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>> OUR NEXT CASE TODAY IS  
GRAHAM VERSUS HARIDOPOLOUS  
>> MY NAME IS ROBIN GIBSON.  
THE ISSUE OF  
HOW MUCH AUTHORITY WAS  
TRANSFERRED BY THE AMENDMENT TO  
THE BOARD OF GOVERNORS, AND DID  
IT INCLUDE THE AUTHORITY TO  
SET TUITION AND FEES FOR  
STATE UNIVERSITIES.  
HOW MUCH WAS TRANSFERRED TO THE  
BOARD OF GOVERNORS?  
ALL LEGISLATIVE POWER IS  
IN ARTICLE 3,  
POWER OVER UNIVERSITIES.  
THE PLAIN LANGUAGE OF THE  
AMENDMENT, COLON.  
THE POWER TO OPERATE, REGULATE,  
CONTROL AND BE FULLY  
RESPONSIBLE FOR MANAGEMENT OF  
THE WHOLE UNIVERSITY SYSTEM.  
HOW MUCH WAS RETAINED BY THE  
LEGISLATURE?  
THE AUTHORITY TO APPROPRIATE  
FOR THE EXPENDITURE OF FUNDS,  
CONFIRM APPOINTMENTS TO THE  
BOARD, AND SET MEMBERS  
STAGGERED TERMS.  
THE SETTING OF TUITION AND FEES  
IS NOT AN EXCEPTION TO THE  
TRANSFER.  
WHERE THE FIRST DISTRICT ERRED  
BY ENABLING THE LEGISLATURE TO  
SET APPROPRIATE TUITION AND  
FEES BASED ON ARTICLE 7  
AUTHORITY TO LEVY TAXES.  
THE REQUESTED REMEDY.  
STATUTES STILL PURPORTING TO  
EXERCISE CONTROL OVER  
UNIVERSITIES INCLUDING FEE SETTING  
HAVE BEEN REPEALED BY THE  
TERMS OF THE AMENDMENT, SHOULD  
BE DECLARED UNCONSTITUTIONAL,  
AND REMOVED FROM THE BOOKS.  
>> YOU SUCCEEDED IN HAVING A  
MINUTE AND 30 SECONDS WHERE NO  
ONE INTERRUPTED YOU ABOUT THAT.  
THAT IS VERY GOOD.  
>> PROBABLY A RECORD.  
>> THAT IS UNPRECEDENTED  
ACTUALLY.  
>> THAT WILL BE THE LAST MINUTE  
AND 32 SECONDS WHERE THAT  
OCCURS.  
>> POWER TO SET FEES AND  
TUITION, THAT IS REALLY WHAT  
THE CASE IS ABOUT, CORRECT?

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>> I THINK THE CASE IS FIRST ABOUT WHAT IS THE SCOPE OF AUTHORITY THAT IS TRANSFERRED AND THEN IS FEES INCLUDED IN THAT?

>> THAT IS THE ARGUMENT. IT IS NOT ABOUT THE MANAGEMENT OF THE UNIVERSITY AT THIS POINT. IT IS NOT ABOUT THE POWER TO SET FEES AND TUITION. NOW IS THAT A EXECUTIVE BRANCH FUNCTION OR A LEGISLATIVE BRANCH FUNCTION?

>> LEGISLATIVE.

>> I WAS WONDERING, I KNOW THIS BRANCH WOULD LOVE TO KEEP ITS FEES THAT WE GENERATE FOR OURSELVES, BUT IT IS THE LEGISLATURE THAT GETS TO DECIDE HOW IT IS SPENT AND HOW WE'RE FUNDED. WHAT MY CONCERN IS, AND I THINK IT IS, THERE'S A LOT OF DIFFERENT WAYS TO GET THERE, AND I KNOW YOU WERE COUNSEL AT THE TIME OF THE ORAL ARGUMENT WHEN YOU REPRESENTED THAT WHAT THIS WAS, IS ABOUT, TRANSFERRING THE EXECUTIVE FUNCTIONING, FUNCTIONS, NOT LEGISLATIVE. AND WE ALL KNOW THAT THE ABILITY TO SET FEES AND TUITION IS, WOULD BE A REVENUE RAISING, WHICH IS A LEGISLATIVE FUNCTION. SO WHAT IS, AND THE OTHER PART, SO WE HAVE THAT, WHICH IS THAT IT IS LEGISLATIVE, NOT EXECUTIVE. AND THAT THERE MIGHT HAVE BEEN A SINGLE SUBJECT CONCERN, IF IT ALSO SUBSUMES INCLUDED LEGISLATIVE, IS THE AMENDMENT ITSELF LIKE SO MANY OTHER STATES DOES NOT HAVE MENTION, WHICH COULD SEEM TO BE SO EASY TO PUT IN, NOT ONLY INCLUDES THE MANAGEMENT OF THE UNIVERSITY SYSTEM BUT THE, ABILITY AND POWER TO SET FEES AND TUITION?

SO, I KNOW THAT IS PROBABLY THREE, THAT IS SORT OF, THAT IS MY CONCERN.

>> OKAY.

>> IT MAY HAVE BEEN THE INTENT  
TO DO IT, AND HOW IT COULD HAVE  
BEEN DONE WITHOUT VIOLATING THE  
SINGLE SUBJECT MANDATE OF  
CITIZENS INITIATIVE NUMBER ONE,  
AND NUMBER TWO, HOW THE  
ACTUAL AMENDMENT CLEARLY  
ENCOMPASSES THE POWER TO SET  
FEES AND TUITION?

>> ALL RIGHT.

I THINK THERE ARE AT LEAST TWO  
QUESTIONS EMBEDDED IN THAT.  
FIRST, HAS TO DO WITH THE  
EXECUTIVE PART OF IT.  
AND AT THE TIME, THE  
EXECUTIVE, THE FUNCTION OF  
ADMINISTERING UNIVERSITIES WAS  
IN THE EXECUTIVE ARTICLE OF THE  
CONSTITUTION, AND ALTHOUGH IT  
WAS LEGISLATIVE, THE  
LEGISLATURE APPOINTED THE BOARD  
OF REGENTS AND THEY WERE  
TO DO IT SO IT IS FOUND IN THE  
EXECUTIVE ARTICLE.

AFTER THE TRANSFER --

>> NO ONE IS CONTESTING THAT  
POWER WAS COMPLETELY  
TRANSFERRED.

SO THE LEGISLATURE COULD NOT  
CONTINUE TO JERK AROUND WHAT  
THE BOARD OF REGENTS AND ALL  
THE OTHER GOVERNING BODIES.  
NO QUESTION.

>> AFTER THE TRANSFER IT IS  
MOVED TO THE ARTICLE 9.  
IT IS IN THE EDUCATION ARTICLE.  
SO IT IS OUT OF THE EDUCATION  
ARTICLE.

I THINK THE SECOND PART OF YOUR  
QUESTION HAD TO DO WITH THE  
AMOUNT THAT WAS TRANSFERRED,  
AND IN THIS PARTICULAR CASE,  
AND THIS COURT MOST RECENTLY  
IN THE CARIBBEAN CASE, THERE'S  
A, THERE'S A METHOD OF ANALYSIS  
AS TO HOW YOU GO ABOUT  
DETERMINING WHAT WAS  
TRANSFERRED AND WHETHER THE  
PARTICULAR QUESTION IS INVOLVED  
IN WHAT WAS TRANSFERRED AND --  
ANALYSIS.

THERE IS EVEN A TEST WHETHER  
SOME OR ALL OF THE AUTHORITY  
WAS TRANSFERRED.  
THAT IS ALL IN THE CARIBBEAN  
CASE.

