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IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,886

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: LIMITED CASINOS

ON REQUEST OF THE ATTORNEY GENERAL FOR AN ADVISORY OPINION
ON THE VALIDITY OF AN INITIATIVE PETITION CIRCULATED PURSUANT TO
ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION,

INITIAL BRIEF OF MR. BILL SIMS, AMICUS CURIAE
OPPOSING THE LIMITED CASINOS INITIATIVE

RANDAL H. DREW, ESQUIRE
POST OFFICE BOX 270
JACKSONVILLE, FLORIDA 32202
(904) 396-3202

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STATEMENT OF THE CASE AND FACTS

On June 3, 1994, the Secretary of State, Jim Smith, submitted to the Attorney General, Robert A. Butterworth, as required by Section 15.21, Florida Statutes, an initiative petition seeking to amend Article X, Section 7 of the Florida Constitution and thereby authorize and direct the placement of casinos within the State of Florida. [A.1]. The full text of the proposed constitutional amendment and the title and summary provides:

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 each 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, two of which shall be within the present boundary of the city of Miami Beach -- with one of those being in the South Pointe Redevelopment Area -- and the third facility shall be outside the present boundary of the City of Miami Beach; 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 pari-mutuel 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 (1), (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.

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-mutuel facilities; and if authorized by the 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.

[A. 1].

Pursuant to Article IV, Section 10, of the Florida Constitution and Section 16.061 of the Florida Statutes, the Attorney General requested the Florida Supreme Court to issue an advisory opinion regarding the validity of the initiative petition proposed by Proposition For Limited Casinos, Inc. In his request to the Florida Supreme Court, the Attorney General expressed grave concerns regarding whether the initiative petition complies with Section 101.161, Florida Statutes. [A. 4-6]. The Attorney General concluded the title and summary

are not clear and unambiguous and did not give the voters fair notice of the purpose of the amendment and noted several significant areas of concern. Rather than limiting casinos, the proposed amendment would authorize "nearly fifty casinos in as many as twenty-four counties"; does not seek to limit casinos but rather would, for the first time, authorize the operation of casinos; fails to inform the voters that one of the two casinos located in Miami Beach must be in the South Pointe Redevelopment Area [A. 5]; and fails to disclose the location of the present pari-mutuel facilities and therefore misstates the number of total casinos authorized within the specified counties [A. 5-6].

The Attorney General expressed equal concern over whether the proposed amendment complies with the single-subject requirement of Article XI, Section 3 of the Florida Constitution. In that regard, the Attorney General suggested three issues for the Court's review:

[W]hether the proposed amendment, which requires voters to accept or reject all of the specified locations at which casinos are authorized, may constitute a form of "logrolling", in that a voter who may favor casinos in one geographic area would be forced to accept casinos in the other specified areas.

[W]hether the proposed amendment, by specifying the location of most of the casinos authorized therein, encroaches upon the powers of local and state government by substantially preempting the regulatory or land use functions of both state and local government.

[W]hether the proposed amendment by mandating the location of casinos violates single subject by encroaching upon the powers of both state and local government.

[A. 6-8].

The Florida Supreme Court issued its Interlocutory Order on June 27, 1994 ordering all interested parties to file their briefs on or before July 6, 1994. Mr. Bill Sims, through his

undersigned counsel, files this amicus curiae brief. Mr. Sims is a resident of the State of Florida and has been very involved with the resort and tourism industries in Florida.

SUMMARY OF ARGUMENT

The initiative for constitutional amendment proposed by the Proposition For Limited Casinos, Inc. fails to satisfy the requirements of Section 101.161, Florida Statutes in that the title is misleading and the summary is so ambiguous as to fail to provide the voter with fair notice of the purpose and effect of the proposed amendment. The title of the initiative is designed to mislead the voter into believing that the amendment would in some way limit casinos. Yet casinos are not presently authorized and the measure would authorize in excess of fifty casinos. The chief purpose the proposed amendment is not to "limit" casinos, as the plain meaning of its title would connote, but rather to authorize numerous casinos throughout the State.

The summary provided within the Limited Casinos initiative is so ambiguous and broad as to leave the voter confused or mislead as to the purpose and effect of the proposed amendment. The summary fails to define the terms "with each pari-mutuel" and "riverboat casinos", each of which materially affects the voters' ability to comprehend the effect of the amendment. For example, although the summary states that only one casino would be authorized in Duval County, at least two casinos would actually be authorized when the effect of the pari-mutuel casinos is included. Moreover, by failing to advise the voter where the pari-mutuel facilities are located, and how many permit holders are hosted by the respective

facilities, the voter can not possibly determine how many casinos would be authorized in his county and whether his county is eligible for "riverboat casinos." The summary, accordingly, fails to advise the voters of the "true meaning, and ramifications" of the amendment as this Court required in Askew v. Firestone.

The initiative has a multiplicity of purposes including authorizing casinos, imposing taxes, creating licenses, regulating the created industry, locating the sites for casinos within the state, and determining a matter of great public significance. Each of these functions would encroach upon the executive, legislative and local government home-rule powers. For example, the initiative would perform several classic legislative functions, including taxing the casinos and determining a public policy matter of great significance - the authorization of casinos. In addition, the initiative fails to disclose the extent it affects the constitution.

