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## **The Reform Party of Florida v. Black and Glenda Hood v. The Reform Party of Florida**

PLEASE RISE. HEAR YE , HEAR YE , HEAR YE. THE SUPREME COURT OF THE GREATSTATE OF FLORIDA IS NOW I N SESSION. ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR , GIVE ATTENTION , AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA , AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN , THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING LADIES AND GENTLEMEN. AND WELCOME TO THE FLORIDASUPREME COURT. THE FIRST CASE AND ONLY CASE ON TODAY'S DOCKET IS THE REFORM PARTY OF FLORIDA VERSUS HARRIET BLACK AND GLENDA HOOD VERSUS THE REFORM PARTY. BEFORE BEGINNING, I JUST WANTED TO MENTION A FEW PRELIMINARY MATTERS. AS YOU'LL SEE , JUSTICE CANTERO IS NOT WITH US TODAY. HOWEVER , THROUGH THE WONDERS OF MODERN TECHNOLOGY , HE I S WATCHING THIS ORAL ARGUMENT. HE IS IN MIAMI. HE WAS CALLED THERE ON WEDNESDAY. HIS FATHER IS IN CRITICAL CONDITION IN THE HOSPITAL. AND OUR THOUGHTS ARE WITH YOU , JUSTICE CANTERO. BUT HE WILL BE PARTICIPATING IN THE DELIBERATIONS IN THIS CASE. ALSO, I KNOW THERE WAS AN OUTSTANDING MOTION FOR , FROM THE REFORM PARTY FOR AN AMENDED BRIEF TO BE FILED. THE COURT DENIES THAT. SO ANY MATTERS THAT , ANY CASE LAW THAT MIGHT BE CITED IN THE AMENDED PORTION SHOULD NOT BE REFERRED TO IN ORAL ARGUMENT. THIRD , THE COURT RECOGNIZES THAT THE TIME PARAMETERS IN THIS CASE , BOTH FOR THE BRIEFING AND FOR THE COURT DELIBERATIVE FUNCTION IS VERY COMPRESSED. AND WE ARE MINDFUL OF THE FACT THAT THE SEPTEMBER 18 DEADLINE IS LOOMING TOMORROW. SO , WE APPRECIATE COUNSEL HAVING COMPLIED AS BEST AS THEY COULD WITH THESE EXTRAORDINARY DEADLINES. IN THE TIME TODAY , I KNOW JUSTICES WILL HAVE MANY QUESTIONS. BUT WE ASK THAT ALL PARTIES FOCUS ON THE DEFINITION OF NATIONAL PARTY WITHIN THE STATUTE. SO WITH THAT , PARTIES READY , AND I'D CALL THE REFORM PARTY , KEN SUKHIA. THANK YOU.

MAY IT PLEASE THE COURT , MADAM CHIEF JUSTICE AND MEMBERS OF THE COURT , I AM KEN SUKHIA AND I REPRESENT RALPH NADER. AND PETER CAMEJO IN THIS CASE. AS I LOOKED AT THE CIRCUMSTANCES, THE FACTS AND ALSO THE LAW THAT WAS CONFRONTING US, I BELIEVE THAT THE COURT'S DECISION MUST BE GOVERNORED IN ANY REVIEW I N THIS CASE BY CERTAIN KEY PRINCIPLES. AND ONE OF THOSE IS THAT WHICH BOTH THE SUPREME COURT OF THEUNITED STATES AND THIS COURT HAS RECOGNIZED. AND THAT IS THAT THE RIGHTS AT STAKE HERE, THAT IS THE RIGHT OF ASSEMBLY , FREE ASSEMBLY , FREE EXPRESSION AND TO VOTE ARE NOT JUST FUNDAMENTALRIGHTS. BUT THEY ARE THE MOST PRECIOUS OF ALL FUNDAMENTAL RIGHTS BECAUSE AS THE SUPREME COURTSAID IN RHODES AND CELEBREZZE , BECAUSE THEY ARE PRESERVIVE O F ALL OTHER RIGHTS.

BUT YOU AGREE THAT THE STATE UNQENL BRING HAS THE RIGHT TO IMPOSE REASONABLE RESTRICTIONS ON THE RIGHT OF ACCESS? AND THAT'S BEEN REITERATED IN NUMEROUS CASES. SO WE HAVE THAT AS A BEGINNING. AND YET , WHAT WE HAVEN'T DETERMINED, NATIONAL PARTIES , HAS BEEN IN THE STATUTE SINCE 1970. BUT WAS FREED FROM THE PERCENTAGE REQUIREMENT IN 1999. SO, AGAIN , WITH THAT IN MIND , DO YOU TAKE A POSITION ON HOW THE COURT SHOULD CONSTRUE NATIONAL PARTIES?

YES. YOUR HONOR , AS THIS COURT SAID , WHEN IT COMES T O CONSTRUING A STATUTE OF THIS NATURE , NEARLY FOUR YEARS AGO , IN HARRIS V PALM BEACH , THAT WHEN THE COURT SAID

THAT THE RIGHT OF SUFFICIENT RANCH OF THE PREEMINENT RIGHT RECOGNIZED IN FLORIDA'S DECLARATION OF RIGHTS, AND THEREFORE , ELECTION LAWS AND THIS IS I N ANSWER TO YOUR QUESTION , ELECTION LAWS AS THE COURT PUT IT MUST RECEIVE A LIBERAL CONSTRUCTION.

LET ME ASK YOU THIS . .

IN FAVOR OF THE VOTERS WHOSE RIGHTS THEY TEBD TO RESTRICT.

BASICALLY, LET'S G O BACK TO THE VERY BASIC. IS WHAT IS A NATIONAL PARTY , IS THAT A QUESTION OF LAW OR IS THAT A QUESTION O F FACT?

I BELIEVE IT MUST BE A QUESTION OF LAW. IT MUST BE A QUESTION OF LAW BECAUSE PERSONS LIKE MY CLIENTS MUST HAVE SOME CERTAINTY SO THAT THEY MAY KNOW BEFORE THEY G O IN TO MAKING ASSESSMENTS AS T O WHETHER THEY SHALL PROCEED .

HOW CAN A INCLUSIVEQUESTION OF LAW I F THERE MUST BE SOME FACTUAL DETERMINATION AS TO WHETHER A PARTY , FOR INSTANCE, IS A LOCAL OR STATE PARTY , WHICH ONLY , WITH ONLY A LOCAL OR STATE FOCUS , FOR INSTANCE, OR WHETHER O R NOT IT IS TRULY A NATIONAL PARTY?

WELL ,.

IN OTHER WORDS , DOESN'T THIS HAVE TO B E SOME FACTUAL DETERMINATION AS TO THE SPANS OR THE INTEREST OF THE PARTICULAR ENTITY?

YOUR HONOR , I BELIEVE WHEN YOU'RE LOOKING AT WHAT THE LEGISLATURE DID WHEN THEY SET THIS STATUTE OUT , THA T THEY WERE NOT INTENDING THAT THERE BE A FACTUAL ANALYSIS WHICH GOES BEHIND THE CERTIFICATION , WHICH IS PRESENTED BY , T O THE SECRETARY .

WHILE YOU'RE ON LEGISLATIVE INTENT, I THINK THAT IS CRITICAL TO WHAT IS BEFORE US THIS MORNING . YOU HAVE FOCUSED ON AND STUD AND STUDIED THIS ISSUE PROBABLY MUCH MORE THOROUGHLY THAN WE HAVE HERE ON THE BENCH. COULD YOU GIVE US YOUR VIEW O F WHAT YOU BELIEVE IT WAS THE INTENT OF THE LEGISLATURE , REALLY TO OFFER THIS SORT OF ALTERNATIVE MEANS FOR CANDIDATES TO GET ON THE STATE BALLOT, AND THAT I S ALTERNATIVE TO THE PETITION PROCESS THAT REQUIRES A CERTAIN PERCENTAGE OF REGISTERED VOTERS TO BE CERTIFIED. WHAT WOULD YOU TAKE IT TO B E THE INTENT OF THE LEGISLATURE NOW IN OFFERING THIS ALTERNATIVE MEANS?

I BELIEVE YOU HAVE TO GO BACK TO THE ARTICLE 11 OF THE CONSTITUTION, WHICH WAS ENACTED , O R WHICH WAS PUT INTO EFFECT IN 1998. AND WHEN THAT PROVISION CAME INTO EFFECT , IT WAS ACKNOWLEDGED THAT FLORIDA WAS THE MOST RESTRICTIVE STATE IN THE COUNTRY .

SO WASN'T THAT PROVISION ALREADY IN THE STATUTE AT THE TIME THAT THAT AMENDMENT WAS PASSED? I MEAN , ALTHOUGH IT WAS COUPLED WITH WASN'T IT , PRIOR TO THAT , WASN'T IT COUPLED WITH THE PETITION , HAD YOU TO HAVE BOTH THE PETITION AND THE ASSOCIATION WITH THE NATIONAL PARTY THAT HAS A NATIONAL CONVENTION? SO YOU ALREADY HAVE THAT IN THE STATUTE . SO WHY WAS THAT A PART OF THE STATUTE?WHAT WAS THE LEGISLATURE 'S INTENT?

LET ME GO TO THE SECOND PART OF MY RESPONSE THEN. THAT IS IF YOU LOOK AT THE SUBSECTION, IF YOU LOOK AT THAT SAME SUBSECTION A AND LOOK AT THE LASSEN SENSE IN SUBSECTION, IT DOESN'T LEAVE ANY REAL IT IS NOT MERELY DISCRETIONARY, IT IS I N FACT MANDATORY. IT SAYS THAT ONCE THE CERTIFICATION I S MADE , WHICHIS A CERTIFICATION MADE UNDER PENALTY OF PERJURY AND IS A CRIMINAL OFFENSE I F FALSE , ONCE IT IS CERTIFIED

BY THE MINOR PARTY, THAT THEY ARE AFFILIATED WITH A NATIONAL PARTY , WHICH NOMINATED AT THEIR NATIONAL CONVENTION , THEIR CANDIDATE , THE SECRETARY SHALL GO I UNDERSTAND THAT THAT'S THE SECRETARY'S DUTY. BUT DOES IT THEN FOLLOW THAT NO ONE CAN LOOK BEHIND WHETHER OR NOT THOSE PARTICULAR CERTIFICATIONS ARE I N FACT TRUE?

WE BELIEVE IT DOES.

COUNSEL , IF THAT'S THE CASE , THEN IT WOULD APPEAR T O ME THAT ANY NUMBER OF LOCAL OR INDIVIDUALS COULD SIMPLY FILE A CERTIFY , NOT CONCERNED WITH THESE CERTIFICATE, NOT CONCERNED WITH THESE PENALTIES OF PERJURY BUT TO PERVERT THE PROCESS.ARE YOU SUGGESTING THAT NO ONE CAN LOOK BEHIND A CERTIFICATION IF IT IS PATENTLY FALSE?

WELL IF EVER IF THAT WERE THE PROBLEM , THAT IT , THAT HAS BEEN SUGGESTED B Y THE PLAINTIFFS, IE , THAT THIS COULD CREATE COULD CREATE OR RESULT IN UNIMAGINEABLE BALLOT, WHICH IS UNDER THE STRICT SCRUTINY TEST IS ONE OF THE LIMITED BASES ON WHICH THE COURT MAY EVEN LOOK TO THE , ANY KIND OF RESTRICTIONS . IF THAT WERE THE CASE , WHY THEN I BELIEVE THE COURT MAY ASK , HASN'T THAT HAPPENED ALREADY? BECAUSE THERE HAS BEEN NO RULING WHATSOEVER DURING ALL THE YEARS THAT THIS PROVISION HAS BEEN IN PLACE , A S T O WHAT THAT MEANS. THERE HASN'T BEEN THAT SITUATION.

WELL YOU'RE SUGGESTING THAT BECAUSE BEFORE , SOMEONE THEORETICALLY HAS NOT VIOLATED THE ELECTION LAWS , THAT HAD THEREFORE IT FOLLOWS THAT NO ONE CAN EVER CHALLENGE, IF ONE BELIEVES A VIOLATION HAS OCCURRED?

WELL I AM .

I'M NOT FOLLOWING THAT LOGIC.

I THOUGHT YOU WERE SUGGESTING, OR INDICATING THAT SOMEONE WHO GETS INVOLVED I N THE PROCESS OF SEEKING TO PLAYS CANDIDATES ON THE BALLOT , COULD PLACING CANDIDATES ON THE BALLOT , COULD TREAT , IF THEY KNEW THERE WOULD BE NO EXAMINATION OF THEIR ASSERTIONS , SUBSEQUENTLY, THAT THEY COULD TREAT THIS AS AN OPPORTUNITY T O SIMPLY FALSIFY THEIR CERTIFICATION.

LET'S SUPPOSE , FOR INSTANCE , THAT THE SECRETARY OF STATE READS IN THE HEADLINES OF THE NEWSPAPERS ONE DAY THAT REFORM PARTY OF USA DISBANDS. AND THE HEADLINES IN THE NEW YORK TIMES AND THERE IS A DETAILED STORY AND THEN WITH QUOTES OF DOCUMENTS FILED WITH THE FEDERAL ELECTIONS COMMISSION. AND JUST INDICATING THAT THERE NO LONGER IS A REFORM PARTY. AND THEN TWO WEEKS LATER , THE SECRETARY OF STATE RECEIVES THESE FILINGS LIKE THIS. AND SHE CALLS UP TO THE FEDERAL ELECTIONS COMMISSION AND SAYS YOU KNOW , I READ THIS STORY IN THE NEW YORK TIMES , IS IT TRUE? AND WHOEVER IS THE HEAD OF THAT SAYS ABSOLUTELY. DO YOU WANT ME TO FAX YOU COPIES? AND THEY FAX HER COPIES. AND AS A RESULT OF THAT , SHE DENIES PLACING THIS ON THE BALLOT. AND NOW YOU'RE PUT IN THE POSTURE, YOU BRING A LAW ACTION AGAINST THE SECRETARY OF STATE O R YOU ARE YOU SAYING THE SECRETARY OF STATE COULD NOT THEN DEFEND THAT ACTION AND SAY WELL , YOU KNOW , WE RECEIVED PROOF THAT THIS PARTY HAD DISBANDED. WE BELIEVE THE LEGISLATURE INTENDED THAT ONLY LEGITIMATE FUNCTIONING NATIONAL PARTIES WERE COVERED BY THIS PROVISION. WHAT WOULD BE THE OUTCOME I N A SITUATION?

I BELIEVE A T THAT POINT AT THAT POINT, THAT THE SECRETARY WOULD HAVE A DEGREE OF DISCRETION BECAUSE THAT'S THE SECRETARY'S JOB.

WHAT'S THE DIFFERENCE BETWEEN THAT SITUATION AND THE FACTUAL SITUATION FACED B Y THE TRIAL COURT IN THIS HERE?

LET ME SUGGEST LET ME ASSUME, GETTING PAST THAT QUESTION, AND ASSUME THAT THERE IS THAT DISCRETION. OR THAT THERE IS SOME DISCRETION TO GO BEYOND. I AM JUST SIMPLY PRESENTING THAT AS OUR INITIAL POINT WHICH WE PRESENTED IN OUR BRIEF. WHICH WE DON'T BELIEVE IT IS APPROPRIATE FOR THE COURTS TO GO BEYOND THIS BECAUSE THE CIRCUMSTANCES OF THIS CASE INDICATE WHY THAT'S A PROBLEM.