NOW THE LANGUAGE OF THE

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AMENDMENT IS WHAT CONTROLS.  
AND THIS LANGUAGE SAYS,  
THE AUTHORITY  
TRANSFERRED IS, TO GOVERN,  
OPERATE, MANAGE, CONTROL,  
REGULATE, AND DO IT IN A  
CORPORATE FORM.  
AND IT FURTHER SAYS THAT THE  
FULL RESPONSIBILITY FOR THE  
WHOLE UNIVERSITY SYSTEM IS  
TRANSFERRED.  
FULL MEANING ALL OF IT, FOR THE  
WHOLE UNIVERSITY SYSTEM IS THE  
ENTIRE UNIVERSITY SYSTEM.  
I'VE INCLUDED 27 PROVISIONS  
THAT, IN THE STATE  
CONSTITUTIONS THAT ACROSS THE  
COUNTRY THAT HAVE SOMETHING TO  
SAY ABOUT UNIVERSITIES IN THE  
CONSTITUTION.  
AND YOU CAN LAY THEM SIDE BY  
SIDE WITH THIS AMENDMENT AND  
YOU FIND THAT THIS AMENDMENT IS  
THE MOST ALL INCLUSIVE, TOTAL,  
COMPLETE TRANSFER OF AUTHORITY.  
SO ALL THE AUTHORITY THAT THE  
LEGISLATURE HAD WAS TRANSFERRED.  
>> BUT IT CAN'T, YOU SEE THE  
PROBLEM IS THOUGH, THAT THE,  
YOU CAN TRANSFER EXECUTIVE  
FUNCTIONS BUT YOU CAN'T AT THE  
SAME TIME TRANSFER IN ONE  
AMENDMENT, EXECUTIVE AND  
LEGISLATIVE FUNCTIONS.  
AND THAT WAS WHAT WAS  
REPRESENTED TO THIS COURT WHEN  
THE COURT UPHELD IT AS NOT  
VIOLATING THE SINGLE SUBJECT  
PROVISIONS OF THE CONSTITUTION.  
AND THAT'S MY, I DON'T, AND  
WE'RE NOT GOING TO GO, WE HAVE  
ALL THE OTHER STATES.  
SO WE KNOW IF THERE ARE  
DIFFERENCES OR SIMILARITIES.  
I DON'T STILL SEE THAT I  
UNDERSTAND HOW IN MANAGEMENT OF  
THE UNIVERSITY SYSTEM THAT  
NECESSARILY UNAMBIGUOUSLY,  
INCLUDES THE POWER TO SET  
TUITION AND FEES  
IN THAT PARTICULAR PHRASE,  
MANAGEMENT.  
HOW DOES, I'M MISSING SOMETHING  
ON THAT.  
>> WELL, I DON'T KNOW WHY IT  
WAS LOCATED IN THE EXECUTIVE  
BRANCH BUT IT WAS IN THE

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EXECUTIVE BRANCH.  
WE HAD NOTHING TO DO WITH  
LOCATED IT THERE.  
AFTER THE LEGISLATURE WHO HAD  
FULL CONTROL.  
THE LEGISLATURE CREATED,  
OPERATED AND TERMINATED THE  
UNIVERSITY SYSTEM.  
SO IT WAS ALL LEGISLATIVE.  
BUT ONE THING'S FOR SURE, AFTER  
THE ADVISORY OPINION, THIS  
COURT SAID IT STRAIGHT AS TO  
WHAT THE SITUATION WAS.  
AND IN THAT ADVISORY OPINION IT  
SAID THAT, WELL, WHAT HAPPENED,  
THE POWER WOULD MOVE TO AN  
INDEPENDENT CONSTITUTIONAL  
ENTITY.  
THIS BECAME THE THIRD OF THOSE  
KIND THAT WE HAVE.  
AND THAT AT THE TIME THE  
LEGISLATURE WAS RESPONSIBLE FOR  
THE OPERATION, REGULATION AND  
CONTROL AND FULL RESPONSIBILITY  
FOR THE MANAGEMENT OF THE  
UNIVERSITY SYSTEM.  
IF THE AMENDMENT WERE PASSED,  
THAT WOULD BECOME THE BOARD OF  
GOVERNORS, RESPONSIBILITY.  
AND ALL YOU HAVE TO DO IS LOOK  
IN THE STATUTES TO SEE WHAT  
PASSED.  
AND IN THE STATUTES, THERE IS  
THE SETTING OF TUITION.  
AND SOMEBODY SAYS, WELL, YOU  
SHOULD HAVE SAID THAT THE  
TUITION WOULD PASS.  
WEALTH OF THE THOUSANDS OF  
THINGS THAT THE GOVERNING BOARD  
FOR UNIVERSITIES DO.  
SHOULD WE HAVE SAID WE SET  
PRESIDENTIAL SALARIES?  
>> HOLD IT A SECOND. REALLY.  
I'M SYMPATHETIC -- IT IS NOT  
THAT I DON'T PROBABLY SHARE  
SOME OF THE FRUSTRATIONS AS A  
CITIZEN AS TO WHATEVER  
HAPPENING IN THIS UNIVERSITY  
SYSTEM.  
I'M LOOKING TO SET POWER AND  
TUITION AND FEES AND COLLECT  
THOSE AND DECIDE HOW THEY'RE  
EXPENDED, AGAIN THE JUDICIAL  
BRANCH, WHICH IS COEQUAL BRANCH  
OF GOVERNMENT, HAS NO CONTROL  
OVER THE APPROPRIATIONS.  
THAT IS LEGISLATIVE.

IT IS FOUND IN A SEPARATE  
ARTICLE WASN'T REFERENCED IN  
THE BALLOT SUMMARY OR THIS  
COURT.

I DON'T THINK IT IS AN ISSUE  
THEY HAD TO SET FORTH EVERY  
SMALL LITTLE THING BUT THE  
POWER TO SET TUITION AND FEES  
AND POWER TO APPROPRIATE THAT  
MONEY FROM TUITION AND  
FEES IS NOT A LITTLE SMALL  
DETAIL.

>> NOW WE'RE ON THE, WE'RE ON  
THE QUESTION OF POWER OF  
APPROPRIATIONS.  
THE POWER OF APPROPRIATIONS DID  
NOT PASS TO THE BOARD OF  
GOVERNORS.

THE POWER OF APPROPRIATIONS  
REMAINS WITH THE LEGISLATURE.

>> LET ME ASK YOU ABOUT  
APPROPRIATIONS.

>> YES, MA'AM.

>> WHEN FEES ARE COLLECTED FROM  
STUDENTS AT STATE UNIVERSITIES  
WHERE DOES THE MONEY GO?

>> THE MONEY GOES INTO AS  
COLLECTED BY UNIVERSITIES AND  
STAYS WITH UNIVERSITIES.

>> AND IT STAYS WITH THE  
UNIVERSITY?

NOTHING GOES TO GENERAL  
REVENUE?

>> THAT'S CORRECT.

WHAT ABOUT THE FEES?

>> THE FEES IS THE SAME THING.

>> SO WHAT THE LEGISLATURE  
APPROPRIATES ARE ADDITIONAL  
MONIES TO ALL OF THE STATE  
UNIVERSITIES IN ADDITION TO THE  
TUITION AND FEES THAT ARE  
COLLECTED?

>> OKAY.

WE'RE TALKING ABOUT TWO  
DIFFERENT THINGS.

ONE IS THE COLLECTION OF  
FEES AND THE OTHER IS  
APPROPRIATION.

LET ME GO AT THEM ONE AT A  
TIME.

FIRST, THE COLLECTION OF FEES.  
THERE'S A DISTINCTION BETWEEN A  
TAKE A TAX AND USER FEE.  
WHAT WE'RE TALKING ABOUT NOW IS  
FEES.

A TAX IS SOMETHING THAT IS  
MANDATORY.

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IT GOES INTO THE GENERAL REVENUE.  
IT CAN BE USED FOR ANY PURPOSE.  
>> WE'RE TALKING ABOUT FEES SUCH AS STUDENTS HEALTH CARE OR --  
>> I'M DRAWING A DISTINCTION. HERE WE GO.  
A USER FEE IS A NONCOMPULSORY PAYMENT FROM THE BENEFICIARY OF THE SERVICE.  
IT IS SPENT TO DEFRAY THE COST OF THE ENTITY'S SERVICE.  
AND IT'S PAID BY VIRTUE OF A VOLUNTARY CONTRACT.  
THIS COURT HAS DRAWN THAT DISTINCTION IN THE CASE THAT WAS INCLUDED IN SUPPLEMENTAL AUTHORITY BY THE LEGISLATURE. THE STATE VERSUS THE CITY OF PORT ORANGE.  
AND IN THAT CASE, AFTER DRAWING THAT DISTINCTION, BETWEEN USER FEES AND THE TAXES THAT GOES INTO GENERAL REVENUE, IT SAYS THAT THE BOARD OF GOVERNORS, EXCUSE ME, IT SAYS THAT THE PROPRIETARY RIGHT OF THE GOVERNING BODY WAS TO ASSESS THE FEE?  
NOW WHAT THAT MEANS IS, THE PEOPLE WHO HAVE THE RESPONSIBILITY FOR OPERATING THE ENTERPRISE ALSO HAVE THE RESPONSIBILITY FOR SETTING THE PRICE FOR THE SERVICE THAT IS RENDERED BY THAT ENTERPRISE?  
>> DOES THE RECORD SHOW HOW MUCH OF THE FUNDING FOR THE STATE UNIVERSITY SYSTEM ACTUALLY COMES FROM APPROPRIATIONS FROM THE LEGISLATURE AS OPPOSED TO THE FEES AND TUITION?  
>> YES, SIR.  
WHAT WE'VE DONE, THIS WAS FILED IN 2007 AND, WHAT WE HAVE DONE IS USE THE FIGURES FOR 2007 AND WE, SO WE'VE USED THE APPROPRIATION ACT FOR 2007, AND IN 2007, --  
>> JUST GIVE ME A PERCENTAGE. I'M INTERESTED IN KIND OF GETTING A BALLPARK IDEA ABOUT HOW MUCH OF IT ACTUALLY COMES FROM THE LEGISLATURE.  
>> WELL, FOR THE UNIVERSITY OF

