

>> ALL RISE.  
[BACKGROUND SOUNDS]  
>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
>> OUR NEXT CASE FOR THE DAY IS  
MASONE V. AVENTURA.  
YOU MAY PROCEED.  
>> THANK YOU.  
GOOD MORNING, YOUR HONORS.  
MY NAME IS ANDREW HARRIS, I AM  
FORMALLY APPELLANT COUNSEL FOR  
BOTH PLAINTIFFS.  
FOR PURPOSES OF ORAL ARGUMENT, I  
WILL BE ARGUING FOR MR. MASONE.  
MR. WEISSER WILL BE ARGUING ON  
BEHALF OF THE RESPONDENT,  
MR. UDOWYCHENKO.  
SO THE WAY THE SCHEDULE IS, I  
BELIEVE I HAVE TEN MINUTES  
RESERVED FOR MYSELF TO BEGIN,  
IF -- UNDER THE AGREED SCHEDULE.  
THANK YOU, YOUR HONORS.  
OF COURSE, THE TWO PRINCIPAL  
ISSUES HERE TODAY ARE PREEMPTION  
AND CONFLICT.  
THE ISSUES HERE, BOTH  
MUNICIPALITY AS THE SOLE MEANS  
FOR THE IDENTICAL DRIVING  
CONDUCT, THE USE OF UNMANNED RED  
LIGHT TRAFFIC CAMERAS.  
FOR BOTH, FOR BOTH OF THE  
PLAINTIFFS IN THIS CASE.  
OF COURSE, WE'RE HERE ON  
CERTIFIED CONFLICT FROM BOTH  
DISTRICTS, THE THIRD DISTRICT  
AND THE FIFTH DISTRICT.  
THERE IS BOTH EXPRESSED AND  
IMPLIED PREEMPTION HERE AS WELL  
AS CONFLICT.  
AND I BELIEVE THIS COURT'S  
RECENT OPINION IN CITY OF WELLS  
FARGO SAID IT BEST WHICH IS THE  
CORE ISSUE HERE, WHICH IS THE  
LEGISLATURE DID NOT HAVE TO TELL  
THE MUNICIPALITIES, THEY DID NOT  
HAVE TO EXPRESSLY PROHIBIT THE  
EIGHT DIFFERENT AREAS HERE WHICH  
THE MUNICIPALITIES HAVE DEVIATED  
FROM CHAPTER 316.  
THIS IS THE IDENTICAL CONDUCT,

THEY'VE JUST CALLED IT A  
DIFFERENT NAME.

NOW, THE PHRASE I USED IN THE  
BRIEFS AND I DON'T -- IT WASN'T  
INTENDED TO BE WITTY, BUT YOU  
CAN'T CALL AN APPLE AN ORANGE  
AND SAY IT'S THE SAME THING.  
THAT'S WHAT'S HAPPENED HERE.

>> WELL, WHAT IS -- WE START,  
THOUGH, WITH THE FACT THAT THE  
LEGISLATURE IN ENACTING HOME  
RULE POWER SAYS THAT A, THAT THE  
MUNICIPALITY CAN LEGISLATE IN  
AREAS UNLESS EXPRESSLY  
PREEMPTED.

NOW, INTO OUR JURISPRUDENCE HAS  
COME WHAT IS NOW REFERRED TO IN  
SARASOTA ALLIANCE AS, QUOTE,  
IMPLIED PREEMPTION AND TRYING TO  
UNDERSTAND WHETHER IMPLIED  
PREEMPTION -- IF IT'S  
PERVASIVE -- IS ACTUALLY  
EXPRESSED PREEMPTION OR CONFLICT  
HAS GOTTEN ME A LITTLE  
CONCERNED.

BUT MY CONCERN ABOUT THE  
ARGUMENT -- BECAUSE CERTAINLY  
THEY EXPRESS AN INTENT TO HAVE  
UNIFORM TRAFFIC RULES, LAWS.  
BUT THEN THEY SAY BUT  
MUNICIPALITIES CAN DO THIS IN  
THESE AREAS.

AND THEN THERE'S W WHICH IS THE  
ONE THAT IS BEING RELIED ON BY  
THE CITY AND ALSO BY THE THIRD  
DISTRICT.

SO IF WE HAVE TO GO THROUGH THAT  
KIND OF STATUTORY CONSTRUCTION  
ANALYSIS TO DETERMINE IF THIS,  
IF THE CITIES WERE BEFORE 2010  
ALLOWED TO REGULATE IN THIS  
AREA, IS THAT, I MEAN, I'M  
CONCERNED THAT THAT'S AT ODDS  
WITH THE HOME RULE AUTHORITY AND  
WITH THE PLAIN LANGUAGE OF THE  
CHAPTER 166.

SO IF YOU COULD ADDRESS THAT, IS  
THIS EXPRESS -- ARE YOU SAYING  
IT'S EXPRESS BECAUSE IT'S WHAT,  
AND THEN WHY ISN'T IT IF IT'S

NOT EXPRESSLY PREEMPTED AREN'T WE VERY CAREFUL BEFORE WE FIND IT'S IMPLIEDLY PREEMPTED?

>> WELL, WE DO HAVE EXPRESS PREEMPTION FOR THE SIMPLE FACT THAT UNDER SUBSECTION 007 ANY MATTER COVERED BY THE LEGISLATURE, ANY MATTER COVERED EXCEPT IF WE GIVE OUR EXPRESS APPROVAL OR AUTHORIZATION. SO THE LEGISLATURE HAD TO GIVE THEIR EXPRESS APPROVAL FOR ALL OF THE WAYS THEY DEVIATED. FOR EXAMPLE, VICARIOUS LIABILITY HERE.

THE PERSONAL OBSERVATION REQUIREMENT --

>> BUT WOULDN'T THAT BE UNDER THE STATUTE, IN OTHER WORDS, IF YOU TOOK THAT THEY WERE GOING TO FIND SOMEBODY THAT WASN'T DRIVING THE VEHICLE, THEY WERE GOING TO ASSESS A CITATION UNDER STATE LAW AND ALSO ASSESS POINTS, THEY'D HAVE TO GET APPROVAL.

BUT IF THEY HAVE WHAT THEY'RE DESCRIBING AS A COMPLIMENTARY SYSTEM, SOMEONE ISN'T GETTING SLAPPED WITH BOTH RUNNING A RED LIGHT UNDER STATE LAW AND UNDER THE ORDINANCE, IT'S ONE OR THE OTHER.

I DON'T KNOW, HOW IS THAT THEN IN CONFLICT?

AND, AGAIN, IF WE HAVE TO DISCUSS THIS TO FIGURE IT OUT, WHY WOULDN'T WE GIVE THE BENEFIT TO THE MUNICIPALITIES IN LIGHT OF THEIR HOME RULE POWER?

>> WELL, THE HOME RULE POWER IN THE SYSTEM WITH CONFLICT OR IMPLIED PREEMPTION, AS I UNDERSTAND, YOU'RE ASKING ABOUT EXPRESS PREEMPTION.

BUT IF I'VE MISTAKEN YOUR QUESTION, WE DON'T HAVE TO GO TOO FAR BECAUSE THE LEGISLATURE HAS PRESCRIBED THE IDENTICAL CONDUCT ALREADY.

IF WE JUST LOOK BACK AT THOMAS  
V. STATE WHERE THEY -- IT'S A  
CHAPTER 316 CASE BEFORE THIS  
COURT.

NOW, IT WAS A CRIMINAL CASE, BUT  
THE MUNICIPALITY HAD THE  
AUTHORITY TO REGULATE THE  
OPERATION OF BICYCLES.

BUT THE STATE HAD DECRIMINALIZED  
THE ACTIVITY, AND THE  
MUNICIPALITY HAD CRIMINALIZED IT  
FOR THE MUNICIPALITY ENACTED AN  
ORDNANCE REQUIRING THE USE OF A  
HORN.

AND IN THEORY, THAT FIT IN  
WITHIN SUBSECTION W.

BUT 008 SUBSECTION W, REGULATING  
BICYCLES.

BUT WHAT THIS COURT SAID IS YOU  
HAVE IMPOSED A HARSHER PENALTY  
FOR WHAT THIS COURT SAID WAS,  
ESSENTIALLY, THE IDENTICAL  
CONDUCT --

>> BUT THEY ALLOWED THE, THAT  
WAS THE ONLY THING THAT THEY  
SAID WAS INAPPROPRIATE IN  
THOMAS, CORRECT?

I MEAN, IT WAS THAT THEY  
CRIMINALIZED SOMETHING THAT WAS  
A CIVIL PENALTY UNDER THE STATE  
LAW.

>> BUT IT WAS, THAT WAS A  
HARSHER PENALTY THAN FOR THE  
ESSENTIALLY IDENTICAL CONDUCT  
UNDER CHAPTER 316.

THAT'S PRECISELY -- THE  
DEFENDANTS ADMIT THAT IT'S A  
HARSHER PENALTY --

>> SO NOW, BUT NOW YOU'LL GET TO  
CONFLICT.

THAT'S CONFLICT PREEMPTION,  
RIGHT?

OR CONFLICT -- CAN WE GO BACK TO  
IT'S EXPRESS PREEMPTION WHY?

>> IT'S EXPRESS PREEMPTION  
BECAUSE THEY NEED THE EXPRESS  
AUTHORITY UNDER 007 FOR  
ANYTHING.

IT IS CALLED THE UNIFORM TRAFFIC  
CONTROL ACT.

WE GO BACK TO SUBSECTION 002.  
UNIFORM TRAFFIC ORDINANCES  
ANYWHERE IN THIS STATE UNDER  
002, UNIFORM TRAFFIC LAWS,  
UNIFORM TRAFFIC ORDINANCES.  
THESE ARE NOT UNIFORM TRAFFIC  
ORDINANCES.

>> LET ME, LET ME ASK YOU THIS,  
WHY DOESN'T SECTION 318.121 ALSO  
ENTER INTO THE ANALYSIS?

I THINK YOU MENTIONED IT IN YOUR  
BRIEF.

IT PROVIDES THAT,  
"NOTWITHSTANDING ANY GENERAL OR  
SPECIAL LAW OR MUNICIPAL OR  
COUNTY ORDINANCE ADDITIONAL FEES,  
FINES, SURCHARGES OR COSTS OTHER  
THAN SOME THINGS THAT ARE NOT  
RELEVANT HERE MAY NOT BE ADDED  
TO THE CIVIL TRAFFIC PENALTIES  
ASSESSED IN THIS CHAPTER."

WHY ISN'T THAT PART OF THE  
ANALYSIS?

>> WELL, THEY ARE ASSESSING  
ADDITIONAL FEES, BUT IT'S THE  
PROCESS LEADING TO THE FEE WHICH  
IS OUR PRIMARY -- WE HAVE THE  
PENALTIES AS WELL.

>> IT'S A FRIENDLY QUESTION.

>> WHAT'S THAT?

>> THAT'S A FRIENDLY QUESTION.  
I DON'T THINK YOU WANT TO ARGUE  
WITH HIM.

[LAUGHTER]

>> THANK YOU, YOUR HONOR.

[LAUGHTER]

THANK YOU, YOUR HONOR.  
I UNDERSTAND, I UNDERSTAND THAT.  
BUT THE POINT FOR THE ENTIRE  
COURT -- AND I DIDN'T MEAN TO  
NOT ADDRESS WITH YOU, JUSTICE  
CANADY -- THAT IS PRECISELY THE  
ISSUE.

BUT I WANTED TO FOCUS IN ON THE  
PROCESS GETTING TO THE PENALTY.  
THE PENALTY AS WELL.

