

>> 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.

THE FIRST CASE ON OUR DOCKET,  
THIS MORNING, IS FLORIDA  
EDUCATION ASSOCIATION VERSUS THE  
FLORIDA DEPARTMENT OF STATE.

MR. MEYER.

>> GOOD MORNING, MR. CHIEF  
JUSTICE, MEMBERS OF THE COURT,  
MAY IT PLEASE THE COURT, I'M RON  
MEYER, I'M HERE ON BEHALF OF THE  
APPELLANTS IN THIS ACTION, WITH  
ME AT COUNSEL TABLE ARE LAWYERS  
FROM MY OFFICE, LYNN HEARN AND  
JENNIFER BLOOM.

YOUR HONORS, THIS IS A CASE  
INVOLVING THE CORRECTNESS OF  
WHAT WE SUGGEST IS THE  
INCORRECTNESS OF THE BALLOT,  
TITLE AND SUMMARY THAT HAS BEEN  
PROPOSED FOR AMENDMENT 8 TO THE  
FLORIDA CONSTITUTION.

SCHEDULED TO BE PLACED ON THE

GENERAL ELECTION BALLOT THIS  
NOVEMBER.

>> NOW I THOUGHT THAT YOUR  
POSITION IS, IS THAT THE TITLE,  
FIRST, YOU DO NOT ATTACK THE  
TITLE?

IS THAT CORRECT --

>> NO, I DON'T.

>> AND IT SAYS REVISION TO THE  
CLASS SIZE AMENDMENT.

>> YES, MA'AM.

>> ALL RIGHT, AND I UNDERSTAND  
IT, YOU DON'T ATTACK THE SUMMARY  
AS FAR AS WHAT IS IN THERE, AS  
ACCURATELY REPRESENTING WHAT IS  
IN THE AMENDMENT, IS THAT ALL  
THE CORRECT.

>> WE BELIEVE THAT THAT THE  
SUMMARY CORRECTLY REFLECTS AT  
LEAST PARTS OF WHAT IS IN THE  
PRESENT ARTICLE 9 OF THE  
CONSTITUTION, RELATING TO WHAT  
THE PRESENT GOALS FOR CLASS SIZE  
COMPLIANCE ARE, THE FACT THAT IF  
AMENDMENT 8 PASSES IT WILL ALLOW  
AN AVERAGING OF -- PROCESS TO BE  
USED IN CALCULATING THOSE GOALS,  
RATHER THAN A PER-STUDENT HEAD  
COUNTED IN CLASSROOMS.  
AND, THAT ALSO, THAT IT ALLOWS  
FOR INCREASING, BY THREE  
STUDENTS IN K-3 AND FIVE  
STUDENTS, GRADES 4-12, THE  
NUMBER OF STUDENTS WHO CAN BE  
TOLERATED IN A CLASSROOM.  
WE DON'T CHALLENGE THAT, THE

SUMMARY CORRECTLY MENTIONS THOSE ITEMS.

>> YOUR ARGUMENT IS THAT THERE SHOULD BE REFERENCE TO THE FINANCIAL IMPACT OF THIS AMENDMENT.

>> YOUR HONOR, IT IS MORE THAN A FINANCIAL IMPACT.

AND, I THINK IF YOU WILL INDULGE ME A MOMENT, TO SHOW HOW WE GOT HERE.

YOU WILL RECALL, IN 1996, THERE WAS A CASE, THE COALITION VERSUS CHILDS CASE, IN WHICH A COALITION OF SCHOOL DISTRICTS BROUGHT A LEGAL ACTION AGAINST THE STATE, ASSERTING THAT PUBLIC SCHOOLS WERE NOT BEING ADEQUATELY FUNDED IN ACCORDANCE WITH THE CONSTITUTIONAL PROVISION AS IT THEN READ AND, THE COURT SAID THAT IS NOT A JUSTICEABLE ISSUE AND DISMISSED THE ACTION AND 1988 IN BUSH VERSUS HOLMES, IN DIRECT RESPONSE TO THE CHILDS CASE, THE CONSTITUTIONAL REVISION COMMISSION CAME IN AND PROPOSED AMENDMENTS TO ARTICLE 9, SECTION 1, WHICH WAS DESIGNED TO PUT IN PLACE SPECIFIC STANDARDS, DEFINING WHAT ADEQUATE PROVISION MEANS, TO HAVE A UNIFORM SAFE, EFFICIENT AND HIGH QUALITY SYSTEM OF FREE PUBLIC SCHOOLS. SO, SORT OF ADDRESSED THE

SHORTCOMINGS FOUND IN THE COALITION CASE AND THEN, IN 2002, THE PEOPLE OF FLORIDA, I CAN ONLY SUSPECT, TIRED OF INACTION ON FUNDING OF PUBLIC EDUCATION, FURTHER DEFINED WHAT AN ADEQUATE PROVISION WOULD HAVE TO BE IN THEIR CONSTITUTION, WHEN THEY PASSED THE ORIGINAL CLASS SIZE AMENDMENT, WHICH SAID, ADEQUATE PROVISION IN ADDITION TO THE OTHER THINGS, UNIFORMITY, SAFETY, ET CETERA. MUST ALSO PROVIDE THAT PROVISION IS MADE FOR FUNDING OF SUFFICIENT NUMBERS OF CLASSROOMS, SO THAT THE GOAL OF NOT HAVING MORE THAN 18 OR 22 OR 25 STUDENTS DEPENDING UPON THE GRADE LEVELS, RESPECTIVELY, COULD BE ACHIEVED. THE CONSTITUTION WAS AMENDED IN A UNIQUE WAY, IN 2002. WHAT IT SET WAS A FUNDING FLOOR. IT SAID THE LEGISLATURE MUST NOT NOT EXERCISE THE NORMAL UNBRIDLED DISCRETION, TO PROVIDE FUNDING FOR EDUCATION BUT MUST START WITH A FLOOR THAT PROVIDES ADEQUATE PROVISION TO MEET THE GOALS THE CONSTITUTION ALSO ADOPTED, 18, 22 AND 25. AND, THAT FLOOR IS WHAT IS RELEVANT TO THE LAWSUIT BEFORE YOU TODAY.

