

>> WE WILL NOW TAKE UP CASE
NUMBER 19, 18, 19, PINELLAS
COUNTY VERSUS GARY JOINER.

>> MAY IT PLEASE THE COURT.
ON BEHALF OF PINELLAS COUNTY,
POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, WE WILL BE
HANDLING THIS AND WOULD LIKE TO
RESERVE WE WOULD LIKE
TO RESERVE 8 MINUTES.

FOR OVER 100 YEARS THIS COURT
HELD THE PRINCIPLE THAT COUNTIES
PARTAKE IN THE STATE'S SOVEREIGN
COMMUNITY.

IMMUNITY FROM TAXATION IS ONE
FACET OF THAT IMMUNITY.
THIS COURT HAS RECOGNIZED
SOVEREIGN IMMUNITY IS DERIVED
FROM SEPARATION OF POWERS.
THE LEGISLATURE HAS THE POWER TO
WAIVE SOVEREIGN IMMUNITY,
UNEQUIVOCAL AND THIS COURT HAS
PREVIOUSLY DECLINED TO INFER A
WAIVER.

SECOND DISTRICT COURT OF APPEALS
DID NOT FIND THE LEGISLATURE
WAVED IMMUNITY WAIVED IMMUNITY
WHERE A COUNTY SUCH AS PINELLAS
IN ANOTHER FLORIDA COUNTY LIKE
PASCOE.

AND IN FACT THERE IS NO SUCH
WAIVER.

>> MAYBE I HAVE GOT WAIVER ON
THE BRAIN TODAY BUT IS YOUR
POSITION THAT LEGISLATION IS
EXCLUSIVELY THE PROVINCE OF THE
LEGISLATURE TO WAIVE SOVEREIGN
IMMUNITY AND NO AMOUNT OF
EXECUTIVE ACTION OR INACTION CAN
NEVER CONSTITUTE SOVEREIGN
IMMUNITY?

>> THAT'S MY UNDERSTANDING OF
THE CURRENT CASE LAW.
YES.

AND I WOULD ASSERT WITH REGARDS
TO OWNERSHIP OF PROPERTY, ONE
COUNTY OWNING PROPERTY IN
ANOTHER COUNTY, LEGISLATURE
GRANTED THE ABILITY TO USE THE
DELEGATED POWER OF EMINENT
DOMAIN TO TAKE PROPERTY IN
ANOTHER COUNTY.
COUNTY, THEY DID NOT ADD A

WAIVER OF SOVEREIGN IMMUNITY.
>> THE BEST SOURCE EXTENDING
BEYOND YOUR BOUNDARIES.
>> NATIVE AMERICAN RESERVATION
OUTSIDE OF IT, WHAT IS YOUR BEST
REFERENCE FOR HOW THAT SOVEREIGN
IMMUNITY EXTENDS?
>> THAT ISSUE IS NOT ADDRESSED
BY FLORIDA COURTS BUT IF YOU GO
BACK TO THE 1900s, COUNTIES
DERIVE IMMUNITY FROM THE STATES
AND YOU LOOK AT THE HISTORY AD
VALOREM TAX LAW WHERE A COUNTY
HAD LEASED PROPERTY FOR PRIVATE
USE IN THE GOVERNMENT OR COURT
SAID STILL IMMUNE TO DICKINSON,
THE TO CITY OF TALLAHASSEE WAS
ATTEMPTING TO IMPOSE A FEE ON
THE STATE AND COUNTY AND SCHOOL
BOARD AND LOOK COURT SAID IN
DICKINSON THAT STATES IMMUNITY,
USING STATE BROADLY TO TALK
ABOUT THE COUNTY, SCHOOL BOARD,
THE IMMUNITY FROM TAXATION WAS
SO WELL-ESTABLISHED THAT LITTLE
ELABORATION WAS NEEDED.
WHEN YOU LOOK AT --
>> THAT HAS NEVER BEEN IN THE
CONTEXT, COUNTY VERSUS COUNTY,
ONE COUNTY, OWNING PROPERTY IN
ANOTHER COUNTY, IT NEVER CAME
UP.
>> IT HAS NEVER BEEN, THIS ISSUE
--
>> THIS HAS NEVER BEEN A FOCUS
WHERE YOU HAVE TWO SUBSIDIARY
ENTITIES WITHIN EVERY MOMENT -
AN ELEMENT OF SOVEREIGNTY WHERE
THEY ARE IN CONFLICT.
THAT'S NOT BEEN ADDRESSED.
THAT IS WHY WE ARE HERE TODAY.
>> THE COURT HAS BEEN CLEAR THAT
COUNTIES --
>> THEY HAVEN'T HAD TO ADDRESS
IT.
>> THEY -- THE COUNTY DERIVED
SOVEREIGNTY FROM THE STATE.
>> ALL OF THEM DO.
>> THE STATE'S SOVEREIGNTY.
>> THE STATE WOULDN'T HAVE
SOVEREIGNTY, IF WE BOUGHT LAND
IN GEORGIA --
>> THERE IS CASE LAW THAT DOES
SUPPORT THAT.

IN GEORGIA WE WOULD PAY TAXES.

