE.

ISN'T THERE SOMETHING ABOUT ADVALOREM TAXATION THAT JANUARY 1 IS A PRETTY MAGIC DATE?

>> WELL, YOUR HONOR, AS I STATED, JANUARY 1 IS THE DATE, YES.

>> SORT OF DETERMINES EVERYBODY'S RIGHTS. YOU CAN DO WHATEVER ELSE HAPPENS TO THE PROPERTY THE REST OF THE YEAR, BUT EVERYTHING RELATES BACK TO WHAT WAS ON THE GROUND ON THAT DATE. ON OTHER ISSUES. I'M NOT SAYING NECESSARILY THIS ONE.

>> WELL, YES. THE PROPERTY APPRAISER DOES LOOK TO JANUARY 1. THE VALUE IS ESTABLISHED, USE AND OWNERSHIP. SUBSEQUENT CHANGES AREN'T CONSIDERED. BUT THERE'S NO CASE THAT SAYS THAT THE FLORIDA LEGISLATURE CAN'T REACH BACK AND CHANGE THAT EXEMPTION AND APPLY IT TO THAT YEAR.

>> I MEAN, THERE PROBABLY WOULD BE A PROHIBITION ON CHANGING THE DEFINITION OF AGRICULTURAL USE, WOULDN'T THERE? SO THAT YOU WOULD ALL OF A SUDDEN CHANGE SOMEBODY'S AGRICULTURAL DESIGNATION TO SOME KIND OF BUSINESS/COMMERCIAL DESIGNATION?

>> WELL, OF COURSE THAT'S NOT THE SITUATION HERE.

>> WELL, NO, NO. I'M SAYING THIS MAY BE A DIFFERENT SITUATION. I'M JUST TRYING TO PUT THIS IN

CONTEXT OF THE OVERALL PROBLEM
WE'RE DEALING WITH.
BECAUSE IT SEEMS TO ME THAT THE
1ST DCA BASICALLY APPLIED
STANDARD CONSTITUTIONAL LAW,
RETROACTIVE APPLICATION OF
STATUTES, NOT REALLY DISCUSSING
OR GETTING INTO THE EXEMPTIONS
AND WHAT YOU'RE ARGUING.
AND I UNDERSTAND THAT.
BUT I THINK WE HAVE TO HAVE A
FULL PICTURE OF WHAT WE'RE
TALKING ABOUT TO INTELLECTUAL
MAKE THESE -- BECAUSE WE'RE
GOING TO BE MAKING SOME
STATEMENTS IN A CASE THAT COULD
HAVE SOME SIGNIFICANT
RAMIFICATIONS BECAUSE IT IS
REACHING BACK AND IMPACTING WHAT
WE HAVE TRADITIONALLY RELIED ON
JANUARY 1 IN CONNECTION WITH
REAL PROPERTY.
THAT'S WHAT MY CONCERN IS.
>> SURE.

AND I GUESS I WOULD SAY THAT IF
YOU LOOK AT THE CONSTITUTIONAL
ANALYSIS, TWO ISSUES THERE.
IF YOU LOOK AT TRADITIONAL DUE
PROCESS ANALYSIS IN THE VESTED
RIGHTS THAT THIS COURT'S
JURISPRUDENCE HAS ISSUED, PANAMA
COMMONS SAYS WE HAVE A CRUDE
CAUSE OF ACTION.
BUT REALLY I WOULD RESPECTFULLY
DISAGREE THAT THERE ISN'T REALLY
AN ACCRUED CAUSE OF ACTION AT
THAT POINT BECAUSE YOU HAVE AN
EXPECTATION OF THE CONTINUATION
OF THE LAW.
BUT YOU CAN'T GO TO COURT ON
JANUARY 2 IF YOU DON'T HAVE A
DISPUTE WITH THE PROPERTY
APPRAISER, IF YOU HAVEN'T BEEN
DENIED OR NOTHING'S CHANGED, YOU
CAN'T SAY I WANT A DECLARATION
THAT I'M ENTITLED TO THIS
EXEMPTION.
>> AN EXEMPTION IS SOMETHING YOU
HAVE TO APPLY FOR EVERY YEAR,
RIGHT?

>> YES.
>> IT'S ON A ONE-YEAR BASIS.
>> CORRECT.
>> SO IT'S NOT LIKE AGRICULTURAL PROPERTY HAS BEEN AGRICULTURE AND BECOMES BUSINESS PROPERTY. EVERY YEAR THEY HAVE TO APPLY, RIGHT?
>> ON THIS RECORD, TO GO BACK TO JUSTICE PARIENTE'S QUESTION, THERE'S NO INDICATION THAT PANAMA COMMONS CHANGED THEIR STRUCTURE IN ANTICIPATION OF THIS EXEMPTION, IS THERE?
>> NO.
I THINK THEY MAKE SOME ARGUMENTS THAT THEY TRY TO SHOW THAT THEY RELIED -- THERE'S SOME TESTIMONY IN AN AFFIDAVIT OR SOMETHING THAT THEY DIDN'T HAVE ANY NOTICE.
BUT THERE WAS NO --
>> THEY WERE A LIMITED PARTNERSHIP PRIOR TO EVEN THE ENACTMENT OF THIS EXEMPTION IN 2009, WEREN'T THEY?
>> I BELIEVE THAT'S CORRECT.
>> BUT THEY COULD HAVE RESTRUCTURED BY JANUARY 1 IF THAT WAS THE LAW ON JANUARY 1. THEY COULD HAVE ACCOMPLISHED THAT BEFORE.
>> THAT IS TRUE.
THAT IS TRUE.
THEY MAY HAVE BEEN ABLE TO, BUT AS THE UNITED STATES SUPREME COURT IN CARLTON, IN UNITED STATES VERSUS CARLTON HELD, SIMPLE RELIANCE ISN'T ENOUGH.
>> AND MY REAL PROBLEM IS WE DON'T HAVE A CASE THAT'S REALLY CORRECTLY ON ALL FOURS WITH THIS, DO WE, ON EITHER SIDE?
>> YOU'RE CORRECT, YOUR HONOR. FLORIDA HAS NOT ADDRESSED THIS PARTICULAR ISSUE.
BUT I WOULD SAY NUMEROUS -- IF YOU WENT TO THE BRIEF AND ESPECIALLY THE PROPERTY APPRAISER'S BRIEF, NUMEROUS

OTHER STATES HAVE FOLLOWED
CARLTON.

