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**FLORIDA DEPARTMENT OF STATE v. BEVERLY SLOUGH, ET AL.
CASE NO. SC08-1569**

WE'LL CALL THE NEXT CASE.

FLORIDA DEPARTMENT OF STATE

v. SLOUGH.

YOU MAY PROCEED.

>> MADAM CHIEF JUSTICE, MEMBERS
OF THE FLORIDA SUPREME COURT,
GOOD MORNING.

MY NAME IS MARK HERRON.

I AM THE ATTORNEY FOR THE VOTE
YES ON 5 AMENDMENT FOR PROPERTY
TAX RELIEF INC., WHICH IS A
POLITICAL COMMITTEE.

WITH ME HERE THIS MORNING IS
ROB TELFER OF MY LAW FIRM AS
WELL AS SCOTT MAKAR, THE
SOLICITOR GENERAL AND LOU
HUBENER CHIEF DEPUTY SOLICITOR
GENERAL ON BEHALF OF THE
APPELLANTS.

APPELLANTS REQUEST THAT THIS
COURT REVISE TRIAL COURT WHICH
REMOVED AMENDMENT 5 FROM THE
2008 GENERAL ELECTION BALLOT.
THE STANDARD JUSTIFYING REMOVAL
OF A PROPOSAL CONSTITUTIONAL
AMENDMENT FROM THE, CLEAR
FROM THE CASES OF THIS COURT,
FIRST, THE COURT'S MUST ACT
WITH EXTREME CARE, CAUTION, AND
RESTRAINT IN REMOVING AN
AMENDMENT.

>> WE KNOW ALL THAT.

THE THINGS THAT WE WRITE.

WHAT I WANT TO KNOW IS WHAT IS
THE INTENT FROM, OF THIS
AMENDMENT?

WHAT DOES IT DO?

>> WELL, THE CHIEF PURPOSE --

>> AND AS THE JUDGE SAID, IT'S
LIKE A PRETTY COMPLICATED
THING.

AND TAXWATCH SAYS IT'S WHO
KNOWS, BUT I WANT TO AT LEAST
TRY TO FIGURE OUT WHAT THE
VOTERS WOULD WANT TO KNOW ABOUT
WHAT THIS AMENDMENT SAYS, AND
THEN WE CAN DECIDE WHETHER THIS

IS A MISLEADING SUMMARY OR NOT.

>> WHAT THE, WHAT THE SUMMARY AND THE BALLOT TITLE ARE REQUIRED TO SET FORTH IS THE CHIEF PURPOSE OF THE AMENDMENT, AND THE CHIEF PURPOSE OF THE AMENDMENT IS TO ELIMINATE SCHOOL PROPERTY TAXES AS A FUNDING SOURCE FOR THE STATE EDUCATION BUDGET AND TO REPLACE THEM WITH SCHOOL REVENUES.

>> IS IT TO DO IT EVERY YEAR OR ARE THEY REQUIRED TO COME UP WITH AN EQUAL AMOUNT FROM WHAT THEY WOULD'VE RAISED IN STATE -- I MEAN LOCAL AD VALOREM TAXES EVERY YEAR OR JUST FOR THE ONE YEAR?

>> THE AMENDMENT ONLY REQUIRES THAT THE EQUIVALENT AMOUNT BE SET FORTH IN THE INITIAL YEAR, AND THE REASON OF THAT IS BECAUSE IT DOESN'T CHANGE ANY EXISTING RULE IN THE STATE CONSTITUTION.

EDUCATION FUNDING, THE AMOUNT OF SCHOOL PROPERTY TAXES THAT CONSIST AND COMPRISE THE STATE EDUCATION FUNDING CHANGES FROM YEAR TO YEAR.

>> BUT WHY ISN'T THAT THOUGH MISLEADING AT THE OUTSET? THAT IS, IF THE AVERAGE VOTER IS GOING TO READ THAT AND SAY, WELL, THIS IS LIKE A HOLD HARMLESS SITUATION, I DON'T HAVE TO WORRY ABOUT THE SCHOOLS NOT CONSISTENTLY BEING FUNDED AT THE SAME LEVEL THAT THEY WERE FUNDED BEFORE I VOTED FOR THIS AMENDMENT, AND DID AWAY WITH THE PROPERTY TAX FUNDING. I, I DON'T HAVE TO WORRY ABOUT IT BECAUSE THE SAME AMENDMENT SAYS THAT THE LEGISLATURE HAS TO CONTINUE FUNDING EVEN THOUGH THEY HAVE TO FIND ANOTHER SOURCE.

WHY ISN'T THAT MISLEADING IF IN FACT IT ONLY PROVIDES FOR ONE YEAR OF THAT MANDATED FUNDING?

>> WELL, THE ONLY YEAR THAT THE REPLACEMENT HAS TO BE MADE, I MEAN, I SAY, THE ONLY YEAR THAT

IT HAS TO BE HELD HARMLESS IS
THE YEAR THE REPLACEMENT HAS TO
BE MADE, AND --

>> BUT THE TITLE SUGGESTS THAT
IT WILL BE HELD HARMLESS
PERIOD.

YOU KNOW, THAT THERE, THERE
WOULD NOT JUST BE A ONE-YEAR
LIMITATION SO WHY ISN'T THAT,
AS I SAY, WHY ISN'T THAT
MISLEADING AT THE OUTSET?
THAT S I AM GOING TO VOTE, AND
I, I READ THIS, AND I SAY WELL,
WHY SHOULDN'T I DO THIS?
IN ADDITION TO THE FACT THAT I
OWN PROPERTY AND I'LL GET A
LITTLE RELIEF I CAN, MY
CONSCIENCE REALLY CAN BE SALVED
BECAUSE THIS ALSO MANDATES THAT
THE LEGISLATURE TAKE CARE TO BE
SURE THAT THAT REVENUE SOURCE
IS, IS REPLACED, SO INSTEAD OF
THAT BEING THE CASE THOUGH,
THEN I FIND OUT OH, THE FINE
PRINT SAYS NOW THEY ONLY HAVE
TO DO THAT FOR ONE YEAR.
AFTER THAT, WE'VE GOT A
PROBLEM.

WHY ISN'T THAT MISLEADING?

>> RESPECTFULLY, YOUR HONOR, I
DON'T THINK THE TITLE AND THE
SUMMARY READ TOGETHER STATE OR
IMPLY THAT --

>> WELL, READ ME THE TITLE
AGAIN.

>> IT SAYS ELIMINATING
STATE-REQUIRED SCHOOL PROPERTY
TAX AND REPLACING
WITH EQUIVALENT STATE REVENUES
TO FUND EDUCATION.

THAT'S THE TITLE.

THAT'S THE CAPTION BY WHICH
THIS AMENDMENT IS KNOWN BY.
NOW WE GO DOWN AND READ THE
SPECIFICS, THE CHIEF PURPOSE OF
THE AMENDMENT, IT SAYS
REPLACING STATE-REQUIRED SCHOOL
PROPERTY TAXES WITH STATE
REVENUES, GENERATING AN
EQUIVALENT HOLD HARMLESS AMOUNT
FOR SCHOOLS THROUGH ONE OR MORE
OF THE FOLLOWING OPTIONS.

>> NOW, WHY DOESN'T THAT?

