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Advisory Opinion to the Attorney General: Sales Taxes

SC05-1564 | SC05-1833 | SC05-1565 | SC05-1834 |

SC05-1566 | SC05-1835

THIS GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING. WELCOME TO THE FLORIDA SUPREME COURT AND OUR ARGUMENTS

AND DOCKET FOR NOVEMBER 1. THE FIRST CASE IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL ON THREE DIDN'T PROPOSALS. -- DIFFERENT PROPOSALS. MS. HEARN.

GOOD MORNING. MAY IT PLEASE THE COURT. I'M LYNN HEARN ON BEHALF OF THE ATTORNEY GENERAL. THIS MATTER COMES BEFORE THE COURT ON THE ATTORNEY GENERAL'S REQUEST FOR ADVISORY OPINIONS ON THREE INITIATIVE PETITIONS. MR. NABORS, ROBERT NABORS WILL BE ARGUING IN FAVOR OF THE PETITIONS AND CYNTHIA TUNNICLIFF WILL BE ARGUING AGAINST THE PETITION.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. I RESERVED 10 MINUTES FOR REBUTTAL. THIS CASE IS A CASE BY AFFAIR WITH THE PEOPLE OF THE STATE OF FLORIDA TO INSTRUCT THE LEGISLATURE TO DO FUNDAMENTAL TAX REFORM, AND DETERMINING WHETHER OR NOT THE CURRENT EXEMPTIONS SERVE A PUBLIC PURPOSE AND WHETHER OR NOT THE FAILURE TO EXCLUDE -- THE EXCLUSION OF SERVICES ALSO SERVES A PUBLIC PURPOSE.

RIGHT NOW IF THERE'S AN EXEMPTION DOES IT HAVE TO SERVE A PUBLIC PURPOSE?

ANYTHING THE LEGISLATURE DOES SERVES A PUBLIC PURPOSE. LEGISLATURE, UNLESS IT'S GAINING A PROPRIETY ACTIVITY, NORMALLY SERVES A PUBLIC PURPOSE. THIS PROPOSAL IN FRONT OF YOU DIFFERS FROM THE ONE PRIOR IN THE SENSE WE DON'T TRY TO ARTICULATE WHAT THAT PUBLIC PURPOSE IS. PRIOR WE HAD THE FACT IT HAD TO PROMOTE COMPETITIVE -- IT HAD TO PROMOTE ONE OF THE RECOGNIZED ACTIVITIES UNDER TAX EXEMPTIONS, WE'VE ELIMINATED THAT, SO THEY HAVE TO SAY HERE IS THEY HAVE TO ARTICULATE WHAT PUBLIC PURPOSE THAT IT PROMOTES AND IT CAN BE WITHIN DISCRETION OF THE LEGISLATURE WHAT IT SAYS, AND THAT WOULD BE --

FIRST OF ALL, MY -- I HAVE A CONCERN THAT AS DID THE LAST ATTEMPT HERE, THIS ENACTS A SERVICES TYPE AND ALSO SETS OUT A BASIS FOR WHICH THERE CAN BE AN EXEMPTION. WOULD YOU AGREE WITH THAT?

WELL, I DON'T THINK -- I DISAGREE WITH THE ACTS OF SERVICE ACTS.

THE LEGISLATURE ACTS BY JULY 1, 2008, TO EXEMPT COMPANIES.

THAT'S RIGHT.

IT'S GOING TO BE TAXED.

THAT'S RIGHT. FAILURE OF THE LEGISLATURE TO ACT RESULTS IN A TAX. THAT'S THE LEVERAGE AND THE CONCEPT WITHIN THIS PROCESS. BUT THE ISSUE THAT I FEEL, IF THERE'S ANY TYPE OF DIRECTION, THAT A SPONSOR CAN DRIVE FROM AN OPINION, I THINK WE HAVE TRIED TO COME UP WITH THREE SEPARATE INITIATIVES TO MEET THE OBJECTIONS THE COURT HAD THE LAST TIME THIS AMENDMENT WAS BEFORE YOU. THE CONCERN --

WOULDN'T IT BE MORE STRAIGHTFORWARD TO SAY THERE SHALL BE A TAX ON SERVICES AND DEFINED SERVICES.

WELL, THAT'S A CHOICE WE COULD HAVE MADE. OUR DECISION WAS TO LEAVE THAT TO THE LEGISLATURE. I MEAN, WHAT THIS PROPOSAL DOES, THE PEOPLE SAY TO THE LEGISLATURE, WE WANT YOU, AT A TIME -- AT A POINT IN TIME TO REVIEW THIS ISSUE WITHIN THE CONTEXT OF THIS PROCESS, AND MAKE A DECISION ON EACH AND EVERY SERVICE OPPOSED. WE HAVE A METHOD TO IDENTIFY THE SERVICES. COULD WE HAVE SAID THE SERVICES ARE ALL TAXED. A LOT OF THE

HORRIBLES BROUGHTUP BY THE PARTIES WOULD BEEMBEDDED IN THAT.THIS IS A PROCESS WHERE THEPEOPLE ARE SAYING TO THELEGISLATURE, YOU HAVEINSTITUTIONALLY BEEN UNABLE TODO SAWLS TAX REFORM, AND THEIDEA THAT'S BEEN AROUND FOREVER.WE ARE INSTRUCTING YOU ASCITIZENS UNDER OUR RESERVEPOLITICAL POWER, TO LOOK AT THEEXEMPTIONS AND THE SALES TAX, TOLOOK AT THE SERVICES THAT ARETAXES AND MAKE A DELIBERATELEGISLATIVE DECISION, WHETHER ORNOT THE DECISION HISTORICALLY OFNOT TAXING THOSE SERVICES AREEXEMPTING THE SALES OF GOODS.DOES THAT SERVE A PUBLICPURPOSE.IF YOU BELIEVE IT DOES, REENACTTHEM.

LET ME FOLLOW UP BRIEFLY ONJUSTICE WELLS' QUESTION IF IMIGHT, THAT IS WE'VE HAD SOMEDIFFICULTY WITH THE APPROACHTHAT'S BEEN TAKEN HERE,APPROACHING THIS TAX ISSUE,STARTING WITH THE STANDPOINT OFEXEMPTION AS OPPOSED TO STARTINGFROM THE STANDPOINT OF IMPOSINGA TAX.THAT IS, THAT IF YOU START WITH EXEMPTIONS, YOU HAVE TO LOOKTHEN AT WHAT THE EXISTINGFRAMEWORK ON THE GROUND IS.COULD YOU GIVE US A LITTLETHUMBNAIL SKETCH AS -- IN TERMSOF WHAT IS THE EXISTINGCONSTITUTIONAL AND STATUTORY LAWAS FAR AS THE EXISTENCE OF A SALES TAX BEFORE YOU GET TO THEEXEMPTION ISSUE?IS THERE A BASIS FOR A TAX INTHE CONSTITUTION?IS IT STRICTLY A LEGISLATIVEDECISION TO IMPOSE A TAX?IN OTHER WORDS, WHAT EXISTSBEFORE YOU GET TO THE ISSUE OFEXEMPTING CERTAIN SERVICES FROMBEING TAXED?

WELL --

WOULD YOU ADDRESS THAT VERYBRIEFLY?

WELL, THE BASIC PRIVILEGE IS,IS THE STATE HAS THE POWER TOTAX, EXCEPT AS LIMITED BY THEPEOPLE IN THE CONSTITUTION.THERE ARE CERTAIN LIMITATIONS INTHE CONSTITUTION, THERE CANNOTBE A LIMITATION ON --

SO RIGHT NOW THE LEGISLATUREHAS THE POWER TO IMPOSE A TAX,IS THAT CORRECT? RIGHT.IT HAS DONE SO IN THE AREA OFTHE SALES TAX ON GOODS.

ALL RIGHT.BUT THERE IS NOT A TOTAL SCHEMERIGHT NOW THAT IMPOSES A TAX ONALL SERVICES OR ALL THETRANSACTIONS OF GOODS, THISIS -- THIS HAS BEEN SORT OF THESTICKING POINT, IF YOU STARTWITH AP EXEMPTION SCHEME OFSOMETHING THAT THE LEGISLATUREDOESN'T HAVE AN OVERALL SCHEMEIMPOSING A TAX TO BEGIN WITH.SO BY FOCUSING ON THE EXEMPTION,DON'T YOU FIRST HAVE TO CONCLUDETHAT THE LEGISLATURE WOULDIMPOSE A TAX ON SERVICES, ANDTHEN CONSIDER THE ISSUE OFEXEMPTION?

