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IN THE SUPREME COURT OF FLORIDA

Case No. 84,165

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Upon Request From The Attorney General  
For An Advisory Opinion As To The  
Validity Of An Initiative Petition

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ADVISORY OPINION  
TO THE ATTORNEY GENERAL

RE: FLORIDA LOCALLY APPROVED GAMING

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INITIAL BRIEF OF  
FLORIDA LOCALLY APPROVED GAMING, INC. and  
BALLY MANUFACTURING CORPORATION  
  
SUPPORTING THE FLAG PETITION

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## INITIAL BRIEF

There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power. ... That this amendment, if adopted may conceivably be valid in some respects or under some conditions is manifest on the face of the proposed amendment itself; that is all that is required. ... That part of it may be questionable, ambiguous or inoperative is of no importance.<sup>1</sup>

' [W]e are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. ... [O]ur first duty is to uphold action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.' ... Neither the wisdom of the provision [initiative petition] nor the quality of its draftsmanship is a matter for our review.<sup>2</sup>

FLORIDA LOCALLY APPROVED GAMING, INC. ("FLAG") has invoked the initiative petition process of article XI, section 3, Florida Constitution, to propose an amendment to the Florida Constitution that would permit a maximum of twenty gaming casinos in counties and municipalities whose governing bodies have authorized gaming within their jurisdictions [A 1]. BALLY MANUFACTURING CORPORATION ("Bally"), now known as Bally Entertainment Corporation, has supported FLAG's efforts to obtain

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<sup>1</sup> Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) (citations omitted).

<sup>2</sup> Weber v. Smathers, 338 So. 2d 819, 821-22 (Fla. 1976) (quoting from Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956), and applying the rule of deference to an initiative petition proposed under article XI, section 3, Florida Constitution).

approval and passage of the FLAG petition [A 2].<sup>3</sup> Pursuant to this Court's Interlocutory Order of January 3, 1995 [A 3], FLAG and Bally submit this initial brief in support of FLAG's proposed amendment to the Florida Constitution.

Motivated wholly by a desire to keep FLAG's petition off the ballot, avowed opponents of casino gaming and of FLAG's petition have advocated and will advocate an interpretation of FLAG's petition entirely at odds with the clear chief purpose of the amendment. FLAG's detractors ask the Court to approach FLAG's petition as if it is presumptively invalid. Quite the opposite is required.

The Attorney General suggests that one sentence in the text of the FLAG petition must be interpreted to mandate the placement of hotel-based casinos in every county having at least 500,000 residents, regardless of local government approval [A 4 at 4]. Proposed section 16(a)(3) of the FLAG petition provides that of the maximum of twenty casinos authorized, "[o]ne casino in a hotel shall be located in every county per each 500,000 residents in such county." If this sentence means what the Attorney General says it means, then it would contradict the title of the FLAG petition (as well as the title of the political committee sponsoring the petition), which promises "Locally Approved Gaming"; the ballot summary, which promises that gaming shall not be allowed

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<sup>3</sup> Bally is a Delaware corporation listed on the New York Stock Exchange (BLY), and in 1993 had revenues of over \$1.2 billion. Through its subsidiaries, Bally operates casinos in Atlantic City, New Jersey (Bally's Park Place and The Grand); Las Vegas, Nevada (Bally's Las Vegas); and Tunica, Mississippi (Bally's Saloon and Gambling Hall).

unless authorized by local authorities; the proposed title of the new section, "Local Option Gaming"; and the next sentence of the text, which provides the only means by which gaming may be authorized: with local authorities' approval. These inconsistencies that would result from the Attorney General's interpretation of section 16(a)(3) show clearly that he is wrong.

The Attorney General's suggestion that a potentially invalidating "factual issue" arises from the provision that the legislature shall enact implementing legislation by July 1, 1995 [A 4 at 3] is also off the mark. The Attorney General disregards that the implementing clause is merely incidental to the chief purpose of the proposal, and disregards the presence and legal effect of the severability clause.

FLAG's petition comes to this Court armored in the people's fundamental right to modify their organic law as they see fit. Opponents have the burden of demonstrating that it is "clearly and conclusively defective." Goldner v. Adams, 167 So. 2d 575 (Fla. 1964). The petition must be interpreted to give force and effect to all of its substantive provisions if at all possible. Accordingly, the Court should reject the Attorney General's invitation to elevate a contrived misinterpretation over a valid interpretation.

Politics, popularity, competition, and the niceties of draftsmanship do not belong here. The Court's duty is to protect the people's sovereign right to amend their constitution; the constitution and statute confine the Court's authority to a determination of whether FLAG's petition contains a single subject

and whether its title and ballot summary fairly inform the voter of the chief purpose and legal effect of the proposed amendment. FLAG's petition does.