THAT HAS IT BOTH IN THE TITLE

AND THEN EVEN MORE DRAMATICALLY
IN THE SUMMARY ITSELF ACTUALLY
USING THE WORDS HOLD HARMLESS.

>> IT DOES HOLD HARMLESS IN THE
YEAR THE REPLACEMENT IS MADE.

>> BUT DOES THE SUMMARY TELL
THE PUBLIC THAT THAT'S WHAT IT
IS?

>> IT DOESN'T SAY OTHERWISE IS
MY POINT T. DOESN'T IMPLY OR
STATE THAT IT IS OTHERWISE.

>> WELL, IS IT NOT POSSIBLE TO
MISLEAD BY, BY OMISSION?

>> THAT --

>> ONE NOT NEED STATE
AFFIRMATIVELY MISLEAD SOMEONE
IF YOU LEAVE OUT PERTINENT OR
KEY, CRITICAL INFORMATION.
SOMETHING, CANNOT, END UP
BEING AS MISLEADING AS AN
AFFIRMATIVE MISLEADING
STATEMENT?

>> THAT IS THE POSITION OF THE
OPONENTS OF THE AMENDMENT.
AND IS THE POSITION THAT THIS
COURT HAS TAKEN WHEN THEY'VE
TALKED ABOUT FLYING UNDER FALSE
COLORS.

BUT AGAIN WE RECOGNIZE THAT
WITH RESPECT TO USE OF THE
REQUIRED LOCAL EFFORT, THAT
THERE IS NO STATE
CONSTITUTIONAL REQUIREMENT,
THAT LOCAL REVENUES BE USED.

>> BUT IT --

>> AND SO WE'RE NOT HIDING THE
BALL HERE.

>> BUT ISN'T THE ESSENCE OF
THAT, THAT THIS AMENDMENT
ATTEMPTS TO CHANGE THE HOLD
FUNDING MECHANISM FOR THE STATE
IN SUPPORTING PUBLIC SCHOOLS?

I MEAN, THAT'S, THAT'S
BASICALLY --

>> THAT IS EXACTLY WHAT IT
DOES, YOUR HONOR.

>> AND WHAT THE, WHAT, THE WAY
I READ THIS IS THAT IT'S A QUID
PRO QUO TYPE OF THING THAT
WE'RE GOING TO REDUCE YOUR
PROPERTY TAXES, BUT WE'RE GOING
TO GUARANTEE THAT THERE'S GOING
TO BE A REPLACEMENT THAT THEN I
FIND UNFORTUNATELY LIKE SOME

WARRANTIES THAT THE, THAT IT'S NOT A LIFETIME WARRANTY. IT'S A LIMITED WARRANTY. BECAUSE IT'S ONLY GOING TO GO FOR ONE YEAR, AND I DON'T HAVE ANY RECOURSE AFTER 2011 TO GO IN AND REQUIRE THE REPLACEMENT TO BE THERE.

I NENE MEAN, ISN'T THAT THE ESSENCE OF THE PROBLEM WE ARE DEALING WITH?

>> THAT'S THE ESSENCE OF THE ARGUMENT OF THE OPPONENTS BUT THE ESSENCE OF THE ARGUMENT IS THAT THERE IS NO GUARANTEE TODAY UNDER FLORIDA'S CONSTITUTION THAT LOCAL PROPERTY TAXES COMPOSE 1 PENNY OF STATE EDUCATION BUDGET. DESPITE WHAT MAYBE A GUARANTEE TODAY, --.

>> DESPITE WHAT MAY BE A GUARANTEE TODAY, WHEN THE AVERAGE PERSON READS THIS WITHOUT YOU PUTTING LANGUAGE IN THAT SAYS THAT THIS HOLD HARMLESS IS ONLY FOR THE YEAR 2010-2011, THE AVERAGE PERSON IS GOING TO READ THIS AND SAY, OKAY, THOSE PROPERTY TAXES ARE GONE, BUT THE STATE IS GOING TO PUT THAT SAME AMOUNT OF MONEY INTO THE SCHOOL SYSTEM I DON'T HAVE ANYTHING TO WORRY ABOUT. WHAT, WHAT WOULD PUT THIS OM-- THEM ON NOTICE IN THIS TITLE OR THE SUMMARY, WHICH IS ALL THEY'RE GOING TO READ WHEN THEY GO TO THE POLLS THAT THIS IS LIMITED.

>> I THINK, YOUR HONOR, THE ANSWER TO THAT QUESTION IS THAT THE TITLE AND SUMMARY IS ACCURATE AS TO WHAT THE AMENDMENT DOES.

WHAT YOU ARE RAISING IN YOUR QUESTIONS, I BELIEVE, ARE THE POLITICAL REASONS THAT ANYONE WOULD OPPOSE THIS AMENDMENT. AND THERE ARE A NUMBER OF POLITICAL REASONS WHY ANYBODY WOULD OPPOSE THIS AMENDMENT.

>> BUT THE POLITICAL REASON YOU WANT YOU WOULD WANT THIS

AMENDMENT IS I'M NO LONGER GOING TO PAY THESE PROPERTY TAXES BUT MY SCHOOL SYSTEM IS STILL GOING TO BE THE SAME. BECAUSE THERE'S MONEY REPLACING IT.

THAT'S THE POLITICAL REASON I WOULD VOTE FOR.

>> BUT IT DOESN'T SPECIFY IN THE AMENDMENT, DOES IMPLY OR INFER THAT IT IS AN ONGOING GUARANTEE.

>> THIS IS THE PROBLEM I HAVE ABOUT THE TITLE.

AND IT REALLY, I THOUGHT THAT JUDGE COOPER DID A GOOD JOB WHEN HE SAID IT.

THE TITLE CAN SOMETIMES BE BROAD, AND IT COULD'VE SAID SOMETHING LIKE IMPACTING THE WAY SCHOOLS ARE FUNDED OR SOMETHING THAT IS SOME CATCHY TITLE LIKE THAT OR LIKE, BALLOT 7, RELIGIOUS FREEDOM, YOU KNOW, WHICH, AND THAT'S REALLY, WE KNOW, THE VOTERS RELY A LOT ON THE TITLE BUT IF THE TITLE IS VERY BROAD THEN MAYBE THEY'LL GO BACK AND THEY'LL LOOK AT THE SUMMARY.

WHEN YOU'VE GOT A TITLE THAT IS VERY SPECIFIC TO THIS ONE, WHICH IS ELIMINATING STATE REQUIRED SCHOOL PROPERTY TAX AND REPLACING WITH EQUIVALENT STATE REVENUES TO FUND EDUCATION, THAT'S WHERE I'M CONCERNED BECAUSE YOU'RE MAKING A VERY, IT APPEARS, AVERAGE JOE AND AVERAGE JUSTICE THAT THAT'S DOING WHAT JUSTICE WELLS SO SAID SO WELL.

IT'S A LIFETIME GUARANTEE.

I DON'T HAVE TO WORRY ANYMORE.

AND THAT'S MY CONCERN AND I THOUGHT THAT WAS JUDGE COOPER'S CONCERN THAT AS LONG AS THE TITLE IS BROAD, IT MAY NOT BE MISLEADING.

