

>> Marshal: ALL RISE.

THE FLORIDA SUPREME COURT IS BACK IN SESSION PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: MONIQUE WORRELL V. RON D. DESANTIS CASE NO. SC23-1246

>> Laura N. Ferguson, Petitioner: APPEARANCE FOR PETITIONER

LAURA N. FERGUSON

GOVERNOR RON DESANTIS SUSPENSION OF MS WORRELL EXCEEDED HIS AUTHORITY UNDER ARTICLE 4 SECTION 7A OF THE CONSTITUTION BECAUSE THE ORDER DOES NOT ALLEGE ANY CONDUCT BY MS WORRELL THAT EVEN IF PROVEN AT SENATE TRIAL WOULD CONSTITUTE NEGLIGENCE OF DUTY OR INCOMPETENCE. STATE ATTORNEYS ARE CONSTITUTIONAL OFFICERS THEY ARE ELECTED TO SERVE AS PROSECUTORS IN THEIR CIRCUIT THERE INVESTED WITH SUBSTANTIAL DISCRETION AND INDEPENDENCE AND IS SUBJECT TO LIMITED SUPERVISION EVEN BY THE STATE ATTORNEY GENERAL.

THEY ARE ACCOUNTABLE TO THE VOTERS AND BECAUSE THEY ARE ELECTED AND NOT APPOINTED THEY DO NOT SERVE AT THE DISCRETION OF THE GOVERNOR. UNDER THE CONSTITUTION THE GOVERNMENT SUSPENSION POWER IS LIMITED TO SPECIFIED GROUNDS. ALL OF WHICH ENTAIL EGREGIOUS MISCONDUCT. FOR THIS REASON HISTORICALLY MOST SUSPENSION ORDERS HAVE INVOLVED OFFICIALS WHO HAVE COMMITTED A CRIME OR PRESENTED A GRAVE THREAT TO PUBLIC SAFETY. REMOVING ESTATE ATTORNEY BECAUSE OF DISAGREEMENTS OVER THE LAWFUL EXERCISE OF PROSECUTORIAL DISCRETION IS UNPRECEDENTED. WHILE THIS COURT HAS TREATED BLANKET NON-PROSECUTION POLICIES AS AN ABUSE OF DISCRETION, NO BLANKET NON PROSECUTION POLICIES ARE ALLEGED HERE. THE GOVERNOR IS OF COURSE ENTITLED TO HAVE DIFFERENT OPINIONS AS TO HOW MS. MORRELL SHOULD EXERCISE HER DISCRETION HE'S ENTITLED TO ENDORSE HER POLITICAL OPPONENTS . BUT SHORT OF CONDUCT THAT MEETS THE HIGH BAR FOR SUSPENSION, IT IS THE VOTERS NOT THE GOVERNOR TO WHOM MS WORRELL IS ACCOUNTABLE.

>> Chief Justice Carlos Muniz: COUNSEL CAN ASK YOU WHY EITHER TEXTUALLY OR IN A HISTORICALLY INFORMED SENSE ASSUMING ALL OTHER PRECEDENTS ABOUT HOW DEFERENTIAL THIS PHASE OF REVIEW IS WHY IS THE CONCEPT OF NEGLIGENCE OF DUTY NOT BROAD ENOUGH IN ITS BROADEST THE MOST REASONABLE SENSE WHY IS IT NOT BROAD ENOUGH TO ENCOMPASS THE KIND OF THINGS THAT ARE TALKED ABOUT IN THE SUSPENSION ORDER.

>> Laura N. Ferguson, Petitioner: FIRST WE SHOULD LOOK TO THE DEFINITION OF NEGLIGENCE OF DUTY THAT WAS IN PLACE DURING THE MOST RECENT ITERATION OF 7A HISTORICALLY IT HAS BEEN THE DEFINITION IT ENTAILS THE FAILURE ON THE PART OF THE PUBLIC OFFICER TO DO AND PERFORM SOME DUTIES OR DUTY LAID UPON HIM AS BY VIRTUE OF HIS OFFICE OR WHICH IS REQUIRED OF HIM BY LAW MORE RECENTLY IN ISRAEL VERSUS DISSENT IS THE COURT TO FIND NEGLIGENCE OF DUTY AS NEGLECTING AN ACTION REQUIRED BY ONE'S POSITION OR OCCUPATION. SO HERE I THINK WHAT IS CRITICAL IS THAT THERE IS NO DUTY THAT MS. WORRELL IS ALLEGED

TO HAVE NEGLECTED. HER DUTY, AS A PROSECUTOR, IS TO EXERCISE HER DISCRETION WITHIN THE BALANCE OF THE LAW AND TO LOOK NEEDS CASE ON AN INDIVIDUALIZED BASIS. SO THE EXECUTIVE ORDER FOR EXAMPLE, IN THE CASE OF ANDREW BOREN ALLEGED THAT MR. MORAN HAD ABUSED HIS DISCRETION BECAUSE HE ESSENTIALLY ABDICATED HIS DISCRETION. HE WAS NOT DECIDING CASES ON AN INDIVIDUAL BASIS YET CATEGORIES OF WHICH HE SAID THERE WOULD BE NO PROSECUTION. MRS. WORLD DOES NOT HAVE ANY CATEGORIES NON PROSECUTION SHE'S LOOKING AT EACH CASE ON AN INDIVIDUAL'S BASIS.

>> Chief Justice Carlos Muniz:

>> Justice Charles Canady: BASICALLY WHAT IS ALLEGED TO SUM IT UP IS THAT SHE HAS POLICIES THAT UNDER PROSECUTE CERTAIN CATEGORIES. AND SHE DOESN'T IT'S NOT THAT SHE HAS A CATEGORICAL RULE THAT YOU NEVER PROSECUTE ANYTHING IN THAT CATEGORY. BUT THERE IS A DIRECTIVE AND UNDERSTANDING THAT WE REALLY AREN'T GOING TO FOCUS ON THESE CASES. I THINK THAT A ROUGH PARAPHRASE OF WHAT'S IN THAT THE ORDER BUT THAT IS KIND OF THE DRIFT OF IT WOULDN'T YOU AGREE.

>> Laura N. Ferguson, Petitioner: THE ORDER IN FIRST AND SPECULATES ABOUT POLICY.

>> Justice Charles Canady: IT MAKES ASSERTIONS AND MAKES ASSERTIONS. IT MAKES ALLEGATIONS. IT DOESN'T HAVE TO PROVE IT WE KNOW THAT THAT IS WHAT THE TRIAL AND THE SENATE ARE FOR. BUT IT MAKES THOSE ASSERTIONS WHICH MAY OR MAY NOT BE WARRANTED. THAT IS NOT FOR US TO FIGURE OUT YOU WOULD ADMIT THAT?

WE DON'T MAKE FACTUAL DETERMINATIONS.

>> Laura N. Ferguson, Petitioner: I AGREE YOU DON'T MAKE FACTUAL DETERMINATIONS. LET'S PICK A POLICY THAT THE ORDER SPECULATES MS. WORRELL HAS THAT SHE DISCOURAGES ATTORNEYS IN OUR OFFICE FOR SEEKING CERTAIN SCENTS AND ENHANCEMENTS EVEN IF THAT IS TRUE IT'S NOT A NEGLECT OF DUTY FOR PROSECUTOR TO DO THAT BECAUSE THE STATUTE ITSELF.

>> Justice Charles Canady: WHY WOULD THERE NOT BE AN UNDERSTANDING OF NEGLECT OF DUTY OR AN UNDERSTANDING OF DUTY WHERE THAT WOULD BE A NEGLECT OF IT?

THAT SEEMS TO ME THEN YOU ARE GETTING INTO REALLY THAT IS KIND OF A POLITICAL QUESTION IT SEEMS LIKE TO ME. THE SCOPE OF HOW THE DUTY IS UNDERSTOOD AND HOW THAT WILL BE DEFINED IT SEEMS TO ME TO BE . REASONABLE PEOPLE CAN DISAGREE ABOUT THAT.

BUT THE GOVERNOR AND THE SENATE HAVE A CONSTITUTIONAL RESPONSIBILITY TO MAKE DETERMINATIONS ABOUT WHAT FALLS WITHIN THE SCOPE OF NEGLECT OF DUTY AND UNDER OUR PRECEDENTS WE DON'T GET INTO THAT UNLESS IT IS SOMETHING JUST LIKE A TOTALLY UNRELATED.

