

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WHO HAVE CAUSE
TO PLEAD, DRAW NEAR, 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.
THE FIRST CASE ON THE DOCKET
THIS MORNING'S LEAGUE OF WOMEN
VOTERS IN FLORIDA VERSUS SCOTT.

>> MAY IT PLEASE THE COURT, JOHN
MILLS ON BEHALF OF THE
PETITIONER'S.

I RESERVE 7 MINUTES AND IF I
MADE SO I DON'T FORGET, I WILL
BEGIN WITH AN APOLOGY TO MY GOOD
FRIEND AND ESTEEMED COLLEAGUE
MISTER CAN TAROT.

SOME PEOPLE HAVE READ OUR
PETITION IS ACCUSING MISTER CAN
TEAR OF NOT BEING FORTHRIGHT OR
PROVIDING DOCUMENTS WHEN
REQUESTED.

NO SUCH INSINUATION WAS
INTENDED, NOR WOULD IT BE TRUE.
HE HAS BEEN NOTHING BUT HIGHLY
PROFESSIONAL THROUGHOUT AND WE
TRY TO COORDINATE AND
COMMUNICATE IN WAYS TO MAKE
THINGS AS EASY AS POSSIBLE WITH
THE COURT AND I REGRET ANY
SUGGESTION TO THE CONTRARY.

THE ISSUES, THERE ARE 3 ISSUES
BEFORE THE COURT TODAY AND NOT A
SINGLE ONE OF THEM DEPENDS WHO
WON THE ELECTION TUESDAY IF WE
KNOW THE ANSWER YET.

NOR ARE THEY UNIQUE TO TODAY'S
SITUATION.

THESE ARE ISSUES THAT ARE LIKELY
TO RECUR.

>> LET ME ASK YOU THAT.

IN VIEW OF THE PASSAGE OF THE AMENDMENT CONCERNING MANDATORY RETIREMENT WHICH NOW HAS A PROVISION ADOPTED BY THE PEOPLE, PROSPECTIVELY ADOPTED, A PROVISION THAT WILL REQUIRE UNIFORM RULE OF REQUIREMENT NO LATER THAN THE AGE WHEN A PERSON TURNS 75 WHICH IS DIFFERENT THAN WE HAVE NOW THAT WE HAVE COLLEAGUES SUBJECT TO MANDATORY RETIREMENT, THE WEIGHT IS OPERATING UNDER THE CURRENT VERSION THEY ARE REQUIRED TO RETIRE AT THE END OF THEIR TERMS.

THAT WILL NOT BE HAPPENING IN THE FUTURE.

UNDER THE NEW CONSTITUTIONAL PROVISION WE WILL NEVER FACE, AND UNLESS WE HAVE AN EXTRA AMERICA WHEN SIDDONS, AT THE END OF THE TERM?

>> YES AND NO.

BEFORE THE AMENDMENT IF A JUSTICE RESIGNS, A VACANCY RECUR IS WHEN RESIGNATION IS ACCEPTED WHEN THEY LEAVE.

THAT IS DECIDED BY THE COURT.

THAT IS NOT THE SCENARIO HERE OR ALL THESE OTHER REASON SOMEBODY COULD LEAVE.

THE ONLY SCENARIO UNDER THE CURRENT CONSTITUTION WE TALK ABOUT IS WHEN SOMEBODY SERVES OUT THERE FINAL TERM.

IN THIS CASE IT IS THE REASON THIS IS THERE FINAL TERM, THESE THREE JUSTICES CANNOT RUN FOR ANOTHER TERM BECAUSE OF MANDATORY RETIREMENT.

AND IN JULY, EVEN IF IT IS A DAY LEFT IN YOUR TERM OR WHATEVER, THAT IS GONE.

HOWEVER, THE SAME PROVISION WHAT APPLY WHERE THIS COULD OCCUR, IF A JUDGE OR JUSTICE WAS EVER NOT RETAINED, THERE'S A RETENTION ELECTION AND NOBODY HAS EVER NOT BEEN RETAINED YET BUT IT COULD

HAPPEN.

OR IF JUDGES AND JUSTICES DECIDE NOT TO SEEK RETENTION EVEN IF THEY ARE ELIGIBLE AND DON'T FIRE PAPERWORK OR IF THEY FORGET TO FILE THEIR PAPERWORK OR ANY OTHER REASON THEY DON'T QUALIFY FOR RETENTION.

ALL OF THOSE CIRCUMSTANCES THERE'S A SPECIFIC CONSTITUTIONAL PROVISION THAT IS NOT AMENDED THAT SAYS THEY COMPLETE THEIR TERM AND VACANCY OCCURS AFTER THE TERM HAS EXPIRED.

THIS CAN RECUR.

IT WOULD NOT RETURN HER IN A SITUATION OF MANDATORY RETIREMENT IT COULD RETURN WITH FAILURE TO RETAIN OR TO SEEK RETENTION.

>> I WANT TO UNDERSTAND IF IN LIGHT OF OUR ORDER THAT STATED THE INCOMING GOVERNOR HAS THE AUTHORITY.

ARE YOU REQUESTING THAT THE NOMINATIONS BE REOPENED?

>> THE APPLICATIONS, YES.

>> AND THIS IS THE PART THAT IS OF CONCERN, THAT NOTHING, EVERYTHING STOPS.

THE RELIEF YOU ARE SEEKING BECAUSE PREVIOUSLY, IN YOUR FIRST PETITION, YOU CONCEDED THAT THE JNC HISTORIC WORKED EARLIER.

>> WE CAN SEE THE CONSTITUTION IN OPERATIVE AT THAT.

>> EXTENDING IT TO SAY DECEMBER 8TH, WHAT YOU SAID IS A DATE OF 30 DAYS OR SO.

WHAT IS THE REASON FOR YOUR CHANGE POSITION AND WHY SHOULD WE NOT GO WITH YOUR ORIGINAL POSITION?

>> WE MAINTAIN THE POSITION IN OUR ORIGINAL PETITION AND FILE A SUPPLEMENTAL PETITION.

WE ARE SEEKING THREE THINGS. THE FIRST AND ONLY THING

RELEVANT FROM OUR ORIGINAL PETITION IS WE SEEK A DETERMINATION FROM THIS COURT AS TO WHEN NOMINATIONS CAN BE MADE. UNDER THAT PROVISION IS NO PROHIBITION ON MAKING NOMINATIONS BEFOREHAND BUT IT IS A QUESTION OF WHEN NOMINATIONS CAN BE MADE.

I WILL GET INTO THAT IN A MOMENT ABOUT TO BE VERY CLEAR, ISSUE 2 IS THE COMMISSION HAD NO AUTHORITY TO SET THE APPLICATION DEADLINE.

IT HAS NO AUTHORITY UNDER ITS RULES, THERE IS NO SUBSTANTIVE PROVISION THAT SAYS YOU SHALL NOT ACCEPT APPLICATIONS BEFORE THE VACANCY.

THEIR RULES WOULD BE CONSTRUCTED IN A WAY, HE ONLY HAD ONE OTHER VOTE.

THE MAJORITY MAY HAVE DISAGREED WITH HIM BUT I UNDERSTOOD HIS REASONING TO MEAN AS LONG AS THE COMMISSION'S RULES AUTHORIZED APPLICATIONS BEFORE AND START INTERVIEWS OR WHATEVER, IT COULD MAKE NOMINATIONS AT THE EARLIEST POSSIBLE TIME.

NOT THAT THE RULES DON'T ALLOW THAT.

>> ARE YOU DISTINGUISHING BETWEEN NOMINATIONS AND CERTIFICATION?

BECAUSE THE COURTS RULED CERTIFICATION CANNOT OCCUR UNTIL THE NEW GOVERNOR IS IN.

ARTICLE 5 SECTION 11 SEE WHICH GOVERNS THIS ALSO TALKED ABOUT THE NOMINATIONS SHALL BE MADE WITHIN 30 DAYS FROM THE OCCURRENCE OF A VACANCY SO IT WOULD SEEM TO ME THAT NOMINATIONS AND CERTIFICATION ARE ESSENTIALLY THE SAME.

>> WE ARE NOT SEEKING TO DISTINGUISH IS IT HYPOTHETICALLY POSSIBLE TO MAKE THE NOMINATIONS AND CERTIFY THEM TWO MONTHS

LATER?

I DON'T KNOW HOW YOU CAN DO THAT.

IT DOESN'T MAKE SENSE TO ME.

>> IT SEEMS THE CONSTITUTION DOESN'T ALLOW IT.

>> YOU HAVE TO READ THOSE SENTENCES TOGETHER AND WHEN YOU DO IT IS A SIMPLE TIMELINE.

>> WHAT IS YOUR ARGUMENT FOR THE PROCESS?

I AGREED BECAUSE I AGREE THE DEADLINE WAS SET BASED ON THE GOVERNOR'S LETTER THAT NOMINATIONS SHOULD BE REOPENED BUT WHAT IS YOUR ARGUMENT THAT NOTHING CAN START UNTIL AFTER THE NEW GOVERNOR IS SWORN IN? IF THE JNC CHANGED COMPOSITION, IF THE STATUTE SAID THE NEW GOVERNOR, THERE WILL BE A NEW JNC, IT WOULD HAVE A DIFFERENT BALLGAME.

