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## **Kelly Tormey v. Michael Moore**

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS TORMEY VERSUS MOORE. MR. JACKSON GOING TO PROCEED?

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS JOSEPH JACKSON FROM GAINESVILLE, FLA. I REPRESENT THE PETITIONER KELLY TORMEY. THE ISSUE PRESENTED BY THE CASE, TODAY, IS WHETHER CHAPTER 189 -- EXCUSE ME 89.100, LAWS OF FLORIDA, COMPLIES WITH ARTICLE III SECTION 6 OF THE LAWS OF THE FLORIDA CONSTITUTION. IT DOES NOT. FIRST TITLE IDENTIFIES A RESTRICTED SUBJECT, PENALTIES FOR SPECIFIED OFFENSES AGAINST LAW ENFORCEMENT OFFICERS.

BEFORE YOU GO INTO THAT, THOUGH, COULD YOU ADVISE, IN TERMS OF THE STATUS OF YOUR CLIENT, AND NOT ONLY THAT SHE HAS ALREADY SERVED HER TERM AND THAT THE MOOTNESS ISSUE, BUT, ALSO, AS TO WHEN THIS WAS RAISED BY HER, IN RELATIONSHIP TO WHEN THE CONSTITUTIONALITY OF THE STATUTE, AS TO WHEN SHE WOULD HAVE APPLIED FOR THESE PROVISIONAL CREDITS. I AM CONCERNED THAT WE ARE LOOKING AT THE CONSTITUTIONALITY OF THIS STATUTE, IN A LLATERAL PROCEEDING, AND ALSO CONCERNED ABOUT THE TIMELINESS OF WHEN THIS PETITION WAS BROUGHT.

YOUR HONOR, MS. TORMEY HAS BEEN RELEASED. HOWEVER, AS THIS COURT'S FEBRUARY 2000 ORDER OF CONSOLIDATION AND SUBSEQUENT ORDER SEVERING THIS PETITION FROM THE HALL PETITION, NOTES MS. TORMEY SERVES IN A REPRESENTATIVE CAPACITY AKIN TO A CLASS ACTION IN THIS CONTEXT. THERE IS A CLASS OF PRISONERS WHO RAISED THE SAME CONSTITUTIONAL CLAIM OR COULD RAISE THE SAME CONSTITUTIONAL CLAIM, UNDER ARTICLE III, THAT MS. TORMEY RAISES. AND THEREFORE, WHILE TECHNICALLY MS. TORMEY'S PETITION MAY BE MOOT, THAT DOES NOT DEPRIVE THE COURT OF JURISDICTION, IN A COMPANION CASE, GOMEZ, THE SAME SITUATION WAS PRESENT. ONE OF THE MEOLA PETITIONERS HAD BEEN RELEASED AND THE COURT RETAINED JURISDICTION. RECENTLY IN THOMAS VERSUS MOORE, AGAIN, A PROVISIONAL CREDIT CHALLENGE. THE PETITIONER HAD BEEN RELEASED YET THE COURT RETAINED JURISDICTION. JUDICIAL ECONOMY WOULD BE SERVED BY DECIDING THIS CASE. IT WOULD BE A GREAT WASTE OF EVERYONE'S RESOURCES, TO DISMISS THE PETITION AT THIS JUNCTURE.

HOW IS THIS RAISED?

YOUR HONOR, MS. TORMEY'S INITIAL PETITION FOR HABEAS CORPUS RELIEF CHALLENGED THE GAIN TIME AWARD SHE HAD BEEN AWARDED BY THE DEPARTMENT, UNDER THE GOMEZ PRECEDENT. IN THE, FOLLOWING THE DEPARTMENT'S RESPONSE, COUNSEL APPOINTED THIS COURT APPOINTED COUNSEL, AND COUNSEL RAISED, MORE SPECIFICALLY, THE ARTICLE III CHALLENGE. MR. CHIEF JUSTICE

THIS IS FILED AS AN ORIGINAL PROCEEDING, AS A WRIT OF HABEAS CORPUS IN THIS COURT. WOULD YOU SPEAK TO THE TIMELINESS ISSUE.

YOUR HONOR, THE COURT HAS HELD, IN OTHER CASES, THAT A CHALLENGE UNDER ARTICLE III SECTION 6, IS A FUNDAMENTAL CHALLENGE THAT CAN BE RAISED FOR THE FIRST TIME ON APPEAL.

NOW, WELL, JUST GIVE ME SOME -- WELL, I THINK WHAT JUSTICE PARIENTE WAS ASKING, IN THE

TRUST OF MY QUESTION, IS THAT THIS IS A '89 STATUTE. AND THAT WHEN DOES THE ISSUE, AS FAR AS THE CONSTITUTIONALITY AND STANDING, RIPEN FOR THIS PARTICULAR INDIVIDUAL?

WELL, IF I UNDERSTAND THE COURT'S QUESTION, IT GOES TO THE WINDOW PERIOD, THE WINDOW PERIOD OPENS ON JANUARY 1, 1990, AND CLOSES --

NO. --

I AM MISUNDERSTANDING YOUR QUESTION.

MY SPECIFIC QUESTION IS, CAN YOU CHALLENGE THE CONSTITUTIONALITY, ON THE BASIS OF ONE SUBJECT? IS THAT A LIMITLESS THING? THERE IS NO TIME PERIOD THAT YOU CAN JUST STEP IN 20 YEARS LATER, AND GO BACK AND SAY, OH, EVEN THOUGH YOU HAVE KNOWN IT SINCE 1989, I JUST DECIDED THAT I AM GOING TO FILE A CONSTITUTIONAL CHALLENGE AS TO SINGLE SUBJECT MATTER OF A 1989 STATUTE.

YOUR HONOR, WHEN OF THE -- WHENEVER THE AGENCY OF GOVERNMENT MISS APPLIES THE STATUTE OR APPLIES THE STATUTE IN AN UNCONSTITUTIONAL FASHION, AT THAT POINT, THE CLAIM RIPENS, THAT THE SINGLE SUBJECT REQUIREMENT OF THE STATUTE WHICH MAKES THE APPLICATION INVALID, CAN THEN BE PRESENTED. THAT CLAIM CAN THEN BE PRESENTED.

