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IN THE SUPREME COURT OF FLORIDA

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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REPLY 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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CASE CITATIONS

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CITATIONS TO CONSTITUTIONS AND STATUTES

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Article XI, Section 7, Florida Constitution.....*in passim*

## SUMMARY OF ARGUMENT

In accordance with Rule 9.210(d), Florida Rules of Civil Procedure, the following Opponents of the proposed initiative – 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 Greyhound Adoption Program, and World Society for the Protection of Animals – submit this reply brief in response and rebuttal to the argument presented by the proponents of the proposed initiative regarding the applicability of Article XI, Section 7, Florida Constitution, to the proposed initiative.

Opponents argue that the two-thirds vote requirement of Article XI, Section 7, Florida Constitution, is applicable to the “new State tax or fee” imposed by the proposed initiative. Any effort to exempt the proposed initiative from the requirements of Article XI, Section 7, Florida Constitution, constitutes a second subject in the proposed initiative in violation of Article XI, Section 3, Florida Constitution.

## ARGUMENT

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.

The proponents of the initiative cannot agree as to whether provisions of the initiative addressing the provisions of Article XI, Section 7, Florida Constitution, apply to the tax on slot machines imposed by the proposed initiative. Floridians for a Level Playing field argue that the reference to Article XI, Section 7, Florida Constitution, contained in the proposed initiative is superfluous: "The drafters of the Petition before the Court could have ignored the whole issue, since the only tax here contemplated is to be legislatively enacted." Brief of Floridians for a Level Playing Field at p. 32.

Conversely, the Florida Horseman's Benevolent and Professional Association and the South Florida Greyhound Association argue that the initiative proposal creates an exemption from the supermajority voting requirement of Article XI, Section 7, Florida Constitution: "Instead, the proposed amendment merely creates a limited exemption from the supermajority voting requirement under Article XI, section 7, for taxes authorized under the proposed slot machine amendment." Joint brief of the

Florida Horseman's Benevolent and Professional Association and the South Florida Greyhound Association at p.13.

Floridian's for a Level Playing Field argue that since the tax on slot machines is to be imposed by legislative enactment, it is not subject to the requirements of Article XI, Section 7, Florida Constitution. Brief of Floridians for a Level Playing Field at pp. 30-31. This argument exalts form over substance in the construction of a provision of the State Constitution that restricts the ability of the people to impose a "new State or tax or fee" by amending the State Constitution. If the argument of Floridians for a Level Playing Fields is correct, all any proponent of a new tax or fee through a proposed constitutional amendment has to do to circumvent the restrictions of Article XI, Section 7, Florida Constitution, is to include words like "The legislature shall impose a tax on..." or "The legislature shall implement this provision through legislation to tax...." Such a construction would render the safeguards of Article XI, Section 7, Florida Constitution, illusory.

The purpose of Article XI, Section 7, Florida Constitution, is just as stated by this Court in *Advisory Opinion to the Attorney General re Tax Limitation*, 673 So.2d 864, 868 (Fla. 1996):

The terms of the ballot title and summary clearly convey that if the tax or fee is not imposed by constitutional amendment (as would be the case if the tax or fee were legislatively imposed), then a two-thirds vote of the

electorate is not required.

To illustrate this point in the context of this legislative proposal: If the Legislature, without being mandated to do so by constitutional amendment, were to permit slot machines at pari-mutuel facilities and to provide by legislation for the imposition of a tax on slot machines, such new tax, because it was not in effect on November 7, 1994, would not be subject to the requirements of Article XI, Section 7, Florida Constitution. However, since the proposed constitutional amendment creates a mechanism for the legalization of slot machines beyond the control of the Legislature and mandates that the Legislature impose a new tax on slot machines, the new tax is subject to Article XI, Section 7, Florida Constitution.

If the argument of the Florida Horseman's Benevolent and Professional Association and the South Florida Greyhound Association is correct, that is, the amendment creates a "limited exemption," then the initiative petition clearly contains 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 the new state tax on slot machines.

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).

Proponents of the initiative argue that the people have the right to amend the two-thirds vote requirement under Article XI, Section 7, Florida Constitution. Brief of Floridians for a Level Playing Field at p. 33; and Joint brief of the Florida Horseman's Benevolent and Professional Association and the South Florida Greyhound Association at pp. 13-14. There is no dispute that an a separate initiative petition could be proposed to amend or repeal Article XI, Section 7, Florida Constitution consistent with the single-subject requirements of Article XI, Section 3, Florida Constitution. *See, Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d 486, 495-496 (Fla. 1994). There is no right or opportunity to exempt an initiative proposal from the requirements of Article XI, Section 7, Florida Constitution, on an *ad hoc* basis.

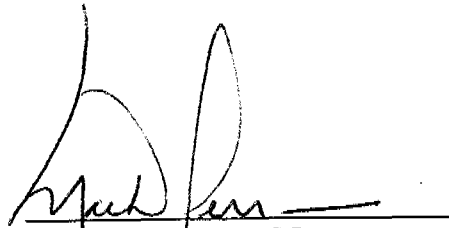
Inasmuch as the proposed initiative contains two distinct subjects, it should be stricken from the ballot.



## CONCLUSION

The proposed initiative contains more than one subject contrary to the requirements of Article XI, Section 3, Florida Constitution, contrary to the assertions of the proponents of the initiative proposal. Consequently, the proposed initiative should be stricken from the ballot.

Dated: July 12, 2001.

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

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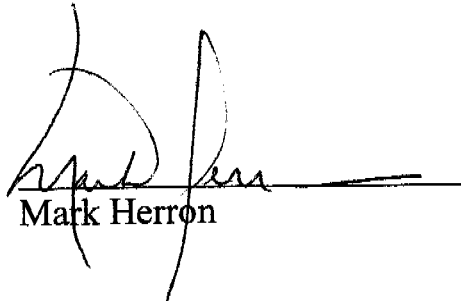
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## CERTIFICATE OF SERVICE

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

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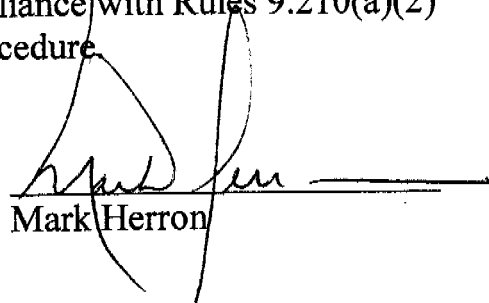
on this 12<sup>th</sup> day of July, 2001.



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