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Citizens' Initiatives on Redistricting

SC08-986 | SC08-1163 | SC08-1149 | SC08-1165

>> PLEASE 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,
THIS GREAT STATE OF FLORIDA,
AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE ORAL ARGUMENT CALENDAR FOR
THURSDAY, NOVEMBER THE 6th.

THE FIRST CASE ON OUR AGENDA IS
ADVISORY OPINION TO THE
ATTORNEY GENERAL STANDARDS FOR
ESTABLISHING LEGISLATIVE
BOUNDARIES.

MR.^RICHARDS, ARE YOU READY TO
PROCEED OR --?

MR.^HUBENER?

>> INTRODUCTORY REMARKS.

LOUIS HUBENER ON BEHALF OF THE
ATTORNEY GENERAL'S OFFICE.

THIS MATTER IS BEFORE THE COURT
ON THE ATTORNEY GENERAL'S
REQUEST FOR AN ADVISORY
OPINION.

MR.^RICHARD WILL ARGUE IN, ON
BEHALF OF THE SPONSOR, AND
JASON VAIL ON BEHALF OF THE
OPPONENT, THE LEGISLATURE.

THANK YOU.

>> MADAM CHIEF JUSTICE, MEMBERS
OF THE COURT, MAY IT PLEASE THE
COURT.

MY NAME IS BARRY RICHARD AND I
AM COUNSEL FOR THE SPONSOR FAIR
DISTRICTS FLORIDA INC. THE
OPPONENTS OF THE MEASURE, THE
FLORIDA LEGISLATURE, RAISE BOTH
SINGLE SUBJECT AND TITLE AND
SUMMARY OBJECTIONS.

ON THE SINGLE SUBJECT ISSUE,
THEY MAKE TWO ARGUMENTS: ^THE
FIRST IS THAT THE PROPOSED
AMENDMENT VIOLATES THE SINGLE
SUBJECT REQUIREMENT BECAUSE IT
IMPOSES MULTIPLE STANDARDS UPON
THE LEGISLATURE'S FUNCTION IN
SETTING DISTRICTS.

THIS COURT HAS NEVER HELD THAT
AN AMENDMENT VIOLATES SINGLE
SUBJECT SIMPLY BECAUSE IT HAS
MULTIPLE COMPONENTS.

IN FACT, THE COURT HAS
HISTORICALLY UPHELD MANY
AMENDMENTS THAT HAD MULTIPLE
COMPONENTS.

INSTEAD WHAT THIS COURT HAS
DONE IS IT HAS ADOPTED A
PRAGMATIC TEST THAT'S DESIGNED
TO DETERMINE AS THE COURT HAS
SAID, WHETHER THERE IS A SINGLE
DOMINANT PLAN OR SCHEME OR IN
OTHER WORDS, WHETHER THERE IS A
UNITY OF OBJECT IN PLAN OR A
LOGICAL AND NATURAL ONENESS OF
PURPOSE, AND SO --

>> HOW WOULD YOU BEST
DISTINGUISH?

IT APPEARS THAT IN OUR ANALYSIS
WITH REGARD TO DISCRIMINATION
IN THAT BALLOT OPTIC, WE
HAD SEVERAL DIFFERENT
STANDARDS, SEVERAL DIFFERENT
CATEGORIES, AND THE COURT THERE
WAS OF THE VIEW THAT WAS
LOGROLLING BECAUSE OF THE
VARIOUS ITEMS INCLUDED AND FOR
THOSE TO BE PROTECTED.

>> JUSTICE LEWIS, YES, AND
INDEED I BELIEVE THAT BASED
UPON THIS COURT'S SERIES OF
OPINIONS THAT WAS A VIOLATION.
WHAT IT DID IS IT APPLIED A
GENERAL ANTIDISCRIMINATION
CONCEPT TO TEN SEPARATE
CLASSIFICATIONS OF INDIVIDUALS
THAT HAD NO COHESIVE UNITY
AMONG THEM.

THEY SIMPLY WERE DIFFERENT
GROUPS THAT IT WAS APPLYING IT
TO.

IN THIS CASE, ON THE OTHER
HAND, IT IS, THE, THE AMENDMENT
WOULD APPLY TO A SINGLE BODY,

FLORIDA LEGISLATURE, A SINGLE
CONCEPT DESIGNED TO DO ONE
GOAL, AND THAT GOAL IS TO
ENSURE THAT WHEN THE
LEGISLATURE SETS LINES, THAT IT
SETS THEM SOLEY ON THE BASIS OF
PROPORTIONAL REPRESENTATION.
PERIOD.

ONE PERSON, ONE VOTE.

AND EACH OF THE STANDARDS
SERVES THAT SAME SINGULAR
PURPOSE BY PROVIDING THAT THE
LEGISLATURE SHALL NOT DISTORT
THAT SINGLE PURPOSE BY
UTILIZING THOSE THINGS THAT
HISTORICALLY HAVE BEEN USED TO
DISTORT IT.

SO IT SERVES ONE PURPOSE.

AND IF YOU LOOK AT EACH OF
THESE STANDARDS, THEY HAVE A
COHESIVE UNITY BECAUSE THEY
EACH SERVE THAT STANDARD WHICH
IS ENTIRELY DIFFERENT THAN THE
ANTIDISCRIMINATION AMENDMENT
WHERE THERE WAS NOTHING
COHESIVE.

IT SIMPLY SAID YOU SHALL NOT
DISCRIMINATE AGAINST THIS GROUP
OR THIS GROUP OR THIS GROUP.
SO THIS SERVES WHAT THIS COURT
HAS DEFINED AS A UNITY OR A
ONENESS OF PURPOSE.

IN ADDITION, BECAUSE OF THE
FACT THAT YOU ARE DRAWING LINES
IN A SINGLE PARAMETER, ANY
STANDARD YOU USE TO DRAW ONE
LINE IS NECESSARILY GOING TO
AFFECT THE OTHER ONE.

IT WOULD BE ENTIRELY
IMPRACTICABLE TO SAY THAT YOU,
THAT YOU MUST, IF YOU WANT MORE
THAN ONE STANDARD THAT
YOU MUST HAVE SEPARATE
AMENDMENTS FOR EACH ONE OF THEM
BECAUSE YOU WOULD BE DENYING
THE PEOPLE THE OPPORTUNITY TO
DECIDE HOW THOSE AMENDMENTS
AFFECT EACH OTHER.

SO I THINK THAT IN TERMS OF
WHAT THIS COURT WAS, HAS BEEN
SEEKING TO DO IN ITS EFFORT
OVER THE YEARS TO CREATE A
MEANINGFUL STANDARD THIS
CERTAINLY --

>> NOW WHY ISN'T THIS --

MR. ^RICHARDS, WHY ISN'T THIS
QUINTESSENTIAL LOGROLLING WHERE
YOU'RE ASKING THE VOTER TO
CHOOSE OR SOME VOTERS TO CHOOSE
BETWEEN A DESIRE ON ONE HAND
NOT TO DISCRIMINATE AGAINST
RACIAL MINORITIES BUT ON THE
OTHER HAND, THAT MEANS THAT
THERE CANNOT BE A POLITICAL
PARTY JUDGMENT MADE IN
REAPPORTIONING THESE DISTRICT.
WHY ISN'T THAT LOGROLLING?
THAT'S A CHOICE BETWEEN TWO
SUBJECTS, ISN'T IT.

>> WELL, I THINK, JUSTICE WELLS
THAT IT IS ALWAYS A CHOICE
BETWEEN TWO SUBJECTS IF YOU
PARSE IT DOWN CAREFULLY ENOUGH
AND THERE'S MORE THAN ONE THING
IN AN AMENDMENT.

I, IN THIS CASE, THE REASON IS
BECAUSE IF YOU LOOK AT IT FROM
THE PERSPECTIVE OF WHAT, WHAT
THIS REALLY DOES, AGAIN, WHICH
I SAID IS IT SAYS THAT THE
DETERMINATION AS TO WHAT THE
LINE SHOULD BE SHOULD BE BASED
SOLELY UPON PROPORTIONAL
REPRESENTATION UNINFLUENCED BY
ANYTHING ELSE.

IF THAT'S WHAT YOU --, IF
THAT'S WHAT YOU ARE IN FAVOR
OF, THEN YOU WOULD VOTE FOR
THIS.

IF YOU ARE NOT IN FAVOR --

>> WHY DOESN'T IT JUST SAY
THAT?

RATHER THAN SAY THAT
LEGISLATIVE DISTRICTS MAY BE
DRAWN IN FAVOR OR DISFAVOR OF
AN INCUMBENT OR A POLITICAL
PARTY?

WHY DOESN'T IT JUST SAY WHAT
YOU SAID?

>> WELL, I COULD RESPOND TO
THAT TWO WAYS.

THE FIRST WAY IS, IT DOESN'T
SAY THAT BECAUSE THE SPONSORS
OF THIS AMENDMENT WANTED TO BE
SURE OF TWO THINGS: ^FIRST, THAT
THE LEGISLATURE UNDERSTOOD
SPECIFICALLY WHAT -- IT WANTED
TO HAVE A CLEAR LINE RULE AS TO

WHAT THEY COULD AND COULDN'T DO
BUT SECOND IT WANTED TO PROVIDE
A REVIEW IN COURT WITH
STANDARDS THAT WERE VERY CLEAR,
THAT WERE NOT SUBJECT TO
INTERPRETATION.