AMENDMENT 8 DOESN'T DISCUSS A

NUMBER OF THINGS.

AND...

>> THE SECTION OF ARTICLE 9,  
SECTION 1 OF THE CONSTITUTION  
THAT YOU ARE REFERRING TO, THAT  
WAS PUT INTO EFFECT IN 2002, WAS  
THAT THE LEGISLATURE SHALL  
PROVIDE SUFFICIENT FUNDS TO  
REDUCE THE AVERAGE NUMBER OF  
STUDENTS IN EACH CLASSROOM AND  
THAT IS THE PART THAT YOU ARE  
REFERRING TO, THAT EXISTED.

WAS THERE ANOTHER...

>> NO, IT IS ACTUALLY THE  
PREAMBLE TO THE NUMBERED  
PARAGRAPHS IN ARTICLE 9.  
SAYS TO ASSURE CHILDREN  
ATTENDING PUBLIC SCHOOLS OBTAIN  
A HIGH QUALITY EDUCATION, THE  
LEGISLATURE SHALL MAKE ADEQUATE  
PROVISION TO ENSURE THAT BY  
BEGINNING AT THE START OF THE  
SCHOOL YEAR, THESE GOALS CAN BE  
MADE.

WHAT THIS COURT SAID IN 2002,  
QUOTING FROM THE DECISION, IS,  
THE PRIMARY PURPOSE OF THE 2002  
AMENDMENT WAS, QUOTE, THE  
LEGISLATIVE FUNDING OF REDUCED  
CLASS SIZE.

THAT IS WHAT THIS AMENDMENT IN  
2002 WAS ABOUT.

NOW, AMENDMENT 8 WILL CHANGE  
THAT.

WHAT IT WILL DO, IF PASSED, IS  
CHANGE THE FUNDING FLOOR THAT

THE PEOPLE PUT IN THE  
CONSTITUTION, IN 2002, FROM A  
RATIO THAT IS 1 TO 18, 22 AND  
25, WILL CHANGE THAT AND WILL  
REDUCE THAT, TO A RATIO...

>> WHAT IS WRONG WITH THAT?

I DON'T UNDERSTAND... IT DOESN'T  
SEEM TO ME THAT YOU ARE REALLY  
QUARRELLING WITH WHETHER OR NOT  
THE AMENDMENT ADEQUATELY INFORMS  
THE PUBLIC OF THE PURPOSE OF THE  
AMENDMENT, BUT, THAT YOU ARE  
ACTUALLY QUARRELLING WITH MAKING  
THESE CHANGES.

>> NO, I'M NOT QUARRELLING AND  
PERHAPS I'M NOT BEING CLEAR AND  
I SUSPECT I WASN'T CLEAR, AT THE  
TRIAL COURT BELOW, BECAUSE I WAS  
NOT PERSUASIVE THERE AND I HOPE  
TO DO BETTER HERE.

WHAT I AM SUGGESTING TO YOU IS  
THAT THERE IS NOTHING WRONG WITH  
THE PEOPLE OF FLORIDA DECIDING  
THAT THEY WANT TO ALLOW MORE  
KIDS IN A CLASSROOM, THAT THEY  
WANT TO CHANGE THE WAY THE KIDS  
ARE COUNTED, OR, INDEED, TO SAY  
WE'RE WILLING TO ALLOW THE STATE  
TO CHANGE THIS BASE FUNDING  
LEVEL THAT THEY MUST PROVIDE,  
AND PROVIDE LESS MONEY.

WHAT I'M SUGGESTING TO YOU, YOUR  
HONOR, IS YOU HAVE TO SAY THAT  
IN THE BALLOT SUMMARY.

THE SUMMARY IS SILENT WITH  
RESPECT TO THE CHANGE THAT IS

BEING MADE.

IF YOU LOOK BACK AT SOME OF YOUR CASES...

>> LET'S GO -- ANSWER, IF YOU COULD ANSWER THAT QUESTION, SILENT AS TO THE FACT THAT ONCE THERE IS AN INCREASE IN THE NUMBER OF STUDENTS REQUIRED NATURALLY FLOWING FROM THAT WILL BE A REDUCTION IN HOW MUCH THE LEGISLATURE WILL HAVE TO FUND?

>> THE LEGISLATURE IS CERTAINLY FREE TO FUND WHATEVER IT WANTS TO.

ABOVE THE FLOOR THAT IS IN THE PRESENT CONSTITUTION.

ARTICLE 9, SECTION 1, NOW SETS A FLOOR AND SAYS, ADEQUATE PROVISION SHALL BE MADE BY THE LEGISLATURE TO ENSURE THAT NO CLASSROOM EXCEEDS 18 STUDENTS.

IF YOU ALLOW LARGER CLASSROOMS, THEN YOU ARE ALSO SAYING THAT YOU ARE GOING TO ALLOW THE LEGISLATURE TO ESCAPE THE FUNDING OBLIGATION THAT IS PRESENTLY --

>> I GUESS, MY -- MY HUMBLE QUESTION TO YOU IS, ISN'T THAT OBVIOUS?

>> I DON'T BELIEVE IT IS, YOUR HONOR.

THERE -- I THINK MORE IS REQUIRED IF WE ARE GOING TO AMEND THE CONSTITUTION AND ALLOW THE PEOPLE OF FLORIDA TO LET THE

LEGISLATURE OFF THE HOOK FOR FUNDING EDUCATION, AT A LEVEL THAT THE PEOPLE PLACED IN THE CONSTITUTION, IN 2002.

>> HOW CAN ANYONE READ THIS AND NOT UNDERSTAND THAT IF THEY CHANGE THE SIZE, INCREASE THE SIZE THAT IS REQUIRED, THAT FLOWING FROM THAT WILL PROBABLY BE A DECREASE IN HOW MUCH THE LEGISLATURE OR THE STATE WILL HAVE TO FUND, AND, ALSO, I WOULD ADD, I GUESS, FOR THE SCHOOL, LOCAL SCHOOL DISTRICTS, PROBABLY, A REDUCTION FOR THEM IN HOW MANY TEACHERS THEY -- HOW MANY MORE TEACHERS THEY HAVE TO HIRE.

YOU HAVEN'T MENTIONED THAT.

