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BAILIFF: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. FIRST CASE ON THE COURT'S CALENDAR THIS MORNING IS JOSH -- IS SORB YEAH -- IS JOSHUA VERSUS THE CITY OF GAINESVILLE. MR. PRINT I.

THANK YOU -- MR. PRINTY.

THANK YOU, YOUR HONOR. ON BEHALF OF THE FLORIDA PLAINTIFF IN THIS CASE, DENEACE JOSHUA. A BRIEF HISTORY OF THE CASE IN THE JUDICIAL. IN JANUARY, 1998, THE PLAINTIFF, DENEACE JOSHUA, FILED A COMPLAINT IN CIRCUIT COURT IN ALACHUA COUNTY, ALLEGING A VIOLATION OF CHAPTER 760, REGARDING RETALIATION FOR A PRIOR AGAINST HER FOR HAVING PREVIOUSLY FILED A CHARGE OF DISCRIMINATION AGAINST HER EMPLOYER, THE CITY OF GAINESVILLE. THERE WAS A HEARING ON DEFENDANT'S MOTION TO DISMISS, CITING MILANO VERSUS MODE MASTER, A CASE OUT OF THE FOURTH DISTRICT COURT OF APPEAL, WHICH HAD HELD THAT THERE WAS BASICALLY A 18-MONTH STATUTE OF LIMITATIONS, IN CASES INVOLVING VIOLATIONS OF CHAPTER 760, WHERE THERE HADN'T BEEN AN ACTUAL DETERMINATION OF REASONABLE CAUSE, YEARN, MADE BY THE -- YES OR NO, MADE BY THE COMMISSION.

NOW, WHAT IS YOUR POSITION AS TO THE COMMISSION NEVER MAKES A DETERMINATION OF REASONABLE CAUSE? WHAT HAPPENS?

IN THIS CASE OR JUST --

JUST TO INTERPRET THIS STATUTE.

WELL, FOR EXAMPLE, IN MISS JOSHUA'S OTHER CHARGE OF DISCRIMINATION, THE FIRST ONE THAT BEGAN THIS CASE, SHE FILED THAT ONE IN JANUARY OF '95. THE COMMISSION, EVEN THOUGH CHARGED BY STATUTE WITH RENDER RENDERING A DECISION ON PROBABLE CAUSE OR REASONABLE CAUSE, WITHIN 180 DAYS, ACTUALLY DIDN'T FILE AN ISSUE, THEIR DETERMINATION THAT THERE, INDEED, WAS REASONABLE CAUSE, ON THAT CHARGE, UNTIL JUNE OF '96, WHICH IS ALMOST A YEAR AND-A-HALF AFTER SHE FILED HER CHARGE. SHE, THEN, PROCEEDED TO AN ADMINISTRATIVE HEARING ON THAT CHARGE, SO IN THAT CASE, THE COMMISSION, EVEN THOUGH CHARGED WITH GETTING OUT THESE DECISIONS WITHIN 180 DAYS, DID NOT DO SO, AND THERE WAS NO RAMIFICATION, YOU KNOW. THIS WAS NOT A BASIS FOR DENYING HER ANY RELIEF IN THE ADMINISTRATIVE. THAT SHE WAS -- THAT THE COMMISSION HAD DONE THIS.

I AM NOT SURE -- SO WHAT YOU ARE SAYING IS THAT, IN PRACTICE, THE COMMISSION IS NOT DOING WHAT IT APPEARS THE STATUTE REQUIRES, WHICH WAS ACTING WITHIN 180 DAYS.

YES, YOUR HONOR.

AND THAT, FURTHER, NO ONE IS TAKING THE POSITION THAT THEY LOSE JURISDICTION OVER THE CASE.

RIGHT THERE. IS NOTHING IN THE STATUTE.

AFTER 180 DAYS.

THERE IS NOTHING IN THE STATUTE THAT DIVESTS THEM OF JURISDICTION FOR THEIR FAILURE TO ACT. THE ONLY THING THAT VESTS THEM OF THEIR JURISDICTION IS WHEN THEY FIND THAT,

EITHER THERE IS NO CAUSE, WHICH, THEN, YOU HAVE 35 DAYS TO GO GET A RELIEF IN ADMINISTRATIVE. OR THEY DO FIND CAUSE, AND YOU BRING YOUR LAWSUIT, OR, AFTER 180 DAYS, YOU ARE GIVEN THE OPTION TO GET OUT OF THE ADMINISTRATIVE FORUM. THAT IS WHAT THE PROVISION, HERE, WHAT THE COURT HAS DONE IS WAVED TOGETHER THREE DIFFERENT PROVISIONS, TO COME UP WITH A STATUTE OF LIMITATIONS, BUT AFTER 180 DAYS, IF YOU DON'T WANT TO PLAY THE ADMINISTRATIVE GAME, THE STATUTE GIVES YOU A REMEDY TO GO TO EITHER ADMINISTRATIVE FORUM OR CIRCUIT COURT. IT SAYS YOU MAY DO THAT. IT DOESN'T SAY YOU HAVE TO.

COULD THE COMMISSION -- WHAT WOULD HAPPEN, IF THEY ARE STILL INVESTIGATING AND NOW, FOUR YEARS HAS PASSED FROM WHEN THE COMPLAINT IS FILED? IS THERE ANY POINT AT WHICH YOU WOULD HAVE TO, STILL, YOU WOULD HAVE TO FILE IN CIRCUIT COURT OR THERE WOULD BE A STATUTE OF LIMITATIONS PROBLEM?

NO, YOUR HONOR. THERE ISN'T. BECAUSE IF THEY DO ISSUE A REASONABLE CAUSE DETERMINATION IN YOUR FAVOR, FIVE YEARS AFTER YOU FILED THE COMPLAINT, AND THEY ISSUE THAT REASONABLE CAUSE DETERMINATION, THE STATUTORY SCHEME, IN SECTION 5, GIVES YOU ONE YEAR FROM THE DATE THAT HAPPENS. IT PUTS NO TIME CONSTRAINTS ON IT. IT JUST SAYS IF YOU GET ONE OF THESE, YOU HAVE GOT A YEAR TO DO SOMETHING WITH IT. AND THEN LIKEWISE, IF YOU GET A NEGATIVE ONE, IT SAYS YOU HAVE GOT 35 DAYS TO DO SOMETHING ABOUT THAT. THERE IS NOTHING IN THERE WHICH ADDRESSES THE SITUATION WHERE YOU DON'T GET ONE.

WELL, WHAT ABOUT THE FACT, WHAT IF NOTHING IS HAPPENING, AND NOTHING EVER HAPPENS, YOUR CLIENT WANTS TO FILE SUIT. ARE YOU GOING TO TAKE THE POSITION THAT THERE IS NO OUTSIDE STATUTE OF LIMITATIONS, IF THE COMMISSION DOESN'T ACT, WHERE YOU HAVE TO FILE

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NO. I AM TAKING THE POSITION, ACTUALLY, THAT, IN MY CASE, I WAS TAKING THE POSITION THAT, UNDER THIS COURT'S DECISION IN THE HOLINGER CASE, THAT, IF YOU HAVE A DISCREET ACT OF DISCRIMINATION YOU HAVE IDENTIFIED IN YOUR CHARGE, YOU HAVE GOT FOUR YEARS FROM THAT DATE, BECAUSE THIS STATUTORY SCHEME CREATES A NEW-FOUND RIGHT CAUSE OF ACTION, WHICH IS AN ACTION FOUNDED SOLELY ON STATUTORY LIABILITY AND UNDER 95.11 YOU HAVE GOT FOUR YEARS FROM THE DATE IT HAPPENED TO BRING YOUR COMPLAINT.

