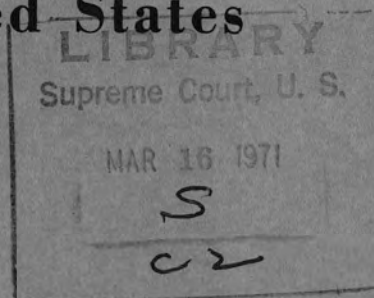


Supreme Court of the United States

OCTOBER TERM, 1971



In the Matter of:

Docket No. 573

-----X
RUBEN ASKEW, ET AL.,

Appellants

vs.

ROBERT H. HARGRAVE, ET AL.,

Appellees
-----X

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Date February 24, 1971

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C O N T E N T S

ARGUMENT OF:

P A G E

Hershel Shanks, Esq., on behalf
of Appellees

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Charles E. Miner, Jr., on behalf
of Appellants

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1971

RUBEN ASKEW, ET AL.,
Appellants
vs
ROBERT H. HARGRAVE, ET AL.,
Appellees

No. 573

The above-entitled matter came on for argument
at 10:30 o'clock a.m. on Wednesday, February 24, 1971.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

- HERSHEL SHANKS, ESQ.
Washington, D. C.
On behalf of Appellees
- CHARLES E. MINER, JR.
Tallahassee, Florida
On behalf of Appellants (Rebuttal)

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume arguments in Number 573: Askew against Hargrave.

Mr. Shanks, you may proceed whenever you are ready.

ORAL ARGUMENT BY HERSHEL SHANKS, ESQ.

ON BEHALF OF APPELLEES

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

I'd like to begin this morning by noting that there are many aspects of the Florida educational financing system which are very fine, indeed, and to the extent that they are good, we applaud them. But there is one element in this system which discriminates on the basis of wealth and to that extent we attack it as unconstitutional.

Basically, the Florida system is this: the state distributes to each of the counties on a very fair and well-considered basis a major portion of the funds for financing the school system. I am willing to assume here, contrary to present fact that this is sufficient to fund an adequate educational system. Added

Added to this basic grant and on top of this is the amount that the local counties add through their local tax effort. Now, I'm even willing to assume here that this added amount, this educational frosting --

1 Q Is an educational what?

2 A Frosting on the cake, Your Honor. In
3 other words its something additional which the -- I don't
4 think in fact is, but I'm willing to assume it here.

5 But, we insist that even the frosting be dis-
6 tributed on an equal basis; that is: without discrimination
7 based on wealth.

8 The Millage Rollback Act, together with the
9 statutes which authorize Florida counties to tax, create a
10 system where they give to each county a certain authority to
11 add this educational frosting, to raise these dollars. In
12 some counties it's \$700 a pupil; in other counties it's six,
13 five, four, and down to \$50 a pupil. Each is treated less
14 well, depending -- as it goes down the wealth scale.

15 So that it's not a question of only two categories;
16 it's a sliding scale and everybody but the top county is dis-
17 advantaged.

18 Now, we are not opposed to limitations as such on
19 local efforts. We don't even insist on a particular formula
20 that the limitation should take. There are a variety of con-
21 stitutional formulas; for example: Florida, a Florida court, in
22 its wisdom, says that each county will be limited to \$100 a
23 pupil, or it could say each county would be limited to a
24 thousand dollars in instruction units and the instruction unit,
25 as was discussed yesterday, is a very complicated formula which

1 takes into account a myriad of factors. It could take an
2 infinite number of reasonable formulas for determining in-
3 struction units, to take account of any reasonable difference
4 in educational needs: transportation, exceptional children,
5 guidance programs, anything. So that we wouldn't object to any
6 limitation which applied without regard to wealth, which was
7 reasonably related to the responsibility which each of the
8 local communities has, and if they have the same responsibility
9 it is our position that the state must give them the same tools
10 to meet that responsibility.

11 Q Well, can Florida pass a law that says no
12 county can tax for purposes more than 15 mills?

13 A That, Your Honor, would depend on a number
14 of considerations --

15 Q Well, wouldn't it violate the --

16 A I would violate --

17 Q -- the United States Constitution?

18 A It probably would, but I can't --

19 Q Well, what article?

20 A The considerations would be these, Your
21 Honor --

22 Q What would it violate, the 14th Amendment?

23 A It -- yes, the --

24 Q It says that all counties are on the same
25 basis, that violates the Equal Protection Clause?

1 A A single tax rate --

2 Q It would violate the Equal Protection
3 Clause?

4 A It probably would, but there would be a
5 number of different factors, but just in this case it would e
6 related to the wealth of the community rather than the respon-
7 sibility of the community.