>> SOVEREIGN IMMUNITY IS NOT SOMETHING YOU CARRY WITH YOU NO MATTER WHERE YOU ARE.

A FOREIGN COUNTRY BUYS PROPERTY HERE.

SO WHY WOULD A COUNTY GOING OUTSIDE ITS BOUNDS OF JURISDICTION CLAIM IT BECAUSE IT IS DERIVED FROM THE STATE.

>> INTO SEVERAL ISSUES IF YOU ALLOW ME TO DO SO.

ONE THING IS NOT ADDRESSED, AND THE CERTIFIED QUESTION USES JURISDICTION, THAT'S PROBLEMATIC.

AS A COUNTY WE HAVE CERTAIN JURISDICTIONS COUNTY WIDE BUDDY MUNICIPALITIES THERE ARE THINGS THE COUNTY DOES NOT HAVE JURISDICTION OVER.

LET'S PUT GEOGRAPHIC BOUNDARIES, HOW WE TALKED ABOUT.

WHEN YOU ARE LIVING AT CASE LAW BY THE PROPERTY APPRAISER, STATES THAT CAME TOGETHER TO FORM THE UNITED STATES WHEREAS THE STATE OF FLORIDA WAS CARVED INTO COUNTIES.

THEY ARE DIFFERENT IN THAT RESPECT.

WHEN YOU LOOK AT STATUTE 76828. THANK YOU.

THE LEGISLATIVE WAIVER OF SOVEREIGN IMMUNITY THAT IS A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR THE STATE AND COUNTIES OR MUNICIPALITIES BUT WHEN YOU LOOK AT THAT THE ANALYSIS FOR -- WAS THE EMPLOYEE ACTING IN THE COURSE AND SCOPE, IF THEY WERE, THE SOVEREIGN COUNTY WOULD BE LIABLE.

THAT DOESN'T HAVE GEOGRAPHIC BOUNDARIES.

UNTIL THE RULING OF THE COURT BELOW, PINELLAS COUNTY CAN ONLY HAVE SOVEREIGN IMMUNITY, NO QUESTION WHEN I DROVE UP US 19 TO COME HERE I HAD SOVEREIGN IMMUNITY.

THE DRAWING OF THE LOWER COURT AND DRYING OF BOUNDARIES CALLS INTO QUESTION THAT BODY OF CASE

LAW ADDRESSED BY THE FLORIDA
ASSOCIATION OF COUNTY ATTORNEYS
AND OUR BRIEFS.
IF YOU LOOK AT TORT IMMUNITY
THERE'S NOT A LOT OF
DECISION-MAKING ON THAT.
LAW ENFORCEMENT OFFICER OUTSIDE
HIS MUNICIPALITY WHEN INVOLVED
IN AN ACCIDENTAL SHOOTING,
LOOKED AT THIS COURSE AND SCOPE
OF EMPLOYMENT AND THEY FOUND THE
EMPLOYER REASONABLY ALLOWED HIM
TO LEAVE HIS MUNICIPALITY, IN
THE COURSE AND SCOPE, SOVEREIGN
IMMUNITY, FROM CASE LAW, FROM
TAXATION.
THEY HAVE EXEMPTIONS.
THE LEGISLATURE AUTHORIZED
ORANGE COUNTY UTILITIES
COMMISSION SITE A POWER PLANT
WITHIN ORANGE COUNTY AND
NEIGHBORING COUNTY.
NO ELECTRICITY FROM THAT PLANT
WAS PROVIDED TO THE NEIGHBORING
COUNTY WAS STILL --
>> THE STATUTORY EXEMPTION.
>> FOR MUNICIPAL PURPOSES AND
THEIR AUTHORITY WAS STATUTORY.
ONE OF THE ISSUES WE ADDRESS
WHEN WE GO THROUGH THE LENS AND
DRAW THE LINE AROUND THE COUNTY
AND ANY PROPERTY YOU HAVE
OUTSIDE, THAT CREATES A RESULT
BETWEEN IMMUNITY AND EXEMPTIONS
WHEREAS MUNICIPALITY CAN HAVE AN
EXEMPTION AND WITH REGARD TO
SOVEREIGN IMMUNITY LAW THE
COUNTY IS CONSIDERED THE STATE.
>> IS THAT SUBJECT TO ZONING
LAWS?
>> WE ARE NOT ASSERTING, THE
SOVEREIGN JURISDICTION, WITH
SOVEREIGN POWER THERE.
WE HAVE THE SOVEREIGN IMMUNITY
THERE.
THAT IS THE POSITION.
>> IT MAKES SENSE OF THESE
COMPETING PRINCIPLES BUT IF WE
WRITE SOMETHING THAT IS LIMITED
TO THE TEXT CONTEXT AND
DISTINGUISH THE TORT CASES WE
ESSENTIALLY, REGARDLESS OF WHICH
PATH THE COURT TAKES THIS IS
SOMETHING THE LEGISLATURE -- IN

EITHER DIRECTION IF THEY CHOSE TO ADDRESS IT LEGISLATIVELY OR DOES ONE PATH TAKEN OUT OF THE HANDS OF THE COURT?

