

>> Chief Justice Carlos Muniz: OUR NEXT CASE NO. SC2023-0095. BOJORQUEZ VS. STATE OF FLORIDA.

>> Bryan S. Gowdy ,Petitioner: GOOD MORNING, MR. CHIEF JUSTICE AND IF IT MAY PLEASE THE COURT, BRYAN S. GOWDY APPEARANCE FOR PETITIONERS, I WILL TRY TO RESERVE FIVE MINUTES FOR REBUTTAL. THE WORD PROPERTY IS USED 143 TIMES IN OUR STATE CONSTITUTION, INCLUDING IN THE DUE PROCESS CLAUSE. BUT THE PHRASE PRIVATE PROPERTY IS USED ONLY TWICE IN THE TAKINGS CLAUSE AND ANOTHER EMINENT DOMAIN PROVISION. BUT NOT IN THE DUE PROCESS CLAUSE. BLACK'S LAW DICTIONARY GIVES MULTIPLE MEANINGS FOR THE WORD PROPERTY. BUT IT PROVIDES A SINGLE DEFINITION FOR PRIVATE PROPERTY.

THAT IS PROPERLY PROTECTED FROM PUBLIC APPROPRIATIONS OVER WHICH THE OWNER HAS EXCLUSIVE AND ABSOLUTE RIGHTS.

IN 2012, THE LEGISLATURE EXPRESSLY ESTABLISHED MY CLIENT'S MEDALLIONS AS PRIVATE PROPERTY.

>> Justice: EXCLUSIVE, AND WHAT WAS THE OTHER WORD. THEY HAVE AN ABSOLUTE RIGHT.

>> Bryan S. Gowdy ,Petitioner: THEY DO ALL PROPERTY EVEN REAL PROPERTY IS SUBJECT TO EXTENSIVE REGULATIONS. I MAY BE PERMITTED FROM BUILDING THINGS ON MY PROPERTY UNLESS I MEET SOME VERY STRINGENT PER SE TESTS UNDER THE REGULATIONS TAKINGS JURISPRUDENCE I'M STUCK WITH THAT. BUT I STILL HAVE THE RIGHT TO USE THE RIGHT TO USE , THE RIGHT TO EXCLUDE AND THE RIGHT TO TRANSFER, AND SO DO MY CLIENTS WITH THESE MEDALLIONS.

>> Chief Justice Carlos Muniz: I WONDER IF WE COULD START WITH A BASELINE QUESTION ABOUT THE TAKINGS CLAUSE.

I THINK YOU WOULD AGREE BECAUSE YOU HAVE BRIEFED VERY WELL.

THAT THE TAKINGS CLAUSE IN THE FLORIDA CONSTITUTION IS ACTUALLY QUITE DIFFERENT FROM THE FEDERAL TAKINGS CLAUSE, AND AS YOU INDICATED, IT IS NOT THE DUE PROCESS PROVISION . IT INDEED IT IS CONTEXTUALLY DIFFERENT. IS THIS THE CASE IN WHICH WE SHOULD SAY THAT WE SHOULD NO LONGER INTERPRET THOSE TWO CAUSES THE FEDERAL TAKINGS CLAUSE AND FLORIDA'S TAKINGS CLAUSE AS THE SAME GIVEN THEIR TEXTUAL DIFFERENCES AND IF SO HOW DOES THAT BREAK FOR YOUR CLIENT.

>> Bryan S. Gowdy ,Petitioner: RIGHT YES IF THAT IF YOU WILL RULE IN FAVOR OF MY CLIENT.

[LAUGHTER] I TAKE YOUR POINT. I WOULD SAY THIS.

I THINK WE HEAR THE WORDS PRIVATE PROPERTY.

AND THOSE TWO WORDS ARE THE SAME.

I THINK WHEN YOU TALK ABOUT COMPENSATION. THE WORDS ARE DIFFERENT.

>> Chief Justice Carlos Muniz: FULL COMPETITION V. JUST COMPOSITION.

>> Bryan S. Gowdy ,Petitioner: I THINK THIS COURT HAS RECOGNIZED THOSE DIFFERENCES HERE.

OF COURSE, THIS COURT IS FREE TO READ THE FLORIDA CONSTITUTION PRIVATE PROPERTY PROVISION, TAKINGS CLAUSE MORE EXTENSIVELY THAN THE FEDERAL THERE IS NOTHING WE DON'T HAVE ANYTHING IN OUR CONSTITUTION, LIKE WE DO WITH THE EIGHTH AMENDMENT WHERE YOU ARE CONSTRAINED BY OUR CONSTITUTION TO READ IT THE SAME WAY . I THINK YOU CAN MAKE THAT CASE, I'M NOT SURE THAT THIS HAS TO BE THE CASE BECAUSE WERE TALKING ABOUT THE WORDS PRIVATE PROPERTY AND OBVIOUSLY BOTH SIDES HAVE RELIED EXTENSIVELY ON FEDERAL CASE LAW AND CASE LAW FROM OTHER STATES.

>> Chief Justice Carlos Muniz: CAN I ASK YOU A QUESTION ABOUT YOUR YOUR REPLY BRIEF PAGE 12 THAT SENTENCE DOES NOT MAKE ME UNDERSTAND YOUR ARGUMENT, . IT SAYS WHILE THE 2017 LEGISLATURE COULD HAVE PROHIBITED THE OPERATION OF TAXICABS OR THE SALE OF MEDALLIONS, WHICH HE DID NOT DO WITHOUT COMPETITION. SO THE LEGISLATURE COULD PROHIBIT YOU, SO YOU HAVE A MEDALLION. THE LEGISLATURE COULD PASS A LAW SAYING YOU MAY NO LONGER OPERATE A TAXICAB OR YOU CAN KEEP YOUR MEDALLION BUT YOU CANNOT SELL IT. THE LEGISLATURE CAN DO THAT WITHOUT COMPENSATION, BUT ELECTS THE SOVEREIGN POWER TO ABOLISH THE TAXICABS OR THE MEDALLIONS UNLESS IT PAYS COMPENSATION.

>> Chief Justice Carlos Muniz: .I DON'T UNDERSTAND HOW THAT DOESN'T UNDERMINE YOUR WHOLE POINT IN THE SENSE THE REALLY IF YOU LOOK AT WHAT THE STATE DID HERE . THEY BASICALLY JUST DEREGULATED THE FIELD AND SORT OF WALKED AWAY FROM IT . IF WE ACCEPT THE FACT THAT THE COUNTY IS OUT OF IT. THE STATE BASICALLY JUST SAID WE ARE REPEALING THE PROHIBITION ON DRIVING A CAB. WE ARE REPEALING THE MEDALLION PROGRAM. IT'S ALL GOING AWAY . EVERYBODY FOR THIS INSTANT IN TIME TO DO WHATEVER THEY WANT. BUT JUST LOOKING AT IT IF YOU SAY THAT YOU HAVE PROPERTY IN THE MEDALLIONS . HOW CAN THE LEGISLATURE STOP THE OPERATION OF A TAXICAB OR THE SALE OF THE MEDALLIONS WITHOUT " TAKING THE PROPERTY" UNDER YOUR THEORY.

>> Bryan S. Gowdy ,Petitioner: THEN BOTH THE TAKING HERE IS THE REPEAL IN SECTION 2 OF THE 2017 ACT.

IT IS NO DIFFERENT THAN RESCINDING THE LAND GRANTS.

IN 1854 MINNESOTA CASE.

AND WE ACKNOWLEDGE THAT THE STATE HAS EXTENSIVE REGULATORY POWER NOT JUST OVER TAXICABS BUT SAY GREYHOUNDS IF THEY WANT TO PROHIBIT THE SALE OF GREYHOUNDS IN PRIVATE . THOSE ARE BEING EXCHANGED BECAUSE OF SOME PUBLIC POLICY AND PRIVATE GREYHOUNDS FROM RACING. ADMITTEDLY, THOSE REGULATIONS WILL CAUSE THE VALUE OF THE PROPERTY TO STILL GO DOWN TREMENDOUSLY BUT IT IS STILL MY PROPERTY. IT IS STILL MY GREYHOUND AT THAT POINT.