The greatest of the ills of the Limited Casinos, however, is the fact that it constitutes a classic example of logrolling. The Limited Casinos' initiative combines the interests of multiple casino and gambling interest groups into a proposal that authorizes casino gambling in pari-mutuel facilities, gaming casinos, and riverboat casinos. The proposal has been worded in such a manner as to imply on the one hand that casinos are being limited, regulated, and taxed and on the other hand authorizes great numbers of casinos. Through its deceptive title and inaccurate summary, the initiative seeks to attract the support of all interested groups as well as those unsuspecting voters who believe the initiative does what its title suggests - limits casinos. The proposal thus presents the worst possible example of logrolling. Moreover, the initiative requires the voter to cast a single "yes" or "no" vote in response to an amendment that raises numerous issues and performs numerous functions.

ARGUMENT

I. THE BALLOT TITLE, "LIMITED CASINOS", AND THE SUMMARY ARE MISLEADING AND DO NOT GIVE THE VOTERS FAIR NOTICE OF THE PROPOSED AMENDMENT'S PURPOSE.

Florida's Constitution reserves to the people the power to propose the revision or amendment of any portion or portions of the Constitution by initiative. Art. XI, § 3, Fla. Const. Section 101.161, Florida Statutes, prescribes the requirements of any such initiative and requires

[w]henver a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The substance of the amendment . . . 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.

§101.161, Fla. Stat. (1993). This Court has construed the requirements of Article XI, Section 3, Florida Constitution and Section 101.161, Florida Statutes on numerous occasions and the legal requirements are well settled. See, e.g., In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276 (Fla. May 26, 1994); In re Advisory Opinion to the Attorney General --Restricts Laws Relating to Discrimination, 632 So.2d 1018 (Fla. 1994); Evans v. Firestone, 457 So.2d 1351 (Fla. 1984); and Fine v. Firestone, 448 So.2d 984 (Fla. 1984). Section 101.161, Florida Statutes, requires that 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). "This is so the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Askew at 155. The purpose of the requirement is "to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew at 156.

A. THE TITLE, "LIMITED CASINOS", IS PATENTLY MISLEADING AND DOES NOT FAIRLY APPRISE THE VOTERS OF THE PROPOSED AMENDMENT'S PURPOSE

The ballot title "LIMITED CASINOS" is patently misleading. Casinos are not presently authorized within the State of Florida. The chief purpose of the proposed amendment is not to limit casinos, which do not presently exist, but rather to authorize casinos. In fact, the proposed amendment would authorize a casino to be operated within each pari-mutuel facility.¹ In addition to the casinos authorized at each pari-mutuel facility,

¹ The proposed amendment would authorize a casino within 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." [A.1]. The Attorney General has been advised by the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation that "35 active permit holders are located within the following counties: Brevard, Broward, Clay, Dade, Duval, Escambia, Hillsborough, Jefferson, Lee, Marion, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, Seminole, Volusia, and Washington." [A. 5, FN 1]. According to the Attorney General several of these pari-mutuel facilities "host more than one permit holder" and some of the "permit holders hold non-wagering races". [A. 5, FN 2]. Therefore, the total number of casinos authorized by the proposed amendment at pari-mutuel facilities can not be determined as the qualifying language contained within the proposed amendment does not define the terms "pari-mutuel facility" or "pari-mutuel meet". Section 3 of the proposed amendment requires the legislature to "license casinos to pari-mutuel permit holders" and thus we must assume the amendment would authorize all permit holders to operate a gaming casino.

the proposed amendment would also authorize twelve (12) casinos in designated counties (including one designated within a specific development within Dade County) and five (5) riverboat casinos. [A.1]. In total, the proposed amendment would authorize over fifty-two casinos state-wide².

As noted by the Attorney General, the "term 'limited' is subjective and could, in the context of this proposal, potentially mislead voters as to the scope and purpose of the amendment's impact." [A. 4]. Although the voters "are expected to inform themselves about the details of a proposed amendment, the ballot title and summary are expected to be 'accurate and informative'." In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So.2d 1018, 1021 (Fla. 1994) (quoting Smith v. American Airlines, 606 So.2d 618, 621 (Fla 1992)). In the case of the proposed amendment, the ballot title is completely misleading in that the purpose of the amendment is not to limit casinos, but rather to authorize over fifty-two casinos. As this Court stated in Evans v. Firestone, 457 So.2d 1351, 1355 (Fla. 1984), "the voter must be told clearly and unambiguously . . . what the amendment does." In the instant case, voters could reasonably assume that an initiative titled "LIMITED CASINOS" would seek to limit the existence or scope of already existing casinos. In fact, the proposed amendment's chief purpose is the

² The Attorney General has been advised by the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation that "35 active permit holders are located within the following counties: Brevard, Broward, Clay, Dade, Duval, Escambia, Hillsborough, Jefferson, Lee, Marion, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, Seminole, Volusia, and Washington." [A. 5, FN 1]. Assuming that each permit holder would be authorized to establish a casino, the proposed amendment would authorize 35 casinos within the pari-mutuels, twelve casinos within designated counties, and five riverboat casinos. This would equate to fifty-two casinos within Florida.

antithesis of the title's plain meaning - it seeks to authorize a great number of casinos in designated locations within the state where none are currently authorized. The title, "LIMITED CASINOS", fails to satisfy the requirements of Section 101.161, Florida Statutes as it is misleading and does not fairly apprise the voters of the proposed amendment's purpose.