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FLORIDA, IT WAS THE, GENERAL  
REVENUE WAS 392,000 AND FROM,  
FOR FEES IT WAS 183,000.  
SO THE PERCENTAGE -- YOU CAN  
CALCULATE.  
>> I'M NOT FOLLOWING THE  
NUMBERS.  
>> I'M SORRY. IT'S MILLION.  
>> HOW MUCH FROM THE FOOTBALL  
TEAM?  
>> SO SOUND LIKE A THIRD, HOW A  
UNIVERSITY OPERATES, ACTUALLY  
COMES FROM TUITION AND FEES?  
>> THAT WAS IN 2007.  
I FULLY SUSPECT THAT IT'S MORE  
NOW. BECAUSE --  
>> THE TUITION GETS COLLECTED.  
>> RIGHT.  
>> ARE YOU SAYING THAT THE WAY  
IT WORKS IT GOES INTO THE  
UNIVERSITY OF FLORIDA'S BANK  
ACCOUNT AND THEN THEY GET TO  
JUST DECIDE WHERE THAT TUITION  
IS GOING TO GO?  
I THOUGHT IT WENT INTO -- BY  
THE LEGISLATURE?  
>> YOU CAN LOOK AT 215.32 WHICH  
DECIDES, WHICH LAYS THIS OUT.  
>> WHERE DOES TUITION GO?  
ARE YOU SAYING THAT, THE  
UNIVERSITY HAS BEEN SPENDING  
TUITION WITHOUT LEGISLATIVE  
OVERSIGHT?  
>> HERE'S THE WAY IT WORKS  
BEFORE THE AMENDMENT.  
SINCE THE AMENDMENT IT HAS BEEN  
BALLED UP.  
BEFORE THE AMENDMENT THIS IS  
THE WAY THAT IT WORKS.  
FIRST, THE UNIVERSITIES ARE  
FUNDED BY GENERAL REVENUE.  
>> CORRECT.  
>> THAT SUPPLEMENTS WHAT THEY  
BRING IN FOR OPERATING THE  
ENTITY. WHAT THEY BRING IN FOR  
OPERATING --  
>> ACTUALLY KIND OF THE OTHER  
WAY AROUND.  
>> IT IS OTHER WAY AROUND.  
>> WHAT THEY BRING IN  
SUPPLEMENTS THE GENERAL REVENUE  
IF I UNDERSTOOD THE NUMBERS  
CORRECTLY, ISN'T THAT RIGHT?  
THE SUPPLEMENT IS LESSER THAN  
THE OTHER?  
>> I WOULD PUT THE FEES FIRST.  
AND THEN, TO MEET THE EXPENSES



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YOU HAVE TO COME UP WITH A  
GENERAL REVENUE.  
THAT'S WHAT ARTICLE 7 SAYS.  
BUT AT ANY RATE, CHICKEN OR  
EGG, YOU WIND UP WITH A TOTAL  
AMOUNT FOR UNIVERSITIES.  
AND THIS IS A VERY IMPORTANT  
STATUTE WHICH MAKES THE  
DISTINCTION BETWEEN THESE FUNDS  
THAT YOU'RE TALKING ABOUT.  
THE GENERAL REVENUE FUND ARE  
FROM TAXES, THEY CAN BE USED  
FOR ANYTHING.  
THEY SUPPLEMENT THE  
UNIVERSITIES, WHAT THE  
UNIVERSITIES BRING IN.  
THEY MAKE STATE UNIVERSITIES  
STATE UNIVERSITIES.  
ALL RIGHT.  
THE FEES COME IN, THE FEES ARE  
WHAT THE USERS PAY.  
>> THE TUITION?  
>> THE TUITION.  
>> I'M ASKING YOU WHERE HAVE  
THEY BEEN, SINCE THE AMENDMENT  
PASSED, WHERE HAVE THOSE, WHEN  
YOU COLLECT THEM, LIKE WE  
COLLECT FILING FEES.  
WE HAVE TO GIVE THEM TO THE  
STATE.  
HAVE THESE FEES, THE TUITIONS  
BEEN COLLECTED AND KEPT BY THE  
UNIVERSITIES?  
>> LET ME TRY.  
IT WAS NEATLY DONE BEFORE THE  
AMENDMENT.  
UNDER 1532, WHAT HAPPENED, THEY  
CAME INTO THE UNIVERSITIES.  
THEY WERE TO BE USED ONLY BY  
THE UNIVERSITIES AND THAT'S WHY  
THEY CALL THEM TRUST FUND.  
SO THEY STAYED WITH THE  
UNIVERSITIES.  
THEY STAYED WITH THE  
UNIVERSITIES.  
>> TRUST FUND.  
WE'RE TALKING ABOUT TRUST  
FUNDS.  
>> GOING TO A STATE PARK PAY AN  
ADMISSION FEE. IT STAYS --  
>> WE KNOW THAT THE LEGISLATURE  
CAN TAKE OUR TRUST FUND WHICH  
THEY ROUTINELY DO.  
>> WELL, IF IT IS A TRUST I  
DON'T THINK THEY'RE SUPPOSED TO  
BUT THAT'S ANOTHER QUESTION.  
BUT IF YOU GO INTO A STATE PARK

AND YOU PAY AN ADMISSION FEE IT  
STAYS WITH THE STATE PARKS AND  
THAT'S THE INCENTIVE.  
YOU WORK HARD.  
YOU EARN THESE FEES.  
YOU GET TO SPEND THEM.  
AND THAT'S WHY THEY ARE, THEY  
ARE TRUST FUND.  
>> YOU'RE IN YOUR REBUTTAL  
TIME.  
>> ALL RIGHT, SIR.  
AT 215.32 MAKES A DISTINCTION  
BETWEEN THE TWO.  
ONE IS ARTICLE 7 WHICH IS THE  
GENERAL REVENUE.  
AND THE OTHER IS ARTICLE 3  
WHICH IS THE LEGISLATIVE POWER  
AND USER FEES ARE ALL SET BY  
THE LEGISLATURE AND THAT'S WHAT  
PASSED TO THE BOARD OF  
GOVERNORS.  
>> I DO HAVE, IS THERE ANYTHING  
IN ARTICLE 3 THAT ACTUALLY  
ADDRESSES FEES AND TUITION?  
I DIDN'T FIND IT?  
>> SAYS THE LEGISLATIVE HAS THE  
LEGISLATIVE POWER.  
AND THEN WHAT THAT POWER IS YOU  
LOOK TO THE STATUTES.  
>> YOU'RE JUST RELYING ON  
ARTICLE 3, SECTION 1.  
>> YES.  
YOU LOOK AT WHAT THE  
LEGISLATION IS AND THAT SHOWS  
YOU WHAT THE POWER IS.  
AND THERE YOU FIND THE  
ASSESSMENT OF FEES.  
>> MAY IT PLEASE THE COURT.  
DANIEL BROWN, CARLTON FIELDS  
FOR RESPONDENTS.  
>> CAN I, BECAUSE I DIDN'T HAVE  
A CHANCE TO REALLY UNDERSTAND  
THIS.  
GIVE ME A REAL LIFE EXAMPLE OF  
WHAT HAS HAPPENED SINCE THE  
AMENDMENT PASSED.  
IS THE, ARE THE TUITION AND  
FEES FROM EACH OF THE OF  
UNIVERSITIES TAKEN AWAY BY THE  
LEGISLATURE TO BE USED FOR SOME  
OTHER PURPOSE?  
WHAT IS, JUST, IS THERE ONE  
EVENT, OR HAS IT JUST BEEN  
SINCE 2004, THIS HAS JUST BEEN,  
AGAIN, CONTROVERSY BETWEEN THE  
LEGISLATURE AND THE GOVERNING  
BOARD, WHICH --

>> FRUSTRATING BUT I UNDERSTAND  
YOUR QUESTION.

FIRST PART OF YOUR QUESTION WAS  
WHETHER OR NOT SINCE THE  
PASSAGE OF THIS CONSTITUTIONAL  
AMENDMENT THE LEGISLATURE HAS  
TAKEN AWAY TUITION AND FEES  
FROM THE UNIVERSITIES AND USED  
THEM FOR OTHER PURPOSES.  
THE ANSWER TO THAT IS IN THIS  
RECORD THERE IS NO EVIDENCE OF  
THAT AND I KNOW OF NONE.

>> OKAY.

>> WITH RESPECT TO WHAT IS YOUR  
QUESTION TO COUNSEL FOR THE  
PETITIONERS ABOUT WHAT HAPPENS  
TO TUITION AND FEES, AS WE  
POINT OUT IN OUR BRIEF, WHAT  
HAPPENS TO TUITION AND FEES IS  
THE SAME TODAY AS IT ALWAYS HAS  
BEEN.

THE LEGISLATURE HAS CREATED  
OVER THE YEARS A CONTINUING  
APPROPRIATIONS STATUTE.  
THERE IS STILL ONE ON THE  
BOOKS.

