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**Palm Beach School Board v. Survivors Charter Schools**

**SC07-2402**

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

>> THE NEXT CASE, ON THE COURT  
CALENDAR IS THE SCHOOL BOARD OF  
PALM BEACH COUNTY VERSUS  
SURVIVORS CHARTER SCHOOLS.  
PARTIES READY TO?

AND JUSTICE ANSTEAD IS RECUSED  
IN THIS CASE.

>> MADAM CHIEF JUSTICE AND MAY  
IT PLEASE THE COURT.

MY NAME IS RANDALL BURKES.  
I'M REPRESENTING THE SCHOOL  
BOARD OF PALM BEACH COUNTY.

WITH ME, COCOUNSEL  
GERALD WILLIAMS,  
CHIEF COUNSEL TO THE SCHOOL  
BOARD.

>> I WOULD LIKE TO GET INTO THE  
AN ISSUE THAT, THE ISSUE IN  
THIS CASE.

AND I HAVE LOOKED AT BOTH SIDES  
OF STATUTORY CONSTRUCTION AND  
I'D LIKE TO ASK YOU, ON, IN  
YOUR POSITION, WHICH THAT THE  
ADMINISTRATIVE PROCEDURES ACT  
DOES NOT APPLY, THIS IS A CASE  
THAT DOESN'T INVOLVE, AS I  
UNDERSTAND IT, HEALTH, SAFETY,  
AND WELFARE OF THE STUDENTS,  
BUT, GOOD CAUSE BEING SHOWN  
THAT YOU THEN INVOKED IMMEDIATE  
TERMINATION PROVISIONS.

MY QUESTION ON IT, IS BECAUSE  
FISCAL MISMANAGEMENT AND GOOD  
CAUSE IS ALSO A BASIS FOR A  
90-DAY TERMINATION, WHICH,  
ALLOWS FOR PROCEDURES, HOW IS  
IT THAT THE GOOD CAUSE IN THIS  
CASE SHOULD BE TREATED THE SAME  
WAY AS THE HEALTH, SAFETY AND  
WELFARE OF THE STUDENTS?  
AND THAT MAY NOT BE, IT REALLY  
GOES INTO, I THINK THE

QUESTION, THE CONCERN, IS THAT THE EXCEPTION ENDS UP FLAWING THE RULE.

IF WE DON'T, THERE'S NOT A DISTINCTION BETWEEN GOOD CAUSE BEING SHOWN AND THE HEALTH, SAFETY AND WELFARE OF STUDENTS, WHICH REALLY DOES SEEM TO ME THAT REQUIRE IMMEDIACY.

THAT IS, THE SAME, YOU FIND OUT SOMETHING DANGEROUS IS GOING ON, YOU'VE GOT TO BE ABLE TO TERMINATE IMMEDIATELY.

BUT, SO, IS THERE ANY ANSWER TO THAT QUESTION, OR IS THAT FOR ANOTHER DAY?

>> I THINK THERE ARE TWO ANSWERS, YOUR HONOR.

ONE IS THAT THERE ARE SOME GUIDELINES PUBLISHED AND APPROVED BY THE STATE BOARD OF EDUCATION WHERE THEY GUIDE THE CHARTER SCHOOL APPEALS COMMISSION ON DETERMINING WHETHER OR NOT THIS ISSUE REALLY IS OF CRITICAL URGENCY, IN ORDER TO JUSTIFY, FOREGOING A HEARING.

>> OKAY.

SO YOU WOULD SAY THEN THIS IS NOT SIMPLY THE FAILURE TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT?

THIS IS SOMETHING THAT IS, BECAUSE OF THE SERIOUSNESS OF IT, IT REQUIRED SOMETHING IMMEDIATE?

>> ABSOLUTELY, YOUR HONOR.

>> BUT WHAT IS IT ABOUT, IF WE SAY THAT THE APA APPLIES, THESE WOULD BE ARGUMENTS THAT HAVE BEEN RAISED, THE LEGISLATURE SPECIFICALLY EXEMPTED FROM THE APA THE CHARTER SCHOOL APPEALS COMMISSION AND THE STATE BOARD OF EDUCATION AND IF THEY MEANT TO EXEMPT SCHOOL BOARDS THAT ARE RESPONSIBLE FOR MAKING THE BASIC LEVEL, FACTUAL DETERMINATION, IT WOULD BE SO EASY FOR THEM TO HAVE SAID IT. AND THAT'S MY, MY BIGGEST CONCERN IN THIS CASE BECAUSE I'M SYMPATHETIC TO WHAT THE

SCHOOL BOARD AND THE AMICAE SAID WHAT IF YOU REALLY HAVE A HEALTH, SAFETY AND WELFARE OF STUDENTS, YOU CAN'T WAIT 14 DAYS.

MY CONCERN ABOUT STATUTORY CONSTRUCTION, WHICH IS WHAT THIS CASE INVOLVES, IS THE LEGISLATURE KNOWS HOW TO SAY SOMETHING AND THEY SAID IT CLEARLY FOR THOSE OTHER TWO BOARDS BUT SAID NOTHING. AND WE KNOW THAT THE APA APPLIES, UNLESS THERE IS AN EXEMPTION.

AND WE'VE NEVER RECOGNIZED IMPLIED EXEMPTIONS.

>> IF I COULD, YOUR HONOR, COULD I JUST GO BACK TO THE PREVIOUS QUESTION.

>> YOU CAN DO WHATEVER YOU WANT TO TRY TO ANSWER MY QUESTION.

>> ACTUALLY THIS CASE DID AFFECT THE WELFARE OF THE STUDENTS DIRECTLY.

THIS ORGANIZATION WAS SUPPOSED TO --

>> YOU KNOW WHAT? THAT HAS NOT REALLY BEEN -- LET'S JUST ASSUME YOU'RE OKAY, THAT IT IS IMMEDIATE.

WHAT I WANT TO KNOW IS, AND THERE ARE EMERGENCY PROVISIONS IN THE APA.

THE IDEA THAT A EMERGENCY CAN'T BE DEALT WITH, IT TAKES MONTHS AND YEARS COURTS EVERY DAY DEAL WITH EMERGENCIES AND THEY MAKE DECISIONS WITH FACTS AND PEOPLE BEING SWORN UNDER OATH THAT CAN BE DONE IN 24 HOURS.

I MEAN, DOESN'T HAVE TO TAKE 14 DAYS.

THIS IDEA IT'S AN ALL OR NOTHING IS SOMEWHAT CONTRARY TO WHAT WE KNOW ABOUT WHAT HAPPENS.

WHAT I'M ASKING YOU THOUGH, IS FROM A STATUTORY CONSTRUCTION POINT OF VIEW, IF THE LEGISLATURE HAD INTENDED FOR SCHOOL BOARDS TO BE EXEMPTED FROM THE ADMINISTRATIVE PROCEDURES ACT, A TOTAL

EXEMPTION, WHY WOULDN'T THEY  
HAVE SET IT FORTH LIKE THEY DID  
FOR THE CSAC AND THE STATE  
BOARD OF EDUCATION?

IT'S SIMPLE, BASIC STATUTORY  
CONSTRUCTION.

QUESTION WE'RE HERE ON AND  
THAT'S A, ONE OF THE BASIC  
TENANTS OF STATUTORY  
CONSTRUCTION.

>> I AGREE, YOUR HONOR.

THANK YOU FOR THE QUESTION.

ONE ANSWER IS THERE WAS NO NEED  
TO SAY THAT THE SCHOOL BOARD IS  
EXEMPT FROM THE APA BECAUSE  
THERE IS NO ACTION SPECIFIED  
FOR THE SCHOOL BOARD TO TAKE  
WHICH FALLS WITHIN THE SCOPE OF  
THE APA WHICH IS NORMALLY THE  
RENDERING OF AN ORDER, A FINAL  
ORDER RATHER THE STATUTE --

>> IS THAT YOUR BEST ANSWER  
ABOUT THAT?

I MEAN THAT'S -- BECAUSE TO  
ME, THAT IS, IF THE CSAC TOOK  
EVIDENCE, AND THERE WAS FACTUAL  
DETERMINATIONS MADE, BASED ON  
EVIDENCE, SWORN EVIDENCE BEFORE  
THE CSAC, I CAN UNDERSTAND THIS  
IDEA THERE WOULD BE A  
TWO-TIERED APPROACH WHERE YOU  
WOULD HAVE THE SCHOOL BOARD  
TAKES A STEP TO IMMEDIATELY  
TERMINATE BUT IT'S LIKE A  
PRELIMINARY INJUNCTION.  
SUBJECT TO THE CSAC HAVING AN  
EVIDENTIARY HEARING AT WHICH  
WITNESSES AND EVIDENCE IS  
TAKEN.

BUT THIS CSAC SAYS, NO, THAT  
HAS TO BE DONE BEFORE THE  
SCHOOL BOARD.

SO THIS IDEA THAT SOMEHOW, WHAT  
YOU DO IS JUST A  
RECOMMENDATION, YOU'RE ABLE TO,  
THE SCHOOL BOARD IS TERMINATING  
THE CHARTER.

