

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Advisory Opinion to the Attorney General: State University System

CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THIS THURSDAY'S ORAL ARGUMENT CALENDAR HERE, AT THE FLORIDA SUPREME COURT. WE ARE PARTICULARLY PLEASED TO HAVE THE STUDENTS FROM THE FOREST LAKE EDUCATION CENTER, A GROUP OF THEIR HONOR STUDENTS FROM LONGWOOD, AND WE ARE PLEASED TO HAVE YOU HERE. I UNDERSTAND THAT YOU ARE ACCOMPANIED BY MR. MATT ORNDORF AND MISS LINDA HAAS. SO WELCOME TO THESE PROCEEDINGS. THE FIRST CASE THAT I ALSO CALL YOUR ATTENTION THAT, AS YOU SEE JUSTICE QUINCE IS UNABLE TO BE HERE AT ORAL ARGUMENT THIS MORNING. HOWEVER, SHE WILL PARTICIPATE IN THE CASES. OF COURSE WE HAVE BOTH VIDEO AND AUDIO AVAILABLE FOR HER, SO WE WILL NOW PROCEED WITH THE FIRST CASE, WHICH IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL REGARDING LOCAL TRUSTEES AND STATEWIDE GOVERNING BOARD TO MANAGE FLORIDA'S UNIVERSITY SYSTEM. MR. HUBENER.

THANK YOU, YOUR HONOR. LOUIS HUBENER FOR THE ATTORNEY GENERAL. THIS CASE IS ON FOR AN ADVISORY OPINION AND MR. STEPHEN TURNER WILL ARGUE AND ROBIN GIBSON WILL ARGUE.

CHIEF JUSTICE: MR. GIBSON.

MAY IT PLEASE THE COURT. MY NAME IS ROBIN GIBSON. I REPRESENT EDUCATION EXCELLENCE FOR FLORIDA. WITH ME ARE CO-COUNSEL TIMOTHY McLENDON AND KEVIN ASHLEY. I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL, IF I MAY, YOUR HONOR. THE PROCESS HERE DOESN'T ALLOW FOR A REPLY BRIEF. THERE ARE TWO POINTS THAT I WOULD LIKE TO MAKE. THE FIRST POINT, I BELIEVE, GOES RIGHT TO THE CRUX OF THE PROBLEM. AND I THINK IT IS BEST DONE ON PAGE 14 OF THE OPPONENT'S BRIEF, AND ON THAT PAGE, AND JUST SEVEN LINES UP FROM THE BOTTOM, JUST ONE SENTENCE THAT I WOULD LIKE TO READ. IT CHARACTERIZES WHAT IS HAPPENING HERE, AND THERE IS ANOTHER SENTENCE THAT CHARACTERIZES WHAT WE ARE TRYING TO DO. THE SENTENCE, SEVEN LINES FROM THE BOTTOM, READS "THE PROPOSED AMENDMENT", SUBSTANTIALLY CHANGES. THAT IS WHAT THIS IS ABOUT. AND TO OTHERWISE MAINTAIN AND OPERATE, OPERATE UNIVERSITIES AS A VITAL PART OF FLORIDA'S EDUCATION SYSTEM.

I UNDERSTAND THE ATTACK ON THE AMENDMENT, THAT IS BASICALLY, IT FOCUSES ON TWO PARTS. ONE, THAT THIS VIOLATES THE SINGLE-SUBJECT PROVISION, BY REASON OF SUBSTANTIALLY AFFECTING NOT ONLY THE LEGISLATIVE BRANCH BUT THE EXECUTIVE BRANCH. NOW, ISN'T THIS FUNCTION OF THE ADMINISTRATION OF THE UNIVERSITIES, AT PRESENT, SOMETHING THAT COMES WITHIN THE EXECUTIVE BRANCH?

YES, IT IS. WHETHER IT IS IN THE STATUTES OR WHETHER IT IS IN THE CONSTITUTION, IT IS AN EXECUTIVE FUNCTION.

AND SO DOESN'T IT AFFECT BOTH THE LEGISLATIVE BRANCH AND THE EXECUTIVE BRANCH?

NO, SIR. JUST EXECUTIVE BRANCH. WE OF -- WE HAVE HAD A BOARD OF GOVERNANCE IN OUR SYSTEM, SINCE 1905. AND UNTIL 2001, AND THAT WAS IN THE EXECUTIVE BRANCH. IT DID NOT PERFORM ANY LEGISLATIVE FUNCTIONS. THIS WOULD DO KNOW MORE THAN PUT THAT IN THE CONSTITUTION, WHERE IT WOULD PERFORM AN EXECUTIVE FUNCTION. THERE IS AN ASSERTION THAT IT IMPACTS OR THAT IT SUBSTANTIALLY AFFECTS A PROVISION OF THE CONSTITUTION

THAT RELATES TO THE LEGISLATURE. I COULD GET TO THAT, IF YOU LIKE. THE ASSERTION IN THE BRIEF IS THAT, IN SECTION I ARTICLE -- IN SECTION ONE OF ARTICLE IX, IT SAYS THAT TO MAKE ADEQUATE PROVISION FOR THE CHILDREN WITHIN ALL BORDERS, AND IT GOES ON AND TALKS ABOUT ADEQUATE PROVISION FOR PUBLIC SCHOOLS AND IT TALKS ABOUT ADEQUATE PROVISION FOR UNIVERSITIES, AND WHEN IT IS DISCUSSING ADEQUATE PROVISION FOR UNIVERSITIES, IT SAYS FOR THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF INSTITUTIONS OF HIGHER LEARNING. SO THE ASSERTION IS THAT THIS IS A CONSTITUTIONAL DELEGATION TO THE LEGISLATURE, TO PERFORM THESE EXECUTIVE FUNCTIONS FOR THE UNIVERSITIES, BUT THAT IS NOT THE WAY THAT IT WORKS. IF WE LOOK AT THIS LANGUAGE, AND THIS IS EXTREMELY IMPORTANT, IF WE LOOK AT THIS LANGUAGE, WE SEE THAT THIS IS ESSENTIALLY LANGUAGE THAT CALLS FOR ADEQUATE FUNDING, AND IT DOES NOT TALK ABOUT THE POWER OF CONTROL OR GOVERNANCE.

LET ME ASK YOU SOME DETAILS.

SURE.

THE BOARD OF TRUSTEES, DO I UNDERSTAND CORRECTLY THAT THEIR DUTIES ARE NOT SPELLED OUT AND WOULD NOT BE SPELLED OUT, UNTIL THE BOARD DETERMINES --

IN THE AMENDMENT THAT, IS CORRECT. THE BOARD OF GOVERNORS WOULD DETERMINE THE EXTENT TO WHICH THE BOARD OF TRUSTEES, THE ADMINISTRATION OF THE UNIVERSITIES WOULD TAKE PLACE.

