

>> WE WILL NOW MOVE TO THE SECOND CASE ON TODAY'S DOCKET, CITIZENS FOR STRONG SCHOOLS VERSUS FLORIDA STATE BOARD OF EDUCATION.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, I JODI SEIGEL, THIS IS KIERSTEN ANDERSON, WE REPRESENT THE PETITIONERS IN THIS CASE.

THIS CASE IS ABOUT THREE ISSUES. FIRST, IN HOLDING AS A MATTER OF LAW THAT ANY CLAIM UNDER ARTICLE 9 IS A NONJUDICIAL POLITICAL QUESTION, THE FIRST DCA CLEARLY AIRED.

IN REVIEWING THE EVIDENCE THE TRIAL COURT ERRED BY FAILING TO WEIGH THE EVIDENCE AGAINST THE CRITERIA OF THE CONSTITUTION AND BY APPLYING IMPROPER STANDARDS. THIRD, THE TRIAL COURT ERRED IN FINDING THERE WAS NO STANDING TO CHALLENGE THE FLORIDA TAX CREDIT ISSUE.

>> LET ME ASK YOU TO UNDERSTAND THE ISSUES FOLKS WILL HEAR FROM. WHAT IS THE ULTIMATE RELIEF YOU ARE ASKING FOR FROM THIS PROCEEDING?

>> FROM THIS PROCEEDING WE WANT THE COURT TO FIND ARTICLE 9 IS ENFORCEABLE AND TO REMAND WITH INSTRUCTIONS ON THE PROPER STANDARD AND NOT JUST RATIONAL BASIS IS NOT APPROPRIATE BUT THE STANDARD SHOULD BE COMPLIANCE WITH THE CONSTITUTION.

TO APPLY WHAT HOLMES DID WHICH IS USE THE CRITERION OF UNIFORMITY TO WEIGH THE EVIDENCE.

>> IT GOES BACK, WHAT RELIEF -->> THE TRIAL COURT?

FROM THE TRIAL COURT WE ARE SEEKING A DECLARATION THAT THE STATE OF THE EDUCATION SYSTEM, PUBLIC EDUCATION SYSTEM HIM OF THE STATE HAS NOT COMPLIED WITH ITS CONSTITUTIONAL DUTY IN ORDER

TO PROVIDE A UNIFORM EFFICIENT  
HIGH-QUALITY SYSTEM OF PUBLIC  
EDUCATION AND ALL CHILDREN DON'T  
HAVE THE OPPORTUNITY.

>> TO CUT TO THE CHASE YOU ARE  
NOT ASKING FOR A PARTICULAR  
LEVEL OF FUNDING.

>> THAT IS CORRECT.

>> YOU ARE REQUESTING THE TRIAL  
COURT-BASED ON PROPER STANDARD  
REVIEW AND STANDARDS, IF THEY  
FIND, PART OF THE COMPLAINT IS  
IT IS NOT MEETING ITS OWN  
STANDARDS WITH RESPECT TO  
CERTAIN SCHOOLS AND CERTAIN  
POPULATIONS LIKE A GREAT SWATH  
OF AFRICAN-AMERICANS, HISPANICS,  
STUDENTS, THAT THEY SUBMIT A  
PLAN FOR IMPROVEMENT.

>> EXACTLY.

>> IT IS IMPORTANT TO UNDERSTAND  
THAT BECAUSE A LOT OF THE PAST  
CONCERNS HAVE BEEN THE COURT  
SHALL ORDER 100 MILLION MORE OF  
THESE.

>> WE ARE NOT ASKING SPECIFIC  
APPROPRIATIONS, WE ARE NOT  
ASKING SPECIFIC ENACTMENT.  
WE ARE ASKING FOR A DECLARATION  
AND THE NEXT STEP WOULD BE THE  
STATE WOULD COME BACK WITH A  
REMEDIAL PLAN AND COMPLY WITH  
THE DECLARATION.

>> IT SEEMS TO ME IF THE COURT  
APPLIED, IT FOUND IT WASN'T JUST  
VISIBLE, THAT IS THE STARTING  
POINT FROM WHAT YOU ARE ASKING,  
TO GO FOR 20 STATES THAT FOUND  
SIMILAR IF NOT LOWER EDUCATION  
ARTICLES TO BE JUST VISIBLE.

THAT WOULD BE NUMBER ONE.  
NUMBER 2, IN THE JUDGE'S  
FINDINGS, THE JUDGE APPLIED  
SOMETHING, A PREPONDERANCE OF  
THE EVIDENCE BEYOND -- WHAT WAS  
THE STANDARD?

>> THE STANDARD WAS WHETHER THE  
EDUCATION POLICIES WERE  
RATIONALLY RELATED TO THE  
EDUCATION SYSTEM.

WHICH IS THE WRONG QUESTION.

>> YOU WOULD PHRASE IT AS IF THERE IS A FINDING THAT CERTAINLY HAVING SCHOOLS OVER 5 YEARS, IF A JUDGE WOULD FIND THAT IS NOT CONSISTENT --

>> IT IS NOT UNIFORM AND NOT EFFICIENT.

>> IS IT THE CASE, MY QUESTION EARLIER, YOUR REQUEST FOR RELIEF, DON'T YOU REQUEST THAT THE REMEDIAL PLAN INCLUDES STUDIES TO DETERMINE WHAT RESOURCES AND STANDARDS ARE NECESSARY TO PROVIDE HIGH-QUALITY EDUCATION FOR FLORIDA STUDENTS?

>> THERE WAS IN THE COMPLAINT.

>> ESSENTIALLY YOU ARE SAYING YOU WANT THE COURT TO FIND IT IS NOT UP TO SNUFF BUT THEN DO STUDIES TO FIGURE OUT WHAT IT WOULD TAKE TO GET IT UP TO SNUFF.

TO USE A COLLOQUIAL EXPRESSION.

>> THAT WAS THE WORDING BUT THROUGH THE PRETRIAL --

>> THE COMPLAINT SETS THE STAGE FOR THINGS.

>> IT SETS THE STAGE BUT THE RELIEF REQUESTED, WHAT THAT WAS ASKING FOR WAS A REMEDIAL PLAN AND THAT IS WHAT WOULD BE PROPER.

THERE IS A DECLARATION.

THERE IS A FINDING OF NONCOMPLIANCE WITH THE CONSTITUTION AND IT IS UP TO THE STATE TO DO A REMEDIAL PLAN.

THAT IS WHAT WE HAVE ASKED THROUGHOUT.

>> THE WHOLE EDUCATION SYSTEM IS FOCUSED ON FAILING SCHOOLS AND THE FAILING POPULATIONS.

>> AND FAILING DISTRICTS.

THERE IS A SIGNIFICANT DISPARITY, SIGNIFICANT FAILURES AMONG GROUPS OF CHILDREN AND BETWEEN SOME DISTRICT AND OTHER DISTRICTS.

