

Slot Machines within Pari-mutuel facilities

Number: PETITION

Date: May 21, 2001

The Honorable Charles T. Wells
Chief Justice, and Justices of The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Wells and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Office of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On April 20, 2001, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to provide authorization for county voters to approve or disapprove slot machines within existing pari-mutuel facilities. The full text of the proposed amendment states:

"Article X, Section 19 is created to read:

SECTION 19. AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES.-

(a) Slot machines are hereby permitted in those counties where the electorate has authorized slot machines pursuant to referendum, and then only within licensed pari-mutuel facilities (*i.e.*, thoroughbred horse racing tracks, harness racing tracks, jai-alai frontons, and greyhound dog racing tracks) authorized by law as of the effective date of this section, which facilities have conducted live pari-mutuel wagering events in each of the two immediately preceding twelve month periods.

(b) Within 180 days of the voters' approval of this amendment, the legislature, by general law, shall implement this section with legislation to license, regulate and tax slot machines. The requirement of a 2/3 majority vote for new state taxes in Article XI, Section 7 of this constitution shall not apply to any slot machine tax authorized by general law in accordance with the mandate of this amendment to the constitution.

(c) The legislature, by general law, shall appropriate tax revenue derived from slot machines to enhance senior citizen services, classroom construction, education programs, and teachers' salaries and benefits.

(d) Following the effective date of this amendment and its implementation by the legislature, the governing body of each county in which there is an eligible pari-mutuel facility as defined in

subsection (a), may authorize a referendum on whether to approve or disapprove slot machines within its jurisdiction. The electorate of such county, by a majority vote of the voters in such county then voting on this referendum, may authorize slot machines within its jurisdiction.

(e) If the electorate in a particular county votes not to authorize slot machines, that county may conduct subsequent elections for the purposes of considering whether to authorize slot machines pursuant to subsection (a) hereof no earlier than two years after any vote in which slot machines were not authorized.

(f) If any portion of this section is held invalid for any reason, the remaining portion or portions of this section, to the fullest extent possible, shall be severed from the void portion and be given the fullest possible force and application.

(g) This amendment shall take effect on the date approved by the electorate; provided, however, that no slot machines shall be authorized to operate in the state until July 1, 2003."

The ballot title for the proposed amendment is "AUTHORIZATION FOR COUNTY VOTERS TO APPROVE OR DISAPPROVE SLOT MACHINES WITHIN EXISTING PARI-MUTUEL FACILITIES." The summary for the proposed amendment states:

"This amendment authorizes county voters to approve or disapprove, in their respective counties only, slot machines at existing pari-mutuel facilities only; requires the legislature to license, regulate and tax such slot machines and to appropriate such tax revenues to enhance senior citizen and education programs; permits voters to authorize the taxation of slot machines by simple majority vote rather than the 2/3 majority vote for new state taxes provided in Article XI, Section 7."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The substance of the amendment . . . 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."

This Court has stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting*, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Advisory Opinion to the Attorney General--Limited Political*

Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991). However, the ballot must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that the voters are advised of the true meaning of an amendment.

The chief purpose of this initiative is to authorize county voters to approve slot machines within existing pari-mutuel facilities and to require the Legislature to license, regulate and tax such machines. The ballot title and summary appear to express this chief purpose.

The ballot summary, however, states that the amendment "permits voters to authorize the taxation of slot machines by simple majority vote rather than the 2/3 majority vote for new state taxes provided in Article XI, Section 7." Article XI, section 7, Florida Constitution, provides that "no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered." [1] Any such amendment which fails to pass by the required two-thirds vote is null, void and without effect.

It is questionable whether a proposed constitutional amendment may exempt itself from an existing constitutional requirement that such an amendment pass by two-thirds vote. To allow such a construction would effectively render the requirements of Article XI, section 7, Florida Constitution, a nullity.

If this Court concludes that the proposed amendment may not exempt itself from the requirements of Article XI, section 7, Florida Constitution, the statement in the summary to that effect must be construed as misleading and, therefore, defective.

