

ALL RISE

>>> PRECOURT ORDER IS NOW IN SESSION.

PLEASE BE SEATED.

>> WE NOW TAKE UP THE THIRD CASE ON OUR DOCKET.

>> MAY I PLEASE THE COURT MY NAME IS TERRY CONN.

I REPRESENT JULIE WINSLOW WHO WAS THE MOTHER OF THE STUDENT INVOLVED TIFFANY CHANCY.

THERE ARE A COUPLE OF IMPORTANT ISSUES TO KEEP IN MIND IN THIS CASE.

THIS INJURY OCCURRED AT A BUS STOP.

THAT'S THE MOST IMPORTANT FACT. THE BUS STOP WAS SELECTED AND DESIGNATED BY THE SCHOOL BOARD AND DESIGNED BY THEM.

TO HAVE A BUS STOP THAT HAD GATHERING AREAS FOR CHILDREN ON BOTH THIS NORTH AND THE SOUTH SIDE OF THE ROAD.

THE REASON FOR THAT IS THAT THIS WAS A MAIN MUNICIPALITY ARTERY AND NO CROSSWALKS OR INTERSECTION ANYWHERE IN THE AREA.

SO THERE WAS NO SAFEWAY TO ACROSS THE STREET OTHER THAN BY THE TEMPORARY, SO TO SPEAK, TRAFFIC CONTROL THAT WOULD BE PUT IN PLACE BY STOPPED SCHOOL BUS.

>> AS WE START ANALYZING BUS STOPS, CERTAINLY, I THINK THE SECOND QUESTION HAS BEEN ANSWERED BY ESCAMBIA COUNTY TO A PLANNING LEVEL.

BUT WITH REGARD TO THE DUTY THAT WE GET INTO IT, IT SEEMS TO ME THAT THERE IS NO SCHOOL BUS STOP.

IN THE ENTIRE STATE OF FLORIDA THAT STUDENTS PROBABLY DON'T HAVE TO ACROSS THE STREET SOMEWHERE.

SO HOW DOES THIS -- NOT LIKE IT'S SOMETHING THAT'S HIDDEN OR STUDENTS ARE PUSHED OUT TO STAND OUT IN THE ROADWAYS LIKE IT'S A RED CASE.

THIS IS THE CASE WHERE IT'S ON EACH SIDE.

SOMEBODY HAS TO CROSS THE STREET  
TO GET TO IT.

HELP ME UNDERSTAND WHY THIS CASE  
IS DIFFERENT FROM ALL OF THOSE  
WHERE ANYBODY THAT LIVES TO THE  
SOUTH OF US IS GOING TO HAVE TO  
CROSS THE STREET TO GET UP TO  
THE BUS STOP SOMEWHERE.

IN TERMS OF TRYING TO GET  
DEALING WITH A LEGAL CAUSE  
ISSUE, THE DUTY YOU'RE SAYING  
THEY WERE NEGLIGENT --

>> OBJECTION YOUR HONOR, BUT  
HERE, THE FACTS IN THE LIGHT  
MOST FAVORABLE TO YOU, HAD THE  
BUS COME YET?

>> NO, YOUR HONOR.

WE NOW HAVE ON THE NORTH SIDE OF  
THE STREET THAT THE STUDENT IS  
SUPPOSED TO GET ON FROM THE  
NORTH, AND SHE WAS ON THE NORTH  
SIDE.

>> SHE HAD CROSSED FROM THE  
SOUTH SIDE TO THE NORTH SIDE.  
NEVER LEFT THE SOUTH SIDE UNTIL  
THE BUS ARRIVES THIS ACCIDENT  
NEVER HAPPENED.

>> SHE WENT TO THE NORTH SIDE.

>> CORRECT.

>> BUT THEN SHE WAS GOING BACK  
TO THE SOUTH SIDE TO SEE HER  
FRIEND.

>> CORRECT.

>> THEN BEFORE THE BUS COMES,  
SHE'S GOING BACK AND SO I'M  
TRYING TO SEE HERE IS THAT IF --  
WHERE IS THE LEGAL CAUSE BETWEEN  
THEIR NEGLIGENT FAILING --  
NEGLIGENT OPERATION OF THE BUS  
STOP AND THIS ACCIDENT?

ARE YOU SAYING THAT IF SHE KNEW  
THAT SHE WASN'T --

SAYING SHE DIDN'T KNOW SHE'S NOT  
SUPPOSED TO CROSS THE STREET IN  
THE MIDDLE OF BUSY TRAFFIC.

>> SHE'S GOING TO THE SOUTH  
SIDE TO SEE HER FRIENDS, AND  
THEN STRUCK WHEN SHE'S WALKING  
OUT AGAIN TO THE NORTH SIDE.

>> YES.

>> I GUESS, IS THIS NOT --  
LET'S JUST ASSUME THERE'S -- I  
KNOW WE DUTY.

TO HAVE COMMUNICATED THE RULES.  
I DON'T SEE WHERE THE LEGAL --

LEGALLY WHERE THE LEGAL CAUSE IS FOR THIS PARTICULAR ACCIDENT EVEN IN THE LIGHT MOST FAVORABLE TO YOU.