>> Laura N. Ferguson, Petitioner: THIS COURT HAS RECOGNIZED ITS ROLE IN DETERMINING WHETHER THE SUSPENSION ORDERS AND THE CONSTITUTIONAL AUTHORITY OF THE GOVERNOR TO ENSURE THAT ORDER IS NOT ABUSING THAT POWER AND AS JUSTICE LABARGA HAS NOTED THE COURT'S ROLE IS NOT

PERFORMA AND THIS IS ESPECIALLY IMPORTANT WE HAVE AN ELECTED OFFICIAL YES THERE ARE A RANGE OF VIEWS ABOUT HOW BEST TO SECURE THE SAFETY OF A COMMUNITY BEST TO USE LAW ENFORCEMENT RESOURCES GENERAL BELIEVE THAT FOR THE VOTERS TO DECIDE.

>> Chief Justice Carlos Muniz: COUNSEL CAN I TAKE YOU TO A SPECIFIC EXAMPLE I'M GOING TO PAGE 7 OF ORDER THE FIRST FULL PARAGRAPH WHICH SAYS " IT ALLEGES AN ALLEGATION THAT ASSISTANT STATE ATTORNEYS ARE GENERALLY PREVENTED OR DISCOURAGED FROM DIRECT FILING CASES WHEREBY JUVENILES ARE CHARGED AS ADULTS.

AND ARE ENCOURAGED TO EFFECTIVELY DROP CHARGES AGAINST JUVENILE DEFENDERS. THAT DOESN'T SEEM TO ME TO BE INFERENTIAL THAT DOESN'T SEEM TO ME TO BE AN EXERCISE OF DISCRETION.

THAT SEEMS TO ME TO BE FAIRLY CONCRETE ALLEGATION PRINT IT IS NOT PROVEN BUT HOW DO YOU ADDRESS THAT SPECIFIC ALLEGATION AND TELL US THAT SOMEONE OR THAT ALLEGATION IF PROVEN TRUE WOULD NOT CONSTITUTE MALFEASANCE, MISFEASANCE OR NEGLIGENCE OF DUTY.

>> Laura N. Ferguson, Petitioner: BECAUSE THE DECISION TO DIRECT FILE IS BY STATUTE OF A JUVENILE.

>> Chief Justice Carlos Muniz: HE BELIEVED THE STATUTE WOULD GIVE HER THE ABILITY TO PREVENT IT DOES NOT SAY DISCOURAGED IT SAYS PREVENT THEN EFFECTIVELY DROP CHARGES AGAINST JUVENILE DEFENDANTS.

>> Laura N. Ferguson, Petitioner: LET ME MAKE THE FUNDAMENTAL POINT THE DIRECT FILING STATUTE WAS AMENDED IN 2019 TO END MANDATORY DIRECT FILING NOW DIRECT FILES ARE ENTIRELY WITHIN THE DISCRETION OF THE PROSECUTOR'S OFFICE. THEREFORE THERE IS NO DUTY FOR A PROSECUTOR TO DIRECT FILE INDIVIDUALS IT IS WITHIN THE STATE ATTORNEYS DISCRETION.

>> Chief Justice Carlos Muniz: YOU BELIEVE THE STATE ATTORNEY COULD LEGALLY PREVENT THE FILING CHARGES IN SOME FORM THAT STRIKES ME AS A PRETTY CLEAR ALLEGATION OF A POLICY NOT AN INDIVIDUALIZED DETERMINATION. IF YOU PREVENT SOMETHING YOU ARE SAYING IT IS NOT GOING TO HAPPEN.

>> Laura N. Ferguson, Petitioner: IF THERE WAS A CATEGORY POLICY THAT THIS OFFICE WILL NEVER DIRECT FILE JUVENILES THEN WE ARE CLOSER TO HAVING A NEGLIGENCE OF DUTY. BUT EVEN THE EXECUTIVE ORDER OR THE BRIEF ACKNOWLEDGES THAT MS. MORALES OFFICE DOES DIRECT FILE JUVENILES.

>> Justice Charles Canady: IT SEEMS TO ME YOU ARE SAYING IT IS NOT A CATEGORICAL RULE SOMEHOW IT CANNOT BE A NEGLIGENCE OF DUTY. THAT SEEMS TO ME TO BE KIND OF SOMETHING THAT WOULD LEAD TO PLAYING GAMES. WE ARE NOT GOING TO HAVE A POLICY WINK WINK WE JUST DON'T DO IT VERY OFTEN.

>> Laura N. Ferguson, Petitioner: BUT THAT IS WITHIN THE STATES ATTORNEYS DISCRETION PRINT IT IS NOT AS THOUGH IN THE FEDERAL SYSTEM THE PROSECUTORS ARE APPOINTED BY THE HEAD OF THE EXECUTIVE BRANCH AND EVERYBODY HAS TO BE ALIGNED ON EXACTLY HOW POLICIES.

>> Justice Charles Canady: .I UNDERSTAND THAT THEY ARE PART OF THE EXECUTIVE

BRANCH HOWEVER YOU WOULD CONCEDE?

>> Laura N. Ferguson, Petitioner: AND ALSO TO HAVE TO HAVE A QUASI JUDICIAL FUNCTION AS WELL THERE CREATED UNDER ARTICLE 5 THAT CREATES THE JUDICIAL BRANCH.

>> Justice Charles Canady: BUT THEY ARE EXECUTIVE OFFICERS.

>> Laura N. Ferguson, Petitioner: THEY ARE CONSTITUTIONAL OFFICERS CREATED UNDER GOAL FIVE OF THE CONSTITUTION THEY HAVE A DUAL FUNCTION EXECUTIVE AND A QUASI JUDICIAL.

>> ARE YOU SUGGESTING THE PROSECUTORS EXERCISE JUDICIAL POWER INTAKES AND OUTSIDE JUDICIAL BRANCH.

>> Laura N. Ferguson, Petitioner: I'M NOT SUGGESTING THAT THEY ARE OFFICERS OF THE COURT.

>> I THE QUESTION WOULDN'T YOU AGREE THAT THE DIFFERENCE IN DEGREES CAN BE A DIFFERENCE IN KIND.

YOU ARE FOCUSED ON BLANKET POLICY. LET'S SAY THE PROSECUTOR HAD A POLICY THAT THEY WERE ONLY GOING TO PROSECUTE ONE PERSON FOR JUVENILE COLONIES. IN YOUR VIEW COULD NOT CONSTITUTE NEGLIGENCE OF DUTY?

>> Laura N. Ferguson, Petitioner: I THINK IN THE ABSENCE OF ANY STATUTORY REQUIREMENT THAT CERTAIN CATEGORIES OF JUVENILE OFFENSES HAVE TO BE PROSECUTED.

AS ADULTS WHICH THE LEGISLATURE ELIMINATED THEY LIMITED THAT MANDATORY REQUIREMENTS PRINT THEN IT IS WITHIN THE STATES ATTORNEYS DISCRETION AS TO HOW BEST TO ENSURE THE SAFETY.

>> THAT WOULD BE A FINE POLICY FOR PROSECUTOR OF DATA POLICY ONLY ONE OF THESE PEOPLE JUVENILE OFFENSES WOULD BE DIRECT FILED IT WOULD BE SOME SORT OF LOTTERY SYSTEM WHICH ONE GOT PICKED.

>> Laura N. Ferguson, Petitioner: THAT TO BE CLEAR THAT IS HIGHLY HYPOTHETICAL.

>> WE ARE TRYING TO FIND OUT IN.

[UNCLEAR AUDIO].

>> ABSENCE THE SHOWING OF SOME THREAT TO THE PUBLIC THAT WOULD JUSTIFY EXECUTIVE INTERFERENCE IN THE DEMOCRATIC PROCESS I THINK THE SYSTEM IS INTENDED TO LET THE DEMOCRATIC PROCESS PLANT LET THE VOTERS DECIDE. THE GROUNDS FOR SUSPENSION ARE THINGS LIKE MALFEASANCE OR COMMITMENT OF A FELONY, OR COMPLETE INCOMPETENCE.

IT'S A SITUATION WHERE SOMEONE HAS ARISEN AFTER THE ELECTION THAT NECESSITATES INTERVENTION TO PROTECT THE PUBLIC TO PROTECT THE OPERATION OF THE JUDICIAL SYSTEM BEFORE THE VOTERS ARE GOING TO BE VOTING AGAIN. HERE THERE IS NO EMERGENCY.

