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## **Ari Miller v. Gina Mendez**

NEXT CASE ON THE COURT'S CALENDAR IS MILLER VERSUS MENDEZ.

GOOD MORNING, EVERYONE. TERRI-ANN MILLER ON BEHALF OF THE PLAINTIFF, IN THIS CASE ARI MILLER. PLAINTIFF FILED INJUNCTIVE RELIEF THAT GINA MENDEZ, AT THE TIME SHE QUALIFIED FOR JUDICIAL OFFICE IN THE 11th JUDICIAL CIRCUIT, WAS A BROWARD RESIDENT AND THEREFORE WAS NOT QUALIFIED TO RUN FOR CIRCUIT COURT IN MIAMI-DADE. SHE WAS NOT A RESIDENT OF MIAMI-DADE COUNTY. IN JULY OF 2000. THERE FOR, UNDER ARTICLE V, SECTION 8 OF THE CONSTITUTION, SHE WAS NOT, QUOTE, ELIGIBLE TO BE A CANDIDATE FOR ELECTION. THE POINT RELIED ON IN THIS APPEAL IS THAT THE FOURTH DCA, IN MILLER V GROSS, CONSTRUED THE ELIGIBILITY RESIDENCY REQUIREMENT OF ARTICLE V SECTION 8 TO MEAN ELIGIBILITY AT THE TIME OF QUALIFICATION IN JULY, NOT TO MEAN AT THE TIME OF ASSUMING OFFICE.

MS. MILLER, I AM FAMILIAR WITH THE VARIOUS CASE LAW THAT HAS BEEN CITED HERE, BUT LET ME ASK YOU THIS. WHY ISN'T IT A BETTER POLICY AND MORE IN COMPLIANCE WITH THE LITERAL LANGUAGE OF THE CONSTITUTION, THAT THE PERSON WHO SIGNS AN OATH, SAYING THAT I HIM QUALIFIED -- THAT I AM QUALIFIED, ACTUALLY BE QUALIFIED AT THE TIME THAT THAT OATH IS SIGNED, BECAUSE, AND SO THAT THE VOTERS, WHEN THEY VOTE, HAVE SOME RELIANCE UPON THE FACT THAT THE PERSON IS QUALIFIED TO SERVE RATHER THAN BEING DEPENDENT UPON THE PERSON MEETING THE RESIDENCY REQUIREMENT, AFTER THEY ARE ELECTED OR AS IN A COUNTY COMMISSION RACE, MOVING FROM ONE DISTRICT TO THE OTHER. WHY ISN'T IT A BETTER POLICY THAT THE PERSON HAVE TO BE QUALIFIED AT THE TIME THAT THEY SIGN AN OATH SAYING THAT THEY ARE, AT THE TIME THAT THEY QUALIFY FOR, TO GO ON THE BALLOT?

BASICALLY SO VOTERS KNOW WHO AND WHAT THEY ARE VOTING FOR AT THE TIME.

SO YOU AGREE WITH JUSTICE WELLS.

IN ALL CANDOR, OF COURSE NOT. I DON'T. IN FACT I WOULD SAY THAT THERE IS NO CASE LAW. STATES FROM THE SUPREME COURT, ADVISORY OPINIONS IN SUPPORT OF THE POSITION TAKEN BY THE FOURTH DISTRICT COURT OF APPEAL. BUT THERE HAS NEVER BEEN A CASE, EITHER, THERE HAS NEVER BEEN A DECISION FROM THE SUPREME COURT --

BUT WE ARE ASKING YOU ABOUT POLICY. IN OTHER WORDS, THE QUESTION, IF I UNDERSTAND JUSTICE WELLS, HE HAS ASKED YOU WHY WOULDN'T IT BE A BETTER POLICY?

IT MIGHT BE, BUT THEY WOULD HAVE TO AMENDMENT THE CONSTITUTION, PROBABLY, TO DO THAT, OR THERE WOULD NEED TO BE SOME CASE LAW FROM THIS COURT TO FINDING THAT. WHAT IS ELIGIBILITY.

WELL, THEN, YOU AGREE THAT IT PROBABLY WOULD BE A BETTER POLICY. IT IS JUST YOUR POSITION THAT THE CONSTITUTION DOESN'T PROVIDE FOR THAT.

EXCUSE ME FOR INTERRUPTING YOU, BY THE WAY. IT MIGHT BE A BETTER POLICY, BUT I THINK ULTIMATELY, THERE IS A BODY OF CASE LAW IRVIN V COLLINS IS ONE THAT COMES TO MIND, THAT THE VOTERS SHOULD BE THE FINAL ASH TORE OF THE QUALIFICATION -- ASHY TORE OF THE QUALIFICATIONS OF A -- ARBITOR OF THE QUALIFICATION OF HIS A CANDIDATE AND THAT THERE OUGHT TO AND POLICY OF ENCOURAGING CANDIDATES RATHER THAN EXCLUDING CANDIDATES.

SO ARE YOU HERE TODAY ADVOCATING FOR THE UPHOLDING OF THE MILLER CASE?

MILLER V MENDEZ ON THE CONFLICTISH YURTION WHERE THE THIRD DISTRICT CONFLICTED WITH THE FOURTH DISTRICT, YOU FOUND THIS IS A BASIC QUESTION AS TO RESIDENCY HAVING TO BE ESTABLISHED AT THE TIME THAT YOU QUALIFY OR AT THE TIME THAT YOU TAKE OFFICE? IS THAT THE THIRD ISSUE?

IT IS IN NEWMAN, BECAUSE THIS COURT DISCUSSED THE FACT THAT REQUIREMENTS --

THAT IS A CONFLICT ELEMENT IN THIS CASE, THE QUESTION OF WHETHER ELIGIBILITY IS AT THE TIME OF THAT YOU QUALIFY OR WHEN YOU --

WHEN YOU ARE ELECTED AND ASSUME OFFICE. THAT IS CORRECT.

SO THE CASE WHICH YOU BROUGHT IN THE FOURTH DISTRICT, YOU AT THAT TIME WERE SITTING AS A JUDGE IN DADE COUNTY THAT, THAT IS A DISTINCTION WITHOUT A DIFFERENCE, FOR THE PURPOSE OF THE CONFLICT ISSUE. IS THAT YOUR POSITION?

