

>> ALL RISE.

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

THE SUPREME COURT OF
FLORIDA, PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON THE DOCKET
THIS MORNING IS DAVID P. TROTTI
V. RICK SCOTT, GOVERNOR, ET AL..

>> I AM PHILIP PADOVANO, HERE
WITH PETITIONER DAVID MATTHEW
FUNDERBUNK.

MISTER SALAMA WAS IN BOTH OF THE
PROCEEDINGS IN THE DCA AND
CIRCUIT COURT.

AFTER HEARING THE EVIDENCE IN
THIS CASE THE TRIAL JUDGE SAID,
QUOTE, THIS WAS SIMPLY AN EFFORT
TO CIRCUMVENT THE CONSTITUTION
NOT TO SUPPORT THE DEFENDANT.

JUDGE FOSTER RESIGNED BEFORE THE
QUALIFYING IN THE GENERAL
ELECTION. GO BUT SET HIS
RESIGNATION DATE 9 MONTHS IN THE
FUTURE TO APPOINT JUST FOUR DAYS
BEFORE THE END OF THE NATURAL
EXPIRATION OF HIS TERM AND THERE
WAS NO REASON TO RESIGN IN THE
FIRST PLACE.

HE QUALIFIED FOR ANOTHER TERM.

>> LET ME CUT TO THE HEART OF
WHAT WE ARE TALKING ABOUT.
THE JURISPRUDENCE OF THIS BOARD
HAS INTERPRETED THE RESIGNATION
AS BEING EFFECTIVE WHEN
ACCEPTED.

>> CORRECT.

>> IN THIS CASE WHAT WE HAVE TO
DO IS A NUMBER OF CASES AS WE
GET TO THE POINT.

>> LET ME TELL YOU WHY.
LET ME START WITH POINTS THAT WE
AGREE.

WE AGREE THERE IS A BODY OF CASE
LAW IN THIS COURT THAT SAYS
RESIGNATION IS EFFECTIVE,
TENDERED AND ACCEPTED BY THE
GOVERNOR.

WE ALSO AGREED THIS COURT HAD ENCOURAGED LAWYERS, JUDGES TO RESIGN IN THE FUTURE SO THE WORK OF THE NOMINATING COMMISSION CAN BE DONE SO THERE WILL BE A SEAMLESS TRANSMISSION IN THE SERVICE --

>> THERE IS A HOLE IN THE CONSTITUTION.

>> WHAT HAPPENS.

>> THESE CASES BASICALLY WERE FOUNDED ON THE PRINCIPLE OF GOOD FAITH THAT RESIGNATION WAS GOING TO BE A RESIGNATION IN THE FUTURE.

EVERY ONE OF THE CASES YOU'RE REFERRING TO THE EFFECTIVE DATE OCCURRED BEFORE THE GENERAL ELECTION.

THE FIRST CASE IT OCCURRED, AND THE RESIGNATION IS BEFORE THE QUALIFYING, BUT AFTER THE QUALIFYING HAD CONCLUDED.

IT WAS SOMETHING ON THE ORDER OF JULY 31ST OR EVEN SEPTEMBER.

BECAUSE THERE ARE 6 OR 7 MONTHS OF NOBODY IN THE OFFICE, AND THERE IS AN UNREASONABLE VACANCY.

THIS DETERMINED, THE COURT DETERMINED THE CASE UNREASONABLE VACANCY.

IT IS ALL INVOLVED IN THAT CATEGORY.

WHAT I'M SAYING TO YOU IS I DON'T THINK THE COURT NEEDS TO MODIFY CASE LAW.

THE COURT NEEDS TO DECIDE THOSE CASES, AND THE COURT HAD IN MIND TO MAKE A MOCKERY OF THIS BY RESIGNING A DAY BEFORE THE END OF THE TERM, AND SWALLOWED UP AN ENTIRE ELECTION.

I DON'T THINK THAT IS WHAT THE COURT HAD IN MIND.

>> WHAT THE COURT HAS IN MIND -- IT IS A QUESTION OF TRYING TO APPLY THE CONSTITUTION.

>> THE CASE WAS DIRECTLY CONTROLLED BY THE COURT DECIDING

--

>> THE CONSTITUTION CHANGED THIS.

>> THE CONSTITUTION DID CHANGE BUT NOT MATERIALLY, AND DID CHANGE IN SOME RESPECTS. THE CONSTITUTION CHANGED IN RESPECT FOR AND MOST NOTABLY WE NO LONGER ELECT JUDGES BACK THEN.

WE WERE ELECTING FLORIDA SUPREME COURT JUSTICES.

CONSTITUTION CHANGED IN THE RESPECT THAT WE NOW HAVE A LONGER PERIOD, THAT CHANGED SEVERAL TIMES SINCE THEN.

THE MATERIAL PART OF SPECTER HAS NOT CHANGED.

IF THERE IS AN ELECTION THE WILL OF THE PEOPLE MUST BE HONORED AND WE MUST HAVE THE ELECTION, YOU HAVE A CASE WHERE THERE WAS NO REASON NOT TO HOLD AN ELECTION.

>> UNDER THIS SCENARIO THAT WE SANCTIONS AND AUTHORIZED, THERE WAS GOING TO BE NO PHYSICAL VACANCY.

>> UNLIKE WHAT WAS OBTAINED HERE, SMALL AND SOME PHYSICAL VACANCY SO THAT IS A DISTINCTION.

>> I CAN SEE THAT IS A DIFFERENCE.

>> LET ME ASK YOU A HYPOTHETICAL.

THERE WAS A CIRCUIT JUDGE, THE TERM EXPIRING IN JANUARY 2021.

A CIRCUIT JUDGE DECIDED SHE WANTED TO LEAVE OFFICE BEFORE THE EXPIRATION OF HER TERM.

ABOUT TWO YEARS BEFORE EXPIRATION OF HER TERM BUT SHE ALSO DECIDED SHE WOULD LIKE HER SUCCESSOR TO BE CHOSEN BY ELECTION OTHER THAN BY APPOINTMENT.

SO NOW IN 2018 BEFORE THE START OF QUALIFYING PERIOD, THE FIRST TUESDAY AFTER THE FIRST MONDAY

IN JANUARY 2019.

