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Advisory Opinion to the Attorney General: Second-Hand Tobacco Smoke

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL TO PROTECT PEOPLE FROM THE HEALTH HAZARDS OF WORKPLACE SMOKING.

MAY IT PLEASE THE COURT. THIS CASE IS BEFORE THE COURT ON THE ATTORNEY GENERAL'S REQUEST FOR AN ADVISORY OPINION. THE PROPOSED AMENDMENT TO PROHIBIT SMOKING INSERT INDOOR WORK PLACES. STEVEN GRIMES WILL ARGUE FOR THE PROPONENTS OF THE AMENDMENT, AND BARRY RICHARD WILL ARGUE IN OPPOSITION. THANK YOU. MR. CHIEF JUSTICE

MR. GRIMES.

MAY IT PLEASE THE COURT. MY NAME IS STEPHEN GRIMES. I REPRESENT THE SPONSOR OF THE CITIZENS INITIATIVE, WHICH WOULD PROHIBIT SMOKING IN ENCLOSED, INDOOR WORK PLACES, AND I REQUEST, IF I MIGHT, TO RESERVE EIGHT MINUTES FOR REBUTTAL. THE TOBACCO COMPANY ASSERTS THAT THE BALLOT SUMMARY IS INVALID, BECAUSE IT INCLUDES SIMPLY THESE WORDS. TO PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECONDHAND SMOKE. THEY DON'T CONTEND THAT IT IS AMBIGUOUS. THEY DON'T CONTEND THAT IT DOESN'T FAIRLY EXPLAIN THE CHIEF PURPOSE OF THE AMENDMENT. THEY SIMPLY SUGGEST THAT THE COURT SHOULD CREATE A NEW RULE WHICH WOULD PROHIBIT A CONSTITUTIONAL AMENDMENT FROM STATING ANY FACTS OR ANY EXPLANATION AS TO WHY IT IS BEING PROPOSED OR WHAT IT INTENDS TO ACCOMPLISH. NOW, THE STATUTE, THE REQUIREMENT FOR A BALLOT SUMMARY IS IN THE STATUTES. 101.161-1, TAN SAYS THAT A BALLOT SUMMARY MUST, QUOTE, AND I AM QUOTING HERE -- AND IT SAYS THAT THE BALLOT SUMMARY MUST, QUOTE, AND I AM QUOTING HERE, STATE IN CLEAR AND UNAMBIGUOUS LANGUAGE THE CHIEF PURPOSE. NO ONE HAS SUGGESTED THAT THE BALLOT SUMMARY HERE DOESN'T DO. THAT FURTHERMORE, THIS BALLOT SUMMARY IS ENTIRELY CONSISTENT WITH A NUMBER OF PRIOR DECISIONS OF THIS COURT IN APPROVING SIMILAR BALLOT SUMMARIES.

MR. GRIMES, HOW DOES THIS VARY OR WHAT DOES IT ADD IN ADDITION TO CHAPTER 386, WHICH SEEMS TO JUST ABOUT COVER THE AMBIT OF THIS AMENDMENT?

YOU MEAN THOSE WORDS?

YES. 386 PROHIBITS SMOKING IN PUBLIC PLACES AND SO FORTH. WHAT IS THIS AMENDMENT GOING TO DO, OVER AND ABOVE THAT? THAT IS WHAT I AM ASKING.

WELL, PRIMARILY, UNDER THE CLEAN AIR ACT, CURRENT STATUTES, IT PROVIDES, LIKE IN RESTAURANTS THAT THERE CAN BE SMOKING AREAS. THINGS LIKE. THAT THIS, THIS IS BROADER THAN. IT WOULD, IN ANY ENCLOSED WORKPLACE, ENCLOSED INDOOR WORKPLACE, IT WOULD PROHIBIT SMOKING, SO IT ENLARGES OR BROADENS THE SCOPE OF CURRENT STATUTES.

THE STATUTES SAY THE PERSON SHALL NOT SMOKE IN A PUBLIC PLACE OR AT A PUBLIC MEETING, EXCEPT IN DESIGNATED SMOKING AREAS. AND AS I READ THE PROPOSED AMENDMENT, IT SEEMS TO SAY PRACTICALLY THE SAME THING.

WELL, IN SOMEONE'S OFFICE, FOR EXAMPLE, WOULD, IF, IF SOMEONE'S OFFICE IS AN ENCLOSED INDOOR WORKPLACE, AND I WOULD SUBMIT THAT THAT IS NOT COVERED BY WHAT YOU JUST

READ, BECAUSE THAT IS NOT A PUBLIC AREA. A PUBLIC AREA WOULD BE, OF COURSE, THIS COURT OR ANYTHING LIKE THAT WHERE THE PUBLIC IS INVOLVED, BUT AN INDIVIDUAL WORKPLACE, WHERE AN OFFICE WHERE PEOPLE ARE WORKING WOULD BE COVERED.

SO COUNSEL, IN GETTING BACK TO THE STANDARDS THAT WE ARE LOOKING TO.
SURE.

YOU HAVE QUOTED THE STATUTE. BUT IT APPEARS THAT THE OPPOSITION HERE IS CENTERED IN UPON CONCEPTS OF POLITICAL MOTIVATION, CONCEPTS OF POLITICAL RHETORIC, BEING INCLUDED WITHIN THE BALLOT THAT SEEMS TO HAVE BEEN PLACED AS AN OVERLAY IN THIS AREA, THROUGH "SAVE OUR EVERGLADES", THE DECISION IN THAT CASE. COULD YOU ADDRESS HERE, WHAT ARE THOSE BOUNDARIES, WHAT ARE THE LINES? IS THERE A BRIGHT LINE? THAT THIS COURT CAN FOLLOW IN MAKING THAT DETERMINATION, IF IT IS A PROPER CRITERIA FROM "SAVE OUR EVERGLADES".

YES, SIR. I SUPPOSE, TO SOME EXTENT, IT IS A MATTER OF DEGREE, BUT THE "SAVE OUR EVERGLADES", THE PROBLEM THERE WAS THAT THE BALLOT SUMMARY ACTUALLY SAID, IN ADDITION TO THE DIFFERENCE BETWEEN SAVE, AS CONTRASTED TO RESTORE, WHICH THE COURT WENT OFF ON, WAS IT SAYS THE SUGAR INDUSTRY HAS POLLUTED THE EVERGLADES AND THE SUGAR INDUSTRY MUST PAY. IT WAS, YOU KNOW, ENTIRELY LAYING LIABILITY, AS THE COURT SAID, ON THE SUGAR INDUSTRY. HERE TO PROTECT PEOPLE THE HAZARD OF SECONDHAND SMOKE IS SIMPLY WRAPPED INTO THE AMENDMENT. IT IS THE PURPOSE, IT IS THE PURPOSE OF THIS AMENDMENT! IF THE VOTERS DON'T BELIEVE THAT SECONDHAND SMOKE IS HAZARDOUS, THEY WON'T VOTE FOR IT AND SHOULDN'T VOTE FOR IT, BUT IT IS INHERENT THAT SOME OF THESE OTHER CASES, THE HIGH-SPEED RAIL CASE THAT HAS BEEN APPROVED, TO REDUCE TRAFFIC AND INCREASE TRAFFIC ALTERNATIVES. THE, TWO OTHER, THE SUBSEQUENT SUGAR CASES, FOR PURPOSES OF CONSERVATION AND PROTECTION OF NATURAL RESOURCES. AND ABATEMENT OF WATER POLLUTION IN THE EVERGLADES. THE BALLOT SUMMARY FOR THE NEW INITIATIVE ON THE HUMANE TREATMENT OF PIGS. QUOTE. INHUMANE TREATMENT OF ANIMALS IS A CONCERN OF FLORIDA CITIZENS. TO PREVENT CRUELTY TO ANIMALS AND AS RECOMMENDED BY THE HUMANE SOCIETY OF THE UNITED STATES, NO PERSON SHALL DO SO ON. IT A HAD ALL OF THAT -- HAD ALL OF THAT PREPTARY LANGUAGE, MUCH MORE THAN WHAT WE ARE TALKING ABOUT, WHICH IS DIRECTLY RELATED TO WHAT THE AMENDMENT IS DIRECTED TO DO.

