

IN THE SUPREME COURT OF FLORIDA

FILED  
OCT 13 1986  
CLERK, SUPREME COURT  
By Deputy Clerk

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

Petitioners, )

v. )

GEORGE FIRESTONE, SECRETARY )  
OF THE STATE OF FLORIDA, )  
and EXCELLENCE CAMPAIGN: )  
AN EDUCATION LOTTERY, INC. )  
(E.X.C.E.L.), a Florida )  
non-profit corporation, )

Respondents. )

CASE NO. 69,410

IN RE: )

PEOPLE AGAINST LEGALIZED )  
LOTTERIES and THOMAS TODD, )

Appellants, )

v. )

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

Appellees. )

CASE NO. 69,426

---

BRIEF OF AMICUS CURIAE  
FLORIDA EDUCATION ASSOCIATION/UNITED, AFT, AFL-CIO

---

THOMAS W. YOUNG III, ESQ.  
General Counsel, FEA/United  
208 West Pensacola Street  
Tallahassee, Florida 32301  
904/224-1161

TABLE OF CONTENTS

	<u>Page</u>
CITATION OF AUTHORITIES	i
ARGUMENT	1
THE PROPOSED AMENDMENT PROVIDING THAT LOTTERIES MAY BE OPERATED BY THE STATE OF FLORIDA IS CONSISTENT WITH THE ONE SUBJECT PRINCIPLE ENUNCIATED IN ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.	
CONCLUSION	10
CERTIFICATE OF SERVICE	11

CITATION OF AUTHORITIES

	<u>Page</u>
<b>STATUTES:</b>	
Section 101.161, Florida Statutes	3
<b>CONSTITUTION:</b>	
Article IX, Section 3, Florida Constitution	2
Article X, Florida Constitution	1
Article XI, Section 3, Florida Constitution	1, 2
<b>CASES:</b>	
<u>Askew v. Firestone</u> , 421 So.2d 151 (Fla. 1982)	3
<u>Evans v. Firestone</u> , 457 So.2d 1351 (Fla. 1984)	8
<u>Fine v. Firestone</u> , 448 So.2d 94 84 (Fla. 1984)	4, 5, 6, 7
<u>Floridians Against Casino Takeover v. Let's Help Florida</u> , 363 So.2d 337 (Fla. 1978)	4, 7

## ARGUMENT

THE PROPOSED AMENDMENT PROVIDING THAT LOTTERIES MAY BE OPERATED BY THE STATE OF FLORIDA IS CONSISTENT WITH THE ONE SUBJECT PRINCIPLE ENUNCIATED IN ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

Florida Education Association/United, AFT, AFL-CIO (FEA/United) submits this brief as Amicus Curiae in support of the position advanced by Appellees in this case, E.X.C.E.L., Inc., et al (E.X.C.E.L.). FEA/United represents approximately 60,000 Florida school teachers and school-related personnel. In its capacity as representative of these employees, FEA/United has endorsed the state lottery proposal and believes that its passage will significantly benefit education. FEA/United bases this belief on the premise that, if passed, the lottery will provide additional revenue for the State of Florida, and that any increase in general revenue has the potential to directly benefit education in Florida. FEA/United has always recognized that constitutional amendments placed upon the ballot by people's initiative petitions cannot constitutionally mandate how the proceeds will be appropriated.

Circuit Judge J. Lewis Hall, Jr., in his order denying motion for judgment on the pleadings, fairly considered the arguments of the parties concerning whether the proposed amendment to Article X of the Florida Constitution, creating

Section 15 thereof, violates Article XI, Section 3 of the Florida Constitution in that such proposal contains more than one subject. Judge Hall correctly imposed upon the plaintiffs the burden to establish that the proposed amendment is "clearly defective" within the purview of Article IX, Section 3, Florida Constitution. Judge Hall correctly concluded that plaintiffs had not met this considerable burden.

Judge Hall's analysis of the case is consistent with the cases and authorities cited by the parties. It was Judge Hall's position that the Supreme Court of Florida "has evolved a synthesized position that compliance with the single subject limitation of Article XI, Section 3 is had when the proposed amendment deals with governmental function in logical and natural oneness of purpose, permissably supported by other portions of the proposed amendment incidentally and reasonably necessary to implement the single function purpose."<sup>1</sup> We concur with Judge Hall's position.

Judge Hall concluded that, based upon the Supreme Court's position, as he interpreted it, the proposed amendment addresses only one subject--i.e., that the state may conduct lotteries. Judge Hall applies common sense reasoning to the analysis when he concludes that any revenue produced by a

---

<sup>1</sup> Order denying Motion for Judgment on the Pleadings, issued September 22, 1986, at page 2.

lottery would necessarily be appropriated by the Legislature in such manner as it sees fit.

