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**Advisory Opinion to the Attorney General: Florida Marriage Protection Amendment Docket  
Number: SC05-1563 | SC05-1831**

THE COURT WILL HEAR THE NEXT CASE OF THE ADVISORY OPINION OF THE ATTORNEY GENERAL WITH REFERENCE TO FLORIDA MARRIAGE PROTECTION AMENDMENT.

YOUR HONOR, MAY IT PLEASE THE COURT. I AM LOUIS HUBENER WITH THE OFFICE OF THE ATTORNEY GENERAL. THIS CASE IS HERE ON THE REQUEST OF THE ATTORNEY GENERAL.

CHIEF JUSTICE: CAN YOU SPEAK UP A LITTLE BIT.

FOR AN ADVISORY OPINION, ARGUING TODAY ON BEHALF OF THE PROPOSED AMENDMENT WILL BE MATTHEW STAVER, AND IN OPPOSITION, WILL BE LESLIE COOPER.

CHIEF JUSTICE: SO THE ATTORNEY GENERAL IS NEUTRAL ON THIS ISSUE.

YES. THANK YOU.

CHIEF JUSTICE: ALL RIGHT. MR. STAVER.

MAY IT PLEASE THE COURT. MY NAME IS MATT STAVER, AND I REPRESENT THE SPONSOR OF THE FLORIDA MARRIAGE PROTECTION AMENDMENT. WHILE MOST INITIATIVES CREATE SOMETHING NEW, THIS AMENDMENT PROTECTS SOMETHING OLD. IT DOES NOT CHANGE EXISTING LAW. IT PRESERVES THE STATUS QUO. THAT STATUS QUO IS MARRIAGE, AND IT HAS BEEN IMPORTANT --

LET ME, BEFORE YOU GET STARTED, JUST TO GET THE QUESTION OUT ON THE TABLE, THE LEGISLATURE STEPPED IN LAST SESSION AND SET UP SOME NEW REQUIREMENTS FOR WHEN THINGS WERE TO BE DONE, CORRECT?

CORRECT.

CHIEF JUSTICE: I THINK THAT IS THE CITIZENS INITIATIVES?

RIGHT.

IN TERMS OF THE VARIOUS REQUIREMENTS, TIMING, NUMBER OF SIGNATURES.

RIGHT. THINGS THAT HAVE TO BE DONE BY FEBRUARY 1.

CORRECT.

AND SO THAT AFFECTED THIS AMENDMENT, CORRECT?

YES, IT DID.

AND THIS AMENDMENT, WHERE DID THE SIGNATURE MATTER STAND? ANOTHER SIGNATURE MATTER STANDS AS OF THE LAST TIME LAST WEEK, LOOKING AT THE DEPARTMENT OF ELECTIONS, AS ABOUT 453,000 OR 456,000 SIGNATURES THAT ARE PUT TO TALLAHASSEE. THERE ARE MORE OUT THERE, BUT THAT SIGNATURE PETITION DRIVE IS STILL MOVING FORWARD.

HAS THERE BEEN A CERTIFICATION BY THE SECRETARY OF STATE?

THERE HAS NOT IN TERMS OF THE 611,000 SIGNATURES, SO INSTEAD OF GOING ON THE BALLOT IN '06, THIS WOULD GO ON THE BALLOT IN '08, ONCE THE CERTIFICATION HAS HAPPENED, SINCE THE CERTIFICATION DID NOT OCCUR BY FEBRUARY 1. ANOTHER REASON FOR MY QUESTION AS I SAY IS DELAYED, IS I HAVE GOT SOME CONCERN ABOUT WHAT TRIGGERS THIS COURT'S REVIEW AT THIS STAGE, UNDER THE STATUTE AND THE CONSTITUTION.

YES, YOUR HONOR. JUSTICE WELLS, WHAT TRIGGERS THIS COURT'S REVIEW IS NOT THE CERTIFICATION BUT THE 10 PERCENT REQUIREMENT. THAT 10 PERCENT REQUIREMENT TRIGGERS THE COURT'S REVIEW WHICH WAS ALREADY DONE. IN OTHER WORDS, NOW POST THE '04 ELECTION, WE NEED ABOUT 611,000 SIGNATURES. TO GET IT BEFORE THE COURT WHICH TRIGGERS THIS COURT'S REVIEW, YOU NEED 10 PERCENT OF THOSE SIGNATURES CERTIFIED, WHICH IS ABOUT 61,000. THAT HAPPENED LAST YEAR, AND THAT IS WHEN THE ATTORNEY GENERAL NOTIFIED THIS COURT OF THAT PARTICULAR EVENT, BECAUSE THAT -- EVENT, BECAUSE THAT TRIPS THIS PARTICULAR CERTIFICATION OR THIS PARTICULAR REVIEW.

ASSUMING THAT IT IS PROPERLY BEFORE US, WOULD YOU TELL US WHAT ISSUES THAT WE ARE MANDATED TO ADDRESS AND WOULD YOU GIVE US YOUR VIEWS ON THOSE ISSUES.

YES, JUSTICE ANSTEAD. THE ISSUES THAT THIS COURT IS REQUIRED TO ADDRESS AT THIS STAGE, IS THE SINGLE SUBJECT REQUIREMENT AND WHETHER THE TITLE AND BALLOT SUMMARY PROVIDE FAIR NOTICE AND ARE NOT MISLEADING. WE SUBMIT THAT IT DOES MEET SINGLE SUBJECT REQUIREMENT AND THE TITLE AND BALLOT SUMMARY ARE FAIR AND ARE NOT MISLEADING. FIRST OF ALL ON THE SINGLE SUBJECT REQUIREMENT, THIS PARTICULAR AMENDMENT IS ONE SUBJECT SOLELY ON THE ISSUE OF PROTECTING MARRIAGE. IT ARISES OUT OF --

YOUR OPPONENT MAKES THE ARGUMENT THAT THIS ADDRESSES TWO, THAT THIS ADDRESSES MARRIAGE, AS I UNDERSTAND THE ARGUMENT, AND THAT IT ADDRESSES ALTERNATIVES, SO IT IS TWO RATHER THAN ONE. DO YOU UNDERSTAND THAT TO BE THEIR POSITION?

I UNDERSTAND THAT TO BE THEIR POSITION.

AND WOULD YOU, THEN, RESPOND DIRECTLY TO THAT.

IT ADDRESSES ONE ISSUE, THE SUBJECT OF MARRIAGE. IT WOULD ADDRESS, FOR EXAMPLE, SAME SEX MARRIAGE FROM MASSACHUSETTS, WHICH REALLY TRIGGERED 19 STATES, AND FLORIDA NOW JOINS SOME OF THOSE STATES SEEKING TO AMEND THEIR CONSTITUTIONS.

CHIEF JUSTICE: WELL, DOES THIS, THAT IS THE EASY ONE. I MEAN, IT IS SAYING THAT, I JUST WANT TO MAKE SURE AND I DO SEE IT FRANKLY AS BEING PART OF THE SAME SUBJECT, AS FAR AS, BUT THERE HAS BEEN A LOT OF TALK ABOUT THINGS LIKE CIVIL UNIONS OR THING THAT IS WOULD HAVE, NOT BE MARRIAGE BUT GIVE SAME SEX COUPLES SOME PROTECTION UNDER THE LAWS OF A STATE. IS THIS INTENDED TO, ALSO, PROHIBIT THAT ANY LEGAL SANCTION OF A SAME SEX RELATIONSHIP WOULD BE PROHIBITED BY THIS?

ABSOLUTELY NOT. IN FACT IT WAS INTENTIONALLY DRAFTED SO IT WOULD NOT DO THAT.

CHIEF JUSTICE: THE SUBSTANTIAL EQUIVALENT, WHICH ISN'T DEFINED, IS A DEFINITION SOMEONE GAVE VIRTUALLY IDENTICAL, THAT IT IS REALLY JUST INTENDED TO --

CORRECT.

CHIEF JUSTICE: -- PROHIBIT LEGAL RECOGNITION OF SAME SEX COUPLES.