>> Chief Justice Carlos Muniz: THE ORDER DOES ALLEGE CUMULATIVE PLEA ALL OF THESE THINGS TO RESULT IN DANGER TO THE PUBLIC.

YOU ARE RAISING THESE VERY IMPORTANT ISSUES ABOUT THE PROPER BALANCE BETWEEN THE GOVERNOR'S AUTHORITY AND LOCAL DECISION MAKING IN ALL OF THAT. NOT TO MINIMIZE ANY OF THAT THAT IS VERY IMPORTANT BUT IT SEEMS LIKE

OUR ROLE AT LEAST IN OUR PRECEDENT HAS BEEN LIMITED TO HAVING IT IS KIND OF DOUBLY DEFERENTIAL.

IT IS DEFERENTIAL BOTH AT THE LEVEL OF DEFINING THE POSSIBLE MEANINGS OF THE TERMS IN THE CONSTITUTION AND AWAY I THINK ESSENTIALLY IF THERE IS ANY REASONABLE UNDERSTANDING OF THE WORDS BECAUSE WHAT WE ARE HERE TO PROTECT AGAINST IS THE ARBITRARY EXERCISE OF POWER SO WE HAVE DEFERENCE AT THE LEVEL OF INTERPRETING THE WORDS THEN WE HAVE DIFFERENCE AT THE LEVEL OF WHAT KIND OF FACTUAL ALLEGATIONS ARE REASONABLY RELATED TO THAT VERY PATIENT DEFINITION OR UNDERSTANDING POSSIBLE MEANINGS OF THE WORD. IT SEEMS LIKE UNLESS WE THINK THE ONLY REASONABLE WAY TO INTERPRET THE LANGUAGE IS NEGLECT OF DUTY MEANS LITERALLY JUST NOT SHOWING UP FOR WORK OR SAYING WE WILL IDENTIFY THESE EIGHT CRIMES AND PER SE NOT PROSECUTE THEM . IT SEEMS LIKE WE HAVE TO ALLOW FOR THE POSSIBILITY IF YOU DO YOUR JOB AGAIN ALLEGEDLY, WE ARE NOT HERE TO LITIGATE THE FACTS. BUT IF YOU ALLEGEDLY DO YOUR JOBS SO POORLY AND AS A RESULT OF THESE DECISIONS YOU MADE IN TERMS OF YOUR POLICIES AND PRACTICES THAT THEY ENDANGER THE PUBLIC THEN MOVE INTO THE REALM OF HAVING TO ARGUE TO THE SENATE THAT THESE OTHER EITHER THAT IS NOT TRUE OR THE LOCAL CONTROL KIND OF PREDOMINATES OVER THAT.

>> Laura N. Ferguson, Petitioner: HERE THE EXECUTIVE ORDER DOES NOT IDENTIFY CONDUCT OF MS. MOREL. IT DOES NOT IDENTIFY POLITIES IN ANY CONCRETE SENSE UNLIKE THE EXECUTIVE ORDER AT ISSUE WITH THE STATE ATTORNEY.

[LISTING NAMES] OR ANDREW GOREN. IN ALL THE OTHER EXECUTIVE ORDERS THIS COURT HAS LOOKED AT IT IS BEEN VERY CLEAR EXACTLY WHAT THE STATE OFFICIAL DID THAT WAS PROBLEMATIC WE KNOW FROM ISRAEL WE KNOW FROM JACKSON.

>> Chief Justice Carlos Muniz: VERUS UNDER MS WORRELL SUPERVISION THE SUPPORT IS AUTHORIZED OR REQUIRED PIECES STATE ATTORNEYS MEANT CERTAIN TO SEEK WITHHOLDING ADJUDICATION TO SUPPORT SUCH DISPOSITION IS NOT PERMITTED BY FLORIDA LAW. DESCRIBING FROM THAT SENTENCE UNDER HER SUPERVISION HER SUBORDINATES HAVE REQUIRED ASA TO SEE THE WITHHOLDING OF ADJUDICATION WHERE IT IS NOT PERMITTED BY LAW THAT SOUNDS LIKE AN ALLEGATION OF ILLEGAL CONDUCT.

>> Laura N. Ferguson, Petitioner: THERE ARE A COUPLE OF LAYERS TO THIS. IT'S ALLEGING THAT HER SUBORDINATES HAVE PERMITTED.

>> Chief Justice Carlos Muniz: SHE REQUIRES THEM.

>> Laura N. Ferguson, Petitioner: HER SUBORDINATES NOT HER.

>> Chief Justice Carlos Muniz: SHE IS ELECTED OFFICIAL THAT IS THE WHOLE THESIS OF YOUR ARGUMENT.

>> Laura N. Ferguson, Petitioner: THERE IS NO ALLEGATION THAT SHE WAS DERELICT IN HER SUPERVISION HE WENT I WOULD THINK IF HER SUBORDINATES WERE GIVING THESE ORDERS AND SHE WAS AWARE OF THEM SHE WOULD BE DERELICT OF HER DUTIES RIGHT?

>> Laura N. Ferguson, Petitioner: NOT NECESSARILY. IT'S A LARGE BUSY OFFICE TO

NEGLECT TO SUSPEND STATE ATTORNEY FOR AN ISOLATED INCIDENCE OF ONE OF THE LINE PROSECUTORS WOULD MAKE ANY STATE ATTORNEY VULNERABLE TO SUSPENSION.

>> Chief Justice Carlos Muniz: THESE ARE TRIABLE ISSUES THIS IS AN ALLEGATION I DON'T KNOW HOW YOU CAN LOOK AT THIS AND SAY THERE IS NO ALLEGATION OF CONDUCT THAT WOULD BE RELATIVE.

>> Laura N. Ferguson, Petitioner: WHAT DUTY IS NEGLECTED THE STATUTE ITSELF ON WITHHOLDING OF ADJUDICATION IT'S AS IF THE STATE ATTORNEY IS GENERAL HAS DISCRETION THIS SEEK WITHHOLD THEIR CERTAIN SITUATIONS WHERE IT IS BEEN A REPEAT OFFENSE WHERE THE JUDGE IS NOT PERMITTED TO ISSUE WITHHOLD OF ADJUDICATION. THIS ORDER DOES NOT PROVIDE A SINGLE EXAMPLE WHERE MS. WORRELL OR SOMEBODY IN HER OFFICE REQUESTED A WITHHOLD WHERE IT WASN'T STATUTORILY AUTHORIZED. AGAIN IT IS UNLIKE ANY OTHER SUSPENSION ORDER WHERE WE KNOW EXACTLY WHAT THE OFFICER DID FLEX COUNSEL BEFORE TIME RUNS OUT AND START THE CUTOFF I WANT YOU TO RESPOND TO THE ARMY FROM THE OTHER SIDE THAT WE ESSENTIALLY LACKED JURISDICTION BECAUSE THE ISSUE RAISED BY MS WORRELL OR NONPOLITICAL QUESTIONS CAN YOU RESPOND TO THAT.

>> Laura N. Ferguson, Petitioner: IT IS THIS COURT'S ROLE TO INTERPRET THE CONSTITUTION THAT ROLE IS BESTED IN THIS BRANCH. WE'RE JUST ASKING THE COURT TO INTERPRET THE CONSTITUTION AND DETERMINE WHETHER THE GOVERNOR HAS EXCEEDED THE SCOPE OF HIS AUTHORITY UNDER THE CONSTITUTION THAT IS TRADITIONALLY WITHIN THE REALM OF THE COURT. EVEN THE SENATE ITSELF DOES NOT TREAT DISCOURSE ROLES AS INTERFERING WITH ITS ROLE ITS ROLES CONTEMPLATE THAT THERE WILL BE A JUDICIAL REVIEW AND THEY WILL HOLD THEIR PROCEEDINGS IN ABEYANCE.

>> I HAVE A FOLLOW-UP TO THE QUESTION CAN YOU TELL ME ARE THERE ANY CASES THAT YOU CAN CITE WHERE FLORIDA COURT HAS CONSIDERED THE POLITICAL QUESTION DOCTRINE THAT MAKES SUSPENSION NON-JUSTICIABLE?

