>> ALL RIGHT, THANK YOU VERY MUCH, MARSHAL.
>> ORDER IN THE COURT.
THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.
THE HONORABLE CHIEF JUSTICE CHARLES T. CANADY PRESIDING.
>> GOOD MORNING AND WELCOME TO THIS SESSION OF THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET TODAY IS ADVISORY OPINION TO THE ATTORNEY GENERAL RE ADULT USE OF MARIJUANA.
COUNSEL, YOU MAY PROCEED.
>> GOOD MORNING, MR. CHIEF JUSTICE, AND MAY IT PLEASE THE COURT, WE'RE HERE TODAY ON THE ATTORNEY GENERAL'S PETITION FOR AN ADVISORY OPINION ON THE CITIZEN INITIATIVE ENTITLED ADULT USE OF MARIJUANA.
MY NAME IS AMIT AGARWAL, AND I'LL BE PRESENTING ARGUMENT ON BEHALF OF THE ATTORNEY GENERAL.
WE'LL HEAR FROM THREE OPPONENTS, AFTER THAT FROM THE SPONSOR AND THEN A BRIEF REBUTTAL.
THE PARTIES HAVE COLLECTIVELY RAISED A BROAD RANGE OF ISSUES IN MULTIPLE ROUNDS OF BRIEFING TO THE COURT, AND TO AVOID DUPLICATION AND IF IT'S AGREEABLE TO THE COURT, I'D LIKE TO GO STRAIGHT TO THE HEART OF THE ATTORNEY GENERAL'S SUBMISSION TO THIS COURT, AND THAT IS TO THE ACCURACY OF THE BALLOT LANGUAGE.
FLORIDA LAW GIVES VOTERS A RIGHT TO VOTE ON CITIZEN INITIATIVES THAT WOULD AMEND THEIR CONSTITUTION, AND THIS COURT HAS TRADITIONALLY BEEN RELUCTANT TO INTERFERE WITH THE EXERCISE OF THAT RIGHT.
HOWEVER, AS THIS COURT HAS REPEATEDLY STRESSED, THAT RIGHT AND THE INITIATIVE PROCESS ITSELF ARE SUBVERTED RATHER THAN

PROTECTED WHEN BALLOT LANGUAGE
INCLUDES MISLEADING, MISLEADING
SUMMARY.
AND WE THINK THAT THAT'S THE
CASE HERE.
[AUDIO DIFFICULTY]
BECAUSE OF THE PREVIOUS
CONSTITUTIONAL AMENDMENT, WHY
WOULDN'T A VOTER, YOU KNOW, IF
THIS WERE TO BECOME PART OF THE
CONSTITUTION, OBVIOUSLY WE HAVE
A CRYSTAL BALL.
WE DON'T KNOW IF FEDERAL
ENFORCEMENT POLICY WOULD CHANGE.
BUT IN TERMS OF THE REAL WORLD,
SORT OF COMMON SENSE
UNDERSTANDING OF VOTERS, WHY
WOULDN'T THIS HAVE THE SAME KIND
OF AN EFFECT?
>> YOUR HONOR, IT'S A REALLY
IMPORTANT QUESTION, AND I'M GLAD
YOU RAISED THAT ISSUE, BECAUSE
THIS COURT IN 2015 APPROVED THE
BALLOT MEDICAL MARIJUANA
AMENDMENT TO WHICH YOUR HONOR
REFERS, AND THE TEXT INCLUDED
TWO CRITICAL QUALIFICATIONS.
THAT AMENDMENT WOULD NOT
IMMUNIZE VIOLATIONS OF FEDERAL
LAW AND, SECOND, THAT THE
AMENDMENT APPLIED ONLY TO
FLORIDA LAW AND, THEREFORE, IT
DID PUT VOTERS ON NOTICE THAT AS
A PRACTICAL MATTER IF YOU
ENGAGED IN THIS CONDUCT, WE'RE
NOT SAYING THAT YOU WOULDN'T BE
SUBJECT TO POTENTIALLY
CATASTROPHIC CRIMINAL LIABILITY.
AND WE THINK THE CHIEF POINT
HERE IS NOT HOW FEDERAL LAW
WOULD BE ENFORCED, BECAUSE AS
YOUR HONOR POINTS OUT, WE DON'T
KNOW WHAT THE CONTENT OF FEDERAL
LAW'S GOING TO BE IN THE FUTURE,
HOW IT'S GOING TO BE ENFORCED.
VOTERS SHOULD BE TOLD THE TRUTH
AND GIVEN THE TOOLS THAT THEY
NEED TO MAKE A FULLY INFORMED
DECISION ON THIS BALLOT
INITIATIVE.

VOTERS RIGHT NOW ARE TOLD
EXPRESSLY THAT THE BALLOT, THAT
THE AMENDMENT WOULD PERMIT
SOMETHING THAT QUITE SIMPLY
WOULD NOT PERMIT IN THE SENSE
THAT IT'S UNDISPUTED AND IT
COULD STILL SUBJECT THE AVERAGE
PERSON DRIVING DOWN THE STREET,
THEY COULD ENGAGE IN CERTAIN
ACTIVITIES THAT ARE ENUMERATED
IN THE TEXT OF THE BALLOT
SUMMARY AND, LIKE I SAID, THEY
COULD BE SUBJECT TO FEDERAL
CRIMINAL LIABILITY ARE.
>> AND SHOULD WE, IN TERMS OF--
SINCE IT SEEMS LIKE YOU GUYS ARE
PLACING ALL OF YOUR EGGS IN THE
PERMITS BASKET, IT SEEMS LIKE
SOME OF-- AT LEAST ONE OF THE
OTHER OPPONENTS I NOTICE
CHARACTERIZED THIS AS A PROBLEM
WITH NOT SO MUCH WHAT IT SAYS,
AS WHAT THE SUMMARY DOESN'T SAY.
YOU STATED ACTUALLY
AFFIRMATIVELY MISLEADING.
DOESN'T-- WHICH ONE OF YOU IS
RIGHT ABOUT THAT?
BECAUSE IT SEEMS LIKE THE
FAILURE TO EDUCATE PEOPLE ABOUT
WHAT PEOPLE MIGHT THINK, WHAT WE
WOULD EXPECT THEM TO KNOW ABOUT
FEDERAL LAW IS KIND OF A
DIFFERENT TYPE OF ARGUMENT ABOUT
SAYING WHEN I TELL THE VOTERS
PERMIT, THAT I'M FALSELY TELLING
THEM THAT THERE ARE NO FEDERAL
LAW CONSEQUENCES.
SEEMS LIKE MORE OF YOUR
ARGUMENT.
>> YEAH.
SO YOUR HONOR IS RIGHT.
TWO RESPONSES TO THAT QUESTION.
FIRST, IT IS NOT-- IT IS OUR
POSITION THAT THE BIG PROBLEM
WITH THE BALLOT LANGUAGE IS NOT
WHAT'S NOT IN IT, IT'S WHAT'S IN
IT.
IT'S THE FACT THAT IT EXPRESSLY
AND UNQUALIFIABLY SAYS TO VOTERS
THAT THIS CONDUCT IS GOING TO BE

PERMITTED EVEN THOUGH IT WOULD
REMAIN A VIOLATION OF FEDERAL
CRIMINAL LAW.
BUT I WOULD RESPECTFULLY THE
DISAGREE WITH YOUR HONOR'S
OPINION OF US EXCLUSIVELY
HAPPENING OUR HAT ON THE MEANING
OF THE WORD PERMIT BECAUSE WE DO
THINK THERE ARE SOME
CONTEXT-SPECIFIC CONSIDERATIONS
HERE THAT OUGHT TO INFORM THE
COURT'S ANALYSIS.
ONE IS THAT WE KNOW THAT THERE
IS POTENTIAL FOR A WHOLE LOT OF
CONFUSION ABOUT THE INTERPLAY
BETWEEN STATES AND FEDERAL LAW
IN THIS PARTICULAR CONTEXT, AND
THAT'S THE CONTEXT OF MARIJUANA
LAW AND POLICY.
AND ANOTHER BALLOT PROCEEDING
THAT IS CURRENTLY PENDING BEFORE
OF THIS COURT, THE SPONSOR
ITSELF RECENTLY FILED A BRIEF
WITH THIS COURT REPRESENTING
THAT THE AMENDMENT, THERE'S AN
ATTEMPT TO, QUOTE, ACTIVE
NULLIFICATION OF FEDERAL LAW.
AND ON TOP OF THAT, WE'VE GOT
OVERLAPPING FEDERAL AND STATE
JURISDICTION, RAPIDLY INVOLVING
LAWS THAT CHANGE ENFORCEMENT
POLICIES.
SOMETIMES THE FEDERAL GOVERNMENT
SEEMED TO BE INDICATING IT
WASN'T-- IN JURISDICTIONS WHICH
LEGALIZE THE USE OF MARIJUANA
UNDER LOCAL LAW.
AND YOU'VE GOT WIDESPREAD USE OF
CONFUSING AND INACCURATE
LANGUAGE ABOUT THE LEGALIZATION.
>> WHAT IS CONFUSING ABOUT THE
FACT THAT IT IS ILLEGAL UNDER
FEDERAL LAW AND THIS MAKES IT
LEGAL UNDER STATE LAW?
YOU SEEM TO BE DOING, AS ONE OF
MY OLD COLLEAGUES USED TO SAY,
THE TALK ABOUT THE CONFUSION
ABOUT THE LAW AND YOU GO INTO
DETAILS, BUT THE FACTS ARE
REALLY SIMPLE.

IT IS ILLEGAL TO POSSESS
MARIJUANA UNDER FEDERAL LAW.
THIS CONSTITUTIONAL A AMENDMENT
MAKES OUT LEGAL IN FLORIDA, BUT
IT'S STILL ILLEGAL-- THAT'S THE
BOTTOM LINE.
AND, YOU KNOW, ARE WE NOT
GIVING CITIZENS SOME CREDIT HERE
FOR DOING THEIR HOMEWORK?
I MEAN, IT IS IN THE TEXT UNDER
FLORIDA LAW, IT'S JUST MISSING
IN THE SUMMARY.
BUT AREN'T WE-- I MEAN, IT IS,
UNDER OUR SYSTEM OF JUSTICE, THE
OLD SAYING THAT IGNORANCE IS NO
DEFENSE, IGNORANCE OF THE LAW IS
NO DEFENSE.
WE HAVE TO ACCEPT THAT PREMISE
TO DO OUR WORK.
CAN'T WE DO THE SAME THING HERE?
THAT PEOPLE WOULD HAVE READ THE
TEXT, DONE THEIR HOMEWORK,
PAPERS AND ARTICLES AND HAVE
INFORMED CITIZENS TO VOTE?
DON'T WE HAVE TO ACCEPT THAT
PREMISE AS WELL HERE?
>> YOUR HONOR, WE CERTAINLY HAVE
NO QUARREL WITH THE PREMISE THAT
IGNORANCE IF OF THE LAW IS NO
EXCUSING VIOLATING THE LAW, BUT
THIS COURT HAS NEVER SAID THAT'S
AN EXCUSE FOR PROVIDING VOTERS
WITH AFFIRMATIVELY MISLEADING
BALLOT LANGUAGE.
THE SPONSOR CANNOT CREDIBLY
ARGUE THAT IT'S NOT IMPORTANT TO
INCLUDE QUALIFICATION BECAUSE
THE SPONSOR ITSELF CHOSE TO
EXPRESSLY AND REPEATEDLY INCLUDE
THAT CRITICAL LIMITATION IN THE
TEXT--
>> ARE YOU CLAIMING THAT THE
TEXT OF THE PROPOSED AMENDMENT
IS MISLEADING?
>> NO, WE'RE NOT.
WE'RE SAWING THAT YOUR HONOR'S
POINT ABOUT THIS DOESN'T HAVE TO
BE COMPLICATED.
IT'S EXACTLY RIGHT, AND THE
SPONSOR TOLD US HOW WE COULD

MAKE THIS NOT COMPLICATED.
AND THAT IS TO REPLICATE IN THE BALLOT SUMMARY THE PRECISE LANGUAGE THAT'S USED IN THE TEXT--
>> THE PRECISE LANGUAGE YOU'RE CLAIMING MISSING FROM THE SUMMARY IS INCLUDED IN AT LEAST TWO PLACES IN THE TEXT OF THE STATUTE.
SO IF WE'RE TO ASSUME THAT CITIZENS ARE EDUCATING THEMSELVES GOING INTO THIS BALLOT BOX, WE SHOULD ASSUME THAT PREMISE THAT THEY READ THE TEXT AND STUDIED IT AND KNOW EXACTLY WHAT WE'RE TALKING ABOUT; ILLEGAL FEDERALLY, LEGAL IN FLORIDA.
WHY CAN'T WE ACCEPT THAT PREMISE?
>> WELL, YOUR HONOR, I DON'T UNDERSTAND THIS COURT'S PRECEDENCE TO STAND FOR THE PROPOSITION THAT IT'S OKAY FOR BALLOT LANGUAGE TO BE MISLEADING IF VOTERS COULD GO READ THE FULL TEXT OF THE AMENDMENT AND THEY COULD THEN UNDERSTAND THAT THE BALLOT LANGUAGE DOES NOT REALLY MEAN WHAT IT SAYS, AND IT'S SUBJECT TO ALL KINDS OF LIMITATIONS AND QUALIFICATIONS THAT ARE NOT IN THE BALLOT LANGUAGE ITSELF.
>> [INAUDIBLE]
COULD I ASK YOU A QUESTION ABOUT SOMETHING REALLY DIFFERENT BECAUSE I KNOW YOUR TIME IS RUNNING SHORT--
>> HIS TIME HAS CONCLUDED.
YOU CAN PROCEED--
>> OKAY.
I'LL SAVE IT FOR-- I WANT YOU TO HAVE SOME TIME LEFT FOR REBUTTAL, SO WE'RE GOOD.
>> ALL RIGHT.
AND ALTHOUGH YOU'VE, YOUR TIME HAS BEEN EXHAUSTED PLUS ANOTHER MINUTE--

