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Liberty Counsel v. The Florida Bar Board of Governors

SC09-363

>> THE SECOND CASE ON THE COURT'S AGENDA TODAY, IS LIBERTY COUNSEL VERSUS THE FLORIDA BAR BOARD OF GOVERNORS. PARTIES ARE READY TO PROCEED?

>> YES, YOUR HONOR.

>> PROCEED.

>> THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS MATHEW STAVER. ON BEHALF OF THE PETITIONERS. THIS CASE INVOLVES THE FLORIDA BAR WHICH HAS PER MISSABLY INJECTED ITSELF INTO A POLITICAL CONTROVERSIAL ISSUE THAT HAS THE POE ATTENTION TO CAUSE DEEP DIVISION UPON A SUBSTANTIAL MEMBERS OF THE SEGMENT OF THE BAR.

>> HOW DO WE KNOW THAT, MR.^STAVER?

>> WE KNOW THAT FOR SEVERAL REASONS YOUR HONOR.

FIRST OF ALL IN 2004, AND 2005 THE FLORIDA LAW PROHIBITED FAMILY LAW SECTION GETTING INVOLVED IN THE SAME 1977 LAW THAT PROHIBITS HOMOSEXUAL ADOPTION.

THINK DID THAT AND SAID SO IN THEIR MINUTES CITING TO RULE 9.50-A-3.

CODIFICATION OF THE SCHWARZ DECISION THAT SAYS THAT THE BAR AND ITS SECTIONS MAY NOT GET INVOLVED IN THESE KINDS OF ISSUES THAT ARE EMOTIONAL OR PHILOSOPHICAL.

THEY HAVE POTENTIAL TO CAUSE DEEP DIVISION AMONG SUBSTANTIAL MEMBERS OF THE BAR.

ALSO IN 2006, THE THEN PRESIDENT IN THE FLORIDA BAR JOURNAL REPORTED ON THE LEGISLATIVE ACTIVITIES OVER THE

PAST YEAR.

AND THE FLORIDA BAR JOURNAL
ACTUALLY SAID, THAT IT
PROHIBITED SECTION FROM GETTING
INVOLVED IN THIS VERY SAME
CASE, INVOLVING THE SAME LAW,
WITH REGARDS TO LOBBYING
AGAINST IT BECAUSE IT WAS
PROHIBITED FROM DOING SO
BECAUSE IT WOULD CAUSE THIS
KIND OF DIVISION.

IN 2005 THE SAME FAMILY LAW
SECTION CAME BACK TO THE
FLORIDA BAR.

INSTEAD OF WANTING TO LOBBY
AGAINST THAT PARTICULAR 1977
LAW, THEY WANTED TO MODIFY A
LAW OR PASS A NEW ONE THAT
WOULD SAY THOSE WHO ARE ENGAGED
IN FOSTER PARENTING THAT ARE
IN, THAT ARE HOMOSEXUAL FOSTER
PARENTS THEY SHOULD BE ALLOWED
TO ADOPT.

APPLYING THE SAME SEX STANDING
RULE, 9.50-A-3 THE FLORIDA BAR
BOARD OF GOVERNORS DENIED THE
SAME FAMILY LAW SECTION TO DO
THAT SAME ISSUE.

IN THIS PARTICULAR CASE, THIS
ISSUE IS CLEARLY CONTROVERSIAL.
JUST THREE YEARS AGO THE BAR
ACKNOWLEDGED THAT IT WAS
CONTROVERSIAL ENOUGH TO
PROHIBIT THE SECTION TO --

>> MAY I ASK ONE QUESTION AS WE
GO THROUGH THIS.

>> YES.

>> I CERTAINLY APPRECIATE WHAT
YOU'RE SAYING.

HOW FAR SHOULD THIS COURT BE
INVOLVED OR HOW FAR SHOULD WE
GO IN MICROMANAGING THE
DAY-TO-DAY DECISIONS WITH
REGARD TO THINGS LIKE THIS?

I MEAN, FOR EXAMPLE, HITTING
THE HEADLINES THIS MORNING, NOW
GOING TO BE LEGISLATION TO
DRILL CLOSE AS THREE MILES.

AND I CAN SEE THIS HAPPENING IN
A LOT OF DIFFERENT AREAS.

WE MAY HAVE AN ENVIRONMENTAL
SECTION.

SO HOW FAR WHEN IT TALKS ABOUT
IN TERMS OF BEING HIGHLY

EMOTIONAL AND CREATING DIVISIONS I CERTAINLY SEE THE MERIT IN NOT WANTING TO SPLIT THE BAR ON THESE KINDS OF THINGS BUT HOW FAR SHOULD THIS COURT GO AND WHAT KIND OF STANDARDS DOES THE COURT APPLY IN GETTING THERE?

AM I CLEAR ON MY QUESTION?

>> YOU ARE CLEAR.

CERTAINLY THIS COURT DOES IN THE WANT TO, OR SHOULD NOT GET INVOLVED IN MICROMANAGING THE BAR.

ON THE OTHER HAND, THIS COURT IS THE ADMINISTRATIVE HEAD OF THE BAR. AND --

>> BUT THIS IS, THIS IS PRECISELY MY CONCERN.

AND AGAIN, WE ENCOURAGE IN FRANKEL, THAT IF THE BAR IS TAKING, THE BAR ITSELF, IS TAKING A LOBBYING POSITION AND A BAR MEMBER DISAGREES, COME UP HERE AND YOU CAN ASK US IF WE AGREE OR DON'T AGREE.

BUT KELLER, SCHWARZ AND FRANKEL, NONE OF THESE CASES INVOLVED ACTIVITIES BY A VOLUNTARY SECTION.

IN ADDITION, NEVER HAS THE COURSE BECOME INVOLVED WHETHER OR NOT THE A SECOND OF THE BAR SHOULD OR SHOULD NOT BE ABLE TO FILE AN AMICUS BRIEF IN A CASE PENDING IN AN APPELLATE COURT.

NOW I WOULD, AND SO IT IS NOT AN ISSUE THE QUESTION ABOUT MICROMANAGING BUT WHERE HAVE WE EVER ESTABLISHED, I MEAN WE DIDN'T HAVE ACCESS TO THESE STANDING POLICIES.

WE DIDN'T APPROVE THE STANDING POLICIES FOR THE SECTION, FOR THIS COURT, TO BE SAYING, YES OR NO AS TO WHETHER AN AMICUS BRIEF, NOT EVEN A LOBBYING POSITION, AN AMICUS BRIEF, FILED AS A FRIEND OF THE COURT, YOU'VE BEEN VERY CANDID YOU'RE FILING ONE ON THE OTHER SIDE, TO GET US INVOLVED IN MAKING A DECISION, THIS ISN'T THE RIGHT CASE TO FILE AN AMICUS BRIEF

IN.

COME ON, EXERCISE CAUTION.
SO, WHERE IS OUR, THERE IS NO
CASES ON IT.

AND YOU, I DON'T SEE THE FIRST
AMENDMENT VIOLATION.
SO THEN THE QUESTION IS, YOU
SAID, THAT THE BAR ACTING
ULTRA VIRES, WHICH WOULD MEAN
THEY HAD NO AUTHORITY TO ACT.
I THOUGHT A LOT ABOUT THIS.
WE'RE GOING DOWN A DIFFERENT
PATH WITHOUT REALLY
ESTABLISHING THE TRAIL THAT WE
EVEN KNEW THESE POLICIES
EXISTED, NOR DID WE APPROVE
THEM.

AND, SO, WHERE, YOU KNOW, WHERE
WOULD THIS LEAD US, THIS COURT?
AND PLEASE, YOU KNOW, THAT IS
IN CONNECTION WITH JUSTICE
LEWIS'S QUESTION, MY CONCERN
IS, IS THAT THIS IS NOT THE
BAR.

IT IS A VOLUNTARY SECTION.
I AGREE THAT IT'S A CREATION OF
THE BAR BUT IF YOU COULD ANSWER
THOSE QUESTIONS WITH REFERENCE
TO THOSE ADDITIONAL CONCERNS,
AND OUR PRIOR CASE LAW.

>> I CAN ANSWER THEM IN TWO
STEPS, IF YOU WILL.

