

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE.

GIVE ATTENTION, AND YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA.

PLEASE, BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.

WE HAVE ONE CASE ON OUR DOCKET
TODAY, WHILEY V. THE HONORABLE
RICK SCOTT.

>> MAY IT PLEASE THE COURT.

I'M TALBOT D'ALEMBERTE, I'M HERE
WITH CINDY HUDDLESTON
REPRESENTING ROSALIE WHILEY.

IN THE ORDER SETTING THIS CASE
FOR ARGUMENT, THE COURT ASKED US
TO LOOK AT THREE ISSUES; THE
ISSUE OF JURISDICTION, THE ISSUE
OF WHETHER JURISDICTION EXISTS,
WHETHER THE COURT SHOULD

EXERCISE ITS DISCRETION AND,
FINALLY, AT THE MERITS.
AT THE COURT'S PERMISSION, I'D
LIKE TO START ON THE THIRD
ISSUE, THE MERITS, BECAUSE A
FULL UNDERSTANDING OF THE MERITS
WILL DRIVE A DECISION ON
JURISDICTION AND DISCRETION.

>> MR. D'ALEMBERTE, COULD I ASK
ONE QUESTION?

YESTERDAY ABOUT MIDDAY WE
RECEIVED A NOTE OF FILING ON A
STATUTORY PROVISION THAT THE
RESPONDENT SAYS ADDRESSES THIS
AREA.

IN GOING THROUGH THAT AS AN
OFFICER OF THE COURT, DO YOU
FIND A PROVISION THAT ALLOWS OR
PROVIDES FOR THIS -- I WON'T USE
ALL THE LETTERS -- THIS OFFICE
OF REVIEW TO STOP AND BE
RESPONSIBLE FOR APPROVING ANY
RULES THAT GO FORWARD, OR IS IT
MERELY AUTHORIZING REVIEW
WITHOUT STOPPAGE?

>> NO, YOUR HONOR.

WE'VE TRIED TO LOOK AT THAT
HOUSE BILL 993, LOOK AT IT
CAREFULLY, LOOKED AT THE STAFF
ANALYSIS, EXAMINED ITS
PROVISIONS.

WE THINK WHAT THE LEGISLATURE'S
DONE IS PICKED UP AND APPROVED
AS AN ALTERNATIVE TO REGULAR
RULE REVIEW, UM, THE OFARR
OFFICE -- IF THAT HAS BEEN
DONE -- SO THAT IT'S NOT A
DUPLICATE REVIEW OF THE SAME
THING.

THERE'S NOTHING IN THAT
LEGISLATION, NOT A WORD, THAT
GIVES THE GOVERNOR AUTHORIZATION
TO HOLD UP RULES OR TO HAVE TO
APPOINT SOME EMPLOYEE OF HIS
OFFICE TO SOMEHOW CHANGE THE
WHOLE RULEMAKING PROCESS WHICH
WE BELIEVE THE LEGISLATURE'S
LAID DOWN IN QUITE GREAT DETAIL.
IN FACT, YOU LOOK AT THE DETAIL
THAT THE LEGISLATURE HAS

PROVIDED US WITH RULEMAKING, YOU
FIND SOMETHING IS VERY
IMPORTANT.

WE IN FLORIDA ARE ALWAYS VERY
PROUD OF BEING THE SUNSHINE
STATE, THAT WE HAVE THE OPEN
GOVERNMENT STATE.

AND, OBVIOUSLY, OPEN MEETINGS
LAWS, PUBLIC RECORDS LAWS, ALL
OF THOSE ARE VERY IMPORTANT TO
US.

BUT NOTHING IS MORE IMPORTANT TO
THE CLIENTS THAT MS. HUDDLESTON
AND I AND OTHER LAWYERS
REPRESENT IN THE ADMINISTRATIVE
PROCEDURES ACT, BECAUSE IT
PROVIDES A WAY FOR CITIZENS TO
HAVE COMMUNICATION, REGULAR
COMMUNICATION WITH AGENCIES
WHOSE RULES EFFECT THEIR DAILY
LIVES.

IF YOU LOOK AT THE PEOPLE WHO
ARE MOST INVOLVED, DISABILITY
RIGHTS, THE ELDERLY, LOOK AT
ENVIRONMENTAL INTERESTS AND LOOK

AT PEOPLE WHO REPRESENT THE
POOR.

DEALING WITH THIS RULEMAKING
BECOMES EXTREMELY IMPORTANT TO
THEM.

AND THE LEGISLATURE NOW HAS LAID
DOWN A VERY OPEN PROCESS.

YOU GET NOTICE, YOU HAVE
OPPORTUNITIES FOR HEARINGS,
THERE'S A RATIONAL PROCESS, YOU
GET AN EXPLANATION --

>> BUT HOW DOES THIS EXECUTIVE
ORDER CHANGE ANY OF THAT?

SEEMS LIKE TO ME, IF I
UNDERSTAND CORRECTLY, ALL OF
THAT IS STILL APPLIED.

THE EXECUTIVE ORDER IS AN
OVERLAY ON THAT.

IT INVOLVES AGENCY CONSULTATION
WITH THIS OFFICE AS FAR AS THE
EXECUTIVE OFFICE OF THE
GOVERNOR.

BUT ALL OF THE REQUIREMENTS OF
THE APA WILL STILL HAVE TO BE
OBSERVED.

THERE'S NOTHING HERE THAT
ACTUALLY ABROGATES ANY OF THOSE
REQUIREMENTS, IS THERE?

>> YES, YOUR HONOR.

>> WHAT SPECIFIC, WHAT SPECIFIC
REQUIREMENT OF THE ABA, OF
THE -- I'M SORRY, OF THE
ADMINISTRATIVE PROCEDURES ACT IS
ABROGATED BY THIS ORDER?

>> YOUR HONOR, AS WE ASK THE
QUESTION I'LL HAVE TO SAY THAT
WE STILL HAVE THE RIGHTS UNDER
THE APA BUT NOT WITHOUT GOING
THROUGH A PROCESS WHICH IS NOT
IN THE APA, A PROCESS WHICH NOW
REQUIRES AN AGENCY HEAD WHO'S
AUTHORIZED BY THE LEGISLATURE TO
ADOPT RULES TO THEN GO TO AN
EMPLOYEE IN THE GOVERNOR'S
OFFICE AND FOLLOW A SET OF
STANDARDS DIFFERENT FROM THE
STANDARDS SET OUT BY THE
LEGISLATURE FOR RULEMAKING.

>> SO HAS THE LEGISLATURE BY
THIS NEW STATUTE GIVEN ANY KIND

OF INFORMADA OF PROCEDURE FROM
GOING TO THIS NEW OFFICE?
BECAUSE I UNDERSTOOD WHAT YOUR
OPPONENTS ARE SAYING IS NOW YOU
CAN EITHER DO IT THE WAY THE
LEGISLATURE SAYS, OR YOU CAN DO
IT ACCORDING TO THIS
ADMINISTRATIVE ORDER.

>> YOUR HONOR, OPPOSING COUNSEL
ARE REALLY CORRECT IN SAYING
THAT FOR THAT PIECE, THAT IS THE
REVIEW OF RULES, IF AN AGENCY
HAS GONE THROUGH OFARR REVIEW
AND THEY DO NOT HAVE TO GO
THROUGH THIS ADDITIONAL
LEGISLATIVE REVIEW.

SO TO THAT EXTENT COUNSEL IS
RIGHT.

BUT NOTHING IN HOUSE BILL 993
APPROVES THE PROCESS OF A
GOVERNOR STOPPING ALL RULEMAKING
AND REQUIRING APPROVAL ON AN
EMPLOYEE IN HIS OFFICE WHO THEN
APPLIES STANDARDS DIFFERENT FROM
THE STANDARDS PROVIDED IN THE

ADMINISTRATIVE PROCEDURE ACT.

>> IF I UNDERSTAND WHAT YOUR
MAIN COMPLAINT IS AND I LOOK
BACK AT YOUR PETITION, YOU
AREN'T CHALLENGING THE CREATION
OF THE OFFICE --

>> NO.

>> -- OR THE IDEA OF SUBMITTING
ANNUAL PLAN --

>> NO.

>> AND IT LOOKS AGAIN, AS YOU
SAID, THE LEGISLATURE HAS
ACTUALLY ENDORSED THOSE ASPECTS.
THERE'S A GOOD IDEA.

THERE ARE ARCHAIC RULES, IF
THERE ARE RULES THAT ARE UNDULY
BURDENSOME, IT BE REVIEWED EVERY
YEAR OR WHATEVER.

SO YOU DON'T HAVE ANY OPPOSITION
OR PROBLEM WITH THAT FOR THIS?

>> ON THE CONTRARY, YOUR HONOR.

WE APPLAUD THAT.

>> OKAY.

SO IT IS THE FACT THAT A RULE
AND ALL THE RULES THAT WERE IN

PLACE STARTING IN JANUARY
THROUGH THE PRESENT TIME COULD
NOT GO THROUGH THE APA'S PROCESS
UNLESS THE GOVERNOR'S OFFICE
APPROVED THAT RULE.

SO THAT IS THE BEGINNING OF THE
PROCESS OR THE CESSATION OF
RULEMAKING THAT YOU SAY IS WHERE
THE GOVERNOR EXCEEDED HIS
AUTHORITY?

>> THAT'S CORRECT, YOUR HONOR.

AND --

>> I JUST -- AND GIVE -- I'D

LIKE TO JUST SO WE ALL PUT FACES
ON THIS, I KNOW MAYBE THINGS
HAVE CHANGED.

BUT THERE WAS ROSALIE WHILEY AND
ALSO THE AUDUBON SOCIETY HAD A
SPECIFIC ISSUE WITH THE RULE
THAT HAD STOPPED BECAUSE OF THIS
PROCESS.

