IN THE SUPREME COURT OF FLORIDA

CASE NUMBERS SC16-778 and SC16-871

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: VOTER CONTROL OF GAMBLING IN FLORIDA

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BRIEF OF INTERESTED PARTY
FLORIDIANS FOR CLARITY IN GAMING CONTROL

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STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition titled "Voter Control of Gambling in Florida," (hereinafter "Gambling Initiative"), which has been assigned Case Nos. SC16-778 and SC16-871 by the Court. The Court will determine (1) whether the ballot title and summary are clear and unambiguous and thus comport with the requirements of Section 101.161(1), Florida Statutes; and (2) whether the Gambling Initiative violates Article XI, section 3 of the Florida Constitution, which requires that the Gambling Initiative embrace but one subject.

STANDARD OF REVIEW

The issues before the Court are questions of law, and therefore the review is de novo.

STATEMENT OF INTEREST

Floridians for Clarity in Gaming Control ("Floridians") is an unincorporated association of individuals and business sharing concerns regarding the proposed constitutional amendment. These interests range from registered voters in Seminole County, Florida to arcade operators, members of native American tribes, casino and lottery vendors and pari-mutuel permitholders. Each is uniquely impacted by ambiguity or inherent conflict between the proposed amendment, its title and ballot summary and current local, state and federal laws potentially

impacted by the proposal as well as the undisclosed conflicts between the proposed amendment on these laws and other provisions of the Florida Constitution. Floridians is opposed to the proposed constitutional amendment because it does not meet the single subject standards set for pursuant to Art. XI, Section 3 of the Florida Constitution.

SUMMARY

The Gambling Initiative does not comport with the requirements of the Florida Constitution or the Florida Statutes. Primarily, the Gambling Initiative's ballot title and summary are misleading as to the rights it provides to the citizens of Florida, the potential conflicts with local government powers and the methods available for obtaining voter approval of gambling expansion, as well as the effects that the Gambling Initiative will have on the Florida Legislature and tribal gaming. Moreover, it violates the single-subject requirement of the Florida Constitution by forcing voters who support some, but not all aspects of the Gambling Initiative into making an all or nothing choice. Therefore the Gambling Initiative should not be placed on the ballot for elector consideration.

ARGUMENT

POINT I

UNDER STANDARDS ESTABLISHED BY THIS COURT THE GAMBLING INITIATIVE'S BALLOT TITLE AND SUMMARY ARE NOT CLEAR AND UNAMBIGUOUS.

A. PRIOR PRECEDENT.

The Gambling Initiative's ballot summary and title do not meet the requirements set forth in Section 101.161, Florida Statutes. A ballot title and summary must be clear and unambiguous and must fairly inform voters of the chief purpose of the amendment and must not mislead the public. *Advisory Opinion to Attorney General re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213-14 (Fla. 2007). To meet this requirement, a ballot's title and summary must, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment. *Id.*

The Court must determine whether the language of the ballot title and summary, as written, mislead the public. *Id.* The ballot title and summary may not be read in isolation, but must be read together when the Court makes this determination. *Advisory Opinion to the Attorney Gen. re Fla. Amendment to Reduce Class Size, 816 So. 2d 580, 585 (Fla. 2002).* The ballot title and summary are the only information available to the electors asked to make a decision, and therefore their completeness and accuracy are of paramount importance in the determination as to whether a proposed amendment may appear on the ballot. *Armstrong v. Harris*, 773 So. 2d 11, 13 (Fla. 2000).

Florida courts have found the ballot title and summary to be misleading when they either "fly under false colors" or "hide the ball." *Id.* at 16.

