OA 8-23-94 #7

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,886

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: LIMITED CASINOS

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

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

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SUMMARY OF ARGUMENT

In its initial brief the Proposition for Limited Casinos, Inc. ("PLC") repeatedly asserted this Court is bound by or should accord great weight to Weber, Floridians Against Casino Takeover, and Watt decisions. The "broad view" standard utilized by the Court in Weber and Floridians Against Casino Takeover, however, was limited to legislative restrictions by this Court in Fine v. Firestone and analytically those cases have been limited to their facts. The Watt decision is completely distinguishable in that the court therein noted that Article XI, Section 3, Florida Constitution did not apply to that case. The PLC's assertion that this Court is bound by or should accord great weight to Weber, Floridians Against Casino Takeover, and Watt is completely without merit and appears to have been interposed to avoid meaningful analysis of the "oneness of purpose" test and to side-step the single-subject limitation.

Citing several cases wherein the term "limited," or a derivative thereof, has been approved in a ballot title, PLC further argued the Court must approve the use of the term "limited" in the ballot title simply because the word has been utilized in another context. This argument is illogical and devoid of merit. The correct use of a term in the past certainly does not justify its incorrect use in the future. In each of the approved uses of the term "limited," or a derivative thereof, in the ballot title, the title was descriptive of the initiative's intention to limit an existing right -- in this instance there is no existing right to casinos. The initiative

simply can not limit what does not presently exist. The use of the term "limited" in the proposed initiative is patently misleading and the assertion that this court is bound by its past decisions misplaced.

The ballot summary fails to fairly apprise the voter of its true purpose and notably omits advising the voter of the mandate to confer a gaming license upon a specific land owner (PLC's benefactor). While there can be no dispute of the fact that one of the chief purposes of the proposed initiative is constitutionally confer a casino gaming license upon the South Pointe Redevelopment Area land owner (PLC's benefactor), PLC argued the ballot summary need not disclose such to the voters. PLC's attempt to hide its benefactor in the "City of Miami Beach" and its argument that somehow voters in and outside the City of Miami Beach would not be equally deceived by the subterfuge of the "South Pointe Redevelopment Area" mandate, is alarming and further evidences the ambiguity and misrepresentation which are apparent throughout the initiative.

The Limited Casinos' initiative fails to satisfy the single-subject requirement of Article XI, Florida Constitution and the requirements of Section 101.161, Florida Statutes. PLC's failure to engage in meaningful analysis of these requirements and the initiative's failure to fairly apprise the voters of its chief purpose and effect demonstrates an impermissible effort to side-step the single-subject restriction and the fair notice requirements of Section 101.161, Florida Statutes.

ARGUMENT

I. PLC'S RELIANCE UPON WEBER, FLORIDIANS AGAINST CASINO TAKEOVER, AND WATT IS MISPLACED IN THE SINGLE-SUBJECT ANALYSIS REQUIRED BY THIS COURT.

The Florida Constitution reserves unto the people the power, through initiative, to propose the revision or amendment of any portion(s) of the Constitution, "provided, that any such revision or amendment shall embrace but one subject and matter directly connected therewith." Art. XI, §3, Fla. Const. The test of what constitutes a "single-subject" within the meaning of Article XI, Section 3 of the Florida Constitution evolved from the 1972 amendment of Article XI until 1984 when this Court, in Fine v. Firestone, 448 So.2d 984 (Fla. 1984) and Evans v. Firestone, 457 So.2d 1351 (Fla. 1984), established the now well settled "oneness of purpose" standard. This standard incorporates a "functional" test of whether the proposal affects a function of government as opposed to a section of the Constitution. Fine, 448 So.2d at 990. This Court has construed the requirements of Article XI, Section 3, Florida Constitution on numerous occasions and the legal requirements are well settled. See, e.g., In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276 (Fla. May 26, 1994); In re Advisory Opinion to the Attorney General --Restricts Laws Relating to Discrimination, 632 So.2d 1018 (Fla. 1994);

Evans v. Firestone, 457 So.2d 1351 (Fla. 1984); and Fine v. Firestone, 448 So.2d 984 (Fla. 1984). In that regard the Court has instructed that "where a proposed amendment changes more than one government function it is clearly multi-subject". Evans, 457 So.2d at 1354. In addition, when a proposed amendment performs the functions of different branches of government, see, Evans, 457 So.2d at 1354, or enfolds "disparate subjects within the cloak of a broad generality", see, Evans, 457 So.2d at 1353, it fails the functional "oneness of purpose" test.