THAT IS WHERE SOME CHILDREN, WE THINK THE COURT COULD LOOK AT THAT AND SAY BECAUSE OF THESE SUBSTANTIAL FAILURES BY CERTAIN GROUPS, YOU ARE RIGHT, NOT EVERY SINGLE SCHOOL OR EVERYTHING A CHILD IS NOT RECEIVING A HIGH-QUALITY EDUCATION.

IT IS ABOUT WHETHER CERTAIN GROUPS AND CERTAIN DISTRICTS ARE FAILING TO PROVIDE THE OPPORTUNITY.

>> LET ME ASK THIS.

ASSUMING THAT WE DO FIND THE LANGUAGE IN THE CONSTITUTION IS JUST ISSUABLE, IT SOUNDS LIKE YOU ARE ASKING FOR A REVIEW, IS THAT WHAT YOU ARE ASKING FOR?

>> AT THIS LEVEL?

>> FOR THE COURTS, THE JUDICIARY TO SAY IN OUR JUDGMENT THIS IS NOT HIGH-QUALITY.

YOU NEED TO DO THIS BETTER OR THIS DIFFERENTLY, YOU NEED TO ADOPT THIS POLICY AND MAKE OUR OWN INDEPENDENT JUDGMENT AS TO WHAT THOSE THINGS SHOULD BE.

>> IN PART.

THE FIRST PART IS CORRECT. DO WHAT JUDGES TYPICALLY DO, WAY THE EVIDENCE AGAINST THE CRITERIA --

>> THEY HAVE A STANDARD.

THAT IS WHAT NEEDS TO HAPPEN, THE CONSTITUTION, THE CRITERIA OF UNIFORMITY NEEDS TO BE APPLIED, THE FUNDAMENTAL ERROR THE TRIAL JUDGE DID NOT DO.

>> I WOULD THINK IF A COURT WERE TO FIND LANGUAGE IS BROAD AND NONSPECIFIC AS ADEQUATE, EFFICIENT, HIGH-QUALITY, TO BE EFFICIENT, TO BE JUSTICIABLE, IN ORDER TO HAVE ANY SEPARATION OF POWERS WHATSOEVER, YOU WOULD HAVE TO HAVE A VERY HIGH DIFFERENTIAL STANDARD. AND SPEND THE MONEY HERE, DO THIS, BASED ON EVIDENCE PRESENTED.

THAT TO ME -- TO HAVE THREE  
SEPARATE BRANCHES OF GOVERNMENT.

>> THIS DID NOT VIOLATE  
SEPARATION OF POWERS BECAUSE THE  
DIFFERENCE IS DIFFERENT IN A  
CASE WHERE HOLMES INTERPRETED  
ARTICLE 9.

AND WHERE THERE WAS A RESTRICTED  
ON A MANDATE IT IS DIFFERENT  
THAN ANY UNCONSTITUTIONAL ACT.  
THAT MAKES ARTICLE 9 DIFFERENT.

>> THE CLASS SIZE AMENDMENT IS  
MEASURABLE BUT WHEN YOU TALK  
ABOUT THESE VERY VAGUE  
CONFLICTING EFFICIENT HIGH  
QUALITY STANDARDS, HOW DO WE  
PROVIDE DIFFERENCE THE  
CONSTITUTION REQUIRES AND  
RATIONAL BASIS WOULD DO THAT.  
WHAT IS THE STANDARD YOU SAY  
SHOULD BE APPLIED?

>> USING THE CRITERIA -- AS IN  
HOLMES, THERE WERE RATIONAL  
POLICIES ON BOTH SIDES, USE THE  
CRITERION OF UNIFORMITY TO  
JUDGES THE LEGISLATIVE ACT AND  
THAT IS WHAT WE ARE ASKING FOR,  
TO USE THE CRITERIA OF  
UNIFORMITY AND HIGH-QUALITY IN  
EFFICIENT TO WEIGH THE EVIDENCE  
AND FIND --

>> YOU TAKE PRESENTATIONS TO THE  
LEGISLATURE AND APPROPRIATIONS  
PROCESS THE EDUCATION COMMITTEE,  
THEY COME UP WITH A PLAN THEY  
HAVE DONE REGULARLY.

AND IN TERMS OF EDUCATION  
POLICY, THE WAY THE EVIDENCE WAS  
BEFORE THE COURT AND THEY COME  
UP AND ARE CONSTANTLY TRYING TO  
COME UP WITH POLICIES AND THEN  
YOU WANT TO COME INTO COURT AND  
PRESENT THE SAME OR DIFFERENT  
EVIDENCE AND SAY YOU WANT US TO  
DECIDE BASED ON THAT EVIDENCE TO  
MEET THE STANDARD WE SHOULD DO  
SOMETHING DIFFERENT THAN THE  
LEGISLATURE DECIDED.

>> THE EVIDENCE, THE FINDINGS OF  
THE COURT REALLY AREN'T PROPER

BECAUSE THE COURT DID NOT --  
>> THAT IS WHAT YOU ARE ASKING  
US TO DO.  
>> WE ARE ASKING --  
>> WE DECIDE --  
>> -- DETERMINED WHAT THAT MEANS  
AND THE STATE HAS COME UP WITH  
MEASUREMENTS AND ALL WE'RE  
ASKING IS FOR THE COURT TO BE  
ABLE TO LOOK AT THE EVIDENCE AND  
DECIDE THEY ARE NOT MEETING IT.  
>> THE BRIEFS WOULD GIVE THEM AN  
INCENTIVE.  
TO REDUCE -- IT SEEMS LIKE IF  
YOU WANT THE HIGHEST QUALITY  
SYSTEM, YOU WOULD SET THE  
HIGHEST STANDARDS POSSIBLE BUT  
IT MIGHT BE VERY DIFFICULT.  
YOU ARE NOT GOING TO MEET THOSE  
STANDARDS EVERY PLACE AT ALL  
TIMES SO IF THE COURTS ARE GOING  
TO SAY YOU SET THE STANDARD SO  
YOU DO XYZ TO MEET IT, IT MAY BE  
FORCED TO SAY -- I DON'T KNOW.  
>> THE ARGUMENT THE STATE WILL  
CHANGE THEIR STANDARDS IN BAD  
FAITH TO MANIPULATE THE  
CONSTITUTION --  
>> IT WOULDN'T BE IN BAD FAITH  
BUT BECAUSE THEY DECIDED TO SET  
THE STANDARDS TOO HIGH.  
>> THEY CAN CHANGE THE  
STANDARDS.  
>> UNREALISTICALLY HIGH  
STANDARDS.  
>> THEY CAN CHANGE THE  
STANDARDS, GO THROUGH THE  
PROCESS AND CHANGE THE  
STANDARDS.  
WE HAVE CURRENT STANDARDS,  
CURRENT MEASUREMENTS THAT ARE  
SHOWING SIGNIFICANT DISPARITIES.  
WE HAVE 670,000 CHILDREN FAILING  
READING.  
THIS IS NOT A CHILD OR TWO BUT A  
SYSTEMIC FAILURE.  
>> WE HEAR THE STATE IS A LEADER  
IN EDUCATION AND CONSISTENTLY AT  
THE BOTTOM TEN IN FUNDING FOR  
EDUCATION.

