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Florida Dept of Children & Families v. Sun-Sentinel, Inc.

CHIEF JUSTICE: THE NEXT CASE ON THE COURT'S DOCKET IS FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES VERSUS SUN-SENTINEL.

GOOD MORNING, CHRISTOPHER KISE. THERE IS A MISAPPLICATION OF THE LAW REGARDING ASSERTION OF DEFENSES UNDER 1 ON 1 -- 101.14-B, AND THE CREATION OF THE IN-HOME PRIVILEGE.

NOW, THE ONLY CONFLICT ISSUE IS ON THAT THIRD POINT, CORRECT?

YES, YOUR HONOR. WITH RESPECT TO THE FIRST TWO POINTS AND I WILL GO THROUGH THEM BRIEFLY, BUT THE ABROGATION OF THE RULES, THE RULES OF CIVIL PROCEDURE APPLY IN ALL CASES, INCLUDING CASES UNDER CHAPTER 119.107-7. IN THIS PARTICULAR CASE, THE STATE ATTORNEY HAD BROUGHT CHARGES AGAINST THE PARENTS, CHARGING THEM WITH CRIMINAL CHILD NEGLECT. IN THE CONTEXT OF THAT CRIMINAL PROCEEDING, THE NEWSPAPER FILED A PETITION UNDER 119.1077.

DO YOU ASSERT THAT THAT FILING OF THE PETITION IN THE ONGOING CRIMINAL PROCEEDING WAS IMPROPER PAROLELY?

NOT NECESSARILY. -- IMPROPER, PROCEEDLY?

NOT NATURALLY. THEY STILL NEEDED TO COMPLY WITH THE RULES OF CIVIL PROCEDURE. THEY STILL NEEDED TO --.

WHAT WOULD HAVE BEEN THE BASIS TO FILE -- THEY ARE NOT A PARTY. THERE IS NO MOTION TO INTERVENE, SO WHAT RULE, RIGHT, STATUTE OR WHAT OTHERWISE GIVES A NONPARTY THE RIGHT TO FILE A PLEADING PETITION OR WHATEVER, IN THIS CASE, AN ACTION BETWEEN THE STATE OF FLORIDA AND A CRIMINAL DEFENDANT?

WELL, YOUR HONOR'S QUESTION GOES DIRECTLY TO THE HEART OF WHAT WE BELIEVE IS THE PROBLEM HERE. THEY DIDN'T SEEK TO INTERVENE. THEY COULD HAVE, AND IN ANSWERING JUSTICE PARIENTE'S QUESTION, I DIDN'T FULLY FLUSH IT OUT, BUT YOUR HONOR'S QUESTION DRAWS IT OUT, AND THAT IS THAT THEY COULD HAVE FILED THEIR PETITION, BUT THEY WOULD HAVE NEEDED TO SEEK, TO INTERVENE UNDER THE RULES, AS WOULD BE REQUIRED IN ANY CASE. THEY ARE A NONPARTY TO THAT PROCEEDING. DCF WHICH THEY SOUGHT TO JOIN AND IN WHICH THEY SOUGHT AN ORDER DIRECTING CDF TO DO SOMETHING, WAS A NONPARTY, SO THEY NEEDED TO FILE A PETITION WITH THE MOTION TO INTERVENE. HAD THAT BEEN GRANTED, THEN UNDER THE NORMAL COURSE OF PROCEEDINGS UNDER THE RULES, THEN IT WOULD HAVE PROCEEDED UNDER DCF AND THE CASE WOULD HAVE PROCEEDED WITHIN THAT CONTEXT, BUT FOR THE PETITION OF HOME VENUE.

IS IT YOUR POSITION THAT IT SHOULD HAVE PROCEEDED AS PUBLIC RECORDS CASE? THAT THAT IS THAT THEY SHOULD HAVE MADE A DEMAND FOR PUBLIC RECORDS AND WHATEVER THE OUTCOME OF THAT WAS AND FOLLOWED THAT UP WITH A COURT PROCEEDING?

YOUR HONOR, 119.077 IS A BIST AN ABBREVIATED PROCEDURE. THE RECORDS THAT -- IS A BIT OF AN ABBREVIATED PROCEDURE. THE RECORDS THAT THEY ARE SEEKING ARE EXEMPT. THEY ARE

ALREADY EXEMPT RECORDS, FILES OF THE DEPARTMENT THAT ARE EXEMPT, FOR WHATEVER REASON, THAT THE LEGISLATURE EXPRESSED IN NUMBER 1099. WHAT CHAPTER 117 DOES IS IT PROVIDES AN AVENUE TO OVERCOME, IF YOU WILL, IF GOOD CAUSE IS FOUND, IT PROVIDES A MEANS BY WHICH THOSE RECORDS COULD BE DISCLOSED TO THE PUBLIC, AND SO THE PLEADING WOULD BE FILED IN THE FIRST INSTANCE. WHAT WE SUBMIT SHOULD HAVE BEEN DONE, THOUGH, MOST APPROPRIATELY, IS TO FILE A PETITION IN LEON COUNTY WHERE THAT FILE IS HEADQUARTERED QUART HE SHOULD, AND THE COURT -- HEAD QUART ERRED, AND THE COURT WOULD THEN MADE A GOOD CAUSE DETERMINATION AND DETERMINED IN FACT WHETHER OR NOT THOSE RECORDS SHOULD BE RELEASED.

GO AHEAD.

WHO WAS ACTUALLY SERVED WITH A COPY OF THIS PETITION OR WAS ANYONE SERVED?

NO ONE WAS SERVED, YOUR HONOR. IT WAS SIMPLY FAXED TO DCF AND IT WAS FAXED TO, I BELIEVE, TWO OTHER PARTIES. IT WAS FAXED TO THE STATE ATTORNEY AND IT MAY HAVE BEEN FAXED TO OTHER COUNSEL. IN PALM BEACH COUNTY, YES, YOUR HONOR.

TO WHOM WAS IT FAXED?

THE REGIONAL DISTRICT OFFICE.

HELP ME OUT, BECAUSE THE PUBLIC RECORDS REQUESTS, BEFORE WE HAD THE RULE IN THE DEATH CASES, THERE WERE A LOT OF PUBLIC RECORDS REQUESTS WHERE, AS I RECALL, THE CASE WAS PENDING, NOT UP IN LEON COUNTY, AND WERE THEY ALL, WAS THIS A SERVICE OF PROCESS ON THE AGENCY, IS THAT THE, IS THAT WHAT IS DONE ROUTINELY, OR, AGAIN, I AM NOT SUGGESTING, MAYBE THE RULES ACTUALLY DO REQUIRE IT, BUT JUST FROM A PACK CRALL POINT OF VIEW, IS THAT SOMETHING THAT HAS BEEN THE WAY THAT THESE PUBLIC RECORDS REQUESTS ARE, PROCEED, THAT IS ACTUALLY HAVING TO GET FORMAL SERVICE ON THE AGENCY UPON WHOM YOU ARE REQUESTING THE RECORDS FROM?

