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IN THE SUPREME COURT OF FLORIDA
Case No. SC01-1000

Upon Request from the Attorney General
for an Advisory Opinion as to the
Validity of an Initiative Petition

ADVISORY OPINION TO
THE ATTORNEY GENERAL

RE: AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES

INITIAL BRIEF OF NO CASINOS, INC., HUMANE SOCIETY OF THE UNITED STATES, THE FUND FOR ANIMALS, THE ARK TRUST, INC., AND AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

IN OPPOSITION TO THE INITIATIVE

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INTEREST OF AUTHORING PARTIES

This proceeding involves a proposed initiative amendment to the Florida Constitution ("the proposed initiative") which would authorize slot machines to be used in the State, ostensibly "within existing pari-mutuel facilities" but in reality, by operation of federal law, throughout many other areas of the State. The authoring parties of this brief are nonprofit organizations opposed, for a variety of reasons, to permitting slot machines in the State of Florida (hereafter "initiative opponents").

No Casinos, Inc. ("No Casinos"), is a Florida nonprofit corporation and registered political committee, founded in 1978 by then-Governor Reuben Askew, to oppose proposals to legalize gambling in Florida. No Casinos has served as the principal opponent to prior gambling-related initiatives, and has appeared before this Court in prior cases involving gambling initiatives. *See, e.g., Advisory Opinion to the Attorney General re Limited Casinos*, 644 So.2d 71, 72 (Fla. 1994).

The Humane Society of the United States (HSUS) is an international nonprofit organization dedicated to the protection of animals. HSUS is the nation's largest animal-protection organization and works to prevent cruelty to animals. HSUS has 300,000 members and constituents in Florida.

The Fund for Animals was founded in 1967 by renowned author and

humanitarian Cleveland Amory. The organization's motto, "We speak for those who can't," illustrates a mission of speaking out against egregious forms of animal cruelty.

Founded in 1991 by stage and television actress Gretchen Wyler, The Ark Trust, Inc. is a national, non-profit animal-protection organization devoted to raising public awareness about the vast spectrum of animal issues. Its primary focus is to promote positive coverage of animal issues by the major media.

The American Society for the Prevention of Cruelty to Animals was founded in 1866 as the first humane organization in the Western Hemisphere. The ASPCA promotes humane principles, prevents cruelty, and alleviates pain, fear and suffering of animals through nationwide information, awareness and advocacy programs.

These animal-protection organizations oppose the proposed initiative because slot machines are often used to subsidize dog-racing, which these groups also oppose.

THE PROPOSED INITIATIVE

The proposed initiative, ballot title and summary, as reported by the Secretary of State read:

Article X, Section 19

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.

Full Text of the proposed amendment:

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 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 by general law 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 in 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 then 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 the state until July 1, 2003.

STATEMENT OF THE CASE

This matter comes before the Court upon a request for opinion submitted by the Attorney General on May 18, 2001, in accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. This Brief is submitted by opponents, No Casinos, Inc., the Humane Society of the United States, the Fund for Animals, the Ark Trust, Inc., and the American Society for the Prevention of Cruelty to Animals, in response to this Court's Order of May 21, 2001, accepting jurisdiction and inviting interested parties to submit briefs, and the Order of June 4, 2001 extending the briefing schedule.

In the letter petitioning for a written opinion as to the validity of the proposed initiative, the Attorney General noted that the chief purpose of the initiative is "to authorize county voters to approve slot machines within existing pari-mutuel facilities and to require the Legislature to license, regulate and tax such machines." *See* Letter of May 18, 2001 from Robert A. Butterworth, Attorney General to Chief Justice Charles T. Wells and Justices of the Court , at 4 [hereinafter "A.G. Letter"]. The Attorney General raised several concerns about the proposed initiative, including:

- Whether a proposed constitutional amendment may exempt itself from an existing constitutional requirement that such an amendment pass by two-

thirds vote, rendering Article XI, Section 7, Florida Constitution, "a nullity." A.G. Letter, at 4.

- Whether the proposed ballot title and summary are misleading, incomplete and inaccurate because the language does not accurately describe voters' powers following enactment and does not clearly advise the voters of the extent, timing and type of slot machine operation. A.G. Letter, at 4-5.
- Whether the proposed initiative violates the prohibition against including more than a single subject by "log-rolling" disparate subjects into one initiative. A.G. Letter, at 6-8.

The initiative opponents fully support and agree with the Attorney General's concerns, and suggest that these points should be sufficient to reject the proposed initiative. The initiative's flaws, however, go far beyond those identified by the Attorney General. The proposed initiative will have drastic and undisclosed effects by opening Florida to gambling on tribal lands. It performs numerous legislative and executive branch functions, and substantially modifies unidentified provisions of the Florida Constitution. For these reasons, No Casinos, Inc., the Humane Society of the United States, the Ark Trust, the Fund for Animals, Inc., and the American Society for the Prevention of Cruelty to Animals, as interested parties, file this brief opposing this initiative proposal.

SUMMARY OF ARGUMENT

From its first five words, the proposed initiative proposes an enormous and hidden change in Florida law. The proposed "Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities" initiative will substantially affect multiple governmental functions and different parts of the Florida Constitution. It presents multiple undisclosed collateral effects on state government at various levels. The title and summary are not clear and unambiguous, but rather foster confusion and fail to point out the one serious effect of the initiative, the opening of Indian lands to high-stakes gambling by operation of federal law. Rather, the summary falsely assures voters that this drastic result will not happen. Because the initiative includes multiple subjects, and because the title and summary are both false and misleading, this Court should invalidate the proposed initiative.

