

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

NEXT CASE IS PHYLLIS GARVIN VERSUS JOANNE JEROME. MS. GARVIN, YOU MAY PROCEED.

GOOD MORNING. I AM PHYLLIS T GARVIN PRO SE. MY CASE IS PHYLLIS T GARVIN VERSUS JOANNE JEROME, CASE NUMBER 94,751, AND I WOULD LIKE TO RESERVE TEN MINUTES OF MY TIME FOR REBUTTAL. I AM BOTH HUMBLLED AND HONORED TO APPEAR HERE BEFORE YOU. THE PETITIONER WAS A LEGALLY -- THE PETITIONER WAS ILLEGALLY RECALLED AS COUNCIL MEMBER AND VICE MAYOR OF DAYTONA BEACH SHORES ON NOVEMBER 28, 1998. THERE WERE FIVE ALLEGATIONS LISTED AGAINST THE PETITIONER. THEY WERE WRITTEN BY THE OPPOSING ATTORNEY, NOT THE LAY PEOPLE ON RECALL. THIS IS ON THE RECALL COMMITTEE. THIS IS PART OF THE RECORD. THREE ALLEGATIONS WERE DECLARED LEGALLY INSUFFICIENT BY THE CIRCUIT COURT.

MS. GARVIN, DID YOU ASK THE TRIAL JUDGE TO ELIMINATE THOSE ONES THAT YOU FOUND OBJECTIONABLE AND ONLY PROCEED WITH THE, WHAT THE JUDGE HELD TO BE VALID POSITIONS ON THE BALLOT, AT ANY TIME? OR DID YOU JUST ASK HIM TO THROW OUT THE WHOLE THING?

NO. WE WERE IN COURT FOUR DIFFERENT TIMES, AND WE HAVE A SEVEN' HOUR TRIAL AT THE -- A SEVEN-HOUR TRIAL AT THE END, AND FOLLOWING THAT TRIAL HE TOOK SEVERAL DAYS, AND THEN HE DECIDED THAT THREE OF THE FIVE CHARGES WERE INSUFFICIENT.

YES, MA'AM. BUT DID YOU ASK HIM TO, THEN, ELIMINATE THOSE FROM THE BALLOT AND PROCEED ONLY WITH THE GROUNDS THAT THAT JUDGE HAD FOUND TO BE VALID, OR DID YOU JUST ASK HIM TO THROW THE WHOLE THING OUT?

NO. WE DIDN'T, BECAUSE WE, THEN, ASKED FOR A REHEARING, BECAUSE THERE WERE QUITE A FEW OTHER DISCREPANCIES AND OTHER MINOR ISSUES THAT I DON'T PLAN TO GET INTO, UNLESS YOU ASK ME, AND THAT IS FINE, BUT IN THE APPEAL, AND WE WERE TRYING TO GET THE OTHER TWO ALLEGATIONS REMOVED, AND SO BY THE TIME THE APPEAL WAS FINISHED, THE VOTE WAS FINISHED, SO THAT IS WHAT I WANT TO TELL YOU, THAT THE APPELLATE COURT REMOVED ONE ADDITIONAL CHARGE. LEAVING JUST ONE OF THE FIVE. AND AS I SAID, THERE WERE MANY PROCEDURAL SIDE ISSUES AND MORE THAN 50 CITATIONS IN THIS CASE. THE PETITIONER FEELS THE CIRCUIT COURT ERRED AND SHOULD HAVE AT LEAST REMOVED FOUR OF THE GROUNDS RATHER THAN THREE. THE FOURTH GROUND, WHICH WAS REMOVED BY THE APPELLATE COURT, WAS, IN MY OPINION, THE WEAKEST GROUND. AND THAT, THEN, THE CHIEF JUDGE WOULD HAVE REALIZED, ACCORDING TO DAVIS, THAT HE WOULD NOT HAVE TO SET A DATE FOR RECALL ELECTION. THE BOARD OF ELECTIONS ERRED, BECAUSE THE APPEAL AUTOMATICALLY STAYED THE ELECTION. SINCE I WAS A PUBLIC OFFICIAL. AND THEY WERE NOTIFIED OF THAT, BUT THE COUNTY ATTORNEY TOLD THE SUPERVISOR OF ELECTIONS TO GO AHEAD WITH THE ELECTION. THE APPEAL WAS ON A FRIDAY. THE ELECTION WAS THE FOLLOWING TUESDAY. THE BALLOT WAS ON A SEPARATE PAGE, JUST RECALL, FROM THE REGULAR NOVEMBER ELECTIONS. IT COULD HAVE BEEN DONE. SO ON ELECTION DAY, WE WENT INTO COURT, AGAIN, TO THE CIRCUIT COURT, AND THEY DECIDED TO SEAL THE BALLOTS, LET THE PEOPLE CONTINUE VOTING FOR THE DAY, BUT SEAL THE BALLOTS, AND TWO DAYS LATER, ALTHOUGH WE HAD THREE DAYS FOR THE APPELLATE COURT TO DECIDE, THE APPELLATE COURT CONFIRMED THE STAY. SO DURING THE TIME OF DELIBERATION BY THE APPELLATE COURT, THE VOTES WERE SEALED, AND IT WAS UNDER A STAY. HOWEVER, THE APPELLATE COURT ERRED, TOO, WHEN THEY BASED THEIR OPINION ON WOLFSON VERSUS WERCK, RATHER THAN GAVEIES VERSUS FRIEND, TWO CONFLICTING APPELLATE DECISIONS. IT IS THE REASON WE ARE HERE TODAY. THIS VOLUSIA COUNTY CASE WILL IMPACT THE ENTIRE STATE. BECAUSE, AS I AM SURE YOU KNOW, WE HAVE OVER 400 CITIES IN OUR STATE, MUNICIPALITIES. THEY ARE NOT ALL CITIES. SOME ARE TOWNS AND SO FORTH. AND WE HAVE THOUSANDS OF ELECTED OFFICIALS.

WOULD THE BEST PROCEDURE, MS. GARVIN, BE SOMETHING WHERE A COURT HAS THE OPPORTUNITY, WELL IN ADVANCE OF THE ELECTION, TO DECIDE WHICH OF THE PETITION GROUNDS ARE VALID OR INVALID, SO THAT IT NEVER GETS BEFORE THE ELECTORATE, EXCEPT ON THOSE THAT ARE FOUND TO BE VALID?

THEY DID DECIDE OR COULD DECIDE, THE APPELLATE, ACTUALLY, WAS AFTER, BUT THREE OF THE GROUNDS WERE REMOVED BEFORE THE ELECTION, BUT THEY WERE ALL THERE WHEN THE PEOPLE SIGNED THE PETITIONS, WHICH IS THE FIRST PROBLEM.

SO WOULD YOU, WHAT WOULD YOU, UNDER YOUR THEORY, IF ONE OR MORE OF THE GROUNDS ON A PETITIONER INVALID, WHAT WOULD HAVE TO HAPPEN? THE PETITION WOULD GET STRUCK AND THE PETITIONERS WOULD HAVE TO START AGAIN?

THAT WOULD REQUIRE, PERHAPS, A CHANGE IN THE LAW. I DON'T KNOW. BUT THAT WOULD SEEM FAIR TO ME.

BUT IT WOULD HAVE TO --

THAT, YOU KNOW, IT WOULD NOT BE A GREAT OF A HARDSHIP ON A RECALL COMMITTEE, IF THEY WERE OPPOSED IN COURT AND CERTAIN OF THEIR GROUNDS WERE REMOVED.

