>> HEAR YE, HEAR YE, HEAR YE,
THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, GIVE ATTENTION,
AND YOU SHALL BE HEARD. GOD
SAVE THESE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
OUR FIRST CASE OF THE DAY IS
LICENSE ACQUISITIONS VERSUS
DEBARY. YOU MAY PROCEED.
>> GOOD MORNING, YOUR HONOR.
BARRY RICHARD ON BEHALF OF
THE APPELLANT,
OWNER OF PALM BEACH KENNEL
CLUB.
AT COUNSEL TABLE WITH ME IS REILLY
DAVIS WHO IS COUNSEL FOR
WEST VOLUSIA RACING AND
LAYNE SMITH FOR THE
DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION.
THOSE TWO PARTIES WAVED THEIR TIME
AND I WILL PRESENT IT.
HOWEVER, WE DO NOT INTEND TO
WAVE THE ARGUMENTS
IN THEIR BRIEFS.
THEY ARE PRESERVED.
I WOULD APPRECIATE, FIVE MINUTES
FOR REBUTTAL.
THE DECISION IN THIS CASE RESTS
UPON THE INTERPRETATION OF THREE
WORDS, SECTION 550.40.
LEAD IT TO DECLARE THAT PORTION
OF THE STATUTE UNDER CHALLENGE
TO BE UNCONSTITUTIONAL.
HISTORIC CONTEXT.
WE DEAL WITH INTERRELATED
STATUTES.
ALL OF THEM, ENACTED BY THE
LEGISLATURE OVER A PERIOD OF
YEARS AND CONTINUING EFFORT, TO
AS SIS A STRUGGLING PARI-MUTUEL
INDUSTRY.
THE FIRST ONE WAS PARI-MUTUEL
PERMITTEE, MOVE THE PERMIT BY
LEASING ANOTHER FACILITY, WITH A
PERMIT IN THE SAME CLASS, WITHIN
35 MILES.
AND SAID THAT BECAUSE OF THAT
DEFINITION, THAT IT HAD TO BE
INTERPRETED AS PRECISELY TO, NO
MORE, AND NO LESS.
AND BY THAT INTERPRETATION, HE
ELIMINATED THE SEVERAL COUNTIES
THAT HAD A SINGLE PERMIT IN
THEM.

IT IS MY POSITION THAT THIS IS
AN INAPPROPRIATE INTERPRETATION
FOR SEVERAL REASONS.
THE FIRST IS THAT THE VERY
BLACK'S LAW DICTIONARY
DEFINITION OF THE COURT CITED
INCLUDING IN IT SEVERAL OTHER
DEFINITIONS.
ONE OF WHICH WAS, NOT MORE THAN
TWO.
IN ADDITION, WE CITED A SERIES
OF OTHER DICTIONARIES, WELL,
REGARDED, GENERALLY ACCEPTED
DICTIONARIES AND THESAURUSES IN
FLORIDA THAT RECOGNIZED THAT THE
WORD ONLY CAN ALSO MEAN NOT MORE
THAN AND PERHAPS MOST
IMPORTANTLY, WE CITED SIX
EXAMPLES OF STATUTES IN FLORIDA
IN WHICH THE LEGISLATURE HAD
USED THE WORD ONLY IN THE
CONTEXT IN WHICH IT WAS CLEAR
THEY MEANT NOT MORE THAN.
SO IT IS SOMETHING THAT THE
LEGISLATURE HAS BEEN IN THE
HABIT OF DOING BUT, PROBABLY
MOST SIGNIFICANTLY, BECAUSE
THERE IS ALWAYS THE POLESTAR
HERE IS LEGISLATIVE INTENT.
THE INTERPRETATION GIVEN BY THE
DISTRICT COURT OF APPEAL HAS NO
RATIONAL BASIS.
IT'S DIFFICULT TO CONCEIVE OF A
REASON THAT THE LEGISLATURE
WOULD HAVE SAID YOU CAN ONLY DO
THIS CONVERSION IF THERE ARE
PRECISELY TWO PERMITS.
BUT IT IS EASY TO UNDERSTAND WHY
THEY WOULD HAVE NOT MORE
THAN TWO BECAUSE THAT IS TYPICAL
OF THE LEGISLATURE'S HISTORY,
TRYING TO AVOID AN
OVERPOPULATION OF PERMITS IN A
COUNTY, OVERCOMPETITION WHICH
WOULD HAVE THE EFFECT OF
REDUCING REVENUE.
>> IF WE -- ONLY, HERE, I, IS,
IN FUTURE PERMIT APPLICATIONS,
WELL, THE DEPARTMENT THEN WILL
BE BOUND WHICH THAT, THIS
INTERPRETATION, NOT BY THE
INTERPRETATION GIVEN BY THE
REPRESENTATIVE FOR THE
DEPARTMENT DURING THE
DEPOSITION.
IN OTHER WORDS, THEY APPARENTLY,
IN RESPONSE TO A DEPOSITION
PRODUCED A REPRESENTATIVE THAT
INTERPRETED IT AS ONLY TWO,
WHICH, MAY BE, WOULD BE AKIN TO
AN AGENCY INTERPRETATION YOU SAY
NOT EVEN THAT MUCH.

WILL THEY THEN BE BOUND TO
INTERPRET IT THE WAY THIS COURT
SAYS IT WOULD BE INTERPRETED TO
BE CONSTITUTIONAL?
>> YES, YOUR HONOR, OF COURSE.
THEY WOULD, BOUND TO THAT.
>> AND THE POSITION NOW OF THE
DEPARTMENT IS THAT IT IS THE
CORRECT INTERPRETATION?
>> THAT'S CORRECT.
IN FACT THE ONLY POSITION THAT
THE DEPARTMENT HAS EVER TAKEN.
THE ISSUE HERE WHICH THE
DISTRICT --
>> WHEN YOU SAY THAT, YOU SAID
SOMETHING ABOUT THE DEPARTMENT
DETERMINED THE STATUTE WAS
CONSTITUTIONAL.
IT WASN'T, WAS THERE SOME KIND
OF A FORMAL FINDING THAT THE
STATUTE WAS CONSTITUTIONAL AND
NOT REALLY THE ROLE OF THE
DEPARTMENT?
>> IF I SAID THAT THEY FOUND IT
CONSTITUTIONAL THAT WOULDN'T
ACTUALLY BE APPROPRIATE BECAUSE
WE ALL KNOW THAT IS NOT THE JOB
OF AN AGENCY.
WHAT THEY DID WAS GAVE IT AN
INTERPRETATION WHICH RENDERED IT
CONSTITUTIONAL BUT THE ANSWER TO
THAT --
>> WHICH WAS WHAT.
>> ONLY MEANS, NOT MORE THAN.
>> WHEN WAS THAT INTERPRETATION
GIVEN?
>> TWO TIMES.
FIRST PRIOR TO THIS LAWSUIT IT
WAS IMPLICITLY THE RESULT WHICH
LED THEM TO ISSUE THESE TWO
PERMITS.
BUT --
>> I MEAN THAT'S SPECULATION.
THERE IS NOTHING IN THE RECORD
THAT --
>> NO, THERE'S NOT.
IN THIS LAWSUIT HOWEVER, THE
DEPARTMENT OFFICIALLY TOOK THE
POSITION THAT ONLY MEANS NOT
MORE THAN.
THE REASON THIS IS IMPORTANT IS
BECAUSE THE DISTRICT COURT OF
APPEAL EXPRESSLY BASED ITS
INTERPRETATION UPON A STATEMENT
BY WITNESS THAT WAS CALLED BY
THE PLAINTIFF, MR. BARNES, ON A
CORPORATE NOTICE DEPOSITION.
MR. BARNES WAS AN INVESTIGATOR
FOR THE DIVISION THERE WAS NO
EFFORT TO ESTABLISH HE WAS
AUTHORIZED TO SPEAK FOR THE
AGENCY AS FAR AS INTERPRETATION

