

>> HEAR YE HEAR YE HEAR YE,
SUPREME COURT IS NOW IN SESSION.
GIVE ATTENTION, YOU SHALL BE
HEARD.

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

>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA PLEASE BE
SEATED.

GOOD MORNING, WELCOME TO THE
FLORIDA SUPREME COURT.

BEFORE WE START, WE HAVE A
COUPLE VISITORS, THE FLORIDA
UNIVERSITY OF FLORIDA LAW
SCHOOLS CONSTITUTIONAL LAW
CLASS, FLORIDA CONSTITUTIONAL
LAW CLASS VISITING, PLEASE
STAND.

AND PROFESSOR JOHN NELSON FORMER
SPEAKER OF THE HOUSE.

WE HAVE A CLASS -- EXCUSE ME,
OKAY.

PLEASE STAND.

THANK YOU FOR HAVING US HERE.
THE FIRST CASE ON THE DOCKET,
THE LEAGUE OF WOMEN VOTERS.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, JOHN MILLS, THE
LEAGUE OF WOMEN VOTERS, AND
INDIVIDUAL MEMBERS OF THE
ORGANIZATION.

LAST DECEMBER, THE GOVERNOR
ANNOUNCED HE WOULD BE APPOINTING
THREE REPLACEMENTS FOR THREE
JUSTICES ON THE COURT WHOSE TERM
EXPIRED JANUARY 2018.

THE PETITIONERS SEEK TO ENSURE
THOSE WHO MAKE THE APPOINTMENT
IS ACCOUNTABLE TO THE VOTERS,
WILL BE ELECTED VOTERS.

THEM IN THE PROSTITUTION BECAUSE
IT -- AMEND THE CONSTITUTION, IT
ADVOCATED A FEW YEARS AGO
RESOUNDINGLY DEFEATED.

THEY FILED A NOTICE OF
SUPPLEMENTAL AUTHORITY,
CONSIDERING THAT ISSUE AND
LOOKING AT CHANGING LANGUAGE OF
THE CONSTITUTION TO ACHIEVE THAT

RESULT.

>> IT IS SO CLEAR IN THE CONSTITUTION, WHAT IS THE CONSTITUTIONAL PROVISION YOU BELIEVE IS SO CLEAR, THE GOVERNOR MAKE THE APPOINTMENTS.

>> ARTICLE 5, SECTIONS 10-11 IN THE INTERPLAY.

AND JUDICIAL TERMS, THE FIRST MONDAY OF JANUARY FOLLOWING THE GENERAL ELECTION AND APPLYING THE STANDARD RULES FOR DETERMINING ANY TERM OF YOUR IN THE LAW THE FIRST DAY, WE COUNT THE NEXT DAY, TERMS EXPIRE, AT THE END OF THE DAY.

EVEN IF WE ARE WRONG.

>> THE CONSTITUTION DOESN'T SAY IN THE END WITH 6-YEAR TERMS AND THEY START.

AND AT MIDNIGHT, BETWEEN MONDAY AND TUESDAY, THE FIRST MONDAY IN JANUARY, CORRECT?

>> THESE ARE UNIQUE TERMS, NEVER ONE PERSON LEAVING THE TERM AND ANOTHER COMING IN ON THAT DAY. THEY HAVE RETENTION.

AND WHAT WAS POINTED, IT WAS THAT DAY.

YOU CAN CONTINUE ON.

IF YOU ARE NOT RETAINED, AND SEEK RETENTION, IT EXPIRES AT THE END OF THE TERM.

>> IT STARTS THE FIRST TUESDAY OF THE LAST MONDAY IN JANUARY AND --

>> AT THE START OF THE NOON.

>> NO PRACTICAL REASON TO KNOW.

>> AT MIDNIGHT AFTER THE FIRST TUESDAY, FIRST MONDAY.

>> I DON'T THINK THERE IS AN EXPRESS TIME, IT DOESN'T SERVE ANY PURPOSE TO HAVE THAT DEMARCATION.

>> LET ME ASK YOU ABOUT THIS. COMPARE ARTICLE 5 SECTION 10 AND THE LANGUAGE THERE, THE LANGUAGE IN ARTICLE 4 SECTION 5.

ARTICLE 5 SECTION 10 CONCERNS THE COMMENCEMENT OF JUDICIAL

TERMS AND THE LANGUAGE IN THAT PROVISION IS SIMILAR TO THE LANGUAGE, PROVISION OF ARTICLE 4 SECTION 5 CONCERNING COMMENCEMENT OF GUBERNATORIAL AND CABINET TERMS.

GIVEN SIMILARITY OF THE LANGUAGE, WHY WOULDN'T WE INTERPRET THEM TO HAVE SIMILAR EFFECT?

>> YOU SHOULD.

>> AT THE END OF TUESDAY, THE GOVERNOR'S TERM BEGINS AT THE BEGINNING.

IF THAT IS THE CASE, THE JUDICIAL TERMS BEGIN, AT THE BEGINNING OF TUESDAY, WEDNESDAY END THEY WILL BE ENDING AT THE END OF MONDAY.

AND SIX YEARS IN A DAY.

>> IT IS NOT SIX YEARS AND A DAY RESPECTFULLY.

THE FOUR YEAR TERM BEGINS THE SAME DAY A 6-YEAR TERM WOULD BEGIN FOR A JUDGE.

GOVERNOR SCOTT'S TERM HE IS SERVING BEGIN ON JANUARY 6TH, THE LAST FOUR YEARS.

>> THE CASE LAW FROM ANOTHER CONTEXT, THE FOUR YEAR TERM WOULD END TUESDAY.

>> IT DOESN'T WORK THAT WAY.

>> JANUARY 6, 2015, HIS TERM ENDS IN 2019, NOT A TUESDAY, AND THE TERM WAS MIDNIGHT THAT SUNDAY.

MONDAY YOU HAVE A GAP, MONDAY IS NOT ANY THE GOVERNOR'S TERM.

WE HAVE A LINE OF CASES, IT QUALIFIES, IN ARTICLE 2 SECTION 5A APPLIES TO PUBLIC OFFICES, PUBLIC OFFICER CONTINUES AND A SUCCESSOR QUALIFIES.

