

IN THE SUPREME COURT OF FLORIDA

✓ FILED  
THOMAS D. HALL

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ADVISORY OPINION TO THE  
ATTORNEY GENERAL RE:  
AUTHORIZATION FOR COUNTY  
VOTERS TO APPROVE OR DISAPPROVE  
SLOT MACHINES WITHIN EXISTING  
PARI-MUTUEL FACILITIES

CASE NO.: SC01-1000

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ORIGINAL PROCEEDING

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INITIAL BRIEF OF ANIMAL PROTECTION INSTITUTE, ARK TRUST,  
INC. FRIENDS OF ANIMALS, GREY2K USA, GREYHOUND  
PROTECTION LEAGUE, LAST CHANCE FOR ANIMALS, MICHIGAN  
RETIRED GREYHOUND LEAGUE, NATIONAL COALITION  
AGAINST GAMBLING EXPANSION, NATIONAL GEYHOUND  
ADOPTION PROGRAM, AND WORLD  
SOCIETY FOR THE PROTECTION OF ANIMALS

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## STATEMENT OF THE CASE AND THE FACTS

In accordance with Article V, Section 3(b)(10), Florida Constitution, and Section 16.061, Florida Statutes, the Attorney General has petitioned this Court for an advisory opinion on the validity of a proposed initiative to provide authorization for county voters to approve or disapprove slot machines within existing pari-mutuel facilities. The issue before this Court is whether the proposed initiative petition complies with Article IX, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes.

A group known as Floridians for a Level Playing Field proposed the initiative. It seeks to create a new provision in the state constitution, Article X, Section 19. The initiative provides:

Article X, Section 19 is created to read:

### SECTION 19. AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES.-

- (a) Slot machines are hereby permitted in those counties where the electorate has authorized slot machines pursuant to a referendum, and then only within licensed pari-mutuel facilities (i.e., thoroughbred horse racing tracks, harness racing tracks, jai-alai frontons, and greyhound dog racing tracks) authorized by law as of the effective date of this section, which facilities have conducted live pari-mutuel wagering events in each of the two immediately preceding twelve month periods.

- (b) Within 180 days of the voters' approval of this amendment, the legislature, by general law, shall implement this section with legislation to license, regulate and tax slot machines. The requirement of a 2/3 majority vote for new state taxes in Article XI, Section 7 of this constitution shall not apply to any slot machine tax authorized in accordance with the mandate of this amendment to the constitution.
- (c) The legislature, by general law, shall appropriate tax revenue derived from slot machines to enhance senior citizen services, classroom construction, education programs, and teachers' salaries and benefits.
- (d) Following the effective date of this amendment and its implementation by the Legislature, the governing body of each county in which there is an eligible pari-mutuel facility as defined by subsection (a), may authorize a referendum on whether to approve or disapprove slot machines within its jurisdiction. The electorate of such county, by a majority vote of the voters in such county voting on this referendum, may authorize slot machines within its jurisdiction.
- (e) If the electorate in a particular county votes not to authorize slot machines, that county may conduct subsequent elections for the purposes of considering whether to authorize slot machines pursuant to subsection (a) hereof no earlier than two years after any vote in which slot machines were not authorized.
- (f) If any portion of this section is held invalid for any reason, the remaining portion or portions of this section, to the fullest extent possible, shall be severed from the void portion and be given the fullest possible force and application.
- (g) This amendment shall take effect on the date approved by the electorate; provided, however, that no slot machines shall be authorized to operate in this state until July 1, 2003.

The ballot title and summary of the proposed initiative provides:

**Ballot Title: AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES.**

**Ballot Summary: This amendment authorizes county voters to approve or disapprove, in their respective counties only, slot machines**

at existing pari-mutuel facilities only; requires the legislature to license, regulate and tax such slot machines and to appropriate such tax revenues to enhance senior citizen and education programs; permits voters to authorize the taxation of slot machines by simple majority vote rather than the 2/3 majority vote for new state taxes provided in Article XI, Section 7.

This brief is submitted, pursuant to this Court's order of May 21, 2001, on behalf of the following parties in opposition to the proposed initiative: Animal Protection Institute, Ark Trust, Inc., Friends of Animals, Grey2K USA, Greyhound Protection League, Last Chance for Animals, Michigan Retired Greyhounds as Pets, National Coalition Against Gambling Expansion, National Greyhound Adoption Program, and World Society for the Protection of Animals. These parties will be referred to herein as "Opponents."