THE VOTERS IN THIS STATE, OVER AND OVER, HAVE ASKED THAT THERE BE STANDARDS OF HIGH-QUALITY. THE EVIDENCE IS THAT PERCENTAGE OF CHILDREN ARE NOT MEETING OR NOT ABLE TO READ AT GRADE LEVEL IS THAT BECAUSE IN FOURTH GRADE YOU ARE ASKING THEM TO READ AT 10TH GRADE LEVEL OR ARE THEY MEASURABLE STANDARDS?

WHAT IS THAT?

WHAT DOES IT MEAN WHATEVER THE PERCENTAGE WAS?

>> THERE ARE A LOT OF PERCENTAGES BUT 42% OF CHILDREN ACROSS THE STATE ARE READING IT GRADE LEVEL.

>> LET ME ASK YOU ON THAT. MAYBE WE ARE GETTING AWAY FROM THIS.

I UNDERSTAND YOU ARE ASKING IF THAT IS NOT HIGH-QUALITY BUT IF THEY WERE TO SAY GRADE LEVEL IS WE ARE GOING TO CHANGE WHAT GRADE LEVEL IS.

WE HAVEN'T REALLY THE REASON THEY ARE NOT MEETING GRADE LEVEL IS WE ARE ASKING THEM EVEN THOUGH THEY WERE IN FOURTH GRADE THEY SHOULD READ AT A 10TH GRADE LEVEL.

IS THAT WHAT WE ARE TALKING ABOUT?

>> THE STATE --

>> WHAT DOES THAT MEAN?

I UNDERSTAND KIDS IN LOW PERFORMING SCHOOLS, F SCHOOLS AS WELL AS OTHER SCHOOLS ARE ACTUALLY UNABLE TO READ WHEN THEY ARE IN THIRD OR FOURTH GRADE.

SO WE ARE NOT TALKING ABOUT THIS BEING, WE ARE ASKING OUR STUDENTS IN THIS STATE TO BECOME COLLEGE EDUCATED WHEN THEY ARE IN SIXTH GRADE.

THE HIGH STANDARDS HAVE BEEN SET.

>> THE STATE HAS SAID THIS IS WHAT KIDS MUST LEARN.

WE ARE GOING ALONG WITH THAT.  
THE STATE IS SAID IT.  
MEASURING IT.

IT IS NOT THEY ARE EXPECTING TO  
LOOK AT COLLEGE-LEVEL MATERIAL  
IN THIRD GRADE BUT WE CAN SHOW  
IT IS IMPORTANT BECAUSE THE  
STATE HOLDS KIDS ACCOUNTABLE.  
THEY ARE NOT AT FOURTH GRADE  
LEVEL TO GO INTO FOURTH GRADE.  
SCHOOL DISTRICTS ARE HELD  
ACCOUNTABLE.

THE STATE NEEDS TO BE HELD  
ACCOUNTABLE TO THE SAME  
INFORMATION, THE SAME DATA TO  
SHOW THE STATE IS NOT PROVIDING  
HIGH-QUALITY.

IT IS NOT A MATTER OF --

>> SOME OF THESE PROBLEMS ARE  
DIFFICULT PROBLEMS TO SOLVE.  
THE IDEA OF A MAGIC BULLET,  
PEOPLE DISAGREE WHAT ACTUALLY  
WORKS, ISN'T THAT TRUE?

>> THERE ARE EDUCATION DEBATES  
BUT IT IS CLEAR THE EVIDENCE WAS  
VERY CLEAR WHAT NEEDED TO  
HAPPEN.

AND TO LEARN ACROSS THE STATE --

>> AS OPPOSED TO THE LOCAL  
SCHOOL BOARDS.

>> THE ALTERNATE RESPONSIBILITY  
OF THE CONSTITUTION IS ON THE  
STATE AND THE STATE, THEY SET  
THE SCHOOL SYSTEM AND PROVIDE  
FUNDING, THE SCHOOL BOARD, THEY  
ARE DOING ANYTHING ABOUT IT,  
THEY CAN DO SOMETHING ABOUT IT  
AND THEY ARE THE ONLY ONES WITH  
RESPONSIBILITY TO DO SOMETHING  
ABOUT IT.

>> THE FACTUAL FINDINGS, YOU  
FAULT FACTUAL FINDINGS, FOR  
PROPER FACTUAL FINDINGS, WHY DO  
YOU FAULT THAT?

>> THE JUDGE, THE TRIAL COURT  
LOOKED AT THIS CASE, THESE TERMS  
ARE NOT JUST ISSUE AND THEN  
DECIDED TO WEIGH THE FACTS AND  
THESE FINDINGS WITHOUT BEING  
MORE TO THE CONSTITUTION.

THERE ARE FACTS THAT ARE NOT RELEVANT.

>> THE FACTS MANY OF THE FACTUAL FINDINGS ARE JUST ABOUT THINGS THAT HAPPEN.

THIS EMPIRICALLY COULD BE ESTABLISHED.

WHAT IS WRONG WITH FACTUAL FINDINGS?

>> THE CONCLUSION AND THE WEIGHING OF THE EVIDENCE.

>> NOT SO MUCH THE FINDINGS THEMSELVES.

THE FINDINGS, THE COURT SAYS THE WEIGHT OF THE EVIDENCE SHOWS, THE WEIGHT OF THE EVIDENCE SHOWS, OVER AND OVER AGAIN, THEY ARE QUITE EXTENSIVE FACTUAL FINDINGS.

YOUR FAULT REALLY IS WITH THE CONCLUSIONS OF THE LAW MORE THAN THE ACTUAL FACTUAL FINDINGS.

>> IT IS BOTH.

THERE ARE MANY UNDISPUTED FACTUAL FINDINGS BUT THE FACTUAL FINDINGS, THE WEIGHT OF THE EVIDENCE SHOWS WHAT?

NOT HAVING THE CONSTITUTION AS A GUIDELINE, THE CONCLUSIONS ABOUT THE WEIGHT OF THE EVIDENCE MAKES NO SENSE.

>> THE GENERAL STANDARD IN APPELLATE REVIEW WHEN SOMEONE WANTS TO CHALLENGE A FACTUAL FINDING IS WHETHER IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

I'VE NEVER SEEN A CONTEXT IN WHICH THE QUESTION OF APPEAL, I COULD NOT FIND ANY FINDING YOU SAID IT WASN'T SUPPORTED.

>> WE ARE NOT CHALLENGING ACTUAL FINDINGS BUT THE CONCLUSIONS AND THE WEIGHING OF THEM AND THAT REMAINS.

>> IF IT IS A FACTUAL ISSUE YOU PRESENT YOUR EVIDENCE, THE OTHER SIDE PRESENTS EVIDENCE, THE FACT -- WE DO NOT WAY, IF YOU ARE CHALLENGING THE WAY --

>> IT MEANS REMANDED WITH THE GUIDANCE.

>> IN ORDER TO SEND IT BACK FOR MORE FACTUAL FINDINGS, GENERALLY IT IS BECAUSE A FACTUAL FINDING WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

YOU ARE SAYING ALL OF THEM WERE, YOU DON'T LIKE THE WAY THEY WERE MADE.