In *Armstrong,* the Court determined that a constitutional amendment on the death penalty did not comply with these requirements. The Court determined that the ballot title and summary were flying under false colors as they were phrased in a way that a citizen could well have voted in favor of the proposed amendment , thinking that they were protecting state constitutional rights, whereas in fact what they were doing was eliminating those rights by tying those rights to the Federal Constitutional standard. *Id.* at 18. Furthermore, the Court found that the proposed amendment ballot summary and title "hid the ball" by failing to state the chief purpose of the Gambling Initiative. *Id.* at 19. The main effect was to nullify the Cruel or Unusual Punishment Clause of the Florida Constitution, which was vastly different than the stated purpose, which was to preserve the death penalty. *Id.*

Additionally, in *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982), the Court determined that the ballot title and summary of a proposed amendment prohibiting former legislators and elected officials from lobbying for two years following vacation of office unless they file a financial disclosure did not set out the chief purpose of the amendment so as to give the electorate notice of the actual purpose of the amendment. *Id.* at 155. Instead, the Court determined that the ballot title and summary neglected to inform the public of the amendment's actual purpose and chief effect, which was to actually abolish the then present two year total prohibition on lobbying. *Id.* at 155-6. The Court declared that because the ballot

title and summary failed to advise the electorate of the true meaning and ramifications of the proposed amendment, it flew under false colors. Because the voters were not given fair notice of the decision they must make, the Court found the ballot to be misleading. *Id.* at 155.

Furthermore, in *Florida Dept. of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662 (Fla. 2010), the Court found that the proposed amendment 7 would have the effect of nullifying the mandatory nature of the contiguity requirement for districts. The Court found the title to be misleading as to its true purpose and effect, as the title "Standards for Legislature to Follow in Legislative and Congressional Redistricting" appears to create and impose standards on the Legislature. *Id.* at 669. However, the amendment would have actually eliminated mandatory standards and replacing them with discretionary choices. *Id.* Therefore, the ballot title "hid the ball" as to the true purpose and effect of the amendment on existing constitutional provisions. *Id.*

Finally, in *Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998), the Court found that the ballot language was overly vague and ambiguous as well as creating an illusory right to choose a healthcare provider, when in fact it would severely limit patient choice was found to be misleading.

B. MISLEADING LANGUAGE OF THE GAMBLING INITIATIVE.

i. MISLEADING ON LOCAL GOVERNMENT IMPACT.

The Gambling Initiative ballot title and summary fail to meet the standards discussed in prior cases. First, the Gambling Initiative does not fairly appraise voters of potential conflicts with local government charters regarding conditions on local approval required for "casino gambling." By way of example, Seminole County has a charter provision which provides as follows:

> The citizens of Seminole County reserve to themselves the power to approve or disapprove casino gambling of any nature within the boundaries of the County. Therefore, if and when casino gambling becomes lawful under the Constitution and laws of the State of Florida, no action may be taken by the Board of County Commissioners, by the governing body of any municipality, or by any elected or appointed officials or employees of either the County or any municipality the effect of which is to authorize, to approve, or in any manner to allow casino gambling to occur anywhere in the County unless and until casino gambling in the County is first authorized by an approving vote of a majority of the qualified electors residing in the County and voting on the question at a referendum separate and apart from any other referendum, statewide or otherwise, on the question.

Section 5.1(A), Seminole County Charter. The charter provision then provides the mechanism for local approval as follows:

> At any primary, special or general election, the Board of County Commissioners may offer to the electorate, and upon a petition from the governing body of a municipality in the County, the Board shall offer as soon as practical to the electorate, the question of whether

> casino gambling should be authorized in the County. Upon approval of the question at referendum, the County and any municipality may thereafter allow casino gambling, to the extent lawful under the Constitution and laws of the State of Florida, and, at the option of the Board, this section may then be deleted from this Charter. If the question is disapproved at referendum, it may be offered to the electorate again from time to time, but in no case more frequently than once in any period of twenty-four (24) months. *Id.* at Section 5.1(C).

As a result, the voters would be led falsely to believe that their compliance with the provisions of this new constitutional provision and Art. XI, Section 3, would entitle them to casino gambling when in reality, it places their vote at odds with their local charter. Does the Gambling Initiative serve as an implied repeal of the conflicting charter provision or is a secondary local "approval" process still required? Regardless of the answer to this question, neither the ballot title and summary nor the amendment text itself provides an answer. It either betrays the portrayal that the "exclusive right" to decide on casino gambling is via Art. XI, Section 3 or fails to explain the impact on local government with conflicting charter provisions. Such a conflict clearly impacts Seminole County's home rule authority as established by Art. XIII, Section (1)(g); however, the ballot summary indicates no such impact stating only that the amendment "affects Articles X and XI."

