GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE COURT'S CALENDAR THIS MORNING IS IN REGARD TO THE ADVISORY OPINION TO THE ATTORNEY GENERAL, IN REGARD TO THE AMENDMENT THAT BARS GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY, BASED ON RACE AND PUBLIC EDUCATION, AND OTHER MATTERS, ALL OF WHICH HAVE BEEN CONSOLIDATED FOR ARGUMENT. MR. ATTORNEY GENERAL. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. FOR THE RECORD, MY NAME IS BOB BUTTERWORTH, AND IT IS MY CONSTITUTIONAL RESPONSIBILITY, AS ATTORNEY GENERAL OF THIS STATE, TO PETITION THIS MONDAYABLE COURT, FOR A WRITTEN OPINION CONCERNING WHETHER PROPOSED CONSTITUTIONAL AMENDMENTS MEET THE REQUIREMENTS OF THE FLORIDA CONSTITUTION AND THE FLORIDA STATUTES. THE BURDEN OF PROVING THAT THEY DO IS PLACED SQUARELY ON THE SHOULDERS OF THE PROPONENTS. OUR FLORIDA CONSTITUTION REQUIRES THAT AN INITIATIVE EMBRACE BUT ONE SUBJECT, WHICH IS CALLED THE SINGLE SUBJECT "LIMITATION". FLORIDA STATUTE 101.161 PLACES SPECIFIC REQUIREMENTS ON THE BALLOT TITLE AND SUMMARY, AND REQUIRES THAT WHAT IS PRINTED ON THE BALLOT MUST BE IN CLEAR AND UNAMBIGUOUS LANGUAGE. THIS COURT HAS STATED THAT THE PURPOSE OF THIS STATUTE IS TO ENSURE THAT THE VOTERS ARE ADVISED OF THE TRUE MEANING OF THE AMENDMENTS. ON NOVEMBER 23, I SUBMITTED MY REQUIRED PETITION TO THIS COURT, WHICH CONTAINED MY ANALYSIS OF PROPOSALS THAT ARE BEFORE YOU TODAY. AS THOSE PETITIONS STATE, IT IS MY OPINION THAT THE PROPOSED AMENDMENTS DO NOT MEET THE NECESSARY CONSTITUTIONAL REQUIREMENT OF SINGLE SUBJECT, AND THEY DO NOT MEET THE STATUTORY REQUIREMENTS OF CLEAR AND UNAMBIGUOUS LANGUAGE IN THE BALLOT TITLE AND BALLOT SUMMARY.

MR. BUTTERWORTH, YOU REALIZE WE HAVE A LIMITED AMOUNT OF TIME, WITH REFERENCE TO THE ORAL PRESENTATION, SO I BEG YOUR INDULGENCE IN INTERRUPTING YOU AT THIS POINT. LET ME ASK YOU A HYPOTHETICAL QUESTION, THOUGH. IT SOMETIMES MAY HELP US GET TO THE BOTTOM OF THINGS HERE. IF YOU WOULD TAKE JUST PROPOSED AMENDMENT, DEALING WITH EDUCATION, AND THE LANGUAGE OF THAT AMENDMENT THERE, DO YOU HAVE THAT AVAILABLE TO YOU?

I WILL SEE --

I BELIEVE THAT IS THE FIRST ONE.

YES, YOUR HONOR.

IF WE COULD GO BACK IN TIME AND, REALLY, GO BACK IN TIME RELUCTANTLY, IN A WAY, TO WORSE TIMES, AND LET'S SAY THAT WE WERE IN THE 1930s AND THE 1940s. AND WE HAD THIS LEGALLY ENFORCED SEGREGATION, WITH REFERENCE TO OUR EDUCATION SYSTEM AND ALL OTHER ASPECTS OF LIFE, UNFORTUNATELY. BUT WE HAD THE SAME PROVISIONS, WITH REFERENCE TO A CITIZENS' INITIATIVE TO CHANGE OR AMEND OUR CONSTITUTION, AND WE HAD A GROUP OF CITIZENS RISE UP AND SAY WE ARE GOING TO CHANGE THIS. WE ARE GOING TO CORRECT THIS WRONG THAT IS OUT THERE. IF YOU WOULD LOOK AT THE PROPOSED AMENDMENT, WITH REFERENCE TO EDUCATION, AND ASSUMING, AS I THINK IT IS PROPTORY ASSUME, THAT IN THE' 30s OR IN THE '40s, THAT WE DID HAVE THE GOVERNMENT, WITH REFERENCE TO OUR EDUCATION SYSTEM, TREATING PEOPLE DIFFERENTLY, ON THE BASIS OF RACE OR COLOR OF SKIN OR PREVIOUS CONDITION OF SERVITUDE. WHY WOULDN'T, IF WE WERE BACK IN THOSE TIMES AND CITIZENS CAME FORWARD AND SAID WE ARE GOING TO RIGHT OR WRONG, BY THIS CITIZENS'

INITIATIVE, WHY WOULDN'T THIS BE ADDRESSING THIS SINGLE WRONG, AND THAT IS THIS ENFORCED TREATMENT DIFFERENTLY IN OUR GOVERNMENT SYSTEM OF EDUCATION, WHY WOULDN'T THAT TREAT THAT SINGLE SUBJECT? YOU UNDERSTAND MY QUESTION?

I BELIEVE I UNDERSTAND THE QUESTION, JUSTICE ANSTEAD. IT IS JUST THAT, BASED UPON YOUR OWN RULINGS IN THE PAST, AND THAT IS WHAT I HAVE TO BASE MY PETITION ON, THIS PARTICULAR ISSUE IS JUST SO EXPANSIVE. IT IS BASICALLY TOUCHING EDUCATION, YES, BUT IT IS TOUCHING FAR MORE THAN EDUCATION.

WELL, THE PROBLEM IN THE PAST, WHEN I GO BACK TO THE '30s OR '40s, OF COURSE, IS THAT PEOPLE WERE BEING TREATED DIFFERENTLY. THAT IS THE PROBLEM, WAS IT NOT?

JUSTICE, YES.

ESPECIALLY THE PEOPLE WERE TREATING PEOPLE DIFFERENTLY, GOVERNMENT WAS, ESPECIALLY IN EDUCATION, AND AS I SAY, THAT WAS A GREAT WRONG, SO WHY WOULDN'T THAT BE A SINGLE PROBLEM, BECAUSE THE LANGUAGE OF THIS AMENDMENT, YOU KNOW, AND SOMEBODY, LATER, IS GOING TO HAVE TO INTERPRET, PERHAPS, THE MEANING OF IT PRECISELY, BUT ON FIRST READING, YOU KNOW, WHEN YOU READ THIS LANGUAGE, IT SOUNDS PRETTY GOOD. THAT IS THAT PEOPLE SHOULDN'T BE TREATED DIFFERENTLY, AND SO I AM THINKING, BACK IN THOSE DAYS, IF SOMEBODY CAME FORWARD WITH THIS AND SAID WE ARE GOING TO FIX THIS PROBLEM WITH THIS IMPROPER, DIFFERENT TREATING OF PEOPLE, WITH REFERENCE TO EDUCATION, THIS IS A WAY THAT WE WOULD GO ABOUT IT. WHY WOULDN'T THAT BE ONE SUBJECT AND TREAT THAT ONE PROBLEM THAT WE ALL ACKNOWLEDGE EXISTED OUT THERE AT THE TIME?

THE COURT SYSTEM DID STEP IN, AND THE COURT SYSTEM, I BELIEVE, DID CORRECT THAT PROBLEM, ESPECIALLY HERE --.

WHY WOULDN'T THAT --

I BELIEVE THIS GOES TOO FAR. IT DOES TOO MUCH. WE DON'T KNOW EXACTLY -- IT AFFECTS ALL EDUCATION. WE ARE ONLY TALKING ABOUT THE TITLE WILL SAY RACE THIS. IS MORE THAN JUST RACE. IT IS COLOR. IT IS ETHNICITY, NATIONAL ORIGIN. I AM BASING MY PETITION ON WHAT THIS COURT HAS DONE. THIS IS NOT 1930. FORTUNATELY THIS IS NOT 1930.

WHAT IS THE LIMIT OF THIS COURT'S AUTHORITY, IN RESPECT TO AN INITIATIVE?

IT IS YOUR RESPONSIBILITY TO DETERMINE WHETHER OR NOT THE -- IT MEETS THE CONSTITUTIONAL AND STATUTORY TESTS, WHEREBY THE PERSON WHO IS GOING THROUGH THE BALLOT KNOWS WHAT THEY ARE VOTING FOR, AND THEY ARE NOT CONFUSED. WE ARE VERY CONCERNED, AS WE PUT FORTH IN A PETITION HERE, THAT A PERSON GOING TO THE BALLOT MAY NOT UNDERSTAND COMPLETELY WHAT THEY ARE VOTING FOR. WE TALK ABOUT PEOPLE IN THE TITLE OR SUMMARY, AND WE TALK ABOUT PERSONS IN THE ACTUAL BODY OF THE AMENDMENT. WHAT DOES THAT MEAN? DOES THAT INVOLVE CORPORATIONS? DOES THIS MEAN, IN CONTRACTING, THAT A FLORIDA CORPORATION WOULD NOT BE ABLE TO, WHO SELLS FOOD TO SCHOOLS WOULD NOT BE ABLE TO -- WOULD THEY BE AFFECTED BY THIS CONSTITUTIONAL AMENDMENT? I DON'T KNOW.

YOUR ATTACKS ARE ON THE SUMMARY?

MY ATTACKS ARE ON THE SUMMARY, AND I, ALSO, HAVE PROBLEMS WITH THE TITLE, YOUR HONOR. THE TITLE ONLY RELATES TO RACE. THAT IS A TRIGGER HERE IN FLORIDA RIGHT NOW. IT IS MEANT TO BE THAT WAY. THE PROPONENTS CAN ARGUE ANY WAY THEY WANT, BUT THE WAY THIS THING IS SET UP, I BELIEVE, IF IT IS ACTUALLY PUT ON BALLOT, WILL BE A DISASTER AND A GREAT EMBARRASSMENT TO THE PEOPLE OF THE STATE OF FLORIDA, AND I DO NOT BELIEVE

THAT THE PEOPLE REALLY WILL KNOW WHAT THEY ARE VOTING FOR IN THESE FOUR PETITIONSS. IT IS NOT 1930, AND I AM PLEASED IT IS NOT 1930, AND I WANT TO MAKE SURE THAT IT DOES NOT BECOME 1930.

I KNOW YOU ONLY RESERVED TWO MINUTES TO PRESENT THE OPPORTUNITY TO THE COURT. NOW THE PROPONENTS WILL HAVE AN OPPORTUNITY TO DO THAT. MR. ERVIN.

MAY IT PLEASE THE COURT. I AM TOM ERVIN. I AM HERE ON BEHALF OF THE FLORIDA CIVIL RIGHTS INITIATIVE PROPONENT. WITH ME IS MY PARTNER EVERETT BOYD. ALSO AT THE TABLE WITH US IS MS. SHARON BROWN OF THE PACIFIC LEGAL FOUNDATION. I AM NOT SURE EXACTLY HOW MUCH TIME THE PROPONENTS HAVE LEFT, AFTER THE GENERAL'S REMARKS, BUT I WILL TRY TO SAVE FIVE MINUTES FOR REBUTTAL. THIS IS, INDEED, AN IMPORTANT PROCEEDING. THERE ARE FOUR CONSOLIDATED CASES BEFORE THE COURT, FOUR CITIZENS' INITIATIVES TO PRESENT TO THE FLORIDA CONSTITUTION. EACH PETITION ARRIVES BEFORE THIS COURT WITH OVER 43,000 CERTIFIED SIGNATURES OF FLORIDA CITIZENS. EACH IS PRESENTED PURSUANT TO ARTICLE I 1 SECTION 3 OF THE FLORIDA CONSTITUTION. THAT PROVISION SPECIAL. THERE ARE FOUR MEANS BY WHICH THE FLORIDA CONSTITUTION MAY BE REVISED OR AMENDED. THE OTHER THREE MEANS, FOUND IN SECTIONS 1, 2 AND 4, REQUIRE PUBLIC APPROVAL BY SOME PUBLIC BODY, A CONVENTION OR LEGISLATURE. ARTICLE IV SECTION 3 IS UNIQUE. IT IS THE DIRECT DEMOCRACY PROVISION.