IT'S TAKING OVER THE SCHOOL AND  
IT IS DOING IN, SUBJECT TO OF  
COURSE THE REVIEW, BUT THE  
IMMEDIACY OF IT IS TAKEN CARE  
OF.

SO I DON'T, I CAN'T UNDERSTAND,  
THEY DON'T NEED TO DO IT

BECAUSE THE SCHOOL BOARD  
WOULDN'T BE SUBJECT TO THE  
ADMINISTRATIVE PROCEDURES ACT  
IN THE ACTION IT HAS TAKEN,  
BEING TAKEN UNDER THE IMMEDIACY  
TERMINATION PROVISIONS.

I JUST DON'T SEE THAT.

>> I WOULD ASK, YOUR HONOR, TO  
NOTICE THE WORD THAT IS USED IN  
PARAGRAPH 8-B THAT THE SCHOOL  
BOARD WILL GIVE A NOTICE.  
IT'S ACTUALLY IN THE PAST  
TENSE, THAT THE SCHOOL BOARD  
WILL NOTIFY THE CHARTER SCHOOL  
OF THE REASONS FOR WHICH IT  
TERMINATED THE CONTRACT.  
IN OTHER WORDS, THE ONLY ACTION  
CONTEMPLATE FOR A SCHOOL BOARD  
IS TO PROVIDE A NOTICE, WHICH  
THE STATUTE SAYS CAN BE AFTER  
THE FACT.

AND THE MERE --

>> LET ME ASK ABOUT THE  
EVIDENTIARY HEARING AND WHERE,  
WAS THERE EVER A REAL  
OPPORTUNITY OR A REAL  
EVIDENTIARY HEARING ON THIS  
ISSUE?

>> THERE WAS CERTAINLY EVIDENCE  
PROVIDED IN TERMS OF WHAT OTHER  
COURTS HAVE SAID IN THE REALM  
OF ZONING HEARINGS, THINGS LIKE  
THAT WHERE IT IS NOT NECESSARY  
TO USE THE JUDICIAL RULES OF  
EVIDENCE TO SWEAR IN WITNESSES  
AND, GIVE THE EVIDENTIARY  
FOUNDATION FOR DOCUMENTS.  
IT IS STILL CONSIDERED TO BE  
EVIDENCE EVEN THOUGH IT MAY NOT  
BE SWORN AND SURVIVORS HAD I  
THINK ABOUT 20, 25 MINUTES TO  
PROVIDE THEIR SIDE OF THE STORY  
TO THE SCHOOL BOARD.

>> HOW LONG DID THEY KNOW THEY  
HAD TO GET READY TO PROVIDE  
THAT EVIDENCE?

>> THE AUDIT ITSELF --

>> IF YOU'RE GOING TO HAVE  
EVIDENTIARY HEARING THERE IS  
SOME NOTICE.

YOU MIGHT HAVE HAVE A  
TERMINATION OF SOME, OR,  
EVIDENTIARY HEARING MIGHT BE  
PREDEPRIVATION OR

POSTDEPRIVATION BUT WHEN EVER IT'S GOING TO BE THERE HAS TO BE ADEQUATE OPPORTUNITY TO GET PREPARED FOR IT.

SO HOW LONG DID THEY HAVE TO GET PREPARED FOR THIS EVIDENTIARY PROCEEDING?

>> BEFORE THE SCHOOL BOARD, OFFICIALLY WE COULD SAY THEY HAD TWO DAYS BECAUSE THEY RECEIVED THE NOTICE TWO DAYS BEFORE, BUT THEY HAD BEEN INVOLVED IN AUDIT FOR THREE MONTHS, AND THE RECORD SHOWS THEY --

>> DO YOU HAVE ANY OPPORTUNITY, DO YOU GET A COPY OF THE AUDIT?

>> THEY HAD A COPY OF THE AUDIT AND THEY RESPONDED IN WRITING, YOUR HONOR.

IN FACT THE APPENDIX OF THE AUDIT IS THEIR RESPONSE WHERE BOTH SCHOOLS AND THE OVERALL ORGANIZATION SUBMITTED THOSE RESPONSES AND THE U.S. SUPREME COURT IN ELDRIDGE HAS HELD SUBMISSION OF WRITTEN RESPONSES ARE --

>> ARE THEY REQUIRED TO FILE A WRITTEN RESPONSE?

>> THEY'RE INVITED TO.

>> WE'RE TRYING TO GET TO THE POINT I THINK JUSTICE CANADY IS MAKING, WHERE WAS THE OPPORTUNITY FOR THE SCHOOL, THE CHARTER SCHOOLS TO GIVE INFORMATION, EVIDENCE, ABOUT THE FINDINGS THAT WERE MADE IN THIS AUDIT?

SO WERE THEY REQUIRED TO DO A RESPONSE?

>> THEY WERE INVITED TO RESPOND AND THEY CERTAINLY DID.

IT WAS A SUBSTANTIAL APPENDIX ATTACHED TO THE REPORT. AND THAT APPENDIX WAS CONSIDERED BY THE SCHOOL BOARD.

>> WELL --.

>> LET ME ASK, YOU'VE BEEN ASKED A NUMBER OF QUESTIONS ABOUT STATUTORY CONSTRUCTION, BUT GIVE ME THE BENEFIT OF YOUR GENERAL ANALYSIS OF THIS STATUTORY SCHEME THAT BRINGS

THE SCHOOL BOARD INTO THIS MATTER.

>> OKAY.

THANK YOU, YOUR HONOR.

THE SCHEME IS THAT THERE MAY BE A SITUATION SO GRIEVOUS THAT THE SCHOOL BOARD CANNOT SIT BY IDLELY.

THEY TAKE ACTION.

SO THEY GIVE NOTICE --.

>> SCHEME BEGINS WITH THE FACT THE SCHOOL BOARD HAS A CONTRACT.

>> EXACTLY.

THEY HAVE A CONTRACT WITH THIS SCHOOL TO OPERATE IT.

AND THEN THEY MAY GIVE A NOTICE OF WHY IT IS BEING TERMINATED IMMEDIATELY.

THEN THE CHARTER SCHOOL --.

>> SO YOU FINISH DOWN THAT ROAD, I'M NOT TRYING TO INTERRUPT YOUR QUESTION. IF, WHEN THE CHARTER SCHOOL WANTS TO BECOME A CHARTER SCHOOL, DO THEY GO TO THE SCHOOL BOARD FOR THAT PERMISSION TO BECOME A CHARTER SCHOOL?

>> YES, YOUR HONOR.

>> AND IF THE SCHOOL BOARD DECIDES DECIDES THAT NOT CANNOT BE A CHARTER SCHOOL, IS THERE A PROCEDURE THEN FOR ANY KIND OF REVIEW?

>> YES.

IT'S THE SAME PROCEDURE, WHICH IS AN APPEAL TO THE STATE BOARD OF EDUCATION.

>> OKAY.

>> INCLUDING IN THAT PROCESS IS INFORMAL HEARING BEFORE THE CHARTER SCHOOL APPEALS COMMISSION.

IN CASE IT WAS SIX HOURS IN LENGTH.

AND BOTH SIDE HAD ABOUT THREE HOURS TO COMPLETELY TELL THEIR SIDE OF THE STORY, NOT ONLY ORALLY, BUT THEY SUBMITTED A VAST QUANTITY OF WRITTEN --

>> NOW, IF YOU WOULD JUST ANSWER JUSTICE WELLS QUESTION.

I JUST WANT TO MAKE SURE WE KNOW FROM THE BEGINNING HOW THE

SCHOOL BOARD WAS INVOLVED.

>> OKAY.

SO THE PROCESS IS THEN, THAT THE OFFICIAL APPEAL IS TAKEN TO THE STATE BOARD OF EDUCATION WHICH RENDERS A FINAL ORDER THAT THE, CHARTER SHOULD HAVE OR SHOULD NOT HAVE BEEN TERMINATED.

>> THE APPEAL TAKEN TO THE DEPARTMENT OF EDUCATION IS AN APPEAL FROM THE DECISION OF THE CHARTER SCHOOL COMMISSION?

>> NO, YOUR HONOR.

IT'S ACTUALLY AN APPEAL FROM THE DECISION, IS THE WORD USED IN THE STATUTE OF THE SCHOOL BOARD, WHICH IS ACTUALLY THE NOTICE THAT THE SCHOOL BOARD GIVES, AND THEN, THE STATE BOARD OF EDUCATION RENDERS THE FINAL ORDER, THE FINAL ACTIONS SUBJECT TO JUDICIAL REVIEW, WHICH PRIOR TO 2002 --

>> WHAT I AM, WHAT I WAS REACHING FOR, YOU SAID THERE WAS THIS SIX-HOUR OPPORTUNITY TO PRESENT DOCUMENTATION AND FOR A HEARING.

WHERE DOES THAT FIT INTO THE SCHEME?