THE GOVERNOR STAYS IN, HIS TERM ENDS SUNDAY AND THERE IS NO NEW GOVERNOR, NO NEW GOVERNOR CAN BECOME EFFECTIVE AGAINST THE TUESDAY STARTS.

THE LAST TWO GOVERNORS, WAS OF ARTICLE 2, IN THE BEGINNING OF

THE TERM.

AND NOVEMBER OR DECEMBER, AND WHOEVER IS ELECTED THIS TIME WILL DO THE SAME THING, THEY WILL HAVE ALREADY TAKEN THE OATH.

GOVERNOR SCOTT ASKED HER MOSTLY LET THE END IS A SUNDAY, HE CONTINUES IN POWER MONDAY UNTIL MIDNIGHT WHEN WE HAVE THE OATH BECOMES EFFECTIVE AND TERM OF THE NEW GOVERNOR BEGINS.

>> HE WILL CONTINUE IN OFFICE UNTIL HIS SUCCESSOR HAS QUALIFIED.

AND THAT PROBABLY IS GOING TO SPRING INTO EXISTENCE AT MIDNIGHT.

THAT IS THE WAY IT HAS TYPICALLY BEEN DONE.

THE GOVERNOR CONFERENCE DIDN'T DO IT.

LEARNING FROM THAT EXPERIENCE, SUBSEQUENT GOVERNORS HAVE DONE IT.

>> IF ANY GOVERNORS ARE WATCHING I AM SURE THEY ARE PUTTING THAT ON THE TO DO LIST.

>> IT WILL TAKE OF THE NOZZLE IS COLOSSAL MISCARRIAGE NOT TO HAPPEN.

>> OUR POINT IS WHETHER THE JUDICIAL TERMS EXPIRE AT MIDNIGHT THE EVENING OF MONDAY OR AT MIDNIGHT THE EVENING OF TUESDAY THE FACT IS ONCE THEY EXPIRES THEY EXPIRE AT THE LAST SECOND, GOVERNOR SCOTT STILL IN POWER OR A DAY LATER IF WE ARE CORRECT.

IF YOU APPLY THE LAW IN TERM OF YEARS THIS COURT HAS ONLY ONCE ADDRESS TERM OF YEARS AND A 6-YEAR TERM IN AN APPELLATE COURT AND SAID WHAT WE SAID. 6 YEARS DOWN THE LINE.

THAT IS THE BIRD CASE IN 1935. EVERY OTHER TIME PERIOD WE TALK ABOUT IN THE LAW, STATUTE OF LIMITATIONS, ANYTHING, NEVER

INCLUDE THE FIRST DAY.

I LOOKED AT WHAT THEY PRESENTED AND JUSTICES OF THIS COURT HAVE PRESUMED IT ENDS THE END OF THE DAY MONDAY INSTEAD OF THE END OF THE DAY TUESDAY.

I THINK THAT IS NOT ACCURATE. YOU CARRY ON UNTIL THE END OF THE DAY TUESDAY.

THAT IS THE WAY WE COUNT PERIODS OF YEARS IN THE LAW AND I DON'T THINK THERE SHOULD BE A DIFFERENT FOR THE COURTS BUT THAT IS THE QUESTION YOU DON'T HAVE TO ANSWER IN THIS CASE.

>> 6 YEARS, 6 YEARS, WHETHER SOMEONE QUALIFIES FOR RETENTION OR NOT.

>> IT IS ONLY A 6-YEAR TERM --

>> WHERE IN THE CONSTITUTION DO YOU SEE THAT LANGUAGE IF IT IS A DIFFERENT 6-YEAR THAT THEY DON'T QUALIFY FOR RETENTION?

>> IF THEY DON'T QUALIFY THERE IS NO TERM.

THE LAST DAY OF THE TERM THERE IS A VACANCY WHEN THE TERM EXPIRES.

>> ACCORDING TO WHAT YOU ARE SAYING, IT WOULD STILL EXPIRE ON THE END OF THE DAY, WHATEVER TUESDAY THAT IS.

>> THAT IS WHEN IT ALWAYS IS EXPRESSED IN THE CONSTITUTION. THE INITIAL TERM, APPOINTED YOUR FIRST TERM IS NOT A 6-YEAR TERM, IT WILL BE AT LEAST A YEAR DEPENDING WHERE IT FALLS IN THE CYCLE.

THE END DATE OF THAT TERM IS THE TUESDAY AFTER THE FIRST MONDAY.

>> DOES YOUR ARGUMENT DEPENDS ON WHETHER THE JUDICIAL TERM IS LONGER THAN THE GOVERNOR'S TERM OR IF THE TERMS EXPIRE SIMULTANEOUSLY.

>> IF THEY EXPIRE -- OUR ARGUMENT DOES NOT DEPEND ON THAT BUT THERE IS NO ARGUMENT THE GOVERNOR'S TERM ENDS AFTER FOUR

YEARS.

IT DOESN'T GO FOUR YEARS AND TWO DAYS OR FOUR YEARS AND TODAY, IT ENDS SUNDAY.

HE HOLDS OVER THROUGH MONDAY UNTIL A NEW GOVERNOR QUALIFIES. THE NEW GOVERNOR CAN'T QUALIFY UNTIL THE BEGINNING OF HIS TERM WHICH IS 12:00 AM EVENING OF MONDAY, MORNING OF TUESDAY, JANUARY 8, 2019.

IT IS CLEAR THERE IS NO ARGUMENT I'M AWARE OF OTHERS AND LET'S SPECULATE THE GOVERNOR WILL FORGET TO TAKE HIS OATH OR WE HAVE JURISDICTIONAL ARGUMENTS THAT HAVE BEEN RAISED LET'S SAY YOU CAN'T PROSPECTIVELY LOOK AT AN ASSERTION OF POWER IN THE FUTURE.

>> BACK TO WHAT YOU SAID. THE GOVERNOR'S TERM ENDS SUNDAY. THE NEW GOVERNOR CANNOT TAKE HIS OR HER OATH UNTIL TUESDAY.

>> CAN'T ASSUME OFFICE.

>> WE ALL TAKE --

>> WILL BEFORE HAND.

YOU HAVE AN INAUGURATION CEREMONY.

>> MIDNIGHT BEGINNING OF TUESDAY, MONDAY, 12:00.

>> 12:00 THE EVENING OF MONDAY IS THE FIRST MINUTE OF TUESDAY.