>> I'M NOT SURE THAT ANY OF THOSE CONSEQUENCES NATURALLY FLOW.

AGAIN, I THINK...

>> MAYBE IF THEY DON'T NATURALLY FLOW, THEN, MAYBE THAT IS NOT WHAT THIS AMENDMENT WILL DO. WHAT WE KNOW FOR SURE, WHAT IT WILL DO IS CHANGE THE MINIMUM OR MAXIMUM SIZE OF THE CLASSROOM.

>> WHAT WE ALSO KNOW IT IS GOING TO DO IS IT IS GOING TO REDUCE THE MINIMUM FUNDING THAT THE FLORIDA LEGISLATURE HAS TO PROVIDE TO THE PUBLIC SCHOOL DISTRICTS IN THE STATE.

>> DO YOU HAVE THE NUMBER FOR

THAT?

HOW MUCH IS THAT?

>> IT IS A RATIO AMOUNT.

IN OTHER WORDS, THE LEGISLATURE SHALL MAKE ADEQUATE PROVISIONS TO ENSURE THERE ARE SUFFICIENT NUMBERS OF CLASSROOMS TO MEET THESE RATIOS.

IF YOU CHANGE THEM YOU ARE DIMINISHING THE FUNDING AMOUNT THAT IS REQUIRED IN THE FLORIDA CONSTITUTION.

>> YOU ARE SUGGESTING THE BALLOT SUMMARY NEEDS TO TELL THE VOTER THAT.

>> TALK ABOUT THE RATIOS?

>> PARDON ME.

>> TALK ABOUT THE RATIOS.

>> IT SHOULD SAY BY CHANGING FROM ONE TO 18, 22 AND 25, TO 1 TO 21, 25, AND 30, YOU ARE ALSO DECREASING THE AMOUNT OF MONEY THAT THE STATE IS REQUIRED TO PAY.

BECAUSE...

>> IS THAT REALLY NECESSARILY TRUE?

BECAUSE WHEN I READ THIS IT TALKS ABOUT THE MAXIMUM NUMBER OF STUDENTS THAT YOU CAN HAVE, BUT IT ALSO TALKS ABOUT THE AVERAGE NUMBER OF STUDENTS. SO, WHEN YOU LOOK AT THAT, QUITE FRANKLY, TO ME, I'M NOT SURE WE ARE DOING LESS BY, YOU KNOW, IF THIS AMENDMENT PASSES, THAT

WE'RE DOING LESS IN CHANGING  
WHAT IT ORIGINALLY SAID.

>> WELL, YOU ARE CHANGING IT  
SUBSTANTIALLY, FROM A FUNDING  
PERSPECTIVE, AND I GO BACK TO  
THE 2002 BASE AMENDMENT.  
WHICH WAS ALL ABOUT FUNDING.  
YOU WILL RECALL, IN THE  
DECISION, ADVISORY OPINION TO  
THE ATTORNEY GENERAL, THE  
PURPOSE OF THE AMENDMENT WAS  
SAID TO BE ABOUT FUNDING, TO  
REQUIRE THE LEGISLATURE TO  
PROVIDE FUNDING FOR SUFFICIENT  
CLASSROOM SPACE, TO MEET THESE  
TARGETS.

TO REQUIRE THE LEGISLATURE, NOT  
LOCAL SCHOOL DISTRICTS, TO PAY  
THE COST ASSOCIATED WITH IT AND,  
THEN TO PRESCRIBE A SCHEDULE FOR  
IMPLEMENTATION.

>> IT STILL SAYS THAT.

>> WE ARE CHANGING THAT, THE  
FUNDING LEVEL THE PEOPLE PUT IN  
PLACE, TO A DIFFERENT LEVEL, AND  
WE ARE NOT TELLING THEM THAT AND  
THAT IS THE FLAW IN THE BALLOT  
SUMMARY, IN THE CASE.

IF YOU GO BACK TO --

>> WELL, JUST TO STAY ON THIS,  
WHAT DO YOU SUGGEST SHOULD BE --  
THIS AMENDMENT SHOULD SAY THAT  
WOULD CURE THAT.

I'M NOT SURE I'M REALLY  
FOLLOWING.

>> I THINK IF THE SUMMARY SAID,

IN THE FIRST PART, WHERE IT  
TALKS ABOUT THE NUMBER OF  
STUDENTS ASSIGNED TO EACH  
TEACHER IN PUBLIC CLASSROOMS,  
SHALL NOT EXCEED THESE NUMERIC

--

>> PAREN A.

>> THE BALLOT SUMMARY ITSELF  
WHERE THEY DESCRIBE THE RATIOS  
IN THE CONSTITUTION.

>> OKAY.

>> IT SHOULD POINT OUT THAT THE  
PRESENT CONSTITUTION REQUIRES  
THE STATE, NOT THE LOCAL  
DISTRICT, TO PROVIDE FUNDING SO  
THAT IS THE PRESENTS PROVISION  
REQUIRED TO PROVIDE FUNDING TO  
MEET THESE GOALS AND WHEN IT  
GOES TO CHANGING THE NUMERIC  
GOALS IT SHOULD SAY, SOMETHING  
ABOUT THE CONCOMITANT DIMINUTION  
IN FUNDING THAT FOLLOWS, FUNDING  
FROM THE STATE.

LOOK THE SCHOOL DISTRICTS HAVE  
TO STRUGGLE TO MAKE WHATEVER IS  
IN THE CONSTITUTION WORK AND  
WHAT PEOPLE SAID IN '02 SAID  
THESE ARE STATE OBLIGATIONS.  
THESE ARE NOT OBLIGATIONS OF  
LOCAL SCHOOL DISTRICTS.

THESE ARE STATE OBLIGATIONS.

I MAY VERY WELL PRESENT AT THE  
VOTING BOOTH, SAYING, LOOK, WHAT  
IS THE DIFFERENCE WITH HAVING  
THREE OR FIVE EXTRA KIDS IN THE  
CLASSES?

WHAT IS THE DIFFERENCE IF WE USE AN AVERAGE INSTEAD OF COUNTING HEADS IN A CLASSROOM?

