

**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

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

---

**INITIAL BRIEF OF SPONSOR, VOTERS IN CHARGE**

---

GELBER SCHACHTER & GREENBERG, P.A.  
Dan Gelber  
Adam M. Schachter  
Freddy R. Funes  
1221 Brickell Avenue  
Suite 2010  
Miami, Florida 33131  
305.728.0950

*Counsel for Sponsor, Voters In Charge*

RECEIVED, 06/09/2016 05:03:36 PM, Clerk, Supreme Court

**TABLE OF CONTENTS**

STATEMENT OF THE CASE ..... - 1 -

SUMMARY OF THE ARGUMENTS ..... - 5 -

ARGUMENT ..... - 7 -

    I.    The Voter Control Amendment Complies With the Single-Subject  
    Requirement..... - 7 -

    II. The Ballot Title and Summary Are Unambiguous and Do Not Mislead. .. - 10 -

    III. The Financial Impact Statement Surpasses Section 100.371’s Demands. - 12 -

CONCLUSION.....- 14 -

## TABLE OF AUTHORITES

### Opinions

|  |           |
|--|-----------|
| <i>In re Extending Existing Sales Tax to Non-Taxed Servs.,</i><br>953 So. 2d 471 (Fla. 2007).....  | 7         |
| <i>In re Fla. Marriage Protection Amendment,</i><br>926 So. 2d 1229 (Fla. 2006).....   | 11        |
| <i>In re Limited Marine Net Fishing,</i><br>620 So. 2d 997 (Fla. 1993).....  | 9         |
| <i>In re Ltd. Casinos,</i><br>644 So. 2d 71 (Fla. 1994).....   | 9, 10     |
| <i>In re Protect People, Especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco,</i><br>926 So. 2d 1186 (Fla. 2006)..... | 8, 12, 13 |
| <i>In re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking,</i><br>814 So. 2d 415 (Fla. 2002).....                 | 11        |
| <i>In re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo,</i><br>959 So. 2d 210 (Fla. 2007).....   | 10–11     |
| <i>In re Right of Citizens To Choose Health Care Providers,</i><br>705 So. 2d 563 (Fla. 1998).....   | 7         |
| <i>In re Rights of Elec. Consumers Regarding Solar Energy Choice,</i><br>188 So. 3d 822 (Fla. 2016).....   | 8         |
| <i>In re Save Our Everglades,</i><br>636 So. 2d 1336 (Fla. 1994).....  | 9, 11, 12 |

*In re Standards for Establishing Legislative Dist. Boundaries,*  
2 So. 3d 175 (Fla. 2009).....10

*In re Use of Marijuana for Certain Med. Conditions,*  
132 So. 3d 786 (Fla. 2014).....12

**Statutes**

FLA. STAT. § 101.161.....1, 10

FLA. STAT. § 100.371.....1, 5, 6, 12, 13

25 C.F.R. § 502.4.....2

15 U.S.C. § 1171(a)(1).....2

25 U.S.C. § 2701.....2

**Other Authority**

FLA. CONST. art. XI, § 3.....*passim*

## STATEMENT OF THE CASE

On April 7, 2016, the Division of Elections submitted to the Attorney General an amendment to the Florida Constitution entitled “Voter Control of Gambling in Florida” (“Voter Control Amendment” or the “Amendment”). On May 6, 2016, the Attorney General petitioned this Court for an advisory opinion as to whether the Voter Control Amendment complies with the single-subject requirement of article XI, section 3, Florida Constitution, and whether the ballot title and summary comply with the substantive and technical requirements in section 101.161(1), Florida Statutes.

On May 19, 2016, the Financial Impact Estimating Conference submitted to the Attorney General a financial impact statement for the Voter Control Amendment. On that same day, the Attorney General requested this Court’s opinion as to whether the financial impact statement satisfies section 100.371, Florida Statutes.

On May 20, 2016, this Court consolidated the Attorney General’s two requests and ordered a briefing schedule.

The Voter Control Amendment, which was proposed through an initiative petition sponsored by Voters in Charge, states as follows:

ARTICLE X, FLORIDA CONSTITUTION, is amended  
to include the following new section:

Voter Control of Gambling in Florida

(a) 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. This section amends this Article; and also affects Article XI, by making citizens' initiatives the exclusive method of authorizing casino gambling.

