Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice

NEXT CASE ON THE COURT'S DOCKET THIS MORNING , IS AN ADVISORY OPINION , CONSTITUTIONAL AMENDMENT RELATING TO THE PUBLIC PROTECTION FROM REPEATED MEDICAL MALPRACTICE. GOOD MORNING AGAIN.

MAY IT PLEASE THE COURT. ON THIS A CASE ARGUING ON BEHALF THE OPPONENT WILL BE TIM McLENDON AND ARGUING ON BEHALF THE OPPONENTS WILL BE STEPHEN GRIMES AND MR . MARDENBOROUGH. THANK YOU.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. MR . CHIEF JUSTICE. MY NAME IS TIMOTHY McLENDON. I REPRESENT FLORIDIANS FOR PATIENT PROTECTIONS , AGAIN , THE SPONSOR OF THIS INITIATIVE, AND WITH ME, ALSO, IS MY COUNSEL , CO-COUNSEL , JON MILLS , AND I WOULD LIKE TO RESERVE TENMINUTES FOR REBUTTAL, IF I COULD.

LET'S JUM P RIGHT IN AND FIGURE OUT THE BREADTH OF THIS. NOW, I GO TO A DOCTOR WHOHAS BEEN PRACTICING MEDICINE IN FLORIDA SINCE 1960 , AND AS FAR AS I KNOW , MY DOCTOR HASN'T HAD ANY MEDICAL MALPRACTICE INCIDENT . BUT IF HE HAD HAD A MEDICAL MALPRACTICE INCIDENT IN WHICH HE WAS INVOLVED IN AN OPERATION IN WHICH A SPONGE WAS LEFT IN A CHILD I N 1961 , AND ONE HAPPENED I N 1962 AND ANOTHER SPONGE CASE IN 1963 , BUT HASN'T , AND THOSE THREECASES WERE FRIENDLY SUITED , SO THAT THEY WENT TO JUDGMENT FOR A SETTLEMENT OF $10,000.AS I READ THIS AMENDMENT , THAT DOCTOR , EVEN THOUGH WITH THE LAST INCIDENT WAS IN 1963 , WOULD BE, HIS LICENSE WOULD BE TAKEN BY THIS AMENDMENT. HOWEVER , IF I WENT TO A DOCTOR WHO HAD THREE CASES IN 1903 , IN 2003 , AND THOSE CASES WERE SETTLED , FOR $1 MILLION EACH , AND THEY DIDN'T GO TO JUDGMENT , HE WOULD NOT BE AFFECTED BY THIS AMENDMENT. IS THAT CORRECT?

THAT IS CORRECT , YOUR HONOR. THE AMENDMENT IS INTENDED TO REMOVE DISCRETION REMOVE DISCRETION IN THE AGENCY THAT DEALS WITH LICENSING , AND IT WOULD, INDEED , TO , THERE IS A POSSIBILITY THAT IT MAY INFLICT SOME HARP O N CERTAIN PEOPLE THAT -- SOME HARDSHIP ON CERTAIN PEOPLE , THE PAST --

WHAT I AM GOING TO , THOUGH, IS , IF I AM READING THE SUMMARY OF THIS , WHERE THIS AMENDMENT SAYS THAT WHO HAVE BEEN FOUND TO HAVE COMMITTED THREE O R MORE INCIDENTS , THEN I WOULD , I THINK I WOULD REASONABLY BELIEVE THAT, IF A DOCTOR SETTLED THREE CASES FOR $1 MILLION EACH , THAT THAT PERSON WOULD BE COVERED BY THIS AMENDMENT! BUT HE IS NOT !

WITH RESPECT , YOUR HONOR , I THINK WE MAINTAIN T HAT THE AVERAGE VOTER READING THIS , READING THE TERMS "FOUND TO AND WILL UNDERSTAND" , THEREIS A FLAUMTION THEY WILL UNDERSTAND NORMAL OPERATIONS INVOLVED, THAT THEY WILL FIND IT REQUIRED. AS TO THE VOTERS --

AS TO THE DOCTOR WHO HAS BEEN MEDICALLY NEGLIGENT OR THEY WOULDN'T HAVE PAID $1 MILLION ON ANY OF THOSE CLAIMS , CORRECT?

THAT'S CORRECT. AND TO THE AVERAGE PEOPLE, THE ENTITIES WHO DO FINDINGS , IT WILL BE THE COURTS AND AGENCIES AND IN THE ADA CONTRACTS , ARBITRATORS . WITH RESPECT TO SETTLEMENTS , WE DO NOT INCLUDE SETTLEMENTS , PARTLY BECAUSE THE PENALTY INFLICTED , AS YOU, YOURSELF , ADMIT , IS A SEVERE ONE , DEPRIVATION AFTER LICENSE, AND PEOPLE WHO SETTLE AND THE INSURANCE COMPANY CAN SETTLE OVERHEAD OF A DOCTOR. WE DO NOT FEEL THAT, FOR THIS LIMITED AMENDMENT , IT WAS APPROPRIATE TO INFLICT THAT PENALTY IN THE SCOPE OF SETTLEMENTS.

AND WE ARE REALLY TAKING LICENSES, THEN , IF THIS AMENDMENT PASSES , ON THE BASIS THAT PEOPLE HAVE , THAT WERE DOCTORS AND SETTLED THE CLAIM AND ALLOWED CLAIMS T O GO T O JUDGMENT , BECAUSE THEY FOUGHT THE LOOINLT LIABILITY , WOULD BE TREAT -- THEY FOUGHT THE LIABILITY , WOULD BE TREATED DIFFERENTLY THAN PEOPLE WHO HAD SETTLED CLAIMS IN THE PAST , WITHOUT ANY KNOWLEDGE THAT THIS WAS EVER ON THE HORIZON. ISN'T THAT CORRECT?

WHERE THERE IS A FINDING , THREE TIMES , THAT MALPRACTICE WAS COMMITTED , THIS WOULD REMOVE THE DISCRETION ON THE AGENCY. IT DOES NOT CHANGE THE STANDARD OF CARE, IN TERMS OF WHAT CONSTITUTES MALPRACTICE.IT DOES NOT CHANGE THE STANDARD OF REVIEW IN ANYCOURT , AS TO WHETHER LIABILITY IS IMPOSED. IT DOES NOT CHANGE THE STANDARD I N THE AGENCY THAT , REMOVAL PROCESS , WHICH WOULD REMAIN CLEAR AND CONVINCING EVIDENCE THAT THERE WERE, IN FACT , THREE PRIOR FINDINGS THAT MET THE STANDARD IMPOSED BY THIS , THE NEW INQUIRY , IMPOSED BY THIS INITIATIVE, BUT - -

LET ME -- GO AHEAD , JUSTICE BELL.