8 Q Let's put it this way: it wouldn't be
9 unconstitutional on its face; would it?

10 A It would be unconstitutional, given -- if
11 it could be demonstrated it probably could --

12 Q But on its face it says that each county
13 shall be treated equally. That, on its face, violates the
14 Equal Protection Clause?

15 A Your Honor, I respectfully disagree that
16 it's equal on its face. It's equal in that it says that same
17 number, flat tax rate is applicable, but I think the Court
18 must ask the question: how does this operate? Does it operate
19 equally or unequally?

20 Let me, if I may, put a hypothetical. Instead of
21 this case where we have the state giving to the local
22 communities tax authorization, let's consider the case where
23 the case was giving money for educational purposes and suppose
24 that the formula under which they distributed money was the
25 same as they distribute tax authority in this case, and suppose

1 that the State of Florida said that: we will give to each
2 county ten mills, a percentage of its tax base for educational
3 purposes. Now, there is no doubt in my mind that this Court
4 would strike that down 9 to nothing. That has no relation-
5 ship to the educational tasks that the counties are required
6 to undertake.

7 Now, the State of Florida, in its presentation
8 nor in its briefs, has suggested a single reason why an equal
9 limitation, if they want a limitation, why an equal limitation
10 would not serve all of its purposes. The State suggested
11 yesterday that the Millage Rollback Act narrows the gap between
12 the poor counties and the rich counties. I think it is
13 obviously true that it narrows the potential gap. That is to
14 say that if there is a limit of ten mills on each county the
15 potential gap is less than if there is a limitation of 15
16 mills and a limitation of 15 mills creates less of a potential
17 gap than no limitation at all.

18 But, the question that we urge on the Court is
19 not the validity of the limitation; it's the validity of an
20 unequal wealth-related limitation expressed as a flat rate tax
21 limitation.

22 Q I think we were told yesterday that there
23 was a pending action in the state court on this subject, with
24 other plaintiffs? Are you familiar with that litigation?

25 A I am familiar with it to the extent that I

1 have seen the pleadings and I have talked to counsel.

2 Q What are the issues that are raised under
3 the State Constitution in that case?

4 A The questions that are raised under the
5 State Constitution, Mr. Justice Brennan, are that the Millage
6 Rollback Act violates a provision of Florida law which says
7 that adequate provision shall be made by law for a uniform
8 system of free public schools; another provision which says
9 that all natural persons are equal before the law and have in-
10 alienable rights and another provision which I think is even
11 weaker; it's rather complicated.

12 But, our position --

13 Q But I gather if those contentions were to
14 prevail under the State Constitution it wouldn't be necessary
15 for us, or any court to reach the Federal claims; would it?

16 A That is correct, Your Honor. Our position
17 here is that we are clearly under 1983 and we have a right to
18 come to a Federal forum with our Federal claim. We have
19 pressed only Federal claims. I believe the position that --

20 Q The fact that it's a 1983 action --

21 A Pardon me?

22 Q The fact that it's a 1983 suit would not
23 preclude, would it, in an appropriate case, abstention until
24 the State law questions were decided; would it?

25 A Well, I believe that is the teaching in

1 Monroe v. Pape, as I read it, and the suggestion that a state
2 law issue or State Constitutional issue may be a ground for
3 abstention is rejected by this Court just last month in
4 Wisconsin against Constantineau, where Mr. Chief Justice Burger
5 dissenting, urged that --

6 Q Well, I know, but whether or not -- I'm
7 just asking: is the fact that it's a 1983 action, in your sub-
8 mission, preclude abstention to have the --

9 A I think it's one of the grounds, Your
10 Honor. I think there are several others. First of all, I
11 don't think that there is any ambiguity here in the statute
12 itself, in the Millage Rollback Act. There is no conceivable
13 vagueness or other way that it can be interpreted that would
14 change the constitutional question here.

15 Moreover, I don't --

16 Q That's so, but however unambiguous, it may
17 nevertheless, may it not, be unconstitutional on one of these
18 State Constitutional grounds?

19 A I think that realistically speaking, of
20 course it hasn't been tested, but as a lawyer assessing a case
21 I would say that you would be filing all new grounds under the
22 Florida Constitution.

