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Floridians for a Legal Playing Field v. Floridians Against Expanded Gambling

SC06-2505

ALL RISE. HEAR YE, HEAR YE, HEAR YE. THE SUPREME COURT OF FLORIDA IS NOW IN 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 ORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT, PLEASE BE SEATED. GOOD MORNING, FRIENDS WELCOME TO THE SUPREME COURT AND THE ORAL ARGUMENT FOR SEPTEMBER 17th. I WOULD HOPE DURING THE DAY WE WOULD ALL TAKE A MOMENT TO REFLECT ON TODAY'S CONSTITUTION. AND WHAT A GREAT BLESSING IT IS FOR SUCH A GREAT NATION. WITH THAT OUR FIRST CASE IS FLORIDIANS FOR A LEVEL PLAYING FIELD VERSUS FLORIDIANS AGAINST EXPANDED GAMBLING. MR. ROGOW. MAY IT PLEASE THE COURT. MR. RBGOW FOR THE PETITIONER. WE WANT TO ADDRESS THE JURISDICTIONAL ISSUE BECAUSE THE IS OBVIOUSLY CONCERNED ABOUT IT AND THEY WERE FILED LAST WEEK. THIS COURT DOES HAVE CERTIFY QUESTIONS. IT'S PART OF. WHY DO YOU HAVE TO DO THAT?

BECAUSE THE JUDGMENT THE JUDGMENT OF THE COURT THE DECISION OF THE COURT WAS SO CERTIFY A QUESTION.

WELL THE JUDGMENT OF A COURT IS USUALLY A FIRM REVERSE, QUASH, APPROVED. THAT'S THE JUDGMENT WHAT'S THE RESULT IN THE CASE? IT DOESN'T SEEM TO ME THE JUDGMENT INCLUDES WHETHER OR NOT TO CERTIFY A QUESTION?

JUDGE BENSON COULD HAVE JOINED BY -- [INAUDIBLE] THEY TALK ABOUT THE DECISION OF THE COURT REALLY THE ULTIMATE OUTCOME IN THE JUDGMENT OF THE COURT. HE CONCURRED WITH WHAT THE COURT HAD DONE WAS MAKE A DECISION AND CERTIFY THE QUESTIONS -- WHY WOULDN'T HE JUST JOIN THE OPINION THEN?

I CAN'T SAY WHY. ALL I CAN SAY WHAT HE DIDN'T DO BY VIRTUE OF WHAT HE WROTE WAS FOR THE COURT AND WHEN THIS COURT APPROVED 9.331 THE LANGUAGE IN THE END BANK RULE IS VERY HELPFUL TO US AND IT'S A 416 SOUTHERN SECOND AT PAGE 1129 DEALING WITH THE TIE VOTE AND THE COURT WROTE IN EITHER CASE DEALING WITH A TIE VOTE THE DIVERGENT VIEWS CULMINATING IN A TIE VOTE OF THE END -- EN BANC COURT WHICH SUGGEST THAT THE DISTRICT COURT SHOULD CERTIFY THE ISSUE TO THIS COURT FOR RESOLUTION. THAT'S EXACTLY WHAT THE DISTRICT COURT DID. IS THE CRITICAL ISSUE ON THIS JURISDICTIONAL QUESTION!!!!!!!!!!!!!! QUESTION -- WHAT JUDGE STANTON CONCURRING VOTE MEANS IN OTHER WORDS YOU AGREE WITH THE IT ENDS UP BEING 6-5 OR-6-6. WHETHER WE WANT TO TAKE THE CASE BASED ON CERTIFIED QUESTION OR NOT BUT WE WOULD NOT HAVE JURISDICTION.

I DON'T AGREE.

BECAUSE I THOUGHT YOU WERE FOCUSING ON JUDGE BENTON'S VOTE.

ONLY BECAUSE THAT'S BECOME THE ISSUE IN THE WAY THAT THEY HAVE EXPRESSED IT. BUT I THINK UNDER THE CONSTITUTION IT TALKS ABOUT THE DECISION OF THE COURT. IT DOESN'T TALK ABOUT A MAJORITY OF THE JUDGES WHO ARE DECIDE!!ING THE CASE.

IT SAID "CERTIFIED BY IT" REFERRING TO THE COURT. SINCE THE COURT'S DECISION, WOULD YOU AGREE THAT THE DEFENDER JOINED INSERTFYING THE QUESTION, YOU COUNTED THEM IN YOUR NUMBERS.

WELL, WHEN YOU ASK --

IN OTHER WORDS A DIFFERENT MAJORITY CAN AGREE TO THE CERTIFIED QUESTION AND CAN AGREE TO THE DECISION OF THE COURT.

YES, AND HERE ARE THE DISSENTERS AGREED IT WAS CERTIFIED BY THE COURT. BECAUSE THE JUDGE'S DISSENT MAKES IT CLEAR THAT HE RECOGNIZED THE COURT HAD CERTIFIED THE QUESTION OF THE COURT. AND JUDGE KAHN TALKS ABOUT THE COURT CERTIFYING THE

QUESTION. REMEMBER IT'S A CERTIFYING OPINION. BUT IF WE DECIDE IF THERE REALLY IS A 6-6 SPLIT YOU YOU WOULD AGREE THAT THE COURT -- I WOULD NOT JUSTICE QUINCE. I THINK WHEN YOU SAY 46 OF 46 -- 6-6 POLICE -- SPLIT. I THINK KRO YOU WOULD HAVE-5 AND THE UNKNOWN RATIONALE OF JUDGE BENSON WHICH I THINK HAS TO THEN FALL ON -- WITH THE 6 THAT HAVE CERTIFIED THE QUESTION MAKING IT A-5 CASE. I GO BACK TO WHAT THIS COURT SAYS IN 9.331 IN TERMS OF CREATING THE RULES THAT -- YOU STILL KEEP SAYING IT MAKES IT A 7-5 BUT IF WE BELIEVE IT'S A 6-6. THEN DO WE HAVE YOUR JURISDICTION TO HEAR THE CERTIFIED QUESTION.

YES. BECAUSE THE NOTION IT HAS TO BE A MAJORITY OF THE JUDGES DECIDE!!ING THE CASE DOESN'T APPEAR IN THE CONSTITUTIONAL PROVISION.

UNDER THAT THEORY THEN IT COULD BE AN 11-1 VOTE AND 1 THE DEFENDING JUDGE CERTIFY!!IES THE QUESTION AND WE WOULD HAVE JURISDICTION.

