

IN THE SUPREME COURT OF FLORIDA

Case Nos.: SC16-778; SC16-871

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

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**ANSWER BRIEF FOR OPPONENTS
JACKSONVILLE KENNEL CLUB, INC., DANIA
ENTERTAINMENT CENTER, LLC, INVESTMENT CORPORATION OF
PALM BEACH, WEST FLAGLER ASSOCIATES, LTD., BONITA-FORT
MYERS CORPORATION, AND
MELBOURNE GREYHOUND PARK, LLC**

John M. Lockwood
Florida Bar No. 28056
Thomas J. Morton
Florida Bar No. 13771
Kala Kelly Shankle
Florida Bar No. 112042
THE LOCKWOOD LAW FIRM
106 East College Avenue, Suite 810
Tallahassee, Florida 32301
Tel: 850.727.5009
Fax: 850.270.2610
john@lockwoodlawfirm.com
tj@lockwoodlawfirm.com
kala@lockwoodlawfirm.com
Counsel for the Opponents

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TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| TABLE OF CONTENTS | ii |
| TABLE OF CITATIONS | iv |
| SUMMARY OF THE ARGUMENT | 1 |
| ARGUMENT | 3 |
| I. THE GAMBLING AMENDMENT SHOULD NOT BE PLACED ON FLORIDA’S BALLOT BECAUSE THE TITLE AND SUMMARY DO NOT SATISFY SECTION 101.161(1), FLORIDA STATUTES, AND THE SPONSOR’S INITIAL BRIEF FAILS TO OFFER ANY SUPPORT TO DEMONSTRATE OTHERWISE. | 3 |
| A. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Title and Summary Mislead the Voters as to the Chief Purpose and Scope of the Voters’ Role in Authorizing or Controlling Casino Gambling in Florida. | 5 |
| B. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Summary Misleads the Voters as to Whether the Chief Purpose of the Amendment is to be Retrospective or Prospective. | 8 |
| C. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Summary and Supporting Text Misleads the Voters on the Kinds of Casino Gambling Impacted by the Amendment. | 11 |
| D. The Financial Impact Statement is Evidence That the Amendment Violates Section 101.161(1), Florida Statutes. | 14 |

| | |
|--|----|
| II. THE GAMBLING AMENDMENT SHOULD NOT BE PLACED ON FLORIDA’S BALLOT BECAUSE THE DISPARATE SUBJECTS IN THE GAMBLING AMENDMENT AMOUNT TO TEXTBOOK LOGROLLING AND THE SPONSOR FAILS TO OFFER ANY INDICATION THE SUBJECTS ARE DIRECTLY CONNECTED. | 17 |
| CONCLUSION | 20 |
| CERTIFICATE OF COMPLIANCE | 22 |
| CERTIFICATE OF SERVICE..... | 22 |

TABLE OF CITATIONS

PAGE

Cases

Advisory Op. to the Att’y Gen. re Ltd. Political Terms in Certain Elective Offices,
592 So. 2d 225 (Fla. 1991)3, 17

Advisory Op. to the Att’y Gen. re Tax Limitation,
673 So. 2d 864 (Fla. 1996)3

Advisory Op. to the Att’y Gen. re Term Limits Pledge,
718 So. 2d 798 (Fla. 1998)3

Advisory Op. to Att’y Gen.— Restricts Laws Related to Discrimination,
632 So. 2d 1018 (Fla. 1994)3

Askew v. Firestone,
421 So. 2d 151 (Fla. 1982)8, 11, 12

Appalachian Racing, LLC v. Family Trust Found. of Ky., Inc.,
423 S.W.3d 726 (Ky. 2014)19

Evans v. Firestone,
457 So. 2d 1351 (Fla. 1984)17

Fla. Hosp. Waterman, Inc. v. Buster,
984 So. 2d 478 (Fla. 2008)8

In re Advisory Op. to the Att’y Gen. re Casino Authorization, Taxation and Regulation,
656 So. 2d 466 (Fla. 1995)11, 12

In re Advisory Op. to the Att’y Gen. re Use of Marijuana for Certain Med. Conditions,
132 So. 3d 786 (Fla. 2014)17