AND HE NEVER SAID HE DID.
HE MADE THE PERSONAL ASSUMPTION
WHEN ASKED HOW MANY PERMITS
THERE WERE IN A COUNTY AND HOW
MANY THERE COULD BE, HE MADE THE
PERSONAL ASSUMPTION THAT ONLY
MEANT PRECISELY TWO.
>> MR. RICHARD, WHAT WAS THE
SPECIFIC LANGUAGE ON THE NOTICE
FOR THE DEPOSITION?
I THINK THAT MAY BE OF CRITICAL
IMPORTANCE BECAUSE AS WE KNOW
OUR RULES PROVIDE FOR A PARTY
TO, TO FILE A NOTICE OF
DEPOSITION, TO DESIGNATE AN
AGENT FOR, MAY BE LIMITED
PARTICULAR LANGUAGE HERE?
>> THERE WERE TWO PARAGRAPHS
THAT DEFINED WHAT HE WAS TO
TESTIFY TO.
FOLLOWING PARI-MUTUEL PERMITS.
AND LISTED PERMITS BY NUMBER.
THAT WAS THE FIRST ONE.
SECOND PARAGRAPH SAID, THE
CONTAINED WITH ON AFFIDAVIT OF
EMPLOYEE OF PARI-MUTUEL
WAGERING, BARNES ON AFFIDAVIT
WHICH WAS SUBMITTED TO
THE COURT IN
THIS ACTION AS AN EXHIBIT TO THE
MOTION FOR SUMMARY JUDGMENT.
THERE WAS NOTHING IN THAT --
>> WHAT DID THE AFFIDAVIT
ADDRESS?
>> I CAN'T RECALL OFFHAND, YOUR
HONOR.
I WILL TELL YOU WHAT IT DID NOT
ADDRESS WHAT THE OFFICIAL AGENCY
INTERPRETATION WAS OF THE WORD,
ONLY.
THE, THERE WAS NOTHING IN THE
RECORD TO INDICATE THAT HE WAS
AUTHORIZED TO SPEAK FOR THE
AGENCY AND HE WAS NOT.
HE, THE UNDERSTANDING WAS HE WAS
BEING CALLED TO TESTIFY AS TO
RECORDS OF THE AGENCY AND THE
BACKGROUND REGARDING ISSUANCE OF
THESE THINGS BUT NOT TO
INTERPRET THAT.
>> WOULD YOU AGREE IF IT HAD TO
BE INTERPRETED IT ONLY MEANT
TWO?
I AGREE WITH YOU, IT DOESN'T
MAKE TO ME ANY SENSE THAT YOU,
YOU'RE TRYING TO MAKE SURE IT IS
NOT COMPETITION.
ONE IS BETTER THAN TWO.
THE COUNTY HAS ONE.
IS, DO YOU AGREE THOUGH IF IT IS
INTERPRETED ONLY MEANING.
BEFORE THIS COURT, WHEN I THINK

THAT A POSITION IS THE RIGHT
ONE, EVEN IF IT'S NOT IN MY
FAVOR.
BUT IN THIS CASE I WOULD NOT
CONCEDE THAT.
IT WOULD STILL LEAVE THREE
COUNTIES, IN WHICH THERE WERE
PERMITS THAT FELL WITHIN OR
THREE PERMITS THAT FELL WITHIN
THE SCOPE OF THE STATUTE, SPREAD
ACROSS THE STATE.
AND I THINK THAT THE ISSUE OF
WHETHER IT IS IDENTIFICATION IS
ONE OF THE ISSUES THAT THIS
COURT CONSIDERS.
BUT WHEN YOU CONSIDER THE FACT
THAT THERE ARE ONLY NINE PERMITS
TO BEGIN WITH, AND THAT THIS
LEGISLATURE FACES THE DIFFICULT
TASK IN BALANCING MULTIPLE
ISSUES AND WHAT WORKS AND WHAT
DOESN'T WORK, I WOULD SUGGEST
EVEN THEN I WOULD NOT BE
PREPARED TO CONCEDE IT WOULD
RENDER IT UNCONSTITUTIONAL.
I WOULD LIKE TO SPEAK FOR A
MOMENT ABOUT THE SECOND
INTERPRETATION BY THIS AGENCY
WHICH WAS NOT BY THE AGENCY, BY
THE DISTRICT COURT OF APPEAL
WHICH WAS THE OTHER TWO WORDS,
WHICH IS AS ISSUED.
WHAT HAPPENED HERE, WHAT RAISED
THIS IN THIS CASE, IN TWO OF THE
COUNTIES, PALM BEACH AND VOLUSIA
COUNTY, BACK IN THE 1930S,
PERMITS HAD BEEN ISSUED THAT NO
LONGER IN EXISTENCE.
IN PARTICULAR WITH REGARD TO
VOLUSIA COUNTY WHICH WAS A
DEFENDANT IN THIS CASE.
THE ARGUMENT THAT THE PLAINTIFF
WAS MAKING IS THAT EVEN IF THERE
WERE ONLY, IS INTERPRETED THE
WAY WE'RE SUGGESTING, EVEN IF
THE STATUTE IS VALID, THAT THEY
WEREN'T ENTITLED TO IT BECAUSE
IN FACT THERE WERE THREE PERMITS
ISSUED IN VOLUSIA COUNTY.
ONLY TWO OF THEM REMAINED IN
EXISTENCE BECAUSE WHEN ONE WAS
ISSUED IN 1938 IT WAS ISSUED
WITH A CONDITION THAT
CONSTRUCTION HAD TO BEGIN ON THE
FACILITY WITHIN A CERTAIN PERIOD
OF TIME OR IT WOULD
AUTOMATICALLY LAPSE.
CONSTRUCTION WAS NOT BEGUN.
THE PERMIT AUTOMATICALLY LAPSED
AND IT DID NOT EXIST WHEN THIS
ISSUE AROSE.
NONETHELESS THE PLAINTIFF SAID,

