

PREPARED TO MOVE ON TO THE FINAL  
CASE ON TODAY'S DOCKET.

>> I REPRESENT THE CITY OF WEST  
PALM BEACH.

I WOULD LIKE TO RETURN TWO  
MINUTES FOR REBUTTAL AND THE  
TIME AFTER WORD.

I'M JOE JACQUOT.

>> YES.

>> OUR APPEAL IS TO RESOLVE THE  
DECISIONAL CONFLICT BETWEEN THE  
FOURTH DISTRICT IN THIS CASE AND  
THE THIRD DISTRICT FOR CITY OF  
CORAL GABLES AS WELL AS THE  
SENATE DISTRICT.

I INTEND TO COVER THREE POINTS  
THAT ISSUE.

THE FOURTH DISTRICT'S INCORRECT  
RELIANT ON VOUCHER SPECIAL  
DAMAGE STANDING, AND IS  
DISCRETIONARY THIS CASE IS  
NONJUSTICIABLE AS A MATTER OF  
SEPARATION OF POWERS.

THIS IS AN UNUSUAL CASE AND  
EVERY DAY CONCERN FOR  
MUNICIPALITY.

THE CITY OF WEST PALM BEACH,  
THEIR NEIGHBOR WAS VIOLATING A  
ZONING ORDINANCE, THEY  
INVESTIGATED AND FOUND NO  
VIOLATION.

HOW TO PURSUE THE CITY FOR  
EQUITABLE RELIEF TO HAVE A COURT  
FORCED THE CITY TO ENFORCE ITS  
ZONING ORDINANCE.

IT IS IMPORTANT TO NOTE THEY HAD  
A REMEDY.

THEY SUED THEIR NEIGHBOR FOR  
ALLEGED VIOLATION AND DISMISSED  
THAT LAWSUIT, WHEN THE DECISION  
IS UPHELD, CITIZENS WILL SUE THE  
GOVERNMENT ANYTIME THEY DISAGREE  
WITH A CODE VIOLATION OR CODE  
ENFORCEMENT OFFICER'S DECISION.  
THAT PANDORA'S BOX NEEDS TO BE  
CLOSED BY REVERSING THE FOURTH  
DISTRICT.

>> TO WHAT EXTENT SHOULD WE VIEW  
THESE DECISIONS IN THE ABSTRACT  
UNDER THE CATEGORY OF  
ENFORCEMENT DECISIONS AND  
ENFORCEMENT DISCRETION VERSUS  
LOOKING SPECIFICALLY AT THE

TEXT, THE ORDINANCE WITH HOW MUCH DISCRETION THE TEXT ITSELF, HOW IT LEAVES FOR THE ENFORCING OFFICIALS.

>> IN THE CASES OF THIS COURT, AND UNDERSTANDING THE POLICE POWERS, DISCRETION TO ENFORCE THE LAW, THE ARRESTING OFFICER WHETHER A CODE ENFORCER, THAT IS THE STARTING POINT, CONCERNING THAT DISCRETION CAN BE PATTERNED BY THE LAW AND IF THERE HAD BEEN AN ALLEGATION OF STATUTORY RIGHT, THAT MAY MAKE A JUSTICIABLE ISSUE, NOT ONLY IS THERE NO ALLEGATION OF THAT KIND OF WRITER VIOLATION OF THE LAW. WHERE THE CITY DETERMINED VIOLATION ACKNOWLEDGES THE DISCRETION OF CHOOSING.

>> IF THERE WERE EVIDENCE, THE COMPLAINT WE HAVE TO OPERATE UNDER, THE REPORT DIDN'T SUPPORT OR SAY THERE WAS A VIOLATION. IT SEEMS LIKE ON THE FACE OF THE ORDINANCE IT DOESN'T TRIGGER ANY OF THE SHALL LANGUAGE BUT LET'S SAY THAT THE COMPLAINT ALLEGED THE INSPECTOR FOUND THE VIOLATION, DOCUMENTED THE VIOLATION, SENT HIS REPORT TO THE HAVE ERRORS, WHAT ARE COURT HAVE THE AUTHORITY HAVE THE AUTHORITY TO COMPEL THE ENFORCEMENT AUTHORITY TO DO XYZ?

>> IF THE ORDINANCE TOUTED ITS OWN DISCRETION AND ONE OF THE SHALLS, VIOLATION IS FOUND AND THE ORDINANCES THE CITY SHALL NOTIFY THE VIOLATOR, THEN THERE COULD BE AN ALLEGATION THAT THE CITY IS VIOLATING THIS ORDINANCE AND THAT COULD BE A QUESTION OF INTERPRETATION THAT COULD GO BEFORE COURT, THAT COULD BE A JUSTICIABLE MATTER BUT IT WOULD HAVE TO BE A VIOLATION OF LAW, THAT THE HOUSE PROVIDED WERE ASSERTING THAT THE COURT COULD ADJUDICATE AS A LEGAL DETERMINATION AS OPPOSED TO SOWING THE CITY HOW TO USE ITS OWN DISCRETION.

>> ISN'T THIS SOMETHING LIKE --

A JUSTICIABLE ABILITY OF THE CASE DEPEND ON THE ALLEGED VIOLATION, SORT OF TAKING THE PROPERTY BY THE GOVERNMENT. THE LENS THROUGH WHICH WE SHOULD BE WORKING AT THIS, A LOT OF THESE CASES OF ZONING THE REGULATORY CONFLICTS APPLY THAT JUSTICIABILITY WHEN IT COMES TO EXERCISE OF LOCAL GOVERNMENT DISCRETION.

DOES THAT MAKE SENSE FROM YOUR PERSPECTIVE OR PUT THAT TO ONE SIDE AT THE TEXT OF THE STATUTE.

