

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.
FINAL CASE ON THE DOCKET THIS WEEK IS THE JENNIFER BRINKMANN V. TYRON FRANCOIS, ETC. ET AL..
>> MR. CHIEF JUSTICE ELLEN A. IT PLEASE THE COURT, THE ISSUE IN THIS PARTICULAR CASE IS WHETHER AT DEMOCRATIC LICENSE CANDIDATE CAN'T CLOSE THE DEMOCRATIC PRIMARY TO ALL REPUBLICANS AND INDEPENDENTS.
IT CAN WORK THE OTHER WAY TOO BUT IN THIS PARTICULAR CASE THAT IS EXACTLY WHAT HAPPENED.
>> I THOUGHT THE ISSUE WAS WHETHER THE RESIDENCY REQUIREMENT IS UNCONSTITUTIONAL.
>> IS ONE OF THE ISSUES.
>> THAT IS WHY WE ARE HERE UNDER MANDATORY JURISDICTION.
>> THAT IS CORRECT.
>> THE BIGGER POLICY ISSUE IS THE QUESTION OF SOMEONE WRITING IN THE UNIVERSAL PRIMARY GETS MAYBE --
>> LOSS.
>> WHAT ABOUT THE CONSTITUTIONAL ISSUE?
>> OUR POSITION IS THIS IS A REASONABLE REGULATION TO ASK THAT RIGHT IN CANDIDATES, BE A RESIDENT OF THE DISTRICT IN WHICH THEY ARE SEEKING TO IN EFFECT RUN.
>> DOESN'T THE CONSTITUTION SAY DIFFERENTLY?
THAT RESIDENCY IS DETERMINED AT THE TIME OF THE ELECTION?
>> IT DOES.
THE CASE TAKES THAT POSITION THAT RESIDENCY IS DETERMINED THAT THE TIME OF THE ELECTION BUT ODDLY ENOUGH GIVEN THE WAY THAT THE MANIPULATION CAN OCCUR WITH THIS RIGHT IN CANDIDACY IN EFFECT DOING AWAY WITH UNIVERSAL PRIMARY RIGHTS, A PERSON COULD BE IN RESIDENCE AND QUALIFY AS A RIGHT IN AND MOVE OUT AND COME

BACK AT THE TIME OF THE GENERAL ELECTION.

IT UNDERSCORES IS THE FALLACY OF THE RIDING CANDIDACY IN THIS SITUATION.

>> WHAT WE REALLY HAVE TO PERCEIVE FROM GRAF'S TO SUPPORT YOUR POSITION ON THIS ISSUE.

>> A SIMPLE STATEMENT IS THAT RESIDENCY IS AT THE TIME OF THE ELECTION.

>> WHAT IT SAYS, IT SPECIFICALLY IS CONSTRUING THE PROVISION RELATED TO COUNTY COMMISSIONERS BUT REALLY IT IS VERY SIMILAR IN STRUCTURE TO WHAT WE ARE TALKING ABOUT HERE.

IF WE CONSTRUE THIS PROVISION AS REQUIRING RESIDENCY AT THE TIME OF ELECTION, THAT IS THE CONCLUSION, THE REASONING AND THAT IS IT.

>> IT IS AND THAT IS WHY I AM TAKING THE EASY ROAD AND CONSENTING TO THE COURT THE LARGER QUESTION WHICH IS IN COMBUSTION THIS WHICH IS HOUSE THIS WRITING CANDIDACY SITUATION UNDERMINES THE UNIVERSAL PRIMARY AMENDMENT.

>> IS THAT SOMETHING THE FOURTH DISTRICT ADDRESSED?

>> IT WAS IN THE FOURTH DISTRICT CASE BUT WAS NOT ADDRESSED BUT IT HAS BEEN IN THIS CASE FROM THE BEGINNING.

>> I'M LOOKING AT THEIR OPINION, THEY SAY NOTHING ABOUT THAT ISSUE.

>> THEY DID NOT.

>> BUT YOU RAISED IT IN A BRIEF?

>> RAISED IN A BRIEF, THROUGHOUT THE PROCEEDINGS BECAUSE IT IS THE ULTIMATE QUESTION IN THIS KIND OF CASE.

>> IT WOULD NOT BE VERY HARD FOR SOMEONE TO BE AT A TIME AT OF QUALIFYING TO BE IN THE DISTRICT, YOU ARE MAKING AN AND BIGGER AND A TERM.

>> THAT IS CORRECT BECAUSE IT WOULD BE SIMPLE ENOUGH TO MOVE HERE IN THE DISTRICT QUALIFIED.

>> THE QUESTION IS WHETHER A WRITE-IN CANDIDATE OF THE SAME POLITICAL PARTY CAN QUALIFY AS OPPOSITION.

>> THAT IS CORRECT.

>> CAN THE RIGHT THING CANDIDATE RUN IN THE PRIMARY?

>> THE RIGHT INTENDED IT WOULD BE ON A GENERAL ELECTION.

>> IF THE WRITING CANDIDATE WANTS TO BE A CANDIDATE HAVE TO BE IN THE GENERAL ELECTION SO THERE'S A FLAW IN STATUTORY FRAMEWORK THAT WE CAN'T FIX.

>> THERE'S NOT A FLAW IN THE STATUTORY SCHEME THAT YOU CAN'T FIX BUT IT CAN BE FIXED BY INTERPRETING THE CONSTITUTIONAL AMENDMENT, THE UNIVERSAL PRIMARY AMENDMENT IN A WAY FIRST WITH THIS CASE TO MAKE IT CLEAR THAT BECAUSE IF YOU LOOK AT THE AMENDMENT, IF ALL CANDIDATES WERE IN OFFICE HAD THE SAME PARTY AFFILIATION.

