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Presidential Election Cases

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED. MR. CHIEF JUSTICE: GOOD AFTERNOON, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. THE COURT IS, CERTAINLY, AWARE OF THE HISTORIC NATURE OF THIS SESSION AND IS AWARE THAT THIS IS A MATTER OF UTMOST AND VITAL IMPORTANCE TO OUR NATION, OUR STATE, AND OUR WORLD, AND WE ASK THAT, DURING THESE ORAL ARGUMENTS, THAT EVERYONE -- WE MUST EXPECT EVERYONE TO REMAIN IN ORDER, DURING THE ENTIRE TIME THAT WE ARE HEARING ORAL ARGUMENT TODAY. WE WOULD EXPECT THAT WE WILL HAVE, AT THE END OF THE APPELLANT'S INITIAL ARGUMENT, A TEN-MINUTE RECESS, AND AT THAT POINT, WE WOULD ASK YOU TO, IF YOU INTEND TO COME BACK FOR THE REMAINDER OF THE ARGUMENT, THAT YOU REMAIN IN THE BUILDING AND, REALLY, IN THE COURTROOM, EXCEPT TO USE THE RESTROOM FACILITIES, AND THAT WILL FACILITATE US GETTING BACK TO THE ARGUMENT IMMEDIATELY AFTER THE RECESS AND, ALSO, ANYONE WHO LEAVES THE BUILDING, WE ARE UNABLE TO ALLOW THEM TO COME BACK IN FOR THE REMAINDER OF THE ARGUMENT. I WOULD, ALSO, LIKE FOR THE LAWYERS TO HAVE AN UNDERSTANDING THAT THE COURT, OF COURSE, HAS CONSIDERED THE PAPERS CAREFULLY, WHICH EACH OF YOU HAVE FILED. WE APPRECIATE THE DILIGENCE THAT COUNSEL HAS TAKEN, IN GETTING ALL OF THESE ISSUES FRAMED AND TO US, AND SINCE WE HAVE A LIMITED AMOUNT OF TIME HERE, WE WOULD ASK THAT WE GET RIGHT TO THE HEART OF THE MATTER, AS YOU SEE IT, AND, BECAUSE, WE ARE FULLY COGNIZANT OF THE FACTS AND THE PROCEDURES, BELOW, THAT HAVE BROUGHT YOU HERE, SO, ON THE PAPERS THAT THE CLERK HAS PRESENTED TO ME, IT IS MY UNDERSTANDING THAT MR. BUTTERWORTH'S COUNSEL WILL GO FIRST. MR. BARKDULL. PLEASE, ALSO, COUNSEL, BE COGNIZANT OF YOUR TIME, SO THAT --

YES, SIR.

RESPECT THE TIME THAT HAS BEEN DIVIDED HERE.

MR. JUSTICE, CHIEF JUSTICE WELLS AND MAEBS MEBS OF THE COURT, PLEASE -- AND MEMBERS OF THE COURT, PLEASE PERMIT ME TO INTRODUCE MR. PAUL HANCOCK, WHO IS THE ATTORNEY FOR MR. BUTTERWORTH. MR. HANCOCK IS WITH THE JUSTICE DEPARTMENT FOR OVER A QUARTER OF A CENTURY AND HAS SPENT A MAJOR AMOUNT OF TIME IN THE ELECTIONS DEPARTMENT. MR. HANCOCK.

THANK YOU. MR. CHIEF JUSTICE AND MEMBERS OF THE COURT, I AM HONORED TO BE INTRODUCED TO YOU BY JUDGE BARKDULL. THE CONSTITUTION OF THE STATE OF FLORIDA ESTABLISHEST ATTORNEY GENERAL AS THE CHIEF LEGAL OFFICER OF THIS STATE. AS SUCH, HE HAS PRIMARY RESPONSIBILITY, WITHIN THE EXECUTIVE BRANCH OF GOVERNMENT, TO INTERPRET OUR LAWS. THIS COURT HAS PREVIOUSLY REFERRED TO THE ATTORNEY GENERAL AS THE PEOPLE'S ATTORNEY, AND I STAND HERE, ON BEHALF OF THE ATTORNEY GENERAL, IN THAT CAPACITY. I WOULD SUMMARIZE THE VIEWS OF THE ATTORNEY GENERAL REGARDING THE ISSUES BEFORE THIS COURT IN THIS MANNER. PUBLIC OFFICIALS HAVE A RESPONSIBILITY TO COUNT AND RECOGNIZE THE VOTES OF ALL FLORIDIANS WHO VOTED IN THIS PRESIDENTIAL ELECTION. FACTORS, SUCH AS ADMINISTRATIVE INCONVENIENCE, EXPEDIENCY, OR THE LIMITATIONS OF VOTE-READING MACHINES, PALE, IN COMPARISON TO PROTECTING THE VOTING RIGHTS OF OUR CITIZENS, AND, OF COURSE, THE RIGHT TO VOTE INCLUDES THE RIGHT TO HAVE THAT VOTE COUNTED. THAT RIGHT IS APPLICABLE TO OUR PERSONS IN OUR STATE, THROUGHOUT THE STATE AND EACH GEOGRAPHIC REGION OF THE STATE, AS WELL AS TO OUR RESIDENTS WHO ARE TEMPORARILY ABS FROM THE STATE, OUTSIDE OF OUR BOUNDARIES, SUCH AS THE MEN AND

WOMEN OF THE MILITARY. FLORIDA CONSTITUTION BEGINS WITH A PROPOSITION WHICH, WE SUBMIT, SHOULD GUIDE THE RESOLUTION OF THESE CASES. ALL POLITICAL POWER IS INHERENT IN THE PEOPLE. THAT MEANS THAT OUR CITIZENS ARE THE OWNERS OF OUR GOVERNMENT, AND THE ROLE OF PUBLIC OFFICIALS IS TO LISTEN TO THEIR VOICES. WE DO THAT, IN PART, THROUGH PUBLIC ELECTIONS. THE RIGHT TO VOTE IS, PERHAPS, THE MOST CHERISHED RIGHT IN OUR DEMOCRACY. THE REAL PARTIES IN INTEREST TO THIS LAWSUIT ARE NOT THE PRESIDENTIAL CANDIDATES NOR THE PARTIES THAT SUPPORT THEM.

MR. HANCOCK, EXCUSE ME FOR INTERRUPTING YOU, BUT LET ME ASK YOU, ARE YOU PREPARED -- I AM -- OTHER COUNSEL, AND I WOULD, REALLY, LIKE FOR COUNSEL ON BOTH SIDES, TO PAY ATTENTION TO A CONCERN OF MINE THAT I WOULD LIKE TO LEAD IN HERE TO YOU, AND THAT IS THAT WE RECOGNIZE THAT THE ELECTION WAS ON NOVEMBER 7 AND THAT THE RECOUNTS HAVE BEEN GOING ON IN THE COUNTY, BROWARD COUNTY AND PALM BEACH COUNTY, AND THAT THERE IS THIS ISSUE AS TO WHETHER THE RECOUNTS WERE PERMISSIBLE AND WHETHER THE -- THERE SHOULD BE ALLOWED, UNDER FLORIDA STATUTE 102.112, AMENDED CERTIFICATIONS, BASED UPON THOSE RECOUNTS.

RIGHT. MR. CHIEF JUSTICE: AND WHAT I AM PARTICULARLY CONCERNED ABOUT IS WHAT PREJUDICE IS THERE TO BOTH THE VOTERS, WHOSE VOTES ARE ALREADY BEEN CERTIFIED, PURSUANT TO THAT, AND THE VOTERS WHOSE VOTES ARE WITHIN THE RECOUNTED COUNTIES, UNDER THE TOTAL SCHEME OF THE STATE SCHEME AND THE FEDERAL SCHEME, FOR THE COUNTING OF FLORIDA'S ELECTORAL VOTES. IT SEEMS, FROM MY READING, WE HAVE A CONTINUUM, FROM NOVEMBER 7 TO SOME POINT IN DECEMBER, AND THAT IS WHEN MY CONCERN IS, AND SO I WOULD LIKE TO SORT OF GET THIS HAMMERED DOWN TO THAT FRAMEWORK.

YES, YOUR HONOR. I WILL ADDRESS THAT. THE FIRST, THE STARTING POINT, THEN, IS DETERMINING WHAT THE LEGAL STANDARD IS, WHAT VOTES SHOULD BE COUNTED, WHEN CAN A COUNTY DO A RECOUNT AND WHEN CAN IT NOT DO A RECOUNT AND WHAT ARE THE STANDARDS FOR DOING THAT RECOUNT, AND THAT RAISES THE ISSUES OF CONFLICTING OPINIONS BY THE DIVISION OF ELECTIONS OF THE SECRETARY OF STATE AND THE ATTORNEY GENERAL OF THE STATE OF FLORIDA. THE DIFFERENCE IN THOSE INTERPRETATIONS OF THE LAW, AND I MUST -- I WANT TO SAY TO YOU FROM THE GET-GO, THAT THE ATTORNEY GENERAL AND THE SECRETARY OF STATE ARE FRIENDS AND ENJOY A CORDIAL WORKING RELATIONSHIP. THE DIFFERENCES, HERE, ARE JUST PROFESSIONAL DIFFERENCES INVOLVED WITH WHAT FLORIDA LAW MEANS. THE VIEW OF THE ATTORNEY GENERAL IS THAT THE STATE HAS A STATUTORY STRUCTURE THAT ALLOWS RECOUNTS INSERT CIRCUMSTANCES. THOSE CIRCUMSTANCES ARE DESCRIBED BY STATUTE. A CANDIDATE CAN REQUEST A RECOUNT, CAN REQUEST A RECOUNT IN A COUNTY. THE COUNTY OFFICIALS, THEN, HAVE THE DISCRETION TO DETERMINE WHETHER TO ALLOW THAT RECOUNT. IF THEY EXERCISE THAT DISCRETION IT BEGINS, AS YOU KNOW, WITH A SAMPLING OF THE VOTES THAT WERE CAST, REVIEWING AT LEAST ONE PERCENT OF THE VOTES THAT WERE CAST, TO SEE WHETHER THAT SAMPLE INDICATES THAT THERE MAY BE A PROBLEM IN THE COUNTY. IF THE SAMPLE INDICATES THAT THERE MAY BE A PROBLEM IN THE COUNTY, THE COUNTY OFFICIALS, ACCORDING TO THE LAW, HAVE OPTIONS TO SELECT FROM.

IS THE SECRETARY OF STATE INVOLVED, AT THIS POINT, OF THE COUNTY, ONCE THE REQUEST IS MADE, DOES THE SECRETARY OF STATE PLAY A PART, AT THAT POINT?

NO, JUSTICE QUINCE. THE SECRETARY OF STATE DOES NOT. THE SECRETARY OF STATE HAS VERY NARROW AUTHORITY, IN THE CONDUCT OF ELECTIONS. THE LAW PROVIDES THAT COUNTIES CONDUCT THE ELECTIONS. THEY SUBMIT THOSE RETURNS TO THE SECRETARY OF STATE, AND PURSUANT TO THE FLORIDA STATUTES, THE SECRETARY OF STATE NOR THE STATE CANVASSING BOARD CAN LOOK BEYOND THOSE RETURNS.

THE COUNT SOLELY A RIGHT CREATED BY STATUTE, OR IS THERE A COMMON LAW RIGHT THAT

THE CITIZENS OF THIS STATE HAVE, TO REQUEST A MANUAL RECOUNT?

JUSTICE PARIENTE, CITIZENS DON'T HAVE A RIGHT TO REQUEST A MANUAL RECOUNT, OR WE MIGHT BE RECOUNTING FOREVER, BUT CANDIDATES DO HAVE A SYSTEM TO REQUEST A RECOUNT, PURSUANT TO THE STATUTE.

AS TO THE STATUTE, IS THERE A RIGHT THAT WOULD HAVE EXISTED, TO EXAMPLE -- FOR EXAMPLE, PRIOR TO 1989, WHEN THE STATISTICAL MANUAL RECOUNT WAS ELECTED, PARTICULARLY WITH REGARD TO REQUESTING A RECOUNT, AND I AM TALKING ABOUT THE RIGHTS OF VOTERS, YET THE SCHEME PUTS INTO DISCRETION AS TO WHETHER TO ALLOW THE RECOUNT, PARTICULARLY WITHIN THE FIRST STEP, TO INDIVIDUAL BOARDS, WHERE, ALREADY, YOU HAVE A SITUATION WHERE THERE CAN BE A LACK OF UNIFORMITY, FROM COUNTY TO COUNTY.

YES, AND, AGAIN, WE DO HAVE A SITUATION WHERE A SUBSTANTIAL AMOUNT OF DISCRETION IS DEL INDICATED -- DELEGATED TO THE COUNTIES. THAT IS NOT UNUSUAL AMONGST STATES. IN FACT, THE ONE CASE I WOULD CITE TO THE COURT IS THE BUSH VHARTKE CASE INVOLVING THE STATE OF INDIANA, IN WHICH VANCE HARTKE WON. THAT WAS A VERY CLOSE ELECTION AND, IN FACT, IT TRIGGERED A RECOUNT IN ONE OF INDIANA'S COUNTIES. THAT WAS THE ISSUE BEFORE THE UNITED STATES SUPREME COURT, AND IN DECIDING THAT CASE, THE UNITED STATES SUPREME COURT NOTE ADD RECOUNT IS AN INTEGRAL PART OF THE INDIANA ELECTION PROCESS AND IS WITHIN THE AMBIENT OF THE BROAD POWERS DELEGATED BY ARTICLE I OF THE UNITED STATES CONSTITUTION.

MR. HANCOCK, IF I COULD REFOCUS ON THE QUESTION I HAD BEFORE. THERE IS THE RECOUNT PROVISION, WHICH WE RECOGNIZE IN THE STATUTE THAT GIVES THE COUNTY'S CANVASSING BOARDS THAT OPPORTUNITY. THERE IS, ALSO, 112, WHICH SAYS THAT THERE IS A SEVEN-DAYTIME PERIOD.

YES.

UPON WHICH THOSE MUST BE SENT TO THE STATE. REALLY, THAT WAS DONE, AS I UNDERSTAND IT, BUT THE QUESTION, REALLY, REVOLVES AROUND AMENDED CERTIFICATIONS.

RIGHT.

NOW, MY QUESTION IS SPECIFICALLY WHAT IS THE ATTORNEY GENERAL'S POSITION, AS TO THE DATE IN DECEMBER THAT THE FLORIDA'S ELECTORAL VOTES WOULD BE PREJUDICED OR NOT COUNTED IN THE ELECTORAL COLLEGE, IF THERE IS NOT A CERTIFICATION BY THE SECRETARY -- BY THE DEPARTMENT OF STATE, UNDER 103.011? WHAT IS THE DATE THAT THE OUTSIDE DATE THAT WE ARE LOOKING AT, WHICH PUTS FLORIDA'S VOTES IN JEOPARDY?

DECEMBER 12, YOUR HONOR, IS MY UNDERSTANDING. THE ELECTORAL COLLEGE MEETS ON DECEMBER 18. THE ISSUE, AND WE HAVE CONSTITUTIONAL LAW PROFESSORS, HERE, WHO CAN ADDRESS THIS, BUT MY UNDERSTANDING IS IT IS DECEMBER 12.

OKAY. NOW, IF IT IS DECEMBER 12, UNDER TITLE III OF THE U.S. CODE, IN THAT SECTION V, IT SEEMS TO INDICATE THAT, IN ORDER FOR THAT SIX-DAY PROVISION TO HAVE MEANING, THAT ALL CONTESTS AND CONTROVERSIES CONCERNING THE STATE VOTES MUST BE RESOLVED, IN ORDER FOR THE STATE'S RESOLUTION TO BE FINAL. NOW, WOULD YOU FIT THAT PROVISION OF THE FEDERAL STATUTE INTO THE FLORIDA PROVISION, SO THAT WE WOULD HAVE SOME GUIDANCE ON WHAT IS, REALLY, THE PREJUDICE.

WELL, WE DON'T KNOW WHAT CONTEST WILL ARISE. I THINK WHAT THIS POINTS TO IS THE IMPORTANCE OF THIS COURT, USING THE FULL REACH OF ITS AUTHORITY, TO ESTABLISH

PROCEDURES THAT ENSURE THAT THIS RESULTS IN A PROCESS THAT, FIRST OF ALL, IS FAIR, THAT IS PERCEIVED AS FAIR TO THE WORLD AND, IN FACT, IS FAIR. THAT IT COUNTS THE VOTE OF ALL PEOPLE WHO ATTEMPTED TO EXERCISE THAT VOTE. AT THE SAME TIME, IN LIGHT OF THE SCHEDULE THAT WE FACE, I THINK IT WOULD BE APPROPRIATE IN THE COURT, AND I REFER THE COURT TO STATE VERSUS HASKELL, A 1916 DECISION OF THIS COURT, IN WHICH THE COURT EXPOUNDED ON ITS BROAD JURISDICTION TO CORRECT ELECTION RETURNS. IF IT DOESN'T CORRECT ELECTION RETURNS, ELECTIONS ARE DETERMINED BY COUNTY OFFICIALS NOT BY VOTERS, SO IT IS IMPORTANT, WE SUBMIT, THAT THE COURT USE THE FULL BREADTH OF ITS AUTHORITY, WITH REGARD TO THE STANDARDS THAT WILL BE GOING ON, PERHAPS THE COURT SHOULD CONSIDER HOW IT SHOULD BE COUNTED AND A TIMETABLE TO ESTABLISH --

LET ME TURN TO A MORE MUNDANE ISSUE AND INVITE YOU TO TELL US WHAT YOU PERCEIVE TO BE THE PURPOSE OF THE STATUTORY PROVISION THAT IS REQUIRE THE SECRETARY OF STATE TO GIVE LOCAL ELECTION OFFICIALS OPINIONS ABOUT THE STATUTORY SCHEME FOR ELECTIONS AND ELECTION ISSUES AND, THEN, BIND THOSE OFFICIALS TO FOLLOW THAT -- THOSE OPINIONS. WHAT DO YOU PERCEIVE TO BE THE PURPOSE OF THOSE STATUTORY PROVISIONS AND THEIR EFFECTS HERE?

THE PURPOSE, YOUR HONOR, IS TO PROVIDE UNIFORMITY AND GUIDANCE TO COUNTY ELECTION OFFICIALS. WE DON'T DISPUTE THE AUTHORITY OF THE SECRETARY OF STATE'S DIVISION OF ELECTIONS TO ISSUE THOSE OPINIONS. HOWEVER, WE DO SUGGEST THAT, IN REVIEWING THAT, THE ACTIONS OF THE SECRETARY OF STATE, IN ISSUING THOSE OPINIONS, THAT REVIEW HERE IS DE NOVO. IT IS NOT MERELY AN ABUSE OF DISCRETION AND WHETHER SHE APPLIED THE CORRECT STANDARD OF LAW. IF I MAY QUOTE TO YOU,, A LONG TIME AGO, JUSTICE JOHN MARSHAL TALKED ABOUT THE USE OF DISCRETION AND APPLYING IT TO DISTRICT COURTS, AND JOHN MARSHAL WAS REVIEWING A SUBPOENA I SHOULD IN THE AARON BURR LITIGATION, AND IN TALKING ABOUT DISCRETION SAID THAT, BUT EMOTION TO ITS DISCRETION IS NOT TO INCLINATION BUT TO ITS JUDGMENT, AND ITS JUDGMENT IS TO BE GUIDED BY SOUND, LEGAL PRINCIPLES. OUR CONCERN WITH THE SECRETARY OF STATE'S INTERPRETATION OF FLORIDA LAW AND EVERYTHING THAT FOLLOWED THAT INTERPRETATION WAS THAT IT WAS NOT GUIDED BY SOUND LEGAL PRINCIPLES. IT IS FLATLY WRONG. IT ELEVATES THE MACHINES OVER VOTERS. WE HAVE A SITUATION, IN PALM BEACH COUNTY, WHERE THE ELECTION OFFICIALS REPORTED THAT 10,000 PEOPLE, 10,000 BALLOTS, DID NOT RECORD A VOTE FOR PRESIDENT. NOW, THAT SHOULD RAISE AN ISSUE. I MEAN MAYBE PEOPLE WENT TO THE POLLS TO VOTE FOR THE SPEED TRAIN, BUT THE LOGICAL ASSUMPTION IS THAT MOST PEOPLE WHO WENT TO THE POLLS WERE THERE TO VOTE FOR PRESIDENT AND VICE PRESIDENT, AND IF 10,000 BALLOTS DON'T HAVE A VOTE FOR PRESIDENT OR VICE PRESIDENT, THAT RAISES AN ISSUE OF WHAT SHOULD BE DONE. FORTUNATELY, OUR STATE HAS A PROCEDURE FOR DEALING WITH THAT, AND THAT IS THE RECOUNT PROCEDURE. WE SUBMIT, TO THE COURT, AND IT IS PLAINLY SET FORTH IN THE STATUTE, THAT, IN THAT RECOUNT, COUNTY OFFICIALS SHOULD LOOK AT THOSE BALLOTS TO DETERMINE THE INTENT OF THE VOTER. THAT IS THE STANDARD THAT IS IN THE LAW, THAT IS IN LOCK STEP WITH EVERY DECISION OF THIS COURT FOR OVER A HUNDRED YEARS, ON HOW WE REVIEW ELECTION RETURNS.

BUT THERE IS, ALSO, A PROVISION OF THAT STATUTE THAT SAYS IT SHOULD BE DONE WITHIN SEVEN DAYS.

YES, JUSTICE HARDING, THERE IS, AND THERE IS THE FOLLOWING SECTION, AFTER THAT, THAT SAYS THAT THE FIRST SECTION YOU CITE SAYS THEY SHALL BE DONE IN SEVEN DAYS OR NOT COUNTED. THE NEXT SESSION SAYS THEY MAY BE COUNTED, IF THEY ARE NOT DONE IN SEVEN DAYS, SO THERE IS A CONFLICT. WE SUBMIT THAT THE ELECTION LAWS HAVE TO BE READ IN THEIR TOTALITY. YES, COUNTIES SHOULD GET THEIR RETURNS IN IN SEVEN DAYS AND THEY SHOULD WORK HARD TO DO IT, BUT THE ELECTION LAWS, ALSO, HAVE PROVISIONS FOR RECOUNTS, AND THE STATUTE ALLOWS AT LEAST SEVEN DAYS TO REQUEST A RECOUNT, IT, THEN

REQUIRES SAMPLING BALLOTS AND IT, THEN, REQUIRES A FULL RECOUNT.

NOW, IF WE KNOCK OUT THE SEVEN DAYS, AS YOU ARE SUGGESTING, AND WE CUTOFF THE TIME LIMITS, AND THEN WE ARE TO SET AN OUTSIDE BARRIER, BEYOND WHICH THIS SECTION OR THESE SECTIONS OF THE STATUTES GOVERN STATEWIDE ELECTION, GUBERNATORIAL ELECTIONS AS WELL, WHAT, THEY DON'T HAVE TO -- I THINK THE ABSENTEE BALLOTS FROM OVERSEAS DON'T HAVE TO BE COUNTED IN THOSE, IN TEN DAYS, UNDER FEDERAL LAW, FOR A PRESIDENTIAL ELECTION. WHAT DO WE DO WITH THIS STATUTE, IF WE RECONSTRUCT IT OR, AS YOU ARE SUGGESTING?

WELL, AGAIN, JUSTICE HARDING, I WOULD SUGGEST THAT IT -- THE LAW NEEDS TO BE READ IN ITS TOTALITY, THAT IT IS NOT PHYSICALLY POSSIBLE, UNDER THIS LAW, AND IT IS NOT SURPRISING IT THAT THIS ISSUE HAS ARISEN IN OUR MOST POPULOUS COUNTIES, WHERE IT CANNOT BE DONE IN A WEEK. SIMPLY, UNDER THE STATUTORY SCHEDULE, IT CAN'T BE DONE IN A WEEK.

