IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO.: SC 03-857

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: AUTHORIZES MIAMI-DADE AND BROWARD COUNTY VOTERS TO APPROVE SLOT MACHINES IN PARIMUTUEL FACILITIES

INITIAL BRIEF OF OPPONENTS AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, GREY2K USA, THE HUMANE SOCIETY OF THE UNITED STATES, AND NO CASINOS, INC.

Mark Herron, Esquire
Florida Bar No.: 0199737
Thomas M. Findley, Esquire
Florida Bar No.: 0797855
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 224-4539

Attorneys for Opponents

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STATEMENT OF THE CASE AND FACTS

In accordance with Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, the Attorney General has petitioned this Court for an advisory opinion as to the validity of an initiative petition that seeks to amend the Florida Constitution to authorize voters in Miami-Dade and Broward Counties to approve slot machines at pari-mutuel facilities. This Court has jurisdiction to render an advisory opinion upon the request of the Attorney General regarding the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution. *See* Article V, Section 3(b)(10), Florida Constitution.

The full text of the initiative petition states:

> Article X, Florida Constitution, is hereby amended to add the following as Section 19:
>
> SECTION 19. **SLOT MACHINES –**
>
> (a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two years before the effective date of this amendment. If the voters of such county approve the referendum by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the

question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

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

(d) This amendment shall become effective when approved by the electors of the state.

The ballot title for the proposed amendment states: "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities."

The summary states:

Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in existing parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. The Legislature may tax slot machine revenues, and such taxes must supplement public education funding statewide. Requires implementing legislation.

This brief in opposition to the proposed amendment is submitted, pursuant to the Court's order of July 14, 2003 on behalf of the following: American Society

for the Prevention of Cruelty to Animals, GREY2K USA, The Humane Society of the United States, and No. Casinos, Inc. These parties will be referred to herein as "Opponents."

SUMMARY OF ARGUMENT

Opponents urge this Court to strike the proposed initiative amendment entitled "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities" from the ballot.

The proposed amendment violates Article XI, Section 3, Florida Constitution, in two respects: First, it impermissibly "logrolls" support of the amendment to permit a referenda in Miami-Dade and Broward Counties to authorize slot machines at existing pari-mutuel facilities with supplemental funding for public education; and, second, it amends Article X, Section 7, Florida Constitution, and Article X, Section 15, Florida Constitution, in addition to authorizing a vote on slot machines in Miami-Dade and Broward Counties.

The ballot summary fails to adequately inform the voter of the substance of the proposed amendment as required by Section 101.161, Florida Statutes, by failing to inform voters that there is no opportunity for voters in Miami-Dade and Broward Counties to reconsider their vote authorizing slot machines and by failing to apprise voters of the effect of the amendment on Article X, Section 7, Florida Constitution, and Article X, Section 15, Florida Constitution.

ARGUMENT

SCOPE OF REVIEW

This Court's inquiry, when determining the validity of an amendment to the State Constitution proposed by initiative, is limited to two legal issues: whether the proposed amendment 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 Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities,* 813 So.2d 98, 100 (Fla. 2002) and *Advisory 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). The burden is on the Opponents to show that the proposed amendment is "clearly and conclusively defective." *Floridian's Against Casino Takeover v. Let's Help Florida*, 363 So.2d 337, 339 (Fla. 1978). In order for this Court to invalidate a proposed amendment the record must show that the proposal is clearly or conclusively defective under either Article XI, Section 3, Florida Constitution, or Section 101.161, Florida Statutes. *Advisory to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 891.

This Court will not review the merits or wisdom of an amendment proposed by initiative. *See, e.g., Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d 486, 489 (Fla. 1994) and *Advisory Opinion to the Attorney General re Limited Casinos*, 644 So.2d 71, 75 (Fla. 1994). Other constitutional challenges are not justiciable in this proceeding. *Advisory to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 891.

SINGLE-SUBJECT

I. The proposed amendment violates Article XI, Section 3, Florida Constitution, because it "logrolls" two separate and unrelated purposes into a single amendment.

A primary purpose for the single-subject rule is to prevent "logrolling," a practice of including unrelated provisions in an amendment, some of which electors might wish to support, in order to get an otherwise disfavored provision passed. *See, e.g., Advisory Opinion to the Attorney General re Limited Casinos, supra* at 73; *Advisory to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 891.

