

>> WE WILL MOVE TO THE ON THE DOCKET.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS VERSUS STATE OF FLORIDA.

>> INTERNATIONAL ASSOCIATION OF FIREFIGHTERS , WHICH IS THE FLORIDA STATE ASSOCIATION OF THE FIREFIGHTERS UNION.

WITH ME CO-COUNSEL RICH SWICA FROM ORLANDO AND CORY FROM CORAL GABLES.

IN PERTINENT PART THE RIGHT OF PUBLIC EMPLOYEES TO BARGAIN COLLECTIVELY SHALL NOT BE ABRIDGED.

>> WE KNOW FULLY THE BACKGROUND. CAN WE CUT INTO THIS.

THIS HAS REALLY CONSTITUTIONAL CONUNDRUMS CONFLICT WITH THAT POSITION, WELL ACKNOWLEDGED HIS TORE POSITION OF A GOVERNOR TO VETO LEGISLATIVE ACTION.

>> THAT IS THE CONFLICT.

>> THIS IS WHERE WE COME DOWN HERE.

IT SEEMS, IT IS VERY UNUSUAL THAT WHEN WE COME TO A SITUATION, JUST STAND BACK FROM THIS.

AVERAGE CITIZEN WOULD SAY THIS IS INSANITY WHERE YOU HAVE TWO PARTIES THAT ARE AT ODDS OVER SOMETHING.

THE GOVERNOR AND THE UNION OVER WHAT'S GOING TO BE, WHAT'S GOING TO HAPPEN.

THE PROVISION IT GOES TO THE LEGISLATURE AND THEN THE LEGISLATURE THEN DECIDES WHAT'S GOING TO HAPPEN BUT IT'S WELL-KNOWN AT THAT POINT IN TIME THAT THE GOVERNOR WILL HAVE TO SIGN OFF AND THE GOVERNOR'S A PARTY TO THAT DISPUTE.

THAT TO ME IS THE EPITOME OF INSANITY.

I MEAN TO SEE THAT CONFLICT, I MEAN RIGHT THERE, IT IS JUST SO PLAIN.

I THINK AN AVERAGE IT SEND COULD SEE THAT.

WHAT WOULD HAPPEN IF THIS COURT SHOULD DECLARE THE STATUTE, THE STATUTE PROVISION FOR GUBERNATORIAL, SOME WAY, IMPACT THAT, THAT IMPASSE PROCEDURE TO TRY TO CIRCUMVENT THE GOVERNOR'S NEED TO APPROVE IT?

>> THERE ARE TWO POSSIBILITIES. POSSIBILITY NUMBER ONE IS, HE CAN'T BE JUDGE AND PARTY AT THE SAME TIME.

>> AGREED.

I DON'T THINK ANYBODY IS DISPUTING THAT.

>> SO THAT WOULD MEAN IT WOULD NOT BE COLLECTIVE BARGAINING IF HE COULD HAVE HIS OWN WAY AT THE END OF THE PROCESS.

>> I THINK THAT'S PRETTY OBVIOUS.

>> SO THAT'S ONE OF THE POSSIBILITIES.

THE OTHER POSSIBILITY IS, SOMETHING THAT SURPRISED ME ABOUT THE DISTRICT COURT'S DECISION.

THEY NEVER MENTION WHAT THE CONSTITUTIONAL TEST IS FOR RESOLVING SUCH A CONFLICT. AND YOU HELD IN THE ATTORNEY'S GUILD CASE AND CHILD TEACHERS CASE, THE RIGHT OF PUBLIC EMPLOYEES TO BARGAIN COLLECTIVELY IS A FUNDAMENTAL RIGHT SUBJECT TO THE STRICT SCRUTINY RULE.

THAT WOULD MEAN, ALL RIGHT, YOU SAY THE GOVERNOR CAN STILL PARTICIPATE IN THIS PROCESS BUT IF HE DOES VETO WHAT THE LEGISLATURE RESOLVED THE IMPASSE, HE HAS GOT TO PROVE THAT HE DID SO BY STRICT SCRUTINY.

IN THIS CASE--

>> SO DO YOU, ARE YOU URGING US TO ADOPT JUDGE THOMAS' DISSSENT. IS THAT YOUR, WHAT RELIEF ARE

YOU SEEKING?

WHAT WOULD YOU LIKE THIS COURT
TO HOLD?

>> I WOULD LIKE YOU TO HOLD HE
IS NOT INVOLVED IN THE PROCESS
AT ALL.

LET ME EXPLAIN WHY.

BUT I RECOGNIZE--

>> BUT YOU SAID SOMETHING ABOUT
STRICT SCRUTINY, COMPELLING
STATE INTEREST.

ISN'T THAT WHAT JUDGE THOMAS'
OPINION, DISSENT SETS FORTH
WHICH DOESN'T REQUIRE DECLARING
A STATUTE UNCONSTITUTIONAL?
IT ALSO DOESN'T COMPLETELY
EVISCERATE THE GOVERNOR'S VETO
AUTHORITY?

>> I AM ONLY THE ADVISOR.
I RECOGNIZE THAT THERE ARE THOSE
TWO LOGICAL POSSIBILITIES.
YOU ASKED ME WHICH ONE I PREFER.
I DON'T THINK HE SHOULD BE
INVOLVED IN IT BECAUSE IT'S A
FUNDAMENTAL RIGHT.

THE PEOPLE MADE NO EXCEPTION.
IT'S THEIR GOVERNMENT.

AND THEY SAID--

>> BUT WHAT I'M STRUGGLING WITH
THIS HERE, LOOKING AT THE TEXT
OF THE AMENDMENT.

IT DOESN'T, IT DOES NOT
GUARANTY A PARTICULAR RESULT.
THE RIGHT TO COLLECTIVE
BARGAINING DOES NOT GUARANTY A
PARTICULAR PATH TO A PARTICULAR
RESULT, DOES IT?

>> NO.

AS A MATTER OF FACT, THE
LEGISLATURE COULD HAVE REVOLVED
THIS IF THEY WERE WITH THE
GOVERNOR'S POSITION.

BUT THEY DIDN'T.

THAT IS THE POINT.

WE HAVE TO DEAL WITH IT THE WAY
IT IS.

>> SEEMS LIKE WE'RE TALKING
ABOUT A CONFLICT BETWEEN THIS
PROVISION OF THE CONSTITUTION
AND THIS FUNDAMENTAL FEATURE OF

OUR CONSTITUTION, WHICH INVOLVES THE GOVERNOR'S VETO RIGHT OVER LEGISLATION, WOULD YOU CONCEDE THAT THAT IS A FUNDAMENTAL ASPECT OF OUR SYSTEM OF GOVERNMENT?

>> YES AND NO, I KNOW THAT IS A LAWYER'S ANSWER BECAUSE THERE IS ANOTHER FUNDAMENTAL AND MUCH MORE FUNDAMENTALLY AND THAT'S THE LIMITATION ON THE POWER OF GOVERNMENT CONTAINED IN THE DECLARATION OF RIGHTS.

>> WHEN THIS WAS ADOPTED, THIS RIGHT TO WORK PROVISION, THIS IS PART OF THE RIGHT TO WORK SECTION, WHEN THAT WAS ADOPTED, HOW IN THE WORLD WOULD THE VOTERS LOOKING AT THAT HAVE UNDERSTOOD THAT THERE WAS GOING TO FLOW OUT OF THAT SOME IMPLICITLY, SOME LIMITATION ON THE GOVERNOR'S AUTHORITY TO BE INVOLVED IN THE USE OF THE VETO, AND THAT SOMEHOW, THERE WERE GOING TO BE APPROPRIATIONS THAT WOULD BE MADE, THAT THE GOVERNOR COULD DO NOTHING ABOUT? HE WOULD HAVE HIS VETO AUTHORITY, WOULD BE TOTALLY SET ASIDE, THAT THAT ASPECT OF THE GUBERNATORIAL POWER UNDER OUR CONSTITUTION, WOULD BE SET ASIDE?