>> THAT IS THE TIME THE NEW GOVERNOR CAN TAKE OFFICE.

IF IT IS THAT THE COURT DETERMINED THAT THE TERM ENDS FOR THE JUSTICE AT THE SAME EXACT TIME DID YOU ADDRESS THAT? WE ARE TALKING HERE, IN THE PAST IF THE GOVERNOR HAS A EIGHT YEAR TERM, NOBODY LOOKS AND WORRIES WHEN THE TERM EXPIRES BECAUSE THE SAME GOVERNOR IS IN OFFICE AND WE HAD TRADITIONS IN THE PAST, UNDER GOVERNOR GRAHAM. THE ASSUMPTION WAS IT WAS THE NEXT GOVERNOR THAT WOULD MAKE THE APPOINTMENTS.

ANY OF US COULD DECIDE TO SAY WE

RE-SIGN AS A BEFORE THE END THE TERM.

>> THAT WOULD MOVE THE ISSUE TO WHATEVER JUSTICE MADE THE DECISION.

>> SO IRONIC, THE IDEA OF SELECTION AND RETENTION WAS TO TAKE POLITICS OUT OF THIS PROCESS AND YET WE ARE SEEING THIS GO WITH POLITICS.

IF THAT IS THE CASE, IF THE GOVERNOR'S TERM WHICH ALREADY ENDED AS A HOLDOVER, WOULDN'T IT STILL BE, MAYBE YOU SAID THIS, THE NEW GOVERNOR WHO COULD TAKE OFFICE AS OF MIDNIGHT GETS THE APPOINTMENT, DOESN'T NEED TO HAVE THE HOLDOVER TO THE NEXT DAY.

>> EXACTLY WHETHER YOU COUNT THAT DAY OR NOT IS A LITTLE BIT ESOTERIC.

IN YOUR ANALYSIS YOU WANT TO RESOLVE THAT BECAUSE THAT IS PART OF IT BUT EITHER WAY WHETHER I AM RIGHT OR WRONG ON THAT, THE WORST-CASE SCENARIO FOR THE PETITIONERS IS GOVERNOR SCOTT WILL LOSE HIS AUTHORITY IS GOING TO COME HIS TERM WILL HAVE ENDED, HE WILL HAVE LOST HIS HOLDOVER POWER AT THE STRIKE OF MIDNIGHT.

THAT IS ASSUMING HIS SUCCESSOR AS QUALIFIED.

AS A MATTER OF FACT IT IS OVERWHELMINGLY LIKELY TO HAPPEN BUT THAT IS SOMETHING WE HAVE TO ASSUME AND THAT WILL BRING THIS QUESTION FOR YOU.

SEEMS LIKE THERE'S A LOT OF SPECULATION THAT SURROUNDS ALL OF THIS AND I AM STRUGGLING TO SEE HOW THIS IS THE RIGHT CONTROVERSY WOULD RESOLVE IN THE CIRCUMSTANCES, GOT TO ASSUME FOR YOUR ARGUMENT TO COME INTO WAY, SOMEBODY WITH CERTAINTY GOING TO FINISH THAT TERM, NOT LEAVE EARLY.

THAT IS NOT LIKELY IN THE PARTICULAR CIRCUMSTANCES.
>> ONLY ONE JUSTICE LEFT UNDER THESE CIRCUMSTANCES.
>> THERE IS A TERM --
>> 60 YEARS OLD.
>> I UNDERSTAND THAT BUT YOU GOT TO ASSUME EVERYBODY WILL FINISH THEIR TERM AND BE IN A POSITION TO FINISH THEIR TERM AND THEY WILL FINISH THEIR TERM, GOT TO ASSUME OF THE NEW GOVERNOR WILL TAKE THE OATH SO THERE IS NO GAP.
THERE IS SPECULATION.
IT IS ALL SPECULATIVE.
THIS IS A RIGHT CONTROVERSY.
HAS BEEN UTILIZED TO GIVE ADVICE ABOUT WHAT CAN OR CANNOT BE DONE IN THE FUTURE.
IT SEEMS TO FOCUS ON PROPERLY EXERCISED PAST TENSE A POWER OF OFFICE, WHETHER THEY WERE QUALIFIED TO DO THAT AND THE POWER THEY DID NOT HAVE.
>> MISSING SEVERAL THINGS.
THOSE ARE 2 ISSUES.
I UNDERSTAND WHERE YOU ARE COMING FROM.
AND IN THE TURNER CASE IN JANUARY, THE SAME SCENARIO, GOING TO APPOINT THE REPLACEMENT OF ONE OF THE JUSTICES UP HERE, NOT ELIGIBLE TO RUN AGAIN.
I WILL APPOINT YOUR REPLACEMENT.
THE PETITION WAS BROUGHT LIKE OURS TO CHALLENGE THAT ASSERTION AND THE SUPREME COURT WITH DISSENT HELD THE JURISDICTION ISSUE AND DID ISSUE THE WRIT.
>> SENIOR PRECEDENT --
>> ONE HAS EVER BEEN CONFRONTED, AND THE AUTHORITY IN A CIRCUMSTANCE LIKE THIS.
>> THE HOUSE OF REPRESENTATIVES --
--
>> KRIST.
>> THE CRC FILING LAWSUITS ON BEHALF OF CAPITAL -- CIVIL RIGHTS LAWSUITS.

