

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR.
GIVE ATTENTION, YOU SHALL BE
HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

[BACKGROUND SOUNDS]

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD AFTERNOON AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT.

WE WANT TO THANK YOU THE FOURTH
DISTRICT COURT, THE CHIEF JUDGE
AND ALL THE STAFF HERE FOR
FACILITATING OUR USE OF THE
COURTHOUSE TODAY FOR THESE
SPECIALLY-SET ORAL ARGUMENTS.
THE FIRST CASE ON OUR DOCKET
TODAY IS DETZNER V. THE LEAGUE
OF WOMEN VOTERS OF FLORIDA.
COUNSEL?

[BACKGROUND SOUNDS]

>> MR. CHIEF JUSTICE, AND MAY IT
PLEASE THE COURT, I'M DANIEL
FELD, DEPUTY SOLICITOR GENERAL.
WE'RE HERE TODAY TO DISCUSS THE
BALLOT LANGUAGE CORRESPONDING TO
ONE OF THE REVISIONS THE CRC HAS
PROPOSED FOR THE GENERAL
ELECTION BALLOT IN NOVEMBER.
I'D LIKE TO ADDRESS A QUICK
TERMINOLOGY ISSUE.

OUR BRIEFS REFER TO--

[INAUDIBLE]

THE NUMBER 3 IS THE DESIGNATION
APPLIED BY THE CRC, AND THE
NUMBER 8 IS THE BALLOT POSITION
ASSIGNED BY THE SECRETARY.
WE HAVE NO OBJECTION THE USE OF
NUMBER 8, AND I'LL BE REFERRING
TO IT THROUGHOUT THE ARGUMENT.
THE REVISION AT ISSUE IN THIS
CASE WOULD, IF APPROVED BY THE

ELECTORATE, MAKE THREE CHANGES TO THE FLORIDA CONSTITUTION CONCERNING PUBLIC EDUCATION. THE RESPONDENTS CHALLENGE CORRESPONDING TO ONE OF THOSE CHANGES, SPECIFICALLY THE REVISION EFFECT ON THE PRE-EXISTING CONSTITUTIONAL DISTRICT SCHOOL BOARDS TO OPERATE, SUPERVISOR AND CONTROL PUBLIC SCHOOLS.

I WON'T BELABOR THE LEAGUE STANDARD, I'LL JUST STATE BRIEFLY THAT THE ONLY QUESTION BEFORE THIS COURT TODAY IS WHETHER THE BALLOT LANGUAGE ISSUE ACCURATELY AND CLEARLY DISCLOSED THE CHIEF PURPOSE OF THE AMENDMENT WHICH IS THE LEGAL EFFECT AND NOTHING MORE. AND WE WOULD SUBMIT THAT IT DOES.

THE AFFECTED CONSTITUTIONAL PROVISION, ARTICLE IX, SECTION FOUR, CURRENTLY GIVES SCHOOL BOARDS THE POWER TO OPERATE, CONTROL AND SUPERVISOR PUBLIC SCHOOLS.

THE REVISION WOULD LIMIT THAT GRANT OF AUTHORITY TO JUST THOSE SCHOOLS ESTABLISHED BY DISTRICT--

>> AND WHAT IS, DO YOU SAY IS THE CHIEF PURPOSE OF THAT OF WHICH THE VOTERS ARE ADVISED?

>> THE CHIEF PURPOSE OF THAT, YOUR HONOR, IS TO EXTEND TO THE STATE RATHER THAN TO THE SCHOOL BOARD A POWER TO OPERATE, SUPERVISOR AND CONTROL THE SCHOOLS NOT ESTABLISHED BY THE SCHOOL BOARD.

>> DOES THAT-- IS THAT REFLECTED IN THE SUMMARY?

>> YES, YOUR HONOR, IT IS.

>> OKAY.

>> IS IT ACTUALLY REFLECTED IN THE AMENDMENT ITSELF?

DOES THE AMENDMENT ITSELF SAY THAT THE STATE WILL NOW HAVE

CONTROL OF-- THE STATE WILL OPERATE ALL THOSE TERMS THAT ARE RIGHT THERE, SCHOOLS THAT ARE NOT ESTABLISHED BY THE SCHOOL DISTRICT?

>> NO, YOUR HONOR.

THAT'S A VERY GOOD QUESTION. THE REVISION ITSELF WOULD BE SILENT, IT WOULD LEAVE THE CONSTITUTION SILENT AS TO WHO SHALL SUPERVISE, OPERATE AND CONTROL SCHOOLS THAT ARE NOT SUPERVISED BY THE SCHOOL BOARD.

>> SO WHAT WOULD THE VOTER, WHAT DOES THE VOTER--

[AUDIO DIFFICULTY]

AND WHO WOULD HAVE CONTROL OF THESE SCHOOLS NOT OPERATING, NOT ESTABLISHED BY THE SCHOOL DISTRICT.

SO IF A VOTER IS READING THAT, WHO IS THE VOTER TO THINK IS GOING TO OPERATE SOME OTHER KINDS OF SCHOOLS?

>> LET ME BACK IT UP AND JUST MAKE SURE WE'RE ON THE SAME PAGE.

SO ONLY THE BALLOT LANGUAGE, THE BALLOT LANGUAGE IS AT ISSUE HERE.

THE BALLOT LANGUAGE TELLS THE VOTER THAT THE REVISION, IF APPROVED, WILL PERMIT THE STATE TO OPERATE, SUPERVISOR AND CONTROL THESE SCHOOLS, AND THE REVISION ITSELF--

>> SO WE'RE NOT TO LOOK AT THE ACTUAL AMENDMENT ITSELF TO SEE IF WHAT IS IN THE BALLOT REFLECTS WHAT IS IN THE AMENDMENT?

>> SO THE REVISION ITSELF, IF I UNDERSTAND YOUR HONOR'S QUESTION, IT'S CORRECT THAT THE BALLOT LANGUAGE INCLUDES THIS PHRASE THAT DOES NOT APPEAR IN THE REVISION.

BUT THAT REVISION IS NOT WHAT IS BEFORE THE--

>> THE PHRASE DOESN'T, BUT IS THERE ANY REFERENCE IN THE ACTUAL AMENDMENT ITSELF THAT REFLECTS THAT?

>> THERE'S-- NO, YOUR HONOR. THERE'S NO DIRECT LANGUAGE TO THAT EFFECT.

BUT BY LEAVING THE CONSTITUTION SILENT AS TO WHO SIGNAL OPERATE, SUPERVISE AND CONTROL, THE SCHOOLS NOT ESTABLISHED BY THE SCHOOL BOARD-- LIKE MANY STATUTES-- THE LEGISLATURE WOULD BE ABLE TO OPERATE IN THAT GAP.

AND THAT IS PRECISELY WHAT THE BALLOT LANGUAGE DISCLOSES TO THE VOTER.

>> LET ME ASK YOU THIS: THIS AMENDMENT, ASSUMING IT'S PASSED ON--

[INAUDIBLE]

>> PUT ME ON THE SPOT THERE.

>> SO THE AMENDMENT IS APPROVED, OKAY?

AND WHEN DOES THE LEGISLATIVE SESSION START NEXT YEAR?

IT WOULD BE EITHER JANUARY OR MARCH, ONE OF THOSE.

AND I WANTED TO ESTABLISH-- IF I WANTED A SCHOOL, WHAT WOULD I DO BEFORE THE LEGISLATURE ACTS? I WOULD BE ABLE TO SAY IS I HAVE A SCHOOL-- SAY I HAVE A SCHOOL AND DON'T HAVE TO GO TO THE SCHOOL BOARD?

WHO WOULD I GO TO.

>> I'M SORRY, ARE WE REFERRING TO-- IS YOUR HONOR REFERRING TO--

>> BEFORE THERE'S ANYTHING DONE BY THE LEGISLATURE.

>> I'M SORRY, IS YOUR HONOR WHO CURRENTLY ESTABLISHES PUBLIC SCHOOLS, IS THAT THE QUESTION?

>> YES.

>> OKAY.

I'M HAPPY TO ADDRESS THAT.

AS I READ THE STATUTE, SO THE FLORIDA CONSTITUTION IS SILENT

AS TO WHO SHALL ACTUALLY
ESTABLISH PUBLIC SCHOOLS.
THAT QUESTION IS LEFT TO THE
LEGISLATURE, AND THE
LEGISLATURE'S PROVIDED IN
SECTION 100.302 THAT THE PUBLIC
SCHOOLS WITHIN A GIVEN SCHOOL
DISTRICT MUST BE ESTABLISHED BY
THE SCHOOL BOARD.

>> MUST BE WHAT?

>> I'M SORRY, MUST BE
ESTABLISHED BY THE SCHOOL BOARD
FOR THAT--

[INAUDIBLE]

AND THE PHRASE, THE PHRASE USED
IN THE STATUTE IS THE PUBLIC
SCHOOLS, AND THAT WOULD INCLUDE
ARE ALL VARIETY OF PUBLIC
EDUCATION SCHOOLS PROVIDED BY
STATUTE.