THE MOST IMPORTANT CASE IS THE
1999 HAWAII SUPREME COURT CASE,
BECAUSE IN THAT CASE THE
LEGISLATURE ENACTED A
RECLASSIFICATION OF PROPERTY IN
I BELIEVE IT WAS JUNE OF THAT
YEAR, HELD IT RETROACTIVE TO
JANUARY 1 IN A SIMILAR STRUCTURE
TO WHAT WE HAVE HERE IN FLORIDA
AND SAID YOU'RE NOT AN APARTMENT
ANYMORE.

NOW YOU'RE A HOTEL.

INCREASED THEIR TAX BILL BY 68%.
THEY MADE THE SAME ARGUMENTS,
RELIANCE, NO NOTICE, AND THE
COURT SAID UNDER CARLTON, WHICH
ALLOWS FOR RETROACTIVITY, THIS
IS OKAY EVEN THOUGH IT INCREASED
YOUR TAX BILL BY 68%.

YOU DON'T HAVE A VESTED RIGHT IN
THE EXEMPTION.

>> YOU'RE WAY OVER YOUR TIME.

>> I'M SO SORRY.

>> WE HELPED YOU ALONG THE WAY.

>> MAY IT PLEASE THE COURT,
LOREN LEVY FOR THE BAY COUNTY
PROPERTY APPRAISER.

I DO APPRECIATE YOUR INDULGENCE
IN ALLOWING US TO SHARE THE
ARGUMENT TIME.

THE STATE HAS AN INTEREST IN THE
OVERALL TAXES STRUCTURE.

PROPERTY APPRAISERS ARE REQUIRED
TO IMPLEMENT THOSE STATUTES
EVERY YEAR.

AND WHAT I WANT TO EMPHASIZE TO
THE COURT IS THAT A LEGISLATIVE
CHANGE TO A PROPERTY TAX STATUTE
IS A COMMON OCCURRENCE DURING
THE TAX YEAR AT ISSUE.

OUR TAX YEAR BEGINS JANUARY 1.

IT CLOSES OUT IN OCTOBER.

TAXES THEN ARE BEGUN TO BE
COLLECTED IN NOVEMBER.

THE LEGISLATURE MEETS DURING
THAT TIME FRAME EVERY YEAR.

EVERY YEAR I HAVE CHANGES TO THE
STATUTES THAT I HAVE TO ADVISE

MY CLIENTS AS TO THEIR EFFECT.
AND THE LEGISLATURE GIVES US
MARKERS, IF YOU WILL, WHEN THEY
WANT THE STATUTE TO BE APPLIED
TO THE CURRENT TAX YEAR, WHETHER
IT'S AS IT IS HERE, THE STATUTE
SHALL APPLY RETROACTIVELY TO THE
2013 TAX YEAR OR THEY'LL JUST
SAY IT APPLIES AS OF JANUARY 1
OR RETROACTIVELY TO JANUARY 1.
THAT IS A COMMON, EVERY YEAR
OCCURRENCE FOR PROPERTY
APPRAISERS.

AND I THINK THAT SHOWS TWO
THINGS.

NUMBER ONE, IT GOES TOWARDS IS
THERE REALLY A REASONABLE
EXPECTATION THAT THE LAW WILL
NOT CHANGE SUBSEQUENT TO
JANUARY 1.

BUT, NUMBER TWO, I THINK THE
LEGISLATURE IS A DELIBERATIVE
BODY AND THE FINE STAFF THAT
SUPPORTS THEM IS AWARE THAT THE
U.S. SUPREME COURT IN CARLTON
AND THE U.S. SUPREME COURT TIME
AND TIME AGAIN HAS OBSERVED THAT
CONGRESS DOES THE SAME ACTION.
IT MEETS DURING THE YEAR AND
CHANGES, FOR EXAMPLE, THE INCOME
TAX LAWS EFFECTIVE AS OF
JANUARY 1.

THIS IS A REGULAR REOCCURRENCE.
AND THERE IS NO CONSTITUTIONAL
PROHIBITION WITH CHANGING THE
TAX LAW EFFECTIVE TO THE CURRENT
TAX YEAR.

NOW, IF THE YEAR WAS IN REPOSE,
THE ROLL HAS BEEN CERTIFIED, THE
APPRAISER HAS SAID I AM DONE.
AND, JUSTICE LEWIS, THERE'S A
GREAT DEAL OF BODY FROM THIS
COURT ON WHAT HAPPENS WHEN WE'RE
DONE, TO THE EXTENT WE CAN GO
BACK AND CHANGE.

THAT WOULD BE A DIFFERENT ISSUE.
IF WE WERE SAYING WE WANT TO
CHANGE THE LAW AS IT WAS TO
2012, IT MAY BE A TOUGHER ISSUE,
IN MY OPINION.