WELL, ON THE EXEMPTIONS, THEYHAVE OPPOSED A TAX ON CERTAINTHINGS.THEY HAVE LEFT OTHERS NOT BEIMPOSED.ON SERVICES, THEY'VE DONE THESAME THING IN A VERY MINOR WAYON CERTIFICATE VOES AND MOSTSERVICES ARE NOT TAXED.WE HAVE A HISTORY IN OUR STATEWHERE THEY WERE TAXED.THEY WERE DONE IN A WAY THATJUSTICE WELLS IS TALKING ABOUT,ACROSS THE BOARD TAX ONSERVICES.

IN EFFECT, ARE YOU SAYINGTHAT EITHER INDIVIDUALLY ORCOLLECTIVELY, THAT THESE THREEPROPOSED AMENDMENTS WOULDMANDATE THAT THE LEGISLATUREADDRESS AND ENACT ACOMPREHENSIVE TAXING SCHEME?FOR INSTANCE, ON ALL SERVICESAND ALONG WITH THAT, THEN, WOULDADDRESS THE EX EXEMPTION ISSUE, AONLY THOSE SERVICES THAT THEYCAN FIND AN EXPLICIT PUBLICPURPOSE WOULD THEY EXEMPT INTHAT SCHEME?

ALMOST PRECISELY WHAT WEINTENDED TO DO HERE IS THAT INEACH -- AND EACH ONE CAN STANDON ITS OWN.THEY'RE CRAFTED IF THE ONE ONSERVICES FAILS, THE ONE ONEXEMPTIONS COULD STILL STAND.BOTH OF THOSE FAIL, THE WAY IT'SENACTED COULD ALSO PASS.WHAT THIS DOES SIMPLY, ANDREALLY, YOU HAVE TO ELEVATEYOURSELF FROM THE BRIEFS IN THISCASE AND GET OUT OF THE DETAIL.WHAT IT REALLY DOES, IT'S ANINSTRUCTION BY THE PEOPLE OF THESTATE OF FLORIDA TO TELL THELEGISLATURE WE ARE UNHAPPY WITHYOUR CURRENT SCHEME OF SALESTAXATION, WE WANT YOU TO LOOK INONE INSTANCE, WE WANT YOU TOLOOK AT ALL OF THOSE THAT YOUHAVE SPECIFICALLY EXEMPTED, TAKEANOTHER LOOK AT THAT IN THESUNSHINE AND SAY WHETHER OR NOTTHAT EXEMPTION SERVES A PUBLICPURPOSE.IF YOU FEEL LIKE IT DOES,REENACT IT.IF YOU DON'T, EITHER REPEAL ITOR LET IT BE REPEALED BY UP MYINDICATION.SHALL -- BY IMPLICATION.

UNDER THIS SCHEME, YOU'REASKING THE LEGISLATURE TO LOOKAT THIS BY A DATE THAT SEEMS TOBE A DATE NOW THAT IS UPPOSSIBLE BECAUSE THIS WILL NOTBE ON THE BALLOT UNTIL

NOVEMBER OF 2008, IS THAT CORRECT?

WELL, THAT'S A PROBLEM, YES, THE WAY IT'S DRAFTED.

AND SO IF THIS IS PASSED, THEN THE LEGISLATURE CERTAINLY COULD NOT HAVE LOOKED AT IT BY THE DATE OF JULY OF 2008, THAT YOU HAVE HERE IN THE PROPOSED AMENDMENT, SO HOW DO YOU FIX THAT?

WELL, I WOULD SAY, TWO POINTS ON THAT. THE FIRST POINT I WOULD MAKE IS THAT WHEN THE COURT SITS IN ITS CAPACITY, ITS JURISDICTIONAL CAPACITIES ON ADVISORY OPINIONS, REALLY YOUR JURISDICTION IS QUITE LIMITED. IT'S LIMITED IN THE WAY THE CONSTITUTION DESCRIBES THAT AND THAT IS TO RESPOND AS PROVIDED BY THE ATTORNEY GENERAL TO GIVE AN ADVISORY OPINION ON WHETHER OR NOT A PROPOSAL MEETS A SINGLE SUBJECT OR THAT THE BALLOT LANGUAGE IS CLEAR. ISSUES OF WHETHER OR NOT IT EVER EVENTUALLY REACHES THE BALLOT OR APPEARS ON THE BALLOT, I WOULD ARGUE ARE BEYOND OUR COLLATERAL USE TO THIS PROCEEDING. AND I WOULD ARGUE YOU DON'T WORRY ABOUT IT.

SO IMPOSSIBILITY HERE WITH THIS PROPOSED AMENDMENT, WE COULD SAY IT'S OK, EVEN IF IT'S AN IMPOSSIBILITY?

WELL, I DON'T THINK YOU COULD SAY IT'S AN IMPOSSIBILITY. IF YOU LOOK AT THE ISSUE ON THE GAMING AMENDMENT, WHERE IT WAS A SIMILAR SITUATION, A SITUATION WHERE THERE'S A DATE FOR THE LEGISLATURE TO IMPLEMENT THE GROUND RULES FOR THE GAMING STATUTE HAD PASSED BY THE TIME IT CAME TO THIS COURT, AND THE COURT IN THE OPINION DIDN'T DEAL WITH THAT WITH A SINGLE SUBJECT AND NOTICE, DEALT WITH THAT IN A SEPARATE SECTION AND SAID WELL, SINCE THE DATES WERE NOT CRITICAL TO THE SUBSTANCE OF THE AMENDMENT, THEN THE LEGISLATURE WOULD HAVE A REASONABLE TIME.

BUT WASN'T THAT REALLY DIFFERENT IN THAT WHAT WE WERE DEALING WITH THERE WAS SOMETHING THAT IN ORDER FOR THAT AMENDMENT TO GO INTO EFFECT, THE LEGISLATURE HAD TO ACT. HERE, IF THE LEGISLATURE DOESN'T ACT, IT GOES INTO EFFECT. AND SO IT SEEMS TO ME THAT'S AN ENTIRELY DIFFERENT --

I WOULD DISAGREE RESPECTFULLY. THE FACT THAT IT GOES INTO EFFECT ON A DATE CERTAIN IS THE TAIL END OF THIS AMENDMENT. THE THRUST OF THIS AMENDMENT IS FOR THE LEGISLATURE TO MAKE THIS REVIEW. IS TO MAKE THIS REVIEW. SO I THINK IT'S A LOT LIKE THAT DECISION IN THE SENSE THAT THE PURPOSE OF THE AMENDMENT IS SAY LEGISLATURE, YOU HAVE TO REVIEW THESE EXEMPTIONS AND THESE EXCLUSIONS. IF YOU DON'T, SOMETHING HAPPENS. IF SOMETHING HAPPENS, THAT'S NOT A GERMANE ISSUE TO THE THRUST OF WHAT'S BEING ACHIEVED HERE. THE ONLY -- AND IN TERMS OF THE JURISDICTION OF THIS COURT TODAY, AND WHAT YOU'VE GOT TO DECIDE TODAY, I WISH WE DIDN'T HAVE THE DATES IN THERE, WE DO. BUT I THINK IN TERMS OF THE JURISDICTION OF THIS COURT TODAY, THAT REALLY DOES AFFECT THE SINGLE SUBJECT ANALYSIS. WHAT IT COULD AFFECT IS THE BALLOT LANGUAGE MISLEADING, BECAUSE IT HAS -- ONE OF THE BALLOT LANGUAGES ON SERVICES HAS A DATE, THE ONE ON EXEMPTIONS DOES NOT HAVE A DATE.

SO WOULD IT REALLY BE MISLEADING IF THIS TAX WOULD GO INTO EFFECT ON JANUARY OF 2009 WITHOUT THE LEGISLATURE EVER HAVING AN OPPORTUNITY TO LOOK AT THIS AND SEE WHICH ONE SHOULD BE ADDRESSED?

