>> LADIES AND GENTLEMEN, THE SUPREME COURT, PLEASE BE SEATED.
>> WE WILL NOW CONSIDER THE CASE OF FLORIDA DIDN'T OF STATE V. MANGAT.
>> MAY ARE PLEASE THE COURT.
THE SOLE ISSUE OF APPEAL IS WHETHER THE TEXT SHOULD APPEAR ON AMENDMENT 9.
>> YOU'RE SAYING THERE'S A PROBLEM WITH THE BALLOT SUMMARY?
>> I AM, YOUR HONOR.
THE TRIAL COURT RULED THE ONLY REMEDY FOR A DEFECTIVE BALANCE SMEARS WAS TO REMOVE THE SECTION FROM THE BALLOT.
FLORIDA LAW DOES NOT SUPPORT THAT OUTCOME.
THAT OUTCOME DISREGARDS THE UNIQUE LAW OF THE LEGISLATURE AND VOTERS ON ITS MERITS EVEN WHEN THERE'S NO POSSIBILITY OF VOTER CONFUSION.
>> WELL, WHAT ABOUT THE LANGUAGE THAT THE LEGISLATURE PASS AS PART OF THE RESOLUTION WHICH ACTUALLY INDICATES WHAT SHOULD BE ON THE BALLOT?
>> YOUR HONOR, THE BALLOT SUMMARY IS NOT A CONSTITUTIONAL REQUIREMENT.
INSTEAD IT'S DONE FOR THE CONVENIENCE OF THE VOTERS, AND THE BALLOT SUMMARY AND TEXT OF THE AMENDMENT ARE SEVERAL.
THE COURT CAN DISREGARD THE

BALLOT SUMMARY JUST AS IT
STRIKES PORTIONS.
>> WELL, THAT'S REALLY NOT THE
SAME SITUATION.
SEVERANCE IS THAT YOU SEVER A
PART.
HERE YOU'RE ASKING SOMETHING BE
SUBSTITUTED FOR THAT WHAT WAS TO
BE THE SUMMARY OR THE STATEMENT
OF THE PRINCIPLE PURPOSE AND
EFFECT, SO THAT'S NOT REALLY A
SEVERANCE BUT IT SUBSTITUTION.
>> A SEVERANCE DOESN'T DO WHAT
YOU'RE ASKING.
YOU'RE ASKING THAT WE SUBSTITUTE
SOMETHING FOR THE SUMMARY.
>> YOUR HONOR, IN MY VIEW, I AM
NOT ASKING FOR A SUBSTITUTION, I
AM ASKING FOR DELETION.
>> YOU'RE ASKING THAT WE DO
EXACTLY WHAT WE DID IN AMERICAN
CIVIL LIBERTIES V. HOOD IN 2004;
IS THAT CORRECT?
>> YES, IT'S THE ONLY CASE ON
THE SUBJECT.
>> BUT WE DON'T KNOW WHY OR WHAT
HAPPENED IN HOOD BECAUSE WE
DON'T HAVE AN OPINION.
>> YOUR HONOR THERE ARE NO
PUBLISHED OPINIONS.
>> WE HAVE ORDERS IN THAT
OPINION.
>> YOU HAVE REDRESS, BRIEFS,
AND PASS THROUGH OPINION, AND
THE FIRST PASS THROUGH OPINION
REFLECTS THERE WAS A CHALLENGE

TO THE BALLOT SUMMARY ENTITLED
AS NOT ENCLOSING THE TRUTH OF
THE AMENDMENT, AND THE PROBLEM
THERE WAS THE TEXT OF THE
AMENDMENT SAID NOT WITH STANDING
THE RIGHT OF PRIVACY OR GIVE
THAT SAME INFORMATION TO VOTERS,
AND SO THE COURT IN A UNANIMOUS
DECISION DECIDED TO PLACE THE
TEXT ON THE BALLOT.
>> IT MAY HAVE BEEN UNANIMOUS
WITH REGARD TO THE RESULT OF IT,
BUT WITHOUT AN OPINION WE DON'T
KNOW WHAT THE RATIONAL OR BASIS
OR AUTHORITY FOR THAT, DO WE?
>> YOUR HONOR, CERTAINLY IT
WOULD BE PREFERABLE IF IT WERE A
PUBLISHED OPINION.
>> WHAT IS THE AUTHORITY OF THE
COURT TO DO THAT.
WHAT IS A LITTLE BIT TROUBLING
TO ME IS THERE WAS A RESOLUTION
PASSED BY THE REQUISITE NUMBER
IN THE HOUSE AND SENATE?
>> YES, YOUR HONOR.
>> BE IT FURTHER RESOLVED THAT
THE FOLLOWING TITLE AND
STATEMENT BE PLACED ON THE
BALLOT, AND THAT ALSO WAS A PART
OF WHAT WAS PASSED BY THE
LEGISLATURE, AND SO NOW YOU'RE
ASKING US TO SAY, NO, THAT'S NOT
WHAT THE LEGISLATURE REALLY
WANTED.
>> YOUR HONOR, I AM ASKING THIS
COURT ON BEHALF OF THE