HERE, JNC COMPOSITION DOES NOT CHANGE.

>> IT DOES NOT CHANGE BY CONSTITUTION BUT WHEN A NEW GOVERNOR TAKES OFFICE IT IS TRADITIONAL TO ASK THEM ALL TO RESIGN WHETHER THEIR TERMS ARE UP OR NOT.

>> DOES THAT HAPPEN WITH JNCs?

>> NOT SURE IT IS EVER BEEN POLITICIZED, NO IDEA IF THAT CAN BE DONE WILL BE DONE.

NOT SURE IF THERE'S AND INTENDS TO DO THAT.

IT WILL BE IN THEIR PREROGATIVE AND WOULD BE INAPPROPRIATE FOR ME TO ASSUME ONE WAY OR THE OTHER.

>> I AM A LITTLE CONFUSED.

EXPLAINED TO ME WHAT IS IT THAT CAN BE DONE BEFORE THE VACANCY OCCURRED AND CANNOT BE DONE?

CAN THE JNC INTERVIEW PEOPLE OR DO THOSE THINGS?

WHAT CAN THEY DO OR CANNOT DO?

WHAT DO YOU SAY?

>> UNDER SUPPLEMENTAL PETITION

THE SECOND ORDER BEFORE THE COURT TODAY, THE CONSTITUTION REQUIRES THEM TO FOLLOW RULES AND PUT RESTRICTIONS ON THOSE RULES AND LOOKING AT THOSE RESTRICTIONS THE ANSWER TO THE QUESTION IS NO, NOT THAT THEY WILL ACCEPT APPLICATIONS UNTIL THE VACANCY OCCURS.

NOT THAT APPLICATIONS SUBMITTED SHOULD BE THROWN AWAY.

I DON'T THINK THERE'S ANY HARM THEY HAVE BEEN ACCEPTED, AND THEY WILL ALL HAVE BEEN INTERVIEWED.

THAT IS FINE AND DOESN'T GO AWAY.

WE ARE JUST SAYING THEY ARE SUPPOSED TO WAIT BY THEIR OWN RULES UNTIL JANUARY 8TH.

>> YOUR ARGUMENT FOR THE FIRST PETITION HAS SHIFTED FROM AN ARGUMENT THAT WOULD DELAY CERTIFICATION OF THE NOMINATION UNTIL THE NEW GOVERNOR TAKES OFFICE TO AN ARGUMENT THAT WOULD PRECLUDE THE PROCESS FROM GETTING STARTED UNTIL THE NEW GOVERNOR TAKES OFFICE.

UNDER THE SCENARIO YOU ARE OUTLINING WITH THE SUPPLEMENTAL POSITION, THIS COURT WILL BE ON POSITION WHERE THERE WOULD BE THESE POSITIONS WOULD BE UNFILLED OR FILLED WITH OTHERS BUT THE NEW JUSTICES WOULD NOT, THE PROCESS FOR SELECTING THEM COULD NOT EFFECTIVELY START UNTIL THE NEW GOVERNOR TAKES OFFICE.

>> IT IS AN ENTIRELY NEW ARGUMENT.

>> IT IS.

LISTEN.

IF THIS COMMISSION HAD AMENDED ITS RULES TO PROVIDE APPLICATIONS BEFORE THE VACANCY, IT SHOULD BE AFTER THE ELECTION.

>> WHAT WOULD KEEP THEM FROM DOING THAT NOW.

WHAT WOULD PRECLUDE THEM FROM DOING THAT?

>> I'M NOT AWARE OF ANYTHING. AND IF A DON'T DO THAT, THEY WOULD FOLLOW YOUR.

AND MORE IMPORTANTLY THEIR RULES, THEY ARE REQUIRED TO FOLLOW THEIR RULES, YOU REVIEW THEIR RULES, LEGISLATURE REPEALS THEIR RULES, THEY CAN BE REPEALED.

IF IT HAS TO APPLY 6 MONTHS IN ADVANCE BEFORE ANY ELECTION OR WHATEVER, YOU SHOULD DO THAT BECAUSE THAT IS NOT FAIR OR THE LEGISLATURE SHOULD.

YOU MUST HAVE AN OPPORTUNITY TO DENY THE OPPORTUNITY.

>> IN ANSWER TO JUSTICE KENNEDY'S QUESTION, PREVIOUSLY IN YOUR PETITION YOU SUGGESTED THE DATE OF DECEMBER 8TH.

>> I DON'T REMEMBER IT BEING DECEMBER 8TH.

>> SOMETHING IN DECEMBER.

>> IF THEY DID IT DECEMBER 8TH THAT WOULD GET 30 MORE DAYS.

>> WHAT I WOULD ASK YOU, IN ANSWER TO THE QUESTION, THE ONLY THING YOU SAY STOPPED THE JNC FROM ACTING NOW TO INTERVIEW, BACKGROUND CHECKS IS THEIR OWN RULES.

IS THAT WHAT I'M UNDERSTANDING?

>> IT IS TWO PARTS, THAT IS THE MAIN PART.

EVEN IF THEIR RULES AUTHORIZED IT, NOW THAT WE HAVE SEEN THEIR RECORDS AND THEY HAVE GIVEN US THE RECORDS OF ALL THE MEETINGS, THEY DID NOT HAVE A MEETING OR A MAJORITY VOTE.

>> THIS ISSUE, I FEEL WE ARE HERE TO GET THIS CONSTITUTIONAL ISSUE STRAIGHT, THE ISSUE OF WHETHER THERE WAS MEETING TO SET THE DEADLINE AND MY QUESTION IS I DON'T THINK THEY HAVE THE AUTHORITY.

EVERYONE KNEW WHEN WE WERE GOING

TO RETIRE BECAUSE THEY KNEW OUR AGE.

IF THEY STARTED LAST YEAR ON THE PROCESS ABSENT THE GOVERNOR DIRECTING THEM NOT SURE THERE IS INDEPENDENT AUTHORITY TO START THE PROCESS SO THAT IS ANOTHER QUESTION BUT GIVEN THEY HAVE STARTED THE PROCESS AND NO JNC, NO GOVERNOR EVER INTERPRETED THEIR OWN RULES I READ BEFORE YOUR FIRST PETITION, TO INTERPRET THAT TO MEAN A CAN'T START THE PROCESS UNTIL THERE'S AN ACTUAL VACANCY.

EVEN THOUGH IT SAYS IT, IS IT THERE?

AND THE ACTUAL VACANCY.

>> THERE HAS BEEN NO ARGUMENT AS TO WHY THE SAME EXACT WORDS IN THEIR RULE THE TRACKS THE CONSTITUTIONAL LANGUAGE THE COURT UNANIMOUSLY SAID, THAT MEANS YOU CAN'T DO IT UNTIL THE VACANCY.

THEY DO THAT.

JUSTICE CAN TAROT TOLD THEM THAT.

>> THE WORD VACANCY MEANS DIFFERENT THINGS.

FACETS IN WHICH THEY ARE USING THE RULES, NOT NECESSARILY THE SAME SETS THEY USE ELSEWHERE. WOULD YOU ADMIT THAT?

>> THEY ARE NOT ON DIFFERENT DOCUMENTS.

WHEN RULES IN THE CONSTITUTIONAL USING THE SAME WORDS IN THE SAME CONTEXT THE CONTEXTS ARE NO DIFFERENT, EVEN IF THEY WERE ALLOWED TO INTERPRET THEIR RULES AS THEY HAVE, THEY NEED TO ACT BY MAJORITY VOTE.

THERE NEEDS TO BE MEETING AND THE PUBLIC HAS TO KNOW ABOUT IT AND THEY HAVE TO VOTE.

THIS IS A CONTROVERSIAL APPLICATION DEADLINE.

YOU HAVE BRIEFS FROM ALL KINDS OF ORGANIZATIONS SAYING WE WANT

TO APPLY.

>> BEFORE WE MOVE TO SOMETHING ELSE I CANNOT THINK OF A DELIBERATIVE BODY IN THIS BODY OR ANYWHERE ELSE BUT CAN'T WAIVE IT TO PROCEDURAL RULES.

>> THIS ONE CANNOT.

THE REASON --

>> THE LEGISLATURE DOES IT.

>> THERE IS NO RULE THAT SAYS THE LEGISLATURE MUST FOLLOW ITS OWN RULES AND ITS RULES CAN BE UP REPEALED BY ANOTHER BRANCH. THESE RULES CAN BE REPEALED BY YOU OR BY THE LEGISLATURE.

IF THEY CAN JUST WAVE AND NOT COMPLY WITH THEIR RULES, THAT REQUIREMENT THAT IS IN THE CONSTITUTION, THEY CAN'T REPEAL THEIR RULES BECAUSE THEY DON'T HAVE TO FOLLOW THEIR RULES. YOU CAN'T REPEAL THEIR RULES BECAUSE THEY DON'T HAVE TO FOLLOW THEM.