UNDER YOUR THEORY OF OUR
CONSTITUTION, WHAT WILL HAPPEN?

>> IT WOULD BE AN ELECTION AND
IF I UNDERSTAND CORRECTLY THAT
IS PRECISELY WHAT HAPPENED.

>> THE JUDGE COULD DECIDE IF
THERE'S GOING TO BE A SPECIAL
ELECTION UNDER THE WAY THE
CONSTITUTION IS NOW.

>> DECIDING TO FOLLOW THE WILL
OF THE PEOPLE AND HOLD AN
ELECTION IN A LITTLE ELECTION
YEAR, DECIDING TO TRY TO THWART
THAT.

>> IT IS A SPECIAL ELECTION.

>> JUST A SERVANT OF THIS COURT,
HE DECIDED --

>> I'M NOT CRITICIZING.

I'M TRYING TO EXPLORE WHERE YOUR
THEORY OF THIS TAKES US.

WHAT WAS INVOLVED IN SPECTOR WAS
A SPECIAL ELECTION THAT WAS SET
AT THE TIME OF REGULARLY
SCHEDULED ELECTION BUT STILL A
SPECIAL ELECTION FOR THAT SEAT,
CORRECT?

>> YES.

>> THE SCENARIO INVOLVED A
SPECIAL ELECTION FOR A CIRCUIT
COURT, CORRECT?

>> I MISSED THE LAST POINT.

>> THE SCENARIO I DESCRIBED, THE
HYPOTHETICAL -- THERE SHOULD BE
A SPECIAL ELECTION, THE CIRCUIT
COURT.

>> IT IS A DIFFERENCE, FOR
EXAMPLE A CIRCUIT JUDGE MIGHT
ANNOUNCE UNTIL EVERYBODY KNOWS
THAT TO BE OPEN.

ONE MIGHT CHARACTERIZE THAT AS A
CONSCIOUS CHOICE ON THE PART OF
THE JUDGE TO FAVOR AN ELECTION.
THIS IS AN ELECTION YEAR.

>> A RESPONSE TO MY
HYPOTHETICAL, YOU ARE SAYING
BASICALLY THE JUDGE CAN DECIDE
THERE IS GOING TO BE A SPECIAL
ELECTION TO FILL OUT A TWO YEAR
PORTION OF THE JUDGE'S TERM,

CORRECT?

>> PERHAPS I DON'T UNDERSTAND
THE HYPOTHETICAL.

>> WHAT DON'T YOU UNDERSTAND?
I AM TRYING TO BE CLEAR AND
SOMETIMES I FAIL.

>> I'M NOT LAYING THAT ON YOU.
IN ANY EVENT WE HAVE A GENERAL
ELECTION HERE.

THIS IS A GENERAL ELECTION YEAR
IN 2018.

>> THAT WAS THE CASE IN SPECTOR
BUT IT WAS NONETHELESS A SPECIAL
ELECTION FOR THAT PARTICULAR
SEAT.

IT WAS NOT -- THE TERM IS NOT
UP.

THERE WAS NOT GOING TO BE AN
ELECTION FOR THAT SEAT AND THE
SCENARIO I GAVE YOU IT WOULD BE
A SPECIAL ELECTION.

IF I UNDERSTAND CORRECTLY THE
JUDGE CAN DECIDE, AS IN SPECTOR,
THAT THERE WILL BE A SPECIAL
ELECTION.

>> I THINK I UNDERSTAND YOU
BETTER AND I'M NOT SURE I WOULD
ANSWER THAT, IT IS A DIFFERENT
SITUATION.

>> HOW IS IT DIFFERENT FROM
SPECTOR?

>> SPECTOR ACTUALLY WAS AGING
OUT 20 DAYS AFTER.

HE WOULDN'T --

>> THE TERM -- BY MANDATORY
RETIREMENT, THE TERM WAS NOT UP.

>> THAT IS CORRECT.

>> A SPECIAL ELECTION WOULD BE
FILLED BY ELECTION, CORRECT?

>> THERE WAS A GENERAL ELECTION
THAT YEAR.

I'M NOT SURE WHAT THE
SIGNIFICANCE OF THE -- THAT WAS
AN ELECTION YEAR.

THERE WAS IN FACT A GENERAL
ELECTION THAT YEAR.

CANDIDATES FOR THE SUPREME
COURT, ARTHUR ENGLAND DID
QUALIFY FOR THAT, TRIED TO.

>> LET ME ASK YOU THIS.

IN OUR CASE, THE LETTER WAS SENT BY JUDGE FOSTER PRIOR TO THE QUALIFICATION, CORRECT?

IT WAS TO HIS TERM, BY HIS TERMS WAS TO END AFTER THE QUALIFYING PERIOD.

>> CORRECT.

>> WHAT WOULD BE THE RESULT IF HE HAD SENT HIS LETTER AWAY, A DAY, A WEEK, WHATEVER, AFTER THE QUALIFYING PERIOD, WOULD THERE BE AN ELECTION YEAR?

OR WE STILL FIGHTING ABOUT WHETHER OR NOT THERE WOULD BE?

>> THAT WOULD CLEARLY BE AN ELECTION.

THAT GOES --

>> WE STILL GET TO THE POINT WHERE A JUDGE CAN, BY THE DATE OF THE LETTER THAT IS SENT TO THE GOVERNOR, DETERMINE WHETHER THERE IS GOING TO BE AN ELECTION OR APPOINTMENT?

>> THAT IS CORRECT.

WHAT I AM SAYING IS I DON'T THINK IT REFLECTS WELL ON THE JUDICIARY, CONSISTENT WITH THE GENERAL, THE RURAL ANNOUNCED INSPECTOR TO DELIBERATELY RE-SIGN BEFORE THE QUALIFYING BEGINS.

KNOWING THAT WILL CREATE AN APPOINTMENT WHEN IN FACT YOU INTEND TO STAY FOR THE ENTIRE YEAR.

>> LET ME ASK YOU THIS.

WHAT YOUR VIEW IS A REASONABLE VACANCY?

>> THE COURT --

>> IF HE SENT THIS LETTER, WOULD IT BE BY APPOINTMENT ACCORDING TO YOUR THEORY?