THAT'S WHY IT DID IT, BUT MY
ADDITIONAL RESPONSE TO THAT IS
THAT YOU COULD ASK THAT SAME
QUESTION OF ANY OF THE
MULTITUDE OF CASES THAT THIS
COURT HAS UPHOLD THAT INVOLVED
MULTIPLE COMPONENTS.
YOU COULD ALWAYS SAY WHY DIDN'T
YOU JUST SAY DO IT THIS WAY?
AND WHY WOULDN'T THIS BE
LOGROLLING BECAUSE SOMEBODY
MIGHT FAVOR ONE OF THOSE
COMPONENTS AND NOT ANOTHER ONE.

AT SOME POINT WE'VE GOT TO
ADOPT A PRACTICABLE APPROACH TO
THIS, AND THAT'S WHAT THIS
COURT HAS DONE IN THE ONENESS
OF PURPOSE, THE UNITY OF
PURPOSE, THE SINGULAR PURPOSE,
AND THIS HAS A SINGULAR PURPOSE
AND THE FACT IS THAT EVEN
THOUGH AN AMENDMENT HAS A
SINGULAR PURPOSE, IT MAY HAVE
SUBCOMPONENTS OF IT THEN ONE
COULD SAY MAYBE SOMEBODY WOULD
LIKE THIS AND NOT THAT.

HERE THE VOTER KNOWS THAT
EITHER I WANT MY DISTRICTS TO
BE BASED SOLELY ON PROPORTIONAL
REPRESENTATION UNINFLUENCED BY
SOMETHING ELSE OR I WANT IT TO
BE INFLUENCED BY SOMETHING ELSE
SO I AM GOING TO VOTE AGAINST
THIS.

IT'S A CLEAR CHOICE.

THE SECOND ARGUMENT THAT'S MADE
BY THE LEGISLATURE UNDER THE
SINGLE SUBJECT TITLE IS THAT
BECAUSE, AND THEY BEGIN WITH A
SERIES OF ASSUMPTIONS, BECAUSE
IN THE OPINION OF THE
LEGISLATURE THE LEGISLATURE
POLITICALLY WILL NEVER BE ABLE
TO ACHIEVE WHAT THIS CALLS FOR,
THEREFORE IT WILL ALWAYS BE
THRUST UPON THIS COURT
ULTIMATELY UNDER THE WAY THAT

THE CONSTITUTION WORKS TO DO
THE REAPPORTIONMENT.
TO DO THE REALIGNING.
AND CONSEQUENTLY WHAT THIS
REALLY DOES IS THAT IMPOSES A
CHANGE UPON BOTH THE
LEGISLATIVE AND THE JUDICIAL
BRANCHES, AND THEREFORE, IT
VIOLATES THE SINGLE SUBJECT
RULE.

FIRST THING I THINK THAT
STRIKES ONE HERE IS THAT WHAT
THEY ARE SAYING IS THAT THE
PEOPLE OF THE STATE CAN NEVER
IMPOSE STANDARDS ON THE
REDISTRICTING BECAUSE THAT
WOULD ALWAYS BE THE CASE.
UNDER THE FLORIDA CONSTITUTION
AND THEREFORE YOU WOULD NEVER
BE ABLE TO DO THIS, SOMETHING
THAT IS ALWAYS A SIGNAL THAT
THERE IS APPARENTLY A FLAW IN
THE ARGUMENT.

IN THIS CASE, THERE IS A FLAW
IN THE ARGUMENT, AND THERE ARE
SEVERAL FLAWS.

THE FIRST IS, IT'S BASED UPON
PURE SPECULATION.

WHAT THE LEGISLATURE IS SAYING
IS IT'S OUR OPINION THAT THIS
COULD NEVER BE ACHIEVED.

THE SECOND THING IS THAT WHAT
THE, WHAT THE, WHAT THE SINGLE
SUBJECT REQUIREMENT IMPOSES IS
THAT YOU NOT HAVE MULTIPLE --
THAT THE AMENDMENT ITSELF NOT
HAVE MULTIPLE CHANGES IN
FUNCTION.

THIS AMENDMENT DOES NOT.
WHAT THIS COURT HAS OFTEN SAID
IS THE FACT THAT AN AMENDMENT
HAS AN EFFECT OR A RAMIFICATION
DOES NOT VIOLATE THE SINGLE
SUBJECT RULE AND THAT'S WHAT
WE'RE DEALING WITH HERE, A
POTENTIAL SPECULATIVE
RAMIFICATION OF THIS.

THE THIRD THING I WOULD NOTE BY
THE WAY IS THAT THIS COURT AND
THE DISTRICT COURTS FOR THAT
MATTER AND ARE OFTEN CALLED
UPON TO REVIEW WHAT THE
LEGISLATURE HAS DONE IN MANY
INSTANCES.

THE MERE FACT THAT THE JUDICIARY HAS CALL UPON TO CONDUCT A REVIEW BECAUSE OF THE FACT THAT ANOTHER BRANCH MAY NOT HAVE DONE ITS JOB PROPERLY DOESN'T MEAN THAT WE ARE IMPOSING SOMETHING UPON THE FUNCTION OF THE COURT, WHICH IS A, WHICH IS A CHANGE IN THE FUNCTION OF THE COURT.

ON THE ISSUE OF THE TITLE AND SUMMARY, THE LEGISLATURE RAISE AS WHOLE MULTIPLICITY OF ARGUMENTS BY PARSING OUT VERY PARTICULARIZED LANGUAGE, AND I WILL COVER ALL OF THEM IF TIME PERMITS.

>> WELL, LET'S BE SURE WE HAVE A COUPLE OF THEM FOR SURE WE CAN TOUCH UPON.

THE -- WE ALWAYS RUN INTO DIFFICULTIES IF THERE IS A DIFFERENCE IF THE VERBIAGE BETWEEN THE SUBSTANCE OF THE PROPOSED AMENDMENT AND THE SUMMARY.

AND HERE WE HAVE IT IN TWO DIFFERENT AREAS.

AT LEAST TWO DIFFERENT AREAS ONE IS THAT THE BALLOT SUMMARY DOES NOT INCLUDE THE CONCEPT OF INTENT.

AND THAT'S WHAT I GUESS THE ALLEGED EVIL IS NAT WE ARE TALKING ABOUT IS THAT NO MATTER HOW YOU DRAW THE LINES THAT THERE MAY BE SOME POLITICAL OR PARTISAN EFFECT FROM THAT. SO THE REAL GUTS THAT THET INTENT MUST NOT BE AND THE SUMMARY DOES NOT MENTION THE WORD INTENT, SO WOULD YOU ADDRESS THAT AND THEN ALSO WOULD YOU PLEASE ADDRESS THE CONCEPT OF THE LANGUAGE WITH REGARD TO POLITICAL, THAT THE BODY OF THE AMENDMENT ADDRESSES POLITICAL LINES AND THE SUMMARY ADDRESSES CITY, COUNTY, AND THERE MAY BE OTHER POLITICAL LINES THAT MAY BE INVOLVED. THOSE TWO AS YOU PLEASE, BUT PLEASE HIT ON THOSE.

>> YES, SIR, I MAY HAVE TO ASK

YOU TO REMIND ME OF THE SECOND ONE.

I GET ON IN AGE, YOU DON'T REMEMBER EVERYTHING.

>> THAT ASSUMES I HAVE.

WE'LL GO FROM THERE.

>> I HAVE TO BE CONCERNED THAT YOU ALSO WILL REMEMBER --

>> THAT'S IT.

YOU DO.

>> THE, WHAT THE LANGUAGE OF THIS AMENDMENT SAYS, AND BY THE WAY, WHAT DISTINGUISHES IT FROM THE SUPPLEMENTAL AUTHORITY THAT THE ROMER CASE THAT WAS FILED ON THIS ISSUE, IS THAT THIS AMENDMENT IN ITS LANGUAGE, THE ROMER CASE BY THE WAY, WAS A, A STATUTORY CONSTRUCTION OF A FEDERAL STATUTE IN WHICH THE, IN WHICH THE COURT HELD THAT BY ADDING THE AND LANGUAGE TO IT, THAT IT ADDED A RESULTS TEST.

IN OUR AMENDMENT, WE DON'T HAVE THAT ISSUE BECAUSE OUR AMENDMENT EXPRESSLY INCORPORATES BOTH AN INTENT AND A RESULTS SAYS WHICH SAYS SHALL NOT BE WITHDRAWN WITH THE INTENT OR RESULT OF DENYING OR ABRIDGING EQUAL OPPORTUNITY, ET CETERA.

WHAT THE SPONSORS DID HERE BECAUSE WITH THE 75-WORD LIMIT IT'S VERY DIFFICULT TO INCLUDE THIS WHOLE PHRASE.

>> BUT JUST TO BE CLEAR ON THE RESULT TEST DOESN'T APPLY TO THE FAVORING OR DISFAVORING OF POLITICAL PARTY OR INCUMBENT, RIGHT?