YES OR POLL I GO MILE -- POLL I GO MILE O R -- POLYGAMY OR SAME SEX MARRIAGES.WE HAVE HAD I T SINCE 1889 AS MARRIAGE BEING THE UNION OF ONE HUSBAND AND ONE WIFE. IN FACT , THEY RA ISE SOME MATTERS WITH REGA RDS TO THE PARTNERS REGISTRY IN FLORIDA , METRO-DADE COUNTY , BROWARD COUNTY AND SO FORTH. THIS DOES NOT E FFECT THAT AT A LL. THIS SUBSTANTIAL EQUIVALENT LANGUAGE IS THE IDEA OF HAVING IT VIRTUALLY IDENTICAL. IF YOU HAVE TWO CARS AND THEY ARE EXACTLY THE SAME BUT ONE HAS A DIFFERENT , MADE BY A DIFFERENT BRAND OR HAS A DIFFERENT LO GO ON I T , THOSE ARE STILL SUBSTANTIALLY EQUIVA LENT , IF THEY ARE EXACTLY THE SAME, AND WHAT THIS DOES IS PROTECT SOLELY ONE SUBJECT MAT TER , AND THAT IS MARRIAGE A S THE UNIO N OF ONE MAN AND ONE WOMAN , AS HUSBAND AND W IFE .

DO I UNDERSTAND YOU CORRECTLY THAT YOU SA ID, IF THERE IS A, SOME KIND OF RELATIONSHIP THAT IS RECOGNIZED , S AY IN AN OTHER STATE , THAT AN UNION BETWEEN TWO PEOP LE OF THE SAME SEX, IT IS NOT CA LLED A MARRIAGE. IF THEY MOVE HERE , THIS AMENDMENT WOULD NOT OR WOULD PROHIBIT THIS STATE FR OM RECOGNIZING THAT RELATIONSHIP?

AS MARRIAGE, THAT'S CORRECT.

NO. I AM SAYING IT IS NOT CONSIDERED A MARRIAGE.IT IS CONS IDERED SOMETHINGOTHER THAN A MARRIAGE. AN UNION OF T HESE TWO PEOPLE . WE WOULD OR WOULD NOT RECOGNIZE THAT UNION?

IT DEPENDS UPON WHAT THAT U NION WAS. IF IT WAS THE SUBSTANTIAL EQUIVALENT OF MARRIAGE, THEN YES, IT WOULD PREVENT THAT , SUCH AS --

SO WE DO NEED TO UNDERSTAND WHAT IS MEANT BY THE SUBST ANTIAL EQUIVALENT OF A MARRIAGE.

I THINK, WELL , YOU LO OK AT MARRIAGE , AND AS THE LOWE CASE IN BROWARD COUN TY ADEQUATELY ADDRESSED, THERE WAS A CHALLENGE TO THE DOMESTIC PARTNERSHIP LAW THAT PROVIDE SOME DAY BENEFITS TO SAME SEX COUP LES , AND THE QUESTION WAS DIDTHAT VIOLATE THE FLORIDA DEFENSIVE MARRIAGE ACT OF 1997, AND THE LOW COURT -- AND THE LOWE COURT CAME TO THE SAME DIRECT CONCLUSION. NO, I T DOES N'T, BEC AUSE THAT G IVES A NUMBER OF BENEFITS BUT NOT THE F ULL PANOPLY O F RIGHTS AND BEN EFITS AND OBLIGATIONS ANDRESPONSIBILITIES THAT ARE I MPOSE ED UPON AND AFFORDED TO MARRIED COUPLES IN A SPOUSAL RELATIONSHIP.

SO ARE YOU THEN SAYING THAT THE SUBSTA NTIAL EQUIVALENT WOULD MEAN THAT YOU WOULD HAVE TO HAVE THE SAME BENE FITS THAT WOULD I KNOW YOUR TO - - THAT WOULD INURE TO A HETEROSEXUAL COUPLE?

THAT'S CORRECT AND I THINK THAT IS WHAT THE WORD SUBSTANTIAL EQUIVALENT MEANS. SUBSTANTIAL, IN ITS NORMAL DICTIONARY DEF INITION IS TRUE , NOT FICTITIOUS , SO IT IS NOT L IKE LOOKING AT AVEHICLE FROM THE OUTSIDE BUT WHEN YOU GO IN SIDE TLRBS IS NO MOTO R.

HOW DOES -- INSIDE THERE , IS NO MOTOR.

HOW DOES THIS AF FECT THE F LORIDA MARRIAGE DEFENSE AC T, THE STATUTORY PROVISION THAT IS ARE ON THE BOOKS NOW ANDTHAT YOU HAVE AL LUDED TO ? HOW DOES THIS AFFECT THAT? IS IT J UST A RESTATEMENT OF THAT LEG ISLATION , OR IS IT SOMETHING DIFFERENT?

IT IS REALLY A RESTATEMENT OF THAT LEGISLATION AND PUTS IT FROM THE STATUTORY LE VEL INTO THE CONSTITUTIONAL LEVEL, AND THE REASON FOR THAT IS THE EXPERIENCE THAT HAPPENED IN MASSACHUSETTS, WHEN IN 2004 OF MAY OF THAT YEAR , THESUPREME COURT JUDICIAL COURTBY A 4-TO-3 DECISION, USED THE STATE CONSTITUTION TO STRIKE DOWN THE

HISTORIC MARRIAGE LAWS THERE. AND AS A RES ULT , 19 STATES HAVE THUS FAR AMEND THEIR STATE CONSTITUTIONS , JOINING 39 OTHER STATES THAT HAD ALREADY AMEND THEIR STATUTES CALLED "DEFENSIVE MARRIAGE ACT".

CHIEF JUSTICE: IS THE CONSTITUTIONAL AMENDMENT YOUHAVE PROPOSED, IDENTICAL TO THE 19 STATES THAT HAVE PASSED IT ?

NO. IT IS ACTUALLY A LI TTLE MORE STRICT THAN THE 19 STATES. WE FILE D A NOTICE OF SUPPLEMENTAL AUTHORITY, BECAUSE THE MOST RECENT ONETHAT WAS PA SSED WAS LAST YEAR IN TE XAS , AND THAT INCLUDES, NOW , 19 S TATES THAT HAVE PASSED CONSTITUTIONAL MARRIAGE AMENDMENTS. SOME OF THOSE AMENDMENTS ARE M UCH MORE BROA D. FOR EXAMPLE , O HI O TALKSABOUT THE LEGAL INCIDENTS OR SOMETHING THAT APPROXIMATES THE DESIGN OR SUBSTANTIAL OF MARRIAGE. IT IS A VERY BROADAMENDMENT.THIS ONE IS NOT THAT BROAD AT ALL. OF THE 19 , E IGH T OF THEM USED SUBSTANTIALLY SIMILAR. WE BELIEVE THAT SUBSTANTIALLY EQUIVALENT IS A MORE STRINGENT REQUIREMENT THAN SUBSTANTIALLY SIMILAR , BECAUSE THEY COULD BE SOMEWHAT GENERALLY THE SAME BUT SUBSTANTIALLY EQUIVALENT MEANS IT HAS TO B E TRUE , NOT A LO SSRY , AND THEN TRUE -- NOT A LOS ERY , AND THEN TRUE MEANS IT HAD TO BE IDENTICAL AND NOT A LOSE RY. SO WE HAD A REQUIREMENT IN THIS PART ICULAR AMENDMENT THAN THE OTHER EIGHT. 1 9 OF THEM HAVE GO NE TO THE POLLS IN THE LAST FEW YE ARS. SEVERAL OF THEM HAVE SINGLE SUBJECT REQUIREMENTS JUST LIKE WE DO IN FLORIDA. THEY HAVE BEEN CHALLENGED UNDER THE SAME EXACT ARGUMENTS THAT THE INTER ESTED PARTIES BROUGHT FORTH , AND ALL OF THE COURTS HAVE YOU AND IN MU STLY R ULED IN FA VOR THOSE SINGLE SUBJECT REQUIREMENTS, EVEN THOUGH THEY HAVE LANGUAGE THAT IS LOSER LIKE IN OHIO OR LIKE IN LOUISIANA WITH SUBSTANTIALLY SIMILAR KINDS OF LANGUAGE.