In re Advisory Op. to the Att’y Gen. – Save Our Everglades,
636 So. 2d 1336 (Fla. 1994)5

| | |
|--|--------|
| <i>In re Protect People, Especially Youth from Addiction, Disease, and Other Health Hazards of Using Tobacco,</i> 926 So. 2d 1186 (Fla. 2006) | 14, 15 |
| <i>State v. Lavazzoli,</i> 434 So. 2d 321 (Fla. 1983) | 8 |
| <i>Trustees of Tufts Coll. v. Triple R. Ranch, Inc.,</i> 275 So. 2d 521 (Fla. 1973) | 8 |
| <i>United States v. 103 Electronic Gambling Devices,</i> 223 F.3d 1091 (9th Cir. 2000) | 14 |
| <i>Wyoming Downs Rodeo Events, LLC v. State,</i> 134 P.3d. 1223 (Wy. 2006) | 19 |

Constitution

| | |
|-----------------------------------|---------------|
| Article X, § 15, Fla. Const. | 13 |
| Article X, § 23, Fla. Const. | 13 |
| Article XI, § 3, Fla. Const. | <i>passim</i> |

Statutes

| | |
|--|---------------|
| 25 U.S.C. § 2701 (2015) | 12, 13 |
| 25 C.F.R. § 502.4 (2015) | 12 |
| § 100.371(6)(a), Fla. Stat. (2015) | 14 |
| § 101.161(1), Fla. Stat. (2015) | <i>passim</i> |
| § 849.15, Fla. Stat. (2015) | 14 |

Other Authorities

*Constitutional Amendment Petition Form,
Voter Control of Gambling in Florida,
Serial Number 15-22 (October 26, 2015)6, 13*

*Financial Information Statement for the Initiative Petition Titled
Voter Control of Gambling in Florida, Office of Economic
and Demographic Research,
Serial Number 15-22 (May 19, 2016)passim*

SUMMARY OF THE ARGUMENT

This Answer Brief is submitted on behalf of the Opponents and is in response to the Sponsor's Initial Brief and the arguments made therein. This Court must find that the Voter Control of Gambling Amendment (the "Gambling Amendment" or the "Amendment") cannot be placed on Florida's ballot because the Gambling Amendment violates the single-subject provision in article XI, section 3 of the Florida Constitution, and the ballot title and summary do not comply with section 101.161(1), Florida Statutes.

First, the Gambling Amendment's title and summary are unclear and ambiguous because they fail to fully inform voters of the chief purpose and scope of the voters' role in authorizing or controlling casino gambling in Florida. Specifically, the ballot summary and title mislead the voters to believe they will "control" gambling, when in practice voters may only "authorize" casino gambling. Further, the summary is ambiguous and misleading because the language of the summary renders two competing outcomes: all casino gambling is authorized pending a citizens' initiative; or in contrast, only forms of casino gambling are separately authorized pending various citizens' initiatives.

What's more, the ballot's summary does clearly reveal that whether in achieving its chief purpose, the force of the Amendment's text is meant to be prospective or retrospective. The absence of this information displays that neither

the Amendment or even the Sponsor's generic Initial Brief contemplate the most significant ramifications of this Amendment on existing licensed casino facilities. Likewise, the Gambling Amendment fails to consider the interaction between this Amendment and existing law for certain forms of casino gambling including slot machines, instant bingo, and historical racing. Even the Financial Impact Statement submitted for the Gambling Amendment recognizes the issues with the Amendment's ambiguous text and lack of clarity for the future gaming industry. All these glaring concerns with the Gambling Amendment's text and summary demonstrate that the Amendment is far too ambiguous and unclear to be placed on Florida's ballot.

Additionally, the Gambling Amendment encompasses two competing subjects: the first is casino gambling authorization by citizens' initiative; and the second is the potential repeal of existing gambling activities whether approved by citizens' initiative. These disparate subjects covered in the Gambling Amendment amount to "logrolling" as prohibited in article XI, section 3 of the Florida Constitution because voters may be forced to vote for an unfavorable outcome in order to obtain a separate yet favorable outcome. As the Florida Constitution prohibits logrolling of this kind, the Gambling Amendment should not be placed on Florida's ballot.

ARGUMENT

I. THIS AMENDMENT SHOULD NOT BE PLACED ON FLORIDA'S BALLOT BECAUSE THE TITLE AND SUMMARY DO NOT SATISFY SECTION 101.161(1), FLORIDA STATUTES, AND THE SPONSOR'S INITIAL BRIEF FAILS TO OFFER ANY SUPPORT TO DEMONSTRATE OTHERWISE.