IS THIS SOMETHING THAT IS A GLITCH IN THE STATUTE, YOU THINK, OR IS THIS WHAT THE, YOU THINK, THE LEGISLATURE INTENDED, WHEN IT TOLD THE COMMISSION THAT THEY HAD TO DO SOMETHING WITH THE 180 DAYS, AND AFTER THAT, IS THIS SOMETHING THAT LOOKS LIKE THIS WAS PART OF THE SCHEME OR JUST SOMETHING THAT HAS HAPPENED BECAUSE THE COMMISSION, REALLY, JUST DOESN'T EITHER HAVE THE ABILITY OR MANPOWER TO ACT UPON IT?

THAT IS A COMBINATION OF IT IS THE COMMISSION DOESN'T HAVE THE MANPOWER TO INVESTIGATE EVERY CASE IN 180 DAYS, BUT THE LEGISLATURE WANTED THEM TO, AND THE LEGISLATURE, ALSO, WAS SEEKING TO PREVENT, AND THE GOVERNOR -- THERE IS A LEGISLATIVE HISTORY, HERE, THAT IS NOT PART OF THIS BUT, I GUESS, WOULD BE AVAILABLE TO YOU ALL. THIS WAS A COMPROMISE TO ALLOW MEDIATION. THE PURPOSE OF THIS STATUTE IS TO MEDIATE EMPLOYER DISPUTES, TO PREVENT THEM FROM COMING INTO COURT, WHERE EVERYBODY SAYS, YOU KNOW, THEY COULD HAVE MADE IT LIKE CHAPTER 768.28, WHERE YOU GIVE THE STATE 180 DAYS' NOTICE, AND AFTER 180 DAYS, YOU SUE THEM FOR A PERSONAL INJURY. HERE THEY SAID WHAT WE WANT -- AND THE STATE CAN RESOLVE PERSONAL INJURY CASES IN THAT 180 DAYS. THAT IS THE POINT OF THAT STATUTE. HERE, WHAT THEY WANT TO HAPPEN IS HOPEFULLY THE COMMISSION, THROUGH ITS INVESTIGATION AND MEDIATION OF CASES, CAN RESOLVE THESE THINGS, WITHOUT RESORTING TO THE COURTS. HOWEVER, THEY DIDN'T WANT TO DEPRIVE THOSE PEOPLE WHO DIDN'T WANT TO WAIT THAT LONG. BECAUSE THERE IS DIFFERENT CIRCUMSTANCES.

IF YOU STILL EMPLOYED WITH YOUR EMPLOYER, AND YOU ARE THINKING YOU ARE WORKING THIS OUT, YOU MAY SAY TWO YEARS TO WAIT? THAT IS NOT A LONG TIME. BECAUSE I AM GOING TO BE WORKING FOR THE NEXT 20 YEARS, MAYBE, WITH THIS EMPLOYER. HOWEVER, IF YOU HAVE ALREADY BEEN FIRED, YOU DON'T WANT TO SIT AROUND AND WAIT FOR TWO YEARS FOR THE COMMISSION TO DO SOMETHING. YOU WANT ACTION NOW. AND THAT GIVES YOU THE OPTION TO SAY I DON'T CARE WHAT THE COMMISSION DOES. I DON'T NEED, BECAUSE I HAVE A PROVISION IN SECTION 8 THAT SAYS AFTER 180 DAYS YOU FILE IT. I CAN GO TO EITHER CIRCUIT COURT OR ADMINISTRATIVE FORUM, AND I CAN DO THAT, BUT IF I CHOOSE TO WAIT, WHICH IS WHAT MISS JOSHUA IS DOING. THAT IS WHY I MENTIONED THE FACT THAT SHE HAD TWO CASES GOING. AND IN THE FIRST CASE, A YEAR OVER A YEAR, ALMOST A YEAR AND-A-HALF AFTER FINALLY, SHE FINALLY GETS A REASONABLE CAUSE DETERMINATION, AND SAYS WHAT DO I DO NEXT? WELL, I AM GOING TO HAVE AN ADMINISTRATIVE FORUM, BECAUSE SHE THOUGHT YOU DON'T HAVE TO PAY A FILING FEE, AND I AM DOING THIS, MYSELF. I WILL GO TO ADMINISTRATIVE HEARING AT DOA. SO SHE DID THAT. SO, NOW, IN HER OTHER CASE, IN ITS TAKING MORE THAN 180 DAYS, TOO, BECAUSE SHE FIGURES, WELL, AT SOME POINT, JUST LIKE IN MY FIRST CASE, I AM GOING TO GET -- I AM GOING TO HEAR FROM THESE GUYS, AND WHEN I DO, I WILL DO SOMETHING ABOUT IT. WELL, WHEN SHE CAME TO ME AND SHE HAD A HEARING SCHEDULED IN JANUARY OF '98 ON HER FIRST CASE. THAT IS WHEN SHE CAME TO ME, AND SHE, ALSO, SAID I HAVE THIS OTHER CASE. I SAID WHAT IS THAT ABOUT? AND SHE TOLD ME AND SHE SHOWED ME. I SAID THIS MILANO CASE HAD JUST COME OUT. AND I SAID, ACCORDING TO THIS MILANO CASE, YOU ARE ALREADY OUT OF TIME. BUT WE WILL DEAL WITH THIS FIRST ONE, AND WE DID, IN JANUARY, RESOLVED THAT ONE, AND THEN A WEEK LATER, WE FILED THIS ONE IN CIRCUIT COURT IN GAINESVILLE. KNOWING THAT MILANO WAS OUT THERE BUT JUST, I THINK MIGHT MIL AND-DOESN'T MAKE -- I THINK MILANO DOESN'T MAKE ANY SENSE, AS MY INTERPRETATION OF IT. IT RELIED ON A CASE, A FEDERAL CASE, WHICH STOOD FOR THE PROPOSITION THAT, WHEN YOU GET A RIGHT-TO-SUE LETTER, YOU HAVE AS MANY DAYS IN THAT RIGHT-TO-SUE LETTER AS THEY GIVE YOU AND THAT IS IT. WELL, THIS LADY, MISS JOSHUA, THE COMMISSION DOESN'T ISSUE RIGHT-TO-SUE LETTERS, AND THAT CASE HAD NOTHING TO DO WITH THIS. SHE WAS WAITING FOR THEM TO TELL HER, BECAUSE THAT IS HER RIGHT, UNDER THE STATUTE, TO WAIT. IF THEY HAD TOLD HER NO CAUSE, SHE HAD AN OPTION. SHE COULD DROP IT OR SHE COULD GO AND PETITION FOR ADMINISTRATIVE RELIEF IN 35 DAYS, AND IF THEY SAID YES, SHE COULD DO THE CIRCUIT COURT OR ADMINISTRATIVE THING AGAIN. BUT SHE HAD GOT NOTHING FROM THEM, EXCEPT FOR ONE THING. IN SEPTEMBER OF '96, SHE DID GET NOTICE FROM THEM THAT THEY WERE DISMISSING HER CASE. THEY HAD CONFUSED IT WITH HER OTHER CASE, WHICH THEY HAD ISSUED THE REASONABLE CAUSE DETERMINATION IN JUNE, AND THEN IN OCTOBER OF '96, SHE GOT ANOTHER ORDER FROM THEM, REINSTATING HER CASE. SO THIS IS A YEAR AND-A-HALF AFTER SHE FILED IT, SHE IS GETTING ORDERS FROM THEM REINSTATING HER CASE, WHICH, I THINK, A REASONABLE PERSON WOULD CONCLUDE, IF YOU GET AN ORDER SAYING THERE IS NOTHING THE MATTER WITH YOUR CASE. WE ARE STILL HANDLING IT, THAT IS, IN FACT, EXACTLY WHAT THEY ARE DOING.

