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Advisory Opinion to the Attorney General: Right to Treatment & Rehabilitation for Nonviolent Drug Offenses

MR. CHIEF JUSTICE

GOOD MORNING THIS MONDAY, DECEMBER 10 AT THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE COURT'S CALENDAR THIS MORNING IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL REGARDING THE RIGHT TO TREATMENT AND REHABILITATION FOR NONVIOLENT DRUG OFFENSES.

THANK YOU, YOUR HONOR. THIS MATTER IS BEFORE THE COURT ON THE ATTORNEY GENERAL'S REQUEST FOR AN ADVISORY OPINION AS TO WHETHER THE PROPOSED AMENDMENT MEETS THE SINGLE SUBJECT AND BALLOT TITLE REQUIREMENTS. THIS MORNING, MR. STEPHEN GRIMES WILL ARGUE IN FAVOR OF THE AMENDMENT AND SIMONE MARSTILLER AND KENNETH SUKHIA WILL ARGUE IN OPPOSITION TO THE AMENDMENT. MR. CHIEF JUSTICE

MR. GRIMES.

MAY IT PLEASE THE COURT. MY NAME IS STEPHEN GRIMES. I REPRESENT THE FLORIDA CAMPAIGN FOR NEW DRUG POLICIES, THE SPONSOR OF THIS AMENDMENT. IN READING THE OPPONENT'S BRIEF, ONE WOULD THINK THE SKY IS FALLING. THEY SAY THE AMENDMENT WOULD ABOLISH THE DRUG COURTS AND LEGALIZE MARIJUANA, AND THAT IT DOES NOTHING OF THE KIND, BUT IN ANY EVENT, ALL OF THIS IS IRRELEVANT, BECAUSE THE QUESTION OF COURSE, BEFORE THE COURT, IS WHETHER IT PERTAINS TO THE SINGLE SUBJECT AND WHETHER THE BALLOT SUMMARY IS FAIR.

WITH REFERENCE TO THE SINGLE-SUBJECT ISSUE THAT COMES BEFORE US, A NUMBER OF THIS COURT'S OPINIONS HAVE DISCUSSED THAT IN THE CONTEXT OF AN AMENDMENT AFFECTING MORE THAN ONE BRANCH OF GOVERNMENT, AND I MUST SAY I HAVE SOME CONCERN FOR THAT HERE. WOULD YOU DISCUSS THAT ISSUE AS IT HAS BEEN ADDRESSED IN THE BRIEFS, AND THE COMMENTS OF THE OTHER.

I WILL. AND THAT IS THE MAJOR ATTACK ON THE SINGLE SUBJECT ISSUE. NOBODY REALLY CONTENTS -- CONTENTS THAT -- IT HAS ONE DOMINANT ISSUE, SO THAT THE SECONDARY ISSUE IS WHETHER IT IMPACTS SUBSTANTIALLY ARRESTS THE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT, AND, OF COURSE, AS THIS COURT HAS SAID, IN DIFFERENT CASES, THAT WE ARE TALKING ABOUT THEY RECOGNIZE, THE COURT HAS RECOGNIZED THAT IT CAN AFFECT AND MOST CONSTITUTIONAL AMENDMENTS DO AFFECT MULTIPLE BRANCHES OF GOVERNMENT, BUT THEY HAVE TO SUBSTANTIALLY AFFECT OR ALTER THE FUNCTION, THE TERM CATASTROPHIC CHANGES -- CATASTROPHIC CHANGES HAS BEEN USED IN THE CASES. THE ATTACK HERE AND MOST OF THE ATTACK SEEMS TO BE THAT IT USURPS THE FUNCTION OF THE JUD -- USURPS THE FUNCTION OF THE JUDICIARY, BY DIVERTING PEOPLE INTO TREATMENT BY PROFESSIONALS, BUT REALLY IF YOU ANALYZE THAT, THIS IS NOT, REALLY NO DIFFERENT THAN WHAT IS DONE RIGHT NOW, IN TERMS OF THE JUDGES DIVERT PEOPLE FOR TREATMENT TO PROFESSIONALS ALL ALONG, MUCH LIKE, REALLY, LIKE PROBATION. IN THE CASE OF PROBATION, A JUDGE PUTS THE PERSON ON PROBATION. HE, THEN, GOES INTO THE HANDS OF THE DEPARTMENT OF CORRECTIONS, WHICH IS NOT, THAT IS PART OF THE EXECUTIVE, AND THE PERSON IS UNDER THE SUPERVISION OF THE EXECUTIVE, AND THE COURT DOESN'T SEE THEM AGAIN, UNLESS THE PERSON VIOLATES THE PROBATION, THEN THEY BRING THE OFFENDER BACK IN.

DO THE COURTS, THOUGH, HAVE ANY DISCRETION UNDER THIS SCHEME? IT APPEARS THAT THIS IS SIMPLY A MATTER TO BE ELECTED BY THE PERSON CHARGED OR CONVICTED.

THAT IS TRUE. YEAH.

BUT IS THERE ANY -- I AM HAVING DIFFICULTY SEEING THAT THERE IS ANY DISCRETION OR REAL SUPERVISION ON THE PART OF THE TRIAL COURT, WITH THE LANGUAGE THAT IS IN THE AMENDMENT.

YOU ARE CORRECT, THAT THE OFFENDER OF THE NONVIOLENT OFFENDER, WHICH IS PURCHASE OR POSSESSION, HAS ABSOLUTE RIGHTS TO ELECT THE TREATMENT AS CONTRASTED TO THEIR DEAL OR SOMETHING LIKE THAT IN THAT SENSE, BUT IT STILL IS COMPARABLE TO PROBATION, BECAUSE ONCE A PERSON IS ON PROBATION, THE COURT NEVER SEES THEM AGAIN, UNLESS THEY VIOLATE, AND, OF COURSE, THIS AMENDMENT PROVIDES THAT, IF THE PROFESSIONALS FIND THAT THE PERSON IS UNAMENABLE TO TREATMENT, FOR EXAMPLE IF HE DOESN'T COME OR DOESN'T DO THE TREATMENT, THEN THEY BRING THEM BACK TO THE COURT, AND THE COURT, THEN, DECIDES WHETHER OR NOT TO GO AHEAD AND PROSECUTE.

