OA 10-16-86

IN THE SUPREME COURT OF FLORIDA

JOHN F. CARROLL, JOSEPH W. LITTLE, and ROBERT T. MANN, TAXPAYERS and CITIZENS OF FLORIDA,

Petitioners,

vs. CASE NO.: 69,410

GEORGE FIRESTONE SECRETARY OF STATE OF FLORIDA, and EXCELLENCE CAMPAIGN: AN EDUCATION LOTTERY, INC. (E.X.C.E.L.), A FLORIDA NON-PROFIT CORPORATION,

Respondents,

. . . . . .

IN RE:

PEOPLE AGAINST LEGALIZED LOTTERIES and THOMAS TODD,

Appellants,

vs. CASE NO.: 69,426

E.X.C.E.L., INC., and THE HONORABLE GEORGE FIRESTONE, Secretary of State,

Appellees.

CONSOLIDATED ANSWER BRIEF OF APPELLEE/RESPONDENT EXCELLENCE CAMPAIGN: AN EDUCATION LOTTERY, INC. (E.X.C.E.L.)

W. DEXTER DOUGLASS
MICHAEL F. COPPINS
DOUGLASS, COOPER & COPPINS
Post Office Box 1674
Tallahassee, FL 32302
(904) 224-6191
ATTORNEYS FOR E.X.C.E.L.

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STATEMENT OF THE CASE AND FACTS

E.X.C.E.L. accepts the procedural history of this case as set forth in Appellants' main brief.

The appeal and petition for mandamus each present pure questions of law - whether the trial court was correct in its determination that the State Operated Lotteries amendment does not violate Article XI, Section 3 of the Florida Constitution and that the ballot summary complies with the requirements of §101.161, Fla.Stat. (1985).

E.X.C.E.L. is responding to both petitioners' and appellants' initial briefs.

SUMMARY OF ARGUMENT

The State Operated Lotteries Amendment satisfies the Article XI Section 3 requirement that a constitutional amendment proposed by initiative "embrace one subject and matter directly connected therewith." The one subject test has been synthesized by Supreme Court opinions to be one of function, requiring a logical and natural oneness of purpose. The authority of the state to operate lotteries is the one governmental function affected by this amendment. Every other portion of the amendment is incidental and reasonably necessary to effect this main object and purpose.

The trial court was correct in holding that the ballot summary gives the voter fair notice of the decision he must make. If the voter votes YES on this amendment, he is voting for the State's authority to operate a lottery. That chief purpose is further effected by an implementation schedule which is fully and fairly explained in the ballot summary. There is no statement in the ballot summary that the monies generated by the lotteries would be irrevocably earmarked for education purposes. The arguments advanced against the ballot summary are a combination of tortured constructions of clear and unambiguous language coupled with purely political arguments against a state operated lottery.

ARGUMENT

The Court is faced with a challenge to a proposed constitutional amendment presented by the people's initiative. In the fact of this challenge, it is the Court's duty to uphold the proposal unless the petitioners/appellants show the proposed amendment to be clearly and conclusively defective. Weber v. Smathers, 338 So.2d 819 (Fla. 1976); Goldner v. Adams, 167 So.2d 575 (Fla. 1964); Fine v. Firestone, 448 So.2d 984 (Fla. 1984); Evans v. Firestone, 457 So.2d 1351 (Fla. 1984). The Court has previously recognized its duty to act with extreme care, caution and restraint before it removes an amendment from the vote of the people. Askew v. Firestone, 421 So.2d 151 (Fla. 1982).

The consolidated challenge to this amendment must fail, for petitioners and appellants have not met the high burden required to prevent the electorate from voting yes or no on the State Operated Lotteries amendment.

I.

THE STATE OPERATED LOTTERIES AMENDMENT EMBRACES ONLY ONE SUBJECT.

Article XI, Section 3 of the Florida Constitution requires that a constitutional amendment proposed by initiative petition "embrace but one subject and matter directly connected

therewith." Article XI, Section 3 was last amended in 1972. Since 1972, the "one subject rule" in initiative petitions has been vigorously litigated in challenges to a "Sunshine Amendment" (Weber v. Smathers, 338 So.2d 819 (Fla. 1976)), a "Casino Gambling Amendment"(Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978)), a "Citizens Choice on Government Revenue Amendment" (Fine v. Firestone, 448 So.2d 984 (Fla. 1984)), and a "Citizens Rights in Civil Actions Amendment" (Evans v. Firestone, 457 So.2d 1351 (Fla. 1984)).