Such confusion, intentional or not, is exactly the type of "hiding the ball" which is not permitted under Florida case law. *See Armstrong*, 773 So. 2d at 18-

19, *see also Florida State Conference of NAACP Branches*, 43 So. 3d at 669. Under the Gambling Initiative, a Seminole County voter would be led to believe that their vote may actually be authorizing an activity when in reality no such authorization would occur.

In addition, the Gambling Initiative is in direct conflict with the Seminole County Charter which defines "casino gambling" as:

> "playing or engaging in any game of chance for money or any other thing of value, regardless of how such game is named, labeled or otherwise characterized, which game was unlawful under the Constitution or laws of the State of Florida as of July 1, 1996."

Id. at Section 5.1(B).This definition is not in accord with the proposed constitutional definition further confusing the voters in that county as to the actual impact of their vote. Currently, Florida law allows card rooms to exist in pari-mutuel facilities that have received a favorable vote from their city or county commission for the conduct of such games. *See* 849.086, Florida Statutes. Because this law was effective on January 1, 2007[1] and after the July 1, 1996 date specified in the Seminole County charter, card room operations in that county are subject to such charter amendment. Voters in Seminole County are not informed as to whether the charter amendment, if superseded by the constitutional amendment, would still apply to card room operations or if a statewide vote on

[1]*See* section 20, ch. 96-364, Laws of Florida.

card room operations would entitle the pari-mutuels in that County with the right to conduct such operations.[2]

ii. MISLEADING REGARDING VOTER APPROVAL.

The amendment and its title also have an inherent ambiguity which further misleads voters. The ballot summary states that "[casino gambling] must be approved by Florida voters pursuant to Art. XI, Section 3 of the Florida Constitution." This provision of the constitution however does not speak to any "approval" and instead speaks to the manner in which a citizen initiative qualifies for single subject review.[3]

The voter approval process of a citizens initiative is discussed in Art. XI., Section 5. Only the actual wording of the amendment itself speaks to a "vote" by citizens. Neither the title nor the summary discuss an actual vote and the cross

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[2]Floridians adopts in total the arguments raised in the brief filed by Opponents, Jacksonville Greyhound et al regarding the question and voter confusion as to the retroactivity of the impact of the constitutional amendment on card room operations and other types of gaming currently legal under Florida law but within the ambit of the proposed definition of "casino gambling" by the amendment.

[3]"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen." Art. XI, Sec 3., Fla. Con.

reference to the constitutional amendment could easily be interpreted to mean that the "voter control" refers to the signature requirements of registered voters for such a proposal and not the follow on vote required in an unreferenced constitutional section.

Also, the ballot summary for the Gambling Initiative states in relevant part that "…voters shall have the exclusive right to decide whether to authorize casino gambling…" The term "exclusive," as previously defined by this Court, means "apart from all others" or "only." S*ee Lee v. Gulf Oil Corp.*, 148 Fla. 612, 618 (1941). The term "decide" means "to arrive at a determination." *See Black's Law Dictionary*, 6th Ed. (1991). Finally, the term "authorize" means "to empower; to give a right or authority to act; or to endow with authority or effective legal power, warrant or right." *Id*. Read together, the sentence of the Gambling Initiative would, using its definitions, state to the voter that by voting "yes" on the amendment that he or she would then have "the only right to arrive at a determination whether to empower casino gambling." This sentence, read using either the original verbiage or its definitional connotations, is misleading to the voter because he or she would not have the sole right to make such a determination, similar to the illusory right present in *Health Care Providers,* 705 So. 2d 563. At a minimum, legislative implementation would still be required.

iii. MISLEADING AS TO IMPACT ON INDIAN TRIBES.