BUT WHEN IT'S TALKING ABOUT THE CURRENT TAX YEAR, I DON'T BELIEVE THAT THERE'S ANY CONSTITUTIONAL PROHIBITION ON THAT AND THE U.S. SUPREME COURT HAS SAID IT TIME AND TIME AGAIN. STATE COURTS THAT HAVE LOOKED AT THE CARLTON DECISION HAVE SAID IT TIME AND TIME AND TIME AGAIN. WE HAVE AS THOROUGH OF A SEARCH AS WE CAN.

WE CANNOT LOCATE A SINGLE STATE SUPREME COURT DECISION THAT HAS SAID ITS LEGISLATURE CANNOT CHANGE THE LAW APPLICABLE TO THE CURRENT TAX YEAR.

AND WE JUST WANT TO EMPHASIZE THAT THAT IS SOMETHING THAT HAPPENS REGULARLY AND FREQUENTLY.

THIS YEAR THERE'S A STATUTE PENDING.

>> IT WAS CERTAINLY ARGUED HERE. WAS IT ARGUED TO THE DISTRICT COURT?

>> YES, JUSTICE PARIENTE, IT WAS.

>> I'M JUST LOOKING WHETHER IT WAS IN THE MAJORITY OR THE DISSENT.

SEEMS LIKE A PRETTY IMPORTANT CASE.

>> IT IS A VERY IMPORTANT CASE. IT IS ARGUED NOW.

THE DISCUSSION OF ALL THE OTHER STATE SUPREME COURT CASES, THAT'S CERTAINLY NEW FOR THIS COURT, BECAUSE I THINK WE'RE IN A DIFFERENT POSTURE THAN WE ARE AT THE 1ST DISTRICT COURT, WHERE WE'RE LOOKING AT WHAT OTHER SUPREME COURTS MAY DO.

CERTAINLY THE CLOSEST THAT THIS COURT HAS GOTTEN IS THE STRAUGHN AND THE VOLUSIA COUNTY CASES, WHICH REJECTED IMPAIRMENT OF CONTRACT CLAIMS TO THE LEGISLATURE'S ABILITY TO CHANGE TAXES STATUTE.

BOTH OF THOSE CASES THE PARTIES

HAD STRUCTURED THEIR BUSINESS AGREEMENTS, THE 99-YEAR LEASES, IT STRUCTURED THOSE BUSINESS AGREEMENTS IN RELIANCE UPON THE STATUTES IN EFFECT THAT THOSE PROPERTIES WOULD BE EXEMPT. THEY BUILT FACILITIES THEREON AND IMPROVEMENTS AND CERTAINLY ACTED IN RELIANCE UPON THAT STATUTE.

AND THEN SUBSEQUENTLY THE LEGISLATURE CHANGED THAT STATUTE.

THIS COURT HELD TWICE THERE'S NOTHING WRONG WITH THAT.

ONE LEGISLATURE CANNOT BIND THE HANDS OF ANOTHER LEGISLATURE. AND CERTAINLY THERE'S NO PROHIBITION ABOUT TAKING AWAY AN EXEMPTION.

AND IT SEEMS DIFFICULT --
>> JUST A QUESTION.

JUDGE BENTON'S DISSSENT, DO YOU FIND LEGAL REASONING THERE CONSISTENT WITH WHAT YOU'RE ARGUING?

>> YES, I DO.

THERE'S NO PROHIBITION CHANGING IT FOR THE CURRENT YEAR. HE DID FOCUS ON JULY 1, THE DATE THAT WE'RE TO DENY OR GRANT AN EXEMPTION IF IT'S BEEN TIMELY FILED.

BUT EXEMPTIONS CAN BE FILED LATE, AFTER YOU'VE RECEIVED YOUR TRIM NOTICE.

AND THERE'S MECHANISMS FOR THAT. SO YOU COULD NOT GET AN EXEMPTION APPLICATION UNTIL SEPTEMBER AND BE ACTING ON IT BEFORE YOU CERTIFY YOUR ROLL IN OCTOBER.

SO I REALLY THINK THAT THE TAX YEAR BECOMES IN REPOSE IN OCTOBER WHEN WE CERTIFY THE ROLL AND UNTIL -- BETWEEN JANUARY AND THAT POINT, THE LEGISLATURE HAS THE ABILITY TO CHANGE THE LAW. NOW, JUSTICE LEWIS, YOU ASKED ABOUT AGRICULTURAL

CLASSIFICATION.

THERE ARE CERTAIN PROVISIONS IN THE FLORIDA CONSTITUTION THAT SAYS THERE SHALL BE AND THERE'S OTHERS THAT THE LEGISLATURE HAS GIVEN THE ABILITY TO IMPLEMENT. I BELIEVE THE AGRICULTURE CLASSIFICATION IS A "SHALL BE," SUBJECT TO THE LIMITATIONS THAT THE LEGISLATURE SETS FORTH.

>> YOU'RE INTO YOUR REBUTTAL TIME.

>> I CERTAINLY APPRECIATE THE COURT'S TIME AND I RESERVE THE REMAINDER.

THANK YOU.

>> DAVID MILLER REPRESENTING PANAMA COMMONS.

MY BROTHER'S ARGUMENT INVITES A SLIPPERY SLOPE TO INVENT A GRACE PERIOD IN WHICH RETROACTIVE REPEAL IS ALLOWED.

THIS I THINK WOULD BE DIFFICULT FOR THE COURT TO DO BUT IT'S VERY UNFAIR TO TAXPAYERS.

TAXPAYERS NEED TO KNOW WHAT THE LAW IS PRIOR TO JANUARY 1.

AS JUSTICE LEWIS POINTED OUT, JANUARY 1 IS THE MAGIC DAY IN WHICH YOUR OWNERSHIP AND YOUR USE OF THE PROPERTY MUST BE FIXED TO ENTITLE YOU TO EXEMPTION UNDER LAW IN EFFECT THEN.