NO, YOUR HONOR. THIS CASE IS AN ANOMALY IN THAT REGARD. UNDER AN ORDINARY CHAPTER 119 CASE, NOT UNDER 119.077, BUT IN AN ORDINARY 119 CASE THERE, IS A DEMAND MADE FOR RECORDS. THAT DEMAND, IF IT IS REFUSED, THEN GIVES RISE TO THE REQUEST FOR THE DOCUMENTS TO HAVE AN ACTION TO BRING AN ACTION AGAINST A PARTICULAR AGENCY, AND THAT ACTION IS BROUGHT IN LEON COUNTY AND SERVICE IS MADE UNDER THE RULES. IN THIS CASE, WE SUBMIT IT IS NO DIFFERENT. THE LEGISLATURE CERTAINLY DIDN'T INTEND ANYTHING DIFFERENT UNDER 119.077. THEY CERTAINLY DIDN'T INTEND TO ABROGATE THE RULES OF CIVIL PROCEDURE AND BASICALLY THROW THE BOOK OUT, WHICH IS EFFECTIVELY WHAT THE TRIAL COURT HAS DONE HERE. THE TRIAL COURT SAID THERE IS NO REASON FOR SERVICE OF PROCESS IN THIS CASE. THERE IS NO NEED FOR IT, BECAUSE DCF ISN'T A PARTY, AND FRANKLY, THE STATE HAS A VERY DIFFICULT TIME UNDERSTANDING HOW THAT CAN BE. THE ORDER, THE REQUEST FOR RELIEF IS A REQUEST MADE TO DCF. THE COURT IS GOING TO ORDER DCF TO DO SOMETHING, WHICH IS TO PRODUCE THOSE RECORDS.

WOULD YOU MOVE TO THE VENUE ISSUE, SINCE TIME IS GETTING ON BY HERE.

YES, YOUR HONOR. AS THIS COURT HAS STATED, REPEATEDLY, HOME VENUE PRIVILEGE APPLIES, UNLESS THERE ARE THREE EXCEPTIONS, ONE OF THREE EXCEPTIONS RECOGNIZED BY THIS COURT. THERE IS THE STATUTE --

BUT IT IS A JUDICIALLY DOCTRINE. IT IS NOT A LEGISLATIVE DOCTRINE.

YES, YOUR HONOR, IN FLORIDA IT IS, YES, YOUR HONOR, AND AS THIS COURT HAS SAID, IF THERE IS A STATUTORY WAIVER, IF THE STATE IS SUED OR AN AGENCY IS SUED AS A JOINT TORTFEASOR

OR IN CASES WHERE THERE IS A SWORD WIELDER EXCEPTION, THAT THE COURT HAS DEFINED.

WHY WOULD THIS NOT BE IN THE NATURE OF THAT LAST ONE, BECAUSE WE HAVE, WE HAVE A GROUP OF DOCUMENTS THAT ARE IN A PARTICULAR LOCATION, INVOLVE A PARTICULAR PERSON, INVOLVE A PARTICULAR DISPUTE THAT IS GOING TO HAVE TO BE RESOLVED WITH REGARD TO THAT PARTICULAR PERSON, AND ALL OF THEM ARE IN PALM BEACH COUNTY, AND NONE OF THEM ARE IN LEON COUNTY, SO WHY WOULD IT BE ILL-ADVISED TO HAVE THAT MATTER THAT MUST BE DECIDED UPON THE GOOD CAUSE OF THE PARTICULAR CIRCUMSTANCES, NOT A BROAD POLICY QUESTION, DECIDED HERE IN TALLAHASSEE, AS OPPOSED TO ON THE SCENE WHERE EVERYTHING, ABSOLUTELY EVERYTHING IS LOCATED?

WELL, RESPECTFULLY, YOUR HONOR, THAT IS FREQUENTLY THE CASE, IN ANY LITIGATION INVOLVING THE STATE. IF THIS COURT WERE TO CARVE OUT AN EXCEPTION WHICH WE WOULD SUBMIT WOULD BE ILL-ADVISED BUT CARVE OUT AN EXCEPTION BASED ON THE LOCATION OF DOCUMENTS OR THE LOCATION OF WITNESSES OR CONVENIENCE OF THE PARTIES THAT, EXCEPTION WOULD EFFECTIVELY SWALLOW THE HOME VENUE PRIVILEGE.

WE ARE TALKING ABOUT RECORDS. THAT IS WHAT WE ARE TALKING B THOSE RECORDS. WE ARE NOT JUST TALKING ABOUT GENERALITIES. IF YOU CAN SPEAK IN GENERALITIES THAT, BUT FOR A SPECIFIC DOCUMENT IN A SPECIFIC LOCATION INVOLVING A SPECIFIC PERSON THAT REQUIRES A SPECIFIC FINDING OF GOOD CAUSE, WITH REGARD TO A PENDING ACTION, EN, PENDING THERE.

THAT WOULD AND -- EVEN, PENDING THERE.

THAT WOULD APPLY, YOUR HONOR, IN ALL CASES PENDING THERE, AND IN ALL 67 SEPARATE JURISDICTIONS.

BUT IN THIS CASE IF THE RECORDS ARE IN PALM BEACH COUNTY AND MORE TO ME, THE PARTIES AFFECTED BY THE DISCLOSURE, AS HAS BEEN POINTED OUT, ARE THE INDIVIDUALS AND THE CHILD WHO IS THE SUBJECT OF THE INVESTIGATION, SO THE ABILITY OF ANYONE ELSE TO SHOW THAT THEY ARE, I MEAN DCF HOLDS THE RECORDS, BUT THE REAL PARTIES SEEM, TO ME, TO BE OTHER INDIVIDUALS THAT ARE MORE, NOT GOING TO BE LOCATED IN LEON COUNTY. WOULD YOU AGREE, YOU KNOW, NOW THAT WE ARE JUST TALKING ABOUT THIS EXCEPTION AND THIS CASE, DO YOU AGREE WITH THAT, THAT THAT IS, CREATES A BURDEN FOR THE GUARDIAN OF THE CHILD, WHO, MIGHT WANT TO ARGUE THAT THERE ISN'T GOOD CAUSE TO RELEASE THOSE RECORDS?

AS THIS COURT RECOGNIZED IN THE AAA CASE, SOMETIMES APPLICATION OF THE HOME VENUE PRIVILEGE IS BURDENSOME, BUT THE PRINCIPLES THAT UNDER LIE THAT PRIVILEGE, THE GLOBAL POLICY PRINCIPLES OF ECONOMIC AND EFFICIENT LITIGATION, MINIMIZE --

IF YOU LOOK BACK AT THE ORIGINAL CASE THAT SET THIS, IT SAID THAT THEY WANTED TO APPLY IN SUITS IN WHICH THERE IS JUDICIAL INTERPRETATION OF RIGHTS OR DUTIES, WHICH ARE DECLARATORY JUDGMENT ACTIONS, UNDER AGENCY RULES, WHICH MAKE SENSE, NOW ESPECIALLY WITH W THE ADMINISTRATIVE AGENCY -- NOW, WITH THE ADMINISTRATIVE AGENCY GOING TO THE FIRST DISTRICT, OR A JUDGMENT FOR DAMAGES, AND ALTHOUGH I REALIZE THAT IN SUBSEQUENT CASES THEY HAVE TALKED ABOUT THREE EXCEPTIONS, IT SEEMS TO ME THAT THAT WAS WHAT WAS BEHIND IT, THAT AN AGENCY INTERPRETATION CASES OR JUDGMENT FOR DAMAGES, IT MADE SENSE TO HAVE THE HOME VENUE PRIVILEGE, BUT THIS DOESN'T FALL INTO THAT, YOU KNOW, WHAT REALLY GAVE RISE TO THE PRIVILEGE TO BEGIN W.

I WOULD RESPECTFULLY DISAGREE WITH YOUR HONOR -- TO BEGIN WITH.