WELL YOU'RE CALLING IT DISCRETION, OKAY? AND WHAT I'M SUGGESTING IS THAT AS IN THE PETITION PROCESS , ALL RIGHT , THERE HAS TO BE SOME VALIDATION OF COURSE, OF THE NUMBER OF SIGNATURES AND WE'RE MORE COMFORTABLE WITH THAT BECAUSE THAT'S SORT OF A MATHEMATICAL THING. SO WHAT'S THE DIFFERENCE BETWEEN THAT AND CHECKING THAT AND CHECKING THE AUTHENTICITY INDEED OF WHETHER OR NOT A PARTY IS STILL ?

THAT'S WHAT I'M SUGGESTING IS THE SECRETARY'S LEGITIMATE FUNCTION AND RESPONSIBILITY. IF THEY WANTED TO CHECK THE AUTHENTICATION OF THIS. AND OF COURSE , IF THAT WAS ALL IN THE PAPERS , THEN THE AUTHENTICATION WOULD COME INTO SOME QUESTION.

I JUST WANT TO REMIND YOU , I KNOW YOU'RE DIVIDING YOUR TIME.

I KNOW. I WOULD LIKE TO GET ASSUME FOR THE SAKE OF ARGUMENT THAT YOU CAN GET PAST THIS. WHAT ARE THE FACTS IN THIS CASE? AND WHY WOULD IT MAKE ANY DIFFERENCE IN THIS CASE? AND I BELIEVE IT WOULDN'T MAKE ANY DIFFERENCE. BECAUSE IF EVER THERE WAS A NATIONAL PARTY, THERE IS A NATIONAL PARTY IN THIS CASE.

SO JUST TO , WE ARE NOW , I DON'T KNOW IF MR. MEROS MINDS YOU'RE TAKING HIS TIME , BECAUSE YOU'RE IN IT NOW , WITH THE RED LIGHT ON.

SEEMS TO BE INDICATING , BECAUSE THAT IS A IS IMPORTANT FOR YOU TO ADDRESS THAT FOR US. AND THAT IS WHERE DID THE TRIAL COURT GO WRONG HERE IN TERMS OF CONSIDERING THE EVIDENCE THEN AS TO WHETHER OR NOT THIS IS A VIABLE NATIONAL PARTY? IN AUGUST AND SEPTEMBER OF 2004?

THAT'S RIGHT.

DID HE GO WRONG?

HE WENT WRONG BECAUSE HE RELIED UPON AN UNRECOGNIZED , NON-WORKABLE STANDARD THAT WAS PRESENTED BY ONE EXPERT , WHEN TWO OTHER EXPERTS SAID THIS IS NOT THE WIDELY ACCEPTED STAND.

WHAT STANDARD WOULD YOU HAVE US SUPPLY?

I BELIEVE YOU MUST APPLY THE BROADEST STANDARD.

WHAT STANDARD IS THAT?

AND THAT IS THE STANDARD THAT IS FIRST LET ME SAY. IT IS THE BROADST STANDARD THIS COURT CAN CAN IMPOSE IN MY ESTIMATION.

TELL US WHAT THE STANDARD IS.

IT WOULD BE THAT YOU MUST LOOK TO WHAT THE DEFINITION IN THE STATUTE UNDER 97 O 2114 IS.

HOW DOES THAT DEFINE NATIONAL PARTIES?

IT DEFINES POLITICAL PARTIES. AND I BELIEVE YOU HAVE TO START WITH THAT, WHICH IS A

GROUP OF PERSONS ASSOCIATED FOR THE PURPOSE OF ELECTING CANDIDATES. AND THEN IN ORDER TO TAKE IT INTO THE NATIONAL REALM , I BELIEVE THIS COURT WERE REQUIRED TO SET FORTH A LIMITATION ON THAT , THAT IT SHOULD BE THE BROADEST AND THAT WOULD BE THAT IT WOULD BE IN TWO DIFFERENT STATES OR TWO OR MORE STATES. AND NOT IN THE SAME REGION.

WHERE WOULD YOU LOOK FOR A DEFINITION OF NATIONAL? IF WE LOOK TO BLACK'S LAW DICTIONARY, FOR EXAMPLE , I'M SURE YOU HAVE LOOKED AT THAT. HAVE YOU NOT?

I HAVE NOT. NOT IN THIS CASE.

I WOULD SUGGEST TO YOU THAT SOME OF THE DEFINITIONS WOULD INDICATE NATIONWIDE . NOT INDICATE TWO STATES. WOULD NOT INDICATE ONE STATE. WOULD NOT INDICATE REGIONAL . WOULD INDICATE NATIONWIDE PERTAINING TO THE ENTIRE COUNTRY. IS THAT HELP M E UNDERSTAND HOW THAT WOULD BE IMPROPER?

FOR SEVERAL REASONS THAT CANNOT BE THE TEST. BECAUSE THERE IS NO PARTY , THERE IS NO MINOR PARTY IN THE COUNTRY THAT IS CONSISTENTLY ACTIVE IN ELECTIONS I N EVERY STATE. IN FACT , WE ARE ONLY ONE O F FIVE MINOR PARTIES IN THE COUNTRY THAT IS OPERATING WITH CANDIDATES ON MORE THAN FIVE BALLOTS.

YOU'RE SAYING THERE HAS TO BE A DIFFERENCE BETWEEN A , WHAT IS A MAJOR POLITICAL PARTY , WHICH MIGHT BE THE REPUBLICAN AND THE DEMOCRAT AND A NATIONAL PARTY. BUT YOUR DEFINITION THEN I S REALLY STILL FOR SOMEBODY LOOKING FOR NEXT TIME , IF W E TAKE WHAT COMES OUT OF THIS CASE, REALLY ANYBODY COULD SAY THAT THEY HAVE GOT A N ORGANIZATION IN TWO STATE AND THEY CAN GET ON THE BALLOT IN FLORIDA BY CERTIFYING. THAT'S WHAT WOULD COME OUT OF THIS, IS THAT CORRECT? I JUST WANT TO UNDERSTAND THE RULE OF LAW THAT WE WOULD B E ANNOUNCING.

IF THEY DID NOT HAVE SUCH AN ORGANIZATION IN TWO DIFFERENT STATES, IN WHICH THEY WERE SEEKING TO , SEEKING TO ELECT CANDIDATES , THEN THEY WOULD BE LYING WHEN THEY MADE THAT OAT.

OATH.

IS THERE A PROBLEM I N THIS CASE. YOU REPRESENT BOTH NADER AND THE REFORM PARTY.

NO , I D O NOT.

YOU REPRESENT THE REFORM PARTY?

NO , I REPRESENT NADER AND MR. CAMEJO.

THANK YOU.

MAY I SIT DOWN? THANK YOU.

YOU'RE GOING TO BE ARGUING FOR THE SECRETARY OF STATE?

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MAY IT PLEASE THE COURTYOUR HONORS , GEORGE MEROS ON BEHALF OF THE SECRETARY OF STATE OF FLORIDA.

MR. MEROS , LET M E ASK YOU THIS. WHAT DOES THE RECORD REFLECT AS T O HOW THE

SECRETARY HAS ADMINISTERED THE STATUTE?

THE RECORD REFLECTS THAT THE SECRETARY HAS ASSUMED AND INTERPRETED THE STATUTE AS MINISTERIAL ROLE TO DETERMINE WHETHER UNDER 103.021 THERE IS A CERTIFICATION TO THE SECRETARY OF STATE AND WHEN THAT OCCURS , .

HAS THE SECRETARY DENIED ACCESS TO THE BALLOT? TO ANY PERSON THAT CLAIMED TO BE A MINOR POLITICAL PARTY UNDER SECTION A?

THERE IS NOTHING I N THE RECORD ABOUT THAT , YOUR HONOR. AND I DON'T KNOW THE ANSWER T O THAT OTHERWISE.

AM I CORRECT THAT THIS STATUTE WAS AMENDED AGAIN I N 1999. BEFORE THAT IT HAD THE SAME TERMS , BUT IT HAD THIS ADDITIONAL REQUIREMENT THAT YOU HAD TO HAVE A PERCENTAGE OF VOTES , IS THAT CORRECT?

IT DID NOT HAVE THE ALTERNATIVE .

DIDN'T HAVE THE ALTERNATIVE. WELL, IT SAID LET ME MAKE SURE I HAVE GOT EXACTLY WHAT IT SAYS HERE. BEFORE THAT , IT SAID THAT MINORITY POLITICAL PARTIES, WHICH ARE AFFILIATED WITH A NATIONAL PARTY HOLDING A NATIONAL CONVENTION , BUT THEY HAD TO GET A CERTAINPERCENTAGE OF THE VOTES.

YES.

SO THEY HAD THAT WHOLE TERM THERE. NOW THEY SEVERED THAT TERM FROM THE PERCENTAGE. AND NOW MINOR POLITICAL PARTIES HAVE TWO-WAYS T O GET ON. THEY CAN GET ON EITHER NO , IS THAT NOT TRUE?

LET ME CLARIFY THAT ,. YOUR HONORS , IF I CAN , LET M E TELL YOU FROM THE PERSPECTIVEOF THE SECRETARY OF STATE WHAT A WORKABLE STANDARD MIGHT BE.

OF WHAT A NATIONAL?

OF WHAT A NATIONAL PARTY IS. IF I MAY. AND THAT IS TO FIRST START WITH SECTION 97 , THE DEFINITION OF LOCAL PARTY IN CHAPTER 97.

MINOR PARTY?

WITH REGARD TO MINOR PARTY. AND THEN A COMMON SENSE BUT BROAD DEFINITION OF NATIONAL PARTY. AND THAT WOULD BE , AND LET ME TELL YOU .

WHAT IS THE DEFINITION OF MINOR PARTY? IS SOMEONE LESS THAN FIVE THE FIVE PERCENT NUMBER?

WELL , IT GOES BEYOND THAT. BUT A NATIONAL PARTY WOULD BE ANY GROUP O F CITIZENS ORGANIZED FOR THE GENERAL PURPOSES OF ELECTING PERSONS AND DETERMINING PUBLIC ISSUES UNDER DEMOCRATIC PROCESSES. AND THEN GOING ON. THAT IS FROM 97. WITH MEMBERSHIP OR ORGANIZATIONS IN TWO OR MORE STATES AND EXTENDING BEYOND A SINGLE REGION OF THE COUNTRY. NOW WHAT I JUST READ , THE LAST PART IS NOT IN CHAPTER 97. BUT IT TAKES MINOR PARTY AND THEN ATTRIBUTES A NATIONAL PERSPECTIVE TO IT.

IS THERE TWO DIFFERENT DEFINITIONS? ONE FOR MINOR PARTY AND ONE FOR POLITICAL PARTY?

THERE IS A DEFINITION , IT IS 97.021 PAREN 15 I S MINOR POLITICAL PARTY.

AND IS THAT DEFINED WITH REFERENCE TO WHETHER THEY HAVE A PLATFORM?

NO. WHAT THIS SAYS , FIRST OF ALL , IT'S MINOR IF IT'S LESS THAN FIVE PERCENT OF THE POPULATION. AND THEN IT IS A POLITICAL PARTY IF IT IS ANY GROUP OF PERSONS ORGANIZED FOR THE GENERAL PURPOSES OF ELECTING TO OFFICE QUALIFIED PERSONS AND DETERMINING PUBLIC ISSUES UNDER THE DEMOCRATIC PROCESSES OF THE UNITED STATES.

HAS THE SECRETARY OF STATE BEEN USING THAT STANDARD?

SECRETARY OF STATE HAS NOT BEEN MAKING FACTUAL DETERMINATIONS AS TO WHETHER THE SUBMISSIONS FIT THIS STANDARD.

IT WOULD BE APPROPRIATE FOR THE SECRETARY OF STATE TO DO THAT NOW UNDER THE DEFINITION THAT YOU'RE OFFERING? TO REJECT THOSE THAT DON'T MEET THE DEFINITION THAT YOU'RE OFFERING?

IF THE COURT OH , YOUR HONOR , CREATES A DEFINITION OF NATIONAL PARTY , SOMEONE , SOME ENTITY, WHETHER IT IS SECRETARY OF STATE , OR THE ATTORNEY GENERAL, OR OTHERS , WOULD HAVE SOME ABILITY .

WOULD YOU COME BACK TO MY QUESTION ABOUT LEGISLATIVE INTENT? SEEMS TO ME OBVIOUSLY THIS IS WHAT WE NEED TO FOCUS ON HERE. AND OF COURSE WE HAVE MANY QUESTIONS AND YA'LL HAVE BEEN VERY HELPFUL IN RESPONDING. BUT IT'S DIFFICULT TO SORT OF GET AN ANSWER TO THAT QUESTION. SEEMS TO ME THAT THE CASE LAW , ALL THE WAY FROM THE U.S. SUPREME COURT TO THE FEDERAL CIRCUITS AND SOME OF THE STATE CASE LAW HAS SAID THAT THE PURPOSE OF THESE RESTRICTIONS IS TO BE SURE THAT WE'RE NOT TALKING ABOUT A FRIVOLOUS ENTITY. OKAY? THAT REALLY DOESN'T HAVE ANY SUPPORT AND IS REALLY JUST A DISTRACTION , OR A DILUTION OF THE PROCESS AS OPPOSED TO A LEGITIMATE PART OF THE PROCESS. HENCE , THE TRADITIONAL REQUIREMENT OF THE PETITION WHERE YOU SHOW THAT YOU HAVE BEEN ACTIVE ENOUGH , THAT YOU CAN ALREADY GET A CERTAIN PERCENTAGE OF REGISTERED VOTERS. AND THAT THIS ALTERNATIVE PROVISION THEN HAS THE SAME FOCUS OR REQUIREMENT , HOWEVER IT SUBSTITUTES THE FACT THAT IF A NATIONAL PARTY HAS SPONSORED YOU , THEN WE WILL ACCEPT THAT AS AN ALTERNATIVE WAY TO SHOW LEGITIMACY. WOULD YOU AGREE WITH THAT?

TO SOME EXTENT .

HELP ME. WOULD YOU PICK UP ON THAT THEN AND TELL ME , BECAUSE , I THINK THAT'S PART OF THE CONCERN THAT WE HAVE HERE AS FAR AS WHETHER OR NOT AS OPPOSED TO THE PETITION PROCESS , THAT THERE HAS BEEN THIS SHOWING THAT YES , I HAVE LEGITIMACY OR WE HAVE LEGITIMACY BECAUSE A NATIONAL PARTY WITH A NATIONAL CONVENTION AND A NATIONAL PLATFORM HAS PUT ME ON THE BALLOT AND I'M CARRYING THEIR BANNER. THEREFORE YOU CAN BE SURE THAT I HAVE THAT LEGITIMACY.

I SAID I DISAGREE YOUR HONOR BECAUSE THERE HAS BEEN DISCUSSION OF ALTERNATIVE MEANS. AND I WILL LATER EXPLAIN WHY THERE ARE NOT ALTERNATIVE MEANS IN THE CONTEXT THAT THE COURT SET.