THAT WOULD NOT BE THE DECISION OF THE COURT. THE DECISION -- WHEN YOU LOOK AT THE CONSTITUTION THAT TALKS ABOUT A DECISION OF THE COURT CERTIFYING A QUESTION -- AND YOU KNOW, LOU ELLEN TALKS ABOUT IN THE CASES THERE'S NOT A SINGLE RIGHT ANSWER. THERE'S A SERIES OF ANSWER. I THINK THE BEST ANSWER HERE AND THE BETTER ANSWER IS THAT THIS WAS CERTIFIED BY THE COURT. THE COURT RECOGNIZED IT. 9.331 SUGGEST EVEN THAT IF IT IS A TIE IT SHOULD BE --

BECAUSE YOU ONLY HAVE LIMITED TIME. I WILL ASK A RELATED QUESTION WHICH IS ASSUME!!ING WE HAVE JURISDICTION, SHOULD WE EXERCISE OUR JURISDICTION OVER THIS CERTIFIED QUESTION? WE TENTATIVELY HAVE DONE THAT. WHAT I WOULD LIKE TO ASK YOU ABOUT THIS, THE ELECTION CURE DOCTRINE, IS WHETHER IT MATTERS AT ALL, HOW PERVASIVE IF FRAUD WAS CLAIMED HOW PERVASIVE THE FRAUD IS, WHEN THE FRAUD WAS DISCOVERED OR COULD HAVE BEEN DISCOVERED -- DOES IT -- IT IS THE SAME EXACT ISSUE AS FAR AS CURE WHETHER THERE WERE AN INSUFFICIENT NUMBER OF VOTES THAT WERE OBTAINED BY LEGAL MEANS? AND I ASK YOU THAT BECAUSE THE RULE OF LAW AT LEAST THE FIVE THAT DIDN'T AGREE IT SHOULD BE CERTIFIED BUT AGREED WITH THE REASONING FELT THAT THIS SHOULD BE DEVELOPED FACTUALLY BEFORE ANY COURT RULES ON IT. AND TO ME I'M CONCERNED THE MORE I THINK ABOUT IT THAT THERE ARE SO MANY POTENTIAL SHADES OF WHAT -- HOW BAD THE FRAUD COULD BE THAT I'M NOT SURE I WOULD ACCEPT THAT IT'S REALLY JUST THE SAME THING AS AN INSUFFICIENT NUMBER OF SIGNATURES. TELL ME ABOUT WHY IT IS THAT WE SHOULD BE ABLE TO PRONOUNCE A RULE OF LAW IN THIS CASE, WHICH WOULD SAY ELECTION CURES EVERYTHING TO DO WITH HOW THE DECISION VOTES ARE GATHERED. THE RULES SHOULD BE WHERE A CHALLENGER DOESN'T SECURE A FINAL RULING BEFORE AN ELECTION OR AND THIS APPLIES MOSTLY TO THIS CASE OR DOES NOT ATTEMPT TO SECURE A FINAL RULING BEFORE THE ELECTION THE VOICE OF THE PEOPLE WILL CURE ANY DEFECT RELATED TO BALLOT PLACEMENT. THAT IS THE RULE THAT WE ESPOUSE. IT'S A IRNO AND LIMITED RULE.

WOULD YOU ELABORATE UPON THAT ASPECT WHERE YOU SAY THEY DIDN'T ATTEMPT TO SECURE A RULING UPON -- CERTAIN!!!!!!!!!!!!!! CERTAINLY A CIRCUIT JUDGE WHATEVER FOR WHATEVER REASON BE IT TIME OR OTHER REASONS MAY NOT REACH A DETERMINATION THAT CAN IMPACT OR STOP A QUESTION FROM GOING ON THE BALLOT. SO TO WHAT EXTENT ARE WE TALKING DO YOU HAVE EXHAUST AND ATTEMPT TO COME TO THIS COURT TO ALL OF THAT BEFORE AN ELECTION OR WHAT DO YOU MEAN BY ATTEMPT? OR WHERE DO WE GO FOR PARAMETERS OF WHAT IS AN ATTEMPT TO OCCUR -- SECURE A FINAL RULING.

I DON'T THINK THE COURT HAS TO SPEAK BROADLY. I THINK THEY SHOULD FOCUS ON WHAT HAPPENED IN THIS CASE. IN THIS CASE THEY DIDN'T ATTEMPT TO EXHAUST THE REMEDIES THAT WOULD HAVE BEEN AVAILABLE TO THEM TO TRY TO GET THIS RESOLVED BEFORE THE ELECTION. THE SIGNATURES WERE CERTIFIED ON JULY 23rd. THEY FILED AN EARLY LAWSUIT WHICH THEY DISMISSED ON SEPTEMBER 27th AND FILED THIS LAWSUIT ON SEPTEMBER 28th ASKED FOR A CASE MANAGEMENT CONFERENCE, ASKED FOR A PERMANENT INJUNCTION HEARING. THERE WAS A HEARING AND THIS COURT NOW HAS THE RECORD OF THAT HEARING ON OCTOBER 11th. BUT, DO WE EVEN KNOW WHEN THE FRAUD WAS DISCOVERED?

WELL, THEY SAY THEY DISCOVERED THE FRAUD SEPTEMBER 17th OR 18th. ISN'T THAT AN IMPORTANT ISSUE, THOUGH? YOU SAY WE WILL JUST DECIDE THIS DAY WHICH BRINGS ME BACK

TO MY ISSUE WHICH THIS CASE HAS SO MANY DIFFERENT PERMUTATIONS WHY SHOULD WE ANSWER THE QUESTION IN A SITUATION WHERE THE FACTS OF THE CASE HAVE NOT BEEN DEVELOPED?

BECAUSE IT WOULD BE A WASTE OF JUDICIAL RESOURCES TO SEND THIS BACK TO MAKE SOME DETERMINATION ABOUT FRAUD ON THE FACTS OF THIS CASE WHERE THEY TKHRAEURED, IT WOULD BE A WASTE OF ADDITIONAL RESOURCES A WASTE OF SUPERVISOR ELECTION RESOURCES, IT WOULD CREATE INSTABILITY, UNNECESSARY INSTABILITY AND UNKNOWN FACTS WITH REGARD TO ECONOMIC PLANNING WHICH HAS RESULTED THROUGHOUT THE CONSTITUTIONAL AMENDMENTS. GETTING BACK TO THE OTHER QUESTION, AS OFTEN HAPPENS WITH FRAUD, SOMETIMES IT'S NOT DISCOVERED UNTIL WELL AFTER IT OCCURRED. SO WHAT HAPPENS IN THE CASE WHEN -- COULD ENVISION CASES WHERE THERE WAS MASSIVE FRAUD IN OBTAINING THE SIGNATURES BE OUT THAT'S NOT DISCOVERED UNTIL AFTER THE ELECTION. IS THERE THEN NO REMEDY?

