

>> OKAY.  
THE NEXT DAYS ON THE DOCKET IS  
TREASURE COAST MARINA V. THE  
CITY OF FORT PIERCE.  
WHENEVER YOU'RE READY, COUNSEL.  
>> GOOD MORNING, I'M--  
>> HANG ON FOR A SECOND.  
LET'S LET IT QUIET DOWN A LITTLE  
BIT.  
OKAY.  
SORRY.  
YOU CAN START.  
>> GOOD MORNING, AND MAY IT  
PLEASE THE COURT, I'M JERRY  
STOCK FOR THE PETITIONERS.  
>> YOU'VE GOT TO REALLY--  
>> THIS CASE--  
>> OKAY.  
>> YEAH.  
THIS CASE PRESENTS A QUESTION  
THAT THE COURT DIDN'T HAVE TO  
REACH IN GAINESVILLE, AND THE  
QUESTION IS WHAT DOES IT MEAN TO  
SAY THAT AN ACTIVITY, MUNICIPAL  
ACTIVITY IS ESSENTIAL TO THE  
HEALTH, SAFETY, MORALS AND  
GENERAL WELFARE OF THE CITIZENS  
IN THAT MUNICIPALITY?  
THE COURT DIDN'T HAVE TO REACH  
THAT QUESTION IN GAINESVILLE  
BECAUSE IT WAS A FACIAL  
CHALLENGE TO A STATUTE.  
AND THE COURT WAS ABLE TO UPHOLD  
THE STATUTE CONCLUDING THAT THE  
TELECOMMUNICATIONS SERVICES IN  
THAT CASE MIGHT NOT BE  
ESSENTIAL.  
THEY MIGHT NOT BE ESSENTIAL.  
AND, THEREFORE, THE REQUIREMENT  
THAT THE TELECOMMUNICATIONS  
COMPANY PAY TAXES ON ITS  
PROPERTY WAS NOT  
UNCONSTITUTIONAL.  
SO THE STATUTE WAS FACIALLY  
CONSTITUTIONAL.  
BUT THE COURT DID NOT ANSWER THE  
QUESTION.  
IT DIDN'T REALLY HAVE TO ADDRESS  
THE QUESTION OF WHETHER THAT  
TELECOMMUNICATIONS COMPANY'S

SERVICES WERE, IN FACT,  
ESSENTIAL.

OKAY?

THE COURT GAVE SOME GUIDANCE  
ABOUT WHAT ESSENTIAL MEANS, AND  
I'LL GET TO THAT IN A SECOND,  
BUT THIS CASE PRESENTS THE  
QUESTION DIRECTLY.

ARE THESE TWO MUNICIPAL MARINAS,  
THE CITY MARINA AND FISHERMEN'S  
WHARF MARINA, ESSENTIAL TO THE  
HEALTH, MORALS--

>> LET ME ASK YOU A QUESTION  
ABOUT THAT, AND I UNDERSTAND  
EVERYTHING YOU SAID IS CORRECT.  
BUT I, I QUESTION HOW USEFUL  
THIS CATEGORY OF "ESSENTIAL" IS.  
BECAUSE WHEN I THINK ABOUT  
ESSENTIAL, I THINK, WELL,  
GROCERY STORES ARE ESSENTIAL FOR  
THE HEALTH AND WELL-BEING OF A  
COMMUNITY.

PEOPLE CAN'T LIVE WITHOUT  
GROCERY STORES.

BUT THAT IS NOT A MUNICIPAL  
PURPOSE.

THAT'S NOT SOMETHING THAT  
MUNICIPALITIES HAVE  
TRADITIONALLY BEEN INVOLVED IN.  
AND WHY ISN'T IT THE CASE,  
ACTUALLY, IF YOU LOOK AT WHAT WE  
SAY THERE WHEN WE START TALKING  
ABOUT THE CASES, THE FOCUS IS ON  
WHAT MUNICIPALITIES HAVE  
TRADITIONALLY DONE.

THE SERVICES THAT THEY HAVE  
TRADITIONALLY PROVIDED AS  
MUNICIPALITIES.

AND WHAT WAS DISTINCTIVE HERE IS  
THAT ALTHOUGH MUNICIPALITIES  
HAVE BEEN INVOLVED IN PROVIDING  
ELECTRICAL POWER, OTHER SORTS OF  
PUBLIC UTILITIES, THEY HAD NOT  
BEEN INVOLVED IN

TELECOMMUNICATIONS AND THE SORT  
OF ISSUE, THE PROVISION OF THE  
SO WAS OF SERVICES THAT WAS AT  
ISSUE IN THE CITY OF GAINESVILLE  
CASE.

AND ISN'T THAT REALLY A MORE

SENSIBLE SORT OF DIVIDING LINE,  
SOMETHING THAT WE CAN, CAN LOOK  
AT HISTORICALLY AND APPLY IN A  
SENSIBLE WAY WITHOUT DOING SOME  
KIND OF METAPHYSICAL DANCE ABOUT  
WHAT IS ESSENTIAL OR NOT?

>> YOUR HONOR, FIRST, IT'S NOT  
METAPHYSICAL, AND I'LL GET TO  
THAT IN A SECOND.

TRADITIONAL IS NO TEST AT ALL.  
I'M TAKING MY GUIDANCE FROM WHAT  
I SAW IN THE GAINESVILLE  
DECISION, BUT THE REASON THESE  
MUNICIPAL MARINAS ARE NOT  
ESSENTIAL IN THE SENSE THAT  
GAINESVILLE INDICATED IS THAT  
THEY DON'T PROVIDE ANYTHING  
ADDITIONAL, SPECIAL, DIFFERENT  
FROM WHAT IS AVAILABLE IN THE  
COMMERCIAL MARKETPLACE.

>> WELL--

>> OKAY?

AND THAT'S--

>> ONCE YOU GO DOWN THAT PATH, I  
MEAN, WE KNOW WE'RE PRIVATIZING  
EVERYTHING.

IF THERE'S ANY KIND OF ACTIVITY  
THAT MAKES MONEY, THERE'S GOING  
TO BE SOMEBODY THAT'S WILLING TO  
COME IN AND CONDUCT IT AS A  
BUSINESS.

I DON'T THINK THAT'S A TEST THAT  
FITS ANYTHING.

>> YOUR HONOR, WHAT ABOUT A  
MUNICIPAL SWIMMING POOL THAT'S  
LOW COST FOR THE PUBLIC, OKAY?  
PEOPLE CAN COME TO THAT POOL,  
JUST AS AN EXAMPLE, THAT MAY NOT  
BE ABLE TO JOIN A PRIVATE CLUB.  
MUNICIPALITIES, PARKS ARE OPEN  
TO THE PUBLIC.

THERE ARE NO PARKS IN THE BOAT.  
PARKS ARE NOT SOMETHING THAT ARE  
PROVIDED BY THE PRIVATE SECTOR.  
SO IF THE MUNICIPALITY IS ADDING  
SOMETHING OVER IS AND ABOVE--

>> WHAT ABOUT A MUNICIPAL  
PARKING LOT?

NOW, THAT IS TRADITIONAL--

>> PARDON ME?

>> A PARKING LOT.

>> YES.

>> OR A GARAGE WHERE PEOPLE COME IN AND THEY PAY TO PARK A CAR.

NOW, THAT IS SOMETHING THAT HAS BEEN DONE FOR PROBABLY, HAD BEEN PROVIDED BY MUNICIPALITIES PROBABLY AS LONG AS THERE HAVE BEEN AUTOMOBILES.