**STATEMENT OF THE CASE AND FACTS**

In accordance with article IV, section 10, Florida Constitution and section 16.061, Florida Statutes (1993), the Florida Attorney General has petitioned this Court for an advisory opinion on the validity of FLAG's initiative petition (the "FLAG petition"). The sole issues before the Court are whether the FLAG petition complies with the single-subject requirement of article XI, section 3, Florida Constitution,<sup>4</sup> and whether the ballot title and substance comply with section 101.161(1), Florida Statutes.<sup>5</sup> The FLAG petition seeks to amend article X of the Florida Constitution by adding a new section entitled "Local Option Gaming":

Title: Florida Locally Approved Gaming

Summary:

This amendment authorizes gaming at twenty casinos; authorizes casinos aboard riverboats and in hotels of one thousand rooms or more; determines the number of casinos

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<sup>4</sup> Article XI, section 3 of the Florida Constitution limits a proposed amendment to "but one subject and matter directly connected therewith."

<sup>5</sup> Section 101.161(1) provides, in pertinent part:

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.



in individual counties based on the resident population of such counties; provides that gaming shall not be authorized in any county or municipality unless approved by the respective county or municipal governing body; provides for licensing, regulation and taxation of gaming; and provides definitions and an effective date.

Section 16 of Article X is created to read:

**Section 16. Local Option Gaming.--**

- (a) Twenty state-regulated, privately owned casinos are hereby authorized. Of such twenty casinos:
  - (1) All shall be located either aboard riverboats or in hotels;
  - (2) One casino aboard a riverboat may be located in every county with at least 200,000 residents, provided that there shall be no more than ten casinos aboard riverboats statewide; and
  - (3) One casino in a hotel shall be located in every county per each 500,000 residents in such county.
- (b) 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.
- (c) The following terms shall have the following meanings:
  - (1) "casino" means a licensed gaming facility aboard a riverboat or located in a hotel.
  - (2) "gaming" means playing or engaging in, for money or other thing of value, baccarat, blackjack or twenty-one, craps, keno, poker, roulette, electronic gaming machines, slot machines or such other games of skill or chance as may be authorized by the legislature.

- (3) "hotel" means a land-based hotel having at least 1,000 guest rooms.
  - (4) "riverboat" means a self-propelled, nonstationary excursion vessel which operates regularly within the state and its territorial and adjacent waters.
- (d) By general law enacted no later than July 1, 1995, the legislature shall implement this section with legislation to license, regulate and tax gaming.
  - (e) If any portion of this section is held invalid for any reason, the remaining portion or portions of this section, to the fullest extent possible, shall be severed from the void portion and be given the fullest possible force and application.
  - (f) This amendment shall take effect on the date approved by the electors, provided that no casinos shall be authorized to operate before July 1, 1995.

### SUMMARY OF THE ARGUMENT

Because the people's sovereign right to amend their constitution is at stake, the Court's duty is to uphold a proposed constitutional amendment if possible, considering the proposal as a whole and giving effect to the chief purpose of the measure and the intent of the drafters. In this proceeding the sole issues are compliance with the single-subject requirement and with the requirements that the title and summary accurately and concisely disclose the chief purpose of the proposed amendment.

The single subject of the FLAG petition is the authorization of privately-owned, state licensed and regulated casinos in Florida. The petition's allocation of casinos, and its authorization of two types of casinos, do not violate the single subject requirement because these are details of scope and implementation directly connected to the single subject of the petition. The Court's approval of the Limited Casinos petition last year, with its substantially similar implementing details, establishes that the FLAG petition also complies with the single subject requirement.

The title and ballot summary of the FLAG petition comply with the statutory requirements that they accurately disclose the common name and chief purpose of the proposed amendment. The requirement for approval by the respective governing bodies of counties and municipalities, and the maximum of twenty casinos statewide, are of paramount importance to the amendment. Although it is impossible to predict how many counties and municipalities will authorize gaming, the demand might exceed the authorized

supply. In that event, implementing the chief purpose of the measure will necessarily require a method of statutory prioritizing the licensure and regulation of the casinos. The text of the FLAG petition provides many of those primary details explaining through the use of mandatory language that top priority is afforded to hotel casinos within counties having at least 500,000 residents. Those and other details of scope and implementation are directly connected with the chief purpose of the measure, need not be disclosed in the summary, and as a practical matter cannot be disclosed in the summary because of the strict length limit. The ballot summary is not defective for failing to include them.