MAY I ASK A QUESTION. ARE YOU SEEKING TO HAVE ALL FOUR INITIATIVES ON THE BALLOT, OR IF THE COURT FINDS -- ARE THE THREE DISTINCT ONES THAT DEAL WITH PUBLIC EDUCATION, PUBLIC EMPLOYMENT AND PUBLIC CONTRACTING, THE FALL BACKS TO WHAT YOU HAVE TERMED THE OMNIBUS PETITION FAILS, SINGLE SUBJECT?

YOUR HONOR, MY CLIENTS WOULD HAVE TO MAKE THAT DECISION. THEY ARE SEEKING TO HAVE ALL FOUR APPROVED.

THERE IS -- YOU WOULD AGREE THERE IS OVERLAP.

THERE IS, INDEED, OVERLAP. IT MIGHT, NEVERTHELESS, BE DECIDED THAT IT IS BEST TO PLACE ALL FOUR BEFORE THE PEOPLE, SO THAT THEY MIGHT MAKE A CHOICE AMONG THE THEM.

NOW -- MONKS THE THEM.

NOW, GENERAL REFERENCE TO SOMETHING THAT SAYS PEOPLE AND SOMETHING SAYS PERSONS. I DON'T KNOW IF THAT WAS INADVERTENT OR IF IT WAS INTENTIONAL, BUT IN TERMS OF THE ACTUAL LANGUAGE OF THE OMNIBUS PETITION, IT SAYS THE STATE SHALL NOT DISCRIMINATE AGAINST OR GRANT PREFERENTIAL TREATMENT, WHEREAS THE OTHER ONES SEEM, I THINK, IN THE BODY OF THE AMENDMENT, SAY THE STATE OR THE GOVERNMENT OR THE STATE OR LOCAL GOVERNMENT SHALL NOT TREAT PERSONS DIFFERENTLY, AND IT DOESN'T SPEAK SPECIFICALLY ABOUT DISCRIMINATION OR PREFERENTIAL TREATMENT.

YOUR HONOR, IT IS OUR POSITION THAT THE BOTH OF THOSE TERMS WERE MEANT TO BE CONSTRUED AND USED IN THE SENSE OF NATURAL PERSONS, RATHER THAN CORPORATE. IF THAT IS THE INQUIRY.

NO. THE INQUIRY WAS ACTUALLY WITH THE USE OF THE TERM, IN THE OMNIBUS PETITION, DISCRIMINATE AGAINST OR GRANT PREFERENTIAL TREATMENT TO, AND IN THE OTHER THREE, USING THE WORDS "SHALL NOT TREAT PERSONS DIFFERENTLY". IS THAT --

YOUR HONOR, THEY WERE INTENDED TO HAVE THE SAME EFFECT. I THINK IT WAS INADVERTENT DIFFERENCE IN THE LANGUAGE. THEY, BOTH, ARE INTENDED TO HAVE THE SAME EFFECT.

ARE ALL FOUR OF THESE AMENDMENTS INTENDED TO LIMB -- TO ELIMINATE AFFIRMATIVE ACTION?

YES, THEY ARE.

SO THAT GOVERNOR BUSH'S "ONE FLORIDA" WHICH SAYS AFFIRMATIVE ACTION, PROPERLY UNDERSTOOD, STILL WOULD REMAIN, UNDER THIS AMENDMENT, IF THE VOTERS, IF THE INTENT THAT IS COMMUNICATED, YOUR INTENT HAD, IN THE SUMMARY, IS TO EXPLAIN THAT AFFIRMATIVE ACTION, EVEN IF IT IS TO RECOMMEND DI PAST DISCRIMINATION, WOULD BE PROHIBITED BY THIS CONSTITUTION --

THAT IS CORRECT. AND I DO NOT BELIEVE -- I AM NOT A STUDENT OF THE "ONE FLORIDA" PLAN, BUT I DO NOT BELIEVE SOME PROVISIONS OF THAT COULD SURVIVE ADOPTION OF THESE AMENDMENTS BY THE PEOPLE OF FLORIDA.

IT IS CORRECT THAT WE HAVE TAKEN A PRETTY NARROW VIEW, IN RESPECT TO THESE TYPES OF INITIATIVES, AS OPPOSED TO INITIATIVES THAT COME FROM THE LEGISLATURE, FOR INSTANCE, AS TO SINGLE SUBJECT MATTERS. WOULDN'T YOU AGREE WITH THAT?

IT IS CORRECT, YOUR HONOR. THERE HAVE BEEN DISCUSSIONS, IN PRIOR OPINIONS, ABOUT THE FACT THAT SUCH PROPOSALS COME DIRECTLY, WITHOUT THE PRIOR DISCUSSION AND DEBATE THAT GOES ON DURING THE LEGISLATURE.

DON'T WE HAVE A PROBLEM, OR WHAT IS YOUR RESPONSE TO THE ASSERTION THAT THERE IS A DEFINITE DIFFERENCE IN SUBJECTS, WHEN YOU ARE DEALING WITH MATTERS OF RACE OR ETHNICITY OR NATIONAL ORIGIN?

YOUR HONOR, THE TEST, IF I MAY, OF SINGLE SUBJECT, WHICH THIS COURT HAS ANNOUNCED IN FINE V FIRESTONE AND MANY OTHER CASES, WHICH IS THE PROPOSAL HAS A LOGICAL VIEW AND CONNECTION, AS COMPONENTS ASPECTS OF A SINGLE DOMINANT PLAN. WE WOULD SUBMIT, YOUR HONOR, THAT THERE ARE TWO BASES ON WHICH THAT TEST IS MET. ONE IS THAT ALL OF THE MATTERS WHICH ARE MENTIONED IN THESE PROVISIONS ARE ONES THAT HAVE ALREADY BEEN IDENTIFIED AND LUMPED TOGETHER, IN ARTICLE I SECTION TWO, WHICH PROHIBITS DISCRIMINATION BY DEPRIVATION OF RIGHTS. THE OTHER, WE WOULD POINT OUT, IS THAT SEX IS ELIMINATED FROM THE THREE NARROWER PROPOSALS, LEAVING ONLY RACE, COLOR, ETHNICITY AND NATIONAL ORIGIN, WHICH, WE WOULD SUBMIT, ARE CLOSELY RELATED ENOUGH TO ACTUALLY FALL INDEPENDENTLY WITHIN THE DEFINITION OF ONE SUBJECT OR THE TEST FOR ONE SUBJECT, AS PREVIOUSLY ANNOUNCED BY THIS COURT.

MR. EVERETT, IF A STATE AGENCY -- MR. ERVIN, IF A STATE AGENCY REFUSED TO HIRE WOMEN OR MINORITIES, UNDER THESE AMENDMENTS, COULD THE STATE FACTOR IN RACE, IN FASHIONING A REMEDY, OR WOULD IT BE RESTRICTED TO INJUNCTIVE RELIEF?

IT WOULD BE RESTRICTED TO INJUNCTIVE OR PROHIBITIVE RELIEF, YOUR HONOR, IS MY UNDERSTANDING. IN OTHER WORDS IF THERE IS A PRIOR OR PAST IMPROPER DEPRIVATION OF RIGHTS, THE SOLUTION PROVIDED TO THESE, BY THESE AMENDMENTS, WOULD BE THAT THERE SHALL BE NO MORE OF THAT. IT WOULD NOT ALLOW THE COURT -- EXCUSE ME -- THE LEGISLATURE TO, THEN, ADOPT A AFFIRMATIVE OR BALANCING PROGRAM IN THE FUTURE.

SO THE AGENCY, THEETLY, COULD HAVE NO WOMEN, BUT THE STATE WOULD HAVE TO CLOSE IT'S TO SAY THAT FACT -- CLOSE IT'SS TO THE FACT THAT -- CLOSE ITS ICE TO THE FACT THAT -- ITS EYES TO THE FACT THAT THE STATE WOULD TRY TO GET WOMEN OR MINORITIES.

YOUR HONOR, THAT IS AN ANSWER TO THAT.

YOU INDICATE THAT, IN EXISTING ARTICLE I, SECTION TWO OF THE FLORIDA CONSTITUTION, AND SOME OF THE ANSWERS THAT YOU HAVE GIVEN HERE, TODAY, I THINK, TOUCH ON THAT, BUT ARTICULATE FOR US HOW THEY WOULD COMPLEMENT RATHER THAN CONTRADICT.

BASICALLY, YOUR HONOR, ARTICLE I, SECTION TWO, AS IT NOW EXISTS, PROHIBITS DISCRIMINATION IN THE FORM OF DEPRIVATION OF RIGHTS, BASED ON RACE, AND THE OTHER FACTORS MENTIONED THERE IN. THIS PROVISION BASICALLY PROHIBITS DISCRIMINATION IN THE FORM OF PREFERENCE OR AFFIRMATIVE, EXTRA RIGHTS, BASED ON THOSE SAME CHARACTERS. THIS PROVISION, THESE PROVISIONS, WOULD NOT LIMIT THE PROTECTION THAT EXISTS, UNDER ARTICLE I SECTION TWO. THEY PROVIDE PROTECTION FROM A DIFFERENT FORM OF DISCRIMINATION, THAT BY PREFERENCE.

HOW DOES THIS AMENDMENT INTERACT WITH ARTICLE I SECTION 21, CONCERNING ACCESS TO THE COURTS? IF I UNDERSTOOD YOUR ANSWER A FEW MOMENTS AGO, YOU INDICATED THAT A COURT WOULD BE LIMITED, THEN, IN WHAT KIND OF REMEDY IT COULD FASHION IN THE APPROPRIATE CASE.

EACH OF THESE AMENDMENTS PROVIDES ITS OWN REMEDIES PROVISION, WHICH BASICALLY SAYS THE REMEDIES IN EACH ONE SHALL BE AS THEN PROVIDED BY GENERAL LAW, THROUGH THE INDIVIDUAL, WHAT WOULD NOT BE ALLOWED WAS WHAT IS, IN EFFECT, A LEGISLATIVE-TYPE REMEDY, WHICH WOULD USE SOME FORM OF PREFERENCE, IN ORDER TO MAKE UP FOR THE SHORTCOMINGS OF THE AGENCY. IT DOES NOT PROHIBIT INDIVIDUAL REMEDIES, AND INDEED SPECIFICALLY SAYS THAT INDIVIDUAL REMEDIES WILL BE AS PROVIDED FOR EXISTING LAW FOR DISCRIMINATION. IN EFFECT THAT PROVISION SAYS IT WILL BE AS PROVIDED BY GENERAL LAW. THAT IS WHAT THE EFFECT OF IT IS AND REQUIRES UNIFORMITY.

WELL, THEN, IF WE TAKE THAT A LITTLE BIT FURTHER, THEN, AS PROVIDED BY GENERAL LAW, YOU STILL HAVE SOME -- THIS AMENDMENT WOULD, HOWEVER, PLACE LIMITATIONS ON WHAT THAT GENERAL LAW COULD BE.

THIS AMENDMENT WOULD PLACE LIMITATIONS ON WHAT THE GENERAL LAW SHOULD BE. THE ONLY LIMITATION PLACED ON INDIVIDUAL REMEDIES WOULD BE THAT WHICH IS PROVIDEED BY GENERAL LAW.

AS I RECALL, ONE OF THE PROPONENTS MADE BY THIS INITIATIVE IS THAT WE ARE IN DEPARTMENT WITH A TWO-TIERED SITUATION, BASED ON THE LANGUAGE. IT WOULD NOT TALK ABOUT ANY EXISTING DECREES OR COURT ORDERS.

