

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
THE FIRST CASE OF THE DAY IS THE
OPINION TO THE ATTORNEY GENERAL.
YOU MAY PROCEED.
>> GOOD MORNING.
MAY IT PLEASE THE COURT, ALLAN
WINDSOR ON BEHALF OF THE
ATTORNEY GENERAL AND WE ARE HERE
ON THE ATTORNEY GENERAL'S
REQUEST FOR AN OPINION.
MR. MILLS IS HERE ON BEHALF OF
THE SPONSOR AND HE'LL BE ARGUING
IN FAVOR OF BALLOT PLACEMENT.
I WILL RETURN AND PRESENT THE
ARGUMENTS OF THOSE WHO HAVE
FILED BRIEFS OPPOSING, INCLUDING
THE ATTORNEY GENERAL, THE
FLORIDA HOUSE OF REPRESENTATIVES
AND THE FLORIDA SENATE AND MR.
NORDBY IS HERE ON BEHALF OF THE
LEGISLATURE.
MR. †BELL IS HERE ON BEHALF OF
THE FIVE OTHER PARTIES WHO HAVE
FILED A BRIEF, THE FLORIDA
CHAMBER OF COMMERCE, MEDICAL
ASSOCIATION, POLICE CHIEFS
ASSOCIATION, SHERIFFS
ASSOCIATION AND SAVE OUR SOCIETY
FROM DRUGS.
>> THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS JOHN MILLS, COUNSEL FOR
THE PROPONENT.
WITH ME AT COUNSEL TABLE IS TIM
MCLENNAN.

TODAY THIS COURT IS ASKED TO ADDRESS TWO SPECIFIC ISSUES. THAT IS, DOES THE PROPOSED AMENDMENT MEET THE SINGLE SUBJECT RULE, AND DOES THE PROPOSED AMENDMENT AND ITS TITLE AND SUMMARY ACCURATELY PORTRAY WHAT ITS ACTUAL EFFECTS ARE TO THE VOTERS OF FLORIDA.

IF I MAY, I'LL ADDRESS THE ISSUE OF TITLE AND SUMMARY FIRST.

>> WOULD YOU GO DIRECTLY TO THE HEART OF THIS, THE TITLE AND SUMMARY, TALKING ABOUT THE DEBILITATING KINDS OF CONDITIONS, YET THE ACTUAL BILL OR THE LANGUAGE CONTAINS SUCH A BROAD CATCHALL THAT ANYTHING BASICALLY THAT A DOCTOR PRESCRIBES IT FOR IS WHAT IT SEEMS TO BE, WITHOUT THE HOOK OR THE NEXUS, THE DEBILITATING ASPECT OF THE DISEASE OR CONDITION.

>> YES, SIR.

THE ISSUE OF THE ACTUAL DETERMINATION OF WHO MAY RECEIVE TREATMENT IS DETERMINED IN BOTH THE DEFINITION AND THE DEFINITION OF HOW TO CERTIFY A PARTICULAR PATIENT.

SO PUTTING THAT IN CONTEXT, IF I WERE A PATIENT OR IF A PATIENT WERE IN PAIN, WERE RECEIVING TREATMENT, THEY WOULD GO TO A DOCTOR, SAY MY CONDITION, DOCTOR, I HAVE THROAT PAIN, I CAN'T SLEEP, I'M HAVING A PROBLEM EATING.

WHAT ARE MY OPTIONS?

DOCTOR SAID, WELL, PERHAPS WE CAN DO OXYCODONE.

THAT'S AN OPTION.

AND IF THIS AMENDMENT WERE IN EFFECT, SAY YOU COULD CONSIDER MEDICAL MARIJUANA.

NOW, LET'S LOOK AT FIRST IN CERTIFICATION I MUST LOOK AT YOUR CONDITION, WHICH IS THE ISSUE YOU'RE DISCUSSING.

SO IF I HAVE ONE OF THE LISTED CONDITIONS, THEN I PARTIALLY QUALIFY BECAUSE I STILL THE DOCTOR MUST ASSESS IN HIS PROFESSIONAL JUDGMENT THAT THE BENEFIT OUTWEIGHS THE RISK. SAY, FOR EXAMPLE, IF I WERE IN CANCER TREATMENT, BUT I WASN'T IN PAIN AND THERE WAS NOTHING THAT THOSE PARTICULAR DRUGS COULD DO FOR ME. THE BENEFITS WOULD NOT NECESSARILY OUTWEIGH THE RISKS. SO THAT LIST IS A STARTING POINT, AND THOSE ARE DISEASES. THERE IS AN ADDITIONAL CLAUSE AND THAT CLAUSE IS OR CONDITIONS AS DETERMINED. NOW, THE SPONSORS WERE FOCUSED ON TWO THINGS: THE PATIENT AND HOW BEST TO MAKE THAT DETERMINATION FOR A PATIENT, WHICH IS VERY MUCH FOCUSED ON PHYSICIAN DECISION. SO A LIST ALONE WOULD NOT BE ADEQUATE. SO THE ISSUE IS HOW DOES THIS CLAUSE FIT. THE CLAUSE FITS IT IS IN THE DEFINITION OF DEBILITATING MEDICAL CONDITIONS. YOU CAN'T READ A CLAUSE WITHOUT READING IT IN CONTEXT. AS A MATTER OF FACT, IF YOU GO TO CONSTITUTIONAL INTERPRETATION 101, IT'S TEXT AND CONTEXT. SO YOU HAVE TO READ THAT CLAUSE IN THE CONTEXT OF THE PROVISION. IT IS THE DEBILITATING MEDICAL CONDITION TERM IS USED IN SEVERAL PLACES, MOST PARTICULARLY AND I THINK IMPORTANTLY IN SECTION 9, WHICH IS IF I'M A CERTIFYING PHYSICIAN, I MUST DETERMINE YOU HAVE A DEBILITATING MEDICAL CONDITION AND THAT THE MEDICAL BENEFITS OUTWEIGH THE RISKS. >> YOU SEEM TO WANT TO INCLUDE THE WORDS "OR OTHER SIMILAR

CONDITIONS," BUT THAT'S NOT THERE.

>> WELL, BECAUSE OF THE CONTEXT, YOUR HONOR, THOSE WORDS WOULD ACTUALLY NOT BE NECESSARY.

>> WELL, IT SEEMS LIKE THE WAY I READ IT, IT WOULD SEEM TO BE, YOU KNOW, IF A STUDENT'S JUST STRESSED OVER EXAMS AND THEY GO IN AND SEE A DOCTOR AND THEY SAID, YOU KNOW, I'M REALLY STRESSED OUT.

I'VE GOT SOMETHING I CAN HELP YOU WITH AND PRESCRIBES MARIJUANA.

WOULDN'T THAT BE INCLUDED IN THIS?

>> NO, YOUR HONOR, AND THERE ARE NOT IN MY OPINION.

AND OF COURSE THE ISSUE IS NOT MY OPINION.

THE ISSUE IS THE OPINION OF A DOCTOR WHO HAS PROFESSIONAL RESPONSIBILITIES TO ASSESS A CONDITION.

AND YOU MUST READ INTO THIS CONDITION.

I UNDERSTAND WHAT YOU'RE SUGGESTING AND I UNDERSTAND THE OPPONENT'S ARGUMENT, THAT THIS CONDITION AND THE TERMS CONDITIONS RELATES TO THE REST OF THE STATUTE.

YOU'VE DONE THAT MANY TIMES.

WHEN THERE ARE DIFFERENT CLAUSES THAT RELATE, YOU READ THEM BOTH.

>> WE SEEM TO BE IN AN INTERESTING DILEMMA, PERHAPS, WHICH IS THE INTENT OF THIS AMENDMENT IS NOT TO HAVE AN OPENENDED USE OF MARIJUANA FOR MEDICAL PURPOSES FOR ANYTHING. AND YOU STATE THAT I GUESS AS THE DRAFTER OR WHOEVER DRAFTED IT, THAT THE INTENT WAS NOT THAT AND THAT YOU GOT TO READ 1, ONE SECTION 1 IN CONJUNCTION WITH SUBSECTION 9.

SO I WAS LOOKING TO SEE IF THERE ARE ANY CASES WHICH REALLY THE

SUMMARY IS POTENTIALLY MISLEADING IF THIS IS MEANT TO BE AN OPENENDED THE DOCTOR CAN JUST DESCRIBE IT LIKE YOU TAKE SOMETHING FOR A HEADACHE OR VALIUM FOR STRESS.

OR IS IT MORE NARROW?

HOW DO WE IF SO WE'RE INTO A CONSTITUTIONAL AMENDMENT THAT MAY ITSELF NOT BE ENTIRELY CLEAR AS TO THE INTENT.

DO WE HAVE ANY CASES WHERE THE INTENT IS TO BE YOU'RE SAYING THE INTENT WAS TO BE MORE NARROW THAN THE OPPONENTS OF THIS, BUT WE'RE READING IT AND IF YOU JUST READ SUBSECTION 1, IT DOESN'T SAY "OR OTHER SIMILAR CONDITIONS."

IT SEEMS TO JUST BE FREESTANDING AS TO THE BENEFITS HAVE TO OUTWEIGH THE RISKS.

SO DON'T WE FIRST HAVE TO DECIDE WHAT THE INTENT OF THE CONSTITUTIONAL AMENDMENT IS BEFORE WE CAN DECIDE WHETHER THE SUMMARY IS MISLEADING.

>> YES.

I UNDERSTAND.

>> DO WE HAVE ANY CASES

>> YOUR JOB IS TO COMPARE.

>> DO WE HAVE ANY CASES, THOUGH, FIRST WHERE THE COURT FIRST SAYS, WELL, WE'RE GOING TO ACCEPT I KEPT ON THINKING WE HAD ONE.

I JUST COULDN'T FIND T. WE'RE GOING TO HAVE TO ACCEPT WHAT THE PROPONENT SAYS THE SCOPE IS, WHICH IS A NARROW SCOPE, NOT A BROAD SCOPE, AND THEN IT WOULDN'T BE MISLEADING BECAUSE THERE'S A REASONABLE INTERPRETATION WHICH YOU'RE ADVANCING THAT THE PROPONENTS DID NOT MEAN FOR THIS TO BE BROAD.

>> WELL, THE COURT CERTAINLY HAS THE RIGHT TO INTERPRET THE PROVISIONS.

>> WELL, DON'T WE HAVE TO I
GUESS THE QUESTION IS DON'T WE
HAVE TO IN THIS CASE?

>> YES.

YOU HAVE TO INTERPRET THE
PROVISIONS.