IT'S ALSO BEEN PROVIDED BY THE PRIVATE SECTOR OVER THAT PERIOD OF TIME.

AND IT'S GOING TO VARY SOMEWHAT FROM ONE MUNICIPALITY OR ANOTHER FROM SOME PLACES, AND MOST OF THE PARKING GARAGES OR PARKING LOTS MAY BE PRIVATELY OWNED.

BUT A LOT OF MACES THEY'RE GOING TO BE PUBLICLY OWNED.

SO I'M HAVING TROUBLE UNDERSTANDING HOW THIS PARTICULAR USE IS REALLY THAT DIFFERENT FROM A PARKING LOT. UNDER OR YOUR ANALYSIS, WOULD APARTMENTS BE NOT-- PARKING LOTS BE NOT COVERED HERE?

>> WELL, WE VIEW IT MORE AS A HOTEL, AS THE TESTIMONY INDICATED--

>> WHAT ABOUT THE PARKING LOTS?

>> PARKING LOT, YOUR HONOR, I HAVEN'T THOUGHT DEEPLY ABOUT.

>> THINK DEEPLY NOW, IF YOU CAN, ABOUT THAT.

[LAUGHTER]

>> WE THINK THE TEST SHOULD BE-- AND I'M TAKING GUIDANCE FROM GAINESVILLE, AS I SAID. I PUT IT OFF A COUPLE TIMES, I'M GOING TO POINT EXACTLY-- BUT ON THE PARKING LOT-- IN IF YOU COULD, I UNDERSTAND THAT, AND I'M GOING TO STOP, BUT IF YOU WOULD DO YOUR BEST TO TELL ME WHAT YOU THINK ABOUT PARKING LOTS AND HOW THAT FITS IN WITH YOUR ANALYSIS.

>> OUR TEST, THE TEST THAT WE BELIEVE THAT COMES OUT OF GAINESVILLE AND THE TEST THAT WE

BELIEVE SHOULD BE THE TEST FOR WHAT IS ESSENTIAL, WHICH CLEARLY WAS WHAT GAINESVILLE SAID, IS THAT THE MUNICIPALITY HAS TO OFFER SOMETHING OVER AND ABOVE WHAT'S-- ADDITIONAL, DIFFERENT THAN WHAT'S AVAILABLE FROM THE PRIVATE SECTOR.

AND SO IF PARKING LOTS ARE AVAILABLE FROM THE PRIVATE SECTOR, I GUESS UNDER THAT TEST MAYBE THEY SHOULD BE TAXED.

BUT IN GAINESVILLE--

>> DID YOU EVER CONSIDER THAT YOUR PLACEMENT OF SO MUCH RELIANCE ON GAINESVILLE MAY BE MISDIRECTED?

THAT GAINESVILLE IS NOT AT ALL IN THE SAME CATEGORY WITH THE MARINAS WE'RE TALKING ABOUT? BE I'M NOT A SAILOR, I DON'T HAVE A BOAT, I HAVE NO INTEREST IN GOING TO A MARINA, BUT SOME PEOPLE IN MY COMMUNITY MAY. IT'S THE SAME THING WITH GOLF COURSES.

I MEAN, I DON'T PLAY GOLF, BUT THERE ARE A LOT OF PEOPLE THAT DO, AND MAYBE MOST OF THE GOLF COURSES ARE PROVIDED BY PRIVATE COUNTRY CLUBS AND THOSE KINDS OF THINGS.

BUT ARE WE TO SAY THEN THAT GOLF, MUNICIPAL OR GOVERNMENTAL OWNED AND OPERATED GOLF COURSES ARE NO LONGER-- IT SEEMS TO ME WE'RE ABOUT TO TAKE A STEP TO TURN THE TAXATION ASPECT ANYWAY ON ITS HEAD, AND THAT'S GOING TO LEAD TO THEN THE ISSUES WITH REGARD TO PUBLIC FINANCING.

>> NO-- WELL, ON PUBLIC FINANCE THE BOND VALIDATION CASES CLEARLY PROVIDE A DIFFERENT STANDARD.

AND AS THE COURT SAID IN THE SECOND SEBRING CASE WHICH YOUR HONOR'S FAMILIAR WITH, THE CONSTITUTION SPECIFICALLY PROVIDES FOR TAXATION THERE.

AND SO THAT'S-- AND THE COURT SAID SPECIFICALLY THAT IS A VERY DIFFERENT STANDARD.

>> USES THE SAME WORD, YET IT'S A DIFFERENT STANDARD.

>> THAT'S RIGHT.

AND--

>> PUBLIC PURPOSE.

>> AND THE OPINION NOTED, THAT OPINION SPECIFICALLY NOTED IT WAS-- ONE THING GAINESVILLE STANDS FOR IS THAT IT'S EXPLICIT, THAT JUST BECAUSE A MUNICIPALITY CAN ENGAGE IN AN ACTIVITY, IT'S AN AUTHORIZED MUNICIPAL FUNCTION.

THAT DOES NOT MEAN THAT IT'S ESSENTIAL IN THE SENSE OF--

>> LET'S GO BACK TO THE 3A WHICH IS THE SECTION OF TAX EXEMPTION WHICH IS THE CONSTITUTION SAYS IT'S PROPERTY OWNED BY A MUNICIPALITY AND USED EXCLUSIVELY BY IT FOR MUNICIPAL OR PUBLIC PURPOSES.

>> YES.

>> SO WE'VE GOT TO GO BACK, AGAIN, AND AS EVERYONE SAID, THE GAINESVILLE CASE HAD TO DO WITH SOMETHING, TELECOMMUNICATIONS WHICH HAD NEVER BEEN ENGAGED IN BY MUNICIPALITIES AND WERE USING, AND IT WAS A FACIAL CHALLENGE.

AND WE SPECIFICALLY SAID THAT THESE SHOULD BE IN THE FUTURE AS A APPLIED-- APPLIED.

SO DON'T WE REALLY NEED TO GO BACK AND FOCUS ON MUNICIPAL OR PUBLIC PURPOSE IN WHAT WE LOOK AT FOR A MARINA WHICH IS TRADITIONALLY THERE HAVE BEEN PUBLIC MARINAS JUST LIKE PUBLIC PARKS FOR AS LONG AS WE'VE HAD MUNICIPALITIES?

>> I THINK THE RECORD ESTABLISHES THAT IT'S THE MUNICIPAL MARINAS HERE ARE FUNCTIONALLY EQUIVALENT TO MY CLIENT'S MARINA, THE PRIVATE

MARINA.

AND, AGAIN, IN GAINESVILLE THE COURT HELD, IT WAS A HOLDING IN THAT CASE THAT THE TELECOMMUNICATIONS SERVICES MIGHT NOT BE ESSENTIAL-- THEY MIGHT OR MIGHT NOT BE ESSENTIAL SERVICES.

THEY MIGHT NOT BE ESSENTIAL SERVICES, THEY MIGHT NOT BE ESSENTIAL--

>> SO YOU'RE LOOKING FOR A HOLDING AS A MATTER OF LAW THAT A MARINA IN A MUNICIPALITY IS NEVER TO BE EXEMPT FROM AD VALOREM TAXATION, IS THAT WHAT YOU'RE ADVOCATING AS OPPOSED TO AN IMPLIED CHALLENGES?

>> THE SAME SERVICES-- GAINESVILLE SAYS THERE HAS TO BE A DIFFERENCE BETWEEN WHAT A MUNICIPALITY CAN DO AND WHAT IT CAN DO WITHOUT PAYING TAXES.