>> LAWSUIT WAS DISMISSED.
>> THERE IS A DIFFERENCE BETWEEN ENTERTAINING A CASE THAT HAS BECOME MOOT AND ENTERTAINING A CASE THAT HAS NEVER BECOME RIPE.
>> IT BECAME MOOT.
>> THIS IS A CASE THAT CAN BECOME MOOT, IT IS NOT MOVED RIGHT NOW IT IS RIGHT RIGHT NOW BECAUSE WE ARE TESTING AN ASSERTION OF EXECUTIVE POWER. THE GOVERNOR MIGHT MAKE THESE APPOINTMENTS, YOU WOULD BE EXACTLY CORRECT, WE ARE HERE BECAUSE THE GOVERNOR HAS ASSERTED A POWER, ASSERTED HIS AUTHORITY.
WE DO NOT HAVE TO WAIT FOR HIM TO ACT.
>> THE SPEAKER OF THE HOUSE, WE ARE GOING TO ENACT THIS BILL AND ACCOMPLISH IT THIS YEAR WITH QUESTION WE HAVE THE VOTES AND IT IS WHAT WE ARE GOING TO DO, YOU COULD BRING A LAWSUIT AND THAT IS UNCONSTITUTIONAL.
>> MIGHT HAVE THE AUTHORITY BUT YOU WOULDN'T EXERCISE IT.
>> THIS IS JURISPRUDENTIAL. WHETHER TO WAIT OR NOT YOU HAVE TREMENDOUS DISCRETION.
WE RECOGNIZE THAT.
>> THE CONSTITUTION GIVES US AUTHORITY AND JURISDICTION TO GIVE AN ADVISORY OPINION. THE QUESTIONS OF LAW THAT ARE NOT RIGHT AND ADVISORY OPINION, DOESN'T THAT AT LEAST IMPLY THAT WE DON'T HAVE JURISDICTION TO GIVE AN ADVISORY OPINION WHEN SOMEONE OTHER THAN A GUN OR ATTORNEY GENERAL ASKS?
>> NOT ASKING AND ADVISORY. WE ARE ASKING YOU TO TEST AN ASSERTION OF POWER BY THE GOVERNOR.
HE SAYS HE HAS THIS POWER, WE ARE ASKING YOU DOES HE?
WE ARE SAYING HE DOESN'T, HE IS SAYING HE DOES.

THAT IS A CONTROVERSY BASED ON
ASSERTION OF POWER.

I UNDERSTAND WHERE YOU ARE
GOING.

THE REASONS YOU MIGHT NOT
ENTERTAIN.

THE REASON YOU SHOULD ENTERTAIN
AND HAVE THE AUTHORITY, THE
GOVERNOR SAYS I WILL EXECUTE
SOMEBODY ON SUCH AND SUCH A DAY
YOU CAN STOP IT.

>> ENTERING AN EXECUTIVE ORDER
ELECTED TO THAT OFFICE OR
WHATEVER, THE COURTS WOULD HAVE
AUTHORITY AS SOON AS THEY GOT
ELECTED TO GIVE AN ADVISORY
OPINION WHETHER THEY HAD THAT
AUTHORITY.

>> I THINK IT WOULD DEPEND ON
THE CIRCUMSTANCES.

>> A UNIQUE SITUATION, THERE
COULD BE OTHER CIRCUMSTANCES AND
MAYBE JURISPRUDENTIAL REASONS
NOT TO DO THAT.

I DON'T THINK ANY JURIST WOULD
CONSIDER IT.

>> YOUR EXECUTION EXAMPLE IS
DIFFERENT.

YOU HAVE THE GOVERNOR SIGNS A
WARRANT.

THERE IS AN OFFICIAL ACT TAKEN
BY DOCUMENT HE SIGNED THAT IS
TOTALLY DIFFERENT.

>> WE HAVE AN OFFICIAL PRESS
CONFERENCE WHERE HE HAS ASSERTED
IT.

>> WE EQUATE A PRESS CONFERENCE
WITH DEATH WARRANT.

>> I'M SAYING YOU ARE SIMILAR.
WITH THE PUBLIC OFFICIAL
ASSERTING AND AUTHORITY, IF YOU
WAIT UNTIL HE ASKS YOU HAVE A
CONSTITUTIONAL CRISIS YOU ARE
NOT POWERLESS TO AVOID.

>> IT IS PROBLEMATIC TO BRING
LAWSUITS OVERSTATEMENTS MADE AT
PRESS CONFERENCES.

THAT IS WHAT YOU ARE DOING HERE.

>> THAT IS EXACTLY WHAT THIS IS.
LOOKING AT WHAT HAS BEEN ARGUED

BY THE GOVERNOR, OTHER THAN THIS
THING ABOUT THE ONE DAY ENDING
TUESDAY, MIDNIGHT INSTEAD OF
MONDAY AT MIDNIGHT, I AM
STRUGGLING TO SEE WHAT IS
DIFFERENT.

I AM NOT SEEING ANY ASSERTION
THAT THE GOVERNOR, WHAT THE
GOVERNOR IS RESPONDING TO, I
DON'T SEE ANY ASSERTION THE
GOVERNOR IS MAKING THAT HE CAN
MAKE AN APPOINTMENT IN THE
CIRCUMSTANCES A JUSTICE SERVED
UNTIL THE END OF THE TERM AND
THE INCOMING GOVERNOR ASSUMES
OFFICE AT MIDNIGHT WHEN THE
GUBERNATORIAL TERM BEGINS.
IF ANYTHING THERE, TELL ME WHERE
IT IS.

>> IT IS THE ABSENCE, HE SAYS HE
IS GOING TO DO IT.

>> THERE IS NOTHING IN THE
GOVERNOR'S RESPONSE THAT
INDICATES HE BELIEVES BASED ON
WHAT IS IN THIS RESPONSE HE IS
ASSERTING HE COULD DO THAT.

>> OPPOSING PETITION IS ASKING
TO ESTABLISH THIS, THEY ARE
OPPOSING IT.

HE'S AGAINST IT.

>> I'M ASKING WHERE HE IS
ASSERTING HE WOULD HAVE HAD
POWER UNDER CIRCUMSTANCES I
DESCRIBED IT, IF YOU SHOW ME
WHAT IS IN THAT PETITION,
LISTEN.

HIS LEGAL ARGUMENTS SUPPORT THE
RELIEF WE ARE REQUESTING, NOT
SAYING HE IS NOT GOING TO DO IT
BUT MAKING LEGAL ARGUMENTS THAT
DO NOT SUPPORT THE CONCLUSION HE
IS REQUESTING.

HIS LEGAL ARGUMENTS DO NOT
SUPPORT HIS POSITION.

>> I IT IS NOT PROPER BECAUSE IT
IS SPECULATIVE.

THAT IS THE MAIN ARGUMENT.

>> YOU ARE WAY OVER YOUR TIME.

WE HAVE HELPED YOU DO THAT.

I WILL GIVE YOU TWO MINUTES TO

REBUT.

AFTER COUNSEL.