THAT'S THE ONLY THE INTENT TEST.

>> NO APPORTIONMENT PLAN OR --

>> IT'S REALLY A KIND OF VARIATION THERE IT HAS INTANT OR -- INTENT OR RESULT WITH RESPECT TO RACIAL OR LANGUAGE MINORITY BUT JUST INTENT WITH RESPECT TO POLITICAL -- POLITICAL PARTIES OR INCUMBENTS.

>> THAT'S CORRECT, YOUR HONOR. AND SO THE QUESTION IS IT IS

VIRTUALLY IMPOSSIBLE WITH THE
75-WORD LIMIT WITH THE SPONSORS
-- AND AS A MATTER OF FACT, I,
YOU MAKE MY POINT, JUSTICE
CANADY, BECAUSE THAT ENTIRE
PHRASEOLOGY WOULD HAVE TO BE
INCLUDED IN THE SUMMARY IN
ORDER TO COVER ALL OF IT.
WHAT THE SPONSORS DID HERE
INSTEAD IS THEY USED THE TERM
THAT WAS BROAD ENOUGH TO COVER
ALL OF IT BY JUST SAYING IT
SHALL NOT BE DRAWN TO CREATE
THOSE PURPOSES.
IT'S OUR POSITION THAT THE WORD
TO IS BROAD ENOUGH AS AN
UMBRELLA TERM TO INCLUDE BOTH
OR EITHER INTENT OR RESULTS,
AND WHAT WE DEAL WITH IN THE
SUMMARY, PARTICULARLY BECAUSE
OF THE 75-WORD LIMIT IS A
NOTICE REQUIREMENT.
DOES THIS PLACE A VOTER ON
NOTICE SUFFICIENT SO THAT THE
VOTER CARES ABOUT THOSE
PARTICULARS HERE SHE CAN GO
READ THE ENTIRE AMENDMENT.
THIS CLEARLY DOES.
THE WORD TO DOES NOT SAY TO THE
VOTER THAT THIS IS LIMITED
EITHER TO INTENT OR RESULTS.
OR THAT IT DOES BOTH.
IT SAYS THAT THIS DOES THIS
THING AND IT COULD INCLUDE
EITHER/OR BUT IT IS CERTAINLY
SUFFICIENT NOTICE, PARTICULARLY
GIVEN THE 75-WORD LIMIT.
IT'S NOT MISLEADING.
THERE'S NOTHING IN THAT
TERMINOLOGY THAT FAILS TO TELL
THE VOTER THAT THISES COULD
INCLUDE EITHER/OR INTENT TO THE
RESULT AND I WOULD JUST ARGUE
TO THE COURT THAT IT'S
SUFFICIENT NOTICE TO CALL TO
THE ATTENTION OF ANY VOTER WHO
CARES ABOUT THAT ISSUE THAT
THIS DEALS WITH IT.
AND, AND IF WE ARE TO, AND
THERE IS VIRTUALLY NO WAY THAT,
THAT ENTIRE PHRASEOLOGY
COULD'VE BEEN, COULD'VE BEEN
INCLUDED AND THEREAGAIN THE
COURT HAS ALWAYS WEIGHED THE

IMPORTANCE OF GIVING FAIR NOTICE AGAINST THE BURDENS OF HAVING TO STAY WITHIN THE 75-WORD LIMIT, AND WHAT THE COURT HAS SAID IS YOU CANNOT DO ONE OF TWO THINGS.

YOU CANNOT DO SOMETHING THAT IS AFFIRMATIVELY MISLEADING CLEARLY IF THIS SAID IT WAS ONLY INTENT WOULD'VE --

IT WOULD'VE BEEN MISLEADING BECAUSE IT WOULD NOT HAVE PERMITTED RESULTS.

THE SECOND THING IS YOU CANNOT FAIL TO GIVE NOTICE OF A MATERIAL CHANGE.

AND THIS DOES NOT.

IT GIVES NOTICE OF THE FACT THAT THE AMENDMENT DOES DEAL WITH THAT QUESTION.

AND, AND IF YOU WANT TO KNOW MORE, YOU NEED TO READ THE AMENDMENT.

THE SUMMARY AND THE, AND THE TITLE, WHILE THIS COURT HAS SAID THAT IT DOES NOT, THAT YOU CANNOT RELY UPON PUBLIC INFORMATION TO PROVIDE MATERIAL INFORMATION THAT'S MISSING, THE COURT HAS ALWAYS SAID THAT THE TITLE AND SUMMARY IS NOT A SUBSTITUTE FOR THE PUBLIC INFORMING ITSELF IF IT HAPPENS TO KNOW MORE ABOUT WHAT IT'S BEEN GIVEN NOTICE OF SUFFICIENTLY IN THE SUMMARY.

>> MR. RICHARD, IN THIS PROPOSAL, YOU USE THE LANGUAGE CONTIGUOUS THAT THESE DISTRICTS HAVE TO BE CONTIGUOUS, AND THEN I NOTICED THAT IN SECTION 16 A, I BELIEVE IT IS, OF ARTICLE 3, THEY TALK ABOUT CONTIGUOUS OVERLAPPING, AND IDENTICAL TERRITORY.

>> CORRECT.

>> AND I'M WONDERING, DOESN'T THIS CHANGE THAT LANGUAGE? AND SHOULD THERE BE IN THIS SOME REFERENCE TO THAT PARTICULAR ARTICLE THAT IS BEING CHANGED?

>> JUSTICE QUINCE, I THINK IT DOES NOT CHANGE T. THE REASON

IT DOES NOT CHANGE IT IS
BECAUSE BY THE DEFINITION THAT
THIS COURT HAS GIVEN THE WORD
CONTIGUOUS, WHICH IS THAT
TOUCHING ANYWHERE EXCEPT ON A
COMMON CORNER, THE WORD
CONTIGUOUS INCLUDES OVERLAPPING
OR IDENTICAL BECAUSE
OVERLAPPING IDENTICAL WHILE
CONTIGUOUS DOES NOT HAVE TO BE
OVERLAPPING AND IDENTICAL.
OVERLAPPING AND IDENTICAL MUST
BE CONTIGUOUS BY THEIR VERY
NATURE.

>> SO THEY WERE VERY REDUNDANT
YOU ARE SAYING IN 16 A.

>> I WOULDN'T SAY REDUNDANT.
I WOULD SAY THAT THE SPONSORS
INCLUDED THE CONTIGUOUS TO
MAKE IT CLEAR THAT WERE
SUGGESTING IT NO LONGHAIR TO BE
CONTIGUOUS BECAUSE OF WHAT THE
SPONSORS WERE SPEAKING TO --
SEEKING TO DO HERE WHICH IS IT
TO SAY THIS SHOULD BE BASED
UPON PROPORTIONAL
REPRESENTATION.

THEY WANTED TO BE CLEAR WE ARE
NOT SAYING YOU CAN HAVE A
DISTRICT HERE AND AN
UNCONNECTED DISTRICT HERE.
WE ARE RETAINING THE
REQUIREMENT FOR CONTIGUITY SO
FAR AS THE CONSTITUTION IS
CONCERNED.

BUT WE ARE NOT ALSO CHANGING
THE LEGISLATURE'S ABILITY,
WHICH CURRENTLY EXISTS, TO MAKE
THE THEM CO-EXTENSIVE OR
OVERLAPPING IF THEY WANT TO
HAVE MULTIMEMBER DISTRICTS OR
PORTIONS OF DISTRICTS.

THE REASON THEY ONLY INCLUDED
ONE IS BECAUSE THEY DID NOT
WANT TO BIND THE LEGISLATURE IN
THE OTHER TWO BUT THEY DID WANT
TO BIND THE LEGISLATURE ON
CONTIGUITY WHICH NOW THE
ARGUMENT MADE BY THE
LEGISLATURE IS THAT THIS
SOMEHOW IS A CHANGE BECAUSE IT
PROHIBITS MULTIMEMBER DISTRICT.

IT DOES NOT.

YOU CAN HAVE MULTIMEMBER
DISTRICTS WHICH ARE CONTIGUOUS.

WHICH IS ALL THAT'S REQUIRED
HERE.

>> SO YOU'RE WELL INTO YOUR
REBUTTAL.

>> UNLESS THE COURT HAS
QUESTIONS ABOUT THE, THE OTHER
ISSUES THAT WERE RAISED, THANK
YOU, YOUR HONOR.

I WILL SIT DOWN.

>> GOOD MORNING.

I'M JAY VAIL HERE FOR THE
FLORIDA LEGISLATURE.

THESE AMENDMENTS ARE CLASSIC
EXAMPLES OF MEASURES THAT
CONTAIN ELEMENTS OF VOTER -- A
VOTER MIGHT DISFAVOR AND MIGHT
BE FORCED TO CAST AN ALL OR
NOTHING BALLOT.

THE AMENDMENTS AFFORD
CONSTITUTIONAL PROTECTION
AGAINST DISCRIMINATION TO FIVE
SEPARATE AND DISTINCT CLASSES.
NEITHER ONE OF THESE CLASSES IN
ANY WAY AFFECTS THE OTHER SO
THAT THEY SHOOT AT DIFFERENT
TARGETS TO ACHIEVE SEPARATE AND
DISTINCT GOALS.