In *Floridian's Against Casino Takeover v. Let's Help Florida, supra*, this Court approved for placement on the ballot an initiative that provided for

distribution of the taxes upon the operation of casinos "to the several counties, school districts and municipalities for the support and maintenance of free public schools and local law enforcement." *Floridian's Against Casino Takeover v. Let's Help Florida, supra* at 338. The Court noted that the generation and collection of taxes, and the distribution thereof, was part and parcel of a single subject of legalized casino gambling serving "to flesh out and implement the initiative proposal, thereby forging an integrated and unified whole." *Floridian's Against Casino Takeover v. Let's Help Florida, supra* at 340.

In dissent, Justice Alderman recognized that the combination of an authorization of casino gambling and an allocation of the revenues therefrom to support schools and law enforcement was a classic example of "logrolling." *Floridian's Against Casino Takeover v. Let's Help Florida, supra* at pp.342-343 (Alderman, J., dissenting).

This Court's rationale permitting the linkage of an authorization of casino gambling with allocating the revenues therefrom to specifically designated purposes unrelated to casino gambling was based on its perception of a "parallel" between the single-subject requirement of Article XI, Section 3, Florida Constitution, applicable to initiatives, and Article III, Section 6, Florida Constitution, applicable to legislation enacted by the legislature. *Floridian's*

Against Casino Takeover v. Let's Help Florida, supra at 340-341. *C.f.*, *Weber v. Smathers,* 338 So.2d 819, 823 (England, J., concurring).

In *Fine v. Firestone,* 448 So.2d 984, 988 (Fla. 1984), this Court receded from the position stated in *Floridian's Against Casino Takeover v. Let's Help Florida* that "there is no difference between the legislative one-subject restriction and the initiative constitutional proposal one-subject limitation." The Court did so for three reasons:

> First, we find that the language "shall embrace but one subject and matter *properly connected* therewith" in article III, section 6, regarding statutory change by the legislature is broader than the language "shall embrace but one subject and matter *directly connected* therewith," in article XI, section 3, regarding constitutional change by initiative…. Second, we find that we should take a broader view of the legislative provision because any proposed law must proceed through legislative debate and public hearing. Such a process allows change in content of any law before its adoption. The process is, in itself, a restriction on the drafting of a proposal which is not applicable to the scheme for constitutional revision or amendment by initiative. Third, and most important, we find that we should require strict compliance with the single-subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions, including the adoption of any laws by the legislature.

Fine v. Firestone, *supra* at 988-989. (Emphasis in text.)

As a consequence, 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, supra* at 990. Stated another way, a proposed initiative must manifest a "logical oneness of purpose." *Fine v. Firestone, supra* at 990.

Despite concluding that this Court should require strict compliance with the single-subject rule in the initiative process, this Court in *Carroll v. Firestone,* 497 So.2d 1204 (Fla. 1986) approved a proposed amendment establishing a lottery in which the net proceeds of the lottery would be placed in The State Education Lotteries Trust Fund. There was no guarantee in the proposed amendment that the funds raised from the lottery would be spent on education. *Carroll v. Firestone, supra* at 1206. *See also Carroll v. Firestone, supra* at 1207 (Boyd, J. concurring) and at 1208 (Ehrlich, J. concurring in result only). The Court found "no essential distinction" between the amendment at issue in *Floridian's Against Casino Takeover v. Let's Help Florida, supra,* and the amendment before it in that case. *Carroll v. Firestone, supra* at 1206.

In his concurring opinion, Justice Ehrlich disagreed. In his view, *Floridian's Against Casino Takeover v. Let's Help Florida, supra,* was wrongly decided. He focused, for the purposes of analysis of the single-subject requirement of Article XI, Section 3, Florida Constitution, on whether the funds generated by the initiative

would be inextricably linked" to specific purposes. In his view, the infirmity in *Floridian's Against Casino Takeover v. Let's Help Florida, supra,* "was that the revenue generated by casino gambling would be *inextricably linked* to funding education and law enforcement" and, hence, violate the single-subject requirement of Article XI, Section 3, Florida Constitution. *Carroll v. Firestone, supra* at 1208. (Emphasis in text.) From his perspective, the fact that the revenues generated by the lottery amendment were not locked-in was "not only significant, but is dispositive" of the single-subject requirement of Article IX, Section 3, Florida Constitution. *Carroll v. Firestone, supra* at 1208.