SO I UNDERSTAND THIS POSTURE, AND THAT WAS WHAT I WAS TRYING TO GET AT, WHEN SHE WAS AWARDED GAIN TIME, SHE CHALLENGED IT IN ADMINISTRATIVE PROCEEDINGS. IS THAT WHAT HAPPENED?

YOUR HONOR, I BELIEVE THAT IS CORRECT. THERE IS A REFERENCE IN THE INITIAL PETITION TO THE ABSENCE OF DOCUMENTATION OF ADMINISTRATIVE PROCEEDINGS, BUT I BELIEVE THAT'S CORRECT.

AND THEN, AS PART OF, THEN, WHEN THEY DENIED WHATEVER IT WAS THEN IT WAS BROUGHT IN THIS COURT, AFTER SHE HAD EXHAUSTED HER ADMINISTRATIVE REMEDIES?

THAT IS MY UNDERSTANDING. YOUR HONOR, THERE HAS BEEN NO OBJECTION ON EXHAUSTION GROUNDS SUGGESTED BY THE RESPONDENT.

BUT THIS COURT HAS AN OBLIGATION, WHEN, AGAIN, WE ARE LOOKING AND ABOUT TO INTERPRET OR EITHER MAYBE HOLD ON UNCONSTITUTIONAL, A 1989 STATUTE TO MAKE SURE THAT PEOPLE WEREN'T THAT THERE WASN'T AN EARLIER TIME THAT THE STATUTE COULD HAVE BEEN CHALLENGED IN THE PROCESS. I MEAN, THIS IS NOT TO SAY SOMETHING COULD BE RAISED FOR THE FIRST TIME ON APPEAL. THIS ISN'T AN APPEAL FROM A CONVICTION, AND I GUESS, WOULD YOUR ARGUMENT BE THIS COULDN'T HAVE BEEN RAISED ON ANY APPEAL TO HER CONVICTION, BECAUSE IT WASN'T A RIPE ISSUE AT THAT TIME?

INDEED. IT HAS NOTHING DO WITH HER CONVICTION. IT HAS TO DO WITH THE AWARD OF OVERCROWDED CREDITS, TO WHICH SHE IS ENTITLED IF, UNDER ARTICLE III -- ARTICLE III, CHAPTER 189, IS UNCONSTITUTIONAL.

SO IF I UNDERSTAND, AT ONE POINT IN TIME SHE WAS ENTITLED TO BE RELEASED AS TO THE STATUTE BEING UNCONSTITUTIONAL AND UNCONSTITUTIONAL, AS APPLIED TO HER, AND THAT IS WHAT YOU ARE CLAIMING IS THE ILLEGALITY, AS TO THE CONSTITUTION, IN THE HABEAS CORPUS, IS THAT CORRECT?

THIS COURT HAD A PETITION OF MANDAMUS FOR THE COURT NOT TO EXCLUDE OR TO AWARD MISS TORMEY ON THE BASIS OF OVERCROWDED LIMITS, WHICH IS THE BASIS THAT IT WAS OBJECTED TO.

IN RESPONSE TO AN EARLIER QUESTION, CAN YOU GIVE US ANY INSIGHT INTO JUST HOW MANY PRISONERS MIGHT BE AFFECTED AND TO WHAT YOUR POSITION IS ABOUT THE POTENTIAL WINDOW PERIOD, ASSUMING THAT THE COURT AGREED WITH YOUR POSITION, WITH REFERENCE TO THE ANALYSIS OF THE STATUTE.

YOUR HONOR, I CANT SAY HOW LARGE THE CLASS IS. I CAN REPRESENT TO THE COURT, THAT IT IS NOT AN EMPTY CLASS. WE KNOW OF AT LEAST ONE OTHER INMATE CONVICTED OF MURDER IN WHAT WOULD BE THE WINDOW PERIOD.

THAT REMAINS INCARCERATED.

THAT REMAINS INCARCERATED, IS NOT SCHEDULED FOR RELEASE.

WHAT IS YOUR POSITION, WITH REFERENCE TO THE WINDOW PERIOD, ASSUMING THAT THE COURT AGREED WITH YOUR INITIAL ANALYSIS OF THE STATUTE?

AS THE RESPONDENT POINTED OUT IN HIS PAPERS, THERE IS THE POSSIBILITY. THERE ARE TWO POSSIBILITIES. EITHER THE 1990 ESSION LAWS AMENDING 944-2 -- 944.277, CURE THE DEFECTOR THEY DON'T, WHICH IN THIS CASE A BIENNIAL RECODIFICAITON CURES THE DEFECT. AS WE KNOW, THE 1990 LAWS DO NOT CURE THE DEFECT, BECAUSE THEY AMEND BUT DO NOT REENACT THE GENERAL MURDER EXCLUSION THAT NEEDS TO BE SEVERED FROM THE ACT SO THE BIENNIAL RECODIFICAITON, WHICH TOOK EFFECT MAY 2, 1991, IS THAT, IS WHAT CLOSES THE WINDOW.

SO BEFORE, IN 1989, AND BEFORE, SOMEONE CONVICTED OF MURDER WOULD BE ELIGIBLE FOR THESE PROVISIONAL CREDITS.

THAT'S CORRECT.

AND ANYBODY AFTER, UNDER THE LATEST DATE, AFTER 1991 THAT WAS CONVICTED, WOULD NOT BE ELIGIBLE. SO WE ARE REALLY TALKING ABOUT CLASS OF PEOPLE THAT, IF THEY WERE CONVICTED, IS IT THE CONVICTION DATE?

THE OFFENSE DATE BETWEEN JANUARY 1, 1990 1 -- 19 -- JANUARY 1, 1990, AND MAY 1991.