>> Justice Charles Canady: WITHOUT A REGULATORY SCHEME. THIS PROPERTY HAS NO VALUE . THE VALUE OF THE MEDALLION IS ENTIRELY DEPENDENT UPON THE EXISTENCE OF THE REGULATORY SCHEME.

>> Bryan S. Gowdy ,Petitioner: THAT IS TRUE FOR MANY TYPES OF PROPERTY. I AGREE

WITH YOU THAT IS TRUE FOR TRADE SECRETS.

>> Chief Justice Carlos Muniz: BUT NOT A GREYHOUND SO MY ANALOGY BREAKS DOWN HERE. IT IS TRUE FOR TRADE SECRETS. IT IS TRUE FOR PATENTS IS TRUE FOR COPYRIGHTS IS TRUE FOR A WHOLE LIST OF INTANGIBLE PROPERTY RIGHTS. WITHOUT THE FRAMEWORK OF THE STATE OR FEDERAL LAW .

>> Justice Charles Canady: AT SOME LEVEL IT IS TRUE OF EVERY TYPE OF PROPERTY EVEN LIKE LAND RIDE SCHEDULE THAT IS TRUE AND THAT IS WHAT THE TREATISES SAY.

>> Justice Charles Canady: THERE ARE DIFFERENCES BETWEEN THESE THINGS THAT ARE TRADITIONALLY THOUGHT OF AS THOSE SORTS OF PROPERTY RIGHTS AND THESE PROPERTY RIGHTS THAT FLOW EXCLUSIVELY FROM THIS SORT OF REGULATORY SCHEME.

THE PROBLEM, THAT I STRUGGLE WITH IS THAT YOU ARE NOT CHALLENGING THE 2001 ACT IN ANY WAY. IF I UNDERSTAND YOUR ARGUMENT.

>> Bryan S. Gowdy ,Petitioner: CORRECT.

>> Justice Charles Canady: YOU CHALLENGE THAT IN NO WAY. EMBEDDED IN THAT OUR PROVISIONS THAT ALLOW FOR THE DISSOLUTION OF THE REGULATORY SCHEME. IF YOU ARE NOT CHALLENGING, THAT PROVISION THAT ALLOWS FOR THE DISSOLUTION OF THE REGULATORY SCHEME. THAT IS WHAT HAPPENED THEY DID AWAY WITH THE REGULATORY SCHEME.

I'M HAVING TROUBLE SEEING HOW YOUR CLAIM DOES NOT JUST COLLAPSE BASED ON THAT PROVISION OF THIS EARLIER STATUTE THAT I'M SORRY THE LAW THAT YOU DON'T CHALLENGE.

>> Bryan S. Gowdy ,Petitioner: SECTION 17.

>> Justice Charles Canady: SECTION 17.

>> Bryan S. Gowdy ,Petitioner: I WOULD POINT YOU TO PAGE 1 OF MY REPLY BRIEF. YOUR HONOR, IT IS NOT SAY WHAT YOU SAID OR THE STATE SAID IT DOES NOT GIVE THE STATE THE RIGHT TO DISSOLVE A SCHEME. WHAT IT SAYS IS IT HAS THE RIGHT TO DISSOLVE THE DISTRICT WHICH IS THE COMMISSION AND ALL THAT MEANS IS ONCE THE DISTRICT OR THE COMMISSION IS DISSOLVED THAT THERE IS A SUCCESSOR REGULATOR WHICH IS THE COUNTY. BY DEFAULT IT DOES IN NO WAY SAY LIKE THESE OTHER STATUTES AND CASES THAT ARE CITED IN THE STATES ANSWER BRIEF THAT THE SCHEME CAN BE.

>> Justice Charles Canady: . IT SEEMS LIKE THE SCHEME IS DEPENDENT UPON THE EXISTENCE OF THE DISTRICT.

I REALLY STRUGGLE IT SEEMS TO BE.

>> Bryan S. Gowdy ,Petitioner: IF I CAN GIVE YOU AN ANALOGY. I HAVE A CORPORATION THAT I OWN HAVE SHARES IN IT EVERY YEAR I FILE ARTICLES OF INCORPORATION WITH THE DIVISION OF CORPORATIONS . I'M SORRY THE DIVISION OF CORPORATIONS WHEN I FAIL TO DO SO . I'M INACTIVE. I'M NO LONGER A CORPORATION.

NOW SUPPOSE TOMORROW. THE LEGISLATURE DECIDED TO DISSOLVE THE DIVISION OF CORPORATIONS.

UNDER YOUR RATIONALE AND THE STATES ALL OF THE CORPORATIONS ARE GONE.

BECAUSE TO HAVE A CORPORATION, YOU ARE DEPENDENT ON THE STATE WITHOUT THE STATE OF FLORIDA, ESTABLISHING THAT DIVISION OF CORPORATIONS. WE DON'T HAVE ANY CORPORATIONS IN THE STATE.

AND SO ALL THIS PROVISION DOES IS SAY AND IN THE STATE OF FLORIDA LEGISLATURE COULD DO THIS TOMORROW. WE WILL NO LONGER HAVE THE DIVISION OF CORPORATIONS SUPERVISE CORPORATIONS, WHAT WOULD IT DO WOULD HAVE A SUCCESSOR REGULATOR.

>> Chief Justice Carlos Muniz: PART OF WHAT WE'RE DOING WITH THESE DIFFERENT TECHNOLOGIES. I FIND THE NOTHING QUITE FITS STRUGGLED THE SAME WAY JUSTICE CANADY DOES.

IF THEY'D ABOLISHED THE DIVISION OF CORPORATION PERHAPS ABOLISH MODE OF OWNERSHIP. IF THE CORPORATION OWNS A TRACTOR. THE TRACTOR IS NOT VAPORIZED. SIMILARLY WITH THE TRADE SECRET WOULD CHANGE IF CONGRESS CHANGED THE COPYRIGHT OR TRADEMARK OR PATENT LAW APPLICABLE IT MIGHT ALTER THE DEGREE OF REGULATORY PROTECTIONS. THE MONOPOLISTIC INTEREST THAT ONE HAS IN THE UNDERLYING ASSET BUT THE ASSET WOULD REMAIN. THE TROUBLE IN YOUR CASE IS THAT THERE IS NO UNDERLYING ASSET IN THE MEDALLION. THE MEDALLION IS A PURE LICENSE. WE ARE NOT TALKING ABOUT THE CAB. WE ARE NOT TALKING ABOUT THE HOURS SPENT DRIVING. WE'RE TALKING ABOUT THE LICENSE TO OPERATE IN A PARTICULAR REGULATORY SCHEME THAT THE STATE CHOSE TO HAVE BUT MIGHT'VE CHOSEN OTHERWISE TO HAVE NO REGULATORY SCHEME AT ALL. BUT I'M STRUGGLING WITH IS IN YOUR ANALOGY, THERE IS NO UNDERLYING ASSETS. THERE IS JUST THE LICENSE.

>> Bryan S. Gowdy ,Petitioner: I GUESS TO TRY TO RESPOND TO THAT THERE IS AN UNDERLYING ASSET. IT IS THE TAXICAB. WE ARE NOT HERE ON THE CLAIMED SAINTED. THEY TOOK THE AUTOMOBILE DULL. YOUR EXAMPLE ABOUT THE CORPORATION LET'S GO BACK TO THE RAILROADS EYESIGHT IN THE REPLY BRIEF.

>> Chief Justice Carlos Muniz: I THINK YOUR BEST CASE IS THE VERY CASES WITH THE 30 CASES ONCE THEY COME CLOSEST TO THE IDEA THAT I DON'T OWN THE RIVER. WE NOT TALK ABOUT THE BOAT. WE'RE TALKING WITH THE RIGHT TO OPERATE A FERRY ON THE BOAT. THAT HAS VALUE.

