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IN THE SUPREME COURT OF FLORIDA

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IN RE:

CASE NO: 84,064

ADVISORY OPINION TO THE
ATTORNEY GENERAL - - CASINO
AUTHORIZATION, TAXATION AND
REGULATION

BRIEF OF PROPOSITION FOR COUNTY CHOICE GAMING, INC.
in support of the
CASINO AUTHORIZATION, TAXATION AND REGULATION 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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STATEMENT OF THE CASE

Proposition for County Choice Gaming, Inc. ("County Choice") is the sponsor of an initiative petition entitled "Casino Authorization, Taxation and Regulation" ("County Choice Initiative"). The Florida Attorney General has petitioned this Court for an advisory opinion determining whether this initiative complies with the single subject requirement of Article XI, Section 3, Florida Constitution, and with the ballot title and summary requirements of Section 101.161, Florida Statutes. See Art. IV, § 10 Fla. Const.; § 16.061, Fla. Stat. (1993). The County Choice Initiative seeks to amend the Constitution to create Section 16 of Article X, Florida Constitution. The proposed Section 16 would permit the voters of the individual counties and established local option Tourist Development Council Districts to authorize casino gaming within their respective jurisdictions. The full text of the initiative provides:

TITLE

Casino Authorization, Taxation and Regulation

SUMMARY

This amendment prohibits casinos unless approved by the voters of any county or Tourist Development Council district who may authorize casinos on riverboats, commercial vessels, within existing pari-mutuel facilities and at hotels. It mandates legislative implementation and requires net license and tax proceeds to be appropriated for crime prevention and correctional facility construction, education, senior citizens' services and

state tourism promotion. The amendment becomes effective upon adoption, but prohibits casino gaming before July 1, 1995.

FULL TEXT OF PROPOSED AMENDMENT

Section 1.

Section 16 of Article X is created to read:

SECTION 16. CASINO AUTHORIZATION, TAXATION AND REGULATION.-

- (a) Casino gaming is prohibited in this state except in those counties or established local option Tourist Development Council Districts of the counties where the electors have authorized the conduct and operation of casino gaming pursuant to an initiative referendum to the extent authorized and then only in state regulated and taxed, privately owned gaming facilities:
- (1) within pari-mutual facilities authorized by law as of the effective date of this amendment, which have conducted live para-mutuel wagering events in each of the two immediately preceding twelve month periods, for so long as the facilities continue to operate live pari-mutuel wagering events as authorized by the legislature; and
 - (2) on board stationary and non-stationary riverboats and U.S. registered commercial vessels; and
 - (3) at transient lodging establishments licensed by the state.
- (b) The types of gaming permitted in a casino shall be baccarat, blackjack or twenty-one, craps, keno, poker, roulette, slot

machines and electronic gaming machines. Other types of gaming may be authorized by general law.

- (c) By general law, the legislature shall implement this section, including legislation to license casinos, tax casinos and regulate casinos.
- (d) Net proceeds derived from the license fees and taxation of casino gaming shall be appropriated to a state trust fund designated the State Crime Prevention, Education, Senior Citizens; and State Tourism Trust Fund to be appropriated by the legislature for crime prevention and correctional facility construction, education, senior citizens; services and state tourism promotion. Such appropriation shall increase and not reduce current funding appropriated to the aforementioned.

Section 2.

If any subsections of this amendment to the Florida Constitution are held unconstitutional for containing more than one subject, this amendment shall be limited to SECTION 16, subsections (a), (b) and (c).

Section 3.

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.

By order dated July 26, 1994, the Court set August 8, 1994 and August 18, 1994 as the dates for the filing of initial and reply briefs. County Choice submits this brief in support of the County Choice Initiative.

SUMMARY OF ARGUMENT

The County Choice Initiative satisfies the single subject requirement of Article XI, Section 3, Florida Constitution in that its sole purpose and effect is the creation of a local option that permits voters of individual counties and established Tourist Development Council Districts to authorize casino gaming within their respective jurisdictions. Decisions concerning the location, type, size and regulation of the gaming to be permitted in any particular county is left to the State and local legislative and judicial processes. The inclusion in the initiative of a provision directing casino taxes and licensing fees to a trust fund for the support of specifically enumerated causes does not involve a separate subject, but rather, is directly connected with the authorization of casino gaming.

In accordance with Section 101.161, Florida Statutes, the County Choice Initiative ballot title and summary give the voters fair notice that the initiative's chief purpose is to create a "local option" for casino gaming. It accurately states that such gaming is prohibited except as expressly authorized by local referendum. Further, it accurately states the types of facilities at which such gaming may be authorized.

ARGUMENT

I. THE COUNTY CHOICE INITIATIVE COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, § 3 OF THE FLORIDA CONSTITUTION

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

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

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

To comply with the single subject requirement, "the proposed amendment must manifest a 'logical and natural oneness of purpose.'" Save Our Everglades, 19 Fla. L. Weekly at S277 (quoting Fine 448 So. 2d at 990). The test is functional, and looks to whether the proposed amendment "substantially alter[s] or

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

The County Choice Initiative encompasses the requisite "oneness of purpose." Unlike the other gaming petitions currently before the court, the County Choice Initiative does not attempt to implement a complex legislative style scheme that affects the functions of multiple branches of state and local government. Rather, it has as its sole purpose and effect the creation of a "local option" that would permit local voters to authorize casino gaming. Decisions concerning the location, type, size and regulation of the gaming to be permitted in any particular county, rather than being micromanaged through the initiative process, are left to the local legislative and judicial processes where they will be subject to the thorough and informed debate they deserve, and where the influence of special interests will be more readily detected and confronted.

II. THE INCLUSION IN THE COUNTY CHOICE INITIATIVE OF A PROVISION CREATING A TRUST FUND DOES NOT CONSTITUTE "LOGROLLING"

The single subject rule long has been held to prohibit "logrolling." See Save Our Everglades Trust Fund, 19 Fla. L. Weekly at S277. This is a process in which "several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue."

Section 1(d) of the County Choice Initiative creates a trust funded by casino taxes and licensing fees and directs the disposal of these funds for the support of crime prevention, correctional facility construction, education, senior citizen's services and state tourism promotion. In his letter to Chief Justice Grimes, the Attorney General criticizes the trust on the grounds that "[a] voter may find one or more of these purposes to be laudable, but object to casino gambling."

This criticism is entirely misplaced. The choice is not between permitting gaming and funding the trust. Indeed, it is quite unlikely that those voters who disfavor casino gaming will put aside their reservations merely because legalized gaming has the effect of generating tax revenues. In reality, there is only one choice: whether to authorize local option gaming. The disposition of the resulting revenues is a matter directly connected with such an authorization and does not violate the prohibition against logrolling. In Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), this Court held that the inclusion of a nearly identical spending provision in a previous casino gaming initiative did not violate

the single subject rule. It is true that this Court has receded from the single subject analysis it applied Floridians. See Fine, 448 So. 2d at 988-91. However, this does not mean that the trust fund provision of the County Choice Initiative necessarily fails the Court's current, more restrictive approach to the single subject rule.

In Advisory Opinion to the Attorney General Re: Funding for Criminal Justice, 19 Fla. L. Weekly S381 (Fla. July 22, 1994), the Court approved an initiative petition that both created a trust, and funded it with a new tax. Similarly, in Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986), This court upheld the creation of a trust fund in connection with the legalization of a state run lottery. These cases recognize that the creation and disposition of revenues does not amount to the aggregation of separate issues into a single initiative, but rather, that they are matters that are "directly related" within the meaning of Article XI, Section 3, Florida Constitution. Thus, where an initiative will generate revenue, the initiative may direct the disposal of those funds without running afoul of the single subject rule's prohibition against log rolling.

In this case, by providing for the licensing and taxation of any casinos that may be authorized, the County Choice Initiative will create a revenue pool. The trust provision of Section 1(d) merely directs the disposal of those funds. In this regard, the County Choice Initiative is no different than the initiative approved in Funding for Criminal Justice which directed that trust

funds be spent on "prisons, juvenile detention facilities, and Florida's other criminal justice purposes." 19 Fla. L. Weekly at S381.

Furthermore, the trust fund provision of the County Choice Initiative does not suffer from any of the infirmities that plagued the initiative the Court struck down in Save Our Everglades. The initiative at issue in that case not only created a statewide trust --- a legislative act --- it also gave the trustees broad powers that both impinged on the function of the executive branch, and, by determining that the sugar industry was solely responsible for the debilitated state of the everglades ecosystem, performed a judicial function. 19 Fla. L. Weekly at 277-78. The County Choice Initiative, like the Funding for Criminal Justice initiative, merely creates the trust and makes general provisions for the disposition of the trust funds. It does not alter or perform the functions of multiple branches of state government, or encroach on municipal home rule powers. To the contrary, it leaves those powers completely intact.

Even if the trust fund provision of Section 1(d) did violate the single subject rule, Section 2 of the County Choice Initiative contains a severance clause that, if necessary to sustain constitutionality, would eliminate the trust provision. Accordingly, the County Choice Initiative does not violate the single subject rule of Article XI, Section 3, Florida Constitution.

III. THE BALLOT TITLE AND SUMMARY GIVE THE VOTERS FAIR NOTICE OF THE INITIATIVE'S CONTENT AND EFFECT.

Section 101.161(1), Florida Statutes, requires that the ballot title and summary for a proposed constitutional amendment "state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982).¹ The critical issue is "fair notice" Restricts Laws Related to Discrimination, 632 So. 2d at 1021. "What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." Askew, 421 So. 2d 151, 155 (quoting Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954)).

A. Use of the Word "Prohibited" Will Not Mislead Voters

In this case the Attorney General correctly observes that ballot title complies with the requirements of Section 101.161. The Attorney General goes on, however, to observe that voters might be "misled by the summary to vote for the proposed amendment under the mistaken assumption that the amendment seeks to prohibit casinos except under certain circumstances rather than authorizing

¹In pertinent part, Section 101.161(1) provides:
Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

casinos for the first time." This is a curious comment, since such a belief on the part of a voter would not be "mistaken". The prohibition of casino gaming except under certain circumstances, i.e. upon the approval of local voters, is precisely what the County Choice Initiative seeks to accomplish. If, from reading the ballot summary, this is what a voter is likely to believe, then the ballot summary obviously complies with the requirements of Section 101.161.

The Attorney General's fear that some people, after reading the County Choice Initiative summary, might be confused into thinking that casinos currently are not prohibited is overwrought. Section 849.001, Florida Statutes specifically prohibits the maintaining of "gambling houses". The voters thus should know that casino gaming currently is prohibited. The County Choice Initiative merely raises this prohibition to constitutional status

and provides for a "local option" exception.² This is perfectly clear from the ballot summary and will not mislead voters.

B. "Transient Lodging Facility" is the Statutory Definition of "Hotel".

The Attorney General goes on to argue that the ballot summary is more restrictive than the initiative in that the summary states that casinos will be permitted in "hotels" rather than in "transient lodging establishments" as is stated in the text of the initiative. Once again, the Attorney General has missed the forest for the trees. Section 509. 013(11), Florida Statutes defines "transient establishment" to mean "any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary." Larger transient lodging facilities, such as those with over 500 rooms, are commonly known as hotels. Indeed, the administrative agency

²Contrary to the suggestion made in the Attorney General's recent Opinion No. 94-6, dated February 1, 1994, the Constitution currently does not prohibit casino gaming. That prohibition is statutory only. The Constitution prohibits only lotteries. Art. 10, § 7, Fla. Const. A lottery is commonly described as a "scheme whereby, for a valuable consideration, one may, by favor of chance, obtain a prize of value superior to the amount of that which he risks." See generally Greater Loretta Improvement Ass'n v. State ex rel. Boone, 234 So. 2d 665, 678 (Fla. 1970) (internal citations omitted) (Carlton, J. dissenting). A correlative definition often cited states that a lottery is a "scheme by which a result is reached by some action or means taken, in which result man's choice or will has no part, nor can human reason . . . sagacity or design enable him to know or determine . . . until the same has been accomplished" Id. (citations omitted). In contrast, winning at gambling depends on the exercise of skill and judgment. Id. Not being lotteries, the legislature could permit casino style games such as those provided for in the County Choice Initiative. Id.

charged with licensing and regulating such establishments is called the "Division of Hotels and Restaurants of the Department of Business [and Professional] Regulation."

County Choice used the term "transient lodging establishment" in the text of the initiative in order to make sure that it comported with current statutory language. The more economic synonym "hotel" was substituted in the ballot summary for the lengthier statutory phrasing in order to save space. Furthermore, it might be argued that had the term "transient lodging establishment" would be more confusing to voters than the vernacular "hotel". In any event, "hotel" is not more restrictive than "transient lodging establishment". Hence, the ballot summary is not misleading in this respect.

C. Reference to "Commercial Vessels" Is Not Misleading

As the Attorney General admits, the summary is not required to explain every ramification of the proposed amendment. Letter to the Honorable Stephen Grimes, 19 Fla. L. Weekly S383, S384 (Fla. July 29, 1994). Rather, it simply may not mislead the voters. As noted above, the County Choice Initiative has as its sole purpose and effect the creation of a "local option" that permits the voters of individual counties to authorize casino gaming. In the context of creating this option, the County Choice Initiative also sets out the types of facilities from which the voters might choose, i.e. pari-mutuel facilities, riverboats, U.S. registered commercial

vessels, and transient lodging establishments licensed by the state.

Though the ballot summary does not repeat the term "U.S. registered commercial vessels", it clearly states that the voters may choose to locate casinos on "commercial vessels". That such vessels may or may not be sailing under the U.S. flag is of little significance, the fact of primary import being the type of vessel on which casinos will be permitted. It is this knowledge, not the registration of the vessel, that will enable the voter to determine the breadth of his choices at the local level, and hence, the ultimate effect of the initiative.

D. The Term "Riverboat" Has a Commonly Understood Meaning, and Its Use Is Not Misleading

The Attorney General argues that "nothing in the proposed initiative would prohibit the operation or the establishment of a "riverboat" for casino purposes far removed from water." He thus concludes that voters "may be misled by the language of the proposed amendment . . . regarding the potential locations of casinos in this state." 19 Fla. L. Weekly at S384 (emphasis added).

Neither the initiative nor the summary make any provision whatsoever for the geographic location of casino facilities. These matters are left to post-enactment legislative, and perhaps judicial, interpretation. Instead, the initiative merely lists the types of facilities in which casinos may be located. Whether the initiative should or should not include more detailed instructions

regarding the placement of the enumerated facilities is not at issue here. Also unrelated to the present inquiry are the possible interpretations that terms used in the initiative might receive after its enactment. "These questions go to the wisdom of adopting the amendment and it is for the proponents and opponents to make the case for adopting or rejecting the amendment in the public forum." Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986).

As stated above, the only issue currently before the court is whether the summary "state[s] in clear and unambiguous language the chief purpose of the measure." Askew, 421 So. 2d at 154-55. See Also Restricts Laws Related to Discrimination, 632 So. 2d at 1019. "Inclusion of all possible effects is not required" Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982). In construing the summary language, the words used must be given their plain and ordinary meaning. See In re Advisory Opinion to the Governor -- Request of June 29, 1979, 374 So. 2d 959, 964 (Fla. 1979).

The summary accurately states that "riverboats" are among the types of facilities at which casinos may be authorized. The term "riverboat" is self-defining and is commonly understood to mean a boat for use on a river. See Webster's Ninth New Collegiate Dictionary, p. 1018. Oftentimes the term evokes the image of mid-nineteenth century Mississippi paddlewheeler. The fact that some individual in another state may have placed a building on dry land and called it a "riverboat" does not change the meaning of word. It merely indicates that individual either has misused the term, or has used it in a thematic sense. Given its commonly understood

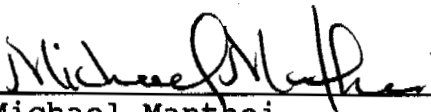
meaning, use of the term "riverboat" is not misleading, and correctly and accurately informs voters that these facilities will be located on water. The summary need do no more.

CONCLUSION

From the foregoing, it is clear that the County Choice initiative satisfies the requirements of Article XI, Section 3, Florida Constitution, and Section 101.161, Florida Statutes (1993). The Justices are respectfully requested to so advise the Attorney General.

Respectfully submitted,

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. Drawer 11300
Tallahassee, FL 32301
(904) 681-6810

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 8th day of August, 1994 to all parties listed herein.


Michael Manthai

Attorney General Robert A. Butterworth
Opinions Division
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