In addition, the ballot summary regarding Article XI, section 7, Florida Constitution, does not reflect the language in the text of the proposed amendment. The text of the proposed amendment would appear to exempt a two-thirds majority requirement from passage of the tax imposed by the Legislature rather than passage of the proposed constitutional amendment. As noted above, however, Article XI, section 7, refers to passage of a proposed constitutional amendment which provides for the imposition of a state tax or fee.

The ballot summary indicates that county voters will decide whether to permit slot machines at existing pari-mutuel facilities within their respective counties. In fact, the amendment provides that the governing body of the county may place such an issue before the voters. The amendment, however, does not appear to require that this issue be scheduled for referendum. Thus, voters may believe from the ballot summary that they will be guaranteed a referendum on this issue when the language of the amendment does not necessarily support such a conclusion.

Moreover, the language of the ballot summary does not clearly advise the voters of the extent of slot machine operation. The language does not indicate whether the operation of slot machines is restricted to periods during pari-mutuel wagering events or whether such machines may operate continuously even though pari-mutuel events are not being conducted at the facility.

As discussed above, this office recognizes that the ballot title and summary need not explain every detail or ramification of the proposed amendment; this office, however, would note that

neither the ballot title nor summary advise the voter that if a referendum is held on the issue of slot machines within a county and fails, a subsequent referendum on the issue may not be conducted within two years. In addition, the ballot summary fails to indicate that no slot machines may be authorized to operate until July 1, 2003.

No definition of "slot machines" is provided such that the voter is given notice of the types of gambling devices that would be authorized by passage of the proposed amendment.[2]

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

Article XI, section 3, Florida Constitution, provides in relevant part:

"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."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). And see *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

The proposed constitutional amendment clearly affects multiple levels of government by requiring the Legislature to license, regulate and tax slot machines, and directing the appropriation of tax revenues to particular purposes while at the same time providing for placement on the ballot by a county governing body the issue of legalizing slot machines in the particular county. This Court has stated that an initiative which affects multiple branches or levels of government does not necessarily violate the single subject requirement, provided it does not substantially alter or perform the functions of those branches. *Advisory Opinion to the Attorney General--Limited Casinos*, 644 So. 2d 71, 74 (Fla. 1994), citing, *Advisory Opinion to the Attorney General English--The Official Language of Florida*, 520 So. 2d 11 (Fla. 1988). Whether such interference is substantial enough to invoke the proscriptions of Article XI, section 3, Florida

Constitution, is a matter that this office presents to this Honorable Court for resolution.

In the past, this Court has rejected proposed amendments on the basis of logrolling as a violation of the single subject requirement, where a voter may be forced to accept an unfavorable portion of an initiative in order to enact a favorable change in the Constitution. See *In re Advisory Opinion to the Attorney General--Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888 (Fla. 2000); *In re Advisory Opinion to the Attorney General--People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304 (Fla. 1997); *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

The proposed amendment limits the use of tax revenues derived from slot machines to the enhancement of "senior citizen services, classroom construction, education programs, and teachers' salaries and benefits." The proposed amendment thus enfolds the disparate subjects of education and senior citizens. Therefore, a voter in favor of enhancing educational programs would have no option but to accept the expenditure of slot machine tax revenues on senior citizens programs and vice versa. As this Court in *In re Advisory Opinion to the Attorney--Restricts Law Relating to Discrimination*, 632 So. 2d 1018 (Fla. 1994),

"The proposed amendment also violates the single subject requirement because it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked one "yes" or "no" answer to a proposal that actually asks ten questions. For example, a voter may want to support protection from discrimination based on race and religion, but oppose protection based on marital status and familial status. Requiring voters to choose which classifications they feel most strongly about and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single-subject limitation."

Therefore, I respectfully urge this Honorable Court to consider whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

cc: The Honorable Katherine Harris
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable John McKay
President, Florida Senate

The Honorable Tom Feeney
Speaker, Florida House of Representatives

Mr. Daniel K. Adkins
Chair, Floridians For a Level Playing Field

[1] Article XI, s. 7, Fla. Const., defines the phrase "new State tax or fee" to mean "any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund[.]"

[2] Under the proposed amendment, slot machines are "permitted" in counties where an approving referendum has been held. The amendment, however, does not advise the voter of the scope of the term "permitted." Use of such a term could authorize the manufacture, repair or storage of slot machines at authorized facilities as well as the operation of such machines.