WOULD YOU ADDRESS THE ISSUE THAT IS RAISED BY THE RESTAURANT ASSOCIATION THAT, WHEN THIS BALLOT SUMMARY REFERS TO WORKPLACES, WHAT WOULD REASONABLY COME TO MIND IS AN OFFICE OR A FACTORY, AND THAT IT COVERS MUCH MORE THAN THAT, INCLUDING RESTAURANTS.

WELL, AN ENCLOSED INDOOR WORKPLACE IS THE TERMINOLOGY THAT IS USED IN THE AMENDMENT, AND THAT IS THE TERMINOLOGY THAT IS USED IN THE BALLOT SUMMARY. THE, IT CLEARLY THE VOTER IS PUT ON NOTICE THAT WE ARE TALKING ABOUT ANY PLACE WHERE WORK TAKES PLACE! AND THE, A RESTAURANT IS A WORKPLACE. THERE IS ALL KINDS OF PEOPLE WORKING IN A RESTAURANT.

WELL, BUT, WOULDN'T THE AVERAGE VOTER THINK THAT A RESTAURANT, TO THAT VOTER, IS A PLACE OF RECREATION, AS OPPOSED TO A PLACE OF WORK? I MEAN, ISN'T THAT MISLEADING TO THAT EFFECT? THAT WHEN YOU ARE TALKING ABOUT WORK PLACES, AND YOU INCLUDE WITHIN IT, McDONALD'S, THAT THE CONNOTATION THAT THE AVERAGE VOTER PUTS IS A CONSUMER NOT AS WORKER.

WELL, I SUBMIT, OF COURSE, IF NOTHING ELSE, THE EXCLUSION OF STAND-ON LAN -- OF STAND-ALONE BARS OUGHT TO EXCLUDE ANY DOUBT ABOUT IT, BUT YOU CAN NOT DEFINE ADDITIONAL, WHEN YOU ARE TRYING TO DO AN AMENDMENT, IT SAYS WHAT IT SAYS, AND THERE IS NO

MISLEADING, NO EFFORT TO MISLEAD ANYBODY. IF SOMEONE HAS ANY DOUBT, OF COURSE THEY CAN GO TO THE AMENDMENT, BUT OBVIOUSLY WHAT THEY ARE GOING TO LOOK AT AT THE SUMMARY, THE PUBLICITY ON THIS CAMPAIGN IS GOING TO BE ALL ABOUT THAT YOU SMOKE IN RESTAURANTS OR SOMETHING LIKE THAT. REALLY NOT A LEGAL ISSUE HERE. THE ISSUE IN THIS CASE IS GOING TO BE IN THE BALLOT BOX, WHERE THE IDEA ABOUT PUBLIC SAFETY IS WEIGHED AND THE VOTER WILL HAVE TO DECIDE WHETHER THAT IS IMPORTANT ENOUGH TO WEIGH AGAINST THE SUBSTABS OF THE ARGUMENTS -- THE SUBSTANCE OF THE ARGUMENTS THAT THE OTHER SIDE IS GOING TO MAKE. IT IS GOING TO HURT BUSINESS OR GOING TO HURT TOURISM OR A PERSON OUGHT TO HAVE AN OPPORTUNITY OR RIGHT TO SMOKE SOME A -- TO SMOKE IN A RESTAURANT OR SOMETHING LIKE. THAT IN THE FINAL ANALYSIS, NOBODY IS GOING TO BE CONFUSED ABOUT THIS, BUT AN ENCLOSED INDOOR WORKPLACE, IF YOU GIVE IT ANY REAL THOUGHT, IT INCLUDES WHERE PEOPLE WORK. IS THIS, THERE IS NO WAY TO GO BEYOND THAT. IT SIMPLY COVERS PLACES WHERE PEOPLE WORK, AND IT PROTECTS THE WORKERS IN THE WORKPLACE, AS WELL AS THE PEOPLE THAT GO TO THE RESTAURANT.

WOULD I BE ABLE TO SMOKE IN MY LAW OFFICE, IF I HAD A FOUR-MAN LAW OFFICE, AND THE PUBLIC IS INVITED TO COME INTO THE FRONT, THE WAITING AREA, AND THEY ARE, ALSO, INVITED TO COME BACK INTO MY OFFICE AND TALK TO ME?

NO, SIR, YOU WOULDN'T.

WOULD I BE ABLE TO SMOKE IN MY OFFICE?

NO, SIR, YOU WOULDN'T, BECAUSE IT IS AN ENCLOSED INDOOR WORKPLACE, THAN IS A DEBATE THAT THE VOTERS ARE GOING TO HAVE AS TO WHETHER THEY WANT TO DO THAT. BUT THAT IS NOT A LEGAL ISSUE. IT IS THE ISSUE YOU THAT IS GOING TO BE SPIRITEDLY DEBATED IN THE WORKPLACE.

BUT THE PUBLIC HAS TO, ADDRESSING WHETHER IT IS MISLEADING OR NOT, THAT IS HOW THAT WOULD COME INTO PLAY. IF THE PUBLIC CONFUSED AS TO IT, THEN THERE MIGHT BE A PROBLEM.

WELL, ENCLOSED INDOOR WORKPLACE SPEAKS FOR ITSELF, YOUR HONOR.

I UNDERSTAND. ALL RIGHT. GO AHEAD.

JUSTICE QUINCE.

IN YOUR BALLOT SUMMARY, WHERE YOU TALK ABOUT THE EXCEPTIONS TO THIS CLOSED INDOOR WORK SPACE, I FIND IT A LITTLE BIT TROUBLING HERE. IT SAYS "EXCEPT WHEN THEY ARE BEING USED TO PROVIDE COMMERCIAL" -- WE ARE TALKING ABOUT A RESIDENCE, EXCEPT WHEN IT IS BEING USED TO PROVIDE A COMMERCIAL CHILDCARE, ADULT CARE ET CETERA. WHAT DOES THAT REALLY MEAN? DOES IT MEAN THAT THE, DURING THE TIMES OR HOURS THAT IT IS BEING USED AS ONE OF THESE FACILITIES, OR DOES IT MEAN THAT AT NO TIME, BECAUSE AT OTHER TIMES, YOU ARE USING IT AS A CHILDCARE FACILITY?

NO. IT MEANS THE FIRST OF WHAT YOU SAID. WHEN IT IS BEING USED AS ONE OF THESE COMMERCIAL CHILDCARE --

YOU DON'T THINK THAT A MEMBER OF THE PUBLIC COULD READ IT AS THE OTHER WAY, BECAUSE IT IS BEING USED AS A CHILDCARE FACILITY?