IT IS CITED ON OUR BRIEF AT  
PAGE 15 AND IT SAYS, EXCEPT AS  
OTHERWISE PROVIDED IN GENERAL  
APPROPRIATIONS ACT ALL MONIES  
RECEIVED BY THE UNIVERSITIES  
FROM STUDENT FEES, THAT IS  
TUITION AND OTHERS ARE HEREBY  
APPROPRIATED FOR THE USE OF  
UNIVERSITIES AND HELD IN A  
UNIVERSITY ACCOUNT.

THAT DOES NOT --

>> THEY ARE FREE TO USE THAT  
MONEY, OR DOES THE LEGISLATURE  
TELL THEM HOW TO USE THOSE  
TUITIONS AND FEES THAT ARE  
COLLECTED?

>> THERE IS NOTHING IN THE ACTS  
THAT ARE BEING CHALLENGED HERE  
TODAY IN WHICH THE LEGISLATURE  
DIRECTS THE PRECISE USAGE  
OF TUITION AND FEES THAT THE  
UNIVERSITIES ARE ALLOWED TO  
KEEP.

THE QUESTION BEFORE THIS COURT  
AND THE STATUTES CHALLENGED  
HERE HAVE TO DO WITH WHO HAS  
THE POWER, NUMBER ONE, TO  
DETERMINE WHAT THE LEVEL OF  
TUITION WILL BE.

IS THAT LEGISLATIVE POWER OR  
POWER GRANTED SOMEHOW BY

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ARTICLE 7 TO THE BOARD OF  
GOVERNORS? NUMBER TWO, ONCE  
THOSE FEES ARE SET AND RAISED  
WHO HAS THE POWER TO  
APPROPRIATE THEM?  
NOW, --  
>> DID THEY CHANGE THE FACT OR  
DID ANY OF THESE STATUTES  
CHANGE THE FACT FEES AND  
TUITION GO TO THE UNIVERSITY?  
THAT HAS NOT CHANGED?  
>> NO, YOUR HONOR, IT HAS NOT  
CHANGED BUT BEAR IN MIND IT HAS  
ALWAYS BEEN THE CASE THAT THE  
LEGISLATURE THROUGH THE  
APPROPRIATIONS PROCESS CAN  
DECIDE, IF THEY WISH TO, TO  
REVOKE THE CONTINUING  
APPROPRIATION OF THOSE TUITION  
AND FEES TO ALLOW THEM TO BE  
HELD IN THE UNIVERSITY ACCOUNTS  
AND SAY PUT IT INTO THE STATE'S  
GENERAL REVENUE FUNDS AND WE'LL  
APPROPRIATE IT OUT OF THAT?  
>> IN THE LAW SCHOOLS, DEANS  
ARE ALWAYS TRYING TO RAISE  
MONEY BY EVERY WHICH WAY AND  
THERE ARE GENEROUS DONATIONS.  
THOSE DON'T FIT INTO ANY OF  
THIS, CORRECT?  
THAT MONEY GOES STRAIGHT TO THE  
UNIVERSITY?  
>> HAS NOTHING TO DO WITH  
DONATIONS.  
HAS NOTHING TO DO WITH GRANTS  
IN AID FROM THE FEDERAL  
GOVERNMENT.  
IT ONLY HAS TO DO WITH WHO HAS  
THE POWER.  
>> OVER TUITION AND FEES?  
>> OVER TUITION AND FEES.  
>> IF THEY ARE AWARDED A GRANT  
OR CONTRACT, THAT REMAINS WITH  
THE UNIVERSITY?  
>> RIGHT.  
IF YOU HAVE A DONATION,  
OBVIOUSLY THE DONOR CAN CONTROL  
HOW THE FUNDS CAN BE USED AND  
PUT REVERTER CLAUSES IN, THE  
GIFT, IF IT ISN'T USED THAT  
WAY, IT GOES BACK.  
SAME WITH FEDERAL GOVERNMENT,  
BECAUSE OF SUPREMACY CLAUSE AND  
PUT ADDITIONS IN GRANTS IN AID  
FOR KIDS IN THE UNIVERSITY  
SYSTEM THAT IS NOT INVOLVED  
HERE.

>> THERE WAS SOMETHING LAST  
YEAR I KNOW THE UNIVERSITY OF  
FLORIDA WAS LOBBYING BEFORE THE  
LEGISLATURE BEING SUPER  
UNIVERSITIES THAT COULD SET  
HIGHER FEES.

WHAT WAS, THE ARGUMENT WOULD BE  
THAT THEY WOULD BE ALLOWED TO  
DO THAT ON THEIR OWN.

THAT THEY, THE UNIVERSITY OF  
FLORIDA COULD MAKE A DECISION  
AS TO HOW MUCH TO RAISE THEIR  
TUITION WITHOUT REGARD TO  
LEGISLATIVE INPUT?

IS THAT CORRECT?

>> THAT WOULD BE THE  
UNIVERSITY'S POSITION, YES.

>> AND WHY IS THAT, THE POWER  
TO ACTUALLY SET THE AMOUNT OF  
THE TUITION, WHY IS THAT A  
LEGISLATIVE FUNCTION AS OPPOSED  
TO THE FUNCTION TRANSFERRED  
WHEN THIS GOVERNING SYSTEM AND  
CONSTITUTIONAL ENTITY WAS THE  
SET UP?

>> I THINK THERE ARE PROBABLY  
ABOUT THREE ANTICIPATES TO  
THAT, YOUR HONOR.

SO LET ME GIVE THEM TO YOU IN  
ROUGHLY THE ORDER I THINK THEY  
HAVE THE MOST IMPORTANCE.  
FIRST OF ALL, THAT HAS ALWAYS  
BEEN THE POWER OF THE  
LEGISLATURE WHEN THIS AMENDMENT  
WAS ADOPTED.

THAT IS HISTORICALLY,  
UNQUESTIONABLY ALWAYS BEEN  
WITHIN THE LEGISLATURE'S POWER.

>> IT WAS AN EXERCISE OF A  
POWER TIED TO THE PREPARE  
OPERATIONS POWER, CORRECT?

>> THAT'S CORRECT.

THAT IS POINT NUMBER ONE.  
POINT NUMBER TWO, WE'RE, THERE  
IS NOTHING IN THE AMENDMENTS  
TERMS OR ITS TITLE ITSELF OR IN  
ITS BALLOT SUMMARY WHICH EVEN  
REMOTELY HINTS THAT POWER WOULD  
BE TRANSFERRED TO THE BOARD OF  
GOVERNORS.

AND NUMBER THREE, WHERE IS THE  
AFFIRMATIVE POWER OF THE BOARD  
OF GOVERNORS TO DO SUCH A  
THING?

NOW MR. GIBSON CLAIMED IT IS  
PROPRIETARY RIGHT AND CITE THIS

IS COURT'S DECISION IN STATE  
VERSUS CITY OF PORT ORANGE  
ORANGE.

THE PROBLEM THEY HAVE IS THIS.  
IN CITY OF PORT ORANGE AND  
EVERY OTHER CASE DECIDED AER  
FEE QUESTION THE COURTS HAVE  
UNIFORMLY SAID, AS THE CITY OF  
PORT ORANGE SAYS, QUOTE, USER  
FEES ARE CHARGES BASED ON THE  
PROPRIETARY RIGHT, THE  
PROPRIETARY RIGHT OF THE UNIT  
OF GOVERNMENT THAT IS  
EXERCISING THE POWER.

NOW THAT MEANS PROPERTY RIGHT.  
THE PROBLEM IS THAT SINCE AT  
LEAST 1993 AND IN THE CURRENT  
CODE, STATUTES OF THE STATE,  
THE UNIVERSITIES HAVE NO  
PROPRIETARY RIGHT TO LANDS AND  
BUILDINGS FUNDED HERETOFORE.  
SECTION 101.706 SUBSECTION 6  
SAYS, ALL TITLE TO REAL  
PROPERTY ACQUIRED PRIOR TO  
JANUARY 7, 2003, AND ALL REAL  
PROPERTY ACQUIRED WITH FUNDS  
APPROPRIATED BY THE LEGISLATURE  
THEREAFTER SHALL BE VESTED  
IN THE BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT FUND.  
NEITHER THE BOARD OF GOVERNORS,  
NOR ANY UNIVERSITY IS VESTED  
WITH PROPRIETARY RIGHT THAT  
WOULD ALLOW THEM TO USE A USER  
FEE ANALYSIS TO JUSTIFY THEIR  
POWER TO SET FEES.

>> SEEMS THIS COMES DOWN TO, AS  
JUSTICE CANADY INDICATED, IF  
THE ASPECT OF REGULATION AND  
CONTROL FLOWS FROM THE POWER  
AND OBLIGATION TO APPROPRIATE,  
THEN THE QUESTION IS THIS  
AMENDMENT HAS SEVERED THIS  
MANAGEMENT CONTROL AND DOES IT  
CARRY ALONG WITH THAT, THE  
RIGHT TO SET THE FEES AND  
TUITION?

ISN'T THAT REALLY WHAT WE'RE  
TALKING ABOUT?