>> THE QUESTION, THE WRITING CANDIDATE, WHAT IS IT THAT PREVENTS THE RIGHT IN CANDIDATE FROM BEING A RIGHT-WING CANDIDATE IN THE PRIMARY? IS A STATUE OF THE CONSTITUTION?

>> THE WRITING AND IT IS NOT WRITING CANDIDATE IN THE PRIMARY.

>> THAT IS THE PROBLEM. IS THERE RIGHT IN THE CONSTITUTION FOR THERE TO BE RIGHT IN CANDIDATES?

>> THERE IS NO CONSTITUTIONAL RIGHT TO BE A WRITING CANDIDATE LIZ THEREUNDER ELECTION LAWS THAT WRITING CANDIDACY IS SOMETHING AVAILABLE ON THE ELECTION LAWS BUT WHEN I SAY YOU WOULD THEN APPEAR, A IS A MISNOMER.

THERE WOULD BE A BLANK LINE IN

THE GENERAL ELECTION SO YOU HAVE
THE CANDIDATE NOT SHOWING UP.
THE CANDIDATE IS A GHOST AND
THAT IS THE PROBLEM,
IF YOU LOOK AND ARTICLE 5
SECTION --

>> MIGHT NOT BE THE PROBLEM.
YOU ASSUME RIGHT IN CANDIDATE
NOT LEGITIMATE.

LET'S ASSUME THEY ARE PUT UP --
LET'S JUST BE PERFECTLY OPEN
ABOUT IT, THEY ARE PUT UP TO
DEFEAT THE PURPOSE OF THE UPA,
UNIVERSAL PRIMARY FACT.
OR AMENDMENT.

ISN'T THAT WHAT YOU ARE SAYING?
THAT MR. FRANCOIS WAS NOT A
LEGITIMATE RIGHT IN CANDIDATE?
HE WAS PUT IN SO THERE WOULD BE
A CLOSED PRIMARY FOR THE PRIMARY
ELECTION?

>> IN THIS CASE YES BUT I AM NOT
MAKING MY ARGUMENT ON THE BASIS
FED EVERY RIGHT IN CANDIDATE IS
A MALIGNANT ENTRY INTO --

>> IF THEY CAN'T QUALIFY FOR THE
PRIMARY THEN YOU ARE ESSENTIALS
LEASE SAYING THE PERSON THAT HAS
A RIGHT TO BE A RIGHT IN
CANDIDATE WILL NEVER BE ABLE TO
ASSERT THAT RIGHT.

>> WHAT I AM SAYING --

>> THAT WOULD BE THE LOGICAL
CONCLUSION.

>> IN THIS CASE IT IS A LITTLE
DIFFERENT BECAUSE THIS WRITING
CANDIDATE IS OF THE SAME PARTY.
THE QUESTION IS ALL LITTLE
LARGER.

IF WE MOVE AWAY FROM THAT BUT
HERE BECAUSE --

>> MAYBE -- LISTEN.

UNDER THE LAW CAN MR. FRANCOIS
HAVE BEEN A CANDIDATE IN THE
PRIMARY ELECTION FOR COUNTY
COMMISSIONER?

>> YES, IF HE QUALIFIED FOR THE
BALANCE.

>> AS A RATING CANDIDATE LIZ

>> NOT AS A RIGHT IN --

>> YOU ARE SAYING THE BILL IS TO BE A WRITING CANDIDATE IS NOT CONSTITUTIONALLY BASED.

>> THAT IS CORRECT.

WHAT I AM SAYING IS WITHOUT HAVING TO LOOK AT WHETHER OR NOT THE ENTRY, THE WRITING AND IT IS SEEKING TO EXCLUDE PEOPLE OR NOT ALL THE MANY CASES THAT WOULD BE THE REASON FOR IT, IT IS A VERY SMART TACTICAL MOVE IT SEEMS TO ME IF YOU WANT TO EXCLUDE ALL THE VOTERS OF THIS AND THE VOTERS FROM YOUR PARTY.

WHAT I AM SAYING IN THIS SITUATION, WHEN YOU LOOK AT THE CONSTITUTIONAL AMENDMENT IF ALL CANDIDATES FOR AN OFFICE HAD THE SAME PARTY AFFILIATION AND THE WINNER WILL HAVE NO OPPOSITION IN THE GENERAL ELECTION, THEN THE PRIMARY IS OPEN AND EVERYBODY CAN VOTE.

I AM SAYING IN THIS NARROW ISSUE, THIS PARTICULAR CASE, HE IS OF THE SAME PARTY.

>> THE PROBLEM ALSO IS HE IS GOING TO BE IN THE GENERAL ELECTION AND WILL CONSTITUTE OPPOSITION IN GENERAL ELECTIONS SO THE POSITION YOU ARE ASKING US TO TAKE ON THIS POINT WOULD REQUIRE THAT THE ESSENTIALLY A RIGHT IN CANDIDATES FOR PURPOSES OF THE ANALYSIS HERE IS TREATED AS A NONENTITY, AS AN ENTITY THAT CANNOT CONSTITUTE OPPOSITION.

>> EXACTLY.

>> REQUIRING US TO REWRITE THE AMENDMENT.

I UNDERSTAND THE WHAT YOU ARE SAYING MAKES A LOT OF SENSE IN TERMS OF THE PURPOSE, BUT IS IT OUR ROLE TO READ RIGHT THIS, TO REACH THE PURPOSE WHEN THIS COULD HAVE BEEN REWRITTEN, THIS IS AN OBVIOUS ISSUE, THIS IS AN OBVIOUS FLAW IN THE DRAFTING OF THIS PARTICULAR AMENDMENT TO THE

CONSTITUTION BY THE
CONSTITUTIONAL REVISION
COMMISSION, BUT WHY SHOULD WE
CORRECT THAT ERROR IN THE
DRAFTING OF THIS?