I WOULD RESPECTFULLY DISAGREE WITH YOUR HONOR AND GO BACK TO YOUR HONOR'S QUESTION, WHICH IS THAT ALL OF THE PARTIES THAT ARE AFFECTED BY THIS DECISION ARE IN

PALM BEACH COUNTY. I WOULD SUBMIT THAT IT IS BROADER THAN THAT, BECAUSE PART OF 9 PURPOSE IS TO EVALUATE -- PART OF THE PURPOSE IS TO EVALUATE DCF AND TO EVALUATE THE CARE OF CHILDREN IN ALL AREAS ACROSS THE STATE, THAT ARE AFFECTED BY THESE PARTICULAR RECORDS IN THIS CASE, BECAUSE IT IS PART OF THE PROCESS --

I DIDN'T UNDERSTAND THAT.

HOW IS THE DETERMINATION MADE AND THE CALL, AS TO HOW IT APPLIES IN LEON COUNTY, AND LET'S SAY THE STATE HAS SOME INFORMATION ABOUT IT GETTING OUT AND IT AFFECTING ITS CASE OR THE DEFENSE COUNSEL HAVING SOME CONCERN OR THE GUARDIAN AD LITEM FOR THE CHILDREN OR THE ATTORNEY FOR THE PARENTS, WHO MAY BE THE SAME IN THIS CASE OR OTHERWISE. HOW DOES A JUDGE IN LEON COUNTY MAKE THAT FACTUAL DETERMINATION OF SUFFICIENT GOOD CAUSE TO WAIVE THE EXEMPTION, WITHOUT HAVING BEFORE HIM OR HER, ALL OF THOSE PARTIES HERE IN LEON, COUNTY?

I THINK THE STATUTE CONTEMPLATES THAT THOSE PARTIES WOULD BE HERE, AND THAT SDB, OF COURSE, RAISE THE BURDEN -- AND THAT, DOES OF COURSE, RAISE THE BURDEN PROBLEM THAT HAS BEEN RAISED BY BOTH UP IN AND INQUEST BEFORE THIS COURT, BUT I THINK THAT THAT CONTEMPLATES THAT THAT JUDGE IN LEON COUNTY WOULD, INDEED, HAVE TO CONSIDER THESE FACTORS.

YOU WOULD HAVE TO BRING THE PUBLIC DEFENDER, THE 3R9 OR, THE -- THE PROSECUTOR, THE GUARDIAN AD LITEM, THE PARENTS AND THE RECORD KEEPER AND THE RECORDS, ALL, UP FROM PALM BEACH FOR A JUDGE HERE, TO MAKE THAT DECISION AND SEND IT BACK DOWN.

IN THE CONTEXT OF THIS PARTICULAR CASE, YES, YOUR HONOR, AND THAT WOULD BE, AGAIN, BURDENSOME WITHIN THE CONTEXT OF THIS PARTICULAR CASE, BUT I THINK THE COURT NEEDS TO RECOGNIZE THAT THESE CASES AREN'T ALWAYS LIKE THIS. WHAT ABOUT THE CASE WHERE THERE IS NO PENDING PROCEEDING, WHERE IT IS SIMPLY A PETITION FILED UNDER 119.07-7.

THE ANSWER TO THAT IS THAT THAT IS A DIFFERENT CASE. HELP ME WITH, HAVEN'T SOME OF THE, THESE PRINCIPLES BEHIND RECOGNIZING THIS VENUE PRIVILEGE, BEEN ERODED OVER THE YEARS? I MEAN, HAVEN'T WE MOVED, NOW, FROM THE DAYS WHEN YOU HAD A STATE DEPARTMENT OF TRANSPORTATION, FOR INSTANCE, AND THEY ONLY HAD A LAWYER IN TALLAHASSEE. MAYBE THEY HAD ADMINISTRATIVE OFFICES IN TALLAHASSEE, AND IF THEY WERE SUED IN ALL OF THE COUNTIES OR WHATEVER, WE ARE TALKING ABOUT, THEN, THAT THAT AGENCY WOULD HAVE TO SEND THEIR ADMINISTRATIVE PEOPLE TO ALL OF THESE OTHER PLACES, AND I WONDER IF THE REALITY ON THE GROUND IS STILL QUITE THE SAME, THAT IS THAT ORIGINALLY RECOGNIZING THAT VENUE PRIVILEGE, HAVEN'T THINGS, WE ARE NOW TALKING ABOUT, PERHAPS, THE LARGEST AGENCY, AS FAR AS EMPLOYEES IN THE STATE, AS YOU INDICATE, YOU KNOW, THEY HAVE DIVIDED THEMSELVES UP INTO REGIONS AND SDPRICKTS -- AND DISTRICTS AND WE KNOW THAT THERE ARE COUNSEL, REGIONAL COUNSEL AND DISTRICT COUNSEL THAT ARE PROVIDED ADMINISTRATIVE OFFICES THAT HAVE BEEN ESTABLISHED IN ALL OF THESE OTHER AREAS. WHEN YOU SEE THAT THE AGENCY ON THE GROUND CLEARLY HAS THE ABILITY TO ADEQUATELY, AS YOU POINTED OUT, WHY SHOULDN'T WE SOFTEN THAT RULE A LITTLE BIT? THEN AS OPPOSED TO HAVING ALL OF THESE OTHER PEOPLE THAT COME TO TALLAHASSEE, AND WHERE PROBABLY THE LEAD COUNSEL FOR THE DEPARTMENT, WHATEVER, SO I AM JUST ASKING THERE, SHOULDN'T WE LOOK AT THOSE, WHAT IS ACTUALLY HAPPENED, BY EXPERIENCE NOW, THAT WE ARE NOT WHERE WE WERE WHEN WE FIRST ESTABLISHED A PRINCIPLE LIKE THAT, AND WHEN IT MADE COMPLETE SENSE, AS FAR AS REQUIRING. HELP ME WITH THAT A LITTLE BIT.

WELL, RESPECTFULLY, YOUR HONOR, I WOULD DISAGREE THAT WE WERE NOT WHERE WE WERE. I THINK WE ARE. I THINK THESE STATE AGENCY, STATE AGENCIES AREN'T IN THE BUSINESS OF

LITIGATION. STATE AGENCIES ARE IN THE BUSINESS OF CARING FOR CHILDREN, OF PROTECTING THE ENVIRONMENT. EVEN IF THEY HAVE REGIONAL OFFICES, THOSE OFFICES AREN'T SET UP TO RESPOND TO LITIGATION. THEY ARE SET UP TO DO THE DAY-TO-DAY BUSINESS OF THE AGENCY. AND QUITE CANDIDLY, YOUR HONOR, ALLOWING A SWALLOWING, A WHOLESAL ABANDONMENT OF THE HOME VENUE PRIVILEGE IN THIS CASE, WOULD CREATE, BASICALLY, A SITUATION WHERE THE STATE AGENCY ARE GOING TO HAVE TO RESPOND IN 67 COUNTIES. I MEAN, YOU ARE ADDING TO AN ALREADY OVERBURDEN END STATE AGENCY LIKE DCF, THAT HAS A DIFFICULT ENOUGH TIME WITH THE PROBLEMS THAT IT FACES AND WITH THE BUDGET CHALLENGES THAT IT FACES, FULFILLING ITS PRIMARY MISSION. TO NOW ADD TO THAT, THAT THEY WOULD HAVE TO RESPOND IN 67 DIFFERENT COUNTIES --

WHO ACTUALLY, DOES, IN CASES OF PUBLIC RECORDS RESPONSES? IS IT THE ATTORNEY GENERAL THAT COMES IN FOR THE AGENCIES LIKE THE ATTORNEY GENERAL COMES IN WHEN THE COURT IS SUED, WE DON'T PERSONALLY RESPOND. THE ATTORNEY GENERAL COMES TO REPRESENT US. WHO DOES THAT FOR DCF?

IT HIS CASE-SPECIFIC YOUR HONOR. SOMETIMES.

BUT IT CAN BE THE ATTORNEY GENERAL.