>> IN THIS CASE THE COURT SEEMS TO BE HUNG UP NOT ON THE JUSTICIABILITY ISSUE BUT THE STAND ISSUE, IN THE FOURTH DISTRICT'S OPINION.

THE VOUCHER PRECEDENT, CLEARLY LAYS OUT SPECIAL DAMAGES.

THERE IS ANOTHER SECONDARY CONSIDERATION ONCE YOU HAVE STANDING, IS THE CASE JUSTICIABLE?

SO THERE ARE SPECIAL DAMAGES BUT IF HE HASN'T -- THE DISCRETION OF THE CITY IN THE CASE THAT IS WITH THE CITY AND NOT BEFORE THE COURT.

>> DOESN'T OUR READING -- ALMOST LIKE YOU ARE SAYING OF THE ORDINANCE IS MANDATORY ENOUGH FOR ENFORCEMENT OFFICIALS TO DO, THERE IS THIS OTHER STEP OF US READING A PRIVATE RIGHT OF ACTION FOR THIRD PARTIES, SEPARATION OF POWERS ISSUES TOO. WHY DO YOU HAVE THE AUTHORITY TO DO THAT, WHERE DO YOU HAVE THE AUTHORITY IN THIS REALM TO ALLOW THIRD PARTIES TO SUE TO ENFORCE ORDINANCES AGAINST THE NEIGHBOR FOR EXAMPLE?

>> ABSOLUTELY.

THERE IS NO PRIVATE ACTION HERE. EVEN THE FOURTH DISTRICT RECOGNIZED THIS ISN'T EVEN A MINISTERIAL DUTY.

THIS IS A DISCRETIONARY DUTY. NOT TO SAY THERE ARE REMEDIES. THEY DID INDEED SUE THEIR NEIGHBOR AND CHOSE TO DISMISS THAT, TOO BEFORE THE CITY

COUNCIL, OPERATE IN THE REALM OF WHICH THIS MATTER IS STILL RESTING.

UNTIL THERE IS A LEGAL DEFINITION TO BE MADE IT IS NOT PROPERLY BEFORE THE COURTS.

>> CAN I ASK ABOUT THIS ISSUE WITH THE AG AND SEPARATION OF POWERS THING.

>> CAN WE DECIDE THIS IN TERMS OF THE EXTENT OF THE JUDICIAL POWER UNDER THE CONSTITUTION WITHOUT BLENDING THAT INTO THE, QUOTE, SEPARATION OF POWERS CLAUSE?

>> ABSOLUTELY.

AS I UNDERSTAND THE AG'S ARGUMENT UNDER ARTICLE 2 SECTION 3, THE BRANCHES ARE THE DISTINCT STATE BRANCHES.

WE ARE NOT ARGUING THAT THE CITY HAS THE SAME LEGISLATIVE AUTHORITY AS THE HOUSE AND THE SENATE, THE SAME EXECUTIVE AUTHORITY IS THE GOVERNOR.

OUR ARGUMENT IS THE COURTS, THE JUDICIARY AS A STATE BRANCH DOESN'T HAVE THE ABILITY TO INTRUDE ON A MATTER THAT IS NOT YET A LEGAL MATTER, BUT POLICYMAKING AND DISCRETIONARY JUDGMENTAL DECISION-MAKING AT THE MUNICIPALITY.

THOSE ARE VERY CONSISTENT, THIS COURT COULD CERTAINLY SAY THIS CASE IS NONJUSTICIABLE AND RECOGNIZE SEPARATION OF POWERS BUT FOR A DIFFERENT REASON, THE LIMITS OF THE JUDICIARY AS OPPOSED TO IMPUGNING LEGISLATIVE OR EXECUTIVE AUTHORITY.

IF THE COURT DOESN'T HAVE ANY OTHER QUESTIONS THERE IS ONE THING I WOULD LIKE TO ADDRESS BEFORE CONCLUDING AND THAT IS THE FOURTH DISTRICT RELIES PRETTY SIGNIFICANTLY ON THE DISSENT BY JUDGE LEGOA WHO RECOGNIZED THAT VOUCHER, REGARD AND PROGENY PROVIDE SPECIAL DAMAGES AND IN ALL THE CASES THAT IS DISSENT SITES THERE WAS ALSO SOME VIOLATION OF THE LAW SO IN ADDITION TO THERE BEING

SPECIAL DAMAGES THE CITY OR COUNTY MAY HAVE CREATED THE CITY OR COUNTY ALSO DID SOMETHING ELSE, THEY VIOLATED SOME SETBACK REQUIREMENT FOR BUILDINGS, SOME PUBLIC NOTICE REQUIREMENT, MISINTERPRETED AND ORDINANCE, THERE WAS SOME ALLEGATION OF LEGAL VIOLATION AND IN THIS CASE WE DON'T HAVE THAT, WE HAVE JUST THE PURE DESIRE TO HAVE THE COURTS ENFORCE THE AUDIENCE EVEN IF THERE ARE SPECIAL DAMAGES BUT NO VIOLATION OF LAW AND THAT IS CRITICAL IN DISTINGUISHING BETWEEN THE DISSENT, THE FOURTH DISTRICT, AND ADDRESSING THAT DISTINCTIONS FOR CASE LAW. AND HIS FULL EFFECT, THE COURT RECOGNIZED THE PRINCIPLE ADDRESSED IN TRYON, SPEAKING AND SUBSEQUENT CASES ON THE COURT.

>> YOU ARE NOT DISPUTING THE ALLEGATIONS IN THAT ARE ENOUGH TO SATISFY SPECIAL DAMAGES. YOU CAN SEE THE ALLEGATIONS ARE SUFFICIENT ON THAT PRONG. THE COURT DOESN'T HAVE ANY MORE QUESTIONS AT THIS TIME I AM HAPPY TO RESERVE WHATEVER TIME YOU WISH FOR REBUTTAL, CERTAINLY TWO MINUTES IF ADDITIONAL TIME IS NEEDED AT YOUR DISCRETION.