>> SEE MY PROBLEM WITH THIS, AND
IT WAS, I THINK, WHAT THE
CIRCUIT COURT ZEROED IN ON, IS
WHETHER THE BALLOT-- TITLE AND
SUMMARY ESTABLISHES THE, I THINK
IT'S CALLED THE TRUE MEANING OF
THE AMENDMENT.

AND IT IS PRETTY CLEAR FROM
LOOKING AT THE BRIEFS THAT THE
TRUE PURPOSE WAS TO TAKE AWAY
RESPONSIBILITIES FROM THE SCHOOL
BOARDS AND TRANSFER IT TO EITHER
THE LEGISLATURE, THE STATE, TO A
PRIVATE COMMISSION.

AND I'M, YOU KNOW, I'VE LOOKED
AT THIS, I KEEP ON GOING BACK
AND FORTH BETWEEN THE TITLE AND
THE ACTUAL AMENDMENT WHICH IS
VERY, AS YOU SAY, ALMOST IT'S SO
SIMPLE IN WHAT IT SAYS, TO SEE
HOW A VOTER WOULD KNOW THAT WHAT
WE'RE REALLY TALKING ABOUT ARE
THE CHARTER SCHOOLS, THE
SUPERVISION OF CHARTER SCHOOLS
WOULD BE TRANSFERRED FROM SCHOOL
BOARDS TO SOME OTHER ENTITY NOT
REALLY KNOWN TO ANYONE.

SO WHY IS THAT NOT MISLEADING AS
TO THE CHIEF PURPOSE OF THAT
PART OF THE BALLOT SUMMARY?

AND WHAT'S YOUR ANSWER TO THAT?

>> I APOLOGIZE, I'LL HAVE TO ANSWER YOUR HONOR'S QUESTION IN A COUPLE OF PARTS.

THAT'S A FAIRLY COMPLEX ONE--

>> WELL, IT'S REALLY AT THE HEART OF WHAT THE CIRCUIT COURT FOUND AND WHAT THE APPELLANTS SAY HERE, IS THAT IT'S FINE IF THIS IS WHAT THE CONSTITUTIONAL REVISION COMMISSION WANTED TO DO, WAS TO TAKE AWAY POWER FROM THE SCHOOL BOARDS AND TRANSFER IT TO THE STATE.

IS IT, YOU KNOW, THAT IS A VALID DECISION, BUT THE VOTERS NEED TO KNOW THAT IS WHAT IS, IN FACT, HAPPENING SO THEY KNOW HOW TO CAST AN INTELLIGENT VOTE.

>> YOUR HONOR, I THINK THAT ACTUALLY THAT EFFECT IS PRECISELY WHAT THE BALLOT LANGUAGE COMMUNE A CANDIDATES, THAT IT IS MAYBE TAKING THE SECURE--

>> WELL, FIRST OF ALL, IT USES THE WORD "ESTABLISH" WHICH IS NOWHERE IN ANYTHING BEFORE OR-- BEFORE.

WHAT DOES THAT EVEN MEAN, "ESTABLISHED"?

>> WE THINK, YOUR HONOR, THAT ESTABLISHED HAS A VERY PLAIN DICTIONARY MEANING WHICH MEANS TO CREATE OR INSTITUTE. THAT TERM IS USED THROUGHOUT THE EDUCATION CODE.

AND THE SECTION 100 3.02 SAYS THAT DISTRICT SCHOOL BOARDS WILL ESTABLISH THE SCHOOLS WITHIN THE DISTRICT.

SO I THINK IT'S FAIR TO, THAT THE VOTER WOULD BE AWARE OF THAT--

[INAUDIBLE]

THIS COURT'S PRECEDENCE IS--

[AUDIO DIFFICULTY]

THE TERM ACTUALLY DOES APPEAR IN THE EDUCATION CODE AND, FOR EXAMPLE, CHARTER SCHOOLS HAVE

BEEN, TO DATE, ESTABLISHED BY THE DISTRICT SCHOOL BOARD.

>> SO CHARTER SCHOOLS RIGHT NOW ARE ESTABLISHED BY THE SCHOOL BOARDS?

>> THAT'S CORRECT, YOUR HONOR.

>> AND SO IF THIS AMENDMENT PASSED, THOSE CHARTER SCHOOLS THAT ARE PRESENTLY IN EXISTENCE WOULD STILL BE OPERATED, SUPERVISED, ALL THOSE-- REGULATED BY THE SCHOOL BOARDS? BUT THE NEW CHARTER SCHOOLS WOULD NOT.

>> THAT'S ACTUALLY NOT CORRECT, YOUR HONOR, BECAUSE THE REVISION ITSELF WOULD HAVE NO EFFECT ON EXISTING STATUTE.

THERE IS NOTHING THAT NEEDS TO BE DISCLOSED FURTHER TO THE VOTER BECAUSE ALL THE REVISION WOULD DO IS LEAVE, LEAVE ROOM IN WHICH THE LEGISLATURE MAY OPERATE.

THE REVISION ITSELF WOULD NOT REPEAL ANY EXISTING STATUTE THAT--

>> THE ANSWER WOULD BE, YES, THAT THOSE SCHOOL BOARDS, SCHOOL DISTRICTS WOULD STILL HAVE THE SAME SUPERVISORY POWER OVER THOSE CHARTER SCHOOLS THAT ARE PRESENTLY IN EXISTENCE.

>> THAT'S ABSOLUTELY CORRECT, YOUR HONOR.

>> UNLESS THE LEGISLATURE SAYS OTHERWISE.

>> UNLESS AND UNTIL THE LEGISLATURE SAYS OTHERWISE. AND I THINK--

>> BUT COULD THEY EVEN TO THAT IF YOU'VE ALREADY SAID THAT THIS AMENDMENT WOULD SAY THAT THEY HAVE THAT SUPERVISORY POWER OVER THOSE SCHOOLS ESTABLISHED BY IT. AND PRESENTLY YOU JUST ALSO SAID THAT THE SCHOOL BOARD, THE SCHOOL DISTRICT DOES, IN FACT, PRESENTLY ESTABLISH THE CHARTER SCHOOLS, RIGHT?

>> I'M SORRY, YOUR HONOR.
I'M NOT, I'M NOT-- IT'S
ENTIRELY ARE MY FAULT, BUT I'M
NOT SURE I FOLLOWED YOUR
QUESTION.

>>

[INAUDIBLE]
CHARTER SCHOOL.

>> NO, YOUR HONOR.
THEY CURRENTLY-- I'M SORRY.
THE SCHOOL BOARDS DO CURRENTLY
ESTABLISH THE CHARTER SCHOOLS.
THE CHARTER SCHOOL IS CREATED
WITH, I'M SORRY, WHEN THE SCHOOL
BOARD SIGNS A CONTRACT OR
CHARTER WITH THE, WITH THE
SCHOOL ITSELF.

ASK THE STATUTE, SECTION 1003.02
ACTUALLY SAYS THIS IS THE
ESTABLISHMENT OF THE SCHOOL.
SO IT IS CURRENTLY THE CASE THAT
THESE CHARTER SCHOOLS UNDER THE
CURRENT STATUTES ARE ESTABLISHED
BY THE SCHOOL BOARD.

AND FOR THAT REASON, EVEN IF THE
LEGISLATURE WERE TO-- AFTER THE
PASSAGE OF THE REVISION--
CHANGE ANY EXISTING STATUTE AS
TO WHO OPERATES, SUPERVISES AND
CONTROLS CHARTER SCHOOLS
SPECIFICALLY, IT WOULDN'T AFFECT
ANY-- THAT LEGISLATION WOULD
NOT AFFECT ANY CHARTER SCHOOL
THAT HAS ALREADY BEEN
ESTABLISHED--

>> WELL, WE REALLY DON'T KNOW
THAT.

I MEAN, THAT'S-- THE ISSUE OF
WHETHER IT IS AMBIGUOUS, WHETHER
IT WILL CREATE LITIGATION IN THE
FUTURE IS SOMETHING NOT BEFORE
US.

BUT ONE THING, I JUST-- YOU
SAID THAT THEY WERE ONLY
ATTACKING, OR THE APPELLEES WERE
ONLY ATTACKING ONE PART, MY
CONCERN IS IN THE TITLE AND THE
SUMMARY BEFORE YOU GET TO WHAT
IS A FAIRLY MONUMENTAL SHIFT IN
AUTHORITY TO PUBLIC SCHOOLS THAT

ARE CHARTERED AND OTHER TYPES OF SCHOOLS, YOU GET TO THINGS THAT ARE FAIRLY NONCONTROVERSIAL AND WELL KNOWN, TERM LIMITS FOR SCHOOL BOARDS.