>> THE LEGAL CAUSATION HAS TO DEAL WITH FORESEEABILITY. WHEN IT TALKS WITH THE PURPOSE OF THE RULE.

THE PURPOSE OF THE RULE IS TO KEEP KIDS FROM CROSSING THE STREET UNLESS THE SCHOOL BUS IS THERE.

IT'S FORESEEABLE THAT A STUDENT THAT CROSSES WITH THE SCHOOL BUS IS NOT THERE MIGHT CROSS BACK TO SPEAK TO A FRIEND BECAUSE THEY FORGOT A BOOK.

SAW THING THAT INTERESTED THEM --

FOR ANY NUMBER OF REASONS IT'S COMPLETELY FORESEEABLE THAT SOMEBODY MAY BE CROSSING IN BOTH DIRECTIONS.

>> I WOULD LOOK AT IT IN TERMS OF DUTY.

IF YOU'RE TALKING ABOUT DUTY OF THE SCHOOL BOARD, THAT A DUTY MAY EXIST WHERE A STUDENT MAY SAFELY BOARD THE BUS.

BUT HERE, I'M NOT SURE THAT DUTY EXTENDS TO A STUDENT WHO'S CROSSING A ROAD TO MEET A FRIEND.

WHERE IT SEEMS LIKE THOSE ARE DIFFERENT OBLIGATIONS BECAUSE SHE WAS THERE, SAFE ACROSS, AND MADE IT ACROSS.

HAD SHE BEEN HARMED WHILE CROSSING THERE, I THINK YOUR ARGUMENT WOULD MAKE MORE SENSE. OBVIOUSLY, YOU DON'T COM THE FACTS OF YOUR CASE BUT DIFFICULT FOR ME TO UNDERSTAND FROM A DUTY PERSPECTIVE WHERE THE SCHOOL BOARD OBLIGATION LIES TO A STUDENT WHO IS SAFELY AT A BUS STOP AND THEN GOES ACROSS A ROAD TO MEET A FRIEND.

>> THE DUTY STEMS FROM THE FACT THAT THEY HAVE THE AUTHORITY TO ENACT THE RULES THEY DID INEQUITY THE RULE DIDN'T COMMUTE OR MONITOR IT.

AND THAT'S OPERATIONAL.

I THINK EVERYBODY AGREES WITH

THAT.

>> THE PROBLEM THAT THE COURT SEEMS TO BE HAVING I'M SORRY, YOUR HONOR.

>> WE KNOW, YOU'VE ALLEGED IN YOUR COMPLAINT THAT THIS WAS NOT COMMUNICATED TO THEM, THAT THEY WERE SUPPOSED TO STAY ON WHATEVER SIDE OF THE STREET THAT THEY LIVED ON?

>> YES, YOUR HONOR.

>> WHAT ARE YOU -- DID YOU JUST MAKE THAT ALLEGATION OR YOU HAVE FACTS TO SUPPORT THAT?

>> WELL I HAVE FACTS TO SUPPORT THAT.

>> IN THE COMPLAINT ORDER --

>> THERE ARE FACTS ALLEGED IN THE COMPLAINT TO SUPPORT THAT. AND WE --

THOSE ARE GOOD FAITH.

ATTEND TO IMPROVE THEM.

>> YOU WOULD DISMISS AN MOTION TO DISMISS.

>> THIS IS A MOTION TO DISMISS.

>> FACTUAL FINDINGS WERE MADE?

>> THERE WERE FINDINGS MADE IN THE ORDER GRANTING THE MOTION TO DISMISS OTHER THAN THAT THE -- ACTUALLY IT WAS BASED ON THIS PHYSICAL CUSTODY CONCEPT.

AS I READ IT, WAS THE TRIAL JUDGE SAYS BECAUSE THE SCHOOL BOARD DIDN'T HAVE PHYSICAL CUSTODY WITH NO DUTY.

>> LOOKING AT THE ACTUAL OPINION WHICH HAS NO -- THE OCTOBER FACTS IT HAS IS THAT SHE WALKED INTO TRAFFIC AT A SCHOOL BUS STOP.

AND IT SAYS BECAUSE THE SCHOOL BOARD DID NOT HAVE CONTROL OVER THIS STUDENT AT THE TIME OF THE ACCIDENT, THE SCHOOL BOARD HAD NO DUTY TO THE STUDENT.

>> CORRECT.

>> SO IT'S REALLY --

WE'RE SORT OF TALKING PAST THAT. WHICH IS THEY DON'T NECESSARILY HAVE HAD TO HAVE CONTROL AT THAT PRECISE MOMENT IF THEY NEGLIGENTLY CARRIED OUT THEIR OPERATIONAL DUTIES.

>> YES.