THEY HAVE TO FOLLOW THEM AS A MATTER OF CONSTITUTIONAL LAW, CONSTITUTIONAL PROVISION REQUIRING THEM TO HAVE RULES AND MAKING THEM SUBJECT TO REPEAL IS UNIQUE.

THERE IS NOT ANOTHER COMMISSIONER BODY I AM AWARE OF THAT DOES THEM.

THAT IS BINDING ON THEM.

IF THEY DON'T HAVE TO FOLLOW THEIR RULES THEN YOU ARE RIGHT TO REPEAL THE RULES, IT IS ABSOLUTELY MEANINGLESS.

YOU SHOULD NOT INTERPRET THE CONSTITUTION TO HAVE NOTHING LIKE THAT BE MEANINGLESS.

YOU HAVE TO HAVE THE RIGHT TO SAY YOU CAN'T DO THAT AND IF YOU REPEAL THE RULE YOU BETTER NOT FOLLOW IT ANYWAY.

IF THERE IS A RULE YOU KNOW WHAT THEY ARE, YOU ARE ENTITLED, THE PUBLIC IS ENTITLED THAT HELD THEM IN THE MOST SOLEMN OCCASION TO FOLLOW THEIR OWN RULES.

>> I AM STILL PUZZLED BY THE WAY THIS HAS EVOLVED BECAUSE THIS IS AN ARGUMENT THAT WOULD HAVE BEEN AVAILABLE FOR THE SUPPLEMENTS PETITION WAS FILED.

>> I DIDN'T HAVE THE INFORMATION THAT WAS AVAILABLE.

THE OTHER RULES SAY THEY ARE EFFECTIVE IN 2016.

I DIDN'T KNOW THEY COULD AMEND THEM.

I WOULD ASSUME THIS BODY WOULD FOLLOW ITS RULES.

>> I THOUGHT YOU WERE SAYING THE RULES REQUIRE THEY CAN'T ACCEPT THE APPLICATIONS UNTIL THE VACANCY OCCURS.

THAT OBVIOUSLY WAS AVAILABLE TO YOU ALL ALONG.

>> I HAVEN'T KNOWN WHAT THE RULES WERE.

>> WHAT DO YOU MEAN YOU DIDN'T -- THAT IS PUBLICLY ACCESSIBLE INFORMATION.

IF YOUR KNOWLEDGE IS NOT AT ISSUE, THIS IS AN ARGUMENT THAT WAS AVAILABLE TO YOU.

IF I REMEMBER YOUR ORIGINAL PETITION YOU ESSENTIALLY WERE SAYING IT IS FINE TO GO AHEAD AND GET STARTED.

YOU QUIBBLED ABOUT THE TIMING AND THOUGHT IT SHOULD BE LATER. YOU DIDN'T ATTEND TO THAT IN THE CONSTITUTION OR ANYWHERE BUT YOU BASICALLY AFFIRMED THEY ARE PROCEEDING WITH ACCEPTANCE OF APPLICATIONS UNTIL THE END OF THE TERMS THAT ARE TO BE FILLED. IS THAT CORRECT?

>> THAT IS NOT CORRECT.

I AFFIRMED THE CONSTITUTION OPERATED THEM FROM DOING THE.

I PRESUME THE COMMISSION AS THEY ARE ENTITLED TO DO HAD A MEETING AND SAID WE BETTER AMEND THE RULE BECAUSE WE WANT TO START EARLY AND AMENDED THE RULE WHICH THEY ARE ENTITLED TO DO AND HAD MINUTES AND I WOULD BE ABLE TO

SEE THERE WAS A MAJORITY VOTE
AND THIS WAS DONE.

THEY HAD EVERY RIGHT TO DO THAT
AND I WASN'T GOING TO PRESUME
THEY DIDN'T DO THAT.

WE KNOW WHERE CAN I FIND THAT
OUT OTHER THAN BY ASKING THEM
CAN I HAVE ALL THE MINUTES OF
YOUR MEETINGS?

I HAVE DONE THAT.

>> THE AMENDED RULES BECOME
EFFECTIVE BEFORE THEY ARE
REVIEWED BY THIS COURT.

>> I BELIEVE SO.

THERE IS NO PROVISION THAT
UPHOLDS IT.

IF THEY HAD A PUBLIC MEETING
THEY NEED TO GIVE SOME ADVANCE
NOTICE.

THEN WE CONSIDER A RULE CHANGE
TO ALLOW APPLICATION FOR A
VACANCY CAN DO THAT AND IF THEY
HAVE A MAJORITY VOTE IT IS THE
RULE UNTIL THAT IS REPEALED.
THEY HAVEN'T DONE ANYTHING TO
THOSE THINGS AND THEY HAVE A
DELIBERATIVE SESSION THEY HAVE
TO CONSIDER THE SINCE THE
APPLICATION DEADLINE THE
QUALIFICATION OF BEING A JUSTICE
HAVE CHANGED.

AND THEY KNOW ALL THE
AFRICAN-AMERICAN BAR
ASSOCIATIONS, WOMEN LAW
ASSOCIATIONS ARE SAYING THERE IS
NO SPECULATION LIKE THEY SUGGEST
IN THEIR RESPONSE, THEY SAY
OUTRIGHT THEY HAVE MEMBERS WHO
WANT TO APPLY, BUT WOULDN'T
APPLY WHEN IT LOOKED LIKE
GOVERNOR SCOTT WAS MAKING IT.

>> ISN'T IT THE CASE THAT IT HAS
BEEN KNOWN FOR A LONG TIME THAT
THERE WAS MUCH CONTROVERSY
SWIRLING AROUND HOW THESE
APPOINTMENTS ARE MADE AND HOW
THAT WOULD WORK.

THAT IT IS NOT NEWS TO ANYBODY.
AND APPLYING FOR JUDICIAL
POSITIONS, ONE OF THE KEY

FACTORS IS UNCERTAINTY.
NO ONE EVER KNOWS HOW THE
PROCESS WILL TURN OUT.
PEOPLE THAT WAIT FOR CERTAINTY
OR A HIGHER DEGREE OF CERTAINTY
IN THE PROCESS ARE GOING TO BE
WAITING FOR GODOT.
THIS WAS A KNOWN UNCERTAINTY.
I STRUGGLING TO UNDERSTAND WHY
PEOPLE ARE ENTITLED TO A HIGHER
LEVEL OF CERTAINTY.
>> I'M NOT SAYING PEOPLE ARE
ENTITLED, WHAT IS FAIR IS FAIR
AND KNOWING WHO WILL MAKE THE
SELECTION IS IMPORTANT.
>> YOU ARE NOT SAYING THEY ARE
ENTITLED TO IT?
I DON'T UNDERSTAND.
YOU ARE ASKING WE REQUIRE
SOMETHING, IF THEY ARE NOT
ENTITLED TO IT.
>> THEY ARE ENTITLED TO HAVE THE
RULES FOLLOWED.
THEY ARE NOT ENTITLED TO A
CERTAIN DEADLINE.
MY ONLY POINT IS THIS
DELIBERATIVE BODY INSTEAD OF A
CHAIR ON HIS OWN, IF THEY SAT IN
A ROOM AND SAID WHETHER THEY
AGREE THAT THAT IS UNREASONABLE
AND EVERYBODY SHOULD HAVE TO
KNOW THAT OR THEY SAID IT IS NOT
UNREASONABLE ESPECIALLY FOR A
PRIVATE LAWYER WHO THEY FILE AN
APPLICATION, THEIR BOSS KNOWS
THEY ARE LOOKING FOR ANOTHER
JOB, THEIR CLIENTS KNOW ABOUT
THE LAWYER, NEW CLIENTS MAY
NEVER HIRE THEM.
>> JON S. MILLS, I WOULD LIKE TO
ASK YOU, I DON'T CARE WHY YOU
DID NOT DO A SPECIFIC THING AT A
SPECIFIC TIME, BUT I'M VERY
INTERESTED IN WHAT THIS COURT
SHOULD BE DOING ABOUT WHETHER
YOU OPEN UP THE PROCEDURE, WHEN
THE DEADLINES GOT TO BE SO WOULD
YOU PLEASE GIVE ME YOUR BEST
ARGUMENT ABOUT WHAT WE SHOULD BE
DOING?

WHAT SHOULD THE JNC BE DOING
FROM THIS POINT FORWARD?

>> TWO THINGS THAT ARE CLEAR,
YOU SHOULD SAY THE APPLICATION
DEADLINE WAS INVALID AND THEY
MUST FOLLOW A DEADLINE THAT
COMPLIES WITH THEIR POOLS.
AND SECOND --

>> THE APPLICATION DEADLINE
ACCORDING TO THEIR RULES, TELL
ME SPECIFICALLY.

>> THAT APPLICATION DEADLINE CAN
BE NO EARLIER THAN JANUARY 8TH.
IF THEY CHANGE THEIR RULES IT
COULD BE EARLIER.