AND THEN THE TEACHING, I THINK THIS IS THE ONE, CIVIC LITERACY. SO IS THERE ANY, YOU DON'T SEE THAT SOMEONE'S READING THIS AND GOING ALONG, OKAY, TERM LIMITS, GREAT, DUTIES, YEAH, WE WANT SCHOOL BOARDS TO HAVE DUTIES, THAT THIS THIRD REALLY LARGE PART OF WHAT'S HAPPENING AS FAR AS THE ADMINISTRATION OF CHARTER AND OTHER TYPES OF SCHOOLS LIKE THAT ARE GOING TO BE SHIFTED. AND AS A VOTER, I WOULD FIND THAT TO BE REALLY HIDING THE BALL, AS WE USE THAT TERM. SO WHY IS IT THAT APPELLEE-- NOT THAT YOU CAN'T BUNDLE UNRELATED THINGS, BUT THE WAY THIS IS PLACED IS FURTHER REASON IT'S MISLEADING.

>> WELL, YOUR HONOR, THE ONLY QUESTION BEFORE THIS COURT TODAY IS WHETHER THE BALLOT LANGUAGE IS CLEAR AND WHETHER IT'S ACCURATE.

AND WE WOULD SUBMIT THAT IT IS. LOOKING TO EACH-- THE BALLOT LANGUAGE CORE RESPONDING TO EACH OF THE THREE ASPECTS OF THE REVISION THAT IS, THE PROSPECTIVE ASPECT OF THE REVISION IS EFFECTIVELY DESCRIBED.

THAT IS THE ONLY QUESTION BEFORE THE COURT.

THE ARGUMENT THAT HAS BEEN MADE, THE COURT BY ACCEPTING THIS ARGUMENT, IS THAT BY BUNDLING THE OTHERWISE CAN DEFECTIVE LANGUAGE TOGETHER WITH A COUPLE OF OTHER PROPOSALS, THE CRC WAS EFFECTIVELY HIDING THAT, THAT DEFECT.

BUT THAT ARGUMENT ACTUALLY DEPENDS ENTIRELY ON THE DEFECT

ITSELF AND FOR THE REASONS WE'VE
DISCUSSED AND THE REASONS THAT
ARE DISCUSSED IN THE BRIEFS.
WE THINK THERE IS NO DEFECT, AND
THAT BUNDLING ARGUMENT IS
ENTIRELY--

[INAUDIBLE]

[AUDIO DIFFICULTY]

>> I'M NOT SURE I STILL HEARD AN
ANSWER TO THE QUESTION AS TO WHY
THE POSITIONING DOESN'T CREATE
AN AMBIGUITY.

>> WELL, YOUR HONOR, I THINK THE
QUESTION OF, THE QUESTION OF
BUNDLING AND THE QUESTION OF
CLARITY ARE SEPARATE INQUIRIES.

>> YOU DON'T THINK THEY CAN EVER
CROSS THE CO-EBBS TENTS OF
THE-- EXTENTS OF THE TWO?

>> EL, YOUR HONOR, IT'S ENTIRELY
POSSIBLE--

>> THAT'S THE QUESTION I THINK
HAS BEEN POSED TO YOU, IS WHY
THE POSITIONING HERE IS NOT ONE
OF THOSE IN THAT CATEGORY.

>> WELL, YOUR HONOR, THE
RESPONDENTS HAVE NOT OFFERED ANY
REASON, AND THE COURT BELOW
FOUND NO REASON WHY ANY OF THE
BALLOT LANGUAGE CORRESPONDING TO
THE OTHER TWO ASPECTS OF THE
REVISION-- THE CIVIC LITERACY
AND THE TERM LIMITS-- WOULD
RENDER THE BALLOT LANGUAGE
CORRESPONDING TO THE CHANGE TO
SCHOOL BOARD, SO--

[INAUDIBLE]

WOULD CAUSE THAT LANGUAGE TO BE
MISLEADING.

THE ARGUMENT WAS SIMPLY DID YOU
GET MULTIPLE THINGS PUT
TOGETHER, ONE OF THEM IS
DEFECTIVE, AND BY HAVING A
COUPLE OTHERS THERE, THAT'LL
HIDE THE DEFECT.

BUT, AGAIN, ONLY IF THAT DEFECT
IS ACTUALLY A DEFECT, IS THERE A
PROBLEM.

AND WE WOULD SUBMIT, YOUR HONOR,
RESPECTFULLY THAT THERE IS NOT.

>> AND YOU DO AGREE THAT THE STANDARD IS THAT THE CHIEF PURPOSE MUST BE SET FORWARD IN THE SUMMARY?

>> THAT'S CORRECT, YOUR HONOR.

>> AND WOULD YOU TELL ME THE WORDS THAT DEMONSTRATE THE CHIEF PURPOSE.

>> CERTAINLY, YOUR HONOR.

IT'S THE REVISION ADOPTED--

[INAUDIBLE]

PERMITS THE STATE TO OPERATE, CONTROL AND SUPERVISE PUBLIC SCHOOLS NOT ESTABLISHED BY THE SCHOOL BOARD.

>> NOT ESTABLISH-- WHAT DOES NOT ESTABLISHED BY THE SCHOOL BOARD MEAN?

>> RESPECTFULLY, YOUR HONOR--

>> DO WE KNOW FROM LOOKING AT BALLOT?

>> I DON'T THINK WE NECESSARILY KNOW EXACTLY HOW THAT PHRASE WOULD APPLY AT THE--

[INAUDIBLE]

BUT WHAT I WOULD SAY IN RESPONSE, YOUR HONOR, IS THAT IS THE SAME LANGUAGE USED IN THE REVISION ITSELF.

>> HERE'S THE PROBLEM, AGAIN, WHEN WE SAY ITS CHIEF PURPOSE. IS THIS A 75-WORD BALLOT SUMMARY?

>> I APOLOGIZE, I HAVEN'T COUNTED.

IT'S PROBABLY CLOSE.

>> YOU'RE READING ALONG--

YOU'RE A VOTER, YOU'RE ABOUT TO VOTE ON SEVERAL, 8, 10, WHATEVER IT IS, YOU'RE READING ALONG.

TERM LIMITS, LIKE THAT.

CIVIC LITERACY, LIKE THAT.

THE DUTIES OF THE SCHOOL BOARD, THEY HAVE GOT TO OPERATE-- AND THEN YOU DON'T GET UNTIL THE VERY LAST TWO, ONE AND A HALF LINES TO WHAT YOU SAY IS THE CHIEF PURPOSE OF THIS AMENDMENT.

AND IT WOULD BE SO EASY TO PUT IT IN THERE TO NOT MISLEAD THE

VOTER.

THAT'S THE-- THAT'S WHAT I'M CONCERNED ABOUT, IS WHY IT WAS WRITTEN LIKE THIS, WHY IT WAS BUNDLED.

WELL, WE ONLY HAVE 75 WORDS.

IF THAT'S THE CHIEF PURPOSE.

IT'S AT THE VERY END OF THE 75-WORD LIMIT, ISN'T IT?

>> IT IS, IT IS THE LAST CLAUSE.

THAT'S ABSOLUTELY CORRECT.

>> THAT'S THE CHIEF PURPOSE, IS WHAT THE STATE IS SAYING.

>> WELL, NO, OUR--

[INAUDIBLE]

IS THERE ARE THREE CHANGES TO THE FLORIDA CONSTITUTION HERE, ALL OF WHICH WOULD CONCERN PUBLIC EDUCATION.

AND THE DEBATES OF THE CRC MADE CLEAR THAT IS THE REASON WHY THESE WERE BUNDLED IN THIS WAY, BECAUSE THEY'RE ALL ON THIS TOPIC.

AND RESPECTFULLY, EACH OF THOSE THREE CHANGES IS A CHIEF PURPOSE THAT MUST BE DISCLOSED.

AND THEY'RE IN A PARTICULAR ORDER REGARDLESS OF WHICH ONE COMES LAST, SOMETHING IS GOING TO COME LAST, AND THE VOTER IS GOING TO GET TO THAT LAST.

IN THIS INSTANCE, THIS IS JUST THE WAY THAT IT WAS ASSEMBLED, AND I DON'T THINK THERE'S ANYTHING IN THE RECORD TO SUPPORT THAT THE CRC WAS TRYING TO HIDE IT AT ALL.

>> COUNSEL, YOU ARE NOW WELL INTO YOUR REBUTTAL TIME.

I WILL, NONETHELESS-- IF YOU WANT TO STOP HERE, I'LL AFFORD YOU FIVE MINUTES FOR REBUTTAL.

>> YEAH.

THANK YOU VERY MUCH, YOUR HONOR.

>> JUSTICE CANADY, MEMBERS OF THE COURT, MY NAME IS RON MEYER. I'M HERE ON BEHALF OF THE APPELLEE.