IS THAT SOMETHING THAT WE HAVE IN THE RECORD, THAT IT CAN'T BE DONE, AND WHAT IS THE SIGNIFICANCE OF 7-A THAT REQUIRES AS MANY COUNTY TEAMS, AS NECESSARY, TO MANUALLY RECOUNT. WHAT EVIDENCE, IN THE RECORD, IS THERE, THAT IT COULDN'T BE DONE IN A NORMAL SITUATION --

NO.

-- UNDERSTANDING THERE IS, HERE, SOME CLAIMS THAT THERE WAS OBSTRUCTION, BUT WHAT EVIDENCE DO WE HAVE THAT IT COULDN'T BE DONE, WITHIN A SEVEN-DAY PERIOD?

I DON'T KNOW THAT THERE IS ANY EVIDENCE IN THE RECORD. I THINK IT IS INTUITIVE, WITH THIS BIG A TASK, AND TO ME, TO US, TO THE ATTORNEY GENERAL, THE IMPORTANT PART IS RECOGNIZE THE VOTERS' RIGHTS. IF SOMEONE, THE SECRETARY OF STATE, REFERS TO THE PROBLEM AS VOTER ERROR, I SUBMIT TO YOU THAT, IF A VOTER PUNCHES A HOLE IN A BALLOT TO INDICATE THEIR CHOICE, AND THE CHAD SIMPLY DOESN'T FALL OFF, FOR ONE REASON OR ANOTHER, THAT IS NOT VOTER ERROR. THAT VOTER HAS CAST THE VOTE.

MR. HANCOCK, I THINK YOUR TIME --

YES. CHIEF CHIEF THANK YOU VERY MUCH -- MR. MR. CHIEF JUSTICE: THANK YOU. MR. ROGOW.

MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT. A WEEK AGO SUNDAY, THE PALM BEACH COUNTY CANVASSING BOARD, AROUND TWO-THIRTY IN THE MORNING, VOTED TO DO A MANUAL RECOUNT, AFTER HAVING DONE THE INITIAL ONE PERCENT RECOUNT AND DETERMINING THAT THE FIGURES EXTRAPOLATED COULD HAVE AFFECTED THE OUTCOME OF THE ELECTION, AND THEY BEGAN THAT MANUAL RECOUNT. JUSTICE QUINCE: AS A PART OF YOUR PRESENTATION, WOULD YOU EXPLAIN WHAT PROMPTED THE BOARD TO ASK FOR AN OPINION FROM THE SECRETARY OF STATE?

THERE WAS CONCERN FROM THE BOARD, AT LEAST FROM THE ONE MEMBER OF THE BOARD, AS TO WHETHER OR NOT IT WAS PROPER TO DO A FULL MANUAL RECOUNT, AND SO THAT MEMBER OF THE BOARD POSED THAT QUESTION. THE BOARD, THEN, VOTED TO ASK THE SECRETARY OF STATE FOR THE OPINION, AND, EXCUSE ME, WHEN THE OPINION WAS RECEIVED, OF COURSE, THE OPINION WAS THAT THERE WAS NOT A RIGHT TO DO A FULL MANUAL RECOUNT. JUSTICE PARIENTE: PRIOR TO THAT OPINION, HAD THERE BEEN A CASE IN PALM BEACH COUNTY WITH FULL MANUAL RECOUNT DUE TO MACHINE ERROR IN ELECTIONS?

CERTAINLY LIKE THIS HAD BEEN REQUIRED, BEFORE, IN PALM BEACH COUNTY, BUT THERE WAS NO QUESTION IN THE BOARD'S MIND THAT, GIVEN THE FIGURES THEY HAD SEEN, THAT THE FULL MANUAL RECOUNT WAS THE PROPER DECISION FOR THEM. THEY MADE THAT DECISION, OF

COURSE, AND THEN THE FULL MANUAL RECOUNT WAS STOPPED, WHEN THE SECRETARY OF STATE SAID THAT THERE WAS NO BASIS FOR IT. JUSTICE PARIENTE: WAS THE CONCERN THAT THERE WAS, WITH THE QUESTION OF WHAT AN ERROR IN VOTE TABULATION MEANT, OR WAS THE CONCERN AS TO WHETHER THE ERROR IN VOTE TABULATION COULD AFFECT THE OUTCOME OF THE ELECTION, IN REQUESTING THIS, IN LOOKING AT THE STATUTE?

JUSTICE PARIENTE, I DON'T THINK THE CONCERN WAS SO MUCH WITH WHAT VOTE TABULATION MEANT AS IT WAS WITH THE FACT THAT MAYBE THERE COULD BE AN ARGUMENT MADE THAT VOTE TABULATION WAS SOMETHING OTHER THAN THE KIND OF ERROR THAT THEY WERE SEEING. THEY WERE SEEING, OBVIOUSLY, IN THAT ONE PERCENT RECOUNT, THAT PEOPLE HAD VOTED, AND THEY COULD SEE THAT THE CHADS HAD BEEN PENETRATED, AND THEREFORE THEY COULD DISCERN THE THE INTENT OF THE VOTER, AND THEREFORE THEY ELECTED TO DO A FULL MANUAL RECOUNT. MR. CHIEF JUSTICE: CHIEF JUSTICE LEWIS. JUSTICE LEWIS: WE HAVE GOT THE 166 RECOUNT, AND THE FULL STATUTORY SCHEME, BUT WE, ALSO, HAVE THE 168 SECTION FOR CONTESTING THOSE RESULTS, AND IF THIS CONTESTING CONTINUES UP TO THE EVE OF REPORTING FOR THE ELECTORAL COLLEGE, WOULD WE, THEN, RIDE OUT, WOULD WE NOT, THE PROVISION FOR CONTESTING WHAT IS A RECOUNT.

JUSTICE LEWIS, I DON'T KNOW IF YOU ARE ASKING ME AS AN OFFICER OF THE COURT AT THIS MOMENT OR ON BEHALF THE PALM BEACH CANVASSING BOARD, BECAUSE THE CANVASSING BOARD FILED THIS, REALLY, IN THE NATURE OF AN INTERPLEADOR. WE WILL FOLLOW, FROM THE SECRETARY-GENERAL OR THE SECRETARY OF STATE, WE WILL FOLLOW WHATEVER THE LAW OF THIS COURT SAYS IT IS, SO I WANT TO PREFACE THAT --. MR. CHIEF JUSTICE: CHIEF I THINK, SINCE YOU HAVE A LIMITED AMOUNT OF TIME, YOU OUGHT TO DIRECT YOUR ATTENTION TO THE ISSUES THAT YOUR PARTY HAS, AND I WOULD ASK THE OTHER COUNSEL TO NOTE JUSTICE LEWIS'S QUESTION AND ADDRESS THAT. IT IS AN IMPORTANT QUESTION.

YES.

DID THE CANVASSING BOARD ASK YOU FOR THE ATTORNEY GENERAL'S OPINION?

NO. NO.

HOW DID THAT COME ABOUT, TO YOUR KNOWLEDGE?

IT WAS PROVIDED. I THINK THAT THE REQUEST HAD BEEN MAY BY OTHER PEOPLE OF THE ATTORNEY GENERAL'S OPINION, AND THE ATTORNEY GENERAL'S OPINION, THEN, OF COURSE, BECAME EXI GENT TO THE CAN ASING BOARD. I THINK THE QUESTION IS DOES THE RECOUNT COUNT? THE CANVASSING BOARD HAS BEEN WORKING SEVERAL THOUSAND HOURS IN DOING THE RECOUNTS. DEMOCRATS AND REPUBLICANS. IT IS BEING DONE IN A WAY THAT IS OPEN, ABSOLUTELY OPEN TO THE PUBLIC. IT IS TELEVISED, AS A MATTER OF FACT. IT IS TEDIOUS WORK, BUT IT IS BEING DONE TENDERLY BY THE CANVASSING BOARD, WITH CARE TO TRY TO PROTECT THE VOTES OF THE VOTERS OF PALM BEACH COUNTY.

JUSTICE SHAW.

IS THERE A POINT, MR. ROGOW, WHEN THE SECRETARY CAN CUTOFF THE RECOUNT? FOR INSTANCE, IF IT WOULD AFFECT HER GETTING THE VOTES IN, TO THE ELECTORAL COLLEGE, TO BE COUNTED, COULD SHE CUTOFF THE RECOUNT?

I DON'T THINK SHE COULD CUTOFF THE RECOUNT ON THAT BASIS, JUSTICE SHAW. I THINK THAT, WHAT IS INTERESTING, HERE, IS, OF COURSE, THE CERTIFICATION, WHICH WE MADE AFTER SEVEN DAYS, IS, REALLY, ONLY A PARTIAL CERTIFICATION, BECAUSE THE ABSENTEE BALLOTS ARE NOT DUE UNTIL THREE DAYS LATER, TEN DAYS AFTER THE ELECTION, SO THE PROCESS IS AN OPEN, ONGOING PROCESS, AND WE THINK THAT THE TIME, OF COURSE, IS THERE, TO COMPLETE THE

PROCESS.

DO YOU THINK SHE HAS ANY DISCRETION OR ARE ALL OF HER DUTIES MINISTERIAL?

NOW, JUSTICE SHAW, YOU ARE PLACING ME IN AN AREA IN WHICH I THINK I SHOULD DEFER TO COUNSEL FOR THE PARTICIPANTS. MR. CHIEF JUSTICE: CHIEF THANK YOU, MR. ROGOW. THE BROWARD COUNTY CANVASSING BOARD COUNSEL, MR. MYERS.

THANK YOU, JUSTICE WELLS. MR. CHIEF JUSTICE: CHIEF MR. MYERS, LET ME GET DIRECTLY TO THE METHOD IN WHICH, I KNOW YOU HAVE RAISED IN YOUR BRIEF, AS TO WHETHER THERE IS SOME ISSUE TO THE IT AND THAT HAS -- TO THE BRIEF AND THAT IT HAS BEEN CHANGED SINCE YOU FILED YOUR REPLY BRIEF. WHAT I AM INTERESTED IN KNOWING, GOING ON IN BROWARD COUNTY, IS DO WE HAVE A SITUATION IN WHICH THERE ARE CERTAIN VOTES GOING FOR THE VICE PRESIDENT AND CERTAIN VOTES GOING FOR THE GOVERNOR, ABOUT WHICH THERE IS NO CONTEST, AND VOTES IN THE MIDDLE, IN WHICH THERE IS A DISAGREEMENT?

YES, SIR. THAT'S CORRECT. MR. CHIEF JUSTICE: CHIEF SO THAT -- ARE THOSE VOTES BEING SEPARATED, SO THAT WE KNOW WHICH VOTES ARE IN THE MIDDLE?

YES, THEY ARE. THEY ARE BEING HELD SEPARATE AND INITIALLY THE CANVASSING BOARD IN BROWARD COUNTY HAD USED WHAT WE CALL THE TWO-CORNER RULE, SO THEY WENT THROUGH THE BALLOTS, AND THEY INITIALLY JUST DETERMINED INTENT, BASED UPON TWO CORNERS OF THE -- BASED UPON TWO CORNERS OF THE CHAD BEING REMOVED. IF THEY DIDN'T FIND THAT, THEY KEPT THE CONTESTED BALLOTS SEPARATE, AND BASED UPON THEIR DECISION YESTERDAY, THEY INTEND TO GO BACK, JUST FOR PROCESS PURPOSES, THEY DON'T WANT TO START APPLYING THE NEW STANDARD, NOW, UNTIL THEY FINISH GOING THROUGH AND MAKING THE FIRST CUT.

WAS THE TWO-CORNER RULE THAT YOU HAVE JUST ANNOUNCED OR STATED THAT THE BROWARD COUNTY BOARD IS FOLLOWING, WAS THAT A STANDARD THAT WAS IN EXISTENCE, AS OF THE DATE THAT THIS ELECTION TOOK PLACE, OR IS THIS SOMETHING THAT HAS COME UP AFTER THE FACT?

JUSTICE PARIENTE, THIS IS SOMETHING THAT CAME UP AFTER THE FACT, BASED UPON, AS IT TURNS OUT, WHAT WE BELIEVE TO HAVE BEEN AN EARLY REVIEW OF WHAT THE LAW REQUIRES. JUSTICE PARIENTE: HAS BROWARD COUNTY, BEFORE THIS DATE, DONE MANUAL RECOUNTS, AND IF SO, WHAT STANDARDS DID THEY APPLY?

I AM NOT AWARE OF MANUAL RECOUNTS, MA'AM. MR. CHIEF JUSTICE: CHIEF WOULD YOU ADDRESS JUSTICE LEWIS'S QUESTION, IF YOU COULD, AS TO HOW 102.168, THE CONTEST STATUTE, FITS INTO THIS, WHERE THERE ARE AMENDED CERTIFICATIONS, AND CAN YOU CONTEST, AT THE POINT IN TIME AFTER THE AMENDED CERTIFICATIONS?

MR. CHIEF JUSTICE, WHAT I WOULD PREFER TO DO WOULD BE TO DEFER TO SOMEBODY WHO CAN ANSWER THAT BETTER THAN I CAN. WHAT I WOULD LIKE TO TRY TO BRING TO THE COURT IS OUR PERSPECTIVE IN BROWARD COUNTY, AND JUSTICE PARIENTE, YOU ASKED A QUESTION THAT I CAN ANSWER, AND I KNOW OTHER PEOPLE CAN'T, SO I WOULD LIKE TO STICK TO THOSE ISSUES, IF THAT.

-- IF THAT WOULD BE OKAY, SIR. MR. CHIEF JUSTICE: CHIEF THANK YOU.

THANK YOU. YOU ASKED IF WE COULD JUST INCREASE THE NUMBER OF COUNTING TEAMS AND INCREASE OUR RESOURCES, IN ORDER TO GET THROUGH THIS IN SEVEN DAYS. THAT IS NOT TRUE, JUSTICE PARIENTE. WHAT HAPPENS IS WE CAN HAVE AS MANY COUNTING TEAMS AS WE CAN FIND, AND IN FACT WE HAVE A BUNCH OF THEM IN OUR EMERGENCY OPERATIONS CENTER, BUT AFTER THE COUNTING -- AFTER THE COUNTING TEAMS GO THROUGH THE BALLOTING PROCESS,

IT GOES THROUGH A THREE-MEMBER CANVASSING BOARD, AND IT IS THREE MEMBERS, WHETHER IT IS A TINY COUNTY OR A COUNTY THE SIZE OF BROWARD COUNTY. JUSTICE PARIENTE: YOU SAY ALL OF THE BALLOTS. I THOUGHT IT IS IF THERE IS A QUESTION OF INTENT THAT NEEDS TO BE RESOLVED.

NO, MA'AM. IT IS MY UNDERSTANDING THAT THEY ARE GOING BACK THERE, AND WHAT THEY ARE DOING IS CONFIRMING THE VOTE AND MAKING DECISIONS WHERE THERE IS A DOUBLE CONTEST, SO MANUALLY THEY ARE RECHECKING EVERY BALLOT, A 83,000, AND THEN WHERE -- 583,000, AND THEN WHERE THERE IS AN ACTUAL CONTEST, THEY CAN PROCEED ONLY AS FAST AS THOSE THREE PEOPLE CAN PROCEED IN COUNTING THOSE BALLOTS, AND IN BROWARD COUNTY THE THEY ARE FAR AHEAD OF THE CANVASSING BOARD. JUSTICE PARIENTE: THERE WERE REPORTS THAT THE RECOUNTING WOULD BE FINISHED TODAY. IS THAT STATEMENT NOT ACCURATE?

THAT WAS BASED UPON APPLYING A TWO-CORNER RULE, AND BASED UPON THAT, WE ARE GOING TO HAVE TO WHAT WE BELIEVE TO BE A CORRECT INTERPRETATION OF THE LAW, TO CONCERN EACH BALLOT FROM THE TOTALITY OF THE BALLOT. JUSTICE HARDING: ISN'T THERE SOMETHING UNUSUAL ABOUT CHANGING THE RULES IN THE MIDDLE OF THE GAME?

I DON'T THINK SO, JUSTICE HARDING. THE IMPORTANT THING TO DO IS THE RIGHT THING IN THE END, AND THIS HAS BEEN AN EVOLVING -- JUSTICE HARDING: YOU STARTED OUT COUNTING THEM. ARE YOU GOING TO COUNT THEM THE SAME WAY?

YES, BUT AT THE SAME TIME WE KEPT THE INFORMATION AS UNFOLDED, AND JUSTICE HARDING, SINCE THAT TIME, WE HAVE RECEIVED DIRECTION FROM BOTH JUDGE LEBARGA IN PALM BEACH COUNTY AND FROM JUDGE MILLER, WHO IS HANDLING A CASE FOR US DOWN BELOW. BOTH OF THEM STATED THAT OUR TWO-CORNER RULE WOULDN'T BE VALID, AND THAT IS CONSISTENT WITH OUR UNDERSTANDING OF THE LAW. JUSTICE 35RIENT: YOU SAY NOT VALID. YOU MEAN TOO RESTRICTIVE?

NOT VALID. MEMBERS OF THE CANVASSING BOARD HAVE DETERMINED THAT THEY CAN DETERMINE OTHER WAYS OF COUNTING BALLOTS, OTHER THAN THE TWO-CORNER RULE, AND IN FACT THERE ARE PRESENT BALL OINGS WHICH ARE BEING TALLIED, FROM ONE SIDE OR THE OTHER, AND SHOWING THAT INTENT. MR. CHIEF JUSTICE: CHIEF THANK YOU, MR. MYERS. -- MR. MEYERS.

THANK YOU VERY MUCH. I AM MR. DAVID BOIES FROM THE STATE OF NEW YORK. MR. CHIEF JUSTICE: CHIEF MR. BOIES.

MAY IT PLEASE THE COURT. LET ME BEGIN BY ADDRESSING JUSTICE LEWIS'S QUESTION AS TO HOW YOU RECONCILE A PROTEST, UNDER SECTION 166, WITH A CONTEST, UNDER 168, AND HOW THAT ALL HAPPENS, WITHIN A TIME FRAME THAT ALLOWS BOTH TO COEXIST. FIRST, IF YOU LOOK AT SECTION 102.111, IT TALKS ABOUT HAVING THE RETURNS COME FROM THE COUNTY BY 5:00 P.M., SEVEN DAYS AFTER THE ELECTION. IT, THEN, TALKS ABOUT, SEPARATE TERM, THE OFFICIAL RETURNS, AFTER THE OFFICIAL RETURNS ARE IN. YOU HAVE A CERTIFICATION, AND THEN A DECLARATION OF THE WINNER. SO YOU HAVE THE RETURNS. YOU HAVE THE OFFICIAL RETURNS, FOLLOWED BY A CERTIFICATION, AND THEN A DECLARATION OF THE WINNER. IN THIS PARTICULAR CASE, THE DECLARATION OF THE WINNER WOULD BE UNDER 103.011, WHICH IS THE DECLARATION OF WHO ARE GOING TO BE THE ELECTORS, AND UNDER THE STATUTE, 56.14, 101.5614, IT TALKS, IN SUBSECTION 8, ABOUT THE OFFICIAL RETURNS, INCLUDING NOT ONLY THE MACHINE COUNT, THE INITIAL RETURNS, BUT, ALSO, THE ABSENTEE BALLOTS, WHICH, OBVIOUSLY, ARE COMING IN AFTER THE SEVEN DAYS, AND THE MANUALLY-COUNTED BALLOTS, WHICH ARE COMING IN AFTER THE SEVEN DAYS, SO WE BELIEVE THAT, IF YOU READ ALL OF THOSE SECTIONS TOGETHER, WHAT YOU HAVE IS A REQUIREMENT OF THE COUNTIES TO COME FORWARD, WITH THEIR RETURNS, SEVEN DAYS AFTER THE ELECTION, THAT THOSE RETURNS

WILL, THEN, BE SUPPLEMENTED BY MANUAL RECOUNTS, BY ABSENTEE BALLOTS, AND THEN THERE WILL BE AN OFFICIAL RETURN, AND THAT OFFICIAL RETURN WILL, THEN, BE CERTIFIED, AND AT THAT POINT, WE BELIEVE, 168 CONTEST TAKES PLACE, IF THERE IS GOING TO BE ONE. MR. CHIEF JUSTICE: CHIEF GO AHEAD.

WHAT I AM CONCERNED ABOUT IS THE TIMING. LET'S ASSUME THAT THE ABSENTEES AND RECOUNTS COME TO THE EVE OF REPORTING DAY, AND THERE IS INSUFFICIENT TIME. JUST AS A MATTER OF FACT, TO CONDUCT A CONTEST, SO, THEN, ARE WE NOT ELIMINATING 168 FROM OUR STATUTORY SCHEME?

I THINK YOU WOULD BE, IF THAT HAPPENED, YOUR HONOR. I THINK THERE ARE TWO POINTS. ONE IS I THINK THE SAME BASIC STANDARD FOR THE PROTEST IS THE SAME BASIC STANDARD FOR THE CONTEST, EXCEPT THAT YOU DON'T HAVE TO WORRY ABOUT THE TIMING OF WHEN THE COUNTY IS --. MR. CHIEF JUSTICE: CHIEF MR. BOIES, LET ME FOCUS BACK, IN FOLLOWING UP ON JUSTICE LEWIS'S QUESTION, IS THAT, IF THE COUNSEL FOR THE ATTORNEY GENERAL IS CORRECT, AND DECEMBER 12 IS THE DATE BY WHICH THEY HAVE TO -- THE CERTIFICATION HAS TO BE MADE FOR THE ELECTORAL COLLEGE, AND AS I READ SECTION V OF THE U.S. CODE, THAT WHAT THAT DATE MEANS IS THAT ALL OF THE CONTROVERSIES AND CONTESTS IN THE STATE HAVE TO BE FINALLY DETERMINED BY THAT DATE. OKAY. THAT -- DO YOU AGREE WITH THAT?

I DO, YOUR HONOR.

OKAY. IN ORDER FOR THEM TO BE CONCLUSIVE IN THE ELECTORAL COLLEGE. NOW, IF WE HAVE, THEN, CONTEST, UNDER 168, OR WE HAVE THIS PROTEST GOING ON, IN BROWARD COUNTY, FOR INSTANCE, WHERE THEY HAVE GOT SOME VOTES IN THE MIDDLE, AND HOW IS IT GOING TO WORK, WITHIN THAT TIME PERIOD, FOR THE VOTES TO GET TOTALLY RECOUNTED AND, THEN, IF GOVERNOR BUSH WANTS TO HAVE -- CONTEST THAT, FOR HIM TO GET A CONTEST FINALLY RESOLVED, OR ISN'T IT, AND LET ME POSE MY WHOLE QUESTION, ISN'T IT SOMETHING THAT THE SECRETARY OF STATE, AS THE PERSON WHO HAS TO DO THE CERTIFICATION, SHOULD SEPARATE OUT THOSE THAT ARE UNCONTESTED ON BOTH SIDES AND THEN, WITH THE ONES IN THE MIDDLE, THERE WOULD HAVE TO BE A DETERMINATION MADE IN THE FINAL CERTIFICATION, AS TO WHETHER THERE WAS A -- YOU COULD GET THAT FINALLY DETERMINED OR NOT AND HOW MANY VOTES YOU ARE TALKING ABOUT AND WHETHER THOSE VOTES IN THE MIDDLE WOULD ACTUALLY CAUSE THE ELECTION TO BE DIFFERENT. DO YOU GET MY DRIFT?