THE ELECTION DOCTRINE WORKS EVEN IN THE FACE OF FRAUD. IN RESPONSE TO YOUR QUESTION PARIENTE BECAUSE HEAR THE QUESTION PRESENTED TO THE VOTER WAS SLIGHTLY FAIR. THIS COURT HAD APPROVED IT. THERE WAS NO DISPUTE ABOUT IT. --

BUT THAT OPENS THIS WHOLE PROCESS UP TO A SITUATION AND WHICH THEY ARE NOT GOING TO HAVE TO FULLFILL THE REQUIREMENT THAT YOU GET A SIGNATURES WITH ADDRESSES SO THAT THOSE CAN BE CHECKED. THAT'S THE WHOLE SCHEME THAT WAS DEVELOPED OR THE INITIATIVE PROCESS THAT THERE WAS GOING TO BE THIS PRELIMINARY HOOP THAT YOU HAD TO GO THROUGH BEFORE YOU GOT ON THE BALLOT. AND WHAT YOUR ADVOCATING REALLY JUST TURNS THE BLIND EYE TO IT. I AM NOT LIMITED TO THE FACT THAT THIS CASE. WHEN WE TALK ABOUT WHEN THEY THEY SAY THEY 'TIS COVERED IT -- DISCOVERED IT ALL!!!!!! ALL -- ALTHOUGH THEIR COMPLAINT HAD BEEN FILED BEFORE THE ONE THEY DISMISSED. EVEN IF IT IS SEPTEMBER 18th OR 19th LOOK WHAT HAPPENED IN THIS CASE. THEY FILED ON THE 28th. THE ELECTION NOT UNTIL FIRST WEEK IN TPOFER. THEY HAD TIME TO SEEK A DECISION BEFORE HAND. THE 2000 ELECTION CASE WENT FROM THE CIRCUIT COURT TO THE U.S. SUPREME COURT TWICE WITHIN 35 DAYS. YOU COULD CERTAINLY LITIGATE THIS CASE QUICKLY IF YOU WANTED TO LITIGATE THIS CASE QUICKLY. THAT'S WHY THE RULE I'M ESPOUSE!!ING DEALING WITH THE FAILURE TO EVEN ATTEMPT TO SEEK REVIEW BEFORE THE ELECTION --

BUT DIDN'T THE JUDGE IN THIS CASE BASICALLY SAY THAT THERE WAS NO REASON TO HAVE!!!!!!! HAVE -- REASON TO HAVE AN AJUDEICATION OF THIS CASE PRIOR TO THE ELECTION?

ONLY THEY ARE THE ONES THAT TALKED ABOUT ONLY HAVING HER MAKE A DECISION BEFORE THE ELECTION. THEY COULD HAVE SOUGHT REVIEW OF HER DECISION TO DENY THE HEARING ON THE INJUNCTION.

MY PROBLEM WITH THAT AND I'M -- AGAIN I THINK THIS IS SO COMPLEX. YOU CAN READ ALL OF OUR CASES AND THEY JUST DEPENDS IF IT'S REELECTION. POST ELECTION THAT JUDGE CLARK SAID WHAT WAS RAISED PRESENTED SERIOUS ISSUES THAT WAS GOING TO REQUIRE EXTENSIVE DISCOVERY. AND MY CONCERN AND IT GOS BACK TO WHAT JUSTICE WELLS IS SAYING IF THIS HAD BEEN A DE MIMIMUS CHALLENGE, MAYBE IT COULD HAVE BEEN RESOLVED QUICKLY. BUT IF IT WAS PERVASIVE FRAUD WHICH THEY ARE CLAIMING, THEN IT PRESENTED AS JUDGE PARK SAID SERIOUS ISSUES. YOUR REPRESENTATIVE WHOEVER THE LAWYER WAS AT THE HEARING NEVER SAID, JUDGE, WHEN SHE SET THE CASE MANAGEMENT CONFERENCE FOR AFTER THE ELECTION, THEY SAT BACK AND DID NOT SAY THAT THE ELECTION WOULD CURE IT. I THINK THERE SHOULD BE AN OBLIGATION ON THE SIDE OF THE PROPONENT TO ALSO TRY TO OBTAIN THAT PREELECTION RULING. WHAT DO YOU SEE IF THAT'S THE FACT THAT SHE ALLEGED THAT -- OR SHE SAID THERE WAS SERIOUS ISSUES THAT WERE GOING TO TAKE SOME TIME TO LITIGATE. IT WASN'T DISCOVERED UNTIL SEPTEMBER 17th. THEY MOVED HER CASE MANAGEMENT CONFERENCE AND YOUR -- THE ATTORNEYS FOR THE PROPONENTS NEVER EVEN SUGGESTED THAT THIS WOULD BE AN FACILITY TO DO IT AFTER THE ELECTION. [INAUDIBLE] I DON'T THINK IT'S THE OBLIGATION TO ANYONE BUT THE PLAINTIFF TO SEEK THIS REVIEW AND TO SEEK TO GET THIS RESOLVED BEFORE HAND. AND IN THIS SITUATION WHEN ONE REACHED THE OCTOBER 11th HEARING, I THINK IT'S CLEAR THAT THE PLAINTIFFS REALLY MADE NO EFFORT TO PURSUE -- THEY THOUGHT THAT THIS WAS SO IMPORTANT. IN FACT I THINK IT'S ON PAGE 17 WHERE THEY SAY MAYBE THIS COULD

WAIT. I DON'T REMEMBER EXACTLY THE LANGUAGE. BUT THE POINT IS THAT, THAT SEPTEMBER 17th OR 1th IF THAT'S WHEN THEY SAY THE DATE THEY FOUND IT, ONE I HAVE SOME TROUBLE WITH THAT BECAUSE ONE -- WHEN ONE REACHED THAT HEARING CLEARLY THEY HAD ALLEGED FRAUD BEFORE. ASSUMING THAT'S SO YOU ARE TALKING TWO MONTHS THEY HAD TO TRY TO GET THIS RESOLVED BEFORE HAND. BUT YOU AGREE THAT THERE WAS NOT SUFFICIENT TIME TO RESOLVE THE SUBSTANCE OF THE ISSUE.

NO. THE BASIS OF THE FRAUD. YOU THINK THAT COULD HAVE BEEN RESOLVED IN LESS THAN A MONTH.

