

Supreme Court of the United States

OCTOBER TERM, 1970

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Supreme Court, U. S.

APR 2 1971

In the Matter of:

Docket No. 573

----- X
REUBEN ASKEW, ET AL.,

Appellants,

vs.

ROBERT H. HARGRAVE, ET AL.,

Appellees.
----- X

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Place Washington, D. C.

Date February 23, 1971

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1 IN THE SUPREME COURT OF THE UNITED STATES
2 OCTOBER TERM, 1970

3 -----
4 REUBEN ASKEW ET AL.,
5

Appellants

6
7 vs.

No. 573

8
9 ROBERT H. HARGRAVE ET AL.,
10

Appellees
11 -----

12 Washington, D.C.

13 Tuesday, February 23, 1971

14 The above entitled matter came on for
15 argument at 2:25 p.m.

16 BEFORE:

17 WARREN E. BURGER, CHIEF JUSTICE
18 HUGO L. BLACK, Associate Justice
19 WILLIAM O. DOUGLAS, Associate Justice
20 JOHN M. HARLAN, Associate Justice
21 WILLIAM J. BRENNAN, JR., Associate Justice
22 POTTER STEWART, Associate Justice
23 BYRON R. WHITE, Associate Justice
24 THURGOOD MARSHALL, Associate Justice
25 HENRY BLACKMUN, Associate Justice

1 APPEARANCES:

2 CHARLES E. MINER, JR., ESQ.
Tallahassee, Florida
3 On behalf of Appellants

4
HERSHEL SHANKS, ESQ.
5 Washington, D.C.
On behalf of Appellees
6

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1 P R O C E E D I N G S

2
3 MR. CHIEF JUSTICE BURGER: We'll hear ar-
4 guments next in No. 573, Askew against Hargrave. Mr. Miner,
5 you may proceed whenever you're ready.

6 ARGUMENT OF CHAREES E. MINER, JR., ESQ.

7 ON BEHALF OF APPELLANTS

8 MR. MINER: Mr. Chief Justice, and may it
9 please the Court.

10 In February of 1968---

11 Q Would you mind raising your voice a little,
12 please?

13 A In February of 1968, we in Florida under-
14 went a rather disquieting situation when, in our public scholls
15 roughly 1/2 of Floridas public school teachers went out on what
16 they termed a period of resignation. They blamed insufficient
17 state support to the public school systems for their determin-
18 ation to do this.

19 The legislature was responsive to the plea of the
20 teachers for increased state funding and went into, at the
21 call of the governor, an executive session to remedy as best
22 it could at that time the inequities in pvblic school finan-
23 cing that existed at that time.

24 As a portion of the legislative amendments that were
25 passed in February of 1968, the so-called Millage Rollback Act,

1 which is the statute that is before the Court for determination,
2 was enacted.

3 Simply stated, the Millage Rollback Act told to each
4 county that regardless of whether or not the people within
5 your county vote for you for public school operating purposes
6 in addition to 10 mills, you must roll back the 10 mills, and
7 when you do so, we will then guarantee you additional state
8 funding in the amount of at least \$1,000.

9 Now this is the statute that is under attack. Appelle-
10 es contend that it denies to Florida schoolchildren an equal
11 economic educational opportunity, which they say is required
12 by the 14th Amendment.

13 Q Mr. Miner, where does the state, as such,
14 get its funds to make up the \$1,000 you referred to, does
15 Florida have an income tax?

16 A No, sir.

17 Q Do they have an inheritance tax?

18 A The sources of revenue -- no, sir -- the
19 sources of revenue are the sales and use taxes, gasoline tax,
20 etc., primarily the sales tax is the source of Floridas reven-
21 ue.

22 Q Does any share of the property tax go to
23 the state?

24 A No, sir. As I will expand into this argument
25 a portion of the property tax, a certain millage figure, is fig-

1 ured into the state funding formula; it doesn't come into the
2 state as such.

