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Advisory Opinion to the Attorney General: Sales Tax Exemptions

HEAR YE.HEAR YE.HEAR YE.THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION.ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR , GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

CHIEF JUSTICE: GOOD MORNING . LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT , PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE AND WE MEAN COME TO THE -- AND WELCOME FOR THE FLORIDA SUPREME COURT. WE HAVE FOUR IMPORTANT CASESON THE DOCKET THIS MORNING. WE HAVE LIMITED THE TIME, AND WE WOULD APPRECIATE COUNSEL RESPONDING TO THAT. WE HAVE MADE A GREAT EFFORT TO B E CERTAIN THAT WE HEARD THESE IMPORTANT CASES BEFORE OUR SUMMER BREAK , SO IT IS IMPORTANT THAT WE GET RIGHTTO THE POINT AND , ALSO , THAT WE RESPOND TO ANY QUESTIONS FROM THE BENCH. SO WITHOUT ANY FURTHER ADO , THE ATTORNEY GENERAL WILL PRESENT THE FIRST CASE.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I AM LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL. THIS MATTER IS BEFORE THE COURT ON THE ATTORNEY GENERAL'S REQUEST FOR AN ADVISORY OPINION. ARGUING IN FAVOR OF THE AMENDMENT WILL BE THOMAS JULEN AND IN OPPOSITION WILL BE CYNTHIA TUNNICLIFFE AND DAN STENGEL.

CHIEF JUSTICE: GOOD MORNING .

MAY IT PLEASE THE COURT. MY NAME IS THOMAS RJULEN OF THE LAW FIRM OF HUNTEN AND WILLIAMS, REPRESENTING THE PROPONENTS , FLORIDIANS AGAINST INEQUITIES IN RATES .

CHIEF JUSTICE: WOULD YOU IMMEDIATELY GO TO ONE OF THE ISSUES OF CONCERN IN THIS CASE, IS THE ISSUE O F THE AUTHORITY FOR ATTACKS ON SERVICES. THAT IS , WOULD YOU GIVE US YOUR VIEW OF WHETHER OR NOT THIS AMENDMENT WILL CREATE THE AUTHORITY TO IMPOSE TAXES O N SERVICES AND JUST FOLLOW-UP WITH THAT , BECAUSEI BELIEVE THAT TO BE ONE OF THE CONCERNS HERE , ALSO YOUKNOW, WHETHER , IF THAT IS THE CASE, HOWEVER THAT IS THE CASE , THEN WHETHER THE SUMMARY INFORMS THE VOTERS OF WHAT IS HAPPENING IN THAT REGARD.

IT IS ONE OF THE CONCERNS OF THE OPPONENTS , AND THE , WHAT THIS AMENDMENT DOES , OF COURSE, IS IT REQUIRES THE LEGISLATURE TO REVIEW , BOTH , EXEMPTIONS AND EXCLUSIONS , AND EXCLUSIONS --

LET'S FOCUS ON EXCLUSIONS FOR JUST A MOMENT.

RIGHT , BECAUSE , OF COURSE , EXCLUSIONS, SERVICES CURRENTLY ARE EXCLUDED. THEY ARE NOT PART OF THE SALES AND USE TAX.

THE Y ARE EXCLUDED BECAUSE THEY ARE NOT INCLUDED , ISTHAT THE --

THAT'S CORRECT.BY THE DEFINITION , THEY ARE EXCLUDE BECAUSE THEY ARE NOT INCLUDED.

THERE IS NO STATUTE THAT ACTUALLY EXCLUDES SERVICES FROM THE SALES TAX?

WELL, CHAPTER 212 DOES EXCLUDE SERVICES , BY VIRTUE OF NONINCLUSION . NOW , CHAPTER 212 DOES INCLUDE SOME SERVICES. THERE ARE SOME PROVISIONS OF CHAPTER 212 THAT DID DOES IMPOSE TAXES O N SOME SERVICES, SUCH AS DETECTIVE SERVICES AND OTHER SERVICES , AND BY OMISSION , IT DOES EXCLUDE TAXES ON SERVICES. THIS AMENDMENT , IT IS SAYING , IT IS NARROWLY FOCUSED ON THE SALES TAX. IT IS AN EXTRAORDINARILY NARROW AMENDMENT, IN THAT RESPECT, AND IT IS TARGETED SQUARELY AT THE LEGISLATURE , NOT AT THE GOVERNOR, NOT AT THE COURTS .