HELP ME WITH THAT PROPOSITION TOO, THAT IS THAT ORDINARILY UNDER OUR SCHEME, THERE IS SOME MEMBER OF THE EXECUTIVE BRANCH BY THE PROSECUTOR OR --, EITHER PROSECUTOR OR THE PROBATION OFFICER OR SOMEBODY CONNECTED WITH THE EXECUTIVE BRANCH THAT SUPERVISES AND THEN MAKES SOME PRELIMINARY DETERMINATION OF WHETHER THE OFFENDER HAS COMPLIED WITH THE TERMS AND THEN BRINGS THAT BACK TO THE COURT'S ATTENTION, USUALLY ADVOCATING A POSITION, SAYING THAT THEY -- HERE I AM NOT SURE THAT I UNDERSTAND WHAT THE ROLE, IF ANY OF THE EXECUTIVE BRANCH, WITH REFERENCE TO DOING SOMETHING LIKE THAT. I REALIZE IT TALKS ABOUT A PROFESSIONAL AND IT TALKS ABOUT IS THE WORD UNAMENABLE TO TREATMENT OR SOMETHING LIKE THAT BEFORE THE THING MAY, BUT HELP ME. I AM NOT SURE --

IT ENVISIONS, AND THAT IS ONE REASON. THIS AMENDMENT IS NOT SELF EXECUTING, AS SOME AMENDMENTS ARE. SPECIFICALLY, BECAUSE OF THE KIND OF QUESTIONS YOU ASK, IT ENVISIONED THAT THE LEGISLATURE WOULD ENACT LEGISLATION CONSISTENT WITH THE SPIRIT OF THE AMENDMENT, TO DO JUST WHAT YOU ARE TALKING ABOUT. IT DOES REQUIRE THAT ANY OF THE PROFESSIONALS THAT ARE INVOLVED HAVE TO BE APPROVED IN ACCORDANCE WITH THE STATUTE. IT IS THE STATUTE THAT DEFINES PROFESSIONAL, AND THAT THE LEGISLATURE WOULD, THEN, IMPLEMENT THIS BY LEGISLATION THAT WOULD PROVIDE THAT THE EXECUTIVE WOULD BE INVOLVED IN THE SENSE MUCH LIKE PROBATION, BUT THE -- THE AMENDMENT, ITSELF AS I SAY, IS NOT SELF EXECUTING, AND IT WOULD PROVIDE SOMETHING ALONG THE LINES YOU ARE TALKING ABOUT.

UNDER YOUR VIEW OF THIS, WOULD THE LEGISLATURE, IN ANY WAY, WITH REFERENCE TO THE QUALIFYING OFFENSES, I REALIZE THAT, HERE, IT TALKS ABOUT POSSESSION, BUT IT DOES SEEM TO BE UNCLEAR, WITH REFERENCE TO THE OFFENSES THAT MIGHT QUALIFY A PERSON FOR TREATMENT. WOULD THE LEGISLATURE, FOR INSTANCE, BE LIMITED TO GIVING A SCHEDULE OF THE OFFENSES THAT WOULD QUALIFY?

THE AMENDMENT PROVIDES THAT THE ONLY PEOPLE THAT ARE PERMITTED TO ELECT ARE PEOPLE WHO ARE CHARGED WITH THE POSSESSION OF DRUGS, NOT PARAPHERNALIA OR ANYTHING ELSE. NOW, WITHIN THAT SCOPE, WITHIN THAT DEFINITION, THE LEGISLATURE COULD DEFINE, BUT RIGHT NOW ON THE BOOKS, IT IS FAIRLY EASY TO SEE WHICH OFFENSES WOULD BE INVOLVED. PURCHASE OF DRUGS. IN OTHER WORDS, IT DOESN'T INCLUDE THE DEALERS OR THE SELLERS OR PEOPLE LIKE THAT.

BUT IT WOULD INCLUDE ANY DRUG.

YES, IT WOULD.

AND WOULD IT INCLUDE ANY AMOUNT OF THE DRUG?

IT WOULD.

SO IT IS UNLIMITED, AS FAR AS HOW SERIOUS THE DRUG IS AND IN TERMS OF HOW MUCH THE DRUG S THE LEGISLATURE WOULD BE LIMITED. THEY COULDN'T PUT LIMITS ON THE AMOUNT OR THE NATURE OF THE DRUG.

THAT'S MY UNDERSTANDING. THAT'S RIGHT. THE THOUGHT WAS AND THE REASONING BEHIND ALL OF THIS IS THAT, IN TERMS OF PURCHASE OR POSSESSION, AS CONTRASTED TO THE SALE OF THE DEALER AND THIS SORT OF THING, OR POSSESSION WITH INTENT TO SELL, WHICH WOULD BE OUT, THAT THE PURCHASER IS THE ONE OR THE POSES OR IS THE ONE THAT IS THE USER, AND THAT IS WHAT THEY ARE TRYING TO TREAT.

WHAT WOULD YOU CALL OUR ATTENTION TO, AS THE CLOSEST ANALOGOUS AMENDMENT INITIATIVE THAT THIS COURT HAS APPROVED TO GO ON THE BALLOT? IS THERE SOMETHING THAT IS SIMILAR TO THIS?

I DON'T KNOW THAT THERE IS. NOTHING THAT OCCURS TO ME. I SUBMIT THAT IT CLEARLY IS CONSISTENT WITH THE CONSTITUTIONAL REQUIREMENTS BUT NOTHING COMES TO MIND, EXACTLY, THAT --

ON THAT LINE, WHEN WE ARE TALKING, AGAIN, ABOUT AFFECTING VERSUS SUBSTANTIALLY ALTERING MULTIPLE BRANCHES OF GOVERNMENT.

YES. SURE.

IF YOU HAVE GOT LEGISLATION THAT IS ON THE BOOKS NOW, THAT THIS WILL SUPPLANT THAT LEGISLATION. YOU HAVE GOT EXISTING PROCEDURES -- WILL IT OR WILL IT NOT? IN OTHER WORDS, ISN'T THERE, LEGISLATURE HAS MANY, MANY STATUTES IT HAS ENACTED THAT IS DEALING WITH FIRST TIME OR SECOND TIME OFFENDERS IN THE DRUG LAWS. WHAT WILL THAT DO?

IT DOESN'T SUPPLANT ANYTHING. THE ARGUMENT IS THAT IT WILL ABOLISH THE DRUG COURTS. IT WOULD BE PARALLEL WITH THE DRUG COURTS. THERE ARE OFFENSES ON THE BOOKS NOW THAT A PERSON CAN ELECT TO GO IN THE DRUG COURTS THAT HE WOULDN'T DO THIS. IT WOULD BE PARALLEL WITH EACH OTHER, SO IT, NOW, AND A PERSON ACTUALLY MAY ELECT TO GO INTO THIS OR HE MAY ELECT TO GO IN THE DRUG COURTS, IF THE PROSECUTOR AGREES WITH IT.

IT WILL ABOLISH OR CHANGE THE LEGISLATURE'S ABILITY TO DEAL WITH THOSE CATEGORY OF OFFENSES. IT WOULD CHANGE THE EXECUTIVE'S ABILITY TO SUPERVISE THOSE LEVEL OF OFFENSES, AND IT WILL CHANGE THE JUDICIARY'S ABILITY TO DEAL WITH THOSE LEVEL OF OFFENSES. SO WHY ISN'T THAT SUBSTANTIALLY AFFECTING ALL THREE BRANCHES OF GOVERNMENT?