I DO, YOUR HONOR, AND I THINK I AGREE WITH, MAYBE, ONE EXCEPTION, AND THAT IS THE COURT TALKED ABOUT THE SECRETARY OF STATE DEALING WITH THE VOTES IN THE MIDDLE. I THINK THAT, UNDER FLORIDA LAW, THOSE ARE FIRST COUNTED BY THE COUNTY CANVASSING BOARDS, AND, THEN, THERE IS A JUDICIAL QUESTION, AS TO WHETHER THOSE VOTES HAVE BEEN PROPERLY COUNTED, BUT THAT IS NOT A QUESTION FOR THE SECRETARY OF STATE. I, ALSO, THINK THAT THIS COURT, CERTAINLY, HAS THE POWER TO SAY WHAT WE ARE GOING TO DO IS TELL THE COUNTY BOARDS THAT YOU HAVE GOT THIS AMOUNT OF TIME TO COMPLETE YOUR RECOUNT, AND AT THAT POINT, THOSE VOTES ARE, THEN, SUBJECT TO BEING CONTESTED BY GOVERNOR BUSH OR VICE PRESIDENT GORE, AND THOSE CONTESTS, THEN, TAKE PLACE IN A TIME FRAME THAT ALLOWS EVERYTHING TO BE COMPLETED BY DECEMBER 12. SO I THINK IT IS CLEARLY WITHIN THE POWER OF THIS COURT TO SAY IN ORDER TO MEET THE DATE OF DECEMBER 12, YOU HAVE GOT TO HAVE ALL OF YOUR VOTES MANUALLY COUNTED THAT ARE GOING TO BE INCLUDED IN THIS INITIAL CERTIFICATION BY A PARTICULAR DATE, AND THEN THE CONTEST, IF THERE IS ONE, TAKES PLACE BETWEEN THAT DATE AND DECEMBER 18.

DO WE HAVE INFORMATION IN THE RECORD THAT CAN GUIDE US? DO WE KNOW HOW LONG IT IS GOING TO TAKE TO DO THESE THINGS? ARE WE JUST GOING TO REACH UP, FROM SOME INSPIRATION, AND PUT IT DOWN IN PAPER?

YOUR HONOR, I THINK IF IS IN BETWEEN -- I THINK IT IS IN BETWEEN. I THINK THERE IS SOME INFORMATION IN THE RECORD, BUT TO BE COMPLETELY CANDID WITH THE COURT, I BELIEVE THAT THERE IS GOING TO HAVE TO BE A LOT OF JUDGMENT APPLIED BY THE COURT, AS WELL.

AND ISN'T THIS -- IS THIS NOT SOMETHING THAT THE LEGISLATURE TRIED TO DO, IN SETTING THESE TIME LIMITS, WHEN THE VOTES SHOULD BE IN AND SET UP SOME REASONABLE OR WHAT YOU CONTEST IS NOT REASONABLE BUT SOME PROCEDURE, AND ISN'T THAT WHAT THEY HAVE DONE?

I DON'T THINK THAT IS WHAT THEY HAVE DONE, YOUR HONOR, BECAUSE IF YOU LOOK AT SECTIONS 102.111 AND 102.112 TOGETHER, JUST THOSE TWO, TOGETHER, LEAVING ASIDE THE MANUAL RECOUNT PROVISIONS, WHAT YOU SEE IS THAT THE LEGISLATURE IS SAYING YOU MUST GET YOUR RETURNS IN BY SEVEN DAYS, BUT, THEN, THE OFFICIAL RETURNS, AND THERE IS NOTHING IN THAT STATUTE THAT SAYS THE OFFICIAL RETURNS HAVE TO BE COMPLETED BY SEVEN DAYS, THEN THE OFFICIAL RETURNS, AS DEFINED IN STATUTE TO INCLUDE THE RESULT, NOT ONLY OF THE INITIAL RETURNS BUT OF THE MANUAL RECOUNTED VOTES AND OF THE ABSENTEE BALLOT VOTES THAT ARE NOT INCLUDED IN THOSE FIRST SEVEN DAYS, I THINK WHEN YOU SEE THOSE PROVISIONS, EVEN IF YOU LEAVE ASIDE THE MANUAL RECOUNT PROVISIONS, YOU HAVE GOT A STATUTORY SYSTEM THAT DOES NOT CONTEMPLATE THAT SEVEN DAYS BRINGING DOWN A CURTAIN.

WHAT IS THE TIME LIMIT THEN?

WELL, YOUR HONOR, IF I WERE SITTING IN YOUR CHAIR, THAT WOULD BE A DIFFICULT QUESTION FOR ME. IT IS AN EVEN MORE DIFFICULT QUESTION, STANDING WHERE I AM.

WELL, IT IS, ALSO, DIFFICULT FOR US, BECAUSE THIS STATUTE GOVERNS STATEWIDE ELECTION AND NOT NECESSARILY ONLY PRESIDENTIAL ELECTION.

IT DOES, YOUR HONOR, BUT IN A STATEWIDE ELECTION, YOU DON'T HAVE QUITE THE SAME PROBLEM. IN A STATEWIDE ELECTION, IF YOU PUT OFF THE DECISION, YOU ARE NOT DISENFRANCHISING THE VOTERS OR POTENTIALLY DISENFRANCHISING THE VOTERS, AS YOU MAY BE IN THIS CASE, BECAUSE OF THE FEDERAL DEADLINE OF HAVING THE ELECTORS SELECTED, SO THIS IS A SITUATION THAT IS DIFFERENT THAN THE USUAL SITUATION THAT THE COURT CONFRONTS, AND I THINK, PICKING UP FROM WHAT JUSTICE LEWIS SAID, IF YOU WORK BACKWARD FROM HOW MUCH TIME DO YOU REALISTICALLY NEED FOR A CONTEST, THAT AMOUNT OF TIME, WORKING BACK FROM DECEMBER 12, COULD GUIDE THE COURT IN DETERMINING WHAT WAS THE OUTER DATE FROM THE TIME THAT THE RECOUNT HAD TO BE COMPLETED. MR. CHIEF JUSTICE: CHIEF JUSTICE SHAW.

WHY SHOULDN'T THE SECRETARY OF STATE BE THE PERSON TO SET THE DATE, INSTEAD OF A COURT? WHY COULDN'T THE SECRETARY SAY THAT THIS IS THE TIME FRAME THAT I NEED, IN ORDER TO FULFILL MY DUTY OF GETTING THE CERTIFICATION IN AND SET AN ARBITRARY DATE?

BUT, YOUR HONOR, THE SECRETARY OF STATE'S FUNCTION IS MINISTERIAL FUNCTION. SHE IS NOT GOING TO BE THE PERSON WHO PRESIDES OVER THE CONTEST. THE CONTEST, IF THERE IS ONE, IS GOING TO BE A CONTEST THAT IS GOING TO BE BEFORE THE CIRCUIT COURT AND, ULTIMATELY, BEFORE THIS COURT, PERHAPS.

HOWEVER, MR. BOIES, THAT BRINGS US TO THE "MAY IGNORE" LANGUAGE IN THAT STATUTE, AND WOULDN'T YOU HAVE TO AGREE THAT THE "MAY" DOES CON NOTE SOME DEGREE OF DISCRETION AND WHY ISN'T THAT DISCRETION SET, ON THE BASIS THAT SHE MAY IGNORE THEM, IF THE ACCEPTANCE OF THE AMENDED CERTIFICATION WOULD PREJUDICE THE OTHER VOTERS, WHOSE VOTES WOULD BE CERTIFIED, BECAUSE THEY WERE ALREADY THERE AND GET TIMELY COUNTED IN THE ELECTORAL COLLEGE?

I THINK, YOUR HONOR, YOU COULD SAY, AND THIS IS NOT THE -- THAT DIFFERENT FROM WHAT WE HAVE ARGUED, THAT AS LONG AS THE MANUAL RECOUNTS WILL NOT IMPAIR THE FINAL CERTIFICATION, IN TIME TO PERMIT THE SELECTION OF LEG FORCE BY DECEMBER 12 -- OF ELECTORS BY DECEMBER 12, THAT THOSE MANUAL RECOUNTS MUST BE INCLUDED. THAT IS THE SECRETARY OF STATE, TO THE DISCRETION THAT SHE HAS, IF SHE HAS ANY, WOULD BE TO SAY I NEED TO HAVE THESE PARTICULAR RESULTS BY THIS PARTICULAR DATE, IN ORDER TO ENSURE THAT THE RESULTS ARE INCLUDED BY DECEMBER 12.

IF THAT IS THE CASE, THEN SHOULD WE BE TRYING TO DETERMINE, ALSO, THIS WHOLE ISSUE ABOUT THE FAULTY CHADZ, BECAUSE I WOULD ASSUME THAT THAT WOULD BE A PART OF ANY CONTEST THAT WOULD BE MADE OF THE RECOUNT, BUT IF WE ARE WORRIED ABOUT THIS TIME LIMIT, IS THAT SOMETHING THAT WE SHOULD BE CONCERNED WITH, NOW, AND IS IT SQUARELY BEFORE THIS COURT NOW?

YOUR HONOR, I THINK IT IS SQUARELY BEFORE THE COURT, AND I THINK THE COURT MUST BE CONCERNED WITH IT NOW, BECAUSE I THINK THAT, GIVEN THE PARTICULAR DEADLINE, THE WALL THAT IS SET UP BY THE FEDERAL PROVISION, THAT THIS COURT NEEDS TO ACT EXPEDITIOUSLY, TO SET THE STANDARD, BECAUSE WE DON'T, FRANKLY, HAVE TIME --

AND WHERE DO WE FIND CASE LAW OR WHATEVER, TO TELL US WHAT THE STANDARD SHOULD BE?

YOUR HONOR, I THINK YOU FIND IT PARTLY IN FLORIDA LAW, BUT I THINK YOU CAN, ALSO, FIND IT FROM THE LAWS OF OTHER STATES THAT HAVE DEALT WITH THESE VERY SAME QUESTIONS. IF YOU GO BACK INTO FLORIDA LAW, THE TEST HAS, ALWAYS, BEEN THE INTENT OF THE VOTER, AND THAT IS WRITTEN INTO SECTION 166, THE MANUAL RECOUNT PROVISION. IT TALKS ABOUT, FIRST, THE COUNTERS, AND THEN THE CANVASSING BOARD, LOOKING AT THE BALLOT, TO DETERMINE THE INTENT OF THE VOTERS.

SO IF THAT IS THE CASE, WOULD IT BE YOUR -- WOULD YOU BE TELLING THIS COURT THAT ANY MARK MADE BY THE VOTER WOULD BE EVIDENCE OF THAT VOTER'S INTENT AND SHOULD BE COUNTED AS SUCH?

I THINK SO, YOUR HONOR, AND THAT IS, REALLY, WHAT THE, FOR EXAMPLE, THE DELLAHUNT DECISION THAT WE CITED IN OUR PAPERS, FROM THE SUPREME COURT OF MASSACHUSETTS OR THE ILLINOIS CASES THAT WE CITED OR THE ANY NUMBER OF OTHER CASES THAT WE CITED HAVE EXPRESSLY HELD. THAT SITUATION HAS NEVER BEEN BEFORE THIS COURT DIRECTLY, BUT THAT HAS BEEN DEALT WITH IN THE CASES FROM THE OTHER JURISDICTIONS THAT HAVE DECIDED THAT WE HOPE THE COURT WOULD FIND PERSUASIVE. IN ADDITION WE CITED THAT, PERHAPS, FOR OBVIOUS REASONS, THE STATUTE FROM TEXAS, WHICH PROVIDED STATUTORY GUIDELINES FOR DEFINING THAT.

IS THE UNIFORMITY OF HOW THESE MANUAL RECOUNTS ARE CONDUCTED ESSENTIAL TO THE INTEGRITY OF THE PROCESS OR, ALSO, TO THE CONSTITUTIONALITY OF THE STATUTE?

YOUR HONOR, I THINK IT IS IMPORTANT TO THE INTEGRITY OF THE PROCESS. I THINK, IF YOU HAD VERY WIDE VARIATIONS, YOU COULD RAISE CONSTITUTIONAL PROBLEMS.

WELL, FOR EXAMPLE, IF, RIGHT NOW IN PALM BEACH COUNTY, CHADS THAT ARE NOT DETACHED AT ALL BUT, I GUESS, ARE THESE DIMPLEED CHADS ARE BEING COUNTED, BUT IN BROWARD COUNTY THEY ARE NOT COUNTED, DOES THAT SAY THAT ONE VOTE IS BEING COUNTED IN ONE COUNTY AND NOT IN THE OTHER? IF THAT IS AN ARGUMENT, THEN WHAT DO YOU SAY TO THE -- GOVERNOR BUSH'S ARGUMENT AND THE SECRETARY OF STATE'S ARGUMENT THAT, FOR THOSE COUNTIES THAT DID NOT HAVE MANUAL RECOUNTS BUT, ALSO, HAVE PUNCH CARDS, BECAUSE I

GUESS NOT ALL COUNTIES HAVE THE PUNCH CARDS, THAT IF THOSE VOTES DID NOT GET MANUALLY RECOUNTED, THAT THAT IS UNFAIRLY GIVING CERTAIN COUNTIES A GREATER VOICE IN THIS ELECTION THAN OTHER COUNTIES?

WELL, THE FIRST THING, YOUR HONOR, IS THAT ANY CANDIDATE COULD HAVE REQUESTED A MANUAL RECOUNT, IN ANY COUNTY, SO THAT THE MANUAL RECOUNT PROVISION IS SOMETHING THAT, BY STATUTE, IS GIVEN TO THE CANDIDATES, AND WHEREVER THERE HAS BEEN A HAS NOTULE -- A MANUAL RECOUNT REQUESTED, THE COUNTIES HAVE GONE FORWARD AND, INDEED, SOME OF THE RUTS THAT HAVE ALREADY BEEN CERTIFIED HAVE BEEN RESULTS THAT INCLUDED MANUAL RECOUNTS.

DO WE KNOW, IN VOLUSIA COUNTY, WHETHER THEY USED -- WHAT STANDARD THEY USED? IS THAT IN THE RECORD?

I DO NOT BELIEVE THAT IS IN THE RECORD, YOUR HONOR. I WOULD SAY, FOR THE REASONS THAT YOU POINT OUT, IT IS QUITE IMPORTANT THAT THIS COURT BE AS SPECIFIC AS POSSIBLE, IN TERMS OF THE STANDARD TO BE APPLIED, SO THAT WE WILL HAVE UNIFORMITY. I, ALSO, THINK, YOUR HONOR, THAT, IF YOU CONCLUDED THAT IT WAS ESSENTIAL TO AVOID UNFAIRNESS OR SOME KIND OF OVERWEIGHTING OF ONE COUNTY'S VOTE OVER ANOTHER COUNTY'S VOTE, THIS COURT HAS, WITHIN ITS EQUITABLE POWER, TO HAVE A STATEWIDE RECOUNT, IF YOU CONCLUDED THAT THAT WAS NECESSARY. MR. CHIEF JUSTICE: CHIEF ALONG THAT LINE I TAKE IT THAT, IF THIS COURT SHOULD HOLD THAT THE 72-HOUR, THE SEVEN-DAY PERIOD WAS NOT SPECIFICALLY ENFORCEABLE, THEN YOU WOULD SAY THAT THERE SHOULD BE A WINDOW OF OPPORTUNITY FOR BOTH SIDES TO REQUEST RECOUNTS IN ADDITIONAL COUNTIES?

I THINK THE COURT HAS THE POWER TO ORDER THAT, IF IT BELIEVES --

WHAT IS YOUR POSITION ON THAT?

YOUR HONOR, WE DON'T THINK THAT IS NECESSARY, BECAUSE --. MR. CHIEF JUSTICE: CHIEF SO WOULD YOU TRY TO STRICTLY ENFORCE THE 72-HOUR PROVISION OF 166?

THE 72-HOUR PROVISION IN 166 HAD, ALREADY, PASSED, BY THE TIME THAT THE SEVEN-DAY PERIOD HAD PASSED. HOWEVER --

BUT THE CERTIFICATION HAD NOT.

BUT THE CERTIFICATION HAD NOT, YOUR HONOR, AND IT WAS FOR THAT REASON THAT VICE PRESIDENT GORE, INFORMALLY -- OBVIOUSLY HE DIDN'T HAVE THE POWER THAT THIS COURT HAS -- BUT INFORMALLY PROPOSED, AS THE COURT MAY OR MAY NOT BE AWARE, THAT HE WOULD BE PREPARED TO ACCEPT A STATEWIDE RECOUNT. WE ARE NOT URGING THAT UPON THE COURT BUT, CERTAINLY, THAT IS SOMETHING THAT WE HAVE INDICATED THAT WE WOULD ACCEPT, AND WE BELIEVE THE COURT HAS THE POWER TO ORDER THAT OR TO ORDER, AS THE COURT SUGGESTS, A WINDOW.

HOW DO YOU THINK A STATEWIDE RECOUNT WOULD IMPACT ON THE WHOLE IDEA OF GETTING THESE THINGS DONE BEFORE DECEMBER 12, IS IT, AND AREN'T WE JUST ADDING ANOTHER LAYER, IF WE ORDER A STATEWIDE RECOUNT?

YOU COULD BE, YOUR HONOR. HOWEVER, SINCE THE RECOUNT TAKES PLACE COUNTY BY COUNTY, IT WILL PROCEED IN PARALLEL, AND SINCE THE MOST POPULOUS COUNTIES ARE THE ONES THAT ARE ALREADY UNDER WAY, WE BELIEVE THAT IT WOULD BE PRACTICAL TO DO THOSE RECOUNTS, IF THE COURT FOUND IT TO BE DESIRABLE. MR. CHIEF JUSTICE: CHIEF JUSTICE SHAW.

WHAT WOULD BE THIS COURT'S AUTHORITY TO OPEN UP THIS WINDOW OF OPPORTUNITY, WHEN

IT HAS NOT BEEN REQUESTED WITHIN THE TIME FRAME?

YOUR HONOR, THAT IS -- THAT WAS THE HESITANCY ON MY PART, IN ANSWERING THE CHIEF JUSTICE'S QUESTION. I BELIEVE THAT THE BROAD EQUITABLE POWER THAT THIS COURT HAS, UNDER THE CONSTITUTION, TO ASSURE THAT THE ELECTION RESULTS, REALLY, REFLECT WHO GOT THE MAJORITY OF THE VOTES OR THE PLURALITY OF THE VOTES, WOULD ENABLE THE COURT TO DO THAT. THE DEADLINE HAS PASSED. I THINK, PARTICULARLY IF YOU HAD A SITUATION IN WHICH BOTH CANDIDATES WERE PREPARED TO ACCEPT THAT, YOU WOULD HAVE A SITUATION IN WHICH THE COURT WOULD HAVE THE POWER.

IN ANSWERING YOUR PREVIOUS QUESTION, YOU INDICATED THAT YOU THOUGHT THE SECRETARY COULD SET A FINAL DATE TO CERTIFY, PROVIDED IF IT INTERFERED WITH HER GETTING THE VOTE IN TO THE ELECTORAL COLLEGE ON TIME. WHAT WOULD BE HER BURDEN TO JUSTIFY THIS? COULD SHE JUST SAY I NEED TEN DAYS TO GET THE VOTE IN AND ARBITRARILY SET THAT, OR COULD SHE SAY I NEED 30 DAYS AND COMPLETELY CLOSE IT OUT?

WELL, YOUR HONOR, THIS COURT IS, I THINK, EXPERIENCED WITH REVIEWING THE EXERCISE OF DISCRETION IN LOWER COURTS, AND I THINK THAT, WHEN ALL IS REQUIRED IS A MINISTERIAL ACT OF PREPARING THE PAPERS TO DECLARE THE WINNER, I WOULD THINK THIS COURT WOULD HOLD THAT THAT DID NOT REQUIRE VERY MUCH TIME.

WELL, YOU KEEP REFERRING TO IT AS A MINISTERIAL ACT, BUT UNDER 103.011, DOESN'T THE SECRETARY HAVE A DUTY TO PROTECT FLORIDA'S ELECTORAL VOTES, BY GETTING THE CERTIFICATION MADE?

YES, YOUR HONOR, AND WHAT I MEANT TO BE SAYING WAS THAT, IN ORDER TO GET THAT CERTIFICATION MADE, SHE NEEDS TO HAVE ENOUGH TIME TO MAKE THAT CERTIFICATION, BUT THE FACT THAT THE CERTIFICATION IS A MINISTERIAL ACT DOESN'T MEAN IT IS NOT IMPORTANT. IT SIMPLY MEANS THAT IT IS AN ACT THAT, IN OUR VIEW, CAN BE DONE RELATIVELY QUICKLY, THAT SHE DOESN'T NEED FIVE OR TEN DAYS TO DO IT. MR. CHIEF JUSTICE: CHIEF YOU ARE IN YOUR REBUTTAL TIME, AND SO I THINK THE TIME HAS, NOW, ARRIVED WHEN WE WOULD TAKE OUR TEN-MINUTE RECESS. I WOULD ANNOUNCE, MR. HANCOCK, THAT THE MARSHAL SAYS THAT THE CLOCK WENT OFF THREE AND-A-HALF MINUTES TOO SOON FOR YOU, SO YOU WILL HAVE THAT AMOUNT OF TIME OF REBUTTAL. THANK YOU. WE WILL BE IN RECESS FOR TEN MINUTES. THE MARSHAL: PLEASE RISE. THE MARSHAL: PLEASE RISE. PLEASE BE SEATED. MR. CHIEF JUSTICE: WE WILL, NOW, HEAR FROM THE COUNSEL FOR RESPONDENTS, AND, I BELIEVE, KATHERINE HARRIS IS THE FIRST RESPONDENT, REPRESENTED BY MR. KLOCK.

THANK YOU, MR. CHIEF JUSTICE. WE ARE, ALSO, REPRESENTING THE CANVASSING BOARD AND COMMISSIONER CRAWFORD, WHO IS HERE AS WELL.

THAT IS THE ELECTIONS CANVASSING BOARD, UNDER CHAPTER 102 --

YES, CHIEF JUSTICE, AND FOR EASE, WE COULD REFER TO THEM AS THE COMMISSION. I THINK I COULD START WITH A POINT THAT NEEDS TO BE ADDRESSED. I BELIEVE THAT THE PROBLEM THAT IS CREATED HERE, REALLY, AND AS THE QUESTIONS GO BACK AND FORTH FROM THE COURT, I CAN SEE IT. THE DIFFERENCE THAT WE HAVE, HERE, IS REALLY NOT A LEGAL PROBLEM. IT IS A POLITICAL PROBLEM. WE HAVE A TWO-TIERED PROCESS IN FLORIDA, AS FAR AS ELECTION RETURNS ARE CONCERNED, AND THAT HAS TO DO WITH, FIRST, THE COUNTY AND THE CERTIFICATION OF BALLOTS, AND THE SECOND IS THE CONTEST. AND MOST OF WHAT YOU ARE BEING ASKED TO DEAL WITH, TODAY, IS THE PROBLEM THAT IS CREATED BY THE CONTEST, AND IF YOU THINK ABOUT IT, IT CREATES AN ENORMOUS NUMBER OF PROBLEMS, AS FAR AS THE COURT IS CONCERNED, A NUMBER OF WHICH HAVE BEEN ADDRESSED BY THE DIFFERENT JUSTICES, BUT IF WE START OUT FROM THE POINT THAT WHAT WE HAVE, HERE, THE SECRETARY HAS CERTIFIED THE FIRST ELECTION RETURNS THAT CAME IN, THEN, IN BETWEEN THAT TIME AND

SATURDAY, WHEN SHE, PROBABLY, WOULD HAVE CERTIFIED, ALONG WITH THE COMMISSION, THE OVERSEAS BALLOTS, THE STAY WAS ENTERED BY THE COURT AND, NATURALLY, IS RESPECTED BY BOTH THE CANVASSING BOARD AND BY THE SECRETARY, BUT THE FACT OF THE MATTER IS, IS THAT, UNTIL SUCH TIME AS THE CERTIFICATION IS MADE, THE PROCESS OF CONTESTING THE ELECTION CANNOT STAND. THE QUESTION RAISED, BOTH BY THE CHIEF JUSTICE AND BY JUSTICE LEWIS, WHICH IS WHAT IS THE IMPACT OF THE TWO STATUTES, IS VERY CLEAR. MR. BOIES SAID THAT, YOU KNOW, IT IS ALL KIND OF ONE THING AND YOU CAN, REALLY, HANDLE IT, ONE WAY OR THE OTHER, BUT THAT IS NOT TRUE. FOR INSTANCE, THE WHOLE ISSUE OF THE OVERSEAS SOLDIERS' BALLOTS CAN'T BE RESOLVED, UNTIL SUCH TIME AS THE ELECTION RETURNS ARE CERTIFIED AND A CHALLENGE CAN BE MADE AS TO WHATEVER STANDARDS ARE BEING USED TO NOT INCLUDE THOSE BALLOTS. THERE ARE A NUMBER OF OTHER THINGS THAT CAN'T OCCUR UNTIL THAT HAPPENS, AND THEN THE SUGGESTION THAT THE SUPREME COURT CAN SET A DATE, ALTHOUGH THEY ARE NOT WILLING TO EVEN SUGGEST TO YOU WHAT THAT DATE SHOULD BE, COMES BACK TO THE POINT THAT WHAT IS IT THAT THEY, REALLY, NEED TO HAVE HAPPEN HERE? FOR THE SECRETARY TO BE SUCCESSFUL, ALL THAT HAS TO OCCUR IS THAT THE COURT LIFTS THE STAY AND AFFIRMS OR SIMPLY LET'S IT SET, JUDGE LEWIS'S ORDER. FOR THE PETITIONERS, HERE, TO SUCCEED, A NUMBER OF THINGS HAS TO OCCUR. MR. CHIEF JUSTICE: JUST MR. KLOCK, LET ME GET YOU TO MY CONCERN QUICKLY.