BUT IF IT GETS NARROW, THEN YOU HAVE SOMETHING THAT COULD BE MISLEADING AND AGAIN I'D SAY THAT EVEN IN THE SUMMARY ITSELF BUT AREN'T CASES DIFFERENT

DEPENDING ON HOW BROAD OR NARROW THE TITLE IS TO PUT THE VOTER ON NOTICE AND ISN'T THIS STATEMENT A VERY NARROW VIEW THAT COULD BE AFFIRMATIVELY MISLEADING TO THE VOTERS?

>> I DON'T THINK ANY OF YOUR CASES HAVE EVER SAID THAT. I THINK WHAT YOUR CASES HAVE SAID CONSISTENTLY THAT THE TITLE, THE 15 WORDS IS A CAPTION AS WHAT THE AMENDMENT GOES BY.

FOR EXAMPLE, CLASS-SIZE AMENDMENT WENT BY THE NAME CLASS-SIZE AMENDMENT BUT IT HAD ALL SORTS OF THINGS THEREIN THAT DEALT WITH THE FUNDING OF CLASS SIZES UNDER THE EDUCATION AMENDMENT.

IN ANSWER TO A QUESTION, I THINK THIS IS THE TITLE PART, THE 15 WORDS IS JUST THE CAPTION BY WHICH THE CONSTITUTIONAL REVISION COMMISSION CALLED IT.

>> BUT DOESN'T THAT CAPTION HAVE TO NOT GIVE THE VOTER A FALSE IDEA OF WHAT IS CONTAINED IN THE AMENDMENT. BECAUSE IT SAYS ELIMINATING AND REPLACING.

>> AND MADAM CHIEF JUSTICE, I THINK YOU ARE BUY NOTHING TO THE POLITICAL DEBATE THAT -- BUYING INTO THE POLITICAL DEBATE THAT THE APPELLEES ARE ARGUING IN THEIR OPPOSITION TO THIS AMENDMENT. THIS AMENDMENT DOES DO EXACTLY THAT.

IT ELIMINATES AND REPLACES, THAT'S WHAT IT DOES. IT CLEARLY DOES THAT.

>> IT ELIMINATES FOR ALL TIME -- CORRECT.

>> CORRECT.

>> AND REPLACES ONE YEAR.

>> IT REPLACES IN THE YEAR IN WHICH THE ELIMINATION OCCURS.

>> THEN WHY WAS IT NECESSARY TO USE WITH EQUIVALENT BECAUSE IT SAYS NECESSARY TO REPLACE WITH EQUIVALENT.

>> TO LET THE VOTERS KNOW THAT THERE IS A FLOOR ESTABLISHED IN THAT YEAR, AND THAT THAT FLOOR IS SET FORTH IN THE AMENDMENT IN THE TEXT OF THE AMENDMENT. AND IT'S THE, IT'S THE FUNDING IN THE 2008-2009 FISCAL YEAR AS ADJUSTED BY GROWTH FACTOR.

>> SO DO YOU AGREE IT WOULD AT LEAST BE -- WOULD YOU AT LEAST ADMIT IT WOULD BE CLEAR AND EQUIVALENT HOLD HARMLESS FOR ONE YEAR?

>> JUSTICE BELL, I MEAN, I'VE WRITTEN SOME OF THESE, AND I'VE ATTACKED SOME OF THESE AND I'VE DEFENDED SOME OF THESE AND IT IS AN ART AS OPPOSED TO A SCIENCE.

AND, AND THERE ARE HUNDREDS OF WAYS IN WHICH THIS TITLE COULD'VE BEEN WRITTEN IN A DIFFERENT WAY.

>> COULD YOU GIVE US ONE, SINCE YOU'VE GOT TO SOMETIMES ARGUE AGAINST YOURSELF, I'M SURE YOU DO THAT WHEN PREPARING WHAT MIGHT HAVE BEEN A BETTER WAY TO HAVE STATED THIS?

IN OTHER WORDS, IF YOU WERE TO TELL THE VOTERS 15 WORDS WHAT THIS WAS DOING, CAN YOU DO IT?

>> I THINK I COULD. I WOULDN'T WANT TO CONCEDE THAT IT'S A BETTER TITLE.

>> WHAT WOULD IT SAY?

>> IT MIGHT SAY ELIMINATION OF SCHOOL PROPERTY TAXES.

>> YOU AGREE THAT IN DRAFTING A TITLE AND SUMMARY, THE DRAFTER IS SKIRTING A LINE BETWEEN BEING AS ACCURATE AND INFORMATIVE AS POSSIBLE. ON THE ONE HAND AND ON THE OTHER HAND GETTING THE AMENDMENT PASSED.

AND YOU AGREE THAT INCLUDING THE LIMITATION THAT IT'S ONLY FOR GUARANTEED FOR ONE YEAR, THAT DECREASES THE LIKELIHOOD OF GETTING THE AMENDMENT PASSED.

>> I WON'T AGREE TO THE SECOND PART, AND IN ALL HONESTY, I

DON'T, I CAN'T MOTIVATE WHAT THE CONSTITUTIONAL -- I MEAN THE TAX AND BUDGET REFORM COMMISSION DID IT WHEN THEY DRAFTED THIS TITLE.

I THINK THEY TRIED -- THE TITLE AND SUMMARY TOGETHER I THINK THEY TRIED TO PUT OUT THERE EVERYTHING THE AMENDMENT DOES IN CLEAR AND UNAMBIGUOUS LANGUAGE.

>> WELL, MR. HERRON, TELL ME ABOUT WHERE IT ADDRESSES IN THE SUMMARY THAT ADEQUATELY EXPLAINS WITHOUT MISLEADING WITH REGARD TO NOT JUST THE SCHOOL IMPACT BUT THE LIMITATION ON OTHER TAXES AS WELL.

>> WELL, IN TERMS OF THE TITLING OR THE TITLE AND SUMMARY READ TOGETHER?

>> BOTH.

THE TITLE DOESN'T --

>> THEY DIDN'T ADDRESS IT IN THE TITLE AT ALL BECAUSE AGAIN THE TITLE IS THE NAME BY WHICH IT GOES BY AND IT HAD TO HAVE BEEN --

>> BUT IT HAS NOTHING TO DO WITH SCHOOLS.

YOU HAVE GOT A TITLE THAT ADDRESSES ONLY THE ASPECT OF SCHOOLS AND THEN YOU HAVE GOT A SIGNIFICANT IMPACT WITH REGARD TO LOCAL SERVICES AND THE CAPS THAT ARE GOING TO BE PLACED, CORRECT?

BUT UNDER THE STATUTORY REQUIREMENT FOR THE TITLE IT'S 15 WORDS BY WHICH IT'S CALLED. IT'S THE SUMMARY THAT DESCRIBES --

>> SO THEN THE COURT SHOULD NOT LOOK TO THE TITLE TO DETERMINE UNDER THE STATUTORY CHAPTER 101 TO NOT LOOK TO THAT AS TO WHETHER IT'S MISLEADING OR THE PUBLIC'S GOING TO, TO NOT REALLY UNDERSTAND WHAT WE'RE DEALING WITH?

