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IN THE SUPREME COURT OF FLORIDA

Case Nos.: SC16-778; SC16-871

ADVISORY OPINION TO THE ATTORNEY GENERAL
REGARDING VOTER CONTROL OF GAMBLING IN FLORIDA

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ANSWER BRIEF OF SPONSOR, VOTERS IN CHARGE

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Table of Contents

INTRODUCTION ..... - 1 -
SUMMARY OF THE ARGUMENTS ..... - 3 -
LEGAL ARGUMENT ..... - 5 -
I. The Voter Control Amendment Complies with the Single-Subject Requirement. ..... - 5 -
A. The Amendment Does Not Substantially Alter or Perform the Functions of Multiple Branches. ..... - 6 -
B. The Amendment Does Not Logroll. ..... - 8 -
II. The Title and Summary Comply with Section 101.161(1). ..... - 10 -
A. The Ballot Summary and Title Are Clear and Unambiguous. ..... - 11 -
B. The Ballot Summary and Title Are Not Misleading. ..... - 15 -
i. The use of "control" in the title and "authorize" in the summary does not mislead voters. ..... - 16 -
ii. The summary's citation to article XI, section 3 of the Constitution is not misleading… ..... - 17 -
iii. The summary's language does not "directly" conflict with itself. ..... - 19 -
iv. The summary does not mislead as to the role of the legislature. ..... - 21 -
v. The summary need not list every effect on local government. ..... - 22 -
vi. Clarity in Gaming's remaining arguments are speculative. ..... - 25 -
C. The Opponents Do Not Contest the Financial Impact Statement. ..... - 26 -
CONCLUSION ..... - 27 -

TABLE OF AUTHORITES

Opinions

Advisory Opinion to the Governor,
132 So. 2d 163 (Fla. 1961)……..……..14

Askew v. Firestone,
421 So. 2d 151 (Fla. 1982)…….……...……15

Asociacion de Perjudicados por Inversiones Efectuadas en U.S.A. v. Citibank, FSB,
770 So. 2d 1267 (Fla. 3 DCA 2000)……...1

In re Extending Existing Sales Tax to Non-Taxed Servs.,
953 So. 2d 471 (Fla. 2007)…...……..5

Fine v. Firestone,
448 So. 2d 984 (Fla. 1984)……..6–7

In re Fla.'s Amendment to Reduce Class Size,
816 So. 2d 580 (Fla. 2002)……..12, 16

Fla. Dep't of State v. Fla. State Conference of NAACP Branches,
43 So. 3d 662 (Fla. 2010)……15–16

In re Fla. Minimum Wage Amendment,
880 So. 2d 636 (Fla. 2004)…….……8

In re Limited Marine Net Fishing,
620 So. 2d 997 (Fla. 1993)……..8–9

In re Limits or Prevents Barriers to Local Solar Elec. Supply,
177 So. 3d 235 (Fla. 2015)……..……9

In re Local Trs. & Statewide Governing Bd. To Manage Fla.'s Univ. Sys.,
819 So. 2d 725 (Fla. 2002)……18, 23–24

In re Ltd. Casinos,
644 So. 2d 71 (Fla. 1994)……..……6, 18

In re Phys. Shall Charge the Same Fee for the Same Health Care Serv. To Every Patient,
880 So. 2d 659 (Fla. 2004)…….....…...14, 24, 26

In re Prohibiting Pub. Funding of Political Candidates' Campaigns,
693 So. 2d 972 (Fla. 1997)……...……..9

In re Protecting People, Especially Youth, from Addiction, Disease, & Other Hazards of Using Tobacco,
926 So. 2d 1186 (Fla. 2006)……..……..…5–6, 8–9

In re Protect People from the Health Hazard of Second-Hand Smoke,
814 So. 2d 415 (Fla. 2002)……..17, 23

In re Pub. Protection from Repeated Med. Malpractice,
880 So. 2d 667 (Fla. 2004)……..……..14, 25–26

In re Rights of Elec. Consumers Regarding Solar Energy Choice,
188 So. 3d 822 (Fla. 2016)……..……..11

In re Right to Treatment & Rehab.,
818 So. 2d 491 (Fla. 2002)……...……...12, 24

In re Save Our Everglades,
636 So. 2d 1336, 1340 (Fla. 1994)……6, 11, 15, 17

In re Standards for Establishing Legislative Dist. Boundaries,
2 So. 3d 175 (Fla. 2009)……...…….....…..11, 23