YES. MR. CHIEF JUSTICE: THE CONCERN THAT I HAVE IS THAT IT IS NOT -- WE HAVE A LONG-STANDING POLICY, OUT OF OTHER COURTS OF THIS STATE, THAT SAY THAT THE REALLY PARTIES IN -- THAT THE REAL PARTIES IN INTEREST HERE ARE THE VOTERS. NOW, WHAT I WANT TO KNOW IS THAT -- AND THIS 112 HAS A PROVISION, WHICH SAYS THAT SOME VOTERS' VOTES MAY BE IGNORED, AND WHAT I AM CONCERNED ABOUT IS IN WHAT IS THE BOUNDARIES UPON WHICH THE SECTOR THE COMMISSION COULD EXERCISE ITS DISCRETION AND HAVE THOSE VOTERS IGNORED, AND I POSE, TO YOU, THAT, IN THIS PARTICULAR PRESIDENTIAL ELECTION, ISN'T IT -- DOESN'T IT REVOLVE AROUND THE ELECTORAL COLLEGE AND THE FACT THAT THE PREJUDICE THAT IS INVOLVED HERE IS THE PREJUDICE OF NOT ALLOWING FLORIDA'S SLOTS -- VOTES STOCKS COUNTED?

WELL, MR. CHIEF JUSTICE, THE BEGINNING POINT, HERE, IS THAT THERE ARE 6 MILLION VOTERS, OF COURSE AND THE ISSUE OF THE FOCUS IS ON 73,000 OF THEM IN THREE COUNTIES. THE ATTORNEY GENERAL'S POSITION STARTED OUT AS SAYING THAT ALL OF THE VOTES IN FLORIDA BE COUNTED, BUT THAT, OF COURSE, IS NOT WHAT IS UNDER WAY AT THIS POINT. THE PROBLEM, WITH RESPECT TO THE ELECTORAL VOTES IN FLORIDA, ONLY OCCURS IF THE STATUS QUO IS MAINTAINED, IF THE VOTES CANNOT BE CERTIFIED, IF THE CONTEST PROCEDURE CANNOT BEGIN.

WOULDN'T THEY HAVE TO BE CERTIFIED TODAY? UNDER A FEDERAL SCHEME, IS THERE A MANDATORY POSITION TODAY?

MR. CHIEF JUSTICE, IT IS GOVERD BY -- GOVERNED BY FLORIDA LAW. MR. CHIEF JUSTICE: BUT WHAT I AM CONCERNED ABOUT IS THE RAMIFICATIONS, UNDER THE FEDERAL STATUTE, WHICH YOUR OPPOSITION SAYS, HERE, IS DECEMBER 12, OR SIX DAYS BEFORE DECEMBER 18. NOW, WHAT I WANT TO KNOW IS, ON WHAT DATE DOES THE SECRETARY TAKE THE POSITION THAT HER DUTY TO CERTIFY THOSE VOTES IS GOING TO BE JEOPARDIZED, AND WHAT IS THE BASIS OF THAT JEOPARDY, IF THE VOTES AREN'T CERTIFIED ON "X" DATE?

RESPECTFULLY, MR. CHIEF JUSTICE, THE SECRETARY IS MANDATED BY THE ELECTION RESULTS, SEVEN DAYS AFTER THE ELECTION, AND THEN TO PICK UP THE OVERSEAS BALLOTS LATER. NOW, THE QUESTION THAT YOU ARE ASKING, I CAN'T EXACTLY ANSWER, BECAUSE WHAT YOU ARE, NOW, BALANCING, IS THE RIGHT OF THE ACCOUNTING PROCESS VERSUS THE RIGHT OF THE CONTEST PROCESS. YOUR HONOR, I DON'T KNOW HOW TO ANSWER THAT QUESTION.

BUT WHAT I AM CONCERNED WITH, NOW, IS THE RIGHTS OF THE VOTERS WHO MAY NOT HAVE

THEIR VOTES COUNTED, IF WE DON'T HONOR THE RECOUNTED VOTES, AND THE RIGHTS OF THE ENTIRE, ALL THE VOTERS, WHO MIGHT HAVE THEIR RIGHTS DENIED, IF THE CERTIFICATION DOESN'T GET IN, WITHIN THE TIME LIMIT AND ON THE BASIS THAT IT WILL BE ACCEPTED, UNDER TITLE V OF THE U.S. CODE?

RESPECTFULLY, AT THIS POINT IN TIME, THE ONLY BAR TO THAT IS THE STAY ORDER THAT HAS BEEN ENTERED BY THE COURT. IF THE STAY ORDER IS LIFTED, THE VOTES CAN BE CERTIFIED. ONCE THE VOTES ARE CERTIFIED, THEN A CONTEST CAN TAKE PLACE, IF ANYONE WANTS TO TAKE THE CONTEST, AND THAT MAY HAVE TO BE DONE ON AN EXPEDITED BASIS, BUT THE FACT OF THE MATTER IS THAT, IF ALL OF THIS RELIEF THAT WOULD SATISFY THESE FOLKS WOULD BASICALLY BE IN THE CONTEST, WHEN IT IS POSSIBLE TO HAVE A RECORD. A LOT OF THE QUESTIONS ASKED BY JUSTICE PARIENTE, THAT HAVE NOTHING -- PARIENTE, THAT HAVE NOTHING DO WITH THE FACTS, ARE RECORDS EXCLUDED IN THIS CASE.

HAVEN'T THE LOCAL CANVASSING BOARDS FOLLOWED THE STATUTES, IN REGARD TO MAKING -- HAVING A REQUEST FOR A RECOUNT AND THEN MAKING A COUNT, THE THREE PRECINCTS OR ONE PERCENT AND THEN MAKING A DETERMINATION THAT, ON THAT BASIS, A MANUAL RECOUNT WOULD FOLLOW?

JUSTICE HARDING --

HAVEN'T THEY FOLLOWED THE STATUTE?

JUSTICE HARDING, THE STATUTE, WHAT THE STATUTE BASICALLY SAYS IS YOU ARE SUPPOSED TO CERTIFY SEVEN DAYS AFTER THE VOTE IS TAKEN, IF THERE IS GOING TO BE A REQUEST. IF THE SECRETARY HAS DISCRETION WHICH JUSTICE LEWIS, OF COURSE, FOUND THAT SHE DOES, THEN THAT DISCRETION HAS TO BE EXERCISED, EITHER TO PERMIT OR NOT PERMIT LATE FILINGS. REASONS WERE GIVEN TO THE SECRETARY. SHE SENT A LETTER OUT. SHE ASKED FOR THE REASONS. THEY PROVIDED THE REASONS BY 2:00 P.M. ON THE DAY AFTER, ON WEDNESDAY, I BELIEVE, AND SHE PROMPTLY RESPONDED, AFTER APPLYING THEM AGAINST A SET OF CRITERIA THAT SHE HAD DEVELOPED, TO EXERCISE HER DISCRETION.

WHEN DID SHE DEVELOP THOSE CRITERIA?

YOU ARE ASKING ME, AS A MATTER OF FACT, YOUR HONOR? PROBABLY STARTING WITHIN AN HOUR AFTER JUDGE LEWIS ENTERED HIS DECISION, HE ASKED FOR THE KINDS OF CRITERIA THAT WOULD BE APPROPRIATE FOR HER TO EXERCISE HER DISCRETION.

IS THAT A REASONABLE WAY FOR AN AGENCY HEAD TO COME UP WITH A DECISION IN THIS STATE, TO JUST COME UP WITH SOMETHING IN A FEW HOURS, AS TO WHETHER TO ALLOW SOMETHING OR NOT TO ALLOW SOMETHING?

WELL, JUSTICE PARIENTE, I WAS ACTUALLY REFRESHED, BECAUSE THE AGENCY HAD ASKED FOR LEGAL ADVICE AND WHAT THE LEGAL STANDARDS WOULD BE FOR HER TO PROPERLY EXERCISE HER DISCRETION AND SO SHE WAS PUSHING AGO DEADLINE AND I CONSIDERED IT EXCELLENT, FRANKLY.

BUT SHE DIDN'T EXERCISE HER DISCRETION. WHAT WAS SAID WAS A REASON THAT SHE WAS NOT GOING TO RECOGNIZE AS A REASON FOR LATE FILING, MANUAL RECOUNTS BEING CONDUCTED, IN ACCORDANCE WITH 166. THAT WAS NO DISCRETION EXERCISED. IT WAS A -- IT WAS IN ACCORDANCE WITH HER PRIOR LEGAL DECISION THAT RECOUNTS THAT WERE NOT BASED ON MACHINE ERRORS WERE NOT GOING TO BE ALLOWED, AND THAT IS WHAT SHE ANNOUNCED, THE DAY BEFORE.

WELL, YOUR HONOR, THE DECISION THAT THE OPINIONS THAT COME OUT FROM THE DIVISION OF

ELECTIONS, MR. ROBERTS' GROUP, IS NOT EXACTLY THE SECRETARY. THE SECRETARY IS THE ONE THAT HAD THE OBLIGATION, UNDER THE STATUTE, TO EXERCISE HER DISCRETION IN THIS CASE, AND WHAT SHE DID WAS SHE LOOKED AT THE VARIOUS CRITERIA IN CHALLENGING THE ELECTION, AND SHE LOOKED AT OTHER CRITERIA, AS WELL, AND SAID THAT A MANUAL RECOUNT THAT IS UNDERTAKEN SOLELY TO SOLVE VOTER ERROR IS NOT THE KIND OF THING THAT IS SUFFICIENT TO ALLOW A BREAKDOWN OF THAT DEADLINE SCHEME. THAT WAS THE REASONABLE EXERCISE OF HER DISCRETION.

SO IS THE SECRETARY SAYING THAT THE REASON THAT THESE MANUAL RECOUNTS WERE NOT GOING OR ARE NOT GOING TO BE ALLOWED IS BECAUSE THEY ARE TOO LATE? THAT IS THEY WERE NOT IN WITHIN SEVEN DAYS AFTER THE ELECTION?

WELL, TWO THINGS, YOUR HONOR. FIRST WHAT SHE IS SAYING IS --

IS THAT NUMBER ONE?

AS YOU KNOW, VOLUSIA COUNTY COMPLIED WITH 200,000 VOTERS IN THREE DAYS. THEY DID THE RECOUNT.

SO WE HAVE, WITHIN THE STATE'S RECOUNTS, ONE COUNTY THAT HAS COUNTED THOSE VOTES BY HAND. CORRECT?

THAT'S CORRECT. AND JUSTICE PARIENTE, AS WELL THE SECRETARY AND THE CANVASSING BOARD HAVE NO RIGHT TO GO BEYOND THE CERTIFICATE THAT COMES FROM THE CANVASSING BOARD, AND VOLUSIA COUNTY DID A MANUAL RECOUNT, IRRESPECTIVE OF WHAT THE SECRETARY MAY THINK, LEGALLY THAT, THE BOARD HAD THE RIGHT TO DO THAT, ONCE THOSE RETURNS ARE CERTIFIED, THE SECRETARY, NEITHER THE SECRETARY NOR THE CANVASSING BOARD, CAN GO BEHIND THEM, SO THIS ENTIRE PROBLEM THAT WE HAVE HERE, TODAY, IRRESPECTIVE OF WHETHER YOU BUY INTO THE CONCEPT THAT THE SECRETARY HAS THE RIGHT TO ESTABLISH STANDARDS AND HAS THE RIGHT TO EXERCISE HER DISCRETION WHICH WE BELIEVE SHE DOES, BOTH UNDER THE CASE LAW AND AS A RESULT OF THE ORDER SHE WAS RESPONDING TO FROM JUDGE LEWIS, THE FACT IS THIS PROBLEM COULD HAVE BEEN RESOLVED, IF THE PEOPLE, ASKING FOR A MANUAL RECOUNT, RIGHT OR WRONG, HAD COMPLETED THE MANUAL RECOUNT WITHIN THE TIME PERIOD SET FORTH, AS THEY DID IN VOLUSIA COUNTY.

SO, THEN, THE SECRETARY WOULD HAVE COUNTED THOSE VOTES, WITHIN THE TOTALS, IF THEY HAD BEEN SUBMITTED BY NOVEMBER 14, AT FIVE O'CLOCK.

NEITHER THE SECRETARY NOR THE CANVASSING BOARD HAS THE POWER NOT TO, JUSTICE PARIENTE. THEY WOULD HAVE TO DO THAT. NOW, YOU ASKED THE QUESTION, EARLIER, AS TO WHETHER OR NOT THERE IS ANY HISTORY, AS FAR AS BROWARD COUNTY IS CONCERNED. SINCE, OF COURSE, THERE IS NOT A RECORD, I CAN'T RESPOND THERE, BUT THERE IS ONE CASE WHICH IS THE BROWARD COUNTY VERSUS HOGAN CASE, WHERE THE ISSUE WENT UP TO THE FOURTH DISTRICT COURT OF APPEAL ON WHETHER OR NOT THE CANVASSING BOARD'S DECISION NOT TO CONDUCT A RECOUNT WAS WITHIN THEIR DISCRETION AND THEY HELD IT WAS, SO I KNOW AT LEAST ON THAT ONE OCCASION, THAT THEY DID NOT EXERCISE THEIR RIGHT TO CONDUCT A RECOUNT, AND YOU HAVE TO UNDERSTAND THAT THE POSITION OF THE SECRETARY SIMPLY HAS TO DO WITH HER UNDERSTANDING AS TO HOW THE STATUTES ARE WRITTEN. IF YOU GO BACK TO THE '88 RACE BETWEEN SENATOR MACK AND GOVERNOR MacKAY, THE ISSUE, THERE, WAS THE PROBLEMS THAT HAD ARISEN WITH THE MECHANICAL VOTING MACHINES. THAT IS THE REASON WHY THE STATUTORY AMENDMENTS WERE CREATED, AND IF YOU LOOK THROUGH THE STATUTE, AND TAKING RESPECTFUL EXCEPTION TO THE POSITION OF THE ATTORNEY GENERAL, WHEREVER YOU SEE TABULATION, THEY ARE BASICALLY REFERRING TO MACHINE OR LEG THROW MAGNETIC OR -- OR ELECTRO MAGNETIC OR HOWEVER IT IS PHRASED AND NOT TO ACTUAL COUNTING, WHICH IS REFERRED TO DIFFERENTLY, BUT THE POSITION OF THE SECRETARY WITH REGARD TO

THAT ONE POSITION, YOU CANNOT PULL THAT ONE SECTION OF THE STATUTE OUT AND PRETEND IT IS AS TO THAT SECTION. THE ISSUE OF THE MATTER IS, WHICH, OF COURSE, IF A RECOUNT IS DONE MECHANICALLY, YOU CAN ASK FOR, THE CANDIDATE AND NOT A PARTY VOTER, CAN ASK FOR MANUAL RECOUNT. THE MANUAL RECOUNT, YOU HAVE TO GO THROUGH THE ONE PERCENT AND THE THREE PRECINCTS.

DOES THE SECRETARY PLAY ANY ROLE IN DETERMINING WHETHER OR NOT THERE SHOULD BE A MANUAL RECOUNT IN ANY COUNTY?

ABSOLUTELY NOT, SIR.

WHO HAS THE RESPONSIBILITY AND THE AUTHORITY FOR THAT?

THE COUNTY CANVASSING BOARD HAS THE RESPONSIBILITY, IN RESPONSE TO A REQUEST FROM A CANDIDATE OR A POLITICAL PARTY, TO CONDUCT THIS TEST TESS.

ISN'T THE ANSWER TO THIS QUESTION THAT THE SECRETARY OF STATE, WHO HAS NO AUTHORITY OVER THAT, OVERRULING THE AUTHORITY BY THE PROPER BODY THAT HAS THE AUTHORITY TO DO IT?

CONTRARY TO THAT.

IF THE SECRETARY SAYS THAT I AM NOT GOING TO COUNT THE RECOUNT THAT WAS STARTED AT A VERY LATE TIME IN THE PROCESS AND EFFECTIVELY A LARGE COUNTY, WHERE THE RECOUNT COULD NOT BE COMPLETED BEFORE THE SEVEN DAYS WERE UP, ISN'T THAT THE NET EFFECT?

JUSTICE, I DON'T KNOW THAT THE RECOUNT COULDN'T BE DONE WITHIN THAT PERIOD OF TIME AND, OF COURSE, WE HAVE NO TRIAL RECORD, TO KNOW WHETHER THE RECOUNT COULD BE DONE IN THAT TIME?

DON'T WE, ALSO, END UP DISCRIMINATING BETWEEN SMALL COUNTIES AND LARGE COUNTIES, IF WE TAKE DADE COUNTY, FOR INSTANCE, AND OKALOOSA COUNTY, CLEARLY THERE IS GOING TO BE A VAST DIFFERENCE IN THE TIME IT TAKES FOR A LARGE COUNTY TO DO A MANUAL RECOUNT, COMPARED TO A SMALL COUNTY. WOULDN'T YOU AGREE?

JUSTICE, MAY I CONTINUE?

YES.

ALL OF THIS, FLORIDA HAS AN ELECTION CODE THAT UNDERSTANDING THAT THERE IS VOTING, PROVISIONS FOR AUTOMATIC RECOUNTING OF VOTING AND THAT THERE IS MANUAL COUNTING. CONSIDERING THAT IS ALL TO BE A PART OF THE SCHEME, IT HAS TO BE DONE WITHIN SEVEN DAYS.

HOW DO WE KNOW THAT THEY CONSIDERED THIS SPECIFIC ISSUE, WITH REFERENCE TO A RECOUNT THAT IS NOT STARTED, FOR INSTANCE, UNTIL SIX DAYS AFTER THE ELECTION, AND THAT THEY CONTEMPLATED THAT, IN MANDATING THAT EVERYTHING BE IN IN SEVEN DAYS? HOW DO WE KNOW THAT THEY CONSIDERED THAT?

JUSTICE ANSTEAD, I AM SURE THAT THEY PROBABLY DIDN'T CONSIDER THE FACT THAT SOMEONE WOULD COMMENCE A RECOUNTING, WHENEVER THEY FELT LIKE DOING T.

THE SCHEME ALLOWS FOR IT, DOES IT NOT? THE SCHEME ALLOWS FOR A REQUEST FOR A RECOUNT, VERY LATE IN THE PROCESS.

THE SCHEME, THE FACT THAT SOMETHING, IF YOU ARE PERMITTED TO INITIATE SOMETHING AT ANY POINT IN TIME AND IT HAS TO BE TURNED IN AT A CERTAIN TIME, THAT IS THE SAME BASIC RULE THAT I HAD IN HIGH SCHOOL, WITH REGARD TO TERM PAPERS. YOU CAN START IT THE NIGHT BEFORE, IF YOU WANT TO, BUT YOU HAVE TO TURN IT IN WHEN IT IS DUE.

SO IF THEY ARE GIVEN THE RIGHT TO INITIATE A RECOUNT AT THAT TIME, THAT IS AN ELUSORY RIGHT. IT IS NOT CORRECT, IN THE STATUTE, THAT YOU HAVE THAT MUCH TIME, BEFORE THE CERTIFICATION OF THE RESULTS, IN OTHER WORDS, TO MAKE THAT REQUEST?

YOU HAVE THE SEVEN-DAY PERIOD WITHIN WHICH TO HANDLE ALL OF THE COUNTING OF THE VOTES, THE INITIAL COUNTING. IF YOU HAVE AN OUT AUTHI CAN RECOUNT, AND IF -- IF YOU HAVE AN AUTOMATIC RECOUNT, AND IF THERE IS GOING TO BE MANUAL RECOUNT, BUT I THINK ANOTHER IMPORTANT THING TO NOTE IS WE ARE NOT TALKING ABOUT A MANUAL RECOUNT ON A STATEWIDE BASIS. IT IS THREE SELECTED COUNTIES.

LET'S TALK ABOUT THE SEVEN DAYS, TOO, AND ASK FOR YOUR HELP, AND LET'S TALK AND WORK BY WAY AFTER HYPOTHETICAL. ARE YOU SUGGESTING, BY THE LANGUAGE THAT HAS THIS SEVEN-DAY DEADLINE THAT,, IF WE HAD, FOR INSTANCE, IN DADE COUNTY, THAT THE ELECTION OFFICIALS DOWN THERE, AFTER THEY COMPILED THE VOTE AND EVERYTHING AND THEY WERE THE ONLY COUNTY OUTSTANDING, AND THERE WAS GROSS NEGLIGENCE, THEN, THAT THEY ALL WENT OFF ON VACATION TO THE ISLANDS AND JUST LET THE ELECTION RETURNS SET THERE, AND SEVEN DAYS PASSED AND EIGHT DAYS PASSED AND NINE DAYS PASSED AND 11 DAYS AND SO ON, THAT THE SECRETARY OF STATE, BECAUSE OF THAT SEVEN-DAY RULE, THEN, AND THE GROSS NEGLIGENCE OF THE ELECTION OFFICIALS DOWN THERE, WOULD SIMPLY SAY THAT IS IT AND, UNDER THE LANGUAGE OF THE LEGISLATURE, I CANNOT COUNT THE VOTES FROM DADE COUNTY, THE LARGEST COUNTY IN THE STATE OF FLORIDA, IN THE ELECTION RETURNS? IS THAT WHAT THE POSITION OF THE SECRETARY OF STATE IS?

I DON'T BELIEVE SO. OF COURSE THAT IS NOT THE SITUATION WE ARE IN NOW. THERE IS A CASE GROWING IN POINT.

WHAT IS THE POSITION? WHEN WE HAVE A WEEK PAST, PAST THE SEVEN DAYS. WE HAVE NEGLIGENCE ON THE PART OF THE LEGAL OFFICIALS, AND THEY SIMPLY HAVE NOT SENT THE RESULTS UP TO TALLAHASSEE, WHAT IS THE OBLIGATION OF THE SECRETARY OF STATE?

JUDGE, WE DON'T KNOW THAT THERE IS A MATTER OF NEGLIGENCE. THE COURT IS ASSUMING THAT.

NO. I AM ASSUMING IN MY HYPOTHETICAL, TO ASSUME THAT IT IS NEGLIGENCE.