Citing his concurring opinion in *Fine v. Firestone*, Justice Ehrlich illustrated his point that linking revenues from an initiative amendment expanding gambling to specific causes amounted to impermissible "logrolling:"

> It would be difficult to imagine a better illustration of logrolling than the initiative approved in *Floridians.* Tying increased funding of education to the casino gambling proposal was unarguably an attempt to enlist support of those concerned with the quality of education in Florida for a measure inherently unrelated to education.

Carroll v. Firestone, supra at 1208 (citing to *Fine v. Firestone, supra* at 996).

Likewise, mandating that slot machine tax revenues "supplement public education funding statewide" unarguably is an attempt to enlist support of those concerned with education funding in this state for a measure – authorizing slot machines in Miami-Dade and Broward Counties – that is no way directly connected to education. *Fine v. Firestone, supra* at p. 989. There is no natural relationship between the two subjects, other than to use the promise of supplemental education funding to garner support for the authorization of slot machines in Miami-Dade and Broward counties.

In *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation,* 656 So.2d 466 (Fla. 1995), this Court struck from the ballot a proposed amendment that would have permitted voters of individual counties and local option Tourist Development Districts to authorize casino gambling within their respective jurisdictions. The proposed amendment would have directed that the net proceeds from license fees and taxation of casino gambling be "appropriated by the legislature for crime prevention and correctional facility construction, education, senior citizen services promotion." *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, supra* at 468. This Court found "the proposed ballot title and summary are misleading and, consequently, direct that the proposed amendment not be

placed on the ballot." *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, supra* at 467. This Court did not discuss whether linking the authorization for casino gambling with funding specific programs violated the single-subject requirement of Article XI, Section 3, Florida Constitution.

In *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra,* this Court struck from the ballot an amendment that would have permitted voters in those counties with licensed pari-mutuel facility to authorize slot machines at pari-mutuel facilities in those counties. The proposed amendment would have directed the Legislature to "appropriate tax revenues from slot machines to enhance senior citizen services, classroom construction, education programs, and teachers' salaries and benefits." *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra* at 99. This Court found that the proposed amendment violated the single-subject rule because it would effectively amend Article XI, Section 7, Florida Constitution, as well as permit local authorizations of slot machines. *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within*

Existing Pari-mutuel Facilities, supra at 102. This Court also concluded that the ballot summary was defective by stating that the amendment could be approved by a majority vote. *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra* at 102.

However, this Court stated:

> The fact that the proposed initiative includes both local authorization to approve slot machines and a mandate that such slot machines be licensed and taxed for a particular purpose is not problematic. *C.f. Advisory Opinion to Atty. Gen. re Ltd. Casinos*, 644 So.2d 71,74 (Fla. 1994) (citing *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So.2d 337 (Fla. 1978) for the proposition that the "provision requiring anticipated tax revenues be applied to education and law enforcement properly served to implement the single-subject of casino gambling in Dade and Broward counties.")

Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra at 101.

Opponents respectfully request that this Court recede from this position as articulated in *Floridians Against Casino Takeover v. Let's Help Florida, supra,* and adopted in *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-*

mutuel Facilities, supra. As succinctly noted by Justice Alderman in *Floridians Against Casino Takeover v. Let's Help Florida* the amendment is "not lawful because the allocation of tax revenue is separate from and not directly connected to the subject of casino gambling." *Floridians Against Casino Takeover v. Let's Help Florida, supra* at 343 (Alderman, J., dissenting).

Just as in the proposed amendment before the Court in this case, the allocation of revenues to "supplement public education funding statewide" is a subject separate from and not directly connected to the subject of authorizing slot machines. It is a "sugar coated pill" attached to the amendment to persuade Floridians not living in Miami-Dade and Broward counties to vote for slot machines on the theory that they might receive some of the benefits resulting therefrom but none of the detriments. *Floridians Against Casino Takeover v. Let's Help Florida, supra* at 343 (Alderman, J., dissenting).