NO.

YOU COULD NEVER SMOKE THERE?

NO. THAT IS NOT WHAT THE INTENT AND THAT IS NOT WHAT IT SAYS, YOUR HONOR. I DO NOT BELIEVE, I THINK IT IS VERY, IT IS QUITE CLEAR. IT IS ONLY WHEN THAT IS OCCURRING. OTHERWISE --

DURING THE TIMES, DURING THE HOURS.

DURING THE HOURS THAT THAT IS OCCURRING. YES. LET ME ADDRESS ONE OTHER MATTER. THE RESTAURANT ASSOCIATION MAKES SOME COMPLAINTS ABOUT THE WHEREAS CLAUSES, WHICH PRECEDE THE ACTUAL AMENDMENT. THIS IS NOT IN THE BALLOT SUMMARY. THE ATTORNEY GENERAL NOTED THIS BUT EXPLAINED THAT IT WASN'T A PROBLEM, BECAUSE IT WAS PART OF THE AMENDMENT ITSELF, AND THERE IS A WHOLE LOT OF OTHER AMENDMENTS THAT HAVE BEEN APPROVED WITH PREPARATORY LANGUAGE LIKE THAT. THE LIMIT THE POLITICAL -- THE LIMITED POLITICAL TERMS AMENDMENT SAID SOMETHING LIKE, WELL, THE PEOPLE, I DON'T TRUST THE LEGISLATORS, AND THEY WANT TO HAVE THEM LIMITED TO TERMS OF OFFICE, AND THEREFORE WE ARE GOING TO, I AM PARAPHRASING. WE ARE GOING TO HAVE THIS AMENDMENT TO LIMIT THE POLITICAL TERMS. THAT IS ALL IN -- THAT WAS ALL ON THE BALLOT, ON THE FORM. AND IT WAS APPROVED. IT DOES NOT GO INTO THE AMENDMENT, ITSELF. OUR WHEREAS CLASSES DO NOT GO INTO THE AMENDMENT, ITSELF. THEY DO NOT GO ON THE BALLOT SUMMARY. THEY DO NOT GO ON THE AMENDMENT, ITSELF. A RULE OF THE DIVISION OF ELECTIONS PROVIDES THAT YOU CAN PUT POLITICAL RHETORIC OR PERSUASIVENESS INTO THE FORM. THERE IS NO PROHIBITION. IT SAYS "PAID POLITICAL ANNOUNCEMENT" RIGHT AT THE BOTTOM, AND THERE IS SIMPLY NO PROHIBITION FOR THIS HALF A DOZEN AMENDMENTS. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

YES, SIR. A HALF A DOZEN OF THE AMENDMENTS ALREADY APPROVED BY THIS COURT HAVE HAD WHEREAS CLAUSES IN THERE. SOME OF THEM ARE ACTUALLY INTO THE CONSTITUTION. OURS WILL NEVER BE IN THE CONSTITUTION, BECAUSE IT PROVIDES UNDER THAT, THE CONSTITUTION IS AMENDED TO READ, AND IT SIMPLY SAYS WE PROHIBIT SMOKING IN THE WORKPLACE. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. MR. CHIEF JUSTICE

MR. RICHARD.

MAY IT PLEASE THE COURT. MY NAME IS BARRY RICHARD. MR. CHIEF JUSTICE

MR. RICHARDS, I UNDERSTAND THAT YOU AND MR. HUSBAND ARE GOING TO DIVIDE YOUR TIMES. EYE WILL RESPECT THE 20 MINUTES, SIR.

YES.

I REPRESENT A COALITION OF TOBACCO AND OTHER ASSOCIATIONS THAT OPPOSE PUTTING THE WORDING ON THE BALLOT AS CURRENTLY WORDED. MY CONCERN TRANSCENDS PARTICULAR QUESTIONS REGARDING THE MISLEADING NATURE OF THIS BALLOT WHICH, INDEED, ARE THERE AND NOT THE LEAST OF WHICH WAS THE ONE RAISED BY JUSTICE SHAW, WHICH I THINK DIRECTLY IMPLICATES THE COURT'S HOLDING IN THE EVANS V FIRESTONE CASE, BUT I BELIEVE THAT THERE IS AN OVER ARCHING ISSUE HERE THAT RAISES THE POINT MADE BY JUSTICE PARIENTE IN THE PRESIDENTIAL LITIGATION, WHEN SHE SAID, IN ONE OF THOSE ARGUMENTS, THAT WHAT WE DO HERE, TODAY, IS NOT LIMITED TO THIS CASE. BUT WILL AFFECT CASES HERE AFTER AS THEY COME BEFORE THE COURT. THE LAST THING THAT THE VOTERS SEE BEFORE CASTING A BALLOT IS THE TITLE AND SUMMARY, AND IT IS COMMON KNOWLEDGE THAT HOW A PERSON ANSWERS A QUESTION IS OFTEN INFLUENCED STRONGLY BY HOW THE QUESTION IS WORDED. AND FOR THAT REASON, THIS COURT HAS JEALOUSLY GUARDED THE INTEGRITY OF THE BALLOT, AS REFLECTED IN 1984, IN EVANS V FIRESTONE, AND IN 1994, IN "SAVE OUR EVERGLADES",

WHEN THE COURT SAID THIS, THE BALLOT SUMMARY IS NO PLACE FOR SUBJECTIVE EVALUATION OF SPECIAL IMPACT. THE BALLOT SUMMARY SHOULD TELL THE VOTER THE LEGAL EFFECT OF THE AMENDMENT AND NO MORE. THE POLITICAL MOTIVATION BEHIND A GIVEN CHANGE MUST BE PROPOUNDED OUTSIDE THE VOTING BOOTH. NOW, THE SECOND ALF OF THIS SUMMARY MEETS THAT VERY CLEAR CRITERIA. WHEN IT SAYS THIS AMENDMENT PROHIBITS TOBACCO SMOKING IN ENCLOSED INDOOR PLACES. EVERY EVERYTHING -- -- EVERYTHING ELSE SERVES NO PURPOSE BUT TO GET A LEG UP FOR THE PROPONENTS. THE FIRST LINE OF THE SUMMARY AND THE TITLE, ITSELF, IS NOTHING BUT POLITICAL RHETORIC. YES, SIR.

WOULD YOU ADDRESS, HOWEVER, THE, WE CERTAINLY APPRECIATE THE ARGUMENTS WITH REGARD TO "SAVE OUR EVERGLADES", BUT AS THAT WAS MODIFIED IN THE 1996 APPROACH TO THAT, WHEN THE LANGUAGE WAS CONSERVE AND PROTECT NATURAL RESOURCES AND ABATE WATER POLLUTION, COULD YOU HELP ME UNDERSTAND THE DIFFERENCES OR WHY THIS ONE IS REALLY DIFFERENT FROM THE 1996. I CERTAINLY SEE THE POINT WITH THE "SAVE OUR EVERGLADES", BUT I AM HAVING DIFFICULTY SEEING THAT THIS IS DIFFERENT THAN THE 1996 EVERGLADES WHICH WAS APPROVED.