>> THAT IS THE, THAT IS WHAT  
WE'RE TALKING ABOUT.

>> THAT IS THE ESSENTIAL PART.

>> THAT IS THE ESSENTIAL  
QUESTION.

>> THERE IS HOWEVER ANOTHER  
QUOTE THOUGH AND HAS BEEN AT  
THE CENTER OF THIS CASE.

---

WHAT IS THE SCOPE OF THE  
LEGISLATURE'S APPROPRIATION  
POWER? NOW --

>> WE KNOW FROM THE AMENDMENT  
THAT EXPRESSLY, THAT THE  
LEGISLATURE KEPT THAT?

>> YES.

>> BECAUSE THAT IS EXPRESS.  
MAYBE WE HAVE A DIFFERENT CASE  
IF THIS AMENDMENT DID NOT SAY  
THAT, ALTHOUGH WE GET THEN INTO  
QUESTIONS ABOUT THE WAY THE  
AMENDMENT WAS PRESENTED TO THE  
PEOPLE BUT I'LL LEAVE THAT  
ASIDE.

BUT THE AMENDMENT SPECIFICALLY  
RESERVES THE LEGISLATURE'S  
APPROPRIATIONS POWER.

>> THAT'S CORRECT, SIR, JUSTICE  
CANADY.

>> ISN'T THAT A VERY IMPORTANT  
FACT FOR YOUR CASE.

>> THAT IS CRITICAL AND  
ESSENTIAL TO THIS CASE.

>> YOUR INTERPRETATION OF THAT  
WHAT GOES ALONG WITH THAT  
WHETHER SETTING AND FEES OF AND  
TUITION ARE PART OF THAT  
PROCESS.

BECAUSE AS YOU DISCUSSED  
BEFORE, THE OTHER ELEMENTS THAT  
WERE TRANSFERRED WERE  
INHERENTLY PART OF THAT,  
CORRECT?

>> NOT QUITE, YOUR HONOR.  
IF I MIGHT.

LET'S TAKE FOR A MOMENT, WE  
DON'T AGREE OBVIOUSLY FOR THE  
REASONS I'M ARTICULATING NOW  
AND ARTICULATED IN OUR BRIEFS,  
WE DON'T AGREE THE BOARD OF  
GOVERNORS EVER ACHIEVED THE  
RIGHT TO DETERMINE WHAT TUITION  
FEE LEVEL SETTING WOULD BE.

>> THAT IS QUESTION OF  
INTERPRETATION OF MANAGE,  
CONTROL, ET CETERA.

>> LET'S ASSUME FOR JUST A  
MOMENT THAT THEY DID.

LET'S ASSUME THAT THE POWER TO  
DECIDE WHAT TUITION AND FEE  
SETTING WOULD BE TRANSFERRED.  
I DON'T AGREE WITH THAT BUT  
ASSUME IT FOR THE SAKE OF  
ARGUMENT.

THAT DIDN'T CHANGE THE  
APPROPRIATIONS POWER.

>> RIGHT.  
>> AS THIS COURT HAS HELD IN  
ADVISORY OPINION OF THE  
GOVERNOR CITED IN OUR BRIEF,  
INVOLVING GOVERNOR KIRK, MONIES  
RAISED BY STATE AGENCY OR  
RECEIVED FROM WHATEVER SOURCE,  
DOESN'T MATTER WHERE THEY COME  
FROM, OR WHO SETS THEM, MUST BE  
APPROPRIATED BY THE LEGISLATURE  
BEFORE THEY MAY BE EXPENDED.  
>> COULD YOU ADDRESS, AND  
THAT'S IN ARTICLE 7, SECTION  
ONE, THE CONSTITUTIONAL DUTY OF  
THE LEGISLATURE TO RAISE  
APPROPRIATE STATE FUNDS THE  
ARGUMENT IS BEING MADE THAT THE  
POWER TO SET TUITION AND FEES  
IS ACTUALLY, NOT DERIVED FROM  
ARTICLE 7, SECTION 1, BUT  
FROM ARTICLE 7, SECTION 1.  
WHAT IS THE RESPONSE TO THAT?  
>> MY RESPONSE IS THAT'S  
INCORRECT AS A MATTER OF --  
>> I GUESS, IS THERE ANY CASE  
LAW THAT ACTUALLY PUTS THAT  
INTO THAT PART OF --  
>> THERE IS CASE LAW, YOUR  
HONOR, THAT SAYS, FROM THIS  
COURT, IT'S CITED IN OUR BRIEF,  
THAT CITES THE POWER OF  
APPROPRIATION IN ARTICLE 7.  
THERE IS NO CASE SPECIFICALLY  
ON POINT ALTHOUGH CHILES VERSUS  
CHILDERS, A, B, C, D, LEGISLATURE  
HAVING POWER OF THE PURSE  
TO BOTH RAISE AND APPROPRIATE  
MONIES.  
ARTICLE 7 ITSELF SAYS TWO  
INTERTWINED THINGS.  
ONE, THE LEGISLATURE SHALL  
RAISE REVENUES SUFFICIENT TO  
DEFRAY THE EXPENSES OF THE  
STATE.  
DOESN'T SAY GENERAL REVENUES.  
DOESN'T SAY TAXES.  
SAYS REVENUES.  
SO THE LEGISLATURE IS  
CONSTITUTIONALLY GIVEN THE  
POWER TO RAISE REVENUES TO  
DEFRAY THE EXPENSES OF THE  
STATE.  
IN THE VERY PRECEDING  
PARAGRAPH, SAYS NO MONEY'S FROM  
THE TREASURY SHALL BE WITHDRAWN  
WITHOUT APPROPRIATION BY THE  
LEGISLATURE.



---

I SUBMIT THERE IS NO CASE LAW  
MAKING THAT POINT ANY CLEARER  
BECAUSE THE CONSTITUTIONAL  
ITSELF IS CRYSTAL CLEAR WHERE  
THE BOYER OF THE STATE LEVEL  
WHERE TO RAISE AND APPROPRIATE  
FUNDS LIES.

>> AS I THOUGHT I HEARD WE HAVE  
A POT OF MONEY SUFFICIENT,  
MONEY THAT IS ACTUALLY  
APPROPRIATED BY THE  
LEGISLATURE. IS THAT CORRECT?

>> NO, YOUR HONOR.  
IN FACT I THINK THAT'S  
INCORRECT.

>> OKAY.

>> THE LEGISLATURE APPROPRIATES  
IT ALL.  
WHAT THEY HAVE DONE  
HISTORICALLY IS THEY HAVE  
CREATED A CONTINUING  
APPROPRIATION BY STATUTE.  
SAYS WE DON'T HAVE TO DEAL WITH  
IT EVERY YEAR IN THE GENERAL  
PREPARATIONS ACT.  
LONG SET STATUTES ON THE BOOKS.  
MONEY COLLECTED BY TUITION AND  
FEES IS HEREBY APPROPRIATED FOR  
USE BY UNIVERSITIES.

>> BUT NOT IN ANY SPECIFIC WAY?  
>> NOT IN ANY SPECIFIC WAY.  
>> BUT MONEYS THAT ACTUALLY  
COME FROM GENERAL REVENUE, I'M  
USING GENERAL REVENUE IN THE  
TERM OF IT'S NOT TUITION AND  
FEES, THOSE MONIES ARE ACTUALLY  
APPROPRIATED FOR SPECIFIC  
CATEGORIES, IS THAT CORRECT?

>> THEY'RE APPROPRIATED IN  
CATEGORIES FOR USE BUT NOT DOWN  
TO MINUTE DETAILS LEVEL.

>> OKAY.

IT SEEMS TO ME THIS REALLY IS  
SORT OF TWO POTS OF MONEY HERE.  
THE LEGISLATURE JUST GIVES  
GENERAL AUTHORITY TO USE  
TUITION AND FEES, NOT SPECIFIC  
CATEGORIES, IS THAT CORRECT OR  
NOT?

>> AT THE PRESENT TIME, THAT'S  
CORRECT, YOUR HONOR.

>> THIS IS SORT OF A QUESTION I  
HAD, I WAS TRYING TO LOOK FOR  
IT.