Finally, the so-called "factual issue" about the July 1, 1995 date for legislative implementation is not within the scope of these proceedings. If for any reason the Court reaches this legal issue, it should merely apply the severability clause in the FLAG petition to delete the specific date, leaving intact the requirement that the legislature license, regulate, and tax gaming. The chief purpose of the FLAG petition as a whole is unaffected by this severance, and therefore the inclusion of the date does not invalidate the petition.

## ARGUMENT

### I. THE FLAG PETITION IS ENTITLED TO GREAT DEFERENCE.

Because of the grave importance of protecting the people's right to modify the organic law of Florida, the Court has always recognized that it should be extremely reluctant to remove a proposed constitutional amendment from the ballot. Each proposed amendment is to be reviewed with "extreme care, caution and restraint." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). The Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978) (emphasis added; citing Weber, 338 So. 2d at 821-22, and Goldner v. Adams, 167 So. 2d 575 (Fla. 1964)). "Extreme restraint" and "duty" are strong words, defining the standard of review of FLAG's petition as very deferential. FLAG's petition is well within the requirements of the law.

### II. THE FLAG PETITION SATISFIES THE REQUIREMENTS OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

The Attorney General suggests that the FLAG petition might violate the single-subject requirement in three respects. He challenged the Limited Casinos petition in the same three respects, and this Court rejected all three.<sup>6</sup> Therefore, Advisory Opinion

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<sup>6</sup> The Attorney General's request for an advisory opinion on FLAG's petition, filed before the Court ruled in Limited Casinos, is virtually identical to that he submitted on the Limited Casinos petition. Compare A 4 with A 6. FLAG and Bally filed briefs as interested parties opposing the Limited Casinos petition, but did not maintain that it violated the single-subject requirement.

to the Attorney General re Limited Casinos, 644 So. 2d 71 (Fla. 1994), conclusively establishes that FLAG's petition does not violate the single-subject requirement.

First, the Attorney General suggests that the FLAG petition permits casinos only in counties with at least 200,000 residents, which "may constitute a form of 'logrolling' in that a voter who may favor casinos must accept their location in metropolitan areas even though he or she may favor their location in rural areas." [A 4 at 6.]<sup>7</sup> The Attorney General had also suggested that the Limited Casinos petition was fatally flawed by designating geographic locations for casinos, because "a voter who may favor casinos in one geographic area would be forced to accept casinos in the other specified areas." [A 6 at 6.]

Second, the Attorney General suggests that FLAG's petition is guilty of logrolling because "those voters who may approve of riverboat casino gaming have no option for disapproving land-based casino operations." [A 4 at 6.] The Attorney General had also suggested that the Limited Casinos petition violated the single-subject requirement by forcing voters to accept two forms of casino gaming: "voters who may approve of riverboat casino gaming have no option for disapproving casino operations at local pari-mutuel facilities." [A 6 at 6.]

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<sup>7</sup> The Attorney General mischaracterizes the effect of FLAG's petition. Just because a county that authorizes gaming has at least 200,000 residents does not mean that the casino(s) must be located in a "metropolitan area," as the Attorney General assumes [A 4 at 6]. A casino could be located in a rural area within the county's jurisdiction.

This Court in Limited Casinos rejected both of the Attorney General's logrolling arguments, and found that designating geographic areas and including two types of casinos did not violate the single-subject requirement:

The sole subject of the proposed amendment is to authorize privately-owned casinos in Florida. The proposal does not combine subjects which are dissimilar so as to require voters to accept one proposition they might not support in order to vote for one they favor. Although the petition contains details pertaining to the number, size, location, and type of facilities, we find that such details only serve to provide the scope and implementation of the initiative proposal. These features properly constitute matters directly and logically connected to the subject of the amendment. Limited Casinos, 644 So. 2d at 73.

The sole and single subject of FLAG's petition is the authorization of privately-owned casinos, but like Limited Casinos, it also includes details of scope and implementation directly related to that single subject. That is no violation of the single-subject requirement.

The Attorney General suggests that because FLAG's petition "mandates the location of casinos in counties with a certain population density, regardless of local land use regulations and zoning laws ... [it] encroaches upon the powers of local and state government by substantially preempting the regulatory or land use functions of state and local government." [A 4 at 6]. In virtually identical language, the Attorney General had suggested that the Limited Casinos petition violated the single-subject requirement "by mandating the location of casinos in certain counties, regardless of local zoning and land use regulations ... [thus] encroaches upon the powers of local and

state government by substantially preempting the regulatory or land use functions of both state and local government." [A 6 at 6.] And again, this Court rejected the argument:

We also reject the opponents' argument that the proposed amendment would perform functions of local governments including local zoning, as well as the functions of local governments and the executive branch in the areas of planning, land use and environmental regulation. Nothing in the petition usurps, interferes with, or affects, the powers and authority of the executive branch of government or of local governments to integrate casinos into existing governmental policies for planning, zoning, land use, or environmental considerations. There is no directive in the petition for an override of local or state environmental, land use, or regulatory policies. Limited Casinos, 644 So. 2d at 74.