>> OKAY.

SO YOU'RE SAYING THAT A NEW TEST WOULD BE IF THE PRIVATE SECTOR CAN DO THE SAME THING AND IS DOING IT, THEN THE MUNICIPALITY DOESN'T GET THE ADVANTAGE--

>> THAT'S WHAT THE COURT SAID IN GAINESVILLE--

>> OKAY.

BUT THAT'S WHAT YOU'RE--

>> SOMETHING--

>> THAT WOULD BE A DISTINCT DEPARTURE FROM PRECEDENT FROM BEFORE THE CITY OF GAINESVILLE--

>> NOT BEFORE APPLIED THE MUNICIPAL FUNCTION STANDARD FROM THOSE CASES AND APPLIED THE BOND VALIDATION STANDARD FROM THOSE CASES.

AS THE DISTRICT COURT DID HERE ON THE CASE THAT YOU'RE REVIEWING.

THOSE STANDARDS, THE MUNICIPAL FUNCTION STANDARD WAS EXPLICITLY REJECTED IN GAINESVILLE, OKAY? AND SO WHATEVER IS NOT, WHATEVER

IS NOT TAXABLE IS-- THAT A MUNICIPALITY CAN DO IS A SMALLER CATEGORY OF ACTIVITIES THAN WHAT THE MUNICIPALITY CAN DO.

AND SO, AGAIN, IN GAINESVILLE ON REMAND IN GAINESVILLE THE CIRCUIT COURT FOUND THAT THE TELECOMMUNICATIONS COMPANY WAS ESSENTIAL, THAT THERE WERE TELECOMMUNICATION SERVICES THAT WERE NOT AVAILABLE IN GAINESVILLE.

WE CITED THE ORDER, QUOTED THE ORDER IN OUR BRIEF AND THAT THE CITY HAD STEPPED INTO THAT MARKET TO PROVIDE SERVICES THAT WERE NOT BEING PROVIDED BY THE PRIVATE SECTOR.

THEREFORE, IT WAS ESSENTIAL IN THE SENSE THAT GAINESVILLE OUTLINED, THEREFORE, IT WAS, IT WAS NOT TAXABLE.

BUT GAINESVILLE, I THINK, SET OUT THIS TEST.

AGAIN, IF I MAY, ON PAGE 265 THE COURT SAID, AND I QUOTE, IN OTHER WORDS, A MUNICIPALITY MAY ENTER A MARKET IN WHICH A HIGH LEVEL OF SERVICE AND COMPETITION ALREADY EXISTS WITHOUT INTRODUCING NEW LEVELS OF SERVICE, FOSTERING INNOVATION OR ENCOURAGING INFRASTRUCTURE INVESTMENT.

IN THAT CASE THE MUNICIPAL TELECOMMUNICATIONS COMPANY DOES NOT PROVIDE A SERVICE THAT IS ESSENTIAL AND SO FORTH.

SO THE TEST THAT WAS OUTLINED THERE FOCUSED ON NEW LEVELS OF SERVICE ABOVE AND BEYOND--

>> DIDN'T WE ALSO SAY THAT UNLIKE ELECTRICAL POWER IN PUBLIC PARKS, TELECOMMUNICATION SERVICES HAVE HISTORICALLY BEEN PROVIDED BY THE PRIVATE SECTOR? I UNDERSTAND WHAT YOU'RE SAYING IS IN THERE--

>> AGAIN, YOUR HONOR--

>> IT'S A LONG OPINION, AND

THERE'S A LOT GOING ON IN THERE,  
AND I THINK THAT THERE'S A FOCUS  
ON THE HISTORICAL PROVISION OF  
SERVICES, PARTICULAR TYPES OF  
SERVICES, ISN'T THAT RIGHT?

>> I DON'T THINK THAT'S--

>> IT'S NOT A FOCUS.

>> AS I SAID BEFORE-- WELL, I  
THINK THE FOCUS IS ON THE NEW  
LEVELS OF SERVICE, AND--

>> THAT'S BECAUSE THAT WAS THE  
STATUTE.

THE STATUTE WAS A LEGISLATIVE  
STATUTE WHICH WE PRESUME IS  
CONSTITUTIONAL WHICH DID NOT  
WANT MUNICIPALITIES TO JUMP IN  
AND USE THE PRIVATELY DEVELOPED  
INFRASTRUCTURE TO PROVIDE AND  
MAKE MONEY OFF OF THE INTERNET.

I MEAN, THAT WAS-- IT'S,  
WE'RE NOT, YOU KNOW, AND I  
APPRECIATE SINCE, OBVIOUSLY, I'M  
NOW THE AUTHOR OF THIS THING  
THAT YOU CAN PICK APART A  
PARTICULAR ASPECT OF THE CASE.

BUT AS JUSTICE CANADY SAID, THE  
REASON IT'S WRONG IS BECAUSE IT  
REVIEWS EVERY CASE THAT EXISTED  
UP UNTIL THAT TIME AND SAID WE  
ARE ADOPTING PRIOR CONSTRUCTIONS  
OF WHAT SECTION 3A OF THE  
FLORIDA CONSTITUTION STATES.

>> THAT'S FAIR, YOUR HONOR.

BUT IF I MAY GO BACK TO THE  
TRADITIONAL, TO ME, IS NO TEST  
AT ALL.

THE FACT THAT SOMETHING HAS BEEN  
DONE TRADITIONALLY, THAT'S WHY  
WE'RE HERE.

THIS COURT HAS NOT LAID DOWN A  
RULE ABOUT WHAT IT MEANS TO BE  
ESSENTIAL TO--

>> SO A PUBLIC PARK, NOT  
ESSENTIAL.

>> A PUBLIC PARK IS SOMETHING  
THAT CITIES PROVIDE OVER AND  
ABOVE WHAT'S OTHERWISE  
AVAILABLE.

WE'RE TALKING ABOUT--

>> SO YOU'RE SAYING, NO, A

PUBLIC PARK WOULD NOT-- THAT  
PROPERTY WOULD NOT BE EXEMPT  
FROM AD VALOREM--

>> WELL, OF COURSE IT'S EXEMPT.

>> WELL, WHY?

IT'S NOT ESSENTIAL UNDER YOUR  
DEFINITION.

>> IT'S NOT OTHER SIDE  
AVAILABLE.

NO, WHAT I'M PROPOSING AND WHAT  
I THINK GAINESVILLE POINTS TO,  
THE GAINESVILLE OPINION POINTS  
TO IS THAT THE MUNICIPALITY HAS  
TO PROVIDE SOMETHING OVER AND  
ABOVE WHAT'S AVAILABLE FROM THE  
PRIVATE SECTOR.

>> LET ME ASK YOU THIS.

THE OPINION IN GAINESVILLE  
CLEARLY SAYS-- GAINESVILLE  
CLEARLY SAYS WE CONCLUDE THAT  
THE '68 CONSTITUTION DID NOT  
CHANGE THE DEFINITION OF  
MUNICIPAL OR PUBLIC PURPOSE, SO  
LOOK BACK AT OUR PRIOR PRECEDENT  
TO DETERMINE WHAT THAT MEANS.

>> YES.

>> SO IF YOU IGNORE GAINESVILLE  
AND LOOK BACK AT OUR PRIOR  
PRECEDENT, IS A MARINA A  
MUNICIPAL OR PUBLIC PURPOSE?

>> WELL, IT HAD NEVER BEEN  
ADDRESSED--

>> RIGHT.