## SUMMARY OF ARGUMENT

Opponents urge this Court to strike the proposed initiative entitled “Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities” from the ballot.

The proposed initiative violates Article XI, Section 3, Florida Constitution, in several respects: First, the proposed initiative contains two subject in that it proposes to authorize a referendum on slot machines and it seeks to amend the provisions of Article XI, Section 7, Florida Constitution, for the purposes of this issue; second, the proposed initiative includes unrelated taxing and spending provisions in a single initiative; third, it “logrolls” spending authorizations in an effort to garner support for the amendment; and finally, it removes the power of the Legislature to authorize slot machines.

The amendment fails to adequately inform the voter of the substance of the proposed amendment as required by Section 101.161, Florida Statutes, at least two significant respects: It fails to inform voters that they will have no opportunity to reconsider a vote authorizing slot machines and it fails to apprise voters that it limits legislative power to authorizes slot machines, a power currently within the province of the Legislature.

## ARGUMENT

- I. The proposed initiative violates Article XI, Section 3, Florida Constitution, because it seeks to authorize a referendum to approve or disapprove slot machines within those counties that have an existing eligible pari-mutuel facility and it seeks to alter the requirements of Article XI, Section 7, Florida Constitution.

It is well established that this Court's inquiry, when determining the validity of an initiative petition, is limited to two legal issues: whether the petition satisfies the single-subject requirement of Article XI, Section 3, Florida Constitution, and whether the ballot title and summary complies with the requirements of Section 101.161, Florida Statutes. *See, for example, Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So.2d 888, 890 (Fla. 2000); *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, 705 So.2d 563, 565 (Fla. 1998); *Advisory Opinion to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So.2d 972, 974 (Fla. 1997). This Court will not review the merits or demerits of a proposed initiative amendment:

This Court's role in these matters is strictly limited to the legal issues presented by the constitution and the relevant statutes. This Court does not have the authority or responsibility to rule on the merits or

wisdom of these proposed initiative amendments....

*See, Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices*, 592 So.2d 225, 227 (Fla. 1991).

Article XI, Section 3, Florida Constitution, provides that a proposed initiative amendment “shall embrace but one subject and the matter directly connected therewith.” In order to satisfy the single subject requirement of Article XI, Section 3, Florida Constitution, a proposed initiative must have a “natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object is the universal test.” *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984). A proposed initiative must manifest a “logical oneness of purpose.” *Id.*

The single-subject requirement cannot be altered by an initiative which itself deals with more than one subject. *See, Advisory Opinion to the Attorney General re People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So.2d 1304, 1309 (Fla. 1997). The proposed initiative boldly declares that it deals with two subjects: the first authorizes county voters to approve or disapprove slot machines within existing pari-mutuel facilities located within those counties, and the second modifies the 2/3 vote

requirement of Article XI, Section 7, Florida Constitution, for the establishment of any new state tax or fee.

Article XI, Section 7, Florida Constitution, provides as follows:

Notwithstanding Article X, Section 12(d) of this constitution, No new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994, including without limitation such taxes and fees as the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds required hereby shall be null, void and without effect.

In addition to authorizing a local vote on whether to permit the operation of slot machines at pari-mutuel facilities, the proposed initiative seeks to exempt itself from the requirements of Article XI, Section 3, Florida Constitution. It states that "[t]he requirement of a 2/3 vote majority vote for new state taxes in Article XI, Section 7 of this constitution shall not apply to any slot machine tax authorized in accordance with the mandate of this amendment to the constitution." Proposed Initiative at Subsection (b). The tax on slot machines authorized by subsection (b) of the proposed initiative

was not in effect on November 7, 1994 and it will produce revenue subject to appropriation by the Legislature as provided in subsection (c) of the proposed initiative. The proposed initiative is within the class of constitutional amendments subject to the 2/3-vote requirement of Article XI, Section 7, Florida Constitution.

Inasmuch as the proposed initiative contains two distinct subjects, it should be stricken from the ballot.

- II. The proposed initiative violates Article XI, Section 3, Florida Constitution, because it includes disparate taxing and spending provisions in a single initiative.

A primary provision for the single subject restriction is to prevent “logrolling,” 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. *See, for example, Advisory Opinion to the Attorney General re Limited Casinos*, 644 So.2d 71, 73 (Fla. 1994) ; *Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra*; , *Advisory Opinion to the Attorney General re People’s Property Rights Amendments Providing Compensation for Restricting Real*

*Property Use May Cover Multiple Subjects, supra; Fine v. Firestone*, 448 So.2d 984, 988-989 (Fla. 1984).