[LAUGHTER]
I WILL, NONETHELESS, AFFORD YOU TWO MINUTES FOR REBUTTAL.
>> THANK YOU VERY MUCH, MR. CHIEF JUSTICE.
>> THANK YOU.
COUNSEL, YOU MAY PROCEED.
>> APOLOGIZE, YOUR HONOR.
MY NAME IS JEREMIAH HAWKES, AND I AM REPRESENTING THE FLORIDA SENATE TODAY.
THE FIRST QUESTION I WANT TO BRING UP IS THE MATTER OF THE COURT'S JURISDICTION.
YOU KNOW, WHAT THE CONSTITUTION SAYS IS THAT WHEN AN INITIATIVE IS GOING TO QUALIFY FOR THE BALLOT, IT HAS TO GET 8% OF THE NUMBER OF PEOPLE WHO VOTED IN THE LAST, PRECEDING PRESIDENTIAL ELECTION ARE.
AND WHAT THE LEGISLATURE HAS SAID IS YOU HAVE TO GET 10% OF THAT NUMBER PREVIOUSLY-- AND NOW THE STATUTE'S CHANGED TO 25% OF THAT NUMBER-- YOU HAVE TO GET 25% OF THAT NUMBER IN ORDER TO GET COURT REVIEW.
SO, CLEARLY, THOSE TWO THINGS ARE TIED TOGETHER.
THE LEGISLATURE MEANT FOR THE SAME THRESHOLDS TO APPLY TO THE COURT'S REVIEW THAT APPLY TO OBTAINING THE BALLOT.
AND SO WHAT'S HAPPENED HERE IS THIS IS CLEARLY NOT GOING TO BE ON THE 2020 BALLOT.
AND IN 2020 WE'RE GOING TO HAVE A PRESIDENTIAL ELECTION.
AND THE THRESHOLD IS GOING TO CHANGE.
BARRING THE EXACT SAME NUMBER OF VOTERS VOTING IN THE 2020 ELECTION THAT VOTED IN THE 2016 ELECTION.
AND SO WE DON'T KNOW WHAT THOSE THRESHOLDS ARE.
AND IN THE ABSENCE OF THAT KNOWLEDGE, I THINK IT WOULD BE APPROPRIATE FOR THE COURT TO

REMAND THIS BACK TO THE
SECRETARY OF STATE TO BE
RECERTIFIED WHEN THE NEW
THRESHOLDS ARE ESTABLISHED AND
SO THAT ANY INITIATIVES THAT
MEET THE NEW THRESHOLDS CAN BE
CERTIFIED TO THE COURT AT THAT
POINT IN TIME.
I THINK THAT'S THE CLEAR IMPORT
OF THE CONSTITUTIONAL LANGUAGE,
AND THAT'S WHAT THE LEGISLATURE
INTENDED TO HAVE HAPPEN.
YOU KNOW, WHAT THEY WANTED TO DO
IS SHOW THAT THERE WAS A SERIOUS
COMMITMENT ON THE BEHALF OF
SPONSORS TO PROCEED, AND THEY
WANTED TO KEEP THE COURT'S
REVIEW INTO THE SAME CONTEXT AS
OBTAINING THE BALLOTS.
WHAT THE ATTORNEY GENERAL HAS
SUGGESTED IS THAT ONCE THE COURT
RECEIVES JURISDICTION, THE
JURISDICTION REMAINS NO MATTER
WHAT CHANGES IN CIRCUMSTANCES
MAY OCCUR.
AND I WOULD SUGGEST THAT'S AN
ERROR.
THE ATTORNEY GENERAL SAYS, YOU
KNOW, IF THE SIGNATURES EXPIRE,
IF THE LEGISLATURE CHANGES THE
STANDARDS, IF, YOU KNOW, IF IT
BECOMES CLEAR IT'S NOT GOING TO
MAKE THE BALLOT, ONE OF THOSE
THINGS CAN HAVE ANY IMPACT ON
WHETHER OR NOT THE COURT SHOULD
REVIEW.
AND I BELIEVE THAT THAT IS
INCORRECT.
THAT IS NOT SUPPORTED BY THE
TEXT OF THE CONSTITUTION.
THE OTHER POINT ON THAT MATTER
IF, YOUR HONOR, IS THE ATTORNEY
GENERAL ALSO MAKES REFERENCE TO
PAST PRACTICE, AND I THINK
THERE'S TWO PROBLEMS WITH THIS
PAST PRACTICE ARGUMENT.
THE FIRST PROBLEM IS THE
ATTORNEY GENERAL ACKNOWLEDGES IN
THEIR BRIEF THERE IS, THE COURT
HAS NEVER SPOKEN TO THIS ISSUE

IT, APPARENTLY IF, HAS NEVER
BEEN BROUGHT UP.
AND SECONDLY, YOUR HONOR, I
DON'T BELIEVE IT TRULY IS A PAST
PRACTICE.
YOU'RE LOOKING OVER PAST
INITIATIVES, AND I CANNOT CLAIM
TO HAVE DONE AN ABSOLUTELY
EXHAUSTIVE REVIEW, BUT THERE ARE
A NUMBER OF EXAMPLES WHERE
THINGS HAVE COME UP IN ELECTION
YEARS.
AND WHAT GENERALLY SEEMS TO
HAPPEN IS EITHER THE COURT RULES
PRIOR TO IT BECOMING CLEAR THAT
THE INITIATIVE CANNOT MAKE THE
BALLOT, OR--
>> COUNSEL, LET ME ASK YOU THIS,
IN CASES SUCH AS THAT, WHAT
SHOULD-- SHOULD WE GO BACK AND
INVALIDATE OUR OPINION?
>> NO, NO ONE'S ASKING THE COURT
TO GO BACK AND INVALIDATE THE
OPINION.
I THINK THAT, YOU KNOW, WHAT
HAPPENS--
>> WELL, SO YOUR VIEW IS WE'VE
ISSUED AN OPINION, THE SHIP HAS
SAILED.
>> IF WE ISSUED AN OPINION, I
BELIEVE THE SHIP HAS SAILED.
>> WHAT ABOUT THE PERSPECTIVE
THAT ONCE THE ATTORNEY GENERAL
HAS SUBMITTED THE LETTER TO US
REQUESTING AN ADVISORY OPINION,
THAT AT THAT POINT THE SHIP HAS
SAILED?
>> I DON'T THINK THAT'S WHAT THE
LEGISLATURE INTENDED, YOUR
HONOR.
AND I THINK WHAT THAT DOES IS IT
DEPRIVES THE LEGISLATURE OF THE
ABILITY TO DO WHAT THEY DID THIS
SESSION.
THIS IS SESSION THE LEGISLATURE
SAID, YOU KNOW WHAT?
WE DON'T THINK THAT THE STANDARD
OF REVIEW HAS BEEN WORKING, IS
AND WE THINK THAT WE NEED TO UP
THE CRITERIA.

SO I THINK TO DO THAT, YOUR HONOR, IN MATTERS WHERE IT IS CLEAR THAT IT IS NOT GOING TO MAKE THE NEXT BALLOT, IT FORECLOSES THE LEGISLATURE BEING ABLE TO ACT FOR THE COURT TO STEP IN AND SAY, WELL, WE'RE GOING TO DECIDE THE MATTER ANYHOW.
I DON'T THINK, YOU KNOW, JURISDICTION IS NOT A MATTER OF CONVENIENCE.
IT NEEDS TO FOLLOW THE LAW.
AND IN THIS INSTANCE, THIS MATTER SHOULD WAIT.
>> WELL, YOU KNOW, THE CONSTITUTION SAYS THAT THE COURTS SHALL, WHEN REQUESTED BY THE ATTORNEY GENERAL PURSUANT TO THE REVISIONS OF ARTICLE X, SECTION-- I'M SORRY, SECTION TEN, ARTICLE IV, RENDER AN ADVISORY OPINION OF THE JUSTICES AS PROVIDED BY GENERAL LAW.
>> AS PROVIDED BY GENERAL LAW IS WHAT'S KEY IN THAT PHRASE, YOUR HONOR.
YOU KNOW, THE LEGISLATURE HAS SAID YOU'LL DO THAT THE WHEN THEY HAVE 10% OF THE SIGNATURES THAT THEY'RE GOING TO NEED.
AND AT THIS POINT IN TIME--
WELL, 25% OF SIGNATURES THEY'RE GOING TO NEED,AND AT THIS POINT IN TIME WE DON'T KNOW HOW MANY SIGNATURES ARE GOING TO BE NEEDED FOR THESE VARIOUS INITIATIVES.
>> COUNSEL, CAN I ASK YOU A SEPARATE QUESTION?
>> YES, YOUR HONOR.
>> ON THE ISSUE OF THE CHANGE TO THE LAW THAT NOW SAYS THE COURT IS SUPPOSED TO LOOK AT THE SPATIAL, POTENTIAL FACIAL INVALIDITY OF THE MEASURE IN RELATION TO THE U.S. CONSTITUTION, WHAT IS YOUR POSITION ON WHAT THE REMEDY SHOULD BE ASSUMING THAT THE

COURT WERE TO, IN THIS CASE OR, YOU KNOW, SOME FUTURE CASE IF WE WERE TO ADDRESS A QUESTION LIKE THAT, WHAT SHOULD THE REMEDY BE IF THE COURT I THINKS THAT IT WOULD BE FACIALLY UNCONSTITUTIONAL?
>> WELL, AS WE ADDRESS IN OUR BRIEF, THERE ARE A NUMBER OF CASES THAT SAY IF A MATTER IS UP CONSTITUTIONAL, THE CITIZENS DO NOT HAVE THE POWER TO AMEND THEIR CONSTITUTION IN A WAY THAT VIOLATES THE U.S. CONSTITUTION.
>> WELL, I DON'T-- I THINK, I'M NOT SURE IF THE CASES ARE-- I MEAN, SO THERE WAS A LOT GOING ON IN THOSE CASES.
FIRST OF ALL, THOSE WEREN'T ADVISORY OPINION CASES.
AND SECOND OF ALL, THERE'S AN ASSUMPTION IN THOSE CASES THAT IT WOULD BE FUTILE FOR THE VOTERS TO AMEND THE CONSTITUTION UNDER THOSE CIRCUMSTANCES.
BUT I DON'T KNOW IF THAT REALLY TAKES ACCOUNT OF THE POSSIBILITY THAT SO, FIRST OF ALL, THERE'S THE ISSUE OF, YOU KNOW, I THINK THAT THOSE CASES, THAT THOSE ARE BASED ON PREDATED THE INITIATIVE PROCESS AND THE FACT THAT THE CONSTITUTION TALKS ABOUT, YOU KNOW, THE ONE SINGLE SUBJECT REQUIREMENT BEING THE ONLY-- AT LEAST ON THE FACE OF THE CONSTITUTION, THE ONLY REQUIREMENT.
BUT EVEN IF YOU ACCEPT THE IDEA THAT, YOU KNOW, THAT THIS FEDERAL CONSTITUTIONALLY IS LURKING IN THE BACKGROUND THERE, YOU STILL HAVE THE POSSIBILITY OF A-- OF SOMETHING IN THE FEDERAL CONSTITUTION IF FLORIDA CONSTITUTIONAL LAW WAS GOING TO CHANGE.
SO IF THE PEOPLE OF FLORIDA WANT TO PUT SOMETHING IN OUR CONSTITUTION AT A CERTAIN POINT

IN TIME MIGHT BE
UNCONSTITUTIONAL OBVIOUSLY
SUBJECT TO CHANGE, WHY DOES THE
LEGISLATURE IS HAVE THE
AUTHORITY TO RESTRICT THEIR
ABILITY TO DO THAT?
>> WELL, I DON'T THINK THAT THEY
ARE PUTTING THIS IN THE
CONSTITUTION SUBJECT TO FUTURE
CHANGE.
I THINK THAT THEY ARE--
>> SUBJECT TO CHANGE IN FEDERAL
LAW.
>> SUBJECT TO CHANGE IN FEDERAL
LAW.
I DON'T THINK THAT THEY ARE
DOING IT SUBJECT TO THE CHANGE
OF FEDERAL LAW.
I THINK THEY EXPECT IT TO BE
IMPLEMENTED IMMEDIATELY.
AND WHAT MR. AGARWAL TALKED
ABOUT IS THE VOTERS
UNDERSTANDING WHAT THEY'RE
VOTING ON.
AND IF WE'RE PUTTING SOMETHING
IN THE CONSTITUTION THAT IS
UNCONSTITUTIONAL AND AT SOME
RANDOM MOMENT IN TIME SOME ACT
OF CONGRESS IS GOING TO CHANGE
OUR CONSTITUTION, I DON'T THINK
WE PUT THINGS INTO LAW--
>> WELL, I MEAN.
>>-- THAT ARE UNCONSTITUTIONAL
LIKE THAT--
>> SORRY TO INTERRUPT YOU.
COULD BE A U.S. SUPREME COURT
DECISION.
BUT AGAIN, YOU'RE SORT OF
JUMPING FROM THE IDEA OF US--
THE CONSTITUTION DOESN'T SAY
WHAT THESE ADVISORY OPINIONS ARE
SUPPOSED TO DO.
THE OBVIOUSLY AS A MATTER OF
PRACTICE WHEN WE'VE BEEN DEALING
WITH THE 101.61 ISSUES AND THE
SINGLE SUBJECT ISSUES WHERE THE
COURT HAS SAID THE REQUIREMENTS
AREN'T MET, THE COURT HAS THEN
SAID, OKAY, THE AMENDMENT NEEDS
TO BE STRICKEN FROM THE BALLOT,