APPELLANTS TO SAY THAT IS NOT A
REQUIRED PORTION.
THAT'S NOT REQUIRED.
INSTEAD THE TEXT OF THE
AMENDMENT AND THE SUMMARY ARE
INDEPENDENT.
THE PURPOSE OF THE LEGISLATURE
PASSING THE RESOLUTION WAS TO
PUT AMENDMENT 9 ON THE BALLOT
FOR A DECISION BY THE VOTERS.
IN FACT, THE TEXT OF THE
AMENDMENT APPEARS ON
CONSTITUTION UPON VOTER
APPROVAL.
>> THAT'S REALLY AT ANY PROPOSED
CONSTITUTIONAL AMENDMENT.
WHAT YOU SEE ON THE BALLOT IS
NOT WHAT REALLY ENDS UP IN THE
CONSTITUTION AS THE ACTUAL TEXT.
THAT'S NOT DIFFERENT FROM ANY
OTHER.
>> NO, YOUR HONOR, BUT THE
DECISION IS TO PRESENT THE
AMENDMENT TO THE VOTERS FOR A
DETERMINATION, AND THAT'S A
DETERMINATION THAT WAS MADE BY
SUPERMAJORITY OF THE
LEGISLATURE.
THEY DIDN'T WANT TO PUT THIS TO
A VOTE ON THE MERIT, AND THAT
JUDGMENT IS ENTITLED TO RESPECT.
AT THE TRIAL COURT LEVEL, WE
OBVIOUSLY HAD A MEEKEST
APPEARANCE BY THE LEGISLATURE.
THEY SUPPORTED THE REMEDY AND IN
FACT SUGGESTED THIS REMEDY IN

THE MEEKEST BRIEF IN THE HOOD CASE.
THAT MEEKEST BRIEF WAS STRICKEN FOR OTHER REASONS, BUT THIS IS A REMEDY SUPPORTED BY THE LEGISLATURE, IS CONSISTENT WITH THE COURTS AUTHORITY TO UPHOLD ACTIONS OF THE LEGISLATURE IF THERE IS IN THE REASONABLE WAY IT CAN BE DONE, AND HERE THERE IS SUCH A WAY, AND THAT WAY IS TO ALLOW VOTERS TO VOTE ON THE TEXT OF THE AMENDMENT, AND IT'S IMPORTANT THAT THE BALLOT SUMMARY IS FOR THE CONVENIENCE OF THE VOTERS.
THE 2000 AMENDMENT TO SECTION 101.161 EXPECTED THE LEGISLATURE FROM A PLAN STATEMENT OR VOWED SUMMARY EXPLAINING THE CHIEF PURPOSE.
>> IN TYPICAL SEVERANCE SITUATIONS WITH LEGISLATION YOU FIND A PROVISION THE LEGISLATURE PUTS IN THERE.
THERE'S NOTHING LIKE THAT IN THE RESOLUTION.
>> YOUR HONOR, THERE IS NOTHING IN THE RESOLUTION, BUT AT THE SAME TIME THIS COURT HAS SEVERED LEGISLATION WITHOUT EXPRESSED PROVISIONS.
BUSTER WAS A GOOD EXAMPLE.
AS I RECALL THERE WAS NO EXPRESSED AUTHORITY AND THE COURTS LOOKED AND DETERMINES THE

STATUTE EVEN WHEN SEVERED COULD
STILL FULFILL ITS PURPOSE.
>> AND THE LEGISLATURE KNOWS IT
REALLY DOESN'T HAVE TO DO A
SUMMARY.
DIDN'T WE HAVE AN EARLIER AMOUNT
THAT WE WERE PROPOSED AMENDMENT
DISCUSSING THAT THE ACTUAL
LANGUAGE OF THE PROPOSED
AMENDMENT, SO THE LEGISLATURE
CLEARLY KNOWS THAT IT COULD JUST
PUT THE LANGUAGE OF THE ACTUAL
AMENDMENT, CORRECT?
>> YOUR HONOR, THE LEGISLATURE
DOES REALIZE THAT.
IN THE SAME WAY THE LEGISLATURE
REALIZES WHAT THE COURT DID IN
HOOD.
IT WAS PART OF THE CASE IN HOOD,
AND IT'S AWARE OF WHAT THE COURT
DID IN HOOD AS AWARE OF THAT
BEING AN AVAILABLE REMEDY.
>> NOW THERE ARE CASES WHERE
THAT REMEDY WAS NOT DONE AND WE
IN FACT STRUCK THE BALLOT
SUMMARY, AND DID NOT REPLACE IT
WITH THE ACTUAL --
>> YOUR HONOR, THERE ARE NO
CASES IN WHICH THE COURT SAID
THAT HOOD WAS UNAVAILABLE IN
WHICH THE COURT SAID THAT THE
AMENDMENT OF THE TEXT COULD NOT
BE PLACED ON THE BALLOT.
INSTEAD, HOOD IN THE 2004
DECISION IS REALLY THE ONLY CASE
THAT DISCUSSES THIS ISSUE, AND

AGAIN, WOULD HAVE BEEN IDEAL FOR
PUBLISHED OPINION, BUT IT'S THE
ONLY CASE THAT DISCUSSES THIS
ISSUE.
>> SO WHAT ABOUT SMITH V.
AMERICAN AIRLINES?
IT CERTAINLY TOUCHES ON THE
ISSUE.
WHETHER WHAT THEY DISCUSSED IS
THERE, BUT THE COURT HAS THE
AUTHORITY TO REWRITE THE BALLOT
SUMMARY TO CONFIRM TO THE
STATUTE AND IT REVEALED NO
AUTHORITY TO DO SO.
>> THEY DO SAY THAT, BUT THAT'S
A VERY DIFFERENT ISSUE.
SMITH TALKS ABOUT WHETHER THE
COURT CAN REWRITE THE SUMMARY,
AND SMITH WAS DONE AT A TIME
WHERE WAS THE LEGISLATURE TO
HAVE A SUMMARY BALLOT.
SMITH IS BEFORE 2000.
TO REWRITE WOULD BE TO REMOVE
THE THREE CHALLENGE RACES.
IT WOULD BE TO FIX THE SUMMARY
TO CONFORM TO THE STATUTE, BUT
THAT IS NOT THE RELIEF WE SEEK.
IN ADDITION, HOOD CAME OVER A
DECADE AFTER SMITH, AND THE
COURT WAS CERTAINLY AWARE OF
SMITH AND ALL THE OTHER CASES
WHEN IT DECIDED HOOK, AND SO
SMITH DEALS WITH A VERY
DIFFERENT SITUATION.
IF WE ASKED THE COURT TO LEAVE
THE -- BUT TAKE OUT THE FIRST