SO THE LOCAL BOARD OF TRUSTEES, THE VOTER WOULD NOT KNOW WHAT THEIR DUTIES WOULD BE.

IT WOULD BE DELEGATED BY THE BOARD OF GOVERNORS. THIS, THERE ARE A NUMBER OF VERSIONS OF GOVERNANCE FOR UNIVERSITIES. LOTS OF THEM. BUT THE TWO ESSENTIAL ONES ARE WHAT IS CALLED A TWO-TIER SYSTEM AND A ONE-TIER SYSTEM. A ONE-TIER SYSTEM, SUCH AS THERE IS IN THE CONSTITUTION OF CALIFORNIA OR SUCH AS THE FLORIDA HAD, IS ESSENTIALLY ONE BOARD OF GOVERNANCE THAT HAS RESPONSIBILITY FOR THE SYSTEM AND FOR ALL THE INDIVIDUAL UNIVERSITIES. A TWO-TIER SYSTEM, SUCH AS APPEARS IN THE STATUTES IN NORTH CAROLINA OR THE CONSTITUTION IN LOUISIANA, THERE IS ONE BOARD OF GOVERNORS, AND THEN BELOW THAT IS A BOARD OF TRUSTEES FOR EACH OF THE UNIVERSITIES.

BUT IT SPEAKS OF LOCAL, ONE WOULD THINK THAT, WHERE YOU SAY LOCAL TRUSTEES, THAT THEY WOULD COME FROM THE VICINITY OF THE UNIVERSITY. AS I UNDERSTAND IT, THOUGH, THEY COULD, THEY WOULDN'T EVEN HAVE TO BE, WOULD THEY HAVE TO BE CITIZENS OF THE STATE OF FLORIDA?

THERE IS NO RESIDENCY REQUIREMENT AT ALL.

AND ACCOUNTABILITY. IS THIS JUST FISCAL ACCOUNTABILITY TO THE LEGISLATURE, OR IS THIS, WHAT IS THE EXTENT OF THIS ACCOUNTABILITY?

IT STARTS WITH THE FISCAL ACCOUNTABILITY. IT IS THE SAME PHRASE THAT WAS IN THE AMENDMENT THAT WAS PUT TO THE ELECTORATE IN 1978. IT IS EXACTLY THE SAME LANGUAGE, AND THERE THE COMMITTEE SAID THAT, WHAT REALLY, WHAT IT AMOUNTED TO WAS A PUBLIC ACCOUNTABILITY, BECAUSE IT SAYS THAT IT WILL BE, THAT THE BOARD WOULD BE ACCOUNTABLE TO THE LEGISLATURE AS PROVIDED BY LAW.

WOULD THAT MEAN --

FOR THE EXPENDITURE OF ITS FUNDS.

WOULD IT HAVE TO REPORT TO THE LEGISLATURE, OR WOULD THE LEGISLATURE GIVE IT AN AMOUNT OF MONEY AND SAY YOU ARE RESPONSIBLE AND YOU REPORT TO US AT THE END OF THE YEAR, OR HOW WOULD THAT WORK? HOW DO YOU PROPOSE?

THE LEGISLATURE CARRIES OUT ITS RESPONSIBILITIES TO APPROPRIATE THE MONIES TO THE UNIVERSITY, AND AFTER THE LEGISLATIVE IS DONE, AFTER THE APPROPRIATION IS DONE, THEN THE UNIVERSITY PICKS UP WITH ITS MANAGEMENT RESPONSIBILITY, AND THEN THE PROVISION THAT SAYS THEY WOULD BE ACCOUNTABLE TO THE LEGISLATURE PICKS UP AFTER THAT. AND AS THE REPORT SAID, IT IS A POST AUDIT PROCESS, AND THEN THE LEGISLATURE GETS TO EVALUATE HOW WELL ITS MONEY HAS BEEN SPENT, AND THEN AFTER THAT, IT CAN DETERMINE WHETHER IT WANTS TO CONTINUE TO INVEST IN THIS SYSTEM OR THE EXTENT TO WHICH IT WANTS TO CONTINUE TO INVEST IN THIS SYSTEM, AND WHAT IS CALLED A PUBLIC ACCOUNTABILITY FUNCTION.

AND AS I READ THE PROPOSED AMENDMENT, IT IS SILENT AS TO THE FACT THAT FLORIDA NOW HAS ARTICLE IX SECTION 1, WHICH SETS UP PUBLIC EDUCATION. THERE IS NO MENTION OF THIS IN THE PROPOSED AMENDMENT.

NO, SIR.

COULD THAT BE MISLEADING TO THE PUBLIC, THAT THE PUBLIC THINKS THAT THEY HAVE GOT TO SET THIS UP, BECAUSE WE DON'T HAVE A SYSTEM IN PLACE?

WHAT I WAS, AND I WOULD START AND TALK ABOUT ARTICLE I, AND THIS GOES RIGHT TO THE POINT THAT YOU ARE ASKING ABOUT. ARTICLE I TALKS ABOUT THE ADEQUATE PROVISION FOR HIGHER EDUCATION. THERE IS NOTHING IN THERE THAT ESTABLISHES A BOARD OF CONTROL. NOW, IF YOU LOOK ELSEWHERE, IN THE EDUCATION ARTICLE, YOU FIND THAT THEY DO ESTABLISH BOARDS OF CONTROL, AND IN SECTION 4, FOR INSTANCE, THE SCHOOL BOARD IS DESIGNATED AS THE BOARD OF CONTROL FOR K-THROUGH-12, THE SCHOOL DISTRICTS, AND IT IS CLEAR THEY HAVE CONSTITUTIONAL STATUS, SO K-THROUGH-12 HAS A BOARD OF CONTROL THAT, A CLEARLY IDENTIFIED BOARD OF CONTROL, CONSTITUTIONAL STATUS, BUT THERE IS AVOID THERE, AS FAR AS HIGHER EDUCATION IS CONCERNED. NOTHING EXISTS, RIGHT NOW, FOR COMMUNITY COLLEGES OR UNIVERSITIES, SO THE LEGISLATURE HAS IT BY DEFAULT. ALL THIS AMENDMENT WOULD DO IS TO TAKE A GOVERNANCE SYSTEM TO UNIVERSITIES AND PUT IT IN THIS BOARD OF GOVERNANCE VACUUM THAT EXISTS AND FILL UP THAT VACUUM. IT FITS, JUST LIKE A PIECE IN A PUZZLE. AND THERE PRESENTLY IS THE K-THROUGH-12 IS COVERED, AND THEN THE AMENDMENT WOULD COVER THE UNIVERSITIES.