>> SO HOW DO WE DO THAT?

SO YOU'RE SAYING THAT IF WE WERE
HERE, SAY THERE WAS A DOCTOR
THAT WAS BEING PROSECUTED
BECAUSE HE HAD OR SHE HAD
PRESCRIBED MARIJUANA FOR
SOMEBODY WHO HAD ANXIETY OVER AN
EXAM AND THEY WERE BEING
PROSECUTED FOR THAT.

SOMEBODY WOULD BE HERE ARGUING,
WELL, NO, THAT DOCTOR COULD
PRESCRIBE IT FOR THAT BECAUSE
THE BENEFITS I THOUGHT I
DON'T THINK THERE ARE ANY RISKS
IN MARIJUANA SO I THINK I CAN
PRESCRIBE IT FOR JUST ABOUT
ANYTHING.

AND WE HAVE TO BE INTERPRETING
THE CONSTITUTIONAL PROVISION.

>> WELL, YOU WOULD.

AND IF YOU WERE IN THAT
POSITION, WHAT YOU WOULD DO IS
YOU WOULD EMPLOY ALL OF THOSE
STATUTORY CAN CANONS OF
INSTRUCTION.

>> YOU THINK B9 HAS TO BE
BECAUSE IF YOU READ JUST
SUBSECTION 1, YOU REALLY COME UP
WITH THE INTERPRETATION THE
ATTORNEY GENERAL HAS PUT ON IT.
BUT IF YOU LOOK AT 9, IT APPEARS
TO REALLY NARROW THE SCOPE OF
WHAT CAN BE DONE.

>> I THINK YOU HAVE TO READ
YES.

YOU HAVE TO READ B9 AND YOU HAVE
TO READ EVEN THAT SUBSECTION.
AND THERE'S THE OLD LEGISLATIVE
INTERPRETATION OF GENERIC.
GENERICALLY THE TOPICS THAT ARE
ADDRESSED IN THAT DEFINITION
SECTION ARE SERIOUS DISEASES.

IT IS COUNTERINTUITIVE

>> BUT ISN'T THAT LIST SEPARATED

BY AN OR FROM THE LAST FOUR?

>> IT IS.

>> WHICH SAYS "OTHER CONDITIONS FOR WHICH A PHYSICIAN BELIEVES" AND IT DOESN'T "BELIEVES THAT THE MEDICAL USE OF MARIJUANA WOULD LIKELY OUTWEIGH THE POTENTIAL HEALTH RISKS FOR A PATIENT."

IT SEEMS LIKE TO ME IF THE INTENT WAS TO ONLY INCLUDE CONDITIONS THAT WERE SIMILAR BECAUSE THEY WERE ALSO DEBILITATING, THAT THAT'S NOT THE WAY THE LANGUAGE WOULD BE, AS JUSTICE POLSTON SUGGESTED. IT SEEMS THERE WOULD HAVE BEEN SOME REFERENCE TO OTHER SIMILAR CONDITIONS.

BUT THAT'S NOT WHAT IT SAYS. SO I DON'T SEE HOW THAT CANON REALLY COMES INTO PLAY IN THIS PARTICULAR CONTEXT GIVEN THE STRUCTURE OF THIS.

WHY AM I WRONG?

>> EVEN IN PLAIN MEANING, WHICH IS THE MOST REMOVED AND MOST ISOLATED OF INTERPRETATIONS, YOU HAVE TO VIEW CONTEXT, HAVE TO VIEW CONTEXT.

AND THE CONTEXT ISN'T NECESSARILY JUST THE NEXT WORD. THIS CASE THIS COURT IN LOCALLYAPPROVED GAMING, WHICH WAS ANOTHER INITIATIVE, DEALT WITH INTERPRETATION OF A CLAUSE THAT IN FACT THE ATTORNEY GENERAL HAD ARGUED WAS MISLEADING BECAUSE ALL COUNTIES, THERE WERE 500,000, MUST HAVE CASINOS.

BUT THERE WAS ANOTHER CLAUSE THAT SAID THEY HAD TO VOTE. AND THIS COURT SAID YOU HAD TO READ THOSE TOGETHER TO UNDERSTAND WHAT WAS GOING ON. AND THE PRECEDENCE OF THIS COURT AND WE'RE TALKING ABOUT THE ISSUE OF FAIRLY INFORMING

VOTERS.

AGAIN, YOU HAVE TO LOOK AT THE TITLE AND SUMMARY AND THE ACTUAL TEXT AND INTERPRETATION.

AND THE TITLE AND SUMMARY HERE IS INCLUDES CERTAIN MEDICAL CONDITIONS AND DEBILITATING DISEASES.

>> WELL, IT SAYS DEBILITATING DISEASES AS DETERMINED BY A LICENSED PHYSICIAN.

>> AS DETERMINED BY A LICENSED PHYSICIAN, WHICH FRANKLY IS THE CORE OF THIS.

>> I LOOKED AT THE DICTIONARY DEFINITION OF DEBILITATING. THERE'S BOTH THE MEDICAL DEFINITION AS WELL AS THE WEBSTER.

AND IT DOESN'T AT FIRST I THOUGHT DEBILITATING MUST MEAN, AGAIN, YOU'VE GOT ALS AND YOU'RE JUST NOT AND APPARENTLY AND THAT'S SO THE IDEA THAT DEBILITATING I GUESS IT'S NOT SERIOUS DEBILITATING ILLNESSES.

>> DEBILITATING AND, BY THE WAY, ANOTHER STATE THAT HAD USED A SIMILAR DEFINITION TO WHAT WE HAVE IS MASSACHUSETTS, AND THEY'RE IMPLEMENTING REGULATION CONSISTENT WITH OUR INTERPRETATION AND THEY DEFINE DEBILITATING, TOO.

>> IN SUBSECTION 9 WHEN IT REFERENCES DEBILITATING MEDICAL CONDITION FOR THE DOCTOR TO CERTIFY, WOULD YOU NOT GO BACK TO THE DEFINITION PROVIDED WITHIN ITS CONSTITUTIONAL AMENDMENT?

>> WELL, YOU WOULD.

AND THEREFORE READING THE TWO IN CONTEXT, THAT'S REALLY ONE OF OUR MAJOR POINTS.

>> WE STILL GET BACK TO WHAT IT MEANS IN THE DEFINITIONAL CLAUSE OF B1, RIGHT?

>> IF YOU READ THIS IN CONTEXT AND IN CONJUNCTION WITH B9, AND

IF, AS THE OPPONENTS SUGGEST, YOU COULD DETERMINE THAT A THEN A CERTIFYING DOCTOR THAT THE BENEFITS OUTWEIGH THE RISKS AND THE BENEFITS OUTWEIGH THE RISKS AND THAT DOESN'T MAKE SENSE.

9 SAYS YOU HAVE TO CERTIFY A DEBILITATING MEDICAL CONDITION AND THAT THE BENEFITS OUTWEIGH THE RISK AND THAT'S

>> BUT THE WAY IT'S DRAFTED IN THE FIRST SECTION, IT SEEMS, AS YOU SAY, IF YOU HAD CANCER, THE DOCTOR COULD PRESCRIBE MEDICAL MARIJUANA EVEN THOUGH THEY DIDN'T DETERMINE THE BENEFITS OUTWEIGHED THE RISKS.

YOU CAN'T THE WAY THIS IS I DON'T WANT TO, YOU KNOW, SHOOT THE MESSENGER HERE, SO TO SPEAK, BUT THIS DEFINITION, WHEN IT SAYS "OR OTHER CONDITIONS WHERE THE BENEFITS OUTWEIGH THE RISKS," BENEFITS OUTWEIGH THE RISKS DOESN'T APPEAR TO, IF YOU JUST LOOK AT THAT, RELATE BACK TO THOSE CONDITIONS SUCH AS GLAUCOMA, VARIOUS DO YOU SEE WHAT DO YOU UNDERSTAND

>> YES.

I'M TRYING TO SUGGEST THAT YOU ACTUALLY NEED TO LOOK AT SUBSECTION 9, WHICH IS WHERE THESE DECISIONS ARE GOING TO BE MADE.

THAT CERTIFICATION WHICH IS WRITTEN, THE PHYSICIAN WILL HAVE TO SAY WHAT THAT DEBILITATING CONDITION IS AND REPORT THAT TO THE DEPARTMENT OF HEALTH AND THAT THE BENEFITS OUTWEIGH THE RISKS AND THAT'S TWO SEPARATE DECISIONS.

>> LET ME ASK YOU A QUESTION. RIGHT NOW WE DO HAVE DOCTORS CAN PRESCRIBE A LOT OF MEDICATIONS THAT ARE CONTROLLED SUBSTANCES UNDER OUR CRIMINAL LAWS.

AND I'M JUST WONDERING HOW THIS ONE FITS IN WITH ALL OF THESE OTHER SUBSTANCES THAT DOCTORS CAN PRESCRIBE.

AND ARE THEY BOUND BY THE SAME KIND OF LANGUAGE THAT WE HAVE IN THIS PROPOSED CONSTITUTIONAL AMENDMENT?

>> DOCTORS THAT ARE PRESCRIBING CONTROLLED SUBSTANCES OR SECTION 2 OR CONTROLLED SUBSTANCES, THERE'S A PARTICULAR STATUTE, 456, THAT ACTUALLY TELLS THEM HOW TO CONDUCT A PHYSICAL EXAMINATION.

IF YOU'RE PRESCRIBING CONTROLLED SUBSTANCES, YOU ACTUALLY HAVE TO USE A DIFFERENT KIND OF PAPER AND YOU HAVE TO REPORT IT.

SO WHAT YOU ONE OF THE MAJOR ISSUES IN TRYING TO REDUCE THE ABUSE OF OXYCODONE WAS REPORTING TO THE DEPARTMENT OF HEALTH.

THAT'S ONE OF THE PROVISIONS THAT'S INCLUDED HERE, IS THAT THE DOCTOR IN THE CERTIFICATION PROCESS REPORTS TO THE DEPARTMENT OF HEALTH.

ONE THING THAT'S INCLUDED HERE THAT ISN'T INCLUDED IS THE ACTUAL PATIENT IDENTIFICATION.

THE PATIENT HAS TO OBTAIN IDENTIFICATION FROM THE DEPARTMENT OF HEALTH.

SO THEY'RE DISTINCT TRACKS. AND THE DOCTOR STILL HAS THE SAME OBLIGATION.