>> WE THANK YOU.  
PETER HAVER.

>> MY NAME IS PETER HAVER, REPRESENTING MY WIFE AND MYSELF IN THESE PROCEEDINGS WHICH I APOLOGIZE TO THE COURT ON COMMERCIAL AREA, JULY OF 2018, OUR NEIGHBORHOODS ACROSS THE STREET FROM US STARTED TO OPERATE WHAT IS KNOWN AS AN ADULT CARE HOME WHICH RESULTED IN VIOLATING A SINGLE-FAMILY ZONING, MORE THAN 200 PEOPLE, CHANGING CORRESPONDENCE, MY WIFE AND I FILED A COMPLAINT AGAINST THE CODE VIOLATOR, THE SEE OF WEST PALM BEACH AND THE CITY OF WEST PALM BEACH EMPLOYEES RESPONSIBLE FOR CODE ENFORCEMENT. IN 2019 THE TRIAL COURT, THE

THIRD DISTRICT COURT'S DECISION,  
THE CITY OF CORAL GABLES.  
ON JUNE 10TH OF THE FOURTH  
DISTRICT COURT OF APPEAL  
REVERSED THE TRIAL COURT  
DECISION, THE INJUNCTION AGAINST  
THE CITY ON THE GROUNDS THE  
DECISION VIOLATED THE COURT'S  
PRECEDENT.

>> WOULD YOU MIND, CAN YOU HEAR  
ME OKAY?  
MY AUDIO WASN'T WORKING EARLIER.  
PERFECT.

WOULD YOU MIND IF I JUST  
INTERRUPT YOU WITH A QUESTION  
ABOUT THE FOURTH DCA'S APPROACH.  
IF WE WERE TO ADOPT NOT APPROACH  
WHICH IS THE POSITION YOU  
ADVOCATED.

WHAT WOULD THE TRIAL COURT ORDER  
LOOK LIKE THAT DIRECTED THE CITY  
TO ENFORCE THIS DISCRETIONARY  
SORT OF ACTION?

WHAT WOULD IT ENTAIL?

WOULD GIVE THE CITY SPECIFIC  
INSTRUCTIONS?

WOULD IT LIMIT THE CITY COULDN'T  
SETTLE?

WOULD IT SAY YOU MUST IMPOSE A  
FINE?

YOU MUST FIX THE PROBLEM IN A  
PARTICULAR MANNER?

WHAT WITH THE ORDER FROM THE  
TRIAL COURT IN YOUR MIND ENTAIL  
IF WE ADOPT THE FOURTH DCA'S  
APPROACH?

>> COUNT 2 OF THE COMPLAINT  
ASKED FOR A

JUDGMENT TO COMPLY WITH A  
RESPONSE TO THE ORDINANCE OF  
9434 WHICH REQUIRES IN CASE OF  
THE VIOLATION OF ZONING LAW A  
CERTAIN MANDATORY STEP.

OFF OF THAT ORDINANCE, IT SETS  
OUT CLEARLY THE ASSEMBLED STEPS  
WHEN THERE IS A ZONING  
VIOLATION.

>> THE ORDER FROM THE TRIAL  
COURT WOULD LAY OUT MANDATORY  
STEPS WITHOUT ADDITIONAL  
DISCRETION GIVEN TO THE CITY.

>> YES BECAUSE THIS PARTICULAR  
ENFORCEMENT SAYS WHAT THE CITY  
HAS TO DO WITH HOURS OF

OPERATION.

DOESN'T ALLOW FOR ANY  
DISCRETION.

I DID SEE RESEARCH ABOUT THE  
ORIGIN OF THAT PARTICULAR  
ENFORCEMENT ORIGIN THAT SEEMS TO  
COME FROM TAKING THE DISCRETION  
AWAY FROM PUBLIC SAVINGS WHEN  
THERE IS ACTUAL VIOLATION.

>> PETER HAVER, I CAN APPRECIATE  
AND UNDERSTAND YOUR ARGUMENT BUT  
WHAT I AM STRUGGLING WITH IS  
FROM WHAT I READ THE CITY DID  
NOT DETERMINE THAT A VIOLATION  
EXISTS.

HAD THEY DONE SO I COULD SEE  
WHERE MANDATORY ASPECT OF THE  
ORDINANCE WOULD REQUIRE FURTHER  
ACTION ON THEIR PART PURSUANT TO  
A RELIEF BUT THE PROBLEM I AM  
STRUGGLING WITH IN YOUR CASE IS  
THE CITY DID NOT FIND A  
VIOLATION.

HELP ME WITH THAT.

>> IT IS THE SAME ISSUE.

THE PROBLEM IS IT IS A  
CONTRADICTION POSITION.  
IN YOUR INITIAL BRIEF THAT THE  
TRIAL LEVEL THEY SAID TAKING  
LEGAL ACTION.

BUT THE COUNCIL'S OWN INSPECTOR  
STOOD UP AND SAID TO THE  
PREMISES AND FOUND THERE WAS NO  
VIOLATION AS THERE WAS ONLY ONE  
PERSON AND ALL THE PEOPLE WERE  
OUT AND WHAT WAS CAUGHT IN THIS  
COURT AGAIN MIGHT SAY THERE WAS  
A DETERMINATION THAT THERE WAS  
NO VIOLATION SO THE ATTEMPT TO  
DO THAT.

>> LET ME ASK YOU THIS.

