

>> 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 FLORIDA SUPREME COURT.

THIS MORNING WE HAVE A DOCKET  
WITH THREE CASES.

JUSTICE PARIENTE IS UNABLE TO BE  
WITH US HERE TODAY.

SHE.

>> HOWEVER, VIEWING THE ORAL  
ARGUMENTS AND WILL BE  
PARTICIPATING IN THE DECISION OF  
THESE CASES.

THE FIRST CASE WE WILL CONSIDER  
TODAY IS FLORIDA DEPARTMENT OF  
STATE VERSUS FLORIDA STATE  
CONFERENCE OF N.A.A.C.P.

BRANCHES.

REPRESENTATIVE CANON.

>> MR. CHIEF JUSTICE, JUSTICES  
MATE PLEASE THE COURT, I'M DEAN  
CANNON, AND I REPRESENT THE  
FLORIDA SENATE, AND THE FLORIDA  
HOUSE OF REPRESENTATIVES.

THIS IS NOT A BALLOT SUMMARY

CASE.

IN THIS CASE, THE LEGISLATURE AS A COEQUAL BRANCH OF GOVERNMENT EXERCISED IT'S AUTHORITY UNDER ARTICLE 11, SECTION ONE OF OUR CONSTITUTION TO OFFER THE VOTERS THE ENTIRE TEXT OF A PROPOSED AMENDMENT TO THEIR CONSTITUTION, NOW KNOWN AS AMENDMENT 7. INSTEAD OF TRYING TO SUMMARIZE OR DESCRIBE THE TEXT, OF AMENDMENT 7, THE LEGISLATURE CHOSE TO PLACE THE ENTIRE TEXT ON THE BALLOT FOR THE VOTER TO SEE.

BY DOING SO, THE LEGISLATURE AVOIDED ALL POSSIBILITY THAT A DEFECTIVE SUMMARY COULD SOMEHOW MISLEAD THE VOTERS, BY FAILING TO ACCURATELY DESCRIBE THE LANGUAGE OF THE TEXT ITSELF.

AMENDMENT 7 OFFERS THE VOTERS THE CHOICE TO ADD NEW STANDARDS FOR OUR CONSTITUTION, FOR THE LEGISLATURE TO FOLLOW IN THE REAPPORTION --

>> WHAT ARE THE NEW STANDARDS, MR. CANON?

>> JUSTICE LEWIS, THAT THE LEGISLATURE SHALL FIRST APPLY FEDERAL REQUIREMENTS AND BALANCE AND IMPLEMENT ALL STANDARDS IN ARTICLE 3.

>> HOW IS THAT A STANDARD.

>> WELL, I WOULD... THAT IN AND OF ITSELF, IS A DIRECTION --

>> THEY CAN --

>> WHICH IS A STANDARD AND THE STANDARDS THOUGH THEY MAY BE DISCRETIONARY ARE, NONETHELESS, STANDARDS AND WILL COMPEL THE LEGISLATURE TO TAKE INTO CONSIDERATION THE ABILITY OF RACIAL AND LANGUAGE MINORITIES TO PARTICIPATE IN THE POLITICAL PROCESS AND ELECT CANDIDATES OF THEIR CHOICE...

>> DOES IT... [INAUDIBLE]

ARTICLE 3.

>> IT ADDS TO ARTICLE 3, SECTION 16-A BUT DOESN'T CHANGE ANYTHING THAT IS IN ARTICLE 3 TODAY.

>> AND, YOU ALREADY HAD TO FOLLOW... [INAUDIBLE], IS THAT CORRECT.

>> THAT'S CORRECT AND AMENDMENT 7 OFFERS THE VOTERS FOR THE FIRST TIME IN OUR STATE'S HISTORY THE ABILITY TO DIRECT THE LEGISLATURE TO BOTH TAKE INTO CONSIDERATION THE ABILITY OF RACIAL HANDLING OF MINORITIES TO PARTICIPATE IN THE POLITICAL PROCESS AND CONSIDER COMMUNITIES OF INTEREST OTHER THAN POLITICAL PARTIES AND THAT IS SIGNIFICANT, FOR TWO REASONS, FIRST, THOSE TWO THINGS TOGETHER, THE ABILITY OF RACIAL AND LANGUAGE MINORITIES TO PARTICIPATE IN THE PROCESS, AND, COMMUNITIES OF INTEREST OTHER THAN POLITICAL

PARTIES, PROHIBITS POLITICAL  
PARTIES FROM BEING A FACTOR --  
>> WHAT DOES THAT MEAN?  
COMMUNITIES OF COMMON INTEREST  
OTHER THAN POLITICAL PARTIES?  
WHAT DOES A COMMUNITY OF  
INTEREST.

>> COMMUNITIES OF INTEREST, BY  
DEFINITION, ARE GROUPS OF PEOPLE  
WITH COMMON INTERESTS.

>> THAT DOESN'T TELL ME MUCH.  
WHAT EXACTLY -- I MEAN, I CAN  
UNDERSTAND, RACIAL AND ETHNIC  
MINORITIES, BUT WHAT IN THE  
WORLD IS A COMMUNITY OF  
INTEREST?

I'M NOT SURE THAT I UNDERSTAND  
AND I'M NOT SURE THE PUBLIC  
REALLY WILL UNDERSTAND WHAT A  
COMMUNITY OF INTEREST MEANS.

>> WELL, THE COMMUNITIES OF  
INTEREST CAN MEAN, ESSENTIALLY  
THE DICTIONARY DEFINITION WHICH  
IS A GROUP --

>> ANYTHING, ANY... PARTICULAR  
THING IS A COMMUNITY OF  
INTEREST.

>> IF THEY HAVE COMMONALITIES,  
IN THE HISTORY THERE ARE SUCH  
THINGS AS SOCIOECONOMIC  
COMMUNITIES OF INTEREST, WHICH  
ARE NEITHER RACIAL NOR PARTY  
BASED, AND, SOME ARE DEMOGRAPHIC  
SUCH AS THE ELDERLY AND SOME  
A VOCATIONAL LIKE AGRICULTURAL  
DISTRICTS, A CONCEPT FOR

REAPPORTIONMENT LAW, USED AS A  
NON RACE-BASED JUSTIFICATION TO  
DRAW DISTRIBUTIONS AND AMENDMENT  
7 WAS A RESPONSE TO AMENDMENTS 5  
AND 6, OFFERED FOR THE FIRST  
TIME TO THE VOTERS AND,  
AMENDMENTS 5 AND 6 WOULD HAVE  
THREE SECTIONS.

THE FIRST, SECTION OF AMENDMENTS  
5 AND 6 WOULD PROHIBITS  
POLITICAL FAVORITISM, THAT IS --

>> LET ME ASK YOU THIS:

DOES IT MAKE ANY REFERENCE TO 5  
AND 6?

>> NO, YOUR HONOR.

>> DOES THE VOTER KNOW READING  
THIS AMENDMENT, DOES THIS  
SOMEHOW INVOLVE 5 AND 6, OR  
NEGATES 5 AND 6.

>> THEY WILL NOT --

>> JUST THIS AMENDMENT, WOULD  
YOU KNOW THAT.

>> NOT AT ALL, YOUR HONOR AND  
THE COURT LAID DOWN THE RULE  
THAT IT IS NOT A REQUIREMENT OF  
A PROSPECTIVE AMENDMENT TO  
ANTICIPATE OR DESCRIBE ANY OTHER  
PRO SPECK TV THINGS THAT MAY BE  
ADDED TO THE CONSTITUTION,  
LATER.

IN THE --

>> THIS ISN'T REALLY ADDED TO  
THE CONSTITUTION LATER, IT SEEMS  
TO ME WHAT WE HAVE IS AMENDMENTS  
ON THE BLOOD, AMENDMENTS THAT  
MAY BE ON THE BALLOT, IN THOSE

INSTANCES, AND THE PUBLIC WILL HAVE TO READ -- THEY WILL READ FIVE AND SIX AND READ 7, AND, MY ... WILL HAVE NO IDEA 7 IS THERE TO NEGATE OR EXPLAIN OR DO SOMETHING ABOUT FIVE AND SIX AND IT SEEMS TO ME, WE ARE REALLY DOING THE PUBLIC A DISSERVICE IF WE PUT THESE KINDS OF AMENDMENTS ON THE BALLOTS AND DON'T EVEN MAKE ANY REFERENCE TO THE FACT THERE IS SOMETHING ELSE THAT IS THERE THAT IS RELATED TO IT.

>> WELL, IN A SENSE, YOUR HONOR, WE DON'T KNOW IF 5, 6 OR 7 WILL BE PUT INTO THE CONSTITUTION.

>> BUT WE KNOW 5 AND 6 WILL BE ON THE BALLOT, CORRECT.