>> OKAY, BEFORE THE STATE BOARD OF EDUCATION RENDERS ITS FINAL ORDER, IT SENDS BOXES FULL OF DOCUMENTATION TO THE CHARTER SCHOOL APPEALS COMMISSION, WHICH IS AN APPOINTED GROUP, HALF OF THEM ARE CHARTER SCHOOL OPERATORS, AND HALF ARE SCHOOL BOARD PERSONNEL-RELATED TO CHARTER SCHOOLS.

>> LET ME JUST STOP IF YOU BECAUSE AND I REALIZE WE ALL HAVE, COMING AT THIS IN DIFFERENT WAYS AND, I THINK THAT WHAT JUSTICE CANADY HAS RAISED IF THE APA DOESN'T APPLY, WAS DUE PROCESS, YOU KNOW, IT WAS DUE PROCESS VIOLATED.

I'M NOT SURE THE FOURTH DISTRICT NEVER REACHED THAT BUT, IS IT CORRECT, LET'S JUST ASSUME THAT I DON'T FIND OR WE

DON'T FIND WHAT HAPPENED ON JANUARY 25th, WHICH WAS WHERE THEY GAVE EACH SPEAKER THREE MINUTES AND WE KNOW WHAT THOSE SCHOOL BOARDS, COUNTY COMMISSION, CITY COMMISSION MEETINGS THEY GET UP, THEY SAY WHAT THEY WANT TO SAY.

IT'S NOT UNDER OATH.

THERE WAS NO EVIDENCE.

THERE WAS NO EVIDENCE TAKEN, LET'S ASSUME THAT.

THAT NOTHING OF SUBSTANCE REALLY OCCURRED AT THAT.

IS IT YOUR POSITION, AND THIS COULD BE BECAUSE IT WOULD CHANGE THE WHOLE MAKEUP OF THIS THING THAT AT THE CSAC LEVEL THERE SHOULD HAVE BEEN AN OPPORTUNITY FOR EVIDENCE TO BE TAKEN, FOR WITNESS TO BE SWORN? IN OTHER WORDS, AS LONG AS YOU HAD THIS TERMINATION, THE SCHOOL BOARD'S TAKEN OVER THE OPERATION OF THE SCHOOL, SO WE NOW HAVE THE EMERGENCY HAS BEEN, SORT OF LIKE PRELIMINARY INJUNCTION.

BUT THEN THE OPPORTUNITY FOR THERE TO BE EVIDENCE SUBMITTED IS AT CSAC?

IS THAT CONTEMPLATED BY THE STATUTE?

>> IT IS NOT CONTEMPLATED BY THE STATUTE AND I THINK THAT'S ON PURPOSE.

>> BUT I THINK THAT WE NEED TO UNDERSTAND IS THAT NOT ONE IS CHALLENGING, WHAT THE CSAC DID THERE, WHEN SURVIVORS AND, AGAIN THERE'S TWO DIFFERENT SCHOOLS AND WE KIND OF PUT THEM TOGETHER BUT THERE WERE DIFFERENT FISCAL ISSUES FOR EACH OF THE SCHOOLS, THAT WHEN THEY TRIED TO PUT ON EVIDENCE, AT THE CSAC LEVEL, THEY GO, NO, WE'RE LIMITED TO WHAT HAPPENED BELOW.

DO YOU AGREE WITH THAT THE STATUTE ACTUALLY MAKES THAT LIMITATION ALTHOUGH IT DOES ALLOW THE CSAC TO ASK QUESTIONS AND GATHER --

>> THEREFORE MY QUESTION IS, IN THIS SCHEME, SINCE IT'S NOT CONTEMPLATED THAT EVIDENCE WILL BE TAKEN AT THE CSAC LEVEL, WHY IS IT THAT, WHEN WE'RE LOOKING AT REALLY DUE PROCESS, WHICH TO ME IS PRETTY DIFFERENT WITH WHETHER YOU GET A CHARTER, WHICH IS MUCH LOWER LEVEL OF, WHETHER YOU THERE IS DUE PROCESS AND AFTER YOU HAVE IT, AND YOU'VE INVESTED YOUR MONEY, AND YOU'VE INVESTED TIME, AND YOUR STUDENTS ARE FLOURISHINGLY, WITHIN ONE DAY A SCHOOL BOARD DECIDES WE'RE GOING TO TERMINATE, AND THEY GIVE YOU A ESSENTIALLY, 20 MINUTES TO PUT ON THESE SPEAKERS, WHY IS IT THAT WE'RE NOT SAYING THAT, IN THAT CIRCUMSTANCE, THE LEGISLATURE DIDN'T CONTEMPLATE THAT THAT COULD HAPPEN?

WHAT THEY CONTEMPLATED IS THAT THE ADMINISTRATIVE PROCEDURES ACT WOULD COME IN WITH SOME OF ITS PROTECTIONS.

YOU KNOW, I THINK THAT'S WHERE THE DEVIL IS IN THE DETAILS SO TO SPEAK.

BUT THAT'S THE VOID THAT APPARENTLY THE PALM BEACH SCHOOL BOARD DECIDED, THERE WAS REALLY NOTHING THAT NEEDED TO HAPPEN AT THAT STAGE.

MAYBE OTHER SCHOOL BOARDS HAVE DECIDED THAT EVIDENCE CAN BE TAKEN AND MAYBE THAT IS WHY THESE CASES HAVEN'T COME UP?

BUT THAT'S MY CONCERN IS'S A VOID HERE AND, YOU SEEM TO SAY THAT IT'S TOTALLY UP TO THE SCHOOL BOARD HOW LONG, YOU KNOW, WHAT SPEAKERS, HOW LONG, THAT THERE DOESN'T HAVE TO BE ANY SWORN WITNESSES, THAT THERE ISN'T AN OPPORTUNITY FOR CROSS-EXAMINATION, THAT THEY DON'T HAVE THE OPPORTUNITY TO PUT IN EVIDENCE, THAT THERE DOESN'T HAVE TO BE NOTICE OF, BEFOREHAND AND IT CAN BE, YOU KNOW, THAT'S WHAT THE

LEGISLATURE CONTEMPLATED.  
AND I THINK THAT'S WHERE WE GET  
BACK TO WHETHER IT'S GOOD OR  
BAD, YOU KNOW, MAYBE THE  
SPECIFIC LEGAL FOUNDATION SAYS  
THIS IS A GREAT IDEA.

WE DON'T WANT SCHOOLS INTO  
THIS.

BUT WE'RE LOOKING AT WHAT THE  
LEGISLATURE INTENDED AND SO,  
LET'S JUST MAKE SURE WE GO BACK  
THAT YOU'RE SAYING THERE IS NO  
CONTEMPLATING, CONTEMPLATION IN  
THIS STATUTORY SCHEME FOR  
EVIDENCE TO BE TAKEN, FOR  
WITNESSES TO BE SWORN, OR FOR  
CROSS-EXAMINATION TO OCCUR AT  
ANY LEVEL OF THE PROCESS?

>> THAT'S WHAT --

>> AM I CORRECT?

>> THAT'S WHAT THE STATUTE  
SAYS, YOUR HONOR.

I BELIEVE THE LEGISLATURE MADE  
THAT CHOICE INTENTIONALLY.  
HOWEVER, I WOULD DIRECT THE  
COURT TO THE GRAFITZ, D.C.,  
DISTRICT OF COLUMBIA, WHICH  
QUOTED UNITED STATES SUPREME  
COURT CASE ELDRIDGE SAID, THE  
SUBMISSION OF WRITTEN  
DOCUMENTATION CAN CONSTITUTE A  
HEARING IN THE ADMINISTRATIVE  
SETTING.

AND A VAST QUANTITY OF WRITTEN  
DOCUMENTATION WAS SUBMITTED AT  
VARIOUS TIMES THROUGHOUT THIS  
PROCEEDING.

FURTHERMORE, THAT SAME CASE  
HELD, UNDER D.C. LAW AND, IT  
WAS REALLY UNDER FEDERAL DUE  
PROCESS PRINCIPLES, THAT THE  
SITUATION OF A CHARTER  
TERMINATION SIMPLY  
DOESN'T RISE TO THE LEVEL OF  
THE NEED FOR THAT KIND OF  
CONSTITUTIONAL PROCESS.

>> SEE, IF THAT ISSUE, IF WE  
DECIDE THE APA DOESN'T APPLY,  
THEN THE ISSUE OF DUE PROCESS  
IS A SECONDARY THING.

YOU BE RIGHT, THAT DUE PROCESS  
WAS SATISFIED OR IT WASN'T, BUT  
DO YOU AGREE THAT THE THRESHOLD  
ISSUE WE HAVE TO DECIDE, THE

STATUTORY CONSTRUCTION ISSUE,  
IS, DOES, DID THE LEGISLATURE  
CONTEMPLATE THAT THE PROTECTION  
OF THE ADMINISTRATIVE  
PROCEDURES ACT WOULD APPLY WHEN  
A SCHOOL BOARD SEEKS TO  
IMMEDIATELY TERMINATE THE  
CHARTER OF A CHARTER SCHOOL?  
THAT'S THE ISSUE.