IF 35 DAYS WE COULD RESOLVE THE CIRCUIT ELECTION FROM CIRCUIT TO SUPREME COURT TWICE YOU COULD HAVE RESOLVED THIS CASE WITHIN 55 OR 60 DAYS. YES, IT COULD HAVE BEEN DONE. HAD THEY ATTEMPTED TO DO IT. THAT'S WHY NARROW RULE I THINK IS SO IMPORTANT. --

MR. ROGOW WHAT BOTHERS ME REALLY ABOUT THIS IS CASE IS YOU HAVE THE SIGNATURES THE CONSTITUTION REQUIRES YOU TO HAVE THEM. AND IN THE CASE OF PROPER VERSUS GILCHRIST WHILE IT WAS A LEGISLATIVE INITIATIVE ONE OF THE CONSTITUTIONAL REQUIREMENT FOR THOSE THAT THIS BE THE VOTE OF THE SENATE HAS TO BE REFLECTED. AND WE SAID THAT WAS A FATAL DEFECT. WHY ISN'T THIS A FATAL DEFECT WHEN THIS IS A CONSTITUTIONAL REQUIREMENT THAT YOU HAVE TO HAVE THESE SIGNATURES IN ORDER TO PUT THEM ON THE BALLOT.

BECAUSE --

AND IF YOU DON'T HAVE THEM, WOULDN'T THAT BE FATAL TO THE PROPOSED AMENDMENT? BECAUSE IT IS CURED WHILE IT IS AN IMPORTANT, OBVIOUSLY, CRITICAL CONSTITUTIONAL AMENDMENT TO GET ON THE BALLOT, ONCE IT IS ON THE BALLOT AND THERE HAS NOT BEEN AN ATTEMPT -- THAT'S WHY I THINK THIS IS SO IMPORTANT. THERE'S NOT AN ATTEMPT TO GET FINAL RESOLUTION OF THE CASE, THEN THE ELECTION CURES EVEN THAT DEFECT.

DON'T WE ALWAYS ALSO TALK ABOUT THE ELECTION CURE BEING P R.E. -- PERFORMO AND I'M TRYING TO THINK OF THE LANGUAGE, PROCEDURAL ISSUES, AS OPPOSED TO SOMETHING THAT THE REALLY A CONSTITUTIONAL REQUIREMENT HERE. THAT YOU GET THE SIGNATURES. BUT CRAWFORD AND WEST AND ALL OF THOSE CASES DEAL WITH CONSTITUTIONAL FAILURES OF THE LEGISLATURE HAS IMPROPERLY RECORDED ITS VOTE THAT'S A CONSTITUTIONAL FAILURE TOO AND YET THE ELECTION --

WE DID SAY IT WAS A FATAL ERROR; DIDN'T WE?

BUT, RECOGNIZING THOUGH, WHEN YOU LOOK AT THE LIST OF CASES BEGINNING WITH WEST WHICH ALSO HAD A CONSTITUTIONAL FAILURE PROBLEM, THAT THE ELECTION COULD CURE THE DEFECTS.

THE VOICE OF THE PEOPLE ULTIMATELY WINS THE DAY AS LONG AS THE STATEMENT ON THE BALLOT IS CLEAR AND UNDERSTOOD. THAT'S WHAT WE'RE TALKING ABOUT HERE. ANY OTHER APPROACH TO THIS WOULD ALLOW SOMEBODY TO COME IN LATE AND THROW INTO CHAOS A CONSTITUTIONAL AMENDMENT THAT'S ABOUT TO BE VOTED ON. AND IN THIS KIND OF SITUATION CREATE INSTABILITY BOTH CONSTITUTIONALLY INSTABILITY. THE QUESTION REALLY BECOMES THEY DID BRING THIS ACTION BEFORE IF ELOCATIONION AND NO MATTER WHO MADE THE FINAL DECISION IT WASN'T DECIDED BEFORE THE ELECTION BE. -- BUT THEY BROUGHT IT BACK.

THEY DIDN'T PURSUE IT JUSTICE QUINCE. THAT'S THE POINT I'M MAKING. THAT'S WHY I TALK ABOUT THIS NARROW RULE. NO ATTEMPT NO ATTEMPT TO SEEK APPELLANT REVIEW OF THE DENIAL IF YOU WANT TO CALL IT THE DENIAL OF THE INJUNCTION.

WHAT WOULD BE THE VEHICLE FOR SEEKING APPELLANT REVIEW OF THAT DECISION.

9.130 BECAUSE BY DENYING THE INJUNCTION HEARING THAT ASK FOR THERE'S A DENIAL OF THE INJUNCTION OR AN --

YOU ARE MOVING INTO YOUR REBUTTAL TIME. DO YOU WANT TO SAVE SOME?

YOU HAVE A QUESTION. [INAUDIBLE]

NO, OR DENY THE INJUNCTION. BECAUSE THAT'S APPEALABLE TOO [INAUDIBLE]

WELL, IF SHE DENIES THE INJUNCTION, THEN THEY COME UP TO THE DISTRICT COURT OF APPEAL. BECAUSE IT'S AN INTERLOCUTORY APPEALABLE. NO ATTEMPT WAS MADE TO DO THAT HERE.

FROM THE RESPONDENT'S BRIEF UNDERSCORES THEIR IT MAYBE FAILURE TO HAVE DONE THAT.

GOOD MORNING, MAY IT PLEASE THE COURT MY NAME THE JACK PELZER HERE TODAY

REPRESENTING THE FLORIDA AGAINST EXPANDED GAMBLING. I WOULD LIKE TO RESERVE FIVE MINUTES OF MY TIME SO WE CAN ADDRESS THE ISSUES FOR THE JURISDICTIONAL ISSUE. FIRST I WOULD LIKE TO GO THROUGH THE JURISDICTIONAL ISSUE THIS COURT RAISED. I THINK THAT THIS QUESTION DOES COME DOWN TO -- [INAUDIBLE]

MOST RESPECTFULLY I WONDER IF IT CAME DOWN TO THAT WHY NOBODY RAISED IT UNTIL THE COURT RAISED IT CAN.

FRANKLY YOUR HONOR I WAS A BIT EMBARRASSED BY THAT. THE COURT DID OBVIOUSLY PRIOR TO THE QUESTION I REALIZED SIMPLY TAKING THE WORD FOR IT WASN'T ADEQUATE HERE. BUT OBVIOUSLY THEY MADE A McMc -- MISTAKE.

WILL SOMEONE ADDRESS THE JURISDICTION ON THE MISAPPLICATION OF ARMSTRONG VERSUS HARRIS? I KNOW THAT THE ORIGINAL JURISDICTIONAL BRIEF DID SEEK REVIEW ON ALTERNATIVE BASIS. NOW I'M WONDERING WHETHER MR. ROGOW COUNTED UP THE RULES CONCERN.