>> THAT'S CORRECT AND THE VOTER WILL HAVE 5, 6 AND 7 BEFORE THEM IN THE VOTING BOOTH AND WILL BE ABLE TO READ 5, 6 AND 7 AND ONE OF THE POTENTIAL DEFECTS WE HEARD TESTIMONY DURING THE SESSION, FROM BOTH AFRICAN-AMERICAN DEMOCRATS AND CUBAN-AMERICAN REPUBLICANS, TWO OF WHOM ARE SITTING MEMBERS OF CONGRESS, THEIR CONCERN WAS THE LEGAL EFFECT OF AMENDMENTS 5 AND 6, AFTER THE U.S. SUPREME COURT'S HOLDING IN BARTLETT VERSUS STRICKLAND, HANDED DOWN AFTER THE COURT APPROVED 5 AND 6 FOR THE BALLOT IT WOULD HAVE THE NET EFFECT OF REDUCING THE

MINORITY REPRESENTATION IN  
CONGRESS AND THE LEGISLATURE.  
AND, IT IS CRITICAL, YOUR HONOR,  
THAT THE ONLY ISSUE BEFORE THE  
COURT TODAY, IS WHETHER THE  
SUMMARY IS MISLEADING AND IN  
THIS CASE THE SUMMARY CAN NOT  
BE MISLEADING BECAUSE IT IS THE  
ENTIRE TEXT OF AMENDMENT 7.  
BUT, TO YOUR HONOR --

>> ARE THE -- THE AMENDMENT  
ITSELF, IS A PUBLIC...

[INAUDIBLE] UNDERSTAND WHAT IS  
THE PURPOSE AN EFFECT OF THE  
AMENDMENT.

>> IT CAN -- THIS COURT HAS  
NEVER STRUCK -- NO COURT IN  
FLORIDA HAS EVER STRUCK AN  
AMENDMENT WHERE THE FULL TEXT  
WAS ON THE BALLOT, EXCEPT IN THE  
LIMITED CIRCUMSTANCE WHERE THE  
TEXT WAS A WHOLESAL INSTITUTION  
OF AN EXISTING PROVISION OF  
FLORIDA LAW.

WE THINK OF ARMSTRONG VERSUS  
HARRIS OR ASKEW VERSUS FIRESTONE  
AND THE PROPOSED AMENDMENT WHILE  
IT WAS THE TEXT WAS TO DO  
SOMETHING CONTRARY TO SOMETHING  
ALREADY IN EXISTING LAW AND ONLY  
THOSE LIMITED CIRCUMSTANCES HAS  
THE COURT STRUCK IT AND, YOUR  
HONOR IF THE RULE WERE SUCH THAT  
AN AMENDMENT HAD TO ANTICIPATE  
THE FUTURE ADDITIONS TO THE  
CONSTITUTION WE COULDN'T ADD

ANYTHING TO THE CONSTITUTION.  
THINK OF FOUNDATIONAL RIGHTS  
THAT'S RIGHT TO DUE PROCESS OR  
PRIVACY.

>> YOU KEEP SAYING FUTURE  
AMENDMENTS TO THE CONSTITUTION  
BUT, TO ME, THIS IS A TOTALLY  
DIFFERENT THING.

WHAT THEY -- MAY HAPPEN TWO  
YEARS FROM NOW IF SOMEONE WANTS  
TO PUT SOMETHING ON THE BALLOT  
AS OPPOSED TO THOSE THINGS THAT  
ARE ACTUALLY ON THE BALLOT,  
RIGHTED NOW.

THAT THE PUBLIC SHOULD BE AWARE  
OF HOW THIS PARTICULAR AMENDMENT  
MAY AFFECT OTHERS THAT ARE BEING  
PROPOSED.

AND I'M CONCERNED.

THIS MAKES NO REFERENCE AT ALL.

WHILE IT DOESN'T HAVE TO  
ACTUALLY REFERENCE THOSE  
PARTICULAR AMENDMENTS, I KNOW  
THERE IS CASE LAW, TO THAT  
EFFECT AND THERE SHOULD BE  
SOMETHING HERE THAT CLEARLY  
INDICATES TO THE PUBLIC, IT  
SEEMS TO ME, THAT THIS HAS A  
RELATIONSHIP TO THE OTHERS, THEY  
ARE BEING ASKED TO VOTE ON,  
ALSO.

>> LET ME SEE, ALTHOUGH THE  
COURT SETTLED IN THE GROWTH  
MANAGEMENT CASE, THERE IS NO  
REQUIREMENT, AND IT IS NO BAR OR  
THERE IS NO REQUIREMENT THAT AN

AMENDMENT ON THE BALLOT  
DISCLOSES INTERACTION WITH OTHER  
AMENDMENTS ON THE BALLOT.  
IN THIS CASE, EVEN IF THERE  
WERE, AMENDMENT 7 DOES NOT  
SUBSTITUTE ITSELF FOR FIVE AND  
SIX AND DOES NOT --  
>> WHAT IS THE RELATIONSHIP,  
THEN?  
TO FIVE AND SIX?  
>> FIVE AND SIX, TO -- POLITICAL  
PARTIES AND THE REAPPORTIONMENT  
PROCESS AND REQUIRE THERE BE NO  
DIMINISHMENT AND ABRIDGEMENT OF  
THE RIGHTS OF LANGUAGE AND  
RACIAL MINORITIES TO PARTICIPATE  
IN THE POLITICAL PROCESS.  
IT SETS, ESSENTIALLY A FLOOR  
THAT -- WE CANNOT REGRESS, BUT,  
THEN IN SECTION 2, IT SAYS,  
DISTRICTS MUST BE COMPACT, AND  
THEY -- MUST, WHERE FEASIBLE,  
FOLLOW CITY AND COUNTY AND OTHER  
POLITICAL BOUNDARIES.  
AND, WHAT THAT WOULD MEAN IS TO  
THE EXTENT THE LEGISLATURE  
WANTED TO DRAW A NEW DISTRICT,  
TO -- WHAT WE CALL A MINORITY  
ACCESS DISTRICT WHERE THE  
POPULATION MAY BE LESS THAN 50%,  
BUT COMBINED WITH OTHER VOTERS  
IN THE MAJORITY OF THE SAME  
PARTY ELECT THE MINORITY  
CANDIDATE THE U.S. SUPREME COURT  
IN BARTLETT VERSUS STRICKLAND,  
YOUR HONOR, SAID THOSE DISTRICTS

ARE NOT PROTECTED BY THE FEDERAL VOTING RIGHTS AMENDMENT AND THAT WAS IN NORTH CAROLINA WHERE THEY HAD A COUNTY PROVISION --

>> IT SOUNDS TO ME LIKE WHAT THE SECTION IS SAYING THAT -- IS THAT YOU CANNOT TAKE A SECTION OVER HERE AND PUT IT WITH ANOTHER SECTION THAT IS NOWHERE NEAR IT TO TRY TO, YOU KNOW, MAKE SOME KIND OF I -- I GUESS YOU ALWAYS REFER TO GERRYMANDERING.

AND THAT IS WHAT IT SOUNDS LIKE TO ME, AND, SO HOW DOES THIS RELATE TO THAT.

>> AMENDMENT 7 WOULD ADD A MEASURE OF FLEXIBILITY, THAT WOULD BE REMOVED BY SECTION 2 --

>> GIVE THE LEGISLATURE MORE AUTHORITY IN DOING THOSE DISTRICTS.

>> IT WOULD GIVE THEM MORE DISCRETION, YOUR HONOR, WITH RESPECT TO THE CRITERIA OF COMPACTNESS AND FOLLOWING CITY AND COUNTY BOUNDARIES BUT WOULD IN NO WAY UNDERMINE THE PROHIBITION AGAINST INTENTIONALLY FAVORING OR DISFAVORING A POLITICAL PARTY OR INCUMBENT.

WHAT THE TRIAL COURT WRONGLY CONCLUDED WAS, SOMEHOW, AMENDMENT 7 WOULD UNDO THE CONTIGUITY REQUIREMENT AND MAY

HAVE BEEN WHAT YOUR HONOR WAS REFERRING TO, WE CANNOT DRAW NONCONTIGUOUS DISTRICTS IF AMENDMENT 7 IS IN PLACE ANY MORE THAN WE CAN VIOLATE THE STANDARDS OF ARTICLE 3 TO SAY SENATE DISTRICTS HAVE TO BE BETWEEN 30 AND 40 IN NUMBER AND HOUSE DISTRICTS HAVE TO BE BETWEEN 80 AND 120.

WE CANNOT EXCUSE OURSELVES, AMENDMENT 7 GIVES US NO OPPORTUNITY TO NOT FOLLOW THE EXISTING PROVISIONS OF ARTICLE 3, SECTION 16A.