Justice England once observed that the one subject rule "obviously means different things to different, reasonable people." Weber, supra (England, J. concurring). The progression of initiative petition litigation set forth above had produced an ever increasing collection of dissenting, concurring, and special concurring opinions wherein individual justices offer their varying thoughts on what the one subject rule means. Notwithstanding refinements in the Supreme Court's analysis of the one subject rule, and recission from discrete language in earlier opinions, the Article XI, Section 3 cases continue to offer a fundamental analytical basis upon which to judge a one subject challenge.

Since City of Coral Gables v. Gray, 19 So.2d 318 (Fla. 1944), the proper test has been one of function. In Gray, the Court held:

> [T]he fact that an amendment may be capable of separation into two or more propositions concerning the value of which diversity of opinion might arise is not alone sufficient to condemn the proposed amendment; provided the proposition submitted may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test, and it is to be looked for in the ultimate end sought, not in the details or steps leading to the end.

Gray, at 320.

The Gray test was cited with approval in Floridians Against Casino Takeover, supra. Moreover, the Floridians court held that:

> If a proposed amendment has but one main purpose and all else is incidental and reasonably necessary to effectuate the main object and purpose contemplated, it is not susceptible to the charge that it contains more than one amendment.

Floridians, at 339.

In more recent cases, the Gray test has been cited with approval as consistent with the proposition that the one subject test is functional and not locational. In Fine, supra, Justice Overton, writing for the majority, reaffirmed the Gray test, and reaffirmed the Court's emphasis in Floridians that the test should include a determination of whether the proposal affects a function of government as opposed to whether the proposal affects a section of the Constitution. As Justice Overton wrote:

> The significance of the word "function" as used in Floridians was to point out that the

> one subject limitation dealt with a logical and natural oneness of purpose, as opposed to the prior limitation on initiative proposals affecting multiple sections of the Constitution.

Fine, at 990.

From the 1944 Gray opinion to the 1984 Fine opinion, the courts have emphasized the logical and natural oneness of purpose, effecting one governmental function, as the hallmarks of a valid single subject amendment. By that standard, the State Operated Lotteries amendment now before the Court passes the functional test for the single subject limit. The only function of government touched by this proposed amendment is the authority of the State of Florida to operate a lottery. Every other portion of the proposed amendment is incidental and reasonably necessary to effect this main object and purpose, if the legislature chooses to act on the constitutional authority granted by the amendment. Every other portion of the proposed amendment is directly, logically and reasonably related to the function of operating State lotteries.

The petitioners and appellants argue that subsections (b) and (c) are each separate "subjects" that affect separate functions of government. Both allege that subsection (b), the "severability clause," impliedly amends Article V of the Constitution by dictating to the judicial branch a narrow or restrictive scope of judicial review. Subsection (c) is said to affect

the Legislature's appropriation function by establishing a named trust fund.

In both instances, the challengers' arguments are classic attempts to elevate form over substance, and refuted by existing case law.

The argument that subsection (b) is somehow a restraint on the judicial branch of government was disposed of in Fine v. Firestone, supra. The proposed amendment under attack in Fine was the so-called "Citizens Choice On Government Revenues," ultimately found by the court to deal with multiple governmental functions of taxation, user fee services, and the funding of capital improvements with revenue bonds. Printed on the petition form seeking the amendment's position on the ballot, but not included within the text of the amendment or ballot summary, was the following language:

> "If any portion of this ballot title, summary and amendment is found to be invalid, the remaining portion shall not be invalidated. If this amendment is found to contain multiple subjects, all references to additional subjects, found after the first subject, shall be invalid, but the remaining portions of the amendment shall not be invalidated."

The Fine court disposed of this language as follows:

> This language is not part of the amendment and would not appear on the ballot. Further, such language cannot circumvent this court's responsibility to determine whether the proposed amendment may constitutionally be placed before the voters.

Fine, at 992.

It is abundantly clear from the Fine holding that the courts retain the authority to determine whether a proposed constitutional amendment fails the single subject requirement or fails any other constitutional test. Whatever its failings, subsection (b) cannot be said to have any functional effect on the operation of the judicial branch of government. Fine, supra. As observed by the trial court, "The provisions of a proposal, unadopted, have no legal efficacy and in no wise inhibit the scope of review by this or any other court."