The Court's reasoning applies with even greater force to the FLAG petition, which mandates local government approval, implicitly requiring that the local governments exercise appropriate discretion to approve gaming only in a manner consistent with local and state environmental, land use, and regulatory policies.

The Court in Limited Casinos also rejected arguments that the requirement of legislative implementation encroached on legislative powers: "We find that this language is incidental and reasonably necessary to effectuate the purpose of the proposed amendment and does not violate the single-subject requirement." Id. The Court's rejection of identical single-subject arguments in Limited Casinos establishes that the FLAG petition no more violates the single-subject requirement than the Limited Casinos petition did: not at all.



**III. THE FLAG PETITION SATISFIES THE REQUIREMENTS  
OF SECTION 101.161(1), FLORIDA STATUTES.**

**A. The Title Is Short Enough, Is The Common Name  
Of The Proposal, And Does Not Mislead Voters.**

Section 101.161, Florida Statutes (1993), requires that "[t]he 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 title of FLAG's petition is "Florida Locally Approved Gaming." This four-word title obviously complies with the length requirement of section 101.161, and reflects both the name of the political committee sponsoring the proposed amendment and the chief features of the proposal: gaming that is subject to local approval.

The Attorney General challenges the title of FLAG's petition on the sole basis that it contradicts his interpretation of proposed section 16(a)(3), which provides that of the maximum of twenty casinos authorized by the amendment, "[o]ne casino in a hotel shall be located in every county per each 500,000 residents in such county." The Attorney General asserts that this can only mean that "the text of the proposed amendment does not require local approval of gaming in those counties with a population of 500,000 or more," and thus is inconsistent with the title [A 3 at 4]. The Attorney General is wrong.

Proposed section 16(a)(3) must be read in context in order to be interpreted correctly. The requirement of local government authorization that is central to the FLAG petition is implicit in proposed section 16(a)(3), as are the other restrictions that appear elsewhere in the text, although they are not repeated

on each line of the text as the Attorney General apparently would require. The bracketed language below illustrates what is implicit in each subparagraph under section (a):

- (1) All [that are authorized by local governing authorities] shall be located either aboard riverboats or in hotels [subject to the other provisions of this section, including licensure and regulation by general law];
- (2) [If authorized by local governing authorities and if any of the authorized maximum of 20 casinos are still available for allocation,] One casino aboard a riverboat may be located in every county with at least 200,000 residents, provided that there shall be no more than ten casinos aboard riverboats statewide; and
- (3) [If authorized by local governing authorities and if any of the authorized maximum of 20 casinos are still available for allocation,] One casino in a hotel shall be located in every county per each 500,000 residents in such county.

The Attorney General apparently would require the bracketed language to appear in the text rather than being implicit from the overall scheme of the proposed amendment. No such requirement exists, nor should it, lest proposed amendments bog down in endless obvious repetition. Instead, a proposed amendment must be read and interpreted as a unified whole.

Here is how these provisions of the FLAG petition work, and why subparagraph (3) uses the mandatory "shall" that the Attorney General finds so troubling. The entire FLAG scheme is subject to two paramount restrictions: approval by local governing authorities, and a maximum of twenty casinos statewide. Under proposed section 16(b), every one of Florida's sixty-seven counties and all of its innumerable municipalities may authorize "gaming" as that term is defined in the proposed amendment. Any number of

scenarios may develop; perhaps only a few local governments will authorize gaming and twenty casinos will suffice to meet the demand. But the constitution must endure as Florida grows. With the passage of time, if not immediately, perhaps a larger number of local governments will authorize gaming -- perhaps so many that twenty casinos are not enough to meet the demand. But the FLAG petition promises a maximum of twenty casinos, and the twenty-casino maximum obviously creates the possibility that not every county and municipality that authorizes gaming is guaranteed to obtain a casino.