Permitting sponsors of an initiative proposal to link unrelated subjects allows sponsors to appeal to the good instincts of Florida's voters with the promise of funding programs of concern at that moment in time in return for supporting a proposition that they might otherwise oppose. Over time those sponsoring the expansion of gambling in this state have been experts at "logrolling" such promises into their initiative proposals.

In *Floridian's Against Casino Takeover v. Let's Help Florida, supra* 338, the ballot initiative provided for distribution of taxes from the operation of casinos "to the several counties, school districts and municipalities for the support and maintenance of free public schools and local law enforcement;" in *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation, supra* at 468, the proposed amendment directed that the net proceeds from license fees and taxation of casino gambling be "appropriated by the legislature for crime prevention and correctional facility construction, education, senior citizen services promotion;" and in *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra* at 99, the proposed amendment directed the Legislature to "appropriate tax revenues from slot machines to enhance senior citizen services, classroom construction, education programs, and teachers' salaries and benefits."

Recognition of the obvious by receding from the position articulated in *Floridians Against Casino Takeover v. Let's Help Florida, supra,* and followed in *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra,* would permit the proposed amendment to authorize slot machines in Miami-

Dade and Broward Counties to rise or fall on its own merits without "logrolling" the unrelated issue of enhanced support for education into the vote on the amendment.

Accordingly, the amendment should be stricken from the ballot because it contains two distinct subjects.

II. The proposed amendment violates Article XI, Section 3, Florida Constitution, because it addresses more than one subject: local authorization of slot machines in Miami-Dade and Broward Counties at existing pari-mutuel facilities and lotteries otherwise prohibited under Article X, Section 7, Florida Constitution as well as state operated lotteries under Article X, Section 15, Florida Constitution.

The proposed amendment purports to authorize voters in two counties on the question of whether to authorize "slot machines" within existing licensed pari-mutuel facilities in those counties. But what type of "slot machines" are the voters being asked to approve?

The proposed amendment does not define the term "slot machine." Because there has been "no opportunity for public hearing and debate not only on the proposal itself but in the drafting of any constitutional proposal," *Fine v. Firestone*, *supra* at 988, voters will be forced to guess.

Current Florida law defines a "slot machine" as follows:

> Any machine or device is a slot machine within the provisions of this chapter if it is one that is adapted in such a way that, as a result of any piece of money, coin or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:
>
> (a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance or thing of value or which may be given in trade; or
>
> (b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

Section 849.16(1), Florida Statutes. Voters do not whether this is the definition of "slot machine" intended by the proposed amendment, however.

If this definition a "slot machine" was intended to define the scope of the amendment, it would include the traditional "slot machine" that uses spinning reels or video displays. However, it also appears broad enough to include within its ambit a game played on a video terminal "that, upon insertion of cash, tokens, credits or vouchers, is available to play or simulate a lottery-type game…in which by means of an element of chance, a player may receive credits that can be redeemed for cash;" or a game played on a video terminal "that, upon the insertion

of cash, tokens, credits, or vouchers, is available to play or simulate traditional card games, including video poker…in which the player may win credits that can be redeemed for cash; or a progressive game "in which a jackpot grows and accumulates as it is being played on a video lottery terminal or a network of video lottery terminals, and in which the outcome is randomly determined by the play of video lottery terminals linked by a central network." Fla. SB 64, § 1 (2003). In 2003, these types of games were defined as "video lottery games," in an effort to allow the state's pari-mutuel facilities to offer slot machine-type games known as "video lottery terminals." Fla. SB 64 (2003), included in Appendix A.

Although the 1868, 1885 and 1968 state constitutions have prohibited lotteries, none of those constitutional provisions have defined the term. *See* Article X, Section 7 (1968); Article III, Section 23 (1885): and Article IV, Section 20 (1868). Nor has the Legislature by statute specifically defined the term.