The ballot summary states both that "…voters shall have the exclusive right to decide whether to authorize casino gambling…" and "this amendment does not conflict with federal law regarding state/tribal compacts." The ballot summary is thus patently misleading, as these sentences are in direct conflict with one another. Federal law currently provides for Native American tribes to conduct Class II gaming without a compact with the State of Florida. *See* 25 U.S.C. s. 2710(a)(2). By virtue of this Gambling Initiative, the only method by which Native American tribes could conduct gaming would be via a compact, or by citizens' initiative pursuant to Article XI, section 3. Class II gaming includes, per federal law, the following:

> (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—
> (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
> (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
> (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,
> including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and
> (ii) card games that—
> (I) are explicitly authorized by the laws of the State, or
> (II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

> but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

See 25 U.S.C. s. 2703(7)(a).

There are two Native American tribes in Florida which are entitled, as a matter of right, to conduct Class II gaming. One is currently operating, the other has elected to not yet do so. Section (c) of the Gambling Initiative provides that "nothing herein shall…affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA." This amendment specifically does affect the existing Class II gaming on tribal lands as such gambling does not, pursuant to federal law, require a compact between the state and the tribe. Yet Class II gaming is caught within the broad definition of casino gambling by the following text of the Gambling Initiative:

> and any other game not authorized by Article X, section 15, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing. As used herein, "casino gambling" includes any electronic gambling devices, simulated gambling devices, video lottery devices, internet sweepstakes devices, and any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under IGRA.

The language of the Gambling Initiative would require the Native American tribe currently offering Class II slot machines, bingo and card games to cease such operations until such time as the tribe entered into a compact with the State of Florida or passed a citizens initiative. This is in direct contradiction to the ballot summary, which provides that "…this amendment does not conflict with federal law regarding state/tribal compacts." As a result, the Gambling Initiative is unclear on its true purpose and effect. *See Florida State Conference of NAACP Branches*, 43 So. 3d 662 at 669.

iv. MISLEADING BY DEFERRING TO FUTURE FEDERAL CHANGES IN GAMBLING DEFINITIONS.

Another example of how the Amendment's language is misleading is the inclusion of the provision that incorporates by reference into the proposed constitutional definition of "casino gambling" future additions to the federal definition of Class III games. This Court has without deviation held that any attempt by the Legislature or other law making branch of any segment of the government to incorporate into a law future regulations of administrative bodies or laws of other jurisdictions is an unconstitutional delegation of a power that the Florida legislature alone possesses under Art. III, §1. See for example *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So. 2d 599 (1945); *Freimuth v. State*, 272 So. 2d 473 (Fla. 1972); *State v. Welsh*, 279 So. 2d 11 (Fla. 1973); and

Department of Legal Affairs v. Rogers, 329 So. 2d 257 (Fla. 1976). Without conceding that this provision of the proposed amendment would withstand an unlawful delegation or other constitutional challenge, it is acknowledged that the amendment would not be legislation. However, in the context of a constitutional amendment, the automatic incorporation into the Florida Constitution of some unknown future federal law hardly provides the type of fair notice of the content of the amendment required by the case law—as it is clear that the inclusion of the future incorporation by reference provision would allow the content of the amendment to change at any time and at the whim and caprice of the federal government.

v. MISLEADING ROLE OF LEGISLATURE AND GOVERNOR.

The ballot summary further misleads the voting public to believe that the passage of the Gambling Initiative would create a scenario wherein the Legislature cannot establish gaming or gambling in Florida. Section (c) of the Gambling Initiative provides that "nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities" while the ballot summary for the Gambling Initiative states in relevant part that "…voters shall have the exclusive right to decide whether to authorize casino gambling…" Section (c) therefore specifically allows the Legislature to "regulate" gambling through general law. The term

"regulate" is defined as "to fix, establish or control." *See Black's Law Dictionary*, 6th Ed. (1991). Therefore, by the plain language of the text of the Gambling Initiative, the Legislature retains the ability to establish gaming or gambling, in direct conflict with the ballot summary.