BUT --

THEN GO BACK TO THEIR PEOPLE AND GET THE SAME NUMBER OF 10% SIGNATURES AND 15% --

BUT THAT IS NOT WHAT THE LAW PROVIDES NOW.

NO.

SO THAT WOULD BE SOMETHING THAT YOU WOULD WANT TO PETITION THE LEGISLATURE TO DO.

THAT IS JUST MY OWN PERSONAL OPINION THERE. WOLFSON SAID THAT THERE WERE ONLY, AND I WANTED TO READ THIS TO YOU, SO PERHAPS I WILL DO THAT NOW, BECAUSE WOLFSON ONLY REQUIRED ONE VALID ALLEGATION OUT OF FIVE. AND WOLFSON IS YELL-- FLAGGED. WOLFSON IS, THE COURTS ERRED, I FEEL, WHEN THEY APPLIED WOLFSON VERSUS WORK. WOLFSON WAS A SECOND DISTRICT DECISION. A SUPPORT FOR THE DECISION THAT ONE CHARGE MEETING THE STATUTORY MANDATE IS SUFFICIENT. HOWEVER, WOLFSON IS A 1978 CASE AND IS NO LONGER CONSIDERED GOOD LAW. IT IS YELL-- FLAGGED BY WESTLAW AS -- IT IS YELLOW FLAGGED BY WESTLAW AS A QUESTION OF ITS APPLICABILITY. MOREOVER, THE WOLFSON COURT, UNLIKE THE LOWER COURTS HERE, DID NOT DETERMINE THAT ANY OF THE CHARGES WERE INVALID. THEY DIDN'T EVEN LOOK AT THE OTHER ONES. THE WOLFSON DECISION WAS SOLELY BASED UPON THE FINDING THAT THE TRIAL COURT, ON THE FIRST CHARGE, SPECIFICALLY VIOLATED AN EXPRESS PROHIBITION OF THE CITY CHARTER, I.E. GIVING ORDER TO CITY EMPLOYEES, WHERE THE CHARTER EXPRESSLY PROHIBITED GIVING ORDINANCE TO SUBORDINATES OF THE CITY MANAGER. NOW, ON THE OTHER HAND, MORE RECENT AND REASONABLE DECISION, THE 1987 DAVIS VERSUS FRIEND, FOURTH DISTRICT, AND THAT WAS IN 1987, AND I QUOTE, AND DAVIS IS THE ONE THAT WE FEEL SHOULD BE APPLIED. RECALL PROCEEDINGS PREDICATED ON FOUR SUBSTANTIVE CHARGES. THEY HAD FOUR CHARGES. COULD NOT SERVE AS BASIS FOR RECALL ELECTION, ONCE THREE OF THE FOUR CHARGES HAD BEEN STRICKEN. SUN STACKS -- SUBSTANTIAL NUMBER OF VOTERS SUPPORTED PETITIONER AND IT IS IMPOSSIBLE TO DETERMINE WHETHER THOSE VOTERS WOULD HAVE ENDORSED RECALL PETITION, IN ABS OF THREE INVALIDATED CHARGES, ALL OF WHICH SPECIFY OFFICIALLY APPEARED TO BE MORE SERIOUS THAN -- SUPERFICIALLY APPEARED TO BE MORE SERIOUS THAN THE REMAINING CHARGE. SO THERE HAS BEEN DISCUSSION AS TO HOW MANY INVALID CHARGES SHOULD INVALIDATE THE RECALL. SURELY FOUR OUT OF FIVE ARE,

THAT IS NOT IN SUBSTANTIAL COMPLIANCE. AS CASE LAW STATES, WITH THE LAW. FOUR OUT OF FIVE WERE THROWN OUT.

HOW WOULD YOU DEFINE? WHAT IF YOU HAD THREE OUT OF FIVE? WOULD THAT BE SUFFICIENT?

THREE OUT OF FIVE. WE HAVE KIND OF ANALYZED THIS. IT IS A MAJORITY, AND, OF COURSE, OR THREE OUT OF FOUR, WHATEVER, THAT SHOULDN'T BE ALLOWED, EITHER. WHEN YOU COME DOWN TO IT, IF THERE ARE ONLY TWO, THEN YOU GET INTO TRYING IT TO DECIDE, WELL, HOW SERIOUS WERE THE TWO? WERE THE OTHERS, THOSE THAT WERE THROWN OUT LESS SERIOUS THAN THE ONE REMAINING OR THE OTHER WAY AROUND? SO REALLY, JUSTICE PARIENTE, YOUR IDEA JUST KIND OF MAKES SENSE TO ME, THAT, INSTEAD OF A COURT TRYING TO DECIDE WHICH CHARGES ARE MORE IMPORTANT THAN OTHERS, THE FACT IS THAT PEOPLE LOOKED AT PETITIONS WHICH ARE PART OF THE RECORD, FOR RECALL, LIKE THIS IS THE FIRST. THIS WAS THE FIRST ONE, WITH THE LINES, AND THIS WAS THE SECOND. THEY LOOKED AT THIS WHOLE LONG THING. EVEN IF THEY DIDN'T READ IT, THAT IS A TREMENDOUS NUMBER OF CHARGES AGAINST AN ELECTED OFFICIAL.

SO YOU SEE THERE IS A PROBLEM IN, AND THE COURT IS TRYING TO DECIDE WHETHER, WHEN THEY STRIKE TWO OUT OF FIVE OR ONE OUT OF FIVE OR FOUR OUT OF FIVE, AS TO WHICH ARE SUBSTANTIAL OR NOT, SO WOULD YOU, THEN, SAY THAT THERE SHALL BE, EITHER A PER SE RULE ONE WAY OR ANOTHER, WHICH IS EITHER IF THERE IS ONE INVALID CHARGE, THE WHOLE THING IS OFF THE BALLOT? WOULD YOU ADVOCATE THAT RULE?

I THINK THAT IS REALLY UP TO THE COURT TO DECIDE, BUT RIGHT NOW THE WAY THE LAW ACTUALLY READS, IT SAYS THAT THE CHARGES SHALL CONSISTS OR THE GROUNDS, I DON'T HAVE THE EXACT WORDS RIGHT HERE, CONSISTS SOLELY OF THE SEVEN GROUNDS. THE STATUTE LIST SEVEN DIFFERENT GROUNDS THAT A MUNICIPAL OFFICIAL CAN BE RECALLED FOR, AND THEY SAY SOLELY, SO IF THEY MEAN SOLELY, THEN IT SEEMS TO ME THAT, IF ANYTHING ELSE IS PUT IN THERE, THAT ISN'T ONE OF THOSE GROUNDS, WHICH IN MY CASE THEY WERE, THEN IT SHOULD BE THROWN OUT.

DID YOU WISH TO SAVE ANY OF YOUR TIME FOR REBUTTAL? THE YELLOW LIGHT IS ON, AND THAT INDICATES REBUTTAL. YOU MAY PROCEED, IF YOU WISH, OR --

YES. I WILL, YOUR HONOR, BECAUSE I HAVE GOT A BAD LEG, AND I WILL SIT DOWN AND WAIT FOR THE OTHER SIDE.

THANK YOU. MS. HANSON.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM MARY HANSEN, COUNCIL FOR JOANNE JEROME AS CHAIRMAN OF THE GARVIN RECALL COMMITTEE, AND I WOULD NOTE THAT I WAS COUNSEL, BOTH ON THE TRIAL AND, ALSO, ON APPEAL.