>> I'M NOT GOING TO SAY ALL OF THEM.

>> YOU HAVEN'T CHALLENGED ONE.

>> THEY WERE INFECTED WITH LEGAL ERROR.

WE ARE NOT CHALLENGING THE UNDERLYING FACTS NECESSARILY BUT BY LOOKING AT THE EVIDENCE AND MAKING THE CONCLUSION THAT THEY ARE RATIONALLY RELATED TO A SYSTEM WITHOUT REGARD FOR RELATED TO WHAT?

RELATED TO UNIFORMITY WOULD MAKE SENSE, RELATED TO HIGH QUALITY WOULD MAKE SENSE BUT RELATED TO THE EDUCATION SYSTEM?

>> YOUR ARGUMENT.

REALLY, IS THE WRONG STANDARD WAS APPLIED SO IT NEEDS TO GO BACK.

>> YES.

>> AND YOU WANT A NO VOTE STANDARD.

>> FOR THE TRIAL COURT, YES.

>> FOR EXAMPLE, YOU ARE IN REBUTTAL.

WHAT THE TRIAL COURT DID IN THE FINAL JUDGMENT IS COMPARE WHAT WAS GOING ON WITH FLORIDA WITH OTHER STATES.

THIS IS NOT ABOUT WHETHER WE ARE BETTER THAN MISSISSIPPI.

THE TRIAL JUDGE ALSO WAS OPERATING UNDER THE ASSUMPTION THAT THESE WERE NOT JUST ISSUABLE ISSUES.

THE OTHER THING ABOUT THIS, YOU HAVEN'T POINTED OUT IN YOUR BRIEF THAT 12 TO 20 STATES HAVE FACED SIMILAR CHALLENGES.

COURTS HAVE BEEN ABLE TO  
ADJUDICATE THESE DISPUTES IN A  
RESPONSIBLE WAY.

WE ARE NOT TALKING ABOUT  
SOMETHING THAT HAS NEVER BEEN  
DONE BEFORE.

>> THAT IS RIGHT.

THE STANDARDS THAT WE PROVIDED,  
DEFINITIONS OF HIGH-QUALITY  
EFFICIENCY COME FROM NOT ONLY  
OTHER STATES BUT LEGISLATIVE  
HISTORY AND STATUTES.

SO YES, YOU ARE CORRECT.

>> WE CONSIDERED MOST OF YOUR  
REBUTTAL TIME.

I WILL GIVE YOU TWO MINUTES FOR  
REBUTTAL.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT, MY  
NAME IS ROCCO E. TESTANI AND I  
REPRESENT THE COMMISSIONER OF  
EDUCATION IN THE FLORIDA HOUSE  
AND SENATE.

I WOULD LIKE TO ALLOCATE 5  
MINUTES OF TIME FOR COUNSEL TO  
PRIMARILY ADDRESS THE FLORIDA  
TAX CREDIT ISSUES.

JUDGMENT IN FAVOR OF THE STATE  
DEFENDANTS SHOULD BE APPROVED  
FOR MANY REASONS.

FIRST AND FOREMOST THE  
PLAINTIFFS DO NOT CHALLENGE THE  
TRIAL COURT'S FACTUAL FINDINGS  
AS TO THEIR CENTRAL THEORY OF  
LIABILITY IN THIS CASE AND THAT  
IS LACK OF STATE FUNDING FOR  
EDUCATION HAS CAUSED ALLEGEDLY  
LOW STUDENT PERFORMANCE ACROSS  
THE STATE.

NOT ONLY DID PLAINTIFFS NOT  
CHALLENGE OR DO NOT CHALLENGE  
FACTUAL FINDING OR DID THEY  
ESTABLISH CAUSAL RELATIONSHIP,  
THE TRIAL COURT CONCLUDED AFTER  
FOUR WEEKS OF TRIAL, HEARING  
FROM DOZENS OF WITNESSES  
INCLUDING OVER TEN EXPERTS, THE  
WEIGHT OF THE EVIDENCE  
DEMONSTRATED THAT THE LEVEL OF  
RESOURCES AVAILABLE IN SCHOOL

DISTRICT IN FLORIDA WAS NOT RELATED TO PERFORMANCE DIFFERENCES ON STANDARDIZED TESTS OR GRADUATION RATES OR ANY OTHER MEASURES AND PARAGRAPH 30 OF THE PLAINTIFF SECOND AMENDMENT COMPLAINT SAYS THE OVERALL LEVEL OF FUNDING IS NOT SUFFICIENT TO PROVIDE UNIFORM ASSISTANCE TO PUBLIC SCHOOLS. THAT FINDING OF FACT AND THOSE FINDINGS OF FACT ARE FINDINGS ON AN EMPIRICAL QUESTION THAT WAS DEBATED WITH EXPERT EVIDENCE OF THOUSANDS OF EXHIBITS AND THE DETERMINATION WAS MADE THAT THEIR THEORY OF LIABILITY FAILS. REGARDLESS OF BURDEN OF PROOF, WHETHER IT IS RATIONAL BASIS OR WHATEVER, THAT FACTUAL FINDING IS UNAFFECTED BY ANY OF THAT BECAUSE JUDGE REYNOLDS, TRIAL COURT JUDGE, FOUND THE WEIGHT OF THE EVIDENCE SUPPORTED THE STATE'S POSITION ON THIS POINT.

>> IN TERMS OF EVIDENTIARY STANDARDS THE JUDGE WAS JUST USING THE LOWEST STANDARD OF PREPONDERANCE OF EVIDENCE. THE PLAINTIFFS -- IS THAT CORRECT?

>> WITH RESPECT --

>> HE DIDN'T REQUIRE CLEAR AND CONVINCING EVIDENCE THAT CERTAIN THINGS WERE TRUE OR BEYOND A REASONABLE DOUBT. ANY FACTUAL FINDINGS WERE BASED ON PREPONDERANCE OF EVIDENCE.

>> WHAT THE TRIAL COURT DID WAS HE CONCLUDED PLAINTIFFS WHICH TOOK THE POSITION OF THE TRIAL COURT THAT ONE STATUTORY ENACTMENT THEY WERE CHALLENGING IN THIS CASE WAS THE 2015-16 APPROPRIATIONS ACT, THE ONE STATUTORY ENACTMENT PLAINTIFFS WERE CHALLENGING. THEY ACKNOWLEDGED THAT IT WAS THEIR BURDEN TO ESTABLISH THAT THAT APPROPRIATIONS ACT WAS

UNCONSTITUTIONAL BEYOND  
REASONABLE DOUBT WHICH IS IN  
LINE WITH FLORIDA LAW  
CHALLENGING CONSTITUTIONALITY.  
I POINT OUT CAUSATION BECAUSE  
THE TRIAL COURT CONCLUDED NOT  
THAT THEY ADMIT BURDEN OF PROOF  
BUT RATHER THE WEIGHT OF THE  
EVIDENCE SUPPORTED THE STATE'S  
POSITION AND THE STATE HAD NO  
BURDEN OF PROOF.

