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

ANSWER BRIEF OF THE SPONSOR, FLORIDIANS FOR A LEVEL PLAYING FIELD

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The proposed amendment does not violate the single-subject rule because it permits a referenda in Miami-Dade and Broward Counties to authorize slot machines at certain pari-mutuel facilities and also provides that any tax revenues from such slot machines are to be applied to public education. Two prior decisions of this Court have specifically held that similar provisions which were contained in proposed amendments were interrelated and did not violate the single-subject rule. Moreover, the proposed amendment does not amend Article X, section 7 and Article X, section 15 of the Florida Constitution which pertain to lotteries and thus, does not violate the single-subject rule in this respect.

The ballot summary clearly explains the chief purpose of the amendment. The Opponents' argument that the summary should have stated that there was no opportunity for voters to reconsider their vote authorizing slot machines was rejected in the previous appearance of the slot machine amendment before this Court. The proposed amendment did not affect Article X, section 7 and Article X, section 15 of the Florida Constitution, so there was no reason for the ballot summary to suggest that it did. There was no purpose or need for the ballot summary to say that the amendment stated that the Legislature may license and regulate the slot machines.

ARGUMENT

I. THE PROPOSED AMENDMENT DOES NOT VIOLATE THE SINGLE-SUBJECT RULE BY "LOGROLLING" TWO SEPARATE AND UNRELATED PURPOSES INTO A SINGLE AMENDMENT.

The Opponents contend that the proposed amendment "logrolls" two separate and unrelated purposes into a single amendment. They argue that the authorization to approve slot machines by referenda and the requirement that any tax revenue derived from the slot machines be applied to education are two separate subjects. In their argument, they have included a detailed discussion of various cases interpreting the single-subject rule with emphasis on the dissenting opinions. However, they admit that this Court has twice rejected this contention.

In Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), this Court held that a proposed amendment that authorized casinos in Dade and Broward County and provided that the taxes from the casinos be appropriated for education contained only a single subject. The Court reasoned as follows:

> Just as the Court in *Weber* concluded that financial disclosure and loss of pension are elements within the ambit of a single subject—ethics in government—so is the generation and collection of taxes, and the distribution thereof, part and parcel of the single subject of legalized casino gambling. In both instances the various elements serve to flesh out and implement the initiative proposal, thereby forging an integrated and unified whole.

The Court recently reaffirmed this position in the earlier appearance of the citizen's initiative seeking to authorize a referenda on the placement of slot

machines in pari-mutuel facilities in Miami-Dade and Broward Counties. Advisory Op. to Att'y Gen.—Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities, 813 So. 2d 98 (Fla. 2002). The 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. *Cf. 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 that 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").

813 So. 2d at 101.

The reason the initiative in that case was ultimately declared invalid for violating the single-subject rule was because it also included an exemption from the supermajority voting requirement of Article XI, section 7 of the Florida Constitution for amendments that impose new taxes. However, the current initiative does not suffer from that problem, because it does not require the imposition of taxes and does not contain a provision pertaining to the supermajority vote. Thus, the proposed amendment has cured the only defect which prevented the previous initiative from being approved.

II. THE PROPOSED AMENDMENT DOES NOT VIOLATE THE SINGLE-SUBJECT RULE, BECAUSE IT DOES NOT AMEND MORE THAN ONE SECTION OF THE FLORIDA CONSTITUTION

The Opponents first complain that the proposed amendment does not define slot machines. This complaint is academic because there is no requirement for proposed amendments to define all of their terms. More to the point, however, is the fact that there can be no confusion over what constitutes a slot machine. Section 849.16(1), Florida Statutes (2002), provides a comprehensive definition of a slot machine. It is because of the statutory prohibition against the ownership or use of slot machines in section 849.15, Florida Statutes (2002), that this amendment is being proposed.

Opponents then seem to be contending that slot machines constitute a lottery,[1] because they argue that the proposed amendment violates the single-subject rule by amending two provisions of the constitution that refer to lotteries. There is no merit in this argument for several reasons.

In the first place, slot machines do not constitute a lottery. The public knows the difference between a slot machine and a lottery. See Advisory Op. to the Att'y Gen. re: Tax Limitation, 673 So. 2d 864 (Fla. 1996) ("The voter must be presumed to have a certain amount of common sense and knowledge . . .). The

[1] The Opponents' position is surprising, because in their brief (pages 16, 21) opposing the slot machine amendment in its earlier appearance before this Court, they stated that a slot machine is not a lottery. Advisory Op. to the Att'y Gen. re: Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities, 813 So. 2d 98 (Fla. 2002).