LET ME GET BACK TO THEFACT THAT THE , THERE ARE TAXES THAT ARE EXCLUDED. NO. SERVICES THAT ARE EXCLUDED BY NONINCLUSION.

YES.

SO WHEN THE LEGISLATURE , THIS AMENDMENT WOULD ALLOW THE LEGISLATURE, WOULDREQUIRE THE LEGISLATURE TO REVIEW ALL EXEMPTIONS AND EXCLUSIONS , CORRECT?

THAT'S CORRECT.

SO WHEN THE LEGISLATURELOOKS AT THOSE SERVICES THAT ARE, I N FACT , INCLUDED AND, AGAIN, SAY , INCLUDE THEM --

YES.

-- WOULD THAT , BY NECESSITY, CONTINUE T O EXCLUDE OTHER SERVICES? I THINK THAT IS THE PROBLEM WE ARE HAVING HERE , I S IF NOTHING IS EVER SAID ABOUT OTHER SERVICES, ARE THEY, THEN , INCLUDED?

IF NOTHING IS EVER SAID ABOUT SERVICES , THEN THEY ARE , THEY WOULD BE SUBJECT TO THE TAX, BECAUSE UNDER THE AMENDMENT , THE LEGISLATURE IS REQUIRED TO LOOK ATTENTION CONCLUSIONS AND TO MAKE A DETERMINATION OF WHETHER ANYTHING THAT IS CURRENTLY EXCLUDED SHOULD CONTINUE TO BE EXCLUDED.

LET ME GO AT IT THIS WAY. IF , UNDER YOUR , UNDER THIS AMENDMENT , IF ON JULY 2 , 2007 , THE LEGISLATURE HAS NOT ACTED --

YES .

-- THEN THERE WOULD BE A SALES TAX ON SERVICES , ON LEGAL SERVICES , BARBER SERVICES.

THAT IS ABSOLUTELY CORRECT.

AND HOW WOULD , AND THAT WOULD BE NOT BY VIRTUE OF WHAT THE LEGISLATURE HAS DONE TO DATE , BUT IT WOULD BE BY VIRTUE OF THIS AMENDMENT .

IT WOULD BE BY VIRTUE OF BOTH WHAT THE LEGISLATURE HAS DONE IN ENACTING A SALES AND USE TAX IN CHAPTER 212 AND THEN BY THE AMENDMENT , WHICH OPERATES ON CHAPTER 212 , TO ELIMINATE , IN THE WORDS OF THE AMENDMENT , ANY EXCLUSION THAT IS NOT APPROVED BY A THREE-FIFTHS VOTE OF THE MEMBERS OF LEGISLATURE.

I THOUGHT YOU AGREED THAT THERE WAS NOTHING IN 212 PRESENTLY THAT AUTHORIZES ASALES TAX ON SERVICES.

I T IS CURRENTLY EXCLUDED . THAT IS CORRECT.BUT --

BUT THERE IS NO LANGUAGE IN 212 THAT SAYS "SERVICES ARE EXCLUDED."

THERE IS NO LANGUAGE THAT SAYS SERVICES ARE EXCLUDED. IT SAYS THIS IS A SALES AND USE TAX , AND THEN IT APPLIES IT PRIMARILY , TO SALES OF TANGIBLE PERSONAL PROPERTY. WHAT THIS AMENDMENT WOULD DO , IT WOULD OPERATE O N CHAPTER 212 , T O ELIMINATE THAT RESTRICTION THERE , TO PERSONAL PROPERTY.

DOESN'T THIS AMENDMENT , IN EFFECT, CREATE A SALES TAX ON ALL SERVICES THAT ARE PERFORMED IN THE STATE OF FLORIDA , SUBJECT T O AUTHORIZING THE LEGISLATURE TO SPECIFICALLY EXCLUDE SOME , SO DOESN'T IT I N EFFECT , DOESN'T THIS CREATE A SALES TAX ON ALL SERVICES THAT ARE PROVIDED FOR REMUNERATION IN THE STATE OF FLORIDA?