WITH ME AT THE TABLE DO--

[INAUDIBLE]

FROM MY OFFICE AND THE SOUTHERN
POVERTY LAW CENTER, WHICH HAS
JOINED US IN BRINGING THIS
ACTION.

THERE'S NOTHING THAT IS PERHAPS
MORE WELL ESTABLISHED IN THIS
AREA OF THE LAW THAN THE FACT
THAT THE BALLOT TITLE AND
SUMMARY HAS TO BE VIEWED THROUGH
THE LENS TO HAVE VOTER WHO'S
SHOWING UP AT THE VOTING BOOTH
TO CAST AN INFORMED BALLOT ON A
CONSTITUTIONAL AMENDMENT.

THAT BALLOT SUMMARY HAS TO BE
WRITTEN IN CLEAR AND UNAMBIGUOUS
LANGUAGE, AND IT HAS TO BE AN
EXPLANATORY STATEMENT OF THE
CHIEF PURPOSE OF THE MEASURE.
WHEN SUCH WORDING SELECTIONS
RENDER A BALLOT TITLE OR SUMMARY
DECEPTIVE OR MISLEADING, THE LAW
REQUIRES IT BE REMOVED FROM THE
BALLOT.

THAT WAS THIS COURT'S DECISION
IN THE SLYLE CASE.

THERE IS NO DEFINITION IN THE
CONSTITUTION OF FLORIDA AS TO
WHAT IS A PUBLIC SCHOOL
ESTABLISHED BY THE SCHOOL BOARD.
IT'S JUST SIMPLY A NEW CATEGORY
THAT'S BEING CARVED OUT OF WHAT
HAS BEEN THE WALL-TO-WALL
AUTHORITY CONFERRED BY ARTICLE
IX, SECTION FOUR OF THE
CONSTITUTION THAT LOCAL ELECTED
SCHOOL BOARDS SHALL CONTROL,
OPERATE AND SUPERVISE ALL
SCHOOLS OF THE STATE.

>> ON THAT POINT, WHICH I THINK
IS CORRECT, I THINK YOU'RE
ABSOLUTELY CORRECT.

THIS IS A NEW CATEGORY.
WOULDN'T THE VOTER WHO IS
EXAMINING THE SUMMARY UNDERSTAND
THAT POINT?

THEY WOULD FIRST UNDERSTAND,
FROM WHAT'S IN THE SUMMARY ON
THIS PART OF THE PROPOSAL, THAT
SCHOOL BOARDS NOW HAVE DUTY, AND

I THINK IMPLIED WITH THAT WOULD BE AUTHORITY, WITH RESPECT TO ALL PUBLIC SCHOOLS.

THAT'S IN IT, RIGHT?

>> WE BELIEVE THAT'S IN THERE.

THE STATE HASN'T TAKEN THAT POSITION IN ITS BRIEF.

TODAY HE SAID THERE'S A STATUTE THAT SAYS--

>> I'M NOT-- I'M TALKING ABOUT WHAT'S IN THE SUMMARY.

WHAT'S IN THE SUMMARY.

THEY WOULD UNDERSTAND FROM THE SUMMARY, I MEAN, BECAUSE YOU LOOK AT IT THERE, AND IT SAYS THIS.

>> IT SAYS IT MAINTAINS THE SCHOOL BOARDS--

>> NO, I'M NOT TALKING ABOUT THAT.

IT SAYS CURRENTLY SCHOOL BOARDS HAVE A CONSTITUTIONAL DUTY TO OPERATE, SUPERVISE-- CONTROL AND SUPERVISE ALL PUBLIC SCHOOLS.

>> CORRECT.

>> YOU'VE GOT THIS DISCLOSURE HERE THAT THE SCHOOL BOARDS HAVE THIS AUTHORITY WITH RESPECT TO ALL PUBLIC SCHOOLS, AND THEN THAT'S FOLLOWED BY THE STATEMENT THAT THIS AMENDMENT IS GOING TO CREATE SOMETHING NEW, AND IT WILL-- WHICH WILL PERMIT THE STATE TO OPERATE, CONTROL AND SUPERVISE PUBLIC SCHOOLS NOT ESTABLISHED BY THE SCHOOL BOARD. SO IT SEEMS LIKE A VOTER READING THAT IS GOING TO UNDERSTAND, A VOTER WOULD HAVE TO UNDERSTAND THIS IS GOING TO TAKE AWAY SOMETHING FROM THE SCHOOL BOARDS.

WHICH IS WHAT IT WOULD ACCOMPLISH, ISN'T THAT CORRECT?

>> HERE'S THE PROBLEM WITH THAT RATIONALE, THAT'S NOT WHAT THE AMENDMENT LANGUAGE DOES.

THE AMENDMENT LANGUAGE SAYS THE SCHOOL BOARD SHALL OPERATE,

CONTROL AND SUPERVISE ALL FREE PUBLIC SCHOOLS ESTABLISHED BY THE DISTRICT SCHOOL BOARD WITHIN THE SCHOOL DISTRICT.

PERIOD.

IT SAYS NOTHING ABOUT PREVENTING THE STATE, THE LEGISLATURE OR ANY OTHER ENTITY TO ESTABLISH SCHOOLS THAT ARE NOT ESTABLISHED BY THE SCHOOL--

>> THE STATUS QUO IS, WHICH IS DESCRIBED HERE IN THE SUMMARY, IS THAT THEY'VE GOT THIS UNIVERSAL AUTHORITY WITH RESPECT TO ALL PUBLIC SCHOOLS--

>> SCHOOL BOARDS DO.

>> SCHOOL BOARDS DO-- UNDER THE CURRENT STATE OF THE LAW.

THAT'S IN THE SUMMARY.

AND THIS AMENDMENT IS CHANGING THAT.

IT'S LIMITING THEIR AUTHORITY, POTENTIALLY, TO SCHOOLS THAT ARE ESTABLISHED BY THE DISTRICT SCHOOL BOARD.

AND, YOU KNOW, IT JUST SEEMS LIKE TO ME-- I UNDERSTAND THERE ARE NUANCES IN THIS.

THERE ARE ALWAYS NUANCES.

THERE ARE ALWAYS THINGS THAT SOMEBODY MIGHT NOT UNDERSTAND.

BUT I'M HAVING A HARD TIME UNDERSTANDING WHY THIS BASIC POINT HERE THAT SOMETHING IS BEING, SOME AUTHORITY WITH RESPECT TO PUBLIC SCHOOLS THAT'S CURRENTLY EXERCISED BY THE SCHOOL BOARDS IS BEING LOST ARE.

NOW, THE LEGISLATURE MIGHT NOT TAKE IT AWAY FROM THEM.

I GUESS THEY COULD STILL GIVE THEM-- DO SOMETHING UNDER THIS AMENDMENT.

THEY WOULD NOT TRUNCATE IT.

BUT IT'S OPENING UP SOMETHING THERE FOR THE STATE THAT IS NOT CURRENTLY AVAILABLE.

>> IT'S CLEARLY OPENING SOMETHING UP, BUT WHAT IS IT OPENING UP.

FIRST OF ALL, IT'S OPENING UP SOMETHING FOR A CATEGORY OF SCHOOLS THAT'S NOT COMBINED ANYWHERE--

>> BUT THAT'S, THAT'S, IT SEEMS TO ME WHEN YOU MAKE THAT POINT, THAT INDICATES A PROBLEM YOU HAVE NOT WITH THE SUMMARY, BUT WITH THE PROPOSAL ITSELF. AND I UNDERSTAND YOU'VE GOT A PROBLEM WITH THE PROPOSAL. I'VE ACCEPTED THAT, AND I UNDERSTAND THE POLICY REASONS THAT PEOPLE WOULD HAVE A PROBLEM WITH THE PROPOSAL. THAT CAN BE FOUGHT OUT. BUT THAT'S NOT A REASON TO KEEP THE PEOPLE OF FLORIDA FROM HAVING AN OPPORTUNITY TO VOTE ON THIS.

THE QUESTION IS WHETHER THEY'RE GOING TO BE SOMEHOW, BASICALLY THE QUESTION IS WHETHER THEY'RE GOING TO BE SOMEHOW FOOLED ABOUT WHAT THEY'RE VOTING ON.

AND I'M STILL STRUGGLING TO UNDERSTAND WHY THEY AREN'T GOING TO GET THE MAIN POINT HERE THAT THE SCHOOL BOARDS ARE GOING TO LOSE SOME AUTHORITY AND THEN THIS WILL OPEN IT UP TO THE STATE TO HAVE GREATER AUTHORITY THAN WILL BE TAKEN AWAY--

>> AND I SUBMIT TO YOU THE PEOPLE AREN'T GOING TO BE FOOLED BY THIS BALLOT SUMMARY LANGUAGE. THE PEOPLE ARE GOING TO BE TOLD, IMPROPERLY, THAT THE AMENDMENT PERMITS THE STATE TO OPERATE, CONTROL AND SUPERVISE PUBLIC SCHOOLS--

>> AND WHAT'S INACCURATE ABOUT THAT?

