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## **Advisory Opinion to the Attorney General: Florida Minimum Wage Amendment**

THE LAST MATTER ON THE COURT'S DOCKET THIS MORNING , IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL I N RE THE FLORIDA MINIMUM WAGE AMENDMENT. COUNSEL , YOU MIGHT JUST TAKE A MINUTE AND LET THEM GET SEATED. ,,

THANK YOU. LOUIS HUBENER WITH THE ATTORNEY GENERALS OFFICE. THIS IS THE LAST ONE ON THE AGENDA . IT IS A REQUEST FOR AN ADVISORY OPINION , AND ARGUING IN FAVOR OF IT I S FAITH GAY AND IN OPPOSITION , WILL BE WARREN HUSBAND. THANK YOU . -- WARREN HUSBAND. THANK YOU .

GOOD MORNING. MAY IT PLEASE THE COURT, YOUR HONORS. FAITH GAY ON BEHALF OF THE PROPONENTS. A SINGLE BRIEF WAS FILED IN OPPOSITION AND RAISES FIVE POINTS. NONE OF THOSE POINTS COME CLOSE TO CLEARLY AND CONCLUSIVELY MAKING THIS AMENDMENT DEFECTIVE. LET ME DEAL WITH THE BROADEST ONE FIRST, WHICH IS THERE IS A SINGLE SUBJECT PROBLEM HERE. THIS DOESN'T EVEN MERIT MORE THAN A MINUTE'S WORTH OF DISCUSSION. THE AMEND HAS A SINGLE SUBJECT -- THE AMENDMENT HAS A SINGLE SUBJECT, WHICH IS ESTABLISHING A MINIMUM WAGE AMENDMENT AT "X" DOLLAR THAT IS INDEX TO INFLATION. THE OPPONENTS' ARGUMENT SEEMS TO BE SIMPLY THAT BECAUSE THERE IS BOTH AN ESTABLISHMENT OF A MINIMUM WAGE AMENDMENT AT "X" DOLLAR PLUS INFLATIONARY INDEXING THAT , THIS IS SOMEHOW A MULTIPLE SUBJECT. THIS COURT HAS, IN THE PAST, APPROVED BACK IN 1988 , IN A LIMITATION TO ECONOMIC DAMAGES , THE SAME KIND OF THING WHERE THERE WAS A CAP ON PUNITIVE DAMAGES THAT WAS INDEXED TO INFLATION. THERE WAS NO PROBLEM THERE WITH MULTIPLE SUBJECTS.

CAN YOU ADDRESS THE ISSUE OF WHETHER OR NOT THE AMENDMENT PROVIDES A BROADER CLASSIFICATION OF EMPLOYEES THAN DOES THE FEDERAL?