DO YOU HAVE IN THE PLEADINGS,
ARE THERE EXAMPLES OF, YOU KNOW,
YOU SAID THIS IS AFFECTING THE
WHOLE CITIZENS OF THE STATE OF

REAL-LIFE PROBLEMS THAT HAVE
OCCURRED BECAUSE OF THIS?
>> YOUR HONOR, JUST TO BEGIN
WITH WE BELIEVE UNDER THE
JURISPRUDENCE OF THIS COURT
WE'RE NOT REQUIRED TO SHOW SOME
SPECIAL DAMAGE.

>> I UNDERSTAND THAT.

BUT IN TRYING TO --

>> WE DID POINT TO THE RULE THAT
PARTICULARLY IMPACTED

MS. WHILEY --

>> ALL THOSE CIRCUMSTANCES
CONTESTED?

IT SEEMS TO ME IN THE RESPONSE
THERE'S SOME CHALLENGE TO THE
QUESTIONS RAISED ABOUT THE FACTS
SURROUNDING THAT RULEMAKING
PROCEDURE.

>> YOUR HONOR, THERE MAY VERY
WELL BE QUESTIONS AND, CLEARLY,
THE RULE THAT WE CARE ABOUT HAS
NOT YET BEEN ADOPTED.

BUT WE'RE NOT HERE LOOKING AT
RULES.

WE'RE NOT HERE ON A RULE

CHALLENGE.

WE'RE HERE QUESTIONING THE

GOVERNOR'S AUTHORITY TO ISSUE

EXECUTIVE ORDERS THAT CONFLICT

WITH THE PROCEDURES SET FORTH BY

THE LEGISLATURE.

HERE'S WHAT THE LEGISLATURE

SAYS --

>> LET ME BE A LITTLE BIT MORE

SPECIFIC.

ON PAGE 11 AND 12 OF THE

RESPONSE, IT LAYS OUT VERY

SPECIFIC FACTS ABOUT THE U.S.

DEPARTMENT OF AGRICULTURE AS THE

PETITIONER, THE DELAY REGARDING

THEIR APPROVAL, THEIR REVIEW.

AND THEN ONCE IT WAS SUBMITTED

TO THE OFFICE FOR REVIEW, IT

SAID THAT IT WAS APPROVED THE

VERY NEXT DAY SO THAT THERE WAS

NO DELAY CAUSED BY THE EXECUTIVE

ORDER.

DO YOU AGREE WITH ALL THOSE

STATEMENTS ON PAGE 11 AND 12?

>> YOUR HONOR, I ACTUALLY
THOUGHT THOSE STATEMENTS BEGAN
ON PAGE 10.

>> CORRECT.

THAT'S WHERE THEY BEGAN, BUT THE
ONES I WAS REFERENCING WERE
ON -- DO YOU AGREE WITH ALL
THOSE?

>> YOUR HONOR, WHAT COUNSEL HAS
SAID IS ABSOLUTELY CORRECT.

WHAT HE DIDN'T SAY WAS THAT THE
RULE STILL HAS NOT BEEN ADOPTED.

>> BUT THERE'S GOING TO BE ALL
KINDS OF, BUT THERE COULD BE ALL
KINDS OF REASONS THAT A RULE MAY
NOT BE ADOPTED THAT ARE
UNRELATED TO THE EXECUTIVE ORDER
THAT'S IN PLAY.

>> THAT'S RIGHT, YOUR HONOR.
AND THAT'S WHY THIS CASE TURNS
ON WHETHER OR NOT THE GOVERNOR'S
EXECUTIVE ORDERS DISPLACE OR
EVEN ADD TO PILE-ON PROCEDURES
THAT THE LEGISLATURE SET UP.
HERE'S WHAT THE LEGISLATURE SAYS

WITH THE OFFICE OF
ADMINISTRATIVE PROCEDURE ACT.
IT BEGINS IN THE VERY EARLY PART
OF THE SECTION OF THE STATUTE
THAT GOVERNS RULEMAKING, 120.54
I KNOW JUDGE POULSON, THE FIRST
DISTRICT COURT OF APPEALS, HAD
TO DEAL WITH THIS QUITE A LOT.
AND HERE'S WHAT IT SAYS.
"RULES SHALL BE ADOPTED BY THE
RULEMAKING PROCEDURE PROVIDED IN
THIS SECTION."
THAT'S THE WAY RULES ARE TO BE
ADOPTED, BY THE WAY THE
RULEMAKING PROCEDURE IS SET UP
IN THIS SECTION.
AND LATER IN THAT SAME SECTION
IT SAYS "RULEMAKING PROCEEDINGS
SHALL BE GOVERNED SOLELY,"
THEY'LL BE GOVERNED SOLELY BY
THE PROVISIONS OF THIS SECTION.
THEN IT GOES ON TO SAY, "UNLESS
LITIGANT CAN SHOW THAT THE
PROCEDURE DOESN'T PROVIDE THEM
FULL ACCESS."

THIS WHOLE IDEA OF PROVIDING A
PROCEDURE IS TO PROVIDE AN
OPPORTUNITY FOR CITIZENS
TO DO SOME THINGS THAT THEY
CANNOT EVEN DO WITH THE
LEGISLATURE.

THEY GET TO INITIATE RULEMAKING.
CITIZENS GET TO HAVE NOTICE OF
HEARINGS.

CITIZENS GET TO PARTICIPATE IN
THE HEARINGS.

AS YOU LOOK AT THE PROCESS THAT
THE GOVERNOR'S EXECUTIVE ORDER
PLACES, HOW DO WE KNOW WHAT'S
BEFORE OFARR?

HOW DO WE KNOW WHO OFARR IS?
WHEN DO WE GET A HEARING?

>> LET ME -- IF YOU -- YOU CLAIM
IT CONFLICTS WITH THE APA, BUT
YOU AGREE THAT THE -- WELL, LET
ME ASK YOU.

COULD THE LEGISLATURE HAVE
AUTHORIZED THIS SPECIFIC PROCESS
THAT THE GOVERNOR IS SPEAKING
THROUGH EXECUTIVE ORDER TO

INITIATE?

>> YOUR HONOR, ABSOLUTELY HE
COULD HAVE, AND WE PUT IN AN
APPENDIX TO OUR REPLY BRIEF THE
ORIGINAL DRAFT OF HOUSE BILL
993.

AND YOU'LL SEE IN THAT THAT THE
LEGISLATURE AT LEAST CONSIDERED
AT ONE TIME THE POSSIBILITY OF
ADOPTING A PORTION OF THE
EXECUTIVE ORDERS.

BUT THAT'S NOT THE VERSION OF
993 THAT PASSED.

>> OKAY.

AND SO THAT'S THE OTHER THING.
AND, YOU KNOW, WE GOT IT
YESTERDAY, I GUESS THE GOVERNOR
HAD JUST SIGNED IT, THAT IT
WOULD BE HELPFUL IF THE
LEGISLATURE HAD DONE WHAT THE
GOVERNOR WANTS TO DO OR WANTED
TO DO OR DID, THIS CASE WOULD BE
IN A VERY DIFFERENT POSTURE.

>> OH, ABSOLUTELY.

>> AND YOU WOULD, I MEAN, IT

MIGHT STILL EFFECT RULES FOR SIX MONTHS, BUT GOING FORWARD IT WOULD BE, HAVE BEEN AUTHORIZED BY THE LEGISLATURE.

>> NO, YOUR HONOR.

THE RULEMAKING, YOU THINK ABOUT RULEMAKING AS THE SETTING OF POLICY.

THIS IS A DISTINCTIVELY LEGISLATIVE PROCESS.

AND IT'S A PROCESS THAT THE LEGISLATURE'S TOLD US HOW WE HANDLE.

THEY SET OUT THE WAY WE --

>> WELL, LET ME -- THE GOVERNOR SAYS, YOU KNOW, IT'S DELEGATED TO THE AGENCY HEADS.

HE GETS TO APPOINT THE AGENCY HEADS, AND WHY CAN'T HE THEN DIRECT THE AGENCY HEADS NOT TO SUBMIT A RULE UNTIL HE OR HIS OFFICE LOOKS AT IT AND DECIDES WHETHER THEY SHOULD GO AHEAD?

ON ITS FACE IT SOUNDS LIKE, WELL, THAT'S REASONABLE.

HE'S THE ONE -- THEY'RE HIS

APPOINTEES, NOT THE

LEGISLATURE'S APPOINTEES.

SO IF YOU COULD ELABORATE ON

THAT ARGUMENT, THEN IT SEEMS ON

ITS FACE PRETTY REASONABLE.

>> YOUR HONOR, I SENSE QUITE A

LOT OF WHAT THE RESPONDENT

ARGUES IS BASED ON THE POWER TO

HAVE IT REMOVED AT HIS PLEASURE.

AND WE AGREE HE HAS THAT POWER.

NOW, LET'S THINK ABOUT THAT FOR

A SECOND.

THAT'S A UNIQUELY EXECUTIVE

POWER.

THE LEGISLATURE COULD NOT, ON

ITS OWN, REMOVE APPOINTED

OFFICIALS.

BECAUSE THE LEGISLATURE COULD

NOT INTRUDE INTO AN EXECUTIVE

POWER.

CONVERSELY, THE POWER TO ADOPT

RULES TO SET POLICY IS A

LEGISLATIVE POWER.

>> YOU KNOW, I'VE SEEN

STATEMENTS IN THE CASE, THE CASE

LAW THAT REFLECT THAT.

I DO NOT UNDERSTAND THAT.

BECAUSE WE'RE TALKING ABOUT

RULEMAKING, ADMINISTRATIVE

RULEMAKING.

NOW, I UNDERSTAND THAT LAWMAKING

IS A LEGISLATIVE FUNCTION AND

THE PARAMETERS FOR

ADMINISTRATIVE RULEMAKING ARE

ESTABLISHED BY THE LEGISLATURE.

