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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_

Chief Deputy Clerk

IN RE:

CASE NO: 83,886

ADVISORY OPINION TO THE  
ATTORNEY GENERAL - - LIMITED  
CASINOS

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BRIEF OF AMICUS

PROPOSITION FOR COUNTY CHOICE GAMING, INC.

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## STATEMENT OF THE CASE

The Florida Attorney General has petitioned this Court for an advisory opinion concerning the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution by a group known as Proposition for Limited Casinos, Inc. See Art. IV, § 10 Fla. Const.; § 16.061, Fla. Stat. (1993). The petition seeks to amend Article X, Section 7, Florida Constitution to permit casino gaming in certain locations and at certain facilities in the State of Florida. The full text of the amendment provides:

### TITLE

Limited Casinos

### SUMMARY

Authorizing a limited number of gaming casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties, with two in Miami Beach; and limited-size casinos with existing and operating pari-mutual facilities; and if authorized by the legislature up to five limited-size riverboat casinos in the remaining counties, but only one per county. Mandating implementation by the legislature. Effective upon adoption, but prohibiting casino gaming until July 1, 1995.

### FULL TEXT OF PROPOSED AMENDMENT

#### Section 1.

Section 7 of Article X is amended to revise its title to read "Lotteries and Limited Casinos," and to designate the existing text as subsection "(a)".

Section 2.

Subsection 7(b) of Article X is created to read:

The operation of a limited number of state regulated, privately owned gaming casinos is authorized, but only:

(1) at one facility each to be established within the present boundaries of Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties; and

(2) at two facilities to be established within the present boundary of Broward County; and

(3) at three facilities to be established within the present boundary of Dade County, only two of which shall be within the present boundary of the City of Miami Beach with one in the South Pointe Redevelopment Area; and

(4) with each pari-mutuel facility which has been authorized by law as of the effective date of this amendment and which has conducted a pari-mutuel meet in each of the two immediately preceding twelve month periods; provided that no casino located with a parimutuel facility shall have a gaming area in excess of 75,000 square feet; and

(5) at not more than five riverboat casino facilities having a gaming area not in excess of 40,000 square feet, as the legislature may approve within the present boundaries of counties not identified in paragraphs 91), (2) and (3); provided that the legislature shall not approve more than one riverboat casino in any one county.

Section 3.

By general law, the legislature shall implement this section, including legislation to regulate casinos, to tax casinos, and to license casinos to pari-mutuel permit holders and at the other authorized facilities.

Section 4.

This amendment shall take effect on the date approved by the electorate; provided however, that no casino gaming shall be authorized to operate in the state until July 1, 1995.

The Amicus, Proposition for County Choice Gaming, Inc., is the sponsor of a competing initiative petition and shortly will be submitting its own petitions to the Secretary of State. Although Amicus favors the legalization of casino gaming as a "local option" upon the approval of voters in individual counties, Amicus opposes the Limited Casinos initiative for the reasons set out more fully below.



## SUMMARY OF ARGUMENT

The proposed amendment violates the single subject requirement of Article XI, Section 3, Florida Constitution in that it alters and performs the functions of multiple branches of state government and preempts municipal and county home rule powers. By legalizing casino gaming for the first time, the proposed amendment implements a policy of statewide significance, and thus performs an essentially legislative function. At the same time, by dictating the location of casinos, and even sanctioning particular sites, the proposed amendment encroaches on local home rule and state judicial powers.

The proposed amendment also affects multiple sections of the Florida Constitution. The proposed amendment ostensibly amends Article X, Section 7, Florida Constitution. However, by authorizing the legislature to locate a single riverboat casino in five additional counties, the proposed amendment authorizes five future special laws, and thereby affects Article III, Section 10, Florida Constitution.