IF YOU LOOK AT THOSE WORDS, THAT FLOWS FROM THAT?

THAT'S WHAT, I'M HAVING TROUBLE WRAPPING MY MIND AROUND THAT?

>> THIS COURT HAD TO ANSWER THAT RATHER EARLY ON BECAUSE THERE WERE, THE LEGISLATURE MET EVERY TWO YEARS AT THAT TIME. THEY WENT THROUGH TWO SESSIONS WITHOUT DOING ANYTHING TO IMPLEMENT.

IN RAND II JUSTICE ROBERTS WRITING FOR THE COURT SAID, YOU WILL HAVE TO DO THAT AT THE NEXT SESSION OF THE LEGISLATURE OR WE'LL DO IT FOR YOU.

THEN HE WENT ON TO SAY THE
ARGUMENT WHETHER PUBLIC
EMPLOYEES SHOULD HAVE THE RIGHT
TO BARGAIN COLLECTIVELY IS OVER.
QUOTE, THE PEOPLE HAVE SPOKEN,
CLOSE QUOTE.

>> THAT IS UNQUESTIONABLY TRUE.
IT'S HERE.

IT'S IN THE CONSTITUTION BUT THE
PRECISE CONTOURS OF THAT AND HOW
THAT PROCESS FLOWS AND HOW IT
REACH AS PARTICULAR CONCLUSION,
YOU CAN'T DIVINE FROM WHAT THOSE
WORDS SAY, CAN YOU?

>> IT MAY BECOME AWKWARD DEALING
WITH THE STATE LEGISLATURE.
WORKS MUCH EASIER IN THE CITY
OBVIOUSLY.

MORE PEOPLE INVOLVED.

LEGISLATURE DOESN'T MEET ALL
YEAR LONG BUT THAT DOESN'T
DIMINISH THE RIGHT.

THE RIGHT IS STILL THERE.

IT IS NOT THAT DIFFICULT BECAUSE
ALL THAT REALLY HAPPENS, AND BY
THE WAY, WHEN THEY FIRST
IMPLEMENTED IT, THE RESOLUTION
OF IMPASSE WAS BY ARBITRATION
WHICH IS COMMONLY DONE IN THE
PRIVATE SECTOR.

BUT THE LEGISLATURE REPEALED
THAT.

SO THAT IS OUT.

IF THE PARTIES HAVE NOT REACHED
AGREEMENT, IF THEY'RE AT
IMPASSE, THERE HAS TO BE, HAS TO
BE SOME CONSTITUTIONALLY
AUTHORIZED THIRD PARTY DECIDER
AND IN THIS CASE IT WAS THE
LEGISLATURE.

THE BIG DIFFERENCE HERE THE
LEGISLATURE APPROPRIATED THE
MONEY AS WELL AS HAVING RESOLVED
IT.

>> SOUNDS LIKE EVEN THOUGH IF
YOU WOULD HAVE ARBITRATION AND
IT REQUIRES LEGISLATIVE ACTION
TO APPROPRIATE THE MONEY TO
SATISFY IT, IT IS STILL GOING TO
FLOW UP TO THE GOVERNOR?

>> THEY HAVE ALREADY APPROPRIATED THE MONEY. THE QUESTION HERE WHICH IS FUNDAMENTAL, IS, CAN THE GOVERNOR USE HIS VETO POWER OVER THE BUDGET TO VIOLATE THE FUNDAMENTAL RIGHTS OF THE PEOPLE?

HE COULD CANCEL ELECTIONS. HE COULD DO ANYTHING. IT CAN NOT BE.

I FEEL FOOLISH STANDING HERE THAT I'M ADVOCATING FOR THE IMPORTANCE OF THE DECLARATION OF RIGHTS.

THE DECLARATION OF RIGHTS IS BY DEFINITION A LIMITATION ON THE POWER OF THE GOVERNMENT NO MATTER HOW BIG THAT POWER IS. THE GOVERNMENT CAN NOT USE, WHATEVER BRANCH, IT IS NOT JUST THIS GOVERNOR, ANY GOVERNOR, EXECUTIVE POWER CAN NOT BE USED TO VIOLATE FUNDAMENTAL RIGHTS UNLESS THE GOVERNMENT CAN SHOW THAT IT WAS A COMPELLING STATE INTEREST AND THAT IT WAS THE LEAST INTRUSIVE WAY TO DO SO AND YOU SAID IN THE CHILES CASE, I THINK IT WAS A 700 MILLION-DOLLAR SHORTFALL IN A 28 BILLION-DOLLAR BUDGET. AND YOU SAID, THAT IS NOT A COMPELLING STATE INTEREST. YOU ALSO SAID THAT POLITICAL NECESSITY EITHER.

>> WAS CONTEXT THERE, REFRESH MY MEMORY ABOUT THAT. THE CONTEXT THERE WAS ABOUT A CONTRACT THAT WAS ENTERED AND THE QUESTION WAS WHETHER THAT CONTRACT COULD BE SET ASIDE, RIGHT?

>> EXACTLY.

>> THAT IS NOT SOMETHING WE'VE GOT HERE.

THIS HAS NEVER ACTUALLY COME TO FRUITION BECAUSE OF THE GOVERNOR'S VETO.

>> THIS IS NEW, YOU'RE RIGHT BUT

THE PRINCIPLE IS THE SAME.
THE PRINCIPLE HAS TO BE THAT
ONCE THE LEGISLATURE, WHICH IS
THE DESIGNATED AND, THERE HAS TO
BE SOMEBODY WHO RESOLVES THE
IMPASSE.

IT CAN'T GO BACK TO THE PARTY
WHO SAID NO IN THE FIRST PLACE.
YOU CAN READ IT.

>> BUT LEGISLATURE RESOLVED THE
IMPASSE.

>> THEY DID AND APPROPRIATED THE
MONEY.

>> THEY HAVE A SEPARATE
PROVISION, IF MONEY IS NOT THERE
IT IS RESOLVED THE OTHER WAY,
CORRECT.

>> YES, BUT IT WAS RESOLVED.
EITHER THE GOVERNOR IS AN
INTERLOPER AND OUT OF THIS
PROCESS-- TRY ANOTHER WAY.

WHAT IF THE LEGISLATURE
DESIGNATED THE COURTS AS THE
RESOLUTION OF IMPASSE?

>> BUT THE LEGISLATURE CAN NOT
APPROPRIATE FUNDS EXCEPT BY
PASSING A LAW.

THAT'S THE WAY THE LEGISLATURE
ACTS.

AGAIN THAT IS PART OF THE
PROCESS OF OUR GOVERNMENT THAT
IS FUNDAMENTAL.

AND THE GOVERNOR IS PART OF THAT
PROCESS.

>> AND THE PEOPLE HAVE PUT
LIMITATIONS ON THAT IN THE
DECLARATION OF RIGHTS ABOUT ALL
SORTS OF THINGS.

THIS PARTICULAR ONE IS RIGHT
THERE WITH RIGHT OF ASSEMBLY AND
FREEDOM OF RELIGION.