>> Bryan S. Gowdy ,Petitioner: THOSE ARE GOOD CASES. I DO THINK I TALK ON THE SAME PAGE 12 OF THE REPLY BRIEF, THE CHIEF JUSTICE EYESIGHT TO THE MILLS AND ABBOTT CREASES 19TH CENTURY TREATISE. IT TALKS ABOUT THE FACT THIS IS WHAT HAPPENED, ACTUALLY.

THAT THE CORPORATION OWNS THE RAILROAD. THERE IS YOUR UNDERLYING ASSET. BUT WHAT IF WHAT IF ALL OF A SUDDEN THE INTANGIBLE SHARES OF THE CORPORATION. IT IS TAKEN.

THAT IS A TAKING THAT IS A LOSS TO THE OWNER.

BECAUSE OF THE SHARES. JUST BECAUSE THE RAILCARS OF THEIR DIVISION NOT MEAN ANYTHING.

BECAUSE YOU'VE TAKEN THE ACTUAL CORPORATION. WHAT IT SAYS.

>> Justice Charles Canady: WHAT YOUR CLIENTS HAVE BEEN DEPRIVED OF IS THEIR

POSITION IN A GOVERNMENT ESTABLISHED CARTEL. THAT IS WHAT IT BOILS DOWN TO.

I DON'T MEAN TO USE THE WORD CARTEL.

IN A PEJORATIVE SENSE, BUT JUST IN A DESCRIPTIVE SENSE. THAT IS WHAT THIS REGULATORY SCHEME DID. IT'S A SET UP A LIMITED NUMBER OF ACTORS IN THIS MARKET. THE DERIVED A PRIVILEGE FROM THAT.

BUT THAT IS WHAT THIS IS ABOUT. IT IS ABOUT WHAT WAS CREATED FOR THIS MARKET . BY THAT REGULATORY SCHEME.

>> Bryan S. Gowdy ,Petitioner: I THINK THAT IS PART OF IT, BUT IT IS MORE THAN LEOPARD AS THE AMICUS BRIEF POINTS OUT, MY CLIENTS WERE ABLE TO PUT THESE IN THE THIRD ESTATE PLANNING DOCUMENTS. FAMILY WHAT YOU CAN PUT IN YOUR ESTATE PLANNING DOCUMENTS. THAT IS NOT.

>> Justice Charles Canady: HOPE SPRINGS ETERNAL. EVERYBODY WHO IS A CARTEL HOPES THAT GOES ON FOREVER WILL KNOW CARTELS DO NOT GO ON FOREVER.

>> Bryan S. Gowdy ,Petitioner: THIS IS ALSO THE PROBLEM IN ALL OF THESE BRIDGE CASES EYESIGHT BRIDGE WOULD BE BUILT . CONTRARY TO WHAT THE STATE SAYS IN ITS ANSWER BRIEF. IT WAS NOT JUST FOR 10 YEARS. SOME OF THESE FRANCHISES WERE GIVEN AT THE FOUNDING OF THE COUNTRY WERE FOR 100 YEARS. THEN SOMEBODY STARTED TO REALIZE IT WOULD BE NICE IF WE HAD ANOTHER BRIDGE WE DID NOT HAVE TO PAY A TOLL FOR . THE ISSUE IN THOSE CASES, THIS IS THE KEY DISTINCTION.

IN EACH OF THOSE CASES IT DIDN'T HAPPEN. WHAT WAS HAPPENING HERE FOR THE STATE REPEALED THE FRANCHISE.

WHAT THE STATE DID ALLOWED UBER TO COME IN AND OPERATE IT ALLOWED ANOTHER BRIDGE TO COME OPERATE RIGHT NEXT DOOR. WE ARE NOT HERE ON THAT CLAIM.

>> Justice: WAS INFRASTRUCTURE CASES DIFFERENT. THEY ARE FULFILLING A PUBLIC PURPOSE. OTHERWISE, THE GOVERNMENT WOULD BE FULFILLING ITS ALMOST A DELEGATION OF GOVERNMENTAL POWER TO THE PEOPLE WILL BUILD THE BRIDGE OR PROVIDE THE INFRASTRUCTURE GAP HERE THAT IS NOT WHAT IS HAPPENING.

IT IS THIS SPECIFIC ISSUE. IT IS NOT NECESSARILY WE CAN GET ACROSS THE RIVER WITHOUT THE BRIDGE PUBLIC PURPOSE SORT OF SITUATION IS MORE AKIN TO THE LICENSE.

>> Bryan S. Gowdy ,Petitioner: I DISAGREE. I ENCOURAGE YOU TO READ THE AMICUS BRIEF OLD WEIGHT THROUGH THE TAXICAB AND YOU WOULD'VE SEEN IN THERE TALKING ABOUT HOW THIS IS PUBLIC TRANSPORTATION.

JUST LIKE THE BRIDGE JUST LIKE THE BUSES JUST LIKE THE STREETCARS.

>> Justice: GUESS THAT'S WHY I'M ASKING WHY IS IT NOT INFRASTRUCTURE . WHY IS THAT NOT A DISTINCTION.

>> Bryan S. Gowdy ,Petitioner: IT IS PUBLIC TRANSPORTATION BECAUSE TAXICAB DRIVERS ARE REQUIRED TO GO ANYWHERE IN THE COUNTY EVEN WHEN IT IS NOT PROFITABLE. THEY ARE REQUIRED TO GET PEOPLE FOR EMERGENCIES. THEY ARE,

IT IS NOT LIKE UBER I WILL GO FOR. I WANT TO GO . IT IS PUBLIC TREPIDATION FOR ALL OF THE PUBLIC.

IT IS NOT BUILDING A BRIDGE, BUT PROVIDING PUBLIC TRANSPORTATION TO THE CITIZENS OF HILLSBOROUGH COUNTY.

>> Justice: .I UNDERSTAND THE ARGUMENT. CAN YOU GO TO THE 2001 ACT AGAIN. I JUST HAD A QUESTION . WHY IS IT NOT HYPER LITERAL READING TO SAY THERE MUST BE A SUCCESSOR REGULATOR AND THIS DISSOLUTION PROVISION IN THE ACT DOES NOT RELATE TO THE ENTIRE STRUCTURE OF THE ACT . IF IT IS BEING CREATED IN THE CIRCUMSTANCES, AND IT SAYS THAT THE DISTRICT CAN BE DISSOLVED .

>> Bryan S. Gowdy ,Petitioner: KEEP IN MIND IF YOU GO THROUGH THE HISTORY, THERE HAS BEEN A SUCCESSOR OF MANY DIFFERENT REGULATORS OF TAXICABS. BEFORE EVEN WE CALL THIS THE COMMISSION THERE WAS A PREDECESSOR COMMISSION.

THEN YOU CAN GO BACK TO THE TIME THAT WE WERE FIRST AUTOMOBILES. AND THERE WAS POWER GIVEN TO INDIVIDUAL MUNICIPALITIES. THE CITIES NOT THE COUNTIES. THEN AT SOME POINT IN TIME WE MADE THE DEFAULT PROVISION TO BEAT THE COUNTY.

I THINK THE FACT THAT THE HISTORICAL PERSPECTIVE IS NEVER JUST HAD NO REGULAR BETTER. IT IS JUST THE REGULAR HAS BEEN COSTLY CHANGING. I THINK THAT THEIR READING OF THE TEXT THAT THEY HYPER LITERAL IS THAT THE LEGISLATURE HAS THE POWER TO CHOOSE THE REGULATOR A COULD BE THE COUNTY IT CAN BE THE CITY. IT CAN BE AN INDEPENDENT SPECIAL DISTRICT . IT IS HAS USED ALL OF THOSE IN THE LAST CENTURY AND 1/4.

>> Justice: WE NEED TO READ THIS, IT MUST BE A REGULATOR.

>> Bryan S. Gowdy ,Petitioner: .NO. ALL I'M TRYING TO SAY IS POWER REPEATEDLY SAID IN THE BRIEF. IF YOU LOOK AT ALL OF THE CASES GIVE THE CASES THAT ARE BEING CITED. IT DOES HAVE THAT BROAD LANGUAGE THAT SAYS THERE IS NO RIGHT CREATED HERE . IT CAN BE RESCINDED AT ANY TIME. WE DON'T HAVE THAT LINE WOULD SHARE. WE JUST SAY YOU ARE DISSOLVING THE COMMISSION.

