NEXT COURT ON THE CALENDAR IS OCALA BREEDERS' SALES VERSUS FLORIDA GAMING CENTERS.

MAY IT PLEASE THE COURT. I AM LINDA COLLINS HERTZ. WITH ME AT COUNSEL FABLE TABLE IS BILLOW OPEN AT COUNSEL TABLE IS BILL HAMILTON. WE REPRESENT HOLLAND -- WE ARE BOTH FROM HOLLAND AND NIGHT. WE REPRESENT THE COMPANY OCALA BREEDERS' SALES CORPS ANY, INCORPORATED -- COMPANY, INCORPORATED, AND IT IS FROM THE FIRST DISTRICT COURT OF APPEAL, AFFIRMING THE TRIAL COURT'S DECLARATORY INJUNCTION, FINDING A FLORIDA STATUTE UNCONSTITUTIONAL, AND WE ARE HERE ON TWO GROUNDS, BASICALLY, WITH SEVERAL SUBSIDIARY ISSUES THAT ARE INVOLVED, BUT THE QUESTION THAT I THINK IS THE MOST INTERESTING AND, PROBABLY, SHOULD BE DISPOSITIVE FOR THIS COURT, IS THAT THE ISSUE IS MOOT. AND IT WAS MOOT WHEN IT WAS DECIDED BY THE FIRST DISTRICT COURT OF APPEAL. THE STATUTE WAS AMENDED DURING THE PROCESS OF THE APPEAL. AND WE, NOW, HAVE POSSESSION OF A LICENSE I SHOULD UNDER THE -- ISSUED UNDER THE NEW STATUTE. WE ARE NOT OPERATING, SO THE INJUNCTION HAS NO MEANING, AND THE INTERPRETATION OF THE STATUTE --

WHEN YOU SAY THE STATUTE WAS AMENDED --

YES.

-- THERE IS A RENUMBERING, HERE, AND -- WOULD YOU HELP ME OUT IN DETERMINING WHETHER OR NOT THERE IS STILL A SEX 615, AS OPPOSED TO THIS NEW NUMBERING, 6308 OR SOMETHING, SO?

THE ANSWER IS I CAN GUESS AT WHAT THE LEGISLATURE DID, BECAUSE THERE IS NOTHING --

6308 JUST DEALS WITH THAT ONE PORTION THAT IS SUBSECTION 9, DOESN'T IT?

YES.

SO WHAT ABOUT THE REST OF 615?

6 1R5 STILL EXISTS.

OKAY.

AND 615 SUBSECTION 9 HAS BEEN REPEATED IN THE 1998 SUPPLEMENT.

OKAY.

SO THE QUESTION IS WHAT HAPPENED THERE, AND WHAT I CAN ASSUME IS, WHEN THIS STATUTE WAS AMENDED, IT WAS DIRECTLY BECAUSE OF THE TRIAL COURT'S FINDING THAT PORTION UNCONSTITUTIONAL, SO, BUT, BY PROCESS OF PUTTING YOURSELF IN THEIR SHOES, THEY PASSED A NEW STATUTE, BECAUSE THE OTHER ONE WAS UNCONSTITUTIONAL, AND THEY ASSUMED IT NO LONGER EXISTED.

BUT THEORETICALLY, DON'T YOU STILL HAVE 615, SUBSECTION 9, WHICH WOULD RELATE TO PEOPLE WHO HAVE QUARTER HORSE PERMITS, AND THEN 6308, WHICH DOES NOT HAVE THAT LANGUAGE? SO IT SORT OF LOOKS LIKE, AT LEAST ON THE SURFACE, THAT THESE TWO COULD BOTH OPERATE.

IT MAKES NO LOGICAL SENSE TO DO THAT, AND I THINK THE -- IF THERE IS EVER A CONCEPT OF REPEAL BY IMPLICATION, THIS HAS GOT TO BE IT, BECAUSE THEY TOOK THE LANGUAGE OF THE 615 [9] AND IF YOU SUPERIMPOSE IT WITH THE LANGUAGE OF THE NEW STATUTE, THEY CARRIED OVER A LOT OF IT. THEY AMENDED WORDS HERE AND THERE. THEY AMENDED CONCEPTS, AND THERE IS ONLY ONE LICENSE TO BE I SHOULD.

-- TO BE ISSUED.

DOES THE LEGISLATURE SPECIFICALLY SAY, NORMALLY, WHEN THEY MEAN TO ABOLISH A STATUTE, DON'T THEY SPECIFICALLY SAY THAT, IN MOST INSTANCE? THEY DON'T LEAVE IT TO IMPLICATION. ISN'T THAT RATHER UNUSUAL?

WE WOULD HAVE NO NEED FOR A REVISE ORS PROVISION WITHIN THE STATUTES, IF THEY ALWAYS DID IT RIGHT. THEY DON'T ALWAYS DO IT RIGHT. WE HAVE LEARNED THAT.

BUT AFFORD A PRESUMPTION THAT THEY DID NOT MEAN TO ABOLISH IT?

MY PRESUMPTION IS, AND I THINK ONE THIS COURT COULD EASILY REACH, IS THEY THOUGHT IT WAS UNCONSTITUTIONAL AND WAS WIPED OUT AND THEY REPLACED IT.

YOU SAY PRESUMPTION GOING ONE WAY OR ANOTHER HERE?

NO. I DON'T THINK SO. I THINK YOU CAN ONLY STAY THE LATEST PRONOUNCEMENT BY THE LEGISLATURE IS THE ONE THAT APPLIES, AND IN THIS CASE THE LATEST PRONOUNCEMENT IS THEY AMENDED THE LANGUAGE OF 615-9 AND PUT IT INTO 6308, AND THEY TOOK BECAUSE WHAT THE TRIAL COURT TOOK TO BE A PROBLEM WITH 615-9, AND THEY ERASED IT.

DID THEY SAY THAT WELL ARE TAKING SUBSECTION 9? THEY DIDN'T SAY THAT, DID THEY? THEY ARE SAYING WE ARE NOW GOING TO REWRITE IT INTO 6308?

NO. THEY SAY THE STATUTE HAS BEEN HELD UNCONSTITUTIONAL BY THE TRIAL COURT, AND THE STATE IS LOSING $400,000 A YEAR BECAUSE THE STATUTE IS NO LONGER OPERATIVE. THEY DON'T MENTION THE STATUTE BY NAME, BUT THE HISTORY, I MEAN, THAT IS THE ONLY CONCLUSION YOU CAN DRAW FROM THE LANGUAGE.

I GUESS WHAT IS THE HARM, IF WE WERE TO UPHOLD THAT THE LEGISLATURE ASSUMES IT WAS UNCONSTITUTIONAL, IF WE JUST UPHOLD THE FIRST DISTRICT'S OPINION? WHERE IS THE HARM, IF IT DOESN'T MATTER, I MEAN, YOU SAY IT IS MOOT, BUT SINCE WE ARE NOT SURE, THAT IS WHAT THE LEGISLATURE DID, WITH WHY DON'T WE MAKE SURE BY AFFIRMING THE FIRST DISTRICT'S OPINION?