BUT IT IS THE PROCESS --

>> BUT I'M, THE OTHER SIDE WILL  
GET AN OPPORTUNITY TO ADDRESS MY  
CONCERN ABOUT THIS, BUT THIS

SEEMS TO ME TO BE PRETTY CLEAR.  
AND WHAT WE HAVE HERE ARE  
ADDITIONAL PENALTIES THAT ARE  
IMPOSED, AND IT SAYS THAT IN THE  
SECTION WHICH IS HEADED  
"PREEMPTION OF ADDITIONAL FEES,  
FINES, SURCHARGES AND COSTS."  
IF THAT'S NOT EXPRESS  
PREEMPTION, I DON'T KNOW WHAT  
WOULD BE.

>> I AGREE.  
I CERTAINLY AGREE WITH THAT,  
YOUR HONOR.

[LAUGHTER]  
GOING BACK TO JUSTICE PARIENTE,  
AN EXAMPLE OF THE EXPRESS  
PREEMPTION.  
AND I THANK YOU FOR THE FRIENDLY  
QUESTION.

[LAUGHTER]  
BE THAT AS THAT MAY, I BELIEVE  
IT'S ALREADY THERE IN EVERY  
PROVISION FROM START TO FINISH.  
THE LEGISLATURE -- IF WE LOOK  
BACK, THE LAW WAS ENACTED IN  
1971.

AND IN THE STAFF ANALYSIS WAS A  
REFERENCE TO THE HODGEPODGE OF  
LOCAL ORDNANCES.

THAT'S EXACTLY WHAT WE HAVE  
HERE.

IF WE LOOK AT THE TWO  
JURISDICTIONS, NOW AVENTURA  
DOESN'T DISAGREE WITH OUR  
DISCUSSION OF THE ORLANDO  
ORDNANCE HERE.

BUT YOU CAN -- BOTH ORDNANCES,  
OF COURSE, ARE HERE BEFORE THIS  
COURT, AND THE DIFFERENCES ARE  
RIGHT THERE IN TERMS OF THE  
APPOINTMENT PROCESS.

HOW DOES THE MAGISTRATE GET  
DETERMINED?

THE QUALIFICATIONS.  
THE DEFENSE ACTUALLY HAVE STRICT  
LIABILITY.

IT'S DIFFERENT IN EACH ORDNANCE.  
SO WE TALK ABOUT ADDITIONAL FEES  
AND PENALTIES.

ORLANDO TAKES THE POSITION WE'RE

NOT, WE DON'T ACTUALLY HAVE  
STRICT LIABILITY HERE.  
NOW, I BELIEVE THEY DO, BUT  
THAT'S THEIR POSITION.  
AVENTURA, AS I UNDERSTAND IT,  
THEY RECOGNIZE WE ARE PUNISHING  
OWNERS.

AND SO NOT ONLY DO WE HAVE  
ADDITIONAL FEES, ADDITIONAL  
PENALTIES, WE HAVE DIFFERENT  
PENALTIES FROM JURISDICTION TO  
JURISDICTION, AND WE HAVE  
DIFFERENT PENALTIES FROM TRAFFIC  
LIGHT TO TRAFFIC LIGHT.

WE HAVE THE SAME TRAFFIC LIGHT  
AT DIFFERENT TIMES.

IN ORLANDO, FOR EXAMPLE, YOU CAN  
ACTUALLY LOSE THE RIGHT TO HAVE  
A BUSINESS OR LOSE THE RIGHT TO  
HAVE A PERMIT.

NOT IN AVENTURA.

IN AVENTURA IT'S JUST A LIEN ON  
YOUR PROPERTY.

IT'S NOT JUST A LIEN, IT'S A  
LIEN ON YOUR PROPERTY.

SO WE HAVE THE DIFFERENT  
PENALTIES FROM JURISDICTION TO  
JURISDICTION.

THAT'S PRECISELY WHAT THE  
LEGISLATURE INTERVENED HERE.

BEFORE THE 1973 MUNICIPAL HOME  
POWERS ACT, THIS WAS ACTUALLY A  
LAW ENACTED IN 1971.

AND SO THE LEGISLATURE WAS CLEAR  
THEN, AND THEY'VE BEEN CLEAR FOR  
THE LAST 42 YEARS UP THROUGH  
2010 IN RESPONSE TO THE  
LITIGATION THE 2010 STATE  
INTERVENTION THERE.

AND I KNOW THAT JURISDICTIONS  
DISAGREE WITH THE PURPOSE AND  
WHY THAT STATUTE WAS ENACTED.

BUT --

>> YOU'RE DONE WITH YOUR TEN  
MINUTES.

>> OH.

THANK YOU, YOUR HONORS.

I WILL --

>> MAY IT PLEASE THE COURT,  
COUNSEL.

IF I MAY, I'D LIKE TO START WITH, JUSTICE PARIENTE, THE ISSUE YOU RAISED REGARDING THE PREEMPTION.

AND LET ME START OFF BY SAYING THAT THIS IS A CASE OF EXPRESS PREEMPTION.

I DON'T THINK THERE'S ANY QUESTION ABOUT THAT.

AND WE FIND THIS IN GOVERNING BODIES OF AUTHORITY ON THIS ISSUE.

THE FIRST ONE I'D LIKE TO DISCUSS IS GOING TO BE 316.002 AND THEN 316.007 AND, FINALLY, IS GOING TO BE THE WELL-REASONED OPINION AND EVEN THE WELL-REASONED DISSENT BY JUSTICE PERRY IN THE WELLS FARGO CASE. I'D LIKE TO ADDRESS THAT FIRST WITH YOUR HONOR, JUSTICE PARIENTE, BECAUSE THERE'S SOME INSTRUCTIVE GOVERNING CASE LAW THAT ADDRESSES THE ISSUE ABOUT WHETHER THE MUNICIPALITY'S ORDNANCE IS GOING TO BE SUPERIOR TO THE STATE LAW.

AND THE COURT RECOGNIZED, YOUR HONORS, WE HAVE RECOGNIZED THAT WHEN THE CONCURRENT STATE AND MUNICIPAL REGULATION IS PERMITTED BECAUSE THE STATE HAS NOT PREEMPTIVELY OCCUPIED A REGULATORY FIELD, THE MUNICIPALITY'S CONCURRENT LEGISLATION MUST NOT CONFLICT WITH STATE LAW.

AND YOUR HONOR CITED THE THOMAS CASE.

YOUR HONOR'S ACTUALLY TOOK IT A STEP FURTHER STATING:

ACCORDINGLY, MUST NOT CONFLICT WITH ANY CONTROLLING PROVISION OF THE STATUTE.

AND I THINK THAT'S SO RELEVANT TO THIS ISSUE, JUDGE, BECAUSE IF WE LOOK AT THE LEGISLATIVE INTENT BEHIND THE ENACTMENT OF 316, IT WAS BECAUSE WE HAD THIS INCONSISTENCY IN THE APPLICATION



ENFORCEMENT AND PENALIZATION OF THE TRAFFIC LAWS THROUGHOUT THE STATE.

>> YOU SAID YOU'D START WITH SECTION 316.002.

AND IT SAYS THAT THEY, THAT SECTION 316.008 ENUMERATES, "THE AREAS WITHIN WHICH MUNICIPALITIES MAY CONTROL CERTAIN TRAFFIC MOVEMENT IN THEIR RESPECTIVE JURISDICTIONS."

"THIS SECTION SHALL BE SUPPLEMENTAL TO THE OTHER LAWS OR ORDINANCES OF THIS CHAPTER AND NOT IN CONFLICT THEREWITH."

AND THEN THEY GO TO THE NEXT 007, AND THEN YOU HAVE 008.

NOW, I, YOU KNOW, THE THIRD DISTRICT CONSTRUES THAT AS GIVING MUNICIPALITIES THE AUTHORITY TO DO IT, WHEREAS THE FIFTH DISTRICT REACHES A DIFFERENT DECISION.

BUT IF IT'S -- YOU SAY THIS IS CLEAR THAT THIS IS EXPRESS PREEMPTION, AND I'M HAVING A HARD TIME UNDERSTANDING --

[INAUDIBLE]

JUST WAS CITED.

THERE IS EXPRESS PREEMPTION FOR RUNNING A RED LIGHT, WHICH NOBODY THINKS IS A GOOD THING TO DO --

>> SURE.

>> -- THAT THESE ARE SUPPLEMENTAL.

AGAIN, PUNISHING -- NOT PUNISHING SOMEONE, NOT CRIMINALIZING IT, BUT YOU CAN'T RUN A RED LIGHT.

YOU'RE GOING TO, SOMETHING.

YOU'RE GOING TO GET A FINE OR A PENALTY IF YOU DO IT.

AND IF YOU DO IT WITH A POLICE OFFICER, YOU'LL GET -- UNDER THE STATE STATUTE -- POINTS ADDED TO YOUR LICENSE.

>> I THINK THERE'S TWO ELEMENTS TO THAT, YOUR HONOR.

NUMBER ONE, UNFORTUNATELY, YOU

LEFT OUT THE VERY NEXT SENTENCE  
IN 002 WHICH READS: "IT IS  
UNLAWFUL FOR ANY LOCAL AUTHORITY  
TO PASS OR ATTEMPT TO ENFORCE  
ANY ORDINANCE IN CONFLICT WITH  
THE" --

>> I DIDN'T, I REALIZE THAT'S  
THE NEXT SENTENCE.

AND, OF COURSE, THAT'S TRUE THAT  
CONFLICT PREEMPTION, BUT I'M  
ASKING YOU, YOU SAID THIS IS AN  
EXAMPLE OF EXPRESS PREEMPTION.

>> SURE.

BECAUSE THE VERY INITIAL WORDING  
UNDER 002 IS, "IT IS THE  
LEGISLATIVE INTENT IN THE  
ADOPTION OF THIS CHAPTER TO MAKE  
UNIFORM TRAFFIC LAWS TO APPLY  
THROUGHOUT THE STATE AND ITS  
SEVERAL COUNTIES AND ALL  
MUNICIPALITIES."

AND BECAUSE SECTION 316.074 AND  
075 GOVERN RED LIGHT  
INFRACTIONS, THAT'S AN AREA  
PREEMPTED NOW TO THE STATE.

>> HOW, YOU SEE, I GUESS -- AND  
LOOKING BACK AT THE LAW AND  
LOOKING AT CITY OF HOLLYWOOD V.  
MULLIGAN WHERE WE'VE RECOGNIZED  
THAT YOU HAVE THE SAME CONDUCT  
AND EVEN WHERE IT SAID "SHALL"  
THAT THERE CAN BE OTHER LAWS,  
THE CASE OF THE CITY OF  
SARASOTA.

WHAT I'M WONDERING IS IF WE'RE  
BY GOING -- IF WE DON'T FIND  
EXPRESS, BUT THIS IS IMPLIED  
PREEMPTION, HOW THAT IS  
CONSISTENT WITH THE HOME RULE  
AUTHORITY UNDER 166 WHICH  
REQUIRES THERE -- ALLOWS  
MUNICIPALITIES TO LEGISLATE  
UNLESS EXPRESSLY PREEMPTED?

>> YES, YOUR HONOR.

AND, AGAIN, WE HAVE THE THREE  
DIFFERENT LEVELS, THE EXPRESS,  
THE IMPLIED AND THEN THE  
CONFLICT.

NOW, I THINK THERE IS EXPRESS.  
BUT MOVING ON TO IMPLIED, THE

CASE LAW -- AND YOUR HONOR CITED THE SARASOTA ALLIANCE CASE -- ESTABLISHES THAT IF THE STATUTE IS SO PERVASIVE AS TO OCCUPY THE ENTIRE FIELD.

THAT'S WHY I THINK --

>> WHAT ELSE DOES IT SAY? AND AGAINST WHAT?