WHY WOULDN'T A REMEDY DIRECTED  
AT THE OFFENDING NEIGHBOR BE  
SUFFICIENT TO RESOLVE THIS SORT  
OF CONTROVERSY AND ARGUABLY  
WRONG WITHOUT THE JUDICIARY AND  
ORDERING EXECUTIVE OFFICIALS OF  
GOVERNMENT TO DO THINGS THAT  
THEY DECIDED TO KEEP THEIR HANDS  
OFF OF IT.

>> IT IS TRICKY, A VERY  
DETERMINED NETWORK AND THEY  
WOULD SWITCH PEOPLE BACK AND  
FORTH AS SOON AS THERE WAS A

PROBLEM AND REALIZE IT IS ALSO TO MANIPULATE THE FACT THAT IN A POSITION THAT WILL NOT GET US VERY FAR, THE POLICE POWERS OF THE STATE IDENTIFY THAT. JUST GAVE UP ON THE CAUSE OF ACTION AGAINST THE CODE VIOLATOR.

THE COUNTERCLAIMS ON THAT BASIS BECAUSE OF THE CODE VIOLATORS FACING MASSIVE LITIGATION MY WIFE AND I DECIDED THE JOB OF THE CITY OF WEST PALM BEACH TO ENFORCE ORDINANCES WHY SHOULD CITIZENS SPEND THEIR OWN RESOURCES ESPECIALLY WITH THE LITIGATION CONTENT, DIFFICULT TO DO SO.

SO I WILL CONTINUE ON IS WHAT THE COURT DID WITH THAT CAUSE OF ACTION TO CREATE SYMMETRICAL CAUSE OF ACTION ALLOWS VICTIMS OF ZONING VIOLATIONS TO SOOTHE THE PERPETRATOR.

AT THE SAME TIME TO SUE THE CITY TO COMPEL THE CITY TO ENFORCE THE ZONING VIOLATIONS AND THE NEW CAUSE OF ACTION HAS TWO ELEMENTS TO SHOW THE ZONING VIOLATION AND SHOW SPECIAL DAMAGES.

SPECIAL DAMAGES ARE AN INTERESTING CONCEPT FOR THAT PARTICULAR ELEMENT, BY THE PUBLIC AT LARGE.

THE JUDICIAL JURISDICTIONAL CONSTRAINT, TO PREVENT COURTS FROM ADJUDICATING THE CARS OF ACTION FROM A PURELY PUBLIC REALM.

THE JUDGMENT IN THE DISSENT PICS ON THE DOUBLE FUNCTION OF SPECIAL DAMAGES.

IT LOOKS TO ADDRESS THE POSSIBILITY THE ACTION ADJUDICATE PUBLIC SCENARIO THERE MIGHT BE SOME RISKS OF ENCROACHING ON THE POWERS OF THE MUNICIPALITIES.

SHE SAYS IN SHORT, ONCE SPECIAL DAMAGES ARE SHOWN, IT IS NO LONGER IN ACTION.

WEST PALM BEACH REQUIRES WHAT DID NOT CREATE A CAUSE OF

ACTION.

AND THE CAUSE OF ACTION.

REFUSAL TO ENFORCE, THE  
CONSTITUTIONAL VIOLATION, THE  
ORDINANCE OF 94-74 TO

INVESTIGATE THE FACILITY, TO  
TAKE SPECIFIC, A VIOLATION.

THE HOLDING IS VERY CLEAR, HIS  
OWN VIOLATION WITH RESPECT WITH  
RESPECT TO THE CITY, NOT  
ENFORCING PERSPECTIVES AND THIS  
UNDERSTANDING REAFFIRMED TWO  
SETS OF CASES.

THE CAUSE OF ACTION IS THE  
VIOLATION OF THAT, THE CAUSE OF  
ACTION IN THAT CASE.

NOW THE MAJORITY, THE ATTORNEY  
DISCUSSES THAT.

THE CAUSE OF ACTION ADDRESSES AN  
ISSUE FOR ENFORCEMENT ON  
MUNICIPAL AUTHORITIES.

WEST PALM BEACH DOES A HEAD  
SHAKEN SAYS EVEN IF IT DOESN'T  
REQUIRE A DEMONSTRATION OF  
NATURAL VIOLATION ON THE PART OF  
THE MUNICIPALITY DOESN'T REQUIRE  
THAT, IT IS VIOLATION OF  
SEPARATION OF POWERS AS A  
CONSEQUENCE OF SEPARATION OF  
POWERS AND UNCONSTITUTIONAL.  
WITH THAT CASE.

THE TAXONOMY SECTION OF THAT  
DECISION, THE COURT'S  
MUNICIPALITIES ABSOLUTE  
DISCRETION WITH RESPECT TO  
ENFORCEMENT AND BUILDING CODES.  
WITH THAT LANGUAGE NOT TO  
ANALYZE SEPARATION OF POWER BUT  
CITIES, ACTIONS AND DECISIONS  
GIVE RISE TO CARE WHICH THAT  
LAW.

IT HAS TO DO WITH POWERS AND  
THAT SUSPENSION MADE VERY CLEAR.  
BUT OKAY, MAYBE TAXONOMY  
LANGUAGE DOESN'T APPLY BUT THE  
REFUSAL FOR THE ZONING  
CLASSIFICATION IS A POLICY  
DECISION, THE SEPARATION OF  
POWERS BECAUSE THIS COURT HAS  
DECIDED THE CASE THAT THE  
COMMISSIONERS IN SCHNEIDER, IT  
IS POLICY, THE ABDICATION OF  
POLICY AND IT IS INSERTED TO THE  
COURT'S REVIEW PURSUANT TO THE

STANDARD OF SUBSTANTIAL EVIDENCE  
BUT THEN WEST PALM BEACH TAKES A  
STEP BACK AND SAYS IN ANY CASE  
THE ALLEGED DISCRETIONARY, STEMS  
FROM THE POLICE POWERS AND  
CONSEQUENTLY THE POWER SHOULD  
APPLY THE INJUNCTIONS.