>> SO EVERY PATIENT UNDER THIS THAT IS PRESCRIBED MEDICAL MARIJUANA WILL BE KNOWN TO THE DEPARTMENT OF HEALTH AND FOR EACH PATIENT THE DOCTOR HAS TO FILL OUT ONE OF THESE CERTIFICATES.

>> THAT'S CORRECT.

>> SO THE AND, AGAIN, THIS GOES BACK TO I GUESS MY EARLIER QUESTION.

I DON'T KNOW IF YOU DIDN'T HAVE AN ANSWER.

HAS THERE BEEN A CASE INVOLVING A BALLOT TITLE AND SUMMARY WHERE THE FIRST ASPECT OF OUR DECIDING WHETHER THE TITLE AND SUMMARY WERE MISLEADING WAS TO CONSTRUE THE CONSTITUTIONAL AMENDMENT AND TWO DIFFERENT INTERPRETATIONS WERE GIVEN WHERE IF IT'S A BROAD YOU CAN JUST PRESCRIBE IT FOR A HEADACHE, IT'S POTENTIALLY MISLEADING, BUT IF IT'S MORE NARROW, IT'S NOT MISLEADING. HAVE WE SAID, WELL, IF YOU IF THE PROPONENTS ARE SAYING THIS IS THE WAY IT'S INTENDED AND THAT'S A REASONABLE INTERPRETATION, THEN THE BALLOT SUMMARY IS NOT MISLEADING. DO WE HAVE ANY CASES LIKE THAT?

>> WELL, YES.

GIVE YOU A COUPLE EXAMPLES. THERE ARE A WHOLE SERIES OF CASES THAT THIS COURT HAS REMOVED, GOING BACK TO THE ASKEW CASE DEALING WITH LOBBYING, THE ARMSTRONG CASE DEALING WITH DEATH PENALTY.

THESE WERE THE ISSUE OF WHETHER IT'S MISLEADING IS WHETHER THE TITLE AND SUMMARY ACTUALLY SERIOUSLY MISSTATE AND MISLEAD AN AVERAGE VOTER SO THEY WOULD NOT BE ABLE TO MAKE AN INTELLIGENT VOTE.

IN THOSE CASES, THEY'RE DIRECTLY MISLED.

THERE'S THE SLEW CASE WHICH DEALT WITH TAX AND BUDGET REFORM COMMISSION, WHERE THE ACTUAL LANGUAGE AND THE EFFECT OF THE LANGUAGE WAS THAT THERE WOULD BE A TAX BREAK FOR A YEAR, BUT THERE WOULDN'T BE PERMANENT AND THE TITLE AND SUMMARY SUGGESTED THERE WAS.

THERE'S THE TREATMENT AND REHABILITATION CASE, WHICH THIS COURT APPROVED, IS A PRETTY GOOD EXAMPLE OF AN ARGUMENT ABOUT WHAT THE TEXT MEANT.

AND IN THAT CASE IT DEALT WITH

>> YOU'RE TALKING ABOUT THE
RIGHT TO TREATMENT AND
REHABILITATION FOR NONVIOLENT
DRUG OFFENSES?

>> YES.

>> I LOOKED AT THAT, AND I THINK
THAT IS AN INTERESTING STATEMENT
OF THE LAW AND OUR STANDARDS,
BUT I DIDN'T THINK THAT THE TEXT
THAT SOMEBODY WAS ARGUING
THAT THE CONSTITUTIONAL
AMENDMENT ITSELF WAS DIFFERENT

>> I THINK THEY WERE.

>> OKAY.

>> I THINK THEY WERE SAYING THAT
THE CONSTITUTIONAL AMENDMENT
LIMITED THOSE WHO QUALIFIED FOR
TREATMENT, REHABILITATION, TO
SINGLE OFFENSES, BUT THOSE
OFFENSES COULD BE ON TWO
DIFFERENT DATES, BUT THEY COULD
BE MULTIPLE OFFENSES ON A SINGLE
DATE.

SO THOSE THAT WERE OPPOSING IT
SAY THAT'S MISLEADING TO SAY
IT'S TWO OFFENSES.

AND THERE IS AN ANALOGY HERE
BECAUSE YOU HAVE CONDITIONS THAT
ARE SUMMARIZING AND YOU HAVE 75
WORDS AND THIS COURT HAS
REFERRED TO THAT ISSUE IN OTHER
CASES.

SO WHAT YOU MUST LOOK AT IS WHAT
THE TITLE AND SUMMARY EXPLAINS.
AND WHAT THIS DOES.

>> WELL, LET ME ASK YOU THIS.
IF WE CONCLUDED THAT UNDER THE
LANGUAGE OF SUBSECTION B 1, THE
DEFINITION OF DEBILITATING
MEDICAL CONDITION, A PHYSICIAN
WOULD BE AUTHORIZED TO GIVE A
CERTIFICATION

>> TO DO ANYTHING?

>> PURSUANT TO THIS
PROVISION, IN ANY CIRCUMSTANCE
WHERE THE PHYSICIAN BELIEVES
THAT THE MEDICAL USE OF

MARIJUANA WOULD LIKELY OUTWEIGH THE POTENTIAL HEALTH RISKS FOR A PATIENT.

IF WE BELIEVE THAT THAT'S WHAT THE PHYSICIAN WOULD BE ALLOWED TO DO, WOULD YOU AGREE BASED ON THAT INTERPRETATION I UNDERSTAND YOU DON'T YOU'RE SUGGESTING THAT'S NOT THE CORRECT INTERPRETATION, BUT IF THAT'S THE INTERPRETATION THAT WE DECIDE MAKES THE MOST SENSE WHEN WE LOOK AT THE WHOLE CONTEXT OF EVERYTHING HERE, WOULD YOU AGREE THAT THE BALLOT SUMMARY THAT MAKES REFERENCES TO INDIVIDUALS WITH DEBILITATING DISEASES AS DETERMINED BY A LICENSED FLORIDA PHYSICIAN WOULD BE MISLEADING?

>> WELL, THAT CERTAINLY IMPROVES THE ARGUMENT.

IT SEEMS

>> I MEAN, I THINK IT MY THE WAY I UNDERSTAND IT, I THINK THIS WHOLE QUESTION ALL TURNS ON THAT.

AND IT SEEMS LIKE TO ME IF WE CONCLUDE THAT THAT IS THE CORRECT INTERPRETATION, THE INTERPRETATION I EXPLAINED, WHICH GIVES FORCE TO THAT LAST PHRASE AFTER THE "OR" IN SUBSECTION B1, THEN THAT THAT SEEMS TO BE VERY DIFFERENT THAN WHAT THE BALLOT SUMMARY SUGGESTS BY REFERRING TO DEBILITATING DISEASES, BECAUSE THE VOTER THINKING ABOUT DEBILITATING DISEASES IS GOING TO HAVE A VERY DIFFERENT IDEA THAN WHAT WOULD BE AUTHORIZED HERE, WHERE A PHYSICIAN IS SIMPLY LOOKING AT RISK AND BENEFIT.

IN EVERY CASE IT'S A RISK AND BENEFIT ANALYSIS.

AND OBVIOUSLY THAT'S GOING TO DEPEND ON THE PHYSICIAN'S OUTLOOK ON THESE ISSUES.

>> I WOULD SUGGEST ONE THING,
AND I'D LIKE TO CONCLUDE SO I
CAN PRESERVE MY TIME, BUT THAT
YOU THE COURT HAS ALWAYS READ
THE TITLE AND SUMMARY TOGETHER,
AND I TOTALLY UNDERSTAND YOUR
POINT.

THE TITLE IN THIS CASE IS
CERTAIN MEDICAL CONDITIONS,
WHICH IS A WHICH IS A BROAD
STATEMENT, NOT AS BROAD AS
SUGGESTED BY THE OPPONENTS, BUT
IF THE ISSUE IS DOES THE AVERAGE
VOTER UNDERSTAND THAT MEDICAL
MARIJUANA IS BEING AUTHORIZED BY
PHYSICIANS AND THAT IS, AMONG
OTHER THINGS, THE LIMITATIONS ON
THE DISTRIBUTION, IT'S A PRETTY
BROAD STATEMENT.

I UNDERSTAND YOUR POSITION.

>> BUT DOESN'T THAT HAVE TO BE
UNDERSTOOD IN THE CONTEXT OF
WHAT THE BALLOT SUMMARY SAYS,
WHAT THE VOTER'S LOOKING AT.
IT'S NOT JUST IS THE BALLOT
TITLE, WHICH IS FOLLOWED BY THE
BALLOT SUMMARY, WHICH MAKES THAT
REFERENCE TO DEBILITATING
DISEASES AS DETERMINED BY A
LICENSED FLORIDA PHYSICIAN.

>> AND, YOUR HONOR, YOU MUST
READ THOSE TWO TOGETHER.

>> WHICH MEANS YOU HAVE TO GO
YOU HAVE TO LOOK AT SECTION 9.

>> YES.

>> BECAUSE SECTION 9 AS I LOOK
AT IT SAYS THAT THE PHYSICIAN
HAS TO SAY THAT THIS IS A
DEBILITATING DISEASE BEFORE THE
PHYSICIAN CAN MAKE THE
PRESCRIPTION OR

>> YES.

>> IS THAT CORRECT?

>> I'M SORRY.

GO AHEAD.

>> I'M SORRY.

IS THAT CORRECT?

>> YES.

>> THAT THE PHYSICIAN HAS TO SAY
THIS IS A DEBILITATING DISEASE.

>> THAT'S RIGHT.
THAT IS A CONDITION PRECEDENT TO
DOING CERTIFICATION.
YOU HAVE TO SAY IT'S A
DEBILITATING DISEASE.
AND THEN YOU HAVE TO SAY THE
BENEFITS OUTWEIGH THE RISKS.
>> EVEN IF IT'S ONE OF THOSE
DISEASES NOT LISTED.
EVEN IF IT'S SOMETHING NOT
LISTED LIKE THE CANCER OR
GLAUCOMA.
>> ABSOLUTELY AND THAT'S FRANKLY
ONE OF THE POINTS.
THE ISSUE IS THERE ARE OTHER
DEBILITATING DISEASES IN THE
FUTURE AND THERE ARE OTHER
DEBILITATING DISEASES AND
CONDITIONS THAT A DOCTOR MAY
WELL DETERMINE.
AND TO PUT THIS ALL IN A LIST IN
THE CONSTITUTION IS NOT A GOOD
POLICY DECISION.
AND THE ONE OF THE THINGS
THAT THE OPPONENTS SUGGESTED
THE SPONSOR DOESN'T DISPUTE THE
FACT THAT INDIVIDUAL DECISIONS
ALONE DETERMINE WHEN MARIJUANA
IS APPROPRIATE.
AND WE TOTALLY AGREE, THAT THAT
IS EXACTLY WHAT WE'RE SAYING,
THAT INDIVIDUAL PHYSICIANS ARE
IN THE POSITION TO MAKE THAT
DECISION.
AND, YOUR HONOR, I'D LIKE TO
>> IS THERE SUCH A THING AS
PHARMACEUTICAL MARIJUANA NOW
THAT PHYSICIANS PRESCRIBE?
>> IN SOME STATES.
THERE'S SOME THINGS SUCH AS
MARINOL.
>> IN FLORIDA TODAY?
>> I THINK SO.
BUT IT'S NOT THE SAME SUBSTANCE.
IT'S A DIFFERENT SUBSTANCE.
BUT, YES, SIR, THERE ARE 20
STATES THAT HAVE DIFFERENT
VERSIONS OF THIS.
OKAY.
THANK YOU, YOUR HONOR.

