

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.

GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA
SUPREME COURT.

THE FIRST CASE ON THE DOCKET
THIS MORNING IS FLORIDA
DEPARTMENT OF REVENUE VERSUS
AMERICAN BUSINESS USA CORP.
WHENEVER YOU'RE READY, COUNSEL.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, I'M
ALLEN WINSOR HERE ON BEHALF OF
THE DEPARTMENT OF REVENUE.
TODAY'S CASE IS ABOUT THE SALES
TAX ON FLOWERS.

AND FLORIDA HAS ENACTED A
SPECIFIC STATUTE THAT PROVIDES
WHEN IT COMES TO FLOWERS, THE
SALES TAX LIABILITIES IMPOSED ON
THE FLORIST WHO TAKES THE ORDER,
REGARDLESS OF WHERE THEY'RE
DELIVERED.

IF YOU CONSIDER A TRANSACTION
WHERE ONE PERSON PLACES THE
ORDER WITH A FLORIST, THAT
FLORIST ARRANGES WITH A LOCAL
FLORIST TO DELIVER TO YET
ANOTHER PERSON, BECAUSE
TYPICALLY THE PERSON WHO ORDERS
THE FLOWERS IS NOT RECEIVING THE
FLOWERS.

>> SO LET ME ASK YOU THIS.
I LIVE IN FLORIDA.

LET'S SAY I HAVE A DAUGHTER
GOING TO COLLEGE IN NEW YORK.
IT'S HER BIRTHDAY.

I CALL A FLORIST HERE IN FLORIDA
AND I TELL THE FLORIST TO SEND
MY DAUGHTERS SIX -- 12 ROSES.

I WILL HAVE TO PAY A TAX BECAUSE I'M SENDING FLOWERS FROM FLORIDA TO NEW YORK.

>> THAT'S RIGHT.

>> NOW, VICE VERSA.

LET'S SAY I LIVE IN NEW YORK AND MY DAUGHTER'S GOING TO UNIVERSITY OF FLORIDA.

WHERE ELSE?

AND I DECIDE TO SEND HER FLOWERS BECAUSE IT'S HER BIRTHDAY.

I WOULD NOT PAY TAXES.

>> YOU WOULD NOT PAY THE FLORIDA TAX.

IN THAT SCENARIO, THERE WOULD BE A FLORIST THAT WAS MANUFACTURING THE BOUQUET AND DELIVERING IT TO YOUR DAUGHTER.

THAT WOULD NOT BE TAXED BECAUSE FLORIDA SOURCES THE SALE OF THE TAX WHERE THE ORDER IS PLACED.

>> WHY SHOULD THERE NOT BE A TAX IN THAT SCENARIO?

IT'S THE SAME THING.

IT'S JUST VICE VERSA.

>> ONE, IT'S UP TO THE LEGISLATURE WHERE THEY'RE GOING TO SOURCE THE TAX.

WHAT THEY'VE DONE BY DOING IT THIS WAY, THE APPROACH 36 OTHER STATES HAVE TAKEN, IT'S BEEN THERE WAY FOREVER, AND THERE'S NEVER BEEN ANY COURT THAT FOUND IT, BUT TO ANSWER YOUR QUESTION, IN THAT CASE IT'S A LITTLE DIFFERENT BECAUSE YOU'RE PAYING ONE PRICE AND GETTING THE FLOWERS AND WHAT YOU'RE ALSO GETTING IS THE SERVICE THAT GOES ALONG WITH THAT.

THAT'S WHY PEOPLE CALL A LOCAL FLORIST OR CALL 1-800-FLOWERS BECAUSE FLOWERS NEED TO BE PRODUCED WHERE THEY'RE GOING TO BE DELIVERED BECAUSE THEY DON'T KEEP.

SO YOU'RE BUYING THE FLOWERS AND YOU'RE BUYING THE SERVICE OF PARTICIPATING IN THAT NETWORK AND HAVING SOMEONE WHO CAN GO

IDENTIFY THE PROPER FLORIST AND
GET YOU YOUR PRODUCT.

BUT THERE'S NO -- WE'RE NOT
SUGGESTING THE WAY YOU SUGGESTED
WOULD BE CONSTITUTIONALLY
IMPERMISSIBLE.

IT'S A VERY HIGH BURDEN TO SAY
THE WAY A STATE HAS CHOSEN
VIOLATES THE DORMANT CLAUSE.
WITH ANY STATUTE THERE'S A
STRONG PRESUMPTION OF
CONSTITUTIONALITY AND THERE'S A
STRONG BURDEN TO SHOW BEYOND ALL
DOUBT THAT IT'S NOT PERMISSIBLE.

>> THE DCA FRAMED THE ISSUES AS
FLOWERS THAT WERE ORDERED BY
OUT-OF-STATE CUSTOMERS FOR
OUT-OF-STATE DELIVERY.

DO YOU KNOW HOW THEY DEFINE
OUT-OF-STATE CUSTOMERS?

IS THAT SOMEONE WHO IS ACTUALLY
LOCATED OUTSIDE THE STATE OF
FLORIDA?

>> IN MANY INSTANCES THEY ARE
LOCATED OUTSIDE.

I DON'T KNOW EXACTLY WHAT THE
FOURTH DISTRICT HAD IN MIND WITH
THAT LANGUAGE.

>> AND YOUR OPPOSING SIDE ALSO
USES THAT SAME LANGUAGE.

>> THEY'RE OUT-OF-STATE
TRANSACTIONS.

THEY HAVE TO DO IT THAT WAY
BECAUSE IF YOU GO BACK TO THE
PURPOSE OF THE COMMERCE CLAUSE,
IT'S TO PROHIBIT STATES FROM
DOING THINGS THAT WOULD GIVE
PEOPLE INCENTIVES TO KEEP
BUSINESS IN-STATE.

SO YOU CAN'T HAVE A LAW THAT
DISCRIMINATES AGAINST INTERSTATE
COMMERCE.

THE STATUTE MAKES CLEAR THAT IT
DOESN'T MATTER WHERE THE FLOWERS
ARE GOING.

SO IF I ORDER FLOWERS FOR
DELIVERY IN TALLAHASSEE, IT'S
TAXED THE SAME WAY AS IF I ORDER
FLOWERS FOR DELIVERY IN
TENNESSEE, OUT-OF-STATE.

>> ARE THEY MAKING A DISTINCTION THAT IF YOU HAVE SOMEBODY THAT'S A CUSTOMER WHO'S, FOR EXAMPLE, LOCATED IN GEORGIA, THEY ORDER ON THE INTERNET FLOWERS FROM THIS COMPANY, WHO IS BASED IN FLORIDA, FOR DELIVERY IN NEW YORK.

YOUR POSITION IS THAT A TAXABLE TRANSACTION, RIGHT?

>> THAT'S RIGHT, BECAUSE THE TRANSACTION IS A FLORIDA TRANSACTION.

>> I WOULD READ THEIR POSITION TO SAY, NO, THAT'S IN VIOLATION OF THIS CONSTITUTION, BUT IS THERE IN THE RECORD SOME FACTUAL DISTINCTION AS BETWEEN IF THAT CUSTOMER IS LOCATED IN GEORGIA OR FLORIDA?

DOES THE RECORD SUPPORT THAT LEVEL OF A DISTINCTION?

>> I DON'T UNDERSTAND THEM TO MAKE THE DISTINCTION BETWEEN THE PURCHASERS.

AND CORRECT ME IF I'M WRONG, BUT THE WAY THEY FRAME IT --

>> IT'S CERTAINLY DESCRIBED THAT WAY.