I THINK FIRST OF ALL, THIS
COURT ALREADY HAS GOOD
GUIDELINES IN SCHWARZ.

IT HAS THE FIVE AND
IT HAS THREE CRITERIA IN THE
CAUTIONARY SECTION.

THAT CAUTIONARY SECTION DON'T
GET INVOLVED IN THESE KIND OF
EMOTIONAL DIVISIVE ISSUES.

THAT CAUTIONARY LANGUAGE
CODIFIED BY STANDING RULES.

950, SECTIONS RELATE TO
LOBBYING.

>> MOST RESPECTFULLY YOU
ALWAYS FILE GREAT BRIEFS AND
VERY INFORMATIVE, EITHER
SCHWARZ OR FRANKEL, THE BAR
SHOULDN'T BE DOING THIS BUT
PLEASE LET THE SECTIONS DO
THESE KINDS OF THINGS.

WE GAVE GOOD GUIDELINES TO THE
BAR IN SCHWARZ FOR THE BAR BUT

WE SPECIFICALLY SAID IN FRANKEL, NO, BAR, YOU CAN'T DO THIS STUFF, THIS HAD TO DO WITH THE CHILDREN'S COMMISSION BUT PLEASE, THE MAJORITY AND JUSTICE BARKETT SAID PLEASE LET THE SECTIONS DO THESE THINGS.

>> CORRECT.

BUT I THINK THE GUIDELINES ARE ALREADY THERE.

SO I DON'T THINK WE'VE HAD TO HAVE THE COURT MICROMANAGE THE BAR.

>> BUT WOULD YOU AGREE WE DID NOT APPROVE THE STANDING POLICY?

>> WITH REGARDS TO THE SECTIONS?

>> TO THE SECTIONS.

>> THAT'S CORRECT.

BUT THE POLICIES ARE THERE.

AND THOSE POLICIES HAVE BEEN CODIFIED IN THE STANDING RULES. NOW AS IT RELATES TO THE SECTIONS.

ONLY TIME SECTIONS WERE MENTIONED IS BY THE DISSENT BY JUSTICE MACDONALD.

HE MENTIONED BAR CAN'T DO IT PERHAPS THE SECTIONS CAN OR OTHER GROUPS.

THEN JUSTICE MACDONALD WAS QUOTED IN FRANKEL TOWARD THE END OF THAT PARTICULAR DECISION AFTER IT AFFIRMED THOSE RULES, THE FIVE AND THE THREE AND THEN, DIDN'T MENTION THE CAUTIONARY SECTION, IT SAID AT THE VERY END THAT, PERHAPS THE SECTIONS CAN GET INVOLVED IN THIS OR POLITICAL ACTION COMMITTEES, PACS.

THOSE KINDS OF LOBBYING TYPES OF ISSUES THAT THE BAR MAY NOT OTHERWISE GET INVOLVED WITH.

I WOULD RESPECTFULLY SUBMIT EVEN THOUGH THIS IS THE FIRST TIME THIS COURT HAS ADDRESSED THE ISSUE OF THE SECTIONS THAT IN THIS CASE THE WAY THE SECTIONS ARE SET UP, THEY ARE ESSENTIALLY EXTENSIONS OF BAR.

>> I GUESS MY CONCERN THOUGH GOES BACK, LET'S, THE BAR HAS

SET IT UP WITH AMICUS BRIEF
BEING THE SAME AS LOBBYING
POSITION.

BUT I WOULD LIKE YOU FOR A
SECOND TO THINK ABOUT, THEY
MENTIONED IN THE BRIEF THE
SCHIAVO CASE.

>> RIGHT.

>> A CASE THAT WAS COMING
BEFORE US.

JUST IMAGINE, I'M JUST THINKING
AT THE SAME TIME, THAT WE'RE
DECIDING THE SCHIAVO CASE,
SOMEONE ELSE IS FILING A
PETITION, I MEAN WE CAN DECIDE
NOT TO ALLOW THE AMICUS BRIEF,
MAYBE NOT BE HELPFUL TO US BUT,
DECIDING WHETHER THE BAR, HAD
THE AUTHORITY TO ALLOW THAT
AMICUS BRIEF TO BE FILED AND
THERE THEY WERE SAYING YOU CAN
FILE IT ON SEPARATION OF POWERS
BUT NOT ON PRIVACY.

IF, I JUST AM NOT SURE THIS IS,
WITHOUT OUR HAVING AGAIN,
REVIEWED HOW WE SHOULD LOOK A
AMICUS BRIEF SECTIONS WE SHOULD
HAUL OFF IN THIS CASE AND JUST
IN YOUR FAVOR AND GRANT AN
INJUNCTION BECAUSE IT'S SO, YOU
SAID, NO, EXACT SAME THING AS
WHAT WE SAID ABOUT THE BAR.
I'M NOT SURE I CAN ACCEPT THAT
PROPOSITION THAT WE EVER
ENVISIONED WHAT WOULD BE THE
PROCEDURE FOR AMICUS BRIEFS
FILED BY SECTIONS.

YOU KNOW, UP UNTIL THIS TIME WE
NEVER HAD A REVIEW THOSE KINDS
OF THE INITIAL DECISIONS AS
OPPOSED TO WHETHER THE BRIEF
WILL BE HELPFUL OR NOT.

>> AS IT RELATES TO AMICUS
BRIEFS AND LOBBYING THE BAR HAS
ALWAYS TAKEN THE POSITION THAT
THEY'RE THE SAME.

IN THE RESPONSE BRIEF THEY SAY
THEY TREAT THEM THE SAME.

>> JUST BECAUSE THE BAR SAYS
THAT, YOU KNOW, QUESTION FOR
THIS COURT THOUGH IS THAT GOOD,
IS THAT A GOOD DECISION?
IS THAT SOUND THAT AMICUS
BRIEFS MAY BE VERY DIFFERENT IN

TERMS OF THE COURT'S INTEREST
IN EITHER RESTRICTING OR
ALLOWING THEM, THAN, LOBBY
ABOUTING POSITIONS?

>> NO.

THEY ARE THE SAME.

AND IN FACT, WHEN THIS CASE,
WHEN A CASE CALLED GIBSON
ARGUED BY MR.^BARRY RICHARD WAS
BEFORE THE UNITED STATES
SUPREME COURT, THE TRANSCRIPT
THAT ORAL ARGUMENT SAYS, IN
FACT JUSTICE KENNEDY SAYS, WHY
WOULD THE BAR TO A RESPONSE
QUESTION BY THE PETITIONER,
WANT TO PLAY GAMES AND HAVE
THIS ONLY APPLY TO LOBBYING BUT
NOT OTHER MATTERS?

AND MR.^RICHARD SPECIFICALLY
ADDRESSED THE COURT AND SAID,
THE BAR HAS THIS AS A BROAD
RULE.

WE'RE NOT GOING TO PLAY GAMES.
IT DOES APPLY BEYOND THE
LOBBYING, IF IT APPLIES TO
OTHER AREAS AS WELL.

IN HELLER IT APPLIED TO BOTH
AMICUS BRIEFS AND LOBBYING
POSITIONS.

IN GOING TO THE SECTIONS THE
SECTIONS IN THIS CASE, AS THEY
ARE CREATED BY THE BAR,
CONTROLLED BY THE BAR THEY HAVE
TO HAVE REVIEW OF THE AMICUS
BRIEFS IN ORDER TO GET THIS
APPROVED BY THE BAR AND THEY
CAN'T TAKE A POSITION CONTRARY
TO THE BAR, ARE VERY CLOSE TO
THE BAR.

AND IT'S VERY SIMILAR TO WHAT
HAPPENED IN THE KELLER CASE.
THERE IT WAS THE BAR BUT ALSO
THE CONFERENCE OF DELEGATES.
THE CONFERENCE OF DELEGATES IN
THE KELLER CASE WAS A, WAS A
SECOND ALMOST LIKE WHAT WE HAVE
HERE IN FLORIDA.

NOW IN 2002, IN ORDER TO AVOID
THIS ISSUE WHERE THEY CAN'T GET
INVOLVED IN SOME OF THESE
LOBBYING OR POLITICALLY
DIVISIVE ISSUES THEY SPUN THE
CONFERENCE OF DELEGATES OFF AS
TO A SEPARATELY INCORPORATED

ENTITY WITH A SEPARATE BOARD.
NOW --

>> LET ME GET YOU BACK TO THIS
CASE FOR A MINUTE.

