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Chester R. Morrissey, Jr. v. Thomas M. Owen

CHIEF JUSTICE: GOOD MORNING EVERYONE. IT LOOKS LIKE COUNSEL IS READY TO GO, SO IF YOU ARE READY TO GO THE FIRST AND THE ONLY CASE FOR THIS MORNING. JIM SMITH ET AL. VERSUS COALITION TO REDUCE CLASS SIZE. COUNSEL IS READY, YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS CLAY ROBERTS, AND I AM HERE REPRESENTING JIM SMITH, THE SECRETARY OF THE STATE OF FLORIDA. ALSO BEFORE I GET INTO THE PROCEDURE PROPER, THE FIRST STEP IN AMENDING THE FLORIDA CONSTITUTION, BY INITIATIVE PETITION, IS TO FORM A POLITICAL COMMITTEE. AFTER FORMING A POLITICAL COMMITTEE, SPONSORS OF INITIATIVE PETITIONS ARE REQUIRED TO REPORT, PERIODICALLY TO THE DIVISION OF ELECTIONS, EXPENDITURES AND RECEIPTS OF MONEY AND EXPENDITURES THEY MAKE IN SUPPORT OF THAT PETITION. AFTER FORMING A POLITICAL COMMITTEE, THE SUBSTANCE OF THE AMENDMENT, THE 15-WORD TITLE AND THE 75-WORD BALLOT SUMMARY IS SUBMITTED TO THE DIVISION OF ELECTIONS. THE DIVISION OF ELECTIONS REVIEWS IT FOR THE NUMBER OF WORDS, THE SIZE OF THE CARD THE PETITION IS ON AND WHETHER IT HAS THE PAID POLITICAL ADVERTISEMENT DISCLAIMER CONTAINED AT THE BOTTOM. THE CARD MUST BE GREATER THAN 3 BY 5 AND NO GREATER THAN 8 BY 10 AND MUST HAVE THE NAME AND ADDRESS, VOTER REGISTRATION NUMBER AND/OR THE DATE OF BIRTH OF THE VOTER. AFTER GATHERED, THEY MUST BE VERIFIED BY THE SUPERVISOR OF ELECTIONS UNDER FLORIDA ADMINISTRATIVE CODE. UNDER 100.371, FLORIDA STATUTES, INDIVIDUAL PETITION SIGNATURES ARE VALID FOR A PERIOD OF FOUR YEARS AFTER THEY ARE SIGNED.

I ASSUME THAT THE POINT, THERE, IS THAT THESE ARE ALL REGULATIONS THAT HAVE FLOWED OUT OF LEGISLATIVE ENACTMENTS ON THE INITIATIVE PROCESS. IS THAT THE POINT?

THAT IS PART OF THE POINT, JUSTICE WELLS.

LET ME ASK YOU THIS. THE, IN THE AMICUS BRIEF, ON BEHALF OF THE LEGISLATURE, THERE IS AN INDICATION THAT THERE ARE TEN STATES WHICH, BY STATUTE, HAVE ADOPTED FISCAL IMPACT STATEMENTS. ARE YOU FAMILIAR WITH THAT?

YES, YOUR HONOR.

OKAY. AND HAVE ANY STATE COURTS HELD THE, IN POSITION OF THE FISCAL IMPACT STATEMENT BY STATUTE, TO BE UNCONSTITUTIONAL?

TO MY KNOWLEDGE, THEY HAVE NOT, YOUR HONOR.

HAS THERE BEEN ANY FEDERAL LITIGATION, IN WHICH THOSE HAVE BEEN HELD UNCONSTITUTIONAL?

TO MY KNOWLEDGE, THEY ARE NOT YOUR HONOR.

DO THOSE STATES HAVE THE SAME RESTRICTIONS DEALING WITH BALLOT INTEGRITY, THAT WE DO, IN FLORIDA?

I HAVE NOT REVIEWED THE CASE LAW COMING OUT OF THOSE STATES WHERE THERE ARE CONSTITUTIONAL PROVISIONS. MR. HILL IS BETTER ABLE TO SPEAK TO THAT. I BROUGHT OUT THIS

PROCEDURE FOR A COUPLE OF REASONS. ONE IS TO SHOW THAT THE COURT HAS ALLOWED THE LEGISLATURE TO ENACT EXTENSIVE PROVISIONS REGARDING THIS AREA OF LAW.

BUT WHY WOULD THOSE NOT BE CONSIDERED, AS PART OF THE INTEGRITY OF THE BALLOT, RATHER THAN A SUBSTANTIVE APPROACH?

WELL, YOUR HONOR, I BELIEVE THE STANDARD IS, UNDER CITIZENS FOR TAX RELIEF VERSUS FIRESTONE, THE COURT SAID THAT THE LEGISLATURE HAS THE POWER TO ENACT REASONABLE REGULATIONS TO ENSURE BALLOT INTEGRITY AND THE INTEGRITY OF THE ELECTION PROCESS IN GENERAL, AND I BELIEVE THAT IS THE STANDARD, AND --

THAT IS WHAT MY QUESTION IS. I THOUGHT THAT IS JUST WHAT I HAD ASKED IS WHY ARE THOSE PROVISIONS NOT DIRECTED TO THE INTEGRITY OF THAT PROCESS, RATHER THAN A SUBSTANTIVE PROVISION THAT WE ARE DEALING WITH TODAY?

YOUR HONOR, I BELIEVE THE PROVISION WE ARE DEALING WITH TODAY ALSO DEALS WITH THE INTEGRITY OF THE ELECTION PROCESS.

IN WHAT RESPECT?

IN THE RESPECT THAT INCREASINGLY, WE HAVE FOUND THAT THE CONSTITUTION, THAT THE INITIATIVE PETITION PROCESS IS BEING USED TO LEGISLATE IN THE CONSTITUTION. THE CONSTITUTION IS OUR FOUNDATIONAL DOCUMENT, WHICH SETS FORTH THE STRUCTURE OF OUR GOVERNMENT. I THINK IN 1968, WHEN THE '68 REVISION COMMISSION REVIEWS ADVISED -- REVISED THE CONSTITUTION, THEY PUT IN THE PROVISION PROCESS TO ALLOW THE CITIZENS TO DIRECTLY CHANGE THE DOCUMENT THAT PROVIDED THE STRUCTURE OF OUR GOVERNMENT. INCREASINGLY THERE ARE GROUPS THAT AMEND THE CONSTITUTION TO BASICALLY ENACT STATUTORY SCHEMES. CERTAINLY THAT IS ALLOWED, BUT THE LEGISLATURE HAS FELT LIKE THAT, IF STATUTORY SCHEMES ARE GOING TO BECOME ENACTED IN OUR CONSTITUTION, THE VOTERS SHOULD KNOW HOW MUCH THEY COST. THE FISCAL PIE THAT THE STATE HAS IS LIMITED. AND IN DECIDING WHAT PROGRAMS WILL GO FORWARD --

THAT GOES TO THE MERITS OR DEMERITS OF THE PROPOSED AMENDMENT, BUT WE ARE TALKING ABOUT A VERY LIMITED SUBJECT, AND THAT IS WHETHER OR NOT YOU CAN PLACE A RESTRICTION OR WHETHER OR NOT THIS IS A RESTRICTION ON AN INITIATIVE THAT IS PUT ON THE BALLOT. IT HAS BEEN BROUGHT BY, TO THIS COURT AND THIS COURT HAS APPROVED IT, AND SO THE WISDOM OF WHETHER OR NOT THE PEOPLE OUGHT TO KNOW IS ONE THING, BUT, AND I THINK THE LEGISLATURE, WHEN, IN 2001, ENACTED A LAW TO PUT ON THE BALLOT, THIS NOVEMBER THAT FISCAL IMPACTS WILL ALWAYS BE A PART OF THIS INITIATIVE PROCESS. AND SO I GUESS MY QUESTION IS HOW CAN WE, THE INCREASING NUMBER OF AMENDMENTS BE A RATIONAL ARGUMENT TO SAY THAT WE HAVE GOT TO PUT A LEGISLATIVE FISCAL IMPACT ON IT?