Although the proponents of the Limited Casinos' initiative, Proposition For Limited Casinos, Inc. ("PLC"), recognized the standard of review imposed upon constitutional initiatives requires an evaluation of "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 government", see, Initial Brief of PLC, p.4, PLC relies upon Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), Weber v. Smathers, 338 So.2d 819 (Fla. 1976), and Watt v. Firestone, 491 So.2d 592 (Fla. 1st DCA 1986), review denied, 494 So.2d 1153 (Fla. 1986), to support its contention that the Limited Casinos' initiative passes the single-subject requirement. Such reliance is misplaced and is interposed solely to avoid the required single-subject analysis.

This Court in Fine and Evans specifically receded from the language earlier espoused in Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978) and Weber v. Smathers, 338 So.2d 819 (Fla. 1976). See Fine, 488 So.2d at 987 and Evans, 457 So.2d at 1354. Although this Court did not abrogate the ultimate holdings in Floridians

Against Casino Takeover, and Weber,[1] any analysis predicated upon these cases must be evaluated in light of this Court's subsequent rulings -- particularly with regard to the single-subject requirement of Article XI, Section 3, Florida Constitution. PLC urges this Court to adopt the "broad view" utilized in Weber and Floridians Against Casino Takeover in its analysis of the single-subject restriction. This Court, however, has specifically abandoned the "broad view", which PLC would require, in evaluating the single-subject requirement applicable to constitutional initiatives.[2] Fine, 488 So.2d at 988. "We recede from our prior language in Floridians that expressed the view that there is no difference between the legislative one-subject restriction and the initiative constitutional proposal one-subject limitation." Id. After distinguishing the two requirements, the Court added "we find that we should require strict compliance with the single-subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions." Id.

A. PLC'S Reliance Upon Weber and Floridians Against Casino Takeover in Analysis of the Limited Casinos Initiative is Misplaced.

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[1] See Evans v. Firestone, 457 So.2d 1351, 1357 (Fla. 1984) (J. Overton concurring).

[2] This Court stated in Floridians Against Casino Takeover, referring to its decision in Weber, that "[t]he narrow view would have compelled a finding that at least five 'subjects' were embraced within the proposal. The broad view accepted, in fact, by the Court led to upholding the proposal as a single subject 'ethics in government'". Floridians Against Casino Takeover, 363 So.2d at 340. In Fine v. Firestone, however, this Court receded from its position in Floridians Against Casino Takeover that there was no difference between the single-subject requirements imposed upon the Legislature and the single-subject requirement applicable to constitutional initiatives. In doing so, this Court limited the "broad view" to the legislative single-subject restriction. See Fine 448 So.2d at 987.

In Floridians Against Casino Takeover the Court reviewed the following initiative:

> Casino Gambling: The operation of state regulated privately owned gambling casinos is hereby authorized only within the following limited area:
>
> That area of Dade and Broward Counties, Florida bounded . . . (providing the geographic description of the proposed area).
>
> Taxes upon the operation of gambling casinos shall be collected by the State and appropriated to the several counties, school districts and municipalities for the support and maintenance of the free public schools and local law enforcement.

Floridians Against Casino Takeover, 363 So.2d at 338. In reviewing the initiative, the Court looked to the analysis utilized in Weber, which was the first case decided under the 1972 amendment to Article XI, Florida Constitution. Floridians Against Casino Takeover, 363 So.2d at 340. In Weber, the Court was asked to determine the validity of the "Sunshine Amendment." The standard of review initially developed by the Weber Court required:

> First, the 1972 change was designed to enlarge the right to amend the Constitution by initiative petition. Second, the burden upon the opponent is to establish that the initiative proposal 'is clearly and conclusively defective.' Third, 'the 'one subject' limitation was selected to place a functional, as opposed to locational, restraint on the range of authorized amendments.' Last, in applying the foregoing principles to the amendment . . . the one subject limitation should be viewed broadly rather than narrowly.

Floridians Against Casino Takeover, 363 So.2d at 340 (outlining the analysis utilized by the court in Weber). Discussing the standard applied by the Court in Weber, the Court in Floridians Against Casino Takeover noted that the "Sunshine Amendment" "arguably embraced at least five 'subjects' ranging from financial disclosure by public officials to limitations on lobbyists and civil penalties on nongovernmental employees." Id. Even so,

because the "broad view" was utilized, the "Sunshine Amendment" was found to contain a single broad subject - "ethics in government." Id. Adopting the same "judicial philosophy" the Floridians Against Casino Takeover court held, on the sole basis of the "broad view" requirement of Weber, "the generation and collection of taxes, and the distribution thereof, [are] part and parcel of the single subject of legalized casino gambling." Id.

The sole basis for the Floridians Against Casino Takeover Court's rationalization that there was but a single subject in the initiative was the use of the "broad view" standard established by the Court in Weber. This so called "broad view" has, however, been limited by this Court to the single-subject analysis of legislation and no longer applies to the single-subject analysis of constitutional initiatives. Fine, 488 So.2d at 988. In Fine, this Court stated "[w]e recognize that we have taken a broad view of this legislative restriction", but, the Court continued, "[w]e recede from our prior . . . view that there is no difference between the legislative one-subject restriction and the initiative constitutional proposal one-subject limitation."[3] Id. (referring to its prior decision in Floridians Against Casino Takeover). Thereafter, the Court has utilized the "oneness of purpose" test in determining whether the initiative affects more than one function of government, affects unnamed other provisions of the Constitution, or alters or performs the functions of different branches of government as PLC has defined the test established by this Court for the single-purpose requirement. PLC's suggestion that this Court is bound by the outcome reached in Floridians Against Casino

[3] This Court further receded from the language in Floridians Against Casino Takeover that "the question of whether an initiative proposal conflicted with other articles or sections of the constitution had 'no place in assessing the legitimacy of an initiative proposal'." Fine at 990.

Takeover is an attempt to side-step the required single-subject analysis.

When the underlying analysis utilized by a court has been later abrogated, the decision is left a shell limited to its facts. As such, the Weber and Floridians Against Casino Takeover decisions must be so limited, for the tests employed therein no longer square with the standards established by this Court in subsequent decisions. When the Limited Casinos' initiative is analyzed in light of this Court's clear pronouncements and the current well settled standards, the initiative fails to satisfy the single-subject requirement of Article XI, Florida Constitution.

B. PLC's Reliance Upon Watt v. Firestone in Analysis of the Limited Casinos Initiative is Misplaced.

PLC, in its effort to side step the single-subject analysis under the well established standards of this Court, further argues

> [i]n 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.

Initial Brief of PLC, p.10. The PLC, however, neglects to mention that the neither the First District Court of Appeal nor this Court reached the single-subject analysis of Article XI, Section 3, Florida Constitution.

In fact, the First District, found the initiative was proposed under Article VIII, Section 1(g) of the Florida Constitution, and noted that non-charter counties have similar power under Article VIII, Section 1(f) of the Constitution and Section 125.01 of the Florida Statutes.

The Watt court then rejected the argument that the proposed amendment violates Article XI, Section 3 of the Florida Constitution in that, if the provision were approved, an additional constitutional amendment would be necessary to give all Florida counties the power to conduct initiative referenda. Thus, the Watt court never addressed or even discussed the single-subject requirement of Article XI, Section 3, Florida Constitution or Section 101.161, Florida Statutes.

PLC's assertion that the Watt decision should be accorded great weight in this Court's evaluation of the proposed initiative demonstrates a complete lack of regard for the legal analysis applicable to the evaluation of a constitutional initiative. Such an assertion appears to have been interposed in a further effort to side-step the constitutionally required single-subject analysis.

II. THE PROPOSED BALLOT TITLE, "LIMITED CASINOS", IS PATENTLY MISLEADING AND PLC'S ASSERTION THAT BECAUSE OTHER APPROVED BALLOT TITLES CONTAIN THE WORD "LIMITED" OR SOME DERIVATIVE THEREOF THIS TITLE MUST BE APPROVED IS WITHOUT MERIT.

PLC asserts that "precedent here too compels the Court to reject the Attorney General's suggestion that the title is defective." Initial Brief of PLC, p. 20. PLC argues that "[t]he 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.' Id. The PLC again fails, however, to engage in any meaningful analysis of why the title it proposed, "Limited Casinos," satisfies the requirements of Article XI, Section 3, Florida Constitution and Section 101.161, Florida Statutes. In each instance cited by PLC, the use of the word "Limitation" or "Limited" is clearly distinguishable from the title "Limited Casinos."

For instance, the title "Limited Political Terms in Certain Elective Offices", see In re Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991), accurately communicates that the measure seeks to limit the terms of certain elective offices. In other words, the existing terms would be somehow limited by the initiative. In "Limited Casinos", however, casinos are not presently authorized and rather than "limit" the existence of casinos, the measure would authorize a great number of casinos. There is quite a difference in the messages being sent to the voters by these two measures.

The same is true of the other cited titles -- "Homestead Valuation Limitation", see, In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So.2d 586 (Fla. 1991), and "Limitation of Non-Economic Damages in Civil Action.", see, In re Advisory Opinion to the Attorney General -- Limitation of Non-Economic Damages, 520 So.2d 284 (Fla. 1988). In each instance the use of the word is descriptive of the true purpose of the initiative. "Limited Casinos" is not. The chief purpose of the Limited Casinos' initiative is not to limit but rather to authorize casinos. The proposed initiative in no way limits the existence of casinos -- casinos do not presently exist in Florida. How could the initiative possibly "limit" what does not currently exist? The chief purpose of the initiative is to authorize an unidentifiable number[4] of gaming casinos within the state. The fact that the

[4] The exact number of casinos that would be authorized can not be determined within the text of the proposed amendment. Assuming that each of the current pari-mutuel permit holders would receive a casino gaming license, as required in Section 3 of the proposed amendment, there would be 35 authorized casinos located "with" the pari-mutuels, 12 casinos authorized within the enumerated counties, and 5 riverboat casinos. Thus, there would be 52 casinos authorized. There has been no agreement, however, among the parties hereto and therefor the exact number seems incapable of determination even among persons who have

proposal broadly defines the locations of the authorized casinos or defines the square footage of the authorized facilities does not in any way "limit" casinos as the title implies. The proposed ballot title is patently misleading. Moreover the cited instances of approved titles containing the word "limited" or some variation thereof do not compel approval but rejection of the proposed ballot title. The mere fact that the term "limited" has been correctly utilized in the past does not justify its incorrect use in the present.

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studied the amendment. Even if the parties could decide on the total number of authorized casinos, there is no way to determine where the riverboat casinos would be located.

III. THE BALLOT SUMMARY IS MISLEADING AND DOES NOT GIVE THE VOTERS FAIR NOTICE OF THE PROPOSED AMENDMENT'S PURPOSE.

Section 101.161, Florida Statutes, requires that a proposed constitutional amendment "state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So.2d 151, 154-55 (Fla. 1982). "This is so the voter will have notice of the issue contained in the amendment, will not be mislead as to its purpose, and can cast an intelligent and informed ballot." Askew, 421 So.2d at 155. The purpose of the requirement is "to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew, 421 So.2d at 156. Although the summary is not required to explain every ramification of the proposed amendment, see, e.g, Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 228 (Fla. 1991), it must give fair notice of the purpose and effect of the amendment.

Contrary to the plain meaning of the proposed ballot title, "LIMITED CASINOS", the summary reveals that the proposed amendment would not "limit" but rather would authorize casinos in Florida. [A.1]. Although the summary purports to define the counties in which casinos would be authorized, the summary fails to advise the voter of how many total casinos would be authorized in the counties after factoring in the pari-mutuel and riverboat locations. For example, although the summary provides that one casino would be authorized within Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach, and Pineallas counties, at least two casinos would actually be authorized by the proposed amendment in each county (not including Orange County) after factoring in the pari-mutuel locations. In Dade County, which has multiple pari-mutuel facilities, at least ten (10) casinos would be authorized. Should the

pari-mutuel facility host several permit holders, the amendment would authorize multiple casinos to be located "with" the host pari-mutuel facility. The voters can not reasonably determine the number of authorized casinos, the location of the riverboat casinos, or the total number of casinos within the respective counties. Therefore, the voters can not determine from the summary (or even from the full text of the proposed amendment) the impact or effect of the initiative.

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

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

the present facilities of a pari-mutuel.

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

Notably, rather than responding to these concerns, the PLC wrote at length regarding why they should not be required to advise the voters that the amendment would mandate that one of the casinos be placed upon the property of PLC's chief benefactor. [A.2]. The ballot summary, which is 72 words in length, fails to advise that one of the mandated casino locations would be "South Pointe Redevelopment Area."[5] While one of the major purposes of

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[5] It has been argued that there is no such location as the "South Pointe Redevelopment Area." See Initial Brief of Florida Locally Approved Gaming, Inc. and Bally Manufacturing Corporation, pp. 13-18. The constitutional mandate authorizing a casino on a specific land owner's property is made solely to confer a constitutionalized right upon a specific land owner. The fact that PLC has omitted this material fact from the summary is disturbing. Because the initiative would confer a gaming license upon the land owner (PLC's benefactor) by constitutional mandate, the initiative would perform the legislative and executive functions of regulating the gaming license holders and, in the instance of the South Pointe Redevelopment Area owner, would completely remove, except through further constitutional amendment, any ability of the legislature, executive, and judicial branches to withdraw or restrict the license -- even for cause. Such an intrusion upon the legitimate regulatory

the proposed amendment clearly is to confer the constitutional right to a casino upon a certain land owner, that matter is omitted from the summary. PLC's attempt to hide its benefactor in the "City of Miami Beach" and its argument that somehow voters in and outside the City of Miami Beach would not be equally deceived by the subterfuge of the "South Pointe Redevelopment Area" mandate, speaks only to the ambiguity and misrepresentation which are apparent throughout the initiative.

The proposed ballot summary must fairly advise the electorate "of the true meaning, and ramifications, of an amendment." Askew, 421 So.2d at 156. In this instance, the ballot summary is patently ambiguous, uses terms which may make for good marketing but which are problematic to the legal interpretation of our Constitution, and is susceptible of many varying interpretations. The ballot summary will also cause great confusion among the voters. This Court has held that it "should [not] be placed in the position of redrafting substantial portions of the constitution by judicial construction." Fine, 448 So.2d 984, 989 (Fla. 1984). The proposed amendment is so ambiguous and broad as to require this Court to engage in such judicial construction.

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functions of government is alarming and violates the single-subject restriction upon constitutional initiatives.

CONCLUSION

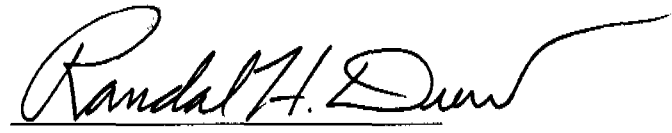
The Limited Casinos' initiative fails to satisfy the single-subject requirement of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes. PLC's assertion that this Court is bound by or should accord great weight to Weber, Floridians Against Casino Takeover, and Watt is misplaced and has been interposed in an effort to side-step the required single-subject analysis. The "broad view" standard utilized by the Court in Weber and Floridians Against Casino Takeover has been limited to legislative restrictions. The Limited Casinos' initiative must be evaluated on the basis of this Court's now well settled "oneness of purpose" test. The PLC's refusal to engage in meaningful analysis of the "oneness of purpose" test and its assertion that this Court is bound by or should accord great weight to Weber, Floridians Against Casino Takeover, and Watt have been interposed in an effort to side-step the required single-subject analysis.

Moreover, the proposed initiative fails to satisfy the requirements of Section 101.161, Florida Statutes. The ballot title is misleading. PLC's argument that the Court must approve the use of the term "limited" simply because it has been approved of in another context is without merit. The correct use of the term in the past does not justify its incorrect use in the future. In each of the approved uses of the term "limited," or some variation thereof, limits were being proposed to existing rights -- in this instance there is no existing right to casinos. The initiative simply can not limit what does not presently exist. The use of the term

"limited" in the proposed initiative is patently misleading.

The ballot summary fails to fairly apprise the voter of its true purpose and notably omits advising the voter of the mandate to confer a gaming license upon a specific land owner (PLC's benefactor). While one of the major purposes of the proposed amendment clearly is to confer the constitutional right to a casino upon a certain land owner, that matter is omitted from the summary. PLC's attempt to hide its benefactor in the "City of Miami Beach" and its argument that somehow voters in and outside the City of Miami Beach would not be equally deceived by the subterfuge of the "South Pointe Redevelopment Area" mandate, further evidences the ambiguity and misrepresentation which are apparent throughout the initiative.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the this Brief together with the annexed Appendix has been furnished to the Attorney General, Robert A. Butterworth, at The Capitol, Tallahassee, Florida 32399; M. Stephen Turner, P.A. and Michael Manthei, Esquire, Broad & Cassel, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301; Julian Clarkson, Esquire, Susan Turner, Esquire, and Mikki Canton, Esquire, Holland & Knight, 315

South Calhoun Street, Suite 600, Tallahassee, Florida 32302; Robert T. Mann, Esquire, P.O. Box 907, Tarpon Springs, Florida 34688-0907; Stephen R. MacNamara, Esquire and Donald L. Bell, No Casinos, Inc., 217 South Adams Street, Tallahassee, Florida; and Arthur J. England, Jr., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami, Florida 33131 by U.S. Mail postage prepaid, this 15th day of July, 1994.

Randal H. Drew

ATTORNEY

INDEX TO APPENDIX

A.1 Constitutional Amendment Form -- "Proposition For Limited Casinos"

A.2 The Miami Herald, April 7, 1994, Page 1C (Business Section)

* "Developer, Vegas Pionecr Agree to Build Beach Casino"

* "Divided 'Casino Summit' Groups Refuse to Compromise on Agendas"

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 _____

X _____

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.

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Source: ANTHONY FAIOLA Herald Business Writer

DEVELOPER, VEGAS PIONEER AGREE TO BUILD BEACH CASINO

Steve Wynn, the man who helped turn a small Nevada desert town into the neon forest of Las Vegas, struck a deal with German developer **Thomas Kramer** Wednesday to build a $500 million, 1,000-room casino-hotel on the southern tip of Miami Beach.

Of course, there's one big problem: Casinos aren't legal in Florida yet. And with in-fighting tearing apart the pro-gambling movement, casinos in the Sunshine State are more of a wild card than ever.

But that isn't stopping Wynn's Mirage Resorts and **Kramer's** Portofino Group from planning what would be Dade's second- largest hotel – complete with a vast gaming area lined with slot machines, blackjack, poker tables and roulette. Dade's largest would still be the 1,266-room Fontainebleau Hilton.

The deal is contingent on Florida voters approving casinos Nov. 8.

"I have always felt that the clearest place for gaming in America is in South Florida," Wynn, 52, said Wednesday in an telephone interview from Las Vegas. "It has all the things that gaming could exploit: a successful tourism industry, beautiful beaches, and wonderful, tropical tradewinds. Gaming could be the economic engine that helps South Florida into the next decade."

The agreement between Wynn and **Kramer**, while amazingly speculative, provides South Floridians with a glimpse into the fast and furious world of deal-cutting that could dominate the region's business landscape if casino gambling is passed. Like dice on felt, big casino companies would tumble into South Florida, gobbling up land for their gaming palaces.

"Miami is close to becoming the hottest new casino spot, and casinos aren't even legal there yet!" exclaimed Andrew Zarnett, a casino analyst for Furman Selz in New York. "Wynn is just the first to make a tangible move, and that doesn't surprise me. Miami Beach fits Wynn's style of big, glamorous destinations."

In the deal, Mirage Resorts becomes managing partner, controlling the land and dictating the design and operation of the proposed casino-hotel.

Kramer would not be involved in the day-to-day operation of the casino.

"**Kramer** doesn't know anything about casinos," Wynn said. "We do."

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Source: ANTHONY FAIOLA and MARK SILVA and TERRY NEAL Herald Staff Writers

DIVIDED 'CASINO SUMMIT' GROUPS REFUSE TO COMPROMISE ON AGENDAS

Attempts to unite Florida's fractured pro-casino movement are fizzling fast.

Evidence: In Tallahassee on Wednesday, representives from four of the five pro-casino groups gathered at a "casino summit" to try and hash out a compromise. But instead of uniting, each group made it clear that it wouldn't budge from their individual proposals.

"I believe Florida voters have a right to a clear choice and not be confused," said state Sen. Al Gutman, R-Miami, a gaming advocate who fears that the infighting will doom the casino movement. Gutman had called for the summit.

Right now, five separate groups are working to bring various forms of casino gaming to Florida. One, for instance, wants just gambling riverboats; another wants casinos in hotels, dog tracks and jai alai frontons; yet another wants virtually unlimited types of casino gaming.

But Florida law states that only the voters of the Sunshine State can legalize gaming palaces. And anyone who wants to put an amendment on the Nov. 8 ballot only has until Aug. 9 to collect nearly 430,000 signatures and have them certified by election officials.

Despite the fast-approaching deadline, the largest and most organized of the groups, Proposition for Limited Casinos Inc., announced Wednesday that it was scrapping its petition with 70,000 signatures and starting anew with a revised casino amendment.

The move stems from a desire to win more friends in South Florida -- and Las Vegas. It does this by rewriting the Limited Casinos petition to include a clause that virtually ensures German developer **Thomas Kramer** and casino king Steve Wynn, chairman of Las Vegas-based Mirage Resorts, the right to build a 1,000-room hotel-casino on the southern tip of Miami Beach.

The new Limited Casino proposal also opens the door for a casino at the Fontainebleau Hilton, co-owned by Stephen Muss, one of Florida's most powerful hotel owners.

By bringing **Kramer**, Wynn and Muss into its group, Limited Casinos leader C. Patrick Roberts succeeded in winning over three men who are likely to be large contributors to Florida's casino movement. Both **Kramer** and Wynn already have written the group checks for $25,000, and more money is likely to flow soon. In an telephone interview from Las Vegas on Wednesday, Wynn said it was he who persuaded **Kramer** and Roberts to work together.

"I told **Kramer** that he needed to work with others, and I told Roberts that he needed to think about doing something more for the hotel industry in Dade County," Wynn said.

However, including **Kramer**, Muss and Wynn in the Roberts group could alienate some original supporters such as the parimutuel owners.

"At this point, I am thoroughly confused," said John Brunetti Sr., owner of Hialeah Race Track. "Before it was for the parimutuels, now it looks like there are special considerations for South Pointe. It's like a beautiful idea that's going bad."

Proposition for Limited Casinos Inc. started with a proposal for eight major casinos around Florida, including one mega-casino in Miami Beach, and limited gambling halls of no more than 75,000 square feet at any of the three parimutuels: horse and dog tracks and jai alai frontons.

Now, the plan is expanded to include three hotel-based casinos in Dade County, two on Miami Beach. Two others would be built in Broward. The new proposal will also authorize one casino each in Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas counties. It would also allow five riverboat casinos in different counties. The new plan would increase the maximum total number of casinos, including those at parimutuels, from 38 in the original plan to 47 under the new one.

The four other casino plans are promoted by:

■ Proposition for County Choice Gaming, backed by Beach hotelier Bennett Lifter. This group proposes an amendment legalizing casinos, then allowing any of Florida's 67 counties to decide for themselves if they want riverboat gambling, hotel- based casinos or gambling at parimutuels -- or all of that.

■ Florida Riverboats. This Orlando-based group proposed limited-access riverboat gambling -- different from the dockside gaming halls that have sprouted up in the South and Midwest -- actual cruising boats that gamblers have to board at one time and get off when the boat returns to shore.

■ Bally Manufacturing Co. The company, which supplies gaming machinery as well as operating casinos in Las Vegas, Atlantic City and New Orleans, is preparing another amendment.

■ Roger Fallon of Miami Beach, who is promoting a plan for gaming districts.

[LARGE SUB-HEADING TEXT]

Associated Press

A NEW ALLY: Owner Steve Wynn stands atop his Mirage Hotel in Las Vegas. Wynn and developer **Thomas Kramer** have joined forces with Proposition for Limited Casinos Inc., Florida's largest and most organized pro-casino organization.