YES. I HAVE NOT ADDRESSED THOSE EXCEPTIONS TO THE OPERATION OF THE LAW YET. THERE ARE TWO PARTICULAR EXCEPTIONS THAT I BELIEVE ARE IN THERE TO AVOID CATACLYSMIC RESULTS OR DISRUPTIONS. ONE OF THOSE IS A SPECIFIC PROVISION THAT SAYS IT WILL NOT AFFECT EXISTING JUDICIAL ORDERS OR CONSENT DECREES, AT THE TIME OF ITS ADOPTION. THE OTHER ONE SAYS THAT IT WILL PERMIT ACTION NECESSARY TO ESTABLISH OR MAINTAIN ELIGIBILITY FOR FEDERAL FUNDS IN FEDERAL PROGRAMS, IF IT IS NECESSARY TO MAINTAIN THE FUNDING. I HAVEN'T SAID THAT AS WELL AS IT IS WRITTEN IN THE AMENDMENT, BUT THAT IS WHAT IT SAYS. JUSTICE, I AM NOT SURE IF I ANSWERED IT.

THERE WAS ONE OF THE, I GUESS THE OPPONENTS HAD SAID THAT THIS AMENDMENT, IF PASSED, WOULD ELIMINATE PROGRAMS, SUCH AS ENGLISH, AS A SECOND LANGUAGE. IS THAT, AGAIN, I UNDERSTAND THAT WE CAN'T ADDRESS THE MERITS OF IT, BUT TRYING TO MAKE SURE THAT, IF THE SUMMARY ADEQUATELY EXPLAINS TO THE VOTERS WHAT THE FAR-REACHING EFFECTS OF THIS AMENDMENT WOULD BE, DO YOU AGREE THAT THOSE TYPE OF PROGRAMS THAT WOULD BE SORT OF PREFERENTIALAL PROGRAMS, TAILORED TO NATIONAL ORIGIN, WOULD BE PROHIBITED BY THIS AMENDMENT?

WE DO NOT AGREE THAT THE LANGUAGE CLASSES WOULD BE PROHIBITED. WE DO AGREE THAT, TO SET UP A SPECIAL CLASS THAT ONLY HISPANICS WERE ELIGIBLE FOR, WOULD BE PROHIBITED. LANGUAGE IS NOT A NATIONALITY. NOT A NATIONAL ORIGIN. IT IS A COMMUNICATIONAL SKILL, AND WE DO NOT BELIEVE THAT ALL OF THOSE PROGRAMS WOULD BE OUTLAWED OR PROHIBITED BY THIS.

NOW, THE SECTION TWO OF ARTICLE I NOW SAYS NO PERSON SHALL BE DEPRIVED OF ANY RIGHT BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN OR PHYSICAL DISABILITY, SO IN ELIMINATING OR NOT REFERRING TO RELIGION OR PHYSICAL DISABILITY, ESSENTIALLY THOSE FUNDAMENTAL CHARACTERISTICS OR -- WOULD BE -- WOULD NOT BE AFFECTED.

THE LAW WOULD NOT -- THE EXISTING LAW WOULD NOT BE CHANGED, AS TO THOSE CHARACTERISTICS WHICH ARE NOT INCLUDED WITHIN THESE. I BELIEVE I AM AT TWENTY.

WE GAVE YOU AN ADDITIONAL FOUR MINUTES, MR. ERVIN.

THANK YOU.

ON PEOPLE AND PERSON --

I DON'T KNOW WHETHER YOU WANTED IT.

I DO. I DO, YOUR HONOR. THANK YOU. I AM HAVING SECOND THOUGHTS. [LAUGHTER]

CAN PEOPLE AND PERSONS BE USED INTERCHANGEABLY, OR IS THERE A SIGNIFICANT DIFFERENCE?

IN THIS INSTANCE, I ADVISE THE COURT THERE WAS NOT INTENDED TO BE A SIGNIFICANT DIFFERENCE. THE USAGE OF PEOPLE AND PERSONS, I BELIEVE, WAS INTENDED TO BE USED INTERCHANGEBLY. THERE IS CONCERN THAT PERSONS WITHOUT THE WORD NATURAL IN FRONT OF IT, AT LEAST SOME OPPONENTS, HAVE EXPRESSED CONCERN THAT THAT MIGHT MEAN CORPORATIONS. IN OUR VIEW, THE CONTEXT IN WHICH THE WORD PERSONS WAS USED, DOWN IN THE TEXT, INDICATES THAT IT DID NOT MEAN CORPORATIONS. IT MEANT NATURAL PERSONS.

WHAT DID THESE AMENDMENTS DO THAT ARTICLE I SECTION 2 OF THE STATE CONSTITUTION DOES NOT DO?

ARTICLE I SECTION 2 AND ITS CORRESPONDING FEDERAL COUNTERPART HAVE BEAN CONSTRUED, AT LEAST IN A NUMBER OF INSTANCES IN THE PAST, OVER THE LAST 40 YEARS, BY LEGISLATURES, BY EXECUTIVE BODIES, ADMINISTRATIVE BODIES AND SOME COURTS, TO PROHIBIT DEPRIVATION OF RIGHTS OF MINORITIES OR OTHER CHARACTERISTICS MENTIONED IN THERE, BUT NOT TO PROHIBIT PREFERENCE IN FAVOR OF THOSE CLASSES. THESE PROVISIONS WOULD ELIMINATE SUCH PREFERENCES.

IT SAID BASICALLY THAT NO PERSON SHALL BE DEPRIVED OF ANY RIGHT BECAUSE OF RACE, RELIGION OR PHYSICAL DISABILITY. ISN'T THIS WHAT YOUR AMENDMENTS ARE TRYING TO DO?

JUSTICE SHAW, IF THOSE PROVISIONS HAD BEEN READ LITERALLY, AS WRITTEN, THAT IS CORRECT. THAT IS EXACTLY WHAT THESE AMENDMENTS WILL ACCOMPLISH. THEY WILL MAKE IT WORK BOTH WAYS.

IS IT THE INTENT THAT THE AMENDMENTS GO FURTHER THAN THIS CONSTITUTIONAL PROVISION?

THE INTENT IS THAT IT WILL PROVIDE THE CORRESPONDENCING RESTRICTION ON PREFERENCE, WHICH WILL BALLOT AND GUARANTEE EQUAL RIGHTS UNDER THE LAW.

DO YOU FEEL OR DO YOU THINK THAT THE PUBLIC MIGHT BE MISLED IN FEELING THAT THESE PROVISIONS ARE DOING SOMETHING MORE THAN THE CONSTITUTION?

YOUR HONOR, I DON'T THINK THEY ARE MISLED FOR A MINUTE. I THINK THAT THE PUBLIC KNOWS THAT PREFERENCE, AFFIRMATIVE ACTION AND SO ON, EXISTS. I THINK THEY WILL GO TO THE POLLS, KNOWING THAT, IF THEY VOTE YES FOR THESE AMENDMENTS, THEY WILL BE VOTING TO STOP IT. IF THEY VOTE NO, THEY WILL BE VOTING TO ALLOW IT TO CONTINUE. I THINK THEY WILL, ALSO, KNOW THAT THERE ARE EXCEPTIONS AND SO ON, BUT I BELIEVE THESE SUMMARY ADEQUATELY MEET THE REQUIREMENTS OF SECTION 101.161, AS DOES THE CAPTION, WHEN THE TWO ARE READ TOGETHER.

BUT WILL THEY KNOW IT, BY THE LANGUAGE THAT YOU HAVE CHOSEN HERE, OR WILL THEY KNOW IT, YOU KNOW, BY A POLITICAL CAMPAIGN THAT PUB SIZES IT? LET ME COME BACK TO, AGAIN, JUST AS AN EXAMPLE, THE EDUCATION, THE FIRST AMENDMENT. YOU HAVE CANDIDLY STATED, HERE, THAT THIS IS AN ANTI-AFFIRMATIVE ACTION AMENDMENT. IS THAT CORRECT? ANTI-AFFIRMATIVE ACTION IN EDUCATION?

AN AMENDMENT TO ELIMINATE AFFIRMATIVE ACTION IN PREFERENCES IN EDUCATION. THAT IS CORRECT. BY GOVERNMENT.

NOW, WHERE DO THE WORDS "ANTI-AFFIRMATIVE ACTION IN EDUCATION" APPEAR IN THAT FIRST PROPOSED AMENDMENT?

IN THE PROPOSAL ABOUT EDUCATION, WELL, I KNOW ANTI-AFFIRMATIVE ACTION DOESN'T APPEAR. THE --

WELL, IF THAT IS WHAT THE INTENT OF THAT IS -- AREN'T WE IN SOME DIFFICULTY, FOLLOWING UP ON JUSTICE SHAW'S WORDS TO YOU? THE LANGUAGE THAT YOU USED HERE JUST AS EASILY COULD HAVE BEEN IN THE CIVIL WAR, POST POST-CIVIL WAR AMENDMENTS TO THE US CONSTITUTION. COULDN'T THEY NOT? IN OTHER WORDS IT IS DRESSED UP IN THAT SAME LANGUAGE. IS IT NOT?

LET ME, IF I MAY, YOUR HONOR, READ THAT LANGUAGE THAT ANSWERS YOUR QUESTION AND MEETS, IN MY OPINION, ALL OF THE REQUIREMENTS OF 101.161, IN STATING THE CHIEF PURPOSE OF THE MEASURE. IT SAYS TO BAR STATE AND LOCAL GOVERNMENTAL BODIES FROM TREATING PEOPLE DIFFERENTLY, BASED ON RACE, COLOR, ETHNICITY OR NATIONAL ORIGIN, IN THE OPERATION OF PUBLIC EDUCATION, AND IT KEEPS GOING. WHETHER THE PROGRAM IS CALLED PREFERENTIAL TREATMENT, AFFIRMATIVE ACTION, OR ANYTHING ELSE. WE SUBMIT TO YOUR HONORS THAT THAT IS ADEQUATE TO MEET THE STATUTORY REQUIREMENTS OF THE SUMMARY AND ADEQUATE TO INFORM THE PEOPLE OF FLORIDA AS TO WHAT THEY ARE VOTING ON.

THANK YOU. MS. BROWN.

MS. BROWN.

MAY IT PLEASE THE COURT. MY NAME IS SHARON BROWNE. I AM WITH PACIFIC LEGAL FOUNDATION, AND I AM HERE ON BEHALF OF THE CAMPAIGN FOR A COLOR-BLIND AMERICA, INITIATIVE AND REFERENDUM INSTITUTE, AS WELL AS SPECIFIC LEGAL FOUNDATION. JUSTICE ANSTEAD, I WOULD LIKE TO QUICKLY ADDRESS YOUR QUESTION ON THE USE OF THE TERM AFFIRMATIVE ACTION. AS THIS COURT KNOWS, THE CALIFORNIA CIVIL RIGHTS INITIATIVE HAS BEEN IN EFFECT, NOW, SINCE 1996. SO THIS COURT IS, REALLY, NOT BLAZING ANY NEW TRAILS, BECAUSE THE CALIFORNIA CIVIL RIGHTS INITIATIVE WAS, IN FACT, LITIGATED, BOTH PRIOR TO THE ADOPTION OF PROPOSITION 209, AS WELL AS AFTERWARDS. IN THE PREHE EX -- IN THE PREELECTION CHALLENGE TO THE CALIFORNIA CIVIL RIGHTS INITIATIVE, A CHALLENGE WAS BROUGHT BECAUSE THE BALLOT TITLE AND SUMMARY DID NOT INCLUDE THE TERM

AFFIRMATIVE ACTION. THE THIRD DISTRICT COURT OF APPEAL, IN LUNDGREN VERSUS SUPERIOR COURT, SAID THAT THE TERM "AFFIRMATIVE ACTION" IS SO AMORPHOUS AND VALUE LADEN THAT, IN FACT, UNLESS THE PARTIES CAN AGREE ON WHAT THAT TERM ACTUALLY MEANS, THAT THE PARTIES ARE NOT ON COMMON GROUNDS. AND SO THE FACT THAT THE BALLOT TITLE AND SUMMARY IN THE FLORIDA CIVIL RIGHTS INITIATIVE DOES NOT USE THE TERM AFFIRMATIVE ACTION, IN FACT, IS, ACCORDING TO THE CALIFORNIA COURTS, WOULD BE A PROPER ELIMINATION OF THAT TERM.