Moreover, to the extent that the proposed amendment allocates casinos among pari-mutuel permit holders and specifically named counties, it actually performs the function of a special law. In particular, the requirement that a casino be placed in Miami Beach's South Pointe Redevelopment Area inures to the benefit of a few well connected private interests. Mirage Resorts Incorporated has formed a joint venture with the Portofino Group to build a \$500 million luxury hotel-casino on property owned by the Portofino

Group and located in the South Pointe area. The venture is conditioned on the passage of "satisfactory enabling legislation". The proposed amendment thus makes a private bill part of the State constitution.

The proposed amendment embodies the sort of "log-rolling" that the single subject requirement is designed to foreclose. Voters who favor casino gaming as an adjunct to existing, regulated pari-mutuel gaming facilities might not approve of establishing new, free-standing gaming facilities. Voters who favor the establishment of casinos in one geographic area are force to accept them in other areas. Voters who approve of river boat gambling must accept land based casinos (and vice versa). Finally, the initiative forces voters to accept both casinos of unlimited sizes and casinos of limited size.

The ballot title and summary for the proposed amendment violate the "fair notice" requirements of Section 101.161, Florida Statutes (1993). The summary does not inform the voter that a total of three casinos are authorized in Dade County, nor that one of the two authorized for Miami Beach must be located in the South Pointe Redevelopment Area. It also does not inform the voters that the provision for a South Pointe casino will inure to the exclusive benefit of Mirage Resorts Incorporated and the Portofino Group.

While stating that casinos are limited, the ballot title -- "Limited Casinos" -- does not reveal how they are limited. The summary speaks in terms of limiting the number of casinos as well

as the size of pari-mutuel and riverboat casinos. However, it does not explain the purpose of these limits and state what they are. It therefore fails to give the voter enough information to make an informed decision. Use of the term "limited" also misleads voters into believing that the undisclosed limits will keep Florida's gaming industry small relative to other states; and, that by preventing casino gaming from growing out of control, they will protect other attractions such as pari-mutuel events. This simply is not the case.

For all practical purposes, the proposed amendment authorizes unlimited casino gaming. With authorization for approximately 50 facilities, Florida would have more casinos than any state other than Nevada (196). Of all the casinos located in Atlantic City, New Jersey, only three exceed the proposed amendment's 75,000 square foot limit for pari-mutuel casinos. This limit also would place Florida's pari-mutuel casinos on a par with such mammoth Las Vegas casinos as Treasure Island, Bally's, Golden Nugget, the Mirage and the Luxor. Similarly, Florida's riverboat casinos, at 40,000 square feet, would be among the largest in the country.

Assuming that the 12 county specific casinos average 75,000 square feet each, i.e. the same as "limited-sized" pari-mutuel casinos, Florida will have a total of 3.725 million square feet of gaming space. This dwarfs Atlantic City's total of approximately 854,000 square feet and is only a hair's breadth away from the approximately 4 million square foot total (excluding space devoted to bingo and bookmaking) for the entire state of Nevada.

The ballot summary is ambiguous and misleading insofar as it states that casinos are authorized "with existing and operating pari-mutuel facilities." It is unclear whether the term "with" means "on the same premises" or merely "nearby". If the latter, the question becomes how far removed from the actual pari-mutuel facility may a casino be and still be "with" the pari-mutuel facility. The voter thus has no basis from which to judge the true impact of permitting casinos "with" pari-mutuel facilities.

The phrase "with existing and operating pari-mutuel facilities" gives the impression that casino gaming will exist in conjunction with pari-mutuel events. However, nothing in the amendment limits casino operations to days on which pari-mutuel events are staged. Furthermore, once the state issues a pari-mutuel casino permit, nothing in the amendment prevents the facility from ceasing pari-mutuel activities altogether.

Finally, the summary gives the impression that there will be only one casino "with" each pari-mutuel facility. Because some pari-mutuel facilities host more than one pari-mutuel permit holders, the proposed amendment may, in fact, authorize the issuance of more than one pari-mutuel casino permit, and hence, the construction of more than one casino, per pari-mutuel facility.