YES. YES.

BUT LET ME SEE IF I UNDERSTAND CORRECTLY HERE. YOU ARE NOT ACTUALLY HERE TO ADVOCATE THE POSITION THAT WAS TAKEN THAT, THE PETITIONER SUPPOSEDLY IS TAKING, AND THAT IS THAT YOU HAVE TO BE ELIGIBLE AT THE TIME THAT YOU, YOU ARE A CANDIDATE FOR OFFICE.

QUALIFY IN JULY.

SO NO ONE IS HERE ADVOCATING THAT POSITION.

YES. I WOULD BE HERE ADVOCATING THIS POSITION, IF I COULD FIND SOMETHING IN SUPPORT OF IT. I COULD FIND NOTHING IN SUPPORT OF IT.

BUT WE REALLY DON'T HAVE ANY CONTROVERSY HERE. ALL THE PARTIES ARE IN AGREEMENT.

WE DO HAVE A CONTROVERSY, BECAUSE THERE EXISTS, NOW, A CONFLICT THERE IS A CONFLICT, BECAUSE IF YOU ARE A CANDIDATE IN MIAMI-DADE COUNTY FOR ELIGIBILITY, YOU HAVE TO MEET THE REQUIREMENTS IN JANUARY, WHEREAS IF YOU TAKE OFFICE IN BROWARD COUNTY AS A JUDICIAL CANDIDATE, YOU HAVE TO BE ELIGIBLE AND MEET RESIDENCY REQUIREMENT IN JULY, WHEN THE, WHEN YOU FILE THE PAPERS AND DURING THE QUALIFICATION PERIOD.

BUT YOU ARE URGING THAT WE AFFIRM THE THIRD DISTRICT AND QUASH, AND DISAPPROVE THE FOURTH DISTRICT.

AND OVERRULE THE FOURTH. YES.

I AM CONCERNED, MS. MILLER, ABOUT WHAT I AM CONCERNED, MS. MILLER, ABOUT WHAT IS THE STATEMENT THAT YOU FILED AT THE TIME OF FILING IN BROWARD COUNTY. WHAT IS THE OATH?

THE ACTUAL WORDING OF THE OATH THAT, IS STATUTE 1105.031. I BELIEVE IT IS 4-B. I WILL GET THAT.

DOES IT USE PRESENT TENS?

YES, IT -- PRESENT TENSE?

YES, IT DOES.

IT SAYS "I AM". CORRECT. BUT THE CASE LAW, AND WE HAVE CASE LAW GOING BACK TO 1916, 1920, AND IT HOLDS THAT THE STATE ADAMS, STRIKE THAT, JAMES V COUNTY OF VOLUSIA, DAVIS V CRAWFORD, THEY ALL SAY THAT THE --

BUT YOU HAD --

IT IS IN CENTURO.

YOU HAD A PARTICULAR SITUATION, IN WHICH, WHEN YOU SIGNED THAT, YOU WERE SERVING AS A COUNTY JUDGE IN DADE COUNT CAN I, CORRECT? -- COUNTY, CORRECT?

THAT'S CORRECT.

AND TO BE QUALIFIED THERE, YOU HAD TO LIVE IN DADE COUNTY.

YES. TO CONTINUE SERVING AS A JUDGE IN DADE COUNTY, OBVIOUSLY.

SO YOU WERE IN A POSITION IN WHICH YOU SIGNED THE OATH, AND WHAT THE OATH SAID WASN'T TRUE.

NO. WHAT I SIGNED, I REGISTERED TO VOTE IN BROWARD, THAT IS. THE PROBLEM, SEE, AND I CONSIDER THE TERM "RESIDENCY" AS USED IN THE CONSTITUTION, THAT IS. THE ISSUE THAT NEEDS TO BE CLARIFIED. BECAUSE TO ME, RESIDENT, LEGAL RESIDENCY IS DEFINED IN THE STATUTE. RESIDENCY IS NOT DEFINED ANYWHERE. DOMICILE, IF THE CONSTITUTION MEANT DOMICILE, THEY COULD HAVE SAID DOMICILE. THE CONSTITUTION DOES NOT SAY DOMICILE. RESIDENCY, WHERE YOU HANG YOUR HAT. A PERSON CAN HAVE MANY RESIDENCES, BUT THEY CAN ONLY HAVE ONE DOMICILE, SO AT THE TIME THAT I SIGNED THE AFFIDAVIT IT WAS ACCURATE. I HAD A RESIDENCE IN BROWARD. I HAD A RESIDENCE IN DADE COUNTY COUNTY. HE WAS AN ELECTOR OF THE STATE OF FLORIDA. BUT AGAIN, I FEEL THAT THE OATH, THE WAY THAT THE CASE LAW HAS INTERPRETED, THE OATHS FOR QUALIFICATION, THEY ARE TO APPLY IN FUTURO, NOT IN PRESENTING.

IS THERE ANYTHING IN THE RECORD INDICATING THAT ANY OF THE OATH DOCUMENTS WERE ANY DIFFERENT IN THE TWO CASES, BECAUSE I WOULD ASSUME THAT THEY ARE STANDARD UNDER THE STATUTES. THE SAME DOCUMENTS WOULD HAVE BEEN SIGNED UNDER BOTH CASES, SO IS THERE ANYTHING THE RECORD THAT ADDRESSES THAT?

AS FAR AS BEING IN THE RECORD ACTUALLY THE OATH THAT EVERYBODY SIGNS. THE OATH THAT THEY SIGN, USUALLY USUALLY, TO QUALIFY AS A COUNTY COURT JUDGE, IS THEY USE THE WRONG OATH, TO BEGIN WITH.

WELL, BEGIN AGAIN, WHAT IS THE STATUS? DOES -- WELL, AGAIN, WHAT IS THE STATUS OR DOES IT MAKE ANY DIFFERENCE OR DOES IT DISTINGUISH THE TWO CASES, WHAT I AM TRYING TO DETERMINE.

NO, IT DOES NOT, NO.

SO THE SAME DOCUMENTS WERE SIGNED IN BOTH CASES, TO THE COURT.