THE INJUNCTION CASES TO THE  
SIDE, THE CITY'S ACTIVE  
DECISIONS.

BE CAREFUL, THE DECISION OF  
SYNTAX, IT SEEMS DISCRETIONARY  
POWERS VIOLATE THAT DOCTRINE.  
WITH THAT CAUSE OF ACTION  
WITHOUT ASKING JURORS TO DECIDE,  
ACTING MAJORITY TO DECIDE ABOUT  
THE VIOLATION AND IN THAT CASE,  
HOW MANY PEOPLE IN THAT HOUSE.  
THEY ARGUE, THE SEPARATION OF  
POWERS DOCTRINE DOES NOT  
PROHIBIT THE ACTION, THE WAIVER,  
APPLIES TO TORT LAW.

SOVEREIGN IMMUNITY REMAINS IN  
PLACE, THAT ARGUMENT, THE ACTUAL  
ORIGINS, WEST PALM BEACH  
SUGGESTS SOVEREIGN IMMUNITY  
COMES AT CONSTITUTIONAL --  
SEPARATION OF POWERS.

IT IS A DOCTRINE THAT PEOPLE,  
GOD SAVE THE KING, AND  
COMMON-LAW APPLY IT.

WITH SOVEREIGN IMMUNITY, PRIOR  
TO THE WAIVER IN THE 1970s AND  
CARVED OUT EXCEPTIONS TO  
SOVEREIGN IMMUNITY.

IN SUPPORT OF THAT BODY OF LAW,  
CARVED OUT, WHAT WAS KNOWN AS  
PROPRIETARY FUNCTIONS AND THE  
VICTIMS OF ZONING VIOLATIONS,  
DID WHAT IS DONE WITH RESPECT TO  
IMMUNITY.

IT IS INTERPRETED AND APPLIED TO  
COMMON-LAW WITH DATA EXCEPTIONAL  
LOUD VICTIMS OF ORDINANCES TO  
SEEK INJUNCTIVE RELIEF.

IN CONCLUSION THIS COURT, WHAT  
IT HAS DONE IS CREATE A  
MULTIFACETED CONSTRUCT, THE  
DECISIONS AND ACTIONS TAKEN BY  
MUNICIPALITIES.

THE COURT HAS DONE, CONTINUE  
DIFFERENT KINDS OF ACTIONS, AND  
CONTINUALLY STOOD OUT  
SPECIFICALLY, DADE COUNTY.

ON THE FAR END, THE STANDARD OF REVIEW APPLIES PARTICULARLY, AND THEY SHOWED IS NOT ARBITRARY AND IT IS DEBATABLE STAND.

>> YOU ARE NOW EXCEEDED YOUR TIME.

IF YOU COULD SEAL THIS UP AND 30 SECONDS.

>> I CAN COLLUDE WEST PALM BEACH WANTS THIS COURT TO RECEIVE FROM THIS SOPHISTICATED MULTIFACETED CONTINUUM AS AN ALTERNATIVE TO APPLY A STANDARD BRIEF, STANDARD OF REVIEW TRADITIONALLY OBSERVED ONLY FOR POLICY AND PLANNING BUT THEY APPLY THAT STANDARD AND ANY KIND OF DECISION, THE LEGISLATION IS GOING, THE EXECUTIVE HAD TOTAL DISCRETION. THANK YOU.

>> THANK YOU.

I WILL RECOGNIZE DEPUTY SOLICITOR GENERAL.

>> THANK YOU, MISTER CHIEF JUSTICE, MAY IT PLEASE THE COURT.

THE SEPARATION OF POWERS CLAUSE APPLIES TO THE STATE GOVERNMENT, NOT LOCAL GOVERNMENTS.

I WANT TO BE CLEAR WHAT WE MEAN BY THAT.

WE DON'T MEAN COURTS HAVE OPEN SEASON WHENEVER LOCAL GOVERNMENTS APPEAR BEFORE THEM. INSTEAD WE MEAN LOCAL GOVERNMENTS ARE NOT CO-PEOPLE BRANCHES OF THE STATE GOVERNMENT WITH POWERS THAT CANNOT BE INVADED BY THE COURT AND BRANCHES OF STATE GOVERNMENT. FOR EXAMPLE STATE LEGISLATION APPLIES TO MUNICIPALITY, THE MUNICIPAL EXECUTIVE CANNOT CHALLENGE THE LEGISLATION BY CLAIMING HER OWN EXECUTIVE POWERS WERE VIOLATED BY IT. WHAT WE HEARD THIS MORNING AS THE PETITIONER AGREES WITH US AND THAT MUCH IS CLEAR FROM THE TEXT OF THE SEPARATION OF POWERS BOX WHICH BEGINS BY TALKING ABOUT POWERS OF THE STATE GOVERNMENT, NOT THE POWERS OF LOCAL GOVERNMENT, THE POWERS IT

DISCUSSES ARE GIVEN TO THE STATE GOVERNMENT AND ARTICLES 3, NUMBER 4 AND 5 AND THE BRANCHES IT DESCRIBES CORRESPOND TO THE STRUCTURE OF THE STATE GOVERNMENT, NOT THE STRUCTURE OF LOCAL GOVERNMENTS.

I DON'T THINK OUR FRIENDS ON THE PETITION ASIDE ARGUED A TEXTUAL MATTER.

INSTEAD THEIR ARGUMENT AS I TAKE IT IS IF LOCAL GOVERNMENTS ARE NOT THOUGHT TO BE INCLUDED IN THE SEPARATION OF POWERS CLAUSE COURTS FORCED INTO THE BUSINESS OF LEGISLATING WITH LOCAL GOVERNMENTS.