I THINK, FIRST OF ALL, WE ARE SURE THAT THAT IS WHAT THE LEGISLATURE DID. I DON'T THINK THAT THERE IS A LOGICAL CONCLUSION OTHERWISE, BUT THE HARM IS THAT YOU ARE, THEN, ISSUING AN ADVISORY OPINION, AND YOU ARE APPROVING THE FIRST DISTRICT'S ISSUEING AN ADVISORY OPINION. THIS COURT HAS JURISDICTION TO ISSUE ADVISORY OPINIONS IN LIMITED SITUATIONS. THIS IS CERTAINLY NOT ONE OF THEM. AN ISSUE, IF IT IS MOOT, THE COURT CAN CONTINUE TO HEAR IT, IF IT FITS CERTAIN CRITERIA, NONE OF WHICH ARE APPLYING HERE.

BUT WHY DO YOU CARE?

WE CARE, BECAUSE THEY ARE STILL LITIGATING. THEY ARE STILL RELYING UPON THE FIRST DISTRICT'S OPINION AND THE TRIAL COURT'S OPINION IN THEIR CHALLENGE TO 6308, AND THEY ARE SAYING IT IS PRECEDENT.

WELL, IF THE REASONING WOULD BE APPLICABLE TO THAT, REASONING WOULD BE APPLICABLE

NO MATTER WHAT. IF IT IS. IN OTHER WORDS, IF IT IS VALID. YOU ARE NOT CLAIMING ANY BENEFIT, UNDER THE STATUTE?

THEY ARE CLAIMING THAT, IF THERE IS A PARTICULAR PHRASE THAT THE DISTRICT COURT OF APPEAL DIDN'T LIKE, THEN THAT IS PRECEDENT FOR THE NEW STATUTE, BECAUSE IT HAS SOME OF THE SAME PHRASEOLOGY. SO THE HARM IS, AS MUCH PSYCHOLOGICAL FOR THE TRIAL COURT, THE NEXT TIME IT IS GOING TO HEAR IT, AS TO WHETHER OR NOT AM I BOUND BY THIS OR NOT, IT REALLY CREATES HAVOC WHERE THERE SHOULD BE NONE. I MEAN WE ARE READY TO LITIGATE THE NEW STATUTE, AND WE BELIEVE THE OLD STATUTE IS PERFECTLY CONSTITUTIONAL, BUT THERE IS NO REASON FOR THE COURTS TO REACH OUT TO DECIDE IT, WHEN ITS DECISION ON THE QUESTION CAN HAVE NO IMPACT BELOW, IN TERMS OF CARRYING OUT THE ORDER OF THE COURT, AND NOW WE ARE INTO THE NEW FISCAL YEAR, AND WE HAVE A LICENSE UNDER THE NEW STATUTE FOR THE NEW FISCAL YEAR, SO THERE IS NO QUESTION ABOUT THE APPLICABILITY OF 615-9.

DO YOU STILL HAVE YOUR LICENSE UNDER THE OLD STATUTE?

NO.

WE KNOW THAT IN THIS RECORD?

YES, THE RECORD IS BECAUSE WE WERE CONSTANTLY FILING MOTIONS WITH ATTACHMENTS, DEALING WITH THE MOOTNESS ISSUE, AND WE WERE ISSUED A AMENDED LICENSE ON FEBRUARY 5, FOR OUR PRIOR LICENSE THAT WAS UNDER 615-. IT WAS AMENDED -- 615-9. IT WAS AMENDED BY THE STATE. THE STATE IS ABSOLUTELY ACTING AS IF THERE IS NO 615-9, AND AND THEIR INTERPRETATION IS THAT WE ARE PROCEEDING PROPERLY UNDER 615 ONLY. WE HAVE AN AMEND LICENSE THAT CARRIED OVER FROM FEBRUARY 5 TO JULY 1.

ARE THERE OTHER ENTITIES, DO WE KNOW, THAT HAVE RECEIVED LICENSES UNDER 6308?

AS FAR AS I KNOW, AND AS FAR AS THIS RECORD IS CONCERNED, NO ONE ELSE HAS APPLIED. THIS IS NOT A MATTER OF GREAT PUBLIC INTEREST ACROSS THE STATE. THERE ARE ONLY TWO PARTIES THAT HAVE EVER SHOWN ANY INTEREST IN IT.

BUT 6308 -- BUT UNDER 6308, YOU CAN STILL HAVE ONLY ONE LICENSE I SHOULD THROUGHOUT THE STATE?

FOR CARRYING ON INTERTRACK WAGERING FOR HORSES ACROSS THE STATE AT FACILITIES.

DON'T YOU HAVE A LOCK ON IT? YOU SAY THE STATUTE APPLIED?

NO, WE DON'T, AND FOR THAT I WILL MOVE INTO THE MERITS OF THE ISSUE. BECAUSE WE DON'T HAVE A LOCK ON IT, AND IF YOU WANT TO DECIDE WHAT THE NEW STATUTE SAYS, AND THEN YOU ARE REALLY REACHING, BECAUSE NOBODY HAS DECIDED THAT, BUT UNDER THE OLD STATUTE WE DON'T HAVE A LOCK ON IT.

WHY NOT?

I AM TELLING WHAT MY POSITION IS, AND WHAT WE URGE YOU TO DO IS TO RECOGNIZE WHAT THE LEGISLATURE DID AND THE DIVISIONS IT CREATED WITHIN 615-9, SUBSECTION A, DEALING WITH THE CRITERIA WITH APPLYING FOR THE LICENSE. SUBSECTION B DEALS WITH THE CRITERIA TO APPLY, WHEN MORE THAN ONE PERSON APPLIES FOR THE LICENSE, AND THERE ARE OTHERS WHO DEAL WITH WHAT HAPPENS WHEN YOU HAVE THE LICENSE. SUBSECTION A IS THE CRITERIA. THIS IS A DECLARATORY JUDGMENT ACTION, WHERE THEY HAVE COMPETITIVE INJURY CLAIMED UNDER THE STATUTE. THE ONLY COMPETITIVE INJURY IS IF THERE IS A LICENSE AT ALL, NOT

WHO GETS IT, SO IT IS MY POSITION THAT YOU OUGHT TO EXAMINE THESE, SEX BY SEX, AND START WITH SUBSEX A. THERE ARE THE REQUIREMENTS FOR A QUARTER HORSE PERMIT. THERE ARE NO RESTRICTIONS ON THE NUMBER OF QUARTER HORSE PERMITS THAT CAN BE OBTAINED. OCALA BREEDERS HAS HAD A QUARTER HORSE PERMIT SINCE 1985. WE BUILT A PERMANENT FACILITY THAT WOULD ACCOMMODATE IT, AND THAT IS ALL THE STATUTE REQUIRES, SO THE FACT THAT IT CAN OR DID --

UNDER THAT QUARTER HORSE PROVISION, AND ANOTHER SUBSECTION, I BELIEVE SUBSECTION E, THERE IS A PROVISION THAT SORT OF -- I GUESS A QUARTER HORSE LICENSE, AS I UNDERSTAND IT, CAN BE REVOKED, IF YOU DON'T USE IT OVER A CERTAIN PERIOD OF TIME?