>> BECAUSE THAT WOULD BE
CONSISTENT WITH THE LANGUAGE OF
THE CONSTITUTIONAL AMENDMENT.
OPPOSITION AND I WILL TALK ABOUT
THAT IN ONE SECOND AND WITH THE
INTENT OF THE CONSTITUTIONAL
AMENDMENT WHICH WAS TO PREVENT
THIS KIND OF THING FROM
HAPPENING.

THE QUESTION IS IS A BLANK
LINE OPPOSITION?

THAT IS WHAT HAPPENED IN THE
GENERAL ELECTION.

IT WOULD BE A BLANK LINE.

>> IS THAT THE WAY IT HAS TO BE?
IF IT IS NOT A BLACK LINE WOULD
NOT BE A RIGHT IN CANDIDATE.

>> THAT IS TRUE BUT GIVEN THIS
CONSTITUTIONAL AMENDMENT THE
QUESTION IS IS A BLANK LINE
OPPOSITION?

>> THE NOTION THAT A WRITE-IN
CANDIDATE IS NOT OPPOSITION, IF
I WERE A CANDIDATE ON A VALID
FOR ONE OF THE PARTIES, A RIGHT
IN CANDIDATE IS THE KIND OF
OPPOSITION BY WOULD LOVE TO
HAVE.

I UNDERSTAND THAT.

BUT TO SAY THAT THE WRITING
CANDIDATE IS NOT OPPOSITION
SEEMS TO ME TO BE STRETCHING THE
LANGUAGE.

IT MAY NOT BE EFFECTIVE
OPPOSITION.

MIGHT NOT THE OPPOSITION THAT IS
LIKELY TO WIN ALTHOUGH IN THE
HISTORY OF THIS COUNTRY THERE
HAVE BEEN SOME WRITING
CANDIDATES THAT HAVE WON
ELECTIONS.

IT IS VERY UNUSUAL BUT THE WAY I
HEARD THIS DESCRIBED BY PEOPLE
WHO HAVE HAD A RIDING CANDIDATE
AGAINST THE MORE I HAVE NO

OPPOSITION EXCEPT FOR A RIDING CANDIDATE BUT IT IS STILL LAW POSITION.

WHY AM I WRONG IN LOOKING AT IT THAT WAY?

>> BECAUSE LOOKING AT THE WAY DOES NOT REFLECT WHAT THE INTENT WAS OF THE CONSTITUTIONAL AMENDMENTS WHICH WAS TO AVOID A SITUATION IN WHICH THERE WOULD BASICALLY BE A GENERAL ELECTION IN WHICH PEOPLE WOULD BE COMPLETELY EXCLUDED.

THAT IS THE THRUST OF IT.

>> SEEMS TO ME WHEN YOU ARE REALLY SAYING IS THERE IS A DIFFERENT DEFINITION FOR OPPOSITION.

WHAT YOU SEEM TO BE SAYING IS THAT OPPOSITION HAS TO BE OF ANOTHER PARTY.

>> OPPOSITION DOES HAVE TO BE OF ANOTHER PARTY.

>> THAT IS NOT WHAT IT SAYS. IT SIMPLY SAYS OPPOSITION.

>> IT DOES SIMPLY SAY OPPOSITION BUT THE QUESTION IS OPPOSITION MEANS, ANOTHER PARTY.

IF YOU LOOK AT THE DICTIONARY DEFINITION IT EVEN TALKS ABOUT THAT.

OPPOSITION IS A RIVAL POLITICAL PARTY.

>> IT CAN BE OPPOSITION.

>> IT COULD BE LIKE THE TEA PARTY BUT THAT WOULD BE OPPOSITION IN SOME INSTANCES.

>> NO QUESTION PEOPLE AND THE OPPOSITION.

>> ALL BLANK LINE OPPOSITION? I'M BEING REALISTIC ABOUT THIS. IS A BLANK LINE OPPOSITION?

>> IN THIS CIRCUMSTANCE THE WRITING CANDIDATE IS FROM THE SAME PARTY.

>> THIS MAKES IT EVEN STRONGER.

>> COULDN'T THE LEGISLATURE INSTEAD OF HAVING A RIGHT IN CANDIDATE AUTOMATICALLY GOING TO TO THE GENERAL ELECTION, AND THE

LEGISLATURE REQUIRED BY STATUTE
A RIDING CANDIDATE OF THE SAME
PARTY TO THE FIRST PLACE IN THE
PRIMARY AS OPPOSED TO THE
GENERAL ELECTION?

>> IT COULD DO THAT BUT I DON'T
WANT TO GET INTO IS THAT BECAUSE
I DON'T WANT TO GIVE THIS TO THE
LEGISLATURE.

>> THE POINT IS THERE SEEMS TO
BE A LEGISLATIVE FIX FOR THIS SO
WHY SHOULD WE AS A COURT BE
ATTEMPTING TO REWRITE THE
CONSTITUTION WHEN THERE REALLY
IS A LEGISLATIVE FIX FOR WHAT
THE PROBLEM IS?

>> TWO THINGS.

FIRST, WITH REGARD TO THE
DEMOCRATIC CANDIDATE, IN THIS
SITUATION, WHAT YOU HAVE A YEAR
IS A SITUATION WHICH UNDER THE
CONSTITUTIONAL AMENDMENT HE IS
FROM THE SAME PARTY.

>> YOU ARE SAYING THE SAME
THING.