BY APPROVING THE AMICUS, DID,
ARE YOU SAYING THE BOARD
ACTUALLY DETERMINED THAT THE
ISSUE CARRIED THE, DID NOT
CARRY THE POTENTIAL OF DEEP
PHILOSOPHICAL OR EMOTIONAL
DIVISION?

OR THAT THEY FAILED TO MAKE
THAT DETERMINATION?

MAYBE THAT GOES BACK JUSTICE
POLSTON'S INITIAL INQUIRY WHICH
IS, WHAT OUR STANDARD REVIEW
THEN WOULD BE, ON THIS, IF I
ACCEPT YOUR PROPOSITION WE
SHOULD BE REVIEWING THIS JUST
LIKE WE WOULD REVIEW A BAR
LOBBY ABOUTING POSITION, WHAT
IS THE RECORD, SAY, AS TO
WHETHER DID THE BOARD MAKE THAT
DETERMINATION THAT IT DID NOT
CARRY THE POTENTIAL ARE OR DID
THE BOARD IGNORE THAT
REQUIREMENT MAKING THEIR
APPROVAL ULTRAVIRUS BECAUSE
THEY IGNORED THE INQUIRY? TWO
THINGS.

ONE, THEY MADE THE DETERMINATION
AND IT WAS ERRONEOUS OR TWO,
THEY FAILED TO MAKE THE
DETERMINATION AND THEREFORE
THEY DID NOT ACT IN ACCORDANCE
WITH THEIR OWN STANDING POLICY.
WHAT IS YOUR POSITION AS TO
WHICH OF THOSE TWO OCCURRED?

>> IT IS UNCLEAR WHETHER THEY
ACTUALLY ADDRESSED THE DIVISIVE
NATURE.

HOWEVER ONE OF THE BAR MEMBERS
DID SAY THEY VOTED AGAINST THIS
BECAUSE OF ITS DIVISIVE NATURE
IN 2004-2005, AS IT RELATES TO
THE SAME SEX WITH REGARDS TO
THE SAME LAW BUT THEN
ULTIMATELY SAID SHE CHANGED HER
MIND BECAUSE THIS IS AN AMICUS
BRIEF AS OPPOSED TO LOBBYING.

>> THE QUESTION I HAVE FOR YOU,
IN TERMS OF YOU HAVE ONLY SAID,
YOU APPEALED THIS WILL, OR
PETITIONED FOR THE INJUNCTION

AS TO THE FIRST AMENDMENT
ISSUE, BUT YOU ALSO PETITIONED
SAYING THEY ACTED ULTRA VIRES.
IF THEY SIMPLY MADE THE WRONG
DECISION, IN TERMS OF, FROM
YOUR POINT OF VIEW IT WAS ONE
THAT WAS OF DEEP, POTENTIAL FOR
DEEP PHILOSOPHICAL OR EMOTIONAL
DIVISION, IS OUR STANDARD OF
REVIEW DIFFERENT?

>> I THINK THAT THE STANDARD OF
REVIEW WOULD NOT NECESSARILY BE
DIFFERENT.

I THINK THEY MADE THE WRONG
DECISION.

THEY DIDN'T ADDRESS AT LEAST IN
THE MINUTES, AS THEY DID
BEFORE, THEY DIDN'T
SPECIFICALLY STATE WHETHER IT
WAS DIVISIVE.

>> YOU ONLY ARGUED ULTRA VIRES.
YOU DIDN'T ARGUE IT WAS A, YOU
KNOW, AN IMPROPER DECISION.
LIKE SAY THIS WAS, YOU WERE
ARGUING THAT IT WASN'T WITHIN
THE SUBJECT MATTER OF THE
FAMILY LAW SECTION.

>> RIGHT.

>> WHICH IS ONE OF THE
REQUIREMENTS.

AND THERE IS NOTHING IN THE
RECORD THAT SHOWS THAT THEY
CONSIDERED WHETHER IT WAS
WITHIN OR WITHOUT THE
EXPERTISE.

COULD YOU BRING THAT PETITION
HERE AND SAY, WELL, THEY JUST
DIDN'T MAKE THAT DETERMINATION
AND WE WOULD THEN SAY, WE'RE
GRANTING AN INJUNCTION BECAUSE
IT DOESN'T LOOK LIKE THEY, YOU
KNOW, THEY ADDRESSED THAT
ISSUE?

>> WELL, I THINK THAT THEY ARE
CLEARLY ULTRA VIRES.

I THINK IF YOU FOLLOW WHAT THE
BAR'S RESPONSE IS, HERE IS THE
BAR'S LOGIC.

THE BAR CAN ENGAGE IN THIS
ACTIVITY ON THIS PARTICULAR
STATUTE.

WE ALL AGREE ON THAT.

THE SECTION IS PROHIBITED FROM
ENGAGING IN THIS ACTIVITY.

THEY CONCEDE THAT AND THEY APPLIED THAT TO THE SECTION. ALSO, THEY SAY THAT THEY APPLIED THE SAME EXACT RULE TO AMICUS BRIEFS.

THEY THEN DEFAULT TO THIS POSITION IT IS NOT CONTROVERSIAL.

THEY SAY THAT IT IS NOT CONTROVERSIAL --

>> WHAT IS YOUR DEFINITION OF ULTRA VIRES?

I THOUGHT IT REALLY MEANT THAT THE BAR DIDN'T HAVE THE AUTHORITY TO DO WHAT IT DID? WHAT ARE YOU USING THE TERM ULTRA VIRES TO MEAN?

>> WE'RE USING THE TERM THAT IS VIOLATED ITS OWN RULE IN THIS PARTICULAR CASE.

BUT WE'RE ALSO STATING THAT INDEED IT VIOLATED THIS COURT'S CAUTION IN SCHWARZ.

FRANKEL DOES NOT DO AWAY WITH CAUTIONARY LANGUAGE IN SCHWARZ.

THE CAUTIONARY LANGUAGE AFTER YOU LOOK AT FIVE AND THREE, GRANTED IT WAS TALKING ABOUT THE BAR ITSELF --

>> LET ME ASK YOU THIS.

WHAT DID THE BAR SAY WHEN THEY GAVE THE SECTION PERMISSION TO FILE AN AMICUS?

>> WE DON'T KNOW EXACTLY WHAT THE BAR SAID OTHER THAN THE FACT THAT THEY GAVE PERMISSION FOR IT TO FILE THE AMICUS BRIEF IN THIS CASE.

>> SO THERE ARE THREE BASIC PARTS OF WHAT YOU HAVE TO DETERMINE.

WHETHER THIS IS SOMETHING OUTSIDE THE SCOPE OF THE BAR, WHETHER THIS IS SOMETHING THAT THE SECTION ITSELF CAN DO WITHIN THEIR SUBJECT MATTER AREA, AND WHETHER OR NOT IT MIGHT BE DIVISIVE.

SO IF THEY JUST SIMPLY GAVE THE SECTION THE RIGHT TO FILE THIS BRIEF, DON'T WE HAVE TO ASSUME THAT THEY, LOOKED AT THOSE THREE PROVISIONS AND SAID, THIS IS SOMETHING THAT THE BAR CAN'T

DO.

THIS IS SOMETHING WITHIN THEIR SUBJECT MATTER AND THIS IS SOMETHING THAT IT IS NOT DOES NOT HAVE THE POTENTIAL TO BE DIVISIVE.

HOW DO WE GET TO THE POINT YOU WANT US TO GET TO AND SAY THAT IT IS?

>> OUR ARGUMENT WASN'T SO MUCH IT WAS ULTRA VIRES, BUT THE FACT THAT THEY ENGAGED IN POLITICAL ACTIVITY THAT IS OUTSIDE THE PURPOSE OF THE BAR BY ALLOWING THIS AMICUS BRIEF TO BE FOLLOWED.

THEY HAVE GONE INTO THE PHILOSOPHICAL AND DIVISIVE AREAS WHETHER DOING IT THEMSELVES.