It is well established that constitutional amendments must comply with the requirements set forth in section 101.161(1), Florida Statutes. The language of the ballot summary and title must be clear and unambiguous in order to advise the electorate of the true meaning and ramifications of an amendment. *See Advisory Op. to the Att'y Gen. re Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991); *Advisory Op. to the Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998). In all such cases this Court has held that the voters should not be misled as to the chief purpose of the amendment so that the voter can cast an "intelligent and informed ballot." *Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996).

In an attempt to show compliance with the requirements found in section 101.161(1), Florida Statutes, the Sponsor's Initial Brief conclusively and with little detail argues that "[b]oth the ballot title and summary explicitly state this clearly informing the voter in a straightforward manner as to how the Amendment will effectuate its chief purpose." Sponsor's Initial Br. at 11-12. In this way, the Sponsor contends the "chief purpose" of the Gambling Amendment is to "require[] that in

order for a *form* of casino gambling to be legal in the State, it must be authorized by initiative pursuant to article XI, section 3.” Sponsor’s Initial Br. at 5 (emphasis added).

The Sponsor’s rudimentary explanation of the language in the ballot title and summary is troubling because the Gambling Amendment’s vague and ambiguous language creates a myriad of major complications not expressly discussed or resolved anywhere in the Amendment’s text. Predominantly, the ballot title and summary is unclear and ambiguous because the Gambling Amendment: 1) misleads the voters regarding the scope of the voters’ role in authorizing or controlling casino gambling; 2) fails to inform the voters whether the chief purpose of the Gambling Amendment is intended to be retrospective or prospective; and 3) conceals the true scope of the kinds of casino gambling expressly or impliedly addressed in the Amendment. Even the Financial Impact Estimating Conference’s financial impact statement suggests the Gambling Amendment is far too ambiguous to adequately study its future impact if adopted.

While the Sponsor may argue that the ballot title and summary do not need to address every ramification of a proposed amendment, this argument has no place in this proceeding. The Gambling Amendment’s title and summary turn a blind eye to the most glaring and obvious ramifications of this Amendment in accomplishing its chief purpose, leaving the voters with a weak understanding of this Amendment’s

true intentions. Thus, without more from the ballot summary and title the voters are left to guess the implications of this Amendment and cannot cast an intelligent and informed ballot. It is for these reasons, the Gambling Amendment cannot be placed on Florida's ballot.

A. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Title and Summary Mislead the Voters as to the Chief Purpose and Scope of the Voters' Role in Authorizing or Controlling Casino Gambling in Florida.

In drafting a constitutional amendment, the selection of words used in titles and summaries is important to ensure that language does not mislead voters as to the true meaning of the Amendment. For example, as discussed in the Opponents' Initial Brief, the Court in *In re Advisory Op. to the Att'y Gen. – Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994), found the difference between the words "save" and "restore" used in the amendment's title and summary were so different that the words could "mislead as to the contents and purpose of the proposed amendment." *Id.* at 1341. As both words could have incited distinctive and contrasting emotions for voters, the amendment's language was misleading and could not be placed on Florida's ballot.

Here, the Sponsor's Initial Brief alleges the title and summary is so "succinct" and "plainly stated" that it would not "lead the voter astray." Sponsor's Initial Br. at 12. In support, the Sponsor's Brief attempts to argue the words used in the title and summary are not "political rhetoric or emotional language" and thus, do not mislead

the voters. *Id.* This argument is vastly untrue. As explained in the Opponents' Initial Brief, the words "control" and "authorize" have two entirely different meanings, which ultimately mislead the voters as to the scope of their role in decision making regarding casino gambling. The voters may vote to "authorize" a particular activity but may be unaware that the voter is not actually going to "control" how casino gambling is operated in Florida as actual "control" is reserved for the Florida Legislature. In this way, the word "control" is political rhetoric because the word incites a kind of emotion in the voters and the promise of true decision making regarding casino gambling (including taxation and deciding location of facilities). In practice, however, the Gambling Amendment only delivers the voters authorization of "forms" casino gambling. Sponsor's Initial Br. at 11.

