

>>> AND WILL NOW GO TO CASE 2  
ON OUR DOCKET.  
ANOTHER ADVISORY OPINION CASE,  
THIS ONE BEING ADVISORY OPINION  
TO THE ATTORNEY GENERAL RAISING  
THE MINIMUM WAGE.  
YOU LOOK LONELY UP HERE.  
>> NORMALLY I WOULD ASK FOR  
REBUTTAL.  
>> THANK YOU, MISTER CHIEF  
JUSTICE.  
CHRISTOPHER BAUM, THIS COURT  
OFFERS AN ADVISORY OPINION TO  
THE VALIDITY OF AN IMPACT  
STATEMENT.  
THE DECISION WAS CORRECT AND  
COUNSEL IN FAVOR OF ADHERING TO  
THAT DECISION.  
IT HAS PROVEN WORKABLE, RECEDING  
FROM IT WOULD DISMANTLE THE  
LEGISLATION FOR FINANCIAL IMPACT  
STATEMENTS AND THE RECENT  
AMENDMENTS FOR 100.371, DOES NOT  
CAUSE THAT TO BE UNWORKABLE.  
>> LET'S PUT ASIDE THE STANDARD.  
THE DECISION WE MADE PREVIOUSLY  
TO EXERCISE JURISDICTION.  
AND GOING THROUGH ANALYSIS  
AGAINST THAT.  
I HAD A HARD TIME SEEING HOW  
WHAT WE DECIDED TO DO IN THIS  
CONTEXT IS CORRECT.  
WHEN I GO TO ARTICLE 4 SECTION  
10 WHICH REFERS TO RENDERING AN  
OPINION AS TO THE VALIDITY OF  
ANY INITIATIVE PETITION.  
I'M STRUGGLING TO SEE HOW WE GET  
FROM THAT CORE LANGUAGE THAT  
ESTABLISHES OUR JURISDICTION TO  
AN OPINION REGARDING THE  
FINANCIAL IMPACT STATEMENT WHICH  
IS NOT PART OF THE INITIATIVE  
PETITION.  
WE COULD HAVE A SYSTEM WHERE  
INITIATIVE PETITIONS HAD TO HAVE  
A FINANCIAL IMPACT STATEMENT.  
THAT WOULD BE A DIFFERENT SYSTEM  
FROM THE ONE WE HAVE AND THERE  
WOULD BE AN ENTIRELY DIFFERENT  
ISSUE HERE BECAUSE IF IT IS PART

OF THE INITIATIVE PETITION IT WOULD BE A VERY STRONG ARGUMENT RENDERING AN OPINION ON THE VALIDITY OF THE INITIATIVE PETITION WOULD ENCOMPASS THE FINANCIAL IMPACT STATEMENT THAT WAS PART OF THE INITIATIVE PETITION BUT THAT IS NOT WE HAVE WE HAVE SOMETHING SEPARATE THE TAGALONG AFTERWARDS.

IT IS A SEPARATE CASE, SEPARATE MATTER AND I AM STRUGGLING TO SEE HOW WE CAN BE FAITHFUL TO THAT LANGUAGE THAT ESTABLISHES OUR JURISDICTION AND ACT IN THE WAY THAT YOU ARE SUGGESTING WE COULD.

TELL ME WHAT I'M MISSING ABOUT THAT LANGUAGE.

>> ARTICLE 4 SECTION 10 DOES NOT ESTABLISH THIS COURT'S JURISDICTION.

ARTICLE 5 SECTION 3B 10 IS THE JURISDICTIONAL PROVISION THAT SETS FORTH THE SCOPE OF THE JURISDICTION AND THAT SECTION PROVIDES THE COURT SHALL ADDRESS ISSUES AS PROVIDED BY GENERAL LAW.

OTHERS ARE CROSS-REFERENCED ARTICLE 4 BUT ARTICLE 5 IS THE JURISDICTIONAL PROVISION AND THE FACT THAT ARTICLE 5 -

>> DOESN'T AT ALL LEAD BACK TO ARTICLE 4 SECTION 10? THAT IS THE BASIS FOR EVERYTHING WE DO IN THIS ARENA?