>> BY APPOINTMENT.

>> THE JUDGE COULD DO THAT SUBJECTIVELY TO MAKE IT AN APPOINTMENT.

>> YES.

>> YOUR CONCERN IS NOT REALLY WITH THE SUBJECTIVE INTENT BUT WITH THE LENGTH OF TIME.

>> THAT IS CORRECT.
I THINK THAT IS CORRECT.
>> LOOKING AT THE 2006 UNANIMOUS
ADVISORY OPINION FOR THIS COURT,
IT SAYS UNDER PRIOR CASE LAW
VACANCY OCCURRED IN THAT CASE,
THE GOVERNOR RECEIVED AND
ACCEPTED STEVENSON'S RESIGNATION
AND THAT IS THE POINT OF LAW
THAT YOU AGREE WITH.
>> THAT IS CORRECT.
>> THAT GOES ON TO SAY BECAUSE
THE QUALIFYING PERIOD HAD NOT
COMMENCED UNDER THIS COURT'S
DECISION, THE ELECTION PROCESS
HAS NOT YET BEGUN, THIS ARTICLE
5 SECTION 11 BE CONTROLLED, THE
VACANCY SHALL BE FILLED BY
APPOINTMENT.
>> THAT IS ALL CORRECT.
>> IF WE WERE TO FOLLOW THAT,
THEN THIS WOULD BE AN APPOINTED
POSITION.
>> THE DIFFERENCE AND IT IS A
BIG DIFFERENCES THAT INVOLVES AN
ACTUAL VACANCY, LONG-TERM,
FORGET HOW LONG.
>> THAT WASN'T PART OF THE
REASONING, WAS IT?
>> IN THE PREVIOUS CASE IT
INVOLVED JUDGE FULLER, TALKING
ABOUT THE FACT IT HAD TO BE
DIDN'T --
>> IT WAS A 7 MONTH VACANCY.
>> YES.
BECAUSE OTHERWISE AN
UNREASONABLE VACANCY, TO GO BACK
TO YOUR EARLIER QUESTION I DON'T
THINK THE COURT DEFINED WHAT AN
UNREASONABLE VACANCY WAS.
I THINK THAT IS A GOOD ARGUMENT
FOR SAYING THAT THE COURT
DOESN'T NEED TO DEFINE A SHORT
TIME.
>> LET ME ASK ABOUT THE
PRACTICALITY OF THIS CASE AND
PRECEDENT.
OBVIOUSLY I AGREED WITH YOU,
YOUR DISSENT IN THE PRIOR ABCA13
CASE.

THE HALLWAY OUR LAW HAS DEVELOPED INCLUDING WHETHER THE VACANCY OR THE LETTER IS ACCEPTED BEFORE THE QUALIFYING PERIOD AND WE ARE RIGHT AFTER, CREATES AN ARBITRARINESS, SO TO ME I SEE THAT THIS, WHETHER IT IS ALL LEGISLATIVELY, CONSTITUTIONALLY OR BY THE COURT BUT IN THIS SITUATION IT DOES CONCERN ME THAT WE HAVE THE ALTERNATIVES WE HAVE A JUDGE IN THE WINGS WHO WAS, WENT THROUGH A JUDICIAL NOMINATING COMMISSION PROCESS, WE CAN ASSUME OTHER QUALIFIED PEOPLE.

AND APPOINTING HIM, AND THE SAME ABCA13, NOBODY ELSE PUT IN FOR THE SEAT PRESUMABLY, RELYING ON PRECEDENT.

IT CONCERNS ME FROM A PRACTICAL POINT THAT THE CHOICES HERE, AT LEAST HERE, GOING FORWARD MAY BE DIFFERENT, WE SHOULD STICK WITH OUR PRESIDENT AND LET THIS GO BY APPOINTMENT AND PROSPECT OF THE, DEPENDING, MAKE SURE THIS DOESN'T CONTINUE TO HAPPEN.

WHAT DO YOU SAY ABOUT THE FACT OF THE POLICIES IN FAVOR OF ELECTIONS THERE WASN'T ANY ELECTION HERE.

>> WHAT I SAY IS THERE WAS AN ELECTION.

OF THE CONSTITUTION CALLS FOR ANY ELECTION IT CALLS FOR ANY ELECTION WHETHER ONE PERSON QUALIFIES ARE 10 PEOPLE QUALIFY AND ALSO SAY THAT THERE IS PROVISION IN FLORIDA LAW THAT SAYS WHAT HAPPENS WHEN ONLY ONE PERSON QUALIFIES, THE PERSON VOTED FOR HIMSELF OR HERSELF AND

--

>> I SAYING THE REALITY IS WE HAD ONE PROCESS THAT WAS A FULL PROCESS AND ANOTHER, I WOULD ASSUME THERE ARE MORE PEOPLE IN THE CIRCUIT.

>> THAT IS RIGHT.

THE ANSWER TO YOUR BROADER QUESTION AND GETS TO A PROBLEM IN THIS CASE, ADVOCATING FOR ELECTIONS AND YET THERE WON'T BE A CONTESTED ELECTION.

THERE IS AN ELECTION, THERE WON'T BE A CONTESTED ELECTION.

I UNDERSTAND THAT.

THAT IS A CONCERN THE FIRST DISTRICT EXPRESSED.

I THINK THAT ONCE THIS PROBLEM IS RESOLVED, IF WE ADHERE TO WHAT WE SAID IF THERE ISN'T MACHINERY FOR ELECTING, WE FOLLOW THAT BECAUSE THAT IS THE WILL OF THE PEOPLE.

OF LAWYERS GET THE IDEA THE COURT IS WILLING TO SUPPORT THE CONSTITUTIONAL RIGHT TO AN ELECTION, THIS ISN'T GOING TO HAPPEN SO OFTEN.

IT HAPPENED EVERY ELECTION CYCLE.

IN THE FIRST MATTHEW FUNDERBUNK CASE THERE WAS NOT MUCH INTEREST IN ELECTIONS.

>> YOU ARE CONSUMING A REBUTTAL TIME.

>> I DO NOT.

>> THANK YOU FOR REMINDING ME.

>> ON BEHALF OF GOVERNOR SCOTT, AND THE CHIEF DEPUTY COUNSEL.