WELL , I UNDERSTAND THE DISCUSSION, BUT WHY WOULD IT NOT HAVE ACCOMPLISHED WHAT YOU WERE DESIRING TO ACCOMPLISH , IF THAT PHRASE WAS NOT PART OF IT ?

BECAUSE JUSTICE WELLSTHAT, IS A GO OD QUESTION. IF THERE WERE A C REATION O F MARRIAGE BUT SOMEONE WANTED TO HAVE SOME INGENIOUS IDEA AND SAY WE ARE GOING TO NAME THIS SOMETHING ELSE BUT IT IS EXAC TLY SAME THING. IF FOR EXAM PLE YOU WERE TO HAVE POLYGAMY OR SAME SEX MARRIAGE BUT YOU DON'T CALL IT THAT. YOU CALL IT SOMETHING ELSE. WHEN YOU ANALYZE IT , I T HAS THE F ULL PANOPLY OF RIGHTS, BENEFITS, OBLIGATIONS, RESPONSIBILITIES THAT CARRYNOT ONLY DURING THE RELATIONSHIP AND EVEN CARRYON AF TER THE REL ATIONSHIP . IF YOU WERE TO SIMPLY RE NAME IT TO SOMETHING ELSE , THEN SOMEONE COULD ARGUE THAT THAT IS NOT MARRIAGE AND IN F ACT IT REALLY IS.

WELL , YOU SAY THAT WEHAVE HAD THIS T YPE OF THING IN FLORIDA SINCE THE 1800s .

YES.

HAS ANYONE, DO WE HAVE COURT DECISIONS OR SOME TYPE OF AUTHORITATIVE INTERPRETATIONS THAT HAVE DONE THAT IN F LORIDA THAT HAVE CREATED --

WE DON'T.

-- A MARRIAGE , OTHER THAN WHAT WE HAVE A COMMON UNDERSTANDING OF?

NO , YOUR HONOR , WE DON'T, BUT THE , AN INTE REST ING ERATHAT WE LIVE I N NOW WITH A LOT OF LIT IGATION TACTICS MOVING FORWARD IN DIFFERENT LEVELS AROUND THE COUNTRYTHAT ARE DOING EXACTLY THAT SAME THING, AND IN FLORIDAWE DI DN'T EVEN THINK ABOUT SAME SEX MARRIAGE BA CK I N THE 1800s BUT NOW WE ARE, AND SO THIS IS A AMENDMENT THAT IS DESIGNED TO DO MORE THAN TRADEMARK EIGHT LETTERSOF A WORD , MARRIAGE. IT IS DESIGNED TO PROTECT THE SUBSTANTIAL OF MARRIAGE SO THAT MARRIAGE IS

MARRIAGE AS WE HAVE ALWAYS KNOWN AND COMMONLY UNDERSTOOD SINCE THE 1800s AND EVEN BEFORE THAT.

CHIEF JUSTICE: I GUESS WHETHER WE GET PHILOSOPHICAL OR NOT AS YOU LISTEN TO THESE DEBATES OUT HERE AND, AGAIN, THE QUESTION OF WHAT WE ARE PUTTING IN OUR CONSTITUTION, MARRIAGE REALLY IN MANY WAYS IS A DEEPLY RELIGIOUS INSTITUTION, AND WE HAVE ALWAYS THOUGHT THE QUESTION OF THE STATE'S SIDE IS JUST QUESTION OF WHAT BENEFITS OR OBLIGATIONS ARE YOU GOING TO PLACE ON A RELATIONSHIP, ESPECIALLY IF THERE ARE CHILDREN, MOST CONCERN TO THE STATE IF THERE ARE CHILDREN THAT COME OUT OF THAT UNION. AND SO, AGAIN, DO WE HAVE A, IF WE SAID WE KNOW MARRIAGE WHEN WE SEE IT, DO WE HAVE SOMETHING THAT IS ALREADY IN THE CASE LAW OR STATUTE BOOK THAT SAYS MARRIAGE IS THIS, MARRIAGE IS AN UNION BETWEEN A MAN AND A WOMAN THAT HAS THESE LEGAL INCIDENTS CONNECTED WITH IT?

NO. WE DON'T HAVE THAT, BECAUSE IT IS SPREAD THROUGHOUT OUR STATUTES. THERE IS PROBABLY OVER 1,000 OR SO DIFFERENT KINDS OF BENEFITS, BOTH ON THE STATE AND THEN YOU, ALSO, INCLUDE THE FEDERAL LEVEL WITH REGARD TO MARRIAGE, SO WE DON'T HAVE THAT VERY NEAT SECTION. THE LOWE CASE DID GIVE CERTAIN KINDS OF RIGHTS THAT ARE ESSENTIALLY EXCLUSIVE TO MARRIAGE AND IT LISTED SOME OF THOSE.

WE DO HAVE A SCHEME WITH REFERENCE --

WE HAVE A SCHEME.

-- TO THE ISSUING OF A PROPER LICENSE, IN ORDER TO GET THE STATE'S SANCTION TO THE RELATIONSHIP, AND SO WOULD YOU JUST, BEFORE YOU SIT DOWN, ADDRESS, AGAIN, HOW THIS WOULD IMPACT ALL OF THE MYRIAD OF EXISTING LEGAL PROVISIONS THAT ARE ON THE BOOKS, BECAUSE WE START OUT WITH THE PROPOSITION OF WE WILL ISSUE A LICENSE, THEN WE WILL RECOGNIZE CERTAIN OFFICIALS, SUCH AS JUDGES AND OTHERS --

RIGHT.

-- TO PERFORM A CEREMONY, IN ORDER FOR YOU TO GET A STATE SANCTION TO THIS RELATIONSHIP, BUT THEN AS THE CHIEF HAS INDICATED, AFTER THAT, WE JUST HAVE ALL OVER THE STATUTE BOOKS, PROVISIONS WITH REFERENCE TO RESPONSIBILITIES, BENEFITS AND YOU KNOW, OTHER THINGS THAT ARE THERE. HOW WILL THIS AMENDMENT AFFECT THAT EXISTING SCHEME, IF WE WANT TO CALL IT THAT, OF PROBABLY THOUSANDS OF PROVISIONS THAT HAVE DUTIES, OBLIGATIONS, BENEFITS AND REGULATIONS WITH REFERENCE TO THAT RELATIONSHIP?

YOUR HONOR, IT DOES NOT AFFECT IT AT ALL. AS I MENTIONED AT THE BEGINNING, MANY INITIATIVES TRY TO BRING UP AND CREATE SOMETHING BRAND NEW. THIS DOES NOT CREATE ANYTHING NEW WHATSOEVER. IT PRESERVES THE STATUS QUO, SO IT LEAVES THE STATUS QUO EXACTLY THE WAY IT HAS HISTORICALLY BEEN AND THE WAY THAT IT IS TODAY. IT DOES NOT PROHIBIT EITHER A LOCAL GOVERNMENT OR THE STATE GOVERNMENT FROM GIVING A BUNDLE OF RIGHTS TO UNMARRIED PEOPLE. IT DOES NOT PROHIBIT THAT AT ALL. WHAT IT DOES PROHIBIT IS HAVING MARRIAGE OTHER THAN THE UNION OF ONE MAN AND ONE WOMAN. THAT IS THE SOLE PURPOSE OF THIS AMENDMENT. AND IN ADDITION TO THAT, WE BELIEVE THAT THE TITLE IN THE BAILLOT SUMMARY ARE FAIR AND THEY ARE NOT MISLEADING. THE WORD "PROTECTION" HAS BEEN RAISED BY THE INTERESTED PARTIES BUT IT HAS NEVER BEEN STRUCK DOWN BY THIS COURT IN ANY CASE. IN FACT THE WORD PROTECTION HAS BEEN USED IN OTHER CASES, SUCH AS PROTECTION FROM REPEATED MEDICAL MALPRACTICE IN '04. THE SECOND MANNED SMOKE CASE IN '02 AND THE EVERGLADES CASE IN '96, ALL OF WHICH WERE UPHELD AND SAID THAT PROTECTION IS A NEUTRAL TERM. MOREOVER, IT IS NOT MISLEADING AND IN FACT, THIS COURT HAS RECENTLY UPHELD IN THE PREGNANT PIG CASES IN '02 --

CHIEF JUSTICE: YOU DIDN'T HAVE TO REMIND US ABOUT THAT, DID YOU?