AND IT ALSO VIOLATES SCHARZ AND FRANKEL AND KELLER.

>> IN THE MINUTES OF THE BAR IS THERE ANY REFERENCE TO THE DIVISIVENESS ISSUE?

>> ONLY REFERENCE BY INDIVIDUAL STATEMENTS OF MEMBERS OF THE BAR.

THEY DON'T ACTUALLY MENTION WHETHER IT IS DIVISIVE.

THERE IS DISCUSSION BY ONE PERSON WHO MENTIONED BEFORE SHE VOTED AGAINST THIS, BECAUSE IT WAS DIVISIVE.

NOW SHE DOESN'T THINK IT IS DIVISIVE.

THERE IS NOTHING IN THE ACTUAL SUMMARY OF THE MINUTES.

IN ONE OF THE CASES FOR EXAMPLE IN ONE OF THE SITUATIONS BEFORE THIS, IN 9.50 IN REGARD TO LOBBYING.

REFERENCE IN THE MINUTES IS REFERENCE 9.50-A-3.

ELDER LAW SECTION IN THE TERRI SCHIAVO CASE.

WHICH ARE THE SAME ONE, ONE FOR LOBBY ABOUTING.

ONE FOR AMICUS BRIEFS.

THESE PARTICULAR MINUTES AS FAR AS I KNOW DOESN'T REFERENCE THAT PARTICULAR SECTION BUT THERE WAS DISCUSSION, PASSIONATE DISCUSSION ABOUT

WHETHER THE SECTION OUGHT TO BE ABLE TO GET INVOLVED IN THIS ISSUE.

>> TO THE EXTENT THAT YOU'RE YOUR POSITION HERE FOCUSES THE BAR VIOLATING ITS OWN STANDING BOARD POLICY, NAMELY, THIS 8.10-A-3, THE HEART OF THAT, THAT, REFERENCE POTENTIAL OF DEEP PHILOSOPHICAL OR EMOTIONAL DIVISION, IF WE WERE TO AGREE WITH YOU THAT THE BAR ERRED IN APPROVING THIS, IT IS INCONSISTENT WITH THIS PROVISION, HOW WOULD YOU DEAL WITH THE ARGUMENT THAT THE BAR CAN WAIVE THOSE POLICIES ANYWAY?

BYLAW 2.9-2, PROVISION IS MADE THAT THE PROVISION OF ANY STANDING BOARD POLICY MAY BE WAIVED BY 2/3 VOTE PRESENT AT ANY REGULAR MEETING OF THE BOARD OF GOVERNORS?

>> IN TWO RESPECTS JUSTICE CANADY.

FIRST OF ALL WE'RE NOT RELYING ON FACT THEY VIOLATED 8.10-A-3. THEY CLEARLY DID AND THAT SHOULD BE INDISPUTABLE. THAT IS CODIFICATION OF CAUTIONARY LANGUAGE IN SCHWARZ. IT IS A GOOD POLICY TO CODIFY THAT.

THIS CASE WILL NO DOUBT COME BEFORE THIS COURT.

I THINK IT PUTS FAMILY LAW JUDGES PART OF THE FAMILY LAW SECTION IN ESSENTIAL CONFLICT OR, UNEASY POSITION, BUT.

>> YOU HAVE ACKNOWLEDGED THAT SCHWARZ REFERS TO THE BAR ITSELF AND NOT TO SECTIONS. SO YOU'RE ASKING US TO REALLY EXTEND SCHAWARZ TO INCLUDE SECTIONS?

>> THE WAY THE SECTIONS ARE SET UP, CHIEF JUSTICE QUINCE, I THINK IT SHOULD INCLUDE THE SECTIONS.

>> PLEASE ANSWER, FOR ME, BECAUSE I HAVE THIS, JUSTICE CANADY'S QUESTION IS, YOU HAVE NOW SHIFTED TO RECUSEAL ISSUE

BUT FROM JUSTICE CANADY'S QUESTIONS, IF IT IS THE BAR'S STANDING POLICY AND SECTION THAT JUSTICE CANADY REFERRED TO, CAN'T IT BE WAIVED BY THE BAR?

>> THE BAR COULD WAIVE THE RULE.

IT DIDN'T WAIVE THE RULE IN THIS CASE.

>> YOUR POSITION WOULD BE THEY WOULD HAVE TO IN ORDER TO GET THE BENEFIT OF THIS PROVISION THEY WOULD HAVE TO EXPRESSLY WAIVE IT?

IT CAN NOT BE AN IMPLICIT WAIVER?

>> EXACTLY. BUT BEYOND THAT --

>> YOU ACKNOWLEDGE THE RULE, SAY WE'RE GOING TO, FOR WHATEVER REASON WE BELIEVE THAT THERE'S JUSTIFICATION FOR WAIVING IT AND WE HEREBY WAIVE IT?

>> CORRECT.

AND BEYOND THE WAIVER I THINK THE POLICY OF SCHWARZ AND CAUTIONARY LANGUAGE WOULD COME INTO ISSUES OF PLAY WITH KELLER.

KELLER SIMPLY JUST DIDN'T DEAL WITH THE BAR.

IT DEALT WITH THIS SIMILAR CONFERENCE OF DELEGATES.

THAT'S WHY THE CONFERENCE OF DELEGATES HAS NOW BEEN PUT IN A DIFFERENT SITUATION SO IT KANG LOBBY.

>> YOU HAVE JUST SAID SOMETHING ELSE. WHY I AM TRYING TO THINK WE REALLY HAVE DIFFERENT REASONS FOR NOT GETTING INVOLVED IN THESE CONTROVERSIES.

WHETHER YOU'RE FOR OR AGAINST THIS ISSUE, THE COURT, IF AND WHEN IT SEES THIS ISSUE WILL DETERMINE THAT QUESTION ON THE MERITS, NOT AS TO WHETHER THERE'S A POTENTIAL FOR DEEP PHILOSOPHICAL DIVISION.

>> CORRECT.

>> WHAT YOU'RE ASKING THIS COURT TO DO IS MAKE DE NOVO DETERMINATION THAT A SECTION OF

THE BAR CAN NOT FILE AN AMICUS BRIEF, AND APPELLATE COURT, BECAUSE, BECAUSE IT IS CONTROVERSIAL.

AND TO ME THERE'S A CONCERN THAT THEN ALL OF SUDDEN WE'RE GETTING INVOLVED IN A CONTROVERSY THAT, YOU KNOW, WE MIGHT HAVE TO RECUSE OURSELVES FROM IN THE FUTURE.

AND THAT CAN'T BE GOOD, YOU KNOW, POLICY, FOR THIS COURT. ANOTHER REASON WHY MAYBE WE SHOULD STAY OUT OF CASES, OR PETITIONS THAT INVOLVE AMICUS BRIEFS OF PETITIONS BECAUSE IT MAY COME BEFORE THE COURT --

>> CHIEF JUSTICE QUINCE, I AM OUT OF TIME.

>> YOU MAY ANSWER THE QUESTION BUT YOU'RE OUT OF YOUR TIME.

>> IN ANSWER TO THAT QUESTION, JUSTICE PARIENTE, THIS COURT HAS TO GET INVOLVED IN SOME OF THESE ISSUES WHETHER IT LIKES IT OR NOT.

IF THIS WAS THE BAR DOING IT THE COURT WOULD HAVE TO BE INVOLVED.

THE BAR WOULD HAVE TO BE WHERE THIS COURT WAS INVOLVED, FOR EXAMPLE IN FRANKEL.

THIS COURT GOT INVOLVED IN THOSE. THROUGH ISSUES CHALLENGED IN FRANKEL. THIS COURT GOT INVOLVED.

>> THAT WAS A LEGISLATIVE POSITION.

>> YES, BUT THERE IS NO DIFFERENCE BETWEEN LEGISLATIVE OR AMICUS BRIEFS.

>> IT IS FOR THIS COURT. BECAUSE THE COURT EITHER IN THE END SAY YES OR NO WHETHER YOU CAN FILE AN AMICUS BRIEF.

>> WELL YOU HAVE TO SAY THE SAME THING WHETHER OR NOT THE BAR CAN GET INVOLVED IN POLITICALLY DIVISIVE ISSUE ON LOBBYING OR EVEN AMICUS BRIEFS. THAT IS WHAT KELLER WAS, AMICUS BRIEFS.