>> BUT, NO, THE PROBLEM WITH  
THAT IS IT'S TRUE THE  
FORMULATION IN THE CONSTITUTION  
DIDN'T CHANGE, BUT PRIOR TO THE  
1968 CONSTITUTION LEGISLATIVE  
DECLARATIONS OF PUBLIC PURPOSE  
WERE DETERMINATIVE.

AND SO UNDER THE PRIOR, UNDER  
THE PRIOR CONSTITUTION THE  
STATUTE IN GAINESVILLE WOULD  
HAVE, THE STATUTE IN GAINESVILLE  
WHICH SAID THAT THESE  
TELECOMMUNICATION SERVICES ARE A  
MUNICIPAL OR PUBLIC PURPOSE AND  
ARE TAXABLE, THAT WOULD HAVE  
BEEN DETERMINATIVE.

THAT WOULD HAVE SAID THAT THE

TELECOMMUNICATIONS COMPANY IS  
EXEMPT.

OKAY?

AND SO IT'S TRUE THAT THE WORDS,  
THE DEFINITION DIDN'T CHANGE,  
BUT THE APPLICATION IS  
NECESSARILY DIFFERENT BECAUSE  
LEGISLATIVE DECLARATION, WHAT  
THE LEGISLATIVE-- THE  
LEGISLATURE HAS DECLARED OR THE  
CITY HAS DECLARED THEY CAN  
ENGAGING IN A MARINA.

THAT IS NO LONGER DETERMINED.  
THAT'S WHY WE'VE ARGUED THAT  
GAINESVILLE NARROWED THE  
STANDARD IN THAT SENSE.

YOU KNOW, NARROWED IS A LITTLE  
BIT OF A SEMANTIC ISSUE BECAUSE  
THE COURT HAS NEVER ADDRESSED  
THIS QUESTION BEFORE.

BUT THE TEST THAT COMES OUT OF  
GAINESVILLE, WE BELIEVE, IS  
NARROWER, NARROWER THAN THE  
MUNICIPAL FUNCTIONS TEST,  
NARROWER THAN THE BOND  
VALIDATION TEST.

TRADITIONAL, YOUR HONOR, I  
THINK, DOESN'T ANSWER THE  
QUESTION EITHER BECAUSE THE  
QUESTION'S NEVER BEEN ANSWERED  
BY THIS COURT.

AND SO WHERE YOU HAVE A  
COMMERCIAL ENTERPRISE LIKE  
THIS-- WHICH, AFTER ALL, IS,  
YOU KNOW, THIS IS A-- WHICH  
PRIMARILY SERVES NONRESIDENTS OF  
FORT PIERCE.

AND WHICH, AFTER ALL, IS LARGELY  
A SUBSIDY TO THE BOAT OWNERS,  
RIGHT?

TO THE YACHT OWNERS WHO COME  
IN--

>> WELL, THAT'S THE CASE WITH  
ANYONE WHO IS A USER OF THAT  
PARTICULAR SERVICE.

GOLF COURSES, FOR EXAMPLE.  
IF YOU'RE NOT A GOLFER, THAT  
OFFERS YOU NOTHING.

>> THIS COURT DID ADDRESS--

>> IT'S ALWAYS GOING TO BE THAT

KIND OF ISSUE, ISN'T IT?

>> ALWAYS GOING TO BE WHAT KIND OF ISSUE, YOUR HONOR?

>> THAT IT CANNOT SERVE EVERYBODY'S INTERESTS, BECAUSE EVERYBODY DOESN'T HAVE THE SAME INTERESTS.

IF I DON'T HAVE AN AUTOMOBILE, I DON'T NEED A PARKING LOT.

IF I DON'T PLAY GOLF, I DON'T NEED A GOLF COURSE.

IF I DON'T HAVE A BOAT, I DON'T NEED A MARINA.

BUT THAT DOESN'T ANSWER THE QUESTION WITH REGARD TO WHETHER IT IS A PUBLIC PURPOSE AND WHETHER IT IS A TRADITIONAL MUNICIPAL OR GOVERNMENTAL FUNCTION.

>> WELL, THIS COURT ACTUALLY DID ADDRESS GOLF COURSES IN A CASE WE DIDN'T CITE CALLED CAPITAL CITY CLUB, I BELIEVE, AGAINST TUCKER.

AND SAID THERE THAT GOLF COURSES WERE A NONGOVERNMENTAL PURPOSE.

IT WAS A PLACE WHERE THE PROPERTY HAD BEEN LEASED, SO IT'S GOT THAT ISSUE.

>> WELL, THAT'S BEEN ANSWERED, AND IT'S ANSWERED IN THIS CASE IF THE SPACE, AS I UNDERSTAND IT HERE, IS TAXABLE TO THE EXTENT THAT THEY'VE LEASED IT TO A PRIVATE ENTERPRISE, CORRECT?

>> RIGHT.

AND THAT'S BECAUSE THE CONSTITUTION REQUIRES THAT IT BE USED BY THE MUNICIPALITY.

THAT DOESN'T ANSWER THE QUESTION OF WHETHER THE ACTIVITY IS GOVERNMENTAL OR NOT.

>> RIGHT.

RIGHT, RIGHT.

>> YOU'RE INTO YOUR REBUTTAL TIME.

YOU'RE WELCOME TO CONTINUE--

>> YES, YOUR HONOR.

I'M FINE, THANKS.

>> MAY IT PLEASE THE COURT, MY

NAME'S LOREN LEVY, I REPRESENT MICHELLE FRANKLIN WHO'S NOW THE ST. LUCIE COUNTY PROPERTY APPRAISER.

WITH ME AT COUNSEL TABLE IS ROB AND JIM WALKER, AND THEY REPRESENT THE CITY OF FORCE PIERCE AND THE FORT PIERCE REDEVELOPMENT AGENCY, AND THEY VERY GRACIOUSLY ALLOWED ME THEIR TIME TO PRESENT ORAL ARGUMENTS--

>> MR. LEVY, IS THERE A DIFFERENCE-- YOU STIPULATED THAT THIS WERE NO ISSUES OF FACT, IT WAS ON SUMMARY JUDGMENT.

BUT THERE'S SOME POSSIBLE SUGGESTION THAT THE TWO MARINAS, THE FISHERMEN'S WHARF AND THE CITY MARINA, ARE IN DIFFERENT SITUATIONS AS FAR AS WHETHER IS THE PUBLIC ABLE TO FREELY GO INTO THE MARINA OR WHAT ARE THE, IS ALL OF THIS SPACE LEASED TO INDIVIDUALS OR COMPANIES THAT ARE NOT EVEN RESIDENTS OF FORT PIERCE.

ARE THOSE CONSIDERATIONS THAT SHOULD HAVE BEEN DEVELOPED IN A FACTUAL SETTING OR BECAUSE IT WAS STIPULATED TO SORT OF IN AN ALL OR NOTHING SITUATION?

>> I BELIEVE THE RECORD IS FAIRLY DEVELOPED IN THAT REGARD. THERE WAS RECORDS OF THE USAGE OF THE FISHERMEN'S WHARF MARINA VERSUS THE CITY MARINA AS FAR AS THE NUMBER OF BOAT SLIPS AND CITY RESIDENTS VERSUS NON-CITY RESIDENTS.

THE RECORD INCLUDES THAT THERE'S ONE DOCK AT THE FISHERMEN'S WHARF MARINA THAT IS LOCKED FOR THE FOLKS THAT HAVE THE SLIPS THERE.

AT THE CITY MARINA WE HAD, THERE'S EIGHT DOCKS THERE, THREE OF WHICH ARE LOCKED, THE OTHER FIVE ARE NOT LOCKED.