IT CAN BE THE ATTORNEY GENERALS OFFICE AND THAT IS BASED ON SOME BUDGET CONSTRAINTS THAT THE LEGISLATURE SET UP. ATTORNEY GENALWAYS OFFICE REPRESENTS -- GENERALS OFFICE REPRESENTS THE DCF IN CERTAIN CASES BUT IT IS NOT ACROSS THE BOARD. WHAT HAPPENED HERE IS THE ATTORNEY GENERAL REPRESENTS THE AGENCY IN PROCEEDINGS THAT RELATE TO PUBLIC RECORDS ACT CASES.

BEFORE YOU SIT DOWN, I KNOW THAT YOUR REBUTTAL TIME IS ON, BUT YOU WOULD AGREE, WOULDN'T YOU, THAT MANY STATE AGENCIES SUE, AS PLAINTIFFS, PARTIES THROUGHOUT THE STATE.

YES, YOUR HONOR, I WILL.

OKAY. SO WHY, IF THEY ARE COMPETENT ENOUGH AND ESTABLISHED ENOUGH TO SUE OTHERS IN OTHER PARTS OF THE STATE, THEN WHY DO WE NEED TO PROTECT THE AGENCIES FROM GETTING SUED IN OTHER PARTS OF THE STATE?

WELL, OFTENTIMES, YOUR HONOR, THE DECISION TO SUE OTHERS IN OTHER PARTS OF THE STATE, IS DRIVEN MORE BY THE LOCATION OF THE DEFENDANTS THAN IT IS BY THE LOCATION OF THE AGENCY. THE HOME VENUE PRIVILEGE APPLIES IN CONTEXT WHERE THE STATE IS A DEFENDANT, BUT THE SWORD WIELDER EXCEPTION, I WOULD SUBMIT, THEN, WOULD APPLY, IF THE STATE AFFIRMATIVE DOES SOMETHING TO SUE ANOTHER INDIVIDUAL. A VENUE WOULD HAVE TO BE LAID WHERE THE DEFENDANTS RESIDE.

IF IT WAS THAT IMPORTANT TO HAVE UNIFORMITY IN THE LAW AND NOT SUBJECT AGENCIES TO SUITS THROUGHOUT THE STATE, I MEAN, WOULDN'T THE HOME VENUE PRIVILEGE, ALSO, APPLY TO THE PLAINTIFF'S CASES AND WOULDN'T WE HAVE CREATED A DOCTRINE SAYING THE STATE CAN SUE ANYBODY IN TALLAHASSEE AND DOESN'T NEED TO GO ANYWHERE ELSE?

I WOULD RESPECTFULLY SUBMIT THE UNDERLYING CONCEPTS OF FAIRNESS WOULD NOT APPLY AS HEAVILY IN CASES WHERE THE STATE IS THE PLAINTIFF OR THE STATE IS ACTUALLY TAKING AFFIRMATIVE ACTION TO AFFECT A CORPORATION OR A CITIZEN, BECAUSE THERE THE CONCEPTS OF FAIRNESS WOULD INDICATE THAT, IF YOU ARE GOING TO BE SUED BY THE STATE, AT LEAST YOU SHOULD BE SUED IN YOUR HOME COUNTY WHERE YOU RESIDE. IT IS DIFFERENT --

DON'T YOU HAVE A SITUATION, JUST FOLLOWING UP THE PUBLIC RECORDS, WHERE ORDINARILY

THE CONSTITUTION SAYS THAT CITIZENS SHOULD HAVE ACCESS TO PUBLIC RECORDS. NOW, HERE YOU SAY THERE IS A EXCEPTION BUT WE ARE TALKING GENERALLY, SO IT IS WHEN THE AGENCY SAYS, NO, I AM NOT GOING TO PRODUCE IT, THAT IT FORCES THE CITIZEN, THEN, TO HAVE ACCESS TO THE COURTS, SO THEN THE AGENCY SAYING NOT ONLY ARE WE NOT GOING TO LET YOU HAVE IT, BUT YOU ARE GOING TO HAVE TO COME UP TO LEON COUNTY TO FIND ME AND TRY TO GET THEM, AND DOESN'T THAT ALSO RUN COUNTER, ACTUALLY, WHEN WE ARE TALKING ABOUT PUBLIC RECORDS, TO THE PURPOSE AND THE SPIRIT OF THE PUBLIC RECORDS LAWS AND THE CONSTITUTION IN THIS STATE?

AGAIN, I DON'T THINK SO, YOUR HONOR, BECAUSE WHILE THAT IS TRUE, WHILE UNDER ORDINARY 119 CASES THE HOME VENUE DOES APPLY AND YOU WOULD NEED TO BRING YOUR SUIT IN TALLAHASSEE IN LEON COUNTY, I THINK THE LEGISLATURE HAS RECOGNIZED THAT, IN THOSE CASES, IF IN FACT THE STATE HAS DONE SOMETHING WRONG, THERE IS A PROVISION TO COLLECT ATTORNEYS FEES AND COSTS.

CHIEF JUSTICE: YOU WANT TO SAVE SOME OF YOUR REBUTTAL TIME, SO --

THANK YOU, YOUR HONOR.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. JOHN HARGROVE HERE ON BEHALF SUN-SENTINEL.

MR. HARGROVE, WHY WILL THIS NOT OPEN PANDORA'S BOX, AS COUNSEL SUGGESTED IT IS GOING TO BREAK THIS CASE WIDE OPEN AND THEN IT CAN BE FILED WHEREVER ANYBODY WANTS TO FILE IT ACROSS THE STATE, AS THE SOLICITOR GENERAL HAS ARGUED?

JUSTICE LEWIS, LET ME START OUT BY SAYING, FIRST OF ALL, I DON'T THINK THAT THAT IS A PROBLEM. I DON'T THINK THAT WE NEED TO CONSIDER HYPOTHAL PANDORA'S BOXES IN -- HYPOTHETICAL PAN ADORE'S BOXES WITH REGARD TO THE PUBLIC RECORDS LAWS. IRONICALLY, WE HAVE IN SECTION 123 AND 124, THAT RELATE TO THE RIGHT TO PUBLIC RECORDS AND PRIVACY, AND IT IS SUCH A FUNDAMENTAL RIGHT THAT THE ONLY TIME THE RIGHT OF PRIVACY IS SAID TO YIELD UNDER OUR CONSTITUTION, RELATES TO WHEN THERE IS A PUBLIC RECORDS ISSUE. IT IS SUCH A STRONG PUBLIC POLICY THAT WE HAVE TO LOOK, NOT AS AN ACROSS-THE-BOARD RULE OF LAW, WHAT MAY HAPPEN, WHAT IS GOING TO CONVENIENCE THE STATE, BUT I THINK WE HAVE TO HAVE A CONTEXT-BASED ANALYSIS HERE, WHICH I BELIEVE THE COURT IS GETTING TO, WITH ITS QUESTIONS. FOR EXAMPLE, JUSTICE BELL ASKED, AT THE BEGINNING, WHAT GIVES? I ANY -- WHAT GIVES ANY CITIZEN THE RIGHT TO PROCEED? IS THIS A TYPICAL INTERVENTION, LIKE WE HAVE UNDER THE RULES OF CIVIL PROCEDURE, AND THE ANSWER IS NO. THE RIGHT IS GIVEN UNDER CHAPTER 119.