WE KNOW CASE LAW, THAT IF IT IS GROSS NEGLIGENCE OR MARKING UP BALLOTS OR SOMETHING LIKE THAT, THAT THE COURT HAS SPECIFICALLY UPHELD THAT THAT CAN'T BE HELD AGAINST THE VOTERS.

WHAT DOES THE SECRETARY OF STATE DO? A WEEK HAS PASSED, PAST THE SEVEN-DAY DEADLINE, WHAT WOULD THE SECRETARY OF STATE DO?

IF SHE HADN'T NOTICED THAT THE DADE COUNTY RESULTS WBT IN FOR A WEEK -- WEREN'T IN FOR A WEEK, I THINK AS A PRACTICAL MATTER THAT THE SECRETARY OF STATE WOULD BE A LITTLE MORE PROACTIVE. IF IT WAS CLEAR TO THE SECRETARY OF STATE THAT THERE WAS GROSS NEGLIGENCE INVOLVED IN NOT GETTING THEM IN, SHE IS BOUND BY CASE THREW ACCEPT THEM OR, YOUR HONOR, IT WOULD BE RAISED IN A CONTEST, BUT TO GET BACK, RESPECTFULLY, SIR, TO THE SITUATION THAT WE ARE IN HERE, THE SITUATION HERE WAS NOT CAUSED BY THE SECRETARY. THE DIFFICULTY THAT WE HAVE HERE, ALL WE NEED TO DO IS WE NEED TO BE ABLE TO CERTIFY THE ELECTION. ONCE WE CERTIFY, THE CONTEST PERIOD CAN BEGIN. THE

CONDITIONERS ARE TRYING TO CON -- THE PETITIONERS ARE TRYING TO CONDUCT A CONTEST PRIOR TO THE PROCEEDING, NOT FOR LEGAL REASONS BUT FOR POLITICAL REASONS.

SHE JUST SAID WE DON'T KNOW THERE IS GOING TO BE AN ISSUE AS TO THE INTEGRITY OF WHETHER THE RECOUNT WAS DONE, SO HOW CAN THAT START, BEFORE THE MANUAL RECOUNT IS COMPLETED?

BECAUSE, JUSTICE PARIENTE, YOU HAVE TO READ ALL OF THE STATUTES TOGETHER, AND ONE OF THE clearest things, when you look in the statutes, is the mandatory nature of certain actions that have to be taken by the secretary. Not even the petitioners, your honor, could come up with some way of balancing between 166 and 168, and what the court is being asked to do is an extensive amount of legislation. I mean you are going to have to do away with the search-day rule. You are going to have to amend 166. You are going to have to do away with the secretary's discretion and then the court enters the great universe of Chad, when deciding are two corners enough or three corners enough?

I thought you said the seven-day rule did not apply, that the secretary of state has some obligation, if the period of time passes, to contact the county and now inquire into the period of the seven days, and if she determines, for instance that, it is just negligence of the local officials in failing to send the ballots up, that she can ignore the seven-daytime and --

YOUR HONOR, I AM NOT SAYING SPECIFICALLY WHAT THE SECRETARY WOULD DO. ALL I AM SAYING IS, IF IT IS GROSS NEGLIGENCE ON THE PART OF THE ELECTIONS OFFICERS THAT, THE VOTES WOULD BE COUNTED.

BUT THE PERIOD IS NOT ABSOLUTE THEN?

NO. OF COURSE IT IS NOT ABSOLUTE. JUDGE LEWIS RULED THAT THE SECRETARY HAS DISCRETION TO EXERCISE, AND HOW WE MAY INTERPRET 11 OR 112 -- 111 OR 112, AS TO SHALL OR NOT MAY, WE GO FORWARD WITH JUDGE LEWIS.

WHAT IS THE RULING OF JUDGE LEWIS, AFTER LOOKING AT THE RECORD?

JUSTICE, THEY AGREED THAT THE SECRETARY COULD GO FORWARD AND THAT THE "MAY" STANDARD WILL OUTTRUMP THE "SHALL" STANDARD, AND THE PETITIONERS WERE PERFECTLY HAPPY WITH THAT, UNTIL SUCH TIME AS JUDGE LEWIS RULED THAT THE SECRETARY HAD NOT ABUSED HER DISCRETION. MR. CHIEF JUSTICE: JUSTICE SHAW HAS A QUESTION.

IF THE SECRETARY HAD PROVIDED A PROTEST -- IF THERE WAS PROVIDED A PROTEST PROCEDURE, CAN THE SECRETARY OF STATE EXERCISE HER DISCRETION UNDER 112, SO AS TO FRUSTRATE THAT PROCEDURE?

I AM AFRAID I DON'T UNDERSTAND THE JUSTICE'S QUESTION EXACTLY. IF THE QUESTION -- I AM SORRY. I DON'T UNDERSTAND THE QUESTION.

DO YOU AGREE THAT, UNDER 102.112, THAT THE SECRETARY HAS SOME DISCRETION? THAT WOULD BE YOUR POSITION?

I WOULD AGREE, YOUR HONOR, THAT, BASED ON THE RECORD AS IT IS AND THE AGREEMENT OF THE SECRETARY TO BE BOUND BY THAT, SHE HAS THE RIGHT TO EXERCISE DISCRETION AFTER SHE ESTABLISHES STANDARDS.

CAN SHE EXERCISE THAT DISCRETION IN SUCH A FASHION AS TO FRUSTRATE THE SCHEME IN

WHICH A PROTEST CAN BE LODGED?

NO. BECAUSE THE CONTEST IS UNDER 168, YOUR HONOR, NOT UNDER 166.

IT IS NOT A CONTEST. A PROTEST.

A PROTEST. WITH RESPECT TO A RECOUNT?

YES.

YOUR HONOR, ALL THE SECRETARY CAN DO IS SHE HAS THE RIGHT TO BE ABLE TO ESTABLISH CRITERIA TO DETERMINING WHETHER OR NOT A LATE FILING WILL OCCUR. SHE ESTABLISHED THOSE CRITERIA, DRAWN FROM PRECEDENTS OF COURTS. SHE, THEN, APPLIED THE REQUESTS AGAINST THAT AND FOUND THEM TO BE WANTING. AS I SAID BEFORE, YOUR HONOR, THE ENTIRE PROBLEM COULD BE SOLVED, IF THE CERTIFICATION HAD TAKEN PLACE ON TIME BECAUSE THEY HAD COMPLIED WITH THE TIMING. THAT COMPLETELY, OF COURSE, AVOIDS --

JUSTICE QUINCE.

DOESN'T THAT ARGUMENT, REALLY, BLUR THE LINES BETWEEN A PROTEST AND A CONTEST? NOW, UNDER 166, YOU CAN CONTEST RETURNS OR PROTEST RETURNS, WITHIN THE 72-HOUR PERIOD OR THE SEVEN-DAY PERIOD, UNDER 166. ISN'T THAT A COMPLETELY DIFFERENT PROCEDURE FROM 168, WHICH IS THE ELECTION CONTEST? IT SEEMS TO ME THAT YOUR ARGUMENT IS BLURRING THOSE TWO PROCEDURES.

NO. AND I APOLOGIZE, IF IT IS, JUSTICE QUINCE. I THINK THAT IS EXACTLY THE CENTRAL ISSUE HERE. THE PROCEDURE, WITH RESPECT TO CERTIFYING AN ELECTION, IS, AS HAS BEEN SAID BY THE ATTORNEY GENERAL, MOSTLY MINISTERIAL. OKAY. WHAT HAS HAPPENED --

ONCE CERTIFICATION IS DONE, ISN'T THAT WHEN THE CONTEST COMES IN?

YES, MA'AM.

THE PROTEST IS A DIFFERENT MATTER. YOU DON'T HAVE TO CERTIFY, TO HAVE A PROTEST.

WE DO NOT HAVE ANY KIND OF PROCEDURE, UNDER FLORIDA LAW, FOR DEALING WITH A FULL-FLEDGED CONTEST KIND OF ACTION, PRIOR TO CERTIFICATION. THAT IS THE DIFFICULTY WE HAVE HERE. AND THAT IS THE REASON WHY THE COURT IS BEING ASKED TO ENGAGE IN EXTENSIVE STATUTORY REWRITES AND THEN THE ENTIRE ISSUE OF HOW YOU ARE GOING TO MAKE JUDGMENTS WITH RESPECT TO THESE BALLOTS.

MR. KLOCK, LET ME FOLLOW-UP ON JUSTICE QUINCE'S QUESTION. WHY WOULDN'T IT BE, IN THIS UNIQUE CIRCUMSTANCE, A BETTER THING TO DO TO WAIT AND, UNLESS THERE IS A SPECIFIC REASON THAT IS GOING TO PREJUDICE THE FLORIDA CERTIFICATION TO THE ELECTORAL COLLEGE, WAIT AND SEE, TO A POINT IN TIME, WHEN THE MANUAL RECOUNTS ARE COMPLETED. ALLOW THOSE AMEND CERTIFICATIONS TO BE MADE, AND THEN THERE WILL BE A POINT IN TIME, IN WHICH A DETERMINATION CAN BE MADE, AS TO WHETHER THE CONTEST, IN RESPECT TO THOSE, ARE GOING TO JEOPARDIZE FLORIDA'S ELECTORAL VOTE?

MR. CHIEF JUSTICE, WHAT YOU ARE TALKING ABOUT IS MAKING A VALUE JUDGMENT, AS BETWEEN WHETHER OR NOT THE RIGHTS OF 168 TRUMP 166. ON BEHALF OF PEOPLE, THERE IS NO SUGGESTION ANYWHERE, HERE IN THE RECORD, THAT WE HAVE A PROBLEM WITH THE VOTING MACHINES OR THERE WAS ANY FRAUD OR ANYTHING ELSE. WHAT WE ARE TRYING TO DO IS TO DEAL WITH A PROBLEM OF PEOPLE WHO DID NOT FOLLOW INSTRUCTIONS. THE INSTRUCTIONS WERE TO PUT THE STYLUS THROUGH THE HOLE IN THE BALLOT. THEY DID NOT FOLLOW THOSE

INSTRUCTIONS. NOW, BALANCED AGAINST THAT IS THE SUGGESTION THAT THE ENTIRE CONTEST PERIOD SHOULD BE STOOD ON ITS HEAD, AND THAT THE SECRETARY OF STATE LOSES HER ABILITY TO CONDUCT HER CONSTITUTIONAL EXERCISES. THE ATTORNEY GENERAL, FOR INSTANCE, POINTS OUT ALL OF THE STATES THAT HAVE ELABORATE STATUTES TO MAKE JUDGMENTS ON MANUAL RECOUNTS. THAT IS WONDERFUL, ACCEPT THE FLORIDA LEGISLATURE HASN'T DONE THAT.

WE HAVE HAD CASES DEALING WITH THIS ISSUE IN FLORIDA SINCE THE 1800s, AND ALL OF THEM, IN SOME WAY, SHAPE OR FORM, COME ABOUT BECAUSE VOTERS DO NOT FOLLOW THE INSTRUCTIONS, AND IN ALL OF THOSE CASES THAT I HAVE READ, YOU CAN LOOK AT THE BALLOT, EVEN THOUGH IT IS IMPROPERLY MARKED AND EVEN THOUGH THE VOTER DID NOT FOLLOW THE INSTRUCTION, BUT YOU CAN TELL THE INTENT OF THE VOTER FROM THAT BALLOT. IF THAT VOTE HAS TO BE COUNTED.

AND MR. JUSTICE HARDING, I WOULD SUGGEST TO YOU THAT ALL OF THOSE CASES THAT YOU HAVE SEEN HAVE BEEN A VOTING COBB TEST, AND THE DIF-- CONTEST, AND THE DIFFICULTY THAT WE HAVE HERE, AS I WILL SAY AGAIN, THAT THE COURT IS BEING BROUGHT INTO SOMETHING THAT IS NOT REALLY PROBLEM THIS. IS A POLITICAL PROBLEM. IF THE VOTING IS CERTIFIED, EVERYONE CAN THEN PROCEED WITH A CONTEST. THE DIFFICULTY IS THE POLITICAL PROBLEM THAT IS CREATED.

HOW DO YOU PROCEED, MR. KLOCK, THAT THIS MATTER WOULD BE RESOLVED, IF IT IS CHALLENGED, THEN, WE WOULD ORDER A RECOUNT OR SOME COURT WOULD ORDER A RECOUNT?

YOU COULD DO THAT, YES, YOUR HONOR. YOU COULD HAVE A RECORD, FOR INSTANCE.

ISN'T THAT DISCRETION GIVEN TO THE CANVASSING BOARD, UNDER THE STATUTE?

THE CANVASSING BOARD IS FREE -- THE MANUAL RECOUNTS ARE GOING ON RIGHT NOW, AND I BELIEVE IRRESPECTIVE OF WHAT THIS COURT HAS SAID, THAT THE MANUAL RECOUNTS CAN GO ON. THEY MAY WELL BE COUNTED IN A LATER CONTEST. IT DOESN'T MEAN THAT, IF SOMEONE BEGINS A RECOUNT PROCESS, THAT THE REST OF THE STATUTORY SCHEME STANDS STILL AND WAITS FOR THEM TO COME BACK FROM VACATION OR DO WHATEVER THEY WERE DOING, AND THE RECORD SHOWS IN ONE CASE SOMEONE WAS OFF FOR FOUR DAYS, AND MIAMI-DADE HAS HAD A HEARING EVERY COUPLE OF DAYS, OVER THE PAST TWO WEEKS. IT IS NOW WE ARE ALMOST TWO WEEKS BEYOND THE ELECTION.

ISN'T A PART OF THAT, THOUGH, THAT THE SECRETARY OF STATE SAID YOU CANNOT GO FORWARD AND HAVE THIS RECOUNT?

I THINK THE RECORD SHOWS THAT NO ONE PAID ANY ATTENTION TO THE SECRETARY OF STATE, YOUR HONOR. CLEARLY IN PALM BEACH COUNTY IT IS IN THE RECORD, IN THE CIRCUIT COURT, THAT THEY DIDN'T PAY ANY ATTENTION, AND AS FAR AS BROWARD COUNTY IS CONCERNED, I DON'T KNOW PRECISELY WHAT THEY DID OR DIDN'T DO, BUT THE ISSUE, HERE, AGAIN, THIS COMPLETELY AVOIDS THE ISSUE THAT WAS NOT ENDORSED BY THE COURT, ALTHOUGH IT WAS RAISED BY ONE OF THE JUSTICES, IS HOW ABOUT THE FOLKS IN THE OTHER 64 COUNTIES THAT DON'T HAVE THE BENEFIT OF HAVING THEIR BALLOTS FLEXED AND RECOUNTED AND FALL ON THE FLOOR AND ALL OF THE THING THAT IS CAR, WITH -- THAT OCCUR, WITH RESPECT TO THE RECOUNT. MR. CHIEF JUSTICE: MR. KLOCK, YOUR TIME IS UP. I BEG YOUR PARDON. FOR GOVERNOR BUSH, MICHAEL CARVIN.

MAY IT PLEASE THE COURT. AS THE COLLOQUY, TODAY, INDICATES, THERE IS A VERY CLEAR PROCEDURE FOR RESOLVING ALL OF THE QUESTIONS OF THE JUSTICES THAT WERE ASKED, AND THAT IS SET FORTH IN THE STATUTE. YOU SET A FIRM DEADLINE, AND YOU MAKE SURE THAT EVERYBODY GETS THEIR VOTES IN AT THE SAME TIME, AND THERE ARE ANY PROBLEMS IN TERMS

OF VOTER TABULATION OR THE KINDS OF THE QUESTIONS THAT WE HAVE DONE, YOU HAVE GOT TO KEEP TO THAT DEADLINE, SO YOU WILL HAVE TIME TO DO THE ELECTION CONTEST AFTER THAT.

MAY I ASK YOU A QUESTION. DOES THIS ONLY COME UP, AS FAR AS THE INTERPRETATION OF THIS SEVEN-DAY DEADLINE, EVEN THOUGH COUNTIES ARE WANTING TO DO MANUAL RECOUNTS, AS REQUESTED BY THE VOTERS IN THAT COUNTY, BECAUSE THIS IS A PRESIDENTIAL ELECTION? IN OTHER WORDS IS THIS REQUIREMENT OF THE DEADLINE, ON ONE END, GOING BACK TO WHAT JUSTICE WELLS HAS BEEN ASKING, CREATED BAUD OF THE DEADLINE ON THE OTHER END? -- CREATED BECAUSE OF THE DEADLINE ON THE OTHER END?

THIS COMES UP IN ALL. THERE IS A FIRM DEADLINE FOR ALL, STATEWIDE.

WOULDN'T YOU THINK THAT WE WOULD WANT TO, FOR ALL TIME'S SAKE, INTERPRET THIS STATUTE THAT, IF, FOR EXAMPLE, IT IS A LEGISLATIVE RACE AND THE UNSUCCESSFUL CANDIDATE HAS REQUESTED A MANUAL RECOUNT, UNDER THE STATUTE, AND REQUESTED IT ON THE SIXTH DAY, THAT WE WOULD SAY THAT, BECAUSE THAT IS NOT AN EXEXTRAORDINARY CIRCUMSTANCE, IT IS A FORESEEN CIRCUMSTANCE THAT, WE WOULD SAY, WELL, THE SECRETARY HAS THE DISCRETION TO NOT RECOGNIZE THAT MANUAL RECOUNT AND COULD DECLARE THE PERSON, THE OTHER PERSON WINNER? WOULD THAT MAKE SENSE IN ANY OTHER CONTEXT, OTHER THAN THIS PRESIDENTIAL ELECTION?

OH, I THINK YOUR CASE WOULD BE AN EASY HYPOTHETICAL. IF THE LOSING CANDIDATE WAITED SIX DAYS AND GAMED THE SYSTEM, SO THAT THEY BACKED THE CANVASSING BOARD UP SO THAT THEY COULDN'T DO A MANUAL RECOUNT UNTIL THEY REQUESTED IT, THEN FOR THAT REASON ALONE, THE CANVASSING BOARD WOULD --

BUT THE STATUTE ALLOWS UNTIL CERTIFICATION, THE SEVENTH DAY, SO THE STATUTE, IF SOMEBODY WAS EXERCISING THEIR STATUTORY RIGHT WITHIN THE SEVEN DAYS, YOU ARE SAYING THAT THE SECRETARY, ON THE SEVENTH DAY, WOULD SAY TOO BAD, I AM NOT GOING TO RECOGNIZE IT?

BECAUSE IT IS NOT A STATUTORY RIGHT, YOUR HONOR. IT IS AN OPTION THAT THEY PROVIDE TO THE COUNTIES. THE LEGISLATURE HAS MADE NO PREFERENCE FOR MANUAL RECOUNTS AS THE MOST ACCURATE WAY OF DETERMINING A VOTE, WHICH IS WHY THEY MAKE IT ENTIRELY OPTIONAL. THE ONLY RIGHT AND DUTY OF THE STATE OF FLORIDA IS TO HAVE THE ELECTION RETURNS CERTIFIED AFTER SEVEN DAYS. THAT IS A MANDATORY DUTY, AND THEY EXPRESSLY CONTEMPLATED THAT ALL COUNTIES, REGARDLESS OF WHETHER CONDUCTING MANUAL RECOUNTS, WOULD PLAY BY THE SAME RULES AND GET THEIR ELECTION RETURNS IN ON TIME.

BUT THE SAME RULES DON'T APPLY, BECAUSE ONLY CERTAIN COUNTIES USE PUNCH CARDS, WHICH IS, REALLY, WHAT CREATES THE PROBLEMS IN THE THREE POPULOUS COUNTIES TO THE SOUTH. THAT IS NOT THE SAME PROBLEM WITH AN OPTICAL SCANNER. CORRECT?

SO THERE IS NOT UNIFORMITY, EVEN WITHIN THE STATE, AS TO THE TYPE OF PROCEDURES OR THE VOTING PROCEDURES THAT ARE USED IN EACH COUNTY?

WE HAVE COMPLAINED ABOUT THE AD HOC SITUATION IN EACH COUNTY.

YOU SAY YOU HAVE COMPLAINED ABOUT IT. WHERE IS THAT?

IN FEDERAL COURT, AND I AM NOT TRYING TO INTRODUCE THAT HERE.

IS THERE A CONSTITUTIONAL ATTACK ON THIS STATUTE BEING MADE?

WELL, WE DON'T THINK YOU NEED REACH THE QUESTION BUT YES.

IS THAT BECAUSE YOU ARE REQUESTING THE FEDERAL COURT TO REACH IT, AND YOU DON'T THINK THAT THE STATE COURT HAS IT, WITHIN ITS JURISDICTION, TO DECIDE WHETHER A STATUTE IS BEING CONSTITUTIONALLY APPLIED?

OH, NO CLEARLY THE STATE COURTS HAVE THAT POWER. I AM SAYING THERE IS A SIMPLER POINT FOR MAKING THIS CASE THAN GOING ALL THE WAY TO THE CONSTITUTION, WHICH IS STATE LAW MAKES IT QUITE CLEAR FOR THE PETITIONER THAT IS REQUESTING IT, BECAUSE STATE LAW MAKES IT QUITE CLEAR THAT THEY HAVE NO MANDATORY DEADLINE TO REWRITE THE LAW. THEY CREATE A SCHEME TO CREATE A STATUTE THAT SUITS THEIR PERSONAL PROBLEMS OR EXPERIENCES, BUT IN DOING SO, THEY POSE A HYPOTHETICAL THAT CANNOT BE FOUND IN THE STATUTE.

LET ME ADDRESS MY INITIAL CONCERN, NOW STATED BY YOU. TELL ME WHEN FLORIDA'S CERTIFICATION WOULD BE IN JEOPARDY, IF THE CERTIFICATION, IF THE CERTIFICATION IS NOT MADE BY THAT DATE?

WELL, IT IS CLEARLY IN JEOPARDY NOW.

WHY IS THAT?

DECEMBER 12 IS THE CUTOFF DATE.

WHY IS IT IN JEOPARDY NOW?

BECAUSE IF THEY ARE NOT CERTIFIED, THEN THERE IS NO WAY TO COME TO AN ACCURATE STATEWIDE COUNT, AND THEN, AS WE HAVE SEEN OVER THE LAST TEN DAYS, IS AN ENORMOUS UNDERTAKING, SO IF WE CONTINUE TO DELAY THE CERTIFICATION PROCESS, REMEMBER THAT DEADLINE IS NOT THE END OF THE PROCESS FOR FINDING ACCURACY. IT IS THE BEGINNING OF THE PROCESS FOR FINDING ACCURACY.

YOU ARE REFERRING TO THE CONTEST, UNDER 168.

PRECISELY.

HOW CAN THOSE CONTESTS, UNDER THESE CIRCUMSTANCES, BE MADE, YOU BELIEVE THE RECOUNTS ARE -- BE MADE, UNTIL THE RECOUNTS ARE COMPLETED? WHY ISN'T IT SOMEWHAT LIKE A PROFFER, THAT YOU HAVE GOT TO PROFFER THE EVIDENCE, IN THE FORM OF THESE RECOUNTS, SO WE KNOW WHAT IS IN THOSE RECOUNTS, AND WHETHER THERE IS A PROPER BASIS FOR THERE TO BE AN AMENDED CERTAIN FIRTION -- CERTIFICATION?