FOR THE FIRST TIME I HAVE HEARD
THE OPPONENTS SAY THE --
PROPONENTS SAY THE INTENT WAS
TO ACHIEVE A ONE PERSON ONE
VOTE VOTE BY REDISTRICTING.
THAT'S ALREADY REQUIRED IN
FEDERAL LAW IN BOTH AREAS OF
REDISTRICTING STATE AND FEDERAL
BUT EVEN IF THAT IS THE PURPOSE
OF THIS PARTICULAR AMENDMENT,
WHETHER OR NOT WE HAVE
ANTIDISCRIMINATION PROTECTIONS
AGAINST RACIAL MINORITIES DOES
NOT WORK TO ACHIEVE THAT
PARTICULAR GOAL.

IT'S A GOAL THAT SHOOTS TOWARD
A DIFFERENT TARGET.

>> WELL, ISN'T THE REAL, I SEE
THIS AS THE REAL PURPOSE OF
THIS AMENDMENT REALLY IS TO
KEEP PARTIES WHO ARE IN POWER
FROM RIGGING DISTRICTS TO
REMAIN IN POWER.

ISN'T THAT THE REAL PURPOSE OF

THIS MOMENT?

>> WELL, THAT'S THE ISSUE WE SEE IS TO PROHIBIT POLITICAL GERRYMANDERING. WHICH IF, IF THE COURT IS FAMILIAR WITH THE VIETH CASE, IT'S A VERY DIFFICULT THING TO DO IN TERMS OF JUDICIAL REVIEW. THERE'S NO WORKABLE TEST IN WHICH TO DO THAT.

IT'S A --

>> BUT IF THAT'S WHAT THE CITIZENS WANT TO DO, AND IF THIS AMENDMENT REALLY IS A SINGLE SUBJECT AMENDMENT AND IF IT HAS NO, IF THE BALLOT TITLE AND SUMMARY ARE NOT MISLEADING, THEN THE CITIZENS ARE FREE TO DO THAT, AREN'T THEY?

>> WELL THEY WOULD BE BUT THE PROBLEM WITH THIS PARTICULAR AMENDMENT IS IT'S JUST A CATCH ALL.

IT'S A BIN WHERE ALL DIFFERENT THINGS HAVE BEEN THROWN TOGETHER AND I THINK YOU CAN FAIRLY MAKE THE ARGUMENT THAT SOME OF THESE ARGUMENTS ARE MADE TO SIMPLY SWEETEN POT IN ORDER TO OVERCOME VOTER OBJECTION TO OTHER ELEMENTS IN THERE.

IF THE PEOPLE WANTED TO OFFER AN AMENDMENT THAT DEALT STRICTLY WITH POLITICAL GERRYMANDERING THEY COULD DO THAT BUT I DON'T THINK THAT THEY COULD PUT IN ALL THESE OTHER THINGS AS WELL. THESE ARE STAND ALONE REQUIREMENTS.

THEY AIM TOWARD DIFFERENT SUBJECTS.

THE COURT'S CASES ARE VERY CLEAR THAT WHERE VOTERS MAY TEND TO DISFAVOR ONE OR ANOTHER AND ARE FORCES TO MAKE AN ALL OR NOTHING VOTE, THAT VIOLATES THE ONE SUBJECT PROVISION.

YOU KNOW THE CASE WE'RE RELYING ON CASE FOR DISCRIMINATION IS VERY CLEAR ON THAT.

>> SO TELL US SPECIFICLY THEN

WHAT IT IS THAT YOU CONTEND THIS AMENDMENT, WHAT SEPARATE SUBJECTS ARE THERE IN THIS.

>> WELL THERE ARE THE FIVE ANTIDISCRIMINATION SUBJECTS WHICH ARE IN OUR OPINION SEPARATE.

IF YOU WANT TO CUT THIS PIE IN THE MANNER MOST FAVORABLE TO THE PROPONENTS YOU HAVE GOT A BROAD GENERAL CATEGORY AND, ANTIDISCRIMINATION, YOU HAVE GOT ANOTHER BROAD GENERAL CATEGORY DEALING WITH GEOGRAPHY, THAT'S THE, THE ONE VOTE OR EXCUSE ME, THE QUALITY OF COMPACTNESS AND CONTIGUOUSNESS.

BOUNDARY REQUIREMENTS, BUT EVEN, AND I'M NOT SURE THAT I, I, I WOULD TAKE AT FACE VALUE THE ARGUMENT OF THE, OF THE PROPONENTS THAT CONTIGUOUS IS NOT MEANT TO BE A STEALTH REQUIREMENT TO REQUIRE SINGLE MEMBER DISTRICTS.

I'M NOT SURE WHAT IT MEANS. WE DON'T HAVE REDUNDANT LANGUAGE IN THE CONSTITUTION. WE ALREADY HAVE A SET OF STANDARDS THEREIN THAT AREN'T GOING TO BE REPEALED BY THE VOTERS, AND YET WE HAVE A READOPTION OF THIS CONTIGUITY REQUIREMENT AND I'M NOT SURE WHERE THAT LEADS, AND IT STRIKES ME THIS MAY WELL BE A SINGLE MEMBER DISTRICTS REQUIREMENT.

SO YOU HAVE GOT AT LEAST THE FIVE ANTIDISCRIMINATION CLASSES YOU HAVE GOT THE GEOGRAPHICAL ONES ASSUMING THEY CAN BE BROUGHT TOGETHER WHICH I'M NOT SURE IS NECESSARILY TRUE AND THEN YOU HAVE THE POTENTIAL FOR THE SINGLE MEMBER DISTRICT REQUIREMENT.

ON THE ISSUE OF AFFECTING THE COURTS, IT'S OUR OPINION THAT PARTICULARLY THE GERRYMANDERING POSITION, THAT'S THE ONE WE'RE CONCERNED ABOUT. REDISTRICTING HAS BEEN A

POLITICAL PROCESS.
THROUGHOUT OUR HISTORY THE
FOUNDERS INTENDED IT TO BE A
POLITICAL PROCESS.
THEY PLACED IN THE U.S.
CONSTITUTION THE REQUIREMENT TO
DO CONGRESSIONAL REDISTRICTING
STRICTLY WITH THE LEGISLATURE
UNDER THE SUPERVISION OF
CONGRESS.

>> SO ARE YOU SAYING THEN THAT
THE PEOPLE HAVE NO WAY IN --
SAY IN THIS.

THAT THEY CAN'T PUT REASONABLE
RESTRICTIONS.

>> NO WE ARE NOT --

>> ON THE LEGISLATURE
REDISTRICTING.

>> SO WE ARE NOT SAYING THAT
BUT WHAT WE ARE SAYING IS THAT
BECAUSE OF THE WAY THIS
PARTICULAR AMENDMENT IS DRAFTED
TO PROHIBIT THE INTENT, YOU
CAN'T TAKE INTENT OUT OF THE
CONSTITUTION.

AS THE COURT HAS NOTED IN THE
TWO OPINIONS I'VE CITED YOU
IT'S AN INHERENTLY POLITICAL
PROCESS.

AN INTENT CAN'T BE EXTRACTED
FROM IT IF THE LEGISLATURE IS
INVOLVED IN THE PROCESS.

>> SOMETHING MAY BE INHERENTLY
OF A POLITICAL NATURE.

DOES THAT MEAN THAT OUR
DEMOCRACY HAS CONSTITUTIONALLY
ELIMINATED THE JUDICIAL BRANCH
FROM REVIEW?

>> NO, YOUR HONOR.

>> IN AREAS AS OPPOSED TO
OTHERS BECAUSE IT SEEMS TO ME
THAT VIRTUALLY ANYTHING THAT
GOES INTO A CONSTITUTION AT ONE
TIME OR ANOTHER MAY HAVE THE,
THE CIRCUMSTANCE OF
UNFORTUNATELY BEING DRAWN INTO
JUDICIAL, A JUDICIAL FORUM.

>> NO, YOUR HONOR, WE'RE NOT
SAYING THAT, THAT THE COURTS
HAVE NO ROLE TO PLAY.

CLEARLY THEY DO UNDER BOTH THE
STATE AND FEDERAL CONSTITUTION
THEY HAVE THE OBLIGATION TO
REVIEW PLANS BUT WHAT WE ARE

SUGGESTING IS IS THAT THE INEVITABLE RESULT OF THIS PARTICULAR AMENDMENT, THE WAY IT'S DRAFTED RIGHT NOW, WILL BE TO VASTLY EXPAND THE COURT'S INVOLVEMENT IN REDISTRICTING IN A MANNER NOT PRESENTLY CONTEMPLATED BY EITHER THE STATE OR FEDERAL CONSTITUTION.

>> IT SEEMS TO ME TO ACCEPT THAT PROPOSITION ONE MUST ACCEPT THE PROPOSITION THAT THE LEGISLATURE WILL REFUSE TO FALLEE INCONSTITUTION THEREBY EVERY TIME SOMETHING'S DONE IT THEREBY BECOMES A JUDICIAL ACT, AND I, I FIND THAT HARD TO UNDERSTAND.