THAT IS A PARTIAL STATEMENT THAT THE APPELLANT -- I MEAN THE APPELLEE HAS RELIED ON FROM TIME TO TIME, BUT THERE ARE TWO PROVISIONS. YOU HAVE TO APPLY FOR IT. YOU HAVE TO RUN RACES, OR, UNLESS PROVISO CLAUSE, UNLESS YOU BUILD THIS PERFECTLYNENT FACILITY, AND THEY HAVE A DEFINITION OF WHAT SUBSTANTIAL COMMENCEMENT -- WE BUILT THE PERMANENT FACILITY, SO WE DON'T FALL UNDER THE CRITERIA FOR USE IT OR LOSE IT, BECAUSE WE HAVEN'T RUN QUARTER HORSE RACES, SO THAT IS AN ILLUSION THAT HAS BEEN ARGUED.

WHAT IS THE PURPOSE, WITHIN SUBSECTION E, WHICH TALKS ABOUT, EVEN IF YOU HAVE THE QUARTER HORSE LICENSE AND YOU DON'T USE IT, THAT WON'T PREVENT YOU FROM GETTING ONE OF THESE LICENSES?

THE PURPOSE? I DON'T KNOW WHAT THE PURPOSE IS, OTHER THAN IT IS WITHIN THE PREROGATIVE OF THE LEGISLATURE TO PASS LAWS AND HAVE, IN ONE SECTION, IF THIS APPLIES, THEN ANOTHER SECTION OF OUR OWN LAWS WON'T TAKE EFFECT, AND THAT WOULDN'T JUST APPLY TO US. THAT WOULD APPLY TO ANYBODY WHO HELD A QUARTER HORSE PERMIT, BUT THE PROBLEM WITH THAT ENTIRE SECTION IS BECAUSE NOBODY WHO HAS A QUARTER HORSE PERMIT HAS OBJECTED TO THIS. WE DON'T HAVE STANDING, IT SEEMS TO ME, TO CONSIDER THE VALIDITY OF SUBSECTION E, AND YOU COULD STRIKE IT COMPLETELY AND STILL HAVE THE ONE LICENSE ISSUED UNDER SUBSECTION A, SO IT IS REALLY A RECEIVERABLE ISSUE AND ONE THAT -- A SEVERABLE AND ONE THAT I DON'T THINK THE COURT NEEDS TO GET INTO. NOW, IF YOU LOOK AT SUBSECTION B, I THINK THE LANGUAGE USED BY THE DISTRICT COURT OF APPEAL AND THE STATUTE, BOTH SAY THAT THERE IS THE THEORETICAL PROBABILITY THAT SOMEBODY ELSE COULD QUALIFY UNDER SUBSECTION A, AND THEREFORE THEY MINGLE AND BRING IN, UNDER SUBSECTION B, OKAY, IF SOMEBODY ELSE DID APPLY, THEY WOULD NEVER GET IT. EVEN THAT IS NOT TRUE. IN SUBSECTION B, YOU HAVE THE REQUIREMENT FOR SOMEONE WHO HAS A PERMANENT FACILITY IN THIS STATE. NOW, THAT IS THE ONLY ONE THAT OCALA WOULD HAVE A LOCK ON, AND IT IS BECAUSE OF IT IS THE LENGTH OF TIME THEY HAVE HAD THE PERMANENT FACILITY. WE HAVE THE PERMANENT FACILITY. SO WE WOULD WIN THAT, IF YOU JUST LOOKED AT THE DIFFERENT CRITERIA. THE OTHER ONE IS THE VOLUME OF SALES OF THOROUGHBRED HORSES. NOW, THERE IS NOTHING THIS THERE THAT WOULD PROHIBIT ANYBODY, AND FACEK TIPTON IS A NATIONAL THOROUGHBRED HORSE SALES COMPANY, TO PROHIBIT FACEK TIPTON FROM COMING IN, BUILDING ITS FACILITY, MAKING IT MUCH GRANDER, HUGER, MORE INTERESTING THAN WE HAVE, AND APPLYING AND HAVING A LARGER VOLUME, AND THEN THE OTHER CRITERIA IS THE -- OKAY, WE HAVE THE LENGTH OF TIME, THE -- I AM BLANKING ON WHAT THE THIRD ONE WAS. CAN ANYBODY HELP ME OUT? IT IS THE VOLUME. IT IS THE LENGTH OF TIME YOU HAVE HAD THE FACILITY, AND THE LENGTH OF TIME YOU HAVE BEEN SELLING HORSES IN THE STATE OF FLORIDA. FACEK TIPTON HAS BEEN SELLING HORSES IN THE STATE OF FLORIDA FOR YEARS. THERE IS NO SHOWING THAT WE WOULD HAVE AN ABSOLUTE LOCK ON THAT. SO YOU TAKE JUST ONE AND TWO, THERE ARE TWO THAT WE WOULD NOT NECESSARILY WIN, AND THERE HAS BEEN NOBODY TESTING IT, AND THE SECOND REQUIREMENT IS THAT THE STATE HAS TO GIVE DEFERENCE TO THOSE WHO BETTER QUALIFY UNDER THESE CRITERIA, SO I DON'T THINK WE NECESSARILY HAVE A LOCK, UNDER SUBSECTION B, BUT I DON'T THINK YOU NEED TO GET THAT.

YOU NEED TO LOOK AT SUBSECTION A, AND IT IS NOT A SPECIAL ACT.

DID I UNDERSTAND YOU CORRECTLY, A FEW MINUTES AGO, AND DID YOU SAY THAT THE JAI ALAI DID NOT HAVE STANDING TO RAISE THIS ISSUE?

I SAY -- I AGREE THEY HAVE STANDING TO CHALLENGE SUBSECTION A, WHICH IS THE ONLY ONE THAT GIVES THEM A COMPETITIVE INJURY, A CLAIM OF COMPETITIVE INJURY.

YOU ARE SAYING THEY DON'T HAVE STANDING UNDER SUBSECTION E.

THEY DON'T HAVE STANDING TO GO INTO B & E.

LET ME JUST ASK YOU, ON THE ISSUE AS TO WHETHER THIS IS A LAW THAT IS TAILOR MADE FOR YOUR CLIENT ONLY, AND WHAT IS THE BASIS FOR OUR REVIEWING WHETHER THAT IS THE CASE OR NOT? THERE IS SOME LANGUAGE IN SOME OF THE CASES THAT TALKS ABOUT THE FACT FINDER HAS TO ASK THE QUESTION, CAN IT APPLY OR NOT. NOW, YOU HAVE JUST MENTIONED ANOTHER BREEDER OR A FACILITY. HOW -- DO WE -- IS IT INCUMBENT ON THIS COURT, THEN, TO LOOK AT THE RECORD THAT WAS BEFORE THE TRIAL COURT AND LOOK AT WHETHER THERE WERE FACTS DEVELOPED TO SHOW THAT OTHER INDIVIDUALS OR OTHER ENTITIES COULD QUALIFY?

I BELIEVE, IF YOU ARE GOING TO GET INTO THE MERITS OF IT, YOU WOULD NEED TO DO THAT, TO ASCERTAIN WHETHER OR NOT THE FIRST DISTRICT COURT OF APPEAL --

ISN'T THIS JUST A QUESTION OF LAW, THOUGH?