BECAUSE IT HAD BEEN ISSUED,
THEREFORE, THERE WERE THREE THAT
HAD BEEN ISSUED IN THIS COUNTY
AND THAT WAS THE INTERPRETATION.
NOW WHAT THE DISTRICT COURT OF
APPEAL DID, IS THEY AGREED WITH,
BY THE WAY IN THIS INSTANCE, THE
AGENCY HAD FORMALLY TAKEN THE
POSITION THAT THIS WAS NOT A
CORRECT INTERPRETATION, THAT
THEY DID NOT COUNT PERMITS THAT
HAD AT ONE TIME BEEN ISSUED BUT
NO LONGER WERE IN EXISTENCE.
THE DISTRICT COURT OF APPEAL
DISAGREED.
THE RESULT OF THESE TWO
INTERPRETATIONS TOGETHER, WAS
THAT IT WIPED OUT FIVE OF THE
COUNTIES, FOREVER, FROM BEING
WITHIN A CLASS TO TAKE ADVANTAGE
OF THIS NEW STATUTE.
MY POSITION WITH REGARD TO HAS
ISSUED IS, IS THAT ALSO DOESN'T
MAKE SENSE FOR TWO REASONS.
THE FIRST IS THAT THE DISTRICT
COURT OF APPEAL WROTE ANOTHER
WORD IN.
THEY WROTE THE WORD, EVER IN,
HAS EVER ISSUED.
BUT MORE IMPORTANTLY AGAIN IT
MAKES NO RATIONAL SENSE.
ON WHAT CONCEIVABLE, WHAT BASIS
WOULD THE LEGISLATURE HAVE
INTENDED TO SAY, THAT IT DOESN'T
MAKE ANY DIFFERENCE IF THERE ARE
TWO PERMITS, ONE PERMIT OR NO
PERMIT, IF THE LEGISLATURE HAS
EVER IN HISTORY GOING BACK TO
THE 1930S ISSUED WHAT
CUMULATIVELY THREE PERMITS YOU
CAN'T TAKE ADVANTAGE OF THIS?
I WOULD SUGGEST IF THE
LEGISLATURE INTENDED THAT, THAT
WOULD RENDER THIS AND ANY OTHER
STATUTE WITH THAT TYPE OF
LANGUAGE UNCONSTITUTIONAL
BECAUSE IT WOULD BE AN ARBITRARY
AND CAPRICIOUS ACT THAT HAD NO
SIGNIFICANCE.
SO WHEN YOU TAKE THESE TOGETHER,
IF YOU ADOPT ANOTHER REASONABLE
INTERPRETATION, WHICH IS THAT
ONLY, HAS ISSUED ONLY MEANS, NOT
MORE THAN TWO, THAT ARE
CURRENTLY IN EXISTENCE, THEN ALL
BUT ONE JAI-ALAI PERMIT IN THIS
STATE WOULD HAVE BEEN ELIGIBLE,
WITH THE APPROPRIATE CHANGE OF
FACTS THAT TO TAKE ADVANTAGE OF
THIS.
ONE OF THE REASONS FOR THAT IS,
THAT EVEN IN THOSE COUNTIES THAT

HAVE MORE THAN TWO RIGHT NOW,
IT'S POSSIBLE IN THE FUTURE,
THAT SOME OF THOSE PERMITS WILL
BE REVOKED, WHICH FLORIDA LAW
PERMITS TO HAPPEN, OR, IF FOR NO
OTHER REASON IN ORDER TO TAKE
ADVANTAGE OF THE BENEFIT
CONFERRED BY THESE COMBINATIONS
OF STATUTES, SOMEBODY WERE TO
ACQUIRE ANOTHER PERMIT, AND
PERMIT IT TO LAPSE, THEY WOULD
BE PERMITTED TO TAKE ADVANTAGE
OF THIS.
NOW THIS IS INTERESTING BECAUSE
OF THE DISTINCTION BETWEEN THIS
CASE AND THE GULF STREAM CASE
WHICH THE PLAINTIFF RESTS SO
HEAVILY ON GULF STREAM WAS THE
CASE WHICH TRACKS COULD ENGAGE
IN INTERTRACK WAGERING
EVERYWHERE EXCEPT WITH TRACKS SO
MANY MILES OF EACH OTHER WHICH
WAS ONLY ONE AREA OF STATE WHICH
WAS BROWARD AND MIAMI-DADE
COUNTY.
IN GULFSTREAM THE COURT TOOK A
STEP BEYOND ANYTHING THIS COURT
EVER SAID BEFORE.
IT HAD NEVER BEFORE INVALIDATED
AS A SPECIAL ACT A STATUTE THAT
PERMITTED MORE THAN ONE, OR IN
THIS CASE, MULTIPLE ENTITIES
WITHIN THE STATE TO TAKE
ADVANTAGE OF IT.
>> YOU'RE DEEP IN YOUR REBUTTAL
TIME, MR. RICHARD.
>> OKAY.
>> THE DIFFERENCE WAS THAT WAS
PUNITIVE AND NO REASON ANYBODY
WOULD TAKE ADVANTAGE OF IT.
IN THIS CASE IT'S A BENEFIT AND
SIGNIFICANT BENEFIT AND
PERFECTLY REASONABLE TO ADOPT
THIS INTERPRETATION.
THANK YOU.
>> MAY IT PLEASE THE COURT,
DAVID ROMANIK FOR THE APPEALEES.
I BELIEVE THERE IS A FUNDAMENTAL
ERROR IN MR. RICHARD'S ARGUMENT.
THAT HAS TO DO WITH THE OPENNESS
OF THE CLASS.
HE IS ARGUING THAT IF HE CAN
FIND ONE OTHER JAI-ALAI THAT
QUALIFIES OUT OF THE 11
JAI-ALAIS THAT EXIST THE CLASS
IS OPEN.
THAT IS NOT THE LAW.
THE LAW IS, ALL MEMBERS OF THE
CLASS SUBJECT TO THE LAW HAVE TO
HAVE THE ABILITY IN THE FUTURE
TO QUALIFY AND THAT DOESN'T
EXIST HERE.

THERE ARE THREE PERMITS.
>> WHY WOULD THEY NOT, WHY WOULD THERE NOT BE THE POSSIBILITY THAT YOU WOULD HAVE MULTIPLE COMPETITORS IN A PARTICULAR YEAR AROUND WOULD MAKE SENSE THAT YOU WOULD NOT THOSE PARTICULAR BUSINESS OPERATIONS TO FACE FURTHER COMPETITION AND, BUT YOU WOULD, YOU MAY NEED IT IN OTHER PARTS OF THE STATE?
SO I'M, I'M A LITTLE PUZZLED BY YOUR STATEMENT THAT IT HAS TO OPERATE WITH EVERY, EVERY JAI-ALAI IDENTICALLY.
IT WOULD SEEM TO,
SEEMS WITH SOMETHING SUCH FEW IN NUMBER, THAT WOULD CREATE ALMOST AN UNWORKABLE SITUATION THAT, EVERY PIECE OF LEGISLATION JUST HAS TO AUTOMATICALLY, WITH A BALANCE THAT IS WE'VE HAD, WITH THE, WITH THE HORSE, THE TRACKS IN SOUTH FLORIDA, AND SEVERAL EXAMPLES, THEY SEEM TO HAVE BEEN TREATED A LITTLE DIFFERENTLY, THAN MAYBE YOU WOULD OTHER AREAS OF THE LAW?
>> YOUR HONOR --
>> HAVE WE SAID IT HAS TO BE EVERYONE IDENTICALLY?
>> YES.
>> WE HAVE?
>> YOU SAID IT AT LEAST THREE DIFFERENT TIMES I KNOW OF.
STATE VERSUS HARRIS, CITED BY THE DISTRICT COURT WHEN THEY WRAPPED IN THE MARION COUNTY PERMIT.
THERE IS ISSUE WHETHER MARION COULD QUALIFY OR NOT.
I THINK THERE WAS FACTUAL ERROR REGARDING THAT BUT THAT HARRIS VERSUS LANDIS CASE SAID IT.
THE SANFORD-ORLANDO CASE WHICH IS ONE OF THE PARI-MUTUEL CASES SAYS THIS.
A GENERAL LAW OPERATES UNIFORMLY, NOT BECAUSE IT OPERATES UPON EVERY PERSON IN THE STATE BUT BECAUSE EVERY PERSON BROUGHT UNDER THE LAW IS AFFECTED BY IT IN A UNIFORM FASHION.
UNIFORMITY OF TREATMENT WITHIN THE CLASS IS NOT DEPENDENT UPON THE NUMBER OF PERSONS IN THE CLASS.
SO, YOU HAVE 11 JAI-ALAIS AND AGAIN IF YOU GO BACK TO SANFORD-ORLANDO, THIS CASE, WHOEVER WROTE THIS LAW WAS