## ARGUMENT

### I. THE PROPOSED AMENDMENT VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, § 3 OF THE FLORIDA CONSTITUTION

#### A. The Proposed Amendment Alters or Performs the Functions of Multiple Branches of Government

Article XI, § 3 of the Florida Constitution authorizes changes to the Constitution by initiative petition and provides that:

[t]he power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, **provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith.** (emphasis added).

Of the four methods provided in Article XI for changing the constitution, the initiative process of Section 3 is the only one that does not provide for a filtering legislative process. The single subject provision thus acts as a rule of restraint that protects Florida's organic law from "multiple precipitous changes." Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276, S277 (May 26, 1994); Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984). It directs the electorate's attention to a change regarding one specific subject, and thereby eliminates the possibility that voters will be placed in the predicament of "having to accept part of an initiative proposal they oppose in order to obtain a change in the constitution which they support." Fine, 448 So. 2d at 988.

To comply with the single subject requirement, "the proposed amendment must manifest a 'logical and natural oneness of purpose.'" Save Our Everglades, 19 Fla. L. Weekly at S277 (quoting

Fine 448 So. 2d at 990). The test is functional, and looks to whether the proposed amendment "substantially alter[s] or perform[s] the functions of multiple branches." Id. (emphasis in original). See also Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984) ("where a proposed amendment changes more than one government function, it is clearly multi-subject"). An initiative also violates the single subject rule when it alters or performs the function of both state and local governments or encroaches on local home rule powers. Advisory Opinion to the Attorney General - - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994).

The Proposition for Limited Casinos not only alters and performs the functions of multiple branches of the state government, it also encroaches on municipal and county home rule powers. Section 2 of the initiative begins by authorizing the operation of privately owned gaming casinos. This provision "implements a public policy decision of statewide significance and thus performs an essentially legislative function." Save Our Everglades Trust Fund, 19 Fla. L. Weekly at S277.

At the same time, by dictating the locations of authorized casinos, and, in particular, by dictating that two of the three casinos authorized in Dade County must be within the city limits of Miami Beach, and that one of these two must be located within the South Pointe Redevelopment Area, the proposed amendment encroaches on local home rule powers. It also nullifies the ability of the

counties, through the enactment of land use and zoning ordinances, to control the use of land within their respective jurisdictions.

It is axiomatic that the power to set zoning policy ultimately reposes in the local government. Gulf & Eastern Development Corp. v. Fort Lauderdale, 354 So. 2d 57, 59 (Fla. 1978); Miami Beach v. Greater Miami Hebrew Academy, 108 So. 2d 50, 52 (Fla. 3d DCA 1958). The exercise of this power involves much more than mere classification.

Among other things it involves consideration of future growth and development, adequacy of drainage and storm sewers, public streets, pedestrian walkways, density of population and many other factors which are peculiarly within the legislative competence [of the local government].

Miami Beach v. Weiss, 217 So. 2d 836, 837-38 (Fla. 1969).

Ultimately, it is the power of the local government to decide what is good and bad for the people of the community. Hebrew Academy, 108 So. 2d at 52. The proposed amendment usurps this power.

For example, a pari-mutuel facility that is too small under a local comprehensive plan to warrant addition of a casino is nevertheless constitutionally eligible for the addition. Moreover, by submitting the authorization of site specific casinos to a vote of the state-wide electorate, the proposed amendment has the effect of allowing the citizens of populous, pro-casino counties to decide what types of facilities will be required or permitted in other counties.

By authorizing casinos in specific locations, the proposed amendment would seem to obviate the need for the Administration

Commission to conduct any type of Development of Regional Impact Review. See § 380.06, Fla. Stat. (1993); Fla. Admin. Code, Ch. 28-24. The proposed amendment thus would appear to directly "impinge on the powers of existing agencies," Save Our Everglades Trust Fund, 19 Fla. L. Weekly at S277-78, thereby altering the nature and scope of their executive, regulatory authority.