CAN YOU HELP US WITH THE CONCEPT OF, IF WE HAVE ONE VALID GROUND UNDER A CHARTER PROVISION, ADMITTEDLY A VALID GROUND, THAT THAT IS, THEN, COUPLED WITH FIVE OR SIX HIGHLY INFLAMMATORY BUT POLITICALLY POPULAR ITEMS THAT ARE NOT VALID. WOULD NOT BE A VALID BASIS FOR A RECALL. WHAT IS THE PUBLIC POLICY SERVED BY PUTTING THOSE TO THE PUBLIC, AS OPPOSED TO, IN SOME WAY, MAKING SURE THAT WHAT THE PUBLIC VOTES ON IS A VALLEY PROVISION, BEFORE WE -- IS A VALID PROVISION, BEFORE WE EVEN GET TO THE ELECTORATE, SO THE COURTS DON'T EVEN GOT INVOLVED IN THIS.

THERE ARE THREE LONG ANSWERS TO THAT, BUT FIRST OF ALL THE STATUTE DOES NOT EVEN REQUIRE THAT THE LANGUAGE OF THE CHARGES BE ON THE BALLOT. THE ONLY PEOPLE WHO SEE THE CHARGES ARE THE FOLKS WHO SIGN THE PETITION. SO IF YOU LOOK AT, I THINK IT IS IN SUBSECTION 1-E OR F, ABOUT WHETHER THE SUBJECT MUST APPEAR ON THE BALLOT, IT IS ONLY

A VALID QUESTION OF WHETHER THE PUBLIC OFFICIAL SHOULD OR SHOULD NOT BE REMOVED AND A SPACE FOR YES OR NO, AND I THINK THAT LEADS US INTO THE FIRST OF THREE THAT YOU HAVE TO RESOLVE TODAY, AND IT IS A FASCINATING QUESTION. THE FIRST IS LOOKING AT THE LANGUAGE OF 3.161 WITHIN CONTEXT, AND THE SECTION THAT MRS. GARVIN JUST REFERRED TO, ABOUT THE CHARGES IN THE PETITION MUST BE LIMITED SOLELY TO THOSE CONTAINED IN SECTION 1-A, IS THE SEX THAT SAYS THE LIMITED SOLELY LANGUAGE, BUT IF YOU, ALSO, KEEP GOING IN THE STATUTE AND SECTION 1-D, THE LEGISLATURE DOES BUILD IN A CHECK POINT, AND THE CHECKPOINT IS THAT THE CLERK IS EMPOWERED TO DECIDE WHETHER OR NOT THE FACIAL VALIDITY, PURSUANT TO 1-B, WHICH IS SUBSTANDARD GROUNDS, HAS BEEN MET BY A PARTICULAR PETITION. IF IT HAS NOT, THEN NOTHING FURTHER HAPPENS. THE PETITION JUST SIMPLY IS FILED AS A MATTER OF PUBLIC RECORD. HOWEVER, IF THE CLERK DOES FIND FACIAL VALIDITY, AS WAS FOUND HERE, THEN IT GOES INTO THE SUPERVISION OR OF ELECTION FOR VERIFICATION OF SIGNATURES.

WELL, DOES FACIAL VALIDITY HAVE TO, UNDER THE STATUTE, DOES IT HAVE TO GO TO ALL OF THE GROUNDS OR JUST ONE OF THE GROUNDS, UNDER THE STATUTE?

IT SAYS FACIAL VALIDITY OF THE PETITION, AND I AM NOT SURE YOU CAN READ INTO THE STATUTE A REQUIREMENT THAT, BECAUSE HINDZ VERSUS DOZER IS AN INTERESTING CASE, AND IT SAYS THAT, UNLESS THE TRUTH MUST BE DEMONSTRATED AS A MATTER OF STATUTE, AS A CONDITION FOR THE PREDICATE OF SUBMITTING THE RECALL, AND I WOULD SUBMIT THAT IS TRUE, A FINDING OF LEGAL SUFFICIENCY IS COULD BE ADOPTED BY THE LEGISLATURE. THEY JUST SIMPLY HAVEN'T DONE IT. IF YOU LOOK AT THE SCHEME OF 3.161, IT IS HEAVY DUTY, WHEN IT COMES TO THE PROCEDURAL ASPECTS OF THE THE LEGISLATURE, AND I THINK VERY WISELY, STAY AWAY FROM THE SUBSTANTIVE ASPECTS OF WHAT THOSE CHARGES MIGHT BE. NOW --

SO LET ME STOP YOU THERE. SO WHAT, EXACTLY, DOES IT MEAN TO HAVE A CLERK LOOK AT THE FACIAL VALIDITY. WHEN YOU LOOK AT THIS PETITION, I MEAN, THEY USE THE WORDS, AT LEAST IN MOST OF THE ALLEGATIONS THAT ARE IN THE STATUTE, THE TERM MALFEASANCE AND MISFEASANCE, AND SO WHEN THE CLERK LOOKS AT THAT, AND IF THEY ARE LOOKING AT THE STATUTE, ALSO, THEY ARE GOING TO SEE THAT, AND SO IS THAT ENOUGH TO SHOW THE FACIAL VALIDITY OF THIS PARTICULAR --

WITHOUT A STATUTORY REQUIREMENT THAT LEGAL SUFFICIENCY I MUST BE DETERMINED, I BELIEVE IT IS, AND I THINK THAT IS SPECIFICALLY WHAT THE STATUTE SAYS.

I MEAN, SO, IS THAT REALLY ANY KIND OF CHECK? YOU SAID THAT -- ANY KIND OF CHECK? YOU SAID THAT SUBSECTION D WAS, LIKE, A CHECK ON THIS, BECAUSE THE CLERK HAD TO LOOK AT THE FACIAL VALIDITY.

IT IS A CHECK ON THE PETITION, ITSELF, AND THE VALIDITY OF THAT PETITION FROM ITS FACIAL SENSE. IT IS A CHECKPOINT, I THINK, IS THE USE, THE WORD THAT I USED, AND I CERTAINLY AGREE THAT THE CLERK HAS ABSOLUTELY NO BUSINESS AND NO AUTHORITY TO DETERMINE LEGAL SUFFICIENCY I. BUT THERE IS NOTHING THE STATUTE THAT REQUIRES THAT ANYONE DETERMINE LEGAL SUFFICIENCY. THAT IS TOTALLY -- THAT IS TOTALLY AT THE ARGUMENT OF THE LEGAL DEPARTMENT. THE LEGISLATURE COULD HAVE WRITTEN THAT IN THERE AND WE WOULDN'T BE IN THIS PICKLE, BUT I THINK IN THIS CASE, THE UNDERLYING CASE OF BOARDMAN VERSUS ESTEVAR, WHICH YOU HAVE IN THIS CASE, THAT IT SAYS THAT THE PARTICULAR STATUTE ISN'T NECESSARY FOR VALIDITY. IN THAT CASE IT WILL BE TREATED AS DIRECTORY, AND THE COURT WILL NOT BE DISENFRANCHISED ON THE BASIS OF REQUIREMENT. I DON'T THINK IT IS IMPOSSIBLE AND IT IS EXPRESS IN THE FACT THAT, IF THERE IS A FAILURE OF THE CHARGES BUT FOR ONE, IN TERMS OF THEIR LEGAL SUFFICIENCY, THAT THE RECALL CANNOT CONTINUE.