YOU SEE, JUST SO I UNDERSTAND, THE INTENT OF THIS AMENDMENT IS TO PLACE, IN THE CONSTITUTION, WHAT HAD EXISTED, UNTIL THE RECENT LEGISLATIVE CHANGES, AS FAR AS REESTABLISHING A BOARD OF REGENTS.

NOT REALLY.

IT IS DIFFERENT. SO HOW IS IT DIFFERENT? COULD YOU EXPLAIN HOW IT IS DIFFERENT THAN WHAT EXISTED IN FLORIDA?

WELL, THERE ARE SOME HUGE DIFFERENCES. FOR ONE THING, CONSTITUTIONAL STATUS PROVIDES A LOT MORE STABILITY THAN A STATUTORY STATUS.

AS FAR AS ACTUALLY --

AS FAR AS THE STRUCTURE IS CONCERNED, IT IS THE DIFFERENCE BETWEEN A TWO-TIER SYSTEM AND A ONE-TIER SYSTEM. BECAUSE WITH THE BOARD OF REGENTS, AND BEFORE THAT THE

BOARD OF CONTROL, WHAT WE HAD WAS ONE BOARD THAT HAD RESPONSIBILITY FOR THE SYSTEM AND FOR EACH OF THE UNIVERSITIES, IN WHAT IS PROPOSED, WHICH IS MODELED AFTER THE NORTH CAROLINA SYSTEM, IN WHAT IS PROPOSED, YOU HAVE A BOARD OF GOVERNORS THAT HAS RESPONSIBILITY FOR THE WHOLE SYSTEM, AND THEN YOU HAVE BOARDS OF TRUSTEES THAT ADMINISTER THE AFFAIRS OF THE LOCAL UNIVERSITIES. THE TWO-TIER SYSTEM, WHICH WE DID NOT HAVE BEFORE, SO IT IS A HUGE DIFFERENCE.

GOING BACK TO JUSTICE WELLS'S QUESTION, UNTIL THIS AMENDMENT, YOU HAD THE ADMINISTRATION OF THE PUBLIC UNIVERSITY SYSTEM VESTED IN THE EXECUTIVE BRANCH, BUT WITH THE DECISION AS TO HOW THAT WOULD BE COMPRISED, LEGISLATIVE DECISION, CORRECT?

RIGHT. THE LEGISLATURE SET UP THE STRUCTURE. ONCE THE STRUCTURE WAS SET UP, IT OPERATED IN THE EXECUTIVE BRANCH, JUST AS IT WOULD OPERATE, IF IT WAS SET UP BY THE CONSTITUTION.

SO THE, IF THIS AMENDMENT WAS PLACED IN THE CONSTITUTION, THEN THE BOARD OF EDUCATION, WHICH IS NOW CREATED UNDER SECTION 2, WOULD HAVE NO CONTROL OVER THE PUBLIC UNIVERSITY SYSTEM?

IT IS NOT GOING TO HAVE ANY CONTROL OVER IT AT ALL. BECAUSE IT IS GOING TO CHANGE, COME JANUARY. ITS RESPONSIBILITY WILL BE LIMITED TO K-THROUGH-12 PUBLIC SCHOOLS.

THE SAME THING WITH SECTION 2 AND SECTION 3?

SECTION 2, NOT AT ALL. SECTION 3 THE SAME THING. IT HAS TO DO WITH APPOINTING PEOPLE WHO SERVE FOR TERMS, I THINK, LONGER THAN FOUR YEARS. THE LANGUAGE STAYS THE SAME. THE LEGISLATURE, STILL, REGULATES PEOPLE WHO SERVE IN TERMS FOR EDUCATION FOR LONGER THAN FOUR YEARS, BUT WHAT WILL HAPPEN IS THAT THIS AMENDMENT WILL COME IN, AND IT WILL SET TERMS FOR LONGER THAN FOUR YEARS, FIVE AND SEVEN YEARS, FOR THE PEOPLE THAT ARE ON THE BOARD.

MANDATORY TERMS.

WELL, THEY CAN RESIGN IF THEY WANT.

NO, MANDATORY. THAT IS THEIR TERM.

THAT IS THEIR TERM OF OFFICE.

SO WHY --

SO, BUT, WHAT THAT AT TO, THERE IS NO -- AMOUNTS TO, THERE IS NO CHANGE IN THE CONSTITUTION. IT JUST AMOUNTS TO A CHANGE IN THE LEGISLATURE. THEY STILL HAVE THE APPOINTMENT OF ALL OF THE OTHER PEOPLE IN THE EDUCATIONAL ESTABLISHMENT, EXCEPT TO THE EXTENT THAT IT IS INCONSISTENT WITH THE CONSTITUTION, WHICH IS THE WAY EVERYTHING WORKS WITH THE LEGISLATURE. THEY ARE FREE TO DO WHATEVER THEY WANT, UNLESS IT IS INCONSISTENT WITH THE CONSTITUTION. AND THIS, NOW, WOULD FIT IN THIS VOID, A GOVERNANCE SYSTEM FOR UNIVERSITIES AND IT WOULD BE IN THE CONSTITUTION. THE LEGISLATURE DOES ALL THE REST. THE ONE THING, MY TIME IS ABOUT UP --

THE LEGISLATURE WOULD CONTINUE TO HAVE WHAT IT PRESENTLY HAS, AS FAR AS APPROPRIATION OF MONEY AND THE AUDIT.

YES. IT SPECIFICALLY PROVIDED --

OPAGA COULD GO IN AND WILL BE RESPONSIBLE FOR DOING AUDITS.

RIGHT. SPECIFICALLY PROVIDING, IN THE AMENDMENT, THAT THE LEGISLATURE HAS THE POWER TO APPROPRIATE, ONLY TO PICK UP WHERE THAT LEADS OFF.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME, MR. GIBSON.

THE ONLY THING THAT I WOULD SAY, YOUR HONOR, IN CUTTING INTO MY REBUTTAL TIME, WHICH IS WHAT I WAS STARTING OUT HAVING TO DO WITH PAGE 14 HERE, IT ACCURATELY DESCRIBES WHAT THE CRUX OF THE PROBLEM IS, AND IT ACCURATELY SAYS, SIX LINES DOWN, THAT WHAT WE ARE SEEKING TO DO IS TO DIVEST THE LEGISLATURE OF WHAT IT PRESENTLY HAS, WHICH IS A NATURAL CONSEQUENCE OF THE RIGHT OF THE PEOPLE TO PREEMPT THE LEGISLATURE, THROUGH THE INITIATIVE PROCESS. THAT IS ABSOLUTELY CORRECT.

RIGHT NOW THE LEGISLATURE, NOW, DETERMINES THE TERMS OF THE PEOPLE IN THE BOARD OF EDUCATION. THIS CHANGES THAT, DOESN'T IT? THIS SETS TERMS, THIS PROPOSED AMENDMENT.