ABSOLUTELY , YOUR HONOR. WITH REGARD TO THAT , THE AMENDMENT MAKES CLEAR , BOTH IN SECTION B AND F , THAT IT LOOSE TO THE FEDERAL MINIMUM WAGE AMENDMENT AND ACTS AND ITS CFR REGULATIONS FOR GUIDANCE AS TO WHAT THE COVERAGE OF THE FLORIDA STATE MINIMUM WAGE IS. THEREFORE IF , UNDER THE FEDERAL ACT THERE IS AN EXEMPTION TO WHO IS AN EMPLOYEE OR AN EMPLOYER THAT CAN BE APPLIED FOR, THE SAME WOULD B E AVAILABLE HERE , BECAUSE , A S SECTION F SAYS , VERY EXPLICITLY IN THE AMENDMENT , IT IS INTENDED THAT THE CASE LAW , ADMINISTRATIVE INTERPRETATIONS AND OTHER GUIDING STANDARDS , DEVELOPED UNDER THE FEDERAL FLSA, SHALL GUIDE THE CONSTRUCTION OF THIS AMENDMENT. SO , AGAIN , IF YOU ARE AN EMPLOYER , UNDER THE FLORIDA MINIMUM WAGE, AND YOU THINK THERE IS A EXEMPTION THAT SHOULD APPLY HERE AND YOU SHOULDN'T HAVE TO PAY THE MINIMUM WAGE , YOU CAN LOOK TO FEDERAL LAW FOR GUIDANCE , AND THAT IS SAYING THE SAME EXEMPTION ARGUMENT I S CLEARLY AVAILABLE TO YOU IN THE STATE CONTEXT . AND , AGAIN, IT COULD NOT BE CLEARER IN SECTIONS B AND F OF THE MINIMUM WAGE AMENDMENT HERE , THAT THE IDEA AND THE CLEAR IDEA, IS TO LOOK TO FEDERAL STANDARDS AS TO DEFINITIONS AND AS TO EXEMPTIONS. ONE THING TO POINT OUT VERY SPECIFICALLY FROM THE OPPONENT S' BRIEF, IS THEY SAY, WELL THERE, IS A NARROWER DEFINITION IN THE FEDERAL FLSA STATUTE 203 , BUT WHAT THE FLORIDA AMENDMENT DOES IS SAY , LOOK TO THE ENTIRE FEDERAL STATUTE NOT JUST TO 203. YOU CAN LOOK TO THE DEFINITIONS , THE EXEMPTIONS , WHATEVER APPLIES, AND YOU CAN MAKE THOSE ARGUMENTS AS WELL . WITH REGARD TO THE REST OF THE ARGUMENTS MADE BY OPPONENTS , WHICH ALL GO TO

WHETHER THE BALLOT SUMMARY IS SOMEHOW MISLEADING --

THE SUMMARY DOESN'T SAY THAT THIS IS REALLY A \$1 INCREASE IN THE MINIMUM WAGE. NOWHERE DOES IT SAY THAT.

YOUR HONOR, IT IS NOT AN INCREASE IN THE FEDERAL MINIMUM WAGE. IT IS A STATE MINIMUM WAGE AMENDMENT.

LET'S GO STEP-BY-STEP THOUGH. IT DOESN'T SAY THAT.

NO. IT DOESN'T SAY THAT THERE IS A INCREASE AND THERE IS NO REASON TO DO IT. IT SAYS WHAT THE AMOUNT IS , AND IT SAYS IT WILL BE INDEXED TO INFLATION. IT IS NOT CHANGING OR IN ANY WAY ELSE AFFECTING A FLORIDA STATUTE .

LET'S TALK ABOUT THE INDEX TO INFLATION. IF THERE I S DEFLATION , IF THE INFLATION DECREASES , THEN IT CANNOT BE REDUCED , IS THAT CORRECT?

WELL , YOUR HONOR, WITH REGARD TO BOTH THE SUMMARY AND WITH REGARD TO THE AMENDMENT ITSELF, I T ONLY SPEAKS IN TERMS OF INFLATION, WHICH IS IN FACT AN INCREASE BY DEFINITION FROM BLACK'S LAW DICTIONARY AND EVERYWHERE ELSE.

SO INDEX TO INFLATION, IF THERE IS A FLEINGT I HAVE INFLATION -- IF THERE IS A NEGATIVE INFLATION RATE OF MINUS 2 PERCENT , VOTERS AREN'T GOING TO INFER THAT THE MINIMUM WAGE WILL BE DECREASED , BY READING THE SUMMARY?

YOUR HONOR , AGAIN , THE COMMON DEFINITION OF INFLATION MEANS INCREASE BOTH SUMMARY AND THEAMENDMENT, ITSELF .

BUT THE INFLATION INDEX , THEY CAN SPEAK IN TERMS O F NEGATIVE, CAN'T THEY? INFLATION INDEX MIGHT BE MINUS 2 PERCENT , RIGHT?

THE INFLATION INDEX SPEAKS OF INFLATION AND DEPLATION.THERE IS NO MENTION OF DEFLATION , EITHER IN THE AMENDMENT OR ITS SUMMARY.

SO IN YOUR OPINION THE AVERAGE VOTER READING THIS WOULD INFER THAT, IF THERE IS INFLATION , THEN IT WOULD BE INCREASED, BUT IF THEREIS DEFLATION, THEN IT WOULDNOT B E INCREASED. THEY CAN INFER THAT FROM THIS.