WE ARE REALLY NOT HERE ON WHETHER SHE ACTED REASONABLY. WE ARE HERE, BASED ON A QUESTION OF HOW TO INTERPRET THIS STATUTE. YOU AGREE WITH THAT.

AND HOW SHE INTERPRETS THE STATUTE AND HOW CAN SHE INTERPRET THE STATUTE, IF SHE -- IF LAWYERS -- THERE IS A AWFUL LOT -- NO LAWYER HAD RAISED THIS CASE OF THE DECISION IN MILANO, UNTIL THAT CAME OUT, AND THEN ALL OF A SUDDEN, OBVIOUSLY, ALL THE DEFENSE LAWYERS AROUND STARTED RAISING IT, BUT NOBODY HAD INTERPRETED THE STATUTE THAT WAY BEFORE.

IN OTHER WORDS WHAT YOU ARE SAYING IS THAT THE POLICY OF ENCOURAGING THE RESOLUTION OF THE DISPUTES, WHICH WOULD NECESSARILY LAST BEYOND 180 DAYS, WOULD BE FRUSTRATED, IF --

RIGHT.

-- TO INTERPRET THIS WOULD REQUIRE THE CLAIMANTS TO RUSH TO COURT.

IN ASSUMING THE GENERAL POLICY THE GENERAL POLICY IS TO DO THAT, AS STATED IN THE PREAMBLE LANGUAGE, AND THAT IT IS LIBERALLY LABELED TO BE CONSTRUED TO THAT, BECAUSE HENCEFORTH, FROM THIS DAY, ON, EVERYBODY WHO IS CHARGED DISCRIMINATION WAITS 180 DAYS AND THEN FILES THE CIRCUIT COURT ACTION, AND THEN WE DON'T HAVE THIS PROBLEM, AND THAT IS WHAT EVERYBODY IS GOING TO DO, BECAUSE THAT IS WHAT MILANO TELLS LAWYERS AND COMPLAINANTS TO DO IS YOU BETTER JUST GO TO COURT, BECAUSE YOU ARE GOING TO LOSE IT, AND YOU BETTER GET IT IN THERE, SO WE ARE GOING TO HAVE, INSTEAD OF THINGS BEING RESOLVED BY THE COMMISSION, WITHOUT RESORT TO THE ACTUAL CIRCUIT COURT JUDICIAL PROCESS, WITH APPELLATE REVIEW AND ALL OF THAT, YOU ARE GOING TO HAVE EVERYONE JUST SAYING YOU WOULD BE AN INCOMPETENT LAWYER TO DO ANYTHING ELSE BUT JUST SAY ON THE 181 DAY, LET'S JUST GO TO COURT SO THERE IS NO DOUBT ABOUT WHAT WE ARE DOING HERE. WE ARE NOT WAITING AROUND FOR ANYTHING. WE ARE SUING, THE FIRST CHANCE WE GET, AND THAT -- THIS COURT HAS THE OPTION OF BECOMING THE PERSONNEL BOARD FOR THE STATE OF FLORIDA, FOR ALL PUBLIC AND PRIVATE EMPLOYERS, OR IT CAN LET THE FLORIDA COMMISSION TAKE CARE OF THAT STUFF.

SURELY YOU DON'T BELIEVE THE LEGISLATURE INTENDED THAT THESE CLAIMS JUST SIT THERE INDEFINITELY. WITHOUT THE COMMISSION OR THE PARTIES HAVING SOME RESPONSIBILITY TO MOVE THEM ALONG. AND WOULDN'T THAT BE THE END RESULT OF WHAT YOU ARE ARGUING HERE? AND THAT IS THAT THERE ARE APPARENTLY NO RESPONSIBILITY ON THE PERSON MAKING THE COMPLAINT TO MOVE IT ALONG.

SHE HAS A RESPONSIBILITY. SHE HAS AN OPTION.

WHAT RESPONSIBILITY DOES SHE HAVE?

SHE HAS A RESPONSIBILITY TO COMPLY WITH ANY ORDERS THAT SHE RECEIVES FROM THE COMMISSION. SHE HAS THIS RESPONSIBILITY TO ATTEMPT TO MEDIATE WITH THE COMMISSION. AND SHE HAS THIS OPTION TO GO TO COURT, BUT THAT IS ALL IT IS, IS AN OPTION.

WELL, WHY ISN'T THIS A STATUTORY CAUSE OF ACTION? I MEAN I UNDERSTOOD IN THE DISTRICT COURT, THIS WAS A STATUTORY CAUSE OF ACTION.

THAT'S CORRECT. WITHIN THE FOUR YEARS.

AND THE FOUR-YEAR STATUTE APPLIES.

TO ME HOLE I THINKER WOULD SAY, AT -- TO ME, HOLLINGER WOULD SAY AT FOUR YEARS.

I AM A LITTLE TROUBLED BY THIS THOUGHT THAT, YOU KNOW, YOU CAN JUST ENDLESSLY AVOID HAVING TO FILE SUIT AND COME BACK IN SIX OR SEVEN YEARS AND FILE SUIT.

YOUR HONOR, LET ME RUN YOU THROUGH A LITTLE -- SUPPOSE -- AND I AGREE. I THINK THIS COURT, IN HOLINGER, HAD LAID DOWN A BRIGHT-LINE RULE, AND MILANO DIDN'T ADDRESS IT. THEY TAKE THE POSITION THAT IT DIDN'T APPLY BECAUSE IT AMEND THE STATUTE.

HOW DO YOU DEAL WITH THE AMENDMENT TO THE STATUTE, UNDER THAT THEORY?

WELL, IF THE AMENDED STATUTE DID CREATE A STATUTE OF LIMITATIONS, THEY BE A -- THEN THAT SPECIFIC ONE COULD OVERRULE HOLLINGER. BUT I AM SAYING IT CREATED AN OPTION THAT SPEEDED IT UP AND GET IT INTO COURT, IF SHE CORRECTS OR SHE CAN RELY ON THAT, AND HER DUTY IS TO BE AWARE OF HOLLINGER AND SAY AT THREE YEARS OR 364 DAYS, IT IS OBVIOUS THIS COMMISSION AIN'T GOING TO DO ANYTHING. I HAVE GOT TO GO TO COURT NOW, JUST LIKE