WHERE DOES THE RIGHT SAY THAT THE PETITION HAS THE PETITIONER IN THIS CASE, A UP IN, OR ANY INDIVIDUAL IN THE STATE OF FLORIDA, HAS THE RIGHT TO FILE, AND HAVING DONE THIS NUMEROUS TIMES, TO FORCE, IN THIS CASE, A CRIMINAL COURT TO STOP, AND ADDRESS A PUBLIC RECORDS REQUEST. IN THE CRIMINAL PROCEEDING. WHAT BASIS, UNDER ANY RULE, ANY STATUTE, DOES, IN THIS CASE THE NEWSPAPER HAVE STANDING, TO BRING A PETITION UNDER PUBLIC RECORDS REQUEST, IN A CRIMINAL PROCEEDING?

CHAPTER 119, SECTION 7-A, 077-A.

WHAT DOES IT SAY? REGARDING WHERE THE PETITION IS FILED.

REGARDING WHERE THE PETITION IS FILED? IT SAYS ANY PERSON OR ORGANIZATION, INCLUDING THE DEPARTMENT OF CHILDREN AND FAMILIES, MAY PETITION THE COURT FOR AN ORDER, MAKING PUBLIC THE RECORDS OF THE DEPARTMENT OF CHILDREN AND FAMILIES SERVICES THAT

PERTAIN TO INVESTIGATIONS OF ALLEGED ABUSE, NEGLECT, ABANDONMENT OR EXPLOITATION OF A CHILD OR OF A VULNERABLE ADULT -- OF A VULNERABLE ADULT. THAT IS THE END OF THE FIRST SENTENCE. IT, THEN, GOES ON TO SAY, THE COURT SHALL DETERMINE IF GOOD CAUSE EXISTS FOR PUBLIC ACCESS TO THE RECORDS SOUGHT OR PORTION THERE OF, AND IN MAKING THIS DETERMINATION, THE COURT SHALL BALANCE THE BEST INTEREST OF THE VULNERABLE ADULT OR CHILD WHO, IS THE FOCUS OF THE INVESTIGATION, AND OF THE CASE OF THE CHILD, THE INTEREST OF THAT CHILD'S SIBLINGS, TOGETHER WITH THE PRIVACY RIGHT OF OTHER PERSONS IDENTIFIED IN THE REPORTS AGAINST THE PUBLIC INTEREST. NOW, DIRECTLY ANSWERING YOUR QUESTION, THERE IS NOTHING IN HERE THAT SAYS THEN YOU SHALL BE IN SUCH-AND-SUCH A PLACE, BUT IF YOU TAKE AND IN PARI MATERE EYE, READING -- PARI MATERE, READING, THAT 7-A AND 7-B REQUIRE DIFFERENT NOTIFICATION UNDER THE PUBLIC RECORDS ACCESS. JUSTICE ANSTEAD WAS GETTING TO THE ISSUE, WHEN HE SAID IS THIS A TYPICAL PUBLIC RECORDS PROCEEDING?

YOU ALSO HAVE TO READ, WITH ALL OF THIS MATERIAL, THE FACT THAT THIS COURT HAS A LONG STANDING HOME VENUE PRIVILEGE, AS FAR AS -- PRIVILEGE, AS FAR AS THE STATE, WHETHER IT IS JUDICIALLY GRAFTED OR NOT, AND IT HAS BEEN THERE AT THE TIME THAT THIS LAW HAS BEEN IN EFFECT, HAS IT NOT?

WELL, JUSTICE WELLS, IT IS LONG STANDING RULE, I SUBMIT THAT THIS IS IS A JUDICIALLY CREATED DOCTRINE. IT IS NOT SET IN STONE.

DON'T YOU HAVE TO READ IT IN CONNECTION WITH THE FACT THAT THE LEGISLATURE, IN ADOPTING THIS STATUTE, WAS PRESUMED TO KNOW THAT THAT VENUE REQUIREMENT WAS ON THE BOOKS!

IF YOU LOOK AT THE HOME VENUE, THE HOME COURT ADVANTAGE THAT WE ARE TALKING ABOUT HERE TODAY, AND YOU LOOK AT THE CONTEXT IN WHICH THAT DOCTRINE HAS BEEN APPLIED, IT IS ONLY APPLIED TO EFFECTUATE A POLICY, AND THE POLICY HERE, WE SUBMIT, IS CLEAR UNDER PUBLIC RECORDS LAWS, THAT IT DOES NOT APPLY IN ANY RESPECT. THE, THIS COURT, IN 1983, DECIDED BOARD OF COUNTY COMMISSIONERS OF MADDISON COUNTY, VERSUS -- MADISON COUNTY VERSUS GREISS, IN THIS COURT MADE IT VERY CLEAR THAT THE HOME VENUE PRIVILEGE IS NOT ABSOLUTE, AND WHAT I PARTICULARLY FOUND INFORMATIVE, IN READING THIS OPINION, IS THAT THE COURT REASONED THAT THE HOME VENUE PRIVILEGE PROMOTES ORDERLY AND UNIFORM HANDLING OF STATE LITIGATION AND HELPS TO MINIMIZE EXPENDITURE OF PUBLIC FUNDS AND MANPOWER. -- PUBLIC FUNDS AND MANPOWER. IT TALKS IN THE CONTEXT OF LITIGATION AGAINST THE STATE, AND THIS IS NOT LITIGATION AGAINST THE STATE.

WHAT MY CONCERN IS, IS THAT THIS PUBLIC RECORDS STATUTE HAS BEEN ON THE BOOKS, IN THE STATUTES FOR HOW MANY YEARS?

PUBLIC RECORDS LAWS?

RIGHT.

A SUBSTANTIAL NUMBER OF YEARS.

RIGHT.

AND HAS THERE BEEN AN INSTANCE BEFORE THE FOURTH DISTRICT'S CASE, IN WHICH THE, THERE HAS BEEN DETERMINED TO BE AN EXCEPTION TO THE HOME VENUE RULE, APPLICABLE TO THAT SECTION OF THE PUBLIC RECORDS LAW?

MY, HOPEFULLY DILIGENT, RESEARCH, HAS FOUND THAT THE ANSWER TO THAT QUESTION TO BE NO. AND I WOULD BE SUFFICIENTLY EMBARRASSED, IF YOU HAD ONE THAT I DIDN'T HAVE.

AND SO WHERE WE HAVE BEEN SINCE THE ADOPTION OF THE PUBLIC RECORDS LAW, HAS BEEN THAT THE HOME VENUE EXCEPTION HAS BEEN APPLIED TO THE PUBLIC RECORDS LAW, CORRECT?

WELL, YOUR HONOR, I HAVE FOUND NO REPORTED OPINION WHICH TRUFERS THE RIGHT OF AN INDIVIDUAL PLAINTIFF IN THE CON -- WHICH TRUMPS THE RIGHT OF AN INDIVIDUAL PLAINTIFF IN THE CONTEXT OF 7-A, LIKE WE ARE DEALING WITH HERE, THAT WOULD PERMIT ANY STATE AGENCY TO INVOKE THE HOME VENUE PRIVILEGE TO MOVE THIS PARTICULAR PROCESS TO LEON COUNTY.

HERE IS WHERE MY, I COME FROM EXPERIENCE, SINCE I HAVE BEEN HERE, ON THE PUBLIC RECORDS LAW, IN RESPECT TO CAPITAL CASES, WHICH WE WERE HAVING PUBLIC RECORDS FILEINGS THROUGHOUT FLORIDA, IN CAPITAL CASES, AND THEN THEY WERE PROCEEDING INTO THE VARIOUS DISTRICT COURTS IN FLORIDA, AND IT BECAME A VERY CHAOTIC SITUATION, UNTIL SUCH TIME AS JUSTICE PARIENTE SAID, WE STEPPED IN, AND HAVE A RULE THAT ALL OF THOSE RECORDS ARE SENT TO TALLAHASSEE, IN ORDER TO GET THERE TO BE SOME ORDERLY MANNER IN WHICH THERE CAN BE LITIGATION IN RESPECT TO AND PRO DUKES OF THE RECORDS -- PRODUCTION OF THE RECORDS. PUT THEM IN THE INDIVIDUAL CASES, WHAT I WANT TO FOCUS ON, IS WHETHER, BY PUTTING THESE IN ALL OF THE VARIOUS CIRCUIT COURTS, WE ARE GOING TO BE HEADED INTO THAT SAME TYPE OF CHAOTIC SITUATION.