3 The Millage Rollback Act set a 10 mill cap, in effect
4 telling the counties you will not levy in excess of 10 mills
5 if you want to participate in minimum foundation funding pro-
6 gram.

7 Q What does that word "cap" mean? I notice
8 that---. Maximum it means, doesn't it?

9 A Yes, sir. There were certain exceptions to
10 the 10 mill cap but it---

11 Q I see.

12 A ---means maximum of 10 mills.

13 Q for what, school busses, and for what, new---

14 A Capital outlay,

15 Q Yes. But what does the word "cap" mean? I
16 find it throughout the briefs and that word---

17 A The 10 mill limitation. It's popularly re-
18 ferred to in Florida, or unpopularly referred to in some circles
19 as a "cap" meaning---

20 Q Meaning what?

21 A Meaning a maximum of 10 mills.

22 Q Yes.

23 A Yes, sir.

24 Q I see.

25 Q (immediately following, by another Justice)

1 Mr. Miner Mr. Miner, there is a lot of talk in the
2 briefs, too, about counties taxing themselves. The voters vot-
3 ing to tax themselves. I suppose what it really means, trans-
4 lated, is that it's taxing the property there. Might as well be
5 corporate property?

6 A No, that is real --- or real property.

7 Q Real property.

8 A Yes, sir. Real and tangible personal pro-
9 perty.

10 Q Might be owned by a non voting corporation.

11 A That's right. It's owned by individuals,
12 citizens, it's just a real property and the tangible personal
13 property in a given county.

14 Q So it's a bit of a euphemism to say that the
15 voters vote to tax themselves---

16 a We are taxing the property within the coun-
17 ty.

18 Q OK, real and tangible personal---

19 A Yes, sir?

20 Q The non-exempt property.

21 A Yes, the non-exempt property, we have---

22 Q And if you say personal property also?

23 A Well, there is a constitutional limitation
24 on the amount of personal property that can be taxed, a con-
25 stitutional limit, and Florida has a \$5,000 homestead exemption,

1 so that homestead exemption, that \$5,000 comes off the top.

2 Q One more question and I'll stop. Could Flo-
3 rida remove constitutionally the county power to tax? Do you
4 think, and take it on to---

5 A Yes, I am of the opinion that they could,
6 Your Honor, they could, since it grants the taxing power through
7 its legislature, that I am of the opinion that it can identify
8 sources that can be utilized for public school financing and
9 we in Florida, in fact, do so.

10 The public schools in Florida are financed as a part-
11 nership between the state and the county. The argument made
12 by Appellees that if the operation of the Millage Rollback
13 discriminates against the schoolchildren in Floridas property
14 poor counties, that is, property poor in relation to their
15 student numbers, would have great appeal if the public schools
16 in Florida were financed solely from local ad valorem taxes,
17 but that is not the case.

18 What this 10 mill cap serves to do, or the 10 mill
19 mazimum limitation serves to do, is to marrow the gap that has
20 historically existed in Florida. An example: Dade County, Flo-
21 rida. One mill of tax applied to the assessment rolls of Dade
22 county will raise\$89.00 and some cents per student.

23 In Gadsden County, Florida, one of Floridas property
24 poor counties, it will only raise \$8.21. In our brief we have
25 suggested that to unleash, as it were, the taxing power of the

1 wealthier school districts would be to magnify the very in-
2 equity that the Plaintiffs, or rather the Appellees suggest
3 that exists.

4 So, Florida has for some years realized that we
5 could not forever rely on the property tax in a given county.
6 We had to do something at the state level to infuse more state
7 dollars into public education---

8 Q Because, basically because of the wide
9 disparities among counties with---

10 A With socio---

11 Q Well---

12 A With socio-economic fact that some counties
13 are poor in relation to their student numbers and others are
14 rich. Glades county, the small county that I mentioned, has 844
15 students. Dade county on the other hand, has thousands and thou-
16 sands of students and this---

17 Q Well was the proceeding in the Court below
18 just on the face of the pleadings?

19 A Yes, summary judgement.

20 Q No affidavit or anything?

21 A No, there were 2 or 3 affidavits submitted
22 at that time, Your Honor.

23 Q Did you make this sort of a presentation in
24 the three-judge court?

25 A No, sir, I did not. At that time I was not

1 representing the State Board of Education.