In re Term Limits Pledge,
718 So. 2d 798 (Fla. 1998)……..……6

Statutes

FLA. STAT. § 101.161(1)……3, 10–11, 15, 24

FLA. STAT. § 551.102(4)…..…….14, 15

Other Authority

AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2016)……..16, 22

BLACK'S LAW DICTIONARY (10th ed. 2014)……..……..……22

FLA. CONST. art. XI, § 5……...……....19

U.S. CONST. art. VI, cl. 2……..……...20

INTRODUCTION

Before this Court is a proposed amendment, which, if passed by Florida voters, would allow casino gambling under Florida law only if it is authorized through a citizens' initiative. Voters in Charge (the "Sponsor") sponsored this proposed constitutional amendment (the "Amendment"). At this stage, this Court's analysis is straight-forward. It must decide (1) whether the Amendment concerns a single subject and (2) whether the title and summary that will go to the voters' ballot fairly informs the voters of the Amendment's chief purpose without misleading them.

Two interests—Clarity in Gaming Control ("Clarity in Gaming")[1] and the Jacksonville Kennel Club, Inc.; Dania Entertainment, LLC; Investment Corporation of Palm Beach; West Flagler Associates, Ltd.; Bonita-Fort Myers Corporation; and Melbourne Greyhound Park, LLC ("Jacksonville Kennel" and along with Clarity in Gaming, the "Opponents")—argue that the Amendment cannot go to the ballot because it fails these requirements. In making their arguments, the Opponents pay lip service to the narrow scope of this Court's analysis, but then throw a grab-bag of arguments wholly unrelated to the issues to be analyzed here. Instead, the Opponents, without explicitly noting as much,

[1] It bears noting that Clarity in Gaming is an unincorporated association, which generally lack standing to participate in litigation. *See Asociacion de Perjudicados por Inversiones Efectuadas en U.S.A. v. Citibank, FSB*, 770 So. 2d 1267, 1269 n.3 (Fla. 3d DCA 2000).

consistently maintain that the ballot summary is misleading because it fails to discuss a number of topics, such as its effects on state statutes, on local charters, on federal provisions, on slot-machine gaming, on cardroom operators, and so on. But this proceeding is not supposed to facilitate any such discussion; indeed, there is no reason at all for this Court to wade into these legal issues to help these Opponents flesh out the proper interpretation and potential application of the Amendment. Rather, this Court must answer the two discrete issues mentioned above.

As shown below, the Amendment concerns a single subject, and the ballot summary does not mislead voters and does fairly inform them of the Amendment's chief purpose. This Court should approve the proposed Amendment for placement on the ballot.

SUMMARY OF THE ARGUMENTS

The Amendment meets the single-subject requirement because it does not substantially alter the functions of multiple branches of state government, and the Opponents barely even argue otherwise.

Nor does the Amendment logroll, for it deals with one subject: the authorization of casino gambling. The Opponents contest this, but their argument has no basis in law. The Opponents argue that the Amendment logrolls because it forces voters to choose between the status quo and a change to the status quo. If this Court accepted this brand of argument, no proposed amendment could survive the single-subject requirement.

The Amendment's ballot summary and title also comply with section 101.161(1) of the Florida Statutes. The ballot summary follows the Amendment's principle language nearly verbatim, so it fairly informs voters of the Amendment's chief purpose. The Opponents' argument to the contrary—that the ballot summary does not inform voters about its possible effects on statutes and pending litigation—ignores this Court's consistent pronouncements that a ballot summary must fairly inform voters of the proposed amendment's chief purpose, only. There is no requirement whatsoever that a ballot summary detail every possible effect on society, the law, or the economy.

Likewise, the ballot summary is not misleading. The Opponents raise a barrage of arguments, but they are all unavailing. In fact, most of these arguments assert that the ballot summary is misleading because it fails to describe the Amendment's effects—that it fails to inform of the Florida Legislature's role in writing laws, of conflicting local laws, and of future federal legislation. But there is no authority for the proposition that a ballot summary misleads a voter because it fails to describe every single effect that a proposed amendment might have. To the contrary, this Court has universally held that such a requirement would be untenable, especially given the ballot summary's 75-word limitation.

Simply put, the Amendment should be put on the ballot, and the Opponents' confused arguments to the contrary should be rejected.