IT DOES NOT. IT CERTAINLY IS NOT , DOES NOT READ AS CREATING A SALES TAX ON SERVICES. IT SIMPLY SAYS -- TIME TALKING ABOUT THAT IS PROBABLY PART OF THE ISSUE ABOUT HOW IT READS, TOO , AND HOW , BUT HELP ME WITH THAT , IF IT DOES NOT CREATE THE TAX , THEN , HOW IS IT THAT , WHEN THE LEGISLATURE, IF THE LEGISLATURE IS REQUIRED T O ACT TO EXCLUDE A PARTICULAR SERVICE , FROM ITS RANGE , WHAT , THEY ARE EXCLUDING IT FROM ALL OF THE POTENTIAL SERVICES THAT ARE RENDERED OUT THERE IN THE STATE OF FLORIDA, AND IT IS ONLY THROUGH THIS PROVISION , IS IT NOT, THAT SORT OF IS A RESIDUAL, THEN , THAT YOU KNOW WHAT IS TAXED. YOU KNOW WHAT IS TAXED , IF THEY CREATE AN EXCLUSION FOR TEENAGERS MOWING LAWNS , FOR INSTANCE, ALL RIGHT , THEN WE KNOW THAT THAT SERVICE IS NOT TAXED , BUT THAT EVERYTHING , EVERY OTHERSERVICE IN THE STATE OF FLORIDA IS TAXED , AND HOW DO WE KNOW EVERYTHING ELSE IS TAXED ? WE HAVE TO READ THIS AMENDMENT.IS THAT NOT CORRECT?

THAT I S PRECISELY CORRECT , THAT THIS , AND THIS AMENDMENT DOES NOT ACT ALONE. IT ACTS WITH CHAPTER 212. IF THE LEGISLATURE DECIDED WE ARE NOT GOING TO USE A SALES AND USE TAX AT ALL , THEN THIS AMENDMENT WOULD NOT IMPOSE A TAX ON SERVICES OR ANYTHING ELSE , IF THE LEGISLATURE TOOK THE SALES AND USE TAX OUT. WHAT THIS AMENDMENT IS SAYING IS , IF OUR LEGISLATURE CHOOSES AS IT HAS, TO HAVE A SALES AND USE TAX , THEN IT MUST LOOK AT BOTH THE EXEMPTIONS AND THE EXCLUSIONS, AND IT MUST, B Y THREE-FIFTHS VOTE , APPROVE BOTH, AND IF IT DOESN'T D O THOSE, THEN THE SALES TAX ITSELF, WHICH THE LEGISLATURE HAS CHOSEN TO ENACT, DOES IMPOSE THE TAX. THE TAX I S IMPOSED BY LAW.

WHEN YOU SAY LOOK AT THE EXCLUSIONS , WE ARE NOT TALKING ABOUT THAT OVER HERE THERE IS A LIST OF EXCLUSIONS AND THEY MUST,THEY BE -- THEY MUST, THEN , LOOK AT THAT LIST PERIODICALLY AND THEY MUST DECIDE WHETHER TO KEEP THAT EXCLUSION.WE ARE REALLY TALKING ABOUT OVER HERE, THIS RESIDUAL , ALL SERVICES THAT ARE PERFORMED FOR REMUNERATION IN THE STATE OF FLORIDA AND DECIDING WHETHER OR NOT , NOW, TO DEFINE A PARTICULAR USE FOR PURPOSES OF EXCLUDING IT , AND I AM COMING BACK T O WHYDO YOU SAY THAT THIS AMENDMENT DOESN'T CREATE THAT TAX?

BECAUSE THE AMENDMENT IS OPERATING ON CHAPTER 212 , AND IT IS REALLY TRYING TO TAKE CHAPTER 212 AND REQUIRE JUSTIFICATION OF THE EXEMPTIONS AND EXCLUSIONS , AND IF I T DOESN'T, THEN IT OPERATES ON THE STATUTE AND SAYS, IT IS SIMILAR TO WHEN THE COURT IS DECLARING UNCONSTITUTIONAL, PART OF A STATUTE AND SEVERING SOMETHING OUT.IT LEAVES THE STATUTE IN PLACE , BUT IT, IN THIS INSTANCE, WE HAVE A CONSTITUTIONAL AMENDMENTTHAT IS COMING INTO EFFECT AFTER THE STATUTE IS THERE.

BUT YOU AGREE WITH THE NET EFFECT. THE NET EFFECT IS THAT ALL SERVICES PERFORMED FOR REMUNERATION IN THE STATE OF FLORIDA , WILL BE SUBJECT T O TAX , IF THE LEGISLATURE DOES NOT PROVIDE A SPECIFIC EXEMPTION.

I AGREE THAT THAT IS HOW THIS WOULD OPERATE. IT WOULD MAKE CHAPTER 212 DO THAT.

CHIEF JUSTICE: THE MARSHAL HAS REMINDED YOU OF THAT SHORT TIME.