23 Q Well, we weren't.

24 A No; as I say, I think a lawyer would be.
25 The Florida courts would be. I don't think that there is the

1 kind of guidelines existing in Florida Constitutional law --

2 Q Incidentally, were any of these State
3 Constitutional grounds raised by the defense in this litiga-
4 tion?

5 A Raised -- no; they wouldn't be raised in
6 fact --

7 Q I mean were they raised or --

8 A They were not pressed by us.

9 Q You raised only the Federal Constitutional
10 grounds?

11 A Yes; as a matter of fact, we did say in
12 our complaint one of these grounds. We never referred to it
13 again, though, and --

14 Q You mean you pleaded a State Constitutional
15 ground and it was not passed on in the Three-Judge Court?

16 A No; we never really -- it was, quite
17 candidly, when we're drafting a complaint we try to put every-
18 thing conceivable in. At the -- as we pressed forward in
19 litigation we assess our chances on each, I think we concluded
20 that this is not a realistically -- a possibility of obtaining
21 relief on this ground. And we are pressing only our Federal
22 ground, as we think we have a right to do under Monroe against
23 Pape.

24 Q Mr. Shanks would you agree that after
25 hearing Mr. Miner's argument and reading his brief, that there

1 is quite a lot of material here that was not before the
2 Three-Judge Court in Florida?

3 A I think the only thing that was not before
4 the Three-Judge Court in Florida, Your Honor, is the argument
5 that this statute may possibly be justified on the ground that
6 it narrows the gap. And that argument, I think, is very
7 easily met.

8 The answer to it is: we have no objection to
9 your trying to narrow the gap; all we have objection to is that
10 you do by imposing an unequal wealth discrimination. There is
11 an analogy, I think, in this case, to *McLaughlin* against
12 Florida in which Mr. Justice Stewart, I believe, wrote the
13 opinion, where there was an attempt by Florida, the same state,
14 to suppress extramarital promiscuity.

15 MR. JUSTICE STEWART: That was Mr. Justice White
16 in that opinion; and I wrote a concurring opinion.

17 MR. SHANKS: Excuse me; I'm sorry, Your Honor.
18 In which the Court indicated it was perfectly proper on the
19 State of Florida to do something about its extramarital or
20 premarital promiscuity, but they said "don't do it by drawing
21 a racial line," and the analogy here is that we have no objec-
22 tion to the State's imposing a limitation, if that's what they
23 want to do, but don't do it by a wealth discriminating limita-
24 tion.

25 Q Your argument has to go so far as to say

1 that a state may not limit the amount of educational support
2 that is to be derived from property taxes and substitute for
3 that support other revenue?

4 A No.

5 Q Well, because the state says, look take
6 no more than 10 mills; don't burden property owners any more
7 than ten mills for the board of education because we're going
8 to make up the sums from other sources.

9 A If they made up the sums from other sources.
10 In other words, suppose that a county says: all right, we
11 would normally -- there is another county here that is raising
12 \$150 a pupil, but the 10 mills in our county only raises \$100
13 a pupil and if we were free, if you treated us equally with the
14 other counties we would get raised \$150. If the state says:
15 we'll make the \$50 up to you so that you really are being
16 treated equally, that would be all right. The only thing we
17 object to is the unequal treatment.

18 Q So, you're saying that the state's
19 equalization program isn't satisfactory.

20 A That's correct.

21 Q And that this program they have of pouring
22 more money in and equalizing equal educational opportunities
23 still denies equal protection of the law.

24 A That's correct.

25 Q Well, that's -- that really then involves

1 the whole picture of all state support to education which, it
2 doesn't seem to me the District Court had before ...

3 A Well, respectfully, Mr. Justice White, I
4 think it does not, because the only thing that is necessary to
5 examine is the Millage Rollback Act to see whether it operates
6 equally and if it does not, is there something which equalizes
7 the operation and the State hasn't pointed to anything which
8 equalizes the operation.

9 All the State has said is: well, we poured in more
10 money on a fair basis. Yes, they have poured in more money
11 on a fair basis --

12 Q It seems to me you would also have to say
13 that the State, it would be unconstitutional for the State
14 to remove the taxing power from all counties and school dis-
15 tricts and the State itself assess and levy the property tax
16 and if it just levied the property tax at 10 mills right across
17 the board you wouldn't say that that was unconstitutional?