The Florida Supreme Court has held that the quality of a proposed amendment's draftsmanship is not an appropriate subject for judicial review. Weber, supra, at 822. Based on the Fine holding, there can be no doubt that the severance clause of subsection (b) is ultimately non-functional -- the function of the judicial branch's review of a proposed constitutional amendment challenge cannot be circumvented, altered or affected by a severance clause. At worst, subsection (b) is inartful, surplus language chosen to emphasize the singular intent and purpose of the amendment -- the authority to operate a state lottery. The argument that anomalous or surplus language should not appear in the Florida Constitution is political argument improperly directed to the quality of draftsmanship and the merits of the proposal. If the language ultimately has no functional effect on the operation of government (and it does not), it may not be used

to manufacture a "second subject" challenge to a valid single subject amendment.

In like manner, subsection (c), the amendment Schedule, has no functional effect on government. By its plain terms, the implementing schedule contained in subsection (c) does nothing more than provide an initial name for the authorized lotteries, initially name a trust fund to receive the net proceeds derived from the lotteries, and provide for lottery revenue appropriation by the Legislature. Subsection (c) is wholly dependent on the Legislature's implementation of the authority granted in subsection (a). Moreover, subsection (c) provides that the entire schedule may be amended by general law.

On its face, the subsection (c) Schedule provides no functional limitation on the Legislature's discretion as to the implementation or operation of the lottery authorized by this amendment. Referring again to the "one subject and matter directly connected therewith" language in Article XI, Section 3, the implementation schedule is transitional, incidental and reasonably necessary to effectuate the main object and purpose contemplated by the amendment. The implementation schedule clearly has a natural relation and connection to the dominant purpose of the amendment, but standing alone has no binding functional effect on any unit or branch of State government.

The Court need look no further than Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978),

to defeat the argument that the implementation schedule contained in subsection (c) is another "subject" within the State Operated Lotteries amendment. The proposed amendment under consideration in Floridians authorized state regulated, privately operated casino gambling in specific geographical areas and directed the anticipated tax revenues from the casino operations to specific education and local law enforcement functions. The proposal was consistent with pre-existing provisions in the Constitution which earmark or allocate specific revenues to specific purposes, i.e., pari-mutuel taxes (Art. VII, §7); motor vehicle fuel taxes (Art. XII, §9(2)(c)); and motor vehicle license taxes (Art. XII, §9(2)(d)). In a Per Curiam opinion, the Floridians court held that the legalization of casino gambling, its taxation and the dedication of revenues to specific purposes did not violate the single subject rule.

The Supreme Court revisited the Floridians holding in Fine v. Firestone, supra. Justice Overton, a member of the Floridians majority, wrote the majority opinion in Fine. Fine affirmed the Floridians court's holding that the Casino Gambling Amendment constituted a single subject. Thus, although the Fine court did recede from certain language in Floridians, the court did not recede from its ultimate decision in Floridians that the casino gambling proposal met the single subject requirement. Nor did the Fine court recede from its decision in Weber determining that the Ethics in Government amendment met the single subject

requirement. The fact that Floridians and Weber remain viable precedents as to their ultimate holding was again pointed out by Justice Overton in his special concurring opinion in Evans v. Firestone, supra. Justice Overton wrote:

> It is important to note that, although we have receded from certain language in Floridians, we have not retreated from our decision in Floridians determining that the casino gambling proposal meets the single subject requirement, nor have we receded from our decision in Weber determining that the ethics-in-government proposal meets the single-subject requirement.

Evans, at 1357 (Overton, J., concurring).

The State Operated Lotteries amendment survives a one subject challenge when compared with the challenges and holdings in Floridians and Weber. The Floridians court held that an amendment which authorized an activity, taxed it, and dedicated the revenues to a specific purpose and geographical location was a single subject amendment. Contrast the State Operated Lotteries amendment, which does not contain the constitutionally inviolate link between the authority to conduct lotteries and the mandatory dedication of its revenues. The State Operated Lotteries amendment merely authorizes the State operation of lotteries, then provides an implementing schedule which names the lotteries and a trust fund within which to deposit the net proceeds, if the lotteries authorization is implemented at all. The implementation is further subject to the Legislature's right to

appropriate funds, change the names, or otherwise amend the entire implementing schedule.

The State Operated Lotteries amendment pre-empts a multi-subject challenge by removing all anticipated allegations of encroachment upon the legislative function. By preserving the Legislature's control over lottery implementation and dedication of revenues, the amendment is one step removed from the Floridians proposal which was and is, under the most recent cases, a single subject.

The single subject challenge is without merit.

II.

THE STATE OPERATED LOTTERIES AMENDMENT BALLOT SUMMARY COMPLIES WITH FLORIDA STATUTES §101.161.