YOU CAN'T KEEP PEOPLE IN THE DARK UNTIL MAYOR JUNE.

YOUR TAX LIABILITY ACCRUES ON JANUARY 1 EVEN THOUGH THERE MAY BE LATER ACTIONS TO PERFECT YOUR TAX EXEMPTION RIGHTS.

>> THE QUESTION IS IT DOES SEEM UNFAIR, BUT THE ISSUE IS IS IT UNCONSTITUTIONAL.

AND HOW DOES CARLTON AND THE UNITED STATES SUPREME COURT FIT INTO YOUR ARGUMENT?

>> CARLTON INVOLVES A DIFFERENT TAX.

THERE'S NO JANUARY 1 MAGIC DATE IN CARLTON.

WHAT YOU'RE FACING THERE IS A TRADITION THAT THE FEDERAL COURTS HAVE HAD FOR INCOME TAX TO BE ADJUSTED IN MIDYEAR TO EQUALIZE THE TAX BETWEEN PEOPLE WHO REALIZED INCOME PRIOR TO THE EFFECTIVE DATE AND PEOPLE WHO REALIZED INCOME AFTERWARDS. UNLIKE PROPERTY TAX, WHERE YOU HAVE TO SET UP YOUR OWNERSHIP AND USE PRIOR TO TAX DATE IN ORDER TO QUALIFY FOR THE EXEMPTION.

>> WELL, MR. LEVY IS SAYING THAT YOU COULD ADJUST -- IF THERE'S A CHANGE IN THE LAW, YOU CAN ADJUST IT TO CLAIM THE EXEMPTION.

>> NO, YOUR HONOR. YOU CAN'T GO BACK AND REORDER YOUR OWNERSHIP AND YOUR USE IN MAYOR JUNE OR LATER. IN THIS CASE, PANAMA COMMONS SET UP ITS OWNERSHIP STRUCTURE IN RELIANCE ON THE TAX EXEMPTION STATUTE.

>> WELL, SO HOW LONG DO YOU HAVE THAT EXPECTATION?

IS IT JUST FOR THAT YEAR?

>> FOR THAT YEAR.

>> SO YOU'RE ONLY ARGUING FOR THE ONE YEAR.

>> THIS IS HOW WE DISTINGUISH THE CASES.

THOSE INVOLVE STATUTES THAT TOOK EFFECT DECEMBER 31 THE YEAR OF PASSAGE.

THAT'S WHY THE COURT DID NOT APPLY ANY RETROACTIVE CHANGE IN THE EXEMPTION.

>> NOW, YOU JUST SAID THAT PANAMA COMMONS SET UP THEIR STRUCTURE IN RELIANCE ON THE EXEMPTION, BUT I THOUGHT THAT PANAMA COMMONS WAS ALREADY SET UP AS A LIMITED PARTNERSHIP PRIOR TO THE ENACTMENT OF THE 2009 EXEMPTION.

>> NO.

NO.

THE 2009 EXEMPTION WAS ENACTED BEFORE WE BOUGHT THE PROPERTY. THIS IS IMPORTANT. THE PARTICIPATION OF THE FOR-PROFIT LIMITED PARTNERS WAS REALLY LIKE THE CHERRY ON TOP OF THE SUNDAE. THEIR PARTICIPATION WAS ONLY \$400,000. THE LOANS WE TOOK OUT WERE ABOUT \$10 MILLION.

>> WHEN WAS THE PROJECT BUILT?

>> IT WAS BUILT IN 2010, COMPLETED IN 2011, WHILE THIS LAW WAS IN EFFECT.

WE COULD HAVE BUILT THIS PROJECT OR ONE THAT'S PRETTY CLOSE TO IT WITHOUT THE FOR-PROFIT LIMITED PARTNERS.

WE COULD HAVE EITHER TAKEN OUT A LARGER LOAN OR WE COULD HAVE SCALED BACK THE SIZE OF IT.

>> JUST AS A PRACTICAL MATTER, FOR THE FUTURE, IS IT SOMETHING THAT CAN BE RESTRUCTURED TO OBTAIN THE BENEFIT GOING FORWARD?

>> DON'T KNOW, YOUR HONOR. THAT'S NOT IN THE RECORD EITHER WAY.

BUT WE'RE NOT ARGUING THAT THE LAW IS UNCONSTITUTIONAL PROSPECTIVELY.

THEY LABELED IT RETROSPECTIVELY FOR A REASON BECAUSE THEY KNEW JANUARY 1 WAS THE MAGIC DATE.

>> YOUR OPPOSITION SUGGESTS TO US THAT THERE'S NOT A CASE ANYWHERE IN THIS COUNTRY THAT SUPPORTS THE POSITION OF PANAMA COMMONS AND IN FACT ALL OF THE OTHER SUPREME COURTS FROM AROUND THE COUNTRY SUPPORT THEIR VIEW. WHAT'S YOUR RESPONSE TO --

>> WE CITED SOME CASES FROM OTHER JURISDICTIONS, BUT LET ME TALK ABOUT FLORIDA.

THIS COURT IN A CASE ADOPTED A PRINCIPLE WHICH HAS SERVED THE STATE VERY WELL AND THAT IS THAT

YOU CAN'T EITHER HAVE AN
IMPAIRMENT OF A VESTED RIGHT OR
A RETROACTIVE OBLIGATION.

>> IS THAT A TAX EXEMPTION CASE?

>> NO.

WE SUGGEST THAT THAT PRINCIPLE
APPLIES IN TAX --

>> I'M ASKING SPECIFICALLY
FOR --

>> WE CITED THE CONVOY CASE,
WHERE IN EFFECT THE CITY PASSED
AN ORDINANCE.