WHAT IS INACCURATE ABOUT THAT?

>> BECAUSE THERE'S NOTHING IN THE AMENDMENT THAT DOES THAT.

>> WELL--

>> SECONDLY, WHAT'S THE STATE? IF YOU READ THE SUMMARY, IT STARTS OUT SAYING THAT--

REQUIRES THE LEGISLATURE TO PROVIDE FOR THE PROMOTION OF CIVIC LITERACY OF PUBLIC SCHOOLS, BUT THEN IT JUMPS DOWN AND SAYS PERMITS THE STATE TO OPERATE TO, CONTROL AND SUPERVISE.

NOW THE APPELLATE WANTS TO MAKE THE STATE AND THE LEGISLATURE THE SAME THING, BUT THAT'S NOT THE SAME THING, YOUR HONOR.

>> WELL, YOU UNDERSTAND THAT UNDER OUR-- YOU SAY ANY AMENDMENT THAT AFFECTS POLICY MAKING BRANCH OF GOVERNMENT HAS TO EXPLAIN THE BASIC STRUCTURE OF OUR CONSTITUTION IN THE 75 WORDS SO THAT THE PEOPLE WILL UNDERSTAND THAT IF THERE'S A POLICY DECISION THAT HAS TO BE MADE, IT'S THE LEGISLATURE THAT'S GOING TO DO THAT?

>> NO, YOUR HONOR.

WHAT I'M SAYING IS WHEN THE DRAFTERS OF THE SUMMARY USED THE TERM "THE LEGISLATURE SHALL DO SOMETHING" HERE-- WITH RESPECT TO CIVIC LITERACY-- BUT THE STATE SHALL OPERATE, CONTROL AND SUPERVISE PUBLIC SCHOOLS, WHAT IS THE VOTER WHO IS READING THAT TO CONCLUDE?

IT MUST BE SOMETHING DIFFERENT THAN THE LEGISLATURE.

IT MAY BE THE STATE BOARD OF EDUCATION.

IT MAY--

>> AND IT WELL MAY BE, BECAUSE THE LEGISLATURE COULD GIVE IT TO THE STATE BOARD OF EDUCATION.

>> BUT WHERE DOES IT SAY THE LEGISLATURE GETS TO DO THAT?

>> WELL, I THINK THAT-- WHAT IS THAT, ARTICLE II OF THE CONSTITUTION?

>> YOU REALLY THINK THAT PEOPLE WOULDN'T UNDERSTAND THAT WHEN SOMETHING REFERS TO THE STATE BEING ABLE TO DO SOMETHING, THAT WOULDN'T CLUE THEM INTO THE FACT

THAT THE LEGISLATURE IS THE--

>> YOUR HONOR, I DON'T--

>> [INAUDIBLE]

HAVE AUTHORITY THERE?

>> I DON'T THINK THE PEOPLE SHOULD BE ASKED TO GUESS WHAT'S AT--

>> BUT, AGAIN, DON'T WE HAVE TO ASSUME--

[INAUDIBLE CONVERSATIONS]
SPEAKING OF CIVIC LITERACY,
DON'T WE HAVE TO ASSUME A CERTAIN MINERAL LEVEL OF CIVIC LITERACY ABOUT THE STRUCTURE OF GOVERNMENT AND THE RESPONSIBILITY OF THE LEGISLATURE TO HAVE THIS PROCESS MAKE ANY SENSE AT ALL?

OTHERWISE YOU'RE GOING TO BE KIND OF GOING-- THERE'S NO WAY YOU COULD HAVE A SUMMARY THAT WOULD BE ADEQUATE TO EXPLAIN. YOU'D NEED A TEXTBOOK TO EXPLAIN ALL THE THINGS THAT YOU NEED TO EXPLAIN.

I'M JUST STRUGGLING WITH THIS IDEA THAT WHEN IT REFERS TO THE STATE, THAT PEOPLE AREN'T GOING TO UNDERSTAND THAT THAT WOULD OPEN UP AN OPPORTUNITY FOR THE LEGISLATURE.

>> YOUR HONOR, I CAN ONLY GO BACK TO THE CASES THAT THIS COURT HAS DECIDED IN LOOKING AT THIS LANGUAGE TO DETERMINE WHETHER THE LANGUAGE IN CLEAR AND UNAMBIGUOUS TERMS--

>> HAVE WE, DO WE HAVE THE CASE-- AND WE MAY--

[LAUGHTER]

DO WE HAVE A CASE THAT SAYS THAT WHEN THE STATE IS IDENTIFIED AS AN ACTOR, PEOPLE WOULD NOT UNDERSTAND THAT WOULD CARRY--

>> I DON'T THINK WE HAVE A CASE LIKE THAT.

>> YOU THINK YOU WOULD HAVE FOUND IT IF WE HAD IT?

YOU'RE A GOOD LAWYER.

I'M QUITE CONFIDENT YOU WOULD

HAVE FOUND IT IF WE HAD IT.
>> LET ME-- JUST GOING ON THE
BALLOT SUMMARY ITSELF, IT DOES
APPEAR THAT THERE IS A
DISCONNECT BETWEEN THE BALLOT
SUMMARY AND THE ACTUAL AMENDMENT
WHICH IS, THIS IS ONLY-- ONE,
TWO, THREE-- FIVE WORDS.
WHAT IS IT CLEAR AND
UNAMBIGUOUSLY, AND MAYBE
MR. BELL TOLD US, WHAT ARE THE
PUBLIC SCHOOLS THAT THE SCHOOL
BOARD ESTABLISHES CURRENTLY?
WHAT ARE THEY?
ARE THEY WHAT WE'D CONSIDER THE
REGULAR PUBLIC SCHOOLS--
>> YOUR HONOR, THAT'S PART OF
THE PROBLEM.
>> WELL, BUT LET'S GET TO THAT.
>> THERE'S NO GUIDANCE HERE AS
TO WHAT IS.
>> I'M ASKING YOU YOUR BEST, I
MEAN, ARE THEY-- WHAT ARE THEY
AND THEN, THEREFORE, WHAT ARE
THE PUBLIC SCHOOLS NOT ESTABLISH
BY THE SCHOOL BOARD--
>> WELL, I CAN REFER BACK TO THE
DUVAL DECISION CITED IN OUR
BRIEF.
THAT WAS WHEN THE LEGISLATURE
CREATED A SEPARATE ORGANIZATION
TO CHARTER PUBLIC SCHOOLS OF
CHARTER SCHOOL NATURE OUTSIDE
THE SWEEP OF--
>> YOU SEE, I THINK THAT'S THE
BEST-- TO ME, WHAT MAKES IT THE
MOST CONFUSING.
BECAUSE IF YOU'RE READING THIS,
ALL THEY HAD TO SAY WAS
SOMETHING SUCH AS CHARTER
SCHOOLS THAT I THINK MOST VOTERS
WOULD KNOW, OKAY, NOW WE'RE
TALKING ABOUT THE PUBLIC SCHOOLS
THAT MOST PEOPLE SEND THEIR
CHILDREN TO.
BUT NOW WE'RE-- AND THEN THE
STATE WILL THEN HAVE CONTROL
OVER THOSE NONTRADITIONAL
SCHOOLS.
AND AS THE AMICUS FROM THE

CHARTER SCHOOL GROUP SAYS AND SOME OF THE OTHERS, THEY DON'T LIKE SCHOOL BOARDS' MONOPOLY ON OTHER KINDS OF INNOVATIVE SCHOOLS.

BUT IS THAT-- WE'RE NOT LOOKING AT WHAT EVERYONE'S SAYING READING THAT.

WOULD YOU AS A PERSON WHO REPRESENTS TEACHERS, SCHOOLS BE ABLE TO TELL US UNDER THE CURRENT STATE OF THE LAW WHAT IS, WHAT ARE THE ONES THAT THE SCHOOL BOARD ESTABLISHES, AND WHAT ARE THE ONES THAT THE SCHOOL BOARD DOESN'T ESTABLISH?

>> YOUR HONOR, WE BELIEVE THAT THE SCHOOL BOARD ESTABLISHES ALL K--

>> WELL, THAT'S WHAT, TO ME, MAKES IT MISLEADING AND CONFUSING.

>> AND NOW WE'RE GOING TO TAKE A SUBSET--

>> THAT'S WHY WHEN YOU SAY YOU SAY SOMETHING, THEY DON'T KNOW WHETHER IT'S THE STATE OR THE LEGISLATURE, THAT SEEMS TO BE NITPICKING.

THIS I'VE READ OVER AND OVER, I DON'T KNOW WHAT THEY'RE TALKING ABOUT.

>> IT'S HUGE BECAUSE NOW ALL OF THEM ARE OPERATED, CONTROLLED, SUPERVISED, AUTHORIZED BY LOCAL ELECTED SCHOOL BOARDS.