>> THERE IS A DIFFERENCE BETWEEN
THE RIGHT TO COLLECTIVELY
BARGAIN THAT IS IN THE
DECLARATION OF RIGHTS AND THE
RIGHT TO RECEIVE HOW MUCH MONEY
OF PUBLIC FUNDS YOU'RE GOING TO
GET PURSUANT TO THAT THING,
PURSUANT TO THE COLLECTIVE
BARGAINING AGREEMENT.

THOSE ARE TWO SEPARATE THINGS.
THE RIGHT TO COLLECTIVELY
BARGAIN IS PROTECTED,
DECLARATION OF RIGHTS, BUT IT
DOESN'T GUARANTY WITHOUT
LIMITATION HOW MUCH MONEY YOU
GET AND THAT IS SUBJECT TO THE
APPROPRIATION PROCESS AND
GOVERNOR'S POWERS OVER THAT
PROCESS LIKE ALL OTHER PUBLIC
FUNDS, IS IT NOT?

>> THIS CASE IS NOT ABOUT THE
AMOUNT.

IT WAS NEVER ABOUT THE AMOUNT.
THIS CASE IS ABOUT ONE OF TWO
THINGS THE GOVERNOR CAN NOT USE
THE POWER OF BUDGET TO VIOLATE
THE FUNDAMENTAL RIGHTS OF THE
PEOPLE IN ANY WAY?

OR AT LEAST WITH REGARD TO
COLLECTIVE BARGAINING THE STRICT
SCRUTINY RULE APPLIES, AND HE
WOULD HAVE TO DEMONSTRATE A
COMPELLING STATE INTEREST AND HE
DIDN'T DO THAT.

>> ARE WE NOT TALKING ABOUT
MONEY?

NO.

THEY HAD ALREADY APPROPRIATED
MONEY.

HE SAID NO.

HE CAN ONLY SAY NO IF HE CAN
DEMONSTRATE THERE WAS COMPELLING
STATE INTEREST TO DO SO AND
THERE ISN'T.

THEY WERE NEVER GIVEN THAT.

>> FINISH YOUR THOUGHT ABOUT
RESOLVING AN IMPASSE.

THEY COULD HAVE USED A JUDICIAL
MECHANISM.

EXPLAIN THAT.

>> WELL, WOULDN'T HAVE
SEPARATION OF POWERS.

CERTAINLY THE LEGISLATURE WOULD
HAVE TO HONOR THE DECISIONS OF
THE COURT.

THAT IS WHY WE'RE HERE.

YOU KNOW, THERE IS NO SEPARATION
OF POWERS.

THE STATE HASN'T ADJUDICATED ITS

RIGHTS ALL THE TIME BY THE COURTS.

THERE IS NOTHING NEW ABOUT THAT. THE QUESTION WHETHER IT IS APPROPRIATE TO HAVE A-- THEY'RE NOT THE EMPLOYER.

>> BUT EVEN IF THE COURT, OR THE PERSON WHO, OR ENTITY THAT WAS TO RESOLVE THE IMPASSE AND THE COURT CAME UP WITH SOME AMOUNT AND LEGISLATURE HAD TO APPROPRIATE THE MONEY, WHAT WOULD STOP THE GOVERNOR, EVEN UNDER THOSE CIRCUMSTANCES FROM VETOING?

>> WELL, OF COURSE THAT IS A DIFFERENT PROCESS AND I THINK YOU MAY RECOGNIZE WHERE IT COMES TO PLAY BECAUSE IF A COURT, CIRCUIT JUDGE DECIDED WHO IS GIVEN POWER TO DO RESOLUTION OF THE IMPASSE AND HE SIDED IN FAVOR OF THE UNION, THAT COULD GO TO A WRIT OF EXECUTION AND THE SHERIFF WOULD TAKE THE BANK ACCOUNT OF THE STATE TO SATISFY IT.

>> YOU CAN'T EXECUTE AGAINST THE STATE?

THAT IS NOT THE REMEDY.

THE POINT, IF WE HAD A JUDGMENT OF SOME KIND, THE QUESTION WOULD BE, WHAT'S THE PROCESS TO FLOW UP TO, UP THE CHAIN.

SO FIRST IT WOULD GO THROUGH THE LEGISLATIVE PROCESS AND THEN, LET'S ASSUME THAT THE LEGISLATURE APPROVES PAYMENT OF A JUDGMENT OF SOME KIND AND THEN IT GOES TO, STILL GOES TO THE GOVERNOR.

THAT IS THE PROBLEM.

EVERYTHING THE LEGISLATURE DOES FLOWS UP TO THE GOVERNOR.

THAT'S THE FUNDAMENTAL FIGHT THAT, OR IT IS NOT A FIGHT.

IT IS A FUNDAMENTAL PROBLEM TO DEAL WITH IN THIS AREA.

>> WE DO NOT HAVE A GUBERNATORIAL FORM OF

GOVERNMENT.

WE HAVE A CONSTITUTIONAL FORM OF GOVERNMENT.

>> WELL THAT'S TRUE, BUT THE CONSTITUTION GIVES WHOEVER IS SITTING IN THAT CHAIR THE POWER TO EITHER APPROVE OR VETO.

>> YEAH, BUT THIS AMENDMENT THAT GAVE THE PEOPLE RIGHTS WAS LATER IN TIME.

SO WE CERTAINLY KNOW THAT THE PEOPLE WHEN THEY VOTED FOR THIS, AND ROBERTS SAID THE PEOPLE HAVE SPOKEN.

>> LET ME HAVE YOU ADDRESS A PRACTICAL QUESTION I HAVE. WHAT AGENCY OR AGENCIES WERE THE RECIPIENT OF THE FUNDS IN THE APPROPRIATION THAT GOT VETOED?

>> WELL THE, THAT'S KIND OF COMPLICATED BECAUSE THE STATE FIREFIGHTERS ACTUALLY WORK FOR A NUMBER OF DIFFERENT AGENCIES. SOME OF WHICH ARE INDEPENDENT OF THE GOVERNOR.

THAT IS TO SAY, THERE IS THE TEACHERS AT THE STATE FIRE COLLEGE.

THEY WORK FOR THE CHIEF FINANCIAL OFFICER.

THERE IS THE FORESTRY FIREFIGHTERS WHO FIGHT FOREST FIRES.

THEY WORK FOR THE COMMISSIONER OF AGRICULTURE.

BOTH OF THOSE PEOPLE ARE INDEPENDENT CONSTITUTIONAL OFFICERS IN THEIR OWN RIGHT AND DON'T ANSWER TO THE GOVERNOR.

SO THERE ARE--

>> THEY'RE STILL FUNDED THROUGH THE SAME APPROPRIATION BILL, RIGHT?

>> RIGHT.

>> AS A PRACTICAL MATTER, ISN'T IT CORRECT THAT THE LEGISLATURE CAN PRACTICALLY MAKE VETO-PROOF APPROPRIATION BECAUSE OF THE, THERE IS THE, THE GOVERNOR CAN VETO ANY SPECIFIC APPROPRIATION

BUT CAN NOT VETO A PROVISIO
WITHOUT A VETOING THE
APPROPRIATION CONNECTED WITH IT,
CORRECT?