RIGHT THERE IN ARTICLE 5 SECTION 3B 10 WHICH IS WHAT YOU ARE REFERRING TO, IT SPECIFICALLY REFERS TO SECTION 10 OF ARTICLE 4.

THAT IS THERE. THAT IS PART OF WHAT WE ARE TALKING ABOUT.

>> THE CROSS-REFERENCES EXACTLY THAT, ARTICLE 4 ESTABLISHES THE ATTORNEY GENERAL MAY REQUEST AN ADVISORY OPINION ON THAT SPECIFIC TOPIC BUT IT DOES NOT

LIMIT WHAT THE COURT MAY ADDRESS  
IN ISSUING AN OPINION ON THAT  
PARTICULAR TOPIC.

THE ATTORNEY GENERAL MAY NOT  
SIMPLY ASK FOR AN ADVISORY  
OPINION ON ANYTHING.

IT HAS TO BE WITH RESPECT TO  
INITIATIVE PETITIONS BUT THE  
COURT HAS A SLIGHTLY BROADER  
GRANT OF JURISDICTION ON ARTICLE  
5 SECTION 3B 10 BECAUSE IT SHALL  
RENDER AN ADVISORY OPINION  
ADDRESSING ISSUES AS PROVIDED --

>> AREN'T YOU LEAVING OUT SOME  
IMPORTANT LANGUAGE, WHEN  
REQUESTED BY THE ATTORNEY  
GENERAL PURSUANT TO THE  
PROVISIONS OF SECTION 10 OF  
ARTICLE 4 RENDER AN ADVISORY  
OPINION?

>> THAT REFERS TO THE ATTORNEY  
GENERAL'S REQUESTS.

THE REQUEST MUST BE --

>> PURSUANT TO.

THAT IS LIMITING LANGUAGE ON THE  
JURISDICTION.

THE COURT REQUEST MUST BE  
PURSUANT TO THE PROVISIONS OF  
ARTICLE 10 SECTION 4.

DO YOU AGREE?

>> I AGREE THE REQUEST MUST BE  
MADE PURSUANT TO ARTICLE 4  
SECTION 10 BUT THAT DOES NOT  
LIMIT WHAT ISSUES THE COURT MAY  
ADDRESS.

>> ARTICLE 4 SECTION 10 SAYS THE  
ATTORNEY GENERAL SHALL REQUEST  
THE OPINION OF THE JUSTICES OF  
THE SUPREME COURT AS TO THE  
VALIDITY OF ANY INITIATIVE  
PETITION.

>> THAT IS WHAT THE ATTORNEY  
GENERAL MUST ASK FOR AND THE  
LEGISLATURE CAN --

>> IF OUR JURISDICTION IS  
LIMITED TO THE REQUEST MADE  
PURSUANT TO ARTICLE 10 SECTION  
4.

ARTICLE 10 SECTION FORCES THE  
ATTORNEY GENERAL SHALL REQUEST

OPINION REGARDING VALIDITY OF THE PETITION, WHY ISN'T THAT THE LIMITING LIQUIDS ON THE JURISDICTION?

>> THAT IS ONE WAY TO READ IT AND THE WAY JUSTICE BELL READ IT.

>> IS THAT THE MOST REASONABLE WAY TO READ IT?

>> THAT IS ONE WAY TO READ IT BUT ANOTHER WAY WOULD BE ARTICLE 5 SECTION 3B 10 DOES NOT CONTAIN SIMILAR LIMITING PROVISION THAT THE ISSUES MUST RELATE TO THE VALIDITY.

>> WHY WOULD IT NEED TO REPEAT WHAT IT SAID ELSEWHERE?

>> IT WOULD BE MORE CLEAR OR WE WOULDN'T BE HERE TODAY.

>> ONE NEVER KNOWS.

[LAUGHTER]

>> AN ADDITIONAL ISSUE IS THE COURT HAS ALREADY HELD REPEATEDLY IN ROBERT VERSUS BROWN THAT THE COURT'S JURISDICTION IS NOT LIMITED TO ADDRESSING THE CONSTITUTIONAL VALIDITY OF AN INITIATIVE PETITION BECAUSE OTHERWISE THE COURT CANNOT REVIEW THE BALLOT TITLE AND SUMMARY FOR COMPLIANCE WITH 101.161.