>> I HAVEN'T REALLY THOUGHT THROUGH THAT QUESTION.

I DON'T BELIEVE ANYTHING YOU WOULD DECIDE HERE TODAY WOULD TAKE IT OUT OF THE HANDS OF THE LEGISLATURE WHETHER YOU RULE ON BEHALF OF PINELLAS COUNTY OR NARROW YOUR OPINION TO TAXATION. PERHAPS IF YOU FIND WE ARE NOT SOVEREIGNLY IMMUNE'S THAT WOULD BE OUT OF THE HANDS OF THE LEGISLATURE.

>> THE PRINCIPLES GOING AROUND, IF WE VIEW THIS AS A TRICKY POLICY THING WHERE POINTING IN BOTH DIRECTIONS WE NEED TO SET A DEFAULT LIMITED TO THE TAX CONTEXT AND LEGISLATURE.

>> I WOULD URGE YOU TO SET A DEFAULT AND FIND PINELLAS COUNTY RETAIN -- RETAINED ITS IMMUNITY THROUGH THE STATE OF FLORIDA AND ALLOW THE LEGISLATURE TO BE A PROBLEM THAT NEEDS TO BE ADDRESSED.

PINELLAS COUNTY OWNED THIS PROPERTY FOR A LONG TIME, A YEAR AFTER DIXON -- DICKINSON WAS DECIDED.

YOU DON'T SEE A LOT OF THESE CASES BECAUSE THERE HAVEN'T BEEN A LOT OF ISSUES AND THIS COURT IN THE PAST DECIDED TO WAIT INTO THOSE POLICY DECISIONS.

OBVIOUSLY AS YOU CAN TELL FROM OUR BRIEF AND THE INTERMINGLING BETWEEN THIS AND TORT IMMUNITY IT GETS VERY TRICKY AND WHEN YOU LOOK AT THE TAX STATUTES AND YOUR DECISIONS REGARDING THE TAX STATUTES, MY COLLEAGUE LIKES TO SAY ARE PULLING A THREAD ON A SWEATER.

THAT IS WHERE WE ARE.

IF YOU LOOK AT A DECISION IN 2006 WHERE YOU FOUND THAT THE STATE WAS NOT A TAXPAYER FOR PURPOSES OF THE NONCLAIM STATUTE TO CHALLENGE TAXATION.

YOU LOOK AT THE PROVISION OF

FLORIDA STATUTES THAT SAYS A
CERTIFICATE CANNOT BE ISSUED AND
A LIEN IS NOT CREATED ON
PROPERTY OWNED BY A GOVERNMENTAL
ENTITY AND BECOME SUBJECT TO
TAXATION THROUGH A LEASE FOR
NONGOVERNMENTAL PURPOSES AND YOU
SAID IN THAT DECISION THE
LEGISLATURE NEVER CONTEMPLATED
THE STATE WOULD BE A TAXPAYER
WHOSE PROPERTY COULD BE LOST
THROUGH NONPAYMENT OF TAXES AND
YET THE DECISION BEFORE YOU THAT
IS WHERE DALLAS COUNTY STANDS,
WE ARE A SUBDIVISION OF THE
STATE, OUR IMMUNITY DERIVED FROM
THE STATE.

>> YOU ARE TRYING TO TAKE ON THE
COMPLETE POWER OF THE STATE BUT
YOU ARE NOT.

NO OTHER CONSTITUTIONAL
AUTHORITY WOULD PREVENT A COUNTY
TO ASSERT THEIR SOVEREIGN
IMMUNITY BEYOND ITS OWN BORDERS.
DO YOU HAVE ONE?

>> ASIDE FROM CASES IN TORT, NO.
IT IS SOMETHING WE WOULD ARGUE
IMMUNITY IS SOMETHING WE ARE
VESTED WITH.

IT IS INHERENT IN THE FABRIC OF
WHO THE COUNTY IS BECAUSE WE
WERE CONSTITUTIONALLY -- THE
SUBDIVISION OF THE STATE AND
SHOULD THE POLICY CONCERNS BE
SUFFICIENT CONCERNS, THE
LEGISLATURE COULD CRAFT A WAIVER
OF IMMUNITY TO ADDRESS THIS LIKE
THEY HAVE IN 76828.

I MET THE END OF MY TIME.
THANK YOU.

>> MAY IT PLEASE THE COURT.
COUNSEL TABLE, WE REPRESENT THE
CURRENT PASCOE COUNTY PROPERTY A
QUAYS OR -- APPRAISER, THIS IS
ADMITTEDLY A UNIQUE CASE AND IT
ARISES IN AN AREA THAT IS FAIRLY
UNIQUE TO ITSELF AND THAT IS
PROPERTY TAXES.

IT IS A VERY SMALL DITCH AND IN
MANY RESPECTS IS INTELLECTUALLY
INTRIGUING CASE.

WHEN YOU HAVE A CASE THAT WE
DON'T HAVE ON POINT, WE TRY TO
DECIDE HOW TO OUTPUT PACES

TOGETHER TO MAKE SENSE OF
CONSTITUTIONAL BOUNDARIES THAT
WE HAVE.