>> PUBLIC POLICY AS WELL.

>> SO HOW IS THIS, HOW IS IT THAT SUPPLEMENTARY ENFORCEMENT OF THOSE THAT WOULD RUN RED LIGHTS IN MUNICIPALITIES, HOW IS THAT AGAINST PUBLIC POLICY IN THE STATE OF FLORIDA?

>> BECAUSE THE ENTIRE CONCEPT BEHIND THE UNIFORM TRAFFIC CODE IS THE UNIFORMITY THROUGHOUT THE STATE SO THAT IF A DRIVER IS TRAVELING FROM TALLAHASSEE TO MONROE COUNTY, THE LAWS WILL BE THE SAME, BUT THE APPLICATION WILL BE THE SAME --

>> WELL, YOU KNOW YOU CAN'T RUN A RED LIGHT IN THE STATE OF FLORIDA.

>> THAT'S WHEN WE GET TO THE CONFLICT ISSUE, YOUR HONOR. EVEN ASSUMING THAT THE MUNICIPALITIES HAD THE AUTHORITY TO ENACT THEIR ORDINANCE, IT CAN'T CONFLICT WITH THE STATE LAW.

AND THE WAYS THAT IT DID WAS, NUMBER ONE, IT TURNED THIS INTO A VICARIOUS OFFENSE.

ANYWHERE ELSE IN THE REST OF THE STATE IF SOMEBODY BLOWS THROUGH A RED LIGHT, THE DRIVER IS RESPONSIBLE.

THE ORDINANCE FROM THE DEFENDANTS HAS ESTABLISHED IT'S NOW GOING TO BE THE OWNER.

SECONDLY, IT IS A CRIMINAL VIOLATION, AND IN THE ORDINANCES, THEY HAVE SOME QUASI-DUE PROCESS PROTECTION AS OPPOSED TO THE STATUTE WHICH REQUIRES PROOF BEYOND TO THE EXCLUSION OF A REASONABLE DOUBT.

NUMBER THREE, AS JUSTICE  
CANADY --

>> THE MUNICIPAL ORDINANCE IS A  
CRIMINAL VIOLATION?

>> IT DOESN'T HAVE THE SAME  
STANDARD OF PROOF OF THE  
REASONABLE DOUBT STANDARD.

>> NO, BUT I THOUGHT THIS WAS A  
CIVIL PENALTY.

>> WELL, NO, IT'S A CRIMINAL  
PENALTY UNDER THE STATUTE.  
THEY'RE TRYING TO TURN IT INTO A  
CIVIL ORDINANCE VIOLATION  
WHICH --

>> YOU THINK THAT, THE FACT THAT  
THE FLIP OF THOMAS, THE FACT  
THAT THEY'RE ONLY MAKING IT A  
CIVIL VIOLATION IS SOMEHOW THEY  
CAN'T HAVE POLICE OFFICERS  
EVERYWHERE, I'M SURE --

>> SURE.

>> -- IF WE COULD HAVE THEM  
EVERYWHERE, WE COULD GET ALL THE  
RED LIGHT VIOLATORS.

SO THE FACT THAT THEY'RE MAKING  
SOMETHING LESS OF A VIOLATION IS  
A CONFLICT?

>> THE PROBLEM IS THEIR  
PENALTIES ARE DRACONIAN COMPARED  
TO THE STATUTORY PENALTIES.  
UNDER THE --

>> IS THE PROBLEM HERE, IS IT  
THEY CAN HAVE THE CAMERAS, BUT  
THEY CAN'T DO THE PUNISHMENT?  
I MEAN, BECAUSE THE STATUTE  
CLEARLY SAYS THAT THE  
MUNICIPALITIES ARE NOT REQUIRED  
TO REGULATE THE MOVEMENT.  
NOT NECESSARILY THE MONITORING  
THAT CAN REDIRECT THINGS,  
TRAFFIC AND ETC., ETC.

THAT'S WHAT THESE 008 SEEM TO --  
BUT IF THEY JUST TOOK THE  
PICTURE AND COULD IDENTIFY THE  
PERSON DRIVING AND LATER GIVE  
THEM A, PUNISH THEM UNDER THE  
UNIFORM CODE, WOULD THAT BE  
OKAY?

>> I THINK THAT'S A GOOD POINT,  
JUDGE.

AND I WOULD TEND TO AGREE THAT THEY HAVE THE RIGHT TO USE THE CAMERAS, BUT THEY HAVE TO COMPLY WITH THE REST OF THE STATUTE.

THE ENFORCEMENT AND THE PENALIZATION MUST BE IN COMPLIANCE WITH THE REST OF 316. THERE MUST BE THE REASONABLE -- >> SO THAT WOULD TAKE CARE OF THE SAFETY CONCERN, WOULDN'T IT NOT?

>> I WOULD IMAGINE SO. AND THIS WAS ADDRESSED BY, YOU KNOW, REPRESENTATIVE ARMEY IN 2002.

IF THESE WERE LEGITIMATE SAFETY CONCERNS, ALL THEY HAVE TO DO IS MAKE THE YELLOW LIGHTS LONGER, AND WE WOULDN'T EVEN BE HERE. AND, JUSTICE CANADY, YOU ADDRESSED THIS AS WELL. THE ISSUE IS THEY'RE NOT FOLLOWING THE REST OF CHAPTER 316.

THERE IS NO REASONABLE DOUBT STANDARD.

THE FINE SCHEDULE IS DRACONIAN. UNDER THE ORDINANCE IN ORLANDO, THEY CAN TAKE AWAY YOUR OCCUPATIONAL LICENSE, YOUR BUILDING PERMITS.

THAT'S NOT CONTEMPLATED BY THE STATUTE, AND IT NEVER WAS.

SO THE PENALTIES, GOING BACK TO YOUR HONOR PARIENTE, ARE SO MUCH MORE SEVERE UNDER THEIR ORDINANCE THAT IT TAKES IT OUT OF THE AMBIT THAT THIS IS AN EXCEPTION IN 008.

NOW THEY'VE COMPLETELY MODIFIED THE ENTIRE STRUCTURE WHICH GOES BACK TO THE INITIAL PREEMPTION ARGUMENT.

THE INTENT IS THE UNIFORMITY THROUGHOUT THE STATE.

AND THEY'VE DONE A COMPLETE DISSERVICE AND INJUSTICE TO THE INTENT OF THE LEGISLATURE BY CHANGING THE REGULATORY SCHEME, CHANGING THE MANNER IN WHICH

THESE OFFENSES ARE OBSERVED.  
THEY DON'T HAVE AN ARTICLE V  
JUDGE ADDRESSING THESE PENALTIES  
WHICH IS REQUIRED UNDER THE  
CONSTITUTION OF THE STATE OF  
FLORIDA.

THEY DO NOT HAVE THE REASONABLE  
DOUBT STANDARD.

THEY ARE SENT A PENALTY THAT IS  
FAR GREATER.

IN AVENTURA, FOR EXAMPLE, THE  
FINE GETS UP TO \$500, AND IN  
ORLANDO IT GOES UP TO \$250 FOR A  
THIRD OFFENSE AS OPPOSED TO THE  
\$125 UNDER THE STATUTE.

AND SO EVEN IF THEY FIND -- AND  
YOUR HONORS ARE ENTITLED TO  
FIND -- THAT THE SUBSECTION OF  
008 PERMITS THEM TO UTILIZE THE  
CAMERAS, IT STILL UNDER 007 MUST  
BE IN COMPLIANCE WITH THE  
REMAINDER OF THE STATUTE.

AND AS 007 SAYS, "NO LOCAL  
AUTHORITY SHALL ENACT ANY  
ORDNANCE ON A MATTER COVERED BY  
THIS CHAPTER UNLESS EXPRESSLY  
AUTHORIZED TO DO SO," AND IT  
CANNOT BE IN CONFLICT.

AND THAT IS THE ISSUE RAISING  
THE THIRD ELEMENT WHICH IS THE  
CONFLICT JURISDICTION.

SO WHEN WE TAKE THIS IN ITS  
COLLECTIVE, THE GENERAL LAW AND  
THE HOME RULE POWER WILL ALWAYS  
BE SUBSERVIENT AS YOUR HONORS  
NOTED IN THE WELLS FARGO CASE.

IT IS IN VIOLATION EXPRESSLY  
BASED UPON 316.002 AND 007.

IT IS IMPLIEDLY UNDER THE  
SARASOTA ALLIANCE CASE  
PREEMPTED, AND UNDER THE  
CONFLICT JURISDICTION AS WAS  
NOTED IN THE FIFTH DCA'S  
OPINION.

THERE ARE SEVEN DIFFERENT  
CATEGORIES BY WHICH THEY ARE  
VIOLATED IN CONFLICT THE  
DIFFERENT JURISDICTIONS THAT  
WERE ESTABLISHED IN THE STATUTE.  
SO WE FIND THAT THERE IS

NO JUSTIFIABLE BASIS FOR THIS, EVEN IF THE CAMERAS ARE DEEMED TO BE VALID UNDER THE SUBSECTION.

THE DEFENSE HAS NOT COME FORWARD FOR THE JUSTIFICATION FOR THE MANNER OF ENFORCEMENT IN DIRECT CONTRAVENTION BEHIND THE ENTIRE INTENT THAT WAS ENACTED IN 1972.

>> THANK YOU.

>> THANK YOU, YOUR HONOR

>>> GOOD MORNING.

MAY IT PLEASE THE COURT. EDWARD GUEDES ON BEHALF OF THE CITY OF AVENTURA.

WE HAD, OF COURSE, PLANNED ON A CAREFULLY ORCHESTRATED PRESENTATION WHERE I WOULD EXPRESS PREEMPTION, AND MY COLLEAGUE IMPLIED THAT THE BEST LAID PLANS OF MICE AND MEN OFTEN GO ASTRAY, AS PARTICULARLY GIVEN JUSTICE CANADY'S QUESTION DURING MY COLLEAGUE'S PRESENTATION.

I ASSUME WE'RE GOING TO COVER FARTHER AFIELD THAN OUR PLAN.

>> YOUR CHOICE.

>> YEAH, I WILL START, CERTAINLY, WITH EXPRESS PREEMPTION AND, OF COURSE, ANSWER WHATEVER QUESTIONS DIRECTED THE COURT.

>> THE ONE THAT'S TROUBLING ME IS THE ELECTION CONTEXT THAT WE DEALT WITH IN SARASOTA, AND I DISSENTED IN THE CASE, BUT IT WAS CERTAINLY NOT AN EXPRESS PREEMPTION, BUT THE MAJORITY OF THIS COURT HELD IN THE ELECTION PROCESS, YOU COULDN'T HAVE STEPS TO FURTHER VALIDATE AN ELECTION OR AN ELECTION PROCESS BECAUSE OF THE OVERWHELMING STATE INTEREST AND THE LEGISLATION IN THAT AREA. YOU KNOW, I'M CONCERNED --

HOW DOES ONE GET AROUND THAT TYPE OF THING?

BECAUSE THAT WAS AN AREA THAT SEEMED TO ME THAT THIS WAS SUPPLEMENTAL TO, WAS ENHANCING THE STATE STATUTES, BUT THIS IS -- I MEAN, REALLY DIRECTLY COLLIDES HEAD ON WITH SO MANY PROVISIONS OF THE OTHER STATE STATUTES DEALING WITH TRAFFIC CONTROL.

>> I RECALL CORRECTLY, AND I BELIEVE I'M RECALLING BROWNING, THE SARASOTA ELECTION CASE, DIFFERENTLY. IF I RECALL, THE COURT CONCLUDED THERE WAS NO EXPRESS PREEMPTION OR IMPLIED PREEMPTION.