THAT'S WHERE MAYBE THE PROBLEM  
IN THAT BROOD STATEMENT IS.  
AND THE FIRST DISTRICT  
OPINION --  
>> YES, YOUR HONOR.  
BUT IF WE GOT BACK INTO IT, THE  
FACT IS THAT THERE'S STILL NO --  
THE BUS WASN'T THERE.  
AND THE ISSUE OF THE CONTROL IS  
REALLY -- GOES TO WHERE IS THEIR  
DUTY AT THAT POINT IN TIME TO  
THE STUDENT?  
AND THIS GOES BACK REALLY TO  
WHAT JUSTICE SAYS.  
WHERE IS THEIR DUTY TO CONTROL  
OVER THE STUDENT?  
DUTY OVER THE STUDENT THAT WOULD  
ALLOW THEM TO CONTROL THE  
CHILD'S ACTIONS.  
>> THEY COMMED BY ENACTING THE  
RULE AND MONITORING THE RULE AND  
ENFORCING THE RULE.  
AS I SAID IT'S -- IF THE CHILD  
HAD NEVER LEFT, THE SOUTH SIDE  
OF THE ROAD, THE ACCIDENT NEVER  
HAPPENED.  
>> THE PROBLEM IS THIS WHO HAS  
A PRACTICAL MATTER IS GOING TO  
DO THAT AT A BUS STOP UNLESS WE  
WOULD IMPOSE AN OBLIGATION ON  
SCHOOL BOARDS TO HAVE A MONITOR  
AT EVERY SCHOOL BOARD.  
NOW YOU MENTIONED I THINK YOU  
ANXIOUS THAT AS THE BUS  
DRIVER.  
DID THE BUS DRIVER FAIL TO DO  
CERTAIN THINGS --  
I HAVE QUESTIONS ABOUT THAT  
ALSO.  
THE BUS DRIVER'S RESPONSIBILITY  
IS TO DRIVE THAT BUS SAFELY.  
AND TO MAKE SURE THAT THE  
CONDUCT ON THE BUS IS  
APPROPRIATE, AND THAT THINGS  
AREN'T GOING ON THE BUS THAT  
SHOULDN'T BE GOING ON.  
BUT HOW CAN WE EXPECT A SCHOOL  
BUS DRIVER TO NOTE WHERE THE  
KIDS CAME FROM WHO HAPPENED TO  
BE AT THE ONE SIDE OF THE ROAD  
AS OPPOSED TO THE OTHER SIDE OF  
THE ROAD.  
HOW IN THE WORLD WOULD THE BUS  
DRIVER KNOW THAT?  
HOW IN THE WORLD CAN WE EXPECT

THE BUS DRIVER WHILE WHO'S GOT THIS RESPONSIBILITY, TO DRIVE THIS BUS, TO BE CARRYING OUT THE KIND OF TASK THAT YOU WOULD SEEM TO IMPOSE ON THE BUS DRIVER?

I THINK IT WOULD BE PHYSICALLY IMPOSSIBLE FOR THE BUS DRIVER TO DO IT, AND SEEMS TO ME TO BE AN UNREASONABLE EXPECTATION.

>> YOU'RE WRONG BECAUSE WE'VE ACTUALLY TAKEN SWORN STATEMENTS FROM THE BUS DRIVER AND FROM THE PEOPLE AT THE SCHOOL BOARD.

THE BUS DRIVER ADMITTED SHE KNEW WHERE EVERYBODY LIVES, EASY TO FIGURE OUT HOW THE BUS DRIVER KNOW THIS IS YOUR HONOR, BECAUSE WHEN SHE DROPS THEM OFF AT THE END OF THE DAY SHE DROPS THEM OFF ON THE SOUTH SIDE, THE ONES THAT GO TO THE NORTH SIDE CROSS IN FRONT OF HER BUS AND GO TO THE NORTH SIDE.

THIS IS THE LAST DAY OF THE SCHOOL YEAR.

SHE'S SEEN THIS NOW FOR 200 DAYS KNOWS EXACTLY WHAT SIDE OF THE ROAD THE KIDS LIVE IN.

>> THAT'S NOT FAIR.

IF THIS WAS THE CASE -- WHERE THE SCHOOL BUS ARRIVED AND IT WAS THE LAST DAY MAYBE THE SCHOOL BUS DRIVER FORGOT TO PUT OUT THE FLASHING LIGHTS AN THE STOP SIGN.

>> CORRECT.

>> WE WOULD HAVE -- I THINK EVERYBODY WOULD AGREE WE HAVE A WHOLE DIFFERENT CASE.

BECAUSE WE'VE GOT NOW -- GOT A NEGLIGENT OPERATION BY FAILING TO DEPLOY THE STOP SIGNS AND THE LIGHTS; CORRECT?

BUT WHAT IS THAT SCHOOL BOARD DRIVER TO DO WHEN THE SCHOOL BOARD WHEN THIS HAPPENS BEFORE THE SCHOOL BUS ARRIVES?

>> THE PROBLEM WAS THAT THE SCHOOL BUS DRIVER DIDN'T DO HER JOB FOR THE PRECEDING 199 DAYS. SHE KNOWS WHAT SIDE OF THE STREET THE KIDS LIVE ON.

