OA 3-14-95 047

FILED
SID J. WHITE
JAN 23 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: FLORIDA LOCALLY APPROVED GAMING

CASE NO. 84,165

_____/

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

RICHARD E. DORAN
ASSISTANT DEPUTY ATTORNEY GENERAL
FLORIDA BAR NO. 0325104

THE CAPITOL, PL-01
TALLAHASSEE, FLORIDA 32399-1050
(904) 488-8253

COUNSEL FOR GOVERNOR LAWTON
CHILES AND THE FLORIDA CABINET

TABLE OF CONTENTS

	PAGE(S)
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.	5
A. THE BALLOT TITLE AND SUMMARY FOR "FLORIDA LOCALLY APPROVED GAMING" ARE MISLEADING.	5
B. THE TEXT OF THE PROPOSED AMENDMENT VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF ART. XI, § 3, FLORIDA CONSTITUTION.	8
CONCLUSION	
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

CASES	PAGE(S)
Adams v. Gunter, 238 So.2d 824 (Fla. 1970)	11
Advisory Opinion to the Attorney General - Limited Casinos, 19 F.L.W. S444 (Sept. 9., 1994)	13
Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991)	5, 6, 10
Advisory Opinion to the Attorney General - Property Rights, 19 F.L.W. S493 (Oct. 4, 1994)	13
Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018 (Fla. 1994)	11, 14
Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, 636 So.2d 1336 (Fla. 1994)	10, 11
Advisory Opinion to the Attorney General, re: Stop Early Release of Prisoners, 642 So.2d 724 (Fla. 1994)	5
Allied Fidelity Ins. Co. v. State, 415 So.2d 109 (Fla. 3 DCA 1982)	8
Evans v. Firestone, 457 So.2d 1351 (Fla. 1984)	10
Fine v. Firestone, 448 So.2d 984 (Fla. 1984)	10
Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978)	11
Smith v. American Airlines, 606 So.2d 618 (Fla. 1992)	6
Wadhams v. Board of County Comm., 567 So.2d 414 (Fla. 1990)	9

TABLE OF CITATIONS
(Cont'd.)

FLORIDA CONSTITUTION

Art. IV, § 4, Florida Constitution	1
Art. XI, § 3, Florida Constitution	i, 2, 5,10

FLORIDA STATUTES

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; the Florida Land and Water Adjudicatory Commission and the 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 role in maintaining the quality of life for all Floridians.

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.

On November 8, 1994, the people of Florida overwhelming rejected the one proposed constitutional amendment directed toward authorizing casino gambling by a wide margin. The Governor and Cabinet continue to oppose any effort to amend the Constitution of Florida to allow casino gambling.

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 The Florida Locally Approved Gaming proposal because the proposed amendment is fatally defective given: (1) its requirement of a legal impossibility; (2) its failure to provide a voter with sufficient information to enable the voter to make a reasoned decision regarding the proposition and (3) its violation of the constitutional prohibition against "logrolling." Based upon this Court's most recent decisions, this proposed amendment should not be allowed on any future ballot.

ARGUMENT

I.

THE PROPOSED AMENDMENT SHOULD NOT BE ALLOWED TO APPEAR ON THE BALLOT.

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, 642 So.2d 724 (Fla. 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 TITLE AND SUMMARY FOR FLORIDA LOCALLY APPROVED GAMING ARE 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 at bar is entitled Florida Locally Approved Gaming. The ballot summary states as follows:

> This amendment authorizes gaming at 20 casinos; authorizes casinos aboard riverboats and in hotels of 1,000 rooms or more; determines the number of casinos in individual counties based on resident population of such counties; provides that gaming shall not be authorized in any county or municipality unless approved by the respective county or municipality governing body; provides for licensing, regulation and taxation of gaming; and provides definitions and an effective date.

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).

The most apparent problem with the proposed amendment and ballot title and summary is the amendment's inclusion of a requirement that the Legislature take affirmative action toward licensure, regulation, and taxation of gambling by July 1, 1995.[1]

---

[1] Proposed Art. X, § 16(d).

This time specific requirement for legislative action is only referenced generally in the summary by means of the following language, "[p]rovides for licensing, regulation and taxation of gaming. . . ." Given that the amendment could not appear on the ballot prior to the elections in 1996, it is impossible for the implementing language mandate of subsection (d) to occur. The ballot summary as constituted would clearly mislead the voters as to the necessity that the Legislature have the appropriate rules and regulations in place in an expedited fashion prior to the actual opening of any casinos. The drafters could have easily utilized language that would have required the Legislature to act within a specific period of months after voter approval or used language to require action at the first legislative session following voter approval, but they did not. The specific limitation imposed by this language is critically important to a voter's evaluation of the text. Prior to signing the initiative, a voter would have reviewed the language and found himself agreeing to place it on the ballot because he liked the fact that the amendment would have compelled the Legislature to quickly frame rules and regulations for gaming. Because the language in the proposal is now a nullity, any severance of its provisions would materially alter the amendment. Absent the subsection (d) language, the amendment would not mandate speedy legislative action, but rather leave those questions open-ended. For this reason alone, the ballot summary is fatally flawed.

A second problem with the ballot title and summary centers on the statement that local approval by the voters of a county would be required prior to placement of a casino in a city or county. Such language contradicts the language in Section (a)(3) of the proposed amendment, "one casino in a hotel **shall** be located in every county for each 500,000 residents in such county." (emphasis added) Voters will be misled by the title and summary to vote for the proposed amendment under the assumption that the amendment prohibits casinos except under certain circumstances when, in fact, the amendment mandates casinos for large sized counties. See, Allied Fidelity Ins. Co. v. State, 415 So.2d 109, 110-111 (Fla. 3 DCA 1982), for a discussion of the term "shall".

The ballot summary also misleads the voter due to a lack of consistency between the summary's statement that the amendment "determines the number of casinos in individual counties based on the resident population of such counties," and the text of the amendment which indicates that **riverboat** casinos may only be located in mid-sized or larger counties containing more than 200,000 residents. Likewise, the text of the amendment indicates that casinos located in hotels may only be sited in counties with 500,000 or more residents. Currently, only 18 counties in Florida have a population of 200,000 residents or more. Likewise, only 7 counties have a population equalling or exceeding 500,000. Florida Population Estimate and Projection By County, Table 2C, June 7, 1994, State Data Center, Office of the Governor. Assuming each of

the 7 largest counties receive its allotment for casino locations under the mandatory formula of the amendment, 10 of the proposed 20 casinos would be located in those 7 counties. Even, given the most simple mathematics, this will not add up to possible approval of local gaming for all targeted counties under this amendment. If as indicated above, 10 casinos are mandated for the largest counties then the 18 counties with populations of 200,000 or more will somehow have to compete for the remaining 10 sites for riverboats. This is not explained in the ballot summary and, in fact, the summary gives the contrary illusion that each of these counties will have the opportunity to obtain a casino.

A more appropriate ballot summary would have given the voter clear indication that the proposed amendment authorizes no more than 20 casinos to be placed on either riverboats or in large hotels in large counties and that there would be no more than 10 riverboat casinos around the state. This material omission again fatally flaws the ballot summary and independently stands as a reason to strike this proposition from the ballot. Wadhams v. Board of County Comm., 567 So.2d 414 (Fla. 1990). A voter who casts a ballot based on the language of this ballot summary would lack the type of information needed to appreciate the scope and detail of the change they are being asked to approve.

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 ART. XI, § 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).

In voting on the instant proposal, the voter would be faced with a single decision lacking an opportunity to distinguish among the types of gambling operations or where they may be located. Instead, the voter must accept or reject all 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 issue by Judge Alderman in 1978 still rings true. The instant proposal attempts to lump together disparate interests in an effort to gather enough pockets of approving voters to obtain passage. By crafting the proposal to marry the interest of the large hotel/motel industry of Florida to the resort gambling interests and the riverboat gambling interests, the proposal falls squarely within the prohibition outlined above. 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, back-room 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 state and local government functions. As outlined in the Preliminary Statement, the Governor and Cabinet are entrusted with administrative oversight on issues as diverse as land and water quality and statewide law enforcement. The

potential interference with the functioning of the Cabinet system was previously discussed, and regrettably rejected by this Court, in Advisory Opinion to the Attorney General - Limited Casinos, 19 F.L.W. S444 (Sept. 9, 1994). Under the provision of the proposed amendment for local option gaming, there is mandate that "one casino in a hotel shall be located in every county per each 500,000 residents in such county." Furthermore, subsection (b) of the proposal provides, "Each county, but only as to the unincorporated area within its boundary, or municipality, by a vote of its governing body, may at any time after the effective date of this section authorize gaming within its jurisdiction as provided by this section." These provisions provide a potential constitutional basis to limit the ability of various government agencies to enforce law relating, but not limited, to growth management and environmental protection. However, the amendment fails to indicate how to resolve the situation where, for example, a municipality in Dade County and the county government would resolve where such casinos would be built if both governing bodies were eager to have all the casinos located within their jurisdiction. Additionally, the proposal mandates approval of casinos by local government in counties with high population density in apparent disregard of local zoning laws, environmental laws, and land use regulations. Accordingly, the proposal smacks of the same type of encroachment on local government functions that was rejected by this Court in Advisory Opinion to the Attorney General re: Property Rights, 19 F.L.W. S493, 496 (Oct. 4, 1994), wherein it was held:

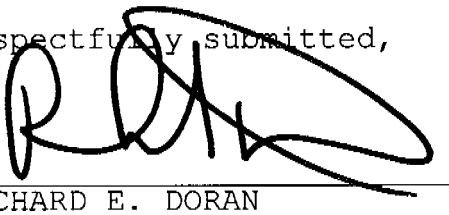
> This initiative not only substantially alters the functions of the Executive and Legislative Branches of state government, it also has a very distinct and substantial effect on each local governmental entity. The ability to enact zoning laws, to require developmental plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm water drainage and flood waters all would be substantially affected by this provision.

Id. See also Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018 (Fla. 1994). This reason alone should justify rejection of this amendment. Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, supra, at 1340.

CONCLUSION

Based upon the foregoing arguments, the Governor and Cabinet urge this Honorable Court to prohibit the placement of this proposed amendment on any future ballot.

Respectfully submitted,



RICHARD E. DORAN
Assistant Deputy Attorney General
Florida Bar No. 0325104

OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(904) 488-8253

COUNSEL FOR GOVERNOR LAWTON
CHILES AND THE FLORIDA CABINET

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 Street, Suite 600, Post Office Drawer 810, Tallahassee, Florida 32302, and **CHESTERFIELD SMITH, ESQ.** and **MIKKI CANTON, ESQ.**, Holland & Knight, 701 Brickell Avenue, Suite 3000, Post Office Box 015441, Miami, Florida 33131, Counsel for Florida Locally Approved Gaming, Inc. and Bally Manufacturing Corporation; **ROBERT T. MANN, ESQ.**, 1326 Riverside Avenue, Post Office Box 907, Tarpon Springs, Florida 34688-0907; **STEPHEN R. MACNAMARA, ESQ.**, General Counsel, No Casinos, Inc., 217 South Adams Street, Tallahassee, Florida 32301, and **DONALD L. BELL, P.A.**, Kerrigan, Estes, Ranking & McCloud, 217 South Adams Street, Tallahassee, Florida 32301, Counsel for No Casinos, Inc.; **RANDAL H. DREW, ESQ.**, 909 Haines Street, Post Office Box 270, Jacksonville, Florida 32206-6027, Counsel for Bill Sims; by U.S. Mail this 23rd day of January, 1995.

RICHARD E. DORAN

richard\flag\brief