THE LEGISLATURE --

DOES IT TAKE THE POWER AWAY FROM THE LEGISLATURE?

ACTUALLY THE BOARD OF EDUCATION IS SET BY THE CONSTITUTION. THE STATE BOARD OF EDUCATION IS ESTABLISHED BY THE CONSTITUTION. BUT IT, THE TERMS ARE THOSE TERMS IN THE EDUCATION, IN EDUCATION, ACROSS THE BOARD, OF TERMS OF MORE THAN GREATER, GREATER THAN MORE THAN FOUR YEARS.

YOUR REBUTTAL TIME, BUT WHO SETS THOSE TERMS? THE LEGISLATURE NOW?

THE CONSTITUTION SAYS THE LEGISLATURE DOES IT. WHEN OUR AMENDMENT COMES IN AS TO UNIVERSITIES, THEY WILL BE SET BY THE CONSTITUTION. THE LEGISLATURE STILL --

SO IT DOES AFFECT THE POWER OF THE LEGISLATURE, NOW, I GUESS THAT IS MY POINT.

YES. IT AFFECTS THE POWER OF THE LEGISLATURE TO INVALIDATE IT TO THAT EXTENT, BUT THAT IS STATUTORY NOT CONSTITUTIONAL. OUR PROBLEM IS, IF WE IMPINGE ON OTHER PARTS OF THE CONSTITUTION.

THANK YOU.

THANK YOU.

CHIEF JUSTICE: MR. TURNER.

I THINK WE HAVE GOT A CONCEPTUAL DIFFERENCE, BECAUSE I THINK MR. GIBSON'S VIEW, HERE, IS THAT, IF WE DON'T CHANGE THE LANGUAGE OF THE CONSTITUTION, WE DON'T CHANGE SOMETHING. THE FACT IS, YOU CAN DIVEST OR TAKE AWAY DUTIES, BY ADDING SOMETHING, AND THAT CAUSES THE CHANGE, JUST AS YOUR HONORS HAVE POINTED OUT. I THINK IT WOULD HELP JUST A MOMENT, IF I REVIEWED FOR YOU THE CONSTITUTIONAL STRUCTURE OF ARTICLE IX, BECAUSE I THINK IT HELPS GET THIS THING IN FOCUS. RIGHT NOW THE LEGISLATURE IS CONSTITUTIONALLY RESTRICTED IN CONTROLLING PUBLIC EDUCATION, BECAUSE THERE IS A DISTRICT SCHOOL BOARD PROVISION IN ARTICLE IX SECTION 4, WHEREBY THE DISTRICT SCHOOL BOARDS ARE TO OPERATE CONTROL AND SUPERVISE THE SCHOOLS WITHIN THEIR DISTRICTS, AND THE LEGISLATURE IS RESTRAINED BY SECTION 2 OF ARTICLE IX, WHICH SAYS THERE SHALL BE A SEVEN-MEMBER BOARD TO SUPERVISE THE K-THROUGH-12 SYSTEM, AS THE LEGISLATURE, IN ITS DISCRETION PROVIDES. THAT IS THE CONSTITUTIONAL STRUCTURE. AS TO HIGHER EDUCATION,

THE LEGISLATURE PRESENTLY IS UNRESTRAINED. THIS AMENDMENT RESTRAINS THEM, AND THERE IS THE PROBLEM.

WELL, WE JUST ADOPTED IT. WE DIDN'T ADOPT. WE JUST HAD AN AMENDMENT WHICH WAS HELD BY THIS COURT TO PASS MUSTER, HAVING TO DO WITH THE CLASSROOM SIZE, AS YOU, KNOW, NOW, THAT WAS SOMETHING THAT --

SINGLE-SUBJECT.

-- PROVISION.

WHAT WAS RESTRICTED, AS TELLING THAT WE HAVE TO HAVE A PARTICULAR THING DONE OR NOT DONE, THAT IS WHAT THIS COURT HAS DONE. THERE IS ONLY TWO CASES WE FIND, WHERE WE HAVE TRIED TO ESTABLISH A GOVERNANCE SYSTEM BY THE INITIATIVE PETITION PROCESS, WHICH IS, AS YOU KNOW, AS THIS COURT HAS OBSERVED IN RACE RELATIONS AND OTHER CASE, THIS IS NOT A SYSTEM GIVEN TO DEBATE, AND THAT IS THE PROBLEM, SO THERE HAS TO BE STRICT COMPLIANCE. OKAY. THERE IS ONLY TWO CASES WE ARE AWARE OF. SAVE OUR EVERGLADES, IN 636 SO.2D, WHERE THIS COURT SAID, NO, IT GOES TOO FAR, AND IN THE FISH AND WILDLIFE CASE IN 705, WHERE THIS COURT SAID WAIT A MINUTE. WE ARE NOT CREATING A NEW ENTITY IN THE GOVERNING SYSTEM. WE ARE ONLY TAKING POWER FROM THE LEGISLATURE AND TRANSFERRING IT TO AN EXISTING CONSTITUTIONAL STRUCTURE, SO THEREFORE WE WILL PERMIT THAT, ALTHOUGH YOU HAVEN'T DISCLOSED IT, SO IT VIOLATES THE BALLOT SUMMARY REQUIREMENT AND WAS STRICKEN FROM THE AMENDMENT. THIS CASE GOES BEYOND, WAY, WAY BEYOND, FISH AND WILDLIFE. IT GOES WAY BEYOND FOR TWO REASONS. FIRST, WE CREATE A NEW ENTITY IN THE CONSTITUTION, AND TINKER WITH THE GOVERNANCE STRUCTURE, WHICH THIS COURT DOES NOT PERMIT.

MR. TURNER, THEORETICALLY, THOUGH, THERE WOULD BE NO WAY FOR THE CITIZENS TO HAVE AN EFFECT ON THE CONSTITUTION, TO SET UP THIS TYPE OF GOVERNANCE FOR THE UNIVERSITY SYSTEM, WITHOUT SOME TYPE OF DESIGN, SUCH AS THIS. I MEAN, WHAT YOU ARE ARGUING FOR IS THAT THE CONSTITUTION AND THE SINGLE-SUBJECT PROVISION, JUST PROHIBITS THIS TYPE OF -

YOUR HONOR, I HONESTLY FEEL, AS THE COURT HAS POSED THE QUESTION SO I WILL ANSWER IT DIRECTLY AND FORTHRIGHTLY. I HONESTLY FEEL THAT YOU CANNOT CHANGE THE FUNDAMENTAL GOVERNANCE STRUCTURE BY THE CONSTITUTIONAL PROVISION PROCESS. HOWEVER, I WILL ALSO ADD, IN A SECOND BREATH THAT, WE ARE GOING BEYOND THAT HERE, AS MR. FRANKLIN HAS FRANKLY ACKNOWLEDGED TO THIS COURT.