IT IS A QUESTION OF LAW, BUT THE STATUTE IS PRESUMED CONSTITUTIONAL. IT WAS PRESUMED CONSTITUTIONAL BELOW. IT WAS PRESUMED CONSTITUTIONAL IN THE FIRST DISTRICT, AND IT IS STILL PRESUMED CONSTITUTIONAL, SO THAT WHAT YOU HAVE TO DO IS LOOK AND SEE IF THERE IS ANYTHING THAT CUTS AGAINST THAT PRESUMPTION. NOW, THIS WAS SUMMARY JUDGMENT.

AND YOU -- DID BOTH SIDES AGREE THAT IT SHOULD BE A SUMMARY JUDGMENT?

WE COUNTERED THAT THEY HAD NOT MET THEIR BURDEN ON PROVING THE FACTS. THEY HAD TO PROVE THE NEGATIVE. THEY SAID NOBODY ELSE CAN APPLY. FACEK TIPTON'S REPRESENTATIVE, IN A DEPOSITION THAT IS IN THE RECORD, SAID WE HAVE NOT BUILT A PERMANENT RESIDENCE. WE HAVE NEVER SOUGHT AN INTERTRACK WAGERING PERMIT, BUT WE DON'T RULE OUT THAT POSSIBILITY.

BUT YOU DIDN'T SAY THE SUMMARY JUDGMENT WAS INAPPROPRIATE.

NO. WE ASKED FOR SUMMARY JUDGMENT, AS DID THEY, BUT IF YOU WANT TO LOOK TO THE FACTS, THERE ARE NO FACTS TO PROVE THAT NEGATIVE. I WILL RESERVE MY TIME FOR REBUTTAL.

THANK YOU, COUNSEL.

MR. SMITH.

MAY IT PLEASE YOUR HONORS. I AM ROBERT SMITH WITH JAMES ALVES, MY PARTNER, HERE, ON BEHALF OF OCALA JAI ALAI. LET ME TOUCH ON THE QUESTION OF MOOTNESS FIRST. DID THE NEW LAW REPLACE THE OLD LAW? IT DID NOT REPEAL IT. IT DID NOT REFER TO THE OLD LAW AS AMENDED. WHICH WAS THE EXPRESSION USED BY COUNSEL FOR THE APPELLANT HERE, AT THE BEGINNING. IT WAS NOT AMENDED. IT WAS THE ENACTMENT OF A NEW LAW. IN THE BRIEFS, APPELLANT SAYS, WELL, THERE WOULD BE A REVISE REVISEORS BILL TO ELIMINATE SUBSECTION

NINE. THERE HAS BEEN NO REVISEORS BILL, YOUR HONOR. COUNSEL SAYS THAT COUNSEL SAYS THAT IT WAS INCLUDED, AND FLORIDA STATUTE SUPPLEMENT, 1998, WELL, I CAN TELL THAT YOU BOTH OF THESE STATUTES ARE IN FLORIDA STATUTE 1999.

BUT DO THEY EACH HAVE AN AREA OF OPERATION?

THEY DO.

AND WHAT IS THAT?

AS FAR AS I CAN TELL, THERE IS A LICENSE AVAILABLE UNDER EITHER ONE OF THEM. AND THE FACT THAT THERE HAS BEEN NO NEW LICENSE REPLACING THE ONE THAT THEY SAY THAT THEY ABANDONED TEMPORARILY, UNTIL WE WIN THE LAWSUIT ON THE NEW STATUTE IN THE COURT BELOW, THE REASON THERE HAS BEEN NO NEW LICENSE HERE UNDER SUB9 IS THAT NOBODY ELSE CAN QUALIFY FOR IT. IT IS NOT MOOT. REMEMBER THAT YOU ARE SITTING AS COURT OF ERROR.

IS THAT IN THE RECORD?

WHAT?

HAS THAT BEEN DETERMINED BY A LOWER COURT THAT, NOBODY ELSE CAN QUALIFY?

YES. NOBODY ELSE CAN QUALIFY.

UNDER THE PRIOR LAW.

YES.

THE NEW LAW --

THE LAW THAT THEY SAY HAS NOW BEEN ABANDONED BY THEIR LICENSURE, YES, THAT IS THE MERIT'S DECISION. AM I UNDERSTANDING YOUR QUESTION?

YES.

DON'T THEY MAINTAIN THAT, NOW, THEY HAVE A NEW LICENSE, UNDER THE NEW LAW?

THAT IS WHAT THEY SAY, YES, AND THEY DO.

NOW, HAS BEEN THAT BEEN CHALLENGED?

SIR?

HAS THAT BEEN CHALLENGED?

YES, AND THAT CHALLENGE IS UNDER WAY IN THE CIRCUIT COURT NOW, AND SO WHAT THE APPELLANT IS ASKING YOU TO DO, AS A COURT OF ERROR, IS TO SAY THIS IS A DIRECT APPEAL, OF COURSE, FOR THE DISTRICT COURT OF APPEAL, BECAUSE OF HOLDING THE UNCONSTITUTIONALITY OF THE STATUTE, THAT THE DISTRICT COURT OF APPEAL ERRED IN NOT DISMISSING THE APPEAL AND VACATING THE JUDGMENT OF THE CIRCUIT COURT. I KNOW OF NO CASE IN WHICH AN APPELLANT HAS EVER PREVAILED BY SUCH A PROPOSITION AS THAT. WE LOST IN THE CIRCUIT COURT. WE APPEALED. WE LOST ON THE APPEAL. WE NOW ASK THE SUPERIOR COURT, I.E. THE SUPREME COURT, TO VACATE THE DISTRICT COURT DECISION, TO VACATE THE CIRCUIT COURT DECISION, BECAUSE OUR APPEAL WAS UNNECESSARY. THE STATUTE WHICH WAS HELD BELOW TO BE UNCONSTITUTIONAL IS A DEAD LETTER. IT IS TO BE REPLACED BY A NEW

STATUTE, AND WHEN, IN FACT, IT HASN'T BEEN REPLACED IN THE STATUTES.

THEY DID RAISE MOOTNESS, BEFORE THE FIRST DISTRICT.

DISTRICT COURT OF APPEAL. YES.

SO IT WOULD BE, IF IT WERE, INDEED, MOOT, IF THERE WAS NO QUESTION BUT THAT THIS STATUTE WAS REPEALED, WOULD THERE BE -- WOULDN'T WE HAVE THE AUTHORITY TO LOOK AND REVIEW THE QUESTION AS TO WHETHER THE FIRST DISTRICT SHOULD HAVE DECIDED THE CASE?