>> A FEW THINGS THAT CONCERN ME, AND THE PAST JURISPRUDENCE.

VACANCY OCCURRING AT THE TIME THE RESIGNATION IS ACCEPTED.

IN THIS CASE, MORE RECENT CASES WERE ONLY A MATTER OF A DAY OR TWO DAYS OR THREE DAYS, THERE SEEMS TO BE SOMETHING UNINTENDED WITH THAT, THAT SOMEBODY, MAYBE A MONTH OR WHATEVER, IS THAT TO THE CONSTITUTION OR SOMETHING THAT THE COURT HAS CREATED?

WHEN THE VACANCY OCCURS?

>> IT IS LONG SETTLED LAW.

SPECTOR VERSUS GLISSON ANNOUNCED THE TIME OF THE RESIGNATION IS TENDERED AND ACCEPTED BY THE GOVERNOR AND CONSISTENT WITH 114

OF THE FLORIDA STATUTES WHICH IS RESIGNATION OCCURS WHEN THE RESIGNATION TAKES PLACE.

>> WHAT CASES WE TALKED ABOUT AN ACTUAL VACANCY?

JUDGE FOSTER WHO COULDN'T SERVE ANOTHER TERM HAS BEEN SITTING AND CONTINUE TO SIT UNTIL A COUPLE DAYS BEFORE.

>> IN THE 1992 ADVISORY OPINION INVOLVING JUDGE FULLER, MORE SPECIFICALLY 2006 ADVISORY OPINION THE SHERIFF IN JUDICIAL VACANCIES ADVISORY OPINION FOR 2006, INVOLVED A RESIGNATION TENDERED BEFORE THE QUALIFYING PERIOD AND EFFECTIVE AFTER THE QUALIFYING PERIOD AND IN THAT CASE AS WELL THE COURT HELD TO ITS PRECEDENT THAT THE EFFECTIVE DATE OF THE VACANCY WHEN IT IS ACCEPTED RATHER THAN THE DATE IT BECOMES EFFECTIVE.

>> IN THAT CASE THERE WAS A TRUE -- HE WAS RESIGNING EFFECTIVE MAY 31ST SO THERE WAS A 7 MONTH VACANCY.

AND ACTUAL VACANCY.

THE OTHER QUESTION I HAVE, I KNOW I STOPPED YOU AT THE BEGINNING, IS THIS IDEA, I THINK IT CAME FROM ADVISORY OPINION. OF THE RESIGNATION BECOMES ACCEPTED BEFORE THE BEGINNING OF THE QUALIFYING PERIOD, IT GOES BY APPOINTMENT.

IT IS AFTER THE QUALIFYING PERIOD BY ELECTION AND I BELIEVE THAT WAS AN ADVISORY OPINION, WHAT IS THE RATIONALE THAT THE COURT WOULD HAVE ENUNCIATED WHICH SEEMS TO BE A VERY ARBITRARY DEADLINE WHEN YOU KNOW THERE ARE MONTHS AHEAD.

AND SINCE WE ARE CONCERNED ABOUT THE ADMINISTRATION OF JUSTICE IF THE CONSTITUTION DOESN'T SPEAK TO IT DOES THAT MAKE SENSE TO YOU?

>> LET ME ANSWER YOUR QUESTIONS

AND TURN.

THE LENGTH OF THE ACTUAL VACANCY, PICKING UP ON SOMETHING JUSTICE LAWSON MENTIONED IN THE EARLIER QUESTIONING, AS PART OF ITS RATIONALE IN THESE CASES AS TO THE LENGTH OF THE ACTUAL VACANCY, SPECIFICALLY IN THE 2002 ADVISORY OPINION WHEN THIS COURT RETIRED JUDGE HARLEY ON THE LEON COUNTY COURT DURING THE QUALIFYING PERIOD THIS COURT DETERMINED THE SEAT SHOULD BE FILLED BEFORE THE ELECTIONS PROCESS, NOTWITHSTANDING JUDGE HARLEY WAS INVOLUNTARILY RETIRED EFFECTIVE AT MIDNIGHT THE SAME DAY RESULTING IN AN 8 MONTH ACTUAL VACANCY IN OFFICE.

NOTWITHSTANDING THE 8 MONTH ACTUAL VACANCY THIS COURT SAID THE ELECTION PROCESS SHOULD CONTINUE BECAUSE THE ELECTION PROCESS HAD BEGUN.

EMPLOYMENT HAPPENED IN CASES WITH 7 MONTH ACTUAL VACANCIES, ELECTIONS HAPPENED WITH 8 MONTH VACANCIES.

>> SOUNDS TO ME LIKE JURISPRUDENCE CREATED SOMETHING NOT VERY JURISPRUDENTIAL HE SOUND IS WHAT I'M SEEING HERE. THAT IS MY POINT.

WE HAVE AN OPPORTUNITY TO MAKE SURE GOING FORWARD THAT THE SYSTEM CAN'T BE MANIPULATED. SEVERAL JUDGES IN THEIR HEART BELIEVE, OVER ELECTION BUT THE QUESTION IS VOTERS HAVE REJECTED THAT FOR TRIAL JUDGES AND CREATED BY JURISPRUDENCE, UNINTENTIONAL WHOLE, WHERE THE SYSTEM CAN BE MANIPULATED.

>> AS WE LAID OUT THE BRIEF THE CONSTITUTION PROVIDES WHEN VACANCIES OCCUR IN OFFICE, VACANCIES ARE FILLED BY THE GOVERNOR AND THAT IS WHAT THE CONSTITUTION SAYS.

THE COURT IN THE 2002 ADVISORY

OPINION IS EXCEPTION TO THAT.
AND JUSTICE LEWIS DISSENTED FROM
THAT OPINION, THE ELECTION
PROCESS, THAT LED US TO THIS
AREA.

THE POLICY RATIONALE, THAT WAS A
VACANCY AFTER THE QUALIFYING
PERIOD.

THE EVE OF AN ELECTION.

UNDER THOSE CIRCUMSTANCES IT
DOESN'T MAKE SENSE TO A POINT TO
NULLIFY AN ONGOING ELECTION.