With respect to the ballot summary and the application of Section 101.161, Florida Statutes, case law establishes that the ballot summary advise the voter sufficiently to enable him intelligently to cast his ballot. Referring to Askew v. Firestone, 421 So.2d 151 (Fla. 1982), Judge Hall concluded that the ballot summary must give the voter fair notice of the decision he must make. It was Judge Hall's position that the ballot summary in the instant case "is a fair and straightforward articulation of the meat of the proposal and thus passes statutory muster."

John F. Carroll, Joseph W. Little and Robert T. Mann, taxpayers and citizens of Florida (Petitioners), and Thomas C. Todd and People Against Legalized Lotteries, Inc. (Appellants), argue that the language in the proposed constitutional amendment and summary violate the single subject restriction and mislead Florida's voters. Their argument is largely a highly technical and extremely selective interpretation of this Court's recent decisions concerning proposed constitutional amendments. In addition, their arguments give little credit to a literate and informed electorate capable of common sense analysis as it determines whether to cast an intelligent yes or no vote to constitutional revisions.

It is the position of both Appellants and Petitioners that the proposed amendment establishing a state lottery is a gross example of "logrolling." Logrolling was discussed by this Court in Fine v. Firestone, 448 So.2d 984 (Fla. 1984). There, this court stated in pertinent part,

We recognize that there is a similar one-subject restriction contained in Article III, Section 6 of the Florida Constitution regarding laws enacted by the legislature. The purpose of this provision is to prohibit the aggregation of dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage. In legislative parlance, Article III, Section 6, prohibits what is known as "logrolling."

Id. at 988 (citations omitted). The instant case contains no such "aggregation of dissimilar provisions."

This Court, in Fine, receded in part from language contained in Floridians against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), and concluded that the Court should "require strict compliance with the single subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions, including the adoption of any laws by the Legislature." 448 So.2d at 989. Strict compliance with the single subject rule in the instant case will not result in a conclusion that the single subject rule has been violated. Instead, it is clear from the language of the proposed amendment

that the electorate cannot help but understand that the single change proposed in the existing constitution is to establish a state lottery.

With specific reference to the constitutional proposal under review in Fine, this Court concluded that the proposal addressed "at least three subjects which affect separate, distinct functions of the existing governmental structure of Florida, and substantially affects multiple sections and articles of our present constitution which are not in any way identified to the electorate." The proposal in the instant case addresses one subject--lotteries. The proposal in question affects one function of the existing governmental structure--raising revenue by means of the lottery, such revenue to be appropriated by the Legislature. This proposal affects one section of our present Constitution, and its effect is clear and unmistakable--it establishes a state lottery.

As this Court stated in Fine,

The purpose of a single subject requirement is to allow the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.

448 So.2d at 993. This purpose is completely satisfied by the proposed amendment in question. There is no second subject in this proposed constitutional amendment that would cause voters



to accept a part of the proposal which they oppose in order to obtain a change which they support. Voters on this proposal will clearly be deciding only one question--i.e., whether there should be established a lottery in the State of Florida. The intent of this proposal is clear and unmistakable.

Justice McDonald, in his concurring opinion in Fine, provides a clear insight as to what constitutes an amendment covering more than one subject. Justice McDonald stated as follows:

The instant proposed amendment's supporters claim that their proposal affects only a single subject, "revenues." Their opponents, however, point out that "revenues" encompasses a multitude of subjects. Included are such things as ad valorem taxes, user fees, proprietary income, sales taxes, corporate income taxes, income from trust funds; in effect all income from whatever source except as limited by the proposed amendment itself.

448 So.2d at 994. Justice McDonald continues, indicating that the proposed amendment would have the affect of amending or repealing sixteen sections of the Florida Constitution. Id at 995.

Justice McDonald's conclusion in his concurring opinion that "the very broadness of the proposed amendment amounts to logrolling because the electorate cannot know what it is voting on...", is obviously completely justified in Fine. However, such

a conclusion does not follow in the instant case. Unlike the proposal in Fine, the proposed amendment in the instant case states clearly what it will affect and effect and clearly complies with the requirement that the proposed amendments embrace only one subject.

Justice Shaw, in his concurring opinion in Fine, provides insight as to the Court's rationale in both Floridians and Fine. Justice Shaw stated,

In Floridians the initiative to legalize casino gambling and earmark tax proceeds was relatively narrow from a constitutional viewpoint. It could be described as the camel's head under the tent. By contrast, the present initiative is extremely broad and brings the entire camel into the tent.