LET ME MODIFY JUSTICE WELLS 'S HYPOTHETICAL. ASSUMING IT WAS IN THE 1960s , SOMEBODY PRACTICING AS A GENERAL SURGEON AND THEY HAVE TO HAVE THE INTERNAL MEDICINE DEGREE BEFORE THEY BECOME A GENERAL SURGEON. THEY GIVE UP THE OFFICE PRACTICE AND SO FAR IN 3 0 YEARS THERE, HAVE BEEN NO INCIDENTS RELATED TO THE FACT OF INTERNAL MEDICINE AND HAVE HOSPITAL PRIVILEGES TO PRACTICE GENERAL SURGERY. THIS WOULD PROHIBIT THAT PERSON FROM GETTING A LICENSE RENEWED?

IT WOULD , AND THE SUMMARY DOES MAKE CLEAR THREE FINDINGS PREVENTS THE HOLDING AFTER MEDICAL LICENSE , YES, YOUR HONOR.

THREE --

WE DO , HOWEVER , MAINTAIN THAT THIS I S A MINUSCULE PORTION OF DOCTORS TO WHOM THIS APPLIES. IT IS A SMALL PERCENTAGE OF DOCTORS WHO REPEAT MALPRACTICE . IN JANUARY 2004, THE FACT THAT THEY ARE NOT DISCIPLINED BY THE AGENCY --

THAT I S SIMILAR TO A ROUTINE BYPASS SURGERY BUT IT IS NOT ROUTINE IF IT IS YOU GOING I N , SO IT IS NOT MINUSCULE TO THE DOCTOR WHOHAS BEEN PRACTICING FOR 30 YEARS , WHO HAD NO IDEA WHEN HE FRIENDLY SUITED THREE MINOR CLAIMS FOR $10,000 EACH IN 1960 , THAT HE WAS GOING TO GET HIS LICENSE JERKED IN 200046789 ISN'T THAT FAIR?

AS I SAY , THE -- IN 2004? ISN'T THAT FAIR?

AS I SAY , THE - -

EXTEND THAT T O THE MEDICAL BOARDS, THE AGENCIES THAT ARE IN THE SAME POSITION, THAT IS THAT MAYBE THEY MADE FINDINGS , QUOTE, IF THERE IS SUCH A THING , MINOR MALPRACTICE , BUT NOT KNOWING THAT, WHEN THEY WERE DOING THAT , THAT IN THE FUTURE , SOMETHING LIKE THIS MIGHT HAPPEN , AND THAT A CONSEQUENCE, THEN , OF THEIR FINDINGS, OF WHICH THEY IMPOSED , FOR INSTANCE , A CAUTION OR A REPRIMAND , WOULD LATER HAVE THIS EFFECT

OF DEPRIVING THE PHYSICIAN OF HIS LICENSE FOR FUTURE PRACTICE. IS THERE SOMETHING VIOLATIVE OF THE PHYSICIAN 'S RIGHTS AND , AGAIN , WHERE THE PHYSICIAN MAY HAVE SAID , WELL , I WILL ACCEPT THAT KIND OF FINDING , ALONG WITH A REPRIMAND , TO RESOLVE THIS , AND NOW WE SEE THIS VERY SERIOUS CONSEQUENCE THAT COMES ALONG LATER .

IT I S POTENTIAL. THERE ARE , HOWEVER , FOR EXAMPLE , I N , PERHAPS , SOME OF YOUR INSTANCES , JUSTICE WELLS , THE CHANCE THAT , WAS THIS IN FACT , MALPRACTICE , WHATEVER WAS SETTLED OR ADJUDGED IN 1960 , WOULD IT BE MALPRACTICE UNDER THESTANDARD OF THIS AMENDMENT , WHICH REFERENCES THE STANDARD OF CARE IMPOSED BY THE LEGISLATURE TODAY? AND SO IF THERE WAS A GOOD GROUND THAT THE LICENSE HOLDER COULD ARGUE THAT THIS WOULD NOT HAVE BEEN MALPRACTICE , BUT --

IT SEEMS TO B E PRETTY ABSOLUTE AMENDMENT HERE. IT SAYS THAT , IF THERE HAS BEEN ANY FINDING , EITHER JUDICIALLY, BY AN ADMINISTRATIVE AGENCY , OR THROUGH ARBITRATION , THERE WAS MEDICAL MALPRACTICE , THAT , THREE O F THEM , THAT YOU CANNOT HAVE A LICENSE, SO MY QUESTION TO YOU IS , WHEN DO YOU , WHEN WOULD YOU EVER GET TO TRYING T O DETERMINE OR SAY THAT THAT WASN'T MALPRACTICE ? AND SECONDLY , WOULD THIS REQUIRE THE LICENSING BOARD TO NOW LOOK AT ALL OF THE LICENSES, TO SEE IF ALL THE DOCTORS OR WHICH DOCTORS MEET THIS CRITERIA ?

T O ANSWER YOUR SECOND QUESTION QUICKLY , THE AGENCY DOES HAVE , LICENSED APPLICANTS ARE REQUIRED TO INFORM THE AGENCY ABOUT THEIR MALPRACTICE HISTORY, AND WHEN THEY RENEW, THEY ARE ALSO REQUIRED T O UPDATE THEIR HISTORY, SO A REVIEW OF THE RECORDS WILL IDENTIFY , POINT THE LICENSE HOLDERS THAT NEED TO B E INVESTIGATED , IN THAT REGARD. THAT IS A RELATIVELY SIMPLE. WITH REGARD TO THE FINDINGS , YES, ONCE THE FINDINGS HAVE BEEN DEMONSTRATED IN THE AGENCY PROCESS, BY CLEAR AND CONVINCING EVIDENCE THAT THESE ARE FINDINGS OF MALPRACTICE , THAT WOULD MEET THE CURRENT LEGISLATIVESTANDARD, WHICH IS REFERENCED IN THE AMENDMENT , THEN , AT THAT POINT , THE PENALTY PHASE , DISCRETION WOULD BE REMOVED FROM THE AGENCY. THAT IS THE INTENT . IT IS --

IS THE ANSWER TO HERQUESTION THAT , YES , IT WOULD REQUIRE AN ADMINISTRATIVE AGENCY, NOW, TO GO BACK AND REVIEW, TO SEE WHETHER OR NOT THERE HAVE BEEN THREE OF THESE FINDINGS , BECAUSE OTHERWISE IF I UNDERSTAND IT CORRECTLY , THEY WOULD BE RELICENSING PHYSICIANS WHO , REALLY, WERE NO LONGER ELIGIBLE UNDER THIS CONSTITUTIONAL PROVISION?