IT HAS NEVER FOR THAT FAR, IN INTERPRETATION OF THE SINGLE SUBJECT.

YOU HAVE NEVER PERMITTED, IT OUR KNOWLEDGE, A FUNDAMENTAL CHANGE IN THE GOVERNANCE SYSTEM IN ANY CASE, SO YOU WOULD BE, IF YOU ARE DOING THAT, BUT TO GO BEYOND THAT, I WANT THIS COURT TO UNDERSTAND, WE ARE NOT PROVIDING SIMPLY THAT THERE SHOULD BE ABOARD TO SUPERVISE EDUCATION, LIKE ARTICLE IX SECTION 2 DOES FOR THE PUBLIC EDUCATION SYSTEM. WE ARE NOT DOING. THAT WE ARE GOING WAY, WAY BEYOND THAT, AND CREATING A SUPER DISTRICT SCHOOL BOARDS, QUITE INTERESTING, THE WAY IT SETS UP, BECAUSE YOU ARE GIVING THIS BOARD, THE BIG BOARD, THE STATE BOARD THE ESSENTIALLY SAME POWER THAT YOU WOULD GIVE DISTRICT SCHOOL BOARDS. THE SAME WORDS ARE USED. OPERATE, CONTROL, INSTEAD WE USE THE WORD "REGULATE", HERE IN THIS AMENDMENT, SO WE ARE CREATING THE BOARD TO OPERATE, REGULATE, MANAGE, CONTROL THE WHOLE THING.

THE LEGISLATURE COULD DO THAT.

ABSOLUTELY THEY COULD.

WELL, IF THEY COULD, THEN WHY CAN'T THE PEOPLE, THROUGH AMENDING THE CONSTITUTION, DO THE SAME THING?

YOU COULD DO IT, IF YOU DID IT IN CONSTITUTIONAL CONVENTION. THE QUESTION IS IF YOU CAN DO IT BY PETITION, YOUR HONOR. THAT IS THE QUESTION OF THIS WHOLE THING.

I AM NOT SURE WHERE THEY TAKE US. LET'S SUPPOSE, THOUGH, THAT WE DIDN'T, IN FLORIDA, HAVE DISTRICT SCHOOL BOARDS, AND THE STATE GREW. IN OTHER WORDS THAT, BEFORE WE HAD DISTRICT SCHOOL BOARDS, THAT WE WERE A RURAL STATE AND THERE WAS GOVERNANCE OF THE SCHOOL SYSTEM THROUGH LEGISLATIVE-DEVELOPED STATE BOARD OR SOMETHING, AND THEN AS THE STATE GREW, PEOPLE LOOKED AROUND THE COUNTRY AND SAID, NOW WE ARE BECOMING A BIGGER STATE, AND ALL OF THESE LOCAL AREAS ARE SO BIG, THEMSELVES, THAT THEY NEED SOME MORE SPECIFIC LOCAL MANAGEMENT, AND SO THEY SAID, WELL, ALL THE OTHER 49 STATES HAVE DISTRICT SCHOOL BOARDS, AND SO WE THINK THAT IS A GOOD IDEA, TO HAVE DISTRICT SCHOOL BOARDS. ARE YOU SAYING THAT, UNDER OUR CITIZENS INITIATIVE PROCESS, THAT A CONSTITUTION THAT DIDN'T HAVE THE DISTRICT BOARDS BEFORE, THAT THERE COULD NOT BE AN AMENDMENT TO THE CONSTITUTION, UNDER THE INITIATIVE PROCESS, TO NOW ADD THAT TO THE CONSTITUTION, TO CREATE THAT STRUCTURE OF DISTRICT SCHOOL BOARDS, BY CITIZEN INITIATIVE REFERENDUM?

IN MY OPINION, YOU COULD NOT, SIR. THAT IS CORRECT, AND THIS COURT HAS NEVER APPROVED SUCH A FUNDAMENTAL CHANGE TO A GOVERNMENT STRUCTURE.

IT SOUNDS LIKE A VERY SIMPLE, STRAIGHTFORWARD, SINGLE SUBJECT. YOU NEED TO EXPLAIN, WE ARE GOING TO GO FROM HAVING THE STATE GOVERNANCE TO DISTRICT BOARDS. NOW, WHY -
-

YOU ARE DIVESTING THE LEGISLATURE OF ITS POWER, SO YOU ARE AFFECTING THE LEGISLATURE, AND YOU ARE GIVING EXECUTIVE POWER TO THIS BOARD AND PUTTING IT --

ANY TIME YOU AMENDMENT THE CONSTITUTION OF THE STATE OF FLORIDA, YOU ARE AFFECTING THE LEGISLATURE. THAT IS THAT THE LEGISLATURE NOW THAT WAS FREE TO OPERATE IN AN AREA, NOW HAS SPECIFIC LIMITATIONS IN ANY LANGUAGE OF THE CONSTITUTION.

THAT WELL COULD BE TRUE, BUT HERE IT IS VERY FUNDAMENTAL. YOU ARE TAKING AWAY THEIR CONTROL OVER HIGHER EDUCATION, AND THAT IS THE PROBLEM. THIS AMENDMENT DOESN'T SAY THEY CAN FILL IN THE DETAILS. IT DOESN'T GIVE THE LEGISLATURE ANY AUTHORITY, AND BY ADMISSION OF COUNSEL VERY FORTHRIGHTLY, THEIR INTENT IS TO TAKE AWAY ALL LEGISLATIVE POWER, TO GIVE IT NOTHING EXCEPT THE PURSE. THAT IS THE ONLY THING IT PROVIDES.

SO THE SAME WOULD BE TRUE, IF WE WERE IN THE, IF WE DID NOT HAVE THE JUDICIAL QUALIFICATIONS COMMISSION, AND THE PEOPLE DECIDED THAT THEY WANTED TO HAVE THAT TYPE OF JUDICIAL DISCIPLINE PROCESS, RATHER THAN JUST HAVE IT BY THE LEGISLATURE. PEOPLE COULD NOT DO. THAT.

IF YOU WANTED TO CREATE A JUDICIAL QUALIFICATIONS COMMISSION IN THE CONSTITUTION --
BY CITIZENS INITIATIVE.

-- AS AN EXECUTIVE BRANCH OR AN INDEPENDENT CONSTITUTIONAL BODY, YOUR HONOR, I WOULD HAVE TO SAY, IN MY ANALYSIS OF YOUR HONORS' CASES, WHICH IS ALL THAT I HAVE TO GO ON, IS WHAT YOUR HONORS HAVE WRITTEN. I DON'T HAVE ANYTHING ELSE. I AM NOT DIVINING ANYTHING. I DON'T SEE THAT YOU PERMITTED ANY JURISPRUDENCE.