I AM NOT BLAMING THAT ON THIS COURT. I UNDERSTAND.

CHIEF JUSTICE: I JUST WANTED TO REMIND YOU, YOU ARE IN YOUR REBUTTAL, IF YOU WANT TO CONCLUDE.

YES. I WILL CONCLUDE WITH THIS. IN THAT PARTICULAR CASE, THE SUMMARY ACTUALLY SAID INHUMANE TREATMENT OF ANIMALS IS A CONCERN OF FLORIDA CITIZENS. THAT WAS UPHELD. IN SECONDHAND SMOKE, TO PROTECT PEOPLE THE HAZARDS OF SECONDHAND SMOKE WERE UPHELD AND MARINE FISHING, MARINE RESOURCES FOR THE STATE BELONG TO THE PEOPLE, WHICH WAS UPHELD. WE BELIEVE IT PASSED THE SINGLE SUBJECT AND THAT TITLE AND BALLOT ARE ACCURATE. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. WE WILL NOW HAVE MISS COOPER.

MAY IT PLEASE THE COURT. I AM LESLIE COOPER HERE WITH RANDALL MARSHALL OF THE ACLU OF FLORIDA.

MS. COOPER, DO YOU AGREE THAT THE NUMBER OF SIGNATURES ARE SUCH THAT, AND THE PROCEDURE IS SUCH THAT OUR REVIEW HAS BEEN TRIGGERED?

I DO, YOUR HONOR. I AM HERE ON BEHALF OF SIX LESBIAN AND GAY COUPLES, THE AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, EQUALITY FLORIDA AND THE ACLU OF FLORIDA. THIS RULE COMBINES THE SINGLE SUBJECT RULE BECAUSE IT COMBINES TWO SEPARATE SUBJECTS ABOUT WHICH PEOPLE MAY HOLD ONE SUBJECT INTO LIMIT. FIRST IT SAYS THAT MARRIAGE IS LIMITED TO THE UNION OF ONE MAN AND ONE WOMAN, AND SECOND, IT RESTRICTS WAYS GOVERNMENTS CAN PROVIDE PROTECTIONS FOR RELATIONSHIPS.

CHIEF JUSTICE: MR. STAVER HAS JUST STATED THAT SUBSTANTIALLY EQUIVALENT MEANS VIRTUALLY IDENTICAL, AND THAT IT WOULD NOT PROHIBIT THE STATE TO, SHOULD IT CHOOSE TO DO SO, TO GRANT CERTAIN RIGHTS TO SAME SEX COUPLES.

WELL, FIRST OF ALL IT IS NOT FOR THE PROponents TO SAY HOW FAR THE LANGUAGE OF THE AMENDMENT GOES, BUT EVEN TAKING THEM ON THEIR WORD AND ASSUMING THEY ARE CORRECT, THIS AMENDMENT, THIS PROPOSED AMENDMENT STILL CONTAINS TWO SUBJECTS, BECAUSE SOME PEOPLE LIKE THE PROponents, SEE THE STATUS OF BEING MARRIED AND THE PROTECTIONS THAT GO WITH BEING MARRIED, AS BEING ONE AND THE SAME, BUT WE KNOW THAT MANY OTHER PEOPLE FEEL THAT THE INSTITUTION OF MARRIAGE WHICH HAS AS MUCH SOCIAL AS LEGAL SIGNIFICANCE IS ONE THING AND SHOULD BE RESERVED FOR HETEROSEXUAL COUPLES, BUT THAT THE PROTECTION THAT IS COME ALONG WITH IT ARE SOMETHING ELSE AND OUGHT TO BE MADE AVAILABLE THROUGH SOME SYSTEM SUCH AS CIVIL UNIONS.

WHAT IS YOUR POSITION TO HOW THIS AFFECTS OR HOW IT IS RELATING TO THE EXISTING STATUTORY PROVISION THAT IS REFERRED TO AS THE PROTECTION OF MARRIAGE ACT ON THE FOLKS IN FLORIDA? IS THIS JUST A CONSTITUTIONALIZATION OF THAT STATUTE?

THE DEFENSE OF MARRIAGE ACT STATUTE?

RIGHT.

IT GOES BEYOND THE LANGUAGE OF THE STATUTORY BAR ON MARRIAGE FOR SAME SEX COUPLES, WHICH DOESN'T EXTEND TO THE SUBSTANTIAL EQUIVALENT. IT JUST REFERS TO TREATING LIKE A MARRIAGE, SO IT DOES HAVE, IT DOES GO FURTHER IN TERMS OF COVERING SOME

PROTECTIONS OR STATUSES THAT ARE NOT MARRIAGE OR NOT TREATED LIKE MARRIAGE BUT ARE WHAT EVER THE SUBSTANTIAL EQUIV ALENT MIGHT BE, SO IT DOES THAT , AND I T , OF COURSE , ENSHRINES BOTH PARTS OF THE PROPOSED AMENDMENT INTO THE CONSTITUTION. RIGHT NOW THE LEGISLATORS ARE FREE TO DEFINE MARRIAGE HOWEVER THEY SEE FIT , CHANGE THE LAW AS THEY HAVE DONE. IF THAT GOES INTO THE CONSTITUTION, IT DOESN'T SIMPLY MAIN TAIN THE STATUS QUO. IT M A KES A CONSTITUTIONAL MANDATE THAT LEGISLATURES CAN NO LO NGER DEFINE MARRIAGE CERTAIN WAYS.

THAT IS TRUE WITH ANY AMENDMENT TO THE CONSTITUTION. IT RESTRICTS THE LEGISLATIVE ACTION. ISN'T THAT RIGHT?

I THINK THAT THAT IS RIGHT, BUT IT CERTAINLY IS NOT MAINTAINING THE STATUS Q UO. IT IS A CHANGE IN FLORIDALAW, IN THAT THESE WILL BE CONSTITUTIONAL PROVISIONS.

BUT FOR EXAMPLE, THE MEDICAL MALPRACTICE AMENDMENTS, I MEAN , GOODNESS KNOWS WHAT THOSE REALLY MEAN. WE ARE STILL DEBATING WHAT ALL THOSE MEAN , ANDCERTAINLY IT CHANGED EVERYTHING IN FLORIDA L AW F ROM LI ENS TO WHO PAYS FE ESTO WHAT THOSE FEES ARE , ANDTHAT WAS CONSIDERED A SINGLE SUBJECT, AND I AM STRUGGLING WITH WHY THIS IS NOT AND WHY IT IS NOT VIEWED AS HAVING A NATURAL RELATION SHIP CONNECTION OF THE COM PONENT PARTS AS BEING RELATED , WHICH THIS COURT HAS EXPRESSED AS THE STANDARD. BECAUSE IT IS NOT WH ETHER YOU LITI GATE IT FURTHERLATER ON AS I UNDERSTAND THE STA NDARD.IS THAT HOW YOU UNDERSTAND IT AS WELL?

THE FACT THAT THERE MAY BE LITIG ATION REQUIRED TOCLEAN UP DE TAILS , DOES NOTMEAN THAT THER E IS AVIOLATION OF EITHER OF THE PROVISIONS. HOWEVER , THE SINGLE SUBJECT RULE AND IT SOUNDS LIKE WE ARE ALSO SLIPPING INTO THECLEAR AND UNAMBIGUOUS REQUIREMENT, ARE MEANT TO PROTECT THE VOTERS , T O ENSURE THAT THEY UNDERSTAND WHAT THEY ARE VOTING FOR, S O H ERE I WOULD SAY THE SUBSTANTIAL EQUIVALENT OF MARMING LANG UAGE IS CERTAINLY NOT -- MARRIAGE LANGUAGE IS CERTAINLY NOTCLEAR TO THE VO TERS IN TERMS OF WHAT THAT MEA NS, WHAT TYPES OF PROTECTIONS WILL B E PROHIBITED.