>> WELL, OUR CONCERN IS WITH THE PARTICULAR LANGUAGE IN THE TEXT THAT SAYS WITH THE INTENT TO.

AND OUR CONCERN IS THAT YOU ARE ALWAYS GOING TO BE ABLE TO FIND INTENT IN LEGISLATIVE ACT.

THERE'S, SUPREME COURT HAS SAID FLAT OUT IN THE BANDEMER CASE THAT YOU JUST CAN'T, YOU CAN'T TAKE TYOU CAN'T AVOID IT SO THAT EVERY, EVERY DISTRICT PLAN IS GOING TO BE SUBJECT TO RE, REDISTRICTING PLAN IS GOING TO BE SUBJECT TO CHALLENGE.

I'M -- WE'RE NOT CONVINCED THAT WE CAN, WE CAN MEET THE TEST WITH INTENT.

AS PRESENTLY DRAFTED.

>> ARE YOU ARGUING IN SOME WAYS THAT THE ACTUAL LANGUAGE IS UNCONSTITUTIONAL?

>> WE HAVE CONCERNSUCT THAT, PARTICULARLY RELATED TO THE CONGRESSIONAL REDISTRICTING AMENDMENT.

>> I'M NOT SURE IF YOU'RE ANSWERING.

[INAUDIBLE]

>> I PERSONALLY BELIEVE THAT IT IS.

BUT THAT'S NOT OUR OFFICIAL POSITION.

>> OF COURSE, WE DON'T REACH THAT ISSUE IN, IN THIS PROCEEDING HERE.

AT LEAST OUR, THE WAY WE HAVE HISTORICALLY DEALT WITH THESE AMENDMENTS.

IS THAT WE DON'T RULE UPON THEIR CONSTITUTIONALITY IN A PROCEEDING TO DETERMINE WHETHER IT MEETS THE CONSTITUTIONAL REQUIREMENTS TO GO ON THE BALLOT.

SO THAT'S NOT SOMETHING THAT YOU'RE -- AS I UNDERSTAND IT, YOU'RE TRYING TO --

>> NO, YOUR HONOR, I HAVE NOT PREPARED THAT.

I MEAN I HAVE A PRELIMINARY OPINION ABOUT IT BUT IT'S MY PERSONAL OPINION THAT IT'S FORMED BY THE READING OF ONLY A FEW OF THE LEADING SUPREME COURT OPINIONS IN THE AREA, BUT AS YOU SAY, SIR, WE ARE NOT HERE TO DISCUSS THAT.

AND I'M NOT PREPARED REALLY --

>> I AM NOT SPEAKING TO MR. RICHARD'S POINT THAT THIS AMENDMENT HAS ONE PURPOSE AND THAT IS TO TAKE THE POLITICAL PARTIES AND INCUMBENT DOMINATION REAPPORTIONMENT, WHICH WE HAVE HISTORICALLY HAD, AND TO HAVE IN THE CONSTITUTION THAT THAT IS NOT TO BE THE BASIS UPON WHICH REAPPORTIONMENT IS TO BE DETERMINED, AND THAT THE REASON THAT YOU, YOU HAVE THIS ANTIDISCRIMINATION FEATURE IS TO, TO ALSO SAY THAT IN DOING THAT, IN TAKING THE POLITICAL PARTY AND INCUMBENT DOMINATION OUT OF THE PROCESS, THAT DOES NOT MEAN THAT YOU CAN REPLACE IT WITH SOME TYPE OF DISCRIMINATION IN THE REAPPORTIONMENT PROCESS.

>> WE ARE ALREADY BOUND BY FEDERAL AND STATE STATUTE AND JUDICIAL OPINIONS DEALING WITH DISCRIMINATION, WE CAN'T -- THE FEDERAL --

>> THAT DOES NOT MEAN IT CANNOT GO IN THE FLORIDA CONSTITUTION. I MEAN, AS WE HAVE CASES THAT SAY THAT, THAT THERE, THERE CAN

BE GREATER CONSTITUTIONAL RIGHTS UNDER THE STATE CONSTITUTION THAN THERE ARE IN THE -- UNDER THE FEDERAL CONSTITUTION.

>> WELL, THAT'S TRUE, SIR BUT THESE PARTICULAR STANDARDS ON THEIR FACE STANDING ALONE DON'T NECESSARILY WORK TOGETHER. IN AN IDEAL WORLD, WE CAN WISH THAT THEY WOULD WORK TOGETHER, WHICH SEEMS TO BE THE INTENT OF THE PROPONENTS, BUT THEY DON'T NECESSARILY WORK TOGETHER. THEY ARE INDEPENDENT. THEY GO OFF IN DIFFERENT DIRECTIONS, AND THEY DON'T SUPPORT ONE ANOTHER.

IN THE WAY THAT THIS COURT HAS EXPECTED VARIOUS ELEMENTS OF A PROPOSAL TO DO.

>> I DON'T QUITE UNDERSTAND WHY THEY DON'T WORK TOGETHER BECAUSE UNDER THE PRESENT WAY THAT THE LEGISLATURE DOES REDISTRICTING, THEY HAVE TO CONSIDER ALL OF THE -- DECISIONS THAT U.S. SUPREME COURT HAS RENDERED. INDEED THAT THIS COURT MAY RENDER.

IN OTHER WORDS, THEY HAVE TO FACTOR IN, BE SURE THEY DON'T VIOLATE ANY OF THOSE DECISIONS ALONG WITH THE OTHER FACTORS THAT THEY USE IN REDRAWING DISTRICT LINES.

I'M HAVING DIFFICULTY WITH YOUR ARGUMENT THAT THEY, THAT THEY CAN'T WORK TOGETHER. WHY CAN'T THEY WORK TOGETHER? THEY'VE BEEN WORKING TOGETHER. I'M SURE, THAT YOU WOULD BE THE FIRST TO SAY THAT THE LEGISLATURE HAS BEEN VERY CAREFUL AT WHILE DRAWING LINES IN THE WAYS THAT THEY WANTED TO DRAW THEM THAT THEY'VE BEEN VERY CAREFUL NOT TO DISCRIMINATE ON THE BASIS OF RACE OR ETHNIC MINORITIES OR, OR WHATEVER.

WOULD YOU NOT AGREE?

>> WE HAVE, YOUR HONOR.

BUT THERE IS A TENSION BETWEEN SOME OF THE REQUIREMENTS IN PARAGRAPH ONE THAT TO COMPLY WITH SOME OF THEM YOU MAY HAVE TO VIOLATE THE OTHER ONES.

>> INHERENT DIFFICULTY --

>> AT PRESENT, THERE'S NO LIMITATION ON --

>> BUT THAT'S ALWAYS GOING TO BE THERE.

IF YOU WERE GOING TO TRY TO COME UP WITH A QUOTE OBJECTIVE, WHATEVER THAT MEANS, PLAN, YOU KNOW, WHAT INGREDIENTS WOULD YOU CHOOSE TO PUT IN HERE? FOR STANDARDS?

>> WELL, I CERTAINLY WOULD HAVE THE RACIAL DISCRIMINATION PROVISIONS IN THERE.

I MEAN, PERSONALLY I WOULD AGREE WITH THAT.

I THINK TO OPPOSE THAT IS LIKE VOTING AGAINST THE FLAG.

THE LANGUAGE MINORITY REQUIREMENTS TO THE EXTENT THAT I CAN UNDERSTAND THEM, THEY APPEAR TO BE DRAWN FROM THE VOTING RIGHTS ACT.

THERE'S, WE HAVE NO QUARREL WITH THOSE.

AND WE --

>> I'M JUST HAVING DIFFICULTY WITH YOUR RESPONSE TO THE QUESTIONS ABOUT WHETHER OR NOT THE PEOPLE CAN DO THIS THAT WE SEE THE SPECTER OUT THERE BUT IF CALIFORNIA WHERE THEY DOMINATE THE LEGISLATURE WHERE THEY DRAW LINES TO PERPETUATE THE POWER AND CONTROL OF THE DEMOCRATIC PARTY THEN IN ANOTHER STATE WHERE THE REPUBLICAN PARTY DOMINATES IN THE LEGISLATURE THAT THEY AND THE PUBLIC HAS BEEN EXPOSED TO THAT AND APPARENTLY THE OPPONENT TO THIS AMENDMENT ARE COUNTING ON THE PUBLIC ACCEPTING MORE OF A PLAN LIKE THIS THAN ONE THAT THE SPECTER THAT THE NEWS HAS POINTED OUT TO US IS A PURE PARTISANSHIP. SO WHY CAN'T THE PUBLIC LOOK AT THIS AND SAY, WELL, NOPE, WE

WOULD RATHER HAVE THE, THE PURE PART WHEREINSHIP.

BECAUSE WE'RE -- PARTISANSHIP BECAUSE WE'RE OF A PARTICULAR PARTY AND SO WE'RE HAPPY WITH THAT OR WHATEVER, OR WE CAN VOLUNTARILY CHOOSE TO ACTUALLY PUT THIS IN OUR CONSTITUTION TO MAKE IT LESS PARTISAN.