THAT'S SOMETHING THAT THE COURT JUST KIND OF DECIDED.
COULD WE READ WHAT THE LEGISLATURE IS DOING HERE AS A TRUE ADVISORY OPINION SO VOTERS KNOW WHAT THE COURT'S VIEW IS TO POSSIBLE CONSTITUTIONALITY IS AND THEN THE THEY COULD GO AHEAD AND DO WHAT THEY WANT AS OPPOSED TO THE LEGISLATURE ADDING A NEW SUBSTANTIVE LEGISLATION AS TO WHAT THE VOTERS ARE DECIDING TO DO AT ALL?
>> I THINK, YOUR HONOR, PUTTING IN FRONT OF THE VOTERS A NULLITY IS NOT WHAT THE CITIZEN INITIATIVE PROCESS IS FOR.
AND I DO NOT-- AND I THINK WHAT THOSE CASES SAY AND THERE'S EVEN ONE FROM THE 1970s, THE CITIZENS CANNOT AMEND THEIR CONSTITUTION IN A WAY THAT DEFIES THE U.S. CONSTITUTION.
AND I THINK THAT HAS TO BE THE CORRECT RULE.
I DON'T-- AND I DON'T THINK, YOUR HONOR, THAT WE CAN AMEND OUR CONSTITUTION ON A CONDITIONAL BASIS, YOU KNOW, IF THIS HAPPENS, THEN THIS WILL HAPPEN.
AND I DON'T THINK, YOUR HONOR, THAT IT IS FAIR TO VOTERS TO PUT A QUESTION IN FRONT OF THEM, AND THIS MAY TAKE EFFECT AT SOME POINT IN THE FUTURE BASED ON THE INDEPENDENT ACTIONS OF SOME THIRD ACTOR.
WE DON'T KNOW WHEN, WE DON'T KNOW WHO, YOU KNOW?
MAYBE THE ATTORNEY GENERAL--
>> SO DO YOU CONSIDER THIS A LEGISLATIVE-- WHAT'S THE SOURCE IN THE LEGISLATURE'S AUTHORITY TO ADD A NEW REQUIREMENT TO WHAT THE CONSTITUTION SAYS IS A PERMISSIBLE SUBJECTIVE AMENDMENT?
>> I DON'T BELIEVE-- I THINK THAT, YOU KNOW, WHAT THIS COURT

HAS ALWAYS HELD AND I THINK IS
THE CORRECT HOLDING IS THAT IT
IS AN IMPLICIT RESTRICTION THAT
FLORIDA CONSTITUTIONAL
AMENDMENTS CANNOT VIOLATE THE
U.S. CONSTITUTION.
YOU DON'T HAVE TO SAY THAT
EXPRESSLY.
THAT'S HOW THE FEDERAL SYSTEM
WORKS.
AND I THINK THE COURT'S FOCUS
ONLY ON THE EXPRESS LIMITATION
HAS IGNORED VERY IMPORTANT
CONSIDERATION THAT I THINK THE
COURT SHOULD HAVE BEEN TAKING
INTO ACCOUNT ALL ALONG.
AND I THINK WHAT HAPPENED IN THE
TERM LIMITS CASE WHERE YOU HAVE
THE VOTERS VOTE ON SOMETHING AND
THEN YOU YANK IT OUT OF THE
CONSTITUTION A FEW YEARS LATER,
I DO NOT THINK THAT IS FAIR TO
THE VOTERS.
I DO NOT THINK THAT IS GOOD FOR
OUR CONSTITUTION, TO PUT THINGS
IN THERE THAT WE KNOW ARE NEVER
GOING TO HAVE ANY EFFECT AND
THEN JUST TAKE THEM OUT LATER
ON.
I THINK THAT IN THESE
INITIATIVES WE HAVE TO SPEAK TO
THE MOMENT IN TIME WHEN IS THE
ELECTION OCCURRING, WHAT IS THE
STATE OF THE LAW AT THAT POINT
IN TIME.
WE MAY MAKE ALL SORTS OF CHANGES
IN THE FUTURE INCLUDING THE LAWS
THAT EXIST RIGHT NOW, AND I DO
NOT THINK IT IS FAIR TO THE
VOTERS TO DO THAT.
AND IT ALSO--
>> COUNSEL, YOUR TIME HAS BEEN
MORE THAN EXHAUSTED, BUT I WILL
ALSO AFFORD YOU TWO MINUTES FOR
REBUTTAL.
>> THANK YOU, YOUR HONOR.
>> ALL RIGHT.
COUNSEL, YOU MAY PROCEED.
>> THANK YOU, MR. CHIEF JUSTICE,
MAY IT PLEASE THE COURT, EXCUSE

ME, MY NAME IS JEREMY BAILIE ON
BEHALF OF THE DRUG-FREE AMERICA
FOUNDATION, THE FLORIDA
COALITION ALLIANCE--
[INAUDIBLE]
DRUG-FREE OPPONENTS.
I DON'T WANT TO DUPLICATE ANY OF
THE ARGUMENTS THE COURT HAS
HEARD OR WILL HEAR, I WANT TO
FOCUS SPECIFICALLY ON AN
ARGUMENT THAT WAS ADDRESSED IN
OUR BRIEFING, THE FACT THAT THE
BALLOT SUMMARY HIDES FROM VOTERS
AND, THEREFORE, IS INEFFECTIVE
THIS BROAD GRANT OF IMMUNITY
THAT WOULD ALLOW ANY ADULT TO
USE MARIJUANA OR MARIJUANA
ACCESSORIES IN THE STATE OF
FLORIDA.
IN ORDER TO UNDERSTAND, YOU NEED
TO GO INTO THE TEXT ITSELF.
SECTION 1B IN THE PROPOSED
AMENDMENT UNDER THE PUBLIC
POLICY SECTION, AN ADULT CAN
POSSESS, USE, DISPLAY, PURCHASE
OR TRANSPORT MARIJUANA OR
MARIJUANA ACCESSORIES AND THEN
FINISH IT BY SAYING IS NOT
SUBJECT TO CIVIL OR CRIMINAL
LIABILITY UNDER FLORIDA LAW.
OF COURSE, THE PROPOSED
AMENDMENT WASN'T BEING DRAFTED
ON A CLEAN SLATE, IT WAS DOING
SO IN LIGHT OF WHAT HAPPENED IN
MARIJUANA TWO AND MARIJUANA ONE.
AND EVEN BEGINNING BACK IN
MARIJUANA ONE, THE COURT PUT THE
INITIATIVE ON THE BALLOT, THE
JUSTICE-- YOUR HONORS JUSTICE
POLSTON AND CANADY DID ADDRESS
THIS PROVISION-- AND THAT
POTENTIALLY ALLOWS--
[INAUDIBLE]
CONSTITUTIONAL PROVISION WILE
STILL ALLOWING THAT ACTIVITY
BEING IMMUNIZED.
FAST FORWARD TO MARIJUANA TWO,
AND I THINK THAT'S A CRITICAL
ANALYSIS HERE.
THE DRAFTERS OF THE AMENDMENT IN

MARIJUANA TWO ACTUALLY CORRECTED
MANY OF THE ISSUES THAT WERE
NOTED IN THE DISSENT,
SPECIFICALLY RELEVANT HERE WAS
THE LIMITATION SECTION,
SUBSECTION D, SUBSECTION 8 THAT
STATED THAT THE AMENDMENT DID
NOT AFFECT OR REPEAL TWO TYPES
OF CLAIMS; LAWS RELATING TO
NEGLIGENCE OR PROFESSIONAL
NEGLIGENCE FOR FIVE CATEGORIES
OF PEOPLE-- QUALIFIED PATIENTS,
CAREGIVERS, PHYSICIANS
[INAUDIBLE]
OR THEIR AGENTS OR EMPLOYEES.
SO ESSENTIALLY THE THING YOU
NEED WITH THIS CLAWBACK THAT
ALLOWED IT TO STAY WITHIN THE
GOALPOST OF--
[INAUDIBLE]
SO YOU HAVE THIS IMMUNITY FOR
USE, NOTABLY THE FIVE CATEGORIES
OF PEOPLE FOR THE ONLY FIVE
CATEGORIES OF PEOPLE ALLOWED TO
USE MARIJUANA IN THE MEDICAL
MARIJUANA SCHEME AND IT DIDN'T
CLAW BACK ANY IMMUNITY FOR
CLAIMS OF NEGLIGENCE OR
PROFESSIONAL NEGLIGENCE.
MOVING TO THE PROPOSED AMENDMENT
TODAY, THERE IS NO SUCH
CLAWBACK.
THERE'S THIS BROAD RANGE OF
IMMUNITY TO ANY ADULT WHICH IS
DEFINED AS ANY PERSON OVER THE
AGE OF 21 FOR USE OF MARIJUANA
OR MARIJUANA ACCESSORIES, AND
IT'S OPEN-ENDED FOR SIMPLE
IMMUNITY UNDER FLORIDA LAW.
THE ATTEMPT TO SAVE THAT
PROVISION OR TO KEEP IT WITHIN
THE GOALPOSTS IS TO POINT BACK
TO THE SUBSECTION D, SUBSECTION
8 OF MARIJUANA TWO WHICH IS NOW
ENSHRINED IN THE FLORIDA
CONSTITUTION AT ARTICLE X.
IT'S REALLY COMPARING APPLES TO
ORANGES AND IT DOESN'T, IN FACT,
SAVE THE PROVISION.
YOU'RE TALKING ABOUT IMMUNITY I

FOR ANY ADULT IN THE PROPOSED AMENDMENT, AND THEN IN THE CLAWBACK IT'S ONLY TALKING ABOUT CLAWING BACK THAT IMMUNITY FOR THOSE FIVE CATEGORIES OF PEOPLE.
JUST BASED ON THE PLAIN TEXT, THERE ARE INDIVIDUALS WHO ARE GETTING IMMUNITY UNDER THE PUBLIC POLICY SECT THAT WOULD NOT BE ALLOWED BACK UNDER SUBSECTION D, SUBSECTION 8.
ON THAT BASIS ALONE AND IN ADDITION TO THE ARGUMENT AS HEARD REGARDING THE TEXT, THE BALLOT SUMMARY IS FATALLY DEFECTIVE BECAUSE IT DOESN'T GIVE ANY NOTICE TO VOTERS THAT THEY'RE ALLOWING THIS IMMUNITY PROVISION INTO THE FLORIDA CONSTITUTION.
CERTAINLY, VOTERS ARE GOING TO HAVE AN UNDERSTANDING WHEN THEY CHECK YES IN THE BOX THAT SOME LEVEL OF CRIMINALIZATION IS GOING--
[INAUDIBLE]
THAT'S GOING TO BE UNDERSTOOD.
BUT NO NOTICE TO VOTERS IN THIS SUMMARY THAT IMMUNITY IS ALSO GOING TO BE GIVEN.
THE SUPPORT OF THE INITIATIVE HAVE ARGUED THAT IT SIMPLY GIVES THE SAME AMOUNT OF IMMUNITY THAT ANY OTHER PRODUCT ENJOY UNDER FLORIDA LAW, BUT THERE'S NO OTHER EXAMPLE WHERE WE'VE ENSHRINED IN OUR CONSTITUTION IMMUNITY FOR THE USE OF ANY PARTICULAR PRODUCT, SPECIFICALLY NOT A HALLUCINOGEN.
THIS COURT'S PRECEDENTS ARE CLEAR THAT A BALLOT SUMMARY CAN BE MISLEADING BY OMISSION JUST AS IF IT WAS AFFIRMATIVELY MISLEADING.
SO THE FACT THAT THIS BALLOT SUMMARY HAS BEEN COMPLETELY VOIDED OF ANY REFERENCE TO IMMUNITY BUT HAS BROAD IMMUNITY GRANTED IN IT--

>> LET ME ASK THE QUESTION, DO YOU AGREE THAT IF WE WERE GOING TO PROHIBIT THE VOTERS FROM AMENDING THEIR CONSTITUTIONS, THAT IT SHOULD BE-- BASED ON OMISSION, THAT IT SHOULD BE A MATERIAL OMISSION?
>> YES, YOUR HONOR, IT SHOULD BE A MATERIAL OMISSION.
>> AND WHAT DO YOU THINK MATERIAL MEANS IN THIS CONTEXT?
>> SO SOMETHING THAT THE AVERAGE VOTER WOULDN'T UNDERSTAND COMING ALONG WITH THE PROPOSAL.
>> WOULDN'T MATERIAL MEAN IT WOULD MAKE A DIFFERENCE IN THEIR VOTE?
>> I THINK, I THINK THAT'S PART OF IT, BUT I THINK PART OF IT IS GOING--
>> THERE'S A LOT THAT YOU CAN'T EXPLAIN THAT PEOPLE WOULDN'T KNOW IN A VERY SHORT 75-WORD SUMMARY THAT'S SUPPOSED TO ONLY HIT THE CHIEF PURPOSE, RIGHT?
>> YES, YOUR HONOR.
BUT I THINK WHEN YOU HAVE AN UNDERSTANDING FOR VOTERS THAT THEY'RE GOING IN WITH THIS EXPECTATION OF DECRIMINALIZES, WHEN YOU HAVE HIDDEN IN THE AMENDMENT THE CIVIL LIABILITY IMMUNITY, THAT IS MATERIAL.
THEY'RE ESSENTIALLY BROADENING WHAT THEY'RE SAYING.
THEY'RE NOT JUST PERMITTING THE USE OF MARIJUANA, THEY'RE IMMUNIZING THE USE OF MARIJUANA.
AND THAT'S A DIFFERENCE, I THINK THE MATERIAL DIFFERENCE, THAT SHOULD BE--
>> YOU THINK THAT WHATEVER PERCENTAGE OF THE VOTERS HAVE DECIDED THAT THEY'RE FOR THIS WOULD DECIDE THEY'RE NOT FOR THIS IF THEY KNEW, ONLY KNEW WHAT YOU'RE TALKING ABOUT NOW.
>> I THINK SOME VOTERS MAY, THAT MAY BE AN ISSUE FOR SOME VOTERS, YOUR HONOR.