THE LAST THING I'M ASKING FOR IS
EXTRAORDINARY, I RECOGNIZE IT IS
SIGNIFICANT AND USE YOUR POWER
TO MAKE THOSE REMEDIES
MEANINGFUL, PROHIBIT THEM FROM
CHANGING THE RULES OF THE GAME,
AND OTHER GAMESMANSHIP.

>> WHAT IS THE STANDARD FOR AN
EXTRAORDINARY WRIT?

>> WHETHER THE STATUS QUO NEEDS
TO BE HELD IN PLACE SO SOMETHING
THE COURT HAS JURISDICTION TO DO
CAN BE MEANINGFUL.

IT IS NOT AN INDEPENDENT BASIS.

>> WHAT IS THE STANDARD?

>> IT IS WHETHER AN ACTION AS WE
NOW KNOW HAS BEEN TAKEN, AN
OFFICIAL ACTION IS WITHIN THE
ACTOR'S AUTHORITY.

>> THESE ARE DISCRETIONARY?

>> YES THEY ARE.

>> SLIGHTLY INTO YOUR REBUTTAL
TIME, YOU MAY PROCEED OR
RESERVE.

>> LET ME MAKE SURE I HAVE GOT
EVERYTHING I NEED TO.

I HAVEN'T TALKED A LOT ABOUT THE
TRAINING MATERIALS.

WITH TIME PERMITTED WE WILL RELY
ON OUR BRIEFS BUT THESE ARE
IMPORTANT TO US.

THEY ARE NOT COMPLYING WITH
THEIR RULES, THEIR OWN TRAINING
MATERIALS SHOW THEY ARE DOING
IDEOLOGICAL VETTING, THAT IS NOT

APPROPRIATE.

IT IS AGAINST THE RULES, THEY ARE NOT SUPPOSED TO DO THAT. THAT IS WHY WE NEED TO FREEZE THIS.

THE COMMISSION THAT CONSIDERS THESE TO THE EXTENT IT IS OKAY TO ACCEPT INPUT FROM THE GOVERNOR --

>> THE BASIS FOR THAT ARGUMENT THAT THIS WAS A PARTISAN TAINTED PROCEDURE WAS THERE WAS A VIDEO IN WHICH THE GOVERNOR ADDRESSED THE JNC AND SAID WHAT HE WAS LOOKING FOR BUT YOU DIDN'T HAVE ANY STATEMENTS THAT WERE MADE THAT WOULD SUPPORT THAT.

IT WAS YESTERDAY YOU FILE THE TRANSCRIPT, VERY SHORT STATEMENT FROM THE GOVERNOR THAT SAYS HE'S LOOKING FOR HIGH-QUALITY PEOPLE AND FROM THE GENERAL COUNSEL THE GOVERNOR BELIEVES MANY QUALITIES MAKE A GOOD JUDGE, EXPERIENCE DIVERSITY, AND HE TALKS ABOUT THEM COMMITTED TO THE RULE OF LAW.

>> THINGS THEY AGREE IS APPROPRIATE TO ALL JUDGES. THE NEW GOVERNOR WHO IS ELECTED SHOULD AMPLIFY IF THEY WISH. IT IS IMPORTANT THE JUDICIARY REFLECT THE RACIAL AND GENDER BACKGROUND OF OUR CITIZENRY. FOR EIGHT YEARS WE'VE NOT HAD A SINGLE AFRICAN-AMERICAN APPOINTED TO AN APPELLATE BENCH. IT IS IMPORTANT TO ME THESE REFLECT OUR POPULATION.

I DON'T WANT ANYBODY WHO'S NOT GOING TO FOLLOW THE LAW, BUT PROVIDE ME AS GOVERNOR CRIST DID TO HAVE THAT INPUT.

HE CAN'T FORCE THEM TO DO THAT BUT SHOULD HAVE THAT CONVERSATION, PLEASE DON'T BE ASKING THESE QUESTIONS WHEN YOU ASK ABOUT IDEOLOGY.

THAT MAKES ME NERVOUS BECAUSE THAT IS MY JOB TO DETERMINE THE

RIGHT IDEOLOGY.

>> WHAT JUSTICE LAWSON JUST READ WASN'T ABOUT IDEOLOGY.

>> IT IS NOT OVERTLY ABOUT IDEOLOGY, MOST OF THE BAR AND JUDICIARY REQUIRE SOMEONE LIKE GOVERNOR SCOTT SAID SOMEONE WILL FOLLOW THE LAW WHEN HE SAYS YOU, JUSTICES, THIS COURT, HAVE NOT FOLLOWED THE LAW.

>> THIS IS SO SPECULATIVE. WHAT WAS SAID THAT WAS IMPROPER? GIVE ME THE WORDS.

>> NOTHING, NOT ONE THING.

>> WHAT IS THIS ARGUMENT ABOUT?

>> IT IS ABOUT THE NEW GOVERNOR SHOULD BE ABLE TO --

>> THAT IS NOT AN ARGUMENT YOU EVER MADE.

THE ONLY ARGUMENT YOU MADE WAS THINGS WERE SAID TO THIS JNC THAT WERE PARTISAN AND IMPROPER AND WE SHOULD STOP THE PROCESS BECAUSE IT IS INFECTED WITH THIS PARTISANSHIP AND WHAT YOU POINTED TO WAS WHAT I JUST READ.

>> I POINTED TO MORE THAN THAT. PUBLIC STATEMENTS, THE VIEWPOINT, YOU MIGHT DISAGREE WITH IT.

MANY PEOPLE IN THE STATE AND THIS BAR AND ON THIS JUDICIARY BELIEVE THIS JNC IS IDEOLOGICALLY VETTING, WE HAVE OBJECTIVE EVIDENCE THAT THEY ARE.

AND THE NEW GOVERNMENT ENTITLED TO SAY DON'T DO THAT AT ALL OR IS SOMETHING PERMISSIBLE TO SHARE WITH THEIR IDEOLOGY? THAT IS ALL.

THE SECOND THIS LAST FORM OF RELEASES EXTRAORDINARY.

>> AS A MATTER OF DISCRETION GIVEN ALLEGATIONS OF YOUR PETITION AND WHAT YOU ARE SAYING NOW, WOULDN'T IT MAKE MORE SENSE TO LET THE NEW GOVERNOR FILE SOMETHING, INSTEAD OF ACTING, SPECULATING --

>> BEST WAY TO DO THAT IS TO
STAY EVERYTHING TO DO THAT.
>> THERE HAS NOT BEEN ELECTION
CERTIFIED AND ONCE THEY ARE
CERTIFIED IT APPEARS IT WILL BE
MISTER DESANTIS AND IF GOVERNOR
ELECT DESANTIS IS MADE GOVERNOR
ELECT HE CAN INTERVENE.
WE ARE HERE TO VINDICATE THE
PEOPLE, THE VOTERS, WE KNOW THE
VOTERS VOTED FOR ONE OF THESE
TWO MEN, TO HAVE HIS FULL
AUTHORITY, HE IS ENTITLED TO
HAVE THAT AUTHORITY SO IF YOU
DON'T WANT TO STAY UNTIL
JANUARY 8TH YOU MAKE AN
EXCELLENT POINT.
AND WILL JANUARY 8TH OR UNTIL
THE GOVERNOR ELECT SAYS PLEASE
LET THIS BEGIN, HAVE SOME
OPPORTUNITY TO PARTICIPATE IN
THE PROCESS.
WE DON'T WANT TO CREATE PROBLEMS
WITH THE COURT.
IT HAS BEEN DIFFICULT TO DRAFT
THESE ARGUMENTS IN THE MOST
RESPECTFUL WAY POSSIBLE.
WE BELIEVE THIS IS IDEOLOGICALLY
VETTING.
I HOPE THEY AREN'T.
MAYBE WE ARE WRONG BUT PUBLIC
PERCEPTION SHOULD MATTER.
IT SHOULD MATTER WHEN THE STAKES
ARE THIS HIGH.
THE CLEANEST PROCESS.
IF THEY SAY WE ARE GOING TO
REOPEN PEOPLE CAN APPLY NOW THAT
THE ELECTION IS OVER WE WILL
CONSIDER THOSE, LARGELY THIS
BECOMES THAT.
THE MOST IMPORTANT THINGS YOU
CAN DO TODAY THAT I DON'T THINK
SHOULD BE CONTROVERSIAL ARE TO
SAY THEY CAN'T NOMINATED UNTIL
JANUARY 8TH AND UNLESS THEY
VALIDLY CHANGE THE RULES AND
HAVE A MAJORITY VOTE, THEY HAVE
TO ACCEPT APPLICATIONS
JANUARY 8TH.
THEY HAVE TO DISREGARD

APPLICATIONS THAT HAVE BEEN RECEIVED, A LOT OF WORK HAS BEEN DONE.

I SEE NO REASON TO IMPOSE UNFAIRNESS ON THE APPLICANTS. MORON COMMISSION FOR THE WORK THAT IS DONE.

THOSE TWO THINGS HAVE BEEN CLEAR.