WE DON'T ACCEPT THE OPPOSITION,
IF SOMEBODY -- IF THERE IS --
WHETHER IT IS A LINE ATTACHED TO
A PERSON, IS ONLY CAN QUALIFY
FOR THE GENERAL ELECTION.

WHY IS IT WHAT JUSTICE PAULSON
SAYING ABSOLUTELY CORRECT,
THERE'S ALWAYS ACCUSATIONS OF
WHETHER A COURT IS BEING
ACTIVISTS OR LEGISLATOR IS IN
BLACK ROBES BUT IF THE
LEGISLATURE CAN SOLVE THE
PROBLEM TO FULFIL WHAT YOU ARE
SAYING THE INTENT OF THE VOTERS
WERE IN PASSING THIS AMENDMENT,
ISN'T THAT THE CLEANER WAY TO DO
IT?

MAYBE THERE ARE OTHER POLICY
REASONS ON BOTH SIDES THAT IT
CAN BE DISCUSSED SEND A DOZEN
SEEN THE OPPOSITION, YOU ARE
ASKING US TO GIVE IT THE MOST
NARROW DEFINITION WHEREAS
OPPOSITION IS SOMEBODY THAT
HEARING ON THE BALLOT IN A

GENERAL ELECTION, THE PERSON IS NOT WALKING IN THEIR UNOPPOSED, RIGHT?

THAT IS WHAT IT WAS PREVENTING, THE WE ARE NOT GOING TO HAVE A CHANCE TO VOTE ON ANYBODY IN THE GENERAL ELECTION SO YOU OUGHT TO LET EVERYONE VOTED THE PRIMARY FIFTH THERE'S ANOTHER ALTERNATIVE IN A GENERAL ELECTION THERE IS OPPOSITION.

>> I CANNOT DENY THAT THIS COULD BE FIXED BY THE LEGISLATURE BUT THE POINT IS A COUPLE THINGS.

>>, THE LEGISLATURE FIX IT?

>> THE SUGGESTION IS THAT IN THIS KIND OF SITUATION IF YOU WERE OF THE SAME PARTY AND YOU WORRY WRITING CANDIDATE, YOU HAD TO APPEAR ON THE PRIMARY BALLOT.

>> THE PROBLEM OF SOME CANDIDATE BEING PUT UP TO RUN IN THE GENERAL ELECTION AND AS A RIGHT IN, AND INDEPENDENTS OR BULL MOOSE PARTY OR WHENEVER RUNNING IN THE GENERAL WHICH IS GOING TO PREVENT THE PRIMARY FROM BEING UNIVERSAL PRIMARY.

>> THAT IS CORRECT.

THE ANSWER, THE SIMPLE ANSWER TO THE QUESTION IS IN THIS CASE I DON'T THINK IT MET THE CONSTITUTIONAL COMMAND BECAUSE HE WAS OF THE SAME PARTY.

THE COURT COULD FIND IN THIS NARROW CIRCUMSTANCES WHERE IT IS THE DEMOCRATIC PERSON RUNNING AS A RIDING, HE CAN'T DESTROY THE RIGHTS OF ALL THE OTHER VOTERS.

>> SEEMS TO ME THE STARTING POINT IS RECOGNITION THAT WE DID NOT WANT TO DISENFRANCHISE ANYONE, SO YOU HAVE TO LOOK AT THE PARAMETERS OF THE GENERAL ELECTION TO MAKE THAT DETERMINATION AND THAT IS WHY THIS AMENDMENT IS THERE SO THAT INDIVIDUALS WILL HAVE A RIGHT TO VOTE BECAUSE OF THEY DID NOT HAVE THAT RIGHT THE ELECTION

WOULD HAVE BEEN DECIDED IN THE PRIMARY.

ISN'T THAT WHAT THIS IS ABOUT? IT IS NOT ABOUT THE PRIMARY, IT IS A FIGHT ABOUT I NEED TO HAVE THE RIGHT TO VOTE NO MATTER WHAT MY PARTY DESCRIPTION IS.

>> THE GENERAL ELECTION, THE PRIMARY WOULD BE THE GENERAL ELECTION.

>> BUT YOU DON'T HAVE THE RIGHT TO PARTICIPATE.

>> THAT IS THE REASON.

>> THE REASON IS HAVING IT FOR THE GENERAL ELECTION OF IT SOMEONE IS OUTSIDE THE PARAMETERS OR THE PRIMARY, ANYONE IN THAT CATEGORY SHOULD BE ABLE TO SATISFY WHAT THE PROBLEM IS SO PEOPLE CAN PARTICIPATE IN VOTING.

>> THAT IS WHY JUSTICE LEWIS, ARGUMENT IS IF YOU WOULD GET THE UNIVERSAL PRIMARY AMENDMENT AND TREAT IT AS IT WAS MEANT TO BE TREATED IN THESE RIGHT IN CANDIDACIES ARE NOT, QUOTE, OPPOSITION.

IT IS THROUGH I AM TAKING A DEFINITION OF OPPOSITION THAT IS BOTH REAL, PRACTICAL AND CONSISTENT WITH THE INTENT OF THE AMENDMENT WHEN THE AMENDMENT WAS ENACTED.

>> WHEN THE AMENDMENT WAS ADOPTED, PROPOSED AND ADOPTED DID WE HAVE PROVISIONS OF LAW REGARDING RIGHT IN CANDIDACY?

>> YES.

>> NOT LIKE SOMETHING THAT DEVELOPED AFTER IT.

IT PUZZLES ME WHY THIS WOULD HAVE BEEN BECAUSE IT IS A PRETTY OBVIOUS FLAW.