>> THEY POINT THAT OUT, BUT WHAT THEY SAY IS KEY IS WHERE THE DELIVERY TAKES PLACE.

THE TRANSACTION TAKES PLACE WHERE THE DELIVERY TAKES PLACE, WHICH IS NOT CORRECT AS A MATTER OF FLORIDA LAW.

WHAT THE CONSTITUTIONAL TEST IS IS THERE A NEXUS.

THEY HAVE TO SAY THIS IS AN OUT-OF-STATE TRANSACTION TO SAY THERE'S NO NEXUS BETWEEN THIS TRANSACTION AND THE STATE OF FLORIDA.

>> THE INTERNET SALE -- BECAUSE THIS IS DIFFERENT -- WHEN SOMEONE SAYS 1-800-FLOWERS, THEY DON'T REALLY CARE WHERE THAT INTERNET COMPANY IS LOCATED. THE ISSUE IS YOU EITHER HAVE WHERE IT'S GOING TO BE DELIVERED

AND WHERE THE FLOWERS ARE COMING FROM, RIGHT?

THOSE ARE THE TWO THINGS.

HERE TELL ME WHERE THE -- IF IT'S OUT-OF-STATE CUSTOMER AND OUT-OF-STATE DELIVERY, WHAT'S THE NEXT -- I MEAN, THIS ISN'T A LONG-ARMED CASE, BUT WHAT'S THE NEXUS WITH FLORIDA?

BECAUSE YOU SAID THE SALES TAX IS ON THE SERVICE OF THE CUTTING THE FLOWERS AND DELIVERING THEM. MAYBE YOU DIDN'T SAY THAT.

BUT ANYWAY WHAT'S THE NEXUS IF THERE ISN'T A FLORIDA CUSTOMER ORDERING IT, JUSTICE LABARGA'S NOT HERE AND HIS DAUGHTER'S NOT HERE, AND FLORIDA?

ISN'T THAT WHAT THE FOURTH DISTRICT WAS CONCERNED ABOUT?

>> THAT IS.

BUT THE NEXUS IS THE TRANSACTION ITSELF.

THE FOURTH DISTRICT BASICALLY WROTE THE TAXPAYER, THE ENTITY THAT'S BEEN ASSESSED WITH THIS TAX, OUT OF THE TRANSACTION ALTOGETHER.

YOU HAVE SOMEONE BUYING IT OVER HERE, A DELIVERY OVER THERE, BUT THAT TRANSACTION HAS TO COME TOGETHER AND THAT'S WHAT THIS ENTITY DOES.

THEY'RE THE ONES WHO TAKE THE MONEY.

THEY'RE THE ONES WHO ADVERTISE THEIR SERVICE, MAKE THE TRANSACTION HAPPEN BY TAKING A BUYER, IDENTIFYING THE LOCAL FLORIST WHO CAN ACTUALLY FILL THE ORDER AND MAKING ALL THAT HAPPEN.

SO FOR THEM TO SAY THERE'S NO CONNECTION BETWEEN THEM AND THE TRANSACTION --

>> I MEAN, THE TAX IS THE SAME AS TO THE SALES TAX WHETHER THE CUSTOMER WAS FROM FLORIDA DELIVERING TO NEW YORK OR THE CUSTOMER WAS FROM NEW YORK

DELIVERING TO FLORIDA OR NEITHER
THE CUSTOMER WAS FROM FLORIDA OR
THE TRANSACTION WAS IN FLORIDA.
THE TAX IS THE SAME.

>> THE TAX IS THE SAME
REGARDLESS OF WHERE THE FLOWERS
ULTIMATELY ARE DELIVERED.

>> OR WHO THE CUSTOMER -- WHERE
THE CUSTOMER IS.

>> THAT'S RIGHT.

THAT'S RIGHT.

BECAUSE THE TRANSACTION IS
WHAT'S BEING TAXED.

THIS IS NOT A PROPERTY TAX ON
FLOWERS.

YOU COULD HAVE A PROPERTY TAX ON
FLOWERS.

GETTING BACK TO THE CHIEF
JUSTICE'S POINT ABOUT WHY IS IT
THIS WAY, THERE'S A NUMBER OF
WAYS THE STATE COULD TAX
BUSINESS.

>> WHAT ABOUT THE PERSON WHO
IT'S A FLORIDA COMPANY, THEY GET
A TENNESSEE GROWER OR WHOEVER IT
IS TO DELIVER FLOWERS TO SOMEONE
IN TENNESSEE.

BUT THEY'VE STARTED IN FLORIDA.
SO YOU TAX IT.

THE PERSON WHO ACTUALLY DOES THE
DELIVERY AND CUTTING THE FLOWERS
AND PUTTING THEM IN THE GREAT
BOUQUET, DO THEY GET THE TAX
ALSO?

>> WELL, THERE'S TWO PARTS TO
THAT QUESTION.

THE SHORT ANSWER IS THE FACT
THAT THERE COULD BE POTENTIALLY
DOUBLE TAXATION DOESN'T PRESENT
A COMMERCE CLAUSE PROBLEM IN AND
OF ITSELF.

THAT'S AN APPORTIONMENT QUESTION
AND THEY'VE NOT RAISED
APPORTIONMENT AS ONE OF THE
FACTORS OF THE COMPLETE AUTO
TEST THAT THEY'RE SAYING
FLORIDA'S TEST FAILS.

BUT IF WE ARE TALKING ABOUT
APPORTIONMENT, TO ANSWER YOUR
QUESTION, WHAT THE COURT DOES IS

IT LOOKS FOR THE INTERNAL AND EXTERNAL CONSISTENCY OF THE STATUTE.

WHAT THEY WOULD LOOK AT FOR FLORIDA IS IT'S A HYPOTHETICAL TAX.

YOU SAY WHAT IF EVERY STATE ENACTED THIS SAME LAW?

WOULD THERE BE DOUBLE TAXATION? THAT WOULD SHOW IT'S DISCRIMINATORY.

HERE THERE WOULDN'T BE DOUBLE TAXATION BECAUSE THAT TENNESSEE FLORIST WOULD NOT BE LIABLE FOR THE TAX.

BUT THEY DON'T RAISE APPORTIONMENT.

THE COURT NEED NOT CONSIDER T. WE PLAINLY WOULD SATISFY IT ANYWAY BECAUSE WE MEET THE INTERNAL CONSISTENCY AND THE EXTERNAL CONSISTENCY WHEN YOU'RE TALKING ABOUT A SALE FOLLOWS RIGHT BEHIND THAT.

SO --

>> SO I GUESS I ASSUME FROM THAT ANSWER IS THAT YOU AS THE FLORIDA COMPANY HAS ALREADY MADE SOME KIND OF ARRANGEMENT WITH THE OTHER -- THE COMPANY IN TENNESSEE FOR WHATEVER THE PRICE OF WHAT THEY'RE DOING.

IS THAT HOW THAT WORKS?

>> WELL, IF I UNDERSTAND YOUR QUESTION CORRECTLY, THE WAY THAT I UNDERSTAND THAT IT WORKS IS THE FLORIST, WHETHER IT'S A 1-800 COMPANY OR THIS ENTITY WOULD TAKE THE ORDER, TAKE THE CUSTOMER'S MONEY AND IT WOULD BE COMPLETELY INVISIBLE TO THE CUSTOMER WHO IS DELIVERING THEIR FLOWERS.