>> DO YOU AGREE THAT UNDER THE CONSTITUTION AS JUSTICE BELL SAID, OR EVEN THE STATUTE OR BEYOND THAT THE VALIDITY OF THE PETITION ITSELF IS NOT DEPENDENT ON THE VALIDITY OF THE FINANCIAL IMPACT STATEMENT?

>> YES, YOUR HONOR.

IF THE JURISDICTIONAL PROVISION IS READ TO PRECLUDE AN ASSESSMENT OF THE STATUTORY VALIDITY, IT WOULD BE LIMITED ONLY TO THE CONSTITUTIONAL VALIDITY OF AN INITIATIVE PETITION, THE COURT CANNOT REVIEW BALLOT TITLES AND SUMMARIES.

>> UNDER OUR CURRENT SYSTEM, THE

BALLOT TITLES AND SUMMARIES --  
>> YES, BUT THE ONLY  
CONSTITUTIONAL REQUIREMENT AS TO  
VALIDITY IS THE SINGLE-SUBJECT  
RULE.

SO IF THE COURT'S JURISDICTION  
IS LIMITED TO THE  
CONSTITUTIONAL--

>> BUT THAT'S WHERE IT DOES SAY  
AS TO VALIDITY AND THEN AS  
DIRECTED BY GENERAL LAW.

SO WE'RE TALKING ABOUT THE  
LIMITED PETITION WHICH INCLUDES  
THE BALLOT TITLE AND SUMMARY,  
AND THERE IS OPPORTUNITY FOR THE  
LEGISLATURE TO DEFINE WITHIN  
THOSE PARAMETERS WHAT OUR REVIEW  
IS.

THE PROBLEM IS, I THINK YOU  
WOULD AGREE-- YOU ALREADY DID  
WITH JUSTICE CANADY-- THAT THE  
FINANCIAL IMPACT STATEMENT IS  
NOT PART OF THE INITIATIVE  
PETITION.

>> THAT'S CORRECT, YOUR HONOR.

>> UNDER OUR CURRENT SYSTEM.

>> THAT'S CORRECT.

AND I THINK THAT TO THE EXTENT  
THE COURT IS INCLINED TO AGREE  
WITH JUSTICE BELL'S DECISION,  
THEN THIS IS A STARE DECISIS  
CASE.

REFERENDUM FOR ADOPTION HAS  
PROVEN EMINENTLY WORKABLE.  
THE COURT HAS APPROVED 17 OUT OF  
23 OF THE FINANCIAL IMPACT  
STATEMENTS IT HAS REVIEWED.  
IT HAS REJECTED 6.

ALL 6 OF THOSE HAVE BEEN CURED.  
THE COURT HAS ACCEPTED 10 OUT OF  
THE LAST 10 FINANCIAL IMPACT  
STATEMENTS.

SO THE CONFERENCE HAS NOT  
STRUGGLED IN DRAFTING THESE  
STATEMENTS, AND THE COURT HAS  
NOT STRUGGLED IN REVIEWING THESE  
STATEMENTS.

SO THE DECISION--

>> WE WOULDN'T STRUGGLE IN  
REVIEWING A LOT OF THINGS THAT

WE DON'T HAVE THE AUTHORITY TO REVIEW.

>> THAT MAY BE TRUE, YOUR HONOR, BUT THE DECISION HAS NOT PROVEN UNWORKABLE, WHICH IS PART OF THIS COURT'S TEST--

>> ISN'T IT SORT OF STRUCTURALLY UNWORKABLE THAT THE COURT IS ACTING OUTSIDE OF ITS CONSTITUTIONAL AUTHORITY?

>> THAT'S ONLY IF THIS COURT DISAGREES WITH THE FIVE JUSTICES WHO HELD IN REFERENDA REQUIRED FOR ADOPTION THAT IT WAS ACTING WITHIN ITS CONSTITUTIONAL AUTHORITY.

AND THAT QUESTION TURNS ON--

>> DON'T WE ALWAYS TREAT JURISDICTION A LITTLE DIFFERENTLY?

I MEAN, WE CAN RAISE IT ON OUR OWN INITIATIVE.

IT DOESN'T HAVE TO BE PRESERVED. WE CAN LOOK AT IT AT ANY TIME.