YES, YOUR HONOR , AGAIN , THERE IS NO MENTION OF DEFLATION , AND I THINK UNFORTUNATE LY ALL THE VOTERS KNOW WHAT INFLATION IS.

IF WE DISAGREE WITH THAT INTERPRETATION, THEN WEWOULD HAVE T O CONCLUDE THAT THE BALLOT SUMMARY IS MISLEADING ?

I THINK NOT, YOUR HONOR , BECAUSE AGAIN --

LET'S ASSUME THAT WE DISAGREE WITH YOUR INTERPRETATION. WHY WOULD THAT NOT BE MISLEADING?

BECAUSE WITH REGARD TO BOTH THE BALLOT SUMMARY AND THE AMENDMENT, ITSELF , THEY USE THE TERMS INFLATION, S O IN TERMS OF WHAT THE BALLOT SUMMARY HAS TO DO , IT SIMPLY HAS T O REFLECT ACCURATELY WHAT THE AMENDMENT SAYS, WHICH ONLY SPEAKS TO INFLATION NOT DEFLATION .

MY QUESTION, THOUGH , IS LET'S ASSUME FOR THE MOMENT THAT WE BELIEVE THAT INDEX TO INFLATION WOULD , AN AVERAGE VOTER WOULD READ THAT TO SAY , IF THERE IS A DECREASE IN

INFLATION, THEN IT WOULD BE , THEN THE MINIMUM WAGE WOULD BE REDUCED , S O THAT THE SUMMARY APPEARS TO SAY SOMETHING THAT THE AMENDMENT DOESN'T SAY , OR IS DIFFERENT FROM WHAT THE AMENDMENT ACTUALLY DOES. WOULD THAT , THEN , BE MISLEADING ENOUGH TO RENDER IT, NOT BE ABLE TO BE PUT ON THE BALLOT?

AND AGAIN , YOUR HONOR , TWO POINTS ON THAT , FIRST OF ALL TO GO BACK TO THE GENERAL PROPOSITION THAT HAS BEEN MADE ON THAT AND IS WELL-SETTLED , THE SUMMARY NEEDS TO INDICATE THE CHIEF PURPOSE OF THE AMENDMENT , WHICH IS SIMPLY TO CREATE A FLORIDA MINIMUM WAGE AT A CERTAIN AMOUNT , BUT MORE TO YOUR POINT , THE , BOTH THE SUMMARY AND THE AMENDMENT USE THE SAME TERMINOLOGY , AND WITH REGARD TO THE THAT , THERE -- WITH REGARD TO THAT, THERE IS SIMPLY N O DIFFERENCE BETWEEN SAYING INFLATION IN THE SUMMARY AND SAYING INFLATION IN THE AMENDMENT, ITSELF. WITH THAT I WILL RESERVE MY FINAL TIME.

CHIEF JUSTICE: FINE .