ARTICLE 9, SECTION, 1-A STILL  
PROVIDES THE LEGISLATURE HAS TO  
MAKE ADEQUATE PROVISION FOR

---

ESTABLISHMENT AND MAINTENANCE  
OF FLORIDA UNIVERSITIES.  
THAT WAS NOT TAKEN OUT OF THE  
LEGISLATURE'S RESPONSIBILITY?  
>> NO, IT WAS NOT, YOUR HONOR.  
AS WE POINT OUT IN OUR BRIEF,  
MAINTENANCE OR MAINTAIN MEANS  
PROVIDE FUNDING FOR.  
>> SO THAT IT REALLY, IF  
SOMETHING, IF WE STARTED TO  
HAVE THIS AS AN ALL-OUT FIGHT  
WHERE THE LEGISLATURE SAID,  
LISTEN, YOU TAKE THE TUITION  
AND FEES, YOU RAISE THEM HIGHER  
YOU WANT TO RAISE THEM BUT  
WE'RE NOT GIVING YOU ANYMORE  
GENERAL REVENUE, WE WOULD  
REALLY HAVE A CRISIS IN THIS  
STATE, WOULDN'T WE?  
>> POTENTIALLY, YOUR HONOR.  
FRANKLY I THINK THE POSITION  
THE LEGISLATURE WOULD BE UNDER  
ESTABLISHED PRECEDENT FROM THIS  
COURT.  
EVEN IF THEY COULD RAISE THE  
FEES, THEY CAN'T SPEND THEM AT  
A LEVEL NOT APPROPRIATED.  
AND THAT IS PERFECTLY --  
>> RAISE, WHEN YOU SAY RAISE IT  
THEY --  
>> IS THE LEVEL.  
>> SET THE LEVEL OF TUITION?  
>> BUT COULD NOT SPEND THE  
RESULTING FUNDS WITHOUT  
APPROPRIATION FROM THE  
LEGISLATURE.  
>> WHAT WAS THE STATUTE LAST  
YEAR, I'M THINKING, THEY  
WERE GOING TO PASS OR ABOUT THE  
SUPER UNIVERSITIES?  
UNIVERSITY OF FLORIDA  
AND OTHERS?  
>> THERE WAS A QUESTION AS TO,  
THERE WAS DEBATE WHETHER SOME  
UNIVERSITIES SHOULD BE ALLOWED  
TO SET TUITION AT  
SUBSTANTIALLY HIGHER LEVELS  
THAN OTHER UNIVERSITIES FOR  
PURPOSE OF MAKING THEM --  
>> THAT WAS BEING SOUGHT IN THE  
LEGISLATURE?  
>> THAT WAS A DISCUSSION IN THE  
LEGISLATURE.  
>> IF THIS WAS CORRECT, THEY  
WOULDN'T HAVE TO GO WITH THE  
LEGISLATURE, THEY COULD DO THAT  
WITHIN THE POWER GRANTED IN

---

ARTICLE, IN THE AMENDMENT THAT WE'RE TALKING ABOUT, RIGHT?  
>> WELL IN THAT CASE, YOUR HONOR, IN THAT HYPOTHETICAL CASE I THINK WHAT WOULD HAPPEN IS THIS.  
THEY MIGHT, UNIVERSITY MIGHT TRY TO SET THE TUITION LESS WHERE THEY WANT TO, BUT WHEN THEY WANT TO SPEND THE MONEY NEXT YEAR THEY WILL HAVE TO HAVE LEGISLATIVE APPROPRIATION TO DO IT.  
IF LEGISLATURE SAYS I DON'T CARE HOW HIGH YOU SET THE FEES WE THINK MIX BETWEEN TAXES AND WHAT STUDENTS WILL PAY IN TUITION WILL BE X.  
AND YOU CAN NOT SPEND MORE THAN X.  
>> THAT IS REALLY THE PROBLEM WHY THIS SEEMS LEGISLATIVE. THIS IS NOT LIKE A LITTLE SUPPLEMENT BEING PROVIDED BY THE LEGISLATURE.  
>> YOUR HONOR --  
>> EVEN THOUGH THEY MAY BE IN DIFFERENT POTS THEY'RE ALL GOING FOR THE SAME PURPOSE WHICH IS TO PROVIDE A QUALITY EDUCATION FOR THE CITIZENS, THE STUDENTS, THAT ENTER THE UNIVERSITY SYSTEM. SO THAT WOULD BE TOUGH, RIGHT, IF IT WAS, IT WAS SEGMENTED THAT WAY?  
>> IT WOULD, YOUR HONOR. AND JUST FOR CLARIFICATION SAKE, FOR 2007 FIGURES, FUNDING FOR THE STATE UNIVERSITY SYSTEM AS A WHOLE, NOT EACH UNIVERSITY, BUT THE FUNDING ITSELF, BROKE DOWN APPROXIMATELY THIS WAY. GENERAL REVENUE, APPROXIMATELY 29%.  
THE EDUCATION ENHANCEMENT TRUST FUND, APPROXIMATELY TWO, 3%.  
>> I'M SORRY.  
I MISSED THAT PERCENTAGE? WHAT WAS THAT PERCENTAGE FROM THE TRUST FUND?  
>> THE EDUCATION ENHANCEMENT TRUST FUND IS 2.9%.  
THE EDUCATION TRUST FUND WHICH IS TUITION FEES ABOUT 11%.  
OTHER SOURCES, FINANCIAL AID

AND CONTRACTS ABOUT ANOTHER 25,  
TO 30%.

THERE IS SOME EXPENSES.

>> OF TUITION FEES VERSUS  
GENERAL APPROPRIATIONS WHAT IS  
THE PERCENTAGE?

>> TUITION AND FEES, CAME  
OUT IN 2007 FIGURES, MAYBE 13,  
14, 15%.

>> THEIR ARGUMENT WHICH SEEMS  
POWERFUL SOME OF THE GREAT  
UNIVERSITY SYSTEMS IN THE  
COUNTRY DO WHAT THIS AMENDMENT  
WAS INTENDED TO DO.

THEY POINT TO MICHIGAN AND  
CALIFORNIA.

WHAT IS THE RESPONSE TO THAT?

>> MY RESPONSE TO THAT IF THEY  
WANTED THE MISSION IN  
CALIFORNIA MODEL THEY SHOULD  
HAVE USED THE MICHIGAN AND  
CALIFORNIA LANGUAGE WHICH NONE  
APPEARS IN THIS AMENDMENT.

>> COULD THEY HAVE DONE THAT  
WITHOUT VIOLATING SINGLE  
SUBJECT?

>> THAT'S A QUESTION I CAN'T  
ANSWER.

PERHAPS, YOUR HONOR, THAT'S ONE  
I, YOU KNOW THAT IS A PRETTY --

>> WHAT ADDITIONAL LANGUAGE?

>> ONLY WE WOULD KNOW THAT.

>> I'M SORRY?

>> ONLY WE WOULD BE ABLE TO  
ANSWER THAT QUESTION.

>> MIGHT HAVE BE POSSIBLE TO  
CRAFT IT WITHOUT A SINGLE  
SUBJECT PROBLEM BUT THAT'S NOT  
WHAT THEY DID.

CLEARLY SET OUT THE  
CONSTITUTIONAL PROVISIONS IN  
THE BRIEFS.

THERE ARE NOTHING, THEY'RE VERY  
CLEAR IN THOSE STATES AS TO WHO  
CONTROLS MONIES AND IT IS THE  
UNIVERSITY SYSTEM.

THAT IS NOT WHAT HAPPENED HERE.  
I WOULD POINT OUT ONE THING.  
THIS IS NOT LIKE DIFFERENT POTS  
OF MONEY.

THIS IS AS YOU POINTED OUT  
JUSTICE PARIENTE, IS A PIE  
WHICH IS COMPOSED OF A NUMBER  
ABOUT PIECES, PART OF IT IS  
TAX, GENERAL REVENUE, PART OF  
IT IS OTHER FEES.

THIS COURT HAS ALREADY DECIDED

IN SIMILAR CONTEXT IN  
DEPARTMENT OF EDUCATION VERSUS  
GLAZER IT IS WITHIN THE  
LEGISLATURE'S APPROPRIATION  
POWER TO SAY WE'RE GOING TO  
CONDITION THE APPROPRIATION OF  
TAX MONIES TO YOU IN AN  
EDUCATION SYSTEM BASED UPON  
YOUR AGREEING TO DO FOLLOWING  
THINGS TO COLLECT MONEY AND NO  
MORE.

AND THE COURT SAID THAT IS  
CLEARLY WITHIN A CONDITION OF  
THE LEGISLATURE CAN PUT ON AN  
APPROPRIATION FOR THAT PURPOSE.  
NOTHING DIFFERENT HERE.

EVEN IF YOU BELIEVE, AND WE  
BELIEVE THAT'S WRONG, IF YOU  
BELIEVE THAT THE APPROPRIATIONS  
POWER OF THE LEGISLATURE WAS  
SOMEHOW RESTRICTED JUST TO  
GENERAL REVENUES ALTHOUGH  
NOTHING IN THE AMENDMENT SAYS  
THAT, IN THE APPROPRIATION OF  
GENERAL REVENUE YOU ALREADY  
DECIDED WE CAN THEN CONDITION  
THE OTHER PIECES ON WHAT AMOUNT  
OF GENERAL REVENUE THE  
LEGISLATURE GETS.

>> EVEN IF IT VIOLATES THE  
CITIZENS INITIATIVE WITH REGARD  
TO CONTROL MANAGEMENT IS WHAT  
YOU'RE SAYING?

>> NO, YOUR HONOR. I'M SAYING IT  
CAN NOT VIOLATE THAT.

>> CAN NOT VIOLATE THOSE?