LEGAL ARGUMENT

I. THE VOTER CONTROL AMENDMENT COMPLIES WITH THE SINGLE-SUBJECT REQUIREMENT.

Any proposed amendment must meet what is called the "single-subject requirement." There are two ways a proposed amendment may fail this requirement. First, a proposed amendment encompasses more than a single subject if it substantially alters or performs the functions of multiple branches of government. *See In re Extending Existing Sales Tax to Non-Taxed Servs.*, 953 So. 2d 471, 480 (Fla. 2007). Second, a proposed amendment fails the single-subject requirement if it undertakes logrolling, which "is a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *In re Protect People, Especially Youth, from Addiction, Disease, & Other Hazards of Using Tobacco*, 926 So. 2d 1186, 1191 (Fla. 2006) (per curiam) (internal quotation marks omitted).

The Opponents agree that this is the proper standard. [Jacksonville Kennel Br. at 16; Clarity in Gaming Br. at 24] And yet, in their briefs, Opponents attack the Amendment because it does not meet never-before-seen standards created by the Opponents and standards that this Court has never before imposed.

A. The Amendment Does Not Substantially Alter or Perform the Functions of Multiple Branches.

It is "difficult to conceive of a constitutional amendment that would *not* affect other aspects of government to some extent." *In re Ltd. Casinos*, 644 So. 2d 71, 74 (Fla. 1994) (per curiam) (emphasis added). Consequently, "a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government." *Id.*; *accord In re Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994); *In re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998) (per curiam). As this Court has held, to fail the single-subject requirement, a proposed amendment must do more than affect a branch of government; it must *substantially alter or perform* the functions of multiple branches of government. *See Protect People*, 926 So. 2d at 1191. The Amendment satisfies this requirement.

After all, the Amendment establishes that voters, not the legislature, have the authority to allow casino gambling as defined in the Amendment. And in no way does the Amendment perform the executive's or judiciary's functions.

In a throwaway paragraph found on the last page of its argument section, Clarity in Gaming argues that the Amendment violates the single-subject requirement because it would "deprive the Legislature of a significant component of its lawmaking power." [Clarity in Gaming Br. at 27] In defense of its position, Clarity in Gaming argues that, in *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984),

this Court held that a proposed amendment that affects several functions of a single branch fails the single-subject requirement. [Clarity in Gaming Br. at 27] Not so.

In *Fine,* this Court held that a proposed amendment sought to alter multiple functions of the government's structure and multiple sections of the constitution, therefore constituting separate subjects. *Id.* at 990. The proposed amendment altered how state and local governments used tax revenues for "general governmental operations," restructured state and local "user-fee services," and constrained the state and local governments' issuance of "revenue bonds" for capital improvements. *Id.* at 990–91. Thus, *Fine* concerned a proposed amendment that bundled multiple subjects, which constitutes logrolling. And the proposed amendment in *Fine* altered basic, disparate government functions—spending, user-fee services, and issuing bonds.

In contrast, nothing in the Amendment radically alters multiple, basic functions of the state and local governments. Though Clarity in Gaming argues that the Amendment deprives "the Legislature of a significant component of its lawmaking power," it never even explains how the Amendment does this. [Clarity in Gaming Br. at 27] Clarity in Gaming's diktat is not enough to reject a proposed amendment, and so this argument fails.

B. The Amendment Does Not Logroll.

Even where a proposed amendment does not substantially alter or perform the function of multiple branches of government, it may still fail the single-subject requirement. Where an amendment "contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed," it logrolls and violates the single-subject requirement. *Protect People*, 926 So. 2d at 1191 (internal quotation marks omitted). "In addressing [logrolling], the Court utilizes a 'oneness of purpose standard,'" and a proposed amendment meets this standard "when it may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *In re Fla. Minimum Wage Amendment*, 880 So. 2d 636, 639–40 (Fla. 2004) (per curiam) (internal quotation marks omitted).

Undoubtedly, the Amendment surpasses the oneness-of-purpose standard. In subsection (a), the Amendment poses a single question: Should Florida voters have the sole right to determine if casino gambling is allowed under Florida law?

The other subsections—(b) through (e)—raise no new issues. This Court has already held that provisions like subsections (b) through (e), which simply provide "definitions, . . . a severability clause, and an effective date," are "logically related to the subject of the amendment." *In re Limited Marine Net Fishing*, 620 So. 2d

997, 999 (Fla. 1993) (per curiam). The Amendment's oneness of purpose is thus indisputable.