I WOULD RESPECTFULLY DISAGREE, IF I UNDERSTAND YOUR QUESTION, JUSTICE WELLS. LET ME TRY TO PUT THIS IN PERSPECTIVE, IF I CAN. I THINK JUSTICE PARIENTE WAS ASKING ABOUT WHETHER OR NOT THERE WERE OTHER OFFICES OF DCF, AND WHAT WE ARE DEALING WITH HERE IN THE CONTEXT OF THESE STATE OFFICES, AND WHO WAS SERVED, AND HOW THEY WERE SERVED. IN CONNECTION WITH THIS PARTICULAR PETITION, DCF HAS 17 OFFICES THROUGHOUT THE STATE OF FLORIDA, FOR THE CONVENIENCE OF THE CITIZENRY. THAT IS THE ONLY REASON WHY IT WOULD EXIST, THE CITIZENS OF FLORIDA. THAT IS THE ONLY REASON WHY THE PUBLIC RECORDS LAWS EXIST. WE FAXED NOTICE TO COLLEEN FARNSWORTH AT THE DEPARTMENT OF CHILDREN AND FAMILIES DISTRICT 9 IN WEST PALM BEACH, FLORIDA. WE FAXED THE GUARDIAN AD LITEM IN WEST PALM BEACH, FLORIDA. WE FAXED THE ASSISTANT STATE ATTORNEY IN PALM BEACH, FLORIDA. AND WE FAXED COUNSEL FOR THE HUTTONS IN PALM BEACH, FLORIDA. EVERYBODY WAS THERE. THIS JUDGE PRESIDING IN THIS PARTICULAR CASE, KNEW WHAT THE SITUATION WAS. HE KNEW THE FACTS. AND HE MADE AN INFORMED JUDGMENT THAT, UNDER THE PUBLIC RECORDS LAWS, AS THIS COURT DETERMINED IN TRIBUNE VERSUS CANNELL A, THERE IS NO TIME TO WASTE. WE DON'T HAVE A FORMAL NEW LAWSUIT WITH SERVICE OF PROCESS.

WHY ISN'T THERE TIME -- WHAT WAS THE URGENCY IN THIS CASE, OTHER THAN THE NEWSPAPER'S INTEREST IN COVERING THE STORY AND MAYBE COROLLARY RIGHT THAT YOU CLAIM FOR THE CITIZENS OF FLORIDA, BUT WHAT WAS THE URGENCY IN THIS CASE, IN THE CRIMINAL PROCEEDING?

THE POINT I WAS ACTUALLY MAKING, AND I PROBABLY MISSPOKE, JUSTICE BELL. THE POINT IS THAT, UNDER TRIBUNE VERSUS CANELLA, UNDER THE STATUTE, EVERYTHING HAS TO BE DONE EXPEDITIOUSLY, AND WHAT HAS TO BE DONE EXPEDITIOUSLY, IS GOING TO AFFECT PARTIES INVOLVED IN THAT PROCEEDING, SO THAT WAS THE CONTEXT IN WHICH I WAS MAKING MY POINT.

WITH THAT IN MIND, WHY, HAVE YOU MADE THE ARGUMENT THAT, SINCE ONE OF THE EXCEPTIONS TO THE HOME VENUE PRIVILEGE IS THAT THERE ARE COPARTIES OR WHATEVER, WHO ARE LOCATED IN A DIFFERENT JURISDICTION, WHY WOULDN'T THIS BE, IN TERMS OF TRYING TO NARROW WHAT THIS IS, IS THAT YOU HAVE GOT, AS YOU SAID, THE REAL PARTY, WAY SEE AS THE REAL PARTIES IN INTEREST ARE, IS THE CHILD AND, WHO IS, AND THE STATUTE DIRECTS THAT THAT BE THE BEST INTEREST BE THE GUIDING LIGHT IN LOOKING AT IT. SO, AND YOU GAVE THEM NOTICE, SO WHY WOULDN'T WE JUST SORT OF LOOK AT A VARIATION OF RATHER THAN

REMOVE THE HOME VENUE PRIVILEGE FOR PUBLIC RECORDS, SAY THAT, YOU KNOW, AGAIN IN THIS TYPE OF A CASE, WHERE THERE IS AN ONGOING CASE BUT SPECIFICALLY, WHERE YOU HAVE GOT REAL PARTIES IN INTEREST BEING THE CHILD OR WHATEVER, THAT, WHO ARE LOCATED IN PALM BEACH COUNTY, THAT THAT IS THE PROPER VENUE UNDER THAT EXCEPTION?

JUSTICE PARIENTE, I DON'T MEAN TO BE, TO SOUND FLIP BY THIS, BUT IF THAT SUSTAINS THIS RESULT, THEN I WOULD CERTAINLY, BUY INTO THAT. I THINK GETTING BACK TO WHAT JUSTICE LEWIS SAID BEFORE, IF WE ARE TO TAKE A JUDICIALLY DOCTRINE, AND WE ARE TO SAY THAT IT HAS ANY APPLICATION AT ALL IN THE ANALYSIS, THEN WE CAN POTENTIALLY OR PERHAPS, PERHAPS LOOK AT THE SWORD WIELDER DOCTRINE, AND SAY THAT, ONCE DCF DECIDES THAT IT IS GOING TO PARTICIPATE ACTIVELY IN THIS PROCEEDING, AND IT IS GOING TO ATTEMPT TO THWART, PERHAPS EVEN JUST FINELY, I AM NOT KAS -- JUSTIFIABLY, AND I AM NOT TRYING TO WIELD A SWORD THERE, THEN YOU HAVE THE PREVENTION BETWEEN A CONSTITUTIONAL RIGHT AND THE STATUTE BEING ASSERTED BY THE CITIZEN --

IT WOULD AFFECT ALL PUBLIC RECORDS THEN.

YES.

I WAS LOOKING TO SEE IF THERE MAY BE A MIDDLE GROUND, BECAUSE WE ARE LOOKING AT THIS CASE AND WHAT SEEMS TO BE A RIDICULOUS RESULT THAT, IS TO TRANSPORT THE GUARDIAN AD LITEM, THE PUBLIC DEFENDERS OFFICE, THE STATE ATTORNEYS OFFICE, TO SOME, RECORDS, UP TO LEON COUNTY, WHEN THE JUDGE DOESN'T KNOW ANYTHING ABOUT THE CASE WHEN THERE HAS BEEN A LOCAL JUDGE INVOLVED IN IT, TO ME DOESN'T MAKE ANY SENSE, BUT I AM CONCERNED ABOUT HOW MANY PUBLIC RECORDS REQUESTS ARE FILED EVERY YEAR AND WHETHER THEY HAVE BEEN ROUTINELY FILED IN LEON COUNTY, THAT WE DON'T LIGHTLY SAY IT IS NOT APPLICABLE AT ALL, WHEN THE AGENCY OBJECTS TO THE PUBLIC RECORD, FORCING THE CITIZEN TO SUE.