ARMSTRONG DEALT WITH DEFECT IN THE BALLOT. WHERE IT HAD IN THE BALLOT SUMMARY. ISN'T THAT -- THE MAJORITY RELIES ON ARMSTRONG -- RELIES ON ARMSTRONG WHILE SAYING YOU ARE OKAY. ISN'T THAT -- ISN'T IT A POSSIBLE BASIS OF JURISDICTION TO SAY THEY COMPLETELY MISAPPLIED, TOOK A SENTENCE OUT OF ARMSTRONG AND MISAPPLIED IT TO THE FACTS OF THIS CASE.

NO, I DON'T THINK SO YOUR HONOR. BECAUSE IN ARMSTRONG THE BALLOT SUMMARY, WHICH WE CREATED IN MAY OF THAT YEAR WHERE THE LAWSUIT WAS FILED THE COURT HELD BECAUSE IT WAS FILED PREELECTION --

I'M SURE YOU'VE READ MY CONCURRENCE WHICH -- WELL, IT DEALS WITH THE FACT THAT THIS COURT HAS DISMISSED IT WITHOUT PREJUDICE. THEREBY, PERHAPS CREATING EVEN A DIFFERENT SITUATION. BUT THE ISSUE BEING THAT IN ARMSTRONG THE DEFECT WENT TO THE MISLEADING BECAUSE THE MAJORITY FOUND BALLOT SUMMARY SO THAT THE VOTER COULD NOT HAVE FULL INFORMATION. THIS DEFECT GOES TO ALTHOUGH VERY IMPORTANT TO THE NUMBER OF SIGNATURES, HOW IS THAT EVEN REMOTELY SIMILAR IN TERMS OF THE ELECTION DOCTRINE?

I THINK THAT'S CERTAINLY A DIFFERENCE BETWEEN THE CASES IT'S THE DIFFERENT!!!!!!!!!!!!!!!!!!!! DIFFERENT -- DIFFERENCE IN THE FIRST DISTRICT. THE COURT HAS A VERY QUOTABLE CLAUSE IN ARMSTRONG WHEN THE FIRST DISTRICT TO QUOTE. THEY CHOSE TO DO IT FACT THEY TAKEN A LITTLE BIT OUT OF PROPORTION HERE. THE IMPORTANT THING ABOUT ARMSTRONG WAS THAT THE COURT SAID THAT FRAUD COULD NOT BE DEEMED A MERE PROCEDURAL OR TECHNICAL IRREGULARITY.

FRAUD THE MISLEADING BAT!!!!!! BAT -- BALLOT SUMMARY AS OPPOSED TO DID NOT DEAL WITH THE INITIAL PREREQUISITE OF GETTING SOMETHING ON THE BALLOT.

THAT'S WHY I THINK FRANKLY THIS CASE WILL BE A EVEN STRONGER CASE FOR AVOIDING THE ELECTION DOCTRINE.

DO YOU SAY IF THE JUDGE KAHN MADE MUCH OF THE FACT IT DOESN'T MATTER IF THERE'S AN UNSIVE AMOUNT OF SIGNATURES BY JUST NEGLIGENCE OR NOT COUNTING PROPERLY OR MASSIVE FRAUD. DO YOU THINK THAT IT DOES MATTER WHAT THE NATURE AND EXTENT OF THE FRAUD IS IN TERMS OF WHAT THE RULES SHOULD BE?

I THINK IT CAN, YOUR HONOR. AND I THINK IT GOES TO THE ARGUMENT THAT I WAS TRYING TO MAKE TO JUDGE KAHN ON THE FIRST DISTRICT. I REALLY TALKED ABOUT TWO DIFFERENT ENTITIES. AT THE BEGINNING OF THE SENTENCE THE COURT SAID THE FIRST -- THE AMENDMENT HAD TO BE DULY PROPOSED. AND FOR DULY PROPOSED IT DOESN'T MATTER WHY OR WHY NOT. IT MUST BE DULY PROPOSED FOR THEM TO CONSIDER THE ELECTION. AT THE END OF THE SENTENCE THAT APPEARS TO FIND AN OPINION WHERE IT TALKS ABOUT DAUGHTERING A -- EVENTUALLY IT WAS ELABORATED ON IN THE ARMSTRONG CASE AND ALSO THE LANDIS CASE. THIS REFERS TO THE TECHNICALITY WITH THINGS THAT ARE TECHNICAL AND MINOR.

ARE YOU SAYING THAT BECAUSE A BALLOT ON THE INITIATIVE THAT DOESN'T HAVE ENOUGH SIGNATURES FOR WHATEVER REASON CAN NEVER BE DULY PROPOSED.

THAT'S CORRECT, YOUR HONOR. IT DOESN'T MATTER THE ELECTION CURE WHETHER IT'S A MERE FAILURE TO GET ENOUGH SIGNATURES AND SAY THE BG OF STATE JUST MISCOUNTED OR MASSIVE FRAUD. IT WOULD BE SAME THING THAT ELECTION CANNOT CURE THAT TYPE OF ERROR.

THAT'S CORRECT, YOUR HONOR. THAT'S WHY THEY GET MORE THAN WHAT THEY NEED. THIS GOS BACK TO CRAWFORD CASE. PAUSE IN THE CRAWFORD CASE THE POINT WAS THE SENTENCE HAD NOT BEEN MET. THERE WAS A MOTION FOR CONSIDERATION -- HOW LONG DOES THE CONSTITUTION UNDER THAT THEORY REMAIN UNSETTLED? CAN YOU CHALLENGE IT 20 YEARS LATER?

I WOULD SUGGEST, YOUR HONOR THAT, THAT COMES INTO PLACE -- THOUGH THIS IS AN EQUITABLE MATTER AS OPPOSED TO A LEGAL MATTER? [INAUDIBLE] BUT THE CRAWFORD CASE THAT DEALT WITH THREE FIFTH WAS A PREELECTION CHALLENGE; WASN'T IT? LET'S GO TO THIS ISSUE WHICH IS MR. ROGOW PROPOSES THAT IT'S NARROWER APPEALING DOESN'T ATTEMPT TO SECURE A FINAL RULING FOR THE ELECTION. IN THE CASE OF CITED IN THE FIRST DISTRICT CASE, THE ISSUE WITH JUDGE CLARK NOT HAVING EXPEDITED THIS CAN YOU -- AS SOMEONE THAT MUST HAVE READ ALL THE CASES, MY QUESTION IS WHY DIDN'T YOU AND I DON'T ASK -- SHOULDN'T WE CONSIDER THE FACT THAT AT THE HEARING -- SHE'S WILL SERIOUS ISSUES. I WON'T SAY WE DON'T NEED TO EXPEDITE THIS THAT SOMEONE TYPICALLY, YOUR CLIENTS HAD AN OBLIGATION TO SAY, NO, NO WE MUST AC -- EXPEDITE THIS BECAUSE THERE ARE CASES OUT THERE THAT WOULD SAY THE ELECTION WOULD CURE THIS AND THEREFORE IT IS OUR OBLIGATION TO BRING THIS IN AN ATTEMPT TO HAVE IT LITIGATED ON EXPEDITED BASIS. WHAT DO YOU SAY ABOUT THAT? [INAUDIBLE]

WITHOUT THE QUESTION HAVING BEEN RAISED PRIOR TO ELECTION. IF WE LET THE FIRST DISTRICT OPINION STAND. DOES IT MEAN THAT SOMEBODY THAT KNOWS THEY LOST THE BALLOT SUMMARY WAS CONFUSED AND FOR OUR COURT AND NOW UNDER THE CONSTITUTION WE HAVE GOT TO DECIDE THAT BY FEBRUARY BEFORE. THERE'S MONTHS AND MONTHS AND MAYBE EVEN YEARS THAT SOMEBODY COULD SIMPLY FILE A CHALLENGE MONTHS BEFORE NOT DO ANYTHING WITH IT AND ELECTION WOULDN'T CURE IT?