THE 2002 CASE THE VACANCY
QUALIFYING IN THE ELECTION
PROCESS SHOULD CONTINUE.

AND THE VACANCY OCCURRED THE
QUALIFYING PERIOD TO THE
VACANCY, APRIL RESIGNATION, AND
THERE WERE CANDIDATES WHO WANTED
TO RUN FOR THAT OFFICE AND THIS
COURT THAT THE CONSTITUTION
REQUIRES VACANCIES TO BE FILLED
BY THE GOVERNOR AND QUALIFYING
PERIOD HASN'T HAPPENED YET IN
THE ELECTION PROCESS IS DONE AND
THE 2008 OPINION VACANCY
OCCURRED DURING THE QUALIFYING
PERIOD AND THEY SAID WE WON'T
LOOK AT FACTS SPECIFIC TO EACH
ELECTION CYCLE TO DETERMINE HOW
THE PROCESS SHOULD BE CARRIED
OUT.

WHEN DID THE VACANCY OCCUR?
WAS IT BEFORE OR AFTER THE
BEGINNING OF THE STATUTORY
QUALIFYING PERIOD?

WE DON'T HAVE TO LOOK AT THE
LENGTH OF THE VACANCY, SPECIFIC
NEEDS OF ANY TRIAL COURT,
SUBJECTIVE MOTIVATIONS OF THE
RETIRING JUDGE.

WAS IT BEFORE OR AFTER THE
QUALIFYING?

THERE IS AT LEAST ONE RATIONALE
FOR THAT APPROACH BEING TAKEN.

>> IS THERE A PROBLEM WITH THE
LANGUAGE THAT SAYS THE VACANCY
OCCURS WHEN YOU SEAL A LETTER AS
OPPOSED TO THE DATE THAT YOU
INDICATED IN THAT LETTER, YOU

WERE ACTUALLY LEAVING, RESULTING IN A REAL VACANCY AS OPPOSED TO THEORETICAL?

>> I DON'T THINK WE HAVE A DISAGREEMENT WITH OUR FRIENDS AS TO THAT LINE OF PRECEDENT AND THAT HAS EXISTED SINCE SPECTOR VERSUS GLISSON AND IS CONSISTENT WITH LANGUAGE OF ARTICLE 10 SECTION 3 IN CHAPTER 114 OF THE FLORIDA STATUTE AND WHAT THAT ALLOWS IS THE JUDICIAL NOMINATING PROCESS TO BEGIN, TO RESULT IN NOMINATIONS AND APPOINTMENT FOR A SEAMLESS TRANSITION.

>> ON THE OTHER HAND, CIRCUIT AND COURT ACCOUNT ELECTIONS ARE DIFFERENT FROM THE APPELLATE PROCESS BUT IN AN APPELLATE SITUATION, GENERALLY YOU GET, IF SOMEONE GETS TO THE END OF THEIR TERM SUCH AS JUDGE FOSTER WOULD HAVE AT THE END OF HIS AGING OUT, THE PROCESS STARTS, THE CONSTITUTION REQUIRES AT LEAST 60 DAYS BEFORE THE ACTUAL VACANCY.

WHY ISN'T THAT JUST AS GOOD A PROCESS TO HAVE A CIRCUIT COURT SITUATION?

>> I THINK THERE ARE DIFFERENT POLICY ARGUMENTS WHAT A BETTER SYSTEM WAS.

JUSTICE. THEY -- THE CLARIFYING AMENDMENT IS ONE WAY TO ADDRESS THIS.

AS A MATTER OF CURRENT PRECEDENT AND CURRENT CONSTITUTIONAL LANGUAGE I DON'T THINK THERE'S ANY DISPUTE THE VACANCY OCCURRED BEFORE THE QUALIFYING PERIOD AND IN ANY SUCH CIRCUMSTANCE VACANCIES BEFORE CANDIDATE IS QUALIFIED ARE FILLED BY THE APPOINTMENT PROCESS.

>> WHAT IS THE EXECUTIVE BRANCH'S VIEW?

IF WE HAVE A CIRCUMSTANCE, THIS COURT WOULD SAY WE CREATED A

LOW, JURISPRUDENCE THE TALKS, A THEORETICAL THING.
IT IS NOT A REAL THING.
CERTAINLY YOU CAN'T STOP JUDGES OR OTHER OFFICERS FROM RESIDING.
IT IS A PART OF WHAT HAPPENS.
THE CONSTITUTION DOES NOT PROVIDE FOR A YEAR'S WAIT TIME.
IT IS NOT CONSTITUTIONALLY ENSHRINED.
IT IS SOMETHING WE ALLOWED.
WHAT WOULD BE THE EXECUTIVE BRANCH'S VIEW IF A COURT WOULD SAY THE VACANCY, IT OCCURS, WHEN IT IS TENDERED AND ACCEPTED AND INDIVIDUAL JUDGES DO NOT HAVE THE POWER TO SUBVERT THE WILL OF THE PEOPLE EXPRESSED IN THE CONSTITUTION.
IT IS NOT WHAT WE WANT OR WHAT US LAWYERS ONCE.
IT IS WHAT THE CONSTITUTION SAYS AND ALTHOUGH I MAY PREFER AS MANY DO A MERIT RETENTION SYSTEM WE DON'T HAVE IT FOR TRIAL JUDGES.
WHAT WOULD BE THE EXECUTIVE'S RESPONSE TO AN OPINION OR THOUGHT OR AN ARGUMENT THAT WOULD SAY WE SHOULD NOT LET JUDGES OR POLITICIANS MANIPULATE WHAT THE CONSTITUTION CLEARLY SET FORTH, THAT IT OCCURS WHEN TENDERED AND ACCEPTED.
>> TWO RESPONSES TO THAT.
ONE MORE ON THE LAW AND ONE FROM PRACTICAL EXPERIENCE.
ON THE LAW THE CONSTITUTION DOES PROVIDE A MERIT SELECTION PROCESS TO FILL VACANCIES.
ARTICLE 5 SECTION 11.
THAT IS THE CIRCUMSTANCE HERE, TO FILL A VACANCY IN OFFICE FOR A LIMITED TERM FOLLOWED BY ELECTION FOR A FULL TERM.
THE MORE PRACTICAL CONSEQUENCES, WE HAVE NOT SEEN ANY FROM MISTER DAVID P. TROTTI V. RICK SCOTT, GOVERNOR, ET AL. ABOUT WHAT WILL HE IS ASKING THE COURT TO ADOPT

THAT WOULD NOT ALLOW A JUDGE TO RESIGN IN A WAY THAT WOULD ENSURE AN APPOINTMENT OR AN ELECTION OF HIS OR HER SUCCESSOR.