20 WORDS, YOU QUESTION WHETHER
IT WAS A HOLDING, BUT IT DEALS
WITH AN ENTIRELY DIFFERENT
CONTEXT.
YOUR HONORS, THE LEGISLATURE IS
A SEPARATE COEQUAL BRANCH THAT
IS EXPRESSLY AND UNIQUELY
EMPOWERED TO EM POSE AMENDMENTS
TO THE PEOPLE.
IN THIS SITUATION, THEY DECIDE
THAT THE PEOPLE SHOULD HAVE THE
CHANCE TO VOTE ON AMENDMENT 9.
THE TEXT OF THE AMENDMENT HAS
NOT BEEN CHALLENGED EITHER AT
THE TRIAL COURT LEVEL OR AT THIS
COURT.
THE TEXT OF THE AMENDMENT 9 MORE
THAN SATISFIES ANY APPLICABLE
STANDARDS AS IS ACCURATE, DOES
NOT CONTAIN THE SUMMARY
CHALLENGED LANGUAGE, THOSE THREE
PHRASES, AND USES CLEAR AND
UNAMBIGUOUS LANGUAGE.
THE TEXT OF AN AMENDMENT IS
SURELY ITS SUBSTANCE.
I WOULD ALSO SAY THERE IS NO
REASON WHY THIS COURT CANNOT
RELY COMPETITIVE ADVANTAGE ON
HOOD.
IT DEALS WITH SIMILAR IF NOT THE
SAME CIRCUMSTANCES.
BALLOT CHALLENGES WERE MEANT TO
PROTECT, NOT DISENFRANCHISE
VOTERS.
THEY ARE NOT MEANT AS A SANCTION
PUNISHMENT FOR DRAFTING ERRORS.

IN THE SAME WAY, COURT SHOULD
STRICT LEGISLATIVE ACTIONS ONLY
WHEN THERE IS NO OTHER CHOICE.
THERE IS A CHOICE HERE.
PLACING THE TEXT OF AMENDMENT 9
ON THE BALLOT EXPRESSES THE
VOTER AUTHORITY AND THE INHERENT
RIGHTS OF PROPOSED AMENDMENT AND
CURES ANY CONCERNS.
ACCORDINGLY WE REQUEST THE
COURT REVERSES THE TRIAL
DECISION IN THE TEXT OF THE
AMENDMENT 9 ON THE BALLOT.
I'D LIKE TO RESERVE MY REMAINING
TIME.
>> MAY IT PLEASE THE COURT.
I'M GARY EARLY, AND WITH ME AT
THE COUNSEL TABLE ARE LAW
PARTNERS.
YOUR HONOR, THIS CASE IS A CASE
IN WHICH WE'RE DEALING WITH A
SINGLE ISSUE, AND THAT IS THE
SUBSTITUTION OF THE FULL TEXT OF
THE AMENDMENT FOR THE LAWFULLY
ADOPTED BALLOT SUMMARY THAT WAS
PASSED BY THE LEGISLATURE, AND I
THINK THAT ONE THE ISSUES AND
MAYBE A PRIMARY ISSUE IS THE
PRESUMPTION PUT FORTH THAT THE
TEXT OF THE AMENDMENT WILL
CLEARLY AND UNAMBIGUOUSLY
EXPRESS THE CHIEF PURPOSE AND
EFFECT OF THE AMENDMENT, AND
THERE HAS BEEN NO FINDING IN
THIS CASE.
THAT ISSUE WAS NOT RAISED IN THE

LOWER COURT.
IT WAS THE BALLOT SUMMARY THAT
WAS FOUND TO BE MISLEADING AND
HAD THE AMENDMENT REMOVED.
THE ISSUE OF WHETHER OR NOT THE
ACTUAL AMENDMENT WOULD INFORM
THE ELECTOR OF THE MEASURE WAS
NEVER RAISED.
I DIRECT THE COURT'S ATTENTION
TO THE CASE OF WAD HAM AND THE
COUNTY IN WHICH CASE THE COURT
DEALT WITH THE ISSUE OF THE FULL
TEXT OF AN AMENDMENT AND WHETHER
OR NOT THAT AMENDMENT FORMED THE
ELECTORATE OF THE PURPOSE.
IN THIS CASE THE BOARD OF COUNTY
PUT AN INITIATIVE ON THE BALLOT
THAT WOULD HAVE AFFECTED THE WAY
--
>> WHAT CASE ARE YOU TALKING
ABOUT?
>> WADHAMS V. BOARD OF THE
COUNTY.
THEY PLACED AN AMENDMENT ON THE
BALLOT THAT WOULD HAVE HAD THE
AFFECT OF ESTABLISHING A
SCHEDULE BY WHICH THE COUNTY
COMMISSIONERS WOULD CONDUCT
THEIR MEETINGS, AND IF OTHER
SPECIAL MEETINGS WERE HELD IT
WOULD REQUIRE UNANIMOUS
APPROVAL.
ON THE FACE THE COURT SAID THIS
WAS A ABSOLUTELY CORRECT
STATEMENT OF WHAT THIS AMENDMENT
WAS GOING TO DO.