18 A No; no; that would be constitutional. It's
19 now how you get the money; it's how you give it back. In other
20 words if the State levied a 10 mill or 20 mill or 30 mill
21 property tax throughout Florida there would be nothing uncon-
22 stitutional about that. What would be unconstitutional is if
23 it took that money and distributed it on the basis of wealth.

24 And here we're talking about -- there's a big
25 difference, and I think it's important to maintain the

1 distinction between getting the money in, whether the state is
2 treating someone equally in the way of taxes from the taxpayer's
3 point of view and on the other hand, whether the state is
4 distributing its largess with benefits unequally here. And
5 here we claim that the state is distributing its benefits un-
6 equally; not money, but in this case, according to tax. And I
7 think it is a discrete part of the taxing system in Florida,
8 and of course it could be met if Florida was to come in here
9 and say yes, it's true that it does operate unequally, but we
10 have made it up by this. And they haven't come in and said
11 that and that's why I don't think, Mr. Justice White, that
12 it's necessary to examine any more of the --

13 Q Mr. Shanks, let me try once again: suppose
14 Florida says that no county may tax more than 10 mills for
15 purposes of fire prevention. Is there anything wrong with
16 that?

17 A In that case, Mr. Justice Marshall,
18 property may be a measure of the need for fire prevention. In
19 other words, there may be a relationship between --

20 Q How about police? Same answer?

21 A I don't know. We're getting into border-
22 line cases. But, if there is -- in education there is demon-
23 strably no relationship between property and need. WE have
24 shown in the record here that the top base varies between
25 \$5,000 a pupil and \$7,200 a pupil, so that there's no

1 relationship whatever --

2 Q Isn't that true in most states?

3 A That's correct. I want to go back to
4 something --

5 Q Do you go on the theory that each child in
6 the state is entitled to the exact same amount of money for
7 education?

8 A No; not at all; not at all, and I'd like
9 to comment on that if I may, because I think it's important.

10 There are, as Your Honor noted yesterday, there
11 are variations in almost every state -- I think Hawaii is the
12 only exception -- between the rich districts and the poor dis-
13 tricts and that is because --

14 Q How could you possibly say that the
15 wealthiest group is the best one?

16 A Well --

17 Q There is no such thing as absolutely --

18 A And we are not urging equality. All we are
19 urging is a negative proposition that you can't discriminate
20 on the basis of wealth. We don't believe that a plaintiff
21 moots his case simply by showing, for example that: I've got a
22 school built five years ago and you've got a school built just
23 last year. We say that the burden on the plaintiff is to
24 establish that there has been a discrimination -- an invidious
25 discrimination on race or wealth and --

1 Q Well, I'm still waiting for you to get to
2 that from your argument.

3 A Well --

4 Q I must have missed something.

5 A I'm obviously deficient, myself, in trying
6 to explain it. What I'm trying to say is that --

7 Q I understood from the State that they put
8 in a certain amount of money per 27 children, or whatever it is
9 per unit in any county and they deduct from that what the county
10 raises in its millage; is that right?

11 A No.

12 Q Well, how does it operate?

13 A The State --

14 Q How does the Equalization Fund operate?

15 A The Equalization Fund operates in this
16 way: the State determines the total amount of an adequate
17 system by formula and there is one equalization element which
18 my brother Miner touched upon which works this way: one
19 element of the total picture is they determine how much would
20 be raised by a four mills tax in the local taxing unit. And
21 then there is an X figure up here and they take whatever is
22 raised by four mills the state will make up, up to X.

23 Q That's what I thought and that's the way
24 I understand it.

25 A That's right. Now, between four and ten

1 the local district is free to add its own tax effort --

2 Q Up to ten.

3 A Up to ten, and that is where we say that
4 inevitably and necessarily and inequity, a discrimination by
5 wealth is built in, because we say to the one county: all
6 right, you can tax an additional six mills over the four and
7 whatever that is you can add it to your system and whatever --
8 given the fact that there is a wide variation in tax base for
9 people, the inevitable result is that in one county they can
10 add \$400 or \$500 per pupil and the other county is prevented
11 from doing the very same thing.

12 Q Does the record show how many counties did
13 add?

14 A Yes, Your Honor. There are 24 counties.
15 I think it might be helpful if I call the Court's attention to
16 the most important table in the case, which appears in the
17 Appendix at 25 and 26, and that is, unfortunately, a small
18 type, but it's got a lot of numbers in it and it shows that
19 the 24 counties which, prior to the Mills Rollback Act, were
20 taxing up to 17 and 18 mills.