THE TAXPAYER RELIED ON IT TO GET
A PARTIAL EXEMPTION.

AND THE COURT RULED THAT IT WAS
UNFAIR TO APPLY THIS TO
RETROACTIVELY REVOKE THE PARTIAL
EXEMPTION.

>> COULD YOU ADDRESS ROGER DEAN
ENTERPRISES VERSUS DEPARTMENT OF
REVENUE CASE?

>> YOUR HONOR, I HAVE TO CONFESS
I HAVEN'T FOCUSED ON THAT CASE.
IF YOU CAN TELL ME A LITTLE BIT
MORE ABOUT IT, I'LL DO MY BEST.

>> WELL, AS I UNDERSTAND IT, IT
WAS A 1980 FLORIDA SUPREME COURT
CASE WHERE THERE WAS A SALE ON A
CHAIN OF PROPERTIES AND THEN
THERE WAS A CHANGE IN THE LAW
THAT PERMITTED CORPORATE
TAXATION.

AND EVEN THOUGH THE GAIN TOOK
PLACE IN PRIOR YEARS ON AN
INSTALLMENT SALE BASIS IT WAS
PERMITTED FOR THE TAX TO BE
IMPOSED UPON THOSE INSTALLMENT
SALE RECEIPTS IN SUBSEQUENT
YEARS.

SO WHY DOES THAT NOT APPLY IN
THIS CIRCUMSTANCE?

>> WELL, YOUR HONOR, I'D HAVE TO
KNOW WHETHER THE PROPERTY --
WHETHER THE PROPERTY OWNER COULD
FOR SEE -- COULD REASONABLY HAVE
FOR SEEN THAT AND COULD HAVE
AVOIDED THE TAX.

IN OUR CASE, IF WE HAD KNOWN THE
TAX WAS GOING TO BE REPEALED, WE
COULD HAVE ADJUSTED OURSELVES.

>> IT SEEMS TO ME THAT COUNSEL'S DISCUSSION, THE PROPERTY -- THE DISCUSSION ABOUT THE WAY THE TAXING PROCESS OPERATES AND KIND OF THE RHYTHM OF THE YEAR AND THE REALITY THAT THE LEGISLATURE IS FREQUENTLY MAKING CHANGES IN THE CURRENT -- IN WHAT'S GOING TO HAPPEN IN THE CURRENT YEAR, THE CURRENT TAX YEAR, THAT THAT GOES DIRECTLY TO YOUR POINT ABOUT EXPECTATIONS.

A PROPERTY OWNER CAN EXPECT THAT THESE THINGS ARE GOING TO HAPPEN AND THAT THE LEGISLATURE IS IN THE BUSINESS OF ADJUSTING THESE MATTERS ON AN ONGOING BASIS.

SO WHEN YOU TALK ABOUT EXPECTATIONS, IT SEEMS TO FLY IN THE FACE OF THE REALITY OF WHAT THE LEGISLATURE DOES AND EVERYBODY WHO KNOWS ANYTHING ABOUT THIS KNOWS THE LEGISLATURE DOES THAT.

AND SO WHY DOES THAT NOT INDICATE THAT THERE COULD BE NO SETTLED EXPECTATION WITH RESPECT TO THE STATUS THAT YOUR CLIENT WANTS?

>> WELL, YOUR HONOR, YOU'D HAVE TO LOOK AT THE NATURE OF PROPERTY TAX.

PEOPLE HAVE TO RELY ON WHAT THEY EXPECT THE LAW TO BE IN ORDER TO ORDER THEIR AFFAIRS PRIOR TO JANUARY 1.

THEY DON'T GET TO GO BACK AND REORDER THEM.

IN INCOME TAX, BY CONTRAST, PEOPLE RARELY TURN DOWN THINGS LIKE DIVIDENDS COMING IN. THEY HAVE NO CONTROL OVER THAT. BUT HERE THE PARTY HAS CONTROL OVER THE OWNERSHIP AND USE OF THE PROPERTY, CAN ORDER ITS AFFAIRS TO AVOID THE TAX IF IT KNOWS WHAT THE TAX IS GOING TO BE.

THE PROPERTY TAX, IF DUE, BECOMES A FIRST LIEN, WHICH

DISPLACES ALL OF THE MORTGAGES.
YOU'VE BASICALLY REORDERED THE
MORTGAGES.

IT'S SIMPLY NOT SOMETHING THAT
THE TAXPAYER WOULD NORMALLY
FORESEE AND HAS NEVER BEEN DONE
IN FLORIDA JURISPRUDENCE, THAT
THEY HAVE RETROACTIVELY REVOKED
AN EXEMPTION.

THIS IS THE FIRST CASE WHERE
THAT HAS HAPPENED.

NOW, THEY HAVE RETROACTIVELY
GRANTED AN EXEMPTION.

AND THOSE ARE THE CASES THAT ARE
CITED BY THE PROPERTY APPRAISER.

AND IN THOSE CASES IF SOMEONE
WANTED TO COMPLAIN ABOUT IT,
MAYBE THEY'D HAVE A CAUSE OF
ACTION, ALTHOUGH IT WOULD BE
VERY RARE THAT THEY WOULD HAVE
ACTUAL STANDING, BECAUSE THEY
DON'T HAVE A SUBTLE EXPECTATION
OF A PARTICULAR MILLAGE.

I AGREE WITH THAT.

YOU DON'T HAVE A SETTLED EXPECT
A PARTICULAR MILLAGE WOULD
APPLY.

IF YOUR MILLAGE GOES UP
SLIGHTLY, THAT'S NOT A CAUSE OF
ACTION FOR SOMETHING BEING
UNCONSTITUTIONAL.