**B. THE SUMMARY IS NOT CLEAR AND UNAMBIGUOUS
AND DOES NOT GIVE THE VOTERS FAIR NOTICE OF THE
PROPOSED AMENDMENT'S PURPOSE AND SCOPE.**

Contrary to the plain meaning of the proposed ballot title, "LIMITED CASINOS", the summary reveals that the proposed amendment would not "limit" but rather would authorize casinos in Florida. The proposed amendment purports to authorize "a limited number of state regulated, privately owned gaming casinos." [A. 1]. Although the summary is not required to explain every ramification of the proposed amendment, see, Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 228 (Fla. 1991), it must give fair notice of the purpose and effect of the amendment. The summary must "state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So.2d 151, 154-55 (Fla. 1982). "This is so the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Askew at 155. The purpose of the requirement is "to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew at 156.

Although the summary purports to define the counties in which casinos would be authorized, the summary fails to advise the voter of how many total casinos would be authorized in the counties after factoring in the pari-mutuel locations. For example, although the summary provides that one casino would be authorized within Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach, and Pineallas counties, at least two casinos would actually be authorized by the proposed amendment in each county (not including Orange County) after factoring in the pari-mutuel locations. In Dade County, which has multiple pari-mutuel facilities, at least ten (10) casinos would be authorized.

Moreover, by failing to advise the voter of where and how many pari-mutuel facilities are presently located within the state, the summary fails to advise where the riverboat casinos would be located. The summary states that the legislature "shall not approve more than one riverboat casino in any one county," again conveying the false impression that casinos would be limited. In fact, riverboat casinos could be authorized in counties that have pari-mutuel facilities. Thus, the summary, though it speaks of "limited" casinos would authorize far greater numbers of casinos within the various counties than can be reasonably discerned from the text of the summary.

Apart from its failure to fairly apprise the voter of the purpose and effect of the amendment, the summary is ambiguous in several significant regards. The proposed amendment states that gaming casinos are authorized "with each pari-mutuel facility." [A.1]. The text, however, does not in any way limit the number of such casinos which may be authorized "with" the pari-mutuels, and completely fails to define the term "with" within the context it is being used. It logically follows that a casino may be "with" a pari-mutuel if

located within the existing building, on the existing grounds, in a separate facility on the existing grounds, in a separate facility off the existing grounds, in multiple facilities on of off the present facilities of a pari-mutuel.

The only limitation provided within the text of the summary is that "no casino located with a pari-mutuel facility shall have a gaming area in excess of 75,000 square feet." [A. 1]. This language is not only ambiguous, but it may give rise to an even greater number of actual gaming casinos than implied. For instance, Section 3 mandates the legislature, in part, to "license casinos to pari-mutuel permit holders." [A.1]. As there are several pari-mutuel facilities which are host to multiple permit holders, See supra note 1, it would logically follow that each permit holder would be entitled to develop a casino at the facility. This would create certain pari-mutuel facilities which house multiple casinos. If each such casino encompassed the allowed 75,000 square feet, the facilities would grow geometrically beyond any voter's reasonable expectations.

The Attorney General in his request for an advisory opinion from this Court noted that the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation noted that several pari-mutuel facilities host more than one permit holder. Because the summary fails to define "pari-mutuel facility", the proposed amendment must be read to confer casinos upon permit holders, thus permitting multiple casinos within an existing facility or location³. In addition, it was noted that several of the permit holders hold

³ A property right can not be conferred upon an inanimate object such as a "pari-mutuel facility", therefore we must assume that the rights are actually being conferred upon the permit holders. This assumption is supported by the requirement imposed upon the legislature, by Section 3 of the proposed amendment, to "license casinos to pari-mutuel permit holders." [A.1]. As the Attorney General has been advised that several of the facilities "host

non-wagering races. The existence of those non-wagering permit holders could produce two outcomes - neither of which is clear. One, the non-wagering permit holder would also be authorized to operate a casino under the language of the proposed amendment. If so, and the permit holder did not desire to operate a casino, could he sell over the right vested in the casino to another? Two, the non-wagering permit holder would cause the facility to become ineligible for gaming. The language of the ballot summary would permit all these scenarios and thus is patently ambiguous.