TRYING TO BRING THIS CASE WITHIN SANFORD-ORLANDO BECAUSE IN THAT CASE THE LAW SAID, ANY HARNESS TRACK IN THE STATE MAY CONVERT TO A DOG TRACK IF IT MEETS CERTAIN PERFORMANCE REQUIREMENTS, WHICH THEY WERE NEGATIVE REQUIREMENTS BECAUSE, YOU KNOW, YOU HAD TO FALL UNDER CERTAIN PARI-MUTUEL HANDLE LEVELS BUT THE COURT SAID IT OPERATES UPON EVERY HARNESS TRACK IN THE STATE AND THAT'S WHAT MADE IT A GENERAL LAW.
>> I GUESS I'M HAVING TROUBLE WITH, WITHOUT LOOKING AT EVERY CASE, I NEVER THOUGHT THAT IF WE WERE, IF THIS WAS CLEAR, WHICH YOU THINK IT'S CLEAR THE OTHER WAY.
>> RIGHT.
>> BUT THEY PUT A NUMBER ON THAT THE NO COUNTY CAN HAVE MORE THAN TWO PERMITS OR THREE PERMITS AT ANY ONE TIME, THAT THAT WOULD EXCLUDE CERTAIN COUNTIES BECAUSE THEY ALREADY HAD THAT NUMBER AND BECAUSE OF THE INTEREST IN MINIMIZING OVERCOMPETITION.
SO, NOW YOU'RE SAYING THAT UNLESS THEY CREATED SOMETHING WHERE THERE WAS NO, NO CEILING ON THE NUMBER OF PERMITS, THAT THIS WOULD ALWAYS, THIS WOULD BE AN UNCONSTITUTIONAL SPECIAL LAW?
>> IT IS NOT CEILING ON THE NUMBER OF PERMITS, YOUR HONOR.
>> THE FACT THAT ALL MEMBERS OF THE CLASS HAVE TO BE TREATED THE SAME.
>> THEY'RE TREATED EQUALLY IN COUNTIES THAT NOW HAVE --
>> SEE, THAT'S WHERE YOU RUN INTO THE PROBLEM WITH ON CLASSIC MILE.
CLASSIC MILE SET UP QUALIFICATION SCENARIO ONLY MARION COUNTY COULD EVER QUALIFY.
>> RIGHT.
BUT HERE IF YOU ACCEPT THE FACT THAT IT IS RATIONAL TO LIMIT THE TOTAL NUMBER OF PERMITS IN A COUNTY AT ANY ONE TIME, THAT IS A RATIONAL, NOT INTENDED TO FAVOR ONE GREYHOUND OR JAI-ALAI OVER -- PLEASE LET ME FINISH.
I KNOW YOU'VE BEEN INVOLVED IN THIS CASE A LONG TIME SO I APPRECIATE THAT.
THAT THAT IS A RATIONAL

LIMITATION.
YOU'RE SAYING NO, THAT THE
LEGISLATURE COULDN'T PUT ANY
LIMITATION ON IF IT WERE TO
EXCLUDE ANY OF, I DON'T KNOW
WHETHER IT IS NINE OR 11
JAI-ALAI PERMITS?
THAT'S WHAT YOU'RE SAYING?
>> WELL, LET ME GIVE YOU AN
EXAMPLE.
>> ARE YOU SAYING THAT?
>> WELL, WHAT I'M SAYING IS,
THEY ALL HAVE TO BE TREATED THE
SAME BECAUSE THAT'S IS WHAT YOUR
CASE LAW PROVIDES.
>> I'M ASKING A SPECIFIC
QUESTION.
YOU'RE SAYING THEY COULD NOT,
WITHOUT IT BECOMING A SPECIAL
LAW.
LEGISLATURE COULD NOT LIMIT
NUMBER OF PERMITS PER COUNTY?
>> WELL, I'M NOT SURE I
UNDERSTAND THE QUESTION BECAUSE,
IN THE CONTEXT OF THIS STATUTE,
YOU'RE TALKING CONTEXT OF THE
STATUTE OR IN GENERAL CAN THEY
LIMIT THE NUMBER?
>> I'M TALKING ABOUT IN THE
STATUTE.
>> THEY MADE SOME LIMITATION,
WHETHER PRECISELY TWO OR NO MORE
THAN TWO, EVER OR AT THE PRESENT
IS THE QUESTION BEFORE US.
BUT, THERE IS A LIMITATION,
WE'RE ALL AGREEING WITH THAT.
AND I'M HEARING YOU SAY NOW THAT
THERE CAN'T BE A LIMITATION OR
THERE WOULD BE, IT WOULD BECOME
A SPECIAL LAW?
BECAUSE THERE ARE COUNTIES THAT
HAVE THREE OR MORE.
>> RIGHT.
>> AND THOSE RIGHT NOW WOULD NOT
QUALIFY FOR CONVERSION, EVEN IF
THEY WERE DORMANT FOR 10 YEARS.
>> CORRECT.
>> WELL, I GUESS I, I DO NOT
BELIEVE, UNLESS, UNLESS, THEY
FOLLOWED THE SPECIAL LAW
PROVISIONS IN THE CONSTITUTION
WHICH MEANS HAVING, HAVING
EITHER NOTICED PUBLISHED IN THE
PAPER OR A REFERENDUM AFTER THE
FACT, YES, IT WOULD BE A SPECIAL
LAW BECAUSE IT DOESN'T APPLY
UNIFORMLY.
BUT THE EXAMPLE I WANTED TO GIVE
YOU THOUGH WAS GADSDEN COUNTY.
THERE IS ONLY ONE TRACK IN
GADSDEN COUNTY.
WHY WERE THEY EXCLUDED?