YES, YOUR HONOR. I MEAN , THE AGENTS , BUT MY POINT WAS THE AGENCY HAS THE INFORMATION TO DO THIS. THE RECORDS ARE AVAILABLE.

BEFORE YOU SIT DOWN , THE WORD "INCIDENT" IS NOT DEFINED IN HERE , CORRECT?

IT IS NOT DEFINED I N THIS AMENDMENT, BUT WE BELIEVE IT IS CLEAVER TO VOTERS . -- BUT WE BELIEVE IT IS CLEAR TO VOTERS.

IF YOU HAVE THREE INCIDENTS AGAINST AN ANESTHESIOLOGIST IN AN INCIDENT WHERE THERE WAS AN ALLEGED DAMAGE IN ADMINISTERING , AN ALLEGED DAMAGE IN MONITORING, AN ALLEGED DAMAGE IN THE TAKING OUT OF THE DRUG , AND THEREFORE IN THREE COUNTS , YOU WOULD HAVE THREE INCIDENTS , AND THE ANESTHESIOLOGIST WOULD --

ASSUMING WE ARE TALKING ABOUT ONE EVENT , ONE PATIENT , I BELIEVE THAT , AS INCIDENT IS USED IN THE STATUTES,WHICH ARE ALSO REFERENCED,NO , THAT WOULD BE ONE INCIDENT. IT MIGHT WELL BE GROSS MALPRACTICE BUT IT WOULD NOT INVOLVE THE REPEAT MALPRACTICE THAT THIS AMENDMENT TARGETS. THE AGENCY HAS AND WOULD CONTINUE TO HAVE THE DISCRETION TO SANCTION OR DEPRIVE THE LICENSE.

WE ARE TALKING ABOUT THREE COUNTS THAT GO TO FINAL JUDGMENT. THOSE WOULD BE COVERED.

BUT IF THERE WAS ONLY ONE INCIDENT, AS I SAY, THAT WOULD BE GROSS MALPRACTICE NOT REPEATED MALPRACTICE .

ISN'T IT A SEPARATE --

ISN'T AN ACT OF CARE BITE ANESTHESIOLOGIST THAT CAUSE DAMAGE, ISN'T THAT AN INCIDENT?

IF WE ARE TALKING ABOUT DIFFERENT PRACTITIONERS .

DOES IT SAY THAT?

DIFFERENT DOCTORS.

DOES IT SAY THAT?

IT DOES SAY DOCTORS WHO COMMIT REPEATED MALPRACTICE . SO PERHAPS I MUST HAVE MISUNDERSTOOD YOUR QUESTION. WITH RESPECT , WE THINK THIS IS A SINGLE , LIMITED PROPOSAL. WE THINK THE SUMMARY IS CLEAR TO THE VOTERS , AND WE REQUEST , AGAIN , THAT YOU ALLOW THIS AMENDMENT T O APPEAR ON THE BALLOT . THANK .

CHIEF JUSTICE: THANK YOU. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME I S STEPHEN GRIMES , REPRESENTING THE FLORIDA MEDICAL ASSOCIATION , IN OPPOSITION TO THE AMENDMENT .

LET ME ASK YOU INTHING JUSTICE WELLS 'S PREVIOUS QUESTIONS ON THE EXAMPLE ABOUT THE 1960 , '61 , '62 MEDICAL MALL PRACTICE , AND GENA -- MALPRACTICE, AND GENERALLY I THINK WHAT JUSTICE WELLS WAS ASKING, ARE THERE CONSTITUTIONAL PRACTICES TO APPLY TO AN AMENDMENT LIKE THIS, WITH REGARD TO FINDINGS THAT OCCURRED BEFORE THE AMENDMENT WAS ENACTED , AND MY QUESTION IS , IS THAT SOMETHING THAT WE NEED TO DETERMINE NOW , IN DETERMINING WHETHER THIS IS A SINGLE SUBJECT VIOLATION , OR IS IT SOMETHING THAT WOULD COME UP IN A PARTICULAR CASE , WHEN WE LOOK AT THE AMENDMENT AS APPLIED TO THAT SITUATION AND DETERMINE IT IN THE CIRCUMSTANCES OF THAT CASE, WHETHER THERE WAS AN U.S. CONSTITUTIONAL VIOLATION?

I WOULD HAVE TO ANSWER IT THIS WAY . NORMALLY , IN THIS TYPE PROCEEDING, YOU DON'T ADDRESS CONSTITUTIONAL ISSUES SUCH AS YOU HAVE ANNOUNCED . UNLESS IT IS , APPEARS THAT, ON IE S ITS FACE , IT HAS A HE HAVE -- THAT , ON ITS FACE , IT HAS AN EFFECT, A SERIOUS EFFECT ON ANOTHER CONSTITUTIONAL PROVISION, AND YOU DON'T POINT THAT OUT.IN OTHER WORDS THERE , HIS CASE LAW THAT SAYS THAT , I F IT SUBSTANTIALLY HAS AN EFFECT ON OTHER ARTICLES IN THE FLORIDA CONSTITUTION , FOR EXAMPLE , LIKE DUE PROCESS OR SOMETHING LIKE THAT, AND YOU DON'T POINT THAT OUT, THEN THAT IS A SUBJECT OF THIS PROCEEDING , BUT ORDINARILY WHAT YOU SAY, I THINK, WOULD COME UP IN A SUBSEQUENT CASE.

BUT THIS AMENDMENT , OFCOURSE , COULDN'T SUPERSEDE THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

NO , IT COULDN'T.

SO A S T O , YOUR ARGUMENT IS IT COULD AFFECT THE DUE PROCESS CLAUSE --

IT CAN'T AFFECT THE FEDERAL CONSTITUTION.

IT CAN'T AFFECT THE FEDERAL CONSTITUTION .