IT IS ALWAYS INTERESTING AND
INTRIGUING.

I WANTED TO START WITH COUNSEL
TALKED ABOUT THE CASE THAT WAS A
COUNTY ATTEMPTING TO TAX THE
STATE.

THAT IS THE PARENT/CHILD
IMMUNITY THAT HAS BEEN
WELL-ESTABLISHED IN CASE LAW,
THIS COURT, IT IS NOT THE
SITUATION WE HAVE HERE TODAY.

>> THE CASE STANDS FOR SOMETHING
ELSE WHICH IS THE FAIRLY WEAK
POWER OF THE LEGISLATURE.

HOW DO YOU ANSWER THE ARGUMENT
THAT THAT POWER UNDER OUR CASES,
EXCLUSIVELY IN THE LEGISLATURE,
AND THE LEGISLATURE MUST ACT NOT
FOR POLICY REASONS BUT
CONSTITUTIONAL REASONS ONLY THE
LEGISLATURE CAN WAIVE SOVEREIGN
IMMUNITY.

THERE HAS BEEN NO AFFIRMATIVE
STATEMENT BY THE LEGISLATURE.

>> THERE'S AN ARGUMENT UNDER
196.99 THEY REACHED THAT ISSUE
BUT THE FIRST STEP, DOES IN THE
UNITY EXIST BEYOND THE COUNTY'S
BOUNDARIES?

IF THE ANSWER IS YES IT WOULD BE
THE LEGISLATURE'S PREROGATIVE.
SHY OF THAT WHICH IS THE CASE WE
HAVE HERE WE ARE DEALING WITH
COMMON-LAW THEORIES THAT IS
EXPOUNDED UPON BY THIS COURT
THROUGH ITS DECISIONS AND THIS
COURSE WOULD HAVE THE ABILITY TO
SAY WHAT THIS CASE LAW MEANS AND
IS APPLIED IN A FACTUAL
SCENARIO.

YOUR ORIGINAL QUESTION YOU ASK,
IS THIS EXCLUSIVELY IN THE
AUTHORITY OF THE LEGISLATURE?
THIS IS A COMMON LAW DOCTRINE
THE COURT IS EXPOUNDED ON AND
SAY WHAT THE LAW IS.

IF THE COURT WERE TO DETERMINE
PINELLAS COUNTY IS IMMUNE YOU
WOULD BE LOOKING AT THE
LEGISLATIVE WAIVER WHICH WHEN
YOU LOOK AT THE SECOND DISTRICT

COURT OF APPEALS DECISION YOU WILL SEE THEY REMAND IT BACK AND SAY REMAND IT BACK TO DO WHAT WE SAID TO DO IN OUR OPINION AND YOU MAY LOOK AT ANY EXEMPTION ISSUES, THAT REFERENCE WAS TO 196.

99 PROVISIONS THAT SAYS PROPERTY OWNED BY COUNTIES, CITIES ETC. IS EXEMPT IF IT IS USED FOR PUBLIC PURPOSES IN THE DISTRICT COURT.

WE DON'T THINK IMMUNITY EXISTS. WHEN YOU LOOK AT SOVEREIGN IMMUNITY FROM TORT AND SOVEREIGN TAX IMMUNITY, WE MAY NOT HAVE THE SAME ORIGIN STORY BUT FUNDAMENTALLY DIFFERENT TYPES OF IMMUNITIES IF YOU WOULD, THE SOVEREIGN IMMUNITY FROM FORD RECOGNIZES, CAN DO NO LONG, SOVEREIGN TAX IMMUNITY IS BUILT ON THE COURT'S RECOGNITION THAT WE'VE GOT TO -- TO BE RESOLVED AMONG COMPETING POLITICAL SOVEREIGN VIOLENCE.

1819 WE HAD THE CASE IN THE UNITED STATES SUPREME COURT THAT SAYS A STATE CANNOT TAX THE FEDERAL GOVERNMENT.

NO LANGUAGE SAID THAT, NO CONGRESSIONAL INTENT, THAT THE ONLY WAY WE CAN HAVE A PROPER FUNCTIONING RECOGNITION OF RESPECTIVE POWERS OF THE STATE, THE FEDERAL GOVERNMENT.

THIS COURT TRACKED ALONG THE SAME LINE RAISING ITS DICKINSON CASE.

THE CHILD CANNOT TAX THE GOVERNMENT, LIFELINES RECOGNIZE THE COUNTY MAY NOT TAX ITSELF. THE COUNTY CANNOT TAX THE STATE. THE COURT RECOGNIZED, ALL THE PIECES OF GOVERNMENT TO WORK TOGETHER.

THEY HAVE TO BE INFERRED. IT ALWAYS TROUBLES ME WE ARE TRYING TO -- IT IS INFERRED FROM PROPER FUNCTIONING OF GOVERNMENT.

AGAINST PASCOE COUNTY SOVEREIGN RIGHTS TAX WHICH IS AN EXPRESS RIGHT IN THE FLORIDA

CONSTITUTION.