THEY WERE EXCLUDED BECAUSE IT
WAS A CONVERTED PERMIT.
I WOULD SUGGEST THE REASON THEY
WERE EXCLUDED BECAUSE THE GROUP
THAT WROTE THIS, ALSO REPRESENTS
THE DOG TRACK IN JEFFERSON
COUNTY.
THEY DIDN'T WANT A DOG TRACK IN
GADSDEN COUNTY TO COMPETE WITH
ONE IN JEFFERSON.
>> YOU'RE TAKING ANOTHER PART OF
THE STATUTE WHICH HASN'T BEEN
CHALLENGED, WHICH IS THEY COULD
NOT HAVE PREVIOUSLY CONVERTED,
AND SAYING THAT MAKES IT
ARBITRARY OR, I DIDN'T KNOW THE
GADSDEN COUNTY CONVERSION WAS AN
ISSUE IN THIS CASE?
>> WELL IT IS AN ISSUE IN THE
CASE, YOUR HONOR, BECAUSE OF THE
FACT THAT YOU START WITH 11 AND
THEN YOU GO THROUGH A PROCESS BY
WHICH THE LEGISLATURE ELIMINATED
NINE AND LEFT ONLY TWO.
THAT'S THE ISSUE.
>> THAT'S IF YOU EXCLUDE THE
ONES AND I DON'T GET THAT ONE AT
ALL.
HOW COULD IT BE THAT THE
LEGISLATURE -- AND LET'S AGAIN,
YOU WRITE IT SO IT IS ON COUNSEL
UNCONSTITUTIONAL, IF YOU GET IT
REASONABLE INTERPRETATION WHICH
IS NOT MORE THAN, THAN ANY OF
THE COUNTIES ONLY HAVE ONE, ALSO
QUALIFY.
WOULD YOU AGREE THERE ARE THOSE
THAT ONLY HAVE ONE?
>> YES. I AGREE.
AGAIN I HAVE NEVER SEEN THE WORD
"ONLY" DEFINED AS NOT MORE
THAN.
I CHALLENGED MR. RICHARD AND
BOTH AT DISTRICT COURT AND HERE
SHOW US ONE CASE IN THE, ANY
REPORTED CASE EVER DECIDED IN A
FLORIDA OR ANY OTHER STATE WHERE
THAT, WHERE THE WORD "ONLY" WAS
DEFINED THAT WAY?
AND --
>> HE GAVE EXAMPLES OF STATUTES
WHERE IT WOULD BE ABSURD TO SAY
THAT YOU HAVE TO TAKE THE SOME
EXAM ONLY FIVE TIMES TO SAY YOU
HAVE TO TAKE IT FIVE TIMES EVEN
IF YOU PASS IT THE FIRST FOUR
TIMES?
>> RIGHT.
BUT THAT WORD ONLY THERE WAS
USED TO DEFINE THE MAXIMUM
NUMBER OF TIMES YOU COULD TAKE
THE TEST.

AGAIN IT IS PRECISELY FIVE IS
THE MAXIMUM NUMBER.
THAT IS WHAT THE STATUTE DID.
DIDN'T SAY THE NUMBER OF TIMES
YOU COULD TAKE IT.
SET MAXIMUM AT FIVE.
>> PUTTING MAXIMUM AT TWO.
>> WELL, OKAY.
I MEAN I HEAR WHAT YOU'RE
SAYING, YOUR HONOR.
AGAIN I HAVE NEVER FOUND A CASE
THAT SAYS IT.
AND HE HASN'T FOUND A CASE THAT
SAYS IT EITHER.
THIS COURT HAS SAID THAT, THAT,
IT IS IMPOSSIBLE, THAT YOU
SHOULDN'T GIVE AN IMPOSSIBLE OR
A RATIONAL CONSTRUCTION SIMPLY
TO VALIDATE THE
CONSTITUTIONALITY OF A STATUTE.
>> BUT I THINK YOU'RE PUTTING IT
THE OTHER SIDE WHICH IT IS,
SEEMS TO ME, AND I LAUGH ABOUT
ONLY BECAUSE THERE WAS, AS A
JUDGE, THAT IS RETIRED NOW THAT,
ALL THIS CONCERN WHERE YOU PLACE
ONLY.
HAS ISSUED ONLY OR HAS ONLY
ISSUED AND IT BECOMES PERHAPS A
DIFFERENT MEANING.
BUT, DO YOU AGREE IT CAN BE
BOTH ADJECTIVE AND ADVERB?
>> DEPENDING WHERE IT IS PLACED.
>> IS THIS ISSUE OF PLACEMENT,
THAT THE LEGISLATURE PLACED IT
IN THE WRONG PLACE TO COME UP
WITH BEING AN ADVERB?
>> NO, I THINK, RIGHT, I AGREE
WITH THAT.
I THINK THEY EXACTLY THE RIGHT
PLACE TO BE AN ADJECTIVE, ONLY
TWO.
YOU PLACE THE WORD ONLY IN FRONT
OF A WORD YOU MODIFY.
>> YOU AGREE THAT CONSTRUCTION
WOULD BE AN UNREASONABLE ONE AND
AN ATTEMPT TO LIMIT THE
JAI-ALAI, WHO COULD QUALIFY TO
ONLY TO, TWO OF THE, ONLY TWO
THAT DID QUALIFY?
YOU'RE SAYING THE LEGISLATURE,
THAT WOULD BE, THERE WOULD BE NO
RATIONAL REASON OTHER THAN TO
GIVE IT TO, ESPECIALLY TO TWO
JAI-ALAI PERMITS?
>> THAT IS EXACTLY WHAT THEY
DID.
>> WHAT IF THEY DIDN'T, WHAT IF
THERE IS A REASONABLE
CONSTRUCTION THE OTHER WAY?
>> WELL, YOUR HONOR, THERE IS
ANOTHER STATUTE WHICH I'VE

CITED.
550.055 WHICH ALLOWS FOR
RELOCATION AND IT SAYS THAT
RELOCATION IS PERMISSIBLE IF
THERE IS ONLY ONE DOG RACING
PERMIT ISSUED.
SO HOW, ONLY ONE.
SO NOW WHAT DO WE SAY, NOT MORE
THAN ONE?
SO DOES THAT MEAN IT IS ZERO?
AGAIN, ONLY MEANS, ONLY.
AND THIS, HIS ODDBALL DEFINITION
AGAIN, TO ME COMPLETELY MAKES
IT, MAKES THE STATUTE PRETTY
MUCH UNWORKABLE.
>> UNDER YOUR INTERPRETATION
OF -- PERMITS -- BENEFITS OF
THIS LAW?
>> PALM BEACH AND VOLUSIA ARE
THE ONLY ONES.
>> THAT WOULD BE TWO.
IN WHAT CASES HAVE WE HELD THAT
A SPECIAL LAW EXISTED THAT
AFFECTED TWO DIFFERENT COUNTIES?
>> THERE ARE NO PARI-MUTUEL
CASES BUT THERE IS THE MARTIN
COUNTY, THE MARTIN MEMORIAL CASE
WHEN THERE WERE FIVE COUNTIES
AND ALSO THE LANGUAGE THAT JUST
READ YOU SAID IT DOES NOT MATTER
HOW MANY, HOW MANY MEMBERS ARE
IN THE CLASS.
IT IS UNIFORMITY OF TREATMENT
WITHIN THE CLASS IS NOT
DEPENDENT UPON THE NUMBER OF
MEMBERS OF THE CLASS.
SO HERE WE HAVE --
>> THE WHOLE QUESTION THERE,
AND THIS IS
COMPLEX AND A LITTLE CONFUSING
BUT DEPENDS ON WHAT THE CLASS
IS.
YOU'RE DEFINING THE CLASS ONE
WAY.
THE LEGISLATURE DEFINED IT A
DIFFERENT WAY.
YOU'RE ASSUMING THAT THE CLASS
IS A BROADER CLASS THAN WHAT THE
LEGISLATURE'S ESTABLISHED.
RIGHT?
>> WELL, LET'S LOOK AT IT.
THERE ARE TWO POSSIBLE CLASSES
HERE, RIGHT?
THE CLASS OF ALL THE JAI-ALAIS
WHICH IS HOW THE STATUTE STARTS
WHICH IS SIMILAR TO THE
SANFORD-ORLANDO STATUTE.
THEN THERE WOULD BE THE CLASS OF
DORMANT JAI-ALAIS, THAT WOULD BE
THE SECOND CLASS WE'RE TALKING
ABOUT HERE.
THE STATUTE IS WRITTEN HERE THAT