The potential for demand to exceed supply would require a method by general law of allocating the casinos. The FLAG petition does not leave the allocation entirely up to the legislature's discretion, but rather prescribes a priority for allocating the maximum of twenty casinos if the need arises. When proposed section 16(a)(3) says "shall," it means hotel casinos within counties having at least 500,000 residents are the first priority for allocations. If the governing authority of such a county or of a municipality within such a county authorizes gaming, and a license is sought for a casino within the jurisdiction of the authorizing government, and if any of the twenty casinos are available, then only a hotel casino may go there; i.e., it "shall be" a hotel casino. So long as any qualified applications for casinos meet these conditions (local government approval within a county having at least 500,000 residents, and some of the twenty are still unallocated), they must be hotel casinos.

Because the FLAG petition gives hotel casinos priority status, riverboat casinos come into play (so to speak) only if some of the maximum of ten riverboats are unallocated and no qualified applications for hotel casinos are pending. The FLAG petition uses the permissive "may" as to riverboats in order to be consistent with the intended priority for hotel casinos in the event demand exceeds supply: "[o]ne casino aboard a riverboat may be located ... ." Taken together, the permissive language as to riverboats and the mandatory language as to hotels means that if twenty local governments within counties having at least 500,000 residents each authorize gaming (or fewer than twenty local governments if one or more of the counties or municipalities is big enough to be entitled to more than one hotel casino), and otherwise qualifying applications are submitted for casinos within the authorizing jurisdictions, all twenty must be in hotels and there would be no riverboat casinos. If section 16(a)(3) said "may" instead of "shall," the intended directive to give priority to hotel casinos would be lost. That is why the section says "shall," and not, as the Attorney General suggests, because local government approval is not required for hotel casinos.

The law is well settled that an interpretation that gives effect to other sections, implements the drafters' intent, and results in a finding of validity, is to be preferred over an interpretation that would result in invalidation of the entire provision. The Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'"

Floridians, 363 So. 2d at 339 (emphasis added; citing Weber, 338 So. 2d at 821-22, and Goldner, 167 So. 2d 575).

A court's duty to uphold an initiative petition unless clearly and conclusively defective is similar to -- but, because of the people's unique and fundamental constitutional right to amend the constitution, stronger than -- a court's duty to uphold a legislative enactment. Acts of the legislature are presumptively constitutional and entitled to deference, owing in part to the fact that the legislature itself is subject to the same duty to uphold the Florida and federal Constitutions that governs judicial action. Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956).<sup>8</sup> The rule of deference to legislative enactments is "even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval." Id. at 790. This Court has applied this "even more impelling" rule to initiative petitions. Weber, 338 So. 2d at 821-22. In the face of these authorities, the intent of the drafters, and the overall scheme of the proposed amendment, the Attorney General's interpretation of proposed section 16(a)(3) must be rejected. Giving full effect to the chief purpose of the petition and the correct interpretation of proposed section 16(a)(3), it remains perfectly clear that the

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<sup>8</sup> See also, e.g., City of Daytona Beach v. Del Percio, 476 So. 2d 197 (Fla. 1985) (statute susceptible of two interpretations must be interpreted in the manner that renders it valid); State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981) (strong presumption of constitutionality continues until disproven beyond all reasonable doubt); Boynton v. State, 64 So. 2d 536 (Fla. 1953) (adopt valid interpretation rather than one that would invalidate statute); Hanson v. State, 56 So. 2d 129, 131 (Fla. 1952) ("all intendments favored towards its [statute's] validity"). See also Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958).

title accurately informs the voter of the chief purpose of the proposed amendment and satisfies the requirements of section 101.161.

**B. The Ballot Summary Discloses The Chief Purpose and Effects Of The Proposal, And Does Not Mislead Voters.**

The Attorney General suggests that the ballot summary of the FLAG petition may mislead the voters in three respects, two of which are infected with the Attorney General's misinterpretation of proposed section 16(a)(3). None of the three has any merit; the ballot summary of FLAG's petition is accurate and not misleading.

**1. It Accurately Informs Voters That Local Government Approval Is Required.**

First, the Attorney General after misinterpreting proposed section 16(a)(3) claims that the ballot summary is misleading when it says the amendment "provides that gaming shall not be authorized in any county or municipality unless approved by the respective county or municipal governing body." [A 4 at 4.] The Court must reject the Attorney General's misinterpretation for the reasons already discussed in detail. In addition, section 101.161 requires the Court to read the summary and the title together. Limited Casinos, 644 So. 2d at 75 ("This Court has always interpreted section 101.161(1) to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter."). Applying the correct

interpretation of proposed section 16(a)(3), and the rule that the Court's duty is to uphold the proposed amendment if any valid interpretation is possible, clearly resolves the Attorney General's concern about the promise of local approval. The summary clearly and accurately informs the voter that local government authorization is a prerequisite to gaming within any local government's jurisdiction.<sup>9</sup>

**2. It Accurately Discloses In General Terms That Population Is A Factor In The Allocation Of Casinos Among Local Jurisdictions Whose Governing Authorities Have Authorized Gaming.**

The ballot summary informs the voter that the proposed amendment "determines the number of casinos in individual counties based on the resident population of such counties." The Attorney General suggests that "[a] voter, therefore may be misled by the summary to believe that any county would have the option of permitting a casino within its boundaries, although the number of casinos within that county may be limited based on the county's population." [A 4 at 4 (emphasis original)]. Apparently, the Attorney General would require FLAG to explain to voters in the ballot summary that local government authorization of gaming is not a guarantee of obtaining a casino.

If this is the Attorney General's concern, he overlooks the disparity between the small number of casinos authorized by the

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<sup>9</sup> Implicit in this requirement is the notion that local government can also withdraw its approval, subject, of course, to the requirements of due process and other requirements of Florida law. Therefore, "continuing" approval is required in order for gaming to continue within the local government's jurisdiction.

FLAG petition and the very large number of counties and municipalities in Florida. The maximum of twenty casinos statewide is disclosed in the first clause of the ballot summary. Under the FLAG limits, there could never be enough casinos to place one within the jurisdiction of every local government in Florida. The next logical question is how to determine which counties may authorize casinos; the ballot summary accurately informs the voter that it depends on population as well as the cap of twenty and the licensure and regulation of the legislature.

If the Attorney General means to suggest that the ballot summary is misleading for failing to include the specific details by which the maximum of twenty casinos and other restrictions will be implemented, then the Attorney General requires more of the ballot summary than the law requires. Section 101.161(1) allows only seventy-five words, within which the summary must explain only the "chief purpose" of a proposed amendment. The FLAG ballot summary carefully and accurately summarizes the chief purpose of the proposal, and it is already seventy-three words long. To repeat the text's details would require much more than the seventy-five-word limit, particularly if the petition were required to explore the various scenarios that might develop in implementing the amendment. The law does not require so much of the ballot summary. The Court has said that the ballot summary is not required to include all possible effects, Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982), nor to "explain in detail what the proponents hope to accomplish." Official Language, 520 So. 2d at 13.



This Court's treatment of the Limited Casinos petition is a perfect example.<sup>10</sup> The ballot summary failed to define riverboat casinos and pari-mutuel facilities (omissions shared by the text), failed to disclose the number of casinos authorized, failed to disclose the location and number of existing pari-mutuel facilities (to which the proposal would have automatically granted casino licenses), and failed to disclose that one casino was mandated for a very small part of south Miami Beach owned virtually in its entirety by a single individual. Limited Casinos, 644 So. 2d at 75. Although Justice Grimes, dissenting, considered the ballot summary misleading, the majority, phrasing the issue as whether the summary provides "sufficient information to make an informed decision on how to cast their ballots," approved the ballot summary. Limited Casinos, 644 So. 2d at 75.

A summary is by definition a more general description of something else.<sup>11</sup> Within the confines of a strict seventy-five

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<sup>10</sup> The Court has approved several ballot summaries that omitted information contained in the text. Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228-29 (Fla. 1991) (summary failed to mention severability clause and failed to advise voters that no term limits previously existed); Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986) (summary failed to warn voters that "legislature may choose not to authorize lotteries, not appropriate the proceeds to educational uses, and even to divert the proceeds to other uses"); Grose, 422 So. 2d at 305 (summary failed to explain and analyze Fourth Amendment law and exclusionary rule). See also In re Advisory Opinion to the Attorney General, English -- The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988) (summary said legislature would "implement" this "article," whereas text said legislature would "enforce" this "section").

<sup>11</sup> Black's Law Dictionary at 1287 (5th ed.) defines "summary" in pertinent part as "[a]n abridgment, brief; compendium; digest."

word limit, a ballot summary cannot include every detail. The failure to do so cannot constitute a "clear and conclusive defect" warranting invalidation of the entire petition. This summary accurately describes in more general terms the manner by which the full text of the amendment determines allocation of a very limited number of casinos. The voters are put on notice that population is involved, and the voters have the opportunity to inform themselves of the details merely by studying the full text of the amendment. No more is required. See Carroll v. Firestone, 497 So. 2d at 1207 (Boyd, J., concurring) ("The fact that people might not inform themselves about what they are voting for or petitioning for is immaterial so long as they have an opportunity to inform themselves."). Therefore, the ballot summary is legally sufficient by informing the voters in general terms that population is a factor in the allocation of casinos among local governments that have authorized gaming.

**3. It Does Not Conflict With The  
Textual Provision For Local  
Government Approval.**

The Attorney General's third and last challenge to the ballot summary focuses on semantic differences between the summary and the text [A 4 at 5]. Thus, while the summary accurately discloses that the proposed amendment "provides that gaming shall not be authorized in any county or municipality unless approved by the respective county or municipal governing body," the text puts it another way, providing only one method by which casinos may be authorized: "[e]ach 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." Proposed Section 16(b).

This challenge is apparently based in part on the Attorney General's misinterpretation of proposed section 16(a)(3), which the Court must reject for the reasons already discussed. The Attorney General may have preferred that both the summary and the text state the requirement of local government approval in the negative, but semantics are unimportant and inappropriate here. What matters is that, consistent with the title and the text of the proposed amendment, the summary accurately discloses to the voter that local government approval is required. So doing, it satisfies the requirements of section 101.161.

**IV. THE SO-CALLED "FACTUAL ISSUE" ABOUT THE DATE FOR LEGISLATIVE IMPLEMENTATION IS NOT BEFORE THE COURT, AND IN ANY EVENT DOES NOT RENDER THE PETITION INVALID.**

The Attorney General devotes a separate section of his letter to what he calls a "factual issue." [A 4 at 3.] He points out that the text of the amendment requires the legislature to enact implementing legislation "no later than July 1, 1995," which precedes the date on which the FLAG petition will appear on the ballot.<sup>12</sup> The Attorney General suggests that "[t]he Court,

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<sup>12</sup> The proposed amendment also provides that "no casinos shall be authorized to operate before July 1, 1995." Proposed section 16(f). The Attorney General does not claim that the appearance of the date here creates any obstacle to the validity of the petition, apparently because this requirement necessarily will have been satisfied by the time the proposed amendment appears on the ballot. To the extent that any concern is raised about this

therefore, may wish to consider whether such an inconsistency within the initiative petition is fatal to the petition."

The date does not appear in the title or ballot summary. The Attorney General has not suggested that the date violates the single-subject requirement or the requirements of section 101.161(1), nor has he explained what "factual" issues the date presents for judicial determination. To the contrary, he concludes that the date presents the legal issue of the validity of the FLAG petition.

Although section 16.061(1), Florida Statutes (1993), permits the Attorney General to "enumerate any specific factual issues which the Attorney General believes would require a judicial determination,"<sup>13</sup> that section does not permit the Attorney General to raise any legal issues other than compliance with the single-subject, title, and ballot summary requirements. Limited Political Terms, 592 So. 2d at 227 & n.3. In this proceeding the Court does not have jurisdiction to consider other legal issues. The Court has said so repeatedly. See, e.g., Limited Casinos, 644 So. 2d at 73; Limited Political Terms, 592 So. 2d at 227.

This Court in Limited Casinos ruled that the legislative implementation provision in that petition was "incidental" to the chief purpose of the proposed amendment. 644 So. 2d at 74. Being likewise merely an "incidental" detail compared to the chief

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use of the date, it can be severed readily without impact on the proposed amendment as a whole.

<sup>13</sup> This provision of section 16.061(1) seems to contemplate remand or relinquishment of jurisdiction for fact-finding, since this Court is not a fact-finding tribunal.

purpose of the FLAG petition, the date for legislative implementation is not a separate subject, and need not be disclosed in the title or ballot summary. The effect of the date and the operation of the severability clause to cure it are beyond the scope of this proceeding, and can be determined after the voters approve the proposed amendment.

If the Court determines that it should resolve this legal issue now, the outcome is the same: the appearance of the July 1, 1995 date for legislative implementation does not invalidate the FLAG petition. Most importantly, raising the precise date of implementation (an "incidental" detail) to the level of invalidating the entire FLAG proposal would violate this Court's own numerous prior rulings that a proposed constitutional amendment is to be given the fullest possible effect lest the people's right to amend their organic law be infringed without substantial justification. E.g., Weber v. Smathers, 338 So. 2d at 821-22; Pope v. Gray, 104 So. 2d at 842.