GOOD MORNING , YOUR HONOR , WARREN HUSBAND HERE REPRESENTING THE FLORIDA RESTAURANT ASSOCIATION AND FEDERAL RETAIL FEDERATION. MY PARTNER STEVE MADSEN UNFORTUNATELY COULDN'T BE HERE DUE TO TRAVEL ARRANGEMENTS, BUT HERE I WILL JUMP INTO KIND OF WHERE WE LEFT OFF WITH THE INFLATION QUESTION. AND I THINK WHAT IS TELLING IN THAT REGARD IS THAT IN FACT, THE LANGUAGE IS NOT THE SAME BETWEEN THE SUMMARY AND THE AMENDMENT TEXT , AND I WOULD ARGUE TO YOU THAT IT IS DELIBERATELY DIFFERENT. INDEXED TO INFLATION IS THE LANGUAGE USED IN THE SUMMARY. WELL, INDEX IN EVERYONE'S COMMON EXPERIENCE, INDEXES GO UP. INDEXES GO DOWN. IT CERTAINLY CONVEYS TO THE VOTER THAT THE MINIMUM WAGE COULD GO UP AS THE COST OF GOODS AND SERVICES GO UP AND COULD GO DOWN AS THE COST OF GOODS AND SERVICES GO DOWN. WHAT IS THE LANGUAGE IN THE AMENDMENT TEXT? IT SAYS IT I S INCREASED WITH INFLATION SOUGHT SPONSOR CLEARLY KNOWS HOW T O USE THE WORD INCREASED. WHY WOULDN'T THEY USE THAT IN THE SUMMARY, AND I WOULD SUGGEST THAT IT IS PERHAPS A MORE REASONABLE TERM FOR VOTERS TO BUY INTO THAT , PERHAPS SUGGESTING THAT THE MINIMUM WAGE CAN NEVER BE REDUCED , AND SO THAT IS ONE OF THE WAYS IN WHICH THE BALLOT TITLE AND SUMMARY , WE CONTEND , ARE MISLEADING. ANOTHER ISSUE THAT WAS TOUCHED ON IS THE NOTICE OF DEFINITION OF EMPLOYEE AND THE SCOPE OF WHAT THIS MINIMUM WAGE WILL ADDRESS. IF YOU GO, TO AGAIN , THE TEXT OF THE SUMMARY, ITSELF , IT SAYS QUOTE THIS AMENDMENT CREATES THE FLORIDA MINIMUM WAGE COVERING ALL EMPLOYEES IN THE STATE COVERED BY THE FEDERAL MINIMUM WAGE. OKAY. IF THAT IS TRUE , THEN WHY IN THE TEXT OF THE AMENDMENT, DID THEY NOT JUST SAY EMPLOYEE MEANS ANYONE COVERED BY THE FEDERAL MINIMUM WAGE OR ANYONE ENTITLED TO RECEIVE THE FEDERAL MINIMUM WAGE? THEY DIDN'T DO THAT , EVEN THOUGH OBVIOUSLY THAT WAS WITHIN THEIR POWER TO DO. WHAT THEY DID IN STEAD WAS SAY WE ARE GOING TO ADOPT THE MEANING AND TERMS OF THE FEDERAL MINIMUM WAGE FROM THE FAIR LABOR STANDARDS ACT. IN FACT , I N THEIR INITIAL BRIEF --

HOW DOES THAT REALLY DIFFER FROM JUST SAYING THOSE COVERED BY THE FEDERAL MINIMUM WAGE? I MEAN, WHEN YOU LOOK AT THE FLSA , YOU END UP AT THE SAME POINT , DON'T YOU? IF YOU LOOK AT ALL OF THE SECTIONS OF THAT ACT , YOU END UP WITH THE SAME PEOPLE WHO WOULD BE COVERED UNDER THAT ACT . UNDER THE FLORIDA STATUTE.

WELL , I N FACT, YOUR HONOR, YOU DON'T, AND THAT IS, THE BONE OF CONTENTION HERE , IN FACT IN THEIR INITIAL BRIEF , THE PROPONENTS , THE SPONSORS OF THE AMENDMENT , STATE THAT THE AMENDMENT EXPRESSLY DON'T, QUOTE , THE FL A S DEFINITIONS OF THE TERMS EMPLOYER, EMPLOYEE AND WAGE. WELL , THE FLSA INCLUDES REQUIREMENTS THAT GO BEYOND MINIMUM WAGE. THEY COVER MAXIMUM HOUR AND CHILD LABOR REQUIREMENTS , SO THE DEFINITION OF EMPLOYEE FOUND IN SECTION 203 OF THE FAIR LABOR STANDARDS ACT DEFINES EMPLOYEE BROADLY TO BE THE TERM ANY INDIVIDUAL EMPLOYED BY AN EMPLOYER.

AFTER THAT , DON'T THEY GO ON AND TALK ABOUT SOME EXCLUSIONS FROM THAT BROAD DEFINITION?