THE GAMESMANSHIP THAT CONTINUE TO SAY THE GOAL IS TO LET GOVERNOR SCOTT PARTICIPATE IN THE PROCESS.

HE HAS NO SUCH RULE, YOU SHOULD STOP IT.

>> UNLESS YOU WANT.

>> CAN I NEGOTIATE FOR TIME.

>> ON BEHALF OF THE JUDICIAL NOMINATING COMMISSION, AND ON BEHALF OF ITS CHAIR, JASON UNDER, I WILL RESERVE A FEW MINUTES ON BEHALF OF THE GOVERNOR.

AS TO GOVERNOR SCOTT, THE COURT HAS DETERMINED THE ISSUES IN ITS ORDER.

I BELIEVE AS TO THE COMMISSION THEY HAVE PROVIDED NO BASIS FOR THE EXTRAORDINARILY RELIEF THEY ARE REQUESTING.

>> DO YOU AGREE WITH MISTER MILLS THAT NOMINATION IS TIED TO CERTIFICATION.

EVEN THOUGH IT OUR ORDER WE SAID THEY CAN'T BE CERTIFIED UNTIL THE NEW GOVERNOR ASSUMES OFFICE.

IF YOU LOOK AT THE LANGUAGE OF ARTICLE 5 SECTION 11 SEE, IT SEEMS THOSE NOMINATIONS, WHATEVER THAT MEANS, THE NAMES, THE 18 NAMES OR WHATEVER IT WILL BE.

>> HOW I INTERPRET THE ORDER IN THE CONSTITUTION IS THE COMMISSION CAN CERTIFY IS NOMINATION BEFORE JANUARY 8TH. BUT THE 60 DAY PERIOD THE GOVERNOR HAS IN ORDER TO APPOINT DOESN'T BEGIN UNTIL THAT GOVERNOR TAKES OFFICER

REGARDLESS WHEN THE COMMISSION CERTIFIES, THE GOVERNOR WILL HAVE 60 DAYS FROM JANUARY 8TH.

>> IF YOU DON'T AGREE WITH THE ARTICLE 5 SECTION 11 SEE DOESN'T ALLOW NOMINATIONS TO BE MADE UNTIL 30 DAYS, WITHIN 30 DAYS MEANING AFTER THE OCCURRENCE OF THE VACANCIES.

>> DOESN'T SAY AFTER.

>> SO LET ME --

>> THAT IS WHAT IT IS ABOUT.

>> ONE OTHER THING AND PLEASE ADDRESS THAT.

THE DEADLINE ISSUE.

THE DAY AFTER THE LETTER, WHETHER IT WAS THE CHAIRMAN SET THE DEADLINE OF OCTOBER 8, '30 DAYS BEFORE THE DEADLINE.

HE WOULD HAVE 30 DAYS TO MAKE THE NOMINATIONS UNDER THAT LETTER.

WITH THE FACT THAT GOVERNOR SCOTT DID NOT HAVE THE AUTHORITY TO SET THAT DEADLINE.

WHAT IS THE POSITION OF WHAT THE JNC CAN DO ACTING ON ITS OWN WITHOUT DIRECTION FROM THE GOVERNOR WHO HAS AUTHORITY TO APPOINT?

>> YOU WANT ME TO ANSWER THIS ONE?

LET ME GET TO THE FIRST QUESTION, THE FINAL CONSTITUTIONAL LANGUAGE, THE CONSTITUTION PROVIDES THE NOMINATION SHALL BE MADE WITHIN 30 DAYS OF THE OCCURRENCE OF THE VACANCY.

THIS CAN BE INTERPRETED AS THIS COURT SAID A FEW TIMES IN BARCO VERSUS SCOREBOARD INTERPRETING THE TERM WITHIN INTERPRETING 1.5 WHICH REQUIRED ATTORNEYS FEES AND COSTS TO BE FILED WITHIN 30 DAYS OF THE JUDGMENT AND THE COURT IN INTERPRETING THE TERM WITHIN LOOKED BEHIND THE PURPOSE OF THE RULE AND THE WILL HAD BEEN CHANGED WHERE BEFORE IT HAD

SET A DEADLINE OF A REASONABLE TIME, AND SOME PEOPLE WERE MISSING A DEADLINE THEY DIDN'T KNOW EXISTED BECAUSE REASONABLE TIME CANNOT BE DETERMINED. THE COURT SAID IN THE CONTEXT OF THIS RULE, NO LATER THAN 30 DAYS YOU CAN FILE BEFORE JUDGMENT BUT YOU DON'T HAVE TO WAIT UNTIL IT IS FILED TO FILE A MOTION FOR ATTORNEYS FEES.

INTERPRETING THAT IS EXPANSIVE IN THAT CONTEXT.

SIMILARLY IT IS CITED, ANOTHER SUPREME COURT OPINION REGARDING A TAX ASSESSMENT AND WHEN YOU FILE TO CHALLENGE A TAX ASSESSMENT IN THE STATUTE IN 60 DAYS WHEN THE ASSESSMENT IS FINAL, AND FILED BEFORE THE TAX ASSESSMENT BECAME FINAL IN THE COURSE SAID NO.

WE WANT TO GIVE THEM AS MUCH TIME AS POSSIBLE.

IF THEY FILED IT BEFORE AS LONG AS THEY DON'T FILE IT AFTER 60 DAYS HAS RUN ON THE BACK END, THEY FILE IT ON THE FRONT END.

>> THE LANGUAGE WAS WITHIN 30 DAYS AFTER FILING, CORRECT?

THE COURT STILL SAID WE LOOK AT THE PLANE MEANING, COULD BE READ SEVERAL DIFFERENT WAYS, THAT IS WHAT MAKES SENSE IN CONTEXT HERE.

BARCO ANSWERS THE QUESTION, THEY CAN DO IT BEFOREHAND.

>> IT MAKES PERFECT SENSE IN THIS CONTEXT, BECAUSE THIS COURT IN 1992 IN THE ADVISORY OPINION SAID VACANCY SHALL BE LIMITED TO THE EXTENT POSSIBLE.

I WOULD LIKE TO QUOTE WHAT THE COURT SAID.

WHEN JNCs HAVE BEEN FOLLOWING FOR THE LAST 26 YEARS AND VACANCIES IN OFFICE ARE TO BE AVOIDED WHENEVER POSSIBLE.

WE ARE CONFIDENT THE FRAMERS OF ARTICLE 5 INTENDED THE

NOMINATING AND APPOINTMENT
PROCESS WOULD BE CONDUCTED IN
SUCH A WAY AS TO AVOID MINIMIZE
THE TIME THEY SEES EXISTED.
JNCs HAVE BEEN FOLLOWING THIS
AND THE PRACTICE UNIFORMLY FOR
THE LAST 20 PLUS YEARS HAS BEEN
THAT JNCs THE PROCESS AND MAKE
THE NOMINATIONS BEFORE THE
JUSTICE OR JUDGE LEAVES OFFICE.
THERE ARE NO EXCEPTIONS TO THAT
RULE FOR THE JUSTICES ON THIS
COURT OR JUSTICE, JUDGES ON THE
COURT.

>> IT HASN'T BEEN CHALLENGED.
JUST GOING BACK, THE ADVISORY
OPINION WHERE YOU WROTE YOUR
CONCURRENCE.

GOVERNOR BUSH REQUESTING THE
ADVISORY OPINION, THE
CONSTITUTIONAL VACANCY IS THE
STARTING POINT, WOULD BE 120 DAY
VACANCY.

ALL WE ARE TALKING ABOUT HERE,
YOU AND I, THE NOMINATION
PROCESS IS TERMINUS WITH THE
CERTIFICATION.

I DON'T THINK THERE HAS EVER
BEEN A CHALLENGE BECAUSE IT
HASN'T BEEN AN ISSUE.

AND SOMETHING DIFFERENT WE NEVER
HAD BEFORE WHICH IS A CHALLENGE
AND ALSO THE JNCs AT THE PRESENT
TIME ARE MARKEDLY DIFFERENT FROM
WHAT THEY WERE IN THE YEAR
BEFORE JUSTICE QUINCE WAS
APPOINTED BECAUSE ALL OF THEM
ARE ESSENTIALLY APPOINTEES OF
THIS CURRENT GOVERNOR.

THAT CHANGED THE NATURE OF THE
JNC.

TO SAY IT HAS BEEN DONE THAT WAY
DOESN'T MEAN THAT IS
CONSTITUTIONALLY THE CORRECT
INTERPRETATION.

IT HAS BEEN ASSUMED IN THAT 2006
OPINION, WOULD HAVE A START AT
THE POINT OF THE VACANCY.

WOULD YOU AGREE WITH THAT?

THE LETTER TO THE GOVERNOR.

>> I DON'T THINK IT DOES HAVE TO START AT THE POINT OF A VACANCY.

>> THE GOVERNOR IN THE LETTER IN WHICH THE ADVISORY OPINION IS ISSUED ASSUME THE VACANCY WOULD START THE PROCESS.