YES AND I WILL RESERVE MY TIME. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS CYNTHIA TON I CLIFF -- TUNICLIFFE AND I AM APPEARING WITH MR . DAN STENGEL.

CHIEF JUSTICE: NOW , WE HAVE VERY NARROW REVIEW AUTHORITY OF THESE PROVISIONS, AND SO IT IS NOT UNUSUAL AT ALL THAT WE HAVE AN ISSUE RAISED ABOUT WHAT DOES THIS MEAN? AND PROBLEMS DOWN THE ROAD , AND THAT SOMEBODY HAS GOT TO INTERPRET THIS OR WHATEVER . WE SEEM TO, REALLY, TO GO TO THE SORT OF THE MERITS OF IT OR THE DIFFICULTY THAT MIGHT COME ABOUT LATER WITH INTERPRETATION, BUT THAT DON'T NECESSARILY HAVE TO DO WITH THE FACT OF A SINGLE SUBJECT OR THE ACCURACY OF THE SUMMARY. ISN'T THIS CLEARLY A SINGLE SUBJECT? IT ONLY HAS TO DO WITH SALES TAX. I MEAN, HOW CAN THERE BE A MORE LIMITED SINGLE SUBJECT THAN THE SINGLE SUBJECT OF A SALES TAX?

NO, YOUR HONOR. I THINK THIS IS CLEARLY LOG ROLLING IN THE CLASSICAL SENSE.

IT DEALS WITH SALES TAX, DOESN'T IT?

IT DOES DEAL WITH SALES TAX AND I WOULD LIKE TO TAKE THE FIRST FIVE MINUTES TO DEAL WITH THE SINGLE SUBJECT ISSUE AND LET MR . STENGEL DEAL WITH THE OTHER IN THE LAST . IT CLEARLY IS LOG ROLLING.

WHAT DOES IT DEAL WITH BESIDES THE SALES TAX?

IT REQUIRES VOTERS TO MAKE, TO ACCEPT THINGS THAT THEY MAY FAVOR , THEY MAY OPPOSE, IN ORDER TO GET THING THAT IS THEY MAY FAVOR , BECAUSE FOR INSTANCE THEY MIGHT FAVOR DOING AWAY WITH THE EXEMPTIONS , THE CURRENT EXEMPTIONS ON THE SALES TAX OF GOODS BUT NOT FAVOR A WHOLE NEW TAX ON EXCLUSIONS .

HOW ABOUT SPEAKING DIRECTLY TO THE POINT THAT WE WERE DISCUSSING WITH YOUR OPPONENT, AND THAT IS THE POINT , IT SEEMS TO ME , THE QUESTION THAT HAS BEEN RAISED BY YOUR BRIEFS , AND THAT HE WAS RESPONDING TO, IS WHETHER SOMETHING IS EXEMPT BY REASON THAT IT IS OMITTED FROM CHAPTER 212, OR IS IT ONLY EXEMPT IF IT IS SPECIFICALLY SET OUT AS AN EX-EMPTION IN 212? IS -- AS AN EXEMPTION IN 212? IS THAT WHAT WE ARE ARGUING?

212 WAS DESIGNED, WHEN ENACTED IN 1949 , TO BE A TAX ON GOODS. IT ONLY TAXES GOODS, AND THE EXEMPTIONS IN 212 ARE EXEMPTIONS FROM THE TAX ON THE SALE OF GOODS. THEY ARE ENUMERATED IN THE STATUTE. YOU CAN GO TO THE APPENDIX OF OUR BRIEF AND SEE WHICH ITEMS AND WHICH TRANSACTIONS ARE EXEMPT. YOU CANNOT DO THAT WITH EXCLUSIONS. THEY ARE NOT EXEMPT. YOU CAN'T GO TO THE SALES TAX HANDBOOK AND SAY THESE THINGS ARE EXCLUDED.

WHY IS THAT? THAT IS, WE KNOW IN THE EXCHANGE OF GOODS, WE KNOW WHAT GOODS ARE, AND THE LEGISLATURE, YOU KNOW , CAN CLARIFY THAT WITH DEFINITIONS AND EVERYTHING , TOO. WHY DOESN'T THE SAME THING APPLY TO SERVICES FOR REMUNERATION? THAT IS THAT CAN EASILY BE DEALT WITH , WE KNOW WHAT SERVICES FOR REMUNERATION ARE. THAT MEANS THAT , IF I DO A SERVICE FOR YOU , CONDITIONED ON YOU PAYING ME SOMETHING , THAT IS A SERVICE FOR REMUNERATION. WHY , WHAT IS THE DIFFICULTY WITH THAT?