The proposed amendment further creates confusion for the voter in its authorization of riverboat casinos. The summary states that the legislature may approve five (5) riverboat casinos. The summary fails to advise the voter what a "riverboat casino" is and how the legislature is to "approve" riverboat casinos. There are essentially two types of "riverboat casinos" - casinos on boats which operate within the water and structures which are constructed to resemble "riverboats" but which are permanently affixed to the land or permanently docked and do not have the ability to navigate the waters. The voter believing that casinos may be operated only on the navigable waterways may come to find a permanent structure built near or in the water. On the other hand, the voter who lives in a county which does not have sufficient navigable waters to support a true riverboat may vote in favor of the proposal believing that a fixed "riverboat casino" may be located on a small lake within the county or even on dry land where there is no proximate body of water, only to learn that the legislature will only approve "riverboat casinos" on fully operational boats which are capable

more than one permit holder, it follows that several gaming casinos could be operated within a single "pari-mutuel facility". The voters, however, would have absolutely no way to make this determination and as the terms remain undefined, the summary is clearly ambiguous.

of and do navigate in sufficient bodies of water. In either event, the voter would be misled and the language within the summary is so ambiguous as to allow either outcome.

The proposed ballot summary must fairly advise the electorate "of the true meaning, and ramifications, of an amendment." Askew at 156. In this instant, the ballot summary is patently ambiguous, uses terms which may make for good marketing but which are problematic to the legal interpretation of our Constitution, would be susceptible of many varying interpretations and will cause great confusion among the voters. This Court has held that it "should [not] be placed in the position of redrafting substantial portions of the constitution by judicial construction." Fine, 448 So.2d 984, 989 (Fla. 1984). The proposed amendment is so ambiguous and broad as to require this Court to engage in such judicial construction.

II. THE PROPOSED AMENDMENT FAILS TO SATISFY THE SINGLE-SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION AND IS A CLASSIC EXAMPLE OF "LOGROLLING"

The Florida Constitution, reserves unto the people the power, through initiative to propose the revision or amendment of any portion(s) of the Constitution, "provided, that any such revision or amendment shall embrace but one subject and matter directly connected therewith." Art. XI, §3, Fla. Const. "This single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276, S277 (Fla. May 26, 1994) (1994 WL 202534, page 3). The single-subject requirement "mandates that the electorate's attention be directed to a change regarding one

specific subject of government to protect against multiple precipitous changes in our state constitution." Fine v. Firestone, 448 So.2d 984, 988 (Fla. 1984). This rule of restraint also protects against "'logrolling,' a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276, S277 (Fla. May 26, 1994) (1994 WL 202534, page 3). Because the constitution is the foundational document that controls the structure of government, this Court has required "strict compliance with the single-subject rule in the initiative process for constitutional change." Fine v. Firestone, 448 So.2d 984 (Fla. 1984).

THE ONENESS OF PURPOSE STANDARD

This Court uses a "oneness of purpose" standard in applying the single-subject limitation to constitutional initiatives. Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). This standard incorporates a "functional" test of whether the proposal affects a function of government as opposed to whether the proposal affects a section of the constitution." Id. In that regard the Court has instructed that "where a proposed amendment changes more than one government function it is clearly multi-subject", Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). In addition, where the proposed amendment performs the functions of different branches of government, it also fails the functional test. Evans at 1354. An initiative fails the functional "oneness of purpose" test when it enfolds "disparate subjects within the cloak of a broad generality", Evans at 1353, and where it "encroaches on municipal home rule powers and on the rule making authority of executive agencies and the judiciary." In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination,

**A. THE LIMITED CASINOS INITIATIVE ALTERS, AFFECTS
OR PERFORMS MULTIPLE GOVERNMENTAL FUNCTIONS
IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT**

The proposed amendment is so ambiguous and broad that its full impact on governmental functions could not possibly be known until the legislature, judiciary, and executive branches of the State government and the various affected local governments are confronted with the task of implementing or regulating the authorized casinos. In several significant areas, however, the proposed amendment would alter, affect, or perform multiple governmental functions in violation of the single-subject requirement.

**1. THE PROPOSED AMENDMENT
ENCROACHES ON HOME-RULE**

The proposed amendment, in addition to authorizing casinos within the state, specifies where such casinos will be located. Specifically, the initiative would authorize gaming casinos "with each pari-mutuel facility", in the "City of Miami Beach", "in the South Pointe Redevelopment Area" (of Miami Beach), and within certain enumerated counties. [A.1]. The initiative would also authorize five (5) "riverboat casinos" in counties other than the enumerated counties (Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach, Pinellas, Broward, and Dade counties). [A.1]. By requiring the placement of the casinos within counties, cities, and even within a specific development, the proposal significantly encroaches upon home-rule powers conferred by Article VIII, section 1 (counties) and section 2 (municipalities), of the Florida Constitution.

The traditional home-rule powers conferred upon the local governments are planning

and zoning, land-use, and environmental protection. In fact, local governments, in conjunction with the Executive Branch agencies are required to develop growth management plans and zoning to control and manage growth and development within the area. Most pari-mutuel locations were established long before such controls were established and at least several of the existing facilities would be doubled in size to accommodate the authorized casinos⁴. The authorization of this type of growth without approval or regulation by the local governments would not only affect, but would totally perform, substantial and traditional home-rule powers. When an initiative so encroaches upon home rule, the measure fails to satisfy the single-purpose requirement of Article XI, section 3, of the Florida Constitution. See, e.g., In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So.2d 1018, 1020 (Fla. 1994).