BUT ISN'T THAT PART OF THE LANGUAGE OF THEAMENDMENT , ITSELF?

THAT IS PART OF THELANGUAGE OF THE AMENDMENT , BUT THIS COURT HAS --

WE HAVE NEVER SAID , I DON'T BELIEVE , I HAVE NEVER S EEN A CASE , THAT SAYS BECAUSE THE AMENDMENT ITS ELF CONTAINS THE LANGUAGE, THAT BECAUSE THERE MAY BE SOME QUESTION ABOUT THAT, THAT THAT VIOLATES THE SUMMARY PROVISION.THAT IS WHERE WE ARE LO OKING AT, ARE WE NOT , THE SUMMARY PROVISION?

WE ARE. IN THE AS KEW CASE , THE COURT SAID IT DOESN'T MATTER THATTHE LANGUAGE OF THE SUMM ARY TRACKED THE AMENDMENT. IT WAS STILL MISLEADING T O VOTERS AND THEREFORE VIOLATED THE BAL LOT SUMMARY CLEAR AND UNAMBIGUOUS LANGUAGE REQUIREMENT. TURNING BACK TO THE SINGLE SUBJECT ISSUE, THOUGH , I THINK THAT AGAIN WE K N OWTHAT VOT ERS FEEL DIFFERENTLY OR MANY VOTERS FEEL DIFFERENTLY ABOUT THE STATUS OF MARRIAGE. THE INST ITUTION OF MARRIAGE VERSUS THE PROTECTIONS OF MARRIAGE, AND WE KNOW THIS BECAUSE --

WHAT IN THIS AMENDMENT , WHAT SPECIFIC LANGUAGE IN THIS AMENDMENT T ALKS ABOUT THE PROTECTIONS O F MARRIAGE ? BECAUSE YOU ARE SAYING THIS IS TWO SUBJECTS BECAUSE IT IS TA LKING ABOUT MARRIAGE AS A STATUS AND THEN IT IS T ALKING ABOUT THE PROTECTIONS THAT GO WITH THAT STATUS . WHERE IS THE LANGUAGE IN THE AMENDMENT THAT ACTUALLY ONE CAN LOOK AT AND SAY AH-HA! THEY ARE TALKING ABOUT THOSERIGHTS AND PRIVILEGES THAT GO WITH MARRIAGE.

THAT WOULD BE THE SECOND CLAUSE OF THE PROPOSED AMENDMENT, WHICH SAYS NO OTHER LEGAL UNION THAT IS TREATED AS MARRIAGE OR THE SUBSTANTIAL EQUIVALENT THERE OF SHALL BE VALID OR RECOGNIZED, AND THE PROPOSERS SAY THAT THIS LANGUAGE IS CLEAR. TO THEM THEY SAY IT IS CLEAR THAT THIS MEANS ONLY, AND I HOPE I AM PARAPHRASING CORRECTLY, ONLY SYSTEMS THAT PROVIDE ALL OF THE RIGHTS AND BENEFITS OF MARRIAGE. NOW, THEY SAY THAT IS CLEAR. NOW, APPARENTLY IT DIDN'T USED TO BE THAT CLEAR TO THEM A FEW YEARS AGO, WHEN THEY CHALLENGED THE CITY OF GAINESVILLE'S DOMESTIC BENEFITS SYSTEM, SAYING THAT POLICY OF SIMPLY APPLYING DOMESTIC BENEFITS TO EMPLOYEES, THE MOST MODERN OF RECOGNITION THAT IS YOU CAN IMAGINE, THAT DID NOT QUALIFY AND THEREFORE VIOLATED THE DOMA.

NOW, THIS -- VIOLATED THE SYSTEM DOMA.

NOW, SAYING THAT A MARRIAGE IS BETWEEN A MAN AND A WOMAN AND WE ARE NOT GOING TO TREAT ANY OTHER RELATIONSHIP AS A VALID MARRIAGE, THAT IS REALLY WHAT THE AMENDMENT SAYS, ISN'T IT?

THE PROPOSERS CERTAINLY DON'T SEE IT THAT WAY. THEY HAVE INDICATED IN THEIR BRIEFING THAT VERMONT AND CONNECTICUT CIVIL UNIONS AND CIVIL PARTNERSHIP LAWS, WHICH ARE SYSTEMS OF PROVIDING PROTECTION OR RECOGNIZING THE RELATIONSHIP OF SAME SEX COUPLES. THEY INDICATED THAT THIS AMENDMENT IS MEANT TO GET AFTER THOSE KINDS OF SUBPOENAS. I THOUGHT HE SAID HERE IN ORAL ARGUMENT, THAT THIS AMENDMENT WOULD NOT COVER SUCH AS IF SOMEONE MOVED HERE FROM A STATE THAT RECOGNIZED SOME KIND OF UNION BETWEEN SAME SEX PARTNERS, THAT THIS AMENDMENT WOULD NOT PROTECT THEM.

I THOUGHT THE ANSWER WAS IT DEPENDS ON THE PANOPLY OF RIGHTS THAT THAT STATE GIVES COMPARED TO MARRIAGE. I UNDERSTOOD THE ARGUMENT ON THE OTHER SIDE TO BE THAT THOSE WOULD NOT BE RECOGNIZED HERE BUT THAT IS SOMETHING THEY CAN CLEAR UP ON REBUTTAL.

CHIEF JUSTICE: MISS COOPER, I GUESS THE QUESTION, LET'S JUST ASSUME THAT THE INTENT OF THIS AMENDMENT WAS TO OUTLAW OR -- OUTLAW OR MAKE CONSTITUTIONAL, ONLY MARRIAGE AND NOT ALLOW ANY OTHER RELATIONSHIPS BETWEEN, THAT WOULD HAVE THE LEGAL SANCTION OF THE STATE. I AM HAVING TROUBLE IN SEEING WHY THAT STILL WOULDN'T BE A SINGLE SUBJECT. IT MAY BE TRUE THAT WE ARE IN A TRANSITIONAL TIME IN SOCIETY, WHERE THERE IS SOME BELIEF THAT MAYBE SAME SEX COUPLES SHOULD HAVE THE SAME BENEFITS OR SOMETHING ELSE, BUT THE FACT THAT THAT GOES INTO THE DEBATE AS TO WHETHER TO VOTE FOR THE AMENDMENT OR NOT VOTE FOR THE AMENDMENT, I DON'T SEE HOW THAT GOES INTO WHAT WE ARE SUPPOSED TO DO, WHICH IS REALLY LOOK AND SAY IS THIS A CATASTROPHIC CHANGE IN GOVERNMENT THAT, REALLY, CAN'T BE DONE BY A SINGLE INITIATIVE. I MEAN, THIS IS A PRETTY, THIS IS, DEALS WITH THE ISSUE OF RELATIONSHIPS BETWEEN TWO PEOPLE, AND IN A VERY SPECIFIC WAY, SO HELP ME ON THAT ONE THAT, BECAUSE PEOPLE MAY SORT OF HAVE TWO DIFFERENT VIEWS OF IT, IT IS NOT, THAT IS NOT REALLY WHAT WE HAVE MEANT BY LOG ROLLING OR SOMETHING THAT VIOLATES SINGLE SUBJECT.