I THINK ARMSTRONG HAS THAT INFORMATION. THE COURT ANSWER THE QUESTION OF WHEN THE CHALLENGE FOUND OUT ABOUT -- [INAUDIBLE] AND BROUGHT IT TO THE COURT'S ATTENTION. ON THE DAY BEFORE THE ELECTION ARE SOMEWHAT ANALOGOUS TO JUDGE CLARK'S DECISION NOT TO HAVE A HEARING AND OUR REQUEST FOR INJUNCTION.

I WOULD LIKE TO ASK YOU A QUESTION ABOUT THE RELEVANCE OF PIERSON VERSUS TAYLOR, THE CASE FROM THIS COURT IN 1948, WHICH DID APPLY THE ELECTION CURE DOCTRINE TO A PETITION MEASURE. IT WAS ON A LOCAL BASIS BUT NOT ON A STATEWIDE BASIS BUT IT WAS STILL A PETITION INITIATIVE. WHY DOESN'T THAT CASE APPLY?

THEY APPEARED TO HAVE SAT BACK AND WAITED WAITED UNTIL AFTER THEY LOST THE ELECTION. FOR THAT REASON ALONE THAT COURT FOUND IT COULDN'T REACH THAT -- WELL IN THE CONTEXT OF A PETITION INITIATIVE, WHAT IS THE PURPOSE BEHIND GETTING THE SIGNATURES? ISN'T THE PURPOSE TO MAKE SURE THAT THERE'S AT LEAST A CRITICAL MASS OF VOTERS THAT WOULD WANT THIS AMENDMENT TO PASS? THEREFORE IT'S KIND OF A LITMUS TEST. WE WILL NOT PUT IT ON THE BALLOT UNLESS THERE'S SOME PERCENTAGE OF THE PEOPLE THAT WANT THIS AMENDMENT. OTHERWISE IT'S A WASTE OF TIME AND A WASTE OF RESOURCES. ONCE YOU HAVE THE ELECTION. IS ISN'T THAT POINT MOOT?

IT APPEARS WE'RE TALKING ABOUT SIMPLY THE LOCAL OPTION.

BUT LET'S FORGET ABOUT PIERSON. JUST ON A MORE GLOBAL THEORETICAL LEVEL. CAN YOU ANSWER MY QUESTION WITHOUT REGARD TO PIERSON?

THAT'S FOR THE AMENDMENT TO THE CONSTITUTION IS TWO LEVELS. TWO THRESHOLDS TO GET ON THE BALLOT. NOT SIMPLY A STATEWIDE SIGNATURES. BUT ALSO TO STAY AN ASPERSION TO THE COURT THROUGHOUT THE STATE BY HAVING AT LEAST HALF OF MORE THAN THAFL -- MORE THAN HALF OF THE CONGRESSIONAL DISTRICTS AS WELL.

ISN'T THAT JUST ONE MORE MEASURE OF THE FACT THAT THERE IS A CRITICAL MASS OF PEOPLE THAT WOULD FAVOR THE AMENDMENT?

NOT JUST A CRITICAL MASS, YOUR HONOR, BUT ALSO THE ASPERSION AROUND THE STATE. I WOULD SAY JUST REALLY PASSING A CERTAIN CASE LIKE THIS WHERE WE HAVE A PASSING VERY SLIMELY THAT THE DON'T ADDRESS THAT OTHER ASPECT OF THE SIGNATURE REQUIREMENT. [INAUDIBLE]

THIS IS WHAT I HAVE A PROBLEM WITH. YOU SAID THAT THE DEFECT, WHICH IS NOT HAVING

ENOUGH SIGNATURES WOULD MEAN THAT THE PETITION INITIATIVE WASN'T DULY PROPOSED AND THAT WAS A FATAL DEFECT. BUT ON THE OTHER HAND YOU SAY THAT THIS IS SOMETHING THAT'S WAIVEABLE IF IT'S NOT TIMELY BROUGHT. TO ME, THROUGH THE FUNDAMENTAL ERROR ISSUE, IT'S EITHER REALLY BAD OR IT'S SOMETHING THAT DEPENDS ON HOW DILIGENT SOMEBODY WAS. DOES THAT MAKE SENSE TO YOU AS FAR AS BEING SO CRITICAL TO THE VALIDITY OF THE CONSTITUTIONAL PROCESS, BUT IT JUST DEPENDS ON WHAT MONTH ITS BROUGHT. IF IT'S BROUGHT TWO MONTHS BEFORE IT MAY BE ONE THING. ONE MONTH BEFORE IT'S SOMETHING ELSE. THAT'S GOOD RULE OF LAW AND SHOULD IT BE SOMETHING THAT IS JUST ON A CASE-BY-CASE BASIS? [INAUDIBLE] THE POS -- THE POSITION OF HAVING TO DEAL WITH -- ABSOLUTE!!!!!!!!!!!!!! ABSOLUTELY YOU HAVE TO FILE THE -- [INAUDIBLE] THERE HAS TO BE SOME CUT OFF. SOME DEADLINE. THAT'S WHY I BELIEVE THIS COURT AND ARMSTRONG SAID YOU HAD TO BRING WITHIN A REASONABLE TIME. CERTAINLY THE ACCURACY REQUIREMENT WHAT WE ADDRESS IN ARMSTRONG IS JUST AS CENTRAL. JUST AS CRITICAL AT THE 3/5th IN CRAWFORD OR THE SIGNATURE GATHERING REQUIREMENT IN THIS CASE.