The ballot summary is also misleading to the voters as to who actually controls the right to "authorize" casino gambling. The summary states that "in order for casino gambling to authorized under Florida law, it must be approved by Florida voters pursuant to Article XI, Section 3 of the Florida Constitution". Florida courts have indicated that a reference to being authorized or provided "by law" means by act of the Florida Legislature. *See Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982) and *Holzendorf v. Bell,* 606 So. 2d 645 (Fla. 1st DCA 1992). Article XI, Section 3, refers to amending Florida's Constitution by citizens' initiative. As a result, a logical meaning of this sentence is "in order for casino gambling to be authorized [by the Florida Legislature], it must be approved by Florida voters [as a citizens initiative]" which begs the basic questions of "how this will work practically?" and "what comes first?"

Does the Florida Legislature need to propose a general or special law which will then be subject to a single subject petition gathering process or does the citizen initiative process begin first? One would assume true "Voter Control of Gambling

in Florida" would logically leave the last word to the voters but the actual amendment in subsection (c) provides that "nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate or tax and gambling or gambling activities." Does this include "casino gambling" activities currently legal? If it does, does a change in regulation such as the authorization of extended hours of operation or the relaxation of current restrictions on slot machines and their location need to be subject to a referendum?

Conversely, if the voters are able to propose via citizens' initiative the legalization of some type of casino gambling, is the Florida Legislature, after the proposal is "approved by Florida voters," authorized to pass implementing legislation that could restrict the activity in accordance with subsection (c). To allow the Florida Legislature to restrict the activity or fail to act on the citizens' initiative would essentially afford the Florida Legislature "exclusive right" to decide on the matter. Further confusing the matter is since the Legislature must act in this area via "general law," does the Governor not have a role pursuant to Art. III, Section 8, to veto the legislation and as a result would the Governor not be in the final place of having the "exclusive right" to decide the matter?

All of these questions highlight the undisclosed conflict and misleading nature of the title "Voter Control of Gambling in Florida." In addition, the ballot summary's use of the phrase "exclusive right" exacerbates the false colors of this

Gambling Initiative. A citizen initiative proposing a beachside casino resort which meets the Art. XI, section 3 threshold for "approval" still is subject to legislation and the veto pen of the governor. As a result, the voter may never actually receive what they believe they were voting on because it appears the true control to restrict, regulate and tax resides with the Legislature subject to the veto power of the Governor. The seminal words of Justice John Marshall in the Supreme Court case, *McCulloch v. Maryland,* 17 U.S. 327 (1819), that "the power to tax is the power to destroy" should considered in measuring the accuracy of the ballot title and summary. Nowhere is clarity provided as to the role of the Florida Legislature or the Governor in either proposing the casino gambling or implementing on the back end a successful citizens initiative; nor is there any mandate on their part to act. This point by itself demonstrates the misleading nature of the proposal.

POINT II

THE GAMBLING INITIATIVE DOES NOT MEET THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

A. PRIOR PRECEDENT.

Article XI, section 3 of the Florida Constitution requires that any amendment or revision proposed by the people, except those limiting the power of the government to raise revenue "shall embrace but one subject and matter directly connected therewith." *See* Florida Constitution (1998). To meet this requirement, a Gambling Initiative must demonstrate a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).

The single subject requirement fulfills two separate purposes. The first purpose is to prevent "logrolling," which describes the practice of linking an unpopular issue with a popular one to aid in its passing. *Advisory Opinion to the Attorney Gen. re the Med. Liab. Claimant's Comp. Amendment*, 880 So. 2d 675, 677 (Fla. 2004) (quoting *Advisory Opinion to the Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 369 (Fla. 2000)). The test for logrolling is met when a proposed amendment "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.

Unity of object and plan is the universal test." *Advisory Opinion to Attorney Gen. re: Additional Homestead Tax Exemptions*, 880 So. 2d 646, 649 (Fla. 2004).

The second purpose of the single-subject requirement is to prevent a single amendment from substantially altering or performing the functions of multiple aspects of government. A proposed amendment can affect multiple branches of government and still meet the requirements of the Constitution. *See Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991). However, when an initiative "performs the functions of different branches of government, it clearly fails the functional test of the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution." *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984); *see also Advisory Op. re Property Rights*, 699 So. 2d 1304, 1308 (Fla. 1997).