BUT WHO ACTUALLY PROMULGATES THE

RULES WE'RE TALKING ABOUT?

IT'S THE EXECUTIVE BRANCH, ISN'T

THAT CORRECT?

>> YOUR HONOR, THE EXECUTIVE

BRANCH ACTING UNDER --

>> SO THEY'RE WRONG?

>> UNDER THE SPECIFIC AUTHORITY

OF THE LEGISLATURE.

>> WELL, THERE'S NO DISPUTE

ABOUT THAT.

BUT THE GOVERNOR IS THE HEAD OF

THE EXECUTIVE BRANCH.

NOW, WE HAVE A FULL EXECUTIVE

FORCE, A LITTLE COMPLICATED, BUT
WITH RESPECT TO THE AGENCIES
WE'RE TALKING ABOUT HERE THEY
ARE RESPONSIBLE TO HIM, AND HE
HAS THE RESPONSIBILITY UNDER THE
FLORIDA CONSTITUTION TO OVERSEE
WHAT THEY DO.

HE HAS RESPONSIBILITY TO
SUPERVISE THAT, AND HE'S
ACCOUNTABLE FOR WHAT THEY DO.
AND IT SEEMS TO ME THAT GIVEN
HIS RESPONSIBILITY AND
ACCOUNTABILITY THERE'S GOT TO BE
SOME INTERCHANGE BETWEEN THE
GOVERNOR AND HIS AGENCY HEADS.
NOW, WHAT'S HAPPENED HERE IS
THAT THAT HAS BEEN FORMALIZED.
BUT IT CAN CERTAINLY TAKE PLACE
IN AN INFORMAL CONTEXT, AND
THERE'S NOTHING INAPPROPRIATE
ABOUT THE GOVERNOR DISCUSSING
POLICY ISSUES WITH THE PEOPLE
HE'S APPOINTED.
AND IS THERE ANYTHING IN THE LAW
THAT PROHIBITS THAT?

>> YOUR HONOR, I THINK THE PROVISIONS OF 120.54, WHICH I JUST READ TO YOU, 120.54 SAYS THE PROCESS TO BE USED IN RULEMAKING IS A PROCESS SET FORTH IN 120.54.

>> WELL, BUT THE WHOLE PREDICATE FOR THAT IS EACH AGENCY'S STATEMENT DEFINED BY A RULE SHALL BE ADOPTED BY THE RULEMAKING PROCEDURE.

BUT THERE'S A QUESTION THERE OF WHETHER THERE'S GOING TO BE AN AGENCY STATEMENT.

THAT'S A PRELIMINARY POLICY DETERMINATION BEFORE YOU EVER GO OFF DOWN THE RULEMAKING ROUTE, ISN'T IT?

>> YOUR HONOR, YES.

I THINK THE PREDICATE THAT YOU REFERRED TO IS CORPORATE IN THE ORIGINAL APA IN PART BECAUSE THE LEGISLATURE DID NOT HAVE CONTROL OF EXECUTIVE AGENCIES, AND EXECUTIVE AGENCIES HAD

RULEMAKING ALL OVER THE PLACE.

AND THE APA WAS INTENDED TO END

THIS KIND OF ARBITRARY AND

CAPRICIOUS ACTIVITY ON THE PART

OF THE EXECUTIVE BRANCH.

AND IT THEN SAID THEY WOULD LAY

DOWN A PROCESS.

IT WAS A PROCESS TO BE USED IN

RULEMAKING AND THE PROCEEDINGS

FOR RULEMAKING.

ONLY THOSE THAT PROVIDED IN THAT

SECTION, SO WE THINK THE

LEGISLATURE HAS SAID THIS IS THE

WAY YOU DO IT.

FOR THE GOVERNOR TO COME ALONG

AND SAY YOU DO IT IN SOME OTHER

WAY IS, IN OUR OPINION --

>> YOU'RE NOW DOWN TO THREE AND

A HALF MINUTES.

WE HAVE HELPED YOU GET DOWN TO

THAT, SO I WILL GIVE YOU A

COUPLE EXTRA MINUTES FOR YOUR

REBUTTAL, BUT I JUST WANT YOU TO

KNOW YOU'RE NOW IN YOUR REBUTTAL

TIME.

>> I SHOULD HAVE PAID MORE
ATTENTION, YOUR HONOR.

>> LIKE I SAID, WE HELPED YOU
CONSUME THAT TIME, BUT WE'LL
GIVE YOU AN EXTRA COUPLE OF
MINUTES.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT,
CHARLES TRIPPE, EXECUTIVE OFFICE
OF THE GOVERNOR FOR THE
RESPONDENT GOVERNOR, GOVERNOR
RICK SCOTT.

>>> COUNSEL, COULD YOU ADDRESS AT
THE OUTSET THE LEGISLATION WE
RECEIVED YESTERDAY, I RECEIVED
ABOUT MIDDAY YESTERDAY?
IN LOOKING AT THIS REVIEW, IT
APPEARS TO ME THAT THE
LEGISLATURE IN THIS LEGISLATION
HAS ONLY AUTHORIZED REVIEW OF
AGENCY RULES IN EFFECT ON OR
BEFORE NOVEMBER 16, 2010.

IS THAT --

>> THAT APPEARS TO BE CORRECT,
JUSTICE.

>> OKAY.

SO THIS WOULD BE A REVIEW
PROCESS.

THE LEGISLATURE SAYS ALL AGENCY
HEADS, YOU HAVE TO FOLLOW IT AND
DO IT.

THIS WOULD NOT BE SOMETHING
APPLICABLE TO SOME NEW RULE
THEN?

>> WELL, BY ITS TERMS IT DEALS
WITH RULES IN PLACE.

>> OKAY.

BECAUSE THAT'S WHAT I THINK IS
THE CONCERN HERE AND THE
DISCUSSION.

WHILE WE CAN TALK AND MAKE THIS
THING REALLY SUPER COMPLEX,
DOESN'T IT REALLY COME DOWN TO,
I THINK EVERYONE AGREES, THAT
THE REVIEW PROCESS IN THIS
ORDER, THERE DOESN'T SEEM TO BE
ANYTHING WRONG WITH JUST A
REVIEW PROCESS.

WHERE THE REAL CONFLICT OR THE
CONFRONTATION OCCURS IS THAT WE

HAVE A LEGISLATURE WHO PASSES
SOME ACT, AND IT HAS TO BE
ENFORCED IN SOME FASHION.
AND THE LEGISLATURE HAS SET
FORTH THE RULES AS TO RULEMAKING
WITH REGARD TO RULES THAT MAY
HELP THE IMPLEMENTATION.
THIS EXECUTIVE ORDER, WHILE IT
DEALS NOT ONLY WITH THE REVIEW,
ALSO SAYS, NO, BEFORE YOU CAN
EVEN PASS A RULE, YOU HAVE TO
PASS MUSTER WITH THIS
SUPERAGENCY.
THAT'S WHAT THIS SEEMS TO BE
SAYING.
I THINK THAT'S WHERE -- SO,
THEREFORE, YOU COULD HAVE FOUR
YEARS, A GOVERNOR CAN STOP
RULEMAKING BY JUST SAYING, NO,
WE'RE NOT GOING FORWARD WITH
THOSE RULES BECAUSE YOU CAN'T
GET OUT OF THIS SUPERAGENCY, SO
TO SPEAK.
>> JUSTICE LEWIS, I WOULD
RESPECTFULLY DISAGREE WITH THE

TERM, "SUPERAGENCY."

>> WELL, WHAT IS IT?

IF IT LOOKS OVER EVERYTHING AND
YOU HAVE TO GET APPROVAL, WE'RE
TALKING ABOUT THIS THING THAT'S
BEEN CREATED BY THIS EXECUTIVE
ORDER.

THAT'S WHAT I'M REFERRING TO.

>> WHAT WE ARE TALKING ABOUT IS
AN OFFICE UNDER THE GOVERNOR
WHICH EXERCISES HIS
CONSTITUTIONAL, HIS
CONSTITUTIONALLY-MANDATED AND
PERMISSIBLE DISCRETION AS TO THE
RULEMAKING ACTIVITIES THAT THIS
AGENCY HAS.

>> NOW, WHAT IS --

>> WAIT A MINUTE.

YOU DIDN'T ANSWER THE QUESTION I
HAD.

>> I'M SORRY.

I DIDN'T KNOW WHAT THAT IS.

>> YEAH.

THAT OFFICE CAN UNILATERALLY
STOP, IF THEY DON'T APPROVE IT,

RULEMAKING FOR ALL AGENCIES.

ANYTHING THAT'S SUBMITTED, THEY
CAN SAY, NO.

>> THE GOVERNOR, IN THE EXERCISE
OF HIS DISCRETION, CAN ALWAYS
CONSULT WITH HIS AGENCY HEAD.

>> THAT'S NOT THE QUESTION I
ASKED.

PLEASE --

>> I'M TRYING TO --

>> I UNDERSTAND YOU WANT TO
COUCH IT IN TERMS OF HOW YOU
WANT TO SAY IT.

LET'S GET RID OF THIS.

WE KNOW THE GOVERNOR HAS
DISCRETION, WE KNOW THE
AGENCY -- BUT ISN'T THAT WHAT
THIS DOES?

CAN IT STOP EVERY RULE FROM
BEING MADE AND PASSED?

>> EVERY RULE GOES TO THE OFFICE
FOR REVIEW AND APPROVAL.

>> AND IT HAS TO BE APPROVED.

>> AND IT DOES.

>> AND SO THAT OFFICE COULD, AND

IN A THEORETICAL WORLD I'M NOT
SUGGESTING IT WOULD.

BUT IT CAN, CONTRARY TO THE APA,
COULD STOP --

>> WELL --

>> -- COULD STOP ANY RULE?