>> Laura N. Ferguson, Petitioner: LED MARKET-LEADING LEAVING LYNN MARK CASE HARDY B: THE COURT LOOKED AT THE SEPARATION OF POWERS ISSUE AND DISTINGUISHED CASE MYERS WHERE THERE WAS AN ISSUE THAT WAS EXCLUSIVELY DELEGATED TO A PARTICULAR BRANCH AND SAID WELL SUSPENSION IS DIFFERENT BECAUSE ALREADY WE HAVE A BLURRING OF WHICH BRANCH ARE INVOLVED WE HAVE SUSPENSION WITH THE EXECUTIVE WE HAVE THE REMOVAL OR REINSTATEMENT WITH THE SENATE PRINCE OF THE SEPARATION OF POWERS CONCERNS ARE ALREADY NOT REALLY INCORPORATED INTO THE SYSTEM. IN ANY EVENT THERE IS NO DEMONSTRABLE COMMITMENT OF THE REVIEW OF THE SUSPENSION ISSUE TO THE EXECUTIVE.

THERE IS NO LANGUAGE GIVING THE EXECUTIVE SOLE POWER TO DETERMINE THE CONSTITUTIONALITY OF THE EXECUTIVE ACTION THE IMPEACHMENT CASES ON WHICH THE GOVERNOR RELIES INVOLVED LANGUAGE SAYING THAT THE SENATE HAS SOLE POWER TO TRY IMPEACHMENT SUPPORTS THE COURT CANNOT INTERFERE

WITH THAT WORK IN McPHERSON VERSUS FLYNN THE CONSTITUTION SAYS THE LEGISLATURE IS THE SOLE JUDGE OF THE LEGISLATURE'S QUALIFICATIONS. WE DON'T HAVE ANY LANGUAGE LIKE THAT AND THIS COURT HAS ALWAYS CAREFULLY WALKED A LOT WHAT ITS ROLE WOULD BE WITH SUSPENSION FORCES WITH THE SENATE'S ROLE IS AS WEIGHING THE EVIDENCE. AT THIS POINT UNLESS THERE ARE FURTHER QUESTIONS I RESERVE MY TIME FOR REBUTTAL.

>> I HAVE A QUESTION ON THE DUTY OBVIOUSLY THE FOUR CONSTITUTION REQUIRE CONSTITUTIONAL OFFICERS INCLUDING CONSTITUTIONAL TO HOLD THE FORT AND UNITED STATES CONSTITUTION THERE IS A CLEAR SEPARATION OF POWERS PREVENTION AND VETO POWER IS THE GOVERNORS AND THE PRESENTATION . WHEN WE LOOK AT BEING NEGLECTFUL OF DUTY WHY CAN WE NOT CONSIDER THE CONTEXT IN WHICH PROSECUTORS OPERATE WHEN CONSIDERING WHETHER OR NOT A BLANKET POLICY OR AN ALMOST BLANKET POLICY CONSTITUTES NEGLECT OF DUTY?

>> Laura N. Ferguson, Petitioner: TYPICALLY THERE IS NO BLANKET POLICY WERE ALMOST LIKE A POLICY. I THINK INHERENT IN THE OPERATIONAL OF THE CRIMINAL JUSTICE SYSTEM IS THE INDEPENDENCE THE DISCRETION OF THE PROSECUTORS IF A GOVERNOR WERE ABLE TO REMOVE A PROSECUTOR OF A DIFFERENT CLINICAL PARTY SIMPLY BECAUSE THEY DISAGREE WITH THEIR POLICIES AND CATEGORIZE THAT AS NEGLECT OF DUTY OR INCOMPETENCE THAT WILL HAVE A SUBSTANTIAL CHILLING EFFECT ON HOW STATE ATTORNEYS PERFORM THE ROLE OR THEIR WILLINGNESS TO SERVE.

>> Chief Justice Carlos Muniz: THANK YOU YOU CAN HAVE TWO MINUTES FOR REBUTTAL.

>> Jeffery P DeSousa, Respondent: APPEARANCE FOR RESPONDENT JEFFREY P. DESOUSA. THE GOVERNOR PROPERLY SUSPENDED MS WORRELL FROM OFFICE BECAUSE OF POLICIES AND PRACTICES SHE ADOPTED ESTATE ATTORNEYS TO CONTRIBUTE LEGISLATIVE POLICIES AND SIMULTANEOUSLY RESULT IN THE GROSS UNDERPERFORMANCE OF HER OFFICE RELATIVE TO ALL OTHER STATE ATTORNEYS IN THE STATE.

WE THINK OF COURSE THAT POLICY JUDGMENT IS NOT PROPERLY IN FRONT OF THE COURT.

MOST YOUR PRECEDENT SAME YOU WILL ASK IF THERE IS SOME REASONABLE RELATIONSHIP TO THE FACTS ALLEGED IN THE NEGLECT OF DUTY AND COMPETENCE. I THINK MANY OF THE QUESTIONS THIS MORNING HAVE HINTED THAT ON THESE FACTS THAT IS SOMEWHAT OF AN EASY QUESTION. I'D LIKE TO TALK THIS MORNING IF I COULD AND HAPPY TO TALK ABOUT ANY PART OF THE CASE BUT I WOULD LIKE TO START AT LEAST WITH OUR ARGUMENT THAT THE INTEGRITY OF MS WORRELL'S POSITION REPRESENTS A NON-JUSTICIABLE POLITICAL QUESTION FLEX BEFORE TO GET THE CAN I GET TO THE POLICY AND PRACTICE ISSUE HOW MUCH WORK IS NOT DOING IN THE ORDER IN A SENSE I'M CURIOUS IF YOU THOUGHT IT WAS NECESSARY TO ALLEGED THAT AS OPPOSED TO JUST PUTTING IN A BUNCH OF

STATS ABOUT HOW IN THE GOVERNOR'S VIEW THE STATE ATTORNEY IS JUST NOT PROTECTING THE PUBLIC AT A LEVEL THAT REACHES DUTY AND ARE YOU PLANNING ON ACTUALLY PROVING SPECIFIC POLICY I DON'T KNOW WHAT EXACTLY YOUR PRACTICES. WHAT IS THE ROLE OF THAT ALLEGATION IN THE ORDER.

>> Jeffery P DeSousa, Respondent: I THINK THE BILLS WORK TOGETHER BUT THEY ALSO WORK INDEPENDENTLY. IF WE HAD NO ALLEGATIONS AT ALL BUT PRACTICES AND POLICIES AND IT JUST TURNS OUT THAT MS WORRELL WAS NOT VERY EFFECTIVE AT PROSECUTING CRIME AND THE DATA I THINK DOES PROVE THAT I'M HAPPY TO TALK ABOUT THAT IN GRANULAR DETAIL. IF WE HAD NOTHING ELSE THAN THE DATE I WOULD THINK THAT WOULD BE ENOUGH. THE PRACTICES AND POLICIES MAKE THAT EVEN STRONGER AND SOME OF THE QUESTIONS HAVE GOTTEN ASKED EXACTLY THE WAYS IN WHICH THESE POLICIES ARE IMPROPER AND FRUSTRATE THINGS LIKE LEGISLATURE ZERO-TOLERANCE POLICY. IT WANTS THERE TO BE THESE MANDATORY SENTENCES FOR INDIVIDUALS WHO COMMIT DRUGS TRAFFICKING IN FIREARM OFFENSES AND MS WORRELL'S ANSWER TO SOME OF THOSE POINTS IF YOU LOOK AT PAGE 41 OF THE PETITION WITH RESPECT TO THE FIREARMS AND MOST MANDATORY SHE SAYS THERE IS NOTHING IN THOSE STATUTES THAT PREVENTS ME FROM DEBATING THIS MINIMUM MANDATORY BY DOWN CHARGING EVENT A ROBBERY WITH A FIREARM CASE I KNEW I COULD PROVE THE SUGGESTION IS THAT YOU WOULD DOWN CHARGE THAT EMPLOYEE JUST TO A ROBBERY WITHOUT THE FIREARM. TO EVADE THE MINIMUM MANDATORY.