>> AGAIN, AGAIN, IT'S THE CAPTION BY WHICH IT GOES BY. YOU LOOK, YOU LOOK AT THE

SUMMARY FOR --

>> SO YOU CAN PUT ANYTHING IN THE, IN THE IN THE TITLE TO ENTICE VOTERS? SO THIS IS WHAT I AM TROUBLED WITH, AND LET ME SHARE WITH YOU AS LONG AS I HAVE BEEN ON THIS COURT AND IT HASN'T BEEN THAT LONG, BUT IT'S STARTING TO BECOME A GAME AND THESE KINDS OF THINGS OUGHT TO BE FILED ON MERIT, NOT ONLY, -- NOT ON THE CATCHY PHRASING WE ARE TALKING ABOUT THE ORGANIC LAW OF THE GREAT STATE OF FLORIDA AND WE GET INTO THIS GAME PLAYING AS IT APPEARS ARE THE TIME AND IT'S GETTING MORE AND MORE AND MORE.

WHY NOT REQUIRE THAT ANYONE WANTS TO CHANGE THE CONSTITUTION THAT OUR INTERPRETATION OF NOT BEING MISLEADING, THAT IT NOT BE MISLEADING, THAT IT NOT ENGAGE IN ALL OF THESE CATCHY PHRASES AND POLITICAL JARGON, IF YOU WILL, SO THAT THE PEOPLE OF FLORIDA WILL KNOW WHAT THEY'RE VOTING ON?

WHAT'S WRONG WITH THAT CONCEPT?

>> I THINK YOU'RE ASSUMING THE VOTERS ARE ONLY READING TITLES, AND AGAIN, WHAT THE LAW HAS BEEN, WHAT THE STATUTE 101-- WHATEVER THAT STATUTE NUMBER IS -- REQUIRES IS THAT THE MATTERS BE SET FORTH IN THE --

>> MR. HERRON, I MEAN, WE HAVE THE -- HOW THE FLORIDA DEPARTMENT OF STATE, HOW THESE THINGS ARE GOING TO APPEAR ON THE BALLOT, AND ON THE BALLOT JUST LIKE NUMBER 7 SAYS, "RELIGIOUS FREEDOM," AND THEY'RE GOING TO THINK THEY'RE VOTING ON RELIGIOUS FREEDOM, THE VOTERS ARE GOING TO SEE WHEN THEY LOOK AT NUMBER 5, "ELIMINATING STATE-REQUIRED SCHOOL PROPERTY TAXES AND REPLACING WITH EQUIVALENT STATE REVENUES TO FUND EDUCATION."

AND NOBODY IN THEIR RIGHT MIND ISN'T GOING TO THINK, ISN'T THAT

A GREAT IDEA?

I GET SAVINGS ON MY PROPERTY TAX
AND THE STATE GETS TO FUND
EDUCATION.

>> I RESPECTFULLY SUBMIT THE
OTHER 75 WORDS WILL BE THERE,
AND I SEE THAT I'M IN MY
REBUTTAL TIME.

>> YEAH, BUT THE PROBLEM STILL,
MR. HERRON, IS EVEN IF THE VOTER
GOES BEYOND THAT TITLE, READS
THE REST OF THE 75 WORDS THAT'S
THE SUMMARY, WHERE IN IT DOES IT
TELL THAT VOTER THAT THIS
REPLACEMENT WITH EQUIVALENT
STATE REVENUES TO FUND EDUCATION
IS FOR THE YEAR 2010, 2011 ON?

>> I THINK IT'S THERE BECAUSE
IT'S CONNECTED TO THE REPEAL OF
THE STATE PROPERTY TAX AS A
SOURCE OF THE BUDGET --

>> AND SO EVERY CITIZEN WOULD
KNOW THAT?

>> I DON'T THINK WE CAN ASSUME
THEY DON'T.

>> THANK YOU.

MR. RICHARD?

>> MAY IT PLEASE THE COURT, MY
NAME IS BARRY RICHARD, AND I AM
COUNSEL FOR THE APPELLEES.

>> LET ME BEGIN WITH A QUESTION
ON THE TITLE.

TO BE FAIR TO MR. HERRON, THEY
ONLY GET 15 WORDS FOR THE TITLE.
SO IN ORDER TO DECIDE WHETHER IT
IS AFFIRMATIVELY MISLEADING,
DON'T WE NEED TO GO BEYOND TO
LOOK AT THE SUMMARY?

AND YOU MAY BE ABSOLUTELY
CORRECT THAT IT DOESN'T TELL THE
VOTERS THAT THIS IS ONLY FOR ONE
YEAR.

YOU MAY HAVE THAT POINT, BUT MY
QUESTION IS, DON'T WE HAVE TO GO
BEYOND JUST THE TITLE AND LOOK
AT BOTH THE TITLE AND THE
SUMMARY TOGETHER TO DECIDE
WHETHER IT'S MISLEADING OR NOT?

>> NO SIR, NOT IN THIS CASE.

THE COURT HAS SAID IN A NUMBER
OF CASES YOU MUST READ THEM
TOGETHER.

BUT AS WE NOTED IN OUR BRIEF, IN

EVERY ONE OF THOSE CASES WE DIDN'T DEAL WITH THIS SITUATION. WE DEALT WITH A TITLE THAT WAS BROAD ENOUGH TO ENCOMPASS EVERYTHING IN THE AMENDMENT. THERE WAS NOTHING MISLEADING ABOUT WHAT THE TITLE SAID. IT NEEDED THE SUMMARY TO FILL IN NECESSARY DETAILS.

THIS IS MATERIALLY AND DRAMATICALLY DIFFERENT BECAUSE THIS IS A TITLE THAT SAYS TO THE VOTER, THIS ONLY DOES TWO THINGS.

AND, IN FACT, IT DOES FIVE THINGS, AND THE OTHER THREE THINGS ARE MAJOR CHANGES IN THE FLORIDA CONSTITUTION.

IF I CAN GIVE YOU AN ANALOGY, YOUR HONOR.

IF WE SAID THAT THIS IS PERMISSIBLE, WOULD THE COURT NOT ALSO THEN HAVE TO SAY THAT ONE OF THE REVISION PROVISIONS COULD PASS AN AMENDMENT THAT BOTH CHANGED THE BUDGETARY PROCESS, TO BORROW A PHRASE FROM THE LAST ARGUMENT, AND IMPOSED A STATE INCOME TAX --

>> WELL, I GUESS THAT'S THE SINGLE SUBJECT --

>> WHAT I'M SAYING IS WE HAVE NO SINGLE-SUBJECT PROBLEM WITH THE REVISION COMMISSIONS, BUT COULD THEY PUT A TITLE ON IT THAT SAID CHANGING THE BUDGETARY PROCESS AND NOT MENTION ANYTHING ABOUT OPPOSING AN INCOME TAX AND THEN ARGUE?

BUT IF YOU READ THE SUMMARY, IT SAYS, "IMPOSES AN INCOME TAX." ARE WE GOING TO OPEN THE DOOR TO THAT KIND OF

AFFIRMATIVELY-DECEPTIVE TITLES? AND WHY WOULD WE DO THAT?

THE ARGUMENT THAT WE HAVE A LIMITATION TO 15 WORDS DOESN'T ANSWER THE ISSUE HERE.

I POINTED OUT IN THE BRIEF THAT THE REVISION COMMISSION ONCE HAD A TITLE THAT SAID, "TAXATION AND BUDGETING."