BUT I THINK THE MOST IMPORTANT
THING IS BASED ON THIS COURT'S
DECISION THAT THE BALLOT SUMMARY
IF MUST BE ACCURATE.
THE POTENTIAL FOR A MISLEADING
BALLOT SUMMARY TO CONVINCE
PEOPLE ON THE FENCE TO VOTE FOR
SOMETHING THAT THEY MAY NOT IF
OTHERWISE VOTE FOR, I THINK, IS
POTENTIALLY DIFFICULT HERE.
YOU HAVE VOTERS NOT BEING AWARE
OR MADE AWARE THAT THIS CIVIL
LIABILITY IMMUNITY IS BURIED IN
THE TEXT, AND THERE'S NO NOTICE
WHATSOEVER OF IT IN THE ACTUAL
SUMMARY THAT VOTERS ARE GOING TO
BE BASING THEIR DECISION ON.
I THINK THAT LARGE OMISSION
RENDERS THE BALLOT SUMMARY
FATALLY DEFECTIVE, AND THIS
COURT SHOULD NOT PERMIT THIS TO
BE ON THE BALLOT.
THANK YOU, YOUR HONORS.
>> CAN I ASK YOU, I DON'T
UNDERSTAND YOUR ARGUMENT.
WHAT'S THE IMMUNITY YOU'RE
SAYING IS BURIED IN THE TEXT?
EVEN THOUGH THE TEXT REFERS TO
SUB 8 OF THE MEDICAL MARIJUANA
AMENDMENT, IT DOESN'T SEEM LIKE
IT HAS ANYTHING TO DO WITH THIS.
>> CORRECT, YOUR HONOR.
AND I APOLOGIZE.
IN THE PROPOSED AMENDMENT IN
PARAGRAPH B1 IT STATES THAT ANY
ADULT IS PERMITTED TO POSSESS,
DISPLAY, USE, TRANSPORT
MARIJUANA OR MARIJUANA
ACCESSORIES-- OF COURSE, ANY
PIECE OF EQUIPMENT THAT'S TO BE
USED TO USE MARIJUANA--
>> OKAY.
AND THAT'S ALMOST VERBATIM IN
THE SUMMARY, RIGHT?
>> CORRECT.
>> OKAY.
SO WHAT IF IT'S NOT DISCLOSED?
>> THE LAST SENTENCE AND IS NOT
SUBJECT TO CRIMINAL OR CIVIL
LIABILITY UNDER FLORIDA LAW.

SO THAT IS NOT SUBJECT TO CIVIL LIABILITY UNDER FLORIDA LAW IS NOWHERE FOUND IN THE SUMMARY.
>> I MEAN, ISN'T THAT KIND OF IMPLICIT IN PERMITS?
>> NOT FOR CIVIL LIABILITY, NO. FOR CRIMINAL LIABILITY-- I GUESS THAT'S THE ESSENCE OF MY ARGUMENT, YOUR HONOR.
IT'S IMPLICIT THAT IT WOULD ALLOW DECRIMINALIZATION, IS SO IT WOULD NOT SAY YOU HAVE CIVIL IMMUNITY IN A COURT ACTION FOR USE OF MARIJUANA OR MARIJUANA ACCESSORIES.
I THINK THAT'S THE CONTRAST HERE, THAT CERTAINLY VOTE ARE GOING TO BE EXPECTED TO UNDERSTAND WHEN THEY'RE VOTING TO PERMIT MARIJUANA, THEY'RE VOTING TO DECRIMINALIZE UNDER FLORIDA LAW THE SUBSTANCE.
THEY'RE NOT GOING TO UNDERSTAND THAT THEY'RE VOTING TO HAVE CIVIL IMMUNITY UNDER FLORIDA LAW FOR THE USE OF THAT SAME SUBSTANCE.
>> ALL RIGHT.
COUNSEL, YOU HAVE EXHAUSTED ALL YOUR TIME.
IF YOU WANT TO SUM UP, 15 SECONDS, I WILL LET YOU DO THAT.
>> THANK YOU, YOUR HONORS. NOTHING FURTHER.
>> THANK YOU.
COUNSEL, YOU MAY PROCEED.
>> AM I UNMUTED?
>> YOU ARE.
>> OKAY.
MAY IT PLEASE THE COURT, JASON GONZALEZ REPRESENTING THE FLORIDA CHAMBER OF COMMERCE, FLORIDIANS AGAINST RECREATION RECREATIONAL MARIJUANA, SAVE OUR SOCIETY FROM DRUGS AND THE NATIONAL DRUG-FREE WORKPLACE ALLIANCE.
YOUR HONORS, JUST TO ILLUSTRATE HOW EFFECTIVELY MISLEADING THE FIRST TWO SENTENCES OF THIS

BALLOT SUMMARY ARE, IF I WAS TO TURN TO A FLORIDA VOTER AND TELL THEM IF YOU VOTE FOR THIS AMENDMENT AND IT PASSES, IF YOU'RE 21 YEARS OLD, YOU WILL BE PERMITTED TO POSSESS AND USE 2.5 OUNCES OF MARIJUANA FOR ANY REASON, RECREATIONAL OR OTHERWISE, IF I WAS TO SAY THAT WITHOUT ANY CONDITION OR QUALIFICATION, WHAT WOULD I BE DOING?

I WOULD BE LYING BECAUSE THAT IS A PATENTLY FALSE STATEMENT.

IF I HAD A CLIENT COME TO ME AS AN ATTORNEY AND ASK ME TO GIVE THEM AN OPINION REGARDING WHAT THE TEXT OF THIS PROPOSED AMENDMENT WOULD ACTUALLY DO IF PASSED, IF THAT WAS MY ADVICE I GAVE TO MY CLIENT AND THEN I WENT ON TO THE SECOND SENTENCE OF THIS BALLOT SUMMARY AND SAID THE SAME THING, THAT A MEDICAL MARIJUANA TREATMENT CENTER WILL BE PERMITTED TO SELL MARIJUANA FOR RECREATIONAL PURPOSES, IF I SAID THAT WITH NO CONDITION, I WOULD BE COMMITTING PROFESSIONAL MALPRACTICE.

I WOULD BE VIOLATING THE OATH OF ATTORNEY AND THE RULES OF PROFESSIONAL CONDUCT BECAUSE IT'S PATENTLY FALSE, AND IT WOULD NOT JUST MERELY BE A MILD MISSTATEMENT.

IT WOULD BE A PRETTY SERIOUS MISREPRESENTATION, PARTICULARLY WITH RESPECT TO SAYING UP EQUIVOCALLY THAT YOU'LL BE PERMITTED OR SOME ENTITY WILL BE ARE PERMITTED TO SELL RECREATIONAL MARIJUANA BECAUSE WE KNOW THE SALE OF ANY AMOUNT OF MARIJUANA IS NOT MERELY A FEDERAL CRIME, IT IS A FEDERAL FELONY PUNISHABLE BY TEN YEARS IN PRISON.

SO THESE ARE SERIOUS DEFECTS IN THOSE FIRST TWO SENTENCES.

BUT THERE'S ANOTHER ASPECT TO
THE FIRST SENTENCE THAT IS
UNIQUELY MISLEADING, AND THIS
ACTUALLY IS SIMILAR TO A
QUESTION ASKED IN A FEBRUARY
ORAL ARGUMENT ON ANOTHER
AMENDMENT WHEN THE CHIEF JUSTICE
ASKED ABOUT A PART OF A BALLOT
SUMMARY THAT SAYS A PROPOSED
AMENDMENT WOULD PROVIDE
REGULATION FOR LIMITED USE.
WHEN IT WENT OVER TO THE TEXT OF
THAT PROPOSED AMENDMENT, THERE
WAS NO LIMITATION TO THE AMOUNT
OF MARIJUANA THAT COULD BE USED.
IN THIS INITIATIVE IT IS AN EVEN
MORE MISLEADING DEFECT OF A SUM
NATURE BECAUSE THE FIRST
SENTENCE OF THIS BALLOT SUMMARY
UNEQUIVOCALLY SAYS PERMITS USE
OF UP TO 2.5 OUNCES OF
MARIJUANA.
GO TO THE TEXT OF THE AMENDMENT,
THERE IS ABSOLUTELY NO
LIMITATION ON THE AMOUNT OF
MARIJUANA YOU CAN USE WITH.
THAT IS AFFIRMATIVELY
MISLEADING.
NOW, I WOULD LIKE TO MAKE ONE
COMMENT ON SOMETHING THAT THE
SENATE HAD ARGUED IN THEIR BRIEF
WITH MY REMAINING TIME.
THE SINGLE SUBJECT ARGUMENT THAT
THE SENATE MADE, AND I
UNDERSTAND MAYBE THIS IS NOT THE
CASE THAT YOU ADDRESS THE SINGLE
SUBJECT DEFECT BECAUSE THE
MISLEADING NATURE OF THE BALLOT
SUMMARY IS SO OBVIOUSLY
APPARENT.
BUT THE SINGLE SUBJECT ARGUMENT
MADE BY THE SENATE IS THAT
SUBSECTIONS B1 AND B2 ARE
SEPARATE, DISPARATE SUBJECTS
THAT HAVE BEEN LOG ROLLED
TOGETHER IN VIOLATION OF THE
SINGLE SUBJECT RULE IN THE
CONSTITUTION AND THE COURT'S LAW
RULING PRECEDENT.
AND ONE IS THE DECRIMINALIZATION

FOR PERSONAL USE.
B2 IS A SEPARATE AND DISTINCT SUBJECT THAT LEADS TO THE PROLIFERATION OF COMMERCIAL SALE BY A CERTAIN TYPE OF ENTITY CALLED A MEDICAL MARIJUANA TREATMENT CENTER, AND IT PROVIDES CIVIL AND CRIMINAL IMMUNITY TO THAT PARTICULAR TYPE OF ENTITY.
THOSE ARE TWO DIFFERENT SUBJECTS.
AND BACK IN FEBRUARY IN ORAL TO ARGUMENTS THAT I WATCHED JUSTICE LAWSON HAD A VERY GOOD QUESTION THAT HE ASKED ABOUT A SIMILAR TWO PROPOSALS IN ONE AMENDMENT, AND HE HAD SOME SKEPTICISM THAT THAT WAS LAWFUL WHEN HE ASKED WHY WOULD A VOTER FAVOR THE DECRIMINALIZATION OF PERSONAL USE WITHOUT ALSO FAVORING SOME TYPE OF CIVIL AND CRIMINAL IMMUNITY FOR SOME ENTITY TO ENGAGE IN THE COMMERCIAL SALE.
THAT'S A VERY GOOD QUESTION.
AND WHAT I WOULD SAY IN RESPONSE TO THAT QUESTION IS THAT THERE ARE ACTUALLY A HOT OF PEOPLE, I KNOW A LOT OF THEM, THAT HAVE A STRONG PERSONAL BELIEF THAT THEY DON'T CARE WHAT SOMEONE ELSE DOES IN THE PRIVACY OF THEIR HOME AND PUTS IN THEIR BODY IN THE PRIVACY OF THEIR HOME, BUT THEY DON'T-- AND THEY ALSO DON'T WANT THEIR TAX MONEY SPENT ON CRIMINAL PROSECUTIONS FOR WHAT'S DONE IN THE PRIVACY OF THEIR HOME.
BUT THERE ARE MANY OF THOSE SAME PEOPLE THAT MAY NOT WANT THEIR CHILDREN TO SEE A COMMERCIAL RECREATIONAL MEDICAL MARIJUANA-- OR RECREATIONAL MARIJUANA STOREFRONT ON EVERY CORNER OF THEIR NEIGHBORHOOD AS JUSTICE MUNIZ MENTIONED AND AS IN MY NEIGHBORHOOD IF I SEND MY TEENAGERS TO THE CLOSEST PUBLIX

PHARMACY, THEY'RE GOING TO PASS
THREE OF THESE MEDICAL MARIJUANA
IF RETAILERS.
AND IF THERE'S A COMMERCIAL
PROLIFERATION FOR RECREATIONAL
MARIJUANA IF, THAT IS ONLY GOING
TO EXPAND.
SO THERE ARE A LOT OF PEOPLE WHO
OPPOSE THAT, BUT THIS OTHER
PROPOSAL FOR JUST THE
DECRIMINALIZATION UNDER STATE
LAW ONLY OF THE POSSESSION AND
USE AND TRANSPORT BY AN
INDIVIDUAL IN THE PRIVACY OF
THEIR HOME, THEY MAY FAVOR THAT.
SO I THINK--
>> I'M SORRY TO INTERRUPT YOU,
AND I UNDERSTAND WHAT YOU'RE
SAYING.
IF WE WERE WRITING ON A BLANK
SLATE, I VERY MUCH WOULD
APPRECIATE THAT ARGUMENT.
BUT GIVEN THAT SO MUCH OF OUR
CASE LAW SEEMS TO BE DRIVEN BY
THIS IDEA OF IF THE COMPONENTS
OF AN AMENDMENT ARE PART OF A
KIND OF RATIONALLY CONNECTED
PLAN THAT WE HAVE TENDED TO SAY
THAT THAT SATISFIES SINGLE
SUBJECT.
I MEAN, IT SEEMS LIKE IF THAT'S
THE TEST, THEN MAYBE YOUR
ARGUMENT IS WE'VE GONE ASTRAY BY
MAKING THAT THE TEST.
BUT IT SEEMS HIKE IF THAT'S THE
TEST, IT WOULD BE HARD TO ARGUE
THAT LINKING THOSE TWO THINGS IN
THIS AMENDMENT WOULD SATISFY.
>> YES.
AND I THINK YOU'RE ALLUDING TO
THIS JUDICIALLY-CREATED,
EXTRA-TEXTURAL ONENESS OF
PURPOSE STANDARD.
OF COURSE, THE WORD PURPOSE IS
DIFFERENT THAN THE WORD SUBJECT.
OF THEY HAVE DIFFERENT MEANINGS,
AND, AGAIN, THAT WAS A
JUDICIALLY-CREATED STANDARD THAT
JUSTICE HOGAN SAYS HAS CAUSED AS
MANY QUESTIONS AND CONFUSION AS