BUT, SUBSECTION 2 OF AMENDMENTS 5 AND 6 MIGHT PREVENT US AFTER BARTLETT FROM BEING ABLE TO DRAW A MINORITY ACCESS SEAT, AND WE HEARD TESTIMONY AGAIN FROM BOTH RACIAL... WITH MINORITIES, SOME SITTING MEMBERS OF CONGRESS AS FLORIDA CONTINUES TO EMERGE INTO THE NEXT DECADE AND THE LEGISLATURE DISCHARGES ITS DUTY TO REDISTRICT WE WILL NOT BE ABLE TO DRAW THE DISTRICTS TO THE EXTENT THEY ARE CONSTRAINED BY SECTION 2 OF AMENDMENTS 5 AND 6.

>> WHY DOES THIS DISCRETIONARY PROVISION NOT AFFORD DISCRETION WITH REGARD TO ALL OF THE ELEMENTS?

AS I READ THE AMENDMENT 7, IT SEEMS TO BE SAYING THAT IT

REALLY HAS NO STANDARDS, YOU  
CONSIDER ALL OF THESE THINGS BUT  
THERE ARE NO MANDATORY STANDARDS  
AND IT IS ALL DISCRETION AND  
EVERYTHING IS THE SAME, YOU CAN  
ELIMINATE THIS OR THAT AND ADD  
THIS, ADD THAT AND NONE OF WHICH  
ARE NECESSARILY BINDING OR  
REQUIREMENTS.

SO, EVEN THE CONTINUITY  
REQUIREMENT IS NO LONGER  
REQUIREMENT, BUT IS MERELY ONE  
OF THE ELEMENTS TO BEING  
CONSIDERED IS WHAT -- WHY IS  
THAT NOT THE CASE?

>> WELL, FOR THREE PRIMARY  
REASONS.

FIRST, THE TEXT DOESN'T SAY  
BALANCE AND IMPLEMENT SOME OF  
THE STANDARDS, IT IMPLIES GIVING  
EQUAL WEIGHT.

>> AGAIN IT IS GIVING WEIGHT TO  
THEM BUT NOT REQUIRING THEY HAVE  
ANY PARTICULAR REQUIREMENT.

>> BUT AMENDMENT 7 REQUIRES THE  
LEGISLATURE TO BALANCE AND  
IMPLEMENT AND THEY CANNOT FAIL  
TO IMPLEMENT ANY OF THEM AND TO  
THE EXTENT THEY DO --

>> YOU SEEM TO BE SPEAKING  
AROUND WHAT I'M ASKING YOU.  
AS I UNDERSTAND AMENDMENT 7, IT  
GIVES THE LEGISLATURE FULL  
DISCRETION TO GIVE WEIGHT TO ALL  
OF THEM BUT NOT NECESSARILY TO  
FOLLOW ANY OF THEM.

>> TO THE CONTRARY, YOUR HONOR,  
THE TEXT AND THE LEGISLATURE  
INTENT --

>> I'M NOT WORRIED ABOUT INTENT.  
I DON'T THINK INTENT HAS  
ANYPLACE HERE.

WHERE IN THE TEXT DOES IT TELL  
US THAT YOU MUST FOLLOW ANY OF  
THOSE PARTICULAR ONES?

>> WHERE IT DOES WE HAVE TO  
IMPLEMENT THE STANDARDS IN THE  
STATED CONSTITUTIONS.

AND, THIS COURT HAS ARTICULATED  
MULTIPLE --

>> HOW?

BY BALANCING, SOME BALANCING,  
ISN'T IT.

>> THERE WILL BE BALANCING  
INVOLVED IN THOSE FACTORS, YOUR  
HONOR, THAT MAY BE SUBJECTIVE,  
SUCH AS COMPACTNESS --

>> IT DOESN'T SAY THOSE THAT ARE  
SUBJECTIVE.

DOES IT?

>> IT DOESN'T, YOUR HONOR BUT  
THAT IS NOT THE TEST BEFORE THE  
COURT.

THE TEST IS NOT -- COULD IT HAVE  
BEEN WRITTEN BETTER.

>> THE TEST IS, DOES IT IS SAY  
WHAT IT REALLY DOES AND I COME  
BACK TO -- I'M HAVING PROBLEMS  
SAYING IT IS STANDARDS WHEN IT  
IS ALL DISCRETION.

AND SECONDLY WHEN THE ARGUMENT  
IS THAT IT DOES NOT IMPACT ANY

EXISTING STANDARDS, WHEN AS I  
READ IT, IT REQUIRES ALL OF  
THEM.

YOU DON'T HAVE TO FOLLOW ANY OF  
THEM AS LONG AS YOU GIVE  
CONSIDERATION TO IMBALANCE.

>> AND YOUR HONOR I WILL SAY  
BOTH THE TEXT, WHICH DIRECTS THE  
LEGISLATURE TO IMPLEMENT THE  
STANDARDS, ALL OF THEM, AS WELL  
AS THE LEGISLATIVE HISTORY WHERE  
THERE WAS ABUNDANT TESTIMONY  
THAT THERE WAS NO INTENTION TO  
UNDERCUT THE EXISTING PROVISIONS  
OF ARTICLE 3, AS WELL AS THE  
CASES OF THE COURT, WHERE IN  
REDISTRICTING WHEN THE COURT  
LOOKED AT 5 AND 6, IT SAYS  
ABSENT EXPRESS REPEAL AN  
EXISTING CONSTITUTIONAL POSITION  
WILL BE CONSIDERED REPEALED BY  
IMPLICATION ONLY IF IT CANNOT BE  
HARMONIZED WITH THE PROPOSAL.  
HERE IT CAN BE HARMONIZED, GIVE  
IT THE READINGS...

>> MY CONCERN IS, WHEN YOU SAY  
HARMONIZED, WE HAVE  
CONSTITUTIONAL STANDARDS,  
CORRECT?

>> YES, YOUR HONOR.

>> AND THIS AMENDMENT SAYS THOSE  
ONLY BECOME PART OF A BALANCING  
ACT.

THAT IS WHAT I'M CONCERNED  
ABOUT.

>> AND THAT IS NOT OUR READING,

NOR OUR INTENT.

>> I CAN'T GET INTO INTENT,  
BECAUSE, THE VOTER WON'T KNOW  
WHAT YOUR INTENT IS BECAUSE THE  
LEGISLATIVE HISTORY IS NOT GOING  
TO BE ANYWHERE IN THE VOTING  
BOOTH.

>> WELL, YOUR HONOR I WOULD  
RESPOND THIS WAY:  
IF THAT'S TRUE, THE ONLY  
INTERPRETATION IS THAT THESE  
WORDS OF AMENDMENTS 7 WILL  
SOMEHOW RENDER OPTIONAL ALL OF  
THE STANDARDS, IF THAT IS THE  
ONLY --

>> NOT ONLY, THE REASONABLE --  
REASONABLE READINGS OF IT,  
BECAUSE IT'S NOT LIKE A PIECE OF  
LEGISLATION, IN MY VIEW.

WHERE WE TRY TO BEND OVER  
BACKWARDS TO MAKE SURE, WE TRY  
TO GIVE INTENT, EVERYTHING THAT  
WE CAN.

BUT, I'M CONCERNED THAT HERE IT  
IS THE ACTUAL LANGUAGE THAT GOES  
TO THE VOTER, NOT A  
SOPHISTICATED LEGISLATOR OR  
JUDICIAL OFFICERS, THE PUBLIC,  
WHAT WILL THE PUBLIC THINK IT  
MEANS.

>> HOPEFULLY GIVE THE WORDS, THE  
MEANING THEY HAVE TO THEM LIKE  
IF THEY WERE VOTING ON THE RIGHT  
TO PRIVACY OR DUE PROCESS.  
WE GAVE THE WORDS TO THE VOTERS,  
YOUR HONOR, SO THEY'D HAVE THE

ABILITY TO READ THEM AND CHOOSE TO ADD THEM TO THEIR ORGANIC LAW OR NOT AND UNLESS THE -- THE ONLY INTERPRETATION IS, EVEN IF THAT IS THE CASE THE VOTERS MUST GIVE IT THAT INTERPRETATION. I EXPECT THEY GIVE IT THE COMMON, ORDINARY MEANING WE HAVE TO IMPLEMENT THE STANDARDS IN THE CONSTITUTION AND BALANCE THOSE AS BEST WE CAN AND PRESENT TO IT THIS COURT AND THE COURTS WILL HAVE A CHANCE TO JUDGE THOSE PLANS IN 2012. TO DETERMINE WHETHER WE HAVE ACTUALLY DONE THAT. >> BUT, IF THERE IS -- IF AN AMENDMENT IS SUBJECT TO MORE THAN ONE INTERPRETATION BY THOSE READING... [INAUDIBLE] DOESN'T IT MAKE IT AMBIGUOUS AS OPPOSED TO CLEAR AND UNAMBIGUOUS. >> YOUR HONOR, IN THIS COURT'S JURISPRUDENCE, THIS COURT HELD UNMISTAKABLY, WHEN THERE MAY BE MORE THAN ONE INTERPRETATION, TO A POTENTIAL AMENDMENT, IN SMATHERS VERSUS SMITH IT SAYS IT IS PREMATURE AND SPECULATIVE AND THE COURT WILL NOT ADDRESS IT. IF THERE IS ANY MEANING, TO GIVE IT MEANING IT MUST BE ALLOWED -- >> WE ARE NOT LOOKING AT WHETHER THE AMENDMENT IS VAGUE OR AMBIGUOUS BUT WHETHER THE SUMMARY IS, THAT IS TYPICALLY

WHAT YOU LOOK AT IN CASES LIKE THIS AND THERE IS NO LAW THAT SAYS THERE CAN'T BE A PROVISION IN THE CONSTITUTION THAT IS AMBIGUOUS OR VAGUE IF SUCH WERE THE CASE, NO CONSTITUTIONAL CASES WOULD BE COMING TO US, WOULD WE.