WELL, I WOULD ARGUE THAT THAT WOULD BE A -- IF WE -- IF THE SPONSORS DECIDED TO PERSIST ON THE BALLOT, THEN I THINK THAT THAT WOULD BE -- I WOULD SUSPECT WHAT WOULD HAPPEN IS THERE WOULD BE SOME PROCEEDING TO SAY IT HAS TO BE DONE WITHIN A REASONABLE TIME AND OBVIOUSLY, THAT DATE IS INCONSISTENT WITH THE THRUST OF THE AMENDMENT, AND THE THRUST OF THE AMENDMENT IS TO MANDATE A REVIEW OF THE SALES TAX EXEMPTIONS AND SCREWS.

JUSTICE CANTERO HAS A QUESTION, ALSO REMIND YOU YOU'RE INTO REBUTTAL.

LET ME GO AHEAD.

I GUESS I HAD THE SAME QUESTION BUT FROM THE OTHER SIDE. DOESN'T IT MAKE THE SUMMARY MISLEADING AND DIDN'T WE SAY IN THAT PRIOR CASE DIDN'T WE WARN POTENTIAL INITIATIVES SEEKERS THAT THEY SHOULD NOT PUT A DATE, BECAUSE THIS VERY SITUATION MAY HAPPEN? DISWROO I CAN'T YES. NO QUESTION ABOUT.

YES, NO QUESTION ABOUT THAT. YOU DID WARN. BUT THE QUESTION SEEMED TO ME BEFORE THE

COURT TODAY IS WHETHER OR NOT THESE CITIZENS WHO ARE TRYING TO ADVANCE A VERY IMPORTANT ISSUE IN THE STATE OF FLORIDA ARE ENTITLED TO AN ADVISORY OPINION ON SINGLE SUBJECT, AND ON THE QUESTION OF THE BALLOT. IF YOU FEEL LIKE THE BALLOT HAS BECOME NOW UNCLEAR, BECAUSE OF THESE DATE CERTAIN, THAT DOESN'T AFFECT THE SINGLE SUBJECT ISSUE.

WHAT ABOUT THE BALLOT SUMMARY, ISN'T IT NOW MISLEADING, BECAUSE IT SAYS THAT UPON COMPLETION OF SUCH REVIEW, SERVICES CURRENTLY NOT TAXED AND WHICH ARE NOT EXEMPTED SHALL BE SUBJECT TO THE SALES TAX ON JANUARY 1, 2009. BUT THERE WILL BE NO SUCH REVIEW.

NO QUESTION. AND THAT'S WHY I SAY IN TERMS OF THE ANALYSIS THAT'S IN FRONT OF THIS COURT UNDER YOUR LIMITED JURISDICTION, YOU HAVE LIMITED JURISDICTION ADVISORY IN THESE OPINION, THE ATTORNEY GENERAL DOES NOT REQUEST ANYTHING OTHER THAN THE SINGLE SUBJECT AND THE BALLOT QUESTION, IT'S NOT LIKE THE FAIR CASE WHERE THE GOVERNOR WAS INVOLVED AND UNDER HIS INHERENT POWER TO ASK FOR AN ADVISORY OPINION. THIS IS SQUARELY WITHIN THE CORNERS OF YOUR JURISDICTION ON THE ADVISORY OPINION. MY QUESTION GOES TO OUR JURISDICTION WHICH IS ONE OF THE THINGS WE NEED TO DETERMINE. UPPED THE STATUTE IS WHETHER THE BALLOT SUMMARY IS MISLEADING. AND I COULD SEE THIS COURT SAYING, FOR EXAMPLE, THAT THE BALLOT SUMMARY IS MISLEADING BECAUSE OF THIS. THAT COULD HAPPEN. BUT WHAT I WOULD URGE THIS COURT IS BECAUSE OF THE EFFORTS THAT'S SINCE BEEN IN THIS, IS ON THE SINGLE SUBJECT ISSUE, WE'VE REALLY TRIED TO WALK WITHIN THE FOUR CORNERS OF YOUR PRIOR OPINION AND I WOULD ARGUE THAT UNDER ALL THE THEORY OF YOUR JURISDICTION, THESE CASES, WE'RE ENTITLED TO AN OPINION ON THAT, AND I CAN, FOR EXAMPLE, IF YOU USE THE -- LET'S ME GIVE YOU A COUPLE REASONS. IN THE RECENT CASE IN WHICH YOU HAD PREVIOUSLY GIVEN AN OPINION ON THE TITLE AND THEN THE OTHER PARTIES CHANGED THAT BEINGS YOU SAID IN THERE, HOWEVER, BECAUSE OUR OPINIONS AGAINST CITIZEN'S ISSUES ARE TO ENABLE PROPONENTS OF THE BALLOT LANGUAGE, THE FACT THAT WE FOUND ONLY THE BALLOT SUMMARY INDICATES THAT IMPLICITLY REJECTED OTHER CHALLENGES, AND THIS IS THE KEY, TO HOLD OTHERWISE WOULD ALLOW SERIAL TAX ON A PROPOSED AMENDMENT THwarting THE PROPONENT'S EFFORTS INDEFINITELY. AND IF YOU LOOK AT THE LANGUAGE, WHEN THEY --

WHAT YOU'RE ASKING US TO DO IS EVEN IF WE SAY THAT THIS PARTICULAR BALLOT SUMMARY IS MISLEADING, CANNOT GO ON THE BALLOT, YOU WANT SOME GUIDANCE AND DETERMINATION AS TO THE MERITS SO THAT WHEN YOU BRING IT BACK, YOU ARE ALREADY KNOW --

I WOULD ARGUE THAT YOU HAVE TO DO THAT. THAT'S YOUR JURISDICTION THAT THE COURT IS -- WHEN THE -- IF YOU FALL BACK IN THE EARLY DAYS BEFORE THIS PROCESS WAS IN BEING, IT WAS DONE BY CONSTITUTIONAL AMENDMENT, BOTH THE ATTORNEY GENERAL'S POWER AND YOUR JURISDICTION, AND THE COMMENTARY TO THAT, IS THE Pa&C @&CD0% -- COMMENTARY TO THE j[_ JOINT RESOLUTION 71, IT SAYS, THIS IS THE REASON FOR THIS j] PROCESS. IT WAS FELT THAT FAIRNESS DICTATED THE BALLOT SPONSORS BE ABLE TO OBTAIN AN OPINION WITH REGARD TO THE TECHNICAL REQUIREMENTS PRIOR TO GOING TO THE GREAT EFFORT AND EXPENSE OF COLLECTING ALL THE NECESSARY SIGNATURES FOR BALLOT PLACEMENT. WE'VE DONE THAT TWICE TO SUPPORT AN ISSUE. WE'VE DONE THAT TWICE. HINDSIGHT, WE WOULD NOT HAVE USED THAT SPECIFIC LANGUAGE, BUT THAT DOES NOT ELIMB ELIMINATE, I WOULD ARGUE, THE FIRST ARGUMENT, THAT YOU HAVE AN OBLIGATION UNDER YOUR DUTIES TO DEAL ON SINGLE SUBJECT AND BALLOT SUMMARY. AND IF THIS AFFECTS BALLOT SUMMARY, THAT'S THE WAY YOU FEEL, SO BE IT. I CAN MAKE A COLLATERAL ARGUMENT THAT IT IS -- A COLLATERAL PROCEEDING THAT COULD BE CITED AT ANOTHER DATE AND ANOTHER TOO MANY IF WE ELECT TO j] PROCEED. TO BE CANDID WITH THE COURT, WE'RE NOT GOING TO PROCEED TOGETHER ON 208 WITH THIS LANGUAGE. BUT ON THE OTHER HAND, WE'RE NOT GIVING UP. I STILL GOT SOME JUICE LEFT. WE'RE NOT GIVING UP.

JUSTICE PARIENTE HAD A QUESTION.

YOU'RE REALLY SO FAR INTO YOUR REBUTTAL TIME. I JUST WANTED TO, AND MAYBE IT CAN BE ADDRESSED BY YOU WHEN YOU j] GET BACK UP, THAT THE FINANCIAL IMPACT STATEMENT, I UNDERSTAND THAT THE PURPOSE OF THIS AMENDMENT IS REALLY TO BRING FROM THE

OPPONENT'S POINT OFVIEW, A LOT OF NEEDED ADDITIONAL TAX MONEY INTO COFFERS OF THE STATE BUDGET AND SO YOU TAKE ISSUE STRONGLY WITH THE FACT THAT THERE IS NO MENTION ON THE POSITIVE SIDE ABOUT HOW MUCH MONEY CAN BE GENERATED FROM HAVING A TAX ON SERVICES?