>> YES BUT FUNDAMENTAL--

>> SO THE LEGISLATURE COULD HAVE
PUT A PROVISIO LANGUAGE ATTACHED
WITH THE SALARY BUDGET FOR THE
DEPARTMENT OF AGRICULTURE AND
WHATEVER OTHER DEPARTMENTS ARE
INVOLVED AND SAYS THAT OUT OF
THIS SPECIFIC APPROPRIATION OF
HOWEVER MANY MILLIONS OR
HUNDREDS OF MILLIONS OF DOLLARS
THE WHOLE OPERATING BUDGET OR
SALARY BUDGET SO MUCH CAN BE
USED FOR THAT AND THAT PUTS THE
GOVERNOR OF A POSITION HE IS
GOING TO HAVE TO, IF HE WANTS TO
VETO THE PROVISIO, HE HAS TO VETO
THE ENTIRE BUDGET FOR THE
AGENCY.

THE LEGISLATURE DOES THAT ALL
THE TIME, RIGHT?

>> BUT NOT WITH FUNDAMENTAL
RIGHTS.

THE FACT OF THE MATTER--

>> I GUESS THE THING THAT
DISTURBS ME, IF THE LEGISLATURE
CAN ESSENTIALLY PRACTICALLY MAKE
AN APPROPRIATION VETO-PROOF
BECAUSE OF THAT SECOND PROVISIO,
PARTICULARLY IN LIGHT OF THAT I
HAVE, IT IS TROUBLING TO ME THAT
THE THOUGHT THAT THE LEGISLATURE
CAN BY STATUTE MAKE A SPECIFIC
APPROPRIATION VETO-PROOF IN
CONTRAVENTION OF THE FIRST PART
OF THE VETO LANGUAGE THAT SAYS
THE GOVERNOR MAY VETO ANY
SPECIFIC APPROPRIATION.

I MEAN THEY-- THEY CHOSE TO DO
THIS IN A WAY THAT THE
CONSTITUTION ALLOWS THE POSITIVE
TO VETO IT.

THAT IS THEIR PREROGATIVE.

THEY RESOLVED THE IMPASSE IN
THAT MANNER.

THEY COULD HAVE RESOLVED THE
IMPASSE IN A MANNER THAT MADE IT

PRACTICALLY IMPOSSIBLE FOR THE GOVERNOR TO VETO.

JUST--

>> FUNDAMENTAL RIGHTS ARE SUPPOSED TO BE FREE AND AVAILABLE.

THEY ARE NOT SUBJECT TO INTRICACIES OF THE LEGISLATURE.

>> YOU'RE NOT CONTENDING THAT, THAT YOU HAVE FUNDAMENTAL RIGHT TO THE \$2,000, RIGHT?

I MEAN, THERE IS NO FUNDAMENTAL RIGHT FOR THE, THAT REQUIRED THAT THE LEGISLATURE PROVIDE THAT AMOUNT OF MONEY.

>> THAT IS NOT THE ISSUE HERE.

>> I UNDERSTAND THAT, BUT, THAT YOU'RE SAYING THAT BUT IT IS THE ISSUE.

THAT'S WHAT WE'RE TALKING ABOUT.

IT IS ALL ABOUT WHETHER THAT MONEY IS GOING TO BE SPENT BY THE STATE OR NOT AND I'M HAVING TROUBLE FOLLOWING THE LINE OF ARGUMENT, IT'S A FUNDAMENTAL RIGHT BUT IT IS NOT A FUNDAMENTAL RIGHT SO THE LEGISLATURE HAD TO DO IT, RIGHT?

>> SOMEBODY HAS TO DO IT.

EITHER THE JUDICIAL BRANCH, ARBITRATION OR THE LEGISLATIVE BRANCH.

>> FUNDAMENTAL RIGHT TO GET THAT AMOUNT OF MONEY?

>> WHAT IS A FUNDAMENTAL RIGHT TO HAVE THE IMPASSE RESOLVED.

>> I UNDERSTAND THAT.

>> THEY COULD RESOLVE IT BY 1999, WAVER IT IS.

>> OR BY ZERO, RIGHT?

>> YES THEY COULD HAVE DONE IT IN FAVOR OF THE GOVERNOR BUT THEY DIDN'T.

THAT'S THE POINT.

THEY APPROPRIATED THE MONEY. THE GOVERNOR VIOLATED THE FUNDAMENTAL RIGHT OF THE PARTIES TO BARGAIN COLLECTIVELY.

>> IF THEY CAN DO IT IN FAVOR OF THE GOVERNMENT, THEY HAVE AT

LEAST THREE OPTIONS.

THEY CAN SAY, NO, YOU DON'T GET IT.

YES, YOU GET IT I WILL DO IT IN A WAY PRACTICALLY IMPOSSIBLE FOR THE GOVERNOR TO VETO, OR YES YOU CAN DO IT, AND DO IT IN A WAY THE GOVERNOR ALLOWS IT TO VETO.

IF YOU DON'T HAVE A FUNDAMENTAL RIGHT TO THE MONEY, WHY DO YOU HAVE A FUNDAMENTAL RIGHT TO DICTATE THE WAY THE LEGISLATURE DOES IT IN A MANNER THAT CONFLICTS WITH THE CONSTITUTION?

>> FUNDAMENTAL RIGHTS ARE SUPPOSED TO BE FREELY AVAILABLE. THEY'RE NOT SUPPOSED TO BE THE SUBJECT OF INTRICACIES OF THE GOVERNMENT MAKING A KIND OF OBSTACLE FOR IT SO YOU DON'T GET THE TO GET THE PEOPLE SAID YOU'RE ENTITLED TO.

>> THERE IS THE FOLLOW-UP STEP TO THAT.

THAT THE LEGISLATURE KNEW THAT IF A GOVERNOR IS GOING TO VETO A FUNDING BILL, THAT THEY CAN OVERRIDE THAT.

>> SAME ARGUMENT.

>> THEY CAN OVERRIDE THAT WITH A, WITH A VOTE.

SO THAT WHY WOULD THAT NOT, IF I'M SITTING HERE TOTALLY LOOKING AT THIS WHOLE PICTURE, THAT WOULD BE THE FALL-BACK POSITION.

OKAY SO THE GOVERNOR DON'T GO ALONG, WE'LL OVERRIDE THE VETO? WHY COULD THAT NOT WORK?

>> FUNDAMENTAL RIGHTS, YOU SAID IT'S A FUNDAMENTAL RIGHT, SUBJECT TO STRICT SCRUTINY.

NOW IT IS NO LONGER SUBJECT TO STRICT SCRUTINY?

IT SHOULD BE.

THE POINT IF IT'S A FUNDAMENTAL RIGHT YOU CAN'T HAVE INTRICACIES LIKE OVERRIDING A VETO OR JUST TRASH.

IT ISN'T FUNDAMENTAL AT ALL.

THE FACT OF THE MATTER I KNOW
THIS IS A LITTLE DIFFERENT BUT
IT IS JUST THE WORKERS, BUT THE
FACT OF THE MATTER THE PEOPLE
WANTED THIS, AND IT IS THEIR
GOVERNMENT.

REMEMBER WHAT ABRAHAM LINCOLN
SAID--

>> THAT IS NOT IN DISPUTE HERE.

>> OKAY.

>> THIS COURT RECOGNIZES THAT,
THE QUESTION IS, WHAT DOES THAT
MEAN?

THAT JUST ELIMINATE ANY
DISCUSSION OF THE PROCESS BY
WHICH THOSE, THAT FUNDAMENTAL
RIGHT IS IMPLEMENTED?

AND PART OF THE BARGAINING
PROCESS DOESN'T INCLUDE
PARTICULAR AMOUNT BUT IT DOES I
THINK, FAIR TO SAY HAVE A
PROCESS THAT'S FAIR.

SO THAT YOU DON'T HAVE THE
ACTUAL OPPONENTS TO THE PROCESS
HAVING A SAY WHAT HAPPENS.

>> THE ARGUMENT IS THE SAME.