>> THAT REGARDED JUDGE IRVIN, AFTER THE COURT OPINION, AND THE JUDICIAL NOMINATING COMMISSION SENT OUT APPLICATIONS AND NOMINATED BEFORE JUDGE IRVIN LEFT OFFICE WOULD EVEN HAVING THAT OPINION THE JC INTERPRETED IT AS NOMINATING BEFORE THE VACANCY OCCURRED I THINK IN JANUARY OR WHENEVER IT WAS. THEY NOMINATED BEFORE THEN.

>> RAOUL G. CANTERO, THIS IS TROUBLING TO ME.

IF IT IS NOT COUPLED WITH THE CONCEPT OF VACANCY, A GOVERNOR OR JNC, EVERYONE KNEW 6 YEARS AGO THE AGE OF THE JUSTICES. THEY COULD HAVE ACTED THAT MANY YEARS AGO.

ACCORDING TO THIS ARGUMENT IT HAS NOTHING TO DO WITH THE TIMING OF A VACANCY.

>> THAT HAS NEVER HAPPENED IN THE HISTORY --

>> I DIDN'T SAY -- WE ARE PLAYING WORD GAMES THIS MORNING. I'M ASKING YOU WITH THE THEORY BEING ADVANCED IF IT IS NOT TIED TO THE VACANCY ITSELF, THEY CAN ACT AT ANY TIME INCLUDING, IT IS KNOWN IT MAY BE LEAVING, 6 YEARS AGO.

>> THAT WOULD BE UNREASONABLE AND IT WOULD BE AVAILABLE AT THAT POINT BUT THAT HAS NEVER OCCURRED.

>> NOTHING WOULD STOP ACCORDING TO THE ARGUMENT BEING MADE. IF IT IS NOT TIED TO VACANCY, THE LEAVING OF OFFICE, IT CAN BE DONE.

>> WHEN A VACANCY OCCURS WE KNOW OF VACANCY IS GOING TO OCCUR IMMINENTLY, IT DOESN'T --

>> WHERE DID IT COME FROM?
THERE IS NO IMMINENTLY IN THERE.
YOU ARE ARGUING ON ONE SIDE THAT
THERE IS NO RESTRICTION AT ALL.
>> YOU HAVE TO INTERPRET THOSE
WORDS REASONABLY.
YOUR INTERPRETING THE
CONSTITUTION, YOU HAVE TO
INTERPRET THEM IN A WAY THAT
WILL COMPLY WITH THE
CONSTITUTION, NOT IN A WAY --
>> THEY COMPLY WITH THE
CONSTITUTION BECAUSE ACCORDING
TO THE ARGUMENT I AM HEARING THE
PROCESS IS NOT TIED TO VACANCY.
>> IT IS TIED TO A VACANCY BUT
IF THE PROCESS STARTED COULDN'T
EVEN START UNTIL JANUARY, THEY
ARE MAXIMIZING THE TIME OF THE
VACANCY BECAUSE THE VACANCY,
THEY COULDN'T EVEN SEND A CALL
FOR APPLICATIONS.
>> I UNDERSTAND THAT.
I'M ASKING ABOUT THE ARGUMENT
THAT IT IS NOT TIED TO VACANCY.
WHERE'S THE POINT THEY CANNOT
OPERATE?
ACCORDING TO THE ARGUMENT YOU
ARE MAKING THEY COULD ACT AT ANY
TIME ON THEIR OWN MOTION, THEIR
OWN ACTIVITY.
>> WITHIN 30 DAYS OF OCCURRENCE
OF A VACANCY COULD BE
INTERPRETED 30 DAYS BEFORE, 30
DAYS AFTER UNLESS GRANTED BY THE
GOVERNOR ANOTHER 30 DAYS WHICH
HAPPENED IN THIS CASE.
GOING 60 DAYS BACK, 60 DAYS
FORWARD, NOT BACK AS LONG AS YOU
ONES, NOT INFINITELY BACK BUT 60
DAYS.
THAT IS AN INTERPRETATION THAT
COMPLIES WITH THE PLAIN LANGUAGE
OF THE CONSTITUTION EXCEPT THE
GOVERNOR GIVES AN EXTENSION 60
DAYS BEFORE OR AFTER.
>> YOU NEED TO COMPLY WITH YOUR
OWN RULES, THE APPLICATION
PROCESS SHOULD NOT BE COMPLETE
UNDER HIS ARGUMENT, BEGIN UNTIL

JANUARY?

>> ONE A VACANCY OCCURS THE JNC
SHELL CALL FOR A NOMINATION.
ALL JNCs HAVE THE SAME LANGUAGE,
ALL 5 HAVE THAT LANGUAGE, THEY
INTERPRETED THE LANGUAGE IN THE
RULES AS ONE OF VACANCY IS
IMMINENT SO THEY CAN START THE
PROCESS AND COMPLY WITH THE GOAL
OF THE CONSTITUTION TO MINIMIZE
THE TIMING OF A VACANCY.
IT WORKED PRETTY WELL, NOBODY
COMPLAINED IT HASN'T WORKED FOR
THE LAST 20 YEARS.

I THINK THIS IS MUCH ADO ABOUT
NOTHING.

I'M TRYING TO FIGURE OUT WHAT WE
DID WRONG.

>> MY QUESTION ABOUT
NOMINATIONS.

IN LIGHT OF WHAT WE SAID, THAT
THE GOVERNOR HAS 60 DAYS FROM
WHEN THE NOMINATIONS HAVE BEEN
CERTIFIED THEIR CERTIFIED BY
JUDICIAL NOMINATING COMMISSION,
CORRECT?

>> YES.

>> IF YOU READ THAT IN
CONJUNCTION WITH THE FIRST
SENTENCE I DON'T KNOW HOW YOU
CAN SAY NOMINATION WHICH IS THE
NAME GO OUT ANY EARLIER THAN
WHEN THE NEW GOVERNOR TAKES
OFFICE AND MOST RESPECTFULLY.
LET'S GO TO THE SECOND POINT CAN
THEY START EARLIER, TO FOLLOW UP
ON WHAT JUSTICE LEWIS ASKED, HAS
IT EVER BEEN THE CASE THAT THE
JNC HAS ACTED ON ITS OWN AS
OPPOSED TO DIRECTION FROM THE
GOVERNOR IN OFFICE TO START THE
PROCESS?

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

I DON'T KNOW IF THAT HAS EVER
HAPPENED.

I WAS A PRECIPITATING EVENT.

I WILL SAY THAT.

IN THE VAST MAJORITY, THEY USE
THE GOVERNOR'S LETTER IS A

PRECIPITATING EVENT, NOT THAT THEY HAVE TO DO IT AND -- THEY CAN ALWAYS SAY NO.

>> THIS IS THE GOVERNOR'S JNC.

>> THE NEXT GOVERNOR FOR THREE YEARS, IS THAT HOW LONG WE WANT TO WAIT UNTIL THE GOVERNOR PUT HIS OWN JNC IN.

>> THE DEADLINE, I'M MORE CONCERNED WITH WHAT IS BEING ASKED FOR THAT BECAUSE THE DEADLINE WAS SET BASED ON A LETTER BY GOVERNOR SCOTT WHO DID NOT HAVE THE AUTHORITY TO MAKE -- TO SEND THAT LETTER, NO ASSERTIONS ON GOVERNOR SCOTT IN ACCORDANCE WITH PAST TRADITION THAT THE PROCESS SHOULD NOT NECESSARILY STOP BUT SHOULD BE REOPENED FOR ANY ADDITIONAL NOMINATIONS.

>> DON'T THINK THERE HAS BEEN ANY ARGUMENT, NOTHING IN THE CONSTITUTION WOULD PROHIBIT JNC FROM SENDING OUT A LETTER EVEN WITHOUT A LETTER FROM THE GOVERNOR.

HISTORICALLY AND TRADITIONALLY THAT HAS BEEN A PRECIPITATING EVENT BUT IT IS NOT LEGALLY REQUIRED.

THEY CAN TO HONOR AND WITH THE GOVERNOR SCOTT HAD THE AUTHORITY OR NOT.

IT IS TOTALLY IRRELEVANT BECAUSE JNC CAN DO IT ON THEIR OWN.

>> IS THERE ANYTHING IN THE RULES THAT PROHIBIT JNC NOW?

IF IT WANTED TO OPEN UP THE CASE AND EXTEND THE DEADLINE. GO?

>> I DON'T THINK SO.

THEY CAN DO THAT.

MY BIGGEST PROBLEM IS THE LEAGUE OF WOMEN VOTERS, NOBODY EVER ASKED THE JNC TO EXTEND THE DEADLINE TO EXPEND UNTIL SEPTEMBER 20, 2018, WHEN THEY FILE THIS POSITION.

WE NEVER GOT A CALL, NOBODY CALLED THE CHAIR, NO LETTER

SAYING PLEASE EXTEND THE APPLICATION DEADLINE, ASK FOR MORE APPLICATIONS, THIS UNCERTAINTY, THEY WENT STRAIGHT TO LITIGATION, PERHAPS SOMETHING COULD HAVE BEEN DONE, MAYBE NOT BUT WE WILL NEVER KNOW.