Florida Statutes §101.161(1) reads as follows:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, or enabling resolution or ordinance. The substance of the amendment or

> other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

The three leading cases on ballot summary challenges are Askew v. Firestone, 421 So.2d 151 (Fla. 1982), Grose v. Firestone, 422 So.2d 303 (Fla. 1982), and Evans v. Firestone, 457 So.2d 1351 (Fla. 1984).

Again, the petitioners and appellants must show by clear and convincing evidence that the State Operated Lotteries ballot summary fails to inform the voter, in clear and unambiguous language, of the chief purpose of the measure. Again, the parties challenging this amendment have failed to meet their high burden.

In Askew, the ballot summary test was alternatively described as follows:

> Simply put, the ballot must give the voter fair notice of the decision he must make ....
>
> ... The people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be.
>
> The purpose of §101.161 is to assure that the electorate is advised of the true meaning and ramifications of an amendment . ...
>
> Fair notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose.

By any measure set forth in Florida Statutes §101.161 or the cases which construe it, the State Operated Lotteries ballot summary gives the voter fair and full knowledge of the amendment's chief purpose, so as to enable the voter to cast his ballot intelligently.

Both the appellants and the petitioners torture the clear and unambiguous language of the summary, particularly the language concerning the schedule, to suggest confusion and ambiguity where there is none. There is certainly no confusion as to the fact the implementing schedule which names the lotteries and names the trust fund into which net lottery proceeds flow can be "changed by law." There is certainly no confusion that the net lottery proceeds are "for appropriation by the Legislature." The ballot summary gives the voter fair notice of the amendment's chief purpose, and the decision he must make, as required by Askew. Does the voter want the State to be authorized to operate a lottery? The summary's explanation of the severance clause serves clear notice that the authority to operate a lottery is the amendment's chief purpose. If the voters favors the authority to operate a lottery, and the lottery is implemented by the Legislature, does the voter favor the name Florida Education Lotteries? If the voter favors a lottery, does the voter want the net proceeds to initially flow to a trust fund known as the State Education Lotteries Trust Fund, for appropriation by the Legislature?

Without the authority to operate a lottery, all issues as to its name or the disposition of revenues are moot. Again, the chief purpose of the amendment is the authority of the State to operate a lottery, and this purpose is made eminently clear to the voter by the text of the ballot summary. As observed by the trial court, the ballot summary contains no representation that monies generated by the lotteries would be irrevocably earmarked for education.

The result in this case is controlled by Grose v. Firestone, 422 So.2d 303 (Fla. 1982). In Grose, a ballot summary was held to be in compliance with Florida Statutes §101.161 in that it adequately disclosed the chief purpose of the proposed amendment, i.e., the right to be free from unreasonable searches and seizures. As do today's litigants, the challengers to the Grose ballot summary alleged it was defective because it did not adequately describe all possible future effects of the amendment. The court held the ballot summary valid because the chief purpose was clearly stated, giving the voters fair notice of the meaning and effect of the proposal. The court specifically held that the inclusion of all possible effects is not required in a ballot summary, citing Smathers v. Smith, 338 So.2d 825 (Fla. 1976). In Smathers v. Smith, supra, the court refused to speculate on future implications of a proposed amendment in advance of its adoption, holding that "[i]f the amendment should be adopted by the voters, it may then become our responsibility, in an

appropriate case, to harmonize its reach and meaning with other provisions of the Constitution." Smathers, at 831. Although the majority opinion in Fine expressly receded from certain language in Floridians, the Fine opinion does not affect the continuing vitality of the holding in Smathers that premature, unnecessary challenges to a proposed constitutional amendment will not be entertained by the court. Indeed, Smathers is not even cited in Fine.

The importance of the "chief purpose" language in the statute and the court's strong position that all possible effects of a proposed initiative are not required to be set forth in a ballot summary is expressed in two cases cited in Askew. In Hill v. Milander, 72 So.2d 796 (Fla. 1954), the court found that inclusion of the whole proposal was not mandatory because a voter would be apprised of all issues through the media and other means of communication. In Miami Dolphins v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981), the court again emphasized that not every aspect of a proposal need be explained in the voting booth because:

> It is a matter of common knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined and that in this day and age of radio, television, newspaper and the many other means of communication and disseminating information, it is idle to argue that every proposition on a ballot must appear at great and undue length.

Miami Dolphins, at 987, quoting Hill v. Milander, 72 So.2d at 798.