2 Q Well, for example, this interesting table
3 at page 11 - 13 of your brief. Was that information before the
4 three judge court?

5 A No, sir. It was not.

6 Q How is it before us, then?

7 A This was included, Your Honor, because these
8 facts at the time were not available to---

9 Q Well I would think that these are very re-
10 levant and significant---

11 A Yes, sir, they were very relevant and sig-
12 nificant---

13 Q But the argument you're making could have
14 been made without the exact figures---

15 A Yes, it could have been made0--

16 Q And you could have said what the purpose
17 of the legislation was---

18 A Yes.

19 Q What the consequences would be.

20 A Yes.

21 Q Was it said?

22 A I could not answer that, Your Honor, because
23 as I say, I did not represent the State Board of Education at
24 that time.

25 If the Millage Rollback Act is considered in context

1 with other of the legislative enactments, the very reverse
2 proposition as asserted by Appellees is the case.

3 It protects the schoolchildren in Floridas property
4 poor counties by bringing, by narrowing or bridging the gap
5 that presently exists.

6 Appellees suggest that one way that we might finance
7 our public education is to give each student in each county a
8 given amount of dollars. In the reply brief that was filed in
9 this case, we suggested that that sum be \$400 and as they re-
10 questing, the Millage Rollback Act---

11 Q Per pupil?

12 A Per pupil, yes, sir.

13 Q Yes.

14 A And---

15 Q Who would give this, the state?

16 A Pardon me, sir?

17 Q Who is to give the \$400?

18 A The \$400 will come from the state. The
19 millage limitation, the maximum or the cap will be eliminated
20 if the relief sought by Appellees is afforded.

21 Q You mean you'd give \$400 to Miami Beach?

22 A This is only the state source.

23 Q Well---

24 A We are going to eliminate---

25 Q Well --- give the same amount to Miami Beach

1 that you'd give to the poorest county in Florida?

2 A No, sir. This is what the Appellees suggest
3 might be done, and it might be constitutional, so I am taking
4 their argument and finding out just what might happen if we
5 did this.

6 But assuming that we would give \$400 per pupil to
7 every pupil in Florida from state sources, assuming, then, no
8 10 mill cap, if we did this, Floridas richest county in terms
9 of its student population to its assessed value, would have
10 333% more money with which to educate its children than the
11 father in Floridas poorest county, Gadsden.

12 So the cap was simply a transitional equalizing de-
13 vice, that was placed on local tax authority until such time
14 and it will be removed, it has been repealed, this very statute
15 has been repealed, effictive July 1, of 1974, at which time
16 in the wisdom of the legislature we will have increased state
17 support to the basic funding unit of public education, that is
18 the instructional unit.

19 We will have increased it by 50% above what it is
20 today.

21 Q So you think then, you would remove any
22 temptations to overtax property for school purposes?

23 A Well, I think, yes, Your Honor, that the
24 voters are going to take care of that by themselves. With re-
25 gard to voting additional millage. We don't feel that there will

1 be any necessity for the cap at that time, because we will have
2 funneled in such a great porportion of state monies that it
3 will not be necessary to levy any---

4 Q One consequence of the mill limit was to
5 redistribute the burden---

6 A Yes, sir.

7 Q ---even if it didn't reduce the amount of
8 per pupil expenditures below an acceptable figure, even if it
9 didn't do that, it did redistribute the burden of providing
10 that money.

11 A That's right. The state has recognized its
12 burden, under---

13 Q Well, I know, but in terms of the state
14 doesn't have any money except what it gets from other people---

15 A True.

16 Q And so they redistributed the burden---

17 A Right.

18 Q Of educational expenditures and moved it
19 from some extent from prpperty tax to other sources of state
20 revenue.

