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IN RE:

CASE NO: 83,886

ADVISORY OPINION TO THE
ATTORNEY GENERAL - - LIMITED
CASINOS

REPLY BRIEF OF AMICUS

PROPOSITION FOR COUNTY CHOICE GAMING, INC.

IN OPPOSITION TO THE LIMITED CASINOS INITIATIVE

✓
M. STEPHEN TURNER, P.A.
Fla. Bar No. 095601
✓
MICHAEL MANTHEI
Fla. Bar No. 0998044
BROAD AND CASSEL
215 S. Monroe St., Ste. 400
P.O. Box 11300
Tallahassee, Florida 32301
(904) 681-6810

ATTORNEYS FOR PROPOSITION FOR
COUNTY CHOICE GAMING, INC.

Michael Levine, President
Proposition For County
Choice Gaming, Inc.
200 W. College Avenue
Tallahassee, Florida 32302

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ARGUMENT

I. THE BALLOT TITLE AND SUMMARY ARE DECEPTIVE AND FAIL TO PROVIDE VOTERS WITH INFORMATION NECESSARY TO AN INFORMED DECISION

The arguments of Proposition for Limited Casinos, Inc. ("Limited") in support of the Limited Casinos initiative are at once disingenuous and intellectually dishonest. While it is true that the ballot title and summary need not recite every detail of the proposed amendment, it must provide voters with enough information to make an intelligent decision and it must not mislead them. Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982). The ballot title and summary at issue in this case violates both these principles.

Limited argues that the title of the initiative -- Limited Casinos -- "precisely identifies the subject and content of the proposed amendment as being an authorization by the voters for a limited number of casinos" Initial Brief of Proposition for Limited Casinos ("Limited Brief") at 18. The title actually makes no such identification and, in fact, gives no clue as to the scope and purpose of the amendment

The title is no less vacuous when read in conjunction with the summary. The summary states that the proposed amendment will "limit" the number, and in certain instances, the size of casinos to be permitted in the state. Even assuming that a well informed voter has conducted the extensive background research Limited seems to think is required of him or her; and assuming further that, based on this information, the voter has formed an opinion as to

the extent and location of casino gambling he or she is willing to support, the title and summary fail to provide the very information that voter must have in order to cast a vote that comports with his or her beliefs. It does not say what these supposed limits are.

At page 22 of its brief, Limited states that the ballot advises voters that "two of the three [casinos] for Dade County must be located in the City of Miami Beach." This is not true. The summary says only that two casinos must be located in Miami Beach. By failing to disclose the number of casinos to be permitted and their location, the summary fails to advise voters that the initiative favors heavily populated counties. Finally, the summary does not advise the voters that the chief purpose of requiring a casino at the fictitious "South Pointe Redevelopment Area" is insure a substantial benefit to certain private land owners. This information all is material to an informed decision is not available to the voters from sources outside the ballot itself. See Initial Brief of Amicus Proposition for County Choice Gaming ("County Choice Brief") at pp. 17-18.

Also at page 22 of its brief, Limited states that the summary advises voters that "casinos will sited at [pari-mutuel facilities]." Again, this is not true. The ballot summary provides only that casinos will be located with pari-mutuel facilities. If, indeed, the "chief purpose" of the proposed amendment is establish casinos at parimutuel facilities, the ballot summary does not convey this purpose. The summary also deceives voters into believing that it is the pari-mutuel facilities

themselves that will receive casino licenses. In fact, the proposed amendment authorizes the distribution of casino licenses to pari-mutuel permit holders.

Finally, use of the term "limited" misleads voters into believing that the undisclosed limits will keep Florida's gaming industry small so as not to overshadow existing tourist attractions and pari-mutuel events. In fact, the amendment authorizes gaming on a par with that existing in all of Nevada. See County Choice Brief at pp. 19-23. To be sure, the wisdom of such extensive gaming is not at issue here. For the purposes of this proceeding, the flaw in the summary is that it fails to state clearly the true extent and scope the gaming that would be authorized. At the same time, it deceives even informed voters into believing that the amendment will place meaningful restrictions on the Florida gaming industry.

II. LIMITED MISCONSTRUES THE SINGLE SUBJECT REQUIREMENT

A. **The Limited Casinos initiative presents a textbook example of impermissible "log-rolling"**

Limited begins its argument with the apocryphal statement:

The Petition contains one subject and only one subject: an authorization for a limited number of casinos in the State of Florida.

Limited Brief at 7. It then goes on to argue that provisions fixing the size, specific locations, and type (i.e. land based or riverboat) of each facility permitted is merely "implementational detail" directly related to the authorization of "casinos" Id. at

14-15. This is the same type of expansive generality that the court struck down in Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994).

In that case, this Court held that the enumeration of ten classifications of people that would be entitled to protection from discrimination constituted impermissible "log-rolling" in violation of the single subject rule of Article XI, Section 3, Florida Constitution. The proposed amendment at issue in this case forces voters to approve casinos located at multiple, specific locations throughout the state. It also forces them to approve or disapprove with a single vote free standing, hotel based casinos, "riverboat"¹ casinos, and casinos somehow linked to existing pari-mutuel permit holders and facilities. Finally, the proposed amendment forces voters to accept two different size limits as well as casinos with no size limits. If this is merely "implementational detail", the single subject rule is meaningless.

Limited's reliance on Watt v. Firestone, 491 So. 2d 592 (Fla. 1st DCA 1986) is completely misplaced. The proposed amendment at issue in that case did not specify the locations of casinos throughout the state, but rather merely authorized the electors of each county, by initiative referendum, to permit casino gaming within their own counties. Nor can Limited find solace in

¹As No Casinos, Inc. points out in its initial brief, the term "riverboat" when used in conjunction with "casino" has multiple meanings and is used to describe two very different types of facilities. See Initial Brief of No Casinos, Inc. at 13-16.

Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978). The proposed amendment at issue in that case did not involve geographic log-rolling. Rather, it specified a single, well defined location on the border between Dade and Broward Counties within which casino gaming would be permitted. It thus dealt with only a "single subject".

B. The Limited Casinos initiative clearly interferes with local control over land use and zoning

Limited's myopic disregard of well established legal principles is perhaps best illustrated by its argument that "any inherent "encroachment" [on the powers of local government] would be irrelevant to the Court's one-subject analysis." Limited Brief at 16. Only four months ago, in Restricts Laws Related to Discrimination, 632 So. 2d at 1020, this Court held that a proposed amendment which encroaches on municipal home rule powers, and at the same time, alters or performs the functions of branches of the State government, violates the single subject requirement. The proposed amendment at issue in that case merely prohibited local governments from passing laws regarding discrimination. The Limited Casinos initiative usurps the more fundamental power of local governments to control the use of land within their respective jurisdictions.

Local authorities have no choice but to authorize casinos with existing pari-mutuel facilities. To the extent that the counties can have a choice as to the location of the county specific

casinos, they may not choose to deny a casino gaming use. They must authorize the construction of a casino somewhere within their borders. In Dade County, local government suffers an even greater loss of power. Two casinos must be located in Miami Beach. For all intents and purposes, one of these two must be located on land owned by Thomas Kramer.

The effect of the proposed amendment on local home rule powers has nothing to do with the potential need for post-enactment construction. See Limited Brief at 16. Rather, the proposed amendment implements a very real and immediate diminution in the power of local governments. Because it also alters and performs the functions of branches of State government, see County Choice Brief at 8-11, the proposed amendment violates the single subject rule.

CONCLUSION

For the reasons set out in County Choice's initial brief and in this reply brief, the Limited Casinos initiative violates the single subject rule of Article XI, Section 3, Florida Constitution. In addition the ballot title and summary fail to provide the "fair notice" required by Section 101.161, Florida Statutes.

Accordingly, it must be stricken from the ballot.

Respectfully submitted,

M. Stephen Turner, P.A.
Fla. Bar. No. 095601



Michael Manthei

Fla. Bar. No. 0998044
BROAD AND CASSEL
215 S. Monroe, Ste 400
P.O. Drawer 11300
Tallahassee, FL 32301
(904) 681-6810

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Brief was mailed United States Mail postage paid this 15th day of July, 1994 to the parties named in the attached service list.

BY: 

Michael Manthei

Attorney General Robert A. Butterworth
Stephanie A. Dniel, Esq.
Assistant Attorney General
Office of Attorney General PL01,
The Capitol
Tallahassee, FL 32399-1050

Jim Smith, Secretary of State
Department of State, LL10
The Capitol,
Tallahassee, FL, 32399-0250

Arthur England, Esquire
Greenberg Traurig,
1221 Brickell Avenue
Miami, FL 33131
Counsel for Proposition
for Limited Casinos, Inc.

Julian Clarkson, Esquire
Susan Turner, Esquire
Holland & Knight
315 South Calhoun Street, Suite 600
P.O. Drawer 810
Tallahassee, FL 32302
Counsel for Florida Locally
Approved Gaming, Inc. and
Bally Manufacturing Corporation

Mikki Canton, Esquire
Holland & Knight
701 Brickell Avenue, Suite 3000
P.O.Box 015441
Miami, FL 33131
Counsel for Florida Locally
Approved Gaming, Inc. and
Bally Manufacturing Corporation

Robert T. Mann, Esquire
1326 Riverside Avenue
P.O.Box 907
Tarpon Springs, FL 34688-0907

Stephen R. ManNamara, Esquire
General Counsel No Casinos, Inc.
217 South Adams Street
Tallahassee, FL 32301
General Counsel for
No Casinos, Inc.

Donald L. Bell, P.A.
kerrigan, Estes, Ranking & McCloud
217 South Adams Street
Tallahassee, FL 32301
Counsel for No Casinos, Inc.

Randal H. Drew, Esquire
P.O.Box 270
Jacksonville, FL 32202
Counsel for Bill Simms