A LOT OF THINGS ARE OBVIOUS IN HINDSIGHT BUT IT SEEMS TO ME TO BE A PRETTY OBVIOUS PROBLEM WITH THE AMENDMENT.

>> I DON'T THINK IT IS SO MUCH A PROBLEM WITH THE AMENDMENT AS IT

IS WITH THE WORD OPPOSITION.
>> THAT IS NOT TRUE BECAUSE
SOMEONE CAN PUT UP AN
INDEPENDENT REPUBLIC AND THAT IS
ALMOST A PHANTOM CANDIDATE AND
DESTROY THE PURPOSE.

I DON'T THINK IT IS THE FACT
THAT A PERSON IS A DEMOCRAT OR
REPUBLICAN BUT MOST PEOPLE DON'T
THINK WRITING CANDIDATES HAVE
ANY CHANCE OF WINNING AND YET
ONE PERSON CAN DESTROY THE
EFFECT OF THE UNIVERSAL PRIMARY
AMENDMENT WHETHER THEY ARE
INDEPENDENT OR DEMOCRATS OR AS
JUSTICE KENNEDY SAID, SOME OTHER
PARTIES THAT ARE NOT YET KNOWN
TO EXIST.

>> WHEN ONE PERSON DESTROYS THE
RIGHT TO VOTE OF THOUSANDS OF
PERSONS.

>> THINK ABOUT IT.
IN THE GENERAL ELECTION EVERYONE
THAN HAS AN OPPORTUNITY TO VOTE
FOR EITHER OF THOSE CANDIDATES.
EVEN THOUGH ONE MAY BE A BRIGHT
IN CANDIDATE, EVERYONE THEN GETS
THE RIGHT TO VOTE ON THOSE TWO
PEOPLE.

FOR OR AGAINST.

>> IS THAT --

>> THERE'S A LINE.

IF THERE'S MORE THAN ONE RIGHT
IN CANDIDATE THERE'S ONLY ONE
LINE.

ONLY ONE LINE.

ONE BLING LINE.

>> THAT IS BECAUSE YOU CAN ONLY
VOTE FOR ONE.

>> THERE WERE FIVE DEMOCRATIC
CANDIDATES, AND IT DEPRIVED THE
PEOPLE FROM SELECTING WHICH OF
THOSE FIVE THEY WILL VOTE FOR,
NOT THAT ONE IS ELECTED AND THEY
ALL CAN GET IN THE GENERAL
ELECTION AND VOTE FOR, MIGHT NOT
LET ANYONE VOTE FOR THE OTHER
ONE BUT PERHAPS THEIR CANDIDATE
OF CHOICE IS ONE THAT LOST AND
THEY WON'T HAVE A CHANCE TO VOTE

ON THAT PERSON.

>> IT IS A GENERAL ELECTION.
THAT PRIMARY IS THE GENERAL
ELECTION.

LET ME SAVE THE REST OF MY --
ONE SECONDS.

>> I WILL GIVE YOU AN EXTRA.
YOU CAN USE THAT MOST OF YOUR
TIME.

>> MEMBERS OF THE COURT, I AM
MARK HERRON, WITH ME IS ROBERT
VAUGHAN AND I WOULD LIKE TO
FOCUS BRIEFLY ON THE
CONSTITUTIONAL ISSUE WHICH IS
WHY WE ARE HERE.

AS I UNDERSTAND IT THERE IS CASE
LAW, SIGNIFICANT CASE LAW WHICH
SAYS NO STATUTE CAN ADD TO OR
TAKE AWAY FROM THE
QUALIFICATIONS SET FORTH IN THE
CONSTITUTION, ARTICLE 8 OF
SECTION 1 A TALKS ABOUT
RESIDENCY OF COUNTY
COMMISSIONERS.

THIS COURT CONSTRUING THE SAME
LANGUAGE IN THE GRASSY CASE AS
IS BEING CONSTRUED IN THIS CASE,
HELD AS YOU ALL HAVE NOTED
PREVIOUSLY THAT YOU ESTABLISH
RESIDENCY AT THE TIME OF THE
ELECTION, NOT AT THE TIME YOU
FILE YOUR OATH OF CANDIDACY.

>> ISN'T THE PRESIDENT ON THAT
LITTLE SHAKY?

IN GRASSY, I REALIZE NOW IT
WASN'T EXACTLY THE SAME
PROVISION IN THE CONSTITUTION
THAT WAS BEING CONSTRUED THERE
BUT THERE IS NO REASONING IN
EXPLAINING THIS CONCLUSION OR
RESTATEMENT WE MADE THE WE
CONSTRUE THIS AS REQUIRING
RESIDENCY AT THE TIME OF THE
ELECTION.

IS TRUE THAT WE SUBSEQUENTLY
FOLLOW THAT PRECEDENT IN MENDEZ
BUT IT IS AN UNUSUAL SITUATION
BECAUSE THE MAJORITY OF THE
COURT ACTUALLY JOINED IN
CONCURRENCE THAT BUT FOR THAT

PRECEDENT, THEY WOULD REACH A DIFFERENT DECISION.

>> I UNDERSTAND THERE WAS A CONCURRING OPINION BY JUSTICE WELLS THAT SAID THEY WOULD LIKE TO WRITE A ON A CLEAN SLATE BUT THAT IS ALSO TELLING YOU THE SLATE WASN'T CLEAN, THERE WAS PREEXISTING PRECEDENT IN THIS STATE FOR THE HOLDING YOU ESTABLISH RESIDENCY OR AT THE TIME OF THE ELECTION UNLESS THERE'S A SPECIFIC OTHER PROVISION IN THE CONSTITUTION SAYS OTHERWISE THIS PROVISION, THIS I DIAZ EXTENDED TO COUNTY COMMISSIONERS, SHERIFFS, ALL SCHOOL BOARD OFFICIALS, ALL SORTS OF OFFICERS WHOSE QUALIFICATIONS ARE SET FORTH IN THE CONSTITUTION.