I POINT THAT OUT BECAUSE IF WE  
GO BACK TO THE TRIAL COURT WITH  
ARTICULATION ON SOMETHING HERE,  
THAT FINDING WILL BE UNAFFECTED  
BY IT BECAUSE THE WEIGHT OF THE  
EVIDENCE SUPPORTED THE STATE'S  
POSITION WHICH DID NOT HAVE THE  
BURDEN AT ALL.

>> THAT IS WHAT I'M TALKING  
ABOUT.

THE PETITIONERS HAVE NOT PROVEN  
THEIR CASE TO THE REQUIRED  
STANDARD AND ALL THOSE FINDINGS  
SEEM TO BE BASED ON THIS IS WHAT  
THE EVIDENCE SHOWED.

>> THAT IS WHY I SAY IN GREAT  
EXTENT THIS IS ACADEMIC BECAUSE  
EVEN IF THEY WERE RIGHT ABOUT  
YOUR DISABILITY AND THE BURDEN  
OF PROOF WHICH THEY ARE NOT,  
THEY DON'T WIN THIS CASE EVER.

>> IT SOUNDS AS THOUGH WHAT YOU  
EXPLAINED AND WHAT YOU ARE  
ARGUING IS WITH REGARD TO THE  
JUSTICIABILITY ISSUE, THE TRIAL  
COURT DIDN'T, IN THE CENTER, THE  
CONSTITUTIONAL STANDARDS, AND  
FOUND IN YOUR FAVOR.

HERE IS WHAT MY CONCERN IS.  
CONSTITUTIONS ARE PRINCIPLED  
DOCUMENTS BUILT ON PRINCIPLED  
AND MORAL WORDS AND CONCEPTS.  
GOODNESS GRACIOUS, WE HAVE GONE  
ON FOR CENTURIES TRYING TO  
DEFINE DUE PROCESS, EQUAL  
PROTECTION, AND ALTHOUGH THERE  
MAY BE DIFFICULTIES, PRINCIPLED  
CONCEPTS IN THE CONSTITUTION  
SEEM TO ME TO NEED CONSTRUCTION

AND INTERPRETATION APPLICATION  
AND JUST TO TRY TO CONVERT  
EVERYTHING AS BEING POLITICAL IS  
NONRESPONSIVE.

I'M TRYING TO UNDERSTAND IF WE  
LOOK AT THOSE KINDS OF THINGS IT  
IS IN MODERN HISTORY WE HAD THE  
EDUCATION THINGS.

WE HAVEN'T HAD EDUCATION AS LONG  
AS WE HAD GOVERNMENTS.

AND SO WE HAVE A LOT OF  
EXPERIENCE AT SOME OF THOSE,  
MAYBE NOT SO MUCH HERE.

BUT WHAT IS IT ABOUT THESE  
PRINCIPLE TERMS AND CONCEPTS  
THAT MAKE THESE NON-JUSTICIABLE  
AND WE TALK ABOUT WHAT DO  
PROCESS IS, WHAT DOES IT MEAN TO  
HAVE CIVIL RIGHTS, AND ALL THOSE  
THINGS THAT COURTS WERE DESIGNED  
TO INTERPRET CONSTITUTIONS TO  
APPLY TO CARRY OUT THE WILL OF  
THE PEOPLE.

THE CONSTITUTION HERE IS THE  
WILL OF THE PEOPLE.

IT MAY BE STICKY AND MUGGY.  
WHAT MAKES A DIFFERENCE WITH  
THIS AS OPPOSED TO OTHER  
PRINCIPLED CONCEPTS.

>> I UNDERSTAND.

>> THIS COURT IN THE COALITION  
VERSUS CHILD CASE IN 1996 WAS  
ASKED TO INTERPRET ADEQUATE  
PROVISIONS SHALL BE MADE BY LAW  
LANGUAGE THAT WAS IN THE PRE-98  
AMENDMENT.

WHAT THIS COURT SAID AT THE TIME  
WAS THOSE TERMS ARE NOT  
INHERENTLY MEANINGFUL.

THAT PROVISION REMAINS IN THE  
CONSTITUTION TODAY, IT IS THE  
BASIS FOR THIS CLAIM THAT  
PLAINTIFFS ARE CLAIMING THE  
STATE HAS NOT MADE ADEQUATE  
PROVISION BY LAW FOR UNIFORM  
EFFICIENT SAFE SECURE  
HIGH-QUALITY SYSTEM.

IT IS THE SAME PROVISION THE  
COURT SAID 22 YEARS AGO ON THAT  
POINT, THE PLAINTIFFS DID NOT

COME FORWARD TO ESTABLISH  
STANDARDS THAT A COURT COULD USE  
TO APPLY THE WORDS.

>> THAT IS WHAT THEY WERE TRYING  
TO DO, AND WHAT IS HAPPENING ON  
THE GROUND.

>> THAT WAS DECIDED ON MOTION TO  
DISMISS.

IN A LOT OF CASES THERE WERE  
MOTIONS TO DISMISS.

PLAINTIFFS WERE GIVEN 7 YEARS OF  
DISCOVERY AND 4-WEEK TRIAL TO  
COME UP WITH STANDARDS TO HAVE  
EVIDENTIARY VERY STANDARDS TO  
PRESENT THE FACTS OF THE CASE.

>> THAT IS MY POINT.

WHY WAS THAT NOT ACCEPTABLE?  
YOU WON, BUT TO SAY THOSE WORDS  
ARE UNENFORCEABLE BECAUSE WE  
CAN'T EVER KNOW WHAT THEY MEAN,  
THAT IS ONLY IN POLITICS.

>> THAT IS NOT QUITE OUR  
POSITION.

THEY WERE MANAGEABLE STANDARD  
SUPPORTED BY STANDARDS WITH  
FACTUAL CONTEXT AVERAGE, THAT  
WAS ONE OF THE DEFINITIONS.  
ANOTHER WAS IT IS NOT 100%  
PROFICIENCY.

IS 90, MORE?

LESS?

WE DON'T KNOW.

ANY GROUP OF CHILDREN NOT  
PERFORMING AT GRADE LEVEL IS NOT  
HIGH-QUALITY.

IF THERE'S DIFFERENCES BETWEEN  
DISTRICT THAT IS NOT  
HIGH-QUALITY.

IN THE FIRST DISTRICT THEY OFFER  
A STANDARD THAT IS THE ST.

JOHN'S PERFORMANCE THAT IS THE  
RIGHT MEASURE OF HIGH-QUALITY,  
THE HIGHEST PERFORMING DISTRICT.

>> LET ME MAKE SURE I UNDERSTAND  
SOMETHING, YOU ARE REFERRING TO  
THE COURT'S 1996 DECISION WHICH  
PREDATED THE 1998 AMENDMENT THAT  
PUT IN TERMS THAT WERE INTENDED  
TO BE JUDICIALLY INTERPRETED.