>> IT DOESN'T BECAUSE THE  
AMENDMENT SPECIFICALLY SAID  
WHATEVER POWERS THEY WERE  
GIVEN, ARE, QUOTE, SUBJECT TO  
THE POWER OF LEGISLATURE TO  
APPROPRIATE.

>> I UNDERSTAND THAT I'M ASKING  
YOU A QUESTION IF THE  
CONDITIONS BASED UPON THE  
APPROPRIATION, VERY CLEARLY  
EVEN IF YOU WOULD AGREE IT  
INVOLVES AND DIRECTLY HITS UPON  
THE DAY-TO-DAY MANAGEMENT AND  
CONTROL AND OPERATION, OF THE  
UNIVERSITY.

>> I WOULD NOT AGREE WITH THAT,  
YOUR HONOR.

>> I'M SORRY.

>> I WOULD NOT AGREE WITH THAT  
STATEMENT, RESPECTFULLY  
ALL THIS HAS TO DO --

>> I'M NOT SAYING THIS.  
I'M ASKING YOU A QUESTION, SIR,  
IF YOU COULD ANSWER IT.  
>> I'M SORRY.  
>> YOU'RE SAYING APPROPRIATIONS  
COULD PUT ANY CONDITION ON THE  
APPROPRIATION, IS WHAT I  
UNDERSTOOD YOU TO SAY THAT?  
>> ANY CONDITION DIRECTLY  
RELATED TO APPROPRIATION.  
>> DIRECTLY RELATED.  
THAT COULD TOUCH UPON HOW THE  
DAY-TO-DAY OPERATIONS OF A  
UNIVERSITY WOULD BE CONDUCTED?  
>> YOUR HONOR, I THINK --  
>> WOULD IT NOT?  
IS THAT NOT POSSIBLE?  
>> I DON'T BELIEVE SO THE WAY  
YOU PHRASE IT, YOUR HONOR.  
>> I'M TRYING TO DETERMINE IF  
THIS REALLY MEANS ANYTHING AT  
ALL, THIS CONSTITUTIONAL  
AMENDMENT BECAUSE IF YOU'RE  
SAYING THAT THE POWER OF  
APPROPRIATION IS SO BROAD THAT  
IT CAN JUST SWEEP AWAY  
EVERYTHING THAT'S IN THE OTHER  
CONSTITUTIONAL AMENDMENT WITH  
REGARD TO CONTROL, DAY-TO-DAY  
OPERATIONS I WONDER WHETHER  
YOU'RE NOT INTERPRETING THE  
APPROPRIATION POWER FAR TOO  
BROADLY.  
>> YOUR HONOR, I DON'T THINK  
THIS CASE PRESENTS A SITUATION  
WHERE THE APPROPRIATIONS POWER  
HAS BEEN USED TO MEDDLE IN THE  
MANAGEMENT, THE FINE MANAGEMENT  
DECISIONS OF THE UNIVERSITY  
SYSTEM SUCH AS PUT THIS  
PROGRAM THERE.  
>> RIGHT, RIGHT.  
>> WHAT THIS IS ABOUT IS --  
>> I UNDERSTAND THAT BUT I MADE  
THE STATEMENT, YOU MADE THE  
STATEMENT THAT THEY COULD PUT  
ANY CONDITION THEY WANTED ON  
THE APPROPRIATIONS.  
AND THAT'S WHAT I'M WONDERING  
HOW FAR DOES THIS GO?  
>> IT GOES ONLY AS FAR AS THIS  
COURT ALLOWED IT TO GO IN  
DEPARTMENT OF EDUCATION VERSUS  
GLAZER, WHICH HAS TO BE  
DIRECTLY RELATED TO THE PURPOSE  
OF THE APPROPRIATION OF GENERAL  
REVENUE FUNDS.

IN CLOSING --

>> YOU KNOW, I GUESS THE PURSE  
STRING, WHAT YOU'RE SAYING  
THEN IS IT CAN BE INTERPRETED  
BROADLY, YOU CAN APPLY  
CONDITIONS TO ANY CONDITION YOU  
WANT BECAUSE YOU HAVE THE POWER  
TO APPROPRIATE?

>> NO, YOUR HONOR, I DON'T  
BELIEVE THAT IS THE CASE.

>> YOU'RE SAYING CONTROLS  
THE FLOW CONTROLS --

>> EVEN THE CHASE COURT,  
UNIVERSITY OF MINNESOTA VERSUS  
CHASE CASE THAT THE PETITIONERS  
RELY UPON CONCLUDES WITH THIS  
STATEMENT.

THE LEGISLATURE, WHILE IT CAN  
NOT EVEN UNDER THAT SYSTEM  
WHICH IS STRONGER THAN HERE,  
CAN NOT MEDDLE IN THE  
DAY-TO-DAY AFFAIRS OF THE  
UNIVERSITY SYSTEM, IT RETAINS  
THE POWER TO APPROPRIATE AS IT  
SEES FIT.

THAT DOES INFLUENCE EDUCATIONAL  
CHOICES, THERE IS NO QUESTION  
ABOUT IT.

THIS AMENDMENT DID NOT INTEND  
TO REMOVE THE LEGISLATURE FROM  
A SAY IN STATE AND UNIVERSITY  
EDUCATIONAL POLICY.

IT SIMPLY CAN'T INTERFERE WITH  
THE DAY-TO-DAY MANAGEMENT.  
THEIR APPROPRIATIONS POWER WAS  
NOT AFFECTED.

>> THAT MAYBE WOULD BE A  
DIFFERENT CASE BECAUSE IF THEY  
DECIDED THEY DIDN'T LIKE FSU OR  
DIDN'T LIKE THE UNIVERSITY OF  
FLORIDA, THEY LIKED THE NEW  
UNIVERSITY THAT THEY CREATED,  
AND THEY STARTED TO  
APPROPRIATE IN A WAY THAT WAS  
INTERFERED, NOT JUST WITH THE  
DAY-TO-DAY, BUT WITH THE POLICY  
SETTING OF THE UNIVERSITIES,  
THAT WOULD BE --

>> THAT WOULD BE A DIFFERENT  
CASE, YOUR HONOR.

>> IN MY VIEW A VIOLATION OF  
THIS CONSTITUTIONAL AMENDMENT.  
SO I HOPE WE'RE NOT, IF WE HAVE  
TO TIE A DECISION HERE TO THAT  
KIND OF THING THEN WE ARE GOING  
DOWN THE WRONG PATH.

>> YOUR HONOR, THAT'S A

DIFFERENT CASE.  
THAT'S NOT WHAT'S HERE.  
WHAT IS BEING CHALLENGED HERE,  
ARE SIMPLY STATUTES THAT SAY,  
YOU, THE UNIVERSITY SYSTEM,  
WILL ACCEPT TUITION LEVELS AT  
THIS AMOUNT FOR NEXT YEAR TO  
COMPLIMENT OTHER SOURCES OF  
REVENUE THAT ARE BEING  
APPROPRIATED TO YOU.  
THAT'S ALL THESE, THIS CASE  
INVOLVES.  
IT DOES NOT INVOLVE A SITUATION  
WHERE THE LEGISLATURE HAS TRIED  
TO IN ANY WAY MANAGE THE  
DECISIONS ABOUT YOU WHO THE  
UNIVERSITY SYSTEM WILL OPERATE  
WITHIN ITSELF AS CREATING  
AMOUNT OF FUNDING FOR THE  
UNIVERSITY SYSTEM.  
AND I THINK WHAT THIS COURT  
SHOULD ASK ITSELF, IN JUDGING  
THIS, IS, IS THERE ANYTHING IN  
THIS CONSTITUTIONAL AMENDMENT  
AS SUMMARY, ITS TEXT, THE  
BALLOT SUMMARY, THE  
CONSTITUTIONAL JURISPRUDENCE OF  
THIS STATE THAT PRECEDED IT AND  
LED IT TO DECIDE THE  
APPROPRIATIONS POWER THAT WOULD  
LEAD A CITIZEN AND VOTER TO  
BELIEVE THAT THE LEGISLATURE  
LOST ITS ABILITY TO DECIDE HOW  
MUCH OF THE FUNDING PIE IS  
GOING TO COME FROM TAXES AS  
OPPOSED TO FEES THAT STUDENTS  
AND THEIR FAMILIES MUST PAY  
NEXT YEAR.  
AND DID THEY INTEND IT MEAN  
A UNELECTED BOARD COULD  
MAKE THAT DECISION.  
>> YOU'RE OUT OF TIME.  
>> THANK YOU, YOUR HONOR.  
>> COUNSEL, WE'LL ADD ADDITIONAL  
THREE MINUTES TO TIME OF  
REBUTTAL.  
>> THANKS. I APPRECIATE THAT.  
THIS IS SERIOUS BUSINESS.  
WE'RE TALKING ABOUT MILLIONS OF  
DOLLARS.  
THIS IS THE COURT OF LAST  
RESORT.  
MR. BROWN SAYS, WE OUGHT TO DO  
IT THIS WAY BECAUSE IT IS THE  
SAME TODAY AS IT HAS ALWAYS  
BEEN HISTORICALLY.  
THAT'S AS IF THE



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LEGISLATURE WAS IMMUNE FROM  
AMENDMENT BY THE CONSTITUTION,  
THE ULTIMATE AUTHORITY IN OUR  
GOVERNMENT.