YOUR HONOR, I DON'T BELIEVE THAT THE FISCAL IMPACT STATEMENT IS A RESTRICTION ON THE PROPONENTS OF THIS AMENDMENT AT ALL. THAT THEY HAVE BEEN ALLOWED IT GATHER THEIR PETITIONS AND PUT THEIR INITIATIVE ON THE BALLOT. THE QUESTION IS, IS WHETHER THE LEGISLATURE HAS THE AUTHORITY TO PROVIDE TRUTHFUL INFORMATION TO THE VOTERS, REGARDING WHAT THEY ARE GOING TO VOTE ON.

BUT ISN'T THERE A VAST DIFFERENCE BETWEEN THESE PROVISIONS THAT YOU HAVE LISTED THEM OUT IN SOME DETAIL, AND I AM NOT EVEN CERTAIN THAT YOU WERE FINISHED, YOU KNOW, THAT THERE WERE OTHER ONES, THAT MOST WOULD AGREE -- WOULD AGREE HELP INSURE THE INTEGRITY OF THE BALLOT. MOST OF THEM, IN CLERICAL WAYS, THAT IS IN EXPLANATORY WAYS, AND AN ISSUE LIKE THIS, WHERE THE VERY RESOLUTION OF WHAT FISCAL IMPACT WILL OCCUR, IS SOMETHING THAT IS GOING TO BE A GREAT SUBJECT OF DEBATE AND DISPUTE, IS IT NOT? THAT IS THAT THE PROCESS AT ARRIVING AT THAT IS BE GOING TO BE SUBJECT TO SOME FACT FINDING,

AND THEN, EVEN AFTER THE FACT FINDING, BECAUSE WE ARE TALKING ABOUT A PROJECTION IN THE FUTURE SO WOULD YOU ADDRESS THIS SORT OF CORE ISSUE, AND THAT IS YOU ARE SAYING THERE IS REALLY NO DIFFERENCE BETWEEN THIS PROVISION AND THESE OTHER, MORE OR LESS ADMINISTRATIVE OR CLERICAL POSITIONS TO ENSURE THE INTEGRITY OF THE BALLOT. YOU PROBABLY HAVE A LOT OF SYMPATHY UP HERE AT THIS BENCH, WITH THE POINT THAT YOU MADE, ABOUT THE PROLIFERATION OF ISSUES, NOW, GOING ON THE BALLOT. BUT HELP US, IN TERMS OF EXPLAINING WHAT APPEARS TO BE A SUBSTANTIALLY DIFFERENT THING THAN THE PROVISIONS THAT YOU HAVE LISTED AND THE FLITON IS AT ISSUE RIGHT NOW. DO YOU UNDERSTAND MY QUESTION?

YES, YOUR HONOR. ARTICLE I 1 SECTION 3 PROVIDES THE PROCEDURE BY WHICH YOU GET ON THE -- ARTICLE ELEVEN SECTION 3 PROVIDES THE PROCEDURE BY WHICH YOU GET ON THE BALLOT. NO PROVISION IS CONTAINED THAT YOU HAVE TO PROVIDE IN THE SUMMARY OF TITLE THAT HAS TO BE CLEAR AND AMBIGUOUS OF WHAT THE VOTERS ARE GOING TO VOTE FOR. THE LEGISLATURE PROVIDED THAT PROCEDURE, AND THE LEGISLATURE, IN KEEPING WITH THAT, IS JUST A MATTER OF DEGREE. I THINK THE LEGISLATURE COULD HAVE PROVIDED THAT, NOT ONLY COULD HAVE AMENDED THAT LANGUAGE TO NOT PROVIDE THE FISCAL IMPACT STATEMENT IN THE WAY THAT THEY DID BUT SAY THE PROPONENT SHALL PROVIDE A CLEAR AND UNAMBIGUOUS STATEMENT DISCUSSING THE PURPOSE OF WHAT IS ON THE BALLOT AND THE FISCAL IMPACT THERE OF.

I AM GOING TO ACCEPT THAT ANSWER, AND I UNDERSTAND YOU ARE SPLITTING YOUR TIME WITH MR. HILL, AND THE MARSHAL INFORMS ME THAT YOU HAVE USED YOUR PORTION OF THAT. THANK YOU VERY MUCH.

THANK YOU, YOUR HONOR. LET ME QUICKLY SEE IF I CAN PUT THIS INTO CONTEXT. IF I CAN. AND AS I UNDERSTAND YOUR HONOR'S CONCERN, YOUR CONCERN IS THAT THIS AMENDMENT BY THE LEGISLATURE, THIS STATUTE BY THE LEGISLATURE IS AN EFFORT TO ADD SOMETHING SUBSTANTIVELY, IF YOU WILL, TO THE AMENDMENT THAT HAS BEEN APPROVED BY THIS COURT.

WELL HAD, THAT IS A CONCERN.

THAT IS A CONCERN. I THINK, IF I TRY TO SHOW YOU WHAT IT IS THAT LEADS TO THIS AMENDMENT, THAT THAT MAY HELP UNDERSTAND WHAT THE LEGISLATURE IS DOING. AND THE POSITION THAT THE LEGISLATURE IS IN. IN YOUR ADVISORY OPINION, IN WHICH YOU APPROVED THIS VERY AMENDMENT, YOU DISCUSSED WHAT THE RESOLUTION, THAT IS WHAT THE INITIATIVE, WHAT IS GOING ON THE BALLOT, WHAT IT CONTAINS, AND IN THAT PROVISION THAT IS GOING ON THE BALLOT THERE, IS A PROVISION THAT PAYMENT OF THE COSTS ASSOCIATED WITH REDUCING CLASS SIZE TO MEET THESE REQUIREMENTS IS THE RESPONSIBILITY OF THE STATE NOT OF LOCAL SCHOOL DISTRICTS. BEGINNING WITH THE 2003, 2004 FISCAL YEAR, THE LEGISLATURE SHALL PROVIDE SUFFICIENT FUNDS TO REDUCE, AND IT GOES ON. NOW, YOU ALL CONSIDERED THAT, IN THE CONTEXT OF DID THAT TAKE IT BEYOND A SINGLE SUBJECT. YOU ALL DID NOT CONSIDER THAT, ABOUT THE UNANSWERED QUESTION THAT REMAINS. THE LEGISLATURE IS GOING TO FUND IT. IT IS GOING TO COME FROM STATE FUNDS. IT IS NOT GOING TO COME FROM LOCAL DISTRICTS. NOW, WHERE DOES A VOTER GET INFORMATION? THE LEGISLATURE, AS MR. ROBERTS HAS SAID, HAS ENACTED A NUMBER OF DIFFERENT PROVISIONS TO BE SURE THAT A BALLOT, AS IT IS PRESENTED, IS HONEST, IS OPEN, AND GIVES THE VOTERS THE INFORMATION THEY NEED, IN ORDER TO MAKE A CHOICE.

BUT WHAT, I GUESS THE REAL QUESTION I HAVE, THEN, IS WHAT SECTION OF SECTION 3 OR SECTION 5, GIVES THE LEGISLATURE THE AUTHORITY TO, THEN, GO INTO THIS FISCAL IMPACT STATEMENT? I NEED YOU TO POINT EXACTLY TO WHICH OF THOSE STATUTES.

THE SECTION, ITSELF, IS NOT SPECIFIED, INSOFAR AS MAKING THESE PETITIONERS, THE PEOPLE

GETTING THE PETITIONS, BECOME A PART OF THE POLITICAL ACTION COMMITTEE. IT IS IN MEERNT IN WHAT THE LEGISLATURE CAN DO, UNDER SECTION 11, AND I THINK IT IS 5.