>> THANK YOU.

>> GOOD MORNING AGAIN.
JUSTICE QUINCE, FIRST I'D LIKE
TO RESPOND TO YOUR LAST
QUESTION.

WHEN YOU SAID DOES A DOCTOR HAVE
TO DIAGNOSE A PERSON WITH A
DEBILITATING DISEASE AND IN FACT
HE DOES NOT.

HE HAS TO DIAGNOSE THE PATIENT
WITH A DEBILITATING MEDICAL
CONDITION, WHICH IS A DEFINED
TERM IN THIS PROVISION.

SO DOCTOR DOES NOT HAVE TO FIND
THAT THE PERSON HAS A
DEBILITATING DISEASE.

>> SO YOU'RE MAKING A
DISTINCTION BETWEEN A
DEBILITATING DISEASE AND A
DEBILITATING MEDICAL CONDITION.

>> THERE IS A DISTINCTION.
YOU DON'T EVEN HAVE TO HAVE A
DISEASE TO GET MARIJUANA UNDER
THIS AMENDMENT.

THEY'VE SAID IN THEIR BRIEF THAT
YOU CAN HAVE MARIJUANA IF YOU
HAVE A DISEASE, YOU CAN HAVE
MARIJUANA IF YOU HAVE ANOTHER
CONDITION THAT IS NOT A DISEASE.
BUT THE SUMMARY SAYS EXCLUSIVELY
YOU MAY HAVE IT IF YOU HAVE A
DEBILITATING DISEASE AS
DETERMINED BY A PHYSICIAN.

>> WELL, IT STARTS THE TITLE,
THOUGH ONE OF THE PROBLEMS WE
HAVE IS THAT WE'VE GOT A VERY
UNEQUAL SITUATION WITH
CONSTITUTIONAL AMENDMENTS, WHERE
THE LEGISLATURE HAS DECIDED WHEN
IT SUBMITS A BALLOT SUMMARY,
IT'S LIMB LIMITLESS.

WHERE THE CITIZENS HAVE THIS
LIMIT THE LEGISLATURE HAS PUT ON
OF 75 WORDS.

MAYBE IN THE FUTURE THE
LEGISLATURE WOULD CONSIDER IT
MIGHT BE EASIER TO MAKE SURE
THAT THE CITIZENS ARE ON NOTICE

IF THE 75WORD LIMIT IS JUST
MAYBE TOO SHORT.

BUT HERE DO YOU AGREE THAT YOU
READ THE TITLE, THIS IS CERTAIN
MEDICAL CONDITIONS, IN CONTEXT
WITH THE TEXT OF THE BALLOT
SUMMARY.

YOU DON'T JUST TAKE ONE OR
ISOLATE IT FROM THE OTHER.
SO THIS WILL BE KNOWN AS A
MEDICAL MARIJUANA FOR CERTAIN
MEDICAL CONDITIONS, IS HOW IT
WOULD BE KNOWN IF IT WENT ON THE
BALLOT.

AND THEN IS THAT CORRECT?

>> WELL, I AGREE THAT YOU WOULD
READ THEM TOGETHER AND THIS
COURT HAS SAID YOU READ THEM
TOGETHER.

BUT WHEN YOU READ THESE
TOGETHER, YOU WOULD BELIEVE THAT
THE DEBILITATING DISEASES ARE
THE CONDITIONS.

AND THIS COURT HAS NEVER HELD
THAT A BROADER TITLE

>> I DON'T UNDERSTAND.

EXPLAIN THAT AGAIN?

I WOULD THINK WHAT I THINK IN
READING THIS IS THAT IT SAYS
DEBILITATING DISEASES AS
PRESCRIBED AS DETERMINED BY A
DOCTOR.

>> RIGHT, BUT DOESN'T HAVE TO BE
A DISEASE.

>> SO YOU'RE SAYING THE
MISLEADING PART IS THAT IT COULD
BE IF I SUFFERED FROM CHRONIC
BACK PAIN AND I COULDN'T
FUNCTION BECAUSE OF THE BACK
PAIN, IS THAT A CONDITION OR A
DISEASE?

>> THERE IS NO DISPUTE IN FRONT
OF THIS COURT THAT YOU DO NOT
HAVE TO HAVE A DISEASE

>> I KNOW, BUT WHAT IS SO
WHERE IS THE MIS WHAT IS
IT THAT THE AN ORDINARY
CITIZEN WOULD THINK WOULD BE
INCLUDED THAT'S EXCLUDED OR
EXCLUDED THAT'S INCLUDED.

>> THEY WOULD THINK NO ONE COULD HAVE MARIJUANA UNLESS THAT PERSON HAD A DEBILITATING DISEASE.

>> DON'T YOU READ THE TITLE IN CONJUNCTION, WHICH SAYS CERTAIN MEDICAL CONDITIONS?

>> YOU READ THEM TOGETHER, BUT THE CONDITIONS THAT ARE REFERENCED IN THE TITLE THE VOTER WOULD THINK ARE THOSE DEBILITATING DISEASES.

IN THE SLEW DECISION, THIS COURT LOOKED AT A TITLE THAT SAID THIS APPLIES TO SCHOOL TAXES, APPLIES TO SCHOOL TAXES.

AND THE COURT SAID THAT BY IMPLICATION THAT MEANT ONLY SCHOOL TAXES.

THAT'S WHAT THE TITLE CONVEYED. AND IN THE SUMMARY THE SPONSOR SAID IT APPLIED TO NONHOMESTEAD TAXES, WHICH THE COURT ACKNOWLEDGED WOULD INCLUDE THINGS OTHER THAN SCHOOL TAXES. BUT THE COURT SAID WHEN YOU READ THOSE TOGETHER, YOU WOULD THINK THAT THOSE NONHOMESTEAD TAXERS ARE THE SCHOOL TAXES.

THIS COURT HAS NEVER LOOKED AT A TITLE AND HAD A CURE MISLEADING IN THE SUMMARY.

IN ANY SITUATION THE TITLE WHICH HAS TO BE 15 WORDS OR FEWER IS GOING TO HAVE A HIGHER LEVEL OF GENERALITY THAN THE SUMMARY.

IF THEY'RE CORRECT THEN IT WOULD NOT HAVE BEEN MISLEADING TO SAY ALLOWS MARIJUANA FOR CANCER AND AIDS, PERIOD, IF IT SAYS MEDICAL CONDITIONS IN THE TITLE.

AGAIN, PEOPLE WOULD THINK THOSE THINGS LIMITED IN THE SUMMARY IS WHAT THE TITLE'S REFERRING TO.

>> SO YOU THINK THE PROBLEM IS I MEAN, AMONG OTHER THINGS, IS THE USE OF DEBILITATING DISEASES SEE, AND, AGAIN, AS A I JUST DIDN'T FOCUS ON

THAT.

I THOUGHT THE MAIN ARGUMENT WAS THAT IT SOUNDED IF YOU READ THIS THAT THIS COULD ONLY BE PRESCRIBED FOR REALLY HORRIBLE CONDITIONS.

>> WELL, IT'S BOTH.

>> AND, I MEAN, IF SO IT'S BOTH.

SO ON THAT ONE, AS TO WHETHER IT IS OPENENDED AND ALLOWS A DOCTOR TO PRESCRIBE MARIJUANA FOR A HEADACHE OR FOR ANXIETY BEFORE AN EXAM, ALTHOUGH I GUESS A STUDENT WOULD BE PRETTY NOT A GREAT THING TO DO BEFORE YOU TOOK AN EXAM, BUT IF YOU WHAT ABOUT THE FACT THAT YOU DO HAVE TO LOOK TO DECIDE WHETHER IT'S MISLEADING AS TO WHAT THE CONSTITUTIONAL AMENDMENT ITSELF MEANS TO COVER?

DO YOU AGREE THAT THAT'S THE STARTING POINT?

>> SURE.

>> OKAY.

SO WHAT ABOUT THEIR ARGUMENT THAT YOU'VE GOT TO READ SUBSECTION 1 TOGETHER WITH 9? SO THAT IF THE DEPARTMENT OF HEALTH STARTED TO SEE A DOCTOR, FOR EXAMPLE, AND YOU'RE THERE TO ENFORCE THE CONSTITUTION, THAT WAS CERTIFYING I GAVE THIS BECAUSE THIS STUDENT HAS TEST ANXIETY, THEY WOULD THE DEPARTMENT OF HEALTH WOULD SAY, LISTEN, THIS IS A DOCTOR THAT WE ARE GOING TO SERIOUSLY LOOK AT. THIS IS NOT THEY'RE NOT COMPLYING WITH THE CONSTITUTIONAL AMENDMENT. AND AT THAT POINT THEN THEIR ARGUMENT THE IDEA IS, NO, THEY'VE GOT A CERTIFIED DEBILITATING DISEASE OR CONDITION.

SO WHY WOULDN'T WE DO YOU THINK THAT'S AN IMPOSSIBLE CONSTRUCTION OF THIS AMENDMENT?

THAT IS, THAT IT IS MORE NARROW THAN THE OPPONENTS ARE SAYING THAT IT IS?

>> WELL, FIRST, THAT DOCTRINE, YOUR EXAMPLE WOULD ASSERT THE IMMUNITY THAT THIS

>> ONLY IF THEY FOLLOW ONLY IT'S NOT IMMUNITY.

IT'S LIABILITY, NOT IMMUNITY.

>> IMMUNITY FROM LIABILITY.

>> ONLY IF THEY FOLLOW THE CONSTITUTIONAL AMENDMENT.