ACTUALLY I THINK THIS IS PRECISELY THE SAME. THE 1994 EVERGLADES AND COULD BE CORRECTED JUST AS EVERGLADES DID WHEN THEY CAME BACK IN 1996. THE PROBLEM WITH THIS, WHICH WAS THE PROBLEM, "SAVE OUR EVERGLADES", BY THE WAY, THE PROBLEM WITH IT WAS IT WAS TWOFOLD. IT WAS POLITICAL RHETORIC AND IT MADE A FACTUAL AS EMTION. THIS ONE DOES THE SAME THING. IT MAKES A FACTUAL ASSUMPTION THAT THERE IS A HEALTH HAZARD INVOLVED IN SECONDHAND SMOKE WHICH WILL BE CORRECTED BY THIS AMENDMENT. NOW, WHATEVER MAY BE AN INDIVIDUAL'S BELIEF IN THE ACCURACY OF A FACTUAL ASSUMPTION IT IS PROBLEMATIC ON THE BALLOT, BECAUSE WHERE DO WE DRAW THE LINE? IF THIS COURT WERE TO SAY, IN THIS CASE, IT IS PERMISSIBLE FOR THE PRO ONTS TO INCLUDE -- FOR THE PROPONENTS TO INCLUDE A FACTUAL ASSUMES, WHERE DO YOU -- ASSUMPTION, WHERE DO YOU STOP IT? THERE IS NO FORM FOR AN ADJUDICATION, BEFORE IT REACHES THIS COURT, OF WHETHER OR NOT A FACTUAL STATEMENT IS ACCURATE.

DO WE ERR IN THE RECENT OPINION IN THE AMENDMENT CONCERNING PIGS, WHEN WE SAID THAT THE PURPOSE IS TO PREVENT CRUELTY TO ANIMALS? YOU KNOW, SOME PEOPLE MIGHT DISAGREE WHETHER CONFINING PIGS IS CRUEL AND IN HUMAN TREATMENT OF ANIMALS. THAT IS A FACTUAL AS ULTION. I DON'T HAVE THAT IN FRONT OF ME BUT I WOULD CONSIDER THE SAME TYPE OF FACTUAL STATEMENT THAT WOULD KIND OF REF UP THE VOTER, AND I UNDERSTAND WHAT YOU ARE SAYING, AS THAT, YOU KNOW, BALLOT SUMMARY SHOULD ONLY INCLUDE THE LEGAL EFFECT, AND BE DEVOID OF RHETORIC, BUT IT SEEMS THAT WE HAVE APPROVED SEVERAL BALLOT SUMMARIES THAT HAVE THE SAME ASPECT TO IT, THAT IS GIVING SOME FACTS THAT WILL SORT OF DRAW THE VOTER IN AS TO WHY THEY WOULD WANT TO PASS THIS. WOULD YOU, ARE THOSE CASES DISTINGUISHABLE?

YOUR HONOR, I COULD PROBABLY PROVIDE YOU WITH A DISTINCTION. FOR INSTANCE, IN THE PIG CASE, I COULD TELL YOU THAT I THINK THE ISSUE OF WHETHER OR NOT SOMETHING IS HUMANE IS MORE A MATTER OF OPINION THAN A FACTUAL ASSUMPTION, BUT TO BE PERFECTLY HONEST WITH YOU, I THINK THAT THOSE CASES SHOULD NOT HAVE BEEN APPROVED FOR THE BALLOT. I WOULD NOTE, HOWEVER, THAT THE COURT DID NOT FOCUS ON THIS ISSUE, AND TO MY KNOWLEDGE, NOBODY BROUGHT IT TO THE COURT'S ATTENTION AT THAT TIME. NONE OF THAT DETRACTS FROM THE FACT THAT I BELIEVE THAT THIS IS AN UNASSAILABLE PRINCIPLE THAT ONCE YOU PERMIT FACTUAL ASSUMPTIONS TO BE PLACED IN A BALLOT SUMMARY, THERE IS NO WAY TO CLOSE THE DOOR.

SO IT GOES TO THE SECOND ITEM THAT WE LOOK AT, NOT THE SINGLE SINGLE-SUBJECT VIOLATION, BUT WHETHER THE BALLOT, TITLE AND SUMMARY ARE MISLEADING?

ABSOLUTELY, YOUR HONOR. I MIGHT POINT OUT THAT SECTION 101.161 DOES NOT SIMPLY SAY MISLEADING. MATTER OF FACT, IT DOESN'T SAY MISLEADING. WHAT IT SAYS IS THAT THE BALLOT SUMMARY SHALL STATE THE SUBSTANCE AND ACHIEVE PURPOSE OF THE AMENDMENT. THAT IS STATED IN THE SECOND HALF OF THIS. THIS COURT HAS READ THAT TO MEAN THAT YOU ARE TO SAY THAT AND NOTHING MORE, AND THE PROBLEM WITH THE "NOTHING MORE" PART, IS THAT WHEN WE BEGIN TO PERMIT THE PROPONENTS, WE BEGIN WITH THE PROBLEM THAT THESE SUMMARIES ARE WRITTEN BY PROPONENTS, AND THEY KNOW, JUST AS SURVEY COMPANIES KNOW, WHAT I SAID WHEN I BEGAN, THAT THE ANSWER IS OFTEN INFLUENCED BY THE QUESTION, AND TIME AND TIME AGAIN, AS WE HAVE SEEN, THE PROPONENTS FIND IT DIFFICULT TO RESIST THE URGE TO INCLUDE, IN THESE SUMMARIES, SOMETHING TO GET A LAST CRACK AT THE VOTER, BEFORE THE BALLOT IS CAST. AND THE DIFFICULTY IS, AGAIN, WHAT YOU SAY TODAY WILL OPEN THE DOOR TOMORROW. AND IF YOU SAY THAT ANY FACTUAL ASSUMPTIONS HAVE NOTHING TO DO WITH THE LEGAL EFFECT AND THE PURPOSE OF AN AMENDMENT, SO FAR AS AMENDING THE CONSTITUTION. WHAT THE VOTER IS SUPPOSED TO BE TOLD, IN 75 WORDS OR LESS, IS WHAT THIS WILL DO TO OUR CONSTITUTION. HOW WILL IT CHANGE IT?

IF THEY WANT TO USE THEIR 75 WORDS TO GIVE FACTUAL ASSUMPTION ASSUMPTIONS, IF THEY ARE NOT MISLEADING OR CONFUSING TO THE PUBLIC, DOES THAT MAKE IT UNCONSTITUTIONAL?

YOUR HONOR, I WOULD SUGGEST THAT THEY ARE INHERENTLY MISLEADING. BECAUSE THEY DO NOT TELL THE VOTER WHAT THE EFFECT WILL BE ON THE CONSTITUTION. THEY SUGGEST TO THE VOTER THAT SOMEWHERE, SOMEHOW, IN OUR LEGAL PROCESS, THIS FACT HAS BEEN ADJUDICATED. BECAUSE THAT IS WHAT OUR LEGAL PROCESS IS.

BUT MR. RICHARD, THE EVERGLADES PROPOSALS THAT WERE APPROVED MADE THE FACTUAL OR CONTAINED THE FACTUAL CONTENT OF WATER POLLUTION IN THE EVERGLADES. DID THEY NOT? AND THOSE WERE APPROVED AS BEING CORRECTIVE OF THE PROBLEMS FROM BEFORE, AND HOW IS WATER POLLUTION IN THE EVERGLADES, I DON'T KNOW, AS A NONSCIENTIST, WHETHER THAT IS OR IS NOT A FACT I MEAN, THAT KIND OF THING, HOW IS THAT DIFFERENT FROM A QUESTION OF A RISK OF SMOKE OR --

IT IS DESCRIBED AS HAZARD.