The use of these incongruent words is not the only example of ambiguous drafting in the Gambling Amendment. For instance, the thrust of the Sponsor's Initial Brief is that the Gambling Amendment gives Florida voters "the exclusive right to decide whether *various forms of casino gambling* are authorized in Florida." Sponsor's Initial Br. at 8, 10-11 (emphasis added). However, the actual ballot summary does not include the word "form" at all and instead indicates "[t]his 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 . . .*" it must be approved by citizens' initiative. *See Constitutional*

Amendment Petition Form, Voter Control of Gambling in Florida, Ballot Summary, Serial Number 15-22 (October 26, 2015) (emphasis added).

Unfortunately, the purpose as expressed in the Sponsor's Initial Brief is not as clear as in the title or summary of the Gambling Amendment. Specifically, the title and summary imply that voters have the right to decide whether there will be *any* casino gambling in Florida. This is in direct conflict with the definition of "casino gambling" in the Gambling Amendment, which implies that voters can decide what forms of Class III casino gambling shall be authorized through separate citizens' initiatives. The Sponsor's Brief seems to support this implication by discussing that the chief purpose of the Amendment is to authorize "forms" of casino gambling.

In this way, the Gambling Amendment's summary indicates an "all or nothing" decision, as opposed to the right to authorize different "forms" of games via various and separate citizens' initiatives as described in the Sponsor's Brief. This distinction cannot be reconciled only through the Sponsor's Initial Brief. Therefore, as the ambiguity in the words used in the title and summary mislead the voters as to the voters' exact role in authorizing or controlling gambling, the Gambling Amendment cannot be permitted to be on Florida's ballot.

B. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Summary Misleads the Voters as to Whether the Chief Purpose of the Amendment is to be Retrospective or Prospective.

The purpose and effect of a proposed amendment on current law must be abundantly clear to voters. *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). One such purpose is whether the proposed amendment intends to be applied prospectively or retrospectively to current Florida law. *State v. Lavazzoli*, 434 So. 2d 321, 323 (Fla. 1983); *see also Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 489 (Fla. 2008) (stating the intent of the ballot summary and text of the amendment was to be retrospective because the amendment “clearly expressed an intent to do away with then current Florida law restricting access to this information and would lead voters to the conclusion that all records, including existing records, would henceforth be subject to patient review.”). Absent an intent from the ballot text or summary to be retroactive, constitutional amendments have been construed to be applied prospectively. *See Lavazzoli*, 434 So. 2d at 321. This Court has recognized that when retrospective application of an amendment would impede on existing rights, the amendment must only be applied prospectively. *Trustees of Tufts Coll. v. Triple R. Rach, Inc.*, 275 So. 2d 521 (Fla. 1973).

The Sponsor’s Initial Brief contends “the ballot title and summary explicitly state this clearly informing the voter in a straightforward manner as to how the

Amendment will effectuate its chief purpose.” Sponsor’s Initial Br. at 11-12. Thus, the Sponsor’s Brief argues the chief purpose is to allow Florida voters to have the exclusive right to decide whether various forms of casino gambling are authorized in Florida. Sponsor’s Initial Br. at 8.

Nothing in the Amendment, however, indicates whether this Amendment is intended to be retroactive or prospective, leaving it unclear to the voters how this language would effectuate the Gambling Amendment’s chief purpose. This is particularly problematic because for voters to understand the true force and scope of the Gambling Amendment on current and future casino games, voters should know which laws, if any, will be implicated.

To this end, the Gambling Amendment’s summary states that for casino gambling “to be authorized” (a prospective phrase), it must be approved by the voters by citizens’ initiative. This could be reasonably interpreted to state that there shall be no casino gambling authorized in Florida unless and until a citizens’ initiative approves any forms of casino gambling after the proposed Amendment is enacted. This raises a number of issues, as there are a myriad of forms of casino gambling currently authorized by Florida law, including slot machines and player-banked card games. First, if any or all of the existing pari-mutuel casinos are not impacted by the Gambling Amendment and can continue to operate slot machines or other form of authorized gambling, the summary is inaccurate because it does not

explain whether such authorized forms of casino gambling shall continue regardless of the enactment of the Gambling Amendment. Alternatively, if the Gambling Amendment eliminates all existing pari-mutuel casinos' right to operate slot machines or other forms of casino gambling, the summary does not say so. Either way, the Gambling Amendment is far too ambiguous to adequately inform the voter of the ultimate ramifications on existing licensed casino facilities and existing licensed casino games.