The proposed initiative clearly deals with more than one subject, in violation of the requirement of Article XI, Section 3. Ostensibly limited to authorizing referenda to allow slot machines in certain pari-mutuel facilities, in reality this initiative performs numerous other functions of Florida government, and inevitably affects multiple parts of the Florida Constitution. On its face, the initiative also mandates numerous additional and distinct legislative actions with

no inherent link to the overall purpose of the amendment. These include mandating the licensing, regulating and taxation of slot machines. More significantly, the amendment requires the appropriation of the taxation of the slot machines solely to certain identified purposes. These constitutionally-mandated appropriations, in turn, must inevitably impact the power of the Governor to veto such appropriations. The initiative proposal further attempts to exempt itself from the 2/3 vote requirement of Article XI, Section 7. Each of these represent different, distinct functions performed by the proposed initiative.

Most significant, however, are the undisclosed, but automatic and foreseeable collateral effects of the proposed initiative. By the operation of the Indian Gaming Regulatory Act, 25 U.S.C. § 2503 *et seq.*, the immediate effect of adoption of the proposed initiative will be to introduce high stakes gambling onto Indian lands in the State of Florida. This result is not in any way speculative, but is an inevitable result of the operation of federal law, and it is nowhere disclosed to the voters. Rather, the Ballot summary falsely assures voters that this initiative will provide for "slot machines at **existing** pari-mutuel facilities **only**." [emphasis added] As was the case in *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982), the problem lies "not with what the summary says, but, rather with what it does not say." For this reason alone, the Ballot Summary and Title are fatally flawed

under Section 101.161, Florida Statutes.

However, there are also other flaws in the Ballot Summary and Title. The reference in the Summary to the exemption from the effect of the 2/3 vote requirement of Article XI, Section 7 is confusing and would likely mislead voters into believing that they will themselves vote again on whether to tax slot machines, and falsely suggests that the 2/3 vote requirement applies to local referenda.

The proposed initiative amendment, "Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities," fails to comply with the provisions of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes (2000). Because it presents more than one subject to the voters, and because its ballot summary and title are misleading and fail accurately to describe the effect of the initiative, this Court should reject the proposed initiative.

ARGUMENT

The proposed initiative amendment "Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities" represents the latest in a long stream of casino or gambling-related initiative amendments. *See, e.g., Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337 (Fla. 1978); *Advisory Opinion to the Attorney General re Limited Casinos*, 644 So. 2d 71 (Fla. 1994); *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995); *Advisory Opinion to the Attorney General re Florida Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995).

This Court "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). Yet "where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effects on the present constitution," this Court must exercise its power to protect the Constitution and the people. *Advisory Opinion to the Attorney General re Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994) [*Tax Limitation I*].

The drafters of the instant "Authorization" initiative have fallen far short of both requirements for a valid initiative amendment. The ballot summary and title are inaccurate and incomplete in contravention of Section 101.161, Florida Statutes, and the amendment itself performs multiple functions of and affects multiple branches and levels of government, violating the single subject requirement of Article XI, Section 3, Florida Constitution.

More importantly, and not yet addressed to the Court, is the vast and hidden effect that this initiative will have on gambling in Florida. Because federal law dictates automatic granting of high-stakes gambling rights on Indian lands if a State provides similar rights to any person for any purpose, the first and inevitable result of enacting this proposed initiative will be to vastly expand the scope of gambling beyond what is promised by the initiative's text, ballot title or ballot summary. The second and immediate result of enacting this proposed initiative will be to transfer substantial regulatory, enforcement and decision-making power from the State to federal authorities, with no recourse for State officials.

Thus, for both readily apparent and hidden, but no less important reasons, the proposed initiative is fatally flawed and must be rejected.

I. THE PROPOSED INITIATIVE WILL, BY AUTOMATIC OPERATION OF FEDERAL LAW, PERMIT CLASS III GAMBLING DEVICES THROUGHOUT FLORIDA.

The proposed initiative's text, ballot title and ballot summary all suggest that this initiative will have only a limited effect, by authorizing only what reasonable voters would consider "slot machines" in a few already-existing locations. For example, the first sentence of the ballot summary twice uses the word "only" to suggest that "slot machines" will appear only in "existing pari-mutuel facilities." Ballot Summary, *supra*, at 2. This suggestion of limitation is incorrect.

In truth, the proponents either do not know or are not disclosing the actual scope of this initiative. Despite its claim that its effect will be limited to particular areas, the actual effect of the proposed initiative is to immediately legalize slot machines (and perhaps an unknown number and type of other gambling devices) throughout many areas of the State. In addition, enactment will instantly transfer substantial regulatory, enforcement and decision-making power from the State to federal authorities, with no recourse for State officials.

Voters may not want such an expansion of gambling in Florida. Other voters may not want gambling enforcement transferred from State to federal authorities. But there is no hint that these will be immediate and inevitable effects

of enactment in the text, ballot title or ballot summary of the proposed initiative. And these effects are certainly not within the limits suggested by the text, ballot title and ballot summary. Voters will be surprised when they find that they have actually voted for something other than what the text, ballot title and ballot summary suggest.

A. Once Class III Gambling Devices Are Permitted Anywhere In Florida, They Will Be Permitted on Indian Lands.

The first five words of the proposed initiative are "Slot machines are hereby permitted". This phraseology tracks federal law's description of one of the threshold requirements which "inevitably lead[s] to Indian gaming." *Kansas v. United States*, 249 F.3d 1213, 1223 (10th Cir. 2001) (if a tribe has requested Class III gambling in a state which permits such gambling, a finding that a tract of land is "'Indian lands' within the meaning of IGRA [Indian Gaming Regulatory Act, 25 U.S.C. 2702 *et seq.*]. . . inevitably lead[s] to Indian gaming on the tract."). The proposed initiative text, ballot title and ballot summary all claim to limit slot machines to only certain counties, but under federal law, these five words will automatically result in slot machines (and, as shown below, perhaps other Class III gambling devices) appearing on Indian land in Florida. 25 U.S.C. § 2710(d)(1)(B); 25 C.F.R. §§ 291.3, 291.8 (2001) (describing procedure by which U.S. Secretary of Interior can authorize and regulate Class III gambling on Indian

land in any State which permits such gambling anywhere by any person or entity).