SO I THINK THE RECORD IS--  
THERE WOULD BE NO OTHER FACT, IF  
YOU WOULD, THAT WE WOULD THINK  
IS MATERIAL OR HELPFUL--

>> WELL, CITY MARINAS ACROSS THE  
STATE OF FLORIDA WHERE THERE'S  
WATER ACCESS, HAVE THOSE BEEN  
TRADITIONALLY FIRST BECAUSE, OF  
COURSE, WE'RE DEALING WITH THE  
WATER THAT'S UNDER THE SUBMERGED  
LANDS.

DO THEY BEGIN AS CITY-OWNED  
FACILITIES?  
MARINAS?

>> WELL--

>> DO WE KNOW THAT IN THIS  
RECORD?

>> NO, YOU DO NOT KNOW THAT IN  
THIS RECORD.

THERE IS, IN THE RECORD, SEVERAL  
AFFIDAVITS REGARDING THE LONG  
HISTORICAL, INVOLVING A CITY  
MARINA'S, PARTICULARLY ALONG THE  
EAST COAST AND WATER COMMERCE  
AND OTHER ISSUES.

BUT A RECORD THAT THERE'S BEEN  
NO OTHER COMMERCIAL MARINAS OR  
PRIVATELY OWNED MARINAS DURING  
THAT TIME.

>> SO YOU HAVE SOMETHING WITH  
BOATING, IF THEY'RE GOING ALONG  
THE EAST COAST, THE IDEA WOULD  
BE IN THE STATE OF FLORIDA THAT  
SOMEBODY CAN DOCK WITH CHARGE OR  
WITHOUT CHARGE AT ANY CITY  
MARINAS ALONG  
THE COAST OF FLORIDA.

DO WE KNOW THAT?

>> THE RECORD'S NOT DEVELOPED AS  
TO THE CHARGES OF OTHER MARINAS.  
THE RECORD IS DEVELOPED AS TO  
THE CHARGE AT THIS MARINA.

IF YOU WANT TO STAY OVERNIGHT  
WEEKLY, MONTHLY OR ANNUALLY,  
THERE'S A FEE FOR THAT.

IF YOU JUST WANT TO PULL UP,  
PARK YOUR BOAT, GO TO LUNCH,  
SHOP IN THE DOWNTOWN AREA, GET  
BACK ON YOUR BOAT, GO BACK HOME,  
THERE'S NO CHARGE FOR THAT DAILY

USE AT EITHER THE FISHERMEN'S WHARF OR THE CITY MARINA.

>> WHY IS IT, THOUGH, IF WE GO BACK TO THE CONSTITUTION, WHY IS IT A MUNICIPAL OR PUBLIC PURPOSE?

AND, AGAIN, LOOKING JUST AT THE WORDS OF THE CONSTITUTION, WHY IS THE CITY MARINA A MUNICIPAL OR PUBLIC PURPOSE?

>> I THINK MY TOP THREE LIST WOULD BE AS FOLLOWS: NUMBER ONE, IT PROVIDES TRANSPORTATION. HISTORICALLY, THIS MARINA WAS IN 1910, 1938.

IN THAT PERIOD OF TIME, PEOPLE PREDOMINANTLY TRANSPORTED THEMSELVES BY WATER.

SO THERE'S TRANSPORTATION SYSTEMS.

AND I THINK THAT WOULD BE A VALID MUNICIPAL PURPOSE.

YOU WOULD LUMP THAT IN WITH ALL OF THE OTHER CATEGORIES THAT I THINK YOU WOULD QUICKLY BELIEVE ARE PROPER MUNICIPAL PURPOSES. AIRPORTS ARE TRANSPORTATION. BUS TERMINALS, LIGHT RAIL, ALL OF THOSE THINGS ARE TRANSPORTATION.

THEY ALL ARE ESSENTIAL TO HAVE A VIBRANT, ACTIVE MUNICIPAL COMMUNITY.

YOU'VE GOT TO GET IN, AND YOU'VE GOT TO GET OUT.

SO I THINK TRANSPORTATION IS VERY CRITICAL.

I THINK ANOTHER ONE THAT IS UNIQUE TO MARINAS IS PUBLIC ACCESS TO THE WATER.

BECAUSE IF WE WERE ALL PRIVATE MARINAS AND IF I COULDN'T AFFORD THEIR FEES, I COULDN'T HAVE ACCESS TO THE WATER MUCH LIKE THE GOLF COURSE.

IF WE HAD ALL PRIVATE COURSES, THERE MAY BE FOLKS THAT ARE UNABLE TO THEN ACCESS THAT TYPE OF FACILITY.

SO PUBLIC ACCESS, AND WE HAVE

THEM IN THE BRIEF, BUT THERE'S A LOT OF LEGISLATIVE DECLARATIONS OF HOW IMPORTANT PUBLIC ACCESS TO NAVIGABLE WATERWAYS IS.

IT'S IN CHAPTER 342.

YOU HAVE THE SEAPORT CHAPTER, TALKS ABOUT SEAPORTS.

YOU HAVE PORT AUTHORITIES, AND IN MANY RESPECTS A CITY MARINA IS A BABY PORT AUTHORITY, YOU KNOW?

LESS COMMERCIAL, MORE RECREATIONAL.

BUT YOU HAVE ALL OF THOSE LEGISLATIVE DECLARATIONS.

YOU HAD RECENTLY THE CONSTITUTION WAS CHANGED TO ADD WORKING WATERFRONTS AND SPECIFIC TAX TREATMENT FOR WORKING WATERFRONTS RECOGNIZING THE IMPORTANCE OF THIS ACCESS TO THE PUBLIC WATERWAY.

SO I THINK IT ALSO HAS THAT RECREATIONAL ASPECT.

AND THEN FINALLY AND JUST AS IMPORTANT ON THIS RECORD--

>> ADDING TO THAT RECREATIONAL ASPECT, THE CITY MARINA HAS, WHAT, 137 OR SO DOCKS?

>> YES, YOUR HONOR.

>> AND HOW MANY OF THEM ARE ACTUALLY AVAILABLE AT ANY GIVEN TIME FOR THE PUBLIC?

IT SEEMS TO ME A LOT OF THEM ARE RENTED OUT, YOU KNOW, TO, UP TO PEOPLE.

AND SO DOES THE PUBLIC REALLY HAVE ANY TRUE ACCESS TO THAT MARINA?

>> WELL, IT'S, OBVIOUSLY, IT'S FIRST COME, FIRST SERVED, AND THERE ARE MAYBE TIMES THAT FINISH--

>> BUT THEY COULD, THEORETICALLY, RENT OUT ALL OF THEM AT ONE TIME, AND SO THE GENERAL PUBLIC, YOU KNOW, IF ONE JUST HAD A BOAT AND WANTED TO COME UP FOR LUNCH, IF THEY'RE ALL RENTED OUT, THEY CAN'T DO

THAT, RIGHT?

>> WELL, AT THE CITY MARINA  
THERE'S A TOTAL OF 130 SLIPS--

>> I'M TALKING ABOUT THE CITY  
MARINA.

>> THAT'S WHAT I'M TALKING  
ABOUT.

>> OKAY.

>> THERE'S CAPACITY FOR 143  
BOATS.

THERE WAS NOTHING IN THE RECORD  
ABOUT THE DAILY USER, THAT BEING  
UNAVAILABLE--

>> I GUESS I WANT TO KNOW IF THE  
CITY, IF THERE'S A CERTAIN  
NUMBER OF THESE THAT THE CITY  
SAYS CAN'T BE RENTED OUT ON A  
MONTHLY BASIS OR YEARLY BASIS OR  
WHATEVER IT IS BECAUSE WE NEED  
ACCESS FOR THE GENERAL PUBLIC.