I SUBMIT THAT IT WOULD NOT SUBSTANTIALLY AFFECT THOSE BRANCHES. IT IS NOT GOING TO ABOLISH OR IT IS NOT GOING TO REPEAL ANY LAWS. AS SUCH, IT WILL BE SUPPLEMENTARY OR COMPLEMENTARY TO IT. IT GIVES SOME ADDITIONAL ELECTION TO SAY PARTICULAR OFFENDERS UNDER PARTICULAR CIRCUMSTANCES, BUT THE, NONE OF THE LAWS OF THE LEGISLATURE, FOR EXAMPLE,, FOR A PERSON WHO IS A PROSECUTOR, THE OFFENSES OF THE SAME. THE PUNISHMENT IS THE SAME. IT JUST GIVES THESE PARTICULAR OFFENDERS A RIGHT TO OPT INTO THESE PARTICULAR PROGRAMS. THE EXECUTIVE IS GOING TO BE DOING THE SAME THING AS THEY

ALWAYS DO. AND SO TO THE EXTENT I RESPECTFULLY DISAGREE WITH THE FACT THAT IT WOULD BE A U.S. URPATATION OF THOSE PARTICULAR FUNCTIONS. THE -- A USURPATATION OF THOSE PARTICULAR FUNCTIONS.

WHY, IF, IN THESE AREAS WE SAID THIS IS GOING TO HAPPEN, WHY WOULDN'T IT SUBSTANTIALLY ALTER THE WAY ALL THREE BRANCHES DEAL WITH CRIMINAL ACTS?

IT IS TELLING THE LEGISLATURE YOU CAN'T DO THIS. IT IS TELLING THE JUDICIARY THEY CAN'T DO THAT, AND IT IS TELLING THE EXECUTIVE THAT THEY CAN'T. ISN'T THAT, JUST BECAUSE IT IS SOMETHING THAT YOU ARE DESCRIBING AS NOT BEING A HIGH LEVEL OFFENSE, DON'T WE HAVE TO BE CONCERNED WITH THE WAY GOVERNMENT TRADITIONALLY DEALS WITH CRIMINAL ACTIVITIES, AND THIS BEING AN ALTERATION IN THAT APPROACH?

BUT IT WOULDN'T ALTER THE FUNCTION OF THOSE PARTICULAR BRANCHES. IT IS GOING TO AFFECT EVERY BRANCH. ALMOST ANY CONSTITUTION, YOU PASS A CONSTITUTIONAL AE., AND IN SOME -- A CONSTITUTIONAL AMENDMENT, AND IN SOME INSTANCES IT IS GOING TO ACTUALLY REPEAL A LAW. I SUBMIT THAT I CAN'T THINK OF ANY THAT IT WILL ACTUALLY REPEAL IN THIS INSTANCE, BUT SOME OF THEM DO OBVIOUSLY, BECAUSE THE CONSTITUTION SUPERSEDES LEGISLATION, BUT IT WOULD NOT USURP THE FUNCTION AS CONTRASTED TO WHAT THEY ORDINARILY DO. THE DRUG COURT IS GOING TO RUN IN PARALLEL TO THIS INITIATIVE, AND IT IS JUST SIMPLY GIVES AN ADDITIONAL RIGHT FOR THESE PEOPLE TO OPT FOR THIS TREATMENT UNDER THIS CIRCUMSTANCES. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME, MR. GRIMES.

RIGHT. THANK YOU. THE, IT DOES NOT, IT DOESN'T CHANGE, I MEAN, IT DOESN'T REPEAL ANY LAWS. AND THEREFORE I SUBMIT THE, THERE IS A NUMBER OF CASES THAT THE COURT HAS WRITTEN, THAT EVEN THOUGH IT IMPACTS ALL THREE BRANCHES, AS LONG AS IT IS RELATED DIRECTLY TO WHAT THE AMENDMENT IS ABOUT, IT IS LEGAL. FOR EXAMPLE, THE ONE ON ENGLISH LANGUAGE. THE COURT SAID IT SUBSTANTIALLY IMPACTED EACH OF THE BRANCHES OF GOVERNMENT, BUT IT WAS ALL DIRECTED TO THE ONE DOMINANT THEME OF HAVING ENGLISH LANGUAGE AND THE SAME WAY WHERE THE TERM LIMITS AND PUBLIC FINANCING OF DIFFERENT PEOPLE WHO ARE RUNNING FOR ELECTION IN THE DIFFERENT BRANCHES. IT SUBSTANTIALLY, IT AFFECTED ALL OF THE BRANCHES, BUT IT WAS STILL DIRECTED TO A SINGLE DOMINANT THEME, AND THAT IS WHAT THIS IS, A SINGLE DOMINANT THEME OF ALLOWING NONVIOLENT DRUG OFFENDERS TO HAVE THIS RIGHT TO TREATMENT, AND THAT IS ALL IT DOES, AND I SUBMIT THAT IT DOESN'T VIOLATE THESE CONSTITUTIONAL MANDATES. I THINK I WILL RESERVE THE REST OF MY TIME AND RESPOND TO THE OPPONENT'S ARGUMENTS. MR. CHIEF JUSTICE

THANK YOU.

THANK YOU.

MS. MARSTILLER. PLEASE OBSERVE YOUR TIME, IF YOU ARE DIVIDING IT.

MAY IT PLEASE THE COURT. MY NAME IS SIMONE MARSTILER, AND I AM HERE TO REPRESENT GOVERNOR JEB BUSH. I WOULD SUBMIT THAT, BECAUSE THE PARTIES CHALLENGING THIS PROPOSED AMENDMENT, ALTHOUGH THE PARTIES HAVE, I THINK, VERY WELL EXPRESSED TO THE COURT THEIR UNIQUE TAKE ON THIS AMENDMENTS, THE BRIEFS DO LARGELY OVERLAP. HOWEVER, THE BRIEF FILED BY "SAVE OUR SOCIETY FROM DRUGS", I THINK, VERY ABLY POINTS OUT TO THE COURT THE CONSTITUTIONAL AND STATUTORY WEAKNESSES IN THIS PROPOSED AMENDMENT, AND THEREFORE THE CHALLENGING PARTIES HAVE ASKED ME TO ADVISE THE COURT THAT WE WOULD LIKE TO WAIVE OUR ORAL ARGUMENT TIME TO MR. SUKHIA, BUT BEFORE I ASK MR. SUKHIA TO COME UP, I WOULD LIKE TO SAY SOMETHING ON THE GOVERNOR ANSWER BEHALF, AND THAT IS THE GOVERNOR IS SWORN NOT ONLY TO UPHOLD THE LAWS OF