NOT AS YOU SAY, IT CAN NEVER BE, NEVER GOING TO TAKE.

WHY CAN'T THEY DO THAT?

>> WE THINK THAT THEY CAN'T DO IT IN A PACKAGE.

WE THINK THAT IF THE PROPONENTS WANTED TO OFFER SEPARATE AMENDMENTS WITH EACH OF THESE STANDARDS BEING A SEPARATE AMENDMENT THEY COULD DO THAT AND THE PEOPLE COULD VOTE ON IT.

>> -- RELATED OR NOT EVEN, YOU KNOW, IT SEEMS TO ME ALL THESE FACTORS THAT THEY'RE MENTIONING ARE ALL LOGICAL FACTORS.

THE CONTIGUOUSNESS OF THE COMPACTNESS, ALL OF THESE THINGS THAT IN THERE, AREN'T THESE THINGS THAT THE LEGISLATURE CONSIDERS ALREADY?

>> WELL, ON SOME OF THESE MATTERS THERE IS ROOM FOR DISAGREEMENT ABOUT WHETHER ONE STANDARD OUGHT TO BE IN THERE OR NOT AND ACCORDING TO THIS COURT'S CASES WHEN THAT IS THE SITUATION, THE ONE SUBJECT RULE IS VIOLATED BECAUSE IT FORCES THE VOTER TO MAKE AN ALL OR NOTHING CHOICE.

>> LET ME ASK YOU THIS QUESTION.

I MEAN WE HAVE BEEN FOR A YEAR AND A HALF TALKING ABOUT THE STRAND CASE AND THE CITIZENS OUGHT TO BE ABLE TO VOTE OR OUGHT NOT TO VOTE ON EXPENDITURE OF PUBLIC FUNDS AND WE HAVE A CONSTITUTIONAL PROVISION THAT TALKS IN TERMS OF, WHICH I'M SURE YOU'RE FAMILIAR WITH THE, THAT YOU CAN'T DO CERTAIN THINGS WITHOUT A PUBLIC VOTE.

WELL ARE YOU SUGGESTING THAT IF THE CITIZENS DECIDED THEY WANTED TO DEFINE WHAT KIND OF LONG-TERM FINANCING REQUIRED CITIZEN VOTE OR DID NOT, AND THEY DREW, DREW UP WHAT THOSE, THOSE STANDARDS OR FACTORS WOULD BE IN A CONSTITUTIONAL AMENDMENT, THEY COULD NEVER DO THAT?

>> I THINK IT WOULD DEPEND UPON THE SPECIFIC LANGUAGE OF THE AMENDMENT AND --

>> WELL, AGAIN, IT HAS PARAMETERS, IT HAS JUST THE PARAMETERS ON THE IT.

>> WELL THE COURT HAS APPROVED MEASURES THAT HAVE PARAMETERS IN THERE.

BUT I THINK THAT IF YOU GO BACK AND LOOK AT THE, AT THE CASES THAT THE COURT, WHERE THE COURT HAS DONE SO, SUCH AS IN THE CASINO CASES, FOR EXAMPLE, OR THE CLASS SIZE REDUCTION CASES, THE PARAMETERS DO NOT SEEM TO BE OF THE SORT THAT WOULD PROVOKE AN ORDINARY VOTER TO FAVOR OR DISFAVOR ONE PARTICULAR STANDARD OVER ANOTHER AND THEREBY FORCING ON THAT VOTER, MAKING AN ALL OR NOTHING CHOICE.

TO --

>> AND SO THAT'S THE KEY HERE, IN YOUR VIEW, IS THAT THIS REQUIRES THE VOTER TO GO ALL OR NOTHING WITH REGARD TO BOTH PARTISANSHIP OR, OR DISCRIMINATION AND LANGUAGING, MINORITY, THAT KIND OF THICK.

>> THAT IS OUR PROBLEM WITH THIS AMENDMENT, YOUR HONOR, AND I THINK THAT POSITION IS CONSISTENT WITH THE LAWS RELATED TO DISCRIMINATION CASE IN THE EVERGLADES CASE TO NAME BUT A FEW AND THE SAME LANGUAGE HAS POPPED UP IN CASES WHERE THE COURT HAS APPROVED DIFFERENT, WHERE THERE HAVE BEEN SOME PARTS TO IT SUCH AS IN THE VOLUNTARY PRE-HAD K CASE AS WELL.

>> SO YOU ARE REALLY ARGUING THAT YOU WOULD HAVE TO SEPARATE THIS AMENDMENT INTO A COUPLE OF DIFFERENT SECTIONS IN ORDER FOR -- SO THE VOTERS WILL HAVE AN OPPORTUNITY TO DECIDE WHETHER OR NOT THEY WANT A PARTISAN PART OF IT, WHETHER THEY, ALL OF THAT?

>> THAT WOULD BE CORRECT, YOUR HONOR.

>> I JUST HAVE ONE HOUSEKEEPING QUESTION HERE TO ASK, THAT, MR.^MILLS, ARE YOU ARGUING A DIFFERENT PORTION OF THIS CASE? WHICH PART IS THAT?

>> [INAUDIBLE]

>> OH, -- AND YOU ARE GOING TO DISCUSS THAT AS A PART OF YOUR ARGUMENT HERE NOW?

>> WE DID NOT COME TO DISCUSS THAT.

>> ALL RIGHT.

>> TO ADDRESS THE TITLE AND SUMMARY ISSUES BRIEFLY, MR.^RICHARD MADE THE ARGUMENT THAT THE, THE TITLE OR THE SUMMARY IS DRAWN -- IS WRITTEN IN SUCH A WAY THAT SOMEHOW THIS WORD TO VASTLY EXPANDS THE MEANING OF THE SENTENCE AND EMBRACES INTENT.

I'VE DEALT WITH THAT IN THE BRIEF.

I HATE TO BE THE LANGUAGE POLICE BUT THAT SORT OF INTERPRETATION IS NOT CONSISTENT GRAMMATICALLY SO I THINK THAT IT'S PRETTY CLEAR WHEN YOU JUST READ THE WORDS AS THEY ARE WRITTEN IN THE SUMMARY, AND THE COURT WILL READ THEM, AND DECIDE, I THINK YOU'LL SEE THAT THEY, THE EFFECT IS TO LEAD THE ORDINARY VOTER TO BELIEVE THAT HE'S VOTING ON A MEASURE THAT WOULD PROHIBIT THE EFFECT OF, OF, OF NOT FAVOR NOTHINGCUMBENT OR POLITICAL PARTY ON THE ISSUE OF POLITICAL BOUNDARIES, THAT'S A MATERIALLY SIGNIFICANT DIFFERENCE BETWEEN THE TEXT IN THE SUMMARY, THE TEXT OF THE --

SAYS POLITICAL BOUNDARIES,
THAT'S A VERY BROAD AND RATHER
VAGUE TERM WHICH EVEN THE
PLAINTIFFS HAVE, OR EXCUSE ME
THE SPONSORS DON'T EVEN
UNDERSTAND REALLY EITHER.
AND YET THEY USE IN THE SUMMARY
A CITY AND COUNTY BOUNDARIES.
THAT'S A SIGNIFICANT
MATERIAL DIFFERENCE I THINK
INVALIDATES THIS PARTICULAR
INITIATIVE.

TO ADDRESS JUSTICE CANADY'S
REFERENCE TO THE ROMER
DECISION, WE DIDN'T REALLY CITE
THAT CASE FOR THE EFFECT PART
OF IT.

WHAT I SAW SIGNIFICANT IN THAT
CASE HAS TO DO WITH THIS AND/OR
ARGUMENT THAT WE MADE, THE
DIFFERENCE BETWEEN THE AND AND
THE OR AND THE SUMMARY IN THE
TEXT.

THAT PARTICULAR LANGUAGE TEXT
AND THE IN THE SUMMARY IS DRAWN
ALMOST VERBATIM THERE ARE
SLIGHT DIFFERENCES ALMOST
VERBATIM FROM THE PROVISION OF
THE VOTING RIGHTS ACT WHERE AND
IS USED IN THE TEXT OF THE
VOTING RIGHTS ACT TO LINK TWO
ELEMENTS OF A CAUSE OF ACTION.

>> BUT DOESN'T THAT MAKE A
DIFFERENCE.

I WAS LOOKING AT THAT WITH
REGARD BECAUSE THAT'S A --
THAT'S BECOME A BIG ISSUE, THIS
AND/OR ISSUE IS IN ALL KINDS OF
WAYS, BUT HERE DOES IT, DOES IT
NOT, THE LANGUAGE, DOESN'T
REQUIRE A CONJUNCTIVE
VIOLATION OF BOTH THAT EITHER
ONE OF THEM ARE VIOLATIONS.
I MEAN ISN'T THAT THE
DIFFERENCE?

>> IT HAS TO DO WITH THE FACT
THAT THE SUMMARY IS A
MATERIALLY DIFFERENT FROM THE
TEXT AND ROMER POINTS OUT THAT
THE REPLACEMENT OF THE AND WITH
THE OR IS A SIGNIFICANT
DIFFERENCE.