>> THAT'S NOT THE RECORD, YOUR  
HONOR-- NOT IN THE RECORD, YOUR  
HONOR.

IF I COULD GO BACK TO THE CITY  
OF GAINESVILLE CASE, AND I  
BELIEVE AS YOU GO THROUGH THAT  
CASE THAT THIS COURT WAS BEING  
PARTICULARLY CAUTIOUS.

IT WAS A FACIAL  
CONSTITUTIONALITY ISSUE, ONE.  
AND NUMBER TWO, IT WAS AN AREA  
WHERE THE CITY WAS ENTERING INTO  
A FIELD THAT HISTORICALLY HAD  
NOT BEEN INVOLVED IN.

AND SO THE COURT SAID, WELL,  
WE'RE GOING TO INDULGE IN THE  
PRESUMPTIONS OF  
CONSTITUTIONALITY, AND THERE MAY  
BE A SET OF CIRCUMSTANCES WHERE  
A CITY ENTERING INTO THE  
TELECOMMUNICATION AREA MAY NOT  
BE PROVIDING A MUNICIPAL  
FUNCTION.

AND SO WHEN YOU HAVE YOUR  
CHOICE, WE CALL IT LEGISLATIVE  
DIFFERENCE OR WHATEVER IT MAY  
BE, THAT YOU WERE BEING  
PARTICULARLY CAUTIOUS WHEN YOU  
PUT THOSE TWO ASPECTS TOGETHER.

>> DID I UNDERSTAND YOU

CORRECTLY THAT THE CITY MARINA  
CAN BE USED AS, LIKE,  
ESSENTIALLY AS A BOAT RAMP WHERE  
PEOPLE CAN COME AND LAUNCH THEIR  
BOAT OR NO?

>> THE CITY MARINA, YOU HAVE A  
LITTLE BIT OF DIFFICULTY IN THIS  
RECORD BECAUSE THE COMPLAINT  
SAID WE'RE SUING ON THIS PARCEL,  
AND OTHER PARCELS THAT THE CITY  
MAY USE IN ITS MARINA.

THE PARCEL THAT'S SUED ON DOES  
NOT INCLUDE A RAMP, BUT OTHER  
CITY-OWNED PARCELS IN THIS  
GEOGRAPHIC AREA DO INCLUDE RAMP.  
AND THAT'S IN THE AFFIDAVITS.

THERE'S A RAMP NEXT THE  
FISHERMAN'S WHARF MARINA.

BUT, YOU KNOW, CERTAINLY PUTTING  
IN A BOAT, TAKING OUT A BOAT,  
TAKING A BOAT OUT OF THE WATER,  
AROUND HERE YOU PUT YOUR BOAT ON  
A TRAILER, YOU PUT IT IN ON THE  
RAMP.

ALONG THE EAST COAST, THE BOATS  
MAY TEND TO BE BIGGER.

THAT'S NOT REALLY WHAT'S GOING  
ON.

YOU GO FROM DOCK TO DOCK, IS HOW  
YOU DO.

YOU DON'T PUT THE BOAT IN AND  
OUT.

SO WHEN YOU GO THROUGH AND YOU  
LOOK AT THE CITY OF GAINESVILLE  
AND THE CITY OF GAINESVILLE VERY  
CAREFULLY SAID WE'RE NOT  
CHANGING THE LAW AS IT  
HISTORICALLY HAS BEEN, WE'RE NOT  
GOING TO DO THAT.

BUT IN THE 1885 CONSTITUTION AND  
THE DECISIONS THAT THIS COURT  
HAD LOOKED AT, WE'RE NOT  
CHANGING THE LAW.

WHEN YOU HAVE ALL OF THE  
DISTRICT COURT OF APPEAL  
OPINIONS HISTORICALLY DONE BY  
CITIES AND ARE A PROPER  
MUNICIPAL PURPOSE, WE DON'T  
THINK THE CITY OF GAINESVILLE IF  
YOU HAD CHANGED THE FIELD.

AND, JUSTICE CANADY, IF I COULD ADDRESS YOUR QUESTION ABOUT TRADITIONAL OR HISTORICAL. IF YOU WERE TO KEEP IN MIND THAT WITH CITIES THE RULE OF CONSTRUCTION IS THAT CITY-OWNED PROPERTY IS GENERALLY EXEMPT. CITY-OWNED AND USED PROPERTY IS GENERALLY EXEMPT. AND TAXATION WOULD BE THE EXCEPTION. SO IF YOU'RE LOOKING AT A CITY ACTIVITY THAT HAS BEEN TRADITIONALLY AND HISTORICALLY DONE FOR MANY, MANY, MANY YEARS, PROBABLY THE VAST MAJORITY OF THOSE SCENARIOS WOULD END UP WHERE THAT PROPERTY SHOULD BE EXEMPT FROM TAXATION. CITIES DO A GREAT MANY PROPRIETARY ACTIVITIES. THAT'S WHAT DISTINGUISHES A CITY MAINLY FROM A COUNTY, IS THAT CITIES DO ACTIVITIES THAT GENERATE FUNDS. SO IF WE HAVE THE HISTORICAL AND TRADITIONAL-- AND THIS IS WHAT THE CITY HAS DONE, YOU KNOW, YOU NEVER SAY NEVER THERE COULDN'T BE A CASE, BUT MOST LIKELY THAT'S GOING TO BE EXEMPT. ON THE OTHER HAND, WHEN THE CITY OF GAINESVILLE, THE CASE WE HAD THERE WHEN WE'RE TALKING ABOUT TELECOMMUNICATIONS SERVICES THAT THE CITIES HAS NEVER ENGAGED IN, WE'RE GOING TO LOOK AT THOSE CLOSE AND MAKE SURE THAT THERE IS A MUNICIPAL FUNCTION BEING SERVED. BECAUSE THAT'S WHAT THE LEGISLATURE HAD SAID WITH THIS TELECOMMUNICATIONS STATUTE. THE LEGISLATURE SAID CITIES HISTORICALLY HAVE NOT BEEN PERMITTED TO PROVIDE TELECOMMUNICATIONS SERVICES. WE WILL GIVE YOU PERMISSION, STATUTORY AUTHORIZATION. BUT IF YOU ENTER THIS FIELD, YOU

WILL HAVE TO PAY AD VALOREM TAXES OR THE EQUIVALENT. KIND OF A LEVELING OF THE PLAYING FIELD.

AND THE CITY OF GAINESVILLE SAID, WELL, THAT SHOULDN'T BE RIGHT BECAUSE WE BELIEVE WE CAN PROVIDE A MUNICIPAL PURPOSE, A MUNICIPAL FUNK FOR OUR RESIDENTS, WE CAN PROVIDE SOME THINGS THAT HAD NOT BEEN PROVIDED PREVIOUSLY, AND WE DON'T BELIEVE WE SHOULD HAVE TO PAY AD VALOREM TAXES IF WE DECIDE TO ENTER INTO THIS FIELD, AND THAT'S HOW WE GOT THE CITY OF GAINESVILLE, CITY OF GAINESVILLE DECISION.

JUDGE, JUSTICE LAWSON, YOU HAD ASKED DO WE HAVE ANY OTHER FLORIDA SUPREME COURT PRECEDENT ON MARINAS.