>> THAT'S CORRECT, YOU THINK OF FREE EXERCISE OF RELIGION OR THE RIGHT TO DUE PROCESS OF LAW, THOSE CAN GENERATE THOUSANDS OF INTERPRETATIONS BY THOUSANDS OF COURTS AND IT CAN BE NO BAR AND THIS COURT HELD, JUSTICE QUINCE IT IS NOT A PROHIBITION A PROSPECTIVE AMENDMENT MIGHT BE SUBJECT TO MORE THAN ONE INTERPRETATION.

>> BUT AMENDMENT IS AMBIGUOUS AND YOU ARE USING THAT AND -- AS THE BALLOT SUMMARY IN ESSENCE, THERE IS NOTHING YOU CAN DO. THERE IS NOTHING THIS COURT CAN DO IF YOU ARE GOING TO PUT THE WHOLE AMENDMENT ON THE BALLOT. THAT IS IN ESSENCE WHAT YOU ARE SAYING.

>> WHAT WE'RE SAYING IS IT CANNOT BE MISLEADING IN THAT CIRCUMSTANCE AND NO COURT IN FLORIDA SEVER STRUCK A PROSPECTIVE QUESTION WHERE THE TEXAS TEXT WAS THE SUMMARY, THERE WAS NO DISCONNECT AND IT WAS SUBJECT TO MORE THAN ONE

INTERPRETATION OR WE COULD NEVER

--

>> LAST FIVE MINUTES.

>> CONTINUE, IF YOU WOULD LIKE.

>> I'D RATHER RESERVE REMAINING  
TIME FOR REBUTTAL, YOUR HONOR,  
THANK YOU.

>> MR. MAKAR.

>> GOOD MORNING, MR. CHIEF  
JUSTICE, MEMBERS OF THE COURT,  
I'M RON MEYER, I'M HERE WITH MY  
PARTNERS, JENNIFER BLUM AND LYNN  
HARM AND, THIS CASE IS ABOUT THE  
CLARITY OF THE BALLOT SUMMARY  
AND IT DOESN'T MATTER WHETHER  
THE BALLOT SUMMARY IS DISTINCT  
AND DIFFERENT FROM THE  
AMENDMENTS, TO SAY THE --

>> LET ME TAKE YOU TO THE  
STATEMENT I MADE, A MINUTE AGO.  
DO WE HAVE THE AUTHORITY TO  
PROHIBIT THE PEOPLE FROM  
CONSIDER -- PROHIBIT THE PEOPLE  
FROM A PROPOSED CONSTITUTIONAL  
AMENDMENT BECAUSE THE AMENDMENT  
ITSELF IS AMBIGUOUS OR VAGUE.

>> THE PEOPLE OF FLORIDA IF THEY  
ARE TOLD WHAT THE PRIMARY  
PURPOSE AND EFFECT OF A BALLOT  
AMENDMENT IS IN CLEAR AND  
UNAMBIGUOUS TERMS COULD VERY  
WELL ELECT TO VOTE FOR AN  
AMBIGUOUS PROVISION TO THE  
FLORIDA CONSTITUTION.

>> HERE'S WHAT I'M TRYING TO  
UNDERSTAND.

IF YOUR POSITION IS THAT THIS  
PROPOSED AMENDMENT IS AMBIGUOUS  
-- CORRECT?

YOU PUT THAT IN YOUR BRIEF.

>> IT IS VERY AMBIGUOUS, YOUR  
HONOR.

>> SO, IS IT YOUR POSITION THAT  
THE BALLOT SUMMARY SHOULD CHANGE  
THE MEANING OF THE AMENDMENT BY  
ELIMINATING THE AMBIGUITY?

I DON'T UNDERSTAND HOW THAT  
WORKS.

>> NO, YOUR HONOR, OUR POSITION  
IS, THE BALLOT SUMMARY MUST IN  
CLEAR AND UNMISTAKABLE AND  
UNAMBIGUOUS -- UNAMBIGUOUS  
TERMS, AND IN THE VOTING BOOTH  
WHAT THE PRIMARY EFFECT OF  
PASSING THIS AMENDMENT IS AND  
THE PRIMARY EFFECT OF PASSING  
THIS AMENDMENT, YOUR HONOR, IS  
TO REMOVE THE ONLY MANDATORY  
STANDARDS WHICH ARE CURRENTLY IN  
THE CONSTITUTION RELATING TO  
REAPPORTIONMENT.

NAMELY, CONGRUITY AND, IT SAYS  
IT CREATES STANDARDS AND JUSTICE  
LEWIS HIT IT ON THE HEAD.

THERE ARE NO STANDARDS IN  
AMENDMENT 7, IT TALKS IN TERMS  
OF ASPIRATIONAL GOALS.

>> WHAT ABOUT THE TERM  
"IMPLEMENT" ISN'T THAT A  
SIGNIFICANT TERM TO INDICATE IT  
IS MORE THAN PURELY  
ASPIRATIONAL?

>> YOUR HONOR, THE DIRECTION TO APPLY FEDERAL REQUIREMENTS AND BALANCE AND IMPLEMENT STATE CONSTITUTIONAL REQUIREMENTS IN ITSELF IS INCONSISTENT.

WE KNOW WHAT "APPLY" MEANS.

>> ONE THING WE KNOW, FOR SURE, IS IF IT IS A FEDERAL REQUIREMENT, WE MUST ABIDE BY IT.

>> WE AGREE ON THAT, YOUR HONOR.

>> OKAY.

>> BUT WHAT WE GET IN THE LANGUAGE OF BALANCING AN IMPLEMENTING AND THEY SAY ALL STANDARDS AND THERE IS NO "ALL" IN THE CONSTITUTIONAL AMENDMENT.

>> THESE STANDARD, CLEARLY, INDICATE THAT IT IS TALKING ABOUT ALL OF THEM.

>> IT MAY BE TALKING ABOUT ALL OF THEM BUT THEN YOU HAVE TO READ ON INTO THE AMENDMENT AND INTO THE SUMMARY, WHERE IT SAYS THEY HAVE GOT TO BE CONSIDERED, PROMOTED AND RESPECTED, BOTH WITHOUT SUBORDINATION TO ANY OTHER PROVISION OF ARTICLE 3 OF THE STATE CONSTITUTION.

>> WHAT --

>> YOUR HONOR --

>> IS THERE ANY WAY THAT THERE COULD BE A -- AN ACCURATE BALLOT SUMMARY FOR THIS AMENDMENTS.

>> IT IS AMBIGUOUS.

IF THE TEXT ITSELF IS AMBIGUOUS,

THAT IS, IT IS SUSCEPTIBLE TO MORE THAN ONE REASONABLE UNDERSTANDING, WOULD THE BALLOT SUMMARY HAVE TO WEIGH OUT THOSE POSSIBILITIES?

>> IT COULD BE THIS OR IT COULD BE THAT?

IS THAT HOW YOU WOULD GET AN ACCURATE BALLOT SUMMARY IN YOUR VIEW.

>> YOUR HONOR IN MY VIEW, THE VIEW OF THIS COURT IS THAT THE BALLOT SUMMARY HAS TO IN CLEAR AND UNAMBIGUOUS LANGUAGE DESCRIBE THE PURPOSE AN EFFECT OF THE AMENDMENT.

AND, THIS BALLOT SUMMARY DOES NOT DO THAT.

YOU ARE INVITING ME TO REWRITE THE BALLOT SUMMARY, I GUESS YOU ARE ASKING ME COULD A BALLOT SUMMARY BE CONFIGURED THAT WOULD ACCURATELY SAY THAT PASSAGE OF THIS AMENDMENT DOES INDEED SUBORDINATE THE PRESENTS REQUIREMENT OF THE CONSTITUTION THAT DISTRICTS BE CONTIGUOUS, AND SUBORDINATED TO CONSIDERING COMMUNITIES OF INTEREST.