And yet the Opponents dispute it. At its essence, the Opponents' argument is—literally—that the Amendment logrolls because it forces voters to choose between the status quo and voter control over casino gambling. [Clarity in Gaming Br. at 26 ("The Gambling Initiative engages in logrolling by placing the elector in the position of deciding between a preference for controlling the expansion of full-fledged casino gambling and Florida's currently legal gaming landscape.")] But the Opponents cite no authority for the proposition that a proposed amendment logrolls because it gives voters an option between the status quo and change. As a matter of logic, nary an amendment would survive the Opponents' new, rigorous logrolling requirement, which makes the Opponents' logrolling requirement a poor one. *See, e.g.*, *In re Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d 235, 243 (Fla. 2015) (per curiam) (changing status quo but not logrolling); *Protect People*, 926 So. 2d at 1191 (same); *In re Prohibiting Pub. Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997) (same). Because what the Opponents complain about is not logrolling, this Court should reject their argument.[2]

[2] Eventually, the Opponents' argument collapses to their real gripe—that the Amendment's language is misleading. [Jacksonville Kennel Br. at 16 ("[T]he second subject . . . is not readily clear in the text of the Gambling Amendment.");

II. THE TITLE AND SUMMARY COMPLY WITH SECTION 101.161(1).

Section 101.161, Florida Statutes, imposes certain length and clarity requirements on the ballot summary and ballot title of any proposed amendment. Subsection (1) states:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary 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. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

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id. at 17 ("[T]he voter in this scenario may not even realize there are these competing subjects in the text . . . ."); Clarity in Gaming Br. at 26 ("Both voters could be correct or incorrect because of the misleading language.")] But this contention confuses the single-subject requirement with the requirement that the ballot summary and title be clear and unambiguous. Hence, the Opponents' argument is largely irrelevant.

FLA. STAT. § 101.161(1). Though the Opponents' briefs consistently attack the Amendment's proper language as misleading and unclear, section 101.161 imposes its requirements on the ballot summary, not the proposed amendment's language: "[A] ballot summary . . . shall be printed in clear and unambiguous language." FLA. STAT. § 101.161(1).[3] Thus, the focus is on the title and summary's language, not the proposed amendment's language.

A ballot summary and title survive section 101.161's requirements if they meet two conditions. First, the title and summary must fairly inform voters of the proposed amendment's chief purpose. Second, the title and summary, as written, must not mislead the public. *In re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 184 (Fla. 2009).

A. The Ballot Summary and Title Are Clear and Unambiguous.

A ballot summary is clear and unambiguous when "the ballot title and summary fairly inform the voter of the chief purpose of the amendment." *In re Rights of Elec. Consumers Regarding Solar Energy Choice*, 188 So. 3d 822, 831 (Fla. 2016) (per curiam). "[I]n determining whether the ballot information properly informs the voters," this Court "may not" read the ballot title and summary "in

[3] Jacksonville Kennel apparently cites an older version of section 101.161(1) in its brief, because the language quoted by Jacksonville Kennel differs greatly from the current language.

isolation, but must" read them "together." *In re Fla.'s Amendment To Reduce Class Size*, 816 So. 2d 580, 581 (Fla. 2002) (per curiam).

Critically, the test focuses on informing the voter on the proposed amendment's chief purpose, not the proposed amendment's every effect. *See Save Our Everglades*, 636 So. 2d at 1341 ("[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose."). This is so because, by law, the summary is limited to 75 words, making a summary that countenances every possible effect impossible. *See In re Right to Treatment & Rehab.*, 818 So. 2d 491, 498 (Fla. 2002). The summary here does what it must: It fairly informs the voter of the Amendment's chief purpose.

It does this because, when it comes to the Amendment's chief purpose, the summary repeats the Amendment's actual language nearly verbatim. The Amendment's principle language states:

> This amendment ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida. This amendment requires a vote by citizens' initiative pursuant to Article XI, section 3, in order for casino gambling to be authorized under Florida law.

The ballot summary essentially merges these two sentences, rearranges a few words, exchanges the jargon "citizens' initiative" with plain words, and drops a few words to stay within the 75-word limit:

> This amendment ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling by requiring that in order for casino gambling to be authorized under Florida law, it must be approved by Florida voters pursuant to Article XI, Section 3 of the Florida Constitution.

The Amendment and ballot both say the same thing, use the same words, and cite the same provisions. Accordingly, the ballot is clear and unambiguous about the Amendment's chief purpose.