21 Q Are they poor counties or rich counties?

22 A They are --

23 Q And when you are answering will you please
24 give me your line as to what's poor and what's rich.

25 A There is no line, Your Honor. Everybody

1 below the richest man is poor in a relative sense. In other
2 words, this is a discrimination by wealth. When you -- if the
3 state gives one county the authority to tax \$700 and another
4 one \$600, the one that's getting \$600 may be what we would
5 normally call a pretty well-to-do county --

6 Q Well, aren't they --

7 A -- but it's still discriminated against
8 compared to \$700.

9 Q Well, aren't they discriminated against in
10 the hospitals, too? And all the other government services;
11 aren't they?

12 A I think we have to examine each cases and
13 maybe in some of these cases something should be done about it,
14 Your Honor. I'm trying to make a very narrow attack here on
15 a very clear discrimination that the statute imposes. It
16 doesn't result from the fact that they are poor and can't
17 afford it; they are willing to tax themselves at a higher rate.
18 They are willing to raise more money for their children, but
19 this statute prevents them from doing so.

20 Q What you really mean is that some of the
21 taxpayers in those counties, have that view.

22 A They cannot do what some of the taxpayers
23 in wealthier counties can do.

24 Q We don't know from anything in this record
25 what their views really are; do we?

1 A We know that they are denied the same
2 rights as the taxpayers in their neighboring wealthier county
3 have.

4 Q May I ask you just one question, Mr.
5 Shanks with reference to what Justice White and I were both
6 inquiring about, as to what was before the District Court and
7 what was not.

8 In Mr. Miner's brief at pages, I think 11 and on-
9 ward, there are some figures that are certainly very interesting
10 and intriguing, but not very crucial to this case. Now, my
11 impression is that these figures were not before the District
12 Court; is that right?

13 A They were not before because they could
14 not be before them at the time because they occurred afterward,
15 and all they represent, Your Honor, is the additions that the
16 state has distributed to the counties on a fair basis and we
17 don't contest that; we acknowledge that the state has distribu-
18 ted funds to them on a fair basis and increased the funds. The
19 only thing that we are talking and the only thing that we
20 attack, is that narrowed area above the basic state grant
21 which is a grant in authority to the counties to help them-
22 selves, and we say that grant of authority is an unequal one
23 because it's based on how rich you are.

24 Q I had the impression that you agree that
25 -- with Mr. Justice White's suggestion that if the state took

1 this entire operation over and eliminated the counties the
2 state could do precisely that. Did I misunderstand you?

3 A You did. I'm sorry to have given that
4 impression, Mr. Justice Burger. The state could tax at 10
5 mills; that part was all right, the taxing part. But it
6 couldn't take that money and distribute it on the basis of
7 how rich the counties were. It doesn't distribute -- for
8 example, you take sales and use tax where it gets most of the
9 money to support the public schools. It takes that sales and
10 use tax but it doesn't give it back to the counties on the
11 basis of where the money came from; it has a formula which is
12 related to the educational needs of the varying kinds. It
13 doesn't matter whether 50 percent of it came from Dade County.
14 Dade County doesn't get 50 percent; it gets it in terms of a
15 formula related to need and if the state taxed 10 mills on
16 real property that would be perfectly constitutional from the
17 taxpayer's point of view and from the point of view of the
18 revenue-gathering it would be entirely unconstitutional, we
19 submit, for the state to take those funds and distribute it
20 back to the counties on the basis of how rich they are.

21 And, instead of taking money and giving it --

22 Q You mean that they couldn't increase the
23 state grant because people are poor?

24 A They could increase it because they were
25 poor. That's the benign wealth classification which we

1 entirely support. But we couldn't decrease it because they are
2 poor.

3 Q But they could, nevertheless, distribute
4 state monies based on wealth?

5 A Benignly; that is to favor the poor, but
6 not the rich; yes.

7 Q May I ask you just one question?

8 A Yes, Mr. Justice Black.

9 Q The case is rather mysterious to me. After
10 all the argument I do not fully understand what these issues
11 mean to somebody in some way.

12 Suppose that they had decided to abandon a state
13 school system and leave it up to each county to have the system
14 that they wanted to pay for. Could they do that? What would
15 there be in the constitution to prohibit that?