BUT DON'T YOU THINK THAT THE AVERAGE VOTER, LOOKING AT THIS, IS GOING TO FEEL THAT IT IS DOING SOMETHING MORE THAN THE CONSTITUTION DOES?

THE FLORIDA CIVIL RIGHTS INITIATIVE DOES MORE THAN WHAT THE FLORIDA CONSTITUTION DOES RIGHT NOW.

DOES MORE THAN THE FLORIDA CONSTITUTION?

WELL, ACCORDING TO MY UNDERSTANDING AND WHAT I HAVE READ, ARTICLE I SECTION 2 DOES ELIMINATE DISCRIMINATION. WHAT THE FLORIDA CIVIL RIGHTS INITIATIVE PROPOSES TO DO IS, ALSO, ELIMINATE PREFERENTIAL TREATMENT THAT IS GRANTED TO INDIVIDUALS ON THE BASIS OF RACE, SEX, ETHNICITY, ET CETERA, AND SO THE USE OF DISCRIMINATORY PREFERENTIAL TREATMENT PROGRAMS IS A FORM OF DISCRIMINATION, AND THE FLORIDA CIVIL RIGHTS INITIATIVE IS AN ATTEMPT TO MAKE SURE THAT IT --

IS PROVERENTIAL TREATMENT AN EUPHEMISM FOR DISCRIMINATION?

IT IS A FORM OF DISCRIMINATION. PREFERENTIAL TREATMENT IS REALLY JUST FLIP SIDE OF THE DISCRIMINATION COIN. WHAT HAPPENS WITH PREFERENTIAL TREATMENT, SOMEONE IS GIVEN AN ADVANTAGE.

DOESN'T THE CONSTITUTION SAY THAT YOU SHALL NOT DISCRIMINATE?

AND CURRENTLY THE CASE LAW WILL ALLOW SOME FORMS OF PREFERENTIAL TREATMENT. THIS INITIATIVE IS INTENDED TO PROHIBIT EVEN THAT TYPE OF DISCRIMINATION, WHICH WOULD BE AN OPPORTUNITY TO GIVE A BENEFIT TO AN INDIVIDUAL, ON THE BASIS OF RACE OR SEX. SO, IN EFFECT, IT IS THE FLIP SIDE OF THE DISCRIMINATION COIN. I WOULD, ALSO, LIKE TO POINT OUT THE CASE OF COALITION FOR ECONOMIC EQUITY VERSUS WILSON. THAT IS A NINTH CIRCUIT DECISION. THAT DISCUSSES THE OPERATIVE LANGUAGE OF THE CALIFORNIA CIVIL RIGHTS INITIATIVE. LIKE FLORIDA, CALIFORNIA DOES NOT -- DOES HAVE A SINGLE-SUBJECT REQUIREMENT, BUT THAT WAS NEVER AN ISSUE IN PROPOSITION 2 ON 9'S INTERPRETATION. WASHINGTON STATE, ALSO, HAS A SINGLE -- PROPOSITION 209'S INTERPRETATION. AGAIN, WHEN THE PEOPLE OF WASHINGTON ADOPTED THEIR CIVIL RIGHTS INITIATIVE, AGAIN, THERE WAS NO --

IS THERE ANY PROBLEM WITH THE OMNIBUS INITIATIVE, INCLUDING EMPLOYMENT, HE INDICATION -- EDUCATION, AND CONTRACTING, IN THE ONE INITIATIVE?

NO. BECAUSE WHAT -- THAT IS A LIMITATION ON THE OPERATIVE LANGUAGE OF THE FLORIDA CIVIL RIGHTS INITIATIVE. AND WHAT IT WILL DO IS PROVIDE ONE STANDARD FOR THE GOVERNMENT TO APPLY TO ALL CITIZENS EQUALLY.

IS THERE ANY REASON IT WAS PUT IN ONE INITIATIVE, AS OPPOSED TO THREE INITIATIVES? LIKE THE OTHER THREE?

BECAUSE, AGAIN, IT WAS A LIMITATION ON THE OPERATIVE LANGUAGE. IT WASN'T AN ATTEMPT TO INTERFERE WITH THE FUNCTIONS OF GOVERNMENT, BUT JUST MERELY HOW THIS INITIATIVE WAS TO APPLY TO THE VARIOUS FUNCTIONS OF GOVERNMENT. SO IT WOULD ELIMINATE

POLICIES, DECISION-MAKING, AND PROGRAMS. BUT NOT INTERFERE WITH THE ACTUAL FUNCTIONS, THEMSELVES, AND I NOTICE MY TIME IS UP. THANK YOU.

THANK YOU, MS. BROWNE. MR. HATCHET.

MAY IT PLEASE THE COURT. JOSEPH HATCHET FOR FLORIDA I HADIANS REPRESENTING -- FOR FLUORIDEIANS REPRESENTING EQUALITY. IT IS FREE'S POSITION THAT THIS BALLOT INITIATIVE SHOULD FAIL, ALL FOUR OF THEM SHOULD FAIL, BECAUSE THEY FAILED TO EMBRACE JUST ONE SUBJECT. THEY ARE NOTLOGICALLY AND NATURALLY CONNECTED TO AN ONENESS OF PURPOSE, AND THE TITLES AND THE SUMMARIES ARE MISLEADING AND, ALSO, VAGUE, BUT LET ME BEGIN WITH SOME OF THE QUESTIONS THAT THE COURT HAS JUST ASKED. JUSTICE ANSTEAD HAS JUST ASKED WILL THE VOTERS KNOW WHAT THEY ARE VOTING ON, AND THAT IS WHAT THIS PROCEEDING IS ALL ABOUT. ARE THE VOTERS GOING TO HAVE TO GUESS AS TO EXACTLY WHAT IT IS THEY ARE VOTING ON. IF THEY HAVE TO GUESS, THEN IT IS LAW GROWING. IF THEY ARE VOTING FOR MORE THAN ONE THING AT A TIME, THAT IS LAW GROWING, AND THAT IS PROHIBITED BY THE FLORIDA CONSTITUTION. IN ANSWER TO A QUESTION BY JUSTICE PARIENTE. COUNSEL SAYS WHAT YOU ARE FACED WITH IN THOSE PETITIONSS IS INADVERTENT LANGUAGE. THAT IS EXACTLY WHAT LAW GROWING IS ABOUT AND THAT IS EXACTLY WHY THE FLORIDA STATUTE SAYS YOU CAN'T BE VAGUE AND YOU CAN'T BE MISLEADING, AND SO IF COUNSEL IS CORRECT THAT THERE IS INADVERTENT LANGUAGE IN THESE PETITIONS, THEY SHOULD FAIL, FOR THAT REASON ALONE. IN ANSWER TO A QUESTION TO JUSTICE SHAW ABOUT THE AUTHORITY OF COURTS TO GIVE REMEDIES, WHAT IS WRONG WITH THESE PETITIONS IS COUNSEL ADMITTED IF, IN FACT, THESE PETITIONS PASS, COURTS WOULD NOT BE ABLE TO GIVE RELIEF, NOT EVEN AS REMEDIES BASED UPON PAST DISCRIMINATION. IF THAT IS TRUE, EVERYONE OF THESE PETITIONS MUST FAIL, BECAUSE THERE IS NOT A SINGLE THING IN ANY OF THESE PETITIONS THAT SAYS ANYTHING ABOUT AFFECTING THE JURISDICTION OF COURTS, AND COUNSEL HAS JUST ADMITTED, AS I HEARD HIM, EVERY COURT IN FLORIDA WOULD BE WITHOUT THE POWER TO ISSUE REMEDIES, BASED UPON DISCRIMINATION OR PREFERENCES.

IN ANSWER TO A QUESTION BY CHIEF JUSTICE HARDING, ABOUT HARD KEL ONE SECTION -- ABOUT ARTICLE I SECTION 2, IT DOESN'T MATTER WHETHER ARTICLE I SECTION TWO COMPAIN OR WHETHER THEY ARE DIFFERENT OR WHETHER THEY ARE CONTRARY. THE POINT IS THERE IS NOT ONE WORD IN THESE PETITIONS THAT WILL TELL A VOTER THAT THERE IS ALREADY A PROVISION IN THE FLORIDA CONSTITUTION THAT SAYS YOU SHALL NOT TREAT PEOPLE DIFFERENTLY. THEY AT LEAST HAD TO TELL PEOPLE TO LOOK AT ARTICLE I SECTION TWO. THERE IS NO MENTION, AND YET THE PROPONENTS SAY THAT IS ALL RIGHT. TWOT WILL DOVETAIL. THE VOTERS HAVE HE -- THE TWO WILL DOVETAIL. THE VOTERS HAVE TO KNOW THAT THEY WILL DOVETAIL, AND THAT IS WHY THEY MUST BE IN THE PETITION. IN ANSWER TO JUSTICE SHAW'S QUESTION, NOTHING TELLS HIM, HERE, THAT YOU ARE GOING TO AFFECT THE POWER OF COURTS, NOT ONE WORD. IN ANSWER TO JUSTICE SHAW'S QUESTION, WHAT ABOUT PERSONS VERSUS CORPORATIONS? PROPONENTS SAY OH, THAT WAS NOT INTENDED. THEY HAVE TO BE PRECISE, BECAUSE IF A VOTER WALKS INTO A LAWYER'S OFFICE IN THIS STATE AND SAYS ARE PERSONS AROUND CORPORATIONS, ARE PERSONS AND PEOPLE THE SAME, THE LAWYER IS GOING TO TELL THEM KNOW. THEY ARE GOING TO SAY PEOPLE MEAN PEOPLE AND PERSONS MEAN PERSONS AND CORPORATIONS, AND THAT PERSON MAY VERY WELL NOT WANT TO VOTE AGAINST CORPORATIONS AND CONSEQUENTLY THEY HAVE TO VOTE FOR THIS INITIATIVE, EVEN THOUGH THE PEOPLE WHO HAVE DRAWN THE INITIATIVE SAY WE AREN'T SURE OF WHAT WE INTENDED BY THAT LANGUAGE. WE THINK WE INTENDED FOR THEM TO BE THE SAME THING. WELL, THEY CAN'T BE THE SAME THING, UNDER FLORIDA LAW, BECAUSE CORPORATIONS ARE INCLUDED WITHIN THE WORD "PERSONS" IN FLORIDA, SO WE GET BACK TO JUSTICE ANSTEAD'S QUESTION. WHAT WILL THE VOTERS KNOW? THE VOTERS WILL NOT KNOW THAT THERE IS NOTHING ABOUT COURTS HERE. THEY WON'T KNOW THAT THERE IS ALREADY A PROVISION IN THE FLORIDA CONSTITUTION AGAINST TREATING PEOPLE DIFFERENTLY, AND THEY WON'T KNOW WHETHER THESE TWO PROVISIONS WILL DOVETAIL, WHETHER THEY WILL BE CONTRARY, OR WHAT THE RESULT WILL BE. WERE WE LOOK AT THE

TITLE OF THIS -- WHEN WE LOOK AT THE TITLE OF THESE PETITIONS, IT SAYS, IN THE TITLE, THAT THIS COVERS RACE. NO, IT DOESN'T. IT COVERS MORE THAN RACE. AND COUNSEL HAS ADMITTED IT COVERS NATIONAL ORIGIN, ETHNICITY AND COLOR. THAT IS EXACTLY WHAT LOG ROLLING IS. THE TITLE SAYS RACE. YOU SHOULDN'T FIND ANYTHING ELSE IN THE ARGUMENT, OTHER THAN RACE. THIS COURT HAS --

CAN THE TITLE BE EXPLAINED OR EXPANDED IN THE ACTUAL SUMMARY? BECAUSE THE ACTUAL SUMMARY DOES, IN FACT, SAY RACE, ETHNICITY, NATIONAL ORIGIN, COLOR.