SEES WHEN THE BUS STOPS SHOULD SAY --

YOU, YOU, YOU YOU LIVE ON THE

SOUTH SIDE YOU'RE NOT SUPPOSED TO CROSS UNTIL MY BUS STOPS. BY THE WAY, THE SCHOOL BOARD ADMITS THAT IS ONE OF THE DUTIES THAT THE BUS DRIVER IS CHARGED WITH.

TO COMMUNICATE HOW THEY'RE SUPPOSED TO BOARD THE BUS, AND ALSO TO GIVE THEM THE ALL CLEAR SIGNAL.

THAT'S WHAT THE SCHOOL BUS DRIVER IS TRAINED TO DO. SUPPOSED TO DO.

AND SO THAT WAS --

>> ALL CLEAR SIGNAL?

>> THERE'S NO ISSUE ABOUT ALL CLEAR.

THE BUS WASN'T THERE.

>> THE ISSUE IS THAT SHE IS -- SHE IS ENCOURAGING THE STUDENTS TO DISREGARD A RULE BY FAILING TO COMMUNICATE.

>> HER ACQUIESCENCE.

>> YOU'VE GOT PARTICULAR FACTS WITH THIS PARTICULAR PERSON. BUT YOU'RE ASKING US TO SPEAK IN TERMS OF A DUTY OF THE SCHOOL BOARD.

AND JUST SEEMS TO ME THAT THAT'S A BROAD DUTY UNREASONABLE OBLIGATIONS WHEN THE FACT OF THE MATTER IS THERE'S A DUTY FOR THE PARENT TO MAKE SURE THAT THEIR PARENT -- WHEN THEIR CHILDREN GO TO THE BUS STOP, THAT THEY KNOW HOW TO GET THERE, AND WHAT -- HOW THEY SHOULD BE BEHAVING ALSO.

NOT JUST ONE SIDE OF THIS. BUT WE HAVE EATEN INTO YOUR REBUTTAL TIME HERE.

>> IF I COULD DESCRIBE BRIEFLY I'LL SAVE THE REST FOR LATER. WHAT IF THE PARENT OR CHILD WERE NEGLIGENCE IS NOT BEFORE THE COURT.

WHAT WE ASK IS THE CHANCE TO HAVE OUR DAY IN COURT, AND OUR COMPLAINT WAS DISMISSED BEFORE WE COULD DO THAT.

BUT THIS WOULD NOT ANY BURDEN ON THE SCHOOL BOARD AT ALL.

BECAUSE THE SCHOOL BOARD ADMITS HAS THE KNOWLEDGE AND THE BUS DRIVER DROPPED THE BALL.

THERE WOULD BE ONE LESS BRAIN  
DAMAGED CHILD TODAY IN THE STATE  
OF FLORIDA.

>> THANK YOU, YOUR HONOR.

>> I WILL GIVE YOU AN  
ADDITIONAL MINUTE.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT I'M  
DAVID OF THE LAW FIRM TO RESPOND  
IN THIS MATTER.

YOUR HONOR, SOME QUESTION IN  
THIS CASE I THINK WE'VE ALL  
ALLUDED TO IS WHO IS RESPONSIBLE  
FOR THIS STUDENT PRIOR TO THE  
ARRIVAL OF THE BUS?

THAT QUESTION HAS BEEN ANSWERED  
UNIFORMLY AND REPEATEDLY SINCE  
AT LEAST THIS COURT'S DECISION  
IN THE HARRISON CASE.

>> LET'S GO BACK, I DISAGREE  
WITH YOUR STATEMENT.

BUT IN HARRISON, THE COURT VERY  
SPECIFICALLY SAID THAT NOT  
REACHED, THEIR WALKING TOWARD  
THE BUS STOP.

>> SURE, AND THE COURTS HAVE  
TRADITIONALLY DRAWN A  
DISTINCTION BETWEEN STUDENTS ON  
THEIR WAY SAYING THERE'S NO DUTY  
AT ALL FOR THOSE.

BUT ONCE THEY GET TO THE BUS  
STOP, IT'S A DIFFERENT STORY.  
AND AS I'VE GONE THROUGH EACH  
ONE OF THESE AND UNDERLINE IT IS  
WHERE IT IS, AND FALL INTO THE  
CATEGORIES OVERGROWTH MADE THE  
KIDS STAND OUT IN THE ROADWAY  
AND THEY WERE HIT.

I DON'T SEE ANY OF THAT OR  
ANYTHING LIKE THAT IN THIS CASE.  
BUT I THINK WE HAVE TO ALSO BE  
CAREFUL NOT TO PAINT WITH SUCH A  
BROAD BRUSH, WHERE THESE ADULTS  
ARE.

BECAUSE I DO THINK THAT THE CASE  
LAW IN FLORIDA IS SEPARATED ON  
THE WAIT TO THE BUS STOP AND  
BEING ACTUALLY AT THE BUS STOP.

>> YOUR HONOR, IT'S A  
DISTINCTION WITHOUT A DIFFERENCE  
BECAUSE HARRISON TELLS US THAT  
PHYSICAL CUSTODY IS THE SOURCE  
THAT HAVE DUTY.