I MEAN, IT'S A PRETTY FUNDAMENTAL ERROR FOR A COURT TO ACT OUTSIDE OF ITS CONSTITUTIONAL AUTHORITY, ISN'T IT?

>> ABSOLUTELY, YOUR HONOR. BUT I DON'T THINK THAT THERE'S ANY PRINCIPLE OF STARE DECISIS THAT TREATS JURISDICTIONAL HOLDINGS ANY DIFFERENT FROM--

>> WELL, WHY SHOULDN'T THERE BE? AGAIN, IT STRIKES ME THAT AN ERROR WITH RESPECT TO EXERCISE OF JURISDICTION IS IN A CATEGORY OF THE MOST SERIOUS ERRORS THAT A COURT COULD MAKE.

WOULDN'T YOU AGREE WITH THAT?

>> THAT MAY BE SO, YOUR HONOR. HOWEVER, THERE MAY ALSO BE OTHER TYPES OF HOLDINGS THAT THE COURT COULD ISSUE THAT COULD BE OF GREAT MAGNITUDE.

>> I WOULDN'T DISAGREE WITH THAT.

BUT I'M NOT SAYING THAT IT IS NECESSARILY ALONE IN BEING A

SERIOUS ERROR.

BUT, I MEAN, IT'S JUST KIND OF AXIOMATIC THAT ACTING FOR-- FOR A COURT TO ACT OUTSIDE ITS JURISDICTION IS JUST, GOES AGAINST THE GRAIN IN A DRAMATIC AND FUNDAMENTAL WAY.

>> I CERTAINLY AGREE, YOUR HONOR.

BUT, YOU KNOW, WE HAVE FIVE JUSTICES IN REFERENDA REQUIRED FOR ADOPTION WHO HELD THAT THE COURT WAS ACTING--

>> YEAH.

I READ WHAT THEY SAID, AND I-- THEY DID NOT TALK MUCH ABOUT THE CONSTITUTION.

DID THEY?

>> WELL, THEY CERTAINLY REFERRED TO THE APPLICABLE PROVISIONS HERE.

>> SEEMED LIKE THEY WERE TALKING ABOUT THE STATUTE.

AND, YOU KNOW, THERE'S NO QUESTION THAT THE STATUTE CONTEMPLATES THAT WE DO THIS. THAT SEEMED TO BE THE FOCUS OF THEIR, OF THEIR ANALYSIS.

>> YES, YOUR HONOR.

AND THAT WAS BECAUSE THE COURT REALIZED THE LANGUAGE ADDRESSING ISSUES AS PROVIDED BY GENERAL LAW IN ALLOWING THE LEGISLATURE A LITTLE BIT OF LEEWAY IN GIVING THIS COURT JURISDICTION TO ADDRESS QUESTIONS THAT ARE RELATED TO INITIATIVE PETITIONS. AND SO THEN THE COURT TURNED TO WHETHER THE LEGISLATURE HAD, IN FACT, DONE SO.

AND THE LEGISLATURE, OF COURSE, HAS DONE SO IN 100.371.

>> AS A PRACTICAL MATTER, IF THERE'S REALLY A PROBLEM WITH THE IMPACT STATEMENT, SOMEONE COULD CHALLENGE THAT IN A DECLARATORY STATEMENT AND BRING IT THROUGH THE TRIAL COURT PROCESS IF WE DON'T HAVE JURISDICTION TO ADDRESS IT IN AN