In *Advisory Opinion to the Attorney General – Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994), the Court struck down an initiative seeking to compel the sugar industry to fund the restoration of the Everglades. The Court found that the initiative embodied "precisely the sort of logrolling that the single subject requirement was designed to foreclose." *Id.* at 1341. The initiative put voters who favored the restoration of the Everglades in the position of having to also force the sugar industry to bear the financial burden of such a cleanup. The Court recognized that not all voters who favored restoration would support the

funding structure. *Id.* Therefore, because the voters faced all or nothing proposition, the Court deemed that the amendment violated the single-subject rule. *Id.*

Furthermore, in *Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998), the Court recognized the need for an initiative to identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations. *Id.* at 565-566, *see also Advisory Opinion to the Attorney General re Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994). The Court found the proposed amendment in *Health Care Providers* to be flawed in many aspects but addressed only the logrolling effect of the amendment. *Id.* at 566. Again, voters were presented with an all or nothing choice as the proposed amendment combined banning limitations on health care provider choices imposed by law with prohibiting private parties from entering into contracts that would limit health care provider choice. *Id.* By forcing voters who may favor one aspect to also accept another, there was a logrolling effect and was therefore in violation of the single subject requirement. *Id.*

B. THE GAMBLING INITIATIVE AND ITS FAILURE TO MEET A SINGLE SUBJECT REQUIREMENT.

The Gambling Initiative engages in logrolling by placing the elector in the position of deciding between a preference for controlling the expansion of full-fledged casino gambling and Florida's currently legal gaming landscape. Some voters may resent the current restrictions imposed on gambling by the Florida Legislature and vote in favor of the amendment believing their votes will supercede legislative gamesmanship and bring to Florida the casino gambling they long for while other swill vote in favor of the proposal because of a view of controlling the Legislature's recent gambling expansions. Both voters could be correct or incorrect because of the misleading language. Furthermore, the Gambling Initiative is unclear as to whether it operates retroactively. As a result, a voter who supports voter control of the future of gaming expansion in Florida, but is content with the current level of gaming available, is forced to potentially eliminate Florida's current gaming landscape if he or she supports voter control of gaming expansion. Furthermore, voters who desire to limit the expansion of "casino gambling", but who do not wish to bind Florida to the federal government's definitions of Class III gaming found in IGRA, are forced to make a similar all or nothing decision. Additionally, section (b) of the Gambling Initiative itself contains conflicting definitions of "casino gaming", in that it defines the term

as "any of the types of games typically found in casinos and that are within the defintion of Class III gaming" in IGRA as well as 25 C.F.R. §502.4. but then expands the definition to include multiple card games (some of which can be played legally under current Florida law), any game not authorized by Article X, section 15 whether or not defined as a slot machine, and any electronic gambling devices and any other form of electronic or electromechanical facsimiles of any game of chance, regardless of how these games and machines are classified under IGRA. In doing so, the Gambling Initiative creates a situation where an individual who seeks voter control of the future expansion of gambling, but yet does not believe all of the listed gaming options in section (b) to be casino gambling, would be forced into an all or nothing choice as well.

Moreover, the Gambling Initiative would deprive the Legislature of a significant component of its lawmaking power. *See Evans v. Firestone*, 457 So. 2d at 1354 (In *Fine*, we found multiplicity of subject matter because the Gambling Initiative would have affected several *legislative* functions.")(emphasis in original).

CONCLUSION

This Court should direct that the proposed gambling amendment not be placed on Florida's ballot as the ballot summary and title are not in accord with section 101.161(1), Fla. Stat., the title and ballot summary are misleading, as they

improperly lead the voting public to believe that they would have control of gambling in Florida, that the Gambling Initiative does not impact federal law relating to state/tribal compacts, and that the Legislature would no longer retain the ability to establish casino gambling in Florida. In addition, the ballot title and summary are also misleading as to the rights it provides to the citizens of Florida, the potential conflicts with local government powers and the methods available for obtaining voter approval of gambling expansion. Finally, the Gambling Initiative fails to meet the single subject requirement imposed by the Florida Constitution. For these reasons, this Court should direct that the proposed gambling amendment should not be placed on Florida's ballot.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and is submitted in Times New Roman 14-point font.

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