Further, the Gambling Amendment, including its ballot summary, provides no guidance as to whether the Legislature could authorize new locations to operate currently authorized forms of casino gambling. In this way, the Gambling Amendment will have virtually no impact unless the Sponsor intends a retroactive application to currently authorized forms of casino gambling. In other words, it is unclear how the Gambling Amendment could impact future locations unless the Gambling Amendment prohibits all forms of currently authorized forms of casino gambling subject to future authorization by citizens' initiatives. This potential "implied repeal" of currently authorized forms of casino gambling is not evident in the Gambling Amendment or its ballot summary and creates a fatally misleading title and summary in violation of Florida law.

To some extent it seems the proponents of the Gambling Amendment do intend for this Amendment to be retrospective because the proponents have indicated

a negative impact upon Hialeah Park's slot machine license. *Financial Information Statement for the Initiative Petition Titled Voter Control of Gambling in Florida, Office of Economic and Demographic Research*, Serial Number 15-22 (May 19, 2016). Nonetheless, the ballot summary is silent as to whether the Amendment impacts Hialeah Park rendering it unclear and ambiguous on this issue. Any negative impact on Hialeah Park's slot machine operations constitutes an undisclosed retrospective application of the Amendment and a significant potential to impact other forms of currently authorized gambling. As voters have the right to cast an intelligent ballot, the Gambling Amendment fails to adequately inform the voters of these most significant implications of the Amendment and therefore, cannot be placed on Florida's ballot.

C. The Gambling Amendment Violates Section 101.161(1), Florida Statutes, Because the Ballot Summary and Supporting Text Misleads the Voters Regarding the Kinds of Casino Gambling Impacted by the Amendment.

The ballot summary may not implicitly conceal the true meaning or purpose of an amendment. *Askew v. Firestone*, 421 So. 2d at 156. For example, in *In Advisory Opinion to the Att'y Gen. re: Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995), the Court struck a provision that gave a false impression to the voters in Florida. The amendment sought to permit voters of individual counties and tourist development districts to authorize casino gambling within their districts. The Court found that the amendment's language, which stated casinos were

prohibited unless approved by the voters of any county or the Tourist Development Council district, created “the false impression” that casinos are presently allowed in Florida. *Id.* at 469. Further, the Court found the language “fail[ed] to inform the voter that most types of casino gaming are currently prohibited by statute.” *Id.*

This Gambling Amendment falls to the same ailments as in the above case because the summary creates the false impression that through this Amendment all casino gambling can be approved by the voters. Whether this may or may not be the case, the problem lies not with what the summary says, but rather with what it fails to say. *See Askew v. Firestone* at 155-56.

The Sponsor’s Initial Brief simply states “[t]here is also nothing express or implicit in the ballot summary that would mislead voter.” Sponsor’s Initial Br. at 12. However, while the ballot summary and its accompanying text attempt to define the kinds of “casino gambling” that may be included in the voters’ authorization powers, the Gambling Amendment has a number of internal inconsistencies. For example, the Amendment defines “casino gambling” to include types of games that fall within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S. C. § 2701 (“IGRA”), and in 25 C.F.R. § 502.4, upon adoption of the Amendment. The conduct of pari-mutuel wagering is currently considered a Class III game pursuant to 25 C.F.R. § 502.4(c) and thus seemingly considered “casino gambling” for purposes of the Amendment. However, the Amendment subsequently

carves out pari-mutuel wagering from the definition of “casino gambling” creating an internal ambiguity in the Amendment’s application.

In addition, the Gambling Amendment states casino gambling includes “any other game not authorized by article X, section 15 of the Florida Constitution, whether or not defined as a slot machine, in which the outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.” *Constitutional Amendment Petition Form Voter Control of Gambling*, Full Text of the Proposed Constitutional Amendment, paragraph (b). The Amendment fails to acknowledge or reference slot machines authorized pursuant to article X, section 23 of the Florida Constitution, and currently operated in Broward and Miami-Dade Counties. Instead, the Gambling Amendment simply provides that it makes “citizens’ initiatives the exclusive method of authorizing casino gambling.” *Id.* at paragraph (a). The express exemption of lottery games authorized by article X, section 15 of the Florida Constitution, and the failure to exempt slot machines previously authorized by article X, section 23 of the Florida Constitution, creates a general ambiguity as to whether such constitutionally authorized slot machines may continue to operate in light of the Amendment.