>> DID YOU HAVE ANYTHING FURTHER
TO SAY IN RESPONSE TO JUSTICE
POLSTON'S QUESTION?

THAT CASE IS NO MYSTERY.

THAT WAS IN THE BRIEFS, I
BELIEVE.

SO THAT'S NOT SOMETHING
THAT'S NEW.

>> WELL, --

>> IN FACT, IT'S 1980.

>> I UNDERSTAND IT'S NOT NEW,
YOUR HONOR.

I HAVE TO DISTINGUISH INCOME TAX
CASES BECAUSE THERE THE
TAXPAYER, THE RECIPIENT OF
INCOME, GENERALLY DOES NOT HAVE
ANY CONTROL OVER WHEN INCOME
COMES IN AND GENERALLY DOESN'T
WANT TO TURN DOWN THE INCOME

ANYWAY.

THE TAX IS NOT EQUAL TO
THE INCOME.

>> THE QUESTION OF WHEN YOU'RE
GOING TO TAKE -- THE MANNER IN
WHICH YOU'RE GOING TO CLAIM THE
INCOME.

IT WASN'T A MATTER OF
RECEIVING IT.

THAT'S WHAT WAS CHANGED, IS THE
MANNER IN WHICH THE STATE WAS
GOING TO TAX THE MANNER IN WHICH
THE RECEIPTS CAME IN.

AND THAT COULD NOT BE CHANGED
THE WAY THAT THE TOTAL DEAL WAS
STRUCTURED.

>> WELL, I WOULD HAVE TO DEFER
TO JUSTICE POLSTON'S ANALYSIS
AND YOUR OWN OF THE ROGER DEAN
CASE.

HERE WE HAVE PEOPLE WHO
DELIBERATELY -- THE STATE HELD
OUT THE WELCOME MAT TO TRY TO
INDUCE PRIVATE INVESTORS,
FOR-PROFIT INVESTORS, TO
PARTICIPATE, TO TEAM UP WITH
501(C)(3)s TO PROVIDE WHAT
AMOUNTS TO AN IMPORTANT PUBLIC
PURPOSE, AFFORDABLE HOUSING.
WE BROUGHT THIS PROPERTY AND
DEVELOPED IT AND ORDERED OUR
OWNERSHIP STRUCTURE IN RELIANCE
ON THAT EXEMPTION.

WE OUGHT TO BE ENTITLED TO THE
EXEMPTION FOR THE YEAR IN WHICH
IT WAS EFFECTIVE, 2013, ON
JANUARY 1.

IT'S NOT --

>> LET ME BE SURE THAT I
UNDERSTAND YOUR RESPONSE TO
THERE'S NOTHING THAT WOULD
PROHIBIT PANAMA COMMONS FROM
JUST RESTRUCTURING ITSELF FOR
FUTURE YEARS AND FUTURE PURPOSES
OF TAXATION.

>> NOTHING IN THE LAW WOULD
PROHIBIT THAT.

THERE MAY BE SOME PRACTICAL
REASONS WHY THEY CAN'T DO IT,
BUT NOTHING IN THE LAW.

>> SO LEGAL PROHIBITION.

>> NO, SIR.

NO, SIR.

BUT OBVIOUSLY PANAMA COMMONS
SUFFERED HARDSHIP BECAUSE IT
ALSO STRUCTURED ITS LENDING.
ITS BRIDGE LOAN WAS TO BE TAKEN
OUT BY A PERMANENT LENDER DURING
2013.

BUT BECAUSE THE TAX EXEMPTION
WAS REPEALED, WE HAD TO DEFER
THAT AS WELL.

SO THERE ARE COLLATERAL
CONSEQUENCES TO TAXPAYERS WHO
HAVE ORDERED THEIR AFFAIRS BASED
ON THEIR RELIANCE ON THE
EXEMPTION.

WE SUGGEST THAT THE FEDERAL
CASES ARE DISTINGUISHABLE
BECAUSE, ONE, YOU DON'T HAVE
THIS MAGIC JANUARY 1 DATE WHEN
RIGHTS VEST AND ACCRUE.

YOU HAVE SITUATIONS WHERE THE
TAXPAYER BASICALLY SHOULD
FORESEE THAT THERE WOULD BE,
BASED ON THE LONGSTANDING
PRACTICE OF THE COURTS TO ADJUST
INCOME TAX DURING THE --

>> YOU ARE SAYING BASICALLY --
YOU WOULD WANT A HOLDING THAT
WOULD SAY THAT IN THE AREA OF
PROPERTY TAXES, THAT SETTLED
EXPECTATIONS SHOULD EXIST ON
JANUARY 1 OF THE YEAR BECAUSE --
AND THIS IS I THINK IS IMPORTANT
-- BECAUSE TAXPAYER CANNOT GO
BACK AND CHANGE WHAT IT COULD DO
FOR THAT YEAR.

>> RIGHT.

>> WHERE THEY MIGHT BE ABLE TO
DO IT FOR FUTURE YEARS.

>> RIGHT.

THIS IS EFFECTIVELY A NEW TAX
BEING IMPOSED FOR THE FIRST TIME
ON THIS PROPERTY.

IT WAS PREVIOUSLY TAX EXEMPT IN
FULL AS THE PROPERTY APPRAISER
DETERMINED FOR 2012.

THIS IS IN EFFECT A NEW TAX, NOT
JUST AN ADJUSTMENT IN SOME

EXISTING TAX.

>> WELL, I UNDERSTAND THERE'S AN ARGUMENT BEING MADE ALSO THAT PANAMA COMMONS WOULD NOT EVEN QUALIFY FOR THE EXEMPTION UNDER THE 2012 STATUTE BECAUSE A PART OF PANAMA COMMONS IS A FOR-PROFIT ORGANIZATION AND WOULD DISQUALIFY THEM FROM HAVING THIS EXEMPTION.