IF THIS COURT WERE TO SAY --
>> DOESN'T MEAN WE ARE TALKING IN TERMS OF WHAT IS THEORETICAL. IT IS NOT REALLY A VACANCY. THE LETTER SAYS I'M NOT GOING TO LEAVE UNTIL THE DAY BEFORE THE TERM EXPIRES.

>> IF THIS COURT WERE TO SAY THE VACANCY CANNOT BE BEFORE THE GENERAL ELECTION.

>> YOU CAN'T FIX IT IF YOU WANT TO RESIGN, GO AHEAD AND RESIGN. THE TERMS OF THE RESIGNATION BECOME A FACTOR AS THE CONSTITUTION SAYS, WHEN ACCEPTED BY THE EXECUTIVE.

>> THAT WAS SOMETHING MISTER DAVID P. TROTTI V. RICK SCOTT, GOVERNOR, ET AL. SUGGESTED ON PAGE 30 OF HIS BRIEF, RESIGNATIONS EFFECTIVE IN THE FUTURE ARE UNCONSTITUTIONAL, THAT WOULD BE A DRAMATIC DEPARTURE FROM THIS COURT'S PRECEDENT.

>> I DON'T KNOW.
WHAT PROHIBITS THAT?

>> I DON'T BELIEVE IT DOES, I DON'T BELIEVE ANYTHING IN THE CONSTITUTION DOES THAT. THE PETITIONER SUGGESTED THAT ON PAGE 30 OF HIS BRIEF THAT THE COURT MIGHT DECIDE RESIGNATIONS EFFECTIVE TOO FAR IN THE FUTURE ARE UNCONSTITUTIONAL BUT THOSE HAVE HAPPENED BEFORE.

>> IT WOULD BE EFFECTIVE AS THE DAY WE GET IT.
TO ME IT IS AN AFFRONT TO THE PEOPLE OF FLORIDA TO HAVE JUDGES THAT CAN MANIPULATE THE HEART OF WHO WE ARE AS A DEMOCRACY AND I THINK WITH THE TRIAL JUDGE HAD TO SAY IS THAT IS WHAT THIS IS DOING AND I LOOKING TO SEE IF

THERE IS NOT SOME OTHER LEGALLY SOUND BETTER WAY.

>> JUST SO I CAN UNDERSTAND, JUSTICE LEWIS, YOUR SUGGESTION IS A JUDGE WANTS TO RESIGN, THAT RESIGNATION MUST BE EFFECTIVE IMMEDIATELY, CANNOT BE DELAYED. IF THE RESIGNATION OF JUDGE FOSTER HAPPENED IMMEDIATELY IN APRIL, THEN I DON'T THINK THERE IS ANY QUESTION THAT VACANCY WOULD HAVE BEEN FILLED BY APPOINTMENT.

>> MY PROBLEM IS THE CHARADE BEING PLAYED, HE'S NOT REALLY RESIGNING.

>> WHAT THE PROBLEM WITH SUCH A COOL BE IT WOULD MAKE EVERY RESIGNATION EFFECTIVE IMMEDIATELY, YOU TURN IN THE RESIGNATION AS IT IS EFFECTIVE, THAT WOULD ESSENTIALLY GUARANTEE A TWO OR THREE MONTHS PHYSICAL VACANCY BEFORE THE PROCESS, THE MERIT SELECTION PROCESS CAN DO ITS WORK.

>> ABSOLUTELY RIGHT, A PRACTICAL MATTER AND IT COULD BE A 5 OR 6 MONTHS VACANCY.

>> WE HAVE SENIOR JUDGES IN THE LEGISLATURE IS PROVIDING THOSE AND THERE ARE HUNDREDS OF SENIOR JUDGES AROUND THE STATE, THERE IS NOT A SENIOR JUDGE -- WHY NOT PLUG THOSE IN UNTIL YOU NEED?

>> THAT WOULD BE CONTRARY TO A NUMBER OF OPINION SUGGESTING JUDGES SHOULD RESIGN EFFECTIVE IN THE FUTURE TO ALLOW FOR A SEAMLESS TRANSITION.

>> NOT SURE THERE IS A REASON, THEY ARE OVERWORKED OR CAN'T DO THIS.

AFTER 20 YEARS, WATCHING WHAT IS HAPPENING, WHAT IS GOING ON WITH THE TRIAL COURT SYSTEM, I CAN'T SEE, AND MORE THAN ADEQUATELY APPROVAL SENIOR JUDGES THAT COME THROUGH CONFERENCES.

AND PAGES AND PAGES OF THEM.

OUR CONCERN AS PEOPLE THINK THIS IS A LAUGHABLE SITUATION. ONLY LAWYERS BUT THEY VACANCY WHEN THE LETTER COMES IN BUT YOU DON'T HAVE A VACANCY UNTIL 10 MONTHS LATER BECAUSE ONE JUDGE DECIDED THAT IS WHAT HE OR SHE IS GOING TO DO.

>> IF THIS COURT WERE TO SAY JUDGE FOSTER'S RESIGNATION IS EFFECTIVE IMMEDIATELY AS TO APRIL 23RD WHEN IT WAS ACCEPTED BY GOVERNOR SCOTT THE RESULT OF THIS CASE WOULD BE ON OTHER GROUNDS IN THE PROCESS?

>> TRYING TO FIND IN THE FLORIDA CONSTITUTION.

THAT IS WHAT WE ARE TALKING ABOUT.

>> I DON'T KNOW.

IS IT POSSIBLE FOR SOMEONE TO WITHDRAW THE RESIGNATION?

>> I CHANGED MY MIND, I STILL HAVE 6 MONTHS.

>> UNDER THE COURT'S PRECEDENT IT IS POSSIBLE TO WITHDRAW A RESIGNATION UNTIL THE POINT IT HAS BEEN ACCEPTED BY THE GOVERNOR.