WE DON'T THINK THAT CONCERN IS WARRANTED FOR SEVERAL REASONS. THIS IS THE POINT YOU GOT WITH YOUR QUESTION EARLIER, THE SEPARATION OF POWERS IN COMBINATION WITH JUDICIAL CLAUSE ARTICLE 5 IS ITSELF A LIMITATION ON A COURT'S POWER.

NO MATTER WHO THE PARTIES ARE THE COURT IS ALWAYS LIMITED TO EXERCISING THE JUDICIAL POWER, THE JUDICIAL POWER IS THIS COURT RECOGNIZED IN POLITICAL QUESTION CASES REQUIRES JUDICIALLY DISCOVERABLE AND MANAGEABLE STANDARDS.

THAT CLAIMS COMMERCIAL CARRIER AND ITS PROGENY.

IN OUR VIEW GENERALLY DICTATING GOVERNMENT POLICY WITHOUT SOME SORT OF POSITIVE GUIDE IS OUTSIDE THE SCOPE OF THE JUDICIAL STANDARDS TO GENERAL INSET POLICY.

THE SEPARATION OF POWERS CLAUSE PROTECTS FROM INFRINGEMENT THE STATE LEGISLATURE'S DECISION TO ALLOW LOCAL GOVERNMENTS DISCRETION IN ANY AREA.

IT IS TRUE THAT LOCAL GOVERNMENTS HAVE DEFAULT POWERS THE LEGISLATURE ALWAYS HAS THE CHOICE TO OCCUPY THE FIELD AND LEGISLATE FOR ITSELF.

IN DOING SO THE PETITIONER AGREES WITH THIS AS WELL THE LEGISLATURE COULD PROVIDE

STANDARDS THAT ALLOW REVIEW OF LOCAL GOVERNMENT DECISIONS.

THE LEGISLATURE DOES NOT DO THAT, THERE ARE NO BACKGROUNDS COMMON-LAW MEANS TO APPLY THE LEGISLATURE'S DECISION TO LEAVE FULL DISCRETION TO LOCAL GOVERNMENTS IS ITSELF A DECISION OF THE STATE LEGISLATURE WHICH SHOULD NOT BE INVADED UNDER SEPARATION OF POWERS CLAUSE.

>> IS THAT THE SENSE THIS IS ARGUABLY SEPARATION OF POWERS CASE THAT THE ISSUE ISN'T THE COURT INVADING THE AUTHORITY OF THE LOCAL GOVERNMENT BUT INVADING THE STATE LEGISLATURE'S AUTHORITY TO ALLOW LOCAL GOVERNMENT TO GOVERN?

>> THAT IS EXACTLY RIGHT. THE WAY WE WOULD APPROACH ANSWERING THE QUESTIONS IN THIS CASE IS TO FIRST ASK ARE THERE ANY JUDICIALLY MANAGEABLE STANDARDS THAT COULD BE APPLIED AND THAT QUESTION BOILS DOWN TO IS THERE DISCRETION IN WEST PALM BEACH'S DECISION TO ENFORCE OR NOT ENFORCE ITS ZONING ORDINANCE.

IF THERE IS ABSOLUTE DISCRETION, THERE ARE NO STANDARDS THAT MAKE IT A POLITICAL DISCRETION AND WE THINK THAT ALSO REFLECTS THE LEGISLATURE'S DECISION TO LEAVE THE DISCUSSION IN THIS AREA WHICH IS DISCRETION OF POWERS.

>> ANSWERING QUESTION ONE, WOULD YOU STICK TO THE TEXT OF THE ORDINANCE?

>> OBVIOUSLY WOULD LOOK TO ANY INTERPRETIVE CANON IN DECIDING WHAT THAT MEANS.

PETITIONER MAY BE BETTER TO ANSWER BUT LOOK FOR EXAMPLE AT COMMON LAW RULES ABOUT WHAT DISCRETION EXISTED IN EXECUTIVE POWER IN INTERPRETING THAT TEXT BUT FOREMOST CONSIDERATION WOULD BE THE TEXT OF THE ORDER.

>> WHAT IS YOUR WORST-CASE SCENARIO OF WHAT WE COULD SAY IN THIS CASE THAT YOU WOULD CARE ABOUT?

>> WHAT WE CARE ABOUT IS WE THINK THERE'S BEEN A LITTLE BIT OF A TENSION IN THIS COURT CASE LAW SUGGESTING LOCAL GOVERNMENTS HAVE SEPARATION OF POWERS RIGHTS IN THEIR OWN NAMES ALTHOUGH THE COURT HAS SAID THE OPPOSITE. OUR WORST-CASE SCENARIO IS FOR THE COURT TO CONTINUE TO EMPHASIZE WITHOUT ANY DISCUSSION WHERE THE SOURCE IS ROUNDED THAT SEPARATION OF POWERS APPLIES TO LOCAL GOVERNMENTS SO WHAT OPINION IN THIS CASE LOOKS LIKE WOULD CLARIFY LOCAL GOVERNMENTS ARE TEXTUALLY EXCLUDED FROM THE SEPARATION OF POWERS CLAUSE BUT WOULD GO ON TO APPLY THAT ANALYSIS TO THE FACTS OF THIS CASE AND THE COURT COULD EXPLAIN ITS CASES LIKE COMMERCIAL CARRIER ARE REALLY SUPPORTED BY INHERENT LIMITS IN THE JUDICIAL POWER OR THE STATE GOVERNMENTS.