>> THEY SAID WHAT THEY SAID, WHY COULD NOT SARASOTA COUNTY?

>> BECAUSE THERE WAS A CONFLICT.

>> WELL, OKAY.

>> IF YOU LOOK AT THE COURT'S JURISDICTION, I THINK IT'S SORT OF A TIERED, DECLINING TIER.

IN OTHER WORDS†--

>>†YOU CALL IT WHAT YOU WILL. I MEAN CONFLICT IS ANOTHER PERSON'S IMPLIED.

THERE WAS NO PROVISION THAT PROHIBITED THAT TO OCCUR AND THERE WAS NO EXPRESS CONFLICT WITH ANY OF THOSE, IT WAS AN ADDITIONAL STEP.

>> THERE WAS A DIRECT CONFLICT, THE BASIS OF THE COURT'S RULING IN BROWNING, IT INVALIDATED THE LOCAL SCHEME ON A CONFLICT BASIS BECAUSE THE STATE STATUTE SET FORTH A SERIES OF DEADLINES IN ORDER FOR ELECTION RESULTS TO BE FINALIZED AND VALIDATED.

THE STATE LAW SET FORTH A SERIES OF DEADLINES.



THE COUNTY'S ATTEMPT TO  
REGULATE ELECTION LAW CHANGED  
THE DEADLINES.

>> WE CAN GET INTO THE  
HISTORY OF IT.

IT REALLY DIDN'T.

IT WAS TO TEST THE EQUIPMENT.

THAT WAS THE PURPOSE ON IT.

BUT ANYWAY, THAT'S YOUR BASIS  
FOR DISTINGUISHING IT.

OKAY.

I ACCEPT THAT'S YOUR  
ARGUMENT.

>> THE REASONING OF THE COURT  
IS THERE WAS NO WAY TO  
RECONCILE THE TWO, AND I  
THINK IF WE GO BACK IN TIME A  
BIT TO MULLIGAN, WHICH FIRST  
I THINK IT MOST EXPANSIVELY  
DISCUSSED THIS QUESTION OF  
WHERE DO YOU HAVE  
IRRECONCILABLE CONFLICT?  
IN MULLIGAN.

IN ORDER FOR YOU TO HAVE THE  
CONFLICT TYPE OF PREEMPTION,  
I WANT TO GET AWAY WITH USING  
PREEMPTION AND CONFLICT.

YOU HAVE CONFLICT WHEN  
COMPLIANCE OF ONE SCHEME  
RESULTS IN THE VIOLATION OF  
THE OTHER.

AND IN THAT CASE, THIS COURT  
CITED THREE AND ONLY THREE  
EXAMPLES OF WHEN THAT  
CONFLICT ARISES, AND THERE  
ARE THREE EXAMPLES BECAUSE  
THEY ARE PRETTY MUCH  
UNIVERSAL.

IF YOU LOOK AT YOUR CASE LAW  
THROUGH THE PRISM OF THE  
THREE EXAMPLES, YOU COVER  
EVERYTHING.

ONE IS THAT A LOCAL  
GOVERNMENT TRIES TO  
CRIMINALIZE SOMETHING THAT  
THE STATE HAS SAID IS LEGAL.  
EXAMPLE NUMBER ONE.

EXAMPLE NUMBER TWO, THE LOCAL  
GOVERNMENT TRIES TO  
DECRIMINALIZE SOMETHING THAT

THE STATE HAS SAID IS  
ILLEGAL.  
CAN'T HAPPEN.  
THE THIRD ONE IS THE QUESTION  
OF A GREATER PENALTY BEING  
IMPOSED FOR THE SAME  
MISCONDUCT.  
THOSE WERE THE THREE  
CATEGORIES.  
THAT WAS ARTICULATED IN  
MULLIGAN.  
IF YOU MOVE FORWARD TO  
BROWNING AND LOOK HOW  
BROWNING WAS DECIDED, IT WAS  
THE NOTION THAT YOU CAN'T  
COMPLY WITH ONE, THE TIMING  
SCHEDULE OF THE LOCAL  
GOVERNMENT WITHOUT VIOLATING  
THE OTHER, THE STATE SCHEME  
FOR DEADLINES WHEN ELECTIONS  
HAD TO BE VALIDATED.  
SO BROWNING FITS INTO THE  
MULLIGAN MODEL VERY NEATLY.  
BUT IT WASN'T.  
IT WASN'T FROM THE  
PERSPECTIVE OF A PREEMPTION  
ANALYSIS, AND THAT'S TURNING  
TO WHERE I THINK JUSTICE  
PARIENTE WAS FOCUSING.  
IF YOU LOOK AT THE PREEMPTION  
ISSUE FIRST, IT'S FAIRLY  
CLEAR THAT THE LEGISLATURE,  
WHEN THEY CARVED OUT 23  
SPECIFIC AREAS FOR LOCAL  
GOVERNMENTS, FOR  
MUNICIPALITIES TO ACT,  
PRESUMABLY BECAUSE LOCAL  
GOVERNMENTS ARE IN A BETTER  
POSITION TO DETERMINE THE  
NEEDS OF THEIR RESIDENTS AS  
TO HOW TRAFFIC IS HAPPENING  
IN THEIR CITIES, SO THEY  
CREATE THE 23 EXEMPTIONS.  
SO THE NOTION THAT SOMEHOW  
THE UNIFORM ACT SAYS THAT YOU  
CAN'T HAVE THE CAMERAS, AND  
YOU CAN'T REGULATE, MONITOR  
OR RESTRICT TRAFFIC THROUGH  
THE USE OF CAMERAS, SEEMS --  
IT'S NOT PLAUSIBLE.

FROM AN EXPRESS PREEMPTION  
PERSPECTIVE.

>> EXPRESS PREEMPTION -- LET  
ME GO BACK TO THE PROVISION I  
BROUGHT UP BEFORE WHICH IS  
EXPRESSLY, EXPRESSED  
PREEMPTION PROVISION.

>> CORRECT.

>> GIVE ME YOUR ARGUMENT WHY  
THAT DOESN'T CONTROL HERE,  
PROVISION IN 1318.121.

>> TWO REASONS, JUSTICE  
CANADY.

THE FIRST AND BROADEST ONE IS  
CHAPTER 318 CONCERNS ITSELF  
WITH THE MECHANISMS FOR  
ENFORCEMENT OF CITATIONS  
ISSUED UNDER CHAPTER 316.  
SO IF YOU'RE NOT ISSUING A  
CITATION UNDER CHAPTER 316,  
YOU DON'T FALL UNDER CHAPTER  
318.

SO THE PREMISES IS IF YOU'VE  
GOT A PARALLEL SYSTEM THAT  
TREATS THE VIOLATION CAUGHT  
BY A CAMERA, NOT BY A POLICE  
OFFICER, NOT WITH THE  
ISSUANCE OF UNIFORMED TRAFFIC  
CITATION.

YOU HAVE A PARALLEL VIOLATION  
THAT'S OCCURRED HERE THAT  
DOESN'T CONFLICT, THEN YOU'RE  
NOT UNDER CHAPTER 316.

THAT'S ARGUMENT ONE.

>> I HEAR THAT, SEEMS THAT'S  
ADDING LANGUAGE TO WHAT THEY  
ACTUALLY SAID, BECAUSE THEY  
BASICALLY SAY YOU CAN'T --  
THAT THE PREEMPTED ADDITIONAL  
FINES, FEES, SURCHARGES AND  
COSTS THAT ARE ADDED TO THE  
CIVIL TRAFFIC PENALTIES  
ASSESSED IN THE CHAPTER.

OBVIOUSLY, YOU'VE GOT TO HAVE  
SOME UNDERSTANDING ABOUT THE  
UNIVERSE TO WHICH THAT  
APPLIES, BUT THE THINGS THAT  
ARE COVERED BY THE TWO  
CHAPTERS, THEY'RE ALL 316 AND  
318, THEY OPERATE TOGETHER.

>> UNQUESTIONABLY.  
>> I DON'T UNDERSTAND HOW THIS IS NOT ABOUT AS CLEAR AS IT COULD BE A STATEMENT, THAT WE AREN'T -- THE STATE IS NOT ALLOWING THE IMPOSITION OF ADDITIONAL FEES, FINES, SURCHARGES AND COSTS. THAT'S BUTTRESSED IN 316 WHEN YOU GO BACK TO THE SECTION YOU RELY ON.  
IF I CAN FIND IT HERE.  
AND ON THE POWERS OF LOCAL AUTHORITIES, IN 316.008 WHERE THERE ARE SPECIFIC PROVISIONS IN THERE THAT DO ALLOW A LOCAL GOVERNMENT TO IMPOSE ADDITIONAL FINES.  
FOR INSTANCE, I THINK ONE OF THEM HAS TO DO WITH ADDITIONAL FINES FOR VIOLATION OF A HANDICAPPED PARKING RESTRICTION, AND CERTAIN OTHER RESTRICTIONS RELATED TO TRAFFIC.  
BUT THEY'RE SPECIFICALLY IDENTIFIED, OKAY, WE WILL ALLOW AN ADDITIONAL FINE, A HIGHER FINE, AND NOT SPECIFY. THERE IS NO SUCH SPECIFICATION IN W.  
IT DOESN'T SAY ANYTHING ABOUT FINES OR FEES OR SURCHARGES, DOES IT?  
>> THAT WAS A LONG QUESTION, JUSTICE CANADY.  
>> ALWAYS TRY TO END WITH A QUESTION.  
[ LAUGHTER ]  
>> IT'S GOOD  
CROSS-EXAMINATION TECHNIQUE.  
>> I LEARNED THAT IN ANOTHER BRANCH OF GOVERNMENT.  
[ LAUGHTER ]  
>> I'M GOING TO TRY TO PULL YOUR QUESTION APART, IF I MIGHT.  
LET ME START BY AGREEING WITH YOU, I CERTAINLY THINK THAT 318 AND 316 GO HAND IN HAND.

OUR CONTENTION IS WE'RE NOT UNDER 316.

>> WHAT YOU'RE SAYING YOU CAN CREATE A PARALLEL MOTOR VEHICLE SYSTEM, THAT'S WHAT YOU'RE SAYING.

>> YES.

>> TOTALLY SEPARATE AND APART FROM A 316 SCHEME.

>> THE LEGISLATURE CHOSE TWO YEARS AFTER ENACTING THE MUNICIPAL HOME RULE POWERS ACT, THE LEGISLATURE CHOSE TO CREATE A UNIFORM TRAFFIC SYSTEM THAT CARVED OUT 23 AREAS FOR MUNICIPALITIES TO ACT.

I IMAGINE FRESHLY AWARE OF THE FACT THEY HAD JUST GIVEN THE BROADEST POSSIBLE POWERS TO MUNICIPALITIES, SO THEY CREATE THIS SYSTEM AND IT EVEN STARTS WHEN YOU LOOK AT SUBDIVISION 008, 316.008. IT SAYS THE PROVISIONS OF THIS CHAPTER, 316, ALL OF THEM, INCLUDING THE ONES THEY RELY ON, SHALL NOT BE DEEMED TO PREVENT LOCAL AUTHORITIES FROM EXERCISING AUTHORITIES IN THESE AREAS.

THAT IS WHY I SUGGEST THAT THE LEGISLATURE WAS COMMUNICATING THE POSSIBILITY OF SOMETHING THAT WAS SUPPLEMENTAL.

SOMETHING THAT WAS ANCILLARY.

>> WITHOUT SPECIFICALLY STATING THEY WOULD BE -- THEY ANTICIPATED THAT MUNICIPALITIES COULD EVISCERATE THE STATE STATUTE AND CREATE THEIR OWN SEPARATE PARALLEL MOTOR VEHICLE TRAFFIC, IF YOU WILL, SYSTEM.