To the extent that it that casinos are required to be located at specific sites around the state, the proposed amendment makes an essentially judicial determination that the location of such casinos does not adversely affect the rights of local property owners or create a nuisance. Additionally, under both Supreme Court case law and the current Comprehensive Plan Law, citizens who might be affected by development of the magnitude authorized by the proposed amendment would have recourse to local quasi-judicial administrative proceedings, and eventually, to the state court system. See Josephson v. Autrey, 96 So. 2d 784, 787 (Fla. 1957); Hartnett v. Austin, 93 So. 2d 86, 90 (Fla. 1956); § 163.3215, Fla. Stat. (1993). By usurping home rule powers and preempting the local review stage of this process, the proposed amendment also has the effect of cutting off a judicial remedy that is otherwise ultimately available to parties involved in land use disputes. The proposed amendment thus performs a judicial review function.

**B. The Proposed Amendment Affects Multiple Sections of the Constitution.**



How an initiative affects other articles or sections of the constitution also is an appropriate factor to be considered in determining whether the initiative addresses more than one subject. Fine, 448 So. 2d at 990. The proposed amendment ostensibly amends Article X, Section 7, Florida Constitution. However, by authorizing the legislature to locate a single riverboat casino in five additional counties, the proposed amendment authorizes five future special laws.

In pertinent part, Article III, Section 10, Florida Constitution provides that

[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law . . . is conditioned to become effective only upon approval by vote of the electors of the area effected. (emphasis added).

Section 11.02, Florida Statutes requires that notice of special laws be published in newspapers of local circulation at least 30 days before the introduction of the proposed law in the legislature. Section 11.03, Florida Statutes requires proof of publication of notice.

The proposed amendment provides neither for notice, nor for approval by local voters of the legislature's riverboat casino allocations. Rather, the proposed amendment can be read to authorize the legislature, without more, simply to pass a law locating the individual riverboats. It therefore appears to create an exception to the requirements of Article III, Section 10.

Insofar as it allocates casinos among pari-mutuel permit holders and specifically named counties, the proposed amendment actually performs the function of a special law. In particular, the requirement that a casino be placed in Miami Beach's South Pointe Redevelopment Area inures to the benefit of a few well connected private interests. Mirage Resorts Incorporated has formed a joint venture with the Portofino Group to build a \$500 million luxury hotel-casino on property owned by the Portofino Group and located in the South Pointe area. In its annual report, Mirage characterized this property as the "best potential casino site in the South Pointe area." See Mirage Resorts Incorporated Annual Report and Form 10-K 1994 (copy attached at Appendix, tab 1). See also Mirage Resorts Incorporated Quarterly Report for the Quarterly Period Ending March 31, 1994 (copy attached at Appendix, tab 2); Mirage Resorts Incorporated, Press Release, Miami April 6, 1994 (copy attached at Appendix, tab 3).

Mirage's performance under this agreement is conditioned on the passage of "satisfactory enabling legislation". See Quarterly Report, Appendix at tab 2. The Mirage SEC filings do not specifically mention the Proposition for Limited Casinos initiative; however, it is the only initiative to which it has contributed significant funds. To be precise, Mirage and the Portofino Group have contributed \$685,000 of the approximately \$2.75 million Proposition for Limited Casinos, Inc. has raised. See Proposition for Limited Casinos Inc., Contributors List,

February 2, 1994 through May 15, 1994; May 16, 1994 through June 20, 1994 (copy attached at Appendix, tab 4).<sup>1</sup> The present initiative also is the only one that guarantees the success of the Mirage/Portofino venture. The proposed amendment thus circumvents the requirements of Article III, Section 10, Florida Constitution by making a private bill a part of the State constitution.