THAT MEANS THAT A SCHOOL  
OFFICIAL IS THERE AND ABLE TO



SUPERVISE.

IT IS DISTINCT, I THINK THAT THE HARRISON CASE JUST TURNED ON THE CIRCUMSTANCES.

WOULDN'T HAVE BEEN DIFFERENT IF THEY WOULD HAVE BEEN WAITING AT THE BUS STOP.

KEEP IN MIND, 1971 ACCIDENT, DECIDED BEFORE THE COMMERCIAL CARRIER ANALYSIS BEFORE THE CURRENT SOVEREIGN IMMUNITY.

>> HOW ABOUT THIS ISSUE.

WE HAVE THE DUCO CASE OF DUVALL COUNTY.

THAT WAS ALSO ON THE WAY TO THE BUS STOP; CORRECT?

>> THAT'S ACTUALLY A STUDENT WAITING AT THE BUS STOP.

>> THAT ONE WAS WAITING.

BUT THAT WAS A HID IT BEEN TRAP CASE.

ONLY THE STUDENT'S SECOND DAY AT THAT BUS STOP AS OPPOSED TO HERE WE HAVE ONE WHO'S TWO YEARS AWAY FROM DRIVING HERSELF ARRANGED THE STATE OF FLORIDA.

>> THIS IS THE QUESTION -- WHY I THINK WE WERE SOME OF US FELT WE NEEDED TO TAKE THIS CASE IS BECAUSE THE STATEMENT THAT THEY DIDN'T HAVE CONTROL OVER THE STUDENT ALONE.

MAY NOT COVER SITUATIONS YOU MAY HAVE OTHER REASONS, AGAIN, FOR PREVAILING IN THIS CASE, THAT AT THE BUS STOP VERSUS --

WALKING TO THE BUS STOP, BEING AT LEAST THAT STARTS TO BE CLOSER TO WHEN THE DUTY TO THIS STUDENT IS GOING TO ARRIVE.

>> PERHAPS IT'S THE BUS STOP OVERGROWN WITH WEEDS THAT THE STUDENTS ARE FORCED TO STAND IN THE ROADWAY.

>> SO THEREFORE, THE IDEA THAT BECAUSE THEY DIDN'T HAVE CONTROL AT THE TIME IS NOT ALONE DISPOSITIVE OF DUTY.

>> IT DOESN'T HAVE TO BE. THIS COURT DOESN'T HAVE TO OVERRULE SERET TO RULE IN FAVOR OF MY CLIENT.

DUDCO IS A HIDDEN TRAP CASE DOESN'T APPLY HERE.

>> WHAT IT DOES, IT SUGGESTS

THAT THERE IS A DUTY THERE IF  
THERE'S A DANGER.  
AND THIS IDEA OF NO CONTROL, I  
MEAN, IF THERE WAS NO CONTROL  
AND YOU DON'T HAVE ANY LIABILITY  
AT ALL, NO RESPONSIBILITY SO  
THAT'S WHAT I'M SAYING.  
I'M CONCERNED AS JUST AS SHE IS.  
THAT WE PAINT THIS TOO BROADLY,  
AND THAT WE -- THAT THE SCHOOL  
BOARDS EMPTIES DO HAVE  
OBLIGATIONS WHEN THEY ARE AT THE  
STOP.  
>> THE COURT DOESN'T HAVE TO  
REACH THAT CONCLUSION ON THESE  
FACTS.  
>> ISN'T THAT --  
BUT THE FIRST DISTRICT OPINION  
REACHES IT ON, SAYING NO  
CONTROL.  
REACH IT ON THAT BASIS.  
>> SURE, I THINK THAT THAT'S  
THE BASIS, THE IDEA THAT IF I  
HAD A OPPORTUNITY TO SATE  
LANGUAGE, DIDN'T HAVE PHYSICAL  
CUSTODY AT THAT TIME.  
>> THAT DOESN'T ANSWER THE  
QUESTION.  
I THINK YOU WOULD AGREE THAT IF  
THE SCHOOL BUS HAD ARRIVED, AND  
THE SCHOOL BUS DRIVER DIDN'T PUT  
OUT THE STOP SIGNS AND THEN  
SOMEBODY WAS CROSSING AND WAS  
RUN OVER.  
THAT THERE WOULD BE A  
NEGLIGENT --  
>> ABSOLUTELY.  
SO THAT IS NOT THEN THE IDEA  
THAT THE CONTROL IS -- WHEN IS  
IT STARTING?  
IT DOESN'T START WHEN THEY GET  
ON THE BUS.  
IT MAY START --  
>> RIGHT.  
>> DEPENDING ON THE FACTS WHILE  
THEY'RE AT THE BUS STOP.  
DEPENDING ON WHAT IS ALLEGED AS  
TO THEIR ELECTION OF OBLIGATION.  
>> PERHAPS I AGREE --  
>> AGAIN, THEY'VE CREATED JUST  
IN THE LIGHT OF THE FAVORABLE TO  
THEM.  
AGAIN, I JUST -- THEY CREATED A  
BUS STOP WHERE AND THERE WAS NO  
CROSS WALK AND A THEY KNOW ALL

OF THAT.