It is clear that the court does not require that all possible effects of a proposed amendment be included in a ballot summary. If that were the case, the summary would not be limited to 75 words in length, as prescribed by §101.161, and the statute would not use the words "chief purpose."

The creation, nurturing and use of "ambiguity" occasionally rises to an art form in the practice of law. The art is no more fully developed than in the presentation made by petitioners and appellants on the ballot summary issue. This ballot summary should not be judged on the basis of whether a person of marginal intellectual function could misconstrue the summary language, or whether highly trained lawyers can construct a "how many angels can dance on the head of a pin" argument out of plain and unambiguous language. The test must be realistic and pragmatic, directed to the question of whether a reasonable person who reads the ballot summary with reasonable care should understand what his yes or no vote accomplishes. By that measure, the ballot summary describing the State Operated Lotteries amendment is in full compliance with Florida Statutes §101.161.

The fact that the State Operated Lotteries ballot summary contains no reference to Article X, Section 7 of the Constitution is a false issue in the ballot summary challenge. The petitioners and appellants rely on certain language in the

Fine opinion concerning the effect of "conflict" between or among articles or sections of the Constitution. However, the Fine majority receded from Floridians in the narrowest area, stating that whether there was a conflict between the proposed amendment and an existing section of the Constitution is an "appropriate factor" in resolving a more than one subject challenge. Fine does not require addressing this factor at all in the context of the ballot summary.

Even if the "conflict" issue were a consideration in the ballot summary argument, it does not render the summary here ambiguous. The intent and effect of the amendment obviously is not to lift the Article X, Section 7 prohibition against private lotteries. The amendment simply authorizes lotteries to be operated by the State. Contrary to the challengers' suggestion, Article X, Section 7 is not repealed by the State Operated Lotteries amendment -- the prohibition against all lotteries remains in effect, modified by the newly created Article X, Section 15 authority for State operated lotteries. The rationale of the Fine language concerning conflicting sections is that the Supreme Court should not "be placed in the position of redrafting substantial portions of the Constitution by judicial construction." This rationale is not applicable to the State Operated Lotteries amendment, which is unambiguous and complete within itself.

If a voter is asked to vote yes or no for the creation of a new constitutional section authorizing the State operation of lotteries, it logically follows that under the current Constitution, State operated lotteries are not permitted. There is no reason or need to authorize constitutionally an activity that is not otherwise prohibited, and the argument that the voters cannot comprehend this without explicit reference to the Article X, Section 7 prohibition in the ballot summary presumes substantially less than a reasonably intelligent electorate.

The operative question remains whether the failure of the ballot summary to make explicit reference to the general lottery prohibition in Article X, Section 7 misleads or fails to inform the voter that if he votes yes on this amendment, he is authorizing the State to operate a lottery. The answer is no, and the fact that another section of the Constitution is implicitly modified by this authorization does not make the ballot summary misleading.

Most, if not all, of the arguments advanced by petitioners and appellants, particularly as they relate to the ballot summary, are purely political and do not raise any legal issues that would eliminate the right of the electorate to vote on the square issue of authorizing a State-run lottery.

These litigants and other opponents to State-run lotteries will no doubt use all the logical and illogical

arguments available to cause the defeat of the amendment by the electorate.

For example, the very thing that makes this a one subject amendment -- the careful drafting to ensure legislative control over the funds generated -- will be and is attacked by the petitioners and appellants as (1) creating two subjects and (2) telling people that education will be the sole recipient of funds generated by a lottery.

Any casual reader can see this is not true, but that fact will not prevent political advertisers and editorialists from making assertions to the contrary.

The sponsors of this amendment believe the intent is clear to the Legislature that people want these funds to go to improve our educational system. Even if funds were "earmarked" for education, there is no way the general revenue funds now going to education could be frozen. If the general revenue of Florida (which is now appropriated approximately 60% to education) were to be reduced as to education by the new funds created by a lottery, then nothing in the legal sense could be done to stop this.

On the other hand, the sponsors, recognizing this irrefutable political fact, have said unmistakenly, "Approve a State operated lottery. We want the revenue for educational improvement over what is now appropriated, but we know, Legislature, you could by majority vote thwart that purpose, whatever we

do. So we believe you will use these funds for an Education Trust Fund, to be used to improve education in Florida."

The Legislature usually responds to the will of the people; so if this amendment passes, we can assume the individuals who make up the House and Senate will heed the message of the people.

III.