2. THE PROPOSED AMENDMENT ENCROACHES ON EXECUTIVE RULEMAKING AUTHORITY.

Several Executive Branch agencies, including the Department of Environmental Protection, the Department of Community Affairs, and the Department of Business and Professional Regulation, would be affected by the proposed amendment. The Department of Business and Professional Regulation would be affected because Section 3 of the proposed amendment mandates the legislature to "regulate casinos" and to "license casinos to pari-

⁴ Under the proposed amendment the pari-mutuels would be allowed up to 75,000 square feet of space for the gaming casino. Most of the present pari-mutuel facilities, however, are between 60,000 and 100,000 square feet. The addition of 75,000 square feet for new gaming casinos plus the attendant parking, food, and other support service areas would cause the facilities to more than double in size.

mutuel permit holders and at other authorized facilities." [A.1]. Presumably the legislature, honoring the mandate, would place such responsibilities within the Department of Business and Professional Regulation - which already regulates and licenses the pari-mutuels.

Because the size of the casinos authorized "with" pari-mutuel facilities is fixed within the proposed amendment, the local and executive agencies charged with zoning and planning, and environmental protection responsibilities could be prevented from limiting or prohibiting the use of the property in such a manner. For example, there would exist an extreme conflict between the permit holder who desired to expand his pari-mutuel facility to include the authorized 75,000 square foot gaming casino and the local and executive officials who would decline to permit the construction for environmental reasons. The permit holder would, of course, assert his constitutional right to the development supersedes the rights conferred by the legislature to manage growth and maintain the environment - thereby limiting the power of the agencies to function effectively or at all as relates the casinos. This conflict between the pari-mutuel permit holder's constitutional right to expand the facility for the gaming casino and the home rule and executive agencies' obligations to manage growth and protect the environment would cause this Court to engage in the type of judicial construction the single-subject requirement seeks to avoid.

Where the "initiative performs functions of different branches of government, it clearly fails the functional test for the single-subject limitation". Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). The proposed amendment would perform the function of several agencies within the executive branch, would require the legislative branch to take certain enumerated actions (including a mandate to tax the casinos), and would also perform many of

the functions reserved to the local governments under home-rule or required of the local governments by statutes already enacted by the legislature. The proposed amendment therefore fails to satisfy the single-purpose requirement.

3. THE PROPOSED AMENDMENT IMPROPERLY AFFECTS THE LEGISLATIVE FUNCTIONS.

In addition to the encroachment upon the home rule powers of local government and executive agencies the proposed amendment's mandate of the location and size of the authorized casinos, the proposed amendment specifically mandates the legislature to take several actions with regard to the authorized casinos. The proposed amendment, like that in Fine v. Firestone, invades the province of the legislature by affecting several distinct legislative functions. As in Fine, where the Petitioner contended that all of the provisions dealt with a single matter (in that case government revenue - here the authorization of casinos), the proposed amendment, while it deals with a single broad topic, encompasses several subjects within the province of the legislature.

Section 3 of the proposed amendment mandates three matters; it requires the legislature to pass legislation implementing the casinos, requires the legislature to tax the authorized casinos, and requires the legislature to pass legislation regulating and permitting the casinos. Each of these mandates is a separate and distinct subject within the teaching of Fine. Where an initiative, such as the Limited Casinos initiative, affects several of the legislative functions, there is an impermissible multiplicity of subjects. See Fine v. Firestone, 448 So.2d 984 (Fla. 1984).

This Court recently held, in In re Advisory Opinion to the Attorney General -- Save

Our Everglades Trust Fund, 19 Fla. L. Weekly S276, S277 (Fla. May 26, 1994), that an initiative that "implements a public policy decision of statewide significance . . . thus performs an essentially legislative function." As in Save Our Everglades Trust Fund, the initiative at issue seeks to implement a public policy decision of statewide significance -- statewide casino gambling. As such, the very purpose of the initiative is essentially a legislative function. In addition, the Limited Casinos initiative mandates the levy of a tax upon the authorized casinos. As noted in Save Our Everglades Trust Fund, this function is also a "traditional legislative function." Id. The proposed amendment, like that in Save Our Everglades Trust Fund, also performs an executive function by requiring the regulation and licensing of the casino owners. Thus, the initiative performs the function of several branches of government and therefore violates the single-subject requirement.

**4. THE PROPOSED AMENDMENT AFFECTS ARTICLES
AND PROVISIONS OF THE CONSTITUTION THAT ARE
NOT DISCLOSED TO THE VOTERS.**

Section 3 of the proposed amendment requiring the legislature to impose a tax upon the authorized casinos, affects Articles VII (Finance and Taxation) and X, section 7 (Lotteries), of the constitution. This court, in Fine, held that "an initiative proposal should identify the articles or sections of the constitution substantially affected". Fine at 989. The Limited Casinos initiative fails to identify the affected articles and sections of the constitution and therefore fails to satisfy the fair notice element of the single-subject requirement.