IT DIDN'T ADVICE THE
ELECTORATE THERE WERE OTHER
THINGS THEY HAD IN THE
CONSTITUTION THAT WOULD BE
SUPERSEDED BY THIS AMENDMENT.
IN THIS CASE, THIS COURT SAID
EVEN THOUGH THIS WAS AN
ABSOLUTELY CORRECT STATEMENT, IT
DID NOT CLEARLY AND
UNAMBIGUOUSLY MAINTAIN THE
SUBSTANCE, AND THEY ULTIMATELY
STRIKE EVEN THOUGH THAT
WAS AFTER THE ELECTION, THE
COURTS SAID IT WAS NOT --
>> IS THIS ARGUMENT IN YOUR
BRIEF?
THE ARGUMENT YOU ARE MAKING NOW?
>> YES, I BELIEVE WE SITE --
>> I UNDERSTAND THAT.
DID YOU MAKE THIS ARGUMENT THAT
THE TEXT OF THE AMENDMENT ITSELF
IS MISLEADING?
IS THAT WHAT YOU'RE ARGUING.
>> I THINK WHAT I'M ARGUING HERE
>> WHAT ARE YOU ARGUING?
>> I AM, THE SUGGESTION IS MADE
ALTHOUGH I DON'T SEE IT IN THE
BRIEF.
THE SUGGESTION IS MADE THE
AMENDMENT CAN BE REPLACED ON THE
BALLOT BECAUSE IT'S THE
SUBSTANCE, AND THAT FINDING HAS
NOT BEEN MADE.
IT WASN'T RAISED IN THIS CASE.
>> I UNDERSTAND THAT.
BUT YOU DID NOT ARGUE IN YOUR

BRIEF HERE THAT THE SUBSTITUTION OF THE TEXT FOR THE SUMMARY IS PROBLEMATIC BECAUSE THE TEXT ITSELF IS MISLEADING, DID YOU?
>> NO, NOT IN THOSE TERMS AND PRIMARILY --
>> I THOUGHT THAT WAS WHAT YOU'RE ARGUING NOW.
>> IT IS BECAUSE I HEARD THE ARGUMENT NOW THAT WE CAN JUST REPLACE THIS AMENDMENT --
>> I THINK THAT WAS IN THE INITIAL BRIEF.
>> YES.
THERE ARE OTHER REASONS WHY THIS AMENDMENT CANNOT BE PLACED ON THE BALLOT, AND THE FIRST IS I THINK HAS BEEN ELUDED TO IN THE PREVIOUS DIRECT ARGUMENT IS THAT IT'S NOT WHAT WAS PROPOSED.
ARTICLE 11 SECTION 1 OF THE CONSTITUTION PROVIDES THAT THE LEGISLATURE HAS THE AUTHORITY TO PROPOSE AN AMENDMENT AND IT MAY BE PROPOSED BY JOINT RESOLUTION, AGREED TO BY THREE-FIFTHS AND THE JOINT RESOLUTION AND EACH MEMBER VOTING SHOULD BE ENTERED.
THE JOINT RESOLUTION HAS THE BALLOT TITLE, SUMMARY, AND THE AMENDMENT.
IN THIS CASE THE LEGISLATURE VOTED ON ALL THESE OF THOSE AND ADOPTED.
IT PROVIDES THAT THE WORDING OF THE SUBSTANCE AND BALLOT TITLE

BE ENCOMPASSED IN THE JOINT RESOLUTION, AND IN THIS CASE IT WAS.
AND HOUSE JOINT RESOLUTION 37 PROVIDES BE IT FURTHER RESOLVED THAT THE FOLLOWING TITLE AND STATEMENT BE PLACED ON THE BALLOT, AND IT IS THAT STATEMENT THAT WAS FOUND TO HAVE CONTAINED DEFINITIVELY MISLEADING STATEMENTS, AND WE BELIEVE IT'S NOT WITHIN THE CONSTITUTIONAL AUTHORITY OF THE COURT TO DECIDE WHICH PORTIONS OF A JOINT LEGISLATION ARE PASSED AND WHICH ARE DISCARDED.
>> LET ME ASK YOU ABOUT ACLU V. HOOD, AND I AGREE WITH YOU THIS IS NOT A BINDING PRECEDENT ON THAN IT'S BINDING ON A LOWER COURT.
I UNDERSTAND IT DOESN'T HAVE THE SAME STATUS AS A PUBLISHED OPINION OR EVEN A PUBLISHED ORDER, BUT ISN'T IT SOMETHING THAT WE OUGHT TO TAKE NOTICE OF?
I MEAN, THIS COURT BACK IN 2004 UNANIMOUSLY DID JUST WHAT YOU SAY WE CAN'T DO IN THIS CASE.
NOW, I AGREE.
THERE IS NO REASONING.
THE COURT SAID OPINION FOLLOWS AND LATER WE SAID, FORGET ABOUT THAT, AND SO THERE WAS NO OPINION, BUT WE KNOW WHAT HAPPENS.

WE KNOW WHAT THIS COURT DID AND WHAT ONE WOULD, I THINK, REASONABLY INFER THAT THE COURT UNANIMOUSLY HAD CONCLUDED THAT WHAT WE WERE DOING WAS LEGAL. WOULDN'T YOU AGREE?
>> I SUPPOSE THAT BASED ON THE FACTS AND CIRCUMSTANCES THAT EXISTED IN 2004 WHICH UNFORTUNATELY WE CAN'T DETERMINE THAT AT THAT TIME THE COURT ASSUMED WAS DOING WAS LEGAL, CERTAINLY.
>> OKAY, SO ISN'T THAT SOMETHING THAT WE OUGHT TO AT LEAST CONSIDER IN THIS CASE?
IT'S NOT TECHNICALLY IRRELEVANT TO THE WAY WE DEAL WITH THIS CASE.
>> IT IS AN UNESTABLISHED ORDER AND THAT'S NOT COMPLETELY AND IT'S LIKE A MEMORANDUM BY A RULING OF THE CASE FOLLOWED BY A CASE CITATION.
YOU CAN'T REALLY DETERMINE WHAT THE BASIS OF THE COURT'S DECISION WAS.
I WENT THROUGH AND LOOKED THROUGH THE COURT'S DOCKET THE OTHER DAY TO SEE WHAT ELSE OF ON THE FILE AND I NOTICED ON JUNE 10, 2010 THE LAST ENTRY WAS FILE DESTROYED, SO AS FAR AS I KNOW I DON'T KNOW THAT THERE'S ANY PUBLIC DEPOSITORY OF BRIEFS.
I CAN'T TELL YOU WHAT WAS

ARGUED.
AT THE TIME THE ONLY MEMBERS OF THIS COURT ON THE COURT IS JUSTICE LEWIS AND PARIENTE.
THEY MAY PROVIDE RECOLLECTION OF WHAT WAS DISCUSSED AND WHAT HAPPENED.