>> WHAT WOULD BE THE DOWNSIDE? SOMETHING LIKE THAT, MORE PEOPLE APPLY.

>> WE HAVE 59 APPLICATIONS BUT DESPITE WITH THE AMIGA SUGGESTS THERE ARE SEVERAL AFRICAN-AMERICANS, HISPANICS, WOMEN, ASIANS WHO HAVE APPLIED, WE HAVE MORE APPLICATIONS THAN WE EVER RECEIVED, AND MORE APPLICATIONS THAN EVER, NO EVIDENCE WHATSOEVER THAT WE WOULD GET MORE APPLICATIONS. WHEN JUSTICE QUINCE WAS APPOINTED THEY CALLED FOR MORE APPLICATIONS.

NUMBER FORTHCOMING.

NO EVIDENCE THEY WOULD DO ANY GOOD AND WOULD DO BAD BECAUSE IT WOULD DELAY THE PROGRESS.

>> THERE IS NO EVIDENCE OTHER PEOPLE WOULD NOT APPLY.

THIS WAS AN ARTIFICIAL DEADLINE, WHY NOT?

THAT WAS THE QUESTION.

WHAT IS THE DOWNSIDE OF OPENING THE PROCESS, AT LEAST ANOTHER 30 DAYS SO EVERYONE KNOWS YOU HAVE AN OPPORTUNITY, THEY KNEW AT THAT POINT BUT THE LANDSCAPES ARE CHANGED WITH THE ISSUANCE OF THIS ORDER ON OCTOBER 15TH SO WHAT IS THE DOWNSIDE TO DOING THAT?

IF THE CERTIFICATION CAN'T BE MADE UNTIL A NEW GOVERNOR'S SWORN AND WHAT IS THE DOWNSIDE? WE ARE HERE NOVEMBER 8TH, THAT IS GOING TO TAKE PLACE IN JANUARY SO WHAT IS THE DOWNSIDE?

>> WE CAN NOMINATE NAMES BEFORE JANUARY 8TH, THAT WILL GIVE TIME TO VET.

>> LET'S ASSUME ON JANUARY 8TH,
THE JANUARY COMMISSION UNTIL
JANUARY 8TH, WHAT IS THE
DOWNSIDE?

TWO MONTHS FROM NOW.

>> I DON'T KNOW THAT THERE IS A
DOWNSIDE EXCEPT THE THANKSGIVING
HOLIDAYS AND CHRISTMAS HOLIDAYS
ARE COMING UP IN NOVEMBER AND
DECEMBER AND IT IS A HARD ENOUGH
PROCESS TO GET EVERYONE TOGETHER
FOR THESE FOUR.

>> I AM SURE PEOPLE WILL MAKE --

>> YOU SAID IF THE LEAGUE OF
WOMEN VOTERS HAD ASKED NICELY.

>> BEFORE THEY FILED LITIGATION.

>> ALL THE FLORIDA ASSOCIATION
FOR WOMEN LAWYERS, THE NAACP,
BLACK LAWYER ORGANIZATIONS ARE
ASKING THIS COURT BUT ALSO I'M
ASSUMING ASKING THE JNC, SEEMS
TO ME IF WE ARE REALLY TRYING TO
ACT IN A WAY THAT IS JUST WE
FORGOT SOMETHING THAT NEVER
HAPPENED BEFORE WHICH IS THREE
JUSTICES OF THIS COURT WILL BE
RETIRING AT THE SAME TIME BY
MANDATORY RETIREMENT, THE SECOND
AND THIRD WOMAN ON THE COURT ARE
RETIRING AND THE ONLY
AFRICAN-AMERICAN ON THIS COURT
IS RETIRING.

GIVEN THAT TO SAY THAT WITH
THREE VACANCIES YOU HAD 59
APPLICATIONS AND THAT IS A
RECORD NUMBER SEEMS TO BE NOT
TAKING IN THE REALITY OF THE
FACT THAT THERE ARE ONLY 6
AFRICAN-AMERICANS THAT APPLIED
AND 11 WOMEN AND I WOULD JUST
WHENEVER THIS COURT DOES, YOU
HAVE ALWAYS ACTED HONORABLY TO
DO A GREAT DEAL BY REQUESTING
JNC TO DO WHAT IS REQUESTED TO
OPEN IT UP FOR 30 DAYS, DID THAT
TODAY, IT WOULD PERHAPS STOP A
GREAT DEAL OF THIS CONTINUING
CONTROVERSY.

I RESPECTFULLY SUGGEST THE FACT
THAT THERE ARE 59 APPLICATIONS

AND SUCH HARD WORK AND YOU HAVE TO DO MORE WORK AND THERE IS A VACANCY ON THIS COURT FOR 30 DAYS OR 60 DAYS THE COURT WILL DEAL WITH IT, TALKING ABOUT THE NEXT 40 YEARS ON THE COURT IF YOU NOMINATE A YOUNG ENOUGH JUSTICE.

IT IS A MONUMENTAL TIME IN OUR STATE.

>> THE QUESTION BEFORE THE COURT IS WHETHER THE DECISION TO DO SO OR NOT IS SO EXTRAORDINARY THAT IT WARRANTS RELIEF FROM THE COURT.

THAT IS WHAT WE ARE HERE TO TALK ABOUT.

THAT REQUEST TO THE JNC IS TOTALLY LEGITIMATE.

>> THE OCTOBER 8TH DEADLINE WAS APPROPRIATELY SET BECAUSE IT WAS BASED ON A DIRECTION FROM THE GOVERNOR THAT WAS DECLARED INVALID.

IN RESPONSE TO WHAT JUSTICE LEWIS SAID, IT WAS A MONUMENTAL TASK.

>> THE OUTSIDE DEADLINE, 60 DAYS, ONE OR THE OTHER.

THAT I DON'T THINK THAT SHOULD BE A CONCERN FOR THE COURT AND AS FAR AS THE AUTHORITY WHETHER THE GOVERNOR HAD AUTHORITY TO DO SO OR NOT THE JNC HAS AUTHORITY. I'M RUNNING INTO TIME, I ASK YOU TO DECLINE THE ISSUE FOR THE COMMISSION.

>> WHAT I THINK IS A LIMITED PURPOSE, RELIEF REQUESTED IN THE SUPPLEMENT A PETITION AGAINST GOVERNOR SCOTT BY PETITIONERS HERE.

I WANTED TO TALK ABOUT SOMETHING JUSTICE KENNEDY MENTIONED AT THE BEGINNING OF THIS ARGUMENT THAT THIS IS IN ALL LIKELIHOOD THE LAST TIME THIS PRECISE ISSUE WILL OCCUR AS A RESULT OF THE ADOPTION OF AMENDMENT 6. ABSENT AN UNPRECEDENTED

CIRCUMSTANCE SUCH AS FAILURE OF VOTERS TO RETAIN A JUSTICE THE SITUATION WILL NOT OCCUR AGAIN. AS JUSTICE. HE --PARIENTE MENTIONED IT WAS ALWAYS WORKED OUT WITHOUT CONTROVERSY. GOVERNOR ELECT DESANTIS AND GOVERNOR SCOTT SAID THEY WOULD DESIRE TO WORK SOMETHING OUT WITHOUT LITIGATION.

>> IS THAT THE WAY THE STATE OPERATE?

A COUPLE POLITICIANS GETTING TOGETHER AND AGREEING WHAT THEY WANT TO DO NO MATTER WHAT THE CONSTITUTION SAYS?

IS THAT WHAT YOU ARE ARGUING?

>> IN THE CONTEXT OF A DISCRETIONARY WRITTEN --

>> I'M TALKING ABOUT OUR CONSTITUTION.

YOU SUGGEST WE SHOULD ALLOW A COUPLE POLITICIANS TO GET TOGETHER, AND THEY ON THEIR OWN CAN DECIDE WHAT THEY WANT TO DO NO MATTER WHAT THE CONSTITUTION SAYS?

>> I'M NOT SUGGESTING THAT AT ALL.

I'M SUGGESTING THE WAY INCOMING AND OUTGOING GOVERNORS HAVE RESULT THIS ISSUE HAS ALLOWED FOR A PROCESS TO UNFOLD WITHOUT ANY CONTROVERSY.

JUSTICE QUINCE'S APPOINTMENT WAS MADE 20 YEARS AGO --

>> TAKE INTO CONSIDERATION THE LAY OF THE LAND.

WE HAD A DIFFERENT JUDICIAL NOMINATING COMMISSION PROCESS AND TOTALLY DIFFERENT KIND OF PROCESS TODAY.

AFTER THAT, EVERYTHING CHANGED AND NOW WE HAVE A JUDICIAL NOMINATING COMMISSION THAT IS APPOINTED SOLELY BY ONE PERSON. YOU HERE AND YOU READ ABOUT THIS IS SUPPOSED TO BE A FAIR AND IMPARTIAL PROCESS, TO BE REALISTIC ABOUT THE SITUATION

HERE AND THEY MAY HAVE GOTTEN TOGETHER THEN, A WHOLE DIFFERENT LANDSCAPE.