NOW, UNDER SECTION 11-5, THE BALLOT LANGUAGE, WE SAID THE BALLOT SUMMARY THAT YOU HAVE TO LOOK AT, YOU CAN LEGISLATE IN THAT PARTICULAR AREA, BECAUSE SECTION 5 SAYS THAT THE BALLOT NEEDS TO BE CLEAR, SO THAT THE VOTERS UNDERSTAND.

CLEAR AND UNAMBIGUOUS.

SO WHAT PART OF THAT GIVES YOU THE AUTHORITY THAT SAYS THAT THE ELECTORS NEED TO KNOW THAT THERE IS A FISCAL IMPACT?

I BELIEVE IT IS INHERENT IN THE CLEAR AND UNAMBIGUOUS PORTION OF THAT SECTION, AND I SAY THAT NOT CREATING A THEORY THAT IS UNHEARD OF IN THIS COURT BUT I SAY THAT, ARMED WITH YOUR DECISION IN THE ARMSTRONG CASE, AND IN THE ARMSTRONG CASE, THIS COURT DECIDED THAT, INHERENT IN THAT PROVISION, THAT THE BALLOT MUST BE ACCURATE, AND IN DISCUSSING WHAT ACCURACY WAS, AND WHAT ACCURACY IS, ON A BALLOT, THE COURT DETERMINED THAT ACCURACY IS BEING TOTALLY TRUTHFUL, AND THE COURT USED THE WORDS "DON'T HIDE THE BALL." WHAT WE ARE SAYING IS THAT, INHERENT IN THE LEGISLATURE'S RESPONSIBILITY, UNDER CLEAR AND UNAMBIGUOUS, THEY HAVE THE ABILITY TO MAKE CERTAIN THAT THE BALLOT IS THAT WAY. WE ARE NOT --

DOES THAT PROVISION APPLY TO ALL PROPOSED CONSTITUTIONAL AMENDMENTS? I MEAN, DOES IT APPLY TO NOT ONLY CITIZENS INITIATIVES BUT LEGISLATIVE INITIATIVES, CONSTITUTIONAL INITIATIVES?

I AM SORRY. WHICH?

THE ONE WE ARE TALKING ABOUT.

IN THE LEGISLATURE --

HOW IT NEEDED TO BE CLEAR AND UNAMBIGUOUS, ET CETERA.

CLEAR AND UNAMBIGUOUS COMES OUT OF THE SECTION 101.161 OF THE FLORIDA STATUTES.

BUT THE ACTUAL CONSTITUTIONAL AMENDMENT APPLIES. I AM ASKING YOU IS SECTION 5, DOES THAT APPLY TO ALL --

SECTION 5, I BELIEVE, DEALS WITH INITIATIVES.

JUST INITIATIVES.

BUT THIS COURT, IN DEALING WITH 101.161, I BELIEVE, STATED, IN ITS DECISION IN THE ARMSTRONG DECISION, THAT THAT IS A CODIFICAITON OF THE ACCURACY REQUIREMENT OF THE CONSTITUTION, INsofar AS A BALLOT IS CONCERNED AND WHAT WE ARE SAYING IS, IN ORDER TO BE ACCURATE, IN ORDER TO HAVE VOTERS THAT ARE FULLY INFORMED, THE LEGISLATURE HAS A DUTY. INDEED, IN THE ARMSTRONG CASE, THE LEGISLATURE WAS CRITICIZED BOO FO NOT BEING TRUTHFUL, IN TERMS -- CRITICIZED FOR NOT BEING TRUTHFUL, IN TERMS OF ACCURACY. THE LEGISLATURE HAS NOW PASSED SOMETHING, IN ADDITION TO WHAT IS ON THE BALLOT THAT, GIVES THE VOTERS THE INFORMATION THEY NEED TO HAVE IN ORDER TO MAKE AN INFORMED DECISION.

BUT THE ISSUE, AT THE TIME THAT WE APPROVED THIS BALLOT SUMMARY, WASN'T WHETHER THERE WAS INACCURACY, AS FAR AS THE FISCAL IMPACT. DO YOU AGREE WITH THAT?

I AGREE WITH THAT, JUSTICE PARIENTE.

I GUESS ONE, I HAVE GOT TWO ADDITIONAL CONCERNS, AND MAYBE THEY THEY ARE TOGETHER. ONE IS THE FACT THAT THE LEGISLATURE, PRIOR TO PASSING THE STATUTE, HAD DECIDED THAT THE FISCAL IMPACT WOULD BE A GOOD WHY AND HAD HUT THAT -- A GOOD IDEA, AND HAD PUT THAT, AS A LEGISLATIVE INITIATIVE, ON THE BALLOT THIS NOVEMBER FOR A CONSTITUTIONAL REVISION. REALIZING THAT THE LEGISLATURE, WELL, IT IS BETTER TO HAVE IT IN THE CONSTITUTION THAN BY STATUTE TO ME THAT IS AT LEAST EVIDENCE THAT THE LEGISLATURE UNDERSTOOD THAT THIS WAS OF CONSTITUTIONAL SIGNIFICANCE, THAT REQUIRED THE AMENDMENT, SO IF YOU COULD, FIRST, MAYBE ADDRESS THAT CONCERN, SHOULD WE --

I CAN ADDRESS IT. FIRST OF ALL THE CONSTITUTIONAL AMENDMENT ONLY APPLIES TO INITIATIVES. THE LEGISLATION THAT IS BEFORE THE COURT FOR CONSIDERATION, THAT WAS ENJOINED FROM BEING USED, THE LEGISLATION APPLIES TO ALL CONSTITUTIONAL AMENDMENTS. THAT IS ONE BIG DIFFERENCE. SECONDLY, WHEN THE LEGISLATURE CONSIDERED THE CONSTITUTIONAL AMENDMENT, THE LEGISLATURE DRAFTED LANGUAGE AND WHAT IS GOING TO BE ON THE BALLOT NOW IS SOME PRETTY BROAD LANGUAGE THAT WILL GIVE THE LEGISLATURE THE POWER TO NOT ONLY REQUIRE THIS ADDITIONAL INFORMATION BUT, ALSO TO REQUIRE THOSE GOING OUT COLLECTING SIGNATURES, TO HAVE THAT INFORMATION WHEN IT'S AVAILABLE OR TO HAVE THAT INFORMATION AVAILABLE, SO THAT WHEN THEY SIGN A PETITION, THEY KNOW WHAT THE FISCAL IMPACT IS OR AT LEAST THEY ARE TOLD WHAT THE FISCAL IMPACT IS.

CHIEF JUSTICE: YOU NEED TO BE AWARE THAT YOU ARE INTO YOUR REBUTTAL TIME NOW, SO IF YOU WANT TO SAVE SOME TIME.

I AM SAVE THE REMAINDER FOR THAT.

CHIEF JUSTICE: VERY GOOD. COUNSEL.

MAY IT PLEASE THE COURT. MY NAME IS MARK HERRON. I AM HERE ON BEHALF OF THE COALITION TO REDUCE CLASS SIZE AND THE PRE-K COMMITTEE. WITH ME THIS MORNING IS TOM FINDLEY.

MR. HERRON, DO YOU AGREE THAT THE LEGISLATURE HAS THE POWER TO LIMIT BALLOT SUMMARIES TO 75 WORDS?

I DON'T WANT TO CONCEDE THAT, YOUR HONOR, BECAUSE THAT HAS NEVER BEEN CHALLENGED. AS YOU KNOW, ARTICLE I 1 SECTION 3 -- ARTICLE ELEVEN SECTION 3 IS SELF-EXECUTING. THE BALLOT SUMMARIES OF THAT PARTICULAR STATUTORY PROVISION ARE INHERENT IN THE ARTICLE ELEVEN SECTION 5 REQUIREMENTS. I DON'T WANT TO CONCEDE THAT IT IS CONSTITUTIONAL, BECAUSE IT HAS NEVER BEEN CHALLENGED, YOUR HONOR.