IN THIS PARTICULAR CASE, ONCE

THE GUIDELINES OF SCHWARZ ARE THERE, THEY WORKED FAIRLY WELL. YOU DON'T HAVE TO HAVE A LOT OF CONTROVERSIES BECAUSE OF SCHWARZ AND FRANKEL.

OUR POSITION UNDER THIS SITUATION THE RULES ITSELF ON THIS CASE PROHIBIT THE SECTION FROM FILING.

WE'VE GOT GOOD PRECEDENT. WE DON'T HAVE TO BE HYPOTHETICAL AS TO WHETHER OR NOT THIS WILL BE CONTROVERSY^. THEY HAVE ALREADY AGREED IT WAS CONTROVERSIAL ON THIS VERY SAME STATUTE.

THEN BEYOND THAT, JUSTICE PARIENTE, THESE SECTIONS OUGHT TO BE IRRESPECTIVE WHETHER THE STANDING RULES ARE THERE OR NOT, OUGHT TO BE GOVERNED BY THE SCHWARZ PRECAUTIONARY LANGUAGE TO THE COURT DOES NOT HAVE TO GET INVOLVED IN THIS KIND OF WRANGLING.

THE BAR KNOWS HOW TO APPLY IT. THEY JUST DIDN'T IN THIS CASE.

>> THANK YOU, MR.^STAVER. MR.^RICHARD.

>> MAY IT PLEASE THE COURT. I'M BARRY RICHARD AND COUNSEL FOR THE FLORIDA BAR.

>> HAS THE BAR CONCEDED TOO MUCH -- NOT NECESSARILY IN THIS CASE BUT JUST THIS QUESTION, THAT I AM STRUGGLING WITH, MR, RICHARD, IS THAT, SOMEWHERE THE BAR SAID THEY CAN FILE AMICUS BRIEFS BUT NOT ON CONTROVERSIAL ISSUES.

THE BAR HAS NOT LOOKED AT THE ISSUE OF SECTIONS OF AMICUS BRIEFS AND THE PARAMETERS FOR FILING. COULD YOU ADDRESS THOSE, DO YOU AGREE IT IS GOVERNED BY THE SAME, THE SCHWARZ ADMONITION, THAT, YOU CAN DO ALL THESE GREAT THINGS, SECTIONS BUT NO THE IF IT CARRIES THE POTENTIAL FOR THE DEEP PHILOSOPHICAL OR EMOTIONAL DIVISION JUST LIKE THE AMICUS POSITION IN THE STANDING

POLICIES SET FORTH?

>> I AGREE, JUSTICE PARIENTE,
THE BOARD OF GOVERNORS HAS
APPLIED THAT POLICY TO AMICUS
BRIEFS EVEN THOUGH THIS COURT
HAS NOT IMPOSED IT IN EITHER
AMICUS BRIEFS OR LOBBYING.
SIMPLY RECOMMENDED IT.

AND THE BOARD AS OF THIS TIME,
HAS DECIDED THAT AVOIDING
UNDULY DIVISIVE ISSUES IS A
GOOD IDEA FOR THE REASONS THIS
COURT SUGGESTED IN SCHWARZ.
SO AS NOT TO CREATE AN
UNNECESSARY, CONFRONTATION
WITHIN THE MEMBERSHIP OF THE
BAR.

AS I INDICATED IN MY BRIEF, I
THINK THERE IS NO BODY IN A
BETTER POSITION TO MAKE THAT
POSITION THAN THE
DEMOCRATICALLY ELECTED BOARD OF
GOVERNORS.

>> IF THEY -- NOW YOU SAID, YES
IT IS GOOD, IF IT CAME UP
BEFORE THIS COURT YOU WOULD
URGE THE COURT TO ENDORSE THIS
IDEA THAT AMICUS BRIEFS,
SECTION SHOULD BE GOVERNED BY
THE SAME CONCERNS THAT WE HAD
IN SCHWARZ EVEN THOUGH IN
FRANKEL WE SAID, LET THE
SECTIONS DO WHAT THE BAR CAN'T
DO.

SO I'LL ACCEPT THAT, YOU KNOW,
THERE IS, EVEN THOUGH AMICUS
BRIEFS TO ME ARE DIFFERENT THAN
LOBBYING POSITIONS, THE BAR
CONCEDED THAT.

BUT IF'S SO, THEN, HAS, IN THIS
CASE, THE BAR DETERMINED, DID
THEY MAKE THAT DETERMINATION
THAT THE ISSUE DID NOT CARRY
WITH IT THE POTENTIAL FOR DEEP
PHILOSOPHICAL OR EMOTIONAL
DIVISION?

I, THERE IS NOTHING IN THE,
THIS ISN'T A RECORD BUT, YOU
KNOW, DOESN'T SEEM THAT IN THE
ALL OF THE, YOU KNOW, CHEST
BEATING THAT WENT ON THAT
REALLY, ANYONE EVER ASK THAT
PARTICULAR QUESTION?

>> I THINK THAT QUESTION WAS

NOT ASKED AND IT WAS NOT
ADDRESSED SEPARATELY, NOR DID
IT HAVE TO BE BECAUSE THERE IS
NO RULE IMPOSED UPON THE BOARD.
THIS IS ITS OWN POLICY.

I CALLED THE COURT'S ATTENTION
TO THE FACT THAT THIS WAS A
UNANIMOUS DECISION OF THIS
BOARD.

THERE WAS ONE RECUSEAL BUT THERE
WAS NOT A SINGLE DISSENT FROM
THIS.

WHICH STRONGLY SUGGESTS THAT
THERE WAS NOT ANY DIVISIVE
ISSUE HERE.

>> DO WE HAVE, YOU AGREE THERE
IS STANDING ON THE PART OF
MR. STAVER AND DO YOU AGREE
THAT THERE SHOULD BE
JURISDICTION FOR THIS COURT TO
REVIEW THIS IN ITS SUPERVISORY
POWER OVER THE BAR, AND ITS,
AND ITS SECTIONS?

THAT WE OUGHT TO BE OURSELVES
MAKING A YOU KNOW, A REVIEWING
WHETHER THE BAR DID WHAT IT
WAS, SAID IT WOULD DO IN THESE
STANDING POLICIES?

>> I AGREE, AND I DISAGREE.
THIS COURT HAS SAID THAT ANY
MEMBER OF THE BAR HAS STANDING
TO CHALLENGE A POLITICAL OR
IDEALOGICAL POSITION TAKEN BY
THE BAR.

NOT SPEAKING OF THE SECTIONS.
THIS COURT HAS MAINTAINED THAT
POSITION.

AND I HAVE NO PROBLEM WITH IT.
I THINK IT IS A VERY REASONABLE
ONE, TO ALLOW MEMBERS OF THE
BAR TO DO THAT.

KELLER IN FACT REQUIRES THEY
HAVE THAT OPPORTUNITY TO DO
THAT.

IF THE QUESTION IS, SHOULD THIS
COURT ENTERTAIN A CHALLENGE TO
EVERY POSITION TAKEN BY THE
SECTIONS, AND I NOTE THAT THE
BAR DOES NOT APPROVE A POSITION
OF THE SECTIONS AND IT DOES NOT
GRANT PERMISSION TO THE
SECTIONS, IT IS A DEFAULT.
THE WAY THAT THE RULE WORKS
PRECISELY SO THAT THE BAR

COMPLIES WITH SCHWARZ, IS THAT,
IF THE BAR FINDS IT IS WITHIN
THE SECTION'S SUBJECT MATTER
JURISDICTION AND IT IS NOT
UNDULY DIVISIVE AND IT IS
OUTSIDE THE BOARD'S PURVIEW AND
IT TAKES NO POSITION AND THE
SECTION IS PERMITTED TO ACT
UNDER THOSE CIRCUMSTANCES.
I DO NOT BELIEVE THIS COURT
SHOULD GET INTO THE BUSINESS,
OF, AS YOUR HONOR, MENTIONED
MICROMANAGING OR JUSTICE QUINCE
MAY HAVE BEEN THE ONE, EVERY
DECISION BY THE BOARD WITH
REGARD TO THE SECTIONS.