WELL, I THINK THAT THE LOG ROLLING CASES ARE ABOUT ATTACHING AN UNPOPULAR PROVISION TO A POPULAR PROVISION, TO BRING IT IN ON THE COAT TAILS IN ORDER TO, THE RULE IS MEANT TO PREVENT THE PASSAGE OF PROVISIONS THAT DON'T TRULY HAVE VERY POPULAR SUPPORT, AND HERE WE KNOW, BOTH FROM THE EXISTENCE OF A RANGE OF DOMESTIC PARTNERSHIPS, CIVIL UNION, DOMESTIC PARTNER LAWS AROUND THE COUNTRY, THE VIEWS OF MANY ELECTED OFFICIALS, INCLUDING OUR PRESIDENT OPPOSING MARRIAGE BUT FAVORING CIVIL UNIONS OR OTHER SCHEMES FOR SAME SEX COUPLES. WE KNOW THAT THE POLLING DATA CONFIRMS THAT, WHILE A MAJORITY OF PEOPLE IN FLORIDA --



CHIEF JUSTICE: SO THOSE PEOPLE WILL HAVE TO MAKE A DECISION WHETHER TO VOTE FOR THIS OR NOT VOTE FOR THIS. I DON'T SEE HOW THAT AFFECTS WHETHER IT IS A VALID CONSTITUTIONAL AMENDMENT, THE FACT THAT PEOPLE MIGHT HAVE, YOU KNOW , A GAIN , POLITICIANS MAKE STATEMENTS TO APPEAL TO A CERTAIN GROUP OF PEOPLE , AND, AGAIN, AS WE HAVE SORT OF EXPLORED TO DAY, MAYBE NO ONE IS EXACTLY SURE WHAT MARRIAGE MEANS , NOT ONLY THE LEGAL UNION BUT THE PROTECTIONS AND RESPONSIBILITIES THAT GO WITH IT , SO I STILL DON'T , I AM HAVING A DIFFICULT TIME KNOWING , I DON'T THINK THAT IS WHAT OUR CASES HAVE RECOGNIZED AS BEING A VIOLATION OF SINGLE SUBJECT. JUST GIVE ME THE BEST CASE THAT YOU HAVE THAT SHOW THAT SOMETHING LIKE THIS WAS STRICKEN FOR A SINGLE SUBJECT VIOLATION.

WELL , THE CASES WE HAVE CITED IN OUR BRIEF , I THINK , ARE GOOD EXAMPLES. THE COURT HAS SAID THAT LIMITING HEALTH CARE PROVIDER CHOICE BY LAW OR CONTRACT CONSTITUTES TWO SUBJECTS THAT PEOPLE MAY FEEL DIFFERENTLY ABOUT. RAISING REVENUE THROUGH TAXES AND USER FEES. ALL ABOUT RAISING REVENUE BUT THOSE ARE STILL TWO SUBJECTS ABOUT WHICH PEOPLE MAY FEEL DIFFERENTLY. PROHIBITING DISCRIMINATION IN EDUCATION, EMPLOYMENT AND CONTRACTING. IT IS ALL ABOUT PROHIBITING RACE DISCRIMINATION BUT THE COURT FOUND THOSE TO BE DIFFERENT SUBJECT, AND THEN OF COURSE THE "SAVE OUR EVERGLADES" CASE, WHERE RESTORING THE EVERGLADES AND BILLING THE PARTICULAR INDUSTRY FOR THAT PROGRAM WERE CONSIDERED TWO SEPARATE SUBJECTS, AND HERE THIS IS EXACTLY SITUATION. THIS PUTS VOTERS , THIS PROPOSED LANGUAGE PUTS VOTERS IN THAT ALL OR NOTHING DILEMMA THAT THE CASES TALK ABOUT THAT SINGLE SUBJECT --

PERHAPS YOU WOULD HAVE A BETTER ARGUMENT, IF THIS SAID THAT WE ARE GOING TO DEFEND THE INSTITUTION OF MARRIAGE, MARRIAGE BETWEEN ONE MAN AND ONE WOMAN , AND NO STATUTE THAT GIVES SAME SEX COUPLES ANY OF THE RIGHTS THAT A MARRIED COUPLE WOULD HAVE, WILL BE RECOGNIZED IN FLORIDA, WHICH WOULD SEEM TO ME VERY DIVERGENT TYPES OF SUBJECTS. ONE IS ALL MARRIAGE BETWEEN ONE MAN AND ONE WOMAN AND THE OTHER IS ANY OF THE RIGHTS AND PRIVILEGES , WHICH MEANS OUT OF ALL OF THE PANOPLY , THE 1,000 DIFFERENT STATUTES, ANY ONE OF THEM IN THAT, I WOULD THINK , WOULD GIVE THE VOTERS DIVERGENT CHOICES, BUT HERE WHERE IT SAYS SUBSTANTIAL EQUIVALENT, IT SEEMS TO ME IT IS VERY CLOSE TO THE MARRIAGE PART , AND SO I THINK YOU HAVE A MORE DIFFICULT CASE TO SAY THAT THERE ARE TWO SUBJECTS INVOLVED.

WELL, TWO THINGS I WOULD LIKE TO SAY IN RESPONSE TO THAT. AGAIN, JUST LOOKING AT THE WORLD AROUND US AND THE LAWS AND POLICIES THAT HAVE BEEN ENACTED , SIX STATES IN THIS COUNTRY , HAVE ENACTED CIVIL UNION OR DOMESTIC PARTNER LAWS. A NUMBER OF THOSE ARE LAWS THAT PROVIDE VIRTUALLY THE OR PRECISELY THE FULL PANOPLY OF RIGHTS OF MARRIAGE. MANY PEOPLE WHO ARE ADAMANTLY OPPOSED TO MARRIAGE FOR SAME SEX COUPLES , STRONGLY SUPPORT, EVEN IN VERMONT CIVIL UNIONS , PROVIDE SUPPORT , WHETHER RELIGIOUS VIEWS , POLITICAL VIEWS , THEY SEE MARRIAGE AS A STATUS THAT IS SOMETHING DIFFERENT AND SOMETHING THAT IS A TRADITION THAT THEY BELIEVE OUGHT TO BE RESERVED TO LET SEXUAL COUPLES BUT THAT THE -- HETEROSEXUAL COUPLES , BUT THEY BELIEVE THE RANGE OF RIGHTS WITH RESPECT TO -- RIGHTS WITH REGARD TO MARRIAGE , THEY BELIEVE THAT OUGHT TO BE GRANTED TO SAME SEX COUPLES. AND I WOULD LIKE TO SPEAK ABOUT SOMETHING. THE PROponents TALK ABOUT WHAT THIS SAME SEX LANGUAGE DOESN'T COVER AND THEY FOCUS ON EXISTING DOMESTIC PARTNERSHIP LAWS IN FLORIDA, WHICH ARE VERY SMALL BUNDLES OF PROTECTIONS AND THEN ON THE OPPOSITE END, THEY TALK ABOUT CONNECTICUT , VERMONT CIVIL PARTNERSHIP LAWS WHICH THEY CAN SEE WOULD BE AFFECTED , AT LEAST IN THEIR BRIEF , WOULD BE AFFECTED BY THIS AMENDMENT, BUT WHAT THEY DON'T TALK ABOUT IS EVERYTHING THAT FALLS IN BETWEEN. WHAT ABOUT A LAW PROHIBITING GAY COUPLES OR A LAW PROVIDING GAY COUPLES , 99 PERCENT OF THE RIGHTS AND PROTECTIONS OF MARRIAGE, 90 PERCENT , 50 PERCENT.

IN THAT CASE WE ARE GETTING INTO ISSUES OF THE FACT THAT THE CONSTITUTIONAL PROVISION MAY HAVE TO BE INTERPRETED AT A LATER TIME DOES NOT NECESSARILY MEAN THAT IT INVOLVES MORE THAN ONE SUBJECT, AND AS JUSTICE LEWIS POINTED OUT WITH THE MEDICAL MALPRACTICE AMENDMENT AND MANY OTHER AMENDMENTS THAT COME BEFORE, A LOT OF THEM WILL HAVE TO BE INTERPRETED LATER ON TO SEE WHAT THEY MEAN. THE, WE JUST HAD A PROVISION ABOUT THE FLORIDA BAR RULES, AND WHETHER THE BAR RULES SHOULD BE AMENDED, PURSUANT TO A FLORIDA CONSTITUTIONAL AMENDMENT, SO THOSE ISSUES ARE GOING TO COME UP. THAT DOESN'T MEAN THAT IT SHOULDN'T GO ON THE BALLOT.