ABSOLUTELY. YOU HAVE GOT THE JURISDICTION. BUT THE QUESTION FOR THE DISTRICT COURT OF APPEAL WAS SHOULD WE VACATE THE JUDGMENT OF THE CIRCUIT COURT. IF THE STATUTE HAD BEEN REPLACED, WHICH IT HASN'T, EVEN IN FLORIDA STATUTES 1999, AND IF IT WERE NOT POSSIBLE FOR THERE TO BE A PARALLEL LICENSING SCHEME, WHICH THERE CERTAINLY IS, SINCE THE NEW STATUTE DOES NOT FORECLOSE LICENSURE UNDER THE OLD, JUSTICE QUINCE. THE DISTRICT COURT OF APPEAL WOULD STILL BE CONFRONTED WITH THE FAMILIAR QUESTION UNDER MOOTNESS, CAPABLE OF REPETITION YET RATING REVIEW, AND WE WOULD SAY TO THE DISTRICT COURT OF APPEAL THE NEW STATUTE IS SUFFICIENTLY SIMILAR TO THE OLD, THAT IT HAS ALL OF THE CONSTITUTIONAL DEFECTS OF THE OLD, AND THIS IS A DECISION THAT THIS COURT OUGHT TO RENDER, FOR THE GUIDANCE OF THE LOWER COURTS, IN RESPECT TO THE SAME SUBJECT MATTER, CAPABLE OF REPETITION YET EVADING REVIEW, AND THE DISTRICT COURT OF APPEAL WOULD HAVE AUTHORITY TO AGREE WITH US, AND THEN THE QUESTION WOULD BE, BEFORE THIS COURT, IS THAT DOCTRINE JUST NO LONGER APPLICABLE, SO THAT THE DISTRICT COURT OF APPEAL COULD NOT HAVE PROPERLY ACCESSED IT? I DON'T THINK -- I REALLY THINK WE HAVE BEAT THIS TO DEATH, THIS MOOTNESS BUSINESS. AND I AM SIMPLY SAYING TO YOU THAT THE BEST EVIDENCE, FROM A PRACTICAL STANDPOINT THAT, THESE ARE TWO SEPARATE LICENSING SCHEMES, UNDER WHICH THIS PARTICULAR APPLICANT, WHICH, ALONE, CAN QUALIFY UNDER EITHER, WILL TOGGLE BACK AND FORTH IN FUTURE YEARS, IF THIS STATUTE REMAINS ON THE BOOKS.

WHAT YOUR ARGUMENT, JUST SO I UNDERSTAND THIS, TO SAY THAT, IF WE DON'T REACH THE ISSUE, THEN THEORETICALLY WHAT COULD HAPPEN IS THEY COULD GO BACK TOMORROW AND APPLY FOR THE LICENSE, UNDER SUBSECTION 9, WHICH YOU SAY HAS NOT CLEARLY BEEN REPEALED, AND THEN WE WOULD BE BACK WHERE WE STARTED.

THAT'S CORRECT. AND DONE BY DECLARATION.

ISN'T THAT THE ULTIMATE RESULT OF THE QUESTION THAT I WAS --

YES.

-- GOING TO ASK, BUT ISN'T THAT JUST A PART OF THE SYSTEM? IF, DURING THE COURSE OF LITIGATION, SOMETHING SHOULD BECOME MOOT, THE COURTS HAVE SAID WE DON'T WANT TO RENDER ADVISORY OPINIONS THAT WILL GUIDE PEOPLE IN THE FUTURE.

WELL, THE CIRCUIT COURT'S OPINION WAS AN ADVISORY OPINION, EVEN BY THAT STANDARD, AND SO WHAT THEY ARE ASKING YOU IS NOT TO WITHHOLD AN ADVISORY OPINION BUT TO VACATE AN OPINION THAT WAS A LIVE CONTROVERSY, BECAUSE THEY SAY IT LATER BECAME MOOT. THIS IS THE POINT ABOUT AN APPELLANT, COMPLAINING ABOUT A DECISION, AND SIMULTANEOUSLY SAYING MY APPEAL IS MOOT. YOU DON'T HAVE TO DECIDE IT. YOUR HONOR WOULD BE SAYING THAT THE CIRCUIT JUDGE WASTED HIS OR HER TIME IN HANDLING THIS CASE, SINCE THERE WAS NOTHING TO DECIDE AS DETERMINED BY A LATER ACTION OF THE LEGISLATURE. IT JUST DOESN'T HOLD UP.

BUT THE RELIEF THAT YOU ARE ASKING IS THAT WE JUST PREVENT THEM FROM DOING THIS IN THE FUTURE, FROM GOING BACK TO THE OLD STATUTE.

WELL, THE EFFECT OF THIS, OF YOUR HONOR AFFIRMING THE DISTRICT COURT OF APPEAL, WOULD BE DETERMINED. I SUPPOSE, IN LATER LITIGATION, WE ARE ASKING YOU TO AFFIRM THE DISTRICT COURT OF APPEAL'S CORRECT DECISION. THEY ARE ENTITLED TO APPEAL IT HERE, APPEAL IS A RIGHT. YOUR HONORS CAN DECIDE WHETHER THEY CORRECTLY DECIDED IT. YES, I THINK YOU WOULD HOLD THAT IT IS UNCONSTITUTIONAL, THEN IT WOULD DISAPPEAR FROM FLORIDA STATUTES 200 SUP. THEN IT WOULD DISAPPEAR. BUT THE LEGISLATURE HASN'T MADE IT DISAPPEAR.

WOULD YOU ADDRESS THE APPELLANT'S ARGUMENT THAT YOU DON'T HAVE STANDING TO CHALLENGE THE SUBSECTIONS B & E, I BELIEVE THEY SAY, OF 615?

THE STATUTE WAS ENACTED IN ITS PARTS, SIMULTANEOUSLY, CONTEMPORANEOUSLY, ALL AS ONE PACKAGE, AND THE SEPARATION INTO PARTS A AND B WAS SIMPLY A MATTER OF ORGANIZATION. IT IS ONE COHERENT WHOLE. THE CIRCUIT COURT FOUND THAT OUR PROFITS HAD BEEN IMPACTED IN THE JAI ALAI, BY PEOPLE WHO, INSTEAD OF COMING TO A LIVE JAI ALAI PARI-MUTUEL EVENT AT OUR FACILITY, GO TO THE OFF TRACK BETTING PARLOR THAT THEY WILL ARE RUNNING IN CONNECTION WITH THEIR HORSE FARM. AND SO WE DO HAVE STANDING, BY REASON OF ECONOMIC INJURY. AND THAT WAS NOT ATTACKED IN THE DISTRICT COURT OF APPEAL, AND, IN FACT, THE STANDING ISSUE WAS, IN THE TRANSCRIPT OF THE SUMMARY JUDGMENT HEARING IN THE CIRCUIT COURT, THEY SAID WE DON'T RELY UPON IT. THAT IS THE BEST I CAN DO WITH THAT, YOUR HONORS. NOW, LET ME GET TO IT. YOUR HONORS HAS IN MIND, THEY TALK ABOUT THEY HAVE A PERMANENT FACILITY. WHAT THEY HAVE IS A PERMANENT SALES FACILITY. THIS IS A HORSE FARM. THEY HAVE GOT A PERMANENT SALES FACILITY. THE STATUTE DOESN'T REQUIRE THEM TO HAVE A PERMANENT RACETRACK. THEY HAVE GOT A PERMANENT SALES FACILITY. BEAR IN MIND THOROUGHBREDS VERSUS QUARTER HORSES. THOROUGHBREDS STAND IN THE ENGLISH LINEAGE. THEY WERE ENGLISH MARES BRED TO ARABIAN STALLIONS, BIG, FAST HORSES OVER LONG DISTANCES. THOROUGHBRED IS DEFINED, BY FLORIDA LAW, AS HORSES OF A SPECIES LISTED IN A PARTICULAR LIST. QUARTER HORSES, ON THE OTHER HAND, WERE PRODUCTS OF THE AMERICAN SOUTHWEST, THE COWBOY, WORKING CATTLE, SMALLER HORSES, DEFINED, CHARACTERCALLY, IN THE DICTIONARY, AS FAST HORSES OVER SHORT DISTANCES. DEFINED IN THE FLORIDA STATUTES CONSISTENTLY WITH THAT IS ON ANOTHER LIST. TO HOLD A LICENSE, A QUARTER HORSE RACING LICENSE, IF YOU AND I OWN QUARTER HORSE RACERS, WE COULD GO RACE THOSE HORSES. WE DON'T NEED A PERMIT TO DO THAT. WHAT WE CAN'T DO IS CONDUCT PARI-MUTUEL BETTING. WE CAN'T ENTERTAIN PEOPLE AND SELL BETING WITH ODDS, AND THAT IS WHAT IS AT STAKE HERE. IN FLORIDA, WE DO NOT HAVE OFF TRACK BETTING PARLORS. REMEMBER "THE STINK" PAUL NEWMAN? WE DON'T HAVE -- THE SING" PAUL NEWMAN? -- REMEMBER "THE STING" PAUL NEWMAN? WE DON'T HAVE THAT IN FLORIDA. THIS IS A PERMANENT FACILITY FOR THOROUGHBRED HORSES, AND IT HAS A VACANT QUARTER HORSE PERMIT TO CONDUCT QUARTER HORSE RACING THAT IT NEVER HAS CONDUCTED AND WON'T CONDUCT.