IN A CAR ACCIDENT CASE. YOU CAN WAIT THREE YEARS AND 364 DAYS AND BRING A CAR ACCIDENT CASE. NO ONE SAYS, WELL, IT WOULD BE BETTER IF YOU WOULD HAVE BROUGHT IT THE DAY AFTER THE ACCIDENT, BUT YOU DIDN'T. BUT YOU ARE OKAY. THAT IS WHAT SHE HAS THE RIGHT, AND SHE CAN LOOK AT THE BOOKS. YOU CAN LOOK AT THE -- THIS COURT'S DECISION AND SAY, WELL, APPARENTLY THE SUPREME COURT SAYS I HAVE TO DO IT IN FOUR YEARS. WE CAN LIVE WITH THAT, BECAUSE SHE IS WITHIN TWO AND-A-HALF YEARS, BUT SUPPOSE YOU HAVE THE SITUATION. SHE HAS ONE YEAR FROM THE DATE THE INCIDENT OCCURS, TO EVEN REPORT IT TO THE COMMISSION, WHICH IS MANDATORY. YOU HAVE GOT TO REPORT IT TO THE COMMISSION. SO THERE IS ONE YEAR. THEN YOU HAVE GOT SIX MONTHS, AND THEN YOU HAVE GOT A YEAR AFTER THAT. SO SOME PEOPLE HAVE A TWO AND-A-HALF YEAR STATUTE OF LIMITATIONS, AND THE PEOPLE WHO REPORT THEIRS FASTER HAVE, YOU KNOW, A YEAR AND-A-HALF OR LESS, OR A YEAR AND-A-HALF OR SOMEWHERE BETWEEN A YEAR AND-A-HALF TO TWO AND-A-HALF. SO YOU HAVE THIS MOVING STATUTE OF LIMITATIONS THAT IS KIND OF BASED ON WHAT SHE DOES. NOT THE EVENT THAT OCCURRED, WHICH IS WHAT HOLLINGER WOULD SAY IS WHAT DAY DID YOU GET DISCRIMINATED AGAINST? YOU HAVE GOT FOUR YEARS FROM THEN OR GET OUT OF HERE. SHE CAN SAY, WELL, I CAN KIND OF SET MY MOVING TARGET, IF I WAIT SIX MONTHS AFTER IT OCCURRED. THEN I GOT ANOTHER SIX MONTHS FOR THE COMMISSION TO ACT, AND THEN I GOT A YEAR FROM THAT DATE. WELL, WHAT IF THE COMMISSION ACTS ON THE 100 -- YOU KNOW, IN THIS CASE A YEAR LATER. SO SHE WAITS A YEAR. SHE GETS A CAUSE OF REASONABLE DETERMINATION A YEAR LATER. TWO YEARS IS HAVE PASSED. SHE WAITS A YEAR FROM THEM. NOW THREE YEARS HAVE PASSED. SO WHY SHOULD THAT PERSON GET THREE YEARS AND OTHER PEOPLE GET A YEAR AND-A-HALF? AND IT IS BECAUSE, IF YOU READ SECTION 8, IT DOESN'T SAY ANYTHING ABOUT TIMES IN THERE. IT SAYS, IF YOU HAVE -- IF YOU DON'T HAVE A DECISION IN 180 DAYS, YOU CAN PRETEND THAT YOU DO. AND YOU CAN GO TO KOURPT. -- TO COURT. SEE SECTION FOUR. SECTION 4 SAYS YOU CAN GO TO CIRCUIT COURT. YOU CAN GO TO ADMINISTRATIVE FORUM. SECTION 4 DOESN'T SAY ANYTHING ABOUT TIME LIMITS. IT IS SECTION 5 SAYS THAT, IF YOU ACTUALLY DO GET ONE, NOT THIS PRETEND ONE, BUT WHEN YOU REALLY DO GET ONE, WHICH SHE GOT IN HER OTHER CASE, SHE REALLY GOT ONE IN THE MAIL FROM THEM, THE WAY IT IS SUPPOSED TO HAPPEN. SHE GOT ONE. THEN YOU HAVE GOT ONE YEAR FROM THAT DATE, SO YOU HAVE TO TAKE THESE STATUTES AND CUT AND PASTE AND PUT TOGETHER SOMETHING THAT GOES LET ME SEE. 180 DAYS HAVE PASSED. I CAN PRETEND I GOT ONE. WHAT DO I DO NEXT? WELL, I CAN GO, I LOOK TO 4, BECAUSE IT DIRECTS ME TO FOUR. FOUR DOESN'T SAY ANYTHING ABOUT, IN ONE YEAR, YOU SHALL BRING THE FOLLOWING TWO ACTIONS. IT JUST SAYS THIS IS WHAT YOU CAN DO. THEN YOU HAVE GOT TO LOOK UP TO FIVE AND SAY OH, IN FIVE, IT SAYS IF I REALLY DO HAVE ONE, DO I REALLY HAVE ONE WHEN IT SAYS I CAN PRETEND I HAVE ONE? IF YOU READ THE MEANING OF THE WORDS, IT SAYS, NO, WHEN YOU REALLY DO HAVE ONE. WELL, SHE NEVER GOT ONE.

DO YOU WAIVE THE RIGHT TO COURT, IF YOU GO TO ADMINISTRATIVE HEARING?

YES. IT SAYS "EXCLUSIVE". I INTERPRET THAT TO MEAN IF I ELECT TO GO CIRCUIT, THEN I CAN'T GO ADMINISTRATIVE AND VICE VERSA.

IS THE RIGHT TO ASK FOR AN ADMINISTRATIVE HEARING LIMITED BY THIS PASSAGE OF 180 DAYS OR A DETERMINATION OF GOOD CAUSE?

NO, YOUR HONOR. THAT IS THE FUNNY THING. IF, TWO YEARS AFTER YOU GET A FINDING OF NO CAUSE, THEN YOU HAVE GOT 35 DAYS TO GO INTO THE ADMINISTRATIVE ARENA AND HAVE A DOA HEARING OFFICER TELL YOU THAT YOU DID HAVE ACTUALLY REASONABLE CAUSE, AND THEN YOU GO TO THE COMMISSION, AGAIN, AND THE COMMISSION SAYS WE AGREE OR DON'T AGREE WITH THE HEARING OFFICER, AND THEY ISSUE A FINAL ORDER, AND THEN YOU GOT A YEAR FROM THE DATE OF THE FINAL ORDER, THAT FINAL ORDER, WHICH COULD, EVEN, BE APPEALED TO THE DISTRICT COURT OF APPEAL AND COME BACK, BECAUSE IT IS A FINAL ORDER. THEN YOU HAVE GOT A YEAR FROM THAT DATE TO COME BACK AND SAY I NOW RENOUNCE THEIR RELIEF I GOT HAVE -- I COULD HAVE GOT IN ADMINISTRATIVE LAW, AND I WANT TO HAVE

A JURY TRIAL, AND SO I AM GOING TO HAVE A JURY TRIAL. THAT IS ALL A POSSIBLE SCENARIO IN THIS CASE OR IN ANY ONE OF THESE CASES, IS THAT YOU HAVE VARYING OPTIONS WHICH NONE OF THESE SQUAD STATUTE OF LIMITATIONS SEEM TO HAVE BEEN WRITTEN WITH ANY UNDERSTANDING OR CONSIDERATION FOR THE EFFECT, AND I SEE THAT I AM OUT OF TIME. SO THANK YOU.

THANK YOU. MR. KLINGENSMITH.

YES, SIR. MAY IT PLEASE THE COURT. THERE ARE, REALLY, TWO COMPONENTS OF THE CITY OF GAINESVILLE'S ARGUMENT IN THIS CASE TODAY. NUMBER ONE, WE BELIEVE THAT THIS STATUTORY FRAMEWORK AND PROCEDURE THAT HAS BEEN ESTABLISHED IN CHAPTER 7.611. IT -- CHAPTER 7.6011. WE HAVE HAD THREE COURTS OF FEDERAL DISTRICT COURT OF APPEAL AND ONE FEDERAL COURT, AND ALL OF THEM HAVE CONCLUDED THE EXACT SAME THING IN THE PROCEDURE IN THIS CASE. THE PROCEDURE IS MANDATORY, AND THIRDLY IT PROVIDES THAT, IF YOU DON'T FOLLOW THE PROCEDURE OF THE STATUTE, THE PARTY DOES NOT FOLLOW THAT PROCEDURE, HE OR SHE LOSES THE RIGHT TO PURSUE A CLAIM.

HOW DO YOU TAKE A WORD LIKE "MAY" AND CONSTRUE IT TO BE MANDATORY.