>> THERE IS NO, NO DECISION THAT CAN BE RELIED UPON, IN TERMS OF PRECEDENCE, AS YOU HAVE WITH SMITH VERSUS AMERICAN AIRLINES, AND, ARMSTRONG VERSUS HARRIS AND SOME OF THE OTHER CASES THAT ARE VERY DEFINITIVELY -- SAY YOU DON'T NECESSARILY, THE SUBSTANCE OF THE AMENDMENT MAY NOT ACCURATELY REFLECT THE CHIEF PURPOSE AND EFFECT OF AN AMENDMENT.
AND, ARMSTRONG V HARRIS SAYS THAT.
AND, ASKEW VERSUS FIRESTONE MAKES ALLUSION TO THAT AND IN EACH OF THOSE CASES THAT WHAT IS WE ARE DEALT WITH.
>> BOTH THE HOUSE AND THE SENATE HAVE TAKEN A POSITION IN THIS CASE, THAT PUTS THE TEXT ON THE BALLOT AND -- INSTEAD OF THE SUMMARY, HAVE THEY NOT.
>> THEY FILED AN AMICUS BRIEF BELOW AND ARE NOT PARTICIPATE PANTS IN THE APPEAL AND BELOW THEY FILED AN AMICUS WITH THE JUDGE, YES, SIR.

>> WHAT SIGNIFICANCE SHOULD WE PLACE ON THAT.
>> YOU PLACE THE SIGNIFICANCE ON THAT, WITH THE SAME DEGREE THAT YOU WOULD PLACE THE SIGNIFICANCE OF A SITTING MEMBER OF THE LEGISLATURE, TESTIFYING AS TO THE INTENT OF A PARTICULAR PIECE OF LEGISLATION.
I DON'T BELIEVE THAT -- THE LEGISLATIVE INTENT AND WHAT IS BEHIND A PIECE OF LEGISLATION IS EXPRESSED IN THE LEGISLATIVE HISTORY.
NOT IN WHAT THEY MAY FILE AFTER THE FACT, TO SUPPORT.
ONE OF THE THINGS THAT HAS --
>> ONE THING FOR AN INDIVIDUAL MEMBER OF -- TO TAKE A POSITION, BUT WHAT HAS BEEN FILED BELOW, THE HOUSE, AS THE HOUSE OF REPRESENTATIVES AND THIS FLORIDA SENATE, RIGHT?
>> APPEARING AT THE HOUSE AND SENATE, CORRECT.
ONE OF THE ISSUES THAT HAS TO BE CONSIDERED IS THE EXTENT TO WHICH -- AGAIN, WE HAVE MISLEADING BALLOT SUMMARY LANGUAGE VOTED ON BY THE LEGISLATURE.
AND THERE HAS TO BE SOME RECOGNITION THAT THAT WAS PUT IN, IMMEDIATELY PRIOR TO THE FINAL VOTE.
AS WE HAVE LEARNED THROUGH THE

BRIEFS, OF THE SECRETARY, THIS
BILL HAD 63 CO-SPONSORS.
IN ORDER TO REACH THE 3/5
NECESSARY TO PASS A LEGISLATIVE
AMENDMENT YOU NEEDED 72 VOTES SO
THE LANGUAGE WAS PUT EN THREE
DAYS PRIOR TO THE VOTE.
ASCRIBES BENEFICIAL PURPOSES
AND WHO COULD ARGUE WITHOUT
HAVING WAITING LISTS FOR HEALTH
CARE AND THE PRESERVATION OF THE
DOCTOR-PATIENT RELATIONSHIP AND
IT WAS PUT IN IMMEDIATELY PRIOR
TO THE VOTE, AND WE DON'T KNOW
WHY, I CAN'T GIVE YOU ANY KIND
OF INDICATION.
I DON'T KNOW THAT THIS COURT CAN
FIGURE OUT WHY THOSE 72
LEGISLATORS VOTED, OR MORE VOTED
FOR THE BILL, BUT THE FACT --
THE TIMING AND THE FACT THAT THE
LANGUAGE WAS PUT IN IMMEDIATELY
PRIOR TO THE FINAL VOTE, COULD
LEAD ONE TO BELIEVE THAT IT WAS
PUT IN TO GAIN THE NECESSARY
VOTES FOR FINAL PASSAGE.
AND, IT WAS CLEARLY MISLEADING.
THERE IS NO QUESTION.
THE JUDGE WENT THROUGH IN HIS --
BOTH --
>> WHAT WE CAN ASSUME FROM THE
SEQUENCE OF CIRCUMSTANCES, IS
THAT THE LEGISLATURE ONLY PASSED
THIS BASED ON CONTAINING
MISLEADING LANGUAGE.
>> I DON'T THINK WE CAN MAKE ANY