SO IF THEY ARE TAKING SOMETHING AND SAYING I THINK I CAN JUST DO THIS FOR ANYTHING, IT'S UP TO THE DEPARTMENT OF HEALTH TO SAY THESE ARE THE LIMITATIONS ON IT AND THEN I GUESS THERE'S A LAWSUIT.

>> BUT ISN'T THAT ALL KEYED INTO WHAT THE PHYSICIAN BELIEVES?

>> THAT'S RIGHT.

>> IT'S NOT WHAT A REASONABLE PHYSICIAN WOULD BELIEVE.

IT SEEMS TO BE A SUBJECTIVE STANDARD THAT WOULD BASICALLY AS LONG AS THEY'RE ACTING ON SOME GOOD FAITH BASIS, AT THE MOST IF THEY'VE GOT A GOOD FAITH BASIS THEY'RE OFF THE HOOK FOR ANYTHING.

>> THAT'S CORRECT.

THAT'S THE ONLY LIMITATION, THAT A PHYSICIAN HAS TO CERTIFY THAT THE BENEFITS OF MARIJUANA WOULD EXCEED THE RISKS.

>> BUT IT MUST ALSO INCLUDE AS PART OF THAT CERTIFICATION THAT THE PATIENT SUFFERS FROM A DEBILITATING MEDICAL CONDITION, NOT JUST A CONDITION.

>> WELL,

>> THAT'S PART OF THE CERTIFICATION IN 9.

YOU WOULD AGREE WITH THAT.

>> THAT'S WHAT IT SAYS, BUT DEBILITATING MEDICAL CONDITION IS A DEFINED TERM.

WE KNOW THAT WHEN YOU HAVE A DEFINED TERM YOU RELY

EXCLUSIVELY ON THAT TERM.
AND SO TO FIT INTO THE DEFINED
TERM YOU CAN HAVE ANY CONDITION

>> IT SEEMS AS THOUGH IT'S
CIRCULAR REASONING.
WHAT YOU'RE SAYING IS THAT UNDER
THIS PLAN, THAT A PHYSICIAN
WOULD BE CERTIFYING THAT THE
RISKS THAT THE BENEFITS
OUTWEIGH THE RISKS AND THEN
UNDER THE OTHER PROVISION AGAIN
COMING BACK THAT THE BENEFITS
OUTWEIGH THE RISK.

>> RIGHT.

>> YOU'RE SAYING CERTIFIES THE
SAME THING.

>> WELL, LOOK.

>> THAT DOESN'T SEEM TO BE A
LOGICAL READING OF MUCH OF
ANYTHING.

>> IT WOULD BE DANGEROUS TO READ
IT BASED ON A REDUNDANCY.
THIS HAS OTHER REDUNDANCIES.
TO HAVE AN ID CARD, YOU HAVE TO
BE A PERSONAL CAREGIVER AND YOU
HAVE TO BE 21 AND WILLING TO
HELP.

IF YOU'RE A PERSONAL CAREGIVER
BY DEFINITION YOU'RE 21 AND
WILLING TO HELP.

TO BE A QUALIFYING PATIENT YOU
HAVE TO HAVE A PHYSICIAN
CERTIFICATION AND HAVE A
DIAGNOSIS OF A MEDICAL
CONDITION, WHICH YOU HAVE TO
HAVE TO GET A PHYSICIAN
CERTIFICATION ANYWAY.

SO THERE ARE CERTAINLY
REDUNDANCIES AND OTHER FORMS OF
ILLOGIC THROUGHOUT THIS
AMENDMENT.

BUT THAT CAN'T BE A DEFENSE TO
WHAT THE PLAIN LANGUAGE IS.

YOU DON'T GET TO ANY OF THESE
INTERPRETATIVE THEORIES IF THE
LANGUAGE IS PLAIN.

AND THE LANGUAGE HERE IS PLAIN,
THAT YOU HAVE A DEBILITATING
MEDICAL CONDITION BY DEFINITION

IF YOU HAVE A CONDITION FOR WHICH A PHYSICIAN HAS DETERMINED THAT THE BENEFITS OF MARIJUANA WOULD EXCEED THE RISKS.

AND WE ALL KNOW THAT THERE ARE WIDE THERE'S A WIDE VARIETY OF OPINIONS IN THE MEDICAL COMMUNITY ABOUT THE RISKS OF MARIJUANA.

IF YOU BELIEVE THE RISKS ARE VERY LOW, THERE IS NO CONDITION THAT WOULD BE BEYOND THE SCOPE. AND IT CERTAINLY DOESN'T HAVE TO BE A DISEASE.

NOW, ANOTHER PROBLEM WITH THE TITLE IS IT SAYS CERTAIN, ALLOWS MARIJUANA FOR CERTAIN MEDICAL CONDITIONS.

THE MEDICAL CONDITIONS AT ISSUE HERE WE KNOW ARE ANYTHING BUT CERTAIN.

THE SPONSOR HAS ACKNOWLEDGED THAT THERE ARE MEDICAL CONDITIONS THAT DON'T EXIST TODAY THAT MAY BE ELIGIBLE IN THE FUTURE.

>> WELL, YOU WOULD AGREE THAT ANY DICTIONARY WOULD HAVE MULTIPLE DEFINITIONS OF THE WORD CERTAIN.

>> I WOULD.

AND THE FIRST DEFINITION

>> WE'VE HAD IT THIS WEEK.

WE'VE BEEN TOLD THAT THE WORD DOESN'T MEAN ONLY, SO WE'VE ALREADY BEEN TO THAT THIS WEEK.

>> BUT YOU HAVE TO ASK WHY A SPONSOR THERE ARE VERY FEW DRAFTING EXERCISES WHERE THE CHOICE OF WORDS IS MORE IMPORTANT THAN WHEN YOU'RE DRAFTING A TITLE AND SUMMARY, PRECISELY BECAUSE OF THIS COURT'S REVIEW AND PRECISELY BECAUSE OF THE CONSTITUTIONAL RIGHT OF THE VOTERS TO UNDERSTAND, HAVE A FAIR UNDERSTAND OF WHAT THEY'RE ASKED TO VOTE ON.

AND SO YOU'D HAVE TO WONDER WHY

A SPONSOR WOULD USE THE WORD CERTAIN, MEANING FIXED OR SETTLED, WHEN THIS IS NOT, WHEN THEY COULD HAVE USED OTHER WORD LIKE SOME OR MANY OR ALLOWS FOR MEDICAL CONDITIONS WHENEVER AUTHORIZED BY

>> WELL, SOME OR MANY WOULDN'T BE IN THE SAME CATEGORY BECAUSE CERTAIN REFERS TO SOME LIMITATIONS ON THAT. SOME OR ANY OR MANY, THERE'S NO LIMITATION AT ALL.

>> WELL, SOME WOULD BE. OR THEY COULD SAY MEDICAL CONDITIONS AS ALLOWED BY A PHYSICIAN.

IN FACT, THIS VERY SPONSOR AND THIS IS CITED IN THE LEGISLATURE'S BRIEF THEY PROPOSED A PETITION TO ALLOW MEDICAL MARIJUANA IN 2009, COLLECTED TENS OF THOUSANDS OF SIGNATURES AND THEN WITHDREW IT. IN THAT SUMMARY, SAID IT WOULD ALLOW MARIJUANA AND IT LISTS HIV, GLAUCOMA, AND IT SAYS OR OTHER DISEASES OR CONDITIONS WHEN RECOMMENDED BY A PHYSICIAN. THEY COULD HAVE SAID THAT HERE AND VOTERS WOULD HAVE NOTICE THAT IT'S UP TO THE INDIVIDUAL PHYSICIAN AS TO WHETHER OR NOT MARIJUANA

>> AND THAT IN THE SUMMARY WOULD HAVE CURED WHAT YOU BELIEVE TO BE THE MISREPRESENTATION.

>> ONE OF THE MISREPRESENTATIONS.

NOTICE A NUMBER OF THEM.

AT ITS MOST FUNDAMENTAL LEVEL, WHAT THIS AMENDMENT DOES IS ALLOWS AT LEAST UNDER FLORIDA LAW SOME PEOPLE TO USE MARIJUANA IN SOME CIRCUMSTANCES FOR SOME CONDITIONS.

AND A VOTER READING THIS WOULD NOT HAVE ANY IDEA WHAT THAT SCOPE IS.

AND THIS COURT HAS SAID A NUMBER

OF TIMES THAT A PROPOSAL MUST PRESENTED ITSELF AS NEITHER MORE EXPANSIVE OR LESS EXPANSIVE THAN IT ACTUALLY IS.

>> BUT YOU SAY THAT THE VOTER WOULD NOT FOR SURE KNOW WHAT THE SCOPE IS, WHAT WE SAY IN THE RIGHT TO DRUG TREATMENT IS THAT THEY HAVE TO ALSO BE ON NOTICE THAT YOU'RE GOING TO NEED TO LOOK AT THE AMENDMENT.

IT'S ONLY IF IT'S AFFIRMATIVELY MISLEADING THAT WE STRIKE IT. YOU KNOW, I REALIZE WE'RE HERE ON PROBABLY ON A COUPLE DIFFERENT LEVELS.

THERE'S DEBATES ABOUT WHETHER THE USE OF MEDICAL MARIJUANA OR MARIJUANA IS A GOOD THING OR NOT.

THERE ARE PEOPLE THAT JUST WANT TO LEGALIZE MARIJUANA JUST GENERALLY.

WE OBVIOUSLY ARE NOT IN THAT SITUATION.

AND WE'RE ALL CLEAR AND I THINK THE GENERAL ATTORNEY HAS BEEN THAT WE'RE NOT HERE ON THE MERITS OF WHAT IT IS.

BUT IT SEEMS TO ME READING THIS SUMMARY AND BALLOT SUMMARY AND TITLE THAT THE VOTER IS ON NOTICE THAT THERE WILL BE LIMITATIONS ON THE USE OF MARIJUANA IN THIS STATE AND THAT THE PHYSICIAN IS GOING TO BE KEY BECAUSE IT SAYS AS DETERMINED BY THE CONDITIONS.

IF THE VOTER IS MORE CONCERNED ABOUT HOW BROAD IT IS, THEN THEY GO TO THE AMENDMENT.

NOW, THE AMENDMENT YOU'RE SAYING IT SAYS ONE THING.

THE PROPONENTS SAY, NO, IT'S NOT THAT BROAD.

SO UNLESS SO I MEAN, AGAIN, SEEMS LIKE THE PROBLEM MAY BE IN THE DRAFTING OF THE AMENDMENT AS OPPOSED TO IN THE TITLE AND SUMMARY.

HOW DO WE DEAL WITH THAT?