JUSTICE KENNEDY, I DON'T THINK THE POSITIONS SHAKY.

I THINK THE COURT WAS CLEAR THEY KNEW WHEN THEY WANTED TO DO NOT WITHSTANDING FOUR MEMBERS HAD THIS OTHER OPINION.

>> WOULD YOU AGREE WITH THE SEGMENT THAT THE STRENGTH OF A PRECEDENT IS AT LEAST EFFECTIVE TO SOME EXTENT BY THE REASONING THAT IS USED TO SUPPORT IT? WEATHER THERE IS ANY REASONING NEEDS TO SUPPORT IT.

IF YOU HAVE A CLOSER DECISION WHICH REALLY DOESN'T EXPLAIN ANY REASONING TO REACH THAT RESULT THAT MIGHT BE A PRECEDENT THAT WOULD BE MORE SUBJECT TO RE-EXAMINATION THAT A PRECEDENT WHERE THE COURT HAD SHOWN REASON THROUGH QUESTION TO WHICH A RESULT.

>> I AM NOT NECESSARILY CONVINCED OF THAT BECAUSE YOU ARE THE COURT AS ANOTHER LAWYER TOLD YOU ON MOST OCCASIONS AND I CAN'T EXPLAIN HOW THE COURT GOT TO DO WHAT THEY DID IN THE GRASSY CASE.

I CAN ONLY TELL YOU AS OF LITTER
STANDING HERE THAT IT IS THE
SAME LANGUAGE OF THE
CONSTITUTION, THE SAME ISSUE AND
I WOULD THINK THIS COURT NEEDS
TO BE BOUND BY ITS PRESIDENTS
NOTWITHSTANDING THAT A
SUBSEQUENT COURT THINKS IT MAY
NOT HAVE BEEN EXPLAINED IN
SUFFICIENT DETAIL.

WITH RESPECT TO THE ISSUE OF
OPPOSITION IN AN ELECTION IS THE
LEGISLATURE THAT HAS
SPECIFICALLY STATED THAT RIGHT
IN CANDIDATES ARE OPPOSITION IN
THE GENERAL ELECTION AND THAT IS
IN SECTION 101152 B.

AS MEMBERS OF THE COURT MAY HAVE
SUGGESTED THROUGH THEIR
QUESTIONING THE REMEDY FOR THIS
SITUATION IS NOT HERE IN
DETERMINING OR SECOND-GUESSING
WHAT THE CONSTITUTIONAL
PROVISION COMMISSION MEANT BY
OPPOSITION IN THE GENERAL
ELECTION.

THE STATUTE EXISTED PRIOR TO IS
THAT.

WOULD ASSUME THE CONSTITUTIONAL
PROVISION COMMISSION KNEW WHAT
THEY'RE TALKING ABOUT WHEN THEY
USED THE WORDS OPPOSITION IN THE
GENERAL ELECTION.

>> IT SEEMS TO ME THAT TERM IS
PRETTY CLEAR.

YOU HAVE ANOTHER CHOICE IN THE
GENERAL ELECTION.

>> AT LEAST TWO COURTS HAVE SAID
WHEN FACED WITH THIS EXACT ISSUE
PREVIOUSLY IN THOSE TWO COURT
SKULL WAS A FEDERAL DISTRICT
COURT IN SOUTHERN DISTRICT AND
CAME TO THE SAME CONCLUSION AND
THE OTHER WAS THE THIRD D.C. A
FIT CAME TO THIS CONCLUSION IN
THIS NIGHT IS A CASE.

THESE ARE THE WORDS THE
LEGISLATURE USED, WE WON'T
SECOND-GUESS LEATHER RIDING
CANDIDATE IS SUCCESSFUL, THE

WORDS OF THE STATUTE, IN THE
OPPOSITION OF THE GENERAL
ELECTION A WRITING CANDIDATE IS
OPPOSITION IN THE GENERAL
ELECTRIC.

>> THE LEGISLATURE COULD FIX
THIS BY HAVING A WRITING
CANDIDATE OF THE SAME POLITICAL
PARTY BE PART OF THE PRIMARY?

>> I BELIEVE THEY CAN.

>> IF THEY CAN DO IT, IT MAKES
SO MUCH SENSE BECAUSE IT JUST
MAKES SO MUCH SENSE.

>> I BELIEVE THEY CAN.

I HAVE THOUGHT ABOUT THIS OVER A
SERIES OF YEARS AND I BELIEVE
THE LEGISLATURE AND CRAFT
LANGUAGE TO FIX THIS.

THEY CAN FIX IT THROUGH A
CONSTITUTIONAL AMENDMENT AND WE
KNOW THE CONSTITUTION REVISION
COMMISSION IS OVER THE HORIZON A
LITTLE BIT AND IF THEY ARE
CONCERNED ABOUT THEIR INTENT NOT
BEING FOLLOWED THEY CAN TEN AS
WELL AND SUGGEST --

>> HOW WOULD THE LEGISLATURE
LEGISLATIVELY EFFECTS THIS ISSUE
OF SOME NON AFFILIATED PERSON,
NO PARTY, NO PARTY AFFILIATION
RUNNING AS A WRITING CANDIDATE?

>> WHEN YOU QUALIFY AS A WRITING
CANDIDATE YOU DO NOT STATE OR
PARTY AFFILIATION ON THOSE
QUALIFICATION PAPERS SO THIS
ISSUE ABOUT --

>> HOW DID THEY PUT THEM IN A
PRIMARY?