>> Chief Justice Carlos Muniz: COULD YOU BE SPECIFIC. I THINK IT WOULD HELP US IF YOU CAN DISAGGREGATE THE RIGHTS THAT YOU THINK ARE THE PROPERTY.

>> Bryan S. Gowdy ,Petitioner: THE RIGHTS THAT ARE THE PROPERTY.

>> Bryan S. Gowdy ,Petitioner:

>> Chief Justice Carlos Muniz: I THINK IF WE ACCEPT THE PREMISE IS THE PROPERTY RIGHT IS DEFINED BY THE MUTUAL UNDERSTANDING, WE HAVE TO KNOW WHAT EXACTLY ARE THE THINGS WHAT IS THE "PROPERTY THAT YOU HAD IN THE MEDALLIONS THAT YOU CLAIM IS PROTECTED ".

>> Bryan S. Gowdy ,Petitioner: WOULD POINT TO THE THREE CLASSIC RIGHT THAT YOU SEE IN THE TREATIES.

>> Chief Justice Carlos Muniz: SPECIFICALLY WITH THE MEDALLIONS.

>> Bryan S. Gowdy ,Petitioner: WILL BREAK DOWN. THE EASIEST IS TO TRANSFER AND DEVISE.

>> Chief Justice Carlos Muniz: SAID IN THE REPLY BRIEF. THE LEGISLATURE COULD

HAVE PROHIBITED THE SALE WITHOUT COMPENSATION THAT IS RIGHT THEY CAN STILL GIVE IT.

YOU CAN STILL GIVE IT AWAY . YOU CAN PROHIBIT ME FROM SELLING MY DOG BUT I CAN STILL GIVE IT.

I ACKNOWLEDGE THERE CAN BE RESTRICTIONS ON COMMERCE.

IF THE STATE WAS EXERCISING ITS COMMERCE POWER TO RESTRICT THE TRANSFER OF PROPERTY, THEN THAT IS A SOVEREIGN POWER.

>> Chief Justice Carlos Muniz: ONE RIGHT IS THE TRANSFER RIGHT.

>> Bryan S. Gowdy ,Petitioner: IT'S A BROAD RIGHT THAT WAS GIVEN.

>> Chief Justice Carlos Muniz: WHAT ELSE.

>> Bryan S. Gowdy ,Petitioner: THE OTHER TWO RIGHTS IS THE RIGHT TO EXCLUDE AND THE RIGHT TO USE OR POSSESS. THE RIGHT TO EXCLUDE HERE. I'M THE ONLY PERSON GETS TO USE THIS CERTIFICATE A PUBLIC CONVENIENCE IN THIS APARTMENT. THIS VALUE ON THE ONLY ONE THAT GETS TO DRIVE THIS TAXI AND I'M ALLOWED TO CHARGE THESE RATES DO ALL OF THIS, THE CARTEL.

>> Chief Justice Carlos Muniz: IN ORDER FOR THAT TO RISE TO A PROPERTY RIGHT. YOU HAVE TO HAVE SOME SORT OF PETITION THAT HE WILL CONTINUE DEFINITELY RIGHT.

>> Bryan S. Gowdy ,Petitioner: WOULD NOT SAY THAT.

>> Chief Justice Carlos Muniz: YOU DON'T.

>> Bryan S. Gowdy ,Petitioner: I DON'T AGREE WITH THAT. SOME OF THESE FRANCHISE RIGHTS ORALLY FOR 10 YEARS.

>> Chief Justice Carlos Muniz: ,BUT THEY WERE CONTRACT.

UNDERSTAND THAT YOU ARE RESPONDING TO WHERE THE SECOND DCA WHEN IT RESPOND TO THIS DISSENT AND WENT OFF ON THIS TANGENT ABOUT POSITIVE LAW AND PROPERTY, OR WHATEVER. YOUR INITIAL ARGUMENT HAD NOTHING TO DO WITH FRANCHISES OR CONTRACTS OR ANYTHING LIKE THAT WAS VERY MUCH TIED TO THE LANGUAGE OF THE 2012 STATUTE AND LABEL.

>> Bryan S. Gowdy ,Petitioner: .I AGREE WITH THAT. I GUESS LET ME GET BACK TO ANSWER YOUR QUESTION, THERE IS THE RIGHT TO USE, WHICH I THINK I WENT OVER.

AND THE RIGHT TO EXCLUDE IS SIMILAR IN THAT OTHER PEOPLE CANNOT USE MY LICENSE THEY CANNOT USE MY MEDALLION. THEY CANNOT USE MY CERTIFICATE OF PUBLIC CONVENIENCE.

IF SOMEBODY ELSE IS USING IT. I CAN PREVENT THAT.

>> Justice Charles Canady: ISN'T THE VALUE WE TALK ABOUT ACTUAL ECONOMIC VALUE. ISN'T THE ACTUAL ECONOMIC VALUE DEPENDENT UPON THE REGULATORY SCHEME WHICH LIMITS THE NUMBER OF MEDALLIONS.

THAT'S WHAT IT ALL BOILS DOWN TO PRINT. EVERYBODY COULD GET A MEDALLION THAN THIS MEDALLION BECOMES WORTHLESS.

>> Bryan S. Gowdy ,Petitioner: THAT'S THE QUESTION WHEN WE GO BACK JUSTICE CANADY YOU'RE TALKING ABOUT . WHAT IS THE VALUE THE MARKET VALUE OF THESE MEDALLIONS?

WHAT IS THE APPROPRIATE COMPENSATION?

IF IT TURNS OUT THAT THERE IS 1 MILLION MEDALLIONS. MY CLIENTS ARE NOT LIKELY TO GET MUCH COMPENSATION. BUT THAT IS NOT THE QUESTION BEFORE THE COURT.

I HAVE 1 MILLION LEGOS IN MY HOUSE. EACH OF THEM IS A PIECE OF PROPERTY. IF I HAVE 1 MILLION MEDALLIONS EACH OF THEM IS A PIECE OF PROPERTY. YOU MAY SAY IT IS THE DE MINIMIS THAT'S WHAT I'M HEARING IN YOUR LINE OF QUESTIONING. BUT IT IS NOT QUESTION BEFORE THE COURT. THE QUESTION IS THIS PRIVATE PROPERTY. WAS IT TAKEN?

THEN WE'LL GET TO WHAT YOU ARE TALKING ABOUT . I THINK WE WILL PUT WHEN WE GET THERE WE WILL PUT ON EVIDENCE THAT IS LAID OUT IN THE AMICUS BRIEF THAT YOU CAN GET LOANS OF THIS. IT IS NOT SO DE MINIMIS AS YOU ARE SUGGESTING PEOPLE PAY SERIOUS MONEY FOR THESE MEDALLIONS.

THAT WILL BE THE EVIDENCE CREATED WHEN WE GO BACK.

>> Chief Justice Carlos Muniz: YOU CAN HAVE TWO MINUTES FOR REBUTTAL.

>> Bryan S. Gowdy ,Petitioner: THANK YOU VERY MUCH FOR GIVING ME THE OPPORTUNITY TO ARGUE.