I OFFERED THAT AS AN
ALTERNATIVE, WHICH IS A
REASONABLE APPROACH.

AND IS THE ONE YOU ALWAYS USED
FOR EVERYTHING.

AND THAT IS, THE GOVERNOR CAN
PARTICIPATE IN THIS PROCESS AS
YOU'RE SUGGESTING BUT IF HE IS
GOING TO GO AGAINST THE
LEGISLATURE'S RESOLUTION OF THE
IMPASSE, THEN HE IS GOING TO
HAVE TO DEMONSTRATE THE STRICT
SCRUTINY TEST, A COMPELLING
STATE REASON FOR DOING SO.

THAT IS THE RULE OF LAW.

IT IS ORDINARY WAY OF
OPERATING--

>> COUNSEL, YOU HAVE USED ALL
YOUR TIME.

PLUS A LITTLE MORE.

BUT I WILL AFFORD YOU TWO
MINUTES FOR REBUTTAL.

>> GOOD MORNING MR. CHIEF
JUSTICE AND MAY IT PLEASE THE

COURT IF I MAY I WOULD LIKE TO START OUT BY ADDRESSING WHAT WE THINK IS THE SINGLE MOST IMPORTANT ISSUE THAT'S PRESENTED IN THIS CASE AND THAT IS WHETHER THE LEGISLATURE SHOULD BE UNDERSTOOD TO HAVE THE AUTHORITY TO STATUTORILY MODIFY OR REPEAL OR LIMIT THE GOVERNOR'S CONSTITUTIONALLY-AS SIGNED ROLE IN THE APPROPRIATION PROCESS? WE THINK THE ANSWER TO THAT QUESTION UNDER THE PLAIN TEXT OF ARTICLE III, SECTION 8, AND THIS COURT'S PRECEDENCE CONSTRUING THAT PROVISION HAS TO BE NO. THAT CONCLUSION STANDING ALONE PROVIDE SUFFICIENT BASIS FOR DISPOSING OF THIS CASE.

>> I GUESS WHAT I'M STRUGGLING WITH THERE, AND I UNDERSTAND YOUR ARGUMENT BUT IT GOES BACK TO THE STATUTE ITSELF.

WOULD WE BE SAYING, WHEN IT COMES TO MONEY THAT IT'S ESSENTIALLY WHATEVER IS DECIDED WITHIN THE SCOPE OF THAT COLLECTIVE BARGAINING STATUTE? THAT THE GOVERNOR CAN VETO THAT FOR ANY REASON HE WANTS?

I JUST WOULD LIKE YOU TO ADDRESS JUDGE THOMAS', WAS IT A DISSENT OR, TO SAY, WELL, AT LEAST THOUGH, IF THERE IS A COMPELLING INTEREST TO OVERRIDE IT, THAT THAT THEN HARMONIZES THE RIGHT TO COLLECTIVE BARGAIN, MEANINGFULLY COLLECTIVE BARGAINING WITH THE RIGHT TO VETO?

BECAUSE IT DOESN'T SEEM TO ME THE OVERRIDE, YOU KNOW, AFTER THE LEGISLATURE IS OUT OF SESSION, THE VETO OCCURS. YOU'RE GOING TO BRING BACK THE ENTIRE LEGISLATURE FOR A SPECIAL SESSION TO OVERRIDE THAT ONE ITEM.

THAT IS ALMOST, WOULD BE NOTHING AT ALL.

SO WHAT ABOUT, WHY ISN'T THAT AN APPROPRIATE WAY TO RESOLVE THE CONFLICT BETWEEN RIGHT TO COLLECTIVE BARGAINING AND RIGHT TO VETO?

>> FOR A COUPLE OF REASONS, YOUR HONOR.

FIRST, THIS COURT HAS NEVER HELD THAT THE GOVERNOR'S EXERCISE OF HIS VETO POWER IS SUBJECT TO STRICT SCRUTINY, BASED ON THE REASON SUPPORTING THE EXERCISE OF THAT POWER.

SO THIS IS AN ENTIRELY NOVEL CONSTITUTIONAL INNOVATION THAT OUR FRIENDS ON THE OTHER SIDE ARE ASKING THIS COURT TO EMBRACE FOR THE VERY FIRST TIME IN THE HISTORY OF THIS STATE.

AND THAT'S A DANGEROUS ROAD TO GO DOWN.

WE WOULD EMPHASIZE IN RESPONSE TO YOUR HONOR'S QUESTION THE PRACTICAL AND DOCTRINAL IMPLICATIONS OF ACCEPTING PETITIONER'S NOVEL CONSTITUTIONAL THEORY.

FIT IS TRUE THAT THE LEGISLATURE WHEN IT IS ENFORCING OR IMPLEMENTING ARTICLE 1 SECTION 6 CAN DO AWAY WITH THE PRESENTMENT REQUIREMENT OF OUR ARTICLE III, SECTION 8, WHAT ELSE CAN IT DO AWAY WITH?

FOR EXAMPLE, WHY CAN'T THE LEGISLATURE DO AWAY WITH THE BICAMERAL REQUIREMENT SET OUT IN SECTION 8?

>> ARE YOU SAYING THE STATUTE ITSELF THAT THE LEGISLATURE PASSED UNCONSTITUTIONAL?

>> IT IS NOT BECAUSE WE BELIEVE THAT THE STATUTE NEED NOT AND SHOULD NOT BE CONSTRUED TO LIMIT THE BICAMERALISM OR PRESENTMENT REQUIREMENT THAT IS SET OUT IN ARTICLE III SECTION 8.

THAT IS NOT JUST OUR VIEW, JUSTICE PARIENTE.

THIS COURT IN FLORIDA VERSUS--

>> I'M STILL, MAYBE, YOU GOT A PROCEDURE FOR COLLECTIVE BARGAINING.

BOTH PARTIES COME.

THEY COME TO AN IMPASSE.

THEN THE STATUTE IS, REQUIRES THAT THE LEGISLATURE MAKE THAT DECISION AND APPROPRIATE, CORRECT?

>> YES.

>> SO THE ISSUE OF HOW IT GETS RESOLVED, IF IT HAS, IF THE GOVERNOR HAS PLENARY AUTHORITY TO VETO THAT APPROPRIATION, THEN DOESN'T IT UNDERMINE THE ENTIRE STATUTORY SCHEME?

AGAIN, YOU MAY, IT'S, I DON'T KNOW.

I'M JUST, I DON'T THINK IT IS, LIKE WHAT YOU JUST SAID, COULD THEY AMEND, I MEAN YOU'RE TALKING ABOUT A BICAMERAL LEGISLATURE.

ISN'T THAT IN THE CONSTITUTION?

>> IT IS.

>> SO I DON'T REALLY THINK--

>> SO IS THE PRESENTMENT REQUIREMENT IN ARTICLE III, SECTION 8.

IN OTHER WORDS THERE IS A SINGLE EXCLUSIVE, AND MANDATORY PROCEDURE BY WHICH A BILL CAN BECOME LAW IN THIS STATE AND THAT IS SET OUT IN THE EXPRESS TERMS OF OUR ARTICLE III, SECTION 8.

THE LEGISLATURE HAS NO MORE AUTHORITY WHEN IT IS IMPLEMENTING ARTICLE I, SECTION 6 TO DO AWAY WITH THE PRESENTMENT REQUIREMENT THAN IT DOES TO DO AWAY WITH ANY OTHER GENERALLY APPLICABLE CONSTITUTIONAL REQUIREMENT.