IT DEPENDS ON WHERE "MAY" APPEARS, JUSTICE ANSTEAD. IF IT APPEARS IN THE PROVISION OF THE STATUTE THAT ALLOWS YOU TO BRING AN ACTION, AS IF YOU HAD RECEIVED A DETERMINATION OF CAUSE, THAT IS NOT MANDATORY. THE STATUTE CAN'T COMPEL YOU TO FURTHER YOUR RIGHTS ANY FURTHER. IT CAN GIVE YOU THAT RIGHT, BUT IT CAN'T MAKE YOU GO INTO COURT, IF YOU DON'T WANT TO. IT CANNOT MAKE YOU ASK FOR AN ADMINISTRATIVE HEARING, IF YOU DON'T WANT TO. THAT, JUDGE, IS CLEARLY ALLOWING YOU, IN THE STATUTE, TO PURSUE IT OR YOU COULD ABANDON THE CLAIM.

BUT THE STATUTE COULD EASILY HAVE SAID THAT, IN ORDER TO PRESERVE YOUR ACTION, YOU SHALL BRING IT WITHIN ONE YEAR. IT DOESN'T SAY. THAT.

IT DOES SAY YOU HAVE TO BRING IT WITH ONE YEAR, YOUR HONOR.

WHERE DOES IT SAY YOU SHALL BRING IT WITHIN ONE YEAR?

SECTION 5, IT SAYS A CIVIL ACTION BROUGHT HAS TO BE COMMENCED WITHIN ONE YEAR. SHALL BE COMMENCED WITHIN ONE YEAR. THAT IS THE MANDATORY PART OF IT.

COULD YOU READ THE REST OF THAT SENTENCE.

SURELY. NO LATER THAN ONE YEAR AFTER DATE OF DETERMINATION OF REASONABLE CAUSE BY THE COMMISSION.

IN ALL DUE DEFERENCE FOR ALL OF THE COURTS THAT THOUGHT THIS WAS CLEAR AND UNAMBIGUOUS, I READ THAT SENTENCE TO SAY ONE YEAR AFTER THE DATE OF DETERMINATION OF REASONABLE CAUSE BY THE COMMISSION, MEANING THERE HAS GOT TO BE, TO HAVE THAT ONE-YEAR TRIGGERED, THERE HAS GOT TO BE A DETERMINATION OF REASONABLE CAUSE. HOW DO WE GET AROUND THAT THAT, YOUR STATEMENT THAT IT IS CLEAR AND UNAMBIGUOUS. HERE THERE WAS NO DETERMINATION OF REASONABLE CAUSE. SO HOW WAS THE ONE-YEAR TRIGGERED?

I DISAGREE WITH THE COURT ON THAT. THERE WAS A DETERMINATION OF REASONABLE CAUSE. THERE WAS A DETERMINATION BY OPERATION OF LAW. UNLIKE TITLE 7, WHERE, AFTER THE 180-DAY PERIOD EXPIRES, I, AS A CLAIMANT HAVE TO ASK THE COMMISSION, IN THAT CASE, FOR THE RIGHT TO SUE. OUR STATUTE IS QUITE DIFFERENT, IN THAT IT CREATES AN AUTOMATIC RIGHT TO SUE ON THE 181 DAY. AT THAT POINT IN TIME, IT CREATES A FICTIONAL, BY OPERATION OF LAW,

DETERMINE NATION OF CAUSE. IF YOU WISH TO PURSUE IT.

NOW, HOW DOES THAT FICTIONAL OPERATION OF LAW, GO ALONG WITH THE FACT THAT, WHEN THE COMMISSION DETERMINES WHETHER OR NOT THERE IS REASONABLE CAUSE, THE COMMISSION, BY REGISTERED MAIL, SHALL PROMPTLY NOTIFY THE AGO GRIEVED HE PERSON AND THE RESPONDENT OF THE REASONABLE CAUSE DETERMINATION, IN THIS STATUTORY SCHEME THAT YOU SAY IS CLEAR, WHAT HAPPENS TO THAT? IS THE OPERATION OF LAW NOTICE GOES OUT FIXALLY? -- FICTIONALLY?

NO. IF IT IS ACTING AS IT IS SUPPOSED TO ACT UNDER THE LAW, THE LEGISLATURE SAYS YOU MUST ACT WITHIN 180 DAYS, YOU HAVE TO DO SOMETHING, EITHER MAKE A DECISION WITHIN THAT TIME OR MAKE NO DECISION.

IS IT YOUR POSITION THAT THE COMMISSION WOULD LOSE JURISDICTION AFTER 180 DAYS.

YES. IT WOULD LOSE JURISDICTION.

SO THAT NOTHING ELSE CAN HAPPEN. ALL OF THESE OTHER CASES, THEN, THAT MR. PRINTY HAS BEEN TELLING US ABOUT, WHERE THINGS ARE TRYING TO GET MEDIATED OR RESOLVED AFTER 180 DAYS, THOSE ARE ALL NULL AND VOID?

WELL, I THINK WHAT IS BEING LOST HERE, IS, THAT THIS STATUTE CREATES A BALANCE BETWEEN TRYING TO GET MATTERS RESOLVED WITHOUT RESORTING TO LITIGATION, BUT ON THE OTHER HAND, NOT CREATING A PERPETUITY TYPE SITUATION, WHERE THIS EMPLOYER HAS A CLOUD HANGING OVER ITS HEAD FOR THREE YEARS, FOUR YEARS, FIVE YEARS, MAYBE TEN YEARS.

HASN'T IT ALWAYS BEEN AN IMPORTANT PART, AT LEAST IT HAS BEEN SOMETHING THAT WE REGULARLY SEE, OF THESE ADMINISTRATIVE SCHEMES, THAT THEY HAVE A PROVISION THAT PUTS THE CLAIMANT OR PARTIES, WHATEVER, ON NOTICE IN SORT OF A SPOON-FEEDING WAY, THAT HERE IS WHAT WE HAVE DONE, AND NOW HERE IS WHAT YOUR OPTIONS ARE HERE AFTER. AND YOU KNOW, YOU CAN CHECK OPTION A OR OPTION B AND YOU HAVE THESE TIME LIMITATIONS TO DO IT. IT SEEMS TO ME THAT THAT HAS BEEN, IN ORDER TO SATISFY, I SUPPOSE, BOTH EFFICIENCY AND DUE PROCESS, A SORT OF A COMMON DENOMINATOR IN MOST OF THESE SCHEMES. BUT WE DON'T, UNDER YOUR INTERPRETATION HERE, THAT NEVER HAPPENS. THAT IS THAT IF WE HAVE AND HOPEFULLY WE WOULD ENCOURAGE PEOPLE TO COME IN, PERHAPS, ON THEIR OWN, AND THAT THE AGENCY IS SET UP, YOU KNOW, TO ASSIST PEOPLE ON THEIR OWN. WE NEVER HAVE THIS TIME WHEN THEY ARE, NOW, PUT ON NOTICE OF THE, CRITICALLY, THE MOST IMPORTANT TIME IN THE WHOLE CASE, SO WHAT DO WE DO ABOUT THAT HERE? THAT THAT IS LACKING, UNDER YOUR INTERPRETATION OF THAT SCHEME?

WELL, IF IT PLEASE THE COURT, I DON'T THINK IT IS LACKING. WE POINTED OUT IN OUR BRIEF THAT PROCEDURAL PROCESS ONLY REQUIRES NOTICE. IT DOESN'T REQUIRE A MANDATE THAT YOU HAVE TO HAND A GREETING CARD TO SOMEONE AND TELL THEM HERE IS YOUR NOTICE. THE NOTICE IS EMBODIED IN THE STATUTE.

IF HE ACTUALLY MAKES THIS DETERMINATION, THEN THE SCHEME MANDATES THAT THEY PROVIDE THIS KIND OF NOTICE. RIGHT?