THAT'S TRUE. OUR ARGUMENT MORE, HERE , I S AS IT RELATES TO THE LINE OF QUESTIONING OF JUSTICE WELLS , IS THAT YOBLT AVERAGE VOTER WOULD UNDERSTAND, BY LOOKINGAT THAT SUMMARY , IN THE EXAMPLE THAT JUSTICE WELLS SAID IN THE THREE EARLY INCIDENTS OR THREE EARLY FINDINGS OF MALPRACTICE, NOT SETTLEMENTS BUT THE FINDINGS OF MALPRACTICE , VERY SMALLTYPE THING , THAT A LOT OF DOCTORS ARE SHORTLY GOING TO BE REMOVED FROM THE PRACTICE OF MEDICINE , IMMEDIATELY UPON THE PASSAGE O F THIS AMENDMENT , ONCE THE AGENCY FIGURES OUT THAT , SOMETIME BACK I N THEIR HISTORY , THAT THEY HAD THREE FINDINGS, EITHER BY A COURT OR BY MORE SIGNIFICANTLY , BY THIS AGENCY, AND THE VOTER DOESN'T KNOW.THAT THAT I S --

BUT IT MAY NOT, IT MAYNOT , THE REPRESENTATION IS IT ACTUALLY DOESN'T DO THAT, THAT ALTHOUGH IT REMOVES DISCRETION FROM THE LICENSING AERKTS THE MEDICAL MALPRACTICE IS DEFINED AS THE LEVEL OF CARE , SKILL ANDTREATMENT , RECOGNIZED I N GENERAL LAW, SO THAT IT WOULD HAVE TO RELATE T O AN OBJECTIVE STANDARD , SO A 30-YEAR-OLD JUDGMENT MIGHT NOT EVER FIT INTO THAT. SORT OF LIKE WHAT WE HAVE TO DO IN DEATH PENALTY CASES , WHETHER WE FIGURE SOMETHINGIS A PRIOR VIOLENT FELONY , WHETHER IT FITS INTO A CERTAIN, YOU KNOW --

DOES , I SUBMIT, THOUGH, THE AMENDMENT DOESN'T SAY THAT YOU APPLY TODAY'S STANDARDS TO 30-YEAR-OLDFINDINGS OF MALPRACTICE .

BUT YOU ARE SAYING THAT THE VOTER MIGHT NOT KNOW THAT IT IS GOING TO LET SOME DOCTOR WHO REALLY ONLY HAD YOU KNOW , INCIDENTS , MINOR INCIDENTS 40 YEARS AGO , NOT BELIES ENSED, AND I AM SAYING , BUT THE AMENDMENT PROBABLY DOESN'T HAVE THAT EFFECT BECAUSE OF TWO REASONS , ONETHE U.S. CONSTITUTION AND THE OTHER THE DEFINITION O F MEDICAL MALPRACTICE .

BUT IF THEY WERE INCIDENTS OF MALPRACTICE, IF THEY WERE MALPRACTICE , IT MIGHT HAVE BEEN A HANG NAIL THAT WAS NOT PROPERLY TREATED OR SOMETHING , BUT IF IT WAS MALPRACTICE , IF THERE ARE THREE OF THOSE IN THE PAST , N O MATTER HOW FAR AND WHETHER THA T DOCTOR IS NO LONGER DOING SURGERY OR WHATEVER , MY POINT IS , THE VOTER COULD NOT CONCEIVE OF THE FACT THAT MAYBE HIS FAMILY DOCTOR IS GOING TO GET DISENFRANCHISED.

WHY NOT , I F HE PAYS CLOSE ATTENTION HERE TO THE SUMMARY AND THAT I S PLAINLYWHAT THE SUMMARY PROVIDES , ISN'T THAT JUST A MATTER OF YOU KNOW, REALLY, SAYING,WELL , WHAT ARE THE DETAILS OF THIS , AND THAT THERE ARE YOU KNOW , RAMIFICATIONS , AND THAT I S JUST LIKE WE ARE TALKING NOW, THAT WE GET WE GET SOMETHING LIKE THIS -- THAT WE GET SOMETHING LIKE THIS INITIALLY AND WE LOOK AT IT AND ALL OF OUR MINDS START GOING TO WORK AND YOU HEAR HYPOTHETICALS FROM US AND THAT KIND OF THING , BUTTHE PLAIN LANGUAGE HERE , AGAIN , WHERE IS THERE SOMETHING IN THE BODY OF THE AMENDMENT , THAT ISN'T REFLECTED IN THE SUMMARY , INSOFAR AS THIS MISLEADING ARGUMENT?

IT DOESN'T DEFINE INCIDENTS , FOR EXAMPLE , AND AS JUSTICE WELLS POINTED OUT , YOU COULD HAVE SEVERAL INCIDENTS IN ONE OPERATION , AND --

BUT , AGAIN, AREN'T YOU ALWAYS GOING TO HAVE AMBIGUITY LIKE THAT, THAT SOMEBODY EVENTUALLY , COURTS , NORMALLY , O R REGULATING COURT BODIES , ARE GOING TO HAVE TO DEAL WITH?

IT IS AGREED , THE LINE OF QUESTIONING IN THIS LAST CASE WAS, WELL , IF IT SIMPLY TRACKS

THE WORDING OF THE AMENDMENT, THEN , HOW COULDIT BE EVEN IF IT IS AMBIGUOUS , IT WOULD NOT BE VIOLATIVE OF ANYTHING , SO ACTUALLY IN THE CASE OF THE PROPERTY RIGHTS AMENDMENT, THIS COURT HELD THAT THERE WAS SOME COMMON WORDS USED IN THE AMENDMENT AND THEY WERE JUST TRACKED INTO THE SUMMARY, AND THE COURT SAID THOSE WERE AMBIGUOUS AND HELD THAT THE VOTER SIMPLY COULDN'T UNDERSTAND IT. THAT IS AT 699 SO.2D , S O THERE ARE CASES, I BELIEVE THERE ARE OTHER CASES THAT HAVE HELD THE SAME THING, SO IT IS A MATTER OF DEGREE , JUSTICE ANSTEAD. IT, WELL , YOU LOOK AT IT , THE ONLY THING I COULD SAYIS YOU LOOK AT IT , AND IF IT IS SOMETHING THAT A REASONABLE VOTER COULD FIGURE OUT WITH A LITTLE STUDY , THEN IT IS NOT APROBLEM.