IF IN DOUBT, WHERE WE HAVE A EXPRESS RIGHT TO TAX, VERSUS AN INFERRED RIGHT, WHAT YOU DEEPER TO THAT.

THERE WOULD BE NO BASIS TO SAY PINELLAS COUNTY ASSUME THE MANTLE OF THE STATE AND VITIATE THE SOVEREIGN POWERS OF PASCOE COUNTY.

THERE IS NO BASIS FOR THAT.

LOOKING AT THE OLD AMOS VERSUS MATTHEW CASE, 30 OR 40 PAGES LONG, IN THE STYLE OF THE COURT, COUNTIES ARE POLITICAL SUBDIVISION IN THE STATE BUT IN MANY CASE AUTONOMOUS FROM THE STATE, AND THE PARTICULAR REGARD TO AD VALOREM TAX, IT IS EVEN MORE PROFOUND BECAUSE THE STATE IS NOT ALLOWED TO AUTHORIZE AND AD VALOREM TAX.

THAT RIGHT IS RESERVED TO COUNTIES.

THE TAXING AUTHORITIES MAY LEVY THIS AD VALOREM TAX.

BUT THEY MAY NOT.

THAT FURTHERS THE DESIRE FOR PINELLAS COUNTY TO SAY THEY WILL DO ANY EVENT, THAT IS THE -- DRIVING TO A CONFERENCE SOMEWHERE, THAT WOULD BE SOMETHING THAT YOUR CLIENT WOULD BE CONCERNED ABOUT HAVING THAT EXTRATERRITORIAL SOVEREIGN IMMUNITY FROM TORT.

ARE YOU CONCERNED ABOUT ANYTHING THIS OPINION THAT COULD HAVE AN ADVERSE EFFECT ON THAT, OR DO YOU CARE ABOUT THAT?

>> I'M A BELIEVER THAT COURT SHOULD DECIDE THE CASE IN FRONT OF THEM, AND IF THE ISSUE'S NOT IN FRONT OF THEM, IT SHOULD BE DECIDED IN ANOTHER CASE.

>> I THINK THE POINT THE AMICUS BRIEF MAKES IS THEY DON'T WANT US TO DECIDE THE ISSUE HERE AND SAY SOMETHING THAT IS GOING TO HAVE UNINTENDED IMPLICATIONS FOR ANOTHER AREA OF THE LAW.

AND YOU WOULD AGREE THAT THAT'S NOT AN ILLEGITIMATE CONCERN.

>> I CERTAINLY WOULD AGREE, AND

I THINK IT WOULD BE A FAIRLY STRAIGHTFORWARD MATTER FOR THIS COURT TO POINT OUT IN THIS OPINION THAT IT'S NOT ADDRESSING THE TORT IMMUNITY ISSUE. AND I THINK YOU CAN CERTAINLY DISTINGUISH THE SOVEREIGN TAX IMMUNITY IN THE UNDERLYING CONSTITUTIONAL FRAMEWORK BEST BASED ON THE TORT IMMUNITY. TO ME, TORT IMMUNITY IS MORE OF A PERSONAL RIGHT NOT TO BE THE SUED OR THE SOVEREIGN'S RIGHT NOT TO BE SUED OR TO HAVE TO PAY DAMAGES. PROPERTY TAXES -- WE'RE ALWAYS TALKING ABOUT THE PROPERTY ITSELF. THAT PROPERTY IS, FLORIDA SAYS PROPERTY. THE VALUE OF PROPERTY IS THE SAME REGARDLESS OF -- MORE OF AN MREM ACTION. SO THOSE TWO, TO ME, THERE'S A SHARP DISTINCTION BETWEEN THOSE TWO THINGS. KING CAN DO NO WRONG, DOESN'T MATTER WHERE THE KING IS AT. THERE'S A CONCEPT TO TAX IMMUNITY THAT'S DEPENDENT UPON THE BROAD PRINCIPLES OF HOW THE GOVERNMENT INTERACTS WITH EACH OTHER. AND THAT CERTAINLY INVOLVES THE BOUNDARIES, THE PHYSICAL BOUNDARIES OF THOSE GOVERNMENTS. AND ALTHOUGH THIS COURT HAS NOT DIRECTLY EXPOUNDED ON THE ISSUE, WHEN YOU GO TO TRY TO FIND ANALOGOUS AREAS OF THE LAW, IT SEEMS FAIRLY CONSISTENT THAT COURTS THAT HAVE LOOKED AT THIS HAVE RECOGNIZED IN THE CONCEPT OF TAXES AND TAX IMMUNITY, THE BOUNDARY OF BOTH THE OWNING ENTITY AND THE LEVYING AUTHORITY ARE SIGNIFICANT. AND WE THINK THE COURT COULD VERY MUCH ALIGN ITSELF WITH THOSE DECISIONS. >> COUNSEL, SO OBVIOUSLY IF WE SAID THAT THERE IS IMMUNITY THAT'S DERIVED FROM THE STATE, THEN THERE COULD BE A

LEGISLATIVE FIX TO THAT IF THE LEGISLATURE WANTED TO. DO YOU AGREE WITH WHAT YOUR COLLEAGUES SAID, THAT IF WE INSTEAD RULE THAT THERE WAS NO IMMUNITY, THAT THE LEGISLATURE COULD ALSO ADDRESS THAT IF THEY DIDN'T -- IF THEY THOUGHT IT WOULD BE BETTER, IN EVERYONE'S BEST INTERESTS IF IT WERE A DIFFERENT RULE?