WHAT WAS THE -- WHAT DID THE VOTERS, IN THIS CASE, LOOK AT IN? DID THEY HAVE -- WERE --

LOOK AT? DID THEY HAVE -- WERE ALL OF THE CHARGES LISTED ON THE BALLOT IN THIS CASE, EVEN THOUGH --

NO. WE STRICTLY FOLLOWED THE STATUTORY REQUIREMENTS, AND THE BALLOTS WERE PREPARED BY THE SUPERVISOR OF ELECTIONS.

SO IT SAYS, ONLY, RECALL, YEARN?

YES, MA'AM.

I -- YES OR NO?

YES, MA'AM.

I GUESS THE IMPORTANCE, THOUGH, IS YOU WOULD NEVER GET TO THE BALLOT, EXCEPT FOR THE PETITION THAT IS ACTUALLY SIGNED BY 10% OF THE ELECTORATE AND THEN THE 15%, CORRECT?

JUSTICE QUINCE, I THINK YOU DO GET SO TO THE QUESTION, BUT YOU DO SO IN THE POLITICAL SENSE, AND THIS IS WHERE THIS GETS TO BE LOTS OF FUND, BECAUSE ALTHOUGH THE LEGAL SUFFICIENCY IN TERMS OF PROTECTION OF THE DUE RIGHTS OF THE OFFICEHOLDER, IN SURING THAT THE -- INSUREING THAT DEFRAUD HAS NOT BEEN COMMITTED, AND AT THE SAME TIME WITHIN THE POWER OF THE SUPREME COURT, YOU HAVE THE SAME TRUTH OR FALLSITY OF THOSE ISSUES TO THE VOTERS, AND THAT HAS BEEN A CONSISTENT HOLDING OF THIS COURT SINCE 1932, IN LANDIS VERSUS TETTER. IF THAT IS TRUE, THEN WHAT YOU CONTEMPLATE HERE IS A POLITICAL CAMPAIGN, NOT A REQUIREMENT THAT THE COURT DETERMINE LEGAL SUFFICIENCY, IT IS NOT A REQUIREMENT BUT AN ORDER THAT IT BE TRIED ON LEGAL SUFFICIENCY, AND THE RECALL COMMITTEE IS NOT CHARGED TO DEMONSTRATE THAT THE CHARGES ARE TRUE BEFORE THEY PROCEED. IF THEY WERE THE CASE, THAT WOULD HAVE HELPED US A LOT. THEY WOULD HAVE -- WE WOULD HAVE BEEN REQUIRED TO GO IN FOR A DECLARATORY JUDGMENT AND NOT A PROCESS THAT WOULD CONTAIN INVALID CHARGES.

WE ARE HERE ON A PETITION FOR AN INJUNCTION. RIGHT?

YES, SIR.

AND SO THE INJUNCTION THAT IS TO ENJOIN THE SUPERVISOR OF ELECTIONS FROM GOING FORWARD WITH THE ELECTION, IS THAT HOW THIS IS TO WORK?

THAT IS WHERE WE ENDED UP. THERE WAS AN ORIGINAL COMPLAINT. THE DATES THAT ARE IMPORTANT, HERE, IS THAT, ON AUGUST 19, THE CLERK CERTIFIED THAT THE PETITION WAS FACIALLY VALID AND GAVE NOTICE TO MRS. GARVIN. ON AUGUST 24, SHE FILED HER DEFENSIVE STATEMENT TO THE PETITION, AND THAT WAS, THEN, PROMULGATED. IT WAS NOT UNTIL SEPTEMBER 4 THAT THE ORIGINAL COMPLAINT WAS FILED, WHICH DID ASK FOR A TEMPORARY INJUNCTION. HEARING ON THAT WAS SCHEDULED FOR SEPTEMBER 10. IN THE MEANTIME, ALL OF THE OTHER SIGNATURES HAD BEEN COLLECTED ON THE 15% PETITION, WHICH IS THE SECOND ONE, AND I HAD TO GO INTO COURT TO GET THE CITY TO RELEASE THE SIGNATURES THAT HAD BEEN COLLECTED TO THE SUPERVISOR OF ELECTION FOR VERIFICATION. SO BY THE TIME WE ACTUALLY, AND AT THAT TIME I -- WELL, I AM SORRY. BY THE TIME WE GOT THE VERIFICATION, VERIFIED SIGNATURES BACK, IT WAS SOME TIME, I THINK, AROUND THE 8th OR THE 9 OF SEPTEMBER I THEN FILED, PURSUANT TO THE STATUTE, I THEN FILED A MOTION TO SET THE HEARING ELECTION DATE, AND THAT WAS HEARD IN CONJUNCTION WITH THE AMENDED MOTION, WHICH WAS FILED ON SEPTEMBER, EITHER, 10th OR 11th, FOR THE HEARING ON SEPTEMBER 11, WHICH, THEN, JUST ASKED FOR A STRAIGHT INJUNCTION.

THE INJUNCTION BEING THAT THE COURT CAN ENJOIN THE SUPERVISOR OF ELECTIONS FROM

GOING FORWARD WITH A RECALL, BECAUSE THE RECALL IS NOT IN COMPLIANCE WITH THE STATUTE. IS THAT THE UNDERLYING THEORY?

YES. ULTIMATELY IT WAS A SUIT TO ENJOIN THE RECALL ELECTION, NOT JUST PROCEEDING BUT THE HE -- BUT THE ELECTION, ITSELF.

BECAUSE IT WAS NOT IN COMPLIANCE WITH THE STATUTE.

YES. THAT WAS THE ESSENTIAL ALLEGATION.

IN ORDER, WHEN THE COURT DECIDES THAT TWO OR THREE OR HOWEVER MANY OF THE GROUNDS ARE INVALID, THEN, IF I AM HEARING WHAT YOU ARE SAYING, IT WOULDN'T BE A REMEDY TO SAY, WELL, ONLY THE VALID ONES GO ON THE BALLOT, BECAUSE YOU ARE SAYING NONE OF THEM GO ON THE BALLOT, SO, REALLY, THE ONLY REMEDY WOULD BE TO INVALIDATE THE PETITION FROM THE BEGINNING AND HAVE THE PETITION CAMPAIGN START OVER AGAIN. RIGHT? I MEAN IN ORDER TO, SORT OF, IF SOMETHING IMPROPER OCCURRED, THAT WOULD REALLY BE THE ONLY WAY TO RECOMMEND DI THAT.

WELL, BUT IT DEPENDS ON WHAT YOU ARE TRYING TO RECOMMEND DI. I DON'T THINK THE STATUTE READS THAT. -- TO RECOMMEND DI -- TO REMEDY THAT.

THIS IS A FOLLOW-UP, AND I WANT TO UNDERSTAND HOW THESE WORK, THAT THAT WOULD BE A LEGISLATIVE DECISION AS TO HOW THESE RECALL ELECTIONS ARE TO GO?

CLEARLY IT IS.

BUT WHAT OTHER REMEDY DOES A PUBLIC OFFICEHOLDER HAVE, IF YOU KNOW, THE CHARGES, AS JUSTICE LEWIS WAS MENTIONING, YOU KNOW, INCLUDE VERY POLITICALLY INFLAMMATORY LANGUAGE, WHERE HERE IN A DAY WHERE LABELS ARE VERY COMMON AND THERE ARE CERTAIN PUSH BUTTON ISSUES. IS THAT SOMETHING THAT WE HAVE TO BE CONCERNED ABOUT? IS THERE OTHER REMEDIES FOR THAT, IF SOMETHING LIKE THAT OCCURS? COULD YOU ADDRESS THAT?