>> I'M JUST SAYING, BACK TO YOUR ARGUMENT, THAT THE TEXT OF THE AMENDMENT ITSELF IS AMBIGUOUS.

>> YES, SIR.

>> IF THAT IS SO, HOW IS THAT DEALT WITH IN THE BALLOT SUMMARY?

IT SEEMS TO ME YOU ARE SUGGESTING THAT THE BALLOT SUMMARY HAS TO SOMEHOW ELIMINATE THE AMBIGUITY THAT IS INHERENT IN THE TEXT AND I DON'T UNDERSTAND THAT.

>> YOUR HONOR, WHAT THE BALLOT SUMMARY HAS TO DO IS EXPLAIN THAT AMBIGUITY TO THE VOTER WHO IS COMING TO VOTE ON THE BALLOT AMENDMENT.

IT HAS TO EXPLAIN THAT THIS AMENDMENT WAS INDEED CRAFTED IN RESPONSE TO JUSTICE QUINCE'S ARGUMENTS OR QUESTIONS, THAT IT WAS CRAFTED SPECIFICALLY FOR THE PURPOSE OF UNDOING FIVE AND SIX WHICH WERE ALREADY ON THE BALLOT, HAD ALREADY BEEN APPROVED NOT LIKE THE GROWTH MANAGEMENT CASE WHERE THE PETITION WAS FLOATING AROUND HERE -- AND I DON'T BELIEVE THERE IS ANY ARGUMENT ON THIS RECORD, OVER THIS FACT -- HERE, AMENDMENT 7 WAS CRAFTED WITH ONE SPECIFIC PURPOSE IN MIND.

AND THAT WAS TO UNDO WHAT FIVE AND SIX WERE DOING.

AND, HOW IT UNDOED IT, IT CHOSE TO UNDO IT IN THE A WAY OF CREATING THESE ASPIRATIONAL GOALS, CALLING THEM STANDARDS, ADDING TO THE CONFUSION, QUITE FRANKLY IN THE TITLE, CALLING THEM STANDARDS AND PUTTING THE

SUBJECTIVE CRITERIA IN, THAT THE PUBLIC WOULDN'T HAVE A WAY OF KNOWING, EVEN RELATED TO FIVE AND SIX.

SECONDLY, IN CREATING THESE ASPIRATIONAL GOALS, AND GIVING THEM A PREEMINENCE WITHOUT DESCRIBING THIS IN A BALLOT SUMMARY AND WITHOUT TELLING THE VOTER, WE ARE GOING TO CREATE THIS CONSIDERATION OF THE ABILITY OF RACIAL LANGUAGE -- MINORITIES, AND RESPECTING AND PROMOTING COMMUNITIES OF COMMON INTEREST, WHATEVER THAT MEANS, WE'RE GOING TO ELEVATE THAT TO THE SAME DIGNITY OR, INDEED, PERHAPS A HIGHER DIGNITY THAN IS PRESENTLY IN THE CONSTITUTION REQUIRING CONTIGUITY.

>> HOW DID THAT... [INAUDIBLE].

>> WITHOUT ANY OTHER PROVISION OF ARTICLE 3, MEANS IT IS NO LOWER THAN, IT COULD BE HIGHER THAN, HOW DO YOU --

>> HOW DOES THAT READ, 16A OUT OF THE CONSTITUTION?

WE HAVE MINIMAL CONSTITUTIONAL REQUIREMENTS IN ALMOST EVERY ARTICLE OF THE CONSTITUTION.

HOW DOES ADDING ONE, SOMEHOW ELIMINATE THE OTHER?

>> JUSTICE POLSTON, IT DOESN'T READ IT OUT OF THE CONSTITUTION.

WE HAVE NEVER ARGUED THAT AMENDMENTS 7'S PASSAGE REPEALS

THE CONTIGUITY REQUIREMENT.  
WHAT WE SAY IS, IT SUBSTANTIALLY  
ADMINISTERS AND ALTERS THE  
CONTIGUITY -- THERE IS THAT WORD  
-- REQUIREMENT AND PERMITS A  
COMMUNITY OF INTEREST TO BE  
CONSIDERED, WHICH WOULD TAKE  
PREEMINENCE, ARGUABLY, OVER THE  
CONTIGUITY REQUIREMENT.

THE TRIAL COURT MADE A GOOD  
EXAMPLE --

>> IF YOU DON'T ELIMINATE IT THE  
REQUIREMENT OF 16A IS STILL  
THERE.

>> THE REQUIREMENT IS THERE,  
YOUR HONOR, BUT IT IS  
SUBORDINATED TO POTENTIALLY  
CONSIDERATION OF A COMMUNITIES  
OF INTEREST, CONSIDERATION, BUT  
NOT ACTING ON RACIAL MINORITIES,  
AND THINGS OF THAT NATURE.

>> WAS THERE ANYTHING IN 16A,  
THAT SOMEHOW SAYS THAT THOSE  
STANDARDS HAVE TO HAVE  
PRIORITIZATION ON ANY OTHER  
THING, THAT MAY BE IN THE  
CONSTITUTION.

>> NO, YOUR HONOR, BUT WHAT I AM  
SAYING IS, THIS BALLOT SUMMARY  
THE VOTER, GOING TO THE VOTING  
BOOTH, IS GOING TO LOOK AT AND  
READ, HAS NO WAY OF KNOWING THAT  
THE PRESENT UNSALIABLE STANDARDS  
OF CONTIGUITY HAS NOW BEEN  
REDUCED TO A SUBORDINATE ROLE TO  
THESE ASPIRATIONAL GOALS.

AND, SO, THAT IS WHAT I'M SAYING  
IS THE DEFECT HERE.  
THE PUBLIC HAS A RIGHT TO KNOW.  
CONTIGUITY IS A HAND CUFF ON THE  
LEGISLATURE.  
THEY ARE TOLD IN THE  
CONSTITUTION IF YOU ARE GOING TO  
CONFIGURE LEGISLATIVE DISTRICTS  
YOU HAVE TO DO IT WITH  
CONTIGUITY.  
THAT IS THERE.  
AMENDMENTS 7'S PASSAGE OPENS THE  
HANDCUFF AND WE DON'T TELL THE  
PUBLIC THAT.  
WE DON'T HAVE A WHISPER IN  
AMENDMENT 7 OR THE BALLOT  
SUMMARY THAT SAYS BY PASSING  
THIS AMENDMENT YOU ARE GOING TO  
DIMINISH THE IMPORT OF  
CONTIGUITY THAT IS PRESENTLY IN  
THE CONSTITUTION, AND THAT IS  
THE FAILURE...  
>> ISN'T IT REALLY MORE  
REASONABLE TO VIEW THE  
CONTIGUITY REQUIREMENT AS A  
RULE, AS OPPOSED TO A STANDARD.  
SO THAT YOU... AND OUR CASE LAW  
WOULD BE CONSISTENT WITH THAT.  
BECAUSE, WE HAVE SAID THAT  
CONTINUITY INVOLVES TOUCHING AT  
A POINT, THAT'S CORRECT --  
CONTIGUITY INVOLVES TOUCHING AT  
A POINT.  
>> CONTIGUOUS WITHIN YOURSELF.  
>> RIGHT.  
AND IT IS AN EITHER/OR

PROPOSITION AND YOU CANNOT BE A  
LITTLE CONTIGUOUS OR MORE  
CONTIGUOUS, IT'S AN EITHER/OR  
PROPOSITION, IT IS A RULE AS  
OPPOSED TO A STANDARD WHERE YOU  
CAN HAVE A CONTINUUM.

DOESN'T THAT REALLY MAKE MORE  
SENSE?

AND SO WHEN WE TALK ABOUT  
STANDARDS, WE REALLY AREN'T EVEN  
REFERRING TO THAT CONCRETE RULE  
THAT IS SET FORTH IN THE  
CONSTITUTIONS.

BECAUSE, THAT IS NOT THE SORT OF  
THING THAT CAN BE BALANCED.

>> YOUR HONOR, RESPECTFULLY I  
WOULD HAVE TO DISAGREE.

I THINK CONTIGUITY IS CLEARLY AN  
OBJECTIVE STANDARD PRESCRIBED IN  
THE CONSTITUTION --

>> YOU DON'T ACCEPT THE  
DISTINCTION BETWEEN RULES AND  
STANDARDS?

YOU THINK IT DOESN'T APPLY HERE.

>> YOUR HONOR, I'M NOT SURE THAT  
IT APPLIES HERE.