>> YES, SIR.

I BELIEVE THAT THIS COURT EXPOUNDS OF WHAT THE COMMON LAW IS, AND THE LEGISLATURE CERTAINLY CAN ENACT A STATUTE THAT PLACES PARAMETERS ON WHAT THAT COMMON LAW SHOULD BE. IT IS ARGUABLE THAT IN 196.199, IT IS THERE.

THAT STATUTE PROVIDES -- IN TWO SCENARIOS IT HAS SUBSECTIONS 1A AND B THAT PROPERTY OWNED BY A GOVERNMENTAL ENTITY AND USED FOR GOVERNMENTAL, MUNICIPAL OR PUBLIC PURPOSES, IS EXEMPT.

AND IT USES THE WORD "EXEMPT." AND THERE'S SUBSECTION TWO THAT INCLUDES THE STATE, POLITICAL SUBDIVISION, MUNICIPALITIES WHICH IS LEASED TO NONGOVERNMENTAL OPERATORS FOR USES OTHER THAN GOVERNMENT PURPOSES SHALL BE TAXABLE.

THERE'S A LONG BODY OF CASE TORT WITH THIS AS TO HOW WE GOT THERE WITH ALL THESE PROVISIONS.

IT'S ARGUABLE THAT THAT MAY BE THERE, AND THAT GOES BACK TO THE SECOND DISTRICT COURT, WHERE ARE WE AT NOW.

WHAT SHOULD WE BE FOCUSING ON WHEN WE GET BACK TO THE CIRCUIT COURT.

I WOULD SUBMIT WE BE FOCUSED ON THE OPEN USE OF THE PROPERTY. BUT I DO BELIEVE THAT IT WOULD BE MOST CONSISTENT WITH THE OTHER DECISIONS THAT WE HAVE OUT THERE THAT THE FINDING WOULD BE THAT PINELLAS COUNTY, WHEN IT ACQUIRES PROPERTY OUTSIDE OF ITS COUNTY BOUNDARIES, WOULD BE CONSIDERED TO HAVE ACQUIRED THE

PROPERTY AS ANY OTHER PRIVATE PERSON, AND THERE WOULDN'T BE AN EXEMPTION.

IT COULD BE AN ISSUE FOR ANOTHER DAY.

WE DON'T BELIEVE, AGAIN, THAT THIS IS AN ISSUE STRICTLY CONFINED TO HAZARD IN A WAIVER.

I DON'T BELIEVE THAT THAT'S AN APPROPRIATE ANALYSIS.

I DO BELIEVE WE GO BACK TO THIS COURT'S DECISIONS IN ALFORD, DICKENSON AND CANAVERAL PORT AUTHORITY WHICH IS OUR MOST RECENT VINTAGE.

AND THERE THE COURT SAID THIS CONCEPT OF IMMUNITY FROM TAXATION SHOULD BE KEPT WITHIN NARROW BOUNDS, IT SHOULD NOT BE EXPANDED.

AND IT WENT ON AND SAID THAT THE LEGISLATURE WOULD NOT HAVE THE AUTHORITY TO DECLARE AN ENTITY TO BE IMMUNE FROM TAXATION, THAT THAT IMMUNITY DERIVES ITSELF SOLELY FROM THE PROPER FUNCTIONING OF GOVERNMENT.

AND NEW ENTITIES, THE COURT SAID, SHOULD BE CONFINED TO THE STATE -- SCHOOL BOARDS, COUNTIES AND STATE AGENCIES.

AND THE COURT SAID WE HAVE TO KEEP IT NARROW THERE, AND IT WOULD BE INAPPROPRIATE FOR THE LEGISLATURE TO GO AROUND DECLARING WHAT ENTITIES ARE IMMUNE.

ABSENT ANY FURTHER QUESTIONS, I WOULD YIELD THE REST OF MY TIME. THANK YOU, YOUR HONOR.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, EXCUSE ME, MY NAME IS DON KROL, AND I'M HERE ON BEHALF OF PINELLAS COUNTY.

LET ME START WITH PANAM TOBACCO.

IN FLORIDA SOVEREIGN IMMUNITY IS THE RULE, NOT THE EXCEPTION.

NOW, JUSTICE CANADY, YOU POINTED OUT THAT THERE'S NO CASE ON ALL FOURS IN THE STATE OF FLORIDA.

WE CONCEDE THAT.

BUT THE JURISPRUDENCE OF THIS CASE, OF THIS COURT AND THE

FLORIDA COURTS SINCE KAGAN IN 1916 HAVE REPEATEDLY SAID THAT A COUNTY SHARES THE STATE'S IMMUNITY.