BUT THEY ENVISION THAT THE KIDS  
WOULD STAY ON EITHER SIDE OF THE  
STREET; CORRECT?

>> YES.

>> UNTIL THE BUS DRIVER COMES  
ALONG.

>> THAT'S THE ALLEGATION.

>> WHAT I THINK IS SORT OF AND  
MAY BE I'M GETTING IN BEYOND ON  
LEGAL CAUSE, THE IDEA THAT SHE  
SAFELY CAME OVER TO THE SIDE  
WHERE SHE NEEDED TO BE, AND THEN  
WENT BACK OVER AND STRUCK WHEN  
SHE WAS COMING AGAIN.

SO I THINK THAT THE ISSUE OF  
WHETHER THE -- IF THEY HAD BEEN  
ENFORCING THIS RULE IT WOULD  
HAVE MADE ANY DIFFERENCE BUT MAY  
BE CAN BE RESOLVED.

>> THEY'RE SAYING THAT THERE  
WAS A RULE, AND THE RULE WAS YOU  
STAY ON YOUR SIDE OF THE ROAD.  
UNTIL THE BUS COMES.

BUT FOR THE ENTIRE SCHOOL YEAR,  
THAT RULE HAD NEVER BEEN  
ENFORCED AND THE SCHOOL BUS  
DRIVER KNEW IT, AND EVERYBODY  
KNEW IT.

DOES THAT CHANGE ANYTHING ABOUT  
WHAT THEIR NEGLIGENCE OR THEIR  
DUTY?

>> ABSOLUTELY NOT, YOUR HONOR.  
BECAUSE REALLY WHEN YOU BOIL  
DOWN WHAT THEY WANT IN THAT  
RULE, IS YOU FAILED TO TELL ME  
TO STAY OUT OF TRAFFIC.

THAT'S AN OPEN AND OBVIOUS  
CONCERN IN FLORIDA WHERE NO  
WARNING IS REQUIRED.

THE SOVEREIGN DUTY ANALYSIS AND  
WE KNOW THAT FROM THE ORLANDO  
CASE.

THAT INVOLVED A LITTLE MIDDLE  
SCHOOL STUDENT WHO WAS STRUCK  
WHILE THEY STEPPED INTO TRAFFIC.  
THAT'S THE PAIN CASE THAT WE  
CITED IN COURT?

1984 WHERE A HIGH SCHOOL STUDENT  
WAS JAY WALKING.

THE DANGEROUSES ASSOCIATED WITH  
BUSY TRAFFIC IS AN OPEN  
CONDITION AND REQUIRES NO  
WARNING WHATSOEVER.

>> IF SHE WAS AHEAD TOGETHER

NORTH SIDE WHERE THE BUS STOP IS, YOU'RE SAYING IT MAKES NO DIFFERENCE, THE SAME RULE WOULD APPLY EVEN THOUGH SHE HAD -- WAS IN FACT HEADING BACK TO THE SOUTH SIDE IN THIS CASE.

>> TRUE.

>> WHAT'S REALLY GOING ON HERE, YOUR HONOR, IS THAT SCHOOL DISTRICTS PROVIDE INFORMATION TO STUDENTS THAT'S KIND OF THEIR JOB TO EDUCATE THEM.

AND TO PROMOTE THEIR HEALTH, SAFETY AND WELFARE.

EVERY INSTRUCTION DOESN'T GIVE RISE TO A CAUSE OF ACTION.

FOR INSTANCE, ESTABLISHING A RULE THAT SAYS STUDENTS SHOULD STAND OUTSIDE OF THE ROADWAY, AND NOT JAYWALK UNTIL THE BUS ARRIVES IS ONE OF THE SITUATIONS WHERE IT'S DESIGNED TO PROMOTE THE STUDENTS BUT DOESN'T GIVE RISE TO A CAUSE OF ACTION.

REQUIRES NO WARNING WHATSOEVER.

>> ON THE DUTY QUESTION THAT I THINK THE COURT IS PERHAPS STRUGGLING WITH A LITTLE BIT, YOUR HONOR, THERE IS DEFINITELY AN ARGUMENT TO BE MADE THAT NO DUTY AT ALL EXISTS TOWARDS STUDENTS.

BY A SCHOOL DISTRICT, PRIOR TO IT TAKING PHYSICAL CUSTODY TO THE BUS ARRIVING AND STARTING TO EXERT CONTROL OVER THE STUDENTS' BEHAVIOR BECAUSE THERE'S NO SUPERVISION AT THE TIME.

>> AT THE CURRENT LEVEL YOU CAN'T HAVE SEEMS TO ME AM BUS STOP KNOWING THAT YOU'VE GOT SAY A FOUR-LANE ROAD WITH TRAFFIC WIZZING BUY IN ALL DIRECTIONS. AND THEN SAY THIS IS OPEN OBVIOUS TRAFFIC.

GOOD LUCK STUDENTS TRYING TO MAKE IT ACROSS THERE.