>> LET ME RESPOND TO THAT ARGUMENT, WHICH WAS NOT PRESENTED IN THE ARGUMENT HERE TODAY.

WE'RE EXEMPT UNDER THE 2012 LAW IF YOU PROPERLY ANALYZE THE TWO STATUTES THAT ARE RELEVANT TO THIS POINT.

WE ALSO THINK THE PROPERTY APPRAISER WAIVED THIS ARGUMENT BY NOT PRESENTING IT IN HIS NOTICE OF DENIAL.

>> IN HIS WHAT?

>> HE WAIVED THIS ARGUMENT BY NOT PRESENTING IT IN HIS NOTICE OF DENIAL.

THIS IS A POINT THAT'S ARGUED IN OUR BRIEF.

BUT I'M GOING TO ADDRESS YOUR QUESTION ON THE MERITS.

SECTION 1978 ALLOWS OWNERSHIP POSITIVE BY LIMITED PARTNERSHIPS WITH FOR-PROFIT LIMITED PARTNERS.

THAT'S TYPICALLY HOW THESE LIMITED PARTNERSHIPS ARE SET UP. IT'S COMMON TO HAVE A 1% GENERAL PARTNER AND A 99% LIMITED PARTNERS WHO ARE SHELTERED FROM LIABILITY.

SO THIS IS A TYPICAL LIMITED PARTNERSHIP STRUCTURE.

THE 2009 LAW ANTICIPATED THIS AND WANTED TO INDUCE MORE INVESTMENT IN PRIVATE -- IN FOR-PROFIT -- EXCUSE ME, IN AFFORDABLE HOUSING.

THAT'S THE REASON THEY PASSED THIS STATUTE, IS TO INDUCE MORE INVESTMENT BY FOR-PROFIT

INVESTORS.

THE OTHER STATUTE CONTAINS A
DISQUALIFICATION.

THIS IS SECTION 16.195.

IF NO PART OF THE PROCEEDS LEASE
WILL INURE TO THE BENEFIT OF THE
MEMBERS OF THE FOR-PROFIT
ENTITY.

WE THINK WE SATISFIED THAT
CRITERION AS WELL BECAUSE THOSE
ARE THE ONLY TWO THE CATEGORIES
OF BENEFIT TO A FOR-PROFIT
INVESTOR THAT WILL DISQUALIFY
THE EXEMPTION.

THIS IS NEITHER A PART OF THE
SUBJECT PROPERTY NOR IS IT
PROCEEDS FROM DISPOSITION OR
SALE.

>> SO YOUR ARGUMENT IS THAT --
AS I UNDERSTAND THEIRS, IS THAT
THE CLAIMING OF THE DEPRECIATION
ON THE PROPERTY IS WHAT
DISQUALIFIES THEM.

AND YOU BELIEVE THAT DOES NOT
FALL UNDER 195 --

>> THERE ARE TWO CATEGORIES OF
DISQUALIFYING PARTICIPATION.
AND, AGAIN, A DEPRECIATION
DEDUCTION IS A BOOKKEEPING ENTRY
THAT'S HELPFUL FOR FEDERAL TAX
PURPOSES BUT HAS NOTHING TO DO
WITH EITHER THE OWNERSHIP OR USE
OF THE PROPERTY OR THE RIGHT TO
PROCEEDS FROM SALE.

SO YOU MUST READ THESE TWO
STATUTES TOGETHER AND GIVE
EFFECT TO SECTION 196.1978,
WHICH IS INTENDED TO INDUCE THIS
KIND OF PROJECT.

I WOULD CLOSE WITH ONE TIME
THOUGHT.

WE THINK THE LAFORETTE RULE
SERVED THE STATE WELL AND THAT
THE LOWER COURTS PROPERLY
APPLIED IT.

BUT THERE IS ONE OTHER CONCERN
THAT WE HAVE, THAT IT'S NOT JUST
UNFAIR TO THE TAXPAYERS.

IT MAY BE UNFAIR TO THE VOTERS.
IF THE LEGISLATURE CAN ENGAGE IN

SOME KIND OF LEISURE DOMAIN
WHERE IT PASSES A TAX EXEMPTION
LAW IN SESSION IN YEAR ONE AND
RUNS FOR REELECTION SAYING WE
GAVE YOU THIS TAX EXEMPTION AND
THEN THE NEXT SESSION THEY COME
BACK AND REPEAL IT
RETROACTIVELY, THAT'S UNFAIR.
THAT UNDERMINES THE INTEGRITY OF
THE LEGISLATIVE PROCESS.
SO YOU OUGHT TO BE ALERT TO THAT
PROBLEM AS WELL, BECAUSE THAT'S
NOT JUST UNFAIR TO TAXPAYERS.
THAT'S UNFAIR TO EVERYBODY.
THANK YOU.

WE URGE YOU AFFIRM.

>> THANK YOU, YOUR HONORS.

I DON'T BELIEVE THERE'S ANY
LEGITIMATE DISTINCTION BETWEEN
AN INCOME TAX AND A PROPERTY
TAX.

THERE ARE A GREAT MANY WORDS
WRITTEN BY, FOR EXAMPLE, JUSTICE
LEARNED HAND ON THE FACT THAT
INDIVIDUALS STRUCTURE THEIR
TRANSACTIONS FOR INCOME TAX
PURPOSES ALL THE TIME, AND THE
U.S. SUPREME COURT HAS FOUND NO
FAULT IN THE FEDERAL CONGRESS
CHANGING THE LAW DURING THE
CURRENT YEAR TO REACH AN INCOME
TAX ISSUE.