THE STATE OF FLORIDA BUT, ALSO, THE FLORIDA CONSTITUTION. IN ADDITION, HE RESPECTS THE RIGHT OF THE PEOPLE WHO AMEND THEIR CONSTITUTION. HE, ALSO, RECOGNIZES THAT THE PEOPLE OF THE STATE OF FLORIDA SAW FIT TO PUT A LIMITATION IN THE CONSTITUTION THAT APPLY TO CITIZEN INITIATIVES, AND THAT IS THAT THEY APPLY TO A SINGLE SUBJECT ONLY. THE PROPOSED AMENDMENT AT ISSUE TODAY NOT ONLY RADICALLY ALTERS LEGISLATIVE ENACTMENTS THAT EMBODY PUBLIC POLICY, REGARDING HOW THIS STATE HANDLES INDIVIDUALS WHO VIOLATE OUR DRUG LAWS, BUT IT, ALSO, USURPS EXECUTIVE AND JUDICIAL FUNCTIONS WHICH ARE NECESSARY TO THE PROPER ENFORCEMENT OF THE LAWS OF THE STATE OF FLORIDA, AND TO THE OVERALL PROPER ADMINISTRATION, AND THE INHERENT JUST CARRYING OUT OF THE CRIMINAL JUSTICE SYSTEM. IT IS INTEGRITY. THERE FOR THE GOVERNOR DOES BELIEVE THAT THIS PROPOSED VIOLATES THE SINGLE SUBJECT LIMITATION, AND NOW I WOULD ASK MY ABLE COLLEAGUE, MR. KEN SUKHIA, UP TO THE PODIUM TO ARGUE THE IN VILE AT POLICIES. MR. CHIEF JUSTICE

MR. SUKHIA.

YES, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS KEN SUKHIA, AND I AM HERE TO ARGUE AGAINST THE PROPOSED AMENDMENT. VERY BRIEFLY I WOULD NOTE THAT THIS IS NOT A SITUATION IN WHICH WE, IN OUR BRIEF, ATTEMPTED TO ATTACK THE MERITS OF THE PETITION. WE DON'T BELIEVE THAT IS APPROPRIATE FOR THE COURT.

WHAT, LET ME ASK YOU THE SAME QUESTION I ASKED ASKED OPPOSING COUNSEL, AND THAT IS, WHAT IS THE CLOSEST CONSIDERED AND NOT ON THE BALLOT BY THIS COURT?

I BELIEVE AT 487 SO.2D, WHICH IS VARIOUS AMENDMENTS TO PREVENT THE GOVERNMENT FROM DISCRIMINATING ON THE BASIS OF CERTAIN CLASSIFICATIONS. IE ON THE BASIS OF RACE OR SEX. THAT IS COMMONLY KNOWN AS THE WARD CONNALLY AMENDMENT. I BELIEVE THAT'S THE CASE, YOUR HONOR, BECAUSE THIS COURT IDENTIFIED NUMEROUS DEFICIENCIES IN THAT AMENDMENT. ALL OF WHICH ARE PRESENT IN THIS AMENDMENT. IN OTHER WORDS, DIVERGENT TERMINOLOGY. THE FAILURE TO IDENTIFY LEGALLY MEANINGFUL TERMS. THE USE OF PHRASES, SUCH AS BONA FIDE CLASSIFICATIONS, WHEREAS THIS AMENDMENT USES PHRASE LIKE "AS APPROPRIATELY DEFINED", THOUGH IT DOESN'T DEFINE THEM IN THE AMENDMENT.

BUT THAT WAS NOT ON THE BASIS OF SINGLE SUBJECT.

YES, YOUR HONOR, IT WAS. ANOTHER BONA FIDE?

ABSOLUTELY. IT WAS ON THE BASIS OF BOTH SINGLE SUBJECT AND ON THE BASIS OF THE 101 REQUIREMENT. AND, IN FACT, THAT COURT, WELL, I MAY HAVE MISUNDERSTOOD YOUR QUESTION, YOUR HONOR. I AM SORRY. THE CASE DEALT WITH BOTH THE SINGLE-SUBJECT ISSUE AND WITH THE OTHER ISSUE.

RIGHT. BUT I WAS, REALLY INTERESTED IN THE ANALYSIS THAT YOU HAVE IN RESPECT TO A SIMILAR SINGLE SUBJECT.

AS TO SIMILAR SINGLE SUBJECT CASES, I STILL FEEL THAT ONE IS THE, IS THE ONE THAT IS THE CLOSEST, BECAUSE THE COURT ARTICULATED THE OPINION THAT I THINK IS THE BASIS ON WHICH I READ THE AMENDMENT, THE BASIS ON WHICH I FOUND THIS AMENDMENT CLEARLY TO VIOLATE THE PRINCIPLES SET FORTH BY THE COURT. NOW, THERE ARE OTHER CASES. FOR INSTANCE, WHEN THE COURT LOOSE AT THE SINGLE-SUBJECT ISSUE, ONE OF THE THINGS THE COURT ASKS IS, WELL, IS THE PUBLIC BEING GIVEN AN IMPRESSION THAT THIS AMENDMENT FILLS AVOID, AND SPECIFICALLY THE ASKEW VERSUS FIRESTONE CASE ADDRESSED THAT PARTICULAR ISSUE. AND IT SAID THAT, WELL, THIS IS LEAVING THE PUBLIC WITH THE IMPRESSION THAT THERE IS AVOID TO BE FILLED, WHEREAS IN FACT, THE AMENDMENT WAS ACTUALLY RETREATING FROM AND DOING SOMETHING DIFFERENT THAN THE PUBLIC WAS TO EXPECT. IN THAT CASE, IT WAS A TWO-

YEAR BAN ON LOBBYING BY PHYSICIANS IN THE GOVERNMENT.

WAS THAT A BALLOT TITLE SUMMARY DEFICIENCY OR A SINGLE SUBJECT DEFICIENCY?

IT WAS BOTH AS WELL. IN THAT CASE, THE COURT FELT THAT THE BALLOT, TITLE AND SUMMARY WAS DEFICIENT. I AM FORGETTING THAT MOMENTARILY WHAT THAT BASIS WAS, BUT IT WAS A SINGLE SUBJECT ISSUE AS WELL, AND THEY SAID IT WAS, YOUR HONOR THEY SAID, IN THAT OPINION, THIS COURT SAID IN THAT OPINION, THAT IT WAS PROBLEM ON A, ON THE SINGLE SUBJECT BASIS, BECAUSE THAT COURT OR THAT INITIATIVE FLEW UNDER FALSE COLORS, AS THEY PUT IT. IT LEFT THE IMPRESSION THAT IT WAS ACCOMPLISHING SOMETHING NEW NEW, WHEN IN FACT IT WAS SUPPLANTING SOMETHING WHICH HAD BEEN IN PLACE.

ARE YOU SUGGESTING THAT THAT IS THE CASE SNEER.