>> SO WOULD YOU AGREE WITH MR. HERRON THAT, OR WOULD IT

STILL BE MISLEADING IF THEY SAID, "ELIMINATING STATE-REQUIRED SCHOOL PROPERTY TAX," THAT WOULD BE LESS MISLEADING THAN PUTTING THIS AND REPLACING IT WITH -- OR DO YOU THINK THAT WOULD HAVE STILL FAILED IF IT SAID, "ELIMINATING STATE-REQUIRED SCHOOL PROPERTY TAX"?

>> OH, OF COURSE IT WOULD HAVE FAILED.

IT DOESN'T TELL US ABOUT THE CUT FROM TEN MILLS TO FIVE MILLS.

>> SO THAT'S ON -- SO IN OTHER WORDS, THIS DOES OTHER THINGS, BUT AS TO THE MAIN PURPOSE WHICH HAS TO DO WITH THIS SCHOOL PROPERTY TAX AT LEAST THAT WOULD BE LESS MISLEADING AS TO THAT, WOULDN'T IT?

>> WELL, THAT DEPENDS, YOUR HONOR.

I THINK IT'S ARBITRARY TO DECIDE THE MAIN PURPOSE IS THIS SHIFT FROM LOCAL TO STATE TAXATION. I THINK IT WOULD BE MORE APPROPRIATE TO SAY THAT THE MAIN PURPOSE HERE IS A REDUCTION IN REAL ESTATE TAXES.

>> WOULDN'T THEY BE, I MEAN, I GUESS THEN IN TERMS OF TALKING ABOUT MOTIVATION, CERTAINLY EVERYONE, ALL YOU'VE GOT TO SAY IS REDUCE TAXES, AND EVERYONE'S GOING TO VOTE FOR THAT. SO YOU WOULD THINK WHY DIDN'T THEY PUT THAT ONE IN?

>> I AGREE, YOUR HONOR.

AND I THINK AS THE COURT HAS MADE CLEAR IN MANY, MANY CASES IS THE PURPOSE WE GO THROUGH HERE, AND I'M SORRY I'M USING TERMINOLOGY --

[LAUGHTER]

>> THE PURPOSE OF IT IS TO BE -- LOOK, LET ME PUT IT THIS WAY, ALL OF THE CASES THAT THIS COURT HAS DECIDED REALLY COME DOWN TO A SINGLE QUESTION, DO THEY NOT? THE QUESTION IS THIS: IN THE TITLE OR THE SUMMARY, IS THERE AN INACCURACY OR AN AMBIGUITY

THAT MIGHT REASONABLY CAUSE A VOTER TO CAST A BALLOT DIFFERENT THAN THAT VOTER WOULD CAST THE BALLOT IF HE OR SHE HAD A BETTER NOTICE IN THE TITLE OF SUMMARY OF WHAT REALLY HAPPENED? ISN'T THAT ULTIMATELY WHAT ALL OF THESE CASES AND PRINCIPLES LEAD TO?

I DON'T BELIEVE THAT ANYONE CAN SERIOUSLY SUGGEST THAT IN THIS CASE IT IS NOT BOTH A GROSSLY MISLEADING STATEMENT IN THE TITLE AND IN THE SUMMARY AND AMBIGUITIES THROUGHOUT BOTH OF THEM.

>> CAN I ASK YOU SOMETHING ABOUT THE LIMITATIONS?

EVERYONE'S ASSUMED THE 75-WORD AND THE 15-WORD LIMITATION APPLIES.

I KNOW FOR LEGISLATIVE AMENDMENTS, AND THEY'VE GONE TO THE WHOLE AMENDMENT ON -- IS THERE A, IS THE LIMITATION AS WE'VE ASSUMED IT IS ON BOTH THE TITLE AND THE SUMMARY APPLICABLE TO AMENDMENTS FOR THE CONSTITUTIONAL AND BUDGET REFORM COMMISSIONS?

>> YOUR HONOR, I KNOW OF NO CASE IN WHICH THIS COURT HAS DIRECTLY ADDRESSED THE QUESTION.

>> WELL, IN SMITH V. AMERICAN AIRLINES THEY REFERRED TO A 75-WORD LIMIT --

>> THE STATUTE PROVIDES.

>> [INAUDIBLE]

>> THE STATUTE ONLY ACCEPTS JOINT --

>> WE GET INTO A DEEPER ISSUE WHICH IS --

>> NO ONE HAS RAISED THAT ISSUE. I RAISED IT ONE TIME IN A DISSENT.

[LAUGHTER]

>> IN ARMSTRONG --

>> YOUR HONOR WAS EXTRAORDINARILY WELL WRITTEN.

[LAUGHTER]

>> BUT WE DON'T HAVE TO WORRY

ABOUT THAT ACADEMIC QUESTION
HERE BECAUSE THEY SURELY COULD
HAVE GIVEN ACCURATE NOTICE BOTH
IN THE TITLE, AND IN A 75-WORDED
SUMMARY HERE.

THE PROBLEM HERE ACTUALLY IS NOT
SIMPLY WHAT IT DIDN'T SAY, BUT
THE FACT THAT IT INTENTIONALLY
AFFIRMATIVELY SAYS SOMETHING
THAT CREATES --

>> AND WHAT IS THAT?

>> IT SAYS THAT THERE IS A
HOLD-HARMLESS CLAUSE.

>> THAT'S WHAT I WENT BACK TO.

I THINK THAT, TO ME, IS THE MOST
OFFENSIVE PART OF THE TITLE.

BUT WE COULD DEBATE THAT TOO.

I MEAN, IF I SAY THAT'S GOOD
ENOUGH AS LONG AS, YOU KNOW, YOU
AGREE WITH JUDGE COOPER.

BUT, I MEAN, IT'S THAT

"REPLACING WITH EQUIVALENT STATE
REVENUES" THAT, I THINK, IS THAT

HIDE-THE-BALL,

FLY-UNDER-FALSE-COLOR --

>> YOU'RE ARGUING THAT THERE'S
MORE BECAUSE IT DOESN'T REFER TO
THE NON-HOMESTEAD PROPERTY, THE
MILLAGE RATE AS WELL.

>> NO, IT DOESN'T REFER TO THE
THREE OTHER THINGS.

IT DOES --

>> HOW DO YOU DO ALL THIS IN 15
WORDS THOUGH?

UNLESS YOU JUST SAY, "EDUCATION
FUNDING"?

>> YOU DON'T HAVE TO.

YOU COULD DO WHAT THE REVISION
COMMISSION HAS DONE TIME AND
TIME AGAIN, YOU COULD SAY,
"TAXATION."

YOU COULD SAY, "A TAXATION AND
FUNDING OF SCHOOLS," YOU COULD
SAY, "REDUCTION IN REAL ESTATE
TAXES."

YOU COULD -- THE TITLE DOESN'T
HAVE TO BE DESCRIPTIVE.

THE STATUTE SAYS, "THE TITLE
SHOULD BE A CAPTION BY WHICH THE
AMENDMENT IS KNOWN."

THE ONLY THING ABOUT THE TITLE
IS IT CANNOT BE MISLEADING, AND
HERE IT'S AFFIRMATIVELY
MISLEADING.

IT DOESN'T MATTER HOW GENERAL IT IS.
SURELY IT CAN BE DONE IN 15 WORDS, AND SURELY WITHIN 75 WORDS THE COMMISSION COULD HAVE TOLD THE VOTERS MORE ACCURATELY WHAT THIS DOES.