Jacksonville Kennel nonetheless contends that the ballot summary is unclear because this language is unclear as to whether the Amendment applies "retrospectively." [Jacksonville Kennel Br. at 7–10] In reality, though, Jacksonville Kennel's gripe is not the Amendment's possible retrospective application. The thrust of its argument is that the Amendment may repeal current Florida statutes concerning approved card games and slot machines and that this outcome may be unclear.[4] This argument simply ignores the scope of this case.

Fundamentally, this argument attempts to do what this Court cannot do at this stage, that is, reach the merits of possible interpretations. A ballot summary does *not* require "an exhaustive explanation of the interpretation and future

[4] [Jacksonville Kennel Br. at 7 ("If a new amendment is irreconcilable with a statute in force, the conflicting statute will be regarded as repealed via implication."); *id.* at 7 ("This absence of clarity leaves the voter guessing as to which forms of gambling will remain in effect."); *id.* at 11 ("Under a retrospective application of the new Amendment, the Legislature's authorization would be repealed . . . .")]

possible effects of the amendment." *In re Pub. Protection from Repeated Med. Malpractice*, 880 So. 2d 667, 673 (Fla. 2004) (per curiam). Yet this is what Jacksonville Kennel demands.

It asks that the ballot summary describe whether cardroom operators are affected, whether the Amendment applies prospectively or retrospectively, and whether the Amendment outlaws bingo.[5] [Jacksonville Kennel Br. at 8–9] This is the opposite of what is required at this stage: "[N]or is it possible, without a crystal ball, for any person to foresee all possible effects the proposed amendment may have in the future. Certainly, if a ballot title and summary were required to include *all* possible ramifications, it is arguable that no proposed amendment would ever be approved within the current parameters." *In re Phys. Shall Charge the Same Fee for the Same Health Care Serv. to Every Patient*, 880 So. 2d 659, 666 (Fla. 2004) (per curiam).

Nowhere is the impropriety of Jacksonville Kennel's argument better highlighted then when it mentions the scope of section 551.102(4) of the Florida Statutes. [Jacksonville Kennel Br. at 12]

[5] Jacksonville Kennel's argument is particularly perplexing since Florida law is clear that a self-executing constitutional amendment repeals all statutes that conflict with the amendment's plain language. *See In re Advisory Opinion to the Governor*, 132 So. 2d 163, 169 (Fla. 1961) (per curiam). Subsection (d) makes the Amendment self-executing, so the Amendment would repeal any inconsistent statutes if passed. That said, the ballot summary need not (and, because of space limitations, cannot) explain each and every statute, state or local, that would be repealed.

Before this Court, pari-mutuel facilities are currently contesting the State's determination that, under section 551.102(4), pari-mutuels outside of Miami-Dade and Broward Counties cannot own slot machines. The pari-mutuel facilities hope to expand slot machines into six other counties. [Jacksonville Kennel Br. at 12] As of today, this Court has not ruled on the issue. And yet, incredibly, Jacksonville Kennel argues that the ballot summary (with its 75-word limitation) must explain the Amendment's effects on section 551.102(4). This would require more than a crystal ball; neither Jacksonville Kennel nor Voters in Charge can provide such an explanation. This Court should reject Jacksonville Kennel's preposterous argument and conclude that the ballot summary and title are clear and unambiguous.

B. The Ballot Summary and Title Are Not Misleading.

Section 101.161(1) of the Florida Statutes also requires that the ballot summary and title not mislead the voters. Generally, summaries and titles mislead voters when they use political rhetoric or emotional language. *See Save Our Everglades*, 636 So. 2d at 1341–42. This Court will also find language misleading when a summary states the opposite of what the proposed amendment actually does. *See, e.g.*, *Askew v. Firestone*, 421 So. 2d 151, 155–56 (Fla. 1982) (claiming to restrict lobbying activities when actually expanding them); *Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 669 (Fla. 2010) (per

curiam) ("While purporting to create and impose standards upon the Legislature in redistricting, the amendment actually eliminates actual standards . . . .").

The Opponents raise seven arguments as to how the summary is misleading. As shown below, none are availing.

i. The use of "control" in the title and "authorize" in the summary does not mislead voters.