448 So.2d at 997. In the instant case, the simple and straightforward proposed constitutional revision keeps the camel wholly outside the tent.

In Justice Shaw's concurring opinion in Fine, he encourages this Court to adopt a standard of review for citizens initiatives which differs from that enunciated in Weber v. Smathers 338 So.2d 819 (Fla. 1976) and Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978). Justice Shaw concluded that the one subject limitation on initiative petitions serves two purposes:

(1) Ensuring that initiatives are sufficiently clear so that the reader, whether layman or judge, can understand what it purports to do and perceive its limits.

(2) Ensuring that there is a logical and natural unity of purpose in the initiative so that a vote for or against the initiative is an unequivocal expression of approval or disapproval of the entire initiative.

447 So.2d at 997. FEA/United is confident that, when this Court applies common sense analysis such as contained in Justice Shaw's concurring opinion, it will conclude that the initiative in the instant case ensures that the voter will understand the intent of the proposal and understand the meaning of his vote.

With respect to the issues before this Court, it is instructive to look also to its opinion in Evans v. Firestone, 457 So.2d 1351 (Fla. 1984), in which this Court discussed its decision in Fine. This Court stated,

Fine stands for the axiomatic proposition that enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement. There we held that the single subject "revenue" encompassed at least three subjects.

Id. at 1353. The Court continued in pertinent part stating,

The test, as set forth in Fine is functional, and not locational, and where a proposed amendment changes more than one government function, it is clearly multi-subject. In Fine, we found multiplicity of subject matter because the proposed amendment would have affected several legislative functions. The proposed amendment now before us affects the functions of the legislative and judicial branches of government.

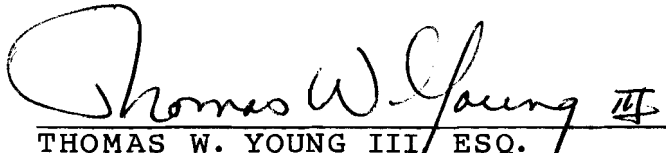
447 So.2d at 1354. In the instant case, the proposed amendment clearly affects one legislative function, i.e., the

appropriation of funds by the Legislature, some of which would be available for appropriation because of revenues generated by a lottery. It is equally clear that the proposed amendment in the instant case affects only the functions of the legislative branch of government.

CONCLUSION

Circuit Judge J. Lewis Hall's Order denying Motion for Judgment on the Pleadings correctly analyzes and applies existing law to the proposed constitutional amendment that lotteries may be operated by the State. The reader of the proposed constitutional amendment, whether layman or judge, can understand what it does. The sole subject contained in the proposed amendment is the establishment of a lottery, and it is clear and unmistakable that a vote for the lottery would create revenues for the state, the appropriation of which will be the province of the legislature. The arguments of Appellants and Petitioners are strained and hypertechnical constructions of this Court's prior decisions on this question. The proposed constitutional amendment is simple and straightforward and the people of Florida should be permitted an opportunity to exercise their will in that regard. Judge Hall's order should be affirmed and the proposal and ballot summary should remain on the ballot to be addressed by the Florida voters in the November 4, 1986 election.

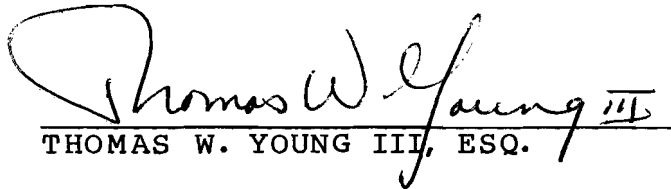
Respectfully submitted,



THOMAS W. YOUNG III, ESQ.  
General Counsel, FEA/United  
208 West Pensacola Street  
Tallahassee, Florida 32301  
904/224-1161

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 13th day of October, 1986 to Joseph W. Little, Esq., 3731 Northwest 13th Place, Gainesville, Florida 32605; Robert T. Mann, Esq., 2626 Northwest 18th Way, Gainesville, Florida 32605; Herbert R. Kraft, Esq., 1020 East Lafayette, Suite 210, Tallahassee, Florida 32301; W. Dexter Douglas, Esq., Douglass, Cooper and Coppins, P. O. Box 1674, Tallahassee, Florida 32302; and Thomas W. Brooks, Esq., Meyer, Brooks & Cooper, P. O. Box 1547, Tallahassee, Florida 32302.

  
THOMAS W. YOUNG III, ESQ.