**B. THE PROPOSED AMENDMENT IS A
CLASSIC EXAMPLE OF LOGROLLING**

The single-subject limitation imposed upon initiatives to amend the constitution further protects against "logrolling." Save Our Everglades Trust Fund at S277. Logrolling, occurs when an initiative aggregates "dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage." Fine at 988. The Limited Casinos initiative is a classic example of impermissible logrolling. As such it can not be "cured by application of an over-broad subject title or by virtue of being self-contained." Evans at 1354.

In Save Our Everglades Trust Fund, this Court was confronted with the same type of logrolling utilized in the Limited Casinos' initiative. The Save Our Everglade Trust Fund initiative sought to do essentially two things -- to restore the Everglades and to tax the sugar industry to fund the restoration. In the instant case, the Limited Casinos' initiative combines the interests of multiple casino and gambling interest groups into a proposal that authorizes casino gambling in pari-mutuel facilities, gaming casinos, and riverboat casinos. In addition, the proposal purports to "limit" casinos and to regulate, license, and tax the created industry. The proposal has been worded in such a manner, however, as to imply on the one hand that casinos are being limited, regulated, and taxed and on the other hand the proposal actually authorizes great numbers of casinos to each of the groups interested therein. Through its deceptive title and inaccurate summary, the Limited Casinos' initiative seeks to attract the support of all interested groups as well as those unsuspecting voters who believe the initiative does what its title suggests - limits casinos. The proposal thus presents the worst possible

example of logrolling.

The Limited Casinos' initiative, like the initiative in Restricts Laws Related to Discrimination, also asks the voter to "give one 'yes' or 'no' answer to a proposal that actually asks" multiple questions. Id. at 1020. The Limited Casinos initiative asks the voter to cast a single "yes" or "no" vote in response to numerous questions, including:

1. Whether casinos should be authorized.
2. Whether casinos should be authorized "with" pari-mutuels.
3. Whether riverboat casinos should be authorized.
4. Whether casinos should be authorized within the enumerated counties.
5. Whether two casinos should be located in Miami Beach.
6. Whether one of the two casinos authorized in Miami Beach should be located in the South Pointe Redevelopment Area.
7. Whether Broward County should be authorized two casinos.
8. Whether Dade County should be authorized three casinos, two of which should be located in Miami Beach.
9. Whether casinos located at pari-mutuel facilities should have a gaming area not in excess of 75,000 square feet.
10. Whether "riverboat casinos" should have a gaming area not in excess of 40,000 square feet.
11. Whether the legislature should be required by the constitution to regulate casinos.
12. Whether the legislature should be required by the constitution to tax casinos.

13. Whether the legislature should be required to license casinos to pari-mutuel permit holders and at the other authorized facilities.

As this Court stated in Restricts Laws Related to Discrimination, [r]equiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications . . . defies the purpose of the single-subject limitation. Id. Such logrolling and coupling of distinct issues within a single initiative patently violates the single-purpose limitation.

In Limited Casinos, the voters would be put at an even greater disadvantage because the issues are not readily apparent from a review of the title and ballot summary. In addition, the text of the title and summary are so misleading and ambiguous that a voter may cast his ballot believing he has voted to "limit" casinos, when, in fact, he has voted to authorize casinos when none were authorized before. No interest group should "be given the power to 'sweeten the pot' by obscuring a divisive issue behind separate matters about which there is widespread agreement." In re Advisory Opinion to the Attorney General -- Limited Political Terms, 592 So.2d 225, 232 (Fla. 1991) (Kogan, J. concurring in part, dissenting in part). "When voters are asked to consider a modification to the constitution, they should not be forced to 'accept part of an initiative they oppose in order to obtain a change in the constitution which they support.'" Restricts Laws Related to Discrimination, 632 at 1019-20. As this Court noted in Fine, if "judicial responsibility is to mean anything, [the Court] . . . cannot allow logrolling to occur in the initiative process. Fine at 995.

CONCLUSION

The initiative proposed by Proposition For Limited Casinos, Inc. violates the requirements of Section 101.161, Florida Statutes in that the title of the initiative is patently misleading. Titled "Limited Casinos", the proposed amendment, rather than "limiting" casinos would authorize over fifty-two casinos in Florida. Moreover, the summary is extremely ambiguous and fails to fairly apprise the voters of how many casinos will actually be created and where such casinos would be located. The summary fails to define the phrase "with each pari-mutuel facility" or the term "riverboat casino" which adds further confusion to the issue of where such casinos would be located. As there are currently several pari-mutuel facilities that "host" multiple pari-mutuel permit holders, such facilities would actually encompass multiple casinos within the one pari-mutuel. The ambiguity and broad language of the summary fails to give the voters fair notice of the proposed amendments' purpose, scope, or effect.