WELL, AGAIN, YOU'VE GOT TO WAIT YOURSELF FROM -- LE ELEVATE YOURSELF FROM THE BRIEFS. UNDER THIS CONCEPT, ALL DECISIONS ARE UP TO THE LEGISLATURE, BECAUSE THEY MAKE A DECISION TO REMOVE SOME EXEMPTIONS, THAT DOESN'T MEAN THERE'S MONEY GOING TO FLOW INTO THE STATE TREASURY. THEY COULD REDUCE THE RATE. WHAT THIS IS INTENDED TO DO, FOR THE GOOD OF FLORIDA, IS TO BROADEN THE SALES TAX BASE, BUT WHETHER OR NOT MONEY FLOWS OR DOESN'T IS GOING TO DEPEND --

WELL THEN THERE ISN'T A WAY TO ESTIMATE THE POTENTIAL BENEFIT -- POTENTIAL BENEFIT. YOU'RE TAKING ISSUE WITH THE FINANCIAL IMPACT.

I AGREE. IF YOU TRIED -- WHAT THEY WANT TO DO IS TO SAY, IT COULD THEORETICALLY GENERATE FROM THIS, THIS HUGE AMOUNT OF DOLLARS. THAT MISLEADS WHAT IT'S GOING TO DO BECAUSE IT HAS NOTHING TO DO. THE THRUST OF THE AMENDMENT IS TO SAY FOR THE PEOPLE, TO SAY THE LEGISLATURE, WE WANT YOU TO LOOK AT THIS STATE TAX, I READ ABOUT IT ALL THE TIME. SERVE EVERYBODY KNOWS IT'S BROKEN, WE WANT YOU TO LOOK AT IT ONE BY ONE AND TELL US WHY THIS EXEMPTION IS THERE, AND WHY THIS SERVICE IS EXCLUDED, AND AT THE END OF THE DAY, LEGISLATURE, YOU CAN DO WHATEVER YOU WANT TO WITH THAT MONEY, YOU CAN REDUCE THE RATE, YOU CAN DO WHATEVER YOU WANT TO, IT'S STRICTLY THAT PROSTATE.

WOULD YOU ADDRESS WHY THE PHRASE PUBLIC PURPOSE IS NOT OF CONCERN DUE TO THE NATURE OF THAT EVER SHIFTING CONCEPT UNDER FLORIDA LAW? WE HAVE ONE DEFINITION WITH REGARD TO BONDING CAPACITY, WE HAVE A DIFFERENT DEFINITION WITH REGARD TO TAXATION, WE HAVE A DIFFERENT DEFINITION WITH REGARD TO EMINENT DOMAIN. WHAT IS -- DOES THAT CREATE A PROBLEM, THAT -- OR IS THE LEGISLATURE JUST FREE TO SHIFT AND MOVE AND TO DECLARE IT EACH TIME? WHAT IS THE --

ONE OF THE THINGS WE DEBATED IN CRAFTING THIS, ONE OF THE REASONS WE PUT SOME LANGUAGE IN THERE, IS SOME OF US DEBATED WELL IF YOU JUST SAY PUBLIC PURPOSE, IT'S WHATEVER THE LEGISLATURE WANTS TO DO AND I THINK THAT'S WHAT IT IS. I DON'T THINK A COURT WOULD INTERVENE IN THAT DECISION, EXCEPT SOME WAY FRINGE AREA ISSUE, AND SO THAT'S THE ONLY TERM OF ART THAT YOU CAN USE WHEN YOU SAY SOMEBODY HAS TO REVIEW IT. BUT THAT PUBLIC PURPOSE DECISION IS GOING TO BE INHERENTLY A LEGISLATIVE DECISION, WHICH COURTS WILL DEFER TO, BUT THE POINT WAS --

IT'S GOING TO BE OF A CONSTITUTIONAL MAGNITUDE, BECAUSE IT'S NOW IN THE CONSTITUTION AND WE HAVE THOSE VARYING CONSTITUTIONAL DID HE HAVE NOTIONS AND DIFFERENT SECTIONS.

PUBLIC PURPOSE, IT'S EMBEDDED THROUGHOUT OUR CONSTITUTION. IT'S KIND OF A -- IT'S KIND OF A 99A -- TO SAY ON ONE HAND THE EXEMPTION IS OK, IT SERVES A NON-PUBLIC PURPOSE, THAT'S CALLED EMBEDDED IN WHAT GOVERNMENT DOES. I THINK IT'S -- I THINK THE WAY IT'S WRITTEN OUT TAKES AWAY SOME OF THE CONCERNS THAT WERE HELD OVER THE LAST ONE. IF YOU READ YOUR PRIOR OPINION ABOUT THE DISPARATE SERVICES, ALL THREE THE WAY YOU ARTICULATED IN YOUR OPINION ARE ADDRESSED HERE AND WE TRIED TO CLEAN IT UP. UNFORTUNATELY, WE WERE TOO OPTIMISTIC. WE THOUGHT WE COULD GET THE SIGNATURES WE DID. QUITE FRANKLY, THE WAY THIS PROCESS WORKS, UNTIL YOU GET AN OPINION, THAT SAYS YOU MEET SINGLE SUBJECT, YOU HAVE A HARD TIME GETTING SIGNATURES, AND SOMETIMES COURTS GET BEHIND OR LEGISLATURE PUTS DEAD LINES, AND SO YOU GET YOUR DECISIONS TOO LATE IN THE PROCESS, SO WHAT WE'RE HERE TODAY TO SAY IS, CONSISTENT WITH THE LEGISLATIVE INTENT OF YOUR JURISDICTION, YOUR LANGUAGE IN THE HOLMSTEAD DEMOCRACY CASE, WE'VE GONE TO THE TIME AND EXPENSE TWO TIMES TO GET HERE, THAT WE'RE ENTITLED UNDER YOUR JURISDICTION OF TO HAVE A DECISION THAT WE THINK THIS MEETS SINGLE SUBJECT. YOU MAY SAY THAT AT LEAST AS TO THE SERVICE ACT, WHICH HAS A SPECIFIC DATE IN IT, EXEMPTIONS DOES NOT, THAT THAT HAS A BALLOT PROBLEM AND WE WOULD WELCOME THAT AS A RESPONSIBLE REACTION TO OUR EFFORTS.

YOU'VE EXTENDED BEYOND YOUR TIME. I'LL GIVE YOU A COUPLE MINUTES IN ADDITION.

THANK YOU.
TO RESPOND.

ATTORNEY TUNNICLIFF.

MAY IT PLEASE THE COURT, MYNOM IS CYNTHIA TUNNICLIFF, I'M APPEARING HERE TODAY WITH ANNSTINGLE FOR THE INTERESTED PARTIES. BOTH OF THESE AMENDMENTS, BOTH THE EXTENSION OF THE SALES TAX TO PREVIOUSLY UNTAXED SERVICES AND THE ELIMINATION OF THE SALES TAX EXEMPTIONS ARE INVALID FOR A NUMBER OF REASONS THAT WE'VE PUT IN THE BRIEF, BUT NOT THE LEAST OF WHICH IS THAT THEY'RE INTERTWINED WITH THESE DATES OF JULY 1, 2008, AND JANUARY 1, 2009.

WELL YOUR OPPONENT SEEMS TO VIRTUALLY CONCEDE THAT ISSUE, BUT WHAT ABOUT THE -- HE WANTS US TO ADDRESS THE MERITS ANYWAY TO GIVE THEM SOME GUIDANCE WHEN THEY COME BACK WITH NEW LANGUAGE, SO WHAT ABOUT THE MERITS AND WHY IS THERE A SINGLE SUBJECT VIOLATION?