>> I DON'T THINK THE APA AND
THIS RULE ARE THE SAME THING.

>> I AGREE.

>> AND TO SUGGEST THAT THE
GOVERNOR WOULD STOP EVERY RULE
INDEFINITELY IS ONLY
HYPOTHETICAL.

>> I'M NOT SUGGESTING IT IS.
I THINK EVERYONE UNDERSTANDS
THAT.

>> SO SOME RULEMAKING CAN BE
INTERRUPTED, IF YOU WOULD, SO
THIS REVIEW BY THE GOVERNOR
THROUGH HIS OFFICE OF OFARR CAN
TAKE PLACE.

AS THE RECORD SHOWS, THE RULE
THAT PETITIONER WHILEY HAS
COMPLAINED OF WAS REVIEWED IN 24
HOURS.

>> YOU HAD MENTIONED IN ANSWER
TO THE QUESTION THAT THE
GOVERNOR'S EXERCISING HIS
CONSTITUTIONAL AUTHORITY, AND IF
WE REALLY ARE TALKING HERE ABOUT
THIS IS ONE AREA OF THE JUDICIAL
BRANCH AT LEAST IN THIS AREA
ISN'T INVOLVED OF THE THREE
BRANCHES, BUT IT IS AN
INTERESTING BALANCE BETWEEN THE
LEGISLATURE DELEGATING
RULEMAKING PURSUANT TO A STATUTE
THAT SAYS HERE'S WHAT SHOULD
HAPPEN, AND THEN THE RULES ARE
THERE TO CARRY OUT THE STATUTE,
AND THEN THE GOVERNOR HAVING
CONTROL OVER THE AGENCY HEADS
AND HIS AGENCY.
BUT WHAT CONSTITUTIONAL
AUTHORITY DOES THE GOVERNOR HAVE
TO CHANGE THE WAY RULES ARE
PROPOSED AND ADOPTED?
YOU'RE NOT SAYING THE APA'S
UNCONSTITUTIONAL AS AN
ENCROACHMENT ON THE GOVERNOR,

ARE YOU?

>> NO.

AND THE EXECUTIVE ORDERS IN
QUESTION DON'T EFFECT THE APA IN
THAT SENSE.

>> WELL, WHAT IT DOES, YOU KNOW,
WE HAVE LAWSUITS ALL THE TIME,
AND THE QUESTION IS, BEFORE
SOMEONE GOES INTO COURT WHAT HAS
TO HAPPEN BEFORE THEY CAN FILE A
LAWSUIT?

AND THERE ARE LEGISLATION PASSED
THAT SAYS LIKE A MALPRACTICE
THEY'D HAVE TO GO THROUGH A
PRESUIT.

SO IT'S NOT STOPPING THEM FROM
FILING THE LAWSUIT, BUT IT'S A
PROCESS BEFORE.

WHAT IT APPEARS THE GOVERNOR HAS
SET UP IS A PROCESS THAT BEFORE
THE NOTICE OF THE PROPOSED RULE
CAN BE MADE, THIS IS THE FIRST
STEP.

AND THAT'S WHERE I THINK THESE
PETITIONERS ARE CHALLENGING THAT

AS BEING UNCONSTITUTIONAL
BECAUSE ALTHOUGH IT'S NOT
INTERFERING DIRECTLY WITH THE
APA, NOTHING CAN COME TO THE
NOTICE PART UNTIL THE GOVERNOR'S
OFFICE SAYS YES OR NO.

I MEAN, IS THAT CORRECT?

>> MY UNDERSTANDING WHAT THE
GOVERNOR INTENDS TO HAVE HAPPEN
AND, YOU KNOW, HAS HAPPENED WHEN
HE SAID ALL RULEMAKING IS --

>> JUSTICE PARIENTE, HERE'S HOW
I WOULD FRAME IT.

THERE IS SOME DISCRETION THAT
THE AGENCY HEADS HAVE TO
COMMENCE, TO THINK ABOUT, TO
CONCEPTUALIZE RULEMAKING BEFORE
ANY FORMAL ACTION IS TAKEN UNDER
THE APA.

CLEARLY, THAT IS A MATTER THAT
IS IN THEIR DISCRETION.

IF THERE WERE NO SUCH
DISCRETION, THERE WOULDN'T BE
ANY RULEMAKING, THE LEGISLATURE
WOULD SIMPLY PASS THE RULE AS IT

PASSES THE STATUTE.

SO THERE'S CLEARLY DISCRETION
THAT THESE AGENCY HEADS WORK IN.

THE QUESTION FOR THIS COURT IS,

IS THERE SOME ROLE FOR THE
GOVERNOR TO PARTICIPATE?

OUR ANSWER TO THAT IS, OF
COURSE.

AND I WOULD LIKE TO TELL YOU
WHY.

>> OKAY.

>> THE GOVERNOR'S POWER AND DUTY
TO SUPERVISE THESE AGENCY HEADS
IS DERIVED DIRECTLY FROM THE
CONSTITUTION, FIRST AND
FOREMOST.

AND YOU REALLY HAVE NOT HEARD
EITHER TODAY OR IN THE PAPERS OF
THE PETITIONER ANY ANALYSIS OF
THE TEXT OF THE CONSTITUTION.

BUT IF WE CAN START WITH ARTICLE
IV, SECTION 6, ALL THESE AGENCY
HEADS SERVE AT THE PLEASURE OF
THE GOVERNOR.

THE GOVERNOR ALSO HAS THE POWER

AND THE DUTY.

THERE'S THE POWER TO DO
SOMETHING AND THE DUTY, ALSO, TO
TAKE CARE THAT THE LAWS BE
FAITHFULLY EXECUTED.

THAT NECESSARILY IMPLIES THE
DUTY TO SUPERVISE AND SUPPORT
OFFICERS IN THE EXECUTIVE
BRANCH.

HE ALSO HAS THE POWER TO DECLARE
IN WRITING THE POWER FOR THOSE
OFFICERS.

HE'S ALSO THE CHIEF OFFICER OF
THE STATE.

AND REALLY WE'RE TALKING ABOUT
THE ADMINISTRATIVE APPARATUS OF
THE STATE WHEN WE TALK ABOUT THE
APA AND APPROVAL.

AND FINALLY, SUPREME EXECUTIVE
POWER IS CLEARLY VESTED IN THE
GOVERNOR.

>> AND GOVERNOR CRIST MADE ALL
THOSE ARGUMENTS WHEN HE SAID HE
HAD THE AUTHORITY TO APPROVE THE
GAMBLING COMPACT, AND THE COURT

SAID, NO, HE COULDN'T DO IT

WITHOUT THE LEGISLATIVE

APPROVAL.

MY CONCERN IS THAT WHAT I

THOUGHT HAPPENED HERE IS THAT

ALL RULES -- NOT RULES THAT WERE

OR MAYBE GOING TO BE SUBMITTED,

BUT ALL RULES THAT WERE ALREADY

IN THE PROCESS OF BEING NOTICED,

THE APA, THE ADMINISTRATIVE

HEARING JUDGES HAD TO STOP WHAT

THEY WERE DOING.

IS THAT NOT WHAT THE FIRST SIX

MONTHS WHAT WAS OCCURRING?

>> I DON'T THINK SO, JUSTICE

PARIENTE.

>> NO?

WELL, I --

>> SORRY, I DON'T MEAN TO

INTERRUPT.

>> OKAY.

TELL ME, DIDN'T RULES THAT WERE

ALREADY BEING PROPOSED, PROPOSED

RULES, THAT RULEMAKING HAD TO BE

STOPPED?

>> WHAT IT MEANS IS --

>> I JUST -- DID THAT HAPPEN IN
THE FIRST SIX MONTHS?

THAT IS, THAT RULES THAT WERE
ALREADY NOT BEING CONCEPTUALIZED
BY AGENCY HEADS SAY, LISTEN, I
THINK I NEED ONE MORE REGULATION
BECAUSE IT'S NOT COMPLICATED
ENOUGH, AND THEY'RE THINKING
ABOUT IT.

I'M TALKING ABOUT RULES THAT
WERE ALREADY BEING PROPOSED AND
BEING CONSIDERED BY
ADMINISTRATIVE JUDGES AROUND THE
STATE.

WERE THOSE -- DID THE EXECUTIVE
OFFICE, ORDER STOP ALL OF THAT?

>> THE EXECUTIVE ORDER ASKED
THAT ALL RULEMAKING BE REVIEWED
BY OFARR TO ONE EXTENT OR
ANOTHER.

>> BUT I THINK THAT DOESN'T
REALLY, THAT DOESN'T REALLY
ANSWER THE QUESTION.

THE QUESTION REALLY IS DID ALL

OF THOSE PROCEEDINGS COME TO A
HALT WITH THIS EXECUTIVE ORDER?

>> THERE'S NOTHING ON THIS
RECORD THAT SUGGESTS THAT'S WHAT
HAPPENED.

WE CAN GO THROUGH EACH ONE OF
THE COMPLAINTS THAT WERE MADE BY
THE PETITIONER, AND THAT'S
CLEARLY EXPLAINED IN OUR BRIEF.

>> SO IF THAT HAPPENED --

>> THAT WOULD BE A VAST
OVERSTATEMENT.

>> SO IF THAT HAPPENED, YOU
WOULD AGREE THAT WOULD BE IN
EXCESS OF HIS AUTHORITY AS THE
GOVERNOR, IF THAT HAD BEEN
MANDATED --

>> TO ORDER THE DOAH PROCESS TO
COME TO A HALT?

>> YES.

>> YES.

THAT IS NOT WHAT THE EXECUTIVE
ORDERS ARE ABOUT.