I THINK IT IS, BECAUSE IT IS A MATTER OF RESPONSIBILITY WITH THE PUBLIC OFFICIAL WHO IS SOUGHT TO BE RECALLED, OF ACTUALLY GETTING INTO THE COURTS IN A TIMELY FASHION, AND INLANDIES VERSUS -- AND, IN LANDIV VERSUS TETT REFORM. -- VERSUS TETTER, THAT WERE SPECIFICALLY CHARGED WITH THE RECALL, AND NOTED THAT THE AFFIDAVIT FOR RECALL HAD TO BE PRESENTED TO THE OFFICEHOLDER AND NOTED THAT THAT WAS PROBABLY SO THEY COULD SEASONBLY GET INTO COURT AND NIP IT IN THE BUD. THE LEGISLATURE HAS PUT DUTIES ON BOTH THE RECALL COMMITTEE AND ALSO ON THE CANDIDATE.

HOW WOULD THEY NIP IT IN THE BUD?

YOU COME IN WITH A LEGAL SUFFICIENCY REVIEW AND A REVIEW FOR SUBSTANTIAL COMPLIANCE WITH THE STATUTE. WOOLED HAPPEN IN THE INSTANCE THAT JUSTICE LEWIS ASKED -- WHAT WOULD HAPTHEN THE INSTANCE THAT JUSTICE LEWIS ASKED ABOUT? THERE ARE FIVE GROUNDS AND THEY COME IN AND NIP IT IN THE BUD, AND THEY DEMONSTRATE THAT FOUR OF THE FIVE GROUNDS NEED TO BE NIPED IN THE BUD. WHAT HAPPENS AFTER THAT?

THE STATUTE DOESN'T SAY -- THE STATUTE DOESN'T SET UP.

SO WHAT ARE WE NIPING IN THE BUD?

WHAT YOU ARE NIPING IN THE BUD IS A TOTAL FAILURE OF A RECALL PETITION.

OKAY. IN OTHER WORDS THAT THE ONLY INSTANCE IN WHICH YOU ARE NIPPING SOMETHING IN

THE BUD IS IF THERE IS, AS LONG AS THERE IS ONE VALID GROUND IN THERE OR ONE GROUND THAT MEETS THE LEGAL REQUIREMENT TO THE STATUTE, THEN IT WILL GO FORWARD, NO MATTER WHAT?

YES.

SO THAT IS JUST ASSURING THAT, OUT OF HOWEVER MANY ALLEGATIONS THERE ARE IN THERE, THAT THERE IS AT LEAST ONE THAT IS LEGALLY SUFFICIENT. IS THAT --

YES, SIR.

SO THAT IS THE ONLY NIPPING IN THE BUD THAT CAN TAKE PLACE.

ALTHOUGH THAT IS A CONSIDERABLE NIPPING, BECAUSE AT THAT POINT, AGAIN, THIS IS A POLITICAL PROCESS, SO PRESUMABLY PART OF THIS REMEDY IS GOING TO BE THE CAMPAIGN.

THIS IS AN EXTRAORDINARY POLITICAL PROCESS, IS IT NOT? IN OTHER WORDS ORDINARILY PROBLEMS LIKE THIS ARE TAKEN CARE OF DURING REGULAR ELECTION. RIGHT? IN OTHER WORDS

--

I DON'T THINK THAT WAS THE CONTEXT IN WHICH THE COURT REFERRED TO A RECALL PETITION AS EXTRAORDINARY. I THINK, THERE, THE COURT WAS SAYING THAT IT IS EXTRAORDINARY, IN THAT IT CAN BE HELD ANY TIME. THERE ARE NO STATUTORY PRESCRIPTIONS.

WELL, IT, ALSO, IS EXTRAORDINARY IN THE SENSE OF REGULAR ELECTIONS. THAT IS THAT THERE CAN BE LOTS OF THINGS THAT A PUBLIC OFFICIAL DOES, AND THERE IS LOTS OF CONTROVERSY, AND THEY MAY NOT BE ELECTED THE NEXT TIME AROUND. MATTER OF FACT THEY MAY BE THROWN OUT OF OFFICE OVERWHELMINGLY, WHATEVER, IN THE ORDINARY COURSE OF -- BUT IT IS EXTRAORDINARY THAT WE ALLOW A PARTICULAR INDIVIDUAL TO BE FOCUSED ON AND VOTED ON IN THE INTERIM. WHAT DO YOU PER ZEB SEAVE THE LEGISLATE -- PERCEIVE THE LEGISLATIVE POLICY TO BE? TO ENCOURAGE RECALLS OR TO MAKE THEM NEUTRAL OR EXTRAORDINARY?

WHAT I SEE IS A STATUTORY ATTEMPT TO BALANCE THE RIGHT TO REMOVE A PUBLIC OFFICIAL, WHO IS MISBEHAVING IN OFFICE IN SOMETHING DIRECTLY RELATED TO THE POSITION. WITH THE DUE PROCESS RIGHTS OF THE OFFICEHOLDER TO HER TENURE IN OFFICE. AND YOU KNOW, I DON'T KNOW WHETHER THE LEGISLATIVE WISDOM HAS STRUCK THE CORRECT BALANCE IN THIS, BUT I DON'T SEE NEUTRALITY HERE. I THINK THERE IS NEUTRALITY, CERTAINLY, IN TERMS OF THE CONTENT OF THE PETITION. IT IS A LIMITATION, BUT IT IS NEUTRAL. THESE ARE STANDARD REASONS.

LIKE IMPEACHMENT, YOU WILL HEAR PEOPLE CITE AND SAY, WELL, WAIT A MINUTE, YOU ARE OVERTURNING AN ELECTION BY AN IMPEACHMENT, SO IT IS AN EXTRAORDINARY KIND OF THING. YOU PERCEIVE, HERE, THAT THE LEGISLATURE IS BEING SORT OF NEUTRAL IN THIS REGARD OR THAT THEY ARE TRYING TO BE PRETTY STRICT, WHEN IT COMES TO RECALL ELECTIONS OR WHICH?

AGAIN, I WOULD USE THE WORD BALANCE, YOUR HONOR, AND THE REASON --

I TAKE THAT TO BE A NEUTRAL SORT OF STATEMENT.

OKAY.

POLICY. LET ME ASK ONE LAST QUESTION, BECAUSE I -- WHAT IS, THEN, TO PREVENT, IF THIS IS THE ONLY THING THAT GETS NIPPED IN THE BUD, WHAT IS TO PREVENT, THEN, COMMITTEES, POLITICAL OPPONENTS, WHATEVER, FROM PUTTING ANYTHING AND EVERYTHING BUT THE

KITCHEN SINK INTO A PETITION THAT, YOU KNOW, COLOR THIS THING, AND KNOWING, WELL, WE HAVE GOT ONE, PROBABLY, LEGAL, VALID GROUND, BUT WE WANT TO BE SURE WE GET ALL THE SIGNATURES, AND SO THEY THROW EVERYTHING BUT THE KITCHEN SINK IN THERE, KNOWING THEY ARE NOT LEGALLY VALID GROUND BUT, ALSO, KNOWING THAT, AS LONG AS THEY HAVE ONE IN THERE, THEY ARE GOING TO BE ABLE TO GET THIS ELECTION HELD? IF WE FOLLOW THIS OF LEAVING IT THAT WAY AND THERE IS NO OTHER RELIEF, AREN'T WE ACTUALLY ENCOURAGING THAT KIND OF PRACTICE?