WELL, FIRST OF ALL, WITH REGARD TO THE MERITS, THIS COURT IN ITS 2004 OPINION SPECIFICALLY HELD THAT THERE WERE THREE -- THAT THAT AMENDMENT ADDRESSED THREE DIFFERENT SUBJECTS. ONE WAS THE SCHEME FOR LEGISLATIVE REVIEW OF EXEMPTIONS, ONE WAS THE SCHEME FOR THE LEGISLATURE TO EXAMINE EXCLUSIONS, AND THEN THE THIRD MATTER THAT WAS ADDRESSED WAS THE LUM TAGS ON LEGISLATIVE AUTHORITY TO PASS EXEMPTIONS AND EXCLUSIONS. THIS COURT IN 2004 SAID THOSE -- THAT WAS CLASSIC SORT OF LOG ROLLING, PUTTING ALL THREE OF THOSE TOGETHER. WHAT THE -- WHAT THE SPONSORS HAVE DONE HERE IS THEY HAVE -- THEY HAVE SEPARATED OUT THE EXEMPTION AMENDMENT FROM THE EXCLUSION EXEMPTION, BUT THEY STILL HAVE NOT SOLVED THE PROBLEM OF LIMITATION ON LEGISLATIVE AUTHORITY. THAT LIMITATION ON LEGISLATIVE AUTHORITY IS STILL CONTAINED WITHIN BOTH OF THEM. SO NOW WE'VE BEEN HAVING THREE DISPARATE SUBJECTS IN THE AMENDMENT, THEY HAVE NOW TWO AMENDMENTS, BOTH OF --

ISN'T EVERY PROVISION, STATE OR FEDERAL CONSTITUTION, A LIMITATION OF LEGISLATION -- [INAUDIBLE] THE SUPERIOR LAW TO THE LAW THAT THE LEGISLATURE MIGHT PASS, IT'S A LAW SET OUT IN OUR CONSTITUTION. SO EVERY PROVISION OF THE CONSTITUTION -- I'M HAVING DIFFICULTY WITH WHY THIS DOESN'T MEET THE SINGLE SUBJECT REQUIREMENT, JUST FROM YOUR VERY OPENING STATEMENT. YOU STATED IN VERY SIMPLE TERMS WHAT THESE TWO FIRST PROVISIONS DO. AND THAT IS REQUIRE THE LEGISLATURE NOW REALLY TO EXAMINE THE EXISTING SALES TAXES AND ESPECIALLY THOSE SERVICES THAT ARE NOT TAXED, AND COME UP WITH A PUBLIC POLICY REASON FOR WHY THEY SHOULD REMAIN EXEMPT. ISN'T THAT A VERY SIMPLE CONCEPT AND JUST CAPTURES IN BOTH THE TITLE AND THE SUMMARY OF THESE PROVISIONS AND THAT OTHER THAN THE ISSUE WITH REFERENCE TO THE DATES, AND YOU KNOW, THAT WE'VE ALL DISCUSSED HERE, ISN'T THIS PRETTY STRAIGHTFORWARD, AND MANDATING THAT THE LEGISLATURE NOW EXAMINE ALL OF THE SERVICES THAT ARE RENDERED AND COME UP WITH A GOOD PUBLIC POLICY REASON FOR WHY SOME SHOULD BE EXEMPT, WHILE OTHERS ARE TAXED? HOW MORE STRAIGHTFORWARD, SINGLE SUBJECT COULD THAT BE?

WELL, FIRST OF ALL, THE LIMITATION ON THIS LEGISLATIVE AUTHORITY IS IF THE LEGISLATURE DOES ENACT, THEN THE TAX WILL BE IMPOSED. IT TAKES AWAY OF THE FUNCTION OF THE LEGISLATURE TO ACT. I MEAN, IF THE -- THEY DON'T ACT BY JULY 1, 2008.

SO YOU CAN'T SET OUT IN THE CONSTITUTION A MANDATORY TAX?

BUT THAT'S NOT WHAT THIS -- I MEAN, THAT'S NOT EXACTLY WHAT THIS DOES. IT SAYS LEGISLATURE ACT BY A DATE WHICH NOW CANNOT BE MET AND THEN --

WELL A MANDATORY TAX WOULD OBVIOUSLY REMOVE THE LEGISLATURE FROM ANY AUTHORITY, AND SO IF YOU CAN HAVE A MANDATORY TAX, IN THE CONSTITUTION, WHY CAN'T YOU HAVE ACTUALLY A PROVISION THAT GIVES THE LEGISLATURE THIS AUTHORITY TO LOOK AT IT FIRST AND OF COURSE THEY'VE GOT A DEADLINE, WHICH IS OBVIOUSLY COMPLICATES, YOU KNOW, THIS AND WE NEED TO WORK OUR WAY THROUGH THAT. BUT OTHERWISE, WHAT MORE SINGLE SUBJECT COULD THIS BE THAN TALKING ABOUT SALES TAX AND SALES TAX EXEMPTIONS. THESE ARE CLEARLY PRETTY MUCH, I THINK, BY NOW, HAVING HAD TO PAY TAXES ON VIRTUALLY EVERY TRANSACTION OUT THERE THE PUBLIC UNDERSTANDS WHAT A SALES TAX IS, AND WHAT

EXEMPTIONS THE SALES TAXES ARE, SO HELP ME WITH WHY THIS ISN'T A SINGLE SUBJECT IF A VERY STRAIGHTFORWARD WAY.

THIS COURT HAS LOOKED AT A SINGLE SUBJECT IN TWO WAYS. ONE IS THIS CLASSIC LOG ROLLING, WHETHER THE VOTER IS REQUIRED TO EXCEPT SOME THINGS IN EXCHANGE FOR OTHERS. AND ALSO, THAT THE AMENDMENT ITSELF AFFECTS MULTIPLE BRANCHES OF GOVERNMENT, AND ALTERS THE PERFORMANCE OF MULTIPLE BRANCHES OF GOVERNMENT. BOTH OF THESE AMENDMENTS, LET'S JUST SAY THE SERVICES TAX FIRST, IT REQUIRES THE VOTER TO ACCEPT TAXES -- SOME SERVICES THAT ARE PRESENTLY NOT TAXED IN ORDER TO SECURE TAXATION OF OTHER SERVICES.

THAT'S NOT TRUE, BECAUSE THE LEGISLATURE IS THE ONE THAT'S GOING TO DO THAT, IS IT NOT? THAT IS THAT THIS IS GOING TO BE UP TO THE LEGISLATURE, IT'S NOT SAYING PUBLIC, THAT THE HERE'S A LIST OF ONES THAT, YOU KNOW, YOU'RE GOING TO HAVE EXEMPTED AND HERE'S A LIST OF ONES THAT AREN'T GOING TO BE EXEMPTED, SO THAT YEAH, YOU MIGHT, YOU KNOW, AGREE WITH THIS ONE, IF THAT'S WHAT YOU DO A LOT, YOU KNOW, KIND OF THING. THIS IS LEAVING IT UP TO THE LEGISLATURE.

IT'S NOT LEAVING IT UP TO THE LEGISLATURE IF THEY DON'T ACT. I MEAN, IF THIS BECOMES AN AUTOMATIC TAX, THEN A PURPOSE WILL SAY, WHAT I WANT TO TAX SERVICES ON HAIRCUTS OR -- BUT I DON'T WANT TO TAX CHILD CARE SERVICES.

BUT ISN'T THE -- I GUESS THAT WHAT I SEE FOR THE LEGISLATURE, IS THAT AS YOU'VE CONCEDED AND AS JUSTICE WELLS ASKED AT THE VERY BEGINNING, THEY COULD HAVE JUST SAID, THERE SHALL BE A SALES TAX ON SERVICES. THAT'S WHAT THE PUBLIC WANTS. AND TAKE THE LEGISLATURE OUT OF EVEN BEING ABLE TO EXCLUDE OR EXEMPT ANY PARTICULAR SERVICES. INSTEAD, IT SEEMS THAT THIS IS BEING SOMEWHAT DEFERRED IN SAYING WE NOW THE LEGISLATURE HASN'T DONE THIS. WE'RE GIVING THEM A CHANCE TO DO IT AND IF THEY WON'T, THEN IT WILL BE ACROSS THE BOARD, BUT OTHERWISE THEY'RE GOING TO LOSE THE OPPORTUNITY AND I GUESS THE FACT THAT IT'S A COMPROMISE, THAT IS, IN GIVING THE LEGISLATURE AUTHORITY AND SAYING, PLEASE DO SOMETHING, I DON'T SEE HOW THAT MAKES THIS A SINGLE SUBJECT VIOLATION, OR VERSUS THE ONE THAT YOU ADMIT WOULD BE OK, WHICH IS JUST TO SAY A BLANKET, THERE SHALL BE A SALES TAX ON SERVICES.