WE HAVE DIVERTED YOUR CONTENTION HERE. WOULD YOU CONTINUE.

THE TITLE IDENTIFIES A RESTRICTED SUBJECT. PENALTIES FOR OFFENSES AGAINST SPECIFIED LAW ENFORCEMENT OFFICERS. THE LEGISLATURE FOCUSED, WITH LASER-LIKE PRECISION, ON AN EXTREMELY SERIOUS AND EXTREMELY SPECIFIC PROBLEM, AS NOTED IN THE FINDINGS AND INTENT OF THE ACT, SOME 66 FLORIDA POLICE OFFICERS WERE MURDERED IN THE LINE OF DUTY, IN THE 11 AND-A-HALF YEARS PRECEDING THE ADOPTION OF THE ACT. THAT WAS THE SUBJECT THAT THE LEGISLATURE CHOSE TO ADDRESS. THE GENERAL MURDER EXCLUSION DOES NOT RELATE TO THAT SUBJECT. IT IS BEYOND THE SCOPE OF THAT SUBJECT, BECAUSE IT APPLIES NOT TO THOSE WHO COMMIT OFFENSES AGAINST LAW ENFORCEMENT OFFICERS BUT TO THSE WHO COMMIT MURDER OR ATTEMPTED MURDER GENERALLY. THIS COURT HAS PRECEDENCE ON TITLE DEFECTS ARE CLEAR. THE TITLE NEED NOT BE EXHAUSTED, AND SO FOR EXAMPLE, THE MEANS OR INCIDENCE OF IMPLEMENTING LEGISLATION NEED NOT BE STATED IN THE TITLE. FOR EXAMPLE IN THE FINDLESON CASE, THE CITY AUTHORIZED TO IMPOSE SPECIAL ASSIST LITTLE -- ASSESSMENTS FOR IMPROVEMENTS BUT MADE NO TITLE OF INTEREST.

THE STOPPING OF PROVISIONAL CREDITS TO INMATES CONVICTED OF ANY DEGREE OF MURDER, AND THEN PROVIDING AN EFFECTIVE DATE, WOULD THAT, WOULD THERE STILL AND SINGLE-SUBJECT VIOLATION?

YOUR HONOR, THE SINGLE-SUBJECT PROVISION OF THE CONSTITUTION CONTAINS BOTH A TITLE

COMPONENT AND A SUBJECT COMPONENT. IF THE TITLE SPECIFIED, IF THERE WAS ADDED, HERE, AT THE END OF THE GREEN SECTION, A SPECIFIC REFERENCE TO WHAT THE FLOOR AMENDMENT DID, THEN THAT WOULD CURE THE TITLE PROBLEM.

BUT WITH THAT TITLE PROBLEM BEING WHAT IT IS, YOU ARE SAYING IT IS AFFIRMATIVELY MISLEADING TO ANYBODY READING THAT.

PRECISELY, AND THAT IS SO, UNDER THE PHYSICAL THERAPY CASE. IT IS NOT SIMPLY THERE IS SOMETHING OMITTED. IT IS THAT WHAT IS STATED IS DECEPTIVE BECAUSE IT IS A HALF TRUTH, AND THAT, INDEED, IS A SECOND PROBLEM, SO THE TWO PROBLEMS WITH THE TITLE ARE THAT FIRST THE SUBJECT IDENTIFIED IN THE TITLE HAS AN EXTREMELY NARROW SCOPE, AND THE FLOOR AMENDMENT GOES BEYOND THE AMENDMENT. WHAT SECTIONPLICITLY STATED IS DECEPTIVE, BECAUSE IT IS A HALF TRUTH. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

THANK YOU, YOUR HONOR. I WOULD RESERVE THE REST OF MY TIME. MR. CHIEF JUSTICE

MS. MAHER.

GOOD MORNING. I AM CAROLYN MOSTLY, REPRESENTING THE DEPARTMENT OF -- I AM CAROLYN MOSELY, REPRESENTING THE DEPARTMENT OF CORRECTIONS. TO ADDRESS SOME QUESTIONS YOU ASKED MY OPPONENT, THE FIRST ONE HAS TO DO WITH THE NUMBER OF INMATES WE HAVE THAT POTENTIALLY COULD BE AFFECTED BY THE STRIKING DOWN OF THE CHAPTER LAW AND THERE ARE APPROXIMATELY 426 INMATES THAT THEIR RELEASE DATE POTENTIALLY COULD BE AFFECTED BY IT, AND OUT OF THAT 426, THERE ARE 141 THAT POTENTIALLY COULD BE RELEASED ON THE FIRST OF THE YEAR, JANUARY 1, BUT THAT WOULD DEPEND ON WHETHER THEY WERE A MODEL INMATE AND THEY GOT ALL THE CREDITS THAT WAS DUE THEM, AND THAT WOULD REQUIRE AN INDIVIDUAL REVIEW OF THE FILE, BUT ASSUMING THEY WERE THE MODEL INMATE, THEN THAT WOULD BE THE APPROXIMATE NUMBER OF 141 AT THAT TIME, BUT OVERALL CLASS AFFECTING THEIR RELEASE DATE, IT WOULD BE ABOUT 426 INMATES.

NOW YOU ARE TALKING ABOUT ANYBODY THAT HAD COMMITTED MURDER IN THAT TIME.

THAT'S CORRECT. THAT IT WOULD AFFECT, YES.

ARE YOU INCLUDING PEOPLE THAT WOULD HAVE BEEN GIVEN LIFE IMPRISONMENT.

NO, YOUR HONOR, JUST ONES THAT IT WOULD REALLY ADVANCE THEIR RELEASE DATE, NOT THOSE THAT RECEIVE DEATH OR LIFE. AND THE OTHER QUESTION HAVING -- OKAY.

SO, TO GO WITH THAT, DO YOU BELIEVE THAT THIS CASE SHOULD BE DISMISSED? YOUR ARGUMENT IS THAT THIS CASE SHOULD BE DISMISSED. BUT HOW DOES THE FACT THAT WE DO HAVE A NUMBER OF INMATES THAT THIS CAN POTENTIALLY AFFECT?