NOT WHAT THEY DO IN D.C. ABOUT  
DUE PROCESS.

>> THAT IS THE ISSUE IN THIS  
APPEAL, YOUR HONOR.

BUT, I WOULD ASK THE COURT TO  
LOOK AT THE PLAIN LANGUAGE OF  
THE STATUTE WHICH THIS COURT  
HAS REPEATEDLY SAID MUST BE THE  
GUIDING PRINCIPLE IN, SHOULD BE  
THE FIRST STEP IN DETERMINING  
SUCH A QUESTION WHEN  
INTERPRETING A STATUTE, WHAT  
DOES THE PLAIN LANGUAGE SAY.  
AND THE PLAIN LANGUAGE SAYS  
THAT THE SCHOOL BOARD WILL GIVE  
A NOTICE.

AND THEN ANY FURTHER ACTION --

>> I THOUGHT IN THE STATUTE  
THAT YOU WERE REALLY RELYING ON  
6-C WHERE IT BE TAKES ABOUT --  
TALKS ABOUT PROCEDURE FOR  
APPEAL TO TAKE PLACE.

LAST SENTENCE OF THAT SAYS,  
STATE BOARD OF EDUCATION  
DECISIONS NOT SUBJECT TO THE  
APA.

I THOUGHT IN THE BRIEF THAT WAS  
REALLY THRUST OF YOUR ARGUMENT.  
IS THAT NOT RIGHT?

>> THAT IS PART OF THE PROCESS,  
YOUR HONOR.

THAT IS THE LAST STEP IN THE  
PROCESS OF TERMINATING THE  
CHARTER.

THAT'S WHEN THE TERMINATION  
ACTUALLY TAKE PLACE BECAUSE THE  
STATUTE REFERS TO IT  
AS THE FINAL ACT.

THE ONLY FINAL ACTION SUBJECT  
TO JUDICIAL REVIEW.

BUT BEFORE 2002 THE SCHOOL  
BOARD USED TO HAVE THAT DUTY.  
IT USED TO BE A THREE-STEP  
PROCESS WHERE THE SCHOOL BOARD  
WOULD MAKE THAT FIRST NOTICE

AND THEN THE STATE BOARD OF EDUCATION WOULD REVIEW IT AND MAKE A RECOMMENDATIONS. THEN IT WOULD COME BACK TO THE SCHOOL BOARD TO MAKE THE FINAL ACTIONS SUBJECT TO JUDICIAL REVIEW.

SO ARGUABLY, IF THIS EVER WAS SUBJECT TO APA, HAD TO BE BEFORE 2002, WHEN THE STATUTE WAS REVISED, SO THAT THERE'S NO LONGER A THIRD STEP WHERE THE SCHOOL BOARD TAKES ANY FINAL ACTION.

NOW THE ONLY FINAL ACTION IS THAT OF THE STATE BOARD OF EDUCATION, RIGHT HERE IN TALLAHASSEE.

>> WHICH, THE STATUTE SAID IS NOT SUBJECT TO REVIEW.

>> EXACTLY.

SO WE WOULD SAY BECAUSE THAT IS NOT SUBJECT, AND THE CSAC IS ALSO SPECIFICALLY NOT SUBJECT, IT MAKES SENSE THAT THE PART OF THE PROCESS, THE GIVING OF A NOTICE, THE MERE CONTRACTUAL GIVING OF A NOTICE, SHOULD ALSO BE NOT SUBJECT TO THE APA FURTHERMORE, I'M SORRY, JUST REALIZED THAT MY TIME IS UP. COULD I ASK FOR ONE MINUTE FOR REBUTTAL?

>> PLEASE SUM UP.

>> OKAY.

FURTHERMORE, IF THE APA IS INTERPRETED THE WAY THE FOURTH DISTRICT HELD, THAT IT WOULD REQUIRE A 14-NOTICE AND THEN UP TO 89 DAYS OF QUASI-JUDICIAL PROCEEDINGS BEFORE THE SCHOOL BOARD CAN DO ANYTHING, THEN I WOULD SAY CHILDREN COULD HAVE ALREADY DIED BY THEN, IF CHILDREN BEING MOLESTED OR PHYSICALLY ABUSED OR WHATEVER THE EMERGENCY MAY BE, BECAUSE THIS STATUTE COVERS BOTH SITUATIONS.

THAT EMERGENCY WOULD HAVE ALREADY TAKEN PLACE AND IT WOULD BE TOO LATE.

IT WOULD DEFEAT THE WHOLE PURPOSE OF THE STATUTE.

>> THANK YOU VERY MUCH.  
AND WE'LL GIVE YOUR MINUTE FOR  
REBUTTAL.

>> THANK YOU, YOUR HONOR.  
>> MR. ^YARNELL.

>> GOOD MORNING, YOUR HONORS.  
MY NAME IS BRYAN YARNELL. I  
REPRESENT THE RESPONDENT,  
SURVIVORS CHARTER SCHOOLS,  
INC.

>> THIS IS ONE OF THESE CASES  
COULD BE A LAW SCHOOL COURSE ON  
STATUTORY CONSTRUCTION AND LOOK  
AT THE REAL LIFE SITUATION BUT  
LET'S JUST GO TO THE LAST  
STATEMENT THAT WAS MADE.

THE FOURTH DISTRICT DECISION  
DIDN'T DOESN'T JUST APPLY HERE,  
COME ON, THEY COULD HAVE WAITED  
A COUPLE MORE DAYS AND GIVEN A  
EVIDENTIARY HEARING AND MAYBE  
THEY WILL DO THAT AND THEY CAN  
DO THAT IF THEY WANT.

BUT, IF YOU TAKE THE FOURTH  
DISTRICT'S OPINION, IT DOES  
HAVE THAT EFFECT THERE ALWAYS  
HAVING TO BE 14 DAYS.

THE PLAIN LANGUAGE OF THE  
STATUTE SAYS, IT PROVIDES FOR  
IMMEDIATE TERMINATION.

SO, WHAT I'D LIKE YOU TO  
ADDRESS IS, HOW DOES IMMEDIATE  
NOT MEAN IMMEDIATE?

WHICH IS YOU SEE, WE KNOW WE'RE  
DEALING HERE WITH FISCAL  
MISMANAGEMENT.

NO ONE MADE A DISTINCTION AND  
SAID, ONE GOES ONE WAY OR THE  
OTHER.

LET'S GO TO THE WORST-CASE  
SCENARIO THAT WAS JUST RAISED,  
THAT IS, THERE IS A IMMEDIATE  
THREAT TO THE HEALTH, SAFETY OR  
WELFARE OF THE STUDENTS.

NOW, UNDER THAT CIRCUMSTANCE,  
ARE WE REALLY SAYING THAT THE  
APA WOULD APPLY SO THAT THERE  
HAS TO BE NOTICE OF 14-DAY THIS  
AND, PROTRACTED LITIGATION?

>> I THINK THERE'S TWO ANSWERS  
TO YOUR QUESTION, TWO-FOLD.  
THE FIRST ANSWER TO YOUR  
QUESTION IS, THAT ISSUE IS NOT  
RIGHT.

IT IS NOT IN THIS CASE.

THERE WAS NO --

>> -- AS APPLIED?

IT'S RIGHT BECAUSE, WHAT WE'RE BEING ASKED TO DO IS DECIDE WHETHER THE ADMINISTRATIVE PROCEDURE ACT APPLIES OR DOESN'T APPLY, AND WE'RE NOT ASKED TO DECIDE THIS CASE AND WHETHER THERE IS DUE PROCESS, AT LEAST I'M, WE MAY REACH THAT OR WE MAY NOT.

WHAT I'M ASKING YOU, DOESN'T THE PLAIN LANGUAGE OF IMMEDIATE TERMINATION, MEAN, THAT IS, NOT 14 DAYS ISN'T IMMEDIATE? SOMETHING LESS THAN 90 DAYS ISN'T IMMEDIATE.

>> I THINK YOU HAVE TO LOOK AT THE PLAIN LANGUAGE OF THE STATUTE.

>> IT SAYS IMMEDIATE.

>> CHARTER SCHOOL MAY BE TERMINATED IF GOOD CAUSE HAS BEEN SHOWN.

IT HAS TO HAVE BEEN SHOWN FIRST.

AND THEN YOU CAN HAVE AN IMMEDIATE TERMINATION.

THE FOURTH DISTRICT COURT OF APPEALS, SPECIFICALLY ADDRESSED THIS DISTINCTION.

THEY SAID, IF THE HEARING IS HELD, YOU DON'T HAVE TO WAIT THE 90 DAYS FOR THE TERMINATION TO OCCUR.

THEN YOU CAN IMMEDIATELY TERMINATE THE NEXT DAY.

>> HEALTH, SAFETY OR WELFARE, IT DOESN'T SAY, HAS TO BE SHOWN.

IT SAYS, SO ARE YOU POSITING ALTERNATIVE THAT IS, THAT WHEN YOU HAVE HEALTH, SAFETY OR WELFARE, WHICH DOESN'T SAY, HAS BEEN SHOWN.