BUT YOU'VE GOT TO TRY TO MAKE IF ACROSS THERE SO YOU BIFORCATE THE BUS STOP KNOWING THAT THE BUS DRIVER AS THE LAWYER SAID KNOWS THIS.

BECAUSE THEY SEE IT HAPPEN ALL YEAR.

A CERTAIN LEVEL WERE PARENTS

COMPLAINING THERE DOES SEEM TO BE AN OPERATIONAL ISSUE THERE, AND A DUTY ARRIVES. WHAT I THINK SAVES THE BOARD HERE IS THE STUDENT GOING BACK ACROSS THE ROAD ONCE SAFELY THERE.

>> THE LEGISLATURE HAS SAID THERE'S A DUTY OWED UNDER THE CIRCUMSTANCES AND OWED BY THE PARENTS BECAUSE PARENTS ARE RESPONSIBLE FOR THEIR CHILDREN PRIOR TO THE ARRIVAL.

>> WHERE THE BUS STOP IS, ALL OF THE OBLIGATIONS ON THE FUNCTION OF THE PARENT.

>> THAT'S WHAT 1,000 .610 SAYS. THEY ADDRESS THIS ISSUE. THAT PRIOR TO ARRIVAL OF THE BUS, THIS IS THE PARENTS' RESPONSIBILITY, THAT'S A COMMON SENSE ISSUE. PARENTS KNOW THEIR CHILDREN BEST AND THEY KNOW THEIR OWN NEIGHBORHOODS BEST. AND PARENTS ARE IN THE POSITION TO ASSESS THE MATURITY LEVEL OF THEIR CHILD AND THE TRAFFIC CONDITIONS TO EXIST, AND TO DECIDE IF THAT CHILD CAN SAFELY WAIT AT THE BUS STOP.

>> THERE'S AN OUTRAGEOUS I LOOK AT WHATEVER THERE IS. WE TALK A LOT ABOUT PARENTS AND RESPONSIBILITY BUT THE MIDDLE SCHOOL STUDENT, AND IF -- THIS IS THE PROBLEM MAYBE WITH COMMERCIAL CARRIER. BUT IF A BUS STOP IS PLACED IN A MIDDLE OF BUSY TRAFFIC, AND THEN YOU'VE GOT THE MUNICIPALITY THAT MAY BE SHOULD BE PUTTING UP A TRAFFIC LIGHT, AND NO LIABILITY BECAUSE THAT'S A PLANNING DECISION OR A CROSSWALK. BUT -- AND THEN THE SCHOOL BUS, SCHOOL BOARD CAN'T BE RESPONSIBLE FOR HAVING PLACED THE SCHOOL -- THE BUS STOP IN A DANGEROUS AREA. WE HAVE THEN SOVEREIGN IMMUNITY BECAUSE THOSE ARE PLANNING LEVEL DECISIONS. I THINK THAT'S REALLY THE FRUSTRATION FOR PARENTS MAY BE

THAT THE REMEDY IS NOT WITH A LAWSUIT, BUT IT'S WITH TRYING TO GET THE TRAFFIC CHANGED.

BUT I STILL GO BACK TO THE QUESTION OF YOU SAYING THAT BECAUSE PARENTS ARE ALSO RESPONSIBILITY, THAT THE SCHOOL BOARD WOULD HAVE NO DUTY UNDER ANY CIRCUMSTANCE AT A BUS STOP BEFORE ALL BUS ARRIVES.

THAT THAT IS THE RULE OF LAW, AND THAT'S BEEN ENUNCIATED IN ALL OF THESE OTHER CASES.

>> NO.

THIS COURT DOESN'T MEAN TO REACH A DECISION THAT A IS THAT BROAD. IT IS REALLY WHAT HAPPENED IN WINSLOW IN THE FIRST DISTRICT DECISION IS IN COMPLETE ACCORDANCE WITH THE CASE THAT WAS REFERENCED EARLIER THE HARRISON CASE.

UNDER THE FACTS OF THIS CASE WHERE THE DANGER COMPLAINED OF IS OPEN AND OBVIOUS.

NOT A HIDDEN TRAP LIKE DUDCO WHERE SCATTERED CHILDREN WERE IN THE GRASS.

OPEN AND OBVIOUS CONDITION ON A TWO-LANE ROAD WITH ALLEGED TO HAVE A 35 MILES AN HOUR SPEED LIMIT.

THERE'S NOTHING UNUSUAL ABOUT THIS PARTICULAR BUS STOP LOCATION THAN ANY OTHER BUS STOP LOCATION IN FLORIDA.

BUT THE COURT DOESN'T HAVE TO OVERALL ARRIVE AT THE CONCLUSION.

UNDER THE FACT WAS THIS PARTICULAR CIRCUMSTANCE, THE DUTY WAS NOT OWED.

BECAUSE THEY VOLUNTARILY CROSSED BACK TO GO TALK TO A FRIEND, AND BECAUSE IF THERE IS ANY RESPONSIBILITY OWED, IT'S COMING FROM THE PARENTS.