WELL --

AFFECT THEIR ARGUMENT?

WELL, THE ISSUE, ALL I WANTED TO PROVIDE THE COURT WITH ACCURATE INFORMATION, BUT THE ISSUE COULD ALWAYS BE RAISED LATER BY ANOTHER INMATE. SO FAR THAT HASN'T HAPPENED. AND THAT GOES BACK TO THE OTHER QUESTION THAT WAS ASKED ABOUT WHEN THIS ISSUE SHOULD BE RAISED AND ONE OF THE PROBLEMS IS THAT APPARENTLY THERE IS NO STATUTE OF LIMITATIONS ON WHEN A PERSON CAN CHALLENGE A STATUTE ON THIS GROUND. BUT THE PROBLEM WITH THAT IS THAT THAT COULD HAPPEN MUCH LATER. NOW, IT IS TRUE THAT

YOU DON'T, YOU CANNOT CHALLENGE THE STATUTE UNTIL IT IS AFFECTING YOU PERSONALLY, SO YOU WOULD HAVE TO BE AN INMATE IN D.O.C. AND HAVE THESE CREDITS DENIED, BUT MS. TORMEY, WE GOT CUSTODY OF HER IN DECEMBER OF 1990, AND PROVISIONAL CREDITS WERE GIVEN BETWEEN JULY OF '88 AND DECEMBER OF '94. NOW, SOME OF THOSE WERE A RESULT OF THE GOMEZ DECISION, BUT WE WERE STILL GIVING CREDITS, WHICH SHE DID NOT RECEIVE, BECAUSE OF THIS PARTICULAR LAW. SO SHE WAIT ADD LONG TIME, BEFORE BRINGING THIS ISSUE UP.

BUT WHEN SHOULD SHE HAVE BROUGHT IT?

SHE SHOULD HAVE BROUGHT IT THE MOMENT DOC DID NOT GIVE HER THOSE THOSE CREDITS, DIDN'T GIVE HER --

AND WHEN IS THAT?

WELL, SHE CAME IN DECEMBER OF '90, AND WE WERE GIVING PROVISIONAL CREDITS ALL ALONG THERE, SO I DON'T HAVE THE FIGURES BEFORE ME, BUT SHORTLY AFTER THAT --

HOW IS THE INMATE INFORMED OF THIS? I MEAN, HOW OFTEN DO YOU INFORM THE INMATE OF WHEN AND HOW MANY PROVISIONAL CREDITS OR ANY OTHER KIND OF GAIN CREDITS ARE BEGIN?

I THINK THEY GET A MONTHLY REPORT THAT SHOWS THEIR GAIN TIME, WHAT THEY HAVE RECEIVED, AND THEY TALK AMONG THEMSELVES IN THE PRISON, SO IF ONE IS GETTING SOMETHING THE OTHER ONE ISN'T, THEY ARE GOING TO KNOW ABOUT IT.

DID YOU MOVE TO DISMISS? I KNOW YOU MOVED TO DISMISS ON A MOOTNESS GROUNDS. HAVE YOU MOVED TO DISMISS IT BECAUSE SHE SHOULD HAVE BROUGHT HER CHALLENGE TO THE D.O.C ACTION WITHIN A -- THAT -- A TIMELY PERIOD OF TIME, AFTER THE AWARD WAS MADE? IS THAT BEFORE US RIGHT NOW?

WELL, I WAS JUST RESPONDING TYOUR QUESTION, YOUR HONOR. NO, I DID NOT PRESENT THAT ARGUMENT IN THE MOTION. BUT I DO REALIZE THAT THAT IS A VERY TROUBLESOME ISSUE THAT SOMEONE CAN WAIT THAT LONG TO CHALLENGE SOMETHING LIKE A STATUTE AS OLD AS THIS IS.

BUT YOU, ALSO, AGREE THAT THEY CAN'T CHALLENGE IT, UNTIL IT IS GOING TO AFFECT THEM.

I DO AGREE WITH THAT, YOUR HONOR. YOU WOULD NOT HAVE STANDING, IF IT DID NOT AFFECT YOU.

IF THERE ARE OVER 400 PEOPLE INVOLVED IN THIS, AND WE DECIDE NOT TO DO IT, AND THEY TALK AMONG THEMSELVES, IT IS GOING TO COME BACK UP.

WELL, BUT, IT MAY BE AT THAT TIME, YOUR HONOR, THE ISSUE IS PERCOLATED MORE, AND --

WHAT BENEFIT WOULD THAT BRING THE PERCOLATION?

WELL SUPPOSEDLY YOU GET A BETTER ARGUMENT OVER TIME. THE ARGUMENT AS BEING PRESENTED TO THIS COURT WOULD BE REFINED. I KNOW THAT IS WHAT THE U.S. SUPREME COURT DOES. THEY LIKE FOR THE ISSUE TO PERCOLATE AMONGST FEDERAL --

WHAT MORE COULD WE KNOW?

WELL, I DON'T KNOW, BUT I HOPE I CAN TELL YOU ENOUGH TO RULE FOR THE DEPARTMENT.

SO IF WE RULE FOR THE DEPARTMENT, YOU WANT US TO --

THAT'S CORRECT, BUT OTHERWISE MAYBE IT NEEDS TO PERCOLATE SOME MORE.

BUT ISN'T THE REAL ISSUE HERE REALLY, IS WHETHER OR NOT THE TITLE OF THIS ACT COVERS THE PROVISIONAL CREDITS FOR CRIMES OTHER THAN THOSE INVOLVING LAW ENFORCEMENT OFFICERS? RIGHT? AND THAT IS GOING TO BE THE SAME ISSUE. WHETHER WE DECIDE IT TODAY OR TWO YEARS FROM NOW.