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the U.S. Supreme Court sharply limited the power of States to apply their gambling laws to Indian lands, saying that Congress had to create any effective ability for the States to prevent or regulate Indian gambling. In response, in 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2702 *et seq.* ("IGRA"), which provides a role for the States in regulating Indian gambling.[1] Questions arising under IGRA are hotly litigated. *See, e.g., Confederated Tribes of Siletz Indians of Oregon v. United States,* 110 F. 3d 688, 692 (9th Cir.), *cert. denied,* 522 U.S. 1027 (1997); *Pueblo of Santa Ana v. Kelly*, 104 F. 3d 1546, 1548 n. 3 (10th Cir.), *cert. denied*, 522 U.S. 807 (1997); *Keweenaw Bay Indian Community v. United States*, 136 F. 3d 469 (6th Cir. 1998) (court rejects tribe's claim that it did not need to use the IGRA negotiation procedure for its Class III gambling

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[1]Although the U.S. Supreme Court invalidated a portion of IGRA (which permitted tribes to sue States which did not negotiate gambling compacts) on Eleventh Amendment grounds in *Seminole Tribe of Florida v. Florida*, 517 U.S. 49 (1996), the remainder of IGRA remains intact. Any "ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor." *Florida v. Seminole Tribe of Florida*, 181 F. 3d 1237, 1242 (11th Cir. 1999); *United States v. Spokane Tribe of Indians*, 139 F. 3d 1297, 1301 (9th Cir. 1998) ("IGRA . . . remains valid"). The federal Department of the Interior has promulgated rules which permit a tribe confronted with a State's refusal to be sued on Eleventh Amendment grounds to ask for and receive federal approval for its Class III gambling activities. 25 C.F.R. § 291.3, 291.8 (2001).

devices).

Slot machines are considered "Class III" devices under IGRA – the highest and most restricted category of gambling devices. 25 U.S.C. § 2703. The IGRA permits gambling using Class III devices on Indian lands in any State which, *inter alia*, "permits such gaming for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B). A tribe may ask a State to negotiate a tribal-state "compact" to permit Class III gambling and the State must negotiate with the tribe in "good faith" to enter into such a compact. 25 U.S.C. § 2710(d)(3). If the State does not enter into such a compact, the federal government may permit Indian gambling anyway on whatever terms the Secretary of Interior feels are appropriate. 25 C.F.R. §§ 291.3, 291.8 (2001); *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1030-31 (2d Cir. 1990); *United States v. Spokane Tribe of Indians*, 139 F. 3d at 1301-02 (resort to Secretary of Interior under 25 U.S.C. § 2710(d)(7)(B)(vii) takes the place of tribal suits barred by Eleventh Amendment). Any "ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor." *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1242 (11th Cir. 1999).

This is not "premature speculation" about future activities, similar to that discounted by this Court in *In re Advisory Opinion to the Attorney General* –

English – The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988). Though there may be an intermediate negotiation about the extent of State regulation, gambling is **inevitable** on Indian lands once a State permits any type of Class III gambling. *Kansas v. United States*, 249 F.3d at 1223 (if a tribe has requested Class III gambling in a state which permits such gambling, a finding that a tract of land is "'Indian lands' within the meaning of IGRA . . . **inevitably** lead[s] to Indian gaming on the tract." Emphasis added.).

Even before the proposed amendment permits Class III gambling in Florida, the State's Indian tribes have begun high-stakes gambling. Indian gambling in Florida is already big business. *Seminole Tribe of Florida v. Times Publishing Co.*, 780 So. 2d at 313 (reporting four Seminole Tribe casinos expected $497 million in revenue in fiscal year 1997). Florida's Indian tribes have already made known their desire to operate "Las Vegas style casinos" featuring Class III gambling devices. *Seminole Tribe of Florida v. Times Publishing Co.*, 780 So. 2d at 313. Indeed, in 1996, the State sued the Seminole Tribe, alleging that the Tribe was illegally engaging in Class III gambling, but the case was dismissed on grounds of tribal sovereign immunity. *Florida v. Seminole Tribe of Florida,* 181 F. 3d at 1139.

Thus, there is a vast and hidden, but automatic and inevitable effect of the

proposed initiative. Nowhere does the proposed initiative even hint that Indian gambling will increase as a result of the State's authorization of Class III gambling. In fact, the initiative text, and ballot title and summary all suggest exactly the opposite effect. The title says that slot machines will only be placed "**within** existing pari-mutuel facilities." Proposed Initiative, *supra*, at 2 (Emphasis added.). Paragraph (a) of the proposed initiative text says that "Slot machines are hereby permitted **in those counties** . . . and **then only within** licensed pari-mutuel facilities. . ." *Id.* (Emphasis added.). The ballot summary says the voters may approve "in their respective counties **only**, slot machines at existing pari-mutuel facilities **only**." *Id.* (Emphasis added.).

Any voter looking at the ballot title or summary, or reading the proposed initiative itself could only believe that any placement of slot machines would be limited to **"only"** those facilities. But the **inevitable** result of permitting slot machines "for any purpose by any person, organization, or entity," 25 U.S.C. § 2710(d)(1)(B), is to permit slot machines by Indian tribes elsewhere in Florida.

This proposed initiative flies under false colors. It is not limited as stated. It will inevitably and by automatic operation of federal law, have a far broader effect than promised. The text, title and summary leave out critical information, like the proposed measure in *Casino Authorization, Taxation and Regulation,* 656

So. 2d at 468-69. The proposed initiative is fatally flawed in text, title and summary.

B. The Proposed Initiative Will Lead to Immediate and Sustained Expansion of Gambling in Florida Beyond That Described by the Text, Title and Summary.