ABSOLUTELY, YOUR HONOR, BECAUSE IN THIS CASE THERE IS THE AVERAGE VOTER WILL NOT HAVE ANY KNOWLEDGE OF THE FACT THAT, UNDER SECTION 948 OF THE FLORIDA STATUTE, THERE IS A MEANS ALREADY BY WHICH THE COURT AND THE COURT ALONE, MAY PLACE SOMEONE UNDER SUPERVISED PROBATION, AND THE SUGGESTION BY THE PROPONENTS THAT THIS IS THE SAME AS SECTION 948, IS QUITE HONESTLY AND RESPECTFULLY, WRONG! IT IS, IN FACT, THE CASE, UNDER SECTION 948, THAT, AT EVERY STEP OF THE WAY, THROUGHOUT THE PROBATIONARY PERIOD, THE JUDGE DECIDES. THE JUDGE HAS THE DISCRETION. WHEREAS THIS AMENDMENT PLACES THE SOLE DISCRETION IN THE HANDS OF UNELECTED, UNAPPOINTED --

WHERE DO YOU GET THAT THIS FILLS AVOID AND THEREFORE FLIES UNDER FALSE COLORS?

NO. YOUR HONOR, IT DOES NOT FILL AVOID. THE PROBLEM IS IT LEAVES AN IMPRESSION THAT IT MAY BE FILLING AVOID. IN OTHER WORDS THE AVERAGE VOTER WHEN HE GOES INTO THE BALLOT BOX IS NOT GOING TO HAVE ANY NOTION THAT THE STATE CURRENTLY HAS A PROGRAM BY WHICH THE COURT MAY PLACE ANY OFFENDERS INTO TREATMENT.

AND THAT IS THE DEFICIENCY ON THE PART OF THE VOTERS' KNOWLEDGE IS GOING TO BE DEFLECTED OR SOMEHOW OVERCOME?

WELL, I AM MERELY ANSWERING YOUR HONOR'S QUESTION, BUT I DON'T SEE THAT -- I DON'T SAY THAT IS THE MOST SIGNIFICANT DEFICIENCY IN THIS INITIATIVE. HOWEVER, IT IS ONE OF THEM. IT PURPORTS TO FILL AVOID, WHEN, IN FACT, WE HAVE ALREADY DEALT WITH THIS ISSUE, BUT IT IS MORE, THE MORE SIGNIFICANT PROBLEM WITH THE AMENDMENT IS THE MANNER IN WHICH IT PURPORTS TO FILL THAT VOID. IT DOES SO, WITHOUT INFORMING THE PUBLIC, AND IN FACT JUSTICE OVERTON, WHEN HE WAS WRITING IN EVANS VERSUS FIRESTONE, TALKED ABOUT THIS PROBLEM. HE SAID THAT WE EMPHATICALLY STATED, AND THIS IS A QUOTE FROM HIM, WE EMPHATICALLY STATED, IN ASKEW VERSUS FIRESTONE, THAT AN INITIATIVE MUST BE OBJECTIVE AND FAIR, AND MUST SUFFICIENTLY INFORM THE VOTERS, SO AS TO PERMIT THEM TO MAKE AN INFORMED DECISION, WHEN THEY VOTE ON THE BALLOT INITIATIVE. IN OTHER WORDS, THE SUMMARY, ITSELF, MUST PROVIDE THAT INFORMATION, AND IN THIS CASE, YOUR HONORS, THE SUMMARY SAYS NOTHING OF THE FACT, NOTHING WHATSOEVER, OF THE FACT THAT QUALIFIED PROFESSIONALS ARE GIVEN OVER THE RESPONSIBILITY OF MAKING CRITICAL LIBERTY INTEREST DECISIONS.

NOW, YOU ARE NOT SAYING -- I GUESS, LET'S START, FIRST, WITH THE SINGLE SUBJECT PROBLEM THAT YOU PERCEIVE, AND DISTINGUISH BETWEEN SOMETHING THAT IS SUBSTANTIALLY ALTERING A FUNCTION OF GOVERNMENT.

YES.

VERSUS AFFECTING MULTIPLE BRANCHES OF GOVERNMENT, BECAUSE SOMETIMES THAT IS A

SUBTLE OR NOT SO SUBTLE DISTINCTION, AND WE HAVE AN OBLIGATION TO PUT THIS ON THE BALLOT, UNLESS IT VIOLATES SINGLE-SUBJECT AND THE BALLOT SUMMARY PROVISION.

I UNDERSTAND. YES, MA'AM. THIS COURT HAS IDENTIFIED THREE COMPONENTS OF THE SINGLE-SUBJECT RULE. THE FIRST IS WHETHER IT IS LOG ROLLING. THAT IS WHETHER IT FORCES OR ENCOURAGES THE VOTER TO ACCEPT PORTIONS OF A PROPOSAL WHICH THEY MAY OPPOSE, IN ORDER TO OBTAIN SOMETHING WHICH THEY MAY SUPPORT, AND I BELIEVE THIS INITIATIVE CLEARLY DOES. THAT SOMEONE MAY SUPPORT, FOR INSTANCE, IF I MIGHT, VERY BRIEFLY ADDRESS THAT POINT, NUMBER ONE, THE LOG ROLLING. THIS ENCOURAGES VOTERS OR MAY WELL GIVE -- THIS ENCOURAGES VOTERS OR MAY WELL GIVE VOTERS AN INTEREST IN HAVING TREATMENT OR HAVE AN INTEREST IN TREATMENT. THIS GRANTS TREATMENT FOR ALL OFFENSES, WHETHER HEROIN, LSD, COCAINE, WHATEVER, GRANTS TREATMENT FOR ANY AMOUNT OF THE DRUG, GRANTS TREATMENT NOT ONLY FOR THOSE WHO POSSESS MERELY BUT FOR THOSE WHO PURCHASE. YOU SEE, IT FORCES THAT VOTER TO MAKE THAT TYPE OF DECISION, AND THAT IS A PRECISE, THOSE ARE PRECISELY THE DECISION THAT IS THIS COURT HAS SAID A VOTER SHOULD NOT BE PUT IN THE POSITION OF HAVING TO MAKE. THAT IS ONE OF THE COMPONENTS OF MAKING IT MORE THAN ONE SUBJECT AT WHICH TIME DOES MORE THAN THAT. IT FORCES THE VOTER, FOR INSTANCE, TO ACCEPT TREATMENT, AND THE VOTER MAY BE THINKING, WELL, WHAT IS TREATMENT? IT SAYS IN THE SUMMARY "APPROPRIATE TREATMENT". WHAT IS APPROPRIATE TREATMENT TO ONE VOTER MAY NOT BE APPROPRIATE TO THE OTHER. WHEN YOU GO TO THE SUBSTANCE OF THE AMENDMENT, IT SAYS THE APPROPRIATE TREATMENT SHALL INCLUDE, AS DEEMED APPROPRIATE, AGAIN, APPROPRIATE APPROPRIATE, AS DEEMED APPROPRIATE, SHALL INCLUDE FAMILY COUNSELING, LITERACY TRAINING, JOB TRAINING. WELL, THE VOTER WHO MAY BE INTERESTED IN SUPPORTING TREATMENT MAY HAVE, HAS NO EARTHLY NOTION THAT WHAT IS CONTEMPLATED AS TREATMENT HERE HAS NO EARTHLY NOTION FROM THE SUMMARY. I KNOW THAT THAT GETS TO YOUR POINT THAT, IT IS SOMETIMES HARD TO DIVIDE THOSE TWO, YOUR HONOR, AND I REALIZE, HOWEVER, THIS COURT HAS SPOKEN IN THIS LANGUAGE AS WELL OF THE ADDRESSING OF THE SINGLE-SUBJECT ISSUE. THEY HAVE ADDRESSED THE FACT THAT IT IS NOT MENTIONED IN THE SUMMARY AND IT IS HERE, BUT THAT IS ANOTHER THING THAT THEY ARE FORCED TO DECIDE, WHICH IS CONTRADICT AREA DETERMINATIONS. FOR INSTANCE THEY -- CONTRADICTORY DETERMINATIONS. FOR INSTANCE THEY MAY FIND IT APPROPRIATE THAT SOMEONE IN TREATMENT BE REMOVED FROM A PROGRAM BUT THEY MAY NOT BELIEVE IT APPROPRIATE THAT SOMEONE CANNOT BE DETERMINATE TO BE UNAMENABLE TO TREATMENT, UNLESS HE HAS TWO PROGRAMS AND TWO VIOLATIONS.