>> IN THIS CASE IF THERE HAD BEEN A VIOLATION BY THE CITY STUMBLING WHICH IN THE ORDINANCE IS MANDATORY TO THE POINT WHERE THE CAUSE OF ACTION WOULD APPLY BY THE COURT?

>> MY TIME IS EXPIRED IF I COULD ANSWER THAT.

WE AGREE WITH THE WAY YOU READ THE ORDINANCE.

WE DON'T TAKE POSITION HOW THAT WOULD COME OUT AND THE REASON IS THERE MAY BE COMMON-LAW BASIS THAT EVEN THOUGH IT SAYS SHALL THE PETITIONER COULD ARGUE THERE IS INHERENT DISCRETION LEFT IN THE STATUTE BUT I WANT TO BE CLEAR WE DON'T TAKE AN ULTIMATE VIEW ONE WAY OR THE OTHER WHERE THERE IS ANY DISCRETION.

>> YOU DON'T ARGUE THAT THERE IS LACK OF AUTHORITY BY THE COURT TO ISSUE A MANDAMUS IF IT WAS FOUND TO BE MANDATORY.

>> WE DON'T THINK THERE ANY LIMITS ON THE COURT IN APPLYING A NONDISCRETIONARY SCHEME IN A CASE LIKE THIS.

THE QUESTION IS THERE DISCRETION?

>> MISTER GIBBS.

>> MISTER CHIEF JUSTICE, MAY IT PLEASE THE COURT, EDWARD GET US ON BEHALF OF THE FLORIDA LEAGUE OF CITIES AND MUNICIPALITIES IN CUTLER BAY, THE PURPOSE IS ALSO THE CITIES OF MIAMI AND CORAL GABLES IN MIAMI-DADE ALL OF WHICH ARE IN AGREEMENT THAT SEPARATION OF POWERS PRINCIPLES DO APPLY WHEN LOCAL GOVERNMENTS ARE INVOLVED IN THE CASE.

LISTENING TO THE COURT'S QUESTIONS AND THE ARGUMENT OF COUNSEL IN THE CASE I AM REMINDED OF THE UNWRITTEN RULE APPLICABLE TO AMICUS THAT IS FIRST DON'T DO NO HARM.

WE MAY BE DANCING ON THE HEAD OF A PIN LIKE AN ANGEL TRYING TO FIGURE OUT WHAT IS GOING ON WITH THE CLAUSE AND TO BE CLEAR THE CONTENTION OF THE AMICI IS SEPARATION OF POWERS PRINCIPLES HAVE APPLICATION IN CASES THAT INVOLVE THE EXERCISE OF POWERS BY LOCAL GOVERNMENTS CHARACTERIZED AS EITHER LEGISLATIVE IN NATURE OR EXECUTIVE IN NATURE AND ARTICLE 8 OF THE CONSTITUTION WHICH CONFERS HOME RULE POWERS ON MUNICIPALITIES SPECIFICALLY INDICATE ALL MUNICIPALITIES ARE REQUIRED TO HAVE ELECTED BODIES THAT ARE LEGISLATIVE IN NATURE. THEY ARE EXERCISING LEGISLATIVE POWER.

COULD THAT POWER BE PREEMPTED BY THE STATE LEGISLATURE?

ABSOLUTELY UNDER APPROPRIATE CIRCUMSTANCES SO THAT IS NOT THE DEBATE.

IT ARISES THAT THE COURT GAVE A SWEEPING RULING AT THE ATTORNEY GENERAL'S INVITATION TO CONCLUDE SOMEHOW THAT SEPARATION OF POWERS PRINCIPLES HAVE NO APPLICATION SIMPLY BECAUSE ARTICLE 2 SECTION 3 DOES NOT MENTION LOCAL GOVERNMENTS AND IF THE COURT IS PREPARED TO TRAVEL DOWN THAT PATH I RESPECTFULLY SUGGEST THIS IS NOT THE CASE TO

DO SO.

THERE HASN'T BEEN A FULL EXPLANATION BY THE PARTIES AND THE PARTY SHOULD NOT HAPPEN BUT TURNING TO THE MERITS OF THE ATTORNEY GENERAL'S POSITION BRIEFLY I UNDERSTAND THE ATTORNEY GENERAL'S DESIRE TO COUCH THE ISSUES IN A MANNER THAT SEPARATES LOCAL GOVERNMENT FROM ARTICLE 2 SECTION 3 AND THEY CALL IT JUICE DISABILITY AND THAT IS FINE BUT COURTS SHOULD RECOGNIZE THE CONCEPT OF JUDICIAL ABILITY DON'T EXIST IN A VACUUM.

THEY ARE RISE FROM THE WELLSPRING OF SEPARATION OF POWER WHICH IS THE FOUNDATION OF AMERICAN DEMOCRACY WHETHER AT THE FEDERAL LEVEL OR THE STATES AND THAT IS THE WELLSPRING FROM WHICH THE CONCEPT OF THE DISABILITY -- JUICE DISABILITY COMES FROM.

THE MOST ARTICULATE WAY I'VE SEEN IT WAS JUSTICE NEIL GORSUCH WHEN HE SAID THE FOUNDERS DESIGN FOR SEPARATION OF POWERS ISN'T JUST ABOUT HOW THE POWERS ARE DISPERSED INTO BRANCHES BUT ALSO HAVE IMPLICATIONS FOR HOW THEY ARE EXERCISED WITHIN EACH BRANCH ANY LAYMAN'S TERMS THAT MEANS JUDGES SHOULDN'T ACT AS LEGISLATORS, LEGISLATORS SHOULDN'T ACT AS JUDGES ETC..

IT IS A BASIC PROPOSITION AND THAT IS WHAT WE SEE IN THE SECOND SENTENCE OF ARTICLE 2 SECTION 3 NAMELY THAT NO MEMBER OF ONE BRANCH SHALL EXERCISE POWERS PERTAINING TO THE OTHERS. THAT CAPTURES THE SAME CONFLICT. WE DO NOT HAVE A PROBLEM.