LET ME MIND YOU ABOUT THE LATER. AND THIS IS TOUGH , YOU'RE NOW IN THEIR REBUTTAL.

YOU WANT ME TO WAIT FOR REBUTTAL, I WILL?

IF YOU WANT TO FINISH. BUT THERE IS NOT GOING TO BE A LOT LATER.

YOUR QUESTION OF INTENT , LET ME WALK YOU THROUGH THE INTENT. IN 1997 , THIS COURT AND

THE POLICY OF THE STATE OF FLORIDA WAS THAT THERE IS A LEGITIMATE STATE INTEREST IN PROMOTING THE NATIONAL PARTIES AND MINIMIZING SOME EXTENT SMALLER PARTIES SO AS NOT TO TRACK ON !!!ONOOIZ THE VOTE. IN 19978 , THE PEOPLE OF FLORIDA PASSED ARTICLE 6 , SECTION ONE , WHICH WAS NEW AND SAID THAT ELECTIONS AND POLITICAL PARTIES AND CANDIDATES ARE SUBJECT TO REGULATION. BUT , AND I QUOTE , THE REQUIREMENTS FOR A CANDIDATE WITH NO PARTY AFFILIATION O R FOR A CANDIDATE OF A MINOR PARTY FOR PLACEMENT OF THE CANDIDATE'S NAME ON THE BALLOT SHALL BE NO GREATER THAN THE REQUIREMENTS FOR A CANDIDATEOF THE PARTY HAVING THE LARGEST NUMBER OF REGISTERED VOTERS. IN RESPONSE TO THAT , APPROXIMATELY 6 MONTHS LATER , IN 1999 , THE LEGISLATURE PASSED THIS PROVISION , WHICH PROVIDED FOR NO NO PERCENTAGE REQUIREMENT.

SO MR. MEROS , I THINK THE QUESTION HERE REALLY COMES DOWN TO , WOULD YOU AGREE THAT , IN THE SECTION OF THE STATUTE THAT REQUIRES YOU TO GET OUT AND GET THE CERTAIN PERCENTAGE OF SIGNATURES IN ORDER TO GET ON THE BALLOT , THAT THAT IT IS REASONABLE BUT SUBSTANTIAL? IT IS A SUBSTANTIALREQUIREMENT TO GO OUT AND GET THESE SIGNATURES?

YES.

AND SO THE QUESTION BECOMES , DOESN'T THAT , LEGISLATIVE INTENT THAT EVEN IN THIS OTHER WAY YOU CAN DO THAT , IT IS A SUBSTANTIAL REQUIREMENT AND IT REQUIRES SOMETHING BEYOND JUST MERELY CERTIFICATION THAT THIS HAPPENED, THAT YOU REALLY NEED TO BE TO FIT THIS CRITERIA OF BEING A MINOR PARTY , AFFILIATED WITH A NATIONAL PARTY THAT HAS A NATIONAL CONVENTION, THAT THOSE ARE SUBSTANTIAL REQUIREMENTS THAT SHOULD BE AND WE SHOULD CONSIDER THEM EQUAL TO THE SUBSTANTIAL REQUIREMENT OF GOING OUT AND GETTING SIGNATURES?

THE COURT HAS THE ABILITY TO DETERMINE AND ASCERTAIN COMPLIANCE WITH THESE PROVISIONS. NO QUESTION. BUT LET ME THAT THESE ARE NOT ALTERNATIVES . AND THAT'S VERY IMPORTANT TO UNDERSTAND.

YOU SAY THERE ARE NOT ALTERNATIVES? YOU MEAN A MINOR PARTY CANNOT DO ONE OR THE OTHER?

NO, MA'AM. LET ME EXPLAIN. PAREN A SAYS A MINOR PARTYTHAT IS AFFILIATED WITH A NATIONAL PARTY MAY DO IT BY HOLDING A CONVENTION. PAREN B SAYS , A MINOR PARTY THAT IS NOT AFFILIATED WITH A NATIONAL PARTY MAY D O IT BY THE PERCENTAGE. THESE ARE NOT ALTERNATIVES. AND WHAT YOU HAVE .

SO A MINOR PARTY THAT I S AFFILIATED WITH A .

A NATIONAL PARTY. MAY DO IT BY NATIONAL CONVENTION.

COULD NOT DO I T BY A PETITION?

CORRECT.

SO GOING BACK TO THAT THOUGH, WOULDN'T THERE HAVE TO BE THEN SOME MEANING TO THE PART THAT IS THE NATIONAL PARTY HOLDING A NATIONAL CONVENTION? AND YOU HAVE ASKED US , YOU SAID WE COULD CREATE A DEFINITION. PROBLEM IS, THE COURT CAN'T CREATE A DEFINITION. WE HAVE ALSO HAVE THE U.S. CONSTITUTION TO BE CONCERNED WITH. AND WITH THE STATE LEGISLATURE DETERMINED TO BE THE REQUIREMENTS FOR THE ELECTION OF ELECTORS. THERE IS NOTHING , IS THERE , THAT YOU UNCOVERED IN THE LEGISLATIVE HISTORY BEYOND THE FACT THAT THIS CONSTITUTIONAL AMENDMENT PASSED , THAT TELLS US WHAT THE LEGISLATURE INTENDED THE DEFINITION OF NATIONAL PARTY HOLDING A NATIONAL CONVENTION TO BE?

THAT'S CORRECT , YOUR HONOR.

SO THEREFORE , IS IT VAGUE?

TO THE EXTENT THAT THE LOWER COURT ORDER WOULD BE THE LAW OF THIS COURT , IT WOULD BE VAGUE. AND IT WOULD IN MY OPINION VIOLATE THE CONSTITUTION. IT HAS TO BE A STANDARD THAT IS SUFFICIENTLY BROAD , THAT PEOPLE CAN APPLY THESE STANDARDS .

HOW DO WE KNOW? YOU'RE SAYING WE SHOULD APPLY SOMETHING IN ONE OTHER STATE. HAWAII HAS THAT , IOWA , IT HAS TO BE IN 25 STATES. I MEAN , SO HOW DO WE KNOW HOW DO WE KNOW WHAT THE LEGISLATURE INTENDED IN THIS REGARD?

IF YOU LOOK AT THE CONSTITUTIONAL PROVISION AND THE NEW CONSTITUTIONAL PROVISION IN 1998 AND WHAT THEY DID IN 1999. I BELIEVE THIS COURT CAN SAY THAT LEGISLATURE INTENTIONALLY LEFT THIS WITHOUT SPECIFIC STANDARDS AND IN FACT , WHAT THEY DID WAS THEY DID NOT PROVIDE RULE MAKING AUTHORITY.

SO IF WE ARE TALKING ABOUT THIS STATUTE REALLY IS TALKING ABOUT FOR NATIONAL ELECTIONS , CORRECT? AND SO WHY WOULDN'T IT BE REASONABLE FOR US TO THEN LOOK TO ANY NATIONAL LEGISLATION OR REGULATION SUCH AS THE FEC REGULATIONS TO DETERMINE THIS ISSUE?

TWO FUNDAMENTALLY DIFFERENT INQUIRIES. HERE THE INQUIRY IS , WHEN CAN ONE BE DEPRIVED A PLACE ON THE BALLOT? AND WHAT ARE THE INTERESTS IN THE STATE IN DEPRIVING ONE TO BE ON THE BALLOT? AND IN PARTICULAR , WITH REGARD TO THE PRINCIPLES OF THIS COURT HAS ALREADY SAID , AND THAT IS YOU ERR ON THE SIDE OF INCLUSION.

MR. MOWER ROSE MEROS , WE HAVE DEFINITELY PEN TAKING YOUR TIME. WITH OUR HELP , YOU NOW ONLY HAVE FIVE MINUTES WITH REBUTTAL.

I WILL ANSWER THIS QUESTION AND SIT DOWN. THE SECOND WITH REGARD TO THE FEC, THE POLICIES AND INTERESTS THERE ARE TO PREVENT FRAUD OR CORRUPTION WITH REGARD TO CAMPAIGN CONTRIBUTIONS. AND TO MAKE SURE THAT THE PUBLIC MONIES ARE PROPERLY SPENT AND ONLY EFFICIENTLY SPENT. THOSE ARE THE FUNDAMENTALLY DIFFERENT ANALYSIS. AS JUSTICE PARIENTE SAID , HERE ON THE OTHER SIDE OF THE DEFINITION, ANY DEFINITION THIS COURT DEEMS UNDER THIS STATUTE , COMES UP AGAINST THE RIGHTS OF ASSOCIATION , AND THE RIGHTS OF SPEECH OF POLITICAL PARTIES AND CANDIDATES. AND THE REASON WHY THIS NOT BEING AN ALTERNATIVE IS SO CRITICAL, YOUR HONORS , IS THAT A PERSON OR A PARTY ABSENT ANY STANDARD GREATER , OR WITH A STANDARD ANY MORE SPECIFIC AND NARROW THAN THIS CANNOT TELL WHAT TO DO. IF THE REFORM PARTY BELIEVES IT'S AFFILIATED REMEMBER, THIS IS APPLICATION OF LAW EX-AUNTY, YOU HAVE TO DO IT FIRST AND THEN BE ADJUDICATED. IF YOU LOOK AT THIS AND HAVE JUDGE DAVEY'S STANDARD OR ANYTHING MORE SPECIFIC THAN THIS, WHAT DO YOU SAY? AM I AFFILIATED OR AM I NOT? IS THIS A NATIONAL PARTY? OR IS IT NOT?

WAIT , WAIT. I KNOW WE ARE GOING TO GET HERE. JUSTICE LEWIS HAS A QUESTION. RATHER THAN SAVE IT FOR REBUTTAL, WE WILL GIVE YOU A FEW MORE MINUTES.

YOU HAVE SUGGESTED A VAGUENESS PROBLEM. I'M I HAVE NOT SEEN THE PARTIES PROVIDE US WITH CASE AUTHORITY THAT WE CAN PUT OUR HANDS ON. THAT THE STATUTE IS VAGUE. IT IS AN INVALID STATUTE. YOU CANNOT QUALIFY UNDER THIS STATUTE BECAUSE THIS IS AN INVALID STATUTE. WHERE DOES THAT LEAVE US? WHERE DO WE GO? DO YOU HAVE A CASE YOU CAN DIRECT US TO , THE AUTHORITY FOR THAT?

I BELIEVE THE REFORM PARTIESES , OR NADER EITHER ONE OF THE REFORM OR NADER PARTIES

BRIEF HAS CASE CITATIONS ABOUT VAGUENESS.

WHAT'S THE RESULT?

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WHAT'S THE RESULT?

WELL THE RESULT WOULD ONLY BE , WITH REGARD T O SECRETARY OF STATE , IS IT WOULD ONLY B E VOID FOR , IN APPLICATION , IF IN FACT THIS COURT WERE T O SAY JUDGE DAVEY'S METHOD AND MANNER OF DETERMINING THIS .

AGAIN, WHAT'S THE RESULT?

THE RESULT WOULD BE THAT THE ACT WOULD REMAIN BUT THE DAVEY'S ORDER WOULD BE REVERSED. BECAUSE IT I S NOT VOID FOR VAGUENESS, IF IN FACT THE DUTY OF THE SECRETARY OF STATE IS , IF THERE IS A CERTIFICATION , AND IF IT IS PROVIDED TO THE DEPARTMENT OF STATE , THE PERSON IS PLACED ON THE BALLOT. NOW THAT IS VERY BROAD. NO QUESTION ABOUT IT. BUT IT I S NOT VAGUE AT THAT POINT.IT IS BROAD. AND IF THERE IS A PROBLEM WITH THAT, AND IF THAT IS TOO BROAD , THE LEGISLATURE CAN ACT. IT IS THE SORT OF AD HOC DETERMINATION METHOD THAT JUDGE DAVEY USES THAT IS IMPOSSIBLE OF PREDICTABLE , RATIONAL APPLICATION IN THE FUTURE. AND THE SECRETARY OF STATE HAS AN ABIDING INTEREST I N NOT HAVING A SITUATION WHERE PARTIES CAN'T TELL IN THE BEGINNING. IF YOU HAVE A COMMON SENSE PROVISION ABOUT NATIONAL BEING IN MORE THAN ONE REGION , AND IF YOU HAVE A COMMON SENSE NOTION THAT IT'S PEOPLE WHO BELIEVE THAT THEY ARE AFFILIATED, BELIEVE THAT THEY ARE ORGANIZED RGING AND THAT THEY ARE HERE FOR POLITICAL PURPOSES , THEN YOU HAVE A REASONABLE ABILITY T O IMPLEMENT THAT IN A WAY S O THAT PEOPLE DON'T MAKE A PICK UNDER THESE THREE PROVISIONS AND THE PICK BE WRONG.

BUT I N THE END , IF THE CONSTITUTIONAL PROVISION WAS TO ALLOW MINOR PARTIES AFFILIATED WITH A NATIONAL PARTY TO BE ON EQUAL PAR WITH A MAJOR POLITICAL PARTY , THIS INTERPRETATION, WHICH YOU JUST HAVE TO CERTIFY THERE ARE MORE THAN THEY'RE MORE THAN EQUAL. BECAUSE THE REQUIREMENTS , THE PRIMARY THAT YOU HAVE FOR THE MAJOR PARTIES ARE CERTAINLY MORE ONEROUS THAN JUST THE CERTIFY WAY.

CORRECT. BUT YOUR HONOR, I THINK YOU HAVE TO SAY THAT LEGISLATURE'S PASSAGE OF THIS ACT AFTER THE CONSTITUTIONAL AMENDMENT PASSAGE IS A PRETTY CLEAR INDICATION THAT THEY LEFT THESE VAGUE FOR REASONS. AND IN OTHER PORTIONS OF THE STATUTE RELATING TO NATIONAL POLITICAL PARTIES , THERE IS RULE MAKING AUTHORITY. FOR A GOOD REASON. BECAUSE THEY'RE SAYING AGENCY CREATE RULES. HERE THERE IS A VERY LOUD SILENCE WITH REGARD TO RULE MAKING AUTHORITY BECAUSE OF THE CONSTITUTIONAL PARAMETERS AND BECAUSE OF THE DIFFICULTY OF MAKING I T SPECIFIC.

BUT YOU WOULD AGREE THAT IF THERE WAS SOME CLEAR VIOLATION , SUCH AS THEY WERE NOT AFFILIATED, THAT THAT WOULD BE SOMETHING THAT THE VIOLATION OF THAT PART OF THE STATUTE COULD BE BROUGHT I N A COURT OF LAW AND REMEDIED THROUGH THE PROCESS THAT JUDGE DAVEY DID , THROUGH THE INJUNCTIVE PROCESS?

AT SOME POINT AND IN SOME WAY. CERTAINLY NOT IN THE MANNER IN WHICH HE DETERMINED AFFILIATION. AFFILIATION, WE WOULD SUGGEST , AS A STANDARD , IF I N F ACT THE COURT IS GOING TO D O THAT , IS TO CONNECT OR ASSOCIATE ONE'S SELF WITH A PARTY. AND IF ONE SELF IS REFLECTSIVE AND VERY IMPORTANT.

WELL HE DECIDED THE AFFILIATION ISSUE IN YOUR FAVOR?