(b) 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, 25 U.S.C. § 2701 et seq. ("IGRA"), and in 25 C.F.R. § 502.4, upon adoption of this amendment, and any that are added to such definition of Class III gaming in the future. This includes, but is not limited to, any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games); any player-banked game that simulates a house banking game, such as California black jack; casino games such as roulette, craps, and keno; any slot machines as defined in 15 U.S.C. 1171(a)(1); and any other game not authorized by Article X, section 15, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing. As used herein, "casino gambling" includes any electronic gambling devices, simulated gambling devices, video lottery devices, internet sweepstakes devices, and any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under IGRA. As used herein, "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For purpose of this section, "gambling" and "gaming" are synonymous.

(c) Nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.

(d) This section is effective upon approval by the voters, is self-executing, and no Legislative implementation is required.

(e) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

Voters in Charge also prepared a ballot title and summary for the Amendment. The title and summary of the Voter Control Amendment read as follows:

#### Voter Control of Gambling in Florida

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. Affects articles X and XI. Defines casino gambling and clarifies that this amendment does not conflict with federal law regarding state/tribal compacts.

The Financial Impact Estimating Conference approved the following financial impact statement for the Voter Control Amendment:

The amendment's impact on state and local government revenues and costs, if any, cannot be determined at this time because of its unknown effect on gambling operations that have not been approved by voters through a constitutional amendment proposed by a citizens' initiative petition process.

Voters in Charge, as Sponsor of the proposed Voter Control Amendment, submits this Initial Brief as an interested party.

## **SUMMARY OF THE ARGUMENTS**

The Voter Control Amendment fulfills the single-subject requirement of article XI, section 3, as it presents one clear single subject to Florida voters. The Amendment requires 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. Thus, by requiring that voters authorize casino gambling, it concerns one subject, contains no other subject, and does not logroll.

The Voter Control Amendment also does not substantially alter or perform the functions of multiple branches of State government. The Voter Control Amendment affects the legislative branch alone, and so it does not substantially alter or perform the functions of multiple branches of government.

The ballot title and summary for the Voter Control Amendment meet the requirements of Florida law by stating in clear and unambiguous language the chief purpose of the Amendment. The language consistently informs voters that the Amendment would require that voters authorize casino gambling and provides relevant information on the Amendment's logically connected components. Nothing in the ballot title or summary, moreover, could mislead the voters.

The financial impact statement prepared by the Financial Impact Estimating Conference also passes muster under section 100.371, Florida Statutes. Although the financial impact statement provides that the Voter Control Amendment's

financial effects are indeterminate, that language suffices under section 100.371,  
Florida Statutes.

## ARGUMENT

“In reviewing the propriety of the initiative, this Court does not rule on the merits or wisdom of the proposal.” *In re Right of Citizens To Choose Health Care Providers*, 705 So. 2d 563, 565 (Fla. 1998) (per curiam). Instead, the Court focuses on three issues. First, it decides whether the proposed amendment concerns a single subject. Second, it verifies that the ballot title and summary clearly and unambiguously inform voters of the proposed amendment’s chief purpose. And, third, it concludes if the financial impact statement clearly and unambiguously informs voters of the financial impact. As shown below, the proposed Voter Control Amendment and financial impact statement surpass these requirements.

### **I. The Voter Control Amendment Complies With the Single-Subject Requirement.**

The People have the power to propose the “revision or amendment of any portion or portions” of the Florida Constitution. FLA. CONST. art. XI, § 3. Any such revision or amendment, however, must “embrace but one subject and matter directly connected therewith.” *Id.* A proposed amendment meets this single-subject requirement if it neither engages in logrolling nor substantially alters the functions of multiple branches of government. *In re Extending Existing Sales Tax to Non-Taxed Servs.*, 953 So. 2d 471, 480 (Fla. 2007). The Voter Control Amendment does neither of these things, and so it concerns a single subject.

To begin with, the Voter Control Amendment satisfies the single-subject requirement because it presents a single unified question to Florida voters. “In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a logical and natural oneness of purpose.” *In re Rights of Elec. Consumers Regarding Solar Energy Choice*, 188 So. 3d 822, 827 (Fla. 2016) (per curiam). The Amendment has a natural oneness of purpose, for the single question it poses is whether Florida voters shall have the exclusive right to decide whether various forms of casino gambling are authorized in Florida. And the remaining provisions logically and naturally relate to the execution of the Amendment’s single subject.