>> THEY COULD NOT EVISCERATE THE SYSTEM, YOUR HONOR.

>> THE PARALLEL SYSTEM, DOES IT?

>> IT DOESN'T.

>> LET ME REMOVE THE WORD,  
THEN.  
MY VIEW IS IT DOES.  
YOU COULD SET UP A PARALLEL  
SYSTEM THAT DOES NOT MATCH  
STATE SYSTEM.  
>> MATCHING IS NOT CONFLICT.  
THE FACT THAT THINGS DON'T  
MATCH DOES NOT MEAN THEY ARE  
NOT CONFLICT.  
THIS COURT'S JURISPRUDENCE --  
THERE'S NO QUESTION ABOUT  
THIS -- IS THAT CONFLICT  
ARISES WHEN COMPLIANCE WITH  
ONE VIOLATES THE OTHER.  
THAT DOES NOT ARISE FROM A  
NONMATCHING PARALLEL SYSTEM.  
>> LET ME ASK YOU THIS,  
BECAUSE I'M --  
>> DYING TO GET BACK TO  
JUSTICE CANADY'S SECOND  
QUESTION.  
>> I WANT TO MAKE SURE YOU  
ADDRESS WHETHER THE PENALTIES  
ARE GREATER, AND THEREFORE IN  
CONFLICT WITH THAT.  
PLEASE ANSWER IN CONJUNCTION  
WITH WHAT HE'S ASKING.  
IT'S NOT JUST SUPPLEMENTAL  
BUT YOU SAID ONE OF THE  
REASONS THERE CAN'T BE  
GREATER PENALTIES FOR THE  
SAME CONDUCT.  
>> THAT'S A VERY LOGICAL AND  
PERFECT SEGUE, JUSTICE  
PARIENTE, THANK YOU.  
THE SECOND ARGUMENT THAT I  
WAS GOING TO PRESENT TO YOU,  
YOUR HONOR, ISN'T SO MUCH A  
CONTRADICTING ARGUMENT, BUT A  
FALLBACK POSITION, WHICH IS  
EVEN IF YOU ACCEPT, EVEN IF  
YOU ACCEPT THE NOTION THAT  
318.121 IS AN EXPRESS  
PREEMPTION, IT IS ONLY AS TO  
THE FEES, IT IS ONLY AS TO  
THE PENALTY IMPOSED.  
THEREFORE, IF THIS COURT WERE  
TO COMPLETELY DISAGREE WITH  
US THAT WE'RE FREE AND CLEAR

THAT -- CREATE THIS PARALLEL SYSTEM THAT WE'VE CREATED, THE PREEMPTION, AND THE CONFLICT ARISING FROM A GREATER PENALTY OR DIFFERENT PENALTY ONLY INVALIDATES THE PENALTY.

>> WHAT IS LEFT WITHOUT THE PENALTY?

>> ENFORCEMENT.

YOU STILL CAN CITE THE PERSON, YOU CAN BRING THEM IN FOR A HEARING, THE PENALTY CAN BE MADE CONSISTENT WITH THE STATE STATUTE.

IN OTHER WORDS, LET'S SAY IT'S ONLY \$125.

>> THIS IS -- THAT WOULD BE NOT CONSISTENT WITH MY UNDERSTANDING OF THE PREEMPTION BECAUSE I THINK IT'S TALKING ABOUT THEY CAN'T BE ADDED TO THE CIVIL TRAFFIC PENALTIES ASSESSED IN THIS CHAPTER.

>> IN THIS CHAPTER.

>> SO YOU CAN'T HAVE A -- THIS WOULD BE THE WAY I TAKE IT ON ITS FACE, AND TELL ME WHY I'M WRONG.

YOU CAN'T HAVE AN ADDITIONAL FEE, FINE OR SURCHARGE OR COSTS THAT ARE IMPOSED, IN ADDITION TO ANY CIVIL TRAFFIC PENALTY ASSESSED IN THE CHAPTER.

SO IT'S NOT THE -- AMOUNT DOESN'T MATTER.

IF THEY'RE ASSESSED IN THIS CHAPTER, THEY HAVE TO BE ASSESSED CONSISTENTLY WITH THE PROCEDURES IN THE CHAPTER.

SO I DON'T SEE HOW YOU CAN HAVE THIS -- I DON'T SEE THAT IT MAKES A DIFFERENCE UNDER THIS PROVISION, WHAT THE AMOUNT OF THE FINE IS.

IF IT'S BEING DONE AS SOMETHING THAT'S ADDITIONAL

TO WHAT IS THE PROCESS THAT IS ALLOWED UNDER CHAPTER 318.

>> WELL, I'M NOT SURE, YOUR HONOR, THAT YOUR CONCERN WOULD ARISE.

LET'S ASSUME HYPOTHETICALLY THAT AVENTURA'S ORDINANCE PROVIDED FOR A FINE AND PENALTY THAT WAS IDENTICAL, IN ALL RESPECTS, TO THE PENALTIES IMPOSED UNDER CHAPTER 318.

>> IT'S NOT GOING TO BE IDENTICAL BECAUSE IT CAN'T BE IMPOSED IN THE SAME MANNER. IT'S A SEPARATE PROCESS. THEY CAN GO THROUGH THE PROCESS THAT IS ESTABLISHED FOR THESE.

>> I UNDERSTAND. THIS PREEMPTION SECTION DEALS WITH PENALTY NOT WITH THE MANNER OF IMPOSITION.

>> IT PROHIBITS ANY OF THEM. IT PROHIBITS ANY.

>> RIGHT.

AND I UNDERSTAND WHERE YOUR HONOR'S COMING FROM. IT GETS ME BACK TO FIRST -- RESPONSE TO THE FIRST QUESTION THAT 318 AND 316 WORK IN TANDEM, AND IF YOU'RE NOT UNDER 316, YOU'RE NOT UNDER 318.

>> JUST TO BE SURE, NONE OF THE CASES INVOLVE ANYBODY BOTH CITED UNDER 316 AND THEN ALSO GETS THE OWNER GETS SLAMMED UNDER THE ORDINANCE?

>> ABSOLUTELY NOT.

I CAN CERTAINLY SPEAK TO AVENTURA'S, I BELIEVE THIS IS TRUE OF ORLANDO'S.

>> THAT WOULD BE A PROBLEM.

>> HUGE PROBLEM.

OUR ORDINANCE IS SPECIFIC SAYING IT DOES NOT APPLY, IT DOES NOT APPLY IF YOU'VE BEEN OBSERVED BY A POLICE OFFICER RUNNING THE LIGHT.



AND I SEE I'M RUNNING OUT OF TIME.

LET ME WRAP UP BY ADDRESSING JUSTICE PARIENTE'S QUESTION, THE IMBALANCE AND PENALTIES CREATE A CONFLICT UNDER THE MULLIGAN STANDARDS?

MY RESPONSE IS I DO NOT BELIEVE IT DOES.

WHILE UNQUESTIONABLY, AVENTURA'S SYSTEM AS IT EXISTED AT THAT TIME, IMPOSED \$125 FOR FIRST OFFENSE, \$250 FOR SECOND, REPEAT OFFENDER, AND POSSIBLY GREATER FOR MORE THAN THAT.

IT ALSO DID NOT IMPOSE POINTS.

SO YOU'RE NOT REALLY COMPARING APPLES AND APPLES. IN OTHER WORDS, YES, THE FINE MAY BE GREATER, THE MONETARY FINE MAY BE GREATER BUT THE CONSEQUENCES OF IMPOSING POINTS TO INSURANCE, TO THE PRIVILEGE OF YOUR DRIVING, ALL OF THOSE THINGS THAT ARE IMPOSED BY THE STATE LAW AREN'T IN OURS.

HOW DO YOU COMPARE THE TWO? CAN YOU NECESSARILY SAY ONE IS GREATER THAN THE OTHER?

I SUGGEST IN LIGHT OF BROAD MUNICIPAL HOME RULE AUTHORITIES YOU SHOULD SIDE IN FAVOR OF THE CITY.

I THANK THE COURT FOR ITS TIME AND RESPECTFULLY REQUEST, SINCE I DO NOT GET ANOTHER CHANCE TO SPEAK, THAT YOU AFFIRM THE DCA'S DECISION.

>> THANK YOU FOR YOUR ARGUMENT.

>>> I'M DAVID KING AND I REPRESENT THE CITY OF ORLANDO.

AGAIN IN OUR GRAND PLAN, I WAS SUPPOSED TO TALK ABOUT IMPLIED PREEMPTION AND

CONFLICT, BUT IT SEEMS TO ME LIKE WHAT I NEED TO TRY TO DO HERE IS TO CUT THROUGH TO THE BASIC THRUST OF WHAT I SENSE IS THE CONCERN ABOUT WHAT WE'VE DONE HERE, IN ATTEMPT TO CONSIDER WITH YOU THE RATIONALE FOR THAT, AND WHY WE THINK THAT'S A RATIONALE THAT SUPPORTS THAT DECISION. IN THE FIRST PLACE, AS FAR AS EXPRESS AND IMPLIED PREEMPTION IS CONCERNED, THE QUESTION IS HAS THE LEGISLATURE OCCUPIED THE FIELD?

IF THEY'VE OCCUPIED THE FIELD, EITHER EXPRESSLY OR IMPLIEDLY, THERE'S NO PLACE FOR THE MUNICIPALITY TO OPERATE, IN THE FIELD. BUT YOUR JURISPRUDENCE, THE CASES -- AND WE'VE HAD A LOT OF CASE LAW ON PREEMPTION SINCE 2006 FOR SIGNIFICANT CASES FROM THIS COURT. YOUR CASE LAW HAS ESTABLISHED THAT WHEN THERE IS A SIGNIFICANT DELEGATION OF POWER TO THE LOCAL GOVERNMENT, THAT IS INIMICABLE THAT THE LEGISLATURE OCCUPIED THE FIELD.

>> DO YOU AGREE WITH CO-COUNSEL, HOW WE DESCRIBE IT, THAT THE LOCAL GOVERNMENTS HAVE THE POWER TO SET UP A PARALLEL TRAFFIC SYSTEM?

>> YES, SIR, I ACCEPT HIM AS MY CO-COUNSEL, EVEN THOUGH WE ARE ON DIFFERENT CASES, AND I AGREE THAT THE LOCAL GOVERNMENT HAS THE POWER TO DO THIS.

BUT THAT'S+--

>>+NOT THIS, TO SET UP WHAT HE DESCRIBED AS A PARALLEL TRAFFIC SYSTEM.

>> HERE'S WHY WE SAY THAT.  
THE REASON WE SAY THAT IS  
BECAUSE THERE HAS NOT BEEN  
EXPRESS OR IMPLIED PREEMPTION  
BECAUSE THERE IS A HUGE  
DELEGATION OF LOCAL POWER TO  
THE MUNICIPALITIES, IN  
316.008, 23 AREAS.  
NOW HOW DOES THAT GET US TO  
THE PARALLEL SYSTEM?  
THE FACT OF THE MATTER IS  
THAT THE LEGISLATURE HAS  
AUTHORIZED THIS.  
THEY AUTHORIZED IT BY TELLING  
US THAT THERE ARE AREAS THAT  
WE CAN CONTROL TRAFFIC  
MOVEMENT AND PARKING IN OUR  
JURISDICTIONS, AND THEN THEY  
SET OUT THOSE 23 AREAS.  
AND THEY SAY THAT AMONG  
THOSE, FOR EXAMPLE, A  
REGULATING, RESTRICTING AND  
MONITORING TRAFFIC BY  
SECURITY DEVICES.  
WHAT DOES THAT MEAN?  
BUT THEY DO NOT INCLUDE  
ANYTHING IN THERE ABOUT HOW  
WE GO ABOUT ENFORCING THEIR  
SILENT REGARDING ENFORCEMENT,  
WHICH WE SUBMIT GIVES US THE  
POWER TO REGULATE BECAUSE  
REGULATE AS THIS COURT HELD  
IN 1942 IN THE NICHOLS CASE,  
INCLUDES ENFORCEMENT.  
SO IN THAT RESPECT, WE  
CONCLUDED, THE CITY OF  
ORLANDO CONCLUDED AND  
OBVIOUSLY, OTHER CITIES IN  
THE SYSTEM CONCLUDED THAT  
WHEN THERE IS THIS GRANT OF  
POWER, AN ENCOURAGEMENT TO  
ACT IN THOSE AREAS IF WE SEE  
THE NEED TO DO IT AND WE SEE  
A SAFETY NEED THAT NEEDS TO  
MET, THEN UNDER THOSE  
CIRCUMSTANCES, THROUGH THE  
MUNICIPAL ORDINANCE, WE'RE  
NOT DETRACTING, NOT  
DENIGRATING FROM CHAPTER 316  
AND 318 IN ANY WAY.