ASSUMPTION OR PRESUMPTION AS TO
WHAT -- BUT IT IS AS REASONABLE
AN EXPLANATION OF WHY THE
LANGUAGE APPEARED AFTER HAVING
BEEN SUBMITTED FOR
CONSIDERATION, BY THE HOUSE OF
REPRESENTATIVES, EARLY IN THE
SESSION, SIX WEEKS LATER, A
COUPLE OF DAYS PRIOR TO THE
FINAL VOTE, THIS LANGUAGE
APPEARS, THAT HAS ABSOLUTELY
NOTHING TO DO -- YOU CANNOT READ
THE DISPUTED BALLOT SUMMARY AND
THE AMENDMENT AND --
>> YOU KNOW, YOU TALKED ABOUT
THE INTENT OF THE LEGISLATURE.
AND, I THINK SO YOU WANT TO US
FOCUS ON THE INTENT OF THE
LEGISLATURE AS IT IS ACTUALLY
REFLECTED IN WHAT THEY PASSED
AND I AGREE WITH YOU.
I THINK THAT IS RIGHT.
BUT, CAN'T YOU LOOK AT WHAT THEY
PASSED?
BEYOND A SHADOW OF A DOUBT, THAT
THEIR PREEMINENT INTENT AND
PURPOSE WAS TO GIVE THE PEOPLE
OF FLORIDA AN OPPORTUNITY TO
VOTE ON THIS PARTICULAR
AMENDMENT TO THEIR CONSTITUTION
RELATED TO HEALTH CARE.
>> THAT MAY HAVE BEEN THEIR
INTENT BUT THE FACT IS THAT WHAT
THEY PASSED AND WHAT THE
LEGISLATURE INTENDED TO HAVE
PRESENTED TO THE PEOPLE FOR

THEIR VOTE WAS NOT AN ACCEPTABLE BALLOT SUMMARY.
AND IT WAS FOUND TO BE SO AND, THE REMEDY IN THIS CASE, OTHER THAN HOOD, OTHER THAN HOOD, THE REMEDY ACROSS THE BOARD FOR EVERY TYPE OF BALLOT, JOINT RESOLUTION FOR INITIATIVE, FOR A CONSTITUTIONAL REVISION COMMISSION ANOTHER TAXATION AND BUDGET REVISION COMMISSION, THE REMEDY IS CONSISTENTLY AND UNANIMOUSLY WITH ONE EXCEPTION TO REMOVE THE AMENDMENT FROM THE BALLOT, TO SEND IT BACK TO THE SPONSORING ENTITY, AND TO HAVE THEM COME BACK NEXT SESSION, NEXT YEAR, WITH SOMETHING ACCEPTABLE.
AND WE BELIEVE THAT THAT IS WHAT SHOULD HAPPEN IN THIS CASE AND TO DO OTHERWISE, YOUR HONOR, I BELIEVE, SETS UP A TWO-TIERED SYSTEM OF BALLOT -- AMENDMENT PRESENTATION.
YOU WOULD HAVE THAT, THAT IS PROPOSED BY THE LEGISLATURE AND THE LEGISLATURE WOULD ALWAYS HAVE A PASS, BECAUSE NO MATTER WHAT THE LEGISLATURE PLACED IN A BALLOT SUMMARY, NO MATTER WHAT TYPE OF POLITICAL COMMENTARY MIGHT GO INTO A BALLOT SUMMARY, IT IS ALMOST AS IF THE LEGISLATURE IS GIVEN THE AUTHORITY TO PLEAD IN THE

ALTERNATIVE.
AND, TO SAY, OKAY.
HERE'S OUR BALLOT SUMMARY BUT WE KNOW IF IT DOESN'T MAKE IT, IF SOMEBODY CHALLENGES, WE'RE GOING TO BE ABLE TO FALL BACK ON THE FACT THAT WE CAN HAVE THE AMENDMENT PLACED ON -- AND THAT IS A REMEDY NOT AVAILABLE TO CITIZEN INITIATIVES AND NOT AVAILABLE TO ANY OF THE OTHER MECHANISMS AND THIS COURT RECOGNIZED OVER THE YEARS, THAT THERE IS A BALANCE THAT HAS TO BE MAINTAINED, BETWEEN THE TYPES OF MECHANISMS FOR PROPOSING AMENDMENTS BECAUSE THE COURT RECOGNIZED YOU DON'T WANT TOO MUCH POWER IN THE LEGISLATURE, YOU DON'T WANT TOO MUCH POWER IN THE CONSTITUTIONAL COMMISSION, OR, IN THE PEOPLE.
THEY ALL HAVE TO BE --
>>... [INAUDIBLE] SIGNIFICANTLY FROM THE FACT THAT THEY DIDN'T HAVE TO DO A BALLOT SUMMARY IN THE FIRST PLACE.
>> BUT THEY DID.
I MEAN, THAT IS THE ANSWER, THEY DID.
THEY DECIDED THAT FOR WHATEVER REASON, THEY DIDN'T -- DECIDED TO DO SOMETHING DIFFERENT THAN THEY DID IN 7.
AND DECIDED THEY WERE GOING TO HAVE AS PART OF THE JOINT

RESOLUTION A STATEMENT TO BE
PRESENTED TO THE VOTERS AND THE
SUGGESTION THAT THAT CAN BE
SEVERED, I DON'T KNOW THAT THAT
IS APPLICABLE IN A CASE OF A
BALLOT INITIATIVE AND, ALSO, THE
ISSUE OF DEFERENCE AS WELL.
I MEAN, THE SUGGESTION HAS BEEN
THAT THE COURT OWES AN
OBLIGATION TO PREFER AND PROVIDE
DEFERENCE TO A CO-EQUAL BRANCH
OF GOVERNMENT AND NO DOUBT THAT
THAT IS THE CASE BUT ARMSTRONG
V. HARRIS, THE COURT SAID WE OWE
AN EQUAL AMOUNT OF DEFERENCE TO
THE OTHER BALLOT AMENDMENT
PROPOSALS THAT COME BEFORE US.
>> AND SOMETHING ABOUT THE
ACTUAL LANGUAGE HERE.
I KNOW THAT THERE IS A
CONFESSION THESE THREE POINTS, I
BELIEVE, THE WAITING LIST OF THE
PATIENT/DOCTOR MANDATE.
>> PREVENTING MANDATES.
>> ISN'T THERE LANGUAGE --
>> THE WORD "MANDATE" DOES NOT
APPEAR IN THE LANGUAGE ITSELF.
>> WOULD YOU SAY THERE IS'
PROBLEM WITH IT?
>> I HAVE TO GO THROUGH THE
AMENDMENT, AGAIN, MY
RECOLLECTION IS THAT IT IS NOT
IN THERE AND I DON'T THINK JUDGE
SHELTER FOUND IT.
AND EVEN IF THE WORD "MANDATE"
WERE IN IT, THERE IS SOMETHING