PERHAPS, BUT IF YOU DON'T HOLD THE WAY THAT WE ARE SUGGESTING THAT YOU SHOULD, THEN YOU RUN THE RISK OF MAKING SURE THAT RECALL, THAT OFFICIALS WHO HAVE COMMITTED MISCONDUCT, RECALLABLE MISCONDUCT IN OFFICE, WILL NEVER BE RECALLED, AND THE REASON FOR THAT IS --

WELL, WAIT A MINUTE. YOU CAN DO THAT, IF THERE IS ONLY ONE FOUND TO EXIST. THEN YOU CAN GO BACK AND GET ANOTHER PETITION DRIVE, CAN YOU NOT?

YOU CAN, YOUR HONOR. FROM A PRACTICAL STANDPOINT, BECAUSE OF THE PROCEDURAL COMPLEXITIES OF THE RECALL STATUTE, WHAT WILL HAPPEN IS FOLKS WILL LOSE ENTHUSIASM. THAT DIDN'T HAPPEN IN THIS CASE, BUT THAT CERTAINLY IS POSSIBLE, AND THIS IS A LAW THAT COVERS EVERY COMMUNITY IN FLORIDA.

WHY SHOULDN'T THE BURDEN BE ON THE PEOPLE THAT ARE DOING THAT TO GET IT RIGHT?

BECAUSE THE LEGISLATURE DIDN'T SET IT UP THAT WAY. THE LEGISLATURE DOES -- IF THE LEGISLATURE REQUIRED US TO COME IN WITH A DECLARATORY JUDGMENT ACTION TO DETERMINE WHETHER OR NOT THERE ARE -- IS LEGAL SUFFICIENCY TO THE CHARGES, THEN I THINK THAT THAT IS THE PROPER APPROACH THAT THE COURT SHOULD TAKE. A NOW, WHERE THERE IS AN ELECTION --

NOW, WHERE THERE IS AN ELECTION, THERE IS A SPECIFIC PROVISION AS TO THE WAY THAT THERE CAN BE A CHALLENGE, A STATUTORY PROVISION, CORRECT? I MEAN I KNOW WE HAD RECENTLY, IN VOLUSIA COUNTY, A CHALLENGE TO THE SHERIFF'S ELECTION, AND MY MEMORY THERE IS THAT THERE IS A PROVISION IN THAT SECTION OF THE STATUTE WHICH PROVIDES THAT YOU CAN SEEK A REMEDY IN THE COURTS FOR THAT ELECTION.

THAT IS UNDER THE ABSENTEE BALLOT LAWS.

HERE, IN THIS PROVISION, I TAKE IT THAT THERE IS NO PROVISION SPECIFICALLY FOR THE COURT.

NO, SIR. THE STATUTE IS SILENT.

THE ONLY PROVISION FOR SOME OFFICIAL ACTION IS FOR THE CLERK TO DO SOMETHING.

YES, SIR.

AND I TAKE IT THAT, IN ORDER TO GET THE CLERK TO ACTOR NOT ACT, IT WOULDN'T BE AN INJUNCTION. IT WOULD BE A FOREWARNED.

YES, SIR. I HAVEN'T REALLY THOUGHT ABOUT THAT, BUT MY FIRST REACTION IS YES, SIR.

YOU INDICATE LACK OF ENTHUSIASM MAY RESULT. BUT MIGHT NOT THE PEOPLE VALIDLY THINK THIS IS NOT WORTH A RECALL ELECTION?

AS A POLITICAL MATTER, OF COURSE THEY CAN. IF THAT IS A MATTER OF THEIR CONVICTION, YES.

AND SHOULD THEY NOT BE GIVEN THAT CHOICE?

THEY HAVE THAT CHOICE.

BUT I AM TALKING ABOUT IN GETTING THE PETITION. ALL OF THESE WERE LISTED ON THE PETITION. ONLY ONE OF THEM STANDS. WOULD THE PEOPLE THAT SIGNED THE PETITION HAVE SIGNED IT WITH ONLY ONE VALID GROUND?

LET'S LOOK AT THE STATUTORY SCENE AGAIN, BECAUSE WHAT HAPPENS IS THAT THE FIRST 10% PETITION, WHICH, IN A COMMUNITY OF ANY SIZE IS A MAJOR UNDERTAKING, TO GET 10% OF THE RECOMMENDING STERD VOTERS. THAT 10% PETITION -- OF THE REGISTERED VOTERS. THAT 10% PETITION IS THEN SUBMITTED TO THE CLERK. ONCE IT HAS BEEN SUBMITTED TO THE CLERK, UNDER THAT STATUTORY SCHEME, IT CANNOT BE AMENDED, SO THAT SUGGESTS THAT, WHERE THE LEGISLATURE WANTS US TO GO WITH THAT IS THAT IRRESPECTIVE OF WHETHER -- IT GOES INTO THE FACIAL VALIDITY OF THE PETITION. IT IS ONLY IF THE PETITION IS NOT FACIALLY VALID THAT THE MATTER ENDS THERE. AT THE TIME IT GOES IN FOR VERIFICATION OF SIGNATURES, THE RECALL COMMITTEE PAYS, BY STATUTE, 10 CENTS PER NAME TO VERIFY TO THE SUPERVISOR, TO VERIFY THE ELECTIONS, SO THERE IS, ALREADY, A SUBSTANTIAL OR CAN BE A SUBSTANTIAL INVESTMENT BY THE RECALL COMMITTEE, AND THAT THEY MAY NEVER BE ABLE TO GET BACK, SO I THINK, ON BALANCE, THAT IS AN INTEREST THAT NEEDS TO BE CONSIDERED, NOT JUST INTEREST OF A RECALL, OF AN OFFICIAL IN BEATING A RECALL CHARGE.

MAY I ASK TWO QUESTIONS GET CLARIFIED?

CERTAINLY.

IN ALL SITUATIONS, FOR A RECALL, IS IT MERELY A YES/NO VOTE ON THE QUESTION SHALL SO-AND-SO BE RECALLED? OR ARE THERE SITUATIONS WHERE THE CHARGES APPEAR ON THE ACTUAL BALLOT FOR THE ELECTION? THAT IS THE FIRST QUESTION.

NOT UNDER 100.361, ALTHOUGH THAT MAY BE TRUE UNDER VARIOUS CHARTER REENACTMENTS, WHICH AUTHORIZE RECALL.

SO WE COULD HAVE DIFFERENCES THERE. SECONDLY, ARE YOU SAYING THAT, AFTER THE 10% VOTE HAS OCCURRED OR THE PETITION BY 10% OF THE VOTERS, THAT AT THAT POINT IN TIME, THE OFFICIAL WOULD BE AUTHORIZED TO CHALLENGE THIS PROCESS BUT NOT AFTER IT HAS BEEN SUBMITTED AND YOU HAVE 15% OF THE VOTERS? IS THAT YOUR STATEMENT? IS THAT THE POSITION?

NO, SIR.

HELP ME UNDERSTAND THAT.

WHAT I AM SUGGESTING IS THAT THE STATUTORY REQUIREMENT THAT THE OFFICEHOLDER BE GIVEN NOTICE OF THE PETITION AND A FIVE-DAY OPPORTUNITY TO PREPARE A DEFENSIVE STATEMENT, THAT AT THAT POINT, THAT IS WHEN YOU KNOW OR SHOULD KNOW THAT YOU EITHER HAVE VALID OR INVALID CHARGES, AND YOU NEED --

THAT IS WHEN YOU SAY NIP IT IN THE BUD.