AND THE CASE CITED IN THE FOURTH DISTRICT COURT OF APPEALS' DECISION, THE CITY OF PANAMA CITY V. STATE IN 1957, WAS THE PANAMA CITY MARINA, AS WE KNOW IT OVER THERE.

AND THAT CASE WAS A BOND ISSUANCE.

AND YOU HAD A VERY LARGE, YOU'RE FILLING IN THE WATERFRONT.

YOU WERE PUTTING IN DOCKAGE AND ALL OF THOSE TYPE OF MARINA FACILITIES.

BUT YOU ALSO HAD A COUPLE OF BUILDINGS THAT WERE GOING TO HOUSE CONCESSION AREAS THAT WERE GOING TO BE RENTED OUT TO PRIVATE BUSINESS.

AND SO THIS COURT'S DISCUSSION IN THAT MARINA CASE DEALT WITH THOSE CONCESSION AREAS.

NOBODY REALLY DISPUTED THAT THE MARINAS, DOCKS, THINGS THAT YOU NEED FOR BOATS, YOU KNOW, THAT'S THE PROPER MATTER FOR A BOND ISSUANCE, BUT WE NEED TO LOOK AT THOSE CONCESSION AREAS, AND THIS COURT SAID THOSE CONCESSION

AREAS WERE INCIDENTAL TO THE OVERALL PURPOSE AND, THEREFORE, LAWFUL.

>> THAT'S WHY I'M GOING BACK TO THIS ISSUE OF FILLING IN LAND AND CREATING THE MARINAS. DOES THIS HAVE ACCESS TO THE INTERCOASTAL WATERWAY?

>> YES.

>> WE'RE TALKING ABOUT-- OKAY. SO DO WE KNOW, WAS THIS, WERE THESE-- THE LAND ON WHICH THESE MARINAS WERE BUILT, WAS THIS STATE-OWNED LAND THAT WAS THEN FILLED IN?

DO WE HAVE THAT IN THE RECORD?

>> WHAT'S IN THE--

>> I MEAN, TO ME, IT'S IMPORTANT BECAUSE IT REALLY GOES TO WHAT THE STATE ENVISIONED, AS YOU SAID, WOULD HAPPEN AS COMMERCE WOULD OCCUR THROUGH THE INTERCOASTAL WATERWAY.

WHAT IS, DOES THE RECORD SHOW ANYTHING ABOUT THAT?

>> WHAT'S IN THE RECORD IS THAT ALL OF THE SLIPS ARE ON SUBMERGED LAND LEASES FROM THE STATE.

AND WHAT'S IN THE RECORD IS THAT WHEN THE STATE DOES A SUBMERGED LAND LEASE WITH A CITY OR OTHER GOVERNMENT ENTITY PROVIDING THAT SERVICE, THEY GET A, I'LL SAY PREFERRED RATE.

IN OTHER WORDS, THEY WOULD CHARGE THE CITY-OWNED MARINA LESS FOR ITS SUBMERGED LAND LEASE THAN A PRIVATE OWNED MARINA, AGAIN RECOGNIZING-- I WOULD SUBMIT-- YOU KNOW, THE STATE'S INTEREST IN PRESERVING THIS PUBLIC ACCESS TO THE WATERWAY.

SO THE SUBMERGED LAND LEASES, THAT IS IN THE RECORD.

THE HISTORY OF HOW THE CITY CAME TO ACQUIRE THE DIRT ALONG THE WATER FRONT IS NOT IN THE RECORD OTHER THAN THERE WAS A TOWN DOCK

IN THIS GENERAL LOCATION IN  
1910.

IT WAS DESTROYED BY A STORM.  
AND IN 1938 THE CITY BUILT THE  
PRECURSOR TO THIS CITY MARINA  
AND HAS OPERATED IT  
UNINTERRUPTEDLY SINCE THAT TIME.  
THEY SAY, WELL, THE TEST SHOULD  
BE IS THE CITY OFFERING  
SOMETHING THAT PRIVATE  
ENTERPRISE CAN'T BE?

WELL, IT SEEMS LIKE ARE WE  
TALKING, WELL, THE CITY'S THERE  
FIRST.

THE CITY HAS THE ONLY MARINA.  
AND THEN THE CITY'S EXEMPT.  
BECAUSE IT'S PROVIDING A SERVICE  
THAT NO ONE ELSE IS PROVIDING.  
BUT AS SOON AS THE FIRST  
COMPETITOR MOVES IN, WELL, NOW  
WE MUST SAY THAT THE CITY MARINA  
IS TAXABLE.

IS AND I JUST-- AND I JUST  
DON'T SEE ANY OF THAT IN ANY OF  
THIS COURT'S DECISIONS IN  
DISCUSSING WHAT CITIES  
HISTORICALLY HAVE DONE AND THEIR  
BROAD DISCRETION IN THE THINGS  
THAT THEY ALSO HAVE DONE.

SO IF YOU WOULD JUST LOOK AROUND  
THE CITY OF TALLAHASSEE, WE HAVE  
THE AIRPORT, THE CITY PROVIDES  
ELECTRIC SERVICE, THEY PROVIDE  
WATER AND SEWER SERVICE.

I BELIEVE EVERYBODY WOULD SUBMIT  
THOSE ARE ESSENTIAL, AND THIS  
COURT KIND OF ACKNOWLEDGED THAT  
IN THE CITY OF GAINESVILLE CASE.  
THE CITY HAS PARKS, SOCCER  
FIELDS, SOFTBALL FIELDS.

WE LOVE THE CASCADES PARK RIGHT  
DOWN HERE AT THE CORNER.

YOU KNOW, IS THAT ESSENTIAL FOR  
CITY SERVICES?

CERTAINLY, IT'S ESSENTIAL FOR  
THE VITALITY OF THE COMMUNITY.  
CITIES GO ON FACT-FINDING TRIPS  
TO OTHER CITIES.

WHAT ARE THEY DOING SO WE CAN  
HAVE A VIBRANT CITY COMMUNITY.

AND I BELIEVE THE POINT OF CITY OF GAINESVILLE IS THAT YOU DIDN'T INTEND TO CHANGE THE LAW AND THAT CITIES ARE CONTINUING IT IS EXEMPT FROM TAXATION.

I WOULD SUBMIT THE RULE CITY-OWNED PROPERTY, THE RULE IT SHOULD BE EXEMPT, AND OCCASION WOULD BE TAXABLE IS VERY RARE, IT WOULD BE ALMOST ANY DOUBT OR ANY REASONABLE DOUBT AS TO THE CITY'S DECISION TO, TO ENTER INTO, TO PROVIDE THIS SERVICE WOULD BE RESOLVED IN FAVOR OF EXEMPTION AND AGAINST TAXATION.

>> SINCE THIS WAS STATE-OWNED LAND DOES THE STATE HAVE ANY STAKE IN, IF THEY WERE TO LEGISLATE IN THIS AREA AND PUT CERTAIN RESTRICTIONS ON IT, ARE WE, ON A POSSIBLE, SOME, OBVIOUSLY ISN'T THE CASE NOW BUT OBVIOUSLY THAT IS WHAT THE CITY OF GAINESVILLE WAS ABOUT, THE LEGISLATURE SAYING THIS IS NOT, THIS SHOULD NOT BE ALLOWED AS SORT OF SAYING AS A MUNICIPAL PURPOSE BECAUSE OF THE, THE WAY THE TELECOMMUNICATIONS INDUSTRY OPERATES BUT THEY HAVEN'T DONE, THEY HAVEN'T DONE ANYTHING LIKE THAT IN THIS AREA BUT YOU'RE SAYING THERE ARE MANY OTHER STATUTES THAT ACTUALLY SUPPORT AN ARGUMENT THAT THIS IS PART OF THE TRADITIONAL MUNICIPAL PURPOSE?