THAT'S RIGHT, FOR THE PURPOSES OF THE ENTIRE ACT, THEY SAY, YES , THERE ARE CERTAIN EMPLOYEES , TO WHICH THE MINIMUM WAGE , MAXIMUM HOUR AND THE CHILD LABOR REQUIREMENTS DON'T APPLY. THEY ARE NOT IN THE DEFINITION OF AN EMPLOYEE, BUT IN AN ENTIRELY SEPARATE PART OF THE ACT THEY CREATE NUMEROUS EXEMPTIONS FROM THE MINIMUM WAGE REQUIREMENT SPECIFICALLY. AND THOSE EXEMPTIONS ARE NOT INCORPORATED WITHIN THE MEANINGS THAT ARE ATTACHED IN THE DEFINITION THAT IS ACTUALLY IN THE AMENDMENT TEXT. IF THEY HAD INTENDED TO SAY WE MEAN , BY EMPLOYEE , THOSE , THE TERM EMPLOYEE WILL HAVE THE MEANING ESTABLISHED IN THE FLSA BUT ONLY TO THE LIMITED EXTENT TO WHICH IT APPLIES TO MINIMUM WAGE.

WHAT ABOUT SUBSECTION F , WHICH GOES ON AND TALKS ABOUT THE , USING OTHER PARTS OF THE STATUTE AND THE WAY THAT THOSE STATUTES HAVE BEEN INTERPRETED?

WELL , AGAIN , EVEN THERE , THEY DON'T TIE IT, THEY TIE IT TO THE FLSA GENERALLY , NOT THE FLSA TO THE LIMITED EXTENT IT APPLIES TO MINIMUM WAGE. THEY ADOPT THE ENTIRE, YOU KNOW, BODY OF LAW, AND IN FACT, IN TERMS OF THE DEFINITIONS, AS I SAY, THEY DON'T SAY THAT EMPLOYEE MEANS , WHAT THEY SAY IS THE TERM EMPLOYEE HAS THE MEANING ESTABLISHED IN THE FLSA, NOT THE FLSA ONLY TO THE EXTENT IT PER OBTAINS TO -- PERTAINS TO THE MINIMUM WAGE THAN IS WHY IT BROADER SCOPE THAN WHAT IS INTENDED OR IMPLIED OR ACTUALLY STATED IN THE BALLOT SUMMARY, ITSELF. ONE OTHER THING I WANTED TO TOUCH ON IN THE BALLOT TITLE AND SUMMARY IS THE TIPPED EMPLOYEE ISSUE , BECAUSE I THINK I NEED TO CLEARLY EXPLAIN THAT WITH AN EXAMPLE TO YOU, OBVIOUSLY OF PARTICULAR INTEREST TO THE RESTAURANT ASSOCIATION. I THINK ANYBODY LOOKING AT THE BALLOT TITLE AND SUMMARY AS THEY GO INTO THE VOTER BOOTH, IS GOING TO SAY , OKAY, WHAT I AM DOING IS SAYING IF YOU ARE MAKING \$5.15 AN HOUR NOW , BECAUSE THERE IS THE FEDERAL MINIMUM WAGE IN FLORIDA NOW AT \$5.15 AN HOUR. WHEN I GO TO VOTE FOR THIS , ANYBODY MAKING \$5.15 NOW HE IS ESSENTIALLY IS GOING -- NOW HE IS ESSENTIALLY IS GOING TO MAKE \$6.15 AFTER THIS AMENDMENT. IT DOES NOT REFLECT THE TIPPED MINIMUM WAGE AT THE PRESENT LEVEL AND LET ME EXPLAIN HOW THAT WORKS. IF THE MINIMUM WAGE IS \$5.15 AN HOUR. AS A TIPPED EMPLOYEE, I MAKE \$6 AN HOUR IN TIPS . ONLY \$2.03 OF THAT CAN BE CREDITED TOWARD THE MINIMUM WAGE, SO THE EMPLOYER HAS TO GIVE A CASH WAGE OF \$3 AN HOUR. NOW, WHEN IT GOES TO \$6.15 AN HOUR WHEN THE MINIMUM WAGE KICKS INTO \$6.15. LET'S SEE WHAT HAPPENS. EVEN THOUGH I WAS MAKING \$3.15 AN HOUR , I AM GOING TO GET A BUMP IN MY WAGE , BECAUSE ONLY \$2 AND CENTS CAN BE CREDITED TOWARD THE MINIMUM WAGE AND THE CASH HAS TO BE \$3.13 , SO I GO FROM \$3.13 AN HOUR TO 9.13 AN HOUR , HE HAVE THOBT THAT WASN'T DIS -- EVEN THOUGH THAT WASN'T DISCLOSED AND IT ONLY USES 65 OF THE 75 WORDS VOIBL VAIBL TO THE SPONSOR. A -- AVAILABLE TO THE SPONSOR.