BESIDES THE TEXT OF THE
CONSTITUTION BECAUSE WE WERE --

THE QUESTION THAT WAS POSED AND
I THINK REALLY THE QUESTION HERE
TODAY IS, DOES THE GOVERNOR HAVE
THE ABILITY UNDER THE
CONSTITUTION TO PARTICIPATE IN
THE PROCESS OF THE AGENCY HEAD
RULEMAKING.

WE TALKED ABOUT THE TEXT OF THE
CONSTITUTION.

THE ONLY THING WE'VE HEARD FROM
THE PETITIONER ON THE TEXT OF
THE CONSTITUTION IS THE
DIRECTION SUPERVISION CLAUSE IN
ARTICLE IV, SECTION 6.

AND HERE'S HOW I WOULD FRAME
THEIR ARGUMENT, IF I COULD.

WHATEVER THE MAXIMUM LIMITS OF
THE GOVERNOR'S SUPERVISORY
POWERS OVER HIS AGENCY HEADS
ARE, THE MINIMUM LIMIT CANNOT BE
AS NARROW AND INEFFECTIVE AS THE
PETITIONER WOULD HAVE THIS COURT
BELIEVE.

THIS COURT SHOULD ALSO CONSIDER
THERE ARE INHERENT POWERS THAT

POTENTIALLY COME STATED IN
FLORIDA'S --
[INAUDIBLE]
AND BECAUSE SOME QUESTIONS WERE
ASKED ABOUT THIS ON THE
PETITIONER'S ARGUMENT, THE
PETITIONER HAS ESSENTIALLY
ABANDONED, AND HE'S ATTEMPTING
TO SHOW ANY PARTICULARIZED
INJURY HERE, THE COURT SHOULD
GET TO THE MERITS OF THE DISPUTE
AND UPHOLD THE EXECUTIVE ORDERS
IF THERE IS ANY WAY THEY CAN BE
CONSTRUED TO BE CONSTITUTIONAL.

>> DOESN'T THE -- LET ME ASK
THAT QUESTION.

>> YES.

>> WE KNOW IN OTHER TYPES OF IN
DEALING WITH STATUTES, FOR
EXAMPLE, THERE'S THE CONCEPT OF
SEVERABILITY.
DOES THAT SIMILAR CONCEPT APPLY
TO INVALID PORTIONS OF AN
EXECUTIVE ORDER WHERE OTHERS MAY
BE VALID?

>> I DON'T BELIEVE SO.

>> IT DOES NOT.

>> NO.

>> SO THEN THE WHOLE THING HAS
TO EITHER RISE OR FALL THEN?

>> I THINK BOTH ORDERS ARE
COMPLETELY CONSTITUTIONAL.

>> HERE'S MY QUESTION.

IT EITHER, EITHER YOU HAVE TO
APPROVE THE WHOLE THING OR
REJECT THE WHOLE THING.

>> I WOULD SAY SO.

>> OKAY.

>> BUT LET ME CONTINUE ALONG
THAT VEIN, JUSTICE LEWIS.
BECAUSE I THINK THE WAY WE
SHOULD THINK ABOUT THE ARGUMENT
BEING MADE BY PETITIONERS, IF
THIS WERE A FACIAL ATTACK ON A
CONSTITUTIONAL STATUTE, THIS
COURT WOULD UPHOLD THE STATUTE
IF THERE WERE ANY WAY TO FIND IT
TO BE CONSTITUTIONAL.
REALLY WHAT THEY ARE ARGUING TO
YOU HERE IS STRIKE DOWN THESE

EXECUTIVE ORDERS IF THERE'S ANY
WAY YOU CAN IMAGINE THEM TO BE
UNCONSTITUTIONAL.

>> I THOUGHT THEY ARE.

LET ME -- I DIDN'T THINK THE
ISSUE WAS WHETHER THE EXECUTIVE
ORDERS THEMSELVES WERE
CONSTITUTIONAL OR NOT, I THOUGHT
WE WERE HERE ON WRIT OF
HABEAS CORPUS, WHETHER THE GOVERNOR
IN RULEMAKING AUTHORITY PURSUANT
TO THESE EXECUTIVE ORDERS WAS
ACTING OUTSIDE OF HIS AUTHORITY.
AND, SO LET'S JUST MAKE SURE
WE -- AND MAYBE WE'LL HEAR BACK
FROM THE PETITIONERS, BUT I
DIDN'T THINK WE WERE HERE TO
DECIDE THE CONSTITUTIONALITY OF
THESE TWO EXECUTIVE ORDERS.
SO IF WE FRAME IT THAT WAY, DID
THE GOVERNOR IN SUSPENDING
RULEMAKING NOT HAVING A REVIEW,
DID HE ACT OUTSIDE OF HIS
CONSTITUTIONAL AUTHORITY?
YOU WOULD SAY, NO, AND YOUR

ANSWER WOULD BE NO FOR ALL THE,
YOU KNOW, YOU GAVE ME ALL THE
PROVISIONS.

SO ISN'T THAT THE LEGAL ISSUE
THAT WE HAVE TO DECIDE?

>> WELL, I'LL DEFER ANY
DISCUSSION OF THE WARRANTO
JURISDICTIONAL ISSUE.

BUT THE WRIT IS MEANT TO ELICIT
WHAT IS THE BASIS OF THE
GOVERNOR'S ACTION?

AND OUR RESPONSE TO THAT IS THE
CONSTITUTION AS WELL AS CASE LAW
AS WELL AS PRIVATE PRACTICE HERE
AND ELSEWHERE AND NOW THE
PRONOUNCEMENT WE'VE SEEN --

>> I WANT TO ASK YOU ABOUT THAT
LEGISLATIVE PRONOUNCEMENT.

I THOUGHT AT FIRST, WELL, THE
LEGISLATURE ACTUALLY EMBRACED
EVERYTHING THAT THE GOVERNOR DID
AND, REALLY, GOING FORWARD THERE
WOULD BE NO CONTROVERSY ABOUT
THE RULES GOING FORWARD.

BUT IT LOOKS LIKE WHAT IT'S DONE

IS WHAT MR. D'ALEMBERTE SAID,
WHICH IS IT TOOK THE PARTS THAT
SEEMED LIKE PROBABLY THE BEST
PARTS OF THE ADMINISTRATIVE, I
MEAN, THE EXECUTIVE ORDER -- THE
IDEA OF THIS REVIEW OF AGENCIES
HAVING TO SAY WHAT THE ECONOMIC
IMPACT OF THEIR REGULATION IS --
AND THEY'VE INSTITUTIONALIZED
THAT IN A WAY SO THAT CITIZENS
HAVE THE CHANCE TO BOTH OBJECT
OR HAVE INPUT.

BUT I DON'T SEE WHERE THEY
AUTHORIZE THE AGENCY OR THE
OFFICE THAT THE GOVERNOR
CREATED, HAD THE AUTHORITY
BEFORE THE NOTICE COULD GO OUT
THAT THERE WOULD BE, LIKE, A
TREMENDOUS RULE PROCESS.
COULD YOU SHOW ME WHERE?
BECAUSE, OBVIOUSLY, IF THE
LEGISLATION VALIDATED ALL OF
THIS, THIS WOULD REALLY CHANGE
THE NATURE OF THIS PETITION.
SO CAN YOU TELL ME WHERE THEY,

WHERE IN THE LEGISLATION DO THEY
DO THAT?

DO THEY SAY THAT BEFORE ANY RULE
CAN BE PROPOSED THAT IT MUST GO
THROUGH THE GOVERNOR'S OFFICE,
AND UNTIL THE GOVERNOR'S OFFICE
APPROVES IT, THE NOTE OF
PROPOSED RULEMAKING CANNOT BE
PUBLISHED?

>> IT DOES NOT SAY THAT, JUSTICE
PARIENTE.

IT LIMITS ITSELF TO A BIENNIAL
REVIEW OF EXISTING RULES, BUT --

>> BUT DOESN'T THAT --

>> BUT DOESN'T IT AT LEAST
IMPLICITLY RECOGNIZE THAT
PROCESS IN THE GOVERNOR'S
OFFICE?

I MEAN, IN OFARR?

BECAUSE IT REFERS TO AGENCIES
WHO HAVE COOPERATED OR WHO
COOPERATE WITH OFARR IN REVIEW
OF THE AGENCY'S RULES IN MANNERS
CONSISTENT WITH THAT ORIGINAL
EXECUTIVE ORDER ARE IN

ALTERNATIVE REVIEW DIRECTED BY
OFARR.

>> THAT'S CORRECT.

>> IT'S KIND OF HARD TO SEE
WHERE THERE IS SOME
ENCROACHMENT, AT LEAST THE
THEORY HERE, THAT THERE'S AN
ENCROACHMENT OF THE GOVERNOR
THROUGH THESE EXECUTIVE ORDERS
ON LEGISLATIVE AUTHORITY WHEN
THE LEGISLATURE IS RECOGNIZING
IN A STATUTE THAT SPECIFIC
PROCESS.

>> THAT'S ALL TRUE, CHIEF
JUSTICE CANADY.

EVEN MORE IMPORTANTLY THE
LEGISLATURE, IN ENACTING THE
STATUTE, HAS RECOGNIZED THE
CONSTITUTIONAL ROLE OF THE
GOVERNOR IN SUPERVISING HIS
AGENCY HEADS' EXERCISE OF
DISCRETION.

>> LET ME JUST MAKE SURE OF
SOMETHING.

WE'RE TALKING ABOUT REVIEW WHICH

NOBODY IS CHALLENGING THE
ABILITY TO REVIEW, AND I THOUGHT
YOU ANSWERED IN RESPONSE TO
JUSTICE LEWIS THAT THESE WERE
REVIEWS OF RULES THAT WERE
ALREADY IN EFFECT AS OF 2010.

>> THAT'S CORRECT, JUSTICE
PARIENTE.

>> OKAY.