BECAUSE , IF THE LEGISLATURE FAILS TO ACT , WHICH THIS AMENDMENT CONTEMPLATES THAT

THE LEGISLATURE WILL NOT ACT, AND THOSE , THE TAX ON SERVICES WILL JUST SPRING FORT WITHOUT ANY GUIDELINES AND STANDARDS . IT WILL RESULT IN --

ISN'T THAT A DIFFICULTY , THOUGH , AGAIN , WITH JUST HOW DETAILED THE PROVISION IS , AND YOU KNOW , WHAT THE LEGISLATURE MAY DO , BUT THAT IS MORE YOU KNOW, THE MERITS OF THE PROPOSAL ? YES, IT APPEARS THAT IT WILL NOW TAX ALL SERVICES , YOUKNOW , IN THE STATE OF FLORIDA , IF A SPECIFIC EXEMPTION , BUT ISN'T THAT WHAT IT SAYS?

IT , ALSO , IT ALSO DEALS WITH THE SINGLE SUBJECT, BECAUSE THIS COURT IN EVERY CASE SINCE FINE VERSUS FIRESTONE, HAS SAID THAT THE DEFINITION OR ANALYSIS OF WHAT CONSTITUTES A SINGLE SUBJECT IS WHETHER IT ALTARS OR PERFORMS THE FUNCTIONS OF MULTIPLE BARCHES OF GOVERNMENT AND THIS CLEARLY DOES. IT PERFORMS AND ALTERNATE ARRESTS THE LEGISLATIVEFUNCTION FOR SURE.

ANY TIME YOU HAVE A TAX , SOMEBODY IS GOING TO HAVE TO COLLECT TAXES AND COURTS AREGOING TO HAVE TO INTERPRET THE PROVISION AND LEGISLATION THAT COMESAFTERWARDS. THINGS LIKE THIS ARE ALWAYS GOING T O INVOLVE ALL THREE BRANCHES OF GOVERNMENT , EVEN THOUGH IT IS FOLK USED -- FOCUSED ON THE LEGISLATURE.

THIS, WHAT I AM SPEAKING OF IS IF THE LEGISLATUREFAILS TO ACT , THERE WILL BE NO GUIDELINES AND STANDARDS. THE DEPARTMENT OF REVENUE , DO THEY HAVE THE AUTHORITYTO ENACT --

WHAT COULD BE MORE SIMPLE THAN THERE WILL BE A TAX, THEN , ON ALL SERVICES FOR REMUNERATION, UNLESS THE LEGISLATURE ACTS? ISN'T THAT PRETTY STRAIGHTFORWARD ?

IT ALTERNATE ARRESTS ANDPERFORMS THE LEGISLATIVEFUNCTION, IF THE GOVERNOR HAS THE PEOPLE'S VETO POWER.

PEOPLE HAVE THE AUTHORITY TO DESIGN THE TAX SCHEME IN THEIR CONSTITUTION, DO THEY NOT?

THIS CREATES A WHOLE TAX WITHOUT GUIDELINES OR STANDARDS AND ELIMINATES THE GOVERNOR 'S VETO .

BEFORE YOU SIT DOWN , I DO WANT YOU T O REPEAT ONE LAST TIME THE ARGUMENT ABOUT LOG ROLLING AND MY CONCERN , THERE, ABOUT THAT ARGUMENT IS, ISN'T THAT WHAT THE LEGISLATURE IS ALWAYS FACED WITH , THAT I S OF CHOICES. THAT IS IF YOU AUTHORIZE, FOR INSTANCE, THE LEGISLATURE TO HAVE A SALES TAX ON GOODS , OKAY , THEY MAKE THE CHOICES ABOUT WHICH GOODS THEY ARE GOING TO IMPOSE THE TAX ON , AND SO YOU COULD ARGUE THAT, WELL , I DIDN'T WANT THEM TO PUT I T ON CHILDREN'S BICYCLE S , BECAUSE I AM GOING TO BUY A BUNCH OF BICYCLES FOR MY KIDS, BUT I DON'T MIND IF THEY PUT IT ON CARS. BUT THE LEGISLATURE IS ALWAYS GOING TO DO. THAT HOW IS THAT LOG ROLLING?