>> SO THEN--

[INAUDIBLE CONVERSATIONS]

THIS WOULD BE ACCURATE IN SAYING CURRENTLY DISTRICT SCHOOL BOARDS HAVE A CONSTITUTIONAL DUTY TO OPERATE, CONTROL AND SUPERVISE ALL PUBLIC SCHOOLS.

>> THAT IS ACCURATE.

>> THAT IS COMPLETELY ACCURATE. AND THEN THE AMENDMENT MAINTAINS THE SCHOOL BOARDS DO THESE TO PUBLIC SCHOOLS THAT IT ESTABLISHES.

THE AMENDMENT DOES THAT, RIGHT?

>> [INAUDIBLE]
>> BUT THAT'S A PROBLEM WITH THE
CONSTITUTIONAL PROVISION, RIGHT?
>> WE HAVE SOME IDEA BEFORE
WE'RE GOING TO CARVE OUT A
SUBSET OF ALL OF THESE PUBLIC
SCHOOLS, AND WE'RE GOING TO
PERMIT THE STATE, WHATEVER THE
STATE IS, TO SUDDENLY TAKE OVER
THEM, SHOULDN'T WE HAVE AN IDEA
AS A VOTER TO KNOW WHAT WE'RE
TALKING ABOUT?
>> HOW CAN YOU KNOW WHAT THE
LEGISLATURE'S GOING TO DO?
ALL YOU CAN EXPLAIN IN A SUMMARY
IS THE AUTHORITY THAT'S GIVEN.
HOW CAN YOU KNOW WHAT THE
LEGISLATURE--
>> YOUR HONOR, ALL YOU HAVE TO
EXPLAIN IN THE SUMMARY TO THE
VOTER IS THAT YOU'RE GIVING UP
WHAT YOU NOW HAVE.
WHAT YOU NOW HAVE IS ELECTED
SCHOOL BOARDS THAT ARE
SUPERVISING, OPERATING,
CONTROL--
>> ALL PUBLIC SCHOOLS.
>>-- AND YOU'RE GOING TO GIVE
UP SOME OF THEM--
>> IT SAYS THE AMENDMENT
MAINTAIN IT IS SCHOOL BOARDS'
DUTY TO PUBLIC SCHOOLS IT
ESTABLISHES BUT PERMITS THE
STATE-- NOT THE SCHOOL BOARD,
BUT THE STATE-- TO OPERATE
THOSE THAT IT DOESN'T.
>> IS IT SCHOOLS THAT IT
ESTABLISHES AFTER THE AMENDMENT?
WE DON'T KNOW.
IT'S AMBIGUOUS.
YOUR HONOR, THERE ARE SO MANY
AMBIGUITIES.
>> TO THE EXTENT IT'S A PROBLEM,
ISN'T THAT A PROBLEM WITH THE
UNDERLYING CONSTITUTIONAL
LANGUAGE?
>> WELL, BUT WHEN THERE'S
AMBIGUITY IN THE UNDERLYING
CONSTITUTIONAL LANGUAGE, IT
BECOMES ALL THE MORE IMPORTANT

FOR THE SUMMARY AND BALLOT TITLE
TO EXPLAIN THE CHIEF PURPOSE.
THAT IS THE HOLDING IN--

>> BUT THE LOGIC OF THAT IF YOUR
ARGUMENT IS THAT THERE'S AN
AMBIGUITY THAT WILL BE RESOLVED
IN FUTURE LITIGATION AS TO THE
CONSTITUTIONAL LANGUAGE, HOW CAN
A SUMMARY GIVE YOU ANYTHING BUT
THAT LANGUAGE?

BECAUSE OTHERWISE YOU WOULD HAVE
TO PREDICT THAT THIS COULD IN
THE FUTURE PLAY OUT THIS WAY, IT
COULD PLAY OUT THIS WAY, IT
COULD PLAY OUT THIS WAY.

>> YOUR HONOR, ALL WE'RE SAYING
IS THAT WHEN THE VOTER PRESENTS
AND READS THIS BALLOT SUMMARY,
THEY'RE NOT BEING CLUED IN TO
THE FACT THAT WHAT THEY HAVE NOW
IS BEING SUBSTANTIALLY AND IN A
MAJOR WAY ERODED

IN A MANNER AND TO AN
ENTITY THAT'S NOT DEFINED,
THAT'S NOT DRAWN ANY KIND OF
NORMALCY IN THE SENSE THAT THE
LANGUAGE USED, "ESTABLISHED BY
EXISTING SCHOOL BOARDS," ISN'T
SOMETHING THAT'S ESTABLISHED IN
THE CONSTITUTION.

YOU'RE CHANGING THE CONSTITUTION
SUBSTANTIALLY, TAKING AWAY
CONTROL.

AND, YOU KNOW, QUITE FRANKLY,
FOR THE PAST YEAR THE CRC HAS
BEEN TALKING ABOUT THIS AS
EXCLUSIVELY TO OVERCOME THE
DUVAL DECISION, EMPOWER CHARTER
SCHOOLS.

WHY DIDN'T THEY JUST SAY THAT?
WHY DID THEY HIDE THE FACT?
WHY DID THEY COME IN WITH THIS
CUTESY LANGUAGE AND BALLOT
SUMMARY THAT DOESN'T DISCLOSE
WHAT THEY'RE--

>> AND THE CUTESY LANGUAGE
YOU'RE TALKING ABOUT IS THE
LANGUAGE IN THE CONSTITUTION,
THOSE ESTABLISHED BY--

>> YES.

>>-- THE SCHOOL BOARD?

OKAY.

>> YES.

WHY DIDN'T THEY USE LANGUAGE
THAT HAS MEANING IN THE
CONSTITUTION?

>> MR. MEYER, TO WE HAVE ANY
AUTHORITY THAT ADDRESSES WHETHER
A MERE REGURGITATION OF WORDS
FROM THE AMENDMENT ITSELF
SATISFIES CLEAR BALLOT SUMMARY?

>> YES, YOUR HONOR, THERE IS
SOME AUTHORITY--

>> WHAT DOES THAT, WHAT DOES
THAT TELL US?

>> WELL, WHAT IT SAYS IS THE
SUMMARY HAS TO DO MORE THAN
REGURGITATE WHAT THE BALLOT IT
SAYS.

IT HAS TO EXPLAIN.

IT HAS TO DEVELOP WHAT THE CHIEF
PURPOSE AND EFFECT OF THIS
MEASURE IS.

BECAUSE THE VOTER CAN'T GO TO
THE ACTUAL LANGUAGE AND GET THE
ANSWER.

IN A LOT OF AMENDMENTS WE GET A
SUMMARY THAT'S A LITTLE VAGUE OR
MISLEADING.

YOU CAN GO TO THE LANGUAGE AND
FIND OUT WHAT IT MEANS.

HERE YOU CAN'T DO THAT.

YES, YOUR HONOR, THERE ARE CASES
CITED IN OUR MEMORANDUM THAT
POINT YOU TO THE FACT THAT WHERE
THERE IS A DEFICIENCY OR
AMBIGUITY IN THE UNDERLYING
LANGUAGE, IT'S ALL MORE
IMPORTANT THAT THE TITLE AND
BALLOT SUMMARY DO IT, AND THIS
TITLE AND SUMMARY FAILS TO DO
THAT ENTIRELY.

>> BUT ISN'T THAT ABOUT
EXPLAINING THE LEGAL BACKGROUND
THAT EXISTS?

OUR CASE LAW ON THAT FOCUSES ON
EXPLAINING THE KIND OF THE LEGAL
CONTEXT THAT'S GOING TO BE
CHANGED, BUT IT SEEMS THAT THIS
AMENDMENT-- THE SUMMARY

ACTUALLY DOES IT.
THE MORE I LISTEN TO YOUR
ARGUMENT, THE MORE IT BECOMES
APPARENT TO ME THAT YOUR REAL
PROBLEM IS NOT WITH THE BALLOT
SUMMARY, BUT WITH THE PROPOSAL.
AND I UNDERSTAND, AGAIN, I
UNDERSTAND HAVING A PROBLEM WITH
THAT.

THAT'S FAIR, AND THAT CAN BE
FOUGHT OUT.

BUT WE-- ISN'T IT TRUE THAT
THIS COURT HAS JUST PRECEDENT
AFTER PRECEDENT IN THIS AREA
WHERE WE SAY WE DON'T LOOK AT
THE MERITS OF THE PROPOSAL.
WE'RE LOOKING AT THE BALLOT
SUMMARY TO DECIDE WHETHER IT IS
SUFFICIENT.

OR MORE ACCURATELY, WHETHER IT
IS CLEARLY AND CONCLUSIVELY
DEFECTIVE.

AND YOUR WHOLE ARGUMENT REALLY
HEDGES ON YOUR-- HINGES ON YOUR
PROBLEMS WITH AMBIGUITIES OR
UNCERTAINTIES IN THE TEXT OF THE
ACTUAL AMENDMENT ITSELF.