BUT, I MAY VERY WELL HAVE SOME QUARREL WITH, BY DOING THAT, I WILL -- I'M GOING TO DIMINISH THE OBLIGATION OF THE STATE OF FLORIDA, TO PROVIDE WHAT HAS BEEN ESTIMATED TO BE BETWEEN 350 AND A BILLION DOLLARS A YEAR, TO THE PUBLIC SCHOOL DISTRICT.

>> BUT, I'M STILL... I THINK THAT I'M UNDERSTANDING WHAT YOUR ARGUMENT IS, BECAUSE IT IS STATED IN YOUR BRIEF, BUT, IT IS NOT -- THIS IS ONE PART OF WHAT AN ADEQUATE FUNDING IS, FOR EDUCATION, THAT IS CLASS SIZE. SO, IT IS ONLY AFFECTING THE STATE'S OBLIGATION WITH RESPECT TO CLASS SIZE AND IF THE VOTERS DECIDE THAT CLASS SIZES CAN BE GREATER THAN THEY ARE NOW WITHOUT AFFECTING THE QUALITY OF THE EDUCATION, THEY'LL MAKE THAT DECISION.

BUT, YOU ARE MAKING IT SOUND AS IF SOMEHOW AS FAR AS OTHER ASPECTS OF A PUBLIC EDUCATION, THAT THE LEGISLATURE WILL BE LET OFF THE HOOK WITH THAT, AND IT'S NOT AFFECTING THE OTHER PROVISION OF ARTICLE 9, IS IT?

>> IT'S NOT AFFECTING IT, EXCEPT THAT, RIGHT NOW, FOR THE PAST 8 YEARS, ARTICLE 9, BECAUSE OF THE

CLASS SIZE AMENDMENT, HAS DRIVEN A FIXED AMOUNT OF MONEY, THE MONEY NECESSARY TO MEET THESE GOALS.

>> ONLY TO BUILD CLASSROOMS AND SO, MAYBE THE LEGISLATURE WILL NOW HAVE THE FLEXIBILITY TO TAKE, IF -- WHATEVER IT IS GOING TO BE, IN SAVINGS, AND PUT IT INTO INCREASING THE SALARIES FOR TEACHERS WHICH I WOULD ASSUME YOUR GROUP WOULD APPRECIATE OR SOME OTHER SOURCE OF QUALITY EDUCATION, OTHER THAN THE NUMERICAL SIZE OF THE CLASSROOM.

>> BUT, SHOULDN'T THE PEOPLE OF FLORIDA BE TOLD THAT YOU ARE TAKING AWAY THE GUARANTEE OF THE FLOW OF MONEY, THAT IS NOW IN THE CONSTITUTION, AND, YOU ARE SPECULATING ON WHETHER THE LEGISLATURE WILL GIVE IT BACK TO YOU?

THERE IS NO GUARANTEE UNDER ARTICLE 9, THAT THE, QUOTE, SAVINGS, WHICH IS ACCOMPLISHED BY TAKING MONEY OUT OF LOCAL SCHOOL DISTRICTS AN ALLOWING CLASSES TO SWELL TO LARGER SIZES, STAYS WITH EDUCATION. RIGHT NOW, THE PEOPLE HAVE AN ASSURANCE, WHETHER YOU AGREE WITH CLASS SIZE OR THINK IT IS THE BEST THING FOR CHILDREN, WHETHER YOU THINK THIS IS WHERE WE SHOULD PUT OUR RESOURCES OR

NOT, THE FACT IS THERE IS A CONSTITUTIONAL PROVISION DRIVING A LEVEL OF FUNDING FROM THE STATE TO LOCAL SCHOOL DISTRICTS SO LOCAL SCHOOL DISTRICTS DON'T HAVE TO MAKE UP LOSSES WITH LOCAL TAXES.

IF YOU ARE CHANGING THAT AND GOING TO REDUCE THAT LEVEL OF FUNDING, FROM THE STATE, IT IS GOING TO HAVE AN EFFECT ON LOCAL TAXPAYERS, AND LOCAL SCHOOL DISTRICTS, AND, ALL I AM SUGGESTING...

>> HOW WILL IT HAVE AN EFFECT? THE LOCAL TAXPAYERS AREN'T GOING TO HAVE TO PAY MORE IF THERE IS A LOWER OR GREATER NUMBER OF STUDENTS PER CLASS.

THAT IS NOT -- HOW IS THAT GOING TO INCREASE THEIR BURDEN.

>> THEY ARE NOT GOING TO GET THE MONEY THE PRESENT CLASS SIZE AMENDMENT REQUIRES BE SENT TO LOCAL SCHOOL DISTRICTS.

THAT IS THE ARGUMENT HERE.

THE SUMMARY DOESN'T TELL THE VOTER PRESENTING TO VOTE ON NOVEMBER 2ND, FIRST, THAT THERE IS A STATE REQUIREMENT IN THE CONSTITUTION TO FUND A CERTAIN LEVEL OF CLASS SIZE COMPLIANCE, A LEVEL OF MONEY TO LOCAL SCHOOL DISTRICTS AND, SECOND, IT DOESN'T TELL THE VOTER WHO PRESENTS ON NOVEMBER 2ND THAT

WE'RE CHANGING THAT REQUIREMENT.  
WE ARE REDUCING THAT LEVEL OF  
FUNDING AND, ALL I'M SUGGESTING  
TO THE COURT, IS THAT PAST  
PRECEDENT OF THIS COURT SUGGESTS  
THAT YOU DON'T HIDE THOSE FACTS  
FROM THE VOTER.

YOU GO BACK TO A FEW WEEKS AGO,  
ON THE AMENDMENT 7 CASE, AND YOU  
FOUND THAT AMENDMENT 7, IN NAACP  
VERSUS ROBERTS DID NOT MENTION  
CONTIGUITY AND IT WAS SILENT  
WITH RESPECT TO THAT AND YET YOU  
FOUND THERE WAS GOING TO BE A  
DRAMATIC CHANGE TO CONTIGUITY.  
YOUR HONORS, THAT IS THE SAME  
CASE YOU HAVE HERE, A PROVISION  
IN THE CONSTITUTION, NOT  
MENTIONED IN THE BALLOT SUMMARY  
AND THAT PROVIDES A LEVEL OF  
FUNDING, A MINIMUM FLOOR, IF YOU  
WILL, TO LOCAL SCHOOL DISTRICTS,  
AND, THAT IS NOT MENTIONED IN  
THE CONSTITUTION.