JUSTICE SHAW HAS A QUESTION.

AS TO HOW THE INITIATIVE SUBSTANTIALLY AFFECTS MORE THAN ONE FUNCTION OF GOVERNMENT, I THINK THAT WAS THE QUESTION.

OKAY, YOUR HONOR, YES, SIR. I THINK WE GOT ON TO THE SUBJECT OF WHAT ABOUT THE SINGLE-SUBJECT RULE, A AND SO I STARTED WITH ANOTHER ONE INSTEAD OF THAT ONE, BUT AS TO HOW IT SUBSTANTIALLY AFFECTS MULTIPLE FUNCTIONS, FIRST AND FOREMOST AND MOST SIGNIFICANTLY, IT AFFECTS THE JUDICIAL FUNCTION. NOW, YOUR HONOR, WHEN YOU ASK THAT, IF YOU ASK THE QUESTION WHAT IS IT THE JUDGES OUGHT TO BE INVOLVED IN, WHAT IS IT THE JUDGES OUGHT TO BE DOING, IN THE JUDICIAL SYSTEM, WHAT OTHER FUNCTION? THEN THE FUNCTION OF SENTENCING REMOVING SOMEONE FROM SOCIETY. DISRUPTING HIS LIBERTY INTEREST. WHAT OTHER FUNCTION COULD YOU DESCRIBE AS BEING MORE JUDICIAL, MORE REQUIRING OF A JUDICIAL DETERMINATION, BUT, YOUR HONORS, UNDER THIS AMENDMENT, UNDER THE SPECIFIC TERMS OF SUBSECTION B OF THIS AMENDMENT, IT SAYS THAT THE METHOD OF MONITORING THE METHODS OF MONITORING A PERSON'S PERFORMANCE WHILE IN TREATMENT SHALL BE GIVEN TO QUALIFIED PROFESSIONALS. IT SAYS THE QUALIFIED PROFESSIONALS SHALL DETERMINE BOTH THE TYPE AND DURATION.

BUT ALL OF THIS IS AN ALTERNATIVE TO THE PRESENT LAW, IS IT NOT?

THAT IS, THAT'S TRUE IT DOES SUPPLANT THE PRESENT LAW.

SO THE PRESENT FUNCTIONS REMAIN.

NO, SIR, YOUR HONOR. IT DOES NOT. IN FACT, THAT IS ABSOLUTELY NOT TRUE. BECAUSE A JUDGE, UNDER THIS AMENDMENT, DOES NOT HAVE THE AUTHORITY TO MONITOR THE METHODS OF TREATMENT. HE DOES NOT HAVE THE AUTHORITY TO SET THE DURATION. IN EVERY OTHER INSTANCE, THE CIRCUIT AND COURT, COUNTY COURT JUDGES OF THIS STATE HAVE THE ABSOLUTE AUTHORITY TO DETERMINE THE LENGTH, THE DURATION OF A PROBATIONARY SENTENCE, AND SO THIS NOTION THAT OH, WELL, IT IS THE SAME AS THIS ONE, AFTER ALL, CORRECTIONAL OFFICERS, PROBATION OFFICERS ACTUALLY DECIDE WHEN THEY HAVE FAILED TO HAVE NOT SUCCEEDED UNDER THE PROGRAM. THAT IS A DISINGENIOUS ARGUMENT, BECAUSE THE JUDGE SETS THE TERM OF THE PROBATION. YES, OF COURSE THE JUDGE MAY NOT SEE HIM AGAIN, BECAUSE THE JUDGE SAYS IF HE SUCCESSFULLY COMPLETES THIS PROBATIONARY TERM THEN HE WILL BE RELEASED FROM SENTENCING. BUT THE RESPONSIBILITY, UNDER THE CURRENT STATUTE, UNDER 948.08-6, THE RESPONSIBILITY TO DETERMINING, UNDER THE CURRENT STATUTE, WHEN SOMEONE HAS VIOLATED PAROLE, WHEN SOMEONE IS SPECIFICALLY THE JUDGE, MOREOVER A HEARING IS PROVIDED, UNDER THE STATUTE, IN ORDER TO COMPLY WITH THE DUE PROCESS REQUIREMENTS, HERE NOT ONLY IS THERE NO HEAR HEARING. THE MATTER IS EXCLUSIVELY GIVEN OVER TO THE MATTER OF DETERMINING WHETHER SOMEONE HAS SUCCESSFULLY COMPLETED THE PROGRAM, WHICH IS TO SAY, ALSO --

WHY COULD NOT NOT BE PART OF THE LEGISLATIVE IMPLEMENTATION?

BECAUSE IN ORDER TO DO THAT, YOUR HONOR, THEY WOULD HAVE TO BE VIOLATING THE EXPRESS TERMS OF THE SUBSTANCE OF THIS AMENDMENT, BECAUSE THE SUBSTANCE OF THIS AMENDMENT SAYS THAT, VERY CHREEF, THEY WENT WAY OUT ON THE -- VERY CLEARLY THEY WENT WAY OUT ON THE LIMB ARCH SAID BOTH THE DURATION -- OUT ON THE LIMB, AND SAID BOTH THE DURATION AND THE TYPE OF TREATMENT SHALL BE THE SUBJECT. THEY WENT WAY OUT ON THE LIMB, AND THEN THEY SAID THE JUDGE HAS THE AUTHORITY TO DETERMINE ELIGIBILITY, BUT THAT IS A JUDICIAL FUNCTION OF WHETHER SOMEBODY MEETS THE DEFINITION OF HAVING MORE THAN ONE PRIOR CONVICTION.