ISN'T THAT TRUE?

>> NO, IT'S NOT TRUE.

OUR PROBLEM, FIRST OF ALL, HAS
NOTHING TO DO WITH THE POLICY
CONSIDERATIONS.

THAT'S UP FOR DEBATE.

OUR PROBLEM IS THAT THE VOTER
PRESENTING AT THE VOTING BOOTH
IS NOT BEING TOLD WHAT'S
HAPPENING HERE, IS NOT BEING
GIVEN AN EXPLANATORY PURPOSE.
AND FURTHER, THE WAY THEY'VE
COMBINED THESE THREE ISSUES AND
OMITTED ANY MEANINGFUL
DISCUSSION FROM THE BALLOT TITLE
WAS DONE IN A WAY THAT FURTHER
MISLEADS AND FURTHER HIDES THE
BALL WHEN YOU LOOK AT THE BALLOT
SUMMARY AND TITLE HERE.

THE FACT THAT LIMIT PUBLIC
SCHOOLS AND GOES TO GREAT
LENGTHS TO DESCRIBE TERM LIMITS
AND THE NEED TO TEACH CIVIC

EDUCATION AND HARDLY ANYTHING TO DO WITH WHAT IS THE MAJOR CHANGE IN THIS AMENDMENT, WE SUGGEST TO YOU THAT THAT COMBINING OF THESE THREE ISSUES-- WE'RE NOT URGING A RULE OF LAW THAT YOU CAN'T LOG ROLL.

WE THINK IT'S BAD POLICY.

THE--

[INAUDIBLE]

COURT DESCRIBED WHY IT SHOULDN'T BE DONE.

BUT UNLIKE THE CITIZENS' INITIATIVE, IT'S NOT SINGLE SUBJECT.

BUT THE POINT IS WHEN YOU START COMBINING DISPARATE IDEAS, YOU'RE FURTHER MISREPRESENTING THE TRUE PURPOSE OF THIS AMENDMENT, AND THAT'S A WHAT THIS BALLOT--

>> I'M TOTALLY UNCLEAR AS TO HOW ANYTHING IS CAMOUFLAGED HERE BY THE COMBINING OF THESE PROPOSALS.

YOU'VE GOT THESE DIFFERENT, DISCREET STATEMENTS ABOUT THE DIFFERENT PROPOSALS.

HOW DOES THAT CAMOUFLAGE ANYTHING?

NOW, IT'S ONE THING IF YOU THINK IT'S NOT ADEQUATE IN WHAT IT SAYS ABOUT ONE OF THE PROPOSALS. WE'VE DISCUSSED THAT SOME.

>> RIGHT.

>> AND, YOU KNOW, THERE ARE DIFFERENT OPINIONS ABOUT THAT, OKAY?

>> BUT THIS IDEA THAT SOMETHING'S BEING CAMOUFLAGED FOR THE THREE THINGS-- BECAUSE THE THREE THINGS ARE IN THERE, I FIND THAT TO BE INCOHERENT.

I DO NOT FOLLOW.

HELP ME UNDERSTAND.

>> WHEN YOU NAME THE AMENDMENT--

[INAUDIBLE]

THAT'S COMMON REFERRED TO TITLE OF THE AMENDMENT IS SUPPOSED TO

BE.

WHERE DO YOU GET ANY CLUE THAT IT'S, OH, AND BY THE WAY, TAKE AWAY THE EXCLUSIVE AUTHORITY OF LOCAL SCHOOL BOARDS THAT PRESENTLY EXIST IN THE CONSTITUTION.

YOU WOULD--

>> WELL, ALL THE CASE LAW SAYS YOU READ THEM TOGETHER, RIGHT?

>> CORRECT.

>> OKAY.

SO IF I UNDERSTAND YOUR TARGET, TO THIS POINT, IF IT WAS SWITCHED AROUND AND SAID PUBLIC SCHOOLS AND SCHOOL BOARD TERM LIMITS AND DUTIES AND THEN THE SECOND SENTENCE WAS THE FIRST SENTENCE SO IT STARTED WITH "CURRENTLY SCHOOL BOARDS," THEN THAT WOULD NOT BE MISLEADING.

>> I THINK YOU WOULD HAVE TO DO MORE THAN REARRANGE THE BALLOT SUMMARY IN THIS CASE, YOUR HONOR.

>> I UNDERSTAND YOU HAVE ANOTHER ARGUMENT WITH RESPECT TO THE LANGUAGE ARE.

WE SPENT TIME TALKING ABOUT THIS.

IS IT-- RIGHT NOW YOU'RE TALKING ABOUT JUST THE ORDER. IT'S, YOU HAVE TO GET TO THE SECOND SENTENCE IN ORDER TO SEE THAT THEY'RE TALKING ABOUT A SCHOOLBOARD'S AUTHORITY TO CONTROL-- SCHOOL BOARD'S AUTHORITY TO CONTROL AND OPERATE ALL PUBLIC SCHOOLS.

>> NOT JUST THE ORDER, YOUR HONOR--

>> WHAT OTHER THAN THE ORDER?

>> TRYING TO GET YOUR EYE OFF THE DOUGHNUT HERE.

SOMETHING THAT IS EASILY UNDERSTOOD, EASILY DESCRIBED AND IS, IN FACT, DESCRIBED IN THE SUMMARY DEALING WITH TERM LIMITS, THAT IS SOMETHING THAT IS EASILY UNDERSTOOD IN COMMON

LANGUAGE THAT'S EASILY
UNDERSTOOD BY THE VOTER,
TEACHING CIVIC EDUCATION.
DOESN'T REQUIRE ANY SPECIAL
LEAP.

PACKAGING IT THAT THAT WAY,
CALLING IT TERM LIMITS AMENDMENT
AND, IN FACT, BURYING THE
PROPOSAL THAT MAKES--

[INAUDIBLE]

[AUDIO DIFFICULTY]

>> I HAVE ONE OTHER QUESTION I
WANT TO ASK YOU, AND THIS IS
ABOUT-- I'M STILL TROUBLED
ABOUT THIS SCHOOLS THAT ARE
SCHOOL BOARDS TO THE PUBLIC
SCHOOLS IT ESTABLISHES.
ARE THERE PRESENTLY PUBLIC
SCHOOLS THAT ARE NOT ESTABLISHED
BY THE SCHOOL BOARD?

>> I DON'T KNOW OF ANY IN THE
K-12 SYSTEM THAT YOU COULD SAY,
YOU KNOW, ARTICLE IX USES THE
WORD "ESTABLISHED" FOR
ESTABLISHING INSTITUTIONS OF
HIGHER LEARNING.

BUT IN TERMS OF K-12, THERE'S
NOTHING CONSTITUTIONALLY THAT
SAYS THERE ARE SCHOOL BOARDS NOT
ESTABLISHED BY THE LOCAL SCHOOL
BOARDS.

>> SO SCHOOLS LIKE VIRTUAL
SCHOOLS AND THOSE KINDS OF
SCHOOLS ARE STILL ESTABLISHED BY
SCHOOL BOARDS OR SCHOOL
DISTRICTS, WHICHEVER--

>> YES, JUDGE.

>> [INAUDIBLE]

SO I'M TRYING TO FIGURE OUT IF A
VOTER WOULD UNDERSTAND FROM THIS
SUMMARY THAT AT PRESENT IT SAYS
CURRENTLY THEY HAVE A
CONSTITUTIONAL DUTY TO OPERATE,
CONTROL, SUPERVISE ALL PUBLIC
SCHOOLS.

BUT IF ALL PUBLIC SCHOOLS ARE
ALSO ESTABLISHED BY THE SCHOOL
DISTRICT, I'M STRUGGLING WITH
WHAT EVEN A SECOND PART MEANS.
THAT AT SOME FUTURE POINT THOSE

SCHOOLS WILL NO LONGER BE ESTABLISHED BY THE SCHOOL BOARD?
>> AND I THINK THE POINT HERE IS THAT NOBODY KNOWS WHAT THAT MEANS, YOUR HONOR.

AND THAT SHOULDN'T BE THE BASIS FOR A VOTER TO MAKE AN INFORMED DECISION ON A CONSTITUTIONAL AMENDMENT.

>> WE THANK YOU FOR YOUR ARGUMENT.

>> THANK YOU, MR. CHIEF JUSTICE.

>> MR. CHIEF JUSTICE, I'D LIKE TO BRIEFLY ADDRESS WHAT I BELIEVE TO BE A CHIEF CONCERN RAISED BY SEVERAL MEMBERS OF THE COURT, AND THAT IS VOTERS WILL COME TO THE BALLOT AND SIMPLY NOT KNOW WHAT THE PHRASE ESTABLISHED BY THE SCHOOL BOARD MEANS.