>> MR. RICHARD, THERE IS 2/3
RULE IN THE BYLAW THERE SAYS
THIS PROVISION CAN BE WAIVED,
RIGHT?
THAT VOTE WAS NOT TAKEN BY THE
BOARD OF GOVERNORS.

>> I DON'T ASSUME THE BOARD
WERE WAIVING ANYTHING.
I ASSUME THEY THOUGHT SINCE IT
WAS UNANIMOUS DECISION IMPLICIT
WITH IT WAS CONCLUSION IT WAS
NOT UNDULY DIVISIVE.

THE BAR WAS AWARE OF THIS ONE
MEMBER POINTED OUT HE HAD IN
THE EARLIER VOTE SEVERAL YEARS
BEFORE VOTED AGAINST TAKING A
POSITION ON THIS BECAUSE HE
THOUGHT IT WAS UNDULY DIVISIVE
BUT HE HAD NOW CHANGED HIS
MIND.

SO THE BOARD WAS AWARE OF THE
DIVISIVE ISSUE AND IMPLICITLY
DETERMINED, UNDERSTAND WHETHER
I WITH WHEN THERE WASN'T A
SINGLE DISSENT THAT THE BOARD
DIDN'T CONSIDER IT UNDULY
DIVISIVE.

>> THE BOARD DIDN'T CONSIDER
THE GAY RIGHTS ISSUE A
DIVISIVE ISSUE
UNDER ITS MEMBERSHIP?

>> WE PRESUME IT DID NOT.
MY PREMISE IS NOT ISSUE THE
BOARD SHOULD OVERRULE THE BOARD
ON ANY PLACE BECAUSE THE COURT
DIDN'T IMPOSE THE RULE ON THIS
BOARD IN ANY CASE.

>> THAT REALLY GOES BACK TO MY

ISSUE.

I'M NOT SURE IT WAS REALLY
RAISED IN THE RESPONSE, THAT
IS, THAT, OBVIOUSLY THIS IS A
CASE OF CONTROVERSY BUT THAT,
WILL YOU URGE THAT THIS COURT,
IF WE DENY THE PETITION, NOT DO
IT ON THE BASIS THAT WE'VE
DETERMINED THAT THIS ISSUE
ISN'T DIVISIVE?

BECAUSE YOU KNOW, LIKE
ABORTION, A FEW OF THESE
HOT-BUTTON ISSUES AND THIS IS
ONE OF THEM, THAT THE COURT
SHOULD NOT BE INVOLVED IN
DECISIONS OF THE BAR CONCERNING
THE FILING OF AMICUS BRIEFS BY
SECTIONS?

THAT THAT SHOULD, AND THAT'S A
DIFFERENT DECISION, THAN
WHETHER OR NOT IT IS
CONTROVERSIAL?

>> I ABSOLUTELY AGREE, FOR ANY
NUMBER OF REASONS.

>> WHICH ONE?

WHICH ONE DO YOU AGREE WITH?
BECAUSE IT IS IMPORTANT TO ME.

>> THAT THIS COURT SHOULD NOT
BECOME INVOLVED IN OVERSEEING
THE DECISION OF THE BOARD WITH
REGARD TO SECTIONS.

I HAVE TO CONCEDE, BECAUSE OF
COURSE WHO KNOWS WHAT POSSIBLE
SET OF CIRCUMSTANCES CAN
ARRIVE, THAT THIS COURT ALWAYS
HAS JURISDICTION AS THE
ADMINISTRATIVE HEAD OF THE BAR
TO TAKE UP ANYTHING.

MY ONLY POINT IS, THAT THIS BAR
SHOULD GRANT CONSIDERABLE
DEFERENCE TO THE BOARD WHEN IT
COMES TO THIS TYPE OF A
DECISION.

THIS, THIS COURT WISELY DIDN'T
EVEN IMPOSE THE DIVISIVE ISSUE
ON THE BAR ITSELF.

IT JUST RECOMMENDED IT.

>> IF WE, JUST OCCURRED TO ME,
IF WE DECIDE THIS CASE ON THE
MERITS HERE, IF THE BAR HAD
MADE, A DIFFERENT DECISION AND
TOLD THE FAMILY LAW SECTION,
THAT THEY COULD NOT FILE THIS
AMICUS BRIEF, WOULD A MEMBER OF

THE BAR THEN HAVE THE RIGHT TO FILE THIS KIND OF PETITION AND SAY, THAT, THE BAR SHOULD HAVE GIVEN THE SECTION THE RIGHT TO FILE THE AMICUS?

>> YES, JUSTICE QUINCE. BECAUSE THAT OPENS AN ENTIRELY DIFFERENT SPECTRUM OF DECISIONS.

THE BAR ITSELF, IS CONSTRAINED, BY KELLER, WHICH HAD NOTHING TO DO WITH WHAT THE BAR COULD SPEAK TO, BUT THE USE OF COMPULSORY BAR DUES.

ONCE THE BAR SAYS YOU CAN NOT TAKE A POSITION, CAN NOT TAKE POSITION ON IDEALOGICAL GROUNDS NOT BECAUSE IT IS OUTSIDE THE SUBJECT MATTER JURISDICTION NOT BECAUSE IT IS TOO DIVISIVE, OR WE DON'T LIKE YOUR DIVISION.

WE TAKE YOUR BAR DUES TO. YOU RAISE THE ISSUE IN KELLER AND AS RAISE THE ISSUE IN SCHWARZ.

WHICH SAYS THE BAR IS CONSTRAINED.

IS IT CAN NOT TAKE A POSITION ON THESE TYPE OF ISSUES. MY ANSWER, DEPENDS ON THE REASON THE BAR SAID YOU CANNOT DO IT.

IF THE BAR SAID YOU CAN NOT DO IT BECAUSE IT IS OUTSIDE SUBJECT MATTER JURISDICTION, NO IT DOESN'T RAISE A ISSUE.

IF IT SAID YOU CAN'T NOT DO IT BECAUSE IT IS UNDULY DIVISIVE, NO.

IF IT SAYS YOU CAN'T NO DO IT BECAUSE WE DON'T LIKE THE POSITION, YES.

>> THEIR ARGUMENT IS THEY SHOULDN'T HAVE ALLOWED THIS BECAUSE IT IS DIVISIVE.

YOU'RE SAYING WE SHOULDN'T BE HEARING THIS?

IS THAT PART OF YOUR POSITION HERE?

>> NO, MY POSITION, JUSTICE QUINCE, I HAD BELIEVE THIS COURT SHOULD NOT BECOME INVOLVED IN TELLING THE

SECTIONS WHAT THEY CAN OR CAN NOT LOBBY.

AND THAT THE BOARD CAN NEVER VIOLATE ANYTHING AS LONG AS IT DOESN'T OBSTRUCT THE SECTIONS ABILITY TO DO SOMETHING.

THAT'S WHAT I'M SAYING.

>> MR. RICHARD, I FULLY UNDERSTAND THE REASONS, WE TALK ABOUT SECTIONS AND THE MAIN BAR WITH REGARD TO COMPULSORY FEES AND THESE KINDS OF THINGS. AND THAT YOU OUGHT NOT BE REQUIRED TO GIVE YOUR DUES, MANDATORY DUES TO SUPPORT, WITH THE BAR SUPPORTING THOSE THINGS.

I'M JUST REALLY STRUGGLING THAT THE SECTIONS, I MEAN, THIS IS THE IMPROMPTER OF THE BAR. THAT IS THE REASON THEY WANT TO FILE THESE THINGS.

IT IS ALMOST LIKE STICKING YOUR HEAD IN THE SAND OR ME STICKING MY HEAD IN THE SAND TO SAY, WELL, THERE'S A REAL DIFFERENCE WHEN WE START STALKING ABOUT SEXES AND ALTHOUGH I BELIEVE THIS IS MUCH ADO ABOUT BASICALLY NOTHING BECAUSE I FIND AMICUS BRIEFS ANYMORE, ARE, REALLY NOT THAT HELPFUL. I MEAN, MANY APPELLATE COURTS THINK THIS IS, WHAT ARE WE FIGHTING ABOUT?