**C. The Proposed Amendment Improperly Embodies impermissible "log rolling"**

The single subject limitation also guards against "log rolling". Save Our Everglades Trust Fund, 19 Fla. L. Weekly at S277. This is a process in which "several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." Id. The evil of log rolling lies in the fact that it

does not give the people an opportunity to express the approval or disapproval severally as to each major change suggested; rather, does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions, who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder.

Id. (quoting Adams v. Gunter, 238 So. 2d 824, 831 (Fla. 1970)).  
For instance, in the recent case of Restricts Laws related to

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<sup>1</sup>The contributions list shows total contributions of \$2,755,487.00 through May 15, 1994. Of this amount, Mirage Resorts contributed \$287,500.00. Golden Nugget, a Mirage subsidiary, contributed a total of \$225,000.00. The Portofino Group donated \$35,000.00 in its own name, while Thomas Kramer, Portofino's owner, contributed \$137,500.00.

Discrimination, 632 So. 2d at 1020, this Court struck down an initiative on the grounds that

it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions. . . . Requiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single subject limitation.

The Proposition for Limited Casinos initiative embodies just this sort of log rolling. Voters who favor casino gaming as an adjunct to existing, regulated pari-mutuel gambling facilities might not approve of establishing new, free-standing gaming facilities. As the Attorney General points out in his petition, the initiative also involves geographic log rolling in that voters who favor the establishment of casinos in one geographic area are force to accept them in other areas. Voters who approve of river boat gambling must accept land based casinos. Finally, the initiative forces voters to accept both casinos of unlimited sizes and casinos of limited size. Forcing these "all or nothing" choices on the voters violates the single subject rule.

## II. THE BALLOT TITLE AND SUMMARY ARE LEGALLY INSUFFICIENT

Section 101.161(1), Florida Statutes, requires that the ballot title and summary for a proposed constitutional amendment "state in

clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982).<sup>2</sup> The critical issue is "fair notice" Restricts Laws Related to Discrimination, 632 So. 2d at 1021. "What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." Askew, 421 So. 2d 151, 155 (quoting Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954)). Thus, where the ballot summary fails to disclose that the amendment will have significant collateral effects, it is invalid. Restricts Laws Related to Discrimination, 632 So. 2d at 1023 (Kogan, J. concurring).

The ballot summary also will be defective if it omits material facts necessary to make the summary not misleading. Askew, 421 So. 2d at 158 (Ehrlich, J., concurring). In Askew, for instance, this Court held defective a ballot summary that described an amendment as granting citizens greater protection against conflicts of interest in government without revealing that it also removed an established constitutional protection. 421 So. 2d at 155-56. As

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<sup>2</sup>In pertinent part, Section 101.161(1) provides:  
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 . . . . 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 Court noted, the problem lay not with what the summary said, but with what it didn't say. Id. at 156.

Similarly, in Smith v. American Airlines, 606 So. 2d 618, 620-21 (Fla. 1992), the Court invalidated a proposed ballot summary concerning taxation of leaseholds of government-owned property because it failed to explain that post 1968 leases would be taxed at a different rate than pre-1968 leases. And, in Restricts Laws Related to Discrimination, supra, the Court held that the ballot summary describing a proposed amendment restricting laws related to discrimination was invalid because it omitted any mention of the "myriad of laws, rules and regulations" affected by the amendment, and because it failed to state that the proposed amendment would curtail the authority of government entities. 632 So. 2d at \_\_. "Instead, the summary merely states that the proposed amendment "restricts laws related to discrimination." Id.

**A. The ballot summary omits material information necessary for voters to make an informed decision regarding the proposed amendment**

The ballot title and summary in this case not only omit material information, but also are misleading in other significant respects. Upon comparing the ballot summary with the text of the proposed amendment, one immediately is struck by the omission of information regarding the casinos authorized in Dade County. The summary does not inform the voter that a total of three casinos are authorized in Dade County, nor that one of the two authorized for Miami Beach must be located in the South Pointe Redevelopment Area.

It also does not inform the voters that the provision for a South Pointe casino will inure to the exclusive benefit of Mirage Resorts Incorporated and the Portofino Group.