BECAUSE HERE , THE SINGLE SUBJECT REQUIREMENT IS ONLY IN THAT PROVISION OF ARTICLE XI , WHICH DEALS WITH CITIZENS INITIATIVES. THE OTHER WAY S OF AMENDMENTING THE CONSTITUTION DO NOT HAVE THAT BECAUSE THEY ARE VETEDIN THE PUBLIC PROCESS , I N THE LEGISLATIVE PROCESS. THIS HAS A STRICT CONSTRUCTION AFTER SINGLE SUBJECT , SO THAT THE PEOPLE WILL KNOW EXACTLY WHAT THEY ARE --

BUT HOW IS THE DIFFERENCES BETWEEN SERVICES AND GOODS LOG ROLLING? THAT IS IF AS I SAY, IT ONLY DEALT WITH GOODS OR JUST DEALT WITH SERVICES , THE LEGISLATURE WOULD STILL MAKE CHOICES BETWEEN?

LET ME GIVE YOU SOME OTHER EXAMPLES BESIDES JUST THAT. THE INITIATIVE PROTECTS

CERTAIN POPULAR EXEMPTIONS , BOTH IN THE DEFINITIONAL SECTION AND IN THE BODY OF THE AMENDMENT. IT PROTECTS FOOD AND DRUGS AND HEALTH SERVICES AND RESIDENTIAL RENT. NOW, A VOTER MIGHT CHOOSE TO , THAT THEY MIGHT WANT TO TAX RESIDENTIAL RENT BUT NOT FOOD. THEY ARE REQUIRED TO MAKE THAT CHOICE T, ALSO, SETS U P A LIST -- TO MAKE THAT CHOICE. IT , ALSO , SETS UP A LIST OF PUBLIC PURPOSES WHICH MUST BE MET FOR REENACTMENT , AND THEY INCLUDE A NUMBER OF THINGS LIKE CHARITABLE PURPOSES, ECONOMIC , RELIGIOUS , AND A VOTER MIGHT WANT TO NOT TAX , OR TO TAX ECONOMIC DEVELOPMENT.

I KNOW YOU HAVE DIVIDEDYOUR TIME.

UNDER YOUR THEORY , THOUGH , THE ONLY WAY THAT YOU COULD ATTACK THE ISSUE O F EXEMPTIONS AND EXCLUSIONS , WOULD BE TO LIST THEM ONE BY ONE , SEPARATELY . ISN'T THAT RIGHT ? I MEAN , THAT WOULD BE - -

THAT WOULD BE ONE WAY, YES, OR THEY COULD DIRECT THE LEGISLATURE TO LOOK AT ALL OF THE EXCLUSIONS AND EXEMPTIONS .

CHIEF JUSTICE: I DON'T KNOW HOW YOU WANT TO DO YOUR TIME BUT THE CLOCK IS FAST-RUNNING.

YES. I AM SORE I.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS DAN STENDEL ADDRESSING THE BALLOT TITLE AND SUMMARY. THE BALLOT TITLE AND SUMMARY IN THIS CASE MISLEADS VOTERS BY NOT ONLY HIDING THE BALL. IT HIDES THE GAME .

WHAT IS THE BALL? WHAT IS THE GAME?

THE GAME HERE I S THAT THERE ARE PRECIPITOUS AND CATAclysmic CHANGES TO OUR CURRENT MECHANISM OF TAXING SALES THAT ARE NOT ADEQUATELY EXPLAINED AT ALL, TO THE VOTER. THEY DON'T EXPLAIN WHICH BRANCHES OF GOVERNMENT WOULD IMPOSE THE SALES AND USE TAX ON SERVICES THAT ARE CURRENTLY NOT SUBJECT TO TAXATION , IN THE EVENT THAT THE LEGISLATURE DOES NOT ACT .

WELL , THE EXECUTIVE BRANCH DOESN'T HAVE ANY AUTHORITY TO IMPOSE A TAX, DOES IT? THE JUDICIAL BRANCH DOESN'THAVE ANY AUTHORITY TO IMPOSE A TAX. IT EITHER HAS TO BE IN THE CONSTITUTION OR BY THE LEGISLATURE, DOES IT NOT?

WELL , BY OPERATION OF THIS, A TAX WOULD SPRING FORWARD , WOULD SPRING FORWARD.

WELL , ISN'T THAT SPRINGING FORWARD , THOUGH, FROM THE CONSTITUTION? DON'T THE PEOPLE HAVE THEAUTHORITY TO DO THAT?