>> MAKE SURE I UNDERSTAND, AS YOUR DISTINGUISHED OPPOSITION SUGGESTS, THAT YOU WOULD INTERPRET OUR CONSTITUTIONAL SCHEME SO THAT THE EXECUTIVE HAS ABSOLUTE DICTATORIAL POWER WITH

REGARD TO REVIEWING EVERY ITEM THAT DEALS WITH FINANCES EITHER TO ACCEPT IT, OR VETO IT?

IT HAS NO, WHETHER THAT DEALS WITH ELECTIONS, WHETHER THAT DEALS WITH OTHER FORMS OF WHAT WE CONSIDER OUR AMERICAN WAY OF GOVERNMENT, AND THERE IS NO EXCEPTION TO THAT?

IS THAT THE PREMISE THAT YOU'RE FOLLOWING?

>> SO OUR PREMISE IS THAT THIS COURT SHOULD FOLLOW THE PRECEDENT THAT IT IS ARTICULATED IN BROWN VERSUS FIRESTONE, WHICH IS NOT THAT THE GOVERNOR HAS ABSOLUTE DICTATORIAL POWER, FAR FROM IT.

THIS COURT IN THE BROWN CASE STRESSED THAT THE VETO POWER HAS TO BE EXERCISED IN CONFORMITY SET OUT IN ARTICLE III, SECTION 8, INCLUDING THE REQUIREMENT WHICH JUSTICE LAWSON REFERRED IF THE GOVERNOR VETOES A SPECIFIC PROVISIO HAVING TO DO WITH AN APPROPRIATION, HE HAS TO VETO THAT WHOLE APPROPRIATION. THAT FOR EXACTLY THE REASON JUSTICE LAWSON STRESSED PROVIDES A VERY SIGNIFICANT CHECK ON THE GOVERNOR'S POWER.

>> BUT OTHER THAN THAT, IF IT IS NOT CONTAINED, DON'T FOLLOW THROUGH WITH THE PROVISIO, PLAYING THAT GAME, THAT THE GOVERNOR, WHOEVER IT IS, THIS ONE OR THE NEXT ONE OR ANY OF THEM, WOULD HAVE THE POWER UNDER CIRCUMSTANCES SUCH AS THIS TO TAKE AN ACTION THROUGH A VETO THAT, THAT, LET'S ASSUME, LET'S ASSUME, CLEARLY VIOLATES ANOTHER PROVISION OF OUR CONSTITUTIONAL WE CONSIDER TO BE THE RIGHTS? IS THAT WHERE WE ARE?

>> NO.

BECAUSE WE'RE ABSOLUTELY NOT ASSERTING THE AUTHORITY OF THE GOVERNOR TO VIOLATE ANY OTHER

GENERALLY APPLICABLE
CONSTITUTIONAL PROVISION.
WHAT WE'RE ASKING FOR THIS COURT
TO FOLLOW THE PRONOUNCEMENT THAT
IT ARTICULATED IN STATE VERSUS
FLORIDA POLICE BENEVOLENT
ASSOCIATION WHERE THIS COURT
STRESSED THAT THE COLLECTIVE
BARGAINING RIGHT THAT IS CREATED
BY ARTICLE I, SECTION 6 DOES NOT
CHANGE OR INVADE OTHER GENERALLY
APPLICABLE CONSTITUTIONAL
REQUIREMENTS INCLUDING, AND THIS
IS VERY IMPORTANT, THE
CONSTITUTIONAL PRINCIPLE OF THE
SEPARATION OF POWERS WHICH IS
EMBODIED IN ARTICLE II, SECTION
3.

NOT TO STRESS THE SEPARATION
POWERS.

>> THAT VIEW IS ADOPTED, THEN
WHY IS NOT THE STATUTORY SCHEME
UNCONSTITUTIONAL AND WE CRY TO
THE LEGISLATURE TO FIND A
DIFFERENT, DIFFERENT PROGRAM OR
PLAN THAT'S CONSISTENT WITH THE
RIGHT OF FLORIDA CITIZENS TO
FREELY BARGAIN?

>> YOU COULD GO DOWN THAT ROAD,
YOUR HONOR, AND WE WOULD
RESPECTFULLY SUGGEST TO THE
COURT THAT YOU NEED NOT, IN OUR
VIEW SHOULD NOT CONSTRUE CHAPTER
447 OF FLORIDA STATUTES TO
CONFLICT WITH THE BUY
BICAMERALISM AND PRESENTMENT
REQUIREMENT SET OUT IN SECTION
8.

WHY?

BECAUSE THE FLORIDA POLICE
BENEVOLENT ASSOCIATION.
THE COURT CAN SAY THE RIGHT TO
ENGAGE IN COLLECTIVE BARGAINING
UNDERSTOOD TO BE SUBJECT TO THE
APPROPRIATION POWER AND THE
APPROPRIATION POWER IS SET OUT
IN ARTICLE II, SECTION 8.

>> THAT DIDN'T THROW INTO
CONFLICT THE VETO POWER OF THE
GOVERNMENT THOUGH, DID IT?

>> WELL, WHAT THE COURT SAID THE RIGHT TO COLLECTIVELY BARGAIN IS GENERALLY SUBJECT TO THE APPROPRIATION POWER.

>> TRUE.

>> THE COURT EXCITED, FOR EXAMPLE A SECOND DISTRICT COURT OF APPEAL CASE THAT EXPRESSLY STATED THAT THE APPROPRIATION POWER OF COURSE INCLUDES ALL GOVERNMENTAL OFFICERS WHO PLAY A CONSTITUTIONALLY ASSIGNED ROLE IN THE APPROPRIATION PROCESS AND THAT OF COURSE INCLUDES THE GOVERNOR.

>> OKAY, THAT HAS BEEN ANSWERED THEN, IS YOUR VIEW?

>> SO OUR VIEW THE STATUTE NEED NOT BE CONSTRUED TO CONFLICT WITH THE CONSTITUTION BUT IF YOU UNDERSTOOD THE STATUTE TO TRY TO ASSERT A POWER ON THE PART OF THE LEGISLATURE TO DO AWAY WITH THE PRESENTMENT REQUIREMENT, THEN WE CERTAINLY WOULD ARGUE AND WE DO IN OUR BRIEF THAT THE STATUTE SO CONSTRUED WOULD NOT BE CONSTITUTIONAL, NOT JUST IN CONTRAVENTION OF ARTICLE II, SECTION 8, BUT CON HAVE TENSION OF SEPARATION OF POWERS PRINCIPLE IN ARTICLE II. HERE IS THE POINT I WOULD STRESS, JUSTICE LEWIS, YOU RAISE IMPORTANT CONCERNS.

AS IN CASE IN LAW AND LIFE THERE IS NO PERFECT SEVEN SOLUTION. AND IN SOME WAYS YOU'RE LOOKING--

>> YOU ALL COME HERE TO FIND THAT PERFECT SOLUTION.

>> USUALLY LEAVE DISAPPOINTED.

>> EVERYONE.

>> WELL, WE'D LIKE TO SUGGEST THAT THE LEAST BAD ANSWER HERE IS TO CONSTRUE THE STATUTE IN SUCH A WAY IT CONFORMS WITH THE REQUIREMENTS OF ARTICLE III, SECTION 8.

WHY IS THAT?

THE PRACTICAL ALTERNATIVE IS TO GIVE THE LEGISLATURE THE POWER TO DO AWAY WITH BY STATUTE, TO DO AWAY WITH WHAT THIS COURT IN BROWN VERSUS FIRESTONE CHARACTERIZED AS THE PRIMARY CHECK ON WHAT WOULD OTHERWISE BE UNFETTERED LEGISLATIVE POWER WITH RESPECT TO THE APPROPRIATION PROCESS.