YOU LOOK AT THE DICTIONARY DEFINITION. IT CERTAINLY SAYS RISKS OR CHANCES. SOMETHING LIKE THAT. HOW WOULD YOU DISTINGUISH THOSE TWO?

YOUR HONOR, I THINK THEY ARE DISTINGUISHABLE. THE SUMMARY, IN THE 1994 "SAVE OUR EVERGLADES" CASE SAYS THIS, CREATES AN EVERGLADES TRUST TO RESTORE THE EVERGLADES FOR FUTURE GENERATIONS, DIRECTS THE SUGARCANE INDUSTRY, WHICH POLLUTED THE EVERGLADES, TO HELP CLEANUP POLLUTION AND RESTORE CLEAN WATER SUPPLY, AND WHAT THIS COURT SAID WAS THERE WAS NO REASON TO ASSUME THAT THE EVERGLADES WOULD BE SAVED OR WOULD BE RESTORED. THE SECOND TIME THE PHRASE "SAVE OUR EVERGLADES" WAS ELIMINATED ALL TOGETHER AND WAS REPLACED WITH THE OBJECTIVE STATEMENT "FEE ON EVER NADZ SUGAR PRODUCTION". I REGRET THAT I DON'T HAVE THE SUMMARY, ITSELF, WITH ME, BUT MY RECOLLECTION IS IF ONE READS THE SUMMARY IN 1996, THAT IT WAS A SPECIFIC STATEMENT OF ACTUALLY WHAT WAS TO BE DONE TO THE CONSTITUTION. NOW, YOU RAISE -- MR. CHIEF JUSTICE

MR. --

I AM SORRY. IT DID CONTAIN THAT FACTUAL STATEMENT WITH REFERENCE TO WATER POLLUTION, A FACT, IN "SAVE OUR EVERGLADES".

I DON'T THINK IT SAID THAT THE WATER HAD BEEN POLLUTED, BUT IF IT DID, I THINK THAT IT WOULD HAVE BEEN INAPPROPRIATE, AND AT SOME POINT IN TIME THIS COURT NEEDS TO CREATE

A BRIGHT LINE AND SAY YOU CANNOT PUT FACTUAL ASSUMPTIONS IN, AND IF WE HAVEN'T DONE IT BEFORE, WE OUGHT TO DO IT NOW, BEAUSE AS I SAID, WE WILL BE INVITING, THERE WILL BE NO STOPPING THE PROPONENTS FROM INCLUDING WHATEVER FACTUAL ASSUMPTIONS THEY WISH. WHAT IS THE BASIS TO -- MR. CHIEF JUSTICE

MR. RICHARDS, YOU ARE IN VADING MR. HUSBAND'S TIME.

THANK YOU.

THANK YOU, YOUR HONOR. WARREN HUSBAND, REPRESENTING THE FLORIDA RESTAURANT ASSOCIATION. WE HAVE, WE FILED OUR OWN BRIEF IN THIS ACTION, BECAUSE WE THINK THAT THIS MEASURE HAS SOME SPECIAL IMPACT ON THE RESTAURANT INDUSTRY. IN PARTICULAR. NOW, I DON'T WANT TO BELABOR THE POINTS MR. RICHARD HAS ALREADY ARGUED. SUFFICE IT TO SAY THAT I THINK ALL OF THIS IN TALLAHASSEE ARE FAMILIAR WITH THE CONCEPT OF THE PUSH-PULL, WHEREBY THE POLLSTER DESIGNS HIS QUESTION TO ELICIT THE ANSWER THAT IS THAT POLLSTER WANTS FROM THE PERSON WHO IS BEING ASKED, AND THANK IS THE DANGER WE LEAD TO HERE, THAT IF THIS IS OKAY, IT IS TO PROTECT FROM HEALTH HAZARDS AND IS OKAY, THEN GOING FORWARD, WE ARE GOING TO FIND MORE AND MORE INITIATIVES, WHERE THAT KIND OF A TACTIC IS EMPLOYED. TO ALLUDE TO SOME OF THE OTHER SUMMARIES THAT HAVE BEEN TALKED ABOUT, FOR EXAMPLE THE HIGH-SPEED RAIL, TALKED ABOUT TO REDUCE TRAFFIC. I WOULD SUBMIT TO YOU THAT DOESN'T REALLY CONTAIN A FACTUAL ASSUMPTION THAT IS DESIGNED TO PUSH THE VOTERS' BUTTONS INTO VOTING FOR THE AMENDMENT. FOR EXAMPLE, SUPPOSE THE RESPONSES HERE HAD SIMPLY SAID TO REDUCE EXPOSURE TO SECONDHAND TOBACCO SMOKE. ARGUABLY I THINK IT WOULD BE VERY MUCH RIGHT TO REDUCE TRAFFIC, BUT THEY CHOSE NOT TO GO THAT WAY. THEY CHOSE TO PROTECT PEOPLE FROM THE SECONDHAND EFFECTS OF TOBACCO SMOKE. THAT IS DESIGNED TO PUSH BUTTONS AND GET THEAL RM -- THE ALARM BELLS GOING ON, AND IF THEY WALK INTO THAT BOOTH AND PEOPLE ARE GOING TO ULTIMATELY MAKE THEIR DECISION WHETHER THEY GET IN THAT BOOTH AND READ THAT SUMMARY. THEY SAY PROTECT FROM HEALTH HAZARDS. I LIKE. THAT THEY SAY SMOKING IN ENCLOSED WORK SPACES. WELL, I WORK IN AN OFFICE AND I CAN'T SMOKE THERE, SO I WILL PUSH YES ON THE TOUCHSCREEN NOW. THE PROBLEM IS THAT, IN DOING THAT, THEY ARE BUYING A LOT MORE THAN THEY THOUGHT, FROM THE TITLE AND SUMMARY, BECAUSE THERE ARE SOME AMBIGUOUS TERMS USED IN THAT TITLE AND SUMMARY. FOR EXAMPLE --

BUT ISN'T THAT TWO SEPARATE THINGS? ONE IS THE QUESTION AS TO WHETHER THE PURPOSE OF THIS AMENDMENT IS TO PREVENT EX-POSSESSION YOUR TO SECONDHAND -- EXPOSURE TO SECONDHAND SMOKE RESPECT AND IT IS DOING THIS TO PROTECT PEOPLE. I GUESS YOU COULD SAY PROTECT PEOPLE, ANIMALS OR WHATEVER, BUT THAT IS THE PURPOSE OF IT. THAT IS, THAT FACTUAL ASSUMPTION IS POLITICAL RHETORIC, I GUESS IS WHAT WE HAVE GOT TO DECIDE, BUT NOW YOU ARE GETTING INTO THE SECOND PART, WHICH IS THAT ARE VOTERS GOING TO THINK CURRENTLY YOU CAN SMOKE IN RESTAURANTS IN FLORIDA? WHAT IS THE LAW? DOES THE LAW SAY YOU CAN OR YOU CAN'T SMOKE?