Jacksonville Kennel maintains that the ballot and title are misleading because the title uses the word "control" to describe the People's power under the Amendment, whereas the ballot summary uses the word "authorize." According to Jacksonville Kennel, the "verbs 'control' and 'authorize' have two very different meanings and the distinction between these words is important to the voters' understanding of their role in casino gambling in Florida." [Jacksonville Kennel Br. at 14] This argument is wayward.

This Court and voters do not read the title and summary in isolation but rather read them together. *See Fla.'s Amendment To Reduce Class Size*, 816 So. 2d at 581. When read together, the title and ballot work in harmony.

The title (Voter Control of Gambling of Florida) informs voters that the Amendment deals with voters' ability to control gambling. Control, however, is a broad term, which even Jacksonville Kennel recognizes can mean to influence or to direct. *See* AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 400 (5th ed. 2016) ("To exercise authoritative or dominating influence over; direct"). The

summary therefore explains what kind of control the voters get: to authorize via a citizens' initiative pursuant to article XI, section 3 of the Florida Constitution. There is nothing misleading about that.

Still, Jacksonville Kennel maintains that, under *Save Our Everglades*, a summary is misleading when it uses a different word than used in the title. But *Save Our Everglades* does not stand for that proposition. In *Save Our Everglades*, this Court rejected the ballot title—"Save Our Everglades"—because it used emotional language: "A voter responding to the emotional language of the title could well be misled as to the contents and purpose of the proposed amendment." *Save Our Everglades*, 636 So. 2d at 1341. Because no one even argues that the title and summary here use emotional language, Jacksonville Kennel's reliance on *Save Our Everglades* is inapposite. *See In re Protect People from the Health Hazard of Second-Hand Smoke*, 814 So. 2d 415, 421 (Fla. 2002) (per curiam) ("[T]he instant proposal does not involve, as did the rejected language in *Save Our Everglades*, the legerdemain of employing an emotional term ('save') in the ballot title or summary while substituting a more docile term ('restore') in the amendment text.").

ii. The summary's citation to article XI, section 3 of the Constitution is not misleading.

Clarity in Gaming contends that the ballot summary is misleading because it states that casino gambling "must be approved by Florida voters pursuant to Article XI, Section 3 of the Florida Constitution." According to Clarity in

Gaming's argument, this language is misleading because article XI, section 3 "does not speak to any 'approval' and instead speaks to the manner in which a citizen initiative qualifies for single subject review." [Clarity in Gaming Br. at 14] Voter approval, this argument continues, is mentioned in article XI, section 5 of the Florida Constitution, so Florida voters will be misled and, apparently, not know that they must approve any citizen initiative at the ballot booth. Nonsense.

Clarity in Gaming's argument faces an irreparable weakness. This Court has consistently rejected arguments, like Clarity in Gaming's, that assume total ignorance by voters. This Court "presume[s] that the average voter has a certain amount of common understanding and knowledge." *In re Local Trs. & Statewide Governing Bd. To Manage Fla.'s Univ. Sys.*, 819 So. 2d 725, 732 (Fla. 2002) (per curiam). For this reason, this Court has routinely rejected those arguments that assume voters will be misled by ignorance. *See, e.g.*, *id.* at 731 ("[W]e believe that the average voter is also aware that the state university system is currently governed by the Florida Board of Education, whose power and duties are enumerated in chapter 229 of the Florida Statutes."); *Ltd. Casinos*, 644 So. 2d at 75 ("We are confident that the public knows that casino gambling is now prohibited . . . .").

The same logic applies here. Florida voters understand how citizens' initiatives work. They will understand—because the ballot summary states so and

because citizens' initiatives are routine—that, to be allowed, casino gambling must first seek authority from the voters through the citizens' initiative process explained in article XI, section 3 of the Florida Constitution. And, because amendments placed by citizens' initiatives are routinely on the ballot, they will understand that the ballot must then be approved through a vote. The ballot summary's failure to cite article XI, section 5 is not misleading; it is common sense.

If anything, citing to article XI, section 5 would cause more confusion, for that provision discusses not just approval of amendments via citizens' initiative but also approval of amendments via joint resolutions, constitutional conventions, and taxation and budget reform commissions. FLA. CONST. art. XI, § 5. The Amendment itself, moreover, cites article XI, section 3, not article XI, section 5.

iii. The summary's language does not "directly" conflict with itself.

Clarity in Gaming picks two sentences from the ballot summary, excises critical phrases from those two sentences so that the sentences conflict, and argues that the sentences "are in direct conflict with one another." [Clarity in Gaming Br. at 16] But when Clarity in Gaming's intentional cherry-picking is undone, it turns out the two sentences do not conflict at all.

