
IN THE SUPREME COURT OF FLORIDA

Case No. SC03-857

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: AUTHORIZES MIAMI-DADE AND BROWARD COUNTY
VOTERS TO APPROVE SLOT MACHINES
IN PARIMUTUEL FACILITIES**

**INITIAL BRIEF AND APPENDIX
OF THE SPONSOR,
FLORIDIANS FOR A LEVEL PLAYING FIELD**

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STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested the Court's opinion¹ on the validity of a constitutional amendment proposed through the initiative petition process of article XI, section 3, Florida Constitution. [A 1 (request for advisory opinion).] The title of the amendment is "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities" (the "Slot Machine Initiative"). This brief is submitted by the sponsor of the Slot Machine Initiative, a political committee called Floridians for a Level Playing Field ("Floridians"). The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.²

The Attorney General, in his request for an advisory opinion, noted that the Slot Machine Initiative now before the Court does not suffer from the flaws that caused the Court to strike down a similar predecessor initiative. [A 1 at 3, 4; see Advisory Op. to the Att'y Gen. – Authorization for County Voters to Approve or

¹ Article IV, section 10, Florida Constitution, requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI." Section 16.061, Florida Statutes (2003), implements this provision by requiring the Attorney General to petition this Court within 30 days after receiving the Secretary of State's certification of entitlement to an advisory opinion [A 2], "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161."

² Article V, section 3(b)(10), Florida Constitution, provides that "The supreme court ... [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

Disapprove Slot Machines Within Existing Pari-Mutuel Facilities, 813 So. 2d 98, 99-100 (Fla. 2002).] Floridians submits that the title, ballot summary, and text of the new Slot Machine Initiative comply with all applicable requirements of law, and thus that the Court should approve it for placement on the ballot.

Title, Ballot Summary, and Text
Of the Proposed Amendment

As already noted, the ballot title for the proposed amendment is "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities."

The ballot summary for the proposed amendment states as follows:

Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in 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 calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

The text of the proposed amendment provides as follows:³

³ When the new Slot Machine Initiative was drafted, section 19 was the next available section under article X of the Florida Constitution, containing "Miscellaneous" provisions. Florida voters subsequently approved three additional amendments placed in article X, so that the next section number now available is section 22. In addition, it is conceivable that other amendments could be adopted before the Slot Machine Initiative is adopted (or appear earlier on the same ballot and thus have priority in numbering). The Secretary of State as compiler of Florida laws has the authority to assign the proper section number after the amendment is adopted, and therefore this clerical issue is not a legal flaw in the present initiative. See § 15.155(1), Fla. Stat. (2003).

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 calendar years before the effective date of this amendment. If the voters of such county approve the referendum question 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 vote of the electors of the state.

SUMMARY OF THE ARGUMENT

This is the second appearance before the Court of a citizen's initiative seeking to authorize the placement of slot machines in certain existing parimutuel facilities such as jai-alai frontons and greyhound racetracks in south Florida. Although the Court struck down the previous initiative for violating the single-subject rule, the sponsors have complied with the Court's admonitions, eliminated the flaws in the amendment, made additional changes in compliance with the applicable laws, and secured eligibility for an advisory opinion on the new Slot Machine Initiative.

The new Slot Machine Initiative now before the Court complies with the single-subject rule. Its single subject is to allow Miami-Dade and Broward County voters to authorize slot machines at certain existing parimutuel facilities in their respective counties. It contains permissible matter directly related thereto, providing details about carrying out the amendment, and allowing for licensure and regulation of slot machines if so authorized. It acknowledges that the Legislature may choose to tax slot machine revenues, but it does not mandate imposition of any tax. It designates a use for any such revenues in the event the Legislature does impose such a tax. These matters are well within the scope of "directly related" provisions that the Court has approved in previous initiative petition cases. The proposed amendment does not substantially alter or perform more than one

government function. Thus, the new Slot Machine Initiative complies with the single-subject requirement, and the Court should approve it for placement on the ballot.

The ballot title and ballot summary of the new Slot Machine Initiative likewise comply with the governing requirements of law. The title is less than 15 words and reflects how the amendment is commonly referenced. The summary is less than 75 words, accurately and fairly reflects the text of the amendment itself, uses clear and unambiguous language, and advises the voter of all salient features of the amendment so as to enable the casting of an intelligent and informed vote. The new Slot Machine Initiative complies fully with the legal requirements for citizens' initiatives, and the Court should approve it for placement on the ballot.

ARGUMENT

Standard of Review. The standard of review is de novo, but with deference to the sovereign right of the people to amend their own organic law. See Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982) (applying standard of “extreme care, caution, and restraint”); Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) (reviewing initiatives represents the “most sanctified” aspect of the Court’s jurisdiction).

The Court recently has said that if an initiative meets the requirements of article XI, section 3, Florida Constitution, “then the sponsor of an initiative has the right to place the initiative on the ballot.” Smith v. Coalition to Reduce Class Size,

827 So. 2d 959, 963 (Fla. 2002) (emphasis added). The Court must approve an initiative unless it is “clearly and conclusively defective.” Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976) (quoting Goldner v. Adams, 167 So. 2d 575, 575 (Fla. 1964)). The Court lacks authority to pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these proceedings. See Advisory Op. to Att’y Gen. Re Voluntary Universal Pre-Kindergarten Educ., 824 So. 2d 161, 164 (Fla. 2002); Weber v. Smathers, 338 So. 2d at 821-22. Floridians submits that the Slot Machine Initiative satisfies all applicable legal requirements, and thus the Court should approve it for placement on the ballot.

I. THE SLOT MACHINE INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

With one exception not applicable here, article XI, section 3, Florida Constitution, restricts citizens' initiatives to "one subject and matter directly connected therewith." The single-subject rule is intended to prevent "logrolling," which is the combining of different issues into one initiative so that people have to vote for something they might not want, in order to gain something different that they do want. Advisory Op. to Att’y Gen. re Florida Transp. Initiative for Statewide High Speed Monorail, 769 So. 2d 367, 369 (Fla. 2000); Advisory Op. to Att’y Gen.—Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). A second reason for the single-subject rule is to prevent one initiative from "substantially altering or

performing the functions of multiple aspects of government." High-Speed Rail, 769 So. 2d at 369.

The Slot Machine Initiative complies with the single-subject rule. It manifests a "logical and natural oneness of purpose." Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is to authorize Miami-Dade and Broward Counties to hold referenda in which county voters may decide whether or not to allow for slot machines in certain existing parimutuel facilities. It includes provisions related directly to that single subject, explaining exactly what is meant by the parimutuel facilities and providing further detail about the referenda and about the potential for regulation and taxation of slot machines if so approved. All of its provisions relate directly to its single subject. Viewed as a whole, it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." Advisory Op. to Att'y Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995) (quoting City of Coral Gables v. Gray, 154 Fla. 881, 883-84, 19 So. 2d 318, 320 (1944)). The initiative does not substantially alter or perform multiple government functions. The Slot Machine Initiative, therefore, satisfies the single-subject requirement, and the Court should approve it for submission to the voters.

The Court rejected the previous slot machine initiative on the grounds that it violated the single-subject rule by both authorizing slot machines in parimutuel

facilities and creating an exception to the supermajority vote requirement of article XI, section 7, Florida Constitution. 813 So. 2d at 101. Article XI, section 7, requires a two-thirds vote to approve any “new State tax or fee” imposed by constitutional amendment. The previous slot machine initiative mandated that slot machines be taxed, and thus it imposed by constitutional amendment a new State tax that would be subject to the supermajority vote requirement. To avoid the supermajority requirement, the previous slot machine initiative created its own exception to that requirement, within the body of the slot machine initiative itself. This Court ruled that this constituted two separate subjects: “these two disparate provisions cannot be combined in a single initiative.” 813 So. 2d at 102. The Court struck the amendment from the ballot for thus violating the single-subject rule. Id.

The new Slot Machine Initiative currently before the Court does not suffer from this flaw, and the Attorney General acknowledges as much in his request for an advisory opinion. [A 1 at 3.] The new initiative does not mandate taxation at all, but merely states that the Legislature “may” tax slot machine revenues. Because the new initiative does not mandate any tax at all, it does not impose a new State tax or fee by constitutional amendment, and is not subject to the supermajority vote requirement of article XI, section 7, Florida Constitution. It was, therefore, not necessary to attempt to create an exception to that supermajority vote requirement,

and the current initiative does not do so. The current Slot Machine Initiative contains only one subject and matter directly connected therewith.