BUT THIS COURT HAS, ON SEVERAL OCCASIONS, AT LEAST SINCE I HAVE BEEN HERE, COMMENTED ABOUT THE FACT THAT BALLOT SUMMARIES ARE NECESSARILY HAVE TO BE JUDGED ON THE BASIS THAT THERE IS A STATUTORY LIMITATION OF 75 WORDS, SO WOULDN'T YOU AGREE THAT AT LEAST IMPLICITLY, THIS COURT HAS RECOGNIZED THE LEGISLATIVE POWER TO DO THAT.

AGAIN, I BELIEVE YOU HAVE, IN THE ARMSTRONG CASE, ACKNOWLEDGED THAT THAT IS A REQUIREMENT OR THAT IS PART INHERENT OF THE CONSTITUTIONAL SCHEME. AGAIN, NO ONE HAS BROUGHT A CHALLENGE TO YOU THAT SAYS THAT THAT STATUTE WOULD INFRINGE UPON THE RIGHT OF AN INITIATIVE GROUP BECAUSE IT IS LIMITED TO P 5 WORDS -- TO 75 WORDS, BECAUSE THEY NEED MORE THAN 75 WORDS TO --

WHILE YOU HAVE GOT YOU, LET ME ASK YOU THIS. WOULD YOU AGREE THAT THE TAX RELIEF

CASE IS A FAR DIFFERENT SITUATION THAN WHAT WE ARE DEALING WITH HERE, BECAUSE THE SPECIFIC ISSUE BEFORE THE COURT THERE WAS WHETHER THERE COULD BE A VARIANCE BETWEEN THE 90 DAYS, WHEN THE CONSTITUTION EXPRESSLY SAYS THE MATTER SHOULD BE FILED, AND THE 122 DAYS IN THE STATUTE, SO THAT WAS A FAR DIFFERENT SITUATION.

I THINK FACTUALLY IT IS DIFFERENT, BUT I THINK THE STANDARD THAT THIS COURT ESTABLISHED IN THIS CASE IS THE APPROPRIATE STANDARD, AND THAT STANDARD, AS THE COURT KNOWS THAT, STANDARD SAYS THAT THE DELICATE SIMMET TRICK BALANCE OF THIS CONSTITUTIONAL SCHEME, THAT IS THE SCHEME OF THE WAY THE CONSTITUTION SETS OUT FOR AMENDING THE CONSTITUTION FROM THE VARIOUS SOURCES, MUST BE MAINTAINED, AND ANY LEGISLATIVE ACT REGULATING THE PROCESS, REGULATING THE PROCESS, SHOULD BE ALLOWED ONLY WHEN NECESSARY TO ENSURE BALLOT INTEGRITY, SO, AGAIN, I THINK THE FACTUALLY, IT IS DIFFERENT, BUT, AGAIN, THE STANDARD THAT THIS COURT HAS SET IS PROBABLY THE APPROPRIATE STANDARD THAT NEEDS TO BE FOLLOWED, AND PETITIONERS IN THIS CASE AND THEIR FRIENDS THAT HAVE JOINED THIS CASE HAVE NOT ARGUED IN ANY WAY THAT THIS STATUTE IS REQUIRED FOR BALLOT INTEGRITY.

IS THERE, IS THE CONCERN OR SHOULD, DOES IT MATTER AT ALL THAT THE METHOD BY WHICH THIS FISCAL IMPACT IS GOING TO BE INCLUDED BY THE LEGISLATION, THAT IS THAT, BY THE REVENUE ESTIMATING CONFERENCE AND THAT THAT IS A SEPARATE REQUIREMENT AND, AS JUSTICE ANSTEAD WAS SAYING, THERE MAY BE SOME CONCERNS ABOUT WHETHER IT IS AN OVERESTIMATE, SO THAT IT IS, THERE IS ACTUALLY A POLITICAL REASON WHY THAT IS HAPPENING VERSUS, IF THE LEGISLATURE HAD REQUIRED, SAY, CHANGE THE BALLOT SUMMARY, TO SAY THAT THERE IS GOING TO BE A 75-WORD EXPLANATION OF THE CLEAR PURPOSE AND THEN ANOTHER 50 WORDS STATEMENT OF THE FISCAL IMPACT, SO THAT IT WAS BASICALLY COMING FROM THOSE THAT WERE GIVING THE INITIATIVE, AND THEN WE WOULD REVIEW IT FOR ACCURACY. DOES THAT AT ALL, YOU KNOW, DOES THAT, SHOULD THAT AFFECT OUR CONSIDERATION AT ALL, OR WOULD YOU SAY EITHER ONE WOULD BE UNCONSTITUTIONAL?

I THINK IT IS A CRITICAL DIFFERENCE HERE THAT IT IS THE GOVERNMENT, ITSELF, THAT IS ANALYZING AND PUTTING THE NUMBERS ON THE BALLOT. AND I SAY THAT, BECAUSE AS JUSTICE LEWIS IMPLIED IN HIS INITIAL QUESTIONING, THIS IS A SUBSTANTIVE ISSUE, BECAUSE THE POWER TO SHAPE THE DEBATE FOLLOWS FROM THE POWER TO PUT THOSE NUMBERS ON THE BALLOT. IN THE DEBATE ON THE ISSUE OF THIS CONSTITUTIONAL AMENDMENT TWO THAT IS GOING TO BE ON THE BALLOT IN NOVEMBER OF 2002, REPRESENTATIVE DOCKERY, IN THE COURSE OF LEGISLATIVE DEBATE, POINTED OUT THAT PROBLEM. IN FACT, SHE SAID THAT THE, WHOEVER CONTROLS THE NEWSPAPERS, CONTROLS WHAT IS SAID ABOUT A PARTICULAR ISSUE, AND I AM A LITTLE CONCERNED ABOUT LEAVING IT UP TO GOVERNMENTAL BUREAUCRACIES TO KIND OF DICTATE TO THE PEOPLE OF FLORIDA WHAT THOSE NUMBERS ARE. FOLLOWING UP AND ANSWERING ABOUT THE REQUIREMENT THAT, IF THE LEGISLATURE SAID WE PUT THE NUMBERS ON THERE. I THINK THAT THAT ISSUE WAS RAISED, IN THE PETITIONER'S REPLY BRIEF, WHEN THEY SAID THAT THERE ARE STATUTES OUT THERE THAT HAVE BEEN HELD CONSTITUTIONAL THAT SAY WE CAN MAKE PEOPLE PUT THINGS ON THEIR CONSTITUTIONALLY-PROTECTED SPEECH, AND THOSE WERE THE POLITICAL DISCLAIMERS THAT ARE ON POLITICAL ADVERTISEMENTS.

THIS IS A FACIAL ATTACK.

THAT'S CORRECT.

MEANING THAT, IF THIS COURT HELD THAT THE, THAT THIS COULD NOT BE DONE BY STATUTE.

THAT'S CORRECT.

THAT THE EFFECT OF WHAT WE ARE SAYING IS THAT THE LEGISLATURE HAS NO POWER TO REGULATE, IN ANY WAY, THE BALLOTS AND THE INITIATIVE PROCESS. ISN'T THAT WHAT WE

WOULD BE SAYING?