>> WELL, YOU DEAL WITH IT BY LOOKING AT WHAT THE SUMMARY SAYS AND ASKING WHETHER A VOTER WOULD BE AFFIRMATIVELY MISLED AND THEY WOULD.

>> THAT'S WHAT I'M TRYING TO WHAT PART WOULD THEY BE AFFIRMATIVELY MISLED ABOUT?

>> THE FIRST WORDS OF THE SUMMARY ARE ALLOWS THE MEDICAL USE OF MARIJUANA FOR INDIVIDUALS WITH DEBILITATING DISEASES AS DETERMINED BY A LICENSED PHYSICIAN.

AND THE SPONSOR HAS ACKNOWLEDGED THAT YOU DON'T HAVE TO HAVE ANY DISEASE TO HAVE MEDICAL MARIJUANA.

>> SO IT'S BACK TO THIS DISEASE/CONDITION THING.

>> THAT'S ONE ISSUE.

>> TELL ME THE DIFFERENCE AND BECAUSE, AGAIN, I GUESS WITH CONDITION AND DISEASE I JUST WASN'T FOCUSING ON THAT, WITH WHY THAT IS A FATAL FLAW THAT SOMEBODY THINKS A DEBILITATING IF I'M DEBILITATED BECAUSE OF SOMETHING MEDICAL, WHETHER I CALL IT A CONDITION OR A DISEASE, THAT'S WHAT I'M CONCERNED ABOUT.

SO WHAT IS IT THAT'S SO IMPORTANT ABOUT THE DIFFERENCE BETWEEN ONE BEING A CONDITION VERSUS A DISEASE THAT MAKES IT AFFIRMATIVELY MISLEADING?

>> BECAUSE OF THE SCOPE OF THE USE, HOW EXPANSIVE IT IS. THIS MANY PEOPLE MAY HAVE DISEASES.

THIS MANY PEOPLE HAVE MEDICAL CONDITIONS THAT ARE NOT DISEASES.

CHIEF JUSTICE POLSTON'S EXAMPLE OF A PERSON SUFFERING ANXIETY, AUTOMOBILE ACCIDENTS, SPORTS INJURIES.

>> I HEAR THE INTENT OF THIS

AMENDMENT AND READING THE DIFFERENT SECTIONS TOGETHER IS NOT TO ALLOW IT FOR THESE MINIMAL SITUATIONS.

>> I'M NOT TALKING EXCLUSIVELY ABOUT MINIMAL SITUATIONS. WE'RE TALKING ABOUT A FOOTBALL. THAT'S NOT CONSIDERED A DISEASE AND YOU'VE NOT HEARD THIS SPONSOR TELL YOU THAT A FOOTBALL INJURY WOULD NOT BE COVERED BY THIS.

BACK PAIN, ALL OF THOSE THINGS THAT ARE NOT DISEASES. THE WORD DISEASE DOESN'T EVEN APPEAR IN THE AMENDMENT ITSELF EXCEPT IN THE CONTEXT OF THE NAME OF PARKINSON'S DISEASE. THEY CHOSE A WORD FOR THE SUMMARY THAT'S NOT IN THEIR AMENDMENT.

>> SO IF SOMEONE HAD DEBILITATING BACK PAIN, YOU'RE SAYING IT'S NOT A DISEASE. THEREFORE, A VOTER WOULD KNOW EVEN THOUGH THE TITLE SAYS CERTAIN MEDICAL CONDITIONS THAT THEY WOULD THINK, WELL, BACK PAIN ISN'T CHRONIC DEBILITATING BACK PAIN.

>> I THINK A VOTER WOULD READ THE SUMMARY WHICH TALKS EXCLUSIVELY ABOUT DEBILITATING DISEASES AND THINK THAT ANYONE WITHOUT A DEBILITATING DISEASE WOULD NOT BE ELIGIBLE FOR MARIJUANA.

I'D LIKE TO TALK ABOUT A SEPARATE ISSUE THAT WE HAVEN'T TALKED ABOUT YET AND THAT'S THE ISSUE OF FEDERAL LAW.

A VOTER WOULD WALK OUT THINKING THAT MEDICAL MARIJUANA IS LAWFUL UNDER FEDERAL LAW BECAUSE OF THE CHOICES THAT THE SPONSOR MADE IN PUTTING THE SUMMARY TOGETHER. IN FACT, MARIJUANA IS ILLEGAL UNDER FEDERAL LAW FOR MEDICAL USE OR OTHERWISE AND EVERY STEP OF THE PROCESS THAT THIS

AMENDMENT WOULD AUTHORIZE, THE GROWING, THE TRANSPORTATION, THE SELLING, THE BUYING, THE SMOKING OF MARIJUANA, WOULD BE A FEDERAL CRIMINAL OFFENSE.

>> THE LAST SENTENCE OF THE SUMMARY, DOES NOT AUTHORIZE VIOLATIONS OF FEDERAL LAW.

>> THAT'S RIGHT.

AND WHAT THAT TELLS VOTERS, JUSTICE LEWIS, IS THAT THE MEDICAL USE OF MARIJUANA IS NOT A VIOLATION OF FEDERAL LAW.

IF YOU SAID, FOR EXAMPLE,

>> NO.

THIS SAYS IT DOES NOT AUTHORIZE VIOLATIONS OF FEDERAL LAW.

>> IT SAYS THAT RIGHT AFTER IT SAYS WHAT IT DOES AUTHORIZE, WHICH IS THE MEDICAL USE OF MARIJUANA.

WE AUTHORIZE THE MEDICAL USE OF MARIJUANA.

WE DO NOT AUTHORIZE THE VIOLATION OF FEDERAL LAWS.

VOTERS WOULD THINK THOSE THINGS ARE DISTINCT.

IMAGINE IF A SUMMARY SAID WE WILL ALLOW MARIJUANA BUT WE WILL NOT ALLOW ANY SCHEDULE I SUBSTANCES.

WHAT DOES THAT COMMUNICATE TO THE VOTER OTHER THAN MARIJUANA IS NOT A SCHEDULE I SUBSTANCE? AND IT IS.

IF YOU LOOK AT THE AMENDMENT ITSELF, IT DOESN'T SAY DOES NOT AUTHORIZE VIOLATIONS OF FEDERAL LAW.

IT SAYS DOES NOT REQUIRE VIOLATIONS.

THAT'S VERY DIFFERENT.

THAT HAS SOME SIGNIFICANCE.

BUT THEY SELECTED TO PUT IN THE SUMMARY DOES NOT ALLOW

VIOLATIONS OF FEDERAL LAW RIGHT AFTER TELLING THE VOTERS IT ALLOWS MEDICAL MARIJUANA.

WHAT THAT COMMUNICATES TO VOTERS IS THAT MEDICAL MARIJUANA AS

OPPOSED TO MAYBE RECREATIONAL MARIJUANA OR OTHER DRUG USE, IS NOT A VIOLATION OF FEDERAL LAW. AND WE KNOW THAT IT IS.

>> WOULD IT BE BETTER IF THEY DIDN'T SAY ANYTHING?
WHAT'S HAPPENING IN ALL THE STATES THAT EITHER MOST OF THEM ARE DOING IT THROUGH THE LEGISLATIVE PROCESS THAT YOU POINTED OUT, MEDICAL MARIJUANA IS A VIOLATION OF FEDERAL LAW. THE USE THE STATE USE AUTHORIZING USE OF MEDICAL MARIJUANA STILL VIOLATES FEDERAL LAW.

>> THERE'S A VERY SMALL EXCEPTION FOR MEDICAL TRIALS.
>> THE FEDERAL GOVERNMENT HAS SAID THEY'RE NOT PROSECUTING? WHAT?

DO YOU WANT THEM TO SAY YOU CAN'T AUTHORIZE VIOLATIONS OF FEDERAL LAW.

>> RIGHT.

>> SO YOU WONDER WHY THAT'S IN THERE.

>> IT SEEMS IT'S SAYING IT STILL COULD BE A VIOLATION OF FEDERAL LAW.

THIS APPLIES ONLY TO FLORIDA LAW.

IF YOU DO THIS, DOCTOR, YOU STILL MAY BE VIOLATING FEDERAL LAW.

I MEAN, I THINK THAT'S THERE. YOU MIGHT SAY, LISTEN, IT DOESN'T TELL THEM THAT THIS COULD BE A VIOLATION OF FEDERAL LAW.

I MEAN, THAT'S WE HAD THAT WITH TERM LIMITS.

>> SURE.

>> THIS MAY BE UNCONSTITUTIONAL UNDER OR ILLEGAL UNDER FEDERAL LAW.

SO I'M NOT SURE WHY THAT'S MISLEADING.

>> IT'S MISLEADING BECAUSE OF THE WAY THEY WORDED IT. THEY WORDED IT TO SUGGEST IT'S NOT ABOUT IT'S NOT ABOUT VOTERS WHO ARE NOT GETTING NOTICE THAT IT'S VIOLATING FEDERAL LAW. IT'S THAT VOTERS ARE GETTING NOTICE THAT IT DOES NOT VIOLATE FEDERAL LAW, WHICH IS IN FACT INCORRECT. YOU SAY IT ALLOWS A, IT DOES NOT ALLOW B. PEOPLE ARE GOING TO THINK THEY'RE DIFFERENT THINGS. THE MEDICAL USE OF MARIJUANA IS A VIOLATION OF FEDERAL LAW. THEY TELL VOTERS IT ALLOWS MEDICAL MARIJUANA. OF COURSE IT ALLOWS IT FOR PURPOSES OF FLORIDA STATUTES OR LAW, BUT IT DOES NOT ALLOW IT BECAUSE IT REMAINS A VIOLATION OF FEDERAL LAW. THEY CHOSE TO PRESENT IT WITH THE OTHER THINGS THAT THIS DOES NOT DO. TO YOUR POINT, JUSTICE LEWIS, ABOUT THE LAST SENTENCE, DOES NOT AUTHORIZE VIOLATIONS OF FEDERAL LAW OR NONMEDICAL USE, POSSESSION OR PRODUCTION OF MARIJUANA. YOU CAN HAVE A LAW THAT AUTHORIZES MEDICAL USE OF MARIJUANA WITHOUT ALLOWING NONMEDICAL USE OF MARIJUANA, SO THEY GROUPED THAT WITH THINGS THAT ARE DISTINCT FROM THE MEDICAL USE OF MARIJUANA. BUT THE VIOLATION OF FEDERAL LAWS ARE NOT DISTINCT. IT'S THE SAME THING. SO THERE WAS NO NEED TO PUT DOES NOT ALLOW NONMEDICAL USE IN THERE OTHER THAN TO GROUP IT WITH THE AUTHORIZATION OF FEDERAL LAW. AND SO THIS IS I THINK A VERY GOOD EXAMPLE OF THE WORDSMITHING

THAT THIS COURT HAS SAID IS
INAPPROPRIATE AND CERTAINLY
THERE'S GOING TO BE A DIFFERENT
RESPONSE FROM THE VOTER IF
INSTEAD OF SAYING WE'RE
AUTHORIZING MARIJUANA IF IT
WOULD HAVE SAID FEDERAL LAW WILL
CONTINUE TO PROHIBIT OR
SOMETHING TO LET VOTERS KNOW
THAT WHENEVER THEY WANT TO
ACHIEVE UNDER THIS WILL REMAIN A
FEDERAL CRIMINAL VIOLATION.
JUSTICE PARIENTE, TO YOUR POINT,
THAT IS A MEMO THAT DEALS WITH
ENFORCEMENT PRIORITIES.
IT IS NOT A STATEMENT BY THE
FEDERAL GOVERNMENT THAT THEY
WON'T PROSECUTOR.
THEY EXPLICITLY CARVED OUT
MINORS FROM THAT.
THAT REMAINS A PRIORITY.