YOU KNOW, IT IS OUR VIEW THAT  
CONTIGUITY IS AND HAS BEEN SINCE  
IT WAS ADDED IN 1968, A STANDARD  
FOR THE LEGISLATURE TO BE  
FOLLOWING REAPPORTIONING THE  
STATE OF FLORIDA AND WHAT I AM  
SAYING TO YOU IS, BY GIVING  
AMENDMENT 7 THE ABILITY SIMPLY  
BY RESPECTING A COMMUNITY OF  
INTEREST, TO UNDO THAT STANDARD,

OR IF YOU WANT TO CALL IT A  
RULE, I SUPPOSE THE SAME RESULT,  
YOU ARE CHANGING A VERY  
SUBSTANTIAL PROVISION OF THE  
EXISTING FLORIDA CONSTITUTION.  
AND YOU ARE SIMPLY NOT GIVING  
THE VOTER WHEN HE OR SHE COMES  
TO THE VOTING BOOTH ANY  
INDICATION THAT THAT CHANGE IS  
BEING MADE.

AND, THAT IS THE DEFECT THAT WE  
SEE HERE.

THAT IS WHAT THE TRIAL COURT  
BELOW SAID.

HE MUSED WHAT IF IN RESPECTING  
AND PROMOTING A COMMUNITY OF  
INTEREST THAT IT MADE SENSE TO  
TAKE DESTIN AND DAYTONA BEACH,  
TWO BEACH COMMUNITIES, THAT  
CLEARLY HAVE COMMON INTERESTS  
AND COMMUNITIES OF COMMON  
INTEREST AND NEEDS, AND  
CONCLUDED THAT THAT COMMUNITY OF  
INTEREST, OF BEACH COMMUNITIES,  
OUGHT TO SERVE AS A MEASURE FOR  
REAPPORTIONMENT.

AND, APPLYING THE LANGUAGE OF  
AMENDMENTS 7, THAT THAT  
COMMUNITY OF COMMON INTEREST CAN  
BE RESPECTED WITHOUT  
SUBORDINATION TO ANY OTHER  
PROVISION OF ARTICLE 3 OF THE  
STATE CONSTITUTION.

YOU HAVE EFFECTIVELY SAID YOU  
COULD HAVE A DISTRICT THAT WAS  
NONCONTIGUOUS BECAUSE IT HAS A

COMMUNITY OF INTEREST THAT IS  
NONCONTIGUOUS.

HOW DO YOU GIVE ANY MEANING AT  
ALL TO THIS LANGUAGE WITHOUT  
SUBORDINATION TO ANY OTHER  
PROVISION OF ARTICLE 3 OF THE  
STATE CONSTITUTION?

IF YOU DON'T RIDE IT THAT WAY?

AND, IF, INDEED, WHAT THE  
DRAFTERS INTENDED WAS TO EXEMPT  
CONTIGUITY, HOW DOES THE VOTER  
GET AN INKLING OF THAT FROM  
READING THE LANGUAGE, THAT SAYS  
IT APPLIES TO ANY OTHER  
PROVISION OF ARTICLE 3 OF THE  
STATE CONSTITUTION AND, THERE  
ARE -- I THINK THERE ARE 19 SUB  
SECTIONS OF ARTICLE 3.

DOESN'T THE PUBLIC HAVE A RIGHT  
TO THE KNOW WHEN YOU VOTE FOR  
AMENDMENT 7, IN PROMOTING THESE  
COMMUNITIES OF COMMON INTEREST,  
OR CONSIDERING THE ABILITY OF  
RACIAL AND ETHNIC MINORITIES,  
TO ACHIEVE VOTER POWER, DOESN'T  
THE PUBLIC HAVE A RIGHT TO KNOW  
THAT THIS AMENDMENT SPECIFICALLY  
EXCLUDES FROM THE REST OF  
ARTICLE 3 THE CONTIGUITY  
REQUIREMENT?

>> ARE YOU SAYING UNDER  
AMENDMENT 7, THIS IS -- IF THIS  
IS PASSED THERE COULD BE A  
NONCONTIGUOUS DISTRICT.

>> YOUR HONOR, I THINK THAT IS  
WHAT THE TRIAL COURT BELOW FOUND

AND I THINK THAT IS THE ONLY  
READING THAT YOU CAN GIVE TO  
THIS LANGUAGE, IN ARTICLE --  
AMENDMENT 7.

>> WHERE DOES IT SAY THAT.

>> IT SAYS THAT YOU CAN RESPECT  
A COMMUNITY OF COMMON INTEREST,  
WITHOUT SUBORDINATION TO ANY  
OTHER PROVISION OF ARTICLE 3 OF  
THE STATE CONSTITUTION.

>> TO GET TO THAT POINT WOULDN'T  
YOU HAVE TO READ SUBSECTION A AS  
BEING SOMEHOW EXCLUSIVE OR  
LANGUAGE IN THE AMENDMENT THAT  
SOMEHOW REWRITES A OUT OF THERE?  
WHERE DOES IT DO THAT.

>> DOESN'T REWRITE IT OUT OF  
THERE, YOUR HONOR IT SIMPLY  
DIMINISHES ITS ABSOLUTENESS AND  
THAT IS WHAT THE VOTER IS NOT  
BEING TOLD.

WHEN THEY GO TO THE VOTING  
BOOTH, THAT WE'RE CHANGING WHAT  
IS.

WHAT IS RIGHT NOW, NOBODY IS  
ARGUING OVER.

THE DISTRICT HAS TO BE  
CONTIGUOUS.

IF AMENDMENT 7 PASSES, IT MAY OR  
MAY NOT BE CONTIGUOUS.

WHY?

BECAUSE IF YOU RESPECT THE  
COMMUNITY OF COMMON INTEREST  
OTHER THAN A POLITICAL PARTY,  
AND YOU TREAT THAT AS NOT BEING  
SUBORDINATED TO THE CONTIGUITY

REQUIREMENT, THEN YOU ON HAVE  
YOU MADE A SUBSTANTIAL CHANGE  
TO THE PRESENT FLORIDA  
CONSTITUTION.

BUT YOU KNOW THERE IS NOT A  
WHISPER OF THE CONTIGUITY IS NOT  
MENTIONED.

ALL THAT IS MENTIONED IS EVERY  
OTHER PROVISION OF ARTICLE 3,  
YOUR HONOR AND WHAT WE SUGGEST  
TO YOU IS THE CASE LAW HAS MADE  
IT PLAIN THAT YOU CANNOT HIDE  
IT.

YOU HAVE TO BE CLEAR.

THE FACT THAT WE'RE HAVING THIS  
DISCUSSION AND DEBATE OVER WHAT  
IT MEANS, WHAT IS COMMUNITY OF  
COMMON INTEREST?

HOW DOES IT AFFECT THIS AND  
THAT?

THESE ARE ALL TEMPS, YOUR HONOR,  
TO THE FACT THAT THIS BALLOT  
SUMMARY IS NOT CLEAR AND  
UNAMBIGUOUS AS REQUIRED BY THE  
STATUTE AND THE CONSTITUTION.

AND, SO THE PERSON GOING INTO  
THE VOTING BOOTH, SIMPLY DOESN'T  
KNOW THE FULL IMPACT AND EFFECT,  
NOT ONLY THAT IT WILL HAVE TO  
AMENDMENTS 5 AND 6, BUT, TO THE  
EXISTING LANGUAGE IN THE FLORIDA  
CONSTITUTION.

AND THAT IS THE PROBLEM, A MAJOR  
PROBLEM WE HAVE, WITH THE  
AMENDMENT 7.

>> REALLY, YOUR ARGUMENT REALLY

IS THAT AT LEAST THAT PART OF  
THIS IS THAT THERE IS ONE THING  
THAT IS VERY CLEAR, AND THAT IS,  
THAT THE CONTIGUITY REQUIREMENT  
MAY BE LOST OR IS NO LONGER A  
REQUIREMENT AND THAT THE TEXT OF  
THE AMENDMENT WHICH IS IN THE  
BALLOT SUMMARY, DOESN'T  
ADEQUATELY PUT THE VOTER ON  
NOTICE ABOUT THAT CLEAR POINT.

>> CLEARLY.

AND IF THE SUMMARY HAD SAID THAT  
THE TEXT OF THE AMENDMENT  
AFFECTS THE CONTIGUITY  
REQUIREMENT IN THE CONSTITUTION  
THE ARGUMENT WOULD BE LESSENERED  
OR IF THEY SAID THE AMENDMENT  
OMITTED BOTH WITHOUT  
SUBORDINATION TO ANY OTHER  
PROVISION OF ARTICLE 3 OF THE  
STATE CONSTITUTION, JUST SIMPLY  
ADDED AN AMENDMENT TO REQUIRE  
THE LEGISLATURE TO CONSIDER  
THESE ASPIRATIONAL GOALS AND  
BALANCE THEM WITH THE OTHER  
STANDARDS, PERHAPS, THEN, THE  
FLAW OF THE AMENDMENT WOULD BE  
PRESENT.

BUT, NONE OF THAT IS HERE.