This information is not immaterial. A recent Mason-Dixon poll reveals that sixty-six percent of those polled responded that they would be less likely to favor an amendment that gave preferential treatment to heavily populated counties. See Louis Lavelle, Poll Shows Casino Vote No Sure Bet, The Tampa Tribune, Thursday, May 26, 1994, p. A1 (copy attached at Appendix, tab 5). Seventy-nine percent of respondents said they would be less likely to vote for a proposal that "seemed designed to benefit the owners of a specific piece of property in Miami Beach". Id. C. Patrick Roberts, the chairman of Proposition for Limited Casinos, Inc., has not challenged these findings and admits that they are consistent with the findings of his own organization. John Kennedy, Support for Casinos Falters in New Survey, The Orlando Sentinel, Thursday, May 26, 1994, p. A1, A11 (copy attached at Appendix, tab 6). The failure to provide information regarding the placement of casinos in Dade county thus deprives the voters of facts necessary to an informed decision regarding the proposed amendment.

**B. Use of the Word "Limited" in the ballot title is ambiguous and misleading**

While stating that casinos are limited, the ballot title -- "Limited Casinos" -- does not reveal how they are limited. In this context, "limited" could refer to the size of casinos; but, this is only partially true. Similarly, it might be read to refer to the

number of casinos. Again, this is only partially true. "Limited" also could mean that the purpose of the proposed amendment is to limit existing gambling, when, in fact, the initiative authorizes casino gaming for the first time.

"Limited" also might be read as referring to the number or types of games permitted. For instance, voters reading the title reasonably could believe that the amendment limits casinos to running certain types of games, i.e. only electronic games or only table games such as blackjack and craps. The proposed amendment, however, imposes no such limits. In short, the ballot title is meaningless.

**C. Use of the word "limited" in the ballot summary is ambiguous and misleading.**

The word "limited" is used even less precisely in the ballot summary. The summary speaks in terms of limiting the number of casinos as well as the size of pari-mutuel and riverboat casinos. Although not expressly stated, the clear implication is that limits serve some useful purpose. One such goal might be to counterbalance the evils that many people believe will result from legalized gambling. In other words, the message is "limits protect".

The ballot summary thus invites the voter to make a subjective evaluation both as to the truth of this general principal, and as to whether the proposed amendment will achieve its goal. The voter



must decide: is limited casino gaming preferable to unlimited casino gaming, or to no casino gaming at all.

If the voter is to make these assessments, he or she must know what limits are being imposed. The summary, however, fails to tell the voter how many casinos may be authorized under the amendment. It also omits any mention of the size limits imposed on river boat and pari-mutuel casinos. Nor does it inform voters that river boat and pari-mutuel casinos will be limited to different sizes.

Insofar as the use of the term "limited" asks the voter to make the above described evaluation, it also invites a comparison of the status quo to be achieved in Florida with the situation in other states that allow casino gaming. Use of the term limited thus appears to be designed to give the impression that these undisclosed limits will keep Florida's gaming industry small relative to other states; and, that by preventing casino gaming from growing out of control, they will protect other attractions such as pari-mutuel events. This simply is not the case.

For all practical purposes, the proposed amendment authorizes unlimited casino gaming. With ostensible authorization for approximately 50 facilities, Florida would have more casinos than any state other than Nevada (196). See State of Nevada Gaming Control Board, Listing of Financial Statements, Square Footage, Statewide, (1993) (copy attached at Appendix, tab 7).<sup>3</sup> Of all the