COULD THE LEGISLATURE PASS THIS KIND OF LEGISLATION OUTSIDE OF A CITIZENS' INITIATIVE?

THAT IS A GOOD QUESTION, YOUR HONOR. PART OF THAT QUESTION THAT CONCERNS ME IS THIS TYPE OF, BECAUSE IT IS, THERE ARE SO MANY DEFICIENCIES HERE, BUT COULD THEY PASS THIS TYPE OF LEGISLATION? I DO NOT BELIEVE SO, NO. THEY COULD NOT. THEY COULD NOT, YOUR HONOR, BECAUSE UNDER ARTICLE V, THE STATE JUDICIARY, ALL JUDICIAL DECISIONS MUST VEST IN THE STATE JUDICIARY, AND THAT PROVISION WOULD CLEARLY BE A VIOLATION OF LAW. MOREOVER, IT WOULD AND EQUAL PROTECTION VIOLATION.

ISN'T THIS SORT OF ANALOGOUS TO OTHER STATUTES? THERE ARE PARTS OF IT, AT LEAST, THAT ARE ANALOGOUS TO OTHER STATUTES. LET'S TAKE THE REOFFENDER STATUTE, FOR EXAMPLE. THE JUDGE DOESN'T REALLY HAVE, YOU KNOW, ANY DISCRETION WHEN IT COMES TO THE SENTENCE THAT IS ACTUALLY BEING IMPOSED IN THOSE SITUATIONS, AND THAT IS THE, PRETTY ANALOGOUS TO WHAT IS HAPPENING HERE. CORRECT?

WELL, THERE, IN THOSE SITUATIONS, WHERE YOU HAVE, I AM ASSUMING YOU ARE REFERRING TO MANDATORY MINIMUM. IS THAT THE --

WELL, THE REOFFENDER STATUTE. IT IS SIMILAR TO A MANDATORY MINIMUM.

THAT MAY BE TRUE. IT IS NOT GIVEN OVER TO A NONJUDICIAL OR EVEN NONGOVERNMENTAL ENTITY. FOR INSTANCE, IF I MIGHT, YOUR HONOR, I THINK THIS DOES RELATE TO YOUR QUESTION. UNDER CHAPTER 948, RIGHT AT THE BEGINNING, IN NO CIRCUMSTANCES SHALL A PRIVATE ENTITY PROVIDE PROBATIONARY OR SUPERVISION SERVICES TO FELONY OR MISDEMEANOR OFFENDERS SENTENCED OR PLACED ON PROBATION OR OTHER SUPERVISION BY THE CIRCUIT COURT. IN OTHER WORDS, NO. PRIVATE INDIVIDUALS WHO ARE NOT QUALIFIED, WHO ARE NOT TRAINED, AND IN FACT, IT GOES ON TO SAY THAT THOSE WHO SUPERVISE, UNDER THE DEPARTMENT OF CORRECTIONS, MUST MEET SPECIFIC ELIGIBILITY REQUIREMENTS, IN ORDER TO PERFORM THOSE FUNCTIONS, AND IN THE FEDERAL SYSTEM, OF COURSE, AND I BELIEVE IT IS TRUE IN SPIRIT IN THE STATE SYSTEM, THOSE PROBATIONARY OFFICERS ARE ACTING AT THE BEHEST OF AND UNDER THE AUTHORITY OF THE COURT BUT THAT IS NOT THE CASE UNDER THIS AMENDMENT. I BELIEVE THE AMENDMENT COULD NOT BE PASSED, IN ANSWER TO YOUR QUESTION, THE AMENDMENT COULD NOT BE PASSED, LEGALLY, BECAUSE IT WOULD REMOVE AUTHORITY, WHICH MUST VEST IN THE COURT. AS TO THE OTHER STATUTES THAT YOU ARE REFERRING TO, THE COURT STILL RETAINS ULTIMATE SENTENCING DETERMINATION. HE STILL RETAINS THE AUTHORITY TO SET LENGTH OF THE PROBATIONARY PERIOD.

ISN'T THE COURT, STILL, RETAINING THE ULTIMATE SENTENCING DETERMINATION, BECAUSE ACTUALLY WE ARE NOT AT SENTENCING YET, BECAUSE THE SENTENCING WOULD ACTUALLY OCCUR AT A POINT AFTER THIS TREATMENT.

THAT ACTUALLY IS QUITE DISTANT I HAVE, UNDER THE STATUTE, BECAUSE THERE IS A REAL QUESTION AS TO WHETHER ANYONE -- IT IS BOTH AFTER CONVICTION AND AFTER SENTENCING. SO WE ARE AT SENTENCING, AT LEAST WITH RESPECT TO THAT OTHER CLASSIFICATION, CATEGORY OF DEFENDANTS, BECAUSE THE STATUTE SAYS AFTER EITHER ARREST OR AFTER CONVICTION, SOMEONE MAY REQUEST HIS SO-CALLED CONSTITUTIONAL RIGHT TO TREATMENT.

WHAT I AM SAYING HERE IS THAT UNDER THIS -- UNDER THIS PROPOSAL, YOU ACTUALLY HAVE YOUR TREATMENT, EITHER BEFORE YOU ARE EVER CONVICTED, OR YOU CAN HAVE IT BEFORE YOU ARE EVER SENTENCED AND IT IS THE RESULT OF YOUR TREATMENT, WHICH WOULD DETERMINE THOSE TWO FACTORS.

WELL, NOT, THAT IS -- ARGUABLY SPEAKING YES, BUT STILL THE FACT THAT THE JUDGE ULTIMATELY, AT THE FINAL STAGE, THAT A JUDGE, IN ONLY THOSE CIRCUMSTANCES IN WHICH IT HAS BEEN DETERMINED THAT SOMEBODY HAS BEEN FOUND UNAMENABLE TO TREATMENT, MAY LATER BE ABLE TO SENTENCE HIM, DOESN'T CHANGE THE FACT THAT, OF 100,000 PEOPLE WHO ARE ARRESTED FOR POSSESSION-TYPE OFFENSES IN THIS STATE EVERY YEAR, THOUSANDS UPON THOUSANDS UPON THOUSANDS OF THEM, THE JUDGE WILL HAVE NO DISCRETION WHATSOEVER WITH RESPECT TO THEM, BECAUSE SOMEONE ELSE WILL MAKE THE DETERMINATION AS TO WHETHER THEY HAVE SUCCESSFULLY COMPLETED COMPLETED. MR. CHIEF JUSTICE

THANK YOU, MR. SUKHIA. YOUR TIME IS UP.

THANK, YOUR HONORS. I THANK YOU VERY MUCH FOR THE OPPORTUNITY TO PRESENT THIS, AND I WOULD ASK THE COURT TO RELY ON THE, OBVIOUSLY, THE WRITTEN BRIEFS THAT WE HAVE SUBMITTED FOR MANY OF THE ARGUMENTS THAT I WASN'T ABLE TO ADDRESS. MR. CHIEF JUSTICE

THANK YOU. MR. GRIMES.