It is not just the geographic impact which is missing or distorted in the text, ballot title and ballot summary of the proposed initiative. Both the definition of "slot machine" and the extent to which permitting "slot machines" also permits the use of other "high-stakes" gambling devices are hotly-litigated subjects, indicating to a near-certainty that voters will not be adequately informed about the effect of this proposal even if they read the text of the measure directly.

Florida law currently prohibits slot machines or similar mechanical games of chance. *See* FLA. STAT. §§ 849.15, 849.16(1). The definition of a "slot machine" is broad and subject to interpretation, and cunning minds are constantly attempting to evade current law by creating new kinds of machines – often converting an otherwise legitimate vending machine into a game of chance. *See, e.g.*, Op. Att'y Gen. Fla. 89-05 (January 27, 1989) (Crane game qualifies as slot machine); Op. Att'y Gen. Fla. 98-07 (February 5, 1998) (long-distance telephone card machine which dispenses sweepstakes ticket is a slot machine). Indian tribes in particular have attempted to expand the limits of permissible gambling devices.

Florida v. Seminole Tribe of Florida, 181 F.3d 1237 (11th Cir. 1999)(tribal immunity bars State suit to stop tribe from operating illegal Class III gambling devices; State's remedy is to seek enforcement by federal officials); *Seminole Tribe of Florida v. Times Publishing Co.*, 780 So. 2d at 313 (describing tribe's attempts to keep video slot machines the U.S. Attorney contends are illegal).

Thus, no one knows what kinds of devices will be permitted under the proposed initiative. The Attorney General advised in his May 18, 2001 letter to the Court that the proposed initiative does not appropriately define "slot machine" so that the State and local governments can know what is being authorized by the proposed initiative. *See* A.G. Letter, at 5. The Attorney General (who, as shown in the previous paragraph, has had to define a slot machine) warns that the "type of gambling devices that would be authorized" is not clear under the proposed initiative. *Id.*

This definitional ambiguity is not ameliorated by leaving to the Legislature the right to "license, regulate and tax slot machines." Proposed Initiative, ¶ (b), *supra*, at 3. Existing law already defines slot machines in an expansive manner, FLA.STAT. § 849.16, yet that definition is constantly tested. This provision of the proposed initiative simply adds duties to the Legislature, and to the other branches of State and local government, which must interpret the definition in the rapidly-

changing and expanding gambling environment and do the actual "regulation" under the proposed initiative and other laws.

The Attorney General's concerns about slot machines, however, are only the tip of the iceberg. Slot machines, no matter how defined, are included in the highest, most strictly-regulated class of gambling devices, known as "Class III" devices for their federal classification. *See, e.g.*, 25 U.S.C. § 2703. The definition of a "Class III" device is subject to the same type of substantial litigation as the definition of "slot machine." *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000); *Diamond Game Enterprises v. Reno*, 230 F.3d 365 (D.C. Cir. 2000).

Perhaps more important, however, is the unknown effect of enacting an amendment which permits **any** Class III gambling devices within Florida. The federal circuits are split over whether federal law authorizes the use of **all** Class III gambling devices on Indian lands in a State once **any** particular type of Class III device is authorized anywhere in the State. *Compare, Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1030-31 (2d Cir. 1990) (rejecting an interpretation that the state may allow some devices and not others), *with, Rumsey Indian Rancheria v. Wilson*, 64 F.3d 1250 (9th Cir. 1994)(permitting a State to authorize

some devices and not others).[2]

The State of Florida has consistently advocated the *Rumsey* "game for game" interpretation, but the Eleventh Circuit has not opined on this question. If the more expansive interpretation is used, however, permitting slot machines in Florida – even if limited to specified locations – would automatically permit other types of Class III gambling devices in the State.

As noted above, this expansion of gambling in Florida cannot be limited by delegating to the Legislature the right to "license, regulate and tax slot machines." Proposed Initiative, ¶ (b), *supra* at 3. Once any type of slot machine is permitted in Florida, as shown below, every appropriate Indian tribe can seek federal intervention to obtain the right to operate at least slot machines, and decisions on which gambling devices will be permitted may be taken from the State's purview. *See, e.g.*, 25 U.S.C. § 2710(d)(3); 25 C.F.R. § 291.8, discussed *supra*.

In other words, the proposed initiative has an indeterminate scope and effect, which recent experience has shown is likely to cause immediate and

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[2]It is important to note that the *Rumsey* decision's "game for game" interpretation, despite being the avowed position of Florida and many other states, was not even a unanimous ruling of the Ninth Circuit. Several circuit judges dissented from denial of rehearing *en banc*, finding the more expansive *Mashantucket Pequot* decision "much the better overview of IGRA." 64 F. 3d at 1253 (dissent from denial of reh'g *en banc*).

sustained expansion far beyond the description in the proposed initiative text, ballot title, or ballot summary. It "leaves voters guessing" about what the various terms mean. *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, 893-94 (Fla. 2000). The proposed initiative as submitted is fatally flawed.

II. THE BALLOT TITLE AND SUMMARY FOR THE PROPOSED INITIATIVE ARE INACCURATE, INCOMPLETE AND MISLEADING.

Section 101.161, Florida Statutes, requires that the ballot summary and title provide the "substance of [the] amendment . . . in clear and unambiguous language." The title and summary of the proposed "Slot Machine" initiative are clearly defective under the statutory standard. Both title and summary mislead voters, and do not advise them of some of the most serious ramifications of the initiative.

This Court reviews the title and summary of a proposed initiative to ensure that "the electorate is advised of the true meaning, and ramifications of an amendment." *Tax Limitation I*, 644 So. 2d at 490; *Askew*, 421 So. 2d at 156. The voter "must be able to comprehend the sweep of each proposal from a fair

notification in the proposition itself that it is neither less nor more extensive than it appears to be." *Askew*, 421 So. 2d at 155 (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)).