NOT IT'S JUST SOME PIECE OF THE STATE'S IMMUNITY, IT DOESN'T SAY WITHIN THE COUNTY'S BOUNDARIES. AND THEN IT WENT SO FAR IN PARKENSHOT AND DICKENSON TO TALK SPECIFICALLY ABOUT THAT SOVEREIGN IMMUNITY AS APPLIED TO TAXATION.

MY COLLEAGUE WAS ALSO TALKING ABOUT CANAVERAL PORT AUTHORITY. WELL, PORT AUTHORITIES ARE NOT CONSTITUTIONALLY RECOGNIZED AS COUNTIES ARE AS BEING PART OF THE STATE.

THAT WAS THE DISTINCTION THERE. BUT CANAVERAL WENT INTO GREAT DETAIL ABOUT THE HISTORY OF THAT STATE'S SOVEREIGN IMMUNITY AND HOW IT HAS APPLIED.

JUSTICE GROSSHANS, YOU ASKED ABOUT FLORIDA VERSUS GEORGIA DISTINCTION.

THESE CASES OUTSIDE OF THE STATE OF FLORIDA THAT ARE DEALING WITH STATE VERSUS STATE, PRINCIPALS OF FEDERALISM WHERE THE STATES GRANTED POWER TO THE FEDERAL GOVERNMENT, NOT THE OTHER WAY AROUND, AND THESE CASES INVOLVING FOREIGN NATIONS, INDIAN TRIBES THAT DEAL WITH TREES AND FEDERAL STATUTORY SCHEMA ARE NOT AT PLAY IN THE STATE OF FLORIDA ARE SIMPLY NOT IN ANY WAY ANALOGOUS TO BE ABLE TO DRAW PRINCIPLES ABOUT WHAT THE LONGSTANDING, INTERNAL FLORIDA JURISPRUDENCE IS.

WE BELIEVE THAT TO THE EXTENT THAT THE HYPOTHETICALS THAT WERE PRESENTED AT THE SECOND DISTRICT COURT OF APPEALS THAT APPEARED TO SWAY THEM ARE BEST SUITED FOR LEGISLATIVE ACTION.

PUBLIC POLICY IS A PLACE FOR THE LEGISLATURE TO HEAR FROM ALL OF THE FACETS OF THE CITIZENRY.

NOT JUST THOSE THAT ARE APPEARING IN A COURT CASE. AND HAVING DECIDED THEIR CASE OR

CONTROVERSY BEFORE THE COURT,
BUT GOING THROUGH LEGISLATIVE
SESSION AND COMMITTEES AND
HEARING ALL THE DIFFERENT PIECES
AND UNDERSTANDING THE THREAD
THAT MAY BE PULLED ON THE SPOOL
AS DOWNSTREAM EFFECT ON
UNINTENDED CONSEQUENCES FOR
OTHER TYPES OF SOVEREIGN
IMMUNITY.

WE BELIEVE 768.28, AGAIN,
SUPPORTING THE CONCEPT, DOESN'T
DEFINE GEOGRAPHIC BOUNDARIES.
NOW, CLEARLY IT'S BOUND BY THE
STATE'S TO BOUNDARIES, BUT IT
DOES NOT FURTHER SUBDIVIDE THAT
PROTECTION.

NOW, PARKENSHOT IS ANOTHER GOOD
EXAMPLE ABOUT WHY WE BELIEVE
THAT THE STATE'S IMMUNITY ISN'T
VIEWED IN THE COUNTIES.

THAT CASE DIDN'T INVOLVE THE
STATE.

AGAIN, THAT WAS ABOUT A COUNTY
WHO LEASED PROPERTY.

BUT THE COURT WENT ON TO LOOK
BACK AT SOVEREIGN IMMUNITY AND
HOW COUNTIES ARE CLOAKED WITH
THE STATE'S IMMUNITY OVER MANY
DECADES AT THAT POINT EVEN TO
SAY THAT THE COUNTY PROPERTY
COULD NOT BE TAXED NOT ONLY BY
THE COUNTY, BUT ALSO BY THE
CITY.

AND THEY TALKED ABOUT SOME
POLICY CONSIDERATIONS THAT MY
COLLEAGUE POINTS OUT IN HIS
BRIEF ABOUT -- THAT ARE LOST
WHEN YOU LEAVE.

PINELLAS GOES IN TO PASCOE
COUNTY, BUT THERE ARE OTHER
TAXING POLICIES AT PLAY.

IN FACT, IN THE PARKENSHOT CASE
THEY SAID THE CITY CAN'T TAX THE
COUNTY EITHER.

THOSE CONSIDERATIONS ABOUT THE
GOVERNMENT NOT TAXING ITSELF AND
THE STATE NOT TAXING ITSELF, THE
STATE, AGAIN, WASN'T A PARTY,
WASN'T A CONSIDERATION.

THOSE SIMPLY AREN'T AT ISSUE AS
THEY CONTINUE ON.

AND THEN DICKENSON RECOGNIZES
AGAIN THAT THE COUNTY SHARES THE

STATE'S SOVEREIGN IMMUNITY FROM TAXATION.

AS TO THE ZONING LAWS QUESTION THAT WAS ASKED, THAT DISTINCTION BETWEEN JURISDICTION AND GEOGRAPHY, WE BELIEVE, IS IMPORTANT.