The Limited Casinos initiative further fails to satisfy the single-subject requirement of Article XI, Section 3, Florida Constitution. The proposed amendment would perform several discrete legislative functions, including imposing a tax and implements a policy decision of statewide significance. In addition, the amend encroaches upon the home-rule powers reserved to the local governments, would perform regulatory functions of the executive branch agencies, would restrain such agencies and local governments from carrying out their land use

management and environmental protection responsibilities, fails to disclose affected provisions of the constitution, and constitutes classic logrolling. Through its deceptive title and inaccurate summary, the Limited Casinos' initiative seeks to attract the support of all interested groups as well as those unsuspecting voters who believe the initiative does what its title suggests - limits casinos. The proposal thus presents the worst possible example of logrolling. The initiative further requires the voter to determine multiple questions with a single "yes" or "no" vote. The Limited Casinos initiative, if allowed to be placed on the ballot would confuse the voters and cause this Court to enter into the very type of judicial construction Article XI, Section 3 seeks to prohibit.

RESPECTFULLY SUBMITTED,



RANDAL H. DREW, ESQUIRE

Florida Bar No. 475361

Post Office Box 270

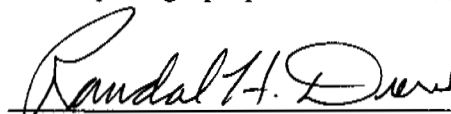
Jacksonville, Florida 32201

(904) 396-3202

Attorney for Mr. Bill Sims, Amicus Curiae
Opposing the Limited Casinos Initiative

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the this Brief together with the annexed Appendix has been furnished to the Attorney General, Robert A. Butterworth, at The Capitol, Tallahassee, Florida 32399, by U.S. Mail postage prepaid, this 6th day of July, 1994.



ATTORNEY

CONSTITUTIONAL AMENDMENT PETITION FORM

PROPOSITION FOR LIMITED CASINOS

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-mutuel 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.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

Name (please print information as it appears on voter records)

Street Address

City Zip

County Date Signed

Precinct Congressional District



SIGN AS REGISTERED

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, two of which shall be within the present boundary of the city of Miami Beach -- with one of those two being in the South Pointe Redevelopment Area -- and the third facility shall be outside the present boundary of the City of Miami Beach; 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 pari-mutuel 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 (1), (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.

104.185 - It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s.775.082 and s.775.083.

MAIL COMPLETED PETITION FORMS TO: 205 South Adams Street, Tallahassee, FL 32301 (904) 561-1194 Fax: (904) 561-1093

Paid Political Advertisement: PROPOSITION FOR LIMITED CASINOS, INC.



STATE OF FL

OFFICE OF ATTORNEY GENERAL
ROBERT A. BUTTICK

June 22, 1994

The Honorable Stephen Grimes
Chief Justice, and
Justices of The Supreme Court,
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Grimes and Justices:

In accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution.

On June 3, 1994, the Secretary of State, as required by section 15.21, Florida Statutes, submitted to this office an initiative petition seeking to amend Article X, Section 7, of the Florida Constitution. The full text of the proposed amendment provides:

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 boundary 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, two of which shall be within the present boundary of the city of Miami Beach--with one of those two being in the South Pointe Redevelopment Area--and the third facility shall be outside the present boundary of the City of Miami Beach; 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 pari-mutuel 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 paragraph (1), (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 ballot title for the proposed amendment is "Limited Casinos."
The summary for the proposed amendment provides:

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-mutuel 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.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, providing in part:

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.

This Court has stated that "section 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." Askey v. Firestone, 421 So. 2d 151, 154-155 (Fla. 1982).

The ballot title, therefore, must be "clear and unambiguous" and not mislead voters as to the content of the proposed amendment. It must give "fair notice" of the proposed amendment's purpose. Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227 (Fla. 1991).

The proposed initiative petition is entitled "Limited Casinos." The term "limited" is subjective and could, in the context of this proposal, potentially mislead voters as to the scope and purpose of the amendment's impact. The proposed amendment authorizes a casino to be operated at "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[.]" In fact, this provision alone would authorize the establishment of more than thirty casinos in addition to the twelve casinos designated for the enumerated counties and the five riverboat casinos which may be located in counties in which casinos are not

otherwise authorized.¹ The proposed amendment thus authorizes nearly fifty casinos in as many as twenty-four counties within this state, a number substantially greater than what could be inferred by at least some voters from the title "Limited Casinos."²

In addition, the ballot title may confuse voters as to the purpose of the amendment in that the proposed amendment does not seek to limit casinos in the State of Florida; rather it would for the first time authorize the operation of a number of casinos. The title, as written, presupposes that the voter possesses the knowledge that casinos are presently prohibited. Recently arrived citizens of Florida especially might lack that knowledge and, as a result, mistakenly conclude that the proposed amendment would restrict the expansion of casinos in this state.

While the ballot summary is not required to explain every ramification of the proposed amendment, see, Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, supra at 228 (Fla. 1991), it may not be misleading. Although the ballot summary lists the counties in which casino gaming is authorized and states that two of the three casinos located in Dade County must be in Miami Beach, it fails to inform the voters that one of the two casinos located in Miami Beach must be in the South Pointe Redevelopment Area.