CARLTON ACTUALLY WAS AN ESTATE
TAX ISSUE, AND IT HAS SOME
SIMILAR FACTS HERE.

THERE THE CONGRESS HAD PASSED A
STATE TAX PROVISION ONE YEAR AND
THE NEXT YEAR THEY'D ALREADY
STARTED TO REALIZE THAT PERHAPS
WE HAD AN UNKNOWING LOOPHOLE IN
THAT THAT ALLOWED FOLKS TO
REALLY WORK THEIR ESTATE TAX
OBLIGATION INTO SIGNIFICANTLY
INCREASE THE EXPECTED FISCAL
IMPACT OF THE CHANGE THAT HAD
BEEN MADE THE PRIOR YEAR.

AND THE U.S. SUPREME COURT SAID
THAT THAT WAS OKAY, THAT THERE
WAS A REASONABLE BASIS FOR THE
ACTION OF CONGRESS.

AS IT APPLIED TO THE CURRENT YEAR, IT WAS FINE.
AND IT ALSO ALLOWED IT FOR A MODEST PERIOD OF RETROACTIVITY TO DATE BACK TO THE EFFECTIVE DATE OF THE STATUTE THAT HAD ORIGINALLY BEEN ENACTED.
THE DEROSOMAT CASE IS AN INCOME TAX CASE.
MY INCOME FROM THE PRIOR YEAR.
THE HEMI CASE WAS A GIFT TAX CASE.
THE WELCH CASE WAS ACTUALLY A STATE INCOME TAX.
ALL THOSE ARE U.S. SUPREME COURT CASES FINDING NO FLAW WITH A CHANGE WITH A MODEST PERIOD OF RETROACTIVITY OR AT LEAST TO THE CURRENT YEAR.
COUNSEL DID CITE THREE CASES IN HIS BRIEF.
THE ST. JAMES CASE OUT OF NEW YORK WAS A 16 TO 32 MONTH PERIOD OF RETROACTIVITY.
IT CITES ANOTHER CASE THAT FOUND THAT A CHANGE EFFECTIVE ONLY TO THE CURRENT YEAR WAS JUST FINE.
THE NEW JERSEY CASE WAS NOT EVEN A DUE PROCESS CASE.
THAT WAS A STATE LAW THAT TALKED ABOUT MANIFEST INJUSTICE.
SO THAT'S NOT EVEN A DUE PROCESS CASE.
AND FINALLY THE CALIFORNIA INTERMEDIATE APPELLATE COURT CASE WAS JUST AS TO PRIOR TAX YEARS.
IF YOU'LL LOOK AT THAT CASE, THE PARTIES ACTUALLY STIPULATED THAT THERE WAS NO IMPEDIMENT TO CHANGING THE LAW FOR THE CURRENT TAX YEAR.
AND THAT WAS AN ADVALOREM TAX CASE ALSO.
I BELIEVE THE ROGER DEAN CASE IS A CORPORATE INCOME TAX CASE AND AGAIN I THINK THAT'S WHAT WE CITED IN OUR BRIEF.
AGAIN, IF YOU'RE TRYING TO FIND THE CLOSEST DECISIONS FROM THIS

COURT, IT DOES GET INTO THE AREA.

AND I WOULD JUST REITERATE THAT IF THIS COURT HAS FOUND IN THE STRAUGHN CASE AND VOLUSIA COUNTY CASE THAT THERE'S NO IMPAIRMENT OF CONTRACT VIOLATION WHEN THE LEGISLATURE CHANGES THE LAW, IT SEEMS DIFFICULT TO ME TO FIND THAT THERE'S SOME SEPARATE SUBSTANTIVE DUE PROCESS RIGHT THAT IS GREATER THAN THAT. THE LEGISLATURE HAS TO ACT DURING THE TAX YEAR ON A REGULAR BASIS, AND WE BELIEVE THEY HAVE DONE SO CORRECTLY.

I HAVE TWO OTHER COMMENTS.

MR. MILLER BELIEVES THAT IT'S OKAY TO RETROACTIVELY ADOPT EXEMPTIONS, BUT NOT TO REMOVE THOSE EXEMPTIONS.

I THINK YOU HAVE THE SAME DUE PROCESS PROBLEMS.

THIS COURT HAS SAID MANY TIMES THAT ONE PERSON'S EXEMPTION IS ANOTHER PERSON'S TAX.

IF I HAVE A VESTED RIGHT TO THE EXEMPTION ON THE BOOKS AS OF JANUARY 1, THEN ALL OF THE OTHER TAXPAYERS HAVE A VESTED RIGHT THAT THEIR TAX OBLIGATION WILL NOT BE IMPACTED BY AN EXEMPTION TO ANOTHER GROUP OF PROPERTY OWNERS.

FINALLY, I BELIEVE WE'RE BACK TO WHERE WE'RE AT.

IN THIS CASE UNDER THE -- MR. MILLER'S ARGUMENT, THE LEGISLATURE WOULD BE ABLE TO BIND THE HANDS OF A SUBSEQUENT LEGISLATURE.

HERE THE STAFF ANALYSIS POINTED OUT THAT THERE SEEMED TO BE AN ISSUE WITH THE STATUTE ORIGINALLY DRAFTED.

THEY WENT TO CORRECT IT.

MR. MILLER WOULD SAY YOU CAN ONLY CORRECT IT IN A FUTURE YEAR.

WE DON'T BELIEVE THE

LEGISLATURE'S HANDS SHOULD BE SO
TIED.
WE URGE THAT YOU REVERSE.
THANK YOU SO MUCH,
>> THANK YOU FOR YOUR ARGUMENTS.