THE SOLUTION IS TO MOVE --.
THERE IS A LEGISLATIVE SOLUTION
TO MOVE THIS FELLOW TO A RIGHT
IN THE PRIMARY BUT IF THERE
IS NO PRIMARY GOING ON FOR THAT
PERSON, HOW DO YOU, HOW DO YOU
GET THEM OFF OF THE GENERAL
ELECTION BALLOT?

>> AGAIN I THINK YOU CAN SOLVE
IT WITH THE STATUTE BY SAYING IF
YOU HAVE TWO OR MORE CANDIDATES
OF ONLY ONE POLITICAL PARTY

RUNNING FOR OFFICE AND SOMEBODY WANTS TO BE A RIGHT AND YOU PUT THAT CANDIDATE ON THE PRIMARY BALLOT, YOU HAVE ALL THESE NON-PARTISAN OFFICE IS NOW ON THE PRIMARY BALLOT, PUT THAT CANDIDATE AS A RATING CANDIDATE ON THE PRIMARY BALLOT AND EVERYBODY CAN VOTE IN THAT PRIMARY ELECTION LIKE THEY CAN VOTE FOR YOUR SCHOOL BOARD A JUDICIAL CANDIDATES, IT MAY DRAW MORE PEOPLE TO THE POLLS.

>> A PRIMARY ELECTION INSTEAD OF PRIMARY ELECTIONS WHICH ARE GENERALLY WHATEVER PARTY IT IS, YOU HAVE A PRIMARY ELECTION WITH MULTIPLE PARTIES.

>> RIGHT.

NOT MULTIPLE PARTIES, YOU HAVE A PRIMARY ELECTION WITH ALL THE CANDIDATES OF A POLITICAL PARTY AND THE RIGHT IN CANDIDATE.

>> YOU CAN HAVE MULTIPLE RIGHT INS.

SPEECH SEEMS TO ME THERE'S ANOTHER INHERENT PROBLEM HERE WITH YOU AND I MAY BE REGISTERED THE SAME PARTY THAT OUR BELIEFS MAY BE SO FAR APART AND I AM REALLY NOT -- THIS CONCEPT OF FREE TO POLITICAL PARTIES IN THIS COUNTRY I THINK IS RAPIDLY LEAVING US.

>> I TEND TO AGREE WITH YOU BUT I AM JUST SUGGESTING THAT THERE MAY BE WAYS TO DO IT, WHEN THEY CAN OR NOT I DON'T KNOW.

THERE ARE A LOT OF POLICY ISSUES LIKE YOU ARE TALKING ABOUT BUT BECAUSE OF ALL THE NON-PARTISAN OFFICE IS THAT BEING PUT ON THE AUGUST PRIMARY EVERYBODY IS BEING INVITED AT LEAST TO SHOW UP TO THAT ELECTION AND VOTE SO BASICALLY BECAUSE IT SAYS IN THE CONSTITUTION, NOT OF THEIR OF TWO DIFFERENT PARTIES, IT JUST SAYS I THEY OPPOSITION AT THE GENERAL ELECTION?

THAT MAY LEAD THE LEGISLATURE TO HAVE SOME FLEXIBILITY TO DEFINE WHAT THAT TERM IS.

JUST ME SPECULATING.

I MENTION THE POINT THAT RIGHT IN CANDIDATES EVEN THOUGH WE HEARD ARGUMENT THAT MR. FRANCOIS IS A DEMOCRAT IS NOT ONE OF THE THINGS HE HAS TO ATTEST TO.

>> EXPLAIN TO ME WHEN DOES A PERSON WHO IS A RIGHT IN CANDIDATE HAVE TO QUALIFY TO BE A RIGHT-WING CANDIDATE?

>> THEY QUALIFY AT THE SAME TIME AS THE OTHER CANDIDATES SO LET'S SAY THE QUALIFYING PERIOD IS IN JUNE FOR THIS TYPE OF OFFICE, I DON'T KNOW, JUDICIAL CANDIDATE USUALLY IN MAY BUT SAY IT IS IN JUNE SO DURING QUALIFYING WEEKS THE PERSON JUST LIKE EVERY OTHER CANDIDATE, PARTISAN CANDIDATE, NONPARTISAN CANDIDATE, WHATEVER, SHOWS UP AND FILES QUALIFYING PAPERS WITH THE FILING OFFICE.

>> I WANT TO BE A WRITING CANDIDATE.

>> THEY HAVE TO FILE THE OF THE OFFICE TO THE WRITING CANDIDATE AND OPEN A CAMPAIGN ACCOUNT.

>> HAVE TO PAY?

>> NO FILING FEE BECAUSE YOU DON'T GET YOUR NAME ON THE BALLOT.

>> YOU DON'T HAVE TO GO THROUGH, SIGN IN --

>> YOU HAVE TO DO THE FINANCIAL DISCLOSURE FORM.

>> SO MANY PETITIONS.

>> NO, NO, NO BECAUSE YOU GET BALLOT ACCESS BECAUSE THE TRADE OFF IS YOU ARE A LINE ON THE BALLOT, BUT YOU ARE OPPOSITION IN THE GENERAL ELECTION.

>> HOW MUCH OF THAT, THE RIGHT TO BE A WRITING CANDIDATE, IS THAT CONSTITUTIONAL RIGHT OR STATUTORY RIGHT?

>> IN THIS STATE AT THIS TIME IT IS A STATUTORY RIGHT.

>> WE ARE LOOKING AT, IT SEEMS LIKE THERE ARE SOME INHERENT PROBLEMS WITH THE HOLE RIGHT IN SYSTEM.