The fact that the current Slot Machine Initiative acknowledges that the Legislature may impose a tax on slot machine revenues, and requires that any such tax revenues be used for a designated purpose, is not a violation of the single-subject rule. This Court itself noted in the previous slot machine case that this is permissible. Authorization for County Voters, 813 So. 2d at 101 (citing Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), in which the Court approved a provision requiring that anticipated tax revenues be applied to education and law enforcement, because the provision properly served to implement the single-subject of casino gambling in Dade and Broward counties). In fact, the Court in the previous slot machine case expressly ruled that it would be permissible to combine authorization of slot machines with a mandate that the machines be taxed and a mandate that the tax revenues be used for a particular purpose. 813 So. 2d at 101 (“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.”) To mandate a new State tax, however, would trigger the supermajority vote requirement of article XI, section 7, Florida Constitution; and therefore the sponsors have abandoned the attempt to mandate a tax. Instead, the new Slot

Machine Initiative acknowledges that the Legislature is allowed to perform its function of imposing a tax on slot machine revenues (which power the Legislature possesses in any event and not as a result of this amendment), and requires that any such tax revenue be used for the designated purpose. This complies with this Court's own ruling in the previous slot machine case, and complies with the single-subject rule of article XI, section 3, Florida Constitution. The Court should approve this amendment for placement on the ballot.

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

Whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment must appear on the ballot. This summary is subject to the following statutory requirements:

Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. ... The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla. Stat. (2003). The Court has ruled that the purpose of this statute is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to Att'y Gen. re Term Limits Pledge, 718 So. 2d 798, 803

(Fla. 1998); Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954) ("All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot."). The Court has applied the requirement to mean that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. Advisory Op. to Att'y Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972, 976 (Fla. 1997); Askew v. Firestone, 421 So. 2d at 154-55. While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification, or effect of the proposed amendment. Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982). The ballot title and summary of the Slot Machine Initiative satisfy these requirements, and thus the Court should approve the amendment to go before the voters.

The title of the Slot Machine Initiative, "Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities," does not exceed 15 words, and is the common reference for the proposed amendment. It thus satisfies the legal requirements for ballot titles. § 101.161(1), Fla. Stat. (2003).

The ballot summary also satisfies the applicable legal requirements:

Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in 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 calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

The ballot summary is 72 words long, and thus complies with the length requirement. The summary also complies with the legal requirement of informing the voter about the chief purpose of the amendment, because it plainly discloses that the amendment would authorize Miami-Dade and Broward Counties to hold local referenda on the question of whether slot machines should be allowed in eligible parimutuel facilities within their respective counties. The summary accurately tracks the text of the amendment itself, including all details reasonably necessary to assist the voter in making an informed decision. The language used is clear and unambiguous, and, read together with the ballot title, provides accurate, informative, and fair notice of the chief purpose of the proposed amendment so that the voter can cast an informed ballot. See Pre-Kindergarten, 824 So. 2d at 167. The Court should approve the ballot title and summary.

When the Court reviewed the predecessor to the current Slot Machine Initiative, it struck down the ballot summary as misleading because the former summary referenced a proposed, but not yet adopted, exception to the supermajority vote requirement of article XI, section 7, Florida Constitution. Authorization for County Voters, 813 So. 2d at 102. That is, the former initiative,

the main purpose of which was to authorize slot machines and mandate the taxation of their revenues, also simultaneously attempted to create an exception to the supermajority requirement that would apply to the initiative itself. The former ballot summary accurately reflected that the former initiative attempted to accomplish both of those objectives. However, because the exception to the supermajority requirement was merely proposed and not yet the law, the Court ruled that it was misleading to present the exception in the summary as if it were already a *fait accompli*, which it was not, thus rendering the summary fatally misleading. The Court rejected all other attacks on the ballot summary, however. 813 So. 2d at 102-03.

As the Attorney General notes in his request for an advisory opinion on the current Slot Machine Initiative [A 1 at 4], the former flaw in the ballot summary no longer exists. The current Slot Machine Initiative no longer seeks to mandate the imposition of a tax on slot machine revenues, and thus no longer seeks to create an exception to the supermajority requirement of article XI, section 7. The ballot summary of the current Slot Machine Initiative is accurate, informative, clear, and unambiguous, and the Court should approve it.

CONCLUSION

The Slot Machine Initiative satisfies the governing legal requirements for the title, ballot summary, and text of a citizens' initiative. The Court should approve it for placement on the ballot.

Respectfully submitted this 4th day of August, 2003.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its appendix has been furnished by United States mail to counsel for the Attorney General, Louis F. Hubener, III, Chief Deputy Solicitor General, The Capitol, Suite PL-01, Tallahassee, FL 32399-1050, this 4th day of August, 2003.

Attorney

CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced.

Attorney

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