THEY GIVE THEIR MONEY OVER AND THEIR MOTHER-IN-LAW GETS THE BOUQUET OF FLOWERS DELIVERED. TO MAKE ECONOMIC SENSE FOR THE INITIAL FLORIST, THEY WOULD KEEP A PORTION OF THAT MONEY AND THEN THE REMAINDER OF THE MONEY WOULD

GO TO THE FLORIST WHO'S
DELIVERING THE FLOWERS.
BUT, AGAIN, IF YOU -- SO IF YOU
DON'T HAVE THE SIMPLICITY THAT
THE FLORIDA LEGISLATURE IN 36
STATES PUT INTO PLACE BY SAYING
THIS IS HOW WE'RE GOING TO TAX
IT VERY CLEANLY, THE FLORIST
TAKING THE ORDER IS LIABLE FOR
THE SALES TAX.
THE FLORIST DOWN THE LINE IS
NOT.

IF YOU TAKE THAT AWAY, SAY
THAT'S UNCONSTITUTIONAL, THEN
YOU GET INTO ALL THESE QUESTIONS
ABOUT, OKAY, SO WHO IS THE
SELLER?

IS IT THIS TENNESSEE FLORIST?
BECAUSE IN A SENSE THEY'RE
SELLING THE BOUQUET THAT THEY
OWN TO THIS FLORIDA FLORIST WHO
IS NEVER TAKING POSSESSION OF IT
BUT RESELLING IT.

IT GETS VERY COMPLICATED IT AND
YOU HAVE THE SERVICE COMPONENT,
SALES COMPONENT.

THIS GETS AVOIDED ENTIRELY BY
SAYING THIS IS HOW WE'RE GOING
TO DO IT.

IT'S GOING TO BE VERY
STRAIGHTFORWARD.

WHEN YOU TAKE THE ORDER, THERE'S
A SALES TAX LIABILITY.

WHEN SOMEONE ELSE IN THE SAME
NETWORK RECEIVES AN ORDER,
PRODUCES FLOWERS, THERE IS NO
SALES TAX.

SO THAT MAKES SENSE.

IT'S BEEN THAT WAY FOR A NUMBER
OF YEARS IN THE VAST MAJORITY OF
THE STATES AS WE POINTED OUT AND
CONGRESS HAS NEVER DONE ANYTHING
TO ALTER THIS.

I THINK THAT'S ONE THING THAT'S
IMPORTANT.

THE WHOLE PURPOSE OF A DORMANT
COMMERCE CLAUSE IS TO PROTECT
CONGRESS'S TURF AND AUTHORITY TO
REGULATE INTERSTATE COMMERCE AND
THE STATE CAN'T COME IN.

THE FACT THAT CONGRESS COULD ALTER THIS AND HASN'T I THINK WEIGHS INTO THE CONSTITUTIONAL ANALYSIS.

I'LL GO THROUGH THE OTHER FACTORS.

YES.

>> IN FAIRNESS, IF THERE WAS REGULATION BY CONGRESS, WE'D BE IN A WHOLE DIFFERENT ANALYSIS. SO THE FACT THAT YOU'RE SAYING WE SHOULD TAKE IT THAT BECAUSE CONGRESS HASN'T REGULATED, THAT THAT MEANS THEY AGREE, I DON'T KNOW THAT THAT'S -- IS THAT A PRINCIPLE THAT WE'VE APPLIED?

>> THE U.S. SUPREME COURT IN QUILL LOOKED AT IT THAT WAY WHEN THEY WERE CONSIDERING WHETHER IT WAS TIME TO REVISIT THE BELLAS HESS CASE, WHERE THE ISSUE WAS CAN YOU TAX -- CAN THE STATE TAX A TRANSACTION THAT TAKES PLACE OUTSIDE THE STATE.

THIS WAS AN OFFICE SUPPLY CASE. AND THE QUESTION WAS IS IT TIME TO OVERRULE THAT EARLIER DECISION.

THE COURT SAID NO.

PEOPLE HAVE RELIED ON THIS.

CONGRESS HAS ENACTED.

THEY UPHELD THE RULE.

THEY SAID A LOT OF THINGS THAT MAKE SENSE HERE.

IT MAKES SENSE TO HAVE A BRIGHT LINE RULE SO THAT PEOPLE UNDERSTAND THE RULES.

AND IN QUILL THEY SAID THAT THAT HAD FOSTERED THE DEVELOPMENT OF THE MAIL ORDER BUSINESS

NATIONALLY, THAT BUSINESS HAD GROWN, THERE WAS PREDICTABILITY IN THE LAW AND THINGS LIKE THAT. THAT'S WHERE I THINK SOME OF THE DANGER OF THIS CASE IS IF THE

COURT SAYS, WELL, HERE'S A NEW RULE AND WHAT THE 36 OTHER STATES HAVE BEEN DOING FOR A NUMBER OF YEARS ACTUALLY DOES VIOLATE THE DORMANT COMMERCE

CLAUSE.
THAT WOULD PUT ADDITIONAL
BURDENS -- THAT WOULD FORCE
FLORIDA TO RESTRUCTURE ITS TAX,
PERHAPS, BECAUSE, AGAIN, THERE'S
OTHER WAYS THAT THIS CAN BE DONE
AND THERE'S NO RULE THAT SAYS
THERE HAS TO BE A CERTAIN WAY
THAT ALL STATES HAVE TO DO IT.
THE SUPREME COURT'S BEEN CLEAR
ABOUT THAT.

EVEN WHEN THERE IS DOUBLE
TAXATION.

YOU HAVE THE MINING CASES WHERE
THERE'S A TAX WHEN THE GOODS ARE
EXTRACTED FROM THE GROUND,
THERE'S A TAX ON THE SALE.
THERE CAN BE TAXES THROUGHOUT
THE PROCESS.

I'LL TOUCH BRIEFLY ON THE
DORMANT COMMERCE CLAUSE --
EXCUSE ME.

I'LL TOUCH BRIEFLY ON THE DUE
PROCESS.

THERE IS NO DUE PROCESS
VIOLATION.

THE CONNECTIONS BETWEEN THIS
BUSINESS, EVERYTHING THIS
BUSINESS DOES, IT DOES IN
FLORIDA.

EVERY TRANSACTION IT
PARTICIPATES IN, IT DOES IN
FLORIDA.

SO WHATEVER IT'S DOING
BEHIND-THE-SCENES TO MAKE THESE
TRANSACTIONS HAPPEN IN FLORIDA,
THERE IS DEFINITELY A NEXUS
SUFFICIENT TO SUPPORT IT UNDER
BOTH THE DORMANT COMMERCE CLAUSE
AND THE DUE PROCESS CLAUSE.

>> HOW DO YOU RESPOND TO THE
ARGUMENT THAT IN THIS TAX
FLORIDA IS ESSENTIALLY REACHING
OUT TO THE CUSTOMERS IN OTHER
STATES AND IMPOSING THE TAX ON
THEM, THAT LEGALLY AND AS A
PRACTICAL MATTER THE TAX FALLS
ON THESE FOLKS THAT ARE OUTSIDE
OF FLORIDA?

>> THE STATUTE MAKES CLEAR THAT

THE FLORIST IS THE ONE LIABLE FOR THE TAX, AND IN THIS CASE THE FLORIST IS THE ONE WHO'S BEEN ASSESSED THE TAX AND IS HERE CONTESTING THE STATE'S AUTHORITY TO DO THAT.

IF FLORIDA SUED AN OUT-OF-STATE CUSTOMER FOR UNPAID SALES TAX, THEN IT CERTAINLY WOULD BE -- THAT CUSTOMER WOULD BE FREE TO LITIGATE THE DUE PROCESS QUESTIONS.

BUT THE STATUTE IS SET UP THAT WAY TO IMPOSE THE LIABILITY ON THE FLORIST TO AVOID THOSE VERY TYPES OF QUESTIONS.