21 A That's right.

22 Q And from property holders to the people
23 who paid the other state taxes.

24 A That's right.

25 Q Yes. And then that, I gather is, that the

1 that the poorer counties now, get a much, this is your position,
2 get a contribution in taxes from other sources which enables
3 those poorer counties to give a better education---

4 A Yes.

5 Q ---than they did when they had to rely---

6 A That's right.

7 Q ---primarily on---

8 A On local sources.

9 Q ---on local property taxes.

10 A That's right.

11 Q Is that it?

12 A Yes, sir. Instead of depending primarily on
13 as valorem taxes, local property taxes, they now, get in taxes
14 that are raised by use taxes or gasoline taxes, the ---, the
15 sources of taxes---

16 Q Well then why does Florida need the 3 years
17 to 1974 to accomplish this---

18 A Because at the same time the Millage Rollback
19 Act was enacted, there was a pledge in the same provision that
20 Florida would guarantee at least that particular year, at
21 least an additional \$1,000 in state sources.

22 Now this Act was further amended in 1970 to provide
23 that for the next 4 years, ending in at the end of fiscal year
24 1974, that Florida would infuse each year an additional \$1100
25 per each instruction unit. And so that at that time---

1 Q And you have to raise that by sometimes the
2 taxes, is that it?

3 A Yes, sir.

4 Q And you have---

5 A Sales and use taxes.

6 Q And you have the taxes already?

7 A No, sir, these are projections.

8 Q These are taxes to be made effective?

9 A Yes, sir. Right.

10 Q I see.

11 A So that by that time the instructional unit
12 which is the basis unit of financing in Florida, will have ach-
13 ieved a worth of \$14,100 per unit. It is presently \$9700 per
14 unit. And at that time we feel that the state will have acquit-
15 ted itself of its responsibility to as nearly equalize as pos-
16 sible the economic educational opportunity for students.

17 Q Now is instructional unit, is that a
18 statewide concept?

19 A Yes, sir. An instructional unit---

20 Q Has been arrived at by some formula, is it?

21 A Yes, sir, a statutory formula contained in
22 the minimum foundation funding program body of statutes.

23 Q And this is supposed to be the amount re-
24 quired in order to provide state wide education of the same
25 quality throughout the state, is that it?

1 A Yes, sir, an educational unit, if Your
2 Honor, will permit, an educational unit, a typical educational
3 unit in Florida is one teacher and 27 pupils in the educational
4 situation.

5 Now that is the typical. Now the value of a given
6 educational or rather unit of identified need, or an instruc-
7 tional unit, it does vary. For instance, in exceptional children,
8 in the Florida school for the deaf and the blind, a typical
9 instructional unit is one teacher and 5 pupils.

10 And the value varies depending upon the time and
11 way of the teacher, so to speak, of the teacher who is teaching
12 the unit, but on the average, the typical unit is worth, pre-
13 sently, \$9,700.

14 Those units are distributed throughout Florida on an
15 equal basis. There is not, depending on the number of students.
16 You divide the number of students by 27 and put a teacher with
17 them, and that is an instructional unit.

18 Q Well I still have some trouble wondering
19 why you needed the 10 mill limit, because you're going to do
20 away with it, because you won't need it, as soon as state aid
21 gets---

22 A To the extent, yes sir---

23 Q I don't know why you need the 10 mill limit
24 on during this transition period. You could have left it off
25 and still built up the state aid and the local governments

1 wouldn't have taxed themselves so much.

2 A In direct response, sir, I would suggest
3 that the reason that it was put on there to begin with was as
4 the result of an overview that there had to be accorded to the
5 taxpayers in some of Floridas counties ad valorem tax relief.

6 Q Before they would put up with the new
7 taxes you were going to assess them?Going to assess for increa-
8 sing---

9 A Yes, sir, I'd say in all honesty this was
10 a determination. But that was not the primary determination as
11 far as the cap was concerned. We have long been concerned in
12 Florida with the fact that some counties could raise and could
13 infuse local funds into their system, greatly in excess of the
14 ability of the other counties to do the same thing.