Moreover, although the summary notes that the proposed amendment provides for the establishment of casinos at certain pari-mutuel facilities, the voter may not be aware of the location of such casinos. For example, while the proposed amendment states that one casino shall be located in Escambia County, two casinos would

¹ The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation has advised this office that 35 active permitholders are located within the following counties: Brevard, Broward, Clay, Dade, Duval, Escambia, Hillsborough, Jefferson, Lee, Marion, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, Seminole, Volusia, and Washington.

² While the proposed constitutional amendment authorizes casino gaming at a "pari-mutuel facility," it does not define that term. Several facilities host more than one permitholder. In addition some permitholders hold nonwagering races. It is not clear whether the proposed constitutional amendment would authorize each permitholder to conduct casino gaming at such facility or whether the nonwagering nature of some permitholders would preclude operation of casino gaming at those facilities.

appear to be authorized for that county because of the existence of an active pari-mutuel facility within that county.

The Court, therefore, may wish to consider whether the ballot title and summary comply with the provisions of Section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, of the Florida Constitution.

Article XI, Section 3, Florida Constitution, reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace but one subject and matter directly connected therewith." Evans v. Firestone, 457 So. 2d 1351, 1352 (Fla. 1984). This Court has stated that a proposed amendment meets this single subject requirement if it has "a logical and natural oneness of purpose[.]" Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d at 227 (Fla. 1991), quoting Fine v. Firestone, 448 So. 2d at 990 (Fla. 1984).

As this Court recently stated in Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, Case No. 83-301 (Fla., filed May 26, 1994), the single-subject requirement also guards against "logrolling," a practice in which several separate issues are rolled into one initiative in order to secure approval of an otherwise unpopular issue. "Logrolling" does not give the voters an opportunity to express their approval or disapproval on each of the several issues but rather has "the purpose of aggregating for the measure the favorable votes from electors of many persuasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder." Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, *supra*, quoting Adams v. Gunter, 238 So. 2d 824, 831 (Fla. 1970).

Recently, this Court struck down a proposed amendment in Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994), as violative of single subject in 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 requirement of article IV, section 3 of the Florida Constitution.

The proposed amendment seeks to amend Article X, Section 7, Florida Constitution. While the proposed amendment addresses the issue of permitting casinos in this state, it does so in a manner that specifies the geographic locations in which such casinos may be operated. In light of the Court's recent comments in Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, supra, and Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, supra, this Court may wish to consider whether the proposed amendment, which requires voters to accept or reject all of the specified locations at which casinos are authorized, may constitute a form of "logrolling" in that a voter who may favor casinos in one geographic area would be forced to accept casinos in the other specified areas. Further, those voters who may approve of riverboat casino gaming have no option for disapproving casino operations at local pari-mutuel facilities.

In Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, supra at 1020, this Court struck down a proposed constitutional amendment because it encroached on municipal home rule powers and on the rulemaking authority of executive agencies and the judiciary. The proposed constitutional amendment mandates the location of casinos in certain counties, regardless of local zoning and land use regulations. The Court, therefore, may wish to consider whether the proposed amendment, by specifying the location of most of the casinos authorized therein, encroaches upon the powers of local and state government by substantially preempting the regulatory or land use functions of both state and local government.


This Court stated in Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, supra, that "although a proposal may affect several branches of government and still pass muster, no single proposal can substantially alter or perform the functions of multiple branches[.]" Slip Op. at 6. Thus, this

The Honorable Stephen Grimes
Page Seven

Court may wish to consider whether the proposed amendment by mandating the location of casinos violates single subject by encroaching upon the powers of both state and local government.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, Section 3, Florida Constitution, and whether the proposed title and substance comply with Section 101.161, Florida Statutes.

Respectfully Submitted,



Robert A. Butterworth
Attorney General

RAB/tgk

Enclosures

cc: The Honorable Jim Smith
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250

Mr. Patrick C. Roberts
101 East College Avenue
Tallahassee, Florida 32301

Supreme Court of Florida

MONDAY, JUNE 27, 1994

ADVISORY OPINION TO THE
ATTORNEY GENERAL

CASE NO. 83,886

RE: LIMITED CASINOS

INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, has requested this Court's opinion as to whether the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution, seeking to amend Article X, Section 7, of the Florida Constitution, complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and substance comply with Section 101.161, Florida Statutes. The full text of the proposed amendment provides:

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:

== 9

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 boundary 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, two of which shall be within the present boundary of the city of Miami Beach--with one of those two being in the South Pointe Redevelopment Area--and the third facility shall be outside the present boundary of the City of Miami Beach; 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 pari-mutuel 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 paragraph (1), (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 ballot title for the proposed amendment is "Limited Casinos." The summary for the proposed amendment provides:

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-mutuel 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.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, of the Florida Constitution.

The full text of the Attorney General's letter is attached hereto as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested parties shall file their briefs on or before July 6, 1994, and serve a copy thereof on the Attorney General. Reply briefs shall be filed on or before July 15, 1994. Please file an original and seven copies of all briefs.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

sg,
cc:

The Honorable Robert A.
Butterworth
The Honorable Jim Smith
Mr. Patrick C. Roberts