CORRECT.

I SAY IN YOUR FAVOR.

I'M TRYING TO TELL WHAT I'M TELLING THE COURT IS THE SECRETARY OF STATE IS , NEEDS A STANDARD THAT IS PREDICTABLE , THAT DOESN'T THAT DOESN'T DISTURB SETTLED EXPECTATIONS THAT HAVE OCCURRED OVER THE YEARS. AND THAT CAN PROTECT .

YOU'RE TELLING U S THE POLICY OF THE SECRETARY OF STATE TO THIS POINT HAS BEEN NOT TO APPLY THE DEFINITION THAT YOU HAVE SUGGESTED FOR US , BUT HAS BEEN MERELY TO ACCEPT THE CERTIFICATION REGARDLESS OF THE NAME OF THE GROUP OR WHATEVER? IS THAT CORRECT?

THAT'S RIGHT. WE HAVE WE HAVE IMPLEMENTED THE STATUTE WHICH TELLS US THAT WE SHALL PLACE ON THE BALLOT UPON CERTIFICATION.

I THINK WE BETTER EXPIRED?WE ARE GOING TO GIVE YOU A LITTLE ADDITIONAL TIME FOR REBUTTAL. BUT YOUR 30 MINUTES HAS EXPIRED.

THANK YOU.

WITH OUR HELP.

CHIEF JUSTICE PARIENTE AND MAY IT PLEASE THE COURT , I'M LAWRENCE TROD , COUNSEL FOR THE WILSON APELL LEASE. WITH ME AT COUNCIL TABLE A STEPHEN ROSENTHAL AND ALSO AT COUNSEL TIME IS JOE PERWIN. JOEL PERWIN.

LET ME STEER YOU TO THIS LAST POINT THAT MR. MEROS MADE. AND THAT IS THAT FROM WHAT I READ IN THIS RECORD , THAT DURING THIS ELECTION CYCLE , SINCE THE SEPTEMBER 1ST DEADLINE, THAT THE SECRETARY HAS CERTIFIED FIVE OR SIX .

FIVE OTHERS.

FIVE OTHER MINOR PARTIES. SIX TOTAL. AND S O THE APPLICATION O F THIS STATUTE DURING THIS ELECTION CYCLE HAS BEEN, AS THE SECRETARY SAYS, AND THAT IS TO , IF SOMEONE CERTIFIES THEY'RE IN A MINOR PARTY , THEN THE STATE IS GOING TO ALLOW THEM ON THE BALLOT. IS THAT CORRECT?

WELL YOUR HONOR , CERTAINLY THE TESTIMONY HAS BEEN THAT MINISTERIAL AND AUTOMATIC. BUT THE FACT THAT THESE FIVE HAVE BEEN APPROVED WOULD NOT IN ITSELF PROVE THAT. MIGHT BE . THAT WITH EACH OF THEM , THEREIS A VERY SOLID RECORD SHOWING THAT THEY MEET THE REQUIREMENTS OF THE STATUTE . THEY DID STRANGE INTERPRETATION SEEMS TO ME OF THE STATUTE. BUT IT IS THE SECRETARY'S INTERPRETATION. BUT SHE DOESN'T ASK THE QUESTION , IS THERE ANY TRUTHAT ALL TO THE CLAIM? THAT THE EXAMPLE OF PARTY DISAPPEARS.

I DIDN'T SEE IN THE RECORD ANY INDICATION THAT IN THE 2000 ELECTION CYCLE THAT THE SECRETARY HAD ADMINISTER ED THIS STATUTE ANY DIFFERENTLY.

NO INDICATION EITHER WAY , YOUR HONOR. NO INDICATION. BUT I THINK .

THERE WAS NOTHING IN THIS , IN THE METHOD , IN THE POLICY THAT THE STATE HAD OUT THERE UP THROUGH SEPTEMBER 1ST THAT WOULD INDICATE OTHER THAN FILING THE CERTIFICATE AND

IF YOU WERE A MINOR PARTY , THAT YOU WOULDN'T GET ON THE BALLOT. IS THAT NOT TRUE?

THAT'S RIGHT , EXCEPT , YOUR HONOR , IF I WERE T O FORM SUDDENLY SUPPOSE I WERE TO FORM A GROUP LIKE THE AMERICAN HERITAGE FOUNDATION BUT MUCH SMALLER , IT WOULD ADVOCATE POSITIONS , WOULD ADVOCATE THE ELECTION OF PEOPLE THAT WOULD MEET THE DEFINITION THEY WOULD HAVE OF POLITICAL PARTY. BUT I THINK THOSE GROUPS WOULD NOT THINK TO APPLY , BECAUSE IT WOULD BE THEIR ASSUMPTION THAT WORDS MEAN SOMETHING. IT IS NOT , IT SEEMS TO ME , THE CASE THAT WE HAVE SO DEGENERATED AS A SOCIETY THAT WE HAVE TO ASSUME THAT THERE ISN'T SOME DEGREE OF SELF-IMPOSED ENFORCEMENT.

BUT HASN'T THE LEGISLATURE REALLY LEFT US OUT ON A LIMB HERE? THAT I S THAT THEY HAVE USED WORDS LIKE NATIONAL PARTY AND NATIONAL CONVENTION AND THEY REALLY HAVE PROVIDED NO EXPLICIT GUIDANCE WITH REFERENCE TO THIS AND THEN WHEN WE GO AND WE SEE FOR INSTANCE, IN THIS RECORD , THAT EVEN IF THE FEDERAL AGENCY CHARGED WITH REGULATING ELECTIONS AND CONDUCT DURING ELECTIONS , HAS REALLY A VERY BROAD BASE O F DEFINITIONS HERE OF LEGITIMACY TO NATIONAL PARTIES. AREN'T WE LEFT IN SORT OF A POLITICAL MAIZE THAT PERHAPS THE COURTS SHOULD NOT TREAD INTO IN THIS SITUATION WHERE THE LEGISLATURE HAS NOT GIVEN US MORE GUIDANCE AND WE HAVE A CONSTITUTIONAL BACKGROUND WHERE WE WANT REALLY TO GIVE DEFERENCE T O PARTICIPATION IN ELECTION, BOTH CANDIDATES AND VOTERS. SO HELP ME WITH THE LEGISLATURE THAT HAS USED THIS LANGUAGE AND NOT SPECIFICALLY HOW CAN WE NOW IMPOSE ON THE ELECTION OFFICIAL IN THE STATE AN OBLIGATION MORE NARROW AFTER THE FACT , THAT I S , AND THIS IS PART OF THE DIFFICULTY , YOU KNOW, WITH THE CASE LAW , TRADITIONALLY ON ISSUES LIKE THIS, IS THAT YOU CAN'T .

LET ME TRY TO ANSWER YOUR QUESTION.

AFTERWARDS WITH ANSWERS , YOU KNOW ,.

FIRST OF ALL , JUSTICE ANSTEAD, I THINK WE SHOULD REMEMBER, WHEN YOU SAY AFTER THE FACT, IT I S IN A SENSE BEFORE THE FACT. THAT IS , THIS KIND OF ISSUE WILL COME U P HOPEFULLY , IF PEOPLE DO NOT WAIT QUITE AS LONG A S MR. NADER AND THE REFORM PARTY DID , T O TRIGGER IT , IT WILL COME UP BEFORE THE ELECTION. IT IS NOT A CRIMINAL PROSECUTION FOR SOMEONE NOT HAVING GUESSED RIGHT WHAT NATIONAL PARTY WOULD MEAN. AND THE LAW IS VERY CLEAR THAT THE STANDARDS OF VAGUENESS ARE VERY MUCH MORE GENEROUS TO THE LEGISLATURE . AS I WOULD URGE YOU TO BE , WHEN THE LEGISLATURE IS NOT THROWING PEOPLE IN JAIL FOR VIOLATING SOMETHING WRITTEN IN INVISIBLE INK.

BEFORE WE GET ANY FURTHER , DO YOU OFFER FOR US , IF W E WERE TO WRITE OUR OPINION , W E SAID THE LEGISLATURE USED THE TERM NATIONAL PARTY HOLDING A NATIONALITY CONVENTION , WE CONSTRUE THAT TERM TO MEAN WHAT ? WHAT WOULD YOU FILL IN THE BLANK?

I THINK THERE ARE TWO APPROACHES THAT YOU MIGHT TAKE. ONE OF THEM LOOKS MORE LEGISLATIVE.AND YOU MIGHT BE A LITTLE NERVOUS ABOUT IT , UNDERSTANDABLY. AND THAT IS , CODIFYING I T , SAYING BY NATIONAL PARTY , NATIONAL MEANS NOT LOCAL , NOT STATEWIDE , NOT REGIONAL. BUT HAVING A SIGNIFICANT PRESENCE THROUGHOUT THE NATION. SIGNIFICANT MEANS MORE THAN 12 AND A HALF PERCENT. IF YOU WERE T O DO THAT , AND I DON'T HAVE A NUMBER TO SUGGEST .

WE COULDN'T DO THAT, COULD WE?

SEEMS TO ME WOULD BE VERY DIFFICULT FOR YOU TO MAKE IT EXPLICIT IN THOSE TERMS.

WE COULDN'T DO I T BECAUSE AGAIN , AS YOU POINT OUT , NOT ONLY DO WE HAVE THE

CONSTITUTIONAL RIGHTS AT STAKE OF THE CANDIDATE , BUT WE HAVE THE ARTICLE TWO THAT REQUIRES AND PUTS PLENARY POWER IN THE LEGISLATURE. SO IN THIS AREA , WE WOULD BE , TO GO AND MAKE UP A DEFINITION WOULD BE .

WITH ALL RESPECT , I THINK ARTICLE TWO HAS BECOME QUITE A BOOGIE MAN.

WELL , IT MAY HAVE BEEN IN THE LAST ELECTION. BUT IN THIS ONE IT SEEMS TO GO DIRECTLY TO THE FACT THAT THE LEGISLATURE LET ME ASK YOU. COULDN'T THE LEGISLATURE COME UP WITH NO RESTRICTIONS ? COULD THEY SAY IN THIS STATE, WE ARE NOT GOING TO PUT ANY RESTRICTIONS ON WHO CAN GO ON OUR BALLOT? COULD THEY DO THAT?

THEY COULD. BUT IT WOULD PRODUCE CHAOTIC BALLOT. WORSE THAN BUTTER PLY. CENTIPEDE BALLOT.

IT COULD GET CHAOTIC. A VOTER COULD SAY NOW MY RIGHTS TO VOTE EFFECTIVELY HAS DILUTED.

IT IS POSSIBLE. THE RIGHT TO VOTE WOULD BECOME MEANINGLESS. IF YOU HAD A HILL OF MANHATTAN TELEPHONE DIRECTORIES.

IN THIS CASE, THE DEMOCRATIC PARTY AND THE INDIVIDUAL PLAINTIFFS ARE NOT ASSERTING ANY VIOLATION OF ANY , OF THEIR CONSTITUTIONAL RIGHTS IF THE STATUTE IS CONSTRUED IN THE BROADEST SENSE TO ALLOW ACCESS BY THE REFORM PARTY AND ITS CANDIDATES.

NO , WE ARE SIMPLY SAYING THAT WE HAVE STANDING BECAUSE .

WE KNOW YOU HAVE STANDING.

WE ARE REQUIRED TO HAVE A LEGAL ELECTION .

BUT IF WE CONSTRUE THE STATUTE IN THE BROADEST SENSE BECAUSE THERE HAS BEEN NO DIRECTION BY THE LEGISLATURE , WE HAVE NOT VIOLATED THE PLAINTIFF'S CONSTITUTIONAL RIGHTS, CORRECT?

I AM NOT SURE. THE REASON I SAY THAT IS THAT IT'S REALLY AN OPEN QUESTION WHETHER ARTICLE TWO , SECTION ONE , CLAUSE THREE , WHICH SAYS THAT YOU'RE TO TAKE THE LEGISLATURE'S WORD SERIOUSLY , THEY'RE THE ONES WHO DECIDED THAT THERE SHOULD BE A LIMIT , AS YOU HAVE POINTED OUT , THEY DECIDED THAT IT SHOULD BE A LIMIT , LOOKS AT THE SERIOUSNESS AND NON-FRIVOLITY OF THE GROUP AND IN I JUST WANT TO FINISH ONE THOUGHT. IF THE LEGISLATURE HAS SAID THAT , AND IF THIS COURT SAYS NO WITH STANDING THE LEGISLATURE'S DESIRE TO HAVE A LIMIT , NOTWITHSTANDING ARTICLE SIX , SECTION ONE , WE ARE GOING TO TREAT THIS AS COMPLETELY OPEN ENDED AND UNLIMITED , EVEN IF THERE ARE CLEAR CASES ON ONE SIDE OF THE LINE. QUITE OFTEN THE CASE , YOU DON'T KNOW QUITE WHERE THE LINE IS BUT SOMETHING IS CLEAR. WHICH IS WHAT THIS TRIAL JUDGE SAID. IF THAT HAPPENED , THEN ANYONE WHO WAS FORCED TO TAKE PART IN A PRESIDENTIAL ELECTION IN WHICH THE LEGISLATURE'S DIRECTIVE ABOUT THE BALLOT HAD BEEN COMPLETELY DISREGARDED BY A COURT THAT SAID WE WON'T HONOR IT , COULD SAY THAT THEIR RIGHTS DERIVATIVELY UNDER ARTICLE TWO WERE VIOLATED.

HERE IS WHAT CONCERNS ME , IS THAT WE ARE IN THIS CASE INTO SOMEWHAT UNUSUAL POSTURE OF THE FACT THAT THIS IS A LIMIT LIMITATION OF BALLOT ACCESS IMPOSED BY THE STATE. THE STATE HAS SAID WE'RE GOING TO APPLY THIS IN THE BROADEST WAY THAT WE CAN. AND THAT WE'RE GOING TO ALLOW YOU MINOR PARTIES ON THE BALLOT. NOW , IF THE STATE HAD TAKEN THE POSITION NO , YOU DON'T BELONG ON THE BALLOT BECAUSE YOU'RE NOT A NATIONAL PARTY , THEN YOU'D HAVE A REJOINER THAT WOULD SAY YOU HAVEN'T DEFINED A

NATIONAL PARTY, WHAT MAKES YOU SAY WE ARE NOT A NATIONAL PARTY? AND IN THAT TERM , IT WASN'T CLEAR WHEN THE DEADLINE PASSED , THAT WE COULDN'T APPLY UNDER THIS PROVISION OF THE STATUTE.

BUT LEGISLATURE HASN'T DONE THAT. WHAT IT HAS DONE IS TO PROVIDE , CONTRARY TO WHAT HAS BEEN SUGGESTED, TO PROVIDE AN ALTERNATIVE. LOOK AT IT FROM THE POINT OF VIEW OF THE CANDIDATE.

BUT THE DEADLINE'S PASSED , THAT'S THE PROBLEM.

WELL TOMORROW THE DEADLINE FOR MAILING THE ADVANCE ABSENTEE BALLOTS ARRIVES. IT IS NOT TILL SEPTEMBER 28 .

BUT THE GATHERING O F SIGNATURES. THE ALTERNATIVE.

THAT'S NOT POSSIBLE.