THANK YOU.

>> MAY IT PLEASE THE COURT, MICHAEL SLOAN ON BEHALF OF THE APPELLEE, AMERICAN BUSINESS USA CORP.

THIS IS ABOUT THE CONSTITUTIONAL LIMITATIONS ON A STATE'S POWER TO COLLECT SALES TAX.

A SALE MAY BE TAXED ONLY BY THE STATE IN WHICH THAT SALE IS CONSUMMATED AND A SALE IS CONSUMMATED IN THE STATE WHERE THE TITLE OR POSSESSION TO THE PROPERTY TRANSFERS FROM THE SELLER TO THE BUYER.

>> SO YOU'RE SAYING ONLY -- EVEN IF THE CUSTOMER ORDERING THE FLOWERS WAS IN FLORIDA, IF IT'S ANY OUT-OF-STATE DELIVERY, THIS STATE DOES NOT HAVE THE POWER TO TAX THAT -- IN OTHER WORDS, EVEN IF IT'S BETWEEN A FLORIDA CUSTOMER AND YOUR COMPANY, IT'S GOT -- IT CAN'T BE TAXED?

>> OUR POSITION IS THAT THIS TAX IS A SALES TAX, AND A SALES TAX IS A TAX ON THE TRANSFER OF PROPERTY, AND THE PROPERTY IN THIS CASE NEVER ENTERS THE STATE OF FLORIDA.

>> SO WHAT I JUST ASKED YOU, WHICH WAS ONE OF THE HYPOTHETICALS THAT JUSTICE LABARGA ASKED WHERE IT'S FLORIDA

CUSTOMER, BUT SENDING THE FLOWERS TO ANOTHER STATE, NO SALES -- IT'S UNDER THE -- IT'S UNCONSTITUTIONAL UNDER THE COMMERCE CLAUSE?

>> YES, YOUR HONOR.

WE WOULD SAY THAT EVEN IN THAT SITUATION WHERE YOU HAVE THE PERSON GOING ON THE INTERNET WEB SITE FROM WITHIN A LOCATION IN FLORIDA, THE ACTUAL PRODUCT THAT THEY'RE BUYING THE TRANSFER OF PROPERTY THAT'S TAKING PLACE IS SOMETHING THAT OCCURS OUTSIDE OF THE STATE OF FLORIDA.

>> BUT YOUR COMPANY, DO THEY EVEN -- YOU DON'T EVEN HAVE THE FLOWERS, RIGHT?

YOU JUST USE LOCAL FLORISTS OR FLORISTS AROUND THE COUNTRY?

>> THAT'S CORRECT.

THERE'S NO INVENTORY OF FLOWERS.

>> THAT WOULD MEAN, THEN, IF I GO DOWN HERE TO THE TALLAHASSEE MALL, GO INTO MACY'S AND PLACE AN ORDER FOR A GIFT THAT'S GOING TO BE SENT OUTSIDE THE STATE OF FLORIDA AND EVEN THOUGH IT MAY NOT COME FROM THE MACY'S STORE HERE IN TALLAHASSEE, IT MAY COME FROM THEIR WAREHOUSE, AS OFTEN HAPPENS, IN ATLANTA, THAT I'M NOT RESPONSIBLE FOR, NOR IS MACY'S RESPONSIBLE FOR ANY KIND OF SALES TAX IN THAT TRANSACTION.

THAT'S WHERE YOUR ARGUMENT TAKES US.

>> I THINK THAT THE ISSUE WHERE SOMEONE GOES INTO A PHYSICAL PLACE OF BUSINESS AND ORDERS PROPERTY TO BE DELIVERED TO ANOTHER LOCATION.

THE CASE LAW IS A BIT INDETERMINATE ABOUT WHERE THE TAX CAN BE IMPOSED THERE BECAUSE IT COMES DOWN TO ISSUES OF WHERE IS THE ACTUAL POSSESSION AND TITLE TO THE PROPERTY TRANSFERRING.

IN THIS CASE WE DO NOT HAVE THAT CLOSE OF A QUESTION BECAUSE IT'S UNDISPUTED IN THIS RECORD THAT THE FLOWERS --

>> SO WE HAVE TO LITIGATE EACH TRANSACTION THAT I MAKE WITH MACY'S TO BE ABLE TO DETERMINE WHERE THE TAX IS THEN.

>> I DON'T KNOW THAT YOU WOULD. AND I THINK --

>> WELL, WE HAVE TO KNOW -- I MEAN, PLEASE.

WE HAVE TO KNOW WHERE WE'RE GOING TO -- IF A TAX IS GOING TO BE APPLIED, IT WOULD SEEM TO ME THAT WE HAVE TO HAVE RULES THAT ARE UNDERSTANDABLE THAT YOU CAN APPLY.

TO SAY SOMETIMES I GO INTO MACY'S AND I ORDER PRODUCT X, MACY'S HAS TO PAY A TAX TO FLORIDA, AND OTHER TIMES IT DOESN'T AND WE'RE GOING TO LITIGATE WHEN THAT HAPPENS. THAT DOESN'T SEEM TO MAKE SENSE.

>> I DON'T THINK THAT YOU WOULD HAVE TO LITIGATE EACH SEPARATE TRANSACTION IN THAT INSTANCE BECAUSE --

>> WELL, I'M USING YOUR TEST. YOUR TEST SAID THAT IF THE PROPERTY IS DELIVERED FROM A LOCATION OUTSIDE THE STATE TO ANOTHER LOCATION OUTSIDE THE STATE, WHICH IS THE HYPOTHETICAL I GAVE YOU FROM MACY'S, I GO INTO THE BRICK AND MORTAR STORE AND I MAKE THAT ORDER AND I MAKE MY MONEY PAYMENT THERE, JUST LIKE IT'S OCCURRED HERE, PAYMENT, AS I UNDERSTAND IT, COMES TO THE FLORIDA BUSINESS, CORRECT?

>> PAYMENT DOES COME TO THE FLORIDA BUSINESS.

>> OKAY.

SO THEN HOW DO WE DETERMINE THEN WHETHER UNDER YOUR SCENARIO, IT WOULD BE UNCONSTITUTIONAL FOR THE STATE TO ASK FOR OR APPLY A

SALES TAX TO THAT TRANSACTION THEN.

>> THE TEST THAT WE PROPOSE AND THAT THE SUPREME COURT HAS LAID OUT IN THE JEFFERSON LINES CASE IS THAT A SALES TAX MAY ONLY BE IMPOSED IN THE STATE WHERE THE SALE IS CONSUMMATED.

>> AGAIN, I'M ASKING YOU THAT QUESTION, IF YOU COULD JUST ANSWER IT YES OR NO, I MEAN, IT WOULD BE A GREAT HELP TO ME, BECAUSE I'M TRYING TO UNDERSTAND IF THERE'S A DIFFERENCE BETWEEN AN ORDER COMING BY WIRE, IS THAT THE DISTINCTION WE'RE MAKING, OR ARE WE MAKING A DISTINCTION IF YOU HAVE A PHYSICAL PLANT WHERE SOMEBODY WALKS IN? THAT'S DIFFERENT?

WE CAN'T JUST LEAVE IT NEBULOUSLY UP IN THE AIR SOMEPLACE.

>> THE DISTINCTION THAT WE DRAW IS THAT THE SALE MAY BE TAXED WHERE TRANSFER OF TITLE OR POSSESSION OCCURS.