>> SO IF I WERE A PHYSICIAN, I
WOULDN'T AND MY LAWYER TOLD
ME THAT IF I DO THIS, I MIGHT BE
OKAY UNDER I MEAN, UNDER
FLORIDA LAW, BUT I'M NOT GOING
TO BE UNDER FEDERAL LAW, I THINK
THAT WOULD HAVE A PRETTY
CHILLING EFFECT ON THE SCOPE OF
THIS AMENDMENT ANYWAY.

>> IT MAY HAVE A CHILLING
EFFECT, BUT THE VOTERS ARE
ENTITLED TO THE TRUTH.
WHAT THIS COURT HAS SAID TIME
AND AGAIN

>> I DIDN'T REALLY AGAIN, I
KNOW YOU'VE SPENT A LOT OF TIME
READING AND REREADING AND I
APPRECIATE YOUR ARGUMENTS WHICH
ARE DONE VERY PROFESSIONALLY AND
I APPRECIATE YOUR POSITION.
I JUST DIDN'T PICK UP ON THAT
THAT PART WAS AT ALL PROBLEMATIC
BECAUSE IT SEEMED TO ACKNOWLEDGE
THAT FEDERAL LAW MIGHT STILL
PROHIBIT IT.

>> I THINK IT DOES NOT
ACKNOWLEDGE THAT.
THAT'S THE ARGUMENT.
AND I THINK THAT THE WORD

>> YOU THINK THEY AFFIRMATIVELY TRY THIS IS ONE OF THESE SLEIGHT OF HAND WORDSMITHING

>> IT SUGGESTS SOMETHING THAT IS UNTRUE AND THAT IS THAT FEDERAL LAW DOES NOT PROHIBIT IT. THE AMENDMENT SAYS DOES NOT PURPORT TO AUTHORIZE VIOLATIONS OF FEDERAL LAW. THAT WOULD RAISE THE EYEBROWS OF A VOTER.

>> THIS IS WHY THIS IS SO PROBLEMATIC WITH THE 75 WORDS AND, YOU KNOW, EVERY ADDITIONAL WORD ENDS UP CAUSING A PROBLEM.

>> WELL, FIRST THIS COURT HAS SAID A NUMBER OF TIMES THAT THE 75WORD LIMIT IS NOT AN EXCUSE TO EVADE THE RESPONSIBILITY TO GET TO INFORM THE VOTERS. SECOND, A LOT OF THE PROBLEMS

>> BUT THE ISSUE OF WHETHER IT'S AFFIRMATIVE WHAT THEY PUT IN IS AFFIRMATIVELY MISLEADING IS THE MORE PROBLEMATIC ISSUE.

>> THE PROBLEMS IN THIS SUMMARY ARE NOT CAUSED BY THE 75WORD LIMIT.

A LOT OF THE PROBLEMS IN THIS AMENDMENT ARE WORDS THEY CHOSE TO ADD THAT THEY SHOULDN'T HAVE ADDED LIKE DEBILITATING DISEASES AND CERTAINLY THESE THINGS AT THE END THAT I INDICATED ABOUT FEDERAL LAW, ABOUT THE NONMEDICAL USE.

WHY WOULD YOU NEED TO USE WORDS TELLING PEOPLE DOES NOT ALSO ALLOW NONMEDICAL USE?

THEY HAVE DETAILS IN THERE ABOUT THE I.D. PROVISIONS, WHICH ARE CERTAINLY THE CARDS, WHICH ARE CERTAINLY NOT A PROMINENT FEATURE OF THIS AMENDMENT. WHAT IS A PROMINENT FEATURE ARE THE IMMUNITIES GIVEN TO PHYSICIANS.

THAT IS A PRIORITY.

BUT THE VOTER HAS NO NOTICE OF THE IMMUNITY AT ALL.

NONE AT ALL.

>> THE PHYSICIAN COULD CERTIFY SOMETHING SAYING THERE WAS A GREATER POTENTIAL USE THAN THE HEALTH RISK, BUT IN FACT MALPRACTICE AND THE OPPOSITE'S TRUE AND SOMEHOW HARMING THE PATIENT.

AND IN THAT INSTANCE WOULDN'T THE PHYSICIAN NOT BE LIABLE UNDER MEDICAL MALPRACTICE?

>> THE HYPOTHETICAL IS THAT A PHYSICIAN ISSUES A PHYSICIAN CERTIFICATION NEGLIGENTLY?

>> JUST GETS IT WRONG.

THEY ARE IMMUNE FROM SUIT UNDER THIS PROVISION?

>> YES.

A PHYSICIAN SHALL NOT BE SUBJECT TO CRIMINAL OR CIVIL LIABILITY OR SANCTIONS UNDER FLORIDA LAW FOR ISSUING A PHYSICIAN CERTIFICATION TO A PERSON DIAGNOSED WITH A DEBILITATING MEDICAL CONDITION IN A MANNER CONSISTENT WITH THIS SECTION. THIS SECTION HAS NOTHING ABOUT STANDARD OF CARE.

ALL THE SECTION SAYS IS THAT YOU HAVE TO DO A PHYSICAL EXAMINATION TO WHATEVER EXTENT THAT YOU FIND APPROPRIATE, I SUPPOSE, AND YOU HAVE TO EXAMINE THE MEDICAL HISTORY.

THAT'S ALL IT SAYS.

AND CERTAINLY THE SPONSOR'S GOAL HERE IS TO PROMOTE THE USE OF MARIJUANA AND TO ALLOW MEDICAL MARIJUANA, THAT IS, AND TO ALLOW PHYSICIANS THE FREEDOM TO CERTIFY THIS.

AND YOU'VE HEARD COUNSEL SAY IT DOES COME DOWN TO THE INDIVIDUAL PHYSICIAN IN EVERY INSTANCE ABOUT WHAT HE OR SHE BELIEVES. AND SO FITS IN WITH THIS BY GIVING THEM IMMUNITY.

IT DOESN'T FIT IN IN A SINGLE SUBSTANCE SENSE AND THAT'S WHAT I'D LIKE TO SPEND THE REMAINING

TIME ON.

HERE YOU HAVE A COMBINATION OF SINGLE SUBJECTS THAT ARE DISTINCT.

THE SINGLE SUBJECT RULE IS A RULE OF RESTRAINT TO STOP THINGS THAT DON'T GO TOGETHER FROM BEING PUT INTO AN AMENDMENT TOGETHER.

IT'S UNIQUE TO THE CITIZEN INITIATIVE.

IT'S TO PROTECT AGAINST PRECIPITOUS CHANGE.

SO HERE YOU HAVE A POLICY OF LEGALIZING MEDICAL MARIJUANA AND THEN YOU HAVE A SEPARATE TOPIC OF PUTTING THE REGULATORY FUNCTIONS ALL INTO A STATUTORY AGENCY, GIVING THAT EXECUTIVE AGENCY SUBSTANTIAL REGULATORY AUTHORITY THAT THEY DON'T HAVE WITHOUT THE SAME KINDS OF OVERSIGHT THAT YOU'D HAVE THROUGH THE APA FROM THE LEGISLATURE.

AND IT ALSO COMBINES THE IMMUNITY.

YOU COULD CERTAINLY IMAGINE AN AMENDMENT THAT ALLOWED MEDICAL USE OF MARIJUANA WITHOUT PROVIDING PHYSICIANS THE IMMUNITY THAT THIS PROVIDES.

THEY SAY IT DOESN'T PROVIDE AS BROADLY AS WE SAY IT DOES, BUT IT DOES SOMETHING.

WE CAN'T IGNORE THE WORDS THAT ARE THERE.

AROUND THE SPONSOR SAID IN ITS INITIAL BRIEF THAT PHYSICIANS ARE ALREADY RECOMMENDING MARIJUANA AND THAT THE PURPOSE OF THEIR AMENDMENT IS TO ALLOW PATIENTS TO FOLLOW UP ON THOSE RECOMMENDATIONS WITHOUT FEAR OF CRIMINAL PROSECUTION.

AND THAT'S FINE.

BUT WHATEVER PHYSICIANS ARE DOING NOW, THEY'RE SUBJECT TO A STANDARD OF CARE AND THE LIABILITY THAT THEY HAVE NOW,

CIVIL LIABILITY THAT THEY HAVE NOW, WOULD GO AWAY UNDER THIS AMENDMENT.

AND THAT IS A LAW RULE VIOLATION.

IT'S ALSO A VIOLATION BECAUSE IT DOESN'T IDENTIFY THE OTHER CONSTITUTIONAL RIGHTS AT ISSUE; NAMELY, THE ACCESS TO COURTS, CONSTITUTIONAL RIGHTS AND OUR DECLARATION OF RIGHTS AND A SEPARATE AMENDMENT THAT DEALS WITH DISCIPLINE OF PHYSICIANS. SO YOU HAVE VERY SEPARATE FEATURES ALL ROLLED INTO ONE AND THAT VIOLATES THE SINGLE SUBJECT RULE.

I'D LIKE TO RESPOND TO THE ARGUMENTS THAT THE SPONSOR MAKES IN THE BRIEF THAT THIS IS REALLY ABOUT A POLICY DEBATE AND THAT PEOPLE SHOULD HAVE THE RIGHT TO VOTE ON THIS ISSUE.