>> YES.  
THEY HAVE NOT STEPPED IN THIS AREA.

THERE IS THE, AND WE HAVE THEM IN OUR BRIEF, CHAPTER 342 TALKS ABOUT RECOGNIZING IMPORTANT STATE INTERESTS IN FACILITATING BOATING AND RECREATIONAL ACCESS TO NAVIGABLE WATERS.

THE SEAPORT PROVISIONS ARE IN 315 AND PORT AUTHORITIES ARE IN, I'M SORRY THE SEAPORTS ARE IN CHAPTER 311 AND THE PORT

AUTHORITIES ARE IN CHAPTER 315.  
WORKING WATERFRONT, THE STATE  
ACKNOWLEDGING THAT IT IS  
IMPORTANT TO HAVE ACCESS TO A  
WORKING NAVIGABLE WATERWAY.  
I WOULD SUGGEST THE STATE STEP  
IN, CITIES IF THEY TRY TO DO A  
GIVEN ACTIVITY IT HAS TO BE  
TAXABLE, WE WOULD BE RIGHT BACK  
TO THE CITY OF GAINESVILLE  
DISCUSSION AND TRYING TO WORKING  
WHETHER THAT STATUTE WOULD BE  
CONSTITUTIONAL ON ITS FACE OR  
CONSTITUTIONAL AS APPLIED.  
SO IT WOULD BE OUR POSITION, THE  
CERTIFIED QUESTION TO YOU WAS IN  
LIGHT OF CITY OF GAINESVILLE,  
DOES A MUNICIPALITY OWN AND  
OPERATE A MARINA STILL QUALIFY  
AS TRADITIONALLY EXEMPT  
MUNICIPAL PUBLIC PURPOSES?  
I THINK THAT ANSWER IS YES.  
HISTORICALLY IT HAS BEEN  
RECOGNIZED AS TRADITIONAL  
MUNICIPAL PURPOSE.  
CITY OF GAINESVILLE SAYS WE HAVE  
NOT CHANGED THE LAW AND THERE  
SHOULD BE NO DIFFERENCE HERE AND  
AT THIS TIME.  
SO IF THERE IS NOT ANY OTHER  
QUESTIONS I WOULD RESPECTFULLY  
URGE YOU TO AFFIRM THE FOURTH  
DISTRICT COURT OF APPEALS  
DECISION.  
THANK YOU.  
>> THANK YOU.  
ALL THE EXAMPLES THAT MR. LEVY  
GIVES, SEWER, AIRPORTS, BUS  
TERMINALS, THOSE ARE ALL  
DIFFERENT.  
GOING BACK TO THE WORDS, THEY'RE  
NOT PROVIDED BY THE PRIVATE  
SECTOR.  
NO PRIVATE SEWERS.  
NO PRIVATE AIRPORTS.  
GOING BACK TO THE WORDS OF THE  
CONSTITUTION, YOUR HONOR,  
MUNICIPAL AND PUBLIC PURPOSE, MY  
OPPONENTS CAN'T GET AROUND THE  
FACT THAT THE HARBORTOWN MARINA

IS FUNCTIONALLY IDENTICAL.  
NO ONE WOULD SAY.  
>> HOW ABOUT TENNIS COURTS?  
>> PARDON ME?  
>> TENNIS COURTS?  
TENNIS CLUB OR.  
>> TENNIS COURTS.  
>> OPEN PRIVATE TENNIS COURTS--  
>> PROVIDED BY THE CITY.  
>> LIKE MY SWIMMING POOL  
EXAMPLE.  
THE PRICE MAY MATTER.  
IF THERE ARE PUBLIC TENNIS  
COURTS OPEN WHERE MY KIDS CAN  
PLAY WE DON'T BELONG TO A  
PRIVATE CLUB THAT MAY BE  
SOMETHING THE CITY IS PROVIDING.  
HERE WE HAVE A COMMERCIAL  
ENTERPRISE AND THERE IS NO--  
>> PROBLEM IS WITH THE MARINA,  
PART AND PARCEL PROVIDING TO  
RESIDENTS OF A COMMUNITY SO THEY  
CAN HAVE A PLACE TO LEAVE THEIR  
VESSELS.  
THAT'S PART OF THE REASON FOR A  
MARINA.  
AND, FROM TIME TO TIME, THE SAME  
THING WITH A LOCK ON THEM.  
THESE ARE EXPENSIVE KINDS OF  
THINGS.  
THESE ARE NOT TOYS.  
AND I DON'T KNOW OF A MARINA, I  
EVER HAVE BEEN AROUND, I'VE BEEN  
A LOT OF THEM, PUBLIC AND  
PRIVATE, DO NOT SECURE  
PASSAGEWAY TO ACTUAL VESSELS  
BECAUSE OF CRIME.  
>> THAT'S FINE, YOUR HONOR.  
NO DIFFERENT THAN HARBORTOWN.  
THEY CAN'T GET AROUND THAT FACT.  
THERE IS NO PUBLIC ACCESS HERE.  
YOU DON'T GET A BOAT IN THIS  
MARINA UNLESS YOU PAY THE MARINA  
FEES.  
IT IS RUN LIKE A BUSINESS.  
>> YOU'RE HEADING FOR A  
PROPOSITION THAT MARINAS CAN  
NEVER BE BECAUSE THEY RENT  
SLIPS.  
THEY RENT SLIPS.

ONCE THEY BECOME FULL--  
>> MUNICIPALITIES CAN ENGAGE IN  
COMMERCIAL ACTIVITY.  
>> YOUR ARGUMENT LEADS TO THE  
INESCAPABLE CONCLUSION THEY WILL  
ALWAYS BE TAXABLE.  
THE DEMAND FOR BOAT SLIPS IN  
FLORIDA, PARTICULARLY  
SOUTH FLORIDA IS, IT'S AMAZING  
THE AMOUNT OF SLIPS SPACE THAT'S  
IN DEMAND.  
>> OKAY.  
>> SO, WHAT YOU WOULD BE SAYING  
IS IS THAT YOU WOULD NEVER HAVE  
A MARINA THAT WOULD BE, THAT  
COULD BE EXEMPT FROM ADVALOREM  
TAXES AS BEING OPERATED BY A  
MUNICIPALITY BECAUSE THEY LEASE  
SPACES TO BOATS AND THEY MAY GET  
FULL.  
>> NEVER IS A LONG TIME, BUT I  
THINK YES--  
>> THAT IS WHAT YOU'RE SAYING.  
>> MUNICIPAL MARINAS SHOULD BE  
TAXABLE BECAUSE THEY'RE  
FUNCTIONALLY EQUIVALENT WHAT IS  
AVAILABLE IN THE PRIVATE SECTOR.  
THEY'RE DIFFERENT FROM SEWERS.  
THEY'RE DIFFERENT FROM AIRPORT.  
THEY'RE DIFFERENT FROM MIUMIU  
MUNICIPAL FUNCTIONS.  
>> IT WAS SIRI, NOT MISCHA THAT  
MUNICIPALITIES SHOULD PROVIDE.  
IF THERE ARE NO FURTHER  
QUESTIONS, I WILL REST THERE.  
>> THANK YOU, SIR.  
THANK YOU FOR YOUR ARGUMENTS.  
THE COURT IS IN RECESS FOR TEN  
MINUTES.