SO IN THE EXAMPLE THAT YOU GAVE, IF THERE WAS SOMEONE WHO WALKED INTO MACY'S AND THEY ORDERED SOMETHING FROM THAT ACTUAL MACY'S STORE, PAID FOR IT AND WALKED OUT WITH THE PROPERTY, THAT WOULD BE WHERE THE SALE WAS CONSUMMATED.

>> THAT'S NOT THE HYPOTHETICAL. THE PRODUCT IS IN THE WAREHOUSE IN ATLANTA.

>> YES.

AND IN THAT SITUATION THE SALE WOULD NOT BE TAXABLE BECAUSE THE TRANSFER OF THE PROPERTY DOES NOT HAPPEN WITHIN THE STATE OF FLORIDA.

THAT IS OUR POSITION IN THIS CASE.

>> BUT AS A PRACTICAL MATTER, IN THE SCENARIO INVOLVING MACY'S, SOMETIMES IF YOU GO IN, THEY DON'T HAVE THE MERCHANDISE ON

HAND, YOU PLACE AN ORDER FOR IT,
THEY MAY NOT -- AT THE TIME YOU
PAY FOR IT, THEY MAY NOT EVEN
KNOW WHERE IT'S COMING FROM.
IT COULD BE COMING FROM ATLANTA.
IT COULD BE COMING FROM MIAMI.
IT COULD BE COMING FROM
SAN FRANCISCO.

AND SO THE PRACTICALITIES OF
APPLYING THIS RULE YOU'RE
TALKING ABOUT IN THE CONTEXT
THAT JUSTICE LEWIS HAS BROUGHT
UP JUST I THINK BOGGLES THE
MIND.

WHY AM I WRONG?

>> WELL, LET ME RESTATE WHAT I
WAS TRYING TO SAY.

IN THE EXAMPLE THAT YOU GAVE
WHERE THE PROPERTY IS ACTUALLY
COMING FROM A WAREHOUSE IN
GEORGIA, IF THAT PROPERTY IS
COMING TO FLORIDA FOR THE
CONSUMER, THE PURCHASER WHO MADE
THAT PURCHASE IN FLORIDA AND THE
PROPERTY IS COMING INTO THE
STATE, IT'S VERY EASY TO
DETERMINE WHERE THAT SALE IS
CONSUMMATED BECAUSE THE SALE IS
CONSUMMATED WHEN THAT PROPERTY
IS DELIVERED TO THE PERSON WHO
BOUGHT IT.

>> NOW, IF WE'RE REALLY GOING TO
GET INTO SHOPPING, I'M THINKING
EVERY DAY OR EVERY OTHER DAY
WHEN WE GO TO ONLINE SHOPPING.
BUT THE TWO DIFFERENT THINGS
THAT COULD HAPPEN HERE WITH
MACY'S IS THAT I WANT TO SEND
SOMETHING TO MY SISTER IN
ANOTHER STATE AND IN ONE
SITUATION -- AND MAYBE THIS IS
-- SOMETIMES I THINK STORES WILL
HELP YOU DO THIS, THEY HAVE THAT
PRODUCT.

SAY IT'S A DRESS.

THEY HAVE IT IN THEIR MACY'S
STORE HERE AND YOU'RE GOING TO
PAY FOR IT AND THEN YOU SHIP IT.
IN ANOTHER SITUATION, THEY MAY
SAY WE DON'T HAVE IT HERE.

WE HAVE IT UP IN BOSTON.
WELL, THEY DON'T HAVE SALES TAX
ON CLOTHES, I THINK, UP THERE.
WE'RE NOT GOING TO CHARGE YOU
THE SALES TAX.

BUT, YOU KNOW, THAT'S --
SOMETIMES THERE'S SOME
INDIVIDUAL DETERMINATIONS THAT
IF THE DEPARTMENT OF REVENUE
STARTED TO LOOK AT ALL OF THE
WAY THAT THERE IS SOME BACK AND
FORTH.

BUT NOW WE'RE REALLY TALKING
ABOUT YOUR INTERNET BUSINESS.
AND ARE YOU SUGGESTING THEN THAT
IN -- WHAT YOU WOULD HAVE TO DO
IS IF YOU'RE NOT GOING TO PAY
THE SALES TAX IN FLORIDA,
BECAUSE IT'S GOING TO TENNESSEE
FOR A TENNESSEE CUSTOMER, THAT
YOU NEED TO ASSESS THE TAX
AGAINST -- UP IN TENNESSEE?
OR WHO COLLECTS THE TAX THEN?
WHO COLLECTS THE SALES TAX?

>> IN THAT SITUATION, A NUMBER
OF STATES HAVE BEGUN TAXING
OUT-OF-STATE RETAILERS
PERMISSIVELY UNDER THE DORMANT
COMMERCE CLAUSE BY LOOKING
THROUGH THE AFFILIATES THEY USE
WITHIN THAT STATE IN ORDER TO
SERVICE CUSTOMERS.

>> SO WAIT.

SO YOU'RE -- THAT -- THAT
TAXABLE EVENT -- BECAUSE YOU
WOULD AGREE THERE'S A TAXABLE
EVENT SOMEWHERE.

>> ABSOLUTELY.

AND WE'RE NOT --

>> OKAY.

AND YOU'RE THE INTERNET COMPANY.
AGAIN, YOU DON'T HAVE A PRODUCT.
YOU'RE JUST FACILITATING.

DON'T YOU THEN HAVE AN
OBLIGATION TO ENSURE THAT THE
SALES TAX THEN IS COLLECTED AND
TRANSFERRED TO TENNESSEE IF THE
CUSTOMER AND THE DELIVERY'S IN
TENNESSEE?

>> I THINK THAT THE STATE OF

TENNESSEE COULD PERMISSIVELY
REQUIRE THEIR IN-STATE FLORIST
TO COLLECT THE TAX.

>> WELL, HOW IS TENNESSEE EVEN
GOING TO KNOW ABOUT THAT
TRANSACTION?

I MEAN, ISN'T THAT YOUR
OBLIGATION?

WHEN YOU GO ON AND SOMEBODY
COMES TO YOU AND THEY -- DO THEY
DO THAT ON THE INTERNET?

I MEAN, YOU'RE NOT A PHYSICAL
LOCATION, RIGHT?

>> CORRECT.

>> SO THEY DON'T CARE WHERE YOU
ARE, RIGHT?

>> CORRECT.

>> YOU COULD BE IN ALASKA.

>> RIGHT.

>> OKAY.

SO WHEN THEY GO ON AND YOU'RE
CALCULATING AND THEY GO THROUGH
WE WANT ROSES, THEY GET TO THE
TAX, DO YOU THEN SAY, WELL, IT'S
GOING TO TENNESSEE, I'M NOW
GOING TO -- YOU'RE GOING TO PAY
THIS TAX, WHICH WE'RE GOING TO
REMIT TO TENNESSEE?

>> THE -- IF A STATE SUCH AS
TENNESSEE WERE TO REQUIRE
AMERICAN BUSINESS TO REGISTER
WITH THE STATE BASED ON ITS USE
OF --

>> THIS SOUNDS LIKE NOT A QUITE
YES OR NO.

IT JUST SEEMS THAT THERE ARE
WAYS -- AND I'M NOT SURE THE
ADVANTAGE, BECAUSE YOU'RE NOT
THE TAX ULTIMATELY.

YOU'RE COLLECTING FROM THE
CUSTOMER AND TRANSMITTING.

>> CORRECT.

>> SO THE INTEREST IS, WHAT,
THAT THE STATE ARE DEPRIVED OF
THAT REVENUE FROM SALES TAX AND
YOU'RE NOT DOING ANYTHING TO
FACILITATE AND MAKE SURE AT
LEAST ONE STATE GETS THE TAX,
EVEN UNDER YOUR SCENARIO.