THAT'S THE FLORIDA ADMINISTRATIVE CODE PROVISION THAT DIRECT THIS IS ISSUE.

WE CITED THAT TO THE COURT, THE FLORIDAED A ADMINISTRATE CODE IS PROMULGATED ON THE AUTHORITY FROM THE FLORIDA LEGISLATURE. AND IT SAYS PARENTS MUST MAKE

SURE THEIR STUDENTS FOLLOW THE RULES AT THE BUS STOP AND SAYS, QUOTE, PARENTS MUST PROVIDE NECESSARY SUPERVISION DURING TIMES WHEN THE BUS IS NOT PRESENT.

THAT'S DETERMINATIVE FROM THE OUTCOME.

>> THAT RECOGNIZES THE LIMITATION ON THE SCHOOL BUS DRIVERS' CONTROL AND AUTHORITY. ONLY WHEN THE SCHOOL BUS DRIVER IS THERE.

THAT'S JUST KIND OF -- EXPLAINING THE IMPLICATIONS THAT ARE INHERENT FOR ITSELF.

The petitioner is trying to create a new duty.

We are going to make schools responsible for students behavior when they are not present to oversee it and also when they don't have the authority to control the behavior.

The outer limits of whatever that new duty is very hard to define.

It's going to overburdened is our ready strain system and trying to figure out.

>> It seems to me coming around though if you say that if there is a hidden danger, there is a duty to warn even though there is no control, that to me says well the control is not the key factor here.

>> Because, there would be no duty in those cases at all.

>> Sir, the court does not have to go that far in this case to reach that conclusion.

They can rule on lack of conflict or sovereign immunity.

>> So really, since they have given enough facts here that she walked into traffic and was struck by a motor vehicle so there is no question we are not dealing with a hidden danger or some other negligence in the maintenance of the school.

>> Especially not hidden because parents complained repeatedly

about this, right?

>> That is the allegation in the complaint.

Again, that is the parents responsibility to address the supervisor and decide what is the safe enough condition for my child under those circumstances?

The Florida legislature has defined that duty for us and in the set of circumstances.

Is the executive branch acting to the board of --

there is a separation of power. Parents are in the best position to know their own children and know their own neighborhoods.

In conclusion almost 30 years ago we had the decision and guidance at school district obligation towards students is based on physical custody.

The authority over their students and their ability to supervise and see what is actually happening.

Less than two years ago this court declined to review the Frances case reaffirming that concept.

In between it has been written in a Florida statute.

In addition to all those reasons this is an obvious condition for which no warning was required and would not have changed the outcome in this case.

The student was not trapped by some hidden condition.

She was going to talk to a friend and for all those reasons Your Honor there is no conflict jurisdiction that this court should decline to review it.

There is no duty under the circumstances.

Sovereign immunity applies.

This court should decline jurisdiction or in the alternative it should affirm the first issuance ruling.

>> Thank you.

>> You have got a minute and a half of your time and I will give you an additional minute.



>> Thank you Your Honor.

As I'm doing that could you address that statute and why that is problematic?

Because you specifically focused on the responsibility of the bus driver and the statute seems to cut against what your position is on what the bus driver supposed to do.

>> The reason that is not determinative is this.

The school board has the obligation to provide transportation.

The school board in this case designed a bus stop and it's not the same as Frances.

Frances was two entirely different bus stops.

It stopped at the northside and the south side and the east or west.

It is completely different.

In this case the school board -- the school board created a zone of danger by requiring students to cross the street.

The school board itself recognized that it was exposing the children to danger.

The school board itself took steps to ameliorate that danger.

What the school board is now arguing is, even though they recognized it, even though they took steps, even though they enacted these procedures no matter how crummy a job they do at following through on their own procedures, they have no responsibility.

That is essentially what they are arguing.

All we are arguing is that having taken these steps, they have an obligation, an operational obligation to communicate monitor and enforce.

>> Are you telling me they had an obligation to communicate what?

Not walking in the street when the cars are coming?

>> No, they had an obligation to

communicate to the students to stay on the Southside until a bus stops.

>> The bus stop is on the south side and if you cross over, it goes back?

>> The pole star of duty as foreseeability.

It is certainly foreseeable as she said previously that if she crosses one she may cross again. She might cross on the north side and forget she had her homework.

She might cross to the other side and remember she needed a book.

It's completely foreseeable that she could cross twice.

Therefore, they violated their duty when they never bothered to communicate and monitor and enforce that rule and it was the cause of this accident.

>> They should provide a station there every day to watch for the bus.

>> Absolutely not.

It's absolutely not necessary. The schoolbus driver knows that those kids are crossing the street before the bus gets there.

Every day when she arrives at the bus stop their standing on the northside of the street.

There is absolutely no need -- that is a strong red herring. There is no need for anybody to monitor this bus stop.

We are only asking that they do one thing.

We are only asking they clearly communicate that they monitor and that they enforce their own procedures which they themselves recognize are necessary to make this essay for bus stop.

It is purely operational.

Thank you Your Honor.

>> We thank you both for your arguments.