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THE STATE-OPERATED LOTTERIES
AMENDMENT EMBRACES MORE THAN ONE
SUBJECT.

The proposition before the Court is cleverly worded to afford the opportunity for argument that it contravenes none of this Court's decisions construing Article XI, §3 of the Florida Constitution of 1968, but if it is approved by the Court the way is clear in future for other proposals in which a constitutionally forbidden objective may be attained by clever but deceptive packaging. Petitioners offer three arguments against E.X.C.E.L.'s proposition, each sound, but it is their cumulative effect that overwhelmingly militates against the approval of the proposed amendment.

Respondents argue that education is not a second subject which would violate Article XI, Section 3. It is second subject in the classical sense: this is logrolling at its worst. Not only do signers of the petition see, in the petition form, the association with education, but if the proposition is adopted they are denied the constitutional assurance that the funds will be applied to education. Logrolling, as Justice Alderman pointed out in dissent in *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So.2d 337 (Fla. 1978), involves the "strategy of aggregating dissimilar provisions in one proposal to attract support from diverse groups." (at p. 343) See also Ruud, "No Law Shall Embrace More Than One Subject," 42 Minn.L.Rev. 389 (1958).

The evil of logrolling is present here, and is not mitigated by the clever denial of constitutional effect to the attractive aspect of the proposition. All good citizens want to further the

cause of education. Not all want to remove a constitutional prohibition which has stood for more than a century. Education is related to this proposition as the wooden horse to the siege of Troy: without it the citizens would not open the gates; once the gates are opened it is expendable. If Article XI, Section 3 does not forbid this callous duplicity what can the framers of that section have meant to forbid?

II

THE STATE-OPERATED LOTTERIES AMENDMENT VIOLATES ARTICLE XI BY PURPORTING TO ENACT A STATUTE IN THE GUISE OF A SCHEDULE, WHEN A SCHEDULE IS NEITHER NECESSARY NOR APPROPRIATE

Respondents point out that Article II, Section 8, the so-called Sunshine Amendment, contains a schedule. Petitioners are content to make two points about the device attempted in E.X.C.E.L.'s proposition:

First, there is no mechanism in Article XI, Section 3 for the enactment of a statute by initiative and referendum.

Second, Article II, Section 8 was self-executing, while this lottery proposition is not. In addition, Article III, Section 18, contained a provision purporting to require a code of ethics for all nonjudicial officers, but the legislature did not act. See the history of that amendment in *Askew v. Firestone*, 421 So.2d 151 (Fla. 1982). It was entirely appropriate to take those provisions of the Sunshine Amendment which were amenable to legislative action and place them in a schedule.

A schedule in a proposition like E.X.C.E.L.'s is unnecessary and inappropriate. Because the initiative process deals only with amendment of the constitution, the effort to enact a statute naming non-existent funds is unconstitutional. It is also unconscionable, because its only purpose is to introduce into the petition form presented to voters the word "education."

III

THE STATE-OPERATED LOTTERIES AMENDMENT BALLOT SUMMARY VIOLATES FLORIDA STATUTES §101.161.

Respondent E.X.C.E.L. asserts that the ballot summary includes all of the three sections of the initiative proposal and accurately describes them. True. What it does not say is that there is a present constitutional prohibition against lotteries, which was part of the 1885 Constitution and continued, with one exception not here relevant, into the current constitution. If the E.X.C.E.L. proposition is approved there will be two sections of the Constitution, the latter of which contradicts the former in part. When the respondent E.X.C.E.L. refers, at page 18 of its brief, to the "prohibition against private lotteries" in the present constitution it misrepresents the facts. The present constitution, in Article X, Section 7, with one exception, prohibits all lotteries.

If this proposition is permissible the way is clear to suggest, two years hence, a proposition to create Article VII, Section 17, permitting the state to tax personal incomes over \$25,000 per annum, and providing that until changed by general law the proceeds of such an income tax shall be divided into

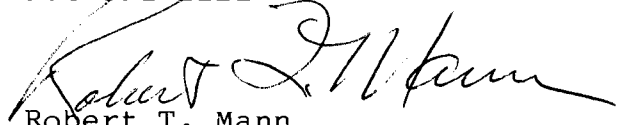
equal parts and deposited in trust funds for education, law enforcement, environmental protection, aid to senior citizens and possibly other politically popular objectives. Without mentioning in the ballot summary, however, that taxes on income of natural persons is presently prohibited, the summary would be misleading, as the one in the current case is.

CONCLUSION

The lottery proposition is clever but misleading and designedly so. It combines authorization of state-operated lotteries with educational finance, in the obvious hope that the latter objective will carry the day at the polls to erase a century of prohibition of lotteries. If education is not a prohibited second subject because it is mentioned in a "schedule" that schedule is the impermissible enactment of a statute by the process reserved for constitutional amendment.

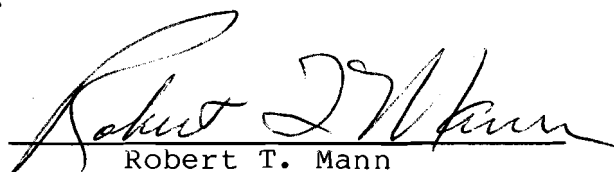
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to ERIC J. TAYLOR, Esq., Assistant Attorney General, Florida Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, and to MICHAEL F. COPPINS, Esq. and DEXTER DOUGLASS, Esq., P.O. Box 1674, Tallahassee, FL 32302-1674, by delivery this 14th day of October 1986.


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