In the leading case of *Lee v. City of Miami*, 121 Fla. 93, 163 So. 486 (1935), this Court construed a statutory scheme that licensed "Certain Types of Coin-Operated Devices." *See* Chapter 17257, Laws of Fla. (1935), included in Appendix B. The question before the Court was "whether or not coin-operated devices as defined by section 2 of chapter 17257, Acts of 1935, constitute lotteries as defined

by section 23 of article 3 of the Constitution." *Lee v. City of Miami, supra* at 488. Section 2 of Chapter 17257, Laws of Florida (1935), defined the following:

> Coin-operated skill machines (commonly referred to as Pin-Games, Marble Tables, and similar devices of this type which have a skill feature) which may or may not pay a reward for skillful operation or upon which operation, premiums may or may not be given for high score or making certain combinations. Such premiums may be awarded automatically by the machine in the form of checks, tokens, or orders, which designate the value of the premium or premiums or may be indicated by a score card attached to the machine. Hereinafter this type shall be referred to as skill machines.

In answering that question, this Court concluded that the coin-operated vending machines described in Section 2 of Chapter 17257, Laws of Florida (1935), do not constitute lotteries per se. *Lee v. City of Miami, supra* at 490. However, this Court noted "that some of them, or possible all of them in their operation, will become such; but we leave that question to be determined when a specific case arises." *Lee v. City of Miami, supra* at 490.

In addressing the question of what constituted a prohibited lottery, this Court held that the constitutional prohibition against lotteries was intended to suppress lotteries which "infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and the simple." *Lee v. City of Miami, supra* at 100 (citing to *Phalen v. Virginia,* 49

U.S. 163, 168 (1850)). Other cases defined lottery as a scheme containing: "first, a prize; second, an award by chance; and third, consideration." *Little River Theatre Corporation v. State ex rel. Hodge*, 135 Fla. 854, 185 So. 855, 861 (1939).

Applying the test annunciated in *Lee v. City of Miami* or *Little River Theatre Corporation v. State ex rel. Hodge*, the authorization granted in the proposed amendment to the voters in Miami-Dade and Broward County to authorize slot machines constitutes the power to establish a lottery in those counties at existing pari-mutuel facilities. By so doing, the proposed amendment effectively amends Article X, Section 7, Florida Constitution, which states: "Lotteries other than the types of pari-mutuels authorized by law as of the effective date of this constitution, are hereby prohibited in this state." Similarly, by permitting existing pari-mutuel facilities in Miami-Dade and Broward Counties to operate lotteries upon approval in a referendum, it also amends Article X, Section 15(a), Florida Constitution, which provides that "[l]otteries may be operated by the state."

In short, the proposed amendment substantially amends Article X, Section 7, Florida Constitution, and Article X, Section 15(a), Florida Constitution, yet nowhere in the amendment is the voter apprised of that fact. The proposed amendment's failure to acknowledge its effect on Article X, Section 7, Florida Constitution, and Article X, Section 15(a), Florida Constitution, violates the

single-subject requirement of Article XI, Section 3, Florida Constitution. *Advisory to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 894.

Accordingly, the amendment should be stricken from the ballot because it contains more than one subject.

BALLOT SUMMARY

III. The ballot summary is defective in that it fails to inform the voter that there is no way to reverse the vote authorized by the amendment to subsequently de-authorize slot machines in Miami-Dade and Broward Counties.

Section 101.161, Florida Statutes, requires that the ballot title and summary of a proposed amendment state in clear and unambiguous language the primary purpose of the amendment. *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, 1307 (Fla. 1997). This requirement ensures that the "electorate is advised of the true meaning, and ramifications, of an amendment." *Advisory Opinion to the Attorney General re Limited Casinos, supra* at 73; *Advisory 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, supra, at 490. However, "the title need not explain every detail of the proposed amendment." *Advisory Opinion of the to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d 972, 974 (Fla. 1997).

While the summary gives notice of the ability of the voters of Miami-Dade and Broward Counties to vote on a referendum approving slot machines in their respective counties, it does not inform them that, once approved, they have no right to subsequently disapprove of slot machines in their respective counties.

The significance of this omission can be illustrated by reference to the current statutory scheme regulating pari-mutuel facilities. Section 550.0651, Florida Statutes, requires that pari-mutuel permits be submitted for ratification or rejection by the voters of the county designated in the permit. In addition, Section 550.175, Florida Statutes, empowers voters in the county where pari-mutuel racing has been conducted to petition for an election as to whether any permit previously granted shall be continued or revoked. The power to approve pari-mutuel gambling and the power to revoke previously approved gambling has been a part of Florida's pari-mutuel law since its inception. *See* Laws 1931, Chapter 14832, §§ 6, 18.