BUT WHY WOULDN'T THIS JUST BE APPROVED BY THE AVERAGE VOTER AS THREE IS ENOUGH! IF I AM GOING TO A DOCTOR , AND I REALLY KNEW THAT HE HAD HAD THREE FINDINGS OF MALPRACTICE , I THINK I WOULD TRY TO FIND ANOTHER DOCTOR HERE, AND MAYBE THAT DOCTOR SHOULDN'T BE LICENSED I N FLORIDA, THAT THAT IS A PRETTY HIGH STANDARD , BUT THAT , ISN'T THAT PRETTY STRAIGHTFORWARD?

WELL , EXCEPT THAT FOUNDTO HAVE COMMITTED IS NOT DEFINED , AND THE VOTER WOULDN'T UNDERSTAND THATTHAT COULD BE , YOU COULD BE FOUND IN A CIVIL JUDGMENT O F MALPRACTICE , AND THEN THE AGENCY, THE REVIEWING AGENCY , ANY TIME THERE IS A CIVIL JUDGMENT OF MALPRACTICE , I UNDERSTAND THE AGENCY WILL END UP HAVING SOME SORT OF REVIEW OF THAT , SO YOU GET ANOTHER FINDING OF MALPRACTICE FOR THE SAME INCIDENT, THAT ONE OF THE PROBLEMS HERE , THEY HAD, THEY HAD SOMETHING LIKE 35 WORDS LEFT THAT THEY COULD HAVE DEFINED THE INCIDENTS. FOR EXAMPLE, SO YOU WOULD UNDERSTAND WHETHER THEY WERE MORE THAN ONE AND SO ON. THEY ALSO HAD --

THEY USE UP THE WHOLE -- THEY DIDN'T USE UP THE WHOLE 75.

THEY HAD A LOT OF ROOMFOR MORE , TO CLARIFY SUCH THAT I WOULDN'T BE IN A POSITION TO MAKE THESE ARGUMENTS THAT I AM MAKING TODAY.

COULD THE SUMMARY ACTUALLY DEFINE SOMETHING THAT IS ACTUALLY NOT DEFINED IN THE AMENDMENT ITSELF?

IT --

THE AMENDMENT ITSELF , DOES NOT DEFINE INCIDENT, DOES IT?

BUT I F INCIDENTS I S SUBJECT TO MORE THAN ONE INTERPRETATION, AMBIGUITIES , AND AS WE HAVE TRIED TO EXPLAIN IN THE BRIEF , INCIDENT THAT IT COULD BE THREE DIFFERENT TYPES OF NEGLIGENCE , IN THE SINGLE TREATMENT , WHICH MIGHT CONSTITUTE THREE INCIDENTS IN ONE WHOLE TREATMENT.

SO YOU ARE SAYING THAT THE BALLOT SUMMARY .

YES .

-- ACTUALLY DO, THIS EVEN THOUGH THE AMENDMENT , ITSELF, DOES NOT , DOES NOT DEFINE WHAT THESE INCIDENTS ARE.

YES. THAT THE , JUST USING THE TERM "INCIDENTS " AND THEN TRACKING IT IN THE SUMMARY, INCIDENTS IS SUBJECT, IN THE CONTEXT OF THIS AMENDMENT , INCIDENTS IS AMBIGUOUS IN ITSELF.

BUT THAT IS AN AMBIGUITY THAT APPEARS IN THE AMENDMENT, ITSELF .

THAT'S RIGHT .

BUT AS WE DISCUSSED IN THE EARLIER CASE , ORDINARILY THERE ARE GOING TO BE THINGS LIKE THAT , THAT HAVE TO BE INTERPRETED.IT IS NOT A GAP BETWEEN SUMMARY AND THE AMENDMENT , RIGHT?

YES.

IT IS THE SAME.

BUT THIS COURT HAS HELD , I KNOW , FOR SURE , I N THE PROPERTY RIGHTS AMENDMENT , THAT A N AMBIGUOUS TERM THAT COULD BE CONSTRUED A.M. BIGSLY IN THE AMENDMENT , WHICH WAS PUT RIGHT INTO THE SUMMARY, THE SAME WORD , ANDTHAT WAS HELD TO BE TOO AMBIGUOUS FOR THE VOTERS T O UNDERSTAND, AND THE SUMMARY WAS STRICKEN FOR THAT REASON. I BELIEVE THERE ARE OTHER CASES THAT HAVE HELD THESAME THING, BUT THAT I S AT 699 SO.2D .

CAN YOU ADDRESS , BEFORE YOU SIT DOWN , YOUR ARGUMENT THAT THE SUMMARY IS MISLEADING AS TO HOW I T CHARACTERIZES THE CURRENTLAW ON REMOVING PHYSICIANS ?

YES, SIR. IT , I T IS A HALF TRUTH. IT SAYS , IT IMPLIES THAT THE LAW CURRENTLY AUTHORIZES DOCTORS WHO HAVE THREE INCIDENTS OF MALPRACTICE , TO GO ON PRACTICING . IT IMPLIES THAT THIS IS WHAT THE LAW EVEN FAVORS. NOW , IT I S TRUE IT PERMITS IT , THE LAW PERMITS IT, BECAUSE YOU HAVE A SITUATION WHERE THE MEDICAL BOARD COULD LOOK , IN THEIR DISCRETION AND DECIDE WHETHER OR NOT IT WAS SERIOUS ENOUGH, BUT THE WAY IT I S WRITTEN , IT IMPLIES THAT TUFINGT TO DO THIS , INORD ARER -- THAT YOU HAVEGOT TO DO THIS, IN ORDER TOTAKE AWAY WHAT THE LAW IS REALLY SANCTION IN G AND PROVIDING.

BUT IT APPEARS THAT THE SUMMARY USES THE WORD "ALLOWS . CURRENT LAW ALLOWS MEDICALDOCTORS WHO HAVE COMMITTED REPEATED REPEATED MALPRACTICE TO BELIESENSED. I AM HAVING DIFFICULTY WITH AND HIM STRUGGLING WITH HOW THE WORD "ALLOWS" TELL THE PUBLIC THAT SOMETHING IS MANDATORY OR IN THOSE TERMS , MR . GRIMES.

WELL , YOUR HONOR , WE SUBMIT THAT WE BELIEVE THAT THE WAY IT IS WRITTEN, IT IMPLIES THAT THIS , THAT WE THINK IT IS ALL RIGHT , IN EFFECT. IT IS A HALF TRUTH. I AGO GEE THAT IT IS NOT TOTALLY WRONG , AND IT IS JUST A MATTER OF HOW WE THINK THE VOTER WOULD APPROVE IT.