>> David M. Costello,Respondent: ,MR. CHIEF JUSTICE, WHEN THE STATE GRANTS THE RIGHT IN THE STATUTE GENERALLY DOES NOT CONVEY PROPERTY UNDER THE TAKINGS CLAUSE. THE REASON IS THAT THE STATE PRESERVES THE POWER TO REPEAL ITS STATUTES AND CHANGE ITS REGULATORY FRAMEWORKS SO STATUTE TYPICALLY DOES NOT DEBATE THE KIND OF CONCRETE INTEREST THAT THE TAKINGS CLAUSE PROTECTS. THAT RULE IS CRITICAL BECAUSE IT PROVIDES THE STATE WITH ROOM TO REGULATE AND RESPOND TO CHANGING CONDITIONS BY CREATING AND ABOLISHING ALL TYPES OF STATUTORY FRAMEWORKS WITHOUT HAVING TO REGULATE MY PURCHASE. NOW THERE IS AN EXCEPTION TO THAT RULE. BY CONNECTING THE CASE LAW IS, IS THAT THE STATE CAN ELEVATE A STATUTORY INTEREST TO PROPERTY UNDER THE TAKINGS CLAUSE IN VERY LIMITED CIRCUMSTANCES WHERE IT EFFECTIVELY PROMISES TO PRESERVE THE INTEREST FOR FUTURE REGULATION. THAT'S LIKE A CONTRACT OR A PROMISE CASE THAT YOU SEE IN CASES LIKE BALLWIN. FOR MY FRIENDS TO PROVE THAT THE TAKINGS CLAUSE HAS EXCUSE ME, THAT THE STATE HAS CREATED SUCH A PROMISE FRIENDS HAVE TO PROVIDE CLEAR EVIDENCE TO THAT EFFECT IN HERE . PETITIONER SAY THAT THE 2012 ACT CREATED THAT KIND OF PROMISE BY PROMISING THE STATE WOULD PRESERVE THE STATE CREATED GRANTS TO THEIR TAXICAB CARTEL.

BUT IS THIS COURT HAS ORGANIZED MANY TIMES STATUTORY CONTEXT IS KING WHEN IT COMES TO CONSTRAINED STATUTES. HERE, THE CONTEXT MAKES CLEAR THAT THE STATE DID NOT CREATE ANY SORT OF PROMISE TO AN EVERLASTING TAXI CARTEL TO USE DESCRIPTIVE USE OF THE WORD.

I THINK ONE IMPORTANT PIECE OF CONTEXT IS ONE THAT YOU TOUCHED ON JUSTICE CANADY. IT IS THE IDEA THAT THE STATE ESPECIALLY PRESERVE THE POWER TO DISSOLVE THE MEDALLION FRAMEWORK ENTIRELY. SECTION 17 OF THE 2001 THAT IT RESERVED THE ABILITY TO DISSOLVE THE DISTRICT IN THIS CONTEXT, THE DISTRICT IS THE MEDALLION FRAMEWORK. THE 2001 ACT IS SHOT THROUGH WITH

REFERENCES TO THE PDC. THE BTC DECIDED WHEN MEDALLIONS WOULD ISSUE WHEN IT WOULD BE REVOKED WHEN THEY CAN BE TRANSFERRED AND WHAT SAFETY RESTRICTIONS THE MEDALLIONS WERE SUBJECT TO. WE THINK WHEN THE STATE CREATES THAT KIND OF COMPLEX REGULATORY FRAMEWORK THAT RUNS THROUGH A REGULATOR WHEN IT SAYS WE RESERVE THE ABILITY TO DISSOLVE THE DISTRICT IT SAYS WE ARE PRESERVING THE POWER TO DISSOLVE THE WHOLE FRAMEWORK.

>> Justice: GET THE STATUTE DOES SEEM TO MAKE A PURPOSEFUL CHOICE IN USING THE WORDS PRIVATE PROPERTY . HOW DO YOU RESPOND TO YOUR FRIENDS . I THINK VERY PERSUASIVE ARGUMENT THAT THAT IS A UNIQUE SET OF WORDS THAT ELSEWHERE IN OUR STATUTES IS GIVEN A CERTAIN EFFECT.

>> David M. Costello,Respondent: IT IS CERTAINLY UNIQUE JUSTICE COURIEL BUT THE QUOTE WHAT WOMEN WORDS PRIVATE PROPERTY ARE LARGE THEY CONTAIN MULTITUDES. THEY MEAN DIFFERENT THINGS IN DIFFERENT CONTEXTS.

>> Justice John Couriel: THAT IS ARTFUL.

ISN'T IT TRUE THAT WE TEND TO TREAT LIKE LIKE IN STATUTORY INTERPRETATION. WE PRESUME CONSISTENT USAGE . WE CALL IT A CANNON.

>> David M. Costello,Respondent: THAT IS CERTAINLY TRUE THAT THIS COURT ALSO ADHERES TO THE CAN THAT ALL WORDS MUST BE CONSTRUED IN CONTEXTS OF THE COURTS TO LOOK TO THE STATUTORY SCHEME AS A WHOLE.

>> Justice John Couriel: WHAT IS IT ABOUT THIS CONTEXT WOULD SEEM TO ME GOING BACK TO WHERE WE STARTED ABOUT THE CHARACTERISTICS OF PROPERTY OWNERSHIP . YOU GOT A PLEDEEBLE ASSET AND ASSET THAT CAN BE USED AS COLLATERAL, WHICH IMPLICATES NOT JUST THE OWNER CERTAINTY . BUT IF IT CAN BE PLEDGED AS COLLATERAL FOR LOANS THAT SPEAKS TO THE FORCE IT HAS IN THE MARKETPLACE.

IT MEANS THAT THERE IS A GAMBLE BUT A SETTLED EXPECTATION ENOUGH THAT SAYS NOT ONLY WHILE THE LICENSE HOLDER HAVE THE ABILITY TO OPERATE THIS FRANCHISE . OTHERS IN THE MARKET ARE COUNTING ON IT AND PLEDGING MONEY OR USING AS COLLATERAL WILLING TO EXTEND IT. IT SEEMS WHILE I FOLLOW THE ARGUMENT. THE STATE HAS THE STATUTORY POWER TO DO AWAY WITH THIS AT ANY TIME DOES SEEM THAT BY HAVING THAT OPPONENT OF USAGE BY CALLING IT PRIVATE PROPERTY . THERE IS A PRETTY GOOD CASE THAT THE STATE CANNOT DO IT WITHOUT COMPENSATION. ESPECIALLY, I WILL GO TO WHERE I STARTED. TODAY I WILL ASK YOU THE SAME QUESTION I ASKED THE OTHER SIDE. GIVEN OUR CONSTITUTION SAYS SOMETHING DIFFERENT ABOUT TAKINGS THAN THE FEDERAL CONSTITUTION. IT SAYS FULL COMPOSITION AS OPPOSED TO JUST COMPENSATION. IT ISN'T HOUSED IN THE DUE PROCESS CLAUSE.

SHOULD WE TAKE FROM THIS CONTEXT . IN THIS USE WHICH WE ASSUME IS PURPOSEFUL, WHICH WE ASSUME IS UNIFORM WITH OTHER USES OF PRIVATE PROPERTY . THE PLEDGE OF THE ASSETS TO STATE THERE SOMETHING COMPENSABLE HERE.

>> David M. Costello,Respondent: NO, I DON'T THINK SO JUSTICE COURIEL TO TOUCH ON

A FEW POINTS. WE AGREE WITH MY FRIEND THE COURT SHOULD NOT DECIDE WHETHER THE KID TAKINGS CLAUSE IS DIFFERENT UNDER OUR CONSTITUTION TO THE FEDERAL CONSTITUTION THAT IS A PRETTY BIG ISSUE MORE POORLY. THIS CASE TURNS ON PRIVATE PROPERTY. THOSE WORDS OF THE SAME IN BOTH CONSTITUTIONS. FULL COMPOSITION IS REALLY NOT THE ISSUE HERE. BUT THE TOUCH ON YOUR POINT ABOUT THE TRANSFER RIGHTS. I THINK I WOULD HAVE TWO RESPONSES. FIRST, ON THE FACTS OF THIS CASE. TRANSFER RIGHTS WERE NOT ABSOLUTE . IN FACT, WE THINK THE TRANSFER SCHEME CUTS THE OTHER WAY BECAUSE THE PDC RETAINED AT ALL TIMES. FULL ABILITY TO DENY TRANSFERS EXCEPT IN THE CASE WHERE THE MEDALLION WAS GIVEN TO AN ERROR AND EVEN THAT CIRCUMSTANCE.

>> Justice: WHAT ABOUT BORROWING WHAT ABOUT PLEDGING IT AS COLLATERAL.

>> David M. Costello, Respondent: ABSOLUTELY CAN BE PLEDGED AS COLLATERAL.

>> Justice John Couriel: WITH THAT SUBJECT TO REGULATORY APPROVAL .