CERTAINLY COULD HAVE DONE IT BEFORE. BUT IT IS SIMPLY NOT TRUE , FOR EXAMPLE , THAT MR. NADER WAS STUCK AND HAD TO GO THIS PATH. HE COULD EASILY HAVE SAID , IF HE AS HE HAS IN MOST STATES , I'LL THAN AN INDEPENDENT.

DIDN'T HE HAVE A RIGHT T O GO THIS WAY?

WELL THE LEGISLATURE GAVE HIM AS A KIND AFTER BONUS. THE LEGISLATURE HAD SAID PREVIOUSLY, BEFORE 1999 , THAT YOU HAVE TO HAVE THREE PERCENT SIGNATURES AND YOU HAVE TO BE AFFILIATED WITH A NATIONAL PARTY WHOSE NOMINEE YOU MUST BE. IF AND THAT WAS VERY RESTRICTIVE.IT DIDN'T JUST BIFURCATE IT. IT CHANGED THE THREE PERCENT TO ONE PERCENT. AND IT TOLD SOMEONE IN THE POSITION OF MR. NADER , YOU CAN IF YOU WANT GO IT ALONE AND TRY TO DO WHAT OTHERS HAVE DONE, PUT IN LABOR , NOT THE CAPITAL OF A PARTY , PUT IN LABOR AND COLLECT 90,000 SIGNATURES.

MR. TROG , BUT IN THIS CASE , HE DID NOT TAKE THAT POSITION ROUTE. BUT IN THIS CASE HE DID THE SECTION A , WHERE H E SAYS THAT HE IS , THAT THIS IS A MINORPARTY.

AND HE IS THE NOMINEE OF THE NATIONAL CONVENTION.

AND THE TRIAL SAID THIS RULING ACTUALLY TURNS O N THAT , SAYING THAT HE WAS NOT THIS WAS NOT A NATIONAL PARTY. OKAY. NOW THE TRIAL JUDGE IN MAKING THAT DETERMINATION USED VARIOUS FACTORS TO SAY THEY WERE NOT A PARTY. THEY WERE NOT PARTY BUILDING. THEY WERE NOT DOING FUND RAISING. THEY DIDN'T HAVE A PLATFORM. AND THAT THEY ONLY WERE ON THE BALLOT IN FOUR OR FIVE STATES. ISN'T THAT WHAT THE .

RIGHT. THEY WERE ALL ABOUT JUST THIS GUY , SPECIFICALLY AS VEHICLE FOR RALPH NADER , NOT A NATIONAL POLITICAL PARTY.

WHAT I'D LIKE TO YOU ADDRESS.AND THE PROBLEM I AM HAVING WITH THAT , IS WHERE DO WE DRAW THE LINE HERE? SEVERAL YEARS AGO WE KNOW THA T THE REFORM PARTY WAS ON THE BALLOT. THEY HAD CANDIDATES I N 13 STATES. AND A NUMBER OF STATES. AND THAT WAS FINE. THEY WERE A NATIONAL PARTY. NOW WE GET DOWN TO 2004 , THEY'RE ONLY ON FOUR STATES , OR FIVE STATES. THEY ONLY HAVE SIX O R SEVEN CANDIDATES.

RIGHT.

WHERE D O WE DRA W THE LINE BETWEEN 13 CANDIDATES AND 7 CANDIDATES? I MEAN , THAT'S WHAT WE ARE BEING ASKED TO DO IF WE AFFIRM WHAT THE TRIAL JUDGE DID. IS THAT

CORRECT?

YOU'RE ASKED TO SAY THAT THERE IS A COMMON LAW ELEMENT HERE. THAT IS , IT IS VERY COMMON EVEN IN ELECTION REGULATION FOR THE LEGISLATURE TO USE WORDS IN GENERAL CIRCULATION WITHOUT DEFINING EVERY ONE OF THEM. WHAT THIS LEGISLATION SAID , THERE IS A PROVISION SAYING IN THAT EVENT , I BELIEVE IT IS PROVISION , LEGISLATION , CERTAINLY THIS COURT HAS SAID THE LEGISLATURE EXPECTS US TO DO THINGS LIKE LOOK AT BLACK'S LAW DICTIONARY.

SO NOW WE GO , WHEN I ASKED YOU BEFORE WHAT THE DEFINITION WAS, YOU STARTED TO SAY WELL YOU COULD DEFINE IT WITH 12 AND A HALF PERCENT AND ALL THIS. NOW IF WE GO AND SAY , BUT WE HAVE TO DEFINE IT THE NATIONAL PARTY THEN HAVE A COMMONLY UNDERSTOOD DEFINITION THROUGHOUT THIS COUNTRY?

WELL NOT NECESSARILY THAT EVERYONE WOULD USE THE SAME WORDS. BUT EVERYONE WOULD SAY NATIONAL MEANS THROUGHOUT THE NATION.

BUT AND SO THEREFORE , .

UNITED STATES OF AMERICAN.

SO THEY WOULD HAVE TO BE IN 50 STATES?

YOU SEE , I DON'T KNOW WHETHER IT HAS TO BE 50. PROBABLY IT DOES POTENTIALLY HAS TO BE 50. IF A PARTY SAYS IN PRINCIPLE , WE ARE NOT GOING TO LOOK AT CALIFORNIA. CALIFORNIA SHOULD FLOAT OUT TO SEA. WE ARE A 49 PARTY STATE. I WOULD SAY THAT IS NOT A NATIONAL PARTY.

NOW WE ARE SAYING THAT THE LEGISLATURE INTENDED THE MOST RESTRICTIVE DEFINITION.

NO , NO. IT MAY HAVE MEANT THAT THE PARTY MUST BE NATIONWIDE. BUT IT DID NOT NECESSARILY MEAN THAT THE PARTY'S COFFERS HAVE TO BE FULL. THAT IT HAS TO BE UNFRACTURED. THAT IT HAS TO BE IN OTHER WORDS , BESIDES THE PETITION ROUTE IS ALWAYS AVAILABLE.

BUT I THINK THAT THE , THAT IT APPEARS THAT WITH DIFFERENT STATES HAVING DIFFERENT DEFINITIONS WITH THIS STATE HAVING NO DEFINITION , WITH THE FEC HAVING ANOTHER DEFINITION , WITH EXPERTS HAVING OTHER CONCEPTS, THAT WE STILL ARE LEFT WITH A SITUATION WHERE THIS TERM IS AMBIGUOUS. IT'S NOT CLEAR.

IT'S AMBIGUOUS ENOUGH THAT CRIMINAL PROSECUTION FOR VIOLATING SOMETHING THAT USED THAT TERM WOULD PROBABLY VIOLATE DUE PROCESS. BUT AS A PROSPECTIVE TERM , THAT IS , IF YOU TRY TO GET ON THE BALLOT AND DO NOT PERSUADE THE TRYER OF FACT , THE MIXED QUESTION OF LAW AND FACTS .

SO WHAT YOU'RE SAYING , EXCUSE ME. SO WHAT YOU'RE SAYING THEN IS WE ARE GOING TO BE GOING THROUGH THIS EVERY TWO TO FOUR YEARS?

I HOPE NOT.

WELL WHO IS GOING TO BE THE TRYER OF FACT?

IT SEEMS TO ME THAT YOU HAVE TO REMEMBER THAT IT IS NOT SO NOVEL NOT SO UNIQUE. THAT IS ALL THE WAY BACK TO 1928 , IN THE CASE INVOLVING THE RATHER COMPLICATED SCENARIO , TERMS AT LEAST AS VAGUE , AS AMBIGUOUS, THE TERM CONVENTION, WHAT REALLY IS A

CONVENTION? WERE REGARDED AS WORKABLE TERMS OF THE LAW. AND WHEN THE SUPREME COURT IN AMERICAN PARTY OF TEXAS VERSUS WHITE SAID THAT IT IS OF COURSE CONSTITUTIONAL , NOT EVEN WORTH DEBATING .

WELL LET'S MOVE IT TO 2004. LET'S SAY WE HAD A THOUSAND PEOPLE , 2000 PEOPLE GET I N A CHAT ROOM ON THE INTERNET AND HAVE THEIR CONVENTION OVER THE INTERNET. UNDER YOUR INTERPRETATION THAT WOULD NOT BE A CONVENTION?

RIGHT. NOT UNLESS WE HAVE GOTTEN FURTHER INTO VIRTUAL REALITY , SO THE BACK SLAPPING AND GOING OFF IN LITTLE CAUCUSES.

SO HOW DOES THE SECRETARY OF STATE APPLY THIS STATUTE WITHOUT IT RESULTING I N EVERY FOUR YEARS A BIG PARTY SUING , WITH THE DEEPER COFFERS SUING THE MINOR PARTY AND REALLY LIMITING ACCESS TO BALLOT? AND THE DEVELOPMENT OF OTHER PARTIES?

IT SEEMS TO M E THAT I F THE CONCERN , AND I THINK IT IS A REAL ONE, A LEGITIMATE ONE , IS NOT TO HAVE ENORMOUS AMOUNTS OF LITIGATION. IT REALLY WOULD TAKE AN EXTRAORDINARILY GIFTED DRAFTS PERSON TO FIGURE OUT HOW TO AVOID THAT. BECAUSE ANYTHING YOU CAN IMAGINE DOING BY WAY OF LIMITING ACCESS T O THE BALLOT , AND YOU DON'T REALLY WANT A BALLOT WITH A THOUSAND NAMES. ANYTHING YOU CAN IMAGINE DOING COULD IN PRINCIPLE SPAWN LITIGATION. EVEN IF THE TERM SEEMED SOMEWHAT PRECISE.

WOULDN'T IT BE BETTER THEN IF THE LEGISLATURE WERE DOING IT? THEY COULD HAVE A PRE-CERTIFICATION ADMINISTERIVE PROCEDURE.GOING BACK , BECAUSE I PROMISED JUSTICE CANTERO I WOULD ASK A COUPLE OF QUESTIONS ON HIS BEHALF. AND YOU SUGGEST THAT THE TERM NATIONAL PARTY HAS TO MEAN SOMETHING THROUGHOUT THENATION. BUT IF THE TERMS MINOR PARTY AND NATIONAL PARTY , DON'T THEY HAVE TO BE CONSTRUED SO AS NOT TO IMPOSE SUCH BURDEN THAT ONLY A MAJOR PARTY CAN B E CONSIDERED ONE?

I THINK THAT'S CERTAINLY TRUE. AND THERE IS NO INDICATION THAT JUDGE DAVEY WAS EVEN MOVING IN THE DIRECTION OF A CONSTRUCTION THAT WOULD ALLOW ONLY MINOR PARTIES IN. HE ALSO DID SOMETHING ELSE THAT WAS VERY IMPORTANT. HE STRESSED THAT THE REASON HE THOUGHT THERE WAS NO CONSTITUTIONAL ISSUE HERE WAS THAT ON EVERY ONE OF THE SEPARATE ELEMENTS , INCLUDING WHETHER THEY NOMINATED THEM AT A CONVENTION , HE LOSES. THE DEFINITION OF NATIONAL PARTY COULD BE THROWN OUT. YOU COULD SAY WELL W E DON'T KNOW WHAT THAT TERM MEANS. BUT IT WOULD I N THIS CASE LEAD TO THE RESULT THAT MR. NADER STILL COULD NOT BE ON THE BALLOT.

WHERE DID JUDGE DAVEY GET THIS CRITERIA THAT HE DECIDED TO USE?

WELL HE LISTENED TO EXPERTS. THERE WAS TESTIMONY. AND ELEMENT OF COMMON SENSE.

A DEFINITION IS THE USE OF EXPERTS , PROPER WAY TO GET A DEFINITION FOR A TERM?

IT IS NOT OPTIMAL. THE OTHER SIDE DIDN'T OBJECT. AND THE JUDGE SAID HE DIDN'T GIVE WHAT HE CALLED I THINK HE SAID EXCESSIVE WEIGHT TO WHAT THE EXPERTS SAID. HE LOOKED AT DICTIONARIES , HE USED COMMON SENSE. THE MAIN THING HE SAID WAS A LOT LIKE COURTS HAVE SAID OFTEN WITH RESPECT TO ON SCENE ANITY. WHAT JUSTICE STEWART USED TO SAY I HAVE A HARD TIME DEFINING IT. BUT I KNOW A HARD CORE CASE WHEN I SEE IT. AND WHAT THE JUDGE SAID , W E GOT ONE HERE. AND HE REMEMBERED SOMETHING THAT I HOPE THE COURT WILL REMEMBER. AND THAT IS THAT IF MR. NADER FROM THE GET-GO HAD SAID I'M CONFUSED ABOUT WHAT'S MEANT HERE BY NATIONAL PARTY , BY MINOR PARTY. I'M JUST GOING T O GO OUT , AS I DID IN OTHER STATES AND GET SIGNATURES. HE WOULD BE ON THE BALLOT IF HE GOT ENOUGH. THAT MEANS THAT THE DEFINITION OF NATIONAL PARTY NEED NOT BE CONFRONTED I N THIS CASE. THAT HE HAS NEVER OFFERED ANY JUSTIFICATION FOR THE CONCLUSION THAT HE

BELONGS ON THE BALLOT BECAUSE THERE ARE PROBLEMS WITH ONE PASS HE MIGHT PATH HE MIGHT HAVE TAKEN NOTWITHSTANDING THE PERFECTLY CLEAR PATH.

OF COURSE HE HAS BEEN ORDERED TO BE ON THE BALLOT BY THE SECRETARY OF STATE. AND SO THAT'S WHERE WE FIND RIGHT NOW. BUT , IN FACT YOU KEEP SAYING THAT THE TERM NATIONAL PARTY OR NATIONAL CONVENTION WOULD BE HARD TO DEFINE. BUT THE BUT THEY HAVE BEEN DEFINED BY LEGISLATURES. I MEAN HAWAII DEFINED NATIONAL PARTY ONE WAY , ONE OR MORE STATES, IF I REMEMBER CORRECTLY , OR TWO OR MORE STATES. IOWA HAS DEFINED ANOTHER WAY. AND SO IT IS AND TO HAVE A NATIONAL CONVENTION CERTAINLY, A LEGISLATURE COULD TELL US WHAT IT MEANT BY THOSE TERMS.

IT COULD. AND I SUPPOSE IF YOU IMAGINE YOURSELF IN DIALOGUE WITH THEM , YOU MIGHT SAY WE REALLY ARE SUFFICIENTLY UNCERTAIN WHAT THOSE TERMS MEAN , THAT WE DO NOT WANT TO USE THIS CASE AS A VEHICLE FOR TRYING TO DEFINE THEM. ESPECIALLY IN LIGHT OF ARTICLE TWO. BUT BECAUSE THERE WAS NO ALLEGATION THAT THE ENTIRE SITUATION CONFRONTING MR. NADER HERE WAS PROBLEMATIC IN ANYWAY , NO ALLEGATION THAT HE COULDN'T EASILY HAVE TAKEN THE PATH THAT WAS BURDENSOME .

BUT DOESN'T THAT REALLY GO TO ANOTHER ISSUE THOUGH , THAT BACK TO IF MR. NADER OR THE REFORM PARTY LOOKING AT THE WAY THIS STATUTE HAD BEEN APPLIED IN 2000 , WHICH WAS HEY , FLORIDA NOW WENT FROM THE MOST RESTRICTIVE TO THIS IS A SLAM DUNK, YOU JUST HAVE TO FILE ONE OF THESE CERTIFICATES.