THAT DEALS WITH THE PRESERVATION OF THE DOCTOR-PATIENT RELATIONSHIP AND IS STRICTLY AN AMENDMENT THAT GOVERNS HOW DOCTORS OR HOW HEALTH CARE PROFESSIONALS ARE TO BE PAID.
>> YOU KNOW, THAT WAS MY QUESTION.
AND I WILL ASK THE -- WHAT IS -- WHAT DOES THE AMENDMENT DO? WHAT IS IT ALL ABOUT?
>> IT IS AN AMENDMENT DESIGNED TO MAKE SURE A PRIVATE INDIVIDUAL, REGARDLESS OF THEIR PARTICIPATION IN A HEALTH CARE PLAN MAY SEEK AND RECEIVE MEDICAL CARE AND PAY OUT OF THEIR OWN POCKET.
I CAN'T ASCRIBE A PARTICULAR MOTIVE -- BUT THAT --
>> IS THAT... [INAUDIBLE].
>> I DON'T THINK THE FACT THAT THE AMENDMENT WAS PASSED IMMEDIATELY AFTER THE PASSAGE OF THE FEDERAL HEALTH CARE ACT IS A COINCIDENCE, BUT WHETHER THAT IS THE PRIMARY PURPOSE AND EFFECT OF THE AMENDMENT IS NOT MY DECISION.
AND IS NOT FOR ME TO SAY BUT I DON'T THINK IT IS ENTIRELY COINCIDENTAL.
>> TELL ME ONCE MORE, WHAT YOU THINK THE PRIMARY PURPOSE IS, IS TO MAKE SURE THAT A PRIVATE INDIVIDUAL CAN PAY DIRECTLY TO

THEIR HEALTH CARE PROVIDER.
>> REGARDLESS OF WHETHER THEY ARE AT A HEALTH CARE PLAN OF ANY KIND, THAT IT ALLOWS AN INDIVIDUAL TO PAY PRIVATELY AND HEALTH CARE PROVIDER AND THEY WOULD BE UNDER NO SANCTION FOR NOT GOING INTO SOME KIND OF PUBLIC OR PRIVATE HEALTH CARE PLAN.
I THINK THAT IS PROBABLY ABOUT AS QUICKLY AS I CAN SUMMARIZE IT.
BUT, IN ANY EVENT, I DON'T THINK THE TERM MANDATES IS IN THE PROPOSAL.
AND, AGAIN, WHETHER MANDATES WERE IN THERE -- CLEARLY, WAITING LISTS OR NOT AND THERE IS NOTHING THERE THAT AFFECTS THE DOCTOR-PATIENT RELATIONSHIP WHICH IS A LEGAL RELATIONSHIP THAT EXISTS BETWEEN A DOCTOR AND A PATIENT.
SO... THOSE ARE EFFECTS THAT ARE -- HAD THOSE GONE TO THE VOTERS, I THINK THEY -- MANY PEOPLE WOULD HAVE SAID, GOSH, THAT SOUNDS GREAT.
HOW CAN I VOTE AGAINST THAT?
AND, THE JUDGE AGREED AND REMOVED THE -- THAT PORTION OF THE JOINT RESOLUTION AND IN SO DOING DETERMINED HE DIDN'T HAVE THE AUTHORITY UNDER SMITH V. AMERICAN AIRLINES AND OTHER

CASES DECIDED BY THE COURT TO
ESSENTIALLY GO IN AND TO ASSUME
THE ROLE OF THE LEGISLATURE IN
THE BALLOT, IN THE AMENDMENT
PROCESS AND THAT IS WHAT THE
SECRETARY SUGGESTS, I THINK,
THAT THIS COURT DO.
IS DETERMINE WHICH PIECES OF
THIS RESOLUTION THAT WAS VOTED
ON BY 3/5 OF THE LEGISLATURE,
ARE WORTHY OF KEEPING AND WHICH
ARE NOT WORTHY OF KEEPING, AND,
THE DISTINCTION BETWEEN THAT,
BETWEEN DISCARDING A PIECE AND
KEEPING A PIECE IS NO DIFFERENT
THAN REWRITING.
THE SUGGESTION THAT REWRITING IS
SOMEHOW DIFFERENT THAN WHAT THE
SECRETARY IS ASKING THE COURT TO
DO, I THINK IS A DISTINCTION
WITHOUT MUCH OF A DIFFERENCE.
AND, IN EITHER EVENT, THE
SECRETARY IS ASKING THIS COURT
TO ASSUME THE ROLE OF THE
LEGISLATURE.
SO... IF THERE ARE NO FURTHER
QUESTIONS, I AM JUST ABOUT OUT
OF TIME AND I WILL SAVE THE
REMAINING 40 SECONDS.
THANK YOU.
>> [INAUDIBLE].
>> QUESTION OF WHAT IS IT THAT
THIS AMENDMENT DOES.
>> YES, YOUR HONOR.
IT WOULD PROHIBIT COMPELLED
PARTICIPATION IN THE HEALTH CARE