THAT IS TRUE. I CAN'T ARGUE WITH THAT. THE DEPARTMENT'S POSITION IS THAT THE SUBJECT IS AN ACT RELATING TO CRIMINAL PENALTIES. THAT IS THE BROADEST SUBJECT MENTIONED IN THE TITLE. NOW, THAT COVERS SOMETIMES THE LEGISLATURE GIVES OTHER INFORMATION, LIKE IT DID HERE. BUT IT DOESN'T ALTER THE FACT THAT THE SUBJECT REMAINS CRIMINAL PENALTIES. NOW, WHAT HAPPENS, ONE OF THE SOURCES OF CONFUSION IS THAT SOMETIMES WE FORGET WE ARE TALKING ABOUT A TITLE, AND IT SORT OF SLIPS INTO THINKING WE ARE TALKING ABOUT A TABLE OF CONTENTS. THAT IS WHY, IN THE CITY OF PENSACOLA CASE, THE DEPARTMENT RELIED ON, THERE YOU HAD YOUR BROAD SUBJECT STATED. IT WAS A CIVIL SERVICE SYSTEM. THEN YOU HAD A LEGISLATURE GIVING INFORMATION ABOUT VARIOUS PROVISIONS IN THE BILL THAT WAS INCOMPLETE. BUT IF THE ORDINARY PERSON, WHO IS PRESUMED TO KNOW THE DIFFERENCE BETWEEN A TITLE AND A TABLE OF CONTENTS, AS LONG AS THAT PERSON KEEPS IN MIND THAT THE SUBJECT WAS, AGAIN, WAS A CIVIL, THE CITY OF PENSACOLA CASE, THE SUBJECT IS THE CIVIL SERVICE SYSTEM.

SO WHAT DOES THIS LANGUAGE, THEN, MEAN, THAT SAYS THIS ACT MAY BE CITED AS THE LAW ENFORCEMENT PROTECTION ACT.

THAT GIVES INFORMATION ABOUT THE SUBJECT. WHENEVER THE LEGISLATURE GIVES ANY INFORMATION ABOUT DIFFERENT PROVISIONS, THAT IS ALL IT IS DOING. IT SAYS HERE IS THE GENERAL SUBJECT, AND HEE IS SOME OF THE THING THAT IS ARE INCLUDED, BUT EVERYONE KNOWS THAT THE FUNCTION OF A TITLE IS NOT TO GIVE THE TABLE OF CONTENTS. THAT IS WHY A PERSON IS ON NOTICE, WHEN THEY READ A TITLE, THAT NO MATTER WHAT IS IN THERE, IT IS NOT GOING TO BE -- IT WON'T BE A COMPLETE TABLE OF CONTENTS.

BUT ISN'T THIS CONTRARY TO EVERYTHING WE KNOW ABOUT THIS PARTICULAR ACT? THAT IS THAT WE KNOW, IN THIS INSTANCE, THAT LAW ENFORCEMENT PROTECTION ACT AND THE PROVISIONS FOR ESTABLISHING THESE PENALTIES AND NOT ALLOWING PROVISIONAL CREDITS AND ALL OF THIS, ALL IS INTENDED FOR LAW ENFORCEMENT-TYPE VICTIMS, AND THAT IS THE WHOLE THIS TRIWE KNOW OF THIS -- HISTORY WE KNOW OF THIS, AND THAT IS H THIS IS SIMPLY ONE OF THOSE INSTANCES WHERE THE WHOLE THRUST AND INDEED THE LANGUAGE THAT IS HERE IS CONSISTENT WITH THAT, BUT THEN AT THE LAST MINUTE, SOMEBODY SAYS, WELL, I WANT TO TAG, YOU KNOW, ANOTHER AMENDMENT ONTO THIS, THAT DOES SOMETHING ELSE. IT IS SORT OF LIKE THE STORIES THAT WE SEE IN THE NEWS, WHERE, IN THE NATIONAL CONG, THERE IS A LAW RELATING TO CHILDREN UNDER THREE YEARS OF AGE, BUT SOMEBODY SEES IT AS AN OPPORTUNITY THAT THEY ARE GOING TO PUT IN THE AMENDMENT PROHIBITING BURNING THE AMERICAN FLAG, AND SO AT THE LAST MINUTE, THEY SAY EVERYBODY IS GOING TO VOTE TO PROTECT CHILDREN UNDER THREE YEARS OF AGE. LET ME SLIP IN MY FLAG AMENDMENT AND ISN'T THAT WHAT WE KNOW IN THIS INSTANCE OCCURRED?

YOUR HONOR, WE KNOW THAT ONLY BECAUSE WE HAVE READ THE BILL, BUT FOR PURPOSES OF THE TITLE, IT HAS A VERY SPECIAL GOAL, AND THAT IS TO INFORM THE READER OF THE SUBJECT. NOW, ANYTHING THAT COMES AFTER THAT SUBJECT, GIVES INFORMATION ABOUT IT, BUT NOBODY WHO PICKED UP TITLE TO A BOOK WOULD SAY I AM NOT GOING TO READ THIS, BECAUSE IT DOESN'T INCLUDE "X", AND YOU SAY, WELL, HOW DO YOU KNOW IT DOESN'T INCLUDE "X". YOU SAY I READ THE TITLE. PEOPLE WOULD THINK YOU ARE CRAZY.

WE ARE NOT TALKING ABOUT TITLE TO SAY BOOKS, ARE WE? WE ARE TALKING ABOUT

RESTRICTIONS ON LEGISLATION THAT SETS THEY CAN ONLY HAVE A -- THAT SAYS THEY CAN ONLY HAVE A SINGLE SUBJECT MATTER, AND THE LEGISLATURE GOT IT RIGHT IN THIS INSTANCE. THIS IS WHAT THEY INTENDED TO DO. EVERYTHING THAT WE KNOW TELLS US THAT THEY INTENDED TO LIMIT THIS LAW TO THIS PARTICULAR PURPOSE OF PROTECTING LAW ENFORCEMENT. THAT IS A RATIONAL, COMMENDABLE REASON TO HAVE THIS LEGISLATION, AND THAT IS WHAT THEY WERE DOING. IT IS MORE THAN JUST A TITLE TO A BOOK, IS IT NOT?