AS I UNDERSTAND THE LAW FROM THIS COURT, THE TITLE MUST BE CORRECT. THE TITLE MUST TELL YOU WHAT THE PROVISION IS ABOUT. BUT I DO REMEMBER THAT, IN THE SUMMARY, IT DOES TALK ABOUT RACE, COLOR, ETHNICITY, AND NATIONAL ORIGIN, BUT I DO NOT BELIEVE THAT O'CLOCK YOU CAN SAVE THE -- I DO NOT BELIEVE THAT YOU CAN SAVE THE TITLE BY A MISLEADING SUMMARY, AND LET ME SAY TO YOU SOME OF THE THINGS THAT ARE MISLEADING WITH THE SUMMARY, AND COUNSEL HAS ALREADY READ THIS. WHAT PROGRAMS ARE PROHIBITED? IF YOU READ THE SUMMARY, IT SAYS IT IS GOING TO WIPE OUT AFFIRMATIVE ACTION. GOING TO ELIMINATE PREFERENTIAL TREATMENT. AND THEN COST WORDS "OR ANYTHING ELSE". ANYTHING ELSE IS WHAT THIS IS ADDRESSING. HOW WOULD ANY VOTER EVER UNDERSTAND WHAT THEY WERE VOTING AGAINST? ANYTHING ELSE IS WHAT THEY ARE TRYING TO PROHIBIT, AND SO EVEN IF YOU CAN SAVE THE TITLE THROUGH THE SUMMARY, THE SUMMARY, ITSELF, IS PROBABLY WORSE THAN THE TITLE. THE WORD "PEOPLE" USED IN THE TITLE, BUT IN THE AMENDMENT IT TALKS ABOUT "PERSONS" AGAIN, BUT THE BIG THING IS WHAT THE COURT HAS ALREADY KEYED IN ON. THERE IS NOTHING TO TELL THE VOTER THAT TREATING PEOPLE DIFFERENTLY IS ALREADY IN THE CONSTITUTION. OF THE STATE OF FLORIDA. OR SAYING HOW THIS WILL DOVETAIL IN WITH IT, IF IT DOES. THE CATCHALL PROVISION TO END GOVERNMENTAL DISCRIMINATION AND PREFERENCES. IT SAYS THAT APPLIES PUBLIC CONTRACTING, PUBLIC EMPLOYMENT, AND PUBLIC EDUCATION, BUT IT IS TO END GOVERNMENTAL DISCRIMINATION, IT SAYS. EVEN IF PASSED, IT DOESN'T COVER EVERYTHING. IT WOULD NOT END DISCRIMINATION. IT WOULD NOT END PREFERENCES. LET'S TAKE AGRICULTURE, FOR EXAMPLE. AGRICULTURE IS NOT INCLUDED IN CONTRACTING EMPLOYMENT AND EDUCATION, SO THERE WOULD BE NO PREFERENCES LEFT THERE. WHAT WITH VETERANS' PREFERENCES? WOULD THAT BE TESTED BY THIS AMENDMENT? NO, IT WOULD NOT, SO IT DOESN'T END ALL GOVERNMENT DISCRIMINATION. WHAT ABOUT PREFERENCES FOR OUT-OF-STATE OR IN-STATE STUDENTS? THAT WOULD CONTINUE, AND SO TO TELL THE VOTER THAT YOU ARE ENDING ALL GOVERNMENTAL PREFERENCES IS SIMPLY MISLEADING, BECAUSE IT DOES NOT. GOING ON TO THE PUBLIC EDUCATION PROVISION, THAT IS SECTION 2. IT SAYS IT APPLIES TO ACTION TAKEN, ACTION TAKEN AFTER THE EFFECTIVE DATE OF THIS SECTION. WELL, WHEN IS ACTION TAKEN, AND WHAT KIND OF ACTION ARE YOU SPEAKING OF? IF YOU ARE AT A MEETING, AND YOU PASS A MOTION, IS THAT THE ACTION TAKEN THAT THEY ARE TALKING ABOUT? IF THEY -- YOU PASS AN ORDER ON THIS, IS THAT AN ACTION TAKEN? I WOULD SUBMIT NOT. THERE IS NO WAY FOR A VOTER TO KNOW WHEN ACTION HAS BEEN TAKEN THAT WILL TRIGGER THIS AMENDMENT, BUT THE BIGGEST THING WE HAVE ALREADY TALKED OF, IN THE RIGHT OF CITIZENS TO CHOOSE HEALTH CARE PROVIDERS, AND IN THE PROVISION REGARDING RESTRICTING DISCRIMINATION, WHERE THERE WERE TEN CLASSIFICATIONS, THIS COURT SAID, IF YOU PUT TEN CLASSIFICATIONS IN AN INITIATIVE, YOU ARE ASKING TEN DIFFERENT QUESTIONS. WELL, IF THAT IS TRUE, AND THIS INITIATIVE, YOU ARE ASKING FIVE DIFFERENT QUESTIONS, AND YOU ARE GIVING THE VOTER ONLY ONE VOTE. RACE, SEX, ETHNICITY, NATIONAL ORIGIN, THAT IS FIVE DIFFERENT QUESTIONS, AND THE PRECEDENT OUT OF THIS COURT SAYS YOU CANNOT ASK THE VOTER TO MAKE THAT KIND OF A STATEMENT. IN THE DEFINITION OF THE STATE, WHAT IS INCLUDED? WELL, STATE INCLUDES, AND THE LANGUAGE I WOULD ASK YOU TO FOCUS ON IS "BUT IS NOT NECESSARILY LIMITED TO". STATE INCLUDES THE STATE, ITSELF. ANY CITY, COUNTY, DISTRICT, PUBLIC COLLEGE OR UNIVERSITY OR OTHER PUBLIC SUBDIVISION OR GOVERNMENT INSTRUMENTALITY OF OR WITHIN THE STATE, AND IT IS NOT LIMITED TO ALL OF THOSE CLASSIFICATIONS. THAT IS LOG ROLLING. BUT EVEN THOUGH THEY HAVE GOT 14 DIFFERENT PROVISIONS HERE, YOU STILL DON'T

KNOW THE BREADTH OF THIS, BECAUSE IT IS NOT LIMITED TO THOSE THINGS WHICH ARE LISTED.

LET ME ASK YOU ABOUT THAT PARTICULAR ISSUE. IS IT YOUR POSITION THAT OUR PRIOR CASE LAW SAYS THAT, IF AN AMENDMENT AFFECTS MULTIPLE LEVELS OF GOVERNMENT, THAT IT NECESSARILY VIOLATES THE SINGLE-SUBJECT PROHIBITION?

NO, MADAM JUSTICE. AS I READ YOUR CASES, THERE ARE TWO LINES OF CASES. ONE LINE HAS TO DO WITH CLASSIFICATIONS, AND THAT IS WHAT I SAY THAT IS CONDEMNED HERE. SEX, RACE, ETHNICITY, NATIONAL ORIGIN.

BUT YOUR SECOND POINT, WHICH HAD TO DO WITH IT EXTENDING TO ALL LEVELS OF GOVERNMENT. I THOUGHT THAT YOU WERE, ALSO, SAYING THAT THAT WAS SOMETHING THAT WOULD BE PROHIBITED.

YES. I DO CLAIM THAT THAT IS, ALSO, PROHIBITED, AND I AM SURE THE JUSTICES EXPECTED ME TO REMARK ON THE CASE REGARDING FEDERAL FUNDS, WHERE THIS COURT APPROVED. THE GOVERNOR, THE SENATE, CABINET MEMBERS AND THE HOUSE. I SAY THAT THAT IS A DIFFERENT LINE OF CASES, BECAUSE THOSE CASES HOLD THAT IT IS OKAY TO AFFECT MULTIPLE BRANCHES OF GOVERNMENT. YOUR CASES DON'T SPEAK OF MULTIPLE LEVELS.

THE MULTIPLE LEVELS, WHICH WAS REFERRED TO IN THE LAW AS TO STOP DISCRIMINATION OR WHATEVER, THE 1994 CASE, SEEMS TO SAY THAT, IF IT AFFECTED THE MULTIPLE LEVELS, THAT IS FROM LOCAL TO STATE, THAT THAT WOULD BE PROHIBITED, UNDER SINGLE SUBJECT, AND MY CONCERN THERE IS THAT WOULD PREVENT, IN A SINGLE INITIATIVE PETITION, IF THE VOTERS DECIDED THAT THEY WANTED TO EXPLICITLY INCLUDE SEX AS A SPECIFIC STATUS THAT WOULD BE PROTECTED, UNDER "NO PERSON SHALL BE DEPRIVED OF ANY RIGHT", OR IF THEY WANTED TO PUT IN MARITAL STATUS, THAT UNDER THESE RULINGS, THAT THOSE WOULD BE PROTECTED, UNDER A SINGLE SUBJECT ANALYSIS, BECAUSE IT WOULD AFFECT, IN ONE FELL SWOOP, ALL LEVELS OF GOVERNMENT. DO YOU READ OUR CASES AS SAYING THAT YOU HAVE GOT TO ACTUALLY SAY YOU CAN REFER TO THE STATE BUT THEN YOU HAVE TO REFER SEPARATELY, IN SEPARATE AMENDMENTS, TO LOCAL GOVERNMENT, BEFORE YOU CAN EXTEND A FUNDAMENTAL RIGHT OR EXTEND A PROTECTION OF THE CONSTITUTION? DO YOU UNDERSTAND MY QUESTION?

I UNDERSTAND YOUR QUESTION. AND MY REVIEW, I HAVEN'T FOUND A CASE WHERE THE COURT HAS SAID ANYTHING ABOUT LEVELS OF GOVERNMENT. YOU HAVE TALKED ABOUT MULTIPLE BRANCHES OF GOVERNMENT. AND SAID THAT THAT IS OKAY, AND THAT MAKES SENSE, BECAUSE IF YOU ARE GOING TO MAKE A FUNDAMENTAL CHANGE IN THE GOVERNMENT OF FLORIDA, SINCE THE FLORIDA GOVERNMENT IS MADE UP OF THREE BRANCHES, YOU ALMOST HAVE TO DO THEM ALL AT ONCE.

BUT IN THE 1994 CASE, AND THAT IS WHAT I WAS REFERRING TO, WE SAID THAT WE FOUND THAT THE SUBJECT OF DISCRIMINATION IN THE PROPOSED AMENDMENT IS AN EXPANSIVE GENERALITY THAT ENCOMPASSES BOTH CIVIL RIGHTS AND THE POWER OF ALLSTATE AND LOCAL GOVERNMENTAL BODIES. BY INCLUDING THE LANGUAGE "ANY OTHER GOVERNMENTAL ENTITY" THE PROPOSED AMENDMENT ENCROACHES ON MUNICIPAL HOME RULE POWERS AND ON THE RULE-MAKING AUTHORITIES OF EXECUTIVE AGENCIES. SO I THOUGHT, AND I READ IN THE BRIEFS, THAT THAT LANGUAGE WAS BEING TAKEN AS SAYING THAT YOU COULDN'T, IN ONE INITIATIVE PETITION, AFFECT BOTH WHAT THE STATE DOES, AS WELL AS LOCAL GOVERNMENT, BECAUSE YOU WOULD BE, THEN, ENCROACHING ON HOME RULE POWERS.