I'M NOT AT ALL SURE THAT JUST A BLANKET SALES TAX ON SERVICES WOULD -- WITHOUT SOME LEGISLATIVE INTERPRETATION OF THAT WOULD BE VALID, BECAUSE THAT IS -- THAT IS THE COURT, AND THIS COURT IN FACT SAID THE VERY BROADNESS OF THE PROPOSAL MAKES IT IMPOSSIBLE TO STATE WHAT IT WILL AFFECT AND VIOLATE THE REQUIREMENT OF THE AMENDMENT.

WE SAY THERE'S NO INCOME TAX IN FLORIDA. CAN'T WE SAY THERE SHALL BE AN INCOME TAX IN FLORIDA?

I THINK SAYING THERE'S AN INCOME -- EVERYONE KNOWS WHAT INCOME IS. IT'S DIFFERENT THAN SERVICES. WHERE IS THE SALE OF A SERVICE?

NOW YOU'RE TALKING ABOUT AN ISSUE OF DEFINITION OF WHETHER IT'S CONFUSING. BUT THAT'S NOT A SINGLE -- THAT'S NOT SINGLE SUBJECT VIOLATION.

WELL, I THINK THAT'S WHAT THE COURT SAID, THE BROADNESS OF WHAT THE COURT SAID IN FACT WOULD VIOLATE A SINGLE SUBJECT REQUIREMENT, BECAUSE IT EMBRACES SO MANY DIFFERENT SUBJECTS.

THE PROBLEM WE'RE HAVING HERE IS THAT THE LEGISLATURE IS GIVEN THE OPPORTUNITY TO DECIDE WHAT SERVICES SHOULD AND WHAT SERVICES SHOULD NOT BE TAXED. SO WHAT IS WRONG WITH THAT, AND WHY ISN'T THAT A SIMPLE SINGLE SUBJECT?

WELL, I THINK THAT IF YOU LOOK AT IT FROM THE POINT OF VIEW OF WHETHER IT ALTERS OR PERFORMS VARIOUS FUNCTIONS OF GOVERNMENT, I THINK THAT CLEARLY THERE'S A LIMITATION ON THE GOVERNMENT, ON THE LEGISLATIVE ACTION.

WHAT DOES IT ALTER?

MAKES THEM DESIGNATE WHAT THEIR PUBLIC PURPOSE IS FOR ENACTING OR KEEPING AN EXEMPTION.

ISN'T THAT WHAT THE LEGISLATURE IS DOING NOW?

THEY NOW HAVE TO --

IN OTHER WORDS, THE NEXT SESSION OF THE LEGISLATURE, THE LEGISLATURE CAN DECIDE UNDER EXISTING CIRCUMSTANCES TO TAX CERTAIN SERVICES. THAT WOULDN'T BE UNCONSTITUTIONAL, WOULD IT?

TO.

SO WHAT -- YOU KNOW, WHAT'S THE DIFFERENCE WITH WHAT THE LEGISLATURE CAN DO NOW AND WHAT THEY CAN DO UNDER THIS -- IT'S SIMPLY IS FORCING THE ISSUE IN TERMS OF THAT YOU'VE GOT TO LOOK AT ALL THE COMMERCIAL CERTIFICATE VOE TRANSACTIONS, -- SERVICE TRANSACTIONS AND DECIDE AND TELL THE PUBLIC THAT THERE IS A PUBLIC PURPOSE FOR US GRANTING AN EXEMPTION TO SOME, AS OPPOSED TO OTHERS.

I THINK THAT -- ALSO, I THINK I THINK, IT PRECLUDES, WHEN YOU TALK ABOUT MULTIPLE BRANCHES OF GOVERNMENT, IT ALSO PRECLUDES OR HINDERS THE GOVERNMENT'S VETO POWER, PARTICULARLY IF THE LEGISLATURE DOES NOT ACT. IT EALUMINATES THE GOVERNMENT'S VETO POWER AND THIS COURT IN THE ADEQUATE SCHOOL FUNDING INITIATIVE RECOGNIZED THE GOVERNOR'S VETO POWER WAS AN IMPORTANT GOVERNMENTAL FUNCTION THAT SHOULD NOT BE INTERFERED WITH.

SO THEN YOU GO BACK TO THIS ISSUE, WHICH IS THAT IF IT SAYS THERE SHALL BE A SALES TAX ON SERVICES, AGAIN, I THINK THAT CLEARLY HAS SINGLE SUBJECT, BUT THE LEGISLATURE CAN ACT AND THE GOVERNOR CAN VETO, SO THAT'S NOT WHAT WE MEANT BY AFFECTING MULTIPLE BRANCHES OF GOVERNMENT, IS IT? YOU KNOW, WE WANT TO MAKE SURE THAT OUR JURISPRUDENCE IN THIS AREA, MAYBE IT'S NOT ALWAYS AS CLEAR AS IT SHOULD BE, BUT THAT IT MAKES SOME COMMON SENSE AND I'M -- SO THE FACT THAT IT MIGHT AFFECT ANOTHER BRANCH IN SOME INCIDENTAL WAY IS NOT ENOUGH FOR YOU A SINGLE SUBJECT VIOLATION, IS IT? IF YOU ELIMINATE NATIONAL THE GOVERNOR'S VETO -- ELIMINATE THE GOVERNOR'S -- ELIMINATE THE GOVERNOR'S VETO POWER -- J.

EVERY TIME THERE'S A CONSTITUTIONAL AMENDMENT, WHICH IS WHETHER IT WAS A PREGNANT PIGS ONE OR NO SMOKING IN RESTAURANTS, THE LEGISLATURE IS PRECLUDED FROM ACTING AND THE GOVERNOR IS PRECLUDED FROM VETOING. AND IT ALWAYS AFFECTS THIS BRANCH, BECAUSE THERE'S ALWAYS LITIGATION WITH ABOUT IT.

THAT IS TRUE. THAT'S TRUE. I'D LIKE TO ALSO ADDRESS THE BALLOT SUMMARY ISSUES. I THINK THERE'S CLEAR ISSUES WITH REGARD TO THE BALLOT SUMMARY HERE. THAT ARE DEFECTS IN ITS BALLOT SUMMARY. IT LISTS HEALTH SERVICES. NOW, HEALTH SERVICES ARE NOT AN EXEMPTION UNDER THE CURRENT LAW. THEY ARE AN EXCLUDED SERVICE. OUTSIDE THE REACH OF THE CURRENT TAX ON GOODS. THE AMENDMENT WHICH EXTENDS THE SALES TAX TO SERVICE -- SALES TAX TO SERVICES WOULD EXTEND TO HEALTH TAX SERVICES, IF NOT EXEMPTED BY THE LEGISLATURE AND SO RATHER THAN PROTECTING HEALTH SERVICES, WE'VE GOT A CONFUSION AMONG THE TWO COMPANION AMENDMENTS. WHAT HAPPENS TO HEALTH SERVICES, IS IT -- IF WE AUTOMATICALLY GO INTO EFFECT ON JANUARY 1, 2009, DO HEALTH SERVICES BECOME TAXED BECAUSE THEY ARE AN EXCLUSION UNDER PRESENT LAW OR DO THEY BECOME EXEMPT UNDER THE EXEMPTION STATUTE? SO I THINK THERE'S A PROBLEM THERE WITH THE BALLOT SUMMARY THAT DOESN'T ADDRESS THAT ISSUE.

THAT'S ON THE SECOND ONE. YOU JUST SWITCHED TO THE SECOND OF THE THREE YOU KNISH -- INITIATIVES.

I THOUGHT WE WERE TALKING ABOUT ALL OF THEM.

WE ARE, BUT AGAIN, CERTAIN OPPONENTS DON'T SAY THERE'S A PROBLEM WITH THE THIRD ONE, RIGHT?