THERE IS TWO PROBLEMS WITH THAT, YOUR HONOR. ONE IS, IN COURT NOT ONLY ONE SIDE GETS TO MAKE A PROFFER, AND HERE WE ARE TALKING ONLY ABOUT COUNTIES SELECTED BY ONE POLITICAL PARTY, SO AT THE END OF THE DAY, IF WE CONTINUE TO WAIT UNTIL MIAMI-DADE FINISHES ITS RECOUNT AND BROWARD FINALLY CHOOSES THE STANDARDS TO DETERMINING WHICH BALLOTS IT WILL COUNT, WE WILL NOT HAVE ANY BETTER UNDERSTANDING OF HOW MANY VOTES WERE CAST AND FOR WHOM IN THE PRESIDENTIAL ELECTION, BECAUSE WE HAVE ONLY LOOKED AT A SELECTIVE SUBSET OF THE COUNTIES IN THIS STATE. IF YOU WERE DOING A RECOUNT IN A MUNICIPAL PROCEEDING, I DON'T THINK ANYONE WOULD TAKE, SERIOUSLY, THE NOTION THAT, WELL, WE HAVE HAD SOME PROBLEMS WITH OUR MACHINE, SO WHAT WE ARE GOING TO DO IS RECOUNT, IN THREE OF THE 67 PRECINCTS HERE, AND THEN WE WILL KNOW WHO THE WINNER IS. NO. OBVIOUSLY YOU HAVE TO RECOUNT OR APPLY THE SAME STANDARDS, THROUGHOUT ALL 67 PRECINCTS, SO YOU CAN COME TO A JUDGMENT AS TO WHO, INDEED, IS THE WINNER.

WAS IT REQUESTED IN THE OTHER 64 COUNTIES?

NO. NOTWITHSTANDING THEIR DEVOTION TO THE MANUAL RECOUNT AS THE ONLY MEANS OF ASSESSING VOTER INTENT AND COUNTING ALL VOTES, THE DEMOCRATS DID NOT REQUEST ALL 67.

WAS THERE SOMETHING THAT PREVENTED YOUR CLIENT FROM REQUESTING RECOUNTS IN THE OTHER COUNTIES?

YES. THEY BELIEVE THE PROCESS IS INHERENTLY FLAWED AND UNCONSTITUTIONAL, BUT MOREOVER IT DOESN'T MATTER IF THEY REQUESTED IT, BECAUSE --

ARE YOU ASKING US TO RESOLVE THAT ISSUE? SO EVEN IF WE SAID THAT EVERYONE HAS A CHANCE FOR A WINDOW PERIOD, TO REQUEST A RECOUNT, IN WHATEVER OTHER COUNTIES ARE IN QUESTION, ARE YOU SAYING THAT IT IS THE POSITION OF YOUR REPRESENTING GOVERNOR BUSH?

YES, I AM.

THE POSITION OF GOVERNOR BUSH THAT HE WOULD NOT GO ALONG WITH WANTING RECOUNTS IN THE OTHER COUNTIES, BECAUSE THE PROCESS IS FLAWED?

NO, YOUR HONOR. I THINK WE SHOULD FOLLOW THE PROCESS THAT IS SET OUT IN THE STATUTE.

BUT I AM ASKING YOU THAT QUESTION. IS THAT YOU ARE SAYING THAT RECOUNTS WEREN'T REQUESTED, BECAUSE THERE WAS A BELIEF THAT THE PROCESS WAS FLAWED.

RIGHT.

WHAT PART OF THE PROCESS WAS FLAWED?

WELL, AS HAS BEEN INDICATED, WE THINK THE PROCESS IS ENTIRELY SUBJECTIVE, SUBJECT TO MISCHIEF, AND MOST IMPORTANT --

THE MANUAL RECOUNT PROCESS?

THE PROCESS, FOR EXAMPLE, THAT WE WERE DISCUSSING IN BROWARD COUNTY TODAY.

BUT IS IT THE MANUAL RECOUNT PROS THESE IS INHERENT INHERENTLY FLAWED?

-- RECOUNT PROCESS THAT IS INHERENTLY INFLUENCED?

YES.

AND IS THAT THE EXACT SAME PROCESS THAT HAS BEEN REPRESENTED TO US, AS THE STATUTES REVEAL IN TEXAS LAW, FOR THIS EXACT PROS TOES TAKE PLACE, WHERE THERE IS MANUAL RECOUNTS, AND THAT THOSE ARE PREFERRED OVER THE MACHINERY COUNT -- THE MACHINE RECOUNT?

I DON'T KNOW WHAT THE PROCESS IS IN TEXAS. IN FLORIDA, THOUGH, I KNOW THERE IS NO RECOUNT OPPORTUNITY FOR MANUAL OVER MACHINE RECOUNTS.

BUT IF THAT IS THE CASE, THEN THE STATUTE -- THE LEGISLATURE SHOULD DELETE THAT FROM THE STATUTE.

NO. OBVIOUSLY THEY COEXIST QUITE COMFORTABLY. IT SAYS THAT YOU HAVE GOT TO GET YOUR RETURNS IN IN SEVEN DAYS. THAT IS THE MANUAL PART OF THE STATUTE. YOU HAVE AN OPTION TO DO AND MANUAL RECOUNT OR TWO OTHERS, IF YOU FIND THAT IS A PROBLEM, OR DO KNOW RECOUNT AT ALL.

BUT YOU ARE SAYING THERE WOULD BE NO OBJECTION, IF THE MANUAL RECOUNT WAS DONE IN SEVEN DAYS?

I WANT TO MAKE THE POINT TO THE PETITIONER'S POSITION MUCH THE SECRETARY DID NOT EXPRESS ANY PREFERENCE FOR MACHINE RECOUNTS OVER MANUAL RECOUNTS. SHE EXPRESSED A PROCESS FOR TIMELY RETURNS OVER THOSE THAT ARE TWO OR THREE WEEKS LATE, WHENEVER THEY WILL COME IN. THERE ARE MANUAL RECOUNTS IN THE CERTIFIED NUMBERS THAT SHE WILL CERTIFY, WHEN AND IF THIS INJUNCTION IS LIFTED. THERE IS NO PREFERENCE, BECAUSE THE SECRETARY, LIKE THE LEGISLATURE, IS AGNOSTIC AS TO WHETHER OR NOT THEY USED A MACHINE RECOUNT OR MANUAL RECOUNT. THEY MADE NO JUDGMENT AS TO WHICH ONE WAS MORE ACCURATE, WHICH IS, REALLY, THE BASIC FLAW IN PETITIONER'S ARGUMENT. THEY WANT THIS COURT, ON THE BASIS OF NO EVIDENCE, TO ENTER A JUDICIAL FIAT THAT THE ONLY WAY TO DETERMINE VOTERS' INTENT IS THROUGH MANUAL RECOUNTS, BUT WE DO KNOW WHAT THE VOTERS' INTENT IS, AT LEAST PRUMENT I FEEL, BECAUSE WE HAVE CERTIFIED RETURNS FROM -- PRESUMPTIVELY, BECAUSE WE HAVE CERTIFIED RETURNS FROM 67 COUNT ITS. THOSE VOTES -- COUNTIES. THOSE VOTES HAVE BEEN CALCULATED AND TABULATED IN PRECISELY THE WAY THAT EVERY ELECTION VOTE HAS BEEN COUNTED, AND WE HAVE NO FLAW.

WHAT IS THE OPTION AT THE MANUAL RECOUNT OF THE CANVASSING BOARD?

I ASSUME BECAUSE MAYBE SOME OF THE MANUAL RECOUNTS, THE LEGISLATIVE INTENT WAS THAT IT WOULD BE PREFERABLE. THEY SAID, LOOK, IF YOU WANT TO DO IT THIS WAY, GO AHEAD AND DO IT, BUT IF THAT IS YOUR PREFERRED WAY, AND THE FIRST IS IF YOU ARE GOING TO DO IT, DO IT QUICK, AND IF YOU HAVE PROBLEMS TO DO IT QUICK, YOU NEED TO ASSIGN ENOUGH PEOPLE TO GET THE JOB DONE. WE UNDERSTAND THAT LARGER COUNTIES ARE GOING TO HAVE MORE VOTES TO COUNT, BUT WE, ALSO, UNDERSTAND THAT LARGER COUNTIES HAVE MORE MONEY AND RESOURCES AND STAFF TO DO IT.

SO YOUR ANSWER IS, IN A LARGE COUNTY, YOUR ANSWER WOULD BE NO, IN A LARGE COUNTY, BECAUSE IT CAN'T BE DONE, EFFECTIVELY, IF YOU ARE ASKED, WOULD YOU ANSWER THAT QUESTION, EFFECTIVELY IF YOU ARE ASKED, ON THE SIXTH DAY, THE CANVASSING BOARD, THE ANSWER HAS TO BE NO, BECAUSE THE LARGE COUNTY, IT CAN'T BE DONE?

I WOULD SAY WHO IS THAT UNFAIR TO? THE CANDIDATE THAT HAS WAITED AND WAITED AND WAITED, BEFORE HE EVEN ASKS THIS PROCESS BEGIN? SURELY IF HE THINKS THE MANUAL RECOUNT WILL AFFECT THE OUTCOME OF THE ELECTION, IT IS UTTERLY IMPOSSIBLE THAT HE WOULD WAIT FOR THE RECOUNT NOT TO BE ABLE TO BE DONE BEFORE HE EVEN MAKES THE REQUEST, SO I DON'T THINK THAT IS A GLITCH IN THE STATUTORY SCHEME.

HAVE YOU RESEARCHED THE STATUTORY SCHEMES IN OTHER STATES, TO COMPARE THEM TO FLORIDA'S?

I AM NOT AWARE WHETHER THEY ARE MANDATORY OR NOT.

I AM JUST ASKING WHETHER YOU HAVE RESEARCHED OTHER STATES, TO SEE IF WHETHER THEY HAVE COMPARABLE STATUTORY SCHEMES. HAVE YOU?

NO, I HAVEN'T.

YOU HAVEN'T RESEARCHED. IS THAT WHAT YOUR ANSWER IS?

NO, WE HAVEN'T.

DO I UNDERSTAND YOUR PREVIOUS ANSWER TO BE THAT YOU WOULD NOT BE INTERESTED IN OPENING UP THIS WINDOW OF OPPORTUNITY, UNDER ANY CIRCUMSTANCES, TO -- SINCE YOU BELIEVE THAT THERE IS -- THE SYSTEM IS FLAWED.

YOUR HONOR --

WAS THAT YOUR ANSWER?

MY ANSWER IS THAT ANYTHING WHICH DEPARTS FROM THE RULES THAT WERE SET BEFORE NOVEMBER 7, BEFORE THE ELECTION, BY THE FLORIDA LEGISLATURE, WOULD BE A GROSS ABUSE OF DISCRETION AND I AM PERMISSIBLE, AND THAT IS -- AND IMPERMISSIBLE, AND THAT IS WHY WE HAVE DEADLINES, AND THAT IS WHY WE HAVE UNIFORM RULES, BECAUSE WE WANT ELECTION CONTESTS TO BE DECIDED, NOT IN THIS FEVERED PARTISAN ENVIRONMENT, WHERE EVERYONE KNOWS THAT THE WAY THEY PROCEED IN COUNTING BALLOTS OR WHETHER THEY USE A TWO-CORNER RULE VERSUS A DIMP HE WOULD BALLOT, IT MAY WELL AFFECT THE OUTCOME OF THE ELECTION, BECAUSE THAT INTRODUCES SUBJECTIVITY AND PARTISANSHIP INTO IT, TAN THAT IS THE REASON WHY IT IS VERY IMPORTANT THAT WE FOLLOW THE RULES SET FORTH BY THE STATUTE, THAT WERE WRITTEN BY THE LEGISLATURE LONG AG --. MR. CHIEF JUSTICE: THE RULES ARE THAT IT BE OPEN AND THAT THERE BE PEOPLE THERE FROM BOTH PARTIES AND THAT THERE BE PEOPLE THERE TO OBSERVE WHAT HAPPENS, AND THAT IT IS AN OPEN AND FAIR SYSTEM, SUBJECT TO DIFFERING PEOPLE'S OPINIONS, BUT THAT IS NOT CLOSED?

YES, AND, OF COURSE, IF THAT IS THE PREFERRED METHODOLOGY, AT THE END OF THE DAY, IF YOU GRANT THE RELIEF THE PETITIONERS SEEK, ONLY THREE P COUNTIES OR FOUR COUNTIES WILL HAVE GONE THROUGH THAT OPEN AND FAIR PROCESS. 64 COUNTIES WILL NOT HAVE, AND IF THE PETITIONERS ARE CORRECT THAT THE MACHINE IS NOT RELIABLE OR DISPROPORTIONATELY RELIABLE, AND IF FOR SOME REASON THEY ARE REJECTING THE BALLOTS WITH GORE ON THEM RATHER THAN THE BALLOTS WITH BUSH ON THEM, THOSE PEOPLE WILL BE DISENCHARGIZED. BUT MY POINT IS, AS WE WAIT FOR THE DADE AND BROWARD COUNTY COUNTIES RETURNS TO COME IN, THERE WILL BE NO CLEARER POSITION TO KNOW WHO THE TRUE WINNER IS IN FLORIDA THAN WE ARE TODAY, AND THAT IS EXACTLY WHY THE LEGISLATURE SAID, LOOK, HERE IS WHAT YOU DO. TAKE ALL OF THE RETURNS IN, PURSUANT TO A METHODOLOGY THAT WE HAVE USED FOR DECADES AND CERTIFY THOSE RESULTS. IF THE PETITIONERS HAVE THE KINDS OF PROOF THAT THEY ASSERT THAT THEY HAVE IN THEIR BRIEF, THEN IT SHOULD BE A FAIRLY SIMPLE MATTER TO SHOW THAT LEGAL VOTES WERE ILLEGALLY REJECTED BY THE MACHINES AND IT COULD AFFECT THE OUTCOME OF THE ELECTION.

SO YOU HAVE NO OBJECTION, THEN, FOR THE MANUAL RECOUNTS TO BE GOING ON WHILE, AT THE SAME TIME, A CONTEST IS FILED?

I HAVE NO OBJECTION, BUT I WILL POINT OUT THAT THE LAW DOESN'T CONTEMPLATE SUPERFLUOUS ACTS. NOW, OBVIOUSLY, ONCE --

YOU SEEM TO BE SAYING THAT, ON ONE SIDE, THAT YOU DON'T NEED TO GO THROUGH THIS PROCESS, AND ON THE OTHER HAND, YOU ARE COMING BACK IN AND SUGGESTING, WELL, IT WOULD BE IMPROPER TO GO THROUGH THE RECOUNTS, AND THEN YOU ARE SAYING THAT, NO, YOU DON'T HAVE TO GO THROUGH RECOUNTS, BECAUSE THAT IS PART OF THE CONTEST PROCESS. I MEAN, AT SOME POINT WE HAVE TO UNDERSTAND DH IS IT-CHO IS IT? IS IT A PART OF THE CONTEST? IS IT TO STOP? WHICH IS IT?

YES, AND I WOULD GO BACK TO THE LEGISLATIVE SCHEME, AND IF I HIM BEING CONFUSING ON THIS, THEN I WILL GO BACK AND RECERTIFY. THE SECRETARY DOESN'T HAVE THE OPPORTUNITY

TO CERTIFY UP-FRONT BUT HAS THE OPPORTUNITY TO GIVE A MANUAL RECOUNT, SO LONG AS THEY DO IT IN A TIMELY MATTER.

WHAT HAPPENS IF IT DOESN'T STOP IN SEVEN DAYS?

WHAT WE HAVE HERE IS THE RETURNS ON FILE, AND IF WE CAN'T FINISH THAT JOB, THEN THOSE ARE THE RETURNS THAT DECLARE THE WINNER.

WHAT DO THEY DO WITH THE RECOUNT? DO THEY MAKE IT STOP?

I THINK THAT WOULD MAKE SENSE, BUT I DON'T THINK THE LEGISLATURE EVER CONTEMPLATED THAT SITUATION, BECAUSE I DON'T THINK THE LEGISLATURE EVER CONTEMPLATED PEOPLE CONTINUING TO COUNT, PAST THE TIME THAT THE VOTES WERE TALLIED.

IF IF THEY CONTINUE TO COUNT, THEN THAT WOULD BE PAST THE PERIOD OF TIME OF THE CONTEST.

YES. EXACTLY.

SO IF IT CANNOT AND IT STOPS, HOW CAN THAT BE PART AFTER CONTEST? HOW CAN IT STAND?

NO. I AM SORRY. I THINK YOUR PROOF OF THE 168, AGAIN, WOULD NOT BE ON THESE CHADS AND ALL OF. THAT I THINK IF YOU POINT OUT, WHICH THEY CLAIM THAT THEY CAN DO, THAT THE MACHINES HAVE IMPROPERLY COUNTED --

BUT YOU WOULDN'T HAVE THE RECOUNT TO PROVE THAT, CORRECT?

WELL, OBVIOUSLY, IF THE MARGIN OF THE ERROR OF THE MACHINES IS SO BAD THAT THEY CAN'T ACCURATELY PREDICT THE WINNER, THEN YOU WOULD BE ABLE TO SHOW, UNDER THE 168 PROCEDURE THAT, THE MARGIN OF ERROR IS SUCH THAT IT COULDN'T AFFECT THE OUTCOME OF THE ELECTION.

BUT YOU WOULD THOUGHT HAVE THE RE-- YOU WOULD NOT HAVE THE RECOUNT, CORRECT?

NO. I DON'T THINK THERE WOULD BE ANY PROBLEM IN PRO DECEMBER DOESING, JUST -- IN PRODUCING, JUST SO I AM QUITE CLEAR, MR. JUSTICE, IS THAT YOU WOULDN'T HAVE A PROBLEM PRODUCING THAT KIND OF A PROCEDURE. WE ARE ALMOST THROUGH, IN BROWARD AND THESE OTHER PLACES, AND INSTEAD OF HAVING EVERY COURT IN FLORIDA RESOLVING, ON AN AD HOC BASIS, THE KINDS OF BALLOTS THAT ARE VALID AND NOT VALID, YOU WOULD BE CENTRALIZING THAT IN ONE COURT IN LEON COUNTY, SO YOU WOULD BRING SOME ORDERLINESS TO THE PROCESS, AND THEY WOULD BE ABLE TO RESOLVE THAT EVIDENTIARY QUESTION. ONE WAY OR ANOTHER, THE COURT IS GOING TO HAVE TO RESOLVE IT.

LET ME ASK YOU REALLY SIMPLY, ON A MACHINE-COUNTED BALLOT, WHERE SOMEONE HAS GONE TO THE POLLS, AND THEY HAVE PUNCHED THE HOLE PROPERLY, BUT FOR WHATEVER REASON, THE CHAD DIDN'T FALL OUT, ARE YOU SAYING, UNDER YOUR ANALYSIS OF THIS, THAT, AND EVEN IF THIS HAPPENED TO HALF OF THE BALLOTS IN THE COUNTY, THAT THERE IS NOTHING THAT CAN BE DONE?

NO. OBVIOUSLY IF THERE WAS A MACHINE MALFUNCTION --

NO. I AM NOT SAYING THERE IS A MACHINE MALFUNCTION. I AM SIMPLY SAYING THAT THE PERSON PUNCHED THE HOLE, WHATEVER HOLE THEY WANTED TO PUNCH, BUT FOR WHATEVER REASON, THE CHAD DID NOT FALL OUT, WHAT WOULD WE DO WITH ALL OF THOSE BALLOTS?

I THINK WE WOULD HAVE TO KNOW WHETHER OR NOT THE BALLOT, THE HOLE DIDN'T FALL OUT BECAUSE THE PERSON PUNCHED AND THE MACHINE MALFUNCTIONED AND IT DIDN'T GO OUT, OR WHETHER THE PERSON INTENDED TO PUNCH WHERE THE HOLE WAS, THAN IS --

IT IS NOT A MACHINE MALFUNCTION, IS IT, WHEN YOU PUNCH THE BALLOT DOWN?

MY POINT, YOUR HONOR, IS YOU DON'T HAVE THE VOTER IN FRONT OF YOU. YOU HAVE THE BALLOT IN FRONT OF YOU. AND WHAT NEEDS TO BE DONE IS LOOK AT THE BALLOT, PURSUANT TO SOME SUBJECTIVE CRITERIA AND DETERMINE WHETHER OR NOT THE PUNCH IS SUFFICIENTLY STRONG SHOWING THAT THE VOTER INTENDED TO DO THAT, TO FIGURE OUT WHETHER OR NOT THEY INTENDED IT, BUT AS WE KNOW, AND AS THE COLLOQUY BEFORE INDICATES, THAT IS A STANDARD LESS AND SUBJECTIVE INQUIRE, WHICH -- INQUIRY, WHICH THERE ARE NO FLORIDA RULES ON, AND THAT IS WHY THEY ARE ASKING YOU FOR SOME GUIDANCE. MY POINT IS HOW CAN THIS COURT, AFTER THE ELECTION HAS BEEN HELD, START DECIDING, RESETTING THE STATUTORY DEADLINES, REANALYZING THE STATUTORY TERMS FOR RESOLVING EMPIRICAL QUESTIONS OF THE SORT THAT YOU ARE DISCUSSING, AND REDOING EVERYTHING THAT REFLECTS A CONSIDERED JUDGMENT THAT IS ALREADY IN THE ELECTION CODE?

BUT THAT, STILL, SOUNDS LIKE YOU ARE COMING BACK TO ALL OF THESE BALLOTS WOULD JUST BE NOT COUNTED. ALL OF THOSE VOTERS WOULD BE DISENFRANCHISED.

NO. I WANT TO MAKE IT QUITE CLEAR. IF THEY DID A TIMELY MANUAL RECOUNT, ALL OF THOSE BALLOTS WOULD BE INCLUDED IN. NOW, LET'S ASSUME THAT THEY WOULD NOT. LET'S ASSUME THAT THEY WERE NOT. THEN THEY WOULD BE IN PRECISELY THE SAME POSITION AS ALL OF THE OTHER VOTERS IN FLORIDA, BUT I DON'T THINK THE PEOPLE IN THOSE 63 COUNTIES WERE DISENFRANCHISED, BECAUSE THE LEGISLATURE DID NOT BELIEVE THAT MANUAL RECOUNTS WERE THE ONLY PROPER WAY OF DISCERNING THE VOTERS' INTENT, AND FOR THE COURT TO DISAGREE WITH THAT WOULD REQUIRE THIS COURT TO SUBSTITUTE ITS --

IN WHAT OTHER WAY WOULD YOU DETERMINE THE VOTERS' INTENT, IF IT IS NOT PICKED UP BY THE MACHINE AND YOU DON'T DO IT MANUALLY, HOW DO YOU DETERMINE?

THE QUESTION IS ACCURATELY ASSESSING THE NUMBER OF VOTES, AND YOU ONLY GET TO THE QUESTION OF THE VOTERS' INTENT, EITHER IN A CONTEST ELECTION OR IN THE PROTEST ELECTION, UNDER 166, AND I WOULD THINK YOU WOULD DO IT, PRESUMABLY, IN THE SAME WAY, IN BOTH CONTESTS. MY ONLY POINT IS THERE ARE NO STANDARDS ESTABLISHED BY FEDERAL LAW, WHICH IS WHY WE HAVE AD HOC SWITCHING BACK AND FORTH, AND I WOULD URGE THAT THE COURT NOT, AFTER THE ELECTION HAS BEEN HELD, CHANGE THE RULES BY WHICH THE ELECTION SHOULD BE CONDUCTED.

MR. CARVIN, I THINK YOU SHOULD LET MR. RICHARDS HAVE HIS TIME, IF HE IS GOING TO USE IT.

IF I MAY ONE FINAL POINT. HE, ALSO, REPRESENTS MR. BUSH, AND I JUST DID WANT TO BRING THE COURT'S ATTENTION, VERY QUICKLY, IF I COULD, TO 3 US C-SECTION 7, MAKES IT CLEAR THAT THE FEDERAL LAW WILL NOT ALLOW THE STATE OF FLORIDA TO CHANGE THE RULES OF THE ELECTION, AFTER THE ELECTION HAS TAKEN PLACE, TO AVOID PRECISELY THE EVIL I HAVE BEEN DISCUSSING, WHICH IS THAT THERE WILL BE AD HOC DECISION-MAKING THAT COULD BE INFLUENCED BY SUBJECTIVE OR PARTISAN CONCERNS. THANK YOU VERY MUCH. MR. CHIEF JUSTICE: DOES GOVERNOR BUSH HAVE FIVE MORE MINUTES FOR MR. RICHARD? THANK YOU.