YES. IF THEY MAKE A DETERMINATION WITHIN THAT 180-DAY PERIOD, AND THE REASON FOR THAT IS THIS, BECAUSE IF THEY DECIDE ON, LET'S SAY, THE 75th DAY AFTER THE COMPLAINT IS FILED, THAT ONE-YEAR STATUTE OF LIMITATIONS IS NOT GOING TO RUN FROM THE 180th DAY. IT IS GOING TO RUN FROM THE 75th DAY, BECAUSE THAT IS THE DATE OF THE DETERMINATION, SO THAT IS WHY THE COMMISSION MUST GIVE NOTE TOYS THE PARTIES, SAYING -- NOTICE TO THE PARTY, SAYING YOUR 365 DAYS TO BRING A LAWSUIT, IF THAT IS WHAT YOU WANT TO DO, OR YOUR 35 DAYS, IF YOU WANT TO GO THE ADMINISTRATIVE ROUTE, STARTS FROM THIS DAY, THE

75th DAY THAT WE MADE THE ACTUAL DECISION. IT DOESN'T START FROM THE 180th DAY, WHICH IT WOULD HAVE IF WE HAD DONE NOTHING DURING THAT PERIOD OF TIME. THAT IS WHERE THE NOTICE ON THAT SITUATION COMES IN. NOW, WHERE THE COMMISSION DOES IT, DOES NOTHING, THE STATUTE TELLS THE COMPLAINING PARTY WHEN THE PERIOD STARTS TO RUN. IT IS 180 DAYS. YOU COUNT 180 DAYS FROM WHEN YOU FILED YOUR COMPLAINT.

WHAT DOES THE STATUTE TELL THE PLAINTIFF?

THE STATUTE CLEARLY SAYS THAT, IF THE COMMISSION DOES NOT ACT WITHIN 180 DAYS, YOU HAVE AN IMMEDIATE RIGHT TO SUE, BY OPERATION OF LAW, AND THAT IS THE BEGINNING POINT. THAT IS AS IF THE COMMISSION HAD MADE THAT DECISION ON THAT DAY.

YOU ARE REFERRING TO SECTION 8 AGAIN?

I AM SORRY, YOUR HONOR. I DIDN'T HEAR YOU.

IF YOU WOULD GIVE US THE SPECIFIC SECTION TO WHICH YOU ARE REFERRING.

YES, SIR. IT WOULD BE SECTION 8, SECTION 4, AND SECTION 5. READING ALL THREE OF THOSE SECTIONS, TOGETHER, BECAUSE SECTION 8 SAYS THAT, IF THE COMMISSION DOESN'T ACT WITHIN THE 180 DAYS, IT IS THE SAME AS IF THEY HAD SAID, ON THE 180th DAY, YOU HAVE A GOOD CLAIM.

WELL, IN FOLLOWING UP ON WHAT JUSTICE ANSTEAD WAS ASKING, I THINK THE PROBLEM THAT I SEE, HERE, WHICH I WOULD APPRECIATE YOUR SPEAKING TO, IS THAT, WHEN YOU LOOK AT SECTION 4, WHICH IS REFERRED TO AS THE ONLY OTHER SECTION REFERRED TO IN SECTION 8.

YES, SIR.

IT DOESN'T SAY ANYTHING ABOUT OPERATION OF LAW. IT SAYS, IN THE EVENT THAT THE COMMISSION DETERMINES THERE IS REASONABLE CAUSE TO BELIEVE, AND IT SEEMS TO ME THAT, IN COBBLING THIS STATUTE TOGETHER, THAT IT WOULD HAVE TO BE READ THAT, WHEN YOU ARE REFERRING TO SECTION 4, THAT YOU ARE SAYING THAT, WHEN THE COMMISSION ACTS, THAT YOU HAVE GOT AN ONE-YEAR PERIOD. BUT THAT IT IS SILENT AS TO THE OTHER PROVISIONS, AND WE ARE FORCED BACK INTO 95.11.

NO, SIR. AND UNDER NO CIRCUMSTANCES DID HOLLINGER EVER APPLY BECAUSE OF TWO REASONS. ONE, BECAUSE IT IS CLEAR FROM THE LEGISLATIVE HISTORY AND THE FILING OF THE STATUTE, ITSELF, THAT STATUTE WAS PASSED IN DIRECT RESPONSE TO HOLLINGER. THERE CAN BE NO OTHER REASON FOR THEM TO HAVE EMBODIED A SPECIFIC STATUTE OF LIMITATIONS, WHEN THIS COURT PREVIOUSLY HAD SAID BECAUSE THERE IS NO SPECIFIC TIME FRAME, WE ARE GOING TO APPLY 95.11, AND SECONDLY WE ALL KNOW THAT THE CORNERSTONE OF OUR LAW IS A SPECIFIC STATUTE OF LIMITATIONS, EMBODIED IN A SPECIFIC STATUTE, TAKES PRECEDENCE OVER A GENERAL STATUTE OF LIMITATIONS PERIOD, SO UNDER NO CIRCUMSTANCES, IF IT PLEASE THE COURT, DO I THINK THAT HOLLINGER WOULD APPLY TO THIS CASE, BECAUSE WE HAVE HAD THE LEGISLATURE INDICATE WHAT STATUTE OF LIMITATIONS THEY WANT TO APPLY, AND THEY HAVE THAT POWER. THEY HAVE THE POWER TO SHORTEN THE STATUTE OF LIMITATIONS IF THEY SO DESIRE. THAT IS A LEGISLATIVE PREROGATIVE. NOW, TO ANSWER YOUR OTHER QUESTION, WHEN WE TRIGGER, IF THE COMMISSION DOESN'T ACT DURING THIS 180-DAY PERIOD, THIS STATUTE CLEARLY SAYS THAT, AT THAT POINT IN TIME, YOU HAVE AN AUTOMATIC RIGHT TO SUE. NOW, UNDER TITLE 7, AS I MENTIONED EARLIER, THAT DOESN'T HAPPEN. UNDER TITLE 7, THE PLAINTIFF IN THAT KIND OF A SITUATION, MUST ASK THE COMMISSION. THE EEOC, FOR THE RIGHT TO BRING SUIT, AND WHY IS THERE A DIFFERENCE? THE DIFFERENCE HAS TO BE BECAUSE, UNDER TITLE 7, THE COMMISSION, THERE, NEVER LOSES JURISDICTION AFTER THE 180 DAYS, UNDER TITLE 7. HERE THEY LOSE JURISDICTION, BECAUSE WHAT THE CLAIMANT CAN DO IS DIVEST THE COMMISSION OF



JURISDICTION AT THE 180th DAY, BY BRINGING A LAWSUIT IN CIVIL ACTION IN CIRCUIT COURT, WITHIN 365 DAYS OF THAT EXPIRATION OF THAT 180-DAY PERIOD. THERE WOULD BE NO OTHER REASON WHY THE LEGISLATURE PUT IN THERE WHAT HAPPENS AFTER THE 180 DAYS EXPIRES. THEY COULD HAVE SIMPLY SAID YOU HAVE THE RIGHT TO INVESTIGATE THIS CLAIM, AND YOU CAN TAKE AS LONG AS YOU WANT TO, BUT THEY SAID YOU HAVE GOT TO DO IT WITHIN 180 DAYS, AND IF YOU DON'T, THE COMPLAINING PARTY, THEN, CAN TREAT YOUR NONDECISION AS IF YOU HAD DECIDED IN THEIR FAVOR, TRIGGERING THE ONE-YEAR STATUTE OF LIMITATIONS.