A situation similar to this arose in Pope, leading this Court to emphasize the importance of permitting a proposed constitutional amendment to go to the voters even if part of it might be inoperative. Pope arose from the 1957 revision of the Florida Constitution of 1885. An amendment proposed by House Joint Resolution 32-X provided in part that "[t]his amendment shall be effective as of October 1, 1957, and when the proposed amendment constituting Article XII of the revised Constitution becomes effective this amendment shall be superseded by it and repealed." Thus, the amendment proposed by HJR 32-X was intended only as a

temporary measure to be repealed by another amendment. The cross-reference to a proposed amendment to Article XII proved impossible to effectuate, however, because the Court invalidated the proposed amendment to Article XII and struck it from the ballot before the separate amendment in HJR 32-X came before the Court. Rivera-Cruz v. Gray, 104 So. 2d 501 (Fla. 1958). Thus, opponents of HJR 32-X argued that the impossibility of giving effect to the repealer provision rendered invalid the HJR-32X amendment.

The Court rejected this argument, holding that the impossibility of fulfilling one part of the proposed amendment "in no way affects the right of the electorate to pass upon all of it." Pope, 104 So. 2d at 842. The Court said, "[t]hat part of it may be questionable, ambiguous or inoperative is of no importance" so long as the proposed amendment could be "valid in some respects or under some conditions." Id. Like the cross-referenced repealing amendment in Pope, the date originally contemplated for legislative implementation of FLAG's petition has been rendered potentially impossible to perform. Moreover, the FLAG petition should be approved for submission to the voters because the severability clause in the petition can readily cure any problem with the date. The intent of the provision in question, to require the legislature to enact implementing legislation, can readily be given effect despite severing the date.

The severability clause of the FLAG petition provides that "[i]f any portion of this section is held invalid for any reason, the remaining portion or portions of this section, to the fullest extent possible, shall be severed from the void portion and

be given the fullest possible force and application." Proposed section 16(e). FLAG's is not the first petition to include a severability clause; the Court has approved a number of other initiative petitions containing severability clauses.<sup>14</sup> Presumably, the Court's approval of initiative petitions containing severability clauses, and their passage by the voters, indicates that severability clauses will be given effect if the occasion arises, although the Court has ruled that a severability clause will not suffice to cure a single-subject defect if the severability clause is not part of the proposed amendment itself. Fine v. Firestone, 448 So. 2d 984, 992 (Fla. 1984). That is not the case here; the date does not present a single-subject problem, and the severability clause is part of the proposed amendment itself.

Severability clauses are common in legislative enactments as well, and can be applied to sever an invalid portion if the remainder of the statute can still accomplish the overall intent of the act. The remainder of the statute must be given effect unless severance would render it incomplete or cause unanticipated results inconsistent with the legislation:

It is a fundamental principle that a statute, if constitutional in one part and unconstitutional in another part, may remain valid except for the unconstitutional portion. However, this is dependent

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<sup>14</sup> See, e.g., Advisory Opinion to the Attorney General-- Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993); Limited Political Terms, 592 So. 2d at 225; In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So. 2d 586 (Fla. 1991); In re Advisory Opinion to the Attorney General, Limitation of Non-Economic Damages in Civil Actions, 520 So. 2d 284 (Fla. 1988).

upon the unconstitutional provision being severable from the remainder of the statute. The severability of a statutory provision is determined by its relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent.

Eastern Air Lines, Inc. v. Department of Revenue, 455 So. 2d 311, 317 (Fla. 1984), appeal dismissed, 474 U.S. 892 (1985). See also Presbyterian Homes of Synod v. Wood, 297 So. 2d 556, 559 (Fla. 1974) (permitting severance "if the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void").

As applied to the FLAG petition, severance of the "incidental" implementing date would preserve the chief purpose and intent of the proposal, and the remainder of the proposed amendment would easily stand alone. As severed, the provision would read: "By general law, [] the legislature shall implement this section with legislation to license, regulate and tax gaming." The amendment would still authorize locally approved gaming at a maximum of twenty casinos, of which a maximum of ten could be riverboats. The legislature would still be required to enact implementing legislation, and the remaining terms of the proposed amendment would be unaffected. Therefore, if the Court reaches this issue, it should merely sever the offending date and permit the remainder of the FLAG petition to go before the voters.



CONCLUSION

The FLAG petition arrives at this Court entitled to a great deal of deference, and can be barred from the ballot only if shown to be "clearly and conclusively defective." The Court has already established in Limited Casinos that the single-subject challenges the Attorney General has raised against the FLAG petition are unavailing. The title and ballot summary of the FLAG petition comply with the requirements of section 101.161 by accurately informing the voter of the chief purpose and effects of the proposed amendment. The Attorney General's misinterpretation of one provision in the petition cannot be given effect, because that interpretation is inconsistent with the clearly expressed purpose of the petition as a whole. Accordingly, the Court should approve the FLAG petition for submission to the voters in the November 1996 general election.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with the attached Appendix was furnished to the following by United States mail this 23rd day of January, 1995.

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