YOUR HONOR, NOT IF YOU KEEP IN MIND THE PURPOSE OF A TITLE. A TITLE, NO MATTER WHETHER IT IS TO A BILL OR WHATEVER, IT IS NOT A TABLE OF CONTENTS. IF, EVERY TIME THE LEGISLATURE INDEXED SOMETHING, IT HAS TO INCLUDE EVERYTHING, THEN YOU ARE CONVERTING THE TITLE TO A TABLE OF CONTENTS.

SO WHAT IS THE PURPOSE OF THE SINGLE-SUBJECT REQUIREMENT?

THE PURPOSE IS YOU ONLY HAVE ONE SUBJECT THERE, SO THAT THERE IS A LOG ROLLING. THERE IS NOTICE. WELL, THE TITLE RELATES TO THE NOTICE, BUT THE SINGLE SUBJECT THERE IS SO THAT YOU CAN PREVENT ESSENTIALLY LOG ROLLING.

HOW DO WE ACCOMPLISH LAW ENFORCEMENT PROTECTION ACT, BY EXTENDING THIS TO VICTIMS, REGARDLESS OF THEIR IDENTITY? THAT DOESN'T PROTECT LAW ENFORCEMENT TYPICALLY, DOES IT?

YOUR HONOR, BUT YOU ARE IGNORING THE FIRST PHRASE THERE, AND THAT CAN'T BE IGNORED. IT SAYS CRIMINAL PENALTIES. ANOTHER FIRST PHRASE IS CORRECT, IS IT NOT, AND IT IS CORRECT, IN THE CONTEXT OF THE LAW ENFORCEMENT PROTECTION ACT'S PURPOSE OF THIS ACT. IN OTHER WORDS, IT DOES RELATE TO CRIMINAL PENALTIES. OBVIOUSLY IT WOULD HAVE TO, IN ORDER TO CARRY OUT ITS PURPOSE OF PROTECTING LAW ENFORCEMENT VICTIMS.

ALL THAT SAYS IS THAT THE SUBTOPICS IN THE PROVISION ARE INCLUDED IN THIS BROAD SUBJECT. THAT IS ALL THAT SAYS, AFTER THAT. AND THERE IS NOTHING IN THAT TITLE THAT RULES OUT THAT AFFIRMATIVELY STATES THAT OTHER PEOPLE WHO, OTHER CRIMINALS, THAT IT EXCLUDES CREDITS TO PEOPLE WHO COMMIT OTHER TYPES OF CRIMES, BECAUSE THAT IS PART OF THE PENALTY AS WELL, AND THAT IS WHAT IT WOULD HAVE TO DO.

WHY WOULD WE TAKE OUT THAT PARTICULAR PHRASE? I MEAN, THERE ARE SEVERAL OF THEM THERE, ALL SEPARATED BY A SEMI-COLON, SO WHY WOULD WE PICK THAT ONE OUT, OUT OF THESE PHRASES THAT ARE, SEEM TO HAVE COEXIST THED HERE.

YOU -- COEXIST HERE.

YOU PICKED THE BROADEST SUBJECT IN THE TITLE, AND THEN ANYTHING THAT IS MORE NARROW THAN THAT, FALLS UNDER THAT. AND --

SO WHAT YOU ARE SAYING, THAT EVERYTHING THAT IS IN THE SEMICOLON IS REALLY THE TITLE. TITLE IS --

THE TITLE IS THE CRIMINAL PENALTY, BECAUSE THAT IS THE BROADEST SUBJECT THAT COVERS NOT ONLY THE REST OF THE LANGUAGE. THAT IS WHY IT IS THE BROADEST LANGUAGE. WHENEVER YOU START INDEXING, YOU ARE GOING TO BE -- BY DESCRIBING IT IS GOING TO HAVE A SUBTOPIC THAT IS SOMEHOW GOING TO MAKE IT MORE NARROW THAN THAT BROAD SUBJECT.

BUT AREN'T YOU SAYING THAT, THEN, WITH THAT OPENING, THAT THE LEGISLATURE COULD HAVE HAD A COMPLETE REVISION OF THE ENTIRE CRIMINAL PENALTY STATUTORY SCHEME AFFECTING MISDEMEANORS PROSTITUTION, DRUNK DRIVING, EVERY PENALTY, ARRIVE CRIMINAL PENALTY, IN THE STATUTE BOOKS, COULD HAVE BEEN REVISED, IN THIS ACT, BECAUSE THEY

HAVE THAT ACT RELATING TO CRIMINAL PENALTIES. IS THAT YOUR POSITION?

YOUR HONOR, IF YOU LOOK AT THAT WITH NOTHING ELSE, I WOULD HAVE TO SAY YES. IT HAS TO DO WITH CRIMINAL PENALTIES. BUT, AGAIN, THAT IS WHY, IN A CITY OF PENSACOLA, THEY INDEX THINGS IN THE BILL, AND IT WAS INCOMPLETE, AND THIS COURT WAS IMMEDIATELY CORRECT, WHEN IT SAID THAT WE DON'T CARE THAT WE HAVE GIVEN SOME, THAT THE LEGISLATURE GAVE YOU INCOMPLETE INFORMATION ABOUT THE TABLE OF CONTENTS OF THE BILL.

ISN'T THERE A DIFFERENCE, THOUGH, AND ISN'T THIS, AGAIN, I GUESS THE QUESTION OF ONE THAT WE HAVE GOT TO DECIDE IS WHETHER SPECIFICALLY AS TO THE PORTION IN GREEN, THAT THERE IS AFFIRMATIVELY MISLEADING, AND THAT, IF THE LEGISLATURE USED THE SAME TITLE BEFORE AND AFTER IT ADDED THIS MAJOR AMENDMENT, THAT REMOVED PROVISIONAL CREDITS FOR ANYONE CONVICTED OF ANY DEGREE OF MURDER, HOW DO YOU GET AROUND THAT CONCEPT? I MEAN, YOU SAY ABOUT AN ORDINARY PERSON READING THIS, WOULDN'T AN ORDINARY PERSON READING THIS TITLE THINK THAT IT IS TO DO WITH LAW ENFORCEMENT, AND AFFIRMATIVELY THE PROVISIONAL CREDITS DEAL WITH THOSE CONVICTED OF OFFENSES AGAINST LAW ENFORCEMENT OFFICERS OFFICERS.