THAT IS ONE OF THE ISSUES WE PHRASE IN OUR BRIEF, JUSTICE PARIENTE. THAT IS ONE OF THE KEY PROBLEMS, BECAUSE AS IT STANDS NOW, AS I BELIEVE JUSTICE WELLS AND JUSTICE SHAW WERE REFERRING TO, THE LAW SAYS THAT ESSENTIALLY YOU CAN'T SMOKE IN ANY PLACE IN ANY BUSINESS, WHERE THE PUBLIC HAS ACCESS, ESSENTIALLY, IN ANY COMMON AREA OF A BUSINESS.

IN RESTAURANTS?

AND IN RESTAURANTS THERE, IS ACTUALLY A SPECIAL PROVISION THAT SAYS, AND IT HAS BEEN, THE PERCENTAGES HAVE CHANGED OVER THE YEARS, BUT AS IT STANDS NOW, ONLY 35 PERCENT AFTER RESTAURANT SEATING CAN BE DESIGNATED AS A SMOKING AREA.

THAT IS BY LEGISLATION.

CORRECT.

WHAT YOU ARE SAYING IS THE POTENTIAL IS THE CONFUSIONING PART OF THIS, JUST BY LEAD READING THIS, BECAUSE -- JUST BY READING THIS, BECAUSE WE DON'T NORMALLY THINK OF A RESTAURANT AS A WORKPLACE FOR THOSE OF US THAT EAT THERE, THAT VOTERS MAY NOT KNOW HAT THEY ARE GOING TO BE OUTLAWING SMOKING IN RESTAURANTS.

EXACTLY SO, YOUR HONOR. I MEAN, I THINK IT IS REASONABLE TO MAKE THE ASSUMPTION THAT A LOT OF PEOPLE, WELL, THEY MIGHT HAVE NO PROBLEM WITH BANNING SMOKING IN THIS BUILDING OR IN THEIR OWN OFFICE PLACE, SINCE THERE ARE VERY FEW PLACES YOU CAN ACTUALLY SMOKE INDOORS NOWADAYS, IT SEEMS, THAT --

DID YOU SAY THAT THERE IS A PROHIBITION AGAINST TOUTING YOUR PROPOSED AMENDMENT IN YOUR BALLOT SUMMARY? AND TITLE, AS LONG AS THAT TOUTING IS NOT MISLEADING OR CONFUSING?

WELL, I THINK I HAVE TO LATCH ON TO MR. RICHARD'S ANSWER TO THAT. I THINK IT IS IN HERNTLY MISLEADING AND CONFUSING TO ESSENTIALLY, AS I SAY, TRY TO PUSH THE VOTERS' BUTTONS, BY THROWING OUT THERE THAT IT IS A HEALTH HAZARD, THAT THAT IS A FACTUAL ASSUMPTION UPON WHICH WE CAN ALL AGREE.

WHAT IS THE PURPOSE OF THE STATUTE? THAT TALKS ABOUT NOT SMOKING IN PUBLIC PLACES AND GIVING CERTAIN PERCENTAGES OF THE RESTAURANT. WHAT IS THE PURPOSE OF THAT STATUTE? IT IS NOT TO PROTECT HEALTH, SO PEOPLE ARE NOT EXPOSED TO SECONDHAND SMOKE, SO WHAT -- WHAT IS THE PURPOSE OF THAT STATUTE?

CERTAINLY THERE ARE FINDINGS IN THE ENACTMENT OF THAT STATUTE THAT BASICALLY MAKE THAT KIND OF A STATEMENT, THAT IT IS TO, YOU KNOW, FOR THE PUBLIC GOOD THAT WE ARE PROHIBITING SMOKING IN THE PUBLIC AREAS, AT LEAST, OF WORK SPACES, BUT HERE WE ARE DEALING WITH SOMETHING ENTIRELY DIFFERENT. THIS IS, THAT IS SOMETHING THE LEGISLATURE STATED AS THE IMPETUS, IF YOU WILL, FOR THEIR ACTION, BUT HERE THE VOTERS BEING PRESENTED WITH THAT AS THE OPENING SALVO, AS HE OR SHE READS THIS AMENDMENT WHEN THEY GO IN THE BALLOT BOX.

WELL, MY QUESTION IS THAT, ONE, I HAVE A HARD TIME ACCEPTING, AS A REASONABLE PROPOSITION, THAT WE HAVEN'T GENERALLY ACCEPTED THAT SECONDHAND SMOKE IS A HEALTH HAZARD, BUT THERE IS NOTHING THAT REQUIRES THE VOTER TO ACCEPT OR REJECT THAT, BY SAYING THAT THE PURPOSE HERE IS TO PROTECT AGAINST, IF IT SAYS IT IS TO PROTECT AGAINST WILD ANIMALS, THAT THAT IS JUST A SIMPLE PROPOSITION THAT IS PUT FORWARD TO BE ACCEPTED OR REJECTED, ISN'T IT?

WELL, YOUR HONOR, I THINK WE WOULD TAKE ISSUE WITH THE NOTION THAT IT IS A GENERALLY-ACCEPTED SCIENTIFIC FACT THAT SECONDHAND TOBACCO SMOKE IS, IN FACT, A HEALTH HAZARD AND DOES, IN FACT, CAUSE DEATH AND DISEASE, AS WE SEE IN THE WHEREAS CLAUSES AS CLAIMED IN THE AMENDMENT, ITSELF. IN FACT, THE EPA TRIED TO CATEGORIZE SECONDHAND TOBACCO SMOKE AS A KNOWN HUMAN CARCINOGEN, AND THAT FINDING WAS REJECTED BY A DISTRICT COURT AND THAT CASE IS ALREADY ON APPEAL, AND IF YOU LOOK AT THAT CASE, HERE IS WHAT THE JUDGE FOUND THAT THE EPA DID. THEY CAME UP WITH THEIR CONCLUSION AND THEN THEY LOOKED FOR THE SIGNS THAT SUPPORTED IT AND IGNORED ALL THE SIGNS THAT DID NOT SUPPORT IT, BUT --

BUT I DON'T -- WE ARE NOT HERE, ANYMORE, TO DEBATE WHETHER IT IS A HEALTH HAZARD OR NOT OR WHETHER IT IS CIGARETTE SMOKING IS ADDICTIVE OR NOT. I MEAN, THOSE SEEM TO BE

IRRELEVANT PROPOSITIONS HERE. IT IS THE FACT THAT THIS SETS FORTH A BASIS THAT THE PROPONENTS ARE SAYING THAT THIS AMENDMENT IS, THAT THE AMENDMENT IS SET OUT. NOW, THE VOTERS CAN EITHER ACCEPT THAT OR REJECT IT, CAN THEY NOT?

IN FACT, YOUR HONOR, THE ISSUE IS, AND THE ONLY REASON THAT WE HAVE PUT SO MUCH STUFF IN OUR BRIEF DEALING WITH SECONDHAND TOBACCO SMOKE, IS IT A HEALTH HAZARD OR ISN'T IT? IS BECAUSE IT IS IN FACT A DEBATABLE QUESTION, BUT THE SPONSOR OF THE INITIATIVE PRESENTS IT IN THE INITIATIVE AND IN THE TEXAS OF THE AMENDMENT AND IN THE SUMMARY AND TITLE -- IN THE TEXT OF THE AMENDMENT, AND IN THE SUMMARY AND TITLE, AS IF IT WERE AN ESTABLISHED ISSUE, THAT THERE IS NO REAL REASON TO DISPUTE IT. DO YOU WANT TO CIRCLE BACK JUST A LITTLE BIT, IF I CAN -- MR. CHIEF JUSTICE

JUSTICE SHAW HAS A QUESTION.