NO, NO. I'M TALKING ABOUT BALLOT SUMMARY WITH REGARD TO BOTH THE SERVICE TAX EXEMPTION AND THE EXEMPTION AMENDMENT. THE BALLOT SUMMARY I THINK ON BOTH OF THOSE ARE -- IS DEFECTIVE. THAT'S ONE OF THE WAYS IN WHICH THE BALLOT SUMMARY IS DEFECTIVE. IT DOESN'T ADVISE THE VOTERS AS TO THE FACT THAT HEALTH SERVICES ARE NOT AN EXEMPTION UNDER THE CURRENT LAW.

WHAT ABOUT THE SUMMARY FOR THE FIRST ONE, FOR THESE SALES TAX? ARE YOU SAYING THAT THAT'S MISLEADING AND HOW?

ONE WAY, WHAT I JUST SAID GOES TO BOTH OF THE SUMMARIES, BECAUSE THE VOTER IS NOT CLEAR. HEALTH SERVICES GOES TO BOTH. THE -- ONE OF THE OTHER WAYS THAT THE BALLOT

SUMMARY IS MISLEADING IS THIS -- THESE AMENDMENTS DO NOT ADDRESS THE CORRESPONDING HIEWLS TAX. -- USE TAX, AND SO THE ONLY -- IT ONLY GOES TO THE SALES TAX EXEMPTIONS, AND THE ONLY SALES TAX EXEMPTIONS ARE SUBJECT TO REVIEW AND ONLY THE SALES TAX IS GOING TO BE EXTENDED TO CERTIFICATE VOES. -- SERVICES.

ISN'T THAT NOW SOMETHING ABOUT THE MERITS OF THE PROPOSAL 99 PROPOSAL, THAT SOUNDS TO ME LIKE SOMETHING THAT WOULD BE PART OF POLITICAL BACK AND FORTH ABOUT THE WISDOM OF THE AMENDMENT, BUT WE DON'T IN -- JUST BECAUSE IT DIDN'T GO FAR ENOUGH, OF COURSE, IF THEY PUT USE TAX IN THERE, IT WOULD BE SAYING WELL, NOW IT'S NOT A SINGLE SUBJECT, IT'S ALSO ENCOMPASSING USE TAX.

I THINK IT GOES TO THE PLAT SUMMARY. -- BALLOT SUMMARY. I THINK THE PUBLIC NEEDS TO BE AWARE OF THE TAX POLICY THAT IS INCORPORATED IN TO THIS AMENDMENT. WHAT THIS -- WHEN YOU DON'T HAVE THE CORRESPONDING USE TAX IN HERE, WHAT YOU'RE SAYING IS THAT IF POLLUTION CONTROL EQUIPMENT IS SOLD IN FLORIDA, IT WILL BE TAXED. IF IT'S SOLD IN GEORGIA, IT WILL NOT BE TAXED. OR ACCOUNTING SERVICES. I COULD SEND MY FINANCIAL RECORDS TO AN ACCOUNTANT IN GEORGIA AND HAVE HIM PREPARE MY INCOME TAX. THAT WOULD NOT BE TAXED. ARE YOU ASSUMING THE LEGISLATURE IS DOING SOMETHING AS DISCRIMINATORY AS THAT. THEY STILL HAVE THE AUTHORITY WITH RESPECT TO THE USE TAX.

BUT THE ISSUE HERE IS NOT WHAT THE LEGISLATURE MIGHT OR MIGHT NOT DO. THE ISSUE HERE IS WHAT DOES THE VOTER DO AND WHAT IS THE VOTER AWARE OF WHEN THEY GO IN TO THE BALLOT BOX?

ARE YOU TALKING ABOUT JUST MAKING IT EVEN MORE COMPLICATED BY MANDATING THAT IF YOU'RE GOING TO HAVE A PROPOSAL LIKE THIS, THAT YOU ALSO HAVE TO HAVE A PROPOSAL ABOUT USE TAX? NOW, WHY DO YOU HAVE TO DO THAT? WHY -- HERE THIS LEAVES THE LEGISLATURE FREE, WITH REFERENCE TO -- AND QUITE CANDIDLY, I DON'T SEE HOW THE USE TAX ISSUE COULD GET ANY MORE COMPLICATED THAN IT ALREADY IS. WITH REFERENCE TO ALL THESE ISSUES, DEDUCT THE SALES OVER THE INTERNET AND CONSTITUTIONAL QUESTIONS THAT ARE RAISED AND DIFFERENT WAYS THAT ALL THE DIFFERENT STATES, YOU KNOW, TREAT THIS. BUT WHY DOES IT HAVE TO TREAT USE TAX IF IT JUST TREATS SALES TAX? IT JUST MAKES IT SIMPLER AND CLEANER, DOES IT NOT?

I THINK IT MAKES IT MORE CONFUSING, BECAUSE THE VOTER DOESN'T REALIZE WHEN THEY GO INTO THE VOTING BOOTH, THAT'S WHAT THE BALLOT SUMMARY IS SUPPOSED TO DO. THE BALLOT SUMMARY IS SUPPOSED TO ENSURE THAT THE VOTER IS SUFFICIENTLY AWARE OF THE PROPOSAL TO ENABLE HIM TO MAKE AN INTELLIGENT CHOICE.

AND IT JUST DEALS WITH SALES TAX, SO WHAT WOULD YOU WANT THEM TO DO ABOUT THE USE TAX?

I THINK THEY SHOULD MAKE CLEAR THAT IT WOULD BE -- THAT IT IS ONLY SALES TAX, AND THAT THESE KINDS OF POLICY -- IT SAYS THAT IT'S ONLY SALES TAX.

BUT I THINK THAT -- I THINK THAT PERHAPS THE -- THE VOTER MIGHT NOT KNOW THAT THAT INCLUDES USE TAX. IT SHOULD SAY SPECIFICALLY THAT IT DOES NOT INCLUDE USE TAX. THEY ALSO FAIL TO DISCLOSE IF THE -- ANY EFFECT ON THE GOVERNOR'S VETO POWER HERE AS WELL, WHICH --

HAVE YOU FOUND ANY AUTHORITY FROM ANY OTHER JURISDICTION DEALING WITH THE TIME ISSUE? ABOUT THE FACT THAT ASSUMING THIS GOES ON THE 2008 BALLOT, THAT THE JULY 1 DATE WILL HAVE ALREADY PASSED? THE JANUARY 1 DATE, YOU KNOW, COMING UP, WILL BE WITHIN ABOUT A MONTH AND A HALF. HAVE YOU FOUND ANY AUTHORITY FROM ANY OTHER JURISDICTIONS THAT HAVE A SIMILAR SCHEME DEALING --

WE HAVE NOT, NO. BUT I DO THINK THAT THE ISSUE, AS TO THE DATES, GOES RIGHT TO THE SPECIFIC ISSUES THAT THIS COURT IS TO DECIDE ON THESE TYPES OF BALLOT INITIATIVE CASES. IT GOES TO THE BALLOT SUMMARY AND THE ISSUE OF SINGLE SUBJECT. THIS COURT IN THE FLORIDA LOCALLY APPROVED GAMING CASE, WHICH WE CALL FLAG, AS A SHORT TERM, THE DATE ISSUE WAS ONE TO BE RESOLVED IN THIS INITIATIVE PROCEEDING. NOW THE COURT SAID THAT IT WAS NOT DETERMINATIVE OF VALIDITY IN THAT ISSUE, BUT IT STILL DECIDED THE DATE ISSUE IN A BALLOT INITIATIVE PROCEEDING, BUT UNLIKE THE AMENDMENT IN FLAG, THE DATES IN THESE

AMENDMENTS ARE SUBSTANTIVE PROVISIONS OF THE AMENDMENT. UNDER THESE AMENDMENTS, THE LEGISLATURE CANNOT ACT BY JULY 1, 2008, AND THE TAX WILL GO INTO EFFECT ON JANUARY 1, 2009. THE BALLOT SUMMARY IN FLAGSIMPLY STATED THAT THERE WOULD BE LEGISLATIVE IMPLEMENTATION OF THE AMENDMENT AND THE AMENDMENT LANGUAGE ITSELF PROVIDED THAT SUCH IMPLEMENTATION SHOULD BE BY A DATE CERTAIN.

WHY CAN'T THAT SIMPLY BE THE SUBJECT OF FUTURE LITIGATION? THAT IS, THAT IMMEDIATELY A DECK ACTION OR SOMETHING WILL BE FILED SAYING THAT THIS REALLY CAN HAVE NO EFFECT ON THE LEGISLATURE SINCE THE DATE IS ALREADY PASSED AND THE OTHER DATE -- CAN THE COURT LOOK AT THAT AND DECIDE WHAT EFFECT.