NOW WE'RE TALKING ABOUT, WHAT
WE'RE TALKING ABOUT STARTING IN
JANUARY WAS PERSPECTIVE
RULEMAKING, AS I SEE IT TO
WHETHER A NOTICE COULD BE
PUBLISHED.

I THOUGHT YOU WERE ANSWERING MY
QUESTION THAT, NO, THE
LEGISLATURE DID NOT THROUGH
LEGISLATION INSTITUTIONALIZE
THAT PROCESS?

IS THAT CORRECT?

BECAUSE, AGAIN --

>> LEGISLATION IS LIMITED TO A
REVIEW OF THE REGULATIONS
EXISTING AT A POINT IN PAST

TIME.

>> OKAY.

>> BUT WHAT IT DOES DO, AND I
WOULD LIKE TO TELL YOU THIS,
WHAT IT DOES DO IS IT RECOGNIZES
THE CONSTITUTIONAL ROLE OF THE
GOVERNOR IN THAT AGENCY HEAD
DISCRETION AND IN THE RULEMAKING
PROCESS.

AND IT RECOGNIZES THE ABILITY OF
THE GOVERNOR TO CREATE OFARR
WHICH, BY THE WAY, WAS CONTESTED
IN THE ORIGINAL PETITION.

VERY CLEARLY.

THEY'VE ABANDONED THAT ARGUMENT.

BUT VERY CLEARLY, THAT WAS AN
ARGUMENT THEY MADE IN THEIR
ORIGINAL PETITION.

AND MORE IMPORTANTLY, ON PAGE 12
OF THE SUBMISSION WHICH IS
SECTION 5, COMPLIANCE ECONOMIC
REVIEW OF RULES AND REQUIRED
REPORT, THE LEGISLATURE ACTUALLY
ADOPTS THE SAME CRITERIA THAT
THE EXECUTIVE ORDER 1172 USES IN

SECTION 3 FOR ANALYZING THESE
RULES FROM AN ECONOMIC POINT.

SO IT, THE LEGISLATION

RECOGNIZES THE CONSTITUTIONAL
ROLE OF THE GOVERNOR IN THE
PROCESS, AS IT MUST.

IT RECOGNIZES THE ABILITY OF THE
GOVERNOR TO CREATE THIS OFFICE,
AS I THINK IT HAD TO.

AND IT ACTUALLY ADOPTS THE SAME
CRITERIA.

AND WE TALKED ABOUT THE TEXT OF
THE CONSTITUTION.

I WOULD LIKE TO MENTION BRIEFLY
BESIDES THE TEXT SUPPORTING
THESE EXECUTIVE ORDERS, CASE
LAW -- THAT'S THE JONES V.

CHILES CASE THAT WE CITE -- BUT
ALSO THE PAST PRACTICE OF
EXECUTIVES IN THIS STATE AND
MANY OTHER STATES INCLUDING
GOVERNOR CHILES.

WE CITE TO YOU AND PROVIDE IN
THE SUPPLEMENTAL APPENDIX TWO
EXECUTIVE ORDERS OF GOVERNOR

CHILES WHICH CLEARLY, ALTHOUGH
THEY'RE NOT IDENTICAL AND THEY
DON'T RELATE IN ALL RESPECTS
WITH THE SAME THING THE TWO
CURRENT EXECUTIVE ORDERS DO,
THEY CLEARLY DIRECT THE AGENCY
HEAD IN RULEMAKING.

>> GO BACK TO THAT.

YEAH, I WENT THROUGH BOTH OF
THOSE, AND I SEE A SUBSTANTIAL
DIFFERENCE THAT THOSE ARE
DIRECTED TO THE REVIEW WHICH IS
PART OF THIS BUT ARE NOT
DIRECTED TO THE STOPPAGE OF THE
RULE PROCESS.

AND WOULD YOU POINT ME DIRECTLY
TO THE WORDS THAT DO THAT IN
THOSE, THOSE TWO EXECUTIVE
ORDERS?

I WENT THROUGH THEM, AND I
DIDN'T FIND IT.

I'M SORRY.

>> THERE'S NO MENTION OF
STOPPAGE OR SUSPENSION.

BUT I WOULD POINT OUT TO YOU IN

THE SECOND ORDER OF 95.265

THERE'S SOMETHING CALLED THE
RULE OF FLEXIBILITY.

THIS IS A RULE THAT GOVERNOR
CHILES DIRECTED HIS AGENCY HEADS
TO FOLLOW, AND I THINK, FAIRLY
CONSTRUED, THIS RULE OF
FLEXIBILITY PERTAINS NOT JUST TO
PAST RULES, BUT ALSO TO RULES AS
THEY'RE FORMULATED IN THE
FUTURE.

SO I THINK GOVERNOR CHILES
ADDRESSED BOTH PAST RULES AND
RULES GOING FORWARD.

>> WELL, YEAH, BUT HE DIDN'T --
I MEAN, THOSE -- I WENT THROUGH
IT, AND IN APPLYING THE REVIEW
RULE, THAT'S FINE.

BUT THAT'S NOT TO SAY YOU CANNOT
PROPOSE AND CONDUCT THE
RULEMAKING PROCESS WITHOUT ANY
APPROVAL OR APPROVAL OF SOMEONE
THAT I HAVE DESIGNATED.

I MEAN, I LOOKED FOR THAT.

CAN YOU DIRECT ME TO THAT

LANGUAGE?

>> I AGREE WITH YOU.

THAT LANGUAGE ISN'T THERE.

>> OKAY.

>> BUT HIS DIRECTION GOING

FORWARD IS THERE, AND HIS

THOUGHTS AND HIS WORDS ON HOW

THEY SHOULD EXERCISE THEIR

DISCRETION TO BE FAIR,

OBJECTIVE, DEFENSIBLE WITHOUT

ACHIEVEMENT AND LEGALISTIC,

RIDICULOUS CONCLUSIONS -- THAT'S

THE LANGUAGE OF HIS RULE OF

FLEXIBILITY -- THAT WAS MEANT TO

GUIDE THEM GOING FORWARD, SO IT

REALLY IS THE SAME THING.

>> AND WE ALL AGREE -- AGAIN, WE

ALL AGREE THAT'S A GOOD THING.

NOBODY WANTS A BUREAUCRATIC MAZE

OF OUTDATED, ECONOMICALLY

INEFFECTIVE OR ECONOMICALLY

BURDENSOME RULES.

AND SO THE INTENT TO THAT EXTENT

IS, I DON'T THINK ANYONE IS

QUARRELING WITH THAT.

THE ISSUE, I THINK, AS WE'VE
NARROWED IT IS CAN THE GOVERNOR
STOP THE RULEMAKING AUTHORITY,
OR BY DOING THAT IS HE ACTING
OUTSIDE OF HIS EXECUTIVE BRANCH
ROLE AND ENCROACHING INTO THE
LEGISLATIVE ROLE?

>> LET ME TRY TO ANSWER THE
QUESTION FOR YOU THIS WAY,
JUSTICE PARIENTE.

WHEN GOVERNOR SCOTT TOOK OFFICE
ON JANUARY 4TH, HE WAS
CONFRONTED WITH THIS, REALLY, AN
ENORMOUS ADMINISTRATIVE MACHINE.
RULEMAKING GOING ON ALL THE TIME
THROUGH MANY, MANY AGENCIES.

IT'S HIS DUTY TO SEE THAT THE
LAWS ARE FAITHFULLY EXECUTED AND
TO SUPERVISE OFFICERS.

IT HAS TO BE THAT FOR SOME BRIEF
PERIOD OF TIME HE WAS ENTITLED
TO SAY TO AT LEAST SOME OF THESE
FOLKS FOR SOME GOOD REASON,
PLEASE, STOP AND LET ME REVIEW
WHAT IT IS YOU'RE DOING.

SO WHAT DO YOU CALL IT, A
SUSPENSION, A STOPPAGE, A
REVIEW?

HOWEVER YOU WANT TO DETERMINE
IT, IT HAS TO BE IF HE COMES
INTO THE OFFICE TAKING OVER FROM
ANOTHER ADMINISTRATION WITH THIS
VAST ADMINISTRATIVE MACHINERY TO
EXERCISE HIS CONSTITUTIONAL DUTY
AND POWER, HE HAS TO BE ABLE TO
SAY, PLEASE, STOP AND LET ME
REVIEW THIS.

>> IS THAT, IS IT A TEMPORAL
ORDER?

I MEAN, IS IT EXPIRED?

>> WELL, THE REVIEW PROCESS GOES
ON, THE DIRECTION TO THE
DEPARTMENT OF STATE IS NO LONGER
IN THE CURRENT VERSION OF THE
EXECUTIVE ORDER.

IF WE LOOK AT THE RECORD WHICH
IS BEFORE THE COURT, AND IF WE
LOOK AT THE WEB SITE OF THE
OFARR OFFICE, IT'S CLEAR THAT
THESE THINGS ARE BEING TURNED

OVER VERY QUICKLY, VERY
EFFICIENTLY WITH VERY FEW
EXCEPTIONS.

I JUST DON'T SEE HOW ANYONE
COULD REASONABLY SAY THAT WHAT
THE GOVERNOR HAS DONE HERE --
WHICH IS CONSISTENT WITH WHAT
PRESIDENT OBAMA HAS DONE,
PRESIDENT REAGAN, 29 OTHER
GOVERNORS -- WHO COULD SAY THAT
THAT'S AN UNREASONABLE EXERCISE
OF THIS --

>> LET ME ASK YOU THIS.

IF THE REVIEW PROCESS ADDED TO
OR SUBTRACTED FROM THE SCOPE OF
THE RULE SUBMITTED BY THE
LEGISLATURE, YOU WOULD AGREE
THAT WAS AN UNCONSTITUTIONAL
EXERCISE OF THE EXECUTIVE POWER,
RIGHT?