IT'S DONE TO HELP THE ANALYSIS.
SO AGAIN, I DON'T KNOW IF THIS IS THE CASE, BUT HOPEFULLY AT SOME POINT THE JURISPRUDENCE OF THE COURT WILL GET AWAY FROM THAT STANDARD, GO BACK TO THE TEXT OF WHAT IS A HIGHLY RESTRICTIVE SINGLE SUBJECT REQUIREMENT IN ARTICLE XI, SECTION THREE, AND THIS HASN'T BEEN DISCUSSED IN ANY OF THE ARGUMENTS ON ANY OF THE AMENDMENTS.
BUT THIS IS A HIGHLY RESTRICTIVE SINGLE SUBJECT REQUIREMENT, SHALL EMBRACE ONE SUBJECT IN A MATTER OF DIRECTLY CONNECTED--ONLY THAT MATTER DIRECTLY CONNECTED THEREWITH.
NOT SOMEWHAT CONNECTED OR INDIRECTLY.
AND MANY DON'T UNDERSTAND OR DON'T KNOW THE HISTORY THAT WHEN WE FIRST PUT A CITIZEN INITIATIVE AMENDMENT PROCESS INTO OUR CONSTITUTION IN 1968, THERE WAS NO SINGLE SUBJECT RESTRICTION.
THE PEOPLE CAME BACK FOUR YEARS LATER IN 1972 AND OVERWHELMINGLY ADOPTED AND ADDED A HIGHLY RESTRICTIVE SINGLE SUBJECT REQUIREMENT BECAUSE THEY REALIZED AFTER THIS WENT IN IN 18968 THAT THIS IS ONE WAY OUT OF THE FOUR WAYS WE CAN AMEND OUR CONSTITUTION WHERE THE PROPOSALS DON'T GO THROUGH ANY REPRESENTATIVE DELIBERATIVE BODY LIKE THE CONSTITUTIONAL REVISION COMMISSION COMMITTEE OR THE LEGISLATURE OR CONSTITUTIONAL CONVENTION WHERE YOU HAVE PEOPLE STUDYING WHAT WOULD BE THE EFFECT OF DIFFERENT SUBJECTS ALL BEING PUT TOGETHER AND PUT IN FRONT OF THE VOTERS.
WITH A CITIZEN INITIATIVE, SOMEBODY CAN DRAFT IT AT THEIR KITCHEN TABLE, GET THE

SIGNATURES AND PUT IT ON THE
BALLOT.
THE PEOPLE CAME BACK AND WANTED
TO LIMIT IT TO ONE DISCREET
SUBJECT AND ONLY THAT MATTER
DIRECTLY CONNECTED THEREWITH.
>> COUNSEL, COME YOU'RE NOW
ABOUT A MINUTE OVER, SO YOU CAN
IS SUM UP.
>> I'M-- THANK YOU, YOUR HONOR,
AND WE APPRECIATE YOU MAKING
YOURSELVES AVAILABLE IN THIS
FORMAT UNDER THESE CIRCUMSTANCES
TO GIVE US A HEARING.
THANK YOU.
>> THANK YOU.
COUNSEL, YOU MAY PROCEED.
>> GOOD MORNING YOUR HONOR.
MY NAME IS GEORGE LEVESQUE.
MY CO-COUNSEL AND I, ASHLEY
LUCAS, REPRESENT MAKE IT LEGAL
FLORIDA.
WE'RE HERE ON BEHALF OF PETITION
INITIATIVE 1911 TITLED ADULT USE
OF MARIJUANA.
AND WE'RE HERE TO ARGUE THAT THE
PROPOSED AMENDMENT STRICTLY
COMPLIES WITH THE REQUIREMENTS
OF 101.161 AND ARTICLE 11 I,
SECTION THREE.
THE BALLOT TITLE USING FOUR
WORDS DESCRIBES THE MEASURE OF
THE AMENDMENT; ADULT USE OF
MARIJUANA.
AND THEN IN 75 WORDS USING CLEAR
AND UNAMBIGUOUS LANGUAGE,
EXPLAINS THE CHIEF PURPOSE OF
THE AMENDMENT; TO PERMIT ADULTS
21 OR YEARS AND OLDER TO OBTAIN
LIMITED QUANTITIES OF MARIJUANA
FOR ANY REASON.
IT PIGGYBACKS BECAUSE AN ADULT
POSSESSING MARIJUANA NEEDS TO BE
ABLE TO OBTAIN IT SOMEHOW
LAWFULLY.
IT PIGGYBACKS OFF OF THE
EXISTING MEDICAL MARIJUANA
STRUCTURE.
IT ALLOWS MEDICAL MARIJUANA
TREATMENT CENTERS TO PROVIDE

MARIJUANA TO ADULTS FOR THEIR
USE.
>> I'M SORRY TO INTERRUPT YOU,
CAN I ASK YOU ABOUT THAT?
SO THE PREVIOUS AMENDMENT ON
MEDICAL MARIJUANA SEEMS TO HAVE
PLACED AN AFFIRMATIVE OBLIGATION
ON THE STATE TO MAKE SURE THAT
THEY PROVIDE FOR THE
AVAILABILITY OF MEDICAL
MARIJUANA.
YOU CAN UNDERSTAND GIVEN THE
PUBLIC DEBATE ON THAT WHY THE
VOTERS WOULD HAVE WANTED-- IT
WASN'T JUST SORT OF A PASSIVE
LIVE AND LET LIVE TYPE THING,
IT'S AN AFFIRMATIVE WE WANT TO
INSURE THE AVAILABILITY OF THIS.
BY SORT OF BOOTSTRAPPING YOUR
AMENDMENT, BY INCLUDING THAT
INTO YOURS, IT SEEMS LIKE YOU'RE
INCORPORATING A CONCEPT THAT YOU
COULD SEE REASONABLE VOTERS NOT
NECESSARILY BEING ONBOARD WITH.
WANTING RECREATIONAL MARIJUANA
TO BE AVAILABLE AND
AFFIRMATIVELY REQUIRED TO BE
AVAILABLE TO THE SAME EXTENT AS
MEDICAL MARIJUANA.
OF AND YET I DON'T KNOW THAT A
TYPICAL VOTER WOULD HAVE ANY
CLUE THAT THAT'S ACTUALLY WHAT'S
GOING ON.
COULD YOU ADDRESS THAT?
>> SURE.
I THINK THE AMENDMENT BROADLY IS
AIMING TO MAKE AVAILABLE TO THE
PUBLIC, ADULTS-- WITH
RESTRICTIONS THAT PROTECT
CHILDREN-- MARIJUANA IN SOME
FORM OR FASHION.
WE PIGGYBACK OFF OF THE EXISTING
SYSTEM.
HOWEVER, WE DON'T DESCRIBE A LOT
OF THE LIMITATIONS THAT ANY
POLICY MAKING BODY MIGHT ENGAGE
IN.
WE LEAVE THAT TO THE
LEGISLATURE.
AND THERE'S EXPRESS LANGUAGE

THAT WOULD ALLOW THE LEGISLATURE SOME ROOM TO OPERATE IF THERE ARE CONCERNS WITH THOSE THINGS. BUT WHAT WE TRY TO DO IS MAKE IF IT CLEAR THAT FLORIDA IS NO LONGER GOING TO CRIMINALIZE THE ADULT POSSESSION OF MARIJUANA THAT'S CONSISTENT WITH THE AMENDMENT.
>> BUT IT, BUT IT SEEMS LIKE BY LINKING THE TWO THINGS TOGETHER, OBVIOUSLY THE MEDICAL MARIJUANA AMENDMENT CONSTRAINED THE DISCRETION OF THE DEPARTMENT OF HEALTH AND/OR THE LEGISLATURE IN A WAY THAT IS SIGNIFICANTLY DIFFERENT FROM THE DISCRETION THEY WOULD HAVE, YOU KNOW, IN THE ORDINARY SENSE.
AND NOW YOU'RE KIND OF LIMITING BY INCORPORATING THAT IN HERE, YOU'RE LIMITING THE DEPARTMENT'S AND THE LEGISLATURE'S DISCRETION IN THE SAME WAY, AND YOU'RE IMPOSING AN AFFIRMATIVE OBLIGATION TO MAKE RECREATIONAL MARIJUANA WIDELY AVAILABLE THAT ISN'T DISCLOSED.
I MEAN, THAT'S THE PROBLEM THAT I'M ASKING ABOUT.
>> SURE.
AND TO BE CLEAR, THERE'S NOTHING THAT REQUIRES A MEDICAL MARIJUANA TREATMENT CENTER IN THE LAW TO PROVIDE TO AN ADULT. IF THERE ARE MEDICAL MARIJUANA TREATMENT CENTERS THAT WANT TO FOCUS ON A MEDICAL-ONLY MODEL AND NOT ENGAGE IN THESE ACTIVITIES, THEY'RE CERTAINLY FREE TO.
BUT AT SOME LEVEL AN ADULT-- AND WE BELIEVE THIS RELATES TO THE ONENESS OF PURPOSE-- AT SOME LEVEL IF YOU'RE GOING TO DECRIMINALIZE THE SUBSTANCE, IT MAKES SENSE TO LINK THAT DECRIMINALIZATION WITH THE ABILITY TO OBTAIN IT FROM SOMEBODY LAWFULLY.

AND THAT'S WHAT WE'RE DOING
HERE.
>> OKAY.
CAN I ASK YOU ANOTHER QUESTION?
SO IN 2020, EARLIER THIS YEAR,
WE SAID THE BALLOT LANGUAGE CAN
BE CLEARLY AND CONCLUSIVELY
DEFECTIVE IF IT FAILS TO INFORM
THE VOTERS OF THE MATERIAL TEXT
OF THE AMENDMENT.
LET'S ASSUME WE MEANT LEGAL,
MATERIAL LEGAL EFFECTS OF THE
AMENDMENT.
AND THEN IN A SEPARATE CASE,
WILEY, WE SAID THAT ISSUING
REGULATION IS A LEGISLATIVE
FUNCTION.
YOUR BALLOT SUMMARY DOESN'T MAKE
ANY MENTION OF THE FACT THAT
YOU'RE GIVING LEGISLATIVE POWER,
ESSENTIALLY ARE, TO AN EXECUTIVE
AGENCY WITH
CONSTITUTIONALLY-RESTRICTED
OVERSIGHT BY THE LEGISLATURE.
HOW IS THAT NOT A LEGALLY
MATERIAL EFFECT OF THIS
AMENDMENT?
>> GOING BACK TO MARIJUANA ONE
AND MARIJUANA TWO, THE TWO PRIOR
CASES FROM THIS COURT, I DON'T
BELIEVE THAT WAS DISCLOSED IN
THOSE AMENDMENTS--
>> IT, ACTUALLY, IN MARIJUANA
TWO IT WAS.
THE BALLOT SUMMARY SAID THE
DEPARTMENT OF HEALTH SHALL
REGISTER AND REGULATE CENTERS
THAT PRODUCE AND DISTRIBUTE,
BLAH, BLAH, BLAH.
SO IT WAS EXPLICITLY DISCLOSED.
>> SURE.
AND IN THIS INSTANCE, WE HAVEN'T
CREATED ANY NEW REGULATORY
ABILITY OTHER THAN THE EXISTING
CONSTITUTIONAL STRUCTURE THAT
WAS CREATED.
SO AT LEAST IN TERMS OF THE
SAVINGS LANGUAGE THAT WAS IN THE
AMENDMENT THAT SPECIFICALLY
ADDRESSES THE LEGISLATURE'S

AUTHORITY TO ENACT LAWS NOT
INCONSISTENT IS WITH IT, THAT'S
THE LANGUAGE THAT WE HAVE IN
OURS, THAT'S THE LANGUAGE THAT
WAS IN THEIRS.
AND WHILE THEIR AMENDMENT
DISCLOSES THAT REGULATORY
AUTHORITY, THAT'S EXISTING
AUTHORITY THAT OUR AMENDMENT
TECHNICALLY DOESN'T TOUCH.
ALL WE'RE--
>> NO.
BUT MY QUESTION GOES TO THE FACT
THAT YOUR AMENDMENT
AFFIRMATIVELY GIVES REGULATORY
AUTHORITY TO THE DEPARTMENT.
OBVIOUSLY, THIS IS, YOU KNOW,
THE WHOLE IDEA OF GIVING
AGENCIES
CONSTITUTIONALLY-DERIVED
REGULATORY AUTHORITY THAT'S IN
SOME SENSE INDEPENDENT OF THE
LEGISLATURE IS A DRAMATIC
DEPARTURE FROM THE LEGAL FORUM.
THAT WAS DISCLOSED, AT LEAST TO
SOME EXTENT, IN MEDICAL
MARIJUANA TWO.
YOUR BALLOT SUMMARY HERE IS
COMPLETELY SILENT ON IT.
AND SO IT SEEMS LIKE IF YOU
ACCEPT THE PREMISE THAT THIS
MATERIAL LEGAL EFFECTS TEST IS
PART OF WHAT THE BALLOT SUMMARY
LAW REQUIRES, IT SEEMS HARD TO
SAY THAT YOU'VE COMPLIED WITH
THAT BY OMITTING ANY REFERENCE
THE THAT HERE.
SO WHICH-- DO YOU DISAGREE WITH
THE TEST, OR DO YOU DISAGREE
WITH THE IDEA THAT IT WOULD BE A
MATERIAL LEGAL EFFECT.
>> I THINK THE CONCEPT OF A
MATERIAL LEGAL EFFECT IS ABOUT
AS AMORPHOUS AS SOME OF THE
PRIOR TESTS THAT WERE APPLIED BY
THE COURT.
>> YOU THINK THAT'S MORE
AMORPHOUS THAN CHIEF PURPOSE?
>> I BELIEVE THE TEXT OF THE
STATUTE TALKS ABOUT THE CHIEF