IN THE VOTING RIGHTS ACT YOU
HAVE AN AND AND SO WHAT THE

COURTS SAID IN ROMER IS WHAT CONGRESS DID WHEN IT ENACTED THAT PARTICULAR PASSAGE WAS CREATE ONE RIGHT WITH TWO ELEMENTS, BOTH OF WHICH WOULD HAVE TO BE PROVEN BUT IF YOU HAVE SUBSTITUTED AN OR THERE YOU WOULD HAVE TWO RIGHTS EACH WITH A SINGLE EM.

ONE OR THE OTHER WOULD HAVE TO BE PROVEN SO IT SUBSTANTIALLY CHANGES A PLAINTIFF'S BURDEN OF PROOF AND THAT WE THINK IS A MATERIAL DIFFERENCE.

>> IS IT WORDED IN THE NEGATIVE AS THIS PARTICULAR?

IS THE LANGUAGE MATCH IDENTICALLY?

IS THE WORDED IN THE NEGATIVE BECAUSE IF IT'S IN THE AFFIRMATIVE IT CHANGES THE USE SO DO YOU UNDERSTAND MY QUESTION?

IS THAT, WHEN, WHEN BOTH THINGS ARE PROHIBITED, IT'S ONE THING, BUT IF YOU'RE REQUIRING IN THE AFFIRMATIVE THAT BOTH THINGS ARE REQUIRED THEN THE AND AND OR MAKE A DIFFERENCE. OR MAY MAKE A DIFFERENCE. DO YOU UNDERSTAND MY QUESTION?

>> I'M NOT QUITE SURE BUT I'M LOOKING AT MY COPY OF THE VOTING RIGHTS ACT AND I'M TRYING TO SEE IN MY READING OF THEM THEY ARE THE SAME.

>> IDENTICAL?

>> THEY APPEAR TO ME TO BE. AND UNLESS THE COURT HAS ANY OTHER QUESTIONS, I AM CONCLUDING.

>> THANK YOU VERY MUCH FOR YOUR ARGUMENT.

MR.^RICHARD, YOU ARE GOING TO REBUT THIS BEFORE THEY -- THE IMPACT STATEMENT.

>> WELL, FIRST, LET ME, IN FACT, I DID FORGET TO RETURN TO THE SECOND HALF OF YOUR QUESTION, JUSTICE LEWIS, WHICH WAS THIS, THIS ISSUE OF POLITICAL BOUNDARIES AND WHAT HAPPENS HERE IS THAT THE AMENDMENT ITSELF REFERS TO

POLITICAL BOUNDARIES, --
BOUNDARIES, WHEREAS THE SUMMARY
REFERS TO CITY COUNCIL AND
GEOGRAPHICAL AREAS AND THE
LEGISLATURE TAKES THE POSITION
THAT THAT'S A MATERIAL
DISCREPANCY.

WE -- OUR POSITION IS IT IS NOT
A MATERIAL DISCREPANCY.
THE QUESTION YOU HAVE TO ASK IS
WHAT ELSE WOULD THERE BE THAT
WOULD MISLEAD THE VOTER.
TAXING DISTRICT HISTORICALLY
THE PROBLEM HAS BEEN THE
FAILURE TO FOLLOW CITY AND
COUNTY BOUNDARIES.

WE DON'T HAVE ANY HISTORIC OR
ANY CASE LAW SUGGESTING THERE
ARE ANY OTHER GEOGRAPHICAL
AREAS THAT HAVE EVER BEEN AN
ISSUE NOR CAN ONE THINK OF ONE
THAT MIGHT BE USED POLITICALLY
TO MAKE A DIFFERENCE.

SO WHILE THERE IS A DIFFERENCE
IN THE LANGUAGE, I WOULD URGE
THE COURT THAT THE DIFFERENCE
IS NOT MATERIAL NOR MISLEADING.
AND THAT --

>> GO AHEAD.

>> AND THAT NOTE VOER IS LIKELY
TO VOTE FOR OR AGAINST IT
BECAUSE THEY LEARNED THAT THE
LANGUAGE IN THE AMENDMENT WAS
POLITICAL BOUNDARIES AND THAT
WE USE CITY AND COUNTY.

>> WOULD YOU ADDRESS THE LAST
COMMENT, THAT THIS AND/OR
ISSUE.

IS OF GREAT SIGNIFICANCE IN
THIS CASE.

>> WELL, I AGREE WITH WHAT YOUR
HONOR SAID, IT MAKES A
DIFFERENCE WHETHER IT IS
AFFIRMATIVE, WHICH SAYS THAT
YOU MUST, THE BURDEN THEN IS
UPON YOU TO PROVE BOTH THINGS
AND THAT WAS WHAT WAS BEING
DONE IN THE VOTING RIGHTS ACT.

>> I JUST WANT -- SO IT IS NOT
THE SAME.

>> IT IS NOT THE SAME BECAUSE
IN OUR CASE BY SAYING EITHER/OR
YOU ARE SAYING
EXACTLY WHAT THE AMENDMENT SAYS

OR EXACTLY WHAT, WHAT IS SUGGESTED.

THE ONLY OTHER THING I WANTED TO COMMENT ON AND, AND SEVERAL MEMBERS OF THE COURT SAID IT BETTER THAN I DID, WHEN I SAID THAT THE PURPOSE OF THIS WAS TO REQUIRE THAT THE DRAWING OF LINES BE BASED SOLEY ON PROPORTIONAL REPRESENTATION, THE MORE PRACTICAL WAY TO SAY THE SAME THING IS TO AVOID POLITICAL GERRYMANDERING AND THE COMMENT I WANTED TO MAKE IS THAT HAPPILY WE ARE BEYOND THE TIME WHEN THE SPONSORS HAD TO BE CONCERNED ABOUT BIGOTRY. THE SPONSORS DO NOT BELIEVE NOR DO I THINK ANY OF US BELIEVE THAT THE LEGISLATURE GERRYMANDERS RACIAL OR ETHNIC GROUPS BECAUSE OF SOME BIGOTRY AGAINST THAT GROUP, BUT WHAT WE DO HAVE CONCERN ABOUT IS THAT THEY USE THOSE GROUPS TO ACCOMPLISH A POLITICAL GERRYMANDERING, SO THE SINGULAR PURPOSE OF THIS, AND THAT'S THE REASON WHEN COUNSEL SAID WE ARE NOT DOING ANYTHING DIFFERENT THAN WHAT THE LAW REQUIRES NOW THAT'S NOT TRUE. THE LAW REQUIRES DISCRIMINATING AGAINST RACIAL OR LANGUAGE MINORITIES FOR THE PURPOSE OF BIGOTRY BUT IT DOES NOT PROHIBIT USING THOSE GROUPS TO ACHIEVE A POLITICAL END AND THAT'S WHAT THIS SEEKS TO STOP AND THAT'S A SINGULAR UNIFIED PURPOSE.

THANK YOU.

>> THANK YOU VERY MUCH.

>> MR.^MILLS?

>> MAY IT PLEASE THE COURT.

MY NAME IS JON MILLS,

CO-COUNSEL

TO THE PROPONENTS.

THERE'S ONE OTHER IMPORTANT FAIR NOTICE ISSUE THAT THIS COURT MUST ADDRESS, AND THAT IS THE PHYSICAL IMPACT STATEMENT.

>> WELL, LET ME ASK YOU,

THIS:^WHAT IS THIS COURT'S ROLE

AS GIVEN BY THE LEGISLATURE IN,
IN CONSTRUING THESE IMPACT
STATEMENTS?

>> THE LEGISLATURE HAS IN
FOLLOWING UP THE CONSTITUTIONAL
REQUIREMENT THAT YOU, THAT THEY
PRESENT THE PROBABLY IMPACT,
THAT THE SPECIFICALLY IN, IN
FLORIDA STATUTE 100 THEY HAVE
LAID OUT THAT THEY WILL DELIVER
YOU A PHYSICAL IMPACT STATEMENT
THAT IS PROBABLE, NOT
INACCURATE AND AS A MATTER OF
FACT YOU HAVE JUST RECENTLY IN
REFERENDUM ON LAND USE
CONSIDERED THAT ISSUE.

>> DID THE LANGUAGE --, I MEAN,
THE WAY THIS, I MEAN, HISTORY
OF THIS WAS THAT THIS COURT
HELD THAT THERE WAS, COULD BE
NO FINANCIAL IMPACT STATEMENT.

THEN THERE WAS A CONSTITUTIONAL
AMENDMENT.

THE CONSTITUTIONAL AMENDMENT
SET UP THAT BY GENERAL LAW THE
LEGISLATURE SHOULD SET OUT THE
REQUIREMENTS OF A FINANCIAL
IMPACT STATEMENT.

AND THE LEGISLATURE SET IT OUT
AND SAID THAT THERE SHOULD BE A
CLEAR AND UNAMBIGUOUS STATEMENT
IN 75 WORDS.

AND ISN'T THAT DRAWING FROM OUR
JURISPRUDENCE ON 1 OR 01.161,
THAT WOULD MEAN THAT THIS COURT
WOULD LIMIT ITSELF TO A
DETERMINATION AS TO WHETHER
WHAT WAS IN THAT FINANCIAL
IMPACT STATEMENT WAS CLEAR AND
UNAMBIGUOUS.