>> David M. Costello, Respondent: I DON'T THINK SO JUSTICE COURIEL THAT IS NOT DIFFERENT FROM OTHER LICENSING SCHEMES. FOR EXAMPLE, IN THE LIQUOR LICENSING CONTESTS LET LIQUOR LICENSES ARE TRANSFERABLE AND WAIT AND WAIT THERE ARE COMMERCIAL PROPERTY. THEY CAN BE SUBJECT TO LIENS THEY CAN BE USED AS COLLATERAL, BUT THEY STILL ARE SUBJECT TO REVOCATION AND OF COURSE THE STATE CAN BAN LIQUOR ENTIRELY AND ABOLISH OLD LICENSES AND IT WOULD NOT NEED TO TAKE A POSITION. I THINK THAT IS REALLY THE KEY HERE. THERE ARE MANY WAYS TO DEFINE PROPERTY UNDER THE TAKINGS CLAUSE CAN GET QUITE CONFUSING BUT A RULE THAT WE KNOW IS IF THE STATE RETAINS THE ABILITY TO DESTROY THE INTEREST AND IS NOT CREATED PROPERTY UNDER THE TAKINGS CLAUSE GROUP SERVED THE POWERS TO THE SWORD. WE CANNOT SAVE IT HAVE THE RIGHT TO EXCLUDE THE GOVERNMENT FROM INTEREST. THAT'S WHY WHEN THE STATE CHRYSALIS IS SCHEME DOES NOT CREATE COMPENSABLE PROPERTY RESERVES THE POWER TO DESTROY THAT INTEREST. SO HERE IF YOU ARE WITH ME THAT THE STATE ALWAYS RESERVED THE ABILITY TO DESTROY THIS REGULATORY SCHEME. A FRIEND DOES NOT HAVE COMPENSABLE PROPERTY REGARDLESS OF HIS TRANSFER RIGHTS.

>> Chief Justice Carlos Muniz: WITH THINK THAT GIVES ME PAUSE ABOUT THIS THE WAY BACK AT THE EARLY STAGES OF THE LITIGATION IN FRONT OF THE TRIAL COURT WHERE WITH THE STATE AND COUNTY WERE STILL POINTING AT EACH OTHER . THE STATE TOOK THE POSITION THAT BASICALLY IT WOULD BE IRRATIONAL AND KIND OF ARBITRARY TO THINK THAT THE INTENT OF THIS LEGISLATION WAS TO WIPE EVERYTHING OUT. THEN JUST KIND OF HAVE THIS CLEAN SLATE . IT WAS BEING HYPER FORMALIST. I CAN REMEMBER, BUT HE MADE IT SOUND PART OF THE STATE'S ARGUMENT WAS LIKE THERE IS NO WEIGHT WHAT YOU'RE SAYING WE DID BY WIPING OUT THIS "PROPERTY" IN MAKING YOU GO FROM SCRATCH THAT IT IS AN UNREADABLE WAY OF LOOKING AT WHAT WE DID. NOW, THIS CASE GETS TO US AND BASICALLY YOU ARE ASKING US TO SORT OF PUT OUR IMPRIMATUR ON THE STATE'S ABILITY TO DO SOMETHING THAT THE STATE, THE INITIAL STAGES OF LITIGATION SAID

WOULD BE ARBITRARY AND UNREASONABLE. COULD YOU ADDRESS THAT.

>> David M. Costello, Respondent: CERTAINLY CHIEF JUSTICE I THINK AS WE UNDERSTOOD THE CASE BACK THEN WERE SIMPLY ARGUING THAT THE COUNTY CERTAINLY HAD THE ABILITY TO UNEARTH THESE MEDALLIONS IF IT SO CHOSE. BUT I DID NOT UNDERSTAND THIS TO BE TAKING THE CONCRETE POSITION THAT THESE MEDALLIONS ARE SIMPLY WOULD CONTINUE TO EXIST FOR CERTAIN.

>> Chief Justice Carlos Muniz: .HE DIDN'T SAY THAT.

BASICALLY, WE ARE NOW HAVING TO READ THIS AS IF THE STATE SORT OF CONSCIOUSLY WIPE THE SLATE CLEAN DID ALMOST LIKE A D REGULATORY TAKING AND SAID GOOD LUCK WITH COUNTY.

IN THE STATES POSITION WAS NO THAT'S A CRAZY WAY OF LOOKING, BUT I WOULD HAVE BEEN HERE AND YET NOW THAT IS WHAT WE ARE GOING TO BE SAYING IF WE AGREE WITH YOU. WE WILL BE SAYING THAT IS FINE, THE STATE CAN DO THAT.

>> David M. Costello, Respondent: I DON'T THINK I DON'T RECALL THAT AS BEING EXACTLY WHAT WE ARGUED BELOW. TO THE EXTENT OF ROLE ABOUT THAT MR. CHIEF JUSTICE RAPIDLY DID NOT WIN ENOUGH YOU. I DON'T THINK WE ARE BARRED FOR TAKING A POSITION HERE EFFECT IS JUST RIGHT VIEW OF THE LAW WHEN YOU HAVE A CONTEXT LIKE THIS. A REGULATORY SCHEME IS CLEAR THAT THE STATE IS CREATED A CONTAINED FRAMEWORK THAT SEEMS TO RISE AND FALL ON THE EXISTENCE OF OUR REGULATOR IS UNDERSTOOD THAT THE ELIMINATION OF THE REGULATOR WOULD BRING WITH IT LICENSES THAT THE REGULATOR ISSUE.

>> Chief Justice Carlos Muniz: TO THE EXTENT WE DON'T WANT TO GIVE A BLANK CHECK FOR GOVERNMENT JUST DOING WHATEVER IT WANTS.

WOULD YOU SAY THAT WE WOULD NEED TO RELY ON OTHER PARTS OF THE CONSTITUTION TO PREVENT THE STATE FROM SAYING SOMETHING LIKE, YOU KNOW WHAT THESE PEOPLE HAVE INVESTED ALL THIS MONEY THESE MEDALLIONS BUT WOULD LIKE TO SEE IF THERE ARE THE PEOPLE WHO CAN DO IT BETTER. WE WILL WIPE OUT THE EXISTING MEDALLIONS KEEP THE DISTRICT AND SAY YOU GOT AN ISSUE THE SAME NUMBER OF NEW ONES BUT JUST TO DIFFERENT PEOPLE? WHAT IS THE CONSTITUTIONAL. IS THERE ANY CONSTITUTIONAL PROTECTION AGAINST THAT .

>> I THINK THE DUE PROCESS CLAUSE CAN PROVIDE THE KIND OF PROTECTION. THE GOVERNMENT CANNOT GENERALLY DO THINGS THAT ARE TOTALLY RATIONAL AND UNREASONABLE. I DON'T THINK THIS COURT SHOULD BE TOO CONCERNED ABOUT THE POSSIBILITY THAT THE STATE WOULD GO AND CREATE MEDALLIONS OR LICENSES THAN JUST NOT GIVE PEOPLE WHO PAID MONEY FOR THOSE LICENSES. THE BENEFIT OF THE DOUBT BECAUSE THERE WOULD BE SUBSTANTIAL POLITICAL PRESSURES PUSHING BACK AGAINST THAT MORE POORLY WHEN YOU WERE DEALING WITH THE GOVERNMENT. AS I THINK.

[LISTING NAMES] PUT IT IN THE.

[LISTING NAMES] DISINTERESTED TURN SQUARE CORNERS AT TIMES. YOU KNOW GOING IN THAT YOU TAKE THIS LICENSE. THE ONE DAY IT MIGHT NOT EXIST ANYMORE. IT IS BAKED INTO THE VALUE OF THE LICENSE. REGARDLESS OF

WHETHER.

>> Justice Charles Canady: CAN I ASK YOU A QUESTION THAT OCCURS TO ME. WHEN THE MEDALLIONS WERE ISSUED . WHAT WAS THE CHARGE ASSOCIATED WITH THE PROVIDING OF THE MEDALLIONS?