DO YOU HAVE ANY PROBLEM WITH THE SINGLE SUBJECT?

YES, SIR. I WILL LEAD RIGHT INTO THAT. THE NOTION OF INCLUDING, WITHIN THE BALLOT TITLE AND SUMMARY, EXCUSE ME, I SEEM TO HAVE MISPLACED MINE. ONE MOMENT. IN ANY EVENT, THE STATEMENT WAS MADE THAT, WELL, WE HAVEN'T PUT THESE FACTUAL STATEMENTS IN OUR AMENDMENT, SO WE HAVEN'T REALLY RUN AFOUL OF SINGLE SUBJECT, AND LET ME BACKTRACK A LITTLE BIT. ONE OF THE, OF COURSE, KEY TESTS IN SINGLE SUBJECT, IS HAS THE AMENDMENT SOUGHT TO PERFORM THE FUNCTIONS OF MORE THAN ONE BRANCH OF GOVERNMENT? AND WE WOULD SUBMIT TO YOU IT DOES. IT OBVIOUSLY PERFORMS A LEGISLATIVE FUNCTION AND THAT IT WIPES AWAY THE EXISTING STATUTES DEALING WITH SECONDHAND SMOKE, AND SECONDLY IT PERFORMS A JUDICIAL FUNCTION, IN THAT IT INCLUDES, IN THE AMENDMENT, FINDINGS OF FACT THAT THE VOTERS BEING ASKED TO WEIGH IN ON, AND IN EFFECT, THEY ARE TRYING TO MAKE A FACT FINDING BY MAJORITY VOTE, RATHER THAN A FACT FINDING BY JUDGE AND JURY, AND I THINK THAT IS AN IMPORTANT ISSUE, I THINK, IN THIS CASE. AND THEY HAVEN'T PRESENTED THESE. FOR EXAMPLE, THEY CITE IN THEIR BRIEF, WELL, THIS IS OKAY, BECAUSE FOR EXAMPLE, IF YOU LOOK AT A COUPLE OF OTHER INITIATIVES THEY BASICALLY KIND OF DO THE SAME THING IN THE AMENDMENT, SO THIS ONE IS OKAY, TOO. ONE OF THE ONES THEY POINT OUT IS LIMITED POLITICAL TERMS. LET ME JUST READ YOU THE FIRST PART OF WHAT THAT PARTICULAR AMENDMENT TALKED ABOUT. THE PEOPLE OF FLORIDA BELIEVE THAT PETITIONS, POLITICIANS WHO REMAIN IN OFFICE TOO LONG MAY BECOME PREOCCUPIED WITH REELECTION AND BEHOLDEN TO SPECIAL INTERESTS AND ET CETERA AND ET CETERA. CONTRAST THAT TO JUST ONE OF THE STATEMENTS THAT IS IN THE AMENDMENT AND BEING SOUGHT TO BE PUT ON THE BALLOT FROM THE SMOKING BAN INITIATIVE. QUOTE, SECONDHAND TOBACCO SMOKE IS A KNOWN HUMAN CARCINOGEN. IT CONTAINS CANCER-CAUSING AGENTS, FOR WHICH THERE IS NO LEVEL OF EXPOSURE, AND CAUSES DEATH AND DISEASE. THE TWO CAN'T BE EQUATED. THE SMOKING BAN SPONSOR -- MR. CHIEF JUSTICE

THANK YOU, COUNSEL. YOUR TIME IS UP.

THANK YOU, SIR. MR. CHIEF JUSTICE

MR. GRIMES, REBUTTAL.

HOW MUCH TIME DO I HAVE? THANK YOU. WELL, A COUPLE OF THINGS. THE SINGLE-SUBJECT QUESTION, THIS DOESN'T SUPPLANT OR SUBSTANTIALLY USURP MORE THAN ONE FUNCTION OF GOVERNMENT. IT DOESN'T REQUIRE APPROPRIATION OF ANYTHING. THERE ARE A MYRIAD OF CASES IN WHICH CONSTITUTIONAL AMENDMENTS HAVE BEEN PUT INTO THE CONSTITUTION ON SUBJECTS IN WHICH THERE WERE ALREADY LAWS ON THE BOOKS, AND OCCASIONALLY THAT HAD BEEN ARGUED, WELL, IT IS ALREADY GOT A LAW ON THE BOOKS AND THEREFORE YOU CAN'T HAVE A CONSTITUTIONAL AMENDMENT. IT WOULD SUPPLANT THE LEGISLATIVE FUNCTION, AND THAT ISN'T SO. THIS IS, DOES NOT REQUIRE, IT DOESN'T REQUIRE THE LEGISLATURE TO DO

ANYTHING! AND AS FAR AS THE JUDICIAL FUNCTIONS, THERE IS NO JUDICIAL FUNCTION INVOLVED. THE FIRST "SAVE OUR EVERGLADES" CASE, OF COURSE, POINTED OUT THAT THERE WAS A, IT INCLUDED A JUDICIAL FUNCTION, BECAUSE IT SAID THAT THE SUGAR PEOPLE WERE LIABLE AND THEY HAD TO PAY, AND OF COURSE THERE IS NOTHING LIKE THIS. THE DISCUSSION HE WAS TALKING ABOUT RIGHT AT THE END, THOSE WHEREAS CLAUSES IN THE AMENDMENT FORM, THEY DON'T GO INTO THE CONSTITUTION AT ALL AND THIS COURT HAS SAID, ON MORE THAN ONE OCCASION, THAT THE FORM OF THE AMENDMENT IS, YOU ARE ONLY INTERESTED IN WHAT GOES ON INTO THE CONSTITUTION, ITSELF, AND THERE IS NO SO-CALLED RHETORIC OR ANYTHING ELSE INVOLVED IN THAT.

WHAT WOULD BE THE STANDARD THAT YOU WOULD HAVE US SUPPLY TO THE ISSUE THAT MR. RICHARD RAISES, AND THAT IS THAT THERE REALLY SHOULD BE NO RHETORICAL, POLITICAL, ADVOCACY IN THE SUMMARY THAT RELIES ON UNDERLYING FACTS OR SUCH? IN OTHER WORDS IS A PERSUASIVE ARGUMENT A THING THAT -- ARGUMENTATIVE THING THAT THE VOTER IS GOING TO SEE WHEN THEY ARE CASTING THEIR BALLOT. WHAT WOULD BE THE STANDARD OF THE LIMITATION THAT YOU WOULD HAVE US SUPPLY?