AND YOU'RE CHANGING IT IF YOU  
PASS AMENDMENT 8 AND THAT IS NOT  
MENTIONED IN THE BALLOT SUMMARY.  
>> YOU ARE NOW DOWN TO LESS THAN  
FOUR MINUTES.

KEEP GOING, IF YOU LIKE.

>> I THINK I'LL STOP NOW AND  
RESERVE THE REST OF MY REBUTTAL.  
THANK YOU.

>> MAY IT PLEASE THE COURT, TIM  
OSTERHAUS ON BEHALF OF THE  
DEPARTMENT OF STATE AND

SECRETARY ROBERTS, TRIAL COURT  
FOUND THE BALLOT... CLEARLY  
STATES AMENDMENT 8'S CHIEF  
PURPOSE IN ACCORDANCE WITH LAW  
AND IS THE NOT MISLEADING AND  
FROM THE SUMMARY THE VOTERS WILL  
KNOW IF THEY ARE DECIDING  
WHETHER THE PUBLIC SCHOOL  
CLASSES OF THEIR KIDS,  
GRANDKIDS, NIECES, NEPHEWS, WILL  
BE GOVERNED BY A FIXED HARD CAP  
ON THE NUMBER OF STUDENTS, OR BY  
AN AVERAGE ACROSS THE NUMBER OF  
CLASSROOMS.

THIS AMENDMENT IS NOT ABOUT  
FUNDING.

IT WOULD BE SIMILAR TO AN  
ANALOGY, I THINK, AS IF THERE  
WAS AN AMENDMENT TO INCREASE THE  
SIZE OF THE COURT, FROM 7 TO 9.  
NOW, CERTAINLY THERE WOULD BE  
OBVIOUS FUNDING CHANGES  
ASSOCIATED WITH THAT, BUT THE  
CHIEF PURPOSE OF THAT AMENDMENT  
WOULD BE NO DIFFERENT, AND IT  
WOULD BE THE SAME AS HERE, WHICH  
IS SIMPLY A CHANGE TO THE  
CURRENT STATUS QUO, AS TO THE  
NUMBERS, AS TO THE CLASS SIZE.

>> I CAN AGREE WITH YOU IF THEY  
WERE CHANGING TO A -- AN AVERAGE  
SO THAT THERE COULD BE  
FLEXIBILITY BUT THERE IS NO  
QUESTION THAT BY INCREASING THE  
MAXIMUM NUMBER OF STUDENTS PER  
CLASS, THAT THERE IS GOING TO BE

MOST LIKELY A VERY SIGNIFICANT EFFECT ON THE AMOUNT OF FUNDING PROVIDED.

I MEAN, MY RESPONSE TO MR. MEYER IS THAT THAT IS OBVIOUS, THAT FLOWS FROM IT.

BUT TO SAY THAT IT'S NOT ALSO -- THAT IT'S NOT PART AND PARCEL OF WHAT WILL HAPPEN I THINK IS SOMEWHAT NAIVE.

>> WELL, I THINK THERE IS SOME SPECULATION, INVOLVED THERE, JUSTICE PARIENTE.

>> HOW COULD THERE BE SPECULATION IF, NOW, THERE WOULD BE A CLASS THAT WOULD HAVE, IT GOES, WHAT, GOING TO GO FROM 18 STUDENTS TO 21?

>> THAT'S CORRECT.

>> EACH OF THE CLASSES ARE GOING TO INCREASE. THE CLASS SIZE.

>> AS A THRESHOLD MATTER, LET ME REMIND YOU THE PURPOSE OF THIS IS TO CHANGE CLASS SIZE BUT ADD TO THE ARGUMENT, IT IS SPECULATION, BECAUSE, IF YOU READ THE RECORD OF PAGES 51 AND 52 UNDER THE CURRENT CLASS SIZE AMENDMENT, SOME OF THE STRATEGIES THAT DISTRICTS AND SCHOOLS WOULD HAVE TO TAKE HERE INVOLVE ELIMINATING SMALL CLASSES, INVOLVE ELIMINATING NONCORE CLASSES. ART, MUSIC, PE AND ESSENTIALLY

STREAMLINING THE EDUCATIONAL  
PROCESS BY FOCUSING EVERYTHING  
ON THE CORE REQUIREMENTS.

>> WELL, I THINK WHAT WE ARE  
PROBABLY SUFFERING FROM, AS FAR  
AS THE LACK OF KNOWLEDGE IN THIS  
REGARD, IS THAT WE HAVE -- IT  
CAME TO US ON A SUMMARY JUDGMENT  
AND ALL WE HAVE ARE THE  
UNDISPUTED FACTS.

AND THE UNDISPUTED ACTS ARE THAT  
THERE IS A -- WE HAVE WHAT THE  
AMENDMENT SAID BEFORE, AND NOW  
WE HAVE THIS.

I QUESTION WHAT WAS THE CHIEF  
PURPOSE OF THE LEGISLATURE?  
WAS IT TO ASSIST THE SCHOOL  
BOARDS SO THEY COULD HAVE MORE  
FLEXIBILITY?

OR WAS IT TO SAY THAT THERE IS  
GOING TO BE OTHERWISE A BILLION  
DOLLAR-PLUS PRICE TICKET ON  
THIS, AND WE CAN'T AFFORD THIS,  
AS A STATE?

AND, WE DON'T -- THAT IS NOT IN  
OUR RECORDS.

SO, AS FAR AS WHAT WAS  
MOTIVATING THE LEGISLATURE TO  
ACT.

INTO THERE IS ALSO NOTHING IN  
THE RECORD, JUSTICE PARIENTE,  
THAT GIVES A FIGURE AS TO  
WHATEVER THE DECREASE THEY ARE  
ALLEGING IN CLASS SIZE FUNDING.  
THERE IS NOTHING JUSTICE PERRY  
THAT GOES TO YOUR QUESTION,

THERE IS NOTHING HERE HA  
INDICATES FROM THE RECORD THAT  
THERE WILL BE ANY KIND OF A  
DECREASE.