I AGREE WITH YOUR HONOR THAT THE FACT THAT THERE MAY BE INTERPRETATION REQUIRED LATER ON WOULDN'T BE A SINGLE SUBJECT PROBLEM, BUT I THINK IT DOES GET INTO THE CLEAR AND UNAMBIGUOUS LANGUAGE REQUIREMENT. THAT REQUIREMENT IS DESIGNED TO MAKE SURE THAT THE VOTERS UNDERSTAND WHAT THEY ARE VOTING FOR, WHEN THEY GO INTO THE VOTING BOOTH, AND ABSOLUTELY THIS COURT COULD CONSTRUCT THAT LANGUAGE, IF REQUIRED TO DO SO, JUST AS IT COULD HAVE CONSTRUED THE LANGUAGE OF EVERY ONE OF THE PROPOSED AMENDMENTS THAT THE COURT INVALIDATED AS A VIOLATION OF THE CLEAR AND UNAMBIGUOUS LANGUAGE REQUIREMENT. THE QUESTION IS WHETHER THE VOTER WHO MAY, FOR EXAMPLE THE VOTER WHO IS IN FAVOR OF THE FIRST CLAUSE BARRING MARRIAGE BUT IS IN FAVOR OF CERTAIN TYPES OF PROTECTIONS OR RECOGNITIONS FOR SAME SEX COUPLES, GOES INTO THE VOTING BOOTH AND DOESN'T KNOW WHETHER THE PROTECTIONS THEY FAVOR ARE GOING TO BE FAVORED BY THIS LANGUAGE.

CHIEF JUSTICE: AGAIN, I GUESS I THINK THAT, WHERE THE POLITICAL FIELD OF ARGUING AND DEBATING THIS IN THE MEDIA AND THE PRESS, COMES INTO PLAY, THE FACT THAT PEOPLE MIGHT HAVE DIFFERING VIEWS ON IT. AGAIN, I AM HAVING TROUBLE SEEING WHERE THE SINGLE SUBJECT VIOLATION IS, DESPITE YOUR EXCELLENT ADVOCACY.

I, ALSO, WOULD WANT TO ADD THAT IT SEEMS, IT IS IMPORTANT THAT THE OTHER SIDE DOESN'T SEEM TO WANT TO SAY HOW MANY PROTECTIONS SHORT OF THE FULL PANOPLY, TAKES YOU SAFELY OUTSIDE OF THE SUBSTANTIAL EQUIVALENT LANGUAGE.

CHIEF JUSTICE: AND THAT IS JUST, AGAIN, WHAT WE ARE TALKING ABOUT. IF CONSTITUTIONAL AMENDMENTS WERE CLEAR AND STATUTES WERE CLEAR, THIS COURT WOULD BE, HAVE A MUCH LOWER CASE LOAD. THE FACT IS THAT EVEN BEST INTENTIONS, YOU CAN'T FIGURE EVERYTHING OUT, AND THAT IS WHAT THE COURTS ARE FOR, TO TEST AND TO SEE WHAT THE EXTEND OF -- WHAT THE EXTENT OF THE PROTECTION IS, AND DESPITE SAYING WHAT MR. STAVER SAYS, WE, THE FACT THAT HE HAS MADE THAT REPRESENTATION IN OPEN COURT IS SOMETHING THAT I WOULD LOOK TO IN FURTHER INTERPRETATION OF THIS AMENDMENT IN THE FUTURE. I THINK THAT IS A SUBSTANTIAL CONCESSION THAT THIS IS A VERY LIMITED CONSTITUTIONAL AMENDMENT. AND SO DO YOU WANT TO TALK ABOUT THE PROTECTION OF MARRIAGE, WHETHER THAT IS A--

ABSOLUTELY. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: SORT OF INFLAMMATORY?

I WOULD LIKE TO MAKE A FEW POINTS ABOUT THAT. FIRST OF ALL, THE LANGUAGE "PROTECT", WHICH WAS ADDRESSED BY MR. STAVER, OF COURSE THE WORD PROTECT IS NOT INHERENTLY A POLITICAL OR EMOTIONAL TERM. THIS COURT DOESN'T EVALUATE LANGUAGE OUT OF CONTEXT. YOU HAVE TO LOOK TO THE CONTEXT OF THE AMENDMENT, AND IN THE PUBLIC PROTECTION FROM REPEATED MEDICAL MALPRACTICE CASE, THE COURT HELD THAT THE TERM "PROTECTION" IN THE INSTANT CASE, DID NOT CONSTITUTE POLITICAL RHETORIC, BECAUSE IT DID NOT CONSTITUTE EVALUATION OF THE POLITICAL AMENDMENT, AS PHYSICIAN LICENSING PRACTICES ARE CLEARLY DESIGNED TO PROTECT THE PUBLIC, BUT HERE IN CONTRAST WHETHER

THE AMENDMENT WOULD PROTECTMARRIAGE IS CLEARLY A SUBJECT EVALUATION OF THE E FFECTION OF THE AMEN DMENT AS OPPOSEED TO A NEUTRAL SUMMARY OF THE EFFECTS.

CHIEF JUSTICE: HOW WOULD YOU CALL IT? YOU COULDN'T HAVE SAID "SAVEOUR MARRIAGE"?

I THINK TH EY COULD HAVE USED LANGUAGE US ED IN THEAMENDMENT , AND THIS COURT IS PARTICULARLY SUSP ICIOUS OF NEUTRAL AMENDMENT TEXT WITH EMOTIONAL OR POLITICAL LANGUAGE IN THE SUMMARIES. THE LANGUAGE --

HOW ABOUT SECONDHAND SMOKING? THE SECONDHAND S MOKE BAN SPECIFICALLY USED THE WORD PROTECT , AND THAT WAS NOT PART OF THE AMEN DMENT AT ALL. HOW WOULD YOU , HOW WAS THAT DIFFERENT FROM WHAT WE ARE ADDRESSING THIS MORNING?

WELL , THERE ARE TWO FACTORS. LOOKING AT THE CONT EXT AND DETERMINING WHETHER THE TE RM IS EM OTIONAL OR POLITICAL IN THAT PART ICULAR CONTEXT. HERE , THE DEBATE OVER THERIGHT TO MARY OR THE RIGHTTO HAVE OTHER PROTECTIONS FOR SAME SEX COUPLES IS ONE THAT HI TS A LOT O F EMOTIONAL CORDS FOR A LOT OF PEOPLE.

SO DID SMOKE AND N ICK CONTINUE ADDICTION. THOSE WERE TREMENDOUS. YOU SHOULD HAVE BEEN HERE THE MORNING OF THAT ARG UMENT.IT WAS TREMENDOUSLY EMOTIONAL.

THE LANGUAGE HERE , IN THE CONTEXT OF TALKING ABOUT THERIGHT TO M ARY OR THE RIGHTTO HAVE OTHER PROTECTIONS FOR SAME SEX COUPLES, THE LANGUAGE " PROTECT" IS NOT ACCIDENTAL. IT WAS INSERTED INTO THE AMENDMENT PRECISELY FOR THE EMOTIONAL VALUE. AGAIN, HERE IT WAS SUCH AN OBVIOUS SOLU TION.

WOULDN'T IT BE IN ALL OF THESE?I AM SURE THAT IN THE SECONDHAND SMOKING THAT IT WAS PLACE THERE HAD INTENTIONALLY.M OST OF THESE WORDS ARE INTENTIONALLY CHOSEN , AND IS THAT REALLY THE TEST ? IT SEEMS TO ME HOW CAN YOU STRIKE DOWN THE SAME WORD IN DIFFERENT CONSTITUTIONAL PROVISIONS, WHEN WE AR E TRYING TO GIVE GUIDANCE FOR WHAT IS ACCEPTABLE AND WHAT IS NOT. WE KNOW "SAVE" WAS NOT ACCEPTABLE FROM THE EVERGLADES, SO THAT IS WHAT I AM STRUGGLING WITH. THE TERMS SEEM TO RELY OPPRESS DENT FROM THE COURT.

AND I THINK -- RELY OPPRESS DENT FROM THE COURT.

I THINK -- ON PREC EDENT FROM THE COURT.