In its brief, Clarity in Gaming notes that the ballot summary states that "voters shall have the exclusive right to decide whether to authorize casino

gambling." [Clarity in Gaming Br. at 16] According to Clarity in Gaming, the ballot summary also says that "this amendment does not conflict with federal law regarding state/tribal compacts." [Clarity in Gaming Br. at 16] How can it be, Clarity in Gaming asks, that voters will have an exclusive right but that federal law will also have some right? Because that constitutes a conflict, this argument continues, the ballot summary is misleading. But this argument ignores the entirety of the two sentences.

Take the sentence about voters' "exclusive right to decide whether to authorize casino gambling." That sentence explains that that the exclusive authority is to allow "casino gambling . . . under *Florida law*." And how about the other sentence? It deals with *federal law*. The two sentences, therefore, do not conflict in any way and cannot be misleading. They directly clarify that the Amendment dictates Florida law but cannot dictate federal law. *See* U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . . .").

Clarity in Gaming's argument quickly morphs into an attack on the possible consequences of the Amendment, arguing that the Amendment violates federal law because it restricts what the Federal Indian Gaming Regulatory Act defines as Class II gaming. [Clarity in Gaming Br. at 17] To make this argument, Clarity in

Gaming quotes the Amendment's subsection (b), which defines casino gambling, *but Clarity in Gaming fails to quote the first sentence of the definition*, which obliterates its argument. The Amendment's subsection (b) defines "casino gambling" as Class III gaming, avoiding the Class II trap Clarity in Gaming fears: "As used in this section, 'casino gambling' means any of the types of games typically found in casinos and that are within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act . . . ." Simply put, there is nothing to Clarity in Gaming's argument.

iv. The summary does not mislead as to the role of the legislature.

In its next argument, Clarity in Gaming maintains that the ballot summary is misleading because it states that voters have exclusive right to "authorize" casino gambling, while subjection (c) of the Amendment lets the Florida Legislature "regulate" casino gambling. "Regulate," this argument holds, includes the right to "authorize." As a result, Clarity in Gaming believes, the ballot summary misleads the public when it states that voters' right to authorize is exclusive. [Clarity in Gaming Br. at 19–20] Clarity in Gaming is wrong, however, because, as generally understood, "regulate" does not include the right to "authorize."

Clarity in Gaming's argument boils down to this: The Sixth Edition of *Black's Law Dictionary* defines the word "regulate" to include "establish," which means "authorize." [Clarity in Gaming Br. at 20] But the common, everyday

definition of "regulate" does not include to establish. AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1480 (5th ed. 2016) ("To control or direct according to rule, principle, or law."). Even the current version of *Black's Law Dictionary* saps Clarity in Gaming's argument. BLACK'S LAW DICTIONARY 1475 (10th ed. 2014) ("To control (an activity or process) esp. through the implementation of rules"). Dictionaries recognize that "to regulate" means to implement rules on a process, which is different than authorizing or establishing the process itself.

But there is something even more fundamentally awry with Clarity in Gaming's argument. The Amendment's subsection (c) in no way allows the Florida Legislature to permit casino gambling. Its language, instead, allows the legislature to "restrict, regulate, or tax" gambling activities already approved by voters. To read subsection (c) as Clarity in Gaming reads it—that is, as allowing the Florida Legislature to permit gambling through general law and without voter approval—would nullify the Amendment, a preposterous outcome that no court, lawyer, or voter would assume.

v. The summary need not list every effect on local government.

Clarity in Gaming next argues that the Amendment's language is misleading because it never tells voters that it conflicts with local laws, like Seminole County's charter, and might therefore repeal them. [Clarity in Gaming Br. at 11–14] This argument is erroneous for three reasons.

To begin with, Clarity in Gaming's argument once again assumes the worst of Florida's voters. This Court, however, does not and presumes, rather, "that the average voter has a certain amount of common understanding and knowledge." *Local Trs.*, 819 So. 2d at 732. And the average voter knows that a state constitutional amendment trumps local laws and state statutes.