>> RIGHT.

>> THAT YOU CAN TERMINATE THE SAME DAY?

>> WELL, I BELIEVE THE PROBLEM HERE LIES IN HOW YOU --

>> THAT IS GREAT QUESTION.

IN OTHER WORDS, THIS IS A CASE INVOLVING EVERY TEACHER IN THE

SCHOOL IS SEXUALLY MOLESTING THE STUDENTS, OKAY? THE WORST-CASE SCENARIO. THAT AND IT COMES TO THE ATTENTION OF THE SCHOOL BOARD. ARE YOU SAYING THAT IN THAT SITUATION SOMEBODY HAS TO, AND THEY HAVE RECEIVED CREDIBLE, THAT THEY, NOW HAVE TO GO THROUGH SOMETHING OTHER THAN IMMEDIATELY TERMINATING THE CHARTER AND TAKING OVER THE OPERATION OF THE SCHOOL?

>> HOW DOES THE SCHOOL BOARD FIND OUT, YOUR HONOR?

IT HAS TO HAVE SOME SORT OF PROCESS BY WHICH THIS INFORMATION IS MADE KNOWN TO THE SCHOOL BOARD.

THERE HAS TO BE SOMETHING OCCURRING.

>> HERE THERE IS AUDITS OCCURRING.

>> WELL THE AUDIT HAS NOTHING TO DO WITH TERMINATION.

>> COULD BE SOMEONE, LAW ENFORCEMENT, COULD BE ANYONE. I DON'T UNDERSTAND THE MAGIC, THERE HAS TO BE COMPLAINING.

IS THAT WHAT YOU'RE --

>> I'M HAVING TROUBLE FIND SITUATION WHERE ENTIRE SCHOOL FULL OF SEXUAL MOLESTERS.

THAT IS JUST, THAT IS REALLY ABSTRACT.

>> THE LANGUAGE SAYS, FOR THE HEALTH, SAFETY OR WELFARE OF THE STUDENTS IS THREATENED, OR, IF THE SPONSOR DETERMINES THAT GOOD CAUSE HAS BEEN SHOWN.

>> YES, YOUR HONOR.

>> YOU'RE USING HAS BEEN SHOWN, ONLY APPLIES TO, IF GOOD CAUSE HAS BEEN SHOWN.

SO EVEN IF YOU TAKE YOUR ARGUMENT AND SAY, SOMEHOW THERE IS A DICHOTOMY BETWEEN GOOD CAUSE, AND HEALTH, SAFETY AND WELFARE, HAS BEEN SHOWN, IT JUST SIMPLY, IS THREATENED AS TO THE FIRST PART.

IMMEDIATE TERMINATION IS, MAY BE OCCUR IF HEALTH, SAFETY OR WELFARE IS THREATENED.

>> I BELIEVE THAT IN THE SITUATION, THAT THE HEALTH SAFETY OR WELFARE IS THREATENED YOU WOULD FALL INTO 120.525. WOULD STILL BE UNDER ADMINISTRATIVE PROCEDURES ACT AND POSSIBLY FALL INTO 120.569, WHICH YOU CAN HAVE IMMEDIATE ACTION.

BUT THE IMMEDIATE ACTION HAS TO BE LIMITED TO ADDRESS THE EMERGENCY THAT'S PRESENT. IT CAN'T BE OVERLY BROAD TERMINATION.

>> LET ME ASK --

>>> I'M SORRY.

>> WOULD YOU PLEASE ADDRESS THE QUESTION I ASKED YOUR OPPONENT. AND THAT IS, WHAT DO YOU SEE IS THE STATUTORY SCHEME HERE OF THIS STATUTE HAVING TO DO WITH STUDENT AND PARENTAL RIGHTS AND EDUCATIONAL CHOICES, AS TO, CHARTER SCHOOLS, AND, HOW HE COME INTO BEING, THEIR SPONSOR. THEN, GIVE ME THE NUMBERS OF THE STATUTE YOU THINK ARE THE APPLICABLE STATUTES AND HOW THE DECISION OF THE SPONSOR IS REVIEWED.

>> WELL, UNDER THE STATUTE THE CHARTERS COME INTO BEING BY WAY OF A PROCESS OF APPLICATION. AND THAT APPLICATION IS MADE TO THE SCHOOL BOARD AND THEN THE SCHOOL BOARD HOLDS A HEARING, REVIEWS THE APPLICATION, AND MAKES ITS DECISION WHETHER IT WILL ACCEPT THE APPLICATION.

>> WHAT SECTION OF THE STATUTE IS UNDER THAT?

>> I BELIEVE THAT IS SECTION 6 OF THE STATUTE THAT DEALS WITH CHARTER APPLICATION PROCESS THAT REALLY ISN'T INVOLVED IN OUR SITUATION.

>> BUT THEN THEY ENTER INTO A CONTRACT, CORRECT?

>> RIGHT.

IF THE CHARTER SCHOOL APPEAL, EXCUSE ME, APPLICATION IS APPROVED THEY ENTER INTO A CONTRACT.

>> IF THE SPONSOR, THE SCHOOL

BOARD, MAKES A DETERMINATION THAT THERE IS, THAT CONTRACT SHOULD BE TERMINATED WHAT PROVISION OF THE STATUTE APPLIES?

>> THE STATUTE, THE STATUTORY PROVISIONS THAT ARE IN PLAY WHEN YOU TERMINATE ARE SECTIONS 8, B, C AND D.

AND IT DEPENDS WHICH STATUTE YOU LOOK AT.

UNDER THE 2006 VERSION OF THE STATUTE IT WAS 8-C AND D.

UNDER THIS VERSION OF THE STATUTE WHICH IS IN 2008, I BELIEVE IT'S A, B AND D.

IN ANY EVENT, IT'S IN SECTION 8 AND THERE ARE TWO PROCESSES FOR TERMINATION.

ONE IS THE REGULAR 90-DAY TERMINATION PROCESS AND ONE IS THE IMMEDIATE TERMINATION PROCESS.

I THINK THAT IT'S IMPORTANT THAT IT'S THE DECISION OF THE SCHOOL BOARD TO TERMINATE. IT'S A PRIMARY DECISION-MAKING AUTHORITY OF THE SCHOOL BOARD. AND THAT DECISION IS APPEALABLE TO THE CHARTER SCHOOLS APPEAL COMMISSION AND THE STATE BOARD OF EDUCATION.

IT BECOMES FINAL IF NO APPEAL IS TAKEN.

SO THERE IS AGENCY ACTION AT THE SCHOOL BOARD LEVEL.

THE QUESTION OF WHETHER OR NOT IT'S FINAL REALLY HAS TO DO WITH --.

>> UNDER THE SCHEME, THE WAY IT WORKS IS THAT THE SCHOOL BOARDS SENDS, AS YOUR OPPONENT SAID, A NOTICE OF TERMINATION AND THE REASON FOR THE TERMINATION, CORRECT?

>> WELL THAT'S IN THE LATER STATUTE.

IN THE STATUTE THAT WAS IN EFFECT AT THE TIME OF TERMINATION THERE WAS NO NOTICE REQUIRED IN THE STATUTORY LANGUAGE.

THAT WAS ADDED IN 2007.

>> SO IN 2006 --

>> AND I DON'T THINK THAT'S AN IMPORTANT PART OF THE STATUTE IN TERMS OF, IN SOME WAY THE SCHOOL BOARDS THAT TO MAKE ITS DECISION KNOWN.

>> I THINK THE ONLY REASON I FIND SOME OF THESE CHANGES, WE TALK ABOUT LEGISLATIVE HISTORY, AND IN DIFFERENT WAYS.

EITHER WHAT THE LEGISLATURE SAYS AND STAFF ANALYSIS OR THE HISTORY OF THE STATUTE. AND WHAT'S IMPORTANT TO ME ABOUT THAT, I THINK THERE ARE GOOD ARGUMENTS IN TERMS OF STATUTORY CONSTRUCTION ON BOTH SIDES, IS THAT WHEN THEY AMENDED THE STATUTE, THEY DIDN'T AMEND IT TO MAKE CLEAR THAT THE APA APPLIED, AS THE FOURTH DISTRICT HELD.

THEY AMENDED IT TO GIVE SOME WRITTEN NOTICE AS TO THE REASON.

AND, I FIND THAT TO BE, TOGETHER WITH THE FACT THAT THEY SEEM TO BE GIVING MORE AND MORE PROCESS, THAT IS, THERE WASN'T, AN APPEAL PROVISION. NOW THERE IS AN APPEAL PROVISION.

BUT THEY'RE NOT EVER CHANGING THE BASIC FACT THAT, IF THEY'RE PROVIDING FOR PROCEDURES, FOR, THE 90-DAY TERMINATION, BUT, AS TO THE IMMEDIACY, THEY'RE RECOGNIZING THOSE ARE EMERGENCIES THAT THE SCHOOL BOARD NEEDS TO ACT SO, MY CONCERN THERE IS, THAT THE LEGISLATURE, IN LOOKING AT WHAT THE LEGISLATURE INTENDED, IT SEEMS THAT THEY WERE INTENDING A VERY FLEXIBLE, IMMEDIATE ACTION IN THE CASE OF, YOU KNOW, THREATS TO THE INTEGRITY OF THE CHARTER SCHOOL AND TO THE STUDENTS AND THEN A MORE DELIBERATE ACTION IF, ON THE 90-DAYS.