>> LET ME ASK YOU THIS.

IT SEEMS TO ME THAT YOU ARE  
ASKING FOR SOMETHING THAT COULD  
COME BACK TO BITE YOU.

IF THE BOARD OF GOVERNORS,

[INAUDIBLE]

FEES, NOTHING THAT WOULD  
LEGISLATURE FROM THEN REDUCING  
THE AMOUNT OF TAXES, MONEY  
COMING FROM TAXES, THEY WOULD  
APPROPRIATE TO THE UNIVERSITY  
SYSTEM, DIRECT PROPORTION TO  
HOW MUCH YOU COULD, FOR  
EXAMPLE, INCREASE THE TUITION,  
IS THERE?

>> THAT'S ABOUT EXACTLY THE WAY  
THAT IT WORKS.

AND ATTACHED TO OUR COMPLAINT,  
ORIGINAL COMPLAINT IS WHAT IS  
CALLED THE CALIFORNIA COMPACT.

THAT STRIKES THE BALANCE.

BECAUSE WHAT YOU HAVE IS, TWO  
COEQUAL, WE'RE TALKING ABOUT  
THE BOARD OF GOVERNORS WHICH IS  
AN INDEPENDENT CONSTITUTIONAL  
ENTITY, COEQUAL TO THE  
LEGISLATURE.

THE LEGISLATURE HAS THE POWER  
THROUGH ITS GENERAL REVENUE TO  
SUPPLEMENT UNIVERSITIES AND THE  
BOARD OF GOVERNORS OVER HERE  
BECAUSE OF ITS POWER, THAT WAS  
TRANSFERRED BY THE LEGISLATURE.  
IT HAS THE POWER TO SET THE  
RATES FOR THE SERVICE THAT IT  
PROVIDES.

AND THAN ONE OF THE WAYS YOU  
CAN GET STABLE FUNDING, IS IF  
THE GENERAL REVENUES ARE DOWN,  
THE TUITION CAN GO UP.

IF THE TUITION GOES DOWN AND  
GENERAL REVENUES ARE BETTER,  
TUITION CAN GO DOWN.

THAT IS THE WAY UNIVERSITIES  
GET STABLE FUNDING IN THOSE  
STATES AS DISTINGUISHED FROM  
WHAT WE'VE EXPERIENCED HERE.

>> BUT THIS PROVISION DOESN'T  
REQUIRE THAT?

THIS CONSTITUTIONAL PROVISION  
WOULD NOT REQUIRE THAT KIND OF  
STABILIZATION?

>> NO. IT DOESN'T REQUIRE IT.

BUT THAT IS THE WAY IT WORKS.  
>> HOW HAVE YOU BEEN, I MEAN  
WHAT IS THE REALITY?  
BECAUSE HAVE YOU WANTED TO  
RAISE TUITION AND THE  
LEGISLATURE SAID NO?  
IS THERE ONE PARTICULAR THING  
THAT HAPPENED?  
CAN YOU GIVE US A GRAPHIC  
EXAMPLE HOW DETRIMENTAL THE  
INTERPRETATION GIVEN BY THE  
FIRST DISTRICT WOULD BE TO THE  
INTENT OF THIS AMENDMENT?  
>> WELL I DON'T KNOW THAT'S THE  
LEGAL QUESTION --  
>> WE'RE TALKING ABOUT, WE'RE  
TALKING SOMEWHAT THEORETICALLY,  
YOU'RE SAYING THIS IS  
DEVASTATING.  
I JUST WANT TO KNOW, COULD YOU  
GIVE ME AN EXAMPLE OF, HAS THE  
UNIVERSITY TRIED TO RAISE FEES,  
LEGISLATURE SAID NO?  
OR IS IT JUST THE --  
>> THE BEST, THE EXAMPLE I CAN  
GIVE YOU, AND IT'S, ABOUT  
SOMETHING THAT'S IN THE RECORD  
IS, THE SURVEY THAT WAS  
CONDUCTED BY "USA TODAY" WHICH  
IS AN EXHIBIT TO THE COMPLAINT  
AND ORIGINAL COMPLAINT IN THIS  
CASE.  
AND THEY TOOK 150 FLAGSHIP  
UNIVERSITIES, WHAT THEY CALLED,  
FLAGSHIP UNIVERSITIES, AND AS  
IT TURNS OUT, FLORIDA'S, TWO  
FLAGSHIP UNIVERSITIES, FLORIDA  
AND FLORIDA STATE WERE, IT WAS,  
50 OF THEM, WERE 49th AND 50.  
THEY WERE THE, ABSOLUTE BOTTOM.  
>> IN WHAT TERMS?  
IN BOTTOM, IN TERMS OF TUITION  
OR?  
>> TUITION.  
>> I'M WORRIED ABOUT THE FACT  
THAT WE'RE STRAYING FROM WHAT  
THE LEGAL QUESTION IS, THAT WE  
HAVE BEFORE US.  
AND I WOULD URGE THE COURT TO  
ADHERE TO THIS COURT'S,  
OPINION IN THE CARIBBEAN CASE  
BECAUSE THAT'S THE ONE THAT  
CLEARLY SETS OUT HOW YOU GO  
ABOUT THE METHOD FOR ANALYZING  
A TRANSFER FROM LEGISLATIVE  
AUTHORITY TO AN INDEPENDENT  
CONSTITUTIONAL BOARD.

AND ALL OF THAT LEGISLATIVE  
AUTHORITY GOES OVER, BASED ON  
CONSTITUTIONAL AMENDMENT,  
UNLESS THERE IS A  
CONSTITUTIONAL EXCEPTION.  
AND WE CAN JUST TAKE A LOOK AT  
THIS.  
THE LEGISLATURE IS TRYING TO  
FIND A CONSTITUTIONAL EXCEPTION  
TO THIS.  
WELL LET'S TAKE A LOOK AT IT.  
ARTICLE 7, NO, THAT'S NO  
CONSTITUTIONAL EXCEPTION.  
THAT'S GENERAL REVENUE.  
THOSE ARE TAX FUND.  
AND THEY'RE THE ONES THAT  
SUPPLEMENT THE UNIVERSITIES.  
LET'S TAKE A LOOK AT ARTICLE.  
ARTICLE 3, NO.  
ALL THE AUTHORITY IN ARTICLE  
3 WAS TRANSFERRED.  
SO IT'S NOT THERE.  
IT COMES DOWN TO  
APPROPRIATIONS.  
SO LET'S TAKE A LOOK AT  
APPROPRIATIONS.  
APPROPRIATIONS IS A POWER THAT  
IS ONLY ON THE EXPENSE SIDE.  
IT IS NOT ON THE REVENUE SIDE.  
>> EXCEPT THAT THE ARTICLE  
SAYS, RAISE REVENUE AND  
APPROPRIATE.  
IT WOULD BE PRETTY HARD FOR THE  
STATE TO ONLY APPROPRIATE IF  
THEY WEREN'T COLLECTING  
REVENUE, WOULD IT?  
>> THEY ONLY APPROPRIATE AFTER  
THE REVENUE IS COLLECTED AND  
THE APPROPRIATIONS POWER HAS  
NOTHING TO DO WITH THE  
COLLECTION OF IT.  
AND AS A MATTER OF FACT, IF YOU  
LOOK AT THIS VERY AMENDMENT,  
AND WE WERE TALKING ABOUT WHAT  
IS RETAINED BY THE LEGISLATURE,  
THE POWER OF THE LEGISLATURE TO  
APPROPRIATE FOR THE EXPENDITURE  
OF FUND.  
NOTHING ABOUT RAISING ANY  
REVENUE.  
LOOK AT THE LEGISLATURE'S OWN  
DEFINITION AS TO WHAT  
CONSTITUTES APPROPRIATIONS.  
IT'S ONLY EXPENDITURES.  
>> YOU HAVE WELL EXCEEDED YOUR  
TIME. IF YOU COULD SUM UP.  
>> PARDON?

>> YOU'VE WELL EXCEEDED YOUR  
TIME AND YOUR ADDITIONAL TIME.  
IF YOU COULD JUST SUM UP.  
I WOULD APPRECIATE IT.  
>> THANK YOU.  
I THINK THE SUMMARY IS THAT ALL  
THE AUTHORITY DID PASS.  
YOU HAVE TO LOOK FOR A  
CONSTITUTIONAL EXCEPTION.  
AND YOU CAN LOOK AT ARTICLE 7,  
ARTICLE 3, ARTICLE 4 AND  
THERE IS NO EXCEPTION.  
>> THANK YOU FOR YOUR  
ARGUMENTS.  
THE COURT WILL BE IN RECESS FOR  
10 MINUTES.  
>> ALL RISE.