>> THAT'S EXACTLY RIGHT.
ALL OTHERS EXCEPT SPECIFIC
STATUTE.

YOUR SPECIFIC DUTY IS TO
DETERMINE IF IT IS MISLEADING
AND IF IT IS SPECULATIVE.
THAT IS THE PRECISE WORD YOU
USED IN THE LAND USE PLANNING
CASE F. IT'S SPECULATIVE.

IN THIS CASE, WHAT YOU HAVE --

>> WHAT I AM GETTING TO,
MR. ^MILLS S WHERE IS THAT IN
THE STATUTE THAT WE DEAL WITH

WHETHER THE DECISION IS
SPECULATIVE?

I MEAN, THAT --

>> THAT IS PRECISELY WHAT YOU
DID IN THE VERY RECENT CASE ON
REFERENDUM ON LAND USE
PLANNING.

YOU READ WHAT WAS DELIVERED AND
YOU DETERMINED IT WAS
SPECULATIVE IN THIS CASE WHAT
HAS BEEN SENT TO YOU IS,
DESCRIBES POTENTIAL
MILLION-DOLLAR IMPACTS.

AND COSTS OF LITIGATION PURSUIT
TO THE PASSAGE OF THIS.

AND REFERRING AGAIN TO THE
REFERENDUM CASE WHICH YOU
SHOULD LOOK TO SPECIFICALLY,
YOU DETERMINED THAT THAT WAS
SPECULATIVE.

YOU COULD NOT KNOW, AND IN THIS
CASE, THE FACTS ARE WE WANT THE
PUBLIC TO UNDERSTAND IF THIS
BALLOT PROVISION COMES BEFORE
THEM BOTH WHAT THEY'RE
CONSIDERING IN A FAIR WAY AND
CONSTITUTIONALLY NOW THAT
THERE, THEY ARE TO SEE THE
PROBABLY PHYSICAL IMPACT.

IN THIS CASE, THE PROBABLY
PHYSICAL IMPACT OF THE PASSAGE
OF THIS IS, IS HIGHLY
SPECULATIVE, VERY UNKNOWN, AND
IN FACT, IF YOU LOOK AT WHAT
THE --

>> LEGISLATIVE CONFERENCE, HOW
CAN, HOW CAN THE PROBABLE
PHYSICAL IMPACT BE DETERMINED
IN THIS INSTANCE?

IN YOUR JUDGEMENT?

>> WELL, I DON'T THINK IT CAN.
THIS COURT HAS SAID BEFORE THAT
IT'S PERFECTLY ACCEPTABLE TO
SAY THAT IT IS UNKNOWN OR
INDETERMINATE.

THAT'S A PERFECTLY
CONSTITUTIONAL AND LEGALLY
ACCEPTABLE DETERMINATION.

IF YOU DON'T KNOW WHAT'S GOING
TO HAPPEN AND IN THIS CASE, THE
ISSUE COULD BE, AND AS THE
SPECULATION OF THE PHYSICAL
IMPACT STATEMENT WAS THAT THERE
MAY BE LITIGATION BUT THERE,

WHETHER THERE'S LITIGATION OR NOT, IT HAS TO BE IN EXCESS.
>> ALL THOSE THINGS, THOSE ARE KIND OF FACTUAL QUESTIONS? AND IT SEEMS TO ME TO BE YOU ARE ESTIMATING THE PHYSICAL IMPACT OF SOMETHING IT'S ALWAYS GOING TO BE AN ELEMENT OF SPECULATION.
INVOLVED BECAUSE WE CANNOT, WITH CERTAINLY, PREDICT THE FUTURE.
AND THAT'S THE HUMAN CONDITION.

BUT FOR, BUT FOR US TO REVIEW THIS IN A CERTAIN WAY, THE WAY YOU'RE SUGGESTING, IT REALLY REQUIRES THAT WE KIND OF SECOND GUESS THE, THE FACTUAL JUDGMENT THAT'S BEEN MADE BY THE PEOPLE THAT HAVE STATUTORY AUTHORITY TO DO THIS, DOESN'T IT?

>> WELL, ACTUALLY, YOUR HONOR, I THINK YOU JUST HAVE TO READ THEIR SUPPORT FOR THEIR OWN CONCLUSION WHEREAS THEY SAID STATEMENTS SUCH AS THIS MAY EXPAND THE SCOPE AND COMPLEXITY, THIS MAY SPAWN CHALLENGES, THIS MAY INCUR COST.

IT IS ASSUMED.

IT IS UNKNOWN.

THAT'S THEIR BACKUP.

THERE ARE CERTAINLY SITUATIONS WHERE YOU ARE GOING TO REQUIRE A NEW AGENCY AND THIS COURT HAS SUPPORTED PHYSICAL IMPACT STATEMENTS BEFORE.

BUT AGAIN, THIS IS FOR THE PUBLIC TO GET A FAIR STATEMENT JUST AS YOU WANT THE PUBLIC TO HAVE A FAIR STATEMENT ON A DESCRIPTION OF THE IMPACT. YOU WANT THE PUBLIC TO HAVE A FAIR STATEMENT ON THE PHYSICAL IMPACT.

>> WHAT WOULD YOU THINK OUR SCOPE OF REVIEW?

>> I THINK THE SCOPE OF REVIEW IS TO COMPLY WITH WHETHER IT'S PROBABLY.

YOU DON'T HAVE A STATEMENT AS YOU DO IN THE OTHER TWO REVIEW

STANDARDS OF CLEAR, CLEARLY DEFECTIVE, SO I THINK YOU LOOK AT THE ACTUAL STATEMENT REVIEW IT, AND IS IT PROBABLE?

>> BUT DO WE GIVE DEFERENCE.

>> YOU HAVE STATED IN YOUR PREVIOUS CASES.

>> I TAKE IT THAT YOU ACCEPT OUR EXPLANATION IN THE CASES TO DATE AS FAR AS WHAT STANDARDS WERE --

[INAUDIBLE]

>> YES.

>> HAVE YOU MADE THE ARGUMENT OR HAS ANYONE MADE THE ARGUMENT HERE -- THAT THE LEGISLATURE ALREADY DOES REAPPORTIONMENT ON A REGULAR BASIS AND THEY HAVE TO GET ALL OF THE DETAILED INFORMATION ABOUT POPULATION SHIFTS, POLITICAL BOUNDARIES, AND ALL THAT THAT THERE WOULDN'T BE ANY PHYSICAL IMPACT BEYOND WHAT THERE ALREADY IS. IN TERMS OF THE, THE COSTS TO THE LEGISLATURE OF BEING SURE THEY HAVE THE INFORMATION -- RIGHT INFORMATION THAN THERE WOULD UNDER THIS SET OF STANDARDS THAT THEY EMPLOY NOW.

>> I THINK THAT'S A WONDERFUL ARGUMENT.

>> IS THIS A UNDER DISCUSSION THIS MORNING.

>> THIS IS A REQUEST --

>> I UNDERSTAND THAT.

>> TO MAKE JUSTICE ANSTEAD'S POINT, THE WHOLE IMPACT OF THIS PROPOSAL IS RELATIVELY NARROW. I MEAN, TO CHARACTERIZE THIS AS SOMETHING THE LEGISLATURE DOES ANYWAY EVERY TEN YEARS AND IT SEMPLY GIVES THEM THE STANDARDS TO ACCOMPLISH THAT REALLY ALSO RESPONDS TO THE SINGLE SUBJECT AND THE CLARITY OF THE ISSUE.

>> YOU ARE TAKING ISSUE WITH EVERYTHING EXCEPT MAYBE THE FIRST OR LAST SENTENCE OF THIS SINGLE SUBJECT STATEMENT OR ARE YOU TAKING ISSUE WITH THE PARENTHETICAL MILLIONS OF DOLLARS.

BECAUSE THAT'S REALLY WHAT THE
VOTER IS GOING TO SEE, OH, THIS
IS GOING TO COST US MILLIONS OF
DOLLARS, SO IS THAT WHAT YOU
ARE TAKING ISSUE WITH?
ALL OF THE OTHER SENTENCES
BETWEEN THE FIRST AND THE LAST
SENTENCE?

>> WELL, AND THE
CHARACTERIZATION OF ENHANCED
COSTS.

AGAIN, THIS IS PRECISELY THE
REVIEW YOU UNDERTOOK IN THE
REFERENDUM ON LAND USE
PLANNING.

THAT IF IT'S A SPECULATION YOU
SHOULDN'T PUT THAT IN FRONT OF
MILLIONS OF FLORIDA VOTERS THAT
MIGHT AFFECT THEIR VOTE.

THANK YOU, YOUR HONOR.

>> I THANK ALL OF YOU FOR OUR
ARGUMENTS -- YOUR ARGUMENTS
HERE TODAY.

>> THE COURT -- THE COURT IS
GOING TO TAKE ITS MORNING
RECESS BEFORE THE NEXT CASE.
SO WE'LL BE IN RECESS FOR TEN
MINUTES.

>> PLEASE RISE.