16 A On the basis of the argument we're making
17 here today the answer is: nothing would prohibit, although the
18 case could be made -- I've got enough problems here without
19 making that case.

20 Q Well, I'm trying to find out -- it seems to
21 me like it would have a pretty close relationship --

22 A No, it doesn't, Your Honor, for this reason:
23 in the case where the state says we're not going to do anything.
24 The localities can do whatever they want --

25 Q That was the original way of running schools

1 in this country; wasn't it?

2 A Right. The difficulty -- this is, I think,
3 crucial to an understanding of the case I'm trying to make.
4 The difficulty that the poor counties have in the case here in
5 Court is that they are too poor that they can't afford, they
6 are unable to pay, but that isn't what keeps them back here.

7 Q Well, you have the same effect if you left
8 it up to the counties --

9 A It might have --

10 Q -- to pay taxes to educate its own
11 children; wouldn't it?

12 A It might have the same effect, but the
13 source of that effect would be in the fact that they are poor.
14 Many laws operate --

15 Q No; the source would be that the state
16 decided to let the counties run their own schools and collect
17 their taxes in their own way. Suppose it did that?

18 A Yes. A case, as I say, could be made, but
19 even that would be unconstitutional --

20 Q Why? What would it violate?

21 A Because it --

22 Q It depends on who has the right to run --
23 the basic right to run the public schools.

24 A It's the responsibility of the state. I'm
25 arguing a case which isn't mine today. I'm saying that it's

1 much worse to discriminate on the basis of the status of being
2 poor than it is to pass a law which operates equally and --

3 Q Suppose the state wanted to abolish all of
4 the schools?

5 A And leave it up to the localities?

6 Q No; abolish their schools.-- like we run
7 other things in this country.

8 A That's equal and I don't see anything un-
9 constitutional. I think it would be very foolish and unwise,
10 but if they authorize the localities it can be argued that they
11 are discriminating on the basis of an ability to pay and the
12 poor ones can't afford it. But, even if that is all right, and
13 I'm willing to assume for the purposes of this case that it is
14 all right, they can't say, for example, if they abolish all
15 schools and leave it up to the locality, they can't say to the
16 rich locality: well, you can have a school with \$1500 a pupil
17 in it and say to the poor county: you're poor and for that
18 reason we won't let you have a \$1500 school system. We will
19 only let you have a \$500 school system.

20 And the difference is that in the second case I
21 put the state is forbidding the poor from doing the same thing
22 as the rich, even if the poor are willing to sacrifice to do
23 it.

24 Thank you very much, gentlemen.

25 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Shanks.

1 Mr. Miner, you have five minutes.

2 REBUTTAL ARGUMENT BY CHARLES E. MINER, JR.

3 ON BEHALF OF APPELLANTS

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

6 I must confess in all candor that the first time
7 that I read the pleadings in this case and the arguments in
8 Mr. Shank's brief I did not then understand how or if Florida
9 was, in fact, discriminating against the school children. I
10 still do not.

11 The whole underlying concept of the minimum
12 foundation funding formula in Florida is a recognition of the
13 socio-economic fact that some of Florida's counties are poor
14 in relation to the student numbers and some are wealthy. We
15 go in and with the minimum foundation funding formula a com-
16 plex series of statutes, we recognize that some counties can
17 not fend for themselves and we are going to see that they at
18 least can give their children a minimum acceptable education.

19 Mr. Shanks has indicated this morning that he is
20 focusing on a narrow -- that he's making a narrow argument. I
21 don't think that we can judge whether or not Florida, is in
22 fact, discriminating against its school children without look-
23 ing at the total concept of the minimum foundation program.

24 Mr. Shanks has indicated in his brief and in
25 argument that several of Florida's counties: 16, I think,

1 suffered in excess of fifty millions of dollars lost because
2 of the -- the Millage Rollback Act was enacted. In truth and
3 in fact, when you consider the infusion of state monies to
4 make up for those monies that were lost there is an increase in
5 excess of \$112 million.

6 So, the counties have not suffered as a result of
7 the Millage Rollback Act.

8 I would urge the Court to determine whether or
9 not we in Florida are discriminating against our school child-
10 ren in our poor counties, in fact and not in theory.

11 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Miner.
12 Thank you, Mr. Shanks.

13 The case is submitted.

14 (Whereupon, at 11:02 o'clock a.m., the argument
15 in the above-entitled matter was concluded)
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