PURPOSE.
I THINK THE MATERIAL LEGAL EFFECTS COULD, COULD BE BROADER WHERE AN AMENDMENT HAS A LOT OF DIFFERENT EFFECTS, ALL OF THEM BEING EQUAL, WHEN YOU'RE CONFINED TO 75 WORDS, I THINK YOU HAVE TO BE A LITTLE MORE FLEXIBLE AND UNDERSTAND THAT THE CHIEF PURPOSE IS CLEARLY ARTICULATED IN THIS AMENDMENT.
>> OKAY.
SO IN YOUR CASE HOW DID YOU DECIDE WHICH IS-- YOU HAVE YOUR FIRST TWO SENTENCES.
ONE IS THE DECRIMINALIZATION FOR THE USE AND POSSESSION, AND THEN THE SECOND SENTENCE GOES TO THE DISTRIBUTION AND SALE.
HOW DID YOU-- IS THAT ONE PURPOSE OR TWO?
AND IF THERE ARE TWO, WHICH ONE IS THE CHIEF PURPOSE?
>> THE CHIEF PURPOSE IS THE FIRST SENTENCE.
>> SO EVERYTHING ELSE AFTER THAT WAS GRATUITOUS?
>> EVERYTHING ELSE AFTER THAT WAS EXPLAINING ADDITIONALLY THE CHIEF PURPOSE.
HOW THE CHIEF PURPOSE WILL WORK.
BECAUSE IT'S NOT SIMPLY STATING THE CHIEF PURPOSE, IT'S EXPLAINING THE CHIEF PURPOSE.
>> OKAY.
SO BY THAT LOGIC THEN, WHY ISN'T GIVING LEGISLATIVE POWER TO AN EXECUTIVE AGENCY ALSO PART OF EXPLAINING HOW IT'S GOING TO, QUOTE-UNQUOTE, WORK?
>> WELL, I THINK WHAT WE'RE TRYING TO DO IS ARTICULATE ON A LEVEL THAT THE VOTER WILL UNDERSTAND.
AND WHILE I AGREE WITH YOUR EARLIER PREMISE THAT IT IS UNUSUAL FOR THESE TYPES OF GRANTS OF REGULATORY AUTHORITY, CONSTITUTIONAL GRANTS OF REGULATORY AUTHORITY, THE

PREMISE IS THAT THE LEGISLATURE
IS NOT BEING RESPONSIVE.
THE POWER OF THE PEOPLE TO AMEND
THEIR OWN CONSTITUTION TO GO
AROUND THE LEGISLATURE IN THOSE
CIRCUMSTANCES WHERE THEY'RE NOT
BEING RESPONSIVE AND DIRECTLY
AMEND THEIR CONSTITUTION IS
SACROSANCT IN ARTICLE I UNDER
THE DECLARATION OF RIGHTS.
AND TO THE EXTENT THAT WHAT
WE'VE SET UP WE'VE INFORMED
THEM, THIS IS WHAT WE'RE DOING,
WE'RE PIGGYBACKING OFF OF THE
EXISTING SYSTEM, I THINK THE
BALLOT SUMMARY UNEQUIVOCALLY
COMPLIES WITH THE PRECEDENTS OF
THIS COURT, EVEN THE RECENT
PRECEDENT TALKING ABOUT THE
MATERIAL LEGAL EFFECTS.
BECAUSE WHILE THAT IS A LEGAL
EFFECT, I WOULD NOT AGREE THAT
THAT IS THE MATERIAL LEGAL
EFFECT.
THE MATERIAL LEGAL EFFECT THAT
WE'RE DOING IS DECRIMINALIZING
MARIJUANA FOR ADULT USE IN
FLORIDA.
>> SO YOU DON'T, I MEAN, YOU
DON'T THINK IT'S A PRETTY
DRAMATIC CHANGE FROM THE
SEPARATION OF POWERS PERSPECTIVE
AS A MATERIAL LEGAL EFFECT?
>> WHEN WE'RE TALKING ABOUT--
>> ISN'T THAT ONE OF THE MOST
FUNDAMENTAL PRINCIPLES IN THE
CONSTITUTION?
>> IT'S A FUNDAMENTAL PRINCIPLE,
BUT WE'RE TALKING ABOUT THE
PEOPLE OF FLORIDA AMENDING THEIR
CONSTITUTION IN A NARROW,
DEFINED AREA.
IN THIS CASE ADULT USE OF A
SUBSTANCE THAT WAS OTHERWISE
DEEMED CRIMINAL.
I DON'T THINK THAT IS A BROAD,
SWEEPING CHANGE AND REBALANCING
OF THE SEPARATION OF POWERS, NO.
>> DOES THE AMENDMENT REQUIRE
NEW MEDICAL MARIJUANA TREATMENT

CENTERS?
DOES IT REQUIRE THE DEPARTMENT
TO AUTHORIZE NEW DISTRIBUTION
FACILITIES?
>> IT DOES NOT.
WE'RE, WE WERE FAMILIAR WITH THE
ONGOING LITIGATION THAT THE
COURT WILL HEAR ARGUMENT ON
LATER THIS EVENING, AND THESE
WERE CHOICES THAT WERE MADE TO
PIGGYBACK OFF OF THE EXISTING
STRUCTURE WITHOUT TRYING TO PUT
OUR FINGER ON ONE SIDE OF THE
SCALE OR THE OTHER ON HOW THAT
WOULD WORK.
SO ALL OF THAT WILL BE LEFT TO
THE DEPARTMENT AND, ULTIMATELY,
THIS COURT TO DETERMINE HOW
MEDICAL MARIJUANA TREATMENT
CENTERS AND WHAT CONSTITUTES A
MEDICAL MARIJUANA IF TREATMENT
CENTER AND WHAT THEY CAN ENGAGE
IN, ALL OF THAT WILL BE LEFT TO
THE DETERMINATION OF THE COURT.
>> SO IT SIMPLY PERMITS MEDICAL
MARIJUANA TREATMENT CENTERS THAT
ARE LICENSED PURSUANT TO THE
EXISTING CONSTITUTIONAL
PROVISION TO SELL WITHOUT
RESTRICTION OF THE MEDICAL USE
FOR SELF PURPOSE, IS THAT
CORRECT?
>> CORRECT.
I BELIEVE THE WAY THOSE MEDICAL
MARIJUANA TREATMENT CENTERS CAN
WORK UNDER THE CURRENT STATUTE,
A MEDICAL MARIJUANA TREATMENT
CENTER CAN PROVIDE AN AMOUNT
GREATER THAN WHAT-- FOR MEDICAL
USE, THAN WHAT WOULD BE
PERMITTED FOR ADULT USE.
RIGHT NOW ADULT USE IS LIMITED
TO 2.5 OUNCES, AND THE MEDICAL
MARIJUANA STATUTE THAT'S, WILL
BE BEFORE THE COURT, THE
LEGISLATURE HAS EXPANDED THE
ABILITY TO PROVIDE THAT IN A
MEDICAL CONTEXT.
THE RESTRICTIONS IN CHAPTER 386
RELATE TO A 70-DAY SUPPLY WHICH

WOULD BE DEVICE THAT AMOUNT, 2.5 OUNCES, 2.5 OUNCES BEING A 35-DAY SUPPLY.
SO AT LEAST IN THIS CONTEXT WHAT IS BEING PROVIDED IS A MUCH MORE LIMITED FOR ADULT USE.
IF YOU WERE TALKING ABOUT THE OVERLAP OF THE TWO MEDICAL MARIJUANA AND ADULT MARIJUANA, REALLY WHAT YOU'RE TALKING ABOUT IS VENN DIAGRAMS WITH A SIGNIFICANT AMOUNT OF OVERLAP.
BUT THERE ARE GOING TO BE SOME DIFFERENCES ON ONE AND ON THE OTHER.
>> DO YOU AGREE THOUGH THAT UNDER THE PLAIN LANGUAGE OF THE AMENDMENT ONCE THE LEGISLATURE DESIGNATES AND LICENSES SOMETHING AS A MEDICAL MARIJUANA TREATMENT CENTER, THE REGULATIONS AND/OR STATE LAW COULD NOT PROHIBIT THE MEDICAL MARIJUANA TREATMENT CENTER FROM ALSO SELLING RECREATIONAL MARIJUANA?
>> CORRECT.
WE, WE-- THE TERM THAT WE USE IN THE AMENDMENT IS ADULT USE FOR ANY REASON.
THE TERM RECREATIONAL ITSELF MIGHT BE LIMITED.
WE DIDN'T WANT A SITUATION WHERE A PERSON WANTS TO SELF-MEDICATE ON A SIMPLE, ISOLATED OCCASION TO BE ABLE TO NOT OBTAIN THAT SAME SUBSTANCE BECAUSE THEY WERE BUYING IT FOR MEDICAL REASONS VERSUS RECREATIONAL REASONS.
>> SO THE LEGISLATURE COULDN'T-- SO IF I'VE GOT TO DRIVE PAST TEN MEDICAL MARIJUANA CENTERS ON MY WAY TO WORK AND THE LEGISLATURE THOUGHT, YOU KNOW WHAT?
WHY DON'T WE JUST HAVE ONE OF THOSE BE AUTHORIZED TO SELL RECREATIONAL MARIJUANA, THAT WOULD NOT BE A POLICY CHOICE THE LEGISLATURE AND/OR THE

DEPARTMENT OF HEALTH COULD HAVE.
IT'S ALL OR NOTHING.
SUBJECT TO THE LIMITS ON THE
AMOUNT.
>> BUT IF I'M A MEDICAL
MARIJUANA TREATMENT CENTER, THEN
I'M BY DEFINITION ALSO A
RECREATIONAL MARIJUANA SALES
CENTER.
>> YOU COULD BE.
I BELIEVE THE POINT THAT YOU'RE
GETTING AT, I BELIEVE A MEDICAL
MARIJUANA TREATMENT CENTER COULD
NOT BE PROHIBITED AS AUTHORIZED
UNDER ARTICLE X, SECTION 29,
COULD NOT BE PROHIBITED FROM
MAKING THOSE SALES FOR
RECREATIONAL OR ADULT USE.
HOWEVER, THEY COULD NOT BE, ON
THE SAME HAPPENED, NOTHING IN
THE AMENDMENT THAT REQUIRES THEM
TO MAKE THOSE SALES.
>> THE MEDICAL MARIJUANA
TREATMENT CENTER, WHY IS OUT,
WHY IS IT IMPORTANT THAT THE
BALLOT SUMMARY DISCLOSE IMMUNITY
FOR CRIMINAL AND CIVIL LIABILITY
FOR THEM?
>> WHY-- I APOLOGIZE, JUSTICE
POLSTON.
IS THE QUESTION WHY IS IT
IMPORTANT--
>> YOUR OPPONENT ARGUES THAT
IT'S A MATERIAL OMISSION FOR THE
BALLOT SUMMARY NOT TO INCLUDE
THE IMMUNITY PROVIDED TO THE
MEDICAL MARIJUANA TREATMENT
CENTERS.
WHY ISN'T IT?
>> WELL, FIRST OF ALL, I BELIEVE
I DISAGREE WITH THE DRUG-FREE
AMERICA'S AND THEIR RELATED
PARTIES.
I DISAGREE WITH THEIR
INTERPRETATION OF THE AMENDMENT.
WHAT THE AMENDMENT DOES IS IT
GRANTS THE IMMUNITY THAT IS
GRANTED IS IMMUNITY FROM
CRIMINAL PROSECUTION AND CIVIL
LIABILITY FOR THE PENALTIES.

NOT EVERY PENALTY THAT CAN BE
IMPOSED ON MINUTE IS NECESSARILY
IN CRIMINAL SANCTION.
THERE ARE CIVIL SANCTIONS THAT
CAN BE IMPOSED.
>> DO YOU NOT THINK THAT THE
AMENDMENT PROVIDES IMMUNITY FROM
THE TORT CLAIM IF THE MEDICAL
TREATMENT CENTER, FOR EXAMPLE,
PROVIDES SOME TYPE OF PRODUCT
THAT INJURES THE PERSON USING
THE MEDICAL MARIJUANA OR THE
MARIJUANA, RECREATIONAL
MARIJUANA BOUGHT BY THE ADULT?
>> I DO NOT.
THE TEXT OF THE AMENDMENT ITSELF
INCORPORATES LIMITATIONS THAT
APPLY TO MEDICAL MARIJUANA, SO
THE SAME LIMITATIONS THAT
PROHIBIT THE USE OF MARIJUANA
WHILE OPERATING A BOAT OR A CAR
OR A TRAIN OR A PLANE, THE SAME
LIMITATIONS THAT MAKE IT CLEAR
THAT THIS DOESN'T IMMUNIZE
VIOLATIONS OF FEDERAL LAW AND
THE SAME LIMITATIONS THAT
INDICATE THAT THE SECTION SHALL
NOT REPEAL OR AFFECT LAWS RED
LIGHTING TO NEGLIGENCE OR
PROFESSIONAL MALPRACTICE.
ALL OF THOSE SAME DISCLOSURES
APPLY IN THIS PARTICULAR
AMENDMENT AS WELL.
WE WANTED TO MAKE CLEAR THAT WE
WERE NOT DOING ANYTHING TO
DRAMATICALLY UPSET THE CURRENT
STATUS IN TERMS OF USE BEYOND
REMOVING THE RESTRICTION THAT AN
ADULT COULD ONLY OBTAIN
MARIJUANA FOR MEDICAL REASONS.
THAT'S THE RESTRICTION THAT
WE'RE TRYING TO REMOVE.
AND THAT'S THE RESTRICTION THAT
THE AMENDMENT REMOVES.
>> AND THE TEXT, IT REFERS TO
SANCTIONS UNDER FLORIDA LAW
THAT'S IMMUNITY FOR.
WHAT DOES THAT REFER TO?
>> IN THE CONTEXT OF-- I KNOW
SOME CITIES AND SOME COUNTIES