ACCORDING TO MR. PRINTY'S ARGUMENT, SOMEONE WHO GETS A DETERMINATION FROM THE COMMISSION THAT THERE WAS NO REASONABLE CAUSE WOULD HAVE GREATER RIGHTS UNDER THIS STATUTE THAN ONE WHO GETS A LATE DECISION SAYING THERE IS REASONABLE CAUSE. WOULD YOU ADDRESS THAT. ACCORDING TO HIM, IF THE COMMISSION DECIDES TWO YEARS FROM THE DATE YOU FILE YOUR COMPLAINT, THAT THERE IS NO CAUSE, YOU STILL HAVE YOUR ADMINISTRATIVE REMEDIES AND CAN CONTINUE ON FROM THERE.

WELL, I DON'T AGREE WITH THAT POSITION. I THINK THE STATUTE IS QUITE CLEAR THAT, IF THE COMMISSION DOESN'T DO ANYTHING WITHIN THAT 180 DAYS, AND I HAVE GOT A CLAIM SITTING UP THERE, THEN I AM ON NOTICE, BECAUSE THE STATUTE TELLS ME THAT I HAVE A RIGHT TO SUE ON THE 181th DAY. I HAVE TWO OPTIONS, THEN ON THE 181 DAY. I DON'T HAVE TO GO INTO CIRCUIT COURT. THE STATUTE GIVES ME ANOTHER REMEDY.

WERE YOU INVOLVED IN MISS JOSHUA'S CASE?

YES, I WAS.

AS I UNDERSTAND HIS ARGUMENT, SHE RECEIVED HER NOTICE ON THE OTHER CASE MORE THAN 180 DAYS?

I HONESTLY DON'T RECALL THAT, YOUR HONOR. I REALLY DON'T. I KNOW THAT, ONCE WE WENT TO ADMINISTRATIVE HEARING, I KNOW THE DIFFERENCE BETWEEN THIS CASE AND THAT CASE AND THAT THE CLAIMANT IN THAT CASE DIDN'T DIVEST ITSELF OF THE JURISDICTION.

I AM SORRY. WHAT?

THE CLAIMANT IN THAT CASE DID NOT DIVEST THE JURISDICTION. IT DID NOT FILE A LAWSUIT BEFORE THE COMMISSION ISSUED A RULING. YOU SEE, IN THIS CASE, NO MATTER WHAT YOU DECIDE, IF YOU DECIDE THAT THE COMMISSION LOSES JURISDICTION ON THE 180th DAY, THE CLAIMANT LOSES. IF HE DECIDES THE CLAIMANT, THE JURISDICTION DOES NOT END ON THE 181 DAY, THE CLAIMANT IN THIS CASE STILL LOSES, AND WHY?

SO IF THE CLAIMANT HAD WAITED UNTIL THE COMMISSION HAD MADE A DECISION, SAY, AND THEY DID, IN FACT, ISSUE A PROBABLE CAUSE OR REASONABLE CAUSE DETERMINATION, SHE WOULD HAVE, THEN, BEEN ABLE TO PROCEED?

UNDER HIS INTERPRETATION, YES. UNDER MY INTERPRETATION AND THE OTHER COURT'S INTERPRETATION, NO, BECAUSE ON THE 181 DAY, THE COMMISSION NO LONGER HAD JURISDICTION. UNDER THEIR INTERPRETATION, IF JURISDICTION --.

I AM TRYING TO UNDERSTAND YOUR ARGUMENT THAT SHE DIVESTED THE JURISDICTION. IT SEEMS TO ME THAT UNDER YOUR ARGUMENT THE COMMISSION WOULD HAVE DIVESTED ITS JURISDICTION ON THE 180th DAY.

I AM SAYING UNDER THEIR SCENARIO, IF YOU BELIEVE THAT THE 180th DAY DOES NOT END THE JURISDICTION OF THE HCSR, THE CLAIMANT LOSES JURISDICTION. SHE DID NOT WAIT FOR THE COMMISSION TO MAKE THE DECISION A YEAR OR TWO YEARS OR THREE YEARS DOWN THE ROAD.

SHE WENT IN AND PREEMPTED THE JURISDICTION OF THAT COMMISSION BY FILE AGO LAWSUIT, AND ONCE SHE DID THAT, SHE IS BOUND TO FILE THAT LAWSUIT WITHIN 365 DAYS OF THAT END OF THE 180th DAY PERIOD.

I UNDERSTAND YOUR POSITION,.

YES, MA'AM.

AND I UNDERSTAND THAT THE LEGISLATURE, MAYBE THEY MEANT TO DO THAT, BUT I, REALLY, HIM HAVING TROUBLE WITH WHY, IF THEY MEANT TO DO THAT, THEY WOULD SAY THAT A CIVIL ACTION SHALL BE BROUGHT NO LATER THAN ONE YEAR AFTER THE DATE OF DETERMINATION OF REASONABLE CAUSE. ISN'T A, AT LEAST A LOGICAL READING, MAYBE NOT THE ONLY READING OF THE STATEMENT "A DETERMINATION OF REASONABLE CAUSE", A STATEMENT THAT THERE IS AN ACTION ON THE PART OF THE COMMISSION, A DETERMINATION THAT THEY HAVE HAD TO HAVE MADE A DECISION, IN ORDER FOR THIS ONE-YEAR STATUTE TO BE TRIGGERED. DO YOU AT LEAST CONCEDE THAT THAT IS A REASONABLE INTERPRETATION OF THAT SENTENCE? NOW, MAYBE IN THE WHOLE SCHEME, YOU ARE GOING TO SAY NO, BUT IF YOU LOOK AT EVERYTHING, THAT DOESN'T MAKE SENSE, BUT JUST THAT SENTENCE THAT I THOUGHT YOU WERE RELYING ON AND THAT I AM READING, CAN YOU AGREE THAT THERE IS ANOTHER REASONABLE INTERPRETATION?

YES. I WOULD AGREE TO THIS EXTENT, YOUR HONOR, AND THAT IS THAT, IF YOU TAKE THAT OUT OF CONTEXT, BY ITSELF, WITHOUT READING IT IN CONJUNCTION, IN JUXTAPOSITION WITH ALL OF THE OTHER PROVISIONS THAT WE HAVE BEEN TALKING ABOUT HERE, YES, THAT IS A PLAUSIBLE INTERPRETATION, BUT IT HAS, ALWAYS, BEEN MY VIEW THAT THAT ISN'T HOW WE INTERPRET STATUTORY LEGISLATION. WE INTERPRET IT LIE LOOKING AT ALL OF THE WORK, THE MECHANISMS THAT ARE IN PLACE AND READING THEM TO THE BEST OF OUR ABILITIES, TO DETERMINE WHAT THE LEGISLATURE INTENDED, AND WHEN THEY SAY DETERMINATION IN THAT ONE PHRASE, THAT ONE CLAUSE, THEY ARE, ALSO, TALKING ABOUT A DETERMINATION IN PARAGRAPH 8.

BUT ISN'T, I GUESS, MY PROBLEM WITH IT, AND MAYBE IT GOES BACK TO SOMETHING THAT MR. PRINTY SAID, IS THAT MANY OF THE CLAIMANTS THAT ARE USING THIS CIVIL RIGHTS STATUTE ARE UNREPRESENTED. CORRECT?

I DON'T KNOW THAT. I CAN'T COMMENT ON THAT.

ALL RIGHT.

THE ONES I ALWAYS COME UP AGAINST ARE REPRESENTED.

WELL, THIS ONE WAS NOT REPRESENTED BY COUNSEL. IS THAT CORRECT?

YES, SHE WAS.