ONLY TWO OF THE DORMANT
JAI-ALAIS COULD EVER QUALIFY AND
THESE TWO.
THEY EXCLUDED GADSDEN AND
THE CONVERTED PERMIT EVEN THOUGH
ONLY ONE IN THE COUNTY AND THEY
EXCLUDE TAMPA BECAUSE IT IS IN A
COUNTY WITH MORE THAN TWO
PERMITS.
SO, AND I SUGGEST TO YOU THAT
TAMPA GOT EXCLUDED BECAUSE
THERE'S A DOG TRACK IN TAMPA AND
ONE IN ST. PETE THAT ALREADY HAS
A LEASING ARRANGEMENT AND THEY
DIDN'T WANT ANYMORE COMPETITION
EITHER.
AGAIN WHEN YOU START GOING
THROUGH ALL THESE
CLASSIFICATIONS YOU GET DOWN TO
THE POINT THAT THEY HAVE
ELIMINATED EVERYBODY ELSE,
GADSDEN AND TAMPA FOR
COMPETITIVE REASONS AND THEN
EVERYBODY ELSE JUST, YOU KNOW,
BECAUSE NOW THERE WOULD BE A
PROLIFERATION OF THESE
DOG TRACKS ALL OVER.
SO, AGAIN, I, TO ME, YOU KNOW,
IF YOU LOOK THE 11 AND GO
THROUGH SAY TWO QUALIFY AND YOU
HAVE THREE THAT NEVER QUALIFIED
BECAUSE THEY WERE CONVERTED,
GADSDEN AND TWO OF THE JAI-ALAIS
DOWN IN DADE AND BROWARD, THEY
CAN NEVER QUALIFY.
ONE OF THEM IS DORMANT.
THEY CAN NEVER QUALIFY.
THEN YOU HAVE, THEN YOU HAVE THE
THREE THAT ARE IN COUNTIES WHERE
THEY'RE THE ONLY PERMIT WHICH
THEY DON'T QUALIFY UNDER THE
DISTRICT COURT'S INTERPRETATION
AND UNDER THE BLACK'S LAW
DICTIONARY TERMS OF THE WORD
ONLY.
THREE DON'T QUALIFY BECAUSE
THEY'RE IN COUNTIES WITH MORE
THAN TWO.
>> WHAT ABOUT HIS ARGUMENT THE
ONES WITH MORE THEY COULD ALLOW
TO LAPSE OR TAKE SOME ACTION TO
GET DOWN TO TWO OR LESS?
>> WE, YOUR HONOR, IF THAT WAS
THE CASE, THEN IT WOULD SEEM TO
ME THEN WE GET KICKED OVER INTO
THE GULFSTREAM REASONABLE
REALISTIC POSSIBILITY TEST
WHETHER THAT COULD HAPPEN OR NO.
BECAUSE, AS YOU KNOW, AS I
SUGGESTED AND AGAIN, THESE
ARGUMENTS WERE ALL RAISED AFTER
THE TRIAL LEVEL. SO IT WASN'T

POSSIBLE FOR ME TO PUT EVIDENCE
IN THE RECORD ABOUT THESE THINGS
BUT I COULD HAVE EASILY HANDLED
THAT THROUGH AN EXPERT WITNESS
OR THROUGH SOME OTHER WITNESS.
YOU KNOW, THAT, THAT COULD, THAT
WOULD INDICATE THAT THAT IS NOT
A REASONABLE POSSIBILITY OF EVER
HAPPENING.
SEE, THERE ARE TWO STANDARDS
NOW.
IT IS NOT --
>> WHY IS THAT?
>> WELL, AGAIN, IF YOU LOOK, IF
THE LOOK AT THE GULFSTREAM
CASE, WE HAD A SITUATION WHERE
THE COURT SAID YOU HAVE AS MANY
QUARTER HORSE PERMITS AS YOU
WANT.
THERE WAS A EXPERT WITNESS
TESTIFIED, NO ONE WOULD PUT
THREE QUARTER HORSE PERMITS IN A
COUNTY TO QUALIFY FOR THIS.
NO ONE WOULD PUT THESE IN
KEY WEST THEY IDENTIFIED,
BECAUSE THERE IS NO LAND AND
ECONOMICALLY NO ONE IS GOING TO
DO THESE THINGS.
IT IS BASICALLY A PARI-MUTUEL
ECONOMIC TEST THAT YOU HAVE TO
NOW ENGAGE IN IN ORDER TO
DETERMINE IF THERE'S A REALISTIC
POSSIBILITY OF THESE THINGS
ACTUALLY HAPPENING.
>> IS THERE SOMETHING IN THE
RECORD THAT SUPPORTS THAT?
>> WELL THERE IS NOTHING IN THE
RECORD BECAUSE THESE ISSUES WERE
NOT RAISED BEFORE THE TRIAL
COURT.
REMEMBER WE WERE THERE ON
SUMMARY JUDGMENT.
WE HAD IN THE RECORD, WE HAD THE
DEPOSITION OF MR. BARNES AND WE
HAD THE DEPOSITION OF MY CLIENTS
REGARDING STANDING.
THAT WAS ALL THE SUMMARY
JUDGMENT EVIDENCE WE HAD.
ALL OF THESE OTHER FACTS WERE
ALL RAISED AFTER THE TRIAL
LEVEL.
AND I THINK THAT'S VERY
IMPORTANT FOR THIS COURT TO
RECOGNIZE.
THIS IS A SUMMARY JUDGMENT CASE.
I'M THE ONLY ONE THAT PUT ANY
EVIDENCE IN THE RECORD.
SO THEY HAVE TO LIVE BY MY
EVIDENCE.
MY EVIDENCE DOES NOT SUPPORT ANY
OF THEIR ARGUMENTS.
YOU KNOW THIS THING THAT