WE ARE ARGUING THAT UNDER ARTICLE ELEVEN SECTION 3. NOW, WE RECOGNIZE THAT CONSTITUTIONAL AMENDMENT TWO IS OUT THERE, IN WHICH THE LEGISLATURE IS ASKING THE PEOPLE WHETHER THEY CAN, WILL GRANT THEM THE POWER TO PASS LEGISLATION IN THIS RESPECT. NOW, THE TRIAL COURT DIDN'T RULE ON OUR FIRST AMENDMENT CLAIMS BELOW, AND WE THINK THAT THERE ARE SOME VALID FIRST AMENDMENT ISSUES IN THAT AS WELL, BUT UNDER OUR STATE CONSTITUTIONAL FRAMEWORK, WE WOULD SAY THAT, IF THE PEOPLE VOTE TO ACCEPT OR VOTE TO APPROVE CONSTITUTIONAL AMENDMENT NUMBER TWO, AUTHORIZING THE LEGISLATURE TO REQUIRE A FISCAL IMPACT STATEMENT ON INITIATIVE PETITIONS, WE WOULDN'T BE HERE ON THIS ISSUE HERE TODAY, AS THE TRIAL COURT RULED ON IT. THERE WOULD BE SOME ADDITIONAL QUESTIONS AS TO WHETHER THE SCOPE OF THAT AMENDMENT WOULD PERMIT THEM TO DO THE OTHERS, BUT THAT IS FOR ANOTHER DAY.

A PART OF THE ARGUMENT THAT THE APPELLANTS ARE MAKING HERE IS THAT THERE ARE OTHER STATUTES THAT THE LEGISLATURE HAVE PASSED THAT REGULATE THIS INITIATIVE PETITION. HOW IS THIS DIFFERENT FROM THE WHOLE SECTION 106, WHICH SAYS THAT YOU HAVE TO HAVE A BALLOT SUMMARY OF 75 WORDS THAT ACCURATELY REFLECT THE PURPOSE OF IT. ISN'T THIS SIMILAR TO THAT? THIS SAYS YOU HAVE TO HAVE 50 WORDS THAT EXPLAIN THE FISCAL IMPACT. ISN'T THAT JUST AN EXTENSION OF THE REQUIREMENT OF 106?

WELL, YOUR HONOR, I DON'T THINK SO, BECAUSE THIS COURT, IN THE ARMSTRONG DECISION, I BELIEVE, TOOK THAT PROVISION, AND YOU SAY IT IS 106 BUT IT IS IN 101, THAT TOOK THAT PROVISION OF 101, WITH RESPECT TO BALLOT TITLES AND BALLOT SUMMARIES, AND I BELIEVE KIND OF INCORPORATED THAT INTO THE CONSTITUTIONAL SCHEME AND SAID IT IS INHERENT IN THE CONSTITUTIONAL SCHEME. I DON'T BELIEVE THAT --

WHY ISN'T THIS INHERENT, ALSO? WOULDN'T THIS HELP TO MAKE THE BALLOT MORE ACCURATE AND REFLECT WHAT IT IS THE VOTERS ARE ACTUALLY VOTING ON?

NO. I BELIEVE THIS REFLECTS THE OPINION OF FOUR STATE ECONOMISTS WHO GOT IN A ROOM ONE DAY AND DECIDED THAT THESE WERE THE NUMBERS. THESE DON'T REFLECT, NECESSARILY THE NUMBERS OF THE PROPONENTS OF THE AMENDMENT. THESE DON'T REFLECT, NECESSARILY THE VIEWS OF ALL THOSE ECONOMISTS, IF YOU LOOK AT THE STATUTE, ITSELF. IT SAYS THAT THREE OUT OF THE FOUR CAN VOTE TO ESTABLISH WHAT THE NUMBER IS. IT, ALSO, SAYS THAT IF --

LET ME ASK YOU THIS THEN. TO GO BACK TO A PART OF JUSTICE PARIENTE'S QUESTION, IF THE PROPONENTS OF THE AMENDMENT, IN THEIR 75-WORD SUMMARY, DECIDED TO PUT SOMETHING IN ABOUT FISCAL IMPACT, WOULD THAT BE FINE?

I BELIEVE THAT WE WOULD BE HERE, ARGUING AT THE FIRST TIME THAT WE CAME BEFORE THIS COURT, BY THE OPPONENTS OF AN AMENDMENT THAT WAY SAY THAT IS FALSE AND MISLEADING, WE ARE HIDING THE BALL, FLYING UNDER FALSE COLORS, BECAUSE THEY WOULD, THEY COULD SAY THAT, HOW DO YOU KNOW HOW MUCH IT IS GOING TO COST? YOU ARE NOT THE ONES THAT NEED TO IMPLEMENT IT. IT IS GOING TO BE THE LEGISLATURE AT ANOTHER POINT IN TIME, FIGHTING ABOUT THAT. I BELIEVE IT WOULD BE IN THE INITIAL REVIEW OF THE BALLOT TITLE AND SUMMARY.

WHAT ABOUT, IN THE COURSE OF REVIEW THAT IS CERTAINLY NECESSARY IN DEVELOPING A BUDGET AND THE COSTS OF GOVERNMENT AND WHAT GOVERNMENT DOES, WHAT WOULD BE WRONG WITH THE LEGISLATURE, BY SEPARATE STATUTORY SCHEME, ACTUALLY SAYING THAT, EVERY TIME ONE OF THESE INITIATIVES IS GOING TO BE, IT HAS BEEN DETERMINED THAT IT IS GOING TO GO ON THE BALLOT, THAT THEY HAVE A PARTICULAR AGENCY, AND PERHAPS THE

REVENUE ESTIMATING COMMITTEE STUDY WHAT THE FISCAL IMPACT WILL BE, AND THEN PUBLICIZE THAT TO THE PEOPLE AND THE VOTERS OF THE STATE OF FLORIDA, IN ADVANCE OF THE ELECTION IN WHICH THAT BALLOT INITIATIVE WILL BE CONSIDERED. ANY PROBLEM WITH THE GOVERNMENT DOING THAT?

NO, SIR, YOUR HONOR. THEY BECOME PART OF THE POLITICAL DEBATE. IT IS WHEN THEY INTERFERE IN THE PETITION PROCESS THAT, AND THEY PUT THEIR VIEW OF WHAT IT COSTS ON THE BALLOT, WITHOUT ANY ATTRIBUTION AS TO THE SOURCE OF THAT VIEW, ON THE BALLOT, THAT IS THE PROBLEM. IF THEY WANT TO PARTICIPATE IN THE POLITICAL DEBATE, THEY ARE WELCOME TO DO SO. THERE IS A ATTORNEY GENERAL'S OPINION FROM 1981 THAT SAYS THEY CAN.

HOW DO WE CONSIDER THE FACT THAT, WHAT YOU ARE REALLY SAYING IS WHAT IS GOING ON IS REALLY NOT A NEUTRAL THING OR IT HAS THE POTENTIAL FOR THAT, AND THAT SOMEHOW THAT IS A LITTLE DIFFERENT THAN SAYING, WELL, IT IS SUBSTANTIVE, AND THEREFORE THE LEGISLATURE CAN'T DO IT, BECAUSE IT IS SUBSTANTIVE. HOW DO YOU, SORT OF ANSWER, IF, JUSTICE WELLS'S QUESTION, IF NEXT YEAR, AND SAY THIS CONSTITUTIONAL AMENDMENT DIDN'T PASS AND THE STATUTE SAID THAT IT WAS UP TO THE PROPONENTS TO PUT A FAIR ESTIMATE ON THERE, AND WE MIGHT BE BACK AGAIN, WHAT IS THE LINE BY WHICH, HOW WOULD YOU SAY THAT YOU WOULD WRITE THIS, TO NARROW THE HOLDING, TO SAY WHY THIS IS CLEARLY UNCONSTITUTIONAL, BUT SOMETHING ELSE THAT COULD BE MORE NEUTRAL WOULD NOT BE?