>> MAY IT PLEASE THE COURT, ON BEHALF OF GOVERNOR SCOTT, THE PETITIONERS ARGUE THERE ARE NO CIRCUMSTANCES UNDER WHICH THERE ARE JUDICIAL APPOINTMENTS AT ISSUANCE, PETITIONERS ARE WRONG FOR REASONS ADDRESSED IN THE BRIEF AND PETITIONS SHOULD BE DISMISSED ON JURISDICTIONAL GROUNDS.

>> A BIG DEAL ABOUT WHAT IS IN THE BRIEFS OR NOT.

DOES THE GOVERNOR EVER TAKE THESE PAPERS FILED IN OUR COURT, THAT DOES NOT INTEND TO EXERCISE THAT POWER AS DESCRIBED BY THE PETITION?

>> WE HAVE ARGUED THERE WERE SEVERAL CIRCUMSTANCES UNDER WHICH THE GOVERNOR MAY MAKE JUDICIAL APPOINTMENTS.

>> THAT IS NOT MY QUESTION, YOU UNDERSTAND MY QUESTION.

IS THERE ANYWHERE IN HEAR YOU SAY THAT IS NOT HIS POSITION, HE HAS NOT SAID HE IS GOING TO MAKE THE APPOINTMENT?

>> WE HAVE NOT ADDRESSED THAT IN OUR BRIEF.

>> YOU DIDN'T SAY THAT ANYWHERE IN YOUR PAPERS.

>> WE DID NOT ADDRESS THAT.

>> I'M LOOKING AT YOUR RESPONSE.

I THOUGHT YOU SAID THEIR ARGUMENTS FAIL ON THE MERITS EVEN IF PETITIONERS COULD OVERCOME THESE JURISDICTIONAL DEFICIENCIES PETITIONERS SHOULD STILL BE DENIED THE MERITS BECAUSE THE ARGUMENTS PRESENTED FAIL AS A MATTER OF LAW.

WHAT AM I MISSING?

>> THEIR ARGUMENTS DO FAIL AS A MATTER OF LAW.

THE PETITIONER'S MIGRANTS REGARDING END OF TERM OF JUSTICES AND THE GUBERNATORIAL TERM ARE INACCURATE.

PETITIONERS ASKED THE COURT TO CONCLUDE THE JUDICIAL TERM STARTING ON THE FIRST TUESDAY AFTER THE FIRST MONDAY OF JANUARY RUNS SIX YEARS AND ONE DAY BEYOND THAT.

>> WITH THE SITUATION OF MIDNIGHT WHERE THE NEW GOVERNOR QUALIFIES, WHAT IS THE POSITION ON THE MERITS AS TO WHETHER THE NEW GOVERNOR QUALIFIES, TAKES THE OATH AT MIDNIGHT, HAS THE POWER TO POINT THE TERMS, THE JUSTICES FOR THE TERMS THAT HAVE EXPIRED?

>> THAT QUESTION WOULD REQUIRE THIS ISSUE TO DECIDE WHAT IT HAS BEEN DECIDED BEFORE WHICH HAS BEEN ASSUMED BY JUSTICE KENNEDY'S STATEMENT THAT THE NEW GOVERNOR'S TERM, THE NEW GOVERNOR'S OATH IN THE COMMISSION FOLLOWING FROM THAT SPRING INTO EXISTENCE AT THE BEGINNING OF THAT TUESDAY. THAT MAY BE THE CASE DECIDED BY THIS COURT.

WHAT WE ARGUED IS PETITIONERS FACIAL CHALLENGE TO THE APPOINTMENT AUTHORITY SHOULD BE DENIED ON THE MERITS BECAUSE THERE ARE CIRCUMSTANCES THE GOVERNOR CAN LAWFULLY APPOINT JUSTICES.

>> THIS SUGGEST YOU AGREE THAT THEY DON'T HAVE THE AUTHORITY.

>> THE GOVERNOR HAS THE AUTHORITY TO MAKE REPLACEMENTS, THE GOVERNOR'S TERM HAS ENDED. AND ASSUMED OFFICE, GOVERNOR SCOTT WILL NOT HAVE THE ABILITY.

>> IT WILL END SUNDAY.

JUSTICE -- THE GOVERNOR'S TERM IS AT THIS MEAL A DAY MONDAY. THE FIRST DAY THE JUSTICE AT THE END OF A MONDAY, JANUARY 7, 2019, UNLESS THERE'S AN EARLIER RESIGNATION.

>> NO QUESTION ABOUT THE AGE OF THE 3 JUSTICES, DO NOT QUALIFY

FOR RETENTION.

THERE IS NO AMBIGUITY IN THAT SITUATION.

SO THE QUESTION BECOMES THE TERM, IF IT ENDS AT MIDNIGHT OF THE SEVENTH, AND TAKES OFFICE WHETHER IT IS DEMOCRAT OR REPUBLICAN, MAKE THE APPOINTMENT OF 3 JUSTICES, GOVERNOR SCOTT'S -- DOES NEED A THIRD TERM.

IN THE PRESS CONFERENCE MAKE THE 3 APPOINTMENTS, AND LEGALLY HAD THAT AUTHORITY.

>> IT IS AN IMPORTANT DISCUSSION, AND CONCLUDED AN END OF MONDAY, JANUARY 7TH.

AT ARTICLE 5 SECTION 10, IN JUDICIAL TERMS THAT WAS NOT RETAINED.

THE VACANCY EXISTS AT THE END OF THE TERM.

WE DON'T KNOW WHEN GOVERNOR SCOTT'S SUCCESSOR WILL QUALIFY, LIKELY THE SUCCESSOR PREFILED THE OATH OF OFFICE AND HAS THE COMMISSION ISSUED.

WE DON'T KNOW THAT TO BE TRUE FOR CERTAIN.

THERE IS AN ARGUMENT BASED ON FACT WE DON'T HAVE IN THE RECORD AND ARE NOT KNOWN YET BUT IF THE GOVERNOR'S SUCCESS QUALIFIES LATER IN THE DAY THERE MAY BE AN OPPORTUNITY FOR GOVERNOR SCOTT, TO MAKE APPOINTMENTS DURING HIS CONTINUED TERM OF OFFICE.

>> WAS THERE RESIGNATION? DID THE JUDGE RESIGNED EFFECTIVE AT MIDNIGHT ON A CERTAIN DATE OR A DATE BEFORE THE TERM ENDED?