TO THAT EXTENT, IT AFFIRMATIVELY SAYS THAT IT DEALS WITH THAT, BUT IT DOES NOT AFFIRMATIVELY STATE THAT IT DOESN'T DEAL WITH ANYTHING ELSE. AND ONCE AGAIN, BECAUSE THAT IS THE FUNCTION OF A TITLE, IT IS NOT A TABLE OF CONTENTS. THERE IS NO WAY A PERSON, THE ORDINARY PERSON COULD READ THAT AND DRAW THE INFERENCE THAT NOTHING WAS INCLUDED IN THAT BILL THAT WAS NOT IN THE TITLE, BECAUSE IT SIMPLY ISN'T THE FUNCTION, NO MATTER HOW MUCH INFORMATION THE LEGISLATURE PUTS IN THERE. THE FUNCTION OF THE TITLE IS TO GIVE THE GENERAL SUBJECT, WHICH IS GIVEN, AND THEN --

THE FIRST ITEM IS THE SUBJECT AND EVERYTHING ELSE IS THE TABLE OF CONTENTS. IS THAT --  
-- OF CONTENTS.

THIS COURT REFERS TO IT AS AN INDEX TO THE BILL, BUT IT IS A TABLE -- EITHER WAY, I AM SAYING TABLE OF CONTENTS, BUT I THINK THAT, TO ME, THAT, MAYBE MAKES IT A LITTLE CLEARER. THAT IS NOT THE FUNCTION OF A TITLE. NO ONE WOULD THINK THAT THE TABLE OF CONTENTS WAS INCLUDED, A COMPLETE TABLE OF CONTENTS WAS INCLUDED IN A TITLE. -- OF CONTENTS WAS INCLUDED IN A TITLE. ALL THE TITLE HAS TO DO IS GIVE YOU A GENERAL SUBJECT, AND THAT IS WHAT IT HAS GIVEN, AND ANYTHING ELSE IS GRATUITOUS. THE LEGISLATURE IMPLY GAVE MORE INFORMATION, BUT NOBODY WOULD THINK IT WAS COMPLETE, BECAUSE, AGAIN, IT IS NOT THE FUNCTION OF A TITLE. IT IS THE FUNCTION OF THE TABLE OF CONTENTS. I CAN'T, I DON'T KNOW HOW TO READ IF MY TIME IS UP OR NOT. THREE MINUTES. OKAY. VERY QUICKLY, I JUST WANT TO SAY --

WAS THERE ANYTHING ELSE ABOUT THIS BILL THAT WAS NOT, OTHER THAN THIS HUGE AREA OF NOT GIVING OR REMOVING PROVISIONAL CREDITS FOR INMATES THAT WERE, THAT COMMITTED MURDER, IS THERE ANYTHING ELSE IN THIS, IN THE ENACTMENT THAT IS TOTALLY DIFFERENT FROM WHAT IS IN THE TITLE?

NO, YOUR HONOR. NO. IT IS INCOMPLETE.

AND THE LEGISLATURE DIDN'T DO IT PERFECTLY. THEY JUST FORGOT TO AMEND THE TITLE, WHEN THEY PUT IN THIS PRETTY LARGE AMENDMENT. I MEAN, IT IS PRETTY CLEAR WHAT HAPPENED HERE.

WELL, IT IS ALL THE MORE REASON, IN A WAY, TO UPHOLD THIS, BECAUSE THAT AMENDMENT WAS DONE ON THE FLOOR. YOU KNOW, THE CONCERN HERE, AND I HESITATE TO GO THAT WAY, BUT THE CONCERN HERE IS ABOUT WHAT IS IN THE TITLE, BUT IT WAS ACTUALLY AMENDED TO



THE FLOOR, SO EVERYBODY HAD NOTICE OF THAT, AND THE PUBLIC, THIS ORDINARY PERSON, KNOWS THAT BILLS CAN BE AMENDED TO THE FLOOR, AND THEY BETTER BE THERE, IF THEY WANT TO KNOW WHAT THAT AMENDMENT IS, SO AS FAR AS NOTICE, EVERYBODY GOT NOTICE. EVERY LEGISLATOR SAT THERE AND VOTED ON IT UNANIMOUSLY, AND THIS, WHEN THIS PROVISION WAS ADDED, TO THIS BILL, WAS, AT THAT TIME. THE OTHER POINT I WANTED TO MAKE IS THAT THE RULES OF STATUTORY INTERPRETATION DEAL WITH STATUTES THAT REGULATE OUR CONDUCT. THE CONSEQUENCES OF WHICH WE CAN LOSE OUR PROPERTY, OUR FREEDOM, OR EVEN OUR LIFE. THE, THOSE RULES ARE NOT TO BE APPLIED TO A TITLE ANALYSIS, BECAUSE THEIR FUNCTIONS ARE DIFFERENT. THIS IS JUST TO GIVE THE READER ENOUGH INFORMATION TO GO READ THE BILL, IF YOU ARE INTERESTED. THAT IS WHY A GENERAL SUBJECT IS ALL THE CONSTITUTION REQUIRES. THAT IS ALL YOU HAVE GOT TO PUT IN THERE. ANYTHING ELSE IS LIKE ICING ON THE CAKE. IT IS SIMPLY NOT NARROWING THAT, THE SUBJECT. IT, BECAUSE IT IS A PARTIAL LISTING OF THE TABLE F CONTENTS WHICH SIMPLY IS NOT REQUIRED FOR THE TITLE.