BUT THESE FIVE GROUPS SORRY TO INTERRUPT YOU , BUT THESE FIVE GROUPS WERE NOT JUST JOE AND JIM AND SAM. THEY WERE REAL LEGITIMATE GROUP.

THE SOCIALIST PARTY , THEY WOULD MEET THE CRITERIA YA?

THEY COLLECTED PETITION SIGNATURES. I CAN'T TELL YOU FOR SURE BECAUSE THE RECORD .

I THINK IF WE WENT ON THE WEB SITE OF ALL THOSE OTHER PARTIES , I DON'T THINK WE WOULD FIND THAT THEY , THAT THEY WOULD ALL MEET THIS MORE STRICT GENTLEMAN DEFINITION. BUT CAN HE LOOK AND SAY IN 2000, WHOEVER WANTED TO GET ON , THEY MADE THIS CERTIFICATION , AND I HAVE BEEN ABLE , YOU KNOW , I CAN IN GOOD CONSCIENCE SAY IT BECAUSE THIS IS NOT A PARTY , YOU KNOW, MAY BE ON THE DECLINE , BUT THIS IS A PARTY THAT WAS ACTUALLY CERTIFIED TO AT LEAST BE A NATIONAL COMMITTEE IN 1998. IN 2000 , I GUESS , SO WE HAVE GOT A DECLINING AND MAYBE ALMOST DEAD PARTY. NOW THEY SEE AN OPPORTUNITY THEY CAN USE NADER TO REVITALIZE THEIR PARTY. WHY ISN'T THAT LEGITIMATE?

WELL , SEEMS TO ME AS AN AIM , THAT IS LEGITIMATE. IT IS ALSO LEGITIMATE FOR THE STATE TO SAY THAT BECAUSE IT TAKES SOME WORK TO GET THE PETITIONS , BECAUSE WE WANT THIS ALTERNATIVE TO BE ROUGHLY AS ONEROUS , NOT MORE , AT A MINIMUM YOU HAVE TO HAVE A CONVENTION THAT NO, MA'AM NATURES YOU. WHEN HE WAS NOMINATED OVER THE PHONE IN THAT CONVERSATION ON MAY 11 , .

WELL LET'S GO BACK. I'D LIKE TO GO BACK TO THE TOTAL NATIONAL PARTY ISSUE. AND WOULD YOU AGREE THAT IN THIS RECORD THERE IS A CONFLICTING EVIDENCE OF WHETHER OR NOT THE REFORM PARTY IS A NATIONAL PARTY?

I HE DON'T THINK THERE WAS ANY EVIDENCE PUT ON BY THE OTHER SIDE .

WELL WASN'T THERE A MISS JANICE MILLER WHO TALKED ABOUT REFORM PARTY? ACTUALLY I RECALL A COUPLE OF WITNESSES WHO TESTIFIED THAT THERE WAS A LEGITIMATE CONVENTION, THAT THIS WAS A PARTY WITH A CERTAIN NUMBER OF MEMBERS , ETCETERA , ETCETERA.

BUT THE JUDGE DID RESOLVE THE EVIDENCE IN A WAY THAT THIS COURT UNDER ITS NORMAL RULES WOULD BE DEFERENTIAL.

BUT ISN'T THAT REVOLVING OF THE CONFLICT. IF YOU CAN AGREE THERE WAS A CONFLICT. SHOULDN'T THAT RESOLVING OF THE CONFLICT BE IN FAVOR OF ACCESS TO THE BALLOT. I THINK HE MADE IT VERY CLEAR. HE SAID HE WAS PUTTING A VERY HEAVY SUM ON THE SCALE. THAT IS WHY HE APPLIED AT THE PRELIMINARY JUNCTION STAGE A STANDARD OF BEYOND REASONABLE DOUBT. AND IN THIS CASE HE SAID THE EVIDENCE IS PREPONDERANT AND MORE THAN THAT IT IS CLEAR AND CONVINCING.

I ALSO HAVE TO BE TIME KEEPER. YOU'RE OVER YOUR TIME BUT THE OTHER SIDE, WITH OUR HELP WENT THREE MINUTES OVER. AND WE ARE GOING TO GIVE YOU A COUPLE MINUTES.

OKAY, HOW MUCH TIME?

I HAVE GIVEN 24 MINUTES.

THEN IT IS, YOU'RE BECAUSE THEY WENT THREE MINUTES OVER, WE WILL ALLOW ANOTHER FEW MINUTES IF WE DON'T FINISH UP.

THE LONGER WE DO THIS, THE MORE WE THROW OUT THE WINDOW COMMON SENSE APPROACHES TO SO MANY THINGS. CERTAINLY TALENTED LAWYERS.

CAN FIND AMBIGUITY ANYWHERE.

HAVE THE CAPACITY TO DEAL WITH THE ENGLISH LANGUAGE AS SUCH. CERTAINLY HERE WE ARE HAVING A DISPUTE OVER WHAT THOSE PHRASES MEAN. GIVING EVERYONE THE BENEFIT OF THE DOUBT. THESE DO HAVE SOME ROOM FOR DISCUSSION, FOR ANALYSIS OF THE PARAMETERS OR ANALYSIS OF THE CONCEPT OF A NATIONAL PARTY. IF IT IS SO OPEN FOR THAT DISCUSSION, AND IT HAS THAT LEVEL OF VAGUENESS THAT'S BUILT IN, WHAT DOES CASE LAW TELL US SHOULD HAPPEN IN THIS CASE? IS IT AS HAS BEEN SUGGESTED THAT WELL THEN, IT BECOMES AN UNREASONABLE RESTRICTION AND THIS MUST GO ON? OR ON THE ALTERNATIVE, IS IT, DO YOU PROVIDE A DEFINITION? OR DO YOU HOLD IT INVALID AND SAY THE STATUTE DOESN'T EXIST? COULD YOU HELP US WITH THAT?

CASE LAW IN GENERAL I THINK SAYS THAT IF IT IS A RETROSPECTIVE APPLICATION, CRIMINAL PROSECUTION, THEN IF IT IS VAGUE AS APPLIED, IF YOU'RE IN THE CORE WHERE YOU HAVE NO IDEA WHETHER SOMEONE IS IN OR OUT OF THE DEFINITION, YOU HAVE TO REVERSE THE CONVICTION. ONLY IF IT IS FACIALLY UNCONSTITUTIONAL DO YOU STRIKE THE ENTIRE LAW DOWN AND IN PROSPECTIVE CONTEXT, THE LAW IS MUCH MORE GENEROUS TO THE LEGISLATURE. BUT ONE THING THAT THE CASE LAW DOES SEEM TO SUGGEST IN THE, FOR EXAMPLE, THE LA RUCH CASE IN THE DISTRICT OF CONNECTICUT, I BELIEVE, IS THAT EVEN IF PART OF ONE OF THESE LAWS IS VAGUE. IN THAT CASE, THEY THOUGHT THAT THE DEFINING ACCESS TO THE BALLOT IN TERMS OF NATIONAL RECOGNITION AND NAME RECOGNITION, WAS VAGUE. BUT THERE WAS ALSO A PROVISION THAT SAID YOU COULD GET ON THROUGH THE PETITION ROUTE. WHAT THEY SAID WAS THAT PART IS SEVERABLE AND VALID. AND WE ARE CERTAINLY NOT GOING TO SAY THAT SIMPLY BECAUSE SOMEONE WAS KEPT OFF THE BALLOT WITH ONE ARM THAT WAS VAGUE, THAT THE PERSON NOW CAN GET ON THE BALLOT. BECAUSE THEY COULD HAVE TAKEN THE OTHER PATH. IN THE CASE LAW I THINK ALSO SUGGESTS THAT BEFORE SOMETHING IS STRUCK DOWN THAT IS VAGUE, IT HAS TO BE, AS FAR AS I CAN TELL, A LOT MORE AMBIGUOUS THAN THIS. ONE OF THE CASES THEY CITE, THE DEFINITION WAS YOU GOT TO BE A REAL CONTENDER. SO I ALMOST IMAGINE MARLIN - - MARLON BRANDO SPEAKING TO HIS BROTHER, I COULD HAVE BEEN A CONTENDER. THAT'S VAGUE. BUT THIS IS NOT LIKE THAT. WE WILL ONLY LET MARLON BRANDO ON. IT IS NOT LIKE THAT.

OKAY. THANK YOU. WITH THAT , I THINK WITH MR. TURNER, YOU HAVE GOT MR. TROG USED ABOUT THREE OF YOUR MINUTES. SO YOU WILL HAVE A COUPLE MORE.

THANK YOU YOUR HONORS. REPRESENTING THE NON-PARTISAN SIDE OF THE ISSUE. PEOPLE WHO ARE INTERESTED IN BALLOT INTEGRITY , WE I THINK FIRST WE HAVE TO TALK ABOUT A GENUINE STANDARD. THAT'S CLEARLY IMMATERIAL REPLIED. JUST AS A SIGNATURE MUST BE GENUINE , I T CAN'T BE THE SAME PERSON OR SOMETHING LIKE THAT. WE HAVE TO DEAL WITH WHAT IS GENERAL INLY A NATIONAL PARTY.

YOU SAY YOU'RE INTERESTED IN BALLOT INTEGRITY. OF COURSE THAT IS STATE INTEREST AND WHY THEY ARE ABLE TO LIMIT. BUT IN THIS SITUATION , AS APPLIED , AT LEAST WE KNOW IN THIS YEAR , THAT THE BALLOT I S NOT UNMANAGEABLE. THAT YOU HAVE GOT SIX THERE IS NOT GOING TO BE ANYONE ELSE QUALIFYING. AND SO WHY NOT ACCEPT THE SECRETARY OF STATE'S VIEW O F HOW SHE FELT SHE HAD TO APPLY THIS STATUTE AND SAY , YOU KNOW , THERE WEREN'T A HUNDRED PEOPLE QUALIFIED , THAT SOUGHT T O QUALIFY, WE MIGHT HAVE A PROBLEM THEN. THERE WERE FIVE OR SIX PARTIES. AND I DON'T KNOW IF THEY ALL QUALIFIED THROUGH THE , THIS ROUTE OR THEY HAD TO GET PETITIONS. WHERE IS THERE WHY IS THAT INTEREST IN BALLOT INTEGRITY FURTHERED BY CHERRY PICKING NADER AND THE REFORM PARTY OFF?

BECAUSE THE LAW WAS NOT FOLLOWED CLEARLY. AND WHAT WE HAVE IS A SHAM.

WHY DIDN'T YOU DID YOU LOOK AT ALL THE OTHER PARTIES THAT WERE ON TO SEE .

NO , BUT THIS IS AN INSURGENT PARTY.THIS I S PARTICULAR EXPERTS BELOW DESCRIBE THAT AS INSURGENT PARTY, WHERE YOU HAVE ONE PERSON THAT CAUSES THE THING TO ERUPT. AND GET SUBSTANTIAL. AND THEN RAPIDLY DECLINE BECAUSE YOU DON'T HAVE AABOUT BIDDING PRINCIPLES.

DON'T WE HAVE FIRST AMENDMENT IN THE STATE FOR THOSE ISSUES TO BE CLEARLY SHOW. THAT THIS IS A HIJACKED PARTY?

THAT'S WHAT WE SHOW.

BUT ISN'T THAT SOMETHING FOR THE VOTERS? IN OTHER WORDS, YOU'RE TALKING ABOUT VOTER INTEGRITY. ISN'T THAT WHY WE HAVE FREE SPEECH AND THE ABILITY TO ARGUE ABOUT THAT IN THE IN THE PUBLIC DOMAIN?

YOUR HONOR CORRECTLY IDENTIFIED THE RULES ARE THERE. WHEN THE STATE SPEAKS , WE HAVE TO FOLLOW. THE RULES ARE THERE TO BE FOLLOWED. WE HAVE TO ASSUME THERE IS MINIMAL REQUIREMENTS HERE. THAT THESE STANDARDS ARE NOT WITHOUT MEANING. IT WOULD BE MEANINGLESS TO SAY A NATIONAL PARTY IS A GROUP O F FRIENDS IN NEW YORK AND AGROUP OF FRIENDS IN CALIFORNIA WHO TALK. THAT'S MEANINGLESS. AND THAT'S THEIR POSITION.

LET ME ASK YOU THIS . YOU OBVIOUSLY ASSERT THAT YOU HAVE STANDING TO CONTEST WHAT THE STATUTE HOW THE STATUTESHOULD BE APPLIED AND WHAT I T MEANS , CORRECT?

WE HAVE STANDING TO ENFORCE THE STATUTE , JUST AS WE WOULD ON JUST AS WE WOULD T O SHOW SIGNATURES ARE NOT GENUINE , YES, SIR.

WELL I NOTE THAT WHAT I S BEING ASKED FOR INITIALLY IS A DECLARATORY JUDGMENT. CORRECT?

AN INJUNCTIVE RELIEF , YES, SIR.

AND. BUT DECLARATORY JUDGMENT. AND THE DECLARATORY JUDGMENT STATUTE HAS BEEN A AVAILABLE SINCE 1999 TO COME IN AND HAVE A DECLARATORY JUDGMENT AS TO WHAT THIS STATUTE MEANS , CORRECT?

I PRESUME IT , SINCE IT'S BEEN ENACTED , THERE WOULD HAVE BEEN A CONTROVERSY OR A CASE PENDING , YES, SIR.

QUITE HONESTLY , WHAT IS BOTHERSOME HERE IS THE FACT THAT WE FIND OURSELVES TRYING TO COME UP WITH A CONSTRUCTION OF THIS STATUTE WHICH , AND TO STRIKE SOMEBODY FROM THE BALLOT AFTER A DEADLINE RATHER THAN DOING IT PROSPECTIVELY.

SOMEBODY WHO CHOSE , YOUR HONOR , WHO CHOSE INTENTIONALLY, WHO IS A INDEPENDENT CANDIDATE. NO QUESTION. IN ALL THE STATES HE'S APPEARING. BUT WHO IS AS HIS CAMPAIGN MANAGER SAID IN THE TESTIMONY , HE IS SIMPLY , THIS ROUTE IS WHERE HE'S , IS HE IS EASIER TO APPEAR ON THE LINE AS A PARTY AS OPPOSED TO COLLECT SIGNATURES. THAT IS WHY WE HAVE A CONTROVERSY.

WELL YOU HAVE STANDING TO ATTACK IT. BUT IT IS STILL THE STATE'S COMPELLING INTEREST THAT ARE AT STAKE. AGAIN , YOUR INTEREST IS IN ENSURING THE BALLOT INTEGRITY.

AS EVIDENCED THROUGH THE STATUTE PASSED BY THE LEGISLATURE. THAT'S WHAT WE ARE HERE TO ADDRESS.

HOW COULD WE HAVE A SYSTEM THAT WILL REQUIRE FOR EACH TIME THAT THERE IS A QUESTION AS TO WHETHER A NATIONAL CONVENTION WAS HELD , THAT THERE WOULD BE A TRIAL COURT , FACT FINDING OF WHETHER THERE WERE ENOUGH BALLOONS OR , YOU KNOW, ENOUGH O F THESE HATS , I MEAN WHATEVER WE WATCH , THAT SEEMS TO BE , COME TO THINK OF AS A NATIONAL CONVENTION. WHERE IS THE INTEREST OF THE STATE IN HOW THE CONVENTION GETS?