>> THAT IS WHAT WE WERE --

>> THAT IS WHAT IT STANDS FOR. THE JURY POWER, THROUGH AN EXTRA DAY.

>> I DON'T BELIEVE SO, THE PRINCIPLE THAT CONTINUES TO EXIST IN ARTICLE 2 SECTION 5 OF THE CONSTITUTION OF THE GOVERNOR CONTINUES IN OFFICE UNTIL HIS SUCCESSOR QUALIFIES.

>> DO THEY USE THE TERM THE JURY?

>> YES.

>> DOES THAT MEAN SOMETHING?

>> AS A MATTER OF LAW, THE GOVERNOR STAYS UNTIL THE SUCCESSOR QUALIFIES.

>> I DIDN'T HEAR THE ANSWER TO THE QUESTION THAT WAS SPECIFICALLY THE NEW GOVERNOR WHO QUALIFIED.

HE OR SHE CAN TAKE OFFICE ON MONDAY.

AT THE END THE DAY ON MONDAY.

>> YES.

THE GUBERNATORIAL TERM BEGINS THE FIRST TUESDAY AFTER THE FIRST MONDAY.

>> YOU ARE SAYING THE JUSTICE'S TERM ENDS AT THE SAME TIME.

>> YOU ARE SAYING THEY ARE BOTH END AT THAT TIME SO UNDER THOSE CIRCUMSTANCES, NOT TALKING ABOUT EARLY RESIGNATION, TALKING ABOUT A NEW GOVERNOR WHO QUALIFIED.

WHO HAS THE AUTHORITY TO MAKE THE APPOINTMENT?

>> THE ASSUMPTION IS THAT THE GOVERNOR PREFILED THE OATH OF OFFICE, NO JUSTICE HAS RESIGNED EARLY AND IS THERE A FURTHER ASSUMPTION UNDER YOUR HYPOTHETICAL BECAUSE THE INCOMING AND OUTGOING OWNER HAVE NOT AGREED ON THE SELECTION?

>> THEY HAVEN'T AGREED.

>> THAT IS A SITUATION THAT HAS NOT OCCURRED BEFORE IN FLORIDA HISTORY.

>> THERE HAVE BEEN TIMES IN HISTORY, PERSONAL KNOWLEDGE OF, THEY HAVE, SO WE DON'T HAVE AN AGREEMENT, THEY BOTH EXPIRE AT MIDNIGHT, THE NEW GOVERNOR IS QUALIFIED.

WHO MAKE THE APPOINTMENT?

>> UNDER THAT HYPOTHETICAL, WHICH WE DON'T KNOW ABOUT, THE GOVERNOR'S TERM HAS BEEN DONE TO MAKE THE APPOINTMENT IF THERE IS

NOT A VACANCY.

WHAT WE HAVE HERE GOES TO THE JURISDICTIONAL ARGUMENT AS WELL, PETITIONERS, THIS JURISDICTION, AND THE STATE OFFICER HAS EXERCISED THE POWER AND DUTY OF OFFICE.

>> YOU ARE SAYING THESE ARE HYPOTHETICALS.

MAKING THE PRONOUNCEMENT THERE WAS NO AMBIGUITY IN WHAT WAS BEING SAID.

ATTEMPTED TO GIVE IT TO THE OUTGOING GOVERNOR, THAT FAILED, THERE ARE THREE JUSTICES WHO WILL REACH THE AGE OF 70 SO THEY CANNOT QUALIFY TO BE ON THE BALLOT FOR RETENTION NEXT YEAR.

>> SOMEBODY COULD HAVE A HEART ATTACK, THERE IS A VACANCY EARLIER, 19 OR 20 YEARS MUCH EARLIER.

THE TRUTH OF THE MATTER IS, THE REASON WHAT IS HAPPENING, MOST LIKELY SCENARIO, WHAT IS IMPORTANT TO UNDERSTAND IS WHEN A TERM OF OFFICE ENDS FOR JUSTICE OR APPELLATE JUDGE OR AT THE SAME TIME, WHERE THE VACANCY IS, THE APPOINTMENT POWER OVER THE VACANCIES.

AND WHETHER IT IS RIGHT OR THESE OTHER ISSUES, CAN YOU ANSWER THAT QUESTION WHICH IS NOT MUCH OF A HYPOTHETICAL.

>> THERE HAVE BEEN EXAMPLES IN THE PAST UNDER WHICH THE AUTHORITY TO MAKE APPOINTMENTS ON THE LAST MORNING IN OFFICE.

>> THE LAW AT THE TIME HE WAS AN ELECTED JUDGE, IT IS THE YEAR 2017 AND MERIT SELECTION, AND WHAT IS THE LAST SCENARIO, WHAT WE ARE FACED WITH TODAY.

AND WE AGREE WITH MISTER MILLS IT IS A DAY LATER AND THERE IS NO AMBIGUITY.

AND ASSUME WHAT YOU SAID, THE TERMS EXPIRE AT THE SAME TIME. THE NEW GOVERNOR IS QUALIFIED.

THE NEW GOVERNOR GETS TO MAKE THE APPOINTMENTS?

>> THE GOVERNOR, GOVERNOR SCOTT'S SUCCESSOR TAKING OFFICE, THE APPOINTMENT AUTHORITY WOULD BE THERE.

WHAT I'M SAYING, WHAT THE CIRCUMSTANCES WILL BE, AND DO NOT GIVE ADVICE WHAT THE LAW SHOULD BE IN THESE CIRCUMSTANCES, TO ISSUE THAT. AND ANTICIPATED EXERCISE OF EXECUTIVE POWER.

IN EVERY CASE PETITIONERS SITE TO REVIEW EXECUTIVE ACTION, TO DETERMINE IF THEY ARE PROPER. THE CONSTITUTION GIVES THE GOVERNOR THE AUTHORITY FOR THE ADVISORY OPINION ABOUT EXECUTIVE POWER.

>> IN THE URBAN CASE, THE VACANCY OCCUR AFTER THE APPELLATE JUDGE QUALIFY, AT THE TIME OF THE END OF THE TERM, AND THE GOVERNOR COULD SOLVE THIS IF THERE IS A QUESTION BY ADVISORY OPINION.

THAT IS HOW THIS COULD BE SOLVED.