DO NOT THINK THEY COULD POSSIBLY BE WHAT THE LEGISLATURE HAD IN MIND WHEN IT SAID ZERO-TOLERANCE AND YOU MUST OPPOSE CERTAIN MINIMUMS. AGAIN IF THERE WAS NOTHING ELSE WE JUST HAD THE DATE OF AND WHAT SOME OF THE DATA SHOWS TAKE THE PRISON ADMISSIONS FOUR 2022 THROUGH 2023 PRAISE THIS IS 100 % OF THE PRISON ADMISSIONS STATEWIDE SHE WAS AT 38% OF THOSE THAT REALLY IS AN ABYSMAL RECORD IF WE HAD NOTHING ELSE IF THERE WAS NOTHING SPECIFIC SHE WAS DOING SHE IS NOT AFFECTED AT PROSECUTING CRIME WE THINK THAT WOULD BE ENOUGH

>> LET ME ASK THIS WE HAD A CASE BEFORE US WHEN THIS HAPPEN LET'S SAY THIS IS AN INNER-CITY CRIME WHETHER IT'S A DRIVE-BY SHOOTING AND A YOUNG GIRL GETS SHOT.

ONLY ONE WITNESS SAW IT.

AND THE STATE FILED CHARGES BASED ON THAT ONE WITNESS WHO SAW WHO SHOT HIM. SURE ENOUGH AS CAN BE EXPECTED IN MANY OF THOSE CASES, LE GRAND INDICATES THE DEPOSITION COMES AROUND THE WITNESS SUDDENLY CANNOT REMEMBER.

NOW THE STATE IS LEFT WITH NOTHING.

HAD THE CASE BEEN CHARGED WITH A FIREARM WHICH EVIDENTLY AGGRAVATED THE PENALTY.

IN THAT CASE THE STATE IS FACED WITH EITHER OFFER SOMETHING IN THE WAY OF A PLEA GET SOMETHING FROM THIS GUY A FEW YEARS IN PRISON WHENEVER. JUST TO GET TO TRIAL SURELY RESULT IN AN NOT GUILTY OR DIRECTED VERDICT.



WHAT WE ARE DOING HERE TODAY IS PLACING THE CHILLING EFFECT ON PROSECUTORS FOR MAKING A DECISION LET ME TAKE SOMETHING LET ME EAT THE GUN MEANING TAKE THAT OUT OF THE SENTENCING PROCESS.

LET'S GIVE THIS GUY TWO OR THREE YEARS IN PRISON LET'S GET THAT OUT OF IT. OR I BETTER GO AHEAD AND TAKE IT TO TRIAL JUST FLY THE AIRPLANE AGAINST THE MOUNTAIN IF I DON'T DO THAT BECAUSE THE GOVERNOR IS GOING TO FIRE ME. ISN'T IT WILL BE DUE IN MAJOR METROPOLITAN AREAS WHEN WE GET MANY OF THOSE CASES.

>> Jeffery P DeSousa,Respondent: I DON'T THINK SO JUSTICE LABARGA THE CULTIC IS VERY WELL I THINK WHAT YOU'RE DESCRIBING WITH THE A VALUABLE EXERCISE OF PROSECUTORIAL.

>> Justice Jorge LaBarga: WHO DECIDES THAT THE PROSECUTORS HAVE TO CALL THE GOVERNOR FOR THE GOVERNORS GENERAL COUNSEL AND SAY THIS IS WHAT I NEED TO DO.

IS THAT OKAY WITH YOU GOVERNOR.

WHO DECIDES THAT?

>> Jeffery P DeSousa,Respondent: REPORTS ARE NOT SAYING THAT I WAS A COUPLE OF THINGS HARDY VERSUS ALLEN CASE FROM 1937 I THINK STANDS FOR THE PROPOSITION THAT WAS THE GAMBLING CASE I DO THINK STANDS FOR THE PROPOSITION THAT THE LABELS PROSECUTORIAL DISCRETION DOES NOT INSULATE ESTATE ATTORNEY FROM SUSPENSION FOR NEGLECT OF DUTY WAS CASE IN WHICH WAS NOT A BLANKET POLICY CASE. THERE HAD BEEN GAMBLING PROSECUTIONS BROUGHT ON THAT COUNTY SOLICITOR AND THE GOVERNOR DECIDED THERE NOT BEEN ENOUGH EVEN IDENTIFIED SOME SPECIFIC INSTANCES THAT HE THOUGHT SHOULD HAVE BEEN CHARGED FOR THIS COURT SAID APPLYING THE APPLICABLE SUSPECTED THAT WAS PROBABLY THE CASE THEY COULD GO TO THE SENATE TO DECIDE. I THINK THAT IS THE BILL IN CERTAIN PART OF WHY WE BELIEVE THAT THIS IS NONJUSTICIABLE BECAUSE THE CHECK AND BALANCE IN THAT CIRCUMSTANCE IS A POLITICAL ONE NOT ONLY THE FACTS THAT THE PEOPLE ELECT THE GOVERNOR AND HE IS ACCOUNTABLE TO THEM BUT ALSO BECAUSE THE CONSTITUTION THE PEOPLE THEMSELVES SET UP THE SENATE AS EFFECTIVELY PERFORMING THE JUDICIAL REVIEW OF A SUSPENSION ORDER.

>> COUNSEL WHAT WOULD THIS ROLES BE LET'S SQUARE THAT LET'S SAY WE AGREE WITH YOU THIS DOES PRESENT A NONJUSTICIABLE POLITICAL QUESTION WHAT IS THE COURT'S ROLE?

IN ISSUING THESE LISTENING. STRESSES

>> JUSTICE FRANCIS WE WOULD STRUGGLE AND IN THE SAME WAY THAT YOU PROPOSED TO DO SO. IN YOUR CONCURRING OPINION IN THE WARRANT CASE WHICH IS TO SAY THAT YOU WOULD IDENTIFY SOME VERY SPECIFIC STRAIGHT UP OR DOWN YES OR NO TYPE OF QUESTIONS RIGHT YOU HAVE A JUDICIALLY TANGIBLE STANDARD AND COURT CAN ADDRESS THAT PRINTS FOR INSTANCE IF THE GOVERNMENT ATTEMPTED TO REMOVE AND OF COURSE THIS WOULD NEVER

HAPPEN IF THE GOVERNOR ATTEMPTED TO REMOVE AN OFFICIAL WAS SUBJECT TO IMPEACHMENT RATHER THAN SUSPENSION I THINK OF THE CLEAR JUDICIALLY MANAGEABLE STANDARD TO SAY WE CAN STEP IN AND ADJUDICATE THAT CASE. I ALSO THINK THAT ALONG THE LINES OF THE CONCURRENCE MIGHT SAY SOMETHING LIKE IS THERE A WRITTEN ORDER THAT STATES GROUNDS AND IS FILED WITHIN THE SAFE CUSTODIAN OF RECORDS THAT WOULD BE JUSTICIABLE BECAUSE OF THE PRESENCE OF JUDICIALLY MANAGEABLE STANDARDS THE PROBLEM IS THIS THE DIFFERENCE AS WE UNDERSTAND IT BETWEEN OUR VIEW OF THE POLITICAL QUESTION DOCTRINE AND REASONABLE RELATIONSHIP TEST YOU APPLY RIGHT NOW BECAUSE THERE IS AT LEAST SOME ARGUMENT THAT A CLAIMANT CAN MAKE THE STATED GROUNDS DO NOT HAVE THAT NEXUS. AS SOON AS YOU GET INTO DOING THAT SORT OF INQUIRY YOU DO HAVE TO THINK TO YOURSELF WHAT DO I BELIEVE THAT A NEGLECT OF DUTY FOR AN EXECUTIVE BRANCH OFFICIAL WOULD LOOK LIKE IN THIS CONTEXT?

EVEN IF YOU ARE DIFFERENTIAL ABOUT THAT WERE STILL EXERCISING A POLITICAL JUDGMENT CULPRIT ABOUT WHAT CONCEIVABLY THAT NEGLECT OF DUTY.

>> DON'T YOU THINK WE CAN LOOK AT OF WHAT REASONABLE VIEW OF THAT WOULD BE JUDGES DO THAT ALL THE TIME PEOPLE DO THAT OVER TIME WE LOOK AT WHAT A REASONABLE VIEW OF THAT WOULD BE WE ARE HIGHLY DEFERENTIAL WHY WOULD THAT PRECLUDE REVIEW ALTOGETHER BECAUSE WE HAVE TO CONSIDER REASONABLENESS AS PART OF THE ANALYSIS.