I UNDERSTAND YOUR QUESTION AND I AGREE THAT THAT IS OUR POSITION. YES. THAT -- AND THIS ONE IS EVEN WORSE, BECAUSE IT NOT ONLY LISTS ABOUT 14 DIFFERENT INSTRUMENTAL ITS AND CITIES, IT TALKS ABOUT INSTRUMENTAL ITS, AS IT TALKS ABOUT GOVERNMENT, AND THEN IT SAYS, AND IS NOT LIMITED TO EVEN THESE THAT WE HAVE ALREADY LISTED. FOR EXAMPLE UNDER THIS PROVISION, WHAT ABOUT A PRISON, A FLORIDA STATE PRISON THAT IS BEING RUN BY

A PRIVATE CORPORATION? IS IT COVERED UNDER THIS AMENDMENT OR NOT? IT MAY BE. IT MAY BE AN INSTRUMENTALITY OF THE STATE. A PRIVATE LEASED PRISON OR A PRISON THAT IS BEING OPERATED BY A PRIVATE COMPANY, AND SO THE VOTER WOULD NEVER KNOW THE EXTENT TO WHICH THIS PROVISION WOULD APPLY.

EXCUSE ME. GO AHEAD.

WOULD YOU PROVIDE YOUR COMMENT OR ANALYSIS TO, I BELIEVE IT WAS, THE PACIFIC COAST GROUP'S SUGGESTION THAT WE ARE REALLY DEALING WITH LIMITATIONS AND NOT WITH MULTIPLE SUBJECTS? HOW WOULD YOU ANALYZE THAT STATEMENT OR THAT ARGUMENT THAT THIS IS JUST LIMITATIONS?

IN TERMS OF ARTICLE I SECTION 2?

YES.

WELL, IT DOESN'T MATTER WHETHER IT IS A LIMITATION OR NOT. THE POINT IS THAT THE VOTERS MUST KNOW THAT ARTICLE I SECTION TWO IS GOING TO BE AFFECTED, SO THAT THEY CAN MAKE THE DECISION THAT YOU HAVE JUST ASKED ME ABOUT. THE POINT IS THAT THE VOTERS DON'T EVEN KNOW THAT THERE IS A ARTICLE I SECTION 2 THAT DOES SOMETHING LIKE WHAT THESE PROPONENTS ARE ASKING TO DO. DOES THAT ANSWER YOUR QUESTION, MR. JUSTICE?

ALSO WITH REGARD TO DEALING WITH RACIAL ISSUES, WITH ETHNICITY. THE COMMENT WAS MADE THAT THESE ARE MERELY LIMITATIONS ON A SINGLE SUBJECT AND YOU VIEW THEM AS MULTIPLE SUBJECTS, AND I WAS TRYING TO GET A LITTLE ASSISTANCE FROM YOU, ON YOUR ANALYSIS OF WHY THOSE ARE NOT LIMITATIONS OR WHY WE SHOULD NOT CONSIDER THEM LIMITATIONINGS.

NUMBER ONE THEY ARE NOT THE SAME. RACE IS SIMPLY NOT THE SAME AS ETHNICITY. RACE HAS TO DO WITH HABITS, CHARACTERISTICS. ETHNICITY HAS TO DO WITH LANGUAGE, FOR EXAMPLE, OR NATIONAL ORIGIN HAS TO DO WITH LANGUAGE, AND NO ONE HAS EVER, UNTIL TODAY, CLAIMED THAT COLOR, RACE, ETHNICITY AND NATIONAL ORIGIN MEAN THE SAME THING. IF THEY MEANT THE SAME THING, WE WOULDN'T HAVE THEM IN A HOST OF FEDERAL STATUTES, FOR EXAMPLE, TITLE SEVEN, FOR EXAMPLE, THAT LISTS ALL OF THESE AS DIFFERENT KINDS OF CHARACTERISTICS AND DIFFERENT LIMITATIONS AND EFFECTS.

MR. HATCHETT, I UNDERSTAND THAT YOU HAVE SOME OTHER PEOPLE WHO WISH TO SPEAK AS WELL. YOU ARE IN CONTROL OF THE TIME, BUT I JUST WANTED YOU TO BE ALERT THAT THE TIME WAS GOING ON.

THANK YOU, MR. CHIEF JUSTICE. I CONCLUDE MY ARGUMENT.

THANK YOU VERY MUCH. MR. HAWKES.

THANK YOU. FRED HAWKES ON BEHALF OF THE BOARD OF REGENTS. I AM HERE, TODAY, WITH GREG LEASON, WHO IS GENERAL COUNSEL FOR THE BOARD. I THINK IT IS IMPORTANT TO UNDERSTAND THAT THE PROPONENTS UNFAIRLY CHARACTERIZED THE COURSE OF THIS COURT'S REVIEW. THE WAY THEY PUT IT IN THE PAPERS IS THAT IT IS UP TO THIS COURT TO DETERMINE WHETHER THE CITIZENS WILL HAVE THE OPPORTUNITY TO VOTE ON THESE PROPOSALS, BUT THAT IS REALLY THE DRAFTER'S RESPONSIBILITIES. THIS COURT SIMPLY APPLIES THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS TO THE INITIATIVES, AND IF THE INITIATIVES FAIL, THAT IS BECAUSE OF THE VOTER'S DRAFTING, AND THE REAL PROBLEM WITH THESE INITIATIVES HAS ALREADY BEEN TOUCHED ON, AND THAT IS HOW THESE PROPOSALS ARE DRESSED UP. THE WHOLE POINT OF THIS PROCEEDING IS TO GIVE THE VOTERS FAIR NOTICE. ALL OF THE OPINIONS THAT THIS COURT HAS WRITTEN IN THIS AREA ARE CONCERNED PRIMARILY WITH FAIR NOTICE, IN BOTH

THE SINGLE SUBJECT REQUIREMENT AS WELL AS THE TITLE AND SUMMARY REQUIREMENTS, IT IS ALL ABOUT THE VOTERS UNDERSTANDING WHAT THEY ARE VOTING ON, SO THAT THEY ARE NOT CONFUSED. IN THIS CASE, THESE PROPOSITIONS ARE ALL DRESSED UP IN SUCH AWAY AS TO CONFUSE THE VOTERS. FIRST THEY IMPLY THERE IS NO EXISTING PROHIBITION AGAINST GOVERNMENTAL DISCRIMINATION. TITLES ARE, BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE, AND HERE, IN THAT TITLE IS NOT WHAT THEY ARE TRYING TO ACCOMPLISH BUT WHAT THEY HOPE THE VOTER WILL VOTE FOR, AND THAT IS A PROBLEM. JUST LIKE IF TAX LIMITATION --

IF THEY HAD MENTIONED ARTICLE I SECTION 2 IN THAT, WOULD THAT HAVE SOLVED THAT PROBLEM?

IT WOULD HAVE HELPED. BUT THE REAL PROBLEM HERE IS WHAT THEY ARE TRYING TO DO IS IMPLY SOMETHING THAT IS NOT ACCURATE. THERE IS AN EXISTING PROVISION IN THE CONSTITUTION THAT ALREADY PROHIBITS MOST OF THIS DISCRIMINATION, AND THE REASON THEY HAVE COMBINED THESE, WHICH IS APPARENT TO ME, IS IN HOPES OF GETTING THE VOTE. THE CHIEF PURPOSE OF THESE PROPOSALS IS TO ABOLISH AFFIRMATIVE ACTION. THE CHIEF PURPOSE IS NOT TO PROHIBIT ALL DISCRIMINATION. BY INTEGRATING THESE TWO THINGS TOGETHER, THESE PROPOSALS ATTEMPT TO DISGUISE THEMSELVES AS SOMETHING ELSE. AND THIS COURT HAS HELD, REPEATEDLY, THAT A PROPOSAL MUST STAND ON ITS OWN MERITS AND NOT BE DISGUISED AS SOMETHING ELSE. THIS COURT REQUIRES MORE THAN JUST MEETING ADVERTISING MARKETING STANDARDS IN PROPOSALS TO THE PEOPLE. A VOTE FOR OR AGAINST A PROPOSAL MUST BE, TO QUOTE, AN EXPRESSION OF APPROVAL OR DISAPPROVAL. NOW, THE PROPONENTS COMPLAIN THAT IT IS HARD TO AMEND THE CONSTITUTION, BUT JUSTICE ROBERTS WROTE, LONG AGO, IN THE WEBER CASE, IT IS HARD TO AMEND THE CONSTITUTION AND IT OUGHT TO BE HARD. THANK YOU.

THANK YOU. MR. SLATER.

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CHIEF JUSTICE HARDING MAY IT PLEASE THE COURT. I AM MATTHEW SLATER REPRESENTING THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS, AND WITH ME IS BARBARA ARNWINE AND BARBARA GROSS. THE TITLE FAIRLY APPRISED THE VOTERS OF THE SUBSTANCE AND AFFECTS THAT HAVE BEEN PUT BEFORE THEM AND THESE PROPOSALS FAILED. FURTHER, IT WOULD HELP TO FOCUS, ESPECIALLY, ON THE USE OF THE INITIATIVES IN THE TERMS "AFFIRMATIVE ACTION" AND "PREFERENTIAL TREATMENT" IN THE TITLES. THOSE DO NOT HAVE ANY DEFINITION WITHIN THE BODIES, THEMSELVES, AND INDEED HAVE NO ACCEPTED OR COMMON MEANING AND ARE A SOURCE OF MUCH CONFUSION AND MISCOMMUNICATION AMONGST PUBLIC AT LARGE AND FOR THE PURPOSE OF THAT THE USE IS CONTRARY TO THE SECTION IS 01.161. I THINK IF YOU WOULD LOOK AROUND THE CHAMBERS TODAY, YOU WOULD FIND THAT SOME PEOPLE THINK THE AFFIRMATIVE ACTION CONCERNS THE ISSUE OF QUOTAS AND OTHER PEOPLE SAY IT GOES BEYOND THAT AND HAS TO DO WITH GOALS AND TIMETABLES AND THAT SORT OF THING AND SOME PEOPLE SAY IT GOES BEYOND THAT AND DEALS WITHOUT REACH OR MENTORING OR MONITORING PROGRAMS AND SOME WOULD SAY IT HAS TO DO WITH RECORDKEEPING AND STATISTICAL AND THAT SORT OF THING. AS A RESULT, WHEN VOTERS COME TO A POLL AND READ THIS LANGUAGE OF AFFIRMATIVE ACTION OR PREFERENTIAL TREATMENT, THEY WILL HAVE DIFFERENT THINGS IN THEIR MINDS AS TO WHAT THEY THINK THEY ARE ACCOMPLISHING, IF THEY DECIDE TO VOTE IN FAVOR, AND THAT IS NOT WHAT HAPPENED UNDER THE SYSTEM THAT HAS BEEN ADOPTED HERE. THE EXPERIENCE IN THE STATES OF CALIFORNIA AND WASHINGTON WERE MENTIONED THIS MORNING, AND I THINK THEY ARE INSTRUCTIVE TO THE COURT FOR A DIFFERENT REASON. THEY DO GIVE A RECORD AS TO HOW THE TERMS AND HOW THE INITIATIVES ARE, IN FACT, CONFUSING TO THE VOTERS. IN CALIFORNIA, BEFORE THE BALLOT WENT UP, ROUGHLY 7 ON% OF THE ELECTORATE SAID THAT -- ROUGHLY 70% OF THE ELECTORATE SAID

THAT THEY WERE IN FAVOR OF OUTREACH PROGRAMS IN PUBLIC EDUCATION AND OUTREACH PROGRAMS FOR CONTRACTING. EVEN THOSE THAT VOTED IN FAVOR OF THE INITIATIVE MORE OR LESS SAID THE SAME THING, YET CONTRARY TO THAT, AS SOON AS THE INITIATIVE WAS PASSED IN CALIFORNIA, GOVERNOR WILSON TURNED AROUND AND SAID THAT THE STATE AGENCIES MAY NOT KEEP RECORDS AS TO HOW MANY MINORITIES OR WOMEN ARE PARTICIPATING IN PUBLIC CONTRACTING. THERE WAS CONFUSION AS TO THE STATE AGENCIES, THEMSELVES, AS TO WHETHER THEY WOULD CONTINUE WITHOUT REACH PROGRAMS AND WHETHER THEY WERE PERMISSIBLE OR NOT. THEN YOU TURN TO THE STATE OF WASHINGTON, WHICH HAD VIRTUALLY THE SAME LANGUAGE AS IS PROPOSED HERE AND WAS ADOPTED IN CALIFORNIA, AND WHAT GOVERNOR LOCKE SAID THERE IS, YES, THIS PROPOSAL WILL PREVENT US FROM USING RACE AS THE SDIT DECISIVE FACTOR IN -- AS THE DECISIVE FACTOR IN STATE DECISION-MAKING, BUT IT DOES NOT PROHIBIT OUTREACH EFFORTS, AND HE EX-PANED THEM, AND IT DOES NOT PROHIBIT GOALS AND TIMETABLES, AND I THINK THIS COURT GIVES US A RECORD, MUCH LIKE THE PREBALLOT ISSUES THAT YOU HAVE --

HAVE THE ACTION THAT IS THE GOVERNOR TOOK BEEN CHALLENGED?