>> HOW DOES THE GOVERNOR ACCEPT THE RESIGNATION?

BY CONVENING THE JUDICIAL NOMINATING COMMISSION, I ACCEPT YOUR LETTER OF RESIGNATION?

>> IT IS A WRITTEN RESIGNATION AND SEPARATE CORRESPONDENCE ASKING THE JUDICIAL NOMINATING COMMISSION.

>> THE GOVERNOR CONVENES AND IF NOMINATED.

>> INSPECTOR VERSUS GLISTEN AND JUSTICE URBAN'S RESIGNATION, AND IT IS IRREVOCABLE.

AND IT IS PROPERLY DEEMED IRREVOCABLE.

>> ON THAT, A JUDICIAL CANDIDATE NOMINATED, AS A COURT JUDGE.

IF WE AGREE, AND WHAT JUSTICE LEWIS SUGGESTED, GOING WITH THE FIRST DISTRICT, WOULD HAVE TO

RUN FOR ELECTION IN 2020.
>> IF THE GOVERNOR ANNOUNCED HIS INTENT TO APPOINT COUNTY JUDGE LESTER BEST TO PROCEED.
>> FOR A YEAR, DOING THE MATH.
>> UNTIL THE NEXT GENERAL ELECTION MORE THAN A YEAR, AND AUGUST PRESUMABLY.
>> WE UNDERSTAND, THAT APPEARS TO OCCUR FOR MANIPULATION, MOTIVATED CONTENTIONS OCCUR IN EVEN NUMBERED YEARS.
WHEN THE VACANCY OCCURS IN AN ODD NUMBER OF YEARS, HAVE TO EXPLAIN WHY MERIT SELECTION AND OTHERS, THERE IS NO QUESTION THOSE SEATS ARE FILLED BY MERIT SELECTION.
IS THAT CORRECT?
>> THAT IS RIGHT.
THIS SEEMS TO COME UP IN AN EVEN NUMBER OF YEARS.
>> IN CASES RECENTLY WHERE EVERYBODY CAN'T EVEN RUN AGAIN, THESE SITUATIONS HAVE COME UP AND UNQUALIFIED, BUT INTENTIONALLY LEAVING TWO OR THREE DAYS BEFORE THE END OF THE TERM.
WE HAVEN'T HAD THAT.
>> THE CASES IN RECENT YEARS ARE ALL THAT SITUATION.
>> WE HAVE JUDGES, IN THE END OF DECEMBER AFTER THE CAPER.
IN THOSE CASES THE ELECTION PROCESS.
>> GOES BACK TO WHAT JUSTICE LEWIS DISSENTED TO SAY WHERE DO WE COME UP WITH THAT ONE SO WE PRINT ANOTHER ARBITRARY DISTINCTION.
>> WHAT WE WOULD ASK THIS COURT TO SAY CONSISTENT WITH THE 2006 ADVISORY OPINION, DO ANY ATTORNEYS SUCH AS MISTER PARIENTE 9 WANT TO RUN FOR THIS OFFICE, THE SCENE WILL BE UP IN TWO YEARS.
IT IS A LIMITED INITIAL APPOINTMENT AND THEY COULD RUN

FOR THAT SEAT.

MY TIME IS UP.

>> I WENT TO GIVE AN EXTRA MINUTE.

>> THANK YOU VERY MUCH.

JUSTICE LEWIS'S EARLIER POINT ABOUT THE ISSUES THAT CHANGED SINCE THEN.

THE MOST IMPORTANT DIFFERENCE BETWEEN NOW INSPECTOR VERSUS GLISTEN LEGALLY IS THE 1996 AMENDMENT TO THE CONSTITUTION, SPECTOR VERSUS GLISTEN HAD IS A CENTRAL PREMISE THAT PEOPLE WANT VACANCIES FILLED THROUGH THE ELECTION PROCESS AT THE EARLIEST OPPORTUNITY BY EXTENDING THE INITIAL APPOINTED TERM TO TWO YEARS BEYOND THE CLOSEST ELECTION.

PEOPLE UNDERMINED THAT PREMISE AND THAT IS ANOTHER REASON SPECTOR SHOULD BE ILLEGAL.

>> ANOTHER QUESTION.

AM I CORRECT THAT THE ISSUES WE HAVE BEEN DISCUSSING WERE DECIDED IN THE 2014 CASE.

>> YES.

>> AM I CORRECT THE PARTIES IN 2014 SOUGHT REVIEW AND IT WAS NOT GRANTED?

>> CORRECT.

>> WHAT WAS THE LEGAL ISSUE IN THE CASE THAT WE ARE CURRENTLY HERE ON TODAY?

>> WE BELIEVE LEGAL ISSUES AND FACTUAL ISSUES ARE LARGELY INDISTINGUISHABLE IN THE PARIENTE 9 CASE.

>> WASN'T THE ISSUE WHETHER THE TRIAL JUDGE AIRED IN A PRIMARY INJUNCTION?

>> THE VEHICLE WAS DIFFERENT IN A FEW CASES.

IN 2014 CASE MISTER DAVID P. TROTTI V. RICK SCOTT, GOVERNOR, ET AL. SUBJECTED THE PETITION FOR THE FIRST DISTRICT COURT OF APPEAL, IN THIS CASE A DECLARATORY JUDGMENT WAS SOUGHT

AND GRANTED BY THE TRIAL COURT
AND REVERSED BY THE FIRST
DISTRICT COURT OF APPEALS.

>> MAYBE I MISS READING IT BUT I
READ THE CASE AS SIMPLY HOLDING
BECAUSE OF THE 2014 OPINION
MISTER DAVID P. TROTTI V. RICK
SCOTT, GOVERNOR, ET AL. COULD
NOT SHOW SUBSTANTIAL LIKELIHOOD
OF SUCCESS ON THE MERITS AND
THEREFORE THE INJUNCTION WAS
INCORRECT SO THE COURT DID NOT
READ DECIDE ANY OF THE ISSUES.
THEY JUST DETERMINED THIS CASE,
THE HOLDING WAS THE TRIAL COURT
WAS BOUND BY THAT CASE.