ADVISORY CAPACITY, RIGHT?  
>> WELL, THERE'S CERTAINLY A QUESTION ABOUT THAT.  
AND JUSTICE BELL OPINED THAT THAT MAY BE A POSSIBILITY.  
BUT THE CURRENT STRUCTURE OF 100.371 PRESENTS SOME PROBLEMS BECAUSE IT SETS FORTH WHAT HAPPENS IF THIS COURT SPECIFICALLY WERE TO REJECT A STATEMENT, THEN IT WOULD BE REMANDED.  
OR IF THIS COURT DID NOT ACT IN TIME, THEN THE STATEMENT WOULD BE DEEMED APPROVED.  
>> WELL, EVEN IF HYPOTHETICALLY A DEC ACTION WAS BROUGHT AND THEN IT FOUND ITS WAY TO OUR COURT, THEN THOSE PROVISIONS WOULD STILL APPLY.  
SO I DON'T THINK THEY'RE NECESSARILY IN CONFLICT, WOULD THEY BE?  
>> I THINK THAT'S RIGHT, YOUR HONOR.  
I JUST THINK THERE'S AN OUTSTANDING QUESTION OVER WHETHER A COURT OF ORIGINAL JURISDICTION COULD ADDRESS THIS. I DON'T THINK IT'S A SETTLEMENT ISSUE.  
>> ARE THERE ANY PROVISIONS IN THE STATUTE THAT EXPLICITLY PROHIBITS THAT KIND OF ACTION GOING FORWARD?  
>> NOT NECESSARILY, YOUR HONOR, ALTHOUGH THE COURT DID HOLD IN ROBERTS V. BROWN THAT THIS COURT HAS EXCLUSIVE JURISDICTION TO REVIEW BALLOT TITLES AND SUMMARIES AND PERHAPS FINANCIAL IMPACT STATEMENTS.  
BUT I THINK YOU'RE RIGHT. IF THIS COURT WERE TO HOLD IT DID NOT HAVE ORIGINAL JURISDICTION OVER FINANCIAL IMPACT STATEMENTS, THEN A TRIAL COURT MAY HAVE JURISDICTION. I WOULD HESITATE TO OPINE OVER, FOR EXAMPLE, WHO WOULD HAVE THE



RIGHT TO BRING CHALLENGE, THAT THE ATTORNEY GENERAL MAY BRING SUCH A PETITION.

BUT IN ALL, I THINK THAT THIS IS A STARE DECISIS CASE, AND PERHAPS THE COURT MAY ELUCIDATE A NEW STANDARD WITH RESPECT TO JURISDICTIONAL ISSUES.

BUT I THINK THAT THE STARE DECISIS FACTORS HERE COUNSEL IN FAVOR OF ADHERING TO REFERENDA REQUIRED FOR ADOPTION.

>> WITHOUT GETTING INTO THE WHOLE STARE DECISIS QUAGMIRE, I THINK OUR MOST RECENT CASE ON STARE DECISIS ESSENTIALLY JUST SAID IF THERE'S A CLEAR LEGAL ERROR, THEN WE RECEDE.

I MEAN, I THINK YOU MIGHT BE OVERSTATING OUR, QUOTE-UNQUOTE, STARE DECISIS TEST.

OBVIOUSLY, THERE ARE CASES WHERE WE PURPORT TO APPLY MULTIFACTOR--

>> SURE.

>>-- PLANNED PARENTHOOD-TYPE TESTS.

BUT THERE'S ALSO VERY RECENT CASES WHERE WE DON'T TALK ABOUT THAT TEST AT ALL.

>> THE STATE OF THE COURT'S STARE DECISIS TEST IS A LITTLE UNCLEAR, BUT WE'VE RELIED ON WHAT THE COURT HAS SAID WITH RESPECT TO THAT THREE-FACTOR TEST.

ALTHOUGH I WOULD NOTE THAT THE COURT HAS SAID IN THE CONTEXT OF ADVISORY OPINIONS IN PARTICULAR THAT WHILE THEY, WHILE THEY MIGHT NOT BE IN A HIGHLY TECHNICAL SENSE BINDING, THEY ARE HIGHLY PERSUASIVE AND ONLY TO BE OVERTURNED IN, QUOTE, EXTRAORDINARY CIRCUMSTANCES. AND THE ONLY CIRCUMSTANCE IN WHICH THE COURT HAS DONE SO IS IN A CASE WHERE THE PRIOR OPINION DID NOT SQUARELY ADDRESS THE ISSUE IN THAT CASE.

NOW, FOR EXAMPLE, HERE IN REFERENDA REQUIRED FOR ADOPTION IN DISSENT, JUSTICE BELL NOTED IN FOOTNOTE 8 THAT HAD THE COURT OPINED ON JURISDICTION, IT WOULD BE BINDING.

SO I THINK THAT IT MIGHT EVEN BE A HIGHER STANDARD IN THE CONTEXT OF THESE ADVISORY OPINIONS TO THE ATTORNEY GENERAL.