THE FIRST DISTRICT RELIED ON A

CASE THAT FROM PENNSYLVANIA FROM 1999 EVEN THOUGH THREE MONTHS EARLIER THAN THEIR DECISION THE PENNSYLVANIA SUPREME COURT SPECIFICALLY SAID THAT IT IS A JUDICIAL DUTY TO INTERPRET CONSTITUTIONAL CLAUSES AND EVERY STATE, I HAVE LOOKED AT EVERY STATE'S CONSTITUTION THAT HAS THESE TERMS, IF WHAT YOU ARE SAYING IS EVEN THOUGH THE JUDGE THOUGHT IT WASN'T JUST ISSUABLE AND THE FIRST DISTRICT DIDN'T FIND IT JUST ISSUABLE THAT WE SHOULD FIND THE PLAINTIFF DID NOT MAKE THEIR BURDEN OF PROOF AND THEREFORE AFFIRM ON DIFFERENT REASONS?

SHOULD WE INTERPRET -- WHAT ARE YOU ASKING?

WHAT I HEARING IS UNDER ANY STANDARD, YOU WIN BUT WE ARE DEALING WITH A GREATER ISSUE WHICH WAS IN 1996 WE SAID IT WASN'T JUST ISSUABLE BECAUSE ADEQUATE PROVISION COULDN'T BE DEFINED EVEN THOUGH THREE JUSTICES DISAGREED AND ONE JUSTICE SAID IF THERE ARE 30% LITERACY THAT COULD RISE TO IT. HAVING 42% OF THE POPULATION NOT READING AT GRADE LEVEL WHEN THEY ARE IN WHATEVER GRADE IS NOT WHAT I WOULD CALL HIGH-QUALITY. GOING BACK TO THIS ARE YOU ALLEGING THAT THIS DISPUTE UNDER THE ARTICLE ADOPTED IN 1998 BY THE VOTERS CAN NEVER BE JUSTICIABLE?

>> ON THE PENNSYLVANIA CASE THEY COULD DECIDE ANY NUMBER OF CASES.

ALABAMA, THERE ARE SEVERAL CASES, ILLINOIS USES THE WORD HIGH-QUALITY AND THAT SUPREME COURT SAID IT IS NOT JUSTICIABLE.

>> IT IS THE MINORITY VIEW. YOU KNOW EVERY STATE'S CONSTITUTION AND WHAT HAS BEEN

DONE, THAT IS A MINORITY VIEW,  
IS IT NOT?

>> ON A MOTION TO DISMISS.

WE HAVE A FULL TRIAL HERE THEY  
WERE CALLED UPON TO PUT IN.

>> THE FIRST DISTRICT NEVER GOT  
TO ANYTHING.

THEY SAID IT WASN'T JUSTICIABLE.  
TO SAY THAT EVERYTHING ELSE THEY  
SAID WOULD BE DICTA.

>> IT WOULD BE AFFIRMED OR  
APPROVED IF THERE IS BASIS FOR  
DOING SO IN THE RECORD OF THE  
LOWER COURTS AND THERE CLEARLY  
IS.

IN TERMS OF HIGH-QUALITY --

>> EVEN IF WE DON'T REACH THE  
ISSUE OF JUSTICIABILITY.

>> THESE CASES ARE ABOUT MONEY  
BY THE WAY.

THE COALITION CASE NOTED THIS ON  
PAGE 44 OF OUR BRIEF.

THE SAME ARGUMENT WAS MADE, WE  
ARE NOT ASKING FOR ANYTHING,  
JUST A DECLARATION.

IT WILL BE FINE, BELIEVE US.

IF YOU LOOK AT THE LANGUAGE THEY  
ARE ASKING FOR A DECLARATION BUT  
THEY ALSO WANT AN INJUNCTION FOR  
STUDIES HAVING TO DO WITH THE  
REMEDY INCLUDING WHAT IS THE  
AMOUNT OF MONEY NEEDED.

I WANT TO SAY ONE THING ABOUT  
THE QUESTION OF PERFORMANCE.

THE THEORY OF PERFORMANCE IN THE  
STATE OF FLORIDA IS THERE WILL  
BE HIGHEST STANDARDS, THERE WILL  
BE AMBITIOUS CUT SCORES SEND TO  
THOSE.

THEY KNOW WHEN THEY SET THEM  
THAT HALF THE KIDS WON'T MEET  
THEM.

WE ARE TALKING TEST SCORES FROM  
FOUR YEARS AGO FOR SOME GRADES,  
MAYBE ONE GRADE.

WE HAVE A DIFFERENCE IN  
STANDARDS TODAY, DIFFERENT SET  
OF ASSESSMENTS.

THE THING THAT IS IMPORTANT  
ABOUT MEASURING EDUCATION WE HAD

A MONTH-LONG TRIAL, EXPERTS SAID  
HOW DO YOU MEASURE EDUCATION  
OVER TIME?

IS FORGETTING BETTER EVEN THOUGH  
45% OR 50% AREN'T MEETING LEVEL  
III WHICH DOES NOT MEAN THEY  
CAN'T READ BY THE WAY AND THAT  
WAS SHUT DOWN IN THE TRIAL  
COURT.

THIS IS NOT ABOUT ILLITERACY.  
IT IS ABOUT LEVELS OF READING  
PROFICIENCY.

KIDS BY THE TIME THEY GRADUATE,  
80% OF KIDS GRADUATING FLORIDA  
WITHIN FOUR YEARS MEANING THEY  
HAVE TO HAVE SHOWN PROFICIENCY  
LEVEL III OR ABOVE IN MATH AND  
READING.

THE THING ABOUT OTHER STATES,  
THE NATIONAL ASSESSMENT TEST,  
WHY IS THAT IMPORTANT?

I TALK ABOUT IT?

IT IS AN OBJECTIVE MEASURE.  
THIS IS THE THEORY OF REFORM  
THAT IS WE WILL RAISE STANDARDS.  
A LOT OF KIDS WON'T MEET IT  
INITIALLY BUT I COULD LEARNING  
MORE AND GETTING SMARTER?

NUMBER ONE IN NATION FOR FREE  
AND REDUCED LUNCH STUDENTS IN  
FOURTH GRADE READING, NUMBER ONE  
IN NATION FOR HISPANIC STUDENTS  
FOURTH GRADE READING, NUMBER 5  
IN THE NATION FOR  
AFRICAN-AMERICAN STUDENTS FOR  
FOURTH GRADE READING AND NUMBER  
8 IN THE NATION, THIS WASN'T THE  
CASE 20 YEARS AGO.

FLORIDA WAS A LADDER FOR SURE,  
THE THEORY OF REFORM WHICH GOES  
TO THE HEART OF POLICYMAKING LED  
TO SUBSTANTIAL CRITICISM IN  
FLORIDA AND THAT IS ON THIS  
APPEAL.

I APOLOGIZE TO MY COLLEAGUE.  
GIVE HIM A COUPLE MINUTES TO  
ADDRESS THE PROGRAM.

>> THAT IS FOR ME.

I WAS TALKING FAST.