I THOUGHT THAT TIPPED EMPLOYEES UNDER THIS AMENDMENT, WOULD BE ENTITLED TO A MINIMUM WAGE OF \$6.15 AN HOUR AND NOT THE \$2.13 UNDER THE FEDERAL STATUTE , BECAUSE THE AMENDMENT ADOPTS THE DEFINITION OF EMPLOYEE UNDER THE FLSA BUT NOT THE EXEMPTIONS FROM THE FEDERAL WAGE REQUIREMENT THAT THE FLSA ADOPTED.

I LIKE IT IF YOU LIKE IT , YOUR HONOR.

I AM NOT SAYING WHETHER I LIKE IT OR NOT. I AM SAYING THAT YOU ARGUED THAT IN YOUR BRIEF.

TIPPED EMPLOYEES ARE NOT EXEMPT FROM THE MINIMUM WAGE. THEY ARE IN FACT ENTITLED TO RECEIVE THE MINIMUM WAGE AND ARE NOT EXEMPTED UNDER SECTION 213 OF THE ACT. THERE IS RECOGNITION THAT UNDER PART OF THE ACT , A CERTAIN AMOUNT OF THE WAGE IS RECEIVED IN

TIPS , I F YOU MAKE \$30 A MONTH, ET CETERA,ET CETERA, BUT THERE IS RECOGNITION OF THE FACT THAT IF YOU ARE IN A TIPED ENVIRONMENT , THE MINIMUM WAGE IS GUARANTEED TO PROVIDE A MINIMUM SORT OF INCOME.

YOU STATED THAT THEY HAVE EIGHT WORDS LEFT IN SUMAREA. ARE YOU GOING TO TELL US HOW THEY CAN USE EIGHT WORDS IN THE COMPLICATED SCHEME THAT YOU HAVE JUST EXPLAINED TO US?

THEY COULD SAY THE FEDERAL TIP CREDIT BUT THEY DECIDED NOT TO DO THAT.

I AM TALKING ABOUT THE EIGHT WORDS THAT THEY HAVE LEFT OVER IN THE SUMMARY , TO EXPLAIN THE CONCEPT THAT YOUARE ATTEMPTING TO EXPLAIN TO US.

THE TIP CREDIT IS FROZEN AT \$2.03.

LET ME GO BACK TO THE FIRST SENTENCE OF THE SUMMARY, AND IF YOU WOULD GIVE ME ONCE AGAIN , YOUR TAKE ON WHY IT IS NOT ACCURATE , TO SAY THAT THE AMENDMENT CREATES A MINIMUM WAGE COVERING ALL EMPLOYEESIN THE STATE COVERED BY THE FEDERAL MINIMUM WAGE. WHY ISN'T IT ACCURATE?

WELL , YOUR HONOR, BECAUSE THE ACTUAL SCOPE OF THE AMENDMENT , IN TERMS OF TO WHOM THIS MINIMUM WAGE, THIS NEW FLORIDA MINIMUM WAGE IS GOING TONIGHT PLY, IS ACTUALLY BROADER THAN THE FEDERAL STANDARD .

BUT IN FACT IT INCLUDES ALL OF THE PEOPLE THAT WOULD BE COVERED BY THE FEDERAL MINIMUM WAGE, DOES IT NOT?