YOU KNOW WHAT IS HAPPENING. COME IN AND ASSERT A POSITION. THEY ARE NO FRIEND OF THE COURT.

THEY WANT TO ASSERT A POSITION. AND I ACCEPT THAT.

BUT, WHEN YOU START PUTTING THE IMPROMPTER OF THE BAR, ON SOMETHING THAT'S FILED WITH THE COURT, I MEAN IT IS BEING DONE JUST FOR THAT REASON, BECAUSE IT IS ASSOCIATED WITH THE BAR.

>> FIRST I HAVE TO MAKE A NOTE, AS SOON AS I FINISH, ABOUT YOUR FEELING WITH REGARD TO AMICUS BRIEFS.

>> I MUST TELL YOU --

>> DIDN'T EXPECTED THAT BUT I NEVER KNEW --

>> IN YEARS I'VE BEEN HERE I THINK THERE HAS BEEN ONE TRULY FRIEND OF THE COURT BRIEF, THAT IS REAL ESTATE MATTER.

OTHER THAN THEY HAVE REALLY TURNED INTO PARTISAN BRIEFS.

NO MATTER WHO FILES THEM.

IT IS REALLY, IT HAS GONE FAR BEYOND WHAT I UNDERSTOOD THE ROLE OF AN AMICUS BRIEF TO BE BUT ANYWAY GO AHEAD.

>> I HAVE TWO RESPONSES TO WHAT YOU SAID.

THE FIRST IN WE GO BACK TO THE COURT'S DECISION IN 1949 WHICH THEY TOOK A VOLUNTARY ASSOCIATION OF LAWYERS AND CONVERTED IT TO WHAT WE NOW REFER TO AS A UNIFIED BAR, THAT OPINION THE COURT ADDRESSED A CONCERN VOICED BY SOME LAWYERS THAT THE EFFECT OF UNIFICATION WOULD BE A STIFLING OF THE BAR'S ABILITY TO ADDRESS IMPORTANT SOCIAL ISSUES.

THIS IS WHAT THE COURT SAID ABOUT THAT.

IT SAID UNIFICATION WAS NEVER DESIGNED TO SACRIFICE THE FREEDOM AND INITIATIVE OF THE BAR, IT'S BOLDNESS AND COURAGE CHALLENGING CAUSES OF DOWNTRODDEN OR ITS INHERENT INDEPENDENCE TAKING UP BATTLE FOR THE MINORITY.

IN KELLER WHICH WAS 42 YEARS LATER THE BAR WAS TRYING TO TAKE UP THE CAUSE OF THE DOWNTRODDEN WHEN IT SOUGHT TO FAVOR A SERIES OF BILLS IN THE LEGISLATURE DESIGNED TO PROTECT CHILDREN WHO WERE ABUSED OR UNDERPRIVILEGED.

THIS COURT ENJOINED IT FROM DOING SO.

BUT IN THE COURSE OF ENJOINING IT FOR DOING SO, IT DID NOT DEPART FROM ITS PROMISE IN 1949 PRECISELY BECAUSE THE BALANCE IT HAD CREATED BY ALLOWING THE SECTIONS TO EXIST.

IN FACT WHAT THE COURT SAID WAS, WAS CONCERNED ABOUT A STATEMENT BY THE UNITED STATES

SUPREME COURT IN INTERNATIONAL ASSOCIATION MACHINISTS v. STREET, IN WHICH, AGAIN THE COURT WAS BEING ASKED IN A UNION SHOP CASE, TO PROHIBIT THE USE OF COMPULSORY DUES TO SUPPORT A POLITICAL SITUATION AND TO ENJOIN THE USE OF THE -- >> THAT ALL SOUNDS VERY NICE. AND YOU DO HAVE A WAY WITH WORDS, MR.^RICHARD.

BUT MY CONCERN IS, IS THAT, THE BAR ITSELF, IMPOSED THIS RESTRICTION THAT THE ISSUE WASN'T ONE THAT CARRIED POTENTIAL FOR DEEP PHILOSOPHICAL AND EMOTIONAL DIVISION.

I KEPT THINKING IN MY MIND, PEOPLE HAVE ANALGIZED GAY RIGHTS TO THE CIVIL RIGHTS MOVEMENT, IF THIS WAS IN THE '50s THAT THE ISSUE OF SCHOOLS, I KNOW, INTEGRATION WOULD HAVE CARRIED DEEP PHILOSOPHICAL OR EMOTIONAL DIVISION AND THE BAR, THE WAY, THEY SET UP THEIR STANDING POLICIES, WOULD STIFLE THE SECTIONS FROM BEING ABLE TO GET INVOLVED IN CONTROVERSIAL ISSUES, THE SECTIONS.

SO IT IS NOT THIS COURT THAT IS SAYING DON'T DO THIS.

FOR WHATEVER REASON, MR.^STAVER THINKS IT IS BECAUSE WE HAVE THE ADMONITION IN SCHWARZ, BUT, THE BAR HAS SAID, YEAH, WE, LOOK THROUGH THESE AMICUS BRIEFS BUT STAY AWAY FROM ANYTHING THAT IS GOING TO BE POTENTIALLY DIVISIVE.

SO THAT'S, SO HOW, HOW DOES THAT GO ALONG WITH, AGAIN YOU GAVE THIS WONDERFUL HISTORY OF 1949, AND THEN THE WE'RE GOING TO HAVE THE SECTIONS TAKE UP THE FIGHT ON THINGS THAT THE BAR SHOULD NOT GET INVOLVED WITH.

BUT THEN THEY COME ALONG AND THEY ISSUE THE STANDING POLICY THAT DOES STIFLE THE SECTIONS INVOLVEMENT.

>> JUSTICE PARIENTE, SPEAKING

FOR THE BAR, I CAN TELL THIS COURT THAT THE BAR IS REALLY NOT SUGGESTING TO THIS COURT THAT IT SHOULD NOT TAKE A POSITION IF IT DESIRES TO DO SO ON SOMETHING BEING DIVISIVE. THE BAR IS COMFORTABLE WITH THAT.

IF THIS COURT WANTS TO IMPOSE A RULE WHICH IN FACT THE BAR WILL PROBABLY ADOPT ANYWAY AFTER THIS YOU MUST TAKE A SEPARATE VOTE WHETHER OR NOT IT IS DIVISIVE, THE BAR IS COMPLETELY COMFORTABLE WITH THAT ALL I'M SUGGESTING TO THIS COURT IS, THAT IT SHOULD NOT PLACE RESTRICTIONS ON THE ABILITY OF THE VOLUNTARY SECONDS TO TAKE POSITIONS BECAUSE OF THE EFFECT OF THAT WOULD BE TO TURN THE BAR INTO A STERILE ORGANIZATION, AND TO DRIVE THOSE PEOPLE IN THE SECTIONS OUT INTO A MYRIAD OF INDEPENDENT ORGANIZATIONS THAT WOULD BE BAD FOR ALL OF US.

>> SO MAYBE THE BAR OUGHT TO RECONSIDER WHETHER ITS, ITS IMPOSITION OF AMICUS BRIEFS THE SAME CONSTRAINTS AS THEY IMPOSE FOR LOBBYING IS INTELLECTUALLY SOUND, OR NOT, BECAUSE, BECAUSE OF JUST WHAT WE'RE SEEING, IS THAT THEN THE COURT, CAN INEVITABLY OR MAY INEVITABLY GET INVOLVED IN MAKING A DETERMINATION, NOT ON THE MERITS.

AND YOU KNOW, THIS IS BEING TELEVISED HERE.

THIS HAS NOTHING TO DO WITH THE ACTUAL CASE ITSELF.

THE THIRD DISTRICT MAY SAY, BAR, WE DON'T NEED YOUR AMICUS BRIEF.

THEY MAY SAY, YOU'RE NO FRIEND OF THE COURT TO US.

THEY CAN DECIDE WHETHER OR NOT TO ALLOW AMICUS BRIEFS.

SO IT IS SO TAN JENKSAL TO THE COURT PROCESS.

>> RIGHT.

>> THIS IS WHY I'M CONCERNED

I'M STILL NOT SURE I UNDERSTAND.