IT IS IMPORTANT TO POINT OUT THE

WAY THE STATE APPROACHED THIS IN THE SEPARATION OF POWERS ISSUE IS VERY REAL, STOP SAYING NEVER AND JUSTICE OVERTON HAD HIS OBSERVATION ABOUT WHAT MIGHT OCCUR.

I WANT TO TALK ABOUT CLASS SIZE BECAUSE THAT IS AN EXAMPLE BUILT INTO THE CONSTITUTION OF A SPECIFIC DIRECTION, WHAT THE STATE IS SUPPOSED TO DO AND FUND.

IT SAYS TO ASSURE HIGH-QUALITY EDUCATION THIS IS WHAT YOU ARE SUPPOSED TO DO AND THE EVIDENCE IN THIS CASE, BACK TO THE EVIDENCE, THE CLASS-SIZE AMENDMENT HAD BEEN FULLY FUNDED. IT IS COMPLIED WITH.

THAT IS UNDISPUTED IN THE CASE. WHEN WE TALK ABOUT CASES, OTHER STATES OF GONE DOWN THIS TRACK, PERFECTLY FINE, SAFE TO DO IT, NEW JERSEY IS A GREAT EXAMPLE. 30 YEARS INTO THEIR LITIGATION, 20 PUBLISHED OPINIONS, FLORIDA IN 20 YEARS HAS FLOWN BY NEW JERSEY AND STUDENT PERFORMANCE OUTCOMES SO THE QUESTION IS WHAT IS THE BETTER MODEL?

IF WE ARE TALKING IN AN ESOTERIC SENSE WHAT IS THE BETTER MODEL?

I WOULD PUT TO YOU THE BETTER MODEL IS WHAT FLORIDA HAS DONE WHICH IS TO RESPOND IMMEDIATELY LEGISLATIVELY WITH THE 98 AMENDMENTS, COME UP WITH A PLAN TO IMPROVE PUBLIC SCHOOLS THE PEOPLE CAN MEASURE WHEN THEY GO TO THE VOTING BOOTHS, NOT ONLY AT THE LEGISLATIVE LEVEL BUT THE SCHOOL BOARD LEVEL.

IT HAS BEEN SUCCESSFUL.

IT HAS WORKED.

IT IS NOT A SYSTEM ANYONE SHOULD BE CONCERNED IS BROKEN OR FITS INTO THE JUSTICE OVERTON DESCRIPTION.

IT IS A LEADING STATE BASED ON REACTION TO THE 98 AMENDMENTS.

IT WAS MEANINGFUL AND IMPORTANT  
AND CONSEQUENTIAL.

I WOULD SAY TO YOU I THINK WE  
WOULD RATHER BE HERE.

THE FREE AND REDUCED LUNCH KIDS  
AND AFRICAN AMERICANS STUDENTS,  
SHOULD BE BETTER OFF AND ARE  
BETTER OFF THAN THEY ARE IN NEW  
JERSEY FOR SURE.

THANK YOU.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT.

THE RULING SHOULD BE AFFIRMED  
FOR THREE REASONS, THE APPELLATE  
IN THIS CASE LACK STANDING TO  
CHALLENGE THE FTC PROGRAM.

THE MCKAY PROGRAM IS  
CONSTITUTIONAL UNDER THE COURT'S  
PREVIOUS RULING AND SETTING  
ASIDE THE MERITS OF THE  
CONSTITUTIONAL ISSUES THERE ARE  
MAJOR JURISDICTIONAL FLAWS THAT  
PROHIBIT THIS COURT FROM GETTING  
TO THE QUESTION OF WHETHER OR  
NOT THESE PROGRAMS ARE  
STANDALONE ON THEIR OWN  
CONSTITUTIONAL BECAUSE THEY  
NEVER APPROPRIATELY PLANNED,  
APPEALED OR PRESERVED THEIR  
ARGUMENTS WITH RESPECT TO THOSE  
PROGRAMS WHICH I WILL SKIP FIRST  
TO THE DISCUSSION OF THE FLORIDA  
TAX CREDIT PROGRAM.

THAT IS ONE OF THE BASES FOR  
REVERSAL.

THE BASIS FOR THEIR ARGUMENT IS  
TAX CREDITS ARE THE FUNCTIONAL  
EQUIVALENT OF LEGISLATIVE  
APPROPRIATIONS.

THIS IS A POSITION PUT FORWARD  
THE ROUNDLY REJECTED BY ANY  
COURT FROM THE US SUPREME COURT  
TO VARIOUS SUPREME COURT'S IN  
FLORIDA.

TO BORROW A LINE FROM THE US  
SUPREME COURT DECISION, IN 2011,  
PRIVATE BANK ACCOUNTS ARE NOT  
PART OF THE PUBLIC TREASURY AND  
THAT IS WHAT THEY ARE ARGUING.  
THESE ARE PRIVATE FUNDS THE PAST

FROM PRIVATE DONORS INTO PRIVATE  
SCHOLARSHIP FUNDING  
ORGANIZATIONS.

>> YOU ARE NOT ASKING US TO  
ADDRESS THE MERITS.

IS THAT IT REALLY WASN'T USING  
SOMETHING THAT WAS TEED UP FOR  
THERE TO BE AN ADJUDICATION ON  
THE FTC OR INDIVIDUALLY ON THE  
MCKAY SCHOLARSHIP.

TO LEAVE THAT TO STAND AS  
OPPOSED TO THE MERITS OF WHETHER  
IT IS CONSTITUTIONALLY  
APPROPRIATE.

>> IT IS NOT NECESSARY TO GET TO  
THE MERITS OF WHETHER IT IS  
CONSTITUTIONALLY APPROPRIATE.

>> IF YOU GET TO IT YOU WANT US  
TO AGREE WITH YOU.

>> ABSOLUTELY.

HAVING SAID THAT, THE FIRST DCA  
POINT OUT THERE IS NO TAXPAYER  
STANDING, NO SPECIAL INJURY  
STANDING.

THESE ARE POSITIONS THAT ARE  
ROUNDLY REJECTED.

THE TESTIMONY THEY SEEK TO  
PROFFER IF THIS WERE TO GO BACK  
DOWN HAS BEEN EXCLUDED IN  
NUMEROUS INSTANCES INCLUDING BY  
THE COURT IN NEW HAMPSHIRE.

>> IF WE REACH THE ISSUE OF  
STANDING, IF THERE'S TAXPAYER  
STANDING, I DON'T KNOW HOW IF A  
PROGRAM OPERATES TO DENY THAT  
MONEY IN THE PUBLIC TREASURY  
BECAUSE IT IS HELD UP TO GIVE AS  
A CREDIT, IF I WANTED TO GIVE  
THIS MUCH MONEY TO THIS  
PARTICULAR SCHOOL I DON'T KNOW  
WHY THERE WOULDN'T BE STANDING,  
GENERAL TAXPAYER STANDING FOR  
THAT BECAUSE WE INTERPRETED THAT  
STANDING FOR TAXPAYER VERY  
BROADLY.

I THINK THE FIRST DISTRICT SEEMS  
TO ACKNOWLEDGE.