>> IF, I SUPPOSE IF THERE WERE
SOME THEORETICAL STATUTE, SOME
ORGANIC, ENABLING STATUTE THAT
SAID ONLY CONSIDER THREE THINGS,
THE GOVERNOR WOULD BE BOUND BY

THAT STATUTE.

>> RIGHT.

AND ALSO IN THE HYPOTHETICAL
JUSTICE LEWIS TALKED ABOUT, IF
IN THE PROCESS SOMEHOW IT WERE
DELAYED FOR FOUR YEARS OR A
PROCESS, LENGTH OF TIME BEYOND
WHAT WAS PERMITTED UNDER CHAPTER
120.54, THAT WOULD BE IN
VIOLATION OF THE APA AND WOULD
BE UNLAWFUL?

>> WELL, ALL THE AGENCY HEADS
REMAIN SUBJECT TO THE APA.
SO IF THEY VIOLATE APA BY
RUNNING OVER ONE OF THE TIME
LIMITS, THAT'S COGNIZABLE UNDER
LAW.

SOMEONE COULD GO TO COURT --

>> AGAIN, LET ME ASK THIS
QUESTION.

TALK ABOUT RULES, THERE'S NO
TIME LIMIT IN THE APA AS TO WHEN
LIMIT STARTS.
THERE'S ONLY RULE FOR WHEN
PROCESS STARTS.

>> WELL, THE TIMETABLES ONLY

START ONCE THE --

>> SURE, IT HAS NOTHING TO DO

WITH THE STOPPAGE BEFORE YOU

EVEN GET IN TO THE PROCESS.

>> WELL, I THINK THERE'S, ALSO,

JUSTICE LEWIS, IN MOST STATUTES

THERE'S A DEFAULT IN THE APA.

YOU HAVE TO COMMENCE THE

RULEMAKING PROCESS AT SOME POINT

UNDER THE --

>> THIS IS DIRECTED TO BEFORE

APA CAN START, CORRECT?

>> WELL, THIS IS DIRECTED TO --

>> AGENCY HEADS DON'T START THIS

PROCESS UNTIL WE SAY OKAY.

>> THAT'S CORRECT.

BUT THERE ARE TIME LIMITS WHEN

THAT PROCESS HAS -- THERE ARE

STATUTORY LIMITS ON THAT

PROCESS.

IF THEY'RE VIOLATED, SOMEONE CAN

BRING A LAWSUIT.

>> RIGHT.

ISN'T THE QUESTION WHETHER OR

NOT THE EXECUTIVE ORDER BY THE
GOVERNOR IS VALID UNDER CERTAIN
CASES, WHICH IS YOUR ARGUMENT
BEFORE ABOUT STANDARD REVIEW OF
THIS THING SIMILAR TO A FACIAL
ATTACK ON THE STATUTE, CAN THIS
EXECUTIVE ORDER COEXIST FOR THE
REVIEW PROCESS OF RULES IN THE
RULEMAKING PROCESS?
AND STILL BE VALID UNDER THE
CONSTITUTIONAL STATUTE?

>> YEAH.

IT'S A SEPARATION OF POWERS
ISSUE TWO WAYS.
THE GOVERNOR HAS SOME ROLE IN
THIS RULEMAKING PROCESS BECAUSE
THE EXECUTIVE AGENCY.
THAT'S THE JONES V. CHILES CASE.
AND THIS COURT, IF THERE'S ANY
WAY THAT THIS EXERCISE OF
DISCRETION CAN BE FOUND TO BE
PROPER, ANY WAY, THIS IS
ESSENTIALLY A FACIAL ATTACK.
THIS COURT SHOULD DEFER FROM
TAKING ACTION.

THESE ARE TWO FUNDAMENTAL
PRINCIPLES UNDER SEPARATION OF
POWERS.

>> ALL RIGHT.

>> FIVE MINUTES OVER.

>> WE THANK YOU.

>> THANK YOU, SIR.

>> SINCE THE GOVERNOR'S COUNSEL
GOT FIVE MINUTES MORE, YOU WILL
GET FIVE MINUTES MORE IF YOU
WANT IT.

YOU'RE NOT REQUIRED TO TAKE IT.

[LAUGHTER]

>> THANK YOU VERY MUCH, YOUR
HONOR.

AND I APPRECIATE THAT, BECAUSE
THERE WERE SEVERAL IMPORTANT
QUESTIONS RAISED INCLUDING THE
COLLOQUY ABOUT WHAT WE'RE HERE
FOR.

AND WE'RE HERE, OBVIOUSLY, ON A
WARRANTO.

WE GOT PRETTY GOOD INSTRUCTIONS
ON HOW LAWYERS AND CITIZENS
SHOULD LOOK AT THIS WRIT FROM

JUSTICE CANTERO WHEN HE ISSUED HIS OPINION IN FLORIDA HOUSE OF REPRESENTATIVES V. CRIST. HE, FIRST OF ALL, GAVE A VERY, I THOUGHT, VERY THOUGHTFUL OUTLINE ABOUT WHAT WARRANTO HAS DONE OVER A PERIOD OF YEARS, AND THEN AT ONE POINT SAID THE IMPORTANCE AND IMMEDIACY OF THE ISSUE JUSTIFIES OUR DEADLINE IN THIS MATTER NOW RATHER THAN TRANSPORTING IT FOR RESOLUTION TO A DECLARATORY JUDGMENT ACTION.

NOW, WHAT'S THE IMMEDIACY IN WRIT?

THERE'S BEEN AN AWFUL LOT OF TALK ABOUT THERE BEING A DELAY.

THERE'S BEEN A TURN AROUND.

IF THE GOVERNOR HAS ACTED IN EXCESS OF HIS CONSTITUTIONAL POWER, IF HE HAS MOVED INTO A LEGISLATIVE REALM -- THAT IS THE REALM OF RULEMAKING OR THE REALM OF DESCRIBING HOW RULEMAKING IS

TO BE DONE, BOTH CONCEIVABLY IN
THE LEGISLATIVE REALM -- THEN
ONE HOUR IS TOO MUCH DELAY.

>> SO YOUR BASIC, YOUR POSITION
IS THAT THIS ORDER IS AT LEAST
IN SOME RESPECTS FACIALLY
UNCONSTITUTIONAL?

BECAUSE, IN ESSENCE, BECAUSE IT
ALLOWS, IT REQUIRES THAT THE
GOVERNOR'S, THE EXECUTIVE OFFICE
OF THE GOVERNOR REVIEW
RULEMAKING BEFORE IT PROCEEDS,
IS THAT -- I'M TRYING TO
ACCURATELY THINK WHAT YOUR
POSITION --

>> MY POSITION IS THE GOVERNOR
HAS ACTED BEYOND HIS POWERS.
HE HAS MOVED INTO WHAT IS
ADMITTEDLY A LEGISLATIVE REALM,
A REALM OF RULEMAKING.
AND A REALM WHERE THE
LEGISLATURE HAS SPELLED OUT A
PROCESS AND HAS TOLD US THIS IS
A PROCESS TO BE USED.
THIS IS THE ONLY PROCESS TO BE

USED.

PROCEEDINGS ARE TO BE CONDUCTED
SOLELY IN ACCORDANCE WITH THE
PROVISIONS OF --

>> SO YOUR ARGUMENT THEN, REALLY
AS I SEE IT, IS WHAT THE
GOVERNOR HAS DONE IS ADDED TO
120, THE APA, SOME ADDITIONAL
STEPS THAT MUST BE TAKEN IN
ORDER TO DO RULEMAKING.

>> THAT'S CORRECT, YOUR HONOR.

>> AND SO IF THAT IS THE CASE,
WHAT IS THE ADDITIONAL STEP?
JUST LAY IT OUT SO THAT WE ALL
UNDERSTAND WHAT IS BEING ADDED
TO THE STATUTE BY THE GOVERNOR.

>> YOUR HONOR, IF YOU'LL LET ME
USE THE EXAMPLE OF INITIATION OF
RULEMAKING, BECAUSE 120.54
ALLOWS PETITION FOR THE
INITIATION OF RULEMAKING.

A CITIZEN GETS TO GO TO THE
AGENCY AND SAY, WE'D LIKE TO
HAVE A RULE.

THE LEGISLATURE'S GIVEN

AUTHORITY HERE THAT THEY DON'T
GET EVEN DEALING WITH THE
LEGISLATURE.

SO WE GET TO INITIATE.

IS THAT TRUE TODAY?

DO WE FILE A PETITION FOR
RULEMAKING?

DOES THE PETITION GO FORWARD OR
DOES OFARR HAVE TO GIVE
APPROVAL?

AS WE READ THE ORDER, OFARR CAN
STOP RULEMAKING RIGHT THERE, AND
IT NEVER GOES ANY FURTHER.

>> WHAT IF WE -- AND THIS GOES
BACK TO WHETHER THERE'S ROOM FOR
INTERPRETATION WITH REGARD TO
THE ORDER.

IF THE COURT DECIDES THAT IT
CANNOT INTERFERE WITH A
CITIZEN'S RIGHT TO PETITION THE
AGENCY, THEN WE, UNFORTUNATELY,
DIDN'T ANSWER ABOUT THAT.

BUT THAT WOULD BE THEN NOT
COVERED.

AND SO UNDER OUR OBLIGATION TO

UPHOLD WHAT ANY HEAD OF
GOVERNMENT IS DOING WHETHER IT'S
LEGISLATION OR THE GOVERNOR, WHY
WOULDN'T THAT BE A SOLUTION IN
THAT REGARD AS FAR AS CITIZENS'
INITIATION OF RULEMAKING?