BUT CAN'T THE SUBJECT BE MODIFIED BY THE LANGUAGE THAT APPEARS RIGHT AFTER A SEMICOLON? NOT HE HAVE RENE -- NOT EVEN A DIFFERENT SENTENCE. IT IS RIGHT THERE IN THE SENTENCE, SEPARATED WITH A SEMI-COLON.

YOUR HONOR, EVERYONE DESCRIBES, ONCE AGAIN YOU HAVE TO HAVE THE BROADEST SUBJECT IN THE TITLE THAT IS LISTED. THE LEGISLATURE COULD HAVE ELIMINATED THAT BY STARTING OUT WITH A MORE NARROW ONE, BUT YOU HAVE TO START OUT WITH WHAT IS THE BROADEST SUBJECT IN THAT TITLE, AND THAT IS ALL THE CONSTITUTION REQUIRES. OKAY. MR. CHIEF JUSTICE

I BELIEVE YOUR TIME IS UP, MS. MOSLEY. THANK YOU VERY MUCH. ANOTHER DEPARTMENT WOULD REQUEST THAT YOU UPHOLD THIS CHAPTER LAW. MR. CHIEF JUSTICE

REBUTTAL?

THANK YOU, YOUR HONOR.

WOULD YOU AGREE THAT THIS WAS REN HE REENACTED ON MAY -- REENACTED ON MAY 2?

1991, YOUR HONOR, YES. YES. RESPONDENT, GOING TO THE MOOTNESS ISSUE, RAISES SOME POINTS THAT I NEED TO CORRECT. IT IS TRUE THAT TORMEY WAS EXCLUDED FROM GETTING PROVISIONAL CREDITS, EVER SINCE 1991, BUT SHE HAD NO CONSTITUTIONAL CLAIM OF THAT, UNTIL THIS COURT DECIDED GOMEZ AND SAID YOU CANNOT APPLY, RETROACTIVELY, A STATUTE THAT DENNIS YOU PROVISIONAL -- THAT DEAN ICE YOU PROVISIONAL CRED-- THAT DENIES YOU PROVISIONAL CREDITS. MOREOVER, EVERYONE IN THE DEPARTMENT WAS DENIED PROVISIONAL CREDITS, AS SOON AS CONTROLLED RELEASE WAS ENACTED BACK IN 1991, SO THIS COURT'S DECISION DID NOT RIPEN IN GOMEZ. THE RESPONDENT ARGUES THAT THE SUBJECT OF THIS ACT IS AN ACT RELATED TO CRIMINAL PENALTIES AND THAT THE COURT SHOULD IGNORE EVERYTHING IN THE TITLE AS RELATES TO THE FIRST CLAUSE. THAT IS CLEARLY CONTRARY TO ESTABLISHING THAT YOU MUST READ THE TITLE AS A WHOLE AND CONTRARY TO THE LEGISLATURE SAYING YOU MUST READ A TITLE TO DISCOVER WHAT THE ACT IS, AND CONTRARY TO THE PUBLIC POLICY OF NOTIFYING THE ACT VIA THE TITLE.

WHAT IS YOUR DEFINITION AFTER TITLE?

THE TITLE IS -- WHAT IS YOUR READING OF THE TITLE?

THE TITLE SAYS AS RELATES TO LAW ENFORCEMENT OFFICERS, INCLUDING ASSISTANT STATE ATTORNEYS AND DISTRICT ATTORNEYS. THE PROBLEM IS BEING KILLED UPHOLDING THE LAW, AND THAT IS WHAT THE LEGISLATURE TRIED TO DEAL WITH, BY SENDING A MESSAGE TO THE CRIMINAL ELEMENT, AS RERIGHTED IN THE ACT, ITSELF, THAT -- AS RECITED IN THE ACT, ITSELF,

THAT FLORIDA WILL NOT TOLERATE VIOLENT ACTS AGAINST ITS LAW ENFORCEMENT OFFICERS. TO IGNORE THE TITLE AND SAY THAT THE ACT SIMPLY RELATES TO CRIMINAL PENALTIES, INDEED, THROWS YOU -- THROWS THROWS OPEN THE ENTIRE UNIVERSE. THIS ACT COULD REVISE THE ENTIRE DEATH PENALTY, AND LEGISLATORS ARE ON NOTICE BECAUSE THE TITLE IS CRIMINAL PENALTIES. THIS TITLE DOES NOT GIVE NOTICE THAT THIS ACT REPEALS THE DEATH PENALTY, AND IT DOES NOT GIVE NOTICE THAT THE PENALTY IN GENERAL FOR MURDER OR ATTEMPTED MURDER IS AFFECTED BY THE PROVISIONS OF THE ACT. THE SUBJECT OF THE ACT IS FOCUSED EX-CLUES I FEEL ON OFFENSES AGAINST LAW ENFORCEMENT OFFICERS. FINALLY, YOUR HONORS, THE RESPONDENT'S SUGGESTION THAT EVERY LEGISLATOR GOT NOTICE OF THIS AMENDMENT, BECAUSE IT HAPPENED ON THE FLOOR, MAY BE TRUE FOR THE HOUSE OF REPRESENTATIVES, BUT IT CERTAINLY IS NOT TRUE FOR THE SENATE, WHICH READ THIS BILL BY TITLE ONLY, ON THE SAME DAY THE FLOOR AMENDMENT OCCURRED, AND PASSED THIS LEGISLATION, WITHOUT ANY NOTICE THAT THE SCOPE OF THE LEGISLATION -- OF THE LEGISLATION HAD BEEN DRAMATICALLY EXPANDED. FOR THOSE REASONS, YOUR HONOR, CHAPTER 89.100 VIOLATES ARTICLE III SECTION 6 OF THE CONSTITUTION THAT MUST BE THE GENERAL MURDER EXCLUSION ENACTED BY THAT BILL MUST BE SEVERED. UNLESS YOU HAVE FURTHER QUESTIONS. MR. CHIEF JUSTICE

THANK YOU. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS.