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ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: CASINO AUTHORIZATION,
TAXATION AND REGULATION

CASE NO. 84,064

On a Request by the Attorney General
for an Advisory Opinion on the Validity of an
Initiative Petition Circulated Under Art. XI, § 3

BRIEF OF GOVERNOR LAWTON CHILES AND THE FLORIDA CABINET

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
SUMMARY OF ARGUMENT	4
ARGUMENT:	
I.	
THE PROPOSED AMENDMENT SHOULD NOT BE ALLOWED TO APPEAR ON THE BALLOT IN THE FALL ELECTIONS.	5
A. THE BALLOT SUMMARY FOR "CASINO AUTHORIZATION, TAXATION, AND REGULATION" IS MISLEADING.	5
B. THE TEXT OF THE PROPOSED AMENDMENT VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.	9
CONCLUSION	13
CERTIFICATE OF SERVICE	13-14

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Adams v. Gunter,</u> 238 So.2d 824 (Fla. 1970)	10
<u>Advisory Opinion to the Attorney General</u> <u>- Limited Casinos,</u> Case No. 83,886, Fla. Supreme Court)	12
<u>Advisory Opinion to the Attorney General</u> <u>- Limited Political Terms in Certain</u> <u>Elective Offices,</u> 592 So.2d 225 (Fla. 1991)	5, 6, 9
<u>Advisory Opinion to the Attorney General</u> <u>- Restricts Laws Related to Discrimination,</u> 632 So.2d 1018 (Fla. 1994)	10, 11
<u>Advisory Opinion to the Attorney General</u> <u>- Save Our Everglades Trust Fund,</u> 636 So.2d 1336 (Fla. 1994)	10, 12
<u>Advisory Opinion to the Attorney General,</u> <u>re: Stop Early Release of Prisoners,</u> 19 F.L.W. S368 (July 7, 1994)	5
<u>Evans v. Firestone,</u> 457 So.2d 1351 (Fla. 1984)	9
<u>Fine v. Firestone,</u> 448 So.2d 984 (Fla. 1984)	9
<u>Floridians Against Casino Takeover</u> <u>v. Let's Help Florida,</u> 363 So.2d 337 (Fla. 1978)	11
<u>Smith v. American Airlines,</u> 606 So.2d 618 (Fla. 1992)	6
<u>Wadhams v. Board of County Comm.,</u> 567 So.2d 414 (Fla. 1990)	7

TABLE OF CITATIONS

PAGE(S)

FLORIDA CONSTITUTION

Art. IV, § 4, Florida Constitution	1
Art. XI, § 3, Florida Constitution	5, 9

FLORIDA STATUTES

Chapter 849, Florida Statutes (1993)	7
Section 101.161, Florida Statutes	5, 9

PRELIMINARY STATEMENT

Pursuant to Art. IV, § 4 of the Florida Constitution, the Governor of the State of Florida presides over a Cabinet which includes the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture, and the Commissioner of Education. This collegial body is entrusted by the people with maintaining the best possible quality of life for all Floridians. These state officers share responsibility for administration of 13 boards and commissions, including the State Board of Education; the Florida Department of Law Enforcement; Florida Land and Water Adjudicatory Commission and Internal Improvement Trust Fund, and the Administration Commission, which addresses environmental and growth management policy issues for items relating to state and local government comprehensive planning. Independent of these Cabinet functions, the Governor of this state bears responsibility for enforcement of environmental and growth management laws through the Department of Environmental Protection and the Department of Community Affairs. Thus, these elected state officials have a significant interest in maintaining the integrity of Florida's unique Cabinet system.

On July 26, 1994, the Governor and Cabinet unanimously entered into the following resolution regarding casino gambling in the State of Florida

WHEREAS, five organized groups have submitted notice of their intention to collect signatures for amendment of the Florida Constitution, pursuant to Article XI, section 3, as the Constitution prohibits casino gambling and lotteries operated by entities other than the state, and

WHEREAS, gambling, more than any other industry, has a higher propensity for criminal activity and misconduct due to the substantial volume of cash involved, and

WHEREAS, jurisdictions enacting casino gambling have witnessed increases in their crime index of up to 245 percent over a 3-year period while surrounding areas rose only 9 percent, and

WHEREAS, increases in criminal activity can significantly affect personal property values and decrease the stability of residential homesteads and commercial properties, and

WHEREAS, the economic benefits of casinos are questionable, and casinos will likely divert money from existing Florida businesses and,

WHEREAS, common casino practices encourage patrons to remain on site, resulting in a decline of 40% in restaurant revenues, as well as negative impacts on taverns, nightclubs, and other retail establishments, and

WHEREAS, poor and working people spend a disproportionate share of their incomes on gambling, and legalization of gambling results in a direct increase in the number of people with pathological gambling problems, and

WHEREAS, gambling is known as the fastest growing teenage addiction, with the rate of pathological gambling among high school and college-age youth about twice that of adults.

NOW, THEREFORE, BE IT RESOLVED:

That the Florida Cabinet opposes any amendments to the Florida Constitution as it relates to casino gambling because casinos offer a false and shallow promise about Florida's future, Floridians are encouraged to educate themselves about the facts regarding casinos and to defeat any casino gambling amendments that may appear on the November ballot.

This brief is filed consistent with the spirit of that unanimous resolution.

SUMMARY OF ARGUMENT

The question presented to the Court is whether a proposed amendment to the Florida Constitution, generated by the signature initiative process, should be placed on the ballot for the fall elections. Governor Lawton Chiles and the members of the Florida Cabinet oppose any action because the proposed amendment fails to provide the voter with sufficient information to enable the voter to make a reasoned decision regarding the proposition and because this proposed amendment violates the constitutional prohibition against "logrolling." Based upon this Court's most recent decisions, this proposed amendment should not be allowed on the ballot for the fall elections.

ARGUMENT

I.

**THE PROPOSED AMENDMENT SHOULD NOT BE
ALLOWED TO APPEAR ON THE BALLOT IN THE
FALL ELECTIONS.**

Florida law limits this Court's consideration to two specific issues: (1) Whether the proposed ballot summary is fair and advises voters of the chief objectives of the proposed amendment so that the voters may intelligently cast their ballots; and (2) Whether the proposed amendment contains only a single subject as required by Art. XI, § 3, Florida Constitution. Advisory Opinion to the Attorney General, re: Stop Early Release of Prisoners, 19 F.L.W. S368 (July 7, 1994), citing Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227-29 (Fla. 1991). Each of these questions will be considered separately.

**A. THE BALLOT SUMMARY FOR "CASINO
AUTHORIZATION, TAXATION,
AND REGULATION" IS MISLEADING.**

Section 101.161, Florida Statutes, outlines 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

ballot 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.

The proposed initiative petition is entitled "CASINO AUTHORIZATION, TAXATION AND REGULATION." The ballot summary states as follows:

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.

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, 592 So.2d at 228 (Fla. 1991), it may not mislead voters. Stated differently, "the summary must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots." Smith v. American Airlines, 606 So.2d 618, 620 (Fla. 1992).

This ballot summary states that it prohibits casinos unless approved by the voters of a county, and by this assertion could lead the voter to believe that casinos are currently authorized. In truth, such operations are now prohibited in Florida. See Chapter 849, Florida Statutes (1993). Voters could be misled by the summary to vote for the proposed amendment under the assumption that the amendment prohibits casinos except under certain circumstances when, in fact, the amendment authorizes casinos for the first time. Cf. Wadhams v. Board of County Comm., 567 So.2d 414, 416 (Fla. 1990) (ballot failed to inform voters that current law had no restriction and that chief purpose of proposal was to create a restriction).

The ballot summary also misleads the voter because it contains language more restrictive than that contained in the text of the proposed amendment. The summary speaks of casinos "on riverboats, commercial vessels, within existing pari-mutuel facilities and at hotels." The text of the proposed amendment, however, is more expansive, allowing casinos at any transient lodging establishment, a broad undefined category that may include timeshare units, rental condominiums, campgrounds or homeless shelters. Moreover, while the summary refers to "commercial vessels," the text of the amendment is limited to United States registered commercial vessels. A voter who casts his vote based on the language of the ballot summary would lack the type of information needed to appreciate the scope of the change they are asked to approve. Wadhams, supra.

A third problem with the proposed ballot summary is its failure to inform the voter of the variety of so-called "riverboat" or "commercial vessels" on which gambling will be permitted. To the ordinary voter, the term "riverboat" connotes an image from the days of Mark Twain; vessels gliding idly down the St. Johns, Suwannee, or Peace Rivers. However, this ballot summary fails to inform the voter that these riverboats may be stationary or nonstationary in nature. That is, a developer could build a casino along the banks of a river or lake (or arguably along the beach front) without regard to its size or impact upon that waterfront, call it a "riverboat" and operate under this provision. This is clearly a significant departure from most common citizens' concept of a "riverboat," and as such, the summary fails to meet its statutory obligation. The same is true in regard to the nature of "commercial vessels" authorized by the provision. Consider the provision's so-called clarity where it states that gaming would be authorized "on board, stationary and nonstationary riverboats and U.S. registered commercial vessels." Can U.S. registered commercial vessels be stationary? Clearly, the voter will not know if they are approving a huge financial enterprise run by American or Japanese or French corporations. Lack of such knowledge should be extremely significant to the Court in its consideration as to whether a voter may intelligently cast a ballot on this question.

Accordingly, this Court should find that the ballot summary misleads the voters of the purpose and effect of the proposed amendment as required by Section 101.161, Florida Statutes.

**B. THE TEXT OF THE PROPOSED AMENDMENT
VIOLATES THE SINGLE-SUBJECT REQUIREMENT
OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.**

Article XI, § 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 984, 990 (Fla. 1984).

The proposed initiative creates a state trust fund to be appropriated by the Legislature for "crime prevention and correctional facility construction, education, senior citizens' services and state tourism promotion." A voter may find one or more of these purposes to be laudable, but object to casino gambling. Likewise, a voter who wishes to supplement appropriations for correctional facility construction may object

to additional funds being appropriated to the promotion of state tourism. The voter is faced with a single decision and has no opportunity to distinguish among the purposes for which the net license and tax proceeds would be expended. Instead the voter must accept or reject all of the subjects benefitting from passage of the proposed initiative.

This Court recently stated in Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, 636 So.2d 1336 (Fla. 1994), that the single-subject requirement guards against "logrolling," in which several separate issues are rolled into one initiative to secure approval of an otherwise unpopular issue. "Logrolling" denies voters an opportunity to express their approval or disapproval of each of the several issues, and 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*, at 1339, quoting Adams v. Gunter, 238 So.2d 824, 831 (Fla. 1970).

In Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018, 1020 (Fla. 1994), the Court reaffirmed the prohibition against asking a voter to "give one yes or no answer to a proposal that actually asks ten questions." The Court went on to say, "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 limitation." Id. A similar warning emanated from Justice Alderman in his dissenting opinion in Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978). Justice Alderman wrote:

The combination of two subjects in the proposed amendment is a classic example of the very evil which the one-subject limitation is designed to prevent. This is so because the interest of those citizens who favor casino gambling is not necessarily the same as the interest of those citizens who seek additional tax revenues for the support and maintenance of free public schools and local law enforcement. In fact, the interest of these groups in some instances may be in conflict.

The strategy of aggregating dissimilar provisions in one proposal to attract support from diverse groups commonly known as "logrolling" did not originate with the proponents of casino gambling. Its roots are found deep in the history of American political politics. Such practice would not be unlawful in the present case if it were not for the constitutional prohibition imposed by Art. XI, § 3. By that provision, the people of Florida have in effect said they will not allow "logrolling" by those who attempt to amend their Constitution by initiative process.

Id. at 342-43. The warning issued by Judge Alderman in 1978 still rings true. Politics of "logrolling" constitute an anathema to the people of this state, and this Court should

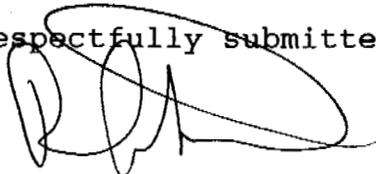
reject this proposal as merely another effort to enforce old school, backroom horsetrading politics on the people.

Lastly, the Governor and Cabinet are deeply concerned that the voters of this state will not be aware that the passage of this amendment will impact on the functioning of the Cabinet system. As outlined in the Preliminary Statement, the Governor and Cabinet are entrusted with administrative oversight on issues as diverse as land and water quality, statewide law enforcement, and administration of our school system. The potential interference with the functioning of the Cabinet system has been clearly outlined by the Initial Brief of No Casinos, Inc. in Advisory Opinion to the Attorney General - Limited Casinos, Case No. 83,886, which is currently pending before this Court. Rather than repeat what has been so ably stated, undersigned counsel would direct the Court to pages 29-32 of that brief. Stated succinctly, passage of this amendment would have a significant, and to the voter totally unknown, impact upon the functioning of the Cabinet. This reason alone should justify rejection of this amendment. In re: Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, *supra*, at 1340.

CONCLUSION

For the foregoing reasons, we urge this Court to strike the proposed initiative petition entitled "Casino Authorization, Taxation, and Regulation" from the ballot on November 8, 1994.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF GOVERNOR LAWTON CHILES AND THE FLORIDA CABINET has been furnished to ARTHUR J. ENGLAND, JR., ESQ., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami, Florida 33131, Counsel for Proposition for Limited Casinos, Inc.; M. STEPHEN TURNER, P.A. and MICHAEL MANTHEI, ESQ., Broad and Cassel, 215 South Monroe Street, Suite 400, Post Office Box 11300, Tallahassee, Florida 32301, Counsel for Proposition for County Choice Gaming, Inc.; JULIAN CLARKSON, ESQ. and SUSAN TURNER, ESQ., Holland & Knight, 315 South Calhoun

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