HOW WOULD THE QUESTIONINGTHAT HAS BEEN PRESENTED, THAT GOES BACK TO EVENTS THAT MAY HAVE OCCURRED IN THE PAST AND HOW THIS MAY OR MAY NOT BE A DRACONIAN TYPE PROVISION , WHY ISN'T THAT MORE IN THE NATURE OF A MERITS ARGUMENT , AS TO THE , WHETHER THIS SHOULD BE PASSED OR NOT , AS OPPOSED TO A QUESTION OF THE SUMMARY AND THE CLARITY OF THAT SUMMARY , BECAUSE IT SEEMS TOME THAT IS WHAT IT IS SAYING , AND THAT MAY NOT BE A GOOD IDEA, BUT I T CERTAINLY DOESN'T IMPACT THE ISSUE , WITH REGARD TO WHETHER IT IS , THERE IS A CLARITY THAT IS HERE.

WELL , I THINK THAT IT GOES BACK TO WHETHER OR NOT THE VOTERS WOULD APPRECIATE IT, AND WE SUBMIT THAT IT , THE VOTER WOULD NOT BE ON NOTICE THAT IT COULD HAVE THAT DRACONIAN EFFECT.THAT IS OUR POSITION . WE WANT T O MAKE ONE OTHER ARGUMENT IN THE TIME THAT I HAVE , AND THAT IS THAT WE DON'T ASSERT THAT IT I S LOG ROLLING, BUT IN THE SINGLE SUBJECT ARGUMENT, THIS COURT HAS , ENLARGED THAT TO THE SECOND PRONG OF THE SINGLE SUBJECT, WHETHER IT SUBSTANTIALLY AFFECTS MORE THAN ONE BRANCH OF GOVERNMENT, AND THERE IS A WHOLE LINE OF AUTHORITY O N THAT. THEY TACITLY ALMOST HERE AT ORAL ARGUMENT , ADMITTED THAT IT REMOVES THE DISCRETION OF THE AGENCY TO HAVE ANYTHING TO DO WITH , IT IS "THREE STRIKES" AND YOU ARE OUT. THAT IS WHAT THE AMENDMENT SAYS. AND WE SUBMIT IT ALSO AFFECTS , SUBSTANTIALLY AFFECTS THE JUDICIAL

BRANCH , BECAUSE WHAT THEY HAVE DONE WHEN THEY DEFINED MALPRACTICE , THEY TIED IT INTO THE STANDARD OF LICENSING CARE , WHICH A LITTLE BIT MORE THAN THE DEFINITION OF MALPRACTICE IN THE CIVIL LAW, WHICH IS CARE LESS THAN IN THE LOCALITY , AND WHAT , THE EFFECT OF THAT IS THAT, IN ORDER TO HAVE, BY THE VIRTUE OF FINDING OF MALPRACTICE , IF YOU HAVE A CIVIL FINDING OF MALPRACTICE , A TORT FINDING , THAT MAY STILL NOT APPLY. THEY HAVE EITHER REDUCED , BY THE DEFINITION O F MALPRACTICE , HAS GOT A LICENSING STANDARD.IN ORDER TO REMOVE SOMEBODY'S LICENSE , YOU HAVE THE BURDEN OF PROOF THERE , IS CLEAR AND CONVINCING , AND IN THE CIVIL LAW , IT I S PREPONDERANCE OF THE EVIDENCE , SO ONE WAY OR THE OTHER , YOU ARE AFFECTING THE BURDEN OF PROOF IN THESE CASES, AND THE BURDEN OF PROOF IS SOMETHING THAT IS STRICTLY A JUDICIAL FUNCTION , AND THE JUDICIAL FUNCTION IS TO ESTABLISH BURDENS OF PROOF , AND SO THIS ALTERNATE ARRESTS THE FUNCTION OF THE JUDICIAL BRANCH , BY AFFECTING THE BURDEN OF PROOF.I DON'T HAVE TIME TO GO INTO THIS I N MORE DETAIL. WE DID IT --

MIGHT NOT THAT ALSO BE A MERITS ARGUMENT , WHICH IS THAT IF THE TWO DON'T ACTUALLY MEASURE, WHICH IS WHAT THIS , WHAT THE PHRASE "MEDICAL MALPRACTICE " MEANS FOR THIS AMENDMENT , VERSUSWHAT THE JUDGMENT OF MALPRACTICE MEANS IN A COURT OF LAW , THEN MAYBE THAT WON'T QUALIFY AS BEING ONE OF THE INCIDENTS. I MEAN --

WELL , EITHER WAY, THOUGH, THE COURT , IT IS SETTING FORTH PROBLEM THAT BURDENS OF PROOF, THE COURT IS GOING TO HAVE TO CHANGE ITS RULING ON BURDEN OF PROOF SOME WAY , IN ORDER TO ACCOMMODATETHAT?

BUT DO WE KNOW THAT? IS THAT REALLY THE KIND OF , WHEN W E TALKED ABOUT AFFECTING MULTIPLE BRANCHES OF GOVERNMENT , WEREN'T WE REALLY TALKING ABOUT THINGTHAT IS WOULD HAVE DRAMATIC EFFECTS ON THE WAY THAT SEVERAL BRANCHES OF GOVERNMENT OPERATE? NOT , AGAIN, THIS IDEA THAT THERE MAY BE SOME IMPACT , INTERMS OF INTERPRETING THIS , THE AMENDMENT DOWN THE ROAD OR --

WELL , IT IS A MATTER OF DEGREE. WE SUBMIT BURDENS OF PROOF IN THE JUDICIAL RANGE , IS PRETTY IMPORTANT. MY TIME IS UP .

CHIEF JUSTICE: THANK YOU .