AND A CONSTITUTIONAL CRISIS BECAUSE THE VERY REAL IDEA ON JANUARY 7TH OR 8 IN 2019, THREE JUSTICES WILL NOT BE SERVING, ON THE EIGHTH, COLLEAGUES KICK US OUT OF OUR OFFICES THE DAY BEFORE, AND VACANCIES, AND WHO MAKES THE APPOINTMENT, AND THAT IS A VERY REAL CONCERN FOR ALL OF US, AND WHICH JUSTICES, AND THE SAME ISSUE.

>> GOVERNOR SCOTT IS NOT ASKED AN ADVISORY OPINION FOR CIRCUMSTANCES, AND SPECIFIC FACTS ARE NOT KNOWN AT THIS TIME THAT WOULD GIVE REASON TO DOUBT ON EXERCISE OF POWER.

AND IT HAS NOT YET HAPPENED.

>> THE ASSUMPTION THAT THIS IS CORRECT, LET'S SAY YOU ARE CORRECT, IT IS NOT RIGHT AND

DOESN'T MAKE THE DECISION.
LET'S ASSUME YOU ARE INCORRECT
AND THE ARGUMENT AFTER WHO MAKES
THIS APPOINTMENT, THE ISSUE
WOULD ONLY BE RIGHT AFTER
GOVERNOR SCOTT MAKES THE
APPOINTMENTS AND WOULD BE
PRESENTED TO US AND WAS
INCORRECT, ORDERING THE
RENEWABLE.

>> I'M ARGUING SPECIFICALLY
ABOUT JURISDICTION.

I AM SAYING THERE IS NOT OF THE
VEHICLE TO SOLVE THIS QUESTION.

>> LET'S ASSUME GOVERNOR SCOTT
WITH THE ADVISORY OPINION, THE
PROCESS YOU SEEM TO BE STATING,
THE ISSUE HAS TO BE RIGHT.
BASED ON WHAT YOU ARE SAYING
AFTER, IF WE FIND THAT, IN
MAKING THE EQUIPMENTS THERE
WOULD BE THE ISSUE THAT HE HAS
APPOINTED.

>> IN 1998, AND NO
CONSTITUTIONAL CRISIS FELL ON
THOSE DAYS BECAUSE THE STATE HAS
BEEN --

>> IN 1998, THE OUTGOING
GOVERNOR DIDN'T ATTEMPT TO MAKE
ANY APPOINTMENTS IN THAT
SITUATION.

>> IN 1998, THE APPOINTMENT --

>> THIS WAS NOT JUST -- THAT WAS
THE SITUATION THEY AGREE THEY
WOULD MAKE A JOINT APPOINTMENT
TO ELIMINATE OR AT LEAST NOT GET
INTO THE NATION FOR
CONSTITUTIONAL CRISIS IF THE
CHILD'S TO DO IT ALONE AND THAT
WAS IMPROPER.

THAT IS A COMPROMISE, IN 1998.
MAKING AN APPOINTMENT AT THE
TURN.

>> THE QUESTIONS ASSUMED THEY
WOULD NOT BE A SIMILAR
COMPROMISE, AND ON THAT --

>> WE HAVE A GOVERNOR SAYING AT
THE TIME HE APPOINTED A FINE
JUSTICE OF THIS COURT FOR THE
NEXT THREE APPOINTMENTS.

AND THE TERM OF JUSTICE OVERTON,
AND HE COULD HAVE AVOIDED THE
PROBLEM BY HAVING RETIRED
EARLIER, AND NEVER ASSERTED --

>> I DISAGREE WITH THAT.
IN THE APPENDIX, I INCLUDED THAT
ON PAGE 32, THE APPOINTMENT
LETTER OF JUSTICE QUINCE BY
GOVERNOR CHILDS ON DECEMBER 11,
1998.

>> THEY DIDN'T RELINQUISH THE
POWER THAT HE HAD.
AND HAVING TO MAKE THAT
CONCESSION.
HOW CAN YOU USE THAT
ESTABLISHING THE CONSTITUTIONAL
LAW?

>> JUSTICE QUINCE WAS APPOINTED
BY GOVERNOR CHILDS.

>> NOTHING TO DO WITH WHAT WE
ARE TALKING ABOUT.

GOVERNOR BUSH UNDER THIS
CONSTITUTION HAD THE RIGHT BUT
DECIDED TO RELINQUISH THAT AND
MAKE A JOINT APPOINTMENT.
AND ESTABLISHES THE
CONSTITUTIONAL PRINCIPLE.

>> THAT DOES NOT ESTABLISH ANY
CONSTITUTIONAL PRINCIPLE OTHER
THAN THE PRINCIPLE THAT UNLESS
THE PETITIONERS ARE ALLEGING
JUSTICE QUINCE'S APPOINTMENT WAS
UNCONSTITUTIONAL UNDER THOSE
CIRCUMSTANCES, GOVERNOR SCOTT
WOULD HAVE THE RIGHT TO MAKE A
SIMILAR APPOINTMENT IF THEY
DEVELOP NEXT YEAR.

>> I DON'T UNDERSTAND THE CASES
THAT ARE PRESENTED TO US.
AND NEVER HE USED UNLESS THE ACT
HAS ALREADY BEEN DONE.

WHAT WE DID IS USED THE
MECHANISM TO PROHIBIT, THE CCR
SEE FROM ENGAGING IN LITIGATION
OF UNDERLYING CASES AND
PROHIBITED THEM FROM ENGAGING IN
THAT.

>> KENNY IS A TRADITIONAL
EXERCISE.

>> WE DID NOT PROHIBIT THE CCR

SEE IN ASPECT OF THAT OPINION
LITIGATING UNDERLYING CASES ON
BEHALF OF THOSE.

>> ON PAGE 406, IT IS CLEAR THE
CCR SEE BROUGHT A LAWSUIT,
CHALLENGING THE LEGALITY OF THE
EXERCISE, AND WHAT MAKES CLEAR
AFTER THAT, JUSTICE KENNEDY
SUGGESTED EARLIER IN EXCEPTION
TO THIS MOOTNESS DOCTRINE, WHAT
WAS TAKEN, THAT CASE AS WELL, A
REVIEW OF WHAT HAD BEEN TAKEN BY
SECRETARY OF STATE.