SO, ANSWER THE QUESTION AS TO WHERE YOU SEE THE VARIOUS AMENDMENTS THAT OCCURRED TO THE SCHOOL, TO THE STATUTE, GIVING MORE PROCESS BUT NEVER COMING

OUT AND SAYING, AND THERE HAS TO BE AN EVIDENTIARY HEARING, WHICH WITNESSES ARE SWORN AND, SO FORTH, THAT IT WOULD BE THE KIND OF THING REQUIRED UNDER THE APA.

>> I DON'T BELIEVE THAT THE STATUTE CHANGING THE FORM OF HOW YOU APPEAL THE DECISION AND WHERE FINALTY COMES, IN ANY WAY, REMOVES THE REQUIREMENT OF A APPLICATION OF THE APA.

>> THEN I --

>> IT ALWAYS APPLIES UNLESS YOU EXPRESSLY PROVIDE A PROCEDURE BY WHICH IT COULD NOT APPLY.

>> NOW LET ME ASK YOU THAT QUESTION.

SEEMS TO BE IN YOUR BRIEF, THAT YOU HAVE SAID, THAT YOU WOULD AGREE THAT UNDER THE 90-DAY PROVISION OF C, 4-C, THAT THEY HAVE DETAIL AND THERE IS AN INFORMAL HEARING.

THAT THEY PROVIDE A PROCEDURE.

>> THEY DO PROVIDE PROCEDURES.

>> AND WHAT YOU'RE SAYING THERE IS THAT SHOWS THAT THAT PROCEDURE IS EXEMPT FROM THE APA.

IS THAT YOUR POSITION?

>> RIGHT.

IF THE LEGISLATURE COMES IN AND PROVIDES A SPECIFIED PROCEDURE, THERE'S NO DOUBT THAT THE LEGISLATURE INTENDED --

>> NOW I WANT TO ASK BUT THE LOGIC OF THIS.

IN THAT PROCEDURE, IT'S AN INFORMAL HEARING AND WITHIN 30 DAYS.

AN INFORMAL HEARING.

WHAT YOU WOULD BE SAYING THE LEGISLATURE INTENDED A SCHEME WHERE FOR THE NON-EMERGENCY SITUATION, THERE ONLY HAS TO BE A INFORMAL HEARING, BUT FOR THE THREATS, THE DANGER TO SAFETY, FAIR OF THE STUDENTS, THERE'S GOT TO BE APA WHERE THERE'S WITNESSES SWORN AND THAT'S NOT AN INFORMAL HEARING.

THAT'S A FORMAL HEARING.

AND I DON'T SEE, YOU SEE THAT'S

WHERE I THINK, IT ME THE LOGIC,  
IS, THE FALLACY OF THE  
ARGUMENT.

THAT IS, THAT THE LEGISLATURE  
WOULD HAVE INTENDED TO GIVE  
MORE PROCESS TO A SITUATION  
WHERE STUDENTS ARE THREATENED  
AND THE -- ARE THREATENED, THEN  
THEY WOULD IN THE PLAIN OL'  
90-DAY TERMINATION.

>> I THINK IT MAKES PERFECT  
SENSE AND HERE'S WHY.

IF THE SCHOOL BOARD IS GOING TO  
ACT IMMEDIATELY AND IT IS SO  
SURE OF ITS ACTION THAT AN  
EMERGENCY EXISTS THEN IT  
SHOULDN'T TAKE THAT LONG COME  
BEFORE THAT BODY WITH THE  
EVIDENCE OF THE EMERGENCY.  
THIS ISN'T, IT ISN'T SOME --.

>> YOU'RE SAYING THE APA WOULD  
REQUIRE A FORMAL HEARING.

>> DOESN'T MEAN IT WOULD TAKE  
90 DAYS.

IT DOESN'T --

>> WHY WOULD THEY GIVE A FORMAL  
HEARING FOR IMMEDIACY?

THEN THEY COULD GO BACK, YOU  
KNOW, AND AN INFORMAL HEARING  
FOR THINGS THAT ARE  
NON-IMMEDIATE?

>> I DON'T KNOW THE ANSWER TO  
THAT QUESTION.

I'M NOT THE LEGISLATURE.

I DON'T THINK --

>> NONE OF US ARE.

>> I DON'T THINK THERE IS ANY  
GUIDANCE AS WHY THE LEGISLATURE  
CHOSE THE SCHEME IT DID.

I JUST BELIEVE THAT IN THE  
CONTEXT OF THIS STATUTORY  
SCHEME, IF YOU'RE GOING TO TAKE  
EMERGENCY ACTION, IT'S NOT TOO  
MUCH TO CONVENE A HEARING.

>> COULD WE GO BACK THROUGH  
AND, YOU WERE IN THE MIDDLE OF  
DESCRIBING IN VERY PRACTICAL  
TERMS HOW YOU SEE THE STATUTE  
OPERATING.

>> WITH RESPECT TO JUSTICE  
WELLS' QUESTION?

>> YES.

YOU GOT THE ONE STEP AND YOU  
DIDN'T GET TO THE ANSWER.

>> I APOLOGIZE IF I INTERRUPTED YOUR --

>> WHAT HAPPENS, YOU'RE SAYING THERE HAS TO BE SOMETHING THAT OCCURS ON RECEIPT OF THE PIECE OF PAPER THERE'S A PROBLEM, CORRECT, FROM THE SCHOOL BOARD?

>> ARE YOU TALKING AT POINT THE SCHOOL BOARD WANTS TO TAKE ACTION AGAINST THE CHARTER SCHOOL?

>> SCHOOL BOARD SAYS THERE IS PROBLEM AND WE'RE GOING TO TAKE ACTION.

APPEARS, JUSTICE PARIENTE EXPLORED WITH YOU, SOMETHING THAT IS RED HOT AND IF THERE IS DIFFERENCE WHAT HAPPENS UNDER THOSE TWO UNDERNEATH THE STATUTE?

>> I BELIEVE IF YOU'RE DEALING WITH A EMERGENCY, TRUE EMERGENCY IT WILL NOT BE OF TERMINATION TYPE IN THE FIRST PLACE.

>> THAT'S NOT THE QUESTION. WHAT HAPPENS?

>> WELL WHAT WOULD HAPPEN, I BELIEVE YOU HAVE TO GIVE NOTICE.

>> YOU HAVE TO HAVE A HEARING.  
>> THE SCHOOL BOARD IS GOING TO ACT.

IF THEY FIND IT'S SUCH AN EMERGENCY IT HAS TO BE DEALT WITH NOW, THEY CAN OPERATE UNDER 120.525, THE EMERGENCY MEETING PROVISION, AND UNDER 120.569, TO TAKE IMMEDIATE ACTION BUT THEY HAVE GOT TO FIND AN EMERGENCY.

THEY HAVE TO DEFINE THAT EMERGENCY, IN TERMS OF THE HAVING A CONTINUING EFFECT.

>> OKAY.

YOU GOT THAT LEVEL.

>> THERE IS PROBLEM, THEN ENTER ORDER TO IMMEDIATELY ADDRESS THAT PROBLEM.

>> YOU'VE GOT THAT ORDER. THEN WHAT HAPPENS UNDER THE APA, IF IT DOES APPLY AND YOU'RE NOT SATISFIED WITH THAT? YOU HAVE COURT REMEDY THEN?

>> I THINK IF THE SCHOOL BOARD

--.

>> UNDER THE APA.

>> THAT THIS WARRANTS, AS  
WELL AS ADDRESSING THE  
IMMEDIATE EMERGENCY, THEY CAN GO ON  
TO HOLD TERMINATION PROCEEDING  
TO TERMINATE THE CHARTER ALL  
TOGETHER TO SAY THAT THIS  
EMERGENCY SITUATION IS  
INDICATIVE OF HOW YOU OPERATE  
YOUR SCHOOL  
AND JUSTIFIES TERMINATING YOUR  
SCHOOL.

>> I'M ASKING YOU JUST THE  
PROCEDURE AS JUSTICE WELLS  
ASKED.

>> RIGHT.

>> WHAT IS THE NEXT STEP?

YOU'RE NOT SATISFIED --

>> THAT THAT OCCURS, YOU HAVE  
EITHER GOOD CAUSE HEARING.

>> UNDERSTAND.

>> OR EMERGENCY HEARING, OR  
MEETING, THEN YOU WOULD BE ABLE  
TO AP THAT DECISION TO THE  
CHARTER SCHOOL APPEALS  
COMMISSION AND STATE BOARD OF  
EDUCATION.

>> WHEN WOULD THE APA TAKE THAT  
REVIEW?

>> IN MY VIEW, WHEN YOU GO TO  
THE APPELLATE PROCEEDINGS  
YOU'RE OUTSIDE THE APA.