IF YOU GO THROUGH ORLANDO IN 2009 AND 2010, YOU HAD TO HONOR THE RED LIGHT AND IF AN OFFICER GAVE YOU A TRAFFIC CITATION, YOU'D BE DEALT WITH EXACTLY AS SET OUT IN THE STATUTE.

THIS COURT HAS CLEARLY SAID THAT JUST BECAUSE YOU PUT SOMETHING IN THERE THAT SAYS THE STATUTE, THE LEGISLATURE SAYS THEY WANT IT TO BE UNIFORM, THAT'S NOT PREEMPTION, AND THIS COURT HAS DECIDED, PARTICULARLY IN PHANTOM OF BREVARD, YOU CALL THE FIREWORK STATUTE A UNIFORM STATUTE.

IF A COUNTY, IF THERE'S AN AREA WHERE THERE IS A SILENCE, THE COUNTY CAN ADD REQUIREMENTS THAT DON'T CONFLICT WITH THE ORDINANCE.

>> LET ME SEE IF YOU AGREE WITH CO-COUNSEL'S EXPLANATION OF THAT.

HELP ME UNDERSTAND WHY IT IS THAT THE FINES THAT ARE IMPOSED PURSUANT TO THESE ORDINANCES DON'T CONSTITUTE FINES THAT ARE ADDED TO THE CIVIL TRAFFIC PENALTIES IMPOSED IN CHAPTER 318 OF THE FLORIDA STATUTES.

>> RIGHT, BECAUSE THEY'RE NOT AWARDED UNDER 316 OR 318.

>> BUT THAT'S -- IT DOESN'T THEY IT'S PROHIBITING ADDITIONAL FEES, FINES, SURCHARGES AND COSTS UNDER CHAPTER 318 THAT ARE IMPOSED IN ADDITION TO THE PENALTIES ASSESSED IN THIS CHAPTER. IT'S A FLAT PROHIBITION ON ANY ADDITIONAL FINES, FEES OR SURCHARGES, ISN'T IT?

>> IT IS A FLAT PROHIBITION, WE WOULD SIMPLY SUBMIT THAT'S AS FAR AS A PENALTY FOR A VIOLATION OF CHAPTER 316.

WHAT WE'RE DEALING WITH HERE IS NOT A VIOLATION OF CHAPTER 316, AND I UNDERSTAND THE COURT'S CONCERN ABOUT THAT, AND WHAT I WOULD SUGGEST, PERHAPS IN RESPONSE TO THAT, IS THE SITUATION IN HOLLYWOOD V. MULLIGAN.

>> HELP ME UNDERSTAND WHAT THE PREEMPTION LANGUAGE IS ABOUT.

>> IT'S PREEMPTION LANGUAGE REGARDING THE PENALTY UNDER 316.

YOU CAN'T MAKE IT GREATER, AND NOBODY HAS DONE THAT. THE 316 TRAFFIC CITATIONS ARE PENALIZED OR WERE PENALIZED IN ORLANDO IN 2009 AND 2010 EXACTLY AS THEY WERE IN EVERY OTHER PART OF THE STATE, AND THE FACT THAT WHEN THEY AUTHORIZE US THE OPPORTUNITY TO REGULATE TRAFFIC BY SECURITY DEVICES AND ENFORCE THE PENALTY AND THEY DON'T ESTABLISH ANY ADMONITION AS TO HOW THAT WOULD BE DONE OR WHAT THE REGULATORY SCHEME WOULD BE UNDER THAT.

OUR POSITION IS THAT WE'RE ENTITLED TO ACT BECAUSE SILENCE IN THAT SITUATION IS NOT PROHIBITORY, IT'S PERMISSIVE, THAT LEADS ME BACK TO HOLLYWOOD V. MULLIGAN WHICH IS A VERY IMPORTANT SITUATION, BECAUSE THERE THEY WERE MAKING THE SAME ARGUMENT.

THEY WERE SAYING THAT, UNDER THE FELONY STATUTE ON FORFEITURE, YOU HAVE DUE PROCESS PROTECTIONS.

THERE ARE CERTAIN REQUIREMENTS THAT HAD TO BE FOLLOWED.

YET UNDER THE CITY OF HOLLYWOOD'S ORDINANCE, DEALING WITH MISDEMEANOR

FORFEITURES, THEY WEREN'T  
USING THE PROCEDURES.  
AND THE COURT SAID, THIS  
COURT FOUND THAT THAT'S  
DIFFERENT BECAUSE IT'S NOT A  
CONFLICT SIMPLY BECAUSE IT  
HADN'T BEEN ADDRESSED.  
IT WAS A DIFFERENT SITUATION.  
THE OTHER THING THAT IS SO  
IMPORTANT FOR ME TO MENTION  
ABOUT CONFLICT IS THE FACT  
THAT WHAT YOU HEARD FROM THEM  
IN THEIR BRIEFS AND YOU'LL  
HERE IN THEIR ARGUMENTS, OUR  
SYSTEM IS DIFFERENT.  
AND IT IS DIFFERENT.  
IT IS A PARALLEL SYSTEM, AND  
IF YOU DON'T BUY THE PARALLEL  
SYSTEM, THEN YOU DON'T BUY  
OUR CASE.  
THAT'S VERY CLEAR.  
I UNDERSTAND THAT.  
BUT JUST BECAUSE IT'S  
DIFFERENT DOESN'T MEAN IT'S  
CONFLICT.  
NOW, IN WELLS FARGO, PALM  
BAY, THERE WAS A REAL  
CONFLICT, AND THE COURT  
FOUND, YOU CAN'T CHANGE  
PRIORITY.  
THAT'S A CONFLICT ON LIENS.  
AND WITH ALL DUE RESPECT,  
JUSTICE LEWIS, IN BROWNING,  
ON THE ONE POINT, THE  
MAJORITY OF THE COURT FOUND A  
CONFLICT.  
BUT THE CONFLICT ANALYSIS IS  
ALWAYS WITHIN THE CONTEXT OF  
IS THE DIFFERENCE  
IRRECONCILABLE, CAN THE  
STATUTE AND THE ORDINANCE  
COEXIST?  
CAN THEY COEXIST?  
THAT'S THE FORMULATION THAT  
YOU'VE USED IN ALMOST ALL OF  
YOUR CASES.  
>> LET ME ASK YOU A QUESTION  
BACK TO THE PENALTY.  
I'M LOOKING AT THOMAS V.  
STATE, WHICH I THINK IS IN

ONE WAY, IT RECOGNIZES THAT THERE CAN BE ENFORCEMENT, IF IT WAS BICYCLES OR SOMETHING ALREADY UNDER 316.

BUT THEN THERE'S A STATEMENT THAT SAYS, THEY DISAGREED THAT YOU COULD CRIMINALIZE SOMETHING THAT WAS CIVIL. BUT THEY ALSO SAY WHEN A MUNICIPALITY MAY PROVIDE A PENALTY LESS SEVERE THAN THAT IMPOSED BY STATE STATUTE, ORDINANCE PENALTY MAY NOT EXCEED THE PENALTY IMPOSED BY THE STATE.

THEIR ARGUMENT IS AT LEAST TO THE MONETARY SIDE OF THINGS, THAT IF, UNDER CERTAIN CIRCUMSTANCES, THE PENALTIES EXCEED WHAT YOU WOULD HAVE UNDER THE UNIFORM -- IF YOU WERE TO GET A CITATION.

ALSO, I DON'T KNOW IF IT'S ORLANDO'S, IS THIS ONE YOU COULD LOSE A LICENSE?

SO THE QUESTION IS, IF WE FIND THERE ARE PENALTIES THAT ARE MORE SEVERE, ISN'T THAT A REASON TO INVALIDATE THE ORDINANCES?

>> YOUR HONOR, I WOULD SUGGEST THAT, IN THE FIRST PLACE, MR. TUDOWYCHENKO IS NOT A GOOD PERSON TO MAKE THE ARGUMENT.

HIS PENALTY WAS \$125, THE EXACT SAME PENALTY HE WOULD RECEIVE IF AN OFFICER HAD SEEN HIM RUN A RED LIGHT RATHER THAN A VIDEO CAMERA SAW HIM RUN A RED LIGHT.

>> HE'S NOT CONTESTING HE RAN THE RED LIGHT.

>> WELL, HE'S FILED THIS CONTEST.

>> THERE ARE SOME -- THE CHALLENGE DEALS WITH PREEMPTION.

>> THE CHALLENGE DEALS WITH PREEMPTION, EXACTLY CORRECT.

>> OKAY.

>> SO CONSEQUENTLY, IF THE COURT FOUND THAT YOU HAD CONCERN OVER OTHER ASPECTS THAT AREN'T RAISED BY MR. TUDOWYCHENKO, YOU HAVE THE ABILITY TO SEVER AWAY THOSE PARTS.

BUT IT GETS TO BE VERY COMPLICATED WHEN THERE'S A SUGGESTION THAT THE PENALTY IS GREATER.

>> THAT'S WHAT I'M ASKING YOU, IS THE PENALTY GREATER AND IS THAT A PROBLEM HERE? NOT FOR HIM, BUT WE'RE DEALING WITH THE FACIAL CHALLENGE.

>> RIGHT, THE PENALTY UNDER THE UNIFORM TRAFFIC CITATION, YOU HAVE POINTS AND THINGS LIKE THAT.

SORT OF AN APPLES AND ORANGES CONSIDERATION, NOBODY IN ORLANDO LOST THEIR BUSINESS LICENSE IN THE ENTIRE HISTORY OF THAT PROGRAM FROM 2009 TO 2010.

>> THAT'S NOT THE TEST, IS IT?

>> NO.

>> THE TEST IS.

AND WE GET DOWN TO SEVERANCE, I APPRECIATE THE SEVERANCE ARGUMENT.

WE CAN'T REWRITE IT TO SEVER OUT THIS S BEYOND, THIS ONE'S NOT.

THIS ONE'S BEYOND, THIS ONE'S NOT.

I HAVE NEVER SEEN AN OPINION OUT OF THE FLORIDA COURT THAT ONCE WE SEVER IT, IT SEEMS LIKE TO ME, WHAT IS IT, THEN? WE CAN HAVE CAMERAS, BUT THAT'S IT.

ISN'T IT?

>> I WOULD AGREE WITH THE COURT.

I THINK YOU COULD SEVER IT,



BUT MY FALLBACK POSITION ON THAT -- ACCEPTING YOUR POSITION, MY FALLBACK POSITION ON THAT IS SIMPLY, AGAIN, BACK TO THE PARALLEL SITUATION.