IN OTHER WORDS SHE HAS BEEN REPRESENTED BY COUNSEL ALL ALONG?

I CAN'T COMMENT ON THINGS OUTSIDE OF THIS RECORD, BUT THIS LADY HAD FOUR LAWYERS THAT ALL WITHDREW.

THIS LADY HAS ALWAYS BEEN REPRESENTED BY COUNSEL.

SHE HAD AN ATTORNEY AT THE FIRST PROCEEDING. MR. PRINTY WAS INVOLVED IN THAT, AND SHE HAD AN ATTORNEY IN THIS PROCEEDING.

SO THE RECORD WILL REFLECT THAT SHE HAS ALWAYS HAD AN ATTORNEY. SHE HASN'T DONE

ANYTHING PRO SE.

NO, SIR. AND I DON'T THINK MR. PRINTY WILL ARGUE WITH THIS, BUT WHEN THE FIRST CASE WAS STARTED, SHE HAD FOUR DIFFERENT LAWYERS. THEY ALL WITHDREW, AT ONE POINT OR THE OTHER, AND MR. PRINTY ENDED UP WITH THE CASE.

LET'S START WITH WHAT THE LEGISLATURE WANTED TO CREATE, HERE, WAS A WAY THAT CITIZENS OF THIS STATE AGO GRIEVED BY WHAT THEY CLAIM TO BE ACTS OF DISCRIMINATION AGAINST THEM COULD, IN A SIMPLE MATTER, COME TO AN ADMINISTRATIVE AGENCY AND TRY TO WORK WITH HIS OR HER EMPLOYER TO RESOLVE THIS.

YES, SIR.

BUT THAT WHAT WE ARE -- WHAT YOU ARE URGING THIS COURT TO DO IS TO SAY THAT THIS STATUTE CLEARLY AND UNAMBIGUOUSLY TELLS CLAIMANTS THAT NO MATTER WHAT ELSE HAPPENS, THAT SIX MONTHS, I GUESS THAT IS 180 DAYS, AFTER THEIR COMPLAINT IS FILED, THEY HAVE GOT ONE YEAR TO GO INTO COURT.

OR 35 DAYS TO ASK FOR AN ADMINISTRATIVE HEARING. THEY HAVE TWO REMEDIES AT THE END OF THAT 181 DAY. ON THE 181 DAY THEY HAVE TWO REMEDIES. THEY CAN ASK FOR AN ADMINISTRATIVE HEARING WITHIN 35 DAYS, BECAUSE THAT IS SECTION 4.

BUT THAT ONLY, AGAIN, THIS IS WHERE WE GO TO FOUR. IT SAYS "IN THE EVENT THAT THE COMMISSION DETERMINES THAT THERE IS REASONABLE CAUSE". SO YOU ARE SAYING THAT YOU WOULD INTERPRET THAT, IF, AFTER 10 DAYS, NOTHING HAPPENS, THAT -- AFTER 180 DAYS, NOTHING HAPPENS, THAT THE COMMISSION WOULD BE ABLE TO GO AHEAD AND PROCEED TO THE ADMINISTRATIVE HEARING STAGE, EVEN THOUGH THEIR INVESTIGATION HASN'T BEEN COMPLETED?

YES, MA'AM. IF, AT THE END OF THE 180 DAYS, THERE HAS BEEN NO DECISION AND NO CONCILIATION, I READ THE STATUTES COMBINED FROM SECTIONS 4, 8 AND 5, SAYING VERY SIMPLY THAT, IF YOU DON'T GET A DECISION WITHIN THAT 180-DAY PERIOD, YOU HAVE GOT TWO REMEDIES. ACTUALLY THREE REMEDIES. YOU CAN DO NOTHING AT ALL AND JUST WAIT AND WAIT AND WAIT, IN WHICH CASE YOU RUN THE RISK OF LOSING YOUR CLAIM, OR YOU CAN EITHER CHOOSE TO GO THE ADMINISTRATIVE ROUTE, BUT YOU HAVE TO DO THAT WITHIN 35 DAYS AT THE END OF THAT 180-DAY PERIOD, OR IF YOU WANT TO GO TO COURT, YOU HAVE GOT AN EVEN LONGER PERIOD OF TIME. YOU HAVE GOT 365 DAYS FROM THAT 181 DAY, IN ORDER TO BRING THAT CLAIM.

NOW, LET'S, I WOULD LIKE, LET'S ASSUME THAT, IN THIS CASE, THAT, ONE YEAR AFTER THE COMPLAINT WAS FILED, THERE WAS A DETERMINATION OF REASONABLE CAUSE.

ONE YEAR AFTER THE COMPLAINT WAS FILED.

ONE YEAR AFTER THE COMPLAINT.

SO THAT WOULD BE SOMEWHERE IN BETWEEN THE 181 DAY AND THE ONE-YEAR STATUTE OF LIMITATIONS.

RIGHT. AND THEN THE CLAIMANT, GETTING HER DETERMINATION OF REASONABLE CAUSE, ELECTED TO FILE ONE YEAR LATER. SO WITHIN TWO YEARS FROM THE DATE OF DETERMINATION OF REASONABLE CAUSE. FILE IN CIRCUIT COURT. IS IT YOUR POSITION THAT, AGAIN, SHE WOULD BE OUT, EVEN THOUGH SHE WAITED FOR THE DETERMINATION, THE DETERMINATION WAS MADE, WITHIN A YEAR, AND THEN SHE ACTED, PURSUANT TO THE STATUTE IN BRINGING THE LAWSUIT WITHIN ONE YEAR AFTER THE DATE OF DETERMINATION?

IF I UNDERSTAND YOUR HONOR'S HYPOTHETICAL, IF THE 180 DAYS HAD EXPIRED, THERE HAD BEEN NO DECISION AND NO CONCILIATION, AND LET'S SAY 735 DAYS LATER, THE COMMISSION CAME OUT WITH A DETERMINATION.

MINE WAS SO WE KEEP WITH THE EASY MATH. ONE YEAR AFTER.

ONE YEAR AFTER THE 180 DAYS.

SO 365 DAYS THERE.

I WOULD SAY, IN THAT SITUATION, THAT HER CLAIM WOULD BE BARED, BECAUSE THE -- WOULD BE BARRED, BECAUSE THE STATUTE OF LIMITATIONS HAD ALREADY BEGUN TO RUN ON THE 180th DAY.

EVEN THOUGH SHE STRICTLY FOLLOWED THE STATUTE THAT SAYS A CIVIL ACTION BROUGHT UNDER THIS SECTION SHALL BE COMMENCED NO LATER AND ONE -- NO LATER THAN ONE YEAR AFTER THE DETERMINATION.

YES. THE FIRST DETERMINATION IS BY OPERATION OF LAW ON THE 180th DAY. THE SECOND ONE OCCURS ON THE 365th DAY AND THAT IS ACTUAL ONE. NOW, IN YOUR HYPOTHETICAL YOUR HONOR, IF THAT HAD HAPPENED IN THIS CASE, IT STILL WOULD HAVE BEEN THE SAME RESULT, BECAUSE THIS LADY JUMPED IN BEFORE THE COMMISSION EVEN HAD A RIGHT TO RULE IN THIS CASE, IF YOU TAKE THE POSITION THAT THEY DIDN'T LOSE JURISDICTION, AND BY DOING THAT, SHE, THEN, TRIGGERS THE 365 DAYS FROM THE DATE OF THE FICTIONAL OR OPERATIONAL OF LAW DETERMINATION.

THANK YOU, COUNSEL. I APPRECIATE YOUR ASSISTANCE. THANK YOU TO BOTH OF YOU. NEXT CASE IS NATHANIEL WOOD