YOU HEARD OUR COLLEAGUE TALK A LITTLE BIT ABOUT IF A COUNTY BUYS PROPERTY OUTSIDE THE STATE, IT SHOULD BE, IN HIS WORDS, THE POLICY THAT WE ARE PARTICIPATING AS A PRIVATE ACTOR.

WELL, THE LEGISLATURE HAS ENTITLED COUNTIES TO EXERCISE THE SOVEREIGN POWER OF EMINENT DOMAIN BEYOND THEIR GEOGRAPHIC BOUNDARIES.

NOW, IT WOULD BE AN ABSURD RESULT TO SAY THE COUNTY, TO BUY PROPERTY, TAKE IT, FORCE A SALE OF PROPERTY AND THEN NOT HAVE IMMUNITY FOR TAXATION OR TORT OR THERE, THAT WOULD BE ABSURD.

AND, CERTAINLY, ALL THESE THINGS ARE SWIRLING AROUND AT THE SAME TIME SINCE KAGAN IN 1916.

THE LEGISLATURE WAIVED SOVEREIGN IMMUNITY --

>> DID PINELLAS COUNTY TAKE IT BY EMINENT DOMAIN?

>> EXCUSE ME.

>> ARE YOU SUGGESTING PINELLAS COUNTY TOOK THIS PROPERTY BY EMINENT DOMAIN?

>> I AM NOT.

NO, SIR.

>> COULD A COUNTY TAKE OUTSIDE ITS BORDERS --

>> YES, SIR, IT'S 127.01, I BELIEVE.

BUT FOR SOME MINOR EXCEPTIONS, I BELIEVE FOR RECREATIONAL PURPOSES, YES.

THE COUNTIES ARE -- PROCESSER V. POLT --

>> WHAT STATUTE SAYS THEY CAN'T DO IT FOR CERTAIN PURPOSES?

>> WELL --

>> BY IMPLICATION, THEY CAN DO IT FOR OTHER PURPOSES.

>> I BELIEVE THE TEXT SPECIFICALLY GRANTS TWO COUNTIES AND THEN LIMITS IT THE WAY YOU

HAVE DESCRIBED IT.

>> MAYBE THE CASE DIDN'T EXPLAIN THAT --

>> I MAY BE INCORRECT, BUT THAT IS MY UNDERSTANDING AND MY BELIEF, SIR.

MOST IMPORTANTLY, WE BELIEVE THAT THIS CASE COMES DOWN TO, TO THE EXTENT THAT THERE IS AN OPEN QUESTION ON WHERE SOVEREIGN IMMUNITY APPLIES BEYOND A COUNTY'S BORDERS WITHIN THE STATE OF FLORIDA, THAT THE POLICY CONSIDERATIONS THAT ARE WRAPPED AROUND THAT CLEARLY NEED TO BE ADDRESSED ONLY BY THE LEGISLATURE, THAT IT IS BEST SUITED FOR THE LEGISLATURE AND SOVEREIGN IMMUNITY AS A SEPARATION OF POWERS ISSUE THAT THAT SHOULD BE ADDRESSED AT THE STATE THE LEGISLATIVE LEVEL AND ALLOWED TO, TO THE EXTENT THERE WERE PROBLEMS THAT NEED TO BE ADDRESSED, BE ADDRESSED.

THERE WAS -- BY THE WAY, WE'RE TALKING ABOUT LARGE PIECES OF PROPERTY BEING OWNED BY A SOVEREIGN IN THE BOUNDARIES OF ANOTHER SOVEREIGN.

THAT HAPPENS ALL THE TIME. THE FEDERAL GOVERNMENT, THE STATE AUTHORITIES OWN PROPERTY WITHIN PINELLAS COUNTY, THERE'S A HUGE VETERANS HOSPITAL ON THE WATER.

THE FACT THAT THE COUNTY, BY KNELL HAS COUNTY OR IF THIS COURT RULES THAT WE DON'T HAVE IMMUNITY FROM TAXATION, THAT DOESN'T FIX THE POLICY CONSIDERATIONS FOR PASCOE COUNTY THAT ARE ARGUED BY MY COLLEAGUE BECAUSE, AGAIN, THERE IS NOT ONLY ONE SOVEREIGN IN ANY ONE PLACE, THERE ARE OFTEN SEVERAL. SO THE SECOND DISTRICT COURT OF APPEALS IN THE MAJORITY SIMPLY, WE BELIEVE, WAS SWAYED BY THE POLICY QUESTIONS THAT WERE BROUGHT FORWARD BY JUSTICE BLACK'S DISSSENT WAS POINT ON. HIS ANALYSIS IS CORRECT, AND IT GETS YOU CONSISTENT WITH ALL OF

THE JURISPRUDENCE TO THIS POINT.
WITH THAT, UNLESS THERE ARE
FURTHER QUESTIONS, I WILL YIELD
THE REST OF MY TIME.

>> THANK YOU.

WE APPRECIATE THE
PROFESSIONALISM AND COMPETENCE
OF THE COUNSEL ON BOTH SIDES,
AND WE'RE ADJOURNED.