>> LITIGATING IN THE OTHER IN
THE FUTURE --

>> IN THE PROCESS OF WHAT
HAPPENED IN THE PAST, THE
PROHIBITION OF ENGAGING IN THE
CONDUCT IN THE FUTURE, THAT IS A
DIFFERENT SITUATION FROM
ANTICIPATORY ONLY EXERCISING
JURISDICTION FOR WHAT MIGHT
HAPPEN UNDER A CERTAIN SET THAT
HASN'T HAPPENED YET.

>> YOUR PRIMARY POSITION, DON'T
HAVE JURISDICTION IN THIS CASE,
ON THE MERITS BASED ON THE FACT
THEY ARE ASKING US TO DECLARE
GOVERNOR SCOTT CANNOT MAKE THESE
APPOINTMENTS AND THERE ARE
CIRCUMSTANCES IN WHICH HE MIGHT
HAVE AUTHORITY TO MAKE THIS
CORRECT.

YOU ALSO CAN SEE THERE ARE
CONSEQUENCES UNDER WHICH HE
WOULD NOT HAVE AUTHORITY TO MAKE
THESE.

>> AFTER THE SUCCESSOR ASSUMED
OFFICE GOVERNOR SCOTT HAS NO
MORE AUTHORITY TO MAKE
APPOINTMENTS.

>> TO GIVE AN ANSWER, UNDER
CERTAIN CIRCUMSTANCES THE
GOVERNOR CANNOT ACT.

WHICH SEEMS LIKE THE VERY REASON
THE FIRST POINT DOES MAKE SENSE,
IN ESSENCE UNDER CERTAIN
CIRCUMSTANCES CANNOT ACT.

>> THERE IS NOT A SITUATION THE
COURT HAS ISSUED AN

EXTRAORDINARILY NARROW WRIT TO
ADDRESS CIRCUMSTANCES THAT
HAVEN'T HAPPENED YET.
UNLESS THERE ARE FURTHER
QUESTIONS MY TIME IS EXPIRED.
>> THE GOVERNOR HADN'T MADE AN
APPOINTMENT AND YOU SAID YOU
CAN'T.
YOU HIT IT ON THE HEAD.
IS IT RIGHT?
THERE'S NO CASE THAT THAT THIS
ISN'T RIGHT.
>> WOULD YOU AGREE IT IS
POSSIBLE THERE IS A GOVERNOR
ELECTED AS THE NEXT GOVERNOR WHO
MIGHT COOPERATE WITH THE CURRENT
GOVERNOR.
>> IT IS VERY DIFFICULT TO
IMAGINE.
IT IS POSSIBLE.
>> IT IS POSSIBLE SOMEBODY WANTS
TO MAKE THESE, WITH THE CURRENT
GOVERNOR.
AND IF THAT GOVERNOR WERE
ELECTED, COULDN'T WORK OUT, WHAT
THE GOVERNOR WOULD TAKE AFTER
BEING ELECTED.
>> THAT IS THE CLIFF WE ARE
HEADED TOWARDS.
AND HE OR SHE MAY APPOINT THREE
PEOPLE, THAT IS GOING TO HAPPEN,
THREE JUSTICES HAVE ANOTHER
PETITION THAT THAT THEY CAN'T
SET UP HERE.
DO YOU HAVE A QUORUM?
>> THE ELECTION IS IN NOVEMBER,
CORRECT?
IF THIS PLAYED OUT MIGHT BE A
CRISIS, WHY WOULDN'T THAT BE THE
INCOMING DETAIL TO DEAL WITH
THAT LEGALLY.
>> AND ADVISORY OPINION, YOU DO
BUT HE DOESN'T.
>> NOT ASKING AND ADVISORY
OPINION.
WHAT WE ARE SAYING --
>> BY DISCUSSING HOW RIGHT I
WAS.
I DON'T GET THAT VERY OFTEN.
GIVING EXTRA TIME IF YOU NEED

IT.

>> BOTH GOVERNORS MADE AN APPOINTMENT.

IT WAS LOWER COURT SEAT, THE STATE GOVERNMENT.

A CHALLENGE TO THREE PEOPLE, IF YOU CAN WAIT TILL THE ELECTION, TO THE APPOINTMENT IN JANUARY, IF YOU WAIT UNTIL THEN, YOU PROVE THE COURSE AND THE WHOLE COURT SYSTEM, THE POLITICAL LANDMINE AND WANTS TO AVOID IT NOW, DON'T KNOW WHO THE NEXT GOVERNOR IS GOING TO BE, MAYBE IT IS SOMEBODY WHO IS GOING TO RUN AGAINST WHO IS APPOINTED TO THE BENCH AND MAKE A CHANGE, WE DON'T KNOW WHO THE APPLICANTS ARE GOING TO BE, AS SOON AS WE KNOW THE ANSWERS TO THOSE QUESTIONS, THIS WILL BECOME A NIGHTMARE.

YOU CAN AVOID IT.

YOU DON'T HAVE TO JUMP OVER THE CLIFF THAT IS COMING, YOU CAN RESOLVE IT RIGHT NOW IN A NICE CALM DISPASSIONATE WAY IN WHICH NOBODY CAN MAKE ANY ACCUSATIONS ANYBODY IS WORRIED ABOUT WHO IS TAKING THEIR COLLEAGUES OR THEIR SUCCESSORS OR WHATEVER.

WE NEED TO AVOID THE CRISIS.

THIS COURT DOES NOT NEED TO HAVE THREE OF ITS MEMBERS BE CHALLENGED.

WHAT ARE YOU GOING TO DO IN THAT TIME PERIOD?

EVERY ACTION THIS COURT CASE, YOU DON'T HAVE FIVE JUSTICES IN THOSE PETITIONS.

OF THE PEOPLE APPOINTED BY THE GOVERNOR BY SITTING UP THERE AND NEVER HAD THAT AUTHORITY, AREN'T ALL THOSE ACTS IS GOING TO BE VOID?

THIS IS EXTRAORDINARY.

I'M ASKING YOU TO DO SOMETHING EXTRAORDINARY.

IT IS VERY BAD FOR THIS COURT, YOU CAN AVOID THESE PROBLEMS.

YOU CAN ASSURE THE ORDERLY
CONDUCT OF OUR COURTS.
I URGE YOU TO DO SO ONE WAY OR
THE OTHER.
>> THANK YOU FOR YOUR ARGUMENTS.