IF I MAY DWELL FOR JUST A MOMENT ON THIS ISSUE OF THE, OF THE FIRST QUESTION WHICH IS THE HOLD-HARMLESS, AND BY THE WAY THE HOLD HARMLESS IS NOT -- AS THE COURT KNOWS -- IS NOT A PHRASE WE'VE MADE UP HERE.

THE COMMISSION CHOSE TO DEFINE "HOLD-HARMLESS."

THEY'VE DEFINED IT IN THE AMENDMENT.

IT IS A SPECIFIC AMOUNT OF MONEY, AND WHAT WE HAVE HERE IS THAT IN THE NINE YEARS SINCE THE AMENDMENT WAS ADOPTED,

THERE HAS BEEN A CONTINUING INCREASE IN THE AMOUNT OF THE REQUIRED LOCAL EFFORT.

IT DROPPED ONLY IN THE FIRST YEAR AFTERWARDS, AND THEN BY LESS THAN 10 PERCENT, AND THEN IT INCREASED CONTINUOUSLY YEAR OVER YEAR WITHOUT A SINGLE YEAR IN WHICH IT DROPPED BY AN AVERAGE OF 7 PERCENT EQUALING \$7.9 BILLION IN THE LAST FISCAL YEAR.

NOW, A VOTER LOOKING AT THIS TITLE AND THIS AMENDMENT, WHICH SAYS TO HIM THAT IN RETURN FOR THE LOSS OF THE AMENDMENT, REQUIRED LOCAL EFFORT, THERE WILL BE A HOLD-HARMLESS PRODUCING AN EQUIVALENT AMOUNT OF INCOME, CAN REASONABLY INFER FROM THAT THAT THIS WILL CONTINUE AND THAT, IN FACT, THE AMENDMENT CREATES IN THE INSTITUTION SOME FORMULA TO INSURE THAT IT CONTINUES.

THAT'S EXACTLY WHAT IT DOES. IT CREATES A FORMULA WHICH IT MANDATES BY WHICH THE LEGISLATURE IS TO APPROPRIATE THE SAME AMOUNT OF MONEY AS THE PREVIOUS YEAR PLUS AN INCREASE

EQUAL TO THE AVERAGE INCREASE
FROM THE TWO PREVIOUS YEARS.

>> BUT WHEN YOU READ THE WHOLE
AMENDMENT THAT IS PROPOSED HERE
AND THEY TALK ABOUT GENERAL
APPROPRIATIONS FOR THE YEARS
2010-2011, WHAT THEN IS THIS
AMENDMENT REALLY SAYING?
IS IT, IS IT REALLY SAYING THAT
FOR THE FISCAL YEAR 2011-2012
THAT YOU'RE ON YOUR OWN, AND
YOU'RE GOING TO HAVE TO GO OUT
AND FIND THIS MONEY IF YOU WANT
TO HAVE YOUR SCHOOLS FUNDED AT
THE RATE THAT THEY WERE FUNDED
PRIOR TO THIS AMENDMENT?

>> WELL, I THINK WHAT IT'S DOING
IS IT'S LEAVING IT TO THE
DISCRETION OF THE LEGISLATURE
AFTER THE 2011-2012 YEAR.
AND IT CAN DO THAT.

THE ONLY ISSUE HERE IS WHETHER
WE'RE GOING TO TELL THE PERSON
STANDING IN THE VOTING BOOTH
EXACTLY WHAT IT DOES.

AND WHAT REALLY HAPPENS HERE,
AND I GO BACK TO A COMMENT
JUSTICE WELLS MADE, IS I BELIEVE
WHAT THIS TITLE AND SUMMARY
TELLS THE VOTER IS THERE'S AN
EVEN TRADE-OFF HERE.

IN RETURN FOR THE LOSS OF THE
REQUIRED LOCAL EFFORT, YOU WILL
RECEIVE WHAT THE SPONSORS
DECIDED TO CALL A HOLD-HARMLESS,
AND THEN THEY GO FURTHER AND SAY
WHICH WILL PRODUCE AN EQUIVALENT
AMOUNT OF INCOME, OF FUNDS FOR
OUR SCHOOLS.

NOW, THAT'S WHAT IT SAYS, BUT
THAT'S NOT WHAT IT DOES.

WHAT IT DOES IS IT CREATES
CONSTITUTIONALLY A
SELF-EXECUTING, AUTOMATIC,
PERMANENT CUTOFF OF THE REQUIRED
LOCAL EFFORT, BUT IN RETURN ALL
YOU RECEIVE IS A ONE-YEAR
MANDATE WHICH IS CONTINGENT UPON
LEGISLATIVE ACTION, AND THAT'S
THE END OF IT.

SO WE GO BACK TO WHAT THIS COURT
SAID IN THE ASKEW CASE WHICH IS
AN ENTIRELY SEPARATE ISSUE, AND
THAT IS THAT YOU CANNOT IMPLY

EVEN TRADE-OFF WHEN THERE IS NO
EVEN TRADE-OFF.

THAT IN ITSELF IS DECEPTIVE AND
MISLEADING.

THE ONLY OTHER COMMENT THAT I'D
LIKE TO ADD, YOUR HONORS, IS
THAT WE'VE BEEN TALKING ABOUT
THE TITLE AND THE FACT THAT THE
TITLE ITSELF TAKEN ALONE IS
MISLEADING, AND I THINK THIS
COURT SHOULD NOT ANNOUNCE A
POLICY THAT SAYS TO THE SPONSORS
THAT SAYS YOU CAN SAY ANYTHING
YOU WANT TO IN THE TITLE, AND AS
LONG AS YOU CORRECT IT LATER IN
A SUMMARY, IT'S OKAY.

THE VOTER HAS THE RIGHT TO
ASSUME -- LET ME PAUSE FOR JUST
ONE MOMENT.

IF I'M A VOTER AND I READ A
TITLE THAT IT ASSURES ME THE
ONLY THING THIS DEALS WITH THE
SCHOOL FUNDING, I HAVE THE RIGHT
NOT TO READ FURTHER.

THAT'S THE WHOLE IDEA OF NOTICE.
I NEED TO BE GIVEN ENOUGH NOTICE
TO KNOW WHETHER OR NOT I HAVE TO
READ FURTHER.

IF ALL IT SAID IS TAXATION AND
FUNDING, I'M ON NOTICE THAT I
BETTER READ FURTHER.

SO ARE WE GOING TO OPEN THE DOOR
FOR PEOPLE TO SAY WHAT I
SUGGESTED, THAT ALL THIS HAS TO
DO WITH IS BUDGET PROCESS WHEN,
IN FACT, IT IMPOSES A STATE
INCOME TAX?

BECAUSE THAT WOULD BE THE
RESULT, AND HOW WOULD WE
DISTINGUISH THAT FROM WHAT WE'D
BE SAYING IN THIS CASE?

>> LET ME ASK YOU A QUESTION,
WHAT LIMITATION WOULD THERE BE
FROM THE LEGISLATURE NEXT YEAR
SAYING WE'RE NO LONGER GOING TO
REQUIRE ANY LOCAL SCHOOL
PROPERTY TAX BONDS?

>> THERE IS NONE, YOUR HONOR.
THE LEGISLATURE HAS THE RIGHT TO
DO THAT, THEY HAVE THE RIGHT TO
DO IT BY LEGISLATION, THEY HAVE
THE RIGHT TO DO IT
CONSTITUTIONALLY, AND I AGREE
WITH COUNSEL, BY THE WAY, THAT

THE LEGISLATURE CAN DO THAT
RIGHT NOW.