AND, JUSTICE LEWIS, YOU ASKED WHETHER WE HAVE PRECEDENT DEALING WITH THE--

[INAUDIBLE]

IN THE BALLOT LANGUAGE.

THIS COURT ABSOLUTELY DOES.

AND IN PARTICULAR, I WOULD SUBMIT THAT THIS CASE IS A VERY STRAIGHTFORWARD APPLICATION OF THE MARRIAGE--

[INAUDIBLE]

THERE BOTH THE BALLOT AND THE AMENDMENT USED THE PHRASE SUBSTANTIAL AND EQUIVALENT THEREOF IN RELATION TO THE WORD MARRIAGE.

AND THE COURT HELD THAT USE OF THAT SAME PHRASE IN THE BALLOT LANGUAGE WAS ACCEPTABLE AND WOULD GO FOR A VOTE BECAUSE IT WAS THE SAME WAY--

[AUDIO DIFFICULTY]

THE COURT OR ACKNOWLEDGED THERE THAT WHILE THERE WOULD BE, OF COURSE, QUESTIONS DOWN THE ROAD AS TO HOW EXACTLY THAT A PHRASE MIGHT APPLY, WHETHER IT MEETS ANY BALANCE OF THE SUBSTANTIAL EQUIVALENT OF MARRIAGE, THAT

THOSE QUESTIONS-- ARE NOT BEFORE THE COURT BECAUSE THE ONLY QUESTION BEFORE THE COURT WAS THE ACCURACY OF THE REPRESENTATIONAL EFFECT OF THE REVISION AND BY USING THE SAME TERM, THE BALLOT LANGUAGE DID THAT.

WE WOULD SUBMIT THAT IS EXACTLY THE CASE HERE.

NOT ESTABLISHED BY THE SCHOOL BOARD IS NOT LEGAL TERMINOLOGY, AND--

>> WHAT IS IT-- GOING BACK-- OR THE DIFFERENCE IS THEY CAN, THEY HAVE TO MAINTAIN THEIR DUTIES TO PUBLIC SCHOOLS IT ESTABLISHES BUT NOT TO ONES THEY DON'T ESTABLISH.

SO WHAT ARE THE SCHOOLS CURRENTLY THAT THEY DON'T ESTABLISH?

>> YOUR HONOR, I'M NOT AWARE OF ANY--

>> SO THAT'S, OKAY, SO MAYBE THAT-- THE LAST TIME AROUND, I'M STILL TRYING TO UNDERSTAND. WHAT IS IN THAT VOTERS WOULD UNDERSTAND WERE BEING AFFECTED BY, YOU KNOW, THE ULTIMATE SENTENCE IN HERE WHICH IS WHAT IT MAINTAINS AND WITH THEN WHAT THE SCHOOL BOARD'S GIVING UP. HOW WOULD A VOTER KNOW WHAT IT IS.

>> YOUR HONOR, LIKE THE REVISION ITSELF, THE PHRASE USED IN THE BALLOT LANGUAGE IS ALL PUBLIC SCHOOLS.

ALL PUBLIC SCHOOLS HAS NO--
[INAUDIBLE]

I WOULD SUBMIT THAT THE REVISION HERE IS ENTIRELY, AS FAR AS I UNDERSTAND IT--

[AUDIO DIFFICULTY]

>> SO COULD, SO COULD IT MEAN THAT THEY, EVEN IF IT'S NOT A TRADITIONAL PUBLIC SCHOOL, IF THE STATE COMES IN AND SAYS WE'RE GOING TO OPERATE, WE'RE

GOING TO ESTABLISH MORE MAGNET SCHOOLS, YOU KNOW, NOT CHARTER SCHOOLS, WE'RE JUST GOING TO OPERATE MORE, OTHER TYPES OF PUBLIC SCHOOLS, SCHOOL OF THE ARTS, CAN THEY COME INTO A COMMUNITY AND ESTABLISH THOSE SCHOOLS?

>> PURSUANT TO THIS REVISION, YOUR HONOR, THE LEGISLATURE WOULD BE ABLE TO DO THAT SO LONG AS IT HAS PROVIDED FOR THE ESTABLISHMENT OF THOSE SCHOOLS IN SOME WAY OTHER THAN--

[INAUDIBLE]

THAT'S EXACTLY CORRECT.

>> SO THEY WANTED TO FUND LIKE LOTS OF GOOD PUBLIC SCHOOL EDUCATION, THEY COULD COME IN, INTO A SCHOOL DISTRICT AND DO SO.

>> THAT'S EXACTLY CORRECT, YOUR HONOR.

AND THE BALLOT LANGUAGE FAIRLY DISCLOSES THAT TO THE ELECTORATE BY INFORMING THEM THIS WOULD AFFECT ALL--

>> JUST SOME CLARITY.

AS OF TODAY, THE WAY THINGS STAND TODAY, EVERY VOTER HAS EVERY RIGHT TO BELIEVE THAT THE SCHOOL BOARD ESTABLISHES ALL PUBLIC SCHOOLS IN OUR STATE.

>> YOUR HONOR, I THINK THIS COURT'S PRECEDENTS DO PRESUME AWARENESS OF THE STATUARY BACKGROUND, AND THAT IS THE STATE--

>> YOUR ANSWER'S YES.

>> YES.

>> SO WHY WOULD IT BE NOT MORE, WHY WOULD IT BE NOT CLEAR IF THE PROPOSED AMENDMENT WOULD SAY FROM THIS DAY ON THE LEGISLATURE WILL BE PERMITTED TO ESTABLISH PUBLIC SCHOOLS IN FLORIDA? THEN PEOPLE WOULD KNOW SOMEONE OTHER THAN THE PUBLIC SCHOOLS VIA SCHOOL BOARDS ESTABLISHED THEM.

THAT WOULD HAVE MADE IT EASIER,
WOULDN'T IT?

FROM THIS DAY ON, THE FLORIDA
LEGISLATURE WILL BE PERMITTED TO
ESTABLISH SCHOOLS IN FLORIDA--
[INAUDIBLE]

>> YOUR HONOR--

>> THAT WOULD HAVE CLEARED ALL
THIS UP.

>> YOUR HONOR, SO I WOULD SUBMIT
THAT THE BALLOT LANGUAGE AS IT'S
WRITTEN IS ACCURATE, THIS
COURT'S PRECEDENTS REQUIRE THAT
YOU CONSIDER ONLY THE BALLOT
LANGUAGE THAT IS PUT TOGETHER BY
THE CRC.

AND THAT ULTIMATELY, WHETHER IT
COULD HAVE BEEN--

[INAUDIBLE]

IS ULTIMATELY NOT--

>> IF THE TASK HERE, IF YOUR
OBJECTIVE HERE IS TO INFORM THE
VOTER AS TO WHAT IS GOING TO
HAPPEN, WHY ARE WE
WORDSMITHING?

JUST COME OUT AND SAY IT.

PASS A CHUTE.

FROM NOW ON-- PASS A STATUTE.

FROM NOW ON THERE'LL BE CHARTER
SCHOOLS.

THAT'S WHAT IT SAYS.

THAT'S WHAT YOU MEAN.

>> YOUR HONOR, THE CONSTITUTION
CURRENTLY DOES NOT ADDRESS WHO
ESTABLISHES PUBLIC SCHOOLS, AND
CAN THE REVISION-- AND THE
REVISION WOULD NOT AFFECT--
[AUDIO DIFFICULTY]

>> OKAY, SO I'M THE VOTER.

TODAY IT IS MY VIEW THAT THE
SCHOOL BOARD ESTABLISHES ALL
PUBLIC SCHOOLS IN THIS STATE.

NOW SOMEONE ELSE GETS TO
ESTABLISH PUBLIC SCHOOLS IN THIS
STATE, PUBLISHING FUNDING.

WHO IS THAT-- PUBLIC FUNDING.

WHO IS THAT?

HOW DO I KNOW WHO I'M ALLOWING
TO ESTABLISH SCHOOLS IN MAY--
MY STATE?

>> THE ANSWER, YOUR HONOR, IS
THAT THE REVISION IS SILENT AS
TO WHO SHALL ESTABLISH--

[INAUDIBLE]

AND LEAVES THAT TO THE
LEGISLATURE BY BEING SILENT ON
THAT POINT AND THE REVISION GOES
TO THAT, SAYING IT PERMITS THE
STATE TO ACT.

AND THE--

[AUDIO DIFFICULTY]

AND IN PARTICULAR I THINK VOTERS
SHOULD BE AWARE THAT THE
STATE-- AND, THEREFORE, THE
FLORIDA LEGISLATURE MAY DELEGATE
RESPONSIBILITY OF THIS CATEGORY
TO A VARIETY OF OFFICERS.

>> WE THANK YOU.

YOUR TIME HAS NOW EXPIRED.
WE THANK YOU BOTH FOR YOUR
ARGUMENTS.

>> THANK YOU VERY MUCH.