>> Jeffery P DeSousa,Respondent: I THINK JUSTICE GROSSHANS IF THE STANDARD REALLY IS THAT DEFERENTIAL THAT YOU PROBABLY GET TO THE SAME PLACE IN A LOT OF THESE CASES ANYWAY. I THINK THE FACT OF MATTER HAVE NOT BEEN QUASHING THESE SUSPENSION ORDERS UNDER REASONABLE RELATIONSHIP TEST. PART OF THE PROBLEM IT ALWAYS INVITES LITIGATION SO EVEN THOUGH YOU HAVE LAID OUT THIS VERY DEFERENTIAL TEST AND IT'S BEEN THE RULE FOR DECADES WE STILL END UP WITH PAGES AND PAGES OF BRIEFING ON THINGS LIKE WHAT ARE THE FACTS WHAT DOES THE EVIDENCE SHOW?

>> Justice Jamie Grosshans: HOW WOULD YOU RECONCILE YOUR POLITICAL QUESTION DOCTRINE AND THE IDEA THAT THIS PULLER IS NONJUSTICIABLE WITH SECTION 21 ARTICLE 1 ACCESS TO COURTS?

THAT COURTS SHALL BE OPEN TO EVERY PERSON FOR REDRESS OF ANY INJURY THAT IS JUST AS MUCH A PROVISION OF THE CONSTITUTION AS WHICH WAS CITING TO SAY ACTUALLY IN THIS CASE THE COURTHOUSE IS COMPLETELY CLOSED. NO ONE CAN RAISE THIS QUESTION HERE.

>> Jeffery P DeSousa,Respondent: TO BE CLEAR I THINK THERE WOULD BE SOME JUDICIAL REVIEW. IT IS YOU WILL PERFORM THE REVIEW WE THOUGHT IT WAS A JUDICIALLY MANAGEABLE STANDARD. THE SECOND THING I WOULD SAY ABOUT THAT TYPICAL QUESTION DOCTRINE FIXING THAT I CARE I SUPPOSE THE SAME THING COULD'VE BEEN SAID IN THE CITIZENS FOR STRONG SCHOOLS CASE WHERE THE QUESTION WAS THIS ADEQUACY OR HIGH QUALITY HAVE SOME KIND OF JUDICIALLY MANAGEABLE CONTEXT?

AND THE COURT SAID NO AND THUS THE COURTS HAD TO BE CLOSED IN AT LEAST THE LIMITED RESPECT. THERE DOES SEEM TO BE THE WAY THE US SUPREME COURT HAS ANALYZED THESE QUESTIONS. IT SAID IN CASES LIKE THE BAKER VERSUS CARR THERE ARE NO POLITICAL CASES THERE JUST POLITICAL QUESTIONS. SO YOU REALLY DO LOOK TO SEE WHAT OF THE CLAIMS IS THIS THE TYPE OF CLAIM THAT WOULD BE APPROPRIATE FOR DIGITAL SOLUTION.

>> Chief Justice Carlos Muniz: I THINK THESE ARE TERMS IF YOU LOOK AT THE OVERALL CONTEXT THE VOTERS CHOSE NOT TO SAY THE GOVERNOR CAN REMOVE ESTATE ATTORNEYS FROM BECAUSE IF THE GOVERNOR THINKS HE OR SHE ESTATE ATTORNEY IS DOING A BAD JOB.

THEY CHOSE KIND OF LEGALLY RECOGNIZED TERMS WITH A LONG HISTORY . THE PERSON IS ELECTED THEY DO HAVE CERTAIN INTERESTS/RIGHTS. THERE JOB ETC. ETC. UNLESS WE THINK THAT THE SENATE WHAT THEY ARE DOING IS A SUBSTITUTE FOR TRIAL LIKE THINGS THEY ARE APPLYING REAL STANDARDS. I DON'T THINK THERE IS ANYTHING THAT IS INHERENTLY KIND OF UNMANAGEABLE ABOUT THE TERMS. OBVIOUSLY YOU WOULD HAVE TO ASK YOURSELF I THINK THE COURT HAS SORT OF THOUGHTFULLY OVERTIME DEVELOPED THIS VERY DEFERENTIAL UNDERSTANDING OF WHAT THAT IS.

I DON'T THINK IT IS SOMETHING WHERE IT IS YOU KNOW IT WHEN YOU SEE IT LEVEL SUBJECTIVITY. OTHERWISE THE WHOLE THING TO NOT MAKE ANY SENSE.

>> Jeffery P DeSousa,Respondent: JUST TO GIVE YOU AN EXAMPLE OF THE KINDS OF LINE DRAWING THAT YOU ARE REQUIRED TO GET INTO IF YOU DO THIS TYPE OF REVIEW I THINK EVERYBODY WOULD AGREE IF YOU JUST GO BACK TO PRISON ADMISSIONS IF THE ALLEGATION WAS ESTATE ATTORNEY ONLY OBTAINED 5% OF THE PRISON ADMISSIONS CAMERAS THROUGHOUT THE STATE OBTAINS WOULD SAY THAT'S A REALLY EASY CASE OF COURSE THAT PERSON WAS NEGLECTING THEIR DUTY. THIS CASE WAS 30% THAT SEEMS LIKE AN EASY CASE. IF YOU GET TO 65% OR 70 OR 75% I THINK YOU CAN SEE HOW IT MIGHT BE MORE OF A DIFFICULT QUESTION TO SAY WE THINK THAT IS OUT OF LINE AS A NEGLECT OF DUTY THAT SITE IS NOT. I DO THINK THAT IS WHERE THE USE OF POLITICAL JUDGMENT COMES IN BECAUSE.

>> WHY IS IT NOT LESS THE QUESTION ABOUT JUDICIALLY MANAGEMENT STANDARDS AND A QUESTION ABOUT WHAT THE PROPER SCOPE OF REVIEW IS? I DON'T SEE IS US TRYING TO LAND AS A JUDICIALLY MANAGEABLE STANDARD IS WE HAVE THE CONSTITUTIONAL AUTHORITY TO HEAR.

[LISTING NAMES] WHAT IS THE PROPER SCOPE AND WITHIN THE SCOPE AS ARC IS LISTED IF THAT IS THE FRAMEWORK FOR SOMETHING LIKE NEGLECT OF DUTY LET'S SAY THERE IS AN EXECUTIVE ORDER THAT SOMEBODY THAT A CONSTITUTIONAL OFFICER SAYS ON FACEBOOK I WAS SUPER WOULD.

[LISTING NAMES] BE BROUGHT ENOUGH FOR A COURT TO LOOK AT THAT AND SAY THE GOVERNOR DOES NOT HAVE THE AUTHORITY TO SUSPEND FOR NEGLIGENT BAKING OF CASSEROLES FOR EXAMPLE.

>> Jeffery P DeSousa,Respondent: I THINK IF SUSPENSION CASES UNDER ARTICLE 4 SECTION 7 WHERE THE ENTIRE UNIVERSE OF CASES THAT MIGHT BE MORE

PALATABLE BUT THE FACT OF THE MATTER IS IT HAS ALL SORTS OF APPLICATIONS SETTING ASIDE THE GOVERNOR SUSPENSION POWER THE POWER HAS BEEN IN ONE PARTICULAR EDITION OF THE RITZ.

A BIG PART OF OUR ARGUMENT IS THERE ARE CLEAR TEXTUAL COMMITMENTS TO THE SENATE AND THIS COURT TO SEND THIS THAT IN ISRAEL/COLEMAN THE SENATE ITSELF IS THE COURT THAT THE PEOPLE SET UP TO DECIDE THESE QUESTIONS SO I THINK TO SOME EXTENT THAT DISPLACES THE MORE GENERALIZED FOR NINE AUTHORITY THAT YOU HAVE TO GET INTO DETAIL AND JUDGE THE SORT OF SUFFICIENCY OF THE FACTUAL ASSERTIONS.