>> WELL, THE REALITY IS THAT THESE ADVISORY OPINIONS ARE NOT REALLY ADVISORY OPINIONS.

>> CORRECT.

>> I MEAN, IT'S-- NOT TO CRITICIZE OUR CONSTITUTION, BUT IT'S REALLY A MISNOMER, BECAUSE WHAT WE DECIDE DETERMINES WHETHER IT GOES ON THE BALLOT OR NOT.

AND DETERMINES WHETHER THE, WITH RESPECT TO FINANCIAL IMPACT STATEMENT, DECIDES WHETHER THAT'S GOING TO GO ON THE BALLOT OR NOT, RIGHT?

>> THAT'S CORRECT, YOUR HONOR. AND THAT'S WHAT THE COURT SAID, I BELIEVE, IN ROBERTS V. BROWN THAT THESE DECISIONS ARE HIGHLY CONSEQUENTIAL.

AND I THINK EVEN IF THE COURT WERE TO RECEDE A LITTLE BIT FROM ITS STARE DECISIS PRINCIPLES OUTLINED IN THE VALDEZ CASE, THE THREE-FACTOR TEST, I THINK IN THE ADVISORY OPINION CONTEXT THE STARE-- THE COURT HAS SAID THAT IT WOULD RECEDE ONLY IN EXTRAORDINARY CIRCUMSTANCES.

AND I DON'T BELIEVE THAT WE HAVE THOSE HERE BECAUSE THE DECISION HAS PROVEN WORKABLE.

ALTHOUGH IT WOULD NOT CAUSE SERIOUS INJUSTICE TO OVERTURN IT, THE COURT HAS RELIED ON IT IN 13 SUBSEQUENT DECISIONS.

THE LEGISLATURE HAS A FINELY-WROUGHT MECHANISM FOR THE COURT'S REVIEW, AND THE RECENT AMENDMENTS DO NOT UNDERMINE THAT

DECISION AND DO NOT CAUSE THIS COURT'S REVIEW TO BE UNWORKABLE.

>> YEAH.

I MEAN, I THINK THE, YOU KNOW, IT SEEMS LIKE TO ME THE STRONGER ARGUMENT WOULD BE THAT TO ACKNOWLEDGE SOME AMBIGUITY AND, ESSENTIALLY, THE LEGISLATURE HAS MADE A DETERMINATION THAT WE HAVE JURISDICTION.

I MEAN, DON'T WE HAVE A ZILLION PRECEDENTS SAYING THAT, YOU KNOW, SOMETHING HAS TO BE CLEARLY-- I MEAN, ESSENTIALLY WE'D BE SAYING THAT THE MECHANISM THE LEGISLATURE HAS SET UP IS UNCONSTITUTIONAL. AND AREN'T WE SUPPOSED TO RESOLVE, YOU KNOW, GIVE THE LEGISLATURE EVERY BENEFIT OF THE DOUBT WHEN THEY'VE MADE A, WHEN THEY'VE INTERPRETED THE CONSTITUTION?

>> I THINK THAT'S CERTAINLY ONE WAY THAT THE COURT COULD LOOK AT IT, YES.

AND, YOU KNOW, ESPECIALLY IN LIGHT OF THE JURISDICTIONAL PROVISION CONTAINING THE LANGUAGE REGARDING GENERAL LAW. NOW, YOU KNOW, ELSEWHERE IN ARTICLE V, FOR EXAMPLE, THAT TERM DENOTES DISCRETION ON THE LEGISLATURE'S BEHALF TO DEFINE THE SCOPE OF THE JURISDICTION OF COURTS.

FOR EXAMPLE, THE CIRCUIT COURTS, COUNTY COURTS, ETC.

SO I THINK THAT'S CORRECT, YOUR HONOR.

SO UNLESS THE COURT HAS ANY FURTHER QUESTIONS, WE, WE WOULD ARGUE THAT REFERENDA REQUIRED FOR ADOPTION SHOULD BE ADHERED TO ON THE BASIS OF STARE DECISIS.

THANK YOU, YOUR HONOR.

>> WE THANK YOU FOR YOUR ARGUMENT.

AND THAT CONCLUDES TODAY'S

SESSION OF THE COURT.  
WE STAND IN RECESS.