NOW...

>> I HAVE A FUNDAMENTAL CONCERN  
WITH, NOT NECESSARILY THIS, BUT  
ALL CONSTITUTIONAL AMENDMENTS.

AND IF WE ASSUME THAT THE  
CITIZENS OF THE STATE OF FLORIDA  
HAVE A CERTAIN RIGHT, HE'S  
ASSERTING, THEY ARE ASSERTING,  
THE RIGHT TO FUNDING, AT THIS  
PARTICULAR LEVEL, COULD BE RIGHT  
TO FREEDOM OF SPEECH.

COULD BE ANY OTHER RIGHT.

WHERE DO WE DRAW THE LINE WHEN  
WE PROPOSE A CONSTITUTIONAL  
AMENDMENT THAT TAKES AWAY SOME  
CONSTITUTIONAL RIGHT THAT  
PRESENTLY EXISTS?

WE HAVE SEEN IT WITH THE FOURTH  
AMENDMENT AND WITH THE 8TH  
AMENDMENT, AND, SO, WHERE IS  
THAT, BECAUSE IT MAY BE A LITTLE  
DIFFERENT, I DON'T KNOW, BUT  
WHERE WOULD YOU SUGGEST THAT  
THIS LINE BE DRAWN, BECAUSE, THE  
AMENDMENT DOES MAKE REFERENCE  
THAT THIS IS GOING TO BE THE  
FUNDING LEVEL.

DO YOU UNDERSTAND MY QUESTION?

>> SURE.

SURE.

YES, JUST LEWIS, IT ALLOCATES  
RESPONSIBILITY FOR FUNDING,

WHATEVER IT MAY BE, TO THE  
LEGISLATURE.

NOW, WHEN WE TALK ABOUT A  
FUNDING MINIMUM, OR A FUNDING  
FLOOR OR RATIO OR ANY OF THE  
WORDS ALONG THAT LINE, YOU WILL  
SEARCH LONG AND HARD IN ARTICLE  
9, SECTION 1, TO FIND THAT THERE  
IS A CONSTITUTIONAL RIGHT OR A  
RIGHT TO THE A CERTAIN LEVEL OF  
FUNDING.

IT IS SIMPLY NOT THERE AND IF  
YOU LOOK TO THE HISTORY OF THE  
WAY THE LEGISLATURE HAS FUNDED  
THIS, IN 2005, IT WAS A BILLION  
DOLLARS IN CLASS SIZE FUNDING  
AND '07, I THINK IT WAS 3.3  
BILLION AND IT DROPS BACK TO 2.7  
BILLION AND, IT TRICKLED UP  
SINCE THEN.

SO THE WHOLE IDEA OF A FLOOR,  
YOU KNOW, IS NO FLOOR THAT YOU  
COULD WALK ON, IT'S NOT A FLOOR  
AT ALL.

IT IS...

>> SO YOU ARE SAYING, THE ONES  
THAT HAVE SOME TYPE OF FORMULA  
OR ASPIRATIONAL BASIS ARE  
DIFFERENT THAN THOSE WHO TAKE  
AWAY SOME EXISTING RIGHT OF  
FLORIDIANS.

>> IT IS -- LEGISLATURE, THIS IS  
THE OBLIGATION, WE NEED CLASS  
SIZES TO BE THIS SIZE AND  
WHETHER YOU USE FUNDING TO MAKE  
THAT HAPPEN OR NONFUNDING

STRATEGIES, TO MAKE THAT HAPPEN,  
ALONG THE LINES OF THIS COURT,  
IN THE 2002 ADVISORY OPINION  
THAT POINTED OUT THAT EXACT  
POINT AND YOU CAN USING FUNDING  
OR NONFUNDING BUT THE GOAL HERE  
IS THAT THE STUDENTS IN THE  
STATE OF FLORIDA HAVE CLASS  
SIZES THAT MEET THE TARGETS IN  
THE CLASS SIZE AMENDMENT AND  
NOW, IN AMENDMENT 8, THE TARGETS  
WOULD BE REVISED TARGETS.  
SO, THAT IS THE THRUST OF THE  
AMENDMENT AND WHETHER THE  
LEGISLATURE IS USING FUNDING OR  
NONFUNDING, THAT IS NOTHING THAT  
IS SPECIFIED IN ARTICLE 9,  
SECTION 1.

AS THIS COURT HAS RECOGNIZED.

>> SO YOU SEE THIS AS NOT IN THE  
CATEGORY OF THOSE CASES, WHERE  
THERE IS A REQUIREMENT THAT YOU  
PLACE IN THE SUMMARY, WHAT THE  
CITIZENS ARE GIVING UP?

>> ABSOLUTELY.

THIS IS NOTHING LIKE ASKEW,  
WHERE THERE IS OUTRIGHT  
DECEPTION INVOLVED AND CHANGING  
THE LOBBYING BAND TO A...  
REQUIREMENT AND NOTHING LIKE  
ARMSTRONG, WHERE YOU GO FROM  
CRUEL OR UNUSUAL TO CRUEL AND  
UNUSUAL AND SHOWING THE VOTERS  
WHAT IS AT STAKE, IT'S NOT LIKE  
AMENDMENT 7.

AGAIN, THERE IS NOTHING IN

ARTICLE 9, SECTION 1, SETTING A  
RATE, FORMULA, A FLOOR.  
OR WHAT HAVE YOU.

>> DO YOU THINK VOTERS READING  
THIS COULD HAVE BELIEVED THAT  
BEFORE THIS AMENDMENT THERE WAS  
NO STATE OBLIGATION AND THERE  
ACTUALLY -- THEY WILL INVOKE  
SOMETHING THAT IS GOING TO GIVE  
THEM MORE RIGHTS?

THAT IS, I THINK THAT WAS WHAT  
ONE OF MR. MYERS' ARGUMENT, IS  
THIS IS A SITUATION WHERE THERE  
WAS AN EXISTING RIGHT AND NOW AS  
FAR THAT'S SIZE OF THE  
CLASSROOM, THAT RIGHT WILL BE  
AFFECTED BY THEM VOTING FOR A  
DIFFERENT LEVEL OF CLASSROOM  
SIZE.