MR. BARNES WASN'T AUTHORIZED TO
TESTIFY ON BEHALF OF THE
DIVISION.
YOUR HONOR, I WAS LOOKING FOR THE
NOTICE YOU WERE ASKING FOR.
I KNOW IT IS IN THE RECORD
BECAUSE I SAW THE RECORD CITED
IN THE BRIEF.
I COULDN'T FIND IT.
BUT I KNOW WHAT I ASKED HIM.
I ASKED HIM TO TESTIFY ABOUT
WHAT COUNTIES QUALIFY UNDER THIS
STATUTE.
THAT'S WHY HE WAS BROUGHT THERE,
TO TALK ABOUT THAT.
>> LET ME ASK YOU ABOUT THIS
POINT.
DO YOU HAVE ANY CASE WHERE AN
AGENCY REPRESENTATIVE TESTIFYING
IN A DEPOSITION HAS BEEN ASKED A
QUESTION OF LAW, BECAUSE THAT'S
WHAT THIS IS, ISN'T IT?
HE WAS ASKED SOME QUESTIONS OF
FACT WHETHER PERMITS HAVE BEEN
ISSUED AND ALL THAT.
WHAT WE'RE TALKING ABOUT NOW IS
A QUESTION OF LAW, WHETHER AN
AGENCY REPRESENTATIVE ASKED A
QUESTION OF LAW, GIVEN A CERTAIN
ANSWER AND THAT HAS BEEN
DETERMINED TO BE THE BINDING
POSITION OF THAT AGENCY ON THE
QUESTION OF LAW.
IS THERE ANY CASES WHERE THAT'S
HAPPENED?
>> YOUR HONOR, FIRST OF ALL, I
BELIEVE THAT EVERY
INTERPRETATION IN THIS AREA OF
OPENNESS OF CLASS IS A MIXED
QUESTION OF LAW AND FACT.
>> WELL, BUT THE INTERPRETATION
OF THE WORDS IN THE STATUTE, THE
MEANING OF ONLY, THAT'S A
QUESTION OF LAW.
ISN'T THAT A PURE QUESTION OF
LAW?
>> WELL I THINK IT'S A QUESTION
OF STATUTORY INTERPRETATION.
>> THE QUESTIONS OF STATUTORY
INTERPRETATION ARE PURE
QUESTIONS OF LAW, ARE THEY NOT?
>> WELL, I CAN'T REALLY DISAGREE
WITH THAT BUT I HAVE SEEN A
NUMBER OF CASE THAT IS TALK
ABOUT DEFERENCE THAT'S GRANTED
TO THE AGENCY WHEN THEY MAKE
A --
>> BUT MY QUESTION, AND I
UNDERSTAND THAT BUT I THINK THE
TYPICAL PATTERN WHERE DEFERENCE
IS GIVEN TO AN AGENCY'S
DETERMINATION ON A QUESTION OF

LAW, IS WHERE THERE HAS BEEN
SOME AUTHORITATIVE PRONOUNCEMENT
OF THE AGENCY IN RULE-MAKING
PROCESS OR ISSUANCE OF AN
ADJUDICATORY PROCESS, AND THAT IS
NOT WHAT HAPPENED HERE.
THIS IS, THIS IS THE GENTLEMAN
WHO IS AN INVESTIGATOR AND
REVIEWS PERMITS WHO IS
EXPRESSING HIS VIEW ABOUT THE
MEANING OF THE STATUTE.
IS THERE ANYTHING LIKE THAT IN
ANY CASE THAT YOU FOUND WHERE
AN, THAT HAS BEEN DETERMINED TO
BE THE AUTHORITATIVE POSITION OF
THE AGENCY ON A QUESTION OF LAW?
THAT'S MY QUESTION.
>> WELL --
>> I UNDERSTAND YOU THINK IT
SHOULD BE BUT DO YOU HAVE ANY
CASE WHERE THAT HAS BEEN, WHERE
THAT HAS HAPPENED?
>> I BELIEVE THE RECENT DECISION
OF THE THIRD DISTRICT COURT IS
EXACTLY ON POINT, THE ONE I
CITED AS SUPPLEMENTAL
AUTHORITY.
I THINK THAT IS EXACTLY WHAT THE
THIRD DISTRICT SAID.
THIS AGENCY MADE A DETERMINATION
BASED ON THEIR KNOWLEDGE OF THE
STATUTORY SCHEME AND THIS IS HOW
THEY INTERPRETED THE STATUTE.
I DON'T KNOW HOW IT CAN BE,
IS --
>> EVEN IF IT WERE THE OFFICIAL
AGENCY INTERPRETATION, SAY IT
WAS AN OPINION LETTER OUT OF THE
OFFICE OF GENERAL COUNSEL, I
DON'T SEE HOW THE TWO PERMIT
HOLDERS WHO ARE DEFENDANTS, THE
APPELLANTS IN THIS CASE, CAN BE
BOUND BY THAT DETERMINATION.
WE GIVE DEFERENCE BUT WE DON'T
GIVE BLIND DEFERENCE TO AN
AGENCY INTERPRETATION.
ESPECIALLY NOT ONE GIVEN BY A
INVESTIGATOR IN THE COURSE OF A
DEPOSITION.
YOU'RE ASKING US TO SAY THAT HAS
TO BE THE INTERPRETATION, RIGHT?
>> WELL, I'M NOT REALLY ASKING
YOU THAT.
I MEAN THE FIRST DISTRICT FOUND
THAT IS WHAT THE WORD MEANT.
>> WELL THEY FOUND IT,
DICTIONARY DEFINITION.
JUST ABOUT OUT OF TIME.
>> I KNOW.
>> I DID WANT TO ASK YOU THE
STANDING QUESTION.
NOT AS TO THE TAXPAYER BUT AS TO

THE, BECAUSE I THINK THERE'S A
PROBLEM WITH STANDING THERE BUT
WHO ELSE DO YOU REPRESENT?
WHAT IS ENTITY THAT IS CLAIMING
THAT THIS STATUTE IS WORKING
AGAINST THEIR ABILITY TO OBTAIN
A GREYHOUND RACING PERMIT?
>> DEBARY REAL ESTATE HOLDINGS A
PARI-MUTUEL PERMIT-HOLDER WITH A
LOCATION, PERMITTED LOCATION IN
VOLUSIA COUNTY WHICH WOULD BE
WITHIN 35 MILES OF A LOCATION OF
THE VOLUSIA, THE CONVERTED
VOLUSIA JAI-ALAI.
>> AND SO THEY, IF THEY HAD,
COULD THEY HAVE ATTEMPTED BEFORE
THE ONE THAT DID TO GET THE
PERMIT?
>> THEY HAVE A PERMIT.
>> I MEAN, TO GREYHOUND?
>> THEY'RE NOT ELIGIBLE -- AGAIN
ONLY JAI-ALAIS ARE ELIGIBLE TO
CONVERT.
>> SO YOUR, YOUR COMPLAINT IS
THAT IT WAS TOO NARROW, THAT IT
SHOULDN'T HAVE JUST BEEN
JAI-ALAI PERMIT HOLDERS?
I'M JUST TRYING TO FIGURE OUT
HOW ANY INTERPRETATION OF THE
STATUTE INVOLVING JAI-ALAI
PERMITS WOULD BE APPLIED TO YOU
IN ANY EVENT?
LIKE SAY WE SAY ALL 11 JAI-ALAI
PERMITS.
YOU'RE NOT A JAI-ALAI
PERMIT-HOLDER.
ISN'T YOUR ARGUMENT THAT YOUR
CLIENT WOULD BE HURT BY THE
COMPETITION?
>> RIGHT. RIGHT.
SEE WHAT'S HAPPENED, AGAIN THERE
ARE A LOT OF LITTLE SUBTLE
THINGS IN HERE THAT YOU NEED TO
SEE.
IN THE RELOCATION STATUTE,
550.055, THE ONE I JUST
MENTIONED, THERE IS REQUIREMENT
THAT IF A PERMIT-HOLDER WANTS
TO MOVE INTO SOMEONE ELSE'S
MARKET AREA WHICH COULD HAPPEN
HERE, THEN THERE IS A 120
HEARING THAT MUST HAPPEN IN
ORDER TO DETERMINE WHETHER THE
RELOCATION WILL NEGATIVELY
AFFECT THE FINANCIAL INTEREST OF
THE PARTY INTO WHOSE MARKET AREA
THEY'RE MOVING.
THIS STATUTE ELIMINATED THAT.
SO THESE FOLKS CAN MOVE WHEREVER
THEY WANT AND THE RELOCATION
STATUTE WHICH APPLIES TO
EVERYBODY ELSE DOESN'T APPLY TO