IN WASHINGTON STATE, NO, THEY HAVE NOT, YOUR HONOR. BUT THEY ARE DIFFERENT FROM THE ACTIONS TAKEN IN THE STATE OF CALIFORNIA, AND I THINK THEY ARE INDICATIVE AND GIVE FURTHER FLESH AND FORCE TO THE NOTION THAT AFFIRMATIVE ACTION AND PREFERENTIAL TREATMENT ARE NOT TERMS THAT HAVE COMMONLY ACCEPTED MEANINGS, AND THEY WILL NOT INFORM THE VOTERS BUT, IN FACT, WILL CONFUSION THEM. -- WILL CONFUSE THEM. THEY ARE LIGHTNING RODS AND EACH PERSON WILL CHARGE THAT LIGHT ANYTHING ROD WITH HIS OR HER OWN PERCEPTION OF WHAT THAT MEANS AND THAT IS NOT THE INTENTION OF 101.161. I WOULD LIKE TO TURN, BRIEFLY, TO THE QUESTION OF THE CONTINUED SCOPE OF AFFIRMATIVE ACTION, PREFERENTIAL OR MORE SPECIFICALLY RACE OR GENDER-CONSCIOUS REMEDIES FOR PAST DISCRIMINATION. IT WAS SUGGESTED THIS MORNING THAT SOMEHOW, THROUGH THIS INITIATIVE PROCESS, THE STATE OF FLORIDA COULD OPT OUT OF THE FEDERAL CONTUSIONAL REQUIREMENT TO -- CONSTITUTIONAL REQUIREMENT TO PROVIDE REMEDIES FOR PAST MISREPRESENTATION. IF THAT IS THE REMEDY, THEN THEY ARE MISLEADING THE VOTERS. IF IT IS AN OBJECTIVE AND CLOSE IN CONSIDERING WHETHER IT IS FOR PAST DISCRIMINATION, THEN THEY ARE NOT APPRISEING THE COURT, WHICH I AM SURE IS WELL AWARE, TO GO THROUGH LITIGATION FROM STEM TO STERN AND NOT HAVE THE OPPORTUNITY FOR PEOPLE'S REPRESENTATIVES, WHETHER ELECTED OR APPOINTED, TO FASHION THEIR OWN REMEDIES THAT MAKE SENSE TO THEM FOR DEMONSTRATED PAST DISCRIMINATION, WHICH WOULD BE REQUIRED. THANK YOU VERY MUCH.

THANK YOU. MR. SMITH.

MAY IT PLEASE THE COURT. MY NAME IS H. T. SMITH, AND I APPEAR, TODAY, ON BEHALF OF THE FLORIDA CHAPTER OF THE NATIONAL BAR ASSOCIATION, AND WITH ME ARE THOMASINA WILLIAMS, WHO WROTE THE BRIEF, AND DARYL PARKS, PRESIDENT OF THE NATIONAL BAR, FLORIDA ASSOCIATION. I AM GOING TO TAKE A STAND AT WHAT I CONSIDER TO BE THE TWO TOUGHEST QUESTIONS. FIRST QUESTION THAT WAS RAISED BY JUSTICE PARIENTE, CONCERNING SEX. IN OTHER WORDS THE QUESTION IS, IF THE PEOPLE OF THE STATE OF FLORIDA WANTED TO MAKE SEX A PROTECTED CLASSIFICATION IN ARTICLE I SECTION 2, WOULD WE BE PROHIBITED TO DO THABS, BECAUSE IT AFFECTS MULTILEVELS OF GOVERNMENT? WELL, I CHAIRED THE DECLARATION OF RIGHTS COMMITTEE OF THE CONSTITUTIONAL REVEHICLES COMMISSION, AND AFTER TWO YEARS OF DELIBERATION, WITH THE INTENT OF GOING INTO THE 21st CENTURY WITH WOMEN AS A PROTECTED CLASS, WE STARTED WITH THE WORD "SEX", WE WENT TO THE WORD "GENDER", AND WITH ALL OF THE FINE MINDS THAT WE HAD AND CHECKING WITH THE BEST MINDS AROUND THE COUNTRY, WE COULDN'T ANSWER THIS QUESTION TO THE PEOPLE, WOULD PUTTING THE WORD "SEX" IN THAT PROVISIONAL ALLOW FOR SAME SEX MARRIAGES? AND YOU SEE THAT IN THE -- WE SIGNED AN INTENT. AND SO WHAT WE DID WAS WE PUT THE WORD FEMALE AND MAIL, ALIKE, ARE NATURAL CITIZENS. NOW, WHY DO I MAKE THAT POINT? THAT IS

THE REASON WHY WE MUST HAVE RESTRAINT ON CITIZENS' INITIATIVES WHERE THERE IS NOT THE DELIBERATIVE DISCUSSION AND DEBATE ON THESE ISSUES, SO THAT PEOPLE WILL NOT BE MISLED, AND WE WILL NOT HAVE THE LIKELIHOOD OF UNINTENDED CONSEQUENCES, WITH REGARD TO JUSTICE ANSTEAD'S QUESTION, WHICH IS A $64,000 QUESTION. YOUR QUESTION IS A VERY IMPORTANT QUESTION. THAT IS, IF, DURING THE '30s OR '40s, WE WANTED TO, WITH ONE FELL SWOOP, THE PEOPLE RISE UP AND SAY, LOOK, WE DON'T WANT TO DISCRIMINATE AGAINST BLACKS IN EDUCATION. WHY CAN'T WE DO IT? IT AFFECTS MULTIPLE LEVELS OF GOVERNMENT. CLEARLY IT IS THE RIGHT THING TO DO. BUT IF YOU READ THE LANGUAGE OF WHAT WAS PROPOSED AND IT SAID EQUAL RIGHTS FOR ALL CITIZENS OF FLORIDA IN EDUCATION, BUT WHEN YOU SAW THAT THE EFFECT WAS EQUAL BUT IT COULD ALLOW FOR, STILL, SEPARATE FACILITIES, IT IS MISLEADING. THAT IS THE PROBLEM WE HAVE HERE. WE STAND TO SAY, WITH THE PROPONENTS, THAT THIS IS THE PEOPLE'S CONSTITUTION, AND THE PEOPLE HAVE A RIGHT TO CHANGE THEIR CONSTITUTION, BUT THEY CANNOT BE MISLED INTO BELIEVING IT IS ENDING DISCRIMINATION, WHEN IT IS NOT. LET'S TAKE THAT PROVISION. "END DISCRIMINATION" AND "PREFERENCE AMENDMENT". I READ THAT TITLE. I WANTED TO BE RUSHING TO THE POLLS, TO BE THE FIRST PERSON TO VOTE TO END DISCRIMINATION. THAT IS HOW IT IS ADVERTISED, BUT IT IS FALSE ADVERTISEMENT. BECAUSE WHAT IT DOES, THAT COMBINED INITIATIVE, IS IT SEEKS TO END THE GOVERNMENT'S EFFORTS TO PROVIDE REMEDIES FOR VICTIMS OF DISCRIMINATION. IN OTHER WORDS IF A LEGISLATIVE BODY, LET'S SAY A LEGISLATURE, LOOKED BACK AND SAID, LOOK, AFRICAN-AMERICANS HAVE BEEN THE VICTIMS OF 250 YEARS OF SLAVERY, FOLLOWED BY 100 YEARS OF AMERICAN-STYLE APARTHEID, THIS PROPOSAL WOULD HAVE BEEN EVERY CITY, EVERY COUNTY, EVERY SCHOOL BOARD, EVERY SCHOOL DISTRICT, AND ANYTHING ELSE, AND ANYBODY ELSE. THE EXECUTIVE BRANCH IN THE LEGISLATURE, FOR PROVIDING REMEDIES TO AFRICAN-AMERICANS, NOT ONLY FOR THE PRESENT EFFECT OF 350 YEARS OF DISCRIMINATION BUT FOR PRESENT DISCRIMINATION THAT EXISTS TODAY. LET ME SAY, REMIND YOU OF WHAT WAS SAID BY THE UNITED STATES SUPREME COURT IN ADAVARIN VERSUS PENA, AND THEY SAY, AND I QUOTE, THE UNHAPPY PERSISTENCE OF BOTH THE PRACTICE AND LINGERING EFFECTS OF DISCRIMINATION AGAINST MINORITY GROUPS IN THIS COUNTRY IS AN UNFORGETTABLE REALITY, AND GOVERNMENT IS NOT DISQUALIFIED FROM ACTING IN RESPONSE TO IT. THIS, THESE FOUR PROPOSALS SEEK TO PREVENT GOVERNMENT FROM DEALING WITH THE UNFORGETTABLE REALITY AND TRY TO SAY DISQUALIFY GOVERNMENT FROM ACTING IN RESPONSE TO IT. THIS IS A CRUEL HOAX. THIS DOES NOT, IN FACT, PROVIDE EQUAL PROTECTION OF THE LAW. WHAT IT DOES IS IT TAKES AWAY THE CLOAK OF PROTECTION FROM THE VICTIMS OF DISCRIMINATION. THAT IS WHAT IT DOES. AND SO WHAT PERSON IS NOT GOING TO GO INTO THE BALLOT POLL AND SAY I AM GOING TO VOTE AGAINST DISCRIMINATION. 90% OF FLUORIDEIANS WOULD VOTE AGAINST DISCRIMINATION, BUT WHAT WE CAN DO, PERFECT EXAMPLE OF FIRST THREE AMENDMENTS, THE FIRST THREE AMENDMENTS DON'T HAVE SEX IN THEM. WE COULD WAKE UP THE DAY AFTER THE ELECTION, BECAUSE THAT WOULD -- IF THOSE THREE PASS, AND ALL THE LELS OF GOVERNMENT -- ALL OF THE LEVELS OF GOVERNMENT COULD PROVIDE PREFERENTIAL TREATMENT FOR WHITE WOMEN, AND OVARY LEVEL OF GOVERNMENT WOULD BE FORBIDDEN -- AND EVERY LEVEL OF GOVERNMENT WOULD BE FORBIDDEN TO PROVIDE REMEDIES FOR DISCRIMINATION AGAINST DESCENDENTS OF SLAVES. I DON'T THINK THE PEOPLE OF THE STATE OF FLORIDA UNDERSTAND THAT, AND THAT IS WHY THIS COURT'S WISDOM HAS BEEN VERY EFFECTIVE IN PREVENTING UNINTENDED CONSEQUENCES FROM INITIATIVES THAT COME UP WITHOUT DELIBERATION, DEBATE, AND DISCUSSION, AND HAVE ALL OF THESE FACTORS IN THAT PEOPLE DON'T UNDERSTAND, AND THAT IS WHY I BELIEVE IT WAS CORRECT IN THE DISCRIMINATION CASE, TO KEEP IT OFF THE BALLOT, AND THAT IS WHY I THINK IT IS ABSOLUTELY IMPORTANT THAT THIS COURT KEEPS THIS MISLEADING HOAX OFF THE BALLOT. THANK YOU.