>> Chief Justice Carlos Muniz: CAN WE TALK ABOUT PRECEDENT IT SEEMS LIKE THIS IS A DIFFICULT ISSUE I THINK THAT THEY WRESTLED WITH THE BREAD THEY WRESTLED WITH THE CONTEXTUAL ALLEGATIONS OF WHO IS DOING WHAT THEY WRESTLED WITH THE IDEA OF THE INDIVIDUAL'S RIGHT JUDICIAL POWERS ABOUT ENFORCING INDIVIDUAL RIGHTS. THIS REMOVAL THING IT IS NOT EVEN A TRIAL REFERRED TO CONTEXTUALLY THE WAY IMPEACHMENT AS THEY CAME UP WITH WHAT I THINK IS A VERY THOUGHTFUL RESOLUTION OF IT YOU HAD OPINIONS THAT RAN THE GAMBIT. BUFORD'S OPINION IS ESSENTIALLY KIND OF ANTICIPATED YOUR ARGUMENT 90 YEARS AGO DIDN'T USE THE TERM POLITICAL QUESTION BUT HE MAKES ALL THE SAME ARGUMENTS HE SAYS NOT EVEN GOING TO PARTICIPATE BECAUSE WE DON'T HAVE JURISDICTION AND HERE IS WHY. FAST FORWARD 30 SOMETHING YEARS LATER THE VOTERS ABOUT A NEW CONSTITUTION DENOTES ANYTHING TO KIND OF FIX THIS BY ADDING WORDS LIKE SOLE OR TELLING THE COURTS TO BUTT OUT OF IT. WHY WOULD WE NOT ACCEPT THAT RESOLUTION THAT'S BEEN PART OF OUR CONSTITUTIONAL HISTORY NOW FOR 90 SOMETHING YEARS OTHER THAN A BE JUST THE KIND OF WELL YOU'RE WASTING EVERYBODY'S TIME WITH THESE THINGS BECAUSE IT IS SO DEFERENTIAL THAT THE COURT ENDS UP SAYING IT'S ALL WITHIN THE ZONE OF REASONABLENESS. I DON'T UNDERSTAND WHY WE MAKE SOME PRONOUNCEMENT ABOUT JUSTICIABILITY NOT HAVING JURISDICTION ETC. ETC. WHEN IT IS SUCH A WELL-ESTABLISHED THING AND WHERE IT IS HARDLY OBVIOUS ON THE MERITS.

>> Jeffery P DeSousa, Respondent: IT IS CERTAINLY NOT OBVIOUS TO VICTOR NINE PETITIONERS THEMSELVES BECAUSE THEY COME THROUGH TIME TIME AGAIN AND MAKE THOSE ORGANS. IF YOU END UP GETTING TO THE SAME PLACE BECAUSE YOU CLARIFIED THE REASONABLE ALLYSHIP TEST USUALLY IS THIS DIFFERENTIAL I THINK THAT IS SOLVING MANY OF THE CONCERNS I WILL SAY THAT THE LOGIC THAT THE COURT ESPOUSED IN ADOPTING A TEST DOES NOT QUITE MATCH UP WITH THE END PRODUCT BECAUSE YOU STILL HAVE WITH A TEST THAT HAS THE JUDICIARY SORT OF MAKING SOME SENSE THESE KIND OF DIFFICULT POLICY DECISIONS. I THINK AS A MATTER OF DOCTRINE THE CORRECT ANSWER IS THIS IS NONJUSTICIABLE PRINCE.

>> Chief Justice Carlos Muniz: IT IS NOT TO SAY IT IS KIND OF RED AND BUTTER JUDICIAL PART OF THE JOB TO INTERPRET WORDS AND TO IDENTIFY KIND OF REASONABLE NOT MESSERLI I THINK THIS IS CLEARLY AN AREA WHERE THE COURT IS NOT SAID WE ARE LOOKING FOR THE BEST MEANING OF THE TEXT. WE'RE

LOOKING THEY ARE TRYING TO ESTABLISH WHAT COULD A REASONABLE PERSON THINK NEGLIGENCE OF DUTY IS FOR MISFEASANCE IS CONNECT AND THAT IS OUR BREAD AND BUTTER THAT IS WHAT WE DO EVERY DAY.

IT IS NOT LIKE WE ARE ASKED TO SAY WHAT IS THE OPTIMAL AMOUNT OF MONEY TO SPEND ON TEXTBOOKS IN SCHOOLS OR SOMETHING. I DON'T UNDERSTAND . THE NOTION THAT WE ARE SOMEHOW IT AT SEA AND THIS IS SO SUBJECTIVE WE NEVER CLAIMED THE AUTHORITY TO SAY DEFINITELY THIS IS WHAT THE WORD MEANS. AND ALL WE ARE LOOKING FOR IS EVIDENCE THAT MIGHT SUPPORT IT WE'VE ALWAYS ALLOWED HIS OWN OF REASONABLENESS EVEN INTO THE DEFINITION OF THE PHRASES IN THE CONSTITUTION.

>> Jeffery P DeSousa,Respondent: YOU RAISE THEIR POINTS I THINK MAYBE SOME CLARIFICATION TO THE PUBLIC AT LARGE ABOUT WHAT THE STANDARD LOOK LIKE MIGHT BE HELPFUL HERE JUST BECAUSE WE END UP THINKING THE SAME ACT WITHOUT ARGUMENT ARGUMENT THAT THE EVIDENCE IN ALL OF THESE CASES MAYBE THE MESSAGE IS NOT QUICK ON THE CROSS. I THINK THE OTHER THING I WOULD SAY WITH RESPECT TO THE PRESIDENTS IS THE MODERN POLITICAL QUESTION DOCTRINE DELETE DID NOT COME ALONG ITS CURRENT ITERATION UNTIL THE 60S WITH BAKER VERSUS CARR. AS TO WHETHER THERE'S BEEN ANY CHANGE TO THE TEXT OF THE FLORIDA CONSTITUTION FROM THE 1885 VERSION TO THE MODERN CONSTITUTION ARTICLE 4 SECTION 7 ONE THING I WOULD POINT OUT IS THERE HAS BEEN A SLIGHT ACTUAL CHANGE WHICH IS BEFORE THE SENATE DID NOT HAVE THE POWER TO REINSTATE IT DE FACTO IF HE DID NOT ACT OR IT DECIDED NOT TO MOVE BUT NOW IT HAS THE POWER TO REINSTATE I DO THINK IT IS TELLING THERE ONLY TO GOVERNMENTAL ENTITIES LISTED IN ARTICLE 4 SECTION 7 WITH THE POWER TO REINSTATE.

WHICH OF THE GOVERNOR HIMSELF AND THE SENATE THAT MEANS STATEMENT POWERFULLY DOES LOOK QUITE A LOT LIKE.

>> Justice Meredith Sasso: ASSUMING THE COURT ADOPTS YOU NONE JUDICIAL DOCTRINE DOES THAT PLEAD TO THE JUDICIARY WITH ANY VOLATILE IN THESE CASES.

>> Jeffery P DeSousa,Respondent: YES FOR INSTANCE IF THE GOVERNOR WERE TO ATTEMPT TO SUSPEND THE SPEAKER OF THE HOUSE I THINK YOU WOULD STEP IN AND YOU WOULD SAY THAT IS NO SEVEREST ACTION WE DOES NOT AUDIBLY FALL WITHIN THE GOVERNOR'S POWER AND QUO WARRANTO WOULD BE APPROPRIATE THERE.

YOU LOOK FOR THOSE KIND OF VERY CONCRETE JUDICIALLY MANAGEABLE STANDARDS.

>> Justice Meredith Sasso: KIND OF LIKE WHAT WE HAVE IN CITIZENS INITIATIVES THERE WE LOOK AT WHETHER OR NOT THE SUMMARY HAS 75 WORDS INSTEAD OF 78 WORDS. NEGATIVE THINK.

>> Jeffery P DeSousa,Respondent: RIGHT.

>> Chief Justice Carlos Muniz: I THINK THERE IS A LOT MORE PEOPLE TO BE SAVED WE DO A LOT MORE IN THAT AREA.

>> IN NO SCENARIO WOULD THIS BE A DISMISSAL FOR LACK OF JURISDICTION BECAUSE IT IS PRESENTED TO US AS A PETITION FOR QUO WARRANTO WE CAN HAVE THE ABILITY TO REVIEW WHETHER OR NOT THE GOVERNOR HAD THE AUTHORITY TO SUSPEND WHETHER OR NOT THE PROSECUTOR WAS A CONSTITUTIONAL OFFICER.

>> Jeffery P DeSousa,Respondent: I THINK WHAT BAKER IS SAYING YOU LOOK AT THE NATURE OF THE CLAIM YOU AND SAVE THE WHOLE CATEGORY OF CASES IS NONJUSTICIABLE YOU LOOK TO SEE WHAT KIND CLAIM DID YOU BRING THE CLAIM BEING BROUGHT LIKE JUDICIALLY MANAGEABLE STANDARDS WE WOULD SAY WE DISMISS FOR LACK OF JURISDICTION IF THE CLAIM HAD BEEN BROUGHT UP WITH SOME CONCRETE JUDICIALLY MANAGEABLE ISSUE WAS THERE A WRITTEN SUSPENSION ORDER AT ALL I THINK YOU WOULD SAY WE HAVE JURISDICTION AND WILL ADJUDICATE THAT.