I DON'T ENVISION THE LEGISLATURE CHANGING THE STATUTE TO GIVE THE PROPONENTS THE OPPORTUNITY TO PUT THEIR VIEW AS TO THE COSTS, ON THE BALLOT. I ONLY HAVE TO WORK WITH THE STATUTE THAT IS IN EFFECT. I KNOW THAT IN SOME STATES, CALIFORNIA, FOR EXAMPLE, THE PROPONENTS AND THE OPPONENTS ARE ALLOWED TO PRESENT THEIR VIEWS AS TO THE COSTS, AND THAT INFORMATION IS SENT TO VOTERS. HOWEVER, WITH RESPECT TO THIS, THE EVIL THAT IS INHERENT IN THIS IS THE FACT THAT YOU HAVE A GOVERNMENTAL ENTITY FROM A GOVERNMENT THAT IS OPPOSED TO THE CHANGE BEING PROPOSED. IT IS EVIDENT IN THE BRIEFS THAT HAVE BEEN SUBMITTED, THE GOVERNMENTAL ENTITIES THAT ARE OPPOSED TO THE CHANGE THAT IS BEING PROPOSED, THAT ARE PUTTING A NUMBER ON THE PROPOSAL OF THE PEOPLE AND COMMENTING UPON THAT, WHEN WE DON'T HAVE THE TRUE OPPORTUNITY TO PUT OUR VIEWS IN FRONT OF THE PEOPLE, IN A SANCTIONED WAY, ON THE BALLOT.

DO YOU KNOW IF ANY OTHER STATE, IS IT ACCURATE THAT TEN OTHER STATES HAVE STATUTES?

I HAVE NO REASON TO DISPUTE THAT, YES.

DO YOU KNOW OF ANY STATE SUPREME COURTS THAT HAVE HELD THAT TO BE UNCONSTITUTIONAL?

I DO NOT NOR DO I KNOW OF ANY CHALLENGES THAT HAVE BEEN BROUGHT, EITHER, AND I DON'T BELIEVE ANY CHALLENGES ARE CITED IN THE BRIEFS BY THE FLORIDA HOUSE OF REPRESENTATIVES ON THIS ISSUE.

DO ANY OF THE STATES HAVE THE SAME CONSTITUTIONAL PROVISIONS THAT WE DO?

I THINK EACH ONE IS DIFFERENT. I HAVE LOOKED AT SEVERAL OF THEM. I HAVEN'T LOOKED AT ALL OF THEM. IN ONE CASE THAT CITED, AND THE PETITIONERS IN THIS CASE TALK ABOUT IT, WE TALK ABOUT IT, THE KEAN CASE, KEAN VERSUS CLARK, WHICH INVOLVES A MISSISSIPPI INITIATIVE PETITION CONSTITUTIONAL PROVISION, RIGHTFULLY SO, THERE WAS A PROVISION IN THAT LAW THAT WAS UPHELD AGAINST FEDERAL CONSTITUTIONAL CHALLENGE. HOWEVER, ONE THING THAT IS NOT NOTED IN THE BRIEF IS THAT THE SPECIFIC CONSTITUTIONAL PROVISION IN MISSISSIPPI AUTHORIZES THE LEGISLATURE TO REGULATE THE MANNER IN WHICH INITIATIVE PETITIONS ARE CIRCULATED, PRESENTED AND CERTIFIED, AND THAT WAS THE ISSUE THAT WAS

BEFORE THE FEDERAL COURT IN THAT CASE AND THAT DISTINGUISHED ITS HOLDING, AGAIN, BASED ON SPECIFIC MISSISSIPPI CONSTITUTIONAL MATTERS AND DISTINGUISHED ITS HOLDING FROM UNITED STATES SUPREME COURT DECISIONS ON PETITIONER CIRCULATEORS. EACH STATE APPROACHES IT DIFFERENTLY. I BELIEVE THE FRAMEWORK IN WHICH FLORIDA IS OBLIGATED TO OPERATE IS THE FRAMEWORK THAT IS SET FORTH IN THE STATE CITIZENS FOR TAX RELIEF VERSUS FIRESTONE CASE AND THAT IS THE APPROPRIATE STANDARD. AS NOTED, THE LEGISLATION HERE DOES NOT CONCERN THE ACCURACY OF THE BALLOT TITLES IN THE SUMMARIES OF THE PROPOSED AMENDMENT. THIS COURT HAS ALREADY DETERMINED THAT THE TITLES AND SUMMARIES OF BOTH THE CLASS SIZE AMENDMENT AND THE PRE-K AMENDMENT ARE ACCURATE. THE LEGISLATION DOES NOT CONCERN ITSELF WITH THE VALIDITY OR INTEGRITY OF THE SIGNATURES ON THE INITIATIVE PETITIONS OR THE PROCESS FOR VERIFYING THOSE PETITIONS. AGAIN, THESE ARE AREAS WITHIN WHICH THIS COURT HAS ALREADY DETERMINED THAT THE STATE MAY REGULATE, BECAUSE IT IS IMPORTANT FOR BALLOT INTEGRITY.

HOW DO YOU CHALLENGE THE ESTIMATES FOR THE REVENUE ESTIMATING CONFERENCE?

YOUR HONOR, THE ONLY STANDARD THAT IS SET FORTH IN THE STATUTE FOR CHALLENGING THE REVENUE ESTIMATING CONFERENCE ESTIMATES ARE THAT THEY ARE CLEAR AND UNAMBIGUOUS. THAT IS THE STATUTORY GROUNDS FOR CHALLENGE. SO IF THEY ARE CLEAR THAT IT IS GOING TO COST "X" BILLIONS OF DOLLARS AND THEY ARE UNAMBIGUOUS THAT IT IS GOING TO COST "X" BILLIONS OF DOLLARS, THE STANDARD OF REVIEW FOR THE TRIAL COURT IN THIS INTERIM PERIOD, NOW, OF 2003 OR THIS COURT, SUBSEQUENT TO JULY 1 OF 2003, IS GOING TO BE LIMITED TO "MUST BE CLEAR AND UNAMBIGUOUS." THERE IS NO GUARANTEE WITHIN THAT STANDARD THAT THE NUMBERS ARE ACCURATE OR TRUE. IN FACT, IF YOU GO LOOK AT THE LEGISLATIVE HISTORY OF THIS LEGISLATION, YOU WILL SEE THAT WORDS TO THAT EFFECT WERE DELETED ALONG THE WAY.

ISN'T THAT THE BETTER ARGUMENT AS TO WHY THIS, THEN, ENTER -- INTERFERES WITH THE RIGHT OF THE CITIZENS TO AMEND THE CONSTITUTION, BECAUSE JUST AS YOU SAY THERE, IS NO OPPORTUNITY FOR PROPONENTS TO CHALLENGE THE FACT FINDING OF THE BODY, AND THEN THAT IS WHAT IS ON THE BALLOT NOT THE POLITICAL DEBATE.

I BELIEVE THAT GOES TO PART OF OUR ARGUMENT THAT WE MADE BELOW, WITH RESPECT TO THE INTERFERENCE ON THE RIGHT SIDE OF FREE SPEECH, AND THE FACT --.

I AM NOT TALKING, I AM TALKING SPECIFICALLY ABOUT THE RIGHT TO, THAT THE CONSTITUTION GRANTS CITIZENS TO AMENDMENT THE -- TO AMEND THE CONSTITUTION, AND WHETHER WE ON THIS COURT AGREE OR DISAGREE THAT IT HAS BEEN ABUSED OVER RECENT YEARS, THAT IS STILL SOMETHING THAT IS IN THE CONSTITUTION.