TO THE EXTENT THAT , YES , IF YOU ARE COVERED BY THE MINIMUM WAGE, THIS WOULD INCREASE THAT MINIMUM WAGE FOR YOU, BUT WHAT IT DOESN'T REVEAL IS THAT THERE ARE , THERE IS , THERE ARE HUGE CLASS OF EMPLOYEES THAT AREEXEMPT FROM THE MINIMUM WAGE THAT NEVER HAVE RECEIVED THE MINIMUM WAGE THAT WILL NOW RECEIVE IT UNDER THIS AMENDMENT, AND PART OF THE REASON THAT THAT IS SIGNIFICANT IS THE , HOPEFULLY I WILL GET TO THE LOG ROLLING TYPE NOTION OF THIS BEING INDEXED TO INFLATION , BECAUSE THE REALITY IS THAT, YOU KNOW , AND MAYBE I WILL SEGUE INTO THAT AS PART OF THAT QUESTION, THAT WE ARE REALLY TALKING ABOUT TWO DISTINCT QUESTIONS HERE. ONE , DO I WANT TO HAVE A \$ 1 INCREASE IN THE MINIMUM WAGE IN FLORIDA, AND ARGUABLY SOME MIGHT BELIEVE THAT IS A FAIRLY POPULAR AND SYMPATHETIC OPINION , GIVENTHAT THE MINIMUM WAGE HASN'T BEEN RAISED SINCE 1997 , BUT WHAT I WOULD SUBMIT TO YOU IS ENTIRELY DIFFERENT , TO SAY THAT WHAT WE ALSO WANT TO DO IS TIE OURSELVES TO A N AUTOMATIC INCREASE IN MINIMUM WAGE OF AN UNKNOWN PROPORTION, EVERY YEAR FROM NOW UNTIL ETERNITY , BASED ON INFLATION.IF YOU LOOK AT EVEN JUST A 5 PERCENT INFLATION RATE, A \$6.15 MINIMUM WAGE IS OVER \$7 AN HOUR IN THREE YEARS. THE IMPLICATIONS OF THAT ARE ENTIRELY DIFFERENT.

BUT WHY ISN'T THAT ARGUMENT TO BE MADE IN TELEVISION ADS THAT ARE SURELY TO FOLLOW IF THIS GOES ON THE BALLOT AND THE ARGUMENT TO THE ELECTORATE , I MEAN , THE ELECTORATE CERTAINLY CAN UNDERSTAND THE RAMIFICATIONS OF WHAT THIS IMPORTANT TENDS.

WELL , YOUR HONOR , I MEAN , I THINK THAT IS THE WHOLE GENESIS OF THE SINGLE SUBJECT. WE HAVE HEARD ABOUT LOG ROLLING, AND THE WHOLE PURPOSE OF LOG ROLLING IS TO SAY, LOOK, INITIATIVE SPONSOR , YOU CONTROL WHAT GOES IN AND WHAT GOES OUT OF THE AMENDMENT. MAY I FINISH?

CHIEF JUSTICE: VERY BRIEFLY.

YES, SIR , YOUR HONOR . YOU CAN'T TAKE A MEASURE THAT YOU THINK IS GOING TO BE POPULAR , PAIR IT WITH A MEASURE THAT YOU THINK WILL BE PERHAPS LESS POPULAR AND MAY NOT GET AS MANY VOTES , TIE THEM TOGETHER AND FORCE THE VOTERS TO TAKE THEM BOTH IN A TWO FOR ONE KIND OF PROPOSITION. YOU HAVE GOT TO DISTINGUISH THESE THINGS SINGLY FROM EACH OTHER .

CHIEF JUSTICE: THANK YOU VERY MUCH. MR. MARSHAL, HOW MUCH TIME? COUNSEL.

YOUR HONOR, THERE HAS BEEN A LOT OF ARGUMENT HERE, ABOUT THE MERITS OF THIS PROPOSAL, AND CERTAINLY THAT CAN BE MADE TO THE PEOPLE , BUT WITH ALL OF THE STRAIN THAT I HAVE HEARD FROM THE OTHER SIDE, THERE IS NOT A SINGLE ARGUMENT THAT SAYS THAT THESE BALLOT SUMMARY DOESN'T TELL BECAUSE THE CHIEF PURPOSE OF THIS AMENDMENT IS , AND THAT IS ALL THAT IS AT ISSUE HERE.