WELL, WHEN THIS COURT HAS MADE A DETERMINATION, IN PUBLIC RECORDS TYPE OF CASES, THAT THE ONLY THING THAT REALLY IS AT ISSUE IS WHETHER AN EXCEPTION APPLIES, AND IN THE CONTEXT OF 7-A, BECAUSE IT IS A LITTLE BUILT DIFFERENT, WE REALIZE THAT -- IT IS A LITTLE BIT DIFFERENT, WE REALIZE THAT THEY ARE EXEMPT, GOING FORWARD, IT IS A DIFFERENT TYPE OF PROCEDURE ADDRESSING YOUR ISSUE, JUSTICE ANSTEAD, THAT WE ARE GOING INTO COURT INITIALLY, SAYING THAT WE UNDERSTAND THAT WE NEED TO HAVE A GOOD CAUSE DETERMINATION MADE BY THIS COURT. THE STATUTE HAS A VERY INTERESTING READING TO IT. THE STATUTE DOES NOT SAY THAT DCF OR ANY OTHER PARTY NOTICED HERE, IS ALLOWED TO COME FORWARD AND ATTEMPT TO JUSTIFY WHAT THEY HAVE DONE OR WHAT THEY HAVE NOT DONE. THE STATUTE FOCUSES ON THE RELATIVE RIGHTS TO BE BALANCED, AGAINST THOSE MINORS, THEIR SIBLINGS, AND VULNERABLE ADULTS UNDER CHAPTER 415.

BUT THAT SPEAKS TO ME, A MORE NARROW EXCEPTION, SAYING THAT IN THIS CASE IN PARTICULAR, AGAIN, WHETHER I CALL IT REAL PARTIES IN INTEREST, IS THE REAL PARTIES IN INTEREST ARE LOCATED IN PALM BEACH COUNTY, AND YOU WOULDN'T ENVISION HAVING A HEARING WITHOUT, IT IS JUST NOT UP TO, IT IS NOT DCF VERSUS THE SUN-SENTINEL. WE HAVE GOT THE CHILD'S INTERESTS AND, PRIMARILY TO BE LOOKED AT, TO SEE WHETHER THIS TYPE OF INFORMATION SHOULD BE DISCLOSED.

YOU HAVE IT EXACTLY RIGHT. IT IS THE CHILDREN'S INTERESTS THAT NEEDS TO BE EVALUATED BY THE COURT, AND THE STATUTE SAYS --

IT IS THE GUARDIAN AT LIGHT EMFOR THE CHILD -- AD LITEM WHO NEEDS TO ASSERT THAT, AND PRESUMABLY THEY ARE IN PALM BEACH COUNTY, SO, AGAIN, WHY ISN'T IT BETTER RESOLVED NOT UNDER A BROAD SWORD WIELDER'S DOCTRINE BUT IN A MORE NARROW THAT, WHEN THERE ARE COPARTIES, AND AGAIN I CAN'T REMEMBER THE DPACKT EXACT -- THE EXACT WORDING OF

THAT EXCEPTION, WHO HAVE A RIGHT TO BE HEARD IN THEIR OWN JURISDICTION, THAT THAT, WE SHOULD ADHERE IT TO THAT EXCEPTION.

WELL, I WOULD SUBMIT THIS TO YOU FOR YOUR THINKING. IF YOU ARE LEANING TOWARD ATTEMPTING TO CARVE OUT ANOTHER EXCEPTION TO IT.

I AM NOT ASKING, I AM JUST ASKING YOU WHAT IS WRONG WITH THAT THINKING IN THIS CASE?

IT WOULD BE A FALLBACK POSITION, BUT HERE IS MY VIEW ON IT. GREISS MAKES IT CLEAR THACK, SOMETIMES COURTS TRY TO LOOK TOO NARROWLY AT THIS JUDICIALLY CREATED DOCTRINE, AS IF IT WERE ABSOLUTE, JUST LIKE JACKSONVILLE ELECTRIC, THE VERY REASON WHY WE ARE HERE, AND THAT MAY BE A FAIR INTERPRETATION. FOR MY NICKEL, I DON'T THINK SO. THE COURT HAS TO EXERCISE, UNDER THIS COURT'S MANDATE, DISCRETION IN TAKING A LOOK AT HOW IT APPLIES H THERE IS NOTHING LEGISLATIVELY THAT SAYS IT MUST. WHAT WE NEED TO DO IS FOCUS ON THE POLICY OF 119 AND DETERMINE, BY WHETHER OR NOT THE COURT IS INFLUENCED OR GUIDED BY CONSIDERATIONS OF, AND I DON'T MEAN TO SOUND LIKE I AM TALKING APHORISMS, BUT I THINK THESE ARE IMPORTANT WORDS, JUSTICE, FAIRNESS, AND, AGAIN, DIRECTING THE LANGUAGE IN GRICE TO YOUR VERY ISSUE, CONVENIENCE, UNDER ALL CIRCUMSTANCES.

LET ME ASK YOU A QUESTION, SO IF WE ACCEPT YOUR POSITION, THIS IS BASICALLY WHAT YOU ARE ASKING, YOU HAVE A RIGHT TO REQUEST THE PUBLIC RECORDS DOCUMENTS UNDER THE STATUTE AT ISSUE. YOU HAVE THE RIGHT TO DO IT IN ANY PROCEEDING THAT IS PENDING IN ANY CIRCUIT OR COUNTY COURT IN THE STATE OF FLORIDA, IN ANY COUNTY, SIMPLY BY FILING A PETITION AND FAXING IT TO WHOM EVER IN THE DEPARTMENT YOU WANT TO FAX IT TO.

I THINK THAT GOES AT IT TOO BROADLY, JUSTICE BELL.

NARROW IT FOR ME. DO YOU HAVE TO GIVE FORMAL SERVICE OF PROCESS OR IS FAXING ENOUGH?

NO. FAXING IS ENOUGH, AND I WILL STICK MY NECK OUT ON THIS, TOO. DCF DOESN'T HAVE TO EVEN BE A PARTY TO THIS. THE ISSUE HERE IS A RIGHT --

I AM TALKING ABOUT THE PROCEDURES PART. NAME ME, IF YOU CAN, IF IT IS NOT THAT BROAD, NARROW IT FOR ME.

I WILL TRY TO DO IT THIS WAY.

BECAUSE I CAN'T THINK OF ANY OTHER PROCEEDING WHERE SOME PARTY UNDER DUE PROCESS RIGHTS, HAS THE RIGHT TO DO WHAT IS DONE HERE.

FIRST OF ALL, UNDER THE BROAD RUBRIC OF PUBLIC RECORDS REQUESTS, THE WAY IT NORMALLY GOES IS YOU SPUB MIGHT A REQUEST TO A STATE AGENCY, LOCAL GOVERNMENT, WHATEVER, AND IF THAT IS REFUSED, THEN YOU HAVE THE INDEPENDENT PROCEEDING THAT JUSTICE ANSTEAD TALKED ABOUT AT THE VERY BEGINNING. 7-A IS DIFFERENT. YOU GO INTO AN ISSUE WHERE DCF RECORDS ARE THE ISSUE, AND WE CONCEDE THEY ARE CONFIDENTIAL, SO THE ONLY WAY YOU ARE GOING TO HAVE THESE RECORDS PRODUCEED, IF YOU FEEL AS THOUGH YOU CAN ESTABLISH GOOD CAUSE TO DO SO, AND SETTING ASIDE WHAT IS THE BURDEN IN A GOOD CAUSE TYPE OF PETITION, WHAT ARE YOU LOOKING FOR? YOU ARE LOOKING FOR CONFIDENTIAL RECORDS. YOU ARE LOOKING FOR CONFIDENTIAL RECORDS BEFORE A COURT IN AN EXISTING PROCEEDING, THAT INVOLVES MINORS, GUARDIANS, AND VULNERABLE ADULTS.