IF YOU'RE SAYING BAR SECTIONS SHOULD BE ALLOWED TO DO THIS, BUT YET, AGAIN, THEY HAVE IMPOSED THE, THE BAR HAS IMPOSED THESE RESTRICTIONS. TELL ME HOW YOU SEE THAT BALANCE BETWEEN THE SECTIONS BEING BOLD BUT YET, THERE IS THIS RESTRICTION.

>> THE BOARD VOLUNTARILY EXPANDED AND ADOPTED THE RECOMMENDATION OF THE COURT AND EXPANDED THE DIVISIVENESS ISSUE TO INCLUDE AMICUS BRIEFS.

I, I DON'T KNOW THAT THE BOARD WOULDN'T FEEL COMFORTABLE REVIEWING THAT RILE BUT WOULD PROBABLY LIKE SOME GUIDANCE FROM THIS COURT BEFORE IT DID SO BECAUSE THE COURT THEY EVER TOLD THE BAR, WHETHER OR NOT IT INTENDED IT TO EXTEND BEYOND LOBBYING.

IT SHOWS, I DON'T KNOW WHY, EITHER ABUNDANCE OF CAUTION BECAUSE IT WASN'T CLEAR WHETHER THE COURT WANTED IT TO OR JUST THOUGHT IT WAS A GOOD IDEA TO IMPOSE IT ON AMICUS BRIEFS.

>> BUT AREN'T YOU SAYING AGAIN, IT RUNS CONTRARY TO WHAT THE SPIRIT HAS BEEN FOR THE SECTIONS TO ALLOW THE SECTIONS TO DO THINGS THAT MIGHT BE MORE, MORE, CONTROVERSIAL, THAN WHAT THE BAR ITSELF CAN DO?

>> I THINK THAT YOUR POINT IS EXTREMELY WELL-TAKEN.

I CAN'T ARGUE WITH THE REASONING THAT IT DOES NOT APPEAR TO BE CONSISTENT WITH THAT POSTURE THAT THE SECTIONS SHOULD BE ABLE TO TAKE UP THE SLACK AND TAKE BOLD POSITIONS. I DON'T DISPUTE THAT.

AND I THINK THE BAR WOULD WELCOME ANY GUIDANCE FROM THIS COURT AS TO WHERE THEY SHOULD GO WITH THAT.

I WOULD LIKE WHILE I HAVE TIME REMAINING IF THE COURT PERMITS, TO RETURN TO JUSTICE LEWIS'S

QUESTION, BECAUSE YOU SAID THERE WERE TWO RESPONSES I HAD. I THINK THE OTHER ONE IS AN IMPORTANT RESPONSE BECAUSE IT GOES TO ONE OF THE CORES OF THE ARGUMENT THAT THE PETITIONERS ARE MAKING.

WHICH IS, AS JUSTICE LEWIS MENTIONED, ISN'T THERE A PROBLEM HERE WITH MEMBERS OF THE BAR BEING ASSOCIATED WITH WHAT THE SECTIONS DO, EVEN THOUGH THEY CLAIM TO BE SEPARATE FROM THE BAR AS A WHOLE?

AND I THINK THAT'S A FAIR QUESTION FOR US TO ADDRESS. MY RESPONSE TO THAT IS, TWO THINGS.

FIRST, WE OPEN A REAL CAN OF WORMS IF WE ASSUME THAT THIS ASSOCIATIONAL ISSUE IS ENOUGH TO PROHIBIT IT.

BECAUSE HOW FAR DO WE GO? WHEN THE PRESIDENT OF THE FLORIDA BAR MAKES A STATEMENT, IT IS NOT REPORTED IN THE PRESS AS BEING AN INDIVIDUAL STATEMENT.

IT IS REPORTED AS A STATEMENT OF THE PRESIDENT OF THE BAR. THE SAME IS TRUE OF A MEMBER OF THE BOARD.

ARE WE NEXT GOING TO TELL THOSE OFFICERS THAT THEY CAN NOT PERSONALLY SPEAK OUT BECAUSE INDIVIDUALS IN THE PUBLIC MAY ASSOCIATE IT, AS A POSITION OF THE BAR?

AND DO WE NOT THEN, RUN INTO THE STREET PROBLEM IN WHICH WE ARE VIOLATING THE FIRST AMENDMENT RIGHTS OF THOSE INDIVIDUALS?

I SUGGEST THAT THE ANSWER TO THAT IS A RECURRING THEME THAT WE SEE IN UNITED STATES SUPREME COURT DECISIONS ON FIRST AMENDMENT.

WHICH IS, THAT WE CAN NOT APPLY THE FIRST AMENDMENT BASED UPON THE ASSUMPTION THAT MEMBERS OF THE PUBLIC ARE NOT CAPABLE OF THINKING FOR THEMSELVES.

PEOPLE UNDERSTAND THAT WHEN AN ORGANIZATION TAKES A POSITION, IT IS NOT NECESSARILY THE BELIEF OF EVERY MEMBER OF THE ORGANIZATION.

PEOPLE UNDERSTAND THAT WHEN THE PRESIDENT OF THE BAR SAYS SOMETHING, OR A MEMBER OF BOARD SAYS SOMETHING OR A SECOND OF THE BAR SAID SOMETHING, THAT IS NOT NECESSARILY THE POSITION OF EVERY OTHER SECTION, OR THE BAR ITSELF OR EVERY MEMBER OF THE BAR.

IF WE ARE GOING TO TAKE A POSITION THAT ONE CAN NOT DO IT, THEN DON'T WE ULTIMATELY SAY NONE OF THEM CAN DO IT AND DON'T WE RUN INTO THE STREET ISSUE?

WHICH DISSENTERS SHOULD NOT BE PERMITTED TO SILENCE THE OTHER MEMBERS?

THIS COURT HAS ESTABLISHED A WONDERFUL BALANCE THAT ENABLES THE BAR TO INCLUDE, WITHIN ITS UMBRELLA, VOLUNTARY GROUPS, SELF-FUNDED, THAT CAN SPEAK OUT ON ISSUES THAT THOSE GROUPS DECIDE ARE IMPORTANT, BUT AT THE SAME TIME, HAS SAID THAT THAT ASPECT OF THE BAR WHICH IS COMPULSORY, WHICH YOU MUST BELONG TO, WHICH YOU MUST SUPPORT FINANCIALLY, IS RESTRAINED, RESTRAINED BY THE WAY MORE THAN MOST OF THE BARS, UNIFIED BARS IN THE UNITED STATES ARE.

FALL BAR IS FIRST, WHEN IT COMES TO THE NARROWNESS OF THE RESTRAINTS ON WHAT THE BAR ITSELF CAN DO.

THAT BALANCE HAS SERVED US WELL SINCE 1949, OR AT LEAST THE MID '50s WHEN THE SECTIONS WERE CREATED I WOULD URGE TO COURT TO RETAIN IT.

>> SO THE 100 LAWYERS THAT FILED AN APPEARANCE IN THE THIRD DCA COULD GO TO THE FLORIDA BAR, AND FORM THEIR OWN SECTION AND TAKE A CONTRARY VIEW?

>> WELL, THE BAR HAS
TRADITIONALLY ALLOWED SECTIONS
NOT TO SPLINTER INTO SUB, SUB,
SECTIONS.

THEY ARE BASED ON A SUBJECT
AREA.

IF YOU HAVE A FAMILY LAW
SECTION AND PEOPLE DISAGREE
WITH IT, AS IS TRUE WITH EVERY
DEMOCRATIC ORGANIZATION WITHIN
THAT FAMILY LAW SECTION THEY
CAN OPPOSE THE POSITION TAKEN
BY THE SECTION.

WHETHER OR NOT THE BOARD WOULD
PERMIT THE CREATION OF ANOTHER
SECTION WHICH COVERS THE SAME
SUBJECT MATTER, I DON'T KNOW
BUT I DOUBT IT.

>> THANK YOU, MR.^RICHARD AND
MR.^STAVER.

YOU HAVE USED ALL OF YOUR TIME
ALSO.

SO I THANK BOTH OF YOU FOR YOUR
ARGUMENTS HERE TODAY.

THE COURT WILL NOW BE IN
RECESS.

>> PLEASE RISE.

>> THE SUPREME COURT IS NOW
ADJOURNED.