HAVE MOVED TO CIVIL SANCTIONS AT
SOME POINT IN TIME VERSUS
CRIMINAL SANCTIONS FOR
POSSESSION OF MARIJUANA OR USE
OF MARIJUANA.
SO I THINK THAT THE SANCTIONS
THAT WE'RE TALKING ABOUT ARE
THOSE TYPES OF CIVIL PENALTIES
THAT MAY BE IMPOSED THAT DON'T
RISE TO THE CRIMINAL LEVEL.
>> THE DEPARTMENT OF HEALTH
WOULD HAVE REGULATORY AUTHORITY
OVER THESE TREATMENT CENTERS,
RIGHT?
>> YES, THEY WOULD.
>> SO UNDER TYPICAL
ADMINISTRATIVE LAW IF THEY'RE
NOT IN COMPLIANCE OR THEY
VIOLATE IT IN SOME WAY, THE
DEPARTMENT IMPOSES SANCTIONS
TYPICALLY IN SOME ADMINISTRATIVE
FORMAT.
IS THAT EXEMPT?
>> NO.
I BELIEVE THAT, THAT AUTHORITY
TO REGULATE IS SEPARATE.
IT DOESN'T IMMUNIZE OR OTHERWISE
CHANGE THE NATURE OF THAT
REGULATORY AUTHORITY.
JUST LIKE AMENDMENT, THE ARTICLE
X, SECTION 29 DOESN'T EITHER.
>> IF THE IMMUNITY PROVIDED IN
THIS PARTICULAR PARAGRAPH WAS
NOT RESTRICTIVE, AS YOU ARGUE,
AND THE SANCTIONS WERE MORE
BROADLY EXEMPTED OR IMMUNE THAN
YOUR ARGUMENT, WOULD THAT BE
MATERIAL AND SOMETHING THAT
SHOULD BE INCLUDED AND SOMETHING
THAT SHOULD BE IN THE BALLOT
SUMMARY?
>> I BELIEVE IF THAT WERE THE
PROPER INTERPRETATION, IF THE
AMENDMENT DOES SOMETHING
DIFFERENT THAN WHAT I JUST SAID,
THEN, YES, I THINK THAT WOULD
PROBABLY NEED TO BE DISCLOSED.
HOWEVER, HERE IT DOESN'T DO WHAT
DRUG-FREE AMERICA SAYS.
THE ABILITY FOR A MEDICAL

MARIJUANA TREATMENT CENTER TO PROVIDE MARIJUANA IS STILL GOING TO BE SUBJECT UNDER THE TERMS OF THE REGULATIONS.
IT'S GOT TO BE CONSISTENT WITH THIS AMENDMENT.
AND THAT WOULD INCLUDE THE REGULATIONS THAT ARE EFFECTIVELY ADOPT BY THE DEPARTMENT OF HEALTH TO REGULATE THOSE ENTITIES.
>> THANK YOU.
>> NOW, I KNOW ONE OF THE CENTRAL ARGUMENTS THAT WE HAVEN'T REALLY DISCUSSED IS WHEN THIS AMENDMENT ITSELF SOMEHOW MISLEADS THE VOTERS BY USING THE TERM PERMIT AND INDICATING THAT A VOTER MAY BE ABLE TO USE MARIJUANA IN FLORIDA, AND THAT'S MISLEADING BECAUSE IT WOULD STILL BE A VIOLATION OF FEDERAL LAW.
IN THIS INSTANCE, WE INFORM THE VOTER IN OUR BALLOT SUMMARY OF THE ONLY ORGANIC LAW THAT WE CAN CHANGE.
WE LET THEM KNOW THE CHANGES THAT WE'RE MAKING TO THE FLORIDA CONSTITUTION.
A CONSTITUTIONAL AMENDMENT TO THE FLORIDA CONSTITUTION CANNOT AMEND THE U.S. CONSTITUTION.
IT CANNOT AMEND FEDERAL STATUTE.
IT ONLY APPLIED HERE.
AND UNDER THE LONGSTANDING PRECEDENCE OF THIS COURT, THIS COURSE HAS NEVER IF FOUND AN AFFIRMATIVE OBLIGATION TO INFORM A VOTER OF WHAT IS GOING ON WITH FEDERAL LAW, EITHER THE STATUS OF FEDERAL LAW OR THE EFFECT.
>> I'M SORRY TO INTERRUPT YOU ON THAT.
AND I THINK YOUR ARGUMENT ON THAT HAS SOME FORCE, BUT I ALSO THOUGHT THAT THE WAY COUNSEL FOR THE CHAMBER KIND OF BROUGHT IT DOWN TO THE SORT OF REAL WORLD CONTEXT OF IF YOU TOLD SOMEONE,

YOU KNOW, YOU ARE PERMITTED TO USE THIS MARIJUANA, I MEAN, IT SEEMS LIKE THERE'S FORCE TO THE ARGUMENT THAT THAT'S JUST NOT TRUE AS TO SOME SORT OF QUALIFIER, YOU KNOW, YOU'RE PERMITTED UNDER STATE LAW, IT'S NOT PERMITTED UNDER FEDERAL LAW. WHAT'S WRONG WITH THE WAY YOU BOILED IT DOWN?

>> FIRST, I WOULD POSIT THAT IF I'M GIVING LEGAL ADVICE TO ANYBODY ABOUT ANY ACTIVITY REGARDLESS OF WHETHER IT IS, I'M NOT GOING TO BE LIMITED TO 75 WORDS.

AND IF IT WAS A REQUIREMENT OF THIS COURT TO INCLUDE WHAT LAW APPLIES OR WHAT LAW IS BEING CHANGED AS A RESULT OF THE AMENDMENT, THEN EVERY AMENDMENT MUST SAY ON ITS FACE APPLIES ONLY TO FLORIDA LAW OR SOMETHING TO THAT EXTENT.

>> WELL, THE MOST PROPOSED CONSTITUTIONAL AMENDMENTS AREN'T AUTHORIZING SOMETHING THAT'S BLATANTLY ILLEGAL UNDER FEDERAL LAW.

AND AS FAR AS THE 75-WORD THING GOES, I MEAN, IN THIS BALLOT SUMMARY IT SEEMS TO ME THE LAST SENTENCE HERE, I MEAN, I HAVEN'T COUNTED THE WORDS, BUT YOU GOT AN ENTIRE FINAL SENTENCE THAT'S COMPLETELY MEANINGLESS.

IT HAS ZERO-- IT COMMUNICATES NO INFORMATION THAT A VOTER WOULD HAVE ANY IDEA WHAT TO MAKE OF THAT SENTENCE.

AND SO IN YOUR PARTICULAR IF CASE, THE OMISSION OF THE FEDERAL LAW THING DOESN'T HAVE ANYTHING TO DO WITH THE WORDING.

>> WELL, IN THIS CASE I THINK WE, THE SENTENCE TO THE EXTENT THAT A VOTER IS LOOKING TO UNDERSTAND HOW IS THIS ACTUALLY GOING TO CHANGE, IT'S AT LEAST PUTTING THEM ON NOTICE THAT

RELATED TO THAT CHIEF PURPOSE, THEY'RE GOING TO HAVE TO DO A LITTLE BIT ADDITIONAL RESEARCH TO UNDERSTAND WHAT CIRCUMSTANCES ARE STILL GOING TO APPLY THAT WOULD BE CARRIED OVER FROM THE MEDICAL CONTEXT.
SO I WOULD AT LEAST RESPECTFULLY DISAGREE THAT THE LANGUAGE IS--
[INAUDIBLE]
BUT CERTAINLY BASED UPON THE PRECEDENTS OF THIS COURT, WE'RE CHANGING THE ONLY CONSTITUTION THAT WE CAN CHANGE, THE ONLY LAW THAT WE CAN CHANGE IS FLORIDA LAW.
AND, AGAIN, THIS COURT HAS NEVER IF, EVER REQUIRED SOMEONE TO INFORM-- SO IF YOU GO BACK TO THE POLITICAL TERM LIMITS OPINION, IN THAT OPINION IT WAS CLEAR TO JUSTICE OVERTON WOULD NOT BE GIVEN FULL EFFECT BECAUSE OF THE PROVISIONS OF THE U.S. CONSTITUTION THAT GOVERNED THE ELECTIONS OF REPRESENTATIVES AND SENATORS.
SO AT LEAST IN THAT CONTEXT, THE COURT WAS WILLING TO SAY, YOU KNOW WHAT?
WE'RE STILL GOING TO LET THE BALLOT GO FORWARD.
IT'S NOT CLEARLY AND CONCLUSIVELY DEFECTIVE AND, ULTIMATELY AT THE END OF THE DAY WHEN WE'RE TALKING ABOUT THE APPLICATION OF THAT, A COURT WILL DECIDE WHETHER THOSE PROVISIONS ARE ENFORCEABLE OR NOT.
BUT AT LEAST IN TERMS OF THE RIGHT OF THE PEOPLE TO AMEND THEIR CONSTITUTION IN A WAY THAT IS NOT CONSUMMATE WITH FEDERAL LAW, THAT RIGHT IS THERE, AND I THINK IT SHOULD BE RESPECTED.
THERE ARE PROVISIONS IN OUR CONSTITUTION NOW THAT EXIST THAT ARE NOT CONSUMMATE WITH FEDERAL LAW.

ONE OF THEM WOULD BE THE
MARRIAGE AMENDMENT.
IT DEFINES MARRIAGE AS BETWEEN A
MAN AND A WOMAN.
AS BASED UPON RECENT U.S.
SUPREME COURT PRECEDENT, THEY'VE
OVERTURNED THAT.
AND SO THAT AMENDMENT THAT'S
CURRENTLY IN OUR CONSTITUTION IS
NOT CONSUMMATE WITH FEDERAL LAW.
SO TO THE POINT, I THINK OUR
SUMMARY ACCURATELY DESCRIBES THE
CHANGES IT CAN MAKE TO FLORIDA
LAW.
WE'VE NEVER BEEN OBLIGATED TO
CHANGE FEDERAL LAW-- OR TO
INFORM OF THE CHANGES TO FEDERAL
LAW.
AND I KNOW AS A PRELIMINARY
MATTER, THE SENATE HAS PRESENTED
ARGUMENTS RELATED TO THE COURT
SHOULD DISMISS THIS AND HAVE THE
SECRETARY AND THE ATTORNEY
GENERAL START OVER ONCE THE NEXT
PRESIDENTIAL ELECTION OCCURS.
NOTHING IN THE TUTORING
MECHANISMS FOR THE PETITION
INITIATIVE PROCESS LOOK FORWARD
TO THE ELECTION WHERE THE BALLOT
WILL APPEAR ON THE BALLOT--
WHERE THE BALLOT WILL APPEAR.
THEY ALWAYS LOOK BACK AT THE
LAST PRESIDENTIAL ELECTION THAT
OCCURRED.
IF ONE WERE TO ACCEPT THE
SENATE'S POSITION, ESSENTIALLY
WHAT THAT MEANS IS WHEN YOU HIT
FEBRUARY 1ST OF AN ELECTION
YEAR, ALL OF THE PROCESS REALLY
PROBABLY STOPS BECAUSE YOU'RE
NOT GOING TO KNOW WHAT THAT
NUMBER IS IN THAT PRESIDENTIAL
ELECTION YEAR UNTIL THE
PRESIDENTIAL ELECTION OCCURS.
THAT'S CONTRARY TO THE PLAIN
TEXT OF THE CONSTITUTION.
ADDITIONALLY, ALTHOUGH THE
SENATE DIDN'T GET INTO IT TOO
DEEPLY, THE ARGUMENTS THAT
CHAPTER 2020.15 SHOULD BE

APPLIED RETROACTIVELY TO THIS
PROCEEDING ARE INCORRECT.
AS A PREFATORY MATTER, IT'S
UNCLEAR FROM THE TEXT OF THE
STATUTE WHETHER 2020.15 SHOULD
BE APPLIED TO CURRENTLY-PENDING
PROCEEDINGS.
THERE'S NOTHING IN THE STATUTE
THAT AFFIRMATIVELY REQUIRES THE
SECRETARY OF STATE TO GO BACK
AND RECERTIFY HER NUMBERS, AND
THERE'S NOTHING THAT REQUIRES
THE ATTORNEY GENERAL TO
REPETITION THIS COURT.
AND THEY HAVEN'T DONE SO.
SO ON THAT BASIS IN THE ABSENCE
OF CLEAR LEGISLATIVE INTENT, THE
LAW SHOULD NOT BE APPLIED
RETROACTIVELY.
IF THE COURT BELIEVES THAT THERE
IS SOME SORT OF INTENT, THE LAW
SHOULD NOT BE APPLIED
RETROACTIVELY BECAUSE IT CHANGES
THE RULES.
AND IN THOSE CIRCUMSTANCES WHERE
THE RETROACTIVE APPLICATION
WOULD EITHER IMPAIR EXISTING
RIGHT OR ADD NEW LEGAL
CONSEQUENCES, THEN THE COURT
SHOULD NOT APPLY WAHL
RETROACTIVELY, AND THAT'S
EFFECTIVELY WHAT 2020.15 DOES.
IT CREATES A NEW LEGAL
CONSEQUENCE.
IT REQUIRES A NEW STANDARD THAT
THIS PETITION INITIATIVE MUST
MEET, AND IT APPLIES A NEW
STANDARD OF REVIEW RELATED TO
FACIAL REVIEW UNDER THE UNITED
STATES CONSTITUTION.
SO FOR THOSE REASONS, IT SHOULD
NOT BE APPLIED RETROACTIVELY.
BUT IF THE COURT WERE TO APPLY
IT RETROACTIVELY, THERE'S A
PROBLEM WITH APPLYING THE FACIAL
REVIEW UNDER THE UNITED STATES
CONSTITUTION.
AND THAT PROBLEM IS THE
LEGISLATURE DOESN'T HAVE THE
AUTHORITY TO SUBSTANTIVELY LIMIT