IN OTHER WORDS, THIS IS AN ORDINANCE.

THE CONDUCT IS PROPERLY DEALT WITH UNDER THE ORDINANCE AND PARALLEL TO THE UNIFORM TRAFFIC CODE, IF THE COURT FINDS YOU DON'T ACCEPT THE PARALLEL SITUATION, THEN, YOU KNOW, WE'VE GOT A PROBLEM, BUT WE SUBMIT THAT WHEN THE LEGISLATURE GIVES US THE RIGHT TO DO THAT, WHEN THEY AUTHORIZE US TO PROCEED, THAT WE HAVE A RIGHT TO PROCEED, AND WHEN THEY ARE VIOLENT ABOUT THE METHOD OF ENFORCEMENT, THE SITUATION THAT BOTH ORLANDO AND OTHER CITIES IN THE STATE ADOPTED IN THAT SITUATION WAS APPROPRIATE.

>> YOU'RE OUT OF YOUR INITIAL TEN MINUTES.

MR. HARRIS?

>> THANK YOU, AGAIN, YOUR HONORS.

THERE WAS VERY CLEAR LANGUAGE FROM CITY OF PALM BAY ADDRESSING CONFLICT, AND WHAT BOTH MUNICIPALITIES ARE ADDRESSING HERE IS WE HAD THE POWER TO CREATE EXCEPTIONS, WHAT THEY CALL A PARALLEL SYSTEM WHICH IT'S NOT PARALLEL.

>> LET'S JUST -- THAT'S WHAT THEY SAY, THEY HAVE THE POWER UNDER THIS UNIFORM TRAFFIC MODEL TO SET UP THEIR OWN SEPARATE -- WAY BEYOND THIS. IT'S WHATEVER THEY MAY DECIDE IS A PARALLEL SYSTEM.

>> WELL, THEY DON'T HAVE THE POWER TO CREATE THE PARALLEL

SYSTEM TO BEGIN WITH.

>> THAT'S YOUR ANSWER.

>> THAT'S ONE PART OF THE ANSWER WHICH IS -- THAT'S WHAT THE COURT SAID IN CITY OF PALM BAY, FIRST IN TIME, FIRST IN RIGHT.

WHAT THE COURT SAID WE CATEGORICALLY REJECT THAT ARGUMENT THAT BECAUSE THERE HAD BEEN SOME EXCEPTIONS CREATED BY THE LEGISLATURE AND BY THE COURTS, THAT WE CAN ALSO, AS MUNICIPALITIES CREATE OUR OWN EXCEPTIONS. THEY DON'T GET THAT POWER. THERE IS CONSTITUTIONAL SUPERIORITY HERE OF THE LEGISLATURE.

CONCUR POWER DOES NOT MEAN EQUAL POWER.

>> LET'S GET BACK TO W -- W SECTION OF THE ORDINANCE.

WHAT IS YOUR UNDERSTANDING OF WHAT THE LEGISLATURE MEANT TO DO WHEN IT SAID IT'S UNIFORM EXCEPT FOR THIS, AND HERE THERE IS 23 AREAS?

CLEARLY IN THOMAS, WE ACKNOWLEDGE THAT THAT COULD BE DONE.

THEY JUST COULDN'T CRIMINALIZE SOMETHING THAT WAS CIVIL.

I AM HAVING A HARD TIME UNDERSTANDING WHAT ALL THESE AREAS WERE THAT THEY EXEMPTED, IF IT WASN'T TO ALLOW THE MUNICIPALITIES IN FURTHERANCE OF TRAFFIC SAFETY TO HAVE -- TO REGULATE IN THIS AREA, WHICH INCLUDES, UNDER OUR JURISPRUDENCE, ENFORCEMENT?

>> IF I CAN JUST REAL BRIEF GO BACK.

FIRST OF ALL, I DON'T BELIEVE THEY CROSSED A HOOP TO GET TO 008 AT ALL BECAUSE OF 316.002.

THERE HAS TO BE SOMETHING  
UNIQUE ABOUT THE MUNICIPALITY  
OR THE FIFTH DISTRICT SAID  
SOMEWHERE STATE LAW IS  
INADEQUATE.

IF THEY COULD GET THROUGH THE  
HOOP.

>> THAT'S AN INTERPRETATION,  
THAT'S A STATUTORY  
INTERPRETATION OF TRYING TO  
READ WHAT NOW THE  
LEGISLATURE, SO WE KNOW, IN  
2010, THEY KNOW HOW TO SAY,  
AND THE INTENT IS TO  
EXPRESSLY PREEMPT, WHICH  
WOULD BE VERY HELPFUL TO THIS  
COURT, TO ME, IF THAT'S WHAT  
WE'RE TRYING TO UNDERSTAND  
WHAT THE LEGISLATURE MEANT.  
SO IF THE UNIQUE PART IS NOT  
IN THERE, I'M HAVING A HARD  
TIME UNDERSTANDING WHY W  
DOESN'T GET THERE.

>> SURE, WRITE IT WITH .008.  
IT WAS NOT THE USE OF THE  
CAMERAS, THE PROBLEM WAS†--  
>>†THE MONEY, RIGHT?

>> THE PROBLEM IS NOT JUST  
THE MONEY, AND THERE WAS NO  
ADDRESSING BY THE  
MUNICIPALITIES IN TERMS OF  
THIS -- THIS IS NOT PARALLEL  
IN TERMS OF THE PROCESS  
GETTING TO THE PENALTY.  
AND I KNOW JUSTICE CANADY  
MENTIONED THAT WITH†.121.  
THE PROCESS LEADING TO THE  
PENALTY HERE IS NOT THE SAME  
AND IT'S NOT JUST NOT THE  
SAME, IT IS HARSHER WHEN YOU  
ARE PENALIZING VEHICLE OWNERS  
HERE, THAT IS HARSHER.

>> THAT'S A -- ONCE YOU GET  
TO TRYING TO FIGURE OUT IF  
THE PENALTIES ARE WORSE OR  
NOT.

IF I'M A MOTORIST, I'D SURE  
RATHER HAVE TO PAY THE FINE  
THAN GET THE POINTS THAT ARE  
GOING TO RAISE MY INSURANCE

PREMIUM ULTIMATELY MAKING ME  
LOSE MY LICENSE, THAT'S IN  
THE EYE OF THE BEHOLDER.  
I DON'T SEE WHERE -- UNLIKE  
SOME OF THE OTHER CASES,  
WHERE WHEN THE  
MUNICIPALITIES, PRESUMABLY IN  
GOOD FAITH, THOUGHT THEY WERE  
GOING UNDER W AT THE TIME,  
WHICH IS PRE-2010, TO GO  
AHEAD AND USE RED LIGHTS TO  
REGULATE THAT THEY WERE NOT  
ALLOWED TO PASS THESE  
ORDINANCES UNDER THAT  
AUTHORITY.

>> WHERE IS THE AUTHORITY TO  
GO TO CHANGE THE BURDEN OF  
PROOF HERE?

I KNOW WE TALKED†--

>>†I DON'T KNOW, I'VE NEVER  
HEARD A CASE WHERE WE GO  
BECAUSE WE WANT A HIGHER  
BURDEN OF PROOF, WE WANT THIS  
TO BE CRIMINAL, EVEN THOUGH  
IT'S CIVIL.

IT DOESN'T SEEM TO ME THAT  
HOW -- HOW IS THAT -- HOW IS  
THAT IN CONFLICT IF YOU HAVE  
A LESSER PENALTY, REALLY,  
BECAUSE YOU'RE AT LEAST UP TO  
\$125?

I'M NOT GETTING THAT.

>> BUT TO PENALIZE, WE'RE  
ENTITLED, ALL OF US IN THIS  
STATE ARE ENTITLED TO CHAPTER  
316, THE MUNICIPALITIES OR  
THROUGH A STATE POLICE  
OFFICER PROVE BEYOND A  
REASONABLE DOUBT FOR A CIVIL  
INFRACTION, WE'RE NOT TALKING  
FOR A MISDEMEANOR FELONY.  
THIS IS THE SAME IDENTICAL  
CONDUCT.

IT'S NOT LIKE MULLIGAN, A  
DISTINCTION BETWEEN FELONIES  
OR MISDEMEANORS OR THOMAS  
WHERE THERE WAS A  
DECRIMINALIZATION.

IF THE PROCESS IS HARsher IN  
LEADING TO THE TICKET, YOU

HAVE -- THERE IS CLEAR -- WE  
TALK ABOUT IF NOT EXPRESSED  
PREEMPTION, THERE IS CLEAR  
CONFLICT.

YOU CANNOT HAVE THOSE BE  
COMPATIBLE.

THE MUNICIPALITIES ARE NOT  
MEETING THE BURDEN OF PROOF  
BEYOND A REASONABLE DOUBT.  
THEY'RE NOT MEETING THE  
ARTICLE 5 REQUIREMENT.  
WE TALK ABOUT THE PROCESS,  
ARTICLE 5 JUDGE OR  
SUPERVISION OF THE COURT.  
THOSE ARE THE PROTECTIONS  
WHICH ALL CITIZENS ARE  
ENSURED UNDER FOR THE  
IDENTICAL CONDUCT UNDER  
CHAPTER 316.

IT'S NOT JUST THE AMOUNT FINE  
OR DETERMINING WHETHER LOSING  
SOMEONE'S BUSINESS IS MORE  
IMPORTANT THAN POINTS OR  
INSURANCE.

>> THAT SEEMS LIKE A DUE  
PROCESS SEPARATE ARGUMENT.  
I MAY BE WRONG.

IN OTHER WORDS, THERE IS THIS  
ISSUE OF WHETHER IT'S FAIR IS  
REALLY A SEPARATE QUESTION AS  
TO WHETHER THE -- IF THE  
LEGISLATURE HAD AUTHORIZED  
IT, IT'S NOT A QUESTION COULD  
YOU DO IT ON A LESSER BURDEN?

>> IF THE LEGISLATURE HAD  
AUTHORIZED IT, YES.

IF THEY HAD GIVEN THEIR  
EXPRESSED AUTHORIZATION,  
WHICH IS WHAT THEY HAD TO DO  
UNDER -- IF YOU LOOK AT 002  
AND 007 TOGETHER, BUT WHERE  
IT IS RELEVANT HERE, SETTING  
ASIDE DUE PROCESS, BOTH  
JURISDICTIONS SAY OUR SYSTEMS  
MATCH.

YOU CAN'T HAVE A MATCHING  
SYSTEM WHEN YOU MADE IT  
HARDER FOR A PERSON TO DEFEND  
THEMSELVES -- IN THIS CASE,  
VEHICLE OWNERS -- WHERE THE

STANDARD OF PROOF IS BELOW.  
WE DON'T KNOW WHAT THAT  
STANDARD OF PROOF -- FOR ALL  
WE KNOW, THEY'RE NOT FILING  
PREPONDERANCE OF THE EVIDENCE  
BECAUSE THE ORDINANCE DOESN'T  
REQUIRE THAT.

>> THAT ARGUMENT COULD BE  
BROUGHT IN A SPECIFIC CASE.  
YOU'RE TAKING ABOUT A FACIAL  
CHALLENGE, IF THERE'S AN  
UNFAIRNESS BECAUSE AN OWNER  
SAYS I DIDN'T GET TO  
ESTABLISH THAT, THAT IS CASE  
SPECIFIC.

BUT THAT'S NOT WHAT ANYONE IS  
AFTER, THEY WANT TO ATTACK  
THE ENTIRE SCHEME.

>> IT IS VOID FROM ITS  
INCEPTION.

YOU MENTIONED OWNER.  
THAT ASPECT DOES MAKE VOID  
FROM ITS INCEPTION.