BUT THAT'S NOT WHAT WE'RE
TALKING ABOUT HERE.

WE'RE TALKING ABOUT WHAT WE'RE
TELLING THE VOTERS, AND WHAT
WE'RE TELLING THE VOTERS HERE IS
THAT THERE'S SOME KIND OF A
CONSTITUTIONAL GUARANTEE, A
HOLD-HARMLESS.

SO YOU DON'T HAVE TO WORRY ABOUT
THAT.

THAT'S THE PROBLEM.

THE PROBLEM HERE IS A NOTICE
PROBLEM.

>> SO THIS COMMISSION COULD
PROPOSE THIS KIND OF AMENDMENT,
BUT WHAT YOU'RE REALLY SAYING IS
THAT YOU'VE GOT TO TELL THE
VOTER THAT THIS AMENDMENT IS
ELIMINATING YOUR PROPERTY TAXES
AND FOR ONLY ONE YEAR ARE YOU
GETTING AN EQUIVALENT AMOUNT.
AFTER THAT, NOTHING.

>> I ABSOLUTELY AGREE WITH THAT,
YOUR HONOR.

>> THAT'S WHAT THE SUMMARY
SHOULD SAY.

>> YES, YOUR HONOR --

>> AT LEAST ON THAT POINT.

THERE'S SOME OTHER POINTS.

>> THERE'S NO QUESTION THAT THE
COMMISSION, THAT THIS COULD BE
DONE BY THE VOTERS OF FLORIDA,
BUT WE GO BACK TO THE ESSENTIAL
QUESTION WHICH REALLY IS AT THE
ROOT OF BASIC PRINCIPLES
REGARDING A FREE SOCIETY.

THE VOTER NEEDS TO KNOW WHAT HE
OR SHE IS VOTING ON AND CAN'T BE
MISLED, AND THERE'S NOTHING MORE
CRITICAL.

AND, YOU KNOW, COUNSEL TALKED
BELOW AND IN MORE ARCANE TERMS
ABOUT DEFERENCE TO THE
COMMISSION.

NO COURT HAS EVER SAID THAT ANY
COMMISSION GETS DEFERENCE WHEN
IT COMES TO THE ISSUE OF BEING
TRUTHFUL AND CLEAR AND
UNAMBIGUOUS WITH THE VOTERS.
THEY DON'T GET A FREE KICK WHEN
IT COMES TO THAT.

>> IN OTHER WORDS, WE DON'T HOLD

EITHER THE LEGISLATURE OR THE COMMISSION TO A LESSER STANDARD OF BEING FORTHRIGHT ABOUT THE CHIEF PURPOSE THAN WE DO FOR CITIZENS' INITIATIVES IN THAT REGARD.

AND NOT THAT YOU WERE ARGUING, BUT YOU REFERRED A COUPLE OF TIMES TO THE LAST CASE.

I WANT TO ASK YOU TWO QUESTIONS.

YOU HAVEN'T ARGUED THIS IS BEYOND THE JURISDICTION.

THIS IS A TAXATION ISSUE FOR THIS?

IS THAT WHAT THIS IS, NOT BUDGETARY PROCESS?

>> NO, I'M NOT ARGUING THAT, YOUR HONOR --

>> BUT IT'S WITHIN TAXATION?

>> NO QUESTION THE COMMISSION CAN DO THIS.

>> BECAUSE IT'S TAXATION.

>> THAT'S CORRECT.

>> OKAY.

THE OTHER THING IS WHICH WE NEVER GOT TO IN THE LAST CASE ON THE BALLOT FOR NUMBER 9 IS REQUIRING 65 PERCENT OF SCHOOL FUNDING FOR CLASSROOM INSTRUCTION AND SAYS NOTHING ABOUT THE SCHOOL VOUCHER THING. THEY MADE THAT ARGUMENT.

IS THAT, HAVE YOU LOOKED AT THAT, THESE OTHER -- HAVE YOU LOOKED AT ALL THE AMENDMENTS THAT ARE BEING PROPOSED?

>> I HAVE, YOUR HONOR, AND WITH YOUR PERMISSION, I DON'T WANT TO GET INTO THAT DOG PILE.

[LAUGHTER]

>> OKAY.

YOU'RE THE ONE THAT KEPT ON --

>> I DON'T HAVE A DOG IN THAT FIGHT.

>> WELL, YES, BUT I KNOW --

>> THAT WAS BEFORE THAT BECAME POLITICALLY INCORRECT.

>> BUT WHAT I WOULD ALSO SAY IS I KNOW YOU AS, YOU KNOW, A FREQUENT ADVOCATE IN FRONT OF THIS COURT THAT'S ALWAYS BEEN HONEST ABOUT THINGS, AND I JUST WANTED TO MAKE SURE THAT WE WERE

JUST BEING EVEN-HANDED IN HOW WE LOOKED AT ALL OF THESE TITLES. AND WHEN I WAS LOOKING AT IT, A COUPLE OF THEM ALSO POPPED UP AS BEING -- THAT COULD SUFFER FROM THE SAME PROBLEM WHAT YOU WOULD SAY, AGAIN, NO MATTER WHAT AMENDMENT THAT WE'RE LOOKING AT THAT THE TITLE CAN BE GENERAL AND NOT BE AFFIRMATIVELY MISLEADING, AND IT CANNOT OMIT A CRITICAL ASPECT.

>> THAT'S CORRECT, YOUR HONOR, AND I THINK IT'S TIME THAT THIS COURT CLARIFIED THAT BECAUSE WHAT HAPPENS TIME AND TIME AGAIN, AS YOU KNOW, IS PEOPLE REFER BACK TO THE SAVE OUR EVERGLADES CASE, AND THAT WAS A CASE IN WHICH THE COURT FOUND THAT THE TITLE WAS NOT ACCURATE, BUT THEY ALSO FOUND THERE WERE OTHER REASONS TO STRIKE IT, AND THE COURT HAS NEVER MADE CLEAR TO SPONSORS THAT YOU ARE HELD TO THE SAME LEVEL OF HONESTY IN THE TITLE AS YOU ARE IN THE SUMMARY. OBVIOUSLY, THE TITLE DOESN'T HAVE TO BE COMPLETELY EXPLANATORY, BUT IT CAN'T BE AFFIRMATIVELY MISLEADING. THE ONE OTHER THING I WANTED TO COMMENT ON IS THAT JUDGE COOPER FOUND THAT IT WASN'T JUST THE TITLE ALONE WITH RESPECT TO THE FACT THAT IT DIDN'T MENTION THAT THERE WERE OTHER THINGS. HE FOUND THAT WHEN YOU READ THE TITLE AND THE SUMMARY TOGETHER, THERE WAS AT VERY LEAST AN AMBIGUITY AS TO WHETHER THE REDUCTION IN THE ANNUAL INCREASE IN NONSCHOOL REAL ESTATE TAXES REFERRED TO JUST SCHOOL FUNDING BECAUSE THE CONSTITUTION TREATS THEM SEPARATELY. AND IT BECOMES AN AMBIGUITY. AND AS THIS COURT SAID IN A PREVIOUS CASE, A TITLE ITSELF WHICH IS POORLY WORDED CAN CREATE AN AMBIGUITY IN THE SUMMARY THAT MIGHT NOT OTHERWISE EXIST, AND AT VERY LEAST THAT HAPPENED HERE.