THE RIGHT OF THE PEOPLE TO AMEND THEIR CONSTITUTION.
ARTICLE X-- OR ARTICLE XI, SECTION THREE PROVIDES THE ONLY SUBSTANTIVE LIMITATION, BEING IT NEEDS TO RELATE TO ONE SINGLE SUBJECT.
>> SO DO YOU ACCEPT THE-- IT SEEMS LIKE THIS PREMISE IS THAT WE CAN'T TREAT THIS AS A TRUE ADVISORY OPINION, THAT IF WE SAY THAT IT'S FACIALLY UNCONSTITUTIONAL, THEN THAT MEANS IT CAN'T GO ON THE BALL O. DO YOU ACCEPT THAT, OR IS THERE SORT OF A LEGAL GROUND THAT FOR PURPOSES OF THAT SINCE IT WOULD ARGUABLY BE ADDING A NEW-- WE CAN JUST GIVE OUR TWO CENTS, AND VOTERS CAN KNOW WHAT OUR TWO CENTS ARE, AND THEY CAN VOTE HOWEVER THEY WANT?
>> I THINK THE PROBLEM I WOULD HAVE IS, IF THE COURT WERE TO TAKE THAT TYPE OF APPROACH, THEY WOULD NEED TO RECEDE FROM SOME PRIOR OPINIONS.
THE COURT RECOGNIZED THESE ADVISORY OPINIONS THAT WE'RE TALKING ABOUT, THEY'RE NOT LIKE OTHER ADVISORY OPINIONS THAT ARE ISSUED.
THEY HAVE, THEY HAVE AN EFFECT. IN THIS CASE WHERE THE ADVISORY IS NEGATIVE, IT HAS THE EFFECT OF REMOVING THE PROVISION FROM THE BALLOT.
>> WELL, BUT I THINK THE ISSUE THOUGH WOULD BE THAT OUR CASES DON'T ADDRESS KIND OF AN EXTRA-CONSTITUTIONAL-- LIKE THIS ONE ARGUABLY IS.
>> I THINK IF THE COURT WERE TO JUST ISSUES WHAT IS TRULY AN ADVISORY OPINION AND ALLOW THESE PROVISIONS TO GO, CONTINUE TO GO ON THE BALLOT, THAT MIGHT BE AN INTERESTING, AN INTERESTING DYNAMIC.
I'M CERTAINLY NOT ARGUING FOR

THAT HERE.
BUT AT THE END OF THE DAY, WE DO WANT TO SEE THIS PROVISION ON THE BALLOT.
I THINK AS A PRACTICAL MATTER THE COURT'S REVIEW IS LIMITED TO WHAT I WOULD ARGUE ARE THE PROCEDURAL AUTHORITY GIVEN TO THE ATTORNEY GENERAL TO BRING AND THE PROCEDURAL MACHINATIONS AROUND THAT AND WHETHER THE AMENDMENT COMPLIES WITH THOSE PROCEDURAL REQUIREMENTS AND THE SINGLE SUBJECT REQUIREMENT.
AND I THINK THAT WOULD CABIN THE COURT'S REVIEW.
SO THIS ADDITIONAL THING THAT THE LEGISLATURE IS TRYING TO GIVE TO THE COURT I THINK IS PROBABLY OUTSIDE THE PURVIEW UNDER THE CURRENT CONSTITUTIONAL FRAMEWORK.
>> OKAY.
AND JUST TO BE CLEAR, I'M NOT SUGGESTING THAT THIS AMENDMENT WOULD FAIL THE FEDERAL CONSTITUTIONAL TEST ANYWAY, I'M JUST TRYING TO KIND OF UNDERSTAND WHAT ARE SENSIBLE WAYS OF DEALING WITH THIS ISSUE, WHAT WE SHOULD DO WITH THIS NEW REQUIREMENT THAT WE HAVE.
>> AND I THINK IN THE INTEREST OF JUDICIAL ECONOMY, I THINK THE ARGUMENTS THAT I'VE PRESENTED PRECEDING GETTING TO THAT SORT OF MORE NUCLEAR OPTION ARE ALL OPTIONS THAT WOULD BE AVAILABLE TO THE COURT TO AVOID REACHING THAT CONSTITUTIONAL QUESTION.
THE BALLOT TITLE AND SUMMARY IN THIS CASE CLEARLY AND UNAMBIGUOUSLY AND IN NEUTRAL TERMS INFORMS AND EXPLAINS THE CHIEF PURPOSE OF THE AMENDMENT.
THE AMENDMENT ITSELF IS LIMITED TO ONLY AMENDING THE FLORIDA CONSTITUTION, AND OUT CREATES RESTRICTIONS AIMED TO THE PURPOSE OF DECRIMINALIZING ADULT

USE OF MARIJUANA IN A CERTAIN
LIMITED FRAMEWORK.
BASED UPON THAT, WE BELIEVE THE
COURT SHOULD VALIDATE THE
AMENDMENT, FIND THAT IT COMPLIES
WITH THE PROVISIONS OF SECTION
101.161 AND ARTICLE XI, SECTION
THREE AND GIVE A FAVORABLE
ADVISORY OPINION AND PERMIT THE
AMENDMENT, 1911, TO GO ON THE
AMENDMENT.
THANK YOU.
THANK YOU FOR YOUR TIME.
>> THANK YOU, COUNSEL.
WE WILL NOW GO TO REBUTTAL.
>> THANK YOU, MR. CHIEF JUSTICE.
AND I HAVE THREE POINTS THAT I'D
LIKE TO MAKE IN REBUTTAL.
FIRST, THE COLLOQUY BETWEEN THE
COURT AND DISTINGUISHED OPPOSING
COUNSEL ABOUT THE MATERIALITY OF
THE BALLOT LANGUAGE THAT WE'VE
IDENTIFIED.
I'D LIKE TO BRIEFLY EXPLAIN WHY
THIS IS A PRACTICAL MATTER.
WE THINK THIS COULD MAKE A
REALLY BIG DIFFERENCE TO VOTE
EARTH IN TWO WAYS.
ONE, IN TERMS OF THE VOTERS'
ASSESSMENT OF WHETHER THEY WANT
THIS KIND OF INITIATIVE TO BE
THE POLICY OF THE STATE AS A
SUBSTANTIVE MATTER.
BUT THERE'S ANOTHER THING, AND
THAT IS THAT IT COULD ALSO--
THE COURT'S DETERMINATION OF
WHETHER IT'S THE KIND OF POLICY
THAT OUGHT TO BE EMBODIED IN THE
TEXT OF THE STATE'S
CONSTITUTION.
IF A VOTER KNOWS THAT THE
OVERALL PRACTICAL IMPACT OF--
[INAUDIBLE]
IS THAT EVERYTHING THAT THE
INITIATIVE PURPORTS TO COMMIT
WOULD ACTUALLY STILL BE A CRIME
UNDER FEDERAL CRIMINAL LAW, THAT
MIGHT AFFECT THE ASSESSMENT OF
WHETHER IT'S WORTH GOING TO THE
TROUBLE OF INCORPORATING THIS

PROVISION IN OUR FUNDAMENTAL
LAW.
SECOND--
[INAUDIBLE]
[AUDIO DIFFICULTY]
THE COURT'S ATTENTION TO--
>> CHIEF, I THINK MR. LEVESQUE
HAS HIS MIC ON, AND I'M
UNABLE--
>> IT HAS BEEN MUTED.
WELL, IT WAS UNMUTED.
COUNSEL, COUNSEL FOR THE
PROPONENT, YOU NEED TO STAY ON
MUTE.
THANK YOU.
[INAUDIBLE CONVERSATIONS]
>> SINCE YOU HAVE SO LITTLE TIME
LEFT, YOU TEASED THIS ISSUE ON
PAGE 5 OF YOUR SUPPLEMENTAL
BRIEF ABOUT THE APPROPRIATE
REMEDY WHEN A PROPOSED AMENDMENT
IS FACIALLY INVALID, BUT THEN
YOU DIDN'T FOLLOW UP ON THAT
LATER.
WHAT, WHAT'S YOUR VIEW ON THAT?
>> YOUR HONOR, WE THINK THAT THE
ENACTMENT OF 120.15 RAISES
POTENTIALLY A LARGE NUMBER OF
QUESTIONS, POTENTIALLY
CONSTITUTIONAL INTERPRETATION,
AND THAT THE OFFICE OF THE
ATTORNEY GENERAL HAS ELECTED NOT
TO PASS ON ALL THOSE ANCILLARY
ISSUES.
WE THINK IT'S AN EASIER WAY TO
DISPOSE OF THIS CASE ON THE
BASIS OF THE BALLOT LANGUAGE
ARE.
I DON'T THINK IT WOULD BE
APPROPRIATE FOR ME TO FORMULATE
A POSITION FOR THE FIRST TIME IN
ORAL ARGUMENT-- ON STATUTORY
AND CONSTITUTIONAL
INTERPRETATION, BUT WE
APPRECIATE THE QUESTION.
WE HOPE THAT WE CAN BE
ASSISTANCE TO YOU IN DEALING
WITH THAT IN THE FUTURE.
>> THANKS.
>> I SEE THAT I AM OVER MY TIME,

MR. CHIEF JUSTICE TO MAKE THE
OTHER POINTS I WAS PLANNING ON
MAKING, I'M HAPPY TO ANSWER ANY
QUESTIONS YOUR HONORS MIGHT
HAVE.
>> I DO HAVE ONE QUESTION IF
YOU'LL ALLOW ME, CHIEF, AND THAT
IS ASSUME THAT WE WILL--
THERE'S LANGUAGE IN OUR CASE LAW
THAT SAYS THAT THE COURT'S GOT
TO PRESUME THAT THE AVERAGE
VOTER HAS A CERTAIN AMOUNT OF
COMMON UNDERSTANDING AND
KNOWLEDGE.
AND ASSUME THAT WE BELIEVE THAT
THAT APPLIES TO THE FEDERAL LAW
LIMITATIONS ON THE USE OF
MARIJUANA, THAT PEOPLE ARE JUST
GOING TO KNOW THAT SO THAT
THERE'S NO REQUIREMENT TO
DISCLOSE THE FEDERAL LAW
IMPLICATIONS.
WITH THAT ASSUMPTION, DO YOU
BELIEVE THAT THE-- YOU SET
FEDERAL LAW ASIDE, THAT THE
PROPOSED AMENDMENT AS WRITTEN
CLEARLY AND UNAMBIGUOUSLY
DESCRIBES THE FLORIDA LAW
EFFECT?
WOULD YOU CONCEDE THAT?
>> YES, YOUR HONOR.
WE HAVE NOT--
[INAUDIBLE]
TO WHICH YOUR HONOR REFERS THAT
THE BALLOT SUMMARY--
[INAUDIBLE]
WE HAVEN'T ADVANCED ANY SUCH
ARGUMENTS TO THE COURT.
>> THANK YOU.
>> DO YOU-- I MEAN, DO YOU
THINK THAT IT'S-- IN A BALLOT
SUMMARY TO HAVE A DEFINED
TECHNICAL TERM LIKE MEDICAL
MARIJUANA TREATMENT CENTER AND
THAT'S SORT OF A REFERENCE TO
PUT THE VOTER ON NOTICE AS TO
WHAT, YOU KNOW, EVERYTHING THAT
GOES ALONG WITH THAT?
>> YOUR HONOR, I DON'T WANT TO
EVADE THE QUESTION BUT, AGAIN, I

WOULD BE RELUCTANT TO FORMULATE
A POSITION ON THAT FOR THE FIRST
TIME.
I DON'T THINK IT WOULD BE FAIR
TO THE OTHER PARTIES FOR ME TO
FORMULATE A POSITION NOW AT THIS
POINT.
>> THANK YOU.
WE'LL NOW GO WITH FURTHER
REBUTTAL.
>> THANK YOU, YOUR HONOR.
I JUST WANT TO MAKE A COUPLE
QUICK POINTS.
ONE, MR. LEVESQUE KEPT REFERRING
TO THE APPLICATION OF THE
STATUTE INTO THIS MATTER IS
RETROACTIVE.
WE DON'T BELIEVE IT'S
RETROACTIVE.
THIS MATTER IS PENDING.
WE'RE NOT ASKING THE COURT TO GO
BACK AND REEVALUATE A CASE WHERE
IT ALREADY HAS ISSUED AN
OPINION.
WE DON'T THINK IT IMPAIRS
EXISTING RIGHTS.
THIS PETITION IS BROUGHT BY THE
ATTORNEY GENERAL.
IT'S NOT BROUGHT BY THE PARTY.
THE PARTY CAN'T WAIVE THIS, THIS
MATTER IS TO PROTECT THE
CONSTITUTION.
IT IS NOT TO BE EXCLUSIVELY FOR
THE BENEFIT OF THE PARTIES.
THESE THINGS ARE STANDARDIZED SO
THE PARTIES KNOW WHAT'S GOING
ON, THE SPONSORS CAN KNOW WHAT'S
GOING ON, BUT IT IS NOT PURELY
FOR THEIR BENEFIT THAT WE GO
THROUGH THIS PROCESS.
AND I JUST WANT TO SAY ON THE
MATTER OF, YOU KNOW, LOOKING TO
FEDERAL LAW THAT THE SPONSORS
MADE THREE ARGUMENTS
ESSENTIALLY.
ONE, THE VOTERS ARE GOING TO
UNDERSTAND THE CONFLICTS BETWEEN
FEDERAL AND STATE LAW.
TWO, THAT WE NEED TO DO
EVERYTHING THAT'S IN THIS

AMENDMENT IN ORDER TO FOLLOW THROUGH ON THEIR LOGICAL ONENESS AND PURPOSE TO OBTAIN THAT LOGICAL AND ONENESS PURPOSE, WE NEED TO HAVE ALL THE COMPONENT PIECES.
AND, THREE, NOT ALL THE PIECES ARE NECESSARILY PREEMPTED BY FEDERAL LAW AND WILL NEED FUTURE LITIGATION IN THE FUTURE TO SORT ALL THAT OUT.
I WOULD SUGGEST, YOUR HONORS, IF WITH WE CAN'T TELL RIGHT NOW WHAT IS AND WHAT ISN'T CONFLICTING WITH FUTURE LAW, THAT WE'RE GOING TO NEED FUTURE LITIGATION, NOT AWE THREE OF THOSE THINGS ARE TRUE.
WE CANNOT SAY PARTS OF THIS CAN GET STRUCK DOWN AND IT'S ALL ONE SINGLE SUBJECT.
AND WE CANNOT ALSO SAY, WELL, WE MAY HAVE TO WORK OUT HATER ON IN SUBSEQUENT LEGISLATION WHAT IS AND ISN'T FEASIBLE.
I DO NOT THINK ALL THREE OF THOSE THINGS CAN BE TRUE AT THE SAME TIME, YOUR HONOR.
>> ALL RIGHT, COUNSEL.
WE THANK YOU AND WE THANK ALL THE OTHER PARTICIPANTS IN THIS ARGUMENT FOR YOUR ARGUMENTS, AND WE WILL NOW MOVE TO OUR NEXT CASE.