YES, SIR , BUT THEY HAVE TO BE INFORMED ADEQUATELY OF WHAT IT IS THEY ARE VOTING ON . THE CONTEST OF THEAMENDMENT.

ISN'T I T PRETTY STRAIGHTFORWARD THAT, IF THE LEGISLATURE DOESN'T PROVIDE AN EXEMPTION O R EXCLUSION, THAT ALL OTHER SERVICES FOR REMUNERATION WILL BE TAXED?

BUT I T DOES NOT SAY, IN ANY WAY , WHICH BRANCHES OF GOVERNMENT WOULD BE RESPONSIBLE FOR IMPOSING THE TAX THAT SPRINGS FORT OUT OF WHOLE CLOTH , BECAUSECURRENTLY SERVICES ARE NOT TAXED UNDER CHAPTER 212. THE TITLE --

THEY ARE NOT TAXED , BECAUSE THEY ARE EXCLUDED.

THEY ARE EXCLUSIONS .

WELL , THIS SAYS EXEMPTIONS AND EXCLUSIONS NOT REENACTED OR ADOPTED BY THE LEGISLATURE ARE ELIMINATED.

YES , AND A TAX WOULD THERE FOR SPRING FORWARD AS A RESULT OF THAT , WHICH IS NOT ADEQUATELY EXPLAINED FROM THE VOTER. THE TITLE AND SUMMARY DO NOT EXPLAIN HOW THE LEGISLATURE WOULD BE COMPELLED TO EXTEND AN EXCLUSION. IT FAILS TO DISCLOSE THE , THAT THE SAFEGUARDS IN ARTICLE VII REQUIRING TAXES TO B E IMPOSED ONLY IN PURSUANCE OF LAW , WOULD BE EFFECTIVELY REPEALED .

BY REFERENCE TO CHAPTER 202 AND CHAPTER 212 , ISN'T THAT SUFFICIENT TO INDICATE THAT THE TAXES WOULD B E IMPOSED PURSUANT TO THOSE CHAPTERS?

NEW YORK CITY BECAUSE THE BALLOT TITLE - - NO , BECAUSE THE BALLOT TITLE AND SUMMARY FAIL ENTIRELY TO DISCLOSE ITS CIRCUMVENTION OF THE GOVERNOR'S VETO POWER, BY ITS REPEAL FROM EXEMPTIONS AND EXCLUSION SALES TAX AND SERVICES.

ISN'T THE SUMMARY REALLY SUPPOSED TO BE AN INDICATION OF THE MAJOR PURPOSE OF THE AMENDMENT , AND WE , IT CANNOT , IN 75 WORDS , INDICATE EVERY RAMIFICATIONS THAT THERE IS OF THE AMENDMENT.

AND WE DO NOT ASK THAT IT DO SO. IT IS COMPLETELY SILENT ON THE CIRCUMVENTION OF THE GOVERNOR'S VETO POWER. IT IS SILENT THAT IT RAISES TAXES , IN SO FAR AS EXPLAINING TO THE VOTERS THAT, WHEN YOU ELIMINATE AN EXEMPTION OR EXCLUSION, IT RAISES THE, A TAX THAT WAS CURRENTLY NOT SUBJECT TO TAXATION UNDER THE EXEMPTION, AND CREATES A WHOLE NEW TAX UNDER THE EXCLUSION.

I DON'T KNOW IF I UNDERSTAND, WHEN YOU SAY THE GOVERNOR'S VETO POWER , I MEAN, IF THERE WAS A STRAIGHTFORWARD AMENDMENT THAT SAID ALL GOODS SOLD FOR REMUNERATION IN FLORIDA SHALL B E TAXED AND THE LEGISLATURE SHALL HAVE NO AUTHORITY TO CREATE ANY EXEMPTIONS , AND THAT WAS DONE , THAT WOULD , ALSO , LIMIT THE GOVERNOR'S VETO POWER , WOULD IT NOT ?

YES.

I ASSUME YOU WOULDN'T CHALLENGE SUCH A SIMPLE PROPOSITION AS THAT , AS BEING OUTSIDE THE AUTHORITY OF THE PEOPLE TO PUT IN THEIR CONSTITUTION.