THEY'RE IMPLYING DANGEROUS  
INSTRUMENTALITY PRINCIPLES  
AND APPLIED IT TO CHAPTER 3  
FOR THE IDENTICAL CONDUCT.  
AGAIN, THEY CALLED IT  
PARALLEL.

YOU CAN'T HAVE PARALLEL WHEN  
YOU'VE TAKEN THE DRIVER AND  
NOW IT'S THE OWNER.

YOU CAN'T HAVE PARALLEL WHEN  
YOU'VE ELIMINATED THE  
CONTEMPORANEOUS PERSONAL  
OBSERVATION REQUIREMENT FOR  
POLICE OFFICER.

YOU CANNOT HAVE PARALLEL WITH  
THE BURDEN OF PROOF.

YOU CANNOT HAVE PARALLEL WHEN  
WE TALK ABOUT THE AMOUNTS.

IT IS IMPORTANT, IT'S NOT  
JUST AN ARTICLE 5 JUDGE HERE,  
IT'S DISCRETION GIVEN TO  
ARTICLE 5 JUDGES OR HEARING  
OFFICERS TO ELIMINATE THE  
FINE TO EXERCISE DISCRETION  
FOR COMMUNITY SERVICE FOR  
OTHER REMEDIES HERE.

THOSE ARE FACIAL, THE PROCESS

IN LEADING INTO -- I SHOULD  
HAVE MENTIONED, THIS IS AN  
APPELLATE PROCEEDING.

WE'RE NOT EVEN ADDRESSING DUE  
PROCESS ISSUE, JUST  
FUNDAMENTALLY, YOU HAVE TO  
COME FORWARD.

THE VEHICLE OWNER HAS TO COME  
FORWARD IN AN APPELLATE  
PROCEEDING.

THE LEGISLATURE EXPRESSLY  
STATED IT'S NOT AN APPELLATE  
PROCEEDING.

YOU COME FORWARD, THE STATE  
OR A MUNICIPAL TRAFFIC  
OFFICER CHARGES A CITIZEN,  
AND THEY COME FORWARD, AND  
THE STATE HAS TO PROVE GUILT  
BEYOND A REASONABLE DOUBT.

>> I HAVE A SEPARATE  
STATUTORY CONSTRUCTION  
ARGUMENT.

EACH SIDE HAS USED THE 2010  
STATUTE AS SUPPORTING THEIR  
ARGUMENT.

IT SEEMED TO ME IF YOU LOOK  
AT WHAT THE LEGISLATURE DOES  
IN 2010, THEY NOW PUT  
RED-LIGHT CAMERAS, THEY  
REALIZED THERE WAS A LOT OF  
MONEY TO BE MADE IN THESE  
CAMERAS, AND THEY  
GRANDFATHERED IN SYSTEMS THAT  
EXISTED BEFORE.

I DON'T KNOW HOW -- IT WOULD  
SEEM TO ME IF THE LEGISLATURE  
INTENDED PREVIOUSLY TO  
EXPRESSLY PREEMPT THE FIELD,  
THEY WOULD HAVE MADE A  
STATEMENT.

NOW AGAIN, IT MAY BE THAT  
NEITHER THAT THIS SUBSEQUENT  
PASSAGE MEANS NOTHING, BUT  
HOW DO YOU USE IT TO SUPPORT  
YOUR ARGUMENT THAT IT MEANS  
THAT THEY HAD EXPRESSLY  
PREEMPTED IT BEFORE 2010?

>> WELL, I DON'T THINK THAT  
THE 2010 LEGISLATURE WAS IN  
POSITION TO DETERMINE WHETHER

THE 1971 LEGISLATURE HAD EXPRESSLY PREEMPTED TRAFFIC REGULATION FOR A NONPARALLEL, NONMATCHING SYSTEM.

SO I DON'T THINK WE CAN LOOK BACK 39 YEARS, BUT THE STATUTE WAS ALSO, AND IT'S IN THE STAFF ANALYSIS, IT WAS DRIVEN BY THE LITIGATION, BY THE LAWSUITS, BY THE CHALLENGERS HERE, ON BEHALF OF -- SO AS MUCH AS ANYTHING THERE WAS A MOTIVATION TO PROTECT AND IT'S PART OF THE POLITICAL LOBBYING PROCESS. THEY'RE ENTITLED THE LOBBYING PROCESS OF THE MUNICIPALITIES AND CODEFENDANT, THE TRAFFIC COMPANY BECAUSE OF THE ENORMOUS REVENUE. NOW THERE WAS EXPRESS PREEMPTION, IT WAS ALREADY THERE.

IN 2002, 2007 AND WHEN YOU LOOK AT THE UNIFORM TRAFFIC CONTROL ACT.

THIS WAS MAKING MORE CLEAR WHAT JURISDICTIONS DID NOT UNDERSTAND ALREADY.

I REALIZE MY TIME MAY BE UP. MY TIME IS UP.

SO IF THERE ARE NO FURTHER QUESTIONS, I WILL SIT DOWN AND OBVIOUSLY ASK YOU TO FOLLOW THE FIFTH DISTRICT DECISION.

THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH.

>> THANK YOU.

MR. KING TO CLOSE.

>> AGAIN, LET ME GO BACK TO THE STARTING POINT.

AS FAR AS EXPRESS AND IMPLIED PREEMPTION ARE CONCERNED, THE LEGISLATURE SHARED THE FIELD OF PLAY AS FAR AS UNIFORM TRAFFIC CONTROL IS CONCERNED. I SUBMIT THAT THE ACT IN 2010 IS EVIDENCE THAT THERE WASN'T EXPRESS PREEMPTION BEFORE



THAT, BECAUSE THEY FELT IT NECESSARY TO DO THAT.

I THINK IT'S APPROPRIATE FOR YOU TO CONSIDER IT IN THAT WAY, AND THEIR RESPONSE IS, WELL, AND, IN FACT, THE FIFTH DISTRICT COURT OF APPEALS ACCEPTED THEIR RESPONSE, OR THEY'RE JUST CLARIFYING IT.

>> NOT ALL MEMBERS OF THE COURT AGREE WITH IT, BUT IF THERE'S A DISPUTE ON A STATUTE, THERE IS CASE LAW THAT PROBABLY FALLS ON BOTH SIDES, AND THE ONE ON HIS SIDE WOULD SAY THAT THEY CLARIFIED WHAT THEY INTENDED BEFORE.

>> I HAVEN'T SEEN ANY CASE LAW THAT SAYS IN THIS SITUATION THEY CLARIFIED WHAT THEY INTENDED BEFORE.

>> BECAUSE THERE'S NEVER BEEN A CASE ON THIS.

>> RIGHT.

IF THEY HAVE TO CLARIFY WHAT THEY MEANT, THEN THAT MEANS THE MUNICIPALITY HAS A RIGHT TO ACT, UNLESS IT'S CLEAR THERE IS EXPRESS PREEMPTION.

>> WHAT DECISION DO YOU RELY ON THAT SAYS THAT, WHEN LEGISLATURE -- IN THOSE CASES WHERE IT SAID THAT THE LEGISLATURE IS MERELY NOW REFLECTING WHAT THEY ORIGINALLY INTENDED THAT YOU GO BACK AND THE OTHER SIDE WINS.

IT'S USED TO DESCRIBE, IS IT NOT?

THAT WAS WHAT THE INTENT BEFORE WAS.

WE CAN FALL ON BOTH SIDES OF THIS ISSUE, IF WE HAVE TO DECIDE ON THAT BASIS.

>> THERE IS NOTHING IN THE LEGISLATION THAT SAYS THE LEGISLATURE IS CLARIFYING WHAT THEY ORIGINALLY INTENT.

THAT'S A CONSTRUCTION.

>> NOR WERE THE OTHER ONES.  
IT WAS THE MERE FACT IT WAS  
AN AMENDMENT TO A STATUTE.

>> THAT'S A CONSTRUCTION BY  
THE COURT.

IF YOU HAVE TO MAKE A  
CONSTRUCTION LIKE THAT, IF  
YOU HAVE TO CLARIFY, THEN  
UNDER OUR LAW, AS I  
UNDERSTAND, THE LAW YOU ALL  
HAVE PROMULGATED, IF THERE IS  
NO EXPRESS OR IMPLIED  
PREEMPTION THEN THE  
MUNICIPALITY HAS THE RIGHT TO  
ACT UNLESS IT CONFLICTS.

>> YOU ARE REALLY TALKING  
ABOUT THE LAW THAT SAYS THAT  
THERE IS NOT AN ASSUMPTION,  
THERE IS PREEMPTION.  
IT'S GOT TO BE FOUND, AND THE  
BURDEN IS CHALLENGING THE  
LAW.

THAT'S A DIFFERENT ISSUE THAN  
WHAT THIS NEW STATUTE WAS.  
AND I THINK YOU CAN MAKE  
ARGUMENTS ON BOTH SIDES AS TO  
WHAT THE NEW STATUTE MEANS,  
BUT I THINK THAT GOING BACK  
TO THE QUESTION THAT MY  
CONCERN, I GUESS, GOES BACK  
TO -- I HAVE LESS CONCERNS  
THAN SOME OF MY COLLEAGUES,  
REALLY HAS TO DO WITH THE  
ISSUE OF WHETHER THE  
PENALTIES ARE, IF YOU CAN  
LOSE YOUR LICENSE UNDER THE  
-- UNDER THE ORLANDO STATUTE,  
WHY ISN'T THAT A GREATER  
PENALTY?

>> AND THAT'S AN APPLE AND  
ORANGES KIND OF SITUATION.  
YOU REALLY CAN'T SAY, I DON'T  
THINK -- IF CONSTRUCTION,  
WITH THE PENALTIES UNDER THE  
UNIFORM TRAFFIC CODE AND THE  
PENALTIES UNDER ORLANDO.  
MR. †UDOWYCHENKO'S PENALTY WAS  
EXACTLY THE SAME.  
AND AS FAR AS THE †--

>>†SO WOULD YOU SAY UNDER THAT IF IT'S CONFLICT PREEMPTION, IT'S NOT, IN THIS CASE, BECAUSE OF THE PERSON THAT'S BRINGING THIS -- THAT THAT'S NOT APPLICABLE BECAUSE HE WAS ONLY ASSESSED THE \$125.

>> THAT WOULD BE CORRECT, YOUR HONOR.

AND AS FAR AS CONFLICT PREEMPTION IS CONCERNED, THAT'S THE MOST TROUBLING PROBABLY FOR YOU, IS THE CONFLICT ISSUE, AND THAT'S ALWAYS THE CHECK, IF THERE'S NOT IMPLIED OR EXPRESSED PREEMPTION, THEN THE MUNICIPALITY HAS THE RIGHT TO ACT BUT YOU'RE PRECISELY CORRECT, THEY CANNOT CONFLICT WITH THE LEGISLATURE'S PROVISIONS.

THE ONLY THING I WOULD SUGGEST TO YOU HERE, THOUGH, THERE IS A GREAT PROPENSITY TO REFLECT ON THE DIFFERENCES IN THE TWO SITUATIONS, THE TWO SYSTEMS, THE TWO SCHEMES, BUT YOUR ANALYSIS ON CONFLICT HAS ALWAYS BEEN IN THE CONCEPT OF CAN THE SCHEMES COEXIST?

DOES IT REQUIRE YOU TO VIOLATE ONE PROVISION, IF YOU ACT ON THE OTHER.

AND THAT'S NOT THE SITUATION IN THIS CASE.

THESE SYSTEMS, THE MUNICIPAL ORDINANCE ENFORCEMENT UNDER THE CITY OF ORLANDO AND THE STATE STATUTE WERE BOTH OPERATING IN TANDEM BUT CONSISTENTLY.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.