BUT IN ARMSTRONG, WE ALSO TALKED IN TERMS OF WHETHER OR NOT DEFECT MISLED THE VOTER FOR THE PURPOSE OF THE MEANING OF THE PROPOSED AMENDMENT. AND THE FAILURE TO HAVE THE SIGNATURES WHETHER IT BE INED A SRERT SEPBT OR!!!! OR -- INADVERTENT OR FRAUD DOESN'T MISLEAD THE VOTER FOR THE PURPOSE OF THE AMENDMENT; DOES IT? NOT AS TO THE PURPOSE OF THE AMENDMENT BUT AS TO WHETHER IT WAS PROPERLY WOULD. BASICALLY BEING ON THE AMENDMENT THE REPRESENTATION OF THE VOTER IN THE STATE. AND THE COURT REQUIREMENT IN THE CONSTITUTION BE MET. THERE'S SOME LEVEL OF MISLEADING THERE. AND I BELIEVE MR. PL STKER WILL ADDRESS THE QUESTIONS HE RAISED. BUT HAVING THAT MISREPRESENTATION TO THE PEOPLE IS AT LEAST IN SOME RESPECT OR COULD BE ANTICIPATED TO EFFECT THE OUTCOME OF THE ELECTION.

YOU STILL CAN SAY YOU NEED TO BRING IT BEFORE IN YOU KNEW ABOUT IT. WE GO BACK TO THIS -- I GO BACK TO THIS ISSUE. THERE'S REALLY NO SHOWING IN THIS RECORD THAT ANY ADEPUTY WAS -- ATTEMPT WAS MADE WHEN JUDGE CLARK SAID THIS WAS SEAR YOU ISSUE. TO SAY, OH, NO. AND CLEARLY MR. ROGOW SAID THAT WE HAVE HAD THE ABILITY TO DO MASSIVE AMOUNT OF LOOKING AT SOMETHING IN A VERY SHORT TIME. I HAVE BEEN A BIG PROPONENT OF EVEN HAVING RULED SO WE MAKE SURE WE HAVE THIS DONE PREELECTION. HOW CAN WE. DOESN'T THIS LOOK TO YOU IF YOU WERE JUST LOOKING AT I OBJECTIVELY NOT AS AN ADVOCATE BUT THIS IS I WILL HAVE MY CAKE AND EAT IT TOO. WILL IT BE CLOSE? MAYBE IT WILL LOSE. THIS IS NOW IN THE HOLE. IN FACT, CAN YOUR HONOR THE PLAINTIFF IN THIS CASE MY CLIENT WANTED TO HAVE THE PREELECTION TRIAL. THAT'S WHAT THE WHOLE PURPOSE OF THE OCTOBER 11th HEARING WAS TO SCHEDULE THAT PREELECTION TRIAL. JUDGE CLARK DECIDED NOT TO HAVE THAT REELECTION TRIAL NOT TO SERVE HERSELF, NOT TO SERVE MY CLIENT BUT TO SERVE THE PROPONENTS OF THE AMENDMENT. TO SERVE THEIR DUE PROCESS RIGHT. AT THIS POINTED OUT EARLYER REPRESENTATIVES FOR THE AMENDMENT PROPONENTS WERE IN THE COURTROOM THAT DAY AND THEY DID NOT STAND UP AND SAY, WELL, WAIT WE ARE GOING TO APPLY THE ELECTION CURE RULE FOR THE ELECTION AT THIS PRIOR TO THIS COURT HAVING A TRIAL AND THEN MAKE!!ING A RULING. THEN -- AGAIN, I GO BACK TO SYLVESTER ARTICULATION OF THE RULE THAT IT DOESN'T APPLY IF THE QUESTION HAS BEEN RAISED PRIOR TO THE ELECTION. IT'S RAISED PRIOR TO THE ELECTION. THIS CASE PRESENTS A SITUATION THAT IS SOMEWHAT UNIQUE WHICH IS UNUSUAL IN THIS TYPE OF LITIGATION IN THAT THERE WOULDN'T BE REQUIRED EXTENSIVE FACTUAL DEVELOPMENT IN ORDER TO RESOLVE THE CONSTITUTIONAL QUESTION. MOST OF THESE CASES ARISE AND CAN BE DECIDED ON THE DEFENSE. AND IN FACT THAT'S WHAT THE COURT DID IN THE CRAWFORD CASE. THERE WAS NO NEED TO HAVE ANY KIND OF TRIAL. THE FACTS WERE UNDISPUTED. THINGS COULD PROCEED THAT QUICKLY. HERE MY CLIENT DID ATTEMPT TO HAVE THAT PREELECTION TRIAL, WOULD HAVE BEEN A POSITION TO HAVE FACT FINDING BY THE FIRST DISTRICT IF JUDGE CLARK HAD ALLOWED US TO DO THAT --

YOU'RE WELL INTO YOUR REBUTTAL. IF YOU ARE SAVING TIME YOU FEED TO BE AWARE. I SIMPLY ASK THAT DISCHARGE JURISDICTIONS HAVE BEEN -- [INAUDIBLE] THANK YOU. BRIEFLY, YOUR HONOR ONE FACT -- [INAUDIBLE]

ISN'T THAT THE EXACT POINT OF THE CURE DOCTRINE AND THAT IS IF YOU DON'T BRING THE FACTS OUT, BRING THEM TO A CONCLUSION BEFORE AN ELECTION THEN TALKING ABOUT THEM AFTER AN ELECTION PARTICULARLY IF IT IS NOT GOING TO THE WORDING OF THE BALLOT ITSELF AND A FRAUD ON THE VOTERS, TO THE WORDING OF IT AS IN ARMSTRONG THE CURE DOCTRINE SHOULD HAVE APPLICATION.

WELL, AS MR. PELZER INDICATED THERE WAS TRYING TO BRING THE FACT OUT AND THE FACTS WEREN'T BROUGHT OUT. WE ALSO KNOW THAT THERE'S 20 SOME PAGES OF SERIOUS ALLEGATIONS OF AFRAID. SOME OF THOSE MAY BE PRIVILEGED SO MAY MAY NOT. ISN'T IT ALWAYS IF THERE'S A CHALLENGE TO AEUPB -- AN INPRO PRIORITY THAT ADDRESSES SOMETHING OF THIS NATURE THAT IT'S ALWAYS A SERIOUS --

WELL, YOUR HONOR I THINK WHERE YOU ARE HEADED AND I FULLY SHARE YOUR CONCERNS IS THAT WE ALL SORT OF THROW UP OUR HANDS AND SAY ANOTHER PREELECTION CASE. THAT'S WHY I SHARE YOUR CONCERN WITH OTHERS. I WISH THERE WAS STANDARD IN THIS AREA, YES THIS IS TIME AND THIS IS NOT. WE JUST DON'T HAVE THAT HERE.

