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

ANSWER 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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SUMMARY OF ARGUMENT

Opponents continue to 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, because it contains two subjects. It authorizes the governing bodies in Miami-Dade and Broward Counties to conduct a referendum in each county on the question of whether to authorize slot machines at existing pari-mutuel facilities and, by doing so, it amends the existing constitutional prohibition on lotteries contained in Article X, Section 7, Florida Constitution.

The ballot summary, as does the amendment, fails to define the term "slot machine." As a consequence, the summary fails to inform the voters of the scope of the amendment, its true meaning, and its ramifications.

ARGUMENT

I. THE SLOT MACHINE INITIATIVE FAILS TO SATISFY THE SINGLE-SUBJECT REQUIREMENT

Inherent in the argument of the proponents of the proposed amendment is the assumption that "slot machines" are a subject not otherwise addressed in the State Constitution. Proponents fail to acknowledge that slot machines are lotteries, otherwise prohibited under Article X, Section 7, Florida Constitution. The proposed amendment seeks to establish a procedure to authorize slot machine lotteries at existing pari-mutuel facilities in Miami-Dade and Broward Counties in derogation of the existing constitutional prohibition on lotteries. By so doing, the proposed amendment addresses two subjects.

The absence of a reference to the existing constitutional provision, which is being amended by the initiative proposal, renders the proposed amendment constitutionally infirm. *Advisory Opinion to Attorney General re Amendment to Bar Government from Treating People Differently Based on Race*, 778 So.2d 888, 894 (Fla. 2000). Accordingly, it should be stricken from the ballot.

II. THE BALLOT TITLE AND SUMMARY OF THE SLOT MACHINE AMENDMENT FAIL TO FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT

The term "slot machine" is not defined in the proposed amendment. As a consequence, the voter is not informed of the scope of the amendment, its true meaning, and its ramifications. *Advisory Opinion to the Attorney General re Tax Limitation*, 644 So.2d 486, 490 (Fla. 1994).

In *Advisory Opinion to the Attorney General re People's Property Rights*, 699 So.2d 1304 (Fla. 1997), this Court "held that the ballot summary was defective because, among other things, it failed to define the term 'common law nuisance,' leaving voters unaware of what restrictions would be compensable under the proposed amendment." *Advisory Opinion to Attorney General re Amendment to Bar Government from Treating People Differently Based on Race*, *supra* at 898.

In the same way, the ballot summary fails to define the term "slot machines," as does the text of the proposed amendment. Voters are not informed whether they are being asked to approve "Pin-Games, Marble Tables, and similar devices of this type" as approved in *Lee v. City of Miami*, 121 Fla. 93, 163 So. 486 (1935) or video lottery type games as defined in SB 64 (2003 Regular Session). Without this type of

information, the ballot title and summary are not "clear and unambiguous" as asserted by proponents of the amendment.

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 25th day of August 2003 by:

_____
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 Answer Brief has been forwarded by U.S. Mail to the following on this 25th 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

3. John M. Hogan, Esquire
   Holland & Knight, LLP
   Post Office Box 015441
   Miami, FL 33101

4. Ronald L. Book, Esquire
   Ronald L. Book, P.A.
   2999 NE 191st Street, PH 6
   Aventura, FL 33180-3117

_____
Mark Herron