MAY IT PLEASE THE COURT. WHEN ALL IS SAID AND DONE, WHEN THE QUESTIONS POSED BY THIS COURT HAVE BEEN ASKED AND ANSWERED, WE COME DOWN TO A SINGLE, FINAL ISSUE, WHICH IS THIS. WHAT THE APPELLANTS ARE ASKING THIS COURT TO DO AND, IN FACT, WHAT THE COURT MUST DO, IN ORDER TO ARRIVE AT THE CONCLUSION THAT THEY SEEK, IS READ A STATUTE THAT SAYS THAT RETURNS MUST BE FILED BY A DATE AND TIME CERTAIN, AS THOUGH IT SAID MAY BE

FILED, TO READ A STATUTE THAT SAYS THAT THE SECRETARY OF STATE MAY ACCEPT LATE-FILED RETURNS, AS THOUGH IT SAYS MUST ACCEPT LATE-FILED RETURNS, TO DISREGARD THE STATUTE THAT SAYS THAT THE SECRETARY OF STATE'S OPINION AS TO ELECTION MATTERS IS BINDING UPON ALL THOSE OFFICERS AND AGENTS WITHIN THE ELECTIONS SYSTEM, AND TO DISREGARD THE WELL ESTABLISHED AND LONG-STANDING DOCTRINES REGARDING CLEARLY ERRONEOUS STANDARD AND IMPLIED REPEAL.

WOULD YOU ADDRESS THE QUESTION THAT WAS POSED BEFORE, THAT, IF WE STOP, OR IF YOU HAVE THE SEVEN-DAY CUTOFF, DO REKOUNTSZ STOP AT THAT POINT, OR DO RECOUNTS CONTINUE, TO BE USED AS PART OF THE CONTEST?

WELL, I THINK THE RECOUNTS MUST STOP, IF THE SEVEN-DAY CUTOFF OCCURS, UNLESS THE SECRETARY OF STATE, IN THE EXERCISE OF THE DISCRETION THAT THE FLORIDA LEGISLATURE HAS GIVEN HER, DETERMINES THAT THERE IS RATIONAL REASON FOR THEM TO CONTINUE. IT IS THE JOB OF 9 SECRETARY OF STATE. IT -- THE JOB OF THE SECRETARY OF STATE. IT HAS BEEN REPOSED IN HER BY THE LEGISLATURE AND TWO CONSTITUTION, THE U.S. CONSTITUTION AND THE FLORIDA CONSTITUTION, IN USUALLY EXPLICIT LANGUAGE, HAVE DELEGATED THAT DECISION, NOT TO THE STATE OF FLORIDA, NOT TO THE COURTS OF THE STATE OF FLORIDA, BUT TO THE LEGISLATURE OF THE STATE OF FLORIDA, AND THE LEGISLATURE OF THE STATE OF FLORIDA HAS REPOSED THAT AUTHORITY IN THE SECRETARY OF STATE. NOW, IN ORDER FOR US TO DO ANYTHING ELSE, THIS COURT WOULD HAVE TO DISREGARD THE MOST FUNDAMENTAL PRIBS POLLS -- PRINCIPLES OF SEPARATION OF POWERS AND DO WHAT THIS APPELLANT, THESE APPELLANTS ARE ASKING, TO STEP INTO THE SHOES OF BOTH THE LEGISLATIVE AND THE HE EXECUTIVE BRANCHES, TO RE-- AND THE EXECUTIVE BRANCHES, TO REWRITE THE STATUTES, AND TO BEGIN THE PROCESS, WHICH I SUGGEST TO THIS COURT IS NEVER-ENDING, OF SITTING AS A DETERMINATION OR OF -- SITTING AS A DETERMINOR OF THE ULTIMATE ASH TORE OF THE MINUTIA OF FACTS THAT GO INTO THE ELECTIONS PROCESS. MR. CHIEF JUSTICE: JUSTICE QUINCE.

YES. WOULD YOU AGREE THAT THE PARTIES, THE PARTY, THE POLITICAL PARTY AND THE CANDIDATES, HAVE A RIGHT TO REQUEST A MANUAL RECOUNT. CORRECT?

THEY HAVE A RIGHT TO REQUEST IT, ALTHOUGH, INTERESTINGLY, THEIR REQUEST HAS NO MEANING, UNDER THE STATUTES, AND IT IS ENTIRELY WITHIN THE ARBITRARY DISCRETION OF THE CANVASSING BOARD.

ALL RIGHT. ASSUME THAT THE CANVASSING BOARD SAYS, YES, WE WILL DO THIS, HOW DO YOU SQUARE THAT STATUTE WITH THE SEVEN DAYS? IF, IN FACT, SUPPOSE IT IS ASKED THE VERY DAY AFTER THE ELECTION, YET, FOR WHATEVER REASON, IT CANNOT BE DONE, COMPLETED, BY THE SEVENTH DAY, HOW DO YOU READ THESE TWO STATUTES TOGETHER? HOW DO YOU MAKE SENSE OF IT?

SOMEBODY, WHATEVER THE DATE MAY BE, WHATEVER IT MAY BE, IT IS GOING TO BE A DATE, IT IS TO THE LEGISLATURE TO DECIDE WHAT THAT DATE IS, AND IF SOMEBODY FAILS TO REACH IT, SOME AGENCY OF THE STATE OF FLORIDA MUST DECIDE WHETHER OR NOT THERE WAS A RAGS ALONG, ACCEPTABLE -- A RATIONAL, ACCEPTABLE REASON FOR FAILING TO DO SO. THE TWO CONSTITUTIONS HAVE GIVEN THAT POWTER TO DECREE THAT THE AGENCY SHALL DO IT IS THE SECRETARY OF STATE NOT THE COURTS.

AND WHAT ARE THE GUIDELINES FOR THE EXERCISE OF WHAT YOU SEE AS THAT DISCRETION?

WELL, THE LEGISLATURE HAS ESTABLISHED NO GUIDELINES. THE GUIDELINE THAT THIS COURT HAS ESTABLISHED, AS LONG AS INSTITUTIONAL MEMORY EXISTS, IS WHETHER OR NOT THE EXERCISE BY THAT STATE AGENT IS CLEARLY ERRONEOUS, AND I SUGGEST TO THIS COURT THAT THE APPELLANTS HAVE GIVEN THIS COURT NO BASIS IN THIS CASE, FOR FINDING THAT THE SECRETARY OF STATE'S DECISION WAS CLEARLY ERRONEOUS. THAT IS THE ISSUE. AND WHETHER

OR NOT HISTORY ULTIMATELY LOOKS KINDLY UPON WHAT WE DO HERE, I BELIEVE, WILL DEPEND UPON WHETHER WE HAVE ABANDONED THOSE PRINCIPLES OF LAW AND STATUTORY CONSTRUCTION AND SEPARATION OF POWERS THAT WE HAVE ADHERED TO FOR SO LONG.

DOES THE STATUTORY SCHEME CONTEMPLATE THAT THERE BE INITIAL RETURNS FIRST, FILED WITHIN A CERTAIN PERIOD OF TIME?

WELL, THE STATUTORY SCHEME CONTEMPLATES THAT THERE WILL BE ONLY TWO THINGS. ONE SET OF RETURNS FILED SEVEN DAYS, BY FIVE O'CLOCK, SEVEN DAYS AFTER THE ELECTION, AND A SECOND SET OF RETURNS, MANDATED ONLY BECAUSE THE FEDERAL LAW TAKES PRECEDENCE OVER THE STATES AND BECAUSE -- ONLY TO THE EXTENT THAT THERE IS A CONFLICT, THE STATE MUST, THEREFORE, COMPLY WITH IT. THE SUGGESTION BY THE APPELLANTS --

BUT THE SECRETARY OF STATE CANNOT CERTIFY OFFICIAL RESULTS, UNTIL SHE RECEIVES THE ABSENTEE BALLOTS, AND THE OFFICIAL RESULTS, ALSO, INCLUDE MANUALLY-COUNTED BALLOTS. DON'T WE, ALSO, HAVE TO LOOK AT THOSE PORTIONS OF THE STATUTE AND READ THEM, TO COME UP WITH A LOGICAL HOLE IN THIS CASE?

JUSTICE PARIENTE, I WOULD EXPRESSLY SAY THAT IS NOT THE STATUTORY SCHEME THAT THE LEGISLATURE HAS GIVEN US FORM THE SUGGESTION BY THE APPELLANT THAT THERE CAN BE CONTINUES CERTIFICATIONS AND SUPPLEMENTAL CERTIFICATIONS IS NOT WHAT THE STATUTE SAYS F YOU READ THE STATUTE, IT SAYS THERE IS ONE CERTIFICATION MANDATED BY 5:00 P.M., SEVEN DAYS AFTER THE ELECTION, AND THAT IS THE ONLY ONE. THE ONLY REASON THERE IS A SECOND ONE FOR OVERSEAS, ABSENTEE BALLOTS, IS BECAUSE THE FEDERAL CONGRESS HAS STEPPED IN, AS THEY HAVE A RIGHT TO DO, AND HAS SAID THAT THE STATES MUST ALLOW THAT, BUT ONLY TO THAT EXTENT. MR. CHIEF JUSTICE: MR. RICHARD, YOUR TIME IS UP. THANK YOU VERY MUCH. AND ON BEHALF OF MR. BUTLER, MR. MARDENBOROUGH.

MR. CHIEF JUSTICE. MAY IT PLEASE THE COURT. YOUR HONORS, I AM HERE REPRESENTING A VOTER. AND I WOULD LIKE TO SPEND THE NEXT FEW MINUTES, TALKING ABOUT WHAT THIS ENTIRE PROCESS HAS, REALLY, MEANT, NOT FROM THE VOTERS IN SOUTH FLORIDA'S PERSPECTIVE BUT WHAT IT, REALLY, MEANS TO THE VOTERS IN THE OTHER 63 COUNTIES IN THE STATE OF FLORIDA, AND THE FIRST THING THAT I WOULD LIKE TO CLEAR UP IS, JUSTICE PARIENTE, YOU ASKED A QUESTION, BEFORE, THAT YOU SAID SOMETHING LIKE COULD THE VOTERS HAVE ASKED FOR A RECOUNT, AND THEY COULDN'T. THERE IS NO RIGHT, UNDER FLORIDA STATUTE, THAT WOULD ALLOW THE VOTERS TO EVER ASK FOR A RECOUNT, UNDER THESE CIRCUMSTANCES. NOW, UNFORTUNATELY, WE SPENT THE LAST HOUR AND-A-HALF TO TWO HOURS AND CERTAINLY THE LAST FEW WEEKS, LISTENING TO EVERYBODY TRUMPET THE RIGHTS OF THE VOTERS, BUT THE RIGHTS OF THE VOTERS AREN'T WHAT THIS IS ABOUT. THIS IS ABOUT THE CRAFTY USE OF A STATUTORY SCHEME, IN AN ATTEMPT TO SKEW ELECTION RESULTS, AND THAT IS JUST NOT APPROPRIATE. THE LEGISLATURE SET UP STATUTORY SCHEME THAT PUTS TWO DIFFERENT LEVELS OF CHALLENGES TO ELECTION RETURNS. THAT HAS BEEN TALKED ABOUT, NOW, FOR A WHILE. THE FIRST PART IS THE PROTEST PERIOD. THE PROTEST PERIOD IS A SEPARATE AND DISTINCT THING FROM THE CONTEST.

THE PROTEST CAN BE ASKED FOR BY ANY ELECTOR, QUALIFIED TO VOTE IN THE ELECTION?

THAT IS ABSOLUTELY TRUE, BUT THAT IS NOT TRUE, WHEN IT COMES DOWN TO THE MANUAL RECOUNT PROVISION. IF YOU LOOK AT SUBSECTION 4 OF SECTION 102.166, THAT PROVIDES ONLY THAT A CANDIDATE, A POLITICAL -- IN FACT, WHEN IT IS A PERSON BEING VOTED FOR, IT IS JUST A CANDIDATE OR A POLITICAL PARTY THAT CAN ASK FOR A MANUAL RECOUNT. A VOTER CANNOT ASK FOR A MANUAL RECOUNT.

SO THEY HAVE A RIGHT TO PROTEST.

THEY CAN ASK -- THEY CAN DO THE OTHER PORTIONS OF THE PROTEST PROVISIONS, BUT THOSE DO NOT INCLUDE A MANUAL RECOUNT RIGHT.

WELL THAT, IS WHAT -- SINCE THAT, SECTION I WAS HERE BEFORE SECTIONS III AND IV, AND SINCE THERE WERE MANUAL RECOUNTS IN THE STATE OF FLORIDA BEFORE 1989, WE MUST ASSUME THAT THE RIGHT TO PROTEST CARRIED, WITH IT, THE RIGHT, IF THE COURT DECIDED, TO HAVE MANUAL RECOUNT.

WELL, IF THE COURT DECIDED TO HAVE A MANUAL RECOUNT, THAT MAY BE TRUE, BUT THERE IS CERTAINLY NOT A RIGHT FOR A PERSON, A VOTER, TO GO IN AND ASK FOR MANUAL RECOUNT. JUST AS YOU POINTED OUT, SUBSECTION IV WAS ADDED LATER, BUT THE LEGISLATURE ABSOLUTELY RESTRICTED WHO HAD COULD ASK FOR IT. UNDER PRESIDENT NORMAL PRINCIPLE THAT -- UNDER THE NORMAL PRINCIPLE THAT THE LEGISLATURE CAN ASK PARTIES TO DO SOMETHING, THEY TEND TO MEAN IT.

BUT THE CANVASSING BOARD HAS AUTHORIZED IT, HAS IT NOT?

WHERE?

HASN'T IT AUTHORIZED A MANUAL RECOUNT? WE ARE PAST THE REQUEST PERIOD.

I AM SORRY?

WE ARE PAST THE REQUEST PERIOD. THE CANVASSING BOARD HAS AUTHORIZED THE MANUAL RECOUNT.

THAT IS TRUE IN THE COUNTIES THAT WE ARE TALKING ABOUT, BUT THERE WAS A REQUEST MADE, IN ALL OF THESE COUNTIES, BY ONE OF THE STATUTORILY PERMITTED PEOPLE, WITHIN THE 72 HOURS. ALTHOUGH SOME OF THESE COUNTIES HAVE JUST NOW MADE THE DECISION, THEY WERE ASKED TO DO THIS TWO WEEKS AGO OR TEN DAYS AGO, BUT THE PROBLEM, HERE, IS THE VOTERS IN THE REST OF THE STATE OF FLORIDA COULDN'T DO THAT, AND WE BELIEVE THAT THAT IS PROBABLY NOT CONSTITUTIONAL. WE BELIEVE THAT IT VIOLATES THE EQUAL PROTECTION RIGHTS OF ALL OF THE PEOPLE IN THE OTHER COUNTIES IN THE STATE OF FLORIDA, BECAUSE THEIR RIGHT, TO THE EXTENT THAT IT IS PROVIDED BY A STATUTE, TO HAVE THEIR BALLOTS LOOKED AT, TO SEE WHETHER THEY MADE A COMPLETE PUNCH THROUGH THEIR PUNCH CARD, IS DEPENDENT SOLELY ON WHERE THEY LIVE AND WHETHER OR NOT THEY ARE LUCKY ENOUGH TO HAVE A CANDIDATE OR A POLITICAL PARTY ASK TO HAVE SOMEBODY LOOK AT THEIR CARDS. NOW, I UNDERSTAND THAT GOVERNOR BUSH MAY HAVE HAD GOOD REASONS AND HE MAY NOT TRUST THE PROCESS AND HE MAY NOT LIKE THE MANUAL RECOUNTS. HOWEVER, HIS DECISIONS SHOULDN'T AFFECT THE RIGHTS OF THE VOTERS. AGAIN, I THINK IT WAS SAID EARLIER, THE REAL PARTIES IN INTEREST HERE ARE THE VOTERS! BUT THEY CAN'T EVEN ASK FOR IT.

YOU TOOK THE POSITION THAT THE RIGHT TO HAVE A MANUAL RECOUNT SHOULD BE OPEN FOR ANY COUNTY WHERE THAT DECISION IS MADE BY THE COUNTY CANVASSING BOARD?

I AM NOT SURE IF I UNDERSTAND YOUR QUESTION.

ARE YOU SAYING, NOW, THAT THE WAY YOU ARE SAYING -- YOU ARE RAISING A CONSTITUTIONAL ATTACK ON THE FACT THAT VOTEERS DO NOT HAVE THE RIGHT TO REQUEST A MANUAL RECOUNT. SO THE REMEDY, WHAT IS THE REMEDY THAT YOU ARE SEEKING AND IF YOU SOUGHT IT --

I NEED TO BE COMPLETELY CANDID HERE. BECAUSE WE WERE AN INTERVENE OR, THAT WASN'T SPECIFICALLY ASKED FOR THIS PARTICULAR CASE. THAT WAS ASKED FOR LAST FRIDAY AND

JUDGE CLARK RULED. I AM NOT ASKING YOU TO RULE ON THAT PARTICULAR ISSUE. WHAT I AM ASKING IS THE SCHEME FOR THIS AS IT EXISTS IS, REALLY, UNFAIR, AND ONE OF THE THINGS THAT IT COMES DOWN TO, IS IF YOU LOOK AT THE DIFFERENCE BETWEEN A PROTEST AND A CONTEST, YOU CAN FIND SOME FAIRNESS TO TAKE CARE OF THAT, AND HERE IS WHY. IF THERE IS A PROTEST, SOMEBODY GOES TO THE LOCAL CANVASSING BOARD AND SAYS WE WANT TO PICK, IN OUR LITTLE AREA, WE THINK WE CAN CHANGE THE VOTES IN THIS LITTLE PART OF THE STATE. WE THINK THAT, IN PALM BEACH COUNTY WE CAN CHANGE THE VOTES, BUT THAT DOESN'T TAKE INTO ACCOUNT THAT THERE MAY AND LOT OF CHANGES THAT WOULD HAPPEN, IF YOU DID IT THROUGH THE REST OF THE STATE. IT IS A COMPLETELY LOCAL DECISION THAT HAS STATEWIDE RAMIFICATIONS. THE LEGISLATURE, IN ITS WISDOM, SAID THESE PROTESTS ARE GOING TO HAVE TO BE DONE, AT LEAST THE RESULTS ARE GOING TO HAVE TO BE DONE WITHIN SEVEN DAYS. THEY SAID THAT THE RESULTS HAVE TO BE CERTIFIED WITHIN SEVEN DAYS. NOW, WE HAPPEN TO TAKE A DIFFERENT POSITION ON WHETHER OR NOT THOSE MANUAL RECOUNTS COULD GO ON. IT MAY BE THAT THE LEGISLATURE INTENDED THAT MANUAL RECOUNTS CAN KEEP GOING, BUT THEY ARE OF NO USE IN THE CERTIFICATION PROCESS. THEY MAY BECOME EVIDENCE AT SOME POINT, IN A CONTEST. THE DIFFERENCE, AND THIS IS A FUNDAMENTAL AND A CRITICAL DIFFERENCE IN THIS CASE, IS THAT, WHEN SOMEBODY IS CONTESTING THE ELECTION, AS IT HAS BEEN DISCUSSED BEFORE, THEY WOULD BE DOING IT IN LEON COUNTY CIRCUIT COURT, BECAUSE THE STATUTES RECOGNIZE THAT, IF AN ELECTION IS GOING TO DEAL WITH OR AFFECT MORE THAN ONE COUNTY, IT SHOULDN'T BE LOCAL. IT IS GOING TO COUP HERE, AND JUDGE, HERE, IS GOING TO HAVE TO MAKE THAT ULTIMATE DECISION, UNDER THE CASE LAW THAT HAS BEEN SET FORTH BY THIS COURT, AS TO WHETHER OR NOT THE RESULTS WOULD CHANGE THE -- WHETHER ANY ULTIMATE FINDINGS WOULD CHANGE THE RESULTS OF THE ELECTION. THAT WOULD MEAN THAT A JUDGE WOULDN'T ONLY BE LOOKING AT DID YOU END UP GETTING A FEW MORE VOTES IN A FEW SELECT COUNTIES, CHOSEN BY POLITICAL PARTY, BUT IT WOULD, ALSO, TAKE INTO ACCOUNT A CONSIDERATION AS TO, WELL, WHAT IF THAT SAME STANDARD HAD BEEN APPLIED THROUGH THE REST OF THE STATE? IF WE GOT SOME MORE VOTES BY CHECKING PUNCH CARDS IN THE HEAVILY DEMOCRATIC PARTIES, WHAT WOULD HAVE HAPPENED, IF THE SAME THING HAD HAPPENED IN THE OTHER COUNTIES, AND THAT IS A FACTOR THAT A JUDGE COULD TAKE IN AN ELECTION CONTEST, AND THAT IS THE REASON THAT WE BELIEVE THE FLORIDA LEGISLATURE PROVIDED FOR, BOTH, A PROTEST PROVISION AND A CONTEST PROVISION. IF THIS COURT WERE TO TAKE THE PROTEST PROVISION THE WAY IT IS BEING SUGGESTED BY THE APPELLANTS THERE, IS NEVER A NEED FOR ANY CONTEST. THERE IS ABSOLUTELY NO PURPOSE IN THE FLORIDA LEGISLATURE HAVING A SECTION OF FLORIDA STATUTES THAT DEFINES HOW AN ELECTION CONTEST WORKS BECAUSE THEY ARE SAYING EVERYTHING GETS DONE, BEFORE YOU EVEN CERTIFY IT. THEY ARE SAYING THE SECRETARY OF STATE HAS TO SIT BACK AND CANNOT CERTIFY THE WINNER, UNTIL EVERYBODY'S DISAGREEMENTS HAVE, ALREADY, BEEN RESOLVED. THE PROBLEM IS THERE IS NO ASH TORE TO MAKE A -- NO ASHY TORE TO MAKE A DECISION -- NO ARBITOR TO MAKE A DECISION ABOUT THE DISAGREEMENTS. THERE IS NO ELECTIONS OFFICIAL OUT THERE. IT IS LOCAL BOARDS MAKING DECISIONS ON CHOICES OF CANDIDATES, WHETHER OR NOT TO LOOK AT BALLOTS AGAIN THERE. IS ABSOLUTELY NOBODY LOOKING TO SEE WHETHER, OVERALL, THIS IS GOING TO CHANGE THE RESULTS OF AN ELECTION.

WHY IS IT THEY ARE SAYING THAT YOU DON'T HAVE A CONTEST, AN ELECTION CONTEST, UNTIL YOU HAVE HAD THE PROCEDURE THAT CONCERNS A PROTEST? BECAUSE THERE, CERTAINLY, YOU CAN GO THROUGH THIS PROTEST PROCEDURE AND, STILL, GET TO THE CONTEST PROCEDURE.

CERTAINLY. HOWEVER, THE LEGISLATURE WROTE BOTH OF THOSE PROVISIONS. THE LEGISLATURE SAID THERE IS GOING TO AND PROTEST PROVISION, BUT THE LEGISLATURE, ALSO, WROTE THAT THERE IS A SEVEN-DAY DEADLINE FOR GETTING THE CERTIFICATIONS IN, AND FOR THIS COURT TO -- THE FIRST STEP THIS COURT HAS TO TAKE, IN INTERPRETING THAT STATUTE, IS CAN YOU READ THAT WHOLE THING TOGETHER? CAN YOU LOOK AT CHAPTER 102, AND CAN YOU READ IT IN A WAY THAT ALL OF THE PROVISIONS ACTUALLY MAKE SENSE, SO YOU DON'T HAVE TO JUST IGNORE ONE OF THEM, BECAUSE YOU ARE BEING ASKED TO IGNORE THE SEVEN-DAY

RULE. YOU CAN READ THAT ENTIRE STATUTE TOGETHER, IN A WAY THAT MAKES PERFECT SENSE, BY SIMPLY RECOGNIZING THAT THE PROTEST PERIOD, WHICH CONCEIVABLY COULD, EVEN, BE ASKED FOR AFTER CERTIFICATION TAKES PLACE, BECAUSE THEY HAVE GOT 72 HOURS FROM THE TIME THAT THE RESULTS ARE CERTIFIED, SO IF SOMEBODY CERTIFIES THE RESULTS --

I THOUGHT THE PROVISION WAS 72 HOURS OR FIVE DAYS -- OR BEFORE THE VOTES ARE CERTIFIED. IT SEEMS TO ME THAT THAT PROVISION DOESN'T ALLOW FOR THE PROTEST, ONCE THE VOTES ARE CERTIFIED.