WHY NOT DO IT THROUGH THE DEPENDENCY COURT, IF THERE IS A DEPENDENCY ACTION, WHY NOT FILE IT IN THE DEPENDENCY COURT?

THAT WOULD BE FINE.

WHAT I AM SAYING, IT IS SIMPLY UP TO, IN THIS CASE A NEWSPAPER, TO FILE IT IN WHATEVER PROCEEDING THEY WANT TO FILE IT IN?

INTERESTINGLY ENOUGH, DCF, AS THE TRIAL JUDGE IN THIS CASE FOUND, EXPRESSLY FOUND, IN THE DECENT MATTER, ACTUALLY THEY HAVE THE RIGHT TO DISCLOSE TO THE PUBLIC, FOR THE PUBLIC'S INFORMATION, INFORMATION RELATIVE TO THEIR INVESTIGATIONS.

YOU SAID A MINUTE AGO, AND I AM, THIS SOUNDING AN AWFUL LOT LIKE WE ARE JUST GOING TO MAKE ALL THIS STUFF UP AS WE GO ALONG, AND YOU SAID DCF DOESN'T EVEN NEED TO BE A PARTY TO THIS. HOW IN THE WORLD CAN THE CARETAKER OF THE RECORDS, IF YOU ARE TRYING TO GET RECORDS, NOT BE THE MAIN PARTY TO THE ACTION, SO I HAVE THE SAME CONCERNS THAT JUDGE BELL IS EXPRESSING HERE, IN TERMS OF GOING BACK TO THE, THIS ISSUE OF WHETHER YOU HAVE TO FILE A FORMAL PETITION, MOST TO INTERVENE -- MOTION TO INTERVENE OR SOMETHING, AND THEN WHERE YOU GET JURISDICTION OVER THE PARTICULAR DEPARTMENT THAT IS INVOLVED. I REALIZE WE ARE REALLY AT THE END OF THE, YOU KNOW, WHAT YOU ARE LOOKING FOR IS REALLY ANOTHER EXCEPTION IN SOME FORM, TO THE VENUE PRIVILEGE RULE, AND THAT IS WHAT YOU ARE ASKING US TO DO.

AT THE RISK OF GETTING MYSELF IN TROUBLE, CAN I TAKE TEN SECONDS TO ANSWER YOUR QUESTION?

IF YOU CAN DO IT IN TEN SECONDS.

THE STATUTE ITSELF, WHEN I TALKED ABOUT DCF DOESN'T EVEN NEED TO BE A PARTY, THE STATUTE ITSELF, DOESN'T CONTEMPLATE THAT. REALLY IT DOESN'T.

HOW IN THE WORLD CAN YOU GET RECORDS, IF YOU DON'T BRING THE PARTY IN THAT HAS THE RECORDS IN THEIR BACK POCKET?

THAT MAY BE THE PRACTICAL EFFECT OF IT, THAT YOU ARE GIVING NOTICE TO THEM.

THE COURT CANNOT ORDER SOMEBODY THAT HAS RECORDS TO PROVIDE THEM TO YOU, UNLESS THAT PARTY IS BEFORE THE COURT LEGALLY.

I AGREE WITH THAT. WHAT I WAS TRYING TO SAY, THOUGH, IS IF YOU LOOK AT THE STATUTE, THE STATUTE DOESN'T EVEN REQUIRE T NO PLACE DOES THE STATUTE SAY DCF MUST BE A PARTY AND DCF MUST BE SERVED.

CHIEF JUSTICE: OKAY. THANK YOU. MR. MARSHAL, HOW MUCH TIME ON REBUTTAL? A COUPLE OF MINUTES.

WITH RESPECT TO YOUR QUESTION, CHIEF JUSTICE ANSTEAD, DCF DOES HAVE TO BE A PARTY. DCF IS THE CUSTODIAN. IF YOU LOOK AT OTHER PUBLIC RECORDS ACT CASES, THE MEANTES CASE THAT WE CITED IN OUR -- THE MENTES CASE THAT WE CITED IN OUR BRIEF, IT MUST BE SERVED ON THE CUSTODIAN.

BECAUSE THE CHILD IN THIS CASE IS THE FOCUS OF THIS PARTICULAR EXCEPTION, NEEDS TO ALSO BE A PARTY OR NOTICED, AND HAVE AN OPPORTUNITY TO BE HEARD BEFORE THE DECISION IS MADE?

I THINK SOMETIMES THAT MAY BE TRUE, BUT I DON'T KNOW THAT IN ALL CIRCUMSTANCES THAT IT IS, PARTICULARLY IN SITUATIONS WHERE THE CHILD AS SOON UNFORTUNATELY DECEASED. THERE MAY NOT BE ANY NEED FOR THE GUARDIAN AD LITEM IN THAT --

WHY ISN'T MR. HARGROVE'S POINT, POINTING TO THE GRICE STATEMENT ABOUT CONVENIENCE, SOMETHING THAT SHOULD BE TAKEN SERIOUSLY INTO CONSIDERATION HERE, IN THAT AT THE TIME THAT THIS EXCEPTION WAS JUDDISHALLY CREATED -- JUDICIALLY CREATED, WE DIDN'T REALLY HAVE A FORM NONCONVENIENCE AT THE STATE LEVEL IN OUR JURISPRUDENCE. NOW, WE HAVE PRETTY MUCH GONE THAT WAY IN VENUE, AND WHY ISN'T THAT SOMETHING THAT WE SHOULD TAKE INTO CONSIDERATION?

I THINK YOUR HONOR, THAT THEIR RELIANCE ON GRICE IS MISPLACED IN THAT REGARD, BECAUSE THE LANGUAGE IN GRICE GIVES THE TRIAL COURT DISCRETION BUT ONLY IN CASES WHERE THERE IS A JOINT TORTFEASOR, AND YOU CONSIDER THOSE FACTORS WHEN THERE IS JOINT TORTFEASOR, WHEN THE STATE IS BROUGHT IN AS A JOINT TORTFEASOR. IF YOUR HONOR'S QUESTION GOES TO WHY CONVENIENCE ISN'T GENERALLY SOMETHING THAT SHOULD BE TAKEN INTO ACCOUNT, IT MAY NEED TO BE, FROM A GLOBAL PERSPECTIVE, BUT THE OVERRIDING POLICY CONCERNS THAT UNDER PIN THE HOME VENUE PRIVILEGE, WE WOULD SUBMIT STILL APPLY.

EVEN IF WE DISREGARD IT COMPLETELY AND ABROGATED THE HOME VENUE PRIVILEGE, THE STATE AND ALL ITS AGENCIES WOULD STILL BE ABLE TO INVOKE SECTION 47.122, JUST AS ANY OTHER DEFENDANT CAN INVOKE IT, AND SAY BECAUSE OF THE INTEREST OF WITNESSES, THE CONVENIENCE OF THE PARTIES, OR THE INTEREST OF JUSTICE, THE CASE MAY BE TRANSFERRED TO A VENUE WHERE IT COULD HAVE BEEN INITIALLY BROUGHT. ISN'T THAT RIGHT?

THAT'S CORRECT, YOUR HONOR, BUT I THINK WHAT THAT INVITES, WHAT THAT POLICY WOULD INVITE IS THE SORT OF CHAOS THAT JUSTICE WELLS SPOKE TO, IN THE CONTEXT OF THE PRISONER PUBLIC RECORDS ACT CASES.

CHIEF JUSTICE: ALL RIGHT. WITH THE HELP OF ALL OF OUR QUESTIONS, WE HAVE USED UP ALL OF THE TIME HERE. THANK YOU ALL, VERY MUCH.