THEY ARE BOTH IN FUTURO. THEY SAY I AM. NOT I WILL BE. THEY BOTH SAY THAT. BUT THE CASE LAW HAS MEANT, HAS SAID THAT IT IS THE WHEN YOU SIGNED IT, YOU THOUGHT THAT YOU HAD TO BE ARE A RESIDENT OF BROWARD AT THE TIME THAT YOU -- THAT YOU HAD TO BE A RESIDENT IN BROWARD AT THE TIME THAT YOU SIGNED THE OATH. IT REQUIRES ESTABLISHED RESIDENCY AT THE TIME THAT YOU FILED THE OATH.

IN ALL CANDOR, THE ONLY REASON I DID THAT WAS, PERHAPS, TO MAKE THE ELECTORATE MORE COMFORTABLE. I REALLY WASN'T THINKING IN TERMS OF HAVING TO COMPLY WITH THE OATH, BECAUSE I KNEW WHAT MY FUTURE AND PRESENT INTENTIONS WERE. -IF YOU LOOK AT THE ISSUE THAT WAY --

DOES THE RESIDENCY HAVE TO BE AS OF THE DAY YOU SIGN THE OATH AND QUALIFY AS A CANDIDATE OR WAS IT THE DAY THAT YOU ASSUMED OFFICE?

YES, IT WAS. YES, IT IS.

BECAUSE JUDGE FARMER'S OPINION REALLY GOES OFF ON WHAT RESIDENCY MEANT.

I UNDERSTAND THAT, BUT AT THE END OF THE OPINION AND ALSO THE CONTOURING OCCURRING OPINION BY -- THE CONCURRING OPINION BY JUDGE GROSS HOLDS WHAT I SPECIFICALLY STATE, AND THAT IS QUALIFICATION IN HIS JULY NOT JANUARY.

WOULD IT BE YOUR POSITION THAT SOMEBODY COULD, AS LONG AS THEY ACTUALLY HAD A DRESS IN -- AN ADDRESS IN A COUNTY WHERE THEY WERE ELECTED AS OF THE DATE THAT THEY TOOK OFFICE, THAT THEY COULD REALLY LIVE ELSEWHERE, AND THAT THAT WOULD BE IN TERMS OF YOUR ARGUMENT ABOUT RESIDENCY, THAT REST DINS I IS THAT -- RESIDENCY IS HE HAVE EMRAL FOR THE PURPOSES -- IS EPHEMORAL FOR HAVING AN ADDRESS ELSEWHERE?

EXCUSE ME FOR INTERRUPTING. I THINK THEING ON AGAIN -- I THINK THAT OING AGAIN -- -- I THINK THAT OGDEN IS THAT RESIDENCY IS BASICALLY WHERE YOU INTEND TO RESIDE, AND I THINK THAT, IN FLORIDA, THAT IS NOW WHAT IT IS.

THANK YOU, MR. FAHLBUSCH.

MAY IT PLEASE THE COURT. CHARLES FAHLBUSCH, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. THE CONSTITUTION DOES NOT REQUIRE THAT A CANDIDATE FOR CIRCUIT COURT JUDGE RESIDE WITHIN THE CIRCUIT AT THE TIME OF QUALIFYING FOR ELECTION.

WHAT SPECIFICALLY DOES THE CONSTITUTION SAYS?

THE CONSTITUTION SPECIFICALLY SAYS NO PERSON SHALL BE ELIGIBLE FOR OFFICE OF JUSTICE OR JUDGE OF ANY COURT, UNLESS THE PERSON IS AN ELECTOR OF THE STATE AND RESIDES IN THE TERRITORIAL JURISDICTION OF THE COURT. THAT IS IN ARTICLE V SECTION 8. THE THIRD DISTRICT OPINED THAT THIS PROVISION REQUIRES RESIDENTS IN THE JURISDICTION OF THE CIRCUIT COURT INVOLVED AT THE TIME OF ASSUMING OFFICE, BUT NOT AT THE TIME OF QUALIFYING FOR ELECTIONS.

WHAT IS THE OATH? IS THE OATH SET FORTH IN STATUTE OR IS THAT A FORM THAT THE --

THE OATH IS SET FORTH IN THE STATUTE.

WHAT DOES THAT THE OATH SAYS "I AM QUALIFIED", AND IT ALSO SETS FORTH THE COUNTY OF QUALIFICATION.

HOW COULD, SO THAT, REALLY, THAT OATH IS MISLEADING AND INACCURATE, AND REQUIRES PEOPLE, IF THEY DON'T LIVE AT THE, IN THE COUNTY AT THE TIME THAT THEY ACTUALLY QUALIFY FOR OFFICE, TO, REALLY, SAY SOMETHING THAT IS NOT TRUE.

EITHER THAT OR IT DOESN'T DISQUALIFY THEM, EVEN IF, AS CANDIDATE MENDEZ DID, THEY SAY THAT THEY LIVE IN A COUNTY OTHER THAN THE ONE THAT THEY ARE ABOUT TO RUN IN. THE OATH IS REQUIRED BY SECTION 105.031, AND IT IS PHRASED IN THE PRESENT TENSE.

SO YOU WOULD HAVE TO SAY I AM NOT QUALIFIED, IF YOU DON'T LIVE FURTION LIVING ELSEWHERE,, IF YOU ARE LIVING IN LEON BUT PLAN TO BECOME A JUDGE IN PALM BEACH COUNTY BUT YOU ARE NOT LIVING DOWN THERE THEN, TO SAY YOU ARE QUALIFIED, IT --

YOU COULD SAY I AM STILL QUALIFIED, AND SIGN THE OATH IN THE COUNTY YOU ARE IN, PROVIDED THE CANDIDATE'S INTENT WAS TO BE A COUNTY RESIDENT OF THE COUNTY, BEFORE OFFICE WAS ASSUMED. THAT WAS INTERPRETED IN THE DIVISION OF ELECTIONS, IN 92-10.

SO IT IS THE STATE'S POSITION THAT, IF THE PERSON, THAT THE INTENT OF THE CONSTITUTION, IN SAYING THAT THERE IS A RESIDENCY REQUIREMENT, FOR A COUNTY JUDGE, IS THAT, IF THE PERSON SIMPLY MOVES IN ON JANUARY WHATEVER DAY THAT THEY ARE GOING TO BE SWORN IN, THEY BECOME QUALIFIED. THEY DON'T HAVE TO BE QUALIFIED AT THE TIME THAT THEY ARE ELECTED.