WHICH DO YOU BELIEVE? THAT THE FISH AND WILDLIFE SAYS THAT?

YES, I DO, AND I BELIEVE THAT IN COMBINATION WITH THE 636, THE "SAVE OUR EVERGLADES" CASE. THAT IS THE ONLY TWO CASES WE FIND WHERE ANYTHING SUCH AS THIS HAS BEEN TRIED, AND I THINK YOU HAVE GOT TO CONSIDER THAT WE ARE WAY BEYOND, WE ARE NOT JUST DELEGATING, WE ARE NOT JUST TAKING AWAY AND GIVING THE LEGISLATURE THE POWER TO FILL IN THE DETAILS. REMEMBER, IT DOESN'T SAY "AS PROVIDED BY LAW" IN THIS AMENDMENT. THAT IS THE PROBLEM. NORTH CAROLINA HAS BEEN REFERRED TO. WHEN YOU GO TO THAT STATE'S CONSTITUTION, YOU DON'T FIND THIS. YOU FIND "AS THE LEGISLATURE DEEMS WISE". YOU FIND "THE GENERAL ASSEMBLY MAY ENACT LAWS AS NECESSARY". THAT IS IN ARTICLE IX SECTION 2 PRESENTLY, WITH RESPECT TO PUBLIC EDUCATION. I AM SORRY, YOUR HONOR.

THE PROBLEM ISN'T THAT, IF IT SAID AS PROVIDED BY LAW, TO THIS EXTENT THAT IT WOULD, THEN, NOT FILE LIKE A SINGLE SUBJECT. AS I AM HEARING WHAT YOU ARE SAYING, YOU ARE SAYING THAT, EVEN THOUGH NOW, THE LEGISLATURE IS RESTRICTED AND THERE IS A SYSTEM OF GOVERNANCE WITH RESPECT TO PUBLIC EDUCATION, THAT THERE ISN'T A WAY FOR THE PEOPLE TO PUT IN THE CONSTITUTION, THE SAME, A DIFFERENT SYSTEM WITH REGARD TO THE PUBLIC UNIVERSITY SYSTEM, AND I GUESS WHAT YOU ARE HEARING TODAY, IS WE ARE TRYING TO UNDERSTAND WHY, IF THE INITIATIVE PROCESS IS SOMETHING THAT PEOPLE OF THE STATE HAS RESERVED FOR THEMSELVES, WHY, IF WE ARE ALLOWING IN THE CONSTITUTION, THINGS THAT SEEM TRIVIAL, SUCH AS THE PIG AMENDMENT OR NET BAN THAT MAYBE SHOULDN'T BE IN THE CONSTITUTION, WOULDN'T WE WANT TO PUT IN SOMETHING THAT REALLY IS A STRAIGHTFORWARD CONCEPT, RESTRICTED TO A SINGLE SUBJECT, WHICH IS THE GOVERNANCE OF THE PUBLIC UNIVERSITY SYSTEM?

WELL, I TAKE DEFERENCE, I QUIBBLE WITH YOU THAT IT IS NOT A MULTIPLE SUBJECT, BECAUSE I THINK IT VERY DEFINITELY IS A MULTIPLE SUBJECT, BUT I WILL GET BACK TO THAT IN A MOMENT. I WANT TO ADDRESS THE QUESTION. I THINK THAT THE PEOPLE WANT TO ASK, YOU CAN'T DO SOMETHING OR YOU CAN DO SOMETHING, THAT IS FINE, IF THIS COURT WANTS TO APPROVE BIG AMENDMENTS. THAT IS UP TO YOU, BUT WE HAVE GOT A REQUIREMENT IN THE CONSTITUTION THAT IS PUT IN THE CONSTITUTION, THAT HAS TO BE STRICTLY COMPLIED WITH, AND WHEN YOU MAKE FUNDAMENTAL CHANGES HAD IN GOVERNMENT, I BELIEVE THAT VIOLATES THAT PROVISION THAT IS A CHECK AGAINST THE PEOPLE PUTTING SOMETHING ON THE BALLOT THAT HAS NOT BEEN DEBATED IN THE PROCESSES OTHERWISE REQUIRED, EITHER THROUGH THE LEGISLATURE OR THE CONSTITUTIONAL PROVISION, CONSTITUTIONAL CONVENTION PROCESS.

YOU WERE GOING TO TELL ME WHY THIS IS A MULTIPLE SUBJECT, AND I AM NOT TALKING ABOUT, NOW, THIS QUESTION AS TO THE STRICT LEGISLATIVE POWER, BUT HOW IS THIS NOT THE SINGLE SUBJECT OF THE GOVERNANCE OF THE PUBLIC UNIVERSITY SYSTEM?

BECAUSE IT IS ONE OF THESE ISSUES OF THE COMPONENT PART VERSUS THE ENFOLDING DISPARATE SUBJECTS YOU HAVE INTO A BROAD GENERALITY. YES, IT HAS TO DO WITH THE GOVERNANCE SYSTEM, JUST AS THE LOCAL SCHOOL BOARDS, YOU SEE, THE GOVERNING, THE WAY WE ARE SETTING UP UNDER THE CONSTITUTION, TELLS THE STORY, BECAUSE SECTION 2 OF ARTICLE IX, SAYS THE STATE BOARD OF EDUCATION WILL SUPERVISE, AND IN SECTION 4, IT SAYS THE LOCAL BOARDS WILL OPERATE AND CONTROL, SO YOU HAVE TWO SEPARATE SECTIONS IN THE CONSTITUTION THAT RECOGNIZE LOCAL AND STATE CONTROL ARE DIFFERENT ISSUES, AND HERE WE HAVE, REALLY, A SIMILAR IDEA, WHERE YOU HAVE, IN THE SYSTEM, ITSELF, PROVIDING FOR LOCAL AND STATE BOARDS, AND WE COME BACK TO THE PROBLEMS POINTED OUT BY JUSTICE SHAW, THAT THAT TAKES YOU INTO LOCAL, WHAT DOES LOCAL MEAN. THAT TAKES YOU INTO ALL OF THOSE KINDS OF PROBLEMS THAT WE POINTED OUT THAT CAUSE, WHICH, OF COURSE, WOULD NEVER COME ABOUT, EXCEPT YOU HAVE GOT THIS DISPARATE WAY OF REGULATING.