>> Chief Justice Carlos Muniz: DID YOU SAY BAKER LIKE BAKER VERSUS CORPORATE INSTEAD OF JUST FOLLOWING 90 YEARS OF FLORIDA PRESIDENT WILL TRY TO FIGURE OUT HOW BAKER VERSUS CARR SHOULD APPLY TO THIS.

>> Jeffery P DeSousa,Respondent: I WAS SIMPLY SAYING THAT IS HOW THE US SUPREME COURT AT LEAST HAS UNDERSTOOD THE POLITICAL QUESTION DOCTRINE LEGAL ISSUE BY ISSUE. NOT JUST CATEGORY OF CASES.

THAT IS ALL I MEANT TO SUGGEST THE COURSE THE COURT HAS IN MANY WAYS MODELS IT'S MODERN POLITICAL QUESTIONS JURISPRUDENCE ON WHAT THE US SUPREME COURT IS DONE . THANK YOU VERY MUCH FOR YOUR TIME WE THINK THE CASE SHOULD BE DISMISSED OR DENIED.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Laura N. Ferguson,Petitioner: IT'S REMARKABLE THE GOVERNOR'S LEAD ARGUMENT IS THAT THIS COURT CANNOT REVIEW WHETHER HIS ORDER IS CONSTITUTIONAL. THIS IS A GOVERNOR WAS USED FOR SUSPENSION ORDER WITH GREAT FREQUENCY AND IN AN UNPRECEDENTED WAY. AND TARGETED THOSE OF DIFFERING POLITICAL PARTY I DO THINK THIS IS A CASE CHIEF JUSTICE MUNIZ WHERE THERE SHOULD BE SOME SCRUTINY ON WHETHER THERE IS ABUSE OF POWER. IN TERMS OF WHETHER THE COURT HAS PREVIOUSLY RECOGNIZED THAT PROSECUTORIAL DISCRETION IS FOR GAMING HARDY VERSUS ALLEN HARDY VERSUS ALLEN IS A NON PROSECUTION CASE IT IS NOT A PROSECUTORIAL DISCRETION CASE REASON THAT THE COURT APPROVED THE SUSPENSION ORDER WAS BECAUSE IT INTERPRETED THE OFFICIAL AS KNOWINGLY PERMITTING GAMBLING AND PREFERRING NO CHARGES THEREFOR AND SIMILARLY THE EXECUTIVE ORDER UNDERSTOOD HARDY VERSUS ALLEN AS BEING BASED ON "AN ALLEGED UNWILLINGNESS TO PROSECUTE GAMBLING OFFENSES. THAT IS THE ORDER.

MS WORRELL DOES NOT DECLINE TO PROSECUTE ANY CATEGORY OF OFFENSES. EVEN THE ADMISSIONS DATA SHOWS PEOPLE HAVE BEEN PROSECUTED ACROSS A RANGE OF OFFENSES IN HER JURISDICTION.

IN TERMS OF WHETHER THE FACTS ALLEGED ARE REASONABLY RELATED TO NEGLIGENCE OF DUTY ARE REALLY COMPETENCE RECENTLY RELATED DOES NOT IS NOT A STANDARDLESS TEST. WHAT DISORDER DUMBLY RELIES ON IS PRISON ADMISSION

DATA WHICH IS NOT REASONABLY RELATED TO WHETHER A PROSECUTOR HAS NEGLECTED THEIR DUTY. THERE IS A HOST.

>> Justice Charles Canady: I THINK THE GIST OF WHAT THE COURT SAYING AND THE POINT HERE IS THAT THIS EXECUTIVE ORDER IS IN MANY WAYS LIKE AN INDICTMENT OR INFORMATION FILED IN CRIMINAL COURT.

FOR ALL THE STATE ATTORNEY IS REQUIRED TO DO AS MINIMAL ALLEGATIONS THAT A CRIME HAS BEEN COMMITTED.

IT IS UP TO THE JURY TO DECIDE WHETHER THE PERSON IS GUILTY OR NOT AFTER THE EVIDENCE HAS BEEN PRESENTED. HERE THE ARGUMENT IS THAT THIS IS THE SAME THING. THEY MAKE THE ALLEGATIONS HERE IN THE ORDER THEN THE SENATE WILL HEAR THE EVIDENCE IN THE CASE AND THE SENATE WILL DECIDE.

THEY WILL DECIDE WHETHER MS WORRELL IS GUILTY ON THESE THINGS BRING IN ALL THE ARGUMENTS YOU'RE MAKING TODAY WILL BE PRESENTED TO THE SENATE AND THE SENATE WILL HEAR IT AND MAKE A DECISION. HOW IS THAT NOT IMPROPER?

>> Laura N. Ferguson, Petitioner: THE EXECUTIVE ORDER HERE UNLIKE AN INDICTMENT DOESN'T IDENTIFY INSTANCES OF MISCONDUCT OF MS WORRELL JUST SPECULATES BECAUSE SHE RAN ON A PARTICULAR PLATFORM SHE MUST HAVE CERTAIN POLICY WHICH THEY CAN'T IDENTIFY A SINGLE POLICY. THE ORDER TALKS ABOUT HOW HER OFFICE DISCOURAGES WHICH DOESN'T SOUND LIKE A POLICY TALKS ABOUT PRACTICES BUT CANNOT IDENTIFY A SINGLE EXAMPLE PRINT PRACTICES IN PLACE MULTIPLE EXAMPLES. THEY CANNOT LIST A SINGLE INSTANCE WHERE THERE HAS BEEN AN ABUSE OF DISCRETION PRINT SO AN INDICTMENT TELLS THE DEFENDANT HERE IS WHAT SPECIFICALLY YOU DID MAYBE NOT GREAT DETAIL DOES NOT HAVE TO PROVIDE EVIDENCE BUT THIS IS JUST SPECULATING WE SEE YOU STATE ATTORNEY FROM HIGHLY DENSE POPULATED URBAN AREA YOUR NUMBERS DON'T LOOK SO GOOD AS COMPARED TO OTHER CIRCUITS.

WHERE THESE NUMBERS ARE ABOUT PRISON ADMISSIONS WHICH STATE ATTORNEY CANNOT CONTROL THERE IS A HOST OF FACTORS AS YOU NOTED THIS AVAILABILITY. PLEA BARGAINS ARE ACCEPTED PART OF WORKINGS OF THE CRIMINAL JUSTICE SYSTEM. THE STATE ATTORNEYS ARE ENCOURAGED TO PLEA BARGAIN.

THERE IS A HOST OF REASONS THE JUDGE CONTROL SENTENCES. EVIDENCE MAY NOT BE AVAILABLE. THERE MAY HAVE BEEN POLICE MISCONDUCT. IS A HOST OF REASONS THAT CAN AFFECT PRISON ADMISSION DATA PRINT IT IS UNREALISTIC TO RELY IN PRISON ADMISSION DATA TO CONCLUDE STATE ATTORNEY HAS NEGLECTED THEIR DUTY.

>> Chief Justice Carlos Muniz: YOU CAN HAVE 30 SECONDS TO CONCLUDE IF YOU WOULD LIKE.

>> Laura N. Ferguson, Petitioner: JUST TO SUMMARIZE THE EXECUTIVE ORDER DOES NOT IDENTIFY ANY CONCRETE CONDUCT ANY SPECIFIC POLICIES ANY INSTANCES OF ABUSE OF DISCRETION BY MS WORRELL THAT COULD BE CONSIDERED NEGLECT OF DUTY OR INCOMPETENCE. INSTEAD CLEARLY THERE IS POLICY DIFFERENCES BUT THOSE ARE TO BE RESOLVED IN THE DEMOCRATIC PROCESS THROUGH ELECTIONS

THERE NEEDS TO BE SOME REALLY MORE EGREGIOUS SYSTEMIC PERVASIVE PROBLEM WHERE THERE IS DEMONSTRATED ABUSE OF DISCRETION TO WARRANT THE EXECUTIVE STEPPING IN AND REMOVING AN ELECTED OFFICIAL. WE ASK THAT YOU DECLARE THE EXECUTIVE ORDER INVALID AND RESTORE MS WORRELL TO HER ELECTED OFFICE.

THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU.