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IN THE SUPREME COURT
STATE OF FLORIDA

Case No. 83,886

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN RE: ADVISORY OPINION
TO THE
ATTORNEY GENERAL -- LIMITED CASINOS

INITIAL BRIEF
of
PROPOSITION FOR LIMITED CASINOS, INC.

(Filed in Support of the Initiative Petition)

ORIGINAL PROCEEDING

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Introduction

Proposition for Limited Casinos, Inc. ("PLC"), has formulated and sponsored an initiative petition entitled "Limited Casinos" ("the Petition"), seeking to amend Article X, section 7 of the Florida Constitution to authorize limited casino gaming in the state. This proposal has been forwarded to the Court by the Attorney General for an advisory opinion on the issue of one subject under Article XI, section 3 of the Constitution, and the issue of ballot title and summary under section 101.161, Florida Statutes (1993).

Statement of the Case and Facts

PLC is a political action committee that has formulated and sponsored a petition to amend the Florida Constitution to authorize a limited number of casinos in the state. PLC's Petition seeks to amend that section of the Constitution which now prohibits non-pari-mutuel "Lotteries," by changing the title to read "Lotteries and Limited Casinos" and adding a new subsection containing a casino authorization. A copy of the Petition, containing the full text of the proposed amendment with its ballot title and summary, is attached to this brief as Appendix 1.

On April 7, 1994, PLC obtained approval for the format of the Petition from the Secretary of State. (Appendix 2). PLC publicly announced its intention to seek voter approval of the Petition, and it made available to the press and to the public a statement of the framers' intent with respect to the proposed amendment. (Appendix 3). PLC then began the process of gathering sufficient signatures for placement of the Petition on the ballot for the general election to be held in November 1994.

In due course, PLC submitted to the office of the Secretary of State the requisite number of signed petitions to initiate the advisory opinion process. On June 3, the office of the Secretary of State confirmed that county supervisors had verified a sufficient number of signatures on the Petition to request an advisory opinion from the Court, and it delivered the Petition to the Attorney General. (Appendix 4). On June 22, the Attorney General transmitted the Petition to the Court for an advisory opinion. (Appendix 5).^{1/}

On June 27, the Court set July 6 and 15 as the dates for initial and responsive briefs to be filed by interested parties. This brief is filed by PLC in support of the Petition.

Summary of Argument

In this advisory opinion proceeding, the Court determines only if an initiative petition complies with two requirements. First, a proposed constitutional amendment must embrace "but one subject and matter directly connected therewith." Art. XI, sec. 3, Fla. Const. Second, the ballot title and summary must accurately reflect the substance and effect of the proposal in clear and unambiguous language, so as to give electors fair notice of the proposal's purpose. Section 101.161(1), Florida Statutes (1993). The Petition comfortably meets those two requirements.

The Attorney General's transmittal letter to the Court offers concerns that he suggests the Court may wish to consider in evaluating the one-subject requirement and the requisites for a ballot title and summary. Each of these concerns, however, is inconsistent with the

^{1/} In a press release issued simultaneously with his transmittal to the Court, the Attorney General stated that his office "does *not* take a position on the merits of the proposal." (Appendix 6) (emphasis in the original). Previously, however, he had declared that he is "unalterably opposed" to casino gaming in Florida (Appendix 7) -- a position on the merits that he reiterated when he transmitted his request for an advisory opinion to the Court. (Appendix 8).

Court's decisional law on those topics, and in some instances is directly contrary to decisions of the Court which have already upheld provisions identical to those in the Limited Casinos petition. The issues raised by the Attorney General provide no basis to withhold the Petition from a vote of the electorate.

The Court approaches requests for the invalidation of an initiative petition with "extreme care, caution and restraint." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). It demands that the proposal under consideration be shown to be "clearly and conclusively defective." *E.g., Weber v. Smathers*, 338 So. 2d 819, 821 (Fla. 1976). The Attorney General has made no such showing, and none can be made with the respect to this initiative petition.

Argument

I. The Petition embraces only one subject and matters directly connected.

Under Article XI, section 3 of the Florida Constitution, initiative petitions with sufficient signatures from registered voters may be placed on the ballot for the next general election so long as they contain no more than "one subject and matter directly connected therewith." In this advisory opinion proceeding, the Court is asked to consider whether the Petition formulated by PLC meets that constitutional requirement.

The Court's role in this advisory opinion proceeding has been tightly self-limited. *E.g., Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991) ("**Limited Terms**"). Neither the wisdom nor the draftsmanship of the authorization for casino gaming is an appropriate consideration for the Court. *E.g., Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337, 342 (Fla. 1978) ("**Floridians Against Casinos**"), declaring that "we do not pass judgment upon the

wisdom or merit of the proposed initiative amendment;" *Weber v. Smathers*, 338 So. 2d at 822. PLC is confident that, after careful analysis, the Court will find that the Petition quite comfortably meets the one-subject requirement of Article XI, section 3.

A. The Court has set clear standards for meeting the "one subject" requirement of the Constitution.

The one-subject requirement of the Constitution compels a "logical and natural oneness of purpose" for any constitutional amendment proposed by initiative. *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).^{2/} To meet that oneness of purpose, the Court has applied the "functional" test articulated in the *Fine* decision to consider whether the proposed amendment affects more than one function of government, affects unnamed other provisions of the Constitution, or alters or performs the functions of different branches of the government. *Save Our Everglades*, 19 Fla. L. Weekly at S277; *In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994) ("*Restricts Discrimination*").

The Court has also emphasized that a proposed amendment to the Constitution must not combine subject matters through "logrolling" such that voters are required to accept a proposition they may not support in order to vote for one which they want the Constitution to

^{2/} *Accord*, among other cases, *In re: Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund*, 19 Fla. L. Weekly S276 (Fla. May 26, 1994) ("*Save Our Everglades*"); *In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation*, 581 So. 2d 586 (Fla. 1991) ("*Homestead Valuation*"); *In re Advisory Opinion to the Attorney General -- Limitation of Non-Economic Damages in Civil Actions*, 520 So. 2d 284 (Fla. 1988) ("*Non-Economic Damages*"); *In re Advisory Opinion to the Attorney General English -- The Official Language of Florida*, 520 So. 2d 11 (Fla. 1988) ("*Official English*").

reflect. Compare, *Floridians Against Casinos*, 363 So. 2d 337 (no logrolling), with *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984) (logrolling).

The standards for one subject which have been adopted by the Court are more than descriptive talismans to be applied *ad hoc* to cases as they arise. First and foremost, they are principles that have been distilled and refined by the Court to carry out the "restraint" which the people of Florida have placed on the initiative process. *E.g., Restricts Discrimination*, 632 So. 2d at 1020; *Evans v. Firestone*, 457 So. 2d at 1353.

Of equal importance, however, the standards articulated by the Court are guideposts for those who would attempt to draft petitions by which to amend the Constitution. In this role, it is uniquely important for the Court to maintain stability in the application of its tests for one subject (and for ballot title and summary), since the Court fully expects that its guidelines will be read and followed. *See, Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984), in which these observations were made:

I am at a loss to understand why the proponents of this amendment did not take heed of the *Askew v. Firestone* decision.

* * *

In my view, this Court has set down understandable guidelines for the preparation of an initiative proposal that will meet the single-subject requirement.

(Overton, J. concurring at pp. 1356 and 1357).

I thought, when we announced *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1981), that proponents of constitutional amendments would fairly and accurately summarize them without any misleading comments.

(McDonald, J. concurring at p. 1358).

Fine laid out in clear language the guidelines for determining compliance with the one-subject requirement. If drafters of an initiative petition nonetheless

choose to violate the one-subject requirement, this Court has no alternative but to strike it from the ballot.

(Ehrlich, J. concurring at p. 1359).

The Court is always loathe to deprive the electorate of the opportunity to adopt or reject a proposed constitutional amendment. *Askew v. Firestone*, 421 So. 2d at 156 ("The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people."); *Smathers v. Smith*, 338 So. 2d 825, 826 (Fla. 1976) (amendment proposed by joint resolution of the legislature); *Smith v. American Airlines, Inc.*, 606 So. 2d 618, 619 (Fla. 1992) (amendment proposed by Taxation and Budget Reform Commission). The Court has made clear that its authority to deprive citizens of this method of amending their organic law will be exercised only if a proposed amendment is "clearly and conclusively defective." *Weber v. Smathers*, 338 So. 2d at 821; *Askew v. Firestone*, 421 So. 2d at 154; *Evans v. Firestone*, 457 So. 2d at 1353.^{3/}

B. The Limited Casino petition embraces only one subject and matter directly connected.

The Petition contains one subject and only one subject: an authorization for a limited number of gaming casinos in the State of Florida. There is no subject other than that authorization in the proposed amendment, when viewed through the lens of "unity of purpose" and given a functional analysis.

The Petition in no way affects more than one function of government; it simply authorizes the establishment of casino gaming facilities in the state. It suffers from none of

^{3/} Most recently, the Court had little difficulty removing from the ballot an initiative petition which, the Court concluded, "falls far short of meeting the single-subject requirement. . . ." *Save Our Everglades*, 19 Fla. L. Weekly at S278.

the overlapping effects exhibited in *Save Our Everglades*, for example, where the proposal combined the creation of an executive agency to administer a trust, the exercise of a legislative function (taxation), and the performance of a judicial function (adjudication).

The Petition has no bearing on any provision of the Constitution other than the one which is being amended. The proposed amendment will merely add a new subsection "(b)" to Article X, Section 7 of the Constitution, and if adopted by the voters will operate independently of, and without impact or effect on any other constitutional provision. It is totally without the broad impact on other provisions of the Constitution which, for example, infected the proposal in *Restricts Discrimination*.

The Petition does not in any way combine subjects which are dissimilar, in a way which would require voters to accept one proposition they might not support in order to put in the Constitution one that they favor. That evil -- logrolling -- was exhibited in *Fine v. Firestone* where, under the generality of "revenue" the proposed amendment lumped together and affected three highly unconnected subjects -- the government's ability to tax, the operation of government user fees, and the funding of capital improvements through revenue bonds. Nothing in this proposed amendment -- to allow privately-owned casinos in the state -- forces a voter to accept an undesired change in the Constitution, of a wholly different character, as the price of casting his or her vote for a casino authorization. Or, put in more familiar terms, the Petition does not carry "dissimilar provisions [designed] to attract support of diverse groups to assure its passage." *Fine v. Firestone*, 448 So. 2d at 988. Any voter desirous of authorizing casino gaming into the state can vote to do so without having to accept some undesired change in the Constitution, injected as a "sweetener" for some special constituency, and vice versa.

C. A proposed amendment may contain matters directly connected with its subject, and the Limited Casinos petition does just that.

Based on the constitutional authorization for an inclusion of "matters directly connected," the Court on several occasions has approved proposed amendments which provide details as to the content or scope of the subject expressed in the petition. For example, the Court approved a petition authorizing casinos which contained in the text of the amendment very detailed boundary lines within two counties of the state as the geographical confines for the placement of casinos. *See Floridians Against Casinos*, 363 So. 2d at 338. The Court also approved a petition limiting the types of nets used for commercial fishing which contained a very detailed description of the types and numbers of nets that could be used on commercial vessels, and a catalogue of definitions to explain terminology contained in the text of the proposed amendment. *Advisory Opinion to the Attorney General -- Limited Marine Net Fishing*, 620 So. 2d 997 (Fla. 1993) ("*Net Fishing*").

In a like vein, the Petition contains details related to the authorization for casino gaming. The numbered subparagraphs in proposed subsection 7(b) of the text identifies the location and number of casinos that are to be authorized in the state, and it sets size limitations on certain types of those facilities. Those matters, obviously, are directly related to the authorization of casinos. The Petition goes on to authorize implementation by the legislature, and to establish an effective date. These additional details are the types of "scope and content" matters which the Constitution authorizes, and which the Court has expressly approved in other cases. *See, e.g., Official English*, 520 So. 2d at 13 (legislative implementation provision is not a separate subject); *Non-Economic Damages*, 520 So. 2d at 287 (effective date provision is not a separate subject).

Under established criteria for a one-subject analysis, there is no principled basis on which the Court could treat the identification of locations in the Petition as being other than features directly connected to the subject of the proposal.

D. The concerns expressed by the Attorney General provide no basis to deny the electorate an opportunity to adopt an authorization for a limited number of casinos in the state.

Notwithstanding the clarity, cohesiveness and singleness of purpose expressed in the Petition, the Attorney General has invited the Court to consider whether the Petition violates the one-subject requirement because it specifies the counties in which casinos would be sited, to the exclusion of others. He suggests that this feature of the proposal may be logrolling, or that it may encroach on the powers of state and local governments.

PLC suggests that the two possibilities identified by the Attorney General are inconsistent with the Court's one-subject jurisprudence, and that neither provides a basis for the Court to declare the Petition clearly and conclusively defective. For starters, both suggestions fail to reflect decisions which have already approved initiative petitions for casinos having precisely the same component features.

In *Floridians Against Casinos*, the Court rejected a one-subject challenge to an initiative petition for casino gambling. In that case, the location of casino facilities was specified to be in Dade and Broward Counties, to the exclusion of all others in the state. Opponents of the petition specifically attacked that authorization for casinos "in a specific geographical area" as constituting logrolling. *See Floridians Against Casinos*, 363 So. 2d at 340. The Court upheld the proposal, however, declaring that it "possesses the requisite functional unity to pass muster under Article XI, Section 3, Florida Constitution. . . . [T]he

various elements [of the proposal] serve to flesh out and implement the initiative proposal, thereby forging an integrated and unified whole." *Id.*^{4/}

The opponents in *Floridians Against Casinos* also asserted the encroachment and a conflict with another provision of the Constitution -- one which authorized aid to local governments. The Court rejected the contention that the generic effect of the proposal on authority of local governments would warrant an invalidation of the proposal.^{5/}

In the face of a one-subject challenge, the First District Court of Appeal, too, has upheld a casino petition which had a similar locational feature. *Watt v. Firestone*, 491 So. 2d 592 (Fla. 1st DCA 1986), *review denied*, 494 So. 2d 1153 (Fla. 1986), approving an authorization for casino gambling "in specific geographic locations" approved by electors of the counties. *Id.* at 593.

The Attorney General appears to draw his inference of concern from the two most recent decisions of the Court which removed initiative petitions from the ballot for one-subject defects -- *Save Our Everglades* and *Restricts Discrimination*. By failing to mention the prior casino cases, however, the Attorney General would seem to be suggesting that the Court has shifted its ground with respect to initiatives, either by overruling prior case law by implication or by adopting a new level of hostility to this method for amending the Constitution. Neither form of shift was expressed by the Court in those decisions, and PLC

^{4/} Indeed, the Court rejected a logrolling attack despite the fact that the petition *also* specified the uses of tax revenues to be derived from casino gambling, which the Petition in this case does not.

^{5/} The Court has receded from the rationale there expressed for rejecting the conflict with another constitutional provision. *Fine v. Firestone*, 448 So. 2d at 990. That fact is not important here, however, since there is no direction for use of the tax revenues from casinos in the present Petition, and there is no constitutional provision which is at odds with the amendment to be added by the Petition.

can find no discernible way in which either decision departs from prior one-subject standards. If either of the Attorney General's implied hypotheses is correct, there certainly has been no signal from the Court to warn those who would frame initiatives that the rules of the game have changed.

Contrary to the Attorney General, PLC suggests that timing and coincidence alone are responsible for the Court's invalidation of those two inartfully drawn and abundantly defective proposals.^{6/} By any standard, and irrespective of when they might have come to the Court's attention, they would have been seen by the Court as clearly and conclusively defective. Their framers simply had not paid attention to the Court's guidelines.

No such contention can be made with respect to this petition for limited casinos. Both in terms of the requisite oneness of purpose and functional effect, the Petition is consistent with the guidelines provided by earlier casino (and other) decisions of the Court as regards the one-subject requirement.

A closer analysis of the suggestions made by the Attorney General provides convincing proof that they do not, under any form of analysis, justify removing the Petition from the ballot.

1. The identification of locations in the Petition does not constitute logrolling.

The Attorney General hints that the identification of casino locations in the Petition constitutes prohibited logrolling because voters who might want casinos in one geographic

^{6/} Those proposals are but two of the initiatives that have been or will be considered by the Court in this election year. Those two just happened to be the ones which reached the Court first.

area would be forced to accept them in other specified areas as well. This thought misperceives what the logrolling prohibition is all about.

Logrolling is contrary to Article XI, section 3 because dissimilar "*subjects*" are joined together, to force unwanted choices on the voters.

[E]nfolding disparate *subjects* within the cloak of a broad generality does not satisfy the single-subject requirement.

Evans v. Firestone, 457 So. 2d at 1353 (emphasis added). The locational provisions of this proposed amendment provide a contour for the subject matter of the Petition, to shape its breadth. The locations which are mentioned are not separate "subjects" in and of themselves, any more than casino locations were "subjects" in *Floridians Against Casinos* or in *Watt*. The two recent cases on which the Attorney General relies, in contrast, abounded with "subjects" which could in no way be considered to be details of a unified whole.

In *Restricts Discrimination*, the Court found that the petition encompassed the "subjects" of civil rights and governmental powers, that it reached into home rule powers and the rule-making authority of the judicial and legislative branches of the government, and that it modified and affected two provisions of the Constitution which were nowhere mentioned. After voiding the proposal on these grounds, the Court also held that the proposal's enumeration of ten separate classifications -- race, ethnicity, marital status and others equally disparate -- would force voters to choose all or none of the groups which were to be protected from discrimination. The Court invalidated the proposal as an overbroad attempt to enfold multiple subjects -- including diverse categories of persons protected against discrimination -- within a generality which the framers labelled "discrimination." This is totally unlike the

designation of locations for casino sites, which merely fleshed out the details of the authorization.

In *Save Our Everglades*, the Court explained that logrolling was "a practice wherein several separate *issues*" are improperly aggregated into one initiative. 19 Fla. L. Weekly at S277 (emphasis added). The Court had little difficulty finding disparate issues in the performance of distinct functions within different branches of the government -- functions so widely diverse that the initiative "creates a virtual fourth branch of government. . . ." *Id.* at S278. Like the decision in *Restricts Discrimination*, the Court's decision here followed faithfully its long-standing pattern of rejecting an array of "subjects" which are crammed into one initiative proposal.

The Attorney General's suggestion is also flawed in logic, for it defies the express authorization in Article XI, section 3 for "matter directly connected." If the Court were to hold that the one-subject requirement is violated by a delineation of locations within the state for the type of facilities which the voters are being asked to approve -- in this instance casinos -- the delineation of *any* feature of a petition which defines its scope and range would be similarly prohibited. For example, there could be no detailed recitation of the "mesh area" for fishing nets that may be sought to be outlawed, and no delineation of "coastline" or "nearshore or inshore Florida waters" locations as related to the operation of a fishing net limitation. Yet those features were both present in the *Net Fishing* decision and provided no basis to remove that petition from the ballot. Similarly, there could be no explication of a CPI adjustment in assessments for real property, or any detailed treatment for old versus new homestead properties for assessment purposes in a homestead valuation limitation proposal. Yet those features were both present in the amendment approved in the *Homestead Valuation*

case. Indeed, in that case the Court had absolutely no trouble finding that the elaborative features within the text of the amendment "provide the details of the scope and implementation of that [one subject and] are logically connected to the subject of the amendment." 581 So. 2d at 588.

Obviously, the one-subject concerns of the framers of the Constitution have nothing whatever to do with the subservient aspects of an amendment that shape its contour. The framers of Article XI, section 3 quite clearly anticipated that "matter directly connected" with the *subject* of a proposed amendment were appropriately included, and might well be needed in order to give petition drafters the freedom to express their intent in concrete terms.^{7/}

The "unity of purpose" and "matters directly connected" standards can be tested quite pragmatically here, simply by noting that the Attorney General was unable to phrase his concern about locations without tying it to the thematic subject of authorizing casinos. He states his concern in these terms: "the proposed amendment addresses the issue of permitting casinos . . . *in a manner that specifies the geographic locations in which such casinos may be operated.*"^{8/} The "manner" of carrying out the "issue" in this constitutional proposal is the essence of implementation, not a separate subject. *See Homestead Valuation*, 581 So. 2d at 586.

The Court will quickly realize that the Attorney General's suggestion is altogether implausible, for it can only mean that every petition can have one feature and *no* implementation detail. Otherwise, *any* aspect of the proposal other than its bare directive

^{7/} One might ask how the framers of a proposal for a limited number of casinos in the state could formulate a limitation without specifying how few or many casinos they had in mind.

^{8/} Appendix 5 at p. 6 (emphasis added).

might not be acceptable to some voters. For example, consider an effective date. Under the Attorney General's hypothesis, some voters might want casino gaming deferred until 1996 or 1998, rather than July 1, 1995. The mere designation of an effective date would, under the Attorney General's rationale, constitute a "defect" because some voters are forced to accept the drafters' choice of an implementation date.

2. The Petition does not preempt or interfere with local control over land use or zoning.

The Attorney General next postulates that the Court may want to consider whether the Petition, by mandating the location of casinos in certain counties "regardless of local zoning and land use regulations," encroaches on the powers of local governments. He fails to mention any source for the notion that local zoning and land use regulations are disregarded. The Court will find none in the Petition.

The point here raised by the Attorney General is an exercise in innuendo -- a purely hypothetical construction of the meaning of the proposed amendment which can only be inferred. The Attorney General offers no facts to support his hypothesis and inference, and there are none.

More importantly, even if an inference were warranted (which it is not), any inherent "encroachment" would be irrelevant to the Court's one-subject analysis. In a pre-election, one-subject evaluation, the Court does not concern itself with possible constructions of a

proposed amendment that may later give rise to a need for clarification. *Smathers v. Smith*, 338 So. 2d at 831.^{9/} The Court has stated that

it would be premature to speculate how the amendment might interact with other portions of the constitution as applied to a given factual situation. It may be that, if passed, the amendment could have broad ramifications. Yet, on its face it deals with only one subject.

Official English, 520 So. 2d at 13.

Once again, the lessons of history are unmistakable: inferential power encroachments are disregarded by the Court in this type of proceeding. For example, an authorization for casinos in some counties of the state no more interferes with the power of local governments than the homestead valuation limitation amendment interfered with the power of local property tax appraisers (constitutional officers under Article VIII, section 1(d)), which was approved in the *Homestead Valuation* decision. Likewise, it no more interferes with the power of local government than the direct assignment of casino taxes to local governmental units for schools and law enforcement in the face of the constitutional provision addressing aid to local governments. That situation was approved in *Floridians Against Casinos*.

II. The ballot title and summary give fair notice of the content, and accurately reflect the chief purpose of the proposed amendment.

A. Ballot title.

Under section 101.161(1), Florida Statutes (1993), the title for a proposed constitutional amendment which is submitted to the voters by initiative petition must give "fair notice" of the content of the proposed amendment. *Askew v. Firestone*, 421 So. 2d at

^{9/} In this instance, of course, there exists no constitutional provision with which the Petition need be harmonized. The Constitution does not address county zoning and land use authority.

155. The statute says that the title may not exceed 15 words and shall consist of a caption "by which the measure is commonly referred to or spoken of." The Court has said it must not mislead voters as to the content of the proposed amendment. *Limited Terms*, 592 So. 2d at 228.

The proposed constitutional amendment to authorize limited casino gaming meets these tests, with room to spare. It was carefully framed to meet the standards which had been developed by the Court over many years. The title -- Limited Casinos -- is less than 15 words, reflects its common reference, and precisely identifies the subject and content of the proposed amendment as being an authorization by the voters for a limited number of casinos within the state.

The Attorney General has suggested that the title of the Petition is flawed because the word "limited" is subjective, and might confuse or mislead the electorate. He notes that the petition will authorize nearly 50 casinos in Florida, and he suggests that 50 may conceivably be more casinos than some voters would infer from the word "limited." There are four complete responses to the Attorney General's suggestion.

(1) First, his title concern is obviously founded on a notion that the Court will consider a ballot title in the abstract, rather than in conjunction with the ballot summary which accompanies the title into the voting booth. The Court has never entertained such a vacuous application of the statute. Section 101.161 has always been considered as a unified whole. *See, for example, Askew v. Firestone*, 421 So. 2d at 156:

The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. . . . The burden of informing the public should not fall only on the press and opponents of the measure -- the ballot title *and* summary must do this.

(Emphasis added). There is no possible misconstruction of the legal effect of the proposal when the title and the summary are read together. The title certainly is not so obviously rhetorical or hyperbolic (as was "Save Our Everglades") that voters might be swayed *not* to read the summary out of their passion for or against the political goal which the title conveys.

The ballot summary for the Petition makes unmistakably clear that the word "limited" refers to the number of proposed facilities that will be authorized to house casinos throughout the state, and to the square footage in some of the types of casinos which are being authorized. The summary begins with the declaration:

Authorizing a *limited number* of gaming casinos in [various locales]; and *limited-size* casinos with existing and operating pari-mutuel facilities. . . .

(Emphasis added).

(2) Second, were a naked reading of the two-word ballot title germane to the Court's analysis, which it is not, PLC would note for the Court that less than 50 casinos in a tourist-oriented state having 54,157 square miles, 67 counties, 390 municipalities and a permanent population of 12,937,926 people (according to the 1990 census), is indeed a *limited* number of casino facilities.

The Attorney General's real concern seems to be that *some* persons might think that 47 facilities is not limited enough. That possible, subjective view in the minds of some voters, however, certainly does not make the title misleading. Any voter with that view can simply choose to reject the Petition through the exercise of his or her voting privilege.

This ballot title might well have been misleading -- that is, "fly under false colors"^{10/} -- had the title and summary suggested a limited number of facilities were to be

^{10/} *Askew v. Firestone*, 421 So. 2d at 156.

authorized and the *text* of the proposed amendment in fact authorized unlimited pari-mutuel facilities. That is not the case.^{11/}

(3) Third, in regard to the Attorney General's suggestion that newly-arrived residents of the state might read the title (alone) to think that it connotes a limitation on existing casinos in Florida, rather than a first-time authorization for casinos in the state, there are three responses. Newly-arrived residents have as much of an obligation to inform themselves for an election as those who lived through the two earlier constitutional amendment campaigns in which proponents of casino gaming sought to bring casinos to Florida for the first time. They, too, will see that the title is not alone on the ballot; that it sits with a summary clearly describing the non-existent status of casino gaming in Florida.

In any event, the word "limited" in the Petition's two-word title is an adjective, not a verb. The title is not clearly and conclusively defective because some voters might mistakenly read the word "limited" as if it were an active verb, and then surmise the proposed amendment is "limiting" the number of casinos that already exist in the state.

[The] voters may be presumed to have the ability to reason and to draw logical conclusions. . . .

Smith v. American Airlines, Inc., 606 So. 2d at 621.

Even were the Attorney General's construction plausible (which it is not), the Court would never concern itself with such a narrow point of drafting. *Weber v. Smathers*, 338 So. 2d at 822 ("Neither the wisdom of the provision nor the quality of the draftsmanship is a matter for our review.").

^{11/} Actually, the choice between "limited" and "unlimited" casinos may become available to the electorate in the 1994 general election, for at least one of the casino petitions competing for signatures and placement on the ballot offers authorization for an unlimited number of casino facilities in the state. *See* Appendix 9.

(4) Fourth, and most importantly, precedent here too compels the Court to reject the Attorney General's suggestion that the title is defective, based on the "guideline" principle of initiative petition jurisprudence. The Court has already considered and approved two other initiatives which have used the word "limitation," *and one which has in fact used the word "limited."* The ballot title on the petition approved in *Homestead Valuation* was "Homestead Valuation Limitation." 581 So. 2d at 587. The ballot title on the petition approved in *Non-Economic Damages* was "Limitation of Non-Economic Damages in Civil Actions." 520 So. 2d 284. The ballot title on the petition approved in *Limited Terms* was "Limited Political Terms in Certain Elective Offices." 592 So. 2d at 228.

B. Ballot summary.

Section 101.161(1) requires an explanatory statement of the "chief purpose" of the proposed amendment, in not more than 75 words. It must provide fair notice of the meaning and effect of the proposed amendment. *Restricts Discrimination*, 632 So. 2d at 1021.

The Court has said over and over again, however, that a summary need not recite in detail every feature and aspect of the proposed amendment. *E.g.*, *Limited Terms*, 592 So. 2d at 228; *Carroll v. Firestone*, 497 So. 2d at 1206; *Smith v. American Airlines, Inc.*, 606 So. 2d at 620; *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982) ("Inclusion of all possible effects . . . is not required in the ballot summary."). *And see*, *Official English*, 520 S. 2d at 13, where the Court stated:

We cannot accept the contention that the seventy-five word ballot summary required by the statute must explain in detail what the proponents hope to accomplish by the passage of the amendment.

As in the other areas of initiative analysis, no invalidation is possible unless the summary is "clearly and conclusively defective." *Florida League of Cities v. Smith*, 607 So. 2d 397, 399 (Fla. 1992).

The summary which accompanies the Petition easily meets the guidelines which the Court has laid down. It provides a crisp explanatory statement of the proposed amendment, carefully summarizing the text in each of the four sections of the amendment itself, in simplified and easy-to-read terminology. Yet the Attorney General suggests that the ballot summary may be defective because it is misleading.

He suggests that the ballot summary does not disclose the location of the state's "pari-mutuel facilities" (although it does advise that casinos will be sited at them), and that it does not say that one of the two Miami Beach-based casinos will be sited in the South Pointe Redevelopment Area of that city (although it does list all the counties in which casinos will be located, and advises that two of the three for Dade County must be in the City of Miami Beach). Neither suggestion presents a plausible reason for invalidation.^{12/}

^{12/} The framers of the Petition were sensitive to the public's need for information regarding their intention as to locations, in part because location played such a significant part in the votes on prior authorizations for casinos in the state. To that end, they made public a Statement of Intent at the same time the Petition was unveiled which elaborated on their rationale for specifying casino locations in the proposed amendment, including the site in the South Pointe Redevelopment Area of Miami Beach. See Appendix 3 at ¶ 3 on p. 3.

The intent of the framers of an initiative petition is important to the Court when it considers the weighty issue of removal from the vote of the electorate.

[W]hile we are charged with the ultimate responsibility for interpreting the Constitution, the intent of the drafters or adopters of a constitutional provision is a highly relevant factor. We see no constitutional infirmity, but much to commend, in a drafter attempting to make clear the intent of a constitutional provision.

Carroll v. Firestone, 497 So. 2d at 1206.

To accept either of the Attorney General's suggestions, the Court would have to disavow its repeated advisories that the details of a proposed amendment need not be included in the summary. The two omissions which he has noted are the purest form of "detail," neither of which is, by any stretch of prior case law, relevant to the "chief purpose" of the proposed amendment. Indeed, it is hard to understand the Attorney General's concern about these two, particular omissions.

As to South Pointe, the Petition discloses the counties of Florida in which the casinos will be sited, and it states that three casinos will be located in Dade County with two of those to be located in the City of Miami Beach. To add, within the confines of the 75 words that are available in a summary, that one of the two in Miami Beach will be in the South Pointe Redevelopment Area is hardly necessary to explain the proposed amendment's chief purpose. Is he suggesting that voters *outside* Dade County or Miami Beach will be "misled" when voting on the casino amendment because they have not been told that one of the two casinos that will be within the 21-square area that comprises the City of Miami Beach^{13/} -- a community that is certainly well enough known throughout the state in terms of general location and role in tourism -- is slated to be placed within a discrete, 246-acre zone designated by that municipality as a redevelopment area? Or is he suggesting that voters *within* the municipal boundaries of the City of Miami Beach -- a group comprising one-half of one percent of the eligible voters of the state for the 1994 general election^{14/} -- will be "misled" in voting on the casino amendment because the ballot title and summary have not

^{13/} The City of Miami Beach is 7 miles long and 3 miles wide.

^{14/} According to the Division of Elections, there are 6,541,825 voters registered for the 1994 general election. According to the Dade County supervisor of elections, 33,419 of those voters reside in Miami Beach.

advised them with particularity that one of the two casinos within the City will be in South Pointe? Whichever is his concern, it cannot be said that this omission will mislead *any* voter as to the proposal's "chief purpose."

As to the location of pari-mutuel facilities, the barest examination of the Attorney General's point dispels any valid concern. The voters of Florida are presumed by the courts to have at least some basic, walking-around common sense. The pari-mutuel facilities in Florida -- horse tracks, dog tracks and jai-alai frontons -- are not secret hideaways unknown or unknowable to the citizenry. Indeed, those facilities spend significant dollars advertising their locations, not only in their immediate communities but in nearby and not-so nearby communities, in order to attract customers.

Even if the locations of pari-mutuel facilities are not already known to the electorate, it can hardly be said the information is not readily and easily ascertainable by anyone interested in knowing. The state makes no effort to conceal this information, and a simple telephone call to the state's governmental information center -- at (904) 488-1234 -- or to the Pari-Mutuel Wagering Division of the Department of Business and Professional Regulation -- at (904) 488-9130 -- will elicit the location of every pari-mutuel facility in the state.^{15/}

^{15/} As an aside, the Attorney General notes that the Petition does not define the term "pari-mutuel facility." (Appendix 5 at p. 4, n. 2). For all the reasons discussed in this brief, the absence of that definition in the proposed amendment cannot be a legitimate concern for the Court. In any event, the Court should note that the term "pari-mutuel" presently appears in Article X, section 7 of the Constitution -- the very provision of the Constitution which the Petition is proposing to amend. The proposed amendment cannot be defective for repeating a term which already appears in the section of the Constitution which is being amended.

A ballot title and summary can only do so much. A ballot summary is only required to present the legal effect of the proposed amendment, not every possible ramification.^{16/} The ballot summary is not a voter's first source of information or awareness as to how the Constitution is proposed to be amended. It is not unreasonable to suggest, as the Court indeed has, that so long as a ballot summary is not deceptive it is sufficient if it presents the basic information -- that is, legal effect -- regarding the ballot proposal.

The fact that people might not inform themselves about what they are voting for or petitioning for is immaterial *so long as they have an opportunity to inform themselves.*

Carroll v. Firestone, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring).

Conclusion

The proposed amendment for limited casinos has been carefully crafted to meet the requirements of Article XI, section 3 of the Florida Constitution and section 101.161 of the Florida Statutes, as those provisions have been construed by the Court over the years. The Attorney General has raised concerns which are at odds with the Court's decisions and which, if approved by the Court, would make it impossible for any initiative petition to be proposed or adopted in the state. His agenda clearly does not match the Court's responsibility in this advisory opinion proceeding.

The Justices are respectfully requested to advise that the petition for Limited Casinos meets the constitutional requirements for one subject, and the statutory requirements for a ballot title and summary.

^{16/} Section 101.161(1) limits the summary to 75 words. That limit by itself precludes a listing of the locations of the state's pari-mutuel facilities.

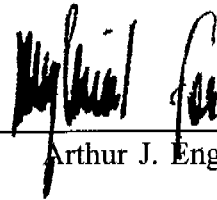
Respectfully submitted,

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Counsel for Proposition for
Limited Casinos, Inc.

Certificate of Service

I hereby certify that a true and correct copy of this initial brief was hand-delivered on July 6, 1994 to Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

A handwritten signature in black ink, appearing to read "Arthur J. England, Jr.", is written over a horizontal line.

Arthur J. England, Jr.

APPENDICES

Index to Appendices

1. Initiative petition proposed by Proposition for Limited Casinos, Inc.
2. Letter to PLC from Secretary of State dated April 7, 1994
3. Statement of Intent from the framers of the Petition
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7. *Tallahassee Democrat*, "Leaders want lawmakers to pass 'casino control'" (March 22, 1994) and *The Orlando Sentinel*, "Chiles, Butterworth vow tough fight on casinos" (March 23, 1994)
8. *The Orlando Sentinel*, "Butterworth flays leading casino plan" (June 23, 1994)
9. *Daily Business Review*, "The Real Gamble" (April 15, 1994)

Appendix Part 1

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.

APPENDIX PART 2



FLORIDA DEPARTMENT OF STATE
Jim Smith
Secretary of State
DIVISION OF ELECTIONS
Room 1801, The Capitol, Tallahassee, Florida 32399-0250
(904) 488-7690

April 7, 1994

Honorable Arthur J. England, Jr.
Proposition for Limited Casinos, Inc.
205 South Adams Street
Tallahassee, Florida 32301

Dear Justice England:

Re: Limited Casinos

This office is in receipt of the amended petition form, ballot title and ballot summary for the proposed initiative amendment, Limited Casinos.

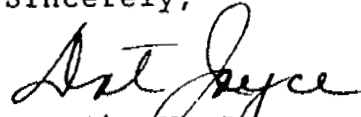
The Division of Elections approves the format which you submitted for the above-referenced initiative and a copy is attached for your files.

No review of the legal sufficiency of the text of the proposed amendment has been, nor will it be undertaken by the Division of Elections.

Any Limited Casinos initiative petitions previously signed before this date are now null and void.

Please let this office know if it can assist you further.

Sincerely,


Dorothy W. Joyce
Division Director

DWJ/EB/pr

Enclosure

cc: Supervisors of Elections
with copy of petition

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 _____



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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.

Proposition for Limited Casinos, Inc.

ANNOUNCEMENT OF INITIATIVE PETITION and STATEMENT OF INTENT

Proposition for Limited Casinos, Inc. has today printed and will file with the Secretary of State a new petition to amend the Florida Constitution to authorize limited casino gaming in the state. The amendment authorizes casino gaming in a limited number of facilities in Florida, at the following locales:

- (1) in one casino facility in each of the following counties:

Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas;

and

- (2) in two casino facilities in Broward County; and
- (3) in three casino facilities in Dade County; and

- (4) in conjunction with each pari-mutuel facility which, on the date the voters approve the constitutional amendment, has a valid permit for pari-mutuel wagering from the state and has held a meet under its permit during each of the two twelve month periods immediately prior to the vote of the electorate; and

(5) on not more than five riverboat casinos, some or all of which the legislature may, but not need approve. Any riverboat casinos that are authorized must be located only within the boundaries of the counties of the state other than the ones named in the first three paragraphs of the amendment, and the legislature may not authorize more than one riverboat casino in any one of these other counties.

The intent of the framers of the proposed amendment is reflected in this Statement of Intent.

1. Revenue enhancement. The framers want to give the voters of Florida an opportunity to approve a significant source of revenue to the state, for present needs and for the unpredictable variety of purposes which will require the expenditure of state funds in future years. While law enforcement, prisons, education and health care may be the most pressing needs of the state today, the framers of this amendment understand that the priorities of the state will change over time, and that a constitutionally-based revenue stream for Florida should not be fettered with trust fund limitations or a commitment to any particular set of *current* purposes.

2. State regulation. The framers want state control and private ownership of casino gaming, just as privately-owned pari-mutuel wagering is now regulated and controlled by the state. The legislature will decide whether to create a separate commission or governmental unit for casino gaming, or whether to utilize the existing structure by which it regulates pari-mutuel wagering. The state's agency or governmental unit will issue casino licenses to authorized pari-mutuel permitholders, and for the other casino facilities which are authorized in the amendment.

3. Twelve casinos to promote tourism and convention business. Casinos to be sited in a limited number of resort hotels will rejuvenate tourism and convention business in South Florida, and spur economic development. In particular in Dade County, where the voters have previously expressed their approval of casino gaming, and in adjacent Broward County, the framers believe that hotels having 1,000 or more rooms should be the sites for the five authorized casino facilities. The framers further believe that one such Broward County resort hotel casino should be sited in Hollywood and the other in Fort Lauderdale. Two of the Dade County resort hotel casinos should be sited in Miami Beach, with one of these located, as expressly provided in the amendment, in the South Pointe Redevelopment Area (as designated by the Miami Beach Redevelopment Agency). The third Dade County resort hotel casino should be sited elsewhere in the county.

The framers further believe that other casinos should be authorized in the state, as in the Pensacola Beach area which is in competition with Louisiana and Mississippi for tourist dollars. The seven casinos authorized in the amendment in counties other than Dade and Broward assure a dispersion of these entertainment centers. The framers have placed no size limitation on these seven casinos, and they express no intent as to whether they should be on riverboats or, if land-based whether they should be hotel-based or free-standing facilities.

4. Preservation of pari-mutuels. The framers believe that casinos at existing, non-dormant pari-mutuel "permitted" facilities will enhance this existing revenue source for the state, by combining the lure of casinos with the entertainment of horse racing, dog racing and jai alai. They intend, 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.

5. Authorization for riverboats. The legislature has been given discretion to authorize up to five riverboat casinos in counties of the state other than those named specifically in the amendment. Some, all or none of these riverboat casinos may be legislatively approved, but the framers intend that they be dispersed in the state by requiring that no county be allowed to have more than one. The framers have imposed a size limitation of 40,000 square feet of gaming area for these casino facilities, in keeping with their intended usage and locations. The framers particularly intend that riverboat casinos be environmentally sensitive, and that appropriate protections be afforded the state's estuaries, waterways, marine life and plant life.

6. Effective date. The proposed amendment will become effective on the date it is adopted by the electorate of the state, and the legislature is mandated to implement the authorization for casinos. That means that work can begin at once to devise the control mechanisms for casinos, to determine an appropriate tax measure, and to put in place the agency or governmental unit which will license the authorized facilities. The proposed amendment specifies, however, that no casino gaming can be allowed to operate prior to July 1, 1995. By this restriction, the framers intend that it be clear, for all purposes, that the State of Florida will in fact have no casino gaming *in operation* until that date, irrespective of the earlier constitutional authorization for legislative implementation.

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SUMMARY OF SIGNATURES NEEDED AND CERTIFIED FOR REVIEW
PURSUANT TO SECTION 15.21, FLORIDA STATUTES

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	8% Required By Article XI, Section 3 Florida Constitution	10% Required By Section 15.21 Florida Statutes	Signatures Certified
FIRST	18,985	1,899	39
SECOND	19,588	1,959	959
THIRD	12,917	1,292	783
FOURTH	19,981	1,998	1,635
FIFTH	22,417	2,242	618
SIXTH	18,300	1,830	913
SEVENTH	18,567	1,857	701
EIGHTH	17,305	1,731	59
NINTH	22,721	2,272	2,441
TENTH	21,929	2,193	1,791
ELEVENTH	16,332	1,633	0
TWELFTH	16,266	1,627	8
THIRTEENTH	23,708	2,371	133
FOURTEENTH	22,920	2,292	405
FIFTEENTH	22,173	2,217	2,143
SIXTEENTH	21,711	2,171	1,496
SEVENTEENTH	11,330	1,133	4,323
EIGHTEENTH	13,527	1,353	2,948
NINETEENTH	23,160	2,316	5,941
TWENTIETH	20,176	2,018	3,983
TWENTY-FIRST	11,873	1,187	2,547
TWENTY-SECOND	20,932	2,093	7,210
TWENTY-THIRD	12,610	1,261	2,072
TOTAL	429,428	42,945	43,148

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	County	Signatures Certified
FIRST	Bay	39
	Escambia	0
	Holmes	0
	Okaloosa	0
	Santa Rosa	0
	Walton	0
	TOTAL	39
SECOND	Baker	0
	Bay	19
	Calhoun	0
	Columbia	0
	Franklin	0
	Gadsden	55
	Gulf	0
	Hamilton	0
	Jackson	0
	Jefferson	0
	Lafayette	0
	Leon	738
	Liberty	0
	Madison	0
	Suwannee	0
Taylor	0	
Wakulla	61	
Washington	86	
TOTAL	959	
THIRD	Alachua	0
	Baker	0
	Clay	9
	Columbia	0
	Duval	700
	Flagler	0
	Lake	0
	Levy	0
	Marion	15
	Orange	0

DATE: 06/03/94 2:48 pm

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	County	Signatures Certified
THIRD	Putnam	0
	Seminole	46
	St. Johns	13
	Volusia	0
	TOTAL	783
FOURTH	Duval	1,284
	Flagler	0
	Nassau	3
	St. Johns	348
	Volusia	0
TOTAL	1,635	
FIFTH	Alachua	0
	Citrus	145
	Dixie	0
	Gilchrist	0
	Hernando	264
	Levy	0
	Marion	33
	Pasco	176
	Sumter	0
TOTAL	618	
SIXTH	Baker	0
	Bradford	0
	Clay	148
	Duval	281
	Lake	264
	Marion	220
	Putnam	0
	Union	0
TOTAL	913	

DATE: 06/03/94 2:48 pm

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	County	Signatures Certified
SEVENTH	Orange	0
	Seminole	701
	Volusia	0
	TOTAL	701
EIGHTH	Orange	0
	Osceola	59
	TOTAL	59
NINTH	Hillsborough	0
	Pasco	203
	Pinellas	2,238
	TOTAL	2,441
TENTH	Pinellas	1,791
	TOTAL	1,791
ELEVENTH	Hillsborough	0
	TOTAL	0
TWELFTH	Desoto	0
	Hardee	0
	Highlands	0
	Hillsborough	0
	Pasco	8
	Polk	0
	TOTAL	8
THIRTEENTH	Charlotte	32
	Hillsborough	0

DATE: 06/03/94 2:48 pm

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	County	Signatures Certified
THIRTEENTH	Manatee	0
	Sarasota	101
	TOTAL	133
FOURTEENTH	Charlotte	68
	Collier	0
	Lee	337
	TOTAL	405
FIFTEENTH	Brevard	1,988
	Indian River	74
	Osceola	81
	Polk	0
	TOTAL	2,143
SIXTEENTH	Glades	0
	Hendry	0
	Highlands	0
	Martin	76
	Okeechobee	0
	Palm Beach	1,420
	St. Lucie	0
TOTAL	1,496	
SEVENTEENTH	Dade	4,323
	TOTAL	4,323
EIGHTEENTH	Dade	2,948
	TOTAL	2,948

DATE: 06/03/94 2:48 pm

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Proposition For Limited Casinos, Inc.

Amendment Title: Limited Casinos

Congressional District	County	Signatures Certified
NINETEENTH	Broward	2,721
	Palm Beach	3,220
	TOTAL	5,941
TWENTIETH	Broward	3,787
	Dade	196
	Monroe	0
TOTAL	3,983	
TWENTY-FIRST	Dade	2,547
	TOTAL	2,547
TWENTY-SECOND	Broward	2,636
	Dade	3,938
	Palm Beach	636
TOTAL	7,210	
TWENTY-THIRD	Broward	1,349
	Dade	141
	Hendry	0
	Martin	0
	Okeechobee	0
	Palm Beach	582
	St. Lucie	0
TOTAL	2,072	
GRAND TOTAL		43,148

DATE: 06/03/94 2:48 pm

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.

APPENDIX



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

FILED

SD WHITE

JUN 22 1994

CLERK, SUPREME COURT

By

Chief Deputy Clerk

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." Askew 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 suasions 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.

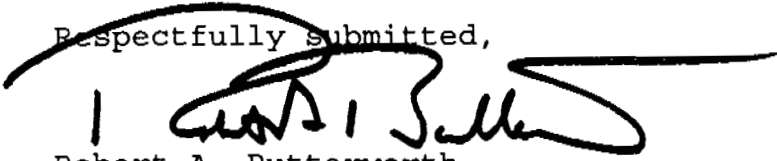
This Court stated in Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, supra, that "although a proposal may affect several branches of government and still pass muster, no single proposal can substantially alter or perform the functions of multiple branches[.]" Slip Op. at 6.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

APPENDIX



OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

June 22, 1994

CORRESPONDENTS:

A 1986 Florida constitutional amendment (Section 10, Article IV) provides that the attorney general shall request the opinion of the Florida Supreme Court as to the validity of any initiative petition circulated to amend the state Constitution.

This process is triggered by receipt of the proposed amendment from the Secretary of State's Office after certain requirements are met under Chapter 15.21 F.S.

In petitioning the court, the attorney general's office may enumerate factual issues concerning the single subject requirement and accuracy of the ballot title and summary. The attorney general's office does not take a position on the merits of the proposal.

Attached is a copy of the attorney general's communication to the court concerning a citizens' initiative petition which, if all additional signature requirements are met, would go on the 1994 general election ballot.

Joe Bizzaro
904/487-0984

APPENDIX

GAMBLING

Leaders want lawmakers to pass 'casino control'

By Mark Silva
THE MIAMI HERALD

Florida's governor and attorney general adamantly oppose casino gambling, yet both are encouraging the Legislature to authorize a new state Gaming Control Act.

They say a powerful law — giving the state authority to license and oversee casinos as well as investigate the background of everyone involved in the business — will be crucial if Florida's voters approve casino gambling.

The House Regulated Industries Committee plans to hear a bill today that creates a Florida Gaming Control Commission in November, in the event voters approve casinos. Two groups are collecting petitions to place casinos on the Nov. 8 ballot, and it's likely at least one will get a referendum.

Gov. Lawton Chiles and Attorney General Bob Butterworth are in harmony on today's bill: Holding noses, nodding approval.

"We are torn between our opposition to casino gambling and the necessity to ensure that a strong regulatory and law enforcement statute is on the books if (casinos) should pass," says Tom Herndon, the governor's chief of staff. "It's a little bit like having an insurance policy. You never want to use it, but you want to have the best one possible."

"This is after a lot of soul-searching," says Pete Antonacci,

deputy attorney general. "Butterworth is unalterably opposed to casino gambling. But there is a requirement that we deal responsibly with a pending public-policy issue ... not bury our heads in the sand."

This could be a short-lived commission. The bill (PCB RI 94-15) only takes effect if voters approve casinos on Nov. 8. If Florida's voters reject casinos — as they have done twice before — the law sunsets on Nov. 9.

Authorities say this is essential, because casinos could open in July 1995 if voters approve, and state regulators need all the preparation they can get.

The bill is modeled after New Jersey's casino laws, considered the country's toughest. The attorney general's office assisted in the drafting, insisting on separate regulatory and police powers: A five-member, full-time Gaming Control Commission, appointed by the governor, and a new Division of Gaming Enforcement under the Florida Department of Law Enforcement.

Casinos represent more than a challenge for state authorities, the FDLE says. They mean added work for local police. The FDLE has studied the impact of casinos in other states since 1990.

Some worry that endorsement of a gaming commission could send the wrong message to voters: lawmakers like casinos.

nes:
8-4371

A-8 The Orlando Sentinel, Wednesday, March 23, 1994

Chiles, Butterworth vow tough fight on casinos

By John Kennedy

TALLAHASSEE BUREAU

TALLAHASSEE — Gov. Lawton Chiles and Attorney General Bob Butterworth have promised to travel the state fighting efforts to legalize casino gambling in Florida, a House committee was told Tuesday.

"We strenuously oppose casino gambling and will campaign vigorously against it for the rest of this year," Tom Herndon, Chiles' chief of staff, told the Regulated Industries Committee.

The committee delayed action on a plan to create a new casino gambling commission to oversee the industry if voters in November legalize gaming. The measure will likely be voted on Thursday, said Chairman Rep. Everett Kelly, D-Tavares.

While committee members said they want more time to study the proposal, they heard from those on both sides of the issue — the sub-

ject of at least two signature petition drives.

About 430,000 signatures must be collected by Aug. 9 to get a casino measure on the November ballot. That represents 8 percent of registered voters, as required by Florida law.

"General Butterworth will be out on the stump along with the governor campaigning against casino gambling," said Assistant Attorney General Jon Glogau. "We're basically on the same page."

Like Herndon, Glogau said his boss "reluctantly" agrees the commission should be created so a regulatory system can be in place if casinos are approved.

The measure also calls for the state getting 16 percent of casino annual revenue — among the highest rates in the nation.

The proposed five-member regulatory panel would be created on Nov. 9 only if voters approve casinos the day before at the polls.

APPENDIX

CFO **B**

Butterworth flays leading casino plan

□ The opinion is preliminary to a Supreme Court ruling on whether the ballot initiative is legal.

By John Kennedy

TALLAHASSEE BUREAU

TALLAHASSEE — Attorney General Bob Butterworth on Wednesday issued a blistering legal opinion of Florida's leading casino gambling initiative, saying the measure may violate the state constitution.

Butterworth's opinion, while not binding, points out potential legal flaws that could keep Proposition for Limited Casinos from appearing on the November ballot.

"We think they have a very serious problem," Butterworth said of the casino initiative.

The attorney general's opinion goes to the state Supreme Court, which reviews citizens' initiatives to assure they comply with the state constitution.

Butterworth found problems with the ballot proposal's title and summary. He also said the measure could be found unconstitutional by addressing more than one subject.

The initiative is the foremost of

What it would do

The Proposition for Limited Casinos would authorize casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas counties, with two in Miami Beach; and limited-size casinos at existing 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. The Legislature would have to implement the proposal. No casino gambling would begin until July 1, 1995.

five ballot items proposed to legalize casino gambling in Florida. It would authorize as many as 47 casinos at pari-mutuel sites, on riverboats and at free-standing casinos across the state.

Organizers of Limited Casinos already have spent about \$2 million on the campaign. They said they are optimistic about collecting signatures from 429,428 registered voters needed by Aug. 9 to appear on the ballot.

Arthur England, a former Supreme Court justice who wrote the

Please see CASINO, B-4

Initiative's author doesn't worry

CASINO from B-1

campaign's ballot initiative, said he was "surprised, disappointed, but not the least bit worried" by Butterworth's opinion.

"Here he's looking very hard for things not to like," England said. "And of course he's an avowed opponent of casinos in Florida. You have to wonder how those two things came together."

But Butterworth said his disdain for casinos did not shape his legal review.

"I've been very much opposed to expanding gaming in Florida, but this is based on law, not personal opinion," Butterworth said.

The Supreme Court already has barred two initiative petitions from the ballot as unconstitutional. It is expected to hear oral arguments on the Limited Casinos initiative within the next two months and rule swiftly on the case.

No Casinos, a St. Petersburg-based organization opposed to all

the gaming initiatives, hailed Butterworth's opinion as affirming many of its claims.

"Certainly our side is heartened," said John Sowinski, campaign manager for the group. "From the beginning we said this was false advertising of a bad idea."

In his opinion, Butterworth said the initiative's ballot title may confuse voters. Instead of limiting casinos, the measure "for the first time" authorizes casino operations, he said.

Butterworth said it is misleading to term the measure "limited casinos" when it authorizes "nearly 50 casinos in as many as 24 counties."

By listing the counties — and in some cases — specific locations where casinos can operate, the measure runs afoul of constitutional provisions barring "logrolling" in ballot initiatives, Butterworth said.

In the wide-ranging Limited Casino initiative, voters are forced to

choose "all or nothing," he said.

Leaders of other casino drives active in Florida said they expected Limited Casinos would face constitutional questions.

Lew Oliver, spokesman for the Orlando-based Safe Bet for Florida Committee, said he felt his own proposal would get a go-ahead from Butterworth and the court.

"The attorney general covered all the bases and we're pretty pleased," said Oliver, whose measure would allow up to 21 riverboat casinos. "I don't see anything we may be in trouble on."

Michael Levine, whose Proposition for County Choice Gaming would allow a wide range of casinos if approved by county voters, agreed that Limited Casinos' troubles could help others.

"I don't want to gloat over it," Levine said. "But this opinion confirms our belief that our amendment will meet the constitutional test."

APPENDIX

DAILY BUSINESS REVIEW

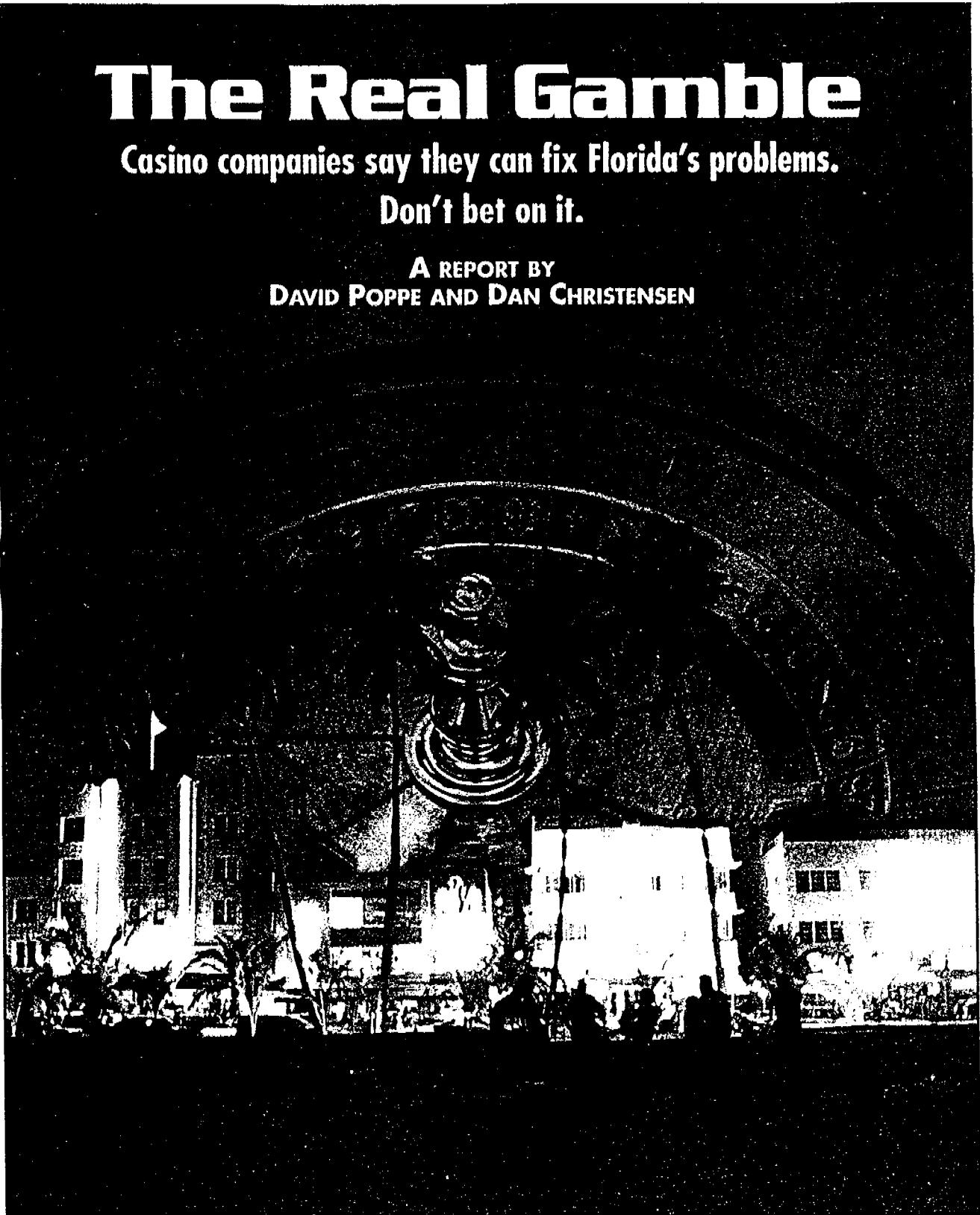
THE NEWSPAPER OF ENTERPRISE, REAL ESTATE AND LAW

FORMERLY MIAMI REVIEW

The Real Gamble

Casino companies say they can fix Florida's problems.
Don't bet on it.

A REPORT BY
DAVID POPPE AND DAN CHRISTENSEN



COMPANIES: West Palm Beach retailer asks fair hearing • By Christopher Hosford, Page A6

Casinos pay off, but only for the house

Companies say they've got what Florida needs;
the evidence says they're hardly a safe bet

BY DAVID POPPE
REVIEW STAFF

If you pay attention, casino owners will tell you what's wrong with their business.

Listen to Steve Wynn, the charismatic chairman of Mirage Resorts, the company that hopes to build a hotel and casino in Miami Beach with investor Thomas Kramer, tell residents of Bridgeport, Conn., what they could expect from one of his casinos:

"Get it straight ... there is no reason on earth for any of you to expect for more than one second that just because there are people here [in a casino], they're going to run into your store, or restaurant, or bar. ... It is illogical to expect that people who won't come to Bridgeport and go to your restaurants or your stores today will go to your restaurants and stores just because we happen to build this building here," Wynn said, as quoted by *The New York Times* in November 1992.

Or listen to developer/casino mogul Donald Trump:

"As somebody who lives in Palm Beach," Trump told *The Miami Herald*, "I'd prefer not to see them [casinos] in Florida, but as someone in the gaming business, I'm going to be the first one to open up if Floridians vote for them."

Or listen to Philip Satre, president of Promus Cos., the parent of Harrah's Casinos, describe how gamblers will give up creature comforts to get down their bets:

"You can wear the same pair of pants for three more months or postpone buying a car for two or three years. But you really can't substitute much for the action and excitement of a casino," Satre told *The Wall Street Journal* last year.

Those are hardly ringing endorsements of the industry, yet at the heart of the argument to bring casinos to Florida is the notion that gambling could be the state's winning ticket, lifting the economy out of its supposed



Michael Levine, lobbyist for the Proposition for County Choice Gaming, argues that casinos are needed because "there's no renaissance on the Beach and there's no renaissance in the state."

funk and "restoring" the Sunshine State as a premier tourist destination.

But gambling's promise of economic development, new jobs and a tax windfall is mostly a mirage. While it's true that South Florida tourism has suffered since the well-publicized shootings of a half-dozen tourists last year, gaming proponents tend to exaggerate both Florida's troubles and the benefits casinos would bring.

Economists and public officials who've measured the effects of casino gambling as it sweeps the country generally say casinos draw tremendous crowds and generate huge revenues — and pay a lot of taxes — but their spillover effect on local economies is minimal. The economic effect can even be negative because casinos drain money from other leisure businesses. They can also spawn street crime and white-collar crime, and hurt a city's image as a place to do business.

Nevertheless, gambling increasingly

is becoming the nation's quick fix. Across the country, voters have been sold on the prospects of new jobs and tax revenues, as well as on the fun of making bets. Last month, researchers at the University of Massachusetts reported that in 1991 states with lotteries spent \$300 million advertising their games, compared with \$50 million on technology research and marketing help for manufacturing companies.

Another study, conducted by researchers at the University of New Orleans, concluded that casinos can harm a community unless they attract substantial numbers of new visitors. When residents and existing visitors spend money in the casino instead of in other local shops, clubs and restaurants, the net effect is negative, because money is diverted from other kinds of spending that have a greater ripple effect on the economy.

"When we pointed that out, we were criticized by casino proponents who

said that's ridiculous. But that's the most basic economic point you can make," said Timothy Ryan, dean of the college of business administration at UNO.

The casino companies, naturally, like to portray themselves as economic jumper cables, revving life into stalled tourism economies. Alan Feldman, a spokesman for Wynn's Mirage Resorts, suggests Florida would be "using gaming as a tool to stimulate job growth, stimulate new taxes, and give a little bit of an afterburner to tourism. You have nine million visitors [to Miami annually]. Why not have 14?"

He says that while Wynn correctly said that a casino wouldn't revive tourism in a downtrodden industrial city like Bridgeport, it could have a far more positive effect in South Florida: "Speaking for our company, the concept of gaming as a tool of economic development can hold promise," he said, though he cautions it holds no guarantee of benefit for neighboring businesses.

Other gaming proponents speak in shriller tones, warning that without casinos, Florida may be unable to compete for tourists in the years ahead.

"Tourism is suffering tremendously, because of crime and other factors. ... We need to add to what we already have to compete for tourism dollars," said Matthew Leibowitz, Dade lawyer and lobbyist for Proposition for Limited Casinos, which favors putting casinos in large hotels and pari-mutuels.

His fellow advocate Michael Levine paints an even bleaker picture. "Tourism revenues are off substantially," said Levine, lobbyist for Proposition for County Choice Gaming. "There's no renaissance on the Beach and there's no renaissance in the state."

It's true that Florida tourism has been battered by a nasty domestic recession followed by recessions in Canada and Europe and by a revival of the state's image as lawless. Florida suffered a 6

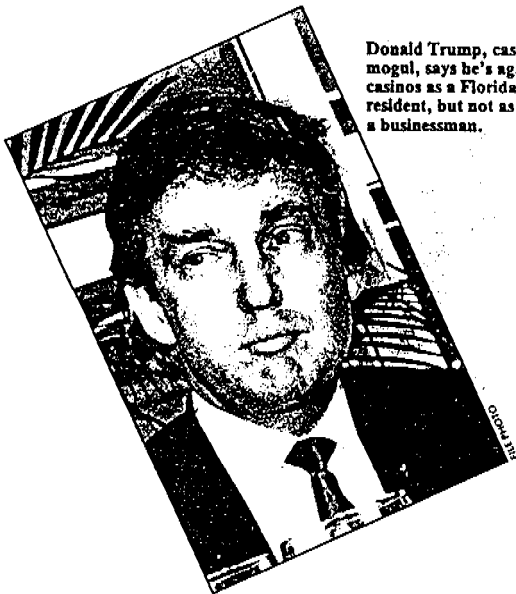
ALISA MONTECRO-CHEN

Steve Wynn, chairman of Mirage Resorts, hopes to build a hotel and casino in Miami Beach.



LAS VEGAS REVIEW JOURNAL

Donald Trump, casino mogul, says he's against casinos as a Florida resident, but not as a businessman.



DIGITAL ART

C. Patrick Roberts, is the chief lobbyist for the Proposition for Limited Casinos.



ALVA WINTER/GO-GETTER

percent drop in tourist visits in January, the state Department of Commerce reported, and February visits were off as much as 8.5 percent from the year before, according to preliminary figures.

But there's no evidence yet to suggest those figures would represent a permanent decline unless the state is saved by gambling-hungry snowbirds. In the midst of last year's bad press about crime, tourism and recreation-related taxable spending grew by 3.6 percent to \$32 billion.

And while Levine likes to say that a typical 300-room hotel employs about 270 people but a 500-room hotel/casino employs about 3,000, those jobs don't bring quite the benefits casino advocates claim.

First, most casino jobs pay less than the \$20,000 to \$25,000 per year gambling advocates cite.

Second, the presence of casinos can be a deterrent to other businesses. Las Vegas may be an exciting place to visit, but it's not a good place to find a decent job. Even though Nevada has no state income tax and neighbors high-tax, recession-wracked California, Las Vegas hasn't attracted much commerce beyond gambling.

In 1992, the University of New Orleans researchers found Las Vegas had only one-sixth as many manufacturing jobs as comparable Western cities. Compared with the nation as a whole, it has less than one-half the per capita jobs in fields like insurance, finance, real estate, business services, health services, law and education. Those researchers concluded that building casinos in Louisiana probably would damage the state's already dicey reputation as a place to do business.

Finally, casino jobs frequently come at the cost of other jobs. In Atlantic City, where casinos now give away more than \$230 million per year in food and drinks, the number of restaurants in the city declined by 40 percent, from 243 to 146, between 1977

Florida's pro-casino players

WITHIN the pro-casino camp, there are wildly different proposals for bringing gambling to Florida. At least four groups are attempting to gather the 430,000 signatures from state voters necessary to put a referendum on the November ballot.

■ **Proposition for Limited Casinos.** This is the best known and probably best-financed plan. It would permit licensing the state's dog tracks, horse tracks and jai-alai frontons as casinos, and would also permit a limited number of hotel/casinos, including three in Dade County and two in Broward. The plan is backed by the state's pari-mutuels and by big Las Vegas casino interests, including Mirage Resorts, Promus (parent of Harrah's Casinos) and the Boyd Group. The plan has been criticized because it specifies that one of the Dade casinos would go on land owned by Thomas Kramer, who plans to build a casino with Mirage. The chief lobbyist for the plan is C. Patrick Roberts.

■ **Proposition for County Choice Gaming Inc.** This state's hotel and motel associations are the principal backers. This plan calls for a two-step process: Voters statewide must approve amending the state constitution to permit casino gambling, then each county would hold a referendum on what type, if any, casinos to open. Under this system, Dade might permit virtually unlimited casinos, while Broward might vote to have none. The best-known backer of this plan is Sunny Isles Beach hotelier Bennett Lifter.

■ **Florida Riverboat Corp.** This group favors licensing 20 riverboats across the state. The riverboats would make three-hour trips on state waterways, but would not be open while docked. Proponents say this system minimizes negative side effects of casino gambling by appealing mostly to tourists, who have time for the trips. Florida Riverboat is backed by Gerald Braley, an Orlando developer and Orange County Republican Party chairman, along with several Midwestern riverboat gaming companies. Its principal spokesman is Lewis M. Oliver III.

■ **Florida Locally Approved Gaming Inc.** This plan, backed by \$2.5 million from Bally Manufacturing Corp., calls for 10 hotel casinos and 10 riverboats to be licensed statewide. Dade County would get up to four hotels and two riverboats. Another key backer is Charles Fernandez, president of VivAmerica Media Group in Miami, owner of Radio Mambi.

Casino movement is Florida's real gamble

COVER STORY, FROM PAGE A13

and 1987, according to last month's University of Massachusetts report.

Those researchers found a "critical lack of objective knowledge and research about the real economic and social costs and benefits of legalized gambling," including the degree to which casinos cannibalize the customer base of existing businesses like nightclubs, shops and restaurants.

In effect, casinos consolidate recreation-related jobs and taxes that had been scattered across the economy. For example, a report by University of South Dakota researchers found that retailers, including car dealers, suffered a drop in 1991 taxable sales of about \$60 million after casinos opened in Deadwood, S.D. The money instead got wagered.

In Illinois, riverboats have created 5,000 jobs. But the state's pari-mutuel industry may ultimately lose that many, say state officials.

And the University of New Orleans study estimated that the new 200,000-square-foot casino scheduled to be built there would create jobs, attract tourists and raise about \$100 million per year in tax revenues. But the casino's effect on local retailing would be negative, reducing sales by \$62 million annually.

"We did estimate that the economic impact on New Orleans would be positive, but we were labeled as casino opponents because we weren't positive enough," said Ryan, the UNO dean.

Ryan said gambling advocates routinely puff estimates of how much money a community can expect to earn from a casino. In Louisiana, advocates claimed the megacasino would generate \$300 million annually in new taxes for the state, a figure that would've required the casino to earn four times as much money per square foot as a typical Las Vegas casino. Now that the casino has been approved, its owners are balking at paying \$100 million per year, Ryan said.

In Iowa, after the state opened six riverboats, its lottery revenues dropped 13 percent. A similar drop in Florida, where the lottery provides the state with \$800 million a year in revenue, would cost more than \$100 million. Considering proponents believe 20 riverboat casinos would generate between \$350 million and \$500 million for the state, the loss of lottery money would be significant.

Jo Miglino, a spokeswoman for Gov. Lawton Chiles, said the governor's opposition to casinos stems from his belief that, in the long run, they would be more of a giveaway to a few large hotels than a benefit for taxpayers. "He doesn't believe that's the kind of business the state needs. He doesn't think that aside from a few hotels that anyone else would really benefit," she said.

What about riverboats?

The idea that casinos can do economic harm is tacitly acknowledged in the debate among gambling advocates about what kind of gaming Florida voters should approve.

Lewis M. Oliver III, counsel to Florida Riverboat Corp., argues that voters would be better off with riverboats than with huge hotel/casinos or pari-mutuel casinos, because the boats are

'As the casino industry expands, the ability of any one area to draw visitors in is going to be difficult. Gamblers now have a lot of choices.'

ECONOMIST TIMOTHY RYAN

more attractive to tourists than to locals. Riverboats aren't open all day, go out only on scheduled three-hour trips and charge admission, all of which discourages locals from making impromptu visits.

"It doesn't suck too many dollars out of the local business community," Oliver said.

Oliver also said while land-based casinos attract pawn shops, tattoo parlors and prostitutes, riverboats have "none of the negative side effects," of hotel/casinos, because people can't come and go as they please.

"It's appealing for a tourism-based economy without being so convenient that it represents an unreasonable temptation," he said.

Not everyone agrees, of course. Dade Commissioner Maurice Ferre says riverboats wouldn't benefit the economy at all because there is no accompanying real estate development. And unlike a new resort, which will attract tourists, no one will come to Florida specifically to gamble on a riverboat.

"The real people who I am worried about are the riverboat people," Ferre said. "If they get their petition signed, that'll kill everybody."

Why? "They look harmless," Ferre said, but, "I oppose them, because they don't generate money for anybody else."

Ferre does believe that pari-mutuels must have some form of casino gambling, or risk being destroyed by Native American casinos that could open in Florida within a year. "They are doing this in self-defense," he said of the pari-mutuels.

Both Oliver and Ferre agree that

Florida will be best served if voters approve very conservative, limited forms of gambling. But even in Illinois, a state lauded for its conservative approach to gambling, results have been mixed.

Illinois has licensed 10 riverboats across the state, nine of them operating. The boats are located in struggling communities and employ about 5,000 people, most of them earning between \$17,000 and \$19,000 per year.

"The boats have been enormously successful," said Michael Belletire, deputy chief of staff to Illinois Gov. Jim Edgar. "A couple of the boats are among the most successful in the world, relative to their square footage."

Illinois imposes heavy 20 percent taxation on casino profits, with the state getting three-fourths of the proceeds and local governments one-fourth. Currently, the state is reaping nearly \$120 million per year from the riverboats.

But that windfall isn't all it seems. The most successful boats are in Joliet and Aurora, two Chicago suburbs. The boats don't bring dollars into Illinois, they wring them out of Chicago.

Further, Illinois' lottery revenues were off by \$50 million last year, though Belletire said the riverboats are only part of the reason for that. One of the state's eight horse tracks closed when its revenues declined by 40 percent, costing 500 jobs. Another track, in East St. Louis, is in financial difficulty.

If five new riverboats open in Chicago, as proposed, ultimately one-fourth of the 20,000 jobs directly or

indirectly related to the horse racing industry in Illinois could disappear, wiping out employment gains on the riverboats.

"Whether there is a net gain in jobs or not is unclear," Belletire said.

Belletire also noted that Illinois' riverboats will never be more profitable than now, because nearby states are opening their own boats, saturating the market.

"The governor has never said this is a great way to raise revenues," Belletire said. "The state could raise much more revenue by a modest increase in taxes" than by licensing casinos. J. Terrence Brunner, executive director of the Better Government Association in Chicago, says Illinois could've raised the same amount of money by raising its state income tax from 3 percent to 3.25 percent.

And what about the economic benefit to the state? "There's an economic benefit, but it isn't as pure as it sounds," Belletire said. He added that as nearby states license their own riverboats, the Illinois boats will draw fewer out-of-state visitors in the future, and thus provide less economic benefit.

Diminishing returns?

There may be a lesson in that experience for Florida. Over time, the power of a casino to draw tourists to Florida almost certainly will diminish.

"As the casino industry expands, the ability of any one area to draw visitors in is going to be difficult," said Ryan, the New Orleans economist.

"Gamblers now have a lot of choices, and the decision to travel to gamble is going to be altered tremendously over the next few years," Ryan said. "If all I want to do is gamble, I don't have to travel. And if I want to travel, I can gamble just about everywhere I go."

If the casino market does become saturated, the casino companies would survive by marketing heavily to the existing tourist market and to local residents.

That, in turn, would ultimately drain millions of dollars out of the South Florida economy and into the coffers of mostly out-of-state casino companies. As with the lottery, the biggest players ultimately could be South Florida's poor and working classes.

Brunner, of Chicago's Better Government Association, described legalized gambling as "a terribly regressive tax on the poorest people in society, and the real addicts are the politicians."

Coral Gables Mayor Raul Valdes-Fauli thinks casinos would do exactly the opposite of what their proponents advocate. He sees folly in bringing casinos to an area already perceived as lawless. His analogy: "My son smokes crack and since I can't fix that, I guess I'll make my house into a crack house."

As for the economic development potential of casinos, Valdes-Fauli scoffs. "We are doing very well, thank you, in Coral Gables, attracting multinationals. And now we are going to be known as the gambling center of Latin America?" Valdes-Fauli asks. "... Do we now market gambling vs. being the telecommunications center for South America? Do we market roulette vs. marketing being the financial services center for South America?"



Gov. Lawton Chiles believes that, in the long run, casinos would be more of a giveaway to a few large hotels than a benefit for taxpayers.