In *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351 (Fla. 1998), this Court addressed an initiative which sought to combine the constitutional Game and Fresh Water Fish Commission with the statutory Marine Fisheries Commission. The Court invalidated the initiative because its ballot summary failed to explain key aspects of the provision. "The problem 'lies not with what the summary says, but, rather with what it does not say.'" *Id.* at 1355 (quoting *Askew*, 421 So. 2d at 156); *cf. Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991) ("A ballot summary may be defective if it omits material facts necessary to make the summary not misleading.").

This ballot title and summary is ambiguous, inaccurate and misleading. It "leaves voters guessing" about what the various terms mean. *Treating People Differently Based on Race*, 778 So. 2d at 893-94 (citing *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998)). The title and summary fail to define ambiguous terms,

as in *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, 1308-09 (Fla. 1997). The title and summary leave out critical information, like the proposed measure in *Casino Authorization, Taxation and Regulation,* 656 So. 2d at 468-69. In short the title and summary "do not clearly and unambiguously inform the voters of the purpose and substance of the amendment." *Id.* at 469. For all of these reasons, the initiative fails to comply with Section 101.161, Florida Statutes.

A. The Title and Summary Do Not Describe the Foreseeable and Automatic Consequences of Enacting the Proposed Initiative.

In the limited space of a ballot title and summary, voters do not have to be told everything about a proposed initiative and its effects. In *Limited Casinos*, for example, this Court noted that "the public . . . will understand that the effect of the amendment would be to permit casino gambling **subject to the limitations contained therein**." 644 So. 2d at 75 (emphasis added). But they must be told the significant effects, particularly if, as shown in the prior section, the effect would be significantly different from what a plain reading of the ballot title and summary would suggest. *See Casino Authorization, Taxation and Regulation,* 656 So. 2d at 468-69 (invalidating initiative for failing to inform voters of the potential

breadth of the proposed amendment).

The proposed initiative does not meet that simple test. As shown above, the immediate effect of passing this proposed initiative will not be to authorize county referenda on carefully-limited terms; the first effect will be to authorize an unpredictable amount of high-stakes gambling on Indian lands. This result is inevitable and automatic, by operation of federal law. Nowhere does the proposed initiative even hint that gambling will increase as a result of enacting this language. In fact, as shown above, the initiative text, and ballot title and summary all suggest exactly the opposite effect.

Similarly, the proposed initiative will effect an immediate and dramatic shift in power between State and federal authorities. Whatever their views on gambling, voters may wish to vote against this separate issue. But again, they are not provided with the information necessary to know what they are voting on. As Justice Kogan wrote in *Advisory Opinion to the Attorney General – Restricts Laws Related to Discrimination*,

> These possible collateral effects . . . are not mentioned in the ballot summary, even in a general sense. This initiative . . . reflects draftsmanship that has not adequately considered all the collateral effects, which could seriously disrupt other important aspects of Florida government and law. Voters relying on the initiative's text and the ballot summary clearly would be misled in this sense.

632 So. 2d 1018, 1022 (Fla. 1994) (Kogan, J., concurring); *cf. Florida League of*

Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992) (initiative invalidated because of undisclosed collateral effects).

This proposed initiative "flies under false colors." *Armstrong v. Harris*, 773 So. 2d 7, 21 (Fla. 2000); *Askew*, 421 So. 2d at 156. It is not limited as stated. It will inevitably and by automatic operation of federal law, have a far broader effect than promised. Voters will be surprised to see the effect. The proposed initiative is fatally flawed in text, title and summary.

B. Both the Title and Summary are Inaccurate and Misleading.

There are also other flaws in the ballot title and summary. The summary speaks of requiring legislative action to license, regulate and tax slot machines, and then prescribes certain limited purposes for which these taxes may be employed, namely senior citizen and education programs. It is debatable whether, in the minds of the reasonable voter, teacher salaries and benefits would figure into an "educational program." The fact that the ballot summary mentions only "educational programs," while the text of the amendment says "classroom construction, educational programs, and teachers' salaries and benefits" is likely to be misleading to the voters. A summary need not provide an exhaustive explanation of every possible effect or ramification of the proposal. *See, e.g.*, *Advisory Opinion to the Attorney General re Prohibiting Public Funding of*

Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997); *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). However, because the words of the Constitution operate to limit the discretion of the Legislature, it is important that the voters understand which limitation are being placed on the use of these tax receipts. *See Peters v. Meeks*, 164 So. 2d 753, 755 (Fla. 1964) (citing *Sun Ins. Office, Ltd. v. Clay*, 133 So. 2d 735, 741-42 (Fla. 1961) (the Florida Constitution is a limitation on the power of the State).

The ballot summary concludes with the misleading statement that it "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 statement is both confusing and misleading to the voter. The statement implies that voters themselves will vote separately on whether or not to tax slot machines. The proposed amendment gives them no such authority. It is also misleading because the 2/3 vote requirement operates not against local referenda governing slot machine authorization, but against the vote over a constitutional amendment which imposes new taxes or fees. *See* FLA. CONST. art. XI, § 7. The undisclosed effect of the provision exempting this amendment from the scope of Article XI, Section 7 is to nullify this portion of the Constitution. The initiative also has important effects on legislative taxing and appropriations

powers, and the gubernatorial veto, but neither these powers nor the modification of their respective constitutional provisions are mentioned in the summary. *See Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners*, 642 So. 2d 724, 726 (Fla. 1994) (invalidating an initiative for not identifying constitutional provisions which were substantially modified).

The ballot summary and title of the proposed initiative fall far short of the requirements of Section 101.161, Florida Statutes. Rather than present a "clear and unambiguous statement" providing voters with all the essential information necessary to decide whether or not to include the proposal in the Constitution, the summary and title leave undisclosed vitally important information. That approval of this initiative will automatically lead to widespread gambling on tribal lands is not disclosed, but instead voters are deceived into believing that their decision will affect only existing pari-mutuel facilities, and only in the approving counties. Such a statement is wrong; voters are not "advised of the true meaning, and ramifications" of the initiative. *Askew*, 421 So. 2d at 156. Voters are further mislead by other information in the summary, especially the exemption of the initiative from the 2/3 vote requirement of Article XI, Section 7, Florida Constitution. Because the ballot summary and title are inaccurate and misleading, this Court should invalidate the proposed initiative.