WHAT ABOUT THE TIP CREDIT? THAT SEEMS TO BE SOMETHING THAT IS FAIRLY SIGNIFICANT , AND IT IS NOT DISCUSSED AT ALL IN THE BALLOT SUMMARY.

WELL , WITH REGARD TO THE BALLOT SUMMARY , TIPPED EMPLOYEES ARE COVERED BY THE MINIMUM WAGE , THAN IS WHAT IT SAYS IN THE BALLOT SUMMARY. WITH REGARD TO WHAT THE EXEMPTION IS RIGHT NOW OR WHAT IT IS THAT THE EMPLOYER CAN TAKE OFF FROM THE MINIMUM WAGE , THE AMENDMENT SAYS IT HAS GOT TO BE EXACTLY WHAT THE FEDERAL STATUTE RECOMMENDS IT TO BE IN 2003, SO IN ESSENCE THE BALLOT SUMMARY IS EXTREMELY ACCURATE . I DON'T KNOW HOW IT CAN BE MORE ACCURATE THAN SAYING --

YOU AGREE THAT IT IS FREEZING THE TIP CREDIT FOR THE --

FOR THE DOLLAR AMOUNT, YES, BUT THERE ARE A MILLION WAYS A X YOU CAN SEE FROM THE FEDERAL -- WAYS, AS YOU CAN SEE FROM THE FEDERAL CFR , THAT THAT CAN BE ADJUSTED . THE EMPLOYERS HAVE TO CERTIFY BEFORE THEY GET INTO THE TIPPED EMPLOYEE CATEGORY CAN BE EASILY CHANGED. THERE IS PROBABLY 200 DIFFERENT WAYS IN THE CFR THAT TIP CREDIT IS DEFINED OVER TIME , SO IT IS NOT AS IF THE FLORIDA STATUTE OR THE FLORIDA LEGISLATURE OR THE FLORIDA COURTS ARE FREEZING AN EMPLOYEE IN TIME. THE CENTRAL PROVISION HERE , IS SIMPLY, AND THIS INCLUDES TIPPED EMPLOYEES AS WELL , IS THAT THOSE FOLKS GET THE MINIMUM WAGE AND THAT FEDERAL LAW HAS LOOKED TO IN DETERMINING THE STANDARDS. THAT IS SET OUT VERY CLEARLY IN THE SUMMARY. IT IS THE SAME ARGUMENT, IN ESSENCE, THAT OPPONENTS ARE MAKING, WITH REGARD TO WHY IT IS THAT THE ENTIRE FEDERAL STATUTE IS NOT LOOKED TO HERE , YOU KNOW, JUST SORT OF PINPOINTING SECTION 203 , PINPOINTING A TIP CREDIT CAP. YOU LOOK TO THE ENTIRE STATUTE, AND TIP CREDIT IS DEALT WITH IN A MILLION DIFFERENT WAYS IN THE FLORIDA , I AM SORRY , IN THE FEDERAL STATUTE , AND THERE IS NO , THERE IS NO LIMITATION NOR IS THERE ANY REASON, UNLESS YOU WANT TO MISLEAD THE VOTERS TO SINGLE OUT THE PEOPLE WHO ARE GETTING TIP CREDITS AND THE MINUTE REGULATIONS THAT ARE GOVERNING THEM. THE POINT IS THAT EVERYBODY , INCLUDING TIPPED EMPLOYEES , GET THE MINIMUM WAGE. THEY GET IT IN A WAY THAT LOOSE TO FEDERAL STANDARDS WHICH COURTS CAN LOOK TO APPLY AS THEY SEE FIT, AND FOR THE REST I WILL REST ON MY BRIEF.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL NOW STAND IN RECESS .

MARSHAL: PLEASE RISE . ,, ,,