YOUR HONOR, THE INSTRUCTIONS THAT WE ALWAYS RECEIVE SAY THAT YOU'RE NOT REQUIRED TO USE ALL YOUR TIME, AND I REALLY READ THEM.

AND UNLESS THERE ARE MORE QUESTIONS, I'M NOT GOING TO USE ANYMORE OF MY TIME.

THANK YOU.

>> WE THANK YOU.

MR. HERRON?

>> MADAM CHIEF JUSTICE, MEMBERS OF THE COURT, WITH RESPECT TO MR. RICHARD'S LAST POINT, WHICH WAS THE SECOND GROUND UNDER WHICH JUDGE COOPER STRUCK THE AMENDMENT FROM THE BALLOT, A CLOSE READING OF HIS ANALYSIS, AT LEAST IN OUR VIEW, IS THAT HIS DETERMINATION THAT THERE'S AN AMBIGUITY IS REALLY A SECOND-SUBJECT OBJECTION THAT'S FLYING UNDER FALSE COLORS. I MEAN, IF YOU LOOK CLEARLY AT THE WORDS OF THE AMENDMENT, THE SUMMARY AS WELL AS THE AMENDMENT, BUT IN TERMS OF THE SUMMARY IT SAYS, "LIMITING ANNUAL INCREASES IN ASSESSMENTS OF NON-HOMESTEAD REAL PROPERTY." THERE IS NO AMBIGUITY THERE AT ALL.

IT DOESN'T TIE IT TO ANY OTHER PARTICULAR TYPE OF TAXATIONS, IT DOESN'T TIE IT TO ANY OTHER TYPE OF REVENUE INCREASES.

>> WELL, READ WHAT HE WRITES. HE SAYS, "WHEN READ WITHIN THE CONTEXT OF THE TITLE AND SURROUNDING TEXT OF THE SUMMARY ALL OF WHICH REFER TO LIMITS ON TAXES AND ON FUNDING ONLY WITH RESPECT TO SCHOOLS, A VOTER COULD WELL CONCLUDE THAT THE SENTENCE ALSO REFERS TO A CHANGE IN THE SECTION DEALING WITH SCHOOL TAX LEVIES."

>> AND WITH RESPECT TO THAT STATEMENT, READ THE STATEMENT RIGHT ABOVE IT THAT'S IN THE TITLE. THE SENTENCE RIGHT ABOVE IT

THAT'S IN THE SUMMARY, THE
BALLOT SUMMARY SAYS, "LIMITING
SUBJECT MATTERS OF LAWS GRANTING
FUTURE EXEMPTIONS."

THAT IN NO WAY IMPLIES OR INFERS
THAT IT'S TIED TO SCHOOLS OR
SCHOOL FUNDING OR THE TAX, THE
TAX SUBSTITUTION.

>> CAN YOU ADDRESS MR. RICHARD'S
POINT AS TO WHAT THE TITLE CAN
AND CAN'T DO?

BECAUSE I THINK THAT'S IMPORTANT
FOR OUR JURISPRUDENCE, AND THAT
IS UNDER YOUR POSITION CAN A
TITLE, DOES A TITLE AND SUMMARY
HAVE TO BE CONSIDERED TOGETHER
TO DETERMINE WHETHER BOTH ARE
MISLEADING AND, THEREFORE,
PERHAPS THE TITLE CAN BE A
LITTLE MISLEADING AS LONG AS THE
SUMMARY CLARIFIES IT, OR CAN THE
TITLE JUST NOT BE MISLEADING AT
ALL, WHICH IS MR. RICHARD'S
POSITION?

>> THE CASES CONSISTENTLY SAY
THAT YOU READ THE TITLE AND
SUMMARY TOGETHER TO DETERMINE
WHETHER IT'S MISLEADING.

I --

>> YOU DON'T AGREE THAT IF WE
LOOKED AT EVERY SINGLE CASE, THE
ONES THAT SAY IT HAVE A BROAD
TITLE?

>> I HAVEN'T LOOKED AT EVERY
SINGLE CASE, SO I CAN'T TELL YOU
THAT.

>> BUT WE DON'T HAVE A CASE THAT
SAYS THE TITLE CAN BE MISLEADING
AS LONG AS BOTH TAKEN TOGETHER
ARE NOT MISLEADING?

>> I DON'T THINK WE HAVE THAT
EITHER.

THE TITLE IS THE NAME BY WHICH
IT GOES BY.

THAT'S WHAT THE STATUTE SAYS.
AND, YOU KNOW, UNLESS IT'S
SAYING IT DOES X AND IT DOES Y,
THEN KIND OF LIKE IN, YOU KNOW,
THE TITLE SAYS THIS DOES X AND
THE AMENDMENT DOES Y, THAT WOULD
BE AFFIRMATIVELY MISLEADING.
IN THIS CASE --

>> AND SO DOESN'T THIS ONE SAY X
WHEN IT REALLY DOES Y?

>> NO.

THE TITLE SAYS IT DOES X, THE
AMENDMENT DOES A, B, C, D, E.

OKAY?

BUT THE CHIEF PURPOSE OF THE
AMENDMENT IS --

>> WELL, WAIT A MINUTE --

>> WHAT A AND B DO.

>> IF THE TITLE SAYS X AND THE
AMENDMENT SAYS A, B, C, AND D,
ISN'T THAT MISLEADING?

IF THE TITLE SAYS X, SHOULDN'T
THE AMENDMENT BE X ALSO?

>> I DON'T BELIEVE SO BECAUSE
YOU GO BACK TO THE STATUTE, THE
STATUTE SAYS IT'S A NAME BY
WHICH THE AMENDMENT IS KNOWN.

>> YEAH, BUT YOU SEE, THE
PROBLEM IS -- WE'LL USE THE
LETTERS -- THE TITLE SAYS X AND
Y, AND WHAT MR. RICHARD IS
SAYING Y AIN'T HAPPENING IN THIS
AMENDMENT.

>> THAT'S A DIFFERENT ISSUE.
THAT'S A POLITICAL ISSUE AS TO
WHY IT ISN'T HAPPENING BECAUSE
FROM OUR POINT OF VIEW --

>> THAT'S WHAT'S MISLEADING
BECAUSE IT'S PROMISING Y IN THE
TITLE, AND IT'S NOT, IT'S NOT A
PROMISE THAT IS FULFILLED IN THE
AMENDMENT OR EVEN -- ISN'T THAT
THE ARGUMENT?

>> THEIR ARGUMENT IS NOT
PERPETUAL.

OUR ARGUMENT IS IT HAPPENS IN
THE YEAR IN WHICH THE SWAP IS
MANDATED BY THE AMENDMENT.
THERE IS A HOLD-HARMLESS, IT'S
SPECIFICALLY DEFINED IN THE
AMENDMENT.

THANK YOU.

>> THANK YOU, MR. HERRON.
THANK YOU BOTH FOR YOUR
ARGUMENTS, AND AGAIN, A VERY
IMPORTANT ISSUE FOR THE PEOPLE
OF THE STATE OF FLORIDA.
WITH THAT, COURT IS NOW
ADJOURNED.

>> PLEASE RISE.