THEM.
SO NOW I HAD A PERMITTED
LOCATION THAT I WAS, I HAD A
FRANCHISE RIGHT AROUND THAT
WITHOUT ANYONE HAVING THE
ABILITY TO RELOCATE WITHOUT
HAVING A HEARING AND NOW THIS
STATUTE IS WRITTEN AND NOW THEY
CAN COME AND PARK THEMSELVES
RIGHT NEXT TO ME AND I HAVE TO
LIVE WITH THAT AND, AND MY
RESPONSE TO THAT IS, YOU KNOW,
FLAGLER, MIAMI BEACH KENNEL CLUB,
ALL THESE OTHER CASES
PARI-MUTUEL PERMIT-HOLDERS HAVE
A RIGHT TO PROTECT THEIR
FRANCHISE RIGHTS UNDER THE
PERMITS.
THAT IS EXACTLY WITH DEBARY THE
CASE.
I HAVE A LOT MORE IN MY BRIEF TO
THE DISTRICT COURT BUT I WENT
THROUGH A COMPLETE ANALYSIS OF
EVERY PARI-MUTUEL SPECIAL LAW
CASE STARTING WITH THE WEST
FLAGLER CASE IN 1963 ALL THE WAY
THROUGH GULFSTREAM.
THERE HASN'T BEEN ONE CASE
EVERYWHERE A PARI-MUTUEL
PERMIT-HOLDER WAS DENIED
STANDING TO PROTECT FRANCHISE
RIGHTS AGAINST THESE TYPE OF
INTRUSIONS INTO THEIR FRANCHISE
RIGHTS.
BUT, YOUR HONOR, YOU SAID YOU
HAVE A PROBLEM WITH THE
TAXPAYERS STANDING?
>> YEAH.
WELL, I THOUGHT THAT WAS, THE
TAXPAYER, IT IS NOT, DO YOU
CONTEND THAT THE TAXPAYER ALSO
HAS STANDING?
>> THAT'S RIGHT.
THE TOTEN CASE I CITED THERE IS
ANOTHER CASE THAT SAYS THE TAXPAYER
DOESN'T HAVE STANDING.
QUITE FRANKLY IF A TAXPAYER
DIDN'T HAVE STANDING TO PROTECT
AGAINST A SPECIAL ACT COMING
INTO ITS COUNTY, THAT VIOLATES
THE CONSTITUTIONAL REQUIREMENTS
FOR NOTICE, THEN WHO HAS
STANDING TO CHALLENGE THAT?
>> YOUR OTHER CLIENT.
>> WELL, OKAY, WELL, MAYBE.
AND AS LONG AS ONE OF THEM HAS
STANDING I DON'T REALLY CARE
BUT STILL, TO THINK ABOUT IT
THOUGH, WHAT CITIZEN OF THE
COUNTY DOESN'T HAVE STANDING TO
CHALLENGE A SPECIAL LAW THAT
AFFECTS IT?

TOTEN CASE CERTAINLY IS ON
POINT.
THEY HAVE NOT CITED A CASE THAT
SAYS A TAXPAYER DOESN'T HAVE
STANDING IN A SPECIAL LAW
SCENARIO.
>> YOU'RE OUT OF TIME.
>> OKAY, THANK YOU.
>> REBUTTAL?
>> PLEASE THE COURT, I JUST HAVE
THREE BRIEF COMMENTS.
COUNSEL WAS ASKED HOW
MANY COUNTIES WOULD BE HE WILL
BABBLE IF THE INTERPRETATION OF
THE DISTRICT COURT WERE
SUSTAINED, HE SAID TWO.
ACTUALLY IT IS THREE.
MARION COUNTY AS WELL ALTHOUGH
MARION COUNTY IS NOT, I THINK
WHAT HE MEANT ONLY TWO ARE
CURRENTLY ELIGIBLE AND THEY
CONVERTED.
MARION COUNTY WOULD BE ELIGIBLE
GIVEN
LONG ENOUGH PERIOD OF DORMANCY
WHICH LEADS TO MY SECOND COMMENT
AND THIS IS WITH RESPECT TO THIS
ISSUE OF TREATING EVERYONE
IDENTICALLY.
WHAT THE COURT HAS SAID IS, THAT
EVERYONE COMING WITHIN THE CLASS
MUST BE TREATED IDENTICALLY.
IN A NUMBER OF THIS COURT'S
CASES, KEY CASES IT HAS FOUND
THAT AT THE TIME OF PASSAGE,
ONLY ONE ENTITY WAS WITHIN THE
CLASS, AND THE COURT
CONSISTENTLY SAID THAT DOESN'T
RENDER IT INVALID.
AS LONG AS IT WAS OPEN TO OTHERS
EVENTUALLY AND IMPLICIT IN THAT,
IS WHAT THEY CHANGE OF
CIRCUMSTANCES OBVIOUSLY.
BECAUSE THAT IS WHY ONLY ONE WAS
ELIGIBLE TO BEGIN WITH.
THE CRITICAL DISTINCTION WHICH
IS REFLECTED IN GULFSTREAM, IT
IS NOT VALID IF IT REQUIRES A
CHANGE IN LAW FOR OTHERS TO COME
WITHIN IN IT, WHICH IS NOT THE
CASE HERE.
LAST THING I WANTED TO
MENTION IS THAT, AS THIS
COURT ITSELF HAS RECOGNIZED,
THERE ARE A FEW AREAS WHERE,
MORE EQUIPMENT ESSENTIALLY
LEGISLATIVE IN CHARACTER THAN
THE AREA OF BALANCING THE
COMPETING INTERESTS OF THE
VARIOUS PARI-MUTUELS AND OF THE
STATE OF FLORIDA.
THAT'S WHAT THE LEGISLATURE

TRIED TO DO HERE.
WHAT THE PLAINTIFF IS ASKING
THIS COURT TO DO IS TO STEP INTO
THE MANAGEMENT OF THAT FIELD,
BEYOND ANYTHING IT HAS EVER BEEN
WILLING TO DO BEFORE.
I RESPECTFULLY URGE THE COURT TO
DECLINE TO DO THAT.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.