III. THE PROPOSED INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT BECAUSE IT SUBSTANTIALLY PERFORMS MULTIPLE GOVERNMENT FUNCTIONS AND AFFECTS MULTIPLE LEVELS OF GOVERNMENT.

Article XI, Section 3, Florida Constitution, gives citizens the power to propose amendments by initiative, but specifies that any such initiative amendment, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." The proposed initiative must address only one question to the voters, instead of multiple questions to which a voter can answer only once. *See Restricts Laws Related to Discrimination*, 632 So.2d at 1019. As this Court has explained, the single subject requirement prevents "logrolling," where a voter is forced to accept an unfavorable portion of an initiative in order to enact a favorable change in the Constitution. *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984); *Floridians*, 363 So. 2d at 339.[3] The proposed initiative poses several questions, each of which should be the subject of separate initiatives.

The test for avoiding "logrolling" is whether a multi-part proposed initiative

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[3] This Court has explained the necessity of a single subject requirement by noting that an initiative amendment lacks a "filtering legislative process," and that the public is not represented in the drafting. *Fine*, 487 So. 2d at 988. In this respect, the initiative process differs from the other means of constitutional amendment or revision established by Article XI. *See Treating People Differently Based on Race*, 778 So. 2d at 891.

may be logically viewed as having component parts or aspects of a single dominant plan, or whether it is a series of separate issues rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. *Advisory Opinion to the Attorney General – Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994); *Limited Political Terms*, 592 So. 2d 225 (Fla. 1991).

This Court has said that it looks to "whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." *Right of Citizens to Choose Health Care Providers*, 705 So. 2d at 565 (quoting *Restricts Laws Related to Discrimination*, 632 So. 2d at 1020); *see also Fine*, 448 So. 2d at 990. An initiative will be invalidated if it: 1) substantially affects more than one function of government, *Save Our Everglades*, 636 So. 2d at 1340; *Fine*, 448 So. 2d at 990; or 2) "performs the functions of different branches of government." *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984). In this analysis, the Court looks to whether the amendment affects a function of multiple branches of government, whether it affects multiple functions of a single branch, or whether it affects a function performed by multiple levels of government, e.g., state, county, municipal. *See Advisory Opinion to the Attorney General re Funding for Criminal Justice*, 639 So. 2d 972, 973 (Fla. 1994); *Save Our Everglades Trust Fund*, 636 So. 2d at 1340; *Restricts Laws Related to*

Discrimination, 632 So. 2d at 1020 (citing *Fine*, 448 So. 2d at 990).

In *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984), this Court explained the functional analysis required by the single subject test:

> The test, as set forth in *Fine*, is functional and not locational, and where a proposed amendment changes more than one government function, it is clearly multi-subject. . . . We recognize that *all* power for each branch of government comes from the people and that the citizens of the state have retained the right to broaden or restrict that power by initiative amendment. But where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution.

457 So. 2d at 1354.

A. The Proposed Initiative Performs Multiple Functions, Substantially Affects Multiple Levels of Government and Constitutes Impermissible "Logrolling."

The proposed initiative combines at least six distinct subjects, each of which constitute separate and distinct functional operations of government: Indian gambling, shifting enforcement and decision-making power over gambling from State to federal authorities, authorizing gambling, authorizing a new tax, restricting State and local government's use of appropriations, and providing an exception to the 2/3 vote requirement of Article XI, Section 7. Thus, the proposed initiative violates the single-subject rule.

Two of the most dramatic effects of the proposed initiative are described in

detail above: the authorization for Indian Class III gambling throughout Florida, and the transfer of authority over that power from State to Federal authorities. These are separate, though related subjects.

The balance between state and federal power over Indian gambling is the subject of substantial current litigation. *See, e.g.*, *Seminole Tribe of Florida*, 517 U.S. 49 (1996); *Florida v. Seminole Tribe*, 181 F.3d at 1242 (the state's power to enforce gambling laws on tribal laws is barred by tribal immunity). Enactment of the proposed initiative will substantially alter that balance of power. Though the separate levels test normally applies to state and local government, for purposes of single-subject analysis, there is no logical reason to limit the "multiple levels" analysis to just state or local government. *See Restricts Laws Related to Discrimination*, 632 So. 2d at 1023 (Kogan, J., concurring) ("I believe this Court is required to consider all issues - including some questions of federal law - for the purpose of determining whether a single-subject violation exists and whether the ballot summary is adequate."). They implicate both legislative and executive branch functions. Though they are not mentioned in either the text, title or summary of the proposed initiative, these shifts in power are both immediate and inevitable effects of enactment. The inclusion of these shifts in power between branches and levels of government in themselves violate the single-subject rule,

and more so in combination with the other subjects treated in the proposed initiative.

The proposed initiative also combines several other subjects with the Indian gambling and transfer of power to federal authorities. Briefly, the proposed initiative performs the following additional separate functions:

1. It permits slot machine (Class III) gambling in Florida.[4]

2. It mandates legislative implementation of licensing, regulating & taxing.[5]

3. It mandates appropriation of resulting tax revenue exclusively for certain favored purposes: a) senior citizens services; b) classroom construction; c) education programs; and d) teachers' salaries.[6]

4. It limits the Governor's power to veto appropriations.

5. It affects the Executive Branch's regulation of gambling and pari-mutuel

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[4] As noted above, this is a separate function from the automatic permitting of gambling on Indian lands, and the transfer of enforcement and regulatory power over such gambling from State to federal officials.

[5] These topics are themselves separate legislative functions. Taxing slot machines themselves, for example, could be considered an illegal *ad valorem* tax. FLA. CONST. art. VII, § 1(a).