NO PROBLEM WHATSOEVER IN THIS CASE THE TURNS ON A DETERMINATION THE FOURTH DISTRICT AIRD, AND JUSTICIABLE.

THEY HAVE NO ISSUE WITH THAT. THE PRIMARY CONCERN, IN LIGHT OF THE ATTORNEY GENERAL'S INVOLVEMENT THAT THE COURT NOT TRAVEL TOO FAR DOWN THE ROAD

RESPECTFULLY AND BEGIN ISSUING  
PRONOUNCEMENTS ABOUT HOW  
SEPARATION OF POWERS HAVE NO  
APPLICATION WHEN LOCAL  
GOVERNMENTS ARE INVOLVED.

>> DO YOU AGREE WITH THE THRUST  
OF THE ANSWERS WE'VE GOTTEN  
TODAY TO THE EXTENT THAT WHEN  
MUNICIPAL GOVERNMENT IS ACTING  
IN LEGISLATIVE CAPACITY AND  
GIVING INSTRUCTIONS TO THE  
EXECUTIVE ACTORS IN ITS  
GOVERNMENT THAT CAN'T CONSTRAIN  
THAT DISCRETION WITHOUT  
INFLATING JUDICIAL SCRUTINY OF  
ENFORCEMENT DECISIONS?

>> TO THE EXTENT LOCAL  
LEGISLATION TIES THE HANDS OF  
THE EXECUTIVE OR THE EQUIVALENT  
OF THE EXECUTIVE BRANCH OF LOCAL  
GOVERNMENT THEN YES, I THINK  
THERE ARE SOME POTENTIAL ISSUES,  
IT IS CLEAR FROM LOCAL  
LEGISLATION WOULD RESULT IN  
VIOLATION OF THE LAW, AND AS MY  
FRIEND ARGUED YOU MIGHT END UP  
WITH A MANDAMUS SCENARIO WHICH  
IS WHY WE DREW THE PARALLELS  
BETWEEN THAT AND THE PROCEEDINGS  
AT ISSUE HERE IN OUR BRIEF  
BECAUSE WE THINK THE TWO BODIES  
OF LAW SHOULD BE INTERPRETED IN  
A CONSISTENT MANNER.  
I SEE I HAVE GONE OVER.

>> IN 15 SECONDS.  
>> WE WOULD RESPECTFULLY REQUEST  
THE COURT QUASHED THE DECISION  
OF THE FOURTH DISTRICT BY  
APPLYING SEPARATION OF POWERS  
PRINCIPLES REGARDING  
JUSTICIABILITY BUT DECLINED THE  
ATTORNEY GENERAL'S INVITATION TO  
ISSUE A BROADER RULING WITH  
RESPECT TO APPLICATION OF  
ARTICLE 2 SECTION 3.  
THANK YOU FOR YOUR TIME.

>> THANK YOU.  
JOSEPH JACQUOT.

>> QUERY -- THREE QUICK POINTS  
IN RESPONSE.

THEY ADMIT THEY WENT STRAIGHT TO  
THE COURTS AND AS WE DISCUSSED  
THERE ARE A NUMBER OF REMEDIES  
THEY HAVE, LAWSUIT AGAINST THEIR

NEIGHBOR PURSUING THE CITY,  
ADMINISTRATIVE REMEDIES UNDER  
THE ORDINANCE ITSELF.  
ORDINANCE 94, 34 B WITH  
MANDATORY STEPS, IT IGNORES THE  
PRECEDING SENTENCE WHERE IT IS  
DETERMINED VIOLATION EXISTS AND  
THAT IS THE DISCRETION.

NUMBER 2, DAVID PUZIO 7 ADMITS  
THEY WANT THE COURT TO DIRECT  
POLICE POWERS OF THE STATE.  
THAT IS THE SOLE CONCERN HERE,  
THE PRIMARY CONCERN IS THAT  
DISCRETION WITHOUT A VIOLATION  
OF LAW REMAINS WITH THE  
MUNICIPALITIES IN THIRD, AN  
ATTEMPT TO DISTINGUISH  
COMMERCIAL CARRIER AND  
APPLICATION.

IF I MAY I WOULD LIKE TO QUOTE  
FROM KAISER AND COLE WHICH PETER  
HAVER CITED, WE OURSELVES  
REPEATEDLY RECOGNIZED THE  
DISCRETIONARY FUNCTION EXEMPTION  
IN THE DOCTRINE OF SEPARATION OF  
POWERS AND THE COURT CITES  
COMMERCIAL CARRIER SO THAT  
PRINCIPLE DISCRETION UNDER THE  
DOCTRINE OF SEPARATION OF POWERS  
IS CONFIRMED IN BOTH CASES.

THE CITY CERTAINLY SUPPORT THE  
STRUCTURAL CONSTITUTIONAL  
PRINCIPLES OF SEPARATION OF  
POWERS AS THEY APPLY TO  
MUNICIPALITIES AND THEY DO IN A  
SENSE THAT THERE IS NO JUDICIAL  
POWER FOR DISCRETIONARY ACTION  
AND TO END, THAT IS SOMETHING NO  
ONE HERE DISPUTE IN TERMS OF  
JUDICIAL POWER HAS ITS LIMITS  
AND IT IS REACHED IN THIS CASE.

>> RIGHT.

WE THANK ALL OF YOU FOR THE  
ARGUMENTS PRESENTED TO THE COURT  
TODAY IN THIS CASE IS THAT IS  
THE LAST CASE ON TODAY'S DOCKET,  
SO THE COURT STANDS IN RECESS.