15 And while we were attempting to equalize economic
16 educational opportunities, it was felt that a cap would be a
17 prudent thing.

18 Q You---

19 A Now if you take the cap away---

20 Q You didn't need to limit the richer counties
21 to 10 mills, or the poorer counties to 10 mills in order to
22 bring up the poorer counties to a decent level.

23 A If I may, sir, go back to one point, and
24 then perhaps I can respond more fully to your query.

25 The way that we arrive at how much money is going

1 to be spent in the Florida public schools each year, is done
2 statutorily, but identified units of need are first compiled.
3 That gives us a figure of how much education in Florida is going
4 to cost us this year.

5 The states are required as part of what we call local
6 effort, it's their local effort to levy at least for this year,
7 4 mills. Three or 4 this year. But whatever that amount of
8 money will raise on the tax roll of that individual county is
9 subtracted from the additive, the units of need.

10 And the remainder there is what the state will be re-
11 quired to put into that particular county. As a part of the 1970
12 equalization act, all counties, or rather it was mandated by
13 the legislature that the Auditor General of Florida to conduct
14 a so-called ratio study, to find out what the assessment pra-
15 ctices were in several states.

16 Q You mean they're 20% some places and---

17 A Yes, sir.

18 Q And a hundred or 150 other places?

19 A Yes, sir.

20 Q Do you mean the states or the counties?

21 A The counties. There has always historically
22 in Florida been wide variation in assessment practice.

23 Q This is not---

24 A --- but there was also at the time the
25 Millage Rollback Act, or the following year, this review was

1 mandated and an attempt to find out who was assessing fairly
2 and who was not assessing fairly, because we had traditionally
3 rewarded those counties for bad assessment practices by giving
4 them additional state monies.

5 Q Tell me, I take it, does this scheme mean
6 that by and large education is going to be primarily a state
7 operation rather than a county cooperation?

8 A Yes, Your Honor, that is the direction that
9 we are moving in, in Florida.

10 Q Well is there anything that says that you
11 have to make this limitation in order to get counties to give
12 up their autonomy in education? I mean, political decision,
13 or--

14 A No, sir, I don't think, I think it was in
15 part a political decision, I think it was a decision that was
16 made as a result of what we saw had happened to the public
17 schools in Florida with great dissatisfaction among our parents
18 and among our teachers, and it was this sad occurrence that fo-
19 cused attention on the need for additional state participation
20 in the funding process.

21 Q Mr. Miner, do I understand you correctly
22 that the unit consists of one teacher and 27 students?

23 A That is the typical instruction unit.

24 Q I would assume that in Florida there are
25 some places with more than 27 students.

1 A I beg your pardon, sir?

2 Q I would assume that in Florida there are
3 some classes with more than 27 students.

4 A Yes, there are, sir.

5 Q What happens then, on the allotment of
6 money?

7 A In terms of the fact that there are some
8 classes with in addition to 27 pupils---

9 Q Most of them are more than 27.

10 A There are some, yes, I would say, but then
11 there are a large number of instructional units that have
12 less than 27. The exceptional children, etc. This is simply
13 a state balance, a state average. This is a starting point.

14 Q Well, in the wealthiest county, which is
15 the wealthiest county?

16 A Glades, in terms of its pupil population.

17 Q Which one?

18 A Glades county.

19 Q Well I'm talking about, which county owns
20 the most taxable, tangible and real property?

21 A I would say Dade county.

22 Q I would think so.

23 A Yes, sir.

24 Q Does Dade county have more money for school
25 per pupil than another county in Florida?

1 A Oh, yes, sir.

2 Q All I'm trying to get is that I think for
3 what it's worth, that it is true in Florida as in every state
4 I know of, there are some counties that spend more on the ed-
5 ucation of children than other counties.