SYSTEM, BY AUTHORIZING ANY
PERSON OR EMPLOYER TO PAY IN
HEALTH CARE PROVIDERS TO BE PAID
DIRECTLY FOR HEALTH CARE
SERVICES, WITHOUT A FINE OR A
PENALTY.
>> PROHIBITS A PERSON FROM
PARTICIPATING IN HEALTH CARE
SYSTEMS.
>> PROHIBITS COMPELLED
PARTICIPATION, YOUR HONOR.
AND, AGAIN, THAT WAS MENTIONED
BY COUNSEL THE WISDOM OR MERITS
OF THE AMENDMENT ARE FOR THE
VOTERS TO DETERMINE.
>> I WASN'T ASKING THAT BECAUSE
OF THE LIST -- THE MERITS OF IT,
I AM ASKING BECAUSE, AS A READER
OF THE AMENDMENT, I WASN'T SURE
WHAT THE AMENDMENT WAS DOING AND
SO I'M QUESTIONING WHETHER OR
NOT PUTTING THE AMENDMENTS ON
THE BALLOT A PERSON WOULD
UNDERSTAND WHAT THE CHIEF
PURPOSE OF IT IS AND WHAT IT
DOES AND THAT IS WHY I WANTED TO
KNOW WHAT IS THE PURPOSE OF IT.
>> AND, YOUR HONOR, AT THE TRIAL
COURT LEVEL, APPELLEE'S COUNSEL
CITED THE TEXT OF THE AMENDMENT
AND SAID IT WAS CLEAR WHAT IT
DID AND DID NOT DO.
>> MAYBE HE DID, BUT...
[INAUDIBLE].
>> I WOULD LIKE TO ADDRESS THAT
SOMEHOW THE REMEDY ISSUE WAS NOT

ADDRESSED BELOW.
APPELLANTS FILED A MOTION, THAT
WAS BRIEFED AND WE HAD A FULL
HEARING ON THE MOTION, REMEDY
AND IT WAS ALSO A SUBSTANTIAL
PART OF THE FINAL HEARING.
AND, IN THE ANSWER BRIEF
APPELLEES SAID IN FOOTNOTE THREE
THE ARGUMENTS WERE NOT DIRECTLY
AT ISSUE IN THIS CASE SO I THINK
IT IS FAIR TO SAY YOUR HONORS
THAT THOSE ISSUES HAVE BEEN
WAIVED AND THE TEXT OF THE
AMENDMENT HAS NOT BEEN ATTACKED
AND APPELLEES CHOSE TO ACCEPT IT
AND IT WAS A REVERSE OF WHAT THE
TRIAL COURT HAD DONE AND THE
TRIAL COURT SAID... [INAUDIBLE]
ARE FINE AND THIS COURT REACHED
DOWN AND SAID, NO, THERE WILL BE
A DIFFERENT OUTCOME AND THE
BRIEFS ARE PUBLICLY AVAILABLE ON
THE INTERNET.
WE CERTAINLY HAVE LOOKED AT
THEM.
AND, THERE WAS IN FACT A MOTION
FOR REHEARING BY APPELLANTS,
RAISING THE ISSUE AND IT WAS
STRICKEN AS UNAUTHORIZED.
>> THE ORDER SAID NO MOTION FOR
REHEARING WOULD BE ALLOWED.
>> IT DID, YOUR HONOR BUT
CERTAINLY, APPELLANTS THOUGHT
THERE WAS A SMITH ISSUE.
THE LEGISLATURE TOOK THE SAME
OATH TO PROTECT CONSTITUTION

THAN MEMBERS OF THE COURT DID, IT CANNOT BE ASSUMED IT CAN BE ACTED ON A WHIM AND THEY DID NOT TAKE THEIR DUTIES RESPONSIBLY IN TERMS OF PUTTING FORTH AMENDMENTS TO BE DECIDED BY THE VOTERS.
THERE WERE 63 COSPONSORS.
THAT IS AN INCREDIBLE NUMBER OF COSPONSORS AND SHOWS THE DEPTH OF SUPPORT FOR THE MEASURE.
IN FACT, THE AMENDMENT HAD FIVE COMMITTEE MEETINGS, WEEKS OF REVIEW.
THE AMENDMENT IS WHAT IS IMPORTANT, THAT IS WHAT WOULD BE IN THE CONSTITUTION, THAT IS THE DECISION.
I'D ALSO LIKE TO ADDRESS THE ARGUMENTS THAT SOMEHOW THE LEGISLATURE IS NO DIFFERENT THAN CITIZEN INITIATIVES.
THAT COURT HAS SAID TIME AND TIME AGAIN, THAT THE LEGISLATURE IS DIFFERENT.
THERE ARE CERTAIN THINGS THAT APPLY BOTH TO THE LEGISLATURE AND OTHER KINDS OF PROPOSED AMENDMENTS, AND THE LEGISLATURE HAS ALWAYS BEEN TREATED WITH A LEVEL OF DEFERENCE, AND WE'RE ASKING THE COURT TO -- NOT ASSUME THE ROLE OF THIS LEGISLATURE, TO RECOGNIZE THE NATURE OF THE LEGISLATURE'S AUTHORITY IN THIS AREA, AND, ITS

UNIQUE POWER UNDER THE
CONSTITUTION TO PROPOSE
AMENDMENTS AND FOR VOTERS TO
MAKE A DECISION.
IN OUR VIEW, THE REMEDY OF
PLACING THE TEXT ON THE BALLOT
IS DIFFERENT, AND, IS FOR MORE
CONSISTENT WITH SEPARATION OF
POWERS.
VOTERS WOULD BE DECIDING ON A
BALLOT USING ONLY THE WORDS
"CHOSEN BY THE LEGISLATURE."
THAT IS FAR DIFFERENT THAN THIS
COURT GOING IN TO THE WORK OF
THE LEGISLATURE AND CHANGING
WORDS, TAKING OUT WORDS AND
ADDING WORDS AND INSTEAD, NEIL
CAN VOTE ON THE AMENDMENT AS IS
WRITTEN BY THE LEGISLATURE.
THANK YOU, YOUR HONORS.
>> THANK YOU.
THAT CONCLUDES TODAY'S SESSION
OF THE FLORIDA SUPREME COURT.
>> PLEASE RISE.