BUT IF WE ADOPT THAT TYPE OF RATIONALE, IT WOULD SEEM TO ME THAT ANYTHING THAT WOULD HAVE MULTIPLE PARTS WOULD NECESSARILY FALL UNDER THE SINGLE-SUBJECT ANALYSIS, SO HERE YOU HAVE A TWO-TIERED KIND OF SYSTEM, A SYSTEM VIRTUALLY EVERYTHING THAT COMES BEFORE IT. IT HAS A STRUCTURE TO IT THAT HAS VARIOUS ELEMENTS, AND THE ANALYSIS THAT COMES TO ME OR PLEASE DIRECT ME TO THE CASES THAT YOU THINK OTHERWISE, THEY ALWAYS SEEM TO RELATE TO THE QUESTION OF DO EACH OF THESE PARTS RELATE TO THE BASIC SINGLE SUBJECT, AS OPPOSED TO MULTIPLE TIERS OR MULTIPLE FACETS OF THE SAME PROBLEM.

I THINK THAT IS THE QUESTION, YOUR HONOR, AND I THINK THAT THIS COURT HAS SPOKEN TO THAT SOME AND GIVEN IT SOME GUIDANCE. I THINK THE RESTRICTS LAWS RELATING TO DISCRIMINATION, TALKS ABOUT THE CLASSES OF PEOPLE, THE DIFFERENT CLASSES, AND EVEN THOUGH YOU WOULD SAY I AM ADDRESSING DISCRIMINATION, THIS COURT SAID BUT YOU HAVE GOT TEN DIFFERENT TYPES OF DISCRIMINATION, TEN DIFFERENT CLASSES THAT YOU ARE TALKING ABOUT. IN REGIONAL TAX, THE STATE SAID YOU HAVE USER FEES FOR THE LOCAL TAX. THE ATTORNEY GENERAL, HIMSELF, PRESENTED THE ISSUE THAT STATE, LOCAL AND REGIONAL TAXES BEING ADDRESSED ARE THREE SEPARATE SUBJECTS, AND FINALLY IN HEALTHCARE, PROVIDES AT 705.565, THIS COURT SAID THAT, WHEN YOU HAVE A PAR ON LIMITING HEALTHCARE PROVIDER CHOICES, EITHER BY LAW OR BY CONTRACT, THAT IS TWO SEPARATE SUBJECTS, TWO DISPARATE SUBJECTS, AND I THINK THE CONSTITUTION, ITSELF, HERE, IS A WONDERFUL POLL STAR, BECAUSE IT SAYS THAT WE HAVE GOT TO HAVE TWO SEPARATE SECTIONS IN THE CONSTITUTION FOR PUBLIC EDUCATION. WE HAVE GOT TO SECTION 2 ADDRESSING SUPERVISION AND SECTION 4 SETTING UP THE LOCAL DISTRICT SCHOOL BOARDS, AND THAT IS EXACTLY WHAT YOU HAVE GOT HERE. YOU HAVE GOT AN ATTEMPT TO TRY TO COLLAPSE THAT ONE, AND THAT IS A PROBLEM. YOU DON'T HAVE TO HAVE LOCALS. YOU DON HAVE TO HAVE STATE. YOU DON'T HAVE TO HAVE EITHER. THEY WANT TO HAVE BOTH IN ONE, AND I THINK THAT IS A PROBLEM, BUT I WANT TO GET BACK TO THE CORE ISSUE HERE, WHICH YOU ARE ON AND WHICH YOU ARE ALL ON, JUSTICE PARIENTE. WE HAVE IT GIVING LEGISLATIVE POWER THAT IS HUGELY EXTENSIVE, AND I DON'T WANT THAT TO BE LOST HERE. WE ARE NOT DOING WHAT COULD NORMALLY BE DONE. IF YOU CAME HERE WITH A SIMPLE LET'S CREATE A HIGHER BOARD OF EDUCATION AS PROVIDED BY LAW, SO WE RESTRAIN THE LEGISLATURE, BUT WE STILL LEFT IT A LOT OF POWER. THAT MIGHT BE SOMETHING THAT GOT US TO THE VERY NEXT STEP ABOVE FISH AND GAME OR FISH AND WILDLIFE, BUT HERE WE HAVE THIS TREMENDOUS CONFERENCE OF POWER, WHERE YOU GET A SITUATION WHERE THE LEGISLATURE WANTS TO SAY NO MORE TENURE. LET'S JUST TAKE A CLEAN EXAMPLE LIKE THAT. THE LEGISLATURE SAYS, WE DON'T WANT TENURE. WE DON'T WANT TENURED PROFESSORS IN OUR SCHOOL. AND THE STATE BOARD SAYS, OH, YES WE DO. WE WANT TO HAVE TENURE FOR 50 YEARS. NOW, WHICH ONE WINS? I SUBMIT TO YOU THAT THE ONE THAT WINS IS THE CONSTITUTIONAL BODY ESTABLISHED. WHERE THE LEGISLATURE CAN'T FILL IN THE DETAILS, WHERE THEY HAVE THE POWER TO REGULATE THE UNIVERSITIES AND THE UNIVERSITY SYSTEM. YOU HAVE CREATED A FUNDAMENTAL AND BASIC CHANGE AND A SWEEPING CHANGE THAT THE CONSTITUTION OF NORTH CAROLINA DOES NOT CREATE, SUPPOSEDLY.

BUT --

YES, SIR. I AM SORRY. I DIDN'T MEAN TO GET CARRIED AWAY.

THE CONSTITUTION, FOR ANY BOARD THAT IS SET UP IN THE CONSTITUTION OR A BRANCH OF GOVERNMENT LIKE THE JUDICIAL BRANCH, THE CHECK IS THE POWER OVER THE PURSE.

THAT IS CERTAINLY ONE CHECK.

AND THAT IS THE CHECK THAT THE LEGISLATURE HAS HERE, IS IT NOT?

IT HAS THAT CHECK.

THIS BOARD IS NOT GOING TO BE ABLE TO APPROPRIATE ANY MONEY FOR THE UNIVERSITY.

AS IT CANNOT WITH THE EXECUTIVE OR THE UNIVERSITY.

THAT IS JUDICIAL QUALIFICATION.