SO I THINK --.

>> YOU'RE SHIFTING IN THE  
MIDDLE THEN.

YOU'RE SAYING PARTIAL APA, THEN  
IT SHIFTS ONCE YOU'RE IN THE  
MIDDLE OF IT?

>> I THINK IT'S LIKE WHAT WAS  
STATED IN THE PHILLIPS CASE.  
IN THAT CASE THE COMMUNITY  
COLLEGE, SANTA FE COMMUNITY  
COLLEGE TERMINATED A TEACHER  
AND IT WAS APPEALED TO THE  
BOARD OF EDUCATION.  
THERE WAS AN ARGUMENT MADE THAT  
THE BOARD OF EDUCATION'S REVIEW  
OF THAT DECISION HAD TO BE  
CONDUCTED IN ACCORDANCE WITH  
THE ADMINISTRATIVE  
PROCEDURES ACT.  
AND THE COURT THERE HELD THAT

WAS TOO BURDEN ON THE STATE BOARD OF EDUCATION, TO DO THAT TO THE STATE BOARD OF EDUCATION WOULD REQUIRE A RETRIAL OF ALL THE ISSUES AT THE STATE LEVEL. AND IT'S NOT THE PLACE FOR TRYING ON A FIRST LEVEL OF THE ISSUES.

AND I BELIEVE THAT'S THE SAME EXACT SITUATION WE HAVE HERE, THAT YOU DON'T TRY IT FOR THE FIRST TIME AT THE STATE BOARD LEVEL.

IT'S THEIR OPPORTUNITY TO REVIEW.

>> AGAIN, LIKE TO GO BACK TO HOW YOU SEE IT OPERATING AND SO YOU SEE.

>> THAT'S HOW I SEE IT OPERATING.

YOU GO TO --

>> THE APA WOULD TAKE THE REVIEW WHERE?

IN A STANDARD APA KIND OF CASE WHERE WOULD THAT REVIEW GO?

>> WELL, IF IT WAS A FINAL DECISION AT THE SCHOOL BOARD LEVEL, THEN UNDER 120.68 YOU WOULD BE ABLE TO APPEAL TO THE DISTRICT COURT.

>> LEGAL EFFECT AND STATUTE SAYS WE'RE NOT HAVING THAT, CORRECT?

>> IN FACT THE STATUTE SAYS INSTEAD OF GOING STRAIGHT TO DISTRICT COURT YOU'RE GOING TO GO TO THE STATE BOARD.

ONCE YOU'RE DONE AT THE STATE BOARD, THEN YOU HAVE A POINT OF ENTRY INTO THE JUDICIARY.

>> AFTER IT'S ALL OVER?

>> AFTER THE STATE BOARD RULES ON IT.

>> BUT NOT UNDER THE APA?

>> THERE IS A CASE OUT THERE SAYS THAT REVIEW IS NOT UNDER THE APA.

>> SO THE STATUTE ALSO SAYS IT'S NOT UNDER THE APA?

>> SAYS THE DECISION OF THE STATE BOARD OF THE EDUCATION, AND CHARTER SCHOOL --

>> WHY DOES THAT ONE SENTENCE CONTROL?

>> I BELIEVE IT DOES.

>> THAT SAYS IT'S NOT SUBJECT TO THE APA?

>> THAT SAYS THE CHARTER SCHOOL APPEALS COMMISSION AND STATE BOARD OF EDUCATION ARE NOT SUBJECT.

DOESN'T SAY THE SCHOOL BOARD IS NOT SUBJECT TO THE APA NOWHERE IN THE STATUTE DOES IT EXEMPT THE SCHOOL BOARD.

THE APA UNDER 120.05 IS APPLICABLE TO ALL AGENCY ACTION, WHETHER IT'S FINAL OR INTERMEDIATE.

>> IF THAT WAS THE INTENT OF THE LEGISLATURE, WHY WAS IT NECESSARY WHEN IT DEALT WELL THINGS LIKE, I THINK IT'S CALLED, REPRISAL OR, UNLAWFUL REPRISAL --

>> SECTION 4 OF THE STATUTE.

>> YES.

TO SAY THAT THAT IS TO BE SUBJECT TO THE APA?

>> I DON'T KNOW THAT IT SAYS IT'S SUBJECT TO THE APA I THINK IT SAYS, IT SETS OUT A DETAILED PROCEDURE TO FOLLOW FOR REPRISALS AND IT ACTUALLY MAKE AS REFERENCE AT ONE POINT TO HAVING A HEARING.

>> HAVE A CONTRACT WITH THE DEPARTMENT OF ADMINISTRATIVE HEARINGS BUT THE WHOLE IDEA THAT IF IT WERE SUBJECT TO THE APA YOU WOULDN'T HAVE, YOU WOULDN'T HAVE TO DO THAT. IF THE WHOLE, EVERYTHING THAT THE SCHOOL BOARD DID WAS SUBJECT TO THE APA, IN THE AREA OF CHARTER TERMINATION, I MEAN, IN THE CHARTER AREA, NOT JUST CHARTER TERMINATION, THEY WOULDN'T HAVE TO SPECIFICALLY TALK ABOUT WHEN THE APA APPLIES AND WHEN IT DOESN'T, WOULD THEY?

>> WELL, I THINK YOU HAVE TO LOOK AT EACH SITUATION FOR WHAT IT IS.

I DON'T THINK THAT YOU, I THINK YOU COME IN WITH THE LEGISLATURE SAYING IT APPLIES

UNLESS WE SAY IT DOESN'T.

>> DO YOU AGREE EITHER WAY'S  
NOT EVEN A CLOSE TO A PER FIT?  
BECAUSE I COULD SPEND HALF HOUR  
WITH YOU ON HOW THESE EMERGENCY  
PROVISIONS UNDER THE APA APPLY,  
AND IT'S NOT EVEN CLOSE TO A  
FIT, AS TO HOW THAT WOULD WORK  
FOR THE SCHOOL BOARD.

DO YOU AGREE, THIS WOULD  
INVOLVE, THIS COURT TRYING TO,  
YOU KNOW, KIND OF TRYING TO FIX  
A LEGISLATIVE SCHEME AND AS  
JUSTICE LEWIS HAS SAID, EVEN IS  
SHOWN THAT THE APA REALLY ONLY,  
IT'S LIKE, IT ONLY APPLIES  
UNDER YOUR CIRCUMSTANCE TO THE  
SCHOOL BOARD HEARING THAT HAS  
TO DO WITH IMMEDIATE  
TERMINATION.

DOESN'T APPLY WHEN THEY DO THE  
90-DAY TERMINATION.

IT DOESN'T APPLY WHEN THEY  
APPEAL TO THE CSAC,  
DOESN'T APPLY WHEN THEY GO TO  
THE DEPARTMENT OF EDUCATION.  
BUT JUST FOR THAT PART, AN  
IMMEDIATE TERMINATION, WE'RE  
GOING TO HAVE MORE PROTECTION  
THAN IN ANY OTHER SITUATION.  
I MEAN THAT'S YOUR POSITION?

>> MY POSITION IS THAT THE  
ADMINISTRATIVE PROCEDURE  
PROVIDES, PROCEDURES ACT  
PROVIDES THE MINIMUM DUE  
PROCESS HERE.

IF YOU LOOK AT --

>> MINIMUM DUE PROCESS IS NOT,  
WHAT, THE APA IS NOT THE FLOOR,  
IS IT?

>> NO, IT'S NOT THE FLOOR.

THE APA --

>> NOT EVEN CLOSE TO THE FLOOR.  
IT'S A VERY, IT IS AGAIN,  
YOU'VE GOT SWORN TESTIMONY,  
YOU'VE GOT CROSS-EXAMINATION,  
YOU HAVE SUBPOENA POWER.  
YOU'VE GOT DISCOVERY.

THERE'S A PANOPLY OF PROTECTION  
THAT WAY EXCEED WHAT DUE  
PROCESS WOULD REQUIRE.

>> I DON'T KNOW ABOUT WAY  
EXCEED.

IT DEPENDS ON YOUR PERSPECTIVE

ON THE LAW I BELIEVE.  
UNDER THE VARIOUS U.S. SUPREME  
COURT CASES, YES, IT'S ABOVE  
MINIMUM DUE PROCESS.  
IN THIS CASE, IF YOU DON'T HAVE  
SOME PROCEDURE, THEN YOU NEVER  
HAVE A CHANCE TO PUT ON A CASE  
AT ANY LEVEL.  
YOU DON'T GET TO DEFEND  
YOURSELF UNDER THE SCHEME, OR  
UNDER THE FACTS OF THIS CASE.  
AND AT SOME POINT YOU HAVE TO  
HAVE A CHANCE TO DEFEND  
YOURSELF.

I'M SORRY, I BELIEVE --

>> MAY I ASK A QUESTION.

WE'RE A LITTLE BEYOND.

ENGAGE ME FOR JUST A MOMENT IN  
A HYPOTHETICAL THAT WE DON'T  
AGREE WITH YOUR ARGUMENT ON  
THE APA.