[6] These topics are also themselves separate legislative functions. The Constitution itself demonstrates the difference in emphasis placed on education, including education funding, and matters concerning senior citizen services. *Compare*, FLA. CONST. art. IX, "Education," *with* FLA. CONST. Art. IV, § 12 "Department of Elder Affairs."

wagering.

6. It claims to exempt itself from the 2/3 vote required for constitutionally-mandated tax measures under Article XI, Section 7, Florida Constitution.

The first three of these functions are legislative. The next two functions affect the Executive Branch, and the last (the attempt to exempt the initiative from the 2/3 vote requirement) is so poorly written that it could either perform a legislative or a judicial function, depending on how it is interpreted.

The essential element of the proposed initiative here is to authorize gambling, but the initiative does much more than that. For example, all that is necessary to authorize slot machines is the first five words of the proposed initiative. The remainder of the first paragraph could be considered a limitation on the first five words, and thus an integral part of and substantially related to the central theme of the initiative.

The remaining part of the initiative, then, must be either necessary for implementing the first paragraph, or ancillary and not substantially different from the central purpose of the initiative. *See Evans*, 457 So. 2d at 1353 ("enfolding disparate subjects within the cloak of a broad generality does not satisfy the single subject requirement"). This Court has, for example, upheld language permitting the Legislature to implement an initiative. *See, e.g., Locally Approved Gaming,*

656 So. 2d at 1263; *English - The Official Language of Florida*, 520 So. 2d at 13. Similarly, the Court has upheld a provision in which a specific tax was created and the proceeds directed to a particular end. *See Advisory Opinion to the Attorney General - Fee on the Everglades Sugar Production*, 681 So. 2d 1124, 1128 (Fla. 1996)(creation of the sugar fee was the sole function of the initiative). In the proposed initiative, the power to tax is neither necessary nor ancillary to the authorization of slot machines.

The designation of purposes for which the taxes mandated by this initiative must be spent is another significant function performed by this initiative. This scheme is far different from the lottery program approved by the Court in *Carroll v. Firestone*, 497 So. 2d 1204 (Fla. 1986). In that case, lottery proceeds were an inherent element of a State-run lottery, and the redirection of the funds was left to the sole discretion of the Legislature. This initiative is also distinguishable from that foreseen in the "Criminal Justice Trust Fund" initiative where the Court said that "[t]he legislature's discretion in allocating the funds is limited only by the provision that the funds must be used for criminal justice purposes . . . Further the amendment does not augment or detract from any of the legislative powers enumerated in the constitution." *Funding for Criminal Justice*, 639 So. 2d at 973-74. This initiative is also easily distinguished from the Sugar Fee approved by the

Court in *Fee on the Everglades Sugar Production*, 681 So. 2d at 1128. That initiative would have mandated a fee on sugar production, and would have designated the funds raised "to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution" in the Everglades. *Id.* The Sugar Fee initiative created a tax for a certain general purpose which had a natural connection to the tax itself, but it most importantly, it performed no other function.

If anything, the instant initiative resembles the failed Save Our Everglades initiative. That initiative created a tax, but it also performed numerous other functions: creating a trust, granting trustees discretion to administer the fund and spend it for certain purposes. *Save Our Everglades*, 636 So. 2d at 1340. The instant initiative, instead of creating a trust, allows for slot machines. Instead of using trustees to collect taxes, it uses the Legislature, but restricts the Legislature's discretion to appropriate solely for certain purposes which are not "matter directly connected" with the purpose of this initiative, the authorization of slot machines.

This Court has noted that the power to tax and the power to appropriate funds are two separate quintessentially legislative functions. *See, e.g., Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (the power to appropriate is legislative function); *Chiles v. Children A,*

B, C, D, E, and F, 589 So. 2d 260, 264 (Fla. 1991); *Campus Communication v. Department of Revenue*, 473 So. 2d 1290, 1291 n.1 (Fla. 1985) ("[t]he power to tax lies with the legislative branch"). The instant initiative represents a significant intrusion into and limitation on the discretion of the Legislature. The combination of a mandated tax and mandated appropriations in one initiative have never been permitted by this Court.

Likewise, the fact that the initiative mandates appropriations of taxes raised from slot machines to certain purposes links together not just the legislative appropriations power, but also the power of the Governor under Article III, Section 8 to veto appropriations. *See Advisory Opinion to the Attorney General re Requirement for Adequate Public Education Funding*, 703 So. 2d 446, 449 (Fla. 1997) (invalidating an initiative that controlled appropriations because it also limited the executive function of the Governor's veto). May the Governor veto these constitutionally-mandated appropriations? *Cf. House of Representatives v. Martinez*, 555 So. 2d 839, 843 (Fla. 1990) (quoting *Brown v. Firestone*, 382 So. 2d 654, 664 (Fla. 1980)) ("the veto power is intended to be a negative power, the power to nullify, or at least suspend, legislative intent"). The initiative provides little guidance to this potentially significant undisclosed or unanticipated collateral effect, which may itself disrupt other functions of Florida government. *See*

Restricts Laws Related to Discrimination, 632 So. 2d at 1022-23 (Kogan, J., concurring). Furthermore, the initiative intrudes into the area of "executive enforcement and decision-making," by impacting the regulatory and administrative powers of the executive branch. *People's Property Rights Amendments*, 699 So. 2d at 1308.

The language here relating to the Legislature is not essential to the basic authority to hold referenda on slot machines. Voters may wish the Legislature to tax gambling, or they may not. They may wish more money to go to senior citizen programs, but not to education. They may wish more money for teacher training, but not at the price of legalizing gambling. The initiative gives them no choice, but forces them to accept all or nothing.