THAT WOULD BE TRUE WITH REGARD TO CIRCUIT COURT JUDGES, YES, JUSTICE.

OKAY. THIS COURT, IN ITS 1966 ADVISORY OPINION, ALBEIT IT WAS CONCERNING THE FIVE-YEAR BAR MEMBERSHIP, SPECIFICALLY STATED THAT THE PHRASE "NO PERSON SHALL BE ELIGIBLE FOR THE OFFICE OF JUDGE", REFERS TO ELIGIBILITY AT THE TIME OF ASSUMING OFFICE, AND NOT AT THE TIME OF QUALIFICATION OR ELECTION TO OFFICE.

IF A PERSON DIDN'T MOVE IN TO THE DISTRICT, THEN WE WOULD HAVE TO REMOVE THAT PERSON.

THAT IS ABSOLUTELY CORRECT, JUSTICE.

YOU WOULD HAVE TO HAVE A NEW ELECTION.

YES, YOUR HONOR.

AND THE SAME WOULD BE TRUE OF A COUNTY COMMISSIONER, WOULD IT NOT?

THE SAME WOULD BE TRUE OF A COUNTY COMMISSIONER, YES, OF COURSE YOUR HONOR.

DOESN'T THAT STRIKE YOU AS BEING BAD POLICY, THAT THE VOTERS OUGHT TO HAVE A RIGHT TO RELY ON THE FACT THAT THE PERSON SAYS "I AM A RESIDENT OF -- I MEET ALL THE QUALIFICATIONS", SO THAT WHEN THEY ARE ACTUALLY VOTING, THAT THEY HAVE, CAN ACT IN RELIANCE UPON THE FACT THAT THAT PERSON IS GOING TO TAKE OFFICE. ISN'T THAT, DON'T YOU THINK THAT WAS THE INTENT OF THE CONSTITUTION?

YOUR HONOR, FIRST OF ALL, IT MAY NOT HAVE BEEN, ALTHOUGH CERTAINLY IT MAY HAVE BEEN, BUT WHERE THE ELECTORS TELL US WHAT THE CONSTITUTION SAYS, AND THEY SAY NO PERSON SHALL BE ELIGIBLE FOR OFFICE, AND THIS COURT VERY UNDERSTANDABLY, HAS HELD THAT THAT MEANS AT THE TIME OF ASSUMING OFFICE, THAT WOULD SEEM TO BE THE PRECISE INTENT OF ELECTORS, AND IT WOULD BE SOMEWHAT, WOULD APPEAR SOMEWHAT PRESUMPTIONIOUS OF US TO SAY, WELL, THE POLICY THAT THEY INTENDED TO IMPLEMENT REALLY WAS --

WHO DRAWS THIS OATH THAT CANDIDATES TAKE?

I BELIEVE THE FLORIDA LEGISLATURE DID, YOUR HONOR.

OKAY. AND WOULDN'T THERE BE AT LEAST SOME CONSTRUCTION, BY USE OF THE PRESENT TENSE, OF THE FACT THAT THE INTENT, THERE, WAS THAT THE PERSON BE QUALIFIED AT THE TIME THAT THEY QUALIFY FOR OFFICE?

THAT MAY WELL HAVE BEEN THE INTENT OF THE FLORIDA LEGISLATURE. YES, YOUR HONOR.

HOWEVER, THIS COURT HAS AN OPINION CALLED STATE VERSUS GRASSY, FROM 1986, WHICH CONCERNED COUNTY COMMISSION CANDIDATES, AND IT HELD THAT ELIGIBILITY REQUIREMENTS FOR COUNTY COMMISSIONERS, BASED UPON AN ANALOGY US CONSTITUTIONAL CONCERN TO THE CONTENT HERE IN, DID NOT HAVE RESIDENCY AT THE TIME OF QUALIFICATION AS A CANDIDATE AND, FURTHER, FOUND THAT A FLORIDA STATUTE WHICH REQUIRED A COUNTY COMMISSIONER TO BE A RESIDENT OF THE DISTRICT FROM WHICH HE QUALIFIED AT THE TIME OF QUALIFICATION, RATHER THAN AT THE TIME OF TAKING OFFICE, WAS UNCONSTITUTIONAL FOR IMPOSING QUALIFICATIONS BEYOND THOSE REQUIRED BY THE CONSTITUTION.

IS THERE ANY DIFFERENCE IN THE CONSTITUTIONAL PROVISION CONCERNING CIRCUIT COURT JUDGES AND COUNTY COMMISSIONS, AS FAR AS THE WORDING OF WHAT WE WERE INTERPRETING IN GRASSY?

THERE ACTUALLY IS SOME DIFFERENCE, BUT THAT DIFFERENCE --

WHAT IS THE DIFFERENCE?

I DON'T SPECIFICALLY REMEMBER THE STATUTE, WITH REGARD TO COUNTY COMMISSIONERS, BUT THE DIFFERENCE IN TERMS OF POLICY AND LEGAL CONSIDERATIONS DISAPPEARS, WHEN WE REALIZE THAT THE ADVISORY OPINION OF 1966 STATES THAT THE PROVISION WITH REGARD TO JUDICIAL CANDIDATES, IN TERMS OF THE TIME THE QUALIFICATIONS ARE TO BE FULFILLED, IS PRECISELY THE SAME WITH REGARD TO THE TIME THAT THOSE --

IN ONE SENSE, SOMEONE IS FIVE YEARS. YOU ARE GOING TO KNOW IF, ON THE DATE THAT THEY TAKE OFFICE, THAT THEY HAVE BEEN A MEMBER OF THE BAR FOR FIVE YEARS, BECAUSE THAT IS A MATHEMATICAL COMPUTATION. THE QUESTION, AS, AND THE VOTERS WILL KNOW THAT, AS WELL, BUT I THINK MY CONCERN, REALLY, ECHOES JUSTICE WELLS'S CONCERN, WHICH IS THAT THESE ARE, WHEN THIS IS ELECTORATE, AND THIS IS A QUESTION OF WHETHER THE PERSON IS QUALIFIED OR MAY BECOME QUALIFIED, HOW IS THE ELECTORATE TO KNOW WHETHER THAT PERSON WILL OR WILL NOT BE QUALIFIED, ON THE DATE THAT THEY, THAT THAT PERSON TAKES OFFENSIVE, AND WHEN YOU ARE TALKING ABOUT RESIDENCY VERSUS YEARS THAT YOU HAVE BEEN PRACTICING?