6 A That's true.

7 Q Isn't that true?

8 A That is true.

9 Q That's inevitable.

10 Q I think it is inevitable.

11 Q And your equalization plan, which has just
12 gone into effect is the states effort to equalize, ---

13 A To equalize---

14 Q To break down this barrier.

15 A To equalize that money.

16 Q And to break down this disparity.

17 A Insofar as it is possible to do so.

18 Q From the state side.

19 A In terms of the total funding of education
20 we are trying to provide each child what is as nearly an equal
21 economic education as is possible. But in direct response to
22 your question, in 1969 and 1970, in Dade county, the average
23 per pupil expenditure was \$823.79. The state average was \$728.00
24 So we recognize that it does cost additional money from county
25 to county and, rather within the state of Florida. That it doesn't

1 cost as much perhaps to educate a child in Bradford county as
2 it does in Dade county.

3 Q Well this depends on your practical factors,
4 the extent of travel and all that sort of thing---

5 A Yes, sir. The transportation factor, the
6 number of students to be transported, obviously the number of
7 students within the county, the number of counties that have
8 exceptional children programs. All the counties in Florida
9 do not have those.

10 Q They would tend to be in the larger centers
11 of population.

12 A Yes, sir. And also there are the inactive
13 areas, that are deriving funds on the public law 874, where
14 they have large military installations.

15 Actually in Florida we are now spending about, or
16 rather the state is now funding about 56% to 57% of the cost
17 of public education. The counties are only funding 41% and the
18 federal government perhaps 2% or #3%.

19 Q Mr. Miner, let me be sure of one thing. Now
20 Florida isn't aiming to the point where there will be no county
21 contributions to ---

22 A No, sir. No, the law as it presently reads,
23 Mr. Justice, is that for the next ensuing fiscal year there
24 will be a 4 mill required effort on the part of the counties.
25 The next year 5, the next year 6, the next year 7. And all years

1 thereafter. Each county will be expected to raise at least
2 7 mills, and that 7 mills will be figured into the state funding
3 formulas which is the equalizing funding formula. That each
4 county will always be expected to maintain, to levy mills for
5 school purposes.

6 Q And as I understood you earlier, there is
7 also an equalization, so that this 7 mills on the \$1,000 that
8 property ---,---

9 A Yes, sir, that is correct.

10 Q There will be realized the same amount as
11 on the \$1,000 plus property and---

12 A Yes. To equalize the impact of tax mill per
13 mill levied.

14 Q And after the 10 mill limit goes off, and
15 the locality can---

16 A They can do what they will, because at that
17 time we will have reached the goal that we have set for our-
18 selves.

19 Q To the extent that they raise their mill
20 levy over 7 mills, the dollar per dollar state aid is reduced?

21 A No, you see, they're only required to levy
22 7 mills but they can levy, under the law 10 mills---

23 Q Yes, but if they did---

24 A They don't lose anything if they do, that
25 is money that we call the fat. They can pour that back into the

1 fills of the system if they like. But they are not required to
2 levy anything in addition to 10 mills.

3 If the voters vote additional millage and they want
4 to go up to 15 mills for the frills, they can do so.

5 Q This went off on summary judgement, below,
6 didn't it?

7 A Yes, sir.

8 Q I think you told us, Mr. Miner, that none
9 of the things that you have been arguing today or this material
10 in your brief, apparently was submitted to the District Court.
11 Is that right?

12 A No, sir.

13 Q Well, I'm just wondering.

14 Q (Immediately following, by another Justice)
15 It isn't right?

16 A I beg your pardon?

17 Q Isn't it right, that this was not submitted?

18 A I cannot say exactly what was submitted to
19 the state court Your Honor.

20 Q --- what is in the record, isn't it?

21 A Pardon me?

22 Q Don't we have the record here?

23 A Yes, sir. You have the entire record.

24 Q Well my question was going to be is this a
25 question in the light that you put it to it, is that we ought

1 to try to decide here, or just send this back with the summary
2 that the judgement was inappropriate, in the circumstances,
3 and have this done over, in the District Court.

4 A There is also, in answer to your question,
5 sir, there is also in our brief, in the Appellants brief, a
6 prayer for abstention.