>> YOUR HONOR, I KNOW OF NO
OBLIGATION OF THIS COURT TO
REVIEW A CASE IN WHICH THE
GOVERNOR'S POWER IS AT ISSUE.
AND TO INTERPRET AN ORDER TO
DIVIDE POWER --

>> WELL, IT'S REALLY MORE OUT OF
DEFERENCE IN REGARD THAT WE
DON'T WANT TO STEP IN TO WHAT
YOU HAVE PHRASED AS A NOT
BETWEEN THE CITIZEN AND THE
GOVERNOR BECAUSE THAT MIGHT BE A
DIFFERENT ISSUE, AND DUE PROCESS
MAY COME INTO PLAY BUT WHAT YOU
FRAMED AS A CLASH BETWEEN THE
LEGISLATURE AND THE GOVERNOR
WHEN THE LEGISLATURE HASN'T EVEN
WEIGHED IN TO SAY THEY'VE
ENCROACHED UPON OUR POWERS.

SO THAT'S WHY I'M ASKING THE
QUESTION --
>> YOUR HONOR, I REALLY DO
UNDERSTAND WHY COURT NEVER WANTS
TO GET INTO A CONFLICT.
WE WANT TO AVOID IT IN ALL WAYS
POSSIBLE.
BUT LOOK AT OUR HISTORY.
WE'VE GONE BACK AND TRIED TO
ANALYZE THE CASES SINCE CLAUDE
KIRK.
WE HAVE HAD -- AND WE GO BACK
THERE BECAUSE THAT'S WHEN THE
1968 CONSTITUTION CAME INTO
BEING.
AND WE FOUND THAT THIS COURT HAS
VERY FREQUENTLY ADDRESSED
QUESTIONS OF POWERS OF THE
GOVERNOR, POWERS OF THE
LEGISLATURE.
SEVERAL OF THEM HAVE BEEN CITED
IN THE BRIEFS.
WE FOUND OVER 100 SUCH CASES
DURING THIS PERIOD OF TIME.
AND IN THAT PERIOD OF TIME THERE

WERE 45 REQUESTS FOR ADVISORY
OPINIONS.

GOVERNORS SEEKING OUT THE
OPINION OF THIS COURT BEFORE
TAKING ACTION, WANTING TO KNOW
WHERE THE LINES OF AUTHORITY ARE
DRAWN.

THERE WERE 38, AT LEAST 38
EXTRAORDINARY RISKS TO TRY TO
GET DEFINITION: AND THERE WERE
APPROXIMATELY 20 OTHER CASES.

SO WE BRING AN EXTRAORDINARY
WRIT, I WANT TO MAKE THE POINT
THAT IT'S NOT UNUSUAL FOR THIS
COURT TO ADDRESS THE ISSUES OF
POWER.

IT'S NOT INSULTING TO MANY
GOVERNORS.

MANY GOVERNORS HAVE COME HERE
SEEKING YOUR OPINION.

>> I GUESS WHAT I'M SAYING IS
THAT IF IT WERE INTERFERING WITH
A CITIZEN'S ABILITY TO PETITION
FOR A RULE CHANGE, THAT MIGHT BE
ONE VARIATION, KIND OF AS AN

APPLIED PROBLEM.

BUT HERE IF WE'RE LOOKING
GENERALLY, YOU AGREE THAT THE
GOVERNOR BEFORE THE AGENCY AND
CERTAINLY GOING FORWARD IS GOING
TO PROPOSE OTHER RULES, THAT THE
GOVERNOR AND THE AGENCY HEAD CAN
SIT DOWN, AND THE GOVERNOR CAN
ASK -- I MEAN, AGAIN,
UNFORTUNATELY, I'M NOT VERY
FAMILIAR WITH THE RULEMAKING
PROCESS.

BUT SAY WHAT RULES ARE ON THE,
ON DECK THAT YOU ARE CONSIDERING
PROPOSING.

AND, PLEASE, REMEMBER WHEN YOU
DO IT TO CONSIDER THE ECONOMIC
IMPACT.

THERE WOULD BE NOTHING WRONG
WITH THAT, CORRECT?

>> ABSOLUTELY NOTHING WRONG.

>> ALL RIGHT.

SO, AGAIN, WHAT THE FUNDAMENTAL
PROBLEM WITH THIS EXECUTIVE
ORDER IS THAT IT STOPPED RULES

THAT WERE ALREADY IN THE
PIPELINE.

IS THAT --

>> AND RULES THAT MIGHT COME IN
THE PIPELINE.

LET ME GO BACK TO MY EXAMPLE
ABOUT RULE INITIATION.

WE PUT A CHART IN OUR APPENDIX.

BUT LOOK AT ALL THE INTRUSIONS
INTO THE ORDERLY RULEMAKING
PROCESS AND RECOGNIZE THAT EACH
OF THESE INTRUSIONS IS BRINGING
INTO THE RULEMAKING PROCESS
SOMETHING THAT IS ANTAGONISTIC
TO THE SPIRIT OF THE APA.

>> WHY SHOULD WE NOT THEN, IF
WE'RE TALKING ABOUT HOW THIS HAS
BEEN APPLIED DURING THE, THIS
PERIOD OF TIME, DURING A
TRANSITIONAL PERIOD OF TIME, AND
IF WE'RE NOT LOOKING AT IT FROM
A FACIAL STANDPOINT, HOW DOES
THIS THING REALLY OPERATE?
WHAT DID IT STOP?
DID IT STOP SOMETHING?

WHY WOULD WE NOT SEND IT BACK TO
A FACT-FINDING KIND OF PROCESS
SO THAT WE WILL KNOW WHAT WAS OR
WAS NOT INTERFERED WITH, WAS
STOPPED AND NOT BE SO
THEORETICAL, BUT CAN REALLY MAKE
A DETERMINATION BASED UPON WHAT
ACTUALLY HAPPENED?

>> YOUR HONOR, TOTALLY WITHIN
THE COURT'S DISCRETION, AND --

>> I UNDERSTAND.

BUT WHY WOULD THAT NOT BE THE
BEST APPROACH?

>> WE SUBMIT THAT IT WOULD NOT
BE NECESSARY, AND LOOKING AT
THIS COURT'S PRONOUNCEMENTS ON
THIS ISSUE INCLUDING THE
PRONOUNCEMENT BY JUSTICE CANTERO
THAT I JUST QUOTED, WHERE YOU
HAVE, CLEARLY, A GOVERNOR
EXERCISING AUTHORITY NOT ONLY
STATED IN THE GOVERNOR'S ORDER
ITSELF, BUT GOVERNOR'S WEB SITE
SHOWS THAT RULES HAVE BEEN HELD
UP FOR VARIOUS PERIODS OF TIME.

SOME OF THEM HAVE BEEN TURNED
AROUND QUITE PROMPTLY AS
MR. TRIPPE HAS SAID.

BUT YOU WOULD NOT SEND IT BACK
BECAUSE THE FUNDAMENTAL ISSUE
WAS ALWAYS GOING TO BE WHETHER
THERE WAS AUTHORITY IN THE FIRST
INSTANCE.

THE ISSUES YOU'RE TALKING ABOUT
CAN BE RAISED IN INDIVIDUAL
RULEMAKING PROCEEDINGS.

>> RIGHT.

>> AND WE ARE NOT DEPRIVED OF
THOSE.

JUSTICE CANADY SAID WE STILL
HAVE THOSE PROCESSES.

BUT AT ISSUE HERE IS WHETHER
THERE'S AUTHORITY IN THE FIRST
INSTANCE.

I WANTED TO SEE IF MY TIME STILL
IS AVAILABLE --

>> WELL, YOU'VE USED AN EXTRA
SIX MINUTES NOW.

>> THANK YOU.

I WANT TO MAKE SURE THAT THE

COURT DOES UNDERSTAND THERE'S NO
QUESTION HERE ABOUT THE
GOVERNOR'S MOTIVATION.

THE GOVERNOR SEEKS TO APPROVE
RULEMAKING, HIS MOTIVATIONS WE
THINK ARE SOUND.

INDEED, THINK ABOUT MS. WHILEY.

HERE'S A PERSON WHOSE LIFE IS
BOUNDED BY AGENCIES IN WAYS THAT
APPLY TO NO ONE ELSE IN THIS
COURTROOM.

SHE'S DEPENDENT ON HAVING A
HARMONIOUS CONVERSATION WITH
AGENCIES.

AND HAVING PEOPLE WHO REPRESENT
HER HAVE THOSE CONVERSATIONS.

IF THE ADMINISTRATIVE PROCEDURE
ACT PROVIDES THAT PROCESS, IT'S
AN OPEN PROCESS.

PROCESS THAT GIVES HER NOTICE.

SHE KNOWS WHO SHE'S DEALING
WITH.

SHE GETS A HEARING.

SHE GETS TO INITIATE
PROCEEDINGS.

AND AN AGENCY HAS TO RESPOND TO
A PETITION TO INITIATE
PROCEEDINGS.

NOW, WE FILE A PETITION TO
INITIATE RULEMAKING PROCEEDINGS,
AND THIS MATTER GOES ON TO SOME
ROOM IN THE GOVERNOR'S OFFICE.

AND AT THAT POINT MS. WHILEY HAS
NOW LOST THIS OPEN GOVERNMENT
THAT SHE ENJOYED BEFORE.

AND I WANT TO JUST SAY --

>> YOU'RE, IF YOU COULD SUM UP,
YOU'RE -- YOU'VE GONE OVER TWO
AND A HALF MINUTES BEYOND
WHAT --

>> I LOOKED AT THE CLOCK AND IT
SAID I HAD SEVEN.

EXCUSE ME.

[INAUDIBLE]

THANK YOU, YOUR HONOR.

>> THANK YOU VERY MUCH.

WE THANK BOTH SIDES FOR YOUR
ARGUMENT.

THAT'S THE ONLY CASE ON OUR
DOCKET TODAY, SO THIS SESSION OF

COURT IS CONCLUDED.

>> ALL RISE.