>> David M. Costello,Respondent: I THINK UNDERSTAND YOU TO BE ASKING JUSTICE CANADY WHAT WERE MEDALLION HOLDERS REQUIRED TO DO WITH THE MEDALLIONS.

>> Justice Charles Canady: WHAT DID THEY HAVE TO PAID THE DISTRICT TO GET A MEDALLION.

>> David M. Costello,Respondent: I THINK WAS VERY SMALL.

>> Justice Charles Canady: BASICALLY AN APPLICATION FEE.

NOT SOMETHING ASSOCIATED WITH THE VALUE OF THE MEDALLION.

>> David M. Costello,Respondent: CORRECT WORK TRANSFER FEE IS THAT YOU HAVE TO PAY BUT THEY WERE NOT ASSOCIATED.

>> Justice Charles Canady: TRANSACTIONAL FEES.

>> David M. Costello,Respondent: EXACTLY.

I THINK IT IS IMPORTANT TO NOTE THAT EVEN UNDER THE PTC FRAMEWORK AFTER THE 2012 ENACTMENT THE PTC STILL CONTAINS SUBSTANTIAL AUTHORITY UNDER TO ABOLISH THE INTEREST. FOR EXAMPLE, AFTER THE 2012 ENACTMENT ESTATE STILL ENDOWED THE PDC WITH THE POWER TO REVOKE OR SUSPEND!

DO YOU READ THAT AS AN INDIVIDUALIZED DETERMINATION OR DO YOU READ THAT AS THE PDC CAN SAY WE ARE TIRED OF YOU HAVING A MEDALLION WE ARE TAKING IT AWAY. I DON'T READ THAT AS BEING THIS EARLY AS EXPENSIVE AS WHAT YOU WERE SAYING.

>> David M. Costello,Respondent: I THINK I DO READ IT THAT WAY. OF COURSE THE PDC PDC WAS ENTITLED TO CREATE RULES TO CONSTRAIN ITS DISCRETION. THE LEGISLATURE SIMPLY USED THE WORD IN SECTION 5DD THE PDC. THE RIGHT TO REVOKE OR SUSPEND VALUES. THAT UNCONSTRAINED GRANT IS MORE CONSISTENT WITH LICENSING SCHEME SCHEME WITH A REGULATOR CAN ABOLISH THE INTEREST IN HIS DISCRETION.

>> Chief Justice Carlos Muniz: EVERYTHING ABOUT THIS IS MORE CONSISTENT WITH LICENSING EXCEPT CALLING IT PRIVATE PROPERTY . I THINK YOU GUYS BELOW EACH SIDE WAS CANDID ABOUT THE FACT THAT THIS IS A UNIQUE, THERE'S NO CASE THAT IS EXACTLY THE GENERAL FRAMEWORK. OBVIOUSLY FAVORS YOU. BUT THIS WEIRD REFERENCE TO PRIVATE PROPERTY.

IT CAUSES YOU AND RAISES AN EYEBROW.

>> David M. Costello,Respondent: .IT IS WEIRD. I AGREE, MR. CHIEF JUSTICE, I THINK WHEN YOU LOOK AT THE CONTEXT OF THE ENTIRE SCHEME WE'VE GIVEN WITH HER CONSTRUCTIONS FOR THE WORD PRIVATE PROPERTY FOR LIKELY MEANT. THE ONE I THINK IS MOST PERSUASIVE IS THE LEGISLATURE WAS LEGISLATING AGAINST THE BACKDROP OF A NUMBER OF COMMON LAW CASES ORGANIZING THAT YOU CAN MAKE A LICENSED COMMERCIAL PROPERTY IN A SENSE BY GIVING IT TRANSFERABILITY THAT IS THE LIQUOR LICENSE CASES. WE STATE. THAT DOES NOT

MAKE IT PROPERTY IN THE CONSTITUTIONAL SENSE, TO THE EXTENT THAT THE TAKINGS CLAUSE IS OBLIGATED AND ALSO I THINK THERE IS A DIFFERENCE BETWEEN PROPERTY UNDER THE TAKINGS CLAUSE IN PROPERTY UNDER THE DUE PROCESS CLAUSE. WE THINK THE WORDS PRIVATE PROPERTY HERE ALONGSIDE THE TRANSFER PROCESS COULD BE UNDERSTOOD AS WELL TO CREATE SOME SORT OF DUE PROCESS PROTECTIONS FOR THESE INTERESTS. UNDER THE PRIOR SCHEME. THE 2001 ACT . THERE WERE PROCEDURES PROPOSED PROBATION PROCESS WITH THE RENEWAL PROCEDURES FOR PRE-DEPRIVATION PRIZES FOR THE PRIVATE PROPERTY LANGUAGE HE COULD BEEN UNDERSTOOD TO TRIGGER THOSE TYPES OF PROTECTIONS.

>> Justice: CAN YOU ADDRESS THERE IS ONE ASPECT OF THE CASE . THE PETITIONER'S DUE ONE IS THE SPLIT STATE AND FEDERAL DOCTOR THAT IS THE UNMISTAKABLY DOCTRINE THAT SORT OF THING . THE REPLY BRIEF, IT HAS NOT BEEN APPLIED IN FLORIDA TOOK THIS IDEA THIS BIG PICTURE OF THE ONE LEGISLATURE CANNOT FIND ANOTHER AND HOW THAT SHOULD BE APPLIED IN THIS CASE.

>> David M. Costello, Respondent: CERTAINLY JUSTICE SASSO I WOULD LIKE TO SAY, THIS CASE DOES NOT TURN ON THE UNMISTAKABLY DOCTRINE, THIS COURT CAN APPLY GENERAL PRINCIPLES, BUT TAKEN THE QUESTION HEAD-ON. IT IS NO DOUBT TRUE THAT ONE LEGISLATURE CANNOT FIND ANOTHER. HOWEVER, LEGISLATORS CAN ENTER INTO BINDING PROMISES OR CONTRACTS TO GIVE STATUTORY INTERESTS, A MEASURE OF CONCRETENESS SO THEY HAVE PROTECTION UNDER THE TAKINGS CLAUSE. THE UNMISTAKABLY DOCTRINE KIDS AND BECAUSE GENERALLY, THE STATE DOES NOT GIVE AWAY ITS POWER TO REGULATE IN THE FUTURE DOES NOT MAKE ANY PROMISES ABOUT HOW IT IS GOING TO REGULATE IN THE FUTURE.

THE UNMISTAKABLY DOCTRINE SAYS IF THE PLAINTIFF'S CLAIM TURNS ON THE STATE HAVING PROMISED TO REGULATE IN A PARTICULAR WAY HERE WOULD BE PRESERVING THE MEDALLION FRAMEWORK FOREVER. THAT PROMISE HAS TO BE UNMISTAKABLY CLEAR IN THE FACE OF THE STATUTE. THE WORDS PRIVATE PROPERTY JUST DON'T PROVIDE THAT CLEAR AND UNMISTAKABLE READING . AS WE'VE GIVEN ANY REASON TO DOUBT THE WORDS PRIVATE PROPERTY AMOUNT TO COMPENSABLE PROPERTY THAT THE LEGISLATURE COULD NEVER DESTROY. I WOULD WANT TO TOUCH ON ONE POINT MY FRIENDS RAISED IN THE REPLY BRIEF . MY FRIEND LIVES ON THE JUSTICE SOUTER KARATE CONSTRUCTION ON THE MYSTIC ABILITY DOCTRINE. WE DON'T THINK THAT PLURALITIES BINDING ON ANYBODY. OF COURSE, DEPENDING ON THIS COURT WITH FLORIDA LAW. WE ALSO NOTE THE FIVE JUSTICES IN WINSTAR REJECTED THAT NARROW DISRUPTION OF UNMISTAKABLY JUSTICE SCALIA AN OCCURRENCE JOINED BY.