7 Q Abstention?

8 A Yes, sir, because there is a case testing
9 the validity of this particular statute, the Millage Rollback
10 Act---

11 Q Well, there again, why should we direct
12 that? If summary judgement was inappropriate here, and you
13 sought to go back to be re-done by the District Court, shouldn't
14 that --- an abstention?

15 A Yes, sir, I was going to say in conclusion
16 to my argument, I was going to refer the Court to the argument
17 that we had made for abstention, I wanted to get as much to the
18 merits as I could, and I have nothing further to add to the
19 argument that we have already made for abstention. Except to
20 say that the case that is testing the validity of this vis a
21 vis the Florida Constitution and the Florida statutes is still
22 a viable case. It has not been dismissed, although no action has
23 been taken under it since November---

24 Q Are they different parties?

25 A Pardon me?

1 Q There are different parties?

2 A There are different parties, yes, sir. The
3 questions are almost precisely the same.

4 Q Are you Counsel in that case?

5 A No, sir, I am not.

6 Q The case has been dead, it hasn't moved
7 along---

8 A It hasn't moved along, yet it hasn't been
9 dismissed for lack of prosecution. Now the reason why it has
10 not moved along, I could not say.

11 Q Where is it, in the Florida Trial Court?

12 A Yes, sir.

13 Q The Florida Trial Court?

14 A Yes, sir. In the Circuit Court in (Forlean)
15 County.

16 Q Maybe the litigants there are waiting on
17 this case.

18 A Yes, sir.

19 Q That's a possibility, isn't it?

20 A That's a possibility, yes, sir. Your Honor,
21 if I have any time available I would like to---

22 Q Fine. (To Mr. Shanks) Would you prefer not
23 to divide your argument, or would you, is it acceptable to open
24 now?

25 Mr. Shanks: As the Court wishes, Your Honor.

1 Q Very well, you may open.

2 ARGUMENT OF HERSHEL SHANKS, ESQ.

3 ON BEHALF OF APPELLEES

4 MR. SHANKS: Mr. Chief Justice and may it
5 please the Court.

6 It's true, Mr. Justice Brennan, that in the reply
7 brief in this Court, the Appellants have, I think, raised a
8 new justification for the Millage Rollback Act. However, we
9 feel that we're prepared to meet that here, and that it's not
10 necessary to send the case back.

11 This is essentially a statistical case, and certain
12 things are necessarily so. The argument that they make here
13 for the first time in the reply brief, I think puts the best
14 light on the Millage Rollback Act that can be put on it.

15 Previously, it appeared that the Millage Rollback
16 Act had been passed as an obeisance to certain powerful pro-
17 perty interests, as a trade off so that they would support
18 legislation increasing state funding of education. Our argument
19 was that a wealth discrimination, a limitation that discrim-
20 inated on the basis of wealth was an unconstitutional price to
21 pay for the increased state funding.

22 Q Mr. Shanks, who are your clients, who are
23 the Plaintiffs in this case?

24 A They are freeholders, parents, and students
25 from 16 counties who have been adversely affected by the Millage

1 Rollback Act.

2 Q Sixteen counties, and how have they been
3 adversely affected?

4 A Prior to the Millage Rollback Act, they had
5 voted to tax themselves, their property---

6 Q Tax themselves and their fellow taxpayers---

7 A That's correct. At a higher rate than is
8 allowed under the Millage Rollback Act, so that this is a two
9 year authorization, all that was needed was the vote of the
10 School Board to assess and levy---

11 Q All that the popular vote did was to author-
12 ize the School Board to assess and levy---

13 A That's correct.

14 Q And your clients, the Plaintiffs, are they
15 from relatively rich counties, or relatively poor counties?

16 A Well, I think that they, on the whole, are
17 from relatively poor counties, but I think that extends. The
18 question as to whether to not they go above the 10 mill limit
19 depends not only on how poor they are, or how rich they are,
20 but also on what kind of an effort they want to make, and if
21 they're poor, they have to make a greater effort, but sometimes
22 some of the middle range counties may be willing to make more
23 of an effort, too.