SO, IS THERE THAT POTENTIAL FOR  
IT MISLEADING THE PUBLIC INTO  
THINKING THAT THEY ARE GETTING  
SOMETHING MORE THAN THEY HAD  
BEFORE?

>> THERE IS NOT, JUSTICE  
PARIENTE.

>> BUT THAT IS -- I MEAN, THAT  
IS ONE OF THE ARGUMENTS,  
CORRECT.

>> THAT IS ONE OF THE ARGUMENTS,  
AND IT WAS NEWLY MINTED BEFORE  
THIS COURT... SEARCH LONG AND  
HARD IN THE COMPLAINT TO FIND AN  
ARGUMENT ALONG THAT LINE IN THE  
MOTION FOR SUMMARY JUDGMENT OR  
THE TRIAL COURT'S ORDER YOU WILL

NOT FIND AN ANALYSIS OF THAT PARTICULAR ARGUMENT.

WHICH GOES TO A PROBLEM, WITH THESE LATE FILED AMENDMENTS, THEY GET OFF -- I'LL COME BACK, IT GOES TO ONE OF THE PROBLEM WITH THE LATE FILED AMENDMENT CASES.

YOU KNOW, OUR PLAINTIFFS HERE ARE SAVVY AND, REPEAT PLAYERS WITH RESPECT TO FILING BALLOT, BALLOT TITLE AND SUMMARY CASE AND DID IT IN '08 AND HERE, THEY SPEND ALL SPRING AND SUMMER TO PUT TOGETHER A COMPLAINT, AND THEY DROP ON THE SYSTEM AND ON THE STATE THE LAST WEEK OF JULY. AND, RUSH THE CASE THROUGH THE SYSTEM, AND YOU KNOW, THEY PRESENT THIS ARGUMENT, HERE, FOR THE FIRST TIME, AND KNOWING THAT WE HAVE ONE BUSINESS DAY TO RESPOND, AND, SO ON THAT ARGUMENT, I DON'T THINK THE COURT SHOULD ENTERTAIN IT BUT IF IT DOES IT DOESN'T HAVE ANY LEGS, GOING BACK TO AN OBSERVATION YOU MADE AT THE BEGINNING OF THE ARGUMENT, IF YOU LOOK TO THE TITLE OF AMENDMENT 8, AND LOOK TO THE SUMMARY, THE SUMMARY IS -- AND THE TITLE ARE VERY CLEAR AS TO WHAT THE REVISE IS HERE AND THIS IS A REVISION OF CLASS SIZE REQUIREMENT FOR PUBLIC SCHOOLS

AND IS NOT CLAIMING TO BE A REVISION OF FUNDING OR A REVISION OF THE LEGISLATURE'S OBLIGATION.

SO THE WHOLE IDEA OF HAVING TO TELL VOTERS, THE LEGISLATURE IS CURRENTLY FUNDING CLASS SIZE WHEN IT ALWAYS FUNDED CLASS SIZE AND THERE IS NO CHANGE IN THAT RESPECT, ON TOP OF THAT TITLE, IN THE SUMMARY, WHICH TELLS THE VOTERS, EXACTLY THAT THIS IS ABOUT AMENDING CLASS SIZE REQUIREMENTS, NOT ABOUT ANY AMENDMENT OF THE FUNDING MECHANISM, I -- I THINK IT IS VERY CLEAR, AND, THERE IS NO REAL THREAT OF VOTERS TO MISCONCEIVING THAT POINT, OR WHAT IS AT STAKE HERE.

>> YOU MENTIONED SOMETHING, IN RESPONSE TO MY QUESTION, THAT I WANTED TO GET ON THE TABLE. WHICH IS, THE FACT THAT IT WAS NOT -- IT WASN'T FILED UNTIL JULY BUT THE POSITION OF THE STATE WAS, BECAUSE IT WAS FILED LATE, WE SHOULD LET IT GO THROUGH THE NORMAL COURSE AND I, WHO WAS PART OF THE ARMSTRONG COURT VOWED THAT THIS COURSE, LOOKING AT A AMENDMENT AFTER IT IS ALREADY PASSED, OR NOT PASSED, AFTER THE FACT, IS A

TERRIBLE THING.

SOT STATE ISN'T SUGGESTING  
THAT THIS COURSE SHOULD  
DELAY AN OPINION IN THIS  
CASE UNTIL AFTER THE  
ELECTION, ARE YOU?

>> I DON'T THINK YOU NEED TO  
DO THAT MARLY AFTER WE  
LOOKED LONG AND HARD AFTER  
THAT WEEK.

>> BUT YOUR POSITION, AND  
THE STATE'S POSITION IS YOU  
CAN WAIT AND RULE ON THIS  
AFTER THE ELECTION, AND I  
DON'T THINK THAT'S A VERY  
RESPONSIBLE POSITION TO BE  
TAKING.

>> I THINK THE POINT THERE  
WAS, YOUR HONOR, THE BALLOTS  
HAVE BEEN PRINTED.  
SO THE NEED TO RUSH, RUSH,  
AND TO HAVE ONE ONE DAY,  
ESSENTIALLY.

>> MAYBE WE SHOULD HAVE TIME  
LIMITS THAT THE LEGISLATURE  
WORK ON THAT THIS  
LEGISLATIVE INITIATIVES.  
THE COURT HAD TO DROP  
EVERYTHING IT WAS DOING OVER  
THE SUMMER.  
AND THIS HAPPENS EVERY TWO  
YEARS SINCE I'VE BEEN ON  
THIS COURT.

SO WE'RE HERE ON THIS CASE  
NOW, AND SINCE YOU BROUGHT  
IT UP, I WANTED TO MAKE SURE

WE CLARIFY THE STATE'S  
POSITION THAT YOU WEREN'T  
ASKING US TO DELAY THE

2

OPINION.

>> SURE, NO WE'RE NOT, YOUR  
HONOR, UNLESS THERE ARE ANY  
QUESTIONS, I COVERED THE  
POINTS I WANTED TO MAKE  
TODAY.

WE RESPECTFULLY QUESTION  
THAT THE VOTERS BE ABLE TO  
VOTE ON NOVEMBER 8 ON THE  
GENERAL ELECTION.