In *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission*, 705 So.2d 1352 (Fla. 1998), this Court invalidated the initiative because the ballot summary failed to explain key aspects of the amendment: "The problem 'lies not with what the summary says, but, rather, with what it does not say.'" *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, supra* at 1355 (quoting *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982)). In that case this Court concluded that the summary did not sufficiently inform the public of the transfer of power from the Legislature to the constitutionally created Fish and Wildlife Conservation Commission. *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, supra* at 1355.

Likewise, in this case, the summary fails to inform the voter that the decision to permit the operation of slot machines at pari-mutuel facilities in Miami-Dade and Broward Counties is a one-way proposition. There is no turning back, short of amending the constitution, to permit the de-authorization of slot machines. Voters in Miami-Dade and Broward Counties, as a consequence of the amendment, will have no opportunity to reconsider a decision approving slot machines in their respective counties. This is a significant loss of political power not disclosed in the summary.

Although this Court has indicated that the fact that the summary fails to inform "the voters, having authorized slot machines in their county, either will or will not have the opportunity to reconsider that vote" is either collateral or without merit, *Advisory Opinion to the Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-mutuel Facilities, supra,* 102-103, and n. 2, Opponents respectfully request this Court to reconsider its finding on this issue.

The people, in which all political power in this state is inherent under Article I, Section 1, State Constitution, "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 v. Firestone, supra* at 155 (quoting from *Smathers v. Smith*, 338 So.2d 825, 829 (Fla. 1976). The failure of the ballot summary to provide notice of the ability of the voters of Miami-Dade and Broward Counties to reconsider a decision approving slot machines is a fundamental ramification of the proposed amendment that should have been disclosed in the summary. Because it does not, the ballot summary is defective under Section 101.161, Florida Statutes.

Accordingly, the amendment should be stricken from the ballot.

IV. The ballot summary is defective in that it fails to inform the voter that it affects existing constitutional provisions prohibiting lotteries as well as state operated lotteries.

"[T]his Court has repeatedly held that ballot summaries which do not adequately define terms, use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not adequately describe the general operation of the proposed amendment must be invalidated." *Advisory to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra* at 899-900.

Because the ballot summary of the proposed amendment fails to apprise voters of its effect on Article X, Section 7, Florida Constitution, and Article X, Section 15(a), Florida Constitution, as described herein, in Argument II, the ballot summary is defective.

Accordingly, the amendment should be stricken from the ballot.

V. The ballot summary is defective in that it fails to inform the voter that the proposed amendment authorizes the Legislature to license and regulate slot machines.

The amendment specifically provides that the Legislature may, although it is not mandatory, provide for "the licensure and regulation of slot machines." The title fails to inform the voter of this fact, despite the fact that it otherwise inform

the voter that "[t]he Legislature may tax slot machine revenues, and such taxes must supplement public education funding statewide."

Because the ballot summary of the proposed amendment fails to inform the voter that the proposed amendment authorizes the Legislature to license and regulate slot machines, the ballot summary is defective.

Accordingly, the amendment should be stricken from the ballot.

CONCLUSION

For the reasons set forth herein, the proposed amendment entitled "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities" should be stricken from the ballot.

Respectfully submitted on this 4th day of August 2003 by:

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MARK HERRON
Florida Bar No.: 0199737
THOMAS M. FINDLEY
Florida Bar No.: 0797855
Messer, Caparello & Self. P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 224-4539

Attorneys for Opponents

CERTIFICATE OF COMPLIANCE

I hereby certify that this Initial Brief 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.

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Mark Herron

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Initial Brief has been forwarded by U.S. Mail to the following on this 4th day of August 2003:

1. The Honorable Charles J. Crist
   Attorney General
   PL 01, The Capitol
   Tallahassee, FL 32399-0250

2. Stephen H. Grimes, Esquire
   Susan L. Kelsey, Esquire
   Holland & Knight, LLP
   Post Office Box 810
   Tallahassee, FL 32303-0810

_____
Mark Herron