THAT WOULD BE A PRETTY BIG DEAL. THAT HAS NEVER BEEN DONE BEFORE IN THE HISTORY OF THIS STATE. WE WOULD SUGGEST IF THERE IS ANY WAY TO AVOID THAT OUTCOME, AND THERE IS HERE, THAT THE COURT SHOULD A VEIL ITSELF OF THAT OPPORTUNITY.

>> YOU KNOW, I GUESS, THIS GOES BACK TO SOMETHING THAT WAS SAID RIGHT AT THE BEGINNING OF THE ARGUMENT BUT IT SEEMS TO ME IN THIS WHOLE COLLECTIVE BARGAINING SITUATION HOW DO WE GET AROUND THE FACT THAT THE GOVERNOR IS A PARTICIPANT IN THIS COLLECTIVE BARGAINING, YOU GET AN IMPASSE, AND SO WHAT YOU'RE SAYING IS THE GOVERNOR HAS THE LAST SAY IN THIS WHOLE PROCESS BECAUSE THE GOVERNOR GETS TO VETO EVEN THOUGH YOU GOT A PROCESS WHERE THE IMPASSE GOES TO SUPPOSEDLY A NEUTRAL BODY, LOOKS AT THE GOVERNOR'S POINT OF VIEW, LOOKS AT THE OTHER PARTICIPANTS POINT OF VIEW, COMES TO A COMPROMISE, OR A SOLUTION, AND THEN THE GOVERNOR STILL GETS TO SAY NO? SO HOW DO WE GET AROUND THAT? IS THERE SOME WAY TO RESOLVE THAT?

>> IT'S A VERY IMPORTANT QUESTION, YOUR HONOR. AND I WOULD ANSWER IT IN A COUPLE OF WAYS. THE FIRST IS TO SAY THAT IT IS NOT ALL TOGETHER UNCOMMON IN OUR CONSTITUTIONAL SYSTEM FOR ONE BRANCH OF GOVERNMENT TO HAVE THE

POWER TO RESOLVE DISPUTES THAT TOUCH ON ITS OWN POWER.

SO FOR EXAMPLE, THE LEGISLATURE CAN APPROPRIATE FUNDS THAT AFFECT AND GO TO LEGISLATIVE OPERATIONS.

THIS COURT ON QUITE FREQUENT BASIS DECIDES CASES THAT SPEAK TO THE DISTRIBUTION OF POWER BETWEEN THE JUDICIAL BRANCH AND OTHER BRANCHES OF GOVERNMENT. THERE IS NOTHING IMPROPER ABOUT THAT, EVEN THOUGH YOU COULD CONCEPTUALIZE IT AS SPECIES OF SELF-INTEREST.

ANOTHER WAY OF SAYING THIS BRANCH UNDER OUR CONSTITUTION UNDER THE CONSTITUTION HAS TO PERFORM THEIR CONSTITUTIONALLY ASSIGNED ROLE.

>> I'M SORT OF STUCK ON THE ARGUMENT, MAYBE YOU ALREADY ANSWERED IT THE BEST THAT IS AVAILABLE, WE'RE DEALING WITH A FUNDAMENTAL RIGHT TO COLLECTIVELY BARGAIN.

AND SO, IT IS NOT THE SAME AS-- WE'RE NOT TALKING ABOUT THE SEPARATION OF POWERS ISSUE HERE. AND YOU KNOW, YOU'RE SAYING, YOU WOULD ADMIT THERE IS A WAY TO OVERRIDE THE VETO BY GOING TO A SPECIAL SESSION, AND THAT'S THE ANSWER TO IT.

THAT IS HOW THE COLLECTIVE BARGAINING RIGHT WOULD GET EFFECTUATED.

AGAIN FOR THE REASONS I POINTED OUT THAT'S REALLY MEANINGLESS.

SO I'M STILL, I GUESS I'M STRUGGLING WITH THE WHY THE SOLUTION OF, THAT IF THE GOVERNOR IS GOING TO VETO THIS PARTICULAR APPROPRIATION HE HAS TO SHOW MORE THAN, OVER, EVERYONE SHOULD HAVE GOTTEN THE MONEY.

HE WANTED ALL STATE EMPLOYEES TO GET THE MONEY OR NO ONE GETS IT. BUT, THAT'S NOT WHAT THIS CASE

WAS ABOUT.

SO WHY WOULDN'T THERE BE, LISTEN
WE'RE IN A FINANCIAL CRISIS.

I'M VETOING ALL THESE OTHER,
SOMETHING ELSE OTHER THAN, I
WANT EVERYONE TO GET A PAY
RAISE?

I MEAN MA WOULD BE, WHY WOULD
THAT WHY WOULD THAT NULLIFY IN
THIS PARTICULAR AREA THE VETO,
THE AUTHORITY OF THE GOVERNOR TO
VETO?

>> SO, I THINK THE ANSWER TO
YOUR HONOR'S QUESTION IS, THAT
ARTICLE III SECTION EIGHT.

I THINK THE ANSWER TO YOUR
HONOR'S QUESTION IS ARTICLE 3
SECTION 8 DOESN'T SAY THE
LEGISLATURE CAN DO AWAY WITH THE
PRESENTMENT REQUIREMENT.

>> ALL WE ARE DOING IS GOING
BACK TO THE SAME ISSUE WHICH YOU
ARE SAYING THE TO SEND CANNOT BE
-- CANNOT COMPORT WITH THE
PRESENTMENT REQUIREMENT.

I AM SAYING I DON'T KNOW WHY IF
IT IS STILL REQUIRING THE
GOVERNOR TO DEMONSTRATE
SOMETHING.

I TOLD YOU I DON'T WANT TO
COLLECTIVELY BARGAIN, DIDN'T
AGREE WITH THAT.

THE LEGISLATURE WENT THROUGH IT,
THEY APPROPRIATED BUT I CAN SAY
NO.

>> JUST TO STRESS A PRACTICAL
REALITY WE DISAGREE WITH THE
SUGGESTION THERE IS NOT A
MEANINGFUL RIGHT TO ENGAGE IN
COLLECTIVE BARGAINING AS
EVIDENCED BY THE FACT THE
FIREFIGHTERS ASKED FOR \$1500 PER
PERSON PAY RAISE AND THEY GOT A
\$2000 --

>> THEY GOT NOTHING.

>> IN 2016.

SOME OF THEIR MEMBERS GOT AN
ADDITIONAL \$2500 PER PERSON
PAY RAISE IN 2018.

BASED ON PUBLIC ENACTMENTS THEY

CITED ON PAGE 5 OF OUR ANSWER
BRIEF WITH CITATION TO PUBLIC
LAWS.

THE MORE FUNDAMENTAL ANSWER TO
YOUR HONOR'S QUESTION ABOUT THE
CONFLICT OF INTEREST.

WHAT IS THE GREATER CONFLICT OF
INTEREST?

THE FACT THAT THE GOVERNOR LIKE
MANY CONSTITUTIONAL OFFICES
SOMETIMES WEARS TWO HATS AND HAS
TO PLAY A ROLE IN
CONSTITUTIONALLY ASSIGNED ROLE
IN THE APPROPRIATION PROCESS
EVEN THOUGH HE CAN BE A PUBLIC
EMPLOYER WITHIN THE MEANING OF
CHAPTER 447 OR IS THE GREATER
CONFLICT OF INTEREST GIVING THE
LEGISLATURE THE AUTHORITY TO
MODIFY OR REPEAL WHAT IS THE
PRIMARY CHALLENGE.