THANK YOU, MR. SMITH. MR. THOMPSON.

PARKER THOMPSON, APPEARING FOR THE FLORIDA CONFERENCE OF BLACK STATE LEGISLATORS. WHEN SO MUCH HAS BEEN SAID, THERE IS VERY LITTLE ADDITIONAL TO SAY, SO I WILL SAY LITTLE, BUT I WOULD LIKE, ALSO, LIKE H. T. SMITH, TO ADDRESS THE QUESTION THAT JUSTICE

ANSTEAD HOPED OPENED TO THE ATTORNEY -- OPENED TO THE ATTORNEY GENERAL AND THAT JUSTICE PARIENTE DEALT WITH, AND THAT IS IMPLICITLY THE QUESTION OF CAN FUNDAMENTAL RIGHTS BE DEALT WITH BY AN INITIATIVE PETITION? CAN YOU SINGLE OUT SEX, MARITAL STATUS? AND THE ANSWER IS YES. YOU CAN. BUT YOU MUST LOOK AT THE COLLATERAL EFFECTS, AS JUSTICE KOING I KNOW DISCUSSED IN A -- COGIN DISCUSSED IN A LENGTHY CONCURRENCE IN ONE CASE, YOU MUST LOOK AT THE COLLATERAL EFFECTS OF THE CASE, AND YOU MUST DESCRIBE THEM, SO THAT THE PEOPLE KNOW WHAT IS THERE, IN THE CONSTITUTION, AND THE PEOPLE KNOW WHAT IS BEING ADDED OR WHAT IS BEING DELETED. THE PEOPLE HAVE TO KNOW. I LEARNED, FOR THE FIRST TIME, LISTENING TO MR. ERVIN, THAT TITLE END, DISCRIMINATION, AND PREFERENCE MEANS THE SAME THING AS TREATING PEOPLE DIFFERENTLY. WERE I A VOTER IN THE VOTING BOOTH, I MIGHT HAVE THOUGHT DIFFERENTLY, BUT WHEN ANYBODY PUTS BEFORE THE VOTERS A TITLE THAT SAYS "END GOVERNMENTAL DISCRIMINATION" AND DOESN'T TELL THEM THAT THERE HAS BEEN A CHANGE, SINCE 1930, AND THAT THE FLORIDA CONSTITUTION PROHIBITS DISCRIMINATION, AND ARGUABLY PROHIBITS THE VERY DISCRIMINATION OR TYPE OF DISCRIMINATION THAT THE PROPONENTS ARE TALKING ABOUT, THAT IS JUST PLANE MISLEADING. AND THEREFORE -- JUST PLAIN MISLEADING, AND THEREFORE WE SUGGEST TO THIS COURT THAT ALL FOUR OF THESE PROPOSED AMENDMENTS FLUNK THE SINGLE-SUBJECT RULE AND ARE GROSSLY MISLEADING IN TITLE AND SUBJECT. I THANK YOU.

THANK YOU, MR. THOMPSON. MR. ERVIN. REBUTTAL?

THANK YOU, YOUR HONOR. THE LAST SPEAKER SAID THAT, REFERRED TO JUSTICE KOGAN, SAID THAT, YES, YOU CAN DO THIS, BUT YOU MUST DESCRIBE ALL OF THE COLLATERAL EFFECTS. THE FLORIDA STATUTES THAT DESCRIBE THE TITLE REQUIREMENTS SAY "AN EXPLANATORY SEGMENT OF THE CHIEF PURPOSE OF THE MEASURE AND LIMIT THAT SUMMARY TO 75 WORDS". IT DOES NOT SAY ALL PURPOSES, ALL EFFECTS, ALL RAMIFICATIONS OR ALL DETAILS OR ALL LIMITATIONS OR ALL REMEDIES OR PENALTIES.

MR. ERVIN, LET ME ASK YOU TWO QUESTIONS IN SORT OF CLOSING HERE. ONE OF THEM IS THAT YOUR COLLEAGUE FROM CALIFORNIA, THE PACIFIC LEGAL FOUNDATION, MENTIONED THAT THIS SINGLE SUBJECT WASN'T RAISED, REALLY, AS AN ISSUE, IN THE FIRST AMENDMENT OF THIS KIND THAT WAS PASSED, OUT IN CALIFORNIA, SO THE FIRST QUESTION THAT I WOULD LIKE YOU TO READDRESS IS THE FACT THAT FLORIDA HAS A VERY SPECIFIC LEGAL HIS -- HISTORY, INSOFAR AS THIS COURT COURT'S INTERPRETATION OF THAT REQUIREMENT, AS IS EVIDENCED BY THE PREVIOUS DISCRIMINATION CASE AND THE OPINION FROM 1994, THAT SEVERAL OF YOU HAVE ALLUDED TO, SO I WOULD LIKE YOU TO ANSWER THAT QUESTION ABOUT THE FACT THAT THIS COURT HAS GIVEN A VERY STRICT INTERPRETATION TO THIS SINGLE SUBJECT REQUIREMENT, AS IS EVIDENCED BY THAT DISCRIMINATION CASE. THE SECOND QUESTION, THOUGH, BECAUSE I WANT TO GET IT OUT AND THEN LEAVE THOSE TWO, YOU KNOW, WITH YOU. IS THIS A WOLF DRESSED UP IN SHEEP'S CLOTHING? THAT IS THIS IS CALLED A CIVIL RIGHTS INITIATIVE. THAT IS ANTI-DISCRIMINATION. SURELY IF WE DID GO BACK IN OUR HISTORY, AND WE LOOKED AT LANGUAGE LIKE THIS, IT WOULD BE DIFFICULT FOR ME TO SAY THAT ANY CONSCIENTIOUS CITIZEN WOULD DISAGREE WITH ENDING WHAT WOULD HAVE BEEN RECOGNIZED AS LONG STANDING DISCRIMINATION BY ADOPTING MEASURES LIKE THIS, BUT IS THAT REALLY WHAT IS GOING ON HERE, AND THAT IS WHERE I WOULD LIKE YOU TO COME BACK TO ADDRESS THE LANGUAGE OF THE AMENDMENT, ITSELF, IN ITS SEPARATE PARTS, BECAUSE IT APPEARS TO ME THAT, REALLY, WHAT IS GOING ON HERE IS THAT THE GROUP THAT YOU REPRESENT, REALLY, DISAGREES, POLICY WISE, WITH INTERPRETATIONS THAT HAVE BEEN PUT ON SIMILAR LANGUAGE IN THE U.S. CONSTITUTION, BY THE U.S. SUPREME COURT, WHICH, OF COURSE, HAVE ALLOWED ALL KINDS OF THINGS TO RECOMMEND DI PAST DISCRIMINATION. SO DO -- IS THAT REALLY SAID IN THE ACTUAL LANGUAGE OF THESE PROPOSED AMENDMENTS? COULD YOU ADDRESS THOSE TWO?

I WILL TRY, JUDGE. FIRST OFF, THE CASE DEALING WITH RESTRICTS LAWS RELATING TO DISCRIMINATION, I BELIEVE THERE ARE A NUMBER OF DISTINCTIONS BETWEEN THAT WHICH WAS PROPOSED IN THAT CASE AND THAT WHICH IS PROPOSED HERE, INCLUDING THE FACT THAT THAT CASE ACTUALLY DEALT WITH THE SUBJECT OF DISCRIMINATION BY DEPRIVATION OF RIGHTS, AS OPPOSED TO PREFERENCE, WHICH DIRECTLY CONFLICTED WITH ARTICLE I SECTION 2 OR REVISED IT. NUMBER TWO, THEY ADDED SEVERAL UNKNOWN AND NEW CATEGORIES TO THE CLASSIFICATIONS TO BE CONSTITUTIONALLY RECOGNIZED, INCLUDING MARITAL STATUS AND FAMILIAL STATUS, MARITAL STATUS BEING DEFINED IN A WAY THAT OFFENDED MANY PERSONS INVOLVED. NUMBER THREE, THEY HAD AN EXPRESS REPEALER, IN THAT PARTICULAR PROPOSAL, OF ALL INCONSISTENT LAW. THEY HAD NO SAVINGS IN THAT PROPOSAL, NO SAVINGS PROVISION FOR FEDERAL FUNDING, AND THEREFORE EMPHASIS WAS PLACED ON THE CATACLYSMIC RESULTS, AND THEY HAD NO SAVINGS PROVISION FOR EXISTING ORDERS OR DECREES, SO WE BELIEVE THERE ARE DISTINCTIONS. YES, YOUR HONOR, IT IS TRUE. THERE ARE CASES IN WHICH THIS COURT HAS TAKEN A NARROW AND RESTRICTIVE VIEW OF WHAT SINGLE SUBJECT MEANS AND HOW THE PRESENTATION TO THE PUBLIC SHOULD BE DONE BY PROPOSERS AND SUPPORTERS. THERE ARE OTHER CASES WHICH SAY THAT THE RIGHT OF THE PEOPLE TO VOTE SHOULD NOT BE LIGHTLY ENTER -- INTERFERED WITH AND THE MATTER NOT DENIED THE BALLOT, ONLY WHEN IT IS SHOWN TO BE CLEARLY AND CONCLUSIVELY DEFECTIVE. THE STATUTORY STANDARD FROM WHICH THIS COURT IS SUPPOSED TO OPERATE, IN MY VIEW, I THINK THAT IS HOW IT IS SUPPOSED TO WORK, SAYS THE SUMMARY NEED ONLY BE AN EXPLANATORY STATEMENT OF THE CHIEF PURPOSE OF THE STATUTE. THERE MAY WELL BE OPINIONS IN THE PAST, BY THIS COURT, THAT SOMEWHAT OVERREACH THAT STATUTORY REQUIREMENT, IN EXPRESSING THE COURT'S VIEW AS TO THE PARTICULAR PROPOSAL THAT WAS BEFORE IT, BUT WE RESPECTFULLY SUBMIT THAT THAT STANDARD IS MET IN THIS CASE. AS TO YOUR SECOND QUESTION, YOUR HONOR, I DO NOT UNDERSTAND THE CONTENTION THAT THIS PROVISION IS SOMEHOW MISLEADING, BECAUSE ARTICLE I SECTION 2 NOW REQUIRES THAT EVERYBODY BE TREATED ALIKE OR NOT DIFFERENTLY. IF IT DID IS ON RIGHT NOW, THEN WE WOULDN'T BE HAVING THE GOVERNOR PASSING A PLAN TO DO AWAY WITH THE RULES REGULATIONS AND WHAT HAVE YOU THAT TREAT PEOPLE DIFFERENTLY, AND THAT AT LEAST UP TO NOW, TO MY KNOWLEDGE, HAVE NOT BEEN HELD INVALID IN PRIOR CASES. UNDER THIS -- THESE PROPOSED AMENDMENTS, IF THE FEDERAL LAW AND CONSTITUTION REQUIRES THAT A PREFERENCE BE RECOGNIZED UNDER FLORIDA LAW, THEN THAT WILL CONTROL. THERE IS AN ENTIRELY DIFFERENT AREA, THOUGH, WHERE FEDERAL LAW DOESN'T REQUIRE THAT A PREFERENCE BE PROVIDED FOR ANYTHING. IT JUST AUTHORIZES THAT IT CAN BE, AND IN THOSE CIRCUMSTANCES, THIS LAW WOULD PREVAIL, AS TO FLORIDA ACTIONS, UNLESS IT WOULD COST THE STATE FEDERAL FUNDING, FEDERAL ELIGIBILITY FOR FUNDING PROGRAMS.

THANK YOU VERY MUCH.

I THINK MY TIME HAS EXPIRED. THANK YOU SO MUCH, YOUR HONORS.

THANK YOU AND THANKS, ALSO, TO ALL COUNSEL WHO HAVE ASSISTED US.