I THINK THERE IS AN INTEREST IN THAT THERE BE A GENUINE NATIONAL PARTY.

BUT THIS WAS AGAIN , NOW WE ARE TALKING ABOUT THE FACT THIS WAS, YOU WOULD AGREE IN 1998, THIS WAS A GENUINE NATIONAL PARTY?

YES. AND THIS IS TYPICAL OF INSURGENT PARTIES.

NOW WE ARE GOING TO GET INTO GOVERNMENT 101 AND DECIDE WHEN ON A CONTINUUM FROM WHEN THEY WERE AT THEIR HEY DAY TO WHEN THEY DIE OUT , WE ARE GOING TO KNOCK THEM OFF THE BALLOT.

WE CERTAINLY WOULD YOUR HONOR AGREE IN 1995 AT THE BEGINNING OF THIS PARTY , I T WAS NOT A NATIONAL PARTY. THERE IS A PROBLEM HERE BECAUSE AT THE BEGINNING AND AT THE END , THEY'RE NOT FUNCTIONING.

BUT ISN'T IT TRUE AS A NATURAL COURSE, IF YOU READ THE HISTORY OF ALL THESE INSEARCH INSURGENT PARTIES AS YOU CALL THEM , THAT THEY DIE A SLOW AND NATURAL DEATH? WITHOUT THE COURTS ENTER VING.

THE BULL MOOSE PARTY WAS ONE DESCRIBED , GEORGE WALLACE PARTY WAS ONE DESCRIBED. USUALLY IT IS VERY RAPID.

WEIGHING THE HARMS AND THE BENEFITS, WHAT'S THE HARM IF THIS COURT WERE NOT TO INTERVENE AND ALLOW THE BALLOT TO GO FORWARD AS THE SECRETARY HAS CERTIFIED?

AS I SEE IT , YOU HAVE A SITUATION WHERE ONE OF THESE PARTIES CAN BE CAPTURED EXACTLY AS IT IS HERE , AND BY COUNTRY CLUB AS ONE OF THE WITNESSES DESCRIBED , AND REALLY TAKE SOMEBODY AND USE THIS VEHICLE TO EVADE THE ONE PERCENT SIGNATURE REQUIREMENT OF MINOR PARTIES , WHICH IS NOT FAIR. THAT'S WHAT WE ARE TALKING ABOUT.

ARE WE THEN TO TAKE INTO CONSIDERATION THE FACT THIS IS RALPH NADER AND THAT HE IS RUNNING ON AN , AS AN INDEPENDENT IN ALL THE OTHER STATES. AND THAT HE IS NOT GOING TO BE RUNNING AS A REFORM PARTY CANDIDATE. IS THAT SUPPOSED TO BE SOMETHING THAT WE TAKE IN OUR CALCULUS OF DECIDING THIS ISSUE?

WELL IT IS THE PARTY UNDER SECTION 103109 PAREN THESE 02. THE PARTY AND NOT THE INDIVIDUAL CANDIDATE ENTITLED UNDER THE LAW TO PLACE THE CANDIDATE ON THE BALLOT.

I'M CONCERNED WITH THE SUB TEXT HERE. THE NEWSPAPER STORIES GOING TO BE VERY DIFFERENT FROM WHAT THE LEGAL STORY IS. WHAT I'M CONCERNED ABOUT IS , ALTHOUGH WE KNOW WE HAVE A LEGAL QUESTION TO EVALUATE , THAT IF WE GET OURSELVES TOO FAR INTO THE POLITICS , ISN'T THE COURT THEN RUNNING AFOUL OF THE I'M NEVER GOOD AT THIS-OVERTIME JUST TIRBL ABILITY ISSUE AS FAR AS GETTING INTO QUINTESSENTIAL POLITICAL CONTROVERSY?

JUDGE, YOUR HONOR , THE STATUTE'S THERE. STATUTE HAS MEANING. IT IS A BALLOT ACCESS LIMITATION AND IT MUST BE APPLIED IN A MEANINGFUL WAY. AND I THINK THE EVIDENCE IN THIS CASE IS CLEAR. BY EXPERTS ON BOTH SIDES.

WELL ARE YOU THEN SUGGESTING LET ME GO BACK TO THE QUESTION YOU HAVE A CHANCE TO ANSWER IT. IF WE WERE WRITING THIS OPINION, WE ARE NOT JUST DEALING WITH THIS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING. WHAT IS THE DEFINITION THAT THE COURT , WHEN THE LEGISLATURE DID NOT DEFINE THIS TERM , WE GO TO WHAT DO WE THEN DO WITH THE TERM NATIONAL PARTY? WE DEFINE IT TO MEAN WHAT?

TO HAVE A GENUINE NATIONAL PARTY, THE EXPERT FOR BOTH OUR CLIENTS AND THE EXPERT FOR THE REFORM PARTY TESTIFIED YOU HAVE TO HAVE FOUR CRITERIA .

WAIT , WAIT. SO ARE YOU SUGGESTING THAT THIS COURT TAKE A STATUTE THAT WAS PASSED IN 1999 , WITHOUT ANY LEGISLATIVE HISTORY , THAT WAS A TERM THAT WAS ON THE BOOKS SINCE 1970 , AND APPLY CRITERIA THAT TOOK PLACE IN A TRIAL AFTER SEPTEMBER 1ST OF 2004?

I'M SUGGESTING THAT WE DO WHAT WE DO EVERY DAY THAN IN INTERPRETING STATUTES. WE APPLY WHAT IS MEANINGFUL , WHAT PEOPLE KNOW IN COMMON SENSE. AND WHAT EVERYONE AGREES ON , THERE ARE FOUR .

IT CAN'T BE COMMON SENSE IF YOU NEEDED AN EXPERT. YOU SEE, THAT IS THE WHOLE PROBLEM WITH THIS. IF THIS IS JUST LIKE THE QUESTION OF , YOU KNOW , 2000 ELECTION , I'M SURE NONE OF US REALLY GAVE MUCH THOUGHT TO WHAT MINOR POLITICAL PARTIES MEANT AND WHAT THESE TERMS MEANT. YOU'RE TELLING ME THAT WE ALL KNOW WHAT A NATIONAL PARTY MEANT BY THESE FOUR CRITERIA?

I'M SAYING THAT PEOPLE WHO KNOW I'M NOT A PARTY PERSON. I AM NOT A PARTY EXPERT. BUT PEOPLE WHO UNDERSTAND WHAT PARTIES ARE , CLEARLY IT MUST BE NATIONAL IN SCOPE OF SOME KIND. BUT THE EXPERT HAS CLEARLY LAID OUT FOUR MINIMUM CRITERIA THAT EVERY ONE IN THE AREA RECOGNIZES.

BUT WE DON'T RELY UPON EXPERTS FOR GIVING , FOR THE COURT TO GIVE A LEGAL DEFINITION.

I RESPECTFULLY DISAGREE JUSTICE WEST.

IS THAT THE ROLE OF THE COURT?

IT IS DONE ALL THE TIME IN LITIGATION. WE AMPLIFY STATUTES AND EXPLAIN WHAT DOES IT MEAN. THIS IS DONE ALL THE TIME. WE ARE NOT ASKING TO YOU DO IT. YOUR HONORS, TO BE PERFECTLY HONEST, YOU'RE JUST SENSITIVE ABOUT THIS AND I UNDERSTAND THAT. BUT THE FACT IS THE LEGISLATIVE PRESCRIBED THIS STANDARD AND IT MUST HAVE MEANING.

SO WHY WOULDN'T HAWAII, THE IOWA, PUERTO RICO OR THE GUAM DEFINITION OF NATIONAL POLITICAL PARTY OR CONVENTION CONTROL OVER HISTORICAL EXPERTS? BEFORE ONE TRIAL JUDGE?

LET'S ASK IT THE REVERSE. IF FLORIDA WANTED TO ADOPT THAT STANDARD, WHY DIDN'T THEY ADOPT THE STANDARD?

I DON'T WANT TO GET ARGUMENTATIVE. WHAT YOU'RE SAYING IT IS COMMON SENSE, REASONABLE, EVERYBODY UNDERSTANDS IT. TO ACCEPT THAT ARGUMENT, HAWAII, IOWA, PUERTO RICO AND GUAM DON'T GET IT?

THE REALITY IS OF IT IS, THERE IS A SPECTRUM FROM BROAD TO MORE NARROW IN WHAT YOU ARE ASKING FOR FROM YOUR EXPERT ON THAT SPECTRUM LEANS TOWARDS THE MORE NARROW DEFINITION.

I THINK IF YOU WANT TO ADOPT A DEFINITION THAT IS NOT NORMALLY FOLLOWED, IF YOU WANT TO ADOPT SOMETHING THAT IS DIFFERENT FROM WHAT IS NORMALLY IN THE, BY POLITICAL SCIENTISTS, EVERYONE CONCERNED WITH THIS, RECOGNIZED, THEN YOU SHOULD DO SO. THE STATE IS CERTAINLY FREE TO DO SO. HERE IT IS CERTAINLY NOT REASONABLE THAT THEY WOULD ADOPT SUCH A BROAD STANDARD IN LIGHT OF THE ONE PERCENT REQUIREMENT SO THAT A MINOR PARTY CANDIDATE, IF IT IS NATIONALLY AFFILIATED, DOESN'T HAVE TO FOLLOW ONE PERCENT. IT MUST MEAN SOMETHING. THEN WHAT? AREN'T THEY HAVE TO BE A GENUINE NATIONAL PARTY, SOMETHING THAT IS VIABLE AND REAL AND NOT THIS MORE BUENED DECK DANT NONEXISTENT AND CAPTURED SIMPLY FOR PURPOSES OF INJECTING ITSELF INTO POLITICAL REALMS. LEGISLATURE HAS NOT SAID THAT. THERE HAS TO BE A GENUINENESS AND A VIABILITY. AND THE TRIAL COURT FOYENED IT WOULDN'T THERE. I THINK YOU'RE BOUND BY THAT FINDING. AND I THINK IT IS A FAIR FINDING. TRIAL COURT SAID IT IS NOT A CLOSE QUESTION. THE EBB HAS FLOWED OUT FOR THIS PARTY. THIS IS NOT A VIABLE REAL NATIONAL PARTY. AND IT HAS TWO OR THREE STATES IT IS RUNNING CANDIDATES IN, MOST OF WHOM RELATE TO MR. SHAWN O'HARA, WHO IS A FRIDGE ISSUE, A FRIDGE CANDIDATE OR PERSON.

I'M SORRY, I KNOW I'M OVER.

WELL WE ARE OVER. BUT YOU'RE OVER BY FIVE MINUTES. SO YOU'RE FINE.

THANK YOU THEN. JUDGE WEST, I'M SORRY, I DIDN'T MEAN TO CUT YOU OFF.

MAY I JUST HAVE ONE QUICK POINT?

I THINK ONE QUICK.

VERY IMPORTANT TO RECOGNIZE IN THIS CASE THE CONSTITUTION OF THE NATIONAL REFORM PARTY, IS SELF-DEFINES CONVENTION. MAKES IT VERY CLEAR THAT THEY WERE GOING OFF THE CONVENTION ROUTE WHEN THEY WENT ON THE PHONE TO NOMINATE HIM. HE ACCEPTED THAT NOMINATION. THEN HE SAID OOPS, MAYBE I SHOULD HAVE A MEETING. SO THERE WAS A MEETING IN DALLAS. IF FOUK CUSS ON THE FACTS OF THIS CASE, I THINK YOU CAN SAY THAT WE HOPE THE LEGISLATURE WILL CLARIFY WHETHER IT MEANS TO GO THE IOWA ROUTE OR THE

HAWAII ROUTE, WE DON'T HAVE TO REACH THAT HERE BECAUSE BY THE PARTY'S OWN DEFINITION HE WAS NOT NOMINATED AT A CONVENTION OF A NATIONAL PARTY.

THANK YOU VERY MUCH. OKAY. WE WILL GIVE YOU THREE MINUTES FOR REBUTTAL. WHICH IS VERY GENEROUS .,

YES, MA'AM. MY NAME IS ANDREW VERN , I REPRESENT THE REFORM PARTIES. I'D LIKE TO ADDRESS THE QUESTION ABOUT THE INTENT OF THE LEGISLATURE. LEGISLATURE MUST HAVE BEEN CONSIDERING IT WANTED TO BE MORE EXPANSIVE THAN IT HAD BEEN. IT COULD HAVE LEFT IN PLACE A THREE PERCENT OR ONE PERCENT PETITION REQUIREMENT. AND SO IN GIVING THIS ALTERNATIVE METHOD, IT MUST HAVE BEEN CONSIDERING THAT WE WANT THE PARTICIPATION OF MINOR POLITICAL PARTIES AND WE ARE GOING TO GIVE THEM EVERY BENEFIT AND EVERY EFFORT .

WHEN THEY FIRST DID THAT , WHEN THEY FIRST ACTUALLY ADDED THAT REQUIREMENT TO THE STATUTE , IT REALLY WASN'T TO BE MORE INCLUSIVE. IT REALLY , THEY ADDED IT TO THE PERCENTAGE REQUIREMENT, DIDN'T THEY? AND WAS ONLY AFTER THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT THAT SAYS YOU CAN'T MAKE THE REQUIREMENT FOR MINOR PARTIES MORE ONEROUS THAN THE PARTY THAT HAS THE MOST VOTES AT STAKE. THAT WE ACTUALLY SEVERED THAT. SO CAN WE REALLY SAY THAT WHEN THIS WAS PASSED , IT WAS REALLY TO GIVE CLEARER ACCESS?

WELL , THE WHOLE MOVEMENT TO AMEND THE CONSTITUTION AND TO CHANGE THE ELECTION LAW WAS TO GIVE ACCESS TO MINOR PARTIES.

AND THAT WAS DONE BY DIVIDING IT? AND INSTEAD OF HAVING TWO REQUIREMENTS, YOU DIVIDED IT INTO SEPARATE REQUIREMENTS?