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<sup>3</sup>Section 2 of the initiative provides for twelve county specific casinos plus five river boat casinos. In addition, according to the Department of Business Regulation, there are 35 pari-mutuel permit holders in 18 counties. However, as discussed

casinos located in Atlantic City, New Jersey, only three exceed the proposed amendment's 75,000 square foot limit for pari-mutuel casinos. See Casino Chronicle, vol. 11, no. 46, May 2, 1994, p. 1. (copy attached at Appendix, tab 8). This limit also would place Florida's pari-mutuel casinos on a par with such large Las Vegas casinos as Treasure Island (75,000 sq. ft. of gaming space), Bally's (56,000 sq. ft.), Golden Nugget (38,000 sq. ft.), the Mirage (95,500 sq. ft.) and the Luxor (100,000 sq. ft.). See Bally Manufacturing Corporation Annual Report and Form 10-K, 1993 (copy attached at Appendix, tab 9); Standard NYSE Stock Reports, Vol. 60, No. 243, Sec. 16, December 20, 1993 (copy attached at Appendix, tab 10); Standard NYSE Stock Reports, Vol. 60, No. 239, Sec. 24, December 14, 1994 (copy attached at Appendix, tab 11).<sup>4</sup>

In a June 1993 report assessing the investment potential of Grand Casinos, Inc., the securities company, Donaldson, Lufkin & Jenrette made a comparison of other riverboat and dockside casinos. Donaldson, Lufkin & Jenrette, Company Analysis, Grand Casinos, June 23, 1993 (copy attached at Appendix, tab 12). Of the riverboat facilities surveyed, only one, Casino Magic in Bay St. Louis, Mississippi had over 40,000 feet of casino space. Id. Similarly, Casino America, Inc. which operates three riverboat casinos in

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more fully below under subheading 4, it is not clear either from the ballot summary or from the complete text of the proposed amendment whether there is a limit of one casino per pari-mutuel facility.

<sup>4</sup>It lends some perspective to note that 75,000 square feet is approximately 2 acres.

Mississippi and Louisiana, reports that only its Isle of Capri riverboat casino in Biloxi, with a gaming area of 45,000 square feet, exceeds Florida's 40,000 square foot riverboat casino limit. See Standard OTC Stock Reports, Vol. 80, No. 25, Sec. 10, March 2, 1994 (copy attached at Appendix, tab 13). Its riverboat in Vicksburg, Mississippi has 20,000 square feet of casino space, while its facility in Bossler, Louisiana has a 30,000 square foot casino. Id. In sum, Florida's riverboat casinos, at 40,000 square feet, would be among the largest in the country.

The most startling comparison is of total gaming area. Assuming that the 12 county specific casinos average 75,000 square feet each, i.e. the same as the "limited size" pari-mutuel casinos, Florida will have a total of 3.725 million square feet of gaming space. This dwarfs Atlantic City's total of approximately 854,000 square feet and is only a hair's breadth away from the approximately 4 million square foot total (excluding space devoted to bingo and bookmaking) for the entire state of Nevada. Given that the size of the county specific casinos is not limited, the total gaming space in Florida shortly may exceed that in Nevada.

The supposed enhancement of the pari-mutuel attractions has been one of the framer's prime selling points, and is incorporated into the "statement of intent" they use to promote the amendment. In pertinent part, this statement provides:

[the framers] intent, however, that the grant of a license to operate a casino at a pari-mutuel facility should not be a means of diminishing existing pari-mutuel attractions by allowing existing pari-mutuel permit holders to build and operate casinos which displace their pari-mutuel attractions. Consequently, a size limitation of 75,000 square feet of gaming area has been placed in the amendment, in order to limit the discretion of pari-mutuel permit holders when they establish their casino facilities.

See Proposition for Limited Casinos, Inc., Announcement of Initiative Petition and Statement of Intent, p. 3-4, Appendix at tab 14. Given that the proposed amendment will authorize the placement of some of the largest casinos in the country next to Florida's race tracks and jai alai frontons, this statement can be described only as an affirmative misrepresentation. Moreover, if the ballot summary meets the standards of Section 101.161 and provides meaningful notice of the amendment's contents, one must ask why such propaganda is necessary.