NO, SIR. BUT I T MUST DESCRIBE FOR THE VOTER , THAT THIS , IN IMPOSING A TAX THAT , ON A GOOD OR SERVICE THAT WAS CURRENTLY NOT TAXED , IT CERTAINLY CIRCUMVENTS THE GOVERNOR'S POWER TO VETO THAT IN THE ABSENCE O F LEGISLATIVE ENACTMENT , AND IT DOESN'T TELL THE VOTER ABOUT THESE FUNDAMENTAL CHANGES TO OUR SYSTEM O F TAXATION. IT , ALSO , ENGAGES THE BALLOT TITLE AND SUMMARY IN ELECTION EARING , BY UTILIZING THE TERM -- IN ELECTION EERING, BY USING THE TERM FAIRNESS. IT LOBBIES THE VOTER BY USING THE TERM "SAVE OUR EVERGLADES". IT IS IMMATERIAL THAT, I N THIS CONCLUSION , THE BALLOT TITLE AND SUMMARY ARE INCLUDING PHRASES IN THE AMENDMENT. THE BALLOT SUMMARY AS WELL IS CLEARLY INCLUSIVE AND INEFFECTIVE, BECAUSE IT CLEARLY REQUIRES A VOTE FOR AN AMENDMENT TO A TAX TO BE REENACTED OR AN EXEMPTION CONTINUED, WHICH MAKES THIS VERY SIGNIFICANT DIFFERENCE IN THE AMENDMENT , ITSELF , IT SAYS IT MUST BE BY THREE-FIFTHS VOTE OF THE MEMBERSHIP OF EACH LEGISLATIVE HOUSE. THE BALLOT TITLE AND SUMMARY DESCRIBE IT OTHERWISE , THAT IT MUST BE APPROVED BY THREE-FIFTHS VOTE O F EACH LEGISLATIVE HOUSE , WHICH IN 120-MEMBER HOUSE , MAKES THE DIFFERENCE OF 35 MEMBERS AND ELEVEN MEMBERS OF THE 40-MEMBER SENATE.

CHIEF JUSTICE: THANK YOU VERY MUCH.

CAN YOU ADDRESS THE POINT RAISED BY YOUR OPPONENT, AND NOT IN TERMS OF THE SINGLE SUBJECT, BUT THE AMENDMENT, APART FROM THINGS THAT WE HAVE BEEN DISCUSSING THIS MORNING, ALSO SAYS THAT THE EXEMPTIONS MAY ONLY BE PASSED BY THREE-FIFTHS VOTE OF THE ENTIRE HOUSE OF EACH HOUSE OF THE LEGISLATURE.

WELL, WHAT THIS AMENDMENT IS DOING, IS IT IS IMPOSING A PROCESS ON THE LEGISLATURE, AND THAT IS A PART OF THE PROCESS, AND THAT IS WHAT MAKES THIS A SINGLE SUBJECT. IT IS DEFINING A PART OF THAT MACHINERY THAT THE LEGISLATURE MUST USE, IN ORDER TO REVIEW THE EXEMPTIONS AND THE EXCLUSIONS, AND IT IS DEFINING EXACTLY HOW THE LEGISLATURE IS TO DO THAT.

DOESN'T THAT ALSO PRESENT LOG ROLLING PROBLEMS, WHEREA VOTER MAY SAY, WELL, IT IS TRUE I DON'T WANT EXEMPTIONS, UNLESS THEY ARE SPECIFICALLY REVIEWED AND DISCUSSED EVERY TEN YEARS, BUT YOU KNOW, A THREE-FIFTHS VOTE OF EACH HOUSE IS SUBSTANTIALLY DIFFERENT THAN WHAT IS NOW THE CASE, WHICH IS A SIMPLE MAJORITY, IS IT A MAJORITY OF THOSE PRESENT OR OF EACH HOUSE?

IT IS THE MAJORITY OF THE MEMBERSHIP OF THE, OF EACH HOUSE THAT IS REQUIRED. AGAIN, IT IS A PROCESS, AND IT DESCRIBES THE PROCESS, AND IF YOU ARE TO LOOK AT EACH PART OF THE PROCESS AS A DIFFERENT SUBJECT, THEN YOU COULD NEVER, THROUGH THIS TYPE OF A CONSTITUTIONAL AMENDMENT, IMPOSE THIS TYPE OF RESTRICTION TO CURE WHAT HAS BEEN A PROBLEM OF LOG ROLLING, WITH THE TAX EXEMPTIONS.

CHIEF JUSTICE: WE ARE GOING TO HAVE TO END ON THAT NOTE AND TAKE THE REST ON YOUR WRITTEN FILINGS. THANK YOU ALL VERY MUCH, FOR COOPERATING AND RESPONDING TO OUR QUESTIONS.