I AM SORRY. I DON'T HAVE THE SPECIFIC --

THOSE TIME STANDARDS ARE IN THE ALTERNATIVE, WITH THE LATER DATE PREVAILING, ARE THEY NOT?

CORRECT. YES.

SO EITHER THE 72 HOURS OR THE TIME OF CERTIFICATION.

RIGHT. I THINK THAT IT IS CERTAINLY CONCEIVABLE, AND I THINK, IN FACT, THE ONLY REASONABLE ASSUMPTION IS THAT THE LEGISLATURE KNEW THAT SOMETIMES THERE WERE GOING TO BE PROTESTS THAT WERE GOING TO BE GOING ON, AND THAT THE LEGISLATURE RECOGNIZED THAT SOMETIMES THERE WERE GOING TO BE MANUAL RECOUNTS THAT WERE GOING ON, AND IT, STILL, CHOSE TO LEAVE THE SEVEN-DAY DEADLINE IN THERE. THEY DIDN'T ELIMINATE THE SEVEN-DAY DEADLINE, AND WHEN THEY -- I SEE MY TIME IS UP. MR. CHIEF JUSTICE: THANK YOU, MR. MARDENBOROUGH. MR. HANCOCK, AS I INDICATED, YOU HAVE THREE MINUTES, AND I WOULD POSE THIS QUESTION TO YOU, AND I WOULD LIKE FOR MR. BOIES TO, ALSO, RESPOND TO IT, THAT, IN SECTION V OF TITLE III, THEY SPECIFICALLY REFER TO CONTEST, IN THAT IT IS FOR ITS FINAL DETERMINATION OF ANY CONTROVERSY OR CONTEST, CONCERNING THE APPOINTMENT OF ELECTORS OF SUCH STATE. NOW, UNDER OUR STATUTE, WHICH IS 168, THOSE CONTESTS CANNOT BEGIN, AS YOUR OPPONENTS SAY, UNTIL SUCH TIME AS THE BALLOTS ARE CERTIFIED, UNDER THIS EXPRESS LANGUAGE. NOW, WHY ISN'T IT CORRECT THAT WE ARE JEOPARDIZING, WITH EACH PASSING DAY, FLORIDA BEING ABLE TO HAVE ITS VOTES COUNTED IN THE ELECTORAL COLLEGE, IF WE DON'T ALLOW THE CERTIFICATION?

BECAUSE THE FIRST -- THE 168 PROVISIONS DO NOT RELIEF COUNTY OFFICIALS OF CERTIFYING ELECTION RESULTS CORRECTLY IN THE FIRST INSTANCE. WE KNOW, HERE, FROM PALM BEACH COUNTY'S SITUATION, AS JUSTICE QUINCE POINTS OUT, THAT PEOPLE HAVE CAST BALLOTS THAT, UNDER THE LAWS OF THIS STATE, THAT OPINIONS OF THIS COURT ARE VALID VOTES. THEY HAVE NOT YET BEEN COUNTED. ONCE THAT FINAL COUNT IS DONE, THEN THE PROCEDURE FOR CONTESTS KICKS IN. THAT IS A COMPLETELY DIFFERENT PROCEDURE. THAT PLACES A BURDEN ON A PLAINTIFF, TO PROVE THAT THE ELECTION RESULTS ARE WRONG. AGAIN, HOWEVER, IN THE FIRST INSTANCE, THAT BURDEN IS ON THE COUNTY ELECTION OFFICIALS, TO CERTIFY A CORRECT RESULT. IF I MAY CORRECT JUSTICE ANSTEAD, PROFESSOR ROGOW HAS ASKED ME TO CORRECT A STATEMENT HE MADE TO YOU. IN FACT, THE PALM BEACH COUNTY CANVASSING COMMISSION DID REQUEST THE ATTORNEY GENERAL TO ISSUE THE LEGAL ADVISORY OPINION THAT WAS ISSUED ON THE 14th.

MR. HANCOCK, WE ARE, CHIEF JUSTICE HAS ASKED A QUESTION, AND I DON'T KNOW WHETHER YOU WANT TO USE YOUR TIME TO REBUT YOUR CO-COUNSEL OR NOT, BUT WHERE DO WE FIND, FROM THIS RECORD, THE LIMITS THAT WE ARE TO SET IN MAKING A DETERMINATION THAT WE HAVE BEEN ASKED TO SAY THE VOTES HAVE TO BE IN BY A CERTAIN TIME, SO THAT THE CONTEST PROVISIONS CAN KICK IN? WHERE DO WE FIND, FROM WHAT HAS BEEN FILED BEFORE US, THE WISDOM TO DO THAT?

JUSTICE SHAW SUGGESTED GIVING THAT AUTHORITY TO THE SECRETARY OF STATE. WE WOULD

SUGGEST, IF THE COURT CONSIDERS THAT, THAT THE COURT SET STANDARDS. THE STANDARDS SHOULD BE THAT THE COUNTIES ARE ENTITLED, AND THE PARAMOUNT INTEREST IN DOING THIS, IS TO RECOGNIZE VOTER INTENT. THE COUNTIES SHOULD BE GIVEN ALL REASONABLE OPPORTUNITIES TO COMPLETE THE PROCESS, CONSISTENT WITH THE TIME OBLIGATIONS, IN A MANNER THAT RECOGNIZES VOTER INTENT.

IS IT THE POSITION OF THE ATTORNEY GENERAL THAT, ALTHOUGH WE DON'T HAVE MIAMI AS A PART OF THIS CASE, THIS WAS MENTIONED SEVERAL TIMES, THAT THEY HAVE JUST NOT DECIDED TO START THEIR MANUAL RECOUNT, UNTIL TODAY? WOULD THAT FALL WITHIN A REASONABLE LIMITATION, TO SAY THIS IS JUST TOO LATE TO DO THAT?

I AM NOT, YOUR HONOR, I AM NOT SURE OF ALL OF THE FACTS OF MIAMI. MY UNDERSTANDING WAS THAT THEY REQUESTED -- FIRST THERE WAS A REQUEST. THEY DECIDED NOT TO DO IT AND THEN RECONSIDERED THAT REQUEST. I AM NOT SURE -- OBVIOUSLY THE REQUEST HAS TO BE TIMELY TO BE CONSIDERED.

AND UNDER THE CIRCUMSTANCES OF THIS CASE, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THAT WOULD BE TIMELY?

I DON'T HAVE AN OPINION. I WOULD SAY ONE OTHER POINT, IF I COULD. JUSTICE PARIENTE EXPRESSED CONCERN ABOUT THE DILUTION OF VOTES WITH RECOUNTS. OBVIOUSLY NO ONE'S VOTE IS DILUTED -- IS DILUTED IN A LEGAL SENSE, BY RECOUNTING OF VOTES. OBVIOUSLY WE HAVE OTHER COUNTIES THAT DON'T HAVE THIS PROCESS. ONE REMEDY THAT THE COURT MIGHT CONSIDER IS HAVING A RECOUNT STATEWIDE. THE PROBLEM, AS YOU CORRECTLY POINT OUT, IS ON COUNTIES USING MACHINERY TO VOTE PUNCH CARDS. IT WOULD BE APPROPRIATE, PERHAPS, TO REVIEW THOSE PUNCH CARDS, IN THOSE INSTANCES WHERE A VOTE FOR PRESIDENT OR VICE PRESIDENT WAS NOT RECORDED, TO DETERMINE WHETHER THE INTENT OF THE VOTER COULD BE ASCERTAINED. THAT WOULD NOT BE A MAJOR BURDEN ON ANY COUNTY OF STATE, AND THOSE COUNTIES WITH OPTICAL SCANNERS WOULD PROBABLY FIND THAT THE BALLOTS WERE BEING READ PROPERLY.

COULD YOU COMMENT ON THE FEDERAL STATUTE THAT WAS REFERRED TO, AS TO WHETHER THIS COURT, IN FACT, DOES HAVE THE AUTHORITY OR ARE WE TREADING INTO THE SEPARATION OF POWERS, BY MAKING SUCH A DETERMINATION IN THIS CASE?

NO. THIS COURT CLEARLY HAS THE POWER. IN THE HARTKE VERSUS RODEBUS SH. -- RODEBUSH CASE IN THE UNITED STATES SUPREME COURT, THE COURT CLEARLY SAID THAT WAS TO THE DISCRETION OF THE STATE, CLEARLY THE SAME CONSTITUTIONAL ISSUE THAT IS AT HAND HERE.

THANK YOU, MR. HANCOCK. MR. BOIES.

YOUR HONOR, LET ME MAKE TWO PRELIMINARY POINTS. ONE, I WANT THE COURT TO UNDERSTAND WHAT THE NATURE OF THE OTHER SIDE'S ARGUMENT IS. THEY SAY THAT WHAT THEY WANT TO DO IS HAVE A CONTEST, BUT WHAT THEY HAVE SAID AND WHAT THEY HAVE SAID, ALSO, EVEN TO THIS COURT, ALTHOUGH MAYBE NOT AS DIRECTLY AS THEY MIGHT, IS THEIR VIEW IS, ONCE THE RESULTS ARE CERTIFIED, THEN THE RECOUNT BECOMES SUPERFLUOUS AND OUGHT TO STOP, AND, SECOND, THAT AS SOON AS THE RESULTS ARE CERTIFIED, THE SECRETARY OF STATE CAN, UNDER 1 ON 3.01 -- UNDER 103.01 -- UNDER 103.011 DECLARE WHO THE ELECTORS ARE, AND IT IS THEIR VIEW THAT, WHEN THAT DECLARATION OF ELECTORS HAS BEEN DECLARED, IT IS OVER WITH, SO ONE THING THAT I WOULD URGE THE COURT IS THAT, WHEN THERE IS A DEADLINE, SO THAT THE CONTEST CAN START, THAT THE COURT STAY THE DECLARATION, UNDER 103.011, SO THAT WE ARE NOT FACED WITH AN ARGUMENT THAT SAYS IT IS ALL OVER AND THE CONTEST HAS BECOME IRRELEVANT.

BUT YOU WOULD HAVE TO AGREE THAT, AT SOME POINT IN TIME, BETWEEN NOW AND DECEMBER

THE 12th OR 11th OR WHENEVER IT IS, THAT FLORIDA'S VOTES ARE GOING TO BE IN JEOPARDY.

YOUR HONOR, I THINK THEY NEED NOT BE, FOR THE FOLLOWING REASON. WE DON'T BELIEVE THAT SECTION 111 OR 112 OF CHAPTER 102 SAYS THERE IS ONE AND ONLY ONE CERTIFICATION. THAT IS WHAT THEY ARGUED, BUT YOU WON'T FIND THAT ANYWHERE IN THE STATUTE. IN FACT, IN 102.111, WHAT YOU FIND IS A DISCUSSION OF RETURNS, THE RETURNS, AND THEN THE OFFICIAL RETURNS. AND THE OFFICIAL RETURNS, AS WE HAVE SAID, BEFORE, IS DEFINED IN 101.5614, SUBSECTION 8, AS BEING RETURNS THAT INCLUDE NOT ONLY THE INITIAL RETURNS BUT THE ABSENTEE BALLOTS AND THE MANUALLY-COUNTED BALLOTS. THERE IS NOTHING, IN OUR VIEW OF THE STATUTE, THAT PRECLUDES THEM FROM MAKING A CONTEST, UNDER 168, OF THE CERTIFICATION THAT HAS ALREADY BEEN FILED, WITH RESPECT TO THE VOTES, OTHER THAN THE MANUALLY-RECOUNTED VOTES.

THE STATUTE SAYS IT IS THE LAST CERTIFICATION, THE LAST COUNTY CANVASSING BOARD CERTIFICATION. THAT IS WHAT 168 SAYS.

YES. AND THE LAST COUNTY CERTIFICATION, FOR EVERY COUNTY EXCEPT THESE THREE. THEY WERE TALKING ABOUT THE OVERSEAS BALLOTS, AND THEY WERE TALKING ABOUT OTHER THINGS THEY SAID THEY WANTED TO CONTEST, EXCEPT FOR THE THREE COUNTIES, THE LAST COUNTY CERTIFICATION IN THOSE COUNTIES HAS, ALREADY, BEEN MADE, AND EACH OF THESE THREE COUNTIES HAVE, ALSO, MADE THE INITIAL CERTIFICATION, ON 5:00 P.M. LAST TUESDAY. WE THINK THAT THERE IS NOTHING IN THE STATUTORY PROVISIONS THAT PREVENTS A CONTEST, WITH RESPECT TO WHAT HAS ALREADY BEEN CERTIFIED, FROM GOING FORWARD WHILE THE SUPPLEMENTAL RETURNS, FROM THE MANUALLY MANUALLY-RECOUNTED BALLOTS, ARE, ALSO, GOING FORWARD.

BUT THERE IS NO WAY, PRESUMING THAT IT IS GOVERNOR BUSH THAT WOULD HAVE THE RIGHT TO CONTEST THE MANUAL RECOUNTS THAT ARE BEING CONDUCTED IN AT LEAST TWO OUT OF THE THREE COUNTIES, FOR THERE TO BE A RECORD, IN ORDER TO CONTEST THAT. THOSE HAVE TO BE COMPLETED.

ABSOLUTELY RIGHT, YOUR HONOR, AND IN ORDER TO ALLOW HIM TO CONTEST THE MANUALLY MANUALLY-RECOUNTED BALLOTS, YOU MUST HAVE A DEADLINE FOR THAT, TOO. MY ONLY POINT WAS --

BUT WHO? NOW WE GO BACK TO THIS. DEADLINE IS NOT IN THE STATUTE. HOW DO WE HAVE THE AUTHORITY TO SET A DEADLINE?

BECAUSE WHAT THIS COURT, I WOULD RESPECTFULLY SUGGEST, HAS TO DO, IS TO RECONCILE THE ENTIRE STATUTORY SCHEME, AND THE STATUTORY SCHEME, LONG BEFORE THERE WAS THIS ELECTION, PROVIDED FOR MANUAL RECOUNTS, AND THIS COURT, I SUGGEST, CANNOT PRESUME THAT THE LEGISLATURE MEANT TO PROVIDE FOR THESE MANUAL RECOUNTS AND YET TO MAKE THAT AN ELUSORY RIGHT, BY HAVING A CIRCUMSTANCE WHERE THEY COULD NOT BE PRACTICALLY TAKEN CARE OF IN WHAT WAS THE MOST IMPORTANT ELECTION THAT THIS STATE HAS, PERHAPS, EVER SEEN. I THINK THAT THE STANDARD IS EXACTLY THE STANDARD THAT THE CHIEF JUSTICE HAS REFERRED TO, WHICH IS WHEN WILL THE DATE BE SUCH THAT PASSING THAT DATE ENDANGERS THE ABILITY OF CERTIFYING AND FINALIZING ANY CONTEST THAT MAY RESULT, SO THAT THE VOTES OF FLORIDA ARE NOT IN PERIL, AND I BELIEVE THAT THAT IS NOT AND ISSUE IN THIS PARTICULAR SITUATION, BECAUSE THE COUNTIES HAVE SAID THAT, IF YOU WILL GIVE -- IF YOU WILL TELL US WHAT THE STANDARD IS AND LEAVE US FREE FROM INTERFERENCE, WE CAN GET THIS DONE IN A MATTER OF DAYS. NOW, BROWARD COUNTY STOPPED, BECAUSE THEY WERE TOLD TO STOP. THEN THEY STARTED, AGAIN, AFTER THIS COURT SAID THEY COULD START, AND YOU KNOW WHAT HAPPENED? REPUBLICAN OFFICIAL OR REPUBLICAN ATTORNEY SUBPOENAED THE CANVASSING BOARDS, TO A CIRCUIT COURT, AND THE

COUNTING HAD TO STOP.

THAT IS NOT PART OF THIS RECORD.

BUT, YOUR HONOR, WHAT IS PART -- ACTUALLY I THINK THE COURT CAN PROBABLY TAKE JUDICIAL NOTICE OF WHAT HAPPENS IN A CIRCUIT COURT, BUT I THINK THE THING THAT IS IMPORTANT FOR THE COURT TO UNDERSTAND IS THAT THIS IS A PROCESS THAT, IF PEOPLE WILL SIMPLY GET OUT OF THE WAY AND LET IT CONTINUE, CAN BE DONE IN A MATTER OF DAYS. THE -- THIS COURT COULD, IF THE COURT WOULD JUST GIVE THE COUNTY CANVASSING BOARDS --

WHERE, IN THE RECORD, WOULD WE FIND THAT IT COULD BE COMPLETED IN A MATTER OF DAYS?

YOUR HONOR, IN -- I THINK IT IS EXHIBIT G TO ONE OF THE -- TO THE EXHIBIT THAT WAS FILED IN THE CIRCUIT COURT. JUDGE LEWIS'S COURT, THAT IS, NOW, PART OF THIS RECORD, YOU HAVE THE LETTERS FROM THE VARIOUS COUNTIES, BROWARD, DADE, AND PALM BEACH, AND I THINK THAT THE BROWARD COUNTY LETTER, FOR EXAMPLE, INCLUDES AN ESTIMATE OF THAT, AND IT, ALSO, INCLUDES A DETAILED STATEMENT AS TO WHY THEY HAD NOT GOTTEN IT DONE BEFORE, AND THAT IS IN THE RECORD. I, ALSO, THINK ANOTHER WAY OF APPROACHING IT IS TO SAY WE WILL GIVE YOU THE STANDARD TO APPLY. WE WILL TELL YOU TO GET IT DONE IN SEVEN DAYS. IF YOU -- IF THE COURT WERE ABLE TO DO THAT, YOU WOULD CERTAINLY HAVE ENOUGH TIME AFTER THAT, TO COMPLETE A CONTEST, AND I AM NOT URGING, IN ANY WAY THAT, THIS COURT DO ANYTHING THAT WILL IMPERIL FLORIDA'S LETTER TO REAL VOTES. WHAT I AM -- ELECTORAL VOTES. WHAT I AM ASKING IS THAT THE COURT USE ITS POWER TO MAKE SURE THAT ALL OF THE VOTES OF THE VOTERS IN FLORIDA THAT HAVE BEEN CAST FOR THOSE ELECTIONS --

BUT WOULD YOU AGREE THAT, IF THE COURT LIFTED THE INJUNCTION AND ALLOWED THE CERTIFICATION TO BE MADE, IT THAT ABSOLUTELY THERE WOULDN'T BE ANY IN PERIL, AS TO FLORIDA'S VOTES?

I WOULD AGREE WITH THAT, EXCEPT TO THE EXTENT THAT, IF YOU DID IT IN A WAY THAT PERMITTED THEM, THEN, TO DECLARE THE ELECTORS, UNDER 103.011, WHAT YOU WOULD HAVE DONE IS YOU WOULD HAVE ELECTORS THAT WERE NOT, IN OUR VIEW, THE ELECTORS ELECTED BY THE PEOPLE.

ARE THOSE TWO DIFFERENT STATUTES THEN? IS THAT THE ONLY PROBLEM IS 103.011, OR IS IT THE CERTIFICATION, UNDER 102.111?

I THINK THAT, IF THE COURT WERE TO MAKE CLEAR THAT THE CERTIFICATION, UNDER 103.011, THE DECLARATION OF THE ELECTORS, WAS STAYED, PENDING THE RESULT OF ANY CONTEST, AND WERE TO MAKE CLEAR THAT THE MANUAL RECOUNT CONTINUES, AND WILL BE CONSIDERED, I THINK, UNDER THOSE CIRCUMSTANCES, HAVING WHATEVER CERTIFICATION IS REQUIRED, UNDER 102.111, TO PERMIT THE CONTEST PERIOD TO BEGIN, WOULD NOT PREJUDICE ANYONE. WE BELIEVE THAT THAT PERIOD CAN, ALREADY, BE TAKEN ADVANTAGE OF. THAT IS WE BELIEVE THAT, BECAUSE 102.111 REFERS TO BOTH RESULTS AND OFFICIAL RESULTS, AND OFFICIAL RESULTS ARE -- IS DEFINED ELSEWHERE, TO INCLUDE MANUALLY-RECOUNTED VOTES, AS WELL AS THE INITIAL RETURNS, THEY COULD -- AND THE CONTEST STATUTE DOES NOT DEPEND ON THE OFFICIAL RESULTS BEING CERTIFIED BUT ONLY RESULTS BEING CERTIFIED, I THINK OUR VIEW IS THAT, UNDER THE CURRENT STATUTORY SCHEME, THEY CAN OR ANYONE CAN FILE A CONTEST, WITH RESPECT TO THE VOTES THAT HAVE BEEN CERTIFIED. OBVIOUSLY YOU ARE ENTIRELY CORRECT THAT, EVEN WITH RESPECT TO THE RECOUNTED VOTES, THOSE HAVE TO BE DONE WITHIN A TIME PERIOD THAT ALLOWS A CONTEST OF THOSE VOTES, BUT BECAUSE THOSE ARE A RELATIVELY SMALL NUMBER OF VOTES, THAT IS A PERIOD OF TIME THAT WE ARE WELL WITHIN, SO THAT, I THINK, ONE SOLUTION THAT WOULD PREJUDICE NO ONE WOULD BE TO PROVIDE THAT A PARTY COULD FILE A CONTEST, WITH RESPECT TO THE VOTES THAT HAVE, ALREADY, BEEN CERTIFIED, THAT IS THE NONMAN MANNULELY-RE -- THE MAN MANUALLY-RECOUNTED VOTES, RIGHT NOW,

BUT THEY ARE THE OFFICIAL VOTES, BECAUSE THEY HAVE BEEN CERTIFIED, AND TO PROVIDE THAT THE MANUAL RECOUNT BE COMPLETED WITHIN SEVEN DAYS OF THE COURT'S ORDER, DEFINING WHAT THE STANDARD IS. MR. CHIEF JUSTICE: MR. BOIES, I THINK YOUR TIME IS UP. THE COURT IS VERY APPRECIATIVE AND INDEBTED TO COUNSEL FOR EACH SIDE, WHO HAS WORKED SO HARD AND LONG ON THE PRESENTATIONS HERE AND ON WHAT HAS BEEN PRESENTED TO THIS COURT, FOR THE COURT'S BENEFIT, IN ATTEMPTING TO ARRIVE AT A FAIR AND JUST SOLUTION IN THIS CASE. WE, ALSO, ARE VERY APPRECIATIVE TO OUR GUESTS, WHO HAVE BEEN HERE, IN THE COURTROOM, FOR THE ARGUMENT, TODAY. I MAKE OBFINAL REQUEST OF YOU -- I MAKE ONE FINAL REQUEST OF YOU, AND THAT IS THAT WE, NOW, RECEDE FROM THE COURTROOM ON, THE BASIS THAT ALL COUNSEL BE PERMITTED TO EXIT THE COURTROOM AND THE BUILDING, SO THAT ALL POST-ARGUMENT INTERVIEWS WILL BE CONDUCTED NOT IN THE ROTUNDA, HERE, BUT OUTSIDE THE BUILDING, AND THEN OUR VISITORS WILL BE ASKED TO, FOR SECURITY PURPOSES, TO EXIT THE BUILDING, AFTER ALL COUNSEL HAVE EXITED THE BUILDING. THANK YOU, AND THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.□