24 But these counties all did tax themselves at a higher
25 rate, before, fell back, as they are required to do by the Mil-

1 lage Rollback Act, and in one case, the School Board said that
2 it couldn't produce a budget with the 10 mills, and---

3 Q That was Broward County, was it?

4 A That's correct, yes sir.

5 Q Isn't that quite a prosperous county? Quite
6 a rich county?

7 A Personally I'm just not sure---

8 Q --- municipalities in Broward County?

9 A No, I don't Your Honor.

10 Q Fort Lauderdale---

11 A I'm just not sure of the location of Broward
12 County---

13 Q Isn't St. Petersburg in it?

14 Q No, Pinellas is St. Petersburg, this is
15 Fort Lauderdale?

16 Q Yes, Hollywood, and Fort Lauderdale.

17 A But our point is really a relative one, a---

18 Q I was wondering how you, how the Plaintiffs
19 are injured in terms of the equal protection clause.

20 A Well, they are prevented, they are really
21 asserting a right of the county as in the same way as in (Gray
22 v. Sanders), where the disadvantaged voters were asserting the
23 right of the county. These people come from counties which have
24 voted higher taxes, and I think it's a fair assumption not only
25 in the case of Broward County, but in the case of other counties

1 where they have been collecting higher taxes and then they fall
2 back and they don't fall back to, let's say, 9½ or 9, they fall
3 back right to that limit.

4 Now I think it's a fair assumption that when you have
5 a higher tax rate that falls back just to the limit, immediately
6 after the limit is imposed that this limitation is an effective
7 limitation on what they would otherwise be doing.

8 Q I just wondered, I had quite a good deal
9 of trouble conceptually, seeing an equal protection injury to
10 the Plaintiffs here, when what they complain of is the action
11 of the state in making every county equal.

12 A No, that's not our argument---

13 Q ---Millage Rollback on every county to 10
14 mills.

15 A That's correct, and our---

16 Q And your people say that that denies you
17 equal protection.

18 A That's correct. Our basic position is that
19 a---

20 Q You mean denying them the right to tax them-
21 selves more than somebody else?--

22 A That's correct.

23 Q ---denies them equal protection?

24 A That's correct, Your Honor.

25 Q They want to be taxed more, and the state

1 says they can't. Is that it?

2 A I'm sorry, Your Honor.

3 Q I understand you to say that these people
4 want to be taxed higher than the state will let them be taxed.

5 A That's precisely so.

6 Q That's what you said.

7 A In other words they're willing to, I think
8 if we look at it as tax authorization, that the state is actual-
9 ly giving, and if they give the rich family, the rich county
10 more than the poor county, than that is a denial of equal pro-
11 tection, and our position is that a flat rate limitation, that
12 is, 10 mills, does operate unequally because, in the rich
13 county it authorizes, or gives to the counties an authorization
14 to tax themselves to the extent of \$750 a pupil, whereas, in
15 the poorer counties it's limited to \$50 per pupil.

16 Q Well, regardless of what the taxes are,
17 wouldn't the child in the poor county have an equal protection
18 argument in consideration with the child in Palm Beach?

19 A That raises a very important point, Your
20 Honor. There are two elements of disparity which I think con-
21 ceptually it's important to keep in mind. Some of the dis-
22 parity between the child in Miami Beach and the child in the
23 pahnhandle, results from the fact that the childs parents, or
24 the taxpayers in Palm Beach and Miami Beach can afford more.
25 And this case is not raising squarely that issue. That issue

1 is raised in the --- and we discussed it in our brief, but the
2 other kind of unequal treatment is with---

3 Q Do you know of any state in the Union where
4 all of the schools are equal?

5 A No, I don't Your Honor, and we're not con-
6 tending in this case that that must be done. We are simply
7 asking for the same---we're not even imposing a limitation,
8 we're just opposing an unequal limitation so that accross the
9 board limitations, we agree that that's constitutional.

10 Q We will resume in the morning.

11 A Thank you very much.
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