I UNDERSTAND YOUR CONCERN, JUSTICE PARIENTE. BUT THE PROBLEM IS THAT THE PHRASE NO PERSON SHALL BE ELIGIBLE FOR THE OFFICE OF JUDGE OR JUSTICE, IN THE PRESENT POSITION, APPLIES TO BOTH THE FIVE-YEAR BAR QUALIFICATION AND THE GEOGRAPHICAL RESIDENCE REQUIREMENT, SO IT WOULD BE EXTRAORDINARILY DIFFICULT AND TORTURED TO INTERPRET THAT PHRASE AS MEANING SOMETHING DIFFERENT, WITH REGARD TO BAR MEMBERSHIP, THAN IT DOES WITH REGARD TO GEOGRAPHICAL RESIDENCE RESIDENCE.

BUT ON THE GRASY ISSUE, GRASSY IS NOT EXACTLY THIS CASE, RIGHT? BECAUSE GRASSY, THE CONSTITUTIONAL PROVISION SAYS ONE COMMISSIONER RESIDING IN EACH DISTRICT SHALL BE ELECTED BY THE ELECTORS OF THE COUNTY, AND THIS COURT SAID WE CONSTRUE THIS PROVISION AS REQUIRING RESIDENCY AT THE TIME OF ELECTION, NOT AT THE TIME OF TAKING OFFICE. CORRECT?

THAT IS ABSOLUTELY CORRECT, YOUR HONOR.

AND SO THERE WAS SPECIFIC LANGUAGE IN THE CONSTITUTION, AS TO COUNTY COMMISSIONERS, THAT SAID THAT ELECTED BY THE ELECTORS OF THE COUNTY.

YOU ARE CERTAINLY ABSOLUTELY CORRECT, BUT THAT DISTINCTION WOULD APPEAR TO DISAPPEAR, WHEN WE CONSIDER THE ADVISORY OPINION CASES OF 1966 AND 1999, BOTH OF WHICH INDICATE THAT THE PHRASE THAT WE TALKED ABOUT, NO PERSON SHALL BE ELIGIBLE FOR OFFICE OF JUSTICE OR JUDGE, REFERS TO ELIGIBILITY AT THE TIME OF TAKING OFFICE, AND

DOES NOT REQUIRE SUCH ELIGIBILITY AT ANY TIME PRIOR TO THAT.

IF YOU ARE SPLITTING YOUR TIME WITH MR. BROWN, BE MINDFUL OF IT, PLEASE.

VERY GOOD. BASED UPON THE ANALYSIS OF THIS COURT IN 1966, WHICH THE FOURTH DISTRICT FOUND TO BE IN APPLICABLE BUT THE VIRD DISTRICT FOUND TO BE -- THE THIRD DISTRICT FOUND TO BE APPLICABLE, THERE EXISTS AN EXTREME CONFLICT IN THE QUALIFICATIONS FOR JUDICIAL CANDIDATES ARE CURRENTLY VERY DIFFERENT BETWEEN THE FOURTH DISTRICT AND THE THIRD DISTRICT THIS. IS A DONFLICT WHICH NEEDS TO -- THIS IS A CONFLICT WHICH NEEDS TO BE RESOLVED BY THIS COURT, AND WE ASK THAT THIS COURT DO SO AND FIND THAT THE OPINION OF THE THIRD DISTRICT, WHICH IS CONSISTENT WITH THE FLORIDA CONSTITUTION AND WITH PRIOR DECISIONS OF THIS COURT, WAS THE PROPER ONE. WE ASK THAT THE THIRD DISTRICT BE AFFIRMED. THANK YOU VERY MUCH.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. JUDGE MILLER AND MR. FAHLBUSCH. JUSTICE QUINCE, YOU HAVE NOTED THAT THIS CASE COMES TO THIS COURT BY THE ROAD LESS TRAVELED, AND YOU HAVE, ALSO, NOTED THAT THERE IS NO ONE HERE ADVOCATING THE PETITIONER'S POSITION, AND THAT IS THE POINT THAT I THINK IS THE ONE THAT I WOULD LIKE, TO BEGIN WITH AND THE ONE THAT IS MOST IMPORTANT. THE PETITIONER IS HERE TO LOSE THIS CASE. I THINK THAT SHOULD RAISE A GRAVE JURISDICTIONAL PROBLEM WITH THE MEMBERS OF THIS COURT.

BUT WE DO HAVE A CERTIFIED, WASN'T THERE A CERTIFIED CONFLICT, DIDN'T THE THIRD CERTIFY CONFLICT WITH THE IN AND OUT?

YES -- WITH THE FOURTH?

YES, YOUR HONOR, HOWEVER THE CONFLICT, IF YOU WILL, WAS MANUFACTURED. JUDGE MILLER --.

STILL, WHETHER IT IS MANUFACTURED FACTS OR NOT, YOU STILL HAVE PRINCIPLES OF LAW THAT YOU HAVE TWO DIFFERENT CRITERIA IN TWO ADJACENT AREAS OF DISTRICT COURTS IN FLORIDA. HOW DO YOU ESCAPE THAT?

YOUR HONOR, I THINK FIRST OF ALL THAT THE TWO CASES THAT ARE PURPORTEDLY IN CONFLICT ARE DISTINGUISHABLE, AND SECOND, I THINK THE PROBLEM THAT IS RAISED BY A CONFLICT WHICH IS NOT GENUINE, IF YOU WILL, OR AN ADVOCATE WHO IS NOT ACTUALLY HERE TO ORDER HAVE A INDICATE THE -- TO ADVOCATE THE POSITION, RAISES THE DANGER OF ARGUMENTS HERE, TODAY, THAT COULD NOT HAVE BEEN MADE. THE PROBLEM IS THE JUDGE IN DADE COUNTY CASE WAS NOT ELECTED, AND HAD THAT JUDGE BEEN ELECTED, THEN WE WOULD HAVE THAT POSTURE, BUT IT DOESN'T ELIMINATE THE CONFLICT THAT IS VERY REAL AND, I THINK, VERY DANGEROUS THAT IS HERE. THAT IS A PROBLEMICAL AREA, WHERE YOU HAVE ONE JURISDICTION SAYS THAT YOU DON'T HAVE TO RESIDE THERE, WHEN YOU QUALIFY, AND THE OTHER ONE SAYS, YES, YOU DO.