ISN'T THE WHOLE POINT OF 550.615 IS TO NOW ALLOW A LIMITED AMOUNT OF OFF TRACK BETTING? ISN'T THAT WHAT 550.615 IS ALL ABOUT?

ONLY IN CONJUNCTION WITH ON-SITE PARI-MUTUEL WAGERING, ATTACHED TO A LIVE SPORT BEING CONDUCTED ON THE SITE. WHETHER IT IS DOGS OR JAI ALAI OR QUARTER HORSE RACING OR THOROUGHBRED RACING, BUT WITH THAT QUALIFICATION, YOU ARE RIGHT.

AND SEX 9 IS THE ONLY -- AND SECTION 9 IS THE ONLY EXCEPTION TO THAT, SUBSECTION 9.

CORRECT. IT IS THE ONLY AREA WHERE YOU HAVE PARI-MUTUEL ON SITE CONNECTED WITH A

REGULATED SPORT OF RACING ON SITE. THIS IS, AS I SAY, LICENSES A FARM, A HORSE FARM, WHICH CONDUCTS THOROUGHBRED SALES REGULARLY, AND ONCE A YEAR RUNS A THOROUGHBRED RACE, WHICH THEY ARE PROHIBITED PIE LAW FROM TAKING ANY BETS ON, A NONWAGERING THOROUGHBRED RACE, REQUIRES THAT ENTITY TO HAVE A QUARTER HORSE PERMIT LICENSING, WHICH WOULD AUTHORIZE AND REQUIRE QUARTER HORSE RACING ON SITE, AT A PERMANENT RACING FACILITY, WITH PARI-MUTUEL WAGERING ATTACHED TO THE QUARTER HORSE RACING. AND AS AN ADJUNCT TO THAT, OFF SITE PARI-MUTUEL BETTING WITH OTHER SPORTS IN FLORIDA THAT ARE REGULATED BY THE DEPARTMENT. THIS IS THE ONLY EXCEPTION, IS THIS OUTFIT HERE, IS THAT EVERYBODY ELSE WHO HAS A QUARTER HORSE PERMIT LICENSE HAS EITHER GOT TO USE IT OR THEY WILL LOSE IT, AND THEY HAVE BEEN REVOKED, SO THE RECORD SHOWS, FOR NOT RUNNING THE SPORT.

YOU SAY THAT THIS IS A SPECIAL LAW?

THAT IS EXACTLY WHAT IT IS. IT IS A SPECIAL LAW, ENACTED IN VIOLATION OF ARTICLE III, SECTION 10, AND THE SAME ANALYSIS OF EQUAL PROTECTION, AS EMPLOYED BY THIS COURT, IN THE HIALEAH RACE COURSE, THE CLASSIC MILE CASE AND THE WEST FLAGLER --

WHY CAN'T WE SEE IT AS A LAW AFFECTING THE ECONOMY OF THE STATE?

IT CREATES A CLASSIFICATION, YOUR HONOR, FOR WHICH THERE IS NO ENTRY. THE DEFINITION OF A GENERAL, OF A SPECIAL LAW, UNDER THE CONSTITUTION, IS THAT IT AFFECTS ONE PERSON. OR ONE SUBJECT. RATHER THAN THE OSTENSIBLE CLASS.

IT AFFECTS ONE PERSON, IN YOUR ARGUMENT, BUT DOESN'T IT AFFECT MORE THAN ONE ENTITY OR ONE --

IT CERTAINLY AFFECTED MY CLIENT, BUT THE POINT ABOUT IT IS, IS IT OPERATE TO CREATE A LICENSE, TO GIVE A RIGHT TO ONE PERSON, BY A CLASSIFICATION SCHEME THAT IS A SHAM, THAT IS DIRECTED TOWARD THE AWARD OF THIS TO ONE PERSON, AND AS I SAY, IF YOU NEEDED ANY FURTHER PROOF OF THIS THE EFFECT OF THIS SUB9 9, -- SUB9, IT DURING THE TIME THAT THE APPELLANT SAYS WE HAVE VACATED OUR SUB-9 AND THE LICENSE THAT WE HAVE FOR THAT TWO OR THREE-YEAR PERIOD, WHATEVER IT HAS BEEN. NOBODY ELSE HAS QUALIFIED FOR THAT MONEY MAKING THING. IT IS A MONEY MAKER. YOU HAVE GOT THE RIGHT, IF YOU SELL THOROUGHBREDS AND YOU HAVE GOT A PERMANENT SALES FACILITY, AND ONCE A YEAR YOU CONDUCT A RACE OF THOROUGHBREDS.

WHAT DO YOU SAY ABOUT THEIR ILLUSION TO THE RECORD, AND THAT THERE IS ANOTHER ENTITY OUT THERE THAT, IF THEY CHOOSE TO, THEY COULD BE --

I THINK THEY WOULD HAVE TOLD US BY NOW, IN THIS COURTROOM TODAY, IF THEY HAD QUALIFIED FOR THAT LICENSE.

WELL, THAT -- IF THEY HAD ATTEMPTED TO.

THAT THEY COULD DO IT. THAT IS THAT THE POTENTIAL FOR THAT, IF SOMEBODY WANTS TO INVEST THE FUNDS TO DO THAT, THAT THEY COULD COME UNDER THIS PROVISION. WHY ISN'T THAT ENOUGH --

THE DECISIONS OF THIS COURT SAY, AND I BELIEVE IT IS THE HIALEAH RACE COURSE DECISION, SAYS THAT THIS IS SUBJECT TO A REALITY, A REALITY TEST. IT IS NOT A THEORETICAL POSSIBILITY. IT IS A SUBSTANTIAL, REASONABLE POSSIBILITY OF SOMEONE ENTERING INTO THIS. THE RECORD SHOWS THAT THIS LAW WAS CREATED FOR BUT ONE PERSON, FOR BUT ONE ENTITY. ONE ENTITY OVER THE COURSE OF TEN YEARS, YOUR HONORS, SINCE 1990, TO 1999, HAS ENJOYED THIS, AND HAS APPLIED FOR IT, AND FOR ALL THAT APPEARS, NOBODY ELSE HAS ANY POTENTIAL

REALISTIC QUALIFICATION THAT WOULD STAND UP AGAINST THE TIEBREAKER PROVISION, WHICH THESE PEOPLE HAVE, BY REASON OF THEIR HAVING HELD THE LICENSE FOR AS LONG AS THEY HAVE. SO WE SAY --

IS THE TIEBREAKER PROVISION CRUCIAL?