>> IN A SITUATION LIKE THE ONE

YOU'RE TALKING ABOUT, THAT WAS ACTUALLY PRESENTED IN THE O'BRIEN CASE.

AT THAT TIME, ILLINOIS HAD A FLORIST TAX THAT OPERATED IN THE INVERSE OF THE WAY THAT THIS OPERATES, AND IT REQUIRED THE IN-STATE ILLINOIS FLORIST TO COLLECT A TAX FROM ITS PROCEEDS OF THE SALE BASED ON THE SALE AND TRANSFER OF ILLINOIS FLOWERS THAT WERE TAKING PLACE IN THAT CASE.

SO THAT'S A WAY THAT OTHER STATES COULD TAX THIS TRANSACTION AND ACTUALLY HAVE IN THE PAST.

ALL THAT WE'RE ARGUING IN THIS CASE IS THAT THE STATE OF FLORIDA HAS NO INTEREST IN TENNESSEE FLOWERS.

THE FLOWERS AT ISSUE NEVER ENTER FLORIDA, THEY'RE NOT GROWN IN FLORIDA, THEY'RE NOT STORED IN FLORIDA AND THEY'RE NOT DELIVERED IN FLORIDA.

>> BUT THE INTEREST THEY SAY IS NOT THE FLOWERS.

IT'S THE SALE.

IT'S THE CONSUMMATION OF THE SALE, WHICH YOU SAY IS NOT DONE UNTIL IT'S ACTUALLY DELIVERED SOMEWHERE.

ARE YOU TELLING ME THAT YOUR CLIENT DOESN'T RECORD A SALE UNTIL THEY TRACK DOWN AND MAKE SURE EVERY SINGLE FLOWER THAT'S BEEN ORDERED TO BE DELIVERED IN ANOTHER STATE HAS ACTUALLY BEEN DELIVERED AT YOUR YEAR-END FINANCIAL STATEMENTS, THAT THEY'RE GOING TO GO TRACK DOWN AND MAKE SURE ALL THOSE DELIVERIES ARE DONE BEFORE THEY RECORD THAT ON THEIR BOOKS?

>> WHAT I CAN SAY IS THE RISK OF THE TRANSACTION NOT BEING PERFORMED LIES WITH US UNTIL THAT DELIVERY IS MADE.

AND THE SUPREME COURT HAS NO --

>> WHETHER THERE'S BEEN A BREACH
IN A CONTRACT OR NOT IS A
DIFFERENT THING AS TO WHEN A
SALE IS CONSUMMATED.

>> CORRECT.

AND IT IS OUR POSITION THAT THE
SALE IS CONSUMMATED AT THE POINT
THAT THE TITLE OR POSSESSION TO
THE PROPERTY TRANSFERS FROM THE
SELLER TO THE BUYER.

>> SO NO SALE HAS BEEN ACTUALLY
DONE UNTIL THAT FLOWER HAS BEEN
DELIVERED.

THAT'S YOUR POSITION.

THAT'S YOUR CLIENT'S POSITION.

>> OUR POSITION IS THAT WHILE AN
ORDER MAY HAVE BEEN PLACED, THE
SALE HAS NOT BEEN -- THE
TRANSACTION HAS NOT BEEN
CONSUMMATED UNTIL IT'S ACTUALLY
FULFILLED.

>> SO YOU DON'T CHARGE THE
CUSTOMER UNTIL YOU ENSURE THE
DELIVERY?

>> NO.

THAT'S NOT WHAT WE'RE SAYING.

BUT WE --

>> YOU CHARGE AT THE TIME OF THE
SALE, THE CHARGE THE CUSTOMER.

>> CORRECT.

AT THE TIME THE ORDER IS PLACED,
WE CHARGE THE CUSTOMER.

BUT IF THOSE FLOWERS DON'T GET
DELIVERED, WE WOULDN'T BE
KEEPING THAT MONEY.

>> WELL, OF COURSE.

NOW WE'RE BACK TO CONTRACT.

OF COURSE THAT'S THE CASE.

OR IF THEY COMPLAIN, I ASSUME
THEY COMPLAIN TO YOU THAT THEY
GOT, YOU KNOW, THOSE 12 ROSES
JUST WERE WILTED WHEN THEY CAME,
RIGHT?

I MEAN, THEY DEAL WITH YOU IF
THERE'S A COMPLAINT.

>> CORRECT.

>> BUT THAT'S DIFFERENT.

HOW DOES THIS BURDEN YOUR
COMPANY'S COMMERCE?

YOU'RE A FLORIDA COMPANY

OPERATING ON THE INTERNET.
HOW DOES THIS BURDEN COMMERCE?
JUST LIKE ON A BASIC ISSUE THAT
WE KNOW -- WE'RE NOT TALKING
ABOUT AN EXPRESS CONFLICT WITH
THE LAWS OF CONGRESS THAT THEY
COULD REGULATE THIS.

HOW DOES THIS BURDEN YOU?
>> THIS BURDENS US IN A COUPLE
WAYS.

FIRST AND FOREMOST, WE'VE BEEN
ASSESSED A TAX HERE, TAX
LIABILITY FOR TAXES THAT WERE
NOT COLLECTED.

AND WHAT WE'RE HERE TO DO IS TO
ARGUE THAT THIS TAX CANNOT BE
IMPOSED BY THE STATE OF FLORIDA.

>> I'M SORRY.

YOU SAID YOU'RE ASKED TO ASSESS
TAXES ON TAXES THAT AREN'T BEING
COLLECTED?

>> AMERICAN BUSINESS IS NOT THE
TAXPAYER IN THIS CASE.

THE TAXES ARE PAID BY THE
CONSUMER, THE PERSON BUYING
THESE FLOWERS.

>> WELL, THAT'S PAID TO THE
RETAILER, ISN'T IT, AND THEN THE
MONEY IS PAID BY YOUR COMPANY TO
THE STATE, NOT DIRECTLY BY THE
PEOPLE MAKING THE ORDER.

>> THAT'S CORRECT.

>> BUSINESS HAS BEEN CONDUCTED
LIKE THAT IN FLORIDA FOREVER.

>> SO WHEN YOU ASSESS THE SALE,
YOU GO -- OKAY.

IT'S \$36 FOR THE ROSES OR IF
IT'S MOTHER'S DAY IT'S \$64 FOR
THE ROSES, AND THERE IS A LINE
FOR SALES TAX.

YOU ASSESS -- YOU FIGURE OUT
WHAT THE SALES TAX IS,
PRESUMABLY, IF THIS LAW IS
UPHELD, IN FLORIDA, AND YOU
ASSESS THAT.

AND THE CUSTOMER WHOEVER IT IS
SAYS I DON'T LIKE THIS DEAL
BECAUSE I DON'T WANT TO PAY A
FLORIDA SALES TAX.

I'M GOING TO GO TO ANOTHER

COMPANY WHERE MAYBE THE SALES TAX ISN'T AS MUCH, RIGHT? BUT YOU ASSESS IT AND YOU COLLECT IT FROM THE CUSTOMER AT THE TIME THAT YOU -- THEY ORDER THE FLOWERS.

>> THAT IS WHAT THE STATUTE AND THE ADMINISTRATIVE CODE RULE REQUIRE.

IN THIS CASE AMERICAN BUSINESS DID NOT COLLECT AND REMIT THIS TAX TO THE STATE.

>> WEREN'T YOU REQUIRED BY THE STATUTE TO COLLECT THE TAXES WHEREVER SOLD?