Similarly, the Gambling Amendment explicitly prohibits games within the definition of Class III gaming in the IGRA. *See* 25 § U.S.C. 2701 (2015). It is unclear, however, whether certain types of electronic bingo will be prohibited under

this law because electronic bingo – as it is defined now – falls under Class II Gambling. *See e.g. United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000) (holding that gambling devices were technologic aids used in connection with a bingo game and therefore a permissible Class II gaming device). However, this same machine operated at a non-tribal location would be considered a slot machine under current Florida law, including the Amendment.¹ *See* § 849.15, Fla. Stat. (2015). The inconsistencies in classification of these machines paint an unclear picture as to the scope of the voters’ power to authorize casino gambling. For these reasons, the summary fails to fully inform the voter of the true ramifications of the the Gambling Amendment.

D. The Financial Impact Statement is Evidence That the Amendment Violates Section 101.161(1), Florida Statutes.

Section 100.371(6)(a), Florida Statutes, states that a financial impact statement must discuss an increase or decrease in any “revenues or costs to the state or local governments resulting from the proposed initiative.” *In re Protect People, Especially Youth from Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1194 (Fla. 2006). For example, in *In re Protect People*,

¹ It is also unclear how the Amendment will impact the Class II gaming operations of the Miccosukee Indian tribe. The Miccosukee’s do not currently possess a gaming compact that would exempt their operations pursuant to paragraph (c) of the Amendment. As noted within this Answer Brief, electronic bingo machines may be considered “casino gambling” pursuant to the Amendment.

Especially Youth from Addiction, Disease, and Other Health Hazards of Using Tobacco, the Estimating Conference found the direct impact of the proposed initiative – “\$57 million in 2005 to be increased annually with inflation” – as well as the indirect impact – “long-term savings to State and local government health and insurance programs and minor revenue loss to State government, presumably through loss of tax revenue in light of decreased sales of tobacco products” through analyzing the amendment’s text. *Id.* at 1194.

The Sponsor’s Initial Brief, however, brushes aside the Financial Impact Estimating Conference’s inability to prescribe an impact on state and local government revenues and cost and concludes that, as in *In re Protect People, Especially Youth from Addiction, Disease, and Other Health Hazards of Using Tobacco, the Estimating Conference*, such indeterminable study is not fatal to the Amendment. While the Opponents agree that a specific impact is not a requirement of section 100.371(5)(a), Florida Statutes, the Opponents note that the failure to prescribe an impacted amount in the Financial Impact Statement was solely due to the Estimating Conference’s uncertainty with the Amendment’s application on current law. *Financial Information Statement for the Initiative Petition Titled Voter Control of Gambling in Florida* at 9. This is vastly different from the facts in *In re Protect People, Especially Youth from Addiction, Disease, and Other Health Hazards of Using Tobacco* for varying reasons.

First, the Estimating Conference on the Gambling Amendment noted that it was uncertain as to whether the Amendment's effects will be prospective or retrospective. *Financial Information Statement for the Initiative Petition Titled Voter Control of Gambling in Florida* at 9. The Estimating Conference also noted uncertainties as to the extent to which the Amendment may impact currently authorized gambling activities. *Id.* Further, the Estimating Conference found ambiguity in the Amendment's application to existing gambling activities that are subject to litigation. *Id.* at 1.

In all, the Estimating Conference's opinions reflect a fundamental problem with the Amendment's text and summary, further evidencing the Amendment's failure to conform to the "clear and unambiguous" requirement set forth in section 101.161(1), Florida Statutes. It is very likely the Estimating Conference could have prescribed a financial impact had they been able to understand the Amendment's application. As the Amendment's text and summary is too uncertain and ambiguous to the Estimating Conference charged with understanding the Amendment, it is misleading to the voters and therefore, cannot be placed on Florida's ballot.

II. THE GAMBLING AMENDMENT SHOULD NOT BE PLACED ON FLORIDA’S BALLOT BECAUSE THE DISPARATE SUBJECTS IN THE GAMBLING AMENDMENT AMOUNT TO TEXTBOOK LOGROLLING AND THE SPONSOR FAILS TO OFFER ANY INDICATION THE SUBJECTS ARE DIRECTLY CONNECTED.