IT CERTAINLY IS DECISIVE. I DON'T THINK IT IS CRUCIAL. IT CERTAINLY IS DECISIVE. IT CERTAINLY IS DECISIVE. IT WAS ENACTED IN ONE PACKAGE, FOR THE CLAIM BENEFIT OF ONE POTENTIAL LICENSEE, AND THAT IS WHAT HAPPENED, AND UNLESS YOU WANT TO GET DOWN INTO THEORETICAL POSSIBILITIES, THAT IS EXACTLY WHAT THEY ACCOMPLISHED.

IF THIS OTHER ENTITY THAT THEY HAVE CITED WERE TO INVEST THE FUNDS, NOW, TO COME UNDER THESE SECTIONS, WOULD THE TIEBREAKER PROVISION EXCLUDE THEM? THEY CITED THE OTHER --

I DON'T SEE HOW IT WOULD EXCLUDE THEM, IF THEY QUALIFY. THAT IS WHY I SAY IT IS DECISIVE BUT NOT INDISPENSIBLE, TO MY ANALYSIS. SINCE THEY HAVEN'T APPLIED, AND CONSIDER THE REWARDS OF APPLYING. YOU GET ALL THESE RACING DATES IN WHICH YOU ARE, IN EFFECT, OPERATING A BOOKING OPERATION, ATTACHED TO A HORSE FARM. ALL THEY HAVE TO DO IS BUILD A PERMANENT HORSE FARM WITH PERMANENT SALES FACILITY, AND THEN THEY GET, FOR ALL THESE DATES WHICH THEY HAVE BEEN EXPANDED BY SUBSEQUENT AMENDMENT TO THIS, TO RUN, IN EFFECT, A BOOKMAKING OPERATION, AS DEFINED BY FLORIDA STATUTES, WHICH IS THE SELLING OF THE OPPORTUNITY TO BET ON OFF SITE EVENTS, EVENTS HUNDREDS OF MILES AWAY, USING ODDS OUT OF WHICH THE PERSON RUNNING THE DEAL WILL MAKE A HANDSOME PROFIT.

WHAT IS THE PLEADING STATUS OF THE OTHER PROCEEDING NOW, UNDER THE NEW STATUTE?

IT IS A WAITING THIS COURT'S DECISION.

IN OTHER WORDS IT IS AT ISSUE?

YES. NOW, IF YOU NEED FURTHER EFFORT, INDICATION OF WHO IS AT INTEREST HERE, BESIDES THIS APPELLANT, WHERE IS THE STATE OF FLORIDA? THE STATE OF FLORIDA NOMINALLY JOINED IN THE NOTICE OF APPEAL FILED IN THE CIRCUIT COURT. FILED NO BRIEF IN THE APPELLATE COURT. DID NOT JOIN IN ANYBODY'S BRIEF. FILED NO APPEARANCE IN THE -- ALTHOUGH OUR BRIEFS AND THEIR BRIEFS, IN THE DISTRICT COURT OF APPEAL, DULY HONORED THE FLORIDA APPELLATE RULES, WHICH SAY ANYBODY THAT JOINS IN AN APPEAL IS AN APPELLANT, AND ANYBODY THAT WAS A PARTY IN THE COURT BELOW BUT DIDN'T JOIN IN THE APPEAL IS A PARTY APPELLEE, AND THEY DIDN'T APPEAR IN THE DISTRICT COURT OF APPEAL. THEY WERE RECOGNIZED AS A PARTY APPELLANT IN THE STYLE OF THE CASE AND THE DISTRICT COURT OF APPEAL. THIS IS THE STATE DIVISION OF PARI-MUTUEL WAGERING. RECOGNIZED AS AN APPELLANT. WITH NO APPEARANCE BY COUNSEL, NO BRIEF. COST NOTICE OF APPEAL BY THE APPELLANT TO THIS COURT, THEY DROP THEM OUT OF THE APPEAL? THEY DROP THEM OFF THE STYLE OF THE CASE. WE RECOGNIZE IT. WE PUT ET AL IN OUR BRIEF, IN THE CAPTION OF THE CASE, AMONG THE AND LEASE, BECAUSE, UNDER OPERATION OF THE RULE, THE STATE IS A PARTY WITH US, BECAUSE THEY DID NOT APPEAL TO THIS COURT, AND WE HAVE CONTINUED TO SERVE COPIES OF OUR BRIEFS, AS HAVE THEY, ON THE ATTORNEY GENERAL, WHO IS NOT HERE, WHO HAS MADE NO APPEARANCE HERE THIS MORNING, AT LEAST THEY HAVEN'T SIGNED IN. I DON'T KNOW IF THEY ARE IN THE AUDIENCE. WHAT BETTER INDICATION COULD YOU HAVE, YOUR HONORS, THAT THIS IS LAW IS --

WHAT DOES THAT MEAN?

SIR? MA'AM?

WHAT DOES THAT MEAN, THE FACT THAT THEY DIDN'T FILE --

I DON'T KNOW, BUT I THINK THE REASONABLE INFERENCE IS THAT THIS LAW IS FOR THE PURPOSE, WAS CREATED FOR THE PURPOSE OF BENEFITTING THIS LICENSEE. AND THERE IS NO EVIDENT STATE INTEREST IN FIGHTING THIS THING THROUGH COURT, AND THE ATTORNEY GENERAL DOES NOT ENDORSE EITHER THE QUESTION OF MOOTNESS, AS PRESENTED HERE, OR THE ASSERTED ERROR IN THE DISTRICT COURT OF APPEAL AND THE CIRCUIT COURT. THE ATTORNEY GENERAL IS SILENT. WE THINK THIS CASE MERITS A FULL AFFIRMANCE. THANK YOU.

THANK YOU, MR. SMITH. REBUTTAL?

WITH ALL DUE DEFERENCE TO MR. SMITH, WHO WASN'T THERE, THE ATTORNEY GENERAL WAS PRESENT IN THE TRIAL COURT. THE ATTORNEY GENERAL WAS PRESENT AT THE STAY HEARING. THE ATTORNEY GENERAL FILED A PLEADING JOINING OUR BRIEF IN THE FIRST DISTRICT COURT OF APPEAL, AND THE ATTORNEY GENERAL ATTENDED ORAL ARGUMENT, SO THE STATE WAS PRESENT ALL THE TIME THIS CASE WAS PENDING, THROUGH THE FIRST DISTRICT COURT OF APPEAL, AND DID AGREE WITH THE MOOTNESS ARGUMENT, WHEN WE FILED THAT. THEY JOINED IN THAT. SO THE FACT THAT THE ATTORNEY GENERAL IS NOT HERE ON THIS APPEAL APPARENTLY MEANS THEY THINK THE WHOLE QUESTION IS DEAD AND THEY HAVE ISSUED A LICENSE UNDER THE NEW STATUTE.