[LISTING NAMES]. ALL ADOPTED OUR CONSTRUCTION AND SAID THE PRINCIPLE APPLIES WHENEVER THE PROMISE IS THAT THE STATE WOULD RELATE IN A PARTICULAR WAY. TO THE POINT THAT YOU RAISE JUSTICE SASSO ABOUT MY FRIENDS SAYING TO DOCTRINE IS NEVER BEEN APPLIED IN FLORIDA. THAT IS

INCORRECT ON PAGE 22 OF HER ANSWER BRIEF CITE TWO CASES WITH THE DOCTRINE HAS BEEN APPLIED IN FLORIDA. THIS COURT APPLIED THE DOCTRINE INDICATES COLD: V. SANHEDRIN HOMES. THE FIRST DISTRICT APPLIED THE DOCTRINE INDICATES COLD SANTA ROSA COUNTY V. GULF POWER. WHICH WAS QUITE SIMILAR TO OUR CASE, THE CLAIM WAS THAT STATUTE EFFECTIVELY PROMISED THAT THE STATE WOULD NOT CHARGE FEES TO A BUSINESS FOR USING THE RIGHT-OF-WAY. THE FIRST DISTRICT SAID NO THERE'S NOTHING UNEQUIVOCALLY CLEAR ON THE FACE OF THE STATUTE THAT THE LEGISLATURE HAD MADE ANY PROMISES. SO WE ARE NOT GOING TO CONCLUDE THAT VILLAGE LEDGER HAD BOUND ITSELF.

>> Justice: IS THAT ANOTHER WAY TO SAY INTERPRETING THE STATUTE AND CONTACT MIC PRIVATE PROPERTY IN THE CONTEXT OF THE STRUCTURE OF THE CONTEXT WHICH WOULD ALLOW ONE LEGISLATURE TO AMEND THE STATUES.

>> IT IS.

[UNCLEAR AUDIO] WHETHER THE GOVERNMENT PARTED WITH ITS SOVEREIGN AUTHORITY. THIS COURT REQUIRES A CLEAR STATEMENT THAT THE GOVERNMENT HAS WAIVED SOVEREIGN IMMUNITY. SIMILARLY, COURSE REQUIRED CLEAR STATEMENT TO SHOW THAT THE LEGISLATURE HAS DELEGATED WITH SUBSTANTIAL POWER UNDER THE MAJOR QUESTIONS DOCTRINE. THE UNMISTAKABLY DOCTRINE IS NO DIFFERENT. IT SOUNDS IN THE GENERAL RULE, BORN OUT OF THE SEPARATION OF POWERS, THE COURTS SHOULD NOT LIGHTLY CONSTRUE THE LEGISLATURE TO OF PARTED WITH HIS POWER AND ITS OBLIGATION TO CHANGE ITS LAWS TO MEET THE PUBLIC'S NEEDS.

WHEN THE PLAINTIFFS CLAIM TURNS ON THAT CURRENT PROMISED THE PROMISE HAS TO BE UNMISTAKABLY MADE.

TO THE POINT THAT WHEN RAISED ABOUT THE CONTENTS OF THE SCREEN . APART FROM THE UNMISTAKABLY DOCTRINE, MY FRIEND MENTIONED THE MEDALLIONS HERE FOR FRANCHISES AND FRANCHISES WERE HISTORICALLY GRANTED FOR A LONG PERIOD OF TIME. IN SOME CIRCUMSTANCES. I THINK THAT IS TRUE. THE PROBLEM HERE IS MEDALLIONS HAD NO TIME LIMIT WHATSOEVER . IF THE PETITIONS ARE RIGHT THAT THE 2012 ACT GREETED SOME SORT OF COMPATIBLE FRANCHISE THAT MEANS WITH JUST TWO WORDS. THE STATE BOUND ITSELF TO HONOR A TAXICAB CARTEL FOREVER. NO MATTER HOW MUCH THE CARTEL MIGHT HURT THE STATE OR ITS CITIZENS IN THE FUTURE. I JUST DON'T THINK THAT'S A REASONABLE CONSTRUCTION OF THE STATUTE.

I'D ALSO WOULD NOTE THE PETITIONER SAID THAT THERE MEDALLIONS ARE LIKE FRANCHISES BUT 2001 ACT USED THE WORDS FRANCHISE AND CONTRACT A LOT. THE DEFINITION OF TAXICAB EXCLUDED FROM IT. CARS OPERATED PURSUANT TO FRANCHISE.

THE FACT THAT THE LEGISLATURE DID NOT USE THE WORDS . THE PETITIONERS ARE CLAIMING THEIR MEDALLION TO BE IN A 2012 ACT AND USE DIFFERENT WORDS. PRIVATE PROPERTY SUGGESTS THAT THE LEGISLATURE DID NOT UNDERSTAND ITSELF TO BE CREATING A FRANCHISE THAT IS A COMPENSABLE PROPERTY RIGHT

UNDER THE TAKINGS CLAUSE.

IF THIS COURT HAS NO FURTHER QUESTIONS WOULD ASK THAT YOU APPROVE THE DECISION OF THE SECOND DISTRICT. THANK YOU.

>> Bryan S. Gowdy ,Petitioner: MY FRIENDS STARTED WITH THE WORD GENERALLY AND TYPICALLY. I WOULD AGREE WITH THAT.

BUT HERE WE HAVE THE EXPRESS WORDS PRIVATE PROPERTY.

I DON'T SEE HOW RULE FOR MY FRIEND WITHOUT BASICALLY SAYING WE'RE NOT GOING TO DO WITH THE LEGISLATURE SAID.

MAYBE THAT WAS A POOR POLICY CHOICE TO PUT THOSE WORDS IN THERE, BUT THEY HONESTLY WERE PUT IN THERE PURPOSEFULLY AND THEY DON'T MEAN JUST PROPERTY.

ALL THE CASES WERE HEARING ABOUT FOOD STAMPS, EMPLOYMENT, ALL OF THOSE WERE DEALING WITH DUE PROCESS CLAUSE CASES.

HERE THE LEGISLATURE'S VIEWED THE WORDS IN THE TAKINGS CLAUSE. I CITE THE KEPNER CASE FROM THE SUPREME COURT WHEN THE LEGISLATURE USED THE WORDS IN THE CONSTITUTION THAT HAVE A WELL DEVELOPED MEETING FOR 200 YEARS THAT THE PRESUMPTION IS THAT YOU WILL APPLIED THOSE CARDS THE SAME WHEN INTERPRETING THE STATUTE.

THE PRESUMPTION HE IS TALKING ABOUT IS FLIPPED HERE BECAUSE THE LEGISLATURE EXPRESSLY ADOPTED TWO WORDS THAT YOU SEE ONLY TWICE IN OUR CONSTITUTION.

THE OTHER THING ON THE UNMISTAKABLY DOCTRINE, I THINK THE THING I KNOW I SAID THIS, MAYBE YOU TOLD ME ALREADY READ THEM. THERE'S ANOTHER CASE IN THIS COURT ON SOVEREIGN IMMUNITY DOCTRINE WITH THE UNIVERSITY. THE SOLICITOR GEN. FILED A BRIEF THAT THE CONTRACT CASE AND THE UNMISTAKABLY DOCTRINE IS NOT TALKED ABOUT IN THERE. I FIND IT ODD THAT THIS COURT WOULD INTERJECT THE UNMISTAKABLY DOCTRINE THAT IS BASICALLY FEDERAL CONTRACT DOCTRINE INTO A TAKINGS CASE AND WE ARE NOT TALKING ABOUT IT IN ANOTHER CASE INVOLVING CONTRACTS.

JUSTICE SCALIA WE WIN WITH HIS CONCURRENCE WITH LIKE THE CLARITY WITH THE CONCURRENCE WE WENT UNDER BOTH. THE WORDS PRIVATE PROPERTY ARE UNMISTAKABLE.

THEY HAVE AN UNMISTAKABLE MEANING IF YOU THINK THE PRIVATE PROPERTY CAN BE TAKEN WITHOUT COMPETITION, THEN THOSE WORDS ARE MEANINGLESS.

I WOULD ASK THAT YOU REVERSE AND GRANT THE RELIEF WE REQUESTED IN THE CONCLUSION SECTION OF THE BRIEF.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH. WE WILL BE IN RECESS FOR 10 MINUTES.