Because the Voter Control Amendment has a natural oneness of purpose, it does not engage in logrolling. “Logrolling 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, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1191 (Fla. 2006) (per curiam) (internal quotation marks omitted). The Voter Control Amendment undertakes no logrolling, for it sets out a comprehensive plan on a single topic.

Subsection (a) denotes that for casino gambling to be authorized, it must be authorized by a “vote by citizens’ initiative.” The other subsections—(b) through

(e)—simply provide “definitions, . . . a severability clause, and an effective date,”<sup>1</sup> which are all “logically related to the subject of the amendment.” *In re Limited Marine Net Fishing*, 620 So. 2d 997, 999 (Fla. 1993) (per curiam). As a result, the Voter Control Amendment does not logroll. *See id.*

Nor does the Voter Control Amendment substantially alter or perform the functions of multiple branches of government. Under this standard, a proposed amendment that affects several branches of government may “still pass muster,” so long as it does not “substantially *alter* or *perform* the functions of multiple branches.” *In re Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994); *accord In re Ltd. Casinos*, 644 So. 2d 71, 74 (Fla. 1994) (per curiam) (“[A] proposed amendment can meet the single-subject requirement even though it affects multiple branches of government.”). The Voter Control Amendment does not substantially alter or perform the function of multiple branches of government.

---

<sup>1</sup> Subsection (b) defines terms. Subsection (c) clarifies that the Amendment does not affect the legislature’s tax and regulatory authority over gambling or federal law with regard to compacts entered under the Indian Gaming Regulatory Act. For example, it acknowledges that the Amendment does not require that an existing or new compact between the State and a Native American tribe (or the extension, renewal, or amendment of such a compact) be subject to the constitutional initiative authorization requirements of this Amendment, so long as gambling authorized by the compact (or the extension, renewal, or amendment of such a compact) is to be conducted by a Native American tribe on tribal property and so long as it falls within the parameters of what can be lawfully authorized through a compact under the Federal Indian Gaming Regulatory Act. Subsection (d) implements the proposed amendment effective immediately, and subsection (e) contains a severability clause.

To the contrary, all it does is establish that voters, not the legislature, have the authority to authorize casino gambling as defined by the Amendment. In fact, by putting the voters in charge of deciding whether specific forms of casino gambling are legal within the State, the Amendment does not implicate the branches of government in that process. Thus, on its face, the Amendment in no way alters the functions of the executive or judicial branches. Nor does it purport to perform the executive or judicial branches' functions. *See In re Ltd. Casinos*, 644 So. 2d at 74.

Simply put, the Voter Control Amendment neither logrolls nor substantially alters or performs the functions of multiple branches of government. It passes the single-subject requirement.

## **II. The Ballot Title and Summary Are Unambiguous and Do Not Mislead.**

Section 101.161, Florida Statutes, requires that any proposed amendment have a ballot title (not exceeding 15 words) and a ballot summary (not exceeding 75 words) that, in clear and unambiguous language, state the measure's chief purpose. A proposed amendment passes muster under section 101.161 if (1) the title and summary, in clear and unambiguous language, fairly inform the voter of the proposed amendment's chief purpose, and (2) the title and summary, as written, do not mislead the public. *In re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 184 (Fla. 2009) (citing *In re Prohibiting State Spending*

*for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213–14 (Fla. 2007)). The Voter Control Amendment meets both requirements.

Initially, both the ballot title and summary satisfy the word limitations of section 101.161, Florida Statutes.

Next, this Court must ensure that the ballot title and summary are written in clear and unambiguous language so that “the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *In re Fla. Marriage Protection Amendment*, 926 So. 2d 1229, 1236 (Fla. 2006). And yet the Court has recognized that because of the statutory 75- and 15-word limits, the summary and title need not be hyper-detailed. *See In re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002) (per curiam). The critical point is that the ballot title and summary must describe the chief purpose of the initiative. *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.”).

Here, the ballot title and summary clearly and unambiguously state the Voter Control Amendment’s chief purpose. And that chief purpose is this: 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. Both 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.

There is also nothing either express or implicit in the ballot summary that would mislead a voter. For example, this Court considers political rhetoric and emotional language to be misleading, but neither the ballot title nor ballot summary use political rhetoric or emotional language. *See id.* at 1341–42. Nothing else in the succinct, plainly stated title and summary would lead a voter astray.