Legislature, itself, has differentiated lotteries from slot machines by defining a lottery in an entirely separate statute. §849.09, Fla. Stat. (2002). Lee v. City of Miami, 121 Fla. 93, 163 So. 486 (1935), the very case that Opponents cite for their position, held that slots machines were not lotteries. In that case, the issue before the court was whether a statute licensing certain coin-operated devices was invalid as being in violation of the constitutional prohibition against lotteries. Section 2(1) and section 2(4) of the statute fully described slot machines. The court ruled that none of the devices described in the statute were lotteries and upheld the statute.[2]

The Supreme Court reaffirmed its position in Hardison v. Coleman, 121 Fla. 892, 164 So. 520 (1935). Hardison kept a slot machine in his business. He was charged under a statute which made it a crime to conduct a lottery. Relying upon its previous opinion in Lee v. City of Miami, the court held that the operation of a slot machine did not constitute the conduct of a lottery. In discharging Hardison from prosecution, the court stated:

> It may be true that every lottery is a game or gambling device, but it does not follow that every game or gambling device is a lottery within the meaning of section 23, article 3, of the Constitution of 1885.

164 So. at 622.

Lee and Hardison have not been overruled. Therefore, because a slot machine is not a lottery, the provisions in the constitution referring to lotteries are unaffected. However, the Opponents' argument would fail even if slot machines

[2] The only portion of the statute quoted by the Opponents in their brief (p. 19) was section 2(2) which described pinball machines.

were considered to be a lottery, because the only constitutional provision that would then be arguably affected by the amendment is Article X, section 7 which prohibits lotteries. The proposed amendment has nothing to do with Article X, section 15 of the Constitution which authorizes the state to conduct lotteries. Therefore, there could be no single-subject violation because Article X, section 7 would contain the only subject arguably affected. Moreover, the Opponents' argument would fail in any event, because the proposed amendment states that it is amending Article X which is the very article that contains those provisions that refer to lotteries.[3]

III. THE BALLOT SUMMARY IS NOT DEFECTIVE FOR NOT STATING THAT THERE IS NO WAY TO REVERSE THE VOTE AUTHORIZED BY THE AMENDMENT TO SUBSEQUENTLY DEAUTHORIZE SLOT MACHINES IN MIAMI-DADE AND BROWARD COUNTIES.

In the first place, the amendment does not state that the voters cannot subsequently deauthorize slot machines in the respective counties. In any event, the Opponents concede that this Court rejected this argument in the previous appearance of the proposed slot machine amendment. Authorization for County Voters, 813 So. 2d at 103, 104. In that case, the Court held that the assertion that the summary failed to reflect or make clear "that the voters, having authorized slot

[3] It is worth noting that the amendment proposed by initiative authorizing a state operated lottery that was approved by this Court in Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986) did not even state what article of the constitution it was amending.

machines in their county, either will or will not have an opportunity to reconsider that vote" was either collateral to its review or without merit. Thus, the Opponents are once again in the position of asking this Court to recede from a ruling made only last year regarding the earlier slot machine initiative.

IV. THE BALLOT SUMMARY PROPERLY OMITS ANY REFERENCE TO AMENDING THE LOTTERY PROVISIONS IN THE CONSTITUTION.

As explained in Point II, the proposed amendment does not amend the lottery provisions of the constitution. Therefore, it would have been misleading for the summary to have stated that it did.

Furthermore, section 101.61(1), Florida Statutes (2003), requires only that a ballot summary explain "the chief purpose of the measure." The chief purpose of this amendment could not be more clear. The ballot summary unmistakably provides that the proposed amendment authorizes Miami-Dade and Broward Counties to hold referenda on whether to permit slot machines in certain pari-mutual facilities and directs that any tax revenue from such slot machines go to public education.

V. IT WAS UNNECESSARY FOR THE BALLOT SUMMARY TO STATE THAT THE LEGISLATURE COULD LICENSE AND REGULATE SLOT MACHINES.

The Opponents contend that the ballot summary should have stated that the proposed amendment provides that the Legislature may license and regulate slot machines. This argument presupposes the remarkable proposition that in the

absence of such a provision, the Legislature would have no authority to license and regulate slot machines.

A ballot summary is limited to 75 words. Ballot summaries cannot be expected to cover all of the details of the amendment. As this Court explained in Carroll v. Firestone, 497 So. 2d 1200, 1206 (Fla. 1986), "[i]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose."

There can be no doubt that the ballot summary sets forth the chief purpose of the proposed amendment.

CONCLUSION

The slot machine initiative meets the legal requirements of containing a single subject and a proper ballot summary. The Court should approve it for placement on the ballot.

Respectfully submitted this 25th day of August, 2003.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing 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, and to Mark Herron, Messer, Caparello & Self, P.A., P. O. Box 1876, Tallahassee, Florida 32302, counsel for the Opponents American Society for the Prevention of Cruelty to Animals, Grey2K USA, The Humane Society of the United States, and No Casinos, Inc., this 25th 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.

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Attorney

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