This proposed initiative combines the two separate subjects of taxation of slot machines and legislative appropriations to “senior citizen services, classroom construction, education programs, and teachers’ salaries and benefits.” It cannot be concluded that these two subjects have a “logical and natural oneness of purpose.” *Fine v. Firestone, supra* at 990. There is no “direct connection” between a tax on slot machines and spending for senior citizen services and education related programs, other than to garner support from diverse groups to assure passage of the initiative. The linkage of these two distinct subjects is “logrolling” in its most classic form.

Because the initiative logrolls two distinct subjects, it should be stricken from the ballot.

- III. The proposed initiative violates Article XI, Section 3, Florida Constitution, because it includes the disparate subjects of enhancing senior citizen services, classroom construction, education programs, and teachers’ salaries and benefits.

In the interest of judicial economy, Opponents join with the argument of the Attorney General that the inclusion of these subjects forces a voter in favor of enhancing educational programs would have no option but to accept

expenditure of slot machine revenues on senior citizen programs and vice versa. *See*, Letter to The Honorable Charles T. Wells from Robert A. Butterworth, May 18, 2001, p.7.

In essence, voters are being asked to give one “yes” or “no” vote to the proposal that asks four different questions with respect to appropriations of slot machine revenues: Should monies be appropriated on senior citizen services; should monies be appropriated on classroom construction; should monies be appropriated on education programs; and should monies be appropriated on teachers’ salaries and benefits? The proposed initiative at a second level engages in classic “logrolling” by forcing voters with disparate interests to support an entire proposal, including provisions contrary to their interests.

Because the proposed initiative requires a voter to choose between these disparate subjects, it violates the single-subject provisions of Article XI, Section 3, Florida Constitution, and should be stricken from the ballot.

- IV. The proposed initiative fails violates Article XI, Section 3, Florida Constitution, because it limits the power of the legislature to regulate slot machines.

In determining whether an initiative proposal manifests a “logical and natural oneness of purpose,” *Fine v. Firestone, supra* at 990, this Court

considers “whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution.” *Advisory Opinion to the Attorney General re People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, supra* at 1307.

By its express terms the proposed initiative establishes an exclusive method for approving the operation of slot machines in certain counties of the state. In so doing, the proposed initiative limits the power of the Legislature to act. The test of legislative power has been stated as follows: “what the people have not said in their organic law their representatives shall not do, they may do.” *State ex rel. Cunningham v. Davis*, 123 Fla. 41, 166 So. 289 (1936), *rehearing denied* 122 Fla. 700, 166 So. 574.

The limitation on the Legislature’s power is significant. Currently, the Legislature possesses plenary power over the regulation of slot machines. Slot machines are not lotteries within the meaning of the constitutional prohibition on lotteries. *Lee v. City of Miami*, 121 Fla. 93, 163 So. 486 (1935); and *Hardison v. Coleman*, 121 Fla. 892, 164 So. 520 (1935). Accordingly, the Legislature has the power to legalize slot machines, to tax slot machines and to spend the revenues generated from the taxation of slot



machines in whatever manner it sees fit. Presently, it has elected to prohibit slot machines. *See*, Sections 849.15-849.23, Florida Statutes (2000).

The proposed initiative removes from the Legislature its ability to legalize slot machines. It transfers that authority first to the Board of County Commissioners in several counties and then, if the County Commission elects to authorize a referendum on whether to legalize slot machines in that county, to the voters of that specific county. Proposed Initiative Subsection (b). While it maintains the legislative power to regulate and tax slot machines, the proposed initiative removes from the Legislature the power to spend those revenues as it sees fit. It limits the Legislature's discretion to spend those revenues to "senior citizen services, classroom construction, education programs, and teachers' salaries and benefits," even if there are greater needs in the state budget. Proposed Initiative Subsection (c)

Because the proposed initiative alters the lawmaking function of the Florida Legislature to regulate slot machines and to make appropriations, in addition to authorizing a vote on whether slot machines should be allowed in certain counties, it should be stricken from the ballot because it contains more than one subject in violation of Article XI, Section 3, Florida Constitution.

- V. The ballot summary fails to adequately inform the voter of the substance of the proposed initiative as required by Section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, requires that the ballot title and ballot summary of a proposed initiative must state in clear and unambiguous language the primary purpose of the initiative. *Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, supra* at 1307. This requirement ensure that the "electorate is advised of the true meaning, and ramifications, of an amendment." *Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 892; and *Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d 486, 490 (Fla. 1994). However, "the title and the summary need not explain every detail or ramification of the proposed amendment." *Advisory Opinion to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns, supra* at 975.

In the interest of judicial economy, Opponents join with the arguments of the Attorney General that the ballot title and summary is

misleading to the extent that it states that the proposed initiative can exempt itself from the requirements of Article XI, Section 7, Florida Constitution, and that it does not adequately inform the voters of the extent of permitted slot machine activity at pari-mutuel facilities. See, Letter to The Honorable Charles T. Wells from Robert A. Butterworth, May 18, 2001, pp. 3-5.

The ballot summary suffers from two more significant deficiencies, however. First, it fails to inform the voter that there is no way to reverse the vote to permit the operation of slot machines at pari-mutuel facilities. The amendment is clear that a decision to permit the operation of slot machines at pari-mutuel facilities within a county is a one-way proposition. There is no turning back. There is no opportunity for the voters to reconsider their initial decision approving the operation of slot machines at pari-mutuel facilities.

The amendment sets forth limitations for subsequent reconsideration of the question to permit the operation of slot machines in the event "the electorate in a particular county votes not to authorize slot machines." Proposed Initiative at Subsection (e). No such provisions are contained in the provisions of the proposed initiative for reconsideration of a decision approving slot machines. Under the doctrine of *expressio unius est exclusio alterius*, that is, the mention of one thing implies the exclusion of the other,

the mention of procedures in the proposed initiative for subsequent reconsideration of a vote that failed to approve slot machines excludes reconsideration of a vote that approved slot machines. *See, for example, Interlachen Lakes Estates, Inc. v Snyder*, 304 So.2d 433, 434 (Fla. 1974).

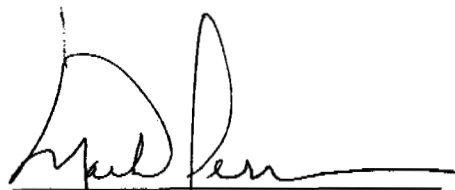
Second, the ballot summary fails to inform voters that the effect of the amendment will be limit the power of the Legislature to legalize slot machines. Slot machines are not lotteries within the meaning of the constitutional prohibition on lotteries. *Lee v. City of Miami, supra*; and *Hardison v. Coleman, supra*. Accordingly, the Legislature has the power to legalize slot machines, although it has elected not to do so. *See*, Sections 849.15-849.23, Florida Statutes (2000).

Because the ballot title and ballot summary fails to comply with the requirements of Section 101.161, Florida Statutes, it should be stricken from the ballot.

## CONCLUSION

The proposed initiative contains more than one subject contrary to the requirements of Article XI, Section 3, Florida Constitution, and it fails to comply with the requirements for ballot titles and ballot summaries set forth in Section 101.161, Florida Statutes. Consequently, the proposed initiative should be stricken from the ballot.

Dated: June 11, 2001.

A handwritten signature in black ink, appearing to read 'Mark Herron', written over a horizontal line.

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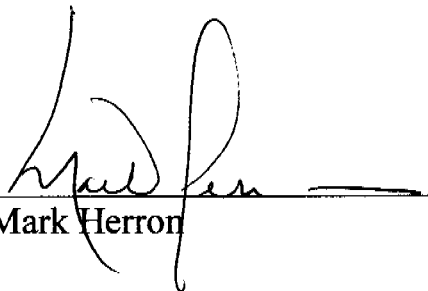
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## CERTIFICATE OF SERVICE

I hereby certify that U.S. Mail to has forwarded a true and correct copy of this Initial Brief:

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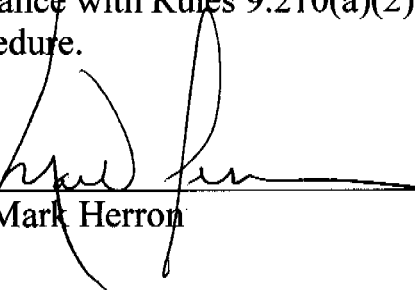
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Mark Herron

## CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief of Appellant has been prepared in Times New Roman 14 point font in compliance with Rules 9.210(a)(2) and 9.100(1), Florida Rules of Appellate Procedure.



Mark Herron