IS THAT AN INACCURATE SUMMARY OF
THE CASE?

>> IT IS ACCURATE AND THE VIEW
EXPRESSED IN OUR JURISDICTION.
WE ASK THIS COURT TO DISCORD
JURISDICTION IS IMPROVISED AND
GRANTED OR OF THE DISTRICT
DECISION.

>> TO GO TO A POINT COUNSEL MADE
NEAR THE END ABOUT THE 96
AMENDMENT, ALL IT DID WAS
LENGTHEN TERM OF AN INTERIM
APPOINTMENT BUT DIDN'T MAKE IT
MORE PERMANENT OR CHANGE THE
RELATIONSHIP BETWEEN ARTICLE 5
SECTION 10 OR ARTICLE 5 SECTION
11 AND I WOULD LIKE TO READ YOU
ONE LINE, CITING 2009, LONG
AFTER THE 2006 AMENDMENT, THE
NOMINATING COMMISSION PROCESS IS
A RESTRAINT ON THE GOVERNOR, NOT
A NEW PROCESS OF REMOVING FROM
THE PEOPLE THEIR TRADITIONAL
RIGHT TO ELECT THEIR JUDGES.
GOES ON TO QUOTE AT LENGTH
SPECTRUM VERSUS GLISTEN.
EVERY MEMBER OF THE COURT FIND
THAT OPINION.

LET ME MAKE ANOTHER POINT.
IF I COULD FOCUS IN A LITTLE BIT
ON THE DIFFICULTY WE ARE HAVING
HERE.

I DON'T THINK WE DISAGREE ABOUT
THE BODY OF LAW THAT SAYS A

VACANCY IS CREATED IF THE RESIGNATION OCCURS BEFORE QUALIFYING.

WHAT IS A VACANCY?

IS THIS A VACANCY?

THE TRIAL JUDGE SAID THIS WAS AN ARTIFICIAL VACANCY.

THAT IS A GOOD WAY TO PUT IT.

MY QUESTION, WOULD YOU BE SATISFIED IF SOMEBODY RESIGNED 15 MINUTES BEFORE MIDNIGHT ON THE LAST DAY OF HIS OR HER TERM. NO WORK IS BEING DONE.

THE COURTHOUSE IS NOT EVEN OPEN BUT WE HAVE TO BLINDLY AND REFLEXIVELY FOLLOW A RULE THAT SAYS YOU KNOW THE JUDGE SUBMITTED RESIGNATION BEFORE THE QUALIFYING AND THERE ISN'T ANY REAL DIFFERENCE BETWEEN THAT EXAMPLE AND WHAT OCCURRED HERE.

ISN'T ANY REAL DIFFERENCE BETWEEN THAT AND SPECTOR. SPECTOR DIDN'T TURN ON THE FACT THE JUSTICE URBAN RESIGNED IN THE LAST DAY OR THE DAY BEFORE OR THE WEEK BEFORE.

THE WHOLE POINT IS THERE WAS INTERVENING ELECTION AND HAVE CITIZENS HAVE A RIGHT TO ELECT THEIR SUPREME COURT JUSTICE IN THE ELECTION.

>> WOULD YOU ALSO AGREE THAT THE ISSUES WE ARE TALKING ABOUT WERE DECIDED BY THE PEOPLE IN 2014 IN THE FIRST DAVID P. TROTTI V. RICK SCOTT, GOVERNOR, ET AL. CASE?

>> THEY WERE BUT I DISAGREE --

>> WOULD YOU AGREE THAT THE ISSUE ON APPEAL STATED IN THE OPINION WE ARE HERE ON IS THE TRIAL COURT ERRED IN GRANTING AN INJUNCTION ON THE BASIS THAT THERE WAS NO SUBSTANTIAL LIKELIHOOD OF SUCCESS.

IS THAT THE WAY THE COURT FRAMED THE ISSUE?

>> THE TRIAL COURT FULLY REACHED THE MERITS OF THE ISSUE AND --

>> TALKING ABOUT THE APPELLATE.
>> YOUR QUESTIONING ME ABOUT JURISDICTION.

I WILL RESPECT THE FACT THAT JURISDICTION IS ALWAYS OPEN IN THIS AND NO QUESTION ABOUT IT.

>> AS MUCH AS WE WANT TO DECIDE A CASE --

>> IN THIS CASE THE FIRST DISTRICT MADE ITS DECISION IN THIS OPINION, THE 18 OPINION BASED ON THE LANGUAGE OF THE CONSTITUTION, THE FIRST LINE OF THE STATE SUMMARY OF THE ARGUMENT IS THIS CASE TURNS ON AND INTERPRETATION OF THE STATE CONSTITUTION SO THE COURT, I THINK TO ANSWER YOUR QUESTION, THE COURT DENIED AN INJUNCTION BECAUSE IT DIDN'T AGREE WITH US ON THE MERITS. THE COURT REACHED THE MERITS ALL OVER.

>> ONE OTHER QUESTION.

YOU JUST SAID IF THERE IS AN INTERVENING ELECTION THAT MAKES THE DIFFERENCE.

IF YOU ARE -- IT SAID IF I AM RESIGNING OCTOBER 31, 2018, SIX DAYS BEFORE THE ELECTION, THIS WOULD BE AN APPOINTED SEAT.

YOU AGREE TO THAT.

>> YES I WOULD.

>> IN YOUR MIND IT ALL TURNS ON WHETHER OR NOT THERE IS IN FACT AN ELECTION BEFORE THE DATE OF THE RESIGNATION.

>> YES AND THAT IS NOT JUST IN MY MIND BUT WHAT SPECTOR SAYS. THE ONLY REASON TO MAKE AN INTERIM APPOINTMENT IS EMERGENCE OF PUBLIC BUSINESS.

FOUR DAYS, IS IT GOING TO SAY WE APPOINT SOMEBODY FOR FOUR DAYS?

I AM OVER -- SPECTOR SAYS, AND TO THE CONFERENCE ROOM AND HAVING TROUBLE WITH THAT I SUGGEST TO YOU THAT THE ANSWER IS THIS SHOULD BE AN ELECTION AND FLUSH THE DECISION OF THE

DISTRICT COURT.
>> THANK YOU FOR YOUR ARGUMENTS.