THANK YOU IF I COULD TAKE AN  
ADDITIONAL MINUTE, YOUR  
HONORS.

THE PRIMARY PURPOSE OF THE  
CLASS SIZE AMENDMENT WAS  
FUNDING.

IN ARMSTRONG, THE COURT  
AHEAD CLEARLY THAT THE  
BALLLY LONGSTANDING  
LANGUAGE.

AMENDMENT EIGHT SUFFERED  
FROM THE SAME SHORT FALL.  
IT DOES NOT TALK ABOUT THE  
FUNDING.

>> I REALIZE IT'S YOUR  
BEST ARGUMENT THAT YOU'RE  
NOT WILLING TO AGREE THAT  
THERE IS A PRETTY LARGE  
DIFFERENCE BETWEEN WHERE  
THERE IS AN EXISTING, SAY,  
JUST AS LEWIS IS SAYING A  
CONSTITUTIONAL RIGHT THAT'S

GREAT FOR AGAINST  
UNREASONABLE SEARCH, AND  
AFTER VOTING ON THE  
AMENDMENT, THE VOTER, YOU  
KNOW THE FLOOR WILL BE  
WHATEVER THE U.S.  
CONSTITUTION SAYS,  
ESSENTIALLY THAT THIS IS  
RIGHT OR IF THIS WAS THE  
RIGHT OF PRIVACY, AND  
THEY'RE GOING TO SAY  
HENCEFORTH THE RIGHT OF  
PRIVACY LIKE THE UNITED  
STATES CONSTITUTION.  
SEE THOSE INDICATIONS TO ME  
ARE VERY DIFFERENT.  
THIS IS NOT CHANGING THE  
FACT THAT THE RIGHT IS FOR

3

SUFFICIENT FUNDING FOR CLASS  
SIZES, IT'S JUST CHANGING  
WHAT THE AMOUNT IS GOING TO  
BE BASED ON DIFFERENCE IN  
THE NUMBER OF STUDENTS.  
>> YOUR HONOR, I'M NOT  
WILLING TO CONCEDE A  
DIFFERENCE BETWEEN I DON'T  
BELIEVE THERE IS A  
DIFFERENCE.  
I WAS HOPING YOU WOULD  
BOLSTER WHAT HE SAID.  
WE HAVE A CONSTITUTIONAL  
RIGHT THAT THE PEOPLE PUT IN  
IN 2002.  
THEY SAID WE APT LEVEL OF  
FUNDING.

I BET YOU CAN HEAR THE  
LEGISLATURE HAVING TO ABIDE  
BY THIS YOU PEEK PROVISION  
THAT SAYS THEY DON'T HAVE  
THE BROAD LATITUDE AS THEY  
DID IN FUNDING THE COURT.  
THEY HAVE TO ABIDE BY WHAT  
PEOPLE OF FLORIDA SAID IS  
THE BASE, AND THEY WANT OUT  
FROM UNDER THAT.

THAT'S FINE.

THEY SHOULD BE ABLE TO DO  
THAT.

>> IT DOESN'T SAY THEY'RE  
GOING TO REDUCE THE BASE.  
IT SAYS YOU'LL REDUCE THE  
CLASSROOM SIZE, CHANGE HOW  
YOU COUNT KIDS, AND READING  
FROM THE AMENDMENT, YOU'LL  
PROVIDE FUNDING SUFFICIENT  
TO MAINTAIN THE PURPOSES OF  
THIS AMENDMENT.

NOT ONLY DO THEY NOT CLEARLY  
TELL YOU THERE'S GOING TO BE  
A CHANGE.

THEY SE SEDUCE YOU TO  
THINKING IT'S HOW IT IS NOW,  
THEY USE MAINTAIN.

I DON'T SEE HOW YOU CAN  
TOLERATE THAT KIND OF --

>> WHAT IS THE PRECISE  
LANGUAGE THAT PRESENTLY  
EXISTS THAT ESTABLISHES WHAT

YOU CALL THAT BASE.

>> THE PRECISE LANGUAGE IS

WHERE THE AMENDMENT, ARTICLE  
9 SAYS THAT CHILDREN  
ATTAINING SCHOOLS GET A HIGH  
QUALITY EDUCATION, THE  
LEGISLATURE WILL MAKE SURE  
THAT BY THE 2010 SCHOOL YEAR  
THERE ARE SUFFICIENT NUMBER  
OF CLASSROOMS TO SO THAT  
THESE GOALS ARE MET.  
WE'RE CHANGING THE GOALS, OR  
WE'RE NOT TELLS THE VOTER  
THAT BY CHANGING THE GOALS.

--

>> BUT DOESN'T THAT LANGUAGE  
STILL REMAIN.

EVEN N IF THIS AMENDMENT  
PASSED.

THAT LANGUAGE WOULD STILL  
SAY THAT THE LEGISLATURE  
SHALL MAKE ADEQUATE  
PROVISIONS THAT SUFFICIENT  
FUNDS ARE AVAILABLE FOR  
THESE CLASSROOMS.

ISN'T THAT LANGUAGE STILL  
THERE EVEN AFTER THIS  
AMENDMENT PASSED?

ASSUMING THIS LANGUAGE  
PASSED.

>> IT MEANS 20% LESS.

WE'RE CHANGING THAT.

>> BECAUSE IF YOU GO FROM 18  
TO 21 THAT'S A 17%

DIFFERENCE, 22 TO 25 THAT'S  
A 23% DIFFERENCE, AND 25 TO  
30, THAT'S A 20% DIFFERENCE.

YOU'RE MOVING THE FLOOR DOWN

BY CHANGING THE PARAMETERS,  
AND THE PEOPLE OF FLORIDA  
ARE NOT BEING TOLD IN THIS  
SUMMARY, THAT THAT'S WHAT  
THEY'RE VOTING ON.

THEY'RE TOLD YOU CAN PUT  
MORE KIDS IN A CLASS, WE'LL  
COUNT THEM DIFFERENTLY, BUT  
YOU'RE LOSING MONEY.

>> THANK YOU YOUR HONORS, I  
APPRECIATE THE TIME.  
THANK YOU.