RIGHT. AND I THINK LANDIS VERSUS TETTEERS SUGGESTS THAT THAT IS THE CASE. IT IS NOT SO HONORABLE TO DO THIS IN A TIMELY FASHION AS OPPOSED TO WAITING UNTIL IT WAS DONE HERE, AT THE LAST MINUTE, TO TRY TO OVERCOME THE CHARGES. THIS WAS NOT FILED UNTIL AFTER THE 15% HAD BEEN --

I UNDERSTAND. THANK YOU, MS. HANSEN.

THANK YOU. I YIELD.

MS. GARVIN, REBUTTAL.

A COUPLE OF QUICK POINTS. THE RECORD WILL SHOW THE TESTIMONY OF THE CLERK WHO WAS OUR CITY MANAGER AT THAT TIME, JOYS HOLMQUIST, AND OTHER OTHER TESTIMONY THAT, THE CLERK'S ONLY JOB WAS TO MAKE SURE THAT SIGNATURES WERE ON A PAGE THAT A CIRCULATE OR HAD SIGNED EVERY PAGE AND TO COUNT THE NUMBERS. THEY, THEN, HAD NOTHING WHATSOEVER TO DO WITH THE CHARGES. OF COURSE THEY CAN LOOK AT THE LIST. IF SOMEBODY BROUGHT SOMETHING IN BECAUSE YOU PARKED YOUR CAR IN THE WRONG SPACE OR SOMETHING, I AM SURE THEY WOULDN'T ALLOW IT, BUT AS LONG AS, I GUESS, IT APPEARED THAT WAY, THEY DID NOT HAVE THE POWER TO DECIDE WHETHER SOMETHING IS LEGALLY SUFFICIENT OR NOT. THE CHIEF JUDGE, ACCORDING TO THE STATUTE, IS THE ONE WHO SETS THE DATE FOR THE ELECTION, AND WHEN THE FIRST MOTION CAME ON THIS RECALL CASE, IT CAME FROM THE RECALL COMMITTEE. THEY PULLED US INTO COURT ONE AFTERNOON, WHEN I WANTED A FEW MORE DAYS, BECAUSE PEOPLE HAD THE OPPORTUNITY TO REMOVE THEIR NAMES FROM THE PETITION, WHICH IS SOMETHING THE LAW DOES ALLOW, AND IF IT COME OUT 60 DAYS, AND IF IT HAD COME OUT IN COURT A WEEK OR TWO LATER, THAT MANY OF THESE ALLEGATIONS WERE LEGALLY INSUFFICIENT, PERHAPS, WE WOULD HAVE HAD DROVES OF PEOPLE COMING INTO CITY HALL. WE HAD SOME, BUT TO REMOVE THEIR NAMES. SO IT DOES ALLOW FOR THAT. BUT IT IS NOT THE CLERK'S JOB. AND THEN YOU WILL NOTICE THAT MY OPENENT SAID SEVERAL TIMES POLITICAL SENSE, POLITICAL CAMPAIGN, POLITICAL PROCESS. I WRITE MY SHORTHAND HERE. UNFORTUNATELY THAT IS WHAT IT WAS. IT SHOULDN'T BE. IT SHOULD BE A PUBLIC OFFICIAL WHO IS REALLY DOING SOMETHING TERRIBLE, COMMITTED A FELONY, DRUNKENNESS ON THE DAYS OF MEETINGS, SOMETHING LIKE THAT, AND THEY JUST PULLED TOGETHER WHATEVER THEY COULD, AND WE HAVE THAT IN OUR RECORD, AND IT IS LIKE IMPEACHMENT. AND IT SO HAPED TO ME TO BE RECALLED -- HAPPENED TO ME TO BE RECALLED ON THE SAME DAY THAT THE PRESIDENT WAS IMPEACHED. THE DIFFERENCE IS I CANNOT DEFEND MYSELF. YES, I HAD A CERTAIN NUMBER OF DAYS TO WRITE A DEFENSE, AND IT IS PART OF THE RECORD THAT WHAT THEY DID, INSTEAD OF PUTTING THIS SECOND PETITION ON ONE PAGE, WHEN WE GAVE THEM A SAMPLE OF HOW IT COULD EASILY BE DONE, AND THE JOANNE JEROME ADMITTED, UNDER OATH, AND SHE IS NOT HERE TODAY, SHOWS THE GREAT INTEREST IN THE CASE, BUT, HOWEVER, THAT -- NOW I FORGET WHAT I WAS GOING TO SAY. ALL RIGHT. I AM GOING TO TALK FAST SO THAT MY TIME WILL BE ALL USED UP HERE. THE DECISION, THE DEFENSE. SORRY. THE DEFENSE. THIS HAS BEEN A VERY STRESSFUL YEAR FOR ME, AND REVIEWING ALL OF THIS JUST KIND OF ADDED TO IT. IT IS UNBELIEVABLE ALL OF THE MANY THINGS THAT WE FELT WERE ILLEGAL, THAT MY COMPETENT ATTORNEY IN THE CIRCUIT COURT AND IN THE APPELLATE COURT TRIED TO PRESENT TO THOSE COURTS FORM THEY DID THE SECOND PETITION ON THREE -- THOSE COURTS. THEY DID THE SECOND PETITION ON THREE PAGES. THE FIRST PAGE WAS JUST FOR SIGNATURES. IT WAS PREVENT PRINTED, WHICH IS EASY TO DO, INCIDENTALY, IN A CITY WITH CONDOMINIUMS, AND IT ONLY COST THEM \$42 AND SOME-ODD CENTS FOR THE 10 CENTS APIECE FOR 400 SIGNATURES TO BE APPROVED. THAT IS NOT A BIG EXPENSE FOR PEOPLE WHO ARE GOING TO TRY TO RECALL A PERSON. IT WILL COST ME AND EVENTUALLY WILL COST THE CITY, IF YOU APPROVE MY MOTION, OVER \$550 55,000 TO DEFEND THIS. THAT IS A BIG DIF-- OVER \$55,000 TO DEFEND THIS. THERE WAS A TOP PAGE AND A MIDDLE PAGE FOR THE PETITION AND A BOTTOM PAGE, WHICH WAS MY DEFENSE, AND MANY PEOPLE DID NOT SEE THE DEFENSE AT ALL, SO I HAD NO OPPORTUNITY TO DEFEND MYSELF, BUT IF I MAY, IN THE TIME THAT I HAVE REMAINING HERE, I WANT TO TELL YOU THAT SOMETHING ABOUT THE FIFTH CHARGE, MAYBE IN YOUR WISDOM YOU WILL DECIDE THAT THAT IS LEGALLY INSUFFICIENT, TOO. THE FIFTH CHARGE AGAINST THE PETITIONER, AND THAT WAS THE ONE ABOUT GIVING DIRECT WORK INSTRUCTIONS, BUT IT IS AMBIGUOUS, BECAUSE THERE IS A DIFFERENCE BETWEEN GIVING DIRECT WORK INSTRUCTIONS, WHICH IS ON THE PETITION, AND GIVING ORDERS, WHICH IS IN THE DAYTONA BEACH CHARTER. ANY MILITARY

PERSON KNOWS WHAT AN ORDER IS.

I AM NOT SURE THAT IT IS OUR RESPONSIBILITY TO MAKE THAT DETERMINATION, IS IT?