A ballot initiative must not engage in “logrolling.” Art. 3, section XI, Fla. Const. This means the ballot initiative must only contain a single subject that manifest a “logical and natural oneness of purpose.” *Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d at 227. A single-subject requirement prevents a voter from having to decide whether to vote for the provisions of an amendment it wishes to support, while also having to vote for unrelated provisions that the voter does not wish to support. *Id.* This means the provisions “encompass[] a single plan and merely enumerate[] various elements necessary to accomplish the plan.” *In re Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 796 (Fla. 2014). This Court has recognized that “enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement.” *Advisory Op. to Att’y Gen.—Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). For example, in *Evans v. Firestone*, 457 So. 2d 1351, 1353 (Fla. 1984), this Court struck an initiative from the ballot that proposed to establish citizens’ rights in civil actions because one of the provisions was not “directly connected” to the other two provisions. *Id.* at 1354.

The vast subjects covered in the Gambling Amendment amount to “logrolling” as prohibited in article XI, section 3 of the Florida Constitution. The Sponsor alleges the Gambling Amendment “set[s] out a comprehensive plan on a single topic” Sponsor’s Initial Br. at 8. However, while the plan may be “comprehensive,” the plan is so overbroad that it spans an array of different topics. For example, the Gambling Amendment does not draw a distinction between the authorization of casino gambling versus the current regulation of pari-mutuel facilities and the games played at the facilities’ cardrooms. Thus, a voter would need to be informed of two different topics – future gaming and current games – to understand the full ramifications of the Gambling Amendment. In this way, a voter who favors approving casino gambling for new types of activities may not be supportive of the repeal of current gaming activity at existing pari-mutuel facilities.

The Sponsor has already indicated that the Amendment will negatively impact Hialeah Park due to Hialeah Park’s failure to obtain its slot machine authorization pursuant to a citizens’ initiative process. *Financial Information Statement for the Initiative Petition Titled Voter Control of Gambling in Florida* at 5. This indicates a retroactive application that will significantly impact numerous forms of currently authorized gambling activities as well as countless businesses and non-profit entities that offer such activities. This interpretation is not evident from the Amendment’s

text but was raised by the Estimating Conference based upon the Sponsor's interpretation and representations. *Id.*

Other forms of gaming contemplated under current law are also implicated in this Amendment's logrolling. To the extent the Gambling Amendment is attempting to make a determination that historical racing is not pari-mutuel in nature, this determination may violate the single-subject requirement of the Florida Constitution. For instance, voters may not fully appreciate that the Gambling Amendment has asked them to determine whether historical racing is pari-mutuel in nature, and to the extent that it is pari-mutuel, that the Sponsor has nonetheless defined it as "casino gambling."² These two subjects are vastly different in scope and should not be addressed in the same proposed amendment. In sum, there is potential that this Amendment defines historical racing in a manner inconsistent with existing Florida law and without fully advising the voters of this inconsistency.

It is important to note, the Gambling Amendment may not actually be comprehensive at all. The Sponsor's Initial Brief attempts to argue the Gambling Amendment "establish[es] that voters, not the legislature, have the authority to

² There is currently an ongoing debate in numerous jurisdictions as to whether historical racing constitutes pari-mutuel wagering or an electronic gambling device. See *Appalachian Racing, LLC v. Family Trust Found. of Ky., Inc.*, 423 S.W.3d 726 (Ky. 2014); *Wyoming Downs Rodeo Events, LLC v. State*, 134 P.3d. 1223 (Wy. 2006). Florida does not currently have any statutory provisions directly addressing the legality of historical racing devices.

authorize casino gambling as defined by the Amendment.” Sponsor’s Initial Br. at 10. In practice this may be untrue, however, as the Legislature still retains the power to restrict, regulate, or tax any gambling activity. In this way, the voters could authorize a form of casino gambling via citizens’ initiative but the Legislature could regulate the casino gambling with such particularity³ that the authorized form of gambling is greater than or less than initially contemplated by the voters. Ultimately, the inclusion of these disparate subjects into one proposed constitutional amendment amounts to logrolling in violation of article XI, section 3 of the Florida Constitution.