Finally, the term "limited-size" casinos also could mislead voters into believing that the entire facility, including associated, non-gaming facilities such as restaurants and gift shops, would be limited in size. Voters are not informed that only the size of the gaming areas are limited. Associated facilities are not limited in any way.

**D. Describing casinos as being "with" pari-mutuel facilities is ambiguous and misleading**

The ballot summary also is ambiguous and misleading insofar as it states that casinos are authorized "with existing and operating pari-mutuel facilities." It is unclear whether the term "with" means "on the same premises" or merely "nearby". The dictionary defines "with" as a function word used "to indicate combination, accompaniment, presence or addition." Webster's Ninth New Collegiate Dictionary, at p. 1355. It need not necessarily mean "on the same premises". Rather, it reasonably could mean on adjacent property, or across the street, or even nearby. This being the case, the question becomes how far removed from the actual pari-mutuel facility may a casino be and still be "with" the pari-mutuel facility. The summary provides no answer. The voter, therefore, has no basis from which to judge the true impact of permitting casinos "with" pari-mutuel facilities.

The phrase "with existing and operating pari-mutuel facilities" also gives the impression that casino gaming will exist in conjunction with pari-mutuel events. However, nothing in the amendment limits casino operations to days on which pari-mutuel events are staged. Furthermore, once the state issues a pari-mutuel casino permit, nothing in the amendment prevents the facility from ceasing pari-mutuel activities altogether. At that point, the facilities are no longer properly characterized as "pari-mutuel" facilities. Instead, they will be nothing but "casino" facilities.

Use of the language "with existing pari-mutuel facilities" also is misleading in that Section 3 of the proposed amendment provides that the legislature shall implement legislation "to license casinos to pari-mutuel permit holders . . . ." On the other hand, Section 2(3) of the proposed amendment requires only that the facility have conducted one pari-mutuel meet in each of the two immediately preceding twelve month periods.

It is helpful here to draw a distinction between the owner of a pari-mutuel facility, i.e. the race track or fronton itself, and the holder of a permit to conduct a pari-mutuel event. They are not necessarily one and the same. See Section 550.054(3)(e), Fla. Stat. (1993). Reading the summary, voters are lead to believe that pari-mutuel casino permits will be issued to pari-mutuel facilities. In fact, it appears that they will be issued to pari-mutuel permit holders. It therefore is unclear from the summary who will be authorized to operate the pari-mutuel casinos. This is clearly material information necessary to an informed vote on the issue of authorizing pari-mutuel casino gaming.

This information takes on added significance when it is realized that some pari-mutuel facilities host more than one pari-mutuel permit holder. Thus, the proposed amendment may, in fact, authorize the issuance of more than one pari-mutuel casino permit, and hence, the construction of more than one casino, per pari-mutuel facility. This is not apparent from the summary.

### CONCLUSION

From the foregoing it is clear that the Proposition for Limited Casinos initiative violates the legal requirements of Article XI, Section 3, Florida Constitution, and Section 101.106, Florida Statutes (1993). The initiative process simply is not the proper mechanism for enacting the type of detailed special interest legislation embodied by the proposed amendment. An initiative properly addressed to the casino gaming issue simply would make the policy decision of legalizing casino gaming and leave the details of implementation to the state legislative process or, as in the case of the Proposition for County Choice Gaming, to the local legislative process. Accordingly, Limited Casinos must be stricken from the ballot.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Brief was mailed United States Mail postage paid this 6th day of July, 1994 to: Attorney General Robert A. Butterworth, Office of Attorney General PL01, The Capitol, Tallahassee, FL 32399-1050, Jim Smith, Secretary of State, Department of State, LL10, The Capitol, Tallahassee, FL, 32399-0250; Mr. Pat Roberts c/o Arthur England, Greenberg Traurig, 111 S. Monroe, Tallahassee, FL 32301; Arthur England, Esquire, Greenberg Traurig, 111 S. Monroe, Tallahassee, FL 32301.

BY:   
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