MAY IT PLEASE THE COURT , AGAIN , MY NAME IS HALL MARDENBOROUGH AGE HERE ON BEHALF OF THE FLORIDA DENTAL ASSOCIATION.YOUR HONORS , I WOULD LIKE TO START OFF WITH IN THE ANSWER BRIEF, IT APPEARS THAT THE PROPONENTS HAVE ACKNOWLEDGED THAT THIS A MENDMENTSHOULDN'T APPLY T O DENTISTS BY ITS LANGUAGE, SO I AM NOT GOING TO ARGUE ABOUT THAT AMBIGUITY.I WOULD LIKE , HOWEVER, SINCEWE HAVE FILED A BRIEF AND ITHINK THIS IS AN IMPORTANT ISSUE FOR THE COURT TO CONSIDER, FOLLOW-UP ON THE LAST ARGUMENT THAT WASPRESENTED TO THIS COURT. JUSTICE PARIENTE, I THINKTHAT THIS I S ABSOLUTELY AN ISSUE THAT THE COURT HAS TO ADDRESS NOW.IT IS NOT JUST A MERITS ISSUE. WE ARE TALKING ABOUT A CONSTITUTIONAL AMENDMENTTHAT THE IMPACT OF WHICH IS TO EFFECTIVELY OVERRULE THIS COURT 'S CAREFUL CONSIDERATION AS TO WHAT THESTANDARD OF PROOF NOT NECESSARILY THE BURDEN OF PROOF BUT THE STANDARD OF PROOF MUST BE, WHEN YOU ARETAKING AWAY A PROFESSIONAL LICENSE. THAT IS NOT SOMETHING THIS COURT DID LIGHTLY. WE CITED IN OUR BRIEF TO THE FERRIS VERSUS TURLINGTON CASES , WHERE THIS COURT MADE IT VERY CLEAR THAT THERE IS A VERY IMPORTANT , PRESUMABLY CONSTITUTIONALLY PROTECTED PROPERTY INTEREST I N A PROFESSIONAL LICENSE, AND THIS COURT HELD THAT , WHEN AN AGENCY I S GOING TO TAKE AWAY A LIESFERENCE SOMEBODY , IT HAS NO CHOICE BUT TO APPLY A CLEAR AND CONVINCING STANDARD OF PROOF. THE AMENDMENT IN THIS CASE WILL OVERRULE THAT , BECAUSE IT BASICALLY TELLS THEAGENCY THAT , IF THERE IS A FINDING BY A TRIAL COURT OR BY A JURY , WHICH EVERYBODY KNOWS IS GOING TO BE ON A PREPONDERANCE OF EVIDENCE STANDARD, THE AGENCY HAS NO DISCRETION

BUT TO CONSIDER THAT AS A FINDING OF MALPRACTICE AND TO CONSIDER THAT AS ONE OF THE STRIKESTHAT GOES TOWARDS TAKING AWAY A PHYSICIAN'S LICENSE. WHAT THAT RESULTS IN IS THAT A PHYSICIAN CAN BE FOUND NEGLIGENT BY THREE JURIES .

THE QUESTION I S WHETHER IT SUBSTANTIALLY ALTERNATE ARRESTS MULTIPLE FUNCTIONS OF THE BRANCHES OF GOVERNMENT. EVERYDAY, WHEN THE LEGISLATURE IS IN SESSION , THERE ARE LAWS THAT THEY PASS THAT AFFECT DECISIONSOF THIS COURT , CHANGE STANDARDS OF REVIEW , CHANGE DEFINITIONS , THAT IS NOT A DEFINITION, THAT IS NOT WHAT IS MEANT BY A SINGLE SUBJECT VIOLATION, IS IT? I MEAN THAT SUBSTANTIALLY ALTERNATE ARRESTS THE FUNCTIONING OF A BRANCH OF GOVERNMENT? THE JUDICIAL BRANCH, BY TAKING, SAYING THAT A STANDARD OF REVIEW IS GOINGTO BE CHANGED OR A DEFINITION, HOW DOES THAT ALTAR THE WAY THE JUDICIAL BRANCH OPERATES?

WELL , YOUR HONOR, THIS COURT STRUCK A PROPOSED AMENDMENT ON TORT REFORM, BECAUSE IT WAS GOING TO DEAL WITH CERTAIN LEGISLATIVE IMPACTS OF TORT REFORM AND BECAUSE IT WAS GOING TO CHANGE THE DEFINITION OR THE STANDARD OF THE SUMMARY JUDGMENT RULE. AND THIS COURT HELD THAT A CONSTITUTIONAL AMENDMENT THAT CHANGES THE STANDARD O N A SUMMARY JUDGMENT RULE , WAS A SIGNIFICANT ENOUGH IMPACT ON THE JUDICIAL BRANCH, TO CONSTITUTE THAT ADDITIONAL GOVERNMENTAL IMPACT , WARRANTING THE STRIKING DOWN OF AN AMENDMENT.

BUT ISN'T THAT A DIFFERENT , WHEN WE ARE TALKING ABOUT THE AUTHORITYOF THE COURT TO ENACT ITS OWN RULES AND WHICH THIS IS PART OF THE FUNDAMENTAL DIFFERENCE BETWEEN BRANCHES OF GOVERNMENT , AND IN AN ISSUE LIKE THIS , FOR INSTANCE, WOULD YOU ARGUETHAT THE LEGISLATURE COULDN'T ADD TO THE REGULATORY SCHEME THAT THE ADMINISTRATIVE BODY CHARGED WITH DISCIPLINING DOCTORS ARE COMPELLED , NOW , I F THERE WERE CIVIL JUDGMENTS , IMPOSED AGAINST DOCTORS , I N THREE SUCCESSIVE MALPRACTICE CASES , THAT THAT WOULD AUTOMATICALLY , THE ADMINISTRATIVE AGENCY WOULD HAVE NO CHOICE BUT T O SUSPEND THE LICENSE O F THOSE PHYSICIANS , IN OTHER WORDSTHAT THEY WOULD JUST ADD THAT TO THEIR STATUTORY SCHEME FOR DISCIPLINE, FOR PHYSICIANS?

I SEE MY TIME IS BASICALLY UP.DO YOU WANT ME TO ANSWER THAT ONE? YOUR HONOR , I SUGGEST THAT , IF THE LEGISLATURE WERE TO DO THAT , THIS COURT WOULD B E BOUND TO STRIKE THAT DOWN FOR TWO REASONS. ONE IS WHEN THIS COURT ADOPTED OR REAFFIRMED THE CLEAR AND CONVINCING EVIDENCE STANDARD IN THE FERRIS CASE , IT WAS ADDRESS ING 100 YEARS OF JURISPRUDENCE , RECOGNIZING ESSENTIALLY BASICALLY IT IS A DUE PROCESS ISSUE. THIS ISN'T JUST A JUDICIAL LY THROWN TOGETHER STANDARD OF PROOF.IT IS A RECOGNITION THAT , UNDER THE FLORIDA AND UNITED STATES CONSTITUTIONS , THEREIS A PROPERTY INTEREST IN A PROFESSIONAL LICENSE , AND IT REQUIRED THAT THERE BE TWO DIFFERENT THINGS. ONE , CLEAR AND CONVINCING EVIDENCE, AND , TWO , OF SUBSTANTIAL CAUSES JUSTIFYING THE FORFEITURE OF THE LICENSE. I SUGGEST, EVEN IF THE LEGISLATURE ATTEMPTED T O DO THIS, IF THE LEGISLATURE DID NOT LEAVE DISCRETION FOR THE AGENCY TO DETERMINE WHETHEROR NOT THERE WERE SUBSTANTIAL CAUSES, THIS COURT WOULD HAVE TO DECLARETHAT RULE, THAT NEW STATUTETO B E UNCONSTITUTIONAL AND THEREFORE --.