I THINK THE EVERGLADES WOULD BE A GO OD CONTENT IN WHICH SAVE WOULD NOT B E POLITICAL OR EMOTIONAL IN THAT CONTEXT AND WHAT IT WAS.

CHIEF JUSTICE: YOU CAN FINISH RESP ONDING AND I WANTED TO REMIND YOU THAT YOUR TIME IS EXPIRED IS.

I F I MAY TA KE A M INUTE OR TWO FOR CONCLUDING REMARKS.

CHIEF JUSTICE: WE REALLY HAVE A FULL DOCKET. T AKE A MINUTE .

SURE .

CHIEF JUSTICE: YOUALREADY V.

I THINK THE MAIN POINTHERE IS THAT THIS PRO POSED AMENDMENT USES EVERY PROHIBITED TACTIC IN AN ATTEMPT TO SECURE PASSAGE OF NOT JUST MARRIAGE BAN BUT RESTRICTION ON GOVERNMENT PROTECTIONS FOR GAY AND LESBIAN COUPLES , DE SPITE THELACK OF POPULAR

SUPPORT FOR THAT SECOND PROVISION. IT IS THE EXPECTED VIOLATION OF THE SINGLE SUBJECT RULE BECAUSE IT TAKES THE UNPOPULAR SECOND CLAUSE ON TO THE MORE POPULAR MARRIAGE BAN, TRIES TO CONCEAL THE IMPACT OF THE AMENDMENT BEYOND MARRIAGE, BY USING THE SUBSTANTIAL --

CHIEF JUSTICE: I THINK YOU HAVE MADE THAT POINT VERY STRONGLY THIS MORNING. THANK YOU VERY MUCH FOR YOUR TIME AND FOR YOUR APPEARANCE HERE TODAY.

THANK YOU, YOUR HONORS.

CHIEF JUSTICE: REBUTTAL.

THANK YOU, YOUR HONOR. I THINK THIS AMENDMENT IS VERY CLEAR AND VERY STRAIGHTFORWARD. IT IS A SINGLE SENTENCE. VERY FEW INITIATIVES ARE THAT SHORT. EVERYONE, I THINK, FROM -- THAT SHORT. ARRIVE ONE, I THINK FROM COMMON UNDERSTANDING WOULD UNDERSTAND THE SINGLE SUBJECT EXCEPT FOR, POSSIBLY THE INTERESTED PARTIES, WHO ARE TRYING TO TURN THIS INTO LITIGATION ON THE MERITS OR EXPAND IT WAY BEYOND ITS ORIGINAL INTENT.

CHIEF JUSTICE: WHEN I READ IT FIRST, WHEN I WAS REVIEWING THIS, I WROTE DOWN THE QUESTION WILL THIS PROHIBIT CIVIL UNIONS? BECAUSE, ALTHOUGH I CAN NOW SAY SUBSTANTIAL EQUIVALENT MEANS VIRTUALLY IDENTICAL.

CORRECT.

CHIEF JUSTICE: WE KNOW WHEN THIS GOES ON TO THE BALLOT, THERE IS GOING TO BE, THAT IS GOING TO BE A QUESTION AND MAYBE THERE ARE GOING TO BE SOME PEOPLE THAT VOTE FOR IT, THINKING THEY ARE BANNING EVERYTHING, AND SO YOU HAVE GOT TO ADMIT THAT WE ARE NOT GOING TO, JUST BECAUSE TODAY WE SAY SUBSTANTIAL EQUIVALENT IS MEANT TO BE TWO FOR DS SIDE-BY-SIDE IS WHAT WE ARE TALKING ABOUT, TWO CARS, IDENTICAL CARS THAT, THERE IS GOING TO BE POLITICAL RHETORIC IN THE CAMPAIGN, SAYING IT IS DOING MORE OR LESS THAN IT MAY BE DOING.

THERE MAY BE POLITICAL RHETORIC, BUT I CAN GUARANTEE IT IS NOT GOING TO COME FROM THE SPONSOR OF THE AMENDMENT, BECAUSE HE HAS GONE ON RECORD TO SAY WHAT THIS AMENDMENT ACTUALLY STATES. IT WILL BE RHETORIC FROM THE OTHER SIDE TRYING TO SAY THAT THIS COVERS ANY KIND OF RIGHT THAT YOU WANT TO GIVE TO UNMARRIED COUPLES AND IT CERTAINLY DOES NOT, NEVER WAS INTEND TO, NEVER WAS REPRESENTED TO, NEVER WILL BE REPRESENTED TO BE THAT BROAD. THIS IS A SINGLE SUBJECT, AND THAT SINGLE SUBJECT IS MARRIAGE. THE MEDICAL MALPRACTICE CASE GOING TO THE TITLE AND THE SUMMARY, HAD IN ITS SUMMARY, ESSENTIALLY THE IDENTICAL VERBATIM WORDS AS IN THE TITLE, AND THEY HAVE RAISED THE ISSUE OF TAXES AND FEES. TAXES AND FEES ARE TOTALLY OPPOSITE OF THIS CASE, BECAUSE THIS COURT HAS CLEARLY SAID TAXES AND FEES ARE SEPARATE SUBJECTS. IF YOU WERE TO COME WITH THIS TAXING AND FEES, IT WOULD BE OBVIOUSLY A DUAL SUBJECT MATTER. THEY RAISED THE DISCRIMINATION CASE, BUT THAT LISTED TEN SEPARATE CATEGORIES OF DISCRIMINATION, AND PEOPLE WERE ASKED TO VOTE YES ON ALL TEN. THEY ARE ASKED TO VOTE YES ON ONE HERE. THEY HAVE RAISED THE "SAVE OUR EVERGLADES" SAYS BUT THAT ASKED TO PRESERVE THE EVERGLADES AND TAX THE SUGAR INDUSTRY TO DO SO. PEOPLE WERE ASKED TO DO TWO THING ANSWER IN THIS PARTICULAR AMENDMENT THEY ARE ASKED TO DO ONE, AND JUSTICE LEWIS AS YOU POINTED OUT IN THE SECONDHAND SMOKING CASE, IN THE TITLE IT WAS THIS, QUOTE, PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECONDHAND TOBACCO SMOKE BY PROHIBITING WORKPLACE SMOKING. AND THE BALLOT SUMMARY SAYS TO PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECONDHAND SMOKE AND IT GOES ON THE WORD PROTECT HAS NEVER BEEN STRUCK DOWN BY THIS COURT. THERE ARE 39 STATES INCLUDING FLORIDA THAT HAVE DEFENSE OF MARRIAGE ACTS. THE FEDERAL

GOVERNMENT I N 1996, HAS DE FENSE OF MARRIAGE ACT . THERE IS A PRO POSED CONSTITUTIONAL AMENDMENTBEFORE CONGRESS CALLED THE MARRIAGE PROTECTION AMENDMENT , TO DEFEND MARRIAGE AS 39 STATES INCLUDING THIS STATE , HAVE DONE STATUTORILY, IS THE SAME AS TO PROTECT MARRIAGE. THE TITLE AND BALLO T SUMMARY ARE FAIR. THEY GIVE PROPER NOT ICE, THEY ARE NOT MISLEADING IN THIS SINGLE SENTENCE, AND I T ADDRESSES THE SOLE SUBJECT OF MARRIAGE.

CHIEF JUSTICE: THANK YOU VERY M UCH . M R. STAVER AND MS. COOPER , I WANT TO THANK BOTH OF YOU FOR THE VERY PROFESSIONAL WAY THAT YOU CONDUCTED YOURSELVES IN RES PONDING TO OUR QUESTIONS , AND I KN OW THIS IS AN EMOTIONAL ISSUE FOR A LOT OF PEOPLE , AND IHOPE THAT THOSE WATCHING THIS ORAL AR GUMENT CAN SEE THAT WE HAVE GOT TO STICK TO THE LE GAL ISSU ES AND NOT THE POLITICS OF IT. THANK YOU VERY MU CH. THE COURT WILL TAKE ITSMORNING RECESS OF 15 MINUTES .