THE STATE OPERATED LOTTERIES AMENDMENT DOES NOT VIOLATE ARTICLE XI SECTION 1 OF THE FLORIDA CONSTITUTION

Petitioners argue that the implementation schedule contained in Subsection (c) of the proposed amendment authorizes the legislature to amend the constitution by general law. The argument is without merit, for it ignores the nature and purpose of a constitutional schedule and ignores the use of schedules in the current Florida Constitution.

A schedule appended to a constitution is generally a temporary enactment for the purpose of effecting a transition from the old to the new and of putting the provisions of a new constitution into effect. By its nature and purpose, the constitutional schedule can be distinguished from the permanent and fundamental law embodied in the constitution itself. See 16 C.J.S. Constitutional Law §15.

Implementation schedules were a prominent feature of the 1968 revision to the Florida Constitution. Article V, Section 20 is a lengthy implementation schedule concerning the judiciary, which includes, at Section 20(c)(1)-(13), numerous substantive provisions to be effective "until changed by general law."

Article VIII Section 6 is another detailed implementation schedule whose provisions as to counties, county seats, municipalities and districts became effective "until changed in accordance with law." Art. VIII, §6(b), Fla. Const.

The entirety of Article XII is another implementation schedule, described in Section 17 as existing "to effect the orderly transition of government from the Constitution of 1885, as amended, to this revision . . ."

Implementation schedules have also been featured in post-1968 amendments to the constitution. For example, Article II Section 8 of the Florida Constitution, titled Ethics in Government, is the 1976 "Sunshine Amendment" originally proposed by the peoples' initiative. Subsection (h) of the Sunshine Amendment was an implementation schedule providing detailed guidance as to the "when" and "how" of financial disclosure, to be effective "until changed by law." Contrary to Petitioners' argument, the Sunshine Amendment implementation schedule spoke to substantive matters, not the least of which were the category of

persons who would be required to file disclosures and the threshold monetary figure for the disclosure of assets and liabilities.

This court rejected a ballot position challenge to the Sunshine Amendment in Weber v. Smathers, 338 So.2d 819 (Fla. 1976). The court did consider the entire Sunshine Amendment, including the schedule, and did find that the amendment, if adopted, would not conflict with other articles and sections of the constitution. Although the Weber majority opinion did not address the schedule with particularity, it is incorrect to suggest that the court did not consider the Sunshine Amendment schedule in reaching its ultimate holding.

The implementation schedule contained within the State Operated Lotteries Amendment is the drafting clone of the implementation schedule contained within the Sunshine Amendment. Both schedules accomplish the primary purpose of transition, giving express, but temporary guidance in the initial operation of the amendments. Both schedules may be amended by general law, a feature consistent with their transition purpose. Of singular importance, however, is that neither schedule allows the legislature to amend, by general law, the fundamental constitutional change wrought by the amendment.

In the case of the State Operated Lotteries Amendment, the fundamental authority of the State to operate lotteries may not be revoked or changed by a majority vote of the legislature. Only the lotteries' initial name and trust fund designation is

subject to legislative amendment. Allowing this implementation schedule to be amended by general law is consistent with current constitutional practice and cannot defeat the submission of the State Operated Lotteries Amendment to the peoples' vote.

CONCLUSION

The State Operated Lotteries initiative satisfies all constitutional and statutory requirements for being submitted to a vote of the people. The Court should affirm the trial court's September 30, 1986 final order and deny the plea to remove this initiative from the November 4 ballot.

Respectfully submitted,

DOUGLASS, COOPER & COPPINS
Post Office Box 1674
Tallahassee, FL 32302
(904) 224-6191
ATTORNEYS FOR E.X.C.E.L.

BY _____
W. DEXTER DOUGLASS

BY _____
MICHAEL F. COPPINS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to HERBERT R. KRAFT, Attorney at Law, 1020 East Lafayette Street, Suite 210, Tallahassee, FL 32301, by hand delivery; ROBERT T. MANN, ESQUIRE, JOSEPH T. LITTLE, ESQUIRE, and JOHN F. CARROLL, College of Law, University of Florida, Gainesville, FL 32601; THOMAS W. BROOKS, ESQUIRE, 911 East Park Avenue, Tallahassee, FL 32301; THOMAS W. YOUNG, III, ESQUIRE, General Counsel, FEA/United, 208 West Pensacola Street, Tallahassee, FL 32301,and ERIC J. TAYLOR, Assistant Attorney General, Florida Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, FL 32301, by U.S. Mail, this 13th day of October, 1986.

BY _____
MICHAEL F. COPPINS