>> IT WOULD SEEM THAT WOULD
VINDICATE THAT SOLUTION, WOULD
VINDICATE BOTH RIGHTS.

>> SUBJECTING THE VETO TO THE
STATE INTEREST TEST.

THE ANSWER TO THAT IS A LOT OF
PRACTICAL REASONS WHY YOU MIGHT
NOT GO DOWN THAT ROAD.

THE RIGHT TO COLLECTIVE
BARGAINING IS NOT THE ONLY RIGHT
THAT IS IMPLICATED, A LOT OF
CONSTITUTIONAL RIGHTS AS A
PRACTICAL MATTER REQUIRE FUNDING
TO BE MEANINGFULLY PROTECTED.

LET ME GIVE YOU A COUPLE
EXAMPLES, THERE IS THE RIGHT OF
ALL CHILDREN UNDER THE STATE
CONSTITUTION TO HAVE ADEQUATE
EDUCATION UNDER ARTICLE 9
SECTION 1.

THERE IS THE RIGHT OF CRIMINAL
DEFENDANTS TO HAVE SPEEDY AND
IMPARTIAL TRIALS UNDER ARTICLE
1.

AND APPROPRIATIONS.

PART OF THE QUESTION THE COURT
ONCE TO ANSWER IS DO WE WANT TO
GET INTO THE BUSINESS, DOES THE
COURT WANT TO GET INTO THE

BUSINESS OF HAVING TO DETERMINE WHETHER A SUFFICIENT JUSTIFICATION SUPPORTS THE EXERCISE OF THE VETO POWER. THAT WOULD AND MESH THE JUDICIARY OF ALL MANNER OF QUINTESSENTIALLY POLITICAL DISPUTES IN THE SUBMISSION CAN'T BE RESOLVED ON JUDICIALLY MANAGEABLE STATEMENTS. I CAN GIVE YOU AN EXAMPLE OF ILLUSTRATING THE PROBLEM IN THIS CASE.

>> EVEN WITH THAT DOESN'T IT MAKE A DIFFERENCE, IF THE GOVERNOR IS A PARTY AT THE TABLE AND MOST OF THESE OTHER SITUATIONS YOU ARE TALKING ABOUT, A PARTY AT THE TABLE. THAT IS WHAT WE HAVE.

>> THE OPERATION OF STATUTE IN 447.03 SUBSECTION 2. ONE MEMBER OF THE COURT SUGGESTED THE LEGISLATURE CAN COME UP WITH A STATUTORY SCHEME THAT WOULD ADDRESS YOUR HONOR'S CONCERN AT RESPECT. WHATEVER THE SOLUTION IS THE SOLUTION SHOULD NOT BE HOLDING FOR THE FIRST TIME THE COURTS SHOULD BE SECOND GUESSING THE REASON SUPPORTING GUBERNATORIAL VETO THAT IS EXERCISED IN FULL COMPLIANCE WITH ALL THE REQUIREMENT OF ARTICLE 3 SECTION 8.

THAT IS NOT JUST OUR VIEW BUT THE VIEW THE COURT ARTICULATED IN BROWN VERSUS FIRESTONE WHEN IT SAID THE GOVERNOR'S VETO POWER MAY BE EXERCISED FOR ANY REASON WHATSOEVER SPEAKING TO THE RATIONALE FOR THE VETO AS OPPOSED TO THE SUBJECT MATTER. I WOULD LIKE IF I MAY IN THE TIME I HAVE REMAINING TO ADDRESS SOME ADDITIONAL PRACTICAL CONCERNS THAT MIGHT COME UP IF WE GO DOWN THIS ROAD OF SUBJECTING THE GOVERNOR'S VETO

POWER TO STRIP SCRUTINY AND ILLUSTRATE WITH RESPECT TO THE PROBLEM IN THIS CASE, JUSTICE PARIENTE.

THEY ASKED FOR \$1500 PAY RAISE AND THE LEGISLATURE IN THE FIRST INSTANCE PAST THE \$2000 PER PERSON PAY RAISE.

COULD THE GOVERNOR REASONABLY HAVE DETERMINED THOSE FIREFIGHTERS WHO ARE IN THE COLLECTIVE BARGAINING UNIT SHOULD GET THE PAY RAISE THEY ASKED FOR BUT THE ADDITIONAL FUNDING THAT WAS AVAILABLE SHOULD GO TO VINDICATING CONSTITUTIONAL RIGHTS INCLUDING RIGHT TO AN ADEQUATE EDUCATION. ARE THERE JUDICIALLY MANAGEABLE STANDARDS BY WHICH THE COURTS OF THIS STATE COULD SAY UNREASONABLE FOR THE GOVERNOR TO SAY THAT ADDITIONAL MONEY, PAYING FOR EDUCATION EVEN THOUGH ADDITIONAL MONEY IS ABOVE AND BEYOND WHAT THE UNION REQUESTED. ONE POINT I WOULD LIKE TO STRESS IS THE LEGISLATIVE PROCESS PLAYED ITSELF OUT, THE GOVERNOR DIDN'T DECIDE THIS CASE, THE LEGISLATURE DID RESOLVE THE IMPASSE AND NOT BECAUSE THE LEGISLATURE DECLINED TO OVERRUN THE GOVERNOR'S VETO AND THEY EXPRESSLY PROVIDED OUTSTANDING IMPASSE ISSUES WOULD BE RESOLVED AS MATTER OF LAW BY MAINTAINING THE STATUS QUO AND THAT IS CHAPTER 2015-223 SECTION 1. THE LEGISLATURE DIDN'T HAVE TO DO THAT BUT IT DID THAT. PETITIONERS MAY NOT THINK THAT IS GOOD RESOLUTION OF THE COLLECTIVE BARGAINING DISPUTE BUT IS A RESOLUTION INTO THE RESOLUTION THE LEGISLATURE HAD THE CONSTITUTIONAL AUTHORITY TO ENACT.

MY TIME HAS RUN OUT BUT I WILL ANSWER ANY QUESTIONS YOU HAVE.

THANK YOU.

>> SHALL NOT BE ABRIDGED HAS NO EXCEPTION, NO EXCEPTION.

THERE IS A NEW CONFLICT HERE BETWEEN THE GOVERNOR'S POWER OR THE BUDGET AND THE FUNDAMENTAL RIGHT.

THE SOLUTION FOR THIS CONFLICT IS THE ONE YOU HAVE ALWAYS USED, THAT IF A FUNDAMENTAL RIGHT IS INVOLVED, YOU HAVE TO ASK THE QUESTION DID THE GOVERNMENT DEMONSTRATE COMPELLING STATE INTEREST IN THE LEAST INTRUSIVE WAY.

YOU HEARD A LOT OF ARGUMENT FROM THE RESPONDENT BUT NO STATEMENT OF THE COMPELLING STATEMENT, YOU HEARD NO STATEMENT OF WHY THIS WAS THE LEAST INTRUSIVE.

THEY DID NOT MEET THE TEST OF STRICT SCRUTINY AND A TEST OF STRICT SCRUTINY MUST APPLY TO ALL FUNDAMENTAL RIGHTS OR WE DON'T HAVE CONSTITUTIONAL GOVERNMENT.

THAT IS THE SOLUTION TO THIS CASE AND I THANK YOU FOR YOUR TIME AND ATTENTION.

>> THANK YOU BOTH FOR YOUR ARGUMENTS AND THAT CONCLUDES TODAY'S SESSION OF COURT.