I ABSOLUTELY AGREE WITH YOU, YOUR HONOR. HOWEVER, THE MEANS BY WHICH THIS CONFLICT HAS ARISEN IS THAT THE PETITIONER'S HUSBAND, WHO HAPPENS TO BE ONE OF A MILLION OR SO ELECTORS IN DADE COUNTY, CHOSE TO BRING THIS CASE AS A MEANS OF CIRCUMVENTING THIS COURT'S DENIAL OF A PETITION FOR SERIOUS ROAR IN THE FOURTH DISTRICT -- FOR CERSRARY IN THE FOURTH DISTRICT CASE. THE PETITIONER'S STANDING WAS NOT RAISED, IS NOT AN ISSUE ON APPEAL AS TO THE STANDING OF MILLER, TO HAVE BROUGHT THIS CASE, SO I UNDERSTAND WHAT YOU ARE SAYING. WHAT YOU ARE SAYING IS THERE IS NO ADVERSE INTEREST HERE, BUT WE WOULD HOPE THAT, BETWEEN THE STATE OF FLORIDA, THE DEPARTMENT THE STATE DEPARTMENT, THE ADVOCATES, THAT IF THERE IS. THE POSITION TO BE TAKEN, THAT SOMEBODY WOULD, BEING AN OFFICER OF THE COURT, WOULD LET US KNOW WHAT THAT IS. SO YOUR

POSITION, TODAY, IS THAT WE SHOULD DISCHARGE JURISDICTION BECAUSE OF THIS UNIQUE POSTURE BE AND LET THE CONFLICT BETWEEN THE THIRD AND THE FOURTH DISTRICT STAND?

WELL, MY ANSWER IS IN PART YES, BUT I WOULD RESPECTFULLY DISPUTE ONE OF THE ASSUMPTIONS THAT YOU HAVE MADE. THAT BEING -- ASSUMPTIONS THAT YOU HAVE MADE, THAT BEING THAT THERE IS A GENUINE CONFLICT. I BELIEVE THAT THE TWO CASES ARE DISTINGUISHABLE, FOR SEVERAL REASONS. ONE REGARDS YOUR QUESTION, JUSTICE PARIENTE, OF WHAT WAS IN JUDGE MILLER'S MIND WHEN SHE SIGNED THE OATH OF OFFICE. GINA MENDEZ, WHEN SHE SIGNED THE OATH OF OFFICE, ASKED THROUGH THE BEST AVENUE AVAILABLE TO HER, FOR AN OPINION SPECIFICALLY AS TO WHAT SHE WAS WEARING TO ON HER OATH -- WAS SWEARING TO ON HER OATH. SHE ASKED THE DIVISION OF ELECTIONS TO SEND A LETTER TO HER THAT, IF SHE LIVED IN DADE COUNTY AT THE TIME THAT SHE WERE ELECTED, IF SHE WERE ELECTED, IF SHE WOULD BE ELIGIBLE AND BE ABLE TO SIGN, YES, I AM ELIGIBLE ON HER OATH OF OFFICE. THE DIVISION OF ELECTIONS, THE BODY OF THIS STATE WHICH GOVERNS ELECTIONS TOLD HER YES, AND BASED ON THAT, RELYING ON THAT OPINION, SHE SIGNED THE OATH OF OFFICE. THEREFORE IN HER MIND SHE HAD A CLEAR UNDERSTANDING THAT SHE COULD BE ELIGIBLE AND WOULD BE WELL ELIGIBLE, AT THE TIME THAT SHE WAS ELECTED. SECOND --

HOW IS THAT DIFFERENT FROM THE CASE IN BROWARD, WHERE THERE WAS SOMEONE THAT RELIED UPON THE OPINIONS INDICATING THAT IT WAS THE TIME OF ASSUMING OFFICE, THE ADVISORY OPINIONS? HOW IS -- OPINIONS? HOW IS WHAT YOU JUST SAID DIFFERENT FROM WHAT YOU SAID OCCURRED IN BROWARD AND THE THOUGHT PROCESS THAT I HAVE TO BE THERE AT THE TIME, TO ASSUME OFFICE.

THE DIFFERENCE, I THINK, IS THAT JUDGE MILLER, IN THE FOURTH DISTRICT CASE, DID NOT SEEK AN ADVISORY OPINION TO GIVE HER GUIDANCE ON THIS ISSUE.

BUT SHE READ THE CASES AND THE CASE LAW SAID IT. SAID WHAT THE CRITERIA. WHY IS THAT DIFFERENT.

I THINK THAT IS DIFFERENT, YOUR HONOR, BECAUSE GINA MENDEZ HAD A RIGHT TO RELY UPON WHAT THE ADMINISTRATIVE BODY OF THIS STATE HAS TOLD HER. IN ADDITION TO THAT, DEFERENCE --

CAN'T WE RELY ON WHAT THE CASES AND ESPECIALLY OUT OF THE FLORIDA SUPREME COURT SAY? I DON'T SEE, I AM HAVING THE SAME PROBLEM JUSTICE LEWIS HAS. YOU HAVE AN ADVISORY OPINION, AND YOU HAVE CASE LAW, WHICH TELLS YOU BASICALLY THE SAME THING, SO WHY COULDN'T YOU RELY ON THAT, INSTEAD OF HAVING TO GET YOUR OWN, INDIVIDUAL -- YOUR OWN, INDIVIDUAL ADVISORY OPINION?