HOW MUCH TIME DO I HAVE? DO YOU KNOW? OKAY. FINE. YOU KNOW, IF THIS AMENDMENT EXPRESSLY CONTROLLED THE ROLE OF THE EXECUTIVE IN THE SUPERVISORY PROCESS OR FAILED TO ALLOW LEGISLATIVE IMPLEMENTATION, IT MIGHT ARGUABLY AFFECT THESE SUBSTANTIALLY HAVE ALTERED THE FUNCTIONS, BUT IT DOESN'T DO THAT. IT REQUIRES COMPLIANCE BY ARRIVE BRANCH OF GOVERNMENT. ALL AMENDMENTS DO THAT. AND THE COURT HAS NEVER SAID THAT THIS IS USURPING THE FUNCTION. JUSTICE WELLS, YOU ASKED WHAT CASES ARE ANALOGOUS,

AND I WAS TRYING TO THINK OF CASES IN THE CRIMINAL CONTEXT, AND THERE HAVEN'T BEEN VERY MANY OF THEM, BUT I SUBMIT THAT THE CASE LIKE THE NET BAN AMENDMENT, THAT CRIMINALIZED CERTAIN THINGS AND SPECIFIED ALL KINDS OF THINGS THAT COULD HAVE ARGUABLY SAID TO IMPINGE ON THE LEGISLATIVE AND THE JUDICIAL. THE HIGH-SPEED RAIL AMENDMENT. THE SIGNIFICANTLY, POINTED OUT A QUOTE HERE, LIKE THE LIMITED CASINO AMENDMENT, THIS PROPOSED AMENDMENT CONCERNING HIGH-SPEED RAIL TRANSPORTATION MAY HAVE BROAD RAMIFICATIONS FOR THE STATE, BUT IT ONLY DEALS WITH ONE SUBJECT, AND IT IS NOT SUBSTANTIALLY ALTERING OR PERFORMING MULTIPLE FUNCTIONS OF GOVERNMENT. HE TALKS ABOUT LOG ROLLING. THIS IS CLEARLY, IT SPELLS OUT EXACTLY WHAT IT IS. IT GIVES THESE PARTICULAR DRUG OFFENDERS TWO ELECTIONS, TO GO INTO TREATMENT, AS CONTRASTED TO BEING SENTENCED OR SENT TO JAIL. THE LEGISLATURE DOES THIS ALL -- EXCUSE ME. I AM SORRY.

I GUESS I STILL WANT TO GO BACK TO THIS ISSUE ABOUT WHEN SOMETHING BECOMES SUBSTANTIALLY ALTERING. IS IT BECAUSE THIS ONLY DEALS WITH A NARROW CLASS OF CRIMES, THAT IT IS YOUR POSITION THAT IT DOESN'T SUBSTANTIALLY AFFECT ALL THREE BRANCHES OF GOVERNMENT? WHAT IF, NEXT YEAR, IT EXTEND TENTH TENDED TO ANOTHER -- IT EXTENDED TO ANOTHER CLASS OF CRIMES, SO THAT IN FIVE YEARS, ALL CRIMES IN THE STATE OF FLORIDA WERE TAKEN, WERE DEALT WITH IN A SIMILAR FASHION OR THROUGH CONSTITUTIONAL AMENDMENT? WOULDN'T AT SOME POINT, YOU WOULD SAY THAT THIS APPROACH IS AFFECTING THE WAY GOVERNMENT DEALS AND CHOOSES TO DEAL WITH CRIMES THAT ARE COMMITTED IN THIS SOCIETY?

I SUPPOSE YOU COULD HAVE A SCENARIO, IF IT ATTEMPTED TO DO THIS WITH ALL CRIMES OR SOMETHING LIKE THAT, YOU COULD CERTAINLY MAKE AN ARGUMENT MORE ALONG THAT LINE, JUSTICE PARIENTE, BUT THE ARGUMENT THAT HE WAS MAKING, THE, ABOUT THE, THAT YOU COULDN'T PASS A STATUTE TO DO THIS, THAT, REALLY, RESPECTFULLY I DISAGREE WITH THAT. THE LEGISLATURE IS ALL THE TIME TELLING JUDGES WHAT THEY HAVE TO DO AND DON'T HAVE TO DO. LENGTH OF SENTENCES, ANYTHING, HABITUAL OFFENDERS, MANDATORIES, ALL KINDS OF THINGS, AND IT AFFECTS THEM. SURE. THEY HAVE GOT TO FOLLOW IT, BUT IT ISN'T -- AND I THINK PROBABLY YOUR CONCERN WOULD BE WHAT WOULD BE CHARACTERIZED AND WHAT THIS COURT HAS USED A PRECIPITOUS AND CATACLISMIC BRANCHES OF GOVERNMENT. AND THIS IS A CATEGORY OF OFFENDERS AND SPELLS OUT EXACTLY WHAT ITS OBJECT I HAVE IS, AND IT -- OBJECTIVE IS, AND YOU KNOW HE MAKES MOST OF HIS ARGUMENT THAT IT AFFECTS THE JUDICIAL BRANCH, AND I REALLY AS ARGUED BEFORE AND IN THE BRIEFS AND I ARGUE THAT IT DOESN'T, NOT ONLY DO YOU HAVE TO HAVE A SUBSTANTIAL USE OF BRANCH OF GOVERNMENT. YOU HAVE TO HAVE MORE THAN ONE BRANCH OF GOVERNMENT.

A CATACLISMIC --

THAT WAS A TERM USED IN SOME OF THE CASES, JUDGE, AND OF COURSE IT FITS IN WITH WHAT I AM TALKING ABOUT, SO I WANT TO POINT THAT OUT, BUT IT HAS, THAT IS NOT A REQUIREMENT. NO. I WOULD CERTAINLY NOT AGREE, BUT I THINK IT IS APT, IN RESPONDING TO JUSTICE PARIENTE'S QUESTION, WHERE IF ALL OF THE CRIMINAL LAWS WERE SO-CALLED DECRIMINALIZED OR SOMETHING LIKE THAT, AND SO WE SUBMIT THAT, AND IT CAN'T POSSIBLY BE LOG ROLLING. IT IS JUST A SINGLE OBJECT I HAVE IDEA, AND THE SUMMARY -- OBJECTIVE IDEA, AND THE SUMMARY LACE IT OUT, AND THE AMENDMENT IS QUITE CLEAR WHAT ITS OBJECTIVE IS, SO UNLESS THE COURT HAS OTHER QUESTIONS, I THINK I WILL PASS. THANK YOU AND WE RESPECTFULLY REQUEST THAT THE COURT APPROVE THE AMENDMENT, SO THE VOTERS CAN DECIDE. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. APPRECIATE YOUR ASSISTANCE IN THIS CASE.