WHY ISN'T IT APPROPRIATE IF THAT IS THE ISSUE, MAYBE THIS IS TO LET THE LEGISLATURE FIX THAT? AND YOU ARE ARGUING THAT THIS SHOULD JUST, THE WE SHOULD BE AFFIRMING THE DISTRICT OF OPINION.

>> YES AND STAY ON THE CONSTITUTIONAL ISSUE AND NOT DEAL WITH I THINK THE ISSUE OF THE YOU BE A.

>> BUT THAT IS THE ELEPHANT IN THE ROOM.

I HAVE WONDERED AS EACH DECISION HAD COME OUT HOW ONE PERSON COULD ESSENTIALLY DESTROYED THE EFFECT OF WHAT THE VOTER'S INTENT WAS IN PASSING THIS AND IT COULD BE ONE VOTER, REPUBLICAN OR INDEPENDENT, THAT IS JUST DONE TO PREVENT THE EPA FROM -- THE PURPOSE BEING FULFILLED.

>> THAT COULD BE A WAY OF LOOKING AT IT BUT THERE ARE OTHER PURPOSES WHY PEOPLE BECOME RIGHT IN CANDIDATES OTHER THAN TO DESTROY OTHER PEOPLE'S RIGHT TO VOTE WHICH I DON'T CONCEDE BECAUSE AS THE TWO CASES AS PREVIOUSLY DISCUSSED, THIS EXACT QUESTION HAVE DETERMINED THE PEOPLE DO HAVE THE RIGHT TO VOTE ON THE CANDIDATE AT THE GENERAL ELECTION.

EVERYBODY HAS THE OPPORTUNITY.

>> IT WOULD SOLVE PART OF THE PROBLEM IF THEY HAVE TO GO IN THE PRIMARY OF THEIR CHOICE. WE'RE TALKING DEMOCRATIC BROWARD COUNTY SO ESSENTIALS WE WHOEVER, UNLESS THINGS CHANGE, YOU CAN TELL ME IF THINGS CHANGE, DEMOCRATS, ONE OF THE FEW PLACES DEMOCRATS RULE.

THE IDEA THAT ANOTHER DEMOCRAT

COULD KIND OF ACTUALLY HAVE A SUPERIOR POSITION TO THE OTHER FOUR DEMOCRATIC CANDIDATES. WHO ARE RUNNING, AND RAISE MONEY AND HAVE A FILING FEE.

>> I AM NOT GOING TO SAY THERE ARE NO PROBLEMS WITH THIS PROVISION OF A STATUTE BUT AGAIN IT IS TOTALLY CONSISTENT IN ITS LANGUAGE WITH THE YOU VA. COURTS HAVE SAID THAT ON AT LEAST WE 2 OCCASIONS, NOT THIS COURT AND OTHER COURTS HAVE SAID THAT BEFORE AS WELL AS THE SOUTHERN DISTRICT.

WITH RESPECT TO MY ARGUMENT I WOULD ASK YOU TO AFFIRM THE DECISION AND DECLARE SECTION 990615 UNCONSTITUTIONAL IN THIS CASE AS WELL AS THE OTHER CASE IN WHICH YOU HELD IN ABEYANCE OF PENDING ARGUMENTS IN THIS CASE.

>> TO ADD TO THE DIFFICULTY HERE, MR. FRANCOIS WITHDREW BEFORE THE REELECTION. THERE WAS A BLANK LINE BUT THERE WAS NO MR. FRANCOIS IN THE ELECTIONS SO THAT SHOWS HOW TERRIBLE THIS KIND OF SITUATION IS.

JUSTICE KENNEDY, TWO YEARS AGO IN KELLY PURSES BROWARD COUNTY, A CASE I LOST IN THIS COURT BECAUSE THE COURT RECEDED FROM PRIOR PRECEDENT.

>> WE HAVE BEEN KNOWN TO DO THAT ON OCCASION.

>> IT IS 947503, MAY 10TH, 2012, SO THERE IS PRECEDENT, THAT WOULD TAKE CARE OF GRASSY. IT WOULD NOT TAKE CARE OF THE OVERALL PROBLEM.

THE TWO CASES THAT WERE REFERRED TO BY MR. HELEN, THERE WERE REPUBLICAN CANDIDATES ALSO WHO WERE WRITING CANDIDATE SO IT WAS NOT A PURE DEMOCRATIC RIGHT IN. THOSE CASES ARE DISTINGUISHABLE. THEY DIDN'T HAVE JURISDICTION AND SAID OF I DID HAVE

JURISDICTION I WOULDN'T ADDRESS THIS BECAUSE IT IS FOR THE FLORIDA COURTS TO ADDRESS AND BASICALLY WOULD HAVE INVOKED EXTENSIONS OF 55,000 PEOPLE WERE DISENFRANCHISED IN THIS ELECTION.

OPPOSITION, UNDERSTAND THE ARGUMENTS ABOUT THE USE OF THE WORD OPPOSITION AND HOW THEORETICALLY THERE IS OPPOSITION BUT IN REALITY THERE'S NOT OPPOSITION SO WE THINK FIRST THAT THE COURT SHOULD REcede FROM GRAF'SY AND TOLD THE RESIDENCE REQUIREMENT IS ALL RIGHT IN THIS SITUATION, IT WOULD HAVE KNOCKED MR. FRANCOIS HOW ABOUT MUCH IN THIS CASE BUT WOULD NOT HAVE SOLVED THE MAJOR PROBLEM WHICH IS THE ONE WE BRING TO THIS COURT. THANK YOU.

>> ARGUMENTS?

THE COURT IS IN RECESS.