ONE PROBABLY COULD, YOUR HONOR, BUT THERE IS NO RECORD EVIDENCE IN THIS CASE THAT THE PETITIONER IN THE FOURTH DISTRICT CASE DID SO. THERE IS RECORD EVIDENCE THAT JUDGE --

BUT DOES IT REALLY MAKE ANY DIFFERENCE WHAT THE CANDIDATE'S STATE OF MIND WAS, WHEN THEY SIGNED THE OATH OF CANDIDACY?

-- I MEAN, YOU EITHER HAD TO BE A RESIDENT OR YOU DID NOT, AND WHETHER THE PERSON'S STATE OF MIND WAS I AM GOING TO BE OR I AM, DOES THAT REALLY MAKE ANY DIFFERENCE?

I THINK, ON THE FACTS OF THE CASE THAT IS AT BAR TODAY, IT DOES. I CONCEDE TO YOU THAT I DON'T THINK, FOR PURPOSES OF THE RULE, THAT THIS COURT HAS TO LAY DOWN THAT, IT PROBABLY DOES MAKE A DIFFERENCE, BUT ON THE NARROW FACTS OF THIS CASE, THE COURT WOULD ESSENTIALLY, IN ORDER TO OVERRULE THE THIRD DISTRICT, HAVE TO TELL GINA MENDEZ, THAT DESPITE OF THE FACT THAT SHE DID EVERYTHING POSSIBLE TO SATISFY HERSELF



AND SATISFY THE ELECTORS THAT SHE WAS ELIGIBLE, NONETHELESS SHE WAS NOT. A SECOND DISTINCTION BETWEEN THE TWO CASES IS THAT THE FOURTH DISTRICT STATED A NARROW ISSUE AND FRAMED NARROWLY, AN ISSUE THAT THE QUESTION WAS WHETHER A SITTING JUDGE IN ONE COUNTY CAN RUN FOR JUDGE IN THE COUNTY, AND RESPECTFULLY -- IN ANOTHER COUNTY, AND RESPECTFULLY --

ARE YOU SUGGESTING THAT A SITTING JUDGE SHOULD BE TREATED ANY DIFFERENTLY THAN ANY OTHER CITIZEN, WHEN IT COMES TO OFFICES? DOES THAT MAKE A DIFFERENCE IN THIS CASE LAW?

I BELIEVE ON THOSE TWO FACTS, IT, DOES YOUR HONOR, BECAUSE A SITTING JUDGE IN ONE COUNTY HAS A COVENANT WITH THE PEOPLE OF THAT COUNTY, WHEREAS A CITIZEN DOES NOT HAVE A COVENANT WITH THE PEOPLE OF THAT COUNTY IN WHICH THE CITIZEN LIVES IN THIS CASE, GINA MENDEZ SWORE OUT AN OATH THAT SHE WAS QUALIFIED AT THE TIME THAT SHE WERE ELECTED, WERE SHE TO BE ELECTED IN DADE COUNTY.

BUT SHE LIVED IN BROWARD AT THE TIME. ALL THESE THINGS TRANSPIRED, DID SHE NOT?

THAT'S CORRECT.

AND HOW IS THAT DIFFERENT FROM THE MILLER CASE, WHERE THAT CANDIDATE LIVED IN DADE COUNTY BUT TRIED TO FILE, WHAT IS THE DIFFERENCE?

ONE CANDIDATE WAS A JUDGE AND ONE CANDIDATE WAS NOT.

AND WHERE, IN THE CONSTITUTION OR CASE LAW, DOES IT SAY THAT THAT JUDGE SHOULD BE TREATED DIFFERENTLY, UNDER OUR CONSTITUTION?

ONLY THE FOURTH DISTRICT SAYS SO, YOUR HONOR, IN THE CASE THAT IS PURPORTEDLY IN CONFLICT HERE.

AND THE FOURTH DISTRICT'S CASE, THE OPINION DOES NOT GO OFF ON THE FACT THAT MILLER WAS A SITTING JUDGE IN DADE COUNTY. IN FACT, JUDGE FARMER GOES TO SOME LENGTH TO SAY THAT ARTICLE V SECTION 8, THAT MEANS THAT YOU ARE INELIGIBLE, UNLESS, UNLESS YOU ARE A RESIDENT AT THE TIME OF QUALIFYING, AND EVEN GOES INTO A REASON WHY ARTICLE V SECTION 8 WOULD WANT TO HAVE JUDGES COME FROM THE COMMUNITY WITHIN THE TERRITORIAL JURISDICTION OF THE COURT, SO IT GOES THROUGH A WHOLE ELABORATE DISCUSSION, SO I MEAN, CAN WE LET THIS FOURTH DISTRICT OPINION STAND, JUST BECAUSE WE MAY NOT THINK THAT THIS CASE CAME UP IN THE MOST, I GERTION LEGITIMATE OF CONTEXTS, THAT YOU SUGGEST. THE AGENDA THAT WAS THERE BUT WHERE IT IS NEVERTHELESS A CASE IN CONTROVERSY?

I THINK THAT THE POINT YOU ARE MAKING, JUSTICE PARIENTE, IS THAT THE FOURTH DISTRICT FOCUSED GREATLY ON UNDERLYING POLICY, POLICIES TO BE SERVED BY A JUDGE LIVING IN THE COUNTY IN WHICH THAT JUDGE IS RUNNING.

AND FOUND, AND THE HOLDING WASN'T EVEN THAT WE FIND QUALIFICATION IS AT THE TIME OF TAKING OFFICE. I MEAN, THE HOLDING OF THE CASE IS THAT THE QUALIFICATION IS AT THE TIME THAT YOU SIGN THIS OATH THAT THAT IS, I MEAN, THAT THE ELIGIBILITY, I AM SORRY, THE RESIDENCY REQUIREMENT IS AT THE TIME THAT YOU TAKE THE OATH, WHICH, AGAIN, IF I WAS READING THAT OATH, I WOULD THINK THAT THAT IS WHAT THE OATH SAYS, BUT NOW WE FIND OUT THE CONSTITUTION SOMETHING ELSE.