>> THE FIRST DISTRICT  
ACKNOWLEDGED IT BUT FOUND THERE  
WAS NO TAXPAYER STANDING BECAUSE

TAX CREDITS ARE NOT THE EQUIVALENT OF LEGISLATIVE APPROPRIATIONS, SOMETHING COURTS HAVE UNIFORMLY HELD THROUGHOUT.  
>> WHAT TO BRING A CHALLENGE IF THERE WAS A PROBLEM WITH THAT THE FLORIDA TAX CREDITS, THE FTC STANDS FOR.

IF -- WHO GETS TO CHALLENGE THAT?

>> SOMEBODY WOULD HAVE TO DEMONSTRATE CONSTITUTIONAL PROVISION THEY BELIEVED WAS BEING VIOLATED HAVE SPECIFICALLY IDENTIFIED AN APPROPRIATION THEY BELIEVE CONTRAVENED --

>> IT IS NOT CHALLENGE A BALL IS WHAT YOU ARE SAYING BECAUSE HOW MUCH MONEY GOES INTO THAT VERSUS APPROPRIATIONS, DOESN'T REALLY MATTER IF THERE'S LESS MONEY FOR PUBLIC EDUCATION BECAUSE OF FLORIDA TAX CREDIT.

>> THEY GOT TO POINT TO A SPECIFIC APPROPRIATION IN THE STATE CAN'T APPROPRIATE SOMETHING IT DOESN'T HAVE AND THAT IS WHY IT IS IMPORTANT.

>> THERE CAN NEVER BE A PLAN IT SEEMS TO ME IS WHAT YOU ARE SAYING.

>> THAT WITHOUT IDENTIFYING AN APPROPRIATION WHICH THEY CANNOT DO IN THIS CASE, YOUR HONOR. I SEE I AM AT THE END AND I WILL CONCLUDE THE PLAINTIFF DO NOT HAVE STANDING TO CHALLENGE THE FTC, THE MCKAY PROGRAM IS THE -- WAS IDENTIFIED IN BUSH VERSUS HOLMES IS A PROGRAM THAT SATISFIES CONSTITUTIONAL MUSTER FOR STUDENTS WITH DISABILITIES AND THE COURT NEED NOT GET TO THESE ARGUMENTS BECAUSE OF JURISDICTIONAL DEFECTS IN THEIR BRIEFING SO THAT I RESPECTFULLY REQUEST THE FIRST DCA OPINION BE AFFIRMED.

>> A LOT OF POINTS BUT I WILL PRIOR TO DO THEM IN PRIME ORDER.

ON THE FLORIDA TAX CREDIT,  
TAXPAYER STANDING, THERE'S  
REALLY TWO BASES AND ONLY ONE  
RELIES ON THE THEORY OF THE  
PUBLIC FUNDS AND APPROPRIATION.  
TAXPAYER STANDING IS FOR TAXING  
AND SPENDING POWER.

>> GO BACK TO ADDRESS THE  
PROCEDURAL PROBLEM.

IS A TRUE THE TRIAL COURT RULED  
THAT YOU FAILED TO PROPERLY  
PLEAD THOSE TWO CLAIMS AND THAT  
IS THAT TRUE?

>> KNOW.

WELL, THE FIRST PART --

>> KNOW, WELL.

>> TWO QUESTIONS.

WE CERTAINLY PLAYED IT.

WE PLED UNIFORMITY CHALLENGE.

WHAT THE TRIAL JUDGE DID WAS SAY  
WE DID AN AFFIRMATIVE SUMMARY  
JUDGMENT AND DID NOT FIND WE  
COULD DO THAT BASED ON HIS VIEW  
THAT IT WASN'T IN PLEADING BUT  
PUT THAT INTO THE FINAL ORDER  
AND WE APPEAL THE FINAL ORDER SO  
WE DIDN'T HAVE TO APPEAL THE  
DENIAL OF A MOTION FOR SUMMARY  
JUDGMENT, WE CAN'T EVEN APPEAL  
THAT.

WE APPEAL THE FINAL JUDGMENT  
WHICH INCORPORATED THAT ORDER.

THERE IS DEFINITELY  
JURISDICTION, NOT A  
JURISDICTIONAL PROBLEM.

>> THE MORE COMPELLING ISSUE, HE  
IS SAYING NEW JERSEY IS WORSE  
THAN WE ARE EVEN THOUGH WE ARE  
IN THE LAST WE 10 OF SPENDING,  
THEY LOOKED AT THIS BECAUSE  
THESE HIGH STANDARDS, I LOOK AT  
THE FINDINGS ABOUT THE NUMBER OF  
CHILDREN NOT READING AT GRADE  
LEVEL AND I'M TRYING TO  
UNDERSTAND THIS DISCONNECT  
BETWEEN HOW WE HAVE THIS FIRST  
IN THE NATION --

>> WE ARE TALKING FACTS.

WE SHOULD BE TALKING FACTS ABOUT  
NEW JERSEY THAT AREN'T PART OF

THE BRIEFS.

THERE HAS BEEN DRAMATIC  
PROGRESS, THERE HAS BEEN  
PROGRESS HERE BUT PROGRESS ISN'T  
THE STANDARD AND THE STANDARD IS  
NOT WHETHER WE ARE BETTER OR  
WORSE THAN ANY OTHER STATE, THE  
STANDARD IS WHETHER THERE ARE  
SUBSTANTIAL AMOUNTS OF CHILDREN  
IN OUR STATE THAT ARE FAILING  
AND WHETHER EVERY DISTRICT HAS  
THE SAME OPPORTUNITY.

WE HAVE TO LOOK AT THE STANDARDS  
IN FLORIDA AND THESE OTHER  
STANDARDS IN ORDER FOR THE STATE  
TO MAKE THAT PROPOSITION THAT WE  
ARE BETTER THAN NEW JERSEY IS  
BASED NOT ON OUR STANDARDS BUT  
TESTS THAT ARE DIFFERENT TYPES  
OF TESTS NOT TIED TO OUR  
STANDARDS.

>> YOU ARE OVER TIME NOW BUT IF  
YOU WANT TO TAKE 15 OR 20  
SECONDS TO SUM UP.

>> WE WOULD LIKE THE COURT TO  
SEND IT BACK SO THE COURT CAN  
WAY THE RIGHT CONSTITUTIONAL  
QUESTIONS.

THEN WE CAN FIND OUT WHETHER WE  
WIN OR NOT.

WE DON'T KNOW WHETHER THE WEIGHT  
OF THE EVIDENCE GOES ONE WAY OR  
THE OTHER BECAUSE THE COURT USED  
THE WRONG CONSTITUTIONAL  
STANDARD.

WE ALSO WANT THE COURT TO FIND  
ARTICLE 9 DOES NOT, IT LIMITS  
LEGISLATIVE TAXING POWER.

NOT JUST SPENDING POWER.

THEREFORE WE HAVE STANDING UNDER  
THE FLORIDA TAX CREDIT.

>> THANK YOU, THANK ALL OF YOU  
FOR YOUR ARGUMENTS.

THE COURT WILL STAND IN RECESS  
FOR ABOUT 10 MINUTES.