WE ARE SPECULATING ON WHY HE IS NOT HERE OR WHY HE IS HERE OR WHY HE IS NOT HERE. WOULD YOU ADDRESS GENERAL LAW AS OPPOSED TO SPECIAL LAW. WHY ISN'T THIS A SPECIAL LAW?

OKAY. A SPECIAL LAW IS ONE THAT HAS SOME LIMITATION. REGIONALLY, TIME FRAME, SOMETHING THAT MAKES IT APPLY TO ONLY ONE PLACE OR ONE ENTITY. AND AN EXAMPLE IS THE CLASSIC MILE CASE, WHERE THEY PASSED A STATUTE THAT SAID, IF YOU HOLD, IF ANY COUNTY, IN WHICH YOU HOLD THESE TWO PERMITS, NEITHER ONE OF THEM HAD BEEN USED BY 1-1-87, AND THERE IS, ALSO, A HIALEAH JAI ALAI PERMIT, THEN YOU ARE ELIGIBLE FOR THIS. ALL THE PARTIES AGREED. THAT DESCRIBED MARION COUNTY, AND THERE WAS NO REFERENDUM.

BUT IT IS CORRECT THERE CAN ONLY BE ONE OF THESE PERMITS.

IT IS CORRECT THERE CAN ONLY BE ONE OF THESE, AND I CAN'T SEE THAT, WHEN YOU --

DOESN'T THAT CALL INTO QUESTION, IN AND OF ITSELF -- TREATMENT IT DOES, MR. JUSTICE. -- IT SEEMS TO ME IT DOES, MR. JUSTICE. THE LEGISLATURE HAS, IN ITS LATEST PRONOUNCEMENT, SAID THERE CAN BE ONLY ONE OF THESE LICENSES AND HAS SET UP THE CRITERIA, SO TO -- THE NOTION THAT, OH, YOU CAN PICK AND CHOOSE WHICH ONE YOU WANT DOESN'T APPLY, UNDER THE LAW, AS I KNOW IT. BUT --

IF THE WHOLE POINT -- I MEAN IT SEEMS TO ME, IN THE BEGINNING OF THE STATUTE, AT LEAST IN 6308, THEY TALK ABOUT WANTING TO INCREASE THE ACTIVITY, I GUESS, IN THIS PARTICULAR INDUSTRY. WHY ISN'T -- WHY NOT ISSUE TWO OR THREE OR FOUR LICENSES, IF THAT IS THE PURPOSE, AS OPPOSED TO ONE LICENSE?

WELL, I THINK THERE IS ALWAYS THE CONSIDERATION OF WHAT IT TAKES TO GET STARTED ON SOMETHING LIKE THIS, AND IN ORDER TO ATTRACT ENTITIES TO UNDERTAKE THE EXPENSE, THE SET-UP OF THE TRACK AND TO SET UP THE SALES FACILITY AND TO MEET ALL OF THE CRITERIA, THAT THERE HAVE TO BE SOME SCHRUS I HAVEITY, AND THE COURTS -- EX-INCLUDES I HAVEITY, AND THE -- EXCLUSIVITY, AND THE COURTS HAVE NEVER --

DO WE HAVE ANY HISTORY OF THE LEGISLATURE PASSING ANY SPECIFIC KIND OF PARI-MUTUEL

BETTING THAT CAN BE DONE, AND SETTING THAT WE ARE GOING TO DO THIS BY GENERAL LAW, BUT WE ARE ONLY GOING TO LET ONE PERSON OR ONE ENTITY HAVE IT?

THEY HAVE GFER NEVER DONE -- THEY HAVE NEVER DONE, WITH REGARD TO HAVING ONLY ONE ENTITY THROUGHOUT THE STATE, BUT THEY HAVE SAID IF YOU ARE IN A REGION, YOU CAN ONLY HAVE ONE WITHIN THIS PARTICULAR AREA, AND THAT HAS BEEN UPHELD TIME AND TIME AGAIN, AND THEY WEREN'T SPECIAL LAWS, JUST CRITERIA THAT ANYONE COULD APPLY IN THE FUTURE.

WHAT IF THERE WAS A COMPETENT FACILITY FOR OFF TRACK BETTING?

IT IS -- I DON'T KNOW THAT THERE IS -- I DON'T UNDERSTAND.

YOU SAID SOMETHING ABOUT IT TAKES AN AWFUL LOT TO BE ONE OF THESE. YOU HAVE TO HAVE A SALES FACILITY, AND I JUST WANTED TO TRY TO SEE IF I COULD UNDERSTAND WHAT HAVING A SALES FACILITY WOULD HAVE TO DO WITH THE --

IT SHOWS, IN THIS PARTICULAR CASE AT LEAST, AN INTEREST IN THE THOROUGHBRED HORSE RACING AND SALES INDUSTRY, SO THAT, AND THIS IS WHAT THEY SAY IN THE PREFACE TO THE NEW STATUTE, IS THAT THEY RECOGNIZE THE ECONOMIC IMPORTANCE OF THE THOROUGHBRED BREEDING INDUSTRY. ITS POSITIVE IMPACT ON TOURISM, AND THE IMPORTANCE OF A PERMANENT THOROUGHBRED SALES FACILITY AS A KEY FOCAL POINT FOR THE ACTIVITIES OF THE INDUSTRY, AND THEREFORE THERE IS ONE LIMITED LICENSE. I JUST WANTED TO, IF I MIGHT --

CAN YOU CLOSURE ARGUMENT.

OKAY. WE ARE NOT JUST A HORSE FARM. WE ARE AN AGRICULTURAL MARKETING COOPERATIVE. WE WITH ARE NOT JUST ONE BREEDER. WE ARE NOT JUST ONE LITTLE PODUNK GUY. THERE IS AN AREA WHERE THERE IS AN INTEREST BY HORSE OWNERS, HORSE BREEDERS, AND OTHERS IN THE FIELD, AND THE INTERTRACK WAGERING BRINGS IN THOSE FOLKS WHO ARE INTERESTED IN BUYING, AND THEN IT GIVES THEM ENTERTAINMENT IN THE PROCESS, AND HORSE RACING HAS BEEN AROUND FOR AS LONG AS I CAN RECALL, AND WAY BACK IN THE PRIOR HISTORY, BUT I MEAN, I DON'T THINK THERE IS ANY REASON THAT ANYBODY ELSE IN THE FUTURE COULD NOT APPLY FOR THIS LICENSE, AND I DON'T THINK, AS A FINAL THING, THAT THERE IS ANY REASON FOR THIS COURT TO GET INTO THE CONSTITUTIONAL QUESTION, BECAUSE THE ISSUE IS SURELY MOOT, AND THE -- THEY SAID THERE WAS ONGOING LITIGATION. THE ADMINISTRATIVE PROCEEDINGS WERE DENIED. THE LICENSE WAS UPHELD, AND THEY DID NOT APPEAL TO THE FIRST DCA.

THANK YOU VERY MUCH. COUNSEL.