>> OKAY.

>> YOU'RE MAKING THE DUE  
PROCESS ARGUMENT.

>> IN THIS CASE IT'S CLEAR THAT  
THEY NEVER HAD ANY CHANCE.

>> I'M SAYING YOU'RE MAKING  
THAT ARGUMENT.

THE FOURTH DCA DID NOT REALLY  
GO THERE, IS THAT CORRECT.

>> THEY DIDN'T HAVE TO.

>> THEY DIDN'T GO THERE.

AND THE STATUS OF THE WHOLE  
CONSTITUTIONAL, THE  
CONSTITUTIONALITY OF THE ENTIRE  
SCHEME, IS THAT SUBJECT OR WAS  
THAT SUBJECT TO PART OF THE  
ATTACK THAT YOU WERE MOUNTING  
AT FIRST LEVEL?

>> WELL, I DIDN'T MAKE AN  
ATTACK ON THE CONSTITUTIONALITY  
OF THE STATUTE BECAUSE I THINK  
THAT YOU NEED TO INTERPRET THE  
STATUTE TO AVOID THAT PROBLEM.  
AND UNDER MY ARGUMENT, TAKING  
IT THE APA DOES THAT.

>> IF SOMEONE DOES NOT ACCEPT  
YOUR ARGUMENT?

>> ASSUMING YOU DON'T ACCEPT  
THE ARGUMENT THEN THE QUESTION  
IS, AT WHAT POINT DOES  
SURVIVORS GET TO PRESENT ITS  
SIDE OF THE CASE.

>> IS IT THAT SUBJECT, IS THAT

SUBJECT, AGAIN, IS THAT SUBJECT TO --.

>> THEY HAVE A PROTECTED PROPERTY INTEREST.

>> LET ME FINISH, I CAN GET AN ANSWER.

>> I'M SORRY.

>> THAT'S ALL RIGHT.

IS THAT PART OF THE LITIGATION?

IS THIS A TWO-PART LITIGATION?

IS THAT, IS THE CASE OVER IF

THIS COURT WOULD SAY, WE DON'T

BELIEVE THAT THIS SCHEME HAS

THE APA APPLICABLE?

ARE YOU STILL INVOLVED IN

LITIGATION OVER A

CONSTITUTIONAL ISSUE THAT'S

BEEN PROPERLY FRAMED AND PLED

FOR ANY COURT ANYWHERE?

>> OH WE RAISED ISSUES IN ALL

OF OUR BRIEFING, YES, AT BOTH

THE STATE BOARD OF EDUCATION

LEVEL AND AT FOURTH DCA.

>> I'M TALKING ABOUT THE LEGAL,

LEGAL REVIEW OF IT?

>> WITH RESPECT TO THIS COURT'S

REVIEW?

>> IN THE COURTS.

IN THE COURTS.

>> I THINK THAT THE COURTS, I

DON'T UNDERSTAND THE QUESTION,

YOUR HONOR.

I APOLOGIZE.

>> LET ME SEE IF I CAN HELP YOU

OUT HERE.

>> I JUST DON'T.

>> SHE IS GOING HELP.

>> IF THIS COURT, IF WE

COULD, IF WE DECIDE THE APA

DOESN'T APPLY AND SINCE THE

FOURTH DISTRICT DIDN'T DECIDE

THE DUE PROCESS ISSUE, WE COULD

REMAND FOR THE FOURTH DISTRICT

TO DECIDE THE DUE PROCESS, IS

THAT CORRECT?

I MEAN YOU'VE RAISED IT

PROPERLY.

>> I THINK YOU CAN ALSO DECIDE

THE ISSUE HERE.

YOU DON'T HAVE TO.

>> ONE OTHER THING.

THE FOURTH DISTRICT THERE

WASN'T STAY ON MANDATE.

WE DON'T KNOW THE STATUS BUT WE

KNOW IT WAS REMANDED FOR THERE  
TO BE SOME TYPE OF A HEARING  
ACCORDANCE WITH THE APA.  
AND WE DON'T HAVE THE RECORD ON  
THAT, BUT --

>> THAT'S NOT HAPPENING.  
PARTIES AGREED TO WAIT UNTIL  
THIS COURT RULES TO PROCEED.

>> MR.^YARNELL, YOU'VE GONE  
WELL BEYOND YOUR TIME.

>> THANK YOU.

>> IF YOU WOULD JUST LIKE TO  
GIVE US A COUPLE SENTENCE IN  
SUMMATION.

>> WELL, YOUR HONORS, I BELIEVE  
IN ORDER FOR MY CLIENT TO EVER  
HAVE A CHANCE TO BE HEARD THIS  
COURT HAS TO FIND THAT THE  
ADMINISTRATIVE PROCEDURES ACT  
APPLIES, REGARDLESS WHETHER  
THERE MAY BE SOME HEIGHTENED  
LEVEL OF PROTECTION ON  
IMMEDIATE TERMINATION VERSUS  
REGULAR TERMINATION.

IT'S NOT THE PLACE FOR THIS  
COURT TO REWRITE THE STATUTE.

THIS IS HOW THE LEGISLATURE  
WROTE THE STATUTE.

IT PROVIDED NO EXPRESS  
EXEMPTION FROM THE APA FOR THE  
SCHOOL BOARD.

IT'S THE SCHOOL BOARD'S PRIMARY  
DECISION-MAKING AUTHORITY  
THAT'S IN PLAY HERE AND THAT  
REQUIRES THEM TO CONVENE SOME  
SORT OF MEANINGFUL OPPORTUNITY  
TO BE HEARD, WHICH IS SUPPLIED  
BY THE APA.

>> THANK YOU VERY MUCH.  
WE APPRECIATE IT.

MR.^BURKS, YOU HAVE ONE MINUTE  
TO GIVE US YOUR SUMMATION.

>> THANK YOU, YOUR HONOR.  
SURVIVORS WAS HEARD, IN WRITING  
AND ORALLY EXTENSIVELY FOR MANY  
HOURS AND THROUGH HOUSES --  
THOUSANDS AND HUNDREDS OF PAGES  
OF DOCUMENTATION.

>> IF WE DECIDED THE APA  
DOESN'T APPLY, ARE YOU SAYING  
THE SCHOOL BOARD HAS THE  
ABILITY IN A ONE-DAY PERIOD TO  
GIVE SOMETHING OF A SEMBLANCE  
OF THE ABILITY FOR THE

SURVIVORS OR NEXT CHARTER SCHOOL TO BE HEARD IN TERMS OF, YOU KNOW, ACTUALLY BEING ABLE TO PUT ON WITNESSES, NOT THIS THREE MINUTE THING?

YOU KNOW, I DON'T KNOW WHAT'S GOING TO HAPPEN NEXT TIME IF WE DECIDE IT THAT WAY, BUT THAT'S MY CONCERN IS THAT, IT IS SORT OF LIKE, SHOULDN'T BE AN ALL OR NOTHING SITUATION.

MAYBE THE ANSWER FALLS INTO THIS DUE PROCESS ISSUE JUST DECIDED ON A CASE-BY-CASE BASIS BUT IT WOULDN'T BE A VERY BIG BURDEN ON THE SCHOOL BOARD TO HAVE A HEARING AT WHICH SOME EVIDENCE WITH WAS TAKEN, WOULD IT?

>> WE'RE NOT OPPOSED TO GIVING A HEARING.

THE PROBLEM IS REQUIRING IT WOULD BE REWRITING THE STATUTE. AND THAT'S WHAT WE'RE OPPOSED TO, REWRITING THE STATUTE.

A QUESTION WAS ASKED WHY DID THE LEGISLATURE WRITE THE STATUTE THAT WAY?

THE ANSWER IS FOUND IN ARTICLE 9 SECTION 1(A) OF THE FLORIDA CONSTITUTION SAYS, WHICH SAYS THE STATE HAS PARAMOUNT DUTY TO PROVIDE FOR A SAFE, SECURE, PUBLIC SCHOOL SYSTEM.

ONLY BY ALLOWING THE SCHOOL DISTRICT TO COME AND ACT QUICKLY WHEN NECESSARY THAT'S ONLY WAY TO MAKE THE SYSTEM SAFE AND SECURE.

AND --.

>> MR. BURKS, PLEASE SUM UP. YOU ARE WELL BEYOND YOUR TIME.

>> IT IS NOT NECESSARY TO HAVE A HEARING TO MAKE GOOD CAUSE SHOWN AND THE THAT THE APA WASN'T MENTIONED IS BECAUSE IT WAS NOT INTENDED TO BE MENTIONED ACCORDING TO PRUITT. WE WOULD ASK THAT THE DISTRICT COURT DECISION BE ANNULLED AND THAT THE STATE BOARD OF EDUCATION FINAL ORDERS BE UPHELD. THANK YOU VERY MUCH.

>> THANK YOU BOTH.

COURT IS NOW IN RECESS UNTIL  
TOMORROW MORNING.

>> PLEASE RISE.

>> SUPREME COURT IS NOW  
ADJOURNED.