PARDON?

WHETHER OR NOT THE CHARGE IS A VALID --

WELL, THE COURTS ERRED IN NOT RULING AGAINST, I BELIEVE, THE CIRCUIT COURT, AND IT IS PART OF OUR RECORD, AND THE APPELLATE COURT, A LOT OF WORDS. IN FACT, I PUT IN THE FINAL BRIEF TOO MANY WORDS HAVE BEEN USED ON THIS. THE DIFFERENCE BETWEEN INSTRUCTIONS AND WORK. BUT IT IS NOT ONLY THAT, BUT WOLFSON, THE WOLFSON CASE REFERS TO AN EXPRESS, WHICH MEANS EXPLICIT, EXACT, SPECIFIC PROHIBITION IN THE CITY CHARTER. THE WOLFSON CASE SAID IT WAS OKAY WITH ONE GROUND, BUT IT HAD TO EXACTLY TRACK WHAT WAS IN THE CHARTER OF THAT CITY, AND THIS CHARGE AGAINST ME THAT IS REMAINING DID NOT TRACK OUR CITY CHARTER, AND I CARRY THAT CHARTER WITH ME ALL THE TIME FOR FOUR YEARS. I KNOW WHAT IT SAYS. AND IF YOU LOOK AT THE CHARGES, PART 1-SA. AND PART 1-B, PART -- PART 1-A AND PART 1-B, PART 1-B SAID SOMETHING ABOUT AN AD THAT I SUPPOSEDLY PLACED. IT IS SAID FROM THE PUBLIC RELATIONS PERSON THAT I HAD PERMISSION FROM THE CITY MANAGER, AS HE SAYS IN HIS AFFIDAVIT, TO PUT AN ARTICLE IN THE PAPER TO TRY TO GET A LOCAL REPLACEMENT. AN INTERIMPART TIME CITY MANAGER, AS IT TURNS OUT THE MAJORITY OF THE COUNCIL MEMBERS THOUGHT THAT WAS A GOOD IDEA, BUT THE CITY MANAGER, WHO WE HAD JUST DISMISSED A FEW DAYS BEFORE, DIDN'T WANT TO PUT ANY AD IN FOR REPLACEMENT. SO THERE WAS NEVER ANY WEEKLY ANNOUNCEMENT IN OUR NEWS LATER. THAT IS PART B, AS FAR AS I AM CONCERNED. THAT IS NOT AN ALLEGATION, IF YOU ACTUALLY READ THE AFFIDAVITS. THE OTHER PART, IF YOU READ THE AFFIDAVIT THERE, I DON'T KNOW. I STILL DON'T KNOW WHO WAS ACCUSING ME OF WHAT INSTRUCTION I GAVE TO WHO FOR WHAT AND WHEN! NOBODY HAS EVER TOLD ME. I THINK THAT THERE IS SOMETHING IN CASE LAW, AND IN FACT I KNOW T I HAVE READ IT. THERE HAS TO BE SPECIFICITY IN THE CHARGES. THAT THE PERSON ACCUSED, WHICH IS MYSELF, AS WELL AS THE PEOPLE WHO ARE GOING TO HAVE TO VOTE ON THIS AND DECIDE WHETHER THESE CHARGES ARE RIGHT OR WRONG AND WHETHER THEY SHOULD BE RECALLED OR NOT, HAS TO KNOW WHAT THE CHARGE IS, AND A VAGUE CHARGE OF GIVING INSTRUCTIONS TO EMPLOYEES, WITHOUT GOING FIRST TO A CITY MANAGER, THAT IS REALLY DIFFICULT, SO AS FAR AS I AM CONCERNED, TAKE AWAY THE AD ONE, YOU HAVE FOUF AND-A-HALF CHARGES THAT ARE ILLEGAL, AND IF YOU TAKE AWAY THE OTHER ONE, THERE REALLY WEREN'T ANY, AND I WOULD LIKE TO BE REINSTATED, WITH BACK PAY AND BENEFITS. I WOULD ASK YOU TO GRANT THESE MOTIONS, OTHER MOTIONS THAT WE HAVE GIVEN, WHICH IS A MOTION FOR ENTITLEMENT TO ATTORNEYS FEES AND COSTS. THE APPELLATE COURT HAD ALREADY AGREED TO THAT, BUT THEN THE POLITICAL OPPOSITION DECIDED THEY WOULD FILE SOME KIND OF MOTION AND WENT DOWN, BACK TO THE LOWER COURT. HAD NOTHING TO DO WITH WHETHER OR NOT, ACCORDING TO IT. HORNBERN AND THE CITY OF FORT WALTON BEACH, I AM ENTITLED TO THOSE THESE FOOES AND COSTS, AND MY -- TO THESE FEES AND COSTS, AND MY ATTORNEY WOULD LIKE TO BE PAID, TO THE PEOPLE WHO HELPED ME OUT. I SAID THAT ILL RETURN THE MONEY. THAT IS -- I SAID THAT I WOULD HELP THEM OUT, IS RETURN THE MONEY, AND THAT IS WHAT I WANT TO DO. IF I AM REINSTATED, I ASK THAT YOU REVERSE THIS, THAT YOU DECLARE, HOWEVER, THE RECALL ELECTION NULL AND VOID AND INVALID, AND I CAN ASSURE YOU THAT, AS FAR AS I AM CONCERNED, AND I DO BELIEVE, A SMOOTH TRANSITION, THAT I HAVE STUDIED ALL OF THE MOTIONS THAT WERE MADE DURING THE TIME I WAS OFF THE CITY COUNCIL, WITH A REPLACEMENT, FROM JANUARY UNTIL NOW. THERE WERE ACTUALLY, AND IN MY BRIEF I THOUGHT THAT THERE WILL BE MORE, BECAUSE THE OPPOSING COUNCIL SAID THAT THEY HAD -- OPPOSING COUNSEL SAID THAT THEY HAD MANY VOTES. THEY WERE REMOVED AT THAT POINT IN TIME. HALF OF THEM NEVER HAPPENED. WE PASSED A NUCHBLING BUMMING OF THEM YOU AND IN -- A BUNCH OF THEM UNANIMOUSLY, SO I CAN DO NOTHING ABOUT THAT, AND WE HIRED A CITY MANAGER, FINALLY, AND HIS CONTRACT JUST STARTED THIS

WEEK. SO I AM HOPEFUL FOR WHAT HAPPENS, FOR BETTER TIMES FOR THIS CITY. IS NOT JUST MY REPUTATION, MY PROPERTY RIGHT, MY FIRST AMENDMENT RIGHTS, BUT THE CHILLING EFFECT THAT RECALL HAS ON LOCAL CANDIDATES. NOBODY RAN FOR MY SEAT, OTHER THAN THE ONE PERSON THAT THEY HAD DECIDED AHEAD OF TIME WOULD TAKE IT. AND NOBODY RAN FOR TWO OPEN SEATS, OTHER THAN MYSELF AND THEIR PERSON, IN THIS CURRENT ELECTION, AND NOBODY WOULD SUBJECT THEMSELVES OR THEIR FAMILIES WOULD ALLOW THEM TO SUBJECT THEMSELVES TO THIS KIND OF ABUSE AND COST, AND SO I HOPE THAT YOU WILL HELP ME.

THANK YOU, MS. GARVIN. THE RED LIGHT IS ON.

I DIDN'T SEE IT. THANK YOU VERY MUCH.

THANK YOU, COUNSEL. THANK YOU, MS. GARVIN.