In short, the ballot title and summary “give the voter fair notice of the question he must decide so that he may intelligently cast his vote.” *In re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 806 (Fla. 2014) (per curiam). Nothing else is required, and so the ballot title and summary are adequate.

### **III. The Financial Impact Statement Surpasses Section 100.371’s Demands.**

The Attorney General also requested that this Court opine whether the financial impact statement suffices under section 100.371, Florida Statutes. It does.

“Section 100.371(6)(a) requires” that the financial impact statement “address the estimated 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 at 1194. Likewise, the financial impact statement must “be clear and unambiguous,” must “consist of no more than seventy-five words,” and

may “set forth a range of potential impacts.” *Id.* The financial impact statement here meets those demands.

The financial impact statement satisfies the 75-word restriction, and it clearly and succinctly states that it cannot determine the estimated increase or decrease in revenues. The fact that the financial impact is indeterminable, moreover, is not detrimental. Even where the financial impacts are “described as indeterminate, rather than quantified, this Court has previously found no bases to reject similar wording.” *Id.* at 1195. Accordingly, this Court should approve the financial impact statement as following the strictures of section 100.371.

## **CONCLUSION**

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

Dated: June 9, 2016

Respectfully submitted,

GELBER SCHACHTER & GREENBERG, P.A.

*/s/Dan Gelber*

---

Dan Gelber

Florida Bar No. 512877

[dan@gsgpa.com](mailto:dan@gsgpa.com)

Adam M. Schachter

Florida Bar No. 647101

[aschachter@gsgpa.com](mailto:aschachter@gsgpa.com)

Freddy Funes

Florida Bar No. 87932

[ffunes@gsgpa.com](mailto:ffunes@gsgpa.com)

1221 Brickell Avenue, Suite 2010

Miami, Florida 33131

Telephone: 305-728-0950

Facsimile: 305-728-0951

E-service [efilings@gsgpa.com](mailto:efilings@gsgpa.com)

*Counsel for Sponsor, Voters in Charge*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2016, a true copy of the foregoing was served by E-mail through the Court's E-Filing Portal System on counsel listed below:

Tim Cerio  
[tim.cerio@eog.myflorida.com](mailto:tim.cerio@eog.myflorida.com)  
Executive Office of the Governor  
State of Florida  
The Capitol  
400 South Monroe Street  
Tallahassee, Florida 32399-0001  
Telephone: 850-717-9310  
Fax: 850-488-9810

*General Counsel to Governor Rick Scott*

Matthew Carson  
[matthew.carson@myfloridahouse.gov](mailto:matthew.carson@myfloridahouse.gov)  
General Counsel  
Florida House of Representative  
The Capitol, Room 420  
402 South Monroe Street  
Tallahassee, Florida 32399-1300  
Telephone: 850-717-5500

*General Counsel for the House Speaker  
Steve Crisafulli*

Adam S. Tanenbaum  
[adam.tanenbaum@dos.myflorida.com](mailto: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*

George T. Levesque  
[levesque.george@flsenate.gov](mailto:levesque.george@flsenate.gov)  
General Counsel  
The Florida Senate  
409 The Capital  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
Telephone: 850-487-5237

*General Counsel to Senate  
Andy Gardiner*

Rachel E. Nordby  
[Rachel.nordby@myfloridalegal.com](mailto:Rachel.nordby@myfloridalegal.com)  
Attorney General  
Department of Legal Affairs  
The Capital PL-01  
Tallahassee, FL 32399-1050  
Telephone: 850-414-3300  
Fax: 850-401-1630

*General Counsel for Attorney General  
Pam Jo Bondi*

Alfred Lagran Saunders  
[lagran.saunders@myfloridalegal.com](mailto:lagran.saunders@myfloridalegal.com)  
Office of Attorney General  
400 S Monroe Street  
# PI-01  
Tallahassee, FL 32399-6536  
Telephone: (850) 245-0158

Amy J. Baker, Coordinator  
[Baker.amy@leg.state.fl.us](mailto: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

Director, Division of Elections  
[DivElections@dos.state.fl.us](mailto: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

*/s/Dan Gelber*

---

Dan Gelber

## CERTIFICATE OF TYPEFACE 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.

*/s/Dan Gelber*

---

Dan Gelber