BUT IT CAN MAKE LAWS, AND THAT IS WHAT IT HAS TO DO IN EDUCATION. IT DOESN'T JUST APPROPRIATE MONIES. THE LEGISLATURE JUST DOESN'T APPROPRIATE MONEY. IT SETS STANDARDS. IT PASSES LAWS THAT AFFECT EDUCATION AND IT CAN REGULATE EDUCATION, AND IT IS ENTITLED TO SET UP BOARDS AS IT BELIEVES IS RIGHT, AND YOU ARE TAKING THAT POWER AWAY FROM THE LEGISLATURE. NOW, COULD WE CHANGE THE COURT SYSTEM BY LEGISLATIVE PETITION? YOUR HONOR RAISES THIS. I WANT TO THROW ONE AT YOU. COULD WE THROW ONE OUT AND SAY WE ABOLISH THE SUPREME COURT OF FLORIDA. COULD WE DO THAT, YOUR HONOR? I DON'T THINK SO, AND THAT IS THE PROBLEM THAT YOU ARE OPENING THE DOOR FOR HERE, SO I ONLY ASK THAT YOU THINK THIS THROUGH, AS DEFINITELY AS YOU CAN. I KNOW THIS IS A BIG ONE. I HOPE YOU WILL GIVE IT YOUR ATTENTION. I AM A LITTLE SHORT AND I HAVE A FEW MINUTES LEFT, BUT I HAVE COVERED THE WATERFRONT HERE, AND IF THERE IS ANYTHING ELSE, I WOULD BE GLAD TO ANSWER IT. MR. ^CHIEF JUSTICE

THANK YOU, MR. TURNER. MR. GIBSON.

ALL RIGHT, MR. GIBSON. THIS YEAR THE UNIVERSITY GOVERNING SYSTEM. NEXT YEAR THE SUPREME COURT GOES?

NO, SIR. THAT IS A FUNDAMENTAL PART OF THE THREE-BRANCH SYSTEM OF GOVERNANCE THAT IS FUNDAMENTAL TO THE UNITED STATES, AND WHILE YOU ARE TALKING ABOUT THAT, YOUR HONOR, 33 STATES IN OUR COUNTRY HAVE MENTION OF UNIVERSITY SYSTEMS IN THEM. THIRTY-THREE HAVE SOME TYPE OF SYSTEM WHICH WE ARE TALKING ABOUT. THEY ALL COMPLY WITH THE THREE-BRANCH GOVERNANCE SYSTEM. WE HAD THIS IN OUR SYSTEM FOR OVER 96 YEARS. IT IS A STANDARD TYPICAL, ORDINARY KIND OF A THING.

ARE THERE OTHER STATES THAT HAVE WRITTEN, INTO THEIR CONSTITUTIONS, AS OPPOSED TO BY LEGISLATION SET UP EXECUTIVE DEPARTMENTS, ARE THERE STATES THAT, IN THEIR CONSTITUTION CREATE THIS FORM OF UNIVERSITY GOVERNANCE?

YES, SIR.

WHAT STATES ARE THOSE?

LOUISIANA HAS A TWO-TIER SYSTEM. THERE IS MUCH MORE ECONOMY. IN MICHIGAN, FOR EXAMPLE, THERE IS MUCH MORE POWER AND AUTONOMY IN GEORGIA, WHERE THEY HAVE LUMP-SUM FUNDING. CALIFORNIA --

WHAT ABOUT THESE ISSUES THAT YOUR OPPONENT RAISES THAT THE LEGISLATURE WILL BE SO RESTRICTED THAT ISSUES LIKE TENURE AND STANDARDS, IN OTHER WORDS, JUST ACROSS THE BOARD EVERYTHING BUT FUNDING APPEARS TO BE VESTED IN THIS SYSTEM. IS THAT A CORRECT APPRAISAL THAT EVERYTHING BUT FUNDING --

ANYTHING THAT HAS TO DO WITH THE EXECUTIVE FUNCTION, MANAGEMENT, IS IN THIS BOARD OF GOVERNORS. AS IT IS IN SO MANY OTHER BOARD OF GOVERNORS, 49 OTHER STATES HAVE BOARDS FOR UNIVERSITIES, OF SOME KIND. THERE IS NOTHING UNUSUAL ABOUT THIS. THIS IS VERY STANDARD STUFF. THE CONSTITUTIONAL PROVISION IS STANDARD STUFF. THE METHOD OF GOVERNANCE IS STANDARD STUFF. IT DOESN'T TAKE ANY CREATIVITY OR IMAGINATION TO DO.

YOU DON'T EVEN NEED A GOOD LAWYER. YOU JUST BASICALLY WRITE DOWN WHAT IS THERE. THAT IS WHAT WE HAVE HERE.

CHIEF JUSTICE: JUSTICE SHAW HAD A QUESTION.

I -- EXCUSE ME.

CHIEF JUSTICE: JUSTICE SHAW.

ALL RIGHT.

DO YOU THINK THAT THE AVERAGE VOTER IS GOING TO BE ABLE TO PICK UP ON THE NUANCE THAT THE LOCAL BOARD OF TRUSTEES IS NEITHER LOCAL, AND IS, IN ACTUALITY, A STRAW MAN, UNTIL SUCH TIME AS THE BOARD OF GOVERNORS BREATHES LIFE INTO IT? IT HAS NO DUTY THAT DOESN'T KNOW WHAT ITS DUTIES ARE. DO YOU THINK THAT THAT IS SOMETHING THAT THE AVERAGE VOTERS WILL UNDERSTAND, OR ARE THEY GOING TO SAY THE LOCAL BOARD OF TRUSTEES IS INTIMATELY CONNECTED WITH THIS PARTICULAR UNIVERSITY, AND IT, THE PEOPLE THAT SURROUND THAT UNIVERSITY, THAT BOARD OF TRUSTEES, IS GOING TO COME FROM THERE. DO YOU THINK THAT SETTLES IT?

THE PEOPLE COULD PUT IN A BOARD OF GOVERNORS WITHOUT ANY LOCAL BOARD OF TRUSTEES, PERIOD. THERE WOULD BE NO POWER AT ALL, BECAUSE THERE WOULDN'T BE THE BOARDS THAT EXIST. THIS IS JUST DONE FOR EFFICIENCY SAKE, SO A LOCAL ADMINISTRATION CAN BE HANDLED BY A LOCAL BOARD. I JUST WANT TO MAKE ONE MORE COMMENT BEFORE I SIT DOWN, AND THAT HAS TO DO WITH THE FISH AND WILDLIFE CASE, WHICH, I THINK, THERE HAS JUST BEEN A MISTAKE INVOLVED HERE, AND THE FISH AND WILDLIFE CASE CLEARLY, ON THE SINGLE-SUBJECT REQUIREMENT, SAYS THAT 7.0 PASSES MUSTER, BECAUSE THERE IS ONE ENTITY THAT GOVERNS ALL MATTERS, INCLUDING FRESH WATER, AQUATIC LIFE, SUBSTITUTE UNIVERSITIES. THE PROPOSED AMENDMENT HAS A ONENESS OF PURPOSE, AND THAT IS ALL THIS IS ABOUT IS GOVERNANCE OF A UNIVERSITY SYSTEM, ONE SYSTEM.

CHIEF JUSTICE: THANK YOU.

IT COULD BE TWO TIERS OR ONE TIER.

CHIEF JUSTICE: THANK YOU, MR. GIBSON. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.