WE STILL DON'T AND ANY OF OUR PROCEDURES DO YOU FEEL THAT WE'RE STILL INADEQUATE? EVEN AFTER THE ATTEMPTS WERE MADE TO MOVE THE DATES? YES, YOUR HONOR.

DID YOU READ THE MAJORITY DECISION AS BEING NARROW THAT IS THE CURE DOCTRINE APPLIES ONLY IF THERE'S AN ATTEMPT TO BRING IT BEFORE HAND AND IT INVOLVES FRAUD AS OPPOSED TO NUMBER OF SIGNATURES.

CERTAINLY THE FIRST DISTRICT SAID THIS PREELECTION CHALLENGE.

BUT I'M SAYING AS TO THE NATURE OF THE CHALLENGE. DOES IT MATTER WHAT THE NATURE OF THE CHALLENGE IS.

I THINK SO. ABSOLUTELY MASSIVE AFRAID MATTERS. IF YOU HAVE --

ISN'T THAT BETTER JUDGE IF JUDGE KAHN SAID THROUGH THE CRIMINAL PROCESS AS OPPOSED TO UNDOING A VOTE OF THE PEOPLE WHERE THE CHALLENGE IS NOT BEEN ADJUDICATED BEFORE THE OATH.

THAT'S ONE ASPECT -- [INAUDIBLE] WHERE YOU HAVE MASSIVE FRAUD YOU SHOULD NOT BE REWARDED.

YOU HAVE HERE A FAIRNESS TRADE OFF. IT WOULD BE GREAT IF WE WENT ABOUT OUR BUSINESS.

AGAIN, IF IT TURNS OUT IN A TRIAL, IF WE DON'T ACCEPT JURISDICTION AND QUASH THE FIRST DISTRICT OPINION AND IT TURNS OUT THAT THERE WASN'T MASSIVE FRAUD THERE WERE JUST AN INSUFFICIENT NUMBER OF SIGNATURES WOULD YOU AGREE THEN THE ELECTION WOULD CURE THAT.

I VERY WELL MIGHT JUSTICE PARIENTE AND UNTIL WE KNOW THE FACT WE DON'T KNOW WHAT WE WILL RULE.

THERE'S A PUBLIC POLICY IS ARTICULATED AS WHAT IS SECRETARY OF STATE.

THE SECRETARY OF STATE BELIEVES THE MATTER SHOULD BE IMPROPERLY GRANTED.

BUT WHY. WHY IS THAT A GOOD RULE OF LAW TO ALLOW POST ELECTION CHALLENGES FOR SOMEONE THAT'S PASSED BY THE SOCIETY!!IERS.

PREELECTION CHALLENGE DIDN'T HAVE TIME. THE SECRETARY IS CONCERNED THE FAIRNESS TRADE OFF. YES, [INAUDIBLE] THEY WOULD LOVE TO CURE EVERYTHING UNTIL EVERYTHING IS FINAL. THAT'S GREAT. THERE'S ALSO THE FAIRNESS ISSUE. FRAUD MAY BE SO PER VASE SEUF AND MASSIVE IT'S UNFAIR AND IT'S IN VIOLATION OF THE CONSTITUTIONAL STANDARDS. WE ASK THE COURT DISMISS -- [INAUDIBLE]

THANK YOU. THANK YOU. REBUTTAL. MAY IT PLEASE THE COURT MAY I FIRST ADDRESS WHAT'S BEEN SAID WITH REGARD TO THE OCTOBER 11th HEARING AND THE ATTEMPT TO GET THE FINAL RESOLUTION, PAGE 15 OF THAT OCTOBER 11th HEARING BY EXPEDITED NEED TO HAVE A HEARING TO PUT ON EVIDENCE FOR THIS COURT FOR NOVEMBER 2ND. THAT'S NOT -- WHAT YOU HAVE TO DO IS MAKE AN ATTEMPT TO GET THE WHOLE THING SOLVED.

WHAT MORE CAN KA PARTY DO OTHER THAN TO ASK THE JUDGE BEFORE THEY ARE APPEARING THAT WE NEED TO PRESENT THE EVIDENCE BEFORE THE ELECTION?

WHEN THE JUDGE SAYS, NO THEN YOU SEEK APPELLANT REVIEW OF THAT, BECAUSE THAT'S THE PRELIMINARY -- HOW FAR DOES THAT GO THAT YOU HAVE TO SEEK APPELLANT REVIEW TO THE

NEXT HIGHER COURT AND IF THAT'S DENIED --

THEN YOU HAVE THE TEST I'M SUGGESTING.

YOU DON'T HAVE TO GO TO THE FLORIDA SUPREME COURT --

WELL, CERTAINLY YOU SHOULD. BUT --

SO I DOES INCORPORATE THEN AN ATTEMPT THROUGH ALL APPELLANT STAGES IS WHAT YOUR RULE --

AN ATTEMPT. THAT'S RIGHT. AN ATTEMPT. WHERE THERE HAS BEEN NO ATTEMPT THEN THEY CANNOT BLAME -- CLAIM ANY KIND OF RELIEF IN THIS COURT. THAT'S WHY MY NARROW RULE I THINK IS SO IMPORTANT. NO ATTEMPT --

LET ME ASK YOU A QUICK QUESTION. WHAT WAS YOUR CLIENT'S RESPONSE FOR THE REQUEST TO HAVE A RESOLUTION BEFORE THE ELECTION?

WELL.

DID THEY OBJECT?

NO, THEY DIDN'T REALLY OBJECT. THEY JUST TALKED ABOUT HOW DIFFICULT IT WAS TO GET SOME OF THIS DONE. WHAT DIFFERENCE DOES IT MAKE? WHAT MY CLIENT SAID -- THEY ARE THE PHRAFS -- PLAINTIFFS IN THIS CASE. THEY ARE IN CHARGE OF TRYING TO GET THIS RESOLVED. THERE'S NO MISLEADING IN THIS CASE. THIS CASE COMPLETELY DIFFERENT FROM ARMSTRONG VERSUS HARRIS. NO MISLEADING, NO ATTEMPTS TO OBTAIN A FINAL DECISION. NO DOUBT ABOUT THE OUTCOME OF THE CONSTITUTIONAL VOTE HERE. AND THERE'S NO NEED TO DESTABILIZE THE CONSTITUTION ON THIS FACTUAL RECORD AND NO NEED TO DESTABILIZE THE ECONOMIC PLANNING THAT HAS OCCURRED. AND THAT'S WHY THE COURT SHOULD TAKE JURISDICTION AND RESOLVE THIS CASE AND AIR MRI THE ELECTION DOOR DOCTRINE BASED ON OUR NARROW APPROACH. THANK YOU VERY MUCH.

COUNSEL WE THANK YOU IN THE COURT WILL TAKE THE MATTER UNDER ADVISEMENT.