BECAUSE IT GOES TO THE BALLOT SUMMARY. THE BALLOT SUMMARY IS -- THE BALLOT SUMMARY SAYS THAT THE LEGISLATURE WILL REVIEW THESE CERTIFICATE VOES AND -- SERVICES AND EXEMPTIONS, AND IF THEY DON'T REVIEW THEM BY JULY 1, THEN THEY'LL GO INTO EFFECT. THAT IS THE BALLOT SUMMARY. THAT IS NOT GOING TO HAPPEN. THERE IS NOT GOING TO BE A REVIEW BY JULY 1.

WHAT YOU'RE SAYING IS AT THE VERY HEART OF THE PROPOSED AMENDMENT IS THAT WE WOULD HAVE LEGISLATIVE REVIEW OF ALL OF THESE SERVICES, TO DETERMINE IF THEY'RE GOING TO BE TAXES, AND THAT CANNOT BE DONE UNDER THE LANGUAGE THAT'S NOW PROPOSED.

I THINK THAT -- I THINK IT'S -- THE AMENDMENT IS SELF-EXECUTING AS WELL. IT DOES SAY THERE WILL BE LEGISLATIVE REVIEW BY JULY 1, BUT IT ALSO SAYS IF THERE IS NO LEGISLATIVE REVIEW, GIVE AN OPINION SAYING THAT ALL OTHER THINGS IN THESE ARE FINE. WOULDN'T IT BE A SIMPLE MATTER OF THE PROPONENTS CHANGING THIS -- CHANGING THESE DATES, RECOMMITTING THESE PROPOSED AMENDMENTS, AND GETTING ON WITH IT? I MEAN, WOULDN'T THAT SOLVE THE PROBLEM? THEY HE COULD CHANGE THESE DATES TO 2010, AND --

YOU MEAN -- SO IN EFFECT, HAVE NEW AMENDMENTS, THEY COULD REWRITE THE AMENDMENTS, YES. BUT THESE AMENDMENTS ARE INVALID, BECAUSE THE BALLOT SUMMARY, FOR ONE THING, IS JUST INACCURATE.

IT HAS -- IT PROVIDES FOR A DATE CERTAIN THAT CANNOT TAKE PLACE, IT PROVIDES FOR LEGISLATIVE REVIEW AND THEN THE AUTOMATIC TAXATION ON JULY 1, WHICH IS ACTUALLY -- I MEAN, JANUARY 1, WHICH IS ACTUALLY BEFORE THE EFFECTIVE DATE OF THE AMENDMENT. THE EFFECTIVE DATE OF THE AMENDMENT WOULD BE THE FIRST TUESDAY AFTER THE FIRST MONDAY, SO THESE AMENDMENT CAN'T GO FORWARD IN THE BALLOT SUMMARY IS JUST ENACTED. THANK YOU VERY MUCH. YOU'VE EXTENDED YOUR NAME. MR. NABORS, YOU GET A COUPLE OF MOMENTS.

MR. NABORS, LET ME ASK YOU A QUESTION THAT'S BURNED INTO MY HEAD AT LEAST AND THAT IS THAT AM I READING THIS RIGHT, THAT REGARDLESS OF WHICH DATE IS HERE, UNDER THIS SCHEME, THAT IF THE LEGISLATURE DOESN'T ACT UNDER THIS SCHEME BY JULY 1 OF 2008, BUT IF THERE ISN'T AN EXEMPTION THAT IS ADOPTED, THEN THAT'S GOING TO BE TAXED FOREVERMORE, THAT BINDS EVERY FUTURE LEGISLATURE?

NO. IT BECOMES TAXED AT THAT POINT. THE NEXT SESSION THEY COULD MAKE A DECISION. WHERE DOES IT SAY THAT?

BECAUSE THE WHOLE THRUST HAS TO DO WITH MANDATING A REVIEW THAT OCCURS. IT DOESN'T PRECLUDE A FUTURE TAXATION OF FOOD, IT DOESN'T INCLUDE A REENACTMENT OF AN EXEMPTION.

IT SAYS ALL SERVICES THAT ARE NON-EXEMPTED, SHALL BE SUBJECT TO THE EXISTING TAX EFFECTIVE JANUARY 1.

RIGHT.

NOW THAT WOULD READ TO ME THAT IF SOMETHING ISN'T EXEMPT BY THAT DATE IN -- WHAT'S GOING TO HAPPEN HERE IS THAT WE'RE GOING TO HAVE A TAX, AND IF IT'S NOT EXEMPTED, THEN FOREVER MORE, EVERY FUTURE LEGISLATURE IS BOUND.

NO, I DON'T READ IT. IT'S NOT INTENDED THAT WAY. BUT IT DOESN'T SAY, AND THEREFORE SHALL ALWAYS BE TAXED. IT SHOES SAYS AT THE END OF THIS REVIEW, IF THE LEGISLATURE MAKES A DECISION NOT TO REENACT IT, IT HAS TO -- LEGISLATURE HAS REALLY THREE CHOICES. IT CAN BASICALLY REASON ENACT A FIRST EXEMPTION WITH CERTAIN CONDITIONS, WHOLE OR IN PART LIKE IT DID, IT CAN PROVIDE TAXATION FROM SOME LAW SERVICES, NOT OTHERS, IT WOULD

REENACT IT IN TOTAL OR STAND SILENT UNLESS THE AMENDMENT WORKS. DOESN'T MEAN THE NEXT TWO SESSIONS, IT CAN'T CHANGE ITS MIND. THERE'S NOTHING IN HERE THAT WOULD GIVE THE READER THAT. THE LEGISLATURE --

LET ME ASK YOU ONE OTHER QUESTION I HAD IS IN THE BODY OF THE AMENDMENT, IT SAYS A SINGLE SERVICE SHALL BE THAT RENDERED BY BUSINESS, INDUSTRY, OR PROFESSION, WITH AT LEAST THE SAME FOUR DIGITS IN THE NAICS CODE. NOW THAT IS NOT A WORD ABOUT THAT IN THE SUMMARY. ISN'T THAT A PROBLEM?

NO, I DON'T THINK THAT IS. THAT'S -- THAT'S A DEFINITIONAL THING, TO TRY -- I MEAN, I DON'T THINK ANYTHING -- THE QUESTION OF THE SUMMARY IS IS THE SUMMARY INFORMED THE VOTER, INFORMED THE VOTER AS TO WHAT THEY'RE VOTING ON.

IT DOESN'T INFORM THE VOTER THAT THERE'S ANY LIMB LIMITATION ON WHAT SOMEBODY IS GOING TO DESIGNATE A SERVICE IF YOU READ THE SUMMARY.

WELL I WOULD NOT AGREE WITH THAT. I THINK IT GOES BEYOND. IT'S A DETAIL THAT GOES BEYOND THE THRUST OF WHAT AN INTELLIGENT VOTER WANTS TO KNOW TO PASS THE AMENDMENT.

MR. NABORS, THANK YOU VERY MUCH. WE HAVE THANK THE PARTIES FOR YOUR ENLIGHTENING ARGUMENTS AND WE'LL TAKE THE CASE UNDER ADVISEMENT. THANK YOU VERY MUCH. TAKE THIS OPPORTUNITY TO WELCOME THE GAD SEND COUNTY TEAM COURT. THEIR SUPERVISOR TEACHER DEBBIEMUELLER AND WE HAVE SOME RESOURCE OFFICERS AND FAMILY AND FRIENDS AN OTHER TEACHERS OF TEAM TEEN COURT, WE WELCOME YOU TO THE FLORIDA SUPREME COURT. WE SUPPORT THE EFFORTS OF TEEN COURT, MOST OF US ON THE BENCH HAVE WORKED WITH TEEN COURTS HERE IN TALLAHASSEE IN ONE WAY OR ANOTHER, AND WE'RE PLEASED THAT YOU BROUGHT THE STUDENTS INTO WATCH GOVERNMENT AND TO WATCH THE COURT PROCESS IN OPERATION. SO WE WELCOME YOU AND WE'RE GLAD YOU'RE HERE.