THEY'VE HIDDEN THE FACT THAT  
THIS IS IN EFFECT -- IN EFFECT  
AND THE VOTER WILL SIMPLY NOT  
KNOW THAT WHEN HE OR SHE  
PRESENTS AT THE VOTING BOOTH.  
WHAT THEY WILL SEE IS SOMETHING  
THAT IS CALLED A "CREATION OF

STANDARDS" BY ITS TITLE, WHEN,  
IN FACT, WHAT THE AMENDMENT DOES  
IS, IT DILUTES THE ONLY -- WHAT  
WE SUBMIT TO BE THE ONLY  
STANDARD IN THE CONSTITUTION, OF  
CONTIGUITY.

DOESN'T WRITE IT OUT OF THE  
CONSTITUTION BUT CERTAINLY  
SUBORDINATES IT, TO THESE  
ASPIRATIONAL GOALS, THAT IS WHAT  
THE COURT BELOW FOUND, AND, WE  
DON'T SEE HOW THIS LANGUAGE CAN  
LEAD TO A DIFFERENT RESULT HERE,  
YOUR HONOR.

>> YOU ARE IN ESSENCE ARGUING  
HERE THAT WHAT THE LANGUAGE DOES  
IS MAKES THE COMMUNITY OF  
INTEREST AND THESE OTHER  
PORTIONS THEY TALK ABOUT, RACIAL  
LANGUAGE, MINORITY...

[INAUDIBLE] THIS MAKES IT MORE  
IMPORTANT I GUESS FOR LACK OF A  
BETTER WORD THAN THE OTHER --  
THAN THE CONTIGUOUS REQUIREMENT  
THAT PRESENTLY EXISTS IN THE  
CONSTITUTION AND THIS IS FLAWED  
BECAUSE IT DOES NOT SAY THAT.

>> IT IS FLAWED BECAUSE IT  
DOESN'T TELL THE VOTER EXACTLY  
WHAT YOU HAVE STATED, YOUR HONOR  
AND THAT IS THAT BY TREATING  
THESE ASPIRATIONAL GOALS, THAT  
YOU SHOULD CONSIDER THESE  
THINGS, YOU SHOULD RESPECT AND  
PROMOTE THESE COMMUNITIES OF  
COMMON INTEREST AND IT'S NOT A

STANDARD, IT'S AN ASPIRATIONAL GOAL, YOU OUGHT TO DO THAT. THERE IS NOTHING WRONG WITH DOING THAT BUT WHEN YOU SAY, WHEN DO YOU THAT, YOU CAN TAKE PRECEDENCE OVER, THE ONLY STANDARD WHICH EXISTS IN THE CONSTITUTION, THAT BEING CONTIGUITY, AND YOU DON'T TELL THE PUBLIC THAT THAT IS WHAT YOU ARE DOING YOU HAVE RUN AFOUL OF THE DUTY OWED TO THE PUBLIC TO HAVE A CLEAR AND UNAMBIGUOUS BALLOT SUMMARY THAT DESCRIBES THE PRIMARY PURPOSE AND EFFECT. LET ME SIMPLY SAY IN THE BALANCE OF MY TIME, THE FAILURE TO DEFINE WHAT A COMMUNITY OF COMMON INTEREST IS, IS ALSO, WE THINK, A FATAL FLAW IN THIS AMENDMENT.

>> WHAT DO YOU THINK A COMMUNITY OF INTEREST --

>> WHATEVER I WANT IT TO BE, A GATED COMMUNITY, A BEACH COMMUNITY, AN ELDERLY POPULATION, A FARMING COMMUNITY.

>> IS THERE ANY CASE LAW, FEDERAL OR STATE THAT TALKS OF COMMUNITIES OF COMMON INTEREST.

>> I AM NOT AWARE OF ANY CASE LAW THAT DEFINES THIS IN THE CONTEXT OF A CONSTITUTIONAL -- CONSTITUTIONAL RESPECT, THAT SAYS YOU SHOULD RESPECT THESE COMMUNITIES OF INTEREST.

THERE IS NOTHING CLEAR AND DEFINED AND, AGAIN, IF WE HAVE TO GUESS, IF I GO TO THE VOTING BOOTH AND SAY, WELL A COMMUNITY OF COMMON INTEREST ARE PEOPLE LIKE ME AND I SUPPORT THAT AND SOMEBODY ELSE SAYS, WELL, IT IS IS REALLY, YOU KNOW, GATED COMMUNITIES OR BEACH COMMUNITIES OR SOME OTHER GROUPING, WE ARE VOTING ON A CONSTITUTIONAL AMENDMENT THAT APPLIES TO ALL THE PEOPLE, BUT WE HAVE NO SINGLE UNDERSTANDING, NOR CAN WE DERIVE AN UNDERSTANDING OF WHAT THAT MEANS FROM LANGUAGE USED IN THE BALLOT ITSELF AND THAT IS A PROBLEM AND LET ME ALSO TOUCH ON, IN MY REMAINING TIME, THE FACT THAT THE CASE LAW SUGGESTS THERE IS NOT A REQUIREMENT FOR A PROPOSED BALLOT AMENDMENT TO ADDRESS OTHER BALLOT AMENDMENTS AND CERTAINLY THE GROWTH MANAGEMENT DECISION OF THIS COURT WOULD LEAD YOU TO THAT BUT WE THINK IN THE FACTS OF THIS CASE, WHERE THIS PARTICULAR AMENDMENT WAS CRAFTED SOLELY AND EXCLUSIVELY TO UNDO, MITIGATE AMENDMENTS 5 AND 6, WHICH WERE ALREADY ON THE BALLOT, AND BEFORE THE LEGISLATURE, AND, FORMED THE BASIS OF THE DISCUSSION BY THE LEGISLATURE, IN CRAFTING AMENDMENT 7, AND

GIVING IT AN OPPORTUNITY TO UNDO AMENDMENT 5 AND 7, THE PEOPLE OUGHT TO AT LEAST BE TOLD THAT.

>> SO IT IS A RACE, THAT YOU THAT IF YOU GET YOUR BALLOT THERE FIRST, SUBSEQUENT BALLOTS HAVE TO REFER TO THE PREDECESSOR BUT NOT THE OTHER WAY AROUND.

>> YOUR HONOR, I DON'T THINK FIVE AND SIX IN ANY WAY AFFECT SEVEN, BUT SEVEN WAS CRAFTED EXCLUSIVELY TO 5 AND.

>> THEORETICALLY YOU COULD HAVE DIFFERENT BALLOTS THAT AFFECT EACH OTHER AND YOUR COUNSEL SAYS THE VOTERS NEED TO FIGURE THAT OUT WHEN THEY LOOK AT IT IN THE VOTERS' BOOTH, OTHERWISE, WHAT CAN YOU DO, AS A MATTER OF CONSTITUTIONAL LAW?

ARE WE TO REQUIRE EVEN AMENDMENT TO SOMEHOW REFER TO OTHER POTENTIALLY AMENDMENTS THAT MAY OR MAY NOT BE PASSED .

>> YOUR HONOR, I THINK WHAT YOU CAN DO, YOU CAN LOOK AT THE FACTS OF THIS CASE AND SAY, THAT IN THIS INSTANCE, THIS WAS DONE IN AN EFFORT TO UNDO FIVE AND SIX, TO MASQUERADE ITSELF AS PART OF A GROUP OF AMENDMENTS, USING THE SAME KIND OF BALLOT TITLE CREATING STANDARDS FOR LEGISLATIVE REAPPORTIONMENT. AND, YET, IN FACT NOT BE PART OF THAT GROUP OF AMENDMENTS BUT

UNDERMINING THEM.

>> SO WE WAIT AND PATCH THEM TOGETHER AND AT THE END, WE SAY, HERE'S ALL THE PROPOSED CONSTITUTIONAL AMENDMENTS THAT WILL GO ON THE BALLOT AND SEE WHAT INTERPLAY THEY HAVE WITH EACH OTHER AND MAKE CERTAIN REQUIREMENTS, CONSTITUTIONALLY, THAT THEY SOMEHOW REFER TO EACH OTHER.

>> JUSTICE POLSTON, YOU DON'T HAVE TO GO THAT FAR.

I THINK WHAT YOU SHOULD DO, SO IS BE MINDFUL OF THE FACT THAT THE PEOPLE WHO ARE ASKED TO VOTE ON THIS AMENDMENT OUGHT TO NOW WHAT ITS GENESIS WAS.

>> LET ME ASK YOU ONE FINAL QUESTION.

IF THE PUBLIC -- 60%, I THINK, HAS TO BE VOTED ON --

>> YES, YOUR HONOR.

>> ALL THREE OF THEM.

WHAT IS THE EFFECT?

>> I THINK FIVE AND SIX BECOME WATERED DOWN AND MEANINGLESS, AND CAN BE TRUMPED BY AMENDMENT 7, THAT SAYS IF YOU TAKE INTO CONSIDERATION THIS OR THAT, THAT IS NOT GOING TO BE SUBORDINATED TO ANYTHING THAT IS IN FIVE OR SIX, OR ELSEWHERE IN THE CONSTITUTION.