>> WELL, THAT'S NOT OUR REALLY WHAT CONTROLS OUR DECISIONMAKING PROCESS, WHETHER IT'S A GOOD IDEA, BAD IDEA, WHETHER YOU LIKE IT, SOMEBODY ELSE DOESN'T.

I MEAN, ALL WE'RE LOOKING AT IS THE WORDS AND WHAT IT TELLS THE PEOPLE OF FLORIDA, ISN'T IT?

>> THAT'S RIGHT.

THAT'S RIGHT.

AND WHAT THE COURT SAID IN THE DECISION IS THAT THE SPONSORS HAVE AN OBLIGATION TO GET IT RIGHT, THEY HAVE TO PROVIDE THE FAIR NOTICE, AND IF THEY USE THAT SITUATION TO TRY AND MARKET THEIR PROPOSAL, TO TRY AND CONVINCE VOTERS TO VOTE FOR THEIR PROPOSAL AS OPPOSED TO PROVIDING FAIR INFORMATION, THEY RUN THE RISK THAT THE SPONSORS RUN HERE, THAT THE COURT WOULD REMOVE IT FROM THE BALLOT TO PROTECT THE VOTERS FROM BEING ASKED TO SUPPORT SOMETHING THEY DIDN'T HAVE.

SO IT WAS UP TO THE SPONSORS TO MAKE A COMPLETE, FAIR BALLOT SUMMARY, TO DRAFT AN AMENDMENT THAT DID NOT VIOLATE THE SINGLE SUBJECT RULE AND THIS COURT SHOULD REMOVE THIS FROM THE BALLOT AND IF THERE ARE NO FURTHER QUESTIONS, I'LL HAVE A SEAT.

>> THANK YOU.
REBUTTAL?

>> MAY IT PLEASE THE COURT, IN RESPONSE TO SEVERAL QUESTIONS, THERE'S AN OVERALL ISSUE ABOUT THE TITLE AND SUMMARY.

THIS COURT'S PRECEDENCE IN TITLE AND SUMMARY ARE EXACTLY WHAT JUSTICE PARIENTE DISCUSSED. IT DOES NOT HAVE TO BE PERFECT, DOES NOT HAVE TO BE

>> WELL, WHAT ABOUT THIS USE OF DISEASE VERSUS THAT IT'S DEBILITATING CONDITIONS?

IT SEEMS IT WOULD HAVE BEEN YOU KNOW, WHY WAS DISEASE PUT IN WHEN IT'S NOT IN THE AMENDMENT?

>> BUT ONE OF THE THINGS THIS COURT HAS DONE CONSISTENTLY IS LOOK AT WORDS USED IN TITLE AND SUMMARY AND WORDS USED IN TEXT. ALL OF THE WORDS; THAT IS, CONDITION, DISEASE AND PHYSICIAN, PHYSICIAN DECISION, ARE IN THE TITLE AND SUMMARY AND IN THE TEXT.

>> BUT THE WORD DISEASE DOES NOT APPEAR IN THE SAME CONTEXT AS IT IS IN THE SUMMARY.

IT APPEARS IN PARKINSON'S DISEASE.

IS THAT CORRECT?

DOES IT APPEAR ANYWHERE ELSE?

>> THERE WERE OTHER CONDITIONS THAT ARE DISEASES.

I BELIEVE CANCER IS A DISEASE. THERE ARE OTHER DISEASES.

IN FACT, THERE ARE A NUMBER OF DISEASES WHICH COULD BE AND WILL BE DEBILITATING MEDICAL

CONDITIONS.

AND, YOUR HONOR, JUSTICE CANADY,
I WANT TO RESPOND TO THE
SUBJECTIVE DECISION OF A
PHYSICIAN, THAT'S ABSOLUTELY NOT
THE CASE.

THERE'S NOTHING IN THIS
AMENDMENT THAT REPEALS THE
STANDARDS OF CARE.

>> IT SAYS FOR WHICH A PHYSICIAN
BELIEVES THAT THE MEDICAL USE
AND THAT'S IN THE DEFINITION OF
DEBILITATING MEDICAL CONDITION,
OKAY?

THE PHYSICIAN'S BELIEF IS THE
FOCUS THERE.

AND THEN YOU HAVE THE BROAD
LANGUAGE OF IMMUNITY.

I DON'T UNDERSTAND HOW THAT
DOESN'T THROW THE ORDINARY

>> IN CERTIFICATION THAT
PHYSICIAN MUST SIGN IN THEIR
PROFESSIONAL OPINION.

THAT'S WHAT SECTION 9 SAYS.

AND IF THEY EXERCISE THEIR
PROFESSIONAL OPINION

NEGLIGENTLY, THEY ARE NEGLIGENT.

AND THIS COURT NO COURT

>> HOW CAN THAT POSSIBLY STAND
IN THE LINE OF THE LANGUAGE IN
SUBSECTION 2 WHEN IT SAYS THEY
SHALL NOT BE LIABLE?

>> THEY SHALL NOT BE LIABLE FOR
THE SINGLE ACT OF ISSUANCE.

I MEAN, THAT'S THE ACT OF
ISSUANCE.

NOT ISSUING IT NEGLIGENTLY.

>> BUT THE WHOLE PURPOSE OF YOUR
TALKING ABOUT THE REASON THAT
THE DEFINITION SURVIVES IS THE
CARE TAKEN BY THE PHYSICIAN AND
THE REVIEW BY THE PHYSICIAN,
WHICH IS NOW NOT SUBJECT TO
LIABILITY UNDER THEIR REVIEW.

>> THE PHYSICIAN, YOUR HONOR, I
WOULD SUGGEST, THAT THE COURTS
HAVE NEVER, BY IMPLICATION,
REPEALED STANDARD FOR, STANDARDS
FOR CARE, STANDARDS FOR
PROFESSIONAL CONDUCT.

AND THIS IS, THE LANGUAGE SIMPLY SAYS, IT, FOR THE ACT, AND IF IT DIDN'T DO THAT, THEN PHYSICIANS WOULD NOT BE ABLE TO PRESCRIBE.

I MEAN TO CERTIFY.

IF I MAY, ON THE CERTAIN ELECTED, ON THE CERTAIN CONDITION.

THE CERTAIN CONDITION IS A PERFECT EXAMPLE OF CONTEXT, THAT, IN THIS CONTEXT YOU READ IT OBVIOUSLY MEANS CERTAIN CONDITIONS THAT INVOLVE DECISIONS BY A PHYSICIAN.

THEY CITE AD CASE WHICH WAS ALSO CORRECT, CERTAIN ELECTED OFFICES, WHICH WAS A LIST.

SO IN EACH CASE YOU HAD TO LOOK AT CONTEXT.

>> BUT, AGAIN I'M CONFUSED ABOUT THIS ARGUMENT BECAUSE THE CONTEXT THE VOTER IS LOOKING AT IS A CONTEXT WHICH THE VOTER WILL SEE REFERENCE TO CERTAIN MEDICAL CONDITIONS FOLLOWED IMMEDIATELY BY THE BALLOT SUMMARY THAT REFERS TO DEBILITATING DISEASES.

YOU NO, I DON'T KNOW WHY A VOTER LOOKING AT THAT ISN'T GOING TO UNDERSTAND, OH, IT IS REFERRING TO MEDICAL CONDITIONS THAT ARE DEBILITATING DISEASES?

>> WELL, YOUR HONOR I THINK IF THE TWO OF THEM TOGETHER AND THE, A VOTER WILL UNDERSTAND THAT THERE ARE DEBILITATING MEDICAL CONDITIONS AND THERE ARE DEBILITATING DISEASES.

I UNDERSTAND YOUR PHYSICIAN BUT WHAT --

>> LET ME ASK YOU, BECAUSE YOUR TIME IS ABOUT OUT HERE.

I WANT TO ASK YOU ABOUT THE PROVISION ON FEDERAL LAW.

WHAT DOES IT MEAN IN THE BALLOT SUMMARY WHEN IT SAYS, DOES NOT AUTHORIZE VIOLATIONS OF FEDERAL LAW?

WHAT DOES THAT MEAN?

>> WELL IT'S PUTTING THE VOTER ON NOTICE THAT NOTHING IN THIS, IN THIS AMENDMENT DOES THAT AND THERE IS --

>> BUT, OKAY, THAT, BUT IT DOES. IT PURPORTS, IT AUTHORIZES, CERTAINLY AUTHORIZES CONDUCT UNDER STATE LAW WHICH WOULD BE CONDUCT THAT VIOLATES FEDERAL LAW, ISN'T THAT THE CASE?

>> AND THE VOTER COULD BE EXPECTED TO UNDERSTAND THAT. THE VERY SPECIFICALLY --

>> BUT IT SAYS IT DOESN'T, IT DOESN'T AUTHORIZE VIOLATION OF FEDERAL LAWS WHEN IT IS AUTHORIZING CONDUCT THAT CONSTITUTE VIOLATIONS OF FEDERAL LAW.

IT SEEMS TO ME IT WOULD BE EASY, THAT THIS IS JUST A CONFUSING STATEMENT THAT IS LIKELY TO LEAD PEOPLE TO BELIEVE THAT NOTHING IN HERE THAT IS AUTHORIZED HERE IS GOING TO BE ILLEGAL UNDER FEDERAL LAW.

NOW IT IS OBVIOUS THAT THE STATE OF FLORIDA CAN NOT CHANGE FEDERAL LAW.

WOULDN'T YOU THINK, THAT IS OBVIOUS?

>> WELL I SEE MY TIME'S EXPIRED. IF I MAY RESPOND.

>> MR. CHIEF JUSTICE, COULD HE HAVE OPPORTUNITY TO ANSWER THAT?

>> PLEASE.

>> THE IMPORTANT PART ABOUT CONVEYING THAT TO THE VOTER IS, I'LL CITE AGAIN TO THE LIMITED CASINOS CASE WHERE THIS COURT SAID THE VOTER IS EXPECTED TO KNOW, AND IN THAT CASE KNOWS THAT CASINOS ARE NOT AUTHORIZED OF THE SO I THINK WE CAN EXPECT THE VOTER TO UNDERSTAND SOMETHING ABOUT THE CONTEXT OF THIS AND, IN CONCLUSION, YOUR HONOR, THIS PROPOSAL IS A NARROW POLICY PROPOSAL.

THE EXPLANATION WITHIN THE

75-WORD LIMIT CONVEYS TO THE
AVERAGE VOTER THE CHIEF PURPOSE
IN A WAY THAT IS READILY
UNDERSTANDABLE.

THANK YOU, YOUR HONOR.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR
10 MINUTES.

>> ALL RISE.