This Court has already found that the average voter has this basic civic knowledge. In one case, proponents sought to pass an amendment that prohibited tobacco smoking in enclosed indoor workplaces. *See Second-Hand Smoke*, 814 So. 2d at 416. An opponent argued that the ballot summary was misleading because it "fail[ed] to disclose the effect that the proposed amendment would have on sections 386.203, .205, Florida Statutes," which placed smoking restrictions in certain public places. *Id.* at 419. Noting that "voter[s] must be presumed to have a certain amount of common sense and knowledge," this Court rejected the argument, finding that the ballot summary did not need have "an exhaustive explanation of the interpretation and future possible effects of the amendment." *Id.* This caselaw demands rejection of Clarity in Gaming's argument.

Next, the argument ignores that the ballot summary must fairly inform only of the proposed amendment's chief purpose. *See Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d at 184. This Court has consistently held that proposed amendments do not mislead solely because they fail to list every possible

effect in the ballot summary. *See Local Trs.*, 819 So. 2d at 731. After all, the summary is limited to 75 words, so it could not possibly list every possible effect. *See Right to Treatment & Rehab.*, 818 So. 2d at 498. If applied, Clarity in Gaming's argument would be untenable. There is no reason that the ballot summary would need to explain only Seminole County's charter; logically, the ballot summary would have to explain the Amendment's effects on other counties that might also have laws on gambling. At a minimum, this list includes Brevard, Broward, Gadsden, Hamilton, Lee, Miami-Dade, Palm Beach, and Washington Counties. And it would require an explanation of the effects on ordinances and laws passed by cities and towns. The ballot summary would hit the 75-word limit with barely an explanation of the Amendment's chief purpose. The law cannot require such a novelistic explanation of every effect, and it does not, which is why this Court must reject Clarity in Gaming's argument.

Finally, Clarity in Gaming's argument applies the wrong test. Section 101.161(1) of the Florida Statutes requires that the language in the ballot *summary* and *title* be clear and unambiguous. *See* FLA. STAT. § 101.161(1) ("[A] ballot summary . . . shall be printed in clear and unambiguous language."). For that reason, this Court has consistently refused to interpret proposed amendments' language at this stage. *See Phys. Shall Charge*, 880 So. 2d at 666. And yet Clarity

in Gaming highlights no language in the title or summary that could make a voter think that the Amendment would not trump local laws.

vi. Clarity in Gaming's remaining arguments are speculative.

Clarity in Gaming raises two other arguments, which maintain the ballot summary and title are misleading. First, it argues that the summary is misleading because it asserts that voters will have "the only right to arrive at a determination whether to empower casino gambling" when, in fact, "[a]t a minimum, legislative implementation would still be required." [Clarity in Gaming Br. at 15] Second, it contends that the "Amendment's language is misleading" because it "incorporates by reference into the proposed constitutional definition of 'casino gambling' future additions to the federal definition of Class III games." [Clarity in Gaming Br. at 18] These two arguments are fraught with error.

The primary issues with these two arguments are that they are wholly speculative and focus on the interpretation of the Amendment, not the ballot summary and title's clarity. This is fatal to these arguments.

Simply put, the analysis at this stage cannot support speculation based on the possible interpretations or outcomes of the Amendment's language. This Court has explicitly stated that it will not countenance attempts to "seek[ ] an exhaustive explanation reflecting [an opponent's] interpretation of the amendment and its possible future effects." *Phys. Shall Charge*, 880 So. 2d at 666; *accord Repeated*

Med. Malpractice, 880 So. 2d at 673. And yet this is exactly what Clarity in Gaming asks this Court to do: interpret the Amendment and speculate about future events.

This statement's veracity is supported by Clarity in Gaming's brief, which continuously references future possible events.[6] And, when it comes to argument about the definition of casino gambling, the brief incorrectly focuses on the Amendment's language. This is not the proper stage to test the Amendment's language against future contingencies and scenarios. At this stage, this Court must focus on whether the ballot title and summary are misleading. Because Clarity in Gaming's argument ignores this standard, its arguments are irrelevant.

C. The Opponents Do Not Contest the Financial Impact Statement.

Finally, neither Jacksonville Kennel nor Clarity in Gaming contest the financial impact statement. Accordingly, this Court should approve it.

[6] [Clarity in Gaming Br. at 15 (discussing how implementation of future proposed amendments legalizing casino gambling would require legislative implementation); Clarity in Gaming Br. at 19 (discussing future changes to Class III gambling under federal law)].

CONCLUSION

For these reasons, Voters in Charge respectfully urges this Court to approve the proposed Amendment for placement on the ballot.

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Respectfully submitted,

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I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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