CORRECT. PERHAPS IF YOU WERE READING THE OATH AND WANTED TO BE SURE, YOU WOULD SEEK AN OPINION FROM THE DIVISION OF ELECTIONS, BUT ADDRESSING THE DIFFERENCES

BETWEEN THE THIRD AND FOURTH DISTRICT CASES, WHICH I THINK ANSWER YOUR QUESTION, THE POLICY CONCERNS THAT THE FOURTH DISTRICT COURT HAD WERE THAT THE A PERSON RUNNING FOR THE OFFICE OF CIRCUIT COURT JUDGE SHOULD HAVE SOME FAMILIARITY WITH THAT COMMUNITY, SHOULD BE FAMILIAR WITH THE MOORS OF THAT COMMUNITY THE PEOPLE OF THAT COMMUNITY. THOSE PURPOSES WERE NOT SERVED IN THE FOURTH DISTRICT CASE, AND AS I READ THE CASE HAD, THAT IS WHAT THAT COURT WAS CONCERNED WITH.

WHEN ALL IS SAID AND DONE, HOWEVER, WHEN YOU OPEN UP THE SOUTH SECOND REPORTERS OR SOUTH THIRD, WHATEVER IT IS NOW. WHAT YOU ARE GOING TO SEE ARE TWO DIMEETCALLY -- OPPOSED HOLDINGS, IN TERMS OF THE DEFINITION OF ELIGIBILITY. ONE IS GOING TO HOLD THAT IT IS AT THE TIME THAT YOU QUALIFY FOR OFFICE, AND THE OTHER IS GOING TO HOLD THAT IT IS AT THE TIME YOU ASSUME THAT OFFICE, AND WHAT IS EVERYBODY TO DO, THEN, AND ISN'T IT THE FUNDAMENTAL ROLE OF THIS COURT, WHEN THERE ARE TWO DIAMETRICALLY -- OPPOSED HOLDINGS FROM DIFFERENT COURTS ON AN ISSUE OF LAW, THAT WE STEP IN AND MAKE THE LAW UNIFORM FOR THE ENTIRE STATE OF FLORIDA, SO ISN'T THIS A CLASSIC CASE OF EVEN THOUGH THE PARTIES AT INTEREST HERE, THE ISSUE MAY WELL BE MOOT, THAT THIS IS THE KIND OF CASE THAT THIS COURT SHOULD TAKE AND RESOLVE, SO THAT WE WILL HAVE UNIFORMITY IN THE MEANING OF THIS VERY IMPORTANT LAW, FOR THE PEOPLE OF THE STATE OF FLORIDA.

I SEE THAT MY TIME IS UP. I WILL BE HAPPY TO ANSWER YOUR QUESTION, IF YOU WOULD LIKE, HOWEVER. I BELIEVE YOU ARE RIGHT, YOUR HONOR, TO THE DEGREE THAT THIS COURT FINDS THERE IS NO JURISDICTIONAL ISSUE AND THAT THERE IS A CONFLICT, THIS MATTER SHOULD BE RESOLVED. AND THE COURT SHOULD RESOLVE IT THE WAY IT HAS ALREADY RESOLVED IT, IN ITS 1966 AND 1999 ADVISORY OPINIONS, AND THAT IS ELIGIBILITY SHOULD, THE SUBSTANDS I HAVE REQUIREMENTS OF -- THE SUBSTANTIVE REQUIREMENTS OF ELIGIBILITY SHOULD ATTACH AT THE TIME OF BEING ELECTED, RATHER THAN AT THE TIME OF QFCK.

THANK YOU, -- OF QUALIFYING.

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS MATTER. I THINK YOU HAVE SOME REBUTTAL TIME, MS. MILLER.

JUST BRIEFLY. I DON'T WANT TO GET INTO WHAT I CONSIDER A PERSONAL ATTACK, BUT IN ANY EVENT, I DO FEEL THAT FLORIDA STATUTE 114.01 DOES ADDRESS SOME OF YOUR QUESTIONS REGARDING PERSONS ELECTED. DO THE PEOPLE HAVE THE RIGHT TO EXPECT THAT THE PEOPLE THAT THEY ELECT ARE QUALIFIED FOR OFFICE. THERE IS A STATUTE THAT STATES, UPON THE FAILURE OF A PERSON ELECTED OR APPOINTED TO OFFICE TO QUALIFY FOR OFFICE, WITHIN 30 DAYS FROM COMMENCEMENT OF THE TERM OF OFFICE, A VACANCY SHALL BE DEEMED TO EXIST. THEREFORE THE STATUTE, IN INTERPRETING THE CONSTITUTION, DID ENVISION A SITUATION WHERE AN ELECTED PERSON WOULD FIRST MEET THE QUALIFICATIONS AFTER THEY WERE ELECTED AND HAD ASSUMED OFFICE.

IF THEY MOVE OUT OF DADE COUNTY?

I AM SORRY.

IF THEY MOVE OUT OF DADE COUNTY WHILE THEY ARE SERVING AS A COUNTY JUDGE, DOES THAT MEAN THEY ARE NO LONGER QUALIFIED TO BE A JUDGE?

THEY ARE SUNT TO REMOVAL, UNDER THE -- SUBJECT TO REMOVAL, UNDER THE SAME STATUTE.

AND SO IT REALLY BOILS DOWN TO THE FACT THAT, IN AN INSTANCE WHERE SOMEONE IS SERVING AS A JUDGE IN DADE COUNTY, THAT IF THEY ARE NO LONGER A RESIDENT OF DADE COUNTY, THEN THEY COULD NOT SERVE.

THAT WOULD BE CORRECT, ASSUMING THAT THE COURT INTERPRETED THE WORD "RESIDENCY" TO MEAN LEGAL RESIDENCY, PERMANENT RESIDENCY OR DOMICILE, RATHER THAN JUST WORD RESIDENCY, AS IT STATES IN THE CONSTITUTION. THANK YOU.

IS THERE ANY DIFFERENCE, WITH REFERENCE TO ASSUMING OFFICE BY ELECTION, AND ASSUMING OFFICE BY APPOINTMENT?

ACCORDING TO THIS STATUTE, NO. THE ONLY DIFFERENCE WOULD HAVE TO DO WITH JUSTICES OF THE SUPREME COURT THAT I BELIEVE THEY NEED TO BE RESIDENTS BEFORE THEY ARE APPOINTED. OR SUBJECT TO ELECTION.

THANK YOU VERY MUCH.

THANK VERY MUCH. MR. CHIEF JUSTICE: THANK YOU, COUNSEL.