The exemption of this amendment from the 2/3 vote requirement of Article XI, Section 7 is itself an additional function imposed by the initiative. This aspect of the initiative is analogous to the "Revenue Limits" initiative approved by the Court in *Tax Limitation I*, 644 So. 2d at 496. That initiative carved out an exception to the single subject requirement of Article XI, Section 3 for those initiatives which "limited the power government to raise revenue." The Court found that the "Revenue Limits" initiative, which made only that one change complied with the single subject requirement. 644 So. 2d at 496. A subsequent

initiative, "Peoples' Property Rights Amendments" attempted to expand the exemption from the single subject requirement for those initiatives which required government to pay for limits on property rights. *See People's Property Rights Amendments*, 699 So. 2d 1304 (Fla. 1997). This Court invalidated that amendment because it also affected other functions and powers of government. *Id.* at 1308. In this case, an initiative could carve out an exception to the 2/3 vote requirement for a certain class of amendments. *Compare, Tax Limitation I*, 644 So. 2d at 496 (allowing an initiative which only sought to establish an exception to the constitutional single-subject rule), *with*, *People's Property Rights Amendments*, 699 So. 2d at 1308 (rejecting an amendment which sought to combine an exception to the single-subject rule with other functions). However, an initiative may not perform that function and other functions without violating the single subject requirement.

In this case, the proposed initiative would carve out an exception to the 2/3 vote requirement for itself. There are two ways to look at this provision, and each demonstrates that the proposed amendment violates the single subject rule.

First, if done as a separate, stand-alone initiative, the creation of an exception to the 2/3 vote requirement would likely pass single subject scrutiny as the performance of a single legislative function. *Tax Limitation I*, 644 So. 2d at

496. A single initiative, however, may not perform that function and add other, different functions without violating the single subject requirement. *Id.* The proposed initiative, as shown above, affects several other functions of government; adding this additional function violates the single subject rule yet again.

Alternatively, the drafters of the proposed amendment may have wanted to clarify their view that the 2/3 vote requirement did not apply to their amendment. By having voters place their opinion into the Constitution, however, the proposed initiative becomes a legally-effective interpretation that the proposed amendment was not subject to the 2/3 vote requirement. The provision "renders a judgment" on the application of the constitutional limitation "and thus performs a quintessential judicial function." *Save Our Everglades*, 636 So. 2d at 1340. Again, a separate initiative to perform a judicial function might pass single subject scrutiny, but not one which combined judicial with other functions.

In either case, because the proposed initiative combines these separate subjects with other, different functions of government, it violates the single-subject rule. The proposed initiative must be rejected.

B. The proposed initiative substantially affects multiple parts of the Florida Constitution.

The proposed initiative will also have multiple impacts on the Florida

Constitution. This Court has said that it is important to identify sections of the Florida Constitution affected by an initiative. *See Right of Citizens to Choose Health Care Providers*, 705 So. 2d at 565-66; *Fine*, 448 So. 2d at 989. Although an initiative may "interact with other portions of the Florida Constitution," and still be valid, it should not have a substantial impact on those other constitutional provisions. *Limited Casinos*, 644 So. 2d at 74; *English - The Official Language of Florida*, 520 So. 2d at 12-13.

The instant initiative proposal identifies only one provision affected, the 2/3 vote requirement for tax increases under Article XI, Section 7, Florida Constitution. However, the instant initiative also affects numerous other provisions of the Florida Constitution, including Article VII, Section 1 (taxing power); Article VII, Section 1(a) (state ad valorem taxes on tangible personal property); Article VII, Section 1(c) (appropriations); Article VII, Section 9(a) (local ad valorem taxes on tangible personal property); Article III, Section 8 (veto); Article III, Section 11(a)(2) (prohibited general laws of local application in area of taxation); Article III, Section 19 (budgeting, planning, and appropriations). The failure to identify these provisions makes it more likely that the initiative will have multiple, undisclosed effects on Florida government. *See Fine*, 448 So. 2d at 989. In *Fine*, the Court explained the basis for requirement:

> Although an initiative petition under the present constitution may amend multiple sections of the constitution as long as the proposal contains a single subject, an initiative petition should identify the articles or sections of the constitution substantially affected. This is necessary for the public to be able to comprehend the contemplated changes in the constitution and to avoid leaving to this Court the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal.

Id.

Because the instant initiative will have substantial effects on these other provisions of the Florida Constitution, and because it does not identify the sections it affects, the proposed initiative violates the single subject requirement. *See Treating People Differently Based on Race*, 778 So. 2d at 894 (proposed initiative failed to identify substantial effect on Article I, Sections 2 and 21); *Tax Limitation I*, 644 So. 2d at 493-94 (proposed initiative invalidated where it substantially affected Article VII, Sections 1(a), 1(b), 2, 5, 7 and 9). Accordingly, this Court should invalidate the proposed initiative.

CONCLUSION

For the foregoing reasons, this Court should invalidate the proposed initiative "Authorization for County Voters to Approve or Disapprove Slot Machines within Existing Pari-Mutuel Facilities."

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 21st day of June, 2001, to The Honorable ROBERT A. BUTTERWORTH, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050; to DANIEL K. ADKINS, Floridians for a Level Playing Field, West Flagler Associates, Ltd., P.O. Box 350940, Miami, Florida 33126; to PARKER D. THOMSON, ESQUIRE and CAROL A. LICKO, ESQUIRE, Thomson, Muraro, Razook & Hart, P.A., One Southeast Third Avenue, Suite 1700, Miami, Florida 33131-1710; and to PETER ANTONACCI, ESQUIRE, Gray, Harris & Robinson, P.A., 301 South Bronough Street, Tallahassee, Florida 32302.

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CERTIFICATE OF TYPEFACE COMPLIANCE

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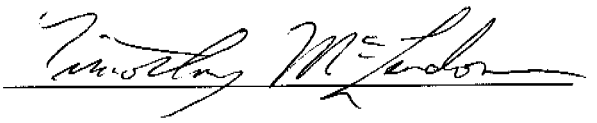

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