>> JUSTICE QUINCE, THE SUPPLEMENT A PETITION THE PETITIONERS HAVE FILED HAS A LOT OF ALLEGATIONS AND ASPERSIONS ON MY CLIENT AND MEMBERS OF THE JUDICIAL NOMINATING COMMISSION. IN THE CONTEXT OF ORIGINAL PROCEEDING BEFORE THIS COURT, WE ARE NOT AFFORDED THE OPPORTUNITY TO RESPOND TO THE ALLEGATIONS. THEY INCLUDED A TRANSCRIPT OF JNC TRAINING, BECAUSE I WOULD ASK EACH OF YOU TO LOOK AT THE TRAINING PROVIDED TO THE JNC MEMBERS INCLUDING ABERDEEN, WHAT HE THINKS IS IMPORTANT IN THE PROCESS.

THE GOVERNOR WHAT'S JUDGES WHO WILL SERVE WITH HUMILITY. I DON'T THINK ANYTHING IS CONTROVERSIAL IN THE PROCESS. AS TO THE IMPORTANT OF DIVERSITY IN THE APPOINTMENTS THIS IS THE FIRST TIME IN HISTORY A SUPREME COURT JNC MAKING APPOINTMENTS WAS COMPRISED OF 5 WOMEN OUT OF 9 MEMBERS APPOINTED BY GOVERNOR SCOTT, TWO MEMBERS OF RACIAL MINORITY GROUPS ON THE SUPREME COURT JNC.

AS TO THE IDEA THE GOVERNOR HAS REJECTED JNC NOMINATIONS AS HE IS ALLOWED TO DO UNDER THE STATUTE, HE HASN'T DONE THIS ON THE SUPREME COURT VACANCY. ALL THE MEMBERS OF THE SUPREME COURT JNC WERE APPOINTED OFF OF LISTS SUBMITTED WITHOUT ANY REJECTIONS TO THAT.

WITH THE GOVERNOR AND THE GOVERNOR ELECT STATING, THE ACTUAL CONCRETE AND PARTICULARIZED INTEREST WITH THE EXECUTIVE AUTHORITY WITH NEITHER OF THEM RAISING AN ISSUE FOR DISPUTE BEFORE THIS COURT, A DISCRETIONARY WRITTEN THAT THERE

WOULD BE AMPLE ROOM TO DISCHARGE JURISDICTION, AND SOME OTHER GROUNDS TO ALLOW THE PROCESS TO MOVE FORWARD.

>> I NEVER HEARD AN ANSWER. HOW WOULD YOU HAVE A WARRANT TO STOP NOMINATING JUSTICE LAWSON'S SUCCESSORS?

WE HAVE TO BE CORRECT. AS TO WHETHER THERE IS A GAP, THE LONGEST GAP THAT COULD POSSIBLY HAPPEN IS IF THEY GO AHEAD AND DO WHAT THEY ARE ABOUT TO DO AND MAKE THESE NOMINATIONS AND ON JANUARY 8TH WHOEVER IS GOVERNOR FOR THE FIRST TIME HAS THAT AUTHORITY, THEY DIDN'T GET TO DO ANYTHING.

WHAT ARE THEY GOING TO SAY? GOVERNOR DESANTIS IS GOING TO SAY IT, MAYBE NOT, IT IS UP TO HIM, I REJECT THIS LIST AS PART OF THE PROCESS --

>> THIS IDEA THAT THE GOVERNOR CAN REJECT A LIST BECAUSE HE WASN'T INVOLVED --

>> NOT BECAUSE OF THAT.

HE WOULD HAVE TO --

>> THE IDEA OF A TAINTED PROCESS, THIS IS TOTALLY SPECULATIVE, THIS POLITICAL RHETORIC CAN BE VIEWED AS SUCH. WHEN I ASK YOU WHAT WAS DONE THAT WAS WRONG, TO NAME IT, YOU CAN'T NAME IT.

>> YOUR HONOR, I THINK I NAMED IT, IT IS SPELLED OUT IN A REPLY.

IT IS A NUMBER OF THINGS.

>> TELL ME NOW.

>> THEY SET A DEADLINE AGAINST THEIR RULES, REFUSED TO OPEN THE PROCESS TO ALLOW BLACK AND WOMEN AFRICANS WHO SAY THEY ARE GOING TO APPLY, THEIR MEMBERSHIP, FORGET THEIR MEMBERSHIP, THEIR MEMBERSHIP SHOWS THEY ARE PARTISANS WHICH RAISES OTHER CIRCUMSTANCES THE SUSPICION THIS MAY HAVE HAD DIFFICULTY PUTTING

ASIDE THEIR BIAS.
THEY SET THE DEADLINE BACKWARDS
FROM THE DEADLINE, PAGE 29 OF
TRAINING MATERIALS SAY FIND THE
DEADLINE FOR MAKING NOMINATIONS,
WORK YOUR APPLICATION BACKWARD.
THEY HAVE NOT HELD PUBLIC
MEETINGS TO CONDUCT THEIR
ACTIONS, THEIR CHAIR HAS
UNILATERALLY DECIDED ALL THESE
THINGS.

A NUMBER OF PROBLEMS HERE AND IT
IS NOT FOR ME TO PROVE.

>> ADDITIONAL TIME HAS EXPIRED.
30 SECONDS.

>> I WILL ASK YOU A QUESTION.
SOMETIMES THE LAW GETS SO WOUND
UP IN ITSELF, WE OVERLOOK
SOLVING PROBLEMS.

MISTER NORDBY TELLS US THIS
PROBLEM WILL BE RESOLVED WITH
WHOEVER IS ELECTED GOVERNOR,
LOOKS LIKE NOW.

THOSE TWO PEOPLE GETTING
TOGETHER WORKING THIS OUT SO IT
IS NOT A BIG DEAL IN THE FUTURE.
WE ARE JUST EXERCISING OUR JAWS
AND THAT IS WHAT THIS AMOUNTS
TO.

>> IT IS UP TO THE NEW GOVERNOR
IF HE WANTS INPUT FROM GOVERNOR
SCOTT OR ANYBODY ELSE THEY ARE
ENTITLED TO.

TO COMPLETE THE ANSWER TO THE
QUESTION YOU ARE RIGHT.

THERE IS SPECULATION HERE.

BEFORE HIM TO DETERMINE THAT IS
THE GOVERNOR ELECT WHO IS THE
SAME PERSON WITH POLITICAL
DISCRETION TO LOOK AT
CIRCUMSTANCES AND DECIDE WHETHER
IT IS TAINTED.

>> THE BEST ARGUMENT YOU MADE
FOR WHY WE SHOULD EXERCISE
DISCRETION TO ENTER A
DISCRETIONARY WRIT UNDER THE
CIRCUMSTANCES, IT COULD CAUSE
MORE DELAY IF THEY DIDN'T, THE
NEW GOVERNOR CAN DO ANYTHING IF
HE WANTS TO UNTIL HE TAKES

OFFICE AND THAT WOULD DELAY THINGS MORE.

I DON'T UNDERSTAND THAT, GIVEN THAT WE HAVE ENTERTAINED YOUR PETITION IT SEEMS THE NEW GOVERNOR IF HE WANTS TO TAKE ACTION TO DO IT, THE GOVERNOR ELECT TODAY OR TOMORROW, IS THERE A BETTER REASON WHY WE SHOULD EXERCISE DISCRETION TO ISSUE A NEXT ORDINARY WRIT EVEN IF WE THOUGHT IT WAS LEGALLY APPROPRIATE RATHER THAN LETTING THE NEW GOVERNOR ACT.

>> THAT ONLY GOES TO THE QUESTION WHETHER YOU SHOULD STOP THE PROCESS AND WHEN THERE'S A GOVERNOR ELECT THEY COULD INTERVENE TO SAY THEY DON'T WANT THE PROCESS STOPPED OR PLEASE KEEP IT STOPPED.

AND HEAR FROM THE PERSON WHO HAS THAT AUTHORITY.

I THINK YOU SHOULD WAIT TO SEE THAT.

THAT IS CONSTITUTIONAL RELIEF. THE QUARTO RELIEF DOESN'T DEPEND ON THAT.

IT IS SQUARELY FOR THIS COURT, NO POLITICAL JUDGMENT.

>> YOUR ARGUMENT THAT THEY SHOULD ADDRESS THOSE ISSUES BECAUSE THEY ARE LIKELY TO RECUR.

>> GOOD REASON TO EXERCISE DISCRETION.

YOU SHOULD ANSWER THIS RIGHT NOW SO IT ISN'T RESOLVED BY BACKROOM DEALS BUT BY A COURT SO EVERYBODY CAN KNOW WHAT THE RULES ARE AND THEY WILL BE FOLLOWED.

THANK YOU VERY MUCH.

>> WE THANK ALL THREE OF YOU FOR YOUR ARGUMENTS.