WELL, OBVIOUSLY EVERYONE, EVERY AMENDMENT, EVERY SUMMARY WOULD STAND ON ITS OWN AND WOULD HAVE TO BE EVALUATED, BUT I SEE, REALLY, YOU DON'T NEED A RULE AS SUCH. I SUPPOSE THERE COULD BE SOMETHING SO BAD THAT THE COURT WOULD STRIKE IT DOWN, BUT IN A 75-WORD SUMMARY, IT SEEMS TO ME THAT IT IS UP TO THE VOTERS TO DECIDE WHETHER, WHETHER THEY ACCEPT THE PREMISE UPON WHICH THE AMENDMENT IS BASED, AND HE IS TRYING TO CREATE A NEW RULE THAT WE HAVE NEVER HAD BEFORE. AND THAT WE HAVE GOT HALF A DOZEN CASES WHICH HAVE MUCH MORE COMMENT OR STATEMENTS OF FACT THAT, THAN WE HAVE IN THIS ONE. THIS JUST SIMPLY STATES WHAT THE PURPOSE OF THE AMENDMENT IS. I DON'T KNOW WHETHER MR., IF HE IS TRYING TO SUGGEST THAT WE ARE REALLY AT THE ROOT OF A BIG DEBATE ABOUT WHETHER SMOKING IS HATS HAZARDOUS. THE -- IS HAZARDOUS. THE LEGISLATION HAS ALREADY SAID THAT IT IS. THE U.S. DEPARTMENT OF ENVIRONMENTAL PROTECTION AGENCY HAS ALREADY SAID THAT IT HAS, AND DON'T THINK YOU CAN HAVE A RULE. I THINK YOU HAVE GOT TO LOOK AT EVERY AMENDMENT AND EVERY SUMMARY ON ITS OWN, BUT TO SAY THAT THERE CAN BE NOTHING SAID, WOULD BE CONTRARY TO ALL OF THE LAW AND ALL OF THESE AMENDMENTS THAT ARE ALREADY ON THE BOOKS. HE SUGGESTED THAT, WELL, IN THE TRANSPORTATION ONE, IT WASN'T CHALLENGED. WELL, YOU KNOW, IN THE STOP-EARLY-RELEASE, THE FIRST STOP-EARLY-RELEASE AMENDMENT, THE COURT, IN ITS OPINION, SAID, WELL, GEE, NOBODY OPPOSED THIS AMENDMENT, AND WE ARE SORRY ABOUT THAT, BUT THESE, WE HAVE A PARTICULAR DUTY, AND THESE CONSTITUTIONAL INITIATIVES, TO MAKE SURE THAT EACH ONE MEETS THE SINGLE-SUBJECT REQUIREMENT AND THE BALLOT SUMMARY REQUIREMENT, AND SO WE ARE GOING TO ANALYZE IT VERY CAREFULLY, AND THE COURT FLEW IT -- THE COURT THREW IT OUT IN THAT INSTANCE, EVEN THOUGH THERE WASN'T ANY OPPOSITION. SO ALL OF THESE CASES HAVE BEEN DECIDED WHETHER OR NOT THEY WERE OPPOSED. THE SUGAR ONES WERE CERTAINLY OPPOSED AND CERTAINLY EVERY OTHER ONE WAS NOT, BUT CERTAINLY THEY HAVE MORE COMMENTARY THAN WHAT HE IS COMPLAINING ABOUT. HE IS WORRIED ABOUT ONE SENTENCE AND IS NOT WORRIED ABOUT A PART OF THE SENTENCE. HE IS WORRIED ABOUT A PART THAT SAYS IT IS A HEALTH HAZARD, SECONDHAND SMOKE IS A HEALTH HAZARD, AND SO I SUBMIT THAT YOU REALLY, DON'T NEED A RULE. AND MOST, BUT I COULD CONCEDE THAT IT COULD BE SO MISLEADING, IF IT IS MISLEADING, I THINK THE RULE WOULD HAVE TO BE THAT, IF YOU LOOKED AT IT AND IF IT IS MISLEADING IN ITS RHETORIC, IF YOU WILL, THEN YOU WOULD THROW IT OUT.

WOULD YOU READDRESS THE CONCERN THAT I AM HAVING THAT, AGAIN, THE BALLOT TITLE SAYS IT IS PROHIBITING WORKPLACE SMOKING. AND I JUST DON'T KNOW THAT A VOTER GOING IN THERE SAYS WORKPLACE SMOKING MEANS -- THIS IS GOING TO HAVE A VERY, VERY MARKED EFFECT ON RESTAURANTS, AND EVERYONE KNOWS RIGHT NOW YOU CAN'T SMOKE IN MOST PUBLIC PLACES ANYWAY, BUT THE RESTAURANT PART, WHY, I MEAN, SHOULDN'T, TO BE

MORE ACCURATE, IT REALLY DISCLOSE UP-FRONT, THAT THIS IS PROHIBITING RESTAURANT SMOKING? IS THAT -- I MEAN, ISN'T THAT REALLY ONE OF THE CHIEF PURPOSES OF THIS AMENDMENT? MAYBE THAT IS THE WAY I SHOULD ASK IT.

IT IS A PURPOSE. IT IS CERTAINLY NOT THE ONLY PURPOSE, BUT CERTAINLY IT IS AN IMPORTANT PURPOSE.

WE ARE NOT AS CONCERNED ABOUT WHETHER SOME LAWYER OR PERSON SMOKING ALONE IN THEIR OFFICE IS OPPOSED TO WHETHER PEOPLE ARE SMOKING IN RESTAURANTS. THAT SORT OF SEEMS TO BE THE BIGGER EFFECT OF THIS.

BUT THE AMENDMENT, ITSELF, USES THE SAME TERMS. ENCLOSED INDOOR WORKPLACE, AND THEN IT DEFINES WHAT ENCLOSED INDOOR WORKPLACE --

I UNDERSTAND, BUT --

AND THE SUMMARY USES THE SAME TERMINOLOGY. NOW, IF THERE IS SOME, OBVIOUSLY THE VOTER IS OBLIGATED TO, IF IT DOESN'T UNDERSTAND WHAT ENCLOSED INDOOR WORKPLACE MEANS, THE VOTER, THEN, IS OBLIGATED TO GO FURTHER, BUT --

I GUESS I DON'T KNOW THAT, WHAT I AM QUESTIONING IS WHETHER THAT WORKPLACE IS A MISLEADING TERM FOR THE BALLOT SUMMARY.

WELL, WITH ALL DUE RESPECT, I SUGGEST I DON'T KNOW HOW ELSE YOU WOULD PUT IT. ENCLOSED INDOOR WORKPLACE, INCLUDING RESTAURANTS? I MEAN, I DON'T THINK THAT IS CALLED FOR. IF THERE IS ANY QUESTION ABOUT WHAT ENCLOSED INDOOR WORKPLACE MEANS LATER ON, OF COURSE, THERE CAN BE, YOU KNOW, AS IN OTHER INSTANCES, THERE COULD BE LITIGATION OVER IT, BUT IT IS NOT, IT IS NOT MISLEADING TO SAY ENCLOSED INDOOR WORKPLACE, AND IF YOU THINK ABOUT IT, THAT IS A WORKPLACE, AND IT IS INCLUDED AND INTENDED TO BE INCLUDED. THERE IS NOTHING MISLEADING ABOUT IT, AND IN ANY EVENT, THAT IS GOING TO BE, THERE CAN BE NO DOUBT THAT, WHEN THE RESTAURANT ASSOCIATION STARTS PUTTING THEIR ADS IN THE PAPER, THE VOTER IS NOT GOING TO HAVE ANY DOUBT. THEY ARE EITHER GOING TO BUY IT OR THEY ARE NOT GOING TO BUY IT. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, MR. GRIMES. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS. THE COURT WILL BE IN RECESS FOR 15 MINUTES.