YOUR BURDEN IS YOU DON'T LIKE THE STATUTE.

>> WE ARE NOT ARGUING THAT THE STATUTE WAS APPLIED INCORRECTLY. WE'RE ARGUING THAT THE STATUTE ITSELF IS UNCONSTITUTIONAL.

>> BUT YOU SAID THAT WAS YOUR BURDEN BECAUSE YOU HAD TO COLLECT THE TAXES.

>> THE BURDEN THAT WE HAVE IS THE FACT THAT WE HAVE BEEN ASSESSED A TAX LIABILITY OF \$137,000 FOR FAILURE TO COLLECT AND REMIT THESE TAXES AND ALSO ADDITIONAL TAXES.

>> HOW DOES THAT AFFECT COMMERCE WAS THE QUESTION.

>> THE WAY THAT THIS AFFECTS COMMERCE IS BECAUSE THE STATE OF FLORIDA IS REACHING OUT BEYOND ITS BORDERS TO IMPOSE --

>> IT'S ONLY COLLECTING TAXES ON THE ENTITY LOCATED IN FLORIDA. THE NEXUS IS OBVIOUSLY THERE. THEY LIVE THERE.

THE ORDER IS PLACED HERE.

THE PAYMENT IS MADE HERE.

THEY HAVE NO INVENTORY HERE, BUT THAT'S THE NATURE OF THE BUSINESS.

WE ARE NOT TAXING THE PROPERTY.

>> THIS IS A TAX ON THE TRANSFER OF THESE FLOWERS, AND THAT TRANSFER OCCURS OUT-OF-STATE.

IF THIS WAS AN INCOME TAX, WHERE

THE STATE OF FLORIDA WAS LOOKING AT ALL OF AMERICAN BUSINESS'S ACTIVITY AND IMPOSING INCOME TAX ON US, THAT WOULD BE PERFECTLY PERMISSIBLE AND I WOULD RESPECTFULLY SUGGEST THAT WE WOULD NOT BE HERE RIGHT NOW.

>> LET ME ASK YOU THIS.

WHAT IS THE OVERARCHING PURPOSE OF THE DOCTRINE OF THE DORMANT COMMERCE CLAUSE?

THERE ISN'T REALLY A DORMANT -- NOT SUCH A TEXT THAT IS THE DORMANT COMMERCE CLAUSE, BUT THERE'S A DOCTRINE.

WHAT'S THE PURPOSE OF THAT?

>> I THINK THAT -- THE PURPOSE OF THE DORMANT COMMERCE CLAUSE IS SO THAT STATES CANNOT IMPOSE RESTRICTIONS ON COMMERCE, A, TO WHICH THEY HAVE NO CONNECTION AND, B, IN A WAY THAT WOULD IMPEDE THE OPERATIONS OF INTERSTATE COMMERCE BETWEEN THE STATES.

IN THIS CASE WE HAVE FAILURE OF THE FIRST ELEMENT BECAUSE THE STATE OF FLORIDA HAS NO CONNECTION TO A CALIFORNIA TRANSFER OF FLOWERS WHEN THOSE FLOWERS ARE GROWN, STORED AND DELIVERED ALL IN THE STATE OF CALIFORNIA.

>> HOW WOULD YOU RESPOND TO WHAT THE SUPREME COURT SAID IN JEFFERSON LINES WHERE IT DESCRIBED THE PURPOSE OF THE CLAUSE AS PREVENTING A STATE FROM RETREATING INTO ECONOMIC ISOLATION OR JEOPARDIZING THE WELFARE OF THE NATION AS A WHOLE AS IT WOULD DO IF IT WERE FREE TO PLACE HOLDS ON COMMERCE ACROSS ITS BORDERS?

>> THIS CASE DOES NOT PRESENT AND WE HAVE NOT ARGUED THAT THERE IS ANY FAILURE OF THE INTERNAL OR EXTERNAL CONSISTENCY TEST OF THE COMPLETE AUTO CASE. OUR ARGUMENT WITH REGARD TO DUE

PROCESS AND THE DORMANT COMMERCE CLAUSE BOILS DOWN TO THE ISSUE OF NEXUS.

AND WE'RE ARGUING THAT THE STATE OF FLORIDA HAS NO NEXUS IN THIS CASE BECAUSE THE ACTUAL ACTIVITY BEING TAXED HERE IS A TRANSFER OF PROPERTY THAT OCCURS OUTSIDE THE STATE.

IN JEFFERSON LINES THE SUPREME COURT NOTED THE VERY CONCEPTION OF THE COMMON SALES TAX ON GOODS, OPERATING ON THE TRANSFER OF OWNERSHIP AND POSSESSION AT A PARTICULAR TIME AND PLACE, THAT IS THE ISSUE HERE.

YOU HAVE A TRANSFER OF GOODS AND THAT TRANSFER OCCURS AT A CERTAIN PLACE AND THAT PLACE IS NOT FLORIDA.

>> DOES IT MATTER -- IN THE DCA OPINION AND IN YOUR BRIEFS YOU TALK ABOUT OUT-OF-STATE CUSTOMERS.

DOES THAT MATTER?

OR IS IT ONLY WHERE IT'S DELIVERED?

>> IF WE ARE CALLING DELIVERY THE POINT WHERE POSSESSION OR TITLE TRANSFERS, OUR POSITION IS THAT IT ONLY MATTERS WHERE IT'S DELIVERED.

AS LONG AS THE TRANSFER OF TITLE AND TRANSFER OF POSSESSION OCCURS WITHIN --

>> SO WHETHER THE CUSTOMERS IS SITTING IN FLORIDA OR SOMEWHERE ELSE DOESN'T REALLY MATTER TO YOUR ANALYSIS.

>> I THINK THAT'S CORRECT, BECAUSE THIS IS A PURELY VIRTUAL TRANSACTION.

THERE MIGHT BE A DISTINCTION TO BE MADE IF SOMEBODY WALKED INTO A MACY'S TO ORDER SOMETHING TO GO SOMEWHERE ELSE.

THAT WOULD PRESENT A DISTINCT SET OF CIRCUMSTANCES THAN THE CASE THAT IS PRESENTED TO THE COURT HERE.

WE HAVE ONLY SOMEONE GOING ONTO AN INTERNET WEB SITE THAT HAPPENS TO BE RUN BY A CORPORATION INCORPORATED IN FLORIDA.

THE FLOWERS THAT THEY'RE BUYING ARE NOT EVER HERE.

THEY DON'T ENTER FLORIDA.

THEY ARE GROWN OUT OF STATE AND THAT'S WHERE THEY STAY.

>> SO IF I GO INTO MACY'S -- I PREFER NORDSTROM'S, BUT THAT'S OKAY.

AND THEY HAVE A PAIR OF SHOES BUT THEY DON'T HAVE THEM IN THE STORE HERE IN FLORIDA.

BUT THEY SAY -- THEY GO ON THE INTERNET AND THEY SEE THAT THESE SHOES ARE IN WASHINGTON STATE OR LET'S SAY SOME STATE THAT DOESN'T HAVE A SALES TAX.

DOES THAT MEAN THAT I CAN GET THOSE SHOES WITHOUT PAYING A TAX OR MACY'S DOESN'T INCLUDE IT IN THEIR -- WHATEVER THEY HAVE -- WHATEVER TAXES THEY HAVE TO PAY?

>> I THINK IN THAT SITUATION THE STATE WHERE THE SYSTEM IS TO BE DELIVERED COULD COLLECT A TAX ON THAT TRANSACTION.

THEY COULD COLLECT A TAX THERE BECAUSE THE TRANSFER IS HAPPENING WITHIN THAT STATE, ASSUMING THAT THEY HAD SOME FORM OF JURISDICTION OVER MACY'S.