SO IF THEY ALL THREE PASSED, FIVE AND SIX BECOME VIRTUALLY

SURPLUS.

THANK YOU, YOUR HONOR.

>> THANK YOU.

REPRESENTATIVE CANON.

>> THANK YOU, YOUR HONORS, AND JUSTICE QUINCE I WOULD LIKE TO PICK UP ON YOUR QUESTION, IF ALL THREE PASS, THEY ALL THEN RIPEN INTO OUR CONSTITUTION.

>> SO WHAT CAN THE LEGISLATURE THEN DO?

>> WELL, THE LEGISLATURE WILL HAVE TO APPLY THE TERMS OF THE EXISTING PROVISIONS OF ARTICLE 3, THE CONTENTS OF 5, 6 AND 7 TOGETHER, AND THEY WORK TOGETHER.

>> SO HOW WOULD THE LANGUAGE THEN IN 7, THAT TALKS ABOUT "WITHOUT SUBORDINATION", WITH ANY OTHER PROVISIONS WORK.

>> WE WOULD APPLY, THE WAY WE INTERPRET IT WHEN WE WROTE IT, YOUR HONOR, WAS IT WOULD BE NEITHER INFERIOR NOR SUPERIOR. WE COULD HAVE CHOSEN THE WORD, "NOTWITHSTANDING THE OTHER PROVISIONS OF ARTICLE 3" AND THAT WOULD HAVE IMPLIED A SUPERIORITY AND WE DIDN'T.

>> WITHOUT YOUR -- YOU KNOW, WHAT CONCERNS ME, YOU WERE PART OF THE LEGISLATURE THAT THE... THAT PASSED THE RESOLUTION AND A FUTURE LEGISLATURE THAT WAS NOT A PART OF THIS, THEY COULD IN

FACT READ THE LANGUAGE, IT SEEMS TO ME, AND -- IN THE MANNER THAT THE APPELLEES ARE TALKING ABOUT AND, WE HAVE A COMMUNITY OF INTEREST AND WE WANT TO LOOK AT THE OTHER ASPIRATIONAL STANDARDS AS HE CALLS THEM AND SAY, WE WANT A DISTRICT THAT LOOKS LIKE THAT.

>> IF THAT WERE TRUE THE LEGISLATURE COULD APPROVE A PLAN WITH 800 SENATE DISTRICTS OR TWO HOUSE DISTRICTS.

ACCORDING TO THE LOGIC OF MR. MEYERS' ARGUMENT WE CAN DISREGARD ANYTHING IN ARTICLE 3 AND THAT IS NOT LOGICAL AND THIS COURT HAS SID THAT IF A LEGISLATIVE ACT IS REASONABLY SUSCEPTIBLE OF ANY CONSTRUCTION -- ANY CONSTRUCTION -- THAT AVOIDS INVALIDITY, THE COURT IS BOUND TO A COORDINATE BRANCH TO ADOPT THAT CONSTRUCTION, THAT IS THE LAW.

IF THERE IS ANY INTERPRETATION, THE LEGISLATIVE BRANCH EXERCISES POWERS UNDER ARTICLE 11, SECTION ONE TO PUT IT BEFORE THE VOTERS IT MUST BE GIVEN THAT INTERPRETATION AND NOTHING IS MORE IMPORTANT AND NOTHING IS MORE COMPLEX THAN THE FACT THAT IN THE LAST TWO DECADES THE LEGISLATURE MADE HISTORIC GAINS IN MINORITY REPRESENTATION OF

BOTH LANGUAGE AND RACIAL  
MINORITIES IN OUR STATE AND  
COMPLEXITY TO MR. CHIEF JUSTICE  
KENNEDY'S POINTS, COMPLEXITY  
CANNOT BE A BAR TO ADDING  
SOMETHING TO THE CONSTITUTION.  
IT MAY BE SUBJECT TO MORE THAN  
ONE INTERPRETATION, BUT, IF THAT  
WERE THE BAR, IT WOULD PROHIBIT  
THINGS FROM BEING ADDED WE COULD  
NOT FUNDAMENTAL RIGHTS AS DUE  
PROCESS OF LAW OR RIGHT TO  
FREEDOM OF SPEECH.

>> BUT, IN THE SAME VERNACULAR,  
WORDSMITHING CANNOT BE UTILIZED  
TO DECIDE WHAT THE PURPOSE OF --  
YOU ARE REQUIRED TO SET FORTH  
THE PURPOSE AND EFFECT OF A NEW  
AMENDMENT AND THAT IS WHAT WE'RE  
GETTING INTO, AN ERA OF PURE  
WORDSMITHING EVERY TIME WE LOOK  
AT THESE THINGS, AND, AGAIN,  
IT'S NOT JUST THE LEGISLATURE, I  
MEAN, THERE ARE TIMES WHEN  
PROponents COME FORTH WITH WHAT  
THE PURPOSE AND WHAT THIS EFFECT  
IS, AND, IT IS NOTHING BUT  
TALKY-TALK OR WORDSMITHING TO  
TRY TO CONVINCe PEOPLE THAT THIS  
IS WHAT SHOULD BE ADOPTED  
WITHOUT REALLY ADDRESSING WHAT  
THE TRUTH OF THE THE MATTER IS,  
ISN'T THAT WHAT WE'RE LOOKING TO  
DO?

WE'RE NOT TRYING TO GET TO THE  
TRUTH OF THE MATTER TO INFORM

THE VOTING PUBLIC.

>> NO, YOUR HONOR.

>> WE'RE NOT.

>> NOT AT ALL.

BECAUSE... A SUMMARY, ALL THE CASES THIS SORT HANDED DOWN, THE WORDSMITHING CAN ONLY OCCUR IF THE SUMMARY FAILS TO FAITHFULLY ARTICULATE THE TEXT.

HERE, WE GIVE THE VOTER THE TEXT.

THERE CAN BE NO WORDSMITHING, THERE IS NO EDITORIALIZING AND APPEAL AND GAVE THE VOTER... TO AVOID ANY POTENTIAL WORDSMITHING AND NOTHING --

>> WHAT ARE YOU SAYING WE ARE LOOKING AT?

IN THIS PARTICULAR PROPOSED AMENDMENT?

WE ARE LOOKING AT A TEXT OF THE ACTUAL AMENDMENT, CORRECT.

>> YES.

>> AND FOR ALL INTENTS AND PURPOSES IS THE SAME AS A BALLOT SUMMARY.

>> IN SOME CASES, YOUR HONOR, AMENDMENTS HAD A -- HAVE A SUMMARY.

AND, THAT RAISES THE POINTS, WHAT WAS THE LEGISLATURE TO DO? IF THE LEGISLATURE HAD TRIED TO DESCRIBE IN A SUMMARY THAT WAS DIFFERENT THAN THE TEXT I'M SURE MR. MEYER WOULD BE ARGUING THE SUMMARY FAILED TO ADEQUATELY

EXPLAIN HOW IT MIGHT INTERACT WITH 5 AND 6 AND 5 AND 6 HAVE THE SUMMARY AND WE CHOSE TO GIVE THE PEOPLE OF FLORIDA THE VERY WORDS THEY MAY CHOOSE OR MAY NOT CHOOSE TO ADD TO THE CONSTITUTION, SPECIFICALLY, TO AVOID JUSTICE LEWIS ANY CHARGE OF EDITORIALIZING OR WORDSMITHING OR TRICKERY AND NOTHING COULD BE MORE FAITHFUL TO THE TEXT THAN THE TEXT ITSELF AND REAPPORTIONMENT IS INCREDIBLY COMPLEX AND, YOUR HONOR, PRESERVING COMMUNITIES OF INTEREST IS HOW THE LEGISLATURE HAS PROTECTED MINORITY RIGHTS BECAUSE THE 14TH AMENDMENT TO THE U.S. CONSTITUTION SAYS A RACE-BASED DISTRICT BY ITSELF IS SUBJECT TO AN EQUAL PROTECTION CHALLENGE AND TO DRAW DISTRICTS THAT ARE MINORITY ACCESS DISTRICTS, THE LEGISLATURES HAVE TO COMBINE THE ABILITY OF THE RACIAL AND LANGUAGE MINORITIES TO PARTICIPATE IN THE PROCESS WITH COMMUNITIES OF COMMON INTEREST OTHER THAN RACE, AND, THAT IS WHY THOSE TWO PHRASES ARE BOTH IN AMENDMENT 7, TO GIVE THE LEGISLATURE THE TOOLS TO PROTECT THE MINORITY RIGHTS THAT WOULD BE RESTRAINED BY SECTION 2 OF AMENDMENTS 5 AND 6.

>> WELL OUR TIME HAS RUN OUT.

I WANT TO THANK BOTH SIDES FOR  
THE EXCELLENT BRIEFING AND  
EXCELLENT ARGUMENT.