CONCLUSION

This Court must bar the Gambling Amendment from being placed on Florida’s ballot because the ballot title and summary violate section 101.161(1), Florida Statutes, and the text of the Gambling Amendment contemplates more than one subject in violation of article XI, section 3 of the Florida Constitution. Predominantly, the ballot title and summary is unclear and ambiguous because the Gambling Amendment: 1) misleads the voters regarding the scope of the voters’ role in authorizing or controlling casino gambling; 2) fails to inform the voters

³ It is unlikely that a citizens’ initiative could adequately describe the gambling activity (such as location, number of machines, types of gambling, etc.) without violating the single-subject requirement. Thus, there would be numerous gaps for the Legislature to fill through regulation pursuant to paragraph (c) of the Amendment.

whether the chief purpose of the Gambling Amendment is intended to be retrospective or prospective; and 3) conceals the true scope of the kinds of casino gambling expressly or impliedly addressed in the Amendment. Even the Financial Impact Estimating Conference's financial impact statement suggests the Gambling Amendment is far too ambiguous to adequately study its future impact if adopted. More so, the Gambling Amendment encompasses two competing subjects, which potentially force voters to vote for an unfavorable provision in support of a favorable provision in the Amendment. This kind of drafting amounts to logrolling prohibited in the Florida Constitution. Therefore, for all these reasons stated herein, this Court must find the Gambling Amendment fails to meet the requirements to be placed on Florida's ballot.

Respectfully submitted this 29th day of June, 2016.

/s/ John Lockwood
John M. Lockwood
Florida Bar No. 28056
Thomas J. Morton
Florida Bar No. 13771
Kala Kelly Shankle
Florida Bar No. 112042
THE LOCKWOOD LAW FIRM
106 East College Avenue, 810
Tallahassee, Florida 32301
Tel: 850.727.5009
Fax: 850.270.2610
john@lockwoodlawfirm.com
tj@lockwoodlawfirm.com
kala@lockwoodlawfirm.com

CERTIFICATE OF COMPLIANCE

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email delivery this 29th day of June, 2016, to the following:

Dan Gelber
dan@gsgpa.com
efilings@gsgpa.com
Adam M. Schachter
aschachter@gsgpa.com
Freddy Funes
ffunes@gsgpa.com
Gelber Schachter & Greenberg, P.A.
1221 Brickell Avenue, Suite 2010
Miami, Florida 33131
Telephone: 305-728-0950
Facsimile: 305-728-0951
Attorneys for Voters in Charge

Tim Cerio
Tim.cerio@eog.myflorida.com
Executive Office of the Governor
State of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001
Telephone: 850-717-9310
Fax: 850-488-9810
*General Counsel to Governor Rick
Scott*

Adam S. Tanenbaum
Adam.tanenbaum@dos.myflorida.com
General Counsel
Florida Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
Telephone: 850-245-6536
*General Counsel to Florida Secretary
of State Kenneth J. Detzner*

Mathew Carson
Matthew.carson@myfloridahouse.gov
General Counsel
Florida House of Representatives
The Capitol, Room 420
420 South Monroe Street
Tallahassee, Florida 32399-1300
Telephone: 850-717-5500
*General Counsel for the House
Speaker Steve Crisafulli*

George T. Levesque
Levesque.george@flsenate.gov
General Counsel

Rachel E. Nordby
Rachel.nordby@myfloridalegal.com
Attorney General

The Florida Senate
409 The Capital
404 South Monroe Street
Tallahassee, Florida 32399-1100
Telephone: 850-487-5237
*General Counsel to Senate Andy
Gardiner*

Amy J. Baker, Coordinator
Baker.amy@leg.state.fl.us
Financial Impact Estimating
Conference
Office of Economic and Demographic
Research
111 West Madison Street, Suite 574
Tallahassee, Florida 32399-6588
Telephone: 850-487-1402
Fax: 850-922-6436

Alfred Lagran Saunders
alsmac@comcast.net
Office of Attorney General
400 S. Monroe Street, # Pl-01
Tallahassee, Florida 32399-6536
Telephone: 850-245-0158

Department of Legal Affairs
The Capital PL-01
Tallahassee, Florida 32399-1050
Telephone: 850-414-3300
Fax: 850-401-1630
*General Counsel for Attorney General
Pam Jo Bondi*

Director, Division of Elections
divElections@dos.state.fl.us
Florida Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
Telephone: 850-245-6200
Fax: 850-245-6217

Marc W. Dunbar
mdunbar@joneswalker.com
Daniel R. Russell
drussell@joneswalker.com
Daniel McGinn
dmcginn@joneswalker.com
Jones Walker LLP
215 South Monroe Street, Suite 13
Tallahassee, Florida 32302

/s/ John M. Lockwood
John M. Lockwood