UNDER THE FEDERAL CONSTITUTION.

ANT US CONSTITUTION AND THE FLORIDA CONSTITUTION UNDER ARTICLE I SECTION 9 , WHICH ALSO HAS DUE PROCESS.

ISN'T THAT A -- IT SAYS THAT THE FLORIDA PEOPLE HAVETO BE TOLD. THEY ARE NOT TOLD IN THIS CASE.

THANK YOU. AGAIN , WE HAVE USED YOUR TIME. COUNSEL. WOULD YOU ADDRESS THE LAST

ARGUMENT THAT WAS MADE.

YES, YOUR HONOR. I FEEL COMPELLED TO. FLORIDIANS FOR PATIENT PROTECTION MAINTAIN THERE IS NO EFFECT ON JUDICIAL FUNCTIONS. THE COURTS WILL OPERATE AS THEY ALWAYS HAVE , UNDER THE STANDARD OF CARE THAT THE LEGISLATURE SETS, WHICH DEFINES MALPRACTICE , SO FIRST OF ALL HAD, THERE IS NO IMPACT THERE.THERE IS NO JUDICIAL FUNCTION THAT IS IMPACTED BY THIS . SEPARATELY , THERE I S ALSO NO IMPACT ON THE QUANTUM OF PROOF THAT I S REQUIRED IN THE AGENCY REVIEW PROCESS. THE DIVISION OF MEDICAL QUALITY ASSURANCE WILL STILL BE FORCED TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE , THAT THERE ARE THREE FINDINGS , WHICH MEET THE CONSTITUTIONAL STANDARD . THIS IS MEDICAL EVIDENCE.

DOES IT HAVE TO DO WITH THE FACT THAT , WHETHER THEPERSON CAN CONTINUE TO KEEP THEIR LICENSE ON THE BASIS OF WHETHER THE EVIDENCE OF THEIR MALPRACTICE HAS BEEN PROVEN BY CLEAR AND CONVINCING OR BY A PREPONDERANCE OF THEEVIDENCE, SINCE YOU CAN HAVE YOUR LICENSE STRIPPED , IF YOU HAVE THREE JUDGMENTS , CORRECT?

THAT'S RIGHT, YOUR HONOR .

OR THREE COUNTS IN ONE JUDGMENT.

THREE FINDINGS . THREE , THAT RELATE TO THREE INCIDENTS .

COULDN'T THAT HAPPEN NOW? I MEAN, UNDER THE WAY THE STATUTE IS WRITTEN NOW , IT SAYS YOU COULD , MAY REVOKE FOR THREE INCIDENTS . ISN'T THAT TRUE?

THAT IS CORRECT. THIS IS A RESPONSE T O CURRENT LAW , WHICH SAYS THE AGENCY MAY REVOKE IN THESE CIRCUMSTANCES. THEY DO NOT DO SO .

CAN YOU DO IT SOLELY ON A YARD OR DO THEY HAVE T O DO IT ON T HE -- ON A BEYOND AREASONABLE DOUBT OR DO THEYHAVE TO D O A CLEAR AND CONVINCING EVIDENCE , UNDER THE AGENTS BUSINESS?

IN THE AGENCY REVIEW PROCESS CURRENTLY , UNDERCLEAR AND CONVINCING. THIS IS NOT AGENCY WRITING , AS YOU NOTED SIR. IT IS MUCH MORE EQUIVALENT TO STOP RELEASE OF PRISONERS TWO , WHICH SAID THAT 85 PERCENT OF A SENTENCE APPLIED IN NO WEISS TO THE JUDICIARY , WHEN THEY WERE FINDING GUILT AND IMPOSING A SENTENCE BUT APPLIED ABSOLUTELY TO THE EXECUTIVE BRANCH, WHICH WAS REQUIRED TO CARRY OUT THE CONSTITUTIONAL MANDATE. THIS , ALSO , DOES THAT, AND LIKEWISE, I NEED T O RESPONDTO THE POINT ABOUT WHETHER THIS STATE'S CURRENT LAW, AND ESPECIALLY THE POINT ABOUT THIS PERHAPS BEING A HALF TRUTH, THE STATEMENT ABOUT CURRENT LAW IS REQUIRED IN THE SUMMARY , NEEDS TO BE ACCURATE, AND IT IS REQUIRED TO BE NOT MISLEADING. AS THEY ADMIT , CURRENT LAW ALLOWS THE DEPARTMENT TO LET THESE DOCTORS CONTINUE PRACTICING. IT I S ACCURATE.IT IS FACTUALLY TRUE. IT IS ALSO TRUE IN THE VAST OVERWHELMING MAJORITY OF CIRCUMSTANCES , AS A PRACTICAL MATTER . THESE DOCTORS , WITH TWO OR MORE, THREE O R MORE FINDINGS , DO PRACTICE. THEY ARE ALLOWED TO PRACTICE. THE SUMMARY IS ACCURATE. IT WILL BE PERCEIVED AND WELL UNDERSTOOD BY THE PEOPLE IN THAT REGARD. AND APPLIED. IF THERE ARE N O FURTHERQUESTIONS , YOUR HONOR , I THINK WE WILL REST.WE WOULD RESPECTFULLY REQUEST THAT YOU WOULD CONSIDER THAT THIS IS A SINGLE , LIMITED INITIATIVE , WORKING ONE FUNCTION , AND THE SUMMARY AND TITLE ACCURATELY DESCRIBE ITS CHIEF PURPOSE TO THE VOTERS. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. THANK YOU ALL , VERY MUCH. THE COURT IS GOING TO TAKE ITS MORNING RECESS AT THIS TIME , BEFORE HEARING THE LAST CASE, SO WE WILL BE IN RECESS FOR 15 MINUTES.

MARSHAL: PLEASE RISE.