>> SO THE SAME TRANSACTION, BUT I WANT THE SHOES SENT TO SOMEONE IN MARYLAND.

SAME SCENARIO?

WHO GETS TO PAY THE TAXES ON THAT?

>> THE PERSON WHO WOULD BE PAYING THE TAXES WOULD BE THE PERSON PURCHASING THE ITEM.

>> BUT THE STORE ITSELF WOULD NOT BE SUBJECT TO WHATEVER TAXES THEY HAVE TO PAY TO THE STATE BECAUSE THE SHOES WERE DELIVERED SOMEPLACE ELSE.

THAT'S WHAT YOUR SCENARIO SAYS,

RIGHT?

>> THAT'S CORRECT.

THE STATE WHERE THE ACTUAL SALE IS OCCURRING, WHERE THE TRANSACTION IS CONSUMMATED, WOULD BE ABLE TO COLLECT ON TAX ON THIS.

IN THIS SITUATION, TAKING THE DEPARTMENT OF REVENUE'S LINE OF THINKING TO ITS LOGICAL CONCLUSION, IF AMAZON.COM SET UP IN FLORIDA, THE STATE OF FLORIDA WOULD ASSERT THE AUTHORITY TO TAX EVERY TRANSACTION THAT OCCURS OVER AMAZON.COM REGARDLESS OF WHERE THE PROPERTY IS AND WHERE IT'S GOING.

THE STATE OF FLORIDA UNDER THEIR VISION OF THEIR AUTHORITY IN THIS AREA HAS WORLDWIDE JURISDICTION TO TAX SALES.

IF SOMEBODY FROM COLUMBIA GOES ON THIS WEB SITE TO BUY FLOWERS FOR SOMEONE IN VENEZUELA, EVEN THOUGH THOSE FLOWERS ARE GROWN, STORED AND DELIVERED ALL WITHIN VENEZUELA, THE STATE ASSERTS THAT THEY HAVE THE AUTHORITY TO TAX THAT TRANSACTION INVOLVING FLOWERS FROM VENEZUELA.

AND WHAT WE'RE ARGUING IS THAT STATES' ABILITY TO TAX A SALE IS LIMITED TO TRANSACTIONS THAT ARE CONSUMMATED WITHIN IT AND THAT IS BASED ON WHERE THE POSSESSION OR TITLE TO THE PROPERTY SHIFTS FROM THE SELLER TO THE BUYER.

>> THANK YOU, COUNSEL.

>> THANK YOU.

AMERICAN BUSINESS WOULD RESPECTFULLY REQUEST THIS COURT AFFIRM THE DECISION OF THE FOURTH DISTRICT.

THANK YOU.

>> JUST A COUPLE OF POINTS.

I THINK SOME OF THIS DISCUSSION ILLUSTRATES THE VALUE OF BRIGHT LINE RULES.

>> COULD YOU USE THE AMAZON

ANALOGY?

AMAZON'S IN FLORIDA, AND THEY --
SO IF IT WAS IN FLORIDA, NO
MATTER WHERE THE CUSTOMER WAS
AND WHERE THE DELIVERY WAS,
FLORIDA COULD COLLECT THE SALES
TAX?

>> WELL, YOU'D APPLY THE SAME
FOUR-PRONG TEST.

AMAZON IS A COMPANY THAT HAS
LOCATIONS THROUGHOUT THE
COUNTRY.

IF YOU LOOK AT THE MCNEIL CASE,
WE'RE NOT SAYING THAT WE CAN GO
OUT AND TAX UNDER THE FIRST
PRONG OF COMPLETE AUTO THINGS
THAT HAVE NOTHING TO DO WITH
FLORIDA.

THAT'S WHAT HAPPENED IN THE
MCNEIL CASE.

EVERYTHING'S HAPPENING OUTSIDE
OF IDAHO, WAS THE STATE THERE
THAT WAS SEEKING TO PLACE THE
TAX, AND THEY SAID THERE'S NO
REASON TO SUPPOSE NOR DOES THE
RECORD IN ANY WAY INDICATE THAT
UTAH OIL'S ACTIVITIES IN IDAHO
CONTRIBUTED IN ANY WAY TO THE
PROCUREMENT OF THAT CONTRACT.
IN ANY WAY.

HERE EVERYTHING -- WE CANNOT SAY
THAT THIS TAXPAYER, WHO DOES
EVERYTHING IT DOES WITHIN THE
STATE OF FLORIDA, IN NO WAY
CONTRIBUTED TO THESE SALES, TO
THESE TRANSACTIONS THAT LED TO
THESE FLOWER DELIVERIES.

>> IT JUST SOUNDED LIKE THEY
DIDN'T WANT TO COLLECT THE TAX.
I DON'T KNOW THAT I GOT AN
ANSWER TO THE QUESTION HOW DOES
THAT BURDEN THEIR COMMERCE.

>> IT DOES NOT BURDEN INTERSTATE
COMMERCE.

IN JEFFERSON LINES, THIS DEALT
WITH BUS TICKETS.

YOU BUY THE TICKET IN ONE STATE,
RIDE THE BUS ACROSS THE COUNTRY.
THAT IS A SALE THAT TAKES PLACE
WHERE YOU BOUGHT THE TICKET.

THERE'S ARGUMENTS WHAT WE'RE REALLY BUYING IS TRANSPORTATION SERVICES, A LITTLE BIT IN GEORGIA, ALABAMA, MISSISSIPPI AND SO FORTH AND SO THAT'S HOW WE SHOULD LOOK AT IT.

THE COURT REJECTED THAT. PEOPLE COMMONLY UNDERSTAND THAT WHEN YOU BUY A BUS TICKET, THAT'S WHERE THE SALE TAKES PLACE AND NOW YOU'RE DONE. AND THE SAME THING WHEN YOU ORDER FLOWERS, IF YOU CALL OR GO ON THE INTERNET OR GO INTO A LOCAL FLORIST AND GIVE YOUR MONEY AND ARRANGE FOR FLOWERS TO BE DELIVERED TO A LOVED ONE, THAT'S THE SALE.

THAT'S WHAT TAKES PLACE.

>> BUT THE ISSUE I GUESS IS -- AND IT REALLY HAS MORE TO DO WITH COMPETITION, BECAUSE IF YOU HAVE SAY 36 STATES DO IT THIS WAY, BUT THERE ARE 14 STATES I GUESS THAT WOULD BE -- GOT MY MATH RIGHT.

>> SOME DON'T HAVE SALES TAX AT ALL.

>> HOW MANY STATES DON'T DO IT THIS WAY?

>> I THINK THERE'S SIX OR SEVEN. THERE'S NOTHING TO SHOW WHAT THEY'RE DOING.

THAT'S ANOTHER THING.

IF YOU SAY WE'LL PUT THE BURDEN ON THE RECIPIENT, GRANDMOTHER HAS TO PAY TAX ON THE FLOWERS SHE RECEIVED.

THERE'S NO ONE WAY THAT YOU HAVE TO DO IT.

THE WAY THAT FLORIDA AND 36 OTHER STATES HAVE CHOSEN TO DO IT MAKES SENSE.

IT'S HAPPENED THAT WAY FOR A LONG TIME.

THERE'S GOOD POLICY REASONS AND IT CERTAINLY DID NOT VIOLATE THE DORMANT COMMERCE CLAUSE OR DUE PROCESS.

WE'D ASK THAT THE COURT REVERSE.

>> THANK YOU FOR YOUR ARGUMENTS.
>> THANK YOU.