THEY CERTAINLY DID. AND WELL THE OVERALL , WHAT I AM ASKING YOU AND I APPRECIATE VERY MUCH YOU COMING BACK AND ADDRESSING THIS VERY CORE ISSUE , AS FAR AS THE INTENT OF THE LEGISLATURE. BUT I'D LIKE YOU TO ADDRESS FROM IT THE BROADER STANDPOINT OF THIS BEING A RESTRICTION THAT IS THAT CLEARLY THE LEGISLATURE HAS IMPOSED SOME STANDARDS , ONE OF THE STANDARDS WHETHER WE CALL IT AN ALTERNATIVE OR JUST A DIFFERENT WAY OF DOING IT , IS OF COURSE GOING THE PETITION ROUTE. BUT THE PURPOSE BEHIND HAVING STANDARDS OR RESTRICTIONS IS TO ASSURE IS SOME LEGITIMACY HERE, THAT IS , IT IS NOT FRIVOLOUS OR WHATEVER. THAT'S REALLY WHERE I WOULD LIKE YOU TO ADDRESS HOW WE COME OUT ON THIS OF WHETHER OR NOT WE HAVE FAITHFULLY OBTAINED THE LEGISLATURE IN TERMS OF THAT BEING THEIR PURPOSE. WE CAN SEE IT CLEARLY WHEN IT IS A PETITION SITUATION BECAUSE THEY HAVE JUST SET OUT WHETHER IT IS ONE PERCENT OR THREE PERCENT OR WHATEVER. BUT NOW WHAT THEY HAVE SAID IS THAT ALSO AS AN ALTERNATIVE WAY TO HAVE THIS LEGITIMACY AND NON-FRIVOLOUSNESS, IF YOU ARE THE LEGITIMATE NOMINEE OF A NATIONAL PARTY THAT HAS A NATIONAL CONVENTION AND SO ON , THEN WE'RE GOING TO LET THAT SUBSTITUTE REALLY THEN AND SAY WELL THAT ALSO DEMONSTRATES THAT YOU'RE NOT FRIVOLOUS. SO HERE IS WHERE I AM CONCERNED WITH THE ARGUMENTS THAT THIS MAY BE A SHAM. THAT IS THAT THIS IS JUST A WAY TO GET ON THE BALLOT OF SOMEBODY THAT HAS NO INTEREST WHATSOEVER IN THIS NATIONAL PARTY AND ITS PLATFORM OR WHATEVER IT STANDS FOR. SO WOULD YOU HELP ME GET OVER THAT HUMP IF THE LEGISLATURE CLEARLY HAD THIS PURPOSE OF HAVING SOME LEGITIMACY BY CARRYING THE BANNER OF A NATIONAL PARTY, DOES THAT REALLY EXIST UNDER THE FACTS OF THIS CASE?

YOUR HONOR, IT DOES. BECAUSE IF THE LEGISLATURE INTENDED TO RESTRICTION, AND I AM CERTAIN THAT THEY DID THAT RESTRICTION BEFORE WE HAD THE LINE DRAWING BY THE LOWER COURT WAS GOOD ENOUGH TO ELIMINATE MOST OF THE WE DON'T HAVE A PHONE BOOK LIST OF CANDIDATES. SIX OUT OF 22 MINOR PARTIES ON THE BALLOT SO THE RESTRICTION

BEFORE THIS CASE WAS GOOD ENOUGH TO ACHIEVE THE LIMITS THAT I'M HEARING THAT EVERYONE IS CONCERNED ABOUT.

BEFORE YOU SIT DOWN , WOULD YOU GIVE US YOUR BEST CASE SCENARIO FROM THE PROVE THAT WAS SUBMITTED BECAUSE WE HAVE HAD SORT OF THIS IDEA , DRAWING ON A SPECTRUM HERE WHATEVER , WHETHER OR NOT THIS MIGHT BE A PARTY DYING ON THE VINE. BUT THAT IT IS STILL ON THE VINE. THAT IT HASN'T DIED YET. WHAT WAS THE MOST SUBSTANTIAL PROOF OFFERED BELOW TO SHOW THAT THERE WAS STILL LIFE IN THIS PARTY SUCH AS WHEN IT WAS ON THE BALLOT IN 2000 , FOR INSTANCE, I BELIEVE? WHAT WAS THE STRONGEST PROOF TO SHOW THAT THE PARTY WAS STILL A VIABLE PARTY?

THE FACT IT I S THE FOURTH LARGEST MINOR PARTY I N AMERICA TODAY. AND WHEREVER THIS COURT DRAWS THE LINE , I F IT DRAWS THE LINE WHERE THE LOWER COURT DID , IT WILL EFFECTIVELY EXCLUDE EVERY MINOR PARTY. BECAUSE IF YOU ARE THE FOURTH LARGEST PARTY IN AMERICA AND YOU CAN'T MAKE IT ON A BOWL LOT .

WHAT WAS THE EVIDENCE THAT , AS OF 2004 THAT IT WAS THE FOURTH LARGEST PARTY? HOW DO

IN TERMS OF VOTER REGISTRATION. IF YOU TAKE THE NUMBER OF PEOPLE IN AMERICA THAT HAVE SIGNED UP TO BE PART OF THIS PARTY , WE ARE THE FOURTH LARGEST IN AMERICA.

WAS THERE ANY TESTIMONY AS WHAT THE PLATFORM IS OF THE REFORM PARTY?

THERE WAS TESTIMONY FROM MISS AMOTT ,O WHO REPRESENTS MS. DATER, SHE GOT A COPY OF OUR PLATFORM AND SHE LOOKED AT IT TO MAKE SURETY WAS CONSISTENT WITH MR. NADER'S VIEWS BEFORE HE AGREED TO JOIN THIS PARTY. HE WAS ADOPTED AT THE 2004 CONVENTION AND PLACED ON THE WEB SITE.

SO ANYONE CAN G O T O THE WEB SITE AND SEE THE PLATFORM?

YES, MA'AM. I DON'T KNOW I F THAT'S EXACTLY THE RECORD THAT WAY. BUT THERE IS NO QUESTION THAT MRS. DEMOTTO WAS ABLE TO GET IT OFF THE WEB SIDE T O MAKE SURE MR. NADER AND THE PARTY WERE CONSISTENT WITH THEIR BELIEFS.

BUT THE FACT MR. NADER IS RUNNING AS AN INDEPENDENT I N ALL THE OTHER STATES , DOES THAT EFFECT THE CALCULUS IN THIS CASE?

I DON'T SEE HOW IT DOES , YOUR HONOR , .

AGAIN , THE INTEREST, THE REFORM PARTY TO BE ON THE BALLOT. BUT BY NOMINATING MR. NADER , THEY'RE ONLY GETTING ON THE BALLOT OF THE PRESIDENT AND VICE-PRESIDENT IN FLORIDA.

I BELIEVE THERE ARE OTHER STATES WHERE THE REFORM PARTY IS EITHER ON THE BALLOT OR ATTEMPTING TO. OF COURSE IT IS BEING CHALLENGED.

LOGICALLY IF HE I S GOING TO CARRY THE BANNER IN FLORIDA OF THE REFORM PARTY , WOULDNT H E BE CARRYING THE BANNER OF THE REFORM PARTY IN ALL THE OTHER STATES?

WELL , HE'S CARRYING THE BANNER OF THE REFORM PARTY ANY PLACE THAT WE CAN GET HIM ON THE BALLOT. OUR PARTY WANTS HIM ON EVERY STATE'S BALLOT FOR THE REFORM PARTY AND WE ARE EXCITED THAT THIS IS A OPPORTUNITY FOR THE REFORM PARTY TO RISE BACK UP WHERE IT WAS. AFTER ALL , THIS PARTY GREW OUT OF ROSS PEROT AND OTHER NATIONAL CANDIDATES.

AND PAT BUCHANAN .

SOMEONE THINKS THE REFORM PARTY CAN GU FROM PAT BUCHANAN TO NADER IN 2004?

WELL THE BEAUTY OF THE POLITICAL PARTY ANY GROUP OF PEOPLE CAN MAKE THEIR IDEAS HEARD. I SUSPECT THAT THERE ARE CANDIDATES THAT ARE MEMBERS OF THE NATIONAL PARTY THAT NOT ALL OF THE MEMBERS OF THAT PARTY WOULD ENDORSE THEIR VIEWS. BUT AFTER ALL , THAT'S THE ESSENCE OF DEMOCRACY. IN OUR PARTY AND THE REST OF THE PARTY.

AGAIN , BY THE FOURTH LARGEST PARTY BY REGISTRATION IS WHAT WAS TESTIFIED TO I N THE RECORD?

YES, MA'AM .

2004 REGISTRATION.

IS THERE ANY IMPACT OF THAT , MISS AMOTTO ALSO TESTIFIED SHE LOOKED AT THOSE AND SAID THEY WERE NOT INCONSISTENT WITH THE VIEWS OF MR. NADER O N SEVERAL THINGS. I THINK THAT IS THE WAY THE TESTIMONY WAS PRESENTED. BUT SHE ALSO TESTIFIED , HE IS NOT A MEMBER OF THIS PARTY.

NO , H E APPARENTLY I S NO..

AND THAT HE APPARENTLY IS IS THAT OF ANY MOMENT OR IS THAT JUST A NOTHINGNESS THAT WE SHOULD JUST NOT CONSIDER?

I DON'T KNOW ANY LAW IN FLORIDA THAT REQUIRES A CANDIDATE TO BE A MEMBER OF A PARTY IN ORDER TO B E THAT PARTY'S CANDIDATE.

SO THEN WE COULD HAVE A PARTY , NATIONAL PARTY IN FLORIDA , WITH AN INDIVIDUAL SLATE THAT IN SOME OTHER STATE , THEY WOULD BE RUNNING AGAINST THE NOMINEES OF THAT NATIONAL PARTY IS WHAT YOU'RE SAYING? IS THAT WHAT THAT WOULD LEAD TO?

I DON'T THINK IT WOULD LEAD TO THAT AT ALL. I THINK , IF WE HAVE A CANDIDATE THAT IS CARRYING OUR BANNER, THEN I WOULDN'T SUSPECT THEY'D BE RUNNING AGAINST OUR BANNER ANYWHERE ELSE.

WELL IT WOULD HAVE TO BE IF YOU HAD A REFOR PARTY CANDIDATE IN ANOTHER STATE , DIFFERENT SLATE OF CANDIDATES THAN HERE , THEN THEY WOULD CERTAINLY, IF RUNNING FOR THE SAME OFFICE , FOR THE SAME PARTY , BE RUNNING AGAINST ONE ANOTHER FROM A NATIONAL STANDPOINT. WOULD THEY NOT?

I DON'T THINK THAT WOULD HAPPEN IF A PRESIDENTIAL ELECTION WHEN THE REFORM PARTYNO, MA'AM NATURES ONE CANDIDATE FOR PRESIDENT.

IN OTHER WORDS , WHEREVER YOU'RE GOING TO GET O N THE BALLOT, YOU HAVE T O HAVE NADER AS YOUR CANDIDATE?

ABSOLUTELY. MR. NADER IS THE REFORM PARTY CANDIDATE.

THANK YOU VERY MUCH. AND I THINK THAT WE'RE WAS THERE ? THIS IS FROM THE SECRETARY O F STATE? ACTUALLY I DID HAVE ONE QUESTION TO YOU.

I WILL BE VERY BRIEF. COUPLE OF THINGS. JOHN MCCAIN AS VICE-PRESIDENT AS POTENTIAL VICE-PRESIDENT DEMOCRATIC PARTY IS THE PERFECT EXAMPLE OF WHY THERE DOES NOT HAVE TO BE CONSTITUTIONALLY THERE DOES NOT HAVE TO BE THAT SORT OF LIMITATION. ALSO THE COURT CANNOT CONSTITUTIONALLY INQUIRE INTO WHETHER A PARTY COMPLIES WITH ITS OWN CONSTITUTION OR ITS OWN RULES. THAT'S WHY THIS NOMINATION, THE FOUNDATION OF THE NOMINATION THING CANNOT WORK BECAUSE YOU INTRUDE ON THE INNER WORKINGS OF THE PARTY.

LOOK TO DETERMINE IF YOU HAVE A NATIONAL PARTY THAT HAS A NATIONAL STRUCTURE. DETERMINE WHETHER THAT HAS BEEN FOLLOWED OR IS IT JUST SOME FRIDGE OPERATION THAT'S DOING WHATEVER THEY WANT?

IF IT DOES NOT FOLLOW THE STRUCTURE, IF IT DOES NOT FOLLOW THE PLAN, IT DOES NOT FOLLOW THE CONSTITUTION, CAN ONE NOT LOOK AT THAT TO DETERMINE WITH WHETHER WHATEVER THIS ENTITY IS, IT IS NOT WHAT IT PURPORTS TO BE?

NOT ONLY IF IT IS NARROWLY TAILORED TO EFFECT A LEGITIMATE STATE INTEREST. AND THE QUESTION IS, IS THE LACK OF STRICT COMPLIANCE WITH THE CONSTITUTION PROBATIVE OF A SHAM? AND IF YOU NARROWLY CONSTRUCT THAT, PERHAPS. BUT HERE WHAT JUDGE DAVEY FOUND, WHAT THE EVIDENCE WAS, IS BY VIRTUE OF NON-COMPLIANCE OF THE CONSTITUTION, THAT ALLOW IS ALONE IS ENOUGH TO SAY YOU CANNOT GET ON BECAUSE YOU WERE NOT PROPERLY NOMINATED.

WOULD THAT NOT BE PROBATIVE HOWEVER OF WHETHER IT IS TRULY THE NATIONAL, THE NATIONAL ORGANIZATION, WHICH IT PURPORTS TO BE?

AGAIN, ONLY DEPENDING ON THE DEFINITION, YOUR HONOR. AND THE PROBLEM THERE OF COURSE IS, IF YOU HAVE A DEFINITION THAT SAYS YOU HAVE TO ABIDE BY THE RULES, WHAT DOES THAT MEAN? AND THE OTHER THING I NEED TO SAY IS THERE HAS BEEN A LOT OF TALK ABOUT, YOU CAN ALWAYS RUN AS AN INDEPENDENT. DON'T FORGET, YOUR HONOR, SECRETARY OF STATE CANNOT IMPLEMENT A STATUTE THAT SAYS YOU CAN ONLY BE AN INDEPENDENT. BECAUSE TO BE AN INDEPENDENT, YOU GIVE UP YOUR ASSOCIATIONAL RIGHTS.

THANK YOU. THE QUESTION I HAD, THE SEPTEMBER 18 DEADLINE, WHICH IS THE MAILING TOMORROW. DO THE SUPERVISORS OF ELECTIONS, DO THEY MAIL TODAY OR DO THEY ACTUALLY PHYSICALLY CAN MAIL TOMORROW?

I BELIEVE THEY CAN MAIL TOMORROW.

AND IS THERE ANYTHING ANY. WITH THE STORM THAT OCCURRED IN PENSACOLA, IS THERE ANY, JUST FROM THE COURT'S POINT OF VIEW SINCE WE ARE IN OBVIOUSLY OUR OWN LITTLE EMERGENCY. IS THERE ANY INDICATION THAT THAT DEADLINE IS GOING TO BE EXTENDED BY THE SECRETARY OF STATE?

WE HAVE NO INDICATION OF THAT. WITH REGARD TO THAT REMEDY, YOUR HONOR, I HAVE TO ADVISE YOU OF ONE THING TO CONSIDER. IF THE REMEDY IS TO AFFIRM THE JUDGMENT ONE WAY OR THE OTHER. THE COURT HAS TO CONSIDER WHETHER THAT REMEDY, WHETHER THAT DECISION WOULD HAVE TO BE CLEARED UNDER SECTION FIVE OF THE VOTING RIGHTS ACT. AND HAVE TO BE SUBMITTED TO THE DEPARTMENT OF JUSTICE.

THAT IS SOMETHING RAISED IN YOUR BRIEF?

IT IS NOT RAISED IN MY BRIEF.

THAT ONE.

I UNDERSTAND.

THAT WILL BE NEXT YEAR. THANK YOU VERY MUCH FOR EVERYBODY'S RESPONSES TO OUR QUESTIONS. COURT IS IN RECESS.

PLEASE RISE.