AGAIN, WE THINK THAT THE STATUTE ALLOWS THE LEGISLATURE, THROUGH THE REVENUE ESTIMATING CONFERENCE OR, I SHOULD SAY, THE GOVERNMENT THROUGH THE REVENUE ESTIMATING CONFERENCE, TO COMMENT, AND UNFAIRLY COMMENT, AND, AGAIN, WE HAVE NO OPPORTUNITY TO PUT OUR BELIEFS ON THE BALLOT AND HAVE THAT SAME --

IT IS ON THE BALLOT. OBVIOUSLY THEY CAN PUT THAT OUT AND DO WHATEVER THEY WANT TO MAKE SURE THE PUBLIC IS INFORMED THAT THIS WILL BE A VERY EXPENSIVE PROPOSITION, IF IT IS --

I BELIEVE THE GOVERNMENT IS DOING THAT ON A DAILY BASIS, AND AGAIN, LIKE I SUGGESTED TO JUSTICE ANSTEAD, THERE IS AN ATTORNEY GENERALS OPINION FROM 1981, WHICH AUTHORIZES THE LEGISLATURE TO DO THAT. IN OUR VIEW, THE LEGISLATION CONCERNS THE INTERPRETATION OF THE INITIATIVE AMENDMENTS BY THE REVENUE ESTIMATING CONFERENCE, AND ITS ASSUMPTIONS ON HOW THE LEGISLATURE WILL CHOOSE TO IMPLEMENT THE AMENDMENTS, IF PASSED AT THE NOVEMBER GENERAL ELECTIONS. PETITIONERS AND THEIR

FRIENDS HAVE TURNED THIS INTERPRETATION PROCESS, AS INFORMATION HELPFUL TO THE -- HAVE TERMED THIS INTERPRETATION PROCESS AS INFORMATION HELPFUL TO THE VOTERS AND OPPONENTS HAVE TERMED IT IN CONFLICT WITH THE PROPOSAL. INTERPRETATION OF A PROPOSED CONSTITUTIONAL AMENDMENT IS NOT NECESSARY FOR BALLOT INTEGRITY. INTERPRETATION OF THE AMENDMENTS IS MORE APPROPRIATELY A PART OF THE PUBLIC DEBATE ON THE INITIATIVES. PETITIONERS, AS THIS COURT HAS NOTED, DO NOT DISCUSS, IN ANY WAY, THE PROPOSED CONSTITUTIONAL AMENDMENT THAT IS ON THE BALLOT. THE CONSTITUTIONAL AMENDMENT TWO WHICH WOULD REQUIRE THE LEGISLATURE TO PROVIDE FOR THE ECONOMIC IMPACT STATEMENTS FOR INITIATIVES. DURING THE LEGISLATIVE DEBATE ON THAT PROPOSAL, THE SPONSOR OF THE AMENDMENT WAS ASKED WHY DO YOU BELIEVE WE NEED TO DO THIS IN THE FORM OF A CONSTITUTIONAL AMENDMENT, RATHER THAN BY LAW? IN RESPONSE, THAT SPONSOR, REPRESENTATIVE RANDY JOHNSON, SAID, MR. SPEAKER, AS I UNDERSTAND IT, WE NEED A CONSTITUTIONAL AMENDMENT, CONSTITUTIONAL REVISION TO AMEND OUR CONSTITUTION. THAT DEBATE --

WOULDN'T YOU AGREE THAT THE REASONS THAT THE LEGISLATURE PUT PASSED A JOINT RESOLUTION OR THE REASONS THAT THE LEGISLATURE PASSED THIS STATUTE ARE REALLY IMMATERIAL TO A CONSTITUTIONAL ANALYSIS? THE CONSTITUTIONAL ANALYSIS HAS TO BE WHETHER IT, THERE, IT COMPELLINGLY CONFLICTS WITH THE CONSTITUTION. ISN'T THAT RIGHT?

I BELIEVE IN THE BOTTOM, THE FINAL ANALYSIS, YOUR HONOR, THAT'S CORRECT, AND WHAT THE LEGISLATURE SAYS IS WHAT THE LEGISLATURE SAYS. BUT I THINK IN THIS CASE, IT PROVIDES COMPELLING EVIDENCE THAT AT LEAST IN THE YEAR 2001, THE LEGISLATURE DID NOT BELIEVE IT POSSESSED THE POWER. AT LEAST IN 2001, THEY BELIEVED THAT, IN ORDER TO PUT THIS FISCAL IMPACT REQUIREMENT OR TO IMPLEMENT THIS FISCAL IMPACT REQUIREMENT AS PART OF THE STATE'S STATUTORY LAWS, THEY NEEDED TO GO ASK THE PEOPLE AS TO WHETHER THEY WANTED THEIR INITIATIVE PROCESS MODIFIED IN SUCH A WAY TO DO THIS. NOW -- IN SUCH A WAY TO DO THIS. NOW, AS REPRESENTATIVE DOCKERY SAID, CONTROL OF THE NUMBERS, BASICALLY MAKE, CONTROLS THE DEBATE. IT WEAKENS THE INITIATIVE PROCESS. IT STACKS THE DECK AGAINST THE PROPONENTS OF THE INITIATIVE OR, IN CASE THE GOVERNMENT IS IN FAVOR OF SOMETHING, YOU COULD STACK THE DECK IN FAVOR OF INITIATIVE BY LOW BALLING A PARTICULAR PROPOSAL. IN THE BIDOFF CASE, THE ELEVENTH CIRCUIT NOTED THAT THE PURPOSE OF THE INITIATIVE PROCESS IS TO ALLOW THE PEOPLE TO ENACT CHANGE BYE-BYE PASSING THE REPRESENTATIVES ALL TOGETHER. WHAT THE REPRESENTATIVES OF THE PEOPLE HERE HAVE DONE, HAVE CHOSEN TO DO, IS TO INTERPOSE THEIR VIEWS ON THAT PROCESS, YET A SPECIAL SPOT ON -- GET A SPECIAL SPOT ON THE BALLOT TO PROVIDE THEIR VERSION OF THE TRUTH. AGAIN, THE TRUTH WILL COME OUT IN TERMS OF THE PUBLIC DEBATE ON THE ISSUE, IN TERMS OF THE INFORMATION THAT IS PRESENTED IN THE COURSE OF THE PUBLIC DEBATE, AND THE GOVERNMENT DOES NOT POSSESS, NOT THE SOLE POSSESS OR OF THE TRUTH. RESPONDENTS BELIEVE THAT THE TRIAL COURT WAS CORRECT WHEN IT ENTERED THE TEMPORARY INJUNCTION AND WE WOULD ASK THE COURT TO AFFIRM THE RULING OF THE TRIAL COURT.

CHIEF JUSTICE: REBUTTAL. MR. MARSHAL, HOW MUCH TIME DO THEY HAVE LEFT ON REBUTTAL?

MR. HILL, HOW DO YOU ADDRESS THE ASSERTION OF OPPOSING COUNSEL THAT A GOVERNMENT OPPOSED TO A PROPOSED AMENDMENT COULD USE THE FISCAL IMPACT TO SPIN, IN EFFECT, THAT AMENDMENT? IN THE EYES OF THE PEOPLE. OR IS THAT A CONCERN OF OURS AT THIS POINT?

WELL, IT IS A CONCERN, IF IT AFFECTS THE RIGHTS AFFORDED BY THE CONSTITUTION, TO THE PEOPLE PETITIONING TO HAVE AN AMENDMENT ON THE BALLOT. BUT ONE THING THAT I WANT TO ADDRESS IS THAT THIS PARTICULAR STATUTE DOES NOT AFFECT THOSE RIGHTS. THIS MATTER, NO MATTER WHAT THIS COURT IS GOING TO RULE TODAY, THIS MATTER IS GOING TO BE ON THE BALLOT. IT IS GOING TO BE ON THERE WITH A FISCAL IMPACT STATEMENT OR WITHOUT IT. THE RIGHTS --

OPPOSING COUNSEL, HIS CONCERN IS THAT IT CAN BE ON THERE WITH A SPIN AND OPPOSING GOVERNMENT WILL GIVE TO IT.

NOT A SPIN, YOUR HONOR. WHAT IT IS A STATEMENT THAT IS WOEFULLY MISSING FROM THE PROPOSAL PUT FORTH BY THE RESPONDENTS THAT IS GOING TO BE IN FRONT OF THE PEOPLE. WOEFULLY MISSING IS THE LEGISLATURE IS GOING TO HAVE TO PAY FOR IT. THERE IS NO DEBATE ABOUT THIS THING IS GOING TO HAVE A SIGNIFICANT IMPACT UPON THE STATE, THE PROGRAMS OF THIS STATE, AND THE REVENUE OF THIS STATE.

BUT COUNSEL, I MEAN, YOU DO AGREE THAT THE WISDOM OF DOING SUCH A THING IS, REALLY, NOT BEFORE US OR WHETHER THAT IS A GOOD IDEA. REALLY WHAT WE HAVE TO LOOK TO IS WHETHER THIS IS SOMETHING WITHIN THE CONSTITUTIONAL PARAMETER.

I AGREE COMPLETELY, YOUR HONOR.

NOW, LET ME ASK YOU THIS QUESTION, IS THIS LIMITLESS? HOW MUCH, WHAT CAN BE DONE UNDER THE UMBRELLA OF WHAT YOU ARE SUGGESTING TODAY? WHAT ARE THE BOUNDARIES OF THAT, IF WE WOULD ADOPT YOUR VIEW?

I DON'T KNOW HOW TO DEFINE THE BOUNDARIES EXCEPT IN A VERY GENERAL SENSE, AND I THINK THE BOUNDARIES THAT I WOULD DEFINE IS, IF THE LEGISLATURE CAN ADOPT A LEGISLATION OR A STATUTE THAT HELPS THE VOTERS UNDERSTAND, THAT GIVES THE VOTERS ALL OF THE INFORMATION THEY NEED, EDUCATES THE VOTERS SO THAT WE HAVE AN INFORMED ELECTORATE, THEN THE CONSTITUTION WOULD PERMIT THEM TO DO SO, AND THAT WOULD BE WITHIN THE FOUR CORNERS OF WHAT THIS COURT HAS SAID IN ARMSTRONG AND IN ASKEW, SO I WOULD DEFINE IT THAT WAY. SO LONG AS WE ARE GETTING TO THE TRUTH AND WE ARE NOT STOPPING THEM FROM BEING ON THE BALLOT, THERE IS NOTHING THAT IS STOPPING THEM FROM BEING ON THE BALLOT IN THE FORM THAT THEY WANT TO BE ON THE BALLOT.

WOULD YOU ADDRESS JUSTICE PARIENTE'S EARLIER QUESTION, AND THAT IS WHERE DO THE PRO ONTS OF A BALLOT INITIATIVE LIKE -- THE PROPONENTS OF A BALLOT INITIATIVE LIKE THIS GET IN ON THE DEBATE ABOUT WHAT THE PROJECTED COST IS GOING TO BE?

THE STATUTE, ITSELF.

SO WOULD YOU --

SURE. THE STATUTE, ITSELF, PROVIDES, AND THE RESPONDENTS HAVE ELECTED NOT TO TAKE ADVANTAGE OF IT, BUT THE STATUTE, ITSELF, PROVIDES THAT THEY CAN HAVE INPUT WITH THE REC, THE REVENUE ESTIMATING CONFERENCE, WHICH IS AN ACCEPTED 15-YEAR, AS I UNDERSTAND IT, BODY, OF ECONOMISTS IN THIS STATE, THAT ROUTINELY REVIEW EVERYDAY, THE BILLS THAT COME BEFORE THE LEGISLATURE, FOR THEIR FISCAL IMPACT, SO THIS IS NOT A BODY CREATED FOR THIS AMENDMENT. THIS IS A BODY THAT HAS A LIFE AND A PURPOSE. THE STATUTE PROVIDES THAT THE RESPONDENTS CAN PROVIDE INPUT, IF THEY WISH, AND IF THEY DON'T LIKE THE RESULT, THEN THEY CAN GO TO THE COURT AND SEEK A RESOLUTION, BECAUSE THEY WOULD MAINTAIN THAT IT IS NOT CLEAR AND UNAMBIGUOUS, AS TO WHAT THE LEGISLATURE OR WHAT THE REC HAS DONE.

IN THIS PARTICULAR INSTANCE, THIS IS A BALLOT INITIALTIVE THAT HAS ALREADY BEEN BEFORE THIS COURT, FOR INSTANCE, AND IT HAS BEEN BEFORE THIS COURT AT A TIME WHEN THIS REQUIREMENT WAS NOT ON THERE, AND SO HOW WOULD WE EVEN APPLY A PROVISION LIKE THIS TO A BALLOT INITIATIVE THAT WE HAVE ALREADY APPROVED, NOW, WITHOUT ANY OPPORTUNITY FOR ANYBODY TO CHALLENGE THAT?

SURE. THIS COURT APPROVED THE BALLOT, I THINK, IN APRIL, I BELIEVE IT WAS. THIS INITIATIVE

OR THIS STATUTE BECAME EFFECTIVE ON MAY 24. THE REVENUE ESTIMATING CONFERENCE DID NOT RENDER THEIR TOWARDS THE END OF JUNE. THE RESPONDENT, FRANKLY TO DO SO IN WHAT I THINK IS A DUE PROCESS ALLOWANCE, THEY COULD HAVE ELECTED TO HAVE INPUT INTO THAT PROCESS. THEY COULD THEN HAVE GONE TO A COURT. THEY DON'T HAVE TO COME TO THIS COURT. THEY COULD GO TO A COURT, BECAUSE THE STATUTE PROVIDES THAT IT CAN GO TO A COURT AND SECRETLY, JUST LIKE THEY DID -- AND SEEK, JUST LIKE THEY DID, IN TERMS OF SEEKING INJUNCTIVE RELIEF.

WHAT WOULD HAVE BEEN THE STANDARD, LET'S ASSUME THAT HAPPENED, WHAT WOULD HAVE BEEN THE STANDARD FOR A COURT TO DETERMINE WHETHER OR NOT WHETHER OR NOT -- -- WHETHER OR NOT THIS ESTIMATE IS ACCURATE.

CLEAR AND UNAMBIGUOUS.

AND THAT IS IT.

SURE, BUT THAT IS A STANDARD THAT EMBRACES A GREAT DEAL.

THROUGH OUR QUESTIONING, I AM AFRAID THAT WE HAVE GONE WELL PAST THE TIME OF BODY. CAN -- OF THE BODY.

CAN I ANSWER ONE QUESTION?

REAL QUICK.

IT IS APPLICABLE, ACCORDING TO ARMSTRONG, TO ALL CONSTITUTIONAL AMENDMENTS.

CHIEF JUSTICE: OKAY. WE ARE GOING TO HAVE TO TAKE THE REST OF IT.

COULD I HAVE A POINT OF PERSONAL PRIVILEGE TO TAKE OFF MY HAT AS ADVOCATE?

TAKE OFF YOUR HAT AS AN ADVOCATE?

RIGHT, SIR.

I AM AFRAID YOU HAVE APPEARED AS AN ADD HAVE CAT HERE, SO -- AS AN ADVOCATE HERE, SO WE WILL HAVE TO TAKE THE REST FROM THE BRIEFS.

ALL I WANT TO SAY, IT IS A PRIVILEGE FOR ME AND FOR ALL OF THE ATTORNEYS HERE TO BE HERE ON THE LAST DAY OF JUSTICE HARDING'S TENURE WITH THIS COURT AND I CAN JUST SAY, ON BEHALF OF THE BAR AND ON THE BEHALF OF THE PEOPLE OF THE STATE AND ON BEHALF OF THE JUDGES OF THE STATE, THAT WE REALLY DO APPRECIATE HIS SERVICE.

CHIEF JUSTICE: THANK YOU VERY MUCH FOR THE TEN